

Immigration Primer

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Executive Summary

The U.S. immigration system is complex and difficult to navigate. Newcomers migrate to this country and to states like Georgia seeking to reunite with family, pursue new employment opportunities or flee persecution and violence in their home country. Georgia's foreign-born population has increased exponentially over the last few decades, accounting for 10 percent of the state's population today. Georgian immigrants come from all around the world and play a vital role in ensuring the vibrancy of communities across the state. To date, state and local policy decisions have failed to meet the needs of Georgia's growing immigrant community. By understanding how the U.S. immigration system functions, better policy decisions can be made to ensure that immigrants in Georgia have the ability to meet their full potential and are able to feel safe in the state they call home.

The Georgia Budget & Policy Institute has created this immigration primer to provide Georgia residents, immigration advocates and state-level policymakers with a general overview of how the nation's immigration system presently functions, identify state-level policy opportunities that uplift immigrants and provide data on immigrants in the state. While the Immigration Primer does not cover all aspects of immigration law and policy, this resource lays the foundation for GBPI's future immigration work and will serve as a resource to facilitate conversations that advance state-level policies to ensure Georgia is a welcoming and prosperous state for all people, regardless of immigration status.

Individuals seeking to migrate to the U.S. have limited avenues they can pursue to make that a reality. Without a qualifying familial relationship, a secured employment opportunity or a credible fear of persecution, most paths to migrating to the U.S. are out of reach. The majority of immigrants living without status also have no options to adjust their status within the existing immigration system. Those with the privilege of accessing our immigration system still face long backlogs and excessive waiting times for visas. While the power to substantively alter the issues entrenched within the immigration systems is held by Congress, state lawmakers can implement state-level policy changes

Over one million immigrants reside in the Peach State, including 444,501 naturalized citizens, 270,000 Lawful Permanent Residents (LPRs) and 342,567 undocumented residents in the state.¹ Regardless of legal status, Georgia lawmakers should remove barriers to opportunity for all residents of the state. When all Georgians have access to higher education, a driver's license, professional licenses and other tools that facilitate prosperity, the state as a whole is better off. Additionally, by ending voluntary compliance with ICE, immigrant communities across the state can live, work and study without fear of detention and deportation.



Government Agencies

United States Citizenship and Immigration Services (USCIS): USCIS is an agency within the Department of Homeland Security (DHS) that administers the nation's lawful immigration system by evaluating requests for immigration benefits. USCIS processes visa applications, refugee and asylum applications, conducts screening interviews of foreign nationals within the U.S., ensures employment eligibility for employment-based visas, grants lawful permanent residence and U.S. citizenship status to eligible applicants, gathers biometrics and photographs at applicant support centers, and performs naturalization ceremonies.²

United States Customs and Border Protection (CBP): CBP is an agency within the DHS that is responsible for enforcing customs, immigration, and agricultural law and regulations at U.S. ports of entry.

United States Department of Homeland Security (DHS): The DHS is a federal government entity charged with overseeing the nation's three immigration agencies USCIS, CBP and Immigration and Customs Enforcement (ICE). These sub-agencies are responsible for providing immigration benefits and enforcing immigration laws.

United States Department of State (DOS): The DOS is the agency primarily charged with issuing U.S. immigrant and non-immigrant visas. Every month, the DOS releases a visa bulletin that outlines the availability of visas by priority dates. The priority dates listed reflect the day the foreign national applied for the visa. Each country is allocated only 7 percent of the total annual family-sponsored and employment-based visas available. Individuals from China, India, Mexico and the Philippines experience the longest waiting periods for visas due to extreme backlogs dating to the late 1990s. The DOS is also generally responsible for the U.S.'s foreign policy by engaging in advocacy and diplomacy.

United States Immigration and Customs Enforcement (ICE): ICE is a federal law enforcement agency within the DHS that primarily conducts homeland security investigations, enforcement and deportation operations within the U.S. Through the 287(g) program, state and local law enforcement agencies have voluntarily used taxpayer money to assist ICE with identifying, detaining and transporting undocumented immigrants into federal custody.³

Additional government entities involved in the U.S. immigration system include: Executive Office for Immigration Review, Board of Immigration Appeals, Office of the Chief Immigration Judge, Office of the Chief Administrative Hearing Officer, U.S. Consulates, U.S. Customs & Border Protection, Department of Labor and Department of Health and Human Services.

Immigration Key Terms

Admission: In the immigration context, an “admission” refers to the process of formally permitting an individual to be physically and legally in the U.S. Often referred to as a part of the “inspection” process, an individual who enters the country without admission is considered to have entered without inspection.⁴

Deferred Action for Childhood Arrivals (DACA): The DACA program was established in 2012 by executive order and granted some undocumented immigrants brought to the United States as children temporary relief from deportation. To apply, individuals had to have arrived in the U.S. before age 16 and lived in the country for at least five years as of June 2012. They also had to be in high school, a high school graduate or a veteran and have no felony convictions. Though the DACA program provides these individuals temporary lawful presence, it does not confer to them a lawful status or pathway to citizenship.⁵

Deportation: The removal of an individual from the U.S. based on the grounds of deportability listed under section 237 of the Immigration Nationality Act.

Immigration Detainer Requests: When federal immigration agents want to take custody of someone arrested by local law enforcement, a detainer request plays a key role in the process. Detainers are non-binding requests from ICE to the local law enforcement agency with custody of the people in question to arrest and hold them for up to 48 business hours beyond the time they otherwise would have been released, such as in the case of posting bail or having minor charges dropped. Federal court rulings have held that detainers are completely voluntary and that state and local officers can decide when to honor the requests and under what circumstances.⁶

Immigration Nationality Act (INA): Enacted in 1952 and amended several times since, the INA remains the primary body of law governing immigration and nationality in the U.S. The INA outlines which immigrants are admissible into the United States and deportable from the country. It also lays out laws pertaining to refugee and asylum seekers, priority categories and requirements for visa applicants, and eligibility for lawful permanent residence and naturalization.

Immigrant Visas: Immigrant visas are extended to individuals who demonstrate an intent to eventually make the U.S. their permanent home. These individuals are granted a green card upon approval of their admission under an immigrant visa.

Lawful Permanent Resident (LPR): LPRs, often referred to as “green card holders,” are non-citizens who have been granted permanent permission to reside and work in the U.S. and have a pathway to citizenship.⁷ After five years of maintaining LPR status, an individual is eligible to apply for U.S. Citizenship, but LPR spouses of U.S. citizens can apply for citizenship after only three years.

Non-Immigrant Visas: Non-immigrant visas are granted to individuals who demonstrate no intent to permanently live and work in the U.S. and as such, are allowed temporary entry to the U.S. Immigrant and non-immigrant visas are typically obtained through certain applicable familial relationships or employment. Temporary student and visitor visas also fall into the non-immigrant visa category.

Temporary Protected Status (TPS): TPS is a temporary immigration status extended to individuals from certain countries experiencing unsafe or difficult country conditions including ongoing armed conflict, environmental disasters, epidemics or other extraordinary and temporary conditions. TPS does not in itself lead to LPR status, but TPS beneficiaries may qualify for other immigration benefits that could put them on a pathway to eventual citizenship.⁸

Unlawful Presence: An individual who enters the country without inspection or overstays their visa is considered to be unlawfully present in the U.S. After an individual has accumulated 180 days of unlawful presence, they will be barred from lawfully re-entering the country for at least three years. After one year of unlawful presence has accrued, an individual will be barred from lawfully re-entering for at least 10 years. Unlawful presence does not begin to accumulate until an individual is 18 years old.

287(g) Program: The 287(g) program deputizes state and local officials to perform the functions of federal immigration agents. Local police officers are permitted to perform immigration duties only within city and county jails. Tasks include interviewing individuals in custody about their immigration status, checking federal databases and physically transporting noncitizens into ICE custody. Participating local officers receive periodic training from federal officials, and ICE agents at local jails supervise the process.⁹

The Role of Federal, State and Local Governments

In Article I, Section 8, Clause 4 of the United States Constitution, the Founding Fathers explicitly assigned Congress with the responsibility for "...establishing a uniform rule of naturalization..." As such, it is their responsibility to pass legislation about a host of topics including who gets to enter the country, what criteria will be used to assess their admission, conditions relating to their employment, residence and access to federal public benefits, grounds for deportation and the rules governing the process to become a U.S. citizen. Due to longstanding partisanship in Congress, no major legislative reforms have touched the immigration system for over 20 years. Only Congress can pass comprehensive immigration reform to give undocumented immigrants, including 342,567 Georgians, a pathway to citizenship.^{10,11}

The President of the United States has historically used the executive authority of the office to advance the administration's goals regarding immigration. In 2012, President Obama issued an executive order in which he extended temporary protection from deportation to undocumented immigrants brought to the country as children, through the Deferred Action for Childhood Arrivals (DACA) program. President Trump would go on to terminate the DACA program in 2017 and also issue several executive orders on immigration during his administration, including the Muslim ban, limiting access to asylum, ordering the construction of a border wall and increasing the construction of immigration detention centers. The use of executive orders is likely to continue following the next Presidential transition of power, as President-elect Biden has vowed to walk back some of the anti-immigrant actions that occurred during the Trump Administration and the balance of power in Congress has yet to be determined.¹²

The third branch of the federal government, the judiciary, has the authority to review acts by the executive and legislative branches to determine whether they are in line with the Constitution and other laws of the United States. In the immigration context, the Supreme Court has held that undocumented immigrant children are entitled to public education in the K-12, bolstered the rights of English language learners and, most recently, determined that the DACA program was ended unlawfully.¹³

While the federal government holds the authority to set the parameters governing the legal immigration system, state and local governments have the power to make life easier or harder for immigrants through the laws and policies they choose to adopt. The Tenth Amendment of the U.S. Constitution states: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." State-level policy decisions can be made to empower immigrant communities to participate in higher education, promote workforce participation by expanding access to driver's licenses and even

streamline the process for professional licensing so foreign-trained doctors and nurses can meet community healthcare needs more easily. Georgia leaders, however, have long opted to choose their power to oppress immigrant communities rather than empower them.¹⁴

State and local policy opportunities that would make Georgia a more immigrant-inclusive and welcoming state include:

- **State-Level Policy Opportunities:**

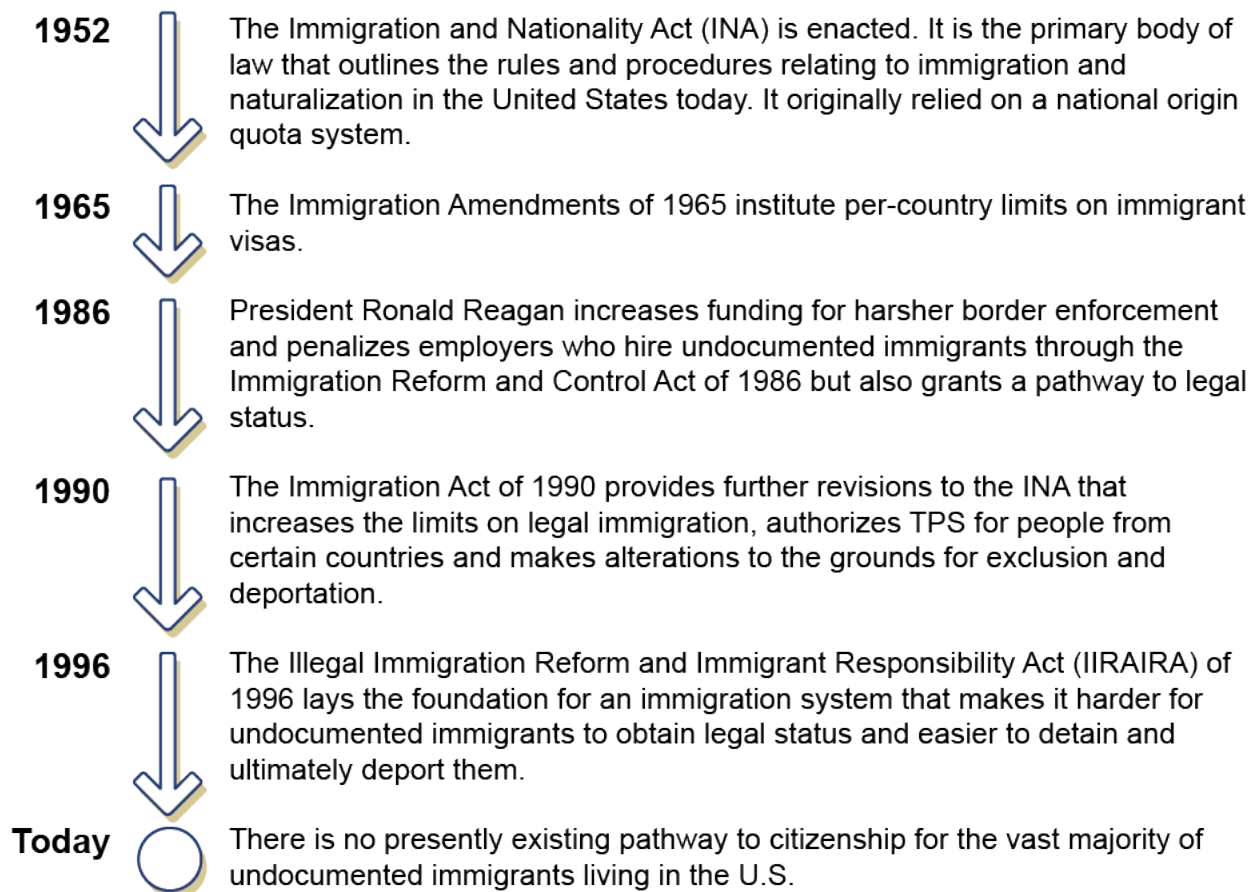
- Expand access to in-state tuition for all undocumented students who graduated from a high school in Georgia, both those with DACA status and those without, as 19 other states have done;¹⁵
- Lift the existing college admission ban that acts as a barrier to opportunity for homegrown Georgians without status;
- Remove the five-year waiting period for LPR pregnant women and children to access Medicaid, as 24 other states have already done;¹⁶
- End the Department of Corrections 287(g) Memorandum of Agreement (MOA) with ICE which uses state taxpayer money to voluntarily do the federal government's job;
- Expand access to driver's licenses for all immigrants as 16 other states have done, to ensure that family units remain whole and that parents can drive their kids to school, doctor appointments and work without fear of being pulled over by law enforcement;¹⁷ and
- Reform professional licensing requirements to more easily leverage the talents and skills held by foreign-trained professionals to serve their communities.

- **Local Policy Opportunities:**

- End all presently existing 287(g) MOAs with ICE that are used to voluntarily do federal immigration enforcement and reinvest the funds in community-based programs that improve public safety;
- Establish a Municipal ID program that undocumented residents and other groups lacking the documentation to access State IDs can use to more easily navigate day-to-day activities including opening a bank account, picking up prescription medication and identifying themselves to law enforcement during routine traffic stops; and
- Allocate local funding toward legal services to provide much-needed representation to local immigrants in immigration court, as four states, three counties and the District of Columbia have done.¹⁸

Overview of the U.S. Immigration System

Timeline of Key Modern-Day Immigration Legislation



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Sources: Wasem, R. E. (2012, March 13). "U.S. immigration policy on permanent admissions." Congressional Research Service; Migration Policy Institute (2011, November 16). "At its 25th anniversary, IRCA's legacy lives on;" USCIS. Immigration Act of 1990; Kerwin, D. (2018). From IIRAIRA to Trump: Connecting the dots to the current US immigration policy crisis. "Journal on Migration and Human Security;" American Immigration Council, Why Don't Immigrants Apply for Citizenship? There Is No Line For Many Unauthorized Immigrants.

Individuals with the privilege of accessing the legal immigration system are generally classified into two subgroups: those who wish to permanently reside and work in the U.S. (immigrants) and those who temporarily come to visit, work or study in the U.S. (non-immigrants). As such, these individuals will either apply for an immigrant visa or non-immigrant visa, depending on their circumstances. The primer will go into more detail about the immigrant visa process; information relating to non-immigrant visas is available online.

Those who are granted immigrant visas have met certain criteria that qualify them for a family-based or employment-based visa that concurrently confers upon them LPR status.

- Individuals who meet the qualifications of being “immediate relatives” of a U.S. citizen are also green card-eligible and fall into the family-based visa system.
- Automatic citizenship is granted to immigrants who are the natural-born or adopted child of at least one U.S. citizen parent, are under age 18, are an LPR, and reside in the U.S. in the legal and physical custody of the U.S. citizen parent.¹⁹

The INA limits the annual, worldwide grants of LPR status to 675,000 people, with some variability for certain people excluded from the limits. Of this total, 480,000 visas are allotted for immediate relatives and family-sponsored immigrants, 140,000 visas are allocated for employment-sponsored immigrants and 55,000 are granted to people through the Diversity Visa program for people from countries with low rates of immigration to the U.S. Any unused family-based visas are absorbed into the employment-based categories and vice versa.

Family-Based Immigration

The family-based immigration is structured around per-country visa limits and the four categories of visa eligibility. Annually, each country is allotted 7 percent of the 480,000 total available family-based visas. But that total needs to deduct the number of green cards granted to immediate relatives (IR), while also adding in the number of people admitted for humanitarian purposes and the number of unused employment visas available in any given year. Notably, the INA states that no fewer than 226,000 family-based immigrant visas shall be allocated to the four family-based preference categories.

| Immediate Relative (IR) Immigrant Visas Unlimited Annual Quantity Issued | |
|---|---|
| IR-1 | Spouse of a U.S. citizen |
| IR-2 | Unmarried child under 21 years of age of a U.S. citizen |
| IR-3 | Orphan adopted abroad by a U.S. citizen |
| IR-4 | Orphan to be adopted in the U.S. by a U.S. citizen |
| IR-5 | Parent of a U.S. citizen who is at least 21 years old |

Note: For example, when the number of IRs increases above 254,000 (480,000 – the 226,000 floor for family-based preference categories), the 480,000 annual cap for family-sponsored immigrants will be increased to accommodate demand.

Source: Immigration Nationality Act §201(b)(2)(A)(i).

| Family Preference Categories for Immigrant Visas Limited Annual Quantity Issued | |
|---|--|
| First Preference (F1) 23,400 visas available, plus any unused visas from the F4 category | Unmarried sons and daughters of U.S. citizens (age 21 or older), and their minor children, if any. |
| Second Preference (F2) 114,200 visas available, plus the number (if any) by which the worldwide family preference level exceeds 226,000, plus any unused visas from the F1 category | F2A – Spouses and Children of LPRs: 77% of the overall second-preference limitation, of which 75% are exempt from the per-country limit. F2B – Unmarried sons and daughters (21 years of age or older) of LPRs: 23% of the overall second-preference limitation |
| Third Preference (F3) 23,400 visas available, plus any unused visas from the F1 & F2 categories | Married sons and daughters of U.S. citizens, and their spouses and minor children. |
| Fourth Preference (F4) 65,000 visas available, plus any unused visas by the first three preference categories | Brothers and sisters of U.S. citizens, and their spouses and minor children, provided the U.S. citizens are at least 21 years of age. |

Source: Immigration Nationality Act §203(a).



Visa Waiting Times and Backlogs

The date on which an individual submits their visa petition to the government becomes the priority date that will determine when a visa becomes available for that individual. Every month, the DOS is charged with maintaining and updating a Visa Bulletin that tracks the waiting time for visa availability. The Visa Bulletin outlines the priority dates for the visas currently being issued for each preference category.

Visa-seekers face long-standing backlogs and processing times. The current delay in accessing visas is so excessive for Chinese, Indian, Mexican and Filipino nationals that the Visa Bulletin individually identifies the priority dates for these countries. The priority dates for all other countries are uniform and therefore listed together. Notably, most of the family-sponsored visa preference categories have priority dates from two decades earlier for applicants from Mexico. The Visa Bulletin updates priority dates monthly, but that does not necessarily mean that the priority dates advance equally. Some months the priority dates advance mere days, stall or even regress to later dates.²⁰

For example, looking at priority dates from December 2019 and December 2020, the F-1 visa category for Mexico only advanced from November 15, 1999 to February 22, 2000.^{21,22} In the span of one year, the first, family-based visa preference category only advanced three months forward in the twenty-year “waiting line.” These excessive waiting periods mean that families remain separated from their loved ones for an indefinite time period.

Backlogs in the Visa Processing System Leave Immigrants Languishing in Long Waiting Lines

| Family-Sponsored Visa Preference Categories | All Other Countries of Origin, Except Those Listed | China - Mainland Born | India | Mexico | Philippines |
|---|--|-----------------------|--------------------|-------------------|-------------------|
| F1 | July 22, 2015 | July 22, 2015 | July 22, 2015 | February 22, 2000 | October 8, 2012 |
| F2A | August 1, 2020 | August 1, 2020 | August 1, 2020 | August 1, 2020 | August 1, 2020 |
| F2B | May 1, 2016 | May 1, 2016 | May 1, 2016 | December 1, 1999 | April 1, 2012 |
| F3 | June 1, 2009 | June 1, 2009 | June 1, 2009 | August 15, 2000 | December 22, 2002 |
| F4 | September 15, 2007 | September 15, 2007 | September 15, 2007 | April 22, 1999 | September 1, 2002 |

Source: U.S. Dept. of State, *Visa Bulletin for December 2020, B. Dates for Filing Family-Sponsored Visa Applications*.

Employment-Based Immigration

The employment-based visa functions similarly to the family-based visa process in that there are immigrant visa and non-immigrant visa categories, preference categories for those seeking to permanently reside and work in the U.S. and a reliance on the Visa Bulletin to determine visa availability by priority dates.

There are, however, differences between both categories. First, there are fewer immigrant, employment-sponsored visas available annually than family-sponsored visas. Every year, 140,000 visas are made available to employers who wish to petition the government on behalf of their employee. The employment-based, permanent residence-conferring visas are divided into five categories and some are subject to the labor certification process, managed by the U.S. Department of Labor, to ensure that employers satisfy certain requirements before they petition for an employee. The employer goes through an evidentiary process that includes posting job ads for a certain period of time to solicit U.S. workers, interviewing any U.S. applicants and other steps as a means to prove:

- There are insufficient available, qualified and willing U.S. workers to fill the position being offered at the prevailing wage; and
- Hiring a foreign worker will not adversely affect the wages and working conditions of similarly employed U.S. workers.²³

The second-preference, employment-sponsored visa category allows for the labor certification requirement to be waived if the individual seeking the visa can successfully apply for a National Interest Waiver. The National Interest Waiver allows the labor certification process to be bypassed because it is in the “interest of the United States” to admit an immigrant into the country, a difficult requirement to prove. In the wake of COVID-19’s impact on the U.S., an individual whose work is critical to the development of a vaccine or includes a substantial business investment leading to much-needed job growth might qualify for a National Interest Waiver.



| Permanent Worker Visa Preference Categories | | |
|---|---|---|
| Preferences | Description | Labor Certification Required? |
| First Preference EB-1 | This preference is reserved for persons of extraordinary ability in the sciences, arts, education, business or athletics; outstanding professors or researchers and multinational executives and managers. | No |
| Second Preference EB-2 | This preference is reserved for persons who are members of the professions holding advanced degrees or for persons with exceptional ability in the arts, sciences or business. | Yes, unless the applicant can obtain a national interest waiver |
| Third Preference EB-3 | This preference is reserved for professionals, skilled workers and other workers. (See Third Preference EB-3 page for further definition of these job classifications.) | Yes |
| Fourth Preference EB-4 | This preference is reserved for “special immigrants,” which includes certain religious workers, employees of U.S. foreign service posts, retired employees of international organizations, immigrant minors who are wards of courts in the United States and other classes of immigrants. | No |
| Fifth Preference | This preference is reserved for business investors who invest \$1.8 million or \$900,000 (if the investment is made in a targeted employment area) in a new commercial enterprise that employs at least 10 full-time U.S. workers. | No |

Source: USCIS, *Permanent Workers, Permanent Workers Preference Categories*.

The H-2A Visa, Significant to Georgia’s Agriculture Industry

The H-2A visa is frequently used by Georgia farmers. The H-2A visa is intended for temporary agricultural workers to fill seasonal jobs for which there are not sufficient U.S. workers able, willing, qualified and available to meet the needs of the industry.²⁴ At the end of 2019, U.S. Department of Labor (DOL) data ranked Georgia as the second-highest nationwide user of the H-2 visa, certifying 29,480 jobs in FY 2019.²⁵ But, as recently as 2018 Georgia held the lead at No. 1, making the H-2A visa critical to the state’s agricultural industry.²⁶

Since 2007, the number of undocumented migrants to the U.S. has declined, further decreasing the labor force that the agricultural industry has historically depended on to keep the food supply chain functioning.²⁷ In response to this labor shortage, farmers have turned to the H-2A visa to supplement their current workforce. The program requires employers to pay the H-2A visa

holders and similarly situated U.S. workers a state-specific minimum wage required by the DOL, which is \$11.71 per hour in Georgia, while also providing housing for the temporary agricultural workers.²⁸ Notably, this is below the average DOL minimum wage of \$13.68/hour nationwide, and housing accommodations have been found to be unsanitary and unsafe in certain cases.^{29,30}

The H-2A visa program has been widely criticized as overly burdensome for employers due to the extensive documentation necessary to participate and the associated expenses incurred through their participation. Additional criticism points to the exclusion of dairy and poultry farms due to the year-round nature of those operations. Finally, many H-2A workers come to the U.S. indebted to the recruiters who found them the job, leading these farmworkers to experience additional abuses and exploitation.³¹

Refugees and Asylees

The U.S. can extend protection to those fleeing persecution abroad through the application of refugee and asylum law. The main difference between a refugee and an asylee is the physical location they are in when applying for protected status, the latter doing so inside the U.S. and the former doing so outside of the U.S. Both groups, however, must meet the same criteria to receive the protection of the U.S. government. They must prove that they are unable or unwilling to return to their country of origin due to past persecution or a well-founded fear of persecution based on race, religion, nationality, membership in a particular social group or political opinion.³²

Every year the President of the United States sets a ceiling on how many refugees the U.S. will accept that year. The Trump Administration oversaw an 86 percent decline in refugee admissions, and the most recent ceiling for admission was set at only 15,000 for fiscal year (FY) 2021. In FY 2018, although the refugee admission ceiling was set at 45,000 people, only 22,491 refugees were resettled, and of those 836 were resettled in Georgia.³³ Many of those refugees are resettled in what has been dubbed the “Ellis Island of the South,” Clarkston, GA, a city with 171 refugees per 10,000 residents.³⁴

Since refugees apply for protection while outside of the U.S., they enter the country having undergone the entire refugee application process through the U.S. DOS. On the other hand, asylees arrive at a U.S. port of entry, either an airport or at the northern or southern border, without documentation to enter the country where they may come into contact with Customs and Border Protection agents who will take them into federal custody. A USCIS Asylum officer is required to conduct an initial “credible fear interview” to determine whether an asylum seeker can establish a “significant possibility” of proving their claims of past persecution or a well-founded fear of persecution before an immigration judge (IJ).³⁵ However, since January 2019, individuals seeking asylum at the southern border have been sent to Mexico to await a determination of their case under the “Migrant Protection Protocols” (MPP) put in place by DHS. Also known as the “Remain in Mexico” policy, MPP has severely curtailed the due process rights of asylum seekers, led to the separation of family units and placed asylum seekers at risk of further violence.³⁶

While the same standards of proof must be met nationwide, between 2014-2019 the Atlanta immigration courts had a denial rate of 97 percent, noticeably higher than the national average of 60 percent during the same time period.³⁷ The Southern Poverty Law Center and Emory University School of Law submitted a complaint to the Executive Office for Immigration Review

in 2017 citing several disturbing observations in the behavior of IJs in Atlanta. Through student observation sessions during 45 hearings, they found that IJs frequently made prejudicial statements that expressed hostility toward asylum-seekers, routinely denied bonds to those qualified to be released from immigration detention centers, granted bonds at prohibitively high amounts, effectively barring release from detention and regularly failed to apply the correct legal standards for asylum cases.³⁸ The data, which do not align with the national average, indicate a uniform pattern of hostility toward asylum seekers by all IJs presiding in Atlanta.

| Asylum Decisions in Atlanta Immigration Courts by Judge, FY 2014-2019 | | | | |
|---|------------------------|----------------------------|-----------------|----------------|
| Immigration Court | Judge | Number of Decisions Issued | Percent Granted | Percent Denied |
| Atlanta | Farrar-Crockett, Emily | 162 | 0.0% | 100% |
| | Maldonado, Njeri B. | 149 | 0.7% | 99.3% |
| | Gillies, John M. | 127 | 1.6% | 98.4% |
| | Wilson, Earle B. | 1029 | 1.9% | 98.1% |
| | Criss, Scott D. | 130 | 3.1% | 96.9% |
| | Houser, Wayne K., Jr. | 121 | 4.1% | 95.9% |
| | Pelletier, Jonathan D. | 314 | 8.0% | 92.0% |
| Atlanta - Alternatives to Detention | Cassidy, William A. | 232 | 1.3% | 98.7% |
| | Wilson, Earle B. | 221 | 3.2% | 96.8% |
| | Pelletier, Jonathan D. | 150 | 3.3% | 96.7% |
| | Criss, Scott D. | 333 | 8.4% | 91.6% |
| | Baird, Michael P. | 116 | 8.6% | 91.4% |

Source: TRAC Immigration, *Judge-by-Judge Asylum Decisions in Immigration Courts, FY 2014-2019*
<https://trac.syr.edu/immigration/reports/judge2019/denialrates.html>.

Immigrant Victims of Crime

U.S. immigration law provides some immigration relief options to immigrants who have been victims of human trafficking or other crimes. Georgia has been highlighted as a state with elevated rates of human trafficking, and these visas offer foreign-born victims an opportunity to escape abuse and provide police with a valuable tool to prosecute traffickers.³⁹ There are three main relief options including U Visas, T Visas and relief under the Violence Against Women Act (VAWA).

U Visas: U visas provide protection to victims of crime that have suffered substantial mental or physical abuse due to the crime. The victim must possess information about the criminal activity and have either been helpful, are currently helpful or are likely to be helpful to law enforcement in the investigation or prosecution of the crime. The crime must have either occurred in the U.S. or have violated U.S. laws.⁴⁰

T Visas: T visas provide protection to victims of a “severe form of human trafficking” and allows those individuals and certain qualifying family members to remain in the U.S. for up to four years if they have assisted law enforcement in the investigation or prosecution of human trafficking. Federal law recognizes sex trafficking and labor trafficking as severe forms of human trafficking that meet the eligibility requirements for T visas.⁴¹

Relief Under VAWA: Under the VAWA noncitizen victims of domestic abuse, child abuse or elder abuse are able to self-petition for LPR status without the cooperation of an abusive qualifying U.S. citizen or LPR spouse, parent or adult child. The VAWA also provides relief from deportation to noncitizen victims of abuse in removal proceedings if they meet all other requirements for relief.⁴²

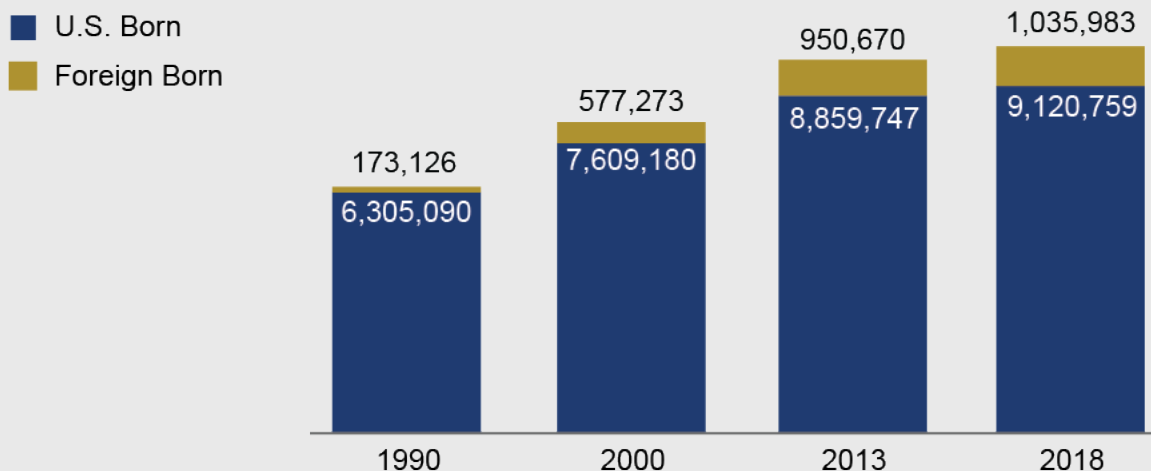


A Profile of Georgian Immigrants

The state of Georgia has grown substantially over the past few decades and part of that growth has been driven by an increase in the number of foreign-born residents. Immigrants share the same motivations as the U.S.-born population when it comes to relocating. They seek safe communities, job opportunities and the prospect of providing their children with more than they had.

While Georgians born abroad once accounted for a mere 2 percent of the population in 1990, that number grew to 10 percent in 2018. One in five children in Georgia have at least one immigrant parent, and most of those children were born in the U.S.⁴³

Immigrants Comprise an Increasing Share of Georgians



Source: ACS 5-Year estimates 1991, 2000, 2013, 2018.

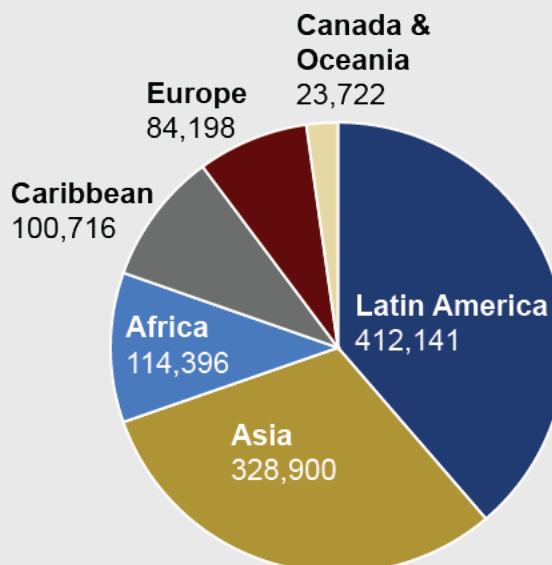
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Georgia's growing community of immigrants, refugees and asylees come from all around the world, adding to the vibrancy of communities across the state. While the largest share of immigrants in the Peach State hail from countries in Latin America, the share of immigrants from Asian and African countries has increased over the last few years. In 2013, Asian immigrants comprised 27 percent and African immigrants accounted for 8 percent of Georgia's foreign-born population.⁴⁴ Today, those figures have increased to 31 percent and 11 percent, respectively. The share of immigrants from Latin America has decreased from 44 percent to 39 percent during the same time period.

In 1990, the population of foreign-born Georgians totaled approximately 173,126, or 2 percent, and they were primarily setting down roots in the Metro Atlanta area.⁴⁵ Thirty years later, the presence of Georgia's immigrant population has revived rural communities and mid-sized cities across the state as their population exceeds 1 million. By 2018, only 32 Georgia counties had immigrant populations that were less than 2 percent, and 15 counties had immigrant populations equating to at least 10 percent of the total population.⁴⁶ Gwinnett County leads the state, as one in four county residents are foreign-born.

Immigration has had widespread reach in Georgia. The five counties that comprise the Metro Atlanta area, Clayton, Cobb, DeKalb, Fulton and Gwinnett counties, are home to 61 percent of foreign-born Georgians.⁴⁷ The presence of immigrants, however, in rural and mid-size cities across the state is significant. In Whitfield County, Hall County and Colquitt County, immigrants respectively comprise 18.5 percent, 16.7 percent and 10.5 percent of the population.⁴⁸

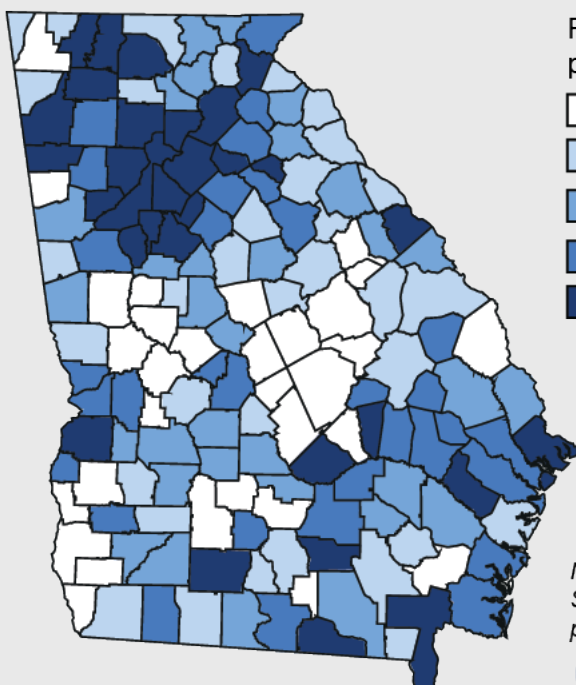
Georgia Immigrants Come From All Over the World



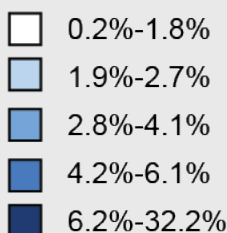
Source: Migration Policy Institute (2018).

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The Widespread Presence of Immigrants in Georgia



Foreign-born residents as share of county population, 2014-2018*



Note: Key based on U.S. Census map

Source: U.S. Census Bureau data on foreign-born persons, 2014-2018.

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Immigrant Children and K-12 Education

Over the last few decades, immigrants have built a life in the Peach State and have raised children that recognize Georgia as their home. Approximately 507,595 of Georgia's children, or 21.6 percent, have one or more parents who are foreign-born, and of this population, 88.7 percent of those children were born in the U.S., and 11.3 percent are immigrants themselves.⁴⁹

Upon beginning their primary education, immigrant children and children of immigrants may participate in the English to Speakers of Other Languages (ESOL) program if they have limited proficiency in the English language. The state of Georgia has an obligation to identify the students who need language assistance and take affirmative steps to overcome the language barriers of all English Learners because failing to do so denies them a meaningful opportunity to participate in public educational programs.⁵⁰ It is also well-established law that states cannot constitutionally deny students a free public education on account of their immigration status.⁵¹

In 2019, there were 108,752 children enrolled in an ESOL program in Georgia.⁵² While the majority of English Learners attend schools in the Metro Atlanta area, they constitute almost one-third of the student population in Gainesville City and 18.3 percent of all students in Hall County.

More information about funding for the ESOL program can be found in GBPI's "English Learners Deserve More: An Analysis of Georgia's Education for Speakers of Other Languages."

Latin American Migration Accounts for Majority of Children Living in Immigrant Households

| Region | Number of Children | Percent of Children |
|---------------|--------------------|---------------------|
| Africa | 64,000 | 13% |
| Asia | 113,000 | 22% |
| Europe | 30,000 | 6% |
| Latin America | 299,000 | 58% |

Source: Kids Count Data Center, *Children in immigrant families by parent's region of origin in Georgia*.

Georgian English Learners by School District

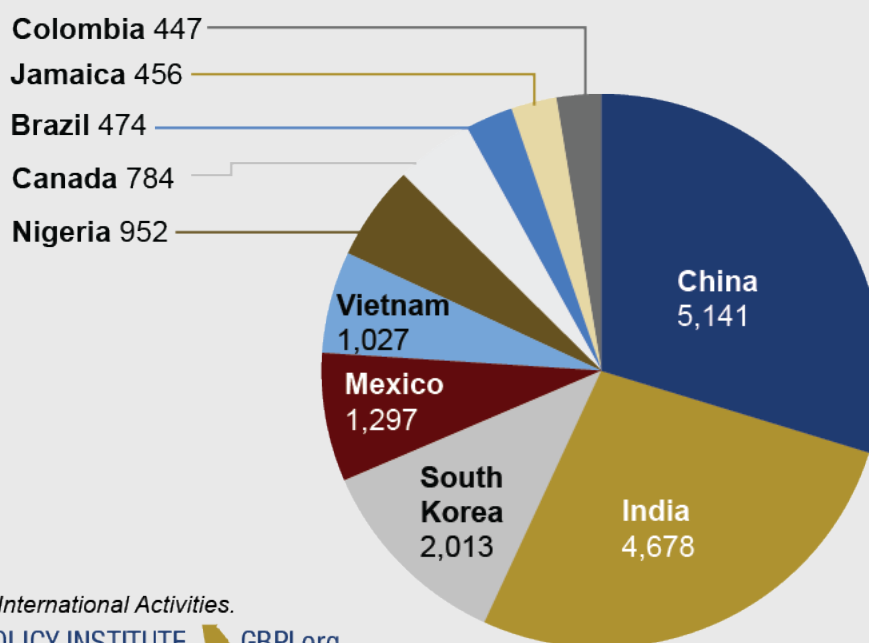
| District | Number of Students in ESOL | Percent of Total Student Population |
|------------------|----------------------------|-------------------------------------|
| Gwinnett County | 23,785 | 13.3% |
| DeKalb County | 13,305 | 13.8% |
| Cobb County | 9,500 | 8.6% |
| Fulton County | 5,798 | 6.3% |
| Hall County | 4,868 | 18.3% |
| Clayton County | 4,854 | 9.0% |
| Forsyth County | 2,806 | 5.7% |
| Cherokee County | 2,720 | 6.5% |
| Gainesville City | 2,242 | 28.9% |

Source: Governor's Office of Student Achievement, (2019). *Student Enrollment Data*.

Access to Higher Education for Immigrants

Access to higher education often varies based on an individual's immigration status. Residents of other countries must navigate the non-immigrant, student visa process to temporarily study and in some instances also work in the U.S. International students may be eligible for an F-1 student visa or M-1 student visa; the former is intended for those in academic degree programs, and the latter is used for vocational or other non-academic programs.⁵³ There are approximately 23,623 international students that attend colleges and universities in Georgia. They hold positions in 10,259 jobs, and in turn, contribute approximately \$850.6 million to the economy.⁵⁴

Top Countries of Origin for Non-U.S. Citizen Students Enrolled in the University System of Georgia, 2019



Source: USG, Report of International Activities.

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While there is a process for residents of foreign countries to attend institutions of higher education in the state and country at large, residents of Georgia who do not have legal status face harsh barriers to accessing higher education. Passed into state law in 2008, SB 492 led to undocumented Georgians being charged out-of-state tuition when attending certain public colleges and universities in the state they call home.⁵⁵ Additionally, the Board of Regents of the University System of Georgia went a step further and banned undocumented students from being admitted to the universities that did not admit all academically qualified applicants, effectively barring otherwise qualified undocumented Georgians from attending top institutions like the University of Georgia and Georgia Institute of Technology.⁵⁶

Nineteen other U.S. states have decided to expand access to higher education to undocumented students through tuition equity policies, including nearby Florida. Twelve of those states have gone a step further by extending financial aid access to their undocumented residents.⁵⁷ Georgia is home to 20,610 DACA recipients and 44,000 DACA-eligible residents who have grown up in the Peach State and deserve an opportunity to continue their education in the state they call home.⁵⁸ On average, these Georgians have been living in the U.S. since 2000 and were approximately seven years old upon their arrival to the states.⁵⁹ Until Georgia lifts the admission ban and provides access to in-state tuition rates, undocumented Georgians will not be able to reach their full potential here and will take their talents to friendlier states.

Undocumented Georgians Pay Tuition Rates Two to Four Times Higher than In-State Tuition Rates

Tuition rates for 15 credit hours, one semester, no fees

| | In-State Tuition, Fall 2020 | Out-of-State Tuition, Fall 2020 |
|---|-----------------------------|---------------------------------|
| Technical Colleges | \$1,500 | \$3,000/\$6,000 |
| University of North GA, Gainesville, Associate Degree | \$1,602 | \$5,918 |
| University of North GA, Gainesville, Bachelor's Degree | \$2,798 | \$9,877 |
| Georgia Gwinnett College | \$2,009 | \$7,500 |
| Kennesaw State | \$2,781 | \$9,815 |

Note: Selected colleges shown as examples, but in-state and out-of-state tuition rates differ for all public colleges. Technical colleges have separate tuition rates for out-of-state U.S. citizens and most non-U.S. citizens. See Technical College System of Georgia Residency policy.



Immigrant Workforce and Entrepreneurship

Georgian immigrants are integral to the state's communities and the economy. Immigrants move for the same reasons that U.S.-born residents move; they are driven by job opportunities, safety, good schools and thriving communities. They also help create and maintain our shared communities through their labor and entrepreneurship efforts. According to the New American Economy, there are 81,567 immigrant entrepreneurs running businesses in Georgia, and those businesses in turn employ 205,962 Georgians statewide.⁶⁰ The sales generated by immigrant-owned businesses in Georgia total \$33 billion.

Foreign-born Georgians complement their role as entrepreneurs by making considerable contributions to the state's workforce. Georgian immigrants comprise 13.9 percent of the state's labor force and fill 12.2 percent of jobs considered to be essential or frontline industries, exceeding their 10 percent share of the population.⁶¹ Immigrants in Science, Technology, Engineering and Mathematics comprise 22.3 percent of the workforce in Georgia and also represent 10.9 percent of nurses and 18.3 percent of health aides in the state.⁶²

Since the start of the COVID-19 pandemic, the country has become increasingly aware of the role that essential workers play in ensuring that Georgia communities continue to have access to food, health care, transportation and child care. Despite their outsized contributions to Georgia's workforce, immigrants were largely excluded from coronavirus relief packages based on their legal status and the identification number they use when filing taxes.⁶³ In Georgia alone, undocumented immigrants paid \$352 million in state and local taxes in 2017, using an Individual Tax Payer Identification Number (ITIN) to file those taxes because they do not have a Social Security Number.⁶⁴ Despite making annual financial contributions that fund our essential government services and working in jobs that exposed them to COVID-19 at higher rates, taxpayers using an ITIN were not eligible to receive the recovery rebates provided by the CARES Act, leaving 128,000 ITIN filers in Georgia and their 151,000 dependent children excluded from relief packages.⁶⁵

Foreign-Born Georgians Play Key Roles in an Array of Essential Industries

| | Percent of Workforce that is Foreign-Born |
|---|---|
| All Workers | 13.9% |
| All Frontline Industries | 12.2% |
| Grocery, Convenience, Drug Stores | 12.6% |
| Public Transit | 6.9% |
| Trucking, Warehousing & Postal Service | 10.6% |
| Building, Cleaning Services | 29.1% |
| Health Care | 10.8% |
| Child Care & Social Services | 10.5% |

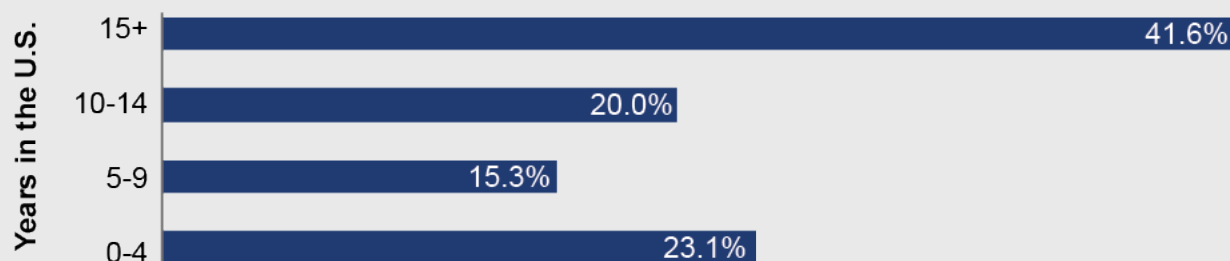
Source: Center for Economic and Policy Research (CEPR) Analysis of American Community Survey, 2014-2018 5-Year Estimates.

Immigration Status

Georgian immigrants come from all around the world seeking safety, opportunity and the chance to provide their families with a better life. Among Georgia's foreign-born population, there are 444,501 naturalized citizens, 270,000 LPRs and 342,567 undocumented residents in the state.⁶⁶

Most Undocumented Georgians Have Lived in the U.S. for Over a Decade

Share of Georgia's undocumented population, by years of U.S. residence



Source: Center for Migration Studies, "Years in the United States."

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Notably, the undocumented population in Georgia has declined by 13.4 percent since 2010 when the population constituted approximately 396,000 people.⁶⁷ In relation to nationwide declines in the undocumented population, the Center for Migration Studies estimates that 45 percent of the decline is attributed to voluntary migration due to improved country conditions.⁶⁸ But there continues to be steady migration from Central America and an increase in undocumented migration from Venezuela, a country experiencing substantial political and financial instability. Approximately 46.8 percent of undocumented Georgians are originally from Mexico and 17.5 percent come from Central American countries.⁶⁹

While most immigrants in Georgia have legal status, a third of foreign-born Georgians lack the documentation necessary to meet their full potential in this country. Most undocumented Georgians have lived in the U.S. for over a decade and have deep roots in the communities in which they live. They speak an array of different languages and share their cultural traditions with us, adding to the fabric of our communities.

Undocumented Georgians Speak a Wide Range of Different Languages

| Language Spoken at Home | Number of Foreign Language Speakers |
|-------------------------|-------------------------------------|
| Spanish | 225,706 |
| English | 27,185 |
| Chinese | 5,391 |
| Hindi | 17,256 |
| French | 7,551 |
| Filipino | 2,112 |
| Dravidian | 11,630 |
| Korean | 9,418 |
| Arabic | 2,243 |
| Other languages | 34,075 |

Source: Center for Migration Studies, *State-Level Unauthorized Population 2018*.

Undocumented Georgians are artists, teachers, religious leaders and entrepreneurs dedicated to improving their communities and building a life in the state they call home.⁷⁰ Navigating the U.S. immigration system is complicated, and there are no legal mechanisms through which most undocumented Georgians can adjust their status. Elected officials have a responsibility to pass laws that uplift immigrant communities and provide a pathway to citizenship for those locked out of the legal immigration system.





Conclusion

While the ability to affect large-scale change to the U.S. immigration system lives with federal lawmakers, Georgia state legislators can make state-level policy decisions that increase opportunity and promote the prosperity of immigrant communities. But before positive reforms can be enacted, we need a shared understanding of how the immigration system works, the issues inherent in the current system and the associated policy solutions that can remedy some of the systemic problems that exist.

Georgia can be a more welcoming state by expanding access to higher education, health care, professional licenses and driver's licenses to our foreign-born neighbors. State and local elected officials can choose to uplift rather than oppress immigrant communities by ending agreements with ICE that separate families and sow further distrust in local public safety officials. People from every corner of the world call Georgia home and share the desire to live, work and contribute to the success of their communities. Lawmakers must recognize the power they have to transform the lives of Georgian immigrants and work to ensure that all Georgians, regardless of immigration status can live up to their full potential. When immigrant communities thrive, Georgia prospers.

End Notes

¹The population of naturalized citizens was derived through GBPI's analysis of the American Community Survey 2014-2018 data; the population of legal permanent resident living in Georgia was acquired through the Department of Homeland Security's Report entitled Estimates of the Lawful Permanent Resident Population in the U.S. and the Subpopulation Eligible to Naturalize: 2015-2019; and the undocumented population was provided by the Center for Migration Studies' State-Level Unauthorized Population and Eligible to Naturalize Estimates.

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