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FAIR FEDERATION FOR AMERICAN IMMIGRATION REFORM  
**Immigration**  
**REPORT**

NOVEMBER 2018

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## DHS Moves to Enforce Rules Against Immigrants Becoming Public Charges

In September, the Department of Homeland Security (DHS) issued proposed rule changes that would honor both the letter and the spirit of laws aimed at restricting the admission of people who would likely become public charges.

According to DHS, a public charge refers to a person “who is likely to become primarily dependent on the government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance or institutionaliza-

tion for long-term care at government expense.”

Under laws going back to 1882 and policies that pre-date the republic, people who are likely to become “public charges” are supposed to be barred from immigrating to this country.

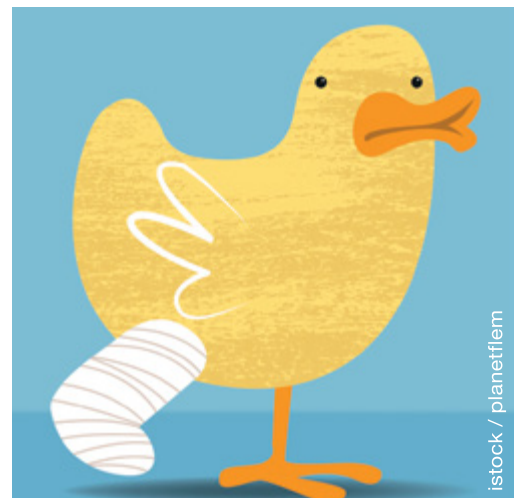
However, in large part, because of our nation’s family chain migration policy, which admits the bulk of legal immigrants based on who they are related to rather than on their ability to assimilate

PUBLIC CHARGE continued on page 3

## Lame Duck Session Could Bring Final Push to Fund Border Wall

(Editor’s note: Due to publication scheduling, this edition of the *Immigration Report* was written before Election Day, and before control of the House and Senate was decided by voters.)

After nearly two years of foot-dragging on one of President Trump’s signature 2016 campaign promises, in the weeks leading up to the midterm elections, Republican leadership indicated that it would mount a serious effort to fund the border security wall during a post-election lame duck session of Congress.



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## WALL FUNDING *continued from page 1*

“We intend on having a full-fledged discussion on how to complete our mission to secure the border, and yes, we will have a fight about this,” state retiring House Speaker Paul Ryan (R-Wis.). The opportunity to consider funding for the border security wall presented itself when Congress failed to finalize spending measures for FY 2019 for the Department of Homeland Security (DHS) and other federal agencies.

The effort to fund the border wall is being spearheaded by Rep. Kevin McCarthy (R-Calif.), who is the odds-on favorite to serve as speaker in a Republican-controlled House, or to be the minority leader in a Democratic-controlled 116th Congress. In early October, McCarthy introduced H.R. 7059, the “Build the Wall, Enforce the Law Act,” which would provide full funding – around \$23 billion – for a wall along the U.S.-Mexico border. The bill also includes other FAIR-supported enforcement proposals like Kate’s Law, the No Sanctuary

### Public Charge Rule Could Affect Guest Worker-Dependent Businesses

America’s loosely policed alphabet soup of guest worker visas have invited widespread abuse. From employers writing phony job descriptions to get cheap foreign workers, to companies laying off their American workers and replacing them with lower-paid guest workers, these programs have served private interests at the detriment of the public good.

DHS’s proposed rule changes to accurately define what it means to be a public charge have additional abuse. Business interest groups are warning that many guest workers could have their visa renewal applications denied if the rules go into effect. About 518,000 guest workers who seek to renew their visas each year would have to demonstrate that they have not relied on government assistance programs such as Medicaid and food stamps.

“I don’t think the business community has any clue how much this impacts them,” said Doug Rand, the president of a firm that assists companies applying for guest workers. The fact that business interest groups are worried might be a clue that the bloated array of guest programs do not provide needed labor, as they are subsidized labor. ■

for Criminals Act, the Criminal Alien Gang Member Removal Act, as well as the highly-debated resolution honoring U.S. Immigration and Customs Enforcement (ICE) personnel.

“For decades, America’s inability to secure our borders and stop illegal immigration has encouraged millions to undertake a dangerous journey to come here in violation of our laws and created a huge loophole to the legal channels to the immigration process where America welcomes immigrants to our country,” McCarthy said. “President Trump’s election was a wake-up call to Washington. The American people want us to build the wall and enforce the law.

Whether the congressional Republican leadership’s attempt to

act on the president’s immigration enforcement promises is too late remains to be seen. But the lame duck session, in which Congress will have to agree on spending bills before a temporary funding measure expires on December 7, appears to be the best opportunity to get meaningful funding for the border wall during President Trump’s current term in office. The president has vowed to veto any spending package that did not include ample funding for border security.

A postelection analysis and an update on effort to include border wall funding in a final FY 2019 spending package will be included in the next edition of the FAIR newsletter. ■

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PUBLIC CHARGE *continued from page 1*

and contribute, about half of all immigrant-headed households in the U.S. rely on at least one form of public assistance to meet their basic needs.

As recently as 1996, Congress reaffirmed that there is “a compelling government interest to enact new rules for eligibility and sponsorship agreements in order to assure that aliens be self-reliant in accordance with national immigration policy.” That bipartisan legislation acted on that compelling interest by:

- Requiring those who petition for a prospective immigrant to assume financial responsibility for that immigrant.
- Requiring petitioners to sign a legally binding affidavit of support acknowledging their financial responsibility.
- Empowering states to deny welfare benefits to most illegal aliens and lawful immigrants.
- Barring illegal aliens from welfare programs that rely on federal funds.
- Rendering immigrants ineligible for means-tested federal benefits for five years after admission to the United States.

However, yielding to pressure from immigrant advocacy groups, the Clinton administration back-pedaled on that commitment to the American people. Instead, rules drafted by the Clinton administration crafted rules that allowed immigrants to access many government benefit programs without being deemed public charges. The public charge definition was further narrowed and ignored by the Obama administration.



The new DHS proposal attempts to more realistically define the sorts of programs that would categorize immigrants, or prospective immigrants, as being primarily dependent on the government to meet basic needs. Under the proposed rule change, very expensive public programs like Medicaid, Supplemental Nutrition Assistance Program (SNAP), Medicare Part D, and some housing programs would be added to the list. People who are deemed unlikely to be able to afford food, basic medical care, or a place to live, can be reasonably defined as public charges.

Obviously, unforeseeable catastrophic events can occur to anyone. However, the rule changes sought by DHS are aimed at identifying characteristics such as education, job skills, age, and health conditions of prospective immigrants that would make dependence on public assistance highly predictable. FAIR has long advocated for these more reasonable definitions of a public

charge.

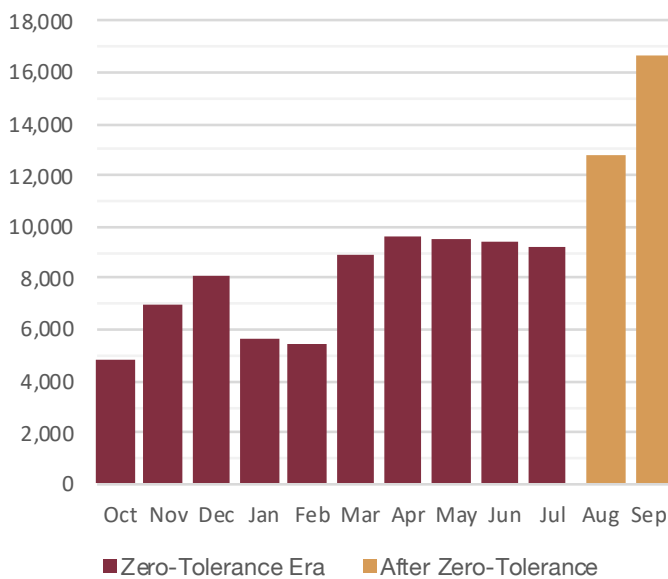
More importantly, FAIR has advocated for adoption of a merit-based immigration system that would objectively assess the ability of nearly all prospective immigrants to be self-sufficient upon arrival in the United States. Such changes to legal immigration policy were recommended by the bipartisan Jordan Commission in the 1990s, and legislation was introduced in both the House and Senate during the soon-to-expire 115th Congress. However, the leadership failed to move those bills in either house.

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TO KEEP IMMIGRANTS  
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## White House: Congress Must Move to Restore Order at the Border

Predictably, last summer's decision by the Trump administration to revert to a catch-and-release policy for family units crossing the border illegally, has led to a surge in family units crossing the border illegally. The number of such families apprehended jumped by 38 percent in August, the first month after the administration ended its zero-tolerance policy. In June, the administration also ended a policy which detained adults and minors separately. By the close of FY 2018 (which ended September 30), more than 105,000 adults with children had been caught at the southern border, far exceeding FY 2017's total of 77,600.

FY 2018 Family Unit Apprehensions Along the Southwest Border



When the zero-tolerance policy was implemented in the spring, a renewed surge of illegal aliens – including a staged “caravan” of Central American migrants – attempted to cross the border illegally. Under a 1997 judicial ruling known as the Flores Settlement, minors – including those who arrive in the company of parents – can only be detained for a maximum of 20 days. Thus, the administration was left with only two options for addressing the growing crisis, both of which were bad: Release the entire family after 20 days, or hold the adults separately and release the minors to the care of relatives or other guardians in the United States.

The administration reasonably chose the latter option. However, they failed to adequately prepare and

execute the policy effectively or to manage the predictable criticism. Most importantly, the administration did not mount a full-scale effort to get Congress to enact legislation that would allow for longer term detention of family units, and force opponents of family detention to defend their obstruction.

In the interim, both the Departments of Homeland Security and Health and Human Services are seeking to have the government withdraw from the Flores Settlement. That agreement originally only pertained to unaccompanied minors. However, a lone federal judge in California later ruled that the 20-day limit must also apply to minors in the company of parents and has rejected government requests to extend the time families may be detained as a unit.

Homeland Security Secretary Kirstjen Nielsen charged that Congress's failure to provide her department with a wider range of options has provided migrants and criminal smuggling organizations with “legal loopholes” to exploit U.S. immigration laws. These loopholes not only provide families with children the ability to circumvent immigration laws, but smugglers and human traffickers as well.

In October, the administration offered a compromise that keeps family units together, but prevents adult illegal aliens from using minors as “get out of jail free cards.” Under the administration's proposal, families could agree to being detained as a unit for as long as it reasonably takes to determine if they have a right to enter the country. Adults who would not agree to remain together while their cases are pending would essentially be opting to be separated from their children – the decision being theirs, not the government's.

Concurrently, the administration is also stepping up pressure on the governments of sending countries to do more to stanch the flow of illegal migrants. In October, President Trump tweeted, “The United States has strongly informed the President of Honduras that if the large Caravan of people heading to the U.S. is not stopped and brought back to Honduras, no more money or aid will be given to Honduras, effective immediately!” Similar warnings were tweeted at the governments of Guatemala and El Salvador.

# NEWS FROM OUR State & Local Operations

## California Cities Can Ignore Sanctuary State Law, Rules Judge

Commonsense and the rule of law scored an important victory in the courts in late September (for a change). Orange County Superior Court Judge James Crandall, in a case brought by the city of Huntington Beach, ruled that California does not have the constitutional authority to compel many local jurisdictions to comply with the state's draconian sanctuary law, SB 54.

SB 54, which went into effect on Jan. 1, 2018, bars nearly all local cooperation with federal immigration enforcement agencies. In effect, it forces local governments to turn most criminal aliens loose in their communities and requires them to ignore Immigration and Customs Enforcement (ICE) requests to detain deportable aliens in local custody. Numerous cities and counties across California sued the state challenging the constitutionality of SB 54.

Judge Crandall's ruling noted that Huntington Beach is a charter city, which gives it authority over the operation and "government of the city police force," and that the California State Constitution makes clear that "the operation of a police department and its jail is a city affair." As such, the state's far-reaching law dictating how and when local police may cooperate with ICE or other law enforcement agencies is an unconstitutional infringement on their rights to be free of "the ever-extending tentacles of state government."

There are 121 cities across California that have their own charters. According to Michael Gates, Huntington Beach's city attorney, Judge Crandall's ruling grants every one of them the right to ignore SB 54 and pursue reasonable policies of cooperating with and assisting in federal immigration enforcement.

FAIR's legal affiliate, the Immigration Reform Law Institute (IRLI) has filed briefs on behalf of several California jurisdictions challenging SB 54. IRLI has also filed briefs in federal court on behalf of police and sheriffs' associations in support of a lawsuit brought by the U.S. Department of Justice challenging the constitutionality of California policies that obstruct immigration enforcement.

## Gov. Brown Vetoes Even More Extreme Pro-Illegal Alien Policies

Perhaps it was just coincidence, but on the same day that Judge Crandall dealt SB 54 a significant blow, Gov. Jerry Brown used his veto pen to block two even more radical bills from becoming law. The two bills he vetoed were SB 174, which would have permitted illegal aliens to serve as political appointees to public office, and SB 349, which would have barred ICE from state courthouses.

State Senator Ricardo Lara, who sponsored both pieces of legislation, vowed to reintroduce these bills in the next year. Gov. Brown is term limited out, and the decision to sign or veto these and other radical illegal alien protection legislation will be up to his successor.

## Activist Judge Flouts the Law and Blocks Move to End TPS for Several Countries



Flicker/Fibonacci Blue

Over the past few months, based on assessments from the State Department, the Department of Homeland Security (DHS) has moved to revoke Temporary Protected Status (TPS) for citizens of Haiti, Sudan, Nicaragua, and El Salvador. TPS was a program established by Congress in 1990 to allow foreign nationals whose homelands were struck by natural disasters or political turmoil to remain and work in the United States temporarily (as the T in TPS would suggest) in the immediate aftermath of the triggering event.

In the case of Nicaraguans, TPS was offered following a hurricane that struck that Central American country in 1998. Over the years, mass immigration advocates and the governments of the affected countries have lobbied to have TPS designation extended, long beyond any reasonable period for recovery and any reasonable definition of temporary.

As has become customary when immigration laws are enforced, advocates for TPS beneficiaries went to court to prevent DHS from rescinding that status – even though every beneficiary understood that the protection was intended to be temporary and could be ended at the discretion of the United States government. And, as is almost always the case, the advocates found a compliant judge – in this case Edward Chen in San Francisco – to issue an injunction barring DHS from terminating TPS for the affected countries.

Judge Chen’s ruling ignores the explicit language of the law establishing the TPS program. The relevant statute states unambiguously that, “There is no judicial review of any determination of the [secretary of Homeland Security] with respect to the designation, or termination or extension of a designation, of a foreign state under this subsection.” In other words, Judge Chen had no authority to even consider a challenge to DHS’s decision, much less block the department’s actions.

Without evidence, the judge concluded that DHS’s decision was based on bias rather than objective assessments of conditions in these countries. “In particular, Plaintiffs have provided evidence indicating that (1) the DHS Acting Secretary or Secretary was influenced by President Trump and/or the White House in her TPS decision-making and (2) President Trump has expressed animus against non-white, non-European immigrants,” Chen wrote.

**JUDGE CHEN HAD NO AUTHORITY TO EVEN CONSIDER A CHALLENGE TO DHS’S DECISION, MUCH LESS BLOCK THE DEPARTMENT’S ACTIONS.**

To begin with, all members of the Cabinet serve at the pleasure of whatever president appointed them. So long as the president is not seeking to have a Cabinet member act illegally, there is no inherent problem with influence being exerted by the White House. Second, a judge may only rule on whether the Executive Branch is acting within the law, not on the inferred motives of the president. As recently as June 2018, in upholding President Trump’s executive order imposing travel restrictions on citizens of countries known to harbor and support terrorists, the Supreme Court rejected the argument that statements made by Mr. Trump when he was a candidate were relevant.

Further undermining the credibility of Judge Chen’s ruling is that despite the statements made by then-candidate Trump, his administration has renewed TPS

## DACA Financed by Hidden Fees and Surcharges

President Obama's Deferred Action for Childhood Arrivals (DACA) amnesty is not only unconstitutional, but is directly harming legal immigrants in the United States. Fees paid by legal immigrants to U.S. Citizenship and Immigration Services (USCIS) are being raided to offset the costs of processing both new DACA applications and DACA renewals. Since 2015, this practice has cost legal immigrants an estimated \$316.5 million.

USCIS operates almost exclusively on a fee-for-service basis. People seeking immigration benefits are charged fees to process applications for whatever immigration status they are seeking. Additional fees are incurred for work permits and the collection of fingerprints. DACA, which grants quasi legal status to illegal aliens, does not require an application fee. DACA beneficiaries are expected to pay \$495 to process work authorization documents and fingerprinting. However, these fees can be waived due to financial hardship.

According to USCIS, it cost the agency \$446 to process each of the approximately 230,000 new DACA applications between 2015 and 2018, and \$216 to process each of the nearly one million renewal applications. Those costs were covered by surcharges that were added to the fees paid by legal immigrants.

Adding insult to injury, DACA also costs people seeking legal immigration benefits time. People working their way through the legal immigration system have had to wait longer for their applications to be processed as USCIS prioritized DACA applications. These delays



represent a hardship to those who seek to obey U.S. immigration laws in order to benefit people who have violated our laws.

The Trump administration is seeking to terminate DACA, a program that was established by nothing more than a policy memo issued by the Obama administration, which asserted a dubious claim of authority to override federal statutes. However, notwithstanding the fact that DACA beneficiaries are statutorily illegal aliens, and a sitting president holds clear authority to change the policies of his predecessor, President Trump has been blocked from ending the program by activist judges. These latest revelations that this program benefiting illegal aliens is being financed by legal immigrants through hidden fees and surcharges should provide additional grounds for the Supreme Court to overrule the lower courts and clear the way for DACA's termination. ■



### TPS Decision *continued from page 6*

designations for citizens of Syria and Yemen. In each of those cases, State Department assessments indicated that conditions in those countries remain dire, and that an extension was warranted.

The Trump administration is expected to appeal Judge Chen's blatantly political ruling. However, the real objective of the plaintiffs

was to delay the termination of TPS for as long as possible. An appeal would likely have to go through the unfriendly Ninth Circuit Court of Appeals before it is finally adjudicated by the U.S. Supreme Court. In the interim, our "temporary" guests will get to stay here a bit longer. ■

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Charity Navigator has awarded FAIR four out of a possible four stars. In addition, FAIR continues its top-rated status with Charity Watch. FAIR has demonstrated exceptional financial health, outperforming most of our peers in our efforts to manage and grow our finances in the most fiscally responsible way possible.

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