A Tale as Old as Time:
Ableism and Immigration

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I. Introduction

The American immigration system fails disabled immigrants and is designed to do so. Sophie Fuko, an immigrant from Hungary, is just one example. She came to the United States with her six-year-old son, Kalman. When they arrived at Ellis Island, the medical inspector certified Fuko as "practically blind in right eye" and Kalman as "afflicted with deaf mutism" therefore making them likely to become public charges.[1] Fuko had two adult sons already living in the United States who came to her hearing before the Board of Special Inquiry. They testified that they were employed and earned decent wages; they spent money to get their mom and brother second-class cabin tickets and furnished a home for them. Furthermore, Fuko testified that she had $20 with her and was self-supporting in Hungary working as a housekeeper. Despite the fact that this would be more than enough for an average immigrant at the time to avoid a public charge determination, the Secretary was urged to dismiss Fuko's appeal because "her child will always be physically defective, and it would be improper to admit merely because of the relatives here."[2]

Fuko's story is but one of many that highlight the pervasiveness of ableism in immigration law, both in intent and impact. Ableism is the discrimination of and social prejudice against people with disabilities

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1. Douglas C. Baynton, Defectives in the Land: Disability and American Immigration Policy, 1882–1924, 24 Journal of American Ethnic History 31, 31–44 (2005), http://www.jstor.org/stable/27501596.

2. Id. at 32.

based on the belief that typical abilities are superior.[3] Not only does ableism impact our immigration system, but it is at the root of the entire immigration system; it helps determine who the system lets in and who it keeps out. This paper will explore the history of ableism in immigration, grounds of inadmissibility that affect disabled immigrants with a specific focus on public charge, and other obstacles faced by disabled immigrants, all while emphasizing that eugenics is still ongoing and perpetuated through the American immigration system.

I am both disabled and an immigrant, so this paper is personal. However, I became disabled after immigrating and therefore did not have to navigate the process with a disability. The American immigration system is broken and was designed to exclude disabled immigrants. This is contradictory to the supposed American ideal of welcoming everyone, including the tired, poor and huddled masses mentioned on the Statue of Liberty. The United States needs a major restructure creating a system more aligned with the social model of disability, which would recognize that there is nothing inherent about disability that leads to disabled people becoming a public charge; rather, it is due to society's ableism.

II. Models of Disability

There are two prevailing views on disability: the medical model and the social model, which model an individual subscribes to typically depends on their proximity to disability. According to the medical model of disability, "disability is perceived as an impairment in a body system

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3. Ashley Eisenmenger, Ableism 101, Access Living (Dec. 12, 2019), https://www.accessliving.org/newsroom/blog/ableism-101.

or function that is inherently pathological."[4] This model frames medical professionals as experts and expects that disabled people follow the advice of the "experts." It views disability as a negative thing that needs to be cured, and an inability to cure or treat the disease is seen as a shortcoming of modern medicine and a disservice to the disabled person. This desire to follow the medical model "arises from the state-sanctioned urge to morph difference into identicalness."[5] The benefit of the medical model is that it has led to the cure and treatments for many diseases. This is important for those with disabilities who wish to be treated or cured. However, the medical model is also very paternalistic. It tells disabled people what they should want and what they should do with their bodies, and it denies their lived experiences.

In contrast, the social model of disability views disability "as one aspect of a person's identity, much like race/ethnicity, gender, etc."[6] Proponents of this model believe that disability is a result of a mismatch between the disabled person and the environment.[7] In this framework,

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4. Rhoda Olkin, Conceptualizing Disability: Three Models of Disability, American Psychological Association (Mar. 29, 2022), https://www.apa.org/ed/precollege/psychology-teacher-network/introductory-psychology/disability-models.

5. Roxana Galusca, From Fictive Ability to National Identity: Disability, Medical Inspection, and Public Health Regulations on Ellis Island, 72 Cultural Critique 137, 140 (2009), http://www.jstor.org/stable/25619827.

6. Olkin, supra note 4.

7. Id.

the way to address disability is to change the environment rather than the person with the disability. Disabled people do not need to be "fixed" or cured; rather the built environment needs to adapt to become accessible. For example, a disabled person is not intrinsically unable to work. Rather, the inaccessibility of employers prohibits them from being able to work within our employment structure. An example of people embracing the social model is the deaf community. Many people who are hard of hearing do not see it as a negative thing that needs to be fixed. People refuse hearing aids or cochlear implants because they enjoy being part of the deaf and hard of hearing community.[8] In a society where everyone knows sign language, not being able to hear would not inhibit your participation in society. However, because we live in a society where most people do not know how to sign, the hard of hearing can be disadvantaged because the world does not know how to communicate with them. This exemplifies how the disability is the result of the environment and not the medical condition. The benefit of the social model is that it fosters community and recognizes discrimination's role in disabled persons' ability to participate in society. However, systemic ableism is overwhelming and impossible to defeat in the short term. This makes it difficult to only follow the social model.

Both models can be used to analyze our immigration system. The social model of disability is typically only adopted by those who are

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8. Amelia Cooper, Hear Me Out: Hearing Each Other for the First Time: The Implications of Cochlear Implant Activation, 116(6) MISSOURI MEDICINE, 469, 469–471 (2019).

disabled themselves or are a close ally to the community. Most doctors, scientists, policy makers, and other people with the authority to impact disabled communities adopt the medical model. The immigration system especially thinks of disability from the perspective of the medical model. Importantly, the medical model is not just a model within the United States but is also a model of the border that controls entry and membership. For instance, the system allows doctors (and sometimes ship captains) to decide if someone is eligible to enter the United States. It also excludes people based on their disability without thinking of ways that society could be adapted to allow them in without risking public health or economic interests. Instead, the immigration system should adopt at least a semi-social model of disability.

III. History of Ableism in Immigration

United States immigration is a project of eugenics that assigns value to bodies based on race and ability. The United States has a capitalistic system of worth where we value humans based on what they can contribute to our economy. Historically, much of the labor that immigrants contributed was physically demanding. By excluding those who they believed to be disabled, immigration officials thought that they were maximizing the productivity of the immigrant labor force. As the 1907 Commissioner General of Immigration said, "the exclusion from this country of the morally, mentally, and physically deficient is the principal object to be accomplished by the immigration laws."[9] The immigration system used inspections to exclude those who were disabled

[9] Baynton, supra note 1, at 32.

or perceived as being so. Harry Laughlin, the Expert Eugenical Agent of the Committee on Immigration and Naturalization, "believed in an American race, narrowly defined as the descendants of the English settlers, and argued that, to preserve the purity of the American stock, the U.S. government had to restrict immigration to northwestern Europeans, and even then only to those who 'are carefully inspected and selected.'"[10] Through these inspections, the government was creating a national identity of able-bodiedness: "to belong to the American nation-state, the incomer had first of all to prove physical and cognitive ability, a tiresome task given the racial and gender stereotypes that framed medical inspections."[11] These inspections and standards of physical and cognitive ability exemplify the immigration system's reliance on the medical model.

In addition to the ideology behind American immigration laws, there were also explicitly ableist statutes. One of the first pieces of major immigration legislation, the Immigration Act of 1882, turned away people identified as a "lunatic, idiot, or any person unable to take care of himself or herself without becoming a public charge."[12] This public charge legislation has been through many iterations since 1882, but the ableist

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[10] Galusca, supra note 5, at 145.

[11] Id. at 157.

[12] Qudsiya Naqui, Disabled Immigrants: Living on the Edge of Barbwire, Disability Visibility Project (Sept. 29, 2021), https://disabilityvisibilityproject.com/2021/07/25/disabled-immigrants-living-on-the-edge-of-barbwire.

foundation has remained. The concept "prevented immigrants whose bodies were deemed ill-suited for labor, production, and self-sufficiency from entering the U.S."[13] It emphasized the immigration system's desire for laborers and lack of consideration for anyone who did not fit within the traditional labor structure. In 1903, the Alien Immigration Act "added for exclusion 'insane persons, epileptics, and persons who have been insane within five years previous; persons who have had two or more attacks of insanity at any time previously,' among other categories."[14] Public charge was further expanded in 1907 with "imbeciles" and "feeble-minded persons," people suffering from tuberculosis, and people "certified" by an immigration official "as being mentally or physically defective," among other categories."[15] It was broadened yet again in 1917 to exclude "people who experienced just one "attack" of insanity (down from two in 1903), and people with "chronic alcoholism" and "constitutional psychopathic inferiority," such as 'moral imbeciles, pathological liars, many of the vagrants and cranks, and persons with abnormal sex instincts.'"[16] The presence of ableist slurs in statutes without explaining why any of these disabilities might lead someone to becoming a public

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13. Id.

14. Kristin Garrity Sekerci & Azza Altiraifi, A US Immigration History of White Supremacy and Ableism, AL JAZEERA (Jan. 31, 2018), https://www.aljazeera.com/opinions/2018/1/31/a-us-immigration-history-of-white-supremacy-and-ableism.

15. Id.

16. Id.

charge is a further demonstration of the true reasoning behind the policy: to keep disabled people out and continue the project of eugenics.

IV. Grounds of Inadmissibility

There are many requirements that one must meet in order to legally immigrate to the United States. One category of requirements is known as "grounds of inadmissibility," which will be referred to as "inadmissibilities" from here on. The inadmissibilities are set forth in the Immigration and Nationality Act (INA). The general categories of inadmissibility include health, criminal activity, national security, public charge, lack of labor certification (if required), fraud and misrepresentation, prior removals, unlawful presence in the United States, and several miscellaneous categories.[17] For select inadmissibilities, waivers are available to certain immigrants. There are also exceptions written into the law where no waiver is required to overcome the inadmissibility.[18] Inadmissibilities, by their very nature, are designed to exclude people from either entering the United States or adjusting status and becoming lawful permanent residents.

There are five inadmissibilities that directly apply to disabled immigrants: INA § 212(a)(1)(A), INA § 212(a)(1)(A)(ii), INA § 212(a)(1)(A)(iii), INA § 212(a)(10)(B), and INA 212(a)(4).[19] The most important

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17. Inadmissibility and Waivers, United States Citizenship and Immigration Services, https://www.uscis.gov/sites/default/files/document/foia/Inadmissibillity_and_Waivers.pdf.

18. Id.

19. Id.

inadmissibility for disabled immigrants is INA 212(a)(4), which is the "public charge inadmissibility." Current law states that "any noncitizen who is applying for a visa or for admission to the United States as a nonimmigrant is inadmissible if they are likely at any time to become a public charge."[20] Public charge is an ableist and eugenic framework from which to approach immigration that has contributed to the national identity of able-bodiedness and deemed disability inherently un-American.

A. Public Charge

As mentioned previously, the public charge language was introduced in the Immigration Act of 1882. The Act excluded "any person unable to take care of him/herself without becoming a public charge."[21] However, the idea of public charge began far earlier. The Massachusetts order in 1655 declared to prohibit "the admission of poor and indigent immigrants."[22] A 1788 New York poor law required ship captains to return passengers to the place of embarkation within a month if they "appeared likely to become a charge to the city."[23] Back to federal immigration

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20. 87 Fed. Reg. 55472.

21. 22 U.S.C. § 214.

22. Eva Weiss, U.S. Migration Policy as Public Health Policy and the Experiences of Disabled Migrants and Migrants in the Direct Care Workforce. AUCD 2022 Conference. Washington D.C. (2022).

23. Gerald L. Neuman, The Lost Century of American Immigration Law. 93 Colum. L. Review 1833, 1853–1854 (Dec. 1993), https://www.jstor.org/stable/1123006?seq=1&cid=pdfreference#references_tab_contents.

law, the Immigration Act of 1891 replaced the phrase "unable to take care of himself or herself without becoming a public charge," with "likely to become a public charge."[24] The 1907 law then required a medical certificate for anyone judged "mentally or physically defective, such mental or physical defect being of a nature which may affect the ability of such alien to earn a living."[25] This introduced a more rigorous standard for disabled people that required the assistance of a medical professional, which was a clear example of the medical model in use. The language was included again in the 1952 Immigration and Nationality Act (INA).[26] The INA defined someone as inadmissible "who . . . at the time of application for a visa or . . . at the time of application of admission or adjustment of status who is likely to become a public charge."[27] The INA was expanded in 1996 to include "the alien's age, health, family status, assets, resources, financial status, and education and skills" as minimum criteria for consideration in determining inadmissibility.[28] While it has changed over time, the essence of public charge has remained: if the government suspects it will have to support you in any way, then you are not welcome here.

In May 1999, the Immigration and Naturalization Services (INS) issued field guidance on how they would determine whether an

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24. 26 Stat. 1084(a) (1889) (Ch. 551).

25. 34 Stat. 898 (1906) (Pub. L. No. 59-96).

26. 66 Stat. 163 (1952).

27. Id.

28. Weiss, supra note 22.

immigrant was a public charge.[29] Under the guidance, receiving any non-cash benefit, except for institutionalization for long-term care at government expense, was said to never be used as a factor in a public charge determination.[30] However, INS would consider "cash assistance for income maintenance" including Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF)-funded cash assistance, and state and local cash assistance programs for income maintenance.[31] In summary, public charge was interpreted to mean a person who is "primarily dependent on the Government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance or institutionalization for long-term care at Government expense."[32]

In 2019, the Department of Homeland Security (DHS) published the final rule ("Rule") for inadmissibility on public charge grounds. Most importantly, the Rule defined "public charge" and "public benefit"—which are not defined in the statute—and explained how DHS will

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29. Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, 64 Fed. Reg. 28689, 28690 (May 26, 1999).

30. Shawn Fremstad, The INS Public Charge Guidance: What Does It Mean for Immigrants Who Need Public Assistance?, Center on Budget and Policy Priorities (Jan. 7, 2000), https://www.cbpp.org/research/poverty-and-opportunity/the-ins-public-charge-guidance-what-does-it-mean-for-immigrants.

31. Id.

32. 87 Fed. Reg. 55472.

make determinations in the totality of the circumstances.[33] The Rule greatly expanded the number of benefits that were considered in order to "better ensure that aliens subject to the public charge inadmissibility ground are self-sufficient."[34] The Rule defines "public benefit" to include cash benefits for income maintenance, Supplemental Nutrition Assistance Program (SNAP), most forms of Medicaid, Section 8 Housing Assistance under the Housing Choice Voucher (HCV) Program, Section 8 Project-Based Rental Assistance, and certain other forms of subsidized housing.[35]

The public charge rule has always had a chilling effect on immigrants seeking public benefits, but it has never been stronger than it was during the Trump Administration. Most importantly, SNAP and Medicaid were counted against immigrants, and the receipt of these benefits made an immigrant more likely to be deemed a public charge. As a result, many immigrants avoided getting medical and social support for fear of being found inadmissible. This became a large issue for disabled immigrants. Trump's public charge policy stated that "an alien is at high risk of becoming a public charge if he or she has a medical condition and is unable to show evidence of unsubsidized health insurance."[36]

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33. 84 Fed. Reg. 41292.

34. Id.

35. Id.

36. Michael D. Shear & Emily Baumgaertner, Trump Administration Aims to Sharply Restrict New Green Cards for Those on Public Aid, N.Y. Times. (Sep. 22, 2018).

Many disabled people are unable to receive employer-based health care because of the systemic discrimination in employment and lack of accessibility. Disabled people often do not get jobs that come with healthcare and thus are forced to rely on private insurance, Medicaid, or Medicare. Private insurance is far too expensive and is also an unrealistic option for most Americans, let alone for immigrants with the added cost of having a disability.[37] Furthermore, the private insurance requirement is especially ableist because these insurance plans do not cover community living support like meal preparation, help with bathing, eating, and dressing, and household care.[38] These resources are indispensable to a disabled person, particularly for a disabled person immigrating to a new country who might not be able to rely on family for caretaking. It also is yet another instance of the society's reliance on the medical model and funneling everything through a medical professional. This leaves public health insurance like Medicare and Medicaid. While these changes to the public benefits considered affected everyone, they had a disparate impact on the disabled immigrant community, which is especially reliant on healthcare. As for SNAP, certain disabilities require specific diets that might be more expensive. Also, the added burden of routine medical care leads to medical bankruptcy, which makes a

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37. . Dan Witters, In U.S., Affording Healthcare More of a Struggle Since 2022, Gallup. (Jul. 17, 2024), https://news.gallup.com/poll/646994/affording-healthcare-struggle-2022.aspx.

38. Elena Hung & Katherine Perez, Trump's New Wall to Keep Out the Disabled, N.Y. Times (Nov. 29, 2018).

disabled person more likely to need food assistance. It is entirely unfair to count receiving help for basic necessities like food and healthcare against disabled immigrants.

Before the Trump Administration's version of the rule was even published, Urban Institute found in a survey that one in seven adults in immigrant families reported that they "or a family member did not participate in a noncash government benefit program in 2018 for fear of risking future green card status."[39] The chilling effect was so severe that it impacted even those who would not be affected by the public charge rule: lawful permanent residents and citizens. In that same Urban Institute survey, 14.7% of adults in families where all noncitizen members had green cards and 9.3% of those in families where all foreign-born members were naturalized citizens reported a chilling effect: news of the proposed change was so widespread that immigrants started to avoid public benefits even before it went into effect due to fear of not being able to adjust status and become lawful permanent residents.[40] While there is less data from the chilling effect post-2020, it would be safe to argue that if the chilling was that dramatic before the rule even went into effect, that it continued to get worse after its implementation.

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39. Hamutal Bernstein, et al., One in Seven Adults in Immigrant Families Reported Avoiding Public Benefit Programs in 2018, Urban Institute (2019), https://www.urban.org/research/publication/one-seven-adults-immigrant-families-reported-avoiding-public-benefit-programs-2018.

40. Id.

Public charge and the benefits that are considered to make a determination have changed greatly over the last five years because of the nature of executive law changing with each new administration. As it stands currently, the public benefits considered include SSI; cash assistance under the TANF program; and state and local cash assistance programs that provide benefits for income maintenance (often called ''General Assistance'' programs).[41] This means there are several benefits not considered, such as most nutrition programs, health programs, housing programs, education and childcare programs, disaster relief, earned benefits, and certain other public benefits. Thankfully, SNAP and Medicaid are no longer considered under the Biden Administration. However, the chilling effect still applies because these considerations can change with each new administration every four years, and immigrants are scared that they will be penalized for past receipt of benefits that were not considered at the time if a new administration were to start considering them again.

The public charge rule is not just for people at the border; it also applies to all applicants for adjustment of status that are subject to grounds of inadmissibility. Adjustment of status is the process of becoming a lawful permanent resident and receiving a green card. The public charge rule applies to most of these people except in humanitarian applications such as U Visas for victims of violent crimes and VAWA for survivors of domestic violence at the hands of a US citizen

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[41] 87 Fed. Reg. 55472.

or lawful permanent resident spouse.[42] In making a determination, U.S. Citizenship and Immigration Services (USCIS) must consider the statutory minimum factors of age; health; family status; assets, resources, and financial status; and education and skills. USCIS makes this determination using the information provided by the applicant as part of the adjustment application (Form I-485) and the Report of Medical Examination and Vaccination Record (Form I-693)."[43] USCIS also considers "any current and/or past receipt of public cash assistance for income maintenance or long-term institutionalization at government expense."[44] USCIS claims that "the fact that an applicant has a disability, as defined by section 504 of the Rehabilitation Act, would not alone be a sufficient basis to determine whether the noncitizen is likely at any time to become a public charge."[45] However, as this paper will demonstrate, ableism is still at play, and the disparate impact on disabled immigrants is unavoidable and unignorable.

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42. Inadmissibility and waivers, UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, https://www.uscis.gov/sites/default/files/document/foia/Inadmissibillity_and_Waivers.pdf.

43. Fremstad, *supra* note 30.

44. USCIS Key Facts About the 2022 Final Rule. United States Citizenship and Immigration Services, https://www.uscis.gov/green-card/green-card-processes-and-procedures/public-charge/public-charge-resources.

45. 87 Fed. Reg. 55472.

To apply for an adjustment of status and avoid a public charge determination, an applicant is required to submit an Affidavit of Support, Form I-864 or Form I-864EZ. This imposes a legally enforceable support obligation on the sponsor. The law requires that sponsors demonstrate that they are able to maintain the sponsored immigrant at an annual income of no less than 125% of the federal poverty level.[46] But as you read in the Fuko story in the introduction, evidence of sponsor support is not always enough for disabled immigrants. While the affidavit of support did not exist at the time when Fuko was immigrating, the ableist sentiment is unfortunately still present. It is also a large undertaking for someone to legally obligate themselves to maintain a disabled person at an annual income of 125% of the federal poverty level. Disabled people deal with unforeseen expenses such as medical bills that could cost thousands of dollars. It is not an easy task to find someone to sign up for this legal obligation. Some disabled immigrants might not be able to find anyone willing to help, or they might not want to put that burden on someone else as they already must rely on others for all sorts of help and support.

The public charge rule greatly impacts disabled immigrants, even before they arrive in the United States. Many disabled immigrants who are aware of the United States' ableist immigration policies are dissuaded from even trying to immigrate. It is also extremely relevant that it is not even immigration officials making exclusion decisions because there is

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[46]. Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, 64 Fed. Reg. 101 (Mar. 26, 1999).

not just one centralized government agency to hold accountable, but rather private individuals. There are financial incentives to deny people deemed disabled. In the nineteenth and twentieth century, immigration laws required ship captains to examine all passengers and certify that none were mentally defective. Ships were required to return rejected immigrants for free with a fee and could be required to deport the immigrant up to three years later if they are subsequently found to be "defective." These laws encouraged shipping companies to refuse any passenger who even appeared to be defective, in order to avoid financial liability.[47] Additionally, ticket agents were fined by shipping companies if they sold a ticket to anyone who was rejected when they tried to board the ship.[48] In 1894, the superintendent of immigration approvingly stated that steamship lines instructed their agents to refuse tickets to "the blind, deaf and dumb, and crippled persons."[49] These ship captains and ticket agents had the power to deny people admission to the United States even though they were not immigration officials. This use of the medical model encouraged ableism and the instant judgment of someone's disability status without the input of that individual or even a medical professional. The United States government delegated immigration enforcement to private individuals which allows them to mask injustices by blaming the non-government third party for the blatant ableism

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47. Baynton, supra note 1, at 40.

48. Id.

49. Id.

displayed throughout the immigration process. However, it is really these private entities' own financial pressure creating these ableist procedures.

There is a strong reason to believe that the public charge rule leads to obscene amounts of disabled immigrants getting turned away. However, these statistics have not been kept, which is a problem within itself. By turning people away based on the presence of a disability, the American immigration system assumes that a lack of ability to find work is due to the disability and not the ableist structure of society, and thus takes the medical model approach. Historically, one reason for which people were turned away was poor physique. A medical officer explained that the "immigrant of poor physique is not able to perform rough labor, and even if he were able, employers of labor would not hire him."[50] This demonstrates the impact that the medical model of disability has on our immigration system. This quote is so close to acknowledging the social model of disability but misses the mark: the issue is the discrimination, not the disability. The discrimination should not be held against the immigrant and affect their ability to enter the United States. Immigrants were also excluded based on lack of sexual development. In these cases, the immigrants were turned away based on abnormal appearance because it "might invite discrimination and therefore poverty."[51] This exemplifies yet again how the system makes the disabled person pay for the consequences of discrimination rather than doing anything to acknowledge that the discrimination is wrong and should not exist.

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50. Baynton, supra note 1, at 35.

51. Id. at 38.

During this period of the late nineteenth century to early twentieth century, immigration officials created a pathological hierarchy of three main classes of disease.[52] Class A included the most unacceptable and dangerous contagions, the "'loathsome diseases' of favus, syphilis, gonorrhea, and leprosy, on a par with the conditions displayed by 'insane persons,' 'the ignorant representatives of emotional races,' and the 'idiots' or 'mental defectives.'"[53] Class B included immigrants who were not in Class A, but were "physically defective or diseased, such defect or disease being of a nature to cause dependency or to affect the ability of the alien for self-maintenance."[54] Lastly, Class C is pregnant women. A unique aspect of this class is that inspectors were charged with discovering if women were "legitimately pregnant." If they were pregnant outside of marriage, they were considered morally corrupt outlaws.[55] These classifications have no scientific reasoning behind them and are based on ableism and the stigma surrounding certain illnesses and disabilities. They demonstrate the immigration system's desire to keep disabled people out and to keep America "pure" and able-bodied, a continuance of eugenics.

During the Ellis and Angel Island eras of mass immigration, immigrants faced a very thorough and invasive medical inspection. The

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52. Galusca, supra note 5, at 149–150.

53. Id.

54. Id.

55. Id.

"Immigrant Examination Procedure at Ellis Island" described the physical medical inspection process and detailed how doctors:

> [S]ize up each immigrant. First they survey him as a whole. If the general impression is favourable they cast their eyes at his feet, to see if they are all right. Then come his legs, his body, his hands, his arms, his face, his eyes, and his head. While the immigrant has been walking the twenty feet the doctors have asked and answered in their own minds several hundred questions. If the immigrant reveals any intimation of any disease, if he has any deformity, even down to a crooked finger, the fact is noticed.[56]

The psychological medical exam was equally—if not more—problematic. A physician on the island, Howard Knox, "created a variety of puzzles and mimicry tests that were decisive, according to officials, in separating the sane from the insane."[57] The percentage of those excluded based on medical criteria increased from 2% in 1898 to 57% in 1913 and 69% in 1915.[58] The numbers rapidly grew, even though it is impossible for the rates of disability to grow this rapidly. Therefore, the medical inspectors were creating new reasons for turning people away based on perceptions of disability rather than actual ability.[59]

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56. Id. at 153.

57. Id. at 155.

58. Id. at 152.

59. Alison Bateman-House & Amy Fairchild, Medical Examination of Immigrants at Ellis Island, 10(4) AMA Journal of Ethics (2008), 235-241,

While there are no specific numbers on how many people are excluded due to public charge, it is known that the impact is widespread. Between the chilling effects of people refusing public benefits and people avoiding immigrating to the United States at all for fear of being excluded, it is clear that public charge is negatively impacting disabled immigrants. While it may not be as explicit as it was historically, the project of eugenics is still alive and shaping our immigration system.

B. Other Grounds of Inadmissibility

The public health reasoning behind public charge eventually led to other inadmissibilities related to public health. The first relevant inadmissibility is INA § 212(a)(1)(A), which states that certain communicable diseases may render an applicant inadmissible.[60] The following conditions are considered communicable diseases of public health significance: chancroids; gonorrhea; granuloma inguinale; infectious leprosy; lymphogranuloma venereum; infectious syphilis; and active tuberculosis.[61] As a result of this inadmissibility, someone who does not have access to adequate healthcare to treat these communicable diseases is barred from the United States or from

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https://journalofethics.ama-assn.org/article/medical-examination-immigrants-ellis-island/2008–04 (explaining another perspective of the medical inspections of immigrants that occurred on Ellis Island).

60. 8 U.S.C. § 1182(a)(1)(A)(i).

61. Inadmissibility and waivers. United States Citizenship and Immigration Services. https://www.uscis.gov/sites/default/files/document/foia/Inadmissibillity_and_Waivers.pdf.

adjusting status once they are here. This especially impacts those with disabilities because a lot of disabled people get other health conditions ignored. Doctors assume that it is a part of their disability and incurable.[62] This is compounded when the patient is a racial or ethnic minority who is already not taken seriously by medical professionals. A 2016 study found that 73% of white medical students believed that Black people have a higher pain tolerance than white people.[63] On the whole, medical professionals take people of color's description of symptoms less seriously than their white counterparts.[64] Elea Chang experienced the intersection of this medical neglect firsthand. As a disabled immigrant they describe that "healthcare experts would be intrigued by my body, but not particularly inclined to offer concrete support nor operate with any sense of urgency or empathy."[65] Elea has spent the last ten years

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62. Disability – a neglected issue in public health. The Lancet Public Health (June 2021) https://doi.org/10.1016/S2468–2667(21)00109–2.

63. Kelly M. Hoffman, et al, Racial bias in pain assessment and treatment recommendations, and false beliefs about biological differences between blacks and whites, 113(16) Proceedings of the National Academy of Sciences of the United States of America, 4296–4301 (2016). https://doi.org/10.1073/pnas.1516047113.

64. Id.

65. Elea Chang, Doctors Need to Believe People Who Are Disabled and Undiagnosed, Rooted in Rights (Aug. 31, 2018), https://rootedinrights.org/doctors-need-to-believe-people-who-are-disabled-and-undiagnosed.

experiencing severe tremors and yet has still not received a diagnosis.[66] They have been "belittled and disbelieved when results are inconclusive" and have therefore stopped trying to force a diagnosis with new neurologists.[67] Because of this medical neglect, a disabled immigrant might not even be aware that they have one of these diseases, let alone be able to receive adequate treatment for it.

The ignorance of treating disabled patients like Elea often means that a disease or illness separate from their disability is unlikely to be detected or treated. Also, disabilities often lead to medical bankruptcy. Being chronically ill is expensive, especially in countries without adequate access to health insurance. This is closely related to the likelihood of becoming a public charge, as discussed at length above. There is a waiver available under INA§ 212(g)(1), but only for someone who: (1) is the spouse or the unmarried son or daughter, or the minor unmarried lawfully adopted child of a United States citizen, or of an alien lawfully admitted for permanent residence, or of an alien who has been issued an immigrant visa; (2) has a son or daughter, who is a United States citizen, or an alien lawfully admitted for permanent residence, or an alien who has been issued an immigrant visa; or (3) is a VAWA self-petitioner, in accordance with such terms, conditions, and controls, if any, including the giving of bond, as the Attorney General, in the discretion of the Attorney General after consultation with the Secretary of Health and Human

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66. Id.

67. Id.

Services, may by regulation prescribe."[68] Waivers are discretionary, add delay to the process, and are not a solution to lessening the burden faced by disabled immigrants. Public health should be a priority in immigration. The COVID-19 pandemic showed us how greatly a communicable disease can impact society. However, there are ways to help these people heal without putting the greater American public at risk, especially with the communicable diseases that are not airborne and pose a lower risk of transmission if taking adequate precautions. While a medical model might simply suggest quarantining the immigrants with these diseases, a semi-social model could help implement practices at the border to detect and treat these illnesses in immigrants with disabilities. It is important to recognize that these immigrants were likely unable to receive that care previously because of their disability and not punish them for this medical neglect. Although quarantining might be necessary to protect American public health, it should not be done without addressing the underlying ableism that has led to this situation and giving these disabled immigrants adequate access to treatment.

INA § 212(a)(1)(A)(ii) states that a failure to prove vaccinations may render an applicant inadmissible.[69] The current mandatory vaccines required are Diphtheria, Tetanus, Pertussis, Polio, Measles, Mumps, Rubella, Rotavirus, Haemophilus influenzae type b (Hib), Hepatitis

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68. Inadmissibility and Waivers, UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, https://www.uscis.gov/sites/default/files/document/foia/Inadmissibillity_and_Waivers.pdf.

69. 8 U.S.C. § 1182(a)(1)(A)(ii).

A, Hepatitis B, Meningococcal disease, Varicella, Pneumococcal disease, Influenza, and COVID-19.[70] This requirement impacts disabled immigrants because many disabled people are unable to get certain vaccines or any at all. There is a waiver available if you have a contraindication to the vaccine, meaning that there is a medical reason for which you should not be vaccinated. However, the contraindication must be reported on the I-693 by a civil surgeon, and this requires that a doctor cares about your disability enough to be aware of the contraindication and document it.[71] Once again, the immigration system is using the medical model to view disability. The reliance on medical professionals, specifically a civil surgeon, is burdensome to disabled immigrants and does not recognize the systemic discrimination. This inadmissibility could be improved with an easier medical exemption process that does not place such a heavy burden on disabled immigrants. For instance, any documentation of a contraindication could be accepted without the requirement of a civil surgeon.

INA § 212(a)(1)(A)(iii) affects applicants with mental or physical disorders. A person is inadmissible if they have a physical or mental disorder and the behavior associated with the disorder may pose (or has posed and is likely to reoccur) a threat to the property, safety or welfare

70. Inadmissibility and Waivers, United States Citizenship and Immigration Services, https://www.uscis.gov/sites/default/files/document/foia/Inadmissibillity_and_Waivers.pdf.

71. Id.

of the person or others.[72] While many mental illnesses or physical illnesses can pose a threat to the safety of the person or others, this is a very vague standard and does not account for any of the precautions that can be taken to avoid this behavior. For instance, if you have this behavior, but medication can make it so that you would not act in such a way, would you be able to adjust status pending medication? This is far too harsh of a standard without taking into account how you could accommodate the disabled immigrant to avoid or manage these behaviors. This inadmissibility is yet another example of the medical model of disability at play in the immigration system with a complete disregard for the social model and how you could adapt society to neutralize the behavior.

Lastly, INA § 212(a)(10)(B) applies to a guardian that is required to accompany a helpless applicant. An individual accompanying another person who is inadmissible and who is certified to be helpless due to sickness, mental or physical disability, or infancy pursuant to INA 232(c), and whose protection or guardianship is determined to be required by the inadmissible applicant who is certified to be helpless is inadmissible.[73] There is not much guidance on how this inadmissibility is assessed, but it can and does impact disabled immigrants and their loved ones. It could lead to a disabled immigrant's caretaker being deemed inadmissible. This puts disabled immigrants in an impossible situation of choosing between receiving adequate care and risking their caretaker's chances of

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72. 8 U.S.C. § 1182(a)(1)(A)(iii).

73. 8 U.S.C. § 1182(a)(10)(B).

immigration. This is an inadmissibility that seems entirely unnecessary and rather than being improved, it should be removed entirely. While it would be informative to know how many people are excluded because of this inadmissibility and its impact on family separation, currently there is not enough information about the impact on caregivers to develop this argument.

C. Solutions

Public charge has existed in some way since the seventeenth century. Unfortunately, it is not going to disappear any time soon. However, there are modifications that could be made to lessen the disparate impact on the disabled community. There have been multiple lawsuits surrounding the public charge rule and whether it violates the Americans with Disabilities Act (ADA) or the Rehabilitation Act. In Make the Rd. N.Y. v. Cuccinelli, the court stated, regarding the Trump Administration rule redefining public charge, that the "plaintiffs have raised at least a colorable argument that the Rule as to be applied may violate the Rehabilitation Act."[74] In their reasoning, the court further explained that DHS did not explain how "disability alone is itself a negative factor indicative of being more likely to become a public charge."[75] This case affirmed a preliminary injunction against the Trump Administration's public charge rule. While this has been addressed by the disclaimer in the new public charge rule that disability itself is not

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[74]. Make the Rd. N.Y. v. Cuccinelli, 419 F. Supp. 3d 647, 664 (S.D.N.Y. 2019).

[75]. Id.

sufficient for a public charge determination, it still leaves room for the argument that public charge and its impact on disabled people is in violation of the Rehabilitation Act and/or the ADA.

1. Rehabilitation Act

The Rehabilitation Act was enacted by Congress in 1973 in response to findings that disabled people were facing significant amounts of discrimination.[76] The goal of the Rehabilitation Act was to improve the quality of life of individuals with disabilities by expanding services, employment opportunities, and accessibility to promote independence.[77] Section 504 of the Act used language from the Civil Rights Act of 1964 to ensure that disabled people are protected from discrimination by government entities. It specifically prohibits the federal government from denying benefits solely by reason of an individual's disability.[78] The government's action is prohibited if it discriminates either through purpose or effect, meaning that recipients of federal funding may not use criteria that have a discriminatory effect on the basis of disability.[79] The public charge rule clearly has criteria that have a discriminatory effect on disabled immigrants, as I discussed at length above. Therefore, even if DHS claims that the public charge is no longer discriminating in purpose

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76. See Rehabilitation Act of 1973, Pub. L. No. 93–112, § 2, 87 Stat. 355, 357 (codified as amended at 29 U.S.C. § 701).

77. Rehabilitation Act § 2 (codified as amended at 29 U.S.C. § 701).

78. Rehabilitation Act of 1973, Pub. L. No. 93–112, § 504, 87 Stat. 355, 394 (1973) (codified as amended 29 U.S.C. § 794).

79. 28 C.F.R. § 41.51(b)(3)(ii) (2020).

against disabled individuals, it is still a violation of the Rehabilitation Act because it is discriminating in its effect. Thus, the public charge rule still violates federal law.

2. Americans with Disabilities Act

The Americans with Disabilities Act (ADA), built on Section 504 of the Rehabilitation Act, was passed in 1990 and ensured the equal treatment and equal access of disabled people to employment opportunities and public accommodations.[80] Title II of the Act prohibits discrimination on the basis of disability by "public entities" such as state and local government agencies and requires public entities to make their services, programs and activities accessible to individuals with disabilities.[81] However, federal agencies are not included as public entities and therefore immigration agencies such as DHS and Immigration and Customs Enforcement (ICE) are not held to this standard, but Section 504 does still apply to federal agencies. It is still uncertain how the ADA can be used to help combat the public charge rule and its disparate impact on disabled immigrants, but it is essential for protecting disabled immigrants in the United States. Federal disability law applies to any person present in the United States, regardless of their immigration status. This means that failing to make reasonable accommodations throughout the immigration process for disabled immigrants violates the ADA. The ableist impact of the public charge rule is necessarily making the immigration process inaccessible to immigrants with disabilities. The

80. 42 U.S.C. § 12101.

81. 28 C.F.R. § 35.130(a).

ADA can still be used to combat discrimination and inaccessibility that they face in detention centers, court rooms, and any other building open to the public. Although Section 504 is a better fit for the fight against public charge, it is important to not overlook the strength of the ADA.

3. Response to Criticism

A proponent of keeping the public charge rule as is or even returning it to the rigidity from the Trump era would argue that the medical model of disability is needed to protect American interests. The public charge rule exists so that people who will become a drain on already limited resources such as SNAP and Medicaid are not admitted into the United States. Undoing systemic ableism is nearly impossible and is not an appropriate task for the immigration system. Therefore, immigration officials must make decisions based on society as it is now and cannot take into consideration the role ableism and discrimination play independent from the actual disabled immigrant. Rather, immigration officials must make assumptions based on the facts that they are presented with and the likelihood that the applicant will rely on public benefits in the future.

Even some disability advocates who support the social model inside the United States might argue that it is inappropriate for the immigration system. They believe that applying the social model at the border would only end up harming disabled Americans because of the already inadequate support and resources for the disabled community. It is okay to demand more of newcomers in order to protect citizens that are already here. As a country, we have a duty to protect our most

vulnerable populations, even if we recognize that the population is made vulnerable not by their disability but by society's treatment of them and their disability. Sometimes this will require drawing boundaries to not let more people in this vulnerable population in when we cannot even help the ones already here, especially if it will only lead to those people facing ableism and everyone having less resources.

While it is true that ableism is rampant in the United States and will impact any disabled person who immigrates here, the first step the American immigration system needs to take is approaching it from a social model of disability rather than a medical model. The public charge rule historically and presently follows the medical model in assuming that there is something inherent to disability that makes an immigrant likely to become a public charge. Despite the Biden Administration's improvements, there is still an extreme disparate impact on those with disabilities based on the rest of the considerations like access to healthcare. The system would work better for parties on both sides if the social model was followed. It would stop dehumanizing and commodifying disabled people and allow them to demonstrate their ability to contribute and even thrive in American society.

While there is no current example of a country having an immigration system based on the social model, there are many instances of accommodations that reflect the social model's principles. For example, there is a lot of work that disabled people are able to do; it just might not be the typical physical labor that society pushes immigrants towards. In a post-COVID world, there are so many remote jobs that do not require you to even leave your bedroom. As of 2023, 12.7% of full-time employees

work from home, and 28.2% work a hybrid model.[82] This demonstrates the ability of many companies to accommodate disabled employees by allowing them to work from home. In Japan, a company called Diverse Avatar Working Network (DAWN) has a café ran by robots that are operated remotely by people with severe physical disabilities.[83] This set up allow those with severe disabilities to continue to work when they otherwise would not have been able to, and it gives these employees social interaction and a way to still participate in society.[84] This is another instance at recognizing that it is not the disability but the inaccessibility of the world that is the problem. If we make society more accessible, disabled people can and will thrive. There are examples of the social model working not just for physical disabilities, but mental disabilities as well. Several major companies have created specialized hiring programs to hire neurodivergent employees.[85] Many of the programs worked in conjunction with disability nonprofits to determine which of the company's

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82. Katherine Haan, Remote Work Statistics and Trends in 2023, Forbes Advisor (June 12, 2023), https://www.forbes.com/advisor/business/remote-work-statistics/#:~:text=As%20of%202023%2C%2012.7%25%20of,normalization%20of%20remote%20work%20environments.

83. Demi Vitkute, Japanese Café Hires Paralyzed People to Control Robot Servers so they Have an Income, MSN (Nov. 2023).

84. Id.

85. Neurodivergent Hiring Initiatives & Partnerships, Employment Assistance and Resource Network on Disability Inclusion, https://askearn.org/page/neurodiversity-hiring-initiatives-and-partnerships.

roles were best suited to the strengths, talents, and skills of the particular neurodivergent population.[86] This a great example of the social model at play within the United States. These companies recognized the inaccessibility of typical hiring programs and created a specialized program, at the direction of the disabled community, to increase their inclusion of disabled employees.

Yet another argument against the public charge rule and the use of the medical model to view disability and immigration is that it is shortsighted. The immigration system is hyper-focused on what the immigrant will contribute economically in the immediate future. Left out is the consideration of all the long-term impacts of letting someone into the fabric of society. A social model approach would consider all the non-pecuniary aspects of what a disabled immigrant could bring to the United States. For example: raising a family and the passage of culture through generations; contributing ideas to society; and overall membership in a community. It is also important to emphasize that disabled people do contribute to the economy. Even in the absence of working a full-time job, disabled people spend more money than their able-bodied counterparts.[87] They also oftentimes create jobs because of a need for caretakers. It is no longer acceptable to make the argument that disabled people are a drain on the economy. The immigration

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86. Id.

87. Hannah Soyer, The High Cost of Disability: The Inaccessibility of the Cost of Access, WORLD INSTITUTE ON DISABILITY, https://wid.org/the-high-cost-of-disability-the-inaccessibility-of-the-cost-of-access.

system needs to stop treating immigrants as short-term labor and start treating them like long-term people.

Recognizing the ways in which we can adapt society to better suit disabled individuals is at the core of the social model and does not require nearly as much overhauling as one might think. The development of technology has made adopting the social model easier than ever. As is, following the medical model as it relates to immigration is sending the message that disabled people are not wanted as Americans. This is a dangerous rhetoric that goes far beyond just immigration and represents the ableist and eugenic ideologies that are pervasive throughout American society.

4. Other Obstacles Disabled Immigrants Face Throughout the Immigration Process

Grounds of inadmissibility are not the only area of immigration where disabled immigrants face immense obstacles. The disabled immigrant community faces barriers in every single step of the immigration process. For the purposes of this paper, I will highlight four important areas of the effects of the intersection between immigration and disability. For each of the issues, I will identify how immigration and disability advocates have used the law as a way to protect disabled immigrants, successfully or otherwise.

a. Right to Counsel

The first area of importance is the right to counsel. Within the American immigration law framework, an individual is not provided with an attorney. However, in 2013, a court ruled in Franco v. Holder that

individuals detained in Arizona, California, and Washington who are deemed mentally incompetent have a right to legal representation and a bond hearing in immigration removal proceedings.[88] The court reasoned that it was a violation of the INA, Section 504 of the Rehabilitation Act, and the Fifth Amendment to fail to provide sufficient procedural due process protections for individuals deemed mentally incompetent.[89] As a result of this case, the Executive Office for Immigration Review (EOIR) created a nationwide policy to increase protections for all individuals with competency issues called the National Qualified Representative Program (NQRP). Under NQRP, the immigration judge (IJ) assigns a Qualified Representative (legal representative) to individuals who are underrepresented and deemed incompetent by the IJ or the Board of Immigration Appeals (BIA).[90] In addition to addressing a need for the right to counsel for the disabled immigrant community, this case is an example of how the Rehabilitation Act has been used by immigrant advocates to fight back against the ableism rooted in the immigration system. Hopefully it can serve as precedent and inspiration for future wins for the disabled immigrant community. However, there is still work

88. Priscilla Olivarez, Advocating for and Representing Clients with Mental Illness in Detained Immigration Removal Proceedings, ILRC (June 2022), https://www.ilrc.org/sites/default/files/resources/removal_proceedings_clients_mental_ilness_advisory_june_2022.pdf.

89. Id.

90. Id.

to be done with NQRP, as the resources are extremely limited; there are only fifty NQRP service providers throughout the entire country.[91]

b. Ableism in Detention Centers

Detention centers are notorious for their terrible and illegal treatment of detainees and disabled detainees are no exception to this. An ACLU investigation found that ICE outright ignored accommodation requests.[92] In one sad anecdote, a Honduran asylum seeker was denied access to a wheelchair and had to rely on other detainees to bathe and go to the bathroom.[93] This is a clear violation of the ADA, as DHS is required to provide reasonable accommodations to detainees with disabilities. Not only is it illegal, but it is abhorrent and dehumanizing. The discrimination is not only present against the physically disabled, but the mentally disabled as well. Asylum seekers with mental illnesses have been denied medication and verbally abused for requesting mental health care.[94] Legal action has also been taken regarding this discrimination and the clear ableism displayed by the American immigration system. In August 2019, a class action lawsuit was filed against ICE and DHS challenging

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91. Id.

92. Trinh Q. Truong, et al., Crossing the Border: How Disability Civil Rights Protections Can Include Disabled Asylum-Seekers, Center for American Progress (Aug. 24, 2022), https://www.americanprogress.org/article/crossing-the-border-how-disability-civil-rights-protections-can-include-disabled-asylum-seekers.

93. Olivarez, supra, note 88.

94. Id.

ICE's systemic failure to monitor its facilities. The lawsuit alleged that this failure to monitor results in policies, procedures, and conditions that discriminate especially against detainees with disabilities. Examples of the discrimination include but are not limited to disciplinary segregation; improper medical screening; delayed and denied medical care; and denial of reasonable accommodations, such as hearing aids and mobility devices.[95] For people who are disabled, a lack of medical care or accommodations could be life threatening. The lawsuit, which ended in an injunction, argued that disabled detainees are routinely denied healthcare and disability accommodations, and are subject to arbitrary and punitive isolation, often over twenty-two hours a day.[96] A report by Disability Rights California found that "children with disabilities are disproportionately placed in ORR's most restrictive placement settings."[97] Overall, detention is a very unsafe place for disabled people because of the complete disregard for accommodations, evidence that they are strictly following a medical model. Thankfully, this is an area where the ADA and immigrants' rights advocates are working together to correct this discrimination and help improve the conditions within detention centers for all, including disabled immigrants.

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95. Fraihat v. U.S. Immigration and Customs Enforcement, Disability Rights Advocates (Mar. 22, 2022), https://dralegal.org/case/fraihat-v-u-s-immigration-and-customs-enforcement/#files.

96. . Id.

97. Olivarez, supra, note 88.

c. Ableism in the Asylum Process

Disabled immigrants also face heightened burdens in the asylum and refugee processes. These burdens start with the actual process of getting to the United States. Many disabled immigrants face immense challenges in transition countries on their way to the United States. For instance, disabled asylum seekers have reported challenges navigating healthcare in their transition country, chronic stress worsening their disability, financial problems, communication barriers, and discrimination.[98] Most disabled asylum seekers struggle with even the most basic tasks of survival and staying healthy. The UN refugee agency reported that, since the COVID-19 pandemic began, 84% of refugees with disabilities in Lebanon said that food insecurity was their biggest concern.[99] Most refugee camps are not accessible and do not have the resources for disabled people to perform daily tasks. Even worse, when humanitarian evacuations are conducted, oftentimes the disabled are abandoned because of the additional effort needed to save them. This means disabled people have a much lower chance at making it out of conflict and are likely to be left behind.[100]

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98. Weiss, supra note 22.

99. Danah Dib, The Forgotten and Overlooked: Refugees With Disabilities, UAB Institute for Human Rights Blog (Oct. 28, 2021), https://sites.uab.edu/humanrights/2021/11/05/the-forgotten-and-overlooked-refugees-with-disabilities.

100. Olivarez, supra, note 88.

Another aspect of disability and asylum seeking that I would be remiss not to mention is that conflict is a disabling event. About 28% of disabled people in the immigration process list illnesses or diseases as the primary cause of their disability.[101] These illnesses are caused by the vulnerable and unhealthy conditions they are forced to live in.[102] Even if people do not start their immigration journey disabled, they still might arrive in the United States as a disabled immigrant due to the terrible conditions in refugee camps and transition countries.

Yet another important aspect to mention is asylum on the basis of disability. As mentioned above, the journey to arrive in the United States is difficult and often a disabling event in itself. However, even if they can make it to the United States and apply for asylum, the petition of someone seeking asylum on the basis of disability is unlikely to be granted. Based on prior case law, it is unclear whether or not disabled people can fit into a particular social group (PSG), one of the main elements of proving an asylum claim. The BIA has conflicting rulings and has said that even something as specific as "mentally ill female Jamaican women" was too large and diverse of a group to qualify as a PSG.[103] For anyone who has worked on asylum cases, this seems like a very particular social group as "women" from a specific country have been found to qualify as a PSG. Clearly, a group of women with mental illness is smaller and less diverse than a group of women without

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101. Dib, supra, note 99.

102. Id.

103. Truong, supra note 92.

the qualification of mental illness. This demonstrates the BIA's lack of willingness to grant asylum on the basis of disability. Unfortunately, the law has been unsuccessful in helping the majority of disabled asylum seekers.

d. Ableism in the Naturalization Process

The last step of the immigration process is naturalization. At this point it probably comes as no surprise that naturalization is also a difficult process for disabled immigrants. There is a disability waiver available if an applicant needs an exception to the English and civics testing requirement called the N-648 medical certification for disability exceptions. There are five requirements to be eligible for this waiver: (1) the applicant has a physical, developmental, or mental impairment, or combination of impairments; (2) the impairment is medically determinable; (3) the disability or impairment(s) have lasted or are expected to last at least twelve months; (4) the applicant is unable to meet the English and/or civics requirement because of the impairment(s); and (5) the loss of cognitive skills is not based on the direct effects of illegal drug use.[104] According to the Immigrant Legal Resource Center, USCIS guidance in the Policy Manual has many new restrictions on disability waivers and "appears to assume that fraud is frequent in the disability waiver process."[105] This assumption of fraud is

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104. Peggy Gleason, Naturalization for Persons With Disabilities, ILRC (June 2022), https://www.ilrc.org/sites/default/files/resources/final_for_pdf_june_22_2022_natz_disabilities-pg-dg2.pdf.

105. Id.

unfair to disabled applicants and creates unnecessary hoops for them to jump through. These requirements are thorough and require a lot of cooperation from medical professionals which again follows the medical model of disability and places the burden on the disabled immigrant.

In addition to a waiver for the testing portion, there is also a waiver for the oath. A disabled applicant can seek a waiver of the oath requirement if they have a physical, developmental, or mental disability that prevents them from being able to understand the meaning of the oath, or to communicate an understanding of the oath.[106] To request this waiver, the applicant needs to submit a written request with a medical evaluation that explains the need for the waiver.[107] If an applicant seeks an oath waiver:

> [T]hey must have either a court-ordered legal guardian or surrogate, or a designated representative who is a U.S. citizen and is either a spouse, parent, adult son or daughter or adult brother or sister who is able to document that they have the primary custodial care and responsibility for the applicant. That guardian or designated representative would sign for the qualifying applicant and act on their behalf.[108]

This is yet another unnecessary burden that does not exist in the statute that makes naturalization harder for disabled immigrants, especially considering there is no right to counsel, with the narrow exception of people who qualify for NQRP. Waivers are complicated and

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106. Id.

107. Id.

108. Id.

not something that a disabled immigrant should be forced to navigate without legal counsel. However, due to the frequency of medical bankruptcy and extreme costs of chronic illness, disabled immigrants are often unable to afford immigration attorneys. These waivers also importantly require a medical evaluation. As discussed above, getting a medical professional to help a disabled person with an exemption is not an easy process and causes severe delays. Doctors should be unable to make immigration decisions based on their perception of a disabled immigrant's lived experience.

V. Conclusion

In conclusion, the United States immigration system is rooted in ableism and was designed to create a national narrative of able-bodiedness. While the ableist intent has been removed, at least from the language, the ableist impact remains. To fix this, there needs to be a shift of perspective from the medical model of disability to the social model of disability. My most important recommendation that I can urge immigrant advocates to adopt in their fight to change the system is to center disabled immigrant voices. None of these changes are possible without centering disabled voices, especially those of disabled immigrants. Disabled people are equally as American as their able-bodied counterparts, and there are thousands of people who exemplify that every day. Notably, Franklin Delano Roosevelt was disabled throughout his presidency, which is one of the most American roles in existence. There are even famous disabled immigrants like Michael J.

Fox. Surely, no one is trying to make the argument that Michael J. Fox is a public charge that should not have been allowed into the United States.

Rather than assuming that becoming a public charge is inherent to disability, the immigration system needs to adopt the social model framework and understand that society makes disabled people more likely to become a public charge because of systemic ableism like that exemplified by the public charge rule. Despite the deeply rooted ableism, there is still hope. The rapid development of technology has made it easier than ever to make society accommodating of disabled people. Furthermore, there are legal avenues to help protect disabled immigrants, namely using the ADA and the Rehabilitation Act in conjunction with constitutional law. This has proven successful for protecting disabled immigrants in other steps of the process and hopefully it can eventually help them at the inadmissibility stage as well. Not only is there a mismatch between disabled people and their environment, but there is also a mismatch between American values and American immigration policy. Until the immigration system does a better job at eradicating the ableism it was based on and actually accommodating disabled immigrants, the United States cannot claim to be a land of equality and justice.