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The ‘Public-Charge’ Ploy

A new rule looks like another effort to limit legal immigration.

President Trump in his better moments has said he wants, and the U.S. needs, more legal immigrants. But that’s hard to square with the way his Administration is now trying to curtail legal immigration under the pretext of preventing America from becoming a welfare magnet.

The Department of Homeland Security on Monday finalized a rule that ostensibly seeks to enforce and clarify the Immigration and Nationality Act. That law bars immigrants from gaining admission, renewing visas or obtaining green cards if they are “likely at any time to become a public charge.”

Congress didn’t define “public charge” beyond such general categories as age, health, family and financial status, assets, education and skills. In 1999 the Clinton Administration issued guidance defining a “public charge” as an individual likely to become “primarily dependent on the government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance, or institutionalization for long-term care at government expense.”

Excluded were noncash benefits like Medicaid and food stamps, which consume a growing share of government welfare spending. The Trump Administration now wants to incorporate noncash benefits into “public charge” determinations to prevent immigrants from coming to the U.S. to live on the dole.

This makes sense as a general principle. Public support for immigration will erode as it has in Europe if Americans perceive immigrants as a government burden. But there’s little evidence that immigrants are free-riding, and the DHS rule cedes too much discretion to bureaucrats over immigration decisions.

Start with DHS’s declaration that it will weigh the “totality of the alien’s circumstances” and that “no single factor alone, including the receipt of public benefits, is outcome determinative.” So immigration officers will apply the kind of holistic admission reviews that colleges now use—except adversity will be considered a *negative*.

Anyone who has been “approved to receive one or more public benefits for more than 12 months within any 36-month period” would receive an automatic negative strike. But most immigrants don’t qualify for most public benefits until they have lived in the country for at least five years. Thus DHS is directing immigration officers in the 837-page rule to project the likelihood that immigrants might someday become a “public charge” based on arbitrary levels of income, employment, education and English proficiency.

Current earnings also don’t predict income growth or government dependency. **According to the National Foundation for American Policy**, incomes of immigrants ages 26 to 40 after a mere four years in the U.S. rose to 300% from 239% of the poverty line—nearly the average of native-born counterparts.

While immigrants are no more likely than native-born Americans to use public benefits, they are more likely to work. The labor participation rate of Hispanic foreign-born high-school graduates (72.2%) is comparable to white native-born bachelor’s degree recipients (72.7%) and significantly higher than native-born whites with merely a high-school education (53.8%). (See the nearby table.)

All of this makes the new rule vulnerable to legal challenges. While supposedly trying to flesh out a vague statute, DHS is essentially rewriting immigration law on its own. And wouldn’t you know, the rule bears a striking resemblance to the “merit-based” system that restrictionists in the White House have proposed but can’t get Congress to pass. If this sounds like Barack Obama ’s legislate-by-rule strategy on climate change, that’s because it is.

We support work requirements for public benefits, and they make sense as part of immigration reform that allows more workers to enter the country legally based on economic demand. But the White House has proposed nothing to expand legal immigration, skilled or unskilled, and all of its recent proposals seem intended to reduce any and all immigration, legal or illegal.

The DHS rule might even drive more folks who are deemed “public charges” to come illegally. The rule looks like one more attempt by White House adviser Stephen Miller to make America a country of no more immigrants.

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