Appendix C

Immigration Changes

Office of Immigrant Relations
DIVISION OF EQUITY & SOCIAL JUSTICE

Prepared by the County of Santa Clara Office of Immigrant Relations
In the Summer of 2018, the Trump Administration began a campaign of separating children from their families. National news outlets projected images of children held in cages under mylar blankets. Unfortunately, the situation worsened, as documented by both the media and Congress. The Trump Administration then implemented four additional immigration policy changes. The changes produced more challenges and created more fear and confusion for community members, legal services providers, local representatives because immigration process became more complicated and layered.

**THE CHANGES WERE THE FOLLOWING**

1. In June of 2018, the President issued executive order “Affording Congress an Opportunity to Address Family Separation”
   a. It directed the Attorney General to promptly file a request with the U.S. District Court for the Central District of California to modify the Settlement Agreement in Flores V. Sessions and allowed detention of children with their legal guardians
b. It directed the Border Patrol to provide detailed information on all immigrants attempting to cross the border into the U.S. and place them into deportation proceedings immediately after being detained

c. On June 21, 2018, the Department of Justice filed a motion asking the Judge in the Flores case to modify the current provision limiting detention of children to 20 days

2. Domestic Violence and Gang Related Asylum Claims

a. This policy shift gives the Attorney General the ability to overrule or modify the decision made by the Department of Justice and/or self-refer any DOJ decision for review

b. Decrees that cases of domestic violence or gang violence are generally no longer valid claims for asylum

3. On July 13, 2018, the Trump Administration gave the U.S. Citizenship and Immigration Services (USCIS) the discretion to deny an application, petition or request without issuing a Request for Evidence (RFE) or Notice of Intent to Deny (NOID). This gives USCIS the discretion to close cases without asking for more information or additional evidence

4. On July 28, 2018 the Updated Guidance for the Referral of Cases and Issuance of Notice to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens was issued. This updated guidance gives USCIS the authority to refer cases or to issue NTAs in cases where certain types of applications have been denied and the applicant has been "deemed" inadmissible or deportable. This means that USCIS has the authority to place the applicant in deportation proceedings. The types of cases in which USCIS can issue NTAs include, but are not limited to:

a. Termination of conditional permanent Resident Status and denials of petitions to remove the conditions of residence;

b. Termination of refugee status by the District Director

c. Denials of the Nicaraguan and Central American Relief Act (NACARA) and the Haitian Refugee Immigration Fairness Act (HRIFA)

d. Asylum and Credible Fear Cases

e. Domestic violence/VAWA, U & T Visas

**PROPOSED CHANGES TO PUBLIC CHARGE**

On October 10, 2018, the Federal Government released its most anticipated proposed changes to the Public Charge definitions. Federal law permits the U.S. government to deny entry, green cards, and some other immigration benefits to individuals deemed likely to become a “public charge.” Under existing and longstanding federal policy, non-citizens may use some public benefits and
services without fear of immigration consequences. Currently, immigration officials only consider limited forms of public cash assistance and long-term institutionalization at public expense in making “public charge” determinations.

The proposed rule change would upend a decades-old policy by significantly expanding the public charge definition. If finalized, the rule could allow the USCIS to deny permanent residency (green card) applications based on the use of certain public benefits and services—no matter if their use of the benefit was legal, temporary, and limited in value. The proposed changes would make it significantly more difficult for low to moderate-income families, and those with any of the negatively weighted factors to immigrate. It will also chill access to critical services with devastating impacts on children, families, and low-income communities. Children will be harmed under this proposal, as parents’ and children’s health are inextricably linked.

Once this proposed change was published, there was a 60 day public comment period. There was a national campaign to get 100,000 comments submitted, by December 11, but over 260,000 comments were submitted. The Department of Homeland Security (DHS) must now review and consider all submitted comments before the rule becomes final. The timing of the publication of a final rule is uncertain, and even after publication, legal challenges could delay implementation. While these proposed changes have no immediate effect in terms of the process and administration of public benefits, it contributes to increased fear in immigrant communities.

OIR worked with national organizations National Immigration Law Center (NILC), Protecting Immigrant Families (PIF), Catholic Legal Immigration Network (CLINIC), and Immigrant Legal Resource Center (ILRC), and County Counsel to respond to this announcement.

In the context of fear, rumor, and superficial media coverage of the changes, OIR focused on clarifying and distinguishing between fact and rumor.

**HOW DOES THE PROPOSED RULE SEEK TO CHANGE THE MEANING OF PUBLIC CHARGE?**

Expanded list of benefits include:
- Cash Support for Income Maintenance*
- Long Term Institutional Care at Government Expense*
- Non-Emergency Medicaid**
- Supplemental Nutrition Assistance Program (SNAP or Food Stamps)
- Medicare Part D Low Income Subsidy
- Housing Assistance (Public Housing or Section 8 Housing Vouchers and Rental Assistance)
* Included under current policy
** Exception for certain disability services offered in school. DHS is asking for input on inclusion of CHIP, but the program is not included in the current proposed change of the regulatory text.

**ADDITIONAL CHANGES**

In October of 2018, a court order stopped the government from ending Temporary Protected Status (TPS). There are now new temporary rules that affect TPS holders from El Salvador, Nicaragua, Haiti, and Sudan.

On November 9, 2018, the Administration issued a presidential proclamation and interim final rules preventing people who enter the U.S. between ports of entry from seeking asylum. The rules, entitled, “Aliens Subject to a Bar on Entry under Certain Presidential Proclamations; Procedures for Protection Claims,” greatly restrict the rights of asylum seekers crossing the southern border. The rules were published as interim final rules in the Federal Register, meaning they go into effect immediately in conjunction with the presidential proclamation.

USCIS proposed changes to the N-648 Disability Waiver
USCIS proposed changes to Form N-648 Disability Waiver in January 2019. Legal services providers expressed concern that the new guidance creates a situation in which simple mistakes and misunderstandings of a complex process are automatically viewed as indicators of fraud. According to legal service providers concerns, “it creates an undue burden for disabled applicants to meet and will be a barrier preventing many eligible disabled applicants from naturalizing.”

National Emergency Declaration
In February 2019, the Trump Administration declared a national emergency in order to fund wall construction along the southern border. Through this declaration, the Administration seeks to use other government funding to address this emergency declaration. The State of California, Sierra Clubs, ACLU filed a lawsuit against this initiative and is still in litigation.

USCIS Immigration Fraud Tip Form
On February 15, 2019, the Department of Homeland Security’s U.S. Citizenship and Immigration Services (USCIS) published a proposed form to collect information from the general public regarding immigration fraud. The publication of this form signals the shift in USCIS’s role from an agency serving immigrants and adjudicating their applications into an “enforcement agency.”

Advance Notice of Proposed Rulemaking on Limited Representation Before EOIR
The Executive Office for Immigration Review
(EOIR) published an Advance Notice of Proposed Rulemaking (ANPRM) on March 27, 2019. The ANPRM seeks public comments about the possibility of changing regulations to allow limited appearances by representatives in immigration court, and whether representatives should be able to help unrepresented immigrants prepare pro se motions and applications.

**Warrant Service Officer program**

On May 6, 2019, Immigration and Customs Enforcement announced a new partnership program that would allow local law enforcement officers to start arresting or detaining immigrants on behalf of federal officials, even if state or local policies forbid them from doing so.

**HUD’s Proposal to Evict Mixed-Status Immigrant Families**

On May 10, 2019, The U.S. Department of Housing and Urban Development (HUD) published a proposed rule that would prohibit “mixed-status” immigrant families from living in public housing and Section 8 programs. Mixed-status families contain both members who are eligible and ineligible for housing assistance based on their immigration status. As a result of this proposal, 25,000 families, including 55,000 children, could be forced to either break up their families or face eviction and an increased risk of homelessness.

**Public Charge as a Ground of Deportability**

In May 2019, Reuters reported that the Trump administration is considering publishing a U.S. Department of Justice draft regulation interpreting this provision to make it easier to deport legal permanent residents who have used public benefits.

Under the Immigration and Nationality Act (INA), any noncitizen who “within five years from the date of entry, has become a public charge from causes not affirmatively shown to have arisen since entry is deportable.” In current practice, this ground of deportability rarely comes up in pending removal proceedings or as a reason for the initiation of removal proceedings. The public charge ground of deportation applies only to people who have been inspected and admitted to the U.S., including those who have adjusted to LPR status.

**TPS for Nepal and Honduras**

On May 10, DHS issued its first Federal Register Notice announcing its plan to comply with the Bhattari v. Nielsen court order, which temporarily halts the termination of TPS for individuals from Nepal and Honduras.

**USCIS memo denies access to non-adversarial affirmative asylum procedures for many vulnerable children**

U.S. Citizenship and Immigration Services issued a memo on May 31, 2019 curtailing access to important asylum protections for
many child asylum seekers. The memo went into effect on June 30, 2019 and will be applied to any cases decided by USCIS on or after that date. It directs asylum officers to conduct an “independent factual inquiry” to determine whether an applicant was under 18 and unaccompanied at the time of filing the I-589 asylum application and thus entitled to certain asylum protections for unaccompanied children. This differs from the previous policy that directed asylum officers to accept a prior unaccompanied child determination made by the federal government, if determination had not been rescinded before the application was filed.

Deferred Action for Childhood Arrivals (DACA) Litigation

Since the Trump administration rescinded DACA in 2017, several states, universities and non-profits have filed lawsuits challenging the rescission and termination. These lawsuits continue to move through courts. Following the Trump Administration’s September 2017 announcement that it would phase out DACA, several federal courts issued injunctions preventing USCIS from implementing the termination. Since January 9, 2018, USCIS has been accepting renewal applications from anyone who currently has or has previously held DACA. However, no initial DACA applications or advance parole applications can be filed.

On May 17th, 2019 the 4th Circuit Court of Appeals in Virginia found that the Trump administration's termination of the DACA program was “arbitrary and capricious,” in line with a prior ruling from the 9th Circuit Court of Appeals. However, the majority judges also reversed a lower court ruling about blocking information on DACA applicants from being shared for immigration enforcement purposes saying that that DACA applicants had no expectation of privacy in their information due to disclaimers on the application.

On June 3, the Supreme Court rejected the Trump administration’s request to fast track a decision on whether it will hear a case over the President’s rescission of the Deferred Action for Childhood Arrivals (DACA) program. The justices denied the request, which was filed on behalf of the administration in May to expedite their decision on whether to review the case.

On July 15, the Supreme Court announced that they will hear oral arguments for DACA on Nov. 12, 2019, in three cases challenging the legality of the rescission of Deferred Action for Childhood Arrivals, or DACA: Regents of the University of California v. Department of Homeland Security, Batalla Vidal v. Nielsen, and NAACP v. Trump. A final ruling from the Supreme Court on the legality of the termination of DACA is expected no later than June 2020.

The 2018 Court Injunction stopping the end of DACA remains in effect. DACA renewals continue; there are still no new applications or advance parole.
Proposed Fee Waiver Changes
The Department of Homeland Security (DHS) is moving forward with its proposal to dramatically transform the fee waiver application process, making it more difficult for individuals to obtain fee waivers when seeking immigration relief, by removing receipt of means-tested benefits as a basis for qualifying for the fee waiver and requiring exclusive use of the Form I-912 for fee waiver requests.

USCIS Processing Delays
In the past three years, USCIS has slowed down its processing of applications for immigration benefits and created a series of roadblocks. Increasing USCIS case processing times negatively affects individuals and their families, often leaving them stranded financially and vulnerable to harm in the United States, and in some instances, in their home countries. These processing delays are taking place in every aspect of USCIS processing times.

Beginning in March 2018, USCIS established a new system to control public access to USCIS offices called Information Services Modernization Program. This replaces InfoPass, a system which allowed individuals and attorneys to self-schedule an appointment with a local office. Additional changes have restricted customer service. In other areas, USCIS is cutting back services. In March 2019, USCIS announced the elimination of the International Operations office at USCIS. USCIS has slowed down the adjudication of all cases. The slowdown has happened along with other administrative changes such as requiring more in-person interviews for application types that could previously be approved based on documentation and performing continuous background checks through the entire application period.

Sources for this legal update are provided by the Catholic Legal Immigration Network, Inc, the Immigrant Legal Resource Center, and the National Immigration Law Center