



Issue Brief

Immigration Reform and the Impact on Pregnant and Birthing Asian and Pacific Islander Immigrant Women

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On the stroke of midnight on New Year's, a Chinese immigrant woman gave birth to her daughter Yuki Lin in a New York City hospital. Yuki and her family soon learned that she was the winner of a random drawing among three babies tied for a national Toys "R" Us sweepstakes. The company promised a \$25,000 U.S. savings bond to the "first American baby born in 2007."¹ However, Toys "R" Us later disqualified Yuki Lin after the company learned that her mother was an undocumented U.S. resident. Instead, sweepstakes administrators awarded the savings bond to a baby in Gainesville, Georgia described by her mother as "an American all the way."²

The toy retailer soon found itself in the midst of the country's heated immigration debate. Asian-American and immigrant rights groups mounted media campaigns against the company, accusing Toys "R" Us of treating Yuki and her family like second-class citizens and arguing that the winner was Yuki, a U.S.-born citizen, and not her mother. Under mounting pressure, Toys "R" Us quickly reversed its decision and awarded savings bonds to all three babies, including Yuki. Anti-immigrant advocates responded to the decision with articles such as "Toys 'R' Us Pays Blood Money to Chinaman," and some urged its members to boycott the toy company.³

As the Toys "R" Us controversy demonstrates, immigration is a hot topic in today's socio-political climate. In the last three decades, the majority of immigrants have been Asian or Latino, prompting media writers and anti-immigrant advocates alike to speculate about the nation's future demographic landscape.⁴ Over the past few years, politicians have also proposed more and more immigration reform

policies to address the so-called immigration "crisis."

Unfortunately, anti-immigrant groups are targeting their reform efforts against immigrant women of childbearing age in particular. Such groups want to limit the ability of immigrant women to give birth on U.S. soil because under current law, U.S.-born children are automatically deemed American citizens. This issue brief discusses the unique challenges and barriers that Asian and Pacific Islander (API) immigrant women face when pregnant and giving birth in the United States.

NAPAWF works to secure reproductive justice for API women and girls. ***Reproductive justice is achieved when all women and girls have the ability to make well-informed decisions about their bodies, health, sexualities, families, and communities.*** It is connected to broader struggles for social justice and human rights. Due to increasing anti-immigrant sentiments, pregnant immigrant women must overcome numerous obstacles to access needed health and social services. Reproductive justice advocates must work closely with immigrant rights advocates to preserve the reproductive health and dignity of all women, regardless of citizenship status.

Demographic Profile

According to the 2003 Census Population Survey, there are approximately 33.5 million foreign-born people living in the United States.⁵ The term "foreign-born" refers to anyone who is a naturalized citizen, refugee, temporary migrant, legal permanent resident, or undocumented immigrant.⁶ About 53% of the U.S. foreign-born population immigrated from

Latin America, 25% from Asia, and 14% from Europe.⁷

The Asian and Pacific Islander community itself is mostly immigrant; approximately 60% of APIs are foreign-born.⁸ The API population represents a diverse community of over 30 ethnic subpopulations and more than 200 languages and dialects.⁹ The API population is also growing at a dramatic rate. Between 1994 and 2004, the API population doubled in size and remains one of the fastest growing racial and ethnic groups in the country.¹⁰

Foreign-born women represent 5% of the total U.S. population. Immigrant women are twice as likely as their male counterparts to be widowed, divorced, or separated. They are also more likely than U.S. born women to live in poverty, be unemployed, and lack health insurance. Further, *the majority of foreign-born women are of childbearing age*. Approximately 42% of immigrant women are between the ages of 25-44 years old, while U.S. born women comprise about 26% of that age segment. The proportion of childbearing-aged women increases among Asian and Pacific Islanders; about half of API women are of reproductive age.¹¹

Impact of Federal Immigration Reform on Immigrant API Women

With the recent start of the 110th Congress, lawmakers and policy advocates are expected to continue the debate over comprehensive immigration reform legislation. During the last session, President Bush signed the Secure Fence Act, which authorized the construction of a 700 mile long fence along the U.S.-Mexico border. In December 2005, the House passed the Border Protection, Antiterrorism, and Illegal Immigration Control Act, an incredibly anti-immigrant bill. The legislation would have imposed criminal sanctions on undocumented immigrants simply for being in the U.S. without proper paperwork. Prosecution under the bill would have constituted an aggravated felony, and the person prosecuted would more than likely face deportation charges.

Attack on Birth Citizenship Rights

Fortunately, the House bill was never enacted, however its passage in one chamber of Congress reflected the growing anti-immigrant sentiment on Capitol Hill and throughout the country. *Immigrant women of childbearing age in particular are increasingly becoming the target of unjust immigration reform policies*. Under our current citizenship laws, persons born on U.S. soil are automatically considered U.S. citizens. The granting of automatic citizenship is a 14th Amendment right that has been in place since it was enacted in 1868.

However, anti-immigrant groups such as the Federation of American Immigration Reform (FAIR) want to change birthright citizenship laws because they believe immigrant women of childbearing age are a significant source of the country's so-called "illegal immigration crisis." Groups like FAIR believe immigrant women enter the U.S. to give birth to "anchor babies," who, upon reaching the age of 21 can sponsor the immigration of other relatives.¹² Babies born in the U.S. by immigrant women are seen as the anchor for an "entire clan" of new immigrants, and anti-immigrant groups are urging Congress to deny birth citizenship rights to undocumented immigrants.

Unfortunately, some Congressional members have introduced such legislation over the last three sessions of Congress. In the 108th and 109th Congresses, Rep. Nathan Deal (R-GA) introduced the Citizenship Reform Act, which sought to amend the Immigration and Nationality Act to deny citizenship at birth to children born in the U.S. of parents who are not citizens or permanent resident aliens. Although the legislation did not make it out of committee and therefore never became law, the bill had 87 co-sponsors when it was introduced in the 109th Congress. The bill was reintroduced in the 110th Congress by Rep. Elton Gallegly (R-CA) and is pending committee action.¹³

Targeting of Pregnant Immigrant API Women

In addition to Congressional efforts to deny automatic birth citizenship rights to the babies of

certain immigrant women, there have been reports that immigration officials are targeting pregnant immigrant women for deportation. On February 7, 2006, Jiang Zhen Xing, a Chinese woman pregnant with twins, miscarried after federal immigration officers forcibly tried to deport her.¹⁴ Ms. Jiang and her family had arrived at the immigration office near her Philadelphia home for what she thought was a routine interview. While her husband and two sons waited for her in the lobby of the immigration office, Immigration and Customs Enforcement (ICE) officials “pushed Ms. Jiang into a minivan, bruised her and bumped her abdomen against the backseat” and drove her to New York’s JFK airport for immediate deportation back to China.¹⁵

Ms. Jiang was seized for eight hours and was not given anything to eat, even though the officers stopped to eat lunch themselves. According to Ms. Jiang, ICE officials also denied her requests for medical care when she told officials that she was unwell. Once they reached the airport, Ms. Jiang suffered from severe abdominal pain and begged for help in a public waiting area. She was eventually taken to a hospital where doctors found that she had miscarried her twin fetuses.

At the time of her attempted deportation, Ms. Jiang had lived in the U.S. since 1995. Although she entered the country as an undocumented immigrant, she made an agreement with ICE officials that allowed her to remain in the U.S. as long as she attended routine check-in interviews at an immigration office in Philadelphia.¹⁶ It was during one of these routine interviews that immigration officials forcibly tried to deport her.

Jiang’s case raised an important question: *Why would immigration officials be in such a rush to send a pregnant woman back to her country of origin after she had been allowed to stay in the United States for over 10 years?*¹⁷ Supporters of Ms. Jiang and other immigrant women who were similarly targeted when pregnant believe the harassment stems from nativist fears of immigrant mothers giving birth to U.S.-citizen children.¹⁸

Barriers to Prenatal and Maternal Health Care

The increasing fear of immigrant motherhood has also manifested itself in health care policy, where changes to Medicaid and State Children’s Health Insurance Programs (SCHIP) have made it more difficult for immigrant women and their children to access much needed reproductive health and maternal health services.

Lack of Health Insurance

Foreign-born women are almost twice as likely as U.S. born women to lack health insurance.¹⁹ *An estimated 2.3 million Asian and Pacific Islanders do not have health insurance coverage*, and uninsurance rates vary significantly among different API populations.²⁰ For example, 34% of Korean Americans and 27% of Southeast Asians lack health insurance.²¹

One of the primary reasons for the high uninsurance rates among immigrant API women is due to misconceptions about the rate that immigrants utilize the U.S. health care system. Many policy makers and advocates blame immigrants for draining social services budgets. Consequently, federal and state governments have made it increasingly difficult for immigrants to access health care benefits. Under the 1996 “Welfare Reform Act,” lawfully present immigrants arriving in the U.S. after August 1996 are prohibited from accessing Medicaid or SCHIP benefits for five years.²² However, deeming and sponsor liability rules often render many immigrants ineligible for services even after 5 years.

The complex nature of the U.S. immigration system also contributes to the high number of immigrant API women who lack health insurance. Many immigrant families live in mixed-status households, where the child of an immigrant parent may be eligible for services while the parent is not. According to the U.S. census data, approximately 85% of immigrant families with children are mixed status families.²³ Thus, the confusion over eligibility under the immigration and legal systems discourages many immigrant women from

seeking preventive care for themselves and their children.

Barriers to Medicaid

On July 1, 2006, new documentation requirements imposed by the Deficit Reduction Act of 2005 (DRA) took effect. Under the new law, American citizens applying for, or already enrolled in, Medicaid, must submit proof of citizenship, such as a U.S. passport or birth certificate.²⁴ Although the provision is aimed at citizens, it has repercussions for immigrants because it adds to the confusion over Medicaid eligibility rules.

The new Medicaid regulation also makes it more difficult for immigrant women to access Medicaid services for their newborns. Soon after the new documentation requirements went into effect, the Centers for Medicare and Medicaid Services (CMS) issued interim regulations on the DRA. In its opinion, CMS stated that the *U.S. citizen newborns of immigrant women receiving emergency Medicaid coverage are subject to the citizenship verification requirements* of the DRA, and must submit proof of citizenship to apply for Medicaid.²⁵ Thus, contrary to longstanding federal law that authorizes automatic Medicaid coverage for all U.S.-born infants regardless of the mother's status, CMS issued a policy change that imposes an unnecessary barrier to well-infant care.²⁶

The added requirement significantly interferes with the ability of low-income API immigrant mothers to access preventive check-ups and medical care for their babies. *In New York City, Medicaid covered 52% of API births in 1999.*²⁷ The Medicaid application process can be a lengthy one, and factors such as obtaining a birth certificate can prevent a newborn from receiving ongoing and timely care. Alarming, some states have already brushed aside longstanding federal law and implemented the CMS opinion.²⁸ These states are denying automatic newborn eligibility and cutting off medical care until the proper paperwork is filed. Such barriers and confusion over policy regulations further deter immigrant API women from accessing medical services.

Fear of Deportation or Loss of Lawful Residency Status

All immigrants—documented and undocumented—are eligible to receive free emergency health services, and services that protect the public health, such as immunizations.²⁹ Labor and delivery services are covered under emergency Medicaid, and pregnant immigrant women in some states can also receive some prenatal care under SCHIP.³⁰

Yet many immigrants are reluctant to seek medical care due to deportation fears and other potential repercussions on their citizenship status. Studies have shown that immigrants use preventative and emergency medical services at lower rates than native-born citizens.³¹ This gap in utilization began soon after the passage of the 1996 welfare reform act, which imposed a five year ban on eligibility for Medicaid benefits. The legislation discouraged the immigrant community from participation, and escalated concerns that accessing public health insurance could harm an immigrant's chance of getting lawful residence, remaining in the U.S., or becoming naturalized.³²

For pregnant API immigrant women, accessing prenatal care through the public health care system represents an additional risk to their citizenship status. SCHIP rules allow states to report pregnant immigrant women who apply for prenatal care to the Department of Homeland Security.³³ Thus, pregnant API immigrant women often delay or go without prenatal care because they cannot afford such services, they don't qualify for Medicaid, their state does not fund prenatal care, or they are afraid to seek care. As a result, pregnant API immigrant women are often at risk of poor health outcomes because they do not have access to timely maternal health care.

Language and Cultural Differences

For many immigrants who are limited English proficient (LEP), language differences create a huge barrier to accessing the health care system, and may help explain why many immigrants who qualify for services still choose not to seek preventative health services. Approximately

30% of immigrant households are linguistically isolated.³⁴ *Within the Asian and Pacific Islander immigrant community, the number of linguistically isolated households increases to 40%.*

Title VI of the Civil Rights Act of 1964 prohibits any organization that receives federal funding from discriminating against individuals on the basis of race, color, or national origin in the delivery of their services. In *Lau v. Nichols*, the Supreme Court held that Title VI created an affirmative responsibility for recipients of federal financial assistance to provide LEP persons with “meaningful opportunity” to participate in public programs.³⁵ Subsequent executive orders have further developed policies intended to improve language access for LEP individuals in a non-discriminatory manner, however language barriers continue to exist in the health care setting.

Language differences create significant barriers to accessing reproductive and maternal health services. Studies have found that *LEP individuals receive fewer preventative services*, such as Pap smears, mammograms, and prenatal care.³⁶

Cultural differences also contribute to the gap in reproductive and maternal health service. Many immigrant API women have misconceptions about Western clinical practices, or have cultural ideas about diet and prenatal care that differ from Western standards of care. For example, in interviews with pregnant Hmong women, many revealed that they delayed prenatal visits because they feared that a doctor’s or nurse’s touch would result in miscarriage.³⁷ However, many immigrant women do not know that delaying prenatal care increases the risk of delivering low-birth weigh infants, infant mortality, maternal mortality, and other pregnancy related complications.

Anti-Immigrant and Anti-Choice Links

Pregnant immigrant women and immigrant women of childbearing age face a political climate that is increasingly hostile to immigrants. Anti-immigrant policy makers and advocates are not only working to deny

automatic birth citizenship rights to the U.S. born children of immigrants, but they are trying to control the immigrant birthrate by denying women the right to reproductive autonomy. *Many anti-immigrant advocates are also long-time anti-choice advocates who are manipulating the issue of immigration reform to advance their anti-choice agenda.*

In November 2006, a report from the Missouri House Special Committee on Immigration Reform concluded that abortion was partly to blame for the “problem of illegal immigration” because it caused a shortage of American workers. The author, Rep. Edgar Emery, explained: *“If you kill 44 million of your potential workers, it’s not too surprising we would be desperate for workers.”*³⁸

In another example, Dr. John Wilke, founder of the National and International Right to Life organizations, testified in September 2005 as a medical witness for the Report of the South Dakota Taskforce to Study Abortion. In his testimony, he stated:

“Muslim countries forbid abortion. Furthermore they have large families... Germany’s birth rate is 1.2...That is the Aryan Germans. What is happening? They’re importing Turkish workers who do all of the more menial labor and right now there are over 1500 mosques in Germany. The Muslim people in Germany have an average of four children. The Germans are having about one. So it’s only a question of so many years and what do you think Germany is going to be? It’s going to be a Muslim country.”³⁹

Dr. Wilke’s testimony was supposed to address an anti-choice proposal in South Dakota, therefore his statement about Germany seems to have relevance only if taken as a warning to South Dakotans against liberal abortion and immigration laws. Notably, Dr. Wilke’s statement also seems to conflate U.S. post-9/11

fears about Muslims with nativist fears about the loss of an Aryan national identity.

Conclusion

Clearly, *immigrant rights is a reproductive justice issue*. Faced with a political system that increasingly seeks to restrict basic health and social services to immigrants, pregnant immigrant women and immigrant women of childbearing age are at risk of poor health outcomes. Moreover, immigrant women are often subject to unwarranted regulation of their reproductive autonomy, and face limited choices when it comes to accessing health care services for themselves and their families. Without support from policymakers and advocates, immigrant women will have to make the difficult decision between not having children, or giving birth in a society that places little value on immigrant motherhood.

End notes:

¹ Nina Bernstein, *First-Baby Sweepstakes Fuels Immigration Debate*, THE NEW YORK TIMES (January 6, 2007).

² *Id.*

³ Available at http://www.byroncrawford.com/2007/01/toys_r_us_pays.html.

⁴ Blaine Harden, *America's Population Set to Top 300 Million*, THE WASHINGTON POST (October 12, 2006).

⁵ U.S. Census Pop. Survey (2003).

⁶ *Id.*

⁷ *Id.*

⁸ Courtney Chappell, *Reclaiming Choice, Broadening the Movement: Sexual and Reproductive Justice and Asian Pacific American Women*, 1 (2005).

⁹ *Id.*

¹⁰ Asian American Justice Center, et. al, *A Community of Contrasts: Asian Americans and Pacific Islanders in the United States*, 3 (2006).

¹¹ *Id.*

¹² Federation of American Immigration Reform, *Anchor Babies: The Children of Illegal Aliens* (updated June 2004), available at http://www.fairus.org/site/PageServer?pagename=iic_immigrationissuecenters4608.

¹³ See the Citizenship Reform Act of 2007 (H.R. 133).

¹⁴ Nina Bernstein, *Protests Brew Over Attempt to Deport a Woman*, NEW YORK TIMES (February 14, 2006).

¹⁵ *Id.*

¹⁶ Jeff Gammage, *Woman Fights Deportation After 10 Years Here*, PHILADELPHIA INQUIRER (June 20, 2006).

¹⁷ For more information about Jiang's case, contact the Justice for Jiang Zhen Xing Campaign. See also the case of Cynthia Lamah, a Cameroon woman who miscarried while in custody of ICE officials awaiting deportation.

¹⁸ Gammage, *supra* note 15.

¹⁹ Approximately 19% of U.S. women 18 to 64 years are uninsured, compared to 34% of foreign-born women. Kaiser Family Foundation, *Women's Health Insurance Coverage* (February 2007).

²⁰ Asian & Pacific Islander American Health Forum, *Health Insurance Coverage of Asians and Pacific Islanders* (December 2006).

²¹ *Id.*

²² The Welfare Reform Act is formally known as the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

²³ Randy Capps, Michael Fix, et al., *The Health and Well-being of Young Children of Immigrants*, Urban Institute (2004).

²⁴ Center on Budget and Priorities, *The New Medicaid Citizenship Documentation Requirement* (revised Sept. 28, 2006).

²⁵ California Immigrant Policy Center, *Access to Medicaid for Newborns of Immigrant Mothers* (November 2006).

²⁶ See 42 U.S.C. Sec. 1396a(e)(4). Maternal and Child Health Access and the National Immigration Law Center, *CMS Attacks Rights of U.S. Citizen Newborns* (August 8, 2006).

²⁷ National Asian Pacific American Women's Forum, *Medicaid and Asian Pacific American Women* (February 2005).

²⁸ California Immigrant Policy Center, *supra* note 25.

²⁹ California Immigrant Policy Center, *Immigrants and the U.S. Health Care System* (January 2006).

³⁰ Cynthia Dailard, *New SCHIP Prenatal Care Rule Advances Fetal Rights at Low-Income Women's Expense*, THE GUTTMACHER REPORT ON PUBLIC POLICY (December 2002).

³¹ See Sarita A. Mohanty, *Unequal Access: Immigrants and U.S. Health Care*, Immigration Policy Center (July 2006). See also California Immigrant Policy Center, *supra* note 29.

³² *Id.*

³³ Dailard.

³⁴ "Linguistic isolation" is defined by the U.S. Census Bureau as a household that has no member over the age of 14 who speaks only English, or speaks a non-English language and speaks English less than "very well."

³⁵ 414 U.S. 563 (1974).

³⁶ Courtney Chappell, 11, *supra* note 8.

³⁷ *Id.*

³⁸ David A. Lieb, *Missouri Panel's Report Links Immigration to Abortion*, THE WASHINGTON POST (November 14, 2006).

³⁹ Quote from testimony on file.