The PRUCOL Proviso in Public Benefits Law: Alien Eligibility for Public Benefits

Sharon F. Carton∗

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Abstract

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ance law, the panel concluded that the statutory bar pled by Albany was "not applicable." 198

XI. Conclusion

With the exception of the Supreme Court's decision in Bontio Boats, 199 the surveyed period was a rather quiet and routine one. It produced no landmark opinions and no groundbreaking precedents. In addition, the year failed to resolve such key issues as whether the Limitation of Liability Act applies to pleasure boats 200 and passed up the opportunity to take a fresh look at certain longstanding problems, such as the inability of cruise passengers to recover for the negligence of shipboard physicians. 201 Nevertheless, the year produced its fair share of well reasoned and carefully crafted opinions. In particular, Judge A. Jay Cristol is to be commended for his decision to make Anthony Williams face the tragic consequences of his indefensible decision to drink while operating a boat. 202 It is to be hoped that Judge Cristol's opinion will, in the months to come, receive careful attention from all boaters and their attorneys.

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I. Introduction

Alien eligibility for public benefits is a legal morass marked by wide inconsistency and topical controversy. As a general rule, entitlement has varied depending on two sets of criteria relating to alienage: first, the immigration status of the alien; and second, the specific program involved. Each classification of alien, based on immigration status, has enjoyed different success in the effort to secure entitlement to benefits. An alien’s eligibility for benefits varies with the specific nature of the program.

Persons deemed to satisfy the requirement of "permanently residing in the United States under color of law" (hereinafter PRUCOL) have generally been held to be eligible for the major federal public benefit programs. That standard, however, has been interpreted differentially for different programs, and has been the subject of extensive legislation and litigation within the past two decades.

198. Cresci, 874 F.2d at 1551.
199. See supra notes 2-14 and accompanying text.
200. See supra notes 109-11 and 126-32 and accompanying text. Shortly after the survey period ended, however, the matter was resolved when the Eleventh Circuit reversed Chief Judge King and held, in an opinion by Judge Hatchett, that the act does not apply to pleasure boats. See Keys Jet Ski, Inc. v. Keys, 893 F.2d 1225, 1990 AMC 609 (11th Cir. 1990).
201. See supra notes 152-56 and accompanying text.
202. See supra notes 65-71 and accompanying text.

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1. Although Medicare and Food Stamps are major federal public benefit programs, PRUCOL is not used as a criterion for alien eligibility for those programs.

For Medicare, aliens are eligible to receive hospitalization benefits regardless of their immigration status, as long as they meet the aged or disabled definition requirements, and have worked in covered employment under a valid Social Security account.

C. Wheeler, Alien Eligibility for Public Benefits: Part 1 at 8 (Immigration Briefings No. 88-11, 1988).

For Food Stamps, the government has tried to avoid the vague "color of law" language. Alien eligibility for food stamps is limited to LPR’s; registry applicants; refugees; asylees; aliens granted withholding of deportation; parolees; and conditional entrants. Id. at 17.

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This article will examine the meaning of PRUCOL as it has been interpreted for each of the major federal public benefit programs. It will discuss the recent cases which have addressed the PRUCOL criterion, as well as the legislative and regulatory efforts to implement the evolving definition of the term.

The article will first review the federal public benefit programs, tracing the historical developments of the PRUCOL proviso as promulgated by federal statutes and implementing regulations, then will turn to the judicial struggle to review and reconcile the varying legislative and administrative expressions of PRUCOL. Finally, the paper will assess states' efforts to accommodate the shifting meaning of PRUCOL for the purposes of federal public benefits, by case law, state statute and state administrative regulation.

II. The Evolution of PRUCOL

A. The Origins of Alien Eligibility for Public Benefits

Contrary to the public perception of immigrants as constituting a massive wave of welfare-seeking opportunists draining our national economy, statistics document the extent to which the coffers of the United States are enriched rather than depleted by the influx of aliens into our country.® The economic benefit is not limited to the intangible wealth engendered by the heterogeneity of our populace, but extends to immediate financial rewards generated by new immigrants.® Nor does the issue of alien eligibility for public benefits pertain exclusively to the poverty stricken or economically deprived.®

All three branches of the federal and state governments have wrestled with balancing the needs and rights of immigrants against that public perception. States have met with uneven success in using their variation of the public's image of aliens to justify limiting alien eligibility to public benefits. Federal restrictions have found a favorable reception in the courts, based predominately on federalist concerns. The recent trend, however, has been toward both liberality and uniformity in determining the classes of aliens which are eligible for benefits.

It is useful, at this juncture, to list the seven major legal categories used in distinguishing among types of aliens. Some of these designa-

10. Wheeler, supra note 1, at 3.
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It is useful, at this juncture, to list the seven major legal categories used in distinguishing among types of aliens. Some of these designations, along with others discussed below, will appear repeatedly in statutory and regulatory classifications of those aliens who may be considered eligible for certain benefits:

1. Lawful Permanent Residents, or LPRs;
2. Refugees, defined as aliens admitted into this country with lawful refugee status pursuant to section 203(a)(7) of the Immigration and Nationality Act (INA);
3. Asylees, or aliens formally granted asylum status by an Immigration and Nationality Service (INS) district director or immigration judge pursuant to INA section 208;
4. Conditional entrants or paroles, a category which includes pre-1980 refugees, Cuban-Haitian entrants, and persons paroled into the country for humanitarian reasons pursuant to section 212(d)(5) of the INA;
5. Registry aliens, that is, those who have lived in the United States continuously since 1972, pursuant to INA section 249;
6. Nonimmigrants, aliens admitted temporarily for a specific reason; and
7. Undocumented or "illegal" aliens—aliens who have entered the United States without inspection or who have remained in this country after expiration of their nonimmigrant visa.

If other statutory requirements are met, those aliens in categories one through five are generally considered eligible for public benefits, while "nonimmigrants" are generally ineligible, and "undocumented or illegal aliens" are sometimes eligible and sometimes ineligible. Families are often composed of members of groups one through five, and six or seven. The combination of classifications does not affect the eligibility of individual members even when members of the family are citizens (as in the case of aliens whose children are born in the United States).

Unlike the above seven categories, PRUCOL, the designation of those aliens who are permanently residing in the United States under color of law, is not a category of immigration status, but rather a category for public benefits eligibility. Although “PRUCOLs” are gener-
ally considered eligible for most public benefits, the definition of the phrases “permanently residing” and “under color of law” PRUCOL aliens a group of shifting composition, depending on the specific program in question.

The four federal programs discussed in this article are: Aid to Families with Dependent Children (AFDC); unemployment insurance compensation; Supplemental Security Income (SSI); and Medicaid. Again, although each of these programs includes PRUCOLs as eligible recipients, each program interprets the term differently, based on an evolution idiosyncratic to each benefit.

1. AFDC is commonly regarded as federal welfare benefits. Payments under AFDC are provided to families with children where either one of both parents are absent or the principal wage earner is incapacitated from working.\textsuperscript{11}

2. Supplement Security Income, or SSI, is a needs-based benefit available to the aged, blind or disabled.\textsuperscript{12}

3. Medicaid provides essentially free medical care by reimbursing providers. It differs from Medicare, which is more like private insurance, in that Medicare affords partial payments of reasonable and customary medical expenses. Medicaid providers, on the other hand, must accept as full payment whatever portion of the medical expense is reimbursed by Medicaid. The insured pays no monthly premium and is not responsible for unpaid balances, unlike Medicare enrollees.\textsuperscript{13}

4. Unemployment compensation provides benefits to qualified persons who become unemployed through no fault of their own.\textsuperscript{14}

Notwithstanding the erroneous public perception of the economic effect of immigration on the public economy, the origin of restrictions on alien access to public benefits is relatively recent. It was only in the 1970s that states began to restrict eligibility for state-administered federal programs such as AFDC or welfare.

\textsuperscript{11} 42 U.S.C. §§ 601 (1988); in Florida, as of October 1990, under certain narrow circumstances, intact families (able-bodied husband and wife living together with their children) will be eligible for AFDC. \textit{Fla.} Stat. § 409.255 (1989).


\textsuperscript{13} 42 U.S.C. § 1396 (1988).


B. Federalism Considerations in the Constitutionality of Alienage Restrictions in Benefit Eligibility

The United States Supreme Court has not yet addressed the issue of the meaning of PRUCOL in any of the federal benefit programs at issue in this article. It has, however, made two meaningful forays into the area of alien eligibility for public benefits.

It was a state-imposed alienage restriction in the administration of federal welfare benefits which led to the seminal opinion on the constitutionality of such limitations. In 1971, in \textit{Graham v. Richardson},\textsuperscript{18} the United States Supreme Court struck down provisions of Arizona’s AFDC program, which required citizenship or long-term residency, and Pennsylvania’s welfare program, requiring citizenship.\textsuperscript{19}

Justice Blackmun, writing for the majority of the Court in Richardson, held that alienage is a suspect class, therefore meriting the application of strict scrutiny to any provision distinguishing on that basis.\textsuperscript{20} While the States argued that the conservation of state resources was a legitimate governmental interest, the Court deemed that a less than compelling justification for the distinction.\textsuperscript{21}

The Supreme Court in Richardson further held that immigration and alien status were areas in which the federal government has an overriding interest, and that states’ intrusion into these areas violates the Supremacy Clause.\textsuperscript{22} Thus, imposing state classifications on the basis of alienage, that is, distinguishing between lawful permanent resident aliens (LPRs) and citizens, for the purpose of allocation of federal public benefits, was held unconstitutional.\textsuperscript{23}

The next major development, though, sharply curtailed any hopes that Richardson might have inspired, by upholding federal limits to Medicare eligibility.\textsuperscript{24} Medicare is a federal program providing health insurance for the elderly and disabled.\textsuperscript{25} The federal statute governing Medicare benefits contained a provision which denied eligibility to aliens unless they had been LPRs residing in the United States for five

\textsuperscript{15} 403 U.S. 365 (1971).

\textsuperscript{16} Id. at 376.

\textsuperscript{17} Id.

\textsuperscript{18} Id.

\textsuperscript{19} Id. at 377.

\textsuperscript{20} Richardson, 403 U.S. at 380.


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years.\textsuperscript{23} The Supreme Court in 1976 upheld this distinction in \textit{Mathews v. Diaz},\textsuperscript{24} reversing the District Court's findings that the five-year residency requirement violated due process, and that the entire alien-eligibility provisions in the federal statute were unenforceable.\textsuperscript{25} Although, at first blush, this holding may appear inconsistent with \textit{Richardson}, the Court rested its position on considerations of federalism, as opposed to state-imposed suspect classifications.\textsuperscript{26}

While the Court in \textit{Diaz} noted that "all persons, aliens and citizens alike, are protected by the Due Process Clause,"\textsuperscript{27} the Court denied that "all aliens are entitled to enjoy all the advantages of citizenship, or . . . that all aliens must be placed in a single homogeneous legal classification."\textsuperscript{28} Thus, the Supreme Court held that Congress was empowered to create a distinction for the purposes of benefits eligibility, not just between aliens and citizens but between different classes of aliens.\textsuperscript{29} In focusing on Congress' broad powers of discretion over matters affecting immigration and naturalization, the Court found Congress' line drawing reasonable, in that it rendered eligible those aliens who, by reason of duration of residence, "may reasonably be presumed to have a greater affinity with the United States . . . ."\textsuperscript{30}

The Court in \textit{Diaz} distinguished the provision at issue from that in \textit{Richardson}, which the Court acknowledged "provides the strongest support of appellees' position."\textsuperscript{31} In so doing, the Court clarified that "it is the business of the political branches of the Federal Government, rather than that of either the States or the Federal Judiciary, to regulate the conditions of entry and residency of aliens."\textsuperscript{32} Also, where \textit{Richardson} had struck down its provision as violative of the Equal Protection Clause, the Court in \textit{Diaz} noted that "[t]he equal protection analysis also involves significantly different considerations because it concerns the relationship between aliens and the States rather than be-}

tween aliens and the Federal Government."\textsuperscript{33} The chief legacy of \textit{Richardson} and \textit{Diaz} was the understanding that, while state-created restrictions would be subject to strict scrutiny, and most likely struck down, any federal classifications affecting aliens could be expected to be upheld. The rationale underlying this apparent inconsistency rests on the federal government's broad powers in any area touching on immigration. The interrelationship between federal and state programs, or state implementation of federal programs, suggest that this demarcation may not be as crystalline as the Supreme Court would have us believe.

C. The Meaning of PRUCOL

The limitation on eligibility for federal public benefits to only citizens, LPRs, and PRUCOL aliens had its origins in federal statute and regulation. Each program's PRUCOL provision evolved independently of its predecessors, mainly in response to case law.

To summarize the chronology of the PRUCOL proviso's appearance in federal legislation and regulation, the following is the order in which PRUCOL appeared for each of the four programs under consideration: In 1972, one year after \textit{Richardson} invalidated state-imposed AFDC alienage restrictions, PRUCOL made its debut in the statute governing eligibility for Supplemental Security Insurance.\textsuperscript{34} This was followed in 1973 by a federal regulation limiting AFDC to PRUCOLS and citizens. \textit{Diaz},\textsuperscript{35} it must be remembered, gave little indication that federal alienage restrictions, unlike the state limitations struck down in \textit{Richardson}, would be considered unconstitutional.

In 1976, PRUCOL appeared in an amendment to the federal statute governing unemployment insurance compensation.\textsuperscript{36} In 1981, the AFDC statute was amended to incorporate the PRUCOL limitation which had been promulgated in the 1973 AFDC regulation.\textsuperscript{37} The following year, Medicaid was brought into line with the other three programs, through a federal regulation limiting its benefits to PRUCOLS and citizens. This restriction was codified by statute in 1986.\textsuperscript{38}

\begin{itemize}
\item \textsuperscript{23} 42 U.S.C. § 1396(b)(v)(2) (1973).
\item \textsuperscript{24} Diaz, 426 U.S. at 67.
\item \textsuperscript{25} Id. at 87.
\item \textsuperscript{26} Id. at 84.
\item \textsuperscript{27} Id. at 78.
\item \textsuperscript{28} Id.
\item \textsuperscript{29} Diaz, 426 U.S. at 87.
\item \textsuperscript{30} Id.
\item \textsuperscript{31} Id. at 83.
\item \textsuperscript{32} Id. (emphasis added).
\item \textsuperscript{33} Id. at 84-85.
\item \textsuperscript{34} Richardson, 403 U.S. at 365.
\item \textsuperscript{35} 42 U.S.C. § 1382(a)(1)(B) (1988).
\item \textsuperscript{36} Diaz, 426 U.S. at 67.
\item \textsuperscript{38} 42 U.S.C. § 602(a)(33) (1988).
\item \textsuperscript{39} Pub. L. No. 99-509, § 9046, 100 Stat. 1874, amending 42 U.S.C. § 1396(b)
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33. Id. at 84-85.
34. *Richardson,* 403 U.S. at 365.

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Recent federal legislation has both reflected and spurred changes in the common law challenges to these traditional approaches to alien eligibility for public benefits. Two federal statutes in particular have signaled the most profound reaction to, and change of, the nature of those restrictions in eligibility.

In 1986, Congress enacted the Immigration Reform and Control Act (IRCA), amending the INA. IRCA restricts newly legalized aliens from receiving certain federal benefits for a five-year period. Under IRCA’s five year prohibition for newly legalized aliens, aliens granted temporary resident status under the general legalization provisions of IRCA are eligible to apply for the numerous benefits. However, during the five years, unless specifically provided otherwise by the bill itself or another law, during their temporary lawful residence period, aliens legalized under IRCA shall not be granted certain enumerated federal public benefits, and may be excluded by state or local law from eligibility for state and local assistance.44

Further, IRCA delegates to states the power to discriminate in setting alien eligibility requirements for state and local financial programs. Congress specifically granted the states and local government entities the right to distinguish or discriminate against IRCA aliens. Therefore, any other distinctions or discrimination against other alien categories is suspect when done by states or local governments. The impact of this potential shift in the *Diaz*45 federalist considerations in evaluating the constitutionality of alienage restrictions in benefit eligibility has not yet been conclusively gauged by litigation.

The second of the two significant federal statutes in this subject area is the Omnibus Budget Reconciliation Act of 1986,46 or OBRA-86, which together with IRCA simultaneously restricted and expanded alien access to Medicaid benefits. Section 9406 of OBRA-86 introduced an alienage restriction into the Medicaid statute for the first time. Previously, alien eligibility was addressed only by regulation.

(1986).

40. There are exceptions to this five year prohibition. For example, Cubans and Haitian entrants who are legalized under IRCA 202, are allowed to get all public benefits. Furthermore, elderly, blind, disabled, and minor aliens can receive Medicaid. Also, elderly, blind, disabled, and minor aliens can receive Supplemental Security Income even though they are legalized under IRCA.
41. *Diaz*, 426 U.S. at 84.

D. Judicial Reaction to PRUCOL

In order to accurately assess the legislative and administrative incorporation of PRUCOL requirements and interpretation of those requirements, it is necessary to review the court opinions which, more often than not, gave rise to the need for such legislative and administrative action.

From 1971 to 1973, under a regulation no longer in effect, the Department of Health and Human Services (HHS), or Health, Education and Welfare (HEW) at that time, interpreted the federal Medicaid statute to require eligibility without regard to citizenship status.48 It was only in 1973 that HEW promulgated a new Medicaid regulation limiting eligibility to LPRs and PRUCOL.44

This new regulation was challenged and struck down in *Lewis v. Gross*.46 In *Lewis*, HHS argued that the statutory alienage requirements under AFDC and SSI were incorporated by reference, and that Congress subsequently ratified the Medicaid regulation by acquiescence.48 The district court disagreed. It considered that the Medicaid statute authorized medical assistance for AFDC-related and SSI-related recipients stemming from financial need, and found that, as a result, HHS had no statutory authority to incorporate the alienage requirements under AFDC and SSI for Medicaid eligibility.49 The Court noted that Congress “knew how to impose alienage requirements in social welfare programs when it intended, and its refusal to impose such a requirement on Medicaid should be respected.”50

In direct response to *Lewis*, Congress enacted OBRA-86,50 which amended the Medicaid statute to explicitly provide emergency services to all aliens, and which for the first time restricted comprehensive Medicaid benefits to LPRs and PRUCOL aliens. Of equal significance to OBRA-86’s effect on Medicaid is the fact that its legislative history provided, for the first time, a definition of PRUCOL.50 The meaning of PRUCOL under Medicaid, as defined in the legislative history of OBRA-86, includes “all of the categories recognized by immigration
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law, policy, and practice.”\textsuperscript{93} Furthermore, Congress, in the legislative history, admonished the Secretary of HHS and the States to “broadly interpret the phrase ‘under color of law.’”\textsuperscript{94}

As noted above, the 1973 Medicaid regulation that had restricted eligibility to PRUCOLs was adopted from a 1972 statutory provision in the SSI program.\textsuperscript{95} These same restrictions were adopted for AFDC by regulation in 1973, and by statute in 1981.\textsuperscript{96} None of these, however, had given any definition of PRUCOL. As a result, it was not until OBRA-86 that Congress provided an interpretation of the criteria included within that term. Indeed, as recently as July 1986, HHS issued interpretive guidelines that established two separate PRUCOL definitions for Medicaid eligibility.\textsuperscript{97} It was in these same guidelines that HHS implemented a broader PRUCOL definition under SSI for SSI-related recipients, and a narrower PRUCOL definition under AFDC for AFDC-related recipients. The reason for this inconsistency is again traceable to judicial action.

The United States Court of Appeals for the Second Circuit addressed the meaning of PRUCOL in two significant cases. Holley v. Lavine,\textsuperscript{98} regarding AFDC benefits, and Berger v. Heckler,\textsuperscript{99} regarding SSI benefits. In Holley, the eligibility restriction at issue was a New York Social Services Law,\textsuperscript{100} a state statute, and a New York State Department of Social Services regulation,\textsuperscript{101} which precluded all aliens residing in the United States (as opposed to LPRs) from receiving AFDC benefits, notwithstanding the federal AFDC regulation entitling PRUCOLs to AFDC benefits.\textsuperscript{102}

First, the Court of Appeals held that, under the Supremacy Clause, the federal regulation takes precedence over the New York state statute; therefore, PRUCOLs must be considered eligible for AFDC’s federally authorized, though state-administered, benefits.\textsuperscript{103} Second, the Court interpreted PRUCOL in the Social Security Act’s implementing regulation to include the plaintiff, a Canadian citizen in the United States illegally but who held a letter of intent from the INS stating she would not be deported “at this time.”\textsuperscript{104}

The Court rejected New York’s argument that it needed to “protect its solvency . . . [by] drop[p]ing from the welfare rolls those who, because their residence is in violation of law, are subject to deportation.”\textsuperscript{105} The Court noted that they were “not dealing with a person who is residing in the United States without the knowledge or permission of the Immigration and Naturalization Service.”\textsuperscript{106} Plaintiff had duly notified INS of her presence, and received from INS a formal letter that “deportation proceedings have not been instituted . . . for humanitarian reasons . . . [and that INS] does not contemplate enforcing her departure from the United States at this time.”\textsuperscript{107}

Under a plain meaning reading of the phrase “under color of law” in the governing federal regulation, the Court pointed out that the “phrase obviously includes actions not covered by specific authorization of law . . . [but also] embraces . . . others enfolded by a colorable imitation.”\textsuperscript{108} The Court went on to elaborate that

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[i]n the phrase encircles the law, its shadows, and its penumbras. When an administrative agency or a legislative body uses the phrase “under color of law” it deliberately sanctions the inclusion of cases that are, in strict terms, outside the law but are near the border.

There is no more common instance of action “under color of law” than the determination of an official charged with enforcement of the law that he, as a matter of public policy, will exercise his discretion not to enforce the letter of a statute or regulation because such enforcement would involve consequences, or inflict suffering, beyond what the authors of the law contemplated.
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The Court then turned to the other criterion of the PRUCOL proviso, that is, that the individual be “permanently residing” in this country.\textsuperscript{109} The INS official had written in his letter of intent that it would

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\item 51. Id.
\item 52. Id. (emphasis added).
\item 53. Lewis, 663 F. Supp. at 1182.
\item 55. 42 C.F.R. § 435.402 (1986); 45 C.F.R. § 233.50 (1986).
\item 56. 553 F.2d 845 (2d Cir. 1977).
\item 57. 771 F.2d 1556 (2d Cir. 1985).
\item 58. Holley, 553 F.2d at 847.
\item 59. Id.
\item 60. Id.
\item 61. Id. at 848.
\item 62. Id. at 849.
\item 63. Id. at 849.
\item 64. Holley, 553 F.2d at 849.
\item 65. Id.
\item 66. Id.
\item 67. Id. at 849-50.
\item 68. Id. at 850.
\end{itemize}
law, policy, and practice.” Furthermore, Congress, in the legislative history, admonished the Secretary of HHS and the States to “broadly interpret the phrase ‘under color of law.’”

As noted above, the 1973 Medicaid regulation that had restricted eligibility to PRUCOLs was adopted from a 1972 statutory provision in the SSI program.56 These same restrictions were adopted for AFDC by regulation in 1973, and by statute in 1981.57 None of these, however, had given any definition of PRUCOL. As a result, it was not until OBRA-86 that Congress provided an interpretation of the criteria included within that term. Indeed, as recently as July 1986, HHS issued interpretive guidelines that established two separate PRUCOL definitions for Medicaid eligibility.58 It was in these same guidelines that HHS implemented a broader PRUCOL definition under SSI for SSI-related recipients, and a narrower PRUCOL definition under AFDC for AFDC-related recipients. The reason for this inconsistency is again traceable to judicial action.

The United States Court of Appeal for the Second Circuit addressed the meaning of PRUCOL in two significant cases. Holley v. Lavine,59 regarding AFDC benefits, and Berger v. Heckler,60 regarding SSI benefits. In Holley, the eligibility restriction at issue was a New York Social Services Law,61 a state statute, and a New York State Department of Social Services regulation,62 which precluded all aliens residing in the United States (as opposed to LPRs) from receiving AFDC benefits, notwithstanding the federal AFDC regulation entitling PRUCOLs to AFDC benefits.63

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67. Id. at 849-50.
68. Id. at 850.
not deport the plaintiff, a mother of dependent children, specifying that "the Service does not contemplate enforcing her departure from the United States at this time. Should the dependency of the children change, her case would be reviewed for possible action consistent with circumstances then existing."  

Contrary to the State's argument, the Court found that letter not inconsistent with the "permanency" requirement of PRUCOL.  

In matters arising under, or cognate to, the [INA] the phrase "permanently residing in the United States under color of law" may properly be construed with an eye to 8 U.S.C. §1101(a)(31) which provides that in the immigration law "the term 'permanent' means a relationship of continuing or lasting nature, as distinguished from temporary, but a relationship may be permanent even though it is one that may be dissolved eventually at the instance either of the United States or of the individual, in accordance with law." The statutory definition of the adjective "permanent" aids in the interpretation of the adverb "permanently."  

Thus, for purposes of alien eligibility for AFDC benefits, the Court in Holley gave both elements of the PRUCOL proviso a liberal interpretation. Under this reading aliens are deemed to be present "under color of law" when an INS letter of intent demonstrates that the INS does not contemplate enforcing the alien's departure from the United States. Consequently, the requirement of "permanently residing in the United States" does not require a showing that the residency will never end, but rather that it is "continuing or lasting," as opposed to "temporary."  

Holley's expansive interpretation of PRUCOL formed the bulwark of the efforts by other state and federal courts to interpret the "permanently residing" and "color of law" criteria of PRUCOL with consistent and meaningful definition. The scope of the later courts' interpretations would go beyond merely AFDC benefits. Indeed, later decisions extended the Holley meaning of the PRUCOL requirement to SSI benefits and unemployment compensation.  

In Berger, 71 HHS attempted to impose a more restrictive reading of PRUCOL for SSI purposes; however, the Court of Appeals refused to impose such a narrow construction on the factual limitations present in Holley. 72 Secretary of the Department of HHS, Margaret Heckler, challenged an order entered on a consent decree regarding alien eligibility for SSI, as exceeding the scope of the statutory PRUCOL provision. 73 The consent decree, inter alia, listed the agreed-upon interpretation of PRUCOL for the purposes of SSI alien eligibility, as including but not limited to:  

(1) aliens admitted to the United States pursuant to 8 U.S.C. §1153(a)(7); (2) aliens paroled into the United States pursuant to 8 U.S.C. §1182(d)(5); and (3) aliens residing in the United States pursuant to an order of supervision, indefinite stay of deportation or indefinite voluntary departure. Any other alien residing in the United States with the knowledge and permission of the [INS] and whose departure from the United States the [INS] does not contemplate enforcing is also permanently residing in the United States under color of law and may be eligible for [SSI] benefits. 74  

Plaintiffs had sought to order Secretary Heckler to revise the agency's regulations to conform to the consent decree's liberal definition of PRUCOL. 75 The district court held that "existing (HEW) regulations . . . suggested that the 'under color of law' provision had a much narrower scope than that set forth in the [decree]." 76 The court went on to note that the existing regulations did not articulate PRUCOL eligibility for "aliens residing in the United States with the knowledge and permission of the INS and whose departure from the United States the INS does not contemplate enforcing . . . ." 77  

The Second Circuit Court of Appeals rejected Secretary Heckler's appellate argument that the consent decree's definition was ultra vires, in that it exceeded the scope of the Social Security Act provision establishing SSI eligibility criteria. 78 In so doing, the court looked to the  

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78. Berger, 771 F.2d at 1570.
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statute's plain meaning and its legislative history.\textsuperscript{79} The Court of Appeals agreed with the District Court in finding the PRUCOL proviso "both expansive and elastic . . . invit[ing] dynamic interpretation by both courts and the administrative agency charged with the statute's enforcement to determine its application in particular cases in light of development in this country's immigration policy."\textsuperscript{80} In equally colorful language, the court of appeals went on to interpret PRUCOL as "designed to be an open vessel—to be given substance by experience."\textsuperscript{81}

While Secretary Heckler argued, based on Holley, "that an official letter of INS intent should be a prerequisite to SSI eligibility under the decree,"\textsuperscript{82} the court rejected the HHS/HEW interpretation of Holley as supportive of its position in Berger.\textsuperscript{83} Instead the court looked to the spirit, rather than the factual idiosyncrasies, of its opinion in Holley, and held that the INS letter of intent referred to in the earlier case was not a prerequisite to eligibility as PRUCOL. The Berger court found "[t]he more significant . . . [Holley's] expansive interpretation"\textsuperscript{84} of PRUCOL, and echoed the Holley characterization of PRUCOL in which "the phrase 'permanently residing' . . . more closely resembled 'lasting' or 'enduring,' than 'forever.'"\textsuperscript{85}

The Berger court upheld the consent decree, which as amended listed eleven specific categories of eligible aliens, including the catch-all category of aliens "residing in the United States with the knowledge and permission of the INS and whose departure from the United States the INS does not contemplate enforcing."\textsuperscript{86} The amended decree provided that the criterion of "one whose departure the INS does not contemplate enforcing" is satisfied "if it is the policy or practice of the INS not to enforce the departure of aliens in such category or if, on all the facts and circumstances in that particular case, it appears that the INS is otherwise permitting the alien to reside in the United States indefinitely."\textsuperscript{87}

The definition of PRUCOL which has emerged from Berger stems from the clause in the district court's consent decree catch-all category of aliens residing in the United States "with the knowledge and permission of the Immigration and Naturalization Service and whose departure INS does not contemplate enforcing."\textsuperscript{88} To a large extent, it is this definition which has almost supplanted PRUCOL in determining alien eligibility for federal benefits.

In 1988, in accordance with Berger, HHS promulgated regulations which listed fifteen categories of PRUCOLs for the purposes of Medicaid eligibility for SSI-related applicants, noting that the list is not exhaustive; a sixteenth, open-ended category allows individualized determination for persons who may demonstrate eligibility based on INS's general acquiescence and knowledge of their presence.\textsuperscript{89} In each of the fifteen categories, HHS listed INS documents that may establish PRUCOL status under a particular category, but required that states obtain documentation for all applicants.\textsuperscript{90}

In Lewis\textsuperscript{91} the District Court for the Eastern District of New York held that the federal regulation and comparable New York State regulation restricting alien eligibility for Medicaid benefits were invalid. The Lewis court held HHS's alienage restrictions to be beyond the scope of statutory authority and justified its holding on the basis of inter alia, the plain meaning and legislative history of the Medicaid statute. Congress responded to this decision by enacting OBRA-86.\textsuperscript{92}

Contrary to the pre-Lewis Medicaid statute,\textsuperscript{93} which had been silent as to any alien eligibility requirements, the PRUCOL proviso is now explicitly articulated in the new Medicaid statute.\textsuperscript{94} Reacting to the legislative history of OBRA-86, HHS, in August 1988, adopted a single PRUCOL standard for all Medicaid applicants, whether AFDC or SSI-related. That standard is one which tracks the SSI definition enumerated in Berger (that is, the fifteen recognized categories and the general open-ended category for individual determination).\textsuperscript{95}

HHS acknowledged that Congress intended PRUCOL to be broadly interpreted for Medicaid. Accordingly, HHS defined PRUCOL so as to include all the categories recognized in Berger. But, in a supplementary Lewis proceeding, the court did preserve the plaintiffs'...
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79. Id. at 1571-73.
80. Id. at 1571.
81. Id. at 1574.
82. Id. at 1575.
83. Berger, 771 F.2d at 1576.
84. Id. at 1576.
85. Id.
86. Id. at 1580.
87. Id. at 1576-77 n.33.
88. Berger, 771 F.2d at 1576-77 n.33.
90. Id. at 38,032-42.
91. Lewis, 663 F. Supp at 1181.
gument that the open-ended provision is unworkable (plaintiffs had argued that INS documentation may not be promptly, or ever, be available for certain aliens covered by INS policies, and that INS often refuses to provide informal verification to state welfare agencies). Prior to Lewis, the courts had wrestled with alien eligibility for Medicaid. Even without an explicit PRUCOL requirement in the Medicaid statute, HHS had inferred a PRUCOL requirement based on other programs' regulations.

In St. Francis Hospital v. D'Elia, a New York State intermediate appellate court held that an otherwise deportable woman was PRUCOL and eligible for Medicaid where INS did not intend to remove her pending the determination of her application for adjustment of status. Another division of the same court also addressed alien eligibility for Medicaid in Papadopoulos v. Shang. In Papadopoulos, INS operating instructions which suspended deportation for "adjustment of status petitioners" were relied upon to show that INS was aware of plaintiff's presence but did not take steps to deport her. Plaintiff had been denied adjustment of status, but had a pending application for deferred action status. Consistent with D'Elia, the New York court in Papadopoulos held that the petitioner was PRUCOL pending determination of her application.

On the other hand, in Esparza v. Valdez, a Colorado case which pre-dated Lewis and OBRA-86, PRUCOL was interpreted more narrowly as requiring a specific statutory or regulatory review and a grant of an immigration status that allows the alien to remain indefinitely. In Esparza, the United States District Court for the District of Colorado addressed the meaning of PRUCOL in the context of unemployment compensation, when it interpreted a federal statute governing the joint federal-state program. The 1976 amendment to the Federal Unemployment Tax Act had added a PRUCOL restriction to the program's eligibility requirements. The Esparza court adopted a construction of the statute's PRUCOL proviso, which made only "those aliens who, after review of their particular factual circumstances pursuant to a specific statutory or regulatory procedure, have been granted an immigration status which allows them to remain in the United States for an indefinite period of time" eligible.

Plaintiffs had argued for a more flexible interpretation, which would consider any alien PRUCOL "whose presence in the United States is known to the INS and [to which the] agency has acquiesced in the continued residence of the worker by some action or inaction." INS itself, filed an amicus brief "urging a very restrictive interpretation, limiting the category to aliens who have a lawful immigration status—conditional entrants, refugees and certain parolees." The court cited Holley, but found the plaintiffs' propounded interpretation of PRUCOL overly broad, so much so that it "would seriously erode the government's ability to deal with the problem of illegal aliens."

The court went on to justify its alarmist concerns:

It would permit any alien, without regard to the legality of his entry, to obtain a job, make his presence known to the INS by the filing of some application, and, in the absence of deportation claim, claim that his residence was "under color of law." Congress has not indicated an intention to place such persons into the unemployment compensation benefits program.

The federal district court's interpretation of PRUCOL in Esparza was not, however, universally adopted. On the contrary, courts in other jurisdictions relied instead on Holley. This liberal interpretation of PRUCOL for AFDC purposes was used to give PRUCOL a more expansive reading in the unemployment benefits program. State courts in Florida, Oregon, Utah, Rhode Island, and Massachusetts...

97. Id.
99. Id. at 154-55.
100. Id. at 154.
101. Id. at 155.
103. Id. at 243-44.
104. Id. at 243.
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found that petitioner after petitioner satisfied PRUCOL provisos in state statutes as well as in the federal unemployment compensation statute.\textsuperscript{116}

Even after OBRA-86, the supposedly definitive congressional edict on the meaning of PRUCOL, the battle was not yet over. After OBRA-86, the Lewis plaintiffs sought a preliminary injunction to the effect that, among other points, the PRUCOL definition under Medicaid is impermissibly narrow.\textsuperscript{117} The court denied the motion with regard to the PRUCOL issue and concluded that the definition is sufficiently consistent with the statute and legislative history to preclude the court from substituting different language.\textsuperscript{118} The court did not accept plaintiffs' position that the legislative history and New York INS practice required listing in the transmittal notice additional PRUCOL categories, including individuals with pending INS applications for a status recognized as PRUCOL, and individuals belonging to a class that INS does not deport as a general policy.\textsuperscript{119}

The above cases, and reactive legislative and administrative enactments, did not set a fixed definition of PRUCOL. Even after Holley engendered a liberal interpretation of PRUCOL for AFDC benefits, the Court of Appeals for the Ninth Circuit in Sudomir v. McMahon\textsuperscript{120} determined that, although asylum applicants were residing under color of law, their residence is temporary rather than permanent, because it is "solely dependent upon the possibility of having [their] application acted upon favorably."\textsuperscript{121} Neither case law nor federal statute or regulation has definitively established a universally applicable scope of PRUCOL for all of the programs under consideration in this article. Immigration practitioners, however, have adopted an approach individual to each program, based on an amalgam of the PRUCOL interpretations generated by each of the three branches of government.

III. PRUCOL in Current Immigration Practice

Given the still pervasive lack of a fixed meaning, only seven categories of aliens are universally accepted by federal agencies as

\textsuperscript{116} Id.
\textsuperscript{117} Lewis, 663 F. Supp. at 1183.
\textsuperscript{118} Id.
\textsuperscript{119} Id.
\textsuperscript{120} 767 F.2d 1456 (9th Cir. 1985).
\textsuperscript{121} Id. at 1463.

PRUCOL: refugees; asylees; conditional entrants; aliens paroled into United States; aliens granted suspension of deportation; Cuban-Haitian entrants; and applicants for registry.\textsuperscript{122} Other categories which may or may not be eligible, depending upon agency interpretation of PRUCOL meaning, include: aliens granted indefinite, extended or renewable voluntary departure; aliens on whose behalf an immediate relative petition has been filed or approved; aliens who have filed for adjustment of status; aliens granted voluntary departure because they have a visa priority date within 60 days of being current; aliens granted a stay of deportation; aliens granted deferred action status; aliens with pending applications for suspension of deportation; aliens granted withholding of deportation; aliens under Order of Supervision; asylum applicants; and aliens residing with the knowledge and permission of INS and whose departure INS is not contemplating enforcing.\textsuperscript{123}

To fit within that last, catch-all category, the emergent test requires that the alien be present in the United States with the knowledge and acquiescence of INS, and that INS will not enforce the alien's departure.\textsuperscript{124} As a practical matter, a client is PRUCOL when it is INS' policy or practice not to enforce the departure of similarly situated aliens,\textsuperscript{125} or when from all the facts and circumstances it appears that INS is permitting the alien to reside indefinitely.\textsuperscript{126}

INS can grant formal deferred action status allowing an otherwise deportable alien to remain in United States, or in the exercise of prosecutorial discretion can simply choose not to initiate removal proceedings; persons who are aged, receiving critical medical care, or beneficiaries of immigrant visa petitions are often allowed to remain in the United States pursuant to informal INS policies.\textsuperscript{127}

IV. State and Local Programs

Many states have their own benefit programs, or programs augmenting a federal program's benefit amount (such as state SSI supplements), expanding eligibility to include additional target populations (such as expanded AFDC), or providing additional services (such as

\textsuperscript{122} Wheeler, supra note 1, at 3.
\textsuperscript{123} Id. at 3-4.
\textsuperscript{124} Id. at 4.
\textsuperscript{125} See, e.g., Berger, 771 F.2d at 1576-77 n.33.
\textsuperscript{126} Wheeler, supra note 1, at 4.
\textsuperscript{127} Id.
found that petitioner after petitioner satisfied PRUCOL provisos in state statutes as well as in the federal unemployment compensation statute.118

Even after OBRA-86, the supposedly definitive congressional edict on the meaning of PRUCOL, the battle was not yet over. After OBRA-86, the Lewis plaintiffs sought a preliminary injunction to the effect that, among other points, the PRUCOL definition under Medicaid is impermissibly narrow.119 The court denied the motion with regard to the PRUCOL issue and concluded that the definition is sufficiently consistent with the statute and legislative history to preclude the court from substituting different language.120 The court did not accept plaintiffs' position that the legislative history and New York INS practice required listing in the transmittal notice additional PRUCOL categories, including individuals with pending INS applications for a status recognized as PRUCOL, and individuals belonging to a class that INS does not deport as a general policy.121

The above cases, and reactive legislative and administrative enactments, did not set a fixed definition of PRUCOL. Even after Holley engendered a liberal interpretation of PRUCOL for AFDC benefits, the Court of Appeals for the Ninth Circuit in Sudemir v. McMahon122 determined that, although asylum applicants were residing under color of law, their residence is temporary rather than permanent, because it is "solely dependent upon the possibility of having [their] application acted upon favorably."123 Neither case law nor federal statute or regulation has definitively established a universally applicable scope of PRUCOL for all of the programs under consideration in this article. Immigration practitioners, however, have adopted an approach individual to each program, based on an amalgam of the PRUCOL interpretations generated by each of the three branches of government.

III. PRUCOL in Current Immigration Practice

Given the still pervasive lack of a fixed meaning, only seven categories of aliens are universally accepted by federal agencies as

PRUCOL: refugees; asylees; conditional entrants; aliens paroled into United States; aliens granted suspension of deportation; Cuban-Haitian entrants; and applicants for registry.124 Other categories which may or may not be eligible, depending upon agency interpretation of PRUCOL meaning, include: aliens granted indefinite, extended or renewable voluntary departure; aliens on whose behalf an immediate relative petition has been filed or approved; aliens who have filed for adjustment of status; aliens granted voluntary departure because they have a visa priority date within 60 days of being current; aliens granted a stay of deportation; aliens granted deferred action status; aliens with pending applications for suspension of deportation; aliens granted withholding of deportation; aliens under Order of Supervision; asylum applicants; and aliens residing with the knowledge and permission of INS and whose departure INS is not contemplating enforcing.125

To fit within that last, catch-all category, the emergent test requires that the alien be present in the United States with the knowledge and acquiescence of INS, and that INS will not enforce the alien's departure.126 As a practical matter, a client is PRUCOL when it is INS' policy or practice not to enforce the departure of similarly situated aliens,127 or when from all the facts and circumstances it appears that INS is permitting the alien to reside indefinitely.128

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116. Id.
118. Id.
119. Id.
120. 767 F.2d 1456 (9th Cir. 1985).
121. Id. at 1463.
122. Wheeler, supra note 1, at 3.
123. Id. at 3-4.
124. Id. at 4.
125. See, e.g., Berger, 771 F.2d at 1376-77 n.33.
127. Published by NSUWorks, 1990
expanded Medicaid programs).128 States have the option under federal law to provide many of these programs, and they may be able to receive partial federal reimbursement.129

Many of these programs do not limit eligibility to citizens or lawfully aliens, but residency restrictions may affect eligibility.130 In the context of general assistance programs, eligibility will vary depending upon a state or county's specific requirements, but it is sometimes limited to United States citizens, LPRs and aliens entitled to remain in the country for an indefinite period.131

Some states have adopted PRUCOL language, while other states' programs have no alienage restrictions.132 These states may instead have strict residency requirements, defining them in a way that disqualifies undocumented aliens.133

One area of marked divergence in state PRUCOL litigation has been the requirement of INS "proof" of status. It has been argued that residency (which ordinarily means physical presence) should not be predicated on possession of documentation showing lawful immigration status. Courts in California, for example, are split over whether an undocumented person (a person without any INS papers) can be considered "lawfully residing" in a particular county, even though residing there (i.e., physically present, having an address, having children enrolled in school).134

In Florida, differences have emerged in the approach to the meaning of PRUCOL for unemployment insurance benefits, AFDC direct payments, and AFDC-related Medicaid benefits. Each of these issues is discussed below.

A. Unemployment Insurance Compensation

The meaning of PRUCOL for alien eligibility for unemployment

128. Id. at 21.
129. Id. (States cannot set federal reimbursement on AFDC beyond the federal interpretation of AFDC PRUCOL in any state expansion).
130. Id.
131. Id.

benefits was addressed by the District Court for the Third District in Alfred v. Florida Department of Labor & Employment Security.135 The appellants in Alfred were either "excludable" or "deportable" aliens.136 All had INS authorization to work at the time they worked, and all applied for benefits upon being separated from their employment.137

The court held parolees and conditional entrants to be PRUCOL, and cited Holley,138 the AFDC case, for the principle that "a relationship may be permanent even though it is one that may be dissolved eventually at the instance either of the United States or of the individual, in accordance with law."139 The Third District Court of Appeal therefore adopted the loose Holley definition of "permanency" as a substantial or protracted, rather than fleeting, period of time.140

The court also held deportable aliens PRUCOL pending "a final determination of deportability."141 The court again relied on Holley, here for the liberal reading of "under color of law."142 The Third District Court of Appeal quoted Holley, along with Papadopoulos, to the effect that "[t]he discretionary refusal of the INS to use its enforcement powers to deport an alien also constitutes action 'under color of law.' "143

While INS revoked the work authorization of some of the Alfred aliens, five of the Alfred appellants had not yet had their work authorizations affirmatively revoked by INS.144 These five met the necessary unemployment compensation criteria of being "able" and available to work.145 The State nevertheless argued that they did not meet the unemployment compensation PRUCOL criteria in the absence of a pending application for lawful status. This reasoning was based on the fact that none of the five had applied for political asylum or residency and, further, that INS had not indicated that it did not intend to exclude or
expanded Medicaid programs). States have the option under federal law to provide many of these programs, and they may be able to receive partial federal reimbursement. Many of these programs do not limit eligibility to citizens or lawful aliens, but residency restrictions may affect eligibility. In the context of general assistance programs, eligibility will vary depending upon a state or county’s specific requirements, but it is sometimes limited to United States citizens, LPRs and aliens entitled to remain in the country for an indefinite period.

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A. Unemployment Insurance Compensation

The meaning of PRUCOL for alien eligibility for unemployment benefits was addressed by the District Court for the Third District in *Alfred v. Florida Department of Labor & Employment Security*. The appellants in *Alfred* were either “excludable” or “deportable” aliens. All had INS authorization to work at the time they worked, and all applied for benefits upon being separated from their employment.

The court held parolees and conditional entrants to be PRUCOL, and cited *Holley*, the AFDC case, for the principle that “a relationship may be permanent even though it is one that may be dissolved eventually at the instance either of the United States or of the individual, in accordance with law.” The Third District Court of Appeal therefore adopted the loose *Holley* definition of “permanency” as a substantial or protracted, rather than fleeting, period of time.

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128. *Id.* at 21.
129. *Id.* (States cannot set federal reimbursement on AFDC beyond the federal interpretation of AFDC PRUCOL in any state expansion).
130. *Id.*
131. *Id.*
135. *Alfred*, 487 So. 2d at 355.
136. *Id.* at 357.
137. *Id.*
138. *Holley*, 553 F.2d at 847.
139. *Alfred*, 487 So. 2d at 357.
140. *Id.*
141. *Id.*
142. *Id.*
143. *Id.* (quoting *Holley*, 553 F.2d at 850); see also *Papadopoulos*, 414 N.Y.S.2d at 152.
144. *Alfred*, 487 So. 2d at 358.
deport them from the United States.\footnote{146} The court unequivocally rejected this argument:

Although the five appellants are subject to being excluded or deported at some time in the future, if the government pursues and prevails, they have, nevertheless, been given alien identification cards and authorizations to work, by or with the approval of INS, and thus are [PRUCOL] as the phrase is defined by Florida law. The quoted phrase from section 443.101(7), Florida Statutes (1985) instructs that the State, and not INS, is to make the eligibility determination for the purpose of state unemployment benefits. According to the state statute, which is all that we need construe, all five appellants fall under the classification of aliens [PRUCOL]. Their eligibility must be presumed to continue until their status is changed by an affirmative INS action.\footnote{147}

Chief Judge Schwartz, in a concurring opinion, agreed that the appellants were PRUCOL, pointing out that, as they had a legal right to a hearing prior to exclusion or deportation, they were by definition “residing in the United States ‘under color of [the] law’ which grants them that right.”\footnote{148}

\footnote{146} Id.
\footnote{147} Id. at 358-59.
\footnote{148} Id. at 359.

In addition to United States citizens, the following categories of aliens are eligible for UC benefits: LPRs, PRUCOL aliens and aliens lawfully present for the purpose of performing services (e.g., commuter aliens, temporary workers with a nonimmigrant visa or possibly aliens granted work authorization by the INS). PRUCOL might include “illegal” aliens when the INS has knowledge of the alien’s presence and in some way acquiesces to that presence by not taking action to deport the alien (e.g., when the alien has filed a petition to adjust status and the INS has granted work authorization).

But, in Esparza, 612 F. Supp. at 241, discussed supra, text accompanying notes 104-11, the United States District Court for the District of Colorado in 1985 interpreted PRUCOL more narrowly for unemployment insurance benefits, finding it required a specific statutory or regulatory review and a grant of an immigration status that allows the alien to remain indefinitely.

Earlier that same year, a Colorado state appellate court also had addressed PRUCOL for unemployment compensation. The court, in Arteaga v. Industrial Comm’n, 703 P.2d 654 (Colo. Ct. App. 1985), relied on Holley, among others, to find an alien present “under color of law” because the “INS was fully aware of his technically illegal presence and yet consented to it by suspending efforts to deport him by authorizing him to work.” Id. at 657, citing Holley, 553 F.2d at 856.

Arteaga predates Esparza. The state court in Arteaga followed the generous Hol-
deport them from the United States.\textsuperscript{146} The court unequivocally rejected this argument:

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\section*{B. AFDC and Medicaid}

One Florida statute governs eligibility for both AFDC direct payment benefits and Medicaid benefits.\textsuperscript{149} Florida Statute section 409.026(1) explicitly restricts eligibility to LPRs and PRUCOL aliens:

The department shall determine the benefits each applicant or recipient of assistance is entitled to receive under this chapter, provided that each such applicant or recipient is a resident of this state and is a citizen of the United States or an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law.\textsuperscript{150}

A Florida administrative regulation governing AFDC eligibility cites the above quoted statute as authority for its comparable PRUCOL limitation.\textsuperscript{151} "The child, parent or relative whose needs are included in an AFDC grant must be either (1) a citizen, or (2) an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law . . . ."\textsuperscript{152} The AFDC regulation explicitly requires documentation or verification of the alien's INS status.

Florida's AFDC Manual, issued by the Department of Health and Rehabilitative Services on March 1, 1988, provides further guidance on aliens' eligibility for AFDC direct assistance. As discussed below, the manual notes, by way of caveat, that "[[i]n]dividuals who are ineligible because of alien status but meet PRUCOL for AFDC-related Medicaid must be approved for Medicaid."\textsuperscript{153} The manual states that eligibility for the two programs differs.

For AFDC direct assistance, only those aliens who fall into one of the following categories are eligible for AFDC direct assistance under PRUCOL:

1. Granted status as a Conditional Entrant Refugee under section

\begin{itemize}
\item \textsuperscript{149} FLA. STAT § 409.026 (1989).
\item \textsuperscript{150} FLA. STAT § 409.026 (1989) (emphasis added).
\item \textsuperscript{151} FLA. ADMIN. CODE ANN. 7. 10c-1.081 (1989).
\item \textsuperscript{152} Id. (emphasis added).
\item \textsuperscript{153} HRSM 165-10 Florida AFDC Manual, Dept. of Health and Rehabilitative Services & S. (Mar. 1, 1988) [hereinafter HRSM Manual].
\end{itemize}
203(a)(7) of the INA;\textsuperscript{154}  
2. Admitted as refugees under section 207(c) of the INA;\textsuperscript{155}  
3. Granted temporary parole status by the Attorney General under section 212(d)(5) of the INA;\textsuperscript{156}  
4. Granted asylum by the Attorney General under section 208 of the INA;\textsuperscript{157}  
5. Cubans or Haitians who have been granted the special immigration status of ‘Cuban/Haitian Entrant’ (Status Pending);\textsuperscript{158}  
6. Evidence of continuous residence in the United States prior to January 1, 1972;\textsuperscript{159}  
7. Granted indefinite voluntary departure status by INS;\textsuperscript{160}  
8. Granted an indefinite stay of deportation by INS.\textsuperscript{161}  
The Florida agency’s policies governing eligibility for AFDC-related Medicaid cases define PRUCOL more broadly, based on the allegedly differing federal regulations controlling the two programs according to the 1988 AFDC Manual.\textsuperscript{162}  
While the interpretive guidelines may differ for AFDC and Medicaid, at present the regulations are not different. They both use the phrase, “citizens, LPRs, and aliens PRUCOL.”\textsuperscript{163}  There are proposed Medicaid regulations which go further, are broader, and specifically state that they are tracking Berger.\textsuperscript{164}  
According to the agency’s policies, aliens qualify for Medicaid if they are living in the United States with the knowledge and permission of INS and INS does not contemplate enforcing their departure.\textsuperscript{165}  
This may include aliens who entered the United States either lawfully or unlawfully, and while aliens in certain categories automatically are deemed PRUCOL, in other instances, a contact with INS is required.\textsuperscript{166}  

\begin{enumerate}
\item 8 U.S.C. § 1157(c) (1988).
\item HRSM Manual, supra note 153, at 9-9.
\item HRSM Manual, supra note 153, at 9-9.
\item Id.
\item Id. at 9-8.
\item FLA. ADMIN. CODE ANN. r. 10c-1.91 & r. 10c-8.0141(b) (1989).
\item 53 Fed. Reg. 38,033 (Sept. 29, 1988).
\item Id.
\item Id.
\item HRSM Manual, supra note 153, at 9-10.
\item Id.
\item Id.
\item Id.
\item Id.
\item Id.
\item HRSM Manual, supra note 153, at 9-12.
\item Id.
\end{enumerate}
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2. Admitted as refugees under section 207(c) of the INA;\textsuperscript{155}

3. Granted temporary parole status by the Attorney General under section 212(d)(5) of the INA;\textsuperscript{156}

4. Granted asylum by the Attorney General under section 208 of the INA;\textsuperscript{157}

5. Cubans or Haitians who have been granted the special immigration status of "Cuban/Haitian Entrant" (Status Pending);\textsuperscript{158}

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\textsuperscript{160} HRSM Manual, supra note 153, at 9-9.
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\textsuperscript{162} Id. at 9-8.
\textsuperscript{163} Fla. ADMIN. CODE ANN. r. 10c-1.91 & r. 10c-8.0141(b) (1989).
\textsuperscript{165} HRSM Manual, supra note 153, at 9-10.
\textsuperscript{166} Id.

For Medicaid in Florida, the agency considers as automatically PRUCOL aliens in the following categories:

1. Aliens granted status as a Conditional Entrant Refugee under section 203(a)(7) of the INA.\textsuperscript{167}

2. Aliens admitted as refugees under section 207(c) of the INA;\textsuperscript{168}

3. Aliens granted temporary parole status by the Attorney General under section 212(d)(5) of the INA;\textsuperscript{169}

4. Aliens granted asylum by the Attorney General under section 208 of the INA;\textsuperscript{170}

5. Cubans or Haitians who have been granted the special immigration status of "Cuban/Haitian Entrant" (status pending);\textsuperscript{171}

6. Aliens residing in the United States pursuant to an order of supervision;\textsuperscript{172}

7. Deportable aliens residing in the United States pursuant to an order of supervision;\textsuperscript{173}

8. Aliens residing in the United States pursuant to an indefinite voluntary departure;\textsuperscript{174}

9. Aliens on whose behalf an immediate relative petition has been approved, and their families covered by the petition, who are entitled to voluntary departure and whose departure INS does not contemplate enforcing.\textsuperscript{175}

10. Aliens who have filed applications for adjustment of status (to LPR) to section 245 of the INA that the INS has accepted as properly filed or granted, and whose departure the INS does not contemplate enforcing.\textsuperscript{176}

11. Aliens granted stays of deportation by court order, statute or regulation or by individual determination of INS, pursuant to section 106 of the INA whose departure INS does not contemplate enforcing.\textsuperscript{177}

12. Aliens granted voluntary departure status pursuant to Title 8

\textsuperscript{168} 8 U.S.C. § 1157(c) (1988).
\textsuperscript{171} HRSM Manual, supra note 153, at 9-11.
\textsuperscript{172} Id.
\textsuperscript{173} Id.
\textsuperscript{174} Id.
\textsuperscript{175} Id.
\textsuperscript{176} HRSM Manual, supra note 153, at 9-12.
\textsuperscript{177} Id.
U.S.C. section 1252(b), section 242(b) of the INA, or 8 C.F.R. section 242.5, whose departure INS does not contemplate enforcing; aliens in this category are in the position of awaiting a visa;\footnote{178} 13. Aliens granted deferred action status pursuant to INS operating instructions;\footnote{179} 14. Aliens who entered and have continuously residing in the United States since before January 1, 1972;\footnote{180} 15. Aliens granted suspension of deportation pursuant to section 244 of the INA whose departure INS does not contemplate enforcing;\footnote{181} 16. Aliens whose deportation has been withheld pursuant to section 243(h) of the INA.\footnote{182} The state agency manual also provides that, notwithstanding their failure to fall within any of the above categories, aliens may still be eligible for Medicaid if “they are known to INS; and . . . the INS does not contemplate enforcing their departure.”\footnote{183} The existence of this catch-all final category marks, or perhaps is merely symptomatic of, the broader application given Medicaid's PRUCOL proviso under Florida law than is afforded for AFDC purposes. This difference in breadth of PRUCOL for AFDC Direct Assistance and for AFDC-related Medicaid has not escaped judicial scrutiny. One recent case put the issue before the Third District Court of Appeal, in \textit{Solis v. Department of Health and Rehabilitative Services}.\footnote{184} In \textit{Solis}, the appellant was a Nicaraguan immigrant, issued her identification card and work authorization documents by the INS.\footnote{185} She was in the United States awaiting an INS decision on her application for political asylum.\footnote{186} A public assistance hearing officer had ruled that, though she satisfied the liberal Medicaid eligibility PRUCOL standard, her alien status was insufficient to satisfy PRUCOL for AFDC benefits.\footnote{187}

\footnote{178} Id. \footnote{179} Id. \footnote{180} 8 U.S.C. § 1159 (1988). \footnote{181} HRS Manual, supra note 153, at 9-12. \footnote{182} Id. \footnote{183} Id. at 9-13. \footnote{184} 546 So. 2d 1073 (Fla. 3d Dist. Ct. App. 1989). \footnote{185} Id. \footnote{186} Id. \footnote{187} Id. at 1074.

The District Court of Appeal reversed the hearing officer on the basis of Alfred, and held that the appellant is PRUCOL.178 The court went on to note that, "to the extent Sudomir is contrary to our holding on the 'permanently' point (it is in accord on the 'color of law' question), we do not agree with nor follow it."179 The court stated that it had already rejected Sudomir in Alfred, aligning itself instead with the federal Court of Appeals for the Second Circuit in Holley.180 In adopting the liberal interpretations of "permanently" and "under color of law" which are applied to PRUCOL for unemployment benefits and Medicaid purposes, the court acknowledged the divergent policy considerations which bear upon the Alfred issue of eligibility for unemployment compensation, which occurs only after a requisite period of work has already occurred, and those involved in determining AFDC benefits, which may become available immediately after the alien's arrival in this country without other independent standards of eligibility.181

Nonetheless, the court took the eminently reasonable stance that dictated it apply the same meaning to "the same words [regarding] persons in the same status."182 In so doing, it provided a rare voice of common sense to the quagmire of cases seeking to justify divergent interpretations of PRUCOL for different benefit programs.

The court was not unmindful of the ramifications of such an astonishingly novel approach:

We know ... the far-reaching economic and political implications of this decision, which may result not only in a highly burdensome financial impact upon our state, as an involuntary host jurisdiction, but in a perhaps unfair division of responsibility for AFDC benefits between Florida and the federal government—the entity which is at least arguably responsible for the aliens' presence here in the first place. Nevertheless, as judges, we may not consider these factors. Instead, we are permitted only to discern and apply the public policy adopted by those empowered to do so, the Legislature and Congress, by interpreting the words they have used to express their

178. Id.
179. Id.
182. Id.
183. Id. at 9-13.
184. 546 So. 2d 1073 (Fla. 3d Dist. Ct. App. 1989).
185. Id.
186. Id.
187. Id. at 1074.
will.\textsuperscript{193} 

In support of this "consistency" approach, the court noted, in a somewhat acerbic footnote, the state's contrary perversity in attempting to rationalize its "inconsistency" approach.

\textsuperscript{194} Although the same policy considerations might seem to apply—as the operative language unquestionably does—as well to Medicaid as to AFDC benefits, the state has freely agreed to pay the former. Its refusal to pay the latter, since it cannot be based on any legal distinction, must be founded only on a political one which this court may not consider.\textsuperscript{194}

The District Court of Appeal then certified as a question of great public importance: "Whether an alien residing in this country pending her application for political asylum is eligible for AFDC benefits as one 'permanently residing in the United States under color of law' within the meaning of section 409.026, Florida Statutes.\textsuperscript{195}\textsuperscript{195}

Rehearing was denied in Solis on August 21, 1989. As of the date this article goes to press, the Supreme Court has accepted jurisdiction.

C. Supplemental Security Income (SSI)

Unlike Medicaid, AFDC and unemployment compensation, SSI has not been a major focus of Florida litigation. PRUCOL aliens are deemed eligible for SSI, which lists several specific statuses that qualify as PRUCOL, along with the catch-all category that renders aliens eligible if they can demonstrate that it is the "policy or practice of INS not to deport aliens in the same category," or "from all facts and circumstances in the alien's case it appears that the INS is otherwise permitting the alien to reside in the United States indefinitely.\textsuperscript{196}

To determine PRUCOL status, the Social Security Administration relies on an information form which they send to INS for completion. One practitioner notes that a problem arises when INS sends back the form with the "textbook correct" policy answer. For example, that it is the policy of INS to deport aliens in that category. Although the practice of INS may differ drastically from the policy, the alien will not be deemed PRUCOL, and thus not eligible for SSI benefits, once that form comes back from the INS with a "yes" answer in the space marked "is it the policy or practice of INS to deport aliens in this category?"

Thus, for the purpose of SSI benefits, even with the liberal federal SSI regulatory definition of PRUCOL, practical application is dependent on fairly restrictive and literalist interpretation by the INS.

V. Conclusion

It is hoped that the profound logic demonstrated by Florida's Third District Court of Appeal last year in Solis marks a judicial rejection of the hodge-podge of interpretations of the PRUCOL proviso. The author, however, is reluctant to imbue the entire nation's judiciary, much less its legislative and executive branches, with such consistency and common sense on such scant evidence.

The past two decades have yielded no consistent approach to PRUCOL. Instead, the meaning of the phrase "permanently residing in the United States under color of law" has evolved in piecemeal fashion, only slowly and sporadically gaining anything remotely approaching a common interpretation. The PRUCOL proviso for the purposes of the four federal public benefits at issue in this article, that is, Aid to Families with Dependent Children, Medicaid, unemployment compensation, and Supplemental Security Income, has been interpreted differently for different programs at different times.

Even recently, when PRUCOL seems to have become almost synonymous with "aliens residing in the United States with the knowledge and consent of the INS, and whose departure INS does not contemplate enforcing," the implications of this new definition are not without their own mixed interpretations. As recently as 1989, Florida's practice of incorporating that loose, catch-all category within its definition of PRUCOL for Medicaid can be sharply distinguished from a more narrow set of criteria for satisfying PRUCOL in the context of AFDC direct assistance payments.

Whether the intermediate appellate court's rejection of this distinction signals a national move toward consistency, remains an open question. The Florida Supreme Court will review the case, but courts across the country seem unable to resolve this legal dilemma. The lack of consistency appears to this author to be cause for somewhat less than sanguine expectations that PRUCOL will gain a uniform defini-
In support of this "consistency" approach, the court noted, in a somewhat acerbic footnote, the state's contrary perversity in attempting to rationalize its "inconsistency" approach.

Although the same policy considerations might seem to apply—as the operative language unquestionably does—as well to Medicaid as to AFDC benefits, the state has freely agreed to pay the former. Its refusal to pay the latter, since it cannot be based on any legal distinction, must be founded on a political one which this court may not consider.\(^{184}\)

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tion for the purposes of all federal public benefits at any time in the foreseeable future.

Interstate Child Custody Disputes: Ensuring the Legality of Florida Child Custody Orders

Eric J. Taylor*
Brent R. Taylor**

On December 28, 1980, H.R. 8406 became law. Entitled the Parental Kidnapping Prevention Act of 1980 [PKPA], the United States Congress enacted this law to address the growing problem of "child snatchers" between parents holding foreign state child custody decrees. Until then the law was in chaos, due in large measure to the judicial uncertainty of the applicability of the full faith and credit clause to interstate custody decrees. This uncertainty led, in turn, to the inconsistent treatment custody awards received in the state courts. Some states recognized the orders, and enforced them, while others ignored them altogether. Even the first legislative response to this crisis, the Uniform Child Custody Jurisdiction Act [UCCJA], failed to halt the practice of "seize and run" by a disgruntled noncustodial parent seek-

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2. The full faith and credit clause of the United States Constitution provides: 'Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.' U.S. CONST. art IV, § 1.