APPENDIX J. NONCITIZENS*

CONTENTS

INTRODUCTION

Opposition to the entry of foreign paupers and aliens "likely at any time to become a public charge"—language found in the Immigration and Nationality Act today—dates from Colonial times. The colony of Massachusetts enacted legislation in 1645 prohibiting the entry of paupers and again in 1700 excluding the infirm unless security was given against their becoming public charges. A bar against the landing of "any person unable to take care of himself or herself without becoming a public charge" was included in the first general Federal immigration law, the Act of August 3, 1882. This prohibition was carried forward in the Immigration Act of 1917, and was recodified in the Immigration and Nationality Act both when it was enacted on June 27, 1952 and again in 1990.

There is no comprehensive rule that restricts direct Federal assistance or federally funded assistance on the basis of immigration status. This is true both with respect to legal permanent residents who enter under the admission system in the Immigration and Nationality Act and to aliens who enter or remain in violation of law.

Those restrictions that do exist have been enacted on a program-by-program basis, beginning in the 1970s—40 years after Congress first enacted major social programs. Most existing restrictions deny assistance to aliens who are here without legal permission. Restrictions affecting legal permanent residents (i.e., immigrants) were not enacted until the 1980s. These restrictions apply to three programs only—AFDC, SSI, and food stamps—and are limited in duration. Starting in 1993, comprehensive rules on alien eligibility for benefits were proposed as components of major welfare reform and immigration bills. Most of the proposals covered both legal aliens and illegal aliens. The proposals also covered both Federal programs and State and local programs.

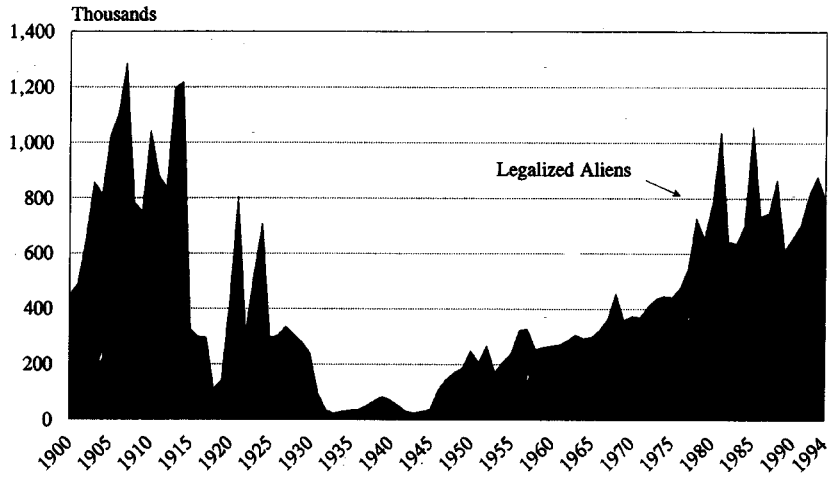
*The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 changed this program; see appendix L for details.

U.S. IMMIGRATION POLICY AND TRENDS

The three major goals underlying U.S. policy on legal immigration are the reunification of families, the admission of immigrants with needed skills, and the protection of refugees. These goals are implemented through the immigration preference and refugee and asylum provisions of the Immigration and Nationality Act, the basic law regulating the admission of immigrants (i.e., aliens allowed to reside in the United States permanently). Another goal of immigration policy is to allow immigrants an opportunity to integrate fully into society. Once aliens have been admitted for lawful permanent residency or have adjusted to permanent resident status while here, they are on a track to citizenship.

Immigration has been increasing sharply since 1980. A recent Census Bureau report indicates that more than 50 percent of the foreign born currently in the United States entered between 1980 and 1994, (Hansen & Bachu, 1995, p. 2). An analysis of the 12.4 million immigrant admissions recorded by the Immigration and Naturalization Service (INS) from 1980 through 1994 indicates that much of the increase is attributable to the admission of approximately 1.6 million refugees and more than 2.6 million legalized aliens. The latter were formerly illegal aliens who adjusted their status under legalization programs for long-term residents and agricultural workers in the Immigration Reform and Control Act of 1986 (IRCA). The number of visa preference petitions filed by them for their relatives since their adjustment has resulted in large backlogs in certain visa preference categories (see chart J–1).

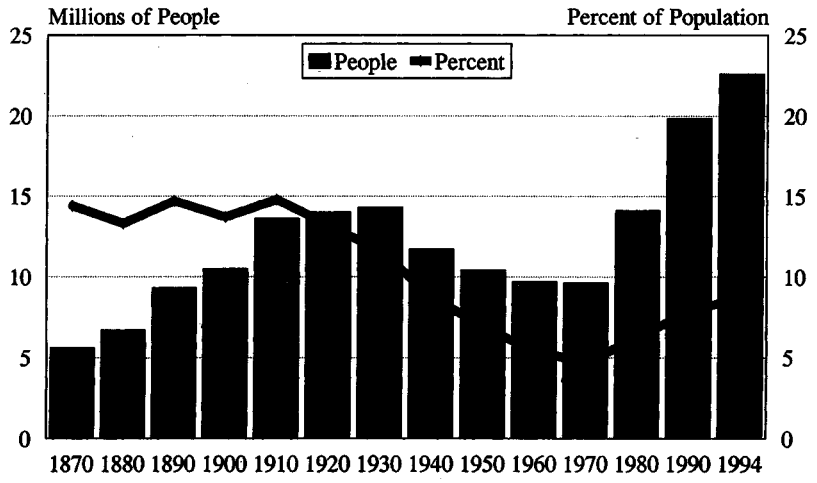
CHART J–1. ADMISSION OF LEGAL PERMANENT RESIDENTS AND ALIENS LEGALIZED UNDER IRCA BY MOST RECENT YEAR OF ENTRY



Source: Congressional Research Service, based on Immigration and Naturalization Service data.

As indicated in chart J–1, immigration during the 1990s has been at the highest level since its precipitous fall during World War I. The foreign born population of the United States over the period 1870–1994 is shown in chart J–2 in terms of absolute numbers and as a percentage of total U.S. population. The year 1910 was the peak in terms of the percent of foreign born (14.8 percent), but 1994 was the high point in terms of absolute numbers (22.6 million).

CHART J–2. FOREIGN-BORN POPULATION OF THE UNITED STATES, 1870–1994



Source: Congressional Research Service, based on U.S. Bureau of the Census, 1995 and Bogue, 1995.

The Immigration and Nationality Act provides that in order to be eligible for admission as an immigrant, aliens must establish that they are not "likely at any time to become a public charge." Under current law, either a consular officer in the State Department or an immigration inspector in the Immigration and Naturalization Service may exclude an alien on public charge grounds, unless the public charge ground is waived, as is the case with refugees. Congress has purposely stated the public charge ground in general terms. Broad discretion is given to consular officers and immigration inspectors to assess individual applicants. As stated in the 1950 report of the Senate Judiciary Special Subcommittee to Investigate Immigration and Naturalization: "Since the elements constituting likelihood of becoming a public charge are varied, there should be no attempt to define the term in law, but rather to establish the specific qualification that the determination of whether an alien falls into that category rests within the discretion of the consular officers or the Commissioner [of Immigration]."

Administrative guidelines continue to emphasize flexibility. According to the U.S. State Department's *Foreign Affairs Manual* (1993), any number of factors may be considered. Essentially, how-

ever, an alien must show adequate personal resources, a permanent job, assurances from relatives or friends in the United States that they will provide support, or a combination of the foregoing to overcome a public charge exclusion. Support from relatives or friends requires the submission of an "affidavit of support" from a resident of the United States providing assurance that the applicant for entry will be supported in this country. Neither statute nor regulation expressly authorizes use of these affidavits, but the practice of requiring them as a device for implementing the public charge exclusion has been followed since 1930.

There is no authoritative data on the number of aliens who have had affidavits of support filed for them. Neither the State Department nor INS compiles statistics on the number of immigrants who demonstrate that they are unlikely to become a public charge by means of the affidavit of support. The U.S. Department of State (1995) estimated on the basis of "the collective experience of consular officers," that "85 percent of family immigrant visa applicants and 10 percent of employment preference immigrant visa applicants possess an affidavit of support when they apply for the visa and when they enter the U.S." Based on these estimates, it appears that approximately one-half of permanent residents had affidavits of support executed for them in fiscal year 1994. This estimate is based on total immigrant admissions and adjustments, including refugees for whom the public charge requirement is waived (Vialet & Eig, 1995).

In practice, there appears to be considerable flexibility in the use of affidavits, so long as State Department and INS officials are convinced that a prospective immigrant will be backed by adequate resources. Under guidelines in the State Department's *Foreign Affairs Manual*, apparently any individual in the United States may execute an affidavit for a prospective immigrant. Having a close family relationship with the immigrant, or even a close personal friendship, is not required, but it is a factor that is considered in assessing whether adequate support is likely to be provided. Also, a sponsor need not show a particular level of income or means. Rather, the general standard is that the sponsor have sufficient means to assure that the alien will not fall below Federal poverty guidelines, but even this standard is not binding. Additionally, more than one individual may submit an affidavit on behalf of an alien.

With regard to the pledges made in affidavits of support (INS Form I–134), the sponsor attests that the beneficiary will not become a public charge and that the sponsor is ready, willing, and able to post bond, if necessary, to that end. The sponsor further acknowledges that "this affidavit will be binding upon me for a period of three (3) years," a period chosen to reflect the so-called "deeming" requirement of three public assistance programs discussed below. Despite these pledges, many State appellate courts have held that affidavits of support, as currently constituted, cannot be used as a legal basis for obtaining funds from sponsors by public agencies that assist sponsored aliens or by sponsored aliens themselves.

The State court decisions have emphasized that administrative authorities developed affidavits of support only as a form of evi-

dence that an alien is unlikely to depend on public resources. The leading California case, *San Diego* v. *Viloria*, explains that affidavits cannot be construed as legal contracts because they do not set the basis of a sponsor's obligations. They are not sufficiently precise, in the court's opinion, to constitute a contract of guarantee or a contract of warranty, nor are they clear as to what unforeseen causes of dependency are covered. Reaching the same conclusion, appellate courts in New York (*Department of Mental Hygiene* v. *Renel*) and Michigan (*State* v. *Binder*) cite the lack of statutory authority for enforceable affidavits and longstanding Federal recognition of the limited weight of affidavits.

ALIEN ELIGIBILITY FOR FEDERAL ASSISTANCE

Congress first restricted alien access to assistance after the Supreme Court held in 1971 that States lacked authority to do so under either State or joint Federal-State programs. Since then, Congress has imposed alienage restrictions under the enabling statutes of many, but not all, Federal assistance programs. The restricted programs include both programs that assist individuals directly under Federal authority (e.g., food stamps and Supplemental Security Income) and programs that provide Federal funds for State programs that comply with Federal guidelines (e.g., Aid to Families with Dependent Children and Medicaid).

There is no uniform rule governing which categories of aliens are eligible for benefits under restricted programs, and no single statute where they are described. Summarizing briefly, aliens who are lawful permanent residents or are otherwise legally present on a permanent basis (e.g., refugees) are generally eligible for Federal benefits on the same basis as are citizens. With the single exception of emergency Medicaid, illegal aliens are specifically barred by law from participation in all the major Federal assistance programs, as are tourists and most other aliens here legally in a temporary status (i.e., nonimmigrants).

Prior to 1971, a number of States denied assistance under joint Federal-State programs to aliens who did not reside within their jurisdictions for extended periods (Eig & Vialet, 1993). However, in *Graham* v. *Richardson*, 403 U.S. 365 (1971), the Supreme Court overturned State-imposed residency requirements for aliens both because they violated the equal protection clause of the Fourteenth amendment and because they encroached on Federal authority to regulate immigration. Responding to the *Graham* decision, the Department of Health, Education, and Welfare (HEW; the predecessor to the Department of Health and Human Services) proposed regulations in June 1972 that would have made immigration status irrelevant in determining eligibility for AFDC and Medicaid. Comments on the regulations were received from 59 persons, 50 of whom opposed granting assistance to aliens who had not been lawfully admitted (Federal Register, 1973). Reasons for the objections included beliefs that the *Graham* decision did not apply to illegal aliens, that caseloads would burgeon beyond the fiscal ability of the States, and that the Federal Government should bear the full cost of providing assistance to aliens here in violation of Federal law.

While the AFDC and Medicaid regulations were still pending, Congress included a statutory alien eligibility requirement in the

original Supplemental Security Income (SSI) statute in 1972. The standard adopted limited assistance to those aliens who either were legal permanent residents (immigrants) or permanently residing in the United States under color of law (PRUCOL).[1] The Department of Health, Education, and Welfare subsequently followed the congressional lead by adopting the PRUCOL standard for Aid to Families with Dependent Children and Medicaid. Congress enacted a PRUCOL standard for Aid to Families with Dependent Children in 1982. Meanwhile, the PRUCOL standard for Medicaid continued to be imposed under administrative regulations only. In 1986, a U.S. district court held that alien access to Medicaid benefits could not be restricted absent a statutory basis, thereby potentially opening access to full Medicaid benefits to all aliens, including illegal aliens. Congressional action followed, and a compromise was struck between Members advocating a PRUCOL standard, and Members who believed that the Federal Government should be fully responsible for the health costs of illegal aliens. The result was a statutory PRUCOL standard for nonemergency services and universal alien eligibility for emergency services.

The flexibility afforded by the PRUCOL standard to adapt to changes in immigration law began to be criticized as being too elastic and difficult to enforce. In 1977, the House Agriculture Committee chose to limit eligibility for food stamps to aliens in one of five specific categories rather than to follow the PRUCOL standard, which leaves a certain degree of discretion with administrative authorities. The Committee feared that a possible Presidential amnesty of illegal aliens could have added millions of potential new food stamp applicants under a PRUCOL test (H.R. Rept. 95–113, p. 148). The model of an exclusive statutory list, as opposed to a more open-ended PRUCOL test, has since been adopted for several other Federal programs.

Through the 1970s, Congress focused its alienage restrictions for means-tested programs on nonimmigrants (i.e., aliens admitted temporarily for a specific purpose, such as tourists, students, and temporary workers) and illegal aliens. By the late 1970s, however, some newly arrived permanent resident aliens were beginning to be viewed as abusing the benefits system, especially SSI. In a 1978 report, "Number of Newly Arrived Aliens Who Receive Supplemental Security Income Needs To Be Reduced," the General Accounting Office stated that "[t]he public charge provisions of the Immigration and Nationality Act are ineffective in screening out aged (age 65 or older) aliens who may need SSI assistance soon after arrival in the United States. We estimate that 34 percent of the aged aliens who entered the United States during fiscal years 1973–75 were receiving SSI at the end of December 1976" (U.S. General Accounting Office, 1978, p. 7). GAO followed its findings with a recommendation that a residency requirement for SSI benefits be imposed for newly arriving legal residents whose age or physical condition made them likely SSI recipients (U.S. General Accounting Office, 1978, p. 21).

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[1] PRUCOL (permanently residing under color of law) is not an immigration status like those defined in the Immigration and Nationality Act. Instead, it designates categories of aliens who are here indefinitely with the permission of INS and, because of that, may be eligible for certain Federal benefits if they meet the other program qualifications. See Vialet, 1994.

Citing the GAO recommendation (S. Rept. 96–408), Congress enacted sponsor-to-alien deeming restrictions for the SSI Program in 1980 and subsequently added similar restrictions for AFDC and food stamps. Under these provisions, a portion of a sponsor's income and resources (and those of the sponsor's spouse) is "deemed" to be available to a sponsored immigrant who is seeking assistance during the applicable "deeming period" in determining whether the immigrant meets the needs-based standard for benefits. The so-called "deeming period" for AFDC and food stamps is the first 3 years after a sponsored alien obtains legal status on the basis of an affidavit of support. Until September 30, 1996, the deeming period for SSI has been extended from 3 years from obtaining legal status to 5 years.

Table J–1 below summarizes eligible, ineligible, and restricted categories of aliens for 10 Federal assistance programs (Vialet & Eig, 1994). Unless otherwise noted, alien eligibility restrictions are part of the enabling legislation of the individual programs. In addition to alien status, *aliens must also meet all the eligibility criteria which apply to U.S. citizens* (e.g., financial need).

TABLE J–1.—SUMMARY OF ALIEN ELIGIBILITY FOR SELECTED PROGRAMS

Federal programs	Eligible [1]	Ineligible	Restricted/limited
Aid to Families with Dependent Children (AFDC).	Immigrants, refugees/asylees, parolees, other PRUCOL. [2]	Illegal aliens, nonimmigrants. [3]	Restricted for 3 years: sponsored immigrants [4].
Supplemental Security Income (SSI) for the aged, blind, and disabled.	Same as AFDC.	Illegal aliens, nonimmigrants.	Restricted for 5 years: [4] sponsored immigrants [5].
Medicaid	Same as AFDC.	Illegal aliens, other noneligible aliens (except for emergency conditions).	NA.
Food stamps	Immigrants, refugees/asylees, parolees, aliens with deportation withheld [6], SAW legalized aliens.	Other PRUCOL, illegal aliens, nonimmigrants.	Restricted for 3 years: sponsored immigrants [5].
Legal services	Immigrants, certain close relatives of U.S. citizens, refugees/asylees, aliens with deportation withheld. [6]	Illegal aliens, parolees, other PRUCOL, most nonimmigrants.	Limited: temporary H–2A agricultural workers [7].
Job training (JTPA).	Immigrants, refugees/asylees, parolees, other aliens authorized to work.	Illegal aliens, other aliens not authorized to work.	NA.
Medicare [8]	Individuals who paid Medicare taxes in covered employment; [9] immigrants after 5 years residence may buy in.	All other aliens. [10]	NA.

TABLE J–1.—SUMMARY OF ALIEN ELIGIBILITY FOR SELECTED PROGRAMS—Continued

Federal programs	Eligible [1]	Ineligible	Restricted/limited
Unemployment compensation.	Immigrants, refugees/ asylees, parolees, other PRUCOL, other aliens authorized to work.	Illegal aliens, other aliens not authorized to work, certain non-immigrants. [11]	NA.
Old Age, Survivors, and Disability Insurance (Social Security) [8].	Individuals who paid OASDI taxes in covered employment [9] for the minimum period and their dependents and survivors in the U.S.	All other aliens, including nonresident dependents and survivors who fail to meet residency requirements.	Other nonresident aliens.
Student aid	Immigrants, refugees/ asylees, citizens of former trust territories, certain family unity aliens.	Illegal aliens, aliens present for temporary purpose.	NA.

[1] Aliens must also meet all eligibility requirements that apply to U.S. citizens.

[2] PRUCOL is an acronym for ''permanently residing under color of law'' which includes refugees, asylees, parolees, and aliens whose deportation has been withheld or suspended.

[3] Nonimmigrants are admitted temporarily for specific purposes (e.g., tourists, students).

[4] The restricted period for sponsored immigrants under SSI was extended from 3 to 5 years until October 1996 in Public Law 103–152.

[5] ''Sponsored immigrants'' entered with affidavits of support from U.S. residents, indicating they were not likely to become public charges. For the purpose of determining financial eligibility, some portion of their sponsors' income is deemed available to them for 3 years after entry for AFDC and food stamps, and for 5 years for SSI.

[6] Refers to withholding of deportation because of threat of persecution, a PRUCOL category for programs using the PRUCOL standard.

[7] Legal services limited to wages, housing, transportation, and certain other employment rights.

[8] Individuals who previously worked in covered employment are covered by virtue of prior mandatory withholding.

[9] Individuals working in covered employment need Social Security account numbers to be covered. Illegal aliens have been barred from obtaining Social Security account numbers since 1972.

[10] Aliens in other categories (e.g., refugees, asylees) would become eligible to buy coverage after they adjust to immigrant status and satisfy the 5-year residence requirement.

[11] Nonimmigrants not subject to unemployment (FUTA) taxes or eligible for benefits include students and exchange visitors (F, J, M visa holders) and H–2A agricultural workers.

NA—Not applicable.

Source: Table prepared by the Congressional Research Service (CRS).

Among the programs included in table J–1 are the four major programs of income support and medical assistance for persons with limited income and resources: AFDC, SSI, Medicaid, and food stamps. AFDC and Medicaid are Federal/State matching programs. AFDC provides Federal funds for State programs furnishing cash welfare payments for the families of needy dependent children. Medicaid provides medical assistance for low-income persons who are aged, blind, or disabled or members of families with dependent children. SSI is a Federal program providing cash assistance for needy persons who are aged, blind, or disabled. These three programs are authorized by the Social Security Act, and AFDC and Medicaid are administered by the Department of Health and Human Services (HHS). SSI is administered by the Social Security Administration. The fourth program, food stamps, is authorized by the Food Stamp Act of 1977 and administered by the Department of Agriculture. Food stamps, like SSI, is a Federal program. It pro-

vides low-income households with monthly benefits, generally in the form of food stamp coupons, to enable them to purchase more adequate diets.

Of the other programs in table J–1, two are major Federal social insurance programs, as opposed to assistance programs, and are financed by payroll contributions. These are Social Security (Old-Age, Survivors, and Disability Insurance) and Medicare (part A, Hospital Insurance). They provide benefits as an earned right without regard to need, and do not have citizenship or alien status requirements.

The five remaining programs for which alien eligibility criteria are summarized in table J–1 are: *Legal Services*, which provides legal assistance to the poor; *Job Training* under the Job Training Partnership Act (JTPA), which authorizes employment training for economically disadvantaged adults and youth and dislocated workers; *Medicare Part B*, the Supplementary Insurance Program, a voluntary health insurance program for people over age 65 financed jointly by enrollees and the Federal Government; *Unemployment Compensation*, a Federal/State program providing income for involuntarily unemployed workers; and *student financial aid* for post-secondary education and training under title IV of the Higher Education Act.

ALIEN ELIGIBILITY FOR STATE AND LOCAL BENEFITS

To a significant extent, the level of a State's expenditures for noncitizens is driven by the size of its alien population and the range of services it provides its residents generally. This is so because States have limited legal authority to discriminate against or among aliens in their statutes. Federal immigration policy is preemptive, and the States may not deny aliens access to State programs and services when doing so would undermine their ability to become as full a part of the community as Congress intended. Preemption aside, the Equal Protection Clause of the Fourteenth amendment may prevent the States from discriminating against or among aliens, even where Congress has placed restrictions on the ability of aliens to receive similar Federal benefits (Eig, 1995).

Legal considerations aside, a large amount of State spending on aliens results from participation in joint Federal-State assistance programs. Under joint programs, such as AFDC and Medicaid, Congress sets alien eligibility requirements, but the Federal Government pays for only part of the assistance.

Additionally, States often provide some type of assistance to needy individuals apart from what is provided under Federal or joint Federal-State programs. Among State cash assistance programs are general assistance programs and State supplements to SSI.

Because State supplements generally are limited to SSI recipients or those individuals who would qualify for SSI but for income limits, alien eligibility appears generally to follow those for SSI benefits themselves. Alien eligibility under SSI is restricted to permanent residents, refugees, asylees, and other aliens permanently residing in the United States under color of law. This standard excludes illegal aliens, but it may be possible that there are some

aliens among groups targeted under some State programs who may not qualify for SSI.

General assistance programs provide State- and locally-funded benefits to low-income individuals who are not eligible for federally-funded cash assistance programs. According to a 1992 survey by the National Conference of State Legislatures, 42 States have general relief programs operating in at least one county (National Conference of State Legislatures, 1992). Twenty-two States have statewide programs with uniform eligibility standards.

Of States with high alien populations, Arizona, New Jersey, and New York have statewide general assistance programs. Arizona's general relief statute limits alien eligibility to permanent residents,[2] while New York's home relief statute bars illegal aliens.[3] Illinois and California are among the States with general assistance programs that are not uniform statewide. Illinois operates programs in some but not all counties. California requires counties to have general assistance programs, but standards and administration are handled exclusively at the county level. Apparently, county programs exclude illegal aliens. Texas and Florida are among the States that neither have a statewide program nor require counties to have them.

Similar to cash assistance provided under general assistance programs, States often provide medical assistance to indigent persons who do not qualify for assistance under Federal or joint Federal-State programs. Also like general assistance programs, this assistance varies widely both among the States and, often, within individual States.

USE OF BENEFITS BY NONCITIZENS

ADMINISTRATIVE DATA

Much of the current concern with the use of public assistance by legal immigrants began in 1993 in response to a study by the Social Security Administration. The subject was the use of SSI by legal aliens entering either as lawfully admitted immigrants or "under color of law." SSA found that permanent legal aliens made up more that 25 percent of aged SSI recipients.

More recent data presented by SSA (Ponce & Scott, 1995) indicated a steady increase from 1982 through 1994 in the number and percentage of lawfully admitted aliens receiving SSI, and an increased percentage of total beneficiaries who are legal aliens (see table J–2). Significant numbers of refugees were being admitted during this period. Legal aliens entering "under color of law," most of whom were refugees, accounted for more than 25 percent of the total number of legal alien SSI recipients in December 1994 (see table J–3).

In 1994, legal aliens accounted for about 30 percent of all aged SSI recipients and 6 percent of disabled (or blind) recipients. However, the number of new alien applicants for SSI, which had been increasing during each of the 12 previous years, actually decreased by nearly 15,000 in fiscal year 1994. SSA stated that one possible

[2] Arizona Rev. Stat. Ann. § 46–233(A)(6).
[3] New York Social Services Law § 131–k.

factor for this drop was the temporary extension of the sponsor-to-alien deeming period from 3 to 5 years beginning in January 1994 (Ponce & Scott, 1995, p. 2) As the deeming period is extended, the number of sponsored aliens who may be denied assistance because of deeming potentially increases.

TABLE J–2.—NUMBER OF ALIENS RECEIVING SSI PAYMENTS AND ALIEN RECIPIENTS AS A PERCENTAGE OF ALL SSI RECIPIENTS BY ELIGIBILITY CATEGORY, 1982–94

Year	Aged		Disabled		Total	
	Number	Percent	Number	Percent	Number	Percent
1982	91,900	5.9	36,000	1.6	127,906	3.3
1983	106,600	7.0	44,600	1.9	151,207	3.9
1984	127,600	8.3	53,500	2.1	181,108	4.5
1985	146,500	9.7	64,300	2.4	210,810	5.1
1986	165,300	11.2	79,000	2.8	244,311	5.7
1987	188,000	12.9	94,500	3.2	282,513	6.4
1988	213,900	14.9	106,400	3.5	320,315	7.2
1989	245,700	17.1	124,600	4.0	370,317	8.1
1990	282,400	19.4	153,200	4.6	435,619	9.0
1991	329,690	22.5	189,970	5.2	519,683	10.2
1992	372,930	25.4	228,500	5.6	601,455	10.8
1993	416,420	28.2	266,730	5.9	683,178	11.5
1994	440,000	30.2	298,140	6.2	738,140	11.8

Source: Ponce & Scott, 1995, citing SSI 10-percent Sample Files, December 1994.

High use of SSI by aliens has resulted in large outlays of Federal funds for SSI benefits and large outlays of State funds under State supplementation of SSI, discussed below. Table J–4 shows that, beyond high rates of use, the average benefit amount for alien recipients exceeds the average benefit paid to citizens. This difference is largely attributable to the fact that alien recipients of SSI are less likely than citizens to qualify for retirement and disability benefits under the Old Age, Survivors, and Disability Insurance Program (OASDI), frequently because they have not been here long enough to work 10 years. Receipt of OASDI benefits reduces the amount of SSI benefits to which a recipient is entitled.

Administrative data for the AFDC and Food Stamp Programs, while more limited than those available for SSI, show lower usage rates than have been found for SSI. Health and Human Services data on characteristics of AFDC recipients indicate that, as a percentage of total adult AFDC recipients, noncitizens legally in the United States have increased from 5.5 percent in fiscal year 1983 to 9.3 percent in fiscal year 1993 (U.S. Department of Health and Human Services, 1983, 1993). This compares with the increase in noncitizen aged SSI recipients from 5.9 percent of the total in fiscal year 1982 to 30.2 percent of the total in fiscal year 1994. Department of Agriculture Food Stamp Program data on the citizenship of the heads of households receiving food stamps in fiscal year 1993 indicated that 6.2 percent were headed by permanent resident aliens and 1.8 percent were headed by other aliens, for a total of 8 percent (U.S. Department of Agriculture, 1993, p. 68).

TABLE J–3.—NUMBER OF ALIENS RECEIVING FEDERALLY ADMINISTERED SSI PAYMENTS BY LEGAL STATUS AND COUNTRY OF ORIGIN, DECEMBER 1994

Country of origin	Total	Color of law	Lawfully admitted	Increase 1989–94
Africa	6,830	1,080	5,750	4,140
North America:				
Canada	2,880	100	2,780	890
Other	(1)	(1)	(1)	(1)
Latin America:				
Cuba	53,980	14,580	39,400	20,070
Dominican Republic	28,610	150	28,460	17,530
El Salvador	10,200	540	9,660	6,860
Haiti	9,220	440	8,780	5,290
Jamaica	9,680	110	9,570	5,100
Mexico	123,240	5,850	117,390	70,230
Columbia	8,050	180	7,870	3,680
Ecuador	5,830	(1)	(1)	2,930
Guyana	4,680	(1)	(1)	2,470
Other	30,250	1,290	28,960	16,470
East Asia:				
China	39,960	2,170	37,790	18,840
South Korea	25,850	130	25,720	10,320
Other	3,510	(1)	(1)	1,040
South Asia:				
Afghanistan	4,370	2,560	1,810	2,170
Cambodia	22,100	12,000	10,100	9,710
India	17,310	210	17,100	9,050
Iran	19,040	6,090	12,950	11,620
Laos	26,790	15,900	10,890	13,350
Philippines	39,200	370	38,830	13,930
Taiwan	5,410	110	5,300	2,260
Vietnam	48,290	23,730	24,560	28,590
Other	23,190	2,830	20,360	12,560
Europe:				
Italy	3,210	(1)	(1)	610
Portugal	6,280	(1)	(1)	1,570
Romania	3,970	1,440	2,530	1,740
United Kingdom	2,470	350	2,120	900
Other	14,300	1,210	13,090	5,710
Former Soviet Republics	70,800	57,570	13,230	53,660
Oceania	2,340	(1)	(1)	1,270
Unidentified	66,210	35,250	30,960	3,470
Total	738,140	186,610	551,530	358,100

[1] Relative sampling error too large for presentation of estimates.

Source: SSI 10-percent sample.

TABLE J–4.—AVERAGE MONTHLY SSI PAYMENT RECEIVED BY CITIZENS AND ALIENS BY STATE AND ELIGIBILITY CATEGORY, DECEMBER 1994

State	Citizen			Alien		
	Total	Aged	Disabled	Total	Aged	Disabled
Alabama	$282.01	$157.55	$321.96	$355.87	$350.72	$375.69
Alaska	314.04	239.64	322.64	280.09	233.40	367.63
Arizona	313.15	179.88	338.05	308.44	294.78	322.97
Arkansas	271.92	136.95	312.85	359.15	375.62	330.33
California	389.91	255.94	427.58	486.86	472.82	506.01
Colorado	297.25	154.88	321.91	354.80	349.42	361.45
Connecticut	304.75	181.21	323.43	342.02	337.48	350.63
Delaware	288.42	138.13	314.02	305.89	297.50	320.08
District of Columbia	326.37	182.36	353.86	329.71	303.37	374.86
Florida	299.01	181.00	330.57	331.72	320.91	351.35
Georgia	271.67	145.31	307.93	350.70	347.36	358.43
Hawaii	349.55	278.35	379.42	346.18	329.59	409.90
Idaho	300.24	108.62	326.18	314.93	304.50	324.67
Illinois	346.53	175.83	362.07	358.41	349.15	373.34
Indiana	309.22	146.31	329.46	352.83	353.91	350.24
Iowa	279.47	132.16	306.21	374.47	365.80	381.85
Kansas	292.54	148.52	311.52	388.28	382.65	394.82
Kentucky	302.66	153.55	332.52	352.81	339.38	368.55
Louisiana	304.42	162.51	337.11	343.70	325.43	374.04
Maine	251.22	106.86	286.69	302.36	254.72	337.38
Maryland	315.15	152.09	342.41	344.44	340.59	357.56
Massachusetts	325.45	205.25	368.69	410.25	403.80	418.10
Michigan	336.22	165.08	355.50	364.82	354.12	377.68
Minnesota	290.09	141.82	317.58	404.91	378.11	421.15
Mississippi	282.35	153.54	322.95	329.23	327.57	331.50
Missouri	298.28	140.47	327.41	374.86	393.71	341.48
Montana	296.13	139.00	322.06	348.69	(1)	(1)
Nebraska	277.36	120.06	306.80	342.16	365.61	314.19
Nevada	297.50	181.86	331.49	358.71	360.83	353.97
New Hampshire	294.16	127.52	312.87	304.42	292.42	323.42
New Jersey	324.63	195.25	350.25	368.89	366.00	375.02
New Mexico	296.46	162.81	332.47	285.23	266.79	305.30
New York	364.21	221.28	393.32	408.18	396.19	426.09
North Carolina	269.26	150.58	306.90	350.56	346.91	357.61
North Dakota	254.37	139.42	282.41	311.45	(1)	(1)
Ohio	333.82	157.06	349.72	355.35	347.09	369.83
Oklahoma	280.58	147.94	317.60	346.95	347.19	346.50
Oregon	298.83	139.54	321.85	364.95	364.12	365.91
Pennsylvania	342.46	183.27	370.60	402.48	393.33	416.88
Rhode Island	323.58	157.18	356.11	371.59	343.89	405.18
South Carolina	276.86	153.28	314.48	347.27	346.60	348.94
South Dakota	280.36	142.58	312.38	326.88	(1)	(1)
Tennessee	286.62	148.45	320.41	341.76	324.17	375.11
Texas	271.36	160.01	314.19	278.76	260.28	309.25
Utah	305.30	140.91	322.36	362.41	371.03	352.78
Vermont	311.66	166.38	338.76	388.13	(1)	(1)
Virginia	281.46	146.85	315.20	357.33	352.50	371.61

TABLE J–4.—AVERAGE MONTHLY SSI PAYMENT RECEIVED BY CITIZENS AND ALIENS BY STATE AND ELIGIBILITY CATEGORY, DECEMBER 1994—Continued

State	Citizen			Alien		
	Total	Aged	Disabled	Total	Aged	Disabled
Washington	328.55	176.11	344.73	408.84	394.68	420.92
West Virginia	315.13	153.49	338.02	368.90	351.82	(1)
Wisconsin	346.60	161.42	380.03	478.93	451.21	496.35
Wyoming	291.38	101.06	316.21	(1)	(1)	(1)
U.S. average	319.11	179.89	350.56	414.12	399.77	437.04

[1] Relative sampling error too large for presentation of estimates.

Source: Ponce & Scott, 1995, citing SSI 10-Percent Sample File, December 1994.

U.S. Census Bureau Data

The most comprehensive source of information on participation by the foreign born in public assistance programs is the Census Bureau's March 1994 Current Population Survey (CPS).[4] The Congressional Research Service analyzed the CPS data; the findings are summarized in tables J–5, J–6, and J–7 (O'Grady, 1995, p. 28).

TABLE J–5.—PERCENT OF CITIZENS BY BIRTH, NATURALIZED CITIZENS, AND NONCITIZENS RECEIVING VARIOUS WELFARE BENEFITS IN 1994

Welfare program	Citizens by birth	Naturalized citizens	Noncitizens
SSI	2	3	3
Under age 65	2	2	2
Age 65 and older	4	7	23
AFDC	5	2	6
State assistance	1	(1)	2
Food stamps	12	7	16
Medicaid	8	3	11

[1] Sample too small for reliable estimates.

Note.—Twenty nine percent of noncitizen households live below the Federal poverty level as compared with 15 percent of citizens by birth and 10 percent of noncitizens.

Source: O'Grady, M.J. (1995). Native and Naturalized Citizens and Non-Citizens: An Analysis of Poverty Status, Welfare Benefits, and Other Factors (95–276 EPW, pp. 1–34). Washington, DC: Congressional Research Service.

Generally speaking, the CRS analysis corroborated administrative data that showed that the foreign born were significantly more likely to use SSI, but were not significantly more likely to use AFDC or food stamps. Table J–5 shows that in the AFDC, Food

[4] The Census Bureau conducts the Current Population Survey (CPS) each month to collect labor force data about the civilian noninstitutionalized population. The March Supplement of the CPS gathers additional data about income, education, household characteristics, and geographic mobility. The March 1994 Supplement was the first CPS to ask participants about their citizenship status. Because CPS is a sample of the U.S. population, the results presented here are estimates.

Stamp and Medicaid Programs, noncitizens had higher participation rates than the native born, but that naturalized citizens had lower participation rates than the native born. However, in the SSI Program both noncitizens and naturalized citizens had higher participation rates than native born citizens. This is especially true among the aged population.

TABLE J–6.—PERCENTAGE OF PEOPLE RECEIVING VARIOUS WELFARE BENEFITS AND PERCENTAGE OF TOTAL RECIPIENTS BY CITIZENSHIP STATUS

Program	Citizenship status		
	Citizen by birth	Naturalized citizen	Noncitizens
Total population			
Number (thousands)	237,184	6,975	15,593
Percentage	91	3	6
Food stamps			
Percentage receiving	12	7	16
Percentage of all food stamp recipients	90	1	8
AFDC			
Percentage receiving	5	2	6
Percentage of all AFDC recipients	92	1	7
State assistance			
Percentage receiving	1	(1)	2
Percentage of all State assistance recipients[2]	85	(2)	12

[1] Sample too small for reliable estimates.

[2] Percentages do not add to 100 due to sample sizes too small for reliable results.

Source: O'Grady, M.J. (1995). Native and Naturalized Citizens and Non-Citizens: An Analysis of Poverty Status, Welfare Benefits, and Other Factors (95–276 EPW, pp. 1–34). Washington, DC: Congressional Research Service.

In addition to the elderly, the other major subgroup of the foreign born using welfare appears to be refugees (and their relatives). While the CRS study did not desegregate refugees, Urban Institute analysts did in Senate testimony. Based also on the March 1994 CPS, they found that 13.1 percent of foreign born from the major refugee sending countries used AFDC, SSI, or GA, compared to 5.8 percent of foreign born from other countries (Fix, et al., 1996).

With regard to use of food stamps, O'Grady (1995, pp. 17–18) found the following (see table J–6):

—Overall 31 million people or 12 percent of the population lived in food stamp households.

—Naturalized citizens were less likely to live in food stamp households than citizens born in the United States. Only 7 percent of naturalized citizens lived in households that received food stamps compared with 12 percent of the population born in the United States.

—Noncitizens were more likely than citizens born in the United States to live in households that receive food stamps. Among noncitizens 3 million or 16 percent lived in households that receive food stamps.

As with food stamps, O'Grady also found that noncitizens were more likely to report Medicaid coverage than the native born (p. 20), but that naturalized citizens were less likely to report Medicaid coverage. Other findings include:

—There were about 2 million noncitizens reporting Medicaid coverage. These noncitizens represented 8 percent of the population reporting Medicaid coverage but less than 1 percent of the total U.S. population.

—Eleven percent of noncitizens reported that they were covered by Medicaid as compared with 8 percent of citizens born in the United States, and 3 percent of naturalized citizens.

Seven percent of the people living in AFDC families were noncitizens. Further, of the noncitizen population, 6 percent lived in families receiving AFDC compared to 5 percent of the native born population and only 2 percent of the naturalized population. Table J–6 summarizes the findings on use of AFDC and State cash assistance.

ILLEGAL ALIENS AND BENEFITS

Two related issues run through the debates over benefits received by illegal aliens. The first is the scope and enforceability of standards prohibiting benefits, the continued availability of which is viewed by some as a migration magnet. The second is a variation of the "unfunded mandate" issue, reflected in requests by heavily impacted States and localities that they be reimbursed for costs resulting from the Federal Government's failure to control illegal immigration.

VERIFICATION AND FRAUD

Detectable illegal use of Federal benefits by illegal aliens is low, but many still believe that undetected fraudulent use through false documentation of citizenship is extensive. The primary means of verifying eligibility for many major Federal benefits is the Systematic Alien Verification for Entitlement (SAVE) Program. Under SAVE, applicants who state that they are not citizens must have their status verified first through a database of INS files and, if primary verification is unsuccessful, through a manual secondary verification by INS district officials.

Most comments by both Federal and State officials have concerned the time needed to complete secondary verifications, rather than the accuracy of SAVE. At House hearings during the 103d Congress (*Access to public assistance*, 1994), Federal and State witnesses alike remarked on the low number of illegal alien applicants identified, so much so that a Department of Agriculture study had found that SAVE was not cost effective for the Food Stamp Program. Because the SAVE data base is limited to aliens, it has been criticized as being vulnerable to circumvention by false citizenship claims.

Much of the current concern about "fraud" in fact appears to be directed toward practices that, while controversial, are within the letter of the law. Foremost among these practices is the provision of emergency medical services, including emergency labor and

childbirth services, to illegal aliens and the payment of AFDC to the children born here of illegal alien mothers.

UNFUNDED FEDERAL MANDATES AND ILLEGAL IMMIGRATION

Many States expend a significant amount of State funds on illegal aliens. In 1994, the Urban Institute (Clark, et al., 1994) estimated that the seven States with the largest populations of illegal aliens—California, Florida, Texas, New York, Illinois, Arizona, and New Jersey—spent the following amounts in fiscal year 1993 in providing three types of services to illegal aliens within their borders: $3.1 billion for public education; $471 million for incarceration; and $445 million for emergency medical care under Medicaid. At the same time, the Urban Institute estimated that these seven States collected the following amounts from illegal aliens in fiscal year 1993 from three types of taxes: $1.1 billion in sales taxes; $700 million in property taxes; and $100 million in State income taxes.

While State costs associated with illegal aliens are often termed "unfunded Federal mandates," these costs do not by and large arise from express legislative requirements imposed by Congress. States must provide illegal aliens equal access to the public school not because of Federal statute, for example, but rather because of a Supreme Court interpretation in *Plyler* v. *Doe* (457 U.S. 202 (1982)) of constitutional restrictions on State power. In that case, five of the nine Justices on the Court overturned education restrictions imposed under a Texas statute on equal protection grounds, even though these Justices also stated that illegal status is not "constitutionally irrelevant."

Other State costs for illegal aliens are incurred under Federal statute. Under the Medicaid statute, the Federal Government and the States share the cost of providing emergency medical services to otherwise qualified illegal aliens. The statute covers emergency services for illegal aliens as a result of a legislative compromise between Members of Congress who wished to deny illegal aliens all Medicaid coverage and Members who advocated full Medicaid coverage as a way of assuring that the Federal Government would defray some of the costs of providing indigent illegal aliens health care.

Whatever the basis for the expenditure, the amount spent for illegal aliens by a State for a particular service depends both on the number of illegal aliens in the State and on the general level of State funding. The Urban Institute study of specified costs associated with illegal aliens found that California had the highest number of illegal students in its public schools by far (307,024), but that its overall level of per student spending for education by State and local government ($4,199) ranked second lowest among the seven States with the highest noncitizen populations.[5] Because of differences in expenditures per student, the cost per State resident of educating illegal alien students in New York, for example, is only about 15 percent less than the cost per resident of educating illegal alien students in California even though, according to the

[5] The cost per student among these States ranged from a low of $3,626 (Arizona) to a high of $8,949 (New Jersey).

Urban Institute, illegal aliens comprise a far larger percentage of California's population than that of New York—4.6 percent compared to 2.4 percent.

Similarly, while Congress sets alien eligibility rules for Federal-State programs, State expenditures will be influenced by broader choices a State makes in its implementing legislation. Thus, expenditure levels for Medicaid, for example, may be influenced by how high an income an individual or family may have and still get benefits. Among high immigration States, the maximum income thresholds for Medicaid eligibility are two to three times higher in California and New York than they are in Texas and Florida.

Constitutional and statutory provisions at the Federal level have not foreclosed all State authority to deny illegal aliens State funded assistance. Even though the *Plyler* decision forbade States from denying illegal alien children a free basic education, the decision also implied that the States have broader power with regard to other programs, especially where the beneficiaries are adults. This broader authority was further recognized by the U.S. district court judge who, in *League of United Latin American Citizens* v. *Wilson* (908 F. Sup. 755 (C.D. Cal. 1995)), temporarily enjoined most of the provisions of California's Proposition 187, a ballot initiative that would deny illegal aliens State services. Except with respect to primary and secondary education, the basis for the injunction concerns how the restrictions on benefits are to be implemented, not the underlying restrictions themselves. The general assistance laws in many States, including Arizona and New York, currently deny assistance to illegal aliens.

Meanwhile, provisions for Federal reimbursement of some part of State and local costs incurred as a result of illegal immigration have been proposed, but not yet adopted. In addition to general Federal budgetary constraints, another difficulty facing advocates of Federal reimbursement for the cost of illegal immigration is that only a handful of States and urban areas have been significantly affected by illegal immigration. From the viewpoint of the relatively unaffected States, Federal reimbursement looks like impact aid for problems they do not have.

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