

Statement of the National Immigration Law Center

House Committee on Energy and Commerce Subcommittee on Health

Road to Recovery: Ramping Up COVID-19 Vaccines, Testing, and Medical Supply Chain Tuesday

February 3, 2021

Dear Members of the House Committee on Energy and Commerce Subcommittee on Health,

The National Immigration Law Center (NILC) appreciates the opportunity to submit this written statement for the record for the hearing titled, "Road to Recovery: Ramping Up COVID-19 Vaccines, Testing, and Medical Supply Chain." NILC is the leading advocacy organization in the U.S. dedicated to defending and advancing the rights and opportunities of low-income immigrants and their families. We focus on issues that promote the well-being and economic security of immigrants and their families: health care and safety net programs; education and training; workers' rights; and federal and state policies affecting immigrants. We have decades of experience advocating for policies that improve the health of immigrants and their families, as well as established relationships with immigrant and community organizations across the country for whom we provide technical, policy and advocacy assistance.

NILC urges Congress and the Biden-Harris administration to ensure that immigrants and their families have equitable access to the COVID-19 vaccine. This testimony details the many barriers, both longstanding and new to the context of this pandemic, that immigrants must overcome to obtain access health care, and specifically to testing and vaccines for Coronavirus 2019 (COVID-19). In December, NILC led a letter to the Centers for Disease Control and the Biden-Harris COVID-19 task force, outlining a number of concerns about immigrants' access to vaccines.¹ Nearly 250 organizations co-signed the letter. Given that immigrants comprise almost 14% of the US population and nearly one in five essential workers, our country cannot hope to overcome the pandemic without ensuring their access to COVID-19 testing, treatment and vaccines.^{2 3}

NILC agrees with the Members of Congress who have recognized that the equitable inclusion of noncitizens in the distribution of vaccinations is necessary to protect the lives and livelihoods of all.⁴ As we detail in this testimony, the barriers to vaccine equity for immigrants are complex and interwoven. Immigrants confront lack of reliable information in languages they speak or write, misinformation spread in communities and on social networks, fears of being detained by immigration enforcement or having their personal information shared with immigration authorities, concerns that accessing public services will undermine their ability to obtain permanent resident status, barriers because of the industry

¹ See letter at <https://drive.google.com/file/d/1OsJtmqP232UHHnt5YmFGWTr2hOj5t9M/view>

² Budiman, Abby, "Key findings about U.S. immigrants," Pew Research Center, August 20, 2020, <http://www.pewresearch.org/fact-tank/2020/08/20/key-findings-about-u-s-immigrants/#:~:text=The%20U.S.%20foreign-born>.

³ "Immigrant Essential Workers are Crucial to America's COVID-19 Recovery," Fwd.us, December 16, 2020, <https://www.fwd.us/news/immigrant-essential-workers/>.

⁴ Grijalva, Raul, U.S. Representative, et al. "An equitable distribution of COVID-19 vaccine must include noncitizens," The Hill, January 26, 2020, <https://thehill.com/blogs/congress-blog/healthcare/535901-an-equitable-distribution-of-covid-19-vaccine-must-include>.

they work in and limited familiarity with our uniquely complex healthcare system – before they take the initial step to obtain a vaccination or other healthcare service. .

NILC appreciates the steps the Biden-Harris administration has taken toward ensuring equity in vaccine distribution. President Biden’s National Strategy for the COVID-19 Response and Pandemic Preparedness includes multiple references to immigrants.⁵ His “Executive Order on Ensuring an Equitable Pandemic Response and Recovery” created a task force for “mitigating the health inequities caused or exacerbated by the COVID-19 pandemic and for preventing such inequities in the future.”⁶ The President’s “Executive Order on Improving and Expanding Access to Care and Treatments for COVID-19” directed the Department of Health and Human Services to “facilitate the equitable and effective distribution of therapeutics.”⁷ The American Rescue Plan proposal includes access to vaccines without immigration status restrictions.⁸ However, more work lies ahead to make these promises real.

We highlight key areas in need of improvement below.

Insufficient Funding for Community Focused Outreach and Assistance

NILC’s partners, which include organizations that work with immigrants directly, report that the scarcity of resources available to conduct culturally and linguistically competent outreach and education is a major barrier to a successful vaccination campaign. Misinformation about the vaccine is spreading online through social media, including through networks and applications used primarily by non-English language speakers. Particularly among immigrants from nations with repressive governments, these rumors amplify fear and exacerbate their distrust of government authorities.

The Kaiser Family Foundation has estimated that the Department of Health and Human Services (HHS) may have over \$1 billion available that could be used for consumer assistance programs.⁹ HHS should use some of this funding to make an immediate and significant investment in the Navigator program, prioritizing funding for community-based organizations with established connections to immigrant and limited English proficient (LEP) populations. Navigators play an essential role in enrollment and beyond, particularly in helping consumers learn how to use health insurance.

While the announcement of the 3 month Open Enrollment period is an important and positive step, the \$50 million allocated for outreach and education is insufficient to overcome immigrants’ concern and

⁵ “National Strategy for the COVID-19 Response and Pandemic Preparedness,” The White House, January 21, 2021, <https://www.whitehouse.gov/wp-content/uploads/2021/01/National-Strategy-for-the-COVID-19-Response-and-Pandemic-Preparedness.pdf>.

⁶ “Executive Order on Ensuring an Equitable Pandemic Response and Recovery,” The White House, January 21, 2021, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/21/executive-order-ensuring-an-equitable-pandemic-response-and-recovery/>.

⁷ “Executive Order on Improving and Expanding Access to Care and Treatments for COVID-19,” The White House, January 21, 2021, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/21/executive-order-improving-and-expanding-access-to-care-and-treatments-for-covid-19/>.

⁸ “President Biden Announces American Rescue Plan,” The White House, January 20, 2021, <https://www.whitehouse.gov/briefing-room/legislation/2021/01/20/president-biden-announces-american-rescue-plan/>.

⁹ Pollitz, Karne and Jennifer Tolbert, “Opportunities and Resources to Expand Enrollment During the Pandemic and Beyond,” January 25, 2021, <https://www.kff.org/health-reform/issue-brief/opportunities-and-resources-to-expand-enrollment-during-the-pandemic-and-beyond/>.

convince them to enroll in health coverage and use it to obtain COVID vaccinations.¹⁰ Navigators generally require an average of 90 minutes to enroll a consumer in health care.¹¹ More time is typically needed to enroll immigrant families because of complex situations like multi-generational households and seasonal work, as well as the need to verify immigration status. Congress should ensure a sustainable funding source for this work by passing the ENROLL Act, which would reverse the Trump administration's sabotage of the Navigator program and ensure it has adequate funding in the future and the MORE Health Education Act, which would fund culturally appropriate advertising. Both these bills were included in the House-passed Patient Protection and Affordable Care Enhancement Act (H.R. 1425 in the 116th Congress).

Congress should also work with the Center for Disease Control and Prevention (CDC) and other agencies to ensure that COVID-19 outreach funding includes dedicated resources for community-based organizations that serve immigrant populations. The inclusion of trusted community messengers is essential for the success of any vaccination campaign that targets immigrants. Congress should empower the CDC to take creative steps such as proactively reaching out to community-based organizations or using larger immigrant-serving organizations as pass-throughs, because the organizations with the closest ties to immigrant communities often lack the administrative infrastructure to apply for federal funding.

States Are Not Allowed to Discriminate Against Immigrants in Distribution

The governor of at least one state has stated that it will deprioritize immigrants in vaccine distribution.¹² The CDC should publicly confirm unequivocally that states and other jurisdictions may not use immigration status as a basis to deny the vaccine or to establish priorities for its distribution and administration. Such discrimination should be prohibited in explicit policies that include the prohibition of practices with a disparate impact, such as limiting vaccination sites in predominantly immigrant neighborhoods.

The CDC should uplift state practices that proactively enhance immigrant inclusion and encourage other states to follow suit, providing technical assistance and connections. For example, Illinois and Utah have stated proactively that immigration status does not affect one's ability to get a vaccine.^{13 14} Arizona health officials are planning immigrant specific outreach campaigns.¹⁵

Everyone, Regardless of Their Immigration Status, Should Have Access to Free COVID-19 Testing, Vaccinations and Treatment

¹⁰ "2021 Special Enrollment Period in response to the COVID-19 Emergency," Center for Medicare and Medicaid Services, January 28, 2021, <https://www.cms.gov/newsroom/fact-sheets/2021-special-enrollment-period-response-covid-19-emergency>.

¹¹ Pollitz, Karen Jennifer Tolbert and Ashley Semanskee, "2016 Survey of Health Insurance Marketplace Assister Programs and Brokers," June 8, 2016, <https://www.kff.org/health-reform/report/2016-survey-of-health-insurance-marketplace-assister-programs-and-brokers/>.

¹² Armus, Teo, "Nebraska governor says citizens, legal residents will get vaccine priority over undocumented immigrants," Washington Post, January 6, 2021, <https://www.washingtonpost.com/nation/2021/01/06/nebraska-covid-vaccine-immigrants-meatpacking/>.

¹³ "COVID-19 Vaccine," Illinois Department of Public Health, <https://www.dph.illinois.gov/covid19/vaccine-faq>.

¹⁴ "Frequently Asked Questions," State of Utah, January 19, 2021, https://coronavirus-download.utah.gov/Health/Coronavirus_Vaccine_FAQ.pdf.

¹⁵ Casey, Matthew, "As Vaccinations Expand, More Undocumented Arizonans To Become Eligible," Fronteras, January 7, 2021, <https://fronterasdesk.org/content/1648613/vaccinations-expand-more-undocumented-arizonans-become-eligible>.

Immigrants are uninsured at substantially higher rates than the US-born. Among lawfully present immigrants, 23% are uninsured, compared to nine percent of U.S. citizens. For undocumented immigrants, the uninsured rate rises to 45%.¹⁶ The sources of these disparities include policy decisions to exclude many immigrants from Medicaid and federally supported health insurance programs. While we call on Congress and the Biden Administration to begin the long process of unwinding those exclusions, in this moment there is an urgent need to ensure that neither immigration status nor a lack of health insurance is a barrier to COVID-19 testing, treatment and vaccination.

In addition to other funding for healthcare providers, Congress should ensure that Federally Qualified Health Centers and other non-profit providers have robust funding. Needed actions include modifying the Health Resources and Services Administration reimbursement process to reimburse all claims in a timely manner and specifically the eliminate delays in reimbursement processing for providers treating patients without identity verification documents. Congress should also pass the Stronger Medicaid Response Act to ensure that states have the flexibility to use Medicaid funding to cover the costs of all uninsured individuals, regardless of status.

Protecting Sensitive Data and Addressing Privacy Concerns

Fears that their personal information will be shared with immigration enforcement. frequently deter immigrants from seeking public services and undermine efforts to administer the vaccine. The CEO of a company that makes an application aimed at connecting immigrants to social services has stated that, “a key vaccine concern among some users was that their personal information could be used against them.”¹⁷ In New Mexico, concerns that information could be shared with law enforcement are a major reason that immigrants are hesitant to get the vaccine.¹⁸

We appreciate that the President’s National Strategy specifically declares its intent to “safeguard privacy and ensure that these data will be used exclusively for public health services, and that it will not be shared with or used by any federal or state law enforcement activities, including actions by the U.S. Immigration and Customs Enforcement.”¹⁹ However, Congress needs to act to limit the information collected by healthcare providers to that which is necessary for public health purposes and to ensure that personally identifiable information is protected from use or disclosure. These limitations need to be unambiguous and readily understood by consumers.

In some states, either the jurisdictional government or providers require vaccine patients to provide documentation of identity or residency before they receive the vaccine; in other cases, patients must use an email address to register in the system.²⁰ For example, Florida’s major hospital system requires either

¹⁶ "Health Coverage of Immigrants," Kaiser Family Foundation, March 18, 2020, <https://www.kff.org/racial-equity-and-health-policy/fact-sheet/health-coverage-of-immigrants/>.

¹⁷ <https://www.marketwatch.com/story/just-because-were-undocumented-does-not-mean-were-worth-less-than-other-people-will-undocumented-immigrants-get-covid-19-vaccines-11611064883>

¹⁸ <https://www.krqe.com/health/coronavirus-vaccine/advocacy-groups-say-immigrants-in-new-mexico-hesitant-to-register-for-covid-19-vaccine/>

¹⁹ “National Strategy for the COVID-19 Response and Pandemic Preparedness,” The White House, January 21, 2021, <https://www.whitehouse.gov/wp-content/uploads/2021/01/National-Strategy-for-the-COVID-19-Response-and-Pandemic-Preparedness.pdf>.

²⁰ Visram, Talib, "How will undocumented immigrants get the COVID-19 vaccine?," Fast Company, January 22, 2021, <https://www.fastcompany.com/90595912/how-will-undocumented-immigrants-get-the-covid-vaccine>

a driver's license or two alternative documents to prove residency.²¹ In at least one instance, providers are using credit agencies to verify the identity of patients for the vaccine.²² In order to ensure there are no immigration barriers to the vaccine, Congress should restrict the information state and local jurisdictions and healthcare providers can require for vaccination.

Congress and the Administration should ensure that language access is prioritized and protected.

Title VI of the Civil Rights Act of 1964 makes it unlawful to discriminate against individuals based on their national origin. Courts have affirmed that this protection includes equity in language access. Executive Order 13166 applied this principle across the federal government and Section 1557 of the Affordable Care Act applies it to all federally funded and operated health programs. Yet many health care providers fail to inform immigrants with limited English proficiency (LEP) of their right to be assisted, at no cost, by a qualified interpreter. In addition, many lack access to translated materials on the pandemic. States, including Massachusetts, Oregon, and the District of Columbia have pledged that all public resources will be translated into multiple languages and the federal government should follow their lead.²³

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Some states and localities have used unsophisticated tools, such as Google Translate, in an attempt to translate COVID-19 materials, resulting in to critical translation errors.²⁶ In Virginia, it produced a Spanish translation that stated the vaccine was "not necessary," and a correction was not issued more than three weeks after community members had identified the error.²⁷ Immigrant community advocates tell NILC that appeals to their state and local governments for improved in-language materials have been rebuffed due to a lack of resources or an inaccurate assumption that what has already been produced is sufficient.

Public and private insurers generally require providers to subsume language access services as part of their administrative costs but historically do not enforce these requirements. As a result, providers often

²¹ Claudia Chacin, Ana, Bianca Pardo Ocasio and Taylor Dolven, "Florida now requiring proof of state residency for COVID vaccines," January 21, 2021, <https://www.miamiherald.com/news/coronavirus/article248671090.html>

²² Cole, Samantha, "Vaccine Site Uses Credit History to Verify Patients' Identities," Motherboard, January 15, 2021, https://www.vice.com/amp/en/article/y3gg9j/nyc-vaccine-site-credit-history-experian-identity-rejected?_twitter_impression=true

²³ "COVID-19 Vaccination Plan," Massachusetts Department of Public Health, October 16, 2020, <https://www.mass.gov/doc/massachusetts-interim-draft-plan/download>

²⁴ "COVID-19 Vaccination Plan," Oregon Health Authority, November 6, 2020, <https://www.oregon.gov/oha/covid19/Documents/COVID-19-Vaccination-Plan-Oregon.pdf>

²⁵ "COVID-19 Vaccination Plan," DC Health, November 27, 2020, https://coronavirus.dc.gov/sites/default/files/dc/sites/coronavirus/page_content/attachments/DC_COVID-19%20Vaccination%20Plan%2011.27.pdf

²⁶ Stanmyre, Matthew, "N.J. immigrant communities were hard hit by COVID. Now, they may not have ready access to vaccines, experts fear," January 24, 2021, <https://www.nj.com/coronavirus/2021/01/nj-immigrant-communities-were-hard-hit-by-covid-now-they-may-not-have-access-to-vaccines-experts-fear.html>

²⁷ Moreno, Sabrina, "Virginia uses Google Translate for COVID vaccine information. Here's how that magnifies language barriers, misinformation," Richmond Times-Dispatch, January 14, 2021, https://richmond.com/news/local/virginia-uses-google-translate-for-covid-vaccine-information-heres-how-that-magnifies-language-barriers-misinformation/article_715cb81a-d880-5c98-aac5-6b30b378bbd3.html

fail to hire in-person interpreters, despite their link with better health outcomes, or even establish contracts with telephonic interpretation services.²⁸

Congress should work to address language access systematic issues in the long term, and during this pandemic, work with the administration ensure that important information being provided to patients on the COVID vaccine is translated into the languages (other than English) most commonly spoken in the United States. It could accomplish this by passing the Coronavirus Language Access Act (S. 4526 in the 116th Congress).

Front-Line Immigrant Workers Must Have Equitable Access to Vaccines

We appreciate the President’s recognition that, “Healthcare workers and other essential workers, many of whom are people of color and immigrants, have put their lives on the line during the coronavirus disease 2019 (COVID-19) pandemic.”²⁹ Immigrants are disproportionately represented among food and agricultural workers in the United States.³⁰ Food production industries, such as meatpacking, have experienced many outbreaks, which have disproportionately impacted communities of color.³¹ New research shows that they are among the deadliest industries to work in during the pandemic, second only to health care.³² Organizations representing agricultural and food production industries have requested they be prioritized for a vaccine.³³

Advocates have told NILC that the lack of access to paid leave is a major barrier to eligible immigrants’ access to vaccinations. The Families First Coronavirus Response Act (“FFCRA”) required certain employers to provide their employees with emergency paid sick leave (“EPSL”) or expanded family and medical leave (“EFMLA”) for specified reasons related to COVID-19. While this employer mandate expired on December 31, 2020, the Coronavirus Response and Relief Supplemental Appropriations Act enacted on December 27, 2020, gave employers covered by FFCRA the option to obtain a tax credit if they extended EPSL and EFMLA leave benefits through March 31, 2021. Congress must extend an expansive paid leave policy that does not exclude industries and is broad enough to cover both taking the vaccine and recuperating from any side effects.

Immigrants Must Not Fear Immigration Consequences from Vaccination

²⁸ Chandrika, Divi et al, "Language proficiency and adverse events in US hospitals: a pilot study," *Int J Qual Health Care*, April 2007, 19(2):60-7 <https://pubmed.ncbi.nlm.nih.gov/17277013/>

²⁹ "Executive Order on Protecting Worker Health and Safety," The White House, January 21, 2021, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/21/executive-order-protecting-worker-health-and-safety/>

³⁰ "The Essential Role of Immigrants in the U.S. Food Supply Chain," Migration Policy Institute, April 2020, <https://www.migrationpolicy.org/content/essential-role-immigrants-us-food-supply-chain>

³¹ Waltenburg, Michelle, et al, "COVID-19 Among Workers in Meat and Poultry Processing Facilities — United States, April–May 2020", *Centers for Disease Control and Prevention Morbidity and Mortality Weekly Report*, July 10, 2020, <https://www.cdc.gov/mmwr/volumes/69/wr/mm6927e2.htm>

³² Chen, Yea-Hung, "Excess mortality associated with the COVID-19 pandemic among Californians 18–65 years of age, by occupational sector and occupation: March through October 2020," *medRxiv*, January 21, 2021, <https://www.medrxiv.org/content/10.1101/2021.01.21.21250266v1.full>

³³ See letter from United Food and Commercial Workers and North American Meat Institute <https://www.ufcw.org/wp-content/blogs.dir/61/files/2020/12/UFCW-and-NAMI-Governor-Letter.pdf>

NILC's networks, as well as the media, report that fears related to the Trump Administration's public charge regulations are deterring immigrants from seeking vaccinations.³⁴ While the Department of Homeland Security (DHS) has stated that COVID-19, "treatment or preventive services will not negatively affect any alien as part of a future Public Charge analysis," the information was not disseminated in a consumer-friendly format, so that predictably this understanding has eluded many immigrant communities³⁵. Ultimately, DHS and related agencies must fully repeal the Trump Administration's public charge regulations, and we appreciate yesterday's Executive Order from President Biden requesting DHS review of the public charge rule. In the meantime, all effort must be made to communicate to immigrants in an accessible, linguistically and culturally competent manner.

Immigrants in Detention Must Have Equitable Access to Vaccines

The rate of COVID-19 spread in immigrant detention facilities is significantly higher than in the general population.³⁶ Conditions in U.S. Immigration Customs Enforcement (ICE) detention facilities pose unacceptable health risks and Congressional investigations have revealed that ICE's widespread failure to provide adequate health care and has contributed to the death of immigrants in ICE custody.³⁷ Yet reporting indicates that ICE lacks a plan to vaccinate people in its custody.³⁸ While NILC believes that Congress must ensure that DHS works toward ending immigration detention during the pandemic and beyond, while immigrants are detained, they must be protected. Some researchers have outlined steps that ICE must take, such as outlining clear plans for vaccination.³⁹ Considering that ICE has not provided people in detention with adequate health care and supplies up to this point, this plan must be publicly posted with regular data on progress.⁴⁰

We appreciate Congress is looking to improve the COVID-19 public health response. We look forward to working with you to ensure that immigrants are included at all aspects of it.

Sincerely,

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National Immigration Law Center

³⁴ Bedford, Tori, "Fear Of Deportation Prompts Undocumented Immigrants To Resist COVID-19 Vaccine," GBH, January 5, 2021, <https://www.wgbh.org/news/local-news/2021/01/05/fear-of-deportation-prompts-undocumented-immigrants-to-resist-covid-19-vaccine>

³⁵ "Public Charge, U.S. Citizenship and Immigration Services, <https://www.uscis.gov/green-card/green-card-processes-and-procedures/public-charge>

³⁶ Erfani, Parsa et al, "COVID-19 Testing and Cases in Immigration Detention Centers, April-August 2020" JAMA, October 29, 2020, <https://jamanetwork.com/journals/jama/fullarticle/2772627>

³⁷ Staff report, "The Trump Administration's Mistreatment of Detained Immigrants," U.S. House of Representatives Committee on Oversight and Reform and Subcommittee on Civil Rights and Civil Liberties, September 2020, <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2020-09-24.%20Staff%20Report%20on%20ICE%20Contractors.pdf>

³⁸ Montoya-Galvez, Camilo, "Questions surround COVID-19 vaccine timeline for immigrants in ICE custody," CBS News, January 18, 2021, <https://www.cbsnews.com/news/covid-19-vaccine-timeline-immigrants-ice-custody/>

³⁹ Uppal, Nishant, Parsa Erfani, and Raquel Sofia Sandoval, "ICE must provide Covid-19 vaccines to all detained migrants," STAT, January 12, 2021, <https://www.statnews.com/2021/01/12/ice-must-provide-covid-19-vaccines-to-all-detained-migrants/>

⁴⁰ "Praying for Hand Soap and Masks," Physicians for Human Rights, January 12, 2021, https://phr.org/our-work/resources/praying-for-hand-soap-and-masks/?utm_content=homepage_hero