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Todd G. Cosenza

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NOTES

PRESERVING PROCEDURAL DUE PROCESS FOR LEGAL IMMIGRANTS RECEIVING FOOD STAMPS IN LIGHT OF THE PERSONAL RESPONSIBILITY ACT OF 1996

Todd G. Cosenza

INTRODUCTION

Socorro Cruz is a single mother who works on the assembly line of a California plastics factory and barely earns the minimum wage.¹ As a legal immigrant² from Mexico, she hoped to receive food stamps to support her eight-year-old son and herself.³ However, once the provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996⁴ (the "Personal Responsibility Act") are implemented in California, food stamp benefits will be eliminated for almost all legal immigrants,⁵ including Socorro Cruz.⁶

The Personal Responsibility Act eliminates food stamp benefits for all legal immigrants except certain qualified aliens.⁷ Included in this exception are those immigrants who have met a "forty qualifying quarters" work test.⁸ Moreover, minor children and spouses of legal immigrants attempting to meet this exception can receive credit for qualifying quarters earned by their supporters.⁹ Merely working for forty quarters, or ten years, however, is not necessarily enough to qualify for this exception. A legal immigrant must meet certain levels of quarterly earnings to qualify.¹⁰ As of August 22, 1997, all legal immigrants not qualifying under the forty qualifying quarter exception will lose their food stamps due to their immigrant status.¹¹ For these

⁵. § 401, 110 Stat. at 2261-62.
⁷. § 402, 110 Stat. at 2262-63.
⁸. A qualifying quarter is a quarter year work period that is credited toward Social Security. See infra note 101 and accompanying text.
⁹. § 435, 110 Stat. at 2275-76.
¹⁰. See infra note 102 for levels of earnings needed to qualify.
¹¹. § 401, 110 Stat. at 2261-62.
individuals, the consequences will be severe; as Socorro Cruz stated, "[t]he little bit extra would have helped a lot."\textsuperscript{12}

Socorro Cruz epitomizes the plight of many immigrants who are attempting to qualify under this exception. Although Cruz has been employed for the last twenty-one years, and theoretically has met the forty quarters exception, much of her salary was paid "off the books."\textsuperscript{13} Many legal immigrants who come to the United States in desperate need of employment opportunities often accept cash paying jobs.\textsuperscript{14} Because federal taxes were not withheld from their employment payments, many legal immigrants, like Socorro Cruz, will have difficulty proving their eligibility for the food stamp benefit exception.\textsuperscript{15}

Although the Personal Responsibility Act mandates the elimination of food stamp benefits to legal immigrants, the process of taking the half-million immigrants already receiving food stamps off the rolls has caused delays, confusion, and turmoil within the welfare bureaucracy.\textsuperscript{16} Perhaps in its haste to pass the measure, or in an attempt to obscure the bill's harsh realities, Congress has drafted a statute filled with contradictory provisions.\textsuperscript{17} As predicted by one Senator who op-

\textsuperscript{12} McDonnell, supra note 1, at B1.
\textsuperscript{13} Id. at B6. The term "off the books" refers to payment in cash for services rendered without the employee or employer reporting the income to the government. See United States v. Morris, 99 F.3d 476, 483 (1st Cir. 1996) (stating that the defendants were involved in a tax conspiracy in which cash payments were made off the books); Diduck v. Kaszynski & Sons Contractors, 974 F.2d 270, 274 (2d Cir. 1992) (finding that immigrant non-union workers were paid off the books with no taxes withheld in violation of wage laws).
\textsuperscript{14} See William Branigin, Reaping Abuse for What They Sew; Sweatshops Once Again Commonplace in U.S. Garment Industry, Wash. Post, Feb. 16, 1997, at A1, A30 (stating that the garment industry takes advantage of immigrant workers' need for employment and pays these workers low wages off the books); Patrick J. McDonnell, Legal Advocacy Groups Sue over Food Stamp Changes, L.A. Times, Oct. 18, 1996, at A3, A23 (claiming that most immigrants will have difficulty proving that they meet the forty qualifying quarter exception because legal immigrants often are forced to take cash-paying jobs). Employment "off the books" is considered covered employment for the purpose of social security benefits. See infra note 178 for a definition of covered employment.
\textsuperscript{15} McDonnell, supra note 1, at B6.
\textsuperscript{16} See, e.g., Ken Chavez & Brad Hayward, Welfare Rules Confuse Many, Sacramento Bee, Sept. 21, 1996, at A1, A20 (stating that the United States Department of Agriculture and state officials have had difficulty understanding the Personal Responsibility Act's provisions dealing with certification of legal immigrants); see also Jonathan Alter, Washington Washes Its Hands, Newsweek, Aug. 12, 1996, at 42, 43 (stating that "the nation is embarking on a vast domestic social experiment" and that the "new law is not conservative, it's radical"); William Claiborne, At a California Clinic, Outbreak of Uncertainty, Wash. Post, Aug. 26, 1996, at A4 (describing the confusing consequences for legal immigrants under the Personal Responsibility Act).
\textsuperscript{17} See Judith Havemann & William Claiborne, Confusion over Food-Stamp Cutoff: States Unsure Which Immigrants Must Be Denied Aid Under New Law, Seattle Times, Sept. 24, 1996, at A3 (reporting that under the new law, states have been confused over who still qualifies for food stamps); Ralph Jimenez, A New Day for Welfare Providers, Recipients, Boston Globe, Nov. 17, 1996, at NH1 (stating that the language
posed the bill, "[t]he poor, the elderly, the disabled will simply lack the means to care for themselves, and, what is worse, they have no grace period to prepare for these changes."\textsuperscript{18} While Congress has the right to enact legislation that some may consider unfair,\textsuperscript{19} it can never encroach on the procedural due process guarantees of the Fifth and Fourteenth Amendments.\textsuperscript{20}

This Note argues that all provisions of the Personal Responsibility Act, especially those relating to food stamps, must provide legal immigrants with necessary procedural due process safeguards. Legal immigrants who either: 1) have worked forty qualifying quarters; 2) have been or are a spouse of an individual who worked forty qualifying quarters; or 3) have been or are a child under the age of eighteen of an individual who worked forty qualifying quarters meet the statutory exception that allows them to continue receiving food stamps. Because of the procedural complexity involved in determining whether or not a legal immigrant has met this exception, however, many deserving legal immigrants are in danger of losing their food stamp benefits. Understandable and practical procedural safeguards, including the right to a full pre-termination evidentiary hearing, are necessary to ensure that those who have worked forty quarters continue to receive food stamp benefits.

Part I of this Note examines the history of procedural due process from its constitutional foundations through the current case law. The evolution of the Court's interpretation of procedural due process reveals the confusion engendered by this constitutional guarantee.

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\textsuperscript{19} See Bi-Metallic Inv. Co. v. State Bd. of Equalization, 239 U.S. 441, 445 (1915). In \textit{Bi-Metallic}, the Court assumed that the power of democracy protects individuals' rights from the actions of lawmaking representatives. \textit{Id.} Additionally, the Court viewed statutory enactments as raising policy questions that are best suited for the legislature, while adjudicative processes are better suited for individual how, why, and where questions. \textit{See id.; see also Kenneth C. Davis, Administrative Law Text § 7.02, at 115-16 (1959) (articulating the distinctions between legislative and adjudicative facts); Edward L. Rubin, \textit{Due Process and the Administrative State}, 72 Cal. L. Rev. 1044, 1117-18 (1984) (discussing the distinction between rule-making and adjudication that has been used in modern administrative law). Yet, these considerable assumptions made by the Court in \textit{Bi-Metallic} would be difficult to apply to legal immigrants. Today's Court would have to consider whether the procedural processes offered by the political system fairly protect the interests of legal immigrants who are food stamp recipients. \textit{See infra} note 211 for a discussion of the obstacles that prevent legal immigrants from participating in the political process. \textit{See generally Richard E. Levy, \textit{Escaping Lochner's Shadow: Toward a Coherent Jurisprudence of Economic Rights}, 75 N.C. L. Rev. 329, 396-97 (1995) (stating that the importance of liberal social policy would allow the Court to be more aggressive in protecting substantive rights); Stephen Loffredo, \textit{Poverty, Democracy and Constitutional Law}, 141 U. Pa. L. Rev. 1277, 1278 (1993) (arguing for enhanced judicial protection for the poor).

Part I will show that from its greatest day in *Goldberg v. Kelly*\(^2\) to its more limited strength today, the use of procedural due process guarantees has varied over time. Because legal immigrants have enjoyed procedural due process guarantees,\(^3\) courts easily could apply this doctrine to the food stamp provisions pertaining to legal immigrants in the Personal Responsibility Act.

Part II examines the statutory language of the provisions in the Personal Responsibility Act that affects legal immigrants' receipt of food stamp benefits. This part analyzes the Personal Responsibility Act's language relating to the denial of food stamp benefits to all legal immigrants and explains the forty qualifying quarters exception in detail.

Part III examines the procedures that the government is using to implement the elimination of legal immigrants' food stamp benefits. In particular, part III focuses on the food stamp recertification process and the procedures used to determine if the legal immigrants meet the forty qualifying quarters exception.

Part IV applies procedural due process analysis to the Personal Responsibility Act's forty qualifying quarters exception and the guidelines that have been specified to implement the Personal Responsibility Act's elimination of food stamp benefits from legal immigrants. Finally, it concludes that before The Personal Responsibility Act's provisions can affect the food stamp benefits of a legal immigrant attempting to meet the forty qualifying quarters exception, a state must apply the full constitutional procedural due process safeguards imposed in court proceedings, including the right to call witnesses, the right to counsel, and the right to cross examine.

I. The History of Procedural Due Process

While the right to procedural due process is explicitly provided in the Constitution,\(^3\) initially, the Court was hesitant to give this right any significant meaning. The Court changed its interpretation in the early 1970s, however, tremendously expanding the scope of interests protected by procedural due process and the procedures necessary to safeguard those interests. Over the last two decades, the Court has retreated and reduced the breadth of procedural due process safe-

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22. See Graham v. Richardson, 403 U.S. 365, 371 (1971). The Court interpreted the term "person" used in the Due Process Clauses to include lawfully admitted aliens as well as citizens of the United States. The statutes in question in Graham created two classes of needy persons that were similar in every respect except for their status as citizens. Id. at 367-68. As a result, United States citizens were allowed to file for and continue to receive benefits while legal immigrants, upon application, were denied these same benefits and could not continue to obtain governmental assistance. The Court held that procedural due process demands that everyone have the same opportunity to life, liberty, or property. Id. at 371. See infra note 215 for a discussion of possible equal protection claims for legal immigrants.
23. See infra part I.A for relevant text in the U.S. Constitution.
guards. These contrasting applications of the doctrine suggest that the Court could apply procedural due process protections to legal immigrants attempting to qualify for food stamps under the forty qualifying quarters exception.

A. Constitutional Background

Procedural due process is derived from the Fifth Amendment's guarantee that "[n]o person shall . . . be deprived of life, liberty, or property, without due process of law," and the Fourteenth Amendment's mandate "nor shall any State deprive any person of life, liberty, or property, without due process of law." These provisions do not ban all government interference with life, liberty, or property; rather, they demand that if and when the federal government infringes on these rights, it must act with procedural fairness. At the essence of procedural due process is the notion that an injured party has a right to receive notice and an opportunity to be heard before the deprivation of a "property" or "liberty" interest. Moreover, procedural due process is especially important to prevent the government from imposing subjective criteria to determine each individual's rights.

The Court has been somewhat unclear in interpreting constitutional procedural due process. It has followed a middle ground: never de-
fining a property interest absent positive legislation to support such an interest, yet denying the legislature the power to completely limit the full scope of any one benefit. This interpretation of procedural due process creates some confusion because the legislature is permitted to establish any property interest; however, the same legislature is prevented from altering that interest in the manner it wants without proper process.


In Goldberg v. Kelly, the Court recognized government entitlements as interests in "liberty" or "property" which could not be taken away without procedural due process. Welfare payments for a per-

See generally Skinner v. Oklahoma, 316 U.S. 535, 541 (1942) (describing marriage and procreation as basic liberties); Pierce v. Society of Sisters, 268 U.S. 510, 534-35 (1925) (holding that there is a liberty interest in choosing to have your children educated in private schools); Meyer v. Nebraska, 262 U.S. 390, 400 (1925) (holding that working as a German language professor was a liberty interest). 30. See Bowen v. Gilliard, 483 U.S. 587, 597 (1987) ("Unless the Legislative Branch's decisions run afoul of some constitutional edict, any inequities created by such decisions must be remedied by the democratic processes."); Mathews v. De Castro, 429 U.S. 181, 185 (1976) (stating that governmental decisions to improve the general public welfare are not to be determined by the courts because the discretion usually belongs to Congress); see also Cynthia R. Farina, Conceiving Due Process, 3 Yale J.L. & Feminism 189, 200 (1991) (maintaining that "due process protects people from being deprived, by their government, of only those things their government has chosen to allow them to keep").

31. Zinermon v. Burch, 494 U.S. 113, 124-26 (1990) (stating that if legislation lacks adequate procedural safeguards, as mandated by the Due Process Clause, courts must protect the interests of the parties affected from arbitrary government action); Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 541 (1985) (holding that the Constitution and the Due Process Clause provide rights that cannot be taken away without adequate procedure); Logan v. Zimmerman Brush Co., 455 U.S. 422, 429-30 (1982) (stating that the Due Process Clause prevents states from denying individuals their property interest without procedural due process). Moreover, some courts have held that judicially enforced procedures are necessary even when the issue at stake is one of legislative policy rather than an adjudicative issue. See Marshall v. Lynn, 497 F.2d 643, 646 (D.C. Cir. 1973) (requiring notice to tenants for possible rent increases in conflict with federal legislative action); Thompson v. Washington, 497 F.2d 626, 639-40 (D.C. Cir. 1973) (stating that tenants are entitled to participate in the consideration of rent increases); see also Frank H. Easterbrook, Substance and Due Process, 1982 Sup. Ct. Rev. 85, 85 (stating that the Court should clarify its position and give full power to the legislatures because "[a] court that protects the legislative power to define substantive entitlements ought to give it control of process as well").


33. Id. at 265-66. Before Goldberg, the Court was unwilling to find a "property" or "liberty" interest for benefits received from the public sector. See Bailey v. Richardson, 182 F.2d 46 (D.C. Cir. 1950) (holding that a hearing was not required for dismissal from governmental occupation), aff'd, 341 U.S. 918 (1951). In exercising such reluctance, the Court was following traditional, pre-New Deal private property doctrine. See Richard J. Pierce, Jr., The Due Process Counterrevolution of the 1990s?, 96 Colum. L. Rev. 1973, 1980 (1996) ("The 'old' property that the Court discounted is private property. It is created by individuals in the private sphere, with the govern-
son statutorily entitled to receive them were not "charity," but the Court stated were a right protected by the Constitution against arbitrary withdrawal. The Court also noted that there was a "brutal need" among welfare recipients for adequate process.

Goldberg also required the government to provide an extremely broad set of procedural protections before it could take away what the Court found to be a "property" interest. In welfare cases, an evidentiary hearing was required before welfare benefits could be eliminated. While acknowledging that the costs of these evidentiary hearings undoubtedly would increase governmental expenditures, the Court nonetheless recognized that the hearings would also allow welfare recipients the opportunity to participate in the administrative

- 34. Goldberg, 397 U.S. at 265. In Goldberg, the Court accepted the work of Charles A. Reich, The New Property, 73 Yale L.J. 733 (1964). Reich claimed that citizens need to extend property rights to include government benefits to protect the independence of those individuals who rely on these benefits. Id. at 785-86. He argued that government benefits were a major source of wealth in post-New Deal America and that the law had not realized the importance of protecting individuals' benefits. Id. at 733. Moreover, individuals had a "new property" right in welfare benefits and these rights had to be protected through an expansion of "scrupulous observance of fair procedure." Id. at 783.

- 35. Goldberg, 397 U.S. at 261. The use of such passionate language comes from Justice Brennan's personal feelings regarding welfare benefits. "For Brennan, the wrongful denial of welfare to one person hurts everyone because it denies all of us of that person's meaningful participation in the community." Randy Lee, Twenty-Five Years After Goldberg v. Kelly: Traveling from the Right Spot on the Wrong Road to the Wrong Place, 23 Cap. U. L. Rev. 863, 900 (1994).

- 36. Goldberg, 397 U.S. at 264 ("For qualified recipients, welfare provides the means to obtain essential food, clothing, housing, and medical care.").

- 37. Id. at 265. As the Court explained:

  We have come to recognize that forces not within the control of the poor contribute to their poverty. . . . Welfare, by meeting the basic demands of subsistence, can help bring within the reach of the poor the same opportunities that are available to others to participate meaningfully in the life of the community. . . . Public assistance, then, is not mere charity, but a means to 'promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity.'

  Id. (footnote omitted).

- 38. Id. at 264 ("[W]hen welfare is discontinued, only a pre-termination evidentiary hearing provides the recipient with procedural due process."); see Ortwein v. Schwab, 410 U.S. 656, 659 (1973) (requiring that a welfare recipient be given a pre-termination evidentiary hearing because of procedural due process guarantees) (citing Goldberg, 397 U.S. at 264, 266-71).
In doing so, the Court claimed that the intangible value of understanding why one’s benefits are being terminated is more important than fiscal restraint over administrative resources. Thus, to affect a person’s property or liberty interests, the full procedural safeguards used in court proceedings should be imposed—including the rights to call witnesses, to counsel, and to cross examine.

After Goldberg, it was apparent that more and more federal government actions could be deemed to impair “liberty” or “property” interests. Between 1970 and 1972 the Court expanded procedural due process protections to numerous new property and liberty interests that were previously viewed solely as privileges. The decision in Goldberg indicated that welfare, and possibly other governmental entitlements like food stamps, were given strict procedural due process protections.

C. Creating a Framework for Procedural Due Process Analysis

Following Goldberg, the Court, in analyzing the constitutionality of government actions affecting benefits, had to determine whether an individual had been deprived of an interest in “life,” “liberty,” or “property.” If the Court determined that the interest at hand was not a life, liberty, or property interest, it inquired no further into the

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39. Goldberg, 397 U.S. at 264-66; see Davis, supra note 19, § 7.02, at 115 (claiming that the “party who has a sufficient interest or right at stake in a determination of governmental action should be entitled to an opportunity to know and to meet . . . unfavorable evidence of adjudicative facts”).
41. Id. at 268-71.
42. See Perry v. Sindermann, 408 U.S. 593, 601-03 (1972) (finding a property interest when the government has made an implied contractual provision regarding a state college professor’s tenure); Wisconsin v. Constantineau, 400 U.S. 433, 437 (1971) (holding that when a person’s reputation is at stake because of governmental actions, “notice and an opportunity to be heard are essential”); Pierce, supra note 33, at 1980 (claiming that the Court’s actions during this period vastly expanded procedural due process protections); see also Robert McAuliffe, A Procedural Due Process Argument for Proportionality Review in Capital Sentencing, 21 Colum. J.L. & Soc. Probs. 385, 399 (1988) (stating that the Court expanded the meaning of liberty and property following Goldberg); Note, Developments in the Law—Public Employment, 97 Harv. L. Rev. 1611, 1794-95 (1984) (arguing that the dynamic expansion of procedural due process protections during the early 1970s was caused by Charles Reich’s “new property” theory and its impact on the Court in Goldberg).
43. Pierce, supra note 33, at 1978. “In a single opinion the Court transformed welfare, and potentially all other forms of government benefits, from a mere privilege completely unprotected by due process to a property right subject to the most stringent procedural safeguards available in the United States legal system.” Id. at 1977-78. But see Goldberg v. Kelly, 397 U.S. 254, 276 (Black, J., dissenting) (“[I]t is obvious that today’s result does not depend on the language of the Constitution itself or the principles of other decisions, but solely on the collective judgment of the majority as to what would be a fair and humane procedure in this case.”).
44. U.S. Const. amendments. V & XIV.
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In government benefit cases, plaintiffs met the property interest requirement by demonstrating that they were included in the statute's rule-based standard for receipt of the benefit.

The Court first used this framework in *Board of Regents v. Roth*, holding that due process protection applied to property interests when an individual already has a property right in particular benefits. If a person is already enjoying a benefit, he has procedural due process rights if the benefit, or property right, is denied. As a result of *Roth's* rationale, the property interest for a recipient of a government benefit is based on the statute's definition of eligibility for the benefit. Procedures are then needed to offer benefit recipients the ability to prove their eligibility for the benefit. Because property rights protect one's ownership claims, "a purpose of the constitutional right to a hearing [is] to provide an opportunity for a person to vindicate those claims." Concerned that it had created overly expansive procedural due process protections in cases like *Goldberg*, the Court began to scale back the types of benefits which it deemed to create a "liberty" or "property" interest and the procedural protections afforded these inter-

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45. Nancy Morawetz, *A Due Process Primer: Litigating Government Benefit Cases in the Block Grant Era*, 30 Clearinghouse Rev. 97, 98 (1996). Currently, the Court does not examine the significance of the interest or the severity of the possible injury to the individual. *Id.*

46. See supra notes 34-37 and accompanying text. "While this Court has not attempted to define with exactness the liberty... guaranteed... it denotes... the right of the individual... to enjoy those privileges long recognized... as essential to the orderly pursuit of happiness by free men." *Board of Regents v. Roth*, 408 U.S. 564, 572 (1972) (quoting *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923)).

47. 408 U.S. 564 (1972).

48. *Id.* at 569-70.

49. *See Perry v. Sindermann*, 408 U.S. 593, 601-03 (1972) (finding a property interest when the government has made an implied contractual provision regarding a state college professor's tenure); *Roth*, 408 U.S. at 577 (stating that a property interest is not just an individual's "unilateral expectation" but a "legitimate claim of entitlement" to the benefit).

50. *Roth*, 408 U.S. at 577; see Morawetz, supra note 45, at 99 (basing the property interest for the benefit in the eligibility statute).

51. *Roth*, 408 U.S. at 577.

52. *Id.* "Property interests, of course, are not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law." *Id.*
As a result of finding Goldberg-like protections unworkable, the Court crafted a balancing test in *Mathews v. Eldridge*.

### D. The Mathews v. Eldridge Balancing Test

Following the initial determination of whether a property interest exists, the test set forth in *Roth*, the *Mathews* balancing test is the second step used in procedural due process analysis. The *Mathews* test weighs the strength of constitutionally mandated procedural due process against pragmatic considerations involved in enforcing procedures. The test examines the costs of requiring a particular set of procedures and weighs them against the benefits from the use of those procedures.

The three key factors used in the *Mathews* test are: 1) the strength of the private interest that would be affected by official action; 2) the risk of an erroneous deprivation through the procedures used and the likelihood that administrative error will be reduced by using additional safeguards; and 3) the burden on government that the additional or substitute procedural requirement would entail.

Unlike welfare benefits in *Goldberg*, the property or liberty interests at issue in *Mathews*—disability payments—were not deemed as important because disability payments were not targeted at the poor and were not simply determined by one’s financial status. While this...

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53. In particular, by 1978, nine cases had limited the scope of procedural due process safeguards. See Memphis Light, Gas & Water Div. v. Craft, 436 U.S. 1, 11-12 (1978) (holding that terminating utility service is subject to limited procedural due process guarantees); Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 524 (1978) (stating that courts are not free to impose procedures if an agency has not gone through its full procedural process); Ingraham v. Wright, 430 U.S. 651, 682 (1977) (holding that the Due Process Clause does not require notice and a hearing prior to corporal punishment for public school children); Paul v. Davis, 424 U.S. 693, 698-99 (1976) (holding that reputation alone is not a liberty or property interest significant enough for procedural due process protection); Mathews v. Eldridge, 424 U.S. 319, 334-35 (1976) (balancing the governmental and private interests to limit the extent of procedural due process protections); Goss v. Lopez, 419 U.S. 565, 576 (1975) (holding that a ten day suspension of students was an interference with a property right and that the students must be given notice and a hearing); Arnett v. Kennedy, 416 U.S. 134, 152-54 (1974) (creating the “bitter with the sweet” doctrine which states that if government creates a property interest by conferring benefits in the form of an entitlement, the government could also limit the procedural safeguards that attach to that interest); United States v. Florida E. Coast Ry., 410 U.S. 224, 240 (1973) (stating that the term “hearing” did not on its own require a full evidentiary proceeding); United States v. Allegheny-Ludlum Steel Corp., 406 U.S. 742, 755 (1972) (allowing an administrative agency to proceed with exemption procedures in special situations).

55. *Id.* at 334-35.
56. *Id.*
57. *Id.* at 340-43. A recent Court decision suggests that in addition to the factors applied in the *Mathews* test, the deprivation of the interest in question must also be atypical or significant. Sandin v. Conner, 115 S. Ct. 2293, 2301 (1995). But this case’s applicability to food stamp benefits is questionable because *Sandin* involved a liberty interest rather than a property interest. *Id.*
may be surprising following the liberal holding of Goldberg, ostensibly the Court in Mathews was only limiting, not eliminating, procedural due process, and was recognizing that, in practice, pre-deprivation hearings were both time-consuming and costly. This understanding of Mathews indicates that greater procedural protections are necessary for need-based programs, such as food stamps, due to their recipients' critical private interest.

E. Procedural Due Process for Food Stamp Benefits

In Atkins v. Parker, a case that analyzed the implications of an across-the-board food stamp cut, the Court stated that a food stamp recipient has a property right in those benefits. Atkins held that a recipient may not challenge a wholesale change by the legislature in the eligibility requirements for a benefit so long as the government provides adequate notice. The Court also stated, however, that if

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58. See Goldberg v. Kelly, 397 U.S. 254, 264 (1970) (finding unpersuasive the argument that pre-deprivation hearings would be too costly for the states because the benefits at issue was the sole measure of survival for welfare recipients). The Court in Mathews also placed more faith in the procedures of the federal government agency that administered benefits than in the local public assistance program in Goldberg. "In assessing what process is due in this case, substantial weight must be given to the good-faith judgments of the individuals charged by Congress with the administration of social welfare programs that the procedures they have provided assure fair consideration of the entitlement claims of individuals." Mathews, 424 U.S. at 349 (citation omitted).

59. Morawetz, supra note 45, at 99. The Mathews balancing test is also counter-intuitive in some respects. First, the test places little or no significance on an individual's basic dignitary interest in fair procedures. Such procedures represent a valuable human experience in which an individual can participate in a decision that greatly affects his interests, and, at the same time, gain satisfaction in understanding the decision through a detailed explanation. See Joint Anti-Fascist Refugee Comm. v. McGrath, 341 U.S. 123, 171-72 (1951) (Frankfurter, J., concurring) (stating that the authority and validity of the government depends on how decisions are made within the government); Tribe, supra note 27, § 10-7, at 501 (stating that the value placed in procedural due process historically comes from the belief that "personal freedom can be preserved only when there is some institutional check on arbitrary government action"). Additionally, the Mathews test requires the balancing of factors that cannot comfortably be placed on the same scale. For example, the private interest of a single benefit recipient differs greatly in meaning from the government's interest in cutting budgetary expenses. Jerry L. Mashaw, The Supreme Court's Due Process Calculus for Administrative Adjudication in Mathews v. Eldridge: Three Factors in Search of a Theory of Value, 44 U. Chi. L. Rev. 28, 58 (1976) (stating that the three factors used in the Court's balancing test are insufficient guides for analysis because the Court does not specify the factors' suggestive values in comparison to each other). Finally, the government also has an interest in detailed procedural requirements. A civic-spirited government would prefer that its programs help those who were intended to be assisted. See Tribe, supra note 27, § 10-13, at 540-41.


61. Id. at 128 (stating that "[f]ood-stamp benefits . . . are a matter of statutory entitlement for persons qualified to receive them." (quoting Goldberg, 397 U.S. at 262)).

62. Id. at 129-31. "Thus, it must be assumed that Congress had plenary power to define the scope and the duration of the entitlement to food-stamp benefits, and to
there are questions regarding an individual's eligibility determination under the new law, pre-deprivation hearings, like those specified in *Goldberg*, are required.\(^6\)

In *Atkins*, the petitioners commenced the action on behalf of all Massachusetts households who had received a standardized letter of notice that mentioned possible reductions in food stamp benefits.\(^6\) The notice sent to food stamp recipients claimed that their benefit levels might be decreased due to diminished funding in the federal food stamp program.\(^6\) The notice also stated that recipients had a right to request a hearing within ten days and that recipients' food stamps would be continued until this hearing was held.\(^6\)

Remaining consistent with its ruling in *Goldberg*,\(^6\) the Court held that food stamp benefits are a form of property protected by procedural due process guarantees for individuals qualified to receive them.\(^6\) The Court noted that the procedural aspect of the Due Process Clause does not constitutionally restrict Congress' authority to make substantive changes in entitlement laws.\(^6\) Furthermore, because recipients received individualized notice that specifically informed them of their opportunity to request a fair hearing and gave the recipients the right to retain their benefits until the requested hearing, the Court held that the notice met constitutional procedural due process requirements.\(^7\)

II. PROVISIONS IN THE PERSONAL RESPONSIBILITY ACT AFFECTING LEGAL IMMIGRANTS' RECEIPT OF FOOD STAMP BENEFITS

The right to procedural due process is bestowed not by legislative action, but by constitutional guarantee.\(^7\) Part II examines the statu-
tory language of the provisions in the Personal Responsibility Act that affect legal immigrants’ receipt of food stamp benefits. As part II demonstrates, the Personal Responsibility Act’s language, which relates to the denial of food stamp benefits to all legal immigrants and its forty qualifying quarters exception, demonstrates that many constitutional procedural due process questions exist within the statute.

One of the most significant reforms in the Personal Responsibility Act is its revised rules on program ineligibility, including its unprecedented broad restrictions on benefits for legal immigrants. The Personal Responsibility Act’s provisions relating to legal immigrants will account for forty-four percent of the legislation’s federal savings, approximately $23.7 billion over the next seven years.

A. General Information on the Personal Responsibility Act’s Restrictions on Legal Immigrants

Under the Personal Responsibility Act, legal immigrants will face three general restrictions. First, legal immigrants will neither receive nor be eligible in the future for both supplemental security income (“SSI”) and food stamps. Second, newly arriving legal immigrants will be denied almost all federal need-based assistance for five years.

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sey v. Brewer, 408 U.S. 471, 481 (1972) (stating that once due process applies, the only question remaining is what process is due and indicating that the Court can remain flexible in the determination of the procedures). But see Easterbrook, supra note 31, at 110-11 (arguing that because of the inefficiency that would result, the Court should not impose procedural protections for government benefits).

72. Legal immigrants are classified as “qualified aliens” in the legislation. Qualified aliens are defined as: legal permanent residents, refugees, asylees, persons who have had their deportation withheld, parolees admitted for at least one year, aliens who have been present since before April 1, 1980, and conditional entrants in the United States. The Personal Responsibility Act, Pub. L. No 104-193, § 431, 110 Stat. 2105, 2274 (1996). But cf. John Rawls, A Theory of Justice 73 (1971). This treatment of legal immigrants goes against Rawlsian notions of justice: [A]ssuming that there is a distribution of natural assets, those who are at the same level of talent and ability, and have the same willingness to use them, should have the same prospects of success regardless of their initial place in the social system, that is, irrespective of the income class into which they are born.

Id.


74. The language for the transition period for legal immigrants receiving SSI benefits states that: during the period beginning on the date of the enactment of this Act and ending on the date which is 1 year after such date of enactment, the Commissioner of Social Security shall redetermine the eligibility of any individual who is receiving benefits under such program as of the date of the enactment of this Act and whose eligibility for such benefits may terminate by reasons of the provisions.

§ 402, 110 Stat. at 2263. The Personal Responsibility Act does not, however, provide the states with guidelines to follow in eliminating benefits.

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after their arrival. Third, a system of block grants for Temporary Assistance for Needy Families ("TANF"), Title XX Social Services Block Grant ("SSBG"), and Medicaid, administered by the states, will replace other current federal entitlement programs and will allow the states to deny legal immigrants state assistance. Consequently, current immigrants remain eligible for all benefits except food stamps and SSI, unless their resident state chooses to ban them from TANF, Medicaid, and/or Title XX Social Services.

While legal immigrants lose all of these benefits, they still remain eligible for programs, services, or assistance that are classified by the Attorney General as necessary for the protection of life or safety.

75. A federal public benefit is defined as:
   A) any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States; and (B) any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided . . . by an agency of the United States or by appropriated funds of the United States.

§ 401, 110 Stat. at 2262.

Federal means-tested public benefits were originally defined as public benefits including cash, medical, housing, and food assistance and social services of the Federal government for which the eligibility for benefits of an individual, household, or family eligibility unit, are determined on the basis of income, resources, or financial need of the individual, household, or unit. Although this definition was deleted from the bill, it was the intention of the conferees that this definition be used for purposes of the Act. H.R. Conf. Rep. No. 725, 104th Cong., 2d Sess., reprinted in 142 Cong. Rec. H8829-02, H8927-02 (daily ed. July 30, 1996).

76. Title XX Social Services Block Grant (SSBG) is a block grant that states use to fund programs such as child care and services for the elderly. See 42 U.S.C. § 1397 (1994).

77. § 401, 110 Stat. at 2113. For TANF, the language is clearly relating to the effectiveness of the termination of benefits, but only vague procedural due process guidelines are mentioned for states to follow. The Act merely states that "[a]n alien who on the date of the enactment of this Act is lawfully residing in any State and is receiving benefits [under such program] on the date of the enactment of this Act shall continue to be eligible to receive such benefits until January 1, 1997." § 412, 110 Stat. at 2270. States are allowed to limit the eligibility of qualified aliens for state public benefits. A means-tested public benefit of a state or locality is any program under which the state or locality specifies the standards for eligibility, and does not include any federal public benefit. Again, the original definition in the proposed legislation was deleted. H.R. Conf. Rep. No. 725, 104th Cong., 2nd Sess., reprinted in 142 Cong. Rec. H8829-02, H8928-02 (daily ed. July 30, 1996). States have the authority to determine the eligibility of legal immigrants for state and local means-tested programs with certain limited exceptions. §§ 411-12, 110 Stat. at 2268-69.

78. This includes:
   [p]rograms, services, or assistance . . . specified by the Attorney General, in the Attorney General's sole and unreviewable discretion after consultation with appropriate Federal agencies and departments, which (i) deliver in-kind services at the community level, including through public or private non-profit agencies; (ii) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and (iii) are necessary for the protection of life or safety.
The Attorney General has issued a "provisional specification" of exempt programs and services that deliver in-kind services at the community level and are not means-tested. These include necessary assistance relating to child protection, mental illness and substance abuse treatment, short-term housing assistance for the homeless and for victims of domestic abuse, food banks, soup kitchens, and medical public health services.

B. The Food Stamp Program

The federal Food Stamp Program is a public social service program established "to promote the general welfare, to safeguard the health and well-being of the Nation's population by raising levels of nutrition among low-income households." Congress intended for the Food Stamp Program to "permit low-income households to obtain a more nutritious diet through normal channels of trade by increasing food purchasing power for all eligible households." The federal government pays for the food stamps and assumes some of the states' administrative costs. The Food Stamp Program is administered by the Secretary of the Agriculture who promulgates "national uniform eligibility standards for the Food Stamp program."

To be eligible for food stamps, one's household income must not exceed 130% of the Federal Poverty Income Guidelines. In 1995, the poverty threshold for an individual was $7,763 and for a four member family it was $15,569. That same year, 36.4 million people in the United States were considered poor and the poverty rate was reported at 13.8% of the United States population. Most of the

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§ 401, 110 Stat. at 2261.  
80. Id.  
82. 7 U.S.C. § 2011 (1994); see also Biek v. Palmer, 916 F. Supp. 1475, 1492 (N.D. Iowa 1996) (arguing that "[f]ood stamps . . . help meet the basic demands of subsistence, and can help bring within the reach of the recipients the same opportunities that are available to others to participate meaningfully in the life of the community"), aff'd, 102 F.3d 1472 (8th Cir. 1997).  
84. Valenzuela v. Espy, 860 F. Supp. 1421, 1423 (D. Ariz. 1993); see Joudeh v. United States, 783 F.2d 176, 178 (10th Cir. 1986) (stating that the Secretary of the Agriculture promulgates such regulations as deemed necessary).  
87. Id. at 1.
$24.4 billion in 1995 food stamp benefits went to these individuals.\(^8\)

Prior to the passage of the Personal Responsibility Act, in determining food stamp eligibility, the income and resources of an alien's sponsor and the sponsor's spouse, less a pro-rated share for the sponsor and spouse, were deemed, or attributed, to legal immigrants for three years.\(^9\) However, once the permanent bar goes into effect for food stamp benefits, no further deeming will be necessary because all legal immigrants will be ineligible for food stamps subject to certain exceptions.\(^9\)

C. Provisions Eliminating Food Stamps for Legal Immigrants Already Receiving Benefits

Under one of the harshest provisions of the Personal Responsibility Act, legal immigrants, currently receiving benefits, will have their food stamps eligibility severely limited.\(^9\) While these individuals receive food stamp benefits in the same proportion as their percentage of the United States population, one of the Personal Responsibility Act's general purposes is to eliminate most legal immigrants from receiving food stamps.\(^9\) The Congressional Budget Office has estimated that approximately one million aliens currently receiving food stamps could lose eligibility as a result of this legislation.\(^9\) In fact, subject to some limited exceptions, most immigrants will lose their food stamp benefits until they become citizens.\(^9\)

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\(^8\) Id. at 2; see Daniel Mont, Welfare and Immigrants: Restricting the Eligibility of Legal Immigrants for Welfare Programs, MigrationWorld Mag., Jan. 1, 1996, at 20.


90. See generally Boswell, supra note 85, at 1495 (stating that the most common outcome of the new deeming requirements is that the immigrant is no longer eligible for food stamps). The term “deeming” means that an immigrant's sponsor and spouse's income and resources are viewed as available to an immigrant when determining program eligibility for food stamps with no allowance for the needs of the sponsor's family. The Personal Responsibility Act, Pub. L. No. 104-193, § 421, 110 Stat. 2105, 2270-71 (1996). The new deeming requirements apply only to immigrants whose sponsors sign new legally enforceable affidavits of support which must be put into use by March 1997. Id. at 2263. These deeming requirements may be unconstitutional for legal immigrants. El Souri v. Department of Social Serv., 414 N.W.2d 679, 682-83 (Mich. 1987) (holding that provisions that deemed income of an alien sponsor as income of the alien in determining eligibility for general assistance benefits were subject to strict scrutiny for purposes of equal protection analysis).

91. § 402, 110 Stat. at 2262-63. In general, the Act increases each state's role in the Food Stamp Program, adds new work requirements, and significantly limits the availability of future benefits for individuals. §§ 741-891, 110 Stat. at 2307-47. See Vee Burke et al., supra note 73, at 3-4.

92. See Mont, supra note 88, at 20; see also supra notes 86-87 for statistics on food stamp benefits and recipient's benefit levels.


94. § 402, 110 Stat. at 2262-63.
The Personal Responsibility Act grandfathers currently participating aliens until their recertification. Legal immigrants who are currently receiving food stamps must be recertified between April 1, 1997 and August 22, 1997, one year after the legislation was enacted. Those aliens who have not been naturalized or are not in one of the categories of aliens excepted from the termination of benefits will not be recertified and will have their benefits discontinued sometime before August 22, 1997. These legal immigrants will then no longer be eligible for food stamps.

D. Forty Quarter Exception

Certain exceptions in the Personal Responsibility Act will allow some legal immigrants to continue to receive food stamps. One such exception provides that legal immigrants who have worked for forty qualifying quarters will remain eligible for food stamps. The term

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95. Id. at 2264.
96. Id. at 2263-64. Originally, the provisions were only supposed to allow legal immigrants to receive benefits until January 1, 1997. Id. at 2265. Because, in some states, the state food stamp agencies recertify recipients for food stamp eligibility every three or six months, many immigrants could have lost their benefits by the early part of 1997. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 amended the Personal Responsibility Act and delayed its implementation until April 1, 1997 for current food stamp recipients who are legal immigrants. "[T]he specified Federal program . . . ineligibility . . . shall not apply until April 1, 1997, to an alien who received benefits under such program on the date of enactment of this Act . . ." The Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, § 510, 110 Stat. 3009 (1996).
97. § 402, 110 Stat. at 2263-64. "[T]he State agency shall, at the time of the recertification, recertify the eligibility of any individual who is receiving benefits . . . as of the date of enactment of this Act and whose eligibility for such benefits may terminate by reason of the provisions . . ." Id.
98. The model underlying this statute has been criticized. See, e.g., Legomsky, supra note 2, at 1463 (arguing that this type of dichotomous method, wherein legal immigrants lose their eligibility for food stamps, may not be as effective as a continuum model, in which legal immigrants would have benefits in proportion to the amount of time they have been in the United States).
99. These include exceptions for refugees, asylees, and those granted withholding of deportation. § 402, 110 Stat. at 2262. These groups are eligible only for benefits during their first five years in the United States. If a refugee, asylee, or one granted withholding of deportation has already been in the U.S. for five years, food stamp and other governmental benefits will no longer be made available. Id.
100. The Personal Responsibility Act states that a qualified alien is eligible for any designated federal program if the alien: is lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act; and . . . worked 40 qualifying quarters of coverage as defined under title II of the Social Security Act or can be credited with such qualifying quarters . . . and in the case of any such qualifying quarter creditable for any period beginning after December
“quarter,” as defined by the Social Security Act, means any of the four three-calendar-month periods ending with March 31, June 30, September 30, and December 31 of any year. Social Security credits for these qualifying quarters are earned by working either as an employee or as a self-employed individual.

Minor children and spouses can be credited with the qualifying quarters of their supporters. A child can count those quarters worked by a parent while the child was under the age of eighteen. A legal immigrant can also count all qualifying quarters worked by a spouse during their marriage provided that the legal immigrant remains married to his spouse or his spouse has died.

III. Procedures for Legal Immigrants Denied Food Stamp Benefits

Legal immigrants currently receiving food stamp benefits must go through the process of recertification to determine whether they are still eligible to receive food stamps under the Personal Responsibility Act. This part provides a detailed explanation about the procedures involved in recertifying legal immigrants for food stamp bene-

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§ 402, 110 Stat. at 2264-65.
101. 20 C.F.R. §§ 404.102, 404.140(a), 404.143(a) (1996). All types of earnings follow this rule. A maximum of four quarterly credits can be earned each year. For 1978 and later, credits are based solely on the total yearly amount of earnings. The amount of earnings needed to earn a credit increases and is different for each year. For 1978 through 1996, the amount of earnings needed for each credit is an amount based on a formula which reflects yearly national increases in average wages. Thus, for example, a $250 quarter in 1978 will qualify, and this amount is adjusted incrementally to reflect rates of inflation. 20 C.F.R. § 404.143(a) (1996). Yet, for any quarters worked after January 1, 1997, legal immigrants will not be able to count a quarter in which they received any federal means-tested public benefits. § 402, 110 Stat. at 2264-65.
103. The Personal Responsibility Act states:
For purposes of this title, in determining the number of qualifying quarters of coverage under title II of the Social Security Act an alien shall be credited with—(1) all of the qualifying quarters of coverage as defined under title II of the Social Security Act worked by a parent of such alien while the alien was under age 18, and (2) all of the qualifying quarters worked by a spouse of such alien during their marriage and the alien remains married to such spouse or such spouse is deceased.
§ 435, 110 Stat. at 2275.
104. Id.
105. Id.
106. See supra notes 96-97 and accompanying text (discussing the Personal Responsibility Act's recertification provisions).
Part IV then analyzes whether these procedures meet due process requirements.

A. States' Food Stamp Recertification Procedures

Applicants for most federal, state, and local benefit programs will be subject to new verification criteria to determine if they are qualified aliens who are eligible for benefits. The Personal Responsibility Act allows states additional flexibility in administrative options for food stamp recipients. For legal immigrants, who through the recertification process will find out whether or not they can continue to receive food stamps, the state agency must establish "procedures for notifying households of expiration dates, providing application forms, scheduling interviews, and recertifying eligible households prior to the expiration of certification periods." The state agency

107. § 432, 110 Stat. at 2274. The Personal Responsibility Act specifies that "[n]ot later than 18 months after the date of the enactment... the Attorney General of the United States, after consultation with the Secretary of Health and Human Services, shall promulgate regulations requiring verification that a person applying for a Federal public benefit... is a qualified alien and is eligible to receive such benefit." Id. States also must comply with new verification systems: "[n]ot later than 24 months after the date the regulations [described above] are adopted, a State that administers a program that provides a Federal public benefit shall have in effect a verification system that complies with the regulations." Id. at 2275.

108. § 840, 110 Stat. at 2331. "Notwithstanding any other provision of law, in carrying out the food stamp program, a State agency shall not be required to use an income and eligibility or an immigration status verification system established under section 1137 of the Social Security Act (42 U.S.C. 1320b-7)." Id. The Income and Eligibility Verification System (the "IEVS") is a system in which the state agency coordinates the exchange of information with other federal benefit programs and adheres to standardized procedures in trading information with other federal programs and agencies. 7 C.F.R. § 271.2 (1996). Previously, states had to use the IEVS to assist in verifying household circumstances, financial situations, and alien status. 7 C.F.R. §§ 272.1, 272.8 (1996). Use of the IEVS is now optional with the states. H.R. Conf. Rep. No. 725, 104th Cong., 2d Sess., reprinted in 142 Cong. Rec. H8829-02, H8951 (daily ed. July 30, 1996). The Personal Responsibility Act permits states to determine their own training needs, and authorizes the Simplified Food Stamp Program, through which states can employ a single set of rules for their state cash assistance programs and the Food Stamp Program. § 854, 110 Stat. at 2340-42. The simplified program allows for a single set of rules and procedures to determine eligibility and benefits for food stamps, and standardizes the deductions between programs. See Vee Burke et al., supra note 73, at 3-4. A state's simplified plan may not increase costs to the federal government. If it does, the state must enter into and carry out a corrective action plan, or the Secretary must terminate the state's simplified program. § 854, 110 Stat. at 2340-42.

109. A state agency is defined as an agency "which is responsible for the administration of the federally aided public assistance programs within the State, and in those States where such assistance programs are operated on a decentralized basis, it includes the counterpart local agencies which administer such assistance programs for the State agency." 7 C.F.R. § 271.2 (1996).

110. Food Stamp Program: Simplification of Program Rules, 61 Fed. Reg. 54303, 54318 (1996) [hereinafter Food Stamp Simplification] (to be codified at 7 C.F.R. § 273.14(a)). In determining legal immigrants eligibility for food stamps, states are given the opportunity to decide whether to rely on: 1) self-certification of legal immigrants, 2) reviewing the documents presented by the legal immigrant, or 3) services
will provide legal immigrants already receiving benefits with a notice of expiration at the time of certification.\textsuperscript{111} This expiration notice\textsuperscript{112} must contain detailed information regarding the termination of food stamp benefits, and the different options available for legal immigrants following termination of benefits.\textsuperscript{113}

The recertification process provides procedural safeguards to ensure that if a legal immigrant's benefits are terminated, the action is taken justly. Legal immigrants are given at least ten days to provide the required verification information.\textsuperscript{114} Furthermore, the recertification form that the legal immigrant completes must contain adequate data relating to the immigrant's income and resources that, when added to information already included in the case file, leads to a reliable determination of eligibility and benefits.\textsuperscript{115} As part of the recertification process, the state agency holds a face-to-face interview with each

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\textsuperscript{111} Food Stamp Simplification, supra note 110, at 54318.

\textsuperscript{112} Adequate notice means a written statement that includes a summary of what the agency has done or plans to do. Additionally, notice must include:

- the reason for the intended action;
- the household's right to request a fair hearing;
- the name of the person to contact for additional information;
- the availability of continued benefits; and the liability of the household for any overissuances received while awaiting a fair hearing if the hearing official's decision is adverse to the household. Depending on the timing of a State's system and the timeliness of report submission by participating households, such notice may be received prior to agency action, at the time reduced benefits are received, or, if benefits are terminated, at the time benefits would have been received if they had not been terminated. In all cases, however, participants will be allowed ten days from the mailing date of the notice to contest the agency action and to have benefits restored to their previous level.

\textsuperscript{113} Included among these are: the date the certification period expires, the date by which an application for recertification must be submitted to continue benefits, the consequences of not applying for recertification in a timely manner, notice of the right to receive an application form and to have it accepted if it contains a signature and a legible name and address, information on submission options available to individuals who cannot come into the certification office, the address of the office where the application must be filed, the individual's ability to request a fair hearing if recertification is denied, notice that failure to attend an interview could result in denial of benefits, and notice that the individual is responsible for providing required verification information. Food Stamp Simplification, supra note 110, at 54318.

\textsuperscript{114} Id. "Any [individual] whose eligibility is not determined by the end of its current certification period due to the time period allowed for submitting any missing verification shall receive an opportunity to participate, if eligible, within 5 working days after the [individual] submits the missing verification." Id.

\textsuperscript{115} Id.
legal immigrant who seeks one. Critics have claimed that this kind of "fair hearing" interview generally is unsatisfactory and unhelpful for individuals seeking redress.

When legal immigrants complete their application requirements and the state agency has processed their applications, legal immigrants are then notified of their eligibility for food stamp benefits by the end of their current certification period. The state agency must then provide legal immigrants determined eligible for food stamps an opportunity to participate in the normal issuance cycle in the month following the end of the current certification period. If the legal immigrant is denied benefits under a forty qualifying quarters claim, additional procedures are used to determine if the legal immigrant qualifies for food stamps.

B. Procedures for Legal Immigrants with Forty Qualifying Quarters' Claims

1. Initial Procedures for Eligibility Determination

To initially determine eligibility for legal immigrants who assert claims under the forty qualifying quarter exception, the United States Department of Agriculture has required state agencies to ascertain the individual's understanding as to the following: 1) how many years the legal immigrant, his spouse, or his parents—before the applicant turned eighteen—have lived in the United States; and 2) the number of those years in which the legal immigrant, his spouse, or his parents earned money through employment. If the applicants answer the second question indicating a period of ten years or more, the state agency must contact the Immigration and Naturalization Services

116. Id.
117. See Haskins v. Stanton, 794 F.2d 1273, 1276 (7th Cir. 1986) (stating that administrative hearings for food stamp recipients "do nothing to redress violations of the [Food Stamp] Act that prevent applicants from obtaining a timely decision"); Karen Terhune, Comment, Reforming the Food Stamp Act: Abating Domestic Hunger Means Resisting "Legislative Junk Food", 41 Cath. U. L. Rev. 421, 444 (1992) (claiming that this process, while good in theory, is unsatisfactory because persons who are eligible, but wrongly precluded from benefits, lack the resources necessary to fully understand their rights within the confusion and delays of the food stamp bureaucracy).

118. If there are delays in processing caused by the state agency, those who "have submitted an application for recertification in a timely manner . . . shall receive an immediate opportunity to participate upon being determined eligible . . . . If the household was unable to participate . . . because of State agency error, the household is entitled to restored benefits." Food Stamp Simplification, supra note 110, at 54319. "If a household does not submit a new application by the end of the certification period, the State agency must close the case without further action." Id.

119. Letter to Regional Administrators, supra note 102, at 2. This letter was sent to all state welfare commissioners to provide guidance for implementing the forty qualifying quarters determination. Until regulations are published, state agencies are expected to follow these procedures. Id. at 1.
to verify the date of United States entry of the legal immigrant, his spouse, or his parents.120

If the dates are consistent with having ten or more years of work, no additional documentation is required at this point, and the state agency will allow the legal immigrant to continue receiving food stamps pending further eligibility determinations by the Social Security Administration ("SSA").121 If the dates of United States entry make it impossible to have ten or more years of work, the state agency is instructed to determine the legal immigrant ineligible.122 The state agency will then inform the legal immigrant of interview rights. The legal immigrant can then produce, for purposes of future verification, the full name, date of birth, social security number, and sex of each individual—self, parent, or spouse—whose work history is relevant to the determination of eligibility.123 In addition, the legal immigrant will provide a release form signed by each such individual giving the SSA permission to release information on that individual to the state agency and the legal immigrant.124 This release form requirement is one aspect of the initial procedures for legal immigrants with forty qualifying quarter claims that is problematic in terms of guaranteeing procedural due process.

2. Procedures After Social Security Administration Verification System Becomes Operational

Within three months after the SSA verification system becomes operational, the state agency will send the identifying information provided by the legal immigrant to the SSA for overnight processing.125 The SSA will respond to the state agencies by providing information about the legal immigrant's qualifying quarters of work.126 If the legal immigrant believes that the SSA relied on inaccurate or incomplete information, the state agency will refer the applicant to the SSA for review.127 The SSA will then send each legal immigrant's employment history to the states.128

If the SSA's records do not confirm a legal immigrant's claim of forty quarters and the individual maintains that the Administration

120. Id. at 2.
121. Id. This means that if a legal immigrant, alone or in combination with parents or spouse, spent enough time in the U.S. to have forty quarters of coverage, the individual only needs to state that he or she had met the forty quarter exception to maintain food stamp benefits. Thus, this aspect of the process meets procedural due process guarantees.
122. Id.
123. Id.
124. Id. This form will be kept in the case file to document the legal immigrant's consent.
125. Id. at 3.
126. Id.
127. Id.
128. Id.
PRESERVING PROCEDURAL DUE PROCESS

has erred, the SSA will assist the legal immigrant in trying to establish additional quarters. Legal immigrants in this situation will be allowed to participate in the food stamp program for six more months if the Administration certifies that it is investigating the claim. To continue receiving benefits for this six-month period, the individual will have to provide the state agency with a document from the SSA stating that the number of quarters is under review. This aspect of the procedures appears to meet procedural due process guarantees.

3. Procedures After Either Administrative Review or Receiving Food Stamps for Six-Months

The SSA will then issue a document to the legal immigrant indicating the number of quarters that are under review. A legal immigrant who provides the state agency with this document can continue to receive benefits for six months from the date of the SSA's initial response or until the SSA has completed its review, whichever is earlier. If the SSA is still unable to establish that the individual has reached forty qualifying quarters, the legal immigrant subsequently will be barred from receiving food stamp benefits.

C. Social Security Administration's Review Process

The SSA's eligibility procedures for social security, SSI, and Medicare would be used to determine the validity of a legal immigrant's qualifying quarters claim. The SSA's hearing process usually takes at least a year, however, which is longer than the six month grace pe-

129. Id. at 1-2.
130. Id. at 3.
131. Id.
132. Id.
133. Id.
134. See id. If the legal immigrant does not meet the exception, the state agency shall establish an inadvertent household error claim for the over-issuance—the amount paid to the claimant during this period—unless the individual knowingly provides false information. Id. at 2.
135. See 20 C.F.R. § 404.900 (1996). The administrative process for review has several steps. First, an initial determination about the entitlement is made by the SSA. If an individual is dissatisfied with the SSA's initial determination and subsequent rulings, he may ask the SSA to reconsider its original determination and request a hearing before an administrative law judge. If still not satisfied, he may request that the SSA's Appeals Council review the decision. Id.

The SSA also has an expedited appeals process that can be used if all of the following requirements are met: i) the Administration has made an initial and a reconsidered determination; ii) an administrative law judge has made a hearing decision or Appeals Council review has been requested, but a final decision has not been issued; iii) the party to the reconsidered determination or hearing decision has submitted a written request; and iv) the individual affected has claimed, and the Administration agrees, that the only factor preventing a favorable determination or decision is a provision in the law that is believed to be unconstitutional. 20 C.F.R. § 404.924 (1996).
period provided in the Personal Responsibility Act. If food stamp benefits were terminated within six months, a legal immigrant would be irreparably harmed before the Administration would have finally decided the forty qualifying quarters claim. Thus, legal immigrants facing removal under the Personal Responsibility Act should have full procedural due process safeguards throughout this onerous process, such as pre-deprivation evidentiary hearings. These protections cannot be eliminated by the Department of Agriculture's unilateral termination actions where the exercise of legal immigrants' food stamp property rights depends on a six-month time limit that is incompatible with the eligibility procedures used by the SSA that legal immigrants have no control over.

Administering these immigrant restrictions for food stamps will impose tremendous burdens on state and local governments. Verification systems currently used by the states merely act as fraud detection systems to recognize possible overpayments and potential duplicate assistance. These verification systems may not accurately deter...

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136 Social Security and Disability Insurance Program, 1995: Hearings on Managing the Social Security Disability Insurance Program Before the Subcomm. on Social Security of the House Ways and Means Comm., 104th Cong., 1st Sess. 8 (1995) (statement of Jim Bunning, Chairman, Subcomm. on Social Security) (maintaining that the Social Security Administration must do a better job with backlogs, waiting times, and overdue reviews). For example, the average disabled applicant has to wait three months to have an initial application processed by the SSA. John B. O'Donnell, GOP Criticizes Delays in Disability Cases: But Members Fear Too Many Payments, Baltimore Sun, May 24, 1995, at 3A. An appeal that goes to a judge takes another thirteen months. Id.; see also Susan D. Bennett, "No Relief but upon the Terms of Coming into the House"—Controlled Spaces, Invisible Disentitlements and Homelessness in an Urban Shelter System, 104 Yale L.J. 2157, 2211 (1995) (stating that these slow administrative processes discourage applicants because "[t]he injuries inflicted on the applicant are repeated and intense: the loss of an application, the disregard of waiting lists, the dispensing of conflicting information, and the hours of waiting without any information at all"). Legal immigrant food stamp recipients with forty qualifying quarter claims will have to go through detailed verification processes with local food stamp offices, the SSA, and the INS to continue receiving benefits. These detailed verification processes are a form of "verification extremism" that will discourage and prevent legal immigrants from receiving food stamp benefits.

137 See supra part II.B (discussing the necessity of food stamps and the problem of poverty in the United States). Additionally, the Social Security Administration does not have the power to limit the constitutional protections that accompany an entitlement before its termination. Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 541 (1985) (holding that the Constitution cannot be trumped by a law that determines the procedures required for the deprivation of property rights).

138 See Logan v. Zimmerman Brush Co., 455 U.S. 422, 433-35 (1982) (holding that a 120 day limit for state fact-finding procedures that extinguished an individual's property interest in a cause of action deprived individual of procedural due process); Morawetz, supra note 45, at 106.


140 Testimony on Welfare Fraud Before the Subcommittee on Human Resources of the House Comm. on Ways and Means, 104th Cong., 2d Sess. (1996) (statement of
mine whether a legal immigrant should be denied aid. As a result, many legal immigrants may be denied food stamp benefits as a result of the Personal Responsibility Act. Thus, the procedures used to determine whether a legal immigrant should have his or her benefits eliminated should be analyzed to ensure that such procedures are constitutionally adequate.

IV. APPLYING PROCEDURAL DUE PROCESS TO THE FOOD STAMP PROVISIONS OF THE PERSONAL RESPONSIBILITY ACT

Procedural due process analysis requires a two-step inquiry. First, the court must determine whether the individuals in question have been deprived of a constitutionally protected interest in "life," "liberty," or "property." At this step, the Court looks only to whether the interest at hand fits one of the designated categories. If the interest is not classifiable as either life, liberty, or property, there is no due process interest and hence no further inquiry into the adequacy of the procedure due to the individual. If, however, this prong is satisfied because the individual has such a protectable interest, the second prong of the inquiry is activated—what process is due?

As stated above, the Court has accepted the concept of food stamps as property. Consequently, legal immigrants possess a constitutional right in their entitlements that requires a certain level of procedural fairness before stripping them of their benefits. This part analyzes the due process rights of food stamp recipients in light of the Personal Responsibility Act, and demonstrates that under current Supreme Court precedent, the harm to legal immigrants and the likelihood of administrative error mandate a full evidentiary hearing prior to eliminating food stamp benefits from legal immigrants.

Bruce Wagstaff, Deputy Director Welfare Programs Division California Department of Social Services, available in Westlaw, 1996 WL 276573 (using the verification problems that exist in California as an example of the welfare fraud that many other states will now face).

141. Id.
143. U.S. Const. amends. V & XIV.
144. Morawetz, supra note 45, at 98 (arguing that the Court does not examine the significance of the interest or the severity of the possible injury to the individual).
145. Id.
146. Atkins v. Parker, 472 U.S. 115, 128 (1985); see supra note 68 and accompanying text.
147. See infra note 209 and accompanying text; see also Goldberg v. Kelly, 397 U.S. 254, 256-56 (1970) (stating that pre-termination evidentiary hearings are necessary in the welfare setting). However, the Court did not place an affirmative duty on the government to provide basic subsistence, the only governmental obligation was sufficient constitutional procedures. Kay P. Kindred, God Bless the Child: Poor Children, Parens Patriae, and a State Obligation to Provide Assistance, 57 Ohio St. L.J. 519, 523 (1996). This reading of the Constitution is consistent with the view that the document
A. Attaching a Property Interest to the Legal Immigrant’s Food Stamp Benefits

Food stamp recipients satisfy the first step of a due process inquiry by showing that they meet the statute’s rule based standard for receipt of the benefit. As stated in Atkins, food stamp benefits are entitlements that should be “treated as a form of ‘property’ protected by the Due Process Clause.” Specifically, the legal immigrants affected by the Personal Responsibility Act can retain their benefits by an individualized showing that they meet the forty qualifying quarters exception. The Personal Responsibility Act explicitly allows legal immigrants, minors, and spouses who have either worked forty qualifying quarters or have been supported by a parent or spouse who has worked forty qualifying quarters to continue to receive food stamps. Those legal immigrants who meet the forty qualifying quarters test have a property right in their food stamp benefits and satisfy the first-prong of the due process inquiry.
B. Process Due to Legal Immigrant's Food Stamp Benefits

Step two of the analysis involves the balancing test used in *Mathews v. Eldridge* which weighs the strength of constitutionally mandated procedural due process with pragmatic considerations involved in the enforcement of procedures. When the government attempts to take away what the Court finds to be a property interest, the Court applies the *Mathews* balancing test to determine what procedural protections are required. If under the *Mathews v. Eldridge* balancing test the amount at stake for legal immigrants multiplied by the likelihood of reducing administrative error through additional procedures is greater than the cost of new administrative safeguards, additional administrative procedures are required to preserve the procedural due process rights of legal immigrants.

1. Amount at Stake for the Legal Immigrant

While courts have stressed the importance of non-means-tested benefits to individuals in a means-tested program like food stamps, legal immigrants have a stronger claim to the benefits. This is because the harm to the individual that would occur as a result of food stamp deprivation is greater than in a non-means-tested program. Food stamp recipients are often desperately in need of assistance and face hunger and malnutrition if removed from the program. If legal...
immigrants are denied essential food stamp benefits that are provided for them in the Personal Responsibility Act, they needlessly run the risk of starvation.\textsuperscript{162} Moreover, legal immigrants have another, intangible, interest at stake. Namely, they possess a right to have their autonomy protected by participating in the process of eligibility determination and receiving a reasoned explanation as to why their food stamp benefits are being taken away.\textsuperscript{163} Many individuals, including Socorro Cruz, have difficulty understanding the requirements for meeting the forty quarter exception that will allow certain legal immigrants to continue to receive food stamps.\textsuperscript{164} To deny a legal immigrant an adequate opportunity to show his eligibility for food stamps when his property is at stake requires justification, not only because the legal immigrant might help the administrative agency make an accurate determination, but also because a lack of personal involvement causes a loss of dignity and self-respect that society holds independently valuable.\textsuperscript{165} Thus, the magnitude of the harm that legal immigrants would suffer if their food stamp benefits were eliminated heightens their interests in the benefits.

In a very recent case, \textit{Blek v. Palmer},\textsuperscript{166} a federal district court noted that the private interest at stake in food stamps is "extremely significant" because "[f]ood is a necessity of life."\textsuperscript{167} The loss of food stamp benefits would force individuals to live at levels below subsistence.\textsuperscript{168} Similarly, other courts have held that an individual's property interest is particularly compelling in elderly disability cases.\textsuperscript{169}

\textsuperscript{162} See supra notes 92-98; see also Boswell, \textit{supra} note 85, at 1478-79 (stating that discussions simply addressing the budgetary aspects of cutting immigrants' benefits have ignored the dramatic impact these reforms will have on immigrants' lives).

\textsuperscript{163} See Davis, \textit{supra} note 19, § 7.02, at 115 (claiming that a party adversely affected "should be entitled to an opportunity to know and to meet" evidence when there is a significant interest at stake); Tribe, \textit{supra} note 27, § 10-7, at 502-03 (noting that there is an intrinsic value in due process and the right to participate and understand such processes by which decisions are made).


\textsuperscript{165} See Goldberg v. Kelly, 397 U.S. 254, 264-65 (1970) (stating that pre-termination evidentiary hearings promote the government's interest of preventing a sense of insecurity and frustration from engulfing society); Gray Panthers v. Schweiker, 652 F.2d 146, 161-62 (D.C. Cir. 1980) (finding that the reasons why society values a personal hearing are "the desire for accuracy, the need for accountability, and the necessity for a decision-making procedure which is perceived as 'fair' by the citizens"); Davis, \textit{supra} note 19, § 7.02, at 115; Tribe, \textit{supra} note 27, § 10-7, at 502-03; Mashaw, \textit{supra} note 59, at 50.

\textsuperscript{166} 916 F. Supp. 1475 (N.D. Iowa 1996), aff'd, 102 F.3d 1472 (8th Cir. 1997).

\textsuperscript{167} \textit{Blek}, 916 F. Supp. at 1488-89 (noting that even the slightest change in a food stamp allotment threatens the health, well-being, and dignity of a household).

\textsuperscript{168} Id. at 1489.

\textsuperscript{169} \textit{Gray Panthers}, 652 F.2d at 166-67; see Klein v. Mathews, 430 F. Supp. 1005, 1010 (D.N.J. 1977) (holding that elderly Medicaid patients would suffer grievous loss if benefits received at their nursing home were terminated).
Medicaid reduction decisions, and attachment of property cases. Due to the possibility that many legal immigrants will be denied food stamps as a result of the Personal Responsibility Act, the private interest at stake for legal immigrants is of the utmost significance.

2. Likelihood of Administrative Error

A principal reason for procedural due process safeguards is to prevent inaccurate or unjust decisions. In the food stamps context, ineligible recipients should have an opportunity to notify the proper governmental administrative agency if an error has been made. With entitlement programs, such as food stamps, major changes in the law are just as likely to cause an error than individual mistakes made by caseworkers. When state agencies are mandated to implement the directives of vague Congressional statutes, as is the case with the Personal Responsibility Act, they are left to proceed without proper guidance. Such a lack of guidance may lead to inadequate procedures and, accordingly, a high rate of error.

Many legal immigrants who have worked for more than forty quarters may not meet the forty qualifying quarter exception without being subject to further proceedings because their income was paid "off the books" and not reported to the appropriate government agency. While these legal immigrants have worked for forty quarters of covered employment, the quarters usually are not in the records.

172. Atkins v. Parker, 472 U.S. 115, 142 (1985) (Brennan, J., dissenting); Carey v. Piphus, 435 U.S. 247, 259 (1978) (stating that procedural due process is not meant to protect individuals from any deprivation, but from an erroneous deprivation of life, liberty, or property); Mathews v. Eldridge, 424 U.S. 319, 344 (1976) (noting that the necessity of procedural due process is determined by the risk of error).
173. See Biek v. Palmer, 916 F. Supp. 1475, 1489 (N.D. Iowa 1996) (finding that the risk of erroneous deprivation is high in the food stamp context), aff'd, 102 F.3d 1472 (8th Cir. 1997); Banks v. Trainor, 525 F.2d 837, 842 (7th Cir. 1975) (stating that detailed advance notice of food stamp termination and reductions is required because of the substantial risk of erroneous deprivation), cert. denied, 424 U.S. 978 (1976).
174. Atkins, 472 U.S. at 142. Brennan claimed in his dissent that this is because "[t]imely and adequate notice permits the affected recipient to surmise whether an error has been made; if the recipient invokes the statutory right to a fair hearing, the agency then determines whether the recipient is correct." Id.
175. See supra note 16 and accompanying text (discussing the confusion surrounding the implementation of the Personal Responsibility Act).
176. See infra notes 189-94 and accompanying text (discussing administrative error).
177. See supra note 13 (defining "off the books").
178. 20 C.F.R. § 404.1004 (a)(1996). In order for employment to be covered under the Social Security Act, any one of the following requirements must be met:
of the SSA, and, as such are not officially counted by the Administra-
tion. Legal immigrants are often victims of employers who did not
report the immigrant’s income to the proper governmental authori-
ties. These legal immigrants have no proof that they meet the stat-
ute’s standard for the entitlement; and these individuals, particularly
migrant workers, will have difficulty confirming that their employ-
ment meets the forty qualifying quarter exception, even with the
assistance of the SSA. As a result, there is a high probability that
without detailed evidentiary procedures these verification obstacles
will prevent legal immigrants who have worked forty qualifying
quarters from receiving benefits.

Additionally, the Personal Responsibility Act creates many factual
problems relating to which qualifying quarters may be credited to a
minor. Under the Personal Responsibility Act, a child could count
those quarters worked by a parent while the child was under the age
of eighteen. This can raise complex questions that would create a
great risk of administrative error regarding the identity of the legal

(1) You perform the work within the United States (whether or not you or
your employer are a citizen or resident of the United States). (2) You per-
form the work outside the United States and you are a citizen or resident of
the United States working for—(i) An American employer; or (ii) A foreign
affiliate of an American employer that has in effect an agreement covering
your work . . . .

Id.

179. In attempting to qualify for food stamp benefits, legal immigrants who were
paid off the books may become liable for harsh income tax penalties for failure to
report cash income on a federal tax return. I.R.C. § 6651 (CCH 1996). However, in
assuming that most legal immigrants applying for food stamp benefits fall below the
poverty line of $7763, see supra note 85-86, most legal immigrants would probably fall
below the $6550 taxable income threshold for single individuals and not have to pay
taxes. See I.R.C. Tax Rate Schedules vii (CCH 1996). If an individual owes no taxes,
there can be no accumulating penalty. However, in most cases, there is also an added
withholding tax problem. Generally, employers that pay a salary to legal immigrants
are required by the Internal Revenue Service to withhold a certain amount from pay-
ment and to place this money in a trust fund for the government. I.R.C. § 7501 (CCH
1996). The amount that the employer is required to withhold from the employee is,
for the most part, to satisfy the employee’s tax liability. A smaller amount is required
to be withheld because of the Federal Insurance Contributions Act—FICA or social
security taxes. C.T. Drechsler, Annotation, Construction, Application, and Effect, with
Respect to Withholding, Social Security, and Unemployment Compensation Taxes, of
Statutes Imposing Penalties for Tax Evasion or Default, 22 A.L.R.3d § 2(a) (1968 &
Supp. 1996). The employer also is liable to the government for his share of FICA
taxes. Id. Because most legal immigrants have played by the rules and the employers
did not lawfully pay social security taxes, it makes little sense to now punish the legal
immigrant employee by denying them needed food stamp benefits. It would be more
logical to penalize the employer through various provisions in the tax code. For ex-
ample, under I.R.C. § 6672(a) (CCH 1996), when an employer that is under a duty to
collect withholding taxes willfully fails to perform this duty, the employer is liable for
a civil penalty equal to the amount of the tax not collected. Id.

180. See McDonnell, supra note 1, at B6.

2105, 2275 (1996).

182. Id.
immigrant's biological parents, the legal immigrant's parents' dates of employment, and whether the legal immigrant's parents worked on or off the books. Moreover, if a parent will not cooperate or is unavailable to validate a child's claim, witnesses may be needed to determine eligibility.

Further, a legal immigrant can count all qualifying quarters worked by a spouse during their marriage provided that the legal immigrant remains married to his or her spouse or his or her spouse has died. This issue brings up many of the same factual questions discussed above in the case of a legal immigrant's child; however, an additional question of proving the existence of a marriage is also involved.

To maintain food stamp benefits if the legal immigrant's recorded date of entry into the country was less than ten years ago, the legal immigrant has to produce the full name, date of birth, social security number, and sex of each individual (self, parent, or spouse) whose work history is relevant to the determination of eligibility, and a release form signed by each such individual giving the SSA permission to release information on that individual to the state agency and the legal immigrant. The requirement of a release form from relatives will be perplexing for both state workers and legal immigrants. Problems will arise if the relative refuses to sign a release form, has died, or has moved out of the United States. Again, witnesses and further evidence will be needed to establish the validity of a legal immigrant's forty qualifying quarter claim.

Without knowing the specifics of these key questions—whether the legal immigrants were paid off the books, minor children's and spouses' ability to prove the validity of their claims, and the difficulties associated with the requirement of a release form—neither state workers nor applicants can know whether a legal immigrant meets the

183. See Connecticut v. Doehr, 501 U.S. 1, 13-14 (1991) (holding that a state statute authorizing prejudgment attachment on real estate without notice or hearing created "too great a risk of erroneous deprivation under any of [its confusing] interpretations" and did not satisfy the requirements of procedural due process).

184. § 435, 110 Stat. at 2275.

185. See supra notes 181-83 and accompanying text.

186. For example, documents that would show a legal marriage may be overseas and not accessible to any governmental agency.

187. See supra notes 122-24 and accompanying text.

188. See Judith Havemann & Barbara Vobejda, Advocacy Groups Across U.S. Preparing to Challenge Welfare Law, Wash. Post, Sept. 30, 1996, at A8 (reporting that legal immigrants may be wrongfully denied aid because of erroneous decisions made by untrained state workers); see also Connecticut v. Doehr, 501 U.S. 1, 13-14 (1991) (stating that when an issue does not concern ordinary uncomplicated matters, the high probability of error that results shows that fairness is rarely obtained through one-sided determinations of facts).
In addition, state food stamp agencies must communicate with the INS to determine whether a person is in the country legally for forty qualifying quarters. If the dates of legal immigrants' entry into the country are inconsistent with having ten or more years of qualifying work during the initial determination of a legal immigrant's forty qualifying quarters claim, the legal immigrant loses his or her food stamp benefits. State food stamp agencies must also contact the SSA to determine if the legal immigrant has worked forty qualifying quarters. With many government agencies working together on numerous, difficult factual questions, the probability of administrative error is exceedingly high, especially in high immigration centers like California, New York, Florida, and Texas.

If there is such a great deal of confusion regarding a statute's interpretation, the risk of administrative error is too high to satisfy the requirements of due process. Moreover, in food stamp cases, the risk of erroneous deprivation has been considered extremely high. Courts have stated that when the risk of erroneous deprivation is substantial, the possibility of additional procedural safeguards must be examined.

189. See Graham v. Heckler, 573 F. Supp. 1573, 1580 (N.D. W. Va. 1983) (holding that when factual issues relate to a recipient's medical condition that must be determined by the Social Security Administration, disability benefits can only be terminated when there is proof that the recipient's condition has improved). "[T]he public interest . . . rests with preserving the financial status quo of the plaintiffs pending final resolution of the primary issue raised." Id.

190. See supra note 122 and accompanying text.

191. Virginia Ellis, Immigrant Food Stamp Ban Voided, L.A. Times, Nov. 1, 1996, at A3 (reporting that a Sacramento Superior Court judge struck down a California directive that denied food stamp benefits to legal immigrants because the "counties were confused and unable to clearly determine who should be allowed to get food stamps"); Havemann & Vobedja, supra note 188, at A8 (stating that during the implementation of the Personal Responsibility Act exempt legal immigrants will be mistakenly denied benefits by overworked state agency employees).

192. Doehr, 501 U.S. at 13-14; see Logan v. Zimmerman Brush Co., 455 U.S. 422, 434-35 (1982) (holding that "[a] system or procedure that deprives persons of their claims in a random manner . . . necessarily presents an unjustifiably high risk that meritorious claims will be terminated").

193. Banks v. Trainor, 525 F.2d 837, 842 (7th Cir. 1975) (stating that detailed advance notice of food stamp termination and reductions is required because of the substantial risk of erroneous deprivation), cert. denied, 424 U.S. 978 (1976); Blied v. Palmer, 916 F. Supp. 1475, 1489 (N.D. Iowa 1996) (finding that the risk of erroneous deprivation is high in the food stamp context), aff'd, 102 F.3d 1472 (8th Cir. 1997); Willis v. Lascaris, 499 F. Supp. 749, 757 (N.D.N.Y. 1980) (noting that the calculation of food stamp benefits requires an individualized determination of income, expenses, and deductions for each recipient to prevent unjust decisions).

3. The Government’s Interest

For the government: 1) the costs of more detailed procedures; 2) the administrative burden; and 3) the expense of providing food stamp benefits to legal immigrants pending a pre-termination hearing are all factors that must be considered in a procedural due process analysis.\(^1\) While the governmental interest in conserving fiscal and administrative resources is an important factor, however, it “is not a controlling weight in determining whether due process requires a particular procedural safeguard.”\(^1\)

First, the government cannot argue that pre-deprivation evidentiary hearings for legal immigrants would create enormous administrative costs when it claims to provide detailed post-deprivation hearings.\(^1\) Second, some courts have stated that the administrative burden in welfare and food stamp cases is not an overriding interest.\(^1\) Third, the government’s concern with paying non-recoverable food stamp benefits to legal immigrants is also a weak governmental interest. As stated in Goldberg, the government itself can minimize these benefit payments by developing accurate and efficient procedures through the “skillful use of personnel and facilities.”\(^1\) Furthermore, other important governmental interests, like the preservation of the dignity and well-being of its people, are served by providing legal immigrants with a pre-termination evidentiary hearing.\(^1\)

4. The Balancing of the Mathews Factors

The prospect of serious harm resulting from the continuation of benefits to legal immigrants until a full evidentiary hearing is minimal

195. See Mathews v. Eldridge, 424 U.S. 319, 347 (1976) (stating that the administrative burden and other societal costs must be weighed in the procedural due process analysis).

196. Id. at 348.

197. See supra notes 135-38 and accompanying text for a description of the Social Security Administration’s hearing procedures; see also Doehr, 501 U.S. at 16 (noting that the government cannot claim additional administrative and financial burdens for pre-deprivation hearings when it provides similar post-deprivation hearings).


199. Goldberg, 397 U.S. at 266; see Bliek, 916 F. Supp. at 1490 (dismissing the government’s argument that their interest in paying non-recoverable food stamp benefits is substantial).

200. See Goldberg, 397 U.S. at 264-65 (stating that the United States’ “basic commitment has been to foster the dignity and well-being of all persons within its borders”); Bliek, 916 F. Supp. at 1492 (noting that food stamps help bring “the same opportunities that are available to others to participate meaningfully in the life of the community”); Mark R. Fondacaro, Toward a Synthesis of Law and Social Science: Due Process and Procedural Justice in the Context of National Health Care Reform, 72 U. Colo. L. Rev. 303, 309 (1995) (arguing that the relationship between due process and respect for human dignity is an important governmental interest).
in comparison to the possible harm that legal immigrants face.\textsuperscript{201} Even though the government would argue that any more detailed procedures and investigations would be cost inefficient, the magnitude of harm to the legal immigrant is so great that legal immigrants could be denied "the very means by which to live"\textsuperscript{202} while waiting for a determination on the accuracy of the original decision that had terminated their benefits.\textsuperscript{203} Congress designed the Food Stamp Program to promote the well-being of the population by raising nutritional standards among low income households.\textsuperscript{204} The Food Stamp Program's economic efficiency should not be given greater weight than the subsistence of legal immigrants who may rightfully qualify for food stamp assistance.\textsuperscript{205}

The adjudication of the legal immigrant's forty quarter claim by the Social Security Administration within six months on the basis of documents submitted and conversations with the legal immigrant hardly seems appropriate.\textsuperscript{206} Legal immigrants attempting to meet this exception will raise many difficult questions and issues that will take

\textsuperscript{201} See Bliek, 916 F. Supp. at 1490 (holding that although the government has an interest in conserving financial resources, administrative inconvenience is not a controlling factor); see also Tribe, supra note 27, § 10-13, at 541 (claiming that administrative inconvenience has not traditionally been a public concern). Additionally, Tribe states that the emphasis on minimizing governmental expense and limiting the individual's process rights represents a considerable break with a tradition that has identified the due process clause as "designed to protect the fragile values of a vulnerable citizenry from the overbearing concern for efficiency and efficacy that may characterize praiseworthy government officials no less, and perhaps more, than mediocre ones." Id. (quoting Stanley v. Illinois, 405 U.S. 645, 656 (1972)).

\textsuperscript{202} Goldberg, 397 U.S. at 264 (noting that an individual denied benefits necessary for subsistence becomes "immediately desperate" and this "adversely affects his ability to seek redress from the welfare bureaucracy").

\textsuperscript{203} See Bowen v. City of New York, 476 U.S. 467, 483-84 (1986) (stating that claimants would be irreparably harmed if their disability benefits were discontinued until redetermination of eligibility). The Court also noted that "[w]e should be especially sensitive to this kind of harm where the Government seeks to require claimants to exhaust administrative remedies merely to enable them to receive the procedure they should have afforded in the first place." Id. at 484; see Connecticut v. Doehr, 501 U.S. 1, 15 (1991) (maintaining that in a deprivation of property case a later hearing might fairly settle the dispute, "but this would not cure the temporary deprivation that an earlier hearing might have prevented"); Fox v. Bowen, 656 F. Supp. 1236, 1243-44 (D. Conn. 1987) (holding that recovery of retroactive benefits by Medicare claimants would not fully compensate them for loss of original benefits).

\textsuperscript{204} See supra part II.B for a discussion of the Food Stamp Program's purpose.

\textsuperscript{205} See Ortiz v. Regan, 749 F. Supp. 1254, 1260 (S.D.N.Y. 1990) (stating that there is no government interest that supports the complete elimination of monthly retirement benefits); Graham v. Heckler, 573 F. Supp. 1573, 1580 (N.D. W. Va. 1983) (finding that the public interest would best be served by preserving the financial status quo of Social Security recipients pending final resolution of the conflict because of the Social Security Program's humanitarian aims).

\textsuperscript{206} See Legomsky, supra note 2, at 1464 (maintaining that immigrants pay taxes and pay far more in total taxes than they receive in total benefits).
more than six months to decide correctly. Because under the Matthews balancing test207 the great interest in food stamp benefits for legal immigrants multiplied by the likelihood of reducing administrative error208 through pre-termination evidentiary hearings is greater than the cost of the pre-termination evidentiary hearings, full pre-termination evidentiary hearings are constitutionally mandated to preserve the procedural due process rights of legal immigrants. 209

C. Necessity of Pre-Termination Evidentiary Hearings

While the government has issued detailed procedures to deal with legal immigrants' food stamp claims,210 full pre-termination evidentiary hearings must be granted to legal immigrants who claim to have met the forty quarters exception.211 Personal, pre-termination evidentiary hearings are necessary because they are "tailored, in light of the decision to be made . . . to insure that [legal immigrants] are given a meaningful opportunity to present their case."212 These hearings


208. See supra note 16 for the confusion surrounding the implementation of the Personal Responsibility Act and supra IV.B.2 for a discussion of the high probability of administrative error.

209. Mathews, 424 U.S. at 334-35; Goldberg v. Kelly, 397 U.S. 254, 266 (1970); Daniels v. Wadley, 926 F. Supp. 1305, 1312 (M.D. Tenn. 1996); see Morrissey v. Brewer, 408 U.S. 471, 489 (1972) (contending that the minimum requirements of due process require many protections for an individual including possible pre-deprivation hearings); Gray Panthers v. Schweiker, 652 F.2d 146, 162 (D.C. 1980) (claiming that any process eliminating a property right requires detailed procedural due process); see also Bernard Schwartz, Some Crucial Issues in Administrative Law, 28 Tulsa L.J. 793, 800 (1993) (arguing that the cost efficient procedure is the one that deals effectively with the appropriate number of cases and the amount at stake in each case). For legal immigrants with forty qualifying quarter claims, a full evidentiary hearing provides the best alternative considering the magnitude of legal immigrants' personal interests and the high probability of administrative error without pre-deprivation evidentiary hearings.

210. See supra part III.B.

211. From a law and economics perspective, the use of proper procedure for legal immigrants would strengthen the substantive aspects of the democratic process. The Coase Theorem states that if high transaction costs exist for certain groups to participate in the bargaining process, which is usually the case for groups that are not politically active, the efficient outcome in the legislative process may not occur. A. Mitchell Polinsky, An Introduction to Law and Economics 13 (1989); Pritchard, supra note 29, at 1065. For example, legal immigrants in need of food stamps face significant obstacles to legislative bargaining and lobbying including low levels of education, geographical dispersion, and the inability to vote. Id. at 1085. In these situations, the preferred legal process would be the one that minimizes the effects of transaction costs. Polinsky, supra, at 13. Because a specially designated administrative judge will be familiar with the nuances of food stamp procedures, a full pre-termination evidentiary hearing would best be able to minimize transaction costs for parties that are adversely affected and thus unable to actively participate in the substantive, political process. This would provide an economic justification for the preservation of procedural due process through a full pre-termination evidentiary hearing that maximizes the total value of the democratic process. See Pritchard, supra note 29, at 1065-66.

212. Mathews, 424 U.S. at 349 (citation omitted).
would eliminate misunderstandings in the interpretation of vague provisions of the Personal Responsibility Act and focus the issues in dispute. The use of full evidentiary hearings would also create an institutional restraint on arbitrary and unauthorized action by any of the numerous administrative agencies involved in the food stamp recertification process. Additionally, formality in the food stamp process would protect legal immigrants from race or class prejudices.

Minimal requirements of the full evidentiary hearing should include: 1) timely written notice of the legal immigrant's ineligibility under the forty quarters exception; 2) an opportunity to be heard in person and to present witnesses and documentary evidence relating to his employment history; 3) a neutral administrative officer to deter

213. *Gray Panthers*, 652 F.2d at 162 (showing that ambiguities can be disclosed and clarified through hearings between the individual and decision-maker); Mattern v. Mathews, 582 F.2d 248, 256 (3d Cir. 1978) (asserting that when an administrative agency's determination is based on credibility, hearings are "crucial to the truth-finding process"), *cert. denied*, 443 U.S. 912 (1979).

214. See supra note 117 (discussing the weaknesses of the interview recertification process); see also *Gray Panthers*, 652 F.2d at 162 (claiming that government workers would be dissuaded from using arbitrary actions to deny an individual benefits if they were required to provide an oral hearing); Small v. Sullivan, 820 F. Supp. 1098, 1107 (S.D. Ill. 1992) (maintaining that prejudice and hostility on the part of a hearing officer violate procedural due process).

215. See *Graham v. Richardson*, 403 U.S. 365, 376 (1971) (holding that the Fourteenth Amendment, along with providing explicit equal protection guarantees, mandates that states give legal immigrants the same process as citizens when filing for government benefits). Because classifications based on alienage are definitively suspect and subject to strict scrutiny under Fourteenth Amendment equal protection guarantees, legal immigrants who are specifically excluded from government sponsored benefit programs, like food stamps, may have both a procedural due process claim, for denial of existing benefits, and an equal protection claim, for exclusion of legal immigrants from receiving government funds. *Id.* at 371-72. The Constitution's text, including the Bill of Rights, does not differentiate between citizens and legal immigrants. U.S. Const. amends. V & XIV. *But see* Mathews v. Diaz, 426 U.S. 67 (1976) (stating that the conditioning of aid on citizenship is firmly based in the law). Furthermore, the Court in *Diaz*, while explicitly supporting *Graham*, and allowing legal immigrants the right to procedural due process, also held that this does not afford all aliens the same benefits of citizenship. *Diaz*, 426 U.S. at 78; see Hiroshi Motomura, *The Curious Evolution of Immigration Law: Procedural Surrogates for Substantive Constitutional Rights*, 92 Colum. L. Rev. 1625, 1690 (1992) (claiming that while *Graham v. Richardson* is good law, it may be the "high water" mark for case law relating to state alienage classifications).


217. See *Brock v. Roadway Express, Inc.*, 481 U.S. 252, 265 (1987) (stating that allowing written and oral response to charges, including affidavits and supporting documents are aspects of procedural due process); *Goldberg*, 397 U.S. at 258 (allowing benefit recipients an opportunity to defend by presenting arguments and evidence
mine the outcome on the facts of the case de novo; and 4) if food stamps are revoked, a written statement by administrative officer as to evidence relied on during the decision-making process.

**Conclusion**

Laws that restrict eligibility of aliens for welfare benefits conflict with traditional governmental policy. One of the distinctive commitments of United States immigration policy has been to encourage immigrants to assimilate into society. Yet, the Personal Responsibility Act erodes that commitment, causing "[l]egal immigrants who have played by the rules ... and have every reason to assume that they are welcome here, [to] be stripped of their federal benefits [without procedural due process]."

The principal reason for having procedural due process safeguards is to prevent inaccurate or unjust decisions. This is especially true for a group such as legal immigrants. The Due Process Clause mandates that procedures meet constitutional guarantees. By protecting legal immigrants' procedural due process rights and having them more fully participate in the democratic process, the nation's democracy will be enriched. Without procedural due process protection, however, "[m]any [legal immigrants] have no idea what is about to happen to them," and they will suffer irreparable harm. The ramifications of having no procedural safeguard requirements in legislative proceedings when legal immigrants make claims under the forty qualifying orally); Daniels v. Wadley, 926 F. Supp. 1305, 1312 (M.D. Tenn. 1996) (holding that Medicaid enrollees receive a pre-deprivation hearing before termination of benefits); Fondacaro, supra note 200, at 310 (claiming that for an indigent person an oral hearing would result in fairer and more accurate decisions). Moreover, the right to confront and cross examine adverse witnesses would also be valuable for legal immigrants. See Arnett v. Kennedy, 416 U.S. 134, 215 (1974) (Marshall, J., dissenting) (stating that the right of confrontation tests the truth of accusations); Goldberg, 397 U.S. at 268, 270 (requiring recipients be given an effective opportunity to confront and cross examine any adverse witnesses).

218. See Goldberg, 397 U.S. at 271 (1970) (mandating that the officer's conclusion rest only on the evidence and legal rules presented at the hearing); Daniels, 926 F. Supp. at 1312-13 (following Goldberg's mandate that to meet procedural due process guarantees an appeal must be heard by an impartial adjudicator); Cain v. Virginia, 574 F. Supp. 559, 562 (W.D. Va. 1983) (noting that due process is violated if an administrative officer has a bias before a case hearing); see also Schweiker v. McClure, 456 U.S. 188, 195 (1982) (stating that due process requires impartiality on the part of the hearing officers).

219. See Goldberg, 397 U.S. at 271 (suggesting that the decision maker state the reasons for his ruling and indicate the evidence on which he relied); Morrissey v. Brewer, 408 U.S. 471, 489 (1972) (holding that the minimum requirements of due process include a written statement by the decision-maker as to the evidence and rationale relied upon); Tribe, supra note 27, § 10-7, at 503 (stating that an explanation as to why a decision was made provides the affected individual with a valuable intrinsic sense of participation in the hearing process).


quarters exception are exacerbated by the possible results of the Personal Responsibility Act’s food stamp provisions. The prospect of having people left hungry without any procedural due process safeguards is not enticing.

While substance and procedure work together, the use of full evidentiary hearings for legal immigrants attempting to meet the forty qualifying quarters exception will only properly enforce, not nullify, the Personal Responsibility Act. The mandate established in Goldberg v. Kelly dictates that due process requires the granting of a full evidentiary hearing before termination of food stamp benefits for those legal immigrants attempting to meet the forty qualifying quarters exception. Thus, to affect a legal immigrant’s property interest in food stamp benefits under the statutory forty quarters exception, the full procedural safeguards imposed in court proceedings should be required, including the right to call witnesses, the right to counsel, and the right to cross examine.