

Immigration Reform and Access to Public Benefits: The Return of an Uneasy Coupling

By JONATHAN BLAZER
NILC Public Benefits Policy Attorney

May 15, 2006

Background

As Congress contemplates major changes to the immigration system, advocates and a growing grassroots movement of immigrant communities have pressed the Senate to go beyond the House's narrow, punitive-only approach and to consider "comprehensive" reforms addressing the systemic inequities of our immigration system. One such inequity is the continued exclusion of millions of immigrants — including lawfully present individuals — from basic safety-net services and work supports that their tax dollars fund and that are available to other U.S. residents. In particular need of reconsideration are the failed policies underlying the 1996 welfare law, which introduced severe new restrictions on immigrant eligibility for federally-funded services, departing from a more inclusive tradition. Over half of all states chose at their own expense to cover one or more of the essential services no longer funded by the federal government, investing in preventive health care, for example, as a matter of sound public health policy. However, states have been unable to fill in all of the gaps created by this historic cost shift, resulting in deep hardships for immigrant families, including U.S. citizen children of immigrant parents.

Nevertheless, the debate over immigration reform has seemed an inhospitable setting to promote improvements to the rules excluding immigrants from benefits programs. Advocates for proposals to offer immigrants who are living and working in the United States an opportunity to legalize their status portray undocumented immigrants as exceptionally hard-working. This positive

depiction, strikingly accurate according to employment data, can be undercut by discussions of public benefit needs, even with respect to programs that support workers. Opponents of legalization invariably highlight the potential costs of offering a pathway to permanent status, particularly in public benefits expenditures, even if those costs would not surface for years and without considering the offsets from the increased taxes that legalized immigrants with higher earnings would pay.

In such a setting, proposing progressive benefits reform has often appeared counterproductive, and even holding the line on program rules has posed a challenge. In fact, the legacy of the broad five-year bar imposed under the 1996 welfare law can be traced to the last time that the U.S. enacted a major legalization program. Because of concerns about cost burdens, undocumented immigrants who secured status under the Immigration Reform and Control Act of 1986 (IRCA) generally were barred from major federal public assistance programs for five years after legalizing.

The risks of proposing a broad reassessment of benefits rules in this context have seemed particularly worrisome in the rancorous environment of the ongoing immigration debate and under the current Congress. Although major improvements in the laws governing benefits eligibility are desperately needed, there is also ground that could be lost.

Understanding this risk, some advocates cautiously have pressed senators to offer benefits-related amendments on behalf of special populations with particularly dire needs, such as a time-limited extension of Supplemental Security Income



NATIONAL
IMMIGRATION
LAW CENTER
www.nilc.org

LOS ANGELES (Headquarters)

3435 Wilshire Boulevard
Suite 2850
Los Angeles, CA 90010
213 639-3900
213 639-3911 fax

WASHINGTON, DC

1101 14th Street, NW
Suite 410
Washington, DC 20005
202 216-0261
202 216-0266 fax

OAKLAND, CA

405 14th Street
Suite 1400
Oakland, CA 94612
510 663-8282
510 663-2028 fax

(SSI) eligibility for refugees and other humanitarian immigrants and the elimination of the five-year bar for victims of domestic violence and other serious crimes who are otherwise eligible for immigration relief. Thus far, such efforts have not been successful.

Misleading Analysis of Budgetary Impact

Even so, opponents of legalization have attempted to use the specter of “runaway” public benefits costs as a tool to undermine comprehensive immigration reform. Sen. John Kyl (R-AZ), whose own bill (S. 1438) would prevent undocumented immigrants from obtaining lawful permanent resident status, said of legalization’s impact on Medicaid: “It could be pretty big, and one of the problems is nobody knows how big.” Sen. Jeff Sessions (R-AL), speaking of legalization proposals he fiercely opposes, said, “There is no doubt about it, American taxpayers will pay if this legislation passes . . . [I]t will be a drain on our programs.” After referencing a number of public benefits such as Medicaid and food stamps, a writer in the *National Review* even asserted, “Neither Congress nor the Bush administration seems to realize that when illegal aliens who earn low wages are transformed into guest-workers or recipients of amnesty who earn low wages, they will immediately become eligible for all these government programs” (Jim Boulet Jr., “The Costs of Amnesty: Who’s Got the Bill?,” *National Review Online*, Mar. 30, 2006).

These claims are difficult to reconcile with the structure of proposed legalization programs and how those programs intersect with existing rules governing immigrant eligibility for public benefits. For example, the recent Hagel-Martinez compromise proposal (S. 2611, 2612), which modifies the comprehensive immigration reform bill approved by the Senate Judiciary Committee, offers its least encumbered pathway to legalization for undocumented workers who have lived in the U.S. for the past five years or more. Such individuals would be eligible to apply for a conditional status and then, after six to eight years, become eligible to apply for lawful permanent residence. Once LPR status is granted, they would become “qualified” immigrants for public benefits purposes. However,

even after obtaining such “qualified” status, they would be required to wait an additional five years before becoming eligible to apply for the major federal public benefits programs. The implications are distressing: the proposed legalization program combines with existing benefits rules to create a public policy that would effectively impose a *16 to 18-year residency requirement* (5 past years and 11 to 13 future years) before which legalized immigrants become potentially eligible for federal benefits such as Medicaid. Of course, only a minority of legalized immigrants would actually become eligible for such programs so many years from now, since they would also have to meet all other program criteria (e.g., low-income, disability, age, and family status). The imposition of such a lengthy benefits exclusion on persons who have already established deep roots in the U.S. and who are fully expected to remain here marks a further departure from our country’s tradition of providing a core safety net for all citizens and immigrants living in the U.S. permanently. Segregating one class of persons from essential services also undermines the much touted goals of integrating immigrants into communities and will thwart any national efforts to achieve progress in areas such as health, nutrition, and economic security.

Even under the restrictive rules currently in place, comprehensive immigration reform proposals necessarily would carry *some* public benefits-related costs. The Congressional Budget Office (CBO) is in the process of producing a cost estimate on the Hagel-Martinez proposal, including costs to the food stamps and Medicaid programs. However, the bulk of these costs are expected to flow not from the legalization of undocumented immigrants, but instead from a reduction in the backlogs of family-based immigration visas. Because the law would reduce the heartbreaking delays that prevent reunification of close family members, it would increase the number of individuals who would enter the country legally as LPRs. Some of these individuals eventually would become potentially eligible for benefits. With respect to the smaller eventual costs associated with undocumented immigrants who legalize, the budget rules that CBO uses preclude any consideration of

the increased tax revenues and economic development attributable to the immigrants' ability to work legally. As immigrants move into better jobs, they also gain greater access to private health insurance and other employer-sponsored benefits.

Proposed Benefits-Related Amendments in the Senate

Prior to the Senate's Easter recess, over 300 amendments were filed to an enforcement-only immigration bill (S. 2454) offered by Senate Majority Leader Bill Frist (R-TN). One of those amendments was the comprehensive immigration reform bill approved by the Judiciary Committee. The Judiciary Committee bill, on which the Hagel-Martinez proposal is layered, will likely continue to anchor the Senate debate. Although benefits issues generally took a back seat in the wrangling over amendments, some of the amendments would affect access to benefits and services. For example:

Sen. Jeff Sessions filed an amendment (SA 3401) stating that neither undocumented immigrants granted conditional status through legalization nor persons granted temporary guest worker status "shall be granted any public benefit as a result of the changed status of the alien." It seems unlikely that this amendment will gain traction or be considered a priority. Federal public benefits already are generally foreclosed to immigrants who are not "qualified," and the legalization and guest worker provisions do not confer "qualified" status.

Sen. John Ensign (R-NV) filed an amendment (SA 3294) that would prohibit payment of Social Security benefits based on quarters of coverage during which an immigrant was not in possession of a Social Security number authorized for employment. Under current law, a non-U.S. citizen must be lawfully present (in the U.S.) in order to collect Social Security. However, as a matter of basic fairness, lawfully present immigrants can secure credit for any past quarters in which they actually worked and paid Social Security taxes. Ensign's proposed restriction is a rehashed version of earlier attempts to deny current Social Security payments to lawfully present immigrants based on past immigration status. In 2003, when the Senate

Finance Committee was considering a similar proposal, then Social Security Administration (SSA) Commissioner JoAnne Barnhart wrote a letter noting that "in a significant number of cases, it could make the adjudication of applications for benefits much more difficult and prone to error." Barnhart identified "the most daunting obstacle" as "the absence of any longitudinal records of the immigration status of noncitizens who have been admitted to the United States and who have been authorized to work." Available records merely reflect the current status of each immigrant, yet "without the development and maintenance of historical immigration records of each noncitizen, SSA would have no ability to verify information furnished to us when these individuals apply for benefits." Even in the face of such opposition from SSA, Ensign's amendment might pose a threat to contend with. After all, it is estimated that undocumented immigrants pay over \$6 billion in Social Security taxes per year, propping up an underfunded retirement system. Barring lawfully present immigrants from securing credit for past earnings could ensure that the funds remain unclaimed. Some might view this as an attractive, if desperate, partial measure towards shoring up Social Security funding.

Amendments by Senators Hillary Clinton (D-NY) and John Cornyn (R-TX) aim to generate funding to assist state and local governments in paying for some of the costs associated with providing services to immigrants. The amendments touch on a genuine structural problem in the way in which immigrant services are financed. Immigrants pay a fair share of taxes; however, due to restrictions on federally funded public benefits, a fair share of that money does not flow back to states to pay for services for immigrants to the same degree as to citizens. While a more direct solution to this problem would be to restore immigrant eligibility for public benefits, the indirect approach of transferring money back to states deserves consideration. However, the Clinton and Cornyn amendments, as currently written, have flaws.

Cornyn's amendment (SA 3373) would impose an additional "health and education" fee on undocumented immigrants applying for conditional

status. The fee, placed on top of two sequential \$1,000 fines as well as application processing fees, would amount to \$500 plus an additional \$100 for each spouse or child accompanying the principal applicant, increasing the total fees and fines imposed on undocumented applicants for conditional status to almost \$3,000. The fee then would be placed in an account that “shall remain available to the Secretary of Health and Human Services, in consultation with the Secretary of Education, to provide financial assistance to health care providers for health and educational services” to conditional immigrants. No details are offered on key questions, such as how health care providers will be assisted financially, or why health care providers are expected to provide both health and education services. The amendment would impose an identical fee on would-be migrants applying for guest worker status, although it is not clear whether that fee substitutes for the existing \$500 fee in the Judiciary Committee bill or constitutes an additional fee. Another section of the amendment could have more profound implications for the guest worker program, preventing many countries from meeting the terms of the bilateral agreements required between the U.S. and sending countries. It would require that the guest worker’s home country “provide a minimum level of health care, as determined by the Secretary of Health and Human Services, to nationals of the home country who are participating in a temporary worker program in the United States,” without offering any indication of how a foreign county could, as a practical matter, provide

health care to workers in the U.S.

Clinton’s amendment (SA 3372) is more promising. As a modification to the Judiciary Committee bill, it aims to ensure that a portion of the two \$1,000 fines already required of undocumented persons seeking conditional status and, subsequently, LPR status are returned to states to pay for health, education, and public safety services for immigrants. Billions of dollars would be allocated to states according to a formula that favors states with large numbers of immigrants and high recent growth in immigrant population. One weakness of the proposal is the lack of any clear maintenance-of-effort requirement: state and local governments seemingly would be permitted to use the new money as a substitute for existing spending on services to immigrants rather than providing new services. In essence, states that already spend money on immigrant health, education, or public safety services would be able to shift the money within their budgets. An additional and related concern is the amendment’s failure to specify which types of health, educational, or public safety services are permitted. The open-ended structure would allow the money to be spent on initiatives that could actually harm immigrants and undermine public safety, such as state and local enforcement of immigration laws.

Advocates will need to provide input on these benefits-related amendments and monitor other implications of immigration reform on access to benefits as the Senate refocuses its attention on immigration.

FOR MORE INFORMATION, CONTACT

Jonathan Blazer | blazer@nilc-dc.org | 202.216.0261 x.3