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IN THE AGE OF TRUMP: POPULIST BACKLASH AND PROGRESSIVE RESISTANCE CREATE DIVERGENT STATE IMMIGRANT INTEGRATION CONTEXTS

By Margie McHugh

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Populist Backlash and Progressive Resistance Create Divergent State Immigrant Integration Contexts

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Executive Summary

After riding a wave of populist anger to victory, almost immediately upon assuming office President Trump made good on many of his campaign promises to clamp down on U.S. immigration and refugee policies. Among his earliest actions were the signing of executive orders seeking, for example, a reduction in refugee admissions, construction of a border wall between the United States and Mexico, significant expansions in the types of noncitizens targeted for deportation, and a ban—at least temporarily—on entry of immigrants from seven countries alleged to pose a danger of sending terrorists to the United States. More recent actions by his administration have deepened the sense of crisis in many immigrant communities. These include the decisions to close down the Obama-era Deferred Action for Childhood Arrivals (DACA) program and set end dates for Temporary Protected Status (TPS) designations for large numbers of Salvadorans and Haitians who have resided in the United States for many years.

Mirroring the fractious debates of the campaign season, the President's actions have been met with resounding support in some quarters and vehement opposition in others. Though some of the early executive orders were bogged down in the courts, long-simmering passions related to federal immigration and refugee policies have come to a full boil—particularly with regard to treatment of the estimated 11 million unauthorized immigrants, most of whom have established deep roots in the United States. And with the President's base urging enactment of a range of restrictionist policies, Republican members of Congress fear retaliation at the polls in late 2018 should they vote in support of immigration legislation that is not seen as tightening immigration and/or sufficiently tough on illegal immigration.

Differences in contexts of state and local reception and support for immigrants are growing ever sharper.

Yet, beyond the daily national diet of anger and bitter recrimination focused on immigration policy approaches past and future, every day tens of millions of immigrants and their children continue to build their lives, and the very future of the United States, in communities across the country. Their success in joining the mainstream of the country's economic and civic life is arguably the most consequential—and most often overlooked—question in national immigration policy debates. Here, too, hyperpoliticized debates regarding the rollback of Obama-era expansions in health insurance, potential imposition of new penalties for immigrants who use social services, impacts of cuts to local refugee resettlement programs, and other debates around key integration supports are unfolding.

However, the federal government has limited authority over how state and local governments manage the many programs and systems—including local law enforcement; health and social services; and K-12, adult, and postsecondary education—that are critical to the integration of immigrant and refugee families. As these policymakers work through their positions on a range of contested issues, differences in contexts of state and local reception and support for immigrants are growing ever sharper—for example, in 2017 California enacted a law barring its law enforcement agencies from assisting in a range of deportation-related efforts, while Texas moved to mandate such assistance. These differences and the underlying approaches they represent to managing the local impacts of federal immigration and refugee policies will be both a major feature of national debates in 2018, as well as a driver of congressional actions.



I. Effects on Key Local Policies and Service Systems

This report briefly examines how some of the key policies and programs that support the long-term integration success of immigrants and refugees are faring as the nation faces an unprecedented level of discord over its immigration policies and appears unable to address the stark political divide that has resulted in gridlock on this and other significant issues. With the numerous fronts on which integration policies and approaches are being contested, the report also discusses key areas to watch in the coming months in order to understand the unfolding story of how integration supports for immigrants and their children are faring during this highly volatile period.

A. State and Local Law Enforcement

Disagreements over the use of state and local law enforcement agencies as “force multipliers” for federal immigration authorities have simmered for decades. However, with the Obama administration narrowing the categories of noncitizens prioritized for removal,¹ and with its Justice Department winning a high-profile legal battle in 2012 to overturn key elements of a far-reaching Arizona immigration enforcement law, recent years saw a lull in these jurisdictional disputes. In 2017 they came roaring back onto the national stage with President Trump’s post-inauguration immigration executive orders, particularly his January 25 interior enforcement directive.² Among the sweeping changes included in the order were a significant expansion in the types of immigrants targeted for deportation, increased federal-local enforcement partnerships, limits on grants to so-called sanctuary jurisdictions, and reinstatement of a controversial federal-local information-sharing program that had become the gateway for the majority of arrests of removable noncitizens in the U.S. interior.

Reactions from states and cities were swift, passionate, and poles apart. Many of the country’s largest cities (including New York, Los Angeles, Chicago, San Francisco) had long argued that public safety is undermined when immigrant communities fear interacting with police and pledged to provide a bulwark against the President’s stepped-up deportation efforts. Supporters of more collaboration between local law enforcement and federal authorities were equally energized. According to the National Conference of State Legislatures, by mid-2017 more than 100 bills had been considered in states and the District of Columbia regarding sanctuary jurisdictions and compliance with detainer requests from U.S. Immigration and Customs Enforcement (ICE).³ Most of the measures sought to ensure greater assistance or cooperation from local police or sheriff’s departments with ICE.

Looking at the few major state laws that have been enacted in response to the changing federal picture, their provisions underscore the starkly divergent paths states are traveling down as they begin to more boldly shape their own approaches to immigration and integration concerns. In May, Texas—the country’s second largest state—passed a sweeping law that, among other provisions, makes it a criminal offense for local police, government department heads, or elected officials to refuse to assist federal immigration

1 First in 2010-11 and then in 2014, the Obama administration refined Department of Homeland Security (DHS) immigration enforcement guidelines to prioritize noncitizens with criminal convictions, recent border crossers, and those who had violated a recent removal order. For more, see Marc R. Rosenblum, *Understanding the Potential Impact of Executive Action on Immigration Enforcement* (Washington, DC: Migration Policy Institute, 2015), www.migrationpolicy.org/research/understanding-potential-impact-executive-action-immigration-enforcement.

2 For more on the executive order, see Sarah Pierce and Randy Capps, *Trump Executive Order and DHS Guidance on Interior Enforcement: A Brief Review* (Washington, DC: Migration Policy Institute, 2017), www.migrationpolicy.org/research/trump-executive-order-and-dhs-guidance-interior-enforcement-brief-review.

3 When state or local law enforcement agencies are asked to hold a removable noncitizen in their custody for up to 48 hours beyond the release date, allowing time for federal immigration authorities to pick him or her up.



enforcement.⁴ It also requires local jails to honor detainer requests and allows police to question the immigration status of people they detain or arrest.

Setting off in exactly the opposite direction, in late October California adopted the *California Values Act*, with lawmakers there vowing to “wall off” law enforcement resources in the country’s most populous and immigrant-dense state from the Trump administration’s deportation efforts. The law largely prohibits local police and other enforcement personnel from using resources to investigate, question, detain or arrest anyone suspected of civil immigration violations.⁵ Other major states taking a similar path include New York, where an executive order from its governor restricts the ability of state officials (including law enforcement agencies) from inquiring about an individual’s immigration status,⁶ and Illinois, where a state law adopted in August affirmed that local police cannot stop, search, or arrest a person based on their immigration or citizenship status, while also banning local law enforcement agencies from detaining anyone for immigration purposes without a court-issued warrant.⁷

The boundaries of federal, state, and local authority on immigration matters continue to be aggressively tested.

While major states are setting a course on these issues, the boundaries of federal, state, and local authority on immigration matters continue to be aggressively tested. The Texas law, for example, was almost immediately challenged on a number of legal grounds; quite remarkably, among those bringing suit to block the measure were three of the state’s largest cities—Houston, San Antonio, and Austin. After earlier rulings in the cities’ favor, in September a three-judge panel of the Fifth U.S. Circuit Court of Appeals upheld the law’s major provisions, including those that bar local entities from prohibiting their officers from assisting with immigration enforcement or from adopting or enforcing policies that limit the enforcement of immigration laws.⁸ A separate three-judge panel of the same court heard arguments on the law again in early November—this time on the grounds that it is too ambiguous. A decision had not been reached at this writing.⁹

Meanwhile, subsequent to the Trump executive order stiffening immigration enforcement in the U.S. interior, the federal government engaged in a high-profile battle to deny certain federal grant funds to cities such as New York, Chicago, Philadelphia, and New Orleans over their “sanctuary” policies.¹⁰ In November 2017, reasoning that the Constitution vests spending powers in Congress, and therefore the President cannot place new conditions on federal funds, a federal judge issued a permanent injunction

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- 4 For more on Texas SB4, see Muzaffar Chishti, Sarah Pierce, and Sela Cowger, “Texas Leads Resurgence in Restrictive State Actions on Immigration Enforcement,” *Migration Information Source*, May 25, 2017, www.migrationpolicy.org/article/texas-leads-resurgence-restrictive-state-actions-immigration-enforcement.
 - 5 See Ben Adler, “California Governor Signs ‘Sanctuary State’ Bill,” NPR, October 5, 2017, www.npr.org/sections/thetwo-way/2017/10/05/555920658/california-governor-signs-sanctuary-state-bill.
 - 6 Office of Governor Andrew Cuomo, “Governor Cuomo Signs Executive Order Prohibiting State Agencies from Inquiring About Immigration Status” (press release, September 15, 2017), www.governor.ny.gov/news/governor-cuomo-signs-executive-order-prohibiting-state-agencies-inquiring-about-immigration.
 - 7 State of Illinois, “Governor Rauner Signs TRUST Act” (press release, August 28, 2017), www2.illinois.gov/Pages/news-item.aspx?ReleaseID=14747.
 - 8 Muzaffar Chishti, Jessica Bolter, and Sarah Pierce. “Will White House Immigration Wish List Tank Emerging DREAMer Momentum in Congress?” *Migration Information Source*, October 19, 2017, www.migrationpolicy.org/article/will-white-house-immigration-wish-list-tank-emerging-dreamer-momentum-congress.
 - 9 Sabrina Canfield, “Lawyers Spar Before Fifth Circuit Over Bid to Kill Sanctuary Cities,” *Courthouse News*, November 8, 2017, www.courthousenews.com/lawyers-spar-fifth-circuit-bid-kill-sanctuary-cities/.
 - 10 U.S. Department of Justice, “Attorney General Sessions Announces Immigration Compliance Requirements for Edward Byrne Memorial Justice Assistance Grant Programs” (press release, July 25, 2017), www.justice.gov/opa/pr/attorney-general-sessions-announces-immigration-compliance-requirements-edward-byrne-memorial.



to block that section of the January 25 executive order.¹¹ However, this skirmish continues, with the federal government filing an appeal in December 2017,¹² and in January 2018 several members of Congress announcing they would introduce a bill which, among other provisions, authorizes the Justice Department to withhold grants from jurisdictions deemed sanctuaries.¹³

Details related to the onslaught of state and local bills and ordinances, and the legislative and legal battles associated with them are each significant in their own way. However, it is the widely divergent local law enforcement contexts in which the country's immigrants are now living, and the muscular challenges to federal (and even state) authority in this arena, that are the more significant developments of 2017. While they reflect the poles, and the highly polarized nature of the country's immigration debate to be sure, they may also come to represent a watershed moment in the erosion of federal authority in the immigration policy arena.

B. Refugee Resettlement

The legal framework for resettling refugees in the United States has existed since 1980, when Congress adopted the *Refugee Act*.¹⁴ It involves collaboration across multiple federal agencies with, among others, the United Nations refugee agency, state governments, and nine major nongovernmental organizations that coordinate local resettlement networks across the United States. Refugees have accounted for about 7 percent of individuals legally immigrating to the United States annually over the past two decades,¹⁵ however, the circumstances from which they are fleeing give rise to a range of particular integration needs that they and the communities that receive them must effectively address.

Its proud history notwithstanding, the program has been subject to increased scrutiny in recent years due to national security concerns—initially in the wake of the 9/11 terrorist attacks, and again more recently as numerous Middle East countries, particularly Syria, generated large refugee flows, and a series of deadly, large-scale terror attacks undertaken by radicalized migrant-background youth took place in Europe in late 2015 and early 2016. Shortly before the high-profile 2015 attacks in Paris, President Obama had raised the fiscal year (FY) 2016 resettlement ceiling from 70,000 to 85,000, with a 10,000 allocation for Syrians. In the ensuing months the Syrian resettlement number and the program more broadly became a target of populist anger. Dozens of governors and state legislatures jumped into the fray, creating executive orders or attempting to pass legislation seeking to curtail resettlement of refugees, particularly those who are Muslim. Tennessee went so far as to adopt a Senate resolution directing the state to sue the federal government for, essentially, violating the state's rights by resettling refugees there without its permission.¹⁶

- 11 Eli Rosenberg, "Federal Judge Blocks Trump's Executive Order on Denying Funding to Sanctuary Cities," *The New York Times*, November 21, 2017, www.washingtonpost.com/news/politics/wp/2017/11/21/federal-judge-blocks-trumps-executive-order-on-denying-funding-to-sanctuary-cities/?utm_term=.777510b77943.
- 12 *City and County of San Francisco and County of Santa Clara vs. Donald J. Trump, et al.*, "Motion to Consolidate Appeals and Retain Existing Briefing Schedule," (motion submitted to Ninth U.S. Circuit Court of Appeals, December 15, 2017), www.clearinghouse.net/chDocs/public/IM-CA-0089-0043.pdf.
- 13 Office of Congressman Bob Goodlatte, "Goodlatte, McCaul, Labrador, McSally Introduce Immigration Legislation" (press release, January 10, 2018), <https://goodlatte.house.gov/news/documentsingle.aspx?DocumentID=1081>.
- 14 U.S. Department of Health and Human Services, Office of Refugee Resettlement, "The Refugee Act," updated August 29, 2012, www.acf.hhs.gov/orr/resource/the-refugee-act.
- 15 From 1995 to 2014, an average of 960,000 immigrants became legal permanent residents (LPRs) each year. An average of 63,000 refugees were resettled annually during the same years. See Migration Policy Institute (MPI) Data Hub, "Legal Immigration to the United States, 1820-Present," accessed November 19, 2017, www.migrationpolicy.org/programs/data-hub/charts/Annual-Number-of-US-Legal-Permanent-Residents; U.S. Department of State, Office of Admissions, Refugee Processing Center, "Historical Arrivals Broken Down by Region (1975 - Present)," accessed June 6, 2016, www.wrapsnet.org/s/Graph-Refugee-Admissions-since-197510517.xls.
- 16 Joel Ebert, "Lawmakers Direct Tennessee to Sue Feds over Refugees," *The Tennessean*, May 20, 2016, www.usatoday.com/story/news/politics/2016/05/20/refugee-resettlement-lawsuit/84659116/?utm_source=feedblitz&utm_medium=FeedBlitzRss&utm_campaign=usatoday-newstopstories.



Disagreements over refugee resettlement—particularly of Muslim-background individuals—were also a hot-button issue in the 2016 presidential race. While Hillary Clinton strongly supported the resettlement program and favored higher numbers for Syrians in particular, Donald Trump vehemently opposed such policies in his campaign speeches and tweets. Terrorist attacks by Muslim-background individuals in Orlando and St. Cloud, Minnesota during the final months of the campaign further fanned passions around the issue, as did an Obama decision in September to raise the refugee resettlement ceiling for 2017 to 110,000. By the time Trump was sworn in, it was clear that major changes to the resettlement program would be among his top priorities.

On January 27, just seven days into his presidency, Trump signed an executive order that among other provisions lowered the 2017 refugee ceiling to 50,000, temporarily suspended the admissions program for 120 days while a review of vetting practices could be undertaken, and indefinitely halted the settlement of Syrian refugees.¹⁷ Now commonly known as the travel ban, for its focus on barring the entry of certain individuals from majority-Muslim countries, the executive order has been revised and continues to face a number of legal challenges. In December 2017, the Supreme Court allowed the blocked portions of the revised executive order to go into effect as challenges wend their way through the lower courts.¹⁸

The President's executive order and his anti-refugee and anti-Muslim statements more generally have heavily affected not just the climate of reception refugees experience in many states, but also the actual capacity of local support systems and programs. The Federal Bureau of Investigation (FBI) reported that hate crimes targeting Muslims increased significantly during the election year, with incidents of intimidation, assault, vandalism, and even murder among the more than 300 crimes recorded in 2016.¹⁹

With regard to state and local integration policies and programs, the most significant impacts to date have had to do with staff layoffs and program closures stemming from the early 2017 pause in refugee processing. These cutbacks occurred because the operations of many resettlement agencies rely heavily on the per-capita rate of \$2,025 they receive in federal funds to cover a range of required services during each refugee's first 30-90 days in the United States.²⁰ These initial reception and placement services include meeting refugees at the airport, helping arrange housing, and assisting with meeting other needs such as access to health care, school enrollment for children, English language classes, job training, and employment.

The pause in refugee processing due to the January executive order caused hundreds of layoffs at local resettlement sites across the country and the outright closing of some offices.²¹ National resettlement organizations conducted emergency funding campaigns seeking support from private donors to prevent even deeper layoffs and to keep programs afloat until processing resumed. However, with the White House adopting a historically low target of 45,000 resettlement places for FY 2018, a new round of deep cuts is expected at many agencies.

Collateral effects of the rapid shrinking of resettlement agency programs underway in dozens of states include: 1) the loss of local capacity to support not just newly arriving refugees, but also the ongoing needs of those resettled in recent years and who continue to require support in learning English and

17 See Sarah Pierce and Doris Meissner, *Trump Executive Order on Refugees and Travel Ban: A Brief Review* (Washington, DC: Migration Policy Institute, 2017), www.migrationpolicy.org/research/trump-executive-order-refugees-and-travel-ban-brief-review.

18 Adam Liptak, "Supreme Court Allows Trump Travel Ban to Take Effect," *The New York Times*, December 4, 2017, www.nytimes.com/2017/12/04/us/politics/trump-travel-ban-supreme-court.html.

19 Katayoun Kishi, "Assaults against Muslims in U.S. Surpass 2001 Level," Pew Research Center, Fact Tank, November 15, 2017, www.pewresearch.org/fact-tank/2017/11/15/assaults-against-muslims-in-u-s-surpass-2001-level/.

20 U.S. Department of State, Bureau of Population, Refugees, and Migration, "FY 2017 Notice of Funding Opportunity for Reception and Placement Program" (announcement, March 21, 2016), www.state.gov/j/prm/funding/fy2017/254909.htm.

21 Victoria Macchi, "Trump's Cuts to US Refugee Program Lead to 300-Plus Layoffs," *Voice of America*, April 27, 2017, www.voanews.com/a/donald-trump-cuts-us-refugee-program-lead-to-hundreds-of-layoffs/3826785.html.



acquiring the skills necessary to move into family-sustaining jobs; 2) the loss of linguistically and culturally competent staff who often serve a vital role in assisting other local health, social services, and education institutions in interacting with refugee families; and 3) the loss of income for former resettlement agency employees—many of whom are refugees—and their families.

C. Elementary and Secondary Education

Schools are arguably the institution most heavily relied upon to create social inclusion and economic mobility for immigrant and refugee families and thereby ensure the long-term success of federal immigration policies. The nearly 18 million children under age 18 with an immigrant parent now make up more than one-quarter of the U.S. child population—more than double the number in 1990.²² They are eligible for free public elementary and secondary education in all states, regardless of their immigration status or that of their parents.

Most young children from immigrant families come from homes where a language other than English is spoken; addressing their English language learning needs and assisting them in developing academic proficiency in English on par with their native English-speaking peers is a continuing, and costly, challenge for many local school systems. Yet despite the challenges and investments required to support the educational success of immigrant-background children, elected officials in most states and at most levels of government have not resisted, and indeed have often championed, efforts to meet these challenges. This is perhaps because the vast majority (almost 90 percent) of these children are U.S. citizens by birth,²³ and also because they represent such a significant share of the future promise, productivity, and vitality of the states and communities in which they live.

The landmark Supreme Court decision in the *Lau v. Nichols* suit that was brought in San Francisco more than 45 years ago,²⁴ serves as the cornerstone in U.S. civil rights and education law guaranteeing these English Learner (EL) students access to the program of instruction offered to students whose native language is English. Upon it rests a complex web of federal, state, and local policies and subsequent court decisions that seek to ensure schools are prepared with appropriate assessments, materials, curricula, instructional designs, teacher licensing standards, and other elements necessary to provide a high-quality education to these students.

The federal government provides about 10 percent of total school funding; yet its broad reach and the requirements attached to its funding have allowed it to play a decisive role—particularly since passage of the *No Child Left Behind* (NCLB) law²⁵ in 2001—in ensuring that states and localities take appropriate steps to identify EL children, regularly measure their progress in learning English and other subjects, and include them in federal performance accountability measurement systems. The landmark law, which created these requirements and established ELs as a subgroup for federal accountability purposes, was reauthorized in late 2015 as the *Every Student Succeeds Act* (ESSA).

Partisan differences had prevented reauthorization of the law for many years; a key compromise that allowed the legislation to proceed granted states significantly more power in setting the standards to which their students would be held. With ESSA thus stripping the U.S. Department of Education of some of its ability to hold states accountable for providing high-quality instruction to ELs, backsliding in the

22 MPI Data Hub, “Children in Immigrant Families,” accessed January 13, 2017, www.migrationpolicy.org/programs/data-hub/charts/children-immigrant-families.

23 Jie Zong and Jeanne Batalova, “Frequently Requested Statistics on Immigrants and Immigration in the United States,” *Migration Information Source*, March 8, 2017, www.migrationpolicy.org/article/frequently-requested-statistics-immigrants-and-immigration-united-states.

24 U.S. Department of Education, Office for Civil Rights, “Developing Programs for English Language Learners: *Lau v. Nichols*,” updated October 15, 2015, www2.ed.gov/about/offices/list/ocr/ell/lau.html.

25 *No Child Left Behind Act of 2001*, Public Law 107-110, 107th Cong., 2nd sess. (January 8, 2002).



quality of services states provide to ELs has been a significant worry of integration advocates since the law passed. Trump's appointment of wealthy Republican donor Betsy DeVos to lead the U.S. Department of Education further unnerved many in the education and integration fields. An ardent advocate of allowing public education funds to support private (including religious) charter schools, DeVos is widely viewed as among the most controversial and ideologically driven of the President's Cabinet appointments.²⁶

Perhaps more importantly for those concerned with the quality of educational services provided to ELs, DeVos also shares the desire of the President and many other Republican leaders to further "reduce the federal government's role in education." Democrats, teacher unions, and others view this language as code for reducing or abandoning the federal government's responsibility to protect the rights of poor and minority children to a quality education, regardless of which state they live in. The Secretary is therefore closely watched as she leads a departmental review ordered by the President, with instructions to reduce or eliminate federal "overreach" into state and local powers. Coupled with her statements that she intends to provide states "maximum flexibility" in implementing the new ESSA law, many fear the backstop the federal government has provided in defending education access for EL and other at-risk students has been removed and are searching for state and local strategies to protect and expand quality programming.²⁷

D. Higher Education

The free, public education guaranteed in all states in K-12 does not extend to postsecondary education, which is generally neither free to any student nor available regardless of an individual's immigration status. As a result, a patchwork of policies exists across the country addressing both access to enrollment and eligibility for state-resident tuition rates and various forms of financial aid for unauthorized students who are long-term state residents.

Federal law bars unauthorized immigrants from accessing the main higher-education grant program operated by the federal government, known as Pell grants. In 1996, Congress attempted to prevent states from providing public aid to unauthorized students in postsecondary institutions by requiring that any aid provided based on those students' residence in the state be provided on an equal basis to any other citizen or national of the United States.²⁸ The measure was intended to prevent the expansion of policies providing access to in-state college tuition rates—a common practice whereby state residents pay an often significantly reduced tuition rate when attending their state's public colleges and universities as compared to out-of-state residents.

Many states responded by creating policies that defined eligibility for in-state rates not on residence, but rather attendance for several years and graduation from an in-state high school. And despite the partisan cast of the congressional debate on these issues, a number of Republican-led state governments adopted these policies, including Texas, Utah, Kansas, and Nebraska. Currently, 20 states and the District of Columbia allow unauthorized youth to benefit from in-state tuition rates, with 16 having established these policies through votes of their legislatures and five via their university governing boards.²⁹ Many of these states also allow unauthorized-resident students to access other state scholarship and financial aid programs. Among the more than two dozen states that do not provide access to in-state tuition, three

26 Dana Goldstein, "Betsy DeVos, Pick for Secretary of Education, Is the Most Jeered," *The New York Times*, February 3, 2017, www.nytimes.com/2017/02/03/us/politics/betsy-devos-nominee-education-secretary.html.

27 See, for example, Joy Resmovits, "Heartbreak' for California Board of Education Member: Focusing on Compliance Instead of Equity," *Los Angeles Times*, September 14, 2017, www.latimes.com/local/education/la-me-california-approves-essa-plan-20170914-story.html.

28 National Conference of State Legislatures (NCSL), "Undocumented Student Tuition: Federal Action," May 2011, www.ncsl.org/research/education/undocumented-student-tuition-federal-action.aspx.

29 National Immigration Law Center (NILC), "Toolkit: Access to Postsecondary Education," updated April 2017, www.nilc.org/issues/education/eduaccesstoolkit/eduaccesstoolkit2/#maps.



Deep South states—Alabama, Georgia, and South Carolina—also either ban or restrict enrollment of unauthorized students in their college systems.³⁰

Despite the overall restrictionist intent of many bills introduced in states in 2017, NASPA, a national organization for higher education student affairs administrators, reports that the vast majority of the 21 bills introduced involving higher education policy and immigrants sought to expand unauthorized students' access to grants and financial aid rather than restrict it.³¹ Restrictive measures included attempts in the Texas Legislature to overturn its generous in-state tuition policies; as with other versions of these bills proposed in recent years, they failed to advance.

It might strike some as surprising that despite how angry many voters are over illegal immigration, so many states have adopted generous higher education access policies for unauthorized youth—particularly conservative states such as Texas where support for the President's overall agenda is strong. Judging from legislative records and polling data it appears that these subnational debates were less easily overwhelmed by hot-button rhetoric, and instead took account of questions related to the culpability of long-term unauthorized youth for their lack of immigration status, and the likely economic benefits to local communities and economies of allowing them to extend their education and training as far as possible. With federal legislation to provide permanent legal status to these youth (known as "DREAMers") pending in Congress since 2001, there is also the expectation that ultimately they will be permitted to legally live and work in the United States on a permanent basis.

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E. Health and Social Services

While all major federal public benefit programs have long denied access to unauthorized residents and those on temporary visas, a sweeping 1996 welfare reform law³² took the unprecedented step of placing new restrictions on legal immigrants' access to these programs. The law barred access by lawful permanent residents (LPRs, also known as green-card holders) to major programs during their first five years in the United States, tightened rules concerning applicants for permanent residence who may have used public benefit programs in the past, and increased potential financial penalties on family sponsors of immigrants who come to rely on means-tested safety-net programs.

The 1996 law provided an option for states to extend certain benefits to their lawfully residing noncitizens; some did so and/or used state funds to provide certain benefits to residents not qualified for federal support. Subsequent expansions of federal medical coverage for children and pregnant women via the Children's Health Improvement Program (CHIP) included a state option to also cover lawfully residing children and pregnant women. The result has been a complex patchwork of policies as many states have

30 Ibid.

31 Diana Ali, "In-State Tuition for Undocumented Students: 2017 State-Level Analysis," NASPA Research and Policy Institute, July 21, 2017, www.naspa.org/rpi/posts/in-state-tuition-for-undocumented-students-2017-state-level-analysis.

32 Amanda Levinson, "Immigrants and Welfare Use," *Migration Information Source*, August 1, 2002, www.migrationpolicy.org/article/immigrants-and-welfare-use.



availed themselves of different options under particular programs and in certain circumstances filled gaps with their own funds.

With the 1996 welfare law imposing work requirements and a five-year lifetime limit for the main federal income support program, Temporary Aid for Needy Families (TANF), controversies related to long-term welfare use became more muted. However, concerns related to health-care costs and insurance coverage took their place, culminating in the Obama administration and congressional Democrats passing the *Affordable Care Act* (ACA) in 2010 without Republican support.³³ Focused primarily on expanding coverage options for those who were uninsured and/or had pre-existing conditions that made insurance prohibitively expensive, the law was and has remained a political flashpoint—even as it extended coverage to 20 million people. Attempts to block its implementation resulted in a partial shutdown of the federal government in 2013 and under Republican leadership Congress voted unsuccessfully dozens of times in recent years to repeal the law, each time falling short of the supermajority required in the Senate.

Trump made repeal of the law in the first 100 days of his presidency a cornerstone of his campaign, and the country was riveted by the attempts of Republican congressional leaders in July 2017 to repeal and/or replace it. However, strong public opposition to the ACA or “Obamacare” had waned as more and more people gained coverage, and more Americans had come to support the once-derided law than oppose it by 2017.³⁴ Ultimately Republican leaders in September 2017 fell short in their best opportunity to kill the law with a Republican in the White House—a major loss for Republicans at both ends of Pennsylvania Avenue.

Trump and GOP congressional leaders have also indicated their desire to reduce the federal food stamp program, the Supplemental Nutrition Assistance Program (SNAP), which in 2016 had 44 million individuals enrolled at a cost of \$71 billion.³⁵ The program was expanded under Obama as part of recovery measures taken during the financial crisis in 2008 and the deep recession that followed. In 2007, 26 million individuals participated in the program;³⁶ enrollment reached a peak in 2013 when 47.6 million were enrolled.³⁷

It is the fate of these two programs—the ACA and SNAP—that is of most significance to those concerned with the strength of the social service safety net available to low-income and “working poor” immigrants and their U.S.-citizen children. Recent bills to repeal the ACA included hundreds of billions of dollars in cuts over time to the Medicaid program, which is the primary vehicle through which states partner with the federal government to provide health care to low-income and disabled children and adults. Medicaid payments from the federal government to states account for well more than half (57 percent) of all the federal funds they receive, leading many to fear the grave effects large federal cuts would have not only for actual health services delivery, but for all state-funded programs, as states search for ways to fill critical gaps in health care funding.³⁸ And though food assistance programs are much smaller than Medicaid, immigrant households are much more likely than the native born to rely on food programs (40 percent versus 22 percent).³⁹ Cuts to SNAP would therefore directly impact millions of immigrant families and their U.S.-citizen children, taking food off their tables and increasing their vulnerability.

33 U.S. Congress, “H.R.3590 – Patient Protection and Affordable Care Act,” accessed January 9, 2018, www.congress.gov/bill/111th-congress/house-bill/3590/actions.

34 Henry J. Kaiser Family Foundation, “Kaiser Health Tracking Poll: The Public’s Views on the ACA,” accessed January 13, 2018, www.kff.org/interactive/kaiser-health-tracking-poll-the-publics-views-on-the-aca/#?response=Favorable--Unfavorable&aRange=twoYear.

35 Leslie Paige, “Congress Should Keep its Promises to Taxpayers in the Next Farm Bill,” *The Hill*, December 19, 2017, <http://thehill.com/opinion/finance/365604-congress-should-keep-its-promises-to-taxpayers-in-the-next-farm-bill>.

36 Kathleen Fitzgerald, “Snapshot of the Supplemental Nutrition Assistance Program” (Congressional Budget Office blog post, April 16, 2013), www.cbo.gov/publication/44080.

37 Max Kutner, “The Number of People on Food Stamps Is Falling. Here’s Why,” *Newsweek*, July 22, 2017, www.newsweek.com/people-food-stamps-snap-decline-participation-640500.

38 See, for example, C.A. “Dutch” Ruppberger, “Medicaid Cuts Shift Burden to States,” *The Baltimore Sun*, September 17, 2017, www.baltimoresun.com/news/opinion/oped/bs-ed-op-0918-medicaid-cuts-20170915-story.html.

39 Steven A. Camarota, *Welfare Use by Immigrant and Native Households: An Analysis of Medicaid, Cash, Food, and Housing Programs* (Washington, DC: Center for Immigration Studies, 2015), <https://cis.org/Report/Welfare-Use-Immigrant-and-Native-Households>.



II. Looking Ahead

As numerous, fast-paced, and momentous as changes in immigration and integration policy were in 2017, several issues on the horizon as 2018 begins could bring the most fundamental and important overhauls yet to existing integration policies and programs, and/or prospects for the successful longer-term integration of today's immigrants and their children, as this section explores.

A. *Further Diminution and Destabilization of the Refugee Resettlement Program*

White House Domestic Policy Advisor Stephen Miller is the President's lead advisor on immigration and refugee matters. Long described as a hard-liner, Miller led the drafting of the immigration-focused executive orders and wrested control of the process for setting the annual refugee admission numbers from the State Department and other agencies,⁴⁰ ultimately succeeding in having the process result in the lowest refugee ceiling—45,000—set since the program's inception in 1980.

Less widely reported upon is that in an October 2017 executive order lifting the original 120-day ban on refugee resettlement, Trump imposed an additional level of review for refugees from 11 countries—Egypt, Iran, Iraq, Libya, Mali, North Korea, Somalia, South Sudan, Sudan, Syria, and Yemen.⁴¹ Individuals from these countries accounted for 43 percent of all refugees resettled in the United States in fiscal year 2017.⁴² Criticized by refugee advocates as a de facto ban and a “cynical and tragic manipulation of administrative process,”⁴³ the new rule will place refugees from these countries into a special screening process that is already significantly backlogged, likely putting their cases on an extended hold.

Coupled with extensive new data-collection requirements on potential refugees, their family members, and contacts, along with application processing having been shut down for part of 2017, many expect that refugee admissions in 2018 will fall well below the 45,000 ceiling. Resettlement would be thrown into further disarray if governors are given more of a say as to whether and where refugees are resettled in their states—a position espoused by Trump during the campaign and referenced in his initial refugee executive order. Entering the second year in which national refugee resettlement networks will be in deep crisis, local affiliates will likely continue to reduce staff, leaving earlier refugee families and local governments without intermediaries to provide the tailored support needed to ensure the successful integration of these families.

At the same time, should Tennessee prevail in its lawsuit challenging the federal government's right to resettle refugees in a state without its consent, the very foundation of the resettlement system could crumble.

B. *Promulgation of an Executive Order on Public Benefits Use*

Days after the Trump inauguration several immigration-focused draft executive orders were leaked to the media. While most were subsequently formally issued, a draft order seeking to tighten procedures for determining if potential immigrants are likely to become a “public charge,” and more generally increase consequences for use of public benefits, has yet to be promulgated. Nevertheless, widespread reports of the draft executive order spread fear in immigrant communities, resulting in many reports of individuals

40 Jonathan Blitzer, “How Stephen Miller Single-Handedly Got the U.S. to Accept Fewer Refugees,” *The New Yorker*, October 13, 2017, www.newyorker.com/news/news-desk/how-stephen-miller-single-handedly-got-the-us-to-accept-fewer-refugees.

41 Ted Hesson, “Trump Targets 11 Nations in Refugee Order,” *Politico*, October 24, 2017, www.politico.com/story/2017/10/24/refugee-nations-trump-administration-muslim-244135.

42 Krishnadev Calamur, “Trump's New Refugee Policy Targets These 11 Countries,” *The Atlantic*, October 25, 2017, www.theatlantic.com/international/archive/2017/10/us-refugees-11-countries/543933/.

43 *Ibid.*



abandoning English classes, disenrolling their U.S.-citizen children from the SNAP program, and more generally shunning interactions with health and social services providers.⁴⁴

Indeed, if the order were to be signed largely as drafted, it would represent a sea change in how the federal government defines public benefit programs and enforces consequences for improperly using them. For example, rather than using the current, narrow definition for programs relevant in an immigration context, the order would make deportable individuals who use *any* benefit for which eligibility is determined “based on income, resources, or financial need,” thereby encompassing potentially hundreds of local education, health, and social services programs. The draft order envisions using this same broad language to define the scope of services for which sponsors would be required to reimburse the government should, for example, a family member whose visa they sponsored use such a program.

C. A Pathway to Legal Status for DREAMers

With the attorneys general of Texas and nine other states forcing its hand by threatening to file a lawsuit, the Trump administration on September 5, 2017 announced it would phase out the Deferred Action for Childhood Arrivals (DACA) program. Launched in 2012 by the Obama administration, the DACA program provided work authorization and temporary relief from deportation to nearly 800,000 unauthorized immigrants who came to the United States as children.⁴⁵ As of the September announcement, 690,000 people held DACA status.⁴⁶ The program sought to allow unauthorized youth who had lived in the United States for many years to make a successful transition to adulthood by continuing their education and/or legally entering the workforce. Widely supported by Democrats, DACA was harshly criticized by Republicans as an illegal usurpation of the authority of Congress. Trump joined in this criticism, regularly promising on the campaign trail to end the program.

Many in both political parties and the wider public view DREAMers sympathetically and have long expected that Congress would take action to address their status. Many conservative leaders are open to negotiations around possible legislative solutions for the group, often basing their support on longstanding legal and religious precepts which hold that children should not be punished for the actions of their parents. However, progress on the DREAM Act, which passed the House in 2010, has been derailed on many occasions, with disagreements often revolving around the scope of enforcement measures expected as a tradeoff for legalization provisions.

In announcing an end to DACA, the Trump administration allowed one month for individuals whose program protections would expire over the next six months to submit extension applications. In doing so, the President essentially gave Congress until March 2018 to pass legislation to resolve the status of these youth, before the winddown begins to hit with full force. Several DREAM Act-type bills have been introduced in Congress⁴⁷ and delicate bipartisan negotiations over the fate of DREAMers, tied to must-pass

44 Molly Reden, “Undocumented Immigrants Avoid Vital Nutrition Services for Fear of Deportation” *The Guardian*, May 9, 2017, www.theguardian.com/us-news/2017/may/09/undocumented-immigrants-wic-nutrition-services-deportation.

45 To be eligible for the Deferred Action for Childhood Arrivals (DACA) program, individuals were required to be at least 15 years old; have arrived in the United States before the age of 16 and been under the age of 31 at the time of first application; continuously resident in the United States for five years as of June 15, 2012; and met certain education and public-safety and security requirements. See U.S. Citizenship and Immigration Services (USCIS), “Consideration of Deferred Action for Childhood Arrivals (DACA),” last updated January 13, 2018, www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-daca.

46 MPI estimates the final DACA recipient will fall out of status in early March 2020, with the terminations beginning to hit in full on March 5, 2018, when an average 915 people will lose their status each day. See Jie Zong, Ariel G. Ruiz Soto, Jeanne Batalova, Julia Gelatt, and Randy Capps, *A Profile of Current DACA Recipients by Education, Industry, and Occupation* (Washington, DC: MPI, 2017), www.migrationpolicy.org/research/profile-current-daca-recipients-education-industry-and-occupation.

47 For estimates of who would be covered under these bills, see Jeanne Batalova, Ariel G. Ruiz Soto, Sarah Pierce, and Randy Capps, *Differing DREAMs: Estimating the Unauthorized Populations that Could Benefit under Different Legalization Bills* (Washington, DC: MPI, 2017), www.migrationpolicy.org/research/differing-dreams-estimating-unauthorized-populations-could-benefit-under-different.



spending measures, were ongoing in January 2018 at this writing. It is notable however that none of the solutions proposed hew particularly closely to the principle that children should not be held responsible for the actions of their parents (e.g. they all contain education attainment, work, or military service requirements).

If Congress proves able to provide a pathway to permanent status for DREAMers, it would be the first major breakthrough in many years in resolving the status of a long-settled unauthorized population, and the start of a new chapter in the longer-term integration of these young people. Conversely, failing to pass legislation to address the group's status will be a personal calamity for hundreds of thousands of these individuals and their families, and further inflame passions around the country's seemingly intractable stalemate over immigration, in particular illegal immigration.

D. Secondary Effects of Major Federal Tax and/or Health-Care Policy Changes

Arguably the most significant and long-lasting effects on integration supports, and on the operations of state and local governments more broadly, could result from wide swings in balance sheets at all levels of government as a consequence of the major tax reform package signed by President Trump in late December 2017 and potential cuts to spending on Medicaid and other health and human services programs in 2018.

Supporters of the tax legislation—exclusively Republicans—say the new measures will provide a tax break (albeit temporary) for middle-class families and dramatically reduce corporate taxes, in the belief that some of the additional corporate profits will be invested to grow businesses and, as a result, the U.S. economy overall.⁴⁸ Democrats vehemently opposed the legislation, citing its \$1.5 trillion cost to the U.S. Treasury over a decade, while also characterizing the bill as a payoff to wealthy Republican donors.

While the law contains some provisions that will directly affect immigrant families—for example, it denies the child tax credit to immigrant children who do not have a Social Security number—its secondary or “knock-on” effects on state and local budgets and the health, education, and social services systems they support are of greatest concern. For example, the law eliminates the ACA mandate that all individuals purchase health insurance or face a fine. This provision ensured many younger, healthier individuals would purchase insurance coverage and thereby stabilize financing of larger insurance pools. Eliminating this essential pillar of the ACA is expected to deepen the crisis facing states that are trying to shore up coverage for millions of individuals affected by the law.

Among the tax law's other highly controversial provisions are limits it places on deductions for interest paid on home mortgages and write-offs for state and local income taxes. It is expected that the latter provision will stymie efforts to increase state and local taxes and perhaps fuel new demands for local tax relief. Religious groups and other charities are also bracing for up to \$20 billion less in annual contributions,⁴⁹ as fewer individuals itemize their federal tax deductions and therefore receive no specific tax benefit for donations they may make to refugee resettlement, legal services, adult education, or others of the thousands of programs across the United States that rely on such donations to fund services that support the integration of immigrants and refugees.

As 2018 begins, Congress also faces the difficult task of finding ways to pay for the significant hole the tax cuts create in the federal budget. House Speaker Paul Ryan has indicated he expects Congress to

48 U.S. Congress, “H.R.1 – An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018,” accessed January 9, 2018, www.congress.gov/bill/115th-congress/house-bill/1/actions.

49 Joseph Rosenberg and Philip Stallworth, “The House Tax Bill Is Not Very Charitable to Nonprofits,” Tax Policy Center, November 15, 2017, www.taxpolicycenter.org/taxvox/house-tax-bill-not-very-charitable-nonprofits.



ramp up its efforts to reform entitlement programs such as Medicaid in the new year⁵⁰ and the budget resolution adopted by both the House and Senate in October 2017 calls for \$1.3 trillion in cuts to ACA subsidies and Medicaid.⁵¹ Such efforts are sure to be met with vigorous resistance from Democrats who have vowed to prevent further fraying of federal safety-net programs and the chain reaction of state and local spending cuts in education, health, and other areas that federal cuts would set into motion.

Sharp differences in state contexts of reception and integration will remain the norm and likely deepen.

III. Conclusion

With a unified government led by Donald Trump in the White House and Republican majorities in Congress (albeit with a razor-thin margin in the Senate), it is reasonable to expect that significant budget measures or legislation on immigration and other matters could break through the gridlock of past years and lead to some of the potential impacts discussed throughout this report. However, the populist backlash that carried Trump to victory in the 2016 election has provoked similarly powerful progressive resistance and caused many states to take bold new steps on immigration and integration policy matters. Now, with legal challenges to federal supremacy on immigration and refugee policy being mounted from both the right and left, states and the courts are the new major actors in the immigration and integration policy spheres. And states in particular are likely to remain so, irrespective of new federal actions, given their lead role in managing a range of critical public safety, education, health, and social services that provide the everyday context within which immigrants build their lives, families, and futures in local communities.

With many states recovering from the effects of the draconian budget cuts they were forced to make during and after the Great Recession, new shortfalls resulting from future cuts to federal domestic programs or the knock-on effects of the tax overhaul could result in severe cuts to integration-support programs and economic retrenchment more broadly.

And while state engagement in immigration and integration policy issues is increasing, the paths they have been taking in responding to federal immigration enforcement and other pressing issues involving immigrants and refugees are diverging ever more. Sharp differences in state contexts of reception and integration will remain the norm and likely deepen, particularly if Congress does not find a way to resolve the parties' long-running dispute over how to address the treatment of unauthorized immigrants who have resided in the country for many years.

50 Jeff Stein, "Ryan Says Republicans to Target Welfare, Medicare, Medicaid Spending in 2018," *Washington Post*, December 6, 2017, www.washingtonpost.com/news/wonk/wp/2017/12/01/gop-eyes-post-tax-cut-changes-to-welfare-medicare-and-social-security/?utm_term=.47e388c5a62a.

51 Center on Budget and Policy Priorities, "Senate Budget Plan Threatens Health Programs," accessed January 15, 2018, www.cbpp.org/research/federal-budget/senate-budget-plan-threatens-health-programs.



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About the Author



Margie McHugh is Director of the Migration Policy Institute's National Center on Immigrant Integration Policy, which provides in-depth research, policy analysis, technical assistance, training, and information resource services on a broad range of immigrant integration issues. Her work focuses on education quality and access issues for immigrants and their children from early childhood through K-12 and adult, postsecondary and workforce skills programs. She also leads the Center's work seeking a more coordinated federal response to immigrant integration needs and impacts, and more workable systems for recognition of the education and work experience immigrants bring with them to the United States.

Prior to joining MPI, Ms. McHugh served for 15 years as Executive Director of The New York Immigration Coalition, an umbrella organization for more than 150 groups in New York that uses research, policy development, and community mobilization efforts to achieve landmark integration policy and program initiatives.

Prior to joining NYIC, she served as Deputy Director of New York City's 1990 Census Project and as Executive Assistant to New York Mayor Ed Koch's chief of staff. She is the recipient of dozens of awards recognizing her efforts to bring diverse constituencies together and tackle tough problems, including the prestigious Leadership for a Changing World award. She has served as a member and officer on the boards of directors for both the National Immigration Forum and Working Today; on the editorial board of *Migration World* magazine; and has held appointive positions in a variety of New York city and state commissions, most notably the Commission on the Future of the City University of New York and the New York Workers' Rights Board.

Ms. McHugh is a graduate of Harvard and Radcliffe Colleges.



The Migration Policy Institute is a nonprofit, nonpartisan think tank dedicated to the study of the movement of people worldwide. MPI provides analysis, development, and evaluation of migration and refugee policies at the local, national, and international levels. It aims to meet the rising demand for pragmatic and thoughtful responses to the challenges and opportunities that large-scale migration, whether voluntary or forced, presents to communities and institutions in an increasingly integrated world.

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