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I. INTRODUCTION

In the late 1800s, my maternal great-grandfather, then a young adult, immigrated to the United States from his rural village in Poland. He could not read or write in Polish, and he spoke no English. In fact, he remained illiterate until his death in the late 1950s. He was a poor, uneducated villager who joined thousands of other young men emigrating from Europe to the United States by crossing the Atlantic Ocean on steamships. After disembarking on the East Coast, many of these immigrants boarded westbound trains to Chicago, eventually finding work in the factories, foundries, and farms of the Midwest.

As the Trump administration called for restrictions on virtually all immigration to the United States,1 I reflected on how ordinary my great-grandfather’s immigration story was in his day. He had no money, owned no property, and possessed no special skills. His sole qualification was his identity as an able-bodied white man. At the time, this was almost the only requirement for starting a new life in the United States. Today, his lack of financial resources or a job offer, and his non-existent education, would most certainly disqualify him from obtaining an immigrant visa.2

Poverty-based immigration control has long been part of the U.S. immigration story.3 Yet, until the Trump administration’s reform of the public charge policy, it covered only those newcomers who would be entirely dependent on the U.S. government for subsistence or institutionalized for long-term care at the government’s

1. See President Trump’s Bold Immigration Plan for the 21st Century, The White House (May 21, 2019), https://trumpwhitehouse.archives.gov/articles/president-trumps-bold-immigration-plan-21st-century/ (revealing President Donald Trump’s “immigration plan that will turn America’s broken immigration system . . . into a point of pride and national unity” by implementing full border security, changing the entire immigration landscape). The only immigrants exempt from these restrictions were those with great achievements in the “merit based” system. Id.


expense. Those newcomers were considered a “public charge,” and were denied either entry to the United States or—for those who had already entered—the ability to become lawful permanent residents, or “green card” holders.

However, in January 2017 and February 2018, internal Trump administration memos were leaked to the press that detailed a crackdown on immigrants, described tightened welfare requirements, and revealed significant planned changes to the public charge determination. Then, on October 10, 2018, the U.S. Department of Homeland Security (DHS) proposed a regulatory change to this longstanding public charge policy, which would prevent the immigration of any person likely to use certain healthcare, nutrition, or housing programs after entering the United States.

Following the publication of the Notice of Proposed Rulemaking (NPRM) for this new rule, more than two hundred sixty thousand public comments were submitted, the vast majority opposing it.

The final rule was published on August 14, 2019 and included three major changes to the existing public charge policy. First, it dramatically altered the public


6. Trisi, supra note 4, at 3.


10. Inadmissibility on Public Charge Grounds, 84 Fed. Reg. 41292 (Aug. 14, 2019) (to be codified at 8 C.F.R. pts. 103, 212–214, 245, 248); see also Final Rule on Public Charge Ground of Inadmissibility, supra note 8 (explaining the three changes the final rule makes to the public charge rule).
charge definition, replacing the ‘reliance on government benefits for survival’ criterion with an assessment of whether the applicant would likely need more than twelve months of government benefits over a thirty-six-month period.\footnote{11}

The second change expanded the “totality of circumstances” test by adding numerous factors weighing negatively against a person attempting to immigrate to the United States.\footnote{12} Prior to this expansion, when making a public charge determination, an immigration adjudicator would consider the applicant’s age, health, family status, assets, resources, financial status, education, and skills, and could also consider an affidavit of support.\footnote{13} No one factor was dispositive, and the adjudicator was required to consider and balance all factors in totality.\footnote{14} Under the new rule, specific factors were weighed negatively against an applicant, including being a child or a senior, or having financial struggles.\footnote{15} Thus, a person could be labeled a public charge even if they were not receiving any government benefits, but were simply young, old, or had low income.\footnote{16}

The third change incorporated certain government benefit programs into the public charge policy.\footnote{17} These included federally-funded Medicaid, the Supplemental Nutrition Assistance Program (“SNAP,” formerly known as food stamps), and Section 8 housing assistance.\footnote{18} Their addition as negative factors created another number of comments DHS had to consider, the rule was not finalized until a year after its proposal. Inadmissibility on Public Charge Grounds, 84 Fed. Reg. 41292 (Aug. 14, 2019) (to be codified at 8 C.F.R. pts. 103, 212–214, 245, 248). Following the final publication, DHS issued a correction to the final rule on October 2, 2019. Inadmissibility on Public Charge Grounds; Correction, 84 Fed. Reg. 52357 (Oct. 2, 2019) (to be codified at 8 C.F.R. pts. 103, 212–214, 245, 248).


\footnote{12} Kaiser Fam. Found., Changes to “Public Charge” Inadmissibility Rule: Implications for Health and Health Coverage 2 (Aug. 12, 2019), http://files.kff.org/attachment/Fact-Sheet-Changes-to-Public-Charge-Inadmissibility-Rule-Implications-for-Health-and-Health-Coverage [hereinafter Changes to “Public Charge” Inadmissibility Rule]. The rule change also identified two positive factors. See id. at 3, 6 (listing over a dozen characteristics that are considered negative, while only listing “having income [or assets and resources] above 250% of the [federal poverty level]” and “having private health insurance that is not subsidized by Affordable Care Act tax credits” as positive).

\footnote{13} See Changes To “Public Charge” Instructions, supra note 5.


\footnote{15} See supra note 12 and accompanying text.

\footnote{16} See Changes To “Public Charge” Inadmissibility Rule, supra note 12, at 3 (identifying several “negative factors” and “heavily weighted negative factors” unrelated to government benefits, considered to increase the likelihood of an applicant becoming a public charge).

\footnote{17} Id. at 1–2, 6.

\footnote{18} Id. Most immigrants are barred for a period of time, usually five years, from eligibility for many benefit programs. Id. at 4; see also Nat’l Immigr. L. Ctr., Overview of Immigrant Eligibility for Federal Programs (Jan. 2021), https://www.nilc.org/wp-content/uploads/2015/11/tbl1_ovvw-fed-pgms.pdf (displaying a table with eligibility requirements for major federal public assistance programs).
obstacle in the path of immigrants with lesser financial resources to legalize their status. Immigration advocates feared that in low-income, mixed-status households, immigrant parents would disenroll their children with U.S. citizenship from food security programs, like SNAP, for fear that the parents would be labeled a public charge in future applications. This fear deprived many children of critical government assistance.

Soon after the issuance of this final rule on public charge assessments, multiple states and immigrant rights organizations filed suit in federal courts across the country. This temporarily arrested the Trump administration’s attempts to exclude “persons likely to become a public charge” or to deny entry to immigrants who could not prove they already had health insurance or the financial resources to cover any medical costs. Still, in January 2020, the Supreme Court allowed the DHS to proceed with its implementation of the new public charge rule, which went into effect nationwide on February 24, 2020. Additionally, in early 2018, the U.S. State Department, which controls visa issuance to intending immigrants outside the United States, quietly implemented this new public charge rule by revising its Foreign Affairs Manual.

25. See Changes to “Public Charge” Instructions, supra note 5. Part of the Foreign Affairs Manual is used by consular officers as guidance in adjudicating immigrant visa petitions at U.S. consulates and embassies overseas. See U.S. Dep’t of State, Foreign Affairs Manual, 9 FAM 101.1–2 (2020) (noting that Chapter “9 [of] FAM is designed to be a comprehensive useful tool for consular officers’ with respect to visa applications, adjudications, and issuances). The immigration process for those living outside
According to a March 2020 policy brief from the National Foundation for American Policy, "[t]he number of visa refusals . . . for immigrants on public charge grounds went from 1,076 in FY 2016 to 20,941 in FY 2019, an increase of 19,865 or 1,846%." Additionally, during this same period, "immigrant visas issued by the State Department declined by 25 [percent]." While the total number of applicants for immigrant visas is unclear, there is no evidence to support the assertion that the demand for immigrant visas has fallen, especially since there are increasing backlogs of pending family-sponsored visa petitions—attributable to the policy changes discussed herein.

This rise of immigrant visa denials based on public charge grounds is a startling example of these policies' impact on the lives of immigrant families, which has garnered far too little public attention.

State program reports showed large declines in the number of immigrants accessing public health insurance or other government entitlements, for fear of negative repercussions and possible deportation.

the United States begins when U.S. citizens or lawful permanent residents petition the State Department on their behalf. See U.S. Citizen Petition for an Immediate Relative to Become a Lawful Permanent Resident, U.S. Citizenship & Immigration Services, https://www.uscis.gov/forms/explore-my-options/us-citizenpetition-for-an-immediate-relative-to-become-a-lawful-permanent-resident (explaining that U.S. citizens may only petition for certain "immediate relatives" to become a lawful permanent resident or to obtain an immigrant visa); see also Green Card for Family Members of a Permanent Resident, U.S. Citizenship & Immigration Services, https://www.uscis.gov/forms/explore-my-options/green-card-for-family-members-of-a-permanent-resident#:~:text=To%20promote%20family%20unity%2C%20immigration,LPRs%20if%20they%20are%20currently (last updated July 8, 2020) (explaining that U.S. lawful permanent residents are only permitted to petition for "certain eligible family members" to obtain immigrant visas). U.S. citizens may only petition for their spouse, unmarried child under twenty-one, or—if the U.S. citizen is twenty-one years or older—their parent. U.S. Citizen Petition for an Immediate Relative to Become a Lawful Permanent Resident, supra. Similarly, lawful permanent residents may only petition for their spouse, unmarried children under twenty-one, and unmarried sons or daughters of any age. Green Card for Family Members of a Permanent Resident, supra. Those seeking to immigrate through such familial relationships need to show that they would not be a "public charge" as understood by the State Department in the Foreign Affairs Manual. See Changes to "Public Charge" Instructions, supra note 5, at 2. If they cannot, they could be denied a visa and prevented from reuniting with family members already in the United States.


28. See id. at 4 (inferring that “the reason for the decline in immigrant visas [being issued] is due to changes in administration policies” because although “there is no evidence [that] the demand has fallen for immigrant visas,” there still are “large backlogs, including for processing, in family-sponsored preference categories”).

rule.\textsuperscript{30} The widespread confusion and general misunderstanding of various immigration statuses led to panic and fear.\textsuperscript{31}

With the outbreak of the global COVID-19 pandemic in early 2020, the states of New York and Illinois, as well as various immigrant rights organizations, petitioned the Supreme Court to stay the implementation of the new public charge rule until the health crisis had subsided.\textsuperscript{32} In April 2020, the Supreme Court denied these requests.\textsuperscript{33} However, at the end of July 2020, with the COVID-19 pandemic still raging throughout the United States, the Southern District of New York granted an injunction prohibiting the Trump administration from applying the new rule during the pandemic.\textsuperscript{34} A little over a month later, in September 2020, the Second Circuit Court of Appeals allowed the DHS to resume implementation of the rule.\textsuperscript{35} Eventually, on March 9, 2021, the U.S. Court of Appeals for the Seventh Circuit vacated the new public charge rule;\textsuperscript{36} nevertheless, its pernicious chilling effects—especially in the form of noncitizens’ reluctance to access health resources and other government services for fear of immigration repercussions—has persisted.\textsuperscript{37}

The purpose of this essay is to debunk the notion that the Trump administration followed historical precedent in creating a vastly more exclusionary public charge rule and to assert that the over four hundred changes made to immigration law since January 2017, whether currently in effect or not, separate immigrant families and prevent low- and middle-income people from immigrating to the United States.

\textsuperscript{30} Changes to “Public Charge” Inadmissibility Rule, supra note 12, at 3. For example, persons who have been granted asylum in the United States or who have received immigration benefits as survivors of domestic violence were statutorily exempt from this new rule. \textit{Id.}; see also 8 C.F.R. § 212.23 (2019) (listing all “categories of aliens” the public charge rule excludes). In addition, lawful permanent residents are not impacted by the public charge rule. See 8 C.F.R. § 212.23.

\textsuperscript{31} Miller, supra note 20; Changes to “Public Charge” Inadmissibility Rule, supra note 12, at 4.


\textsuperscript{33} Barnes, supra note 32; Wolf v. Cook County, 140 S. Ct. 2709 (2020) (mem.) (denying the request for stay without any explanation); Dept. of Homeland Sec. v. New York, 140 S. Ct. 2709 (2020) (mem.) (denying same).


\textsuperscript{35} New York v. U.S. Dept of Homeland Sec., 974 F.3d 210, 216 (2d Cir. 2020) (granting the request to stay the previously implemented preliminary injunction).


\textsuperscript{37} See supra notes 6, 16, 19, 20, 26–31 and accompanying text.
Part II of this essay, I briefly explore the history of public charge as a basis for inadmissibility to the United States. Next, in Part III, I highlight a few of the over four hundred changes to U.S. immigration law that the Trump administration made, focusing on those that seek to criminalize, target, and exclude immigrant families. In Part IV, I address how—despite federal court orders stopping some of these changes, either temporarily or permanently—the “invisible wall” these changes created instills fear in immigrant communities and results in consequences such as disenrollment from healthcare insurance benefits and reluctance to engage in public social services. I assert that in formulating a significantly more exclusionary definition of public charge, the Trump administration sought to make it impossible for low- and middle-income individuals to immigrate to the United States through the family visa process, thereby preventing ordinary people—much like my great-grandfather—from starting a new life in the United States. Finally, in Part V, as we move into the Biden administration, I posit that comprehensive immigration reform must rescind this exclusionary definition of public charge in order to welcome newcomers with dignity and create a fair and humane immigration system.

II. A HISTORY OF EXCLUSION: POOR LAWS TO KEEP OUT THE “HUDDLED MASSES”

U.S. immigration law has its roots in the British Poor Laws, imported to the colonies and “transformed into laws to restrict the admission of particular foreigners and deport them.”38 These laws mandated that impoverished people should be taken care of in the towns or villages in which they had legally settled.39 Should they move to somewhere they did not have legal settlement, they were unable to access any type of aid and could also be expelled from the town or even from colonial America.40 Starting in the mid-to-late 1600s, the Massachusetts and New York colonies passed their own poor laws, focused on returning transient beggars to “the country from whence they came.”41 Colonial New York and Massachusetts were concerned with protecting their towns’ treasuries from outsiders42 and their “respectable” townspeople from newcomers.43

38. Hidetaka Hirota, Expelling the Poor: Atlantic Seaboard States & The 19th-Century Origins of American Immigration Policy 43 (Oxford Univ. Press 2017). British poor law is “a seventeenth-century set of poor laws that established each parish’s financial obligation to support the local poor and its right to refuse to relieve the transient poor who did not belong to the parish.” Id. at 42. Under the British poor law, “parishes [were permitted] to return wandering beggars back to their own neighborhoods.” Id. at 42–43 (footnote omitted). See generally Kunal M. Parker, From Poor Law to Immigration Law: Changing Visions of Territorial Community in Antebellum Massachusetts, 28 Hist. Geography 61 (2000).

39. Hirota, supra note 38; Parker, supra note 38, at 65.

40. Hirota, supra note 38.

41. Id. See generally Edwards, Jr., supra note 3.

42. Hirota, supra note 38, at 43–44.

43. Id.
Poor laws evolved into passenger control laws enacted by colonial governments in New York and Massachusetts in 1683 and 1701, respectively. These laws strictly regulated who was allowed to enter the colonies, with the express purpose of keeping out those deemed to be “undesirable” for their lack of financial means. A century later, after the Revolutionary War, the New York state legislature passed a law requiring that ship captains report the names and occupations of all passengers to the mayor of New York within twenty-four hours of landing. That law of the late 1780s required surety bonds to be paid for passengers who seemed to be without sufficient income or likely to become a pauper. Inspecting officers at U.S. seaports had a great deal of discretion to categorize certain individuals as “destitute” and others as “able-bodied,” resulting in the expulsions of the former with little oversight.

Anti-immigrant and nativist sentiment against poor Irish Catholics fostered the growth of exclusionary state immigration policy in the mid-to-late 1800s. At the same time, the nativist movement was becoming more popular, further affecting the development of U.S. immigration law. Even before the potato famine in Ireland during the 1840s, prejudice against Catholic newcomers was brewing. Anti-Irish and anti-Catholic mobs set fire to churches in Philadelphia in 1844, and conspiracy

44. Id. at 46.
45. See id. at 46–47 (summarizing the passenger control laws in Massachusetts and New York).
46. Id. at 46.
47. Id. Under this law, ship captains were required to either bring the passenger “back to the place of embarkation within one month” or “provide to the mayor . . . a bond of 100£ with surety that the person would not become a public charge.” Id. at 46–47.
48. See id. at 3 (noting that “[s]tate officials enjoyed sweeping powers” to exclude foreigners “with mental and physical defects, such as ‘lunatics,’ ‘idiots,’ and ‘infirm persons[,]’” although “[i]nsanity and infirmity . . . were never well-defined or self-evident conditions, but always subject to fluid and arbitrary interpretations by those who diagnosed them”).
49. See id. at 3–4 (“[I]t was Irish poverty that generated the principal momentum for the growth of state immigration policy. No other coastal state engaged in passenger control with the same level of legislative effort and success as New York and Massachusetts, the major receiving states for Irish immigration.”). Scholars such as Professor Hidetaka Hirota assert that, while these laws excluded poor immigrants of every background, strong cultural and religious prejudice against the Irish Catholics drove these laws’ adoption and growth. See id. at 206.
51. Id. (explaining that the nativists “focus[ed] all their energy on the immigrant question” because “[t]hey wanted to restore their vision of what America should look like with temperance, Protestantism, self-reliance, with American nationality and work ethic enshrined as the nation’s highest values”).
52. See generally Hirota, supra note 38, at 22–28 (exploring Irish immigration to the U.S. before and after the potato famine).
The theories surrounding Catholic religious rituals abounded. The nativist movement stoked fear in people living in Atlantic coastal cities that foreigners—like the Irish—were trying to “steal” elections and gain favor with politicians. Nativists also exploited the stereotype that the Irish immigrants were “immoral drunkards” and used the Irish as scapegoats for social ills such as crime and poverty. In the 1840s and 1850s, nativist sentiment spread beyond the coastal areas to major cities such as Chicago, Cincinnati, and Louisville.

As the famine began in Ireland, American cities saw their populations greatly increase—approximately thirty-seven thousand Irish entered Boston in 1847, a city of only 115,000. A majority of these immigrants were destitute and suffered from malnutrition, exacerbated by the ocean voyage. Once here, they took on low-paying and often dangerous jobs—the jobs that no one else wanted. Newspaper advertisements for desirable job openings at the time emphasized that “No Irish Need Apply.”

In New York City in 1849, a secret society formed under the name “Order of the Star-Spangled Banner.” Its members were not open about their activities and, when asked, would respond: “I know nothing.” Its membership grew and the society became a political party, the Know Nothing party, in 1850. The party was staunchly
anti-immigrant and anti-Catholic. Its members were mainly working-class men, opposed to elitism. They encouraged racist, anti-immigrant tropes against the Irish to incite further fear toward recently arrived immigrants. The Know Nothing party enjoyed political success for a short time, but eventually suffered from a lack of central organization. Nevertheless, the anti-immigrant and anti-poor platform, combined with messages of hate and prejudice, had a profound influence in the shaping of immigration law at both state and federal levels.

Following the Supreme Court decisions in 1849 and 1875 declaring state passenger laws unconstitutional, New York and Massachusetts pushed for the formation of federal immigration policy to keep out the poor. In 1882, Congress created the first Immigration Act, building on the exclusionary policies already implemented by New York and Massachusetts. Passed the same year as the Chinese Exclusion Act, these laws prohibited “any convict, lunatic, idiot, or any person unable to take care of himself or herself without becoming a public charge” from immigrating to the United States.


66. See Briggs, supra note 55 (“Party members tended to come from the working classes and had a strong anti-elitist bent.”).

67. See id. (“Their platform sought to limit immigration and the influence of Catholicism, and they used ugly ethnic stereotypes to stir up hatred against the recent . . . Irish arrivals.”).

68. See id. (“Before 1855, the Know-Nothings had no centralized organization. Encouraged by their successes, they formally organized in 1855 . . . , after which they went into a rapid decline.”).

69. See generally Henderson v. Mayor of New York, 92 U.S. 259 (1875) (holding that the New York state passenger law effectively taxing foreign passengers was unconstitutional because “this whole subject has been confided to [U.S.] Congress”); Smith v. Turner, 48 U.S. 283 (1849) (holding that the New York state passenger law imposing “a tax on passengers of a ship from a foreign port” was unconstitutional because such law was “a regulation of foreign commerce,” which resides solely with the U.S. Congress).

70. See Hirota, supra note 38, at 4–5 (“Officials in both New York and Massachusetts fundamentally influenced the development of national immigration policy in the late nineteenth century by playing a central role in the making of the federal Chinese Exclusion Act of 1882.”); see also Emma Green, First, They Excluded the Irish, The Atlantic, (Feb. 2, 2017), https://www.theatlantic.com/politics/archive/2017/02/trump-poor-immigrants-public-charge/515397/ (“In the 1870s, when the U.S. Supreme Court declared some of the state passenger laws unconstitutional, [New York and Massachusetts] started a campaign to transform their state laws into federal laws. The result was America’s first national immigration laws.”).


In 1891, Congress revised the 1882 Immigration Act and clarified that “[a]ll . . . persons likely to become a public charge” were not allowed to enter.\footnote{Immigration Act of 1891, ch. 551, § 1, 26 Stat. 1084, 1084.}

In 1903, the exclusionary laws evolved to include deportability provisions.\footnote{See generally Immigration Act of 1903, ch. 1012, 32 Stat. 1213.} Foreign nationals who became a public charge up to two years after their arrival in the United States could now be deported.\footnote{Id. § 20.} In fact, five federal immigration laws passed between 1882 and 1917 provided grounds for exclusion or deportation on the basis of poverty, mental and physical health status, morality, or political beliefs.\footnote{Immigration Act of 1882, ch. 376, 22 Stat. 214 (excluding “any person unable to take care of himself or herself without becoming a public charge”); Immigration Act of 1891, ch. 551, 22 Stat. 1084 (excluding “paupers or persons likely to become a public charge”); Immigration Act of 1903, ch. 1012, 32 Stat. 1213 (excluding, among others, “idiots, insane persons, epileptics, . . . professional beggars; . . . persons who have been convicted of a felony . . . ; polygamists, anarchists, . . . [and] prostitutes”; Immigration Act of 1907, ch. 1134, 34 Stat. 898 (excluding immigrants with a “mental or physical defect being of a nature which may affect the ability of such an alien to earn a living”); Immigration Act of 1917, ch. 29, 39 Stat. 874 (excluding “persons with chronic alcoholism” and “vagrants”). See generally Public Charge: A Brief Historical Background, supra note 74.} “Paupers and persons likely to become a public charge . . . accounted for the majority of exclusions and deportations” during this time.\footnote{Torrie Hester et al., Historians’ Comment: DHS Notice of Proposed Rule “Inadmissibility on Public Charge Grounds”, IMMIGR. L. CTR. OF MINN. 3 (OCT. 5, 2018) (footnote omitted), https://www.ilcm.org/wp-content/uploads/2018/10/Historians-comment-PR-2018-21106.pdf. Nevertheless, enforcement of these provisions was uneven. Id. at 2–3. Effectively, anyone not entering the United States as or with an able-bodied white man was at risk of deportation. See id. at 9 (recognizing that the public charge policy is based on the principle that the United States desires “immigrants who are able-bodied and employable, capable of supporting themselves and their families”).}

in locales—including poor houses, asylums for the mentally ill, hospitals, or prisons—they could only be deported as a public charge if their case was brought within the five-year timeframe and if it could be shown that the causes for the institutionalization existed prior to entry.84

In 1996, Congress significantly changed immigration policy with the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA).85 Changes introduced with IIRIRA are too numerous to fully detail,86 but notably include expedited removal, which provides that certain non-citizens deemed inadmissible by an immigration officer may be deported without further administrative hearings or review.87 Also enacted in 1996, the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA)88 sought to reduce dependence upon Public Assistance, SNAP, and Medicaid, by creating employment requirements to increase workforce participation.89 For immigrants and their families, Title IV of the PRWORA created a “qualified alien” category that divided non-citizens into various groups based on their immigration status.90 These divisions can

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86. See generally Dara Lind, The Disastrous, Forgotten 1996 Law That Created Today’s Immigration Problem, Vox (Apr. 28, 2016), https://www.vox.com/2016/4/28/11515132/iirira-clinton-immigration (describing IIRIRA as “a bundle of provisions with a single goal: to increase penalties on immigrants who had violated US law in some way” and detailing “some of [the immigration experts’] most significant complaints”).

87. See Immigration and Nationality Act, § 235(b) (providing that any noncitizen deemed inadmissible by an examining immigration officer “shall be detained for further inquiry to be conducted by a special inquiry officer”), amended by Illegal Immigration Reform and Immigrant Responsibility Act of 1996, § 302(a) (codified as amended at 8 U.S.C. § 1225 (2008)).


delay or otherwise restrict immigrant access to public benefits, and render such access more dependent upon obtaining U.S. citizenship.  

As a result of PRWORA, a non-disabled adult typically must wait a minimum of five years from the immigration status approval date to receive SNAP benefits.

Under these 1996 changes, many immigrants, if not most, are ineligible for any type of federal public benefit.

Some states, including New York, are more generous and allow immigrants to receive Medicaid, cash assistance, and other benefits.

III. ADMINISTRATIVE ASSAULTS ON IMMIGRATION IN THE TRUMP ERA

The Trump administration commenced its efforts to curtail immigration shortly after taking office in January 2017. The first of three travel bans introduced by President Donald Trump was aimed at preventing all persons from seven majority-
Muslim countries from traveling to the United States. The chaos of this first executive order, as felt at U.S. airports nationwide, resulted in detentions of travelers, widespread protests, the provisional revocation of sixty thousand visas, and additional attempts to rewrite the order, and—finally—a Supreme Court challenge.

The Trump administration proposed and implemented over four hundred changes to immigration law through executive actions, policy changes, and statutory and regulatory changes, all aimed at preventing persons of various immigration status from immigrating to the United States. Few of these policies have generated as widespread outrage as the initial travel ban, but all have had wide-ranging impacts on immigrant families. There are too many of them to list in this essay, however, some are summarized below.

Even though the right to apply for asylum is enshrined in both U.S. and international law, the Trump administration repeatedly referred to asylum as a...

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97. See Protecting the Nation from Foreign Terrorist Entry into the United States, Exec. Order 13769, 82 Fed. Reg. 8977 (Jan. 27, 2017) (suspending the entry of “immigrants and nonimmigrants . . . from countries referred to in section 217(a)(12) of the [Immigration and Nationality Act]”; see also Alison Siskin, President Trump’s Executive Order on Suspending Entry of Select Foreign Nationals: The Seven Countries, CRS Insight (Feb. 1, 2017), https://fas.org/sgp/crs/homesec/IN10642.pdf (noting that “citizens of Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen” were barred from entering the United States under Executive Order 13769 even though the order “did not specifically mention the seven countries”).


99. See Protecting the Nation from Foreign Terrorist Entry into the United States, Exec. Order No. 13780, 82 Fed. Reg. 13209 (Mar. 6, 2017) (replacing Executive Order No. 13769 and amending the list of countries included in the travel ban); see also Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats, Proclamation No. 9645, 85 Fed. Reg. 45161 (Sept. 27, 2017) (reinforcing the travel ban and adding new countries to the list “to protect the United States from terrorist attacks and other public-safety threats”). But see Trump v. Hawaii, 138 S. Ct. 2392 (2018) (addressing plaintiffs’ claims that the travel ban “contravenes provisions in the Immigration and Nationality Act” and “violates the Establishment Clause of the First Amendment”).


“loophole.”\textsuperscript{102} The administration went to great lengths to block access to the asylum process and prevent asylum-seekers from entering the country while their applications were pending.\textsuperscript{103} First, the administration’s unofficial policy of “metering”\textsuperscript{104} required those seeking asylum at the U.S. border with Mexico to put their name on an unofficial waiting list. They were “guaranteed a lengthy wait” before the opportunity to see a judge in Immigration Court or attend a Credible Fear Interview with a U.S. government official.\textsuperscript{105} Second, the administration’s Migrant Protection Protocols (MPP) sent individuals and families seeking asylum at the southern border back to Mexico, between their appearances in U.S. Immigration Courts.\textsuperscript{106} A study found that almost fifty thousand asylum-seekers were impacted by the MPP in its first year of operation, and only 0.1 percent of the approximately ten thousand completed cases were granted asylum as of September 2019.\textsuperscript{107} Third, due to the
COVID-19 pandemic, the Trump administration discontinued Immigration Court appearances for asylum-seekers waiting in Mexico indefinitely.\(^{108}\) While other Immigration Courts in the United States conducted hearings remotely, those waiting per the MPP did not have their court dates rescheduled.\(^{109}\)

Additionally, in June 2020, the DHS and the Department of Justice proposed new regulations that sought to dramatically change asylum eligibility.\(^{110}\) With only a thirty-day public comments period, the Notice of Proposed Rulemaking was over 160 pages long, with more than sixty of those pages the proposed regulations themselves.\(^{111}\) The regulations included “dense, technical language and sweeping new restrictions.”\(^{112}\)

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that upended established principles of international human rights law\(\textsuperscript{113}\) and severely limited who can apply for asylum in the United States.\(\textsuperscript{114}\) For example, the proposed § 1208.13(e) would have allowed immigration judges to deny asylum without a hearing or a chance to testify if the judges determine, on their initiative or at the request of a DHS attorney, that the application form does not adequately make a claim.\(\textsuperscript{115}\) This radical change would have permitted judges to “pretermit” asylum claims, which would be extremely problematic, especially for those who do not have an attorney or do not read and write in English, and are thus at risk of filing an inadequate application even though they may have a valid claim.\(\textsuperscript{116}\)

The Trump administration’s attacks on immigrant youth were relentless. In September 2017, the DHS published a memorandum rescinding the Deferred Action for Childhood Arrivals (DACA) program, which allowed for certain immigrant youth to apply for a work permit and granted them protection from deportation for renewable periods of two years.\(\textsuperscript{117}\) The rescission of the two-year protection for those who already had it under DACA was stayed by a federal court, but the court did not stay the ban on new DACA applications for otherwise eligible immigrant youth.\(\textsuperscript{118}\) In June 2020, the Supreme Court found that the termination of DACA was arbitrary and capricious.\(\textsuperscript{119}\) Nevertheless, the Trump administration disavowed the Supreme Court’s decision and continued to reject initial DACA applications, leaving immigrant youth in limbo.\(\textsuperscript{120}\) A further lawsuit in the Eastern District of New York

\(\textsuperscript{113}\) See Lepard, supra note 101 (“These far-reaching changes would violate the United States’ international legal obligations.”).

\(\textsuperscript{114}\) Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review, 85 Fed. Reg. 26264.

\(\textsuperscript{115}\) Id. at 36277.

\(\textsuperscript{116}\) Id.; see also Proposed Changes to the Asylum Regulations, supra note 111 (“Our organization has witnessed that our community suffers from a lack of access to resources, literacy, and extreme language barriers, which impede their ability to understand fully the complex nature of our immigration system.”).


\(\textsuperscript{119}\) Dep’t of Homeland Sec. v. Regents of the Univ. of Cal., 140 S. Ct. 1891, 1913, 1915 (2020).

concluded in the Trump administration’s begrudging reinstatement of DACA in December 2020. On the day of his inauguration, President Joe Biden issued an executive order calling for the DHS to “preserve and fortify” DACA protections.

For children in federal immigration custody, the Trump administration repeatedly sought to upend a longstanding legal settlement agreement, referred to as the Flores Agreement, which governs the minimal conditions for the detention of minors. In addition, beginning in July of 2017, the Trump administration separated more than five thousand immigrant children from their parents as part of its “zero tolerance” policy for asylum-seeking families who entered the United States without authorization rather than waiting for months on a metering list in violent Mexican border cities.

ordered the continuance of rejecting initial DACA applications] [hereinafter Wolf Memorandum]; see also Betty Márquez Rosales, Many Undocumented Youth Remain in Limbo After Supreme Court’s DACA Decision, EdSource (July 13, 2020), https://edsource.org/2020/undocumented-youth-remain-in-limbo-after-supreme-courts-daca-decision/635447.


Years later, many of these children remain separated from their deported parents, some of whom cannot even be located.125

In May 2019, the Department of Housing and Urban Development (HUD) “published a proposed rule that would bar [low-income] ‘mixed-status’ families from residing in public housing and using Section 8 programs.”126 Additionally, if implemented, this proposed rule would impose immigration status checks and verification requirements on all household members.127 Consequently, “mixed-status households would have to make the impossible choice between splitting their families apart or being evicted from their homes” within a short period of time.128 Even though immigrants who are ineligible for federal housing assistance due to their immigration status do not receive such benefits under the current law, “HUD falsely claim[ed] that the proposed rule [was] necessary to prevent undocumented immigrants from utilizing federal housing assistance.”129

Furthermore, in October 2020, the Trump administration significantly raised various immigration application fees.130 Many families seeking to apply for lawful

125. See Press Release, House Comm. on the Judiciary, Judiciary Committee Releases Report on Trump Administration Family Separation Policy (Oct. 29, 2020), https://judiciary.house.gov/news/ documentsingle.aspx?DocumentID=3442 (“As a result, efforts to reunify separated children continue to this day.”); see also Miriam Jordan, Separated Families: A Legacy Biden Has Inherited From Trump, N.Y. Times (Feb. 1, 2021), https://www.nytimes.com/2021/02/01/us/immigration-family-separations-biden.html (last updated Feb. 6, 2021) (“More than 1,000 migrant children still in the United States likely remain separated from their parents, and another 500 or more were taken from their parents who have yet to be located, according to the latest estimates from lawyers working on the issue.”).

126. Milicent Sasu, HUD’s ‘Mixed-Status’ Rule Is the Latest Attack on the Immigrant Community, Nat’l Immigr. L. Ctr. (July 8, 2019), https://www.nilc.org/2019/07/08/huds-mixed-status-rule-is-the-latest-attack-on-the-immigrant-community/; see also Housing and Community Development Act of 1980: Verification of Eligible Status, 84 Fed. Reg. 20589 (proposed May 10, 2019) (to be codified at 24 C.F.R. pt. 5) (official proposed rule). In the context of access to public benefits, “[m]ixed-status families are households where member(s) who are eligible for public housing assistance live with member(s) who are ineligible for housing assistance due to their immigration status.” Sasu, supra (parenthesis in original). As of the time of the writing of this essay, this rule has not yet been implemented. See Housing and Community Development Act of 1980: Verification of Eligible Status Rulemaking Docket, Regulations.gov, https://www.regulations.gov/docket/HUD-2019-0044/unified-agenda (last visited Apr. 14, 2021) (reflecting that no final action on HUD’s proposed rule was published in the Federal Register).

127. See Sasu, supra note 126 (“If this rule is implemented, HUD will . . . require all household members under age 62 to have their immigration status screened and would change the citizenship and immigration verification requirements for U.S. citizens and noncitizens over age 62.”).

128. Id.

129. Id.

permanent residence could potentially be priced out due to this significant fee increase. In addition, the administration sought to make it more difficult for eligible immigrants to receive a fee waiver for certain immigrant benefits applications, including naturalization, by proposing to remove the receipt of means-tested benefits—a proof that a person is receiving public assistance—as a sufficient criterion for an automatic fee reduction.  
A federal judge in California halted this change in December 2019, allowing immigrants to continue to apply for fee waivers for their naturalization applications.

Since March 2020, the Trump administration increasingly used COVID-19 as an excuse to seal shut both the northern and southern land borders of the United States, and to halt most immigration for an indefinite period. U.S. consulates and embassies abroad remained open for emergencies only and visa services were suspended. Europeans, Brazilians, and Chinese persons were banned from traveling to the United States, while domestic U.S. COVID-19 infection numbers soared. Naturalization ceremonies and in-person interviews for all immigration benefits stopped for months.

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135. Travelers Prohibited from Entry to the United States, Ctr. for Disease Control & Prevention, https://www.cdc.gov/coronavirus/2019-ncov/travelers/from-other-countries.html (last updated Feb. 19, 2021). As of January 2021, presidential proclamations were issued restricting “the entry of [foreign nationals] into the United States” who had been in China, Iran, the European Schengen Area, the United Kingdom, Republic of Ireland, Brazil, or South Africa within the past fourteen days. Id. However, “citizens and lawful permanent residents of the United States, certain family members, and other individuals who [met] specified exceptions, who [had] been in one of [those] countries . . . in the past [fourteen] days” were still permitted to enter the United States. Id.
and slowly reopened in the summer of 2020, in a limited capacity only.\textsuperscript{136} These new restraints on immigration were carried out with little fanfare and seemingly few objections from the public, as Americans faced the overwhelming dual challenges of skyrocketing domestic coronavirus cases and soaring unemployment.

While the physical border wall is nowhere near completion, and its future construction looks uncertain in the early months of the Biden administration,\textsuperscript{137} these few examples out of many comprise the “invisible wall” built by the Trump administration and have had an arguably more pernicious effect than the physical wall. The aforementioned executive orders, regulations, and policies effectively barred many individuals from entering the United States.

IV. UNINTENDED OR INTENDED CONSEQUENCES?

While the anticipated consequences of the Trump administration's immigration policy changes are clear, there are other consequences that are as harmful but perhaps not as readily discernable. As early as 2017 and out of fear that their “green card” applications would be denied and they would be ultimately deported, immigrants earning low wages started withdrawing from public benefit programs to which their U.S.-born citizen children might be entitled, such as food assistance.\textsuperscript{138} Likewise, immigrant parents to U.S. citizen children are often afraid to allow their children to access low-cost or free school lunches for fear that it might negatively impact their

\textsuperscript{136} Peggy Gleason & Ariel Brown, Immigrant Legal Res. Ctr., Temporary Changes to U.S. Citizenship and Immigration Services (USCIS) in Response to COVID-19 2 (Dec. 18, 2020), https://www.ilrc.org/sites/default/files/resources/practice_alert_uscis_updates_covid19_dec_2020_update.pdf. All U.S. Citizenship and Immigration Services (USCIS) in-person services were suspended on March 18, 2020. Id. In-person services included “scheduled adjustment, naturalization, affirmative asylum, and other interviews, . . . biometrics appointments at Application Support Centers (ASCs), and all naturalization oath ceremonies.” Id. (parenthetical in original). All services were suspended through June 3, 2020 and on June 4, 2020, USCIS began resuming only some in-person services. Id.; see also USCIS Preparing to Resume Public Services on June 4, U.S. Citizenship & Immigr. Servs. (May 27, 2020), https://www.uscis.gov/news/alerts/uscis-preparing-to-resume-public-services-on-june-4 (announcing that the USCIS is resuming “non-emergency public services” in limited capacity with respect to its asylum offices, ASCs, naturalization ceremonies, interviews, and appointments).


\textsuperscript{138} See Emily Baumgaertner, Spooked by Trump Proposals, Immigrants Abandon Public Nutrition Services, N.Y. Times (Mar. 6, 2018), https://www.nytimes.com/2018/03/06/us/politics/trump-immigrants-public-nutrition-services.html (reporting that public benefit programs were seeing declines in participation between 2016 and 2017); see also Changes to “Public Charge” Inadmissibility Rule, supra note 12, at 4.
own immigration applications.\footnote{139} Fear also keeps immigrants from seeking public medical services.\footnote{140} Importantly, few government benefit programs are even available to immigrants before they become lawful permanent residents and receive their “green cards.”\footnote{141} Nevertheless, the impacts of the “invisible wall” policies on immigrants, particularly mixed-status families, are substantial.

Studies have found that the implementation of the new public charge rule would directly impact immigrant families.\footnote{142} Specifically, the rule would have a disproportionate effect on mixed-status households originally from Latin America, Asia, and Africa, in their ability to sponsor non-citizen family members to either immigrate to the United States or adjust within the country to receive lawful permanent residency.\footnote{143} Additionally, the totality of the circumstances test for determining whether someone is likely to become a public charge unduly impacted families whose income was below 125 percent of the U.S. federal poverty line.\footnote{144} Families with income and assets above this threshold would have a factor in their favor toward establishing financial security in the eyes of the DHS, while those below would not.\footnote{145} Many families from Latin America, Asia, and Africa do not earn enough income or own financial assets that exceed 125 percent of the U.S. federal poverty line for their family size, while immigrants from Western Europe meet this financial threshold more often.\footnote{146} As a result, another consequence of the new public

\footnote{139. See Zaidee Stavely, California School Officials Reassure Immigrant Parents After Ruling Limiting Benefits, \textit{EdSource} (Jan. 31, 2020), https://edsource.org/2020/california-school-officials-reassure-immigrant-parents-after-ruling-limiting-benefits/623231 (explaining how “immigrant families are [] disenrolling or choosing not to enroll their children in public benefit programs” even though “benefits used by U.S. citizen children” should not be considered in determining the parent immigrants’ applications).}


\footnote{141. See Tanya Broder et al., \textit{Nat’l Immigr. L. Ctr., Overview of Immigrant Eligibility for Federal Programs} (Dec. 2015), https://www.nilc.org/wp-content/uploads/2015/12/overview-immeligfedprograms-2015-12-09.pdf (discussing immigrant eligibility requirements for federal public benefit programs). As mentioned earlier, there were significant changes in immigrant access to public benefits at the federal level following the passage of PRWORA and IIRIRA in 1996. \textit{See supra} notes 85–95 and accompanying text.}


\footnote{143. \textit{Id.}}


\footnote{145. \textit{Id.}}

\footnote{146. Batalova et al., \textit{supra} note 142.}
The invisible wall was that it disproportionally impacted communities of color.\textsuperscript{147} Thus, family-based immigration was impacted in a manner not seen since the Immigration Act of 1924, which imposed national origin-based quotas, continued to exclude Chinese and Asian immigrants, and expanded upon the literacy tests present in the 1917 federal immigration laws.\textsuperscript{148} The new rule also evoked the nativist hostility encountered by early immigrant populations, specifically the Irish, in the early twentieth century.\textsuperscript{149}

The chilling effects of the new public charge rule and other policy changes impacting the lives of immigrants in the United States have been magnified by the COVID-19 pandemic.\textsuperscript{150} Some immigrant families were reluctant to seek medical attention for coronavirus symptoms for fear of potential public charge consequences.\textsuperscript{151} Immigration advocates and health policy experts worried that the Trump administration’s explicit and implicit antipathy towards immigrants would hamper public health efforts to control the spread of the virus.\textsuperscript{152} U.S. citizens and immigrants alike lost their jobs at alarming numbers, and consequently often found themselves without health insurance.\textsuperscript{153} Many immigrants, and most undocumented immigrants, are not eligible for federally funded Medicaid and coverage under the Affordable

\begin{itemize}
\item \textsuperscript{147} See id.
\item \textsuperscript{149} See Ibrahim Hirsi, Trump Administration’s ‘Public Charge’ Provision has Roots in Colonial US, The World (Dec. 19, 2018), https://www.pri.org/stories/2018-12-19/trump-administration-s-public-charge-provision-has-roots-colonial-us (“The public charge provision was truly central to early immigration control in America, and that still remains true today[.]”).
\item \textsuperscript{153} See Rachel Garfield et al., Eligibility for ACA Health Coverage Following Job Loss, Kaiser Fam. Found. (May 13, 2020), https://www.kff.org/coronavirus-covid-19/issue-brief/eligibility-for-aca-health-coverage-following-job-loss/ (“In addition to loss of income, job loss carries the risk of loss of health insurance . . . .”).
\end{itemize}
Care Act. In states without additional state-funded Medicaid for poor immigrants, these persons are simply uninsured.

Others have been hesitant to seek necessary medical care due to fears that they might be subject to ICE enforcement actions at hospitals. While ICE considers medical facilities to be “sensitive locations” where arrests of immigrants for suspected civil immigration violations are to be avoided absent exigent circumstances, immigration advocates and media report that there have been arrests at hospitals, even during the COVID-19 pandemic. As a result, marginalized groups, including low- and middle-income immigrant families, have been disproportionately impacted by the COVID-19 pandemic due to limited access to healthcare and fear of negative immigration repercussions.

V. CONCLUSION: HISTORY REPEATS ITSELF

Like the nativist and Know Nothings of the late 1800s, the Trump administration presented familiar assertions in an attempt to blame immigrants for various societal ills to gain political favor. These assertions rest on the belief that immigrants come


156. E.g., Peter Hall, ICE Criticized for Arrest at Scranton Hospital, MORNING CALL (Mar. 16, 2020), https://www.mcall.com/news/pennsylvania/mc-nws-pa-ice-immigrant-arrest-hospital-scranton-coronavirus-20200316-3itqa24pdfau3jknkm62jcdoi-story.html (describing how ICE arrested a Honduran immigrant as he was leaving an emergency room in Scranton, Pennsylvania). Jeff Gammage, Will I Get Detained By ICE If I Go To A Hospital?, PHILA. INQUIRER (Apr. 6, 2020) (advising undocumented immigrants to only go to hospitals if they are “terribly sick” and noting that grounds surrounding hospitals are “not necessarily safe for undocumented people”). But see Nat’l IMMIGR. L. CTR., HEALTH CARE PROVIDERS AND IMMIGRATION ENFORCEMENT: KNOW YOUR RIGHTS, KNOW YOUR PATIENTS’ RIGHTS 2 (Apr. 2017), https://www.nilc.org/wp-content/uploads/2017/04/Protecting-Access-to-Health-Care-2017-04-17.pdf (“[I]mmigration enforcement actions are to be avoided at sensitive locations, including at hospitals and other health care facilities, unless exigent circumstances exist or the officers conducting the actions have prior approval from certain officials within the enforcement agencies.”).

to the United States to abuse public benefit programs,\textsuperscript{160} when the reality is that most are precluded from accessing any type of federal entitlements for a period of at least five years from obtaining lawful permanent residence, if they are eligible at all.\textsuperscript{161} Another claim is that immigrants take American jobs, thereby hurting the U.S. economy and workers.\textsuperscript{162} Economists regularly rebuff this contention by showing a net gain between immigration and job growth.\textsuperscript{163}

Additionally, the hundreds of Trump administration modifications to immigration law and policy furthered its assault on immigrants, particularly low- and middle-income. These changes are harmful to the wellbeing of immigrant families, including U.S. citizen children. These rules and policies also undermine the integration of immigrants, who may one day become U.S. citizens.

Much of my great-grandfather’s story has been lost to history. Yet, despite his illiteracy and humble background, he became a U.S. citizen in 1945. His race, sex, and non-disabled status were the main requirements at the time for the opportunity to enter the United States, as these characteristics apparently proved that he would not be solely reliant on government benefits for his survival. Under the Trump

\begin{itemize}
  
  
  
  \item \textsuperscript{163} Id.; see also Dany Bahar, A Spicy Red Sauce and How Immigrants Generate Jobs and Growth in the US, Brookings (Feb. 7, 2017), https://www.brookings.edu/blog/up-front/2017/02/07/a-spicy-red-sauce-and-how-immigrants-generate-jobs-and-growth-in-the-us/ (“Overwhelming evidence shows that migrants are an important ingredient in the recipe of economic growth, while little to no evidence supports the claim that they are, instead, a threat to America’s national security.”); see also Undocumented Immigrants’ State & Local Tax Contributions, INST. ON TAX’N & ECON. POL’Y (Mar. 2, 2017), https://itep.org/immigration/ (providing “data that helps dispute the erroneous ideas espoused [by] President Trump[. . .] that undocumented immigrants are a drain to taxpayers”). See generally Daniel Costa et al., Econ. Pol’y Inst., Facts About Immigration and the U.S. Economy (Aug. 12, 2014), https://files.epi.org/pdf/68129.pdf. Moreover, the U.S. immigration system has checks in place, such as the labor market test, to assess whether there are any willing, qualified, and available U.S. workers for a given position. See Working in the United States: Permanent Workers, U.S. Citizenship & Immigr. Servs., https://www.uscis.gov/working-in-the-united-states/permanent-workers (last updated Jan. 9, 2020) (nothing that before an employer may sponsor an immigrant, the employer must obtain a labor certification). A labor certification will only be granted if there "are insufficient available, qualified, and willing U.S. workers to fill the position being offered at the prevailing wage" and "[h]iring a foreign worker will not adversely affect the wages and working conditions of similarly employed U.S. workers." Id. "The goal of the Labor Certification Process is to make sure that foreign workers are not taking jobs from qualified U.S. workers." See PERM Labor Certification, CURRAN, BERGER & KLUDT IMMIGR. L., https://cbkimmigration.com/employment-based-immigration/perm-labor-certification/ (last visited Apr. 14, 2021) (describing the steps employers must take to obtain a certification, including the labor market test).
administration’s “invisible wall” of anti-immigrant policies, those with far greater resources, education, family ties, and abilities than my great-grandfather would not be as fortunate.