

# IMMIGRATION POLICY IN NORTH CAROLINA: LEGAL AND ETHICAL CONSEQUENCES FOR SOCIAL WORKERS

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This workshop is sponsored by the UNC School of Social Work, the Latino Migration Project at the Institute for the Study of the Americas and the Center for Global Initiatives at UNC Chapel Hill, and the Z. Smith Reynolds Foundation

# Overview of Immigration Laws

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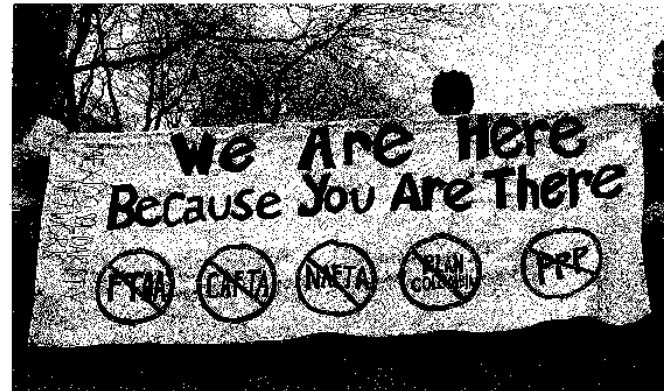


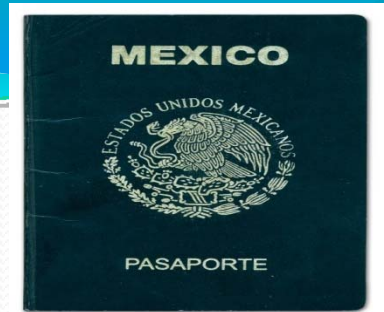
# Immigration Law Basics

- Immigration law generally includes such questions as:
  - Who can come to this country.
  - Who is prohibited from entering the US.
  - When/why noncitizens who have entered the US can be deported.
- Complicated system.
- Waiting lists are long, administrative backlogs.
- Alienage law- how noncitizens are treated when they are here (due process, equal protection).

# Political Determinants of Immigration

- We Are Here Because You Are There
  - Legacy of Colonialism and Occupation
  - Legacy of Racism
  - Consequences of “Free-Trade” Agreements and the Destruction of Political Economies





# BASIC ISSUES: Categorizing People

- First Category
  - Citizenship- National of US vs. non citizens (alien)
- Second Category
  - Noncitizens
    - Immigrant
    - Non Immigrant
    - Undocumented

# First Category: Citizenship

- How to acquire US citizenship.
  - birth in US
  - birth to US citizen parents outside the US
  - naturalization

# Second Category

## Non Citizens/Non Immigrants

- Non immigrants are granted entrance into the United States for a defined period of time and for a specific purpose.
- Permission to enter the U.S. is granted with the understanding that the person will leave after the end of such period of time and will conduct themselves in a manner consistent with their visa.
- many types of visas- business, temporary specialty workers, temporary seasonal non agricultural, or agricultural, temporary trainees, students, exchange visitors, tourist.



# Non Citizens- Immigrants

- Non-citizens who come to the U.S. with the intention of taking up residence are considered immigrants.
- Methods:
  - family sponsorship
    - Immediate Relative
    - Family Preference System (currently working on Mar 2004 applications)
  - employment-based immigrants
  - Diversity (lottery) immigrants
  - asylum/refugee status
  - Special Immigrant Juvenile Status
  - U and T visas
- Purpose is to achieve lawful permanent residency
- Can then consider naturalization process- citizenship.

# What is LPR status?

- Right to live here permanently
- Right to work
- After 5 (or 3) years, may petition for citizenship
- Eligibility for certain government benefits, including in-state tuition at state schools, funding.
- Can be removed for certain criminal acts/behaviors.

# Example of Immigration Process

## Family Sponsored- Spouses

- Married to US Citizen (USC)
  - *Immediate Relative: Prove Good Faith Marriage*
  - *Show not inadmissible (health, criminal)*
- Married to a Lawful Permanent Resident (LPR)
  - *Family Preference System: Prove Good Faith Marriage*
  - *Show not inadmissible (health, criminal)*
- USC or LPR is ***Petitioner***
- Noncitizen is ***Beneficiary***
- ***USC or LPR spouse must file immigration petition. Noncitizen spouse is dependent on him/her to do so.***



# Process for Family-Based/Spouses

- Noncitizen Spouse dependent on USC or LPR Spouse to initiate process (I-130- “Relative Petition”) to obtain *conditional residency*. *USC or LPR files this document*.
- Conditional residency only lasts 2 years.
- Noncitizen Spouse **and** USC or LPR Spouse must file a second petition (I-751)to move from conditional residency to permanent residency (remove condition) after two years. *Noncitizen Spouse and USC or LPR spouse files this petition together.*
  - Prove valid marriage.

# What does this mean for spouses who are in relationships involving domestic violence?

- Immigration laws are a method of control
  - the government uses laws to control who enters.
  - US citizen or LPR spouse can use the laws to control immigrant spouse by refusing to file first or second petition.
- Control is at the core of the dynamic of domestic violence
- Difficulties leaving relationship- dv generally, immigrants specifically
  - Face deportation (without US citizen children)
  - Greater economic dependencies

# Legal remedies for battered women

## Waivers

- Allows noncitizen spouse to avoid having to file the joint petition (I-751) to remove condition on permanent residence and become a full fledged LPR.
- Without waiver, after 2 years, the immigrant spouse's conditional status expires and she/he must leave the US.
- Grounds for Waiver
  - Deceased spouse, divorce, domestic violence
- How can you help?
  - collect documents
  - Help prove domestic violence (documentation, records, letters, affidavits)

# Violence Against Women Act -VAWA

- What is it?
  - allows noncitizen spouses whose abusive spouses never filed an I-130 Relative Petition and thus never received conditional permanent residency to file a self-petition (I-360) in lieu of the I-130 “Relative Petition”

# VAWA- Who is eligible?

Noncitizen spouse abused by a *US citizen* or *LPR spouse*

Noncitizen child abused by a US citizen or LPR *parent*

# Proof- How can you help?

- Help with collection of documents- birth certificates, marriage certificates, wedding photos, other proof of good faith marriage, proof that couple resided together.
- Proof of abuse: counselor statements and records, therapist statement and records, medical records, police records, court records, witnesses affidavits, applicant affidavit.

## U Visa- What/who is eligible?

- For noncitizen victims of certain crimes (not full list) :
  - rape, incest, domestic violence, abusive sexual contact, prostitution, sexual exploitation, torture, female genital mutilation, trafficking, unlawful criminal restraint, false imprisonment, felonious assault, witness tampering...
  - suffered substantial physical or mental injury
  - because of criminal activity- NB: perpetrator does not have to be victim of spouse
  - Obtains certification from any level law enforcement, prosecutor, judge, or other authority investigating the crime, including DSS, that applicant has or will be helpful to the criminal investigation of the matter.
- Non-victim child may be included in parent-victim application. Non-victim parent may be included in child-victim application

# How You Can Help?

- How to prove substantial physical or mental injury.
  - Medical records, medical reports, counselor/therapist affidavits/letters, photographs, dv shelter or rape crisis center records, etc.
  - Police records, witnesses, applicant affidavits

# The 287(g) Program: The Costs and Consequences of Local Immigration Enforcement in North Carolina Communities

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February 2010

Report available at

<http://isa.unc.edu/migration/resources.asp>

## What is the 287g ICE ACCESS Program?

- The Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA), effective September 30, 1996, added Section 287(g), performance of immigration officer functions by state officers and employees, to the Immigration and Nationality Act (INA). This authorizes the secretary of the U.S. Department of Homeland Security (DHS) to enter into agreements with state and local law enforcement agencies, permitting designated officers to perform immigration law enforcement functions, pursuant to a Memorandum of Understanding (MOU), provided that the local law enforcement officers receive appropriate training and function under the supervision of sworn U.S. Immigration and (ICE) officers.



U.S. Immigration  
and Customs  
Enforcement



U.S. Immigration  
and Customs  
Enforcement

Section 287(g) Immigration and Nationality Act

A Law Enforcement Partnership

“The cross-designation between ICE and state and local patrol officers, detectives, investigators and correctional officers working in conjunction with ICE allows these local and state officers: necessary resources and latitude to pursue investigations relating to violent crimes, human smuggling, gang/organized crime activity, sexual-related offenses, narcotics smuggling and money laundering; and increased resources and support in more remote geographical locations.”

Source: Department of Homeland Security

# State Charges for Undocumented Immigrants in the 287(g)

Program	Alamance		Cabarrus		Gaston 4/1/2007 to 2/23/09		Mecklenburg		Wake		Total	
Time Frame	2/19/07 to 4/16/09		3/10/08 to 12/31/08				1/1/07 to 2/23/09		7/8/08 to 3/25/09			
Inmates Interviewed	1290		361		853		9866		2435		14805	
Inmates Processed for Deportation	1014		299		729		5925		1585		9552	
	Alamance	%	Cabarrus	%	Gaston	%	Mecklenburg	%	Wake	%	Total	% Total
<b>State Charges</b>												
Driving While Intoxicated	244	15.0%	151	41.6%	136	11.9%	1460	24.9%	429	24.4%	2420	22.5%
Drugs	145	8.9%	25	6.9%	72	6.3%	402	6.9%	146	8.3%	790	7.4%
Robbery	5	0.3%	1	0.3%	2	0.2%	37	0.6%	26	1.5%	71	0.7%
Sex Crimes	25	1.5%	3	0.8%	11	1.0%	122	2.1%	38	2.2%	199	1.9%
Assault	94	5.8%	12	3.3%	82	7.2%	554	9.5%	183	10.4%	925	8.6%
Domestic Violence	35	2.2%	18	5.0%	7	0.6%	30	0.5%	65	3.7%	155	1.4%
ICE Arrest <sup>a</sup>	53	3.3%	0	0.0%	0	0.0%	0	0.0%	19	1.1%	72	0.7%
<b>Traffic</b>	<b>661</b>	<b>40.7%</b>	<b>65</b>	<b>17.9%</b>	<b>646</b>	<b>56.5%</b>	<b>1731</b>	<b>29.6%</b>	<b>413</b>	<b>23.5%</b>	<b>3516</b>	<b>32.7%</b>
Fraud	43	2.6%	8	2.2%	19	1.7%	19	0.3%	34	1.9%	123	1.1%
Alcohol/Drunk and Disorderly	16	1.0%	9	2.5%	6	0.5%	157	2.7%	33	1.9%	221	2.1%
Theft/Larceny	26	1.6%	17	4.7%	29	2.5%	212	3.6%	224	12.7%	508	4.7%
Breaking and Entering	12	0.7%	13	3.6%	5	0.4%	130	2.2%	38	2.2%	198	1.8%
Trespass	12	0.7%	4	1.1%	2	0.2%	58	1.0%	38	2.2%	114	1.1%
Resist <sup>b</sup>	0	0.0%	11	3.0%	7	0.6%	95	1.6%	0	0.0%	113	1.1%
Murder/Attempted Murder <sup>c</sup>	0	0.0%	0	0.0%	0	0.0%	0	0	16	0.9%	16	0.1%
Weapons <sup>c</sup>	0	0.0%	0	0.0%	0	0.0%	0	0	19	1.1%	19	0.2%
Other	254	15.6%	26	7.2%	120	10.5%	847	14.5%	36	2.0%	1283	11.9%
<b>Total</b>	<b>1625</b>	<b>100.0%</b>	<b>363</b>	<b>100.0%</b>	<b>1144</b>	<b>100.0%</b>	<b>5854</b>	<b>100.0%</b>	<b>1757</b>	<b>100.0%</b>	<b>10743</b>	<b>100.0%</b>

## Severity of Charge for Undocumented Immigrants in the 287(g) Program by County

	<b>Mecklenburg</b> 1/1/07 to 2/23/09		<b>Alamance</b> 2/19/07 to 4/16/09		<b>Cabarrus</b> 3/08/09 to 12/31/09		<b>Gaston</b> 4/2007 to 2/23/2009		<b>All Counties</b>	
<b>Charge Type</b>	<b>Number</b>	<b>%</b>	<b>Number</b>	<b>%</b>	<b>Number</b>	<b>%</b>	<b>Number</b>	<b>%</b>	<b>Total</b>	<b>% Total</b>
Felony	563	10.10%	253	17.41%	51	14.17%	105	9.22%	972	11.4%
Misdemeanor	5012	89.90%	1200	82.59%	309	85.83%	1034	90.78%	7555	88.6%
<b>Total</b>	<b>5575</b>	<b>100%</b>	<b>1453</b>	<b>100%</b>	<b>360</b>	<b>100%</b>	<b>1139</b>	<b>100.00%</b>	<b>8527</b>	<b>100.0%</b>
Source: North Carolina Sheriff's Offices 287(g) Inmate Data										

The 287(g) Program: The Costs and Consequences of Local Immigration Enforcement in North Carolina Communities

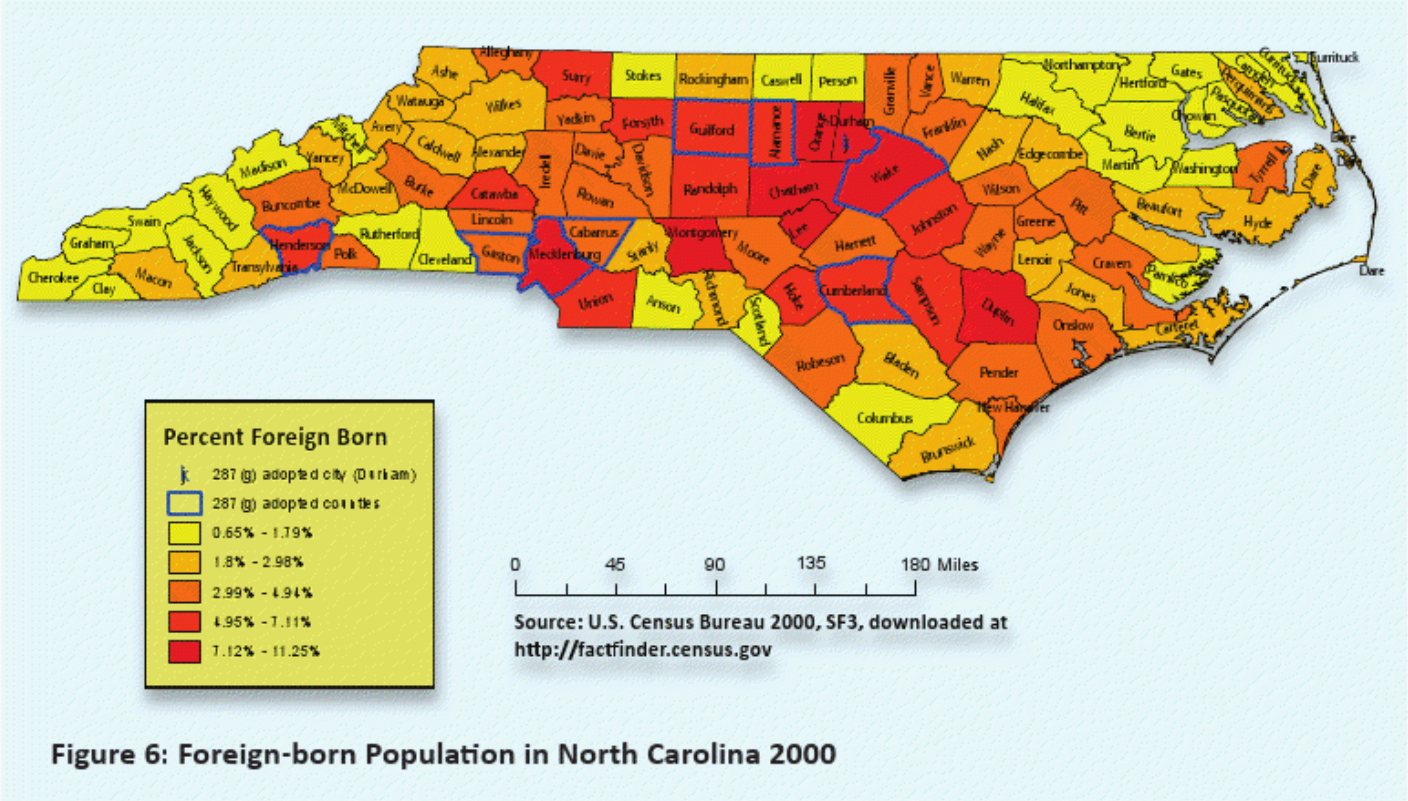
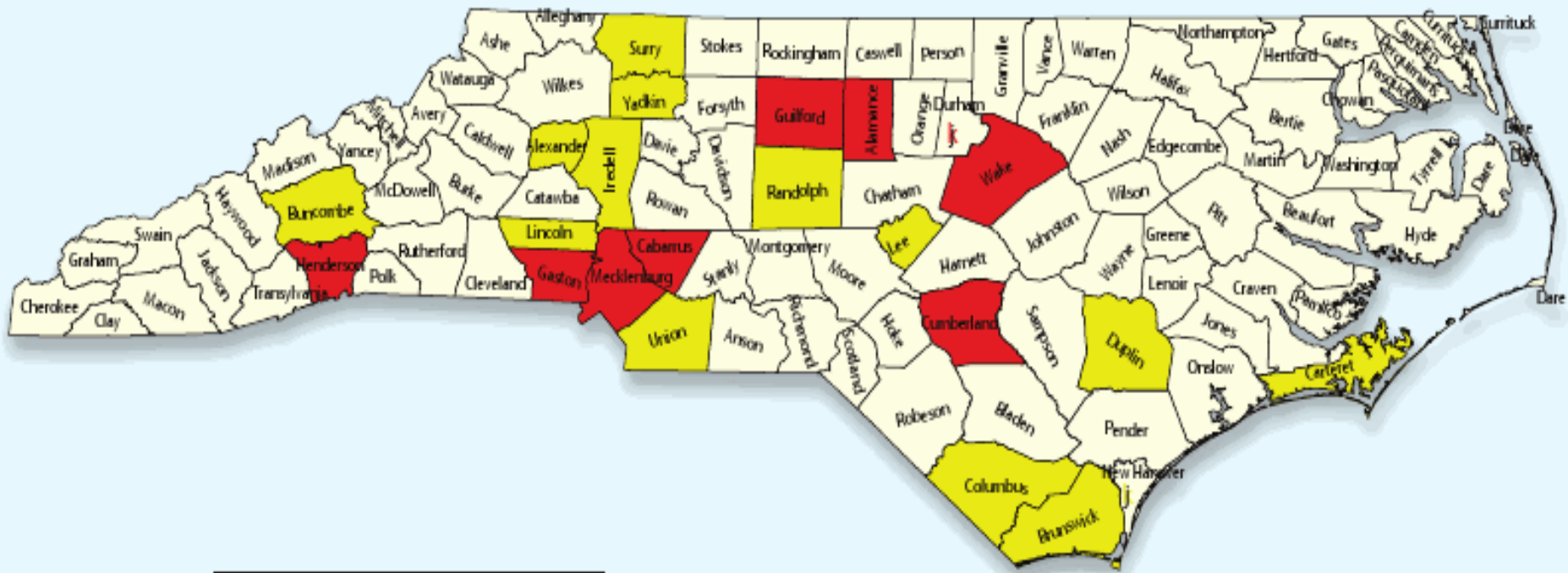





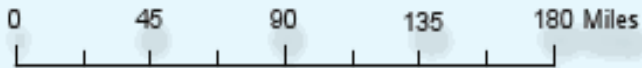


Figure 6: Foreign-born Population in North Carolina 2000



**287(g) Program Status**

-  287(g) adopted city (Durham)
-  287(g) interested city (Wilmington)
-  287(g) adopted counties
-  287(g) interested counties
-  Other NC Counties



Source: North Carolina Sheriff's Association, 7/8/09

Figure 1: Local Jurisdictions Adopted or Interested in the 287(g) Program

# The Latino Migration Project

Upcoming events:

- March 26-27
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- Latin American Migration: Transnational Perspectives, Regional Realities
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- The FedEx Global Education Center, The University of North Carolina at Chapel Hill
- Register at <http://isa.unc.edu/migration/ConferenceMain.asp>
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