Minnesota Journal of Law & Inequality

Volume 43 | Issue 2 Article 2

May 2025

An Examination of Public Benefit Enrollment Data in Minnesota Immigrant Households as Evidence of Public Charge Chilling Effect

Ana Pottratz Acosta
Mitchell Hamline School of Law

An Examination of Public Benefit Enrollment Data in Minnesota Immigrant Households as Evidence of Public Charge Chilling Effect

Ana Pottratz Acosta†

Introduction

A hallmark of the first Trump Administration was its pervasive attacks against immigrant communities. While President Trump often touts his efforts to ramp up immigration enforcement to secure the southern border, other policies aimed at limiting legal immigration to the U.S. through administrative action had a far greater impact on U.S. immigration policy during his first term. One such action, the promulgation of regulations setting forth more subjective standards to determine if an immigrant was subject to the public charge grounds of inadmissibility, led to the denial of many family-based permanent residence applications that were otherwise approvable under existing law.

In addition to increased denials of permanent residence applications under this new standard for public charge, there was significant anecdotal evidence the public charge regulations, together with earlier leaked drafts, caused a chilling effect within immigrant communities. Specifically, many immigrant and mixed status families opted to forego public benefits they were otherwise entitled to receive on behalf of themselves or eligible U.S. Citizen children due to fear it would cause them to be ineligible for future immigration benefits or result in deportation.

---

†. Ana Pottratz Acosta is a Professor of Law at Mitchell Hamline School of Law where she teaches the Health Law Clinic, Immigration Law, and Professional Responsibility. Immediately prior to joining the faculty of Mitchell Hamline School of Law, Prof. Pottratz Acosta worked as an employment-based immigration attorney for the firm of Stinson Leonard Street LLP. Prof. Pottratz Acosta also worked as a supervising attorney with the Lutheran Social Services of New York (LSSNY) – Immigration Legal Services Program, representing low-income immigrants in New York City in their immigration matters before U.S. Citizenship and Immigration Services and the Executive Office of Immigration Review. Prof. Pottratz Acosta is a 2004 graduate of Columbia Law School, a 2001 graduate of the University of Minnesota, and she is currently a PhD Candidate in International Migration and Cooperative Development with Universidad Pontificia Comillas.

In this Article, the Author will examine means-tested benefit enrollment data for Minnesota immigrant households to see if this data supports existence of a chilling effect through decreased immigrant household enrollment in these programs following publication of the public charge regulations. Additionally, while several previous studies using survey data support the existence of a public charge chilling effect, this Article will build on this previous work by analyzing primary enrollment data provided directly by the Minnesota Department of Human Services (MN-DHS), the agency administering these programs.

Part I of this Article will define the public charge ground of inadmissibility under section 212(a)(4) of the Immigration and Nationality Act (INA) and will provide a history of the public charge ground of inadmissibility and enforcement of the public charge statute prior to 2016.

Part II of this Article will summarize the rollout of the public charge regulations by the first Trump Administration. This Part will include discussion of leaked draft executive orders and proposed regulations in 2017 and 2018, changes to the Foreign Affairs Manual (FAM) guidance on public charge in early 2018, and the proposed and final public charge regulations in 2018 and 2019, respectively. Part II will also provide a summary of litigation challenging the final public charge regulations in 2019, including the February 2020 U.S. Supreme Court Order lifting a lower court preliminary injunction and allowing the final regulation to go into effect.

Part III of this Article will discuss the chilling effect of the public charge regulations within immigrant communities, both in terms of contemporaneous anecdotal reports and recent studies, using survey data, to determine impact of the public charge rule on immigrant receipt of means-tested benefits. Part III will also discuss the resulting harm to immigrant households when families forgo means-tested public benefits, such as food insecurity and poor health outcomes due to lack of medical coverage.

Part IV of the Article will then examine enrollment data from 2013 to 2021 for federal means-tested programs in Minnesota, provided directly by MN-DHS, to determine if there were reductions in enrollment following publication of leaked drafts and the proposed and final public charge regulations in the Federal Register. This examination will include an analysis of immigrant household enrollment data for the Minnesota Family Investment Program (MFIP), the Minnesota state-based family cash assistance program funded by Temporary Assistance to Needy Families

(TANF) federal block grant funds, and the Supplemental Nutrition Assistance Program (SNAP). Finally, Part V will provide recommendations to states on how to combat fear within immigrant communities and encourage eligible immigrant families to enroll in means-tested benefit programs.

I. The Public Charge Ground of Inadmissibility: Definition and History

To better understand the regulatory changes to the public charge ground of inadmissibility during the Trump Administration, it is important to understand "inadmissibility" and "public charge" as legal terms under the Immigration and Nationality Act (INA) and the historic background of these terms.

A. "Inadmissibility" and "Public Charge," as Defined by the INA

Consistent with the federal government's plenary power over matters related to national sovereignty, including the enactment and enforcement of immigration laws,[1] Congress has passed laws establishing criteria for immigrants to legally enter the U.S. and be granted lawful permanent resident status. Under these laws, Congress has also established grounds of inadmissibility, found at section 212 of the INA,[2] which make certain "aliens"—the legal term used in the INA to refer to non-citizens[3]—ineligible to enter the U.S. or receive certain immigration benefits, including lawful permanent resident status. The grounds of inadmissibility under section 212 of the INA are varied and include health-related

1. *See* Arizona v. United States, 567 U.S. 387, 394 (2012) (striking down the Arizona State Statute, S.B. 1070 in a 5-3 decision, and holding that "[t]he Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens").

2. *See* Immigration and Nationality Act (INA) of 1952 § 212, 8 U.S.C. § 1182.

3. *See* INA § 101(a)(3). In this Article, the term "alien" will be used when quoting relevant immigration statutes and regulations. The term "alien" is legally defined in INA § 101(a)(3) as "any person not a citizen or national of the United States." *Id.* Because the term "alien" is viewed as a discriminatory, in all parts of this article not directly quoting an immigration statute or regulation, individuals who are not citizens of the U.S. will be referred to as "non-citizens" or by their immigration status within the U.S., such as "lawful permanent resident," "non-immigrant," or "undocumented immigrant."

grounds,[4] criminal grounds,[5] national security grounds,[6] prior violations of immigration law,[7] and the public charge ground of inadmissibility, described further below.

Conceptually, the best way to understand inadmissibility under section 212 is imagining a non-citizen knocking on a door, requesting permission to enter the U.S., and being told by the U.S. government they cannot enter for one of the reasons set forth at section 212. Under the law, a non-citizen may be deemed inadmissible at various points in time when they are knocking on the metaphorical door to request admission to the U.S. In some cases, the non-citizen may literally be "knocking on the door" at our country's border to request admission to the U.S. at an air, land, or sea port of entry and deemed inadmissible by a Customs and Border Protection (CBP) Officer. In other cases, a non-citizen may be deemed inadmissible outside the U.S., when their application for a visa to enter the U.S. as a temporary visitor with a nonimmigrant visa[8] or permanent resident with an immigrant visa[9] is denied at a U.S. consular post abroad due to a ground of inadmissibility under section 212. Lastly, some non-citizens previously admitted to the U.S. with a temporary visa, for example, as a tourist or a temporary

4. *See* INA § 212(a)(1)(A) (deeming a non-citizen who has a communicable disease of public health significance or who has failed to prove that they have received vaccinations for specified vaccine-preventable illnesses, such as measles, mumps, diphtheria, and polio inadmissible to the U.S.).

5. *See* INA § 212(a)(2) (deeming a non-citizen who has been convicted of a certain crime set forth under the statute or who is believed to be engaged in certain criminal activity, such as trafficking of controlled substances, prostitution, human trafficking, or money laundering inadmissible to the U.S.).

6. *See* INA § 212(a)(3) (setting forth "[s]ecurity and related grounds" of inadmissibility).

7. *See* INA § 212(a)(6) (setting forth inadmissibility grounds for "Illegal entrants and immigration violators").

8. *See* INA § 101(a)(15). Under this section, the legal term for non-citizens who are admitted to the U.S. or are present in the U.S. with a temporary form of status valid for a specific period of time, such as F-1 student visa status or H-1B specialty occupation worker status, is "nonimmigrant." *Id.* The INA also lays out specific categories of nonimmigrant status in section 101(a)(15)(A)-(V). *See generally* 9 FAM 401.1 (2024) (directing that non-citizens seeking admission to the U.S. in nonimmigrant status typically must apply for a nonimmigrant visa at the U.S. Embassy or Consulate in their country of citizenship or origin and present evidence of their eligibility for the specific nonimmigrant visa they are seeking (e.g., B-1/B-2 visitor, F-1 student, H-1B specialty occupation worker) and proof they are not subject to any grounds of inadmissibility under the Immigration and Nationality Act § 212).

9. *See generally* INA § 101(a)(20) (defining "lawfully admitted for permanent residence" as a non-citizen granted lawful permanent residence in accordance with immigration laws, which includes after admission as an "immigrant" or adjustment of status from "nonimmigrant" to "immigrant" status as a permanent resident). Non-citizens holding lawful permanent resident status have the right to live in the U.S. indefinitely. *Id.*

worker, may later ask to walk through a second figurative door, inside of the U.S., and exit the second door as a permanent resident by filing an application for adjustment of status to permanent resident.

The main instance when a non-citizen must demonstrate they are admissible and not subject to any of the grounds of inadmissibility under 212 is when they are applying for permanent residence. Eligible non-citizens may apply for lawful permanent residence through one of two processes: filing an application for adjustment of status or consular processing.[10] The first option, adjustment of status, is a process that occurs inside of the U.S. where the non-citizen files an I-485 Application for Adjustment of Status with U.S. Citizenship and Immigration Services (USCIS) and is granted lawful permanent resident status by USCIS after the I-485 application is approved by the agency.[11] Alternatively, permanent residence through consular processing occurs outside of the U.S. when a non-citizen applies for an immigrant visa to enter the U.S. as a permanent resident at a U.S. Embassy or Consulate abroad.[12] After the non-citizen's application for an immigrant visa is approved and the U.S. Consulate issues the non-citizen an immigrant visa, the non-citizen will then travel and enter the U.S. with their immigrant visa. After being admitted to the U.S. by CBP with their immigrant visa, the non-citizen will officially become a permanent resident. In both cases, before a non-citizen can be granted permanent residence through either adjustment of status or consular processing, they are required to demonstrate they are not subject to any ground of inadmissibility under section 212.[13] If the non-citizen applying for permanent residence is deemed inadmissible by USCIS or a Consular Officer, their application for adjustment of status or an immigrant visa will be denied.

Turning to the public charge ground of inadmissibility, any non-citizen deemed "likely at any time to become a public charge is inadmissible" under section 212(a)(4).[14] Historically and under

10. *See* INA § 245. In certain cases, those inside the U.S. may apply for permanent residence through adjustment of status under section 245 by filing Form I-485 with USCIS. Non-citizens outside the U.S. seeking admission to the U.S. as a permanent resident must apply for an "immigrant visa" at a U.S. Embassy or Consulate in their country of origin and establish they are not subject to any grounds of inadmissibility under section 212 before they will be issued an immigrant visa and admitted to the U.S. with an immigrant visa as a lawful permanent resident. 9 FAM 501.1 (2024).

11. *See* INA § 245(a); 8 C.F.R. §§ 245.1–245.2 (2024).

12. *See* 9 FAM 501.1 (2024); 9 FAM 504.1 (2023).

13. *See* INA § 212; 9 FAM 301.1–2, 4 (2024).

14. *See* INA § 212(a)(4).

current interpretation of the law, the U.S. government generally defines "public charge" as a non-citizen who is primarily or wholly dependent on the government or government benefits to support themselves.[15] Because the language of section 212(a)(4) refers to a non-citizen "likely . . . to become a public charge," the assessment of public charge inadmissibility is a forward-looking test of whether the non-citizen is likely to become primarily or wholly dependent on the government or government benefits after admission to the U.S.[16]

In addition to the public charge ground of inadmissibility, at section 212(a)(4),[17] the INA also includes a public charge ground of deportability, at section 237(a)(5).[18] In contrast to public charge inadmissibility, public charge deportability at section 237(a)(5) looks at conduct after admission to the U.S., finding any non-citizen who "within five years after [admission to the U.S.], has become a public charge from causes not affirmatively shown to have arisen since entry" deportable and subject to removal from the U.S. through removal proceedings under section 240.[19]

While certain categories of non-citizens applying for permanent residence are exempt[20] from the public charge ground of inadmissibility, namely humanitarian categories,[21] most non-citizens applying for permanent residence through a family-based[22]

---

15. *Green Card: Public Charge Resources*, U.S. CITIZENSHIP & IMMIGR. SERVS., https://www.uscis.gov/green-card/green-card-processes-and-procedures/public-charge/public-charge-resources [https://perma.cc/348G-RWRW].

16. *See* INA § 212(a)(4).

17. *Id.*

18. *See* INA § 237(a)(5).

19. *Id.*

20. *See, e.g.,* INA § 320; INA § 245; 9 FAM 501.1 (2024). Under the law, certain non-citizens applying for permanent residence are exempt from the public charge ground of inadmissibility. Such categories include 1) children under 18 sponsored for permanent residence by a U.S. citizen parent, who will automatically acquire citizenship upon admission as a permanent resident as U.S. citizens are not subject to public charge or other grounds of inadmissibility and 2) certain humanitarian categories for permanent residence. *See* INA § 320.

21. *See* INA § 212(a)(4)(E) (exempting certain qualified non-citizens applying for permanent residence in specified humanitarian categories from the public charge ground of inadmissibility). The categories include: 1) refugees and asylees applying for permanent residence through a refugee or asylee adjustment of status application; 2) non-citizens applying for permanent residence through a Violence Against Women Act (VAWA) self-petition; 3) non-citizens applying for permanent residence through a Special Immigrant Juvenile Status (SIJS) petition; 4) non-citizens applying for permanent residence through a U-visa as a victim of a qualifying crime or a T-visa as the victim of international trafficking; and 5) Cuban nationals applying for permanent residence through the Cuban Adjustment Act. *See id.*

22. *See* INA § 201(b)(2)(A) (providing that a U.S. citizen can sponsor their spouse,

or employment-based[23] petition must present evidence they are not inadmissible as a public charge. In cases of non-citizens applying for permanent residence through a family-based petition, the biggest hurdle is often the public charge ground of inadmissibility at INA § 212(a)(4). Since passage of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) in 1996, overcoming public charge inadmissibility in family-based cases requires, at minimum, that the petitioner or co-sponsor execute an I-864 Affidavit of Support, with evidence of current income above 125% of the poverty line.[24]

B. History of Public Charge Inadmissibility in U.S. Immigration Law: 1700s to 1990s

Although the public charge ground of inadmissibility has garnered significant attention in recent years, laws and policies prohibiting the admission of immigrants on account of public charge are as old as our country. In viewing the various iterations of laws barring the admission of immigrants likely to become a public charge, from the colonial era to the present, two common and distinctly American themes emerge. First, the negative presumption that certain immigrants will be a drain on society and

children under 21 years of age, and, if the U.S. citizen child is over 21 years of age, their parents, as their immediate relative, a family-based permanent resident category not subject to annual numerical limits). *See also* 8 U.S.C. § 1153(a)(1)–(4) (providing that U.S. citizens and lawful permanent residents can file a family-based petition in specified preference categories, subject to annual limits set by Congress) (family members covered under this section for citizens include adult unmarried children over 21 (FB-1), married children (FB-3) and their siblings (FB-4); for lawful permanent residents, spouse and children under 21 (FB-2A) and unmarried children over 21 (FB-2B)).

23. *See* INA § 203(b)(1)–(5) (providing that non-citizens may also apply for permanent residence in a preference system, ranging from first preference (EB-1) to fifth preference (EB-5), through an employment-based petition filed as either a self-petition or a petition by their employer sponsoring them for permanent residence, subject to annual numeric limitations set by Congress).

24. *See* INA § 212(a)(4)(C)(ii); INA § 213a. In family-based petitions for permanent residence, the petitioning U.S. citizen or lawful permanent resident relative must execute an I-864 Affidavit of Support under section 213a. The I-864 Affidavit of Support must also include evidence of the U.S. citizen or lawful permanent resident's income, including a copy of the petitioner's tax returns or Internal Revenue Service (IRS) tax transcripts for the three most recent years and copies of recent paystubs to show current earnings above 125% of the federal poverty line, as determined by the petitioner's household size. *Id.* If the U.S. citizen or lawful permanent resident family petitioner's income is not above 125% of the poverty line, they must submit an I-864A from other members of the household to show the earnings of the household are above 125% of the poverty line, or from a U.S. citizen or permanent resident co-sponsor with household income above 125% of the poverty line. *Id.*

should be excluded on that basis. Secondly, the distinctly American value of rugged individualism, which views poverty as an individual moral failure, caused by a person's idle nature and unwillingness to work, instead of a failure of society to care for its most vulnerable members.

The earliest public charge laws in the U.S. were enacted during the colonial era in the form of "poor laws," which were enacted at the municipal level in cities and towns throughout the thirteen original colonies.[25] These poor laws in Colonial America were modeled after the British system of poor laws to distribute aid to poor residents, with a presumption that all were capable of working and limiting aid only to residents deemed *worthy* of assistance due to infirmity.[26] Poor laws in Colonial America also contained a law of settlement, which allowed cities and towns to expel, remove and banish non-local poor people and which was frequently used to bar immigrants from residing in the community.[27]

For the first hundred years of our country, from 1776 to 1875, there were no significant federal laws regulating or limiting the admission of immigrants to the U.S.[28] However, in the mid-19th century, New York and Massachusetts, the two states receiving a majority of immigrants at the time, adopted laws and policies at the state level regulating the admission and deportation of immigrants, including public charge related restrictions.[29] The push in Massachusetts and New York to enact laws regulating and restricting immigration at the state level was driven by a rise in nativism and anti-immigrant sentiment at the time against Irish immigrants.[30] In 1847, New York established of the Board of Commissioners of Emigration of the State of New York, a state agency authorized to prohibit the landing and entry of "any lunatic, idiot, deaf and dumb, blind or infirm persons, not members of

25. *See* William P. Quigley, *Reluctant Charity: Poor Laws in the Original Thirteen States*, 31 U. RICH. L. REV. 111, 113–19 (1997).

26. *Id.* at 115.

27. *See id.* at 140–49.

28. *See generally* D'vera Cohn, *How U.S. Immigration Laws and Rules Have Changed Through History,* PEW RSCH. CTR. (Sept. 30, 2015), https://www.pewresearch.org/short-reads/2015/09/30/how-u-s-immigration-laws-and-rules-have-changed-through-history/ [https://perma.cc/8KKF-S7V9] (providing a brief overview of U.S. immigration law over the years).

29. *See* Anna Shifrin Faber, *A Vessel for Discrimination: The Public Charge Standard of Inadmissibility and Deportation,* 108 GEO. L.J. 1364, 1370–71 (2020).

30. *See* Brief of Legal Historians as Amici Curiae in Support of Plaintiffs-Appellees and Urging Affirmance at 7, California v. U.S. Dep't of Homeland Sec., 981 F.3d 742 (9th Cir. 2020) (No. 19-17214).

emigrating families*, and who . . . are likely to become permanently a public charge*" unless the shipmaster provided a bond for the passenger.[31] Later, in 1850, Massachusetts began deporting foreign-born "paupers" to their country of origin, on account of public charge, based on the broad reading of a statute authorizing the state of Massachusetts to transfer or send "the inmates of a state almshouse, state lunatic hospital, or the hospital at Rainsford Island [an immigrant hospital] . . . to any state or *place where they belong*."[32] However, these public charge state laws in Massachusetts and New York were not widely enforced and were primarily used in a targeted manner against Irish immigrants as a pretext to deny them admission or deport them back to Ireland.[33]

In the late 19th century, Congress passed a series of laws imposing significant restrictions on legal immigration at the federal level for the first time. These included three laws, the Page Act of 1875[34] and the Chinese Exclusion Act of 1882,[35] which explicitly restricted immigration to the U.S. from China and other Asian countries, and the Immigration Act of 1882,[36] widely considered to be the first general immigration law at the federal level.

Following passage of the Immigration Act of 1882, the federal government assumed control over the regulation of immigration to the U.S. The Immigration Act of 1882 also delegated cabinet level executive authority over enforcement of immigration law to the Department of Treasury,[37] a power still held by the federal executive branch today under the Department of Homeland Security (DHS). Additionally, the Immigration Act of 1882 required the screening of all immigrants prior to their admission to the U.S. and granted the Secretary of the Treasury authority to exclude any immigrant who was a "convict, lunatic, idiot, or *any person unable to take care of himself or herself without becoming a public charge*."[38] This marked the first restriction to immigration under federal law excluding immigrants on account of public charge. Later, in 1891,

31. *Id.* at 7 (emphasis added).

32. *See id.* at 7–8 (emphasis added).

33. *Id.* at 8–9.

34. *See* Page Act of 1875, Pub. L. No. 43-141, 18 Stat. 447 (repealed 1974) (restricting the admission of laborers from Asia and the admission of Asian women suspected of being prostitutes).

35. *See* Chinese Exclusion Act of 1882, Pub. L. No. 47-126, 22 Stat. 58 (repealed 1943) (barring the admission of immigrants who were nationals of China).

36. *See generally,* Immigration Act of 1882, Pub. L. No. 47-376, 22 Stat. 214 (amended 1891).

37. *Id.* at § 2.

38. *Id.* (emphasis added).

Congress passed a second immigration law entitled an Act in Amendment to the Various Acts Relative to Immigration and the Importation of Aliens Under Contract or Agreement to Perform Labor.[39] This 1891 law further expanded the categories of excludable immigrants and granted the federal government authority to exclude any immigrant "likely to become a public charge."[40] This language from 1891 mirrors the language found in our current law at section 212(a)(4) of the Immigration and Nationality Act, setting forth the public charge ground of inadmissibility in effect today.[41]

Adopting the public charge category as a ground for excluding immigrants from the U.S. had an immediate and significant impact on the admission of immigrants in the late 19th and early 20th centuries. Between 1892 and 1920, public charge was the most common ground of excludability used to deny immigrants admission to the U.S. During this period, approximately 55% of the 308,000 immigrants excluded from the U.S. were denied admission on account of public charge.[42] Nonetheless, the total number of immigrants excluded between 1892 and 1920 amounted to a fraction of the large number of immigrant arrivals to the U.S. during this period. Between 1891 and 1920, over 18 million people immigrated to the U.S.,[43] primarily from Italy and Eastern Europe, as part of the last major wave of immigrant arrivals to the U.S. from the European continent.[44]

The next significant change in federal immigration law was the Immigration Act of 1924, also known as the Johnson-Reed Act, which significantly limited legal immigration to the U.S. through a

---

39. Immigration Act of 1891, Pub. L. No. 51-551, 26 Stat. 1084 (amended 1903).

40. *Id.* § 1.

41. Immigration and Nationality Act (INA) § 212(a)(4), 8 U.S.C. § 1182(a)(4).

42. *See* IMMIGR. & NATURALIZATION SERV., U.S. DEP'T. OF JUST., 2001 STATISTICAL YEARBOOK OF THE IMMIGRATION AND NATURALIZATION SERVICE 258 tbl.66, (2003) [hereinafter 2001 INS STATISTICAL YEARBOOK] https://www.dhs.gov/sites/default/files/publications/Yearbook_Immigration_Statistics_2001.pdf [https://perma.cc/WV9S-JVXJ] (showing that between 1892 and 1920, a total of 168,426 immigrants were excluded and denied admission to the U.S. on account of public charge, accounting for 54.54% of the 308,835 immigrants excluded from the U.S. during this time period).

43. *See id.* at 16 tbl.1 (illustrating that between 1891 and 1920, a total of 18,218,761 individuals immigrated to the U.S.).

44. *See id.* at 18 tbl.2. Of the 18.2 million total immigrants who were admitted to the U.S. between 1891 and 1920, approximately 16 million were immigrants from Europe. *Id.* During this time period, 3.8 million individuals immigrated from Italy, 3.6 million from the Austro-Hungarian Empire, and 3 million from countries that were part of the former Soviet Union. *Id.*

nationality-based quota system.[45] Under the Johnson-Reed Act quota system, legal immigration from each country was limited to 2% of the foreign-born population from that country present in the U.S. as determined by the 1890 Census.[46] Exemptions from the quota system under the Johnson-Reed Act were limited to dependent wives and unmarried children under 18 of U.S. Citizens, foreign students, college and university professors, religious workers, and immigrants from the Western Hemisphere.[47]

Passage of the Johnson-Reed Act in 1924 was largely driven by xenophobic attitudes against Southern and Eastern European immigrants and the eugenics movement in the U.S., which viewed these newer immigrants as genetically inferior to earlier waves of immigrants from Northern Europe.[48] The choice to use census data from the 1890 Census was made to ensure the 2% quota was higher for the favored Northern European immigrants who had arrived in the U.S. before 1890 and lower for the less desirable immigrants who arrived between 1890 and 1920.[49] The impact of the Johnson-Reed Act was immediate and dramatic. In 1925, the first year the Johnson-Reed Act of 1924 was in effect, the total number of immigrants admitted to the U.S. fell to 294,314, a decrease of approximately 60% from the previous year when 706,896 immigrants were admitted to the U.S.[50] Immigration to the U.S. fell

---

45. *See generally* Immigration (Johnson-Reed) Act of 1924, Pub. L. 68-139, 43 Stat. 153 (repealed 1965).

46. *Id*. § 11.

47. *Id*. § 4.

48. The Johnson-Reed Act was influenced by the eugenics movement and the work of Charles Davenport, a eugenicist who supported restrictions immigration from Southern and Eastern Europe and argued that "allowing the wrong races into America could adulterate our national germ plasm with socially unfit traits." Gordon F. Sander, *100 Years After Immigration Law Shut America's Doors, its Legacy Revives,* WASH. POST, (May 24, 2024), https://www.washingtonpost.com/history/2024/05/24/johnson-reed-act-immigration-quotas-trump/ [https://perma.cc/TF8A-3DWV]. The influence of the eugenics movement and xenophobic bias against Southern and Eastern Europeans was also seen in an opinion piece by Sen. David Reed, one of the lead sponsors of the 1924 law, published in the New York Times one month before the Johnson-Reed Act was signed into law, where he stated, "The races of man who have been coming in recent years are wholly dissimilar to the native-born Americans [and were] untrained in self-government, a faculty that has taken the Northwestern peoples many centuries to acquire." *See id.*; *see also,* Muzaffar Chishti & Julia Gelatt, *A Century Later, Restrictive 1924 U.S. Immigration Law has Reverberations in Immigration Debate,* MIGRATION POL'Y INST., (May 15, 2024), https://www.migrationpolicy.org/article/1924-us-immigration-act-history#origins [https://perma.cc/V9GV-B8CJ]. (discussing the history of immigration laws in the United States and its effect on the current state of the law).

49. *See* Sander, *supra* note 48.

50. 2001 INS STATISTICAL YEARBOOK, *supra* note 42, at 16 tbl.1. In Fiscal Year

even further in the years after passage of the Johnson-Reed Act. Between 1931 and 1940, only 528,431 immigrants were admitted to the U.S., approximately one tenth of the number admitted between 1911 and 1920, when 5,735,811 immigrants were admitted over a ten-year period.[51]

While the xenophobic bias against Southern and Eastern European immigrants and a belief these immigrants would be a burden on the U.S. drove passage of the Johnson-Reed Act, the public charge ground of excludability statutory language remained unchanged from the Immigration Act of 1891. However, after implementation of the Johnson-Reed Act and quota system limiting annual immigration to the U.S. based on nationality, the total number of immigrants denied admission to the U.S. on account of public charge dramatically decreased. According to figures from the former Immigration and Naturalization Service (INS), between 1931 and 1960, fewer than 14,000 immigrants were deemed excludable on account on public charge, accounting for fewer than 15% of the 119,000 immigrants deemed inadmissible during this time period.[52] This decrease can be attributed, in part, to the significant reduction in overall immigration to the U.S. after 1924 under new quota system. However, another explanation for this decrease in public charge-based exclusions from the U.S. is that the Johnson-Reed Act created a process for U.S. Citizen sponsors to post a cash bond or provide an assurance to the U.S. government of their ability and willingness to economically support intending immigrants to prevent them from becoming a public charge.[53] This assurance of economic support by U.S. citizen sponsors contained in the Johnson-Reed Act served as a precursor to the I-864 Affidavit of Support, a form used in family-based permanent residence applications today to overcome the public charge ground of inadmissibility.[54]

Ultimately, the quota system created by the Johnson-Reed Act was repealed and replaced by the Immigration and Nationality Act

---

1924, prior to the Johnson-Reed Act taking effect, the U.S. admitted 706,896 immigrants. *Id.* In contrast, only 294,314 immigrants were admitted in FY 1925, marking a reduction of 58.4% in total immigration to the U.S. in a single year. *Id.*

51. *Id.*

52. *Id.* at 258 tbl.66. Between 1931 and 1960, 13,740 immigrants were denied admission on account of public charge excludability, accounting for 11.54% of the 119,065 immigrants denied admission during this period. *Id.*

53. *See* Johnson-Reed Act of 1924, Pub. L. 68-139, § 9(b), 43 Stat. 153, 157–58 (repealed 1965).

54. *See* Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, 64 Fed. Reg. 28689, 28693 (Mar. 26, 1999) [hereinafter 1999 Legacy INS Memo].

of 1965, the law establishing the framework of our modern immigration system of family-based and employment-based petitions for permanent residence.[55] After the Immigration Act of 1965 went into effect, exclusion of immigrants on account of public charge became even more rare. This was because the U.S. Department of State (DOS) and Immigration and Naturalization Service (INS)[56] had a general policy of accepting an affidavit of support presented by the U.S.-based petitioner or sponsor as sufficient evidence the immigrant would not become a public charge.[57] According to statistics published by the INS, only 176 total immigrants were deemed excludable between 1961 and 1980 on account of public charge.[58]

C. Changes to the Public Charge Ground of Inadmissibility and Deportability Under IIRAIRA and Non-Citizen Eligibility for Means-tested Public Benefits Under the PRWORA

After passage of the Immigration Act of 1965, submission of an affidavit of support or employment verification letter was generally sufficient to overcome the public charge ground of inadmissibility. However, this changed in 1996 when Congress passed two laws: the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA)[59] and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA),[60] or Welfare Reform, which

---

55. *See* Immigration and Nationality Act of 1965, Pub. L. 89-236, § 201(a), 79 Stat. 911 (1965) (current version at 8 U.S.C. 1101 *et seq*.).

56. The Immigration and Naturalization Service (INS) was a sub-agency of the Department of Labor and later the Department of Justice responsible for immigration enforcement and adjudication of applications for immigration benefits between 1933 and 2003. Following creation of the Department of Homeland Security (DHS) as a cabinet level agency in 2003, the functions of the former INS were transferred to three new subagencies under the DHS: Customs and Border Protection (CBP), Immigration and Customs Enforcement, (ICE) and US Citizenship and Immigration Services (USCIS). Since 2003, adjudication of immigration benefits, including applications for permanent residence, is completed by USCIS. *See generally* U.S. CITIZENSHIP & IMMIGR. SERV. HIST. OFF. & LIBR. DEP'T, OVERVIEW OF INS HISTORY (2012), https://www.uscis.gov/sites/default/files/document/fact-sheets/INSHistory.pdf [https://perma.cc/TV6V-5Y8M] (discussing the history of the Immigration and Naturalization Service).

57. *See* Robert A. Mautino, *Sponsor Liability for Alien Immigrants: The Affidavit of Support in Light of Recent Developments,* 7 SAN DIEGO L. REV. 314, 315–16, (1970).

58. *See* 2001 INS STATISTICAL YEARBOOK, *supra* note 42, at 258.

59. *See* Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104-208, 110 Stat. 3009-546 (1996) (codified as amended at Immigration and Nationality Act, 8 U.S.C. §§ 1101–1107).

60. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (1996) (amended 1997).

changed the statutory language of the public charge ground of inadmissibility and non-citizen eligibility for means-tested public benefits.

Both IIRAIRA and PRWORA were part of a series of laws passed in the 1990s during the Clinton Administration that marked a rightward shift in the national political landscape in the U.S. Other prominent laws passed during this period include the North American Free Trade Agreement (NAFTA)[61] and the Violent Crime Control and Law Enforcement Act of 1994,[62] more commonly known as the 1994 Crime Bill. Like other laws and policies implemented in the 1990s by the Gingrich Congress and Clinton Administration, both IIRAIRA and PRWORA were driven by animus and negative stereotypes against the poor and communities of color.[63] Both IIRAIRA[64] and PRWORA[65] were passed by the 104th Congress in 1996 on a bipartisan basis.

---

61. *See* North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057 (1993) (repealed 2020).

62. *See* Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103-322, 108 Stat. 1796 (1993) (current version at 34 U.S.C. § 12101).

63. *See infra* notes 84–85.

64. IIRAIRA was initially passed by the House of Representatives, as part of the Omnibus Consolidated Appropriations Act for Fiscal Year 1997, on June 13, 1996, with a vote of 278 to 126, with 88 Democratic Representatives voting in favor of the bill. *See* Fiscal Year 1997 Department of Defense Appropriations: H.R. Roll Vote No. 247, 104th Cong., H.R. 3610 (June 13, 1996), https://clerk.house.gov/Votes/1996247 [https://perma.cc/S644-UDA7]. The Fiscal Year 1997 Omnibus Bill, which included IIRAIRA, was passed by the Senate on July 18, 1996, with a vote of 72 to 27, with 22 Democrats voting to pass the bill. *See* Omnibus Consolidated Appropriations Act, 1997: S. Roll Vote No. 200, 104th Cong., H.R. 3610 (July 18, 1996), https://www.senate.gov/legislative/LIS/roll_call_votes/vote1042/vote_104_2_00200.htm [https://perma.cc/KE4V-QVBE]. Notable Democratic politicians who voted in favor of the Omnibus bill incorporating IIRAIRA include Tom Daschle, Diane Feinstein, Harry Reid, and Bernie Sanders. After being sent to Conference Committee, the final version of the Omnibus Consolidated Appropriations Act, including IIRAIRA, passed the House on September 28, 1996, by a vote of 370 to 37, with 167 Democrats and 1 Independent voting in favor of the bill. *See* Conference Report Department of Defense Appropriations for F.Y. 1997: H.R. Roll Vote No. 455, 104th Cong., H.R. 3610 (Sept. 28, 1996), https://clerk.house.gov/Votes/1996455 [https://perma.cc/Z44C-6R8Y]. The final Omnibus Bill, including IIRAIRA, was passed by voice vote in the Senate on September 30, 1996, and was signed into law by President Clinton that same day. *See* H.R.3610 - Omnibus Consolidated Appropriations Act, 1997, 104th Cong., Bill History (1996), https://www.congress.gov/bill/104th-congress/house-bill/3610/all-actions?overview=closed#tabs [https://perma.cc/7N9B-MLNX].

65. PRWORA initially passed by the House of Representatives on July 18, 1996, by a vote of 256 to 170, with 30 Democrats voting in favor of the bill. *See* Welfare and Medicaid Reform Act of 1996: H.R. Roll Vote 331, 104th Cong., H.R. 3734 (July 18, 1996), https://clerk.house.gov/Votes/1996331 [https://perma.cc/NB84-A356]. PRWORA was then passed by the Senate on July 23, 1996, by a vote of 74 to 24, with 22 Democrats voting in favor of the bill, including President Joe Biden, Former Secretary of State John Kerry, and Sen. Harry Reid. Welfare and Medicaid Reform

i. Changes Under IIRAIRA to the Public Charge Inadmissibility Statutory Language

The Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA), which was passed by Congress and signed into law on September 30, 1996, was the last major piece of immigration legislation passed by Congress and signed into law.[66] Unlike past immigration laws, like the Johnson-Reed Act and Immigration Act of 1965 which reformed the systems and procedures to legally immigrate to the U.S., IIRAIRA was an enforcement-only bill increasing penalties against undocumented immigrants and immigrants convicted of a crime. IIRAIRA was also the law that effectively invented our modern system of immigration enforcement, granting the executive branch authority to create the deportation machine that exists under current immigration law.

One key feature of IIRAIRA was the creation of expedited removal along land borders and ports of entry, granting front line immigration agents the authority to issue a removal order against any non-citizen without authorization to enter the U.S.[67] Under expedited removal, non-citizens have very limited procedural due process protections and can only assert an asylum claim or credible fear of persecution as a defense to removal.[68] With respect to the criminalization of non-citizens, IIRAIRA included a significant expansion of criminal convictions deemed *aggravated felonies*[69] and

---

Act of 1996: S. Roll Vote 232, 104th Cong., H.R. 3734 (July 23, 1996) https://www.senate.gov/legislative/LIS/roll_call_votes/vote1042/vote_104_2_00232.htm [https://perma.cc/56VT-ZMQF]. After passing out of Conference Committee, the final version of PWORA was passed by the House of Representatives on July 31, 1996, with a vote of 328 to 101, with 98 Democrats voting to pass the final bill. *See* Welfare and Medicaid Reform Act of 1996, Conference Report: H.R. Roll Vote 383, 104th Cong., H.R. 3734 (July 31, 1996) https://clerk.house.gov/Votes/1996383 [https://perma.cc/D6N3-3P7X]. The Senate passed the final version of PRWORA on August 1, 1996, with a vote of 78 to 21, with 25 Democratic Senators voting in favor of the final bill. *See* Welfare and Medicaid Reform Act of 1996, Conference Report : S. Roll Vote 262, 104th Cong., H.R. 3734 (Aug. 1, 1996), https://www.senate.gov/legislative/LIS/roll_call_votes/vote1042/vote_104_2_00262.htm [https://perma.cc/FW6Q-92B9]. PRWORA was signed into law by Bill Clinton on August 22, 1996. *See* H.R. 3734 - Welfare and Medicaid Reform Act of 1996, 104th Cong., Bill History (1996) https://www.congress.gov/bill/104th-congress/house-bill/3734/all-actions [https://perma.cc/6L78-BMGQ].

66. *See* Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) of 1996, Pub. L. 104-208, 110 Stat. 3009-546 (1996) (codified as amended at Immigration and Nationality Act, 8 U.S.C.§§ 1101–1107).

67. Immigration and Nationality Act, Pub. L. No. 414, § 235(b)(1)(A)(i), 66 Stat. 163 (as amended through Pub. L. 119-1); 8 U.S.C. § 1225(b)(1)(A)(i).

68. Immigration and Nationality Act (INA), § 235(b)(1)(A)(i), (B), 8 U.S.C. § 1225(b)(1)(A)(i), B.).

69. *See* IIRAIRA § 321.

increased penalties for non-citizens convicted of an aggravated felony, including mandatory detention[70] and removal from the U.S. with a permanent bar on ever returning.[71] IIRAIRA also included a provision known as the three- and ten-year bar,[72] a provision penalizing non-citizens who departed after being present in the U.S. without authorization by barring their reentry to the U.S. for up to ten years. One consequence of the three- and ten-year bar is that undocumented immigrants with significant periods of unlawful presence were effectively stuck inside the U.S. and could not depart the U.S. to regularize their status through consular processing without triggering this bar.[73] Consequentially, in the decade following passage of IIRAIRA and creation of the three- and ten-year bar, the undocumented immigrant population in the U.S. rose from 5 million in 1996[74] to 11.8 million in 2007.[75]

With respect to the public charge ground of inadmissibility, IIRAIRA included significant changes to the statutory language defining public charge and expanded the criteria that could be expressly considered by the government in determining whether a non-citizen was likely to become a public charge. This statutory language, as amended by IIRAIRA, retained the language from past laws deeming non-citizens likely to become a public charge as inadmissible and expanded the factors to be considered in determining whether a non-citizen was likely to become a public charge, through the following:

---

70. *Id.* § 303(a); INA § 236(c)(1)(B).

71. IIRAIRA § 301(b)(1); INA § 212(a)(9)(A)(ii).

72. The Illegal Immigration Reform and Immigration Responsibility Act of 1996 expanded the grounds of inadmissibility under INA § 212(a)(9)(B) to include the three- and ten-year bars. Pursuant to INA § 212(a)(9)(B), if a non-citizen is unlawfully present in the U.S. for between six months and one year and departs the U.S., they are inadmissible and barred from reentering the U.S. for three years. INA § 212(a)(9)(B). For non-citizens unlawfully present for more than one year prior to departure from the U.S. if they departed after being unlawfully present for between six months and one year and barring reentry for ten years if they departed the U.S. after accumulating more than one year of unlawful presence. IIRAIRA § 301(b)(1).

73. *See The Three- and Ten-Year Bars: How New Rules Expand Eligibility for Waivers,* AM. IMMIGR. COUNCIL 1 (Oct. 2016), https://www.americanimmigrationcouncil.org/sites/default/files/research/three_and_ten_year_bars.pdf [https://perma.cc/M4PY-29FK].

74. U.S. DEP'T OF HOMELAND SEC., *Illegal Alien Resident Population* 6 (1996), https://www.dhs.gov/xlibrary/assets/statistics/illegal.pdf [https://perma.cc/6WGL-Y7A3].

75. MICHAEL. HOEFER, NANCY RYTINA & BRYAN C. BAKER, ESTIMATES OF THE UNAUTHORIZED IMMIGRANT POPULATION RESIDING IN THE UNITED STATES: JANUARY 2007, U.S. DEP'T OF HOMELAND SEC. 1 (2008), https://www.dhs.gov/xlibrary/assets/statistics/publications/ois_ill_pe_2007.pdf [https://perma.cc/8NP7-48Y2].

> (a) IN GENERAL.—Paragraph (4) of section 212(a) (8 U.S.C. 1182(a)) is amended to read as follows:
>
> (4) PUBLIC CHARGE.—
>
> (A) IN GENERAL.—Any alien who, in the opinion of the consular officer at the time of application for a visa, or in the opinion of the Attorney General at the time of application for admission or adjustment of status, is likely at any time to become a public charge is excludable.[76]
>
> (B) FACTORS TO BE TAKEN INTO ACCOUNT.—
>
> (i) In determining whether an alien is excludable under this paragraph, the consular officer or the Attorney General shall at a minimum consider the alien's—
>
> (I) age;
>
> (II) health;
>
> (III) family status;
>
> (IV) assets, resources, and financial status; and
>
> (V) education and skills.[77]

In addition to expanding the factors that could be considered by the government in determining if a non-citizen was inadmissible on account of public charge, IIRAIRA also created new requirements under INA § 213A for the Affidavit of Support completed by U.S. petitioners on behalf of sponsored non-citizens to overcome the public charge ground of inadmissibility. Under IIRAIRA and INA § 213A, the Affidavit of Support needed to be executed as a legally enforceable contract between the U.S. petitioner or sponsor and the government where the U.S. petitioner or sponsor affirms they will economically support to the sponsored non-citizen after their admission to the U.S.[78] Additionally, INA § 213A required the U.S. petitioner or sponsor submit evidence demonstrating their household earnings were above 125% of the federal poverty line.[79] The Affidavit of Support contract, under IIRAIRA, also contained a legally enforceable requirement binding the U.S. petitioner or sponsor to reimburse the federal or state

---

76. While the statutory language in the IIRAIRA Bill passed by Congress notes grounds of excludability, under IIRAIRA, prior grounds of exclusion and excludability under the Immigration and Nationality Act (INA) § 212 became grounds of inadmissibility. Following passage of IIRAIRA, all sections of the INA referencing "exclusion" and "excludable aliens" were amended to the terms "inadmissible", "inadmissibility" and "inadmissible alien." *See* Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104-208, § 301(b)(1), 110 Stat. 3009-546, 576–78, (1996) (codified as amended at INA, 8 U.S.C.§§ 1182(a)); INA, Pub. L. No. 414, § 212, 66 Stat. 163 (2025) (as amended through Pub. L. 119-1).

77. *See* IIRAIRA, Pub. L. No. 104, § 531(a), 110 Stat. 3009-784, (1996), (codified as amended at INA, 8 U.S.C. § 1182(a)).

78. *Id*. § 531(a)(4)(C)(ii), § 551(a); INA, § 213A, 8 U.S.C. § 1183a.

79. *See* IIRAIRA § 551(a); INA § 213(A)(1)(A).

government for any means-tested public benefits received by the sponsored non-citizen for five years after the date they were granted permanent residence.[80] The requirements for the Affidavit of Support marked a significant change in policy prior to 1996, where only an informal assurance or affidavit by the U.S. petitioner pledging to support the non-citizen was sufficient to overcome the public charge ground of excludability.[81] IIRAIRA also amended the INA to require that all non-citizens applying for permanent residence through a family-based petition provide an Affidavit of Support meeting the requirements of INA § 213A executed by the U.S. citizen or permanent resident relative sponsoring them for permanent residence.[82]

ii. Changes Under the PRWORA of 1996 to Non-Citizen Eligibility for Means-tested Benefits

The other law passed in 1996 related to public charge was the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA),[83] more commonly known as welfare reform. PRWORA was passed in response to years of negative rhetoric demonizing *welfare queens* abusing the system[84] and perceptions that poor individuals receiving means-tested benefits would become dependent on these programs.[85] Additionally, many of the policy arguments prompting the passage of PRWORA contained

80. IIRAIRA § 551(a).

81. *See* Mautino, *supra* note 57.

82. IIRAIRA § 531(a)(4).

83. *See* Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (1996).

84. The trope of the "welfare queen" was frequently promoted by President Ronald Reagan, who shared the story of Linda Taylor, a Black woman in Chicago, charged and convicted of welfare fraud after allegedly using four aliases to fraudulently collect $3,000 in welfare benefits. In an exaggerated retelling of Linda Taylor's story in a 1976 campaign speech, President Reagan stated, "She has 80 names, 30 addresses, 12 Social Security cards and is collecting veterans' benefits on four non-existing deceased husbands. . . . And she's collecting Social Security on her cards. She's got Medicaid, getting food stamps, and she is collecting welfare under each of her names. Her tax-free cash income alone is over $150,000." *See 'Welfare Queen' Becomes Issue in Reagan Campaign,* N.Y. TIMES (Feb. 15, 1976), https://www.nytimes.com/1976/02/15/archives/welfare-queen-becomes-issue-in-reagan-campaign-hitting-a-nerve-now.html [https://perma.cc/XS5U-2AT6].

85. A 2001 NPR/Kaiser Family Foundation/Kennedy School poll found that 52% of those surveyed believed "lack of motivation was a major cause of poverty" and 44% did not believe "most welfare recipients today really want to work." *See* Daniel T. Lichter & Martha L. Crawley, *Poverty in America: Beyond Welfare Reform*, 57 POPULATION BULLETIN, 1, 18–19 (June 2002) [hereinafter *PRB 2002 Report*], https://www.prb.org/wp-content/uploads/2021/02/06052002_57.2PovertyInAmerica.pdf [https://perma.cc/62AV-HSNR].

significant Anti-Black and Anti-Latinx racist undertones.[86] The final version of PRWORA, signed into law by President Clinton on August 22, 1996, contained a number of measures effectively gutting the social safety net created by the New Deal in the 1930s and the Great Society in the 1960s.

Arguably, the most notable change under PRWORA was elimination of the guaranteed federal cash benefit program for low-income families, Aid to Families with Dependent Children (AFDC), which was replaced with the Temporary Assistance to Needy Families (TANF) program.[87] Unlike the AFDC program, where eligible households received federally funded cash benefits,[88] funding for the TANF program was issued as block grants to each state.[89] Under the TANF block grant system, states were given discretionary authority to spend block grant funds on cash benefits or programing for low-income residents, like job training programs.[90] The TANF program also included time limits on receipt of TANF cash benefits, including an individual lifetime cap of five years on TANF benefits,[91] and requirements that TANF beneficiaries begin working within two years of receiving benefits.[92]

---

86. Many policy arguments in support of welfare reform included negative Anti-Black and Anti-Latino stereotypes painting Black and Latino welfare recipients as "lazy" and "taking advantage of the system" and Latina immigrants as "hyper-fertile" women who deliberately gave birth on U.S. soil to benefit from social welfare programs. *See* ELISA MINOFF, ISABELLA CAMACHO-CRAFT, VALERY MARTÍNEZ & INDIVAR DUTTA-GUPTA, CTR. FOR THE STUDY OF SOC. POL'Y & CTR. ON POVERTY & INEQ. GEORGETOWN L., HOW THE LAW THAT BROUGHT US TEMPORARY ASSISTANCE FOR NEEDY FAMILIES EXCLUDED IMMIGRANT FAMILIES & INSTITUTIONALIZED RACISM IN OUR SOCIAL SUPPORT SYSTEM 11, 12 (2021) [hereinafter CSP/Georgetown Report], https://www.georgetownpoverty.org/wp-content/uploads/2021/08/LastingLegacyExclusion-Aug2021.pdf [https://perma.cc/V9B4-XYKK].

87. *See* Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, § 103, 110 Stat. 2105, 2212–61 (codified as amended at 42 U.S.C. §§ 601–19).

88. *See Aid to Families with Dependent Children (AFDC) and Temporary Assistance for Needy Families (TANF) - Overview,* OFF. ASSISTANT SEC'Y FOR PLAN. & EVALUATION, U.S. DEP'T OF HEALTH & HUM. SERVS., https://aspe.hhs.gov/aid-families-dependent-children-afdc-temporary-assistance-needy-families-tanf-overview [https://perma.cc/TFW5-VYM2].

89. *PRB 2002 Report*, *supra* note 85, at 4.

90. *See Policy Basics: Temporary Assistance for Needy Families,* CTR. ON BUDGET & POL'Y PRIORITIES 2–4 (Mar. 1, 2022) [hereinafter *TANF Policy Basics*], https://www.cbpp.org/sites/default/files/atoms/files/7-22-10tanf2.pdf [https://perma.cc/8KQQ-KW2].

91. *Id.* at 4. There are some exceptions to this five-year cap on TANF benefits: states can exceed the sixty-month limit for up to 20% of recipient families, there is no limit on families that lack an adult recipient, and there is no limit on families receiving funds that are entirely from the state. *Id.*

92. *Id.* at 5–6; *see also* 42 U.S.C. § 602(a)(1)(A)(ii) (outlining the structure of the

These requirements under TANF were established as part of the "work first" provisions contained in PRWORA, intended to convert cash assistance to a short-term benefit to assist individuals and families experiencing temporary financial hardship.[93] Changes to cash assistance programs under TANF were also aimed at encouraging low income individuals to become self-sufficient through work instead of becoming indefinitely reliant on welfare benefits.[94] However, these goals were never fully realized. In the twenty-five years since PRWORA was passed, studies have found the work reporting requirements to receive TANF cash benefits combined with use of TANF block grant funding for non-cash benefit programs have significantly limited resources available to low-income households and exacerbated issues faced by U.S. households living in poverty.[95]

The other major component of PRWORA relevant to public charge was Title IV of the Act, which limited non-citizen eligibility for federally funded means-tested public benefits.[96] Under PRWORA, non-citizen eligibility for federally funded means tested public benefits—including TANF cash assistance, Supplemental Security Income (SSI), Supplemental Nutrition Assistance Program (SNAP) benefits, and Medicaid coverage—was limited to "qualified aliens."[97]

"Qualified aliens," as defined under PRWORA, generally referred to non-citizens with lawful immigration status allowing them to reside in the U.S. indefinitely and immigrants holding specific humanitarian status identified by Congress in the law.[98] The specific forms of immigration status falling under the definition of "qualified alien" included: lawful permanent residents (LPRs), refugees, asylees, immigrants granted withholding of removal status, and humanitarian parolees.[99] All other non-citizens present in the U.S.—including those present with temporary non-immigrant visa status, Temporary Protected Status (TPS) holders,

program).

93. *See PRB 2002 Report*, *supra* note 85, at 3–4.

94. *Id.* at 8.

95. *See TANF Policy Basics*, *supra* note 90, at 6–8.

96. *See* Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, § 400–451, 110 Stat. 2105 (1996).

97. *See id.* § 401, 110 Stat. 2105, 2261–62 (codified as amended at 8 U.S.C. § 1611).

98. *Id.*; *id.* § 403, 110 Stat. 2105, 2274 (codified as amended at 8 U.S.C. § 1641).

99. *Id.* § 431, 110 Stat. at 2274 (codified as amended at 8 U.S.C. § 1641); *see also* Alison Siskin, *Noncitizen Eligibility for Federal Public Assistance: Policy Overview*, CONG. RSCH. SERV. 1–2 (Dec. 12, 2016), https://sgp.fas.org/crs/misc/RL33809.pdf [https://perma.cc/8TWQ-89FZ].

asylum applicants, those with deferred action, and undocumented immigrants—were deemed "non-qualified immigrants" ineligible for federal means-tested benefits.[100] This marked a significant change to the policy in effect prior to PRWORA which allowed immigrants to receive federally funded means-tested benefits—including cash assistance, SSI, SNAP and Medicaid—so long as they could establish they were "permanently residing under color of law" (PRUCOL).[101] PRWORA also prohibited undocumented immigrants without a valid social security number from receiving Earned Income Tax Credit (EITC) when filing a federal income tax return.[102]

In addition to limiting non-citizen eligibility for means-tested benefits to "*qualified immigrants*," Section 403 of PRWORA contained a rule prohibiting LPRs granted permanent residence on or after August 22, 1996 from receiving federal means-tested public benefits for five years from the date they were granted LPR status.[103] The only exceptions to the five-year bar on eligibility for federal means-tested benefits noted in the statute were for the humanitarian categories of "qualified immigrants" including refugees, asylees, non-citizens granted withholding of removal[104] and certain humanitarian parolees and qualified immigrants who had served in the military.[105] Section 403(c) also noted that certain federally funded programs, including emergency disaster assistance, Women, Infant and Children (WIC) nutrition benefits, Head Start, free and reduced school lunch programs, and federal financial aid for higher education, were not subject to the five-year bar.[106]

PRWORA, together with IIRAIRA, also strengthened provisions from earlier law related to sponsor deeming for LPR's sponsored through a family-based petition in the Affidavit of Support completed by the petitioner or co-sponsor in their case.

---

100. *See* Siskin, *supra* note 99, at Appendix A.

101. Historically, prior to the change in the law in 1996 under PRWORA, a person "permanently residing under color of law" or PRUCOL referred to any non-citizen present in the U.S. who the federal government knew to be present but had no plans to remove or deport from the U.S. *See id.* at 4 (citing ALISON SISKIN, CONG. RSCH. SERVS., UNAUTHORIZED ALIENS' ACCESS TO FED. BENEFITS: POL. & ISSUES 4 (2016), https://sgp.fas.org/crs/misc/RL33809.pdf [https://perma.cc/G7LA-MH4C]).

102. *See* Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, § 451, 110 Stat. 2105, 2276–77 (codified as amended at 26 U.S.C. § 32).

103. *Id.* § 403(a).

104. *Id.* § 403(b)(1).

105. *Id.* § 403(b)(2).

106. *Id.* § 403(c).

Under the sponsor deeming rule, codified at 8 U.S.C. § 1631, the income of the sponsor who completed an Affidavit of Support on behalf of an LPR sponsored through a family-based petition is deemed to the LPR when calculating their household income.[107] As a result, because the sponsor's income is deemed to an LPR under the sponsor deeming rules, typically they will not meet the income requirements to receive means-tested benefits prior to becoming a U.S. citizen through naturalization or accumulating forty quarters of Social Security covered earnings.[108]

a. The 1999 Legacy INS Memo and Enforcement of the Public Charge Ground of Inadmissibility by the INS and DHS: 1999 to 2017

Following passage of IIRAIRA and PRWORA in 1996, there was considerable confusion and fear within immigrant communities around the public charge ground of inadmissibility and penalties for past receipt of federal means-tested benefits.

With respect to PRUCOL, non-citizens lawfully receiving federal means-tested public benefits prior to PRWORA taking effect on August 22, 1996, Sections 401 and 402 of PRWORA allowed these PRUCOL non-citizens to remain eligible for SSI and Medicaid, if tied to their SSI benefits.[109] Section 402 of PRWORA also allowed qualified immigrants, namely LPRs lawfully residing in the U.S. on August 22, 1996, to apply for SSI benefits after the law went into effect.[110] This section also gave states the discretion to use TANF block grant funding to issue state cash benefits to qualified immigrants, regardless of their date of entry, so long as they were not subject to the five-year bar on eligibility for receipt of means-tested benefits.[111] Nonetheless, many immigrants who have lawfully received means-tested benefits prior to 1996 remained concerned that their prior receipt benefits would put their immigration status at risk and limit their ability to sponsor family members for permanent residence.[112]

In response to these concerns, on March 26, 1999, the INS issued an Agency Field Guidance Memorandum in the Federal Register to clarify the standards used by the agency to determine

107. 8 U.S.C. § 1631(a).

108. *See* Siskin, *supra* note 99, at 4.

109. *See* Personal Responsibility and Work Opportunity Reconciliation Act, §§ 401–02, 110 Stat. at 2261–65 (codified as amended at 8 U.S.C. §§1611–12).

110. *Id.* § 402.

111. *Id.* § 402(b).

112. *See* Faber, *supra* note 29, at 1378.

whether a non-citizen is inadmissible under INA section 212(a)(4) or deportable under INA 237(a)(5) as a public charge.[113] This Agency Field Guidance, known as the "1999 Legacy INS Memo," became the primary authority used by the INS and later USCIS when adjudicating permanent residence applications and determinations of public charge inadmissibility.[114] With respect to public charge inadmissibility determinations under INA section 212(a)(4), made when a non-citizen is applying for permanent residence through consular processing or adjustment of status, the 1999 Legacy INS Memo clarified a number of ambiguities under the new statutory language. First, the agency clarified that "public charge" was defined as someone "*primarily dependent on the government* for subsistence," as evidenced by "receipt of public cash assistance for income maintenance" or Medicaid benefits to cover the cost of institutionalization at a long term care facility.[115] The 1999 Legacy INS memo also clarified that submission of a validly executed I-864 Affidavit of Support with evidence of the sponsor's income above 125% of the poverty line should be given significant weight in determining whether an non-citizen was inadmissible as likely to become a public charge.[116]

Following publication of the 1999 Legacy INS Memo, from 1999 to 2017, it was the general policy of USCIS and consular officers to deem submission of a validly executed I-864 Affidavit of Support as sufficient to overcome the public charge ground of inadmissibility in family-based permanent residence cases.[117]

---

113. *See* 1999 Legacy INS Memo, *supra* note 54.

114. *Id.* at 28689.

115. *Id.*

116. *See id.* at 28690, 28693 (stressing the I-864 affidavit of support as a positive factor); *see also* IMMIGR. LEGAL RES. CTR., A QUICK LEGAL BACKGROUND, PUBLIC CHARGE AND IMMIGRATION LAW 3 (2021) [hereinafter ILRC Public Charge Background], https://www.ilrc.org/sites/default/files/resources/public_charge-_a_quick_legal_background_0.pdf [https://perma.cc/3YPN-8FUH] ("The Affidavit of Support offers strong evidence that the immigrant will not become primarily dependent on the government.");

117. ILRC Public Charge Background, *supra* note 116, at 3; *see also* Catholic Legal Immigration Network, Inc., FAQ on Public Charge for Intending Immigrants 2 (2019), https://www.cliniclegal.org/resources/ground-inadmissibility-and-deportability/faq-public-charge-intending-immigrants [https://perma.cc/F7XE-R2V8] (noting that the I-864 was the primary factor used to determine public charge inadmissibility).

II. Changes to Public Charge Inadmissibility Under the Trump Administration

Within weeks of President Trump taking office on January 20, 2017, it became clear that the Trump Administration intended to use executive authority to reshape immigration policy. Notable Executive Orders issued by President Trump within his first week in office included Executive Orders on Border Security,[118] Interior Immigration Enforcement,[119] and the first version of the Travel Ban.[120]

In addition to these official Executive Orders by the Trump Administration in January 2017, leaked drafts of three additional immigration Executive Orders were published by Vox on January 25, 2017.[121] These leaked draft Executive Orders included plans to terminate the Deferred Action for Childhood Arrivals (DACA) program, changes to the H-1B program and other areas of employment-based immigration, and reinterpretation of the public charge ground of inadmissibility.[122] Of note, a version of each of the policies outlined in these leaked drafts were eventually implemented by the Trump Administration. The final version of these policies included the Buy American, Hire American Executive Order,[123] issued April 18, 2017, to reform the H-1B program; termination of the DACA program on September 5, 2017,[124] a policy eventually struck down by the Supreme Court in June 2020;[125] and the proposed and final public charge regulations in October 2018[126]

118. *See* Exec. Order No. 13767, 3 C.F.R. 263 (2018).

119. *See* Exec. Order No. 13768, 3 C.F.R. 268 (2018).

120. Under the first version of the Travel Ban, issued on January 27, 2017, admission of refugees through the U.S. Refugee Admissions Program was suspended for 120 days, admission of immigrants from Iran, Iraq, Libya, Somalia, Sudan and Yemen was suspended for 90 days and admission of Syrian refugees was suspended indefinitely. *See* Exec. Order No. 13769, 3 C.F.R. 272 (2018).

121. *See* Matthew Yglesias & Dara Lind, *Read Leaked Drafts of 4 White House Executive Orders on Muslim Ban, End to DREAMer Program, and More*, VOX (Jan. 25, 2017), https://www.vox.com/policy-and-politics/2017/1/25/14390106/leaked-drafts-trump-immigrants-executive-order [https://perma.cc/WPB2-9W2R].

122. *Id*.

123. *See* Exec. Order. No. 13788, 3 C.F.R. 325 (2018).

124. *See* U.S. DEP'T. OF HOMELAND SEC., MEMORANDUM ON RECISSION OF DEFERRED ACTION FOR CHILDHOOD ARRIVALS (DACA) https://www.dhs.gov/archive/news/2017/09/05/memorandum-rescission-daca [https://perma.cc/43LB-2RW8]

125. *See* U.S. Dep't. of Homeland Sec. v. Regents of the Univ. of Cal., 591 U.S. 1 (2020).

126. Inadmissibility on Public Charge Grounds, 83 Fed. Reg. 51114 (proposed Oct. 10, 2018) (to be codified at 8 C.F.R. pts. 103, 212, 213, 214, 245, 248).

and August 2019,[127] respectively. While these policies were not implemented for some time after publication of the leaked drafts, the circulation of these leaked drafts signaled President Trump intended to follow through on campaign promises to crack down on immigration.[128] Additionally, the January 2017 Executive Orders and published leaked drafts further amplified uncertainty and fear within immigrant communities following the election of President Trump in November 2016.[129]

A. Summary of Leaked Drafts of the Public Charge Executive Order and Regulations: 2017 and 2018

Prior to the official publication of the proposed public charge regulations in the Federal Register on October 10, 2018, leaked drafts of executive orders and regulations on public charge were published by various news outlets in January 2017[130] and early 2018.[131] These leaked drafts, which are summarized below, further

127. Inadmissibility on Public Charge Grounds, 84 Fed. Reg. 41292 (Aug. 14, 2019) (to be codified at 8 C.F.R. pts. 103, 212, 213, 214, 245, 248).

128. *See* Yglesias & Lind, *supra* note 121.

129. *See generally* Samantha Artiga & Petry Ubri, *Living in an Immigrant Family in America: How Fear and Toxic Stress are Affecting Daily Life, Well-Being, & Health*, KAISER FAMILY FOUND. (Dec. 2017), https://files.kff.org/attachment/Issue-Brief-Living-in-an-Immigrant-Family-in-America [https://perma.cc/NMJ2-N6SX] (reporting findings from interviews with focus groups of 100 parents from 15 countries and pediatricians regarding how immigration policy was affecting the "daily lives, well-being, and health of immigrant families, including their children").

130. *See* Abigail Hauslohner & Janell Ross, *Trump Administration Circulates More Draft Immigration Restrictions, Focusing on Protecting U.S. Jobs,* WASH. POST (Jan. 31, 2017), https://www.washingtonpost.com/world/national-security/trump-administration-circulates-more-draft-immigration-restrictions-focusing-on-protecting-us-jobs/2017/01/31/38529236-e741-11e6-80c2-30e57e57e05d_story.html [https://perma.cc/2UCW-D44T]; *see also* Dara Lind, *A Leaked Trump Order Suggests He's Planning to Deport More Legal Immigrants for Using Social Services,* VOX (Jan. 31, 2017) [hereinafter Lind, *A Leaked Trump Order*], https://www.vox.com/policy-and-politics/2017/1/31/14457678/trump-order-immigrants-welfare [https://perma.cc/N6EC-A598].

131. *See* Yeganeh Torbati*, Trump Administration May Target Immigrants Who Use Food Aid, Other Benefits,* REUTERS (Feb. 8, 2018), https://www.reuters.com/article/us-usa-immigration-services-exclusive/exclusive-trump-administration-may-target-immigrants-who-use-food-aid-other-benefits-idUSKBN1FS2ZK/ [https://perma.cc/5EXB-ZMT7]; *see also* Dara Lind, *Exclusive: Trump's Draft Plan to Punish Legal Immigrants for Sending US-Born Kids to Head Start,* VOX (Feb. 8, 2018) [hereinafter Lind, *Exclusive: Trump's Draft Plan*], https://www.vox.com/2018/2/8/16993172/trump-regulation-immigrants-benefits-public-charge [https://perma.cc/7FYF-G3YX]; Nick Miroff, *Trump Proposal Would Penalize Immigrants Who Use Tax Credits and Other Benefits,* WASH. POST (Mar. 28, 2018), https://www.washingtonpost.com/world/national-security/trump-proposal-would-penalize-immigrants-who-use-tax-credits-and-other-benefits/2018/03/28/4c6392e0-2924-11e8-bc72-077aa4dab9ef_story.html [https://perma.cc/4W5T-Q4TL].

stoked fear and confusion within immigrant communities and mixed status households regarding penalties for receiving means-tested public benefits.[132]

i. January 2017 Draft Public Charge Executive Order Published by the Washington Post and Vox

By the second week of the Trump presidency, several news outlets reported that the Trump Administration was considering issuing an executive order penalizing immigrant and mixed status households for receipt of means-tested public benefits.[133] According to the draft executive order[134] published by the Washington Post and Vox on January 31, 2017,[135] the Trump Administration planned to issue new regulations on the application and enforcement of the public charge grounds of inadmissibility under INA section 212(a)(4)[136] and deportability under INA section 237(a)(5).[137]

At the outset, Section 1 of the draft executive order indicated the purpose of the executive order was "to protect American taxpayers and promote immigrant self-sufficiency."[138] Section 1 also contained a misleading statement that households headed by immigrants are more likely than those headed by citizens to use federal means-tested benefits.[139] These statements in Section 1

---

132. *See* Artiga & Ubri, *supra* note 129, at 15.

133. Hauslohner & Ross, *supra* note 130; Lind, *A Leaked Trump Order*, *supra* note 130.

134. Memorandum for the President: Executive Order on Protecting Taxpayer Resources by Ensuring Our Immigration Laws Promote Accountability and Responsibility (Jan. 23, 2017) [hereinafter Jan. 2017 Draft Public Charge EO], https://platform.vox.com/wp-content/uploads/sites/2/chorus/uploads/chorus_asset/file/7872571/Protecting_Taxpayer_Resources_by_Ensuring_Our_Immigration_Laws_Promote_Accountability_and_Responsibility.0.pdf?_gl=1*fs1f5c*_ga*NjA0MDYxNTQ3LjE3MjA2OTQ4OTM.*_ga_C3QZPB4GVE*MTcyMzc1ODM4MC44LjEuMTcyMzc1ODM5MS40OS4wLjA [https://perma.cc/7V3L-B9YA].

135. Hauslohner & Ross, *supra* note 130; Lind, *A Leaked Trump Order*, *supra* note 130.

136. Immigration and Nationality Act (INA) § 212(a)(4), 8 U.S.C. § 1182(a)(4).

137. INA § 237(a)(5).

138. *See* Jan. 2017 Draft Public Charge EO, *supra* note 134, at 3.

139. While there is some ambiguity in the available data regarding use of means-tested benefits by immigrant households, namely mixed status households comprised of non-citizens and citizens entitled to receive means-tested benefits, a majority of research shows that individual immigrants use means-tested public benefits at lower rates and at lower portions than native-born U.S. citizens. *See* Tim O'Shea & Cristobal Ramón, *Immigrants and Public Benefits: What Does the Research Say?,* BIPARTISAN POL'Y CTR. (Nov. 2018), https://bipartisanpolicy.org/download/?file=/wp-content/uploads/2019/03/Immigrants-and-Public-Benefits-What-Does-the-Research-Say.pdf [https://perma.cc/ZA9S-XLM7]; *see also* Michael Howard & Alex Nowrasteh,

appeared to indicate the Trump Administration's intent to penalize mixed status households, particularly households comprised of undocumented immigrant parents and U.S. citizen children, receiving means-tested benefits.[140]

With respect to public charge inadmissibility under INA section 212(a)(4), Section 2 of the draft executive order began by stating, "it is the policy of the United States to deny admission to any alien who is likely to become a public charge," effectively reiterating statutory language in effect since 1882.[141] However, Section 3 of the draft executive order indicated an intention by the Trump Administration to overhaul agency interpretation and enforcement of the public charge grounds of inadmissibility and deportability. First, Section 3 instructed the Secretary of Homeland Security to rescind any field guidance interpreting the public charge grounds of inadmissibility or deportability, presumably to rescind the 1999 Legacy INS Memo.[142] Section 3 also instructed the Secretary of Homeland Security to issue new regulations providing standards for "determining which aliens are inadmissible or deportable on public-charge grounds" along with new regulations defining "means-tested public benefits."[143] The latter directive, to issue a new rule defining means-tested public benefits, indicated an intention to expand the list of benefits that would make an immigrant inadmissible or deportable as a public charge specifically excluded from consideration under the 1999 Legacy INS Memo.[144] The draft executive order also sought to strengthen the enforceability of I-864 Affidavits of Support to seek reimbursement from petitioners and sponsors for the cost of federal means-tested public benefits provided to sponsored immigrants after their admission to the U.S.[145] Additionally, Section 2 of the draft executive order stated it was the policy of the U.S. to "identify and remove, as expeditiously as possible, any alien who has become a

---

Immigrant and Native Consumption of Means-Tested Welfare and Entitlement Benefits in 2020, CATO INST. (Jan. 31, 2023), https://www.cato.org/sites/cato.org/files/2023-01/BP148.pdf [https://perma.cc/W2UH-JYNM].

140. Jan. 2017 Draft Public Charge EO, *supra* note 134.

141. *Id.* at 3.

142. *Id.*

143. *Id.*

144. *See* Hauslohner & Ross, *supra* note 130 (discussing the leaked draft of the public charge executive order, immigration advocates expressed concerns that the definition of *means-tested public benefit* could be expanded to include programs like federally funded free and reduced school lunch and Children's Health Insurance Program (CHIP) benefits); Lind, *supra* note 130 (same).

145. *See* Jan. 2017 Draft Public Charge EO, *supra* note 134, at 3, 5.

public charge and is subject to removal,"[146] indicating the Trump Administration's intention to ramp up removal of immigrants on account of public charge deportability under INA section 237(a)(5).

Other portions of the draft executive order further reiterated the Trump Administration's intention to target mixed status families comprised of undocumented immigrant parents and U.S. citizen children. Specifically, Section 3(d) of the executive order instructed the Secretary of the Treasury to issue regulations requiring all household members to have a social security number to be eligible for the child tax credit,[147] effectively eliminating this benefit for undocumented immigrants filing a tax return with an individual tax identification number (ITIN).[148] Section 3(f) of the draft executive order also required the Council of Economic Advisers to provide an annual report on "the cost to American taxpayers of providing means-tested public benefits . . . to households headed by illegal immigrants,"[149] a measure clearly targeting mixed status households.

The draft executive order also contained language throughout the document promoting the narrative that immigrants are a drain on the system at the expense of native-born U.S. citizens. Specifically, Section 3 of the draft executive order required the Council of Economic Advisors to provide a report on "the impact of low-skilled immigrant workers on the long-term solvency of the Social Security Trust Fund."[150] Ironically, such a report would illustrate that undocumented workers pay an estimated $12 to $13 billion each year in unclaimed payroll taxes and these funds are what keep the Social Security system solvent.[151] The draft executive

146. *Id.* at 3.

147. *Id.* at 4.

148. *See* AM. IMMIGR. COUNCIL, THE FACTS ABOUT THE INDIVIDUAL TAXPAYER IDENTIFICATION NUMBER (ITIN) 1 (2022), https://www.americanimmigrationcouncil.org/sites/default/files/research/the_facts_about_the_individual_tax_identification_number_0.pdf [https://perma.cc/RK4M-JUTA] ("The Individual Taxpayer Identification Number (ITIN) is a tax-processing number issued by the Internal Revenue Service (IRS) to ensure that people–including undocumented immigrants–pay taxes even if they do not have a Social Security Number (SSN) and regardless of their immigration status.") ("According to []the IRS, in 2015, '4.4 million ITIN files paid over $5.5 billion in payroll and Medicare taxes and $23.6 billion in total taxes.'").

149. *See* Jan. 2017 Draft Public Charge EO, *supra* note 134, at 5.

150. *Id.* at 5.

151. *See,* Nina Roberts, *Undocumented Immigrants Quietly Pay Billions Into Social Security and Receive No Benefits*, NPR MARKETPLACE, https://www.marketplace.org/2019/01/28/undocumented-immigrants-quietly-pay-billions-social-security-and-receive-no/ [https://perma.cc/8V72-N6WQ] ("According to New American Economy, undocumented immigrants contributed $13 billion into

order also instructed the Secretary of State, Secretary of Homeland Security and Commissioner of Social Security to enact measures "to prohibit aliens from receiving[, for Social Security benefit eligibility purposes,] credit for wages earned during periods of unauthorized work."[152] However, existing law bars undocumented immigrants from receiving Social Security Retirement, Survivors and Disability Insurance (RSDI) benefits, despite their payment of payroll taxes from unauthorized work.[153]

ii. February 8, 2018, Publication of Leaked Initial Draft of Proposed Public Charge Regulations by Reuters and Vox and March 28, 2018 Publication of Leaked Revised Draft Regulations by the Washington Post

On February 8, 2018, the news outlets Reuters[154] and Vox[155] published stories on new leaked draft regulations on public charge inadmissibility under consideration by the Trump Administration. According to these reports and the copy of the leaked draft regulations published by Vox,[156] the Trump Administration planned to rescind the 1999 Legacy INS Memo and significantly expand the criteria that could be considered when evaluating public charge inadmissibility.[157] This revised standard in the leaked draft regulations marked a major departure from the 1999 Legacy INS Memo, which only penalized receipt of cash benefits and Medicaid benefits for long term care, and weighed receipt of additional non-cash benefits as a negative factor when evaluating public charge

---

the Social Security funds in 2016 . . .") ("Three years prior, the Chief Actuary of the Social Security Administration, Stephen Gross, wrote a report that estimated undocumented immigrants contributed $12 billion into Social Security."); *see also* CARL DAVIS, MARCO GUZMAN & EMMA SIFRE, INST. TAX'N AND ECON. POL'Y, TAX PAYMENTS BY UNDOCUMENTED IMMIGRANTS 6 (2024), https://sfo2.digitaloceanspaces.com/itep/ITEP-Tax-Payments-by-Undocumented-Immigrants-2024.pdf [https://perma.cc/5QAB-Y7L3] (discussing a more recent report by the Institute on Taxation and Economic Policy in 2022, finding the employer and employee share of Social Security payroll taxes was $25.7 billion).

152. *See* Jan. 2017 Draft Public Charge EO, *supra* note 134, at 5.

153. Social Security Act § 1137(d)(2)–(3), 42 U.S.C. § 1320b(d)(2)–(3).

154. Torbati, *supra* note 131.

155. Lind, *A Leaked Trump Order*, *supra* note 130.

156. *See* Dep't of Homeland Sec., Staff Level Draft – Not Cleared by Leadership: Inadmissibility on Public Charge Grounds (Feb. 8, 2018) [hereinafter Feb. 2018 Draft Public Charge Regulations], https://platform.vox.com/wp-content/uploads/sites/2/chorus/uploads/chorus_asset/file/10188201/DRAFT_NPRM_public_charge.0.pdf?_gl=1*y1tw37*_ga*NjA0MDYxNTQ3LjE3MjA2OTQ4OTM.*_ga_C3QZPB4GVE*MTcyMzg0Mjg2NS4xMS4wLjE3MjM4NDI4NzIuNTMuMC4w [https://perma.cc/38KM-6N45].

157. *Id.* at 236–38.

inadmissibility.[158] Even more troubling, the leaked draft regulations allowed DHS to consider receipt of means-tested benefits by an immigrant's eligible dependent family members, namely the immigrant's U.S. citizen children, as a negative factor when evaluating public charge inadmissibility.[159] While the leaked draft regulations stated that immigrants would only be penalized for receipt of the expanded list of benefits after the effective date of the final regulations,[160] many immigration advocates expressed concerns about the broad scope of benefit programs listed in the drafted regulations.[161]

According to the leaked draft regulations, immigrants could be deemed inadmissible as a public charge if anyone in their household received non-cash means-tested benefits under the following programs:

- Supplemental Nutritional Assistance Program (SNAP);
- Special Supplemental Nutritional Program for Women, Infants and Children (WIC);
- Children's Health Insurance Program (CHIP);
- Transportation vouchers or non-cash transportation services;
- Public Housing or Section 8 benefits funded by the U.S. Department of Housing and Urban Development (HUD);
- Energy benefits, including the Low-Income Home Energy Assistance Program (LIHEAP); and
- Educational benefits, including benefits under the Head Start Act.[162]

Another major shift from the 1999 Legacy INS Memo was moving away from accepting an I-864 Affidavit of Support as sufficient to overcome public charge inadmissibility to a "totality of the circumstances" approach. Under the totality of the circumstances approach, USCIS officers would weigh positive and negative factors in a forward-looking test to determine if the immigrant is "likely to become a public charge" after being granted permanent resident status.[163] However, the list of negative factors

158. *See* 1999 Legacy INS Memo, *supra* note 54.

159. *Id.* at 234.

160. *See* Feb. 2018 Draft Public Charge Regulations, *supra* note 156, at 236–37.

161. *See* Torbati, *supra* note 131; *see also* Lind, *A Leaked Trump Order*, *supra* note 130.

162. *See* Feb. 2018 Draft Public Charge Regulations, *supra* note 156, at 237–38.

163. *See id.* at 233–36 (discussing how under the leaked draft regulation 8 CFR § 212.22, when determining whether an immigrant is inadmissible as a public charge, DHS was required, at minimum, to consider the immigrant's age, health, family

that could be considered was expansive and included factors like the immigrant having a "costly medical condition" and being unable to show proof of "unsubsidized health insurance," effectively penalizing use of subsidized health insurance plans purchased on the ACA state exchanges.[164]

On March 28, 2018, the Washington Post published a story detailing a second revised leaked draft of the proposed public charge regulations that were even more punitive than the draft regulations described by Reuters and Vox the previous month.[165] In particular, while the March 2018 revised leaked draft excluded Head Start and educational programs from evaluation of public charge inadmissibility, it added receipt of income tax refunds and credits, including the earned-income tax credit as a negative factor to be considered.[166] Given the widespread use of tax credits, the move to add an immigrant's use of tax refunds and credits to the list of criteria to be considered when determining public charge inadmissibility significantly expanded the number of individuals who could be deemed inadmissible as a public charge.[167] The March 2018 revised leaked draft, as reported by the Washington Post, also contained language indicating the Trump Administration was considering issuing new regulations on public charge deportability under INA section 237(a)(5), making it easier to remove lawfully present immigrants as a public charge.[168]

Additionally, the Washington Post story connected the leaked draft public charge regulations to the Trump Administration's desire to limit legal immigration, particularly family-based immigration, often referred to as "chain migration" by Trump Administration officials.[169] In a report analyzing the February 2018 and March 2018 leaked draft public charge regulations, the

---

status, assets, resources and financial status and education and skills, as well as other factors, including previous receipt of means-tested benefits, previous receipt of a fee waiver for an immigration application filed with USCIS, and receipt of means-tested benefits by eligible members of the immigrant's household).

164. *Id.* at 233–35.

165. *See* Miroff, *supra* note 131.

166. *Id.*

167. *Id.* (reporting nearly one-fifth of American taxpayers use the Earned Income Tax Credit (EITC)).

168. *Id.*

169. *Id.* ("[T]he overhaul is part of the Trump Administration's broader effort to curb legal immigration to the United States, and groups favoring a more restrictive approach have long insisted that immigrants are a drag on federal budgets and a siphon on American prosperity.") (discusses how President Trump "blames [the family-based immigration] model for facilitating what he calls 'horrible chain migration'").

Migration Policy Institute (MPI) noted the proposed changes to public charge inadmissibility had the potential to reshape the make-up of future legal immigration flows, particularly in the family-based categories.[170]

B. January 2018 Amendments to the Foreign Affairs Manual Sections on Public Charge Inadmissibility

On January 3, 2018, DOS revised sections of the Foreign Affairs Manual (FAM), the field guidance used by consular officers adjudicating immigrant visa and nonimmigrant visa applications at U.S. Consular posts, amending the standard for determining public charge inadmissibility.[171] Of note, these January 3, 2018 revisions to the FAM (2018 FAM Revisions) occurred months before the DHS Public Charge Inadmissibility Proposed Rule was published in the Federal Register on October 10, 2018[172] and over a year before publication of Final DHS Public Charge Inadmissibility Rule on August 14, 2019[173] and DOS Interim Final Public Charge Rule on October 11, 2019.[174] The 2018 FAM Revisions were in effect and used by Consular Officers until February 24, 2020, when the 2019 DOS Interim Final Public Charge Rule took effect.[175] Further, as detailed below, the 2018 FAM Revisions had a significant impact on

---

170. *See* JEANNE BATALOVA, MICHAEL FIX & MARK GREENBERG, MIGRATION POL'Y INST., CHILLING EFFECTS: THE EXPECTED IMPACT PUBLIC CHARGE RULES AND ITS IMPACT ON LEGAL IMMIGRANT FAMILIES' PUBLIC BENEFITS USE 29–30 (2018), https://www.migrationpolicy.org/sites/default/files/publications/ProposedPublicChargeRule-Final-Web.pdf [https://perma.cc/33UV-W249].

171. *See* 9 FAM 302.8-2(B)(2) (2018); *see also* NAT'L IMMIGR. L. CTR., CHANGES TO "PUBLIC CHARGE" INSTRUCTIONS IN THE U.S. STATE DEPARTMENT'S MANUAL (2018), https://www.nilc.org/wp-content/uploads/2018/02/NILC-FAM-Summary-2018.pdf [https://perma.cc/3RPS-FZXV] (describing two main changes to public charge test: how the agency will not treat affidavits of support as conclusive to the question of public charge, and how the agency will consider non-cash assets of applicants, sponsors, and family members); IMMIGR. LEGAL RES. CTR., LEGAL SERVICES TOOLKIT — PUBLIC CHARGE CONSIDERATIONS: ADJUSTMENT OF STATUS VS. CONSULAR PROCESSING (2019), https://www.ilrc.org/sites/default/files/resources/2019.12_public_charge_considerations.pdf [https://perma.cc/43AV-HPYK] (describing which public charge rules apply when applying for a green card after 2018 changes).

172. *See* Inadmissibility on Public Charge Grounds, 83 Fed. Reg. 51114 (proposed Oct. 10, 2018) (to be codified at 8 C.F.R. pts. 103, 212, 213, 214, 245, 248).

173. *See* Inadmissibility on Public Charge Grounds, 84 Fed. Reg. 41292 (Aug. 14, 2019) (to be codified at 8 C.F.R. pts. 103, 212, 213, 214, 245, 248).

174. Visas: Ineligibility Based on Public Charge Grounds, 84 Fed. 54996 (Oct. 11, 2019).

175. *See* Make the Road New York v. Pompeo, 475 F. Supp. 3d 232, 246 (S.D.N.Y. 2020).

the adjudication and approval rates of immigrant visas for those applying for permanent residence through consular processing.[176]

With respect to the language in the 2018 FAM Revisions, it mirrored the leaked draft public charge inadmissibility regulations published by Reuters and Vox in February 2018 and the Washington Post in March 2018. Notably, these changes shifted public charge inadmissibility determinations away from heavily weighing the I-864 Affidavit of Support to a forward looking totality of the circumstances approach to determine if an immigrant visa applicants was likely to become a public charge.[177] Similar to the February 2018 and March 2018 leaked draft regulations, the 2018 FAM Revisions greatly expanded the evidence considered by consular officers determining if an immigrant visa applicant was likely to become a public charge.[178] However, the expanded evidence to be considered under the 2018 FAM Revisions was even broader than the factors listed in the leaked draft regulations and included *receipt of public assistance of any type by the visa applicant or a family member in the applicant's household,* including the immigrant's petitioning spouse or U.S. citizen children.[179] Additionally, under the 2018 FAM Revisions, the penalty for the immigrant or their household member receiving any type of public assistance was retroactive and instructed consular officers to consider both past and current receipt of public benefits.[180] By granting consular officers broad discretion to consider past receipt of any form of public assistance by anyone in the immigrant's household, the 2018 FAM Revisions made it far easier to deny an applicant's immigrant visa and block them from entering the U.S. as a permanent resident on public charge grounds.

Shortly after the 2018 FAM Revisions took effect in January 2018, immigration attorneys began reporting denials of immigrant visa applications at consulates after a finding the immigrant visa applicant was inadmissible as a public charge, even where the applicant has submitted a valid I-864 Affidavit of Support.[181]

---

176. *Id.*

177. *See* 9 FAM 302.8-2(B)(2) (2018).).

178. *Id.*

179. *Id.*

180. *Id.*

181. *See* Yeganeh Torbati & Kristina Cooke, *Denials of U.S. Immigrant Visas Skyrocket After Little-Heralded Rule Change,* REUTERS (Apr. 15, 2019), https://www.reuters.com/article/us-usa-immigration-visas-insight/denials-of-u-s-immigrant-visas-skyrocket-after-little-heralded-rule-change-idUSKCN1RR0UX/ [https://perma.cc/A4EB-MZRD]; *see also* Ted Hesson, *Exclusive: Visa Denials to Poor Mexicans Skyrocket Under Trump's State Department,* POLITICO (Aug. 6, 2019),

Statistics from the DOS for Fiscal Year 2018 also noted 13,450 immigrant visa applications were denied on account of public charge,[182] a fourfold increase from Fiscal Year 2017 where only 3,237 immigrant visa applications were denied on this basis.[183] In Fiscal Year 2019, DOS denied a total of 20,941 immigrant visa applications on account of public charge,[184] nearly doubling the number of denials from Fiscal Year 2018. News reports from 2019 on this increase in immigrant visa denials at U.S. Consulates on account of public charge also noted a significant portion of these denials were immigrant visa applications filed by Mexican nationals at the U.S. Consulate in Ciudad Juarez.[185] An April 15, 2019 article by Reuters noted that in Fiscal Year 2018 Mexican nationals received 11% fewer immigrant visas compared to 2017.[186] Additionally, an August 6, 2019 Politico story, reported that between October 1, 2018 and July 29, 2019, 5,343 of the 12,197 immigrant visa applications denied by DOS on account of public charge were denied by the U.S. Consulate in Ciudad Juarez.[187]

C. Trump Administration Publication and Implementation of Proposed DHS Regulations (October 2018), Final DHS Regulations (August 2019), and Interim Final DOS Regulations (October 2019) on Public Charge Inadmissibility

After the 2018 FAM Revisions and publication of the leaked draft regulations on public charge inadmissibility in early 2018, many immigration lawyers and advocates anticipated the Trump

---

https://www.politico.com/story/2019/08/06/visa-denials-poor-mexicans-trump-1637094 [https://perma.cc/5MA4-DN52] (discussing how denials of immigrant visa applications increased in 2018 and 2019).

182. *See* TABLE XX IMMIGRANT AND NONIMMIGRANT VISA INELIGIBILITIES (BY GROUNDS FOR REFUSAL UNDER THE IMMIGRATION AND NATIONALITY ACT) FISCAL YEAR 2018, U.S. DEP'T OF STATE (2019), https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2018AnnualReport/FY18AnnualReport%20%20-%20TableXX.pdf [https://perma.cc/5ZS2-5J74].

183. *See* TABLE XX IMMIGRANT AND NONIMMIGRANT VISA INELIGIBILITIES (BY GROUNDS FOR REFUSAL UNDER THE IMMIGRATION AND NATIONALITY ACT) FISCAL YEAR 2017, U.S. DEP'T OF STATE (2018), https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2017AnnualReport/FY17AnnualReport-TableXX.pdf [https://perma.cc/F39T-ZFRE].

184. *See* TABLE XX IMMIGRANT AND NONIMMIGRANT VISA INELIGIBILITIES (BY GROUNDS FOR REFUSAL UNDER THE IMMIGRATION AND NATIONALITY ACT) – FISCAL YEAR 2019, U.S. DEP'T OF STATE (2020), https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2019AnnualReport/FY19AnnualReport-TableXX.pdf [https://perma.cc/4SRA-DJF3].

185. *See* Hesson, *supra* note 181.

186. *See* Torbati & Cooke, *supra* note 181.

187. *See* Hesson, *supra* note 181.

Administration would formally issue and implement new public charge regulations sometime in 2018.[188] Ultimately, on October 10, 2018, DHS formally published Proposed Regulations on Inadmissibility on Public Charge Grounds in the Federal Register,[189] in accordance with the Administrative Procedures Act (APA) notice and comment requirement when promulgating new regulations.[190] On August 14, 2019, after consideration of the public comments received during the 60 day notice and comment period, DHS published the Final Regulations on Inadmissibility on Public Charge Grounds in the Federal Register, to take effect 60 days after publication of the final rule on October 15, 2019.[191] Additionally, on October 11, 2019, DOS published an Interim Final Rule on Visa Ineligibility Based on Public Charge Grounds in the Federal Register, to take effect on October 15, 2019, the same effective date as the DHS Final Rule.[192] The sections below will provide a summary of the DHS Proposed and Final Regulations and DOS Interim Final Regulations on Public Charge Inadmissibility, litigation challenging the proposed and final regulations and implementation of the final regulations.

i. Summary of DHS Proposed and Final Regulations and DOS Interim Final Regulations on Public Charge Inadmissibility

The DHS Proposed Regulations on Inadmissibility on Public Charge Grounds were formally issued through publication in the Federal Register on October 10, 2018.[193] When these proposed regulations were promulgated by the Trump Administration, some portions of the proposed regulations were largely the same as the leaked draft regulations and 2018 FAM Revisions and other portions differed.

---

188. *See* BATALOVA et al., *supra* note 170, at 6 (discussing how the Trump administration was in the process of developing a public charge rule that would likely mirror language from leaked drafts of the regulations published by news outlets in January and March 2018).

189. *See* Inadmissibility on Public Charge Grounds, 83 Fed. Reg. 51114 (proposed Oct. 10, 2018) (to be codified at 8 C.F.R. pts. 103, 212, 213, 214, 245, 248).

190. *See* Administrative Procedure Act, 5 U.S.C. § 553.

191. *See* Inadmissibility on Public Charge Grounds, 84 Fed. Reg. 41292 (Aug. 14, 2019) (to be codified at 8 C.F.R. pts. 103, 212, 213, 214, 245, 248).

192. *See* Inadmissibility on Public Charge Grounds, 84 Fed. Reg. 41292 (Aug. 14, 2019) (to be codified at 8 C.F.R. pts. 103, 212, 213, 214, 245, 248).

193. *See* 2018 DHS Proposed Public Charge Regulations, 83 Fed. Reg. 51114, 51114 (proposed Oct. 10, 2018) (to be codified at 8 C.F.R. parts 103, 212, 213, 214, 245, 248).

Like the 2018 FAM Revisions and leaked draft regulations, the 2018 DHS Proposed Regulations rescinded the 1999 Legacy INS Memo, which heavily weighed the I-864 Affidavit of Support as evidence an immigrant was not inadmissible as a public charge, to a more subjective totality of the circumstances approach.[194] Under this totality of the circumstances approach, adjudication of public charge inadmissibility would be a forward looking test evaluating a number of factors to determine whether an immigrant is *likely to become a public charge* in the future after being granted permanent residence.[195] Under the totality of the circumstances approach, the I-864 Affidavit of Support was just one of many factors that would be considered by a DHS/USCIS officer evaluating whether an immigrant applying for permanent residence is inadmissible as a public charge.[196] In addition to a completed I-864, the factors to be considered were: "age; health; family status; assets, resources, and financial status; education and skills."[197] The 2018 DHS Proposed Regulations also set forth presumptively positive and negative factors and highly weighed positive and negative factors when applying the totality of the circumstances approach.[198] Presumptively positive factors included being of working age between eighteen and sixty-one,[199] having no chronic health conditions,[200] financial support from family,[201] having sufficient assets and resources to support oneself,[202] English language proficiency,[203] and having a bachelor's degree or higher.[204] Presumptively negative factors included: being a minor under 18 or over 61,[205] having a chronic medical condition with a high cost of

194. *Id.* at 51177 ("DHS is proposing to consider the affidavit of support in the totality of the circumstances when determining whether the alien is likely at any time to become a public charge.").

195. *Id.* at 51178(C)(2)–51206(L)(2).

196. *Id.* at 51146.

197. *Id.* at 51178(C)(2), 51291 (detailing the "Minimum factors to consider" for a public charge inadmissibility determination under 8 C.F.R. § 212.22(b)).

198. *Id.* at 51178(C)(2).

199. *Id.* at 51180, 51291. The proposed rule determines the upper age limit by "the minimum 'early retirement age'" set forth in 42 U.S.C. 416(I)(2) which was sixty-one at the time. *Id.* at 51178.

200. *Id.* 51181–84, 51291. Chronic health conditions need not arise to the level that "would render an alien inadmissible under health-related grounds." *Id.* at 51182.

201. *Id.* at 51184–86, 51291.

202. *Id.* at 51186–-89, 51291.

203. *Id.* at 51189, 95–96, 51291.

204. *Id.* at 51189–95, 51291

205. *Id.* at 51180–81, 51291.

care limiting ability to work,[206] having a large family with a high number of dependents,[207] lacking financial resources[208] or education,[209] and lacking English language proficiency.[210] Additionally, having a high net worth or earnings above 250% of the poverty line was deemed a highly-weighed positive factor.[211] Conversely, lack of employment or job prospects,[212] current receipt of one or more public benefits,[213] past receipt of public benefits within 36 months of applying for permanent residence,[214] and diagnosis of a medical condition that is likely to require extensive medical treatment and government subsidized health coverage[215] were listed as highly-weighted negative factors. As part of this new totality of the circumstances approach, immigrants applying for permanent residence through adjustment of status were required to submit the new Form I-944 Declaration of Self-Sufficiency, together with evidence they will not become a public charge.[216]

With respect to past or current receipt of means-tested benefits as a highly weighed negative factor, the language in the 2018 DHS Proposed Regulations was less severe than the 2018 FAM Revisions and the leaked draft regulations. First, while the 2018 DHS Proposed Regulations did expand the list of means-tested public benefits to include certain non-cash benefits, the published regulations only penalized receipt of cash benefits and a limited list of non-cash benefits including: SNAP, Section 8 and other HUD funded housing assistance, and certain Medicaid benefits.[217] The proposed regulations also clarified that an immigrant would be presumptively deemed a public charge only if they received cash public benefits totaling 15% of the poverty line within 12 consecutive months or non-cash benefits for a cumulative of 12 months in a 36-month period.[218] The 2018 DHS Proposed

206. *Id.* at 51182–84, 51291.
207. *Id.* at 51184–86, 51291.
208. *Id.* at 51187–89, 51291.
209. *Id.* at 51190–95, 51291.
210. *Id.* at 51195–96, 51291.
211. *Id.* at 51204, 51292.
212. *Id.* at 51198, 51292.
213. *Id.* at 51198–99, 51292.
214. *Id.* at 51199–200, 51292.
215. *Id.* at 51200–01, 51292.
216. *Id.* at 51228, 51290.
217. *Id.* at 51158–59, 51290; Inadmissibility on Public Charge Grounds, 84 Fed. Reg. 41292 (Aug. 14, 2019) (to be codified at 8 C.F.R. pts. 103, 212, 213, 214, 245, 248).
218. Inadmissibility on Public Charge Grounds, 83 Fed. Reg. 51114 (proposed Oct. 10, 2018) (to be codified at 8 C.F.R. pts. 103, 212, 213, 214, 245, 248).

Regulations also clarified that immigrants would only be penalized for their own receipt of means-tested benefits and would not be penalized by receipt of benefits by their dependents or household members.[219] However, the 2018 DHS Proposed Regulations did clearly state that an immigrant would be deemed inadmissible as *likely at any time to become a public charge* if the DHS/USCIS officer determined they were likely *at any time in the future* to receive one or more of the public benefits listed in the proposed regulation.[220]

The 2018 DHS Proposed Regulations attempted to frame the new totality of the circumstances approach to adjudicate public charge inadmissibility as an objective metric consistent with the statute.[221] However, it was clear the new standard for evaluating public charge would favor wealthy and high-skilled immigrants in the employment-based categories over poor immigrants lacking English proficiency applying for permanent residence in the family-based categories.

On August 14, 2019, after receiving over 266,000 comments on the proposed rule, the DHS Inadmissibility on Public Charge Grounds Final Regulations were published in the Federal Register. The 2019 DHS Final Regulations were largely the same as the proposed rule, with several minor changes, including changing the test for receipt of both cash and non-cash benefits to receipt for 12 cumulative months over a 36-month period.[222] The 2019 DHS Final Regulations also clarified that the standard for determining whether an immigrant would be deemed likely to become a public charge is by preponderance of the evidence.[223] The August 14, 2019 publication of the final regulations in the Federal Register also stated that the 2019 DHS Final Regulations would take effect on October 15, 2019.[224]

On October 11, 2019, approximately two months after publication of the 2019 DHS Final Regulations, the DOS Interim Final Rule: Visas: Ineligibility Based On Public Charge Grounds

---

219. *Id.* at 51165–66, 51290.

220. *Id.* at 51174, 51290.

221. *Id.* at 51284 ("The data collected on [the I-944] forms will be used by USCIS to determine the likelihood of a declarant becoming a public charge based on [the aforementioned factors] . . . . The forms serve the purpose of standardizing public charge evaluation metrics . . . .").

222. *See* Inadmissibility on Public Charge Grounds, 84 Fed. Reg. 41292, 41298 (Aug. 14, 2019) (to be codified at 8 C.F.R. pts. 103, 212, 213, 214, 245, 248).

223. *Id.* at 41506.

224. *Id.* at 41292.

was published in the Federal Register.[225] The 2019 DOS Interim Final Public Charge Regulations largely mirrored the language used in the 2019 DHS Final Regulations,[226] and the purpose of the DOS Interim Final Regulations was to ensure consistency between DHS and DOS when evaluating public charge inadmissibility in permanent residence cases.[227] Under the 2019 DOS Interim Final Regulations, certain visa applicants would be required to complete the new DS-5540, Public Charge Questionnaire, similar to the I-944 Declaration of Self-Sufficiency, to help consular officers determine whether the applicant was inadmissible as a public charge.[228] The Federal Register publication of the 2019 DOS Interim Final Regulations also noted they would take effect on October 15, 2019, the same effective date as the 2019 DHS Final Regulations.[229]

ii. Litigation Challenging DHS Final Public Charge Regulations and DOS Interim Final Public Charge Regulations and Implementation of DHS and DOS Public Charge Regulations

Shortly after the 2019 DHS Final Regulations were promulgated by the Trump Administration, several legal challenges were filed in federal district court challenging the legality of the new public charge regulations on statutory and Constitutional grounds. These legal challenges included suits by the State of Washington and thirteen other states in the Eastern District of Washington (E.D. Wash.);[230] the State of California and four other states in the Northern District of California (N.D. Cal.);[231] the State of New York and two other states and the City of New York in the Southern District of New York (S.D.N.Y.);[232] Cook County in the Northern

225. *See* Visas: Ineligibility Based on Public Charge Grounds, 84 Fed. Reg. 54996, 54996 (Oct. 11, 2019).

226. *Id.* at 55000-06.

227. *Id.* at 55000 (stating that the purpose of the Department's new standards was to avoid contradicting determinations about a non-citizen's public charge evaluation with DHS).

228. *Id.* at 55011.

229. *Id.* at 54996.

230. *See* Complaint for Declaratory and Injunctive Relief, Washington v. U.S. Dep't of Homeland Sec., 408 F. Supp. 3d 1191 (E.D. Wash. 2019) (No. 4:19-cv-05210), 2019 WL 3823975.

231. *See* Complaint for Declaratory and Injunctive Relief, California v. U.S. Dep't of Homeland Sec., 476 F. Supp. 3d 994 (N.D. Cal. 2019) (No. 3:19-cv-04975), 2019 WL 3926611.

232. *See* Complaint for Declaratory and Injunctive Relief, New York v. U.S. Dep't of Homeland Sec., 475 F. Supp. 3d 208 (S.D.N.Y. 2020) (No. 1:19-cv-07777), 2019 WL 3936551.

District of Illinois (N.D. Ill.);[233] and CASA de Maryland, Inc. in the District of Maryland (D. Md.).[234]

The plaintiffs in each of these cases challenging the legality of the 2019 DHS Final Regulations filed a motion for preliminary injunction. On October 11, 2019, four days before the final public charge regulations were set to go into effect, nationwide preliminary injunctions were issued by E.D. Wash.,[235] N.D. Cal.,[236] and S.D.N.Y.[237] and on October 14, 2019, a fourth nationwide injunction was issued by D. Md.[238] Additionally, on October 14, 2019, N.D. Ill. issued a preliminary injunction in the Cook County case limited to the State of Illinois.[239] However, on December 5, 2019 the Ninth Circuit granted the government's motion to stay the preliminary nationwide injunctions issued by the E.D. Wash. and N.D. Cal.;[240] on December 9, 2019, the Fourth Circuit stayed the D. Md. injunction.[241] Additionally, on January 27, 2020, the U.S. Supreme Court granted the government's application for stay of the preliminary nationwide injunction issued by the S.D.N.Y., which allowed the 2019 DHS Final Rule to go into effect across the U.S., with the exception of Illinois.[242]

On January 30, 2020, three days after the U.S. Supreme Court issued a stay blocking the nationwide preliminary injunction, USCIS announced that it would begin implementing the 2019 DHS Public Charge Regulations on February 24, 2020.[243] The following week, on February 5, 2020, USCIS issued a second announcement publishing updated versions of USCIS application forms, with

233. *See* Complaint for Declaratory and Injunctive Relief, Cook Cnty. v. McAleenan, 417 F. Supp. 3d 1008 (N.D. Ill. 2019), *aff'd on other grounds sub nom.* Cook Cnty. v. Wolf, 962 F.3d 208 (7th Cir. 2020) (No. 1:19-cv-06334).

234. *See* Complaint for Declaratory and Injunctive Relief, CASA de Md., Inc. v. Trump, 414 F. Supp. 3d 760 (D. Md. 2019) *rev'd and remanded,*. 971 F.3d 220 (4th Cir. 2020) (No. 8:19-cv-02715), 2020 WL 1643927,

235. Washington v. U.S. Dep't of Homeland Sec., 408 F.Supp.3d 1191(E.D. Wash. 2019).

236. City & Cnty. of San Francisco v. U.S. Citizenship & Immigr. Servs., 408 F. Supp. 3d 1057 (N.D. Cal. 2019).

237. Make the Road New York v. Cuccinelli, 419 F. Supp. 3d 647 (S.D.N.Y. 2019).

238. Casa De Md., Inc. v. Trump, 414 F. Supp. 3d 760 (D. Md. 2019).

239. Cook Cnty. v. McAleenan, 417 F. Supp. 3d 1008 (N.D. Ill. 2019).

240. City & Cnty. of San Francisco v. U.S. Citizenship & Immigr. Servs., 944 F.3d 773 (9th Cir. 2019).

241. Casa De Md., Inc. v. Trump, 971 F.3d 220, 237 (4th Cir. 2020).

242. Dep't of Homeland Sec. v. New York, 140 S. Ct. 599 (2020).

243. *See USCIS Announces Public Charge Rule Implementation Following Supreme Court Stay of Nationwide Injunction*, U.S. CITIZENSHIP & IMMIGR. SERVS. (Jan. 30, 2020), https://www.uscis.gov/archive/uscis-announces-public-charge-rule-implementation-following-supreme-court-stay-of-nationwide [https://perma.cc/JHZ4-PAEX].

questions regarding public charge inadmissibility, under the implementation of the final public charge regulations.[244] Additionally, the February 5, 2020 USCIS announcement stated that all I-485 applications for adjustment of status to permanent residence received on or after February 24, 2020, save for applications in Illinois covered by the Seventh Circuit injunction, must include the newly created I-944 Declaration of Self Sufficiency.[245] Later, on February 21, 2020, the U.S. Supreme Court issued a second ruling granting a stay of the Northern District of Illinois preliminary injunction, allowing the 2019 DHS Final Rule to go into effect nationwide on February 24, 2020.[246]

While there were nationwide preliminary injunctions issued by U.S. federal district courts enjoining the 2019 DHS Final Regulations in late 2019, there were no similar rulings enjoining implementation and application of the DOS Interim Final Regulations or the 2018 FAM Revisions in consular processing cases. Accordingly, the DOS Interim Final Rule also went into effect on February 24, 2020, with the DOS issuing revisions to the FAM, modifying the 2018 FAM Revisions to match the language in the interim final regulations.[247] For those attending a consular interview to apply for an immigrant visa to enter the U.S. as a permanent resident, in addition to providing a completed I-864 Affidavit of Support, the applicant was also required to compete Form DS-5540, Public Charge Questionnaire.[248] The DS-5540 Public Charge Questionnaire required immigrant visa applicants to provide information regarding their assets, liabilities, education, job skills, health, and receipt of public benefits for determination of public charge inadmissibility by consular officers under the DOS Interim Final Regulations.[249] On July 29, 2020, several months after the 2019 DOS Interim Final Regulations went into effect, the

244. *See Public Charge Inadmissibility Final Rule: Revised Forms and Updated Policy Manual Guidance*, U.S. CITIZENSHIP & IMMIGR. SERVS. (Feb. 5, 2020), https://www.uscis.gov/archive/public-charge-inadmissibility-final-rule-revised-forms-and-updated-policy-manual-guidance [https://perma.cc/5D9L-Q8QT].

245. *Id.*

246. Wolf v. Cook Cnty., 140 S. Ct. 681 (2020).

247. *See The State Department's New FAM on Public Charge and Form DS-5540: Summary for Immigration Practitioners,* CATH. LEGAL IMMIGR. NETWORK (Feb 24, 2020), https://www.cliniclegal.org/sites/default/files/2020-03/The%20State%20Department%E2%80%99s%20New%20FAM%20on%20Public%20Charge%20and%20Form%20DS-5540%20Summary%20for%20Immigration%20Practitioners.pdf [https://perma.cc/LDK5-4TWS].

248. *Id.*

249. *Id.*

S.D.N.Y. issued a nationwide preliminary injunction in *Make the Road New York v. Pompeo*, enjoining the implementation or application of the 2018 FAM Revisions and DOS Interim Final Regulations.[250] However, this S.D.N.Y. preliminary injunction was largely a symbolic victory as full implementation of DOS Interim Final Regulations were effectively halted in March 2020 when consular posts closed and suspended visa processing at the start of the COVID-19 pandemic.[251]

On July 29, 2020, the S.D.N.Y. issued a second nationwide preliminary injunction of the 2019 DHS Final Regulations in *New York v. U.S. Department of Homeland Security*, granting plaintiff's motion to enjoin application of the DHS final rule during the COVID-19 Public Health Emergency.[252] The next day, on July 30, 2020, USCIS announced it would apply the 1999 Legacy INS Memo to adjudicate I-485 adjustment of status applications while the S.D.N.Y. injunction was in place.[253] However, this nationwide preliminary injunction was short lived. On August 4, 2020, the Second Circuit issued a partial stay of the July 29, 2020 S.D.N.Y. preliminary injunction, limiting its applicability to New York, Connecticut and Vermont.[254] On September 11, 2020, the Second Circuit issued a second order granting a full stay of the July 29, 2020 nationwide injunction, allowing DHS to resume implementation of the 2019 DHS Final Regulations nationwide, including in New York, Connecticut, and Vermont.[255] Lastly, on November 2, 2020, the N.D. Ill. issued a ruling finding the 2019 DHS Final Regulations violated the APA on procedural and substantive grounds and vacated the regulations nationwide.[256]

---

250. *See* Make the Road New York v. Pompeo, 475 F. Supp. 3d 232 (S.D.N.Y. 2020).

251. *See Suspension of Routine Visa Services*, U.S. DEP'T OF STATE–BUREAU OF CONSULAR AFFS. (July 22, 2020), https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/visas-news-archive/suspension-of-routine-visa-services.html [https://perma.cc/7K5Y-346Y].

252. *See* New York v. U.S. Dep't of Homeland Sec., 475 F.Supp.3d 208 (S.D.N.Y. 2020).

253. *See Inadmissibility on Public Charge Grounds Final Rule: Litigation*, U.S. CITIZENSHIP & IMMIGR. SERVS. (2021) [hereinafter USCIS Public Charge Litigation Summary], https://www.uscis.gov/green-card/green-card-processes-and-procedures/public-charge/inadmissibility-on-public-charge-grounds-final-rule-litigation [https://perma.cc/QJK3-8JJR].

254. *See* New York v. U.S. Dep't of Homeland Sec., 969 F.3d 42 (2d Cir. 2020).

255. *See* New York v. U.S. Dep't of Homeland Sec., 974 F.3d 210 (2d Cir. 2020); *see* USCIS Public Charge Litigation Summary, *supra* note 253.

256. *See* Cook Cnty. v. Wolf, 498 F. Supp. 3d 999 (N.D. Ill. 2020).

However, this ruling was stayed by the Seventh Circuit on November 19, 2020 pending appeal.[257]

On February 5, 2021, several weeks after taking office, President Biden issued an executive order entitled *Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans*.[258] This executive order set forth the Biden Administration's plans to roll back changes to the U.S. immigration system implemented by the Trump Administration, including the DHS and DOS Public Charge Regulations.[259] On March 9, 2021, the Department of Justice (DOJ), together with the parties to the pending public charge litigation, filed a joint stipulation to dismiss the pending petitions for writ of certiorari before the U.S. Supreme Court from the Second, Seventh, and Ninth Circuit Courts of Appeals and the petitions were dismissed.[260] This same day, the DOJ also withdrew its pending appeal before the Seventh Circuit, allowing the November 2, 2020 N.D. Ill. judgement to take effect, vacating the 2019 DHS Final Regulations.[261] In a March 9, 2021 DHS press release announcing the DOJ would no longer pursue appellate review of lower court rulings enjoining enforcement of the 2019 DHS Public Charge Final Regulations, DHS also announced it would use the 1999 Legacy INS Memo to assess public charge inadmissibility pending promulgation of new regulations.[262] Eventually, in 2022, the Biden Administration promulgated new public charge regulations, codifying the guidelines set forth in the 1999 Legacy INS Memo, which took effect on December 23, 2022.[263]

---

257. USCIS Public Charge Litigation Summary, *supra* note 253.

258. *See* Exec. Order No. 14012, 86 Fed. Reg. 8277 (Feb. 5, 2021).

259. *Id.* at 8278.

260. *See* U.S. Dep't of Homeland Sec. v. New York, 141 S. Ct. 1292 (2021); Mayorkas v. Cook Cnty., 141 S. Ct. 1292 (2021); U.S. Citizenship & Immigr. Servs. v. City & Cnty. of San Francisco, 141 S. Ct. 1292 (2021); *see also DHS Statement on Litigation Related to Public Charge Ground of Inadmissibility*, U.S. DEP'T OF HOMELAND SEC. (Mar. 9, 2021), https://www.dhs.gov/news/2021/03/09/dhs-statement-litigation-related-public-charge-ground-inadmissibility [https://perma.cc/WWU8-XUQ4] (explaining that DHS, under the Biden administration, "determined that continuing to defend the final rule, Inadmissibility on Public Charge Grounds . . . is neither in the public interest nor an efficient use of limited government resources") (citation omitted).

261. *See* Cook Cnty. v. Wolf, No. 20-3150, 2021 WL 1608766 (7th Cir. Mar. 9, 2021).

262. *DHS Statement on Litigation Related to Public Charge Ground of Inadmissibility*, *supra* note 260.

263. *See* Public Charge Ground of Inadmissibility, 87 Fed. Reg. 10570 (proposed Feb. 24, 2022); Public Charge Ground of Inadmissibility, 87 Fed. Reg. 55472 (Sept. 9, 2022).

III. Anecdotal Evidence of Chilling Effect of Public Charge Regulations and Summary of Studies to Date on Chilling Effect of Public Charge Regulations

A significant collateral consequence of the DHS and DOS Public Charge Regulations was the resulting chilling effect where immigrant households opted to forgo means-tested benefits they were entitled to receive due to fear of deportation or other negative immigration consequences connected to public charge. This chilling effect was first observed, anecdotally, by immigration lawyers, social workers, healthcare workers, and others who worked with immigrant communities beginning in late 2017 and 2018. Existence of this chilling effect was further supported by studies using survey data from the American Community Survey (ACS) and the Well-Being and Basics Needs Survey (WBNS) to examine decreased benefit enrollment by immigrant households following publication of the public charge regulations.

A. Anecdotal Evidence of a Chilling Effect in Response to Leaked Draft Regulations, 2018 FAM Revisions and DHS Proposed and Final Public Charge Regulations

Following publication of the leaked draft public charge executive order in January 2017, the 2018 FAM Revisions and leaked draft public charge regulations in early 2018, lawyers and others observed an uptick in immigrants expressing concerns about receiving public benefits. This anecdotal evidence included caseworkers observing an increase in immigrant and mixed status households opting to forgo benefits they were entitled to receive,[264] and educators observing reluctance by immigrant families to enroll children in free and reduced school lunch programs.[265]

---

264. *See* Riham Feshir, *Public Charge Rule Blamed for Chilling Effect Among Immigrants,* MINN. PUB. RADIO (Oct. 23, 2018), https://www.mprnews.org/story/2018/10/23/public-charge-rule-blamed-for-chilling-effect-among-immigrants [https://perma.cc/6WK7-9NX4]; *see also* Yesinia Amaro & Barbara Anderson, *'We Don't Know What to Do.' Proposed Trump Rule Strikes New Fear in Immigrant Communities,* FRESNO BEE (Oct. 9, 2019), https://www.fresnobee.com/news/local/article219129850.html [https://perma.cc/AU3Z-HBLG] ("The proposed changes are making legal immigrants reconsider applying for public benefits that they are entitled to . . . [and] [u]ndocumented immigrants . . . are afraid that the few services they are able to receive would prevent them from gaining legal residency.").

265. *See* Ibrahim Hirsi, *Low-Income Immigrants in MN Shying Away From Benefits, Even With Trump Rules Still Weeks Away,* MINN. PUB. RADIO (Aug. 15, 2019), https://www.mprnews.org/story/2019/08/15/lowincome-immigrants-in-mn-shying-away-from-benefits-even-with-trump-rules-still-weeks-away

Several news stories from this time corroborate the chilling effect observed by service providers following publication of the leaked draft regulations, which was exacerbated further after publication of the DHS Proposed Regulations in October 2018. A Fresno Bee story, published October 9, 2018, included quotes from an undocumented mother of a U.S. citizen child with autism who feared receiving state Medicaid insurance benefits on behalf of her son for his care.[266] Another October 2018 report by Minnesota Public Radio (MPR) included an interview with a caseworker in Albert Lea, Minnesota, whose client discontinued WIC benefits, despite being a permanent resident and exempt from the proposed public charge rule, due to concerns it would negatively impact her immigration status.[267]

Additionally, many individuals and organizations who provided comments to the 2018 DHS Public Charge Proposed Regulations gave accounts of immigrant families forgoing immigration benefits due to fear surrounding public charge. In comments submitted by Causa Oregon and Codman Square Health Center in Boston, Massachusetts, the comment authors noted declining WIC enrollment by immigrants due to fear of potential adverse immigration consequences.[268] Many healthcare providers, including Dr. Josephine Henderson-Frost from the Albert Einstein College of Medicine and Triny Health in Michigan, also noted an uptick in immigrants cancelling medical appointments and disenrolling in medical benefit programs due to fears that use of these services would be held against them or their family members.[269] Additionally, a comment by Hope Nakamura, the

---

[https://perma.cc/3Y2K-RA3N]; *see also* Dr. Christine Walker, Comment Letter on Proposed Rule on Inadmissibility on Public Charge Grounds (Dec. 3, 2018), https://www.regulations.gov/comment/USCIS-2010-0012-59349 [https://perma.cc/UMQ5-C68N] (describing the "chilling effect" that the proposed rule would have on immigrant communities, causing "reductions in [school] attendance, family engagement, and immigrant families accessing needed federal assistance programs, regardless of immigration status enrolling in the free and reduced priced meals program").

266. *See* Amaro & Anderson, *supra* note 264.

267. *See* Feshir, *supra* note 264.

268. *See* Andrea Williams on behalf of Causa Oregon, Comment Letter on Proposed Rule on Inadmissibility on Public Charge Grounds (Oct. 29, 2018), https://www.regulations.gov/comment/USCIS-2010-0012-7139 [https://perma.cc/87E8-XUMU]; Codman Square Health Center, Comment Letter on Proposed Rule on Inadmissibility on Public Charge Grounds (Dec. 6, 2018), https://www.regulations.gov/comment/USCIS-2010-0012-36252 [https://perma.cc/7YUC-NER3].

269. *See* Dr. Josephine Henderson-Frost, Comment Letter on Proposed Rule on Inadmissibility on Public Charge Grounds (Oct. 29, 2018), https://www.regulations.gov/comment/USCIS-2010-0012-55285

Directing Attorney of the Legal Aid Society of San Mateo County, California, noted her agency had to spend over $100,000 in resources since publication of the leaked drafts in 2017 and 2018 to allay fears and reduce the chilling effect in immigrant communities.[270] Ms. Nakamura's comment also noted that the Legal Aid Society of San Mateo anticipated it would need to divert additional funding in 2019 toward community education efforts to encourage immigrant families to enroll in benefits they are entitled to receive to reduce food insecurity and negative health outcomes.[271]

B. Studies Examining Survey Data Corroborating Existence of a Chilling Effect and Reduced Public Benefit Utilization by Immigrant Households Due to Fear Surrounding Public Charge

The anecdotal reports of the chilling effect caused by the 2017 and 2018 leaked drafts, 2018 FAM revisions and DHS and DOS public charge regulations were confirmed by empirical research examining utilization of public benefits by immigrant households after 2016. These studies, using survey data, universally illustrated existence of a chilling effect and decreased use of means-tested public benefits by immigrant households on account of public charge.

One study by MPI, examining data from the U.S. Census Bureau's American Community Survey (ACS), found a 37% decrease in TANF cash benefits and SNAP benefit utilization and a 20% decrease in Medicaid and CHIP healthcare benefit utilization by non-citizens in the U.S. between 2016 and 2019.[272] The MPI study also found a significant decrease in benefit utilization by U.S. citizen children in mixed status households, with a 36% reduction in TANF cash benefits and SNAP benefits and a 20% reduction in

---

[https://perma.cc/56XX-D8CZ]; Tina Grant, Comment Letter on Proposed Rule on Inadmissibility on Public Charge Grounds (Dec. 10, 2018), https://www.regulations.gov/comment/USCIS-2010-0012-37621 [https://perma.cc/NS3S-MV6R].

270. *See* Hope Nakamura, Comment Letter on Proposed Rule on Inadmissibility on Public Charge Grounds (Dec. 9, 2018), https://www.regulations.gov/comment/USCIS-2010-0012-47311 [https://perma.cc/59RV-PZQN].

271. *Id.*

272. *See* Randy Capps, Michael Fix & Jeanne Batalova, *Anticipated "Chilling Effects" of the Public-Charge Rule are Real: Census Data Reflect Steep Decline in Benefits Use by Immigrant Families*, MIGRATION POL'Y INST. (Dec. 2020), https://www.migrationpolicy.org/news/anticipated-chilling-effects-public-charge-rule-are-real [https://perma.cc/CFC4-F5RL].

Medicaid and CHIP benefits by this group during this period.[273] While this study noted a universal decrease in means-tested public benefit utilization in the U.S. between 2016 and 2019, likely due to improved economic conditions, the reduction in benefit utilization by immigrant households was two times higher than U.S. born citizen households.[274] The MPI study also concluded that the steep decline in benefit enrollment by non-citizens and U.S. citizen children in mixed-status households was likely caused by the public charge regulations and other anti-immigrant policies by the Trump Administration.[275]

Another study by the Urban Institute examining data from the 2019 Well-Being and Basic Needs Survey (WBNS), a nationally representative, internet-based annual survey, also supported existence of a public charge chilling effect.[276] Among 2019 WBNS survey participants who were foreign-born adults or adults living with an immigrant family member, nearly half said their families avoided Medicaid/CHIP or SNAP benefits and one-third avoided housing subsidies due to fear of adverse immigration consequences.[277] 2019 WBNS survey participants also reported avoiding other non-cash benefit programs excluded from the 2019 DHS Public Charge Final Regulations, including WIC, ACA health insurance subsidies and free and reduced lunch, because of fear

273. *Id.*

274. *Id.*

275. *Id.*

276. The Well-Being and Basic Needs Survey (WBNS) is an annual survey, launched by the Urban Institute in December 2017 to track individual and family well-being and access to social safety net programs. The 2019 WBNS included responses from 1,747 nonelderly adults in the U.S. who were either foreign-born or lived with one or more foreign-born family members who responded to survey questions regarding the impact of the public charge regulations on household benefit utilization. *See generally The Well-Being & Basic Needs Survey*, URB. INST., https://www.urban.org/policy-centers/health-policy-center/projects/well-being-and-basic-needs-survey [https://perma.cc/8MS6-GUSM] (presenting data on the alleged chilling effect); *see also* HAMUTAL BERNSTEIN, DULCE GONZALEZ, MICHAEL KARPMAN & STEPHEN ZUCKERMAN, URB. INST., AMID CONFUSION OVER THE PUBLIC CHARGE RULE, IMMIGRANT FAMILIES CONTINUED AVOIDING PUBLIC BENEFITS IN 2019 (2020) https://www.urban.org/sites/default/files/publication/102221/amid-confusion-over-the-public-charge-rule-immigrant-families-continued-avoiding-public-benefits-in-2019_3.pdf [https://perma.cc/77JX-85RY] (same); JENNIFER M. HALEY, GENEVIEVE M. KENNEY, HAMUTAL BERNSTEIN & DULCE GONZALEZ, ONE IN FIVE ADULTS IN IMMIGRANT FAMILIES WITH CHILDREN REPORTED CHILLING EFFECTS ON PUBLIC BENEFIT RECEIPT IN 2019 (2020), https://www.urban.org/sites/default/files/publication/102406/one-in-five-adults-in-immigrant-families-with-children-reported-chilling-effects-on-public-benefit-receipt-in-2019_1.pdf [https://perma.cc/FTY2-XBTU] (same).

277. *Id.* at 2.

related to public charge.[278] The 2019 WBSN also found that two-thirds of adults in immigrant families were aware of the public charge regulations and 26.2% of adults in low-income immigrant households reported a chilling effect where they avoided public benefits for fear of risking future permanent resident status.[279] Subsequent WBNS survey results from 2020–2022 reported a continuing chilling effect and reluctance by immigrant households to utilize means-tested benefits, despite rescission of the 2019 DHS Public Charge Regulations by the Biden Administration in March 2021.[280] Other studies from 2020 and 2021 also found a decrease in healthcare utilization by children in immigrant households due to public charge-related concerns, which was a particularly troubling statistic in light of the COVID-19 pandemic.[281]

---

278. *Id.*

279. *Id.* at 5.

280. *See generally* JENNIFER M. HALEY, GENEVIEVE M. KENNEY, HAMUTAL BERNSTEIN & DULCE GONZALEZ, Urb. Inst., MANY IMMIGRANT FAMILIES WITH CHILDREN CONTINUED TO AVOID PUBLIC BENEFITS IN 2020, DESPITE FACING HARDSHIPS, (2021), https://www.urban.org/research/publication/many-immigrant-families-children-continued-avoid-public-benefits-2020-despite-facing-hardships [https://perma.cc/8RVE-C3KP] (explaining that many immigrant families in 2020 avoided public programs out of fear of immigration-related consequences); JENNIFER M. HALEY, DULCE GONZALEZ & GENEVIEVE M. KENNEY, Urb. Inst., IMMIGRATION CONCERNS CONTINUED TO DETER IMMIGRANT FAMILIES WITH CHILDREN FROM SAFETY NET PROGRAMS IN 2021, COMPOUNDING OTHER ENROLLMENT DIFFICULTIES (2022), https://www.urban.org/research/publication/immigration-concerns-continued-deter-immigrant-families-children-safety-net [https://perma.cc/RW5U-VKZB] (explaining that immigrant families in 2021 continued to avoid non-cash benefits for fear of immigration consequences); DULCE GONZALEZ, JENNIFER M. HALEY & GENEVIEVE M. KENNEY, Urb. Inst., ONE IN SIX ADULTS IN IMMIGRANT FAMILIES WITH CHILDREN AVOIDED PUBLIC PROGRAMS IN 2022 BECAUSE OF GREEN CARD CONCERNS (2023), https://www.urban.org/research/publication/one-six-adults-immigrant-families-children-avoided-public-programs-2022 [https://perma.cc/8BU8-PF92] (explaining that one-sixth of adults in immigrant families with children reported they avoided non-cash government benefits in 2022 due to immigration concerns).

281. *See generally* ALMA GUERRERO, LUCIA FELIX BELTRAN, RODRIGO DOMINGUEZ & ARTURO BUSTAMENTE, UCLA LATINO POL'Y & POLITICS INITIATIVE, FOREGOING HEALTHCARE IN A GLOBAL PANDEMIC: THE CHILLING EFFECTS OF THE PUBLIC CHARGE RULE ON HEALTH ACCESS AMONG CHILDREN IN CALIFORNIA (2021), https://escholarship.org/content/qt7t28n2kg/qt7t28n2kg.pdf [https://perma.cc/3GVK-F8W8] (outlining the chilling effect public charge changes have on immigrant families with children and the resulting underutilization of healthcare); Marina Masciale, Michelle A. Lopez, Xian Yu, José Domínguez, Karla Fredricks, Heather Haq, Jean L. Raphael & Claire Bocchini, *Public Benefits Use and Social Needs in Hospitalized Children with Undocumented Parents,* 148 PEDIATRICS, July 2021 (finding that families in California with undocumented parents were more likely to have higher levels of poverty and food insecurity than documented families, but use of public benefits was largely the same, implying immigration-related fear may be a barrier to use of benefits); Benjamin D. Sommers, Heidi Allen, Aditi Bhanja, Robert J. Blendon, E. John Orav & Arnold M. Epstein, *Assessment of Perceptions of the Public Charge Rule Among Low-Income Adults in Texas*, JAMA

IV. Examination of Means-tested Public Benefit Enrollment Data for Minnesota Immigrant Households, 2013-2021

Building on the work of the previous studies establishing existence of a chilling effect in response to the 2019 DHS Final Regulations, this section will examine benefit enrollment data for Minnesota immigrant households from 2013 to 2021 to see if there was a decline in enrollment on account of public charge. As discussed further below, the reduction in benefit enrollment rates for Minnesota immigrant households during this period is largely consistent with previous studies and further corroborates existence of a chilling effect due to public charge. Further, the data described in this section corroborating existence of a public charge chilling effect is particularly valuable because it is primary data obtained directly from the Minnesota Department of Human Services (MN-DHS), the state agency administering these programs.

A. The Value of Examining Minnesota Immigrant Household Public Benefit Enrollment Data Demographics of Minnesota's Immigrant Population and Minnesota's Social Safety Net

In addition to the general statistical value of obtaining primary data directly from the state agency administering these programs, versus relying on survey data, there are several other reasons why it is valuable to examine immigrant public benefit enrollment data from Minnesota.

First, while the foreign-born population in Minnesota comprises 8.7% of the state's population,[282] which is slightly lower than the foreign-born percentage of the U.S. population of 13.9%,[283] the ethnic demographic breakdown of Minnesota's immigrant population provides a useful representative sample. Looking

---

NETWORK OPEN (July 15, 2020), https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2768245 [https://perma.cc/7SN7-CC37] (finding that one in eight low-income Texans had friends or family who avoided public programs and medical care because of immigration-related concerns).

282. *See* "Selected Social Characteristics in the United States," *American Community Survey, ACS 1-Year Estimates Data Profiles, Table DP02*, U.S. CENSUS BUREAU (2022), https://data.census.gov/table/ACSDP1Y2022.DP02?q=Minnesota%20immigrant%20population [https://perma.cc/5MNG-FD4G] (providing population statistics for Minnesota in 2022, where the total foreign born population was 498,826 and the total population was 5,717,184 for a foreign born population of 8.7%).

283. *New Report on the Nation's Foreign-Born Population*, U.S. Census Bureau (Apr. 9, 2024), https://www.census.gov/newsroom/press-releases/2024/foreign-born-population.html [https://perma.cc/LU9D-AFSR].

specifically at the world region of birth for Minnesota's foreign-born population, according to the 2022 ACS, 36.3% were born in Asia, 29.4% were born on the African continent and 22.3% were born in Latin America.[284] This differs from national ACS data showing roughly half (50.3%) of the U.S. foreign-born population originating from Latin America.[285]

However, one reason for these differences in the region of birth for Minnesota's foreign-born population—particularly the large segment of Minnesota's foreign-born Asian and African populations—is the state's history of welcoming displaced persons through the U.S. Refugee Resettlement Program.[286] Following passage of the Refugee Act of 1980, creating the U.S. Refugee Resettlement Program, Minnesota became a leading destination for refugees from Southeast Asia displaced by the Vietnam War.[287] Between 1979 and 1999, Minnesota resettled approximately 15,000 Vietnamese refugees and 15,000 Laotian refugees, many of whom were of Hmong descent, and 8,000 Cambodian Refugees.[288] Minnesota is currently home to one of the largest Hmong diaspora populations in the U.S., with a population of over 94,000, and Hmong, along with Spanish, being the top non-English language spoken in Minnesota homes.[289] Minnesota has also resettled a large number of East African refugees from Ethiopia and Somalia and West African refugees from Liberia.[290] Presently, Minnesota is home to approximately 30,000 Ethiopians, 20,000 Liberians, and 80,000 Somalis; between 1993 and 2019, Minnesota resettled 24,000 refugees from Somalia.[291] In total, between 1979 and 2020,

284. "Selected Characteristics of the Foreign-Born Population by Period of Entry Into the United States", *American Community Survey, ACS 1-Year Estimates Data Profiles, Table DP02*, U.S. CENSUS BUREAU (2022), https://data.census.gov/table/ACSST1Y2022.S0502?q=Minnesota%20immigrant%20population [https://perma.cc/69MD-CWB3].

285. *See* SHABNAM SHENASI AZARI, VIRGINIA JENKINS, JOYCE HAHN & LAUREN MEDINA, U.S. Census Bureau, THE FOREIGN-BORN POPULATION IN THE UNITED STATES: 2022 (2024), https://www2.census.gov/library/publications/2024/demo/acsbr-019.pdf [https://perma.cc/Y3PU-NTFQ].

286. *See* Sheila Mulrooney Eldred & Ibrahim Hirsi, *Looking Back at Minnesota's Refugee History,* MPLS. ST. PAUL MAG. (Dec. 19, 2021), https://mspmag.com/arts-and-culture/looking-back-at-minnesotas-refugee-history/ [https://perma.cc/E9FY-877B].

287. *Id.*

288. *Id.*

289. Yuqing Liu, *How did Minnesota Become a Hub for Hmong People?,* SAHAN J. (Sept. 8, 2023), https://sahanjournal.com/news-partners/minnesota-how-did-hmong-people-become-largest-asian-group-in-minnesota-curious-minnesota/ [https://perma.cc/89K8-JTWG].

290. Eldred & Hirsi, *supra* note 286.

291. *Id.*

Minnesota has resettled a total of 111,109 refugee arrivals, including nearly 20,000 refugee arrivals between 2010 and 2020.[292]

Minnesota's high refugee population is particularly relevant when examining immigrant public benefit utilization, as refugees are a humanitarian immigrant category exempt from public charge inadmissibility under INA section 212(a)(4).[293] Refugees are also classified as *qualified immigrants* eligible to receive means-tested benefits under PRWORA.[294] Additionally, refugees who arrive in the U.S. through the U.S. Refugee Resettlement Program receive reception and placement services for the first 90 days after their arrival through local Voluntary Agencies tasked with receiving refugees and providing integration services.[295] These reception and placement services provided by Voluntary Agencies include assisting refugees with enrollment in public benefits programs.[296]

Lastly, Minnesota has a very robust state social safety net that is ranked as one of the most generous in the nation according to several key indicators. In a recent study by the Brookings Institute examining the generosity of each state's social safety net, factoring for cost of living, Minnesota ranked third in cash and food safety net, first in TANF and state-funded cash benefits, and first in state-directed funding for benefits.[297] Minnesota also offers state-funded healthcare, cash assistance and other non-cash benefits for certain lawfully present immigrants who are ineligible for federal public benefits under PRWORA.[298] These benefits include MinnesotaCare, Minnesota's state health coverage program which covers low-income lawfully present immigrants using state funds, state-funded Minnesota Family Investment Program (MFIP) cash benefits and

---

292. *Primary Refugee Arrivals to Minnesota, 1979-2020*, MINN. DEP'T OF HEALTH — REFUGEE AND INT'L HEALTH PROGRAM (Apr. 2022), https://www.health.state.mn.us/communities/rih/stats/refcumm.pdf [https://perma.cc/D22U-EMDX].

293. Immigration and Nationality Act (INA) § 212(a)(4), 8 U.S.C. § 1182(a)(4).

294. *See* Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104–193, 110 Stat. 2105, 2261–62 (1996).

295. *See U.S. Refugee Admissions Program: Reception and Placement*, U.S. DEP'T OF STATE, https://2017-2021.state.gov/refugee-admissions/reception-and-placement/ [https://perma.cc/K6ED-AKYX].

296. *Id.*

297. *See State Safety Net Interactive Map,* BROOKINGS INST. (June 4, 2024), https://www.brookings.edu/articles/state-safety-net-interactive/ [https://perma.cc/Y724-PTKK].

298. *See* RANDALL CHUN & DANYELL PUNELLI, MINN. HOUSE RSCH. DEP'T, ELIGIBILITY OF NONCITIZENS FOR HEALTH CARE AND CASH ASSISTANCE PROGRAMS (2019), https://www.house.mn.gov/hrd/pubs/ncitzhhs.pdf [https://perma.cc/3KUJ-VF3E].

state-funded food assistance.[299] Given that Minnesota has a strong social safety net offering benefits to both citizens and lawfully present non-citizens, the state's benefit enrollment data may better capture a chilling effect within certain immigrant households, namely mixed status households with undocumented parents and U.S. citizen children.

B. Summary of Public Benefit Enrollment Data from MN-DHS for Minnesota Immigrant Households: 2013-2021

The Minnesota public benefit enrollment data examined in this section of the article was obtained by the Author in response to a data request made to the Minnesota Department of Human Services (MN-DHS) Economic Assistance and Employment Supports Division (EAESD) Research Unit.[300] The data analyzed in this article was released to the Author by the MN-DHS EAESD Research Unit after obtaining appropriate authorization from the agency and confirmation by the Author that the data was being requested for academic research purposes.

In the Author's data request to the MN-DHS EAESD Research Unit, the Author requested various data sets relevant to the analysis of public benefit enrollment data for immigrant households in Minnesota. First, with respect to the timeframe, the Author requested public benefit enrollment data from January 2013 to December 2021 to capture baseline enrollment figures prior to *relevant events* (e.g., publication of 2018 DHS Proposed Regulations) and changes after the event occurred. Secondly, the Author requested enrollment data for two programs: SNAP non-cash food support and MFIP cash benefits, Minnesota's state cash assistance program funded by TANF. The Author requested enrollment data for SNAP and MFIP benefits because receipt of these federally funded benefits by immigrants was penalized in the

299. *Id*. at 2–4.

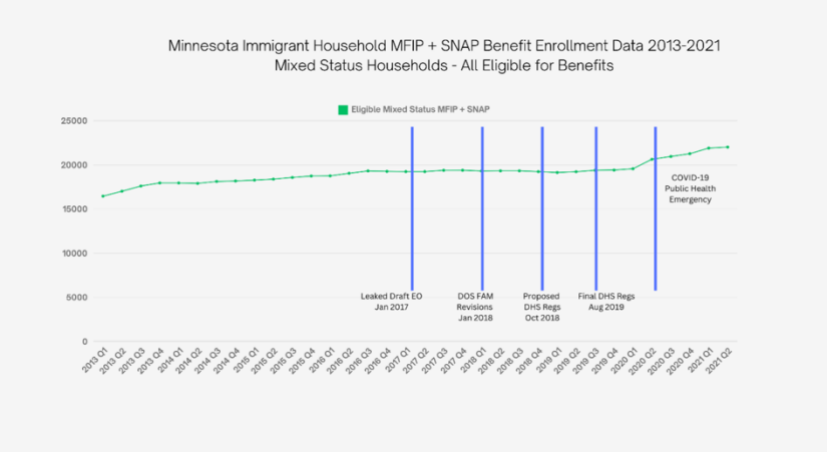
300. The Minnesota MFIP and SNAP immigrant household enrollment data discussed in Section V was provided by MN-DHS EAESD Research Unit on March 21, 2023 in response to a records request by the Author and was sent to the Author in an Excel Spreadsheet Document with monthly enrollment data for each category described in Section V, B. Records Request Response from Minn. Dep't of Hum. Servs. to Professor Ana Pottratz Acosta (Mar. 21, 2023) (on file with author) [hereinafter MN-DHS, *Records Request*]; *see also Data Requests*, Minn. Dep't of Hum. Servs., https://mn.gov/dhs/general-public/about-dhs/data-requests/ [https://perma.cc/3MB3-892M] (providing additional information about the public data request process for MN-DHS data).

leaked draft regulations, the 2018 FAM Revisions and the 2019 DHS Public Charge Final Regulations.[301]

Lastly, the Author requested public benefit enrollment data for three distinct categories of immigrant households. The first category was the *Mixed Status-All Eligible* household category, with both non-citizens and U.S. citizens, where all members of the household were eligible for SNAP and MFIP benefits. This first category intended to capture enrollment data for mixed status households with non-citizens who were qualified immigrants, particularly immigrants who had entered as refugees or another humanitarian category, eligible to receive federally funded means-tested benefits. The second category was the *Foreign-Born U.S. Citizen* household category where all members were citizens, but at least one member of the household was foreign born and obtained citizenship through naturalization or acquired citizenship after birth. The third category was the *Mixed Status-Ineligible* household category, with both non-citizens and U.S. citizens, where at least one non-citizen member of the household was ineligible for SNAP and MFIP benefits. This third category intended to capture enrollment data for mixed status households comprised of at least one undocumented parent with U.S. citizen children.

301. *See* Torbati, *supra* note 131; Lind, *A Leaked Trump Order, supra* note 130; 9 FAM 302.8-2(B)(2) (2018); 2018 DHS Proposed Public Charge Regulations, 83 Fed. Reg. 51114, 51187–88 (proposed Oct. 10, 2018) (to be codified at 8 C.F.R. parts 103, 212–14, 245, 248).

i. In Mixed Status Households Where All Household Members Were Eligible for Benefits, There Were No Statistically Significant Changes in Benefit Enrollment Due to Public Charge



Graph A - representing average total number of MN-DHS Open MFIP and SNAP Benefit Cases per quarter for Mixed Status Households – All Household Members Eligible for Benefits, 2013-2021.

For the first category of immigrant households, *Mixed Status-All Eligible*, a review of the data established that there were no statistically significant reductions in benefit enrollment between January 2013 and December 2021. Between January 2014 and March 2020, the percentage of quarterly average combined total benefit cases in the *Mixed Status-All Eligible* household category remained relatively static and did not fluctuate upward or downward by more than 1.6%.[302] The only instances between 2013 and 2021 where there were significant deviations in the average number of combined MFIP and SNAP cases were in 2013, when average total cases increased by 9.06%,[303] and in 2020 at the start of the COVID-19 pandemic with an increase of 11.97% in average total cases.[304]

302. MN-DHS, *Records Request*, *supra* note 300. According to the data provided by MN-DHS to the author, between Q1 2014 and Q2 2020, the average total number of MFIP and SNAP cases in the *Mixed Status-All Eligible* household category fluctuated between a decrease of -0.49% and an increase of 1.53% (Variation = -0.49 to 1.53%).

303. *Id.* Between Q1 2013 and Q1 2014, the average total number of MFIP and SNAP cases in the *Mixed Status-All Eligible* household category increased from 16,467.6 cases to 17,959.3, marking an increase of 8.3% between Q1 2013 and Q1 2014.

304. *Id.* Between Q1 2020 (Jan-Mar 2020) and Q1 2021 (Jan-Mar 2021), the

Additionally, there were no significant variations or marked reductions in the quarterly average combined number of MFIP and SNAP benefit cases in the *Mixed Status-All Eligible* household category following key *relevant events*[305] between January 2017 and August 2019 linked to public charge. Specifically, while there was a modest reduction of 0.84% in average total MFIP and SNAP cases in this household category between Q1 2018 and Q1 2019,[306] the average total MFIP and SNAP cases increased by 0.339% between Q1 2017 and Q1 2018 and by 2.185% between Q1 2019 and Q1 2020.[307] Additionally, during the time period examined in this article, the annual average number of combined MFIP and SNAP cases in the *Mixed Status-All Eligible* household category increased from 17,264 cases in 2013 to 21,403 cases in 2021, an increase of 19.34%.[308]

Based on this data, the Author concludes the *relevant events* connected to public charge, including the leaked drafts, 2018 FAM Revisions and DHS Proposed and Final Public Charge Regulations, had no significant impact on public benefit utilization and did not cause a chilling effect for this household category.

While additional qualitative research would likely be required to draw more definitive conclusions, this result is likely due to several factors relevant to the demographic makeup of this household category. First, because non-citizen members of the *Mixed Status-All Eligible* household category are likely *qualified*

---

average total number of MFIP and SNAP cases in the *Mixed Status-All Eligible* household category increased from 19,568 to 21,911, marking an increase of 10.69% between Q1 2020 and Q1 2021.

305. Note that Graph A in this section and Graph B in Section V, B.1. contain an annotation marking five key events relevant to the analysis of MN-DHS MFIP and SNAP Enrollment Data for Immigrant Households: 1) Publication of the Leaked Draft Executive Order (Jan 2017); 2) 2018 FAM Revisions (Jan 2018); 3) Publication of 2018 DHS Public Charge Proposed Regulations (Oct. 2018); 4) Publication of 2019 DHS Public Charge Final Regulations (Aug. 2019); and 5) Declaration of COVID-19 Public Health Emergency (Mar. 2020).

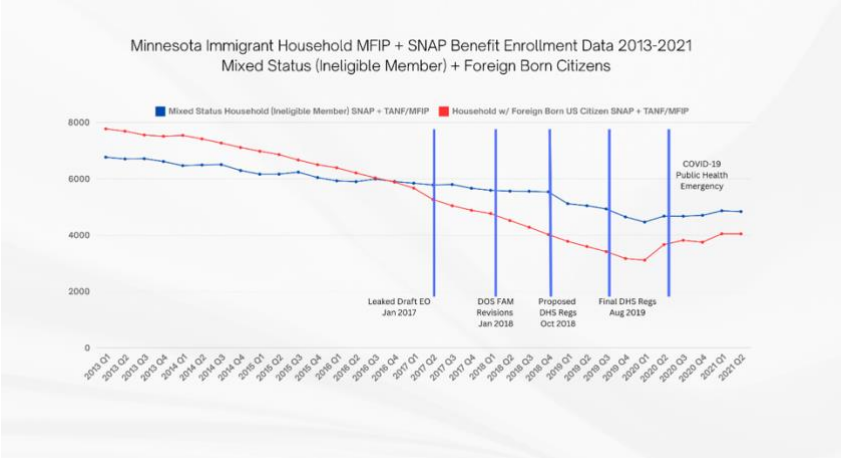
306. CHUN ET AL., *supra* note 298 (according to the data provided by MN-DHS to the Author, between Q1 2018 and Q1 2019 there was a reduction in the quarterly average total combined MFIP and SNAP cases in the *Mixed Status-All Eligible* household category from 19,311.6 in Q1 2018 to 19,149.6 in Q1 2019, marking a reduction of 0.839%.).

307. *Id.* Between Q1 2017 and Q1 2018 there was an increase in the quarterly average total MFIP and SNAP cases in the *Mixed Status-All Eligible* household category from 19,246.3 in Q1 2017 to 19,311.6 in Q1 2018, marking an increase of 0.339%. Additionally, between Q1 2019 and Q1 2020 there was an increase in the quarterly average total combined MFIP and SNAP cases in the *Mixed Status-All Eligible* household category from 19,149.6 in Q1 2019 to 19,568 in Q1 2020, marking an increase of 2.185%.

308. *Id.*

immigrants eligible to receive federally funded SNAP and TANF benefits, they are more likely to hold refugee, asylee or other forms of humanitarian status exempt from INA section 212(a)(4) public charge inadmissibility. Assuming most non-citizen household members in this category hold humanitarian immigration status exempt from public charge inadmissibility, this household category is less likely to be concerned about negative immigration consequences on account of public charge. Additionally, many immigrants granted humanitarian status, particularly refugees, are eligible for case management and other support services to assist them with accessing means-tested benefits and allay concerns related to public charge.

ii. Mixed Status Households with Ineligible Non-Citizen Members and U.S. Citizen Households with a Foreign-Born U.S. Citizen Members Had Statistically Significant Reductions in Benefit Enrollment Following the *Relevant Events* Connected to Public Charge



**Graph B - representing average total number of MN-DHS Open MFIP and SNAP Benefit Cases per quarter for Mixed Status Households with Non-Citizen Household Members Ineligible for Benefits and U.S. Citizen Households with Foreign-Born U.S. Citizen Household Members, 2013-2021.

In contrast to the *Mixed Status-All Eligible* household category, a review of the data shows a statistically significant reduction in total combined MFIP and SNAP benefit cases in the *Foreign-Born U.S. Citizen* and *Mixed Status-Ineligible* household categories following *relevant events* connected to public charge. Additionally, while both categories saw a temporary increase in

MFIP and SNAP enrollment in 2020 at the start of the COVID-19 pandemic, by the end of 2021, MFIP and SNAP benefit enrollment for *Foreign-Born U.S. Citizen* and *Mixed Status-Ineligible* households had decreased to pre-pandemic levels.

a. The Mixed Status-Ineligible Household Category Saw Statistically Significant Reductions in Benefit Enrollment in 2018, 2019, and 2021

Looking specifically at the *Mixed Status-Ineligible* household category, MN-DHS benefit enrollment data demonstrates that there was a statistically significant reduction in total combined MFIP and SNAP benefit cases following *relevant events* connected to public charge in 2018 and 2019. Additionally, while this household category saw a temporary increase in MFIP and SNAP enrollment in 2020 at the start of the COVID-19 pandemic, the level of increased enrollment was much lower compared to the other immigrant household categories examined in this Article. The *Mixed Status-Ineligible* household category also continued to see statistically significant reductions in MFIP and SNAP enrollment in 2021.

In examining MFIP and SNAP enrollment data in the *Mixed Status-Ineligible* household category prior to the first *relevant event* in January 2017, this category saw decreased enrollment between 2013 and 2016 with reductions ranging from 1.43% to 4.7% per year.[309] These reductions in enrollment between 2013 and 2017 were not statistically significant and were consistent with overall reductions in public benefit utilization in Minnesota due to improving economic conditions after the Great Recession.[310]

309. *Id.* Between Q1 2013 and Q1 2014, the quarterly average total combined MFIP and SNAP cases in the *Mixed Status-Ineligible* household category decreased from 6,766 average combined MFIP and SNAP cases in Q1 2013 to 6,467.3 average combined MFIP and SNAP cases in Q1 2014, marking a reduction of 4.414%. Between Q1 2014 and Q1 2015, the quarterly average total combined MFIP and SNAP cases in the *Mixed Status-Ineligible* household category decreased from 6,467.3 average combined MFIP and SNAP cases in Q1 2014 to 6,163.3 average combined MFIP and SNAP cases in Q1 2015, marking a reduction of 4.7%. Between Q1 2015 and Q1 2016, the quarterly average total combined MFIP and SNAP cases in the *Mixed Status-Ineligible* household category decreased from 6,163.3 average combined MFIP and SNAP cases in Q1 2015 to 5,927.3 average combined MFIP and SNAP cases in Q1 2016, marking a reduction of 3.829%. Between Q1 2016 and Q1 2017, the quarterly average total combined MFIP and SNAP cases in the *Mixed Status-Ineligible* household category decreased from 5,927.3 average combined MFIP and SNAP cases in Q1 2016 to 5,842.6 average combined MFIP and SNAP cases in Q1 2017, marking a reduction of 1.428%.

310. *See generally Economic Supports, Cash, Food: News, Initiatives, Reports, Work Groups*, MINN. DEP'T OF HUM. SERVS. [hereinafter MN-DHS, *Economic*

Following publication of the leaked draft public charge executive order in January 2017, delineated in Graph A and Graph B as the first *relevant event,* the *Mixed Status-Ineligible* household category saw a decrease of 4.33% in average total combined MFIP and SNAP cases between Q1 2017 and Q1 2018.[311] However, because this decrease did not deviate significantly from previous reductions in quarterly average MFIP and SNAP combined cases or overall reductions in public benefit utilization in Minnesota in 2017, this 4.33% reduction in average total combined MFIP and SNAP cases is not viewed as statistically significant.

Yet, the *Mixed Status-Ineligible* category did see significant reductions in average combined total MFIP and SNAP cases following the three *relevant events* in 2018 and 2019 delineated in Graph A and Graph B. The three *relevant events* that occurred in 2018 and 2019 were: the 2018 FAM Revisions on January 3, 2018; publication of the 2018 DHS Proposed Regulations on October 10, 2018; and publication of the 2019 DHS Final Regulations on August 14, 2019. With respect to reductions in total MFIP and SNAP benefit cases in the *Mixed Status-Ineligible* household category, between Q1 2018 and Q1 2019 there was a 8.48% decrease in average combined total MFIP and SNAP cases.[312] This decline in MFIP and SNAP enrollment continued in 2019, with a 12.75% decrease in average combined total MFIP and SNAP cases between Q1 2019 and Q1 2020 for this household category.[313] These reductions in MFIP and SNAP benefit enrollment in the *Mixed*

Reports], https://mn.gov/dhs/partners-and-providers/news-initiatives-reports-workgroups/economic-supports-cash-food/ [https://perma.cc/Y8T9-93G7] (scroll down to the SNAP heading and select "Characteristics of People and Cases on the Supplemental Nutrition Assistance Program" to access annual reports from 2013 to 2021 (showing that between December 2013 and December 2014 the total number of SNAP Stand Alone Cases ((i.e. cases not receiving SNAP and MFIP cash or food support)) decreased by 14.93%. SNAP Stand Alone Cases decreased by 4.25% in December 2015, increased by .34% in December 2016 and decreased by 3.08% in December 2017) .

311. MN-DHS, *Records Request*, *supra* note 300. Between Q1 2017 and Q1 2018, the quarterly average total combined MFIP and SNAP cases in the *Mixed Status-Ineligible* household category decreased from 5,842 average combined MFIP and SNAP cases in Q1 2017 to 5,589.6 average combined MFIP and SNAP cases in Q1 2018, marking a reduction of 4.33%.

312. *Id.* Between Q1 2018 and Q1 2019, the quarterly average total combined MFIP and SNAP cases in the *Mixed Status-Ineligible* household category decreased from 5,589.6 average combined MFIP and SNAP cases in Q1 2018 to 5,115.6 average combined MFIP and SNAP cases in Q1 2019, marking a reduction of 8.48%.

313. *Id.* Between Q1 2019 and Q1 2020, the quarterly average total combined MFIP and SNAP cases in the *Mixed Status-Ineligible* household category decreased from 5,155.6 average combined MFIP and SNAP cases in Q1 2019 to 4463.3 average combined MFIP and SNAP cases in Q1 2020, marking a reduction of 12.75%.

Status-Ineligible household category in 2018 and 2019 were much higher than prior years, making them statistically significant. This marked decrease in MFIP and SNAP enrollment in 2018 and 2019 also supports existence of a chilling effect following the delineated *relevant events* connected to public charge.

After declaration of the COVID-19 Public Health Emergency in March 2020, the *Mixed Status-Ineligible* household category did see a temporary increase in MFIP and SNAP enrollment, notably with a 4.73% increase in average combined total MFIP and SNAP cases between Q1 and Q2 of 2020.[314] However, while the average number of MFIP and SNAP cases in this household category did increase by 8.95% between Q1 2020 and Q1 2021,[315] this rate of increase was lower compared to other immigrant household categories[316] and total increased public benefit utilization in Minnesota during the first year of the COVID-19 pandemic.[317] Additionally, the *Mixed Status-Ineligible* household category continued to see statistically significant declines in MFIP and SNAP benefit enrollment in 2021, with a 15.73% reduction in average combined total MFIP and SNAP cases between Q1 2021 and Q4 2021.[318] While a portion of this decrease in enrollment in 2021 can be attributed to improved economic conditions, in December 2021 there were only 4,033 total combined MFIP and SNAP cases, approximately 500 fewer open cases than in January 2020 prior to the start of the pandemic.[319] The lower utilization of

314. *Id.* Between Q1 2020 and Q2 2020 the average total combined MFIP and SNAP cases in the *Mixed Status-Ineligible* category increased by 4.735% from 4,463.3 in Q1 2020 to 4,674.6 in Q2 2020.

315. *Id.* Between Q1 2020 and Q1 2021 the average total combined MFIP and SNAP cases in the *Mixed Status-Ineligible* category increased by 8.95% from 4,463.3 in Q1 2020 to 4,836.3 in Q1 2021.

316. *Id.* By comparison, between Q1 2020 and Q1 2021, the *Mixed Status-All Eligible* household category saw an increase of 11.97% and the *Foreign-Born U.S. Citizen* household category saw an increase of 30.01% in average total combined MFIP and SNAP cases.

317. *See* MINN. DEP'T OF HUM. SERVS., CHARACTERISTICS OF PEOPLE AND CASES ON THE SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM 2020, at 12 (2023) https://edocs.dhs.state.mn.us/lfserver/Public/DHS-5182O-ENG [https://perma.cc/ZXL2-HQ8V]. In the 2020 MN-DHS annual report on SNAP program benefits in Minnesota, MN-DHS reported that in December 2020, 440,300 individuals were enrolled in Minnesota's SNAP caseload, marking a 13% increase from December 2019. *Id.*

318. MN-DHS, *Records Request*, *supra* note 300. Between Q1 2021 and Q4 2021 the average total combined MFIP and SNAP cases in the *Mixed Status-Ineligible* category decreased by 15.73% from 4,836.3 in Q1 2021 to 4,098 in Q4 2021.

319. *Id.* On December 1, 2021, there were a 4,033 total combined MFIP and SNAP cases in the *Mixed Status-Ineligible* category. By comparison, on January 1, 2020, prior to the start of the COVID-19 pandemic there were a 4,525 total combined MFIP and SNAP cases.

MFIP and SNAP benefits by *Mixed Status-Ineligible* households during the pandemic and the statistically significant reductions in MFIP and SNAP benefit enrollment in 2021 both suggest an ongoing reluctance by this household category to utilize public benefits due to ongoing fear related to public charge. Of note, this ongoing fear of utilizing public benefits in the *Mixed Status-Ineligible* household category appears to persist through late 2021 despite reversal of the 2019 DHS Public Charge Regulations by the Biden Administration in March 2021.

b. Between 2017 and 2019 and in 2021 There Were Statistically Significant Reductions in Benefit Enrollment for U.S. Citizen Households with One Foreign-Born U.S. Citizen

The immigrant household category that saw the largest reduction in MFIP and SNAP benefit enrollment between 2017 and 2019, when the four *relevant events* connected to public charge occurred, was the *Foreign-Born U.S. Citizen* household category. Additionally, after an increase in MFIP and SNAP benefit enrollment in 2020 at the start of the COVID-19 pandemic, the *Foreign-Born Citizen* household category also saw a large decrease in MFIP and SNAP enrollment in the second half of 2021.

With respect to enrollment data prior to 2017, the *Foreign-Born U.S. Citizen* household category did have slightly larger year-to-year reductions in MFIP and SNAP enrollment from 2013 to 2016 compared to the *Mixed Status-Ineligible* household category and benefit recipients in Minnesota during this period. Of note, the annual rate of reduction in average total combined MFIP and SNAP cases between 2013 and 2016 ranged from 2.98% to 8.45%,[320] which

320. *Id.* Between Q1 2013 and Q1 2014, the quarterly average total combined MFIP and SNAP cases in the *Foreign-Born U.S. Citizen* household category decreased from 7,771.6 average combined MFIP and SNAP cases in Q1 2013 to 7,540.3 average combined MFIP and SNAP cases in Q1 2014, marking a reduction of 2.97%. Between Q1 2014 and Q1 2015, the quarterly average total combined MFIP and SNAP cases in the *Foreign-Born U.S. Citizen* household category decreased from 7,540.3 average combined MFIP and SNAP cases in Q1 2014 to 6,978.3 average combined MFIP and SNAP cases in Q1 2015, marking a reduction of 7.45%. *Id.* Between Q1 2015 and Q1 2016, the quarterly average total combined MFIP and SNAP cases in the *Foreign-Born U.S. Citizen* household category decreased from 6,978.3 average combined MFIP and SNAP cases in Q1 2015 to 6,388 average combined MFIP and SNAP cases in Q1 2016, marking a reduction of 8.45%. *Id.* Between Q1 2016 and Q4 2016, the quarterly average total combined MFIP and SNAP cases in the *Foreign-Born U.S. Citizen* household category decreased from 6,388 average combined MFIP and SNAP cases in Q1 2016 to 5,883 average combined MFIP and SNAP cases in Q4 2016, marking a reduction of 7.90%. Between Q4 2016 (Oct-Dec 2016) and Q1 2017 (Jan-Mar 2017) there was a 3.63% reduction in

can be attributed, in part, to improved economic conditions during this period.[321]

The more statistically significant results are apparent, however, upon review of MFIP and SNAP enrollment data in the *Foreign-Born U.S. Citizen* household category between 2017 and 2019, the time period when all of the four delineated *relevant events* related to public charge occurred. First, between Q1 2017 and Q1 2018, the average total combined MFIP and SNAP cases in this household category decreased by 15.96%.[322] These reductions in MFIP and SNAP enrollment in the *Foreign-Born U.S. Citizen* category increased further in 2018 and 2019, with a 20.68% reduction between Q1 2018 and Q1 2019 and a 17.6% reduction between Q1 2019 and Q1 2020 in average total combined MFIP and SNAP cases.[323] Additionally, these reductions in MFIP and SNAP enrollment in the *Foreign-Born U.S. Citizen* household category were significantly higher than general reductions in benefit utilization in Minnesota between 2017 and 2019 which only decreased by 2 to 3% annually during this period.[324] Because these statistically significant annual reductions in MFIP and SNAP enrollment were not attributable to general reductions in public benefit utilization between 2017 and 2019, the data further supports a existence of the public charge chilling effect.

During first year of the COVID-19 pandemic, there was a temporary 30% increase in average combined MFIP and SNAP

---

average combined MFIP and SNAP cases, with a decrease from 5,883 to 5,669.3 cases during this period, indicating evidence of a chilling effect in the *Foreign-Born U.S. Citizen* category as early as Q1 2017, following publication of the leaked draft executive order in January 2017. *Id.*

321. *See* MN-DHS, *Economic Supports, supra* note 310.

322. MN-DHS, *Records Request*, *supra* note 300. Between Q1 2017 and Q1 2018, the quarterly average total combined MFIP and SNAP cases in the *Foreign-Born U.S. Citizen* household category decreased from 5,669.3 average combined MFIP and SNAP cases in Q1 2017 to 4,764 average combined MFIP and SNAP cases in Q1 2018, marking a reduction of 15.96%.

323. *Id.* Between Q1 2018 and Q1 2019, the quarterly average total combined MFIP and SNAP cases in the *Foreign-Born U.S. Citizen* household category decreased from 4,764 average combined MFIP and SNAP cases in Q1 2018 to 3,778.6 average combined MFIP and SNAP cases in Q1 2019, marking a reduction of 20.68%. *Id*. Between Q1 2019 and Q1 2020, the quarterly average total combined MFIP and SNAP cases in the *Foreign-Born U.S. Citizen* household category decreased from 3,778.6 average combined MFIP and SNAP cases in Q1 2019 to 3,113.3 average combined MFIP and SNAP cases in Q1 2020, marking a reduction of 17.6%**.** *Id.*

324. *See* generally MN-DHS, *Economic Supports*, *supra* note 310 (providing publicly available data from MN-DHS on SNAP program benefits that between December 2016 and December 2017 the total number of SNAP Stand Alone Cases (i.e. cases not receiving SNAP and MFIP cash or food support) decreased by 3.08%. SNAP Stand Alone Cases decreased by 2.22% between December 2017 and December 2018 and decreased by 2.02% between December 2018 and December 2019).

cases between Q1 2020 and Q1 2021 in the *Foreign-Born U.S. Citizen* household category.[325] However, in 2021 MFIP and SNAP enrollment rates once again decreased with a 19% reduction in average total combined MFIP and SNAP cases in this household category between Q1 2021 and Q4 2021.[326] By December 2021, there were 3212 open MFIP and SNAP cases in this household category, roughly the same number of open in January 2020, prior to the pandemic.[327]

While additional qualitative research is required to reach more conclusive results, several factors may explain the sharp contemporaneous decline in MFIP and SNAP enrollment in the *Foreign-Born U.S. Citizen* household category following the *relevant events* linked to public charge. First, with respect to the 20.68% decline in enrollment in 2018 and 17.6% decline in enrollment in 2019, this may be partially attributable to the impact of the 2018 FAM Revisions on the *Foreign-Born U.S. Citizen* household category. More specifically, for naturalized U.S. citizens sponsoring their spouse, child or parent located outside the U.S. for permanent residence through a family-based petition, their relatives would have been impacted by the 2018 FAM Revisions when they applied for permanent residence through consular processing. Because the 2018 FAM Revisions contained broad language penalizing receipt of any public benefit by the immigrant or their U.S. citizen family sponsor, naturalized citizens in the *Foreign-Born U.S. Citizen* category may have opted to forgo public benefits to avoid negative consequences for relatives undergoing consular processing. In addition to concerns surrounding the 2018 FAM Revisions, it is also possible naturalized citizens in the *Foreign-Born U.S. Citizen* household category continued to fear they were at risk of deportation, despite being a U.S. citizen, because of misinformation within immigrant communities around public charge.

---

325. MN-DHS, *Records Request*, *supra* note 300. Between Q1 2020 and Q1 2021, the quarterly average total combined MFIP and SNAP cases in the *Foreign-Born U.S. Citizen* household category increased from 3,113.3 average combined MFIP and SNAP cases in Q1 2020 to 4,047 average combined MFIP and SNAP cases in Q1 2021, marking an increase of 30.01%.

326. *Id.* Between Q1 2021 and Q4 2021, the quarterly average total combined MFIP and SNAP cases in the *Foreign-Born U.S. Citizen* household category decreased from 4,047.6 average combined MFIP and SNAP cases in Q1 2021 to 3,279 average combined MFIP and SNAP cases in Q4 2021, marking a reduction of 19%.

327. *Id*. On December 1, 2021, there were a 3,212 total combined MFIP and SNAP cases in the *Foreign-Born U.S. Citizen* category. By comparison, on January 1, 2020, prior to the start of the COVID-19 pandemic there were a 3,115 total combined MFIP and SNAP cases.

VI. Conclusions and Recommendations

As previously discussed, analysis of MN-DHS public benefit enrollment data for Minnesota immigrant households from 2013 to 2021 demonstrates statistically significant reductions in benefit enrollment for certain immigrant households, further corroborating existence of a public charge chilling effect. This chilling effect was particularly evident in the *Mixed Status-Ineligible and Foreign-Born U.S. Citizen* immigrant household categories, which saw statistically significant declines in benefit enrollment between 2017 and 2019. Even more troubling, data from 2021 shows that public benefit enrollment has continued to decrease in both of these household categories after rescission of the 2019 DHS Public Charge Regulations by the Biden Administration in March 2021. This continuing decline in enrollment in 2021 points to a continuing chilling effect due to ongoing concerns related to public charge, despite reversal of this policy by President Biden. This chilling effect may be exacerbated further with the start of President Trump's second term in January 2025 and potential regulatory changes to the public charge ground of inadmissibility under the incoming Trump administration.[328]

Because this data, along with other recent studies,[329] demonstrates the existence of an ongoing reluctance by immigrant households to utilize public benefits likely to worsen under a second Trump administration, state and local government officials should allocate additional resources to reverse the public charge chilling effect. These efforts should include community education initiatives to combat misinformation within immigrant communities around public charge and additional resources at the city, state, and county level to help immigrant households enroll in benefit programs. Evidence of the success of such efforts can be seen in the absence of a chilling effect in the *Mixed Status-All Eligible* household category, which likely includes refugees who benefited from supportive integration services through a Voluntary Agency upon arrival. An increase in similar integration services for other immigrant

328. *See* David J. Bier, *Trump Will Likely Cut Legal Entries More Than Illegal Entries,* Cato Inst. (Jan. 21, 2025), https://www.cato.org/blog/trump-will-cut-legal-entries-more-illegal-entries [https://perma.cc/BMW9-Z2NM]; Drishti Pillai &Samatha Artiga, *Expected Immigration Policies Under a Second Trump Administration and Their Health and Economic Implications,* KFF (Nov. 21, 2024), https://www.kff.org/racial-equity-and-health-policy/issue-brief/expected-immigration-policies-under-a-second-trump-administration-and-their-health-and-economic-implications [https://perma.cc/8PJN-ZKJM].

329. *See generally,* Guerrero et al., *supra* note 281 (assessing the "chilling effect" on immigrant children's access to healthcare in California).

household categories would likely limit further declines in public benefit enrollment due to fear around public charge.

Additionally, state and local governments should also invest resources in universal programs to address food insecurity and other negative collateral consequences that occur when immigrant households forgo public benefits on account of public charge. An example of such a program is the universal free school meals program, passed by the Minnesota legislature in 2023 and signed into law by Governor Tim Walz.[330] Such programs address food insecurity and other structural barriers caused by poverty while also eliminating the stigma associated with government programs and fears about negative consequences, such as public charge inadmissibility, by making this assistance universal versus need-based.

330. *See* Elizabeth Shockman, *Walz Signs Universal School Meals Bill into Minnesota Law,* MINN. PUB. RADIO (Mar. 17, 2023), https://www.mprnews.org/story/2023/03/17/gov-signs-universal-school-meals-bill-into-law [https://perma.cc/999J-WD8W].