



December 10, 2018

Submitted via www.regulations.gov

Samantha Deshommes, Chief
Regulatory Coordination Division, Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Avenue NW
Washington, DC 20529-2140

Re: DHS Docket No. USCIS-2010-0012, RIN 1615-AA22, Comments in Response to Proposed Rulemaking: Inadmissibility on Public Charge Grounds

Comments in Response to Proposed Rulemaking: Request for Fee Waiver: Exemptions

Dear Ms. Deshommes:

I am writing on behalf of the American-Arab Anti-Discrimination Committee (ADC) in response to the Department of Homeland Security's (DHS, or the Department) Notice of Proposed Rulemaking (NPRM or proposed rule) to express our strong opposition to the changes regarding "public charge," published in the Federal Register on October 10, 2018. The proposed rule will contravene congressional intent and cause significant harm to immigrants and their families, and DHS provides no justification for why changes are necessary.

ADC is a civil rights organization committed to defending the rights of people of Arab descent and promoting their rich cultural heritage. Our mission includes promoting civil rights and liberties for Arab Americans and other persons of Arab heritage, serving as a public voice for the Arab American community in the United States, and organizing and mobilizing the Arab American community in furtherance of the organization's objectives. In pursuit of this mission, we strive to foster economic, cultural, and political empowerment of Arab Americans. Toward this end, we support and encourage the naturalization of eligible immigrants. As we write today, we are concerned about the Public Charge NPRM that would redefine "public charge" to the significant detriment of populations we serve.

The proposed rule would dramatically expand the interpretation of public charge to include any individual who is likely to use more than a minimal amount of public assistance, and expands the types of benefits that could be considered in the public charge determination to include programs that support basic human needs, including Medicaid and Supplemental Nutrition Assistance Program (SNAP).

For almost two decades, immigrant families have relied upon U.S. immigration officials' explicit reassurance that participation in programs like Medicaid and SNAP (formerly food

stamps) would not affect their ability to become lawful permanent residents.¹ Congress has had several opportunities to amend the public charge law but has only affirmed the existing administrative and judicial interpretations of the law. The implementing regulation published in 1989 defined “public cash assistance” as “income or needs-based monetary assistance” including programs like SSI, but specifically excluding food stamps, public housing, or other non-cash benefits including medical assistance programs such as Medicaid.² This implementing regulation is consistent with the case law on public charge.

The 1996 Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) limited eligibility for “federal means-tested public benefits” to “qualified immigrants” and limited eligibility of lawful permanent residents for “means-tested public benefits” during their first five years in the U.S., but Congress did not amend the public charge law to change what types of programs should be considered. Instead, that same year, in the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Congress merely codified the case law interpretation of public charge by adding the “totality of circumstances” test to consider the applicant’s age, health, family status, assets, resources, financial status, education, and skills to the statute. Congress also made the affidavits of support legally enforceable contracts. Accordingly, since 1996, having such an affidavit of support generally has been sufficient to overcome any concerns about public charge.

The administrative guidance--which remains in effect-- clarifies that the public charge test applies only to those “primarily dependent on the Government for subsistence”, demonstrated by receipt of public cash assistance for “income maintenance”, or institutionalization for long-term care at government expense; it specifically listed non-cash programs such as Medicare, Medicaid, food stamps, WIC, Head Start, child care, school nutrition, housing, energy assistance, emergency/disaster relief as programs NOT to be considered for purposes of public charge.³ The 1999 administrative guidance is consistent with congressional intent and case law, and has been relied upon by immigrant families, and should continue to be used in interpreting and applying the public charge law.

Further complicating the regulatory landscape, the Department of Justice (DOJ) is in the process of creating a public charge rule. Until a DOJ rule is promulgated, Immigration and Customs Enforcement (ICE) attorneys, who *are* bound by DHS regulations, will likely argue that immigration judges should apply the proposed rule’s heightened standards. Lacking any

binding precedent on the interpretation of INA § 212(a)(4), some immigration judges will agree and will rely on the proposed rule as a guide, while other immigration judges will not.⁴ This will create inconsistencies in adjudication that will increase administrative inefficiencies

¹ USCIS, “Public Charge”, <https://www.uscis.gov/greencard/public-charge>.

² See 8 CFR §245a.1(i); there was a similar regulatory interpretation for special agricultural workers, 8 C.F.R. §210.3(e)(4).

³ 64 Fed. Reg. 28689

⁴ The Board of Immigration Appeals (BIA) has not issued any precedent decisions interpreting public charge since Congress amended those provisions in the 1996 Illegal Immigration Reform and Immigrant Responsibility Act.

through additional appeals and motions. Cases that are before judges that rely on the DHS framework for assessing public charge will take significantly more court time, due to the heightened evidentiary requirements and need additional and more detailed testimony. These heightened evidentiary requirements will also impact ICE attorneys, who will be required to review that evidence and prepare a response, as well as the respondent and his or her counsel, if represented.

Uncertainty and confusion about what the proposed rule means and how it will be implemented will prevent many qualified individuals from filing immigration applications out of fear of a denial based on public charge grounds. In addition, as has been well-documented, widespread misinformation and confusion created by drafts of the rule leaked to the press have resulted in a marked decline in the use of a wide variety of life-sustaining benefits by immigrant families,⁵ as well as instability and anxiety among individuals with lawful status - including those in exempt categories such as refugees.⁶ This chilling effect will disproportionately impact applicants for lawful permanent residence through the family immigration system and unduly harm women and families of color.

Based on benefit enrollment patterns observed in the wake of welfare reform during the 1990s, social scientists report that immigrants' use of health, nutrition, and social services could decline significantly if the proposed public charge rule were finalized.⁷ For instance, researchers found that after new eligibility restrictions were implemented for recent immigrants as part of welfare reform, there were 25% disenrollment among children of foreign-born parents from Medicaid even though the majority of these children were not affected by the eligibility changes and remained eligible.⁸ According to the Kaiser Family Foundation, an estimated 2.1 million to 4.9 million Medicaid/CHIP enrollees could disenroll, if the proposed rule leads to disenrollment rates between 15 percent and 35 percent.⁹ Since welfare reform in the 1990s did not affect immigration status directly, unlike the proposed public charge rule, these estimates may actually underestimate the impact of the rule on

⁵ See Migration Policy Institute, "Chilling Effects: The Expected Public Charge Rule and Its Impact on Legal Immigrant Families' Public Benefits Use," (June 2018), available at https://www.immigrationresearch-info.org/system/files/Chilling_Effects_Public_Charge_Rule.pdf.

⁶ See The Henry J Kaiser Family Foundation, "Living in an Immigrant Family in America: How Fear and Toxic Stress are Affecting Daily Life, Well-Being, & Health," (December 2017), available at <https://www.kff.org/report-section/living-in-an-immigrant-family-in-america-issue-brief/>

⁷ Jeanne Batalova, Michael Fix, and Mark Greenberg "Chilling Effects: The Expected Public Charge Rule and Its Impact on Legal Immigrant Families' Public Benefits Use" (Washington, DC: Migration Policy Institute, 2018) <https://www.migrationpolicy.org/research/chilling-effects-expected-public-charge-rule-impact-legal-immigrant-families>.

⁸ Neeraj Kaushal and Robert Kaestner, "Welfare Reform and health insurance of Immigrants," Health Services Research, 40(3), (June 2005), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1361164/pdf/hesr_00381.pdf.

⁹ Samantha Artiga, Raphael Garfield, and Anthony Damico "Estimated Impacts of the Proposed Public Charge Rule on Immigrants and Medicaid" (Washington, DC: Kaiser Family Foundation, 2018). <https://www.kff.org/disparities-policy/issue-brief/estimated-impacts-of-the-proposed-public-charge-rule-on-immigrants-and-medicaid/>.



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benefit usage.¹⁰ Further, the current political climate, with efforts to reduce legal immigration for the first time in decades and increased arrests and deportations, fear of immigration consequences of using public benefits could be even greater.¹¹

Research conducted in 2017 and 2018 confirms anti-immigrant federal policy and rhetoric continues to create barriers in access to health and nutrition programs for people in immigrant families. Health and nutrition service providers have noticed an increase in canceled appointments and requests to dis-enroll from means-tested programs in 2017.¹² Researchers also found that early childhood education programs reported drops in attendance and applications as well as reduced participation from immigrant parents in classrooms and at events, along with an uptick in missed appointments at health clinics.¹³ Another recent study found that immigrant families -- including those who are lawfully present -- are experiencing resounding levels of fear and uncertainty across all background and locations.¹⁴ In a 2018 survey of health care providers in California, more than two-thirds (67 percent) noted an increase in parents' concerns about enrolling their children in Medi-Cal (California's Medicaid program), WIC and CalFresh (California's SNAP program), and nearly half (42 percent) reported an increase in skipped scheduled health care appointments.¹⁵

As is clear from our comments, the proposed rule change would significantly and negatively impact non-citizen and citizen communities, and against Congress's clear intent to allow non-citizens to obtain public assistance for the greater public good without fear of negatively impacting their eligibility for legal status or citizenship.

¹⁰ Samantha Artiga, Raphael Garfield, and Anthony Damico "Estimated Impacts of the Proposed Public Charge Rule on Immigrants and Medicaid" (Washington, DC: Kaiser Family Foundation, 2018) <https://www.kff.org/disparities-policy/issue-brief/estimated-impacts-of-the-proposed-public-charge-rule-on-immigrants-and-medicaid/>.

¹¹ Jeanne Batalova, Michael Fix, and Mark Greenberg "Chilling Effects: The Expected Public Charge Rule and Its Impact on Legal Immigrant Families' Public Benefits Use" (Washington, DC: Migration Policy Institute, 2018) <https://www.migrationpolicy.org/research/chilling-effects-expected-public-charge-rule-impact-legal-immigrant-families>.

¹² Jennifer Laird et al, "Foregoing Food Assistance Out of Fear: Changes to 'Public Charge' Rule May Put 500,000 More U.S. Citizen Children at Risk of Moving into Poverty," Columbia Population Research Center (April 5, 2018) https://static1.squarespace.com/static/5743308460b5e922a25a6dc7/t/5af1a2b28a922db742154bbe/1525785266892/Poverty+and+Social+Policy+Brief+2_2.pdf

¹³ Hannah Matthews et al, "Immigration Policy's Harmful Impacts on Early Care and Education," The Center for Law and Social Policy (March 2018). https://www.clasp.org/sites/default/files/publications/2018/03/2018_harmfulimpactsece.pdf

¹⁴ Samantha Artiga, "Living as an Immigrant Family in America: How Fear and Toxic Stress are Affecting Daily Life, Well-Being, & Health."

¹⁵ The Children's Partnership, "California Children in Immigrant Families: The Health Provider Perspective," <https://www.childrenspartnership.org/wp-content/uploads/2018/03/Provider-Survey-Infographic-.pdf>

In closing, we appreciate the opportunity to provide comments to the proposed rule and respectfully request that you reverse the proposed changes to the Public Charge definition.

Sincerely,



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