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US Immigration and HIV: The Basics

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Image



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Note: This fact sheet is intended for people who plan to stay in the US for longer than a visit. The information below is current as of the date on this fact sheet. However, immigration laws and their enforcement change rapidly, so some information here may no longer apply by the time you read this. This fact sheet is intended for information only and does not constitute legal advice. The Resources section lists organizations that may be able to provide legal help for your specific case.

The US Immigration System

The United States represents about 5 percent of the world's total population, yet is home to close to 20 percent of its migrants. There are more foreign-born people living in the US than in any other country in the world.

View our companion fact sheet, [Immigration to the US, Women, and HIV: Facts and Resources](#), for more information on HIV and US immigrant experience

If you are living with HIV, there is no legal barrier based on your HIV status to your making your home in the US. The rule restricting travel or immigration to the US by people living with HIV, often called the "HIV entry ban," was lifted in 2010 after 22 years by then-President Barack Obama. However, there may be other challenges to consider in that process.

Bias

While the law is supposed to apply to everyone, it is applied unequally, with some ethnicities targeted more than others. At different times in US history, people from various countries of origin have been prohibited or prevented from coming to the US. Current US policy mostly tries to keep out people from countries of the global South (e.g., Central America) – unless they have helped the US in some way (e.g., as interpreters during conflicts), have special skills (e.g., healthcare workers during the COVID-19 pandemic), or are allowed in on temporary unskilled work visas (which generally cannot lead to permanent status).

In numerous instances, the results of US actions throughout the world ... play a large part in making people's home countries unlivable, forcing them to migrate.

Beyond unequal enforcement, some immigration laws apply only to people from specific countries. For example, in 2017, the administration of then-President Donald Trump signed an executive order banning people from seven majority-Muslim countries from coming to the US, even as visitors. Inside the US, people demonstrated against this "Muslim ban." The original regulation, Executive Order 13769, was modified somewhat, and other countries were added to the list. Revoking this order was among President Joe Biden's first actions upon taking office in 2021.

Enforcement

Immigration law is a federal matter, though some states and municipalities have taken steps to limit their role in cooperating with federal authorities to enforce immigration law. The state of California, as well as several counties and cities across the US – including New York City – have declared

themselves to be "sanctuaries." What exactly this means differs among locations, but the general idea is the same: police, social service offices, schools and other local government agencies are meant to not help federal Immigration and Customs Enforcement (ICE) punish people who are in the country without proper documents. They also may not ask about people's immigration status when they provide services. However, even in these cases, people are not fully shielded from deportation and immigration enforcement. There have still been some cases of local law enforcement helping ICE despite sanctuary laws in their jurisdictions. Further, some jurisdictions' policies may allow some forms of collaboration with ICE.

Context for Immigration

People are fleeing conflict, violence, poverty, and the effects of climate change in various parts of the world. In many cases, their destination countries are trying to stop them from coming in. The European Union, as well as individual countries within it, have enacted laws and policies to keep out people fleeing the Syrian civil war. Similarly, Australia has policies aimed at stopping people fleeing government violence in Asia. The US government, for its part, has waged a campaign against Central Americans trying to escape violence in their home countries. In numerous instances, the results of US actions throughout the world – starting or promoting wars, contributing to climate change with massive pollution, supporting corrupt governments, or other interventions – play a large part in making people's home countries unlivable, forcing them to migrate.

As the effects of corruption, climate change, pandemics, and political instability heighten social inequalities and conflicts across the world, such migratory movements are likely to continue, if not increase.

Living in the US

Only persecution for specific reasons – including political or religious beliefs, gender identity, or in some cases HIV status – can be used to apply for asylum.

There are various ways in which a person who is not a US citizen can live in the US with proper documentation.

Green Card

The best-known is to be approved as a "lawful permanent resident" ("resident alien") – that is, to get a "green card." With a few exceptions – such as voting in elections – a green card gives its holder most of the same rights as US citizens. Most commonly, people apply for green cards after marrying a US citizen. In 2015, the US Supreme Court legalized same-sex marriage in every state. This makes it easier for same-sex couples to pursue marriage-based immigration benefits. If same-sex marriage was legal in the state where you got married at the time you got married, it is legally valid for immigration purposes. Unlike US citizens who are not required to carry identification, green card holders must have their card with them at all times.

That said, you must prove to a US immigration official's satisfaction that you are marrying for love, not for a green card, and that you are in an actual married relationship. That could be difficult, if you have a non-traditional relationship. If approved, you will get a temporary card valid for two years. After that time, you and your spouse need to go through another immigration interview and prove that you still have a married relationship to get a permanent green card. In some cases, the immigrant spouse may be afraid to oppose their partner's violence for fear of losing their ability to get a permanent green card.

U Visa

Experiencing intimate partner violence in the US can be a valid reason for a U visa (discussed above),

if the victim cooperates with law enforcement against their former partner. However, police are often slow to respond to cases of intimate partner violence, even among US citizens. This lack of concern is frequently compounded by racism and xenophobia where immigrants are concerned. Further, as discussed above, there is a backlog in applications. In practice, this means that it may take a long time before your application for a U visa is even processed, and the person who committed the crime may retaliate against you for helping the police.

Asylum

Another potential avenue for legal status is asylum. Immigrants have to show a "credible fear of persecution" in an initial interview and then formally file for asylum within a year, including documentation of the hardships they have suffered. Only persecution for specific reasons – including political or religious beliefs, gender identity, or in some cases HIV status – can be used to apply for asylum. Please see our companion fact sheet, [Immigration to the US, Women, and HIV: Facts and Resources](#), for more details on women, HIV, and asylum.

DACA

DACA (Deferred Action for Childhood Arrivals) is a policy that allows people who came to the US as children without documentation to apply for a temporary permission to stay in the US. To qualify, applicants must be enrolled in school, have graduated from a US high school or have been honorably discharged from the US military. There are also requirements about when applicants came to the US and where they were on certain dates. DACA status does not automatically allow you to work and must be renewed regularly.

It is important to note that, under current DACA rules, a young person is required to have been present in the US on June 15, 2012, to be eligible for this form of immigration relief. Unfortunately, at the time of this writing, the federal government was not granting or even processing DACA applications from first-time applicants or anyone whose DACA expired more than a year ago.

Other Methods

There are also a variety of temporary visas, including work permits for people with specialized skills, authorizations for visiting professors or artists, and other special categories. Applications for these visas must generally be filed through an employer or sponsor in the US.

Many people have lived in the US for a long time without any of these authorizations. While living here without proper status has always been difficult, current laws and practices make it even harder. However, some localities have opted to become sanctuaries that push back against ICE enforcement, as explained above. Individual people and organizations are also helping immigrants (see "[Where Immigrants May Find Support](#)" below).

Immigrant community organizations are also organizing to help recently arrived people and to push back against anti-immigrant rhetoric and policies.

Because children born in the US are automatically US citizens, there are many "mixed-status" families in which one or both parents are here without documentation, but their children are US citizens. It is important to have a plan for the children should the parents be arrested by ICE, since ICE cannot legally deport US citizen children.

Where Immigrants May Find Support

As noted above, various locations have declared themselves to be sanctuaries for immigrants without proper documentation. The specific protections offered under a sanctuary law differ by location. For

example, in New York City, the police will share the immigration status of someone they have arrested with ICE, but will not hold that person in jail to help ICE deport them.

Immigrant community organizations are also organizing to help recently arrived people and to push back against anti-immigrant rhetoric and policies. May 1, which is a holiday in most of the world but not in the US, has become a day of rallying for immigrant rights. In addition, events are being organized as needed to counter policies or court decisions, and to protest attacks on immigrants, their businesses and communities.

For more information and resources on HIV and US immigrant experience, view our companion fact sheet, [Immigration to the US, Women, and HIV: Facts and Resources](#).

Conclusion

Like many other industrialized nations, the US is trying to stop immigration by people of color; but cities, counties, states and people are pushing back against the government's attempts. Ultimately, laws and practices governing the movement of people across borders are determined at the policy level. Various movements across US history have led to significant change at that level. Such change can happen again, if enough people get involved in making it happen.

Additional Resources

Select the links below for additional material related to US Immigration and HIV

- [Immigration \(The Center for HIV Law & Policy\)](#)
- [Impact of HIV Status Under Immigration Law \(Justia\)](#)
- [Immigration and Asylum \(Lambda Legal\)](#)
- [LGBTQ and Persons with HIV in Deportation Proceedings \(Illinois Legal Aid Onlin...](#)
- [National Immigrant Justice Center](#)
- [Same Sex 'Green Card Marriage' Facts – FindLaw](#)
- [Living in Limbo: A Guide to Understanding Your Rights, Benefits, and Obligation...](#)
- [Using HIV to Justify Immigration Bans Isn't New. Here's the 35-Year History. \(T...](#)



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