



Immigration Law Intersections with Case Law in Nebraska

A Snapshot of Nebraska Supreme Court Cases

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ACLU
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Introduction

For over 50 years in Nebraska, the ACLU has worked in courts, legislatures, and communities to protect the constitutional and individual rights of all people. With a nationwide network of offices and millions of members and supporters, we take up the toughest civil liberties fights. Beyond one person, party, or side — we the people dare to create a more perfect union.

Combining our national expertise in immigration policy with boots-on-the-ground understanding of the unique Nebraska landscape, the ACLU fights discriminatory policies in Nebraska and ensures everyone is treated like a neighbor. Using targeted impact litigation, advocacy, and public outreach, the ACLU protects the rights and liberties of immigrants.

Although the federal government has primary and exclusive jurisdiction over immigration law, state and local laws and practices impact immigrants as well. Immigrants in Nebraska frequently and necessarily interact with governmental authorities whose determinations about key issues have significant impact on their daily lives. Interpretations and decisions by Nebraska state courts affect an immigrant's ability to maintain or regain custody of their children, navigate the criminal justice system or access critical safety nets and work support benefits such as prenatal care or workers compensation.

This snapshot of select cases highlights areas where the Nebraska Supreme Court has ruled on the rights of immigrants arising from matters of state law. It is important to note that immigration law is complex and its intersections with workers compensation law, family law, public benefits access, and the criminal justice system should be carefully evaluated on a case-by-case basis with qualified counsel.

The following cases highlight significant and consequential Nebraska Supreme Court decisions affecting immigrants' lives and their rights to state benefits and in the civil and criminal court systems.

Workers Compensation

The Nebraska Supreme Court has made several interpretations of the Nebraska Workers' Compensation Act and the availability of benefits to undocumented employees who suffer injuries at work. In some cases, the Nebraska Supreme Court has limited the availability of benefits and services but in other cases the Court has ruled that an undocumented employee is not outright denied benefits for injuries suffered at work regardless of work authorization.

In *Ortiz v. Cement Products*, 708 N.W.2d 610 (Neb. 2005), the Nebraska Supreme Court held that since plaintiff Ortiz was undocumented, he was not entitled to vocational rehabilitation benefits after being injured at work. Ortiz was injured at work when a bucket of cement fell on his leg. Ortiz sought vocational rehabilitation, among other benefits, but the Nebraska Supreme Court held that Ortiz was not entitled to vocational rehabilitation benefits because he was not lawfully employed as he was undocumented. Ortiz testified he intended to remain in the United States, where he could not be lawfully employed because of his immigration status. The statutory purpose of vocational rehabilitation services is to restore an employee to suitable gainful employment and the employee must be willing and able to return to some form of employment. The Nebraska Supreme Court concluded Ortiz would not be able to return to employment since he was undocumented and did not have employment authorization. Since the Court concluded that Ortiz would not be able to return to employment, the Court further held that awarding Ortiz vocational rehabilitation benefits would be contrary to the purpose of the statute.

In *Moyera v. Quality Pork International*, 825 N.W.2d 409 (Neb. 2013), Plaintiff, Ricardo Moyera's foot was run over by a forklift while working for defendant, Quality Pork International. The forklift broke several bones across the top of Moyera's foot, making it difficult and painful for Moyera to walk. The trial court considered the opinions of a physician, physical therapist, and rehabilitation consultant and concluded that due to the nature and extent of Moyera's injuries and employability, Moyera had sustained a permanent total loss of earning power. Defendant contended that Moyera was not entitled to permanent total loss benefits because he was undocumented, relying on the holding in *Ortiz*.

The Nebraska Supreme Court held that an undocumented resident is entitled to permanent total loss of earning power as the Nebraska Workers' Compensation Act applies to undocumented employees working for a covered employer. The Court distinguished *Ortiz* by finding that unlike vocational rehabilitation services, there are no prioritized work goals that must be satisfied before awarding indemnity for a worker's total loss of earning capacity.¹ The Nebraska Supreme Court also reiterated that even if undocumented employees cannot legally work in the U.S., they could have worked elsewhere but for their work-related injury. Additionally, the Court found that excluding undocumented workers from receiving disability benefits creates a financial incentive for employers to continue hiring them, in contravention of federal law.

Public Benefits Access

Federal welfare reform efforts were codified in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) and placed restrictions on noncitizens' access to many but not all federal public benefits. For example, only those immigrants deemed "qualified" are eligible to access federal benefits such as Medicare, Supplemental Nutrition Assistance Program (SNAP, formerly known as the Food Stamp Program), and Supplemental Security Income (SSI). Those who are undocumented, and even including many who are lawfully present in the U.S., are considered "not qualified."² However federal law guarantees certain benefits regardless of immigration status such as emergency medical care. 42 U.S.C. § 1395dd (2020). Additionally, individuals and families may be eligible for certain benefits and services regardless of immigration status under COVID relief programs.³

Mirroring federal law, Nebraska state statutes also preclude state agencies from providing "public benefits to a person not lawfully present in the United States." Neb. Rev. St. § 4-108 (1) (2021). However, some public benefits may be available, such as access to prenatal care and healthcare coverage for U.S. citizen children, regardless of either or both parents' immigration status.⁴

In *E.M. v. Nebraska Department of Health and Human Services*, 944 N.W.2d 252 (Neb. 2020), the Nebraska Supreme Court determined that since plaintiffs were minors not "lawfully present" in the United States and pursuant to PRWORA, they were not entitled to the Bridge to Independence program as a state benefit.

Plaintiffs, E.M., Vasquez Perez, and Hernandez Marroquin, were seeking state public benefits under the Bridge to Independence Program (B2I), Nebraska's extended foster care program which is available to a young adult who is at least 19 years old, was adjudicated to be a juvenile, satisfies the education/work requirement, is a Nebraska resident, and does not meet the level of care for a nursing facility. B2I offers support services such as medical care, foster care maintenance payments, and case management services until the young adult turns 21. B2I was created by the Young Adult Bridge to Independence Act (YABI). Neb. Rev. St. § 43-4501 *et seq.*

Plaintiffs came to Nebraska from Guatemala as minors. Each plaintiff was adjudicated as juveniles and placed into foster care. Each plaintiff had received Special Immigrant Juvenile Status and applied to Nebraska Department of Health and Human Services for B2I but was denied because they did not meet the citizenship or lawful presence requirements of the statute.

Since Nebraska law does not define who qualifies as "lawfully present", the Nebraska Supreme Court turned to PRWORA and concluded that for purposes of state or local public benefits eligibility, "lawfully present" refers to those who meet the qualifications under the federal statute.⁵

The Supreme Court concluded that the plaintiffs did not show that they were

“lawfully present” as defined in PRWORA and the Legislature did not provide for those not lawfully present to be eligible for B2I. Therefore, the plaintiffs were not wrongfully denied benefits.

The same day *E.M.* was decided, the Nebraska Supreme Court also decided *J.S. v. Nebraska Department of Health and Human Services*, 944 N.W.2d 266 (Neb. 2020). The Supreme Court held that since plaintiff J.S. was not a citizen or a qualified immigrant, she was not eligible to receive Medicaid.

J.S. came to Nebraska from El Salvador as a minor and was adjudicated in juvenile court and placed into foster care. At the time of her application for the B2I program, she also had a pending application for Special Immigrant Juvenile Status. Upon turning 19, J.S. was accepted into B2I but was denied Medicaid after her 19th birthday. The Supreme Court upheld the decision of DHHS to deny Medicaid to J.S. because she did not meet the basic requirements of “citizenship or alien status” for all Medicaid recipients. The Supreme Court extended its reasoning in *E.M.* concluding that neither PRWORA nor the Nebraska state law equivalent provided for YABI to extend to noncitizens “not lawfully present.”

Crimmigration

At the intersection of criminal law and procedures and immigration law and procedures lies “crimmigration law.” The two arenas have merged and continue to evolve in tandem, which creates complex and unique considerations for those facing both systems.⁶

In *State v. Gonzalez*, 830 N.W.2d 504 (Neb. 2013), Defendant Alma Ramirez Gonzalez sought to withdraw her plea on the grounds of ineffective assistance of counsel. Nebraska state law requires that the court advise the defendant prior to pleading guilty or nolo contendere (no contest) that conviction may have consequences of removal or denial of naturalization if the defendant is not a U.S. citizen. Neb. Rev. St. § 29-1819.02. Under the statute, if the court fails to advise the defendant, and the defendant pleads guilty or nolo contendere and is subject to immigration consequences, the defendant may move to withdraw the plea and enter a plea of not guilty.⁷ However, the Nebraska Supreme Court found that the district court made this required advisement, so relief under this statute was not available to Gonzalez. Further, the Court held that there is no common law procedure to withdraw a plea after conviction is final. The common-law procedure is available only when the collateral attack is based on a constitutional principle. Otherwise, the remedy to withdraw a plea is pursuant to the Nebraska Postconviction Act and the procedures provided by that statute.⁸

In *State v. Cerritos-Valdez*, 889 N.W.2d 605 (Neb. 2017), the Nebraska Supreme Court considered whether a defendant’s undocumented immigration status was a relevant factor when determining whether to grant or deny probation. Defendant Jose Cerritos-Valdez pled guilty to attempted possession of a controlled substance and driving under the influence. On appeal, Cerritos-Valdez argued that the district

court impermissibly denied him probation based on an irrelevant factor – his status as an undocumented immigrant.

Taking guidance from other jurisdictions, the Nebraska Supreme Court held that although it cannot be the sole factor, the court may consider the defendant’s undocumented status as one of many factors as it relates to the offense of the sentence being imposed, relevant to other sentencing factors under Nebraska law or relevant to the defendant’s ability or willingness to comply with recommended probation conditions. Accordingly, the Nebraska Supreme Court held that the sentencing court did not abuse its discretion in denying probation as the record supported that the court considered other factors such as the nature of the offense and the defendant’s ability to maintain employment, not solely the defendant’s undocumented immigration status.

Parental Rights

Parents who are immigrants may face additional political and legal challenges to raise their children, regardless of the immigration status of the parents and children, often due to cultural and language differences. However, regardless of the immigration status of the parents and the children, all parents have a constitutional interest to maintain custody and raise their children as they see fit.

In *In re Interest of Angelica L.*, 767 N.W.2d 74 (Neb. 2009), the Nebraska Supreme Court held that a parent did not lose her parental rights because she was deported. Mother, Maria L., was deported to Guatemala and had two children who were born in the United States. The County Court of Hall County terminated mother’s rights upon motion by the state. On appeal, the Nebraska Supreme Court reversed and held that state did not provide sufficient evidence to terminate mother’s parental rights.

The Nebraska Supreme Court concluded that the state did not adequately prove the unfitness of the parent. Although the state had expressed concern over Maria L.’s medical judgment of her child, such an error in judgment does not justify the termination of her parental rights. The law does not require perfection of the parent. The Nebraska Supreme Court declined to conclude that Maria’s attempt to bring herself and her child into the United States in the belief that they would have a better life shows an “appreciable absence of care, concern, or judgment.” Although Maria was initially hesitant to seek medical attention for her infant child, Angelica, for fear of being deported or other circumstances unaware to the court, the record showed that Maria did seek regular medical care when Angelica was not thriving. Although Maria missed a follow-up appointment, Maria believed Angelica was getting better and did not have a ride to the appointment. This lapse in judgment does not establish her unfitness as a parent. A parent has a “commanding constitutional interest” in their parental rights.

The Nebraska Supreme Court affirmed the “constitutionally protected relationship”

a parent has with their child in *In re Mateo L.*, 961 N.W.2d 516 (Neb. 2021) by finding that the State failed to meet their burden of clearly and convincingly proving that parent Juana was unfit as a mother.

Parent Juana L., came to the United States from Guatemala when she was sixteen years old with her two children, Mateo L. and Pedro L. Juana had grown up speaking K'iche', a Mayan language common in Guatemala and spoke almost no English or Spanish and had little money. She eventually settled in Norfolk, Nebraska where she met and began dating Carlos P. Juana and her children moved in with Carlos and about a year later, she gave birth to her third child, Bryan L.

Although Juana was found to be slow to seek medical treatment for her children, the circumstances that led to which were not the result of apathy or selfishness. In fact, her desire and ability to seek help for her children were frustrated by the fact that she had little understanding of English, how to use U.S. money or where to seek the necessary medical care. Still, Juana sought and accepted help and was able to schedule appointments for her children and regularly attend them.

After Juana was found to have left her two older children alone at home while she took Bryan to a medical appointment, the juvenile court transferred legal custody of the children to the Department of Health and Human Services, although physical custody remained with Juana.

Three months later, Juana had left Norfolk and Nebraska DHHS located Juana in Minnesota. There, Juana had found a job in a turkey processing facility but had used a false name, false driver's license, Social Security card and birth certificate to apply for the job. She was charged with forgery and using false identification. Juana had revealed that she left Norfolk to escape Carlos, who had abused her and her children.

Although Juana had been arrested for forgery and using false identification, Juana had served time for her offenses and was now in a safe living situation. She was granted asylum and would be on a path to obtaining work authorization. The Court found that Juana had maintained a continuing interest and association with the children and that terminating her parental rights was not in the best interest of the children.

Special Immigrant Juvenile Status

A juvenile seeking Special Immigrant Juvenile Status (SIJS) must be adjudicated by a juvenile court with an order finding that the juvenile is eligible for SIJS because they are a dependent of the court and reunification with one or both parents is not feasible due to abandonment, abuse, or neglect or a similar basis under state law and it is in the juvenile's best interest not to return to their country of residence.⁹

Although USCIS makes the final determination on whether to grant an application for SIJS, the local or state court has a key voice in processing of SIJS applications as it must find that the juvenile meets all the elements to be granted SIJS.¹⁰ The Nebraska Supreme Court held in *In re Guardianship of Carlos D.*, 915 N.W.2d 581 (Neb. 2018) that county courts have authority to make determinations and findings of eligibility for SIJS status and does not require findings from dedicated juvenile courts. A Nebraska county court has exclusive original jurisdiction relating to the guardianship of a person, which is a child custody determination. Since Nebraska statute allows a court that has jurisdiction to make child custody determinations to also make factual findings, the Nebraska Supreme held that the county court is a “juvenile court” for purposes of making findings for eligibility of SIJS.

In a case where the juvenile applicant has never known a parent or a parent has failed to provide support for a significant period, then reunification with the absent parent is considered not feasible because of abandonment. However, the applicant must also show that the reunification with the other parent is also not feasible because of abuse, neglect, or abandonment to meet the standards of SIJS. Thus, when ruling on a petitioner’s motion for SIJS eligibility, the court should generally consider whether reunification with either parent is feasible. *In re Erick M.*, 820 N.W.2d 639 (Neb. 2012).

Conclusion

Immigrants must not only navigate the complex arena of federal immigration law, but they must also interact with state and local laws and authorities throughout their daily lives. Although much of the law impacting immigrants’ lives is established at the federal level, state laws and policies still have significant authority to extend certain state benefits to immigrants or make life-altering determinations about them in the criminal justice system and juvenile courts.

The Nebraska Legislature must establish comprehensive and inclusive laws to make Nebraska communities welcoming and equitable for immigrants. Similarly, Nebraska courts should extend immigrants’ rights in its interpretation of state laws, ensuring that all Nebraskans can thrive and succeed in our communities.

ADDITIONAL RESOURCES

- **Heartland Workers Center**, heartlandworkerscenter.org, 402-933-6095
- **Immigrant Legal Center**, immigrantlc.com, the Nebraska Immigration Legal Assistance Hotline (NILAH), operated by Immigrant Legal Center, is a centralized hotline for low-income individuals seeking immigration legal assistance. Call 1-855-307-6730 Monday through Friday 9 a.m.–3 p.m. CST. Press 9 to leave a voicemail.
- **Legal Aid of Nebraska**, legalaidofnebraska.org, 402-348-1069
- **Nebraska Appleseed**, neappleseed.org, 402-438-8853
- **Nebraska Bar Association**, nebar.com, nefindalawyer.com

ENDNOTES

¹See also *Visoso v. Cargill Meat Sols.*, 826 N.W.2d 845 (Neb. 2013) (holding that loss of earning capacity should have been where place where injury occurred, which was Nebraska, instead of Mexico where claimant was from and where he returned after injury). But see also *Hoffman Plastic Compounds, Inc. v. Nat'l Lab. Rels. Bd.*, 535 U.S. 137 (2002) (holding that undocumented workers are not entitled to backpay under the National Labor Relations Act as the Immigration Reform and Control Act made it unlawful for employers to knowingly hire an unauthorized alien).

²For a more complete list and explanation of “qualified” and “not qualified” immigrants under PRWORA, see Tanya Broder, Gabrielle Lessard & Avidah Moussavian, *Overview of Immigrant Eligibility for Federal Programs*, National Immigration Law Center (Oct. 2021), <https://www.nilc.org/issues/economic-support/overview-immeligfedprograms/>.

³For additional information on healthcare access for immigrants and their families see *Update on Access to Health Care For Immigrants and Their Families*, National Immigration Law Center (May 27, 2020), [https://www.nilc.org/issues/health-care/update-on-access-to-health-care-for-immigrants-and-their-families/#:~:text=Immigrants%20can%20continue%20to%20access,COVID%2D19%20screening%20and%20testing;Health Coverage of Immigrants, KFF \(July 15, 2021\), https://www.kff.org/racial-equity-and-health-policy/fact-sheet/health-coverage-of-immigrants/](https://www.nilc.org/issues/health-care/update-on-access-to-health-care-for-immigrants-and-their-families/#:~:text=Immigrants%20can%20continue%20to%20access,COVID%2D19%20screening%20and%20testing;Health Coverage of Immigrants, KFF (July 15, 2021), https://www.kff.org/racial-equity-and-health-policy/fact-sheet/health-coverage-of-immigrants/).

⁴Nebraska Children’s Health Insurance Program, *Benefits.gov* <https://www.benefits.gov/benefit/1607>; see also CHIP State Plan, Nebraska Department of Health and Human Services <https://dhhs.ne.gov/Pages/CHIP-State-Plan.aspx>.

⁵8.U.S.C. § 1621(a) defines that an “alien who is not 1) a qualified alien, 2) a nonimmigrant under the Immigration and Nationality Act, or 3) an alien who is paroled into the United States under section 212(d)(5) of such Act for less than one year,” is not eligible for any State or local public benefit.

⁶For further discussion of crimmigration law, see CESAR CUAUHTEMOC GARCIA HERNANDEZ, *CRIMMIGRATION LAW* (2d ed. 2021).

⁷The U.S. Supreme Court held in *Padilla v. Kentucky* that criminal defense attorneys must advise noncitizen clients about immigration consequences, such as possible deportation, before entering a plea. 559 U.S. 356 (2010).

⁸Neb. Rev. St. § 29–3001 (2021).

⁹8 U.S.C. § 1101 (a)(27)(I) (2021).

¹⁰The Nebraska Court of Appeals has held that an order vacating the SIJS eligibility determinations “clearly affects a substantial right” as it terminates the application for legal permanent residence. In *re Interest of Luis G.*, 764 N.W.2d 648, 654–5 (Neb. App. Ct. 2009). For an appellate court to review a lower court matter, the order on review must be final and “affecting a substantial right.” *Id.* at 654. A substantial right is an “essential legal right, not a mere technical right.” *Id.*

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