

Beyond Citizenship: The Legal Status of Undocumented Lives in Neoliberal Democracies

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ABSTRACT

This article explores how neoliberal democracies legally construct and manage the status of undocumented individuals, highlighting the systemic exclusion and conditionality embedded in contemporary immigration frameworks. The study employs a scientific narrative review approach based on descriptive analysis to examine peer-reviewed legal scholarship, policy reports, and critical theoretical literature published between 2019 and 2024. Sources were selected across law, political science, and sociology, focusing on key themes such as citizenship, legal liminality, crimmigration, neoliberalism, and undocumented status. Comparative analysis was also conducted across several national contexts, including the United States, United Kingdom, France, Germany, and Australia, to highlight legal and policy divergences in managing undocumented populations. The analysis reveals that undocumented individuals are governed through legal regimes that criminalize presence, restrict access to rights, and condition temporary protections on economic value or compliance. Crimmigration practices, administrative limbo, and detention policies are common tools of enforcement. Neoliberal legal rationalities link recognition to productivity, privatize enforcement responsibilities, and stratify legal protections. This results in widespread legal precarity and systemic disenfranchisement. The review also identifies critical responses such as post-national citizenship, sanctuary policies, and human rights-based frameworks that challenge exclusionary norms and propose more inclusive legal paradigms. Undocumented status in neoliberal democracies is a legal condition shaped by market logic, securitization, and political exclusion. A critical rethinking of legal status and protection is needed—one that moves beyond citizenship and affirms universal personhood and the dignity of all individuals. Future legal frameworks must prioritize equity, humanity, and structural inclusion to overcome entrenched legal marginality.

Keywords: *undocumented individuals, neoliberal democracies, legal liminality, post-national citizenship, crimmigration, legal precarity, human rights.*

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1. Introduction

The contemporary landscape of governance in the Global North has been profoundly shaped by the ascendance of neoliberal democracy—a system that

marries representative political structures with an economic rationality that prioritizes market efficiency, individual responsibility, and privatization. This dual framework has significantly altered how citizenship is conceived and operationalized, leading to stratified



access to rights, resources, and recognition. In neoliberal democracies, the legal construct of citizenship is no longer merely a marker of political belonging but a gatekeeping device through which the state filters access to basic protections and public participation. As states increasingly rely on market-based logics, citizenship becomes entangled with productivity, self-sufficiency, and perceived economic value. This evolution has had profound implications for non-citizens, particularly those categorized as undocumented, who are rendered legally invisible and institutionally marginal within such regimes.

"Undocumented lives" refers to the lived experiences of individuals residing in a country without formal state authorization, often lacking valid residency permits or legal recognition. Their status is not merely an administrative deficit but a deeply entrenched legal and social condition that shapes every aspect of daily life, from access to healthcare and education to labor rights and protection from exploitation. The term underscores not only the absence of documentation but also the absence of formal personhood in the eyes of the law. As noted by scholars analyzing the precarious position of undocumented individuals, legal invisibility subjects them to a paradoxical state of hypervisibility to law enforcement and invisibility to social protections (Hendricks, 2022). In this context, legality itself becomes a flexible, mutable category that serves to manage and contain populations rather than confer rights (Ruszczuk, 2021).

Within the discursive terrain of neoliberal governance, the undocumented person emerges as both a legal aberration and an economic necessity. While demonized politically, their labor is often essential to the informal economies of neoliberal states. This contradiction reveals a deeper ideological function of undocumented status: to preserve the hierarchical boundaries of citizenship while extracting value from those excluded from it. Neoliberal democracies have institutionalized this double-bind through policies that criminalize undocumented status while simultaneously allowing for its exploitation. For instance, in many countries, employers face minimal consequences for hiring undocumented labor, whereas undocumented workers risk deportation for the same transaction (Altman, 2024). Such policies are not accidental inconsistencies but rather manifestations of a broader neoliberal logic in

which the rights of individuals are subordinated to economic imperatives.

Given the complexity and urgency of these issues, a narrative review is particularly well-suited to synthesize insights across the legal, political, and sociological dimensions of undocumented status. A purely doctrinal legal analysis would fail to capture the lived realities of those affected, just as a purely ethnographic approach might overlook the structural mechanisms of exclusion embedded in law and policy. A narrative review, by contrast, allows for an interdisciplinary exploration of the evolving legal subjectivities of undocumented individuals within neoliberal democracies. It facilitates a cross-contextual understanding of how undocumented status is legally produced, politically instrumentalized, and socially contested. This approach is critical to illuminating the nuances of legal marginality and revealing how policies ostensibly aimed at "border control" or "national security" function instead to discipline and manage vulnerable populations (Lopez, 2021).

This article asks several interrelated questions: How do neoliberal legal frameworks shape the lives of undocumented individuals? What legal mechanisms and discursive practices sustain their status as legally liminal subjects? How do undocumented persons navigate the simultaneous demands of hyper-regulation and exclusion? And finally, what alternative legal or theoretical models might offer pathways to recognition and protection outside the narrow confines of citizenship? These questions aim to challenge the assumed universality of citizenship as the sole framework for legal personhood and to explore the potential for more inclusive and humane legal paradigms. By drawing from recent scholarship, judicial decisions, and theoretical frameworks, this review seeks to move the discourse "beyond citizenship" and toward a more nuanced understanding of legal belonging in neoliberal democracies.

2. Methodology

This article adopts a scientific narrative review approach grounded in a descriptive analysis method, aiming to explore and synthesize existing literature on the legal status of undocumented individuals within neoliberal democracies. The narrative review method is particularly suitable for this topic, as it enables a flexible,

critical, and interpretive examination of a wide range of scholarly sources from multiple disciplines, including law, political science, sociology, and migration studies. Unlike systematic reviews that focus on statistical generalizations, the narrative approach in this study emphasizes theoretical exploration and conceptual development, allowing for a deeper understanding of how legal frameworks and neoliberal ideologies intersect to shape the lived realities of undocumented populations. The descriptive analysis method, in turn, provides a foundation for thematically organizing the literature without altering or manipulating the original data. This method allows the author to trace dominant themes, legal patterns, and conceptual tensions across different jurisdictions and academic traditions, offering a cross-contextual, multidisciplinary perspective that is both reflective and analytical.

The corpus of literature examined in this review includes peer-reviewed journal articles, legal commentaries, official policy documents, international human rights reports, and critical theoretical texts published between 2019 and 2024. The sources were selected using a purposive sampling strategy with the goal of capturing the most relevant and recent contributions to the field. Academic databases such as JSTOR, Scopus, Web of Science, HeinOnline, and Google Scholar were utilized to identify key works, using search terms such as “undocumented migrants,” “neoliberalism and legal status,” “crimmigration,” “non-citizenship,” “legal precarity,” and “post-national citizenship.” Priority was given to sources that offered either in-depth legal analysis or strong theoretical engagement with the structural and ideological dimensions of undocumented life under neoliberal governance. Additionally, legal texts from major democracies—including the United States, United Kingdom, Canada, Germany, France, and Australia—were consulted to provide a comparative lens. Reports from human rights organizations such as Amnesty International, Human Rights Watch, and the United Nations High Commissioner for Refugees (UNHCR) were included to ground the discussion in real-world legal developments and humanitarian concerns. The descriptive analysis involved a thematic review of the selected materials, focusing on recurrent patterns, legal frameworks, and critical discourses that define and regulate the status of undocumented persons. This process included close textual analysis of legal

instruments and judicial decisions, especially those pertaining to immigration enforcement, detention, deportation, and temporary protection statuses. At the same time, theoretical literature was examined to interpret the ideological underpinnings of these legal mechanisms, particularly through the lens of neoliberalism and biopolitics. The findings were organized into several analytical categories that emerged inductively during the reading process: (1) the construction of legal non-personhood, (2) the interplay between market rationality and state sovereignty, (3) the use of legal invisibility and liminality, and (4) emerging frameworks for legal resistance and protection. This interpretive process allowed for a critical synthesis of diverse sources and the construction of an overarching narrative that situates undocumented lives beyond the traditional boundaries of citizenship and within the broader dynamics of neoliberal governance.

3. Theoretical and Conceptual Framework

To critically assess the legal status of undocumented individuals in neoliberal democracies, it is essential to unpack several interconnected concepts: citizenship, non-citizenship, undocumented status, and neoliberal legal rationality. Citizenship, in its classical liberal conception, denotes a legal status that confers rights, responsibilities, and formal recognition by the state. However, this legal status has increasingly come to operate as a boundary mechanism in neoliberal democracies, stratifying access to protections and entitlements based on perceived economic value and cultural conformity (Mavelli, 2022). Non-citizenship, by contrast, is not merely the absence of formal membership but often a legally codified condition of exclusion, one that may persist across generations despite sustained presence in the host country.

Undocumented status exists within this broader terrain as a particularly acute form of legal marginality. It is not only a bureaucratic designation but also a socio-legal identity that confers vulnerability and subjugation. The undocumented individual occupies a legal grey zone—present within the national territory but absent from the legal order that governs it. As explored by theorists of legal precarity, this status renders individuals subject to the law’s coercive apparatus (such as detention and deportation) without access to its protective dimensions

(such as due process or labor rights) (Kim, 2022). In this sense, undocumented status exemplifies what political theorist Giorgio Agamben describes as the condition of "bare life"—a state of existence where one is included in the legal order solely through exclusion (J & Karunakar, 2024).

The condition of undocumented individuals is further illuminated by Michel Foucault's theory of biopolitics, which emphasizes the ways in which modern states exercise power through the regulation of life itself. Under neoliberalism, this biopolitical control extends beyond citizens to encompass non-citizens and undocumented populations, who are often subjected to surveillance, bodily control, and administrative violence under the guise of migration management. As neoliberal democracies shift from a rights-based to a security-based logic, undocumented bodies are increasingly governed through techniques of risk management and cost efficiency rather than moral or legal duty (Roberts, 2020). This rationalization of exclusion reveals the ideological underpinnings of neoliberal governance, wherein human life is valued primarily through its potential to contribute to economic productivity.

Wendy Brown's critique of neoliberalism deepens this analysis by highlighting how market rationality colonizes legal and political institutions. In neoliberal democracies, law is no longer a domain of normative justice but an instrument of economic optimization. This reconfiguration is evident in immigration regimes that prioritize skilled labor visas while marginalizing undocumented workers, thereby aligning legal recognition with economic utility (Masias & Mixon, 2022). The undocumented individual thus becomes a product of legal-economic systems that construct their exclusion as both inevitable and justifiable.

Étienne Balibar's theory of border politics also provides a critical lens for understanding the spatial and symbolic dimensions of undocumented status. According to Balibar, borders are no longer fixed geographic demarcations but dynamic, mobile technologies of inclusion and exclusion. In neoliberal democracies, internal borders proliferate through identification checks, workplace raids, and access restrictions to public services, effectively producing a spatial regime of "internal borderlands" where undocumented lives are constantly policed (Qraini & Awad, 2020). These internal borders are instrumental in sustaining legal liminality—

a condition in which individuals are suspended in a state of partial legality, neither fully integrated nor formally expelled.

The concept of legal liminality is crucial to this analysis. Derived from anthropological theories of rites of passage, liminality describes a transitional or threshold state. In legal terms, it refers to the ambiguous and often indeterminate status of individuals who are neither recognized nor removed. This liminality is not merely a temporary phase but a prolonged condition that can span years or even lifetimes, effectively becoming a form of permanent impermanence (Oppendoes et al., 2020). Legal liminality functions as a technique of governance that denies full personhood while maintaining control over the undocumented subject. It allows states to evade accountability by deferring decisions, denying status, and delegating enforcement to non-state actors such as employers and landlords (Esien, 2022).

Taken together, these theoretical perspectives illuminate the structural and ideological foundations of undocumented status in neoliberal democracies. They reveal how legal exclusion is produced not only through overt policies but also through diffuse systems of classification, control, and commodification. By examining undocumented life through the lenses of legal subjectivity, biopolitical governance, and economic instrumentalization, this article seeks to interrogate the normative assumptions that underpin current legal frameworks and to explore alternative modes of recognition that move beyond the rigid binaries of citizen and non-citizen.

4. Mapping the Legal Terrain: Undocumented Status in Neoliberal Democracies

The legal construction of undocumented individuals in neoliberal democracies often begins with the deployment of terminology such as "illegal aliens" or "irregular migrants." These terms are not neutral descriptors but politically charged categories that reinforce narratives of deviance, threat, and exclusion. In the United States, the use of "illegal alien" carries a criminalizing connotation that frames undocumented presence as a violation of law rather than a symptom of global inequality or migration necessity. This framing functions to delegitimize undocumented individuals' claims to rights or recognition, reducing them to juridical non-entities whose legal existence is defined solely by

the violation of immigration law (Hendricks, 2022). Similarly, in the UK and parts of Europe, the category of “irregular migrant” is used to describe individuals who lack the legal paperwork to reside or work, effectively situating them outside the bounds of lawful belonging while continuing to benefit from their labor and presence (Kim, 2022).

The legal marginalization of undocumented individuals has been intensified through the convergence of immigration and criminal law—a phenomenon scholars have termed “cimmigration.” This convergence reflects a broader trend in which immigration violations are increasingly treated as criminal offenses rather than civil infractions. In the United States, for example, policies that once treated unauthorized entry as a regulatory matter now subject individuals to incarceration, criminal prosecution, and removal proceedings (Lopez, 2021). This criminalization is not merely punitive but strategic, serving to associate undocumented status with moral and legal deviance while justifying heightened surveillance and enforcement measures. The shift toward cimmigration also facilitates the expansion of the carceral state under the guise of immigration control, funneling migrants into a system designed for punishment rather than protection (Roberts, 2020).

Another key dimension of legal governance over undocumented lives is the use of administrative limbo and temporary legal instruments. Programs such as the Deferred Action for Childhood Arrivals (DACA) in the United States or Temporary Protected Status (TPS) mechanisms in Europe are illustrative of how states manage undocumented populations through conditional and revocable statuses. These legal instruments offer limited recognition—often tied to employment or residency—but fall short of granting a pathway to permanent legal inclusion. DACA, for instance, provides temporary relief from deportation but does not offer permanent residency or citizenship, effectively institutionalizing a state of legal uncertainty (Martínez, 2024). These temporary frameworks perpetuate a form of legal liminality, wherein individuals are neither fully protected nor entirely excluded, suspended in a legal space that can be withdrawn at the whim of shifting political winds (Oppendoes et al., 2020).

This institutional ambiguity is compounded by the tools of detention, deportation, and non-deportability. Detention centers have proliferated across neoliberal

democracies as states seek to demonstrate control over their borders and compliance with immigration enforcement. Yet, these centers often operate with limited oversight, housing individuals in conditions that violate basic human rights while offering minimal legal recourse (Altman, 2024). Deportation, once reserved for serious offenses, is now applied to routine status violations, underscoring how immigration control is increasingly entwined with penal policy (Ruszczyk, 2021). At the same time, non-deportability—wherein individuals cannot be removed due to conflict in their home country, lack of identification, or international legal prohibitions—places them in a paradoxical condition: subject to removal in law but not in practice. This creates a condition of enforced limbo, where undocumented persons must navigate a system that offers neither resolution nor reprieve (Moise, 2023).

Comparative national case studies further illustrate the differentiated ways in which neoliberal democracies manage undocumented populations. In the United States, the interplay of federal immigration enforcement and local law enforcement agencies has created a patchwork system in which undocumented persons are simultaneously targeted and tolerated depending on their location and economic utility (Masias & Mixon, 2022). The United Kingdom has developed a “hostile environment” policy, making it difficult for undocumented individuals to access housing, employment, and healthcare. These measures effectively deputize private actors to perform immigration enforcement, placing landlords, employers, and even medical professionals in the role of gatekeepers to basic services (Esien, 2022). In France and Germany, policies oscillate between regularization campaigns and crackdowns, reflecting internal tensions between human rights commitments and security imperatives. Australia, meanwhile, has adopted an explicitly punitive model, detaining undocumented migrants and asylum seekers in offshore facilities where access to legal representation and human rights oversight is minimal (J & Karunakar, 2024).

What unites these diverse approaches is a reliance on legal ambiguity and bureaucratic complexity to manage undocumented populations without fully integrating or expelling them. This strategy aligns with the goals of neoliberal governance, which prioritizes flexibility, cost-efficiency, and control over equity and inclusion. Rather

than resolving the legal status of undocumented individuals, neoliberal democracies construct systems designed to perpetuate uncertainty, thereby maintaining a pliable, vulnerable labor force and reinforcing the symbolic boundaries of national belonging (Gasztold, 2019).

5. Neoliberalism and the Erosion of Legal Protections

The erosion of legal protections for undocumented individuals must be understood within the broader context of neoliberal governance, which prioritizes market logic, privatization, and border securitization. Under neoliberalism, states increasingly conceptualize law not as a mechanism for ensuring justice or equity but as an instrument of economic efficiency. This transformation has led to the restructuring of legal protections, particularly for non-citizens, in ways that tie rights and recognition to economic productivity. In many neoliberal democracies, legal access to residency or work permits is conditioned upon demonstrable value to the economy—often measured through employment status, educational attainment, or entrepreneurial activity (Nair, 2023). This market-centric orientation effectively reduces personhood to economic utility, excluding those who do not meet productivity thresholds from legal recognition.

Legal protections are no longer universal guarantees but become stratified and conditional, reserved for those who can “earn” their place through economic contribution. Such stratification is evident in tiered visa systems, which privilege high-skilled migrants while relegating low-skilled or undocumented individuals to legal and social precarity (Kim, 2022). This tiering is also visible in welfare access, where eligibility for housing, healthcare, or education is increasingly contingent on immigration status and length of residency. In the UK, for instance, the “no recourse to public funds” condition bars many undocumented and even some documented migrants from accessing basic welfare services, reinforcing exclusionary legal hierarchies (Qraini & Awad, 2020). These policies reflect a broader trend in which legal inclusion is rendered conditional, reversible, and unequally distributed according to one’s perceived economic worth.

As part of this shift, neoliberal states increasingly offload the responsibilities of enforcement and social regulation onto private actors, creating a decentralized apparatus of

control. Employers, landlords, school administrators, and healthcare providers are transformed into immigration enforcers, compelled to verify legal status before extending services or opportunities. This privatization of legal control not only undermines the rule of law by placing enforcement in unaccountable hands but also exacerbates social exclusion by making everyday life a site of legal surveillance (Altman, 2024). The effect is a form of diffuse governance in which legal protections are mediated through markets and private decisions, subjecting undocumented individuals to inconsistent, often discriminatory treatment (Esien, 2022).

The cumulative impact of these neoliberal policies is the deepening of legal precarity among undocumented populations. Legal precarity refers to the condition in which individuals exist in a state of constant legal uncertainty, lacking secure status, stable rights, or reliable access to justice. For undocumented individuals, this precarity extends to employment, housing, healthcare, and personal safety. They are vulnerable to exploitation in the workplace, where fear of deportation deters them from reporting abuse or wage theft (Masias & Mixon, 2022). In the realm of housing, the inability to sign legal leases forces many into informal or substandard living arrangements, often with little recourse in cases of landlord abuse or eviction (Opperdoes et al., 2020).

Disenfranchisement extends beyond material deprivation to affect the psychological and civic dimensions of life. The constant threat of removal, coupled with systemic exclusion from public institutions, generates chronic anxiety and mistrust toward state systems. This psychological toll is particularly acute among undocumented women and youth, who experience heightened vulnerability due to gender and age-based forms of discrimination (Ramos-Sánchez, 2020). At the same time, undocumented individuals are often excluded from political participation and civic engagement, rendering them invisible within the democratic processes that shape the laws affecting them (Lopez, 2021).

What emerges from this analysis is a portrait of undocumented life as one marked by systematic exclusion, institutional neglect, and legal disenfranchisement—all rationalized through the imperatives of neoliberal governance. Rather than acting

as neutral arbiters of justice, legal systems in neoliberal democracies increasingly serve as tools for regulating mobility, disciplining labor, and reproducing social hierarchies. In this context, the erosion of legal protections is not an unintended consequence but a deliberate strategy for managing populations deemed economically expendable or politically undesirable (Roberts, 2020). This insight challenges conventional narratives that frame undocumented individuals as simply “outside the law,” revealing instead a legal system designed to sustain and exploit their marginality.

A critical examination of these dynamics is necessary to envision alternative legal frameworks that resist the commodification of human worth and restore the primacy of human rights over market logic. By interrogating how neoliberalism reshapes the legal treatment of undocumented persons, this article aims to contribute to broader conversations about justice, inclusion, and the role of law in an era defined by inequality and exclusion.

6. Toward a Critical Legal Response: Rethinking Status and Protection

The prevailing legal regimes in neoliberal democracies render undocumented individuals structurally vulnerable by maintaining rigid distinctions between citizenship and non-citizenship, legal presence and illegal status. However, critical legal scholarship and activist movements have increasingly called for a rethinking of these categories, proposing alternative frameworks that move beyond the limitations of national citizenship and toward more inclusive, rights-based paradigms. One such approach is the concept of post-national citizenship, which seeks to decouple legal personhood from state-based territorial belonging. This model envisions a political and legal identity rooted in human rights and transnational norms rather than sovereign membership. Post-national citizenship challenges the idea that rights must be earned through loyalty to a nation-state and instead posits that fundamental entitlements should be extended to all individuals, regardless of legal status or geographic origin (Mavelli, 2022). In this view, undocumented persons are not “outside” the law but are entitled to the same basic protections as citizens by virtue of their humanity and presence within a legal jurisdiction.

This framework finds practical expression in the growing movement for sanctuary laws, particularly in urban centers that resist national immigration enforcement policies. Sanctuary jurisdictions seek to limit cooperation with federal immigration authorities, thereby creating local spaces of relative protection for undocumented residents. In the United States, for example, sanctuary cities like San Francisco and Chicago have enacted policies that prohibit local law enforcement from inquiring about immigration status or complying with federal detainer requests (Lopez, 2021). These legal and political efforts represent a localized assertion of human dignity over exclusionary national policy and demonstrate how municipalities can act as counter-sites of resistance to the crimmigration regime. While sanctuary policies remain legally and politically contested, they serve as important interventions in redefining the relationship between undocumented individuals and the state.

Another prominent alternative is the human rights-based approach to immigration law, which emphasizes the universality and indivisibility of rights. Under this framework, legal recognition and protection are not contingent on citizenship or economic productivity but are instead grounded in international human rights instruments such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. The strength of this approach lies in its normative clarity: no human being should be deprived of access to healthcare, education, or protection from violence based on their immigration status. However, the enforcement of human rights-based protections often runs into structural limitations, particularly when domestic legal systems prioritize sovereignty and national security over international obligations (Roberts, 2020). Nonetheless, this approach continues to be a foundational element in legal advocacy on behalf of undocumented populations, offering a moral and legal vocabulary for challenging systemic exclusion (Esien, 2022).

In addition to these theoretical models, scholars and activists have proposed concrete policy measures to address the legal precarity of undocumented persons. One of the most urgent among these is the decriminalization of undocumented status. The criminalization of unauthorized entry and presence has led to a punitive immigration regime that subjects

individuals to detention, prosecution, and deportation for administrative infractions. Decriminalizing status would shift the legal paradigm from punishment to regulation, treating migration as a civil rather than criminal matter (Hendricks, 2022). Such a change would reduce the stigmatization of undocumented individuals and alleviate the burden on the criminal justice system while enabling more humane and effective immigration policies.

Other proposals include universal personhood as a legal principle, which would recognize all individuals within a state's jurisdiction as legal subjects entitled to equal protection under the law. This idea challenges the notion that citizenship is a prerequisite for legal recognition and instead affirms that rights accrue from the fact of personhood alone. In legal practice, this could manifest through the extension of constitutional protections to undocumented residents or the prohibition of discriminatory laws that condition access to services on immigration status (J & Karunakar, 2024). Such a shift would mark a radical departure from the status-based legal models that currently govern immigration law and would align legal systems more closely with ethical principles of justice and equality.

Finally, status regularization mechanisms—such as pathways to permanent residency, amnesty programs, or legal adjustment for long-term residents—offer practical and politically viable means of addressing the plight of undocumented populations. Regularization recognizes the social and economic contributions of undocumented individuals and provides a legal route out of liminality and into full legal recognition. European countries have periodically implemented such measures, albeit inconsistently and often in response to labor market needs rather than human rights imperatives (Opperdoes et al., 2020). In Latin America and parts of the Global South, some nations have adopted more inclusive approaches, offering status adjustment based on time of residence, family ties, or humanitarian grounds (Masias & Mixon, 2022). While these policies remain vulnerable to political shifts and administrative barriers, they demonstrate the potential for alternative legal responses that affirm the dignity and rights of undocumented individuals.

Together, these legal critiques and proposals represent a significant departure from the exclusionary logic of neoliberal citizenship. They call for a reimagining of the

legal foundations upon which inclusion, belonging, and protection are constructed, insisting that legal recognition should not be a privilege of the few but a right of all.

7. Discussion

The literature reviewed in this article reveals a consistent pattern of systemic exclusion embedded in the legal structures of neoliberal democracies. Undocumented individuals are not simply excluded from the legal order but are actively governed through legal regimes that reinforce their marginality. From criminalization and detention to temporary legal statuses and administrative limbo, the law operates not as a shield of protection but as a mechanism of regulation and control (Ruszczuk, 2021). This systemic exclusion is perpetuated by the fusion of immigration and criminal law, the delegation of enforcement to private actors, and the elevation of market rationality over human rights considerations (Altman, 2024).

A central tension emerging from this analysis lies between the universalism of human rights and the particularism of sovereign legal authority. While international legal norms assert the equal dignity and rights of all individuals, domestic legal systems continue to privilege citizenship and legal status as the basis for access to rights and protections (Roberts, 2020). This tension undermines the coherence and applicability of human rights law, exposing its vulnerability to political manipulation and state discretion. The disconnect between international obligations and domestic enforcement renders human rights frameworks aspirational rather than operational, particularly for undocumented populations (Esien, 2022).

Despite the growing body of critical scholarship on the legal precarity of undocumented individuals, important gaps remain in current legal literature. There is limited engagement with the lived experiences of undocumented persons and insufficient theorization of how legal subjectivity is constructed and contested across different contexts. Additionally, much of the legal discourse continues to be framed within the constraints of national legal systems, without adequately exploring transnational or post-national models of legal belonging (Mavelli, 2022). These gaps hinder the development of more transformative legal reforms and restrict the imagination of alternative futures in which

undocumented lives are not defined by exclusion and precarity.

To move beyond these limitations, legal scholarship must embrace a more interdisciplinary and critical approach that centers the voices of undocumented individuals and interrogates the ideological foundations of legal exclusion. Reform efforts must address not only policy outcomes but also the structural conditions that produce legal marginality. By shifting the focus from status-based entitlement to universal personhood and human dignity, legal systems can begin to dismantle the hierarchies that sustain inequality and forge new pathways toward justice and inclusion.

8. Conclusion

The legal status of undocumented individuals in neoliberal democracies reflects a complex and often contradictory matrix of exclusion, control, and conditional inclusion. As this review has demonstrated, undocumented lives are situated within a legal landscape that constructs their presence as both necessary and illegitimate—welcomed for their labor and economic contributions but denied the legal protections afforded to citizens and recognized residents. The result is a condition of enduring legal liminality, where individuals are governed without being protected and made visible to enforcement without being acknowledged as rights-bearing subjects. This legal marginality is not incidental or peripheral; it is a central feature of how modern neoliberal democracies manage migration, define national belonging, and reproduce social hierarchies.

Crucially, the legal frameworks that regulate undocumented status are deeply shaped by neoliberal ideologies that prioritize market efficiency, individual responsibility, and state securitization over inclusive justice. The convergence of immigration and criminal law, the increasing use of temporary and revocable legal statuses, and the delegation of enforcement to private actors are all manifestations of a system that seeks to discipline and manage undocumented populations without fully integrating them into the legal community. Rights and protections become increasingly stratified and conditional, tied to economic performance and legal compliance rather than to universal principles of dignity and personhood.

At the same time, emerging critiques and alternative legal visions point toward the possibility of more

inclusive and humane responses. Concepts such as post-national citizenship, sanctuary policies, human rights-based approaches, and proposals for regularization or decriminalization of status represent efforts to reimagine legal recognition beyond the rigid boundaries of state-centered citizenship. These alternatives challenge the assumption that legal protection must be tied to national belonging and instead promote a vision of justice rooted in the inherent dignity of all individuals. The task of rethinking legal status and protection for undocumented individuals is urgent and necessary. Legal systems that fail to recognize the humanity of those within their borders ultimately undermine their own legitimacy and the values they purport to uphold. The exclusion of undocumented persons is not a neutral legal reality but a deliberate outcome of political, economic, and ideological choices. It is therefore a site of contestation and potential transformation. Addressing this condition requires not only legal reform but also a fundamental shift in how societies understand citizenship, belonging, and responsibility.

Moving forward, policymakers, legal scholars, and advocates must continue to interrogate the assumptions that underpin current legal regimes and seek out innovative pathways that prioritize inclusion over exclusion. This means recognizing the contributions and lived realities of undocumented individuals, affirming their right to protection and dignity, and resisting the instrumentalization of legal status as a tool of marginalization. Ultimately, justice for undocumented populations cannot be achieved within the narrow confines of neoliberal logic. It requires a bold commitment to reimagining legal personhood and belonging in ways that center humanity, equity, and shared responsibility.

Authors' Contributions

Authors contributed equally to this article.

Declaration

In order to correct and improve the academic writing of our paper, we have used the language model ChatGPT.

Transparency Statement

Data are available for research purposes upon reasonable request to the corresponding author.

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References

- Altman, T. (2024). Civil Society Silos. *Migration and Society*, 7(1), 78-93. <https://doi.org/10.3167/arms.2024.070108>
- Esien, E. B. (2022). Transnational Network and Information Flow in African Refugees and Undocumented Migrants' International Migration Process. *Ilomata International Journal of Social Science*, 3(2), 117-132. <https://doi.org/10.52728/ijss.v3i2.465>
- Gasztold, B. (2019). In Pursuit of the American DREAM, or Mirage? Undocumented Youth in YA Fiction. *Ad Americam*, 20, 15-28. <https://doi.org/10.12797/adamericam.20.2019.20.02>
- Hendricks, M. J. (2022). National Identity and Immigration: Threat From Undocumented Immigrants in the United States. 183-202. <https://doi.org/10.1037/0000294-010>
- J, D. P., & Karunakar, M. (2024). The Biopolitics of Disability. *Journal of Literary Studies*, 40. <https://doi.org/10.25159/1753-5387/16432>
- Kim, N. R. (2022). A Study on the Protection of Fundamental Right of Undocumented Immigrant Children: Focused on the European Countries. *European Constitutional Law Association*, 29, 217-248. <https://doi.org/10.21592/eucj.2022.39.217>
- Lopez, W. D. (2021). Leisy J. Abrego and Genevieve Negrón-Gonzales (Eds.), *We Are Not Dreamers: Undocumented Scholars Theorize Undocumented Life in the United States* (Durham, NC: Duke University Press, 2020, \$26.95). Pp. 264. <sc>978 1 4780 1083 8. *Journal of American Studies*, 55(5), 1241-1242. <https://doi.org/10.1017/s0021875821001018>
- Martínez, R. A. (2024). Transnational DREAMer Narratives. 49(1), 79-100. <https://doi.org/10.1525/azt.2024.49.1.79>
- Masias, A., & Mixon, J. (2022). Living Undocumented. 93-97. <https://doi.org/10.4324/9781003169468-14>
- Mavelli, L. (2022). Introduction: The Neoliberal Value of Citizenship. 1-24. <https://doi.org/10.1093/oso/9780192857583.003.0001>
- Moise, A. (2023). "My Nine-Digit American-Dream": Undocumentedness and Unwelcomeness in <i>Do You Know Who I Am?</i>. *East-West Cultural Passage*, 23(1), 61-73. <https://doi.org/10.2478/ewcp-2023-0006>
- Nair, P. (2023). With Strings Attached. *Romanic Review*, 114(2), 420-435. <https://doi.org/10.1215/00358118-10604276>
- Opperdoes, M., Greenbrook, J. T. V., Danielsson, L., Elden, H., & Ascher, H. (2020). Navigating Contrasting Liminalities: Women's Experience of Childbearing While Undocumented in Sweden. *European journal of public health*, 30(Supplement_5). <https://doi.org/10.1093/eurpub/ckaa166.946>
- Qraini, E. T., & Awad, Y. (2020). Of Basement Kitchens and Filthy Lodges: Spaces in Desai's the Inheritance of Loss and Hage's Cockroach. *Advances in Language and Literary Studies*, 11(2), 28. <https://doi.org/10.7575/aiac.all.v.11n.2p.28>
- Ramos-Sánchez, L. (2020). The Psychological Impact of Immigration Status on Undocumented Latinx Women: Recommendations for Mental Health Providers. *Peace and Conflict Journal of Peace Psychology*, 26(2), 149-161. <https://doi.org/10.1037/pac0000417>
- Roberts, M. (2020). Globalization and Neoliberalism: Structural Determinants of Global Mental Health? *Humanity & Society*, 45(4), 471-508. <https://doi.org/10.1177/0160597620951949>
- Ruszczyc, S. P. (2021). Moral Career of Migrant II/Legality: Undocumented Male Youths in New York City and Paris Negotiating Deportability and Regularizability. *Law & Society Review*, 55(3), 496-519. <https://doi.org/10.1111/lasr.12571>