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Undocumented Immigrant Access to Housing Under the Trump Administration: Potential Impacts and Policy Alternatives

Shelby Dewberry

I. Introduction

Latin American immigrants have quickly become an integral and growing part of the United States' population. The latest figures from the 2017 American Community Survey show that there are more than 44.5 million migrant residents in the United States, nearly 14% of the population and the highest measure since the census began in 1850. Of the nearly 45 million immigrants, 44% report to be Hispanic or Latino in origin (Zong, Batalova, & Burrows, 2019). Latin American immigrants make up the majority share of undocumented immigrants, accounting for 78% of the undocumented immigrant population, with 50% of these individuals coming from Mexico alone (Hayes & Hill, 2019). Additionally, these immigrants, documented and undocumented alike, are staying in the United States longer than they have in the past. A study by the Pew Research Center (2019) found that only about 22% of Latin American immigrants left the US less than 10 years after arriving, down from 50% in 2000 (Pew, 2019).

According to the 2019 Pew Study, about half of the nation's immigrants live in California, Texas, and Florida. These immigrants often congregate in the larger metropolitan areas, with New York City, Los Angeles, and Miami being home to 65% of the nation's total immigrant population (Pew, 2019). Research from the Migration Policy Institute found that most Mexican immigrants in the US reside in California, 37% to be exact, concentrating most heavily in Los Angeles and Orange Counties. (Zong, Batalova, & Burrows, 2018). Research from the Public Policy Institute of California found around 25% of the nation's undocumented immigrant population lives in California, making up 6% of the state's population and 9% of the labor force in CA (Hayes & Hill, 2017).

The influx of immigrants has, unfortunately, only added to the affordable housing crisis in the United States. An individual is cost-burdened if they pay more than 30% of their income on housing expenses, which makes it harder to afford basic necessities like food, transportation, clothing, or medical care ("Affordable Housing", 2019). According to the U.S. Department of Housing and Urban Development (HUD), there are more than 12 million American households, both renters and homeowners, who spend more than 50% of their income on housing expenses. Thus, a household with a single wage-earner making minimum wage can no longer afford to rent a 2-bedroom apartment anywhere in the United States ("Affordable Housing", 2019).

In April of 2018, the Trump Administration issued an executive order implementing changes to a part of the Housing and Community Development Act of 1980 intended to combat the affordable housing crisis. The executive order, titled "Reducing Poverty in America by Promoting Opportunity and Economic Mobility" sought to reform the welfare system in the US, which was no longer working towards preventing individuals from becoming stuck in a poverty trap. The executive order also has the goal of reducing the years-long wait times for receiving public housing by decreasing the applicant pool, making it more difficult for undocumented immigrants to get access to housing assistance. By tightening scrutiny on immigration status for individuals receiving public assistance, HUD plans to eject around 32,000 households from the waiting list to make room for documented citizens (Misra & Capps, 2019).

The remainder of this paper will look at the history of immigrants in the United States and further examine the actions taken by the Trump Administration that disproportionately impact immigrants, both undocumented and otherwise, as an attempted solution to the affordable

housing crisis in America. Finally, proposed policy alternatives for California will be evaluated to determine the best course of action to reform the welfare system and reducing wait times for gaining federal housing assistance from HUD, while mitigating potential negative impacts on the immigrant community.

II. Literature Review

A. Historical Patterns of Immigration: California and the United States

Current trends in immigration show a relative decrease across the country, with 40% of the nation's immigrants arriving in the United States before 1990. However, this does not mean that immigration has stopped; there have been more than 2 million new immigrants to the United States since 2010 ("State Demographics Data—CA", 2019). California has the largest share of the nation's immigrants, housing a quarter of the population, with the majority coming from Latin America (Johnson & Sanchez, 2019).

Singer (2015) looked at the makeup and diversification of immigrant gateways throughout periods of United States history. The first set of gateways noted are categorized as "former gateways," defined as areas between 1900-1930 that had higher immigration than the national average. These areas are mostly centered in the areas of the northeast and midwest which were historically manufacturing areas, and thus none are located in California (Singer, 2013). The "major continuous gateways" have sustained immigrant populations throughout the 20th century, having had more immigrants than the national average for each decade in the past century. Of them, San Francisco is the only "major continuous gateway" in California. (Singer, 2013).

If areas had an above-average population of immigrants between 1900-1950 and had the same or more immigrants than average in 2014, they are classified as "minor-continuous gateways". Bakersfield, Fresno, Modesto, Oxnard, and Stockton are the minor-continuous gateways in California (Singer, 2013). If a city became a center for immigration in the mid 20th century, it is considered a "post-World-War II gateway. These seven areas, combined, currently house 30% of the nation's immigrants. California also houses 3 of the 7 post-World-War II gateways: Los Angeles, Riverside, and San Diego (Singer, 2013). "Re-emerging gateways" often attracted immigrants in the early 20th century, but then experienced lower levels of immigration, followed by fast growth in immigration population towards the end of the 20th and beginning of the 21st century. Sacramento and San Jose are such cities in California (Singer, 2013).

There are nearly 11 million immigrants in California and 50% of those immigrants are from Latin American origins ("State Demographics Data—California", 2019). Of these immigrants, only 14% are undocumented though these nearly 1.7 million individuals make up around 9% of the labor force in California (Hayes & Hill, 2017). The Public Policy Institute of California (2017), found that most undocumented residents live with family members, often children, who are citizens or are otherwise documented. Estimates show that around 5 million children in California have undocumented parents and, of those children, 78% are United States citizens (Hayes & Hill 2017). With undocumented immigrants making up a significant portion of the population and the workforce, the state was inclined to take action to protect these individuals from the risk of deportation. In 2017, the state passed the "California Values Act," which made California a sanctuary state for undocumented immigrants (CA S.B 54, 2017).

B. What is a Sanctuary?

Across the United States there are sanctuary cities and states that offer greater protection for immigrants from agencies like Immigrations and Customs Enforcement (ICE), and often see higher rates of immigrant residents because of these policies. These cities and states have

recently been targeted by President Trump's threats to pull funding from sanctuary cities and states until these governments comply with federal immigration policy. The President threatened both San Francisco and the State of California in 2017, though courts shut down the issue before President Trump could act (Yee, 2017). It is worth noting that in the United States, simply being an undocumented immigrant is not a crime in and of itself; rather, it is a civil violation with potential for criminal charges, depending on how the individual entered the U.S., among other factors (ACLU: Immigrants' Rights Project, 2010). This means that immigrants, both undocumented and otherwise, still have rights under the constitution that cannot be violated and, thus, that they cannot be arrested if they did not commit an actual crime (America's Voice, 2019).

Sanctuary cities and states allow protections to undocumented immigrants that come into effect when that individual encounters law enforcement. In cases outside of sanctuary cities, an individual's information gets put into a database upon arrest that sends their information to ICE and other agencies (America's Voice, 2019). If ICE recognizes a detainee as an undocumented immigrant, they may ask local law enforcement agencies to hold the individual until ICE can arrive, and ultimately begin the process of deportation (America's Voice, 2019). While the US Supreme Court has determined it is unconstitutional to hold individuals longer than necessary so that ICE can arrive, many states and localities ignore this in order to be strict on immigration (America's Voice, 2019). In a sanctuary city, however, the individual information will not be sent to ICE upon arrest or contact with the police and, thus, individuals do not have the same risk of being deported (America's Voice, 2019).

Sanctuary city status allows undocumented immigrants to feel safer and more comfortable asking for help when they need it. In areas where there are not sanctuary city protections, many undocumented immigrants are unwilling to call the police when they are the victims of serious crimes—like robbery, physical abuse, or rape—which is dangerous for the individuals themselves and those around them. Research shows that sanctuary cities tend to have around 15% less crime than non-sanctuary cities and that more than 66% of the cities with the highest increases in murder rates during 2016 were non-sanctuary cities as well (America's Voice, 2019). Sanctuary city status often makes these areas more appealing for immigrants and, thus, often have high proportions of undocumented residents. This can place a strain not only on assistance programs but also on access to affordable housing, often in areas that are already facing a lack of housing for residents and/or high rates of homelessness.

C. Impact of Race on Housing Access in Los Angeles

Studies suggest that disparities among immigrants and native-born individuals may be responsible for why immigrants may struggle to find access to affordable housing. McConnell (2013) examined the impact of race and legal status on access to housing using data from the Los Angeles Family and Neighborhood Survey (L.A.FANS). The survey was a collection of 3,000 households in LA, with oversampling of poor and very poor households. At the time the data was collected in 2002, households were considered low income if they made less than \$55,000 a year (McConnell, 2013).

McConnell's study used only the subset of low-income earners to look at the impact of race, nativity, and legal status on housing cost burden. The analysis found that 60% of low-income households were cost-burdened and of those cost-burdened, 76.2% were unauthorized immigrants from Latin America (McConnell, 2013). Immigration status was determined to be the factor that most likely predicted housing affordability problems in the sample, more so than race

or nativity. The study noted that more than 75% of unauthorized Latino immigrants are cost-burdened, regardless of how long they have been living in the United States (McConnell, 2013).

The study also noted that unauthorized Latino immigrants are generally less likely to attain affordable living situations due to factors like low pay, minimal opportunities for growth in the workforce, and the overall challenging conditions that unauthorized immigrants are forced to work in (McConnell, 2013). In addition, McConnell found that housing affordability issues came most frequently for Latino immigrants during the earlier stages of adulthood and, as such, these housing issues often impact the daily lives of children. Finally, native-born Latinos have a sort of generational advantage in coming from a family that has lived in the US and knows how to navigate the workforce and the housing market better than someone who is new to the county (McConnell, 2013).

It is important to note that the survey which was the foundation for McConnell's analysis was conducted in 2002, during the housing boom the US experienced between 1999-2005. This means that figures are likely higher now than estimated almost two decades ago. The United States is now in the midst of an affordable housing crisis, making it much more likely that individuals are cost-burdened by their living expenses than they were in the past. In addition, many Latinos were targeted and victimized by the subprime mortgage crisis in 2009, suggesting that this group in particular may be even more impacted than other groups (McConnell, 2013). The rest of this paper examines Trump's Executive Order "Reducing Poverty in America by Promoting Opportunity and Economic Mobility" and provides policy alternatives and introduces criteria for determining the best course of action.

III. Criteria for a better policy

A. Cost

Cost is always an important factor to consider when choosing a policy alternative. In this case, one major area of consideration is the personnel costs required to implement the policy. Some policy options require the verification of all recipients' immigration status', which is a labor-intensive operation for the government that would require paid personnel to complete. Another cost to consider is externalized costs to society that could come as a result of denying household assistance to undocumented immigrants, or even removing them from their residences. These costs include those associated with increased rates of homelessness, like an increase in demand for space in shelters or increased policing costs to manage a growing homeless population. These are all costs to the taxpayer that should be considered when selecting a policy alternative.

B. Ease of Implementation

Another key consideration when selecting a policy alternative is ease of implementation. This issue is of paramount importance in this case as it relates directly to individuals and their access to, or lack of, housing which is a basic human need. If the implementation process of the policy is too complex or takes too long, it could have a negative impact on the lives of many individuals. It is also important to consider ease of implementation in relation to the status quo or the way that things are currently. As it stands now, there are undocumented immigrants receiving federal housing assistance; in order for a policy to be implemented to deal with this, individuals would have to go through a review process and then, potentially, be removed from their housing.

C. Related to the Goal

The goal of the Executive Order (EO) is to reform the welfare system in the U.S. in order to "increase self-sufficiency, well-being, and economic mobility" for individuals—"especially

children”—who have become victims of the “poverty trap,” focusing on encouraging American ideals of “work, free enterprise, and safeguarding human and economic resources” (“Reducing Poverty”, 2018). In order for a policy alternative to be worthy of consideration, it should also seek to achieve these goals. The EO stipulates that “State (and) local governments... may tailor their public assistance programs to the unique needs of their communities”, thus allowing and encouraging these governments to establish their own implementation of the policies outlined and recommended in the executive order (“Reducing Poverty”, 2018). In order for a policy alternative to be successful in regard to the criteria, it must encourage self-sufficiency and economic mobility while also allowing for state and local governments to have the flexibility to implement their own specific policies to achieve these goals.

D. Economic impact

In California alone, undocumented immigrants make up about 1 in 10 members of the labor force (Hayes & Hill, 2017). With this in mind, it is essential that the proposed policy does not impact these individuals’ ability to work and to be a part of the economy in the state. Any impact on their ability to find or secure access to housing can impact their ability to work, which reduces the labor force and has the potential to negatively impact the economy. As of 2018 California had the 5th largest economy in the world, contributing \$2.7 trillion dollars to the national economy (Segarra, 2018). It follows that California’s industry supports industry around the nation, thus a policy that negatively impacts undocumented workers in the state will likely impact the economy of the nation too. Undocumented immigrants are integral in the economy and policies that impact their daily lives and access to housing have external economic consequences. Economic impact, thus, must be considered when examining policy alternatives.

IV: Policy Analysis

Option A: Implement Executive Order 13828

In April of 2019, the Trump Administration issued EO 13828 which proposed changes to a part of the Housing and Community Development Act of 1980 and placed a greater emphasis on ensuring federal agencies only use their funds to support documented US citizens. One section of the EO specifically mandated that welfare agencies implement a policy that mandated agencies “adopt policies to ensure that only eligible persons receive benefits and enforce all relevant laws providing that aliens who are not otherwise qualified and eligible may not receive benefits” (“Reducing Poverty”, 2018). As it stands, the section of the Housing and Community Development Act allows individuals to “elect not to contend eligible information” relating to their immigration status when applying for affordable housing. The Trump Administration’s Executive Order sought to amend this section, proposing that all applicants must have their immigration status verified before receiving any assistance from the Housing and Urban Development (HUD).

As the law was written in 1980, it still stands that HUD funds cannot be given to anyone who is not a US citizen or a part of one of the protected classes of non-citizens; however, individuals were able to opt-out of sharing citizenship status, allowing them to receive assistance before gaining citizenship. Protected classes of non-citizens include lawful permanent residents (green card holders), registry immigrants, refugees, victims of trafficking, and conditional entrants (“Housing and Community Development Act”, 2019). The EO also looks to end the practice of giving HUD funds to “mixed households”, or households that have either a head of household or individual on the lease who is a non-citizen. The proposal seeks to prohibit non-citizens from being head of household in households that receive HUD assistance, regardless of

whether or not there are US citizens living in the household. In California alone, there are nearly 4 million US citizen children that live with at least one undocumented parent; this Executive Order could essentially strip them of their access to housing because of their parent's immigration status (Hayes & Hill 2017). Finally, the proposed rule will also prohibit households from receiving assistance unless all members of the household are eligible, requiring all members to be either citizens or a member of the protected classes of non-citizens.

The United States Secretary of Urban Housing and Development, Ben Carson, claimed that in order to achieve and implement these policies, more than 32,000 families would be ejected from public housing. However, many are skeptical about the accuracy of that prediction (Misra & Capps, 2019). The National Low Income Housing Coalition for instance, estimates that there are only around 22,000 to 25,000 households currently receiving assistance that are ineligible, with most of these individuals living in either New York, California, or Texas. Experts, including those from the National Low Income Housing Coalition, and are also skeptical if this ejection will achieve the intended goal of freeing up space in low-income housing and thus reducing the number of households on the waiting lists.

A study by the National Low Income Housing Coalition (2016) found that there are about 9.5 million families waiting for federal housing subsidies and 2 million families waiting for public housing units, which are figures far greater than the number of proposed housing ejections ("Millions of Families", 2016). Additionally, housing advocates, like the president of the National Low Income Housing Coalition, believe this ejection policy will only impose another penalty on immigrants and "may be part of this administration's effort to instill fear in immigrants throughout the country" (Misra & Capps, 2019). When this paper was written in early 2020, no official decision has been made about the proposed rule change to section 214 of the Housing and Community Development Act.

Option B: Respect the Sovereignty of Sanctuary Cities and States

As mentioned earlier, California and Los Angeles are sanctuaries and, as such, have exercised their authority to not assist in the enforcement of federal immigration laws. Though the Executive Order regarding changes to the HUD law is not technically an immigration law, it relies on immigration status as a means to discriminate against individuals, so it follows that sanctuary states and cities might have the ability to opt not to enforce that part of the legislation. If sanctuary cities and states chose to ignore the Executive Order, the housing assistance programs in these areas would continue to operate as they do now, allowing individuals to opt-out of sharing immigration status in order to receive assistance. However, it is unlikely that states would be able to exert this power without a challenge from the federal government, or challenging the federal government, thus sending the decision into the court system.

As recently as August of 2019, California and three other states filed a suit against the Trump Administration regarding a different executive order that sought to block immigrants from receiving federal assistance. As of early 2020, that case is still in the court system, so no final determination on the constitutionality of the law has been made yet. Though the two executive orders in question are different, they are similar in nature and in goals to make it difficult for immigrants to gain access to the housing services they need. If the case California brought against the Trump Administration succeeds, it follows that a similar challenge to the EO and proposed HUD rule might have a similar result.

However, in the past the federal government has threatened to pull federal funds from sanctuaries for not abiding by federal law. Therefore, the same issue could be present if these areas refuse to enforce the parts of the proposed HUD rule that target undocumented immigrants.

The courts have historically protected the sovereignty of states when it comes to their decision to enforce federal immigration laws; however, since the federal government directly provides funding for subsidized housing programs, it may be able to pull funding from states in this case. In past legal quarrels with states over sanctuary status, the courts have usually sided with the states, emphasizing their sovereignty from the federal government and protecting immigrants from being unjustly targeted.

In the 1997 decision on *Printz v. United States*, the Supreme Court reaffirmed that state legislatures are not subject to federal direction, emphasizing that the federal government cannot coerce states to enforce federal policies (*Printz v. United States*, n.d.). This decision set a precedent that has been applied a few times in other decisions regarding states and their ability to refuse to enforce federal immigration law. The courts have also decided that the federal government cannot coerce states to action by withholding funding or imposing other financial penalties and that the federal government cannot place conditions on grants unless those conditions are “unambiguously” written in the law (America’s Voice, 2019). When it comes to the Executive Order, however, the law in question does stipulate that HUD funds cannot be given to anyone who is not a citizen or a member of the protected classes mentioned earlier. This specificity in the law could cause some trouble if sanctuary states or cities attempted to assert their sovereignty. In California, public housing is funded through both federal and state grants and funds. This suggests that even if federal HUD funding was pulled for California refusing to comply with the EO and proposed HUD rule, the state could potentially still operate public housing projects without support from the federal government.

In sum, this policy alternative emphasizes the sovereignty of states and sanctuary states as an apparatus for refusing to comply with the EO and proposed HUD rule that would disproportionately harm immigrants. This would encompass, first and foremost, not kicking households out of federally assisted programs if individual members of the household do not have proper immigration status. Additionally, the state could continue to allow individuals the option to refuse to answer questions regarding immigration status when applying for public housing. Since undocumented immigrants make up 6% of California’s population and 9% of the labor force, it is in the state’s interest to ensure that these individuals have access to the housing they need, and likely already have, in order to sustain the economy of the state (Hayes & Hill, 2017).

Option C: Protect Children of Immigrants

PPIC (2017) estimates that around 5 million children in California have at least one undocumented parent and 78% of these children are US citizens themselves (Hayes & Hill, 2017). As the Executive Order stands now, these children risk being evicted from their homes or having their housing assistance taken away. The proposed HUD rule requires that all recipients of federal assistance verify their eligible immigration status in order to continue receiving aid; if any leaseholder or the head of household does not qualify for assistance, the household will be removed from the assistance program and could potentially lose their housing (“Housing and Community”, 2019).

The final policy alternative proposes allowing exemptions to the HUD rule that denies funding to undocumented immigrants, so far as that individual has a child that is a citizen of the United States. If the EO and the proposed change to the HUD rule are implemented and households lose their assistance or their residence, many children will be left homeless and could potentially be brought into the care of the state. Though the children are minors, they are US citizens and, thus, should be able to receive federal funds for housing assistance if it is necessary

for their household. Family separation, either by design or by unintended consequence, is detrimental to the well-being of the children and ultimately places an undue burden on the state to care for these individuals who were already cared for by their family members or household.

This exemption, however, does play into the idea that individuals have “anchor babies” which allow undocumented individuals the opportunity to stay in the US and receive benefits that they are not necessarily entitled to. Analysis of the American Community Survey (ACS), found that in the Los Angeles metro area alone, there were around 28,000 births to illegal immigrants between 2012 and 2016 (Camarota, 2018). With this in mind, the proposed policy option will stipulate that households with undocumented leaseholders may only receive funds if the household had a child that is a US citizen at the time the law is implemented. This stipulation allows the children of undocumented immigrants to be able to receive the assistance they need without encouraging undocumented families to have a child in order to continue receiving federal housing assistance funds.

V. Recommendation

Based on the criteria established previously, the best policy alternative is Option B: Respect the Sovereignty of Sanctuary Cities and States. Since this policy is similar to the status quo, it makes implementation simpler than the other policy options proposed. As it stands now, California allows individuals to opt-out of sharing their immigration status when applying for federal housing assistance, and this option that emphasizes state sovereignty in decisions would allow California to continue implementing this policy, or a similar one. Due to its current standing as a sanctuary state, California not only has a larger share of the immigrant population but also has a history of being more lenient with the enforcement of immigration laws. It then follows that the state would also choose to pursue the same leniency when it comes to housing assistance programs as well.

In addition, this option achieves part of the goal of the EO in question by allowing states and local governments the ability to create and implement policy as it relates to the unique make-up of individuals in their region. Because California has a large immigrant population, the best policy for this region would allow immigrants to still have access to housing. Respecting the sovereignty of state and local governments also lends itself to achieving the other goal of the Trump Administration’s EO.

Though the EO emphasized creating efficient welfare programs through ensuring no illegal aliens receive funds, it also placed an emphasis on improving the lives of children and helping individuals escape from the poverty trap, which seems to be contradictory especially in California. In order to “increase self-sufficiency, well-being, and economic mobility” and to encourage American ideals of “work, free enterprise, and safeguarding human and economic resources”, the state of California cannot remove immigrants from public housing and ban them from receiving funds. Since the well-being of the child depends on access to housing, among other factors, it becomes clear that you cannot achieve the stated goal of the EO by implementing a policy that puts their access to housing at risk. Additionally, Research from PPIC (2019) shows that 72% of Californians believe immigrants are beneficial to the state, so it follows that residents could be hesitant to implement policy that could negatively impact this segment of the population.

This policy would not require any additional efforts to reaffirm eligibility of individuals and, most importantly, it would not remove any households from their place of residence. In addition to ease of implementation, this policy is also likely to have lower costs than the others. Most importantly, allowing Californians to create and implement their own policies to achieve

the goals of the EO, the state can better budget and ensure that the costs of implementation are relative to the benefits received. A policy created by the state will also take into consideration the conditions of California's economy, which relies heavily on undocumented immigrants, in a way that a generalized policy like the proposed HUD rule change does not.

In sum, Trump's EO and the proposed change to the HUD rule places an undue burden on immigrants and has the potential to negatively impact the local, state, and national economies. Pursuing locally-based solutions is the best way to work towards the goal of reforming the welfare system and providing individuals access to the housing that they need. In the end, the problem is less about undocumented immigrants receiving federal aid and more about the system being ill-equipped to handle the current state of the economy and the affordable housing crisis. There are millions of people on the waiting list for federal housing assistance who cannot be served simply by removing undocumented immigrants from their residences and denying them funding they rely on. To truly achieve the goal of Trump's EO, the federal government needs to make housing assistance a priority, adding more affordable housing units and more funds to provide assistance to all those who need it. In the end, being an undocumented immigrant is a civil offense, not a criminal one so these individuals do not deserve to be treated like they are criminals for simply trying to put a roof over their head and take care of themselves and their families. The path to citizenship is difficult and long and, surely, is only made more challenging if an individual lacks access to housing. Policy solutions to the affordable housing crisis should look for ways to increase funding and access to affordable housing rather than taking away the already insufficient access from some to give to others.

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