

[https://www.washingtonpost.com/news/made-by-history/wp/2018/08/09/now-the-trump-administration-is-trying-to-punish-legal-immigrants-for-being-poor/?utm\\_term=.177a2af88ddc](https://www.washingtonpost.com/news/made-by-history/wp/2018/08/09/now-the-trump-administration-is-trying-to-punish-legal-immigrants-for-being-poor/?utm_term=.177a2af88ddc)

## Now the Trump administration is trying to punish legal immigrants for being poor

A harsh new proposal threatens to upend 400 years of immigration policy.

Deirdre Moloney



Kirstjen Nielsen, secretary of the Department of Homeland Security, speaks during a White House news briefing in Washington on June 18, 2018. (Andrew Harrer/Bloomberg News)

Recent reporting indicates that the Department of Homeland Security is [planning to significantly limit](#) legal immigration and naturalization by

changing the rules on immigration and welfare that have been central to the immigration system for more than 400 years. DHS wants to change the definition of what constitutes a public charge — someone dependent on the state — to deny green cards to legal migrants who are low-wage workers by considering their use, or likely use, of almost any government benefit as criteria for determining who may enter or remain in the United States. These benefits would include welfare, food stamps, Medicaid, children’s health insurance (CHIP), the earned income tax credit or the health-care subsidies provided by the Affordable Care Act. The proposal, which is expected to be posted soon in the Federal Register, is the administration’s latest attack on immigrant families, coming on the heels of its cruel and unlawful practice of separating families seeking asylum at the border and detaining children in prisonlike conditions.

This is a radical change from historical and current policy.

Yes, there is a “public charge” clause in immigration law that allows the government to take severe action against immigrants who depend primarily upon the government for subsistence. Currently, to be barred from entry, immigrants must arrive without funds and be judged unemployable, making them likely to become a public charge. To be removed after entry, immigrants must have received cash benefits from the government for “general maintenance” or have experienced long-term institutionalization.

But this rule change wildly expands this “public charge” clause, using access to a wide array of social benefits as a means of increasing immigration restriction. Such a change would potentially deny green cards to tens of thousands of people who are eligible under current rules, curtailing their eligibility for naturalization and have a chilling effect on noncitizens who now use public benefits.

The roots of public charge policy lie in “poor laws” that stipulated who could reside in Colonial towns and enter states such as New York and Massachusetts in the early 19th century. Although poor laws governed admission to states for citizens and foreigners alike, by the mid-19th century they morphed into proto-immigration laws for individual states.

Later, these policies provided a framework for the first federal immigration laws, which in 1882 excluded from entry into the country “any convict, lunatic, idiot, or any person unable to take care of himself or herself without becoming a public charge,” and in 1891 expanded that category to “any person likely to become a public charge.” In 1903, the law further stipulated that any foreigner who became a public charge within five years of entry was subject to deportation.

During the late 19th and early 20th centuries, more than 24 million people immigrated to the United States. Five immigration laws were passed between 1882 and 1917, and each provided grounds for exclusion or deportation on the basis of poverty, mental or physical health, morality or political belief. “Paupers” and “persons likely to become a public charge” accounted for the majority of exclusions and deportations.

Still, that number remained small compared with the numbers admitted. During the 1910s, an average of 1 million people a year entered the United States. In 1916, for example, the Immigration Bureau found 10,263 individuals inadmissible at ports of entry because they were likely to become a public charge, and deported 1,431 immigrants as public charges.

A crucial component of the public charge provisions for deportation (specified in 1891 and in each subsequent law) was that a person could be deported only if he or she became a public charge “from causes existing prior to his [or her] landing” in the United States and within a time limit of one to five years after entry. Lawmakers understood that it would be unfair to hold the country of origin responsible for disabilities that occurred after immigrants arrived in the United States. For this reason, the Immigration Bureau did not consider immigrants to be deportable who, as “victims of the general economic depression,” received public relief in the 1930s.

Immigration authorities also understood that conditions existing before entry had a limited shelf life and that, over time, immigrants acquired families, property and community ties — hence the time limit after entry. Congress and the Immigration Bureau recognized that deporting

someone already living in the country “dislodges an established residence” and therefore “must be strictly construed.”

How were these rules enforced? In the early 20th century, immigration inspectors applied the public charge laws based upon an initial impression. This was highly subjective, but the general yardstick in the 1890s was whether a migrant had any cash (typically \$30) and appeared to be able-bodied.

In cases of deportation, only those who depended entirely on government facilities for support — poor houses, hospitals and asylums for the mentally ill — were removable. As the welfare state evolved, immigrants had the same access to social benefits as citizens. In the early 20th century, enrolling in English classes or public health programs were notably not grounds for removal. In fact, these programs encouraged immigrants to participate, to enhance their integration into American society.

As social welfare provisions increased during the 1930s (Social Security and welfare) then again in the 1960s and 1970s (food stamps, Medicaid, WIC, etc.) this general pattern continued. To be removed, one had to depend entirely on the government for one’s subsistence. Noncash benefits, such as food stamps, WIC, Medicaid, CHIP, energy assistance and the like, help individuals and their families, whose incomes are at or near the federal poverty level, including the “working poor.” They were conceived for the purpose of ameliorating poverty or improving public health, not for providing general maintenance.

Until the 1970s, all immigrants, whether lawfully present or undocumented, were eligible for public benefits, just like citizens. Eligibility was based on income, not citizenship. In 1996, Congress enacted a requirement that legal immigrants be present for five years before becoming eligible for benefits. But we have never categorically excluded immigrants from receiving public benefits.

Until now.

If approved, the new policy would effectively deter legal immigrants from using public benefits for which they are eligible, lest they later be denied a green card or be removed. The DHS could also apply “public charge” to legal immigrants who use benefits for their children (such as CHIP), even if the children are U.S. citizens. The Migration Policy Institute estimates that the new policy could have a chilling effect on some 18 million noncitizens and 9 million U.S.-citizen children who reside in families where at least one person uses Medicaid/CHIP, welfare, food stamps or SSI.

The Trump administration wants to deny nearly all public benefits to legal immigrants with a simple rule change — something that should be in the hands of our legislators, not the executive.

Our immigration public-charge policy has always recognized two principles: first, the nation’s desire for immigrants who are able-bodied and employable, capable of supporting themselves and their families; and second, our commitment to assist members of our communities who fall on hard times.

DHS’s proposed policy flies in the face of these long-held values. It views immigrants as threats, not as assets who contribute to the country, including low-wage workers who labor in our restaurants, on farms and at construction sites. It reflects the administration’s desire to bar from legal immigration people from what it has determined are undesirable countries, family members of immigrants and now, welfare bums.

More than ugly rhetoric is at stake. As policy, the proposed change is not only punitive but carries high social costs for immigrant integration, public health, children’s well-being and the nation’s general welfare.