

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	To Eugenia Chough from WAVES re: WAVES Confirmation (partial, SSN, DOB) (1 page)	05/10/1999	b(7)(C), b(7)(E), b(6)

COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Irene Bueno
OA/Box Number: 17175

FOLDER TITLE:

Public Charge: Public Charge - Working File

2017-1120-S
ry2200

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

Freedom of Information Act - [5 U.S.C. 552(b)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
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b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Public Charge

PHOTOCOPY
PRESERVATION

SIGN-IN SHEET- 5/11/99

NAME	AGENCY	Phone/Fax / E-mail		
		Phone	Fax	E-mail
Clara French	WIC/FNS	703 305-2743	703 305-2196	Clara.French@fns.usda.gov
Art Foley	FSP/FNS	703 305 2494	305-2486	ART-Foley@fns.usda.gov
Andy Hyman	HHS	690-6060	(f) 205-2727	ahyman@os.dhhs.gov
Judy Chesser	SSA	358-6030	358-6074	judy.L.Chesser@ssa.gov
Barbara Strack	INS	514-3242	305-0134	Barbara.L.Strack@osdoj.gov
Ed Odom	State	663-1204	663-3898	odomhe@state.gov
Barbara Hunt	IGA	6-5016	456-2889	
William White JR	IGA	6-2896	456-2889	
Maritza Rivera	OPL	6-6659	6-6218	
Cathy St. Denis	INS	514-8195	307-9911	cathy.st.denis@usdoj.gov
Cynthia Rice	WH-DPC	456-2846	456-7431	Cynthia-a.-rice@ea-eop.gov
Irene Buono	WH-DPC	456-6558	456-5581	irene.buono@ea-eop.gov
Jeff Sculley	USDA-OGC	720-2064	720-6910	Jeffrey.A.Sculley@usda.gov
Jeff Farkas	OMB-Health	395-7756	395-7840	Jeffrey-A.-Farkas@omb.eop.gov
Strat Slater	JMP-OIRA	395-7897	-6974	sslat10@omb.eop.gov
Pamela Green-Smith	HHS/ACF	202-401-4531		pgreensmith@acf.
Laura Canfield	HHS/OGC	690-8005	690-7320	LCANFIELD@OS.DHHS.GOV
Web Phillips	SSA	202-358-6027	358-6074	webster.p.phillips@ssa.gov
James Costello				
Patty First				

SIGN-IN SHEET- 5/11/99

NAME	AGENCY	Phone/Fax / E-mail		
		Phone	Fax	E-mail
Clara French	WIC/FNS	703 305-2743	703 305-2196	Clara.French@fns.usda
Art Foley	FSP/FNS	703 305 2494	305-2486	Art-Foley@fns.usda
Andy Hyman	HHS	670-6060	(f) 205-2727	ahyman@os.dhs
Judy Chesser	SSA	358-6030	358-6074	judy.l.Chesser@
Barbara Strack	INS	514-3242	305-0134	Barbara.L.Strack@
Ed Odom	State	663-1204	663-3898	odomhe@state.gov
Barbara Hunt	IGA	6-5016	456-2889	Odom he @ state. gov
William White JR	IGA	6-2896	456-2889	
Maritza Rivera	OPL	6-6659	6-6218	
Cathy St. Denis	INS	514-8195	307-9911	cathy.st.denis@usdoj
Cynthia Rice	WH-DPC	456-2846	456-7431	cynthia-a.-rice@
Jane Bueno	WH-DPC	456-6558	456-5581	irene-bueno@eop.gov
Jeff Sculley	USDA-OGC	720-2064	720-6910	JEFFREY.SCVLLEY@USDA
Jeff Farkas	OMB-Health	395-7756	395-7840	Jeffrey-A.-Farkas@OMB.EOP.GOV
Stuart Shapiro	OMB-ORA	395-7897	-6974	sshapiro@omb.eop.gov
Pamela Green-Smith	HHS/ACF	202-401-4831		pgreensmith@acf
Laura Canfield	HHS/OGC	690-8005	690-7320	LCANFIELD@OS.DHHS.GOV
Web Phillips	SSA	202-358-6027	358-6074	webster.p.phillips@SSA.gov

Plan for Congressional Rollout on Public Charge Legislation

Briefings:

House and Senate Judiciary Committees

1. Authorizing Committees for benefit granting agencies –

- Senate: Finance
Agriculture
Labor
- House: Ways and Means
Agriculture
Commerce
Education and the Workforce

2. Congressional Hispanic Caucus (CHC)

3. Large states and other interested members

New York, California, Texas, Florida, New Jersey, Illinois

Briefers:

INS Barbara Strack

HHS Andrew Hyman

SSA Webster Phillips

USDA Susan Gossman, Bonny O'Neil, or Art Foley

INS will be taking the lead at all briefings. Representatives from HHS, SSA and USDA will also attend. Materials will be distributed at all briefings. Each agency will deal with their appropriators as needed.

Scheduling:

INS will set up meetings with Judiciary, CHC, large states and other interested members. HHS will set up meeting with authorizing committees for benefit granting agencies.

Points of Contact:

DPC Irene Bueno 456-6558

INS Allen Erenbaum 514-8102

HHS Sharon Clarken 690-7450

SSA Judy Chesser 358-6030

USDA Frank Ippolito 720-3631

INTERAGENCY MEETING ON PUBLIC CHARGE

1/29/99

<u>Name</u>	<u>Organization</u>	<u>Phone</u>	<u>Fax</u>
✓ Barbara Strack	INS	514-3242	305-0134
✓ Alice J. Smith	INS/Gen. Co.	305-9353	514-0455
Sheryl Walker	SSA	410-965-5648	966-5366
Hedy Gordon	SA	410 965-2103	
✓ Jeff Farkas	OMB	202 395-7756	395-7840
✓ David Nielsen	HHS/ASPE	(202) 401-6642	690-5514
✓ JEFF SCULLEY	USDA/OGC	202.720.2064	202.720.6910
✓ Stuart Sharov	OMB/OIRA	202-395-7857	395-6974
✓ Lori Schuck	OMB/OIRA	202.395.4718	395-6974
✓ Art Foley	USDA-FCS-FSP	703 305 2490	703 305 2480
→ Jim Pettit	State-Visa Office	202-663-1175	202-663-3897
✓ June Bruno	HHS	202 690-6786	202.690.6351
✓ Larima Lemon	HHS	(202) 401-9246	
✓ Andy Hymen	HHS/KA	(202) 690-6060	(202) 205-2727
✓ ERIC GOULD	DPC	202 456 7871	456 7431
Jack Smalligan	(disability reg.) Food Stamp		
Dan Marcan			
James Costello			
MAINE			

Withdrawal/Redaction Marker

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WAVES_CONF @ PMDF.EOP.GOV
05/10/99 02:26:56 PM

Record Type: Record

To: Eugenia Chough/OPD/EOP

cc:

Subject: WAVES Confirmation

ADDRESSEES: EUGENIA CHOUGH
SUBJECT: CONFIRMATION: APPT. REQUEST FOR CHOUGH, EUGENIA
FROM: WAVES OPERATIONS CENTER - ACD (b)(7)e, (b)(7)c, (b)(6)
Date: 05-10-1999
Time: 13:22:20

This message serves as confirmation of an appointment for the visitors listed below.

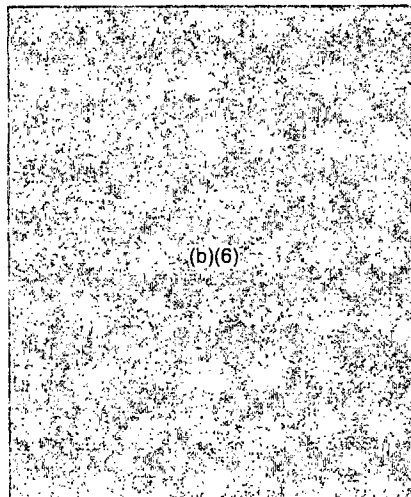
Appointment With: CHOUGH, EUGENIA
Appointment Date: 5/11/99
Appointment Time: 11:00:00 AM
Appointment Room: 211
Appointment Building: OEOB
Appointment Requested by: CHOUGH EUGENIA
Phone Number of Requestor: 62015
WAVES APPOINTMENT NUMBER: U79431

If you have any questions regarding this appointment, please call the WAVES Center at 456-6742 and have the appointment number listed above available to the Access Control Officer answering your call.

TOTAL NUMBER OF NAMES SUBMITTED FOR ENTRY : 16

TOTAL NUMBER OF NAMES OF CLEARED FOR ENTRY: 16

BIDDLE, TOYO
CANFIELD, LAURA
CHESSEY, JUDY
FOLEY, ARTHUR
FRENCH, CLARA
HYMAN, ANDREW
LIMON, LAVINIA
NIELSEN, DAVID
ODOM, EDWARD
PARKER, EMIL
SCULLEY, JEFFREY
SMITH, ALICE
STDENIS, CATHY
STOLLENWERCK, ALLYSON
STRACK, BARBARA
WHALIN, DAVID



pamela greenshield [001]
(b)(6)
(b)(6)
(b)(6)
(b)(6)
(b)(6)

FAX from ...



Senator Dianne Feinstein

of California

331 Hart Senate Office Building
Washington, DC 20510
(202) 224-3841

DATE: May 5

TIME: _____

TO: Irene Bueno
White HouseFROM: Lavita Strickland

COMMENTS:

Please let me know if you
have any questions regarding
these letters. Thanks much!!

Lavita

TOTAL NUMBER OF PAGES (INCLUDING COVER SHEET): _____

NOTE: The information contained in this facsimile is confidential. If you receive this transmission in error, please notify the sender immediately.



U.S. Department of Justice
Immigration and Naturalization Service

CO 703.2046

Office of the Commissioner

425 I Street NW
Washington, DC 20536

APR 8 1999

The Honorable Dianne Feinstein
United States Senate
Washington, D.C. 20510

Dear Senator Feinstein:

Thank you for your letter of February 9 concerning the Immigration and Naturalization Service's (INS) treatment of certain public benefits for public charge purposes under the immigration laws.

As we discussed with your staff in January, the INS is aware that the effect of the public charge doctrine on the receipt of benefits by aliens and their families is a matter of great concern in California and around the country. We recognize that in order to address these concerns, clear policies and guidance are required. To meet this need, the INS has been working over several months on an interagency basis to develop an Administration-wide approach to public charge issues that will take all the relevant legal and policy interests into account. I can assure you that the public health interests at stake are well represented.

At the conclusion of these discussions, the INS will be issuing comprehensive guidance on public charge issues. We expect that benefit granting agencies will also share information through their field structures. In addition, we plan to work with state officials, community-based organizations, and advocacy groups to help assure that accurate information is made available to the public.

In the interim, we have provided clarification on a number of issues related to the public charge doctrine. For example, we have clarified that there is no public charge test for purposes of naturalization, so the receipt of public benefits is irrelevant, as long as the benefits were lawfully received. Where the public charge doctrine does apply, in determining whether an alien is likely to become a public charge for purposes of admissibility or adjustment, the INS examines the "totality of the circumstances," including a prospective evaluation of the alien's age, health, family status, assets, resources, financial status, and education and skills, as required by law. In applying this test,

The Honorable Dianne Feinstein
Page 2

It has been INS policy for many years that the receipt of benefits by an alien's child, either a U.S. citizen or an alien, is not attributed to the alien parent or other family members for public charge purposes. The only time this general rule would not apply, would be if the family were reliant on the child's benefits as its sole means of support.

We appreciate your interest in this matter. We would welcome your advice on and assistance in educating Californians about this important matter to minimize any unfounded fears of adverse immigration consequences that can have negative effects on the public health. If we may be of assistance in the future, please let us know.

Sincerely,

FOR THE COMMISSIONER

A handwritten signature in black ink, appearing to read 'Allen Erenbaum', with a stylized flourish at the end.

Allen Erenbaum
Director
Congressional Relations



United States Senate

WASHINGTON, DC 20510-0504

February 9, 1999

The Honorable Doris Meissner
Commissioner
Immigration and Naturalization Service
425 Eye Street, NW
Washington, D.C. 20536

Dear Commissioner Meissner:

I am writing to ask for your assistance in helping to put an end to the confusion currently surrounding the issue of determining when an immigrant is considered a public charge.

As you know, an alarming number of immigrants have withdrawn from using health care and other necessary public services. Key programs designed to lift low-income families out of poverty have experienced dramatic declines in applications from immigrants, causing health providers, social service agencies, and advocates to worry about the negative effect this is having on broader social policy goals. The stories told by community activists are chilling—high risk pregnant women too fearful to see a doctor for prenatal care, parents too fearful to have their children immunized or treated by a doctor, and many individuals too fearful to seek medical treatment for potentially serious illnesses and injuries.

Immigrant rights advocates have met with my staff detailing examples of how INS offices are using different guidelines to determine whether an applicant is considered to be a public charge. A clear policy on public charge would be helpful in enabling the INS to be consistent. The following cases are only a few of the disturbing examples that have come to my attention:

- * A Hispanic family of six refuses to apply for health insurance despite the fact that the four children are U.S. citizens. The mother is pregnant with her fifth child, she is a resident, but will not apply for Medi-Cal or Healthy Families, although they qualify, because her husband is in the process of getting his residency status and receiving public assistance, they fear, may jeopardize his INS application at the INS. This family only takes their children to a local clinic in case of an emergency. The mother hesitantly applied for Medi-Cal for herself when she was faced with pregnancy complications and accumulated a \$10,000 medical bill. The children remain uninsured.
- * A Hispanic couple qualified and used Medi-Cal in 1994 when they had their first child. The father is a permanent resident and the mother's residency application is pending at the INS. However, the couple refused to apply for Medi-Cal last year to cover their second

pregnancy, out of fear of becoming a public charge and compromising the wife's residency application. This family has a monthly income of \$1,400 and \$180 is spent on private health insurance for the two children, despite the fact that they both qualify for Medi-Cal and Healthy Families.

- * The Orange County Community Development Council works with 42 community-based organizations, all of which have reported cases where qualifying applicants refuse to submit their Medi-Cal and Healthy Families applications. The usual scenario involves families where the parents are legal residents with U.S. citizen children. Although their residency status is often not in question, they fear becoming a public charge would hinder their possibilities of naturalizing in the future.

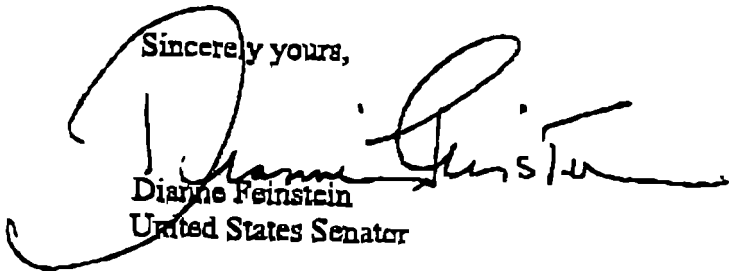
Immigrants are concerned about new requirements that state agencies verify citizenship and immigration status and report undocumented immigrants to the INS. They fear that their own or their children's use of benefits will render them a "public charge" under immigration laws which, they may believe, would affect their ability to gain legal permanent residence, to naturalize or even lead to deportation.

I urge you to set clear policies determining how being a "public charge" factors in with immigration policies. Such a policy would help clarify this issue and aid in minimizing any unfounded fears of adverse immigration consequences that can have negative effects on the public health.

I look forward to working with you to find a way to address this problem, please let me know if I can provide any assistance. If you or your staff have any questions, please contact Rutely Conde in my Los Angeles office at (310) 914-7300 or Lauren Choi in my D.C. office at (202) 224-3841.

With warmest personal regards,

Sincerely yours,


Diann Feinstein
United States Senator

04/30/99 FRI 12:02 FAX 202 225 2202

002

Congress of the United States

Washington, DC 20515

March 23, 1999

William J. Clinton
President of the United States
The White House
Washington, D.C. 20500

Dear Mr. President:

We are writing to request that you direct your Administration to finalize and publish guidance on the issue of public charge. We understand that an inter-agency group has been working on an official policy to implement the immigration law for several months. This group must be encouraged to complete its analysis and release clear, comprehensive and binding policy on this issue.

The lack of clarity on the public charge issue deters eligible individuals from participating in a wide variety of social safety net programs, out of fear that participation will negatively impact their immigration citizenship status. These include child nutrition, emergency assistance to alleviate losses due to crop damage, children's health, and job-training, among others. In each case, many people who are eligible for needed assistance, including U.S.-citizen children of immigrant parents, have been deterred from participation because of fear of immigration consequences. The resulting depressed participation rates in these programs have negative effects that go beyond the particular individuals who are afraid to enroll in public programs. One in five individuals in the U.S. has an immigrant parent. Because of this, policies that deter immigrant participation endanger some of your most important public health, education and inclusiveness goals.

For example, we know of your commitment to the child health issues and that you, the First Lady and the Vice President have all expressed great concern about the exceedingly low enrollment in the Children's Health Insurance Program (CHIP). In California and other high immigrant states, there is no question that CHIP participation will never meet its potential, nor help those it aims to benefit, unless and until the question of public charge is cleared up for immigrant families. Until clear formal guidance is issued, community-based organizations and health providers cannot assure parents of potential participants that their participation will not undermine the parents' immigration status.

Many of us support your Fiscal Year 2000 proposals to restore SSI, Food Stamps, Medicaid, CHIP and prenatal care to legal immigrants. Even if the law is changed, however, we believe a substantial proportion of the eligible population will not participate for fear of jeopardizing their immigration status or that of a family member. This is not tenable.

Mr. President, you and the Vice President took a bold and unprecedented step in declaring an emergency in California due to the citrus freeze. That step made farmworkers eligible for federal assistance in the form of housing and unemployment assistance. Unfortunately, many farmworkers are not benefiting from those programs out of fear that they will be considered a public charge. Again, the lack of clarification on what constitutes a public charge is a barrier to the implementation of much-needed programs.

04/30/99 FRI 12:03 FAX 202 225 2202

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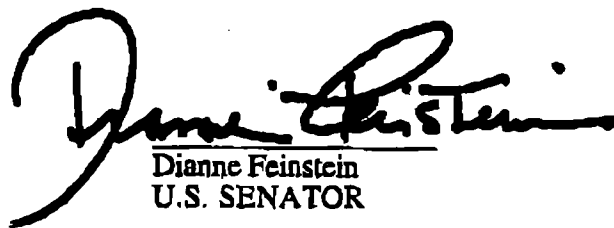
We must address the mounting fear gripping immigrant communities. Your Administration can do so by clarifying the immigration consequences of participating in government programs. Specifically, by designating which specific programs are relevant to the public charge inquiry, and clarifying that participation in any other programs is not relevant and will not be taken into account in determining whether individuals will be admitted or deported because they are considered a public charge.

Thank you for your consideration of this matter of vital importance to the State of California as well as other states. We stand committed to work with you and your Administration to make sure that all those eligible can benefit from programs such as CHIP and would be happy to assist your Administration in planning outreach to help this program meet its mandate.

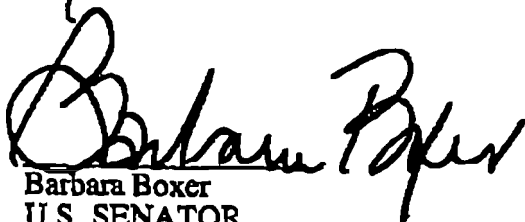
Sincerely,



Xavier Becerra
MEMBER OF CONGRESS



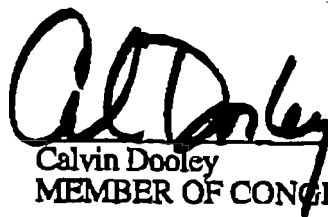
Dianne Feinstein
U.S. SENATOR



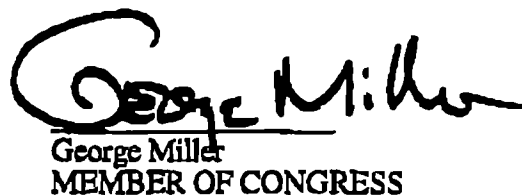
Barbara Boxer
U.S. SENATOR



Lucille Roybal-Allard
MEMBER OF CONGRESS



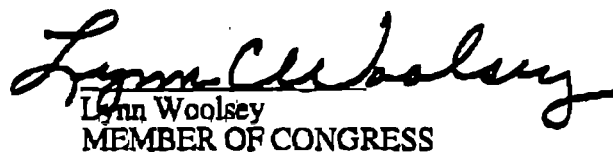
Calvin Dooley
MEMBER OF CONGRESS



George Miller
MEMBER OF CONGRESS



Barbara Lee
MEMBER OF CONGRESS



Lynn Woolsey
MEMBER OF CONGRESS

04/30/99 FRI 12:04 FAX 202 225 2202

006

Congress of the United States

Washington, DC 20515

March 23, 1999

The Honorable Janet Reno
The Attorney General
Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530

Dear Ms. Reno:

We are writing to request that the Department of Justice finalize and publish guidance on the issue of public charge. We understand that an inter-agency group has been working on an official policy to implement the immigration law for several months. This group must be encouraged to complete its analysis and release clear, comprehensive and binding policy on this issue.

The lack of clarity on the public charge issue deters eligible individuals from participating in a wide variety of social safety net programs, out of fear that participation will negatively impact their immigration citizenship status. These include child nutrition, emergency assistance to alleviate losses due to crop damage, children's health, and job-training, among others. In each case, many people who are eligible for needed assistance, including U.S.-citizen children of immigrant parents, have been deterred from participation because of fear of immigration consequences. The resulting depressed participation rates in these programs have negative effects that go beyond the particular individuals who are afraid to enroll in public programs. One in five individuals in the U.S. has an immigrant parent. Because of this, policies that deter immigrant participation endanger some of the Administration's most important public health, education and inclusiveness goals.

For example, we know of the Administration's commitment to the child health issues and that the President, the First Lady and the Vice President have all expressed great concern about the exceedingly low enrollment in the Children's Health Insurance Program (CHIP). In California and other high immigrant states, there is no question that CHIP participation will never meet its potential, nor help those it aims to benefit, unless and until the question of public charge is cleared up for immigrant families. Until clear formal guidance is issued, community-based organizations and health providers cannot assure parents of potential participants that their participation will not undermine the parents' immigration status.

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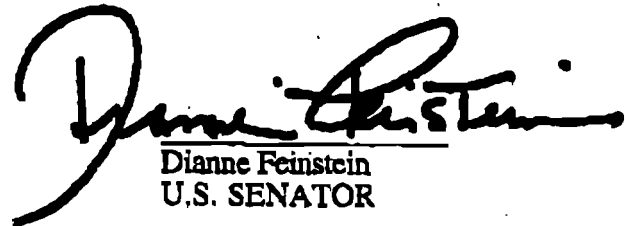
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Thank you for your consideration of this matter of vital importance to the State of California and the rest of the country as well. We stand committed to work with the Department of Justice and the Administration to make sure that all those eligible can benefit from programs such as CHIP and would be happy to assist you in planning outreach to help this program meet its mandate.

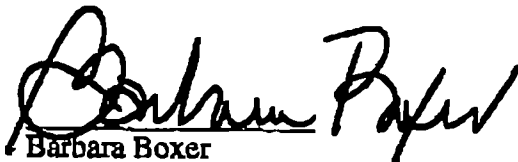
Sincerely,



Xavier Becerra
MEMBER OF CONGRESS



Dianne Feinstein
U.S. SENATOR



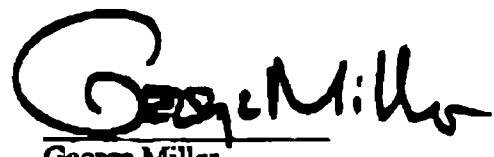
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U.S. SENATOR



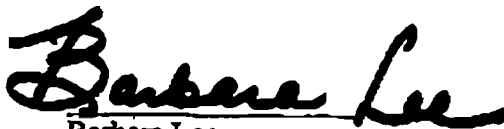
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Barbara Lee
MEMBER OF CONGRESS



Lynn Woolsey
MEMBER OF CONGRESS

DEPARTMENT OF HEALTH SERVICES

714/744 P Street
P.O. BOX 942732
SACRAMENTO, CA 94234-7320
(916) 657-1425



December 7, 1998

Ms. Doris Meissner, Commissioner
U.S. Department of Justice
Immigration and Naturalization Service
425 I Street, NW
Washington, DC 20536

Dear Ms. Meissner:

We are writing once again to request your immediate assistance in gaining clarification of the Immigration and Naturalization Service (INS) policy on an issue of vital importance to the State Children's Health Insurance (S-CHIP) and Medicaid programs nationwide. This issue is public charge. The INS' failure to issue clear and unambiguous policy on public charge is resulting in fewer children being enrolled in these vital health programs. While we are sure this is not your intent, your agency's lack of action has become a major impediment to our outreach efforts.

As you are aware, the State of California for over six months has sought clarification from INS on immigration issues that have been identified as barriers to the enrollment of children in the State's Medicaid program (called Medi-Cal in California) and California's S-CHIP (known as the Healthy Families Program). We have enclosed a chronology of the State's efforts to work with the INS to clarify INS' definition and policy on the issue of public charge. In each of these interactions, the State has made clear the barrier public charge presents to some families' enrollment of their children in Medi-Cal or the Healthy Families Program. Further, in each case, the State has emphasized the need for clear statements of INS public charge policy.

Given the urgency of these issues and our mutual interest in maximizing the rapid enrollment of eligible children, we are disheartened by the failure of INS to provide clear written policy on these immigration issues and to assure that the policy is communicated to all appropriate field offices. As an example of INS' unresponsiveness, we have enclosed your staff's response to the State's October 6, 1998 letter to you regarding the specific question of the public charge implications for alien parents of the lawful receipt of Healthy Families Program benefits by their alien children. As you can see, INS' response addressed the alien parents of citizen children.

California is home to the Nation's most diverse population. Over 60 percent of the children eligible for California's S-CHIP program are Latino; 18 percent are white; 11 percent are Asian American; and 9 percent are African-American. Many eligible children live in families in which one or more members are immigrants to the United States or are considering the sponsoring of family members for immigration to the United States. Community leaders, policy

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December 7, 1998

makers, outreach workers, and the media have all identified the INS' lack of clarity on the issue of public charge as a barrier to the enrollment of eligible children. Given INS' lack of policy direction, the State instead has been asked to provide clear, straightforward information to families regarding immigration policy as it relates to our S-CHIP program.

We have enclosed for your review draft documents that contain information on immigration issues that are of concern to potential applicants and which reflect the policy articulated in your letters as it relates to citizen children. While these documents are not sufficient to address the concerns of all families considering applying to our S-CHIP and Medicaid programs, they do reflect our understanding of the limited information issued to date. We would appreciate your review of these documents for their consistency with INS policy and again ask for INS to issue comprehensive guidance and response to the following questions:

1. Will the receipt of Medi-Cal or Healthy Families benefits by United States citizen children of alien parents result in a finding that the parents are a public charge?
2. Would health care benefits ever be considered the sole source of support for a family?
3. Will the receipt of Medi-Cal or Healthy Families benefits by an alien child be attributed to the alien parent or other family member for public charge purposes?
4. Will the receipt of Medi-Cal or Healthy Families benefits by aliens who are seeking an adjustment of status (or who may seek an adjustment in the future) lead to a finding that the alien is a public charge?
5. What constitutes fraudulent receipt of benefits in the view of the INS?
6. Will the receipt of Medi-Cal or Healthy Families benefits by a citizen or an alien prevent or be used as a factor to prevent the potential sponsorship by the parent or family member or another family member trying to enter the United States? Would the answer be the same if only children had received benefits?
7. What steps will the INS take to assure that its public charge policy is communicated to all appropriate field offices?

Having moved forward with a number of Healthy Families Program changes in recent weeks, including a dramatically shortened application, California believes the single largest outstanding barrier to enrollment of children is ambiguous federal immigration policy. We therefore request a response from INS to clarify these immigration issues as soon as possible.

Ms. Doris Meissner

Page 3

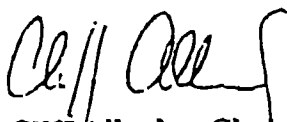
December 7, 1998

The net effect of INS' unresponsiveness and the absence of clear and unambiguous policy on public charge is fewer eligible children receiving needed health care through the Healthy Families Program or Medi-Cal.

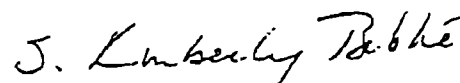
Clear direction from the INS is the best course of action, and we, therefore, request the INS' response by December 28, 1998. In the absence of such feedback, we are prepared to issue documents based on what we know at that time.

If you have any questions regarding these request, please contact Ms. Sandra Shewry, Executive Director, Managed Risk Medical Insurance Board, at 916-324-4695 or J. Douglas Porter, Deputy Director, Medical Care Services, California Department of Health Services, at 916-654-0391.

Sincerely,



Cliff Allenby, Chair
Managed Risk Medical Insurance Board



S. Kimberly Belshé, Director
Department of Health Services

Enclosures

cc: The Honorable Pete Wilson
Governor
State Capitol
Sacramento, CA 95814

The Honorable Gray Davis
Governor Elect
State Capitol
Sacramento, CA 95814

The Honorable Diane Feinstein
United States Senate
331 Hart Senate Office Building
Constitution Avenue 2nd Street, NE
Washington, DC 20510-0504

Ms. Doris Meissner

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December 7, 1998

cc: The Honorable Barbara Boxer
United States Senate
112 Hart Senate Office Building
Washington, DC 20510-0505

The Honorable William M. Thomas, Chair
House Subcommittee
House Committee on Ways and Means
House of Representatives
2208 Rayburn
Washington, DC 20515-0521

The Honorable Pete Stark, Chair
House Committee on Ways and Means
House of Representatives
239 Cannon
Washington, DC 20515-0513

The Honorable Antonio Villaraigosa
Speaker of the Assembly
State Capitol, Room 219
Sacramento, CA 95814

The Honorable John Burton
President pro Tempore
Member of the Senate
State Capitol, Room 205
Sacramento, CA 95814

Ms. Sandra Shewry
Executive Director
Managed Risk Medical Insurance Board
1000 G Street, Suite 450
Sacramento, CA 95814

Mr. J. Douglas Porter
Deputy Director
Medical Care Services
California Department of Health Services
714 P Street, Room 1253
Sacramento, CA 95814

DRAFT

December, 1998

To: Persons Interested in the Medi-Cal for Children and Pregnant Women Program

Re: Immigration Related Policies of Medi-Cal for Children and Pregnant Women Program

Enrollment

All families are encouraged to enroll their eligible children in the Medi-Cal for Children Program. Pregnant Women are also encouraged to enroll.

No matter what your immigration status you may be eligible for some level of Medi-Cal coverage if you meet other eligibility requirements.

Collection and Sharing of Information on Immigration Status

Medi-Cal requests information on immigration status only about the person who wants to receive benefits. The information is sought to be sure that a person is eligible for the program. There are only two circumstances in which this information could be given to the Immigration and Naturalization Service: to verify eligibility and in the course of conducting a fraud investigation.

Repayment of the Costs of Lawfully Received Benefits

Medi-Cal will make no requests of the beneficiary for repayment of any of the costs of lawfully received benefits under Medi-Cal.

INS Determination of Public Charge

Medi-Cal has received requests from many organizations asking for clarification of whether immigrant families should fear actions by the INS if they enroll their children in Medi-Cal. These fears are based on the possibility of the INS determining that a member of the family is a "public charge."

The potential to become a public charge is one of many factors considered by the INS, U.S. State Department, and immigration judges when deciding whether to approve a variety of requests by non-citizens and sponsors of non-citizens. Such requests include application to become a permanent resident, application by a resident of another country for a temporary or permanent visa to enter the U.S., re-admission of a lawful permanent resident who has been out of the U.S. for more than 6 months, and application to become a sponsor of a non-citizen.

If you are applying for yourself or a child, you should not be concerned about being determined a public charge under the following circumstances:

- Your child is applying for benefits and is an U.S. citizen. The INS has stated that public charge does not apply to parents of citizen children applying for, or receiving public benefits.
- You are a lawful permanent resident who has been in the U.S. continuously for five or more years at the time you apply for Medi-Cal.
- You are applying to become an U.S. citizen.
- You are applying for asylum or are a person granted asylum or a refugee.
- You are a registry applicant (a person who has been in the U.S. continuously since before 1972).

If you are applying for yourself or a child, you should be concerned under the following circumstances:

- You are a citizen or lawful permanent resident who is petitioning to sponsor a family member who wants to immigrate. You may have trouble having the INS or the State Department accept your affidavit of support because of past receipt of public benefits.
- You are an alien parent applying for an alien child.

We have asked the INS for clear written policy on these issues.

The Immigration and Nationality Act contains many exceptions to the general rules. The INS looks at each case individually. If you are a non-citizen, you should consider talking with a legal services agency that knows about immigration issues prior to applying for or taking public benefits.

DRAFT

December, 1998

To: Persons Interested in the Healthy Families Program

Re: Immigration Related Policies of the Healthy Families Program

This letter is designed to help families understand the relationship of immigration issues and the Healthy Families Program.

Eligibility & Enrollment

All families are encouraged to enroll their eligible children in the Healthy Families Program.

Children eligible for the Healthy Families Program include:

- U.S. citizen and non-citizen national children, and
- Qualified alien children.

In general, qualified alien children are those legal immigrant children who entered the U.S. prior to August 22, 1996.

Legal immigrant children who entered the country after August 22, 1996 are not eligible for the Healthy Families Program until they have been in the United States for five years. There are several exceptions to the five-year rule. These exceptions are listed in the Healthy Families Program Handbook. For more information on Healthy Families Program eligibility, please call toll free 800-880-5305.

Collection and Sharing of Information on Immigration Status

Children: The Healthy Families Program requests information on the citizenship and immigration status of children applying to the program. This information is collected to be sure that children are eligible for the program. There are only two circumstances in which this information could be given to the Immigration and Naturalization Service (INS) - to verify the eligibility of immigrant children, and in the course of conducting fraud investigations.

Parents: The Healthy Families Program does not collect information on the parents of children enrolled in the program. Parents (or others) applying for Healthy Families Program benefits on behalf of a child are not asked to provide any citizen or immigration related information.

The Healthy Families Program does not collect information on the immigration status of parents. The Healthy Families Program can not and will not provide information on the immigration status of parents to the INS.

Repayment of the Costs of Lawfully Received Benefits

The Healthy Families Program will not ask families for repayment of any of the costs of lawfully received benefits under the Healthy Families Program.

INS Determinations of Public Charge

The Healthy Families Program has received requests from many organizations asking for clarification of whether immigrant families should fear actions by the INS if they enroll their children in the Healthy Families Program. These fears are based on the possibility of the INS determining that a member of the family is a "public charge".

The potential to become a public charge is one of many factors considered by the INS, US Embassy staff, and immigration judges when deciding whether to approve a variety of requests by non-citizens and sponsors of non-citizens. Such requests include: application to become a permanent resident, application by a resident of another country for a temporary/permanent visa to enter the U.S., readmission of a lawful permanent resident who has been out of the US for more than six months, and application to become a sponsor of a non-citizen.

You should **NOT** be concerned about public charge, if:

1. Your child is a citizen. The Immigration and Naturalization Service (INS) has stated that public charge does not apply to parents of citizen children applying or receiving Healthy Families Program benefits.
2. You or your child are lawful permanent residents and in the U.S. continuously for five or more years at the time you apply for the Healthy Families Program.

3. You are applying to become an U.S. citizen.
4. You are applying for asylum or have been granted asylum or are a refugee.
5. You are a registry applicant (a person who has been in the U.S. continuously since before 1972).

You should be concerned about public charge, if:

1. You are an U.S. citizen or lawful permanent resident who is sponsoring a family member who wants to immigrate.
2. You are an immigrant parent applying for an immigrant child.

We have asked the INS for clear written policy on these issues.

The Immigration and Naturalization Act contains many exceptions to the general rules. The INS looks at each case individually. If you are not an U.S. citizen, you should consider consulting with a legal services agency that knows about immigration issues prior to applying for or taking public benefits.

Chronology of Contacts with the United States Immigration and Naturalization Service on Public Charge Issues

May 14, 1998: Immigration and Naturalization Service (INS) public charge policy announced by Jane Arellano, Assistant District Director for Adjudication, INS, at meeting hosted by Community Health Councils Inc. in Los Angeles.

May 19 and June 9, 1998: Gloria Molina, Supervisor, County of Los Angeles, sends letter to Doris Meissner, Commissioner, INS, requesting clarification of public charge policy.

June 5, 1998: Letter to Jane Arellano from Doug Porter, Deputy Director, Medical Care Services, Department of Health Services (DHS) requesting clarification of comments made at the May 14 meeting.

- Will or will not the receipt of federal means tested program benefits (including Medicaid) by aliens who are seeking an adjustment of status (or who may seek an adjustment in the future) lead to a finding that the alien is a public charge unless those benefits are fraudulently obtained?
- Will or will not the receipt of federal means-tested program benefits by U.S. citizen children of alien parents result in a finding that the parents are a public charge unless those benefits are fraudulently obtained?
- What constitutes fraudulent receipt of benefits in the eyes of the INS?

July 22, 1998: Doris Meissner, Commissioner, INS, responds to Gloria Molina's May 19 and June 9, letters. Response advises that the INS is engaged in interagency discussions regarding public charge issues and at conclusion, comprehensive guidance will be issued by INS field offices. Response states that it has been INS policy for many years that the receipt of benefits by an Alien's U.S. citizen child is not attributed to the alien parent or other family members for public charge purposes unless those benefits were the sole means of support of the family. DHS receives copy of letter.

September 9, 1998: Doris Meissner responds to letter from Lark Galloway, Community Health Councils, Inc. Same letter as sent to Gloria Molina except also advises on new affidavit of support rules pertaining to persons seeking to immigrate to the U.S. DHS receives copy of letter.

September 1998: Legal Counsel in DHS, has telephone conversation with Regional Counsel for INS. Requested clarification on public charge issues. INS Regional Counsel had no response and referred DHS Legal Counsel to Washington.

September 30, 1998: Richard Rogers, District Director, INS, responds to Doug Porter's June 5, letter. Same letter as sent to Lark Galloway.

October 6, 1998: Letter to Doris Meissner from Cliff Allenby, Chair, MRMIB. Requests written definitive answers to the following:

- > Will the receipt of HFP benefits by an alien child be attributed to the alien parent or other family member for public charge purposes?
- > Will the receipt of HFP benefits by any child prevent the potential sponsorship by the parent or a family member of another family member trying to enter the United States?

October 9, 1998: DHS, Director; DHS, Chief Deputy Director; and legal staff meet with the INS in Sacramento.

October 12 and following: As follow up to the October 9, meeting, numerous phone calls and messages are left with the INS. As of this date, no calls or message have been returned.

October 16, 1998 (approximately): DHS Legal Counsel e-mailed note to INS requesting clarification of comments found on INS web site regarding consideration of health benefits in review of sponsorship applications. No response has been received to date.

October 20, 1998: Lark Galloway, Community Health Councils, Inc., sends second letter to Doris Meissner requesting clarification on the application of public charge policy to the receipt of health care benefits by a U. S. citizen child, a legal immigrant child, and the impact on sponsorship.

October 30, 1998: Letter from Rosemary L. Melville, Acting District Director, INS, in response to Cliff Allenby's October 6 letter. Incomplete response to questions asked in original letter.

November 16, 1998: Kim Belshé and Sandra Shewry, Executive Director, Managed Risk Medical Insurance Board (MRMIB) meet with Grantland Johnson, from Health and Human Services, to discuss, among many Healthy Families program issues, federal immigration policy and its impact on program enrollment.

November 20, 1998: Robert Bach responds to Lark Galloway's letter to Doris Meissner. Mr. Bach advises that the INS is currently engaged in internal discussions on public charge issues and will be issuing guidance at the conclusion of the discussions.



News Release

CALIFORNIA DEPARTMENT OF HEALTH SERVICES

NUMBER: 107-98
FOR RELEASE: IMMEDIATE
<http://www.dhs.ca.gov>

DATE: December 7, 1998
CONTACT: Carla Agar
(916) 657-3064

STATE HEALTH OFFICIALS SEEK IMMEDIATE POLICY CLARIFICATION FROM THE IMMIGRATION AND NATURALIZATION SERVICE TO BOOST ENROLLMENT IN STATE HEALTH PROGRAM

Public Charge Issue Seen as Major Barrier to Enrollment into the Healthy Families Program

SACRAMENTO – In their continuing efforts to increase the number of children enrolled in California's Healthy Families Program, state health officials today requested for the seventh time since last May immediate clarification from the Immigration and Naturalization Service (INS) regarding its policy on public charge.

"We have heard consistently and clearly that some parents will not enroll their children in the Healthy Families Program for fear that the insurance benefits would be considered a public charge against them by the INS," said Cliff Allenby, chairman of the Managed Risk Medical Insurance Board (MRMIB), the agency responsible for the program.

"To the extent that it is a shared goal with the federal government to enroll as many children as quickly as possible into the program, and I believe it is, we must have a clear, unambiguous response from the INS so that we can quell the fears of parents who want to provide health care for their children," Allenby added.

A letter to Doris Meissner, Commissioner of the INS, signed by Allenby and state health director, Kim Belshé, points out that the State of California for more than six months has sought clarification from the INS on immigration issues that have been identified as barriers to enrollment and attaches a chronology of communications between the two entities.

"We are dismayed and disheartened by the failure of the INS to provide clear written policy on immigration issues as they relate to the Healthy Families Program and Medi-Cal for Children," said Belshé. "Because of their unresponsiveness to our concerns and questions, thousands of California children are not getting the health care they deserve."

"We have moved forward in recent weeks with several major changes in the program, including dramatically shortening the application form and increasing outreach efforts to a variety of ethnic communities, in order to boost enrollment," said Belshé. "I firmly believe that the single largest outstanding barrier to enrollment of children is the federal immigration policy."

-more-

California is home to the nation's most diverse population. More than 60 percent of the children eligible for the Healthy Families Program are Latino; 18 percent are white, 11 percent are Asia and 8 percent are African American. Many children live in families in which one or more members are immigrants to the United States or are considering sponsoring family members for immigration into the United States.

To date, the INS has provided written clarification that the lawful receipt of benefits by a citizen child will not have a public charge impact upon their alien parents, but has been silent regarding the impact to alien parents of alien children and on sponsorship of family members into the United States. INS' response to the citizen children policy came after three months of the State's continued request for full clarification.

Allenby and Belshé also provided to Meissner draft documents that address the public charge issue to determine if they reflect the INS' policy articulated in letters related to citizen children.

"Clear direction from the INS is the best course of action, and we, therefore, request the INS' response by December 28, 1998; in the absence of such feedback, we are prepared to issue documents based on what we know at this time," said Belshé.

The Healthy Families Program began in July 1998 and provides comprehensive medical, dental and vision coverage to children 1-19 years of age who fall between 100-200 percent of the federal poverty level. To date, the Healthy Families Program has enrolled nearly 50,000 children; the Medi-Cal for Children program has enrolled nearly 25,000 children.

Attachments

Note to editors and reporters: Cliff Allenby and Kim Belshé will be available for telephone interviews.

THE WHITE HOUSE

Office of the Vice President

For Immediate Release
Tuesday, May 25, 1999

Contact:
(202) 456-7035

**VICE PRESIDENT GORE TAKES NEW ACTION TO
ASSURE FAMILIES ACCESS TO HEALTH CARE AND OTHER BENEFITS**

***New Regulation Clarifies That Receiving Medicaid, CHIP, or
Other Benefits Will Not Affect Immigration Status***

McAllen, TX -- Vice President Gore announced today a new Department of Justice regulation to assure families that enrolling in Medicaid or the new Children's Health Insurance Program (CHIP) and receiving other critical benefits, such as school lunch and child care services, will not affect their immigration status.

The new policy, effective immediately, clarifies a widespread misconception that has deterred eligible populations from enrolling in these programs and undermined the nation's public health. In addition, the Vice President directed Federal agencies to send guidance to their field offices, program grantees and to work with community organizations to educate Americans about this new policy.

"This new regulation will improve the health of our families by addressing widespread confusion that prevents legal immigrants from signing up for health insurance, school lunch, child care and other essential programs," said Vice President Gore.

**WIDESPREAD CONFUSION ABOUT CURRENT POLICY DETERS LEGAL
IMMIGRANTS FROM ACCESSING CRITICAL BENEFITS**

Recent immigration and welfare reform laws have generated widespread public confusion about whether legal immigrants receiving certain publicly funded benefits can be deemed to be a "public charge," meaning they may be denied the ability to enter the United States to become a legal permanent resident, and may be subject to deportation. This confusion and fear has deterred legal immigrant families from enrolling their children in Medicaid and CHIP, and prevented legal immigrants from receiving immunization and treatment for communicable diseases, which places the entire national public health at risk. It also reduces payment sources for hospitals and other health care providers serving this population, thus increasing their uncompensated care burden. A 1998 Urban Institute study found that in Los Angeles County the rate of legal immigrants applying for health insurance dropped by 21 percent from January 1996 to January 1998, suggesting that legal immigrants do not take full advantage of their eligibility for currently available programs.

NEW STEPS ENSURE THAT LEGAL IMMIGRANTS WILL HAVE ACCESS TO CRITICAL HEALTH CARE AND SOCIAL SERVICES WITHOUT FEAR.

These new regulations provide clear and consistent guidance that receiving health care and other critical services cannot be used to deny individuals admission to the United States or to bar legal permanent resident status, or as a basis for deportation. Eligible legal immigrants can now receive the following benefits without fear of jeopardizing their immigration status:

Health insurance under Medicaid and CHIP. There have been reports of individuals being told that receiving Medicaid or CHIP will negatively effect their immigration status leading to widespread concern in the immigrant community about enrolling in Medicaid or CHIP, even where the beneficiary is a child who is a United States citizen. These new regulations take a significant step towards eliminating that concern by clarifying that legal immigrants who are eligible for these programs (with the exception of institutionalization for long term care) will not face adverse immigration consequences.

Access to immunization, testing, and treatment for communicable disease. After an outbreak of rubella in New York in 1997, public health officials learned that the major reason that people had not been vaccinated was the fear that using health department services would affect their immigration status. These new regulations take new steps to protect the health of all Americans by ensuring legal immigrants can access – without fear – free immunizations, testing, and treatment for communicable diseases, such as rubella or tuberculosis.

Access to essential nutrition programs. These new regulations remove the perceived barriers to receiving critical nutrition benefits, including Food Stamps, the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), the National School Lunch and Breakfast programs, and other supplementary and emergency food assistance programs. Access to these benefits is extremely important for legal immigrant children. Recent studies by the United States Department of Agriculture (USDA) and the Census Bureau indicate that Hispanic families with children have among the lowest food security rates (70 percent), placing them at risk for malnutrition.

Other supports for families. These regulations also make it possible for eligible legal immigrants to also access important social supports for working families, such as child care services, housing assistance, energy assistance, emergency disaster relief, foster care and adoption assistance, transportation vouchers, educational assistance, and job training programs without fear of adverse immigration consequences.

The Vice President also directed all Federal agencies that oversee these programs, including the Department of Health and Human Services, USDA, the Department of Justice, the Social Security Administration, and the State Department, to send guidance to their field

offices, program grantees and to work with community organizations to educate Americans about this new policy.

**CLINTON-GORE ADMINISTRATION'S STRONG COMMITMENT TO
INSURING LOW INCOME FAMILIES AND PROMOTING THE PUBLIC
HEALTH.**

The new regulations the Vice President unveiled today are part of a comprehensive effort by the Clinton/Gore Administration to help families obtain health care, which includes:

Providing health insurance to legal immigrant children, pregnant women, and individuals with disabilities. The Administration's budget proposes to provide health coverage to low-income legal immigrant children and pregnant women who entered the country after August 22, 1996 and to legal immigrants who entered the country after August 22, 1996 and became disabled after entering the country, providing health insurance for over 100,000 legal immigrants. This builds on the Administration's success in restoring eligibility for Medicaid, SSI, and Food Stamps to hundreds of thousands of legal immigrants including restoring disability and health benefits to 380,000 legal immigrants in the Balanced Budget Act and providing Food Stamps for 225,000 legal immigrant children, senior citizens, and people with disabilities in the Agricultural Research Act of 1998

Launching the Children's Health Insurance Program (CHIP). The President, with bipartisan support from the Congress, created CHIP, which allocates \$24 billion over five years to extend health care coverage to uninsured children through State-designed programs. He also launched the Insure Kids Now Campaign, which engages a broad-based, bipartisan, public-private coalition to use a variety of means to educate and assist families in insuring their children. This campaign is specifically designed for minority populations and encourages outreach to children in non-traditional settings, such as churches and community centers, where legal immigrant children are frequently found.

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BILLING CODE 4410-10

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1988-99]

Field Guidance on Deportability and Inadmissibility on Public
Charge Grounds

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: The Department of Justice (Department) is publishing a proposed rule in this issue of the **Federal Register** which proposes to establish clear standards governing a determination that an alien is inadmissible or ineligible to adjust status, or has become deportable, on public charge grounds.

Before the proposed rule becomes final, the Immigration and Naturalization Service (Service) is publishing its field guidance on public charge issues as an attachment to this notice. This is necessary to help alleviate public confusion over the meaning of the term "public charge" in immigration law and its relationship to the receipt of Federal, State, and local public benefits. This field guidance will also provide aliens with better guidance as to the types of public benefits that will and will not be considered in public charge determinations.

DATES: This notice and field guidance are effective May 21, 1999.

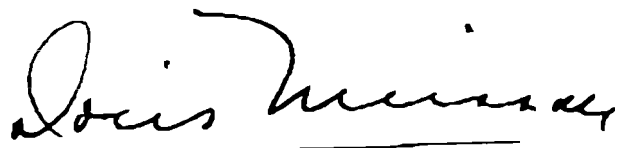
FOR FURTHER INFORMATION CONTACT: Sophia Cox or Kevin Cummings,
Immigration and Naturalization Service, 425 I Street, NW, Office of

Adjudications, Washington, DC 20536, telephone (202) 514-4754.

SUPPLEMENTARY INFORMATION:

Recent immigration and welfare reform laws have generated considerable public confusion about the relationship between the receipt of Federal, State, and local public benefits and the meaning of "public charge" in immigration statutes governing deportation, admissibility, and adjustment of status. The Department decided to publish a proposed rule defining "public charge" in order to reduce the negative public health consequences generated by the existing confusion and to provide aliens with better guidance as to the types of public benefits that will and will not be considered in public charge determinations.

In addition, the Service has issued guidance to its field officers on a variety of issues related to public charge determinations. That field guidance is included as an attachment to this notice to provide additional information to the public on the Service's implementation of the public charge provisions of the immigration laws.



Doris Meissner,

Commissioner, Immigration and

Naturalization Service.

Dated:

5/20/99



U.S. Department of Justice
Immigration and Naturalization Service

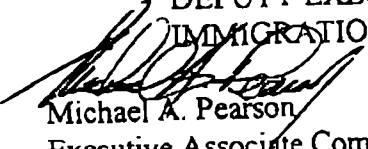
HQOPS-70-21.1.13

Office of the Executive Associate Commissioner

425 I Street NW
Washington, DC 20536

MAY 20 1999

MEMORANDUM FOR ALL REGIONAL DIRECTORS

FROM: 
DEPUTY EXECUTIVE ASSOCIATE COMMISSIONER,
IMMIGRATION SERVICES, FIELD OPERATIONS
Michael A. Pearson
Executive Associate Commissioner
Office of Field Operations

SUBJECT: Public Charge: INA Sections 212(a)(4) and 237(a)(5)

This memorandum provides guidance concerning the public charge ground of inadmissibility, section 212(a)(4) of the Immigration and Nationality Act (INA), and the related deportation charge under section 237(a)(5) of the INA. It also discusses the impact of these subsections on the new enforceable Affidavit of Support prescribed by section 213A of the INA, established by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) and welfare reform laws.¹

IIRIRA and the recent welfare reform laws have sparked public confusion about the relationship between the receipt of federal, state, local public benefits and the meaning of "public charge" under the immigration laws. Accordingly, the Service is taking two steps to ensure the accurate and uniform application of law and policy in this area. First, the Service is issuing this memorandum which both summarizes longstanding law with respect to public charge and provides new guidance on public charge determinations in light of the recent changes in law. In addition, the Service is publishing a proposed rule for notice and comment that will for the first

¹ The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, as amended by the Balanced Budget Act of 1997, Pub. L. 105-33; the Agricultural Research, Extension, and Education Reform Act of 1998, Pub. L. 105-185; and the Noncitizen Technical Amendments Act of 1998, Pub. L. 105-306.

time define "public charge" and discuss evidence relevant to public charge determinations. Although the definition of public charge is the same for both admission/adjustment and deportation, the standards applied to public charge adjudications in each context are significantly different and are addressed separately in this memorandum. After discussing the definition and standards for public charge determinations, the memorandum goes on to discuss exceptions from public charge determinations and particular types of benefits that may and may not be considered for public charge purposes, in addition to other issues.

1. Definition of "Public Charge"

The Service is publishing a rule for notice and comment that defines "public charge" for purposes of both admission/adjustment and deportation. That rule proposes that "public charge" means an alien who has become (for deportation purposes) or who is likely to become (for admission/adjustment purposes) **"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."** Institutionalization for short periods of rehabilitation does not constitute such primary dependence.

The Service is adopting this definition immediately, while allowing the public an opportunity to comment on the proposed rule. Accordingly, officers should not initiate or pursue public charge deportation cases against aliens who have not received public cash benefits for income maintenance or who have not been institutionalized for long-term care. Similarly, officers should not place any weight on the receipt of non-cash public benefits (other than institutionalization) or the receipt of cash benefits for purposes other than for income maintenance with respect to determinations of admissibility or eligibility for adjustment on public charge grounds. Supplementary guidance will be issued, as necessary, in conjunction with publication of a final rule.

See section 6, below, for a more detailed discussion of particular types of benefits that may and may not be considered for public charge purposes.

2. Admission and adjustment of status

Under INA section 212(a)(4), an alien seeking admission to the United States or seeking to adjust status to that of an alien lawfully admitted for permanent residence is inadmissible if the alien, "at the time of application for admission or adjustment of status, is likely at any time to become a public charge."² IIRIRA amended section 212(a)(4) of the INA to codify the factors relevant to a public charge determination. **Officers must consider, at a minimum, the alien's age, health, family status, assets, resources, and financial status, and education and skills when making a public charge inadmissibility determination.** Every denial order based on public

² See Section 4 below on categories of aliens who are not subject to public charge determinations.

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charge must reflect consideration of each of these factors and specifically articulate the reasons for the officer's determination.

The most significant change to section 212(a)(4) under IIRIRA is the creation of a new affidavit of support (AOS), which, coupled with new section 213A, imposes on the sponsor a legally enforceable support obligation. The law requires that sponsors demonstrate that they are able to maintain the sponsored alien at an annual income of not less than 125 percent of the federal poverty level. The AOS requirement applies to all immediate relatives (including orphans), family-based immigrants, and those employment-based immigrants who will work for a relative or for a firm in which a U.S. citizen or lawful permanent resident (LPR) relative holds a 5 percent or more ownership interest. Immigrants seeking admission or adjustment of status in these categories are inadmissible under subparagraphs (C) and (D) of the modified section 212(a)(4), respectively, unless an appropriate sponsor has completed and filed a new AOS if the application for an immigrant visa or adjustment of status was filed on or after December 19, 1997. Note that this requirement applies to these aliens even if, under the factors codified in section 212(a)(4)(B), the adjudicator would ordinarily find that the alien is not likely to become a public charge. The only exceptions from this requirement are for qualified battered spouses and children (and their eligible family members) and for qualified widow(er)s of citizens, *if* these aliens have filed visa petitions on their own behalf. Where such an AOS has been filed on an alien's behalf, it should be considered along with the statutory factors in the public charge determination.

The standard for adjudicating inadmissibility under section 212(a)(4) has been developed in several Service, BIA, and Attorney General decisions and has been codified in the Service regulations implementing the legalization provisions of the Immigration Reform and Control Act of 1986. **These decisions and regulations, and section 212(a)(4) itself, create a "totality of the circumstances" test.**

In determining whether an alien is likely to become a public charge, Service officers should assess the financial responsibility of the alien by examining the "totality of the alien's circumstances *at the time of his or her application*." . . . The existence or absence of a particular factor *should never be the sole criterion* for determining if an alien is likely to become a public charge. The determination of financial responsibility *should be a prospective evaluation*" based on the alien's age, health, family status, assets, resources and financial status, education, and skills, among other factors.³ An alien may be considered likely to become a public charge even if there is no legal obligation to reimburse the benefit-granting agency for the benefits or services received, in contrast to the standards for deportation, discussed below.⁴

³ 8 C.F.R. § 245a.4(b)(1)(iv)(B), and see INA § 212(a)(4)(B). The federal courts have also endorsed this "totality of the circumstances" test. See, e.g., Zambrano v. INS, 972 F.2d 1122 (9th Cir. 1992), *judgment vacated on other grounds*, 509 U.S. 918 (1993).

⁴ Matter of Harutunian, 14 I. & N. Dec. 583 (BIA 1974) (interpreting § 212(a)(15), recodified as § 212(a)(4))

In addition, the Attorney General has ruled that "[s]ome specific circumstances, such as mental or physical disability, advanced age, or other fact reasonably tending to show that the burden of supporting the alien is likely to be cast on the public, must be present. A healthy person in the prime of life cannot ordinarily be considered likely to become a public charge, especially where he has friends or relatives in the United States who have indicated their ability and willingness to come to his assistance in case of an emergency."⁵ Under the new AOS rules, all family-based immigrants (and some employment-based immigrants) will have a sponsor who has indicated an ability and willingness to come to the immigrant's assistance.

Current receipt of cash benefits for income maintenance and current institutionalization

If at the time of application for admission or adjustment an alien is receiving a cash public assistance for income maintenance or is institutionalized for long-term care (as discussed in section 6, below), that benefit should be taken into account under the totality of the circumstances test, along with the other statutory factors under section 212(a)(4)(B)(i) and any AOS. It is possible, for example, that an alien receiving a small amount of cash for income maintenance purposes could be determined not likely to become a public charge due to other positive factors under the totality of the circumstances test. Aliens should not be asked to repay the cost of any benefits received in order to qualify for admission or adjustment.

Current receipt of non-cash benefits or the receipt of special-purpose cash benefits not for income maintenance should not be taken into account under the totality of the circumstances test in determining whether the alien is likely to become a public charge.

Past receipt of cash benefits for income maintenance and past institutionalization

Past receipt of cash income-maintenance benefits does not automatically make an alien inadmissible as likely to become a public charge, nor does past institutionalization for long-term care at government expense. Rather this history would be one of many factors to be considered in applying the totality of the circumstances test. In the case of an alien who has received cash income-maintenance benefits in the past or who has been institutionalized for long-term care at government expense, a Service officer determining admissibility should **assess the totality of the alien's circumstances at the time of the application** for admission or adjustment and **make a forward-looking determination** regarding the likelihood that the alien will become a public charge after admission or adjustment. The longer ago an alien received such cash benefits or was institutionalized, the less weight these factors will have as a predictor of future receipt. Also, the "length of time an applicant has received public cash assistance is a significant factor."⁶ The longer an alien has received cash income-maintenance benefits in the past and the greater the amount of benefits, the stronger the implication that the alien is likely to become a public

⁵ Matter of Martinez-Lopez, 10 I&N 409, 421-422 (AG, Jan. 6, 1964).

⁶ 8 CFR § 2-5a.2(k)(4).

charge. The negative implication of past receipt of such benefits or past institutionalization, however, may be overcome by positive factors in the alien's case demonstrating an ability to be self-supporting. For instance, a work-authorized alien who has current full-time employment or an AOS should be found admissible despite past receipt of cash public benefits, unless there are other adverse factors in the case.

Past receipt of non-cash benefits (other than institutionalization for long-term care) should not be taken into account under the totality of the circumstances test. Similarly, past receipt of special-purpose cash benefits not for income maintenance should not be taken into account.

Repayment of public benefits

IRIRA did not create any requirement that aliens repay benefits received in the past in order to avoid being found inadmissible on public charge grounds, nor has such a requirement existed in the past. Accordingly, officers should not instruct or suggest that aliens must repay benefits previously received as a condition of admission or adjustment, and they should not request proof of repayment as a condition for finding the alien admissible to the United States. (See INS Memorandum, "Public Charge: INA Sections 212(a)(4) and 237(a)(5) – Duration of Departure for LPRs and Repayment of Public Benefits," dated December 16, 1997, for further discussion.)

Repayment is relevant to the public charge inadmissibility determination only in very limited circumstances. If at the time of application for admission or adjustment of status the alien is deportable on public charge grounds under section 237(a)(5) of the INA due to an outstanding public debt for a cash benefit or the costs of institutionalization, then the alien is inadmissible. **Only a debt that satisfies the three-part test under section 237(a)(5), described below, will render an alien deportable as a public charge and therefore ineligible for admission or adjustment.** If the debt is paid, then the alien will no longer be inadmissible based on the debt, and the usual totality of the circumstances test would apply. While the Service may not demand that an alien repay a public debt which meets the three-part test, it may inform an alien that if the alien does not repay the debt, he or she will continue to be inadmissible to the United States. Adjudicators should make sure also to inform aliens that even if they pay the debt, they may still be determined to be inadmissible as an alien likely to become a public charge under the totality of the circumstances test.

If an INS officer finds evidence of possible benefit fraud in the course of performing his or her immigration duties, that information should be forwarded through official channels to the appropriate benefit-granting agency for possible investigation and enforcement action. In such cases, absent a determination of fraud by the benefit-granting agency, immigration benefits to which the alien is otherwise entitled should not be withheld or denied.

3. Public charge determinations - deportation

The determination of whether an alien is subject to removal under section 237(a)(5) is quite different from the determination of whether an alien is inadmissible under section 212(a)(4), although in both contexts the focus is on the receipt of cash benefits for income maintenance purposes. Section 237(a)(5) of the INA states that "[a]ny alien who, within 5 years after the date of entry, has become a public charge from causes not affirmatively shown to have arisen since entry is deportable." This section requires a two-step determination. First, the Service must determine whether the alien has become a public charge within 5 years after the date of entry.⁷ Second, if the alien has become a public charge, then the Service must determine whether the alien has demonstrated that the circumstances that caused the alien to become a public charge arose after the alien's entry into the United States. An alien who can make such a showing is not removable under section 237(a)(5).

With respect to whether an alien has become a public charge, the Attorney General has determined that the mere receipt of a public benefit by an alien does not make an alien a public charge for purposes of deportation under section 237(a)(5). Rather, in Matter of B, 3 I. & N. Dec. 323 (BIA and AG 1948),⁸ the Attorney General established a strict three-part test to determine if an alien has become a public charge. In order for an alien to become a public charge under section 237(a)(5), the following 3 requirements must be met:

- 1) The state or other government entity that provides the benefit must, by law, impose a charge or fee for the services rendered to the alien. In other words, the alien or designated relatives or friends must be legally obligated to repay the benefit-granting agency for the benefits or services provided. If there is no reimbursement requirement under law, the alien cannot be said to be a public charge.
- 2) **The responsible benefit-granting agency officials must make a demand for payment for the benefit or services from the alien or other persons legally responsible for the debt under federal or state law (e.g., the alien's sponsor).**
- 3) **The alien and other persons legally responsible for the debt fail to repay after a demand has been made.**

⁷ The 5-year period starts again each time an alien enters the United States after a departure, except for LPRs who are not applicants for admission unless they meet the terms of section 101(a)(13)(C).

⁸ While this decision concerned the public charge provision of the 1917 Act, the test established continues to be valid under current law, which is substantially the same as the 1917 law. See Matter of L, 6 I. & N. Dec. 349 (BIA 1954), and Matter of Harutunian, 14 I. & N. Dec. 583 (BIA 1974).

The demand for repayment must be made within 5 years of an alien's entry in order to render the alien deportable as a public charge.⁹ In addition, the Service has determined that, in order for an alien to become deportable as a public charge as a result of the failure of the sponsor to repay the agency, the benefit-granting agency must take all available actions to collect from the sponsor. This includes filing an action in the appropriate court and taking all steps available under law to enforce a final judgment against the sponsor or other obligated party.

Deportations based on public charge grounds have been rare, and the new immigration and welfare laws are not likely to change this. First, for aliens who are not sponsored under the new AOS, it is unlikely that there will be a legal obligation to repay public benefits or that the benefit-granting agency will make a demand for repayment. Thus, just as in the past, the first two prongs of the Matter of B test generally will not be satisfied. Only aliens who apply for immigrant visas or adjustment of status on or after December 19, 1997, may be sponsored under the new, enforceable AOS, which could satisfy the standards for deportation under Matter of B. However, under the new welfare reform laws, these same aliens will generally be barred from receiving federal means-tested public benefits for the first 5 years after admission or adjustment – the critical period for purposes of deportability.

In addition, under the "deeming" rules, the sponsor's and the sponsor's spouse's income and resources will be attributed to the alien in assessing his or her eligibility to receive a means-tested benefit, which would normally raise the alien's income over the benefit eligibility threshold. Only if an immigrant receives a cash benefit for income-maintenance within 5 years of entry or is institutionalized for long-term care (despite the eligibility limitations), there is a demand for repayment by the benefit-granting agency, and the sponsor or other responsible party fails to repay, can the immigrant become deportable as a public charge. However, even in this case, the alien must be given an opportunity to prove that he or she became a public charge for causes that arose after entry. If the alien can make such a showing, he or she will not be deportable as a public charge. Thus, the Service is unlikely to see a significant increase in cases of deportability on public charge grounds.

4. Exceptions from public charge determinations

Under the new laws, refugees and asylees remain exempt from public charge determinations for purposes of admission and adjustment of status pursuant to sections 207, 208, and 209 of the INA. Similarly, Amerasian immigrants are exempt from the public charge ground of inadmissibility for their initial admission.¹⁰ In addition, various statutes contain exceptions to the public charge ground of inadmissibility for aliens eligible for benefits under their provisions, including the Cuban Adjustment Act (CAA), the Nicaraguan Adjustment and Central American

⁹ Matter of L, 61 & N. Dec. 349 (BIA 1954).

¹⁰ Amerasian immigrants are defined in section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988.

Relief Act (NACARA), and the Haitian Refugee Immigration Fairness Act (HRIFA).¹¹ These laws provide avenues of adjustment for certain aliens – including Cuban/Haitian entrants,¹² who remain eligible for many public benefits under welfare reform – without subjecting them to screening as potential public charges.

Most LPRs who have been outside the United States for 180 days or less are not applicants for admission and therefore are not subject to the grounds of inadmissibility, pursuant to section 101(a)(13)(C) of the INA.¹³ Accordingly, absent an indication that they may be applicants for admission, such LPRs should not routinely be questioned on issues related to the likelihood that they will become a public charge.

Under section 249 of the INA, which allows aliens who have been in the United States since January 1, 1972, to “register” as LPRs, public charge is not a factor in determining eligibility. Receipt of public benefits is not an adverse factor in meeting the “good moral character” requirement for registry, absent evidence that an applicant procured or attempted to procure such benefits through fraud or misrepresentation.

5. Receipt of benefits by children and other family members

The Service has addressed the issue of receipt of benefits by children and other family members in a number of memoranda on the issue of public charge for aliens applying for legalization under section 245A of the INA. The Service's approach to the receipt of benefits by family members in the legalization context has been upheld in federal court and should govern the question for general public charge determinations as well.¹⁴ The rule is well summarized in an April 21, 1988, memorandum from the Associate Commissioner for Examinations to the Regional Commissioners:

As a general rule, the receipt of . . . benefits by a member of the . . . applicant's family is not attributed to the applicant for purposes of determining the likelihood that the applicant will become a public charge. . . . If, however, the family is reliant on the . . . benefits as its sole means of support, the . . . applicant may be considered to have received public cash assistance. This determination is to be made on a case-by-case basis and upon consideration of the totality of the applicant's circumstances.

¹¹ See Matter of Mesa, 12 I. & N. Dec. (Dep. Assoc. Comm. 1967) (public charge exception under the CAA); NACARA, Pub. L. 105-100, section 202(a); HRIFA, Pub. L. 105-277, Title IX, section 902.

¹² Cuban/Haitian entrants are defined in section 501(c)(e) of the Refugee Education Assistance Act of 1980.

¹³ Section 101(a)(13)(C) provides that an LPR seeking admission to the U.S. is not an applicant for admission unless the alien: (i) has abandoned or relinquished that status; (ii) has been absent for more than 180 days; (iii) has engaged in illegal activity after leaving the U.S.; (iv) left the U.S. while in removal proceedings; (v) has committed certain offenses in the U.S.; or (vi) is attempting to enter other than at a port of entry or has not been admitted to the U.S. after inspection and authorization.

¹⁴ See Perales v. Reno, 48 F.3d 1305 (2d Cir. 1995).

Although this memorandum specifically addressed the receipt of cash assistance under the former Aid to Families with Dependent Children (AFDC) program, the rule is applicable generally to other cash benefit programs that may give rise to public charge determinations. (See section 6.A below.) **Accordingly, Service officers should not attribute cash benefits received by U.S. citizen or alien children or other family members to alien applicants for purposes of determining whether the applicant is likely to become a public charge, absent evidence that the family is reliant on the family member's benefits as its sole means of support.**

6. Benefits that may and may not be considered for public charge purposes

The term "public charge" has not been defined in law or regulation and, in the past, the Service has not provided comprehensive guidance on the kinds of benefits that could cause an alien to be considered a public charge. In light of the new laws and the complexity of the federal, state, and local public benefits system, this issue now requires that the Service adopt uniform standards. Accordingly, the Service is publishing a proposed rule for notice and comment, as noted above. The proposed standards take into account the law and public policy decisions concerning alien eligibility for public benefits and public health considerations, as well as past practice by the Service and the Department of State.

It has never been Service policy that any receipt of services or benefits paid for in whole or in part from public funds renders an alien a public charge, or indicates that the alien is likely to become a public charge. The nature of the public program must be considered. For instance, attending public schools, taking advantage of school lunch or other supplemental nutrition programs, or receiving emergency medical care would not make an alien inadmissible as a public charge, despite the use of public funds. While the Service has not previously issued guidance on a program-by-program basis, the Department of State did codify its policy in the Foreign Affairs Manual (FAM), excluding Food Stamps from consideration for public charge purposes because of its "supplemental" nature.¹⁵ The Service is now taking a similar approach by adopting a definition of public charge that focuses on whether the alien is or is likely to become **primarily dependent on the government for subsistence**. After extensive consultation with benefit-granting agencies, the Service has determined that **the best evidence of whether an alien is primarily dependent on the government for subsistence is either (i) the receipt of public cash assistance for income maintenance, or (ii) institutionalization for long-term care at government expense.**

The Service is proposing this definition by regulation and adopting it on an interim basis for several reasons. First, confusion about the relationship between the receipt of public benefits and the concept of "public charge" has deterred eligible aliens and their families, including U.S. citizen children, from seeking important health and nutrition benefits that they are legally entitled to receive. This reluctance to access benefits has an adverse impact not just on the potential recipients,

¹⁵ 9 FAM § 40.41, n.9 I.

but on public health and the general welfare. Second, non-cash benefits (other than institutionalization for long-term care) are by their nature supplemental and do not, alone or in combination, provide sufficient resources to support an individual or family. In addition to receiving non-cash benefits, an alien would have to have either additional income – such as wages, savings, or earned retirement benefits – or public cash assistance. Thus, by focusing on cash assistance for income maintenance, the Service can identify those who are primarily dependent on the government for subsistence without inhibiting access to non-cash benefits that serve important public interests. Finally, certain federal, state, and local benefits are increasingly being made available to families with incomes far above the poverty level, reflecting broad public policy decisions about improving general public health and nutrition, promoting education, and assisting working-poor families in the process of becoming self-sufficient. Thus, participation in such non-cash programs is not evidence of poverty or dependence.

In adopting this new definition, the Service does not expect to substantially change the number of aliens who will be found deportable or inadmissible as public charges. First, under the stricter eligibility rules of the welfare reform laws, many legal aliens are no longer eligible to receive certain types of public benefits, so they run no risk of becoming public charges by virtue of receiving such benefits. Many of those who remain eligible for federal, state, and local public benefits are LPRs, refugees, and asylees, who are unlikely to face public charge screening in any case in light of the section 101(a)(13)(C) and the statutory exceptions.¹⁶ Further, in light of the Matter of B test, deportations on public charge grounds have been rare and are expected to remain so. With respect to admissibility, the new AOS has already raised the threshold for many families to demonstrate that a sponsored alien is not likely to become a public charge. In addition, the statutory factors under section 212(a)(4)(B) continue to apply. **Thus, while the Service will not take an alien's past or current receipt of non-cash benefits such as medical assistance into account for public charge purposes, the alien's age, health, and resources must be considered (along with the other statutory factors) in determining whether he or she is likely to become primarily dependent on the government for subsistence in the future.**

The rules governing alien eligibility for federal, state, and local public benefits are complex and subject to change, including significant state-by-state variations. INS officers are not expected to know the substantive eligibility rules for different public benefit programs. Rather, this guidance and the proposed rule are intended to make public charge determinations simpler and more uniform, while simultaneously providing greater predictability to the public.

A. Benefits that may be considered for public charge purposes

Cash assistance for income maintenance and institutionalization for long-term care at government expense may be considered for public charge purposes. Programs that provide such benefits include:

¹⁶ See section 4, above, for a discussion of public charge exceptions

1. Supplemental Security Income (SSI) under Title XVI of Social Security Act;
2. Temporary Assistance for Needy Families (TANF) cash assistance (part A of Title IV of the Social Security Act – the successor to the AFDC program);¹⁷
3. State and local cash assistance programs that provide benefits for income maintenance (often called “General Assistance” programs); and
4. Programs (including Medicaid) supporting aliens who are institutionalized for long-term care (e.g., in a nursing home or mental health institution).¹⁸

Past or current receipt of such cash benefits does not lead to a per se determination that an alien is either inadmissible or deportable as a public charge. Rather, such benefits should be taken into account under the totality of the circumstances test for purposes of admission/adjustment and should be considered for deportation purposes under the standards of section 237(a)(5) and Matter of B.

Note that not all cash assistance is provided for purposes of income maintenance, and thus not all cash assistance is relevant for public charge purposes. For example, some energy assistance programs provide supplemental benefits through cash payments, in addition to vouchers or in-kind benefits, depending on the locality and the type of fuel needed. Likewise, cash payments could also be provided for child care assistance. Such supplemental, special-purpose cash benefits should not be considered in public charge determinations because they are not evidence of primary dependence on the government for subsistence.

B. Benefits that may not be considered for public charge purposes

Non-cash benefits (other than institutionalization for long-term care) should not be taken into account in making public charge determinations, nor should special-purpose cash assistance that is not intended for income maintenance. Therefore, past, current, or future receipt of these benefits should not be considered in determining whether an alien is or is likely to become a public charge. Further, an alien need not repay benefits already received or withdraw from a benefit program in order to be eligible for admission or adjustment of status.

It is not possible to list all the supplemental, non-cash benefits or special-purpose cash benefits that an alien may receive that should not be considered for public charge purposes, but common examples include:

¹⁷ States have flexibility in administering the TANF program and may choose to provide non-cash assistance such as subsidized child care or transportation vouchers in addition to cash assistance. Such non-cash benefits should not be considered for public charge purposes. States may also provide non-recurrent cash payments for specific crisis situations under TANF. Such payments should not be considered for public charge purposes since they are not cash for income maintenance.

¹⁸ Costs for imprisonment for conviction of a crime are not a basis for a public charge determination.

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1. Medicaid and other health insurance and health services (including public assistance for immunizations and for testing and treatment of symptoms of communicable diseases; use of health clinics, short-term rehabilitation services, and emergency medical services) other than support for long-term institutional care;¹⁹
2. Children's Health Insurance Program (CHIP);
3. Nutrition programs, including Food Stamps, the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), the National School Lunch and School Breakfast Programs, and other supplementary and emergency food assistance programs;
4. Housing benefits;
5. Child care services;
6. Energy assistance, such as the Low Income Home Energy Assistance Program (LIHEAP);
7. Emergency disaster relief;
8. Foster care and adoption assistance;
9. Educational assistance, including benefits under the Head Start Act and aid for elementary, secondary, or higher education;
10. Job training programs; and
11. In-kind, community-based programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter).

State and local programs that are similar to the federal programs listed above should also be excluded from consideration for public charge purposes. Note that states may adopt different names for the same or similar publicly funded programs. In California, for example, Medicaid is called "Medi-Cal" and CHIP is called "Healthy Families." It is the underlying nature of the program, not the name adopted in a particular state, that determines whether or not it should be considered for public charge purposes.

In addition, and consistent with existing Service practice, cash payments that have been earned, such as Title II Social Security benefits, government pensions, and veterans' benefits, among other forms of earned benefits, do not support a public charge determination.

7. Affidavit of Support

The new AOS form, Form I-864, asks whether the sponsor or a member of the sponsor's household has received means-tested benefits within the past 3 years. The purpose of this question is not to determine whether the sponsor is or is likely to become a public charge, but to ensure that the adjudicating officer has access to all facts that may be relevant in determining whether the 125-percent annual income test is met. Any cash benefits received by the sponsor cannot be counted toward meeting the 125-percent income threshold, but receipt of other means-tested benefits, such

¹⁹ The Service's decision not to consider Medicaid, CHIP, and Food Stamps for public charge purposes does not affect the authority of benefit granting agencies to seek repayment for benefits received by an alien from the alien's sponsor under the new AOS

as Medicaid, is not disqualifying for sponsorship purposes. As noted above, public benefit programs are increasingly available to families with incomes above 125 percent of the poverty line.

The regulations implementing the new AOS requirement are found at 8 CFR part 213a. Separate guidance has been issued on adjudicating applications including an AOS.

Continued Use of Form I-134

The use of the new AOS (Form I-864) is mandatory for those categories of immigrants listed in section 212(a)(4)(C) and (D), and a Service officer may not accept a Form I-134 in place of the new AOS for these immigrants if the application was filed on or after December 19, 1997. In those cases not governed by sections 212(a)(4)(C) and (D) and 213A (e.g., parolees, nonimmigrants, or diversity immigrants) in which the Service has traditionally accepted Form I-134, Service officers may continue to do so on a discretionary basis. Use of Form I-361 will continue in cases involving Amerasians under Public Law 97-361.

8. Naturalization

There is no public charge test for purposes of naturalization. There are two narrow circumstances under which the public charge issue can arise in a naturalization case. First, the alien's admission for permanent residence may not have been "lawful" pursuant to section 318 because, *at the time of admission or adjustment*, the alien was subject to exclusion as an alien likely to become a public charge. This would generally occur only if the Service can show that the alien withheld or misrepresented material facts relating to the public charge issue at the time of admission or adjustment. Secondly, the alien's initial admission may have been lawful, but later the alien became deportable as a public charge, under the test described in section 3, above. This would not be a bar to naturalization unless the Service actually instituted deportation proceedings against the alien. As a practical matter, neither of these situations is likely to occur.

The Service has no authority to make the repayment of public assistance a condition for granting naturalization, and officers should not request proof of repayment from applicants in connection with a naturalization adjudication.

9. Public Charge Bonds

Section 213 of the INA, Admission of Certain Aliens on Giving Bond, was amended by IIRIRA only by including a parenthetical reference to the new AOS prescribed in INA section 213A. Where appropriate, officers may use the public charge bond option pursuant to section 213 as has been done in the past.

10. Points of Contact

Questions concerning this memorandum should be referred to Sophia Cox or Kevin Cummings, Headquarters Office of Adjudications, at 202-514-4754, through appropriate channels.

U.S. Department of Justice
IMMIGRATION AND NATURALIZATION SERVICE

FACT SHEET

05/25/99

Public Charge

In an effort to protect the public health and help people become self-sufficient, the Clinton Administration is publishing a proposed rule in the *Federal Register* on May 26 that clarifies the circumstances under which a non-citizen can receive public benefits without becoming a "public charge" for purposes of admission into the United States, adjustment of status to legal permanent resident, and deportation.

The new regulations, for the first time, define "public charge" and state which benefits a non-citizen may receive without concern for negative immigration consequences. The regulation describes the various issues that must be considered in making a public charge determination. This information will help non-citizens and their families make informed choices about whether to apply for certain benefits. The regulation also enhances the administration of the nation's immigration laws by promoting fair and consistent decision-making.

Background

"Public charge" has been part of U.S. immigration law for more than 100 years as a ground of inadmissibility and deportation. An alien who is likely at any time to become a public charge is inadmissible and ineligible to become a legal permanent resident of the United States. Also, an alien can be deported if he or she becomes a public charge within five years of entering the United States from causes that existed before entry. Instances of deportation on public charge grounds have been very rare.

Recent immigration and welfare reform laws have generated considerable public confusion and concern about whether a non-citizen who is eligible to receive certain Federal, State, or local public benefits may face adverse immigration consequences as a public charge for having received public benefits.

This concern has prompted some non-citizens and their families to deny themselves public benefits for which they are eligible – including disaster relief, treatment of communicable diseases, immunizations, and children's nutrition and health care programs – potentially causing considerable harm to themselves and the general public. This impact undermines the government's policies of increasing access to health insurance and health care and helping people to become self-sufficient by drawing temporarily on public support during a transition period.

(more)

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Definition of Public Charge

The proposed rule, which was drafted after an extensive interagency process with benefit-granting agencies, defines "public charge" to mean **an alien who has become (for deportation purposes) or is likely to become (for admission or adjustment of status purposes) "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."** This definition alone, however, cannot be used to determine if an alien is a public charge -- other issues must be considered, as specified below.

The Immigration and Naturalization Service (INS) is implementing this definition of public charge immediately through field guidance discussing the definition and standards for public charge determinations. The field guidance will be published along with the proposed rule in the *Federal Register*. In addition, the United States Department of State (DOS) will send a cable to U.S. consulates abroad providing guidance on public charge determinations for admission purposes. By making this guidance effective immediately, INS and DOS are helping to relieve public concerns about receiving health care and other important services, as well as providing field personnel with the tools needed to enforce immigration law in a clear and consistent manner.

At the same time, INS is seeking public comment on this approach. The proposed rule includes a 60-day public comment period.

Benefits Subject to Public Charge Consideration

The proposed rule specifies that cash assistance for income maintenance includes Supplemental Security Income (SSI), cash assistance from the Temporary Assistance for Needy Families (TANF) program and State or local cash assistance programs for income maintenance, often called "General Assistance" programs. Acceptance of these forms of public cash assistance could make a non-citizen a public charge, if all other criteria are met (as described below in the section "Criteria for Public Charge Determinations.")

In addition, public assistance, including Medicaid, that is used for supporting aliens who reside in an institution for long-term care -- such as a nursing home or mental health institution -- will also be considered by INS and DOS officials as part of the public charge analysis. Short-term institutionalization for rehabilitation is not subject to public charge consideration.

Benefits Not Subject to Public Charge Consideration

Non-cash benefits and special-purpose cash benefits that are not intended for income maintenance are not subject to public charge consideration. Such benefits include:
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Medicaid, Children's Health Insurance Program (CHIP), Food Stamps, the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), immunizations, prenatal care, testing and treatment of communicable diseases, emergency medical assistance, emergency disaster relief, nutrition programs, housing assistance, energy assistance, child care services, foster care and adoption assistance, transportation vouchers, educational assistance, job training programs, and non-cash benefits funded under the TANF program.

Some of the above programs may provide cash benefits, such as energy assistance, transportation or child care benefits provided in cash under TANF or the Child Care Development Block Grant (CCDBG), and one-time emergency payments under TANF. Since the purpose of such benefits is not for income maintenance, but rather to avoid the need for on-going cash assistance for income maintenance, they are not subject to public charge consideration.

Criteria for Public Charge Determinations

The proposed rule states that an alien's mere receipt of cash assistance for income maintenance, or being institutionalized for long-term care, does not automatically make him or her inadmissible, ineligible to adjust status to legal permanent resident, or deportable on public charge grounds. The law requires that INS and DOS officials consider several additional issues as well. Each determination is made on a case-by-case basis.

Admission and Adjustment of Status

Before an alien can be denied admission to the United States or denied adjustment of status to legal permanent resident based on public charge grounds, a number of factors must be considered by INS and DOS, including: the alien's age, health, family status, assets, resources, financial status, education and skills. No single factor -- other than the lack of an Affidavit of Support, if required -- will determine whether an alien is a public charge, including past or current receipt of public cash benefits for income maintenance.

Deportation

The INS can deport an alien on public charge grounds only if the alien has failed to meet the benefit-granting agency's demand for repayment of a cash benefit for income maintenance or for the costs of institutionalization for long-term care. INS may initiate removal proceedings only if the benefit-granting agency has the legal authority to demand repayment and has:

- chosen to seek repayment within five years of the alien's entry into the United States;
- obtained a final judgment;
- taken all steps to collect on that judgment; and
- been unsuccessful in those attempts.

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Even if these conditions are met, the alien is not deportable on public charge grounds if the alien can show that he or she received public cash benefits for income maintenance or was institutionalized for long-term care for causes that arose after entry into the United States.

Other Public Charge Clarifications

- There is no public charge test for naturalization.
- Public charge is not a factor in whether a non-citizen can sponsor a relative to come to the United States.
- Benefits received by one member of a family are not attributed to other family members for public charge purposes, unless the cash benefits amount to the sole support of the family.

-- INS --

U.S. Department of Justice
IMMIGRATION AND NATURALIZATION SERVICE

Questions and Answers

05/25/99

Public Charge

GENERAL

Q1: Why are the Department of Justice (DOJ) and the Immigration and Naturalization Service (INS) issuing field guidance and a proposed regulation concerning public charge, and what is the effect of these documents?

A1: DOJ and INS are issuing this guidance and proposed regulation to alleviate growing public confusion over the meaning of the currently undefined term "public charge" in immigration law and its relationship to the receipt of Federal, State, or local public benefits. By defining "public charge," DOJ seeks to reduce the negative public health consequences generated by the existing confusion and to provide aliens with better guidance as to the types of public benefits that will and will not be considered in public charge determinations. The guidance defines "public charge" and gives examples of benefits that will and will not be considered by INS officials for public charge purposes. It also summarizes the existing law regarding public charge and explains how the INS will administer these provisions.

Q2: What does it mean to be a "public charge" under the immigration laws?

A2: An alien who is likely at any time to become a "public charge" is ineligible for admission to the U.S. and is ineligible to adjust status to become a lawful permanent resident. An alien who has become a public charge can also be deported from the U.S., although this very rarely happens. These provisions have been part of U.S. immigration law for over 100 years, and the recent immigration reform and welfare reform laws did not substantively change them. Both INS (in the U.S.) and the Department of State (State) (overseas) make public charge determinations.

Q3: How is "public charge" defined, and when will this definition be implemented?

A3: The INS is issuing guidance and a proposed regulation that define "public charge" for the first time. "Public charge" means an alien who has become (for deportation purposes) or who is likely to become (for admission/adjustment purposes) primarily dependent on the government for subsistence. This definition is effective immediately. As discussed below, INS and State will consider the receipt of cash benefits for income maintenance purposes and institutionalization for long-term care at government expense in determining dependence on the government for subsistence.

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IMPLEMENTATION

Q4: How do INS and State decide whether someone is admissible or eligible for adjustment of status under the public charge rules?

A4: In deciding whether an alien is likely to become a public charge, the law requires that the INS (in the U.S.) or State (overseas) take certain factors into account, including the alien's age, health, family status, assets, resources, financial status, education and skills. The government official examines all of these factors, looking at the "totality of the circumstances" concerning the alien, to make a forward-looking decision. No single factor — other than the lack of an Affidavit of Support, if required — will be used as the sole basis for finding that someone is likely to become a public charge, that is, likely to become primarily dependent on the government for subsistence. As described below, non-cash benefits and certain special-purpose cash benefits will not be taken into account under the totality of circumstances test.

Q5: How does INS decide whether someone is deportable as a public charge?

A5: Deportations on public charge grounds are very rare because the standards are very strict. Under the Immigration and Nationality Act, an alien is deportable if he or she becomes a public charge within 5 years after the date of entry into the U.S. for reasons not affirmatively shown to have arisen since entry. The mere receipt of a public benefit within 5 years of entry does not make an alien deportable as a public charge. An alien is deportable only if (1) the state or other government entity that provides the benefit has the legal right to seek repayment from the alien or another obligated party (for example, a sponsor under an affidavit of support), (2) the responsible program officials make a demand for repayment; and (3) the alien or other obligated party, such as the alien's sponsor, fails to repay. The benefit granting agency must seek repayment within 5 years of the alien's entry into the United States, obtain a final judgment, take all steps necessary to collect on that judgment, and be unsuccessful in those attempts. Even if these conditions are met, the alien has the opportunity to show that the reasons he or she became a public charge arose after the alien's entry to the U.S. An alien who can make such a showing is not deportable as a public charge.

Q6: What kind of benefits are considered in deciding whether someone is or is likely to become a public charge?

A6: Not all publicly funded benefits are relevant to deciding whether someone is or is likely to become a public charge. INS' guidance and proposed regulation clarify what kinds of benefits may and may not be considered in making a public charge determination. In order to decide whether an alien has become or is likely to become a public charge, INS and State will consider whether the alien is likely to become primarily dependent on the government for subsistence as

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demonstrated by either (1) the receipt of public cash assistance for income maintenance purposes, or (2) institutionalization for long-term care at government expense (other than imprisonment for conviction of a crime). Short-term institutionalization for rehabilitation is not taken into account for public charge purposes.

Public benefits considered to be public cash assistance for income maintenance include:

- (1) Supplemental Security Income (SSI);
- (2) Temporary Assistance for Needy Families (TANF), but not including supplementary cash benefits excluded from the term "assistance" under TANF program rules or any non-cash benefits and services provided by the TANF program;
- (3) State and local cash assistance programs for income maintenance (often called state "General Assistance," but which may exist under other names).

In addition, the costs for institutionalization for long-term care, which may be provided under Medicaid or other programs, may be considered in making public charge determinations.

While the receipt of these benefits may be considered by INS and State for public charge purposes, having received them does not automatically make someone a public charge. As explained above, the totality of circumstances test applies for admission and adjustment. For deportation, all of the procedural requirements, described above, apply.

Q7: Are there public benefits that aliens can legally receive without worrying that the INS and State will consider them a public charge?

A7: Yes. Not all publicly funded benefits will be considered by the INS or the State Department in deciding whether someone is or is likely to become a public charge. The focus of public charge is on cash benefits for income maintenance and institutionalization for long-term care at government expense. Examples of benefits that will not be considered for public charge purposes include:

- Medicaid and other health insurance and health services (including public assistance for immunizations and for testing and treatment of symptoms of communicable diseases; use of health clinics, prenatal care, etc.) other than support for institutionalization for long-term care
 - Children's Health Insurance Program (CHIP)
 - Nutrition programs, including Food Stamps, the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), the National School Lunch and Breakfast programs, and other supplementary and emergency food assistance programs
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- Housing assistance
- Child care services
- Energy assistance, such as the Low Income Home Energy Assistance Program (LIHEAP)
- Emergency disaster relief
- Foster care and adoption assistance
- Educational assistance, including benefits under the Head Start Act and aid for elementary, secondary, or higher education
- Job training programs
- In-kind, community-based programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter).

Note that not all categories of aliens are eligible to receive all of the types of benefits described above.

Q8: Do the INS and State consider all types of cash assistance in deciding whether someone is a public charge?

A8: No. INS and State only consider cash benefits intended for income maintenance purposes. Some programs provide cash benefits for special purposes, such as the Low Income Home Energy Assistance Program (LIHEAP), transportation or child care benefits provided in cash under TANF or the Child Care and Development Block Grant (CCDBG), and one-time emergency payments made under TANF to avoid the need for on-going cash assistance. These special-purpose cash benefits are not for income maintenance and therefore are not considered for public charge purposes.

Q9: Normally Food Stamp benefits are given in the form of paper coupons or an electronic benefit card that can be used at authorized stores to buy food. However, in a few areas Food Stamp benefits are given in the form of cash. If Food Stamp benefits are given in the form of cash, can those benefits be considered for public charge purposes?

A9: No. Food Stamp benefits will not be considered for public charge purposes regardless of the method of payment because they are not intended for income maintenance.

Q10: Are health care benefits and enrollment in health insurance programs like Medicaid and CHIP considered for public charge purposes?

A10: No, not unless an alien is primarily dependent on the government for subsistence as demonstrated by institutionalization for long-term care at government expense. In particular, INS and State will not consider participation in Medicaid or CHIP, or similar state-funded programs, for public charge purposes. This approach will help to safeguard public health, while still allowing INS and State
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to identify people who are primarily dependent on the government for subsistence by looking to the receipt of public cash assistance for income maintenance. In addition, short-term institutionalization for rehabilitation will not be considered for public charge purposes.

Q11: Do the public charge field guidance and regulation change the policy issued by the Food and Nutrition Service for the WIC Program in WIC Policy Memorandum #98-7, dated March 19, 1998, "Impact of Participation in the WIC Program on Alien Status"?

A11: No. The new field guidance and regulation on public charge are consistent with the WIC policy memorandum issued in 1998. The WIC policy memorandum was developed based on agreements reached with the INS and State. The new field guidance and regulation merely restate and reinforce the agreement previously reached on the impact of participation in the WIC Program and alien status. As noted above, INS and State will not take WIC participation into account for public charge purposes.

AFFIDAVIT OF SUPPORT

Q12: What is an affidavit of support, and who is required to have one?

A12: The Personal Responsibility and Work Opportunity Reconciliation Act and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Section 213A, created a new requirement for all family-sponsored immigrants and those employment-based immigrants who will work for a close relative or for a firm in which a U.S. citizen or lawful permanent resident relative holds a 5 percent or greater ownership interest. An alien who applies for an immigrant visa or adjustment of status in one of these categories on or after December 19, 1997, must have an affidavit of support (AOS), INS Form I-864, from a qualifying sponsor or he or she will be found inadmissible as a public charge. An AOS is a legally binding promise that the sponsor will provide support and assistance to the immigrant if necessary.

The AOS must be signed by a sponsor who meets certain statutory requirements. Sponsors must be able to demonstrate that they are able to maintain the sponsored alien(s) at an annual income of not less than 125 percent of the federal poverty level. (Currently, 125 percent of the poverty level for a family of four is \$20,875.) If the family member who filed the visa petition does not have enough money to sponsor the alien(s), then another person can sign an AOS as a "joint sponsor," indicating that he or she is willing to support the immigrant in the future if needed. The sponsor's obligation under the AOS lasts until the immigrant has naturalized, has worked or can be credited with 40 quarters of work, leaves the U.S. permanently, or dies. The sponsor and joint sponsor (if any)

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must also agree to repay the government if the immigrant uses certain benefits during that time and if the government asks the sponsor for repayment.

Before IIRIRA, aliens were sometimes sponsored using INS Form I-134, but these affidavits of support were found by some courts not to be legally enforceable. Form I-134 may still be used for categories of aliens who are not required to use the new, enforceable affidavit of support, such as students, parolees, or diversity immigrants.

Q13: Can an affidavit of support help an alien demonstrate to the INS and State that he or she is not likely to become a public charge?

A13: Yes. Since many aliens who apply for an immigrant visa or adjustment of status after December 19, 1997, will have an affidavit of support, INS and State will take that into account in deciding whether the alien is likely to become a public charge in the future. Even though an AOS is necessary for some immigrants and helps to convince the government that they will not become dependent on the government for subsistence in the future, INS or State can still deny an immigrant admission or adjustment of status under the totality of circumstances test based on other factors such as age, health, employment, and education, as described above.

Q14: If lawful permanent residents want to sponsor a relative to come to the U.S., will it hurt their chances if they are receiving or have received public benefits in the past?

A14: Sponsors are not subject to public charge screening under the immigration laws; the question is whether the alien being sponsored is likely to become a public charge. Sponsors must satisfy a different test: they must be able to demonstrate that they are able to maintain the sponsored immigrant(s) at an annual income of not less than 125 percent of the federal poverty level.

Q15: Why does the new INS affidavit of support form ask about whether a sponsor or member of his or her household has received "means-tested public benefits" in the past 3 years?

A15: The purpose of this question is to ensure that the INS or State official making the decision has access to all facts that may be relevant in determining whether the 125 percent test, described above, is met. Any cash benefits received by the sponsor, such as SSI or cash TANF, cannot be counted toward meeting the 125 percent income threshold, but they are not held against the sponsor if he or she can meet the 125 percent test through other resources. The receipt of other means-tested public benefits – such as Food Stamps, Medicaid, or CHIP – have no effect on sponsorship.

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Q16: What happens if a sponsor who has signed the new affidavit of support dies?

A16: The obligation to support the alien terminates with the sponsor's death, but the sponsor's estate would still be obligated to repay any obligations accrued before the sponsor's death. If there is a joint sponsor and only one of the sponsors dies, the remaining sponsor would remain liable under the affidavit of support.

For deportation purposes, if a sponsor has died and there is no joint sponsor, there is no legal obligation under the affidavit of support to repay any means-tested benefits. This means that the first prong of the test for deportation would not be met and the sponsored alien would not become deportable based on the affidavit of support.

EXAMPLE SITUATIONS

Q17: Are there categories of aliens who are not subject to public charge determinations?

A17: Yes. Refugees and asylees are not subject to public charge determinations for purposes of admission or adjustment of status. Amerasian immigrants are also exempt from the public charge ground of inadmissibility for their initial admission to the U.S. In addition, various statutes contain exceptions to the public charge ground of inadmissibility for aliens eligible for adjustment of status under their provisions, including the Cuban Adjustment Act, the Nicaraguan Adjustment and Central American Relief Act (NACARA) and the Haitian Refugee Immigration Fairness Act (HRIFA).

Q18: If an alien has received cash public benefits in the past, but has stopped, will INS or State find that he or she is likely to become a public charge?

A18: Past receipt of cash public benefits does not automatically make an alien inadmissible as likely to become a public charge. It is one factor that will be considered under the totality of the circumstances test to decide whether the alien is likely to become a public charge in the future. For example, if an alien received benefits in the past during a period of unemployment, but now has a job and is self-supporting, he or she would most likely not be found inadmissible as a public charge. The more time that has elapsed since the alien stopped receiving the benefit, the less weight it will be given. The length of time that an alien received benefits and the amount of benefits received are also relevant considerations.

Q19: If an alien has received public benefits in the past, does the alien have to repay them to avoid having INS or State find that he or she inadmissible as a public charge, or ineligible to adjust status and become a lawful permanent resident?
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A19: No. INS and State do not have authority to request that aliens repay public benefits in connection with visa issuance, admission, or adjustment of status.

Q20: Who decides whether an alien must repay a public benefit he or she has received in the past?

A20: The requirements and procedures concerning any demand for repayment of a public benefit are governed by the specific program rules established by law and administered by the benefit granting agencies, or by state and local governments, not by INS or State. The public charge rules in the immigration law do not change these program requirements.

Q21: If a member of an alien's family is receiving or has received public benefits, but the individual alien hasn't, will INS or State hold this against the alien for public charge purposes?

A21: In most cases, no. As a general rule, receipt of benefits by a member of an alien's family is not attributed to the alien who is applying to INS or State for admission or to INS for adjustment of status to determine whether he or she is likely to become a public charge. The only time this general rule would not apply would be if the family were reliant on their family member's cash public benefits as its sole means of support.

In particular, alien parents do not have to worry that the INS or State will consider them to be public charges if they enroll their children in programs for which they are eligible, unless these are cash programs which provide the sole financial support for the family. This is true whether the children are U.S. citizens or non-citizens.

If a parent enrolls in TANF for cash benefits for the "child only," this could be used by INS or State for a public charge determination concerning the parent if this cash is the sole support for the family. However, if there are other sources of support or a parent is working, then the cash assistance would not represent the family's sole source of support.

Q22: If an alien receives public benefits, will it hurt his or her chances to become a U.S. citizen?

A22: No. There is no public charge test for naturalization purposes, so the receipt of benefits is not relevant, as long as they were legally received. Nor is there a requirement to repay benefits received in the past in order to qualify for citizenship.

Q23: Can a naturalized citizen lose his or her citizenship because of receiving public benefits?

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A23: No. Nobody can lose his or her citizenship because of receiving public benefits. Once an immigrant becomes a citizen, he or she can receive benefits on the same basis as all other citizens. Citizens cannot be deported or barred from reentering the U.S. after an international trip based on the receipt of public benefits.

Q24: Does an alien have to stop participating in some benefit programs in order to adjust status and become a lawful permanent resident?

A24: No, but someone who is receiving a cash benefit for income maintenance at the same time that he or she applies to become a lawful permanent resident may be considered ineligible for adjustment as a public charge. An alien who has received a cash benefit in the past could reapply to the INS after he or she stops receiving the benefit, and might or might not be considered a public charge.

Someone who is receiving a non-cash benefit – for example, WIC, Food Stamps, Medicaid, or CHIP – would not have to stop participating in the program in order to be eligible to adjust to lawful permanent resident status.

As explained earlier, in all of these situations, the usual “totality of the circumstances” test would apply.

Q25: If a lawful permanent resident has received public benefits and leaves the country, will INS stop him or her from returning on public charge grounds?

A25: In general, a lawful permanent resident who has been outside the U.S. for 6 months or less is not screened for public charge purposes when he or she returns. This is because lawful permanent residents who leave for 6 months or less at a time are not considered applicants for admission when they return, and none of the grounds of inadmissibility, including public charge, apply to them.

There are exceptions to this general rule if (1) the alien has abandoned his or her status as a lawful permanent resident; (2) the alien has engaged in certain illegal activity; (3) the alien was in removal proceedings before he or she left the country; or (4) the alien attempts to enter other than at a port of entry. See INA section 101(a)(13)(C) for more details on these exceptions.

Q26: Can an LPR continue to receive benefits while he or she is out of the country?

A26: If an LPR plans to be out of the country for longer than a month, he should check with the agency providing the benefit to determine the rules. In general, people are not allowed to receive many benefits if they are absent from the country or state of residence for longer than 30 days. If an LPR receives benefits improperly, it can hurt his chances of re-entering the U.S. or becoming a citizen.

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- Q27: If a refugee has adjusted to LPR status and then leaves the country for more than 180 days – is he or she at risk of being found to be a public charge and denied reentry?**
- A27:** As noted above, refugees are exempt from public charge determinations for their admission and adjustment to LPR status. Public charge has never been a problem for refugees who travel and return to the U.S., and nothing in the welfare reform law or immigration reform law has changed this.
- Q28: When an LPR returns from an international trip, can INS make her pay back Medicaid or Food Stamps that she or her children used before?**
- A28:** No. INS does not have the authority to ask immigrants to pay back these benefits. If an alien has received benefits improperly (e.g., if a person claims to be a resident of a state for purposes of eligibility when she is not a resident, or if she does not tell a caseworker about all of her income), it is up to the benefit-granting agency to request repayment, based on the rules governing that program. Typically a benefit-granting agency would only request repayment in situations involving fraud or overpayment, and it would follow its procedural rules involving notice to the individual and the right to appeal.
- Q29: What if an alien has never used cash welfare and is not residing in a nursing home. Can the INS still deny him a green card because they think he might use cash welfare in the future?**
- A29:** Yes, it is possible. INS and State officials must look at all of the factors listed above to determine if a person can support himself in the future. If an alien's current situation related to age, health, resources, and the other statutory factors does not satisfy them that the alien is likely to be able to be self-supporting in the future, then they can refuse to grant a visa or approve adjustment of status, even if he is not currently receiving public cash assistance.
- Q30: What if a person is not receiving cash assistance but is very sick and needs an extended period of care in a nursing home or other long-term care institution? Will she have trouble getting her Permanent Resident Card ("green card")?**
- A30:** Yes. If someone is living in a nursing home or has a serious long-term illness that requires institutionalization, she will probably have trouble getting a green card unless she can show that she can get the care she needs without using Medicaid or other government-funded health programs (e.g., county aid). However, a short-term stay in a nursing facility, for example, to physically rehabilitate after surgery, will not be used to deny a green card. The alien is not deportable on public charge grounds if the alien can show that she received benefits for causes that arose after entry into the U.S.

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- Q31: An alien who is primarily dependent on the government for subsistence as demonstrated by the institutionalization for long-term care at government expense can be found deportable as a public charge. Does this mean that INS will be conducting raids in nursing homes or other long-term care institutions?**
- A31:** No. INS will not send investigators into nursing homes or other long-term care facilities to look for aliens who might be deportable as public charges. INS may use information concerning institutionalization if it comes to ins' attention through other avenues, but the only way an alien could be found deportable is if all the procedural requirements described above were met.
- Q32: If I'm eligible to self-petition for adjustment of status under the Violence Against Women Act (VAWA), do I have to show that I'm not likely to become a public charge?**
- A32:** The Administration is still considering the extent to which self-petitioners under VAWA are subject to the public charge requirements, and will address this in future guidance. The law does make clear that self-petitioners under VAWA do not need to submit an affidavit of support with their application, unlike other family-based immigrants.
- Q33: Cuban/Haitian entrants are eligible to receive certain public benefits under welfare reform. If they receive such benefits, will they be barred from adjusting status because they will be considered public charges?**
- A33:** The answer depends on how they become eligible to adjust status. There are statutory exceptions to the public charge ground of inadmissibility for those Cubans who are eligible to adjust to lawful permanent resident status under the Cuban Adjustment Act and NACARA and for those Haitians who are eligible to adjust status under the HRIFA. Cuban/Haitian entrants are subject to the usual public charge rules if they seek adjustment under other provisions of law that do not contain public charge exemptions.
- Q34: Certain Amerasian entrants are eligible to receive public benefits under welfare reform. If they receive such benefits, will they be considered public charges?**
- A34:** Amerasian entrants are admitted to the U.S. as lawful permanent residents (LPRs), and they are exempt from the public charge ground of inadmissibility at their initial admission. In most cases, the issue of public charge would never come up again, unless the alien leaves the U.S. for more than 6 months and seeks readmission. At that time, the exemption from public charge screening would no longer apply and the alien would be treated like any other LPR under the totality of the circumstances test.

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Q35: If an alien has been in the U.S. since January 1, 1972, and wants to become a lawful permanent resident under the "registry" provision of the Immigration and Nationality Act, section 249, is there a public charge test?

A35: No. Public charge is not a factor for "registry" aliens under section 249.

Q36: Is it improper for an immigration or consular officer to ask non-citizens at an airport or in an interview whether they have received public benefits in the past, or whether someone in their family has?

A36: No. Immigration or consular officers can ask questions about whether a non-citizen or someone in his or her family is receiving or has received public benefits in the past. Non-citizens should answer such questions completely and truthfully. If an alien tells an immigration or consular officer that he or she has received a benefit that is exempt from consideration for public charge purposes, such as Food Stamps or Medicaid, the officer will not use that information in deciding whether the alien is likely to become a public charge.

Q37: INS is publishing this public charge definition as a proposed rule for notice and comment. What happens if an alien receives one of the "safe" benefits—that is, a supplemental, non-cash benefit and the final rule is different from the proposed rule — can aliens rely on the field guidance?

A37: Aliens may rely on ins' field guidance in determining the benefits that they may safely accept before the final rule is issued. If the final rule is different from the proposed rule, INS will issue additional guidance at that time designed to ensure that non-citizens who relied on the current guidance will not suffer harsher immigration consequences based on that reliance.

JUN 10 1998

Dear State Medicaid Director:

The purpose of this letter is to make you aware of statutory provisions enacted in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (P.L. 104-208) and described in interim regulations published by the Immigration and Naturalization Service (INS) on October 20, 1997. In brief, this provision authorizes States to recover from immigrants' sponsors the unreimbursed costs of Medicaid benefits paid on behalf of certain immigrants.

This letter informs you of these provisions and explains their relationship to other rules regarding sponsors of aliens and Medicaid recoveries. For reasons described below, the rules at issue in this letter will have a limited impact on Medicaid. Nonetheless, we felt States should be alerted to the implications of this new law.

In the interest of clarity, we wish to emphasize that the policies contained in this letter pertain only to recoveries from immigrants' sponsors, and do not change the prohibitions against recoveries from the immigrants themselves, as described in our letter of December 17, 1997 to you. (We have enclosed a copy of that letter for your information). The only circumstances under which you may seek to recover for legitimate Medicaid expenditures related to immigrants are those described in the subsequent portion of this letter, where the recovery is from a sponsor who has an obligation under immigration law to pay. The prohibitions described in our earlier letter relate to recoveries from the immigrants themselves for Medicaid benefits they or a family member legitimately received.

As explained in the October 20, 1997 interim INS rule, the new provisions are effective for immigrants who file with the INS on or after December 19, 1997, for an immigrant visa, for admission as an immigrant, or for adjustment of status, who are applying as: a) an immediate relative, b) a family-based immigrant, or c) an employment-based immigrant, and who, in order to be admissible, are required to have a sponsor who signs an affidavit of support under section 213A of the INS Act. States will be able to obtain information about sponsorship from the INS.

In signing such an affidavit, the sponsor agrees to provide financial support to the immigrant, and also agrees to reimburse any agencies which provide means-tested public benefits (e.g., Medicaid) to a sponsored immigrant. After the State applies the sponsor-to-alien deeming criteria, should the sponsored immigrant obtain any Medicaid benefits, the agency may sue the sponsor in Federal or State court to recover any unreimbursed Medicaid costs for those benefits, except for emergency services which are excluded from recovery. Procedural requirements that you must follow in doing this are more fully described in the October 20, 1997 INS rule.

Page 2 - State Medicaid Directors

We believe that the impact on Medicaid would be limited for three reasons. First, most persons filing for admission as an immigrant on or after the effective date of this new rule are banned from receiving non-emergency Medicaid services for five years under section 403(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). Therefore, in most cases, there should be no Medicaid expenditures to recover in the first place.

Second, those groups of immigrants who would be eligible for the full Medicaid benefit package are not populous. Veterans and persons on active duty in the U.S. military, their spouses and dependent children and their unremarried surviving spouses are exempt from the 5 year ban. Refugees, asylees, aliens whose deportation is being withheld, immigrants who are Cuban or Haitian entrants, and certain Amerasian immigrants are also exempt. Consequently, the number of newly admitted permanent residents in these categories who receive Medicaid benefits who will subsequently acquire sponsors that are subject to the affidavit of support and from whom recoveries may be pursued is small.

Third, even when the five year ban is not at issue, States will be required to attribute the income and assets of the sponsor when determining the immigrant's eligibility for Medicaid. The sponsor-to-alien deeming rule continues for as long as the sponsor is obliged under INS rules to provide support, in most cases until the immigrant becomes a citizen. A separate SMD letter is being developed and will be issued soon to explain the HCFA policy to be applied when a sponsored alien is subject to the deeming of the sponsor income and resources.

If you have any questions about this issue, you can contact either Mark Ross on (410) 786-5855, or Robert Tomlinson on (410) 786-4463.

Sincerely,



Sally K. Richardson

Director

Center for Medicaid and State Operations

Enclosure

cc:

All Regional Administrators

All Associate Regional Administrators
for Medicaid and State Operations

Jennifer Baxendell, NGA

Joy Wilson, NCSL

Lee Partridge, APWA



U.S. Department of Justice
Immigration and Naturalization Service

Office of the Executive Associate Commissioner

425 I Street NW
Washington, DC 20536

DEC 22 1998

Mr. Cliff Allenby
Ms. S. Kimberly Belshe
Department of Health Services
714/744 P Street
Sacramento, California 94234-7320

Dear Mr. Allenby and Ms. Belshe:

Commissioner Meissner has asked me to respond to your recent letter concerning Immigration and Naturalization Service (INS) policy on several public charge issues.

As you know, the INS is currently engaged in discussions on an interagency basis to develop an Administration-wide approach to public charge issues. While the results of these discussions will be embodied in INS field guidance, the underlying policy issues are much broader than immigration alone, as your letter reflects. Because of this, the INS has been working closely with benefit-granting agencies such as the Department of Health and Human Services and the Department of Agriculture, among others, to ensure that the outcome takes into account the full range of laws and public policy interests at stake.

While those interagency discussions are not yet completed due to the complexity of the issues, I can offer some additional information in the interim that I hope will be of assistance.

There have been many questions about whether public benefits received by a child will be attributed to his or her alien parents or other family members for public charge purposes. It is INS policy that the receipt of benefits by a child -- either a U.S. citizen or an alien -- is not attributed to the alien parent or other family members for public charge purposes. The only time this general rule would not apply would be if the family were reliant on the child's benefits as its sole means of support.

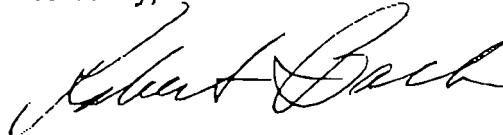
There have also been many questions related to the receipt of public benefits by aliens and their potential sponsorship of family members. The issue for the INS in adjudicating such petitions is whether the *sponsored alien* is likely to become a public charge, not whether *the sponsor* is or is likely to become a public charge. Rather, under the new affidavit of support rules that went into

Mr. Cliff Allenby
Ms. S. Kimberly Belshe
Page 2

effect in December 1997, a sponsor faces a different test: he or she must demonstrate an ability to support the sponsored immigrant(s) at 125 percent of the poverty level for the relevant household size.

Upon completion of the interagency process, the INS will be issuing guidance on public charge issues to all of its field offices, and we anticipate that federal benefit-granting agencies will also provide information relevant to their programs through their field structures. In addition, we plan to work with community-based organizations and advocacy groups to help assure that accurate information is made available to the public. We would welcome your advice on and assistance in educating Californians about this important matter to minimize any unfounded fears of adverse immigration consequences that can have negative effects on the public health.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert L. Bach", written in a cursive style.

Robert L. Bach
Executive Associate Commissioner

State Capitol
P.O. Box 942849
Sacramento, CA 94249-0001

651461

California Legislature

NOV 23 1998

November 10, 1998

The Honorable William J. Clinton
President of the United States
The White House
Washington, D.C. 90002

Dear Mr. President:

We are writing to express our extreme concern regarding the federal government's current implementation of immigration law, which is severely deterring a significant portion of Californians from accessing vital safety net services. Immigrant families' fear of "public charge" is creating a major public health crisis in our state.

Specifically, we urge this Administration to declare that local, state, and federal programs that do not offer cash assistance (such as health care) should be excluded from public charge determinations. Furthermore, the Immigration and Naturalization Services (INS) and the Department of State should be instructed to refrain from making policy choices that undermine this critical goal. Programs which are merely supplemental and do not provide the sole means of financial support to immigrant families should not be considered when making a public charge determination.

The law surrounding public charge – i.e. the adverse effect that receipt of government funded health care and other benefits may have on immigration status – has not changed in the last few years. Nevertheless, recent federal practices, including demanding repayment of Medicaid benefits properly received as a condition of obtaining a "green card" and recent dramatic changes in federal law have created great confusion and anxiety.

The chilling effect of this fear is unduly harming our efforts to reach California's uninsured children. We know that many needy U.S. citizen children - who are clearly eligible for safety net services – are going without services because of parents' fears that their children's enrollment could ultimately cause the separation of the family. Over 50% of California's uninsured children eligible for California's CHIP program, Healthy Families, and those eligible for Medicaid reside in immigrant families.

California has experienced limited success in enrolling uninsured children from immigrant families in the Healthy Families and Medi-Cal programs. The U.S. Department of Health and Human Services released preliminary results of a Los Angeles County study which attributes the dramatic drop

in immigrant utilization of Medi-Cal to fear regarding potential immigration consequences. Likewise, after four months, the Healthy Families program, of which 62% of potential eligibles are Latino children, has only reached 13% of its first-year enrollment target.

In such an environment, we have little hope that our CHIP and Medicaid program will successfully provide much-needed health care in our communities. Government policy has created an obstacle for these children which even the most effective outreach alone cannot overcome.

Your administration has fought hard to restore vital services, like SSI, Medicaid and Food Stamps to legal immigrants. Likewise, the federal government has invested substantial resources in the CHIP program. While we fully support and applaud these efforts, they will ultimately have little practical value in California's immigrant communities if those who are eligible for these programs fear coming forward and enrolling in them.

Thus, we urge you in the strongest possible terms to insist that the delivery of safety-net services to all populations remain your Administration's top priority and that local, state and federal programs that do not offer cash assistance (such as health care) should be exempt from public charge determinations.

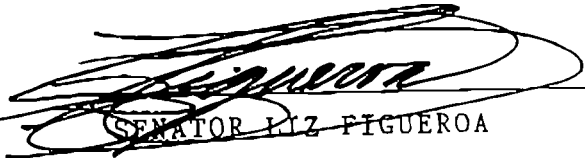

SENATOR DIANE E. WATSON


SENATOR HILDA L. SOLIS

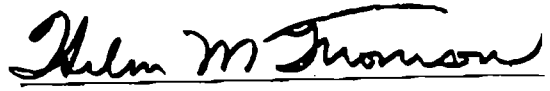

SENATOR HERSCHELL ROSENTHAL

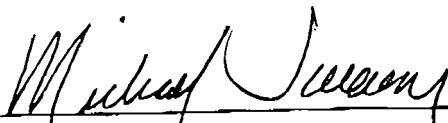

SENATOR RICHARD POLANCO


ASSEMBLYMEMBER MARTIN GALLEGOS


SENATOR LIZ FIGUEROA


ASSEMBLYMEMBER GIL CEDILLO

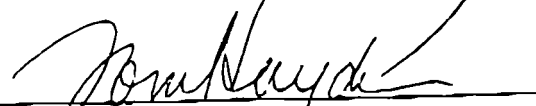

SENATOR HELEN THOMSON


ASSEMBLYMEMBER MICHAEL SWEENEY

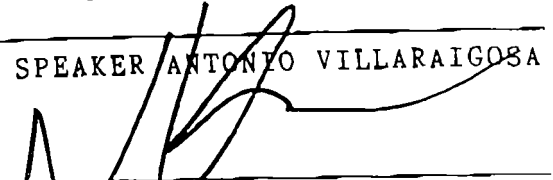

ASSEMBLYMEMBER SCOTT WILDMAN

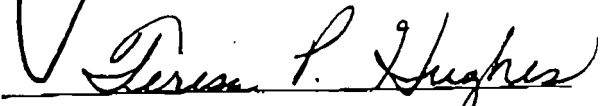


ASSEMBLYMEMBER MARTHA ESCUTIA

ASSEMBLYMEMBER EDWARD VINCENT

SENATOR TOM HAYDEN

SPEAKER ANTONIO VILLARAIGOSA

SENATOR JOHN VASCONCELLOS

SENATOR TERESA P. HUGHES

cc: Vice President Al Gore
Secretary of State Madeleine Albright
INS Commissioner Doris Meissner
Secretary of Agriculture Dan Glickman
Secretary of Health and Human Services Donna Shalala
Attorney General Janet Reno



BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

856 KENNETH HAHN HALL OF ADMINISTRATION / LOS ANGELES, CALIFORNIA 90012 / (213) 974-4111

'98 MAY 22 AM 11:38

GLORIA MOLINA
SUPERVISOR, FIRST DISTRICT

COMMUNITY OFFICE

May 19, 1998

Doris Meissner, Commissioner
U.S. Department of Justice
Immigration and Naturalization Service
425 I Street NW
Washington, DC 20536

Dear Commissioner:

I am extremely pleased that we had the opportunity to meet during my recent trip to Washington, D.C. As we discussed, urgent and immediate measures must be taken to aggressively tackle the naturalization backlog in the Los Angeles District. The County of Los Angeles is committed to working with you to provide the law-abiding and hardworking individuals awaiting naturalization their chance to fully engage in the democratic process as citizens.

Although we touched upon several important issues, I would like to re-emphasize a few points:

- 1) Welfare-to-Work - As Lynn Bayer, the Director of Public Social Services shared with you, we have a clerical pool of Welfare-to-Work participants who can meet many of your clerical needs. By hiring our participants you will be furthering the Administration's Welfare-to-Work mandate and take steps toward addressing the clerical backlog. Ms. Bayer will work with you and your staff to find a way to immediately implement this program.
- 2) Space - The County of Los Angeles has many facilities which it can make available to alleviate any overcrowding or lack of space which is currently hindering processing of naturalization applications. Upon receipt of your specific needs, we will work to immediately provide you with the appropriate facility space.

Ms. Doris Meissner, Commissioner
May 19, 1998
Page Two

- 3) Dedicated Staff - We look forward to working with your new appointee dedicated to solving the backlog issue in the Los Angeles District. As stated in our meeting, a team composed of my staff, and representatives from the Chief Administrative Office, the Departments of Public Social Services and Community and Senior Services will be working with your new appointee.
- 4) County Employees - The County cannot contract to provide you with salaried employees to assist with backlog reduction. Nevertheless, we are willing to explore any other viable options to relieve your personnel shortage. However, your hiring of Welfare-to-Work participants will allow you to shift your current clerical staff to areas of greater need.
- 5) Fingerprint Cards - I was pleased to learn that software is being sought to identify expiration of fingerprint cards. However, I must express my disappointment that James Angus could not provide a target date for implementation of this software program. I must insist that the County be provided with a reasonable time frame for software implementation and a formal explanation of why, as a matter of INS internal policy, fingerprint cards continue to be destroyed and the 15-month expiration of cards is still being followed despite the fact that processing applications exceeds the 15-month period. In the interim, I strongly urge you to identify those applicants who are 75 years of age and older who do not require fingerprints and move them to interview for adjudication.
- 6) Emergency Time Line - It is extremely important to provide timetables with measures to effectively reduce the backlog. Without them, the backlog will continue to rise, persons of good faith will continue to be deterred from naturalizing, and the INS will likely lose the interest of entities committed to assisting in the backlog reduction.
- 7) Local vs. National Control - As with all government functions, it is helpful to maintain accountability at the highest levels and reassuring to hear that headquarters will provide active oversight of backlog reduction measures in the Los Angeles District. This, however, should not preclude the Los Angeles District from moving forward on local initiatives.

These measures are merely the building blocks to the creation of an aggressive backlog reduction plan. We look forward to working with you and facilitating our mutual goals.

Ms. Doris Meissner, Commissioner
May 19, 1998
Page Three

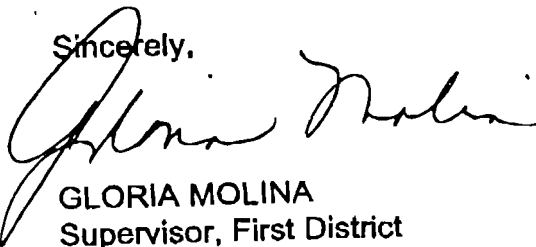
There is, however, one additional matter which has come to my attention since our meeting. As you know, President Clinton provided states with funding to create health insurance opportunities for low income children and to expand outreach to children eligible but not enrolled in Medicaid on the State Child Health Insurance Program (SCHIP). In California, we created the Healthy Families Program which will begin providing coverage to uninsured children living in families with incomes under 200 percent of the federal poverty level on July 1st.

I am bringing this to your attention because California, and Los Angeles in particular, has such a large number of immigrant families. According to state and federal health administration officials, as well as local INS representatives, it is unclear if a U.S. citizen child receives Healthy Families coverage those benefits will be used to demonstrate the non-citizen parent is a Public Charge when he or she adjusts his or her immigration status.

→ It is my understanding that there is no official memorandum stating a child's receipt of these benefits will not be used against the non-citizen parent at a future date. It is critical that a clear statement on how the INS will proceed be issued to the local INS District and to the media within the next few days. The State, the County and local community organizations are now being trained to assist families in filling out the application. They must be able to provide those families with accurate information. Simply put, the President's initiative to provide health coverage to uninsured citizen children remains in peril without your assistance.

As always, please feel free to contact me directly or my Legislative Deputy Rose Anne Rodriguez at (213) 974-4111.

Sincerely,



GLORIA MOLINA
Supervisor, First District

GM/RRR/mju

- c. Hon. Barbara Boxer
Lynn Cutler, Deputy Assistant to the President and Deputy Director of
Intergovernmental Affairs
Karen Skelton, Deputy Assistant to the President and Deputy Director of
Political Affairs
Ray Fisher, Department of Justice
David Janssen, Chief Administrative Officer
Lynn Bayer, Director of Public Social Services
Stephanie Klopfleisch, Director of Community and Senior Services



GARY LOCKE
Governor

STATE OF WASHINGTON
OFFICE OF THE GOVERNOR

P.O. Box 40002 • Olympia, Washington 98504-0002 • (360) 753-6780 • FAX (360) 753-4110 • TTY/TDD (360) 753-6466

July 21, 1998

The Honorable William J. Clinton
President of the United States
The White House
1600 Pennsylvania Avenue
Washington, D.C. 20503

COPY

Dear Mr. President:

I am writing to seek your intervention regarding the availability of health care for legal immigrants. It has come to my attention that many families are not obtaining needed vaccinations for their children and other necessary medical services out of fear that accessing these services will effect their immigration status.

The State Department and the Immigration and Naturalization Service have taken ambiguous and often conflicting positions on the treatment of Medicaid and other services provided by community and migrant health centers as a public benefit. Such treatment could lead to the immigrant families being treated as public charges, putting their immigration status at risk. I urge you to direct the federal agencies to clarify that Medicaid services not be classified as a public benefit for purposes of the "public charge" determination.

The receipt of these critically needed services, such as immunizations, is a public health concern to the communities in which legal immigrants reside. I know you share my belief that access to preventive health services, particularly for children, is of the utmost importance to their success and to the health of our communities. Because there has not been a definitive determination that Medicaid and services provided by a community or migrant health center are exempt from being classified as a public benefit, many legal immigrants are fearful that utilizing these services will determine that they are a public charge.

I urge you to take action to clarify the situation so that legal immigrant families will be able to access services to which they are legally entitled without fear of negative consequences.

Sincerely,

A handwritten signature of Gary Locke in dark ink.
Gary Locke
Governor

State-by-State Population Distribution of Noncitizens

	Total Non-Citizens	Percent
TOTAL	16,542,147	100.0%
AK	14,989	0.1%
AL	75,903	0.5%
AR	34,311	0.2%
AZ	470,053	2.8%
CA	5,378,251	32.5%
CO	159,956	1.0%
CT	130,932	0.8%
DC	34,767	0.2%
DE	11,987	0.1%
FL	1,298,554	7.8%
GA	145,018	0.9%
HI	103,669	0.6%
IA	49,035	0.3%
ID	69,130	0.4%
IL	757,856	4.6%
IN	41,075	0.2%
KS	65,615	0.4%
KY	49,020	0.3%
LA	56,605	0.3%
MA	386,972	2.3%
MD	282,653	1.7%
ME	11,816	0.1%
MI	295,095	1.8%
MN	136,214	0.8%
MO	30,552	0.2%
MS	10,822	0.1%
MT	5,886	0.0%
NC	153,261	0.9%
ND	3,336	0.0%
NE	37,549	0.2%
NH	26,874	0.2%
NJ	683,091	4.1%
NM	73,628	0.4%
NV	127,429	0.8%
NY	2,178,581	13.2%
OH	156,082	0.9%
OK	41,416	0.3%
OR	234,996	1.4%
PA	273,210	1.7%
RI	47,130	0.3%
SC	26,916	0.2%
SD	3,400	0.0%
TN	58,519	0.4%
TX	1,622,264	9.8%
UT	93,393	0.6%
VA	242,281	1.5%
VT	8,717	0.1%
WA	235,696	1.4%
WI	99,061	0.6%
WV	6,210	0.0%
WY	2,369	0.0%

Data source: March Supplement to the 1998 CPS Survey.

Note: Figures are rounded to the nearest one-tenth of one percentage point. In states where there is a 0%, the actual figures are less than .1% and are rounded to 0%.

State-by-State Population Distribution of Noncitizen Children & Women of Child Bearing Age

	Total Non-Citizens		Non-Citizen Children		Non-Citizen Women Age 15-44	
		Percent		Percent		Percent
TOTAL	16,542,147	100.0%	2,461,553	100.0%	5,115,846	100.0%
AK	14,989	0.1%	2,342	0.1%	4,704	0.1%
AL	75,903	0.5%	11,584	0.5%	28,240	0.6%
AR	34,311	0.2%	4,531	0.2%	9,880	0.2%
AZ	470,053	2.8%	83,421	3.4%	159,133	3.1%
CA	5,378,251	32.5%	780,595	31.7%	1,720,921	33.6%
CO	159,956	1.0%	38,086	1.5%	54,937	1.1%
CT	130,932	0.8%	5,012	0.2%	26,305	0.5%
DC	34,767	0.2%	2,473	0.1%	10,059	0.2%
DE	11,987	0.1%	1,989	0.1%	4,454	0.1%
FL	1,298,554	7.8%	194,440	7.9%	385,599	7.5%
GA	145,018	0.9%	16,855	0.7%	60,594	1.2%
HI	103,669	0.6%	9,847	0.4%	28,746	0.6%
IA	49,035	0.3%	12,944	0.5%	15,522	0.3%
ID	69,130	0.4%	15,832	0.6%	21,827	0.4%
IL	757,856	4.6%	129,407	5.3%	203,408	4.0%
IN	41,075	0.2%	3,927	0.2%	16,726	0.3%
KS	65,615	0.4%	14,432	0.6%	20,369	0.4%
KY	49,020	0.3%	13,924	0.6%	19,626	0.4%
LA	56,605	0.3%	9,304	0.4%	19,947	0.4%
MA	386,972	2.3%	62,667	2.5%	112,606	2.2%
MD	282,653	1.7%	45,730	1.9%	78,486	1.5%
ME	11,816	0.1%	1,807	0.1%	4,852	0.1%
MI	295,095	1.8%	37,383	1.5%	92,127	1.8%
MN	136,214	0.8%	25,040	1.0%	52,336	1.0%
MO	30,552	0.2%	0	0.0%	5,740	0.1%
MS	10,822	0.1%	0	0.0%	4,987	0.1%
MT	5,886	0.0%	0	0.0%	2,027	0.0%
NC	153,261	0.9%	33,362	1.4%	56,618	1.1%
ND	3,336	0.0%	410	0.0%	1,998	0.0%
NE	37,549	0.2%	6,110	0.2%	14,554	0.3%
NH	26,874	0.2%	2,618	0.1%	5,822	0.1%
NJ	683,091	4.1%	101,934	4.1%	182,323	3.6%
NM	73,628	0.4%	12,704	0.5%	19,832	0.4%
NV	127,429	0.8%	19,590	0.8%	39,934	0.8%
NY	2,178,581	13.2%	314,639	12.8%	644,499	12.6%
OH	156,082	0.9%	6,312	0.3%	29,476	0.6%
OK	41,416	0.3%	6,228	0.3%	15,254	0.3%
OR	234,996	1.4%	42,796	1.7%	67,352	1.3%
PA	273,210	1.7%	34,634	1.4%	80,559	1.6%
RI	47,130	0.3%	5,014	0.2%	18,318	0.4%
SC	26,916	0.2%	0	0.0%	7,678	0.2%
SD	3,400	0.0%	781	0.0%	1,360	0.0%
TN	58,519	0.4%	0	0.0%	19,190	0.4%
TX	1,622,264	9.8%	242,716	9.9%	516,339	10.1%
UT	93,393	0.6%	19,069	0.8%	25,620	0.5%
VA	242,281	1.5%	33,289	1.4%	96,862	1.9%
VT	8,717	0.1%	1,109	0.0%	2,333	0.0%
WA	235,696	1.4%	44,245	1.8%	80,652	1.6%
WI	99,061	0.6%	10,267	0.4%	22,122	0.4%
WV	6,210	0.0%	0	0.0%	2,117	0.0%
WY	2,369	0.0%	148	0.0%	876	0.0%

Data source: March Supplement to the 1998 CPS Survey.

Note: Figures are rounded to the nearest one-tenth of one percentage point. In states where there is a 0%, the actual figures are less than .1% and are rounded to 0%.

Congress of the United States

Washington, DC 20515

March 23, 1999

William J. Clinton
President of the United States
The White House
Washington, D.C. 20500

Dear Mr. President:

We are writing to request that you direct your Administration to finalize and publish guidance on the issue of public charge. We understand that an inter-agency group has been working on an official policy to implement the immigration law for several months. This group must be encouraged to complete its analysis and release clear, comprehensive and binding policy on this issue.

The lack of clarity on the public charge issue deters eligible individuals from participating in a wide variety of social safety net programs, out of fear that participation will negatively impact their immigration citizenship status. These include child nutrition, emergency assistance to alleviate losses due to crop damage, children's health, and job-training, among others. In each case, many people who are eligible for needed assistance, including U.S.-citizen children of immigrant parents, have been deterred from participation because of fear of immigration consequences. The resulting depressed participation rates in these programs have negative effects that go beyond the particular individuals who are afraid to enroll in public programs. One in five individuals in the U.S. has an immigrant parent. Because of this, policies that deter immigrant participation endanger some of your most important public health, education and inclusiveness goals.

For example, we know of your commitment to the child health issues and that you, the First Lady and the Vice President have all expressed great concern about the exceedingly low enrollment in the Children's Health Insurance Program (CHIP). In California and other high immigrant states, there is no question that CHIP participation will never meet its potential, nor help those it aims to benefit, unless and until the question of public charge is cleared up for immigrant families. Until clear formal guidance is issued, community-based organizations and health providers cannot assure parents of potential participants that their participation will not undermine the parents' immigration status.

Many of us support your Fiscal Year 2000 proposals to restore SSI, Food Stamps, Medicaid, CHIP and prenatal care to legal immigrants. Even if the law is changed, however, we believe a substantial proportion of the eligible population will not participate for fear of jeopardizing their immigration status or that of a family member. This is not tenable.

Mr. President, you and the Vice President took a bold and unprecedented step in declaring an emergency in California due to the citrus freeze. That step made farmworkers eligible for federal assistance in the form of housing and unemployment assistance. Unfortunately, many farmworkers are not benefiting from those programs out of fear that they will be considered a public charge. Again, the lack of clarification on what constitutes a public charge is a barrier to the implementation of much-needed programs.

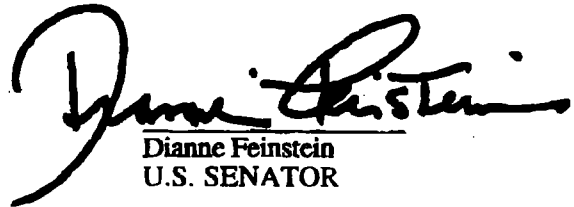
We must address the mounting fear gripping immigrant communities. Your Administration can do so by clarifying the immigration consequences of participating in government programs. Specifically, by designating which specific programs are relevant to the public charge inquiry, and clarifying that participation in any other programs is not relevant and will not be taken into account in determining whether individuals will be admitted or deported because they are considered a public charge.

Thank you for your consideration of this matter of vital importance to the State of California as well as other states. We stand committed to work with you and your Administration to make sure that all those eligible can benefit from programs such as CHIP and would be happy to assist your Administration in planning outreach to help this program meet its mandate.

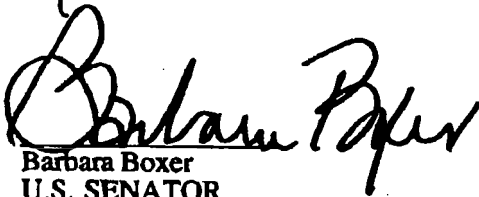
Sincerely,



Xavier Becerra
MEMBER OF CONGRESS



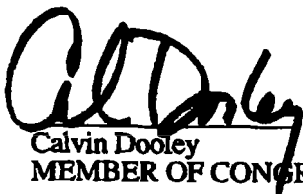
Dianne Feinstein
U.S. SENATOR



Barbara Boxer
U.S. SENATOR



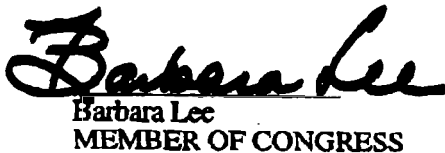
Lucille Roybal-Allard
MEMBER OF CONGRESS



Calvin Dooley
MEMBER OF CONGRESS



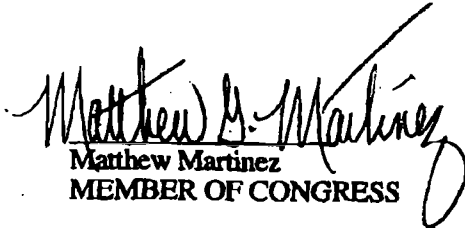
George Miller
MEMBER OF CONGRESS



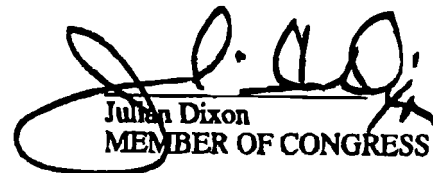
Barbara Lee
MEMBER OF CONGRESS



Lynn Woolsey
MEMBER OF CONGRESS



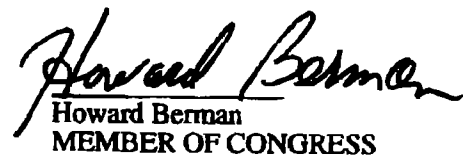
Matthew Martinez
MEMBER OF CONGRESS



Julian Dixon
MEMBER OF CONGRESS



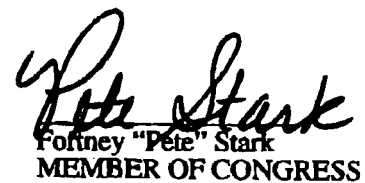
Loretta Sanchez
MEMBER OF CONGRESS



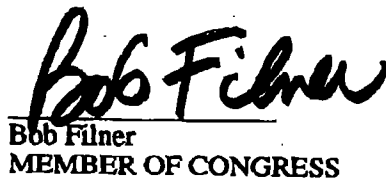
Howard Berman
MEMBER OF CONGRESS



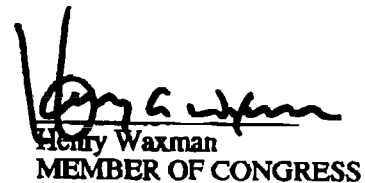
Zoe Lofgren
MEMBER OF CONGRESS



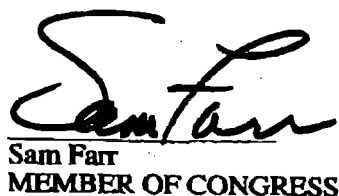
Fortney "Pete" Stark
MEMBER OF CONGRESS



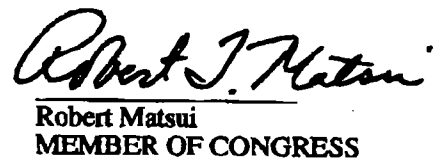
Bob Filner
MEMBER OF CONGRESS



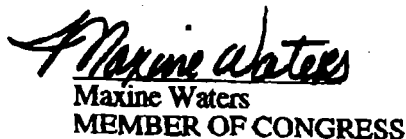
Henry Waxman
MEMBER OF CONGRESS



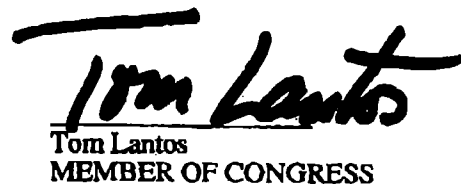
Sam Farr
MEMBER OF CONGRESS



Robert Matsui
MEMBER OF CONGRESS



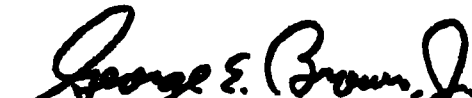
Maxine Waters
MEMBER OF CONGRESS



Tom Lantos
MEMBER OF CONGRESS


Mike Thompson
MEMBER OF CONGRESS


Nancy Pelosi
MEMBER OF CONGRESS


George E. Brown, Jr.
MEMBER OF CONGRESS


Brad Sherman
MEMBER OF CONGRESS


Ellen Tauscher
MEMBER OF CONGRESS


Lois Capps
MEMBER OF CONGRESS


Anna Eshoo
MEMBER OF CONGRESS


Grace F. Napolitano
MEMBER OF CONGRESS


Gary Condit
MEMBER OF CONGRESS


Juanita Millender-McDonald
MEMBER OF CONGRESS

March 29, 1999

Mr. Andrew L. Stern
International President
Service Employees International Union
AFL-CIO, CLC
1313 L Street, N.W.
Washington, D.C. 20005

Dear Andrew:

Thank you for your letter regarding the public charge issue that is of concern to many members of our nation's immigrant communities. I regret that I was unable to respond sooner. I am glad to have your insights and suggestions, and I've forwarded your correspondence to members of my senior staff who are working with the Justice Department and the INS to resolve this critical issue. This is a high priority for us, and be assured that your views will be carefully considered.

As my Administration works to ensure that our nation does not turn its back on the health and well-being of our nation's most vulnerable people. I'm glad to know I can count on your help.

Sincerely,

BILL CLINTON

BC/DIA/SH/NS/DC/pfs-bws (Corres. #4249744)
(3.stern.al)

cc: w/cy of inc to I. Bueno, Rm 217-R

289346

December 17, 1998



The Honorable William J. Clinton
 President of the United States
 The White House
 1600 Pennsylvania Avenue, N.W.
 Washington, D.C., 20500

Dear Mr. President:

I am writing on behalf of the thousands of low wage immigrant workers represented by SEIU who work in nursing homes, in home care and in building services. I am deeply concerned that our hard working members, who come to this country from Latin America, Asia, the Caribbean and many other parts of the world, are not taking advantage of programs newly available through the State Children's Health Insurance Program due to their fear of retaliation from the Immigration and Naturalization Service.

Because many employers do not provide low wage workers with affordable family health care coverage, our union is undertaking a multi-state outreach program to inform members about the new programs established as part of the State Children's Health Insurance Program (CHIP). As most of our immigrant members' children were born in this country, they are eligible for these programs. The problem that we are finding is that immigrant parents shy away from signing up their children for these programs because they are afraid that use of these services could result in negative immigration consequences for family members in the future.

✓ We understand that the Department of State and the Immigration and Naturalization Service have been actively seeking information from immigrants and their family members about prior use of health care and nutrition services. In some instances this information has been used to deny visas or changes in immigration status if the person is believed to become a "public charge," or likely to use public benefits. These practices create a chilling effect which keep all members of immigrant families away from government funded services.

Your administration has shown a strong commitment to expanding access to health care for children through CHIP and Medicaid, including large investments in outreach programs. I applaud your leadership in this area and at the same time ask you to address immigration policies that will make it impossible even with aggressive outreach to provide much needed

ANDREW L. STERN
 International President
 BETTY BEDNARCZYK
 International Secretary-Treasurer

ANNA BURGER
 Executive Vice President
 PATRICIA ANN FORD
 Executive Vice President

ELISEO MEDINA
 Executive Vice President

PAUL POLICICCHIO
 Executive Vice President

SERVICE EMPLOYEES
 INTERNATIONAL UNION
 AFL-CIO, CLC

1313 L Street, N.W.
 Washington, D.C. 20005
 202.898.3200
 TDD: 202.898.3481
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page 2

The Honorable William J. Clinton
December 3, 1998

health care in immigrant communities. Specifically, I stand with other immigration advocates in requesting a clarification of Immigration and Naturalization Service guidelines of their "public charge" policy in the following manner:

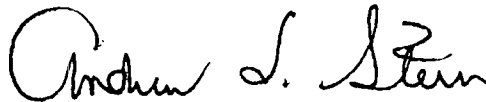
1) Local, state and federal programs that do not offer cash assistance (e.g., health care programs) should be excluded from public charge determinations. These supplemental programs do not provide the sole means of support to immigrant families and are not good indicators of whether a person is likely to become dependent on public benefits.

2) Only the individual receiving non-cash public benefits should be subject to the public charge test. Family members who do not receive public benefits should be excluded from the public charge test. For example, a citizen child's enrollment in CHIP of Medicaid should not affect her mother's attempts to adjust her immigration status.

3) Temporary use of benefits should not be considered in public charge determinations. Immigrants may use public benefits temporarily if they lose their jobs, need to flee an abusive relationship, or have lost their health care coverage. Using benefits for a short period of time does not demonstrate that the immigrant will become dependent on public benefits in the future.

Thank you for your attention to this very important matter. Our Union is fighting hard to improve the lives of low wage immigrant workers. I urge you to insist that delivery of safety-net services be your Administration's top priority, and to instruct all federal agencies - especially the Immigration and Naturalization Service and the Department of State - to refrain from making policy choices which undermine this critical goal.

Sincerely,



Andrew L. Stern
International President

cc: Vice President Al Gore
Deputy Chief of Staff Maria Echaveste
Attorney General Janet Reno
Secretary of Health and Human Services Donna Shalala
Secretary of Agriculture Dan Glickman
AFL-CIO President John J. Sweeney

ALS: cr: im

March 29, 1999

Ms. Antonia Hernandez
President
Mexican American Legal Defense
and Educational Fund
Suite 410
1518 K Street, N.W.
Washington, D.C. 20005

Dear Antonia:

Thank you for your letter regarding the public charge issue that is of concern to many members of immigrant communities. I regret that I was unable to respond sooner. I am glad to have your insights and suggestions, and I've forwarded your correspondence to members of my senior staff who are working with the Justice Department and the INS to resolve this critical issue. This is a high priority for us, and be assured that your views will be carefully considered.

As my Administration works to ensure that our nation does not turn its back on the health and well-being of our nation's most vulnerable people, I'm glad to know I can count on your help.

Sincerely,

BILL CLINTON

BC/DIA/SH/NS/DC/pfs-bws (Corres. #4242460)
(3.hernandez.a)

cc: w/cy of inc to I. Bueno, Rm 217-R



December 23, 1998

William J. Clinton
President of the United States
The White House
Washington, D.C.

Dear Mr. President:

On behalf of the Mexican American Legal Defense and Educational Fund, I am writing to express deep concern that a large number of Latinos, Asian Americans, and other members of the immigrant community continue to be afraid to enroll in Medicaid, CHIP, food stamps and other vital programs, believing that they or their family members will suffer negative immigration consequences as a result of their participation. Moreover, recent activity on the part of the INS and the State Department with regard to immigrants and public benefits has had a widespread chilling effect on the immigrant community's participation in all government sponsored benefits.

We understand that the INS and the State Department have been seeking information from immigrants and their family members about past use of health care and nutrition services in order make decisions on family reunification visas. These types of inquiries are enough to cause fear in the immigrant community that receipt of any government sponsored services may jeopardize their efforts to immigrate. Additionally, the immigrant community fears that there is no assurance that information divulged to social service agencies will be kept confidential and used only for the purposes for which it was gathered.

Please note that this a problem that does not affect the immigrant alone, but has serious implications for the U.S. citizen children of non-citizen parents and other eligible relatives.. These children are clearly eligible for safety net services, but are going without them because of the fear that their enrollment could, at some time in the future, mean a separation from their non-citizen parent. One of the consequence of such fears is that a laudable program such as the CHIP program will not reach many of the children who desperately need the health care that it is meant to provide.

MALDEF, and the communities that we represent, are grateful for the Administration's restoration of services such as SSI, Medicaid, and food stamps to certain legal immigrants and the commitment of substantial resources to the CHIP program. However, to prevent

National Office

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Los Angeles, CA 90014
Telephone: (213) 629-2512
FAX Legal: (213) 629-0266
FAX Non Legal: (213) 629-3120

Regional Offices:

542 S. Dearborn Street
Suite 750
Chicago, IL 60605
(312) 427-9363
FAX: (312) 427-9393

182 Second Street
2nd Floor
San Francisco, CA 94105
(415) 543-5598
FAX: (415) 543-8235

The Book Building
140 E. Houston Street
Suite 300
San Antonio, TX 78205
(210) 224-5476
FAX: (210) 224-5382

1518 K Street N.W.
Suite 410
Washington, DC 20005
(202) 628-4074
FAX: (202) 393-4206

those who are eligible for these programs from failing to enroll out of fear, strongly urge you to instruct all federal agencies, particularly the INS and the Department of State, to not undermine the great efforts made to restore benefits.

As you contemplate the nature of your Administration's guidance to federal agencies, MALDEF believes that it is imperative that any policy decisions or language that could be read or interpreted by the immigrant community to mean that the choice to accept government sponsored help may have negative immigration consequences should be avoided.

Sincerely,

A handwritten signature in black ink that reads "Antonia Hernandez". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

ANTONIA HERNANDEZ
PRESIDENT

cc: Maria Echaveste
Deputy Chief of Staff

Julie Fernandez
Special Assistant to the President
for Domestic Policy

CAPITOL OFFICE
1119 LONGWORTH HOB
WASHINGTON, DC 20515
PHONE: (202) 225-6235
FAX: (202) 225-2202



Congress of the United States
House of Representatives
XAVIER BECERRA
30TH DISTRICT, CALIFORNIA

DISTRICT OFFICE
1910 SUNSET BLVD., #560
LOS ANGELES, CA 90026
PHONE: (213) 483-1425
FAX: (213) 483-1429

FAX COVER SHEET

DATE: 3/19/99

TO: RENE BUENO

FAX#: 456- 5581

FROM: LAURA ARCINIEGA

NO. PAGES (including cover sheet): _____

COMMENTS:

Janet Reno
Attorney General
Department of Justice
950 Pennsylvania Ave., N.W.
Washington, DC 20530

DRAFT

Dear Ms. Reno:

We are writing to request that the Department of Justice finalize and publish guidance on the issue of public charge. We understand that an inter-agency group has been working on an official policy to implement the immigration law for several months. This group must be encouraged to complete its analysis and release clear, comprehensive and binding policy on this issue.

The lack of clarity on the public charge issue deters eligible individuals from participating in a wide variety of social safety net programs, out of fear that participation will negatively impact their immigration citizenship status. These include child nutrition, emergency assistance to alleviate losses due to crop damage, children's health, and job-training, among others. In each case, many people who are eligible for needed assistance, including U.S.-citizen children of immigrant parents, have been deterred from participation because of fear of immigration consequences. The resulting depressed participation rates in these programs have negative effects that go beyond the particular individuals who are afraid to enroll in public programs. One in five individuals in the U.S. has an immigrant parent. Because of this, policies that deter immigrant participation endanger some of the Administration's most important public health, education and inclusiveness goals.

For example, we know of the Administration's commitment to the child health issues and that the President, the First Lady and the Vice President have all expressed great concern about the exceedingly low enrollment in the Children's Health Insurance Program (CHIP). In California and other high immigrant states, there is no question that CHIP participation will never meet its potential, nor help those it aims to benefit, unless and until the question of public charge is cleared up for immigrant families. Until clear formal guidance is issued, community-based organizations and health providers cannot assure parents of potential participants that their participation will not undermine the parents' immigration status.

Many of us support the President's Fiscal Year 2000 proposals to restore SSI, Food Stamps, Medicaid, CHIP and prenatal care to legal immigrants. Even if the law is changed, however, we believe a substantial proportion of the eligible population will not participate in these programs for fear of jeopardizing their immigration status or that of a family member. This is not tenable.

The Administration took a bold and unprecedented step in declaring an emergency in California due to the citrus freeze. That step made farmworkers eligible for federal assistance in the form of housing and unemployment assistance. Unfortunately, many farmworkers are not benefiting from those programs out of fear that they will be considered a public charge. Again, the lack of clarification on what constitutes a public charge is a barrier to the implementation of much-needed programs.

We must address the mounting fear gripping immigrant communities. The Administration can do so by clarifying the immigration consequences of participating in government programs. Specifically, the Administration should designate which programs are relevant to the public charge inquiry, and clarify that participation in any other programs is not relevant and will not be taken into account in determining whether individuals will be admitted or deported because they are considered a public charge.

Thank you for your consideration of this matter of vital importance to the State of California as well as other states. We stand committed to work with you and your Administration to make sure that all those eligible can benefit from programs such as CHIP and would be happy to assist your Administration in planning outreach to help this program meet its mandate.

DRAFT

William J. Clinton
President of the United States
The White House
Washington, DC

DRAFT

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Mr. President, you and the Vice President took a bold and unprecedented step in declaring an emergency in California due to the citrus freeze. That step made farmworkers eligible for federal assistance in the form of housing and unemployment assistance. Unfortunately, many farmworkers are not benefiting from those programs out of fear that they will be considered a public charge. Again, the lack of clarification on what constitutes a public charge is a barrier to the implementation of much-needed programs.

We must address the mounting fear gripping immigrant communities. Your Administration can do so by clarifying the immigration consequences of participating in government programs. Specifically, by designating which specific programs are relevant to the public charge inquiry, and clarifying that participation in any other programs is not relevant and will not be taken into account in determining whether individuals will be admitted or deported because they are considered a public charge.

Thank you for your consideration of this matter of vital importance to the State of California and the rest of the country as well. We stand committed to work with the Department of Justice and the Administration to make sure that all those eligible can benefit from programs such as CHIP and would be happy to assist you in planning outreach to help this program meet its mandate.

DRAFT



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

The General Counsel
Washington, D.C. 20201

October 26, 1998

Randolph Moss
Deputy Assistant Attorney General
Office of Legal Counsel
Department of Justice
10th & Pennsylvania Avenue, N.W.
Room 5238
Washington, D.C. 20530

Dear Randy:

As you know, we have been involved in on-going inter-Departmental discussions (among DOJ, INS, Department of State, USDA, DPC, OMB and HHS) about the circumstances under which an alien who lawfully receives public benefits may be determined to be a public charge. It has been brought to our attention this week that the INS takes the position that, under certain circumstances, an alien admitted after December 1, 1997 with the new affidavit of support who receives Federal or State means-tested benefits could be deportable as a public charge. We have been told that the INS believes that a three-part test articulated in the 1948 case In the Matter of B-, 1948 BIA LEXIS 44, 3 I.&N. Dec. 323 (September 10, 1948) (copy attached), is binding on the INS under these circumstances and that an alternative policy regarding aliens admitted with the new affidavit of support cannot be issued unless and until the Attorney General expressly overrules this case.

As stated in the Matter of B- case, an alien becomes a public charge and is subject to deportation if 1) the State has a cause of action in contract against either the alien receiving the services or against other designated relatives or friends; 2) a demand for payment of the charges is made against those persons liable under State law; and 3) those liable for the charges fail to pay. In this case, the Board was construing the "public charge" clause in section 19 of the Immigration Act of 1917 and giving meaning to responsibilities created under State law. Most importantly, this case was decided before Congress required aliens and their sponsors to execute binding affidavits of support to establish that an alien is not excludable as a public charge.

It is our view that the Matter of B- case is irrelevant now that Congress has enacted a new immigration scheme that includes, as its focal point, a binding three-way relationship between the sponsor, the alien and the benefit provider. See section 551 of the Illegal Immigration Reform

Randolph Moss - Page Two

and Immigrant Responsibility Act of 1996, P.L. 104-208. In considering this new scheme, Congress expressly examined and then rejected a provision that would have subjected legal immigrants to deportation if they received means-tested benefits for an aggregate of 12 months within their first 5 years (S. 1664) or 7 years (H.R. 2202) of legal permanent residence. (Copies of the relevant bill and report language are attached). In addition, H.R. 2202 contained a provision that would have placed new restrictions on naturalization by preventing sponsored aliens from becoming citizens if their sponsors owed any outstanding reimbursements for benefits received by the sponsored alien. (See attached). The Administration strongly objected to both provisions and they were stricken. (Much of this legislative history is documented in a DOJ Conference document (5/31/96), a joint letter from SSA, DOL and HHS (6/19/96), and the final bill language which dropped the offending provisions).

Congress recently has addressed whether to use deportation as a tool to remedy the lawful use of means-tested benefits by permanent resident aliens. Furthermore, the Administration was clearly opposed to such a provision, and it was a high priority of this Department and the Administration to ensure it was not enacted in the final version. It is our view that to determine administratively at this point that legal aliens who lawfully receive benefits would be subject to deportation based on debt incurred by a sponsor as a result of an affidavit of support goes beyond the statute and undermines express Congressional intent.

Sincerely,



Harriet S. Rabb

Attachments

cc: Rob Weiner (w/attachment)
Jeff Farkas
Jack Smalligan
Cynthia Rice
Julie Fernandez

California to D.C.: Quit stalling on kids' health care

Many Latinos fear that if they sign their children up for these health benefits, their action will fall under the 'public charge' provision of federal immigration law

IT'S NOT NEWS WHEN ONE branch of the federal government doesn't know what another branch is doing or when their policies undercut or contradict each other. But when the health and well-being of hundreds of thousands of children of working Californians is at stake and state officials have been protesting for nearly a year, the federal government should end its stalling and bureaucratic gobbledygook and resolve the problem.

In 1997, the federal government created a national program to provide health insurance for children of the working poor, those whose parents earn between 100 percent and 200 percent of the federal poverty level. Of those earning less than 200 percent in California (\$27,000 for a family of three), 70 percent have no health insurance.

The California version became known as the Healthy Families Program, for which some 328,000 children are eligible—three-fourths of them Latino. Many of these Latino children are U.S. citizens. Every \$1 the state appropriates for the program, the federal government doubles. The feds have budgeted \$800 million over five years just for California.

As of the end of February, however, only about 77,500 children have been signed up, 35,000 of them Latino. Thousands of eligible Latino families are not signing up because they fear



JOHN JACOBS

reprisals from another federal agency, the Immigration and Naturalization Service (INS).

In the aftermath of Proposition 187 and years of immigrant-bashing by Congress and by some Republicans in California, many Latinos fear that if they sign their children up for these health benefits, their action will fall under the "public charge" provision of federal immigration law. Public charge is a term that INS and the State Department use to describe immigrants who cannot support themselves and who have or will become dependent on public benefits.

Those deemed a public charge risk denial of admission to the United States or adjustment to legal permanent status — or even deportation. Even if the kids are citizens, their parents often are not. Some fear they couldn't bring other family members here. Immigration lawyers say they can't advise their

clients to take the risk.

The same deep fear is at work in the Medi-Cal program, where additional hundreds of thousands of children (and their parents) are not signing up for health benefits for which they are eligible out of concern about the public charge implications. This is so even though it is absurd to view publicly funded health care coverage in the same manner as cash assistance or food stamps.

For the past 10 months, a variety of California agencies, public officials, including Assembly Speaker Antonio Villaraigosa, and community-based organizations have asked the federal government to clarify whether the public charge provision applies to the Healthy Families program. They have yet to get a definitive answer, and they are frustrated.

"We want an unequivocal statement from INS," Villaraigosa said in an interview Tuesday, "so we can enroll kids in this program who are American citizens or legal immigrants. The idea that we effectively deny them health care turns public policy on its head."

In a Dec. 7, 1998, letter to INS Commissioner Doris Meissner, then-Health Services Director Kim Belshe and Cliff Allenby, chairman of the Managed Risk Medical Insurance Board (which administers the Healthy Families

Program), wrote:

"The INS's failure to issue clear and unambiguous policy on public charge is resulting in fewer children being enrolled in these vital health programs. While we are sure this is not your intent, your agency's lack of action has become a major impediment in our outreach efforts." Later in the letter they added, "We are disheartened by the failure of INS to provide clear written policy on these immigration issues."

In response, Belshé and Allenby got a Dec. 22 letter from Robert Bach, executive associate commissioner of INS, saying INS was working out policy guidelines in conjunction with the State Department and the Department of Health and Human Services. "It is INS policy," Bach said, "that the receipt of benefits by a child - either a U.S. citizen or an alien - is not attributed to the alien parent or other family members for public charge purposes." An earlier INS letter on the same point said, "it has been INS policy."

But in a letter Allenby sent to the White House that same day (one of seven letters California officials have sent to the INS on the public charge controversy), he said INS statements on the Health Families program have been so "qualified" that they don't "provide the level of certainty that immigrant populations seek in order to alleviate their con-

cerns about public charge. ... Until this question is clarified in plain, understandable language, we will be unable to address the concerns of a large segment of the eligible population."

The Clinton administration says it cares about equal access to health care, about the working poor, about Latino immigrants, about California. Vice President Al Gore has made 58 trips to California and hopes it will help anchor his presidential campaign effort next year. Meanwhile, if this matter is not soon clarified and Latinos continue refusing to enroll their kids in a health insurance program for which they are eligible, not only will their health suffer, but California eventually will lose its share of this federal money.

Last time anyone checked, Doris Meissner at INS, Donna Shalala at HHS and Madeleine Albright at the State Department all work for the Clinton-Gore administration. So what's taking so long?

McClatchy Newspapers political editor John Jacobs' column appears in The Bee on Tuesday, Thursday and Sunday. He can be reached by phone at 321-1914; by fax at 321-1996; by letter at Box 16779, Sacramento, CA, 95852-0779; or by e-mail at jjacobs@sacbee.com.