



2020

PUBLIC HEALTH LAW
**VIRTUAL
SUMMIT**

COVID-19 Response and Recovery

September
16-17

Protecting Marginalized and Vulnerable Populations

2020

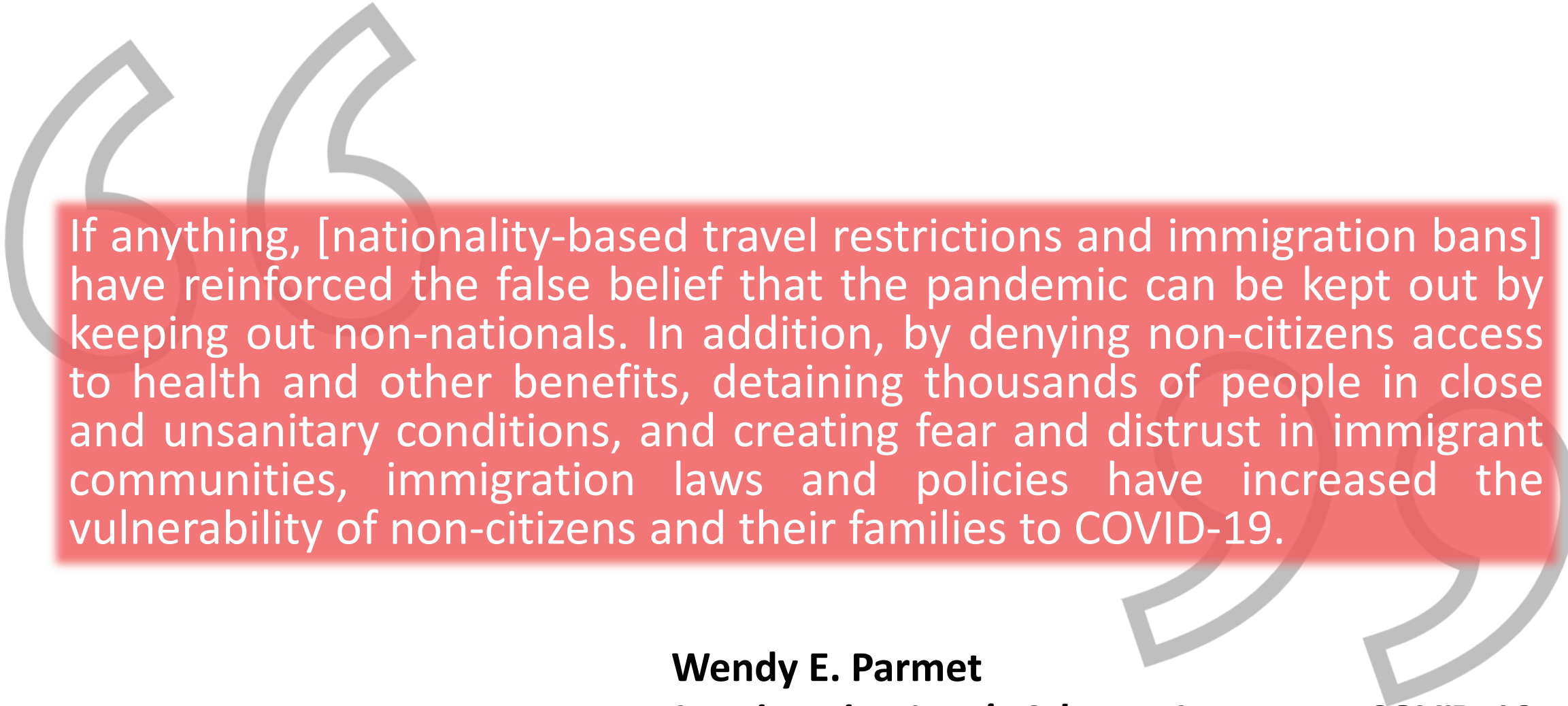
PUBLIC HEALTH LAW
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COVID-19 Response and Recovery

Immigration Law's Adverse Impact on COVID-19

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If anything, [nationality-based travel restrictions and immigration bans] have reinforced the false belief that the pandemic can be kept out by keeping out non-nationals. In addition, by denying non-citizens access to health and other benefits, detaining thousands of people in close and unsanitary conditions, and creating fear and distrust in immigrant communities, immigration laws and policies have increased the vulnerability of non-citizens and their families to COVID-19.

Wendy E. Parmet

Immigration Law's Adverse Impact on COVID-19

Assessing Legal Responses to COVID-19

Immigration Law as a Public Health Intervention

Immigration and Naturalization Act (INA) Based Travel Bans



RULE: Bar entry into the United States by most non-nationals who had been “physically present within the People’s Republic of China” 14 days prior to their arrival in the United States.



EXCEPTION: U.S. Nationals returning from China allowed entry.

- Allowed citizens and legal permanent residents to return home, undermining the ban’s supposed goal.



EXCEPTION: People traveling from other countries allowed entry.

- Similar orders banned travel by non-nationals from Europe, Iran & Brazil.

OUTCOME: By relying on the INA and basing travel restrictions on nationality rather than exposure, the “China ban” seemed to reflect and reassert the erroneous belief that non-nationals are riskier than Americans.

Public Health as a Pretext for Immigration Restriction



42 CFR 71.40

Codified CDC's ability to **bar non-nationals** from any country that it designated as having a communicable disease from which there is a "serious danger of the introduction of such communicable disease in the U.S." **without a requirement of any individualized assessment of risk, nor limit to quarantinable diseases.**

Visa Bans

On June 22, President Trump **extended a 60-day ban** on the issuance of legal permanent resident visas **to the rest of the year** and **expanded it to include non-immigrant H-1B and H-2B visas.**

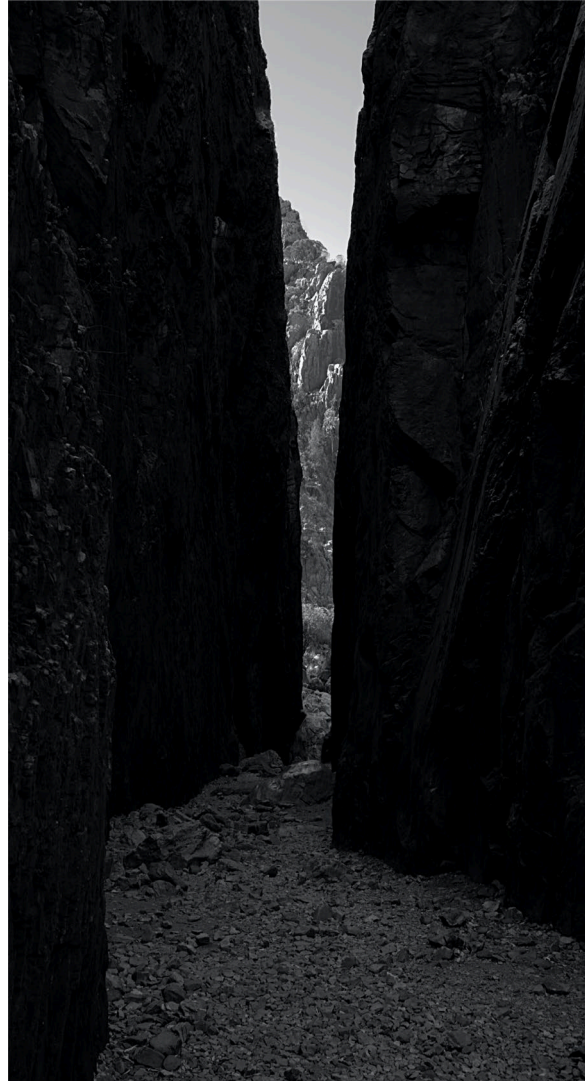
Creating Vulnerabilities

1996 Welfare Reform Act - PRWORA

Undocumented immigrants (including DACA recipients) are **“unqualified”** for federally-funded **health benefits**, except emergency Medicaid. Most **lawfully present non-citizens** are **also ineligible** for covered benefits for the **first five years** they have that status.

Labor Vulnerabilities

Support provided by Congress in response to the pandemic (i.e., CARES) was **limited to citizens and immigrants** who file taxes using a **Social Security**, rather than taxpayer ID number. **Undocumented workers** are also **unable to access unemployment compensation provisions**.



Public Charge Rule

Defines a “public charge” as a non-citizen who receives cash benefits, non-Emergency Medicaid, Supplemental Nutrition Assistance or housing benefits for 12 out of 36 months. Most **non-citizens must show** that they are **“not likely to become a public charge”** in order to **gain entry** into the United States or **receive legal permanent resident status**.

Fear of Deportation

Although ICE considers hospitals and clinics to be sensitive locations in which enforcement actions will not ordinarily be conducted, clinicians have reported that **fear of ICE** has led **patients to forgo appointments and care**.

Spreading Infection



Detention Centers

As of May 23, 2020, **more than 1,400 detainees and 44 employees** had tested positive for SARS-COV-2. **Lack of transparency** by ICE about testing results and policies mean these **numbers could be much higher**. Hundreds if not thousands of **detainees have gone to federal court** arguing their **Fifth Amendment rights have been violated**.

Exporting the Virus

Throughout the pandemic, the administration has **deported non-citizens**, including **individuals infected with COVID-19**, **spreading the disease to nations that have fewer resources** to contain the pandemic.

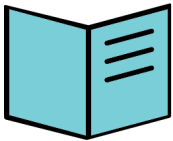
Recommendations for the Federal Government



Should base travel bans on epidemiological factors, rather than nationality or immigration status.



ICE should suspend immigration raids during the pandemic, except where necessary to prevent an imminent risk to public safety.



CDC should repeal new interim final rule and base exclusion orders on risk presented by travelers.



ICE should further depopulate immigration detention facilities, holding only immigrants who pose an immediate risk to public safety. ICE should ensure that detainees who remain receive language-appropriate health information, adequate health care, and the means to practice good hygiene and social distancing.



ICE should declare no immigration law will be enforced in a health care facility and information will not be gathered from health or public health workers, including contact tracers. Widely message, in multiple languages, to immigrant communities.



USCIS should repeal the public charge rule, or at least, suspend it for the duration of the pandemic. If not, Congress should repeal the rule.



ICE should stop deporting individuals who are infected with COVID-19.

Recommendations for the States



States should provide Medicaid and CHIP to all otherwise eligible non-citizens. States should also use their own funds to provide coverage to additional classes of non-citizens.

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Protecting the Rights of People with Disabilities

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COVID-19 and Disability

- More than 1 in 4 Americans, or 61m people, report some form of disability
- People most often cited as being at serious risk are largely people with disabilities
- People with disabilities already experience serious health and other inequities in which are compounded in a crisis

Disability Rights Laws

- **Americans with Disabilities Act** - employment (Title I), public programs, services, and activities (Title II), public transportation and places of public accommodations (Title III), and telecommunications (Title IV)
- **The Rehabilitation Act** - federal employment, programs and activities that receive federal financial assistance
- **Section 1557 of the ACA** - amends the Rehabilitation Act to reach certain health programs and activities

Broad Definition of Disability

- a physical or mental impairment that substantially limits one or more of the major life activities
 - Includes COVID-19 risk factors such as cancer, lung disease, serious heart conditions, immune-suppressing conditions, diabetes, and high blood pressure
 - May also include COVID-19 infection itself
- also a record of an impairment or being regarded as having an impairment

At the Top of the Covid-19 Curve, How Do Hospitals Decide Who Gets Treatment?

Guidelines that could determine which coronavirus patients get prioritized for lifesaving care vary by state, involving factors such as age, health problems, pregnancy and cognitive abilities.



A ward for coronavirus patients in Brooklyn this week. Victor J. Blue for The New York Times

'I Will Not Apologize for My Needs'

Even in a crisis, doctors should not abandon the principle of nondiscrimination.

By Ari Ne'eman

Mr. Ne'eman is a disability rights activist and author.

March 23, 2020

OPINION

Respirators, rationing and the disabled: Coronavirus reminds us why everyone deserves health care



By TONY COELHO

NEW YORK DAILY NEWS | MAR 18, 2020 | 10:10 AM



I'm disabled and need a ventilator to live. Am I expendable during this pandemic?

As medical rationing becomes a reality, "quality of life" measures threaten disabled people like me.

By Alice Wong | Apr 4, 2020, 10:20am EDT

HHS Office for Civil Rights in Action



March 28, 2020

BULLETIN: Civil Rights, HIPAA, and the Coronavirus Disease 2019 (COVID-19)

In light of the Public Health Emergency concerning the coronavirus disease 2019 (COVID-19), the Office for Civil Rights (OCR) at the U.S. Department of Health and Human Services (HHS) is providing this bulletin to ensure that entities covered by civil rights authorities keep in mind their obligations under laws and regulations that prohibit discrimination on the basis of race, color, national origin, disability, age, sex, and exercise of conscience and religion in HHS-funded programs.¹

In this time of emergency, the laudable goal of providing care quickly and efficiently must be guided by the fundamental principles of fairness, equality, and compassion that animate our civil rights laws. This is particularly true with respect to the treatment of persons with disabilities during medical emergencies as they possess the same dignity and worth as everyone else.

The Office for Civil Rights enforces Section 1557 of the Affordable Care Act and Section 504 of the Rehabilitation Act which prohibit discrimination on the basis of disability in HHS funded health programs or activities. These laws, like other civil rights statutes OCR enforces, remain in effect. As such, persons with disabilities should not be denied medical care on the basis of stereotypes, assessments of quality of life, or judgments about a person's relative "worth" based on the presence or absence of disabilities. Decisions by covered entities concerning whether an individual is a candidate for treatment should be based on an individualized assessment of the patient based on the best available objective medical evidence.

Assessment

- OCR has provided clear guidance on the application of the law to medical allocation and other policies
- Reports of disability bias and discrimination persist and there is evidence of widespread lack of knowledge of and noncompliance with these laws in health care settings.
- We lack data related to COVID-19 testing, infections, and outcomes for people with disabilities.

Employment Protections

- Prohibits discrimination against “a qualified individual” on the basis of disability
- Requires employer to make reasonable accommodations, absent “undue hardship” or “direct threat.”
- Limits an employer’s ability to require medical examinations or ask questions that are likely to elicit information about a disability.

Employee Health Checks

- During employment, an employer can require medical examinations and ask disability-related questions only if they are “job-related and consistent with business necessity.”
- For example, if there is a “direct threat” to workplace health and safety, i.e., a significant risk of substantial harm to the health or safety of others that cannot be eliminated or reduced by a reasonable accommodation.



What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws

Technical Assistance Questions and Answers - Updated on Sep. 8, 2020

INTRODUCTION

- All EEOC materials related to COVID-19 are collected at www.eeoc.gov/coronavirus.
- The EEOC enforces workplace anti-discrimination laws, including the Americans with Disabilities Act (ADA) and the Rehabilitation Act (which include the requirement for reasonable accommodation and non-discrimination based on disability, and rules about employer medical examinations and inquiries), Title VII of the Civil Rights Act (which prohibits discrimination based on race, color, national origin, religion, and sex, including pregnancy), the Age Discrimination in Employment Act (which prohibits discrimination based on age, 40 or older), and the Genetic Information Nondiscrimination Act. Note: Other federal laws, as well as state or local laws, may provide employees with additional protections.

Remote Work Policies

- Employers must provide reasonable accommodations for employees with disabilities, i.e., changes to the job or environment that enable performance of essential job functions
- Unless it would pose an “undue hardship” (significant difficult or expense) or a “direct threat” (significant risk to health and safety)

Dispatches from a Pandemic

'I was told I could never work remotely': Before coronavirus, workers with disabilities say they implored employers to allow them to work from home

Published: May 5, 2020 at 9:03 a.m. ET

By [Meera Jagannathan](#)

'I have been trying for years in tech to get to a place where I could permanently work from home'



THE CHRONICLE
of Higher Education

FACULTY

Who Gets to Teach Remotely? The Decisions Are Getting Personal

Faculty input is one thing. Individual exemptions are another.

By [Emma Pettit](#) | JUNE 22, 2020



Courtesy of Jason Helms

Jason Helms, an associate professor of English at Texas Christian U., with his daughter Harper.

Until recently, Jason Helms had been confident that he would be able to teach remotely this fall. He's a tenured associate professor of English at Texas Christian University, and his 2-year-old daughter has a congenital heart defect, so he had planned to do his job virtually so as not to bring the coronavirus home, he told *The Chronicle* in May.

Now, he's not so sure. On Wednesday, Helms was informed by TCU's human resources department that his request for an accommodation under the Americans with Disabilities Act was denied because he did not meet the criteria.

Recommendations for Action

Federal government:

- OCR should continue to enforce and provide COVID-specific guidance on the requirements of the ADA, Rehabilitation Act, and Section 1557 for health care providers, institutions, and systems regarding medical allocation policies, hospital visitor policies, and other policies that impact care for people with disabilities.
- Congress should require HHS to collect and publicly report standardized data related to COVID-19 testing, infections, treatment, and outcomes including data disaggregated by disability status using data collection standards for disability that have been developed under the ACA.
- The EEOC is providing clear, timely, and COVID-specific guidance on the requirements of the ADA in the workplace. The DOJ should provide similar guidance on the requirements of the ADA and Rehabilitation Act in COVID-related policies adopted by state, local, and retail and other business entities, including mask-wearing policies.

State governments:

- State agencies should enforce and provide COVID-specific guidance on the requirements of state laws that prohibit discrimination based on disability.
- States should review and revise state and local policies related to COVID-19, including medical scarce resource allocation policies, hospital visitor policies, and mask-wearing policies, to ensure that they comply with requirements of federal disability rights law.
- Pursuant to federal direction or on their own initiative, states should require the collection and public reporting of standardized data related to COVID-19 testing, infections, treatment, and outcomes including data disaggregated by disability status, using data collection standards for disability that have been developed under the ACA.
- States should adopt policies that encourage employers to allow all employees to work remotely where possible, regardless of disability.

Local governments:

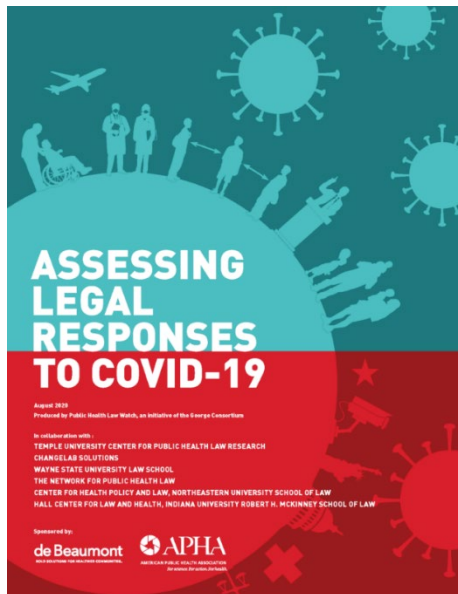
- Local governments should review and revise local policies related to COVID-19, including mask-wearing policies, to ensure that they comply with requirements of federal disability rights law.
- Pursuant to federal or state direction or on their own initiative, local governments should require the collection and public reporting of standardized data related to COVID-19 testing, infections, treatment, and outcomes including data disaggregated by disability status, using data collection standards for disability that have been developed under the ACA.
- Local governments should adopt policies that encourage employers to allow all employees to work remotely where possible, regardless of disability.

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If you're tweeting from the Summit, remember to use this hashtag to share your insights with Summit attendees and others:
#COVID19PolicyPlaybook

Access the full *Assessing Legal Responses to COVID-19* report or individual chapters at:
COVID19PolicyPlaybook.org