

How Does North Carolina's HB 318 Impact Children?

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On October 28, 2015, North Carolina Governor Pat McCrory signed HB 318 into law. The bill, titled the “Protect North Carolina Workers Act,” takes effect immediately and raises serious concerns for the safety and well-being of North Carolina’s growing immigrant population. Nearly 750,000 immigrants currently call North Carolina home, including nearly 350,000 undocumented immigrants.¹ It is also estimated that more than 170,000 U.S. citizen children living in mixed status-families are growing up in North Carolina.² This fact sheet outlines some of the key implications of HB 318 for children and families.

Restricting Access to Critical Services

HB 318 establishes new rules regarding the types of identification that can be accepted to determine a person’s identity or residency, and explicitly restricts the use of the *matricula consular*, a form of identification issued by foreign consulates and commonly used by immigrants, including those that are undocumented. The bill specifically prevents “justices, judges, clerks, magistrates, law enforcement officers, and other government officials” from accepting restricted forms of identification.³

A valid identification is critical for parents to be able to access services on behalf of their children. Thus, children of undocumented immigrants in North Carolina, including those that are U.S. citizens, could face significant challenges as a result of the new identification rules. One of the greatest concerns is that the legislation does not define the term “other government official,” leaving it uncertain as to whether the restrictions apply to all state government employees, which could potentially include social service agencies, public schools, and government health care facilities.⁴ Such a broad interpretation of “other government official” could have serious consequences for children in immigrant families, including the following:

Limited Access to School

The bill could impact children’s access to education as parents often depend on identification documents to establish both their identity as well as their residency when enrolling their children in school. It is estimated that approximately 7.6 percent of U.S. citizen children enrolled in North Carolina’s K-12 school system currently live in a mixed-status family.⁵ Under the 1982 *Phyller v. Doe* ruling, public schools may not deny education to a child based on their immigration status or use “chilling” enrollment practices that may deter undocumented immigrant families from seeking to enroll their children.⁶ In fact, one of the most controversial provisions of Alabama’s 2011 immigration law (HB 56) was ultimately ruled unconstitutional due to its “chilling” effect on school enrollment by requiring schools to document the immigration status of students and their parents. Thus, while North Carolina has historically abided by the requirements under *Phyller v. Doe*, some districts require a parent to present a picture ID at the time of enrollment, which may create a barrier for those who can no longer utilize a *matricula consular*.⁷

Barriers to Obtaining Birth Certificates and Vital Documents

Another area of concern is the potential for the bill to restrict parent's ability to obtain birth certificates or complete affidavits of parentage to establish paternity or other child custody-related actions. In addition to threatening parental rights, the inability to access a birth certificate can have grave consequences for U.S.-born citizen children by denying them their full citizenship rights. A pending lawsuit in Texas, *Perales Serna v. Texas Department of State Health Services (DSHS)*, is an example of the ramifications of policies that ban the use of the *matricula consular* and other forms of identification.⁸ In recent years, a growing number of immigrant families in Texas have been unable to obtain a birth certificate for their children as a result of a new policy banning the use of the *matricula consular* to establish a parent's identity when requesting the certificate. As a result, immigrant families have faced challenges in enrolling their children in school and establishing eligibility their child's for programs such as Medicaid due to their inability to provide a child's birth certificate.⁹

Restricted Access to Public Benefits

Finally, should the bill's restrictive identification policy apply to government employees more broadly, U.S. citizen children living in mixed-status families may face additional barriers to accessing critical public benefits and safety net programs designed to ensure their healthy development. Parents are often required to establish their identity when seeking benefits on behalf of their children, so even if government employees do not question a parent's immigration status, a child may be wrongfully denied access to healthcare or nutrition supports simply because of their parent's inability to produce identification. Similarly, a parent may not be able to prove a child's eligibility for a particular benefit without being able to obtain a child's birth certificate.

Conclusion

Rather than compromise the basic human rights and dignity of immigrant families, federal and state policymakers should focus instead on policies that promote the full integration and success of immigrants and their children. North Carolina's HB 318 is misguided and has the potential to harm the safety and well-being of children, including U.S. born citizens. As the bill is implemented, it will be critical that a narrow interpretation of "other government official" is adopted and that guidance is issued to mitigate the harm to children by ensuring immigrant parents are able to enroll children in school as well as obtain vital documents and access services on behalf of their children.

References

- ¹ Migration Policy Institute. (2015). “Profile of the Unauthorized Population: North Carolina.” Available at: <http://www.migrationpolicy.org/data/undocumented-immigrant-population/state/NC>.
- ² Warren, R. (2015). “U.S.-born Children of Undocumented Residents: Numbers and Characteristics in 2013.” Center for Migration Studies: New York, New York. Available at: <http://cmsny.org/warren-usbornchildren/>
- ³ North Carolina Justice Center. (October 2015). “Analysis of HB 318/S199: Identification Documents and Potential Legal Ramifications.”
- ⁴ Ibid.
- ⁵ Passel, J. & Cohn, D. (November 2014). Unauthorized Immigrant Totals Rise in 7 States, Fall in 14. Washington, DC: Pew Hispanic Center. Available at: <http://www.pewhispanic.org/2014/11/18/chapter-1-state-undocumented-immigrant-populations/>.
- ⁶ U.S. Department of Justice and Department of Education Fact Sheet. (May 8, 2014). “Fact Sheet: Information on the Rights of All Children to Enroll in School.” Available at: <http://www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-201405.pdf>.
- ⁷ North Carolina Justice Center (October 2015). “Analysis of HB 318/S199: Identification Documents and Potential Legal Ramifications.”
- ⁸ Chichsti, M. & Hipsman, F. (November 2015). “Recent Court Rulings Block Deferred Action and Raise Questions for Accessing Birthright Citizenship.” Washington, DC: Migration Policy Institute: Available at: <http://www.migrationpolicy.org/article/recent-court-rulings-block-deferred-action-programs-and-raise-questions-accessing-birthright>.
- ⁹ Ibid.