

LESSONS FROM OPERATION METRO SURGE

ADMINISTERING A SPECIAL NEEDS TRUST WHEN IMMIGRATION ISSUES ARISE

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House keeping matters:

I have lived in Minneapolis since 2014.

I personally witnessed multiple ICE raids and detentions in my own neighborhood.

I personally witnessed ICE agents camped outside of my children's school during drop off hours.

I am NOT an immigration attorney

My goal is to increase basic awareness of immigration issues and introduce concepts that will help you issue-spot when a client or a beneficiary is a noncitizen.

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DHS ENFORCEMENT IS MARKED BY FAILURE TO OBSERVE CIVIL RIGHTS AND DUE PROCESS

- More than 500 U.S. Citizens have been wrongfully detained.
- At least 70 of those were children and teens.
- At least 63 were detained while recording ICE activities in public.
- 36 Americans were held for at least a full day without being able to contact a lawyer or their family
- ICE dumping people out into the Minnesota winter without proper clothing, transportation, or a phone.
- ICE arrests and forcible entry to private homes without a judicial warrant.
- ICE agents following constitutional observers to their homes to intimidate.
- Operation Metro Surge cost Minneapolis nearly $700 million in lost economic activity.

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IMMIGRATION LAW BASICS

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IMMIGRATION CATEGORIES

- **U.S. Citizens**
  - Naturalized Citizens are foreign-born individuals who voluntarily apply for and complete the legal naturalization process.
- **Lawful Permanent Resident (LPR, "Green Card")**
  - Foreign nationals authorized to live and work permanently in the United States.
- **Conditional Permanent Residents**
  - Individuals who receive a 2-year green card such as through a recent marriage, and must file a joint petition to remove conditions before 2 years expire
- **Non-Immigrants (Temporary Visa Holders)**
  - Tourist/Business Visa
  - Student Visa
  - Temporary Workers
  - Refugees/Asylees
- **Undocumented Immigrants**
  - Individuals who enter the US without permission or who have overstayed their authorized stay.

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IMMIGRATION LAW BASICS

- Crossing the border without permission or inspection is a crime.
  - First unlawful entry is a federal misdemeanor.
  - Any subsequent unlawful entry is a felony punishable by fine or up to 2 years in prison.
  - Returning unlawfully after removal or deportation is a felony punishable by between 2 and 20 years in federal prison.
- Being present in the United States after your permission to be here has expired is a civil violation.
- USCIS is fully funded by immigrant fees, and on average most applicants pay thousands in fees, not including legal fees.
- Legal fees average between $5,000 and $15,000, depending on the issue.

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WAIT TIMES TO ENTER THE US LEGALLY VARY WIDELY

- In non-family categories, wait times for a visa can be 25 years.
- Mexican siblings of US Citizens who applied for a sibling visa in 2001 started becoming eligible in 2025
- Those who obtain an employment visa with a highly sought-after skill set can expect to wait between 3-12 years for LPR status, and between 7 - 20 years for citizenship.

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LEGAL REPRESENTATION ISSUES

- There is no right to representation in U.S. immigration courts.
- Children and incapacitated persons are particularly vulnerable as they are not entitled to independent legal representation in removal proceedings.
- In many such cases, USCIS agents represent the interests of the minor or incapacitated person in Court, while also serving as the law enforcement agency investigating the person, presenting evidence against them, and holding them in custody.

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DISABILITIES, SPECIAL NEEDS, PUBLIC BENEFITS, AND IMMIGRATION STATUS

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PUBLIC CHARGE RULE

- 8 USC §1601
- (2)It continues to be the immigration policy of the United States that—
  - (A)aliens within the Nation's borders not depend on public resources to meet their needs, but rather rely on their own capabilities and the resources of their families, their sponsors, and private organizations, and
  - (B)the availability of public benefits not constitute an incentive for immigration to the United States.

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PUBLIC CHARGE RULE (CONT…)

- INA Sec. 212(a)(4) Public charge
- (A) In general.-Any alien who, in the opinion of the consular officer at the time of application for a visa, or in the opinion of the Attorney General at the time of application for admission or adjustment of status, is likely at any time to become a public charge is inadmissible.
- (B) Factors to be taken into account.(i) In determining whether an alien is excludable under this paragraph, the consular officer or the Attorney General shall at a minimum consider the alien's-
  - (I) age;
  - (II) health;
  - (III) family status;
  - (IV) assets, resources, and financial status; and
  - (V) education and skills

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APPLICATIONS FILED BEFORE SEPTEMBER 18, 2026

- "Means-tested benefits" were understood to include federal cash benefits such as SSI and TANF, and long-term institutionalization at government expense
- The following benefits were understood NOT to be considered:
  - Emergency Medicaid
  - Most Medicaid except for long-term institutionalization paid for by Medicaid
  - Section 8 and other housing assistance
  - Pell grants or student loans
  - Unemployment benefits
  - SNAP and CHIP benefits
  - School lunches
  - WIC
  - Benefits used by your US citizen children or other family members

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PUBLIC CHARGE RULE (CONT…)

For noncitizens applying for green card/legal permanent resident status after September 18, 2026:

Any and all means-tested benefits received may be considered.

Means-tested benefits received by a citizen child may be considered if those benefits are a primary source of support for the noncitizen, or *if the noncitizen has a legal obligation to support the citizen child*.

According to the CFR and at least one immigration law attorney, a parent being paid to provide PCA services to a minor disabled child would not necessarily be disqualifying because the parent is earning wages rather than receiving a benefit.

The public charge rule is a "totality" analysis.

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PUBLIC BENEFITS AND NON-CITIZENS

	Medicaid	SNAP	WIC	School meals	SSI
Lawful Permanent Resident (Green card holder)	5-year wait	5-year wait*	Yes	Yes	Sometimes*
Refugee	Varies by State	No (OBBBA)	Yes	Yes	Yes, but only during first 7 years of refugee status
Asylee	Varies by State	No (OBBBA)	Yes	Yes	Yes, but only during first 7 years of asylee status
"Undocumented"	Emergency only (includes labor & delivery)	No	Yes if pregnant or postpartum	Yes	No, with limited exceptions for victims of trafficking, and other small populations.

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TAKEAWAYS FOR PUBLIC CHARGE RULE

- Knowing your beneficiary's legal status is essential to utilizing their resources in their best interests.
- Knowing the legal status of your beneficiary's support network is essential to being able to plan for the future
- If a beneficiary or their parent (if a minor) is going to be applying for green card status, consider consulting an immigration attorney before applying for any means-tested benefits for the beneficiary, especially if the trust has significant assets.
- Confirm a beneficiary's legal immigration status *before* establishing a special needs trust for their benefit.

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THE SOLE BENEFIT RULE

- Social Security Administration. *Program Operations Manual System (POMS)*, SI 01120.201 (May 6, 2024), and 42 U.S.C. § 1396p(d)(4)(A).
- *The key to evaluating this provision is that, when the trust makes a payment to a third party for goods or services, the goods or services must be for the primary benefit of the trust beneficiary. You should not read this so strictly as to prevent any collateral benefit to anyone else. For example, if the trust buys a house for the beneficiary to live in, that does not mean that no one else can live there, or if the trust purchases a television, that no one else can watch it. On the other hand, it would violate the sole benefit rule if the trust purchased a car for the beneficiary's grandchild to take the beneficiary to their doctor's appointments twice a month, but the grandchild was also driving it to work every day.* POMS SI 01120.201F.3.a

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PROBLEM: YOU DON'T KNOW HOW TO TALK ABOUT IMMIGRATION ISSUES

Educate yourself on the basics – what is the difference between a Visa and a green card?

Consider culturally competent ways to have this conversation. Do you need an interpreter? Can you recruit an ally in their church or community to help with the conversation?

Start with the rules of the conversation. Is the conversation protected by attorney-client privilege or other rules of confidentiality? What will this information be used for? Will you be sharing it with anyone else?

Lead with empathy and sincerity – if your intent is to be respectful but you're concerned you might offend someone, just say so.

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PROBLEM: YOUR BENEFICIARY'S VISA EXPIRED, AND/OR THEY ARE UNDOCUMENTED

Being present in the United States without legal status is a civil violation and not a crime.

Seek legal advice immediately from both immigration and special needs counsel.

After receiving advice from immigration counsel, consider whether you should request termination of all means-tested public benefits immediately to avoid fraud charges or overpayments.

Make alternative arrangements to ensure the beneficiary's basic needs previously covered by public benefits are met.

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PROBLEM: YOUR BENEFICIARY IS CAUGHT IN IMMIGRATION PROCEEDINGS

- Gather as many details as you can – immigration status, the nature of any criminal charges, where they were when they were detained or arrested, and where they are being held. Advise the family to keep any recordings of the arrest
- Contact an immigration attorney or assist the family in doing so and paying any necessary retainer.
- Consider whether you have any records or contacts that could be helpful to immigration counsel – care needs assessments, doctor's letters regarding necessary care or communication barriers, etc.
- USCIS does not automatically assess for capacity – noncitizens in the system are presumed to have capacity unless there is evidence to the contrary.

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PROBLEM: YOUR BENEFICIARY MAY BE DETAINED OR RACIALLY PROFILED BY ICE

- Consider obtaining and maintaining records of the beneficiary's legal status.
- Minnesotans of color began carrying their passports with them on a daily basis to prove citizenship in case they were questioned or detained by ICE.
- Discuss with the beneficiary and the family whether a location device like an Apple tag would provide peace of mind.
- Consider installing cameras that cannot be easily blocked or disabled at the beneficiary's front door and in their vehicle.

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PROBLEM: A FAMILY MEMBER CAREGIVER MAY BE DEPORTED.

- Remember the Sole Benefit Rule.
- Losing an advocate who provides care, supervision, transportation, and other services, whether paid or otherwise, is a significant loss to the beneficiary.
- Consider power of attorney, and/or delegation of parental authority if they have minor children.
- If the parent or caregiver is a legal guardian or conservator, discuss succession planning.
- Some Minnesota judges refused to excuse guardians from annual reporting requirements even when the guardian was detained in an ICE facility.

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PROBLEM: HOUSEHOLD INCOME IS DECIMATED BECAUSE WAGE EARNERS CAN'T LEAVE THE HOME.

Again, remember the Sole Benefit Rule.

Consider whether all available benefits are being accessed.

Refer the family to their church or school community which may have resources available.

StandwithMinnesota.com played a pivotal role in allowing families to continue to pay their rent.

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PROBLEM: THE BENEFICIARY CANNOT GET TO SCHOOL OR MEDICAL APPOINTMENTS BECAUSE THE FAMILY CANNOT LEAVE THE HOME

- The Trustee has a role in helping to ensure safe transportation is available to the beneficiary. In Minnesota, many transportation options exist in the metropolitan area, but not in Greater Minnesota.
- Who will accompany the beneficiary to medical appointments if their parent or guardian cannot?
- Can technology bridge gaps? Will a video visit address the need, or can the Trust purchase an iPad that can be used to connect the decision-maker with the treatment team?
- In Minnesota, Parent-Teacher Organizations collected booster seats to allow families to give rides to children who would otherwise be unable to get to school.

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PROACTIVE PLANNING STRATEGIES

- Know the immigration status of your beneficiary and their primary supports.
- Passport and/or legal documentation
- Cameras for the home and car that are hard to block and upload to the cloud.
- Apple tag or other location tracker device
- Bracelet or other wearable that can connect with loved ones in an emergency.
- List of emergency contacts and consents – including neighbors and service providers.
- Community connections
- Power of Attorney, Delegation of Parental Authority

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THINGS WE CAN DO TO HELP NONCITIZENS IN OUR COMMUNITIES

- Attend Constitutional Observer Trainings.
- Know your neighbors and get their phone numbers.
- Connect with your city or community through social media groups or community organizing groups.
- Frequent immigrant-owned businesses.
- Offer seminars to immigrant populations on estate planning and incapacity planning.
- Consider what tools would be needed for a family if one or more parents were detained or deported – Power of Attorney or Trust, Delegation of Parental Authority, Nomination of Guardian

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THINGS WE KNOW MAKE PEOPLE SAFER

- Know your neighbors and check in on them.
- Plan ahead for emergencies – who is allowed to pick up your child from school, or give consent to medical procedures, if something happens to you?
  - Consider adding a component to your intake (if it's not already there) about which trusted others nearby should be contacted by you if your primary contact is not available.
  - Encourage families to connect to their communities – religious entities, schools, cultural centers, and legal aid organizations are great places to start.
- Train to be a Constitutional Observer in your community.
- If you choose to protest, do so with reputable organizations.
- Use your privilege to help others.

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KNOW YOUR RIGHTS

EVERYONE has the right to remain silent. You can lawfully refuse to speak with an I.C.E agent and not answer any questions—especially about your birthplace, immigration status, or how you entered the U.S.

EVERYONE has the right to speak to an attorney and to not sign anything before doing so. Remember to not show any foreign or false documents.

EVERYONE has the right to refuse a search of their person and belongings without a judicial warrant.

EVERYONE has the right to make a phone call if taken into custody.

EVERYONE has the right to record I.C.E. and police in public, as long as they don't interfere with an arrest. Allies, such as U.S. citizens, can help by writing down names, badge numbers, and witness contacts.

THE U.S. CONSTITUTION PROTECTS THESE FUNDAMENTAL RIGHTS FOR EVERYONE — DOCUMENTED OR UNDOCUMENTED.

Credit: Monarcamn.org/resources

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