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# Immigrant Access to Health Care and Public Health: An International Perspective

*Sana Loue, J.D., Ph.D., M.P.H.\**

One out of every thirty-five persons in the world, or approximately 2.9% of the world's population, is an international migrant and the number is growing.<sup>1</sup> Migration has been defined as the physical transition of an individual or a group from one society to another, usually involving the abandonment of one social setting for a different one.<sup>2</sup> It has been estimated that by the year 2050, almost 250 million persons will be living either permanently or temporarily outside of their countries of origin.<sup>3</sup> The reasons for migration are varied and may involve a desire to escape from poverty, persecution, the ravages of a natural disaster, and/or internal

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1. Int'l Org. for Migration, *Facts and Figures on International Migration*, 2 MIGRATION POLICY ISSUES 1, 1 (2003), [http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/published\\_docs/serial\\_publications/MPI\\_series\\_No\\_2\\_eng.PDF](http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/published_docs/serial_publications/MPI_series_No_2_eng.PDF).

2. S.N. EISENSTADT, *THE ABSORPTION OF IMMIGRANTS: A COMPARATIVE STUDY BASED MAINLY ON THE JEWISH COMMUNITY IN PALESTINE AND THE STATE OF ISRAEL* 1 (Routledge & Kegan Paul 1954); J.J. MANGALAM, *HUMAN MIGRATION: A GUIDE TO MIGRATION LITERATURE IN ENGLISH 1955-1962* 8 (Univ. of Ky. Press 1968) (defining migration as "a relatively permanent moving away of . . . migrants, from one geographical location to another, preceded by decision-making on the part of the migrants on the basis of a hierarchically ordered set of values or valued ends and resulting in changes in the interactional system of the migrants"); Everett S. Lee, *A Theory of Migration*, 3 *DEMOGRAPHY* 47, 49 (1966) (defining migration as "a permanent or semi-permanent change of residence").

3. INT'L LABOUR OFFICE, INT'L ORG. FOR MIGRATION, & OFFICE OF THE UNITED NATIONS HIGH COMM'R FOR HUMAN RIGHTS, *INTERNATIONAL MIGRATION, RACISM, DISCRIMINATION AND XENOPHOBIA* 3 (2001), <http://www.unesco.org/most/migration/imrdx.pdf> [hereinafter *RACISM, DISCRIMINATION AND XENOPHOBIA*].

conflict in the country of origin.<sup>4</sup> Additional reasons for migration may include a search for employment opportunities in the destination country, (re)unification with family members, or the enjoyment of recreational opportunities.<sup>5</sup> Although migrants may intend to remain temporarily in their destination country or move permanently, circumstances may modify their original intention.<sup>6</sup>

The manner in which individuals migrate also varies. Their entry into the destination country may be effectuated legally or illegally. “Irregular,” “illegal,” and “undocumented” immigration occurs worldwide.<sup>7</sup> Undocumented status may be a result of (1) illegal or irregular entry, referring to entry into a country without appropriate travel documents; (2) illegal or irregular residence, referring to individuals who legally enter a country, but who subsequently violate the terms of their visas by overstaying and/or by participating in illegal activities; and (3) illegal or irregular employment, referring to participation in employment without authorization from the appropriate authorities.<sup>8</sup>

The annual flow of undocumented immigrants worldwide has been estimated to range from 700,000 to 2,000,000.<sup>9</sup> At least 500,000 Mexicans have illegally crossed the U.S. border annually since 2000.<sup>10</sup> The European Union receives 120,000 to 500,000 undocumented persons each year, including those who enter illegally and those who maintain an illegal residence or illegal employment.<sup>11</sup> As of 1998, it was estimated that

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4. See generally 2 INT’L ORG. FOR MIGRATION, *WORLD MIGRATION 2003: MANAGING MIGRATION – CHALLENGES AND RESPONSES FOR PEOPLE ON THE MOVE* 4 (2003) [hereinafter *WORLD MIGRATION 2003*].

5. See generally *id.*

6. RACISM, DISCRIMINATION AND XENOPHOBIA, *supra* note 3, at 2.

7. BIMAL GHOSH, *REFUGEES AND HUMAN RIGHTS: HUDDLED MASSES AND UNCERTAIN SHORES—INSIGHTS INTO IRREGULAR MIGRATION* 1 (Kluwer Law Int’l 1998).

8. *Id.* at 4. This delineation of undocumented statuses, however, fails to consider the nuances that exist between undocumented status and illegal status. As an example, an individual born in the United States is a citizen at birth by virtue of his or her birth within the territory of the United States. Because there is no requirement that citizens carry identification cards that identify themselves as citizens, the individual may be undocumented in the sense that he or she lacks any identification document establishing his or her identity as a United States citizen. However, that person’s presence within the United States is entirely legal.

9. *WORLD MIGRATION 2003*, *supra* note 4, at 6.

10. JEFFREY S. PASSEL, *THE SIZE AND CHARACTERISTICS OF THE UNAUTHORIZED MIGRANT POPULATION IN THE U.S.* 2 (Pew Hispanic Ctr. 2006), available at <http://pewhispanic.org/files/reports/61.pdf>.

11. Penelope Scott, *Undocumented Migrants in Germany and Britain: The Human “Rights” and “Wrongs” Regarding Access to Health Care*, ELECTRONIC J. SOC. (2004), <http://www.sociology.org/content/2004/tier2/scott.html>.

3,600,000 migrants were without legal status in Western Europe.<sup>12</sup> In Geneva, Switzerland alone, between 10,000 and 20,000 out of 450,000 total residents are undocumented.<sup>13</sup> Additionally, there are more than 1,000,000 foreign-born inhabitants in Sweden overall, some of whom are present illegally, accounting for 11.3% of the population in 2000.<sup>14</sup>

In addition to long term or permanent migrants, whether legal or undocumented, other categories of migrants will likely require health care while they are outside their countries of origin. One category includes temporary visitors who travel specifically for healthcare needs; for example, those seeking lower-cost cosmetic surgery in Latin America,<sup>15</sup> highly advanced care in the United States,<sup>16</sup> or specialized care at a lower cost, such as sexual reassignment surgery in Thailand.<sup>17</sup> Another category of migrants requiring health care includes temporary visitors seeking entry for other reasons, such as tourism or short-term business.<sup>18</sup> A third category includes individuals from a population settlement that straddles national borders; for example, populations that straddle the borders of Estonia/Latvia and Italy/Slovenia.<sup>19</sup> A final group of migrants requiring health care includes individuals sent outside of their country by their healthcare insurer due to undue delays in their home country, the unavailability of a specific procedure in their home country, or financial savings.<sup>20</sup> For example, some healthcare insurers now cover the cost of

12. Román Romero-Ortuno, *Access to Health Care for Illegal Immigrants in the EU: Should We Be Concerned?*, 11 EUR. J. HEALTH L. 245, 247 (2004).

13. Sigiriya Aebischer Perone et al., *Tuberculosis in Undocumented Migrants*, Geneva, 11 EMERGING INFECTIOUS DISEASES 351, 351 (2005).

14. Jan Sundquist, *Migration, Equality and Access to Health Care Services*, 55 J. EPIDEMIOLOGY & COMMUNITY HEALTH 691, 691 (2001).

15. Howard D. Bye, *Shopping Abroad for Medical Care: The Next Step in Controlling the Escalating Health Care Costs of American Group Health Plans?*, 19 HEALTH L. 30, 30 (2007).

16. Milt Freudenheim, *Hospitals Looking Abroad to Keep Their Beds Filled*, N.Y. TIMES, Dec. 10, 1996, at A1.

17. Hélène Bienvenue, *Plastic Surgery: Turn to the Thai Scalpel*, CAFÉBABEL, Dec. 6, 2007, <http://www.cafebabel.com/en/article.asp?T=T&Id=13173>.

18. LUIGI BERTINATO ET AL., POLICY BRIEF: CROSS-BORDER HEALTH CARE IN EUROPE 4 (European Observatory on Health Sys. and Policies 2005).

19. *Id.* at 3.

20. *Id.* at 2. See generally John Connell, *Medical Tourism: Sea, Sun, Sand and . . . Surgery*, 27 TOURISM MGMT. 1093 (2006); Martha Lagace, *The Rise of Medical Tourism*, HARV. BUS. SCH. WORKING KNOWLEDGE, Dec. 17, 2007, <http://hbswk.hbs.edu/item/5814.html>; Michael Parchman, *Cross-Border Utilization of Health Care on the U.S.-Mexico Border*, Abstracts of the 2002 Annual Meeting of the Academy for Health Services Research and Health Policy (June, 25, 2002), <http://www.academyhealth.org/2002/abstracts/workers.pdf> (a study abstract published as a poster that found that low income U.S. residents living near the U.S.-Mexico border are more likely to fill prescriptions in Mexico if they lack health insurance coverage).

care in Mexico for California residents.<sup>21</sup> Additionally, some Canadians may be authorized to seek specific procedures from healthcare providers in the United States due to lengthy delays for these procedures in Canada.<sup>22</sup>

Both the extent of international migration and associated concerns for the public health addressed in this article mandate the abandonment of a national perspective on the provision of health care to migrants and the adoption of an international perspective with attendant collaboration. An international viewpoint would require us to refocus our attention on the larger perspective of international public health, and not merely the health of individuals or the health of migrants in a specific locale. This broader international perspective recognizes the population level influences, individual health risks, and effects of healthcare systems on population health.<sup>23</sup> After discussing factors affecting the health of immigrants and exploring the role of public health, this article focuses on immigrant access to health care and specifically addresses the relationships between legal status, financial resources for health care, and access to care from such an international perspective.

#### I. FACTORS AFFECTING THE HEALTH OF IMMIGRANTS

Numerous factors may affect the health of migrants prior to their arrival at their destination country. Before they leave their country of origin or residence (pre-immigration), the health of migrants is affected by the prevalence of communicable diseases in their countries of origin.<sup>24</sup> Consequently, individuals from countries with a higher prevalence of communicable diseases are at a higher risk of exposure to those diseases.<sup>25</sup> As an example, the incidence of tuberculosis is significantly higher in parts of Africa and Southeast Asia, in comparison with countries in Western Europe and the United States.<sup>26</sup> In addition, the health of migrants prior to their arrival in the destination country may also be affected by the availability and accessibility of adequate healthcare services in their country of origin.<sup>27</sup>

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21. Sonya Geis, *Passport to Health Care at Lower Cost to Patient: California HMOs Send Some Enrollees to Mexico*, WASH. POST, Nov. 6, 2005, at A3.

22. See Steven J. Katz et al., *Phantoms in the Snow: Canadians' Use of Health Care Services in the United States*, 21 HEALTH AFFAIRS 19, 20-22 (2002).

23. David Woodward et al., *Globalization and Health: A Framework for Analysis and Action*, 79 BULL. WORLD HEALTH ORG. 875, 876 (2001).

24. See generally Christopher Dye et al., *Global Burden of Tuberculosis: Estimated Incidence, Prevalence, and Mortality by Country*, 282 J. AM. MED. ASS'N 677, 681 (1999).

25. *Id.* at 680-84.

26. Elisabeth L. Corbett et al., *The Growing Burden of Tuberculosis: Global Trends and Interactions with the HIV Epidemic*, 163 ARCH. INTERNAL MED. 1009, 1017 (2003); Dye et al., *supra* note 24, at 681.

27. See generally Ulrich Ronellenfitch & Oliver Razum, *Deteriorating Health*

Moreover, migrants' health prior to arrival may be affected by their experiences during the process of migration itself (peri-immigration). The mode of travel can lead to disease, traumatic injury, drowning, hypothermia, health stroke, and other injuries associated with trafficking.<sup>28</sup> For example, between November 2002 and March 2003, a malaria cluster was detected among Chinese immigrants who shared a common transit country, Côte d'Ivoire, where they acquired the disease before illegally entering central and northern Italy.<sup>29</sup> Many migrants risk their lives while attempting to gain access to a new country. There have been reports of Africans drowning in the Straights of Gibraltar who were seeking entry into Europe and of Albanians drowning in the Adriatic Sea who were attempting to reach Italy.<sup>30</sup> In North America, Mexicans illegally migrating to the United States have suffered from heat stroke while walking across the desert with scarce amounts of food and water.<sup>31</sup> The potential physical dangers of migration are also evident in tragedies that occur during human trafficking attempts. Fifty-four Chinese individuals suffocated in a sealed truck that was designed to transport fruit into the U.K.<sup>32</sup> In another tragedy, seventeen undocumented immigrants from Mexico and Central America were found asphyxiated in a trailer-tractor holding approximately 100 people; the trailer was abandoned by smugglers in southern Texas.<sup>33</sup>

The media has focused world attention on numerous health issues of particular concern in the context of migration, such as tuberculosis,<sup>34</sup> severe acute respiratory syndrome ("SARS"),<sup>35</sup> and sex trafficking.<sup>36</sup> For instance,

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*Satisfaction among Immigrants from Eastern Europe to Germany*, 3 INT'L J. FOR EQUITY HEALTH 1, 2 (2004).

28. See *infra* notes 29-33.

29. Zeno Bisoffi, *Malaria Clusters Among Illegal Chinese Immigrants to Europe Through Africa*, 7 EMERGING INFECTIOUS DISEASES 1177, 1177 (2001).

30. Manuel Carballo & Aditi Nerukar, *Migration, Refugees, and Health Risks*, 7 EMERGING INFECTIOUS DISEASES 556, 556 (2001).

31. Samuel M. Keim et al., *Heat Fatalities in Pima County, Arizona*, 13 HEALTH & PLACE 288, 289 (2007) (Can.).

32. Carballo & Nerukar, *supra* note 30, at 556.

33. Nick Madigan, *2nd Group of Trapped People Is Found in a Truck in Texas*, N.Y. TIMES, May 17, 2003, at A13; Simon Romero, *Scene of Horror and Despair in Trailer*, N.Y. TIMES, May 16, 2003, at A20.

34. Allison Young, *Atlantan Quarantined with Deadly TB Strain*, ATLANTA JOURNAL-CONSTITUTION, May 30, 2007, at A1; Lawrence K. Altman, *Agency Warns of Surge in Drug-Resistant TB*, N.Y. TIMES, June 6, 2007, at A16.

35. Elisabeth Rosenthal, *W.H.O. Urges Effort to Fight Fast-Spreading New Diseases*, N.Y. TIMES, Aug. 27, 2007, at A9.

36. See, e.g., Diane Taylor, *Sex Trafficking: 'I Was Sold for £4,500'*, THE INDEPENDENT, Jan. 13, 2008 (U.K.), <http://www.independent.co.uk/extras/sunday-review/features/sex-trafficking-i-was-sold-for-1634500-769639.html>; New Human Trafficking Law Passed,

a transcontinental tuberculosis scare was triggered by Andrew Speaker, who reportedly carried a resistant strain of tuberculosis, when he flew from Atlanta to Greece without being detained by the appropriate authorities.<sup>37</sup> Additional areas of concern relate to psychosocial issues of migrants, such as depression, suicide, substance use, and post-traumatic stress disorder.<sup>38</sup> Other diseases that have received less attention from the media, but have caused significant concern in the healthcare community, include cardiovascular disease, cancer, and nutritional deficiencies.<sup>39</sup> As an example of the extent to which health issues may affect international migrants and the potential economic and healthcare burden on destination countries, it has been estimated that one out of every six asylum seekers in the European Union has severe physical problems and two-thirds experience mental problems.<sup>40</sup>

Historical research suggests that various diseases may have “migrated” from their places of origin with their human hosts to become diseases within the destination country, thereby subjecting the populace of the destination country to previously nonexistent health risks from these diseases. Examples include the “migration” of influenza to Santo Domingo through the Spanish<sup>41</sup> and the importation of smallpox into the Americas in 1518 from Africa via the illegal slave trade.<sup>42</sup> Countries have in more recent times largely responded to such perceived health threats presented by potential migrants through the adoption and implementation of procedures designed to isolate and/or sequester the individuals from the populace. These procedures have included adopting health-related criteria to distinguish between those potential migrants who may be granted legal entry;<sup>43</sup> implementing medical examinations to screen potential entrants for specified diseases and disorders;<sup>44</sup> and using isolation and quarantine

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GULF DAILY NEWS, Jan. 1, 2008 (Bahr.), [http://www.gulf-daily-news.com/arc\\_Articles.asp?Article=204378&Sn=BNEW&IssueID=30287](http://www.gulf-daily-news.com/arc_Articles.asp?Article=204378&Sn=BNEW&IssueID=30287).

37. Young, *supra* note 34, at A1.

38. See, e.g., Manuel Carballo et al., *Migration and Health in the European Union*, 3 TROPICAL MED. & INT’L HEALTH 936, 938-41 (1998); Carballo & Nerukar, *supra* note 30, at 558-59; Angela Burnett & Michael Peel, *The Health of Survivors of Torture and Organized Violence*, 322 BRIT. MED. J. 606, 608 (2001).

39. Carballo et al., *supra* note 38, at 938-39.

40. E. Sakellari & D. Sapountzi-Krepia, *Supporting Immigrants and Refugees to Start a New Life in Host Countries: A Challenge for Health Professionals*, 21 ICUS AND NURSING WEB JOURNAL 1, 4 (2005) (Greece), <http://www.nursing.gr/protectedarticles/supporting.pdf>.

41. Francisco Guerra, *The European-American Exchange*, 15 HIST. & PHIL. LIFE SCI. 313, 317 (1993).

42. *Id.* at 324. See generally Plutarco Naranjo, *Epidemic Hecatomb in the New World*, 13 ALLERGY & ASTHMA PROCEEDINGS 237 (1992).

43. See, e.g., 8 U.S.C.A. § 1182 (2005) (listing criteria established by the United States).

44. See, e.g., Susan J. Elliott & Joan Gillie, *Moving Experiences: A Qualitative Analysis*

procedures.<sup>45</sup> Isolation refers to “the separation of persons who have a specific infectious illness from those who are healthy and restriction of their movement to stop the spread of that illness.”<sup>46</sup> In contrast, quarantine refers to “the separation and restriction of movement of persons who, while not yet ill, have been exposed to an infectious agent and therefore may become infectious.”<sup>47</sup> In the United States, underlying racism and xenophobia have sometimes provided the motivation and impetus to utilize such measures. As an example, in the early 20th century, the San Francisco Board of Health attempted to quarantine and inoculate Chinese residents for bubonic plague to the exclusion of other ethnic and racial groups.<sup>48</sup> In more recent years, the United States became known as the only country in the world to establish an internment camp for the quarantine of HIV seropositive asylum seekers—all of whom were black and Haitian.<sup>49</sup>

Despite such measures, previous health exposures and events, as well as the conditions of destination countries, may continue to affect the health of migrants after their arrival in their destination country (post-migration). In fact, some migrants arrive in their destination country in good health, only to see their health deteriorate over the years.<sup>50</sup> For example, migrants often experience an increased risk of injury after their arrival in their destination country,<sup>51</sup> as illustrated by the increased rate of industrial accidents among immigrants in France and Germany than among citizens of those

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*of Health and Migration*, 4 HEALTH & PLACE 327, 331-32 (1998) (Can.); Marie Norredam, Anna Mygind & Allan Krasnik, *Access to Health Care for Asylum Seekers in the European Union—A Comparative Study of Country Policies*, 16 EUROPEAN J. PUB. HEALTH 285, 286-88 (2005) (E.U.) (detailing medical screening procedures of asylum seekers implemented by the European Union that include HIV testing, tuberculosis screening, and physician and mental examinations).

45. Centers for Disease Control and Prevention, *Fact Sheet on Isolation and Quarantine*, May 3, 2005, <http://www.cdc.gov/ncidod/sars/isolationquarantine.htm>.

46. *Id.*

47. *Id.*

48. *Wong Wai v. Williamson*, 103 F. 1, 3 (C.C. Cal. 1900).

49. *See, e.g., Haitian Ctrs. Council Inc. v. Sale*, 825 F. Supp. 1028, 1045 (E.D.N.Y. 1993); Felice Batlan, *Law in the Time of Cholera: Disease, State Power, and Quarantines Past and Future*, 80 TEMP. L. REV. 53, 62-69 (2007) (providing a brief review of the use of quarantine measures). *See generally* Michelle A. Daubert, *Pandemic Fears and Contemporary Quarantine: Protecting Liberty Through a Continuum of Due Process Rights*, 54 BUFF. L. REV. 1299 (2007) (analyzing the constitutional limits of the power to isolate and quarantine).

50. Ronellenfitsch & Razum, *supra* note 27, at 6-7. The concept of the “healthy migrant effect” presupposes that migrants will have better health status and higher health satisfaction at the time of their immigration, as compared to years following their arrival in their destination country, because generally the healthiest individuals self-select to immigrate and/or are permitted to immigrate legally by the receiving country. *Id.*

51. *See* Scott, *supra* note 11.

countries.<sup>52</sup> In these countries, more than thirty percent of all accidents resulting in permanent disability involve non-nationals.<sup>53</sup> Moreover, migrant workers may be exposed to hazardous pesticides and receive inadequate safety training,<sup>54</sup> while the unsafe housing available to migrants may lead to increased lead exposure and lead poisoning.<sup>55</sup>

The increased risk of disease in the destination country may also affect immigrants' health post-arrival.<sup>56</sup> Immigrant populations may experience rates of some cancers following their migration that approach the rates seen in the population of their destination country and exceed the rates seen for those cancers in their countries of origin.<sup>57</sup> The increase in the rates may be attributable to various dietary and environmental factors that did not exist or existed at lower levels in their countries of origin.<sup>58</sup>

A third post-migration condition affecting immigrant health is the absence of an adequate support system.<sup>59</sup> The lack of employment and relative absence of support systems may lead to increased rates of depression, substance abuse,<sup>60</sup> and/or suicide. In Rotterdam, the Netherlands, children of Turkish immigrants are five times as likely to commit suicide as Dutch children; Moroccan children are three times as likely.<sup>61</sup> Finally, immigrants' post-migration health may be affected by the unavailability and/or inaccessibility of adequate healthcare services in the destination country.<sup>62</sup> For example, researchers have found that in Germany, lack of access to prenatal care results in a higher rate of perinatal mortality among non-national mothers than in German mothers.<sup>63</sup>

## II. DEVELOPING AN INTERNATIONAL PERSPECTIVE

### A. Understanding Public Health

In contrast to medicine, which is concerned with the health of

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52. Carballo & Nerukar, *supra* note 30, at 558.

53. *Id.*

54. *Id.*

55. *Id.*

56. See Nahida Gordon, *Cancer*, in HANDBOOK OF IMMIGRANT HEALTH 389, 402 (Sana Loue ed., Plenum Press 1998).

57. *Id.*

58. *Id.*

59. See generally Elliott & Gillie, *supra* note 44, at 334-35.

60. Carballo & Nerukar, *supra* note 30, at 559.

61. *Id.*

62. See BERTINATO ET AL., *supra* note 18, at 6-7.

63. Carballo & Nerukar, *supra* note 30, at 558.

individuals, public health focuses on the health of populations and communities.<sup>64</sup> Public health has been defined as:

[T]he science and the art of preventing disease, prolonging life, and promoting physical health and efficiency through organized community efforts for the sanitation of the environment, the control of community infections, the education of the individual in principles of personal hygiene, [and] the organization of medical and nursing service for the early diagnosis and preventive treatment of disease.<sup>65</sup>

It is “what we, as a society, do collectively to assure the conditions in which people can be healthy.”<sup>66</sup> Although the more traditional view of public health seeks to identify risks or harms and intervene to reduce or prevent them,<sup>67</sup> a broader perspective seeks to address those conditions that undermine our ability to achieve the goals of public health, including the “social ills rooted in distal structures.”<sup>68</sup> Indeed, “[s]ocial justice is viewed as so central to the mission of public health that it has been described as the field’s core value . . . .”<sup>69</sup> Accordingly, a broad perspective of public health seeks to address the distribution of social and economic resources because social status, race, and wealth influence the health of populations.<sup>70</sup>

Markedly divergent constructions of the responsibilities inherent in public health functions have been formulated to both support and oppose the provision of health care to immigrants and, especially, undocumented immigrants. Those who oppose providing immigrants with access to care maintain that the provision of healthcare services to immigrants is unfair and represents a public health threat because it encourages further migration and deprives legal residents of access to health resources that are already scarce.<sup>71</sup> Alternatively, those who support the provision of health care to

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64. INST. OF MED., *THE FUTURE OF PUBLIC HEALTH* 39 (1988).

65. Charles-Edward A. Winslow, *The Untilled Fields of Public Health*, 51 *SCIENCE* 23, 30 (1920).

66. INST. OF MED., *supra* note 64, at 1.

67. WILLIAM SHONICK, *Public Health Services: Background and Present Status*, in *INTRODUCTION TO HEALTH SERVICES* 91 (Stephen J. Williams & Paul R. Torrens eds., John Wiley & Sons 1984).

68. Ilan H. Meyer & Sharon Schwartz, *Social Issues in Public Health: Promise and Peril*, 90 *AM. J. PUB. HEALTH* 1189, 1189 (2000).

69. Lawrence O. Gostin, *A Theory and Definition of Public Health Law*, 10 *J. HEALTH CARE L. & POL’Y* 1, 10 (2007).

70. *See generally* *SOCIAL DETERMINANTS OF HEALTH* (Michael Marmot & Richard G. Wilkinson eds., Oxford Univ. Press 2006) (1999).

71. Lawrence A. Palinkas & Jose I. Arciniega, *Immigration Reform and the Health of Latino Immigrants in California*, 1 *J. IMMIGRANT HEALTH* 19, 22 (1999).

immigrants assert that the imposition of restrictions on their access to healthcare services is unfair and represents a public health threat because such policies will lead to higher overall healthcare costs and increased rates of morbidity and mortality.<sup>72</sup>

Numerous international organizations, such as the World Health Organization, assert the right of individuals to attain a standard of health and/or provide for their protection as patients.<sup>73</sup> Few organizations, however, explicitly recognize the need for such assurances in the context of migration or conceive of such assurances and protections as inuring to a global health community.<sup>74</sup> Recent global epidemics that make apparent the potential threat of worldwide infectious disease transmission, as well as increasing cross-border migration in all parts of the world, have led to the recognition that the concept of a single country of residence is no longer appropriate.<sup>75</sup> In support of this broader perspective, epidemiologists who study health and global migration have called for an expanded definition of community in the context of public health.<sup>76</sup> Recognizing such needs, nongovernmental organizations (“NGOs”) have attempted to reshape the legal structures related to public health.<sup>77</sup>

### *B. International Migrant Status and Access to Health Care*

The ability of international migrants to access health care,<sup>78</sup> regardless of the whether they migrate legally, is often affected by their status as international migrants.<sup>79</sup> For instance, in the United States, research has

72. *Id.*

73. *E.g.*, CONSTITUTION OF THE WORLD HEALTH ORG. preamble; International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), art. 12, U.N. Doc. A/6316 (Jan. 3, 1966).

74. *E.g.*, Eur. Parl. Ass., *European Social Charter*, ETS no. 163, art. 19 ¶ 2 (revised 1996); *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, G.A. Res. 45/158, art. 8, U.N. Doc. A/45/49 (July 1, 1990).

75. BERTINATO ET AL., *supra* note 18, at 4.

76. See Brian D. Gushulak & Douglas W. MacPherson, *The Basic Principles of Migration Health: Population Mobility and Gaps in Disease Prevalence*, 3 EMERGING THEMES EPIDEMIOLOGY 3, 4 (2006).

77. John D. Blum, *Symposium: Global Health and Wellness: A Response to International Health Threats: Law as Development: Reshaping the Global Legal Structures of Public Health*, 12 MICH. ST. J. INT'L L. 207, 213-28 (2004).

78. Access to health care has been defined to encompass four factors: availability - referring to the lack of providers or a limited number of providers in a specified geographic area and the relative accessibility of those providers as a function of systemic factors such as transportation and hours of business; accessibility; the acceptability of the care; and the quality of services. See generally Lu Ann Aday & Ronald Andersen, *A Framework for the Study of Access to Medical Care*, 9 HEALTH SERV. RES. 208, 208-10 (1974).

79. Access to health care may be impeded by various factors in addition to individuals' legal status, such as their lack of insurance and/or financial resources, language, and discrimination or bias.

found that legislation that increases the fear of detection by immigration authorities may exacerbate delays in seeking care.<sup>80</sup> This may be particularly problematic when the symptoms necessitating diagnosis and treatment suggest a highly communicable infectious disease, such as tuberculosis. Researchers found that in Spain, the lack of legal status was significantly associated with the non-utilization of services and a delay in seeking care, after controlling for various factors.<sup>81</sup> In Switzerland, studies showed that lack of legal status and limited access to care were associated with a delay in seeking care for tuberculosis symptoms.<sup>82</sup> A study conducted in Sweden in 2005 found that 82% of the sample of 102 patients did not access needed health services because of fear; 67% believed the risk of being arrested at a hospital was “quite high” or “extremely high.”<sup>83</sup> Finally, a study of the ability of asylum seekers in the European Union to access needed healthcare services discovered that ten countries in the European Union impose legal restrictions on access to care for asylum seekers, resulting in inadequate attention to serious healthcare needs.<sup>84</sup>

International migrants’ lack of insurance and/or adequate financial resources further exacerbates the difficulties they encounter in accessing care. In Switzerland, two-thirds of tuberculosis patients lost their jobs as a consequence of their illness, a factor that potentially deterred other patients from seeking care.<sup>85</sup> In Sweden, undocumented immigrants (*gömnda*) are entitled only to “immediate health care,” that is, urgent care.<sup>86</sup> They are barred from receiving primary health care or maternity care in most cases and must bear the full costs of health care.<sup>87</sup> In the United States, even individuals legally admitted for permanent residence may lack any privately-funded or employment-based healthcare insurance; approximately one-third of immigrants to the United States have no health insurance, compared to 13% of native-born individuals.<sup>88</sup> Further, in 2002, almost

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80. Steven Asch, Barbara Leake & Lillian Gelberg, *Does Fear of Immigration Authorities Deter Tuberculosis Patients from Seeking Care?*, 161 WEST. J. MED. 373, 373, 375-76 (1994).

81. Albert M. Torres & Belén Sanz, *Health Care Provision for Illegal Immigrants: Should Public Health Be Concerned?*, 54 J. EPIDEMIOLOGY COMMUNITY HEALTH 478, 479 (2000).

82. Perone et al., *supra* note 13, at 351.

83. MÉDECINS SANS FRONTIÈRES, EXPERIENCES OF GÖMDA IN SWEDEN: EXCLUSION FROM HEALTH CARE FOR IMMIGRANTS LIVING WITHOUT LEGAL STATUS 6 (n.d.), <http://lakareutangranser.org/files/ReportGomdaSwedenEn.pdf> [hereinafter FRONTIÈRES].

84. Norredam, Mygind & Krasnik, *supra* note 44, at 287-88.

85. Perone et al., *supra* note 13, at 351.

86. FRONTIÈRES, *supra* note 83, at 5.

87. *Id.*

88. MIGRATION POL’Y INST., HEALTH INSURANCE COVERAGE OF THE FOREIGN BORN IN

one-half of all immigrants who resided in the United States for less than ten years were uninsured.<sup>89</sup> Of the 67% of immigrants who do have health insurance, 78% are covered by private plans and the remainder by government plans.<sup>90</sup> Foreign-born individuals are more likely to work service jobs than native born persons (23.3% as opposed to 14.9%), and as a consequence, these workers are less likely to have employer-sponsored health insurance coverage.<sup>91</sup>

In addition, immigrants in the United States face severe restrictions on their ability to access publicly-funded health care. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 distinguishes between those immigrants considered “qualified” and those who are considered “not qualified” for the purpose of determining eligibility for publicly funded medical care, such as Medicaid and Medicare.<sup>92</sup>

Nation states may impose such restrictions on immigrants’ ability to access healthcare services in an attempt to conserve the state’s financial resources for its own citizens and, in some cases, legal residents; to discourage illegal migration for any purpose or for health care specifically; and/or to punish those international migrants who are seen as lawbreakers and reward those who have migrated legally.<sup>93</sup> This perspective is, however, shortsighted.

First, currently existing international and national attempts to combat the global spread of communicable disease are inadequate to achieve their goal. The objective of the International Health Regulations, as drafted by the World Health Organization, is to “prevent, protect against, control and provide a public health response to the international spread of disease in ways that are commensurate with and restricted to public health risks, and which avoid unnecessary interference with international traffic and trade.”<sup>94</sup>

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THE UNITED STATES: NUMBERS AND TRENDS 1 (2004), [http://www.migrationpolicy.org/pubs/eight\\_health.pdf](http://www.migrationpolicy.org/pubs/eight_health.pdf).

89. *Id.* at 2.

90. *Id.*

91. GRANTMAKERS IN HEALTH, FOR THE BENEFIT OF ALL: ENSURING IMMIGRANT HEALTH AND WELLBEING 8, 14 (2005), [http://www.migrationinformation.org/integration/language\\_portal/files/GIH\\_Issue\\_Brief\\_24\\_FINAL.pdf](http://www.migrationinformation.org/integration/language_portal/files/GIH_Issue_Brief_24_FINAL.pdf). See Thomas C. Buchmueller et al., *Immigrants and Employer-Sponsored Health Insurance*, 42 HEALTH SERV. RES. 286, 287 (2007).

92. 8 U.S.C.A. § 1641 (2005). See generally Leighton Ku & Sheetal Matani, *Left Out: Immigrants’ Access to Health Care and Insurance*, 20 HEALTH AFFAIRS 247 (2001) (discussing the impact of limiting immigrants’ access to care).

93. See Palinkas & Arciniega, *supra* note 71, at 22.

94. WORLD HEALTH ORG., INTERNATIONAL HEALTH REGULATIONS art. 2 (2005), [http://www.who.int/gb/ebwha/pdf\\_files/WHA58/A58\\_55-en.pdf](http://www.who.int/gb/ebwha/pdf_files/WHA58/A58_55-en.pdf).

The surveillance, reporting, and procedural mechanisms of the International Health Regulations of the World Health Organization are limited in their application to specified diseases.<sup>95</sup> These mechanisms are also limited in their effectiveness due to the inadequate surveillance capabilities of some nations and the unwillingness of some countries to report outbreaks, for fear of potential economic repercussions.<sup>96</sup>

National efforts to screen immigrants for specified communicable diseases may appear to protect the public health through their exclusion of diseased foreigners, but these procedures are often drawn and implemented too narrowly to actually accomplish their stated purpose. The United States, for instance, requires immigrants to have a physical and mental examination, including screening for tuberculosis and other communicable diseases, as part of the visa application process.<sup>97</sup> Citizens, individuals with permanent resident status, and most temporary visitors are not screened when they return to the United States, although they may be infected and infectious to others. Moreover, mandated screening, even when performed, may be inadequate to detect disease and ensure the treatment of the infected individual and the protection of public health as suggested in one study examining the incidence of tuberculosis among Tibetan immigrants in Minnesota.<sup>98</sup>

A second reason why restricting immigrant access to health care is shortsighted is that a proportion of those who are undocumented at a given time may later be eligible for legal status, including, for instance, some asylum seekers. Health problems that remain undiagnosed and untreated prior to one's transition to a legal status entitling one to publicly-funded health care may ultimately lead to decreased work productivity, increased utilization of healthcare services, and increased costs associated with that needed health care.<sup>99</sup> As an example, one study found that women who had

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95. Mark J. Volansky, *Achieving Global Health: A Review of the World Health Organization's Response*, 10 TULSA J. COMP. & INT'L L. 223, 237.

96. *Id.* at 237-38, 250. See generally David P. Fidler, *International Law and Global Public Health*, 48 U. KAN. L. REV. 1 (1999).

97. 42 C.F.R. §§ 34.1, 34.2 (2007). See also CTRS. FOR DISEASE CONTROL AND PREVENTION, DEP'T OF HEALTH & HUMAN SERVS., TECHNICAL INSTRUCTIONS FOR MEDICAL EXAMINATION OF ALIENS IN THE UNITED STATES (2003).

98. See Dung H. Truong et al., *Tuberculosis Among Tibetan Immigrants from India and Nepal in Minnesota, 1992-1995*, 277 J. AM. MED. ASS'N 735, 738 (1997). This study examined Tibetan immigrants who arrived between 1992 and 1994, and found that 51% of the chest radiographs of Tibetan immigrants to Minneapolis were abnormal, despite initial tuberculosis screening by U.S.-authorized physicians in India prior to immigration to the United States. A comparison with the results from the chest radiograph evaluations conducted in India indicated that 79% of the Tibetans had unchanged readings and 21% showed evidence of potentially progressive disease. *Id.* at 735, 736.

99. See generally Ku & Matani, *supra* note 92, at 22-23.

immigrated to the United States during the previous ten years were least likely to have had a mammogram within the previous two years or a Pap test within the previous three years.<sup>100</sup> In yet another study of 148 foreign-born Hispanic women living in the Washington, D.C. area, it was found that among women over the age of forty, 38% had never had a mammogram and 67% had not followed the screening recommendations for their age group.<sup>101</sup> Failure to obtain this screening, and possible early detection, may have increased their risk of serious disease. Furthermore, receiving care at a more advanced stage of disease may increase the associated costs; some of which may be borne by publicly funded insurance programs for those with legal qualifying status.

### III. CONCLUSIONS: REDEFINING PUBLIC HEALTH FOR A GLOBAL COMMUNITY

Several issues are easily ascertainable based on the above discussion. Significant disparities exist between developing and developed nations with respect to individuals' access to health care and the quality of the health care that is received. Individuals seeking care outside of their country of origin will continue to do so unless and until they are able to secure that care in their home country. This challenges the world community to develop mechanisms to improve both access to health care and the healthcare infrastructure across nations.

The development of such mechanisms necessarily requires a re-examination of international laws and policies that, although not specifically related to health care access, significantly impact the health and health care of populations. As an example, laws and policies governing the international marketing of tobacco and tobacco products ultimately impact the health of the populations that consume these commodities. Pharmaceutical pricing policies may determine whether a government decides to import a particular product, manufacture a substitute medication or, in cases where the country has neither the resources to purchase a specific drug nor the internal capacity to manufacture a substitute product, do without.

Additionally, in view of the extent and rapidity of migration across national borders, it is evident that attempts to exclude disease by excluding diseased foreigners are not only ill-advised in some circumstances, but often inadequate as a means of controlling disease transmission. This oft-

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100. Judith Swan et al., *Progress in Cancer Screening Practices in the United States: Results from the 2000 National Health Interview Survey*, 97 *CANCER* 1528, 1532 (2003).

101. Maria E. Fernandez et al., *Mammography and Pap Test Screening Among Low-Income Foreign-Born Hispanic Women In The USA*, 14 *CADERNOS DE SAÚDE PÚBLICA* 133, 138 (1998) (Braz.).

repeated observation demands that increased global attention be focused, in the public health context, on the development of more adequate disease surveillance systems and, in the legal context, on the strengthening of international regulations and cooperation to control communicable diseases.<sup>102</sup>

Finally, the United States, as well as other countries, has tended to adopt an insular perspective on immigrant access to health care, despite recognition of cross-border issues and the knowledge that health status is often a function not only of various biological, social, and psychological factors, but also of political, legal, and economic considerations. Ultimately, the failure to address immigrant health care in this larger context ultimately impacts not only the individual immigrants, but their communities of origin and destination as well.

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102. Gushulak & MacPherson, *supra* note 76, at 8.