



## Immigration Policy and Health and Human Services

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# Who We Are

## National Immigration Law Center (NILC)

- ▶ Our mission is to defend & advance the rights & opportunities of **low-income** immigrants and their family members.
- ▶ We combine policy analysis and advocacy, impact litigation and strategic communications to protect immigrants' rights and to advance their access to health care, education and economic opportunity.



# Disclaimers

- ▶ Things are changing fast!
  - ▶ There are a lot of unknowns.
  - ▶ We are sharing the information we have at this time.
- ▶ We are providing general information, not legal advice

# Context



# Context: The Current Environment

- ▶ The Administration's policy decisions have created a climate of fear in immigrant communities
- ▶ Unauthorized immigrants are afraid to leave their houses
- ▶ People with status worry about their status being revoked, or about the Government having their information
- ▶ Implications - Chilling effect in accessing needed services
  - People are not seeking essential services
  - People asking to be dis-enrolled from Medicaid and other programs

# White House Immigration Platform

- ▶ Build a wall
- ▶ Deport all unauthorized immigrants
- ▶ Eliminate the diversity visa lottery
- ▶ Reduce family-based immigration (“chain migration”)
- ▶ Implement a ‘merit-based’ immigration system



# Administration Policy Levers

- ▶ Executive Orders
  - ▶ Must be Constitutional, cannot conflict with law
  - ▶ Examples: enforcement orders, Travel Bans
- ▶ Regulations
  - ▶ Implement laws
  - ▶ Example: Proposed regulations would modify *Flores* agreement; permit indefinite detention of children
- ▶ Policy
  - ▶ Examples: DACA termination, asylum

# DACA



# DACA - Deferred Action for Childhood Arrivals

- ▶ Recipients get renewable two-year period of work authorization and relief from immigration enforcement
  - ▶ **No path to citizenship or permanent status**
  - ▶ PRUCOL for Medi-Cal
- ▶ Must meet requirements re: criminal history/public safety, and prove that:
  - ▶ they arrived in the US before age 15,
  - ▶ resided continuously since June 2007, and
  - ▶ met educational/military service requirements
- ▶ Sessions announced termination of program in September, 2017

# DACA litigation



- ▶ As a result of several **court rulings**, anyone who has DACA, or had DACA in the past, can apply for a **renewal**
- ▶ Federal courts in DC, California and New York have all ruled that the government's termination of DACA was improper
  - ▶ These cases challenge the **termination** of DACA
- ▶ Case brought by Texas and six other states threatens a 'circuit split' and a hearing at the Supreme Court
  - ▶ This case challenges the **creation** of DACA

# Texas Order

- ▶ The States asked for a Preliminary Injunction that would have stopped USCIS from processing DACA renewals
- ▶ A party asking for a preliminary injunction has to meet a **high legal standard**, including a showing that the injunction is in the public interest
- ▶ Judge Hanen ruled that the States **did not** meet the threshold for a preliminary injunction, but noted that he was **likely to find that DACA was unlawful** after a full hearing
- ▶ People eligible to renew DACA should do it ASAP!

Asylum



# Asylum

Asylum is humanitarian relief granted to a person who is **in the U.S.**

To qualify for asylum, a person must show that he or she:

1. has been persecuted or has a well-founded fear of persecution, and
  2. the persecution is **because of** the person's race, religion, nationality, political opinion or membership in a particular social group
- ▶ Asylees are **qualified immigrants**, exempt from the five-year bar
  - ▶ Asylum applicants are generally eligible for Covered California

# What Changed?

- ▶ Asylum applicants who were survivors of domestic and gang violence have been able to claim that they were **members of a particular social group**, as women in countries with governments that fail to protect women
- ▶ AG Sessions has instructed immigration judges to stop granting asylum on this basis, stating these are private crimes
  - ▶ Depending on the circumstances of a specific case, some people may be eligible for asylum based on their individual circumstances or for other immigration remedies

# What's Next? Public Charge



**WOULD YOUR IMMIGRANT  
ANCESTORS BE DENIED  
ENTRY TO THE USA TODAY?**

# Public Charge: Background

- A Public Charge is a person dependent on the government for financial and material support
- A person deemed **likely** to become a public charge can be denied permission to enter the country and permanent resident status
- The likelihood that a person will become a public charge is assessed:
  - when they apply to enter the US and
  - when they apply to become a lawful permanent resident (LPR)
    - ▶ There is no public charge test when an LPR applies for citizenship

# Who is Exempt from Public Charge?

Many immigrants permitted to enter or remain in the U.S. for **humanitarian reasons** are exempt from Public Charge, including:

- ▶ Refugees and asylees;
- ▶ Survivors of trafficking (T visa) and other serious crimes (U visa);
- ▶ Self-petitioners under the Violence Against Women Act;
- ▶ Special immigrant juveniles; and
- ▶ People applying for Temporary Protected Status

# Statutory Public Charge Test

- ▶ Whether a person is likely to become a public charge is based on **all of the facts** relevant to their ability to support themselves.
- ▶ Immigration agents are **required by statute** to consider:
  - ▶ age
  - ▶ health,
  - ▶ financial resources,
  - ▶ dependents,
  - ▶ skills and work experience
- ▶ Other relevant factors may be considered



# Public Charge - Benefits



- Other factors relevant in a public charge test include receipt of public benefits
- Under rules in effect since 1999, only two benefits can be considered:
  - Cash assistance for income maintenance
  - Institutionalization for long-term care at government expense
- USCIS is developing [new Public Charge regulations](#)
  - Drafts leaked to the press indicate a **substantial expansion of the benefits considered**

# The Leaked Draft Regulation

# Public Charge - Proposal

The proposed rule would authorize agents to consider federal, state and local benefits used by the immigrant or a **dependent family member, including a citizen**

Benefits listed as implicating public charge include:

- Non-emergency Medicaid
- ACA Premium tax credits
- SNAP
- Housing assistance
- Refundable tax credits like EITC



# Proposed changes to Public Charge

Benefits identified as excluded from a Public Charge determination include:

- ▶ 'Earned benefits' tied to work or military service: Social Security, Medicare, unemployment, workers' compensation and public pensions
  - ▶ Emergency and disaster relief available to the community as a whole
  - ▶ Public health services
  - ▶ School-based nutrition services, public education including Head Start
  - ▶ Loans, including student loans
- ▶ Other benefits received before 60 days **after** the effective date of a new rule (no retroactivity)

# Public Charge and Eligibility

- ▶ A public charge regulation cannot change program eligibility rules
  - ▶ People are deterred from seeking/using benefits because of concerns that their immigration status or ability to change their status in the future
  - ▶ This “chilling effect” reaches beyond the people who are actually affected
- ▶ What about the five-year bar?
  - ▶ Many qualified immigrants are ineligible for federal benefits during their first five years in status
  - ▶ California provides state-funded benefits to people subject to the five-year bar
  - ▶ The leaked draft applies to federal, state and local benefits

# Foreign Affairs Manual

- ▶ The State Department has already changed the public charge instructions in the Foreign Affairs Manual (FAM)
- ▶ The FAM provides guidance to officials in consulates outside the US
- ▶ The new guidance instructs officials to look more deeply into a visa applicant's ability to support themselves and any family members
- ▶ Also allows them to consider a sponsor's ability to support the applicant, including any use of **benefits** by the sponsor or a family member

We are monitoring this issue – [please let us know what you hear!](#)

# PROPOSED RULE: TIMELINE

1

**Fall 2017** → Unified Federal Agenda lists NPRM-published by July 2018

2

**March 2018** → Draft rule went to Office of Management and Budget

3

**Any day** → Proposed rule (NPRM) published in Federal Register

4

Opportunity for Public Comment (*60 days likely*)

5

Final rule published

# Remember!



- ▶ **This is just a preliminary draft!**
- ▶ Important statutory factors cannot be changed by regulation:
  - ▶ Public charge is assessed when a person applies to enter the US and to become a permanent resident
  - ▶ All relevant factors must be considered
  - ▶ Categories of immigrants who are exempt

# Protecting Immigrant Families

Protecting Immigrant Families  
Advancing Our Future



- ▶ Protecting Immigrant Families, Advancing Our Future Campaign
  - ▶ Co-chaired by NILC and CLASP
    - ▶ CA PIF is chaired by CIPC
    - ▶ Over 185 organizational members
- ▶ Focus: defending and protecting access to health care, nutrition assistance, and other vital economic supports for low-income immigrants and their families
- ▶ Short-term goal: generate comments on the proposed public charge regulations
- ▶ [Sign up at this link](#) or on [protectingimmigrantfamilies.org](https://protectingimmigrantfamilies.org)

# Resources

- [How to Talk About Public Charge With Immigrants and Their Families](#)
- [Things to Keep in Mind When Talking to Immigrant Families About Benefit Programs](#)
- [Changes to Public Charge in the U.S. State Department Manual](#)
- [Public Charge: A New Threat to Immigrant Families](#)
- DACA: [UnitedWeDream.org](http://UnitedWeDream.org)
- [ProtectingImmigrantFamilies.org](http://ProtectingImmigrantFamilies.org)