



TESTIMONY FOR A PUBLIC HEARING ON:

**HOW NYC SUPPORTS IMMIGRANT PARENTS
OF CHILDREN AGES 0-5 YEARS**

PRESENTED BEFORE:

THE NEW YORK CITY COUNCIL COMMITTEE ON IMMIGRATION
CARLOS MENCHACA, CHAIR

PRESENTED BY:

ERNIE COLLETTE
STAFF ATTORNEY
MOBILIZATION FOR JUSTICE, INC.

CLAIRE R. THOMAS
DIRECTOR, ASYLUM CLINIC
NEW YORK LAW SCHOOL

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MOBILIZATION FOR JUSTICE, INC.

100 William Street, 6th Floor
New York, NY 10038
212-417-3824
ecollette@mfjlegal.org

NEW YORK LAW SCHOOL

185 West Broadway
New York, NY 10013
212-431-2320
cthomas@nyls.edu

I. Introduction

Mobilization for Justice envisions a society in which there is equal justice for all. Mobilization for Justice’s mission is to achieve social justice, prioritizing the needs of people who are low-income, disenfranchised or have disabilities. We do this by providing the highest quality direct civil legal assistance, conducting community education and building partnerships, engaging in policy advocacy, and bringing impact litigation.

Mobilization for Justice began as the legal arm of Mobilization for Youth, a large community-based anti-poverty program founded in 1962. The legal unit was founded on the principle of equal access to justice through community-based legal representation of poor New Yorkers. In 1968, we began an independent organization, incorporated as MFY Legal Services, Inc. When the federal Office of Economic Opportunity began funding community-based legal services programs, our model became the prototype for hundreds of new programs. By our 25th anniversary in 1988, MFY Legal Services was recognized as a national leader in poverty law, having served tens of thousands of low-income New Yorkers and won numerous test cases. In 2017, we changed our name to Mobilization for Justice (“MFJ”) to better reflect the expanded scope of our work while honoring our roots.

MFJ works to improve immigrant access to public benefits and to educate the immigrant and advocacy communities respectively. In this testimony, we will highlight several unmet social service needs of immigrant parents in New York City with young children. These needs center on access to public benefits, which differ depending on the type of immigration relief sought for both non-citizen parent and child. In addition, we wish to call to the City Council’s attention to proposed federal rule changes that would expand the types of public benefits that would designate a recipient as a “public charge.” If these proposed rule changes go into effect, they would disproportionately impact immigrant parents with young children.

New York Law School (“NYLS”) was established in 1891 to offer a vibrant, diverse, and forward-thinking center of legal studies where students develop the knowledge, skills, and professional values to serve their clients and have successful careers advancing justice, building the economy, and serving the various needs of modern society.¹ NYLS believes that clinical and experiential learning is a critical part of legal education, and is committed to providing such courses for every student to be able to study and develop the skills of law practice.

The Asylum Clinic at New York Law School trains students to represent immigrant clients, both adults and children, fleeing persecution in their home countries and seeking safety in the United States. Under faculty supervision, students interview and counsel clients; conduct fact investigation and discovery; draft pleadings, correspondence, and motions; perform legal research and analysis; collaborate with social work professionals and country conditions experts; engage with interpreters; and appear with clients before the New York Immigration Court and at the Asylum Offices in Lyndhurst, New Jersey or Bethpage, New York.

¹ ¹ New York Law School’s Mission and History, available at http://www.nyls.edu/about_the_school/mission_and_history/ (last accessed April 19, 2018).

II. Access to Public Benefits

Immigrant parents of young children may be low-income or indigent and may lack financial support, requiring access to basic health care, food security, and financial assistance benefits. U.S. citizen children, regardless of the immigrant status of their parents will be eligible to receive such benefits, assuming income and resource criteria are met. However, non-citizen children will face barriers to obtaining access to public benefits or entitlements programs due to their immigration status or lack thereof.

Non-citizen children can be derivatives on the immigration applications of their parent(s) or may be eligible to apply for their own form of immigration relief. However, access to state-funded public benefits depends on what form of immigration relief for which they apply and at what stage they are in that relief process. For example, asylum applicants² whose applications have been pending with the United States Citizenship and Immigration Services (USCIS) for over 150 days and who applied for an Employment Authorization Document (EAD) are currently eligible for Safety Net Assistance,³ a state-funded public assistance program that provides both a cash grant and shelter allowance to the recipient. This eligibility occurred as the result of litigation at the New York Supreme Court⁴ resulting in the Office of Temporary and Disability Assistance (OTDA) determining that PRUCOL status should be granted to asylum applicants with EAD cards for the purpose of cash assistance eligibility.⁵ This designation would apply to non-citizen children who are derivatives on a parent's asylum application, or to minor children who are principal asylum applicants.⁶ Furthermore, upon approval of the asylum application, asylees become automatically eligible for other federal and state benefits and maintain such eligibility after adjustment of status to becoming lawful permanent residents.

While we applaud OTDA on this determination, certain vulnerable immigrant groups remain left out of the PRUCOL definition. For example, Special Immigrant Juvenile Status (SIJS) is a form

² Asylum is form of protection granted to non-citizens already in the United States or at an international border who meet the international definition of a "refugee." The United Nations 1951 Convention and 1967 Protocols defines a refugee as a person who is unable or unwilling to return to his or her home country, and cannot obtain protection in that country, due to past persecution or a well-founded fear of being persecuted "on account of race, religion, nationality, membership in a particular social group, or political opinion." Congress incorporated this definition into U.S. immigration law in the Refugee Act of 1980. 8 U.S.C. § 1101(a)(42). *See also* American Immigration Council, Fact Sheet about Asylum in the United States, available at <https://www.americanimmigrationcouncil.org/research/asylum-united-states> (last accessed April 19, 2018).

³ GIS 17 TA/DC047, Asylum Applicants with Employment Authorization Recognized as Permanently Residing Under the Color of Law (PRUCOL) for Safety Net Assistance (SNA), Nov. 21, 2017, available at <https://otda.ny.gov/policy/gis/2017/17DC047.pdf> (last accessed April 19, 2018).

⁴ *Colaj v. Roberts, et al.*, 452243/2017, (NY Sup. 2017).

⁵ An immigrant "is considered by the Office of Temporary and Disability Assistance (OTDA) to be 'permanently residing under the color of law' (PRUCOL) if it has been officially determined by the United States Citizenship and Immigration Service (USCIS) that the alien is legitimately present in the United States (U.S.) and the USCIS is allowing the alien to reside in the country for an indefinite period of time. PRUCOL is not an immigration status, but a public benefit category used by OTDA for the purposes of Safety Net Assistance (SNA) eligibility." *See* GIS 17 TA/DC047, Asylum Applicants with Employment Authorization Recognized as Permanently Residing Under the Color of Law (PRUCOL) for Safety Net Assistance (SNA), available at <https://otda.ny.gov/policy/gis/2017/17DC047.pdf> (last accessed April 19, 2018).

⁶ Unmarried children under the age of 21 are able to be derivatives on a parent's asylum application. 8 U.S.C. §1101(a)(35) In addition, a child may file his or her own application for asylum, even if the child is a minor.

of immigration relief for children who are unable to reunify with one or both of their parents due to their parents' abuse, abandonment, neglect, or another similar basis under state law.⁷ Applicants must be under the age of 21 and unmarried. However, SIJS petitioners sometimes have their own children, who, if not U.S. citizens, are also eligible for SIJS or another form of immigration relief like asylum.

Currently, the only public benefit a SIJS petitioner can receive is Medicaid or, if under the age of 19, Child Health Plus.⁸ Because SIJS petitioners are not deemed PRUCOL by OTDA, SIJS petitioners cannot receive Safety Net Assistance. Furthermore, unlike asylees, who are granted all federal and state benefits upon approval of their asylum application, SIJS petitioners remain ineligible to receive federal and state benefits until after they become lawful permanent residents. Even in that case, eligibility for certain benefits are age-dependent and subject to federally mandated five-year time bars.⁹

In sum, children who are granted asylum are afforded access to basic public benefits, including public assistance, food stamps and Medicaid, among others. However, children who successfully petition for Special Immigrant Juvenile Status, are eligible to receive only Medicaid or health insurance for children through Child Health Plus. After adjusting status to that of lawful permanent residence, if the unaccompanied minor is 18 years of age or older, she would be barred from receiving public benefits like food stamps or public assistance for five years.

While some of these programs are financed either in part or in whole by federal funds, some state-funded forms of public assistance, through agency discretion, could provide immediate financial assistance to those non-citizen children of immigrant parents who fall through the cracks of existing welfare programs.

III. Public Charge Regulations

The Immigration and Nationality Act states that an individual seeking admission to the United States or seeking to adjust status to that of an individual lawfully admitted for permanent residence ("green card") is inadmissible if the individual, "at the time of application for

⁷ To be eligible for SIJS, the young person must meet the criteria codified in 8 U.S.C. § 1101(a)(27)(J) (2014). The basic elements are:

1. The young person must be under 21 years of age;
2. S/he must be unmarried;
3. S/he must be declared dependent upon the state—this means that a state court has taken jurisdiction over a petition addressing the needs of the young person;
4. Reunification with one or both of the young person's parents must no longer be a viable option due to abuse, abandonment, neglect, or other similar basis under state law; and
5. It is not in the best interests of the young person to return to his/her country of nationality or last habitual residence.

⁸ See Asylum and SIJS Qualification charts, pgs. 237-239, in Claire R. Thomas and Ernie Collette, *Unaccompanied and Excluded from Food Security: A Call for the Inclusion of Immigrant Youth Twenty Years after Welfare Reform* (September 20, 2017). Georgetown Immigration Law Review, Vol. 31, No. 197, 2017; NYLS Legal Studies Research Paper No. 3040215. Available at SSRN: <https://ssrn.com/abstract=3040215> (last accessed April 19, 2018).

⁹ Id. at pgs. 230-232.

admission or adjustment of status, is likely at any time to become a public charge."¹⁰ At present, according to the USCIS, "public charge" means "an individual 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 institutionalization for long-term care at government expense."¹¹ Being designated as likely to become a "public charge" has severe immigration implications, such as being a ground of inadmissibility, if not waived.¹²

Recently, a proposed rule change was sent to the federal Office of Management and Budget (OMB) to expand the types of public benefits that would designate a recipient as a "public charge." If, after the Notice and Comment period, these draft changes are implemented, the recipients of such non-cash assistance programs as the Supplemental Nutrition Assistance Program (SNAP, formerly known as Food Stamps), Medicaid, Women Infant Children (WIC), Child Health Plus (CHIP), Low Income Home Energy Assistance Program (LI-HEAP), and the Earned Income Tax Credit will face "public charge" grounds of inadmissibility.¹³ This would prevent many non-citizens from obtaining lawful permanent residence in the United States. The proposed rule looks not only at the public benefits received by the individual non-citizen who is applying for immigration relief, but also at the public benefits received by the household members of such individuals. As the City Council is aware, many families are comprised of mixed immigration status households.

Mixed-status households with immigrant parents and U.S. citizen children, who are lawfully entitled to receive the above-mentioned non-cash benefits, will be impacted by these proposed changes. Should the immigrant parents seek to adjust their immigration status, the benefits lawfully received by their U.S. citizen children may designate the parent as a "public charge." Thus, parents may decide not to seek benefits that would combat food insecurity or medical needs in order to prevent possible deportation and family separation. The result may be a large disenrollment of eligible household members from vital public assistance programs.

New York City has long promoted a stance of protecting immigrant families and households. The proposed regulations have far-reaching negative consequences. From more individuals foregoing regular Medicaid and relying on Emergency Medicaid services, to children and families dependent upon Free School Lunches and the generosity of soup kitchens and food pantries to feed their families, to less immigrant parents applying to adjust status to become "green card" holders.

We urge the City Council to closely monitor these proposed changes and prepare accordingly to ensure that no New Yorker is without vital services.

¹⁰ INA § 212(a)(4); 8 U.S.C. § 1182(a)(4). *See also* USCIS, Public Charge, available at <https://www.uscis.gov/greencard/public-charge> (last accessed April 19, 2018).

¹¹ 8 U.S.C. § 1182(a)(4). *See also* USCIS, Public Charge, available at <https://www.uscis.gov/greencard/public-charge> (last accessed April 19, 2018).

¹² *Id.*

¹³ Nick Miroff, Washington Post, *Trump Proposal Would Penalize Immigrants who use Tax Credits and Other Benefits*, March 28, 2018, available at: <https://wapo.st/2vGwjNH> (last accessed April 23, 2018).

IV. Conclusion

Mobilization for Justice and New York Law School thank the Committee on Immigration and its Chair, Councilman Carlos Menchaca, for holding a hearing on this important topic. We are committed to continuing to help the New York City Council improve immigrant access to public benefits. Even with the generous support of the New York City Council, we continue to witness strong evidence of unmet legal needs. There remains much work left to be done to ensure equal access to justice for the most vulnerable immigrant New Yorkers who, without access to public benefits, struggle to obtain and maintain the essentials of life.