

A COMPARATIVE STUDY OF MIGRANTS’ ACCESS TO HEALTHCARE: SIMILARITIES AND DIFFERENCES BETWEEN ENGLAND, GERMANY, ITALY, SPAIN, CANADA, AND THE UNITED STATES

Paula Castañeda Restrepo *

I.	INTRODUCTION	109
II.	LAWS AND VARYING DEGREES OF ACCESS IN DIFFERENT COUNTRIES	112
A.	<i>European Countries</i>	112
1.	United Kingdom	112
2.	Spain	116
3.	Germany	119
4.	Italy	123
B.	<i>North American Countries</i>	126
1.	Canada	126
2.	United States	128
III.	COMPARATIVE ANALYSIS OF LAWS	132
A.	<i>Similarities Among the Countries</i>	132
B.	<i>Differences Among the Countries</i>	133
IV.	OPINION	135
V.	CONCLUSION	136

I. INTRODUCTION

In 2010, the Secretary General of the United Nations (U.N.), Ban Ki-Moon addressed the recent rise of migrants entering Europe illegally by sea.¹ In his speech, Ki-Moon urged Europeans to refrain from demonizing the recent arrivals by denying them basic human rights, such as access to health care, and promoted the U.N. goal of social integration for this

* Paula Castañeda is a J.D. candidate for May 2019 at Nova Southeastern University, Shepard Broad College of Law. Paula graduated in 2010 from Nova Southeastern University where she received her Bachelor of Arts in Psychology and Legal Studies. Paula would like to thank Mimi Restrepo for her constant support and encouragement; Augusto and Nohora Restrepo for their help throughout this journey without which this would be impossible; as well as Bryan Siddique for all his patience, help and advice.

1. Francesca Prati et al., *Encouraging Majority Support for Immigrant Access to Health Services: Multiple Categorization and Social Identity Complexity as Antecedents of Health Equality*, 19 GROUP PROCESSES & INTERGROUP REL. 426, 426 (2016).

vulnerable population of newly arrived migrants.² As the current situation of the world continues to worsen in some areas due to war, famine, or poverty, immigration rises. As these immigrants settle in their new countries, many settling illegally, access to health care becomes an issue of global consequence as a basic human right.³ The International Covenant on Economic, Social, and Cultural Rights (ICESCR) has been interpreted to state that denying anyone, even an unauthorized migrant, access to healthcare as a part of a country's policy is a violation of a human right.⁴

As of 2015, there were more than sixty million displaced migrants in the world seeking a place to live, especially in developed and rich countries, such as the countries in Western Europe and North America.⁵ For example, in 2015, there were approximately 4.7 million people who immigrated to one of the twenty-eight member states of the European Union.⁶ Of those 4.7 million, more than half were from a non-member country.⁷ Exclusion from healthcare is a form of discrimination and it is especially egregious when immigrants' health tends to be poorer than the native group members.⁸ This form of discrimination leads to the eventual health problems and shorter life spans for those who are displaced.⁹

Currently in the United States (U.S.), under the Affordable Care Act (ACA), unauthorized migrants are not covered.¹⁰ Furthermore, they cannot qualify for subsidies through which they may purchase insurance through the market exchange.¹¹ The proposed Trump Care bill, Better Care Reconciliation Act, seemed to be aimed at creating tax breaks for the those in the highest tax brackets in the United States, and as a result left the

2. *Id.*

3. See Carin Björngren Cuadra, *Right of Access to Health Care for Undocumented Migrants in EU: A Comparative Study of National Policies*, 22 EUR. J. PUB. HEALTH 267, 267 (June 9, 2011).

4. *Id.*

5. Phillip Connor & Jens Manuel Krogstad, *Key Facts About the World's Refugees*, PEW RES. CTR. (Oct. 5, 2016), <http://www.pewresearch.org/fact-tank/2016/10/05/key-facts-about-the-worlds-refugees/>.

6. *Migration and Migrant Population Statistics*, EUROSTAT, http://ec.europa.eu/eurostat/statistics-explained/index.php/Migration_and_migrant_population_statistics#Main_statistical_findings (last visited June 19, 2017).

7. *Id.*

8. Prati et al., *supra* note 1, at 427.

9. *Id.*

10. Michelle Nicole Diamond, Note, *Legal Triage for Healthcare Reform: The Conflict Between the ACA & EMTALA*, COLUM. HUM. RTS. L. REV. 255, 264 (2011).

11. *Id.* at 265.

possibility of achieving some sort of coverage for unauthorized migrants quite slim.¹²

Unauthorized migrants represent a unique class of people in today's society that is seldom studied due to the lack of legal status.¹³ In most countries, migrants contribute economically to the country, yet hold no direct political power.¹⁴ Unauthorized migrants must be addressed, yet they are a challenge for host countries due to the moral and economic arguments that arise from their stay.¹⁵ Currently, the attitude toward immigrants, in particular Muslim migrants, is highly prejudiced.¹⁶ It is roughly estimated that six-in-ten Syrians have had to leave their homes due to the political turmoil in Syria.¹⁷ The conflict has displaced more than 12.5 million Syrians, creating a major surge in Syrian immigration in comparison to the one million that emigrated from Syria in 2011.¹⁸ Many Syrians end up relocating in countries such as Canada, the United States, or countries within Western Europe, in search of a better and more prosperous future.¹⁹ However, many of these countries try to control migration patterns by denying access to healthcare as a way to curb illegal immigration. Ethnographic studies have shown the societal groupthink of native citizens consider unauthorized migrants as undeserving of access to public health regardless of the legal entitlement they may actually have.²⁰ Groupthink is a psychological concept that is used to explain a manner of group thinking that occurs when the members of a group accept a group viewpoint regardless of individual opinions on whether the viewpoint is correct or

12. See Adam Gaffney, *Trumpcare is Like a Vampire, Set on Sinking its Teeth into the Poor*, GUARDIAN (June 23, 2017, 6:00), <https://www.theguardian.com/commentisfree/2017/jun/23/trump-care-vampire-sinking-teeth-poor>.

13. Heide Castañeda, *Illegality as Risk Factor: A Survey of Unauthorized Migrant Patients in A Belin Clinic*, 68 SOC. SCI. & MED. 1552 (Feb. 25, 2009) [hereinafter Castañeda *Illegality*]. Even though the term “undocumented immigrant” or “illegal immigrant” is preferred in the United States for purposes of this paper the term unauthorized migrant will be used because it better describes the group of people as migrants who may have some sort of documentation about how they entered the country, such as overstaying a tourist visa. It is also useful to better describe people who applied for asylum, and were denied and still remained in the country. *Id.*

14. Heide Castañeda, “Over-Foreignization” or “Unused Potential”? A Critical Review of Migrant Health in Germany and Responses Toward Unauthorized Migration, 74 SOC. SCI. & MED. 830, 837 (2012) [hereinafter Castañeda “Over-Foreignization”].

15. *See id.*

16. Connor & Krogstad, *supra* note 5.

17. *Id.*

18. *Id.*

19. *Id.*

20. Susann Huschke, *Performing Deservingness: Humanitarian Health Care Provision for Migrants in Germany*, 120 SOC. SCI. & MED. 352 (2014).

not.²¹ It is often used to explain how a group mentality may control a group's thinking regardless of personal opinions.²² Data regarding unauthorized migrants is scarce due to unauthorized migrants not wanting to run the risk of exposing themselves.²³

This note aims to compare the various approaches of entitlement to healthcare that Western countries have implemented, specifically regarding unauthorized migrant populations. First, this note will give a brief overview of the structure of four Western European countries' governments (United Kingdom (U.K.), Spain, Germany, Italy) followed by an explanation of the funding and the laws that deal with health care access for unauthorized migrants in each of these countries. This note will then discuss the structure, funding and laws that deal with health care in two North American countries (Canada and the United States). Additionally, this note will compare the six countries' laws and their levels of access. An opinion section will discuss how best to care for this marginalized group. This note will conclude with a brief summary of the points made in the discussion.

II. LAWS AND VARYING DEGREES OF ACCESS IN DIFFERENT COUNTRIES

A. *European Countries*

1. United Kingdom

Great Britain and Northern Ireland make up the U.K.²⁴ The isle of Great Britain includes England, Scotland, and Wales.²⁵ England's government is a parliamentary constitutional monarchy led by the head of the government, Prime Minister Theresa May (since July 2016) and the head of state, Queen Elizabeth II.²⁶ There is a bicameral Parliament consisting of the House of Lords and the House of Commons.²⁷ The House of Lords is comprised of 815 members of which there are hereditary peers (people who inherited their spot), life peers (people the prime minister has

21. Anna Schmidt, *Groupthink*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/topic/groupthink> (last visited Sept. 6, 2017).

22. *Id.*

23. Castañeda *Illegality*, *supra* note 13, at 1553.

24. *The World Factbook: United Kingdom*, CENT. INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/geos/uk.html> (last visited July 7, 2017).

25. *Id.*

26. *Id.*

27. *Id.*

appointed for life), and archbishops and bishops.²⁸ The House of Commons has 650 members of Parliament, which are all elected by a constituency.²⁹ In 2016, the U.K.'s population was estimated at 65,630,000.³⁰ Calculating the total number of unauthorized migrants in the U.K. is difficult because unauthorized migrants stay hidden without any relevant immigration documentation; the closest approximation to a population estimate is a figure from 2007 by the London School of Economics reporting an estimate of 533,000 unauthorized migrants at that time.³¹ There is no question that this number is low based on the more recent wave of immigrants seeking refuge in the United Kingdom.³²

The Parliament, the Secretary of State for Health, and the Department of Health all control health care policy, especially access to health care.³³ The United Kingdom funds the National Health Service (NHS) entirely through national taxation, creating an insurance system which covers England, Northern Ireland, Scotland, and Wales.³⁴ Regardless of the fact that each region manages its system independently, the systems are similar in most aspects and are considered to be part of the same unified system.³⁵

According to the Health Act of 2006, the Secretary of State for Health “has a legal duty to promote a comprehensive health service that provides care free of charge, apart from services with charges already in place.”³⁶ The NHS Constitution delineates the rights for those entitled to health care.³⁷ Those eligible to receive health care have the right to access free care without discrimination even though there may be certain time limitations to it as determined by Parliament.³⁸ Once a person is deemed to

28. William A. Chaney et al., *United Kingdom*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/place/United-Kingdom> (last visited July 6, 2017).

29. *Id.*

30. *Id.*

31. Ruby Lott-Lavigna, *How Many Illegal Immigrants Are in the UK?*, NEWSTATESMAN (Feb. 7, 2017), <http://www.newstatesman.com/2017/02/how-many-illegal-immigrants-are-uk>.

32. *See id.*

33. Ruth Thorlby & Sandeepa Arora, *The English Health Care System*, COMMONWEALTH FUND, <http://international.commonwealthfund.org/countries/england/> (last visited July 7, 2017).

34. *Access to Health Care for Undocumented Migrants and Asylum Seekers in 10 EU Countries: Law and Practice*, HUMA NETWORK 165 (2009), <http://www.epim.info/wpcontent/uploads/2011/02/Legislative-Rapport-HUMA-Network.pdf> [hereinafter HUMA NETWORK].

35. *Id.*

36. Thorlby & Arora, *supra* note 33.

37. *The NHS Constitution for England*, DEP'T OF HEALTH (Oct. 14, 2015), <https://www.gov.uk/government/publications/the-nhs-constitution-for-england/the-nhs-constitution-for-england>.

38. *Id.*

be eligible to receive access to health care, the coverage is universal.³⁹ However, there is no absolute right to receive any particular treatment.⁴⁰ Authorized residents and nonresidents with European Health Insurance Cards are entitled to receive free health care for primary and secondary care.⁴¹ Access to health care is limited for unauthorized migrants who are not entitled to receive universal healthcare however, they are entitled to receive treatment if a doctor finds that it is immediately necessary for emergency care or certain infectious diseases.⁴² Free health care that is available to all residents of the U.K., regardless of their legal residence status, includes the following NHS services:

- i) services provided in an “accident and emergency department” (until the patient is admitted as an in-patient or an out-patient clinic, thus emergency treatment given elsewhere in the hospital) or walk-in [centers] in situation of emergency;
- ii) family planning;
- iii) services provided in the community where staff are not employed by a Trust (e.g. practice nurses);
- iv) treatment of certain communicable diseases, like tuberculosis (excluding HIV/AIDS where it is only the first diagnosis and connected counselling sessions that are free of charge);
- v) treatment given in or referred by sexually transmitted diseases clinics; and
- vi) compulsory psychiatric treatment.⁴³

All residents must register with a General Practitioner (GP) to access NHS services to receive primary care, and then to further receive secondary

39. Thorlby & Arora, *supra* note 33. Universal coverage of healthcare aims to provide “promotive, preventive, curative, rehabilitative and palliative health services” to people who are legally entitled to receive access to health care. *Health Financing for Universal Coverage*, WORLD HEALTH ORG., http://www.who.int/health_financing/universal_coverage_definition/en/ (last visited Aug. 8, 2017). If a person is legally entitled to receive this benefit, then there must be no discrimination based on ability to pay for services. *Id.* There is a duty to provide “good enough” health care that does improve the health of those who request to use the service. *Id.* The cost of services is to be kept low enough so as not to create a financial burden for using the system. *Id.*

40. Thorlby & Arora, *supra* note 33.

41. See Lea Williams, *Guidance on Implementing the Overseas Visitors Charging Regulations 2015*, DEP’T OF HEALTH 10–13 (Aug. 2017), https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/496951/Overseas_visitor_hospital_charging_accs.pdf. See also HUMA NETWORK, *supra* note 34, at 165.

42. Williams, *supra* note 41, at 12.

43. HUMA NETWORK, *supra* note 34, at 165.

care (outpatient care) with the clear exception of emergency care.⁴⁴ If an unauthorized migrant is able to get on a GP's patient list, then he is entitled to receive primary care free of charge.⁴⁵ However, this creates a discretionary factor rather than actual entitlement for unauthorized migrants because access to free primary health care hinges on a doctor's willingness to put the unauthorized migrant on his list.⁴⁶ Doctors are given broad legal reasons to deny a person registration onto their patient list, such as their own personal discretion or on the basis that the patient may not be geographically desirable (there is a doctor that is closer to the patient's home that would better tend to him).⁴⁷ Doctors are not allowed to refuse patients on the basis of "race, gender, social class, age, religion, sexual orientation, appearance, disability or medical condition," however, doctors may easily disguise any personal bias using the broad discretion afforded to doctors to deny NHS registration.⁴⁸

Since most unauthorized migrants work low-paying jobs due to their status, a way to prevent their access to the free healthcare system is by making them pay for services and treatments that may be too expensive; for example, unauthorized migrants are responsible to pay the full cost of any hospital treatment that may consist of "secondary care in out-patient department, in-patient care, ante and postnatal care, medicines and [antiretroviral treatment for the treatment of HIV]."⁴⁹ Hospitals may also refuse to treat a patient who may need secondary care if the hospital realizes that the patient will have to pay for the treatment, but cannot afford to pay.⁵⁰ Hospitals, like doctors, end up with the discretionary decision of who they choose to treat based on status and ability to pay, creating a lack of constancy in the people admitted for treatment.⁵¹ Some hospitals will check immigration status more than others and some may refuse to treat migrants in the emergency room if they decide that the migrant does not qualify for free emergency care.⁵² Therefore, unauthorized migrants in the

44. *Id.* Primary health care refers to the initial and essential level of health care; secondary health care refers to outpatient or inpatient procedures that require some kind of referral from a primary health provider. *Id.* at 11.

45. *Id.* at 166.

46. *See id.* at 176.

47. HUMA NETWORK, *supra* note 34, at 176.

48. *Id.*

49. *Id.* at 166.

50. *Id.* at 176.

51. *Id.*

52. HUMA NETWORK, *supra* note 34, at 176.

U.K. face both bureaucratic and economic obstacles restricting their access to health care, even though they may have legal access to certain services.⁵³

2. Spain

Spain is a parliamentary constitutional monarchy comprised of seventeen autonomous communities and two autonomous cities.⁵⁴ The head of the government is the Prime Minister Mariano Rajoy (since December 2011) and the head of state is King Felipe VI.⁵⁵ Spain has a bicameral legislature known as the General Courts that consists of the Senate and the Congress of Deputies.⁵⁶ The Congress of Deputies, consisting of 350 members, is the lower house and the most powerful of the two.⁵⁷ The Senate currently has 266 Senators of which the majority are elected by each autonomous region; in the minority, half are elected as regional representatives, and the other half are appointed per every one million residents of their region.⁵⁸ In 2016, the population estimate in Spain was 46,370,000.⁵⁹ There is no figure for the exact amount of unauthorized migrants currently in Spain, however there was an estimated 11,624 unauthorized migrants that arrived in Ceuta and Melilla, consisting of mainly Syrian refugees, in 2015.⁶⁰

In 1986, the General Health Law established the Spanish National Health System (SNHS) by expanding the social security system through general taxation creating a tax-based health system regulated by Spain's autonomous communities.⁶¹ A 1989 decree further extended coverage to the poor not entitled to Social Security, thereby covering unauthorized migrants who did not have access to Social Security.⁶² In 2011, a public

53. *See id.*

54. *The World Factbook: Spain*, CENT. INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/geos/sp.html> (last visited July 7, 2017).

55. *Id.*

56. *Id.*

57. Helmut Georg Koenigsberger et al., *Spain*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/place/Spain> (last visited Sept. 13, 2017) [hereinafter *About Spain*].

58. *Composition of the Senate*, SENADO DE ESPAÑA [SPANISH SENATE], <http://www.senado.es/web/conocersenado/t/emasclave/composicionsenadoelecciones/index.html?lang=en> (last updated July 19, 2016),

59. *About Spain*, *supra* note 57.

60. *The Number of Illegal Immigrants Arriving on the Spanish Coast Rises*, EXPATICA (Sept. 21, 2016), https://www.expatica.com/es/news/esPulse-The-number-of-illegal-immigrants-arriving-on-the-spanish-coast-rises_774313.html.

61. Marta Cimas et al., *Healthcare Coverage for Undocumented Migrants in Spain: Regional Differences After Royal Decree Law 16/2012*, 120 HEALTH POL'Y 384, 385 (2016).

62. *Id.*

health law extended coverage to cover those who were not expressly covered by previous decrees.⁶³ Article 12 of the Organic Law 4/2000 (Law 4/2000) on the Rights and Freedoms of Foreigners in Spain and their Social Integration gave unauthorized migrants living in Spain the same access to health care and education as Spanish citizens as long as they registered in their municipalities.⁶⁴

However, in 2012 due to the economic crisis, Spain changed its laws and ended nearly universal access to health care restricting unauthorized migrants' access to the publicly funded healthcare system.⁶⁵ Royal Decree Law 16/2012 (RDL 16/2012) created coverage that was more explicitly linked to social security entitlement and revoked unauthorized migrants' access to healthcare through Law 4/2000.⁶⁶ Unauthorized migrants were left with only access to emergency care, maternal care, and child care for those under eighteen, and access for those seeking asylum and victims of human trafficking during a set period.⁶⁷

After the passage of RDL 16/2012, ten regional governments chose to implement an alternative legal way for unauthorized migrants to receive access to health care.⁶⁸ For example, the community of Navarre passed the Navarre Regional Foral Law 8/2013 reestablishing unauthorized immigrants' entitlement to health care.⁶⁹ The regions, on average, were able to grant access to coverage for primary and secondary health care for up to one year.⁷⁰ The regions did vary in the requirements imposed upon migrants for granting access to health care.⁷¹ For example, Catalonia and Andalusia have granted greater access to health care for unauthorized migrants with varying degrees of requirements and benefits allotted, yet they have different regional policies that are influenced by the governing party and the local economy.⁷² Residency requirements varied from no time at all needed in Andalusia and Asturias, to one year of residency in Basque Country, to three months residency required to obtain primary care,

63. *Id.*

64. *Id.* at 385. Right and Freedoms of Foreigners in Spain and their Social Integration Law art. XII (B.O.E. 2000, 10) (Spain).

65. Cimas et al., *supra* note 61, at 385.

66. *Id.*

67. *Id.*

68. *Id.* at 386.

69. *Id.*

70. Cimas et al., *supra* note 61, at 386.

71. *Id.*

72. María Luisa Vázquez et al., *Are Migrants Health Policies Aimed at Improving Access to Quality Healthcare? An Analysis of Spanish Policies*, 113 HEALTH POL'Y 236, 237 (2013).

but one year residency was required to obtain secondary care in Catalonia.⁷³ Benefits such as lower-pharmaceutical co-payments were given in Aragon, while in the Canary Islands, unauthorized migrants were not covered for any pharmaceutical benefit.⁷⁴ Therefore, after the passage of RDL 16/2012, unauthorized migrant access to health care depended on which region the migrants lived in (whether more progressive or more adherent to RDL 16/2012).⁷⁵

Spain is a perfect example of how a regional autonomous government that does not agree with the central government's policy can choose to implement other measures to ensure all who reside in the region a better quality of life.⁷⁶ This is especially true in the area of health care where central and regional governments share the responsibility of implementing the service to the people.⁷⁷ The regions that were most likely to rule against the central government and create a more inclusive healthcare system for their particular region were those who were led by an opposition party to the one in power in the central government; those who were led by the same ruling party were most likely to abide by the RDL 16/2012 stipulations.⁷⁸ However, there were regions that were led by the same ruling party and still decided to give unauthorized migrants access to health care, most likely because of the cost of providing only emergency care would be higher and ultimately more detrimental to the economy than granting access to health care.⁷⁹

The reason for implementing a severe health care adjustment, like RDL 16/2012, was to cut costs in a declining economy.⁸⁰ However, any real savings that the government may have gained from blocking unauthorized migrants from obtaining health care, in the end, seems to be the opposite of what actually happened in Spain.⁸¹ Specifically for Spain, unauthorized migrants constitute a very small percentage of the population in comparison to Spaniards, so the cost cutting measure would not be one that would necessarily create a major impact.⁸² Ultimately, a strict implementation of this policy will cost tax payers more money because

73. Cimas et al., *supra* note 61, at 386.

74. *Id.* at 388.

75. *See id.*

76. *Id.*

77. *Id.*

78. Cimas et al., *supra* note 61, at 389.

79. *Id.* at 389–90.

80. *Id.* at 390.

81. *Id.*

82. *Id.*

unauthorized migrants can only resort to the emergency room, which is more costly than receiving preventive care through access to the SNHS.⁸³

3. Germany

Germany is a federal parliamentary republic that has a bicameral parliament consisting of the Bundesrat and the Bundestag.⁸⁴ The current head of government is Chancellor Angela Merkel (since November 2005) and the head of state is President Frank-Walter Steinmeier (since March 2017).⁸⁵ The Bundestag, the more powerful of the two chambers, currently has about 600 members, however the number is subject to change depending on election results.⁸⁶ The Bundesrat has a considerably smaller number of members with just sixty-nine members that represent their respective Länder.⁸⁷ As of 2016, it is estimated that there are 81,762,000 people living in Germany.⁸⁸ Germany has recently allowed a great number of migrants to come and resettle within its borders; approximately one million migrants within the last two years.⁸⁹ The number of unauthorized migrants in Germany was estimated at 174,438.⁹⁰

The health care system is set up by the Federal Ministry of Health and services rendered to the public are regulated by the Federal Joint Committee, which is comprised of public and private health insurance funds.⁹¹ “Germany has a predominantly income-based contribution health insurance system that is also partly financed by other statutory insurance scheme (e.g. civil servants), taxes, out-of-pocket payments and private health insurance.”⁹² An employee’s and an employer’s contribution to the Statutory Health Insurance System is on a case by case basis depending on monthly gross salary.⁹³ Once a person is eligible for the Statutory Health

83. Cimas et al., *supra* note 61, at 390.

84. *The World Factbook: Germany*, CENT. INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/geos/gm.html> (last visited July 7, 2017).

85. *Id.*

86. Theodore S. Hamerow et al., *Germany*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/place/Germany> (last visited July 6, 2017).

87. *Id.*

88. *Id.*

89. Michelle Martin, *Number of Migrant Criminal Suspects in Germany Surged in 2016*, REUTERS (Apr. 24, 2017), <http://www.reuters.com/article/us-germany-crime-idUSKBN17Q1G4>.

90. *Id.*

91. Miriam Blümel & Reinhard Busse, *The German Health Care System*, COMMONWEALTH FUND, <http://international.commonwealthfund.org/countries/germany/> (last visited July 7, 2017).

92. HUMA NETWORK, *supra* note 34, at 60.

93. *Id.* at 61.

Insurance System, he may get further coverage through private health insurance that may supplement or compliment the coverage already offered by the State.⁹⁴ Both the Länder and municipalities contribute to the funding of a national healthcare system, however, the health insurance funds and providers of insurance are the main regulators.⁹⁵ The federal government is not the sole controller of health care policy, the Länder and community organizations also help shape the country's policy.⁹⁶ Both the private and the state funded healthcare systems use the same hospitals and doctors that will treat both public and privately insured people.⁹⁷

Health insurance is mandatory for all citizens and permanent residents in Germany; it is provided for by health insurance funds (so-called sickness funds) from the statutory health insurance system and substitutive private health insurance.⁹⁸ Health care coverage is universal for all legal residents⁹⁹ who are able to gain access to the health care system through employment status, or through entitlement to state welfare.¹⁰⁰ Low-income earners usually attain health care through the Statutory Health Insurance System since it is mandatory below a specific economic threshold; for those who earn above the stipulated amount, they have the option to get full coverage from private health care instead.¹⁰¹ Those who earn a very low income can receive access to healthcare by receiving social benefits that will pay for the insurance.¹⁰² Therefore, visitors who are not covered and those who are not legal residents, such as, refugees and unauthorized immigrants, are not entitled to universal health care coverage because they either cannot work legally, or they are not approved for social welfare due to the lack of residency documentation.¹⁰³ Unauthorized migrants must apply for a "*krankenschein*"—a document that allows the person to see a doctor, similar to a health insurance certificate—at a social welfare center in order to be registered to access the health care system free of charge under the condition that the migrants have no income.¹⁰⁴ Unauthorized migrants supposedly have access to the health care system to treat "serious illness or

94. *Id.* at 60.

95. Blümel & Busse, *supra* note 91.

96. *Id.*; see also HUMA NETWORK, *supra* note 34, at 60.

97. Blümel & Busse, *supra* note 91.

98. *Id.*

99. *Id.*

100. Castañeda *Illegality*, *supra* note 13, at 1552.

101. HUMA NETWORK, *supra* note 34, at 60.

102. *Id.*

103. Castañeda *Illegality*, *supra* note 13, at 1552.

104. HUMA NETWORK, *supra* note 34, at 61.

acute pain and everything necessary for recovery, improvement or relief of illnesses, and their consequences, post-natal care, vaccinations, preventive medical tests and anonymous counselling and screening of infectious and sexually transmitted diseases.”¹⁰⁵ Social security will only cover medical issues that are related to acute illness and pain, pregnancy, or childbirth.¹⁰⁶

Due to being excluded from the national health care system, unauthorized migrants are relegated to resorting to the use of non-governmental organizations’ (NGOs) clinics, such as Medibüros or Medinetze and the Malteser Migranten Medizin, for access to basic health care.¹⁰⁷ Even though the use of these NGOs’ clinics is better than no access to medical care at all, the standard of care cannot match the German health care system.¹⁰⁸ Especially in the case of treating chronic or complicated cases, such as cancer, lupus, or HIV, NGOs cannot offer care leaving unauthorized migrants without a recourse.¹⁰⁹

Germany has a unique approach to immigration and it is clearly reflected in how it has constructed its health care policy and entitlement.¹¹⁰ In Germany, it is a felony to reside in the country illegally, a much more severe penalty in comparison to other countries who view it as a failure to abide by an administrative rule.¹¹¹ Not only is it a felony to reside in the country without having legal status, but aiding a person who is known to be there unauthorized is considered a felony as well.¹¹² According to Section 87 of the Act on Stay, Employment and the Integration of Foreigners in the Federal Area if a public institution becomes aware of an unauthorized migrant’s presence in the country they have the duty to disclose that information to the Foreign Office.¹¹³ Furthermore, penalties will be imposed on anyone who is deemed to have helped an unauthorized migrant “irregularly stay or enter in the German territory . . . if acting for his or her benefit for financial gain, if doing so repeatedly or for the benefits of

105. *Id.* at 62.

106. Blümel & Busse, *supra* note 91.

107. Huschke, *supra* note 20, at 353.

108. *Id.* at 354.

109. *Id.*

110. Castañeda “*Over-Foreignization*”, *supra* note 14, at 836.

111. *Id.*

112. *Id.*

113. Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet [AufenthG] [Act on Stay, Employment and the Integration of Foreigners in the Federal Area], July 30, 2004, BGBl I at 1950 § 87, last amended by Gesetz [G], July 20, 2017 BGBl I at 2780, art. 1 (Ger.), http://www.gesetze-im-internet.de/aufenthg_2004/BJNR195010004.html#BJNR195010004BJN000101310; see also HUMA NETWORK, *supra* note 34, at 62–63, 62 n.11.

several foreigners”¹¹⁴ In order to have access to the health care system, unauthorized migrants must first register for the “*krankenschein*,” however, social welfare offices are bound by law, as well as any other public administrative institution, to report unauthorized migrants to the Foreigners Office; a failure to report migrants poses the risk of being penalized by the government thereby creating a state of heightened alert for unauthorized migrants.¹¹⁵ In order to be reimbursed for services rendered by Social Security, medical personnel must transmit information about people residing in the country illegally.¹¹⁶ While the law has been clarified to say that medical personnel will not be held personally accountable, there is still a need to report who the patient is to the social welfare centers to be reimbursed and in effect reporting the unauthorized migrant, creating the ever-present fear of deportation.¹¹⁷ The imminent threat of being reported to the Foreigners Office effectively bars all unauthorized migrants from seeking any type of health care, even for emergency situations, because the hospital must transmit the patients’ information to the social welfare centers in order to be reimbursed.¹¹⁸ Many supporters of limiting access to health care for unauthorized migrants reference the positive deterrent effect it has on migration because it supposedly:

- 1) dissuades migrants from wanting to move to the country in search of health care;
- 2) for those already present in the country, it dissuades them from using the national health care system; and
- 3) it ultimately serves to stop unauthorized migrants from creating an expense on nationals.¹¹⁹

Furthermore, doctors have confirmed that patients are justified in being afraid of seeking health care because the doctors will report them and ultimately have them deported.¹²⁰ Therefore, while unauthorized migrants are technically entitled to emergency care, that option is generally not a viable option for those who fear being deported.¹²¹ “By ‘illegalizing’ undocumented migrants, criminalizing assistance to them and requiring their ‘denunciation’ by all governmental and public institutions, the German

114. HUMA NETWORK, *supra* note 34, at 63.

115. *Id.* at 62–63.

116. *Id.* at 62.

117. Castañeda “*Over-Foreignization*”, *supra* note 14, at 836.

118. HUMA NETWORK, *supra* note 34, at 63.

119. *See* Castañeda “*Over-Foreignization*”, *supra* note 14, at 836.

120. *Id.*

121. *Id.*

government has created a web of laws that effectively exclude undocumented migrants from claiming their human rights, including their right to health.”¹²²

4. Italy

Italy is a parliamentary republic that has a bicameral parliament consisting of the Senate and the Chamber of Deputies.¹²³ The current head of government is the Prime Minister Paolo Gentiloni (since December 2016) and the current head of state is the President Sergio Mattarella (since February 2015).¹²⁴ All members of the Chamber of Deputies, the lower house, are elected through proportional representation.¹²⁵ The Senate, the upper house, has two methods of election: 1) proportional representation and 2) members who serve life terms that are appointed by the president and former presidents.¹²⁶ Italy’s estimated population in 2016 was about 60,815,000.¹²⁷ In 2016, there were approximately 181,405 migrants that arrived in Italy.¹²⁸

The Italian Constitution authorizes the central government to control the distribution of tax revenue in order to fund public health care, which every resident of the Italian regions is entitled to.¹²⁹ The Italian Constitution specifically guarantees all individuals’ fundamental right to health care and specifically guarantees indigents the right to receive treatment free of cost.¹³⁰ The revenue that funds Italy’s National Health Service (INHS) is corporate tax.¹³¹ The central government collects it, and then redistributes it among the regions in proportion to their contribution.¹³² Both the central government and the regional government share the

122. Castañeda *Illegality*, *supra* note 13, at 1554.

123. *The World Factbook: Italy*, CENT. INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/geos/it.html> (last visited July 7, 2017).

124. *Id.*

125. James M. Powell et al., *Italy*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/place/Italy> (last visited July 6, 2017).

126. *Id.*

127. *Id.*

128. Fabio Colombo, *How Many Migrants Arrived in 2016*, LENIUS (Jan. 3, 2017), <https://www.lenius.it/migranti-2016/>.

129. Andrea Donatini, *The Italian Health Care System*, COMMONWEALTH FUND, <http://international.commonwealthfund.org/countries/italy/> (last visited July 7, 2017).

130. Art. 32 Costituzione [Cost.] (It.); *see also* HUMA NETWORK, *supra* note 34, at 81.

131. Donatini, *supra* note 129.

132. *Id.*

responsibility of insuring residents.¹³³ The central government determines what is included in the basic benefit package that is free to those who are entitled, but the local authorities are the ones who must ensure the delivery of services to local residents.¹³⁴ While this in theory seems fair, it does create financial inequalities among the richer and poorer regions and ultimately results in disparities among the regions in relation to peoples' access to health care.¹³⁵ The central government tries to level out the disparities by giving poorer regions a fixed proportion of the national value-added tax to provide essential levels of care.¹³⁶ Even though the central government handles the distribution of funds, the nineteen regions and the two autonomous provinces have considerable autonomy in determining the structure and delivery of local health care.¹³⁷

All citizens and legal residents have automatic universal coverage.¹³⁸ Private health care is generally used to complement the state funded system to provide for services not covered.¹³⁹ Even though the basic benefit package is supposed to be free to all, there are certain services that are more in depth such as "specialist consultations, day hospitalizations after diagnosis procedures, some pharmaceuticals, and thermal assistance and out of clinic rehabilitation" for which a co-pay is required for all residents.¹⁴⁰ Yet, the amount due will vary depending on the region that the patient is in and ameliorating factors such as age, income, and type of illness making it a subjective amount that may vary depending on who the person is.¹⁴¹

In order to have access to the INHS, citizens and authorized residents must register with the local health administration where they are provided with a health card that is used to access the system.¹⁴² Since the INHS is funded through corporate tax, applying for the health card is free for those who pay income tax, for those who are unemployed but are enrolled in an employment agency, refugees, asylum seekers, and any child of an authorized recipient.¹⁴³ For people who do not meet the prerequisite

133. HUMA NETWORK, *supra* note 34, at 81.

134. *Id.*

135. Donatini, *supra* note 129, at 2.

136. *Id.*

137. *Id.*

138. *Id.*

139. *Id.*

140. HUMA NETWORK, *supra* note 34, at 81.

141. *Id.*

142. *Id.*

143. *Id.*

categories to qualify for health care, they may still be eligible to receive a health card if they pay a specific sum.¹⁴⁴

Even though unauthorized migrants do not have access to the INHS, they may receive access to some limited services if they are able to receive a *Stranieri Temporaneamente Presenti* (temporary residing foreigner code) (STP code).¹⁴⁵ Some of the healthcare services that the STP code gives unauthorized migrants free access to or access upon payment are:

- a) “urgent” and “essential” medical care (including continual treatment);
- b) preventive care; and
- c) care provided for public health reasons including prenatal and maternity care, care for children, vaccinations and diagnosis and treatment of infectious diseases.¹⁴⁶

Unauthorized migrants must first apply to receive indigent status and then, free and anonymously, can apply at the local health administration center for the STP code.¹⁴⁷ Once granted, unauthorized migrants are still responsible for charges for medical treatment.¹⁴⁸

While on paper unauthorized migrants do seem to have a legal means to receive access to the INHS, theory must not be confused with actual application of the entitlement.¹⁴⁹ As a marginalized faction of society, unauthorized migrants are hesitant to reach out to health care facilities due to common obstacles such as a lack of language comprehension, a failure to actually know that they can receive access legally, fear of not being able to afford treatment, or actual reporting of their illegal status in the country.¹⁵⁰ NGOs are used by unauthorized migrants as an alternate health care recourse without exposing themselves to the INHS, unfortunately NGOs are not able to provide more than just basic health care assistance.¹⁵¹

A migrant may be granted a permit to stay in Italy for humanitarian reasons, if a doctor determines that this person has a medical condition serious enough that medical care is necessary and there is no possible way to obtain treatment in his native country.¹⁵² However this does not happen

144. *Id.*

145. HUMA NETWORK, *supra* note 34, at 82.

146. *Id.*

147. *Id.*

148. *Id.*

149. *Id.* at 91.

150. HUMA NETWORK, *supra* note 34, at 91.

151. *Id.*

152. *Id.* at 92.

often either due to the failure to report the patient's information or because the doctor in Italy does not know what kind of health care system is in the patient's home country.¹⁵³ If granted, the medical permit must be renewed yearly and once a temporary residence permit is granted, the migrant may ask for the right to work which will grant them access to the INHS.¹⁵⁴

B. North American Countries

1. Canada

Canada has a federal parliamentary democracy that is controlled by a constitutional monarchy.¹⁵⁵ The current head of government is Prime Minister Justin Trudeau (since November 2015) and the head of state is Queen Elizabeth II.¹⁵⁶ Even though the Queen is the head of state, Canada is an independent federal state.¹⁵⁷ Canada has a bicameral parliament consisting of the Senate and the House of Commons.¹⁵⁸ The Senate currently has 105 members and the House of Commons has 308 members.¹⁵⁹ There are approximately 36,222,000 people living in Canada as of 2016.¹⁶⁰ President Trump's election and his views on immigration have increased the flow of unauthorized migrants to Canada leading to at least half of all Canadians' disapproval of unauthorized migrants in Canada.¹⁶¹

Canada has a publicly funded health care system called Medicare.¹⁶² Medicare is not a national plan, instead it is a regional plan that is managed by the thirteen provinces and territories that are responsible for ensuring the citizens of their respective province or territory.¹⁶³ The federal government

153. *Id.*

154. *Id.*

155. *The World Factbook: Canada*, CENT. INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/geos/ca.html> (last visited July 7, 2017) [hereinafter *Canada*].

156. *Id.*

157. Norman L. Nicholson et al., *Canada*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/place/Canada> (last visited July 6, 2017).

158. *Canada*, *supra* note 155.

159. Nicholson et al., *supra* note 157.

160. *Id.*

161. Rod Nickel & David Ljunggren, *Exclusive: Almost Half of Canadians Want Illegal Border Crossers Deported*, REUTERS (Mar. 3, 2017) <http://www.reuters.com/article/us-canadaimmigration-poll-exclusive-idUSKBN16R0SK>.

162. *Canada's Health Care System*, GOV'T CAN., <https://www.canada.ca/en/healthcanada/services/canada-health-care-system.html> (last modified Aug. 22, 2016).

163. *Id.*

and the provincial and territorial governments share the roles and responsibilities of delivering health care services to Canadian residents.¹⁶⁴ “Both the public and private sectors finance Canada’s health systems. Public-sector funding includes payments by governments at the federal, provincial/territorial and municipal levels and by workers’ compensation boards and other social security schemes. Private-sector funding consists primarily of health expenditures by household and private insurance firms.”¹⁶⁵

Provincial and territorial governments are responsible for the control and delivery of publicly funded services locally to the communities ensuring delivery of various aspects of community health care.¹⁶⁶ The federal government must maintain national standards for the health care system by funding support to the regional health care systems, facilitating the delivery health care, and dealing with other health care matters.¹⁶⁷ The Canada Health Act of 1985 states that regional health insurance plans need to be “publicly administered, comprehensive in coverage, universal, portable across provinces, and accessible.”¹⁶⁸ Under Medicare, all Canadian residents that are entitled access to the health care system are able to receive medically necessary procedures for free.¹⁶⁹ Each province and territory has the freedom to set its own residency requirement to determine which territorial residents are entitled to universal healthcare.¹⁷⁰ Unauthorized immigrants are not covered by any federal or provincial program, however provinces and territories may provide limited services.¹⁷¹

As part of the new world countries, Canada has experienced waves of immigration from the moment it was “discovered.”¹⁷² Canada’s health policies have reflected the influx of people that came initially from Europe, and later migrants from Asia, Africa, the Middle East, the Caribbean and South America necessitating the need for new health screenings and

164. *Id.*

165. CANADIAN INST. FOR HEALTH INFO, NATIONAL HEALTH EXPENDITURE TRENDS, 1975 TO 2016 11 (2016), https://secure.cihi.ca/free_products/NHEX-Trends-Narrative-Report_2016_EN.pdf [hereinafter NATIONAL HEALTH EXPENDITURE TRENDS].

166. *Canada’s Health Care System*, *supra* note 162.

167. *Id.*

168. Canada Health Act, R.S.C. 1985, c C-6; Sara Allin & David Rudoler, *The Canadian Health Care System*, COMMONWEALTH FUND, <http://international.commonwealthfund.org/countries/canada/> (last visited July 7, 2017).

169. *Canada’s Health Care System*, *supra* note 162.

170. Allin & Rudoler, *supra* note 168.

171. *Id.*

172. Brian Gushulak & Linda S. Williams, *National Immigration Health Policy: Existing Policy, Changing Needs, and Future Directions*, 95 CANADIAN J. PUB. HEALTH 1-27, 1-27 (2004).

treatments.¹⁷³ Authorized immigrants in Canada typically have to meet certain health requirements in order to be given visas to enter Canada, so a “healthy immigrant effect” is seen in which the migrants are generally healthier than their Canadian counterparts.¹⁷⁴ Ultimately this is seen as a cost-effective measure because migrants will not need to access the publicly funded health care system during their initial residency and will therefore not be a burden on Canadian tax payers.¹⁷⁵ Screening potential legal migrants for health concerns that may be costly and a possible drain on public services has been a fundamental principal of the Canadian approach to migrant health care.¹⁷⁶ However, for those who are not legal migrants this may be a different story since they are coming from different countries and do not have the same economic resources that a skilled worker who has been granted a Canadian visa has; unauthorized migrants may constitute a group who is in greater need of the health care system and who would ultimately create a greater expense if they are denied access.¹⁷⁷ The growing demographic change of migrants who come to Canada results in health disparities that this new group of migrants may require.¹⁷⁸ In the case of refugees who have been the victims of violence, torture, and trauma, there are physical and mental health issues that the community can be possibly responsible for.¹⁷⁹

2. United States

The United States is a federal republic that is currently led by President Donald Trump as both head of state and head of government (since January 2017).¹⁸⁰ It consists of a bicameral congress made up of the Senate and the House of Representatives.¹⁸¹ The Senate, the upper house, consists of 100 senators that are elected two per state, and the House of Representatives consists of 435 Representatives that are elected and their seats are assigned in proportion to the population of congressional

173. *Id.*

174. Angela Kalich et al., *A Scoping Review of Immigrant Experience of Health Care Access Barriers in Canada*, 18 J. IMMIGRANT MINORITY HEALTH 697, 705 (2016).

175. *Id.*

176. Gushulak & Williams, *supra* note 172, at 1-27-28.

177. *See id.*

178. *Id.* at 1-28.

179. *Id.*

180. Wilfred Owen et al., *United States*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/place/United-States> (last visited Sept. 1, 2017).

181. *Id.*

districts.¹⁸² The approximate estimate for the population of the United States in 2016 is 323,349,000 people.¹⁸³ As of 2016, there were approximately 11.3 million people living in the United States as unauthorized migrants.¹⁸⁴ About 8 million unauthorized migrants form part of the United States' workforce, contributing to the economy.¹⁸⁵ Immigration is not expected to wane anytime soon with a projected figure that around one out of five Americans will be an immigrant around the year 2050.¹⁸⁶ More striking is an estimated figure from 2007 where it was approximated that one out three immigrants in the United States was an unauthorized migrant.¹⁸⁷

The ACA is aimed at ensuring that Americans have access to health insurance through a program that apportions coverage through the government, employers, and individuals.¹⁸⁸ Health insurance is provided through both private and public sources.¹⁸⁹ States generally regulate private insurance and public insurance is generally regulated by the federal government.¹⁹⁰ As of 2014, 49% of total health care spending came from public spending.¹⁹¹ For example, Medicaid is tax-funded and is run by the states within the general federal guidelines.¹⁹² Depending on the state's per capita income, the state will receive matching federal funds.¹⁹³ The ACA currently fully funds the Medicaid expansion, but this is subject to change with the new administration's desire to repeal the ACA and implement a new version of health care coverage.¹⁹⁴ With the proposed Trump Care Bill failing on July 2017 as well as the President's plan to let the ACA fail and not propose any replacement, the ACA will continue providing health care

182. *Id.*

183. *Id.*

184. Jens Manuel Krogstad et al., *5 Facts About Illegal Immigration in the U.S.*, PEW RES. CTR. (Apr. 27, 2017), <http://www.pewresearch.org/fact-tank/2017/04/27/5-facts-about-illegal-immigration-in-the-u-s/>.

185. *Id.*

186. Nabilah Irshad, *Medical Repatriations: Death Sentencing United States Immigrants*, 20 *TRANSNAT'L L. & CONTEMP. PROBS.* 797, 800 (2012).

187. *Id.*

188. *The U.S. Health Care System*, COMMONWEALTH FUND, http://international.commonwealthfund.org/countries/united_states/ (last visited July 7, 2017).

189. *Id.*

190. *Id.*

191. *Id.*

192. *Id.*

193. *The U.S. Health Care System*, *supra* note 188.

194. *Id.*

coverage for Americans for the time being.¹⁹⁵ One of the biggest reasons for Trump Care's failure was the cutting of health benefits for low-income earners, which presumably could have affected low-income unauthorized migrants who were able to receive some sort of health care through the ACA.¹⁹⁶

As of 2014, 66% of United States residents received health coverage through private voluntary insurance and 36.5% of residents acquired insurance through government coverage.¹⁹⁷ While the ACA is an attempt at providing greater health coverage for Americans, it is not a universal healthcare policy.¹⁹⁸ The ACA has increased the overall rate of health insurance coverage for uninsured adults. In 2016, the rate of uninsured adults decreased from 22.3% in 2010 to 11.9% in the beginning of 2016.¹⁹⁹

"Both state and federal regulations limit immigrant access to healthcare."²⁰⁰ Unauthorized immigrants are generally ineligible for public health care coverage.²⁰¹ They are unable to purchase health insurance through the health insurance exchange since it requires proof of legal residency in the United States.²⁰² As a result of the lack of coverage, even after the ACA, unauthorized migrants in the United States are less likely to go to a doctor and are less likely to be able to have a stable source of care in comparison to authorized migrants residing in the United States.²⁰³ Around two-thirds of unauthorized immigrants are uninsured, creating a potential cost and burden to the hospitals that treat them.²⁰⁴ Furthermore, immigration continues to be a highly debated topic in the United States with

195. See generally Jennifer Steinhauer et al., *How the Senate Health Care Bill Failed: G.O.P. Divisions and A Fed-Up President*, N.Y. TIMES (July 18, 2017), <https://www.nytimes.com/2017/07/18/us/politics/trumphhealthcaresenatebill.html?hp&action=click&pgtype=Homepage&clickSource=story-heading&module=a-lede-package-region®ion=top-news&WT.nav=top-news>.

196. *Id.*

197. JESSICA C. SMITH & CARLA MEDALIA, U.S. CENSUS BUREAU, HEALTH INSURANCE COVERAGE IN THE UNITED STATES: 2014 3 (2015).

198. *The U.S. Health Care System*, *supra* note 188.

199. ROBIN A. COHEN ET AL., U.S. DEP'T OF HEALTH & HUMAN SERVS., CTRS. FOR DISEASE CONTROL & PREVENTION, NAT'L CTR. FOR HEALTH STAT., HEALTH INSURANCE COVERAGE: EARLY RELEASE OF ESTIMATES FROM THE NATIONAL HEALTH INTERVIEW SURVEY, JANUARY–MARCH 2016 2 (2016).

200. Irshad, *supra* note 186, at 801.

201. *The U.S. Health Care System*, *supra* note 188.

202. See *id.*

203. Arturo Vargas Bustamante et al., *Variations in Healthcare Access and Utilization Among Mexican Immigrants: The Role of Documentation Status*, 14 J. IMMIGRANT MINORITY HEALTH 146 (2012).

204. *The U.S. Health Care System*, *supra* note 188.

polarizing views of the effects of immigrants on the economy, in particular unauthorized migrants.²⁰⁵ “It is highly contested whether the economic benefit of immigration, including all the taxes and contributions they pay, are enough to compensate for the immigrant use of public services such as healthcare.”²⁰⁶

Through the Emergency Medical Treatment and Active Labor Act (EMTALA) unauthorized migrants are eligible to receive emergency care if, after an emergency medical screening examination, an emergency medical condition is found.²⁰⁷ Hospitals that accept Medicare funds must stabilize any patient with an emergency medical condition, this includes any unauthorized immigrant that would otherwise not have access to health care.²⁰⁸ Since EMTALA serves to create a safety net that applies to basically every person in the United States, most hospitals abide by it because failing to do so could result in losing considerable funding and possibly monetary penalties.²⁰⁹ However, states are sovereign entities that may choose to have different laws and policies regarding state funded health care thereby furthering the coverage of unauthorized migrants beyond the point of just:

- 1) stabilization;
- 2) coverage for unauthorized children; or
- 3) coverage for unauthorized pregnant women.²¹⁰

“Although the taxes and contributions to public programs is positive at the federal level, and it is more often negative at the local level due to the types of taxes and services for each level of government.”²¹¹ Unauthorized migrant access to health care at the state level seems to be more of a cost on the local tax payer prompting the restriction of access for unauthorized migrants to health care services.²¹² Inevitably, unauthorized migrants’ lack of access to health care hinges on the perception that they overuse the system and do not really contribute toward its funding even though there is evidence to the contrary.²¹³

205. Vargas Bustamante et al., *supra* note 203, at 147.

206. *Id.*

207. Irshad, *supra* note 186, at 806–07.

208. *The U.S. Health Care System*, *supra* note 188.

209. Irshad, *supra* note 186, at 807.

210. *See id.* at 805.

211. Vargas Bustamante et al., *supra* note 203, at 147.

212. *See id.*

213. *Id.* at 153.

III. COMPARATIVE ANALYSIS OF LAWS

A. *Similarities Among the Countries*

England, Spain, Germany, Italy, and Canada all have universal health care that seeks to insure all citizens and the majority of all legal residents, however, the United States does not have universal healthcare and the upcoming Senate bill does not make it a possibility any time soon. All six countries described in this paper afford unauthorized migrants with some sort of access to health care to a varying degree, with the underlying theme being that unauthorized migrants are marginalized and end up suffering from their legal status. Health care access may also be compared in terms of each country's funding of their health care system.

In this paper, there are systems that are financed out of tax contributions, social security contributions, and private health insurance carriers. The U.K.'s central government collects the taxes that fund health care as opposed to Italy and Spain that fund their systems through local tax collection.²¹⁴ Germany has a social insurance that is funded through the health insurance fund.²¹⁵ Similarly, Canada's health care system is a social insurance based system, however it is specifically taxed and managed by regional authorities.²¹⁶ Meanwhile, this leaves the outlier of the United States, which has a mix of publicly funded health care for a few, but the majority of people must purchase private insurance in order to have access to health care.²¹⁷ However, there seems to be no correlation, in the European countries, between funding systems and unauthorized access to health care, on the contrary these differences do not seem to affect access to health care.²¹⁸ Similarly, between Canada and the United States, even though there are two entirely different systems, there does seem to be limited access for unauthorized migrants regardless of their status, for example, in the United States they cannot be turned away at the hospital for emergency care,²¹⁹ and in Canada the provinces and the territories do offer limited services.²²⁰

There does seem to be a similarity between countries that grant greater power to their municipalities or their regional governments and the corresponding grant of greater access to healthcare to unauthorized

214. Björngren Cuadra, *supra* note 3, at 267.

215. *Id.*

216. See NATIONAL HEALTH EXPENDITURE TRENDS, *supra* note 165, at 11, 18–19.

217. See *The U.S. Health Care System*, *supra* note 188.

218. Björngren Cuadra, *supra* note 3, at 270.

219. *The U.S. Health Care System*, *supra* note 188.

220. Allin & Rudoler, *supra* note 168.

migrants. Also, it does not necessarily stand to conclude that simply because an area may be heavily populated by migrants, it will have more restrictive policies.²²¹ “[T]he proportion of undocumented migrants living in a country [is] a poor predictor of their entitlement to healthcare.”²²² Many countries view the “healthy migrant” effect as a method of spending less on health care for newly arrived immigrants, but the common factor seems to be the many unauthorized migrants who are coming from poorer countries are in poorer health.²²³

B. *Differences Among the Countries*

A country’s health policy can be an essential factor in determining the level of access to health care that unauthorized migrants may have.²²⁴ The countries featured in this note should be viewed on a continuum regarding their respective traditions of being receiving countries. The first level is the legislative level, where a country implements legislation determining what health care access migrants will receive; the second level is how the health systems actually puts the first level legislation into practice.²²⁵ “Countries with a longer tradition as receiving countries have formulated and reformulated their policies over time while countries where this phenomenon is more recent are in the process of formulating and implementing policies.”²²⁶ The countries chosen for this note are all receiving countries, but many have been for a longer period of time. The United States and Canada²²⁷ have historically been receiving countries for immigrants since they were founded as colonies; contrastingly, the European countries in this note have been thought of as receiving countries more recently, England has been considered a receiving country since the 1950s;²²⁸ Germany since the 1950s;²²⁹ Italy since the 1980s;²³⁰ and most

221. Cimas et al., *supra* note 61, at 390.

222. *Id.*

223. María Luisa Vázquez et al., *Health Policies for Migrant Populations in Three European Countries: England; Italy and Spain*, 101 HEALTH POL’Y 70, 71 (2011) [hereinafter Vázquez *England; Italy and Spain*].

224. *Id.*

225. *Id.*

226. *Id.*

227. Gushulak & Williams, *supra* note 172, at 1-27.

228. Vázquez *England; Italy and Spain*, *supra* note 223, at 71.

229. Castañeda “*Over-Foreignization*”, *supra* note 14, at 832.

230. Vázquez *England; Italy and Spain*, *supra* note 223, at 71.

recently, Spain since the end of the 1990s.²³¹ All of the countries are on the second level regarding health care toward unauthorized migrants, but the regions of Spain who have implemented greater access seem to be further along the spectrum in comparison to Germany which has basically denied all health care to unauthorized migrants.²³² The United States stands alone because it does not even offer universal health care to its citizens, so while it has tried to give unauthorized migrants access, the second level is currently in a state of flux considering the new administration.

Spain, Italy, and England implement an integration into the native population approach for migrant access to healthcare which seems to be a bigger influence on furthering specific health policies than a history as a receiving country.²³³ Unauthorized migrants are not abiding by the native population's rules and are therefore not able to integrate completely making them markedly different than authorized migrants which are welcomed.²³⁴ Just as health policy regarding new immigrants has developed with the rise of immigration for each country, so have the approaches regarding unauthorized migrants' access to health care.²³⁵ As many countries further restrict access as a cost-cutting measure, like in Germany,²³⁶ the country's economic situation is a direct factor in restricting access as was seen in Spain with RDL 16/2012.²³⁷

Even though all the countries have given unauthorized migrants some sort of health care access, Germany in particular has been criticized for its approach toward undocumented migrants in reference to other European countries.²³⁸ Germany has been criticized as being too "shortsighted" in its approach in an effort to protect native Germans.²³⁹ Germany has one of the most restrictive policies in the European Union, and even though it does set up roadblocks to limit the access of unauthorized migrants by threatening deportation if they seek help, a migrants' unauthorized status is a significant roadblock that is related to the low usage of health care among this group.²⁴⁰

231. *Id.*

232. *See id.*

233. *Id.* at 75.

234. *See id.*

235. Vázquez *England; Italy and Spain*, *supra* note 223, at 76.

236. Castañeda "Over-Foreignization", *supra* note 14, at 837.

237. Cimas et al., *supra* note 61, at 385.

238. *See* Castañeda *Illegality*, *supra* note 13, at 1553.

239. *Id.*

240. *Id.*

Like the United States, Canada is a country that has been heavily influenced by immigration.²⁴¹ Both of these countries approach to health care access for immigrants is reflective of the waves of immigrants that have helped shape the landscape of these countries.²⁴² However, there is a difference between the two in their approaches to health care; Canada has universal health care for its citizens and some of its residents, while the United States does not have universal health care and is currently struggling to find a new health care measure through which people can actually afford to buy private insurance.²⁴³

IV. OPINION

Access to health care is an overarching international subject of concern, not only because it is a basic human right, but because of the ease in movement of people creating a new generation of people that is more likely to live in a country other than his birth. “[M]igration and population mobility are major factors underlying the processes of globalization. Changes in immigration health policy are needed to reflect these new realities.”²⁴⁴ There is no uniform approach on how to implement a more inclusive system since each country is different and factors such as different health systems, legal systems, immigrant stereotypes, and geographic location of the country (easily accessible countries will have a different outlook than landlocked countries).²⁴⁵ The risk of the spread of infectious diseases may be greater than the savings obtained by denying access to health care.²⁴⁶ Even though access to primary care may seem like an expense that countries do not feel they should shoulder for a population that does not directly contribute to its economy, especially in countries that are subsidizing their health care systems through employment tax, the cost of health care for a more serious health problem that results from a failure to get preventive care ends up being a greater expense to tax payers and is contradictory to the reasons for not granting such access.²⁴⁷ While all countries do state that they will provide emergency care for unauthorized migrants the reality is more complicated because unauthorized migrants are

241. See Gushulak & Williams, *supra* note 172, at 1-27.

242. *Id.*

243. See *The U.S. Health Care System*, *supra* note 188; see also Canada Health Act, R.S.C. 1985, c C-6.

244. Gushulak & Williams, *supra* note 172, at 1-27.

245. HUMA NETWORK, *supra* note 34, at 7.

246. Cimas et al., *supra* note 61, at 390.

247. HUMA NETWORK, *supra* note 34, at 7.

fearful of possible deportation if they seek help and this ultimately nullifies any notion of access to emergency care.

There is also a sociological fear and alienation that is perpetuated by denying unauthorized migrants access to health care.²⁴⁸ There is a group mentality of “us against them” that may promulgate and even legitimize racism.²⁴⁹ The validation of exclusionary labels, “us” and “them” leads to exclusionary practices whereby migrants are restricted from accessing health care.²⁵⁰ This fear can be overcome by stopping the exclusion of unauthorized migrants which eventually is counter-productive to the goal of creating laws that help cut costs and wasteful spending.²⁵¹ The laws implemented while aimed at limiting the over spending of scant public resources is counterproductive when unauthorized migrants’ way of life is taken into account, such as the higher risk jobs they must take and the fact that many come from poorer countries with poorer health care leading to a threat of disease spreading throughout the host population.²⁵² Rather than segregating each other into groups based on nationality, a better redistribution of funds that is aimed at integrating and creating a more harmonious view of common interests may be a better approach at health care access.²⁵³

V. CONCLUSION

Access to health care will continue to be an issue for countries around the world because people will always need access to some type of health care. Especially considering the rise in Nationalist policies aimed at closing borders and viewing immigration as way of siphoning off funds from citizens, countries policies on access to health care for immigrants, in particular unauthorized immigrants, is reflective of the underlying thoughts that are being perpetuated.²⁵⁴ The issue eventually depends on how much should the government, and by default the tax payers, pay out per resident of a particular country. As seen above, a country’s health policy whether it be to grant universal health care coverage (as the majority of the countries featured in this note) or to let citizens buy their own personal coverage at

248. Dayna Bowen Matthew, *The Social Psychology of Limiting Healthcare Benefits for Undocumented Immigrants—Moving Beyond Race, Class, and Nativism*, 10 Hous. J. Health L. & Pol’y 201, 203 (2010).

249. *Id.*

250. Prati et al., *supra* note 1, at 427.

251. Bowen Matthew, *supra* note 248, at 203.

252. *Id.*

253. *Id.* at 204.

254. *Id.* at 206.

their own expense does not necessarily mean that those who are in the margins, such as unauthorized migrants, will be better off in in one country or the other. If health care is seen—as many NGOs have declared it is—as a basic human right, then a government’s limitations on health care is denying people a necessity, it is not a luxury.

In the end, it comes down to how a country views the cost of caring for those who are not seen as contributing toward the economy. However, if history has shown something it is the repeat pattern of people searching and moving for better economic opportunities. Considering the current situation in many countries, war and poverty, are major motivating factors to leave one’s country and try to succeed somewhere else, not access or abuse of a country’s health care system as some may believe.²⁵⁵ Unauthorized immigration is a problem that has resulted from the constant moving of people. This note does not aim to justify or legitimize the fact that people have broken the law in overstaying their visas, but unauthorized immigration will not be curbed any time soon. The issue here is how to handle those people who are already living in a country and to provide for them in the most humane way. In a sense, the constant labeling of people as migrants, as not from “here,” as being in the country “unauthorized,” just serves to legitimize their exclusion from social welfare nets. Many countries or autonomous regions, as explained above, that granted unauthorized migrants greater access did so because the cost to provide healthcare was eventually lower than keeping them out. This solidifies the conclusion that the cost of granting access is lower in long term costs than just granting limited access to emergency care.²⁵⁶ Furthermore, a summary by the European Union Agency for Fundamental Rights concluded that in the instances of prenatal care and hypertension it was a better cost-cutting method to provide preventative care, than to restrict care just to emergency access.²⁵⁷ The restriction of access to healthcare eventually led to more serious health issues that eventually were more costly to treat rather than giving preventative care.²⁵⁸ The more people realize that there is no need to differentiate between the immigrant population and the native population, the more the differences between both groups will diminish and lead to greater support for granting greater access to health care.²⁵⁹

255. *Id.* at 204.

256. Bowen Matthew, *supra* note 248, at 203.

257. EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS, COST OF EXCLUSION FROM HEALTHCARE – THE CASE OF MIGRANTS IN AN IRREGULAR SITUATION SUMMARY 5 (2015).

258. *Id.*

259. Prati et al., *supra* note 1, at 432.

