



NOVEMBER 2020

TRANSITION BRIEFING & RECOMMENDATIONS

Stop the Harm and Start Healing for Children in Immigrant Families

HANNAH MATTHEWS,
DEPUTY EXECUTIVE DIRECTOR FOR POLICY
hmatthews@clasp.org

CLASP
The Center for Law and Social Policy

Introduction

The harm caused by the Trump Administration to children in immigrant families has been far-reaching, with devastating effects. If left unaddressed, this damage will have long-term impacts on children's healthy development and ultimately our nation's future. Children in immigrant families now comprise 1 in 4 of all children, or approximately 18 million, in the United States.¹ Over 5 million children have at least one parent who is undocumented,² and more than half-a-million children have a parent who participates in the DACA or TPS programs.³

Historical barriers to accessing public benefits, education, and other critical services have been exacerbated by an onslaught of anti-immigrant policies by the prior Administration and have caused immense trauma and toxic stress among children. From increased interior enforcement actions to policy changes like the public charge rule, the result has been more children, including U.S. citizens, losing out on health care, nutrition, and other benefits for which they are eligible. These actions have left them living in constant fear of being separated from family members.⁴ For children, the consequences of enduring overwhelming levels of stress, going without sufficient food, having irregular access to medical care, and experiencing other hardships can be deep and lasting. The ongoing pandemic — which has disproportionately harmed immigrant communities — has intensified these problems, while children in mixed-status families have been largely excluded from federal COVID relief efforts.

The extent of harm to children in immigrant families is a national emergency. Every day that we delay reversing course and neglecting to address children's health, mental health, and education is one more day that we are holding them back from the supports they need to grow, thrive, and reach their full potential.

A focus on undoing the harm and prioritizing children of immigrants for additional resources to support their healing is essential on Day One of the Biden-Harris Administration. To begin reversing the damage and moving toward more inclusivity, our nation needs a robust cross-agency effort to quickly undo harmful policies and rebuild trust in public programs and services. Administrative efforts must reach beyond immigration policy and include a holistic approach to child wellbeing. This means addressing access to quality and affordable health care, mental health services, education, nutrition, and safe living environments.

Note: This chapter focuses on policy for children in immigrant families, the vast majority of whom are U.S. citizens. While not included in our recommendations here, we support more comprehensive reforms to the country's immigration system as laid out in the [2021 Immigration Action Plan](#) and [Immigration Big Book](#).

I. Immediate Executive Actions to Stop Harm to Children of Immigrants.

Beginning on Day One, President Biden must use his executive authority and bully pulpit to draw attention to children of immigrants as a population of central importance to our country's future and our collective wellbeing. Specifically, the White House should:

Restore DACA and TPS: Over 500,000 American children have parents who rely on DACA or TPS in order to work. President Biden should fully implement status and work authorization for Deferred Action for Childhood Arrivals (DACA) program recipients and end the termination of Temporary Protected Status (TPS).

Designate a White House champion for children of immigrants. The needs of children of immigrants must be elevated within the White House and across federal agencies. We support the establishment of a White House Office of New Americans to coordinate citizenship, immigration, and integration strategies across agencies. We also advise the administration to designate a lead person in that office to represent the interests of children of immigrants, the majority of whom are U.S. citizens and not New Americans themselves. This person should actively seek input and collaborate with community-based organization working with children directly.

Issue an Executive Order that instructs federal agencies to immediately undo harm to children of immigrants and begin healing through the following actions (described in more detail below):

- Direct the Department of Homeland Security (DHS) to:
 - Immediately cease all enforcement actions and review and reform current immigration enforcement policies, including restoring previous enforcement priorities, expanding the use of prosecutorial discretion, and using alternatives to detention, prior to any restoration of actions.
 - Redesign policies and procedures with a focus on family unity, including appropriate protections and procedures that minimize harm and consider the unique needs of children during all stages of immigrant enforcement actions.
 - Strengthen existing sensitive locations guidance and ensure training on the guidance, effective implementation, and a process of accountability for violations.
 - Roll back the harmful public charge rule by issuing a new interim final rule.
- Direct the DHS Office of the Inspector General to document violations of existing laws, regulations, and guidance that harm children and families; identify responsibility for these violations; and recommend penalties and acts of restoration.
- Direct the Department of Health and Human Services (HHS) to create an Office of Immigrant Children and Families in the Administration for Children and Families (ACF). This office should prioritize and coordinate the needs of children of immigrants within ACF, HHS, and other federal departments and agencies. The office should also convene cross-agency work groups, establish interagency agreements and coordinate efforts to improve access to programs for immigrant families with the White House Office of New Americans.

- Direct federal departments and agencies, including, but not limited to, the Departments of Education (ED), Agriculture (USDA), Housing and Urban Development (HUD), Justice (DOJ), HHS, and Treasury, along with the Environmental Protection Agency to:
 - Report a plan for ensuring equal access to programs and services for children of immigrants. This should include reviewing existing guidance and/or regulations for immigrant exclusions or barriers that go beyond underlying statute, reissuing guidance or regulations to address barriers, and facilitating outreach and education to immigrant families.
 - Issue guidance and directives making clear privacy protections to ensure immigrant families can access all programs and services for which they are eligible—free from fear.
 - Conduct listening sessions with immigrant families and providers working with immigrant families to document the harm to children and families and identify solutions for undoing harm.
 - Review and update existing language-access policies, or immediately begin development of a language-access policy where no current plan exists.

Use of bully pulpit. The White House should use the occasion of key events early in the presidency (inaugural address, first address to Congress, appointment of cabinet members, etc.) to convey a welcoming message to immigrant families to rebuild trust in government. President Biden should convey the importance of the wellbeing of immigrant children and families to our collective wellbeing.

II. Immediate Legislative Priorities to Advance:

COVID-19 relief: The Biden-Harris Administration should prioritize immigrant families in requests to Congress for COVID-19 response legislation:

- All children and adults in households that file taxes with an Individual Taxpayer Identification Number (ITIN), if otherwise eligible, should receive economic stimulus payments, and mixed-status families should receive retroactive payment for the 2020 stimulus payments. An estimated 3.5 million children in tax-paying families were unfairly excluded from the CARES Act's economic support, and the vast majority of these children are U.S. citizens.
- COVID relief should expand access to health care—including coronavirus testing, treatment, and vaccine—and nutrition assistance for all immigrants.
- Release as many immigrants held in detention facilities as possible through humanitarian release and ensure screening and medical attention for those working and held in detention facilities.
- Ensure that the parents of these children – many who find themselves in essential jobs – are able to remain in the country free from the risk of immigration enforcement.

Permanent protections. The Biden-Harris Administration should work with Congress to pass permanent protections and expanded opportunities for legalization of immigrants, including passage of the American Dream and Promise Act.

The Administration should work with Congress to undo the restrictions on ITIN filers' access to the Child Tax Credit imposed by the 2017 tax bill, as well as to make the Earned Income Tax Credit available to mixed-status families.

III. Agency Priorities for First 100 Days

Interior Enforcement

1. Protect children by ending interior enforcement actions against parents, legal guardians, and caregivers.

- DHS should permanently end enforcement actions against parents and legal guardians of minor children.
 - Make parents, legal guardians, and primary caregivers of minor children eligible for presumption for release
 - Reinstate parental interests by revising policy memo 11064.2 on the *Detention and Removal of Alien Parents or Legal Guardians* to strengthen and restore critical provisions that were cut from the original policy (see full recommendation here).
 - Stop the practice of large-scale worksite immigration enforcement and take steps to address the harm experienced by workers and their families due to these raids. These steps should include the termination of pending removal hearings.
 - Establish procedures that consider the unique needs of children when a parent, legal guardian, or caregiver of a child must be apprehended or faces removal. These procedures should ensure that detained parents are able to make decisions about their children's care. Staff should be trained in how to minimize harm if children are present during enforcement actions.

2. Protect and expand the definition of sensitive locations, with attention to child-related locations including child care, Head Start, and schools. The current sensitive locations policy is vague and inconsistently followed by ICE. For the policy to be effective in making parents feel safe taking their children to school, hospitals, and other essential locations, it must be uniformly enforced, and violations must be investigated and addressed. In order to do so, DHS should:

- Expand existing ICE and Customs and Border Protection (CBP) policies to restrict enforcement actions in additional locations deemed sensitive, such as home-based child care, and including *near* sensitive locations, by at least 1,000 feet.
- Improve accountability by
 - clearly assigning enforcement of the policy to the DHS Office of Civil Rights (OCR);
 - instituting regular reporting requirements;
 - modifying the process of reporting violations to be more accessible and transparent; and

- outlining methods of recourse for immigrants who are apprehended in violation of the sensitive locations policy.
- Increase awareness of the policy by disseminating fact sheets and FAQs on the policy in partnership with other relevant federal agencies, such as ED, HHS, and DOJ to ensure that local agencies are aware that they fall under the policy and how to report violations.

Access to Health, Nutrition, and Education Programs

1. Expand access to health and nutrition programs for children and their parents whose health is critical to their wellbeing.

- DHS should roll back the harmful public charge rule by issuing immediate guidance to clarify the current policy and reduce the chilling effect, to be followed as soon as possible by a new interim final rule. All benefit agencies should share clarifying guidance with their state/local partners.
- The USDA's Food and Nutrition Service (FNS) should maximize flexibilities under the Supplemental Nutrition Assistance Program (SNAP), Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), school meals, and Pandemic Electronic Benefits Transfer (P-EBT). FNS should also provide technical assistance to states on how to best use these programs to increase access to nutrition assistance to all eligible families. Finally, FNS should look for opportunities to make permanent the flexibilities granted under COVID-19, such as allowing remote certification for WIC.
- HHS should:
 - Direct CMS to expand eligibility to DACA recipients for Medicaid, the Children's Health Insurance Program (CHIP), and Marketplace subsidies, which will ensure access to affordable health insurance.
 - Research the impact of prohibitions on immigrant access to health care services (e.g., the 5-year ban for Medicaid for documented immigrants, exclusion of Compact of Free Association (COFA) citizens, and complete ban on all federal health coverage for undocumented immigrants) and work with Congress to expand access
 - Take action to ensure that children have access to preventive care, including vaccines and identification and diagnosis of developmental delays and disabilities that have been missed due to the pandemic. HHS should pay special attention to conducting outreach in immigrant communities and improving language access.
 - Encourage states to take up Children's Health Insurance Reauthorization Act (CHIPRA) options to cover immigrant pregnant women and children.
 - Provide technical assistance to state TANF agencies on best practices for serving children in mixed-status households through child-only cases.
- Federal agencies should:
 - Identify outreach and education strategies—as well as discretionary funding for grants to community-based organizations and trusted messengers in immigrant communities—to increase the enrollment in Medicaid, CHIP, SNAP, and other benefit programs.

- Provide guidance to state and local agencies administering federal programs on how to best ensure access and enrollment of immigrant families, including assurances around protecting data and personal confidentiality.
- Encourage the use of indicators such as home language and limited English proficiency in data collection on needs assessment, service delivery, and prioritization of services to improve access to public programs for immigrant children and families.

2. Improve access to child care, early education, and K-12 education for children of immigrants.

- Reissue and widely disseminate guidance for access to K-12 education for immigrant students by ED and DOJ, including [reissuing guidance](#) regarding the prohibition of information that may restrict public school access to students on the basis of race, color, or national origin.
- ED should convene focus groups and listening sessions to understand the impact of reduced in-person schooling on dual language learners (DLLs) and children of immigrants and propose recommendations to address challenges of virtual learning, including extending broadband access.
- ED and HHS should issue guidance to state agencies and grantees regarding immigrant eligibility for child care and early education programs including Head Start, child care subsidies, public pre-kindergarten, and home visiting.
- HHS and ED should use discretionary funding where available, including research and technical assistance (TA) dollars, to support a focus on healing for children of immigrants, including Black children and other subpopulations, in service delivery. This should include mental health and culturally responsive and trauma-informed care services through service providers, such as behavioral health professionals in schools, Head Start, community health centers, and others.
- ACF should issue guidance to child care CCDBG administrators on:
 - Policies that reduce barriers to child care subsidy for immigrant parents, such as:
 - Only asking for the citizenship status for the child(ren) in need of care.
 - Allowing parents to self-attest to employment and wages.
 - Accepting ITINs for family, friend, and neighbor (FFN) caregivers.
 - Exemptions to the citizenship/immigration status verification requirements in CCDBG. This includes operationalizing the exemption for child care-Head Start collaborations and broadly defining “public educational standards” to cover child care services subject to educational or early learning program standards.
- ACF should leverage Head Start to share information and best practices regarding trauma-informed care; culturally appropriate services; and outreach and enrollment to immigrant families, including by:
 - Issuing educational resources to Head Start programs immediately to convey Head Start as a welcoming program for immigrant families.
 - Broadly disseminating research and best practices on early childhood practices with DLLs and monitoring implementation of Head Start standards on DLLs to identify areas for technical assistance.

¹ Jeanne Batalova, Brittany Blizzard, and Jessica Bolter, “Frequently Requested Statistics on Immigrants and Immigration in the United States,” Migration Policy Institute, February 14, 2020, <https://www.migrationpolicy.org/article/frequently-requested-statistics-immigrants-and-immigration-united-states#Children%20of%20Immigrants>

² Randy Capps, Michael Fix, and Jie Zong, “A Profile of U.S. Children with Unauthorized Immigrant Parents,” Migration Policy Institute, January 2016, <https://www.migrationpolicy.org/research/profile-us-children-unauthorized-immigrant-parents>

³ Nicole Prchal Svajlenka, “What We Know About DACA Recipients in the United States,” September 5, 2019, <https://www.americanprogress.org/issues/immigration/news/2019/09/05/474177/know-daca-recipients-united-states/>

⁴ Wendy Cervantes, Rebecca Ullrich, and Vanessa Meraz, *The Day That ICE Came: How Worksite Raids Are Once Again Harming Children and Families*, Center for Law and Social Policy, 2020, <https://www.clasp.org/publications/report/brief/day-ice-came-how-worksite-raids-are-once-again-harming-children-and>