

THE LASTING LEGACY OF EXCLUSION



How the Law that Brought Us Temporary Assistance for Needy Families Excluded Immigrant Families & Institutionalized Racism in Our Social Support System

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**Center for the
Study of
Social Policy**
Ideas into Action

CENTER ON POVERTY and INEQUALITY
GEORGETOWN LAW

**ECONOMIC SECURITY and
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Acknowledgements

The authors of this report are Elisa Minoff at the Center for the Study of Social Policy (CSSP), Isabella Camacho-Craft at the Georgetown Center on Poverty and Inequality Economic Security & Opportunity Initiative (GCPI ESOI), Valery Martínez at CSSP, and Indivar Dutta-Gupta at GCPI ESOI. At CSSP, we thank we thank Megan Martin for guidance and feedback, Alex Coccia for research and writing, Siri Anderson for feedback and editing, and Jessica Pika for the report's design and layout. At the GCPI ESOI we thank Se Young Kim, Jess Belledonne, Isabelle Gilges, Katharine Landfield, and Estela Zuzunaga for research and writing; and Cara Brumfield, Kali Grant, and Aileen Carr for feedback and editing.

CSSP and GCPI ESOI thank Tanya Broder (National Immigration Law Center), Wendy Cervantes (Center for Law and Social Policy), Mark Greenberg (Migration Policy Institute), Suzanne Kahn (Roosevelt Institute), and Aditi Shrivastava (Center on Budget and Policy Priorities) for providing feedback on earlier drafts of this report. We thank Randy Capps, Julia Gelatt, and Valerie Lacarte at the Migration Policy Institute for their insights on this project.

Suggested Citation

Minoff, Elisa et al. "The Lasting Legacy of Exclusion: How the Law that Brought Us Temporary Assistance for Needy Families Excluded Immigrant Families & Institutionalized Racism in our Social Support System." Center for the Study of Social Policy and Georgetown Center on Poverty and Inequality Economic Security & Opportunity Initiative, August 2021. Available here: <https://cssp.org/resource/the-lasting-legacy-of-exclusion/>.

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Introduction & Summary

In the United States, everyone should have the opportunity to take care of themselves, their families, and their communities, and live their lives with dignity and security. This opportunity should be available to all who call the U.S. home.

Immigrants—defined as those who are foreign-born—comprise approximately 14 percent of people living in the U.S., and roughly one in four children lives with an immigrant parent.¹ Immigrant families are vital members of their communities, and like all families, they require a strong, stable foundation to succeed.² Twenty-five years ago, Congress structurally weakened that foundation when it excluded immigrant families from many basic supports and services.

The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), which President Bill Clinton signed into law in August 1996, is most widely known for replacing our only national cash assistance program for families with children, Aid to Families with Dependent Children (AFDC), with the Temporary Assistance for Needy Families (TANF) block grant. TANF block grant funds can be used for time-limited cash assistance but also a wide range of other purposes, and the result has been the decimation of cash assistance in the U.S.³ In 2019, on average only 23 out of every 100 families with children living in poverty receive cash assistance through TANF.⁴ In some states, cash assistance is so elusive that many families assume it no longer exists at all.⁵ TANF's work reporting requirements, harsh sanctions, and family caps have also exacerbated and produced glaring racial inequities.⁶ These policies were the culmination of the work of generations of policymakers who conceived and promoted political narratives that disparaged the caregiving work of solo mothers and levied baseless criticisms against Black women and caregivers.⁷ The result has been policies that institutionalize anti-Black racism in our social support system.⁸

PRWORA also facilitated the exclusion of immigrants from a wide range of social and economic supports, from health care to food assistance to tax credits, which further institutionalized racism in our social support system. In the lead up to PRWORA, policymakers repurposed the racist myths



and tropes directed at Black families and communities to justify policies that threaten immigrants, especially Latinx immigrants. The 1996 law itself introduced new categories of exclusion, barring many immigrants who had previously been eligible for supports on the same terms as citizens from a set of defined federal public benefits.⁹ Though they drew less attention than the block granting of AFDC, the immigrant exclusions were central to PRWORA, and accounted for a sizeable share of the law's initial projected savings. While immigrants only accounted for 15 percent of participants in public benefits in 1996, the Congressional Budget Office estimated the law's immigrant restrictions would account for approximately 40 percent of its initial savings.¹⁰ At the time, many well-respected social policy experts and advocates denounced PRWORA's exclusion of immigrants—alongside the law's other punitive provisions such as time limits and work requirements—noting how they denied families much-needed support.¹¹

PRWORA was a watershed moment in the history of exclusion. PRWORA's convoluted restrictions not only directly denied many immigrants needed support, but in practice excluded many more by fostering fear and confusion in immigrant communities about eligibility for benefits and the immigration implications of accessing them.¹² It also laid the foundation for further exclusion, as the law was used subsequently to justify new restrictions on supports, from the Affordable Care Act (ACA) to the Child Tax Credit (CTC) to public charge rules. The impacts of the law's exclusions are felt everyday by families, as their health and well-being are threatened by their exclusion from services and supports, and entire communities are weakened and less able to weather crises and fulfill their collective potential.¹³

Programs like Medicaid, Children's Health Insurance Program (CHIP), Supplemental Nutrition Assistance Program (SNAP), TANF, and refundable tax credits help provide a foundation that enables people to contribute to their families, communities, and society and fulfill their potential. By reducing hardship and poverty, they can promote the physical and mental health and well-being of children as well as their caregivers, and they have demonstrated long-term, intergenerational benefits on education, employment, and earnings for children in families who participate.¹⁴ Building a just and prosperous society requires policymakers to redress the harms created by PRWORA and its lasting legacy of exclusion and ensure that all families, including immigrant families, are eligible for the basic supports and services they need.





Immigrant Families Currently Experience Significant Hardship Due to Discrimination and Exclusion

Immigrant families face elevated rates of hardship despite their central role in the formal U.S. economy and their communities. Immigrants participate in the labor force at high rates—indeed, the labor force participation rate of immigrants was 64.5 percent in 2020, three percentage points higher than people born in the U.S.¹⁵ They are also more likely to be essential workers than non-immigrants—working disproportionately in critical industries including food service, agriculture, maintenance and janitorial, and caregiving.¹⁶ Despite being more likely to work, and work in critical industries, immigrant families are also more likely to experience poverty and related hardships than non-immigrant families. In 2019, 14 percent of immigrants had incomes below the artificially-low official poverty threshold, compared to 12 percent of people born in the U.S., and this gap has persisted for decades.¹⁷ In 2020, more than one in four immigrant families with children reported difficulty paying for housing costs, and more than half of these families reported fears about being able to pay utility bills.¹⁸ Immigrant families, particularly immigrant families with children, also have traditionally experienced higher rates of food insecurity than non-immigrant families.¹⁹

These hardships are a direct product of discrimination and structural exclusion, which are disproportionately experienced by immigrants of color. Black, Latinx, and southeast Asian immigrants report experiencing discrimination throughout their lives, including in employment.²⁰ Black, Latinx and female immigrant workers experience among the highest rates of workplace violations by employers, such as being paid less than the minimum wage.²¹ Immigrant families also frequently experience both emotional and material hardship when a loved one and financial provider is detained or deported.²² Black and Latinx immigrants are more likely to experience these harms because they are disproportionately targeted by enforcement and are more likely to be subject to mandatory detention once involved in the immigration enforcement system.²³ Finally, and perhaps most importantly, immigrant families are excluded from supports and services that can lift families out of poverty and promote well-being. Some families are not only ineligible for certain supports and services because of their immigration status or the length of time they have lived in the United States, and even families who are technically eligible for supports can be excluded in practice by the complexity of the eligibility rules, misinformation and fearmongering, and programs that are not responsive to their needs. The result is that time and again, supports and services fall short for immigrant families.

*Despite higher levels of poverty and economic insecurity, immigrant families are no more likely than families comprised only of U.S. citizens to participate in basic supports such as cash assistance. From 2014 through 2016 only about one percent of immigrants participated in the TANF program, and less than three percent of immigrants participated in Supplemental Security Income (SSI), comparable to the shares of the U.S. born who participated in both programs.*²⁴

*Despite markedly higher rates of food insecurity among immigrant families, their SNAP participation rates remain modest. From 2014 through 2016 about 17 percent of immigrants participated in SNAP, compared to 16 percent of people born in the U.S.*²⁵ From 2007 to 2018, a survey of families with children in five

major metropolitan areas found that SNAP participation rates were consistently lower among families with immigrant mothers than U.S.-born mothers, even though families with immigrant mothers reported higher rates of household and child food insecurity.²⁶

Immigrant families are likelier to be uninsured. Health insurance allows families to access care and promotes the healthy growth and development of children, but immigrant families experience high uninsured rates.²⁷ Overall, noncitizens, including lawfully present immigrants and undocumented immigrants, are between 2.5 and 4.5 times as likely to be uninsured as citizens.²⁸ Children in immigrant families, including U.S. citizen children living with immigrant parents, are also more likely to be uninsured than children in non-immigrant families.²⁹ Public health insurance, such as Medicaid and CHIP, also fail to meet the needs of immigrant families. Despite their greater need for public health insurance programs, approximately 18 percent of immigrants participated in Medicaid or CHIP, compared to approximately 20 percent of people born in the U.S. from 2014 through 2016.³⁰

To this day, foundational supports like cash assistance, food assistance, and health insurance fail to meet the needs of immigrant families in part because of PRWORA's exclusionary provisions. The roots of this exclusion runs deeper still, and understanding this history can help chart an alternative path forward.

PRWORA's Immigrant Exclusions Have Racist Roots

PRWORA's restrictions on immigrants' access to benefits were the culmination of decades of policy debates in which policymakers, think tanks, and the media vilified and scapegoated immigrants, and Latinx immigrants in particular, for the nation's ills. These restrictions accelerated a radical process of exclusion that began shortly after immigration law opened the U.S. to more non-European immigrants.

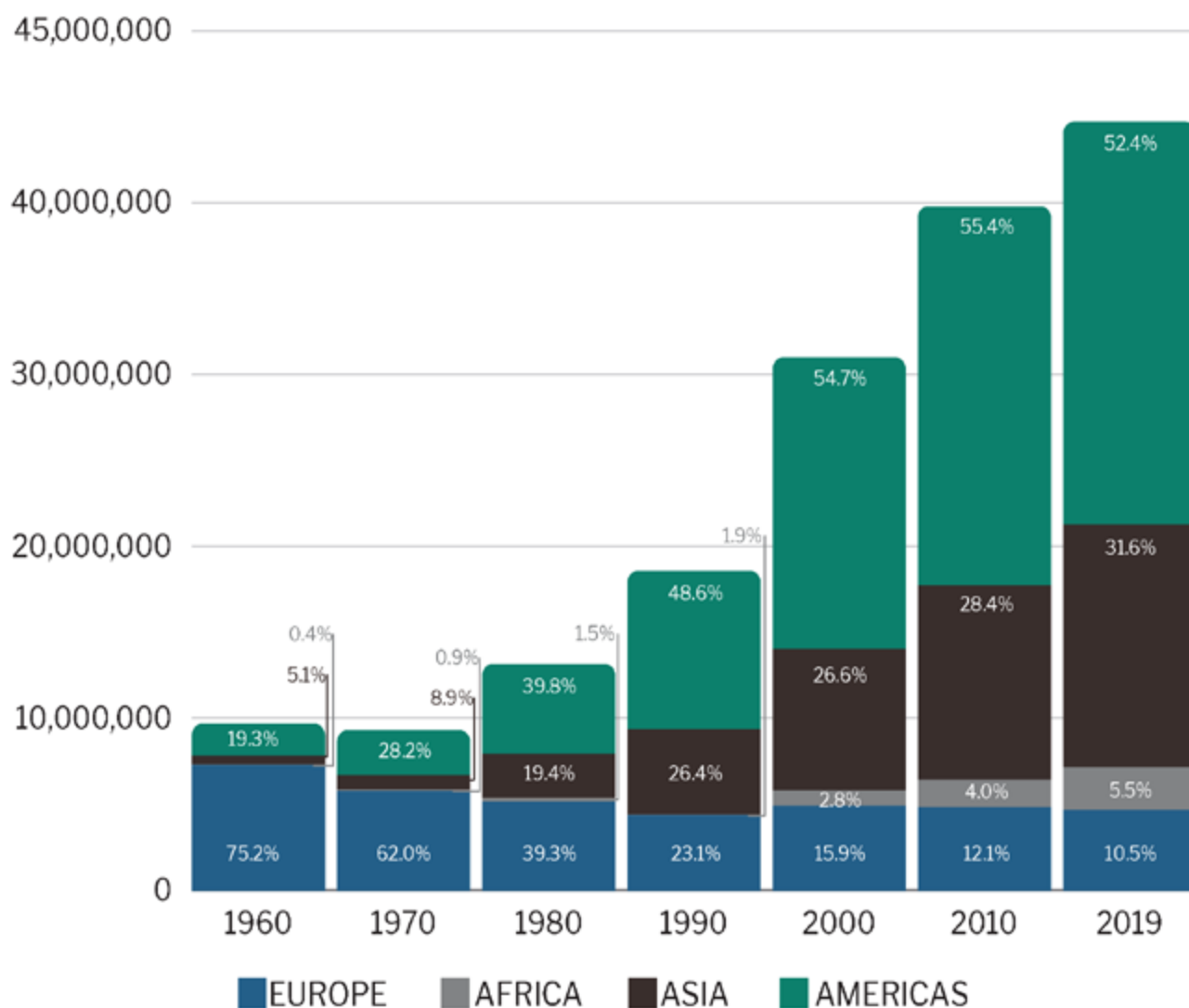
In 1965, the Immigration and Nationality Act, also known as the Hart-Cellar Act, repealed the discriminatory national origins quota system that had severely limited or entirely barred immigration from countries outside of northern and western Europe since the 1920s. Hart-Cellar's new system allocated an equal number of visas by national origin with a preference system based on family reunification and labor force needs. Over





the years that followed, legal immigration overall grew, and a growing share of immigrants came from Asia and Latin America (see Figure 1).³¹ This new system imposed the first numerical restrictions on immigration from the Western Hemisphere, and was created just as Congress ended the Bracero program, the temporary worker program that enabled hundreds of thousands of Mexican agricultural workers to work in the U.S. over the previous decades.³² Actual migration patterns did not change as avenues to migrate legally were closed, so the number of undocumented immigrants living in the U.S. grew dramatically as people who once moved legally between the two countries, now moved, or stayed, without authorization.³³

Figure 1. U.S. Immigrant Population by World Region of Birth, 1960-2019



Note: Adapted from Migration Policy Institute tabulation of U.S. Census Bureau Data. Available at <https://www.migrationpolicy.org/programs/data-hub/charts/regions-immigrant-birth-1960-present>.



Until the 1970s, no federal laws barred non-citizens—including undocumented immigrants—from federally-funded public benefits. Though federal immigration law had discriminated against immigrants from poorer countries and immigrants of color since the late 19th century, including by excluding those deemed “likely to become a public charge,” immigrants’ access to supports, including federally-funded supports, was traditionally set at the state level. As of the early 1970s the vast majority of states did not restrict immigrants’ eligibility for benefits—in fact, they generally did not ask applicants for assistance about their immigration status at all.³⁴ This changed when Congress created SSI in 1972, explicitly excluding undocumented immigrants from participation for the first time.

First Federal Exclusions in the 1970s Were Incited by Racist Backlash to Immigration

The first federal steps to restrict immigrants’ access to benefits occurred in the context of a growing backlash against both immigration and cash assistance. In the early 1970s, many policymakers viewed Aid to Families with Dependent Children (AFDC), the nation’s cash assistance program, as a program in crisis, as the number of families receiving assistance continued to rise.³⁵ At the same time, public concerns about immigration were also growing, as news coverage drew attention to the increase in unauthorized immigration in particular. Much of the attention on immigration focused on immigrants from Mexico and other Latin American countries.

The 1970s witnessed a spike in racist and xenophobic news coverage which often depicted immigration from Mexico and undocumented immigration generally as one and the same.³⁶ By this time, Mexicans had been constructed by policy and cultural discourse as the prototypical “illegal alien.”³⁷ Sociologist Douglas Massey and demographer Karen Pren have found that the use of the negative metaphors such as a “crisis,” “flood,” and “invasion” to describe immigration from Mexico “was virtually nonexistent in 1965, at least in major newspapers, but thereafter rose steadily, slowly at first and then rapidly during the 1970s to reach a peak in the late 1970s.”³⁸ News coverage specifically singled out Mexican and undocumented immigrants’ participation in public benefits, often using the racial slur “wetback” to refer to immigrants who had entered the country without authorization. In 1970, an article in the Oxnard (CA) Press Courier asserted that “California has long been known as a land of milk and honey. Its reputation is well known in Mexico, where to wetbacks [sic]. . . the word is out: ‘Go to California, where welfare workers hand out free food, free money and free medical-dental care just for the asking.’”³⁹ In 1974, the New York Times (NYT) ran an investigative piece on undocumented immigrants’ use of public services in the New York region, in which it highlighted the stories of undocumented immigrants from the Dominican Republic and other parts of Latin America and the Caribbean, and their experiences working and participating in government benefits programs. After quoting one immigrant asserting that he was satisfied with his life in the U.S., the NYT article noted, “Not everyone, however, is satisfied, especially in middle class neighborhoods, black or white or mixed, where the Hispanic bodega has become as commonplace in recent years as the delicatessen or the pub or the spaghetti house.”⁴⁰

In the context of this racialized and racist debate over immigration, California Governor Ronald Reagan, who had made attacking public assistance a defining feature of his political crusade, pioneered the exclusion of immigrants as part of a broader effort to overhaul his state’s cash assistance program in 1971. Concerned that



recent U.S. Supreme Court decisions had hamstrung the state's ability to restrict access to public assistance, at least for U.S. citizens, Reagan and his team sought to exclude immigrants. The California Welfare Reform Act of 1971 contained provisions to "prevent the granting of aid to illegal aliens and temporary foreign visitors" and to "set up a mechanism for communication between county welfare offices and the INS [the since-replaced Immigration and Naturalization Service] to identify illegal aliens on welfare."⁴¹

Federal restrictions came shortly thereafter, in response to a backlash against preliminary attempts to expand immigrants' access to supports following *Graham v. Richardson* (1971), when the Supreme Court held that states could not exclude immigrants from supports.⁴² The Nixon administration took initial steps to align federal policy with the Supreme Court ruling by issuing a proposed rule that affirmatively declared undocumented immigrants eligible for assistance. This decision prompted a political backlash, however, driven by Texas and other southwestern states that had a long history of exclusion and discrimination. Congress quickly took steps to override the judicial and administrative actions. In 1972, when Congress created the SSI program it explicitly excluded undocumented immigrants from participation for the first time. The exclusion of undocumented immigrants from SSI was then cited as justification for their exclusion from Medicaid, AFDC, food stamps, and unemployment insurance, quickly thereafter.⁴³

Racist Anti-Immigrant Mobilization Laid the Groundwork for PRWORA

Over the next two decades, restricting immigrants' access to public benefits became the focus of an increasingly organized and well-financed anti-immigration campaign that found fertile ground in some states. Three think tanks—the Federation of American Immigration Reform (FAIR), founded in 1978 with funding from the heiress of the Mellon banking and industrial fortune; the Center for Immigration Studies; and Numbers USA—backed the campaign, lending an air of respectability to a movement that initially had limited grassroots support and over time developed closer ties to White nationalism.⁴⁴ By the early 1990s, this anti-immigrant mobilization bore fruit in California.

In October 1993, two former INS commissioners with close ties to FAIR met with a group of anti-immigrant activists at a country club in Orange County, California to draft Proposition 187.⁴⁵ Proposition 187 was presented as a solution to the state's budget difficulties, and a direct appeal to the federal government to take action on undocumented immigration. The ballot measure was an extreme measure, excluding undocumented immigrants from social services and benefits, including nonemergency health care and public education.⁴⁶ In doing so it directly contravened the landmark Supreme Court case *Plyler v. Doe* (1982), which held that states cannot deny students a free public education because of their immigration status.⁴⁷

It was during the public debates over Proposition 187, that the term "illegal" was widely used as a noun for the first time.⁴⁸ As before, "illegality" was racialized as Mexican. California Governor Pete Wilson, a former mayor of the border city of San Diego, complained "about the fertile Mexican mother who immigrated unlawfully to give birth in the United States, thus providing the benefit of citizens and the social welfare system to her child."⁴⁹ Latina childbearing was a dominant theme in the demonization of immigrants in California, echoing the racist stereotypes of Black women that dominated the discourse over cash assistance at the time.⁵⁰

One Republican legislator from an L.A. suburb circulated a poem that he claimed was composed by a constituent: “Everything is mucho good./ Soon we own the neighborhood./ We have a hobby—it’s called breeding. Welfare pay for baby feeding.”⁵¹ Wilson championed his support for Proposition 187 in his bid for reelection in 1994. Television ads highlighting Wilson’s unqualified support for the ballot measure showed “shadowy Mexicans crossing the border in large numbers.”⁵² As legal scholar Kevin Johnson has observed, “the fact that undocumented persons in the United States come from many nations other than Mexico never figured prominently in the debate over the initiative.”⁵³

The racist and xenophobic ideas showcased in the debate over Proposition 187 were not unique to California.^{54,55} By the 1990s, the demographic shift brought about by the 1965 immigration law had changed the face of the nation. While Europeans constituted 74.5 percent of the immigrant population in 1960, by 1990 they constituted just 22 percent. A plurality of immigrants in 1990 hailed from the Americas (46.3 percent) and a large and growing share hailed from Asia (25.2 percent).⁵⁶ The political and economic instability unleashed by U.S. military intervention in Central America meant that a growing share of immigrants entering the U.S. hailed from El Salvador, Guatemala, and Honduras.⁵⁷ A large share were unauthorized.⁵⁸

In the 1990s, racist stereotypes of Latinx people were not as pervasive as those of Black people, but there were striking similarities. Nationally, what anthropologist Leo Chavez has called the “Latino threat narrative” dominated media coverage of immigration, and racist stereotypes depicting Latinx immigrants as lazy and Latinas as “hyper-fertile” were widespread.⁵⁹ The 1990 General Social Survey found that, among White people, 59 percent believed “that blacks generally preferred to live off welfare rather than be self-sufficient, 46 percent thought the same of Hispanics, while only 18.5 percent and three percent attributed the characteristic of welfare dependence to Asians and Whites, respectively.”⁶⁰

While civil rights groups successfully challenged Proposition 187, and its key provisions were enjoined by federal courts and never went into effect, the California law and the widespread racialized backlash against immigration it showcased laid the groundwork for federal action.⁶¹





Immigrant Restrictions in 1996 Were Fueled by Racist Rhetoric and Policy Analysis

As Californians voted for Proposition 187, the nation as a whole was considering President Bill Clinton's promise to "end welfare as we know it." In the broader conversation over welfare reform, public debate often focused on policies like work requirements and time limits. Black women and families were the face of welfare reform, as they had been in debates over cash assistance for decades.⁶² Because of the racist mobilization against immigrants and the work of organizations like FAIR in the years leading up to PRWORA, however, restricting immigrants' access to benefits was a politically viable and attractive complementary policy—at least to some—in this context.

As Ron Haskins, the Republican Congressional staffer who helped draft PRWORA, remembers it, research informed the shift to exclude immigrants from social supports as part of welfare reform, but anecdote was more powerful.⁶³ One piece of research that had some influence was economist George Borjas' work on immigration and "welfare magnets." In a highly influential paper, Borjas used 1980 and 1990 census data to show that immigrants were more likely than non-immigrants to live in states with relatively generous social supports.⁶⁴ While Borjas' evidence did not show a causal relationship between benefit levels and immigrants' choices to locate in a particular community, the correlation emphasized by the paper fed into the "Latino threat narrative," and sparked concern that people were crossing the southern border to access the more generous public benefits available in the U.S. In fact, later analyses of INS data refuted Borjas' hypothesis that immigrants' location choices were associated with relative state welfare generosity.⁶⁵ But along with other research documenting benefit use among immigrants, Borjas' work lent an imprimatur of objectivity to a political debate that was fueled by stories and anecdotes.

In the stories that shaped the debate over immigrants' access to assistance, Latinx and Asian immigrants were often portrayed as taking advantage of the system, or even committing fraud, if they accessed supports to which they were entitled. At the time, Asian immigrant's participation in SSI sparked particular controversy. While one incident of outright fraud where middlemen from Southeast Asia were coaching immigrants to feign symptoms of disabilities so they could qualify for SSI captured Congressional attention, the simple idea that benefits were available and might support older immigrants who joined their family members in the U.S. seemed problematic to some conservative lawmakers.⁶⁶ In this regard Norman Matloff's analysis was particularly influential. Matloff, a professor of computer science who analyzed census data of immigrants receiving SSI and would later write occasionally for the Center for Immigration Studies, was widely cited in the lead up to 1996 for his finding that 55 percent of elderly ethnic Chinese immigrants were receiving public benefits in California.⁶⁷ Matloff pointed to resources available in the Chinese community educating immigrants about their rights, noting that "a popular Chinese-language book on life in America sold in Taiwan, Hong Kong and Chinese bookstores in the United States includes a 36-page guide to SSI and other welfare benefits."⁶⁸ When he testified before Congress, he claimed it was part of their "culture" for elderly Chinese immigrants to rely on SSI.⁶⁹

Many Republicans who controlled the fate of welfare reform in Congress did not believe these immigrants should be able to avail themselves of government supports and services. When they realized how much money could be saved by denying them eligibility altogether, they looked to immigrant restrictions as a

solution to welfare reform's mounting costs.⁷⁰ When PRWORA was signed into law, preamble language reflected the political debates around welfare magnets and benefit use, stating that a goal of the policy was to ensure both that immigrants living in the U.S. do “not depend on public resources to meet their needs” and that the “availability of public benefits not constitute an incentive for immigration to the United States.”⁷¹

Meanwhile, these same concerns that immigrants were moving to the U.S. to access benefits and illegitimately, if not exactly fraudulently, taking up support reverberated through concurrent Congressional debates over immigration enforcement. In hearings over another anti-immigrant law passed in 1996, the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA), policymakers stated concerns that undocumented immigrants were choosing to come to the U.S. so that they could give birth to children which in turn gives them “the right to benefits from the taxpayers coffers”—echoing the “Latino threat narrative’s” obsession with Latina’s child bearing.⁷² The most draconian amendments to IIRAIRA, which mirrored Proposition 187 and would have barred undocumented immigrants from public school, were ultimately rejected. Together, however, PRWORA and IIRAIRA codified a system of immigrant exclusion that has wrought lasting harm to immigrant families and communities. Shortly after the laws’ passage, Michael Fix and Wendy Zimmerman, then of the Urban Institute wrote that, together, the laws arguably “represent the most exclusionary turn in immigration policy since the establishment of the national origins quota system in the nativist 1920s.”⁷³

PRWORA Transformed Immigrants' Access to Benefits

PRWORA was a watershed moment in the longer history of immigrant exclusion, denying immigrants who were permanent residents of the U.S. and lawfully present access to supports and services for the first time. The law did so by creating a distinction between “qualified” immigrants—deemed deserving of limited support for some programs—and “unqualified” immigrants. Eligibility for federal benefits were limited to “qualified” immigrants—a category including lawful permanent residents (LPRs), refugees, asylees, and certain other immigrants admitted for humanitarian reasons. Nonimmigrants, such as students and tourists, as well as others with temporary status, such as persons granted Temporary Protected Status (TPS) and, in later years, Deferred Action for Childhood Arrivals (DACA), and immigrants who are undocumented were





declared ineligible for federal public benefits.⁷⁴ In addition, the law required that most immigrants be in qualified status for five years or longer before becoming eligible for certain public benefits—essentially creating a five-year waiting period for assistance.⁷⁵ The most draconian aspects of PRWORA barred most non-citizens from SSI and SNAP altogether.

PRWORA also limited access to benefits through the tax system—which were increasingly significant, with the expansions of the Earned Income Tax Credit (EITC) in the early 1990s. Up until 1996, immigrants could file federal taxes and claim the EITC—enacted in 1975—even if they were not authorized to work. PRWORA, however, imposed a new requirement that a tax filer and their spouse and qualifying children have Social Security Numbers that are valid for employment in order to claim the EITC, for the first time excluding undocumented immigrants who paid taxes.⁷⁶

Finally, PRWORA increased the significance of state action. PRWORA both allowed states to further restrict access to benefits for immigrants who were lawfully present and allowed states to affirmatively extend support to immigrant families in certain cases.⁷⁷ In addition, while PRWORA established default restrictions on state and local benefits by barring undocumented immigrants from assistance, states could override this exclusion with affirmative legislation establishing affected immigrant families' eligibility.⁷⁸

Combined, these policy decisions resulted in a complex web of eligibility rules (see Figure 2), where many immigrants were excluded from supports altogether, and eligibility also varied significantly from one jurisdiction to the next and within families. For example, in the wake of PRWORA it is not uncommon for children to be eligible for benefits from which their parents are excluded, or for a family to gain or lose eligibility for a benefit if they move across a state line. The complexity of eligibility rules in and of themselves can reduce access, as families may not take up benefits due to confusion or misinformation.⁷⁹

In addition to excluding immigrant families from the supports they need, PRWORA along with IIRAIRA, which was signed into law one month later, also made immigrants more dependent on the relatives or others who sponsored them when applying for LPR status.⁸⁰ Under PRWORA, certain benefit-granting agencies were instructed to assess the combined income and resources of the sponsor and immigrant when determining eligibility for benefits—which had the effect of disqualifying many immigrants as over-income. This sponsor “deeming,” which before PRWORA had typically been required only during an immigrant’s first three years of residence in the U.S., now was required until the immigrant had naturalized or had credit for 40 calendar quarters of work history in the U.S.⁸¹ IIRAIRA, in turn, required sponsors to 1) demonstrate proof that they could financially support immigrant relatives at 125 percent of the federal poverty threshold, 2) sign a legally-enforceable affidavit of support, and 3) reimburse the government for certain public benefits used by the immigrant family member until they naturalized or worked.⁸² These requirements had the effect of both making it more difficult for families with lower incomes to sponsor relatives to join them in the U.S. and increasing the financial and emotional burdens on families who were able to sponsor relatives.



Figure 2. Legacy of PRWORA's Immigrant Exclusions Appear in Wide Range of Economic Security & Health Coverage Programs

Topline Overview of Immigrant Eligibility for Key Federal Funding & Programs

	Lawful Permanent Resident (LPR)	Refugee & Asylee	Undocumented
TANF	Not eligible for the first 5 years ⁸³	Eligible for 5 years after arrival/ granted such status ⁸⁴ Eligible unless a state chooses to restrict after 5 years	Not eligible
SNAP	Not eligible for the first 5 years * LPRs receiving disability-related assistance and children under age 18 are eligible	Eligible	Not eligible
WIC [†]	Eligible	Eligible	Eligible ⁸⁵
Medicaid (Federal)	Not eligible for the first 5 years * Children and pregnant LPRs are eligible in some states	Eligible for 7 years after arrival/ granted such status	Not eligible
Emergency Medicaid	Eligible	Eligible	Eligible
CHIP (Federal)	Not eligible for the first 5 years * Children and pregnant LPRs are eligible in some states	Eligible	Not eligible
ACA Marketplace Subsidies	Eligible	Eligible	Not eligible
SSI	Not eligible for the first 5 years and <i>only if also have credit for 40 quarters of work history in the US or meet another exception</i>	Eligible for 7 years after arrival/ granted such status	Not eligible
EITC (Federal)	Eligible	Eligible	Not eligible
CTC	Eligible	Eligible	Not eligible *Eligibility is tied to the child, so an undocumented parent may claim the CTC on behalf of a child with a valid Social Security Number ⁸⁶

Note: Eligibility criteria specific to LPRs applies to immigrants who entered on or after August 22, 1996. Some states may have chosen to expand federal supports to additional immigrant groups. For more detailed information, including on state options, see Table 1 in "Overview of Immigrant Eligibility for Federal Programs." National Immigration Law Center, April 2021. Available at https://www.nilc.org/issues/economic-support/table_ovrwr_fedprogs/.

[†]Special Supplemental Nutrition Program for Women, Infants, and Children

PRWORA Rapidly Increased Hardship for Immigrants & Their Families

The 1996 legislation, including PRWORA, caused a rapid decline in overall participation in cash assistance, food assistance, health care coverage, and other public benefits, due to exclusion, confusion, and fear.⁸⁷ After the passage of PRWORA, almost one million immigrants lost access to benefits.⁸⁸ Immigrant families' participation in SNAP decreased by 72 percent between 1994 and 1998.⁸⁹ One study authored by George Borjas, whose work was used to justify the immigrant restrictions in PRWORA, found a corresponding rise in food insecurity after the law's passage—for each 10 percentage point decrease in the population enrolled in benefits, there was a corresponding five percentage point increase in the population of those experiencing food insecurity.⁹⁰ In addition to explicit exclusion of immigrants, there is strong evidence that even eligible immigrant families, including those with U.S. citizen children, chose not to participate, illustrating a “chilling effect” due to confusion and reasonable apprehension about the new law.⁹¹

From the start, even many of PRWORA's most vocal champions recognized that the law's immigrant exclusions were too draconian. President Clinton spoke out against PRWORA's immigrant restrictions when signing the bill into law, vowing to revisit the exclusions, and his top domestic policy advisor, Bruce Reed, called for the restoration of benefits for all immigrants who were lawfully present, without a waiting period.⁹² Over time, public outcry and the concerted efforts of a broad coalition of advocates and organizers led to some public benefits being restored, particularly to immigrant children.⁹³ In 1997, Congress restored SSI to most immigrants who were living in the U.S. at the time of PRWORA's enactment. In 1998, Congress restored SNAP eligibility for children, as well as seniors and some immigrants with disabilities who resided in the U.S. before August 1996.⁹⁴ In 2002, the Farm Security and Rural Investment Act restored SNAP eligibility for persons receiving disability-related assistance, regardless of date of entry, immigrants who had a “qualified” immigrant status in the U.S. for five years or more, and children under age 18, regardless of date of entry.⁹⁵

Many immigrants families, however, continue to be excluded from the supports and services they need, leading to significant hardship (see “Immigrant Families Currently Experience Significant Hardship Due to Discrimination and Exclusion”). PRWORA's exclusions also established a new norm of exclusion, that has shaped federal policy in the years since.





PRWORA Legitimized Anti-Immigrant Exclusion in Subsequent Policy

PRWORA had immediate and lasting consequences for the millions of immigrants who lost access to benefits.⁹⁶ However, it also left another legacy: it legitimized anti-immigrant racism and politics and created a new norm of immigrant exclusion that has shaped public policy in the two and a half decades since.

PRWORA legitimized exclusion in part by creating a feedback loop between racist stereotypes and public policy—as myths and tropes shaped policy, policy continued to perpetuate these stereotypes by sending messages about who is deserving and who is not.⁹⁷ PRWORA also became a touchstone for policymakers and advocates. Proponents of immigrant exclusion referenced the law to justify new exclusions. Meanwhile, opponents of exclusion, including immigration groups and their allies, had to consistently make the affirmative case for inclusion in PRWORA's wake. Given the politically polarizing nature of immigration policy discourse today, immigrant inclusion is often seen as negotiable rather than necessary to ensure the effectiveness of policies.

PRWORA's Legacy of Exclusion is Evident in Federal Programs

Several new public benefit programs and systems created since 1996—including CHIP, the ACA, and the CTC—have continued this system of exclusion by denying support to many immigrants living in the U.S. As a result, today, 25 years after the passage of PRWORA, our nation's federal system of supports and public benefits continues to exclude immigrant families and community members, with devastating results.

Health Care Coverage

The standard of exclusion introduced by PRWORA has influenced health policy in the years since, including legislation that created CHIP in 1997 and the ACA in 2010.⁹⁸ CHIP reproduced PRWORA's narrow, highly detailed categories to exclude certain immigrants and their families. The ACA expanded health coverage for certain, lawfully present immigrant families, while continuing to exclude undocumented immigrants, including DACA participants. Both laws mirror PRWORA in that they create arbitrary distinctions between individuals, who may have the same need for health care but differing eligibility, and create a default of exclusion that results in significant state variation in access to health care.

One year after PRWORA, policymakers established the State Children's Health Insurance Program (SCHIP or CHIP) to expand health coverage to children in families with incomes that exceed Medicaid eligibility thresholds. In doing so, policymakers adopted restrictions that were similar to PRWORA, albeit less draconian, for immigrant children.⁹⁹ CHIP coverage for children who entered the United States after 1996 could not be paid for with federal funds during the five-year period after they obtained their qualified status, and only a dozen states covered these children with state funds as of 2002.¹⁰⁰ In 2009, the Children's Health



Insurance Program Reauthorization Act (CHIPRA) allowed states to provide Medicaid and CHIP coverage to “lawfully residing” children and pregnant women without a waiting period using federal funds—if states affirmatively elected to do so.¹⁰¹ As of 2021, 35 states have removed the Medicaid/CHIP waiting period for children and 25 states have for pregnant women.¹⁰² In states that do not elect this option, some immigrants, like those with TPS, cannot access CHIP regardless of length of residence.¹⁰³

The Affordable Care Act (ACA) of 2010 expanded health care coverage for some immigrant families, but continued to exclude undocumented immigrants. The debate over the ACA was highly racialized and immigration became a major focus. During a speech before Congress on the ACA proposal, President Obama stated that the plans would not include coverage to undocumented immigrants.¹⁰⁴ In an unprecedented break from decorum, Representative Joe Wilson (R-SC) interrupted the first Black president in an act that was itself racist yelling, “You lie!”¹⁰⁵ From then on, debates regarding the package focused on undocumented immigrants.¹⁰⁶ In the end, the ACA allowed lawfully present immigrants to purchase health insurance on federal or state health exchanges without a waiting period. They are also eligible for premium tax credits, or subsidies to help cover the costs of their monthly health insurance premiums, as are refugees and asylees.¹⁰⁷ Still, these benefits do not extend to undocumented immigrants or DACA participants, who arrived in the U.S. as children and have been granted deferred action or temporary relief from deportation and work authorization.¹⁰⁸ Despite precedent that allowed other groups of immigrants granted deferred action to be eligible for public benefits such as Medicaid or CHIP, in the context of this divisive debate over immigrants access to health care the Department of Health and Human Services under the Obama administration amended its ACA rules and instructions to state health officials to specifically exclude DACA participants from qualifying.¹⁰⁹

Child Tax Credit

The same year Congress created CHIP, it created the Child Tax Credit (CTC), which started as a \$500 per child non-refundable credit that could offset federal tax liability.¹¹⁰ Unlike the EITC, which PRWORA had newly restricted to families in which every member had a Social Security Number authorized for work, the CTC was initially available to families where neither the tax filers nor qualifying children were eligible for Social Security Numbers. In the years that followed, however, as the CTC became more generous and partially refundable, policymakers and anti-immigrant think tanks undertook a concerted campaign to exclude many immigrant families, citing PRWORA as precedent.¹¹¹

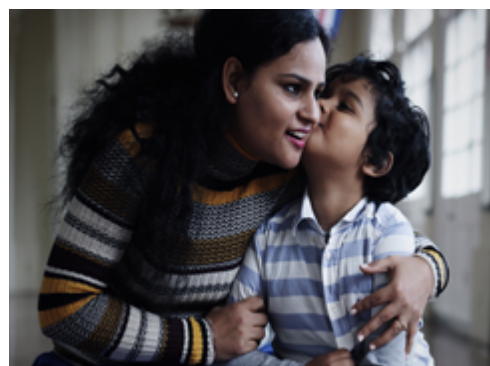
The political interest in immigrants’ access to CTC increased in 2011, after the Treasury Inspector General for Tax Administration (TIGTA), the IRS watchdog, released a report highlighting the benefits immigrant families received from the CTC and raising questions about whether undocumented families should be eligible for the credit given their exclusion from “federal public benefits” under PRWORA. TIGTA’s report was published with a title designed to grab headlines: “Individuals Who are Not Authorized to Work in the United States Were Paid \$4.2 Billion in Refundable Credits.”¹¹² It detailed that, in 2010, people filing taxes with Individual Tax Identification Numbers (ITINs) claimed \$4.2 billion of the refundable portion of the CTC, up from \$924 million in 2005. In reality, more immigrant families had filed federal taxes (and thus, claimed the CTC) in the preceding years due to Congressional debates on comprehensive immigration reform legislation that would have required immigrants to demonstrate they had paid taxes in order to seek adjustment of status.¹¹³ Another reason for the dramatic increase, was that many immigrants were filing returns for multiple years

at a time, and therefore claiming multiple years of the CTC. TIGTA raised the issue of whether the CTC should be considered a “federal public benefit” under PRWORA, and thereby be denied to undocumented immigrants. Echoing the debates over PRWORA, TIGTA repeatedly noted that “the payment of federal funds through this tax benefit appears to provide an additional incentive for aliens to enter, reside, and work in the United States without authorization, which contradicts Federal law and policy to remove such incentives.”¹¹⁴ TIGTA admonished IRS management for interpreting ITIN filers as eligible for the CTC under PRWORA and recommended “legislation to clarify whether a social security number which is valid for employment is needed to claim” the refundable portion of the credit.¹¹⁵

The question whether undocumented immigrants should be eligible for the CTC quickly became politicized and racialized, as Fox News and anti-immigrant think tanks called for their exclusion.¹¹⁶ In news coverage, as well as in the work of FAIR and CIS, immigrants were simultaneously criticized for accessing benefits for which they were eligible and accused of fraud. A single case of fraud uncovered by the NBC affiliate in Indianapolis, where immigrants with ITINs were illegitimately claiming the CTC for children who had never lived in the U.S, was highlighted time and again.¹¹⁷ FAIR made sure to point out that the children being claimed in this case were “in Mexico.”¹¹⁸

In the years that followed, Republicans introduced a number of bills to exclude immigrant families from the CTC, and in 2015, the issue became a talking point in one of the most anti-immigrant presidential races in recent memory.¹¹⁹ In a campaign launched with a speech deriding Mexican immigrants as criminals and “rapists,” then-presidential candidate Donald Trump regularly cited TIGTA’s \$4.2 billion number and used the statistic to inflame anti-immigrant sentiment.¹²⁰ His campaign’s high-level framework for immigration reform, whose primary policy recommendation was building a wall along the Mexican-U.S. border, misleadingly cited \$4.2 billion as one of the “costs” justifying making “Mexico pay for the wall.”¹²¹ Once in office, President Trump’s Attorney General Jeff Sessions echoed these talking points, that the border wall could be paid for by Mexico because of “\$4b in excess payments” of tax credits that were delivered to families who were “mostly Mexicans.”¹²²

The Trump administration achieved its goal of excluding at least some undocumented immigrants from the CTC in the Tax Cuts and Jobs Act of 2017, which limited the CTC to qualifying children who had Social Security Numbers.¹²³ Under the TCJA, mixed status families where one or more parents have an ITIN are eligible for the CTC for any children who have SSNs, but not for any children who have ITINs. With the stroke of a pen, an estimated one million children were excluded from the CTC.¹²⁴ In the years since, anti-immigration groups have continued to beat the drum against refundable tax credits for immigrant families, hoping to narrow eligibility even further.¹²⁵





Public Charge

PRWORA was not only invoked by immigration critics to justify excluding families from supports such as health care coverage and the Child Tax Credit, but it also shaped the Trump administration's most significant action curtailing benefit access for immigrant families: the public charge rule.

Re-imagining the public charge rule became the focus of an administration whose immigration agenda was designed to exclude immigrants of color. The requirement that an immigrant prove that they are not likely to become a public charge in order to enter the country or adjust their status had been a requirement of immigration law since 1882. As the legal scholar Kevin Johnson observed, “a racial dimension lurks behind the public charge grounds,”¹²⁶ as it was used initially to exclude immigrants who were viewed as racially or ethnically different, including the Irish as well as Japanese, Indians, and other immigrants of Asian descent, and has been used in the years since to exclude immigrants who hailed from lower income countries outside of Europe.¹²⁷ Indications that the Trump administration was interested in reimagining public charge were clear in the first week that President Trump was in office, when a draft executive order was leaked stating that the administration intended to ensure “that our immigration laws are enforced in a manner... protecting American taxpayers and promoting immigrant self-sufficiency.” Echoing the language from PRWORA, the leaked order raised concerns about immigrants use of federal means-tested public benefits. It directed the Office of Management and Budget (OMB) to ensure immigrants receive only public benefits to which they are entitled, and the Department of Homeland Security (DHS) and the State Department to “establish new standards and regulations for determining when aliens will become subject to the ‘public charge’ grounds of inadmissibility and deportability.”¹²⁸

A year later, after leaked drafts had already succeeded in leading many immigrant families to avoid public benefits, the Trump administration's DHS published a proposed rule to drastically tighten the public charge standards for admission to the U.S.¹²⁹ One of the clearly stated purposes of the rule was “to improve upon the 1999 Interim Field Guidance...,” which was issued after PRWORA to combat the chilling effect PRWORA was having on immigrants' access to benefits, “...by removing the artificial distinction between cash and non-cash benefits, and aligning public charge policy with the self-sufficiency principles set forth in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA).”¹³⁰ PRWORA was a touchstone in DHS's analysis throughout the rulemaking process. Later in the Notice of Proposed Rulemaking (NPRM), DHS stated that the agency “believes that the policy goals articulated in PRWORA and IIRIRA should inform its administrative implementation of the public charge ground of inadmissibility.”¹³¹ The NPRM justified its restrictions as being consistent with “Congressional objectives announced in PRWORA” and noted specifically PRWORA's goal that, “the availability of public benefits not constitute an incentive for immigration to the United States.”¹³²

The Trump administration's October 2018 proposed rule expanded the public benefits considered under the public charge test, and also clarified that having low and moderate incomes would be weighed negatively when considering whether a prospective immigrant was likely to become a public charge. Under the proposed rule's new complicated formula for assessing whether someone was likely to become a public charge, having family income over 250 percent of the Federal Poverty Level was the only “heavily weighed” positive factor in favor of passing the test. Despite a record number of comments in opposition to the proposed rule, many



of which highlighted the threat the rule posed to the health and well-being of children and families and people with disabilities, in August 2019 the Trump administration released the final rule.¹³³ The basic outlines of the rule were unchanged from the proposed rule, and the administration continued to justify its actions by repeatedly citing PRWORA.¹³⁴

The Migration Policy Institute (MPI) found that the rule would make it especially difficult for people from Asia, Latin America, and Africa to immigrate, effectively limiting the immigration of people of color. According to their analysis, among recently arrived, lawful permanent residents, immigrants from the Caribbean, Mexico and Central America, Africa, and to a lesser extent Asia and South America, are more likely to have incomes under 250 percent of the poverty level compared to immigrants from Europe, Canada, and Oceania.¹³⁵ MPI also found that immigrants from Mexico and Central America were especially likely to have two or more negative factors under the proposed public charge test.¹³⁶ Though the administration asserted that the rule was not discriminatory or racist, the disparate impact the rule would have on immigrants of color was clear.

The administration's final public charge rule was quickly enjoined, and was in effect for only about a year before the Biden administration dismissed the appeals, allowing an order vacating the rule to go into effect on March 9, 2021, and on March 15, formally withdrew the rule.¹³⁷ But the harm to immigrant families, and to immigrants of color in particular has persisted.¹³⁸

Box 1. In the Absence of Federal Support, State & Local Policies Determine Immigrant Families' Access to Support

In the face of repeated exclusion at the federal level, state and local policies increasingly determine whether immigrant families have access to any support at all.¹³⁹ Some state and local governments have used their own funding to create programs that expand immigrants' access to benefits beyond federal eligibility, or taken advantage of federal options in some programs to include some immigrant families, while others have added additional eligibility requirements for immigrants.

Many states have used their own funds to expand support for immigrants. As of April 2020, six states have state-funded food assistance programs for immigrants who are not eligible for federally-funded SNAP and 22 states have state-funded TANF programs for some or all immigrants who are ineligible for federal TANF.¹⁴⁰ As of July 2021, 19 states provide state-funded medical assistance programs for some immigrants who do not have access to federally funded Medicaid or CHIP.¹⁴¹ For example, in California, Cash Assistance Program for Immigrants (CAPI)¹⁴² and California Food Assistance Program (CFAP)¹⁴³ restores SSI and SNAP eligibility for certain noncitizens who would have met all SSI or SNAP criteria before 1996. In Minnesota, the MinnesotaCare program provides health care coverage for lawfully present immigrants who are ineligible for Medicaid during the five-year waiting period; the program also provides coverage for immigrants who have TPS, or are DACA participants.¹⁴⁴

Some states have taken advantage of federal options in some programs to include some immigrant families, while others have excluded additional families. In 35 states, people with lawful status who immigrated after the 1996 law took effect are barred from cash assistance for five years.¹⁴⁵ In 13 states, all LPRs are eligible for cash assistance within their first five years of residency and in three states, some Lawful Permanent Residents who have been in the U.S. for less than five years can access cash assistance.¹⁴⁶

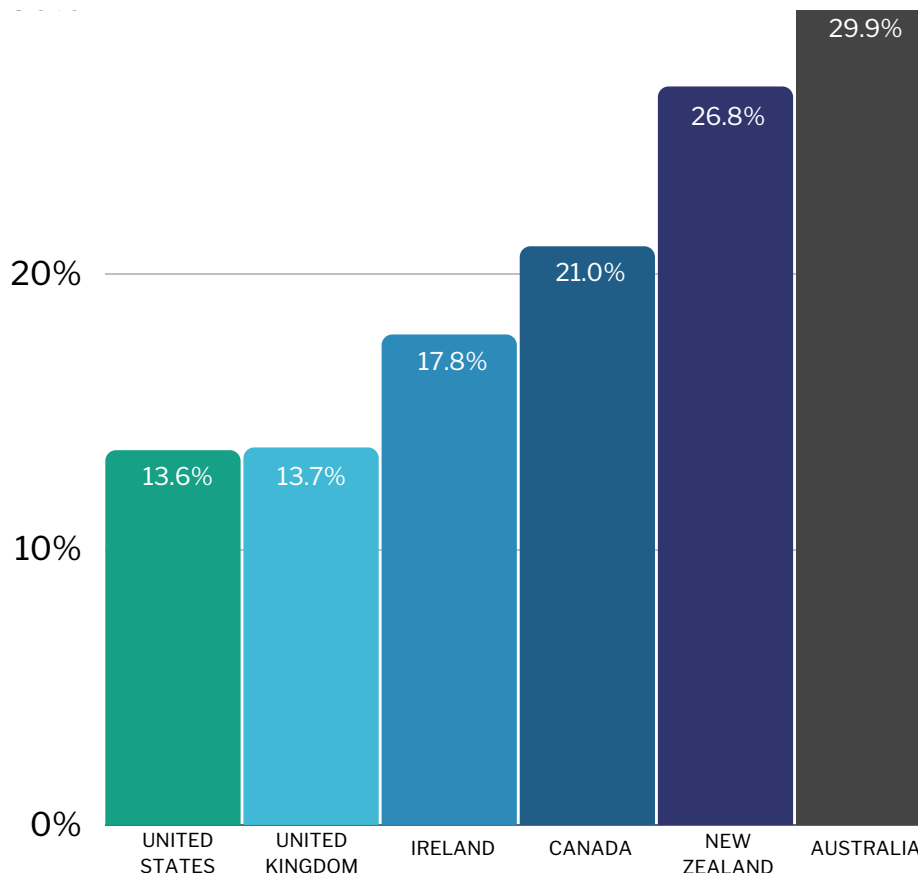
Some states have taken steps to add eligibility requirements for immigrants in addition to PRWORA's requirements. Texas not only applies the federal five-year bar on legally present non-citizens' use of TANF and Medicaid, but denies benefits for legal permanent residents until they have 40 qualifying quarters of work.¹⁴⁷ This work history requirement applies only to immigrants and is also in place in four other states: Mississippi, Montana, Ohio, South Carolina.¹⁴⁸

Conclusion: Including Immigrant Families is Critical to Building Anti-Racist Supports

Twenty-five years ago, the Personal Responsibility and Work Opportunity Act transformed our system of social supports. The law's immigrant exclusions are one of a number of policies that have exacerbated economic and racial inequities and harmed children and families in the years since. By legitimizing immigrant exclusion, the law has also had a protracted afterlife, continuing to influence policymaking and making it increasingly difficult for immigrant families to access the full range of supports they may need.

As PRWORA has embedded exclusion into our system of social supports, immigration has continued. Overall, the immigration rate to the U.S. remains relatively low compared to peer nations (see Figure 3). Today, families making their home in the U.S. increasingly come from Central America, the Caribbean, Asia, and Africa.¹⁴⁹ Today's immigrants, like those who came before, are directly harmed by exclusionary policies that deny them access to foundational supports, and are rooted in a long history of anti-Black and anti-Latinx racism.¹⁵⁰

Figure 3. The U.S. Immigration Rate is Relatively Low Among Peer Nations
Percentage of Population Born Abroad in Select OECD Countries, 2019



Note: Based on data from the Organisation for Economic Co-operation and Development (OECD). Population born abroad covers all people who have ever migrated from their country of birth to their current country of residence.

Ultimately, these exclusions harm everyone. Nothing has highlighted our collective interdependence more than the COVID-19 pandemic. In response to the pandemic and immigrant families' exclusion from federal COVID-19 relief, communities across the country have established emergency relief funds for immigrant families who are ineligible for federal assistance, recognizing how important it is for the broader public welfare that every member of the community have access to the supports and services they need.¹⁵¹ In doing so, they join a growing number of states and localities in developing immigrant-inclusive supports. Over the last several years, states including California, Maryland, Colorado, New Mexico, and Washington have enacted immigrant-inclusive state EITCs.¹⁵² California and Illinois are among the states that have extended Medicaid coverage to undocumented children, and Illinois became the first state in the nation to extend health coverage to undocumented seniors.¹⁵³

A quarter century after PRWORA, it is time for federal action to restore and reinforce access to public benefits for immigrant families. This will require repealing the five-year bar and other restrictions on access to benefits for immigrants who are lawfully present, as well as restoring access for immigrants who are undocumented, so that families can obtain health care, food assistance, cash assistance, refundable tax credits, and other supports they might need, regardless of immigration status.

Policies like PRWORA which codify artificial divisions between families deemed “deserving” and “undeserving,” inevitably—and often by design—leave children and families of color without access to needed services and supports. Broad-based, inclusive programs which recognize immigrant families and families of color as essential members of their communities, rather than politically negotiable, are crucial to countering structural racism and building anti-racist supports that promote the health and well-being of all children and families.¹⁵⁴

The 25th anniversary of PRWORA is far from a celebratory occasion. Rather, it offers an opportunity to take account of the lasting damage that PRWORA and other anti-immigrant legislation has inflicted on immigrant communities and beyond. To redress the harm caused by these policies, policymakers should proactively and comprehensively include immigrant families in public supports and services. Now is the time to create a new legacy of inclusion, and ensure that foundational supports and services meet the needs of *all* children and families.



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