

Features That Should Be Included in Hurricane Katrina Relief

Sept. 19, 2005

■ Background

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 of thousands. Like all others who have suffered from the hurricane and its aftermath, the foreign-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 so 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 immigration enforcement.

• Barriers to government benefits

In addition to the difficulties caused by lack of documentation, Byzantine immigrant 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 country. 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.



NATIONAL
IMMIGRATION
LAW CENTER
www.nilc.org

LOS ANGELES (Headquarters)

3435 Wilshire Blvd
Suite 2850
Los Angeles, CA 90010
213 639-3900
213 639-3911 fax

WASHINGTON, DC

1101 14th Street, NW
Suite 410
Washington, DC 20005
202 216-0261
202 216-0266 fax

OAKLAND, CA

405 14th Street
Suite 1400
Oakland, CA 94612
510 663-8282
510 663-2028 fax

- **Language barriers**

Persons with limited English ability have not been getting the information they need about the disaster and available relief. For example, only one Spanish-language radio station served coastal Mississippi—out of New Orleans—until Katrina. Now there are none. Monolingual people who speak other languages have even less access to information than do Spanish-speakers. We understand that relief agencies rarely have materials or interpreters available to serve these communities.

- **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.

The following changes in the law are essential to address these issues, 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)**

- **Automatic extension of lawful status until Aug. 26, 2006, or current duration of status, whichever is longer.**

Explanation and rationale: “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 them 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.

- **Regular work authorization (not limited to any particular employer or type of employment) during this period.**

Explanation and rationale: 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.**

Explanation and rationale: 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.

- **Expedited issuance of temporary documents to replace lost work authorization credentials.**

Explanation and rationale: Under current law, employers are required to verify the employment eligibility of all persons within three days of hire. If a noncitizen loses his or her documents demonstrating immigration status or employment authorization, it can take weeks or even months to obtain a replacement. 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.

Explanation and rationale: 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, bene-

fits are extended only to those in a limited range of immigration categories. These categories do not include 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. 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 immigrant-related access barriers for disaster victims for benefits purposes 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 lawfully present victims of Katrina will help the receiving communities 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 be 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.

Explanation and rationale: 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 are 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.

Explanation and rationale: 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 with primary languages other than English. For example, Louisiana had been home to an estimated 30,000 Vietnamese individuals, who settled in the familiar climate of 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 (INS), 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 the Federal Emergency Management Agency (FEMA) is now part of the Dept. of Homeland Security, 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.

● Expedited 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, health care and social service providers are informed that they will not be sanctioned for failing to require such verification.

Explanation and rationale: 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.

- **Health care–specific recommendations.**

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

Explanation and rationale: 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 that 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 & 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.

- **Food stamps–specific recommendations.**

- 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.

Explanation and rationale: 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 who chose not to seek certification for administering disaster food stamps to process food stamps 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 home 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.

- **Housing-specific recommendations.**

- 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.

Explanation and rationale: 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 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 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.

- **Legal Services–specific recommendations.**

- Clarify that Legal Services Corporation (LSC)–funded programs may provide assistance to Katrina victims without regard to current immigration restrictions.

Explanation and rationale: 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.

FOR MORE INFORMATION, CONTACT

Josh Bernstein, NILC director of federal policy | bernstein@nilc-dc.org | 202.216.0261