State of Undocumented immigrants in California and Nationally: What lies ahead?

What lies ahead for undocumented immigrants in California and Nationally?

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Federal Updates

On June 15, 2012, President Obama drafted a memorandum granting certain undocumented students the ability to obtain “deferred action.”

The Deferred Action for Childhood Arrivals went into effect on August 15, 2012.
DACA RESCISSION

- On September 5, 2017, the Department of Homeland Security issued a memo terminating the program and would no longer accept or renew new DACA applications.

- Phasing out of DACA program-October 5, 2017 deadline to renew DACA work authorization for those individuals whose DACA expired between then and March 2018.
Recent Federal Developments

- U.S. Supreme Court denied the Administration’s request to fast track the case to the SC and will not take up DACA challenge before the mid-term elections in 2018.

- March 5th Maryland Court decision, a federal Judge held that the Administration had a right to terminate the program and that it is likely that DACA is unconstitutional.

- No impact on prior 2 court decisions, DHS must continue to accept renewals.

- 2 key decisions in August recently ruled that USCIS must continue to accept renewal cases. An injunction was not issued in the Texas case.
Temporary Protected Status

The federal Administration announced the intent to terminate TPS for the following countries:

- El Salvador program terminates 9/9/2019
- Haiti, program terminates 7/22/2019
- Nicaragua, program terminates 1/5/2019
- Sudan, program terminates 11/2/2018
Temporary Protected Status

- In *Ramos v. Nielsen*, a federal judge recently ruled that the termination of the program would cause irreparable harm and great hardship and imposed a nationwide preliminary injunction halting the termination for the following countries:
  - El Salvador
  - Nicaragua
  - Sudan
  - Haiti
ICE Raids

Southern California 2018-

5-Day raid included the following counties-Orange, San Bernardino, Riverside, Ventura, Santa Barbara, and San Luis Obispo

- 212 Arrested
- 122 firms/employers targeted
ICE Raids

Northern California-

- 77 Businesses/Employers targeted
- 150 arrested

Initially, ICE claimed that 88% had criminal convictions.

FOIA request later revealed that over half had no criminal convictions or had minor prior arrests.
Family Separation-Crisis at the Border


Zero-Tolerance- Adults would be arrested and charged with a misdemeanor offense and children would be taken into ICE custody and deemed “unaccompanied minors.”

2,500 children alone were taken in May-July at the border.

ACLU settlement requires family reunification however there are still 1,200 that have not been reunited with their families.
Family Separation-Crisis at the Border

- Federal Administration wants to propose new rules under a 1997 agreement known as the Flores settlement to allow the government to detain children in custody for more than 20 days.

- Greater flexibility to expand Family Detentions in the U.S.

- Arizona had a surge of families crossing in August 2018, the federal government forced to release families en masse to shelters and charities.
Family Separation-Crisis at the Border

Federal Administration proposes new Program in early October, 2018. Stephen Miller convinced that zero-tolerance served as a deterrent for Central Americans.

- FY 2017-2018 experienced the largest surge of about 90,000 individuals and children crossing.

**Bi-nary Choice Program:**
1) Stay in detention with their children until their cases are resolved, days, months or years.

2) Allow children to be taken to shelters.
Federal Legislation Updates

- **Border Security and Immigration Reform Act**
  - Contains $25 billion to build a wall,
  - Allows for the termination of Deferred Action for Childhood Arrivals (DACA) visas if the wall funding is rescinded
  - Creates a “conditional nonimmigrant” status, for DACA / DREAMers that can be renewed after six years
  - Provides an opportunity for legalized immigrants (and their children) to obtain a green card through a point system.
  - Eliminates the diversity visa program & increases requirements for asylum
  - For more Information please click [HERE](#)

- **Securing America’s Future Act**
  - Very similar to the Act above, except for:
    - No access to permanent legal status, only temporary status
    - Makes it a misdemeanor to over stay a visa
    - End family-related visas by eliminating the green card program for relatives of citizens
  - For more information please click [HERE](#)
Public Charge: Overview
(Information acquired from NILC and PIF)
Public Charge

- Public Charge is a term used in immigration law to describe an individual who is dependent on the government for financial and material support.
  - Immigrant officials must consider various factors
  - A person deemed likely to become a public charge in the future can be denied permission to enter the country and permanent resident status.

- Public Benefits: Currently only cash assistance for income maintenance and institutionalization for long-term care at government expense could be considered in a public charge assessment

- Includes programs like Temporary Assistance for Needy Families (TANF) and Supplemental Security Income (SSI)
Federal Administration proposes changes to the Public Charge rule

- New Rule proposed by DHS on Wednesday, October 10, 2018 open for a 60-day comment period

- National Coalition Protecting Immigrant Families or PIF has created a portal to allow individuals or organizations to submit comments

- https://protectingimmigrantfamilies.org/#take-action
Who can be considered a public charge?

- The likelihood that a person will become a public charge is considered when they apply to:
  - Enter or re-enter the US
  - Become a lawful permanent resident (i.e. green card).
    - Many undocumented immigrants do not qualify for a green card (including DACA and people with TPS).
    - Public charge is NOT considered for those applying for citizenship

- Public charge does not apply to: Refugees, asylees, survivors of domestic violence, victims of trafficking or other serious crimes, special immigrant juveniles, and certain other groups.
Statutory Public Charge Test

Whether a person is likely to become a public charge is based on multiple **factors** relevant to their ability to support themselves and any dependents.

- Immigration agents are **required by statute** to consider:
  - age
  - health,
  - financial resources,
  - dependents,
  - skills and work experience

- Other relevant factors may be considered:
  - Including whether the person has a sponsor
  - Whether the individual has used public benefits
Why are we Concerned about Changes to the Public Charge Rule?

- The Office of Management and Budget (OMB) has officially received draft regulations on public charge that would expand the public benefits that could be considered in the public charge determination.

- These rules can drop ANYTIME (DHS released updated language on public charge on 9/22 – not yet published on the Federal Registry).
New Proposed Regulation

- Changes **definition of public charge**: person who uses or receives one or more public benefits
  - But maintains totality of circumstances test

- Also applies public charge test when people are applying to:
  - **Extend** their non-immigrant visa
  - **Change the category** of their non-immigrant visa

- Adds certain federal non-cash **medical, housing and food** benefits in public charge test
Monetizable Benefits

- Included when the value of the benefit received within 12 consecutive months is > 15% FPL for one person ($1,821)

- Cash assistance for income maintenance (already included):
  - SSI
  - TANF (CalWORKS)
  - CAPI (Cash Assistance Program for Immigrants)

- Non-cash:
  - SNAP (CalFresh/food stamps)
  - Housing assistance (e.g. Section 8 vouchers, rental assistance)
Non-Monetizable Benefits

- Included if benefits received > 12 months cumulatively, within 36-month period or if benefits received > 9 months while also receiving monetizable benefit
  - Each benefit is counted separately (e.g. two different benefits received for 6 months each counts as 12 months total)

- Medi-Cal, except for:
  - Emergency
  - School-based Medi-Cal for children

- Long-term care (already included)

- Medicare Part D low-income subsidy

- Subsidized housing
Excluded Benefits

Anything not listed is not included

- Emergency and school-based Medi-Cal
- Emergency and disaster relief
- School-based nutrition services
- Public education, including Head Start
- WIC
- ACA tax credits
- EITC
- Benefits received by others in the household
- Benefits used by members of the military, Ready Reserve, and their spouses and children
- Programs fully state, local, or tribally funded except for cash and long term care
Not Retroactive Not Retroactive

Benefits (other than cash and long-term care) will not be considered until 60 days after the rule becomes final.
Statutory Factors: New Standards

- **Age:** whether too young (under 18) or too old to work
- **Health:** physical or mental health condition that could affect ability to work or attend school, or require expensive care
- **Family:** household size, number of dependents
- **Financial resources:**
  - Whether person earns at least 125% FPL *(over $62,000 for family of four)*
  - Whether person has applied for any benefit or immigration fee waiver
  - Has private insurance or resources to pay for medical expenses
- **Skills:** English proficiency
Adds Heavily Weighted Factors

**Negative:**
- Authorized to work but not working and not a full-time student
- Currently receiving a public benefit
- Has used a public benefit within last 36 months
- Medical condition that could interfere with work or require expensive treatment
- Uninsured without the prospect of receiving private insurance/paying for care
- Previously determined to be a public charge

**Positive:**
- Income or resources over 250% FPL (over $62,000 for family of four)
What Regulations Cannot Change-

- **When** public charge test applies
- **Balance** of factors must be considered
- Negative factors can be outweighed by positives
- **Exempt** categories of immigrants
Timeline

1. Notice of proposed rulemaking (NPRM) posted for public inspection
2. NPRM published in Federal Register
3. Opportunity for public comment (60 days)
4. Agency must read and respond to comments
5. Final rule published
Public Charge: How will Communities be Impacted

- Immigrants' ability to become permanent residents is jeopardized if they enroll in Medicaid, SNAP or use housing assistance.

- Discourage immigrants from enrolling in public benefit programs

- Many immigrant families may avoid seeking healthcare until their condition deteriorates, which could increase avoidable emergency room visits.
Foreign Affairs Manual (FAM)

- Officials in U.S. embassies and consulates abroad use the FAM to make decisions about whether to grant non-citizens permission to enter the U.S.

- Major changes published on January 3, 2018:
  - Apply totality of circumstances test to the applicant
    - Receipt of non-cash benefits in the past or present may be considered
  - Sufficient affidavit of support merely one positive factor
    - Consider sponsor's ability to support intending immigrant
    - Sponsor's use of benefits can be a negative factor
  - Does not impact groups who are exempt from public charge
Resources

- [www.protectingimmigrantfamilies.org](http://www.protectingimmigrantfamilies.org)

- “Public Charge: A New Threat to Immigrant Families”
- “How to Talk About Public Charge With Immigrants and Their Families”
- “Changes to Public Charge in the U.S. State Department Manual”
Public Charge: How to get Involved

- Inform Yourself and Your Communities
  - Train Staff, hold learning sessions for immigrants

- Join US
  - the Protecting Immigrant Families (PIF) Campaign
  - PIF Ca Coalition (Contact CIPC)
    - Sarah Dar ([Sdar@CAimmigrant.org](mailto:Sdar@CAimmigrant.org))
    - To engage in statewide coalition efforts

- National Health Center Immigration Workgroup
  - Contact CPCA (Liz Oseguera)

- Submit Public Comments & Encourage Others to do the same
Public Charge: What are some Helpful Resources

- CPCA’s Immigration Resource Page
  - Public Charge Advocacy Toolkit (available in 9 languages)
- PIF’s Coalition Webpage
- Public Charge Webinar
  - CPCA, in partnership with AAPCHO and NACHC, hosted a webinar on Sept 25 to help health centers and other state PCAs better understand the public charge rule.
  - Recording: [https://register.gotowebinar.com/recording/484799259624338434](https://register.gotowebinar.com/recording/484799259624338434)
New Public Charge Resources

- Legal Aid Flier on Public Charge
- IRLC Public Charge Cheat Sheet
- Legal Aid Society of San Mateo Public Charge Flyer – Who is Impacted (Includes FAM)
- First 5 Public Charge Fact Sheet in Spanish
- A New Threat to Immigrants’ Health — The Public-Charge Rule (New England Journal of Medicine)
New Public Charge Resources

- **Chilling Effects: The Expected Public Charge Rule and Its Impact on Legal Immigrant Families’ Public Benefits Use** ([Migrant Policy Institute](https://www.migrationpolicy.org/))
- **California PCA’s webpage on immigration issues**
  - Includes **Sample P&Ps around immigration**
- **AAPCHO’s webpage on Public Charge**
- **NACHC webpage on Caring for Immigrant Patients**
- **The Children’s Partnership Short Video explaining Public Charge**
- **Fact Sheet: Proposed Rule Change on Public Charge** ([National Immigrant Law Center](https://www.immigrantlawcenter.org/))
- **Things to Keep in Mind when Talking to Immigrant Families** ([National Immigrant Law Center](https://www.immigrantlawcenter.org/))
- **Public Charge Fact Sheet & FAQs** ([U.S. Citizenship and Immigration Services](https://www.uscis.gov/immigration-information-for-immigrants/public-charge))
- **Overview of Public Charge** ([National Immigrant Law Center](https://www.immigrantlawcenter.org/))
- **Resources and Information on Public Charge** ([National Immigrant Law Center](https://www.immigrantlawcenter.org/))
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