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THE RED SCARE TO THE TRAVEL BAN*

Article 3

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## The Invisible Wall: Public Charge Policy Impacts on Immigrant Families

Claire R. Thomas

New York Law School, [claire.thomas@nyls.edu](mailto:claire.thomas@nyls.edu)

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CLAIRE R. THOMAS

## The Invisible Wall: Public Charge Policy Impacts on Immigrant Families

65 N.Y.L. SCH. L. REV. 197 (2020–2021)

ABOUT THE AUTHOR: Claire R. Thomas directs the Asylum Clinic at New York Law School, where she also teaches immigration law as an Adjunct Professor of Law. Her research and writing focus on migration and human rights. J.D. New York Law School, 2011; M.S. New York University, 2008; B.A. University of Chicago, 2004.

## THE INVISIBLE WALL

### 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,<sup>1</sup> 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.<sup>2</sup>

Poverty-based immigration control has long been part of the U.S. immigration story.<sup>3</sup> 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

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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.*
  2. Today, thousands of permanent immigrant visas are granted each year based on several "visa categories." *See generally* AM. IMMIGR. COUNCIL, *HOW THE UNITED STATES IMMIGRATION SYSTEM WORKS* (2019), [https://www.americanimmigrationcouncil.org/sites/default/files/research/how\\_the\\_united\\_states\\_immigration\\_system\\_works.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/research/how_the_united_states_immigration_system_works.pdf) [hereinafter *HOW THE U.S. IMMIGRATION SYSTEM WORKS*] (providing an overview of the U.S. immigration system and the requirements for obtaining permanent visas). U.S. employment is just one method for obtaining a permanent visa. *Id.* Under the employment-based immigration category, permanent visas are granted on an employment-based preference system, which includes "[p]ersons of extraordinary ability," "members of [] professions" requiring advanced degrees, "skilled workers," "special immigrants" who are classified in a very particular subset of employment positions, and "persons who will invest \$500,000 to \$1 million in a job-creating enterprise." *Id.* Lack of financial resources can serve as a basis for denying entry into the United States. *See Public Charge Fact Sheet*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/archive/public-charge-fact-sheet> (last updated Mar. 10, 2021).
  3. *Public Charge Fact Sheet*, *supra* note 2. "An alien who is likely at any time to become a public charge is generally inadmissible to the United States and is ineligible to become a lawful permanent resident." *Id.* A "public charge" is "an alien who receives one or more public benefits . . . for more than 12 months, in total, within any 36-month period . . ." *Id.* Prior to the enactment of federal public charge policies, some colonies adopted their own policies for rejecting impoverished immigrants. *See* JAMES R. EDWARDS, JR., CTR. FOR IMMIGR. STUD., *PUBLIC CHARGE DOCTRINE: A FUNDAMENTAL PRINCIPLE OF AMERICAN IMMIGRATION POLICY* 2–3 (May 2001), <https://cis.org/sites/cis.org/files/articles/2001/back701.pdf> (detailing the history of the public charge doctrine in America, beginning in 1645 in Massachusetts).

expense.<sup>4</sup> Those newcomers were considered a “public charge,”<sup>5</sup> 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.<sup>6</sup>

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.<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup>

The final rule was published on August 14, 2019 and included three major changes to the existing public charge policy.<sup>10</sup> First, it dramatically altered the public

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4. DANILO TRISI, CTR. ON BUDGET & POL’Y PRIORITIES, TRUMP ADMINISTRATION’S OVERBROAD PUBLIC CHARGE DEFINITION COULD DENY THOSE WITHOUT SUBSTANTIAL MEANS A CHANCE TO COME TO OR STAY IN THE U.S. 1 (May 2019), <https://www.cbpp.org/sites/default/files/atoms/files/5-30-19pov.pdf>.
  5. *Id.*; see also NAT’L IMMIGR. L. CTR., CHANGES TO “PUBLIC CHARGE” INSTRUCTIONS IN THE U.S. STATE DEPARTMENT’S MANUAL 1 (2018), <https://www.nilc.org/wp-content/uploads/2018/02/PIF-FAM-Summary-2018.pdf> [hereinafter CHANGES TO “PUBLIC CHARGE” INSTRUCTIONS] (providing a similar definition).
  6. TRISI, *supra* note 4, at 3.
  7. See Dara Lind, *Exclusive: Trump’s Draft Plan to Punish Legal Immigrants for Sending US-Born Kids to Head Start*, Vox, <https://www.vox.com/2018/2/8/16993172/trump-regulation-immigrants-benefits-public-charge> (last updated Feb. 8, 2018) (discussing the draft of a new rule released in February 2018, “allow[ing] the government to keep immigrants from settling in the US” by extending the “government’s power to bar an immigrant from entering the United States, obtaining a new visa, or becoming a lawful permanent resident (green-card holder) by labeling the immigrant a likely ‘public charge’”) (parentheses in original); see also 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> (detailing the documents leaked in January 2017, including an order proposing to “build [a wall] around the welfare state” by deeming any immigrant who is “likely to get *any* benefit” a “public charge”) (emphasis in original).
  8. Inadmissibility on Public Charge Grounds, 83 Fed. Reg. 51114 (proposed Oct. 10, 2018) (to be codified at 8 C.F.R. pts. 103, 212–214, 245, 248); see also *Final Rule on Public Charge Ground of Inadmissibility*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/archive/final-rule-on-public-charge-ground-of-inadmissibility#:~:text=a%20corresponding%20correction.-,On%20Oct.,to%20all%20significant%20public%20comments> (last updated Feb. 24, 2020) (listing public benefits considered in public charge determinations in the “Questions and Answers” section).
  9. Charles Wheeler, *DHS Finalizes Public Charge Rule*, CATH. LEGAL IMMIGR. NETWORK, <https://cliniclegal.org/resources/ground-inadmissibility-and-deportability/public-charge/dhs-finalizes-public-charge-rule> (last updated Aug. 12, 2019).
  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). Due to the large

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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.<sup>11</sup>

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.<sup>12</sup> 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.<sup>13</sup> No one factor was dispositive, and the adjudicator was required to consider and balance all factors in totality.<sup>14</sup> Under the new rule, specific factors were weighed negatively against an applicant, including being a child or a senior, or having financial struggles.<sup>15</sup> 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.<sup>16</sup>

The third change incorporated certain government benefit programs into the public charge policy.<sup>17</sup> These included federally-funded Medicaid, the Supplemental Nutrition Assistance Program (“SNAP,” formerly known as food stamps), and Section 8 housing assistance.<sup>18</sup> Their addition as negative factors created another

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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. pt. 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).

11. Erin Quinn & Sally Kinoshita, *An Overview of Public Charge and Benefits*, IMMIGRANT LEGAL RES. CTR. (Mar. 2020), [https://www.ilrc.org/sites/default/files/resources/overview\\_of\\_public\\_charge\\_and\\_benefits-march2020-v3.pdf](https://www.ilrc.org/sites/default/files/resources/overview_of_public_charge_and_benefits-march2020-v3.pdf).
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).
13. *See* CHANGES TO “PUBLIC CHARGE” INSTRUCTIONS, *supra* note 5.
14. *Id.*; CMTY. SERV. SOC’Y OF N.Y., PUBLIC CHARGE 1 (Aug. 2020), [http://lghhttp.58547.nexcesscdn.net/803F44A/images/nycss/QA\\_on\\_Public\\_Charge\\_\(1\).pdf](http://lghhttp.58547.nexcesscdn.net/803F44A/images/nycss/QA_on_Public_Charge_(1).pdf).
15. *See supra* note 12 and accompanying text.
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).
17. *Id.* at 1–2, 6.
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\\_ovrvw-fed-pgms.pdf](https://www.nilc.org/wp-content/uploads/2015/11/tbl1_ovrvw-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.<sup>19</sup> This fear deprived many children of critical government assistance.<sup>20</sup>

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.<sup>21</sup> 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.<sup>22</sup> Still, in January 2020, the Supreme Court allowed the DHS to proceed with its implementation of the new public charge rule,<sup>23</sup> which went into effect nationwide on February 24, 2020.<sup>24</sup> 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.<sup>25</sup>

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19. CHANGES TO "PUBLIC CHARGE" INADMISSIBILITY RULE, *supra* note 12, at 4–5.

20. *E.g.*, SAMANTHA ARTIGA & BARBARA LYONS, KAISER FAM. FOUND., FAMILY CONSEQUENCES OF DETENTION/DEPORTATION: EFFECTS ON FINANCES, HEALTH, AND WELL-BEING (Sept. 2018), <http://files.kff.org/attachment/Family-Consequences-of-Detention-Deportation-Effects-on-Finances-Health-and-Well-Being> (providing examples of how immigrant families, including children, were negatively affected by the new public charge rule); Leila Miller, *Trump Administration's "Public Charge" Rule Has Chilling Effect on Benefits for Immigrants' Children*, L.A. TIMES (Sept. 3, 2019), <https://www.latimes.com/california/story/2019-09-02/trump-children-benefits-public-charge-rule>.

21. *See* Deepti Hajela, *Lawsuits Around U.S. Seek to Block Trump's Public Charge Rule*, PBS: NEWS HOUR (Oct. 9, 2019), <https://www.pbs.org/newshour/nation/lawsuits-around-u-s-seek-to-block-trumps-public-charge-rule>; *see also* Ann E. Marimow, *Court Sides with Trump Administration Effort to Impose 'Public Charge' Rule*, WASH. POST (Aug. 6, 2020), [https://www.washingtonpost.com/local/legal-issues/block-on-trump-administration-public-charge-rule-lifted-by-court/2020/08/05/68f23426-d74f-11ea-930e-d88518c57dcc\\_story.html](https://www.washingtonpost.com/local/legal-issues/block-on-trump-administration-public-charge-rule-lifted-by-court/2020/08/05/68f23426-d74f-11ea-930e-d88518c57dcc_story.html).

22. Hajela, *supra* note 21; *see also* Proclamation No. 9945, 84 Fed. Reg. 53991 (Oct. 4, 2019) (suspending and limiting the entry of immigrants "who will financially burden the United States healthcare system"). *But see* New York v. U.S. Dep't of Homeland Sec., 408 F. Supp. 3d 334 (S.D.N.Y. 2019) (granting "a nationwide injunction, as well as a stay postponing the effective date of the [Public Charge] Rule pending a final ruling on the merits"); *Make the Rd. N.Y. v. Cuccinelli*, 419 F. Supp. 3d 647 (S.D.N.Y. 2019) (granting same).

23. *See* Dep't of Homeland Sec. v. New York, 140 S. Ct. 599, 600 (2020) (Gorsuch, J., concurring) ("Today the Court (rightly) grants a stay, allowing the government to pursue (for now) its [public charge] policy everywhere save Illinois.") (parenthesis in original).

24. *Public Charge*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/green-card/green-card-processes-and-procedures/public-charge> (last updated Apr. 15, 2021).

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. DEPT 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%.”<sup>26</sup> Additionally, during this same period, “immigrant visas issued by the State Department declined by 25 [percent].”<sup>27</sup> 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.<sup>28</sup> 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.<sup>29</sup> This is regardless of whether the person’s immigration status would actually be impacted by the new public charge

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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 & IMMIGR. SERVS., <https://www.uscis.gov/forms/explore-my-options/us-citizen-petition-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 & IMMIGR. SERVS., <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.

26. NAT’L FOUND. FOR AM. POL’Y, STATE DEPARTMENT IMMIGRANT AND TEMPORARY VISA DECLINES AND REFUSALS IN FY 2019, at 2 (March 2020), <https://nfap.com/wp-content/uploads/2020/03/State-Department-Immigrant-and-Temporary-Visa-Declines-and-Refusals-in-FY-2019.NFAP-Policy-Brief-March-2020.pdf>. “The National Foundation for American Policy (NFAP) is a non-profit, non-partisan organization dedicated to public policy research on trade, immigration, education, and other issues of national importance.” *Mission Statement*, NFAP, <https://nfap.com/about-us/mission-statement/> (last visited Apr. 14, 2021).
27. NAT’L FOUND. FOR AM. POL’Y, *supra* note 26, at 2, 4.
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”).
29. E.g., Leslie Berestein Rojas, *Thousands of LA Immigrant Families Are No Longer Enrolled in Public Benefits. A Pending Trump Rule Could Be Why*, LAIST (Aug. 2, 2019), [https://laist.com/2019/08/02/thousands\\_of\\_la-immigrant\\_families\\_are\\_no\\_longer\\_enrolled\\_in\\_public\\_benefits\\_a\\_pending\\_trump\\_rule\\_co.php](https://laist.com/2019/08/02/thousands_of_la-immigrant_families_are_no_longer_enrolled_in_public_benefits_a_pending_trump_rule_co.php).

rule.<sup>30</sup> The widespread confusion and general misunderstanding of various immigration statuses led to panic and fear.<sup>31</sup>

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.<sup>32</sup> In April 2020, the Supreme Court denied these requests.<sup>33</sup> 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.<sup>34</sup> A little over a month later, in September 2020, the Second Circuit Court of Appeals allowed the DHS to resume implementation of the rule.<sup>35</sup> Eventually, on March 9, 2021, the U.S. Court of Appeals for the Seventh Circuit vacated the new public charge rule;<sup>36</sup> 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.<sup>37</sup>

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. In

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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. *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.

31. Miller, *supra* note 20; CHANGES TO “PUBLIC CHARGE” INADMISSIBILITY RULE, *supra* note 12, at 4.

32. See Robert Barnes, *Supreme Court Denies States’ Bid to Revisit Ruling on Trump’s ‘Wealth Test’ for Immigrants*, WASH. POST (Apr. 24, 2020), [https://www.washingtonpost.com/politics/courts\\_law/supreme-court-trump-wealth-test-for-immigrants/2020/04/24/eccd18f6-8678-11ea-a3eb-e9fc93160703\\_story.html](https://www.washingtonpost.com/politics/courts_law/supreme-court-trump-wealth-test-for-immigrants/2020/04/24/eccd18f6-8678-11ea-a3eb-e9fc93160703_story.html) (reporting that four states—New York, Connecticut, Illinois, and Vermont—asked the Supreme Court to reconsider its decision from January 2020, which allowed the Trump administration to implement the new public charge rule); see also *Public Charge Rule Amid the COVID-19 Pandemic*, LEGAL COUNCIL FOR HEALTH JUST. (Apr. 17, 2020), <https://legalcouncil.org/scotus-publiccharge-covid19/> (noting that the Illinois Coalition for Immigrant and Refugee Rights, the Shriver Center, the Cook County State’s Attorney, and Cook County joined New York, Connecticut and Vermont in petitioning the Supreme Court “to temporarily suspend the . . . public charge rule in light of the public health crisis”).

33. Barnes, *supra* note 32; Wolf v. Cook County, 140 S. Ct. 2709 (2020) (mem.) (denying the request for stay without any explanation); Dep’t. of Homeland Sec. v. New York, 140 S. Ct. 2709 (2020) (mem.) (denying same).

34. New York v. U.S. Dep’t of Homeland Sec., 475 F. Supp. 3d 208, 216 (S.D.N.Y. 2020).

35. New York v. U.S. Dep’t of Homeland Sec., 974 F.3d 210, 216 (2d Cir. 2020) (granting the request to stay the previously implemented preliminary injunction).

36. USCIS POL’Y MANUAL, ch.9 (U.S. CITIZENSHIP & IMMIGR. SERVS. 2021), <https://www.uscis.gov/policy-manual/volume-8-part-g>.

37. See *supra* notes 6, 16, 19, 20, 26–31 and accompanying text.

## THE INVISIBLE WALL

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.”<sup>38</sup> These laws mandated that impoverished people should be taken care of in the towns or villages in which they had legally settled.<sup>39</sup> 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.<sup>40</sup> 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.”<sup>41</sup> Colonial New York and Massachusetts were concerned with protecting their towns’ treasuries from outsiders<sup>42</sup> and their “respectable” townspeople from newcomers.<sup>43</sup>

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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.<sup>44</sup> 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.<sup>45</sup> 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.<sup>46</sup> 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.<sup>47</sup> 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.<sup>48</sup>

Anti-immigrant and nativist sentiment against poor Irish Catholics fostered the growth of exclusionary state immigration policy in the mid-to-late 1800s.<sup>49</sup> At the same time, the nativist movement was becoming more popular,<sup>50</sup> further affecting the development of U.S. immigration law.<sup>51</sup> Even before the potato famine in Ireland during the 1840s,<sup>52</sup> prejudice against Catholic newcomers was brewing.<sup>53</sup> Anti-Irish and anti-Catholic mobs set fire to churches in Philadelphia in 1844, and conspiracy

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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.

50. *See generally* Lorraine Boissoneault, *How the 19th-Century Know Nothing Party Reshaped American Politics*, SMITHSONIAN MAG. (Jan. 26, 2017), <https://www.smithsonianmag.com/history/immigrants-conspiracies-and-secret-society-launched-american-nativism-180961915/>.

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).

53. *See* Christopher Klein, *When America Despised the Irish: The 19th Century’s Refugee Crisis*, HISTORY: HISTORY STORIES (Mar. 16, 2017), <https://www.history.com/news/when-america-despised-the-irish-the-19th-centurys-refugee-crisis> (last updated Mar. 14, 2019) (providing examples of conflicts arising between Protestants and Catholics before the Ireland potato famine).

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theories surrounding Catholic religious rituals abounded.<sup>54</sup> 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.<sup>55</sup> 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.<sup>56</sup> In the 1840s and 1850s, nativist sentiment spread beyond the coastal areas to major cities such as Chicago, Cincinnati, and Louisville.<sup>57</sup>

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.<sup>58</sup> A majority of these immigrants were destitute and suffered from malnutrition, exacerbated by the ocean voyage.<sup>59</sup> Once here, they took on low-paying and often dangerous jobs—the jobs that no one else wanted.<sup>60</sup> Newspaper advertisements for desirable job openings at the time emphasized that “No Irish Need Apply.”<sup>61</sup>

In New York City in 1849, a secret society formed under the name “Order of the Star-Spangled Banner.”<sup>62</sup> Its members were not open about their activities and, when asked, would respond: “I know nothing.”<sup>63</sup> Its membership grew and the society became a political party, the Know Nothing party, in 1850.<sup>64</sup> The party was staunchly

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54. *Id.*

55. Amy Briggs, *The Know-Nothings: The United States' First Anti-Immigration Party*, NAT'L GEOGRAPHIC (Nov. 2018), <https://www.nationalgeographic.com/history/magazine/2017/07-08/know-nothings-and-nativism/>.

56. *Id.*; see also Josh Zeitz, *When America Hated Catholics*, POLITICO MAG. (Sept. 23, 2015), <https://www.politico.com/magazine/story/2015/09/when-america-hated-catholics-213177>.

57. Briggs, *supra* note 55.

58. *Irish Potato Famine: Gone to America*, THE HIST. PLACE, <https://www.historyplace.com/worldhistory/famine/america.htm#:~:text=Throughout%20the%20Famine%20years%2C%2075,53%2C000%20also%20arrived%20in%201847> (last visited Apr. 14, 2021).

59. See Klein, *supra* note 53 (describing the conditions that the Irish immigrants faced while sailing to America).

60. See *Joining the Workforce*, LIBR. OF CONG., <https://www.loc.gov/classroom-materials/immigration/irish/joining-the-workforce/> (last visited Apr. 14, 2021) (“Irish immigrants often entered the workforce at the bottom of the occupational ladder and took on the menial and dangerous jobs that were often avoided by other workers.”).

61. Klein, *supra* note 53.

62. Briggs, *supra* note 55.

63. *Id.*

64. Boissoneault, *supra* note 50. The Know Nothing party—originally called the American party—arose from the nativist movement, which began in the mid-nineteenth century and was “the American political system’s first major third party.” *Id.*; Uri Friedman, *What Is a Nativist?*, THE ATLANTIC (Apr. 11, 2017), <https://www.theatlantic.com/international/archive/2017/04/what-is-nativist-trump/521355/>. The Know Nothing party was a “pureblooded pedigree of Protestant Anglo-Saxon stock” that “reject[ed] all Catholics,” Boissoneault, *supra* note 50, and “portrayed Catholic immigration from countries such as Germany and Ireland as a grave threat to Protestant-born Americans.” Friedman, *supra*.

anti-immigrant and anti-Catholic.<sup>65</sup> Its members were mainly working-class men, opposed to elitism.<sup>66</sup> They encouraged racist, anti-immigrant tropes against the Irish to incite further fear toward recently arrived immigrants.<sup>67</sup> The Know Nothing party enjoyed political success for a short time, but eventually suffered from a lack of central organization.<sup>68</sup> 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,<sup>69</sup> New York and Massachusetts pushed for the formation of federal immigration policy to keep out the poor.<sup>70</sup> In 1882, Congress created the first Immigration Act, building on the exclusionary policies already implemented by New York and Massachusetts.<sup>71</sup> Passed the same year as the Chinese Exclusion Act,<sup>72</sup> these laws prohibited “any convict, lunatic, idiot, or any person unable to take care of himself or herself without becoming a public charge”<sup>73</sup> from immigrating to the United States.<sup>74</sup>

65. See Michael Todd Landis, *How the Know Nothing Party Turned Nativism Into a Political Strategy*, ZOCALO PUB. SQUARE (July 12, 2018), <https://www.zocalopublicsquare.org/2018/07/12/know-nothing-party-turned-nativism-political-strategy/ideas/essay/>.

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.”).

71. See HIROTA, *supra* note 38, at 4–5; see also Torrie Hester et al., *Now the Trump Administration is Trying to Punish Legal Immigrants for Being Poor*, WASH. POST (Aug. 9, 2018), <https://www.washingtonpost.com/news/made-by-history/wp/2018/08/09/now-the-trump-administration-is-trying-to-punish-legal-immigrants-for-being-poor/> (describing the poor laws as “proto-immigration laws for individual states” and explaining that such laws “provided a framework for the first federal immigration laws”).

72. Chinese Exclusion Act, ch. 126, 22 Stat. 58 (1882) (repealed 1943).

73. Immigration Act of 1882, ch. 376, § 2, 22 Stat. 214, 214, *amended by* Immigration Act of 1891, ch. 551, 26 Stat. 1084.

74. *Public Charge Provisions of Immigration Law: A Brief Historical Background*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/about-us/our-history/history-office-and-library/our-history/public-charge->

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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.<sup>75</sup>

In 1903, the exclusionary laws evolved to include deportability provisions.<sup>76</sup> Foreign nationals who became a public charge up to two years after their arrival in the United States could now be deported.<sup>77</sup> 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.<sup>78</sup> “Paupers and persons likely to become a public charge . . . accounted for the majority of exclusions and deportations” during this time.<sup>79</sup>

By the latter half of the twentieth century, public charge regulations appeared in the Immigration and Nationality Act of 1952 and in the amendments that followed in 1965.<sup>80</sup> This codification provided statutory authority to exclude those likely to become a public charge from entering the United States,<sup>81</sup> and to deport those who become a public charge within five years of entry.<sup>82</sup> The “public charge” concept was clarified to mean total dependence on public support.<sup>83</sup> If a person was institutionalized

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provisions-of-immigration-law-a-brief-historical-background (last updated Aug. 14, 2019) [hereinafter *Public Charge: A Brief Historical Background*].

75. Immigration Act of 1891, ch. 551, § 1, 26 Stat. 1084, 1084.

76. See generally Immigration Act of 1903, ch. 1012, 32 Stat. 1213.

77. *Id.* § 20.

78. 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.

79. 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-FR-2018-21106.pdf>. Nevertheless, enforcement of these provisions was uneven. *Id.* Biases and stereotypes often prevailed against women as well as disfavored ethnic and racial groups, and certainly against the disabled. *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”).

80. See Immigration and Nationality (McCarran-Walter) Act, Pub. L. No. 82–414, 66 Stat. 163 (1952) (codified as amended in scattered sections of 8 U.S.C.), amended by Immigration and Nationality Act of 1965, Pub. L. No. 89–236, 79 Stat. 911 (codified as amended in scattered sections of 8 U.S.C.).

81. Immigration and Nationality Act, Pub. L. No. 82–414, § 212(a)(15), 66 Stat. 163 (1952) (codified as amended at 8 U.S.C. § 1182(a)(4)(2013)).

82. Immigration and Nationality Act § 241(a)(8) (1952) (codified as amended at 8 U.S.C. § 1227(a)(5) (2008)).

83. See Medha D. Makhoul, *The Public Charge Rule as Public Health Policy*, 16 IND. HEALTH L. REV. 177, 185 (2019) (noting that the analyses for public charge deportability and inadmissibility both focus on whether

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.<sup>84</sup>

In 1996, Congress significantly changed immigration policy with the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA).<sup>85</sup> Changes introduced with IIRIRA are too numerous to fully detail,<sup>86</sup> 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.<sup>87</sup> Also enacted in 1996, the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA)<sup>88</sup> sought to reduce dependence upon Public Assistance, SNAP, and Medicaid, by creating employment requirements to increase workforce participation.<sup>89</sup> 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.<sup>90</sup> These divisions can

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the noncitizen “will use certain public benefits that indicate total, or near-total dependence on the government”); *see also* Quinn & Kinoshita, *supra* note 11 (“[T]he public charge ground of inadmissibility was triggered if the government determined the individual was likely to become primarily dependent on the government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance or institutionalization for long-term care at government expense.”).

84. *See* Immigration and Nationality Act § 241(a)(3)–(4) (codified as amended at 8 U.S.C. § 1227(a)(2) (2008)).
85. Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009–546 (codified as amended in scattered sections of 8 U.S.C.) (amending the 1952 Immigration and Nationality Act); *see* David M. Grable, Note, *Personhood Under the Due Process Clause: A Constitutional Analysis of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996*, 83 CORNELL L. REV. 820, 821 (1998) (describing IIRIRA as “the most diverse, divisive and draconian immigration law enacted since the Chinese Exclusion Act of 1882,” focused on “stemming the tide of illegal immigration” to the United States).
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)).
88. Personal Responsibility and Work Opportunity Reconciliation Act (Welfare Reform Act), Pub. L. No. 104-193, 110 Stat. 2105 (1996) (codified as amended in scattered sections of 8 U.S.C. and 42 U.S.C.).
89. *See The 1996 Personal Responsibility and Work Opportunity Reconciliation Act in the US*, CTR. FOR PUB. IMPACT (Oct. 30, 2017), <https://www.centreforpublicimpact.org/case-study/personal-responsibility-and-work-opportunity-reconciliation-act-the-clinton-welfare-reform/> (noting that two of the objectives behind PRWORA were to “provide assistance to needy families” and to “end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage”) (internal quotations omitted).
90. PRWORA §§ 400, 431 (codified as amended at 8 U.S.C. §§ 1601, 1641(b) (2008)); Claire R. Thomas & Ernie Collette, *Unaccompanied and Excluded from Food Security: A Call for the Inclusion of Immigrant Youth Twenty Years after Welfare Reform*, 31 GEO. IMMIGR. L.J. 197, 206 (2017).

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delay or otherwise restrict immigrant access to public benefits, and render such access more dependent upon obtaining U.S. citizenship.<sup>91</sup> 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.<sup>92</sup> Under these 1996 changes, many immigrants, if not most, are ineligible for any type of federal public benefit.<sup>93</sup> Some states, including New York, are more generous and allow immigrants to receive Medicaid,<sup>94</sup> cash assistance, and other benefits.<sup>95</sup>

### 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.<sup>96</sup> The first of three travel bans introduced by President Donald Trump was aimed at preventing all persons from seven majority-

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91. See Thomas & Collette, *supra* note 90, at 206–07; see also Amanda Levinson, *Immigrants and Welfare Use*, MIGRATION POL'Y INST. (Aug. 1, 2002), <https://www.migrationpolicy.org/article/immigrants-and-welfare-use> (outlining how immigration status affects whether and when an individual will receive public benefits).

92. See PRWORA § 403 (codified as amended at 8 U.S.C. § 1613 (2020)). Importantly, while subsequent laws restored pre-PRWORA SNAP eligibility to all minor immigrant children, disabled immigrants, and elderly immigrants who resided in the United States prior to the effective date of PRWORA (August 22, 1996) and who were otherwise in a “qualified alien” category, current SNAP eligibility still depends upon the immigrant’s date of entry into the United States and the type of humanitarian relief the applicant applied for at the time of entry or shortly thereafter. *Id.* §§ 401–03 (codified as amended at 8 U.S.C. §§ 1611–13 (2020)); Audrey Singer, *Welfare Reform and Immigrants: A Policy Review*, in IMMIGRANTS, WELFARE REFORM, AND THE POVERTY OF POLICY 21, 27–28 (Philip Kretsedemas & Ana Aparicio eds., West Ct: Praeger Publishers) (2004).

93. Thomas & Collette, *supra* note 90, at 205–06.

94. See NAT’L IMMIGR. L. CTR., MEDICAL ASSISTANCE PROGRAMS FOR IMMIGRANTS IN VARIOUS STATES (Jan. 2021), <https://www.nilc.org/wp-content/uploads/2015/11/med-services-for-imms-in-states.pdf> (outlining immigrant eligibility for Medicaid by state).

95. See KARINA FORTUNY & AJAY CHAUDRY, URBAN INST., A COMPREHENSIVE REVIEW OF IMMIGRANT ACCESS TO HEALTH AND HUMAN SERVICES 10–17 (2011), <https://www.urban.org/sites/default/files/publication/27651/412425-A-Comprehensive-Review-of-Immigrant-Access-to-Health-and-Human-Services.PDF> (discussing “state-only-funded programs,” including cash assistance, health coverage, and food assistance, and the eligibility requirements in each state). Only some states offer state-financed cash assistance to persons who would not be eligible for federally-funded cash benefits due to their immigration status. See generally NAT’L IMMIGR. L. CTR., STATE-FUNDED TANF REPLACEMENT PROGRAMS (Apr. 2020), [https://www.nilc.org/wp-content/uploads/2015/11/tbl8\\_state-tanf.pdf](https://www.nilc.org/wp-content/uploads/2015/11/tbl8_state-tanf.pdf) (providing a list of state-funded programs that provide cash assistance to immigrants ineligible for the federal cash assistance program); see also PEW CHARITABLE TRUSTS, MAPPING PUBLIC BENEFITS FOR IMMIGRANTS IN THE STATES (Sept. 2014), <https://www.pewtrusts.org/-/media/assets/2014/09/mappingpublicbenefitsforimmigrantsinthestatesfinal.pdf> (discussing the federal- and state-funded programs available to immigrants).

96. Jeremy Diamond, *Trump Orders Construction of Border Wall, Boosts Deportation Force*, CNN, <https://www.cnn.com/2017/01/25/politics/donald-trump-build-wall-immigration-executive-orders/index.html> (last updated Jan. 25, 2017) (reporting that shortly after Trump was inaugurated, he “signed two executive orders directing the construction of a wall on the US-Mexico border, boosting border patrol forces and increasing the number of immigration enforcement officers”).

Muslim countries from traveling to the United States.<sup>97</sup> The chaos of this first executive order, felt at U.S. airports nationwide, resulted in detentions of travelers, widespread protests, the provisional revocation of sixty thousand visas,<sup>98</sup> two additional attempts to rewrite the order, and—finally—a Supreme Court challenge.<sup>99</sup>

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.<sup>100</sup> 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,<sup>101</sup> the Trump administration repeatedly referred to asylum as a

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/homesecc/IN10642.pdf> (noting that “citizens of Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen” were barred from entering the United States under Executive Order 3769 even though the order “d[id] not specifically mention the seven countries”).
98. See Rebecca Hersher, *Federal Judge Stays Trump Travel Order, But Many Visas Already Revoked*, NPR: THE TWO-WAY (Feb. 3, 2017), <https://www.npr.org/sections/thetwo-way/2017/02/03/513306413/state-department-says-fewer-than-60-000-visas-revoked-under-travel-order> (last updated Feb. 4, 2017) (reporting traveler detention and revocation of visas due to the travel ban); see also Nathan Heller, *The Promise of J.F.K.: The Place Where America Meets the World*, THE NEW YORKER (Jan. 29, 2017), <https://www.newyorker.com/news/news-desk/the-promise-of-j-f-k-the-place-where-america-meets-the-world> (reporting widespread protests against the travel ban at large airports).
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”).
100. See generally SARAH PIERCE, MIGRATION POL’Y INST., IMMIGRATION-RELATED POLICY CHANGES IN THE FIRST TWO YEARS OF THE TRUMP ADMINISTRATION *passim* (2019), <https://www.migrationpolicy.org/sites/default/files/publications/ImmigrationChangesTrumpAdministration-FinalWEB.pdf>. The various immigration statuses included business, family, and humanitarian. *Id.*
101. See Convention Relating to the Status of Refugees, July 28, 1951, 187 U.N.T.S. 137, 154 (entered into force Apr. 22, 1954), <https://www.refworld.org/docid/3be01b964.html> (recommending “that Governments continue to receive refugees in their territories” and work towards finding these refugees “asylum and the possibility of resettlement”); see also Protocol Relating to the Status of Refugees art. 1, Jan. 31, 1967, 606 U.N.T.S. 267, 268–70 (entered into force Oct. 4, 1967), <https://www.refworld.org/docid/3ae6b3ae4.html> (disregarding the date of the Convention Relating to the Status of Refugees and expanding the 1951 recommendation to provide asylum to all refugees). As a signatory to the 1967 U.N. Protocol, and through the domestic incorporation into U.S. immigration law, the United States has legal obligations to provide protection to those who qualify as refugees. Protocol Relating to the Status of Refugees, *supra*; see also Brian D. Lepard, *Violating International Law Through Onerous Procedural*

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“loophole.”<sup>102</sup> 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.<sup>103</sup> First, the administration’s unofficial policy of “metering” required those seeking asylum at the U.S. border with Mexico to put their name on an unofficial waiting list.<sup>104</sup> 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.<sup>105</sup> 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.<sup>106</sup> 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.<sup>107</sup> Third, due to the

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*Law*, VÖLKERRECHTSBLOG (Aug. 18, 2020), <https://voelkerrechtsblog.org/de/violating-international-law-through-onerous-procedural-law/> (discussing the evolution of U.S. immigration law and the obligations to protect refugees). Congress incorporated the definition of a refugee from the 1951 U.N. Convention into U.S. immigration law in the Refugee Act of 1980. *Compare* Convention Relating to the Status of Refugees, *supra*, at 152, *with* Refugee Act of 1980, Pub. L. No. 96-212, § 201, 94 Stat. 102 (codified as amended in scattered sections of 8 U.S.C.).

102. *E.g.*, President Donald J. Trump is Working to Stop the Abuse of Our Asylum System and Address the Root Causes of the Border Crisis, THE WHITE HOUSE (Apr. 29, 2019), <https://trumpwhitehouse.archives.gov/briefings-statements/president-donald-j-trump-working-stop-abuse-asylum-system-address-root-causes-border-crisis/> (“The biggest loophole drawing illegal aliens to our borders is the use of fraudulent or meritless asylum claims to gain entry into our great country.”).
103. *See* Bill Frelick, *The Trump Administration’s Final Insult and Injury to Refugees*, HUM. RTS. WATCH (Dec. 11, 2020), <https://www.hrw.org/news/2020/12/11/trump-administrations-final-insult-and-injury-refugees> (recognizing that the new rule “sets bars that will make it exceedingly difficult for all people who deserve asylum to be recognized as refugees and protected”); *see also* Press Release, Hum. Rts. First, Rule to Block Asylum Seekers from Protection Finalized in Last Days of Trump Administration (Dec. 15, 2020) (on file with author) (explaining the “insurmountable barriers” asylum-seekers must overcome for their asylum applications to be approved).
104. NPR Weekend Edition Saturday, *Metering At The Border*, NPR, at 8:03 (June 29, 2019), <https://www.npr.org/2019/06/29/737268856/metering-at-the-border>.
105. Ashoka Mukpo, *Asylum-Seekers Stranded in Mexico Face Homelessness, Kidnapping, and Sexual Violence*, ACLU, <https://www.aclu.org/issues/immigrants-rights/immigrants-rights-and-detention/asylum-seekers-stranded-mexico-face> (last visited Apr. 14, 2021). A Credible Fear Interview is the first step in the defensive asylum process for those who would be subject to expedited removal because they seek to enter the United States without a visa or other admission paperwork. *See* Immigration and Nationality Act (McCarran-Walter Act), Pub. L. No. 82-414, ch. 477, § 235(b), 66 Stat. 163 (1952) (codified as amended at 8 U.S.C. § 1225 (2008)) (providing the asylum application process).
106. *Migrant Protection Protocols*, DEP’T OF HOMELAND SEC. (Jan. 24, 2019), <https://www.dhs.gov/news/2019/01/24/migrant-protection-protocols>. “The Migrant Protection Protocols (MPP) are a U.S. Government action whereby certain foreign individuals entering or seeking admission to the U.S. from Mexico—illegally or without proper documentation—may be returned to Mexico and wait outside of the U.S. for the duration of their immigration proceedings, where Mexico will provide them with all appropriate humanitarian protections for the duration of their stay.” *See generally id.*
107. Gustavo Solis, *Remain in Mexico Has a 0.1 Percent Asylum Grant Rate*, SAN DIEGO UNION-TRIB. (Dec. 15, 2019), <https://www.sandiegouniontribune.com/news/border-baja-california/story/2019-12-15/remain-in-mexico-has-a-0-01-percent-asylum-grant-rate>.

COVID-19 pandemic, the Trump administration discontinued Immigration Court appearances for asylum-seekers waiting in Mexico indefinitely.<sup>108</sup> While other Immigration Courts in the United States conducted hearings remotely, those waiting per the MPP did not have their court dates rescheduled.<sup>109</sup>

Additionally, in June 2020, the DHS and the Department of Justice proposed new regulations that sought to dramatically change asylum eligibility.<sup>110</sup> 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.<sup>111</sup> The regulations included “dense, technical language and sweeping new restrictions”<sup>112</sup>

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108. Jasmine Aguilera, *Migrants Stranded in Mexico Have 1 Year to File for Asylum. COVID-19 Is Making That Deadline Nearly Impossible*, TIME (Sept. 25, 2020), <https://time.com/5888791/covid-19-asylum-seekers-mexico/>.

109. Camilo Montoya-Galvez, *U.S. Postpones Court Hearings for Asylum-Seekers in Mexico Over Coronavirus*, CBS NEWS (Mar. 23, 2020), <https://www.cbsnews.com/news/u-s-postpones-court-hearings-for-asylum-seekers-in-mexico-over-coronavirus/>. During the first week of the Biden administration, the DHS issued a statement suspending any new entrants in the MPP program. Press Release, Dep’t of Homeland Sec., DHS Statement on the Suspension of New Enrollments in the Migrant Protection Protocols Program (Jan. 20, 2021), <https://www.dhs.gov/news/2021/01/20/dhs-statement-suspension-new-enrollments-migrant-protection-protocols-program#:~:text=Protection%20Protocols%20Program-,DHS%20Statement%20on%20the%20Suspension%20of%20New,the%20Migrant%20Protection%20Protocols%20Program&text=Today%2C%20DHS%20is%20announcing%20the,adding%20individuals%20into%20the%20program>. The following month, virtual processing of individuals with pending cases under the MPP program resumed, but new applicants are not considered, creating yet another barrier to accessing asylum protections. Press Release, The White House, The MPP Program and Border Security Joint Statement (Feb. 16, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/02/16/the-mpp-program-and-border-security-joint-statement-by-assistant-to-the-president-and-national-security-advisor-jake-sullivan-and-assistant-to-the-president-and-homeland-security-advisor-and-deputy-na/>.

110. Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review, 85 Fed. Reg. 26264 (proposed June 15, 2020) (to be codified in scattered parts of 8 CFR); *see also* Press Release, Dep’t of Justice, The Department of Justice and the Department of Homeland Security Propose Rule on Procedures for Asylum and Withholding of Removal (June 10, 2020), <https://www.justice.gov/opa/pr/department-justice-and-department-homeland-security-propose-rule-procedures-asylum-and> (detailing the proposed changes). The Department of Justice controls the Immigration Courts and Board of Immigration Appeals. *See About the Office*, U.S. DEP’T OF JUST.: EXEC. OFF. FOR IMMIGR. REV., <https://www.justice.gov/eoir/about-office> (last updated Feb. 3, 2021).

111. *See, e.g., Proposed Changes to the Asylum Regulations*, AFRICAN ADVOC. NETWORK (July 15, 2020), <https://www.aansf.org/news/2020/12/7/proposed-changes-to-the-asylum-regulations> (arguing that “[t]he sheer quantity of pages to review and the wide array of substantive changes [the regulations] alter are reason enough for a longer period for comments to be submitted”). *See generally* DEP’T OF HOMELAND SEC., PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL; CREDIBLE FEAR AND REASONABLE FEAR REVIEW (June 4, 2020), [https://s3.amazonaws.com/public-inspection.federalregister.gov/2020-12575.pdf?utm\\_medium=email&utm\\_source=govdelivery](https://s3.amazonaws.com/public-inspection.federalregister.gov/2020-12575.pdf?utm_medium=email&utm_source=govdelivery) (containing the official 161-page document releasing the proposed rule prior to its official publication in the Federal Register).

112. Ctr. for L. and Soc. Pol’y, Comment Letter on Proposed Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review (July 15, 2020), <https://www.clasp.org/sites/default/files/publications/2020/07/CLASP%20Public%20Comment%207.15.20.pdf>.

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that upended established principles of international human rights law<sup>113</sup> and severely limited who can apply for asylum in the United States.<sup>114</sup> 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.<sup>115</sup> This radical change would have permitted judges to “pretermite” 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.<sup>116</sup>

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.<sup>117</sup> 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.<sup>118</sup> In June 2020, the Supreme Court found that the termination of DACA was arbitrary and capricious.<sup>119</sup> Nevertheless, the Trump administration disavowed the Supreme Court’s decision and continued to reject initial DACA applications, leaving immigrant youth in limbo.<sup>120</sup> A further lawsuit in the Eastern District of New York

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

114. Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review, 85 Fed. Reg. 26264.

115. *Id.* at 36277.

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.”).

117. DEP’T OF HOMELAND SEC., MEMORANDUM ON RESCISSION OF DEFERRED ACTION FOR CHILDHOOD ARRIVALS (2017), <https://www.dhs.gov/news/2017/09/05/memorandum-rescission-daca>. See generally *Consideration of Deferred Action for Childhood Arrivals (DACA)*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/archive/consideration-deferred-action-childhood-arrivals-daca> (last updated Feb. 4, 2021) (explaining the DACA policy and providing the requirements for requesting DACA).

118. See *Regents of the Univ. of Cal. v. U.S. Dep’t of Homeland Sec.*, 298 F. Supp. 3d 1304 (N.D. Cal. 2018); *Batalla Vidal v. Nielsen*, 291 F. Supp. 3d 260 (E.D.N.Y. 2018); *Nat’l Ass’n for the Advancement of Colored People v. Trump*, 298 F. Supp. 3d 209 (2018). These district court orders required DHS to “accept DACA applications from people who have or previously had DACA” but did not require DHS to accept new DACA applications. See NAT’L IMMIGR. L. CTR., LITIGATION RELATED TO DEFERRED ACTION FOR CHILDHOOD ARRIVALS (DACA) 1 (Jan. 2021), <https://www.nilc.org/wp-content/uploads/2019/02/litigation-re-DACA-2019.pdf> (discussing litigation surrounding the rescission of DACA).

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

120. See Memorandum from Chad F. Wolf, Acting Sec’y, Dep’t of Homeland Sec., on changes to the DACA policy to Mark Morgan, Senior Off. Performing the Duties of Comm’r, U.S. Customs & Border Protection, Matthew Albence, Senior Off. Performing the Duties of Dir., U.S. Immigr. & Customs Enf’t, & Joseph Edlow, Deputy Dir. of Pol’y, U.S. Citizenship & Immigr. Servs. (July 28, 2020), [https://www.dhs.gov/sites/default/files/publications/20\\_0728\\_s1\\_daca-reconsideration-memo.pdf](https://www.dhs.gov/sites/default/files/publications/20_0728_s1_daca-reconsideration-memo.pdf)

concluded in the Trump administration's begrudging reinstatement of DACA in December 2020.<sup>121</sup> On the day of his inauguration, President Joe Biden issued an executive order calling for the DHS to "preserve and fortify" DACA protections.<sup>122</sup>

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.<sup>123</sup> 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.<sup>124</sup>

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(ordering 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://edsources.org/2020/undocumented-youth-remain-in-limbo-after-supreme-courts-daca-decision/635447>.

121. See *Vidal v. Wolf*, No. 16-CV-4756 (NGG) (VMS), 2020 WL 7121849, at \*1 (E.D.N.Y. Dec. 4, 2020) (vacating the Wolf Memorandum from July 2020 because "Mr. Wolf was without lawful authority" when he issued it, reinstating the DACA program back to "its terms as they existed prior to the attempted rescission," and ordering additional relief and compliance against DHS); see *supra* note 120 and accompanying text; see also *Update: Deferred Action for Childhood Arrivals*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/news/alerts/deferred-action-for-childhood-arrivals-response-to-december-4-2020-order-in-batalla-vidal-et-al-v> (last updated Dec. 9, 2020) (announcing the reinstatement of DACA "pursuant to an order" and noting that "DHS may seek relief from the order"). The Eastern District of New York reinstated the DACA program in November 2020 and ordered the parties to a conference to determine the appropriate relief for the unlawful Wolf Memorandum, which took place in December 2020. *Vidal v. Wolf*, No. 16-CV-4756 (NGG) (VMS), 2020 WL 6695076 (E.D.N.Y. Nov. 14, 2020); see also *Batalla Vidal v. Wolf and State of New York v. Trump*, DHS (Dec. 7, 2020), <https://www.dhs.gov/publication/batalla-vidal-et-al-v-wolf-et-al-and-state-new-york-et-al-v-trump-et-al> (last updated Jan. 15, 2021) (announcing reinstatement of the DACA program as a result of the lawsuits filed after the Wolf Memorandum).
122. Memorandum of January 20, 2021 on Preserving and Fortifying Deferred Action for Childhood Arrivals (DACA), 86 Fed. Reg. 7053 (Jan. 25, 2021). On March 26, 2021, the Biden administration announced a plan to issue a rule that protects DACA from a pending court challenge. Camilo Montoya-Galvez, *Biden Administration Moves to Safeguard DACA Program for "Dreamers" as Court Ruling Looms*, CBS NEWS (Mar. 26, 2021), <https://www.cbsnews.com/news/biden-administration-to-shore-up-daca-program-for-dreamers-as-court-ruling-looms/>.
123. See Jonathan Blitzer, *The Trump Administration's Sustained Attack on the Rights of Immigrant Children*, THE NEW YORKER (Aug. 22, 2019), <https://www.newyorker.com/news/news-desk/the-trump-administrations-sustained-attack-on-flores-agreement-rights-of-immigrant-children> ("The Trump Administration has, from the start, attacked Flores as a 'loophole' that immigrant families have continually sought to exploit . . ."). The Flores Agreement, a result of *Reno v. Flores*, 507 U.S. 292 (1993), "established minimum standards and conditions for housing and release of juveniles in [Immigration and Naturalization Service (INS)] custody" and applies to all unaccompanied noncitizen children in such government custody. MARIA THERESA BALDINI-POTERMIN, IMMIGRATION TRIAL HANDBOOK § 4:5 (Apr. 2019). Requirements of the Flores Agreement include "access to food and medical care" and "promis[ing] to detain [the children] for the shortest possible amount of time, in the 'least restrictive' settings." Blitzer, *supra*.
124. Associated Press, *More Than 5,400 Children Split at Border, According to New Count*, CBS NEWS: IMMIGR. & THE BORDER (Oct. 25, 2019), <https://www.nbcnews.com/news/us-news/more-5-400-children-split-border-according-new-count-n1071791> (reporting that 5,460 children were separated between July 2017 and October 2019). See generally *Family Separation Under the Trump Administration – A Timeline*, S. POVERTY L. CTR. (June 17, 2020), <https://www.splcenter.org/news/2020/06/17/>

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

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.”<sup>126</sup> Additionally, if implemented, this proposed rule would impose immigration status checks and verification requirements on all household members.<sup>127</sup> 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.<sup>128</sup> 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.”<sup>129</sup>

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

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family-separation-under-trump-administration-timeline (providing a timeline of the “zero tolerance” policy from March 2017 to May 2020).

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.*

130. U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, 85 Fed. Reg. 46788 (Aug. 3, 2020) (codified in scattered parts of 8 C.F.R.) (effective Oct. 2, 2020); see also Claire Hansen, *Trump Administration Nearly Doubles Cost to Apply to Become a U.S. Citizen*, U.S. NEWS (July 31, 2020), <https://www.usnews.com/news/national-news/articles/2020-07-31/trump-administration-nearly-doubles-cost-to-apply-to-become-a-us-citizen> (“The Trump administration [] significantly increased fees for a number of immigration and work

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.<sup>131</sup> A federal judge in California halted this change in December 2019, allowing immigrants to continue to apply for fee waivers for their naturalization applications.<sup>132</sup>

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.<sup>133</sup> U.S. consulates and embassies abroad remained open for emergencies only and visa services were suspended.<sup>134</sup> Europeans, Brazilians, and Chinese persons were banned from traveling to the United States, while domestic U.S. COVID-19 infection numbers soared.<sup>135</sup> Naturalization ceremonies and in-person interviews for all immigration benefits stopped for months

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authorization applications, including the fee to apply for naturalization.”). For example, the cost to apply online to become a citizen increased by 81%, from \$640 to \$1,160. *Id.*

131. See *USCIS Updates Fee Waiver Requirements*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/news/news-releases/uscis-updates-fee-waiver-requirements> (last updated Oct. 25, 2019) (discussing the revised criteria for obtaining a fee waiver for immigration documents); see also Geneva Sands, *Federal Court Halts Trump Administration Changes to Fee Waiver for Citizenship*, CNN, <https://www.cnn.com/2019/12/10/politics/federal-court-halts-changes-fee-waiver-for-naturalization/index.html> (last updated Dec. 13, 2019) (reporting that organizations who were challenging the rule “argued that the new agency rules would make it harder to qualify for a fee waiver”).
132. Sands, *supra* note 131; see also *City of Seattle v. Dep’t of Homeland Sec.*, No. 3:19-CV-07151-MMC (N.D. Cal. Dec. 11, 2019) (granting nationwide preliminary injunction).
133. See John Washington, *The Trump Administration is Using the Pandemic as an Excuse to Target Immigrants and Asylum Seekers*, Vox (May 15, 2020), <https://www.vox.com/the-highlight/2020/5/15/21260075/trump-immigrants-refugee-asylum-covid-pandemic-detention-centers> (“Covid-19 has been a boon to the anti-immigrant agenda that President Trump . . . has been aching to implement since he took office[.]”); see also Zolan Kanno-Youngs & Kirk Semple, *Trump Cites Coronavirus as He Announces a Border Crackdown*, N.Y. TIMES (Mar. 20, 2020), <https://www.nytimes.com/2020/03/20/us/politics/trump-border-coronavirus.html> (last updated Mar. 27, 2020) (reporting the closures of the southern and northern borders to tourism and the suspension of processing undocumented immigrants due to COVID-19).
134. *Suspension of Routine Visa Services*, U.S. DEP’T OF STATE, <https://travel.state.gov/content/travel/en/News/visas-news/suspension-of-routine-visa-services.html> (last updated July 22, 2020). Humeyra Pamuk, *U.S. Suspending Visa Services Worldwide Due to Coronavirus*, REUTERS (Mar. 18, 2020), <https://www.reuters.com/article/us-health-coronavirus-usa-visas/u-s-suspending-visa-services-worldwide-due-to-coronavirus-state-department-idUSKBN2153NP>.
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.*

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and slowly reopened in the summer of 2020, in a limited capacity only.<sup>136</sup> 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,<sup>137</sup> 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.<sup>138</sup> 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

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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](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).

137. See Proclamation No. 10142, 86 Fed. Reg. 7225 (Jan. 20, 2021) (outlining President Joe Biden’s plans to halt the construction of the border wall for the foreseeable future). See also Sabrina Rodriguez, *Trump’s Partially Built ‘Big, Beautiful Wall’*, POLITICO (Jan. 12, 2021), <https://www.politico.com/news/2021/01/12/trump-border-wall-partially-built-458255>. The initial order to pause construction on the wall expired on March 20, 2021. Mia Jancowicz, *Biden’s Order to Pause Construction on Trump’s Wall Expires on March 20. Nobody Knows What Happens Next*, BUS. INSIDER (Mar. 16, 2021, 9:47 AM), <https://www.businessinsider.com/what-happen-end-biden-60-day-pause-border-wall-work-2021-3>. See also Thomas Colson, *The Biden administration says it may restart construction of the border wall to fill ‘gaps’ left by Trump*, BUS. INSIDER (Apr. 7, 2021, 7:53 AM), <https://www.businessinsider.com/biden-restart-border-wall-construction-trump-pledge-gaps-2021-4>.

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.<sup>139</sup> Fear also keeps immigrants from seeking public medical services.<sup>140</sup> Importantly, few government benefit programs are even available to immigrants before they become lawful permanent residents and receive their “green cards.”<sup>141</sup> 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.<sup>142</sup> 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.<sup>143</sup> 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.<sup>144</sup> 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.<sup>145</sup> 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.<sup>146</sup> As a result, another consequence of the new public

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139. See Zaidee Stavely, *California School Officials Reassure Immigrant Parents After Ruling Limiting Benefits*, EDSource (Jan. 31, 2020), <https://edsources.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).

140. Brianna Ehley et al., *Fearing Deportation, Immigrants Forgo Medical Care*, POLITICO (July 17, 2017), <https://www.politico.com/story/2017/07/17/deportation-fears-under-trump-have-immigrants-forgoing-medical-care-240635>.

141. See TANYA BRODER ET AL., 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. See *supra* notes 85–95 and accompanying text.

142. See, e.g., Batalova et al., *Through the Back Door: Remaking the Immigration System via the Expected “Public-Charge” Rule*, MIGRATION POL’Y INST. (Aug. 2018), <https://www.migrationpolicy.org/news/through-back-door-remaking-immigration-system-expected-public-charge-rule> (using 2014–2016 data from the U.S. Census Bureau’s American Community Survey and the 2008 Survey of Income and Program Participation to predict the effect of the new public charge rule on immigrant families).

143. *Id.*

144. See Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, 64 Fed. Reg. 28689 (Mar. 26, 1999), <https://www.govinfo.gov/content/pkg/FR-1999-05-26/pdf/99-13202.pdf>. The USCIS has been applying the 1999 Field Guidance since March 9, 2021, when the order vacating the Public Charge Final Rule went into effect. USCIS POL’Y MANUAL, ch.9 (U.S. CITIZENSHIP & IMMIGR. SERVS. 2021), <https://www.uscis.gov/policy-manual/volume-8-part-g>.

145. *Id.*

146. Batalova et al., *supra* note 142.

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charge rule was that it disproportionately impacted communities of color.<sup>147</sup> 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.<sup>148</sup> The new rule also evoked the nativist hostility encountered by early immigrant populations, specifically the Irish, in the early twentieth century.<sup>149</sup>

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.<sup>150</sup> Some immigrant families were reluctant to seek medical attention for coronavirus symptoms for fear of potential public charge consequences.<sup>151</sup> 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.<sup>152</sup> U.S. citizens and immigrants alike lost their jobs at alarming numbers, and consequently often found themselves without health insurance.<sup>153</sup> Many immigrants, and most undocumented immigrants, are not eligible for federally funded Medicaid and coverage under the Affordable

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147. *See id.*

148. *See generally The Immigration Act of 1924 (The Johnson-Reed Act)*, U.S. DEP'T OF STATE: OFF. OF THE HISTORIAN, <https://history.state.gov/milestones/1921-1936/immigration-act> (last visited Apr. 14, 2021).

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[.]”).

150. *See* Jose F. Figueroa et al., *The Trump Administration's 'Public Charge' Rule and COVID-19: Bad Policy at the Worst Time*, STAT NEWS (Aug. 21, 2020), <https://www.statnews.com/2020/08/21/the-trump-administrations-public-charge-rule-and-covid-19-bad-policy-at-the-worst-time/> (“[T]he Trump administration has enacted policies making the spread of Covid-19 in immigrant communities even more likely.”).

151. *Id.* This fear existed even despite the fact that the USCIS announced on March 13, 2020 that it “will not consider ‘testing, treatment, nor preventative care . . . related to COVID-19’ as part of a public-charge determination . . . .” *Practice Alert: COVID-19 and the Public Charge Rule*, AM. IMMIGR. LAWS. ASS'N (June 15, 2020), <https://www.aila.org/advo-media/aila-practice-pointers-and-alerts/practice-alert-covid-19-and-the-public-charge-rule>.

152. Miriam Jordan, *'We're Petrified': Immigrants Afraid to Seek Medical Care for Coronavirus*, N.Y. TIMES (Mar. 18, 2020), <https://www.nytimes.com/2020/03/18/us/coronavirus-immigrants.html> (last updated May 12, 2020).

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 . . . .”).

Care Act.<sup>154</sup> In states without additional state-funded Medicaid for poor immigrants, these persons are simply uninsured.<sup>155</sup>

Others have been hesitant to seek necessary medical care due to fears that they might be subject to ICE enforcement actions at hospitals.<sup>156</sup> While ICE considers medical facilities to be “sensitive locations”<sup>157</sup> 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.<sup>158</sup> 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.<sup>159</sup>

## 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

154. *Id.*; Holly Straught-Eppsteiner, *To Ensure Collective Health and Safety, Federal Packages for COVID-19 Relief Must Include Immigrant Communities*, NAT'L IMMIGR. L. CTR. (Apr. 21, 2020), <https://www.nilc.org/2020/04/21/federal-packages-for-covid19-relief-must-include-immigrant-communities-the-torch/>.

155. *See Health Coverage of Immigrants*, KAISER FAM. FOUND. (Mar. 18, 2020), <https://www.kff.org/racial-equity-and-health-policy/fact-sheet/health-coverage-of-immigrants/> (reporting that the lower incomes typically earned by noncitizens presents barriers to affording either employer-sponsored coverage or coverage through the individual or Affordable Care Act marketplaces); *see also* Randy Capps & Julia Gelatt, *Barriers to COVID-19 Testing and Treatment: Immigrants Without Health Insurance Coverage in the United States*, MIGRATION POL'Y INST. (May 2020), [https://www.migrationpolicy.org/sites/default/files/publications/UninsuredNoncitizens-FS\\_Final.pdf](https://www.migrationpolicy.org/sites/default/files/publications/UninsuredNoncitizens-FS_Final.pdf) (“[N]oncitizens are substantially more likely [than citizens] to be uninsured[] . . .”).

156. *Establishing Sanctuary Hospitals: Protecting the Right to Access Health Care*, PHYSICIANS FOR HUM. RTS. 1, <https://phr.org/wp-content/uploads/2019/09/PHR-Sanctuary-Hospitals-Fact-Sheet-FINAL.pdf> (last visited Apr. 14, 2021).

157. *FAQs: Sensitive Locations and Courthouse Arrests*, U.S. IMMIGR. & CUSTOMS ENF'T, <https://www.ice.gov/ero/enforcement/sensitive-loc> (last updated Feb. 2, 2021).

158. *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-20200316-3itqa24pdfau3kjnm62jcdsai-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.”).

159. Capps & Gelatt, *supra* note 155; Eva Clark et al., *Disproportionate Impact of the COVID-19 Pandemic on Immigrant Communities in the United States*, PLOS NEGLECTED TROPICAL DISEASES, (July 13, 2020), <https://journals.plos.org/plosntds/article?id=10.1371/journal.pntd.0008484>.

to the United States to abuse public benefit programs,<sup>160</sup> 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.<sup>161</sup> Another claim is that immigrants take American jobs, thereby hurting the U.S. economy and workers.<sup>162</sup> Economists regularly rebut this contention by showing a net gain between immigration and job growth.<sup>163</sup>

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

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160. See President Donald J. Trump is Ensuring Non-Citizens Do Not Abuse Our Nation's Public Benefit, THE WHITE HOUSE (Aug. 12, 2019), [https://trumpwhitehouse.archives.gov/briefings-statements/president-donald-j-trump-ensuring-non-citizens-not-abuse-nations-public-benefit/?utm\\_source=twitter&utm\\_medium=social&utm\\_campaign=wh](https://trumpwhitehouse.archives.gov/briefings-statements/president-donald-j-trump-ensuring-non-citizens-not-abuse-nations-public-benefit/?utm_source=twitter&utm_medium=social&utm_campaign=wh) ("We must ensure that non-citizens do not abuse our public benefit programs and jeopardize the social safety net needed by vulnerable Americans.").
161. See Personal Responsibility and Work Opportunity Reconciliation Act (Welfare Reform Act), Pub. L. No. 104-193, §§ 402–03, 110 Stat. 2105, 2262, 2265 (1996) (codified as amended at 8 U.S.C. §§ 1612–13 (2020)) (requiring certain immigrants to be lawful United States residents for five years before they are eligible to receive federal public benefits). See generally BRODER ET AL., *supra* note 141.
162. Josh Boak, *AP Fact Check: Trump Plays on Immigration Myths*, PBS NEWS HOUR (Feb. 8., 2019), <https://www.pbs.org/newshour/politics/ap-fact-check-trump-plays-on-immigration-myths>.
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.