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Chilling Effects and Grumbling Stomachs: The Impact of Public Charge Rule Changes on Nutrition Assistance Access among Children in Immigrant Families

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Executive Summary

In August 2019, the Trump administration published its final changes to the public charge rule. Unlike the previous public charge rule, legal immigrants who utilize nutrition assistance programs would be potentially classified as “public charges,” thus making their pathway to legal permanent residence and citizenship more difficult. These changes have resulted in a “chilling effect” among Latinx immigrant communities, where immigrant families will unenroll from nutrition assistance programs irrespective of immigration status. Regardless of the outcome of litigation on the rule, the “chilling effect” has still affected families and children, needlessly sowing seeds of fear among families for taking advantage of benefits their children are entitled to as U.S. citizens. A lack of access to nutritious food through assistance programs may lead to negative health and educational outcomes in the long term for these children. An information campaign targeted at immigrant communities underscoring U.S.-born children’s eligibility for nutrition assistance programs

regardless of their parents’ status could mitigate this fear and misunderstanding by assuring families that their children’s participation in these programs will not affect their status.

Background on Public Charge

In January 2017, the Trump administration drafted proposed changes to the public charge rules governing application for legal permanent residence among documented immigrants. The final version of this rule was published on August 12, 2019 and was scheduled to go into effect on October 15, 2019.¹ The rule has been challenged in the courts by ongoing litigation, and an injunction introduced on October 11, 2019 had stopped it from being implemented in the meantime.² An appellate court upheld this injunction on January 8, 2020,³ but it was ultimately struck down by the Supreme Court in a decision made public on January 27, 2020. This allows the rule to be enacted while the courts litigate the rule’s fate.⁴ As a result, the rule will go into effect on February 24, 2020.⁵

The first public charge rule was introduced in 1999 under the

Clinton administration, after the passage of the Illegal Immigration Reform and Immigrant Responsibility Act in 1996, to prevent legal immigrants from utilizing social safety net programs. The initial rule defined a public charge as anyone who was “primarily dependent on the government for subsistence, as demonstrated by either (i) the receipt of public cash assistance for income maintenance or (ii) institutionalization for long-term care at government expense.”⁶

The initial public charge rule included cash assistance programs as being subject to scrutiny, but not other welfare benefit programs. According to U.S. Citizenship and Immigration Services,

“[T]he [initial] rule also reaffirmed that [the Immigration and Naturalization Service] would consider the ‘totality of circumstances’ when considering [Likely Public Charges] for Lawful Permanent Resident (LPR) applicants. In addition, the INS stated [that at the time] it would not consider health-care benefits, food programs, and other non-cash granting

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public benefits when determining LPC status for admission. However, the INS could consider use of cash welfare, such as Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF), and state General Assistance; as well as long term institutionalization at the government’s expense, when making LPC determinations.”⁷

In addition to the programs included in the original public charge rule, the Trump administration’s updated rule classifies the use of previously excluded programs, such as the Supplemental Nutrition Assistance Program (SNAP), Medicaid, and housing subsidies, as included in designating a person a potential “public charge.” Legal immigrants who utilize these programs who apply for permanent residence after the finalization and implementation of this rule thus have weakened chances of acceptance.⁸

The updated rule was scheduled to go into effect on October 15, 2019; however, due to lawsuits filed by multiple parties and an injunction from the courts, the rule was not implemented until the Supreme Court ruled the injunction be lifted on January 27, 2020.⁹

The Chilling Effect and its Impact on Children

While the public charge rule is aimed at immigrants, a secondary consequence of the rule is its impact on U.S. citizen children of

legal immigrants through what is known as a “chilling effect.”

As defined by the Migration Policy Institute, a “chilling effect” refers to a sharp decline in program utilization among a given population as a result of the introduction of a policy due to confusion and fear surrounding the policy and who it directly affects.¹⁰

While the rule only applies to those applying for admission to the United States or for a change of legal status, including legal permanent residence, fear and confusion around whose utilization of these programs would affect immigration applications will have a wide impact within immigrant communities. This fear and confusion will result in families unenrolling from any and all social benefit programs, regardless of the legal status of individual family members. Particularly hard hit by the chilling effect are Latinx immigrant communities, and among them, U.S.-born children.¹¹

The population of U.S. citizen children who are children of immigrants is significant; if their families meet federal or state income requirements, these children are eligible for nutrition assistance programs such as SNAP or the Special Supplemental Nutrition Assistance Program for Women, Infants, and Children (WIC). Between 1990 and 2017, the population of children in the United States with at least one immigrant parent grew from 13.4 percent to 26 percent; 88 percent of children in immigrant families in

2017 were born in the United States.¹² 7.6 million of these children live in families where at least one person receives cash or non-cash benefits, which means that 7.6 million children stand to be affected by this chilling effect.¹³ It is also important to note that by the USDA’s calculations, Latinx families see some of the highest utilization rates among eligible persons of the WIC program, with utilization at 60 percent among Latinx women, infants, and children.¹⁴

These children’s eligibility for and utilization of SNAP and WIC benefits are not under direct consideration by immigration officials as they process their family members’ immigration applications under the new public charge rule. However, even if a child’s eligibility is not affected by their parents’ immigration status, many parents worry about the consequences of sharing information with government officials on their own status. One news outlet reports that as a result, SNAP and WIC program administrators in at least 18 states have noticed declines in utilization among immigrant populations up to 20 percent.¹⁵

Policy Implications

The implications of this chilling effect on children’s overall health and educational outcomes are serious. As discussed by the Kaiser Family Foundation, declining participation rates in nutrition programs can negatively impact the growth and healthy

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development of children in immigrant families, leading to greater health problems in the future.¹⁶ This can manifest itself directly through a family's lack of resources, previously provided through SNAP, to purchase healthy food affordably, and also indirectly through other tangentially related programs. For example, children enrolled in SNAP are automatically registered for free school meals. Upon losing these SNAP benefits, these children are not only losing out on food at home, but also from nutritious meals they could be receiving at school.¹⁷ While it is true that many of these students will qualify for free or reduced meals without receiving SNAP, the bureaucracy that families must navigate in order to sign up is an added obstacle to accessing nutritious food.

Regardless of the courts' rulings on public charge, it is the fear of the rule manifested through this chilling effect that affects children in immigrant families most. A climate of fear can have a negative impact on children's overall health and educational outcomes. Fear disrupts family routines, causing families to isolate themselves in their homes, which can negatively impact their children's access to education.¹⁸ Fear around immigration enforcement can also negatively impact children's performance in school, increasing Latinx students' likelihood of repeating a grade by 14 percent, and increasing the

likelihood of dropping out of high school by 18 percent.¹⁹

Conclusion and Recommendation

Even as court injunctions presented the administration with roadblocks to implementing its final public charge rule, the damage was already done in many immigrant communities, where families have unenrolled from nutrition assistance programs their children could and should benefit from.

However, there is still work government can do to combat the chilling effect and its impact on children in immigrant families. As the Kaiser Family Foundation points out, the chilling effect has occurred mainly due to misinformation—thus, outreach and education efforts to immigrant communities about their families' eligibility for nutrition assistance programs should be an important component of mitigating the effects of the final rule.²⁰ State SNAP agencies, who already are responsible for enrolling individuals and families in SNAP and know the communities they serve best, can take a leading role in the information campaign effort. They can place posters and informational pamphlets in multiple languages detailing the eligibility of U.S. citizen children for nutrition assistance programs in agency offices, community centers, and public places frequented by immigrant populations. By enumerating who is eligible for these programs,

and how they may or may not affect family members' applications for changed status, we can bring clarity to immigrant communities.

This is not to say that an information campaign does not bring with it challenges or drawbacks. Potential challenges include identifying affected populations, determining optimal outreach methods, and covering the cost of such a campaign. Especially considering that this issue affects only a subset of the immigrant population, these challenges, while not insurmountable, are important to consider.

Regardless of the ultimate fate of the final public charge rule, or the success of a potential informational campaign, children born in the United States are entitled to the same nutrition assistance benefits of any other U.S. citizen. This is true no matter the immigration status of their parents. It is the duty of government to ensure that all its citizens are treated and protected equally under the law, a duty it neglects when failing to consider the potential chilling effects of a policy like the updated public charge rule. The integrity of these programs depends on ensuring that all those eligible are served, including the U.S.-born children of immigrants.

Endnotes

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⁷ *Ibid.*

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⁹ Harper Neidig, “Supreme Court Allows Trump Administration to Move Forward with ‘public Charge’ Rule,” *The Hill*, January 27, 2020, <https://thehill.com/regulation/court-battles/480114-supreme-court-allows-trump-administration-to-move-forward-with>

¹⁰ Jeanne Batalova, Michael Fix, and Mark Greenberg, “Chilling Effects: The Expected Public Charge Rule and Its Impact on Legal Immigrant Families’ Public Benefits Use” (Migration Policy Institute, June 2018), <https://www.migrationpolicy.org/research/chilling-effects-expected-public-charge-rule-impact-legal-immigrant>