



SPECIAL ISSUE

Hurricane Disaster Relief Measures Fall Short or Stall

IMMIGRANT WORKERS RECRUITED FOR CLEANUP FACE EXPLOITATION, DANGER

Katrina "Immigration Relief" Bills Fall Short

The Immigration Relief for Hurricane Katrina Victims Act of 2005 (HR 3827), which the U.S. House of Representatives passed on Sept. 21, 2005, is disappointing, as is the anticipated parallel Senate bill, because they would leave in place provisions of immigration law that threaten to act as a second wave of harm to hurricane survivors whose livelihood the storm already destroyed.

Though the Senate has been working on its own Katrina relief proposal, it has not yet been introduced. Reportedly, it will be similar to the House bill, but with some improvements. The House bill was sponsored by Rep. F. James Sensenbrenner Jr. (R-WI), who chairs the House Judiciary Committee.

BACKGROUND

Congress has responded to Hurricane Katrina by appropriating more than \$60 billion in assistance, and it appears poised to eventually ante up as much as \$200 billion. But many in Congress are showing a different face to the non-U.S. citizen survivors of the storm. According to U.S. Citizenship and Immigration Services, more than 30,000 nonimmigrants (i.e., non-permanent residents) other than tourists and almost 25,000 lawful permanent residents were affected by Katrina.

Noncitizens in the affected area suffered all of the same experiences and losses as others, but for many recovery will be complicated by unbending provisions of immigration and public benefits laws. Instead of being given a helping hand, thousands of heretofore lawfully present hurricane survivors will be forced to leave the U.S. due solely to the effects of Katrina unless the law is changed to account for the circumstances of the unprecedented disaster. Specifically, these Katrina survivors lost their right to remain in the U.S.—even, in some cases, temporarily—when the loved ones who brought them lost their lives, or when the jobs they had come to perform or the schools they had come to attend were swept away by the storm.

HR 3827 addresses the impact of immigration law on these in-

dividuals, but despite the efforts of some members of Congress and their staffs, it does not do so in the same generous spirit as does relief legislation directed at other populations. Rather, it nickels-and-dimes the relief it offers to such a degree that more of those affected are left out than are included. NILC does not expect that the Senate bill, even with its improvements, will be significantly better.

MAJOR PROVISIONS OF HR 3827

HR 3827 provides that immigrants who would have been eligible for lawful permanent residence because of their relationship to a U.S. citizen or lawful permanent resident would be able to keep that eligibility even though the citizen or LPR was disabled or died as a result of Katrina.

Nonimmigrants — that is, people who were granted permission to come to the U.S. for a specified purpose and for a limited period of time — would be granted a one-year automatic extension of their visa if they were disabled as a result of the storm, as would the spouses and children of nonimmigrants who were disabled or died due to the storm.

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FOUNDED IN 1979, THE NATIONAL IMMIGRATION LAW CENTER PROVIDES technical help to legal services programs, community-based non-profits, and pro bono attorneys throughout the United States. NILC also counsels impact litigation, conducts policy analysis and trainings,

and publishes legal reference materials. NILC's staff specialize in immigration law and in immigrants' employment and public benefits rights. In addition to this newsletter, NILC produces legal manuals, a referral directory, and other community education materials.

Students would be given until Feb. 1, 2006, to enroll in a new school.

In addition, some time limits would be extended for a few months, such as for voluntary departure or to file applications to change status.

Reportedly, the Senate bill will contain similar provisions.

WHAT HR 3827 FAILS TO DO

No provision for most nonimmigrants (non-permanent residents, such as guest workers). HR 3827 would provide no relief for most nonimmigrants who lost their legal status as a result of the storm — e.g., the job they came to perform has been destroyed, making them unable to comply with the terms of their visa. Only death or disability would warrant an automatic extension of a nonimmigrant visa, and even then only for a year; and, in general, only the death or disability of the “principal alien” (i.e., the death or disability of the actual guest worker, but not of the worker’s spouse or children) would matter. As a result, most nonimmigrants who have lost everything, even loved ones, due to Katrina must depart the U.S. immediately or face arrest, removal from the U.S., and, depending on how long they remain after their eligibility to be here expires, bars to reentry.

Reportedly, the Senate bill also will provide some relief to some nonimmigrants who lost employment as a direct result of Katrina, including H-1B skilled workers, H-2A unskilled workers in agriculture, and H-2B unskilled seasonal nonagricultural workers (such as workers sponsored by casinos in Mississippi). Under the Senate bill, all these individuals would be allowed to accept new employment upon filing by a prospective employer of a new employment petition within 180 days. While this is an improvement over the House bill, still it would leave people without work authorization while they try to find a new employer who will file a petition, which is not likely to be easy. And if they failed to find a new employer, it is unclear whether they would accrue “unlawful presence” in the U.S. that might later bar them from reentry for years.

Relief for employment-based applicants for immigrant status only if employer suffered physical damage. HR 3827 provides only the most constricted relief for Katrina survivors who had applied for lawful permanent residence as employment-based immigrants. Under the bill, to qualify for “special immigrant status” and thus the right to remain in the U.S., an applicant for employment-based LPR status would be required to demonstrate that the sponsoring employer’s business was *physically* damaged or destroyed.

For example, if before the storm an applicant for LPR status worked for a hotel in New Orleans’s French Quarter that escaped physical damage, but after the storm could no longer work there because she had to move when her housing was destroyed, she and her family would be required to depart the U.S.

Reportedly, under the Senate bill employer-sponsored applicants for LPR status would be required to show only that they had lost their employment as a direct result of Katrina, a more generous proposal than the parallel provision in the House bill. However, it does not take into account other circumstances that would cause such applicants to fail to maintain their employment, such as loss of housing or the death of a family member due to the hurricane.

Inadequate relief for students. For student nonimmigrants, only those who are able to return to school by Feb. 1, 2006, would be protected under HR 3827. That is, those who were forced to leave school as a result of Katrina and are unable to return by Feb. 1 would be considered not to have been in lawful status as of the time they left school, which would mean that if they remained in the U.S. until March 2006 they would thereafter be barred from reentering the country for three years. Reportedly, the Senate bill will contain the same provision.

No public charge waiver. Many immigrants are afraid to obtain public benefits due to fear that they will later be penalized under the “public charge” provisions of immigration law. As a general rule, most forms of Katrina-related assistance should not create public charge problems; but to ensure that victims can secure the relief they need in order to be able to resume productive lives, Congress should confirm that this temporary assistance will not jeopardize their status. HR 3827 does not provide an across-the-board assurance of this.

The Senate bill would fix this problem by providing that an immigrant shall not be held inadmissible or deportable on the basis that he or she received any public benefit or fee waiver as a direct result of Katrina.

Waiver of violations of immigration law. As described above, HR 3827 and the anticipated Senate bill would provide narrowly circumscribed relief for people who, when the hurricane struck, were noncitizens in lawful status. The Senate bill reportedly would also give the attorney general or secretary of the Dept. of Homeland Security the authority to waive violations of immigration law committed by noncitizens in lawful status on Aug. 26, 2005, whose failure to comply with the immigration laws was the direct result of the hurricane. This broad grant of discretion would be a significant advance over the House bill’s provisions, but because it would be discretionary, it would not provide necessary assurances of favorable treatment in the face of catastrophic circumstances.

CONCLUSION

The Bush administration and many in Congress have touted their concern for immigrants who have “played by the rules” and applied for or obtained lawful status in the U.S. But the proposed legislation provides little human recognition that these law-abiding people, immigrants and guests in our land, have suffered and deserve some minimum degree of compassion. Moreover, as time passes without Congress acting, the significance of even the bills’ limited provisions will be lost.

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Hurricane Relief Benefit Proposals Stall in Congress as Federal Agencies Flex to Meet Needs of Survivors

In the wake of Hurricanes Katrina and Rita, Congress introduced several bills that attempt to address the needs of victims and the communities that were destroyed by the storms, as well

as those that are receiving the evacuees. Among the survivors are tens of thousands of low-income immigrants and refugees who face particular barriers to securing benefits. Like citizens, they have lost family members, jobs, homes, possessions, and the documents they need to obtain critical assistance. In addition, many immigrants, including those who have lived in the U.S. for years, cannot receive the services that they need to resume healthy and productive lives due to immigration-related restrictions in benefits programs.

Within days of the disaster, the White House, federal agencies, and Congress publicly committed to take action to ensure that Katrina survivors could secure housing, health care, food stamps, and other safety-net services quickly, without the lengthy applications and documentation requirements that typically govern these programs. Such action is necessary not only to meet the needs of the evacuees, but also to assure states struggling to deliver aid that federal public benefit programs are available for those in need.

Federal agencies responded quickly and flexibly in administering benefits, based on the widespread recognition that immediate action is a crucial element in recovery efforts — to ensure that assistance reaches those displaced by the Hurricane's devastation. Citizens and immigrants alike fled or were rescued without documents such as birth certificates, driver's licenses, bank statements, and pay stubs in their possession. Many such documents and records were ruined in the storm and its aftermath. On Sept. 8, President Bush announced that residents of counties declared disaster areas due to Katrina would be granted "special evacuee" status, enabling them to receive federal benefits to which they are entitled without being required to satisfy the rigid documentation and verification requirements governing programs such as Medicaid, food stamps, housing, child care, school lunch, disaster unemployment assistance, and job training.

Several federal agencies issued guidelines, streamlining and expediting application procedures for evacuees. For example, guidance issued by the U.S. Dept. of Agriculture (USDA) establishes that all evacuees are eligible for an immediate first month of food stamps based solely on evacuee status. Some of the rules ordinarily governing the program (such as work-related rules) were relaxed for an additional three-month period. These and other agency guidance documents are available on NILC's website. Advocates will need to monitor the administration of these programs to ensure that evacuees are able to secure the assistance that they need in a streamlined manner.

Several bills introduced in Congress seek to expand the capacity and flexibility of states to serve the immediate needs of Hurricane Katrina survivors through federal programs such as Medicaid, food stamps, and Temporary Assistance for Needy Families (TANF). For example, on Sept. 16, Sen. Chuck Grassley (R-IA) and Sen. Max Baucus (D-MT) introduced the Emergency Health Care Relief Act of 2005 (S. 1716), a bill that would provide immediate medical coverage to low-income survivors, including persons who may not meet Medicaid's strict "categorical eligibility," resource or state residency rules, or who may have trouble documenting their income. It would also enable states to secure full federal funding for this coverage, relax verification requirements, and utilize a simplified one-page application for Katrina survivors. Given the bipartisan sponsorship of S. 1716, and the

related bills introduced by Republican and Democratic senators, the prospect for Senate passage initially seemed strong. However, the bill now appears to have stalled due to objections raised by a few Republican senators regarding its cost, as well as a lack of support from the White House. The Bush administration has maintained that Medicaid "waivers" available under existing law provide a sufficient mechanism for covering hurricane survivors who have relocated to other states.

Bills expanding food stamp eligibility for Katrina survivors face similar challenges. Among other things, the Hurricane Katrina Food Assistance Relief Act of 2005 (S. 1643), introduced on Sept. 8 by Sen. Tom Harkin (D-IA) and Sen. Patrick Leahy (D-VT), would provide a modest increase to the monthly food stamp allotment given to Katrina survivors and would raise the income eligibility limit to 150 percent of the poverty line. The bill also would ensure that a range of immigrants would not be denied food stamps arbitrarily due to the Byzantine eligibility rules for immigrants that normally govern the food stamp program. The bill accomplishes this by treating immigrant survivors of Katrina who are lawfully present in the U.S. as refugees for purposes of Katrina relief food stamps. A House bill, HR 3809, introduced a week later by Rep. Collin Peterson (D-MN) covers related ground. However, because the bills currently lack Republican support, their prospects are uncertain.

Many Republicans in Congress appear to be waiting for President Bush to issue his third, and perhaps largest, request for a supplemental appropriation for disaster relief before committing to particular benefits legislation. That proposal is expected by the end of October. The one notable exception is the narrow TANF bill promptly passed and signed into law on Sept. 21. In addition to providing directly affected states with an increase in their TANF block grant amount, the Emergency Response and Recovery Act of 2005 (PL 109-68) establishes a federal reimbursement mechanism to assist host states in providing nonrecurrent, short-term cash benefits to Katrina survivors who move from directly affected states. While helpful to states, the legislation does little to improve access to TANF services for individual survivors. It fails, for example, to lift the federal "five-year bar" or waiting period for immigrants during their time of greatest need.

For resources on immigrant eligibility for disaster assistance benefits, government agency guidance, and links to more comprehensive resources on assistance for low-income evacuees, visit NILC's disaster assistance web page at www.nilc.org/disaster_assistance/index.htm.

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Immigrant Workers Exploited in Katrina Cleanup Efforts

While the Federal Emergency Management Agency (FEMA) is awarding multimillion dollar contracts to clean up the devastation left in the Gulf Coast by Hurricane Katrina and provide emergency housing for people left homeless by the disaster, immigrant workers in the area are being exploited and abused.

Contractors are recruiting immigrant workers from around the

country and transporting them to the Katrina-affected area to work on cleanup and rebuilding efforts, according to a report in the *Los Angeles Times* (Sept. 25, 2005). Lured by recruiters and a web of FEMA subcontractors, immigrant workers are promised certain hourly wages, housing, and in some cases even child care. The reality they encounter when they arrive, however, is substandard or no housing, nonpayment of wages, dangerous working conditions, and threats of deportation if they complain. In addition, the recruiters charge the workers a fee for transportation to the Gulf region and additional fees for gas and food. Workers readily pay the fee and travel to the affected region under the impression that there is plentiful work available.

Housing conditions are a major concern for workers. In some cases, 10 to 12 workers are being housed in a single trailer with no water, stove, refrigerator, furniture or heat. Other workers are placed in tent cities where there is no running water or sanitation. Moreover, contractors are charging the workers for this substandard housing while at the same time refusing to pay them the promised hourly rate, issuing bad checks, or refusing to pay any wages at all. Workers in Mississippi report that they have gone as long as three weeks without being paid a single penny for hours worked.

In addition to violating wage and hour laws, contractors and subcontractors that fail to provide recruited immigrant workers with appropriate safety equipment are deliberately exposing them, without adequate protection, to known hazards and thus are failing to provide them with safe working conditions. According to a news release issued on Oct. 10 by the U.S. Environmental Protection Agency (EPA), "cleanup activities can pose significant health and environmental challenges" to the workers, who may be exposed to mold, toxic fumes, contaminated sediment, hazardous waste, and contaminated flood water. Because of the potential environmental and health hazards, the EPA has released five radio public service announcements in Spanish in an attempt to warn the large number of immigrant workers who are conducting the bulk of the cleanup work about the dangers they face.

Finally, the suspension of certain federal laws has served to exacerbate the poor working conditions that prevail where cleanup and rebuilding are taking place. In response to Hurricane Katrina, the federal government relaxed labor and employment laws, giving contractors and their subcontractors the green light to recruit, abuse, and exploit immigrant workers. On Sept. 8, 2005, President Bush issued a proclamation to suspend the Davis-Bacon Act in areas affected by Hurricane Katrina. The suspension applies to parts of Louisiana, Mississippi, Alabama, and Florida. The Davis-Bacon Act is a federal law that requires contractors on federally funded construction projects to pay all workers the local prevailing wage. In addition, the Dept. of Homeland Security suspended the enforcement of sanctions against employers that hire workers who are unable to prove that they are eligible to be employed in the United States. The suspension of the Davis-Bacon Act not only lowers wages for all workers, but it also allows contractors to hire workers without providing them with adequate training to perform the work. Residents in the hurricane-affected areas who have lost their homes and jobs are now unable to obtain work earning the prevailing wage to help rebuild their communities. The relaxation of the immigration statute's employer sanctions provisions is equally disturbing in light of

reports that federal officials have taken enforcement actions against undocumented immigrant survivors of the disaster, as well as against immigrant workers in the affected area.

Organizations such as the Mississippi Immigrant Rights Alliance, the Equal Justice Center, and the American Friends Service Committee are working on the ground in the Gulf Coast with many immigrant workers to provide education, housing, and other resources. These organizations will also work closely with NILC to document abuses and advocate for federal policies that protect immigrant workers as the cleanup effort proceeds.

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Administration's Failure to Reassure Leads to Fear, Isolation, and Hardship in Immigrant Communities Affected by Hurricanes

Natural disasters do not discriminate, or pick and choose their victims. For this reason, a humanitarian response demands that all victims have access to disaster relief. Beyond this, and to ensure that a deterioration of public health and safety does not follow on the heels of a natural disaster, immediate federal emergency assistance is by law available to all persons affected by a disaster's destruction. In theory, then, all immigrants and citizens affected by Hurricanes Katrina and Rita should be able to secure basic emergency services. However, the Bush administration's failure to reassure immigrant victims of Hurricanes Katrina and Rita that they may seek services without fear of recrimination, combined with immigrant enforcement actions undertaken against victims, have intimidated many storm victims and prevented them from obtaining critical services to which they are entitled.

Although longer-term assistance and cash benefits are available only to citizens and "qualified" immigrants, all hurricane victims — regardless of their immigration status — are eligible for short-term, noncash emergency services such as food, water, medical care, shelter, and clothing. And the U.S. citizen or "qualified" immigrant children of immigrants who are not eligible for the Federal Emergency Management Agency's (FEMA's) cash assistance have the right to secure these services through their parents who live with them.

In the wake of previous disasters, the Bush administration made clear and consistent public statements aimed at ensuring that all persons who are eligible for emergency aid are able to secure these benefits, and allaying immigrants' concerns that seeking aid would subject them to deportation proceedings. For example, following the 9/11 terrorist attacks, James Ziglar, then commissioner of the Immigration and Naturalization Service, announced that immigrants who came forward to assist in rescue and recovery efforts need not fear that they would be referred to immigration authorities. Ziglar issued a written statement he then repeated in a news conference for reemphasis: "I want to personally urge the immigrant community to come forward, and assure everyone that INS will not seek immigration status information provided to local authorities in the rescue and recovery efforts." Almost immediately after Hurricane Charley hit Florida in 2004, FEMA issued a press release in English and Spanish entitled

“Storm Victims Urged to Come Forward for Emergency Aid Regardless of Immigration Status,” in which it encouraged all immigrant victims of the storm not to hesitate to seek emergency aid for which all people are eligible.

However, no equivalent reassurance to immigrants has followed the devastation wrought by hurricanes Katrina and Rita. Mexican President Vicente Fox made a televised statement urging displaced Mexican nationals to come forward for this assistance. In his statement, Fox claimed that U.S. authorities had assured his government that “those who were not documented at the time [Hurricane Katrina hit] will not be subject to any pressure or persecution whatsoever.” Leaders of Central American countries similarly urged citizens of their countries to seek relief without fear of recrimination. But neither the Dept. of Homeland Security (DHS) nor U.S. Immigration and Customs Enforcement (ICE) would confirm that there was any such agreement. Instead, a spokesperson for DHS stated that “as we move forward with the response [to the hurricanes], we can’t turn a blind eye to the law,” implying that DHS may be sharing information between its relief arm — FEMA — and its enforcement arm — ICE — in order to apprehend individuals who are in violation of civil immigration laws.

This failure to reassure at a time of an unprecedented natural disaster in our country is ungenerous and harmful to public health and safety. It also undermines FEMA’s ability to effectively carry forth its core mission to prevent, respond to, and recover from disasters when an entire community of disaster victims remains fearful about participating in response and recovery efforts. Moreover, the need for this kind of public statement following a federal disaster has only increased since FEMA was subsumed under DHS in the reorganization of federal agencies as of Mar. 1, 2003. Today there is virtually no wall between the agency responsible for administering federal emergency benefits to hurricane victims and the agency responsible for immigration enforcement.

Despite multiple requests from members of the U.S. House and Senate, DHS maintains its refusal to clarify that it will not use for immigration enforcement purposes information gathered from people seeking disaster relief. On Sept. 14, 2005, Senate Minority Leader Harry Reid (D-NV), along with 14 other Democratic senators, sent a letter to DHS Secretary Michael Chertoff urging him to issue such a statement. Because the secretary did not respond to their request, these senators sent a second letter to the secretary as the Gulf Coast prepared to face its second storm, Hurricane Rita. The Congressional Asian Pacific American Caucus (CAPAC) and the Congressional Hispanic Caucus have sent similar letters to Secretary Chertoff requesting that DHS clearly state that information gathered in the course of providing emergency assistance will not be turned over to immigration enforcement officials. In its letter, CAPAC noted that such a statement was “vital for humanitarian reasons, as well as to protect the health and safety of the larger public.”

Meanwhile, many immigrants, including immigrant parents with U.S. citizen children, have been afraid to seek assistance. For example, one 31-year-old father of three explained his reluctance to apply for FEMA aid even on behalf of his U.S.-born, citizen children: “I was scared of being thrown in jail, of being deported . . . and I feared I would have to abandon my family.”

During a fact-finding mission to the Gulf region, the social service agency Latino Memphis encountered some 35 immigrants who had not been evacuated from an apartment complex in Bay St. Louis, Mississippi. The residents were in great need and were also without electricity or air conditioning in the sweltering heat. However, they were unwilling to visit a FEMA distribution site that had been set up right across the street and also expressed apprehension about seeking services from the Red Cross.

While there is no indication that DHS is implementing a widespread policy of using disaster assistance as a tool of immigration enforcement, in the immediate aftermath of Hurricane Katrina the federal government initiated immigration enforcement proceedings against a few immigrant victims, even as they were being transported out of the affected region. In one instance, ICE confirmed that its agents had detained three immigrants evacuated from the hurricane-impacted area when their plane landed in El Paso, Texas. The evacuees were released to shelters in the Texas area, but not until they had been served with notices to appear for deportation proceedings.

In another incident, state troopers in West Virginia called in ICE officials as part of their response to a complaint by one passenger against another passenger on a bus transporting Hurricane Katrina evacuees to a temporary shelter in West Virginia. ICE agents took the pair into custody, but after the agents questioned her, the woman refused to press charges.

On another occasion, U.S. Marshals backed-up a local sheriff’s office in a raid of a Red Cross shelter for hurricane victims in Long Beach, Mississippi. During that encounter, approximately 60 individuals who appeared to be Latino were required to produce identification. According to Red Cross officials and several witnesses, the officers gave individuals three destination options after their records and papers were checked: board a bus to Houston, Atlanta, or Mexico. The storm victims reported being warned that if they did not leave within two days they would be deported from the country.

Taken together with the administration’s failure to provide reassurance, the message sent by these incidents is that immigrant victims of the hurricanes should come forward for the emergency assistance to which they are entitled, but that doing so may trigger adverse immigration consequences for themselves or their U.S. citizen family members. As a result of this contradictory message, immigrant advocates cannot provide clear assurance to immigrants in the disaster region or in states hosting evacuees. Worse, immigrant victims are placed in a no-win situation: forego the assistance they need today or risk immigration enforcement.

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Features That Should Be Included in Federal Hurricane Relief Legislation

Immigrants represent a tiny fraction of those harmed by Hurricane Katrina, but due to the scope of the disaster, they still number in the tens or even hundreds of thousands. Like all others who have suffered from the hurricane and its aftermath, the for-

eign-born have lost their lives, their loved ones, their homes, jobs, and possessions. The relief they need is substantially the same as the relief needed by other survivors.

But they also face particular circumstances that could prevent them from making use of the relief that will be available to others or that threaten to add additional hardships to those that they have already endured. These circumstances include:

Loss of legal status. The ability of some individuals to remain in the U.S. lawfully is conditioned on circumstances that may have been affected by Katrina. For example, their status may depend on their relationship to a U.S. citizen spouse or parent. If the spouse was killed by Katrina, the right to remain may be lost. In other cases, noncitizens are required to work for a particular employer. If Katrina wiped out the employer, the worker may face forced departure on top of the other harms caused by the hurricane.

Loss of documents proving lawful immigration status and employment authorization. Like many others, noncitizens may have lost identity documents necessary to prove lawful status so that they can obtain employment, travel, and otherwise survive in the communities where they have been relocated without fear of being harassed by immigration authorities, local law enforcement, or others.

Barriers to government benefits. In addition to the difficulties caused by lack of documentation, Byzantine immigration status-based eligibility rules complicate access to the benefits that many will need to get back on their feet. For example, there is a rule that prevents access to Medicaid and other federal means-tested public benefits by lawfully residing immigrants during their first five years in the United States. A central justification offered in support of the five-year bar has been that it is intended to discourage immigrants from coming to the U.S. with immediate plans to obtain government assistance. But Katrina was an unforeseeable catastrophe for which no one could have planned and which merits a waiver of the bar.

Language barriers and isolation. Persons with limited English ability have not been getting the information they need about the disaster and available relief. For example, before Katrina only one Spanish-language radio station served coastal Mississippi — out of New Orleans — and the hurricane interrupted that station's services. Monolingual people who speak other languages have even less access to information than do Spanish-speakers. In addition, many relief agencies lack materials or interpreters to serve these communities, and as a result immigrant and refugee service centers have been overwhelmed by new clients who have not been helped by the relief agencies charged with that task.

Loss of refugee services. Refugees are admitted to the U.S. via an organized time-limited program that seeks to ensure a smooth transition, both for the refugees and for the communities where they settle. This program has been destroyed in the Katrina-affected areas, but the special needs faced by refugees remain.

DISAPPOINTING RESPONSE TO DATE

The proper response in the wake of a devastating disaster such as Katrina is to suspend immigration enforcement against the victims altogether for a period of time and to provide needed assistance to all who are in need. Such a response is warranted

because our immigration system is dysfunctional and in need of comprehensive reform. It would help all who are in the affected areas by permitting the entire relief effort to concentrate on meeting human needs and the need for reconstruction without being distracted by issues of immigration status.

But sadly, in the real world, such a proposal was never seriously considered by the Bush administration or by Congress. In fact, Congress has yet to enact a single provision to alleviate the concerns raised above.

Worse, the Federal Emergency Management Agency (FEMA) has broken with its longstanding tradition of divorcing humanitarian relief efforts from immigration enforcement. There have been reports and rampant rumors of enforcement actions against Katrina survivors. And for the first time neither FEMA nor anyone else in the Bush administration has been willing to provide reassurance to victims that such actions are against policy and that coming forward for humanitarian assistance will not result in a referral to immigration enforcement agencies.

These lapses have contributed to an unprecedented degree of isolation and fear in affected immigrant communities.

In this climate, we suggest the following modest changes in law that, if enacted, would help prevent immigration-related laws from contributing additional miseries to the displaced survivors of Katrina. These changes represent the minimum needed to prevent unintended consequences of our immigration laws that would otherwise unduly penalize Katrina survivors and to ensure that foreign-born victims can obtain the full benefits of Katrina relief efforts.

FOR PERSONS ON NONIMMIGRANT VISAS (OTHER THAN TOURIST VISAS):

Automatically extend lawful status until Aug. 26, 2006, or current duration of status, whichever is longer. "Nonimmigrants" are individuals who have permission to live in the U.S. for a specified amount of time and for a particular purpose, such as to work at a specific job or to accompany a spouse or parent who came here for such a job. Under current law, many nonimmigrants would be forced to immediately depart the U.S. because Katrina has killed their loved ones or destroyed their place of work or their school. This change would allow such people to stay as long as their original visa would have provided if Katrina had not intervened. For those who were scheduled to depart within a year, it would give some additional time to recover from the effects of the disaster. This time is needed because the disaster will have left many worse off than anticipated. For example, some will have lost income or savings that they were counting on to be able to afford the trip home.

Provide for regular work authorization (not limited to any particular employer or type of employment) during this period. Under current law, the provisions of some nonimmigrant visas either do not grant work authorization or grant only limited eligibility to be employed in the U.S. This change would ensure that those permitted to remain under the automatic extension of status would be able to survive economically while here.

FOR LAWFULLY PRESENT IMMIGRANTS:

Make changes necessary to ensure that noncitizens do not lose immigration benefits as a result of losses caused by Hurricane Katrina. These changes are similar to ones made in the

wake of the 9/11 attack as part of the Patriot Act. They are needed because the disaster will prevent many persons from complying with filing deadlines and other immigration requirements. For example, some benefits are not available after a person's twenty-first birthday.

Expedite issuance of temporary documents to replace lost work authorization credentials. Under current law, employers are required to verify the employment eligibility of all new employees within three days of hiring them. Routinely, noncitizens who lose documents that demonstrate their immigration status or employment eligibility find that it can take weeks or even months to obtain replacement documents. The normal delay might be exacerbated for Katrina survivors because the primary documents they might ordinarily need — such as their passport or birth certificate to prove identity — may have been destroyed. This provision would encourage the Dept. of Homeland Security (DHS) to expeditiously issue a temporary replacement employment authorization or equivalent document so that survivors can obtain employment.

NOTE: On Sept. 6, the DHS advised that it temporarily will not sanction employers for failure to document employment authorization of hurricane survivors. While welcome and necessary, this stop-gap solution is unlikely to help the majority of immigrants who have lost their documents. Why? Most employers — particularly those outside of the immediate affected zone — will not have heard about the new policy, and many who have heard of it, particularly larger employers, will choose not to change their policies as a result. Provision of temporary documentation is a much more satisfactory solution because all employers will be able to comply with the law without changing their procedures.

During a two-year period, ensure that lawfully present immigrant hurricane victims have immediate access to critical benefits such as Medicaid, the State Children's Health Insurance Program (SCHIP), food stamps, and Temporary Assistance for Needy Families (TANF), and waive any public charge implications for the use of such assistance. This can be accomplished by including the following language in relief legislation:

- Clarification that Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 USC 1611 et seq.) shall not apply to a lawfully present immigrant affected by Hurricane Katrina between Aug. 29, 2005, and Sept. 30, 2007.

- Clarification that, when making a determination under 8 USC 1182(a)(4) and 8 USC 1227(a)(5), the consular office or secretary of the Dept. of Homeland Security shall not consider any public benefits received by an immigrant affected by Hurricane Katrina between Aug. 29, 2005, and Sept. 30, 2007.

Under restrictions imposed by the 1996 welfare law — the Personal Responsibility and Work Opportunity Reconciliation Act, or PRWORA — most immigrants must wait at least five years before they can secure health coverage, nutrition, or temporary cash assistance for needy families. Even after the five-year waiting period, benefits are extended only to those in a limited range of immigration categories. Many of the lawfully present immigrant victims of Katrina, including, for example, many thousands of Hondurans who have been living in Louisiana with temporary protected status (TPS) since Hurricane Mitch struck their homeland, do not fall within these immigration status categories. By

contrast, current law allows refugees and other immigrants afforded humanitarian treatment to secure such services immediately. Like other humanitarian immigrants, Katrina victims recently have suffered trauma and are in need of immediate assistance to help them get back on their feet. Removing immigration status-related access barriers to benefits for disaster victims during a two-year period will ensure that they can obtain the critical health care, nutrition assistance, and supportive services necessary to resume productive lives. Ensuring access to such services for immigrant victims of Katrina who are lawfully present in the U.S. will help the communities where they resettle temporarily or permanently to address their needs as well.

Several states provide assistance in “look-alike” programs to some groups of lawfully residing immigrants otherwise subject to the five-year bar. However, they must do so using state-only funds. Given the burdens that states already will assume in serving victims of Katrina, they should have access to federal funds to assist these lawfully residing immigrants. The “public charge” test ordinarily imposed against immigrants seeking to adjust status is similarly intended to discourage immigrants from becoming dependent on the government for their support. Like the five-year bar, its application would be inapt under these circumstances, in which so many victims have lost their jobs, possessions, and livelihood. Immigrant victims of Katrina must be able to utilize temporary assistance without fear that participation in the program will hamper their immigration status by making them a “public charge.” There is precedent for such clarification where compelling reasons exist to get immediate benefits to persons in great need. For example, battered immigrant victims of domestic violence can use public benefits without fear of public charge. See 8 USC 1182(s).

FOR REFUGEES:

Make changes necessary to ensure continuity of refugee services and to prevent disruption of the refugee resettlement program.

- Extend time for relocation assistance, refugee resettlement assistance (including Refugee Medical Assistance (RMA) and Refugee Cash Assistance (RCA)), and repayment of travel loans.

- Expedite new placement for refugees who were slated to go to the region.

- Provide assistance for the voluntary resettlement agencies (volags) affected by the hurricane that are charged with assisting and tracking refugees.

- Provide resources necessary for alternative placement of refugees who had been scheduled for resettlement in the affected areas.

Some of the victims displaced by the disaster were already refugees in the process of resettling in the U.S. Refugees are admitted to the U.S. via an organized time-limited program that seeks to ensure a smooth transition, both for the refugees and for the communities where they settle. This program has been destroyed in the Katrina-affected areas, but the special linguistic, cultural and mental health needs faced by refugees remain. Under current law, temporary medical and cash assistance is available to refugees only during the first eight months after they secure such status; other services may be available only during their first few years in the country. An extension of such services

will be necessary to ensure a smooth transition and integration into a new community. Such assistance will also help the receiving communities that otherwise do not have the resources to cope with an influx of refugees with special needs.

FOR ALL PEOPLE, CITIZENS AND IMMIGRANTS ALIKE:

Provide resources to overcome language isolation and fear.

- Ensure that resources are allocated so that interpretation, translation of written materials, and community outreach and education is conducted in the predominant languages of victims.
- Reassure communities that disaster-related assistance will not be used as a basis for immigration enforcement.

The effectiveness of relief services depends on awareness of the services offered: where to access services, who is eligible, and how to apply. Areas affected by Katrina were home to vibrant communities of immigrants and citizens whose primary languages are not English. For example, Louisiana had been home to an estimated 30,000 Vietnamese individuals, who settled in the region following the upheaval of two wars in their homeland. Relief agencies need additional resources to ensure that their efforts reach all who need assistance and to comply with obligations under federal law to take reasonable steps to assure effective communication with individuals with limited English proficiency.

For immigrant communities to fully embrace relief efforts and avail themselves of needed assistance, the government must dispel fears that use of services can result in deportation or other negative immigration consequences. After the 9/11 tragedy, James Ziglar, commissioner of the Immigration and Naturalization Service, made a public statement encouraging immigrants to come forward to assist rescue and recovery efforts and assuring them that the INS would not seek to obtain immigration status information provided to local authorities in rescue and recovery efforts. Given that FEMA is now part of the DHS, which enforces immigration laws, it is even more important for the government to assure immigrant communities that relief efforts will not serve as a tool of immigration enforcement.

Expedite procedures for obtaining benefits — ensure that documentation requirements do not impede expeditious provision of humanitarian relief by:

- Simplifying and waiving documentation requirements for all assistance to victims during a six-month period.
- Enacting a general provision that a lack of documents for reasons caused by or related to Katrina shall constitute good cause for failure to produce those documents and shall not form the basis of a benefits denial.
- Ensuring that employers as well as health care and social service providers are informed that they will not be sanctioned for failing to require such verification.

Many survivors will not have access to the basic documents normally needed to secure access to benefits. Establishing a streamlined process for the hurricane victims recognizes this fact and ensures that they receive the services that they need immediately.

Provide the following with respect to HEALTH CARE:

- Waive initial documentation requirements in Medicaid/SCHIP.
- Invest significant additional resources in public health and

community health clinics.

Most victims will not have access to the basic documents normally needed to secure access to Medicaid and SCHIP. Establishing a streamlined process for the hurricane victims recognizes this fact and ensures that they receive the health care they need immediately. Medicaid's current presumptive eligibility procedures, which allow applicants to enroll in the program for up to two months or more without burdensome verification requirements, could serve as a model. This period should be extended to at least six months to accommodate the unique needs and circumstances faced by these victims. Consistent with the recently issued Centers for Medicare and Medicaid Services (CMS) guidance, agencies and individuals should be held harmless for services provided under this program or noncompliance with normal program rules or procedures. After the expiration of the six-month period, as the victims are transitioned to ongoing Medicaid, the inability to obtain documentation for reasons caused by or relating to the hurricane should constitute good cause, and the agency should be required to accept a victim's attestation as alternative verification until such time as the documentation becomes available.

To ensure that receiving communities have the resources to address public health needs and that all community members have access to services when they need them, the influx of refugees warrants a significant investment in public health services and community health clinics.

Provide the following with respect to FOOD STAMPS:

- Provide states with reimbursement or relief for their additional costs associated with administering the Food Stamp Program for victims.
- The U.S. Dept. of Agriculture (USDA) should waive verification and documentation requirements for food stamps for Katrina victims for a six-month period.
- Once victims of Katrina are transitioned onto a state's regular food stamp program, inability to provide documentation for a reason relating to Katrina should constitute good cause, and the state should accept a victim's attestation as alternate verification until such time as the documentation becomes available.
- To assure an emphasis on providing food stamps to victims, states should be held harmless for any quality control errors and should not be required to initiate overpayment claims against victims of Katrina for a six-month period.

Access to nutrition is critical to maintain the health of families fleeing the disaster. Recognizing that many hurricane victims will lack access to paperwork, the USDA should waive its verification and documentation requirements for Katrina victims during a six-month period and as they are transitioned to regular food stamps. Current law allows states to seek certification to administer "disaster food stamps." The USDA's Food and Nutrition Service (FNS) has guided states that chose not to seek certification for administering disaster food stamps to process food stamp applications for victims of Hurricane Katrina under expedited ("emergency") procedures. In either instance, documentation/verification procedures will be relaxed. However, these emergency forms of food stamp issuance are short-term. Given that documentation problems will persist until infrastructure in hurricane-affected areas is rebuilt, state food stamp agencies should be instructed to recognize circumstances caused by or related to Katrina as

good cause for an applicant's failure to produce such documentation and to accept a victim's attestation as alternative verification on an ongoing basis, until such time as the documentation becomes available. As explained above, lawfully present immigrants displaced by Katrina should be eligible for benefits without the barriers imposed by the 1996 federal welfare law.

Provide the following with respect to HOUSING:

- Clarify that any new housing programs created to help Katrina victims are statutorily considered to meet the definition of short-term in-kind disaster relief (for purposes of Title IV of the PRWORA). Given the unprecedented nature of this disaster, the duration of such "short-term" or "transitional" housing may need to be extended.

Under current law, short-term in-kind disaster relief, including temporary or transitional housing (which the Dept. of Housing and Urban Development has defined as available for up to two years) are exempt from the immigration status-related restrictions imposed by the 1996 welfare law. Any new program set up to aid Katrina survivors should meet this definition, but in the absence of clarification there will be uncertainty and even the potential for an incorrect interpretation. This suggested provision would simply confirm that the housing assistance set up to assist Katrina victims falls within the existing exemption and that those who

provider housing under the new programs will not be required to collect and verify documentation of each applicant's immigration status.

Provide the following with respect to LEGAL SERVICES CORPORATION (LSC)-FUNDED SERVICES:

- Clarify that LSC-funded programs may provide assistance to Katrina victims without regard to current immigration restrictions.

The LSC funds neighborhood-based programs that provide free legal services to low-income individuals in noncriminal matters such as public benefits, housing, consumer issues, employment, education, and family law. Federal law prohibits programs that accept LSC funding from providing assistance to immigrants who do not fall within certain categories. There is an exception for emergency services, but clarification is needed to ensure that Katrina survivors can obtain assistance without documenting their immigration status at a time when they have an extreme need for all manner of legal expertise, including help with insurance claims, landlord-tenant complications, contract disputes, and consumer abuse.

By JOSH BERNSTEIN, NILC director of federal policy
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