Historians' Comment

DHS Notice of Proposed Rule "Inadmissibility on Public Charge Grounds"
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Executive Summary

The Notice of Proposed Rule "Inadmissibility on Public Charge Grounds" by the Department of Homeland Security proposes to change immigration policies with regard to the definition of "public charge" and "persons likely to become a public charge" for purposes of admission into the United States or adjustment of status by lawfully present non-citizens residing in the US to lawful permanent resident status. Current policy defines a public charge as someone who is primarily dependent upon the government for subsistence. The Department of Homeland Security proposes to vastly expand the benefits and other factors that could be considered in determining whether an applicant for admission or adjustment of status is likely to become a public charge. This comment, written by historians whose scholarly expertise lies in the history of immigration and immigration policy, addresses the long history of public charge policy in immigration. Although the proposal focuses on admission/adjustment of status and not deportation, our comment addresses both. The proposed rule change cannot be understood apart from the history of public charge deportations because the two policies, although distinct, have historically evolved together. We also believe that the proposed rule change, if put into effect, will lay the basis for future deportations.

Public charge laws have a long history in the United States. Rooted in poor laws stipulating who could and could not reside in colonial towns, these laws became policy governing who could and could not enter states like New York and Massachusetts in the early years of the republic. Although poor laws governed admission to states for Americans as well as foreigners, by the mid-nineteenth century they morphed into proto-immigration laws for individual states. The first federal immigration laws were modeled on these policies, excluding "any convict, lunatic, idiot, or any person unable to take care of himself or herself without becoming a public charge" (1882) and any person deemed "likely to become a public charge" (1891). In 1903, the law further stipulated that any foreigner who became a public charge within five years of entry from causes that did not originate in the U.S. was subject to deportation.

Since 1903, definitions of public charge and the grounds for exclusion and deportability have remained constant: those deemed deportable must have received cash benefits from the government for subsistence or they must have experienced long-term institutionalization. This remained the case as public benefits expanded during the 1930s and again during the 1960s and 1970s. Means-tested benefits (Medicaid, welfare, SSI, and Food Stamps, etc.) have been available to legal immigrants without repercussion. Although many of these benefits and their availability to immigrants have varied and changed over time, legal immigrants have not been fully barred from access to them, and thus have not been subject to deportation if they used them.

We contend that expanding the public charge grounds for inadmissibility, adjustment of status, and deportation would break over 100 years of consistent United States immigration policy. An expanded definition would undermine deeply entrenched historical laws and policies that recognize (1)

the nation's need for immigrants who are able bodied and capable of supporting themselves and their families and (2) our commitment to assist all members of our communities who fall on hard times. The proposed new legal strictures are without social benefit. They are punitive and carry high social costs for public health and welfare.

Public charge policy during the colonial era through the nineteenth century

The roots of the public charge clause in immigration policy dated back to the colonial poor laws. Following their mother country's practice, English colonists in America enacted poor laws, which required each town to recognize its permanent residents' claims for relief if they became destitute. At the same time, the colonial poor laws permitted each town to expel transient beggars, or outsiders who became public charges by entering local almshouses or requesting material support such as cash and clothes. In addition to the removal of needy outsiders, the colonial poor law included provisions to prohibit the landing of paupers and disabled people who were unable to financially support themselves and those deemed likely to become public charges. The law normally required shipmasters to provide bonds for the landing of those passengers. If the shipmasters refused or failed to do so, such passengers were not allowed to land and usually ordered to go back to their places of origin.

The early poor laws applied to Americans as well as foreigners, but these laws began to operate as state immigration laws governing the admission and removal of non-citizens in the mid-nineteenth century, largely in response to the influx of impoverished Irish immigrants fleeing famine in their homeland. Two major recipients of Irish immigration, New York and Massachusetts, led the formation of state-level immigration policy. Established in 1847, the Board of the Commissioners of Emigration of the State of New York was authorized to prohibit the landing of "any lunatic, idiot, deaf and dumb, blind or infirm persons, not members of emigrating families, and who . . . are likely to become permanently a public charge," unless the shipmaster provided a bond for each of such passengers.[1] While most states, including New York, retreated from the practice of pauper removal by midcentury, Massachusetts built upon the colonial practice to create the state's immigrant deportation law, a development that reflected the particular strength of anti-Irish nativism in the state. In 1850, Massachusetts' immigration officials began deporting foreign-born paupers in public charitable institutions, such as almshouses and lunatic asylums, to their countries of origin.[2]

State immigration laws, especially those in New York and Massachusetts, eventually developed into the nation's first general immigration law, which was applicable to all immigrants except the Chinese, who fell into a special category. In 1882, in response to the Supreme Court's 1876 ruling declaring state passenger laws unconstitutional, Congress passed the first general Immigration Act. Modeled on existing state laws, the act prohibited the landing of "any convict, lunatic, idiot, or any person unable to take care of himself or herself without becoming a public charge."[3] The next major general immigration legislation, the Immigration Act of 1891, expanded the inadmissible classes to include "persons likely to become a public charge." The law also made deportable any foreigners who became public charges within one year of arrival. The steamship company that brought such immigrants to the United States would bear the cost of deporting them.[4] Long-term resident immigrants-- those integrated into communities, and often with U.S.-citizen children-- were not subject to public-charge provisions. Instead, their integration into a community made them eligible for support. These state public charge laws laid the foundations for the public charge rules in US immigration policy.

It is worth noting that under the colonial, state, and early federal immigration laws, deportation based on the public charge clause applied only to people accommodated at public charitable institutions or who were substantially dependent on public relief for the basic maintenance of their lives. The primary purpose of the public charge provision in federal law lay in preventing recently-arrived immigrants from becoming "inmates of almshouses or charitable hospitals," and institutional removal served as the basic form of deportation in early US immigration policy.[5]

Early to Mid-Twentieth Century

During the late nineteenth and early twentieth centuries, over twenty-four million people immigrated to the United States, mostly for low-waged, low-skilled labor. Five immigration laws passed between 1882 and 1917 provided grounds for exclusion or deportation on the basis of poverty, mental and physical health, morality, or political belief. "Paupers" and "persons likely to become a public charge" (LPC) accounted for the majority of exclusions and deportations.[6] Still, the number of both exclusions and deportations remained small, especially when compared to the numbers admitted. During the 1910s, an average of one million people a year entered the United States. But, in 1916, for example, the Immigration Bureau excluded 10,263 people—just one percent of all arrivals—on grounds that they were likely to become a public charge. That year the government deported only 1,431 immigrants as public charges.[7]

A crucial component of the public charge provisions for deportation (specified in 1891 and in each subsequent law) was that a person could be deported only if he or she became a public charge "from causes existing prior to his [or her] landing" in the United States.[8] In other words, removal was considered a correction to the improper admission of excludable persons. Case law has long held that the grounds for deportability must arise from causes preexisting entry.[9]

In addition to "causes preexisting entry," the law specified that one could be deported only if one became a public charge within a set time after entry. The 1891 law allowed deportation within one year of entry for immigrants who became a public charge for causes preexisting entry. Congress passed immigration laws in 1903, 1907, and 1917 that gradually extended the time limit, and by 1917, it stood at five years.[10] This is where the time limit stands today. We will discuss the significance of preexisting causes and time limits more below.

Enforcement of the LPC provisions in the first decades of the twentieth century was uneven. In inadmissibility cases, LPC was often combined with minor and non-contagious ailments (such as hernia) that were not by themselves grounds for exclusion. Immigration officials also suspected single, divorced, widowed, and pregnant women to be "likely to become a public charge," even if they were self-supporting, possessed occupational skills, or presented affidavits of support from family relations in the U.S. This practice reflected traditional gender norms about female dependency, which denied that women could be independent economic actors.[11] Another bias prevailed against certain ethnic and racial groups that were believed to be "economically unfit" and therefore LPC. This stereotype was used to exclude many Jews (such as peddlers) from the 1910s to the 1940s.[12] In 1914 the head of the Bureau of Immigration instructed agents to exclude people from India on grounds that South Asians did not work hard and/or were unclean, which made them unemployable.[13] By the middle of the twentieth century these gender and ethnic biases were mostly rendered obsolete with the establishment of quantifiable standards for determining whether a person seeking entry to the country is likely to become a public charge.

In cases of deportability, the established pattern defined a public charge as a person who fell completely dependent on public facilities, such as poor houses, hospitals, and asylums for the mentally ill, for support. Immigrants in prison were also deportable as public charges. It was still necessary to bring a deportation case within a prescribed time limit and to show that the causes for institutionalization existed prior to entry. Although social welfare benefits were new in the early twentieth century, there were a growing number of social services such as English classes or public health programs, which aimed to integrate immigrants into society. Using these services was not considered grounds for deportability. This general pattern has continued to our own time.

Despite the general policy, enforcement was unevenly applied and, in some cases, abused. During the early 1920s (when there was an agricultural depression in the southwest) and the Great Depression of the 1930s, authorities removed Mexican workers, including those with jobs, on grounds that they used some city and county public benefits. Most were not deported by federal immigration officials but repatriated by local authorities.[14]

Another pattern in deportation cases concerned the application of "LPC before entry" to cases not involving public support but sexual conduct (such as cohabitation and adultery) and minor offenses that were themselves not deportable. This use of LPC reflected an older view that social transgressions were caused by inborn character defects (e.g. "weak morals"), which by definition preexisted entry. By the 1930s the federal courts were throwing out these cases as unreasonable. Judge Learned Hand argued that public charge meant "dependency, not delinquency."[15] In deportation cases, then, "public charge" was clarified as dependence on public support.

Causes Pre-existing Entry and Time Limits

Let us return to these two provisions in LPC and public charge policy. At the core of the concept "causes existing prior to entry" were two key assumptions. First, to deport an immigrant who became ill or disabled from causes subsequent to entry would unfairly hold the country of origin responsible and contradict the intent of the inadmissibility grounds. The same principle applied to poverty and unemployment. During the 1930s, the Immigration and Naturalization Service (INS) did not consider immigrants who were "victims of the general economic depression" removable simply because they received public relief.[16] Second, grounds for deportability as public charges related to illness and disability, not the use of public health services such as vaccines or medical treatments associated with human development.

In practice it was not always easy to determine whether a condition existed prior to entry in deportation proceedings. The Bureau of Immigration's 1911 *Immigration Laws and Rules* sketched out a rudimentary system, which aimed to coordinate enforcement with local and state institutions and hospitals in order to document the grounds for deportation. Documenting that an illness existed before rather than after immigration was not always straightforward and, with early twentieth-century medicine, sometimes impossible. In the 1940s, scholars studying immigration law pointed out the continued difficulties of assessing causality. For example, in 1941, legal scholar Leo Alper wrote, "In the case of the alien hit on the head by a brick, or run over by a train, the facts of themselves, to use a handy phrase, establish a cause subsequent to entry for the alien's free care at a hospital. Fairly clear also are those cases in which a slowly developing disease, such as trachoma, has a causality definite enough in point of time for a surgeon to state within reason the date of onset." Many other illnesses, Alper noted, were much more difficult to precisely date the origin.[17]

The time limit on deportation of public charges protected long-term residents with the understanding that "causes existing prior to entry" had a limited shelf life. Furthermore, acting on the principle of integration, courts often suspended deportation orders. They recognized the hardship that deporting a family member caused the US citizens who were the children or spouses of such immigrants.

Mid-Twentieth Century Policy Developments

Since 1903, Congress has clearly distinguished between exclusion and deportation in the immigration statutes. While excluding someone who had never been in the country was one thing and considered a commonsensical application of the sovereign prerogative, deporting someone "dislodges an established residence" in the United States and, therefore, provisions for deportation "must be strictly construed."[18] In recognition of the higher stakes in deportation, the Board of Immigration Appeals (BIA) , at mid-century, set more explicit instructions for determining deportability under the public charge and LPC provisions, which limited discriminatory enforcement. In 1948, the BIA decided *Matter of B___* and set a three-part test to determining deportability:

> 1) The State or other governing body must, by appropriate law, impose a charge for the services rendered to the alien.
> (2) The authorities must make demand for payment of the charges upon those persons made liable under State law.
> (3) [T]here must be a failure to pay for the charges.[19]

The BIA based its decision on grounds that "had been 'implicit' in prior judicial decisions and 'applied administratively over a long period of time.'"[20]

In admission cases the BIA reaffirmed in 1974 a "totality of the circumstances" test that was much broader than the three-part test of *Matter of B___*. The BIA determined that myriad factors could be considered in determining whether a person was likely to become a public charge, including age, health, educational level, financial status, and family assets and support. This was consistent with the long-standing approach that considered an alien's economic circumstances as well as physical and mental conditions.

Notably, admissibility cases expanded to include not only aliens applying for a visa (green card) from abroad but also aliens already legally present in the United States who wished to adjust their status to that of a legal permanent resident. The Immigration and Nationality Act of 1952 formalized numerous "nonimmigrant" categories for aliens entering the United States on a temporary basis to visit, work, or study. The 1952 act enabled nonimmigrants to apply for legal permanent residency (adjustment of status) without having to leave the country and apply through a U.S. consulate abroad. Persons applying for an adjustment of status are treated under the "totality of circumstances" test just like aliens applying for entry from abroad.[21] The "totality of circumstances" now includes circumstances that occurred while residing in the United States.[22]

1965 to present

Two developments in the 1970s prompted renewed attention to immigration and public charge policy: first, an expansion of public benefits under the Lyndon Johnson administration; and second, the increase in immigration after the passage of the Hart Celler Act in 1965, including an increase in undocumented immigration. Public debate over immigration in the late twentieth and early twenty-first

centuries has included the question of whether lawful permanent residents (green card holders) and other aliens lawfully residing in the country, such as refugees, should be able to use public benefits. As the scope of public benefits widened in the 1960s and 1970s, Congress did not exclude lawful immigrants and refugees from them. In 1996 Congress imposed time limits on access to some means-tested benefits, and restricted eligibility for some lawfully present immigrants, but did not categorically exclude all immigrants from receiving them. It then became necessary to clarify whether use of benefits was a ground for inadmissibility or deportation. The next section will discuss, first, the evolution of policy on access to public benefits; and second, the definition of "public charge" with regard to admission/adjustment of status and deportation.

Immigrant access to federal and state public benefits

Legislation authorizing the major federal benefit programs enacted since the 1960s—Medicaid, TANF (Temporary Aid for Needy Families, or welfare), Supplemental Security Income (SSI), food stamps, Head Start, etc.—generally did not distinguish between citizens and non-citizens. Eligibility is based on income, not citizenship. As a general rule, immigrants had access to federal public benefits at the time the programs were created. During the 1970s the federal government barred unauthorized immigrants from obtaining Social Security numbers (1972) and from nearly all federal welfare programs, including SSI (1972), Medicaid and AFDC (1973), and food stamps (1977).[23]

Congress began to impose restrictions on eligibility for lawful permanent residents in the 1980s and 1990s. The Immigration Reform and Control Act (IRCA) of 1986 prohibited immigrants newly legalized under the law from receiving public benefits for five years.[24] In 1996 Congress passed the Personal Responsibility and Work Opportunity Reconciliation Act (PRA), which created two categories of immigrants with regard to eligibility for "federal means-tested public benefits": "qualified" and "non-qualified."[25] "Qualified" immigrants include lawful permanent residents, refugees, asylees, and others. Lawful permanent residents and certain other immigrants are barred from receiving federal benefits for five years after entry. Refugees and some other categories of immigrants are exempt from the five-year waiting period.[26]

"Non-qualified" persons include temporary visitors and undocumented immigrants. They are barred from federal benefit programs. But there are important exceptions, where services are available to all people regardless of immigration status: emergency medical care; public health programs (immunizations and treatment of communicable disease symptoms); school breakfast and lunch programs; K-12 public education; Women, Infant and Children nutrition (WIC); and short-term non-cash emergency disaster assistance.

There are myriad other federal programs that do not restrict eligibility based on immigration status. Head Start has no immigration restrictions. Child Care and Development Block Grants are restricted to "qualified immigrants" but they consider the status of the child, not the parent. This is important because 96% of children under six years of age with at least one foreign-born parent are U.S. citizens.[27] Perhaps the broadest public benefit unrestricted by immigration status is public education (K-12). The landmark Supreme Court case *Plyler v. Doe* (1982) struck down a Texas law that would have barred undocumented children from public schools, on grounds that such discrimination was unconstitutional.[28] Under the Affordable Care Act (2010), "lawfully present immigrants" have access to health insurance exchanges and subsidies.[29]

At the state level, two trends developed in the late 20th century. Some states passed laws or referenda that would deny legal immigrants public benefits. In general, many of these have not survived court challenge. The first major case, *Graham v. Richardson* (1971), struck down New York state laws that limited public assistance to citizens and persons with long-duration residency as a violation of the equal protection clause of the Fourteenth Amendment.[30] (However, this applies only to state laws.[31]) Subsequent case law has struck down state laws restricting immigrants' access to employment and benefits on grounds of preemption, that is, that the federal government alone is responsible for regulating immigration.[32]

The other trend among the states has been the allocation of state or local-funded public benefits for immigrants who are ineligible for federal benefits because of the five-year bar or to classes of immigrants not otherwise covered. Twenty-two states have state-funded TANF replacement programs that cover people not covered under the PRA, such as qualified immigrants regardless of entry date.[33] Five states have state-funded SSI replacement programs.[34] Eligibility is sometimes affected by "deeming," that is, the inclusion of a family member or sponsor's income or resources in addition to the immigrant's income in determining eligibility. Fifteen state constitutions mandate or authorize poor relief for the indigent, without immigration restrictions.[35] Some states provide non-emergency medical care to undocumented immigrants.[36]

Inadmissibility and deportation of public charges

As discussed above, the Immigration and Nationality Act of 1952 established different policies for addressing public charges for admission/adjustment of status and for removal. After the passage of the 1996 PRA, the Immigration and Naturalization Service (now Department of Homeland Security) clarified the definition of "public charge." It continued to apply the "totality of circumstances" test in cases of admission/adjustment of status. In 1999 it defined a public charge as "an alien who has become primarily dependent on the Government for subsistence as demonstrated by either (i) the receipt of public cash assistance for income maintenance purposes or (ii) institutionalization for long-term care at Government expenses (other than imprisonment for conviction of a crime)." This definition is consistent with long-established policy defining public charges as those entirely dependent upon state support.[37]

Notably, INS/DHS does not consider receipt of public assistance per se as a ground for deportation. INS confirmed in 1999 the grounds of deportability that were established in 1948 and made them even more stringent. Deportation is restricted to cases, not only where the immigrant depends on government support for general subsistence, but where the government has *demanded repayment* of cash support or the cost of institutionalization *within five years of alien's entry*; the alien or other party obligated to pay failed to do so; and *all administrative and court actions have been taken to collect payment*. [38]

The following benefits are among those that are NOT subject to public charge consideration under current policy: Medicaid; public assistance for immunizations and testing and treating of symptoms of communicable diseases; use of health clinics; short-term rehab services; prenatal care and emergency medical services; Children's Health Insurance Program (CHIP); nutrition programs (food stamps, WIC, school lunch and breakfast); housing benefits; child care services; energy assistance; emergency disaster relief; foster care and adoption assistance; educational assistance (Head Start and public education); job training programs; in-kind, community based programs (soup kitchens, crisis counseling, etc.); non-cash benefits under TANF (subsidized child care or transit subsidies); earned cash

payments such as social security; government pensions and veterans benefits; and unemployment compensation.

The proposed rule change would make receipt of the following benefits grounds for denying admission or adjustment of status to lawful permanent resident: non-emergency Medicaid; Supplemental Nutrition Assistance Program (SNAP); Medicare Part D Low Income Subsidy; and housing assistance, such as public housing or Section 8 housing vouchers and rental assistance. In addition, the proposed rule revises the "totality of circumstances" test to include specific standards that would be weighed negatively in considering the person's age, health, skills, work experience, dependents – such as being a child or a senior, earning under 125% FPL, certain health conditions (without access to private health insurance), credit history, education, English language, etc.—and only a single heavily-weighted positive factor (having income or resources of over 250 percent of the federal poverty level). Thus even a person who does not use any of the proscribed benefits could be deemed likely to become a public charge.

Although the proposed rule change does not cover all of the benefits that immigrants may now receive, we believe that the change from the principle that defines public charge as dependence on the government by cash support for subsistence or by long-term institutionalization will lead to a general erosion of benefits that legal immigrants may access. The new rule also potentially expands grounds for removal of lawful permanent residents.

The expanded definition and negative factors in the test could exclude many low and moderate wage workers from immigrating, even if they are not eligible for receiving public benefits. Beyond this, the proposed rule will chill access to critical services for a much broader group. Out of fear that their green card applications would be denied and they would be ultimately deported as a result, immigrants earning low-wages have already started withdrawing from public benefit programs, including food assistance. The same fear keeps immigrants from seeking public medical services. Without appropriate immunizations and screenings, they are vulnerable to infectious diseases, placing both themselves and citizens at greater public health risks.

Congress and states have long recognized how these various programs help support healthy development and the productivity of working families. The proposed rule is a radical departure from established precedent. It will affect entire families, bringing about serious negative impact on the wellbeing of children, the vast majority of whom are native-born US citizens. It risks further inverting the ways the public benefits have actually worked to help families, workers, and communities thrive. The rule could instead exponentially undermine the integration of long-term immigrants, hurting families and communities in the process.

CONCLUSIONS

(1) Definitions of "public charge" and the grounds for exclusion and deportability of public charges have remained remarkably constant for more than 100 years under statute, case law, administrative regulation, and customary practice. "Public charge" has been narrowly construed to the use of cash benefits for subsistence or long-term institutionalization.

(2) As public benefits expanded for low-income people since the 1960s and 1970s, both legal and undocumented immigrants had access to public benefits. Since the 1970s, undocumented

immigrants have been ineligible for most benefits. Since 1996 legal immigrants face time barriers to access federal benefits but they have not been categorically excluded.

(3) Restrictions on aliens' eligibility for public benefits generally have been authorized by statute.

In conclusion, we submit that the proposals for these sweeping changes in immigration public charge policy would reverse over 100 years of consistent policy. That policy recognizes two principles: first, the nation's desire for immigrants who are able-bodied and employable, capable of supporting themselves and their families; and second, our commitment to assist members of our communities who fall on hard times. The proposed policy is punitive and carries high social costs for welfare and public health beyond the lines of citizenship. Chilling access would undermine the goals of the public charge provision. The proposed policy is at odds with historical experience and policy and will directly harm America's future.

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NOTES

[1] *Annual Reports of the Commissioners of Emigration of the State of New York: From the Organization of Commission, May 5, 1847, to 1860, Inclusive* (New York: John F. Trow, 1861), Appendix, 2.

[2] An Act Relating to Alien Passengers (March 20, 1850), *Acts and Resolves Passed by the General Court of Massachusetts, in the Years 1849, 1850, 1851* (Boston: Dutton and Wentworth, 1851), Chapter 105, 339.

[3] An Act to Regulate Immigration, 22 Stat. 214 (1882).

[4] An Act in Amendment to the Various Acts Relative to Immigration and the Importation of Aliens under Contract or Agreement to Perform Labor, 26 Stat. 1084 (1891).

[5] Immigration Service, *Annual Report of the Commissioner-General of Immigration to the Secretary of the Treasury for the Fiscal Year Ended June 30, 1897* (Washington: Government Printing Office, 1897), 4.

[6] Immigration Acts of 1882 (22 Statues-at-Large 214), 1891 (22 Statues-at-Large 1084), 1903 (32 Statutes at Large 1213), 1907 (34 Statues-at-Large 898) and 1917 (39 Statutes-at-Large 874). Under these laws excludable and deportable categories included paupers, persons likely to become a public charge, persons suffering from a loathsome or contagious disease, felons, persons convicted of other crimes or misdemeanors involving moral turpitude, polygamists, anarchists and communists, imbeciles, feeble-minded persons, persons with physical and moral defects which may affect their ability to earn a living, persons afflicted with tuberculosis, children unaccompanied by their parents, women coming to the U.S. for immoral purposes [prostitution].

[7] U.S., Dept. of Labor, *Annual Report of the Commissioner General of Immigration*, 1916.

[8] Act of Mar. 3, 1891, § 11, 26 Stat. 1084 (1891).

[9] Congressional Research Service, "Public Charge Grounds of Inadmissibility and Deportability: Legal Overview" (Feb. 6, 2017), citing **"**Ex parte Orzechowska, 23 F. Supp. at 429 (no proof that alleged reasons for alien's institutionalization predated her entry); United States ex rel. Mandel v. Day, 19 F.2d 520 (E.D. N.Y. 1927) ("After careful perusal ..., the court finds no evidence to sustain the contention that [the] alien suffered from some mental defect at the time of entry."); United States ex rel. Romanow v. Flynn, 17 F.2d 378 (W.D. N.Y. 1927); Matter of B—, 9 I. & N. Dec. 57 (BIA 1960); Matter of S—, 5 I. & N. Dec. 21 (BIA 1954); Matter of F—, 5 I. & N. Dec. 209 (BIA 1953).

[10] Act of Mar. 3, 1903, § 20, 32 Stat. 1213 (1903); Hutchinson, *Legislative History of American Immigration Policy*, 133; Act of Feb. 20, 1907, § 20, 34 Stat. 898 (1907); Act of Feb. 5, 1917, § 19, 39 Stat. 874 (1917).

[11] Deirdre Moloney, *National Insecurities: Deportation Policy since 1882* (Chapel Hill 2012), 79-80.

[12] Moloney, 82-92.

[13] U.S. Department of Labor, *Reports of the Department of Labor, 1914*, 438–39**.**

[14] Upwards of 400,000 Mexicans (including US-born citizen children) were repatriated in the 1930s. Moloney, *National Insecurities*, 97; Francisco Balderrama and Raymond Rodriguez*, Decade of Betrayal: Mexican Repatriation in the 1930s* (Albuquerque 1995).

[15] Mae Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America* (Princeton 2004), 80-81.

[16] Ngai*,* 72.

[17] Leo M. Alpert, "The Alien and the Public Charge Clauses," 49 Yale L. J. 18 (1939), 1941.

[18] Matter of Harutunian, 14 I&N Dec. 583 (BIA 1974)

[19] CRS, "Public Charge Grounds of Inadmissibility and Deportability: Legal Overview," 3.

[20] CRS, "Public Charge Grounds of Inadmissibility and Deportability: Legal Overview," 3.

[21] USCIS Policy Manual, Volume 7, Adjustment of Status, Sec. 2 (March 28, 2018)

[22] *Matter of Harutunian* 14 I&N Dec. 583 (BIA 1974).

[23] Cybelle Fox, "Unauthorized Welfare: The Origins of Immigrant Status Restrictions in American Social Policy," *Journal of American History* (March 2016): 1051-1074.

[24] Immigration Reform and Control Act, Pub.L. 99–603, 100 Stat. 3445, (November 6, 1986). IRCA legalized the status of persons who entered before Jan. 1, 1982 and had resided in the country continuously since then. Nearly 3 million received legal permanent status under IRCA.

[25] Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub.L. 104-193, 110 Stat. 2105 (Aug. 22, 1996). Eligibility restrictions apply to persons who entered the US on or after Aug. 22, 1996. "Federal means-tested public benefits" are Medicaid, CHIP, TANF, SNAP and SSI.

[26] In addition to legal permanent residents and refugees, "qualified" include persons granted withholding of deportation or paroled into the U.S. for at least one year; Cuban and Haitian entrants; Iraqi and Afghan special immigrants; certain veterans and those on active military duty and their families; certain cases of battered spouses and children and victims of trafficking; and certain other categories.

[27] Center for Law and Policy Social Research, "Immigrant Eligibility for Federal Child Care and Early Education Programs," Hannah Matthews, 2017.

[28] *Plyer v. Doe*, 457 U.S. 202 (1982).

[29] 124 Stat. 119 through 124 Stat. 1025 (2010). Undocumented immigrants and DACA holders are not eligible for health insurance under the ACA.

[30] *Graham v. Richardson*, 403 US 365 (1971).

[31] In *Matthews v. Diaz* (1976) the Supreme Court ruled that the federal government may determine immigrants' eligibility for federal programs under its broad authority to regulate immigration. 426 US 67.

[32] *De Canas v. Bica*, preemption; *LULAC I/II* on Prop 187, CA, preemption; Prop 200 in AZ, preemption.

[33] CA, CT, GA, HI, IL, IA, ME, MD, MN, NV, NJ, NM, NY, OH, OR, PA, RI, TN, UT, WA, and WI. Coverage varies by state.

[34] CA, HI, IL, ME, and NH.

[35] After passage of the 1996 federal welfare law, New York State legislated a 5-year bar to legal permanent residents for state-funded Medicaid but the state court of appeals found that it violated the state constitution mandate to provide assistance according to need and no other criteria. *Aliessa v. Novello* 712 NYS 2nd, 96, 98 (NY Appel Div 2000).

[36] Sixteen states and the District of Columbia use federal funds (CHIP) to provide prenatal care to women regardless of immigration status, under the CHIP option that allows states to enroll fetuses in CHIP. The District of Columbia and New York provide prenatal care to women regardless of immigration status, using local or state funds. NILC, "Overview of Immigrant Eligibility for Federal Programs" (Dec. 2015), 5.

[37] These policies are not formal regulations but have been circulated as INS "field guidance" (May 26, 1999) and as a publicly available "fact sheet" (both on DHS website as of March 15, 2018). INS, "Field

Guidance on Deportability and Inadmissibility on Public Charge Grounds" (64 FR 28689) [FR27-99], May 26, 1999, https://www.uscis.gov/ilink/docView/FR/HTML/FR/0-0-0-1/0-0-0-54070/0-0-0-54088/0-0-0-55744.html; US CIS, "Public Charge Fact Sheet," released April 29, 2011, https://www.uscis.gov/news/fact-sheets/public-charge-fact-sheet.

[38] CRS, "Public Charge Grounds of Inadmissibility and Deportability," 6-7.