No. 19-3595

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

MAKE THE ROAD NEW YORK, AFRICAN SERVICES COMMITTEE, ASIAN AMERICAN FEDERATION, CATHOLIC CHARITIES COMMUNITY SERVICES (ARCHDIOCESE OF NEW YORK), and CATHOLIC LEGAL IMMIGRATION NETWORK, INC.,

Plaintiffs-Appellees,

v.

KENNETH T. CUCCINELLI, in his official capacity as Acting Director of USCIS, UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, CHAD F. WOLF, in his official capacity as Acting Secretary of Homeland Security, and UNITED STATES DEPARTMENT OF HOMELAND SECURITY,

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

PLAINTIFFS-APPELLEES' RESPONSE TO MOTION FOR A STAY PENDING APPEAL

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PRELIMINARY STATEMENT

The Department of Homeland Security's "public charge" rule (the "Rule") seeks to dramatically expand the government's ability to deny to low-income noncitizens the right to live in this country as lawful permanent residents. After considering voluminous written submissions and hearing more than four hours of oral argument, the district court concluded that the Rule is likely contrary to law, that it will cause irreparable harm, and that the balance of hardships and the public interest support a preliminary injunction. All four other federal courts presented with challenges to the Rule reached the same conclusions and preliminarily enjoined the Rule.

Defendants now ask the Court, without full briefing and argument, to reject those findings and legal conclusions pending appeal and apply a Rule that courts have uniformly held to be unlawful.

The Court should deny defendants' motion because the relevant factors all weigh strongly against a stay.

First, defendants cannot make a strong showing that they are likely to succeed on this appeal. The Rule is contrary to more than a century of judicial and administrative interpretation of the statutory term "public charge." It seeks to brand as a public charge those who the Department of Homeland Security ("DHS") predicts may one day receive, even temporarily, a minimal amount of noncash

public benefits such as SNAP (food stamps), housing assistance, or Medicaid. These are benefits that half or more of U.S. citizens use during their lifetimes.

Defendants have identified no court or administrative decision issued in the 137 years since the term "public charge" became part of federal immigration law that is consistent with the Rule. Over that time, noncitizens have been denied legal permanent residence as likely public charges *only* if they are destitute and unable to work, and thus are likely to rely primarily for subsistence on cash assistance from the government or long-term institutionalization at public expense. Congress has repeatedly approved that interpretation by reenacting the relevant provision of the Immigration and Nationality Act ("INA") without material change. And it has rejected proposals to redefine public charge in substantially the manner the Rule proposes.

Defendants' convoluted arguments based on *other* provisions of the INA (arguments that, in most cases, they did not present to any district courts considering the Rule) cannot overcome that consistent history. And defendants' argument that plaintiffs lack standing is contrary to settled law.

Second, defendants scarcely attempt to show that they will be irreparably harmed while their appeal is pending. The injunction requires defendants only to continue processing applications for lawful permanent residence under the rules that have been in effect for more than 20 years. Defendants' speculation that this

will cause some unspecified number of noncitizens to be erroneously granted lawful permanent residence, and some unspecified subset of that group to receive public benefits at some unspecified future time, cannot establish irreparable harm.

Third, defendants do not even address the district court's findings that implementing the Rule will cause enormous harm to plaintiffs and the public. On the undisputed evidence (and as set forth in numerous amicus briefs), the Rule will deny lawful permanent residence to countless noncitizens. And it will cause hundreds of thousands or millions to forgo benefits to which they are entitled, with severe detrimental public health consequences.

Defendants' motion should be denied.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

DHS issued the proposed Rule for notice and comment on October 10, 2018. 83 Fed. Reg. 51,114. More than 260,000 comments were submitted, the "vast majority" of them in opposition. 84 Fed. Reg. 41,292, at 41,304. DHS issued the final Rule, substantially unchanged, on August 14, 2019, with an intended effective date of October 15, 2019. *Id.* at 41,292.

The Rule purports to implement Section 212(a)(4) of the INA, 8 U.S.C. § 1182(a)(4). Under the statute, noncitizens seeking admission into the United States, and those residing in the United States seeking to adjust their immigration status to that of lawful permanent resident, may be denied admission or status

adjustment if, in the government's opinion, they are "likely at any time to become a public charge." *Id*.

Under current law, codified in Field Guidance issued by DHS's predecessor in 1999, "public charge" is defined as a noncitizen who is (or is likely to become) "primarily dependent on the government for subsistence, as demonstrated by either (i) the receipt of public cash assistance for income maintenance or (ii) institutionalization for long-term care at government expense." 64 Fed. Reg. 28,689, at 28,689. The Field Guidance "summarize[d] longstanding law with respect to public charge," and took into account "past practice" by the agencies charged with administering the statute. *Id.* Its definition of "public charge" was "consistent with factual situations presented in the public charge case law." 64 Fed. Reg. 28,676, at 28,677. As discussed below (pp. 12-14), the Field Guidance is consistent with case law and administrative interpretation since public charge provisions became part of federal immigration law in 1882.

The Rule seeks to expand public charge exclusion far beyond this longstanding interpretation. *First*, it redefines "public charge" to include receipt or predicted receipt of any amount of specified noncash public benefits for an aggregate of 12 months over any 36-month period (with receipt of two benefits in a month counting as two months). *See* Proposed 8 C.F.R. § 212.21(a). As one court explained, "[t]o take a plausible example, someone receiving $182 over 36 months

. . . in SNAP benefits is a public charge under the Rule." *City & Cty. of S.F.* v. *USCIS*, 2019 WL 5100718, at *26 (N.D. Cal. Oct. 11, 2019) ("Cal. Op."); *see also CASA de Md., Inc.* v. *Trump*, 2019 WL 5190689, at *12 (D. Md. Oct. 14, 2019) ("Md. Op.") (explaining that the Rule "would exclude immigrants based on their receipt of a small amount of benefits").

Second, the Rule permits the government to label as public charges noncitizens who are predicted to receive or have received only supplemental benefits, regardless of whether they primarily rely on these benefits for subsistence. *See* Proposed 8 C.F.R. § 212.21(b); *cf.* 64 Fed. Reg. at 28,692 (INS's explanation in Field Guidance that supplemental noncash benefits like SNAP and Medicaid should not be part of the public charge analysis because they "do not, alone or in combination, provide sufficient resources to support an individual or family," and are used by "working-poor families" with incomes "far above the poverty level"). The Rule requires officers making these predictions to weigh negatively factors like absence of private health insurance, medical conditions regardless of whether they affect employability, and even youth, for noncitizens under 18. Proposed 8 C.F.R. § 212.22(b).

The Rule would greatly increase the number of noncitizens who are denied admission or status adjustment on public charge grounds. Historically, far less than one percent of applications for lawful permanent residence have been denied on

those grounds. Compl., Ex. 1 ¶ 65. (Citations to "Ex. __" are to exhibits to the attached Declaration of Daniel S. Sinnreich.) By contrast, "more than half of all U.S.-born citizens could be deemed a public charge . . . if [the Rule's] definition were applied to them." Ex. 2. While citizens are not subject to public charge review, these estimates demonstrate the Rule's intended "transformative" impact. Compl., Ex. 1 ¶¶ 9, 218. The prospective determination required by the Rule would allow DHS to deny admission or status adjustment to anyone deemed likely to use de minimis amounts of benefits for 12 months, even years after obtaining citizenship.

On August 27, 2019, plaintiffs—five nonprofit organizations that serve and advocate for low-income noncitizens in New York and nationwide—commenced this action by filing a complaint asserting claims under the Administrative Procedure Act and the Equal Protection guarantee of the Fifth Amendment. The States of New York, Connecticut, and Vermont and the City of New York filed a related action that was assigned to the same district judge. *State of New York* v. *U.S. Dep't of Homeland Security*, No. 19-cv-7777-GBD (S.D.N.Y.). States, municipalities, and nonprofit organizations filed seven similar actions in four other district courts.

On September 9, 2019, plaintiffs moved to preliminarily enjoin the Rule and postpone its effective date. Plaintiffs in the *State of New York* case submitted a

similar motion. The parties collectively submitted hundreds of pages of briefs and supporting materials on those motions, including 26 expert and fact declarations from plaintiffs. Amici—including the American Medical Association, the American Academy of Nursing, and the American Academy of Pediatrics—submitted ten briefs, all but one urging that the Rule be enjoined.

On October 11, 2019, the district court granted plaintiffs' motions and issued preliminary injunctions barring enforcement of the Rule and postponing its effective date. (Mot. Attachment B.) All four other district courts in which the Rule was challenged also preliminarily enjoined it.[1]

On October 25, 2019, two weeks after the district court's ruling, defendants moved in the district court to stay the injunction pending appeal. On November 8, 2019, immediately after plaintiffs submitted their opposing briefs, defendants filed a purported waiver of a reply and a hearing, and asked the district court, for the first time, to rule on their motion by November 14, 2019, six days later.

[1] *See* Md. Op. (nationwide injunction); Cal. Op. (statewide injunction covering four states and the District of Columbia); *Washington* v. *U.S. Dep't of Homeland Sec.*, 2019 WL 5100717 (E.D. Wash. Oct. 11, 2019) ("Wash. Op.") (nationwide injunction); *Cook Cty., Ill.* v. *McAleenan*, 2019 WL 5110267 (N.D. Ill. Oct. 14, 2019) ("Ill. Op.") (statewide injunction in Illinois).

Defendants filed this motion on November 15, 2019. To date, the district court has not ruled on defendants' motion.[2]

ARGUMENT

"A party seeking a stay of a lower court's order bears a difficult burden." *United States* v. *Private Sanitation Indus. Ass'n of Nassau/Suffolk, Inc.*, 44 F.3d 1082, 1084 (2d Cir. 1995). The Court considers: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Nken* v. *Holder*, 556 U.S. 418, 434 (2009). Irreparable harm to the movant and likelihood of success on the merits are the "most critical" factors. *Id.*

I. Defendants' Motion Should be Denied Because the District Court Has Not Ruled on Defendants' Stay Motion

Defendants' motion should be denied at the outset because defendants have not given the district court a reasonable opportunity to rule on their request for a stay. Under Federal Rule of Appellate Procedure 8(a)(2)(A), a motion for a stay pending appeal may be made to the court of appeals only if the movant has

[2] Defendants filed similar stay motions in the other four district courts that enjoined the Rule. To date, one of those courts issued a decision denying the stay motion; the remaining courts have not yet ruled.

previously made such a motion in the district court and the district court has "denied the motion or failed to afford the relief requested," or the movant shows "that moving first in the district court would be impracticable."

Defendants offer no explanation why they could not wait for the district court to decide their stay motion or for their attempt to impose on the district court a six-day deadline for issuing a ruling. Defendants' silence is particularly unjustifiable given their own two-week delay before making that motion. This Court should allow the district court to address that motion in the first instance. *Cf. Aurora Bancshares Corp.* v. *Weston*, 777 F.2d 385, 387-88 (7th Cir. 1985) (per curiam) (remanding a Rule 8 motion so the district court could first consider the issues).

II. Defendants Cannot Make the Requisite Strong Showing That They Are Likely to Succeed on the Merits

A. Plaintiffs Have Standing

An organization has standing under Article III when the defendants' actions have "perceptibly impaired" its ability to provide services to its constituents and required it to devote resources "to identify[ing] and counteract[ing]" those actions. *Havens Realty Corp.* v. *Coleman*, 455 U.S. 363, 379 (1982); *see Centro de la Comunidad Hispana de Locust Valley* v. *Oyster Bay*, 868 F.3d 104, 110 (2d Cir. 2017) (an organization has standing when defendant's actions force it "to divert money from its other current activities to advance its established organizational

interests"); *Nnebe* v. *Daus*, 644 F.3d 147, 157 (2d Cir. 2011) (organization had standing to challenge procedures for suspending taxi licenses when it "expended resources to assist its members" in contesting such suspensions).

The district court correctly concluded that plaintiffs have standing under this settled precedent because they have been "forced to divert [their] resources from [their] usual mission-related activities because of the defendant's conduct." (Mot. Attachment A at 9 (hereinafter "Op.").) For example, as noncitizens turn away from public benefits out of fear of harming their immigration status, plaintiff African Services Committee ("ASC") has experienced an increased demand for its food pantries and English classes. ASC thus has fewer resources available to meet other client needs. (Nichols Decl., Ex. 3 ¶¶ 18-19.) Plaintiffs that provide direct legal services must devote additional time and resources to status adjustment applications, with correspondingly less time available to represent clients in removal and other immigration matters. (Oshiro Decl., Ex. 4 ¶¶ 27, 35, 41; Russell Decl., Ex. 5 ¶¶ 22-24; Nichols Decl., Ex. 3 ¶¶ 21-26; Wheeler Decl., Ex. 6 ¶¶ 10-16.)

Defendants' suggestion that organizational plaintiffs cannot establish standing by showing a need to divert resources to existing services (Mot. at 8) is not the law of this Circuit. *See, e.g.*, *Nnebe*, 644 F.3d at 157-58 (organizational plaintiff had standing because it devoted additional resources to existing practice of

assisting members in challenging license suspensions). And *Kowalski* v. *Tesmer*, 543 U.S. 125, 134 & n.5 (2004) (cited in Mot. at 8), held only that criminal defense attorneys lacked third-party standing to assert the rights of potential clients. Here, plaintiffs have standing based on harm to themselves.

Plaintiffs' claims also fall within the zone of interests of the INA. Contrary to defendants' assertion that only individual noncitizens have any relevant "judicially cognizable interests" (Mot. at 7), immigrant advocacy organizations such as plaintiffs have standing to challenge immigration regulations in light of INA provisions that "give [such organizations] a role in helping immigrants navigate the immigration process." *E. Bay Sanctuary Covenant* v. *Trump*, 909 F.3d 1219, 1245 (9th Cir. 2018). *See, e.g.*, *Batalla Vidal* v. *Nielsen*, 291 F. Supp. 3d 260, 269 n.3 (E.D.N.Y. 2018); *Al Otro Lado* v. *Neilsen*, 327 F. Supp. 3d 1284, 1299-1302 (S.D. Cal. 2018); *Doe* v. *Trump*, 288 F. Supp. 3d 1045, 1067-68 (W.D. Wash. 2017). *See also* Ill. Op. at *6-7; Md. Op. at *8-9. *See generally CREW* v. *Trump*, 939 F.3d 131, 154, 158 (2d Cir. 2019).

B. The Rule is Contrary to the INA

As all five district courts to address the issue have held, the Rule's definition of "public charge" is contrary to Congressional intent and the consistent 130-year history of judicial and administrative interpretation.

From the very first federal public charge statute, enacted in 1882, Congress has intended to exclude as likely public charges only those immigrants who are unable to care for themselves, and not those who might need only temporary assistance. The 1882 Act was intended to bar immigrants likely to become long-term residents of "poor-houses and alms-houses." 13 Cong. Rec. 5109 (June 19, 1882) (statement of Rep. Davis). In contrast, the very same Act established an "immigrant fund" to provide temporary assistance to immigrants "until they can proceed to other places or obtain occupation for their support." 22 Stat. 214, § 1; 13 Cong. 5106 (June 19, 1882) (statement of Rep. Reagan).

Courts and agencies have likewise consistently held the public charge exclusion to apply only to noncitizens who are destitute and unable to work, and thus are likely to rely primarily on government aid for subsistence. (Compl., Ex. 1 ¶¶ 64-71.) *See, e.g.*, *Gegiow* v. *Uhl*, 239 U.S. 3, 10 (1915) (holding that the provision was intended to exclude immigrants only "on the ground of permanent personal objections accompanying them"); *Howe* v. *United States ex rel. Savitsky*, 247 F. 292, 294 (2d Cir. 1917) ("We are convinced that Congress meant [by public charge] to exclude persons who were likely to become occupants of almshouses for want of means to support themselves in the future."); *Matter of B-*, 3 I. & N. Dec. 323, 324 (B.I.A. 1948) ("acceptance by an alien of services provided by a State . . . to its residents, services for which no specific charge is made, does not in and of

itself make the alien a public charge"); *Matter of Martinez-Lopez*, 10 I. & N. Dec. 409, 421-22 (B.I.A. 1962; A.G. 1964) ("A healthy person in the prime of life cannot ordinarily be considered likely to become a public charge, especially where he has friends or relatives in the United States who have indicated their ability or willingness to come to his assistance in case of emergency."). The "long-standing, contemporaneous construction of [the] statute by the administering agencies is entitled to great weight," and should "be shown great deference." *Leary* v. *United States*, 395 U.S. 6, 25 (1969); *see United Airlines* v. *Brien*, 588 F.3d 158, 172 (2d Cir. 2009).[3]

Defendants have identified no case or administrative decision interpreting "public charge," as the Rule does, to include temporary receipt of noncash public benefits, regardless of amount, or to apply to those who rely primarily on their own earnings rather than public benefits. (Op. at 14.) The cases defendants cite on this point—both 90+-year-old district court opinions that they did not cite in prior briefs—are not to the contrary. (Mot. at 14.) In *Guimond* v. *Howes*, 9 F.2d 412 (D.

[3] Defendants assert that under *Matter of B-* a noncitizen qualifies as a "public charge" by failing to repay a public benefit upon demand, "regardless of the amount of the unpaid benefit or the length of time the alien received the benefit." (Mot. at 10, 13-14.) Not so. That case held that failure to repay a public benefit upon lawful demand (in that case, the cost of years' long residence in a psychiatric hospital) was a necessary condition of being held a public charge subject to deportation. Neither the opinion itself nor any subsequent case construing it suggests a public charge finding could be based solely on such a failure to repay, regardless of amount.

Me. 1925), a family was held likely to be public charges where the husband's only occupation was illegal bootlegging and the wife and children relied on charity when he was in jail. In *Ex Parte Turner*, 10 F.2d 816, 817 (S.D. Cal. 1926), a family was held inadmissible where the husband was "likely [to] be incapacitated from performing any work or earning support for himself or his family," and the wife had no property "or any means of earning a livelihood."

Further demonstrating that the agency's longstanding interpretation "is the one intended by Congress," *CFTC* v. *Schor*, 478 U.S. 833, 846 (1986), Congress has repeatedly reenacted the public charge provision without material change. (Compl., Ex. 1 ¶¶ 69, 72, 77, 79.) Congress has also expressly rejected proposed legislation to define "public charge" as the Rule now seeks to do. (*Id.* ¶¶ 80-85.) That is further evidence of "Congressional approval" of the longstanding agency interpretation. *Bob Jones Univ.* v. *United States*, 461 U.S. 574, 600-01 (1983).

Defendants cite policy statements in the Personal Responsibility and Work Opportunity Reconciliation Act ("PRWORA"), enacted in 1996, promoting immigrant "self-sufficiency." (Mot. at 11.) But, following PRWORA and subsequent legislation, many noncitizens remain eligible for federal and state benefits, including Medicaid and SNAP. *See generally* 8 U.S.C. §§ 1612-13. By retaining, and in some cases expanding, immigrant eligibility for certain benefits,

Congress plainly concluded that allowing receipt of such benefits is consistent with promoting self-sufficiency.

Defendants rely on what they assert was "Congress's broad delegation of authority to the Executive Branch." (Mot. at 13.) But the plain language and history of the statute preclude the Rule's inconsistent interpretation. *See FDA* v. *Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 125-26 (2000) (rejecting administrative interpretation in light of statute's structure and purpose, legislative history, content of related statutes, and rejections of efforts to amend statute). Defendants also rely on statements in the legislative history of a 1950 immigration statute, and language in the statute that public charge determinations are made "in the opinion of the Attorney General." (Mot. at 12-13.) But those statements show only that individual public charge determinations are within the agency's discretion, not that the agency has free rein to redefine the statutory term.

Defendants' reliance on INA provisions that exclude from public charge consideration past receipt of benefits by noncitizens who have been "battered or subjected to extreme cruelty" (Mot. at 9, citing 8 U.S.C. § 1641(c), 1182(s))—provisions that defendants nowhere cited to the district court—is misplaced. The benefits available to such noncitizens include cash benefits that would have been considered in public charge determinations under the 1999 Field Guidance. *See* 8

U.S.C. § 1611(c) There is no inconsistency between those provisions and the Field Guidance standards.

Finally, defendants argue for the first time that the Rule is supported by provisions of the INA concerning affidavits of support. (Mot. at 9-10.) Their argument is misplaced. While Congress, in enacting PRWORA, required that certain noncitizens obtain an enforceable affidavit of support from sponsors to clear the public charge hurdle, it chose not to change the definition of public charge as the Rule seeks to do. On the contrary, just one month after PRWORA was enacted, members of Congress sought unsuccessfully to redefine "public charge" to include anyone receiving noncash benefits such as those included in the Rule. (Compl., Ex. 1 ¶¶ 81-83.) No such amendment would have been necessary if Congress had intended the affidavit of support requirement to accomplish the same goal. Defendants' argument is also inconsistent with the Field Guidance, which was issued only three years after PRWORA (and by the same Administration under which it became law), and which exempted noncash benefits from public charge consideration. The Field Guidance interpretation of the statute is stronger evidence of Congressional intent than the Rule's inconsistent interpretation two decades later. *See, e.g.*, *Solid Waste Agency of N. Cook Cty.* v. *U.S. Army Corps of Eng'rs*, 531 U.S. 159, 168 (2001) (citing agency's "original interpretation" of a

statute "promulgated two years after its enactment" in concluding that later, inconsistent interpretation was against Congressional intent).

C. The Rule is Arbitrary and Capricious

All three courts that considered the issue, including the district court here, determined that plaintiffs were also likely to succeed on their claims that the Rule is arbitrary and capricious. Op. at 15-19; Cal. Op. at *31-38; Wash Op. at *19-20.

Defendants assert that it was "hardly irrational for DHS to conclude that aliens who rely on the public benefits enumerated in the Rule over the specified period are aliens who depend on public resources to meet their needs and are not self-sufficient." (Mot. at 18 (citations omitted).) This assertion ignores undisputed evidence that such supplemental benefits promote rather than impede self-sufficiency, *e.g.*, CLASP Public Comment, Ex. 7 at 16, 18-22, 31-36, 48; CBPP Public Comment, Ex. 8 at 49-52; Compl., Ex. 1 ¶¶ 116-30, and that these programs are widely used by working families to supplement their incomes. *See* Schanzenbach Decl., Ex. 9 ¶¶ 6-19 & Tables 1-3; Allen Decl., Ex. 10 ¶¶ 10-22; Ku Decl., Ex. 11 ¶¶ 16-22, 79-81; *accord* 64 Fed. Reg. at 28,692 (INS noting that noncash benefits are "available to families with incomes far above the poverty level"). The arbitrary nature of the rule is further demonstrated by the fact that a person receiving less than $200 in SNAP benefits over three years could be considered a "public charge" under the Rule, and that half or more of U.S.-born

citizens receive public benefits that would trigger a public charge finding for a noncitizen. *See supra* at 4-5.

D. The Rule Violates the Rehabilitation Act and Equal Protection

Defendants argue that the Rule does not violate the Rehabilitation Act because it does not deny admission or status adjustment "solely by reason of disability." (Mot. at 20.) But under section 504 of the Rehabilitation Act, DHS is prohibited from "denying access to benefits and services on the basis of disability . . . and from using discriminatory criteria or methods of administration." (Op. at 19 (citing 6 C.F.R. §§ 15.30(b)(1), (b)(4)).) The "solely" standard does not apply to claims regarding the government's provision of services, where plaintiffs need only show that disability was a "substantial cause of the exclusion or denial." *See Henrietta D.* v. *Bloomberg*, 331 F.3d 261, 291 (2d Cir. 2003). Such a showing is easily satisfied here, where defendants concede that "disability is one [negative] factor" in the public charge analysis, and additional negative factors may flow from disability status. (Ex. 12 at 22 & n.11); *see* 84 Fed. Reg. at 41,368 (DHS conceding that the Rule will have a "potentially outsized impact . . . on individuals with disabilities"). Defendants also argue that consideration of disability is required by the reference to "health" in the INA. (Mot. at 20.) But Section 504's disability discrimination prohibition controls because it is both more specific than the single word "health" in the INA, and because its definition of disability was

broadened twelve years after the "health" factor was added to the public charge provision. *See* Pub. L. No. 110-325, 122 Stat. 3553 (2008).

Defendants barely address plaintiffs' equal protection claim, asserting only that the agency's "reasoned explanations and the clear rational bases it had for adopting the Rule" negate that claim. (Mot. at 19.) But plaintiffs' claim is subject to heightened scrutiny under *Village of Arlington Heights* v. *Metropolitan Housing Development Corp.*, 429 U.S. 252, 267-68 (1977). And "[d]efendants do not dispute that the Rule will disparately impact noncitizens of color." (Op. at 20-21.) The district court's ruling that plaintiffs are likely to prevail on their equal protection claim, (Op. at 20-21), is also supported by voluminous statements by policy makers reflecting discriminatory animus against nonwhite immigrants, and the unusual circumstances surrounding the creation of the Rule, including its origins in a nativist think tank, the pressure from the White House to speed publication, and the sudden resignations or replacements of agency heads. (Compl., Ex. 1 ¶¶ 218, 223-24.)[4] (The Court need not reach plaintiffs'

[4] Recent reporting since the injunction was issued further supports plaintiffs' claim that the Rule was motivated by animus against nonwhite immigrants. Ex. 13 (*Washington Post* article discussing emails from Stephen Miller, a senior White House advisor and a primary architect of the Rule, Compl. ¶¶ 215-18, showing his extensive efforts in the run-up to the 2016 election "to promote white nationalism, far-right extremist ideas and anti-immigrant rhetoric"). Nearly two weeks after these emails were first reported, Mr. Miller retains his White House post.

constitutional claims if it concludes that a preliminary injunction is warranted on statutory grounds.)

III. Defendants Cannot Show Irreparable Harm

Defendants cannot show irreparable harm, and barely try to. The preliminary injunction simply preserves the status quo by requiring defendants to continue processing applications for status adjustment as they have been doing for more than 20 years. *See, e.g.*, *Washington* v. *Trump*, 847 F.3d 1151, 1168 (9th Cir. 2017) (denying motion to stay preliminary injunction pending appeal, in part because "the district court's order merely returned the nation temporarily to the position it has occupied for many previous years"). The Administration did not publish the Rule for more than two years after taking office, and defendants cite no reason that it must now be implemented immediately.

Defendants argue that the injunction will lead to an unspecified number of noncitizens obtaining lawful permanent residence whose applications would be denied under the Rule. (Mot. at 20.) That argument ignores the grievous harm from the unlawful denial of status adjustment if the Rule is ultimately held invalid, including the risk that unsuccessful applicants could face removal. Defendants' unsupported speculation that some number of noncitizens granted status adjustment may someday be entitled to some amount of public benefits does not outweigh that harm or carry defendants' burden.

Defendants also are unlikely to establish that the Rule accurately predicts future benefits use by green-card applicants. The undisputed evidence shows a low likelihood that someone found to be a public charge under the Rule's multi-factor test would receive benefits in the future. *See* Van Hook Decl., Ex. 14 ¶¶ 79-90.

IV. The Harms to Plaintiffs and The Public Interest Disfavor a Stay

The district court found, based on extensive undisputed evidence, that plaintiffs and the immigrant communities they serve will suffer immediate and irreparable harm absent an injunction. (Op. at 21-22.) The district court found that the Rule will "expose individuals to economic insecurity, health instability, denial of their path to citizenship, and potential deportation," "much of which cannot be undone," and that "preventing the alleged economic and public health harms [of the Rule] provides a significant public benefit." (*Id.* at 22-23.) These findings can be overturned only if clearly erroneous. *Homans* v. *City of Albuquerque*, 264 F.3d 1240, 1243 (10th Cir. 2001) (same standard applies to a motion to stay under Rule 8 as to review of preliminary injunction). Defendants do not challenge or even address these findings. This factor weighs heavily against a stay.

V. The District Court's Nationwide Injunction Should Remain in Place Pending an Appeal on the Merits

A nationwide injunction is appropriate to ensure the uniformity of federal immigration law. *See Texas* v. *United States*, 809 F.3d 134, 187-88 (5th Cir. 2015). Such an injunction is a particularly appropriate remedy where an agency rule is

held unlawful because, under the APA, unlawful agency action should be "set aside," 5 U.S.C. § 706(2), and "the ordinary result [of such a determination] is that the rules are vacated—not that their application to individual petitioners is proscribed." *Nat'l Mining Ass'n* v. *U.S. Army Corps of Eng'rs*, 145 F.3d 1399, 1409 (D.C. Cir. 1998). Two other district courts reached the same conclusions in enjoining the Rule nationwide. Wash. Op. at *22-23; Md. Op. at *17-18. Defendants should not be permitted to implement a Rule that multiple courts have uniformly concluded is likely unlawful.

Defendants' assertion that any injunction should be limited to defendants' "service areas" also fails to account for the realities of plaintiffs' operations. Plaintiff CLINIC operates in 49 states and the District of Columbia (Wheeler Decl., Ex. 6 ¶ 2), and all plaintiffs serve immigrants who may move in and out of the New York area. The district court correctly concluded that a nationwide injunction is necessary "to accord Plaintiffs and other interested parties with complete redress." (Op. at 26.)

CONCLUSION

The Court should deny defendants' motion.

Dated: New York, New York
November 25, 2019

By: */s/ Jonathan H. Hurwitz*

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CERTIFICATE OF COMPLIANCE
WITH TYPEFACE AND WORD-COUNT LIMITATIONS

I, Daniel Sinnreich, counsel for Plaintiffs-Appellees Make the Road New York, African Services Committee, Asian American Federation, Catholic Charities Community Services (Archdiocese of New York), and Catholic Legal Immigration Network, Inc., and a member of the Bar of this Court, certify, pursuant to Federal Rule of Appellate Procedure 27(d), that Plaintiffs-Appellees' attached Response to Motion for a Stay Pending Appeal is proportionately spaced, has a typeface of 14 points or more, and contains 5,139 words.

/s/ *Daniel Sinnreich*
Daniel Sinnreich

November 25, 2019

CERTIFICATE OF SERVICE

I, Daniel Sinnreich, counsel for Plaintiffs-Appellees Make the Road New York, African Services Committee, Asian American Federation, Catholic Charities Community Services (Archdiocese of New York), and Catholic Legal Immigration Network, Inc. and a member of the Bar of this Court, certify that, on November 25, 2019, a copy of the attached Response to Motion for a Stay Pending Appeal was filed electronically through the appellate CM/ECF system with the Clerk of the Court. I further certify that all parties required to be served have been served.

/s/ *Daniel Sinnreich*
Daniel Sinnreich

November 25, 2019

No. 19-3595

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

MAKE THE ROAD NEW YORK, AFRICAN SERVICES COMMITTEE, ASIAN AMERICAN FEDERATION, CATHOLIC CHARITIES COMMUNITY SERVICES(ARCHDIOCESE OF NEW YORK), and CATHOLIC LEGAL IMMIGRATION NETWORK, INC.,

Plaintiffs-Appellees,

v.

KENNETH T. CUCCINELLI, in his official capacity as Acting Director of USCIS, UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, CHAD F. WOLF, in his official capacity as Acting Secretary of Homeland Security, and UNITED STATES DEPARTMENT OF HOMELAND SECURITY,

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

DECLARATION OF DANIEL S. SINNREICH

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I, Daniel Sinnreich, declare pursuant to 28 U.S.C. § 1746, as follows:

1. I am associated with the firm of Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, New York 10019-6064, counsel for Make the Road New York, African Services Committee, Asian American Federation, Catholic Charities Community Services (Archdiocese of New York), and Catholic Legal Immigration Network, Inc. I respectfully submit this declaration in support of Plaintiffs-Appellees' Response to Defendants-Appellants' Motion for a Stay Pending Appeal (the "Response").

2. For the convenience of the Court, I submit this declaration to attach copies of certain documents referred to in the Response filed herewith.

3. The table below lists the exhibits attached to this declaration. Each exhibit is a true and correct copy of the document described in the "Document Description" column.

Exhibit Number	**Document Description**
1	Make the Road New York, et al. v. Cuccinelli, et al., Case No. 1:19-cv-07993 (S.D.N.Y.), Docket No. 1, Complaint
2	Make the Road New York, et al. v. Cuccinelli, et al., Case No. 1:19-cv-07993 (S.D.N.Y.), Docket No. 50-30, Danilo Trisi, *Trump Administration's Overbroad Public Charge Definition Could Deny Those Without Substantial Means a Chance to Come to or Stay in the U.S.*, Center on Budget and Policy Priorities (May 30, 2019)
3	Make the Road New York, et al. v. Cuccinelli, et al., Case No. 1:19-cv-07993 (S.D.N.Y.), Docket No. 46, Declaration of Kim Nichols
4	Make the Road New York, et al. v. Cuccinelli, et al., Case No. 1:19-cv-07993 (S.D.N.Y.), Docket No. 43, Declaration of Theo Oshiro

5	Make the Road New York, et al. v. Cuccinelli, et al., Case No. 1:19-cv-07993 (S.D.N.Y.), Docket No. 44, Declaration of C. Mario Russell
6	Make the Road New York, et al. v. Cuccinelli, et al., Case No. 1:19-cv-07993 (S.D.N.Y.), Docket No. 48, Declaration of Charles Wheeler
7	Make the Road New York, et al. v. Cuccinelli, et al., Case No. 1:19-cv-07993 (S.D.N.Y.), Docket No. 50-37, Comment submitted to DHS in response to Notice of Proposed Rulemaking, Center for Law and Social Policy (Dec. 7, 2018), retrieved from regulations.gov website on September 9, 2019
8	Make the Road New York, et al. v. Cuccinelli, et al., Case No. 1:19-cv-07993 (S.D.N.Y.), Docket No. 50-20, Comment submitted to DHS in response to Notice of Proposed Rulemaking, Center on Budget and Policy Priorities, (Dec. 7, 2018), retrieved from regulations.gov website on September 9, 2019
9	Make the Road New York, et al. v. Cuccinelli, et al., Case No. 1:19-cv-07993 (S.D.N.Y.), Docket No. 36, Declaration of Diane Schanzenbach, Ph.D.
10	Make the Road New York, et al. v. Cuccinelli, et al., Case No. 1:19-cv-07993 (S.D.N.Y.), Docket No. 41, Declaration of Ryan Allen, Ph.D.
11	Make the Road New York, et al. v. Cuccinelli, et al., Case No. 1:19-cv-07993 (S.D.N.Y.), Docket No. 42, Declaration of Leighton Ku, Ph.D., M.P.H.
12	Make the Road New York, et al. v. Cuccinelli, et al., Case No. 1:19-cv-07993 (S.D.N.Y.), Docket No. 129, Defendants' Memorandum of Law in Opposition to Plaintiffs' Motion for a Preliminary Injunction
13	Kim Bellware, *Leaked Stephen Miller emails show Trump's point man on immigration promoted white nationalism, SPLC reports*, Washington Post (Nov. 13, 2019)

14	Make the Road New York, et al. v. Cuccinelli, et al., Case No. 1:19-cv-07993 (S.D.N.Y.), Docket No. 45, Declaration of Jennifer L. Van Hook, Ph.D.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
November 25, 2019

Daniel Sinnreich

EXHIBIT 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MAKE THE ROAD NEW YORK, AFRICAN SERVICES COMMITTEE, ASIAN AMERICAN FEDERATION, CATHOLIC CHARITIES COMMUNITY SERVICES (ARCHDIOCESE OF NEW YORK), and CATHOLIC LEGAL IMMIGRATION NETWORK, INC.,

Plaintiffs,

- against -

KEN CUCCINELLI, in his official capacity as Acting Director of United States Citizenship and Immigration Services; UNITED STATES CITIZENSHIP & IMMIGRATION SERVICES; KEVIN K. McALEENAN, in his official capacity as Acting Secretary of Homeland Security; and UNITED STATES DEPARTMENT OF HOMELAND SECURITY,

Defendants.

COMPLAINT

Plaintiffs Make the Road New York ("MRNY"), African Services Committee ("ASC"), Asian American Federation ("AAF"), Catholic Charities Community Services (Archdiocese of New York) ("CCCS-NY"), and Catholic Legal Immigration Network, Inc. ("CLINIC"), for their Complaint against defendants Ken Cuccinelli and Kevin K. McAleenan, in their respective official capacities; the United States Citizenship and Immigration Services ("USCIS"); and the United States Department of Homeland Security ("DHS"), allege as follows:

PRELIMINARY STATEMENT

1. Defendants have promulgated a rule (the "Rule")[1] that seeks to deny lawful permanent residence in the United States to millions of law-abiding aspiring immigrants with low incomes and limited assets. Most of them are the husbands and wives, parents and

[1] *See* Inadmissibility on Public Charge Grounds, 84 Fed. Reg. 41,292 (Aug. 14, 2019) (to be codified at 8 C.F.R. pts. 103, 212, 213, 214, 245, 248).

children of U.S. citizens. For the first time in history, the Rule would impose a wealth test on the primary doorway to U.S. citizenship for immigrants.

2. The Rule purports to implement a narrow provision of the Immigration and Nationality Act (the "INA") that bars admission and lawful permanent residence ("LPR," or so-called "green card" status) to any noncitizen who immigration officials conclude is "likely to become a public charge." For more than a century, courts and administrative agencies have recognized that this provision applies only to noncitizens who are destitute and unable to work, and who are thus likely to be predominantly reliant on government aid for subsistence. In that time, Congress has repeatedly re-enacted the public charge provisions of the Act without material change. And it has expressly rejected efforts to broaden its scope.

3. Defendants now seek through the Rule to redefine "public charge" to dramatically expand the government's power to exclude noncitizens and deny them green cards. Under the Rule, green card status—for the vast majority of immigrants, a necessary condition to achieving citizenship—would be denied to certain, predominantly nonwhite, noncitizens who USCIS loosely predicts are likely to receive even a small amount of specified government benefits at any time in the future. Even the predicted receipt of noncash benefits (such as Medicaid and the Supplemental Nutrition Assistance Program ("SNAP," the former food stamp program)) that are widely used by working families to supplement their earnings—and that, under existing law, are expressly excluded from public charge consideration—would render applicants ineligible for a green card. The Rule would fundamentally transform American immigration law—and, indeed, foundational principles of American democracy—by conditioning lawful permanent residence on high incomes and a perceived ability to

accumulate enough wealth to fully absorb the prospective impacts of health problems or wage losses.

4. The Rule, entitled "Inadmissibility on Public Charge Grounds" and set to become effective on October 15, 2019, threatens grave, imminent harm to immigrants, their families, and their communities, and to immigrant assistance organizations such as plaintiffs here. The nonpartisan Migration Policy Institute has estimated that more than half of all family-based green card applicants could not meet the factor the Rule weights most heavily in favor of an immigrant's adjustment of status, an income of 250 percent of the Federal Poverty Guidelines ("FPG").[2] The Migration Policy Institute has also estimated that 69 percent of recent green card recipients had one or more factors that the Rule weights negatively, and 43 percent had two or more negative factors.[3] As defendants intend, the impact of the Rule would be felt disproportionately by immigrants from countries with predominantly nonwhite populations, including those from Mexico, Central America, the Caribbean, China, the Philippines, and Africa.

5. The harm the Rule will cause is not limited to future denials of green card status. Far from it. As defendants concede—and intend—the Rule will also likely cause hundreds of thousands of immigrants annually not to access benefits to which they are lawfully entitled. Since press reports surfaced in January 2017 of a draft Executive Order directing DHS to adopt a broadened definition of "public charge," large numbers of noncitizens have

[2] Jeanne Batalova et al., *Through the Back Door: Remaking the Immigration System via the Expected "Public-Charge" Rule*, Migration Policy Institute (Aug. 2018), https://www.migrationpolicy.org/news/through-back-door-remaking-immigration-system-expected-public-charge-rule. This study was referenced in numerous public comments, including, *e.g.*, those submitted by the National Hispanic Leadership Agenda, and the Service Employees International Union.

[3] Randy Capps et al., *Gauging the Impact of DHS' Proposed Public-Charge Rule on U.S. Immigration*, Migration Policy Institute (Nov. 2018), https://www.migrationpolicy.org/research/impact-dhs-public-charge-rule-immigration. This study was referenced in numerous public comments, including, *e.g.*, those submitted by the National Center for Law and Economic Justice, and the Massachusetts Attorney General.

already chosen not to participate in public benefit programs for fear of damaging their immigration status. DHS has also acknowledged that the losses of benefits resulting from the Rule could lead to "[w]orse health outcomes," "[i]ncreased use of emergency rooms and urgent care as a method of primary health care due to delayed treatment"; "[i]ncreased prevalence of communicable diseases"; "[i]ncreased rates of poverty and housing instability"; and "[r]educed productivity and educational attainment," among other dire harms.[4] In fact, numerous studies cited in public comments on the proposed Rule have shown that DHS's estimates drastically understate the harm the Rule will cause.[5]

6. Nothing in the INA justifies or authorizes the Rule. On the contrary, the Rule is inconsistent with the language of the Act and with more than a century of judicial precedent and administrative practice. As DHS has admitted, "[a] series of administrative decisions after passage of the [INA] clarified . . . that receipt of welfare would not, alone, lead to a finding of likelihood of becoming a public charge." 83 Fed. Reg. at 51,125. Consistent with these decisions and the settled meaning of "public charge," USCIS's predecessor agency, the Immigration and Naturalization Service ("INS"), determined in 1999 that "mere receipt of public assistance, by itself, will not lead to a public charge finding."[6] INS's 1999 published field guidance (the "Field Guidance"), which has been in effect for more than 20 years, expressly excluded from public charge consideration receipt of such supplemental noncash benefits as Medicaid and SNAP, thus permitting intending immigrants who were not primarily

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4 Inadmissibility on Public Charge Grounds, 83 Fed. Reg. 51,114, 51,270 (proposed Oct. 10, 2018) (to be codified at 8 C.F.R. pts. 103, 212, 213, 214, 245, 248).

5 *E.g.*, California Immigrant Policy Center, Comment, at 3 (Dec. 10, 2018). Throughout this Complaint, public comments on the proposed Rule will be cited by referring to the name of the organization or individual that submitted them.

6 Inadmissibility and Deportability on Public Charge Grounds, 64 Fed. Reg. 28,676, 28,677 (proposed May 26, 1999) (to be codified at 8 C.F.R. pts. 212, 237).

dependent on cash assistance to obtain crucial health or other services for themselves and their families without losing eligibility for green cards.[7]

7. The Rule overturns this historical understanding. It seeks to label as "public charges" a far larger group of intending immigrants, including noncitizens who receive any amount of cash or noncash public benefits for even a short duration. Thus, a noncitizen could be branded likely to be a public charge for receiving benefits such as Medicaid, SNAP, and public housing subsidies that are widely used by low-wage workers and are available to beneficiaries with earned income well above the poverty line. Receipt of such benefits would not have been considered in any public charge determination under existing law, including the Field Guidance. And, because determining whether someone is "likely to become a public charge" is inherently predictive, the Rule would bar green card status to any noncitizen whom USCIS agents predict is likely to receive even a minimal amount of such benefits at any time in the future. Under the Rule, green card status could also be denied on the ground that an applicant has limited assets and works at a job that is low-wage or does not provide health insurance. The Rule would also predicate a "public charge" finding on a wide variety of other factors that have never previously been considered relevant, including such vague and standardless (and non-statutory) factors as English fluency and credit score.

8. The Rule thus attempts to rewrite the INA without action by Congress, and it does so in a way that Congress has expressly and repeatedly rejected. Between 1996 and 2013, Congress rejected multiple efforts to define "public charge" to include the receipt of

[7] *See* Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, 64 Fed. Reg. 28,689 (May 26, 1999).

noncash supplemental benefits. On the contrary, Congress has repeatedly reenacted the public charge provisions of the INA without material change.

9. Defendants fully understand and intend the dramatic change the Rule will make to U.S. immigration law. Stephen Miller, the President's senior advisor on immigration and a principal architect of the Rule, has said that the Rule will be "transformative," and defendant Ken Cuccinelli, in announcing the publication of the Rule, stated that it would "reshape" the system of obtaining lawful permanent residence. They are right. But under the Constitution, it is up to Congress, not the Department of Homeland Security, to "transform[]" or "reshape" U.S. law.

10. The Rule also is "transformative" in that it undermines the goal of family unity, which has been a cornerstone of U.S. immigration policy for nearly a century. Beginning in 1921, Congress expanded the categories of family members of citizens and green card holders able to seek admission or status adjustment through their relatives to further the "well-established policy of maintaining family unity." Revision of Immigration and Nationality Laws, S. Rep. No. 1137, at 16 (1952). The Immigration Act of 1965, also called the Hart-Celler Act, Pub. L. No. 89-236, 79 Stat. 911, adopted an immigration policy designed to "first reunite families," H.R. Rep. No. 89-745, at 12 (1965).[8] Congress has never retreated from that policy. The Rule will predominantly affect family-based aspiring immigrants, and thus will undermine decades of immigration law promoting and protecting family stability, unity, and well-being through the process of granting lawful permanent residence.

[8] *See* Albertina Antognini, *Family Unity Revisited: Divorce, Separation, and Death in Immigration Law*, 66 S.C. L. Rev. 1, 4 (2014).

11. The Rule seeks to achieve by fiat what the Trump Administration has failed to achieve through legislation. The Trump Administration explicitly sought to reduce family-based immigration and convert U.S. immigration policy to a "merit"-based system. But its efforts to achieve that goal through legislation have failed. The Rule now seeks to circumvent Congress in furtherance of that goal.

12. The Rule accordingly violates the Administrative Procedure Act ("APA") because it is not in accordance with law, and is arbitrary, capricious, and an abuse of discretion.

13. Even more fundamentally, under the plain language of the INA, DHS issued the Rule without statutory authority. The INA expressly grants the authority to regulate public charge determinations for noncitizens seeking adjustment of status not to DHS, but to the Attorney General. Accordingly, the promulgation of the Rule was enacted "in excess of statutory jurisdiction, authority, or limitations," in further violation of the APA. 5 U.S.C. § 706(2)(C).

14. The Rule violates the APA for additional reasons. Defendants fail to address substantive objections raised in the more than 266,000 public comments—the vast majority of them opposing the proposed rule—from state and local governments, health care providers, educators, religious organizations, members of Congress, business organizations, independent policy analysts, and others. Defendants fail to establish the premise of the Rule that certain arbitrary and in some cases undefined circumstances, such as the minimal receipt of temporary benefits or lack of English proficiency, are reliable predictors of becoming a public charge. This premise is disconnected from the reality of the immigrant experience in the United States. Defendants fail to justify DHS's dramatic departure from prior agency

interpretation of the INA, including the Field Guidance. And, while purporting to apply only to green card applications submitted after its effective date, the Rule is impermissibly retroactive, as well as so confusing, broad, and vague, and internally inconsistent that it fails to give applicants notice of conduct to avoid and invites arbitrary decision-making by government officials.

15. The Rule also discriminates against people with disabilities contrary to Section 504 of the Rehabilitation Act of 1973. 29 U.S.C. § 794.

16. Finally, the Rule violates the Constitution because its adoption was driven by unconstitutional animus against nonwhite immigrants. The Rule—which originated in a nativist think tank, and subsequently in a draft Executive Order—reflects the President's and his advisors' longstanding hostility to nonwhite immigrants from what he has referred to as "shithole countries," and whom he has characterized as "animals" who are "infesting" the United States. He has repeatedly referred to immigration from the southern border as an "invasion." Defendant Cuccinelli, the acting USCIS Director and the primary public face of the Administration's defense of the Rule, has for many years similarly referred to entry of undocumented immigrants from Mexico as an "invasion." In a recent televised interview, when asked whether the Rule was consistent with the ethos of the Statue of Liberty's welcoming words to "your tired, your poor, your huddled masses yearning to breathe free," Cuccinelli responded that those words were addressed to "people coming from Europe." Multiple courts, including at least two district courts in this Circuit, have already found it "plausible" that other anti-immigrant actions by the current Administration—including actions undertaken by DHS—were motivated by just such unconstitutional animus.

17. Plaintiffs are national and community-based non-profit organizations that advise, assist, advocate for, and serve hundreds of thousands of low-income noncitizens and their families in New York City and nationwide. The Rule will impede their core missions, and they will be forced to allocate substantial time and resources to respond to the impact the Rule will have on noncitizen families in New York and elsewhere. Accordingly, they bring this action under the APA and the Fifth Amendment to the United States Constitution to enjoin the Rule, declare it unlawful, and set it aside.

JURISDICTION AND VENUE

18. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331, as this case arises under the United States Constitution, the APA, 5 U.S.C. § 551 *et seq*., and the INA, 8 U.S.C. § 1101 *et seq*.

19. The publication of the final Rule in the Federal Register, on August 14, 2019, constitutes final agency action within the meaning of 5 U.S.C. § 704.

20. Venue is proper in this district pursuant to 28 U.S.C. § 1391, because the adjudication of family-based adjustment of status applications occurs at the USCIS New York Field Office located at 26 Federal Plaza, New York, New York 10278, which is in this district, and is where MRNY's members, and ASC's and CCCS's clients, would have their adjustment of status applications adjudicated. Venue in this district is also proper because Plaintiffs MRNY, ASC, AAF, and CCCS have offices in this district.

PARTIES

I. Plaintiffs

21. Plaintiff Make the Road New York ("MRNY") is a nonprofit, membership-based community organization with more than 23,000 members residing in New

York City, Long Island and Westchester. Its mission is to build the power of immigrant and working-class communities to achieve dignity and justice. Its work involves four core strategies: Legal and Survival Services, Transformative Education, Community Organizing and Policy Innovation. MRNY regularly creates and disseminates educational and outreach materials and conducts workshops for its members and the public on issues affecting working-class and immigrant communities. MRNY also mobilizes community members to engage in organizing and public-policy advocacy efforts around the organization's priorities.

22. Through its legal, health and education teams, MRNY provides direct services to thousands of immigrant New Yorkers. Among other matters, MRNY's legal team represents thousands of immigrants in removal proceedings or filing affirmative applications for immigration benefits, including individuals seeking adjustment of status. Its health team assists immigrants in accessing health services and navigating the health system as well as advocating for improved access to healthcare for immigrants. And its adult education team focuses on English as a second language, civics, basic adult education, and citizenship classes for immigrant New Yorkers. In 2018 alone, across its five community centers, MRNY provided direct services to over 10,000 individuals (not including their family members who benefited from its services).

23. During the public notice-and-comment period, MRNY submitted to USCIS a detailed comment documenting numerous harms the Rule would inflict on its members and immigrant communities. MRNY's comment demonstrated the Rule's substantial chilling effect on families and individuals entitled to nutritional and health assistance; the risks to public health and children should the Rule take effect; and the economic losses and increased suffering of immigrant communities. MRNY's comment also criticized the Rule's

racist intent and disproportionate impact on Latinx communities; the irrationality of the English-language proficiency requirement; and the incoherence and unlawfulness of the Rule's alteration of the test to determine whether an immigrant is or may become a public charge.

24. MRNY also assisted approximately 300 of its members in submitting comments.

25. The Rule is causing substantial harm to MRNY. MRNY's mission of advocating for the rights of low-income immigrant communities is inseparable from the interests of its members in not being denied admission or adjustment of their immigration status, in receiving vital public benefits, and in maintaining family integrity and unity. Defendants' actions also harm MRNY, and threaten it with ongoing and future harm, by causing the organization to divert resources in response to defendants' actions, including by assisting immigrants who may receive or need to receive public benefits on behalf of themselves and their families in navigating this new, more onerous regulatory framework. MRNY's members and clients who are preparing to file for adjustment of status face the prospect of denial and ultimately removal from the U.S. should the Rule take effect. Since the Rule was proposed, MRNY has held dozens of workshops to address questions and concerns among its members and devoted significant organizational resources to educating, screening and assisting members and other members of the public in responding to the Rule. MRNY's legal team has to divert resources to provide consultations and advice to immigrant New Yorkers who may be impacted under this Rule. In the event that adjustment applications are denied on public charge grounds, MRNY will have to devote resources to representing its members and clients in removal proceedings. Defendants' actions also increase the already

significant fears and needs of New York's immigrant community, impeding MRNY's goals of mobilizing and empowering its constituency.

26. Plaintiff African Services Committee ("ASC") is a non-profit multi-service human rights agency based in the Manhattan neighborhood of Harlem, and dedicated to mobilizing and empowering immigrants, refugees, and asylees from across the African Diaspora, filling gaps in the pathway to achievement of economic self-sufficiency. ASC's departments provide, among other things, housing placement, rental assistance, health screening access to care, and mental health services for hundreds of immigrants, especially those living with and at risk for HIV/AIDS and viral hepatitis; legal representation in immigration proceedings, including those for adjustment of status, providing increasing levels of assistance with legal application fees and emergency financial support to fill one-time needs, from private sources of funding; English language classes for immigrants; food pantry and nutrition services; and development of leadership skills of immigrants through community education and organizing. In seeking to educate and organize the communities it serves, ASC also publishes fact sheets, newsletters, and policy notes, which include updates and information on immigration policies with the potential to impact its clients.

27. During the public notice-and-comment period, ASC submitted to USCIS a detailed comment documenting numerous harms the Rule would inflict on its clients and immigrant communities generally, with a particular focus on the risks to health care access for those with HIV/AIDS.

28. Defendants' actions threaten substantial harm to ASC's ability to accomplish its mission. ASC's clients who are preparing to file for adjustment face the prospect of denial and ultimately removal from the U.S. should the Rule take effect. ASC's

clients are at particular risk because many live with chronic health conditions currently protected under the Americans with Disability Act ("ADA") and lack private health insurance. The Rule reinforces the concept of disability being a public burden, and will adversely affect immigrants with disabilities like many of ASC's clients, who are more likely than non-disabled immigrants to be living on or below the poverty line and utilizing public benefits for survival. For example, people with disabilities often need help with daily activities that are covered by Medicaid, but typically are not covered by private insurance. As another, children whose immigrant parents have disabilities will suffer due to being denied access to programs that provide them shelter and food, even if they were born in the U.S. In the worst-case scenario, children may be forcibly separated from their parents and placed into foster care.

29. The Rule is also affecting ASC's ability to connect clients with the benefits and services they need due to the warranted fear that receiving benefits today will be held against them in the future when they pursue their goals of seeking adjustment of status.

30. Because of the Rule's impact on ASC clients and constituents, among the many legal needs presented by clients, the organization has no choice but to devote significant resources to responding to the Rule. ASC has had to prioritize assisting applicants for adjustment who can file before the Rule's October 15, 2019, effective date, and at the same time counsel staff, community partners, and clients with urgent questions about whether receiving the benefits and services that keep them healthy and secure will undermine their ability to remain permanently in their communities surrounded by their networks of support. The consequences of choosing to forego benefits, especially healthcare and housing assistance, would be detrimental for ASC clients living with chronic health conditions and would derail their efforts to work, pursue education and training, and achieve their goals of success. In the

event that adjustment applications are denied on public charge grounds, ASC will have to devote resources to representing its clients in removal proceedings.

31. Plaintiff Asian American Federation ("AAF") is a non-profit umbrella leadership and organizational development network based in lower Manhattan and Flushing, Queens, with a mission of building the influence and well-being of the pan-Asian American community. AAF represents over 70 community services agencies throughout the northeast who work in health and human services, education, economic development, civic participation, and social justice, and are focused on serving low-income Asian immigrants and their families. In serving these members, AAF provides information and advocacy tools aimed at the low-income constituents of their members and for use by member staff; initiates research and data analysis to assess community needs, improve service delivery, and make policy recommendations; develops research on critical policy issues; raises awareness of problems by engaging with government stakeholders and the media; and provides training and capacity-building support to AAF member agencies.

32. During the public notice-and-comment period, AAF submitted to USCIS a detailed comment documenting numerous harms the Rule would inflict on its clients and immigrant communities generally, with a particular focus on the Rule making it harder for Asian immigrants to adjust and the chilling effect caused by the Rule.

33. Defendants' actions harm AAF in numerous ways. For low-income Asian immigrants, just like others, the Rule represents an emergency that requires immediate, critical decisions be made about pursuing plans to adjust, seeking to preserve the ability to adjust by foregoing public benefits, and dealing with the fallout from foregoing such benefits: immediate, adverse impacts on health, increased hunger, and housing instability. To fulfill its

mission of building the influence and well-being of its constituent communities, AAF has been required to expend resources providing the information, services, and expertise its members need to address this unfolding emergency, and at the same time represent member interests by engaging with government actors, Asian-language media, and the public to help get the word out about the Rule and its impacts, especially in the low-immigrant Asian neighborhoods and communities.

34. Plaintiff Catholic Charities Community Services (Archdiocese of New York) ("CCCS-NY") is a nonprofit organization within the Archdiocese of New York, with program sites and affiliates located throughout New York City and the Lower Hudson Valley. CCCS-NY's mission is to provide high quality human services to New Yorkers of all religions who are in need, especially the most vulnerable: the newcomer, the family in danger of becoming homeless, the hungry child, persons struggling with their mental health and developing youth. CCCS-NY's mission is grounded in the belief in dignity of each person and the building of a just and compassionate society.

35. CCCS-NY has been pursuing this mission since 1949 through a network of programs and services that enable participants to access eviction/homelessness prevention; tenant education and financial literacy training; case management services to help people resolve financial, emotional and family issues; long-term disaster case management services to help hurricane survivors rebuild their homes and lives; emergency food and access to benefits and other resources; immigration legal services; refugee resettlement; English as a second language services; specialized assistance for the blind; after-school and recreational programs for children and youth; dropout prevention and youth employment programs; and supportive housing programs for adults with severe mental illness.

36. CCCS-NY includes a 150-employee Immigrant and Refugee Services Division, which provides legal counsel, deportation defense, and application assistance—including litigation, family unity, asylum support, naturalization, and more—to immigrants; conducts large scale legal services initiatives throughout the Lower Hudson Valley; provides legal orientation, know your rights, and legal defense to unaccompanied children; offers resettlement and orientation support to refugees; provides English as a second language and cultural instruction; and operates three information hotline services, which respond to over 64,000 calls annually. Two of those hotlines are fundamental to the provision of legal services and legal information by New York City and New York State. These are the "ActionNYC Hotline" and the "New Americans Hotline," which answer over 43,000 calls in 18 languages annually and make referrals to social service providers throughout New York State each year. During 2018, the Immigrant and Refugee Services programming directly assisted over 20,000 individuals—children, families, workers—in New York.

37. During the public notice-and-comment period, CCCS-NY submitted to USCIS a comment documenting the harms the Rule would inflict on immigrant communities, including increased suffering for families and children due to immigrants' foregoing food and health care assistance for fear of losing access to immigration status. CCCS-NY's comment also criticized the Rule's unlawful and confusing alteration of the test to determine whether an immigrant is or may become a public charge; the likelihood of arbitrary and discriminatory application of the new standards; and the arbitrary, costly, and inequitable increase in the Rule's public bond requirements.

38. Defendants' actions directly harm CCCS-NY in multiple ways. The Rule threatens CCCS-NY's ability to achieve its core mission of helping to assist vulnerable

immigrants—families, children, long-time residents, workers—establish their footing in the communities they serve, whether through obtaining LPR status to preserve and protect family unity or ensuring that clients who are eligible continue to access critical government services and benefits that support vulnerable families. The Rule also requires CCCS-NY to devote substantial resources to assist its clients in understanding and addressing its impact. Further, CCCS-NY's clients who are preparing to file for adjustment of status face the prospect of denial and ultimately removal from the U.S. should the Rule take effect. In the event that adjustment applications are denied on public charge grounds, CCCS-NY will have to devote resources to representing its clients in removal proceedings.

39. Given the critical role the CCCS-NY hotlines play in the State and City response to public charge, CCCS-NY is on the front line of responding to the impact of the Rule—on New Yorkers who want to adjust to LPR status and their families, and on New Yorkers who are considering giving up SNAP, housing assistance, and essential health care because they do not understand if the Rule applies to them.

40. Plaintiff Catholic Legal Immigration Network, Inc. ("CLINIC") is a national, non-profit training and resource network focused on equipping immigration organizations with the tools necessary to provide comprehensive immigration representation. CLINIC's network includes approximately 370 affiliate immigration programs, which operate over 400 offices in 49 states and the District of Columbia. Its network employs more than 2,300 attorneys and accredited representatives who, in turn, serve hundreds of thousands of low-income immigrants each year, including aid with applications for adjustment of status. In seeking to further its mission to embrace the Gospel value of welcoming strangers, CLINIC supports its network by hosting in-person trainings on immigration-related matters; conducting

e-learning courses and webinars; publishing newsletters, Practice Advisories, and articles on developments in the immigration landscape; and, in some instances, providing funding for affiliates working directly with immigrant communities.

41. CLINIC affiliates employ not only attorneys but also Department of Justice ("DOJ")-accredited representatives. Accredited representatives are non-attorney staff or volunteers who are approved by DOJ to represent noncitizens in immigration court or before the Board of Immigration Appeals or USCIS. An accredited representative must work for a non-profit or social service organization that provides low- or no-cost immigration legal services. Many CLINIC affiliates rely on accredited representatives for the day-to-day work of their organization. In turn, those accredited representatives rely on CLINIC's resources for training and guidance.

42. CLINIC also provides training to its affiliates and other providers of services to immigrants. Trainings take the form of webinars, online courses with multiple classes, online self-directed courses, and workshops during its annual affiliate convening. CLINIC also provides technical support to its affiliates through the "Ask-the-Experts" portal on its website.

43. During the public notice-and-comment period, CLINIC submitted to USCIS a detailed comment documenting the enormous harms and burdens the Rule would inflict on immigrant communities and legal representatives and pointing out significant legal and practical flaws in the Rule's scheme. These flaws included, among others, the Rule's failure to justify changes to longstanding practice; its bypassing of the legislative process; and its inconsistency with congressional intent and the plain meaning of "public charge."

44. Defendants' actions threaten to impede CLINIC's mission, and have directly harmed and threaten ongoing and future harm to CLINIC, including by expending substantial resources to address the Rule and its impacts. Attorneys and accredited representatives from affiliates submit inquiries regarding individual immigration matters that are particularly complex, and CLINIC staff provide an expert consultation. Prior to the Rule being published on August 14, 2019, CLINIC attorneys provided an average of ten consultations a week on public charge related issues. Since the Rule was released, CLINIC has experienced a tripling in volume of technical support questions related to public charge and has had to prioritize updating its legal reference materials, conducting webinars, and modifying its training curricula. CLINIC anticipates that demand for consultations will be that much greater when the Rule becomes effective on October 15, 2019. Consultations regarding removal defense for individuals whose adjustment of status applications have been denied will be particularly complex.

45. CLINIC has no choice to apply its resources to addressing the emergencies precipitated by the Rule, both advising on individual cases brought to them by affiliates, and getting accurate information out to their immense network.

46. Were the Rule enjoined and set aside, plaintiffs could proceed with furthering their missions of affirmatively helping immigrants in meeting their goals instead of being forced into the defensive posture of protecting them from adverse actions, dealing with emergencies, and filling in the gaps created by a disenrollment from government benefits and services. Accordingly, the injuries to plaintiffs would be redressed by a favorable decision from this Court. Such a decision would, among other things, allow the organizational plaintiffs to redirect their resources from this issue to their other core objectives.

II. Defendants

47. Defendant Ken Cuccinelli is the Acting Director of United States Citizenship & Immigration Services, the component of DHS that oversees most adjustments and that is responsible for promulgating the Rule. President Trump appointed him to this role in June 2019 without seeking Senate confirmation, after the abrupt forced resignation of his predecessor, Lee Francis Cissna. Defendant Cuccinelli is sued in his official capacity.

48. Defendant Kevin K. McAleenan (the "Acting Secretary") is the Acting Secretary of Homeland Security and Commissioner of U.S. Customs and Border Protection. He inherited the role of Acting Secretary in April 2019 after the forced resignation of his predecessor, Kirstjen Nielsen. He is sued in his official capacity.

49. Defendant DHS is a cabinet department of the United States federal government. DHS has statutory responsibility for, among other things, administration and enforcement of certain portions of the INA (although, as discussed below, not the provisions by which the Rule is purportedly authorized).

50. Defendant USCIS is the agency with DHS responsible for the administration of applications within the United States for immigrant and non-immigrant benefits, including adjudication of applications for legal permanent residence.

FACTUAL ALLEGATIONS

51. The factual allegations in this Complaint are set forth in nine Sections. Section I describes lawful permanent residence (green card or "LPR") status, the basis for family-based adjustment, and the process an applicant for adjustment follows to obtain status under current law, including the public charge provisions of the INA. Section II discusses the historical interpretation of "public charge" in our immigration laws, including Congress's

repeated rejections of efforts to expand the definition of "public charge" in a manner substantially similar to that reflected in the Rule. Section III describes the Rule. Section IV describes the supplemental, noncash public benefits whose receipt would render a person a public charge under the Rule. Section V describes the ways the Rule violates the Administrative Procedure Act, including that the Rule is unlawfully retroactive, arbitrary and capricious, and discriminatory against individuals with disabilities. Section VI explains DHS's lack of statutory authority to promulgate the Rule. Section VII details defendants' failure to follow the APA's procedural requirements in promulgating the Rule, including their failure to meaningfully respond to substantive comments. Section VIII details the extensive evidence of anti-immigrant animus displayed by the defendants and the Trump Administration, under whose instructions DHS crafted and promulgated the Rule. Finally, Section IX discusses the immediate and irreparable harm that the Rule will cause.

I. LPR Status, the Adjustment Process, and the Public Charge Provision of the INA

52. The INA defines "lawfully admitted for permanent residence" to mean "the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws . . . ." 8 U.S.C. § 1101(a)(20). An LPR, or green card holder, has permission to live and work in the U.S. permanently as long as they abide by the law, and the right to petition for certain family members to join them in the U.S. as LPRs. LPR status is also a precondition for most immigrants to be eligible for obtaining U.S. citizenship through naturalization. The INA refers to the process whereby a noncitizen already residing in the United States obtains legal permanent residence as adjustment of status.

53. There are various paths by which an intending immigrant can obtain LPR status. Family-based immigration is the predominant path, accounting for 66 percent of all adjustments to LPR status.[9] Other paths to LPR status include (among others) humanitarian entry provided to refugees, asylees, and certain crime victims; employer sponsorship; and the diversity visa lottery.

54. Obtaining LPR status through a family member involves a number of preconditions and steps. As an initial matter, a person must have a qualifying relationship with certain U.S. citizens or LPRs. One category of qualifying relationships is "immediate relative," meaning a spouse of a U.S. citizen; an unmarried child under the age of 21 of a U.S. citizen; or the parent of a U.S. citizen who is at least 21 years old. 8 U.S.C. §§ 1151(b)(2)(A)(i), 1151(f). The INA places annual numerical limits on the number of immigrant visas available to relatives of U.S. citizens and LPRs in certain categories, but there are no such limits on the number of persons seeking to obtain LPR status through an immediate relative. *Id*. § 1151(b). Other relatives of a U.S. citizen or LPR may qualify under "family-based preference" categories. *Id.* § 1153(a). These include unmarried adult children of citizens; spouses and unmarried children of LPRs; married children of citizens; and brothers and sisters of citizens, but there are annual numerical limits placed on the immigrant visas available in each of these family-based preference categories. *Id.* § 1151(a)(1). Fiancés of a U.S. citizen and a fiancé's child, as well as a widow or widower of a U.S. citizen, may also be eligible to adjust their status to LPR. Most family-based applicants for LPR status are required

[9] *See* Dep't of Homeland Security, *Annual Flow Report: Lawful Permanent Residents*, at 5 (2018), https://www.dhs.gov/sites/default/files/publications/Lawful_Permanent_Residents_2017.pdf.

to have a financial sponsor who can support them at or above 125 percent of the FPG. *See id.* at § 1183a.

55. Section 212 of the INA lists many of the bases for denying applications for admission and adjustment. *Id.* § 1182(a)(1)–(10) (including, *e.g.*, grounds related to health, criminal convictions, national security, and public charge). If the applicant is found to be eligible and there is no basis for denial, the application for status adjustment is approved and the applicant is issued a lawful permanent resident card, known as a green card.

56. In the context of admissibility and status adjustment, public charge determinations are governed by section 212(a)(4) of the INA, which states that a noncitizen who "in the opinion of the consular officer at the time of application for a visa, or in the opinion of the Attorney General at the time of application for admission or adjustment of status, is likely at any time to become a public charge is inadmissible." *Id.* § 1182(a)(4)(A).

57. The INA identifies five factors that a consular officer or the Attorney General must consider when making a prospective public charge determination in the admissibility context: (1) age, (2) health, (3) family status, (4) assets, resources, and financial status, and (5) education and skills. *Id.* § 1182(a)(4)(B)(i). The statute does not ascribe particular weight to any one factor. The INA also permits a consular officer or the Attorney General to "consider any affidavit of support" from a financial sponsor. 8 U.S.C. § 1182(a)(4)(B)(ii).

58. A separate provision of the INA, not directly at issue here, provides that a public charge determination may result in a noncitizen being deported. Section 237(a)(5) of the INA provides that "[a]ny alien who, within five years after the date of entry, has become a public charge from causes not affirmatively shown to have arisen since entry is deportable."

Id. § 1227(a)(5). Although the Rule at issue in this litigation purports to apply only to Section 212(a)(4), relating to admission and status adjustment, recent reports indicate that the Department of Justice is developing a public charge deportation rule "based on" the DHS Rule at issue here,[10] and DHS confirms as much in the final Rule.[11]

II. The Public Charge Provisions Have Historically Been Interpreted to Apply Only to Noncitizens Primarily Dependent on The Government For Subsistence

59. Since the "public charge" inadmissibility provision first became part of federal immigration law in 1882, courts and administrative agencies have interpreted the term "public charge" to refer to noncitizens who rely primarily on the government for subsistence, and Congress has repeatedly considered and rejected efforts to expand the definition of public charge in a manner similar to the definition in the Rule. The historical interpretation of "public charge," from its origins in federal immigration law to the present, is described chronologically below.

A. 1880s–1930s: The Original Meaning of "Public Charge" Referred to A Narrow Class of Persons Wholly Unable to Care for Themselves

60. The term "public charge" first appeared in federal immigration law in the Immigration Act of 1882, 47th Cong. ch. 376, 22 Stat. 214, § 2, which provided that "any person unable to take care of himself or herself without becoming a public charge" could be denied admission to the United States. Later bills changed the wording of the clause to "likely to become a public charge," and that language has been retained in the statute to the present.[12]

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[10] *See* Yaganeh Torbati, *Exclusive: Trump Administration Proposal Would Make It Easier to Deport Immigrants Who Use Public Benefits*, Reuters (May 3, 2019), https://www.reuters.com/article/us-usa-immigration-benefits-exclusive/exclusive-trump-administration-proposal-would-make-it-easier-to-deport-immigrants-who-use-public-benefits-idUSKCN1S91UR.

[11] *E.g.*, 84 Fed. Reg. at 41,324.

[12] *E.g.*, 1891 Immigration Act, 51st Cong. ch. 551, 26 Stat. 1084 § 1; Immigration Act of 1903, 57th Cong. ch. 1012, 32 Stat. 1213, 1214 § 2 (excluding from the United States "persons likely to become a public charge," among others); Immigration Act of 1917, 64th Cong. Ch. 29, 39 Stat. 874, 876 (same); Immigration and

61. In the Immigration Act of 1891, Congress provided additionally that newly arrived immigrants were subject to "removal," or deportation, if they became public charges within one year after entry resulting from circumstances that did not predate arrival (a period later extended to five years). 26 Stat. 1084, 1086 § 11. Like the public charge inadmissibility provision, the public charge removal provision has remained largely unchanged since it was first adopted.[13]

62. While the 1882 Act and its successors did not define the term "public charge," Congress considered the phrase to refer to those who were likely to become long-term residents of "poor-houses and alms-houses"—*i.e.*, persons who were institutionalized and wholly dependent on the government for subsistence. 13 Cong. Rec. 5109 (June 19, 1882). In the House debate on the bill that became the 1882 Act, one supporter argued that the bill was needed to address alleged efforts by foreign nations "to get these paupers into the United States and make their support a burden upon the United States. . . . Here they become at once a public charge. They get into our poor-houses." 13 Cong. Rec. 5107, 5109 (1882) (statement of Mr. Van Voorhis). The same Representative favorably quoted a writer who stated that "America has come to be regarded by European economists as a cheaper poor-house and jail than any to be found at home." *Id.* at 5108–09.

63. This interpretation of "public charge" is consistent with earlier and contemporaneous usage. Contemporary dictionaries defined "charge" as one "committed to another's custody, care, concern, or management." *Century Dictionary of the English*

Nationality Act of 1952, 82nd Cong. ch. 477, 66 Stat. 163, 183 (1952) (excluding noncitizens "who, in the opinion of the consular officer at the time of application for a visa, or in the opinion of the Attorney General at the time of application for admission, are likely at any time to become public charges").

[13] *See* Immigration Act of 1903, 32 Stat. 1213, 1218 § 20; Immigration Act of 1990, Pub. L. 101-649 § 602, 104 Stat. 4978 ("Any alien who, within five years after the date of entry, has become a public charge from causes not affirmatively shown to have arisen since entry is deportable.").

Language (1889–91). Consistent with this definition (as one group of immigration historians stated in a comment on the Rule), "under the colonial, state, and early federal immigration laws, deportation based on the public charge clause applied only to people accommodated at public charitable institutions or who were substantially dependent on public relief for the basic maintenance of their lives."[14] The 1882 Act itself derived from earlier state statutes regulating admission of immigrants, particularly in New York and Massachusetts, which similarly used the term "public charge" to refer to residents of public institutions for the destitute, such as almshouses and workhouses.[15]

64. Early judicial interpretations of the original public charge provisions confirmed that Congress did not intend the public charge exclusion to apply broadly to noncitizens who relied on any outside assistance, however minimal. On the contrary, the courts recognized early that Congress intended the term public charge to require a substantial level of lengthy or permanent dependence on the public for subsistence. As the Second Circuit held in 1917, "We are convinced that Congress meant [by public charge] to exclude persons who were likely to become occupants of almshouses for want of means to support themselves in the future." *Howe* v. *United States ex rel. Savitsky*, 247 F. 292, 294 (2d Cir. 1917); *see also Gegiow* v. *Uhl*, 239 U.S. 3, 9-10 (1915) (holding that the list of excludable immigrants in the Immigration Act of 1907, including those likely to become a public charge, meant to exclude immigrants "on the ground of ***permanent*** personal objections accompanying them," (emphasis added), and stating that a group of immigrants could not be excluded on public charge grounds based on "the amount of money possessed and ignorance of our language").

[14] Torrie Hester et al., Comment, at 3 (Oct. 5, 2018) [hereinafter "Historians' Comment"].
[15] *See* Hidetaka Hirota, *Expelling the Poor* 180–204 (2017).

65. Consistent with this narrow understanding of public charge, federal immigration officials in the early 20th century excluded only a minuscule percentage of arriving immigrants on public charge grounds. According to DHS's own data, of the approximately 21.8 million immigrants admitted to the United States as lawful permanent residents between 1892 and 1930, approximately 205,000—less than one percent—were deemed inadmissible as likely to become public charges. The same has been true in subsequent years: between 1931 and 1980 (the last year for which DHS publishes such data), only 13,798 immigrants were excluded on public charge grounds out of more than 11 million immigrants admitted as legal permanent residents—an exclusion rate of approximately one-tenth of one percent.[16]

66. The narrow scope of the term "public charge" as interpreted by these courts and administrative agencies in applying the public charge exclusion provision of the INA is consistent with contemporaneous use of the term by courts in other contexts. Contemporaneous state court decisions expressly distinguished between receipt of "temporary relief" and becoming a public charge. *See*, *e.g.*, *Davies v. State ex rel. Boyles*, 27 Ohio C.C. 593, 595–96, 1905 WL 629, at *2 (Ohio Cir. Ct. July 8, 1905) ("[P]ublic interests are subserved by the aiding of persons who might become a public charge, if left to their own resources, to such an extent that, by combining the small fund given them by the state with what they may be able to earn . . . they might be able to maintain themselves and avoid

[16] *See* Dep't of Homeland Security, *Table 1. Persons Obtaining Lawful Permanent Resident Status: Fiscal Years 1820 to 2016*, (Dec. 18, 2017), https://www.dhs.gov/immigration-statistics/yearbook/2016/table1; Immigration and Naturalization Service, *2001 Statistical Yearbook of the Immigration and Naturalization Service* 258 (2003), https://www.dhs.gov/sites/default/files/publications/Yearbook_Immigration_Statistics_2001.pdf; *see also* Mae Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America* 18 (2004). Similarly, during the Great Depression, the Immigration and Naturalization Service ("INS") (the predecessor agency to USCIS) did not consider immigrants who were "victims of the general economic depression" deportable simply because they received public relief. *Id.* at 72.

becoming a charge."); *Yeatman v. King*, 51 N.W. 721, 723 (1892) (emphasizing the "obligation" on the public "to keep a portion of the population destitute of means and credit from becoming a public charge by affording them temporary relief").

B. 1940s–1980s: Administrative Decisions Affirm the Original Understanding of Public Charge

67. The original interpretation of "public charge" by Congress and the courts persisted in the mid-twentieth century, largely through decisions of the Board of Immigration Appeals (the "BIA") and the Attorney General, which narrowly limited the circumstances in which an immigrant could be deported or denied admissibility or adjustment of status on public charge grounds.

68. In the leading case of *Matter of B-*, 3 I. & N. Dec. 323, 324 (B.I.A. 1948), the BIA held that "acceptance by an alien of services provided by a State . . . to its residents, services for which no specific charge is made, does not in and of itself make the alien a public charge." Rather, the Board held, a noncitizen was removable as a public charge *only* if (1) the noncitizen was "charged" for receipt of a public benefit under the law, (2) a demand for payment was made, and (3) the noncitizen or a family member failed to pay. *Id.* at 326. *Matter of B-* has remained the law for more than seventy years.

69. In 1952, four years after *Matter of B-* was decided, Congress reenacted the public charge provision in the Immigration and Nationality Act of 1952 (the "1952 Act," also known as the McCarran-Walter Act). The Senate report accompanying the bill that became the 1952 Act carefully traced the administrative and court decisions interpreting the public charge provisions of the Act, and proposed retaining the existing provisions without defining the term "public charge." S. Rep. No. 1515, at 348–49 (1950). Consistent with that recommendation,

the 1952 Act did not define the term or purport to change existing administrative interpretations. *See* 1952 Act, 66 Stat. 163, 183.

70. The holding in *Matter of B-* that mere receipt of public benefits does not render a person a public charge has been applied in the context of admissibility as well as removal. In *Matter of Martinez-Lopez*, 10 I. & N. Dec. 409 (B.I.A. 1962; A.G. 1964), Attorney General Robert F. Kennedy set forth in detail the history of the public charge inadmissibility rule—including its "extensive judicial interpretation"—and explained that, in order to exclude a noncitizen as likely to become a public charge, "the [INA] requires more than a showing of a possibility that the alien will require public support." *Id.* at 421–22. Instead, the Attorney General explained:

> [s]ome specific circumstance, such as mental or physical disability, advanced age, or other fact reasonably tending to show that the burden of supporting the alien is likely to be cast on the public, must be present. A healthy person in the prime of life cannot ordinarily be considered likely to become a public charge, especially where he has friends or relatives in the United States who have indicated their ability and willingness to come to his assistance in case of emergency.

Id. at 422 (collecting cases); *see also Matter of Perez*, 15 I. & N. Dec. 136, 137 (B.I.A. 1974) ("The fact that an alien has been on welfare does not, by itself, establish that he or she is likely to become a public charge."); *Matter of Harutunian*, 14 I. & N. Dec. 583, 590 (1974) (finding that a 70-year old noncitizen who was reliant on state old age assistance was inadmissible on public charge grounds where she "lacks means of supporting herself, . . . has no one responsible for her support and . . . expects to be dependent for support on old age assistance. . . .").

71. These administrative decisions continue to reflect a narrow definition of "public charge" despite the increasingly broad array of public benefits that became available for low-income people since the 1882 Immigration Act was enacted, including the Aid to

Dependent Children program (1935), public housing (1937), food stamps (1964), Medicaid (1965), Supplemental Security Income (1972), and Section 8 housing vouchers (1974). Indeed, even prior to the New Deal—throughout the nineteenth and early twentieth centuries—states, counties, and municipalities routinely provided temporary assistance to needy residents.[17] And prior to enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, discussed further below, many lawfully residing noncitizens were eligible for most federal public benefits without restriction. Plaintiffs are not aware of any judicial or administrative decision holding that the receipt of benefits under any of these programs rendered the recipient a public charge for immigration purposes, and defendants have cited none.

C. 1990s: PRWORA and IIRIRA Confirm Noncitizen Eligibility for Public Benefits and Leave Existing Law Regarding Public Charge Determinations Unchanged

72. Congress in the 1990s twice reenacted the public charge provisions of the INA without material change. First, the Immigration Act of 1990 reenacted the public charge provision virtually unchanged from the 1952 Act. The legislative history to the 1990 Act recognized that something more than mere receipt of benefits was required to label an immigrant as a public charge. A 1988 House Report explained that courts associated the likelihood of becoming a public charge with "destitution coupled with an inability to work," and noted the Supreme Court's finding in 1915 that a person deemed likely to become a public charge "is one whose anticipated dependence on public aid is primarily due to poverty and to

[17] *See* Michael B. Katz, *In the Shadow of the Poorhouse: A Social History of Welfare in America* 37–59 (10th ed. 1996).

physical or mental afflictions."[18] In the debate leading to enactment of the 1990 Act, one Congressman characterized someone who "would become a public charge" as a person "who gets here who is helpless."[19] The 1990 Act also amended the INA to remove some of its archaic provisions related to the disabled, such as exclusions based on "mental retard[ation]," "insanity," "psychopathic personality," "sexual deviation," or "mental defect."[20]

73. In 1996, Congress enacted two major pieces of legislation focused on the eligibility of noncitizen immigrants for certain public benefits and on public charge determinations: the Personal Responsibility and Work Opportunity Reconciliation Act ("PRWORA," colloquially called the "Welfare Reform Act") and the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"). Neither statute purported to redefine "public charge," or to alter the settled rule that the mere receipt of means-tested benefits is not a basis for branding someone a public charge.

74. PRWORA restricted certain noncitizens' eligibility for certain federal benefits. Pub. L. 104-193, § 403, 110 Stat. 2105, 2265–67 (1996). Some noncitizens were completely excluded from eligibility. But following the passage of PRWORA and subsequent legislation, certain classes of immigrants remained eligible to receive federally-funded government benefits, including Medicaid, Food Stamps (now SNAP), Supplemental Security Income ("SSI") and Temporary Assistance for Needy Families ("TANF," a form of cash assistance), the Children's Health Insurance Program ("CHIP"), and the Special Supplemental Nutrition Program for Women, Infants, and Children ("WIC"). *See generally* 8 U.S.C.

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[18] Staff of the H. Comm. on the Judiciary, 100th Cong., Grounds for Exclusion of Aliens Under the Immigration and Nationality Act: Historical Background and Analysis 121 (Comm. Print 1988) (citing *Gegiow v. Uhl*, 239 U.S. 3 (1915)).

[19] 135 Cong. Rec. S14,291 (July 12, 1989) (statement of Mr. Simpson).

[20] Immigration Act of 1990, Pub. L. No. 101-649, §§ 601-603, 104 Stat. 4978, 5067–85 (1990).

§§ 1612–1613. PRWORA also authorized states to choose to cover a broader group of noncitizens for eligibility in state public benefits programs. *Id.* § 1621(d).[21]

75. Contrary to DHS's suggestion, nothing in PRWORA supports the Rule's unprecedented definition of public charge as someone who receives a minimal amount of public benefits. While PRWORA's statement of purpose expressed the policy that resident noncitizens "not depend on public resources to meet their needs," 84 Fed. Reg. at 41,294, Congress plainly concluded that that policy was consistent with affirming the eligibility of certain noncitizens for federal public benefits, and authorizing states to provide benefits to a broader group of noncitizens not eligible for federal benefits.[22]

76. Nothing in PRWORA purported to change the meaning of "public charge" or to overturn its longstanding administrative application. Nor was this accidental. On the contrary, PRWORA specifically amended *another* provision of the INA relevant to public charge determinations. Section 423 of PRWORA amended the INA to provide detail about the requirements for executing an affidavit of support, a document executed by sponsors of certain immigrants establishing that the immigrant will not become a public charge. Pub. L. No. 104-193, § 423, 110 Stat. 2105, 2271–74. If Congress had wanted to change the settled

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[21] In legislation following enactment of PRW0RA, Congress expanded the availability of certain benefits, particularly SNAP, to so-called "qualified aliens." *See* Agricultural Research, Education and Extension Act of 1998 ("AREERA"), Pub. L. No. 105-185, 112 Stat. 523 (restoring eligibility for certain elderly, disabled and child immigrants who resided in the United States when PRWORA was enacted); The Farm Security and Rural Investment Act of 2002, Pub. L. No. 107-171, 116 Stat. 134 (restoring eligibility for food stamps (now SNAP) to qualified aliens who have been in the United States at least five years and immigrants receiving certain disability payments and for children, regardless of how long they have been in the country).

[22] DHS concedes that PRWORA's policy statements about self-sufficiency were not codified in the INA, including in the public charge inadmissibility provision, which makes no mention of "self-sufficiency." *See* 84 Fed. Reg. at 41,355–56 ("although the INA does not mention self-sufficiency in the context of section 212(a)(4) of the Act, 8 U.S.C. 1182(a)(4), DHS believes that there is a strong connection between the self-sufficiency policy statements [in PRWORA] (even if not codified in the INA itself) at 8 U.S.C. 1601 and the public charge inadmissibility language in section 212(a)(4) of the Act, 8 U.S.C. 1182(a)(4), which were enacted within a month of each other.").

interpretation of public charge to include receipt of minimal amounts of noncash benefits, it would have been eminently logical for it to do so as part of PRWORA, a law that specifically concerned both the availability of public benefits to noncitizens and the public charge inadmissibility provision of the INA. Congress declined to make that change.

77. IIRIRA—which was passed the month after PRWORA—codified the existing standard for determining whether a noncitizen was inadmissible as a public charge. Pub. L. No. 104-208 § 531, 110 Stat. 3009 (1996) (amending 8 U.S.C. § 1182). IIRIRA re-enacted the existing INA public charge provision relating to admission and status adjustment, and once again chose to leave the term "public charge" undefined. *See* 8 U.S.C. § 1182(a)(4). Instead, the statute provided that, consistent with prior case law, a public charge determination should take account of the "totality of the circumstances," and specified that any public charge determination consider the applicant's age; health; family status; assets, resources, and financial status; and education and skills. *Id.* § 1182(a)(4)(B)(i).

78. IIRIRA also confirmed that immigration officers could consider a binding affidavit of support from an applicant's sponsor in making a public charge determination. *Id.* § 1182(a)(4)(B)(ii); *see id.* § 1183a. In practice, since the enactment of PRWORA and IIRIRA, noncitizens seeking admission or adjustment have routinely been able to overcome a potential public charge determination by filing a binding affidavit of support from a sponsor.[23]

79. Nothing in IIRIRA purported to expand the definition of public charge, or reflected an intent by Congress to use the public charge provision to refuse admission or status adjustment based upon past or likely future receipt of supplemental or noncash public benefits.

[23] *See* Center on Budget and Policy Priorities, Comment, at 30 (Dec. 7, 2018) [hereinafter "CBPP Comment"].

D. 1995–2013: Congress Repeatedly Rejects Efforts to Expand the Meaning of "Public Charge"

80. Congress's decision to maintain the definition of "public charge" was no oversight. On the contrary, Congress has repeatedly considered and rejected proposals to amend the INA public charge provisions to apply to persons receiving (or considered likely to receive) means-tested public benefits—the result that DHS now seeks to achieve through the Rule.

81. In the debate leading up to the enactment of IIRIRA, Congress considered and rejected a proposal to label as a public charge anyone who received certain means-tested public benefits. An early version of the bill that became IIRIRA would have defined the term "public charge" for purposes of removal to include any noncitizen who received certain public benefits enumerated in the bill, including Aid to Families with Dependent Children, Medicaid, food stamps, SSI, and other programs "for which eligibility for benefits is based on need." Immigration Control & Financial Responsibility Act of 1996, H.R. 2202, 104th Cong. § 202 (1996). The express purpose of this provision was to overturn the settled understanding of "public charge" found in the case law. When the bill was considered by the Senate, Senator Alan Simpson (a proponent of the provision) explained during debate that the purpose of the new public charge definition was to override "a 1948 decision by an administrative law judge"—*Matter of B-*, discussed in ¶¶ 68–70 above—which he argued had rendered the public charge provision "virtually unenforced and unenforceable." *See* 142 Cong. Rec. S4401, S4408–09 (1996).

82. The effort to overturn *Matter of B-* and change the settled definition of public charge was met with criticism. For example, Senator Patrick Leahy expressed concern

that the bill "is too quick to label people as public charges for utilizing the same public assistance that many Americans need to get on their feet." S. Rep. No. 104-249, at 63 (1996). Senator Leahy was "disturbed that the definition of public charge goes too far in including a vast array of programs none of us think of as welfare," including medical services and supplemental nutritional programs and urged that the bill "will yield harsh and idiosyncratic results that no one should intend." *Id*. at 64.

83. The effort to redefine the public charge in IIRIRA failed. Although a version of the bill including the expansive definition of public charge cleared one chamber of Congress, the bill could not be passed until the provision was removed. In a statement on the Senate floor the day IIRIRA was enacted, Senator Jon Kyl, a floor manager of the bill and proponent of the provision, explained:

> [I]n order to ensure passage of this historic immigration measure, important provisions of title 5 have been deleted. . . . [One] provision that was removed from title 5 would have clarified the definition of "public charge." Under the House-passed conference report, an immigrant could be deported—but would not necessarily be deported—if he or she received Federal public benefits for an aggregate of 12 months over a period of 7 years. That provision was dropped during Saturday's negotiations.

142 Cong. Rec. S11872, S11882 (1996) (statement of Sen. Kyl).

84. In 2013, Congress again turned back efforts to redefine public charge to include anyone receiving means-tested public benefits when the Senate debated the proposed Border Security, Economic Opportunity, and Immigration Modernization Act, a bill that sought to create a path to citizenship for noncitizens who could show they were not "likely to become a public charge." S. 744, 113th Cong. § 2101 (2013). During committee deliberations, Senator Jefferson B. Sessions, later to serve as Attorney General during a period of time when the Rule was under consideration and development, sought to amend the

definition of public charge to include receipt of "noncash employment supports such as Medicaid, the SNAP program, or the Children's Health Insurance Program." S. Rep. No. 113-40, at 42 (2013). Senator Sessions' proposed amendment was rejected by voice vote. *Id.*

85. In short, Congress has repeatedly rejected efforts to expand the definition of public charge along the lines now proposed by DHS. In so doing, it has demonstrated its clear intent to continue to apply the historical definition of public charge that has endured for over 100 years. Nowhere in the INA does Congress delegate to DHS, USCIS, or any other executive agency the authority to add new bases of inadmissibility or removability without the consent of Congress.

E. 1999: Administrative Field Guidance Reaffirms the Settled Interpretation of Public Charge

86. In 1999, approximately three years after the passage of PRWORA and IIRIRA (and in the administration of the President Clinton, who signed both bills), the Immigration and Naturalization Service ("INS," the predecessor agency to USCIS) issued its *Field Guidance on Deportability and Inadmissibility on Public Charge Grounds* ("Field Guidance"), 64 Fed. Reg. 28,689 (May 26, 1999), and a parallel proposed regulation, 64 Fed. Reg. 28,676 (May 26, 1999). INS issued the Field Guidance and proposed regulation "[a]fter extensive consultation with benefit-granting agencies," 64 Fed. Reg. at 28,692, in response to "growing public confusion" about the definition of public charge in the wake of PRWORA and IIRIRA, *id.* at 28,676, and "to ensure the accurate and uniform application of law and policy in this area," *id.* at. 28,689. INS explained that the Field Guidance "summarize[d] longstanding law with respect to public charge," and provided "new guidance on public charge determinations" in light of the recent legislation. *Id.*

87. The Field Guidance defined "public charge" as a noncitizen "who is likely to become (for admission/adjustment purposes) 'primarily dependent on the government for subsistence, as demonstrated by either (i) the receipt of public cash assistance for income maintenance or (ii) institutionalization for long-term care at government expense.'" *Id.* The Field Guidance expressly excluded from public charge determinations consideration of noncash benefits programs, such as Medicare, Medicaid, SNAP, and housing assistance. *Id.* INS explained that "[i]t has never been [INS] policy that any receipt of services or benefits paid for in whole or in part from public funds renders an alien a public charge, or indicates that the alien is likely to become a public charge." *Id.* at 28,692.

88. INS explained that the definition of public charge adopted in the Field Guidance and proposed regulation comported with the plain meaning of "charge," as evidenced by dictionary definitions of the term as one "committed or entrusted to the care, custody, management, or support of another."[24] It reasoned that this definition "suggests a complete, or nearly complete, dependence on the Government rather than the mere receipt of some lesser level of financial support," and that this standard of primary dependence on public assistance "was the backdrop against which the 'public charge' concept in immigration law developed in the late 1800s." 64 Fed. Reg. at 28,677.

89. INS further concluded that noncash benefit programs should not be considered in public charge determinations because benefits under such programs "are by their nature supplemental and do not, alone or in combination, provide sufficient resources to

[24] 64 Fed. Reg. at 28,677 (quoting Webster's Third New International Dictionary of the English Language 377 (1986) (defining "charge" as "a person or thing committed or entrusted to the care, custody, management, or support of another," and providing as an example: "He entered the poorhouse, becoming a county charge.") and citing 3 Oxford English Dictionary 36 (2d ed. 1989) (defining "charge" as "[t]he duty or responsibility of taking care of (a person or thing); care, custody, superintendence")).

support an individual or family." *Id.* at 28,692. It explained that such benefits "are increasingly being made available to families with incomes far above the poverty level, reflecting broad public policy decisions about improving general health and nutrition, promoting education, and assisting working-poor families in the process of becoming self-sufficient." *Id.* INS also emphasized that it did not expect this definition "to substantially change the number of aliens who will be found deportable or inadmissible as public charges." *Id*. Likewise, USCIS publishes on its website a "public charge fact sheet" that, as of the filing of this Complaint, makes clear that noncash benefits are not subject to public charge consideration.[25]

90. In identifying only primary dependence on means-tested cash assistance as a trigger for the public charge determination, the Field Guidance made expectations clear both to applicants for adjustment and admission and to USCIS officers tasked with implementing it. In the 20 years since the Field Guidance was adopted, the number of noncitizens excluded or denied adjustment as likely to become a public charge has remained small. By the same token, according to statistics from the State Department, between 2000 and 2016, approximately 36,000 noncitizens were denied visas on public charge grounds, less than two-tenths of one percent of the more than 17 million immigrants admitted as lawful permanent residents.[26]

F. Background of The Rule

91. The Rule originated in a wide-ranging policy proposal published in April 2016 by the Center for Immigration Studies ("CIS"), a far-right group founded by white

[25] *See* Public Charge Fact Sheet, https://www.uscis.gov/news/fact-sheets/public-charge-fact-sheet (last visited Aug. 24, 2019).

[26] *See* Report of the Visa Office, 2000–2018, https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics.html.

supremacist John Tanton and dedicated to immigration restrictionism.[27] Tanton was a supporter of "passive eugenics"[28] intended to preserve America's white majority, which he feared was under threat due to the "greater reproductive powers" of Hispanic immigrants.[29] He has been quoted as saying, "I have come to the point of view that for European-American society and culture to persist, it requires a European-American majority and a clear one at that."[30]

92. The CIS publication that led to the Rule, "A Pen and a Phone: 79 immigration actions the next president can take," lists numerous proposals for limiting immigration of low-income people and asylum seekers from non-European countries. Action #60 urges the next president to "make use of the public charge doctrine to reduce the number of welfare-dependent foreigners living in the United States."[31] The publication also misleadingly states that "[h]alf of households headed by immigrants use at least one welfare program."[32] This assertion fails to differentiate long-term lawful permanent residents and naturalized citizens from intending immigrants; ignores that most intending immigrants are not eligible for any non-emergency public assistance at all; and misleadingly includes benefits paid to U.S. citizen members of noncitizen-headed households.[33]

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27 *See* Southern Poverty Law Center listing of Center for Immigration Studies as an "anti-immigrant hate group," Southern Poverty Law Center, https://www.splcenter.org/fighting-hate/extremist-files/group/center-immigration-studies (last visited Aug. 24, 2019).

28 *See* Anti-Defamation League, *Ties Between Anti-Immigrant Movement and Eugenics*, (Feb. 22, 2013), https://www.adl.org/news/article/ties-between-anti-immigrant-movement-and-eugenics.

29 *See* Matt Schudel, *John Tanton, architect of anti-immigration and English-only efforts, dies at 85*, Wash. Post (July 21, 2019), https://www.washingtonpost.com/local/obituaries/john-tanton-architect-of-anti-immigration-and-english-only-efforts-dies-at-85/2019/07/21/2301f728-aa3f-11e9-86dd-d7f0e60391e9_story.html.

30 *Id.*

31 Center for Immigration Studies, *A Pen and A Phone* 8 (Apr. 6, 2016), https://cis.org/sites/cis.org/files/79-actions_1.pdf.

32 *Id.*

33 *See* Alex Nowrasteh, *Center on Immigration Studies Overstates Immigrant, Non-Citizen, and Native Welfare Use*, Cato Institute (Dec. 6, 2018), https://www.cato.org/blog/center-immigration-studies-overstates-immigrant-

93. Within a week of President Trump's inauguration, a draft of an Executive Order targeting immigrant-headed families that had used any means-tested public benefit, including health insurance for U.S. citizen children, was leaked to the public, initiating a pattern across the country of fear and withdrawal from public services and benefits. The draft Executive Order, among other things, directed DHS to issue new rules defining "public charge" to include any person receiving means-tested public benefits.[34]

94. The draft Executive Order was never signed. But DHS embarked on drafting changes to the public charge criteria through notice-and-comment rulemaking. Early drafts of the proposed rule were leaked to the press in February and March 2018.[35] And on October 10, 2018, DHS published a Notice of Proposed Rulemaking (the "NPRM") entitled "Inadmissibility on Public Charge Grounds" and opened the proposed rule for public notice and comment. Inadmissibility on Public Charge Grounds, 83 Fed. Reg. 51,114 (proposed Oct. 10, 2018) (to be codified at 8 C.F.R. pts. 103, 212, 213, 214, 245, 248).

95. More than 266,000 think tanks, scholars, advocacy groups, legal services organizations, children's aid groups and other non-profits, states, municipalities, and individuals submitted comments, the "vast majority" of which "opposed the Rule," according to DHS. 84 Fed. Reg. at 41,304.

96. On August 14, 2019, USCIS published the final Rule.

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non-citizen-native-welfare-use (criticizing CIS's "unsound methodological choice[s]" that are made to "inflat[e]" the apparent use of public benefits programs by noncitizens so as to justify expanding public charge).

[34] *See* Executive Order on Protecting Taxpayer Resources by Ensuring Our Immigration Laws Promote Accountability and Responsibility (Jan. 23, 2017), https://cdn3.vox-cdn.com/uploads/chorus_asset/file/7872571/Protecting_Taxpayer_Resources_by_Ensuring_Our_Immigration_Laws_Promote_Accountability_and_Responsibility.0.pdf.

[35] Nick Miroff, *Trump Proposal Would Penalize Immigrants Who Use Tax Credits and Other Benefits*, Wash. Post (Mar. 28, 2018), https://www.washingtonpost.com/world/national-security/trump-proposal-would-penalize-immigrants-who-use-tax-credits-and-other-benefits/2018/03/28/4c6392e0-2924-11e8-bc72-077aa4dab9ef_story.html.

III. Summary of The Rule

97. The Rule seeks to implement the CIS wish list and the draft Executive Order. The Rule brands as a "public charge" anyone who receives any amount of specified means-tested public benefits in any twelve months over a thirty-six month period; it defines the statutory phrase "likely to become a public charge" to include anyone deemed likely to receive such benefits "at any time in the future"; and it provides that receipt of such benefits during the three years preceding the application is a "heavily weighted negative factor" in determining whether an applicant is likely to become a public charge. Other factors, including low income, limited assets, and having a health condition coupled with an absences of private health insurance, also weigh against applicants. The Rule also calls for consideration of such nonstatutory factors as English language proficiency and credit score, and counts both youth and old age against an intending immigrant. The Rule precludes any noncitizen immigrant subject to public charge scrutiny who is deemed likely to receive such benefits at any time in the future—including large numbers of low-income and nonwhite applicants who have never received such benefits—from obtaining legal permanent residence.

98. More specifically, the Rule works as follows.

99. *First*, the Rule defines "public charge" to mean a person "who receives one or more [specified] public benefits . . . for more than 12 months in the aggregate within any 36-month period (such that, for instance, receipt of two benefits in one month counts as two months)." 84 Fed. Reg. at 41,501 (proposed 8 C.F.R. § 212.21(a)).

100. *Second*, the Rule defines "public benefit" to mean *any* amount of benefits from any of the programs enumerated in the Rule. 84 Fed. Reg. at 41,501 (proposed 8 C.F.R. § 212.21(b)). The Rule defines "public benefits" to include a wide range of cash and noncash

benefits that offer short-term or supplemental support to eligible recipients. These benefits include cash benefits such as SSI, 42 U.S.C. § 1381 *et seq.*; TANF, 42 U.S.C. § 601 *et seq.*; and "Federal, state or local cash benefit programs for income maintenance"; and noncash supplemental benefits such as SNAP, 7 U.S.C. §§ 2011–2036c; Section 8 Housing Assistance under the Housing Choice Voucher Program, 24 CFR part 984; 42 U.S.C. §§ 1437f and 1437u; Section 8 Project-Based Rental Assistance, 24 C.F.R. parts 5, 402, 880–884, 886; federal Medicaid, 42 U.S.C. §§ 1396 *et seq.* (with certain narrow exclusions)[36]; and Public Housing under section 9 of the U.S. Housing Act of 1937, 42 U.S.C. § 1437 *et seq.* 84 Fed. Reg. 41,501 (proposed 8 C.F.R. § 212.21(b)).[37] In contrast, as noted, the Field Guidance considers only primary dependence on cash assistance and long-term institutionalization in making a public charge determination, and specifically excludes from consideration noncash benefits.

101. The definition of "public benefit" in the Rule also radically changes the amount as well as the type of benefits that can trigger a public charge finding. While under the Field Guidance, as noted, only a person who was considered "primarily dependent" on the government for subsistence was deemed a public charge, under the Rule, the receipt of any amount of the listed benefits renders the immigrant an excludable public charge if they are received for the established duration: 12 months "in the aggregate" in the 36-month period prior to filing an application for adjustment. Under this "aggregate" calculus, receipt of two

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[36] Medicaid benefits excluded from the public charge analysis include benefits paid for an emergency medical condition, services or benefits provided under the Individuals with Disabilities Education Act, school-based benefits provided to children at or below the eligible age for secondary education, and benefits received by children under 21 years of age, or woman during pregnancy and 60 days post-partum. 84 Fed Reg. at 41,501 (proposed 8 C.F.R. § 212.21(b)(5)).

[37] The definition of "public benefits" excludes benefits received by (i) individuals enlisted in the armed forces as well as their spouses and children, (ii) individuals during a period in which they are exempt from the public charge inadmissibility ground, and (iii) children of U.S. citizens whose admission for lawful permanent residence will automatically result in their acquisition of citizenship. 84 Fed. Reg. at 41,501.

benefits in one month would count as two months. *See* 84 Fed. Reg. at 41,501 (proposed 8 C.F.R. § 212.21(a)).

102. DHS offers no cogent explanation for this twelve-month trigger. Indeed, although DHS received numerous comments that opposed taking into account the receipt of minimal or supplemental benefits in making a public charge determination, the final Rule actually lowers the threshold from what was proposed in the NPRM. The proposed rule in the NPRM would have labeled someone a public charge only if they received any of the listed benefits, such as SNAP, in an amount in excess of fifteen percent of the FPG for a household of one within twelve months—which currently would amount to $1,821 a year. But it did not penalize applicants for receipt of benefits below this already-low threshold. DHS nowhere explains why it considers the appropriate threshold to be 12 months rather than 6, 24, or any other number. Moreover, under the final Rule, USCIS will "consider and give appropriate weight to past receipt of benefits" even below the already low twelve-month threshold. 84 Fed. Reg. at 41,297.

103. The Rule's sweeping definitions of "public charge" and "public benefits" would drastically increase the number of persons potentially deemed a public charge. As an illustration, by one estimate, in any one year, 30 percent of U.S.-born citizens receive one of the benefits included in the proposed definition (compared to approximately 5 percent of U.S.-born citizens who meet the current benefit-related criteria in the public charge determination under the Field Guidance). Similarly, in any given year, 16 percent of U.S. workers receive one of those benefits, compared to one percent who meet the current benefit-related criteria. As set forth in its submission through the public notice-and-comment process, the Center on Budget and Policy Priorities estimates that 40 percent of U.S.-born individuals covered by a

2015 survey participated in one of those programs between 1998 and 2014—a figure that, after adjusting for underreporting, is likely approximately 50 percent.[38] A more recent report by the same organization explains that, "[i]f one considers benefit receipt of the U.S.-born citizens over the 1997-2017 period, some 43 to 52 percent received one of the benefits included in the proposed public charge rule," and that more than 50 percent of the U.S.-born citizen population would receive such benefits over their lifetimes.[39] While U.S. citizens are not subject to the public charge rule, these figures illustrate the extraordinarily broad potential impact of the Rule.

104. DHS does not dispute the accuracy of these estimates. Instead, it dismisses any comparisons to U.S. citizens' benefit use as "immaterial." *See* 84 Fed. Reg. at 41,353 ("it is immaterial whether the definition of 'public charge' in the rule would affect one in twenty U.S. citizens or one in three"). But DHS offers no support for the suggestion that Congress would ever have approved a definition of "public charge" so sweeping that it could be applied to nearly half of U.S. citizens.

105. *Third*, the Rule defines the statutory phrase "likely at any time to become a public charge" to mean "more likely than not at any time in the future to become a public charge, . . . based on the totality of the alien's circumstances." 84 Fed. Reg. at 41,501, (proposed 8 C.F.R. § 212.21(c)). Thus, the Rule expressly disclaims any limit on how far into

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38 *See* CBPP Comment at 2, 7–8, 10; *see also* Center for American Progress, Comment, at 15 (Dec. 10, 2018) ("[T]he proposed redefinition would mean that most native-born, working-class Americans are or have been public charges").

39 *See* Center on Budget and Policy Priorities, *Trump Administration's Overbroad Public Charge Definition Could Deny Those Without Substantial Means a Chance to Come to or Stay in the U.S.* (May 30, 2019), https://www.cbpp.org/research/poverty-and-inequality/trump-administrations-overbroad-public-charge-definition-could-deny.

the future the consideration is to extend or what "totality" of circumstances a government officer is permitted to balance.

106. *Fourth*, the Rule creates a complex and confusing scheme of positive and negative "factors," including certain "heavily weighted" factors, that will be used in determining whether a noncitizen is likely to become a public charge. 84 Fed. Reg. at 41,502–03 (proposed 8 C.F.R. § 212.22).

107. The factors focus overwhelmingly on the noncitizen's income and financial resources. Thus, one of the "heavily weighted negative factors" under the Rule is past or current receipt of public benefits. 84 Fed. Reg. at 41,504 (proposed 8 C.F.R. § 212.22(c)). Another "heavily weighted negative factor" is an applicant's diagnosis with a medical condition that is "likely to require extensive medical treatment" and corresponding lack of private health insurance or financial resources to pay for anticipated medical costs. *Id.*

108. Likewise, every "heavily weighted positive factor" under the Rule similarly focuses on the immigrant's assets and financial resources, such as (1) having income, assets, or resources, and support of at least 250 percent of the FPG, (2) being authorized to work and currently employed with an annual income of at least 250 percent of the FPG, or (3) possessing private health insurance. *Id.* The Rule expressly excludes from consideration as private health insurance any insurance purchased using tax credits for premium support under the Affordable Care Act. *Id.*

109. The factors under the Rule that are not "heavily weighted" also focus predominantly on assets and financial resources. For example, the Rule provides that DHS will consider whether the applicant's household's annual gross income is at least 125 percent of the most recent FPG based on household size. *See* 84 Fed. Reg. at 41502–03 (proposed 8

C.F.R. § 212.22(b)(4)). If the applicant's household's annual gross income is below that level, DHS will consider this a negative factor, unless the total value of the applicant's household assets and resources is at least *five times* the underage. *See id.*[40]

110. Other factors likewise focus on financial resources. DHS states that it will consider whether the applicant has sufficient assets and resources to cover reasonably foreseeable medical costs related to a condition that could require extensive care or interfere with work. Lack of private health insurance or an undefined amount of cash reserves that could cover medical expenses would be a negative factor. 84 Fed. Reg. at 41,503 (proposed 8 C.F.R.§ 212.22(b)(4)(C)); *see also* 83 Fed. Reg. at 51,189.

111. The Rule also penalizes applicants who are under the age of 18—merely because of their age, even though they have their whole working lives ahead of them—as well as those aged 62 and over. *See* 84 Fed. Reg. at 41,502 (proposed 8 C.F.R. § 212.22(b)(1)). Although DHS acknowledges that many commenters pointed out that it is not possible for young people to work to support themselves, the Rule fails to address this point, and instead responds that DHS may not "exempt" such children from the regulation. But choosing not to categorize youth as a negative factor is not the same as providing an "exempt[ion]," and DHS does nothing to address those many comments.

112. The Rule provides further that DHS will consider additional vague and unprecedented factors for which there appears to be no specific standard. For example, for the first time, DHS will evaluate an intending immigrant's English language proficiency, without articulating any standard or level of proficiency an applicant is required to attain or how such

[40] This amount is reduced to three times the underage for an immigrant who is the spouse or child of a U.S. Citizen, and one times the underage for an immigrant who is an orphan who will be adopted in the United States after acquiring permanent residence. *See id.*

proficiency is to be measured. 84 Fed. Reg. at 41,504 (proposed 8 C.F.R. § 212.22(b)(5)(ii)(C)). In contrast, when determining a naturalization applicant's English language proficiency, USCIS's regulation sets out clear standards for ability to read, write, and speak "words in ordinary usage" and directs applicants to test study materials and testing procedures on the USCIS website. *See* 8 C.F.R. § 312.1.

113. Further, the Rule will take into account a noncitizen's U.S. credit score, as assessed by private credit agencies, counting below-average credit scores as a negative factor. 84 Fed. Reg. at 41,503 (proposed 8 C.F.R. § 212.22(b)(4)(ii)(G)). There is no other immigration benefit for which DHS uses credit score—an error-prone measurement, as DHS concedes, *see* 84 Fed. Reg. at 41,427 ("DHS recognizes that the credit reports and scores may be unavailable or inaccurate.")—to determine whether an applicant is entitled to relief.

114. DHS states that it will consider submission of an affidavit of support, but the approach outlined in the Rule departs from past practices by decreasing the impact of a sufficient affidavit of support on a public charge determination. Under the Rule, an affidavit of support will no longer be sufficient to rebut a public charge finding. Rather, it will simply be one positive factor—and not even a heavily weighted one—in the totality of the circumstances test. *See* 84 Fed. Reg. at 41,439. Moreover, DHS will no longer consider an enforceable affidavit of support at face value. Instead, the Rule requires an immigration office to evaluate "the likelihood that the sponsor would actually provide the statutorily-required amount of financial support to the [noncitizen]," by evaluating such non-statutory factors as the sponsor's income and assets, the sponsor's relationship to the applicant, and whether the sponsor has submitted affidavits of support for other individuals. 84 Fed. Reg. at 41,504 (proposed 8 C.F.R. § 212.22(b)(7)).

115. The impact of these factors is to multiply the number of grounds for deeming noncitizens inadmissible as public charges and barred from legal permanent residence. By focusing virtually all the factors DHS chooses to identify—including the majority of "heavily weighted factors"—on an immigrant's assets and resources, the Rule provides immigration officers with an abundance of options to deny green cards to low-income immigrants, whether they have accessed public benefits or not. The income and resources-focused factors are not targeted to determining who is currently or predicted to be primarily dependent on the government for subsistence. Rather, they are geared toward capturing a much broader group of low- and middle-income noncitizens in the public charge dragnet. As discussed above, this approach represents a sharp departure from the consistent historical understanding and application of the public charge inadmissibility rule.

IV. The Public Benefits Targeted by the Rule Provide Temporary and/or Supplemental Support to Individuals Who Work

116. As noted, the Rule defines "public charge" to mean a person who receives certain enumerated public benefits for more than 12 months in any 36-month period. The "public benefits" at the root of the public charge inquiry include, for the first time, noncash benefits, including SNAP, Medicaid, and public housing assistance. As INS recognized in issuing the Field Guidance, these benefits "are by their nature supplemental and do not, alone or in combination, provide sufficient resources to support an individual or family." 64 Fed. Reg. at 28,692. Contrary to DHS's repeated assertion that an individual who makes use of these benefits "is not self-sufficient," *e.g.*, 84 Fed. Reg. at 41,349, these programs are widely used by working families to supplement their other income. And they are, by design, available to people with incomes well above the poverty line and, in some cases, with significant assets.

A. SNAP

117. Congress created the food stamp program (now known as the Supplemental Nutrition Assistance Program, or "SNAP") in 1964, in order to "safeguard the health and well-being of the Nation's population by raising levels of nutrition among low-income households."[41] SNAP benefits may be used to buy nutritional staples, like bread, fruits and vegetables, meat, and dairy products.[42] The current maximum monthly allotment of SNAP benefits an individual is eligible for is $192 for an individual, or $504 for a family of three,[43] which amounts to less than $6 per person daily. The average actual allotment for a family of three in 2019 is estimated to be approximately $378 per month, or little more than $4 per person daily.[44]

118. The supplemental nature of SNAP is evident not only from its name, but from the significant number of SNAP recipients who work. Over one-third of non-disabled adults work in ***every*** month they participate in SNAP.[45] And "[j]ust over 80 percent of SNAP households with a non-disabled adult, and 87 percent of households with children and a non-disabled adult, included at least one member who worked either in a typical month while receiving SNAP or within a year of that month."[46] Many SNAP recipients must meet strict

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41 Food Stamp Act of 1964, Pub. L. No. 88-525, 78 Stat. 703 (codified at 7 U.S.C. § 2011); *accord* 7 C.F.R. § 271.1 (reiterating same purpose).

42 *See* N.Y. Office of Temporary & Disability Assistance *Supplemental Nutrition Assistance Program (SNAP): Frequently Asked Questions*, http://otda.ny.gov/programs/snap/qanda.asp#purchase.

43 U.S. Dep't of Agriculture Food & Nutrition Serv., *SNAP Eligibility*, https://www.fns.usda.gov/snap/recipient/eligibility#How much could I receive in SNAP benefits? (providing monthly SNAP benefits by household size, for the period October 1, 2018 through September 30, 2019).

44 *See* Center on Budget and Policy Priorities, *A Quick Guide to SNAP Eligibility and Benefits* at Table 1 (Oct. 16, 2018), https://www.cbpp.org/research/food-assistance/a-quick-guide-to-snap-eligibility-and-benefits, (estimating 2019 averages based on FY 2017 SNAP Quality Control Household Characteristics Data, the "most recent data with this information"); *accord* CBPP Comment at 44 ("SNAP benefits average only about $1.40 per meal, or about $126 per month per person.").

45 CBPP Comment at 44.

46 *Id.* at 43.

work requirements to maintain eligibility.[47] Receipt of SNAP benefits can improve birth outcomes and long-term health, and reduce future reliance on the very public benefits programs whose use DHS claims it seeks to discourage.[48]

119. Although most SNAP recipients are subject to income and resource eligibility requirements, many recipients have significant assets and income above the poverty line. Households with earned income can maintain SNAP eligibility up to 150 percent of the FPG, and households with childcare expenses up to 200 percent. Many significant assets are excluded from SNAP eligibility determinations, including homes of residence, the full or partial value of certain vehicles, and most retirement and pension plans. 7 U.S.C. § 2014(g); 7 C.F.R. § 273.8(e). Certain households are exempt from the resource cap altogether.

120. In some cases, an intending immigrant undergoing adjustment would be eligible for SNAP before his or her green card application is approved. More commonly, the applicant undergoing the public charge determination only would be eligible for SNAP five years after he or she adjusts. But an adjusted LPR may be eligible for SNAP sooner if he or she is under age 18, in receipt of a disability-based benefit, can be credited with 40 qualifying quarters of work, or was lawfully residing in the U.S. and 65 or older when PRWORA was signed into law on August 22, 1996.

B. Medicaid

121. Congress created the federal Medicaid program in 1965 to assist states in furnishing medical assistance to individuals and families.[49] As described by the federal

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47 For example, Able Bodied Adults without Children, or "ABAWDs" are required to work or participate in a work program for at least 20 hours per week in order to receive SNAP benefits for more than three months in a 36-month period. *See* 7 C.F.R. § 273.24.

48 CBPP Comment at 45–47.

49 Social Security Amendments of 1965, Pub. L. No 89-97, 79 Stat. 286.

Centers for Medicare and Medicaid Services, which works in partnership with state governments to administer Medicaid, "Medicaid provides health coverage to millions of individuals, including eligible low-income adults, children, pregnant women, elderly adults and people with disabilities."[50] The income and resource eligibility criteria for federal Medicaid depend on, among other criteria, the recipient's age and income, and whether the person is blind or disabled.[51]

122. Many recipients of Medicaid work. Nearly 80 percent of non-elderly, non-disabled adult Medicaid beneficiaries are in working families.[52] Among Medicaid enrollees who work, over half work full-time for the entire year in which they participate in the program.[53] Research shows that access to affordable health insurance and care, like Medicaid, "promotes individuals' ability to obtain and maintain employment."[54]

123. In the 37 states (including the District of Columbia) that have adopted Medicaid expansion under the Affordable Care Act, the program is available to workers with no resources cap and with earnings above the poverty level.[55] For example, parents with dependent children, and adults aged 19–64, can qualify for federal Medicaid if their income

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50 Centers for Medicare & Medicaid Services, *Medicaid*, https://www.medicaid.gov/medicaid/index.html (last visited Aug. 24, 2019).

51 *See* Centers for Medicare & Medicaid Services, *Eligibility*, https://www.medicaid.gov/medicaid/eligibility/index.html (last visited Aug. 24, 2019).

52 CBPP Comment at 39.

53 Rachel Garfield et al., *Understanding the Intersection of Medicaid and Work: What Does the Data Say?*, Kaiser Family Foundation, at 4 (Aug. 2019), http://files.kff.org/attachment/Issue-Brief-Understanding-the-Intersection-of-Medicaid-and-Work-What-Does-the-Data-Say.

54 CBPP Comment at 40–41 (quoting Larisa Antonisse and Rachel Garfield, *The Relationship Between Work and Health: Findings from a Literature Review*, Kaiser Family Foundation (Aug. 2018), https://www.kff.org/medicaid/issue-brief/the-relationship-between-work-and-health-findings-from-a-literature-review/).

55 Kaiser Family Foundation, *Status of State Medicaid Expansion Decisions: Interactive Map*, (Aug. 1, 2019), https://www.kff.org/medicaid/issue-brief/status-of-state-medicaid-expansion-decisions-interactive-map/.

does not exceed 133 percent of the FPG.[56] Medicaid expansion was a key component of the Affordable Care Act and appeared in the first public draft of the legislation.[57]

124. A person adjusting to LPR status through a family member who is subject to public charge would become eligible for federal Medicaid after he or she adjusts and has been a so-called "qualified alien" for five years.[58]

125. Through New York State of Health, New York's state-run Health Exchange, New Yorkers are screened for and enrolled in Medicaid as well as other types of government-funded health insurance, government-subsidized private health insurance, and non-subsidized private health insurance. Government-funded insurance provided by New York includes medical assistance that is available to persons not eligible for federal Medicaid. *See* N.Y. Soc. Serv. Law §§ 366(1)(g), 369-gg. Immigrants who are eligible for this form of state-funded health insurance include qualified aliens subject to the five-year limit and persons considered permanently residing under color of law, including persons who have applied for deferred action for childhood arrivals ("DACA") or other deferred action, and applicants for asylum.

126. Some New Yorkers are eligible for New York's Basic Health Plan, called the "Essential Plan." N.Y. Soc. Serv. Law §§ 366(1)(g), 369-gg. The Essential Plan provides coverage to certain immigrants who are ineligible for federal Medicaid, as well as for New Yorkers with income from 139 percent to 200 percent of the FPG who must pay a low monthly

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[56] 42 U.S.C. § 1396a(a)(10).

[57] John Cannan, *A Legislative History of the Affordable Care Act: How Legislative Procedure Shapes Legislative History*, 105 Law Libr. J. 131, 137 (2013).

[58] *See* 8 U.S.C. § 1641(b).

premium for coverage.[59] As required by Congress, immigrants must be "lawfully present" to be eligible for private qualified health plans pursuant to the Affordable Care Act, including the Essential Plan.

127. Although such non-federal Medicaid forms of health insurance do not count as "public benefits" under the Rule's public charge test, many noncitizens fear that enrollment in state-funded programs and even private coverage (which often have the same name as the state's Medicaid program) will carry adverse immigration consequences. Almost all recipients of New York Medicaid are required to enroll in private Medicaid managed care plans. N.Y. Soc. Serv. Law § 364-j. Since many of the same health insurance companies offer commercial, Medicaid, Medicare, Essential Plan, and/or Children's Health Insurance Program coverage, many New Yorkers do not understand which program they are in, especially if their eligibility shifts year to year.

C. Federal Rental Assistance Benefits

128. The Rule includes three types of federal rental assistance in its definition of "public benefit": (i) public housing, (ii) Section 8 vouchers; and (iii) project-based Section 8. Most tenants of public housing pay 30 percent of their income (after certain deductions) for rent and utilities. Federal subsidies, issued by the Department of Housing and Urban Development to the local public housing authority that owns and manages the public housing, are intended to cover the gap between tenant rents and operating costs. Section 8 housing choice vouchers provide a rental subsidy to the participant household that can be used to rent a privately owned housing unit. 42 U.S.C. §§ 1437f, 1437u. Households receiving project-

[59] *See* N.Y. State of Health, *Essential Plan at a Glance* (June 2019), https://info.nystateofhealth.ny.gov/sites/default/files/Essential%20Plan%20At%20A%20Glance%20Card%20-%20English.pdf.

based Section 8 benefit from a subsidy that is attached to the residence where they reside. 42 U.S.C. § 1437f; 24 C.F.R. parts 5, 402, 880–884, 886. Each of these federal rental assistance programs has an income eligibility requirement measured by the local Area Median Income ("AMI") for the size of the family receiving the benefit.

129. Federal rental assistance programs support work by enabling low-income households to live in stables homes. Of the non-elderly, non-disabled households receiving federal rental assistance, approximately two-thirds are headed by working adults.[60] That number is even higher for households containing non-citizens, where approximately three-quarters of non-elderly, non-disabled households report earning wages.[61]

130. As with SNAP and Medicaid, recipients of federal rental assistance may have incomes above the poverty threshold and assets or other resources. Under these three rental assistance programs, while there are requirements for targeting assistance to lower-income households (below 30 percent of AMI), a household can qualify for assistance with income up to 80 percent of the AMI, which for a family of four in New York City is $85,360 per year,[62] more than three times above the FPG of $25,750 for a family that size.[63]

V. The Rule Violates the Administrative Procedure Act in Numerous Ways

131. The Rule violates the APA in several respects, including that it is "arbitrary, capricious, an abuse of discretion, [and] otherwise not in accordance with law," 5 U.S.C. § 706(2)(A), "contrary to constitutional right," *id.* § 706(2)(B), and "in excess of statutory jurisdiction, authority, or limitations," *id.* § 706(2)(C). This section discusses several

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60 CBPP Comment at 48.

61 *Id.*

62 N.Y.C. Dep't of Housing Preservation & Development, *Area Median Income (AMI)*, https://www1.nyc.gov/site/hpd/renters/area-median-income.page (last visited Aug. 24, 2019).

63 *See* U.S. Dep't of Health & Human Services, *U.S. Federal Poverty Guidelines Used to Determine Financial Eligibility for Certain Federal Programs*, https://aspe.hhs.gov/poverty-guidelines (last visited Aug. 24, 2019).

ways in which the Rule violates the APA, including that (1) the Rule's definition of "public charge" is contrary to the INA; (2) the Rule is unlawfully retroactive and penalizes past conduct that was not part of the public charge analysis at the time it occurred; (3) the Rule is so confusing, vague, and broad that it fails to give notice of conduct to avoid and invites arbitrary and inconsistent enforcement; (4) the Rule unlawfully discriminates against individuals with disabilities; (5) the Rule's changes to the public charge bond provision impermissibly renders such bonds inaccessible; and (6) the Rule is arbitrary and capricious in other ways.

A. The Rule's Definition of "Public Charge" is Contrary to the INA

132. As discussed above, *see supra* ¶¶ 59–90, the Rule's definition of "public charge" as an individual who receives a minimal amount of noncash public benefits is contrary to the interpretation of "public charge" that has endured for 130 years: an individual primarily dependent on the government for subsistence. The statutory meaning of the term "public charge" is evident from, among other things, (i) the plain meaning of the phrase, (ii) the judicial and administrative interpretation of the term since it first became part of federal immigration law; (iii) Congress's approval of that interpretation in repeatedly reenacting the statute; and (iv) Congress's rejection of efforts to expand that interpretation in the manner the Rule now seeks to accomplish.

133. Accordingly, the Rule is not in accordance with the law and is in excess of DHS's statutory jurisdiction. 5 U.S.C. §§ 706(2)(A), 706(2)(C).

B. The Rule Retroactively Penalizes Noncitizens for Past Conduct that Has Never Been Relevant to Public Charge Determinations

134. Apparently recognizing that retroactive application of the Rule would be unfair and unlawful, the Rule purports not to consider receipt of public benefits other than cash

assistance and long-term institutionalized care (which were considered in public charge determinations under the Field Guidance) obtained prior to the Rule's effective date. 84 Fed. Reg. at 41,504. But both the Rule itself and the proposed bureaucratic form that accompanies the Rule make clear that DHS *does* intend to consider past receipt of public benefits when determining whether a noncitizen is inadmissible on public charge grounds. Such retroactive application is unlawful, because it is arbitrary and capricious and because DHS lacks the statutory authority to promulgate retroactive rules concerning public charge determinations. *See* 8 U.S.C. § 1182.

135. The Rule applies retroactively in several ways. It (1) explicitly penalizes *any* past receipt of, rather than primary dependence on, cash benefits; (2) requires applicants to document receipt of all past *noncash* benefits on a newly-created Form I-944; (3) evaluates, for the first time, credit scores based on years of past financial activity; (4) assesses English language proficiency that would require years of preparation; and (5) ends the ability of applicants to rely on sponsor affidavits to overcome the heavily weighted "negative" factors that were never before considered. The Rule thus greatly increases the likelihood of a public charge determination based on numerous past activities that were never evaluated or even seen as relevant under the Field Guidance.

136. *First*, the rule retroactively penalizes any past receipt of cash assistance, including amounts that would not give rise to a public charge finding under the Field Guidance. Under the Field Guidance, a noncitizen may be found to be inadmissible as a public charge if she is likely to become "primarily dependent on the government for subsistence, as demonstrated by . . . the receipt of public cash assistance for income maintenance." 64 Fed. Reg. at 28,689. The Field Guidance further provides that "[t]he longer ago an alien received

such cash benefits . . . the less weight [this] factor[] will have as a predictor of future receipt," and "the length of time an applicant has received public cash assistance is a significant factor" as well. *Id.* at 28,690. The Field Guidance explains that receipt of cash assistance is just one factor in the totality of the circumstances test and that, for example, a noncitizen who received cash public benefits but also has an affidavit of support or full-time employment "should be found admissible." *Id.* The Field Guidance has been relied upon by noncitizens, lawyers, and advocates for twenty years.

137. The Rule completely changes this calculus. The Rule states that "DHS will consider, as a negative factor . . . ***any amount of cash assistance*** . . . received, or certified for receipt, before" the effective date of the Rule. 84 Fed. Reg. at 41,504 (proposed 8 C.F.R. § 212.22(d)) (emphasis added). Thus, while the Field Guidance considered receipt of means-tested cash assistance only to the extent it tended to show likely "primary dependence on the government for subsistence," *see* 64 Fed. Reg. at 28,693, the new Rule could predicate a public charge finding on past receipt at any time of "any amount of cash assistance" (even, apparently, cash assistance below the threshold of 12 months within a 36-month period). The proposed Rule, therefore, penalizes past receipt of cash assistance that, at the time it was received, would not have resulted in a public charge determination.

138. *Second*, the Rule requires applicants to submit evidence of past receipt of noncash benefits. While the Rule purports to direct DHS personnel not to consider past receipt of public benefits other than cash assistance or institutionalization, DHS's actions say the opposite. In connection with issuing the Rule, DHS prepared a form (Form I-944)[64] for

[64] USCIS, Form I-944, Declaration of Self Sufficiency, https://www.regulations.gov/document?D=USCIS-2010-0012-63772; USCIS, Form I-944, Instructions for Declaration of Self Sufficiency, https://www.regulations.gov/document?D=USCIS-2010-0012-63771.

submission by those applying for immigration benefits with USCIS, such as adjustment of status or extension or stay or change in status, "to demonstrate that the applicant is not likely to become a public charge under section 212(a)(4) of the Act," 83 Fed. Reg. at 51,254; *see also* 84 Fed. Reg. at 41,295. And the form requests precisely the information DHS says it will not consider. Form I-944 requires immigrants seeking admission or adjustment of status to disclose whether they have "***ever*** applied for" or received the public benefits enumerated in the Rule (emphasis added). Applicants are required to respond to detailed questions about all such benefits they have received at any time. Neither Form I-944 nor its Instructions say that benefits applied for or received before the Rule's effective date—benefits that were not considered in public charge determinations when they were applied for or received—will not be considered.

139. DHS's requirement that such benefits be disclosed to the personnel making public charge determinations is also so onerous as to render it effectively unworkable. As legal services providers have made clear during the public comment period, the complexity of the modern public benefits landscape, the administrative hurdles to recipients of and applicants for benefits, and the likelihood of errors in calculating exact amounts of public benefits, including noncash benefits, received make it "virtually impossible for applicants to accurately self-report."[65]

140. Further, this disclosure requirement clearly indicates that application for or receipt of such benefits could be considered in assessing whether the applicant is likely to become a public charge. At a minimum, DHS personnel reviewing an applicant's Form I-944 will see information about pre-Rule receipt of benefits and have that information in mind when

[65] New York Legal Assistance Group, Comment, at 7 (Dec. 10, 2018).

evaluating whether the applicant is inadmissible. It is both unfair and unlawful to punish a noncitizen under a new Rule for conduct that did not violate any rule at the time it occurred.

141. *Third*, the Rule directs adjustment officers, for the first time, to evaluate applicants' "credit scores," an inherently backward-looking criterion, that subjects applicants to evaluations of reasonable past financial conduct that was never before considered. *See* 84 Fed. Reg. at 51,188. There is no immigration benefit for which eligibility has ever taken into account the credit scores compiled by private credit rating companies. Applicants who have made reasonable financial decisions, such as taking on debt that would assist them in becoming financially stable—for example, a loan for a car that will allow them to work, or schooling that will increase their skills—will be penalized by such past decisions.

142. *Fourth*, the Rule includes an evaluation of English language proficiency that, in addition to lacking any measurable standard, penalizes applicants for decisions to forego English language instruction in reliance on the fact that no immigration benefit other than naturalization is premised on English language proficiency. *See* 84 Fed. Reg. at 51,195. Because achieving proficiency is a time-consuming process that can take years of preparation and substantial monetary commitment, this factor impermissibly penalizes applicants for past decisions made in reliance on then-current rules.

143. *Fifth*, the Rule now penalizes applicants who expected to be able to overcome a public charge determination by having their sponsors submit affidavits of support pursuant to 8 U.S.C. § 1183a(a)(1). *See* 84 Fed. Reg. at 51,117. Under IIRIRA, noncitizens seeking admission through family-sponsored immigration and some forms of employment-sponsored immigration are required to have their sponsor submit such an affidavit as part of their application for admission to the United States. *See* 8 U.S.C. §§ 1183, 1183a. In practice,

affidavits of support have provided sufficient assurance that an individual will not become a public charge, and properly executed affidavits have been deemed sufficient to satisfy a public charge analysis.[66] Intending immigrants who received benefits, including cash assistance (whose receipt prior to the effective date is a negative factor), did so in reliance on the practice that a sponsor affidavit—an enforceable agreement with the U.S. government that the sponsor would support them—would overcome a potential public charge determination.

144. The Rule thus penalizes noncitizens for decisions made in reliance on existing law. For twenty years, noncitizens have made decisions relying on the express terms in the Field Guidance. The Field Guidance made clear that neither mere receipt of cash benefits nor acceptance of supplemental noncash benefits would subject an applicant to a public charge finding, particularly for those filing with the support of sponsor affidavits, nor was credit score or English language proficiency even mentioned as a consideration. The Rule penalizes reliance on these clear rules. In applying this new standard retroactively, the Rule increases every noncitizen's liability for activity that at the time had no negative consequences.

145. DHS identifies no authority that would permit it to promulgate retroactive rules. Without express authorization from Congress, DHS lacks the power to issue this Rule.

C. The Rule is So Confusing, Vague, and Broad that it Fails to Give Applicants Notice of Conduct to Avoid and Invites Arbitrary, Subjective, and Inconsistent Enforcement

146. The Rule is complex and confusing. It transforms the process for determining public charge through a series of changes both to the benefits considered relevant to the public charge determination, and to the assessment and "weighting" of other qualities.

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[66] *See* CBPP Comment at 30; Center for Law and Social Policy, Comment, at 106 (Dec. 7, 2018) (citing 9 FAM § 302.8-2(B)(3)) [hereinafter "CLASP Comment"].

The Rule and the many internal inconsistencies within it fail to give applicants notice of conduct to avoid, and fail to provide adjudicators with clear guidelines to apply.

147. These vague, broad, and standardless factors make it impossible for DHS officers to administer the Rule in an objective and consistent manner, or for applicants to predict how it will be applied. Likewise, an officer administering the Rule would have no way to reconcile inconsistencies between the Rule itself and the preamble purporting to explain the Rule.

148. Many of the retroactive elements of the Rule pose challenges to administering the Rule objectively and consistently. For example, Form I-944 requires immigration officers to obtain information about ***any*** past receipt of noncash public benefits—even benefits received prior to the Rule's effective date—even though those same officers are being instructed in the Rule ***not*** to consider such benefits.

149. The negative factor relating to credit scores is subject to arbitrary application because the Rule fails to consider many scenarios that could affect an applicant's credit score. For example, although the Rule specifically states that "bankruptcies" should form part of the credit score analysis, it provides no guidance about how to treat an applicant who took advantage of bankruptcy laws to discharge and restructure debts. An immigration officer has no way to know whether to treat such a bankruptcy as a positive factor (reflecting sophistication or financial prudence) or a negative factor (reflecting excessive debt and poor financial management). And the Rule is silent about whether "bankruptcies" (or "arrests, collections, actions, [and] outstanding debts") that occurred before its effective date may be considered. *See* 84 Fed. Reg. at 41,425–26.

150. Many other vague factors also invite arbitrary enforcement of the Rule. For example, the English proficiency factor—which comes with no standard for "proficiency" to guide either applicant or immigration officer—may be applied by each officer in a different way depending on the officer's own language comprehension skills or the officer's ability to understand a non-U.S. accent. While the I-944 Form suggests that applicants provide "certifications" of English language courses, the Rule offers no guidance as to how to evaluate these certifications.

151. Beyond that, there are inconsistencies between the Rule and the preamble's description of how the Rule is supposed to work that invite arbitrary enforcement. For example, the preamble to the Rule states that "active duty service members, including those in the Ready Reserve, and their spouses and children" are exempt from their use of public benefits being counted against them. 84 Fed. Reg. at 41,372. But, although the Rule does exclude benefits used by individuals who are family members of active-duty service members who are noncitizens, it inexplicably does not exclude benefits used by noncitizen family members of active-duty service members who are U.S. citizens. This inconsistency leaves immigration officers without clear law to apply to applicants who are spouses or children of active-duty U.S. citizen service members.

152. As another example, the preamble to the Rule states that having non-private health insurance, even if it is not Medicaid, will be given heavily negative weight if the applicant has a qualifying health condition. 84 Fed. Reg. at 41,445 (stating that DHS considers it a "heavily weighted negative factor" if an applicant lacks "financial means to pay for reasonably foreseeable medical costs if the [non-citizen] does not have private health insurance"). But nothing in the Rule itself suggests that having non-private health insurance

other than Medicaid counts as a negative factor. To the contrary, the Rule specifically states that, if an applicant has a medical condition that is likely to require extensive treatment, an immigration officer should consider whether the applicant can pay for reasonably foreseeable medical costs through health insurance "not designated as a public benefit . . . ." 84 Fed. Reg. at 41,503 (proposed 8 C.F.R. § 212.22(b)(4)(2)(H)). Furthermore, to the extent this provision expresses a bias in favor of employer-provided health insurance, it is in conflict with the fact that many noncitizens work in industries where employers are less likely to provide health insurance.

153. The distinction in the Rule between Medicaid and other forms of medical insurance poses additional challenges to consistent enforcement of the Rule (as well as to green card applicants and their advisors). As discussed above, *supra* ¶¶ 125–27, in states like New York where there are numerous forms of health insurance offered by the same managed care plans, a USCIS officer (as well as applicants and their advisors) will have difficulty distinguishing between health benefits that trigger the public charge, namely federal Medicaid, and other forms of health insurance maintained by the same companies whose receipt is not a negative factor under public charge.

D. The Rule Unlawfully Discriminates Against Individuals with Disabilities

154. The Rule discriminates against individuals with disabilities in violation of the Rehabilitation Act of 1973 ("Rehabilitation Act"), Pub L. No. 93-112, 87 Stat. 355. It does so by expressly treating disability as a negative factor—indeed, as multiple, duplicative negative factors—in making public charge determinations. The Rule thus conflicts with Section 504 of the Rehabilitation Act, which provides that "[n]o otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be

excluded from participation in, be denied the benefits of, or be subjected to discrimination . . . under any program or activity conducted by an Executive agency." 29 U.S.C. § 794(a).

155. Starting in 1973, Congress began to pass a series of historic civil rights laws prohibiting discrimination on the basis of disability in public and private life: barring disability discrimination in federally funded programs by the federal government itself, in private and public employment, in state and local programs and services, and in public accommodations. These laws were designed to promote the goal of enabling individuals with disabilities to achieve equality of opportunity, full inclusion, and integration in society. The Rule ignores these laws and attempts to roll back the clock to a time when disabled individuals were not permitted to fully participate in society.

156. The first major federal civil rights statute extending protections to the disabled was the Rehabilitation Act, which authorized vocational rehabilitation grants and prohibited disability discrimination in federally funded programs. 29 U.S.C. § 784. In 1978, Congress extended the Rehabilitation Act protections to prohibit discrimination by the Federal government itself. *See* Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, Pub. L. No. 95-602, 95 Stat. 2955.

157. In 1990, Congress passed the Americans with Disabilities Act ("ADA"), Pub. L. No. 101-336, 104 Stat. 327, to prohibit discrimination against individuals with disabilities in employment, local and state government programs and services, and public accommodations. In passing the ADA, Congress found that "historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem." 42 U.S.C. § 12101(a)(2).

158. In 2008, following a series of Supreme Court cases that had narrowly construed the definition of disability under the ADA, Congress acted to reinforce the intent of these civil rights statutes by passing the ADA Amendments Act, which amended the ADA and the Rehabilitation Act to clarify that the definition of disability in each statute was to be "construed in favor of broad coverage of individuals" to ensure "maximum" coverage.[67]

159. As a program or activity conducted by DHS, public charge determinations are subject to the Rehabilitation Act.[68]

160. DHS regulations implementing the Rehabilitation Act prohibit the agency from denying a benefit or service "on the basis of disability." 6 C.F.R. § 15.30(b)(1). These provisions provide further that the agency may not "utilize criteria or methods of administration" that would: "(i) Subject qualified individuals with a disability to discrimination on the basis of disability; or (ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with a disability." *Id.* § 15.30(b)(4).

161. The Rule violates the Rehabilitation Act and the implementing regulations by creating a new discriminatory scheme that is triggered by disability.

162. *First*, the Rule imposes a negative "health" factor based on disability alone, providing that "diagnos[is] with a medical condition that is likely to require extensive medical treatment," with nothing more, is treated as a negative factor. *See* 84 Fed. Reg. at 41,502 (proposed 8 C.F.R. § 212.22(b)(2)).

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67 *See* The Americans with Disabilities Amendments Act ("ADAA") Pub. L. No. 110-325, 122 Stat. 3553, codified at 42 U.S.C. § 12102 et seq., and codified at 29 U.S.C. § 705(9) (B) (Rehabilitation Act provisions incorporating these ADA definitions.); *see also* Amendment of Americans With Disabilities Act Title II and Title III Regulations To Implement ADA Amendments Act of 2008, 81 Fed. Reg. 53,204 (explaining that the ADA Amendments Act was intended to: "effectuate Congress's intent to restore the broad scope of the ADA by making it easier for an individual to establish that he or she has a disability").

68 *See* Dawn E. Johnsen, Department of Justice Office of Legal Counsel, *Letter Opinion for the General Counsel Immigration and Naturalization Service* (Apr. 18, 1997); Robert B. Shanks, *Memorandum Re: Section 504 of the Rehabilitation Act of 1973* (Feb. 2, 1983).

163. *Second*, the Rule imposes an additional heavily weighted negative factor for applicants who (a) have a medical condition that is likely to require extensive medical treatment or institutionalization or that will interfere with their ability to provide for himself or herself, attend school, or work; and (b) are uninsured and have neither the prospect of obtaining private health insurance, nor the financial resources to pay for reasonably foreseeable medical costs related to such medical condition. *See* 84 Fed. Reg. at 41,504 (proposed 8 C.F.R. § 212.22(c)(1)(iii)).

164. *Third*, the Rule imposes a separate negative factor for an applicant who lacks "sufficient household assets and resources (including, for instance, health insurance not designated as a public benefit under 8 C.F.R. § 212.21(b)) to pay for reasonably foreseeable medical costs, such as costs related to a medical condition that is likely to require extensive medical treatment or institutionalization or that will interfere with the alien's ability to provide care for himself or herself, to attend school, or to work." *See* 84 Fed. Reg. at 41,503 (proposed 8 C.F.R. § 212.22(b)(4)(H)).

165. The Rule thus takes a single characteristic common to individuals with disabilities—a chronic health condition—and counts it as a negative factor ***three*** different times in the totality of the circumstances analysis: once as a negative factor relating to "health," once as a negative factor relating to "assets, resources, and financial status," and once as an independent "heavily weighted negative factor" related, again, to health and financial resources. DHS provides no explanation to justify this triple-counting, which results in disproportionally punishing individuals with disabilities. Indeed, the agency "acknowledges that multiple factors may coincide or relate to each other," and it makes no effort to explain or justify its conclusory

denial that it is "impermissibly counting factors twice," let alone three times. 84 Fed. Reg. at 41,406.

166. The Rule also utilizes a complex and confusing web of discriminatory principles to evaluate health insurance coverage—providing positive and negative weights to health insurance coverage depending on whether it is "private," or "publicly funded or subsidized," or, as in the case of federal Medicaid, a "public benefit." Having "private health insurance" is a heavily weighted positive factor under the Rule, but DHS has arbitrarily determined that applicants cannot receive this heavily weighted credit if they receive Affordable Care Act tax credits for their insurance premiums, despite tax credits only being available to individuals up to 400 percent of the FPG. This disqualification of coverage under the Affordable Care Act is not disqualifying if the coverage was received through the "marketplace," 84 Fed. Reg. at 41,388, a distinction that was not set forth in the NPRM.

167. Many individuals with disabilities must rely on federal Medicaid to meet their needs because it covers services and medical equipment that are often not available under private insurance. Despite this, under the Rule, federal Medicaid is defined as a "public benefit," and past receipt of federal Medicaid is considered a heavily weighted negative factor.

168. Even though the Rule purports to designate only federal Medicaid as a "public benefit," it nonetheless punishes individuals, including individuals with disabilities, for using other non-private forms of health insurance. For example, health insurance provided by New York State's Essential Plan is not a federal Medicaid benefit and does not count as a "public benefit" under the Rule. However, individuals with disabilities who have Essential Plan coverage will nonetheless be assessed a heavily weighted negative factor under the Rule's provision that punishes individuals who have chronic medical conditions and do not have "the

prospect of obtaining ***private*** health insurance." *See* 84 Fed. Reg. at 41,504 (proposed 8 C.F.R. § 212.22(c)(1)(iii)) (emphasis added); 84 Fed. Reg. at 41,445. In addition, because Essential Plan is not private health insurance, an applicant receiving Essential Plan benefits cannot be credited with the heavily-weighted positive factor of having "private health insurance" under proposed 8 C.F.R. § 212(c)(2)(ii). To the contrary, the Essential Plan is considered to be "publicly-funded or subsidized health insurance." 84 Fed. Reg. at 41,428.

169. DHS received numerous comments explaining that the Rule would negatively and disproportionately affect people with disabilities, those with chronic health conditions, and other vulnerable individuals. DHS did not deny this outcome and instead merely responded, without explanation, that the agency "does not intend to disproportionately affect such groups." 84 Fed. Reg. at 41,429.

170. DHS is unapologetic about this discriminatory scheme, which represents a clear departure from the mandates of the Rehabilitation Act and its conforming regulations. In fact, as justification for such harsh treatment of individuals with disabilities, DHS relies on the very archaic views of disability that Congress sought to eradicate in the Rehabilitation Act and the ADA, falling back on the excuse that consideration of health "has been part of public charge determinations historically." 84 Fed. Reg. at 41,368. In support of this point, DHS relies upon a judicial opinion from 1911 in which one individual was excluded on the basis of public charge because "he had a 'rudimentary' right hand affecting his ability to earn a living," another individual had "poor appearance and 'stammering,'" and a third individual "was very small for his age." 84 Fed. Reg. at 41,368 n.407 (citing *Barlin* v. *Rodgers*, 191 F. 970, 974–977 (3d Cir. 1911)).

171. The Rule is thus arbitrary and capricious because it discriminates against people with disabilities and fails to address the conflict between the Rule and Section 504 of the Rehabilitation Act.

E. The Rule's Changes to the Public Charge Bond Provision Render Such Bonds Effectively Inaccessible

172. Since 1907, the federal immigration laws have provided a procedure by which a noncitizen excludable on public charge grounds could be admitted "upon the giving of a suitable and proper bond." Immigration Act of 1907, 59 Cong. Ch. 1134 § 2, 34 Stat. 898 § 26. A public charge bond is a contract between the United States and a counterparty who pledges a sum of money (secured by cash or property or underwritten by a certified surety company) to guarantee that the noncitizen will not become a public charge during a certain time frame. *See* 8 U.S.C. § 1183; 8 C.F.R. § 103.6(c)(1); 8 C.F.R. § 213.1. Currently, the minimum threshold for posting a public charge bond is $1,000. *See* 8 C.F.R. § 213.1.

173. As discussed above, in 1996, Congress created for the first time an alternative to a public charge bond: an enforceable affidavit of support. *See* 8 U.S.C. §§ 1182(a)(4)(B)(ii), 1183a; *supra* ¶ 78. The advent of an enforceable affidavit of support largely obviated the need for public charge bonds, which have been required only "rarely" since the IIRIRA was enacted. *See* 83 Fed. Reg. at 51,219 n.602.

174. The Rule dramatically alters this practice. As described above, under the Rule, an affidavit of support is no longer sufficient for admissibility. Rather, it is only one positive factor—and not a heavily weighted one—in the totality of the circumstances analysis. Accordingly, under the Rule, the posting of a public charge bond is once again the only way to overcome a determination that a noncitizen is inadmissible as likely to become a public charge.

But the Rule takes extreme steps to make the statutorily-authorized public charge bond inaccessible and unworkable.

175. *First*, the Rule provides that a noncitizen can post a public charge bond only with DHS's permission, and DHS is directed to exercise that discretion in favor of permitting a bond only if the applicant possesses no heavily weighted negative factors, the same factors that lead to a finding of inadmissibility in the first place. *See* 84 Fed. Reg. at 41,506 (proposed 8 C.F.R. § 213.1(b)) ("If an alien has one or more heavily weighted negative factors, . . . DHS generally will not favorably exercise discretion to allow submission of a public charge bond."). Thus, contrary to the statute and longstanding practice, the Rule creates a Catch-22 by making bonds available only to applicants who do not need them.

176. *Second*, the Rule would raise the minimum amount of such bonds from $1,000 to $8,100, annually adjusted for inflation. 84 Fed. Reg. at 41,506 (proposed 8 C.F.R. § 213.1(c)(2)). The amount of the bond required is not appealable. *Id.* A noncitizen whose income and assets render her inadmissible on public charge grounds under the proposed Rule is exceedingly unlikely to have $8,100 or more in cash or cash equivalents to secure such a bond. This minimum bond amount effectively regulates away the statutorily mandated availability of public charge bonds to overcome inadmissibility determinations.

177. *Finally*, the Rule also imposes draconian forfeiture procedures on the very few immigrants who might be offered the opportunity to post a public charge bond, and who might have assets to post such a bond. Existing federal regulations (which the Rule purports to incorporate) require a "substantial violation" in order to determine that a public charge bond has been breached. 8 C.F.R. § 103.6(e); *see* 84 Fed. Reg. at 41,455. The Rule, however, requires forfeiture of ***the entire bond*** for any violation of its terms, no matter how minor. In

other words, an immigrant who posts a $8,100 public charge bond and later receives 12 months of a "public benefit" within any 36-month period before the bond is formally cancelled—for example, an immigrant who receives $50 per month of cash benefits for a year after losing a job—would be required to forfeit the entire $8,100 bond. *See* 84 Fed. Reg. at 41,507 (proposed 8 C.F.R. § 213.1(h)(6)) ("The bond must be considered breached in the full amount of the bond.").

F. The Rule Is Arbitrary and Capricious in Other Ways

178. The Rule is arbitrary and capricious in other ways that violate the APA. It uses an arbitrary and capricious durational standard as a threshold for receipt of government benefits. The Rule's durational threshold—receipt of *any* amount of enumerated benefits for 12 cumulative months in any 36-month period—has no sound basis and is at odds with the Congressional intent that the public charge exclusion apply only to those who primarily depend on the government for subsistence. As another example, the Rule employs an arbitrary and capricious system of weighted factors to govern public charge determinations. Many of the factors themselves, like English language proficiency and credit scores, are supported by insufficient evidence and have no value for predicting who is likely to be a public charge. And the Rule provides no guidance, beyond designating factors as "negative," "positive," and "heavily weighted," for determining how different factors should be weighed against each other or considered in assessing the totality of the applicant's circumstances.

VI. The Rule Was Promulgated Without Authority

179. DHS lacks statutory authority to promulgate the Rule.

180. DHS cites as its principal legal authority for promulgating the Rule, and for making "public charge inadmissibility determinations and related decisions," section 102 of

the Homeland Security Act (the "HSA"), codified at 6 U.S.C. § 112, and section 103 of the INA, codified at 8 U.S.C. § 1103. 84 Fed. Reg. at 41,295. Neither provision authorizes DHS to promulgate this Rule as it relates to public charge determinations for noncitizens seeking to adjust their status to lawful permanent resident. Rather, that authority belongs exclusively to the Attorney General of the United States.

181. Section 102 of the HSA created the position of Secretary of Homeland Security, and broadly defined the Secretary's "functions." *See* 6 U.S.C. § 112. Nothing in that section provides the Secretary with rulemaking authority over public charge determinations.

182. Section 103 of the INA describes the "powers and duties" of the Secretary of Homeland Security, the Under Secretary, and the Attorney General, as it relates to immigration laws. *See* 8 U.S.C. § 1103. That section provides: "The Secretary of Homeland Security shall be charged with the administration and enforcement of this chapter and all other laws relating to the immigration and naturalization of aliens, ***except insofar as this chapter or such laws relate to the powers, functions, and duties conferred upon the*** President, ***Attorney General***, the Secretary of State, the officers of the Department of State, or diplomatic or consular officers." 8 U.S.C. § 1103(a)(1) (emphases added). Section 103 further provides that the Secretary of Homeland Security "shall establish such regulations . . . as he deems necessary for ***carrying out his authority*** under the provisions of this chapter." *Id.* § 1103(a)(3) (emphasis added). Accordingly, DHS has the authority to administer and enforce the INA, including through rulemaking, except with respect to provisions of the INA that relate to the powers of the Attorney General (among others).

183. The public charge provision of the INA that is the subject of the proposed Rule specifically relates to the "powers, functions, and duties conferred upon the . . . Attorney

General." Specifically, the public charge provision—section 214(a)(4) of the INA—provides that a noncitizen "who, in the opinion of the consular officer at the time of application for a visa, or ***in the opinion of the Attorney General at the time of application for admission or adjustment of status***, is likely at any time to become a public charge is inadmissible." 8 U.S.C. § 1182(a)(4)(A) (emphasis added). The provision goes on to enumerate the factors that "the Attorney General shall at a minimum consider" when "determining whether an alien is inadmissible under this paragraph." *Id.* § 1182(a)(4)(B). Accordingly, it is the Attorney General, not DHS or the Secretary of Homeland Security, who is responsible for making public charge inadmissibility determinations for noncitizens seeking admission or adjustment of status.[69] The Rule was promulgated by an agency acting beyond its jurisdiction, and is *ultra vires* and void as a matter of law.

VII. The Process for Promulgating the Rule Violates the Law

184. The Rule violates the APA because it was promulgated "without observance of procedure required by law." 5 U.S.C. § 706(2)(D). This section describes how DHS's process for promulgating the Rule was deficient because (1) DHS failed to respond to significant comments, and (2) DHS failed to provide a reasoned explanation for changing policy direction from the Field Guidance.

A. DHS's Process for Promulgating the Rule was Procedurally Deficient

185. DHS published the NPRM on October 10, 2018. *See* 83 Fed. Reg. 51,114. DHS invited public comment on the proposed rule. The comment period closed on December

[69] Although the public charge provision of the INA provides that inadmissibility determinations for visa applicants are to be made by "consular officer[s]," 8 U.S.C. § 1182(a)(4), the HSA specifically transferred rulemaking authority concerning visa applications to the Secretary of Homeland Security. *See, e.g.*, 6 U.S.C. § 202(3); 6 U.S.C. § 236(b). Notably, the HSA did not specifically transfer rulemaking authority concerning adjustment of status applications to DHS.

10, 2018; over 266,000 public comments were filed. Although the vast majority of these comments criticized and opposed the Rule, DHS ignored or did not respond to numerous significant complaints.

186. We cite below just a few examples called to DHS's attention in comments on the proposed rule:

(i) The Rule is so vague, inconsistent, and lacking in measurable standards that it invites arbitrary and discriminatory application;

(ii) The requirement on the Form I-944 that applicants for adjustment disclose past receipt of benefits that were not counted in the public charge determination in the Field Guidance renders the Rule retroactive;

(iii) The Rule provides no standard for measuring English language proficiency, and learning English requires long-term preparation and expense which many applicants postpone until naturalization;

(iv) Advances in treating such illnesses as HIV, cancer, and diabetes enable many people to work, and these chronic conditions should not render an applicant a public charge;

(v) The dramatic increase in the public bond requirement—from $1,000 to $10,000 in the proposed Rule ($8,100 in the final Rule)—is arbitrary and unfair;

(vi) The harms to millions of immigrant families—including increased hunger, illness, and housing instability—cannot be justified.

187. DHS fails to respond meaningfully to significant comments about these issues, instead pushing forward with almost all of the provisions of the proposed rule in the NPRM intact, or with only minor changes that make no meaningful difference.

188. In addition to the non-exhaustive list of examples above, nowhere in the NPRM was there any reference to insurance premiums under the Affordable Care Act. The NPRM failed to give notice to the public that while the Rule would consider private health

insurance as a positive factor, it would not count insurance through the Affordable Care Act markets if the applicant obtained any tax subsidies. Thus, USCIS deprived the public of the opportunity to comment on this provision at all.

189. Numerous procedural anomalies characterized the promulgation and publication of the Rule. In addition to the purges of high-level DHS and USCIS officials, *see infra* ¶¶ 218, 223–24, 232, the Trump Administration has cut short the period of public and Congressional feedback that typically follows the closing of the notice-and-comment period.

190. Shortly before the publication of the final Rule, in a process required by a longstanding Executive Order, the Office of Interagency Affairs ("OIRA"), a component of the Office of Management and Budget, scheduled a series of meetings with stakeholders regarding the impacts of the Rule. *See* Executive Order 12,866 (1993). Although representatives from numerous state and local governments, as well as nationally known advocacy groups, scheduled meetings with OIRA to present their points of view on the Rule and its implementation, OIRA cut short the public feedback process, taking just a few meetings and cancelling the rest.

B. DHS Fails to Justify its Departure from the 1999 Field Guidance

191. DHS fails to provide a reasoned explanation for changing policy direction from the Field Guidance and promulgating the Rule for several reasons.

192. *First*, DHS fails to identify any problems with enforcement of the Field Guidance, which has been in continuous effect for over 20 years. DHS does not suggest that the Field Guidance has been ineffective or difficult to administer, or identify any adverse consequences from the Field Guidance. DHS contends that the Field Guidance is "overly permissi[ve]," 84 Fed. Reg. at 41,319, but does not identify a single adverse result flowing

from the Field Guidance's allegedly permissive standard that the Rule is meant to address. Rather, DHS simply states that it has "determined that it is permissible and reasonable to propose a different approach," 83 Fed. Reg. at 51,164, and that the public charge standard set forth in the Rule "furthers congressional intent" that noncitizens "be self-sufficient," *e.g.*, 84 Fed. Reg. at 41,319. But the agency provides no examples of how the goal of self-sufficiency has not been served by the Field Guidance.

193. *Second*, DHS fails to explain why its new definition of "public charge" better reflects Congressional intent than the definition established in the Field Guidance. DHS repeatedly states that the Rule reflects Congress's intent in PRWORA—which was enacted in 1996—that noncitizens "be self-sufficient and not reliant on public resources." *E.g.*, 84 Fed. Reg. at 41,319. But DHS fails to acknowledge that the Field Guidance—which was issued less than three years after PWRORA, under the administration of the same President who signed that bill into law—is far better evidence of the statute's meaning and congressional intent than the contrary interpretation included in the Rule 23 years later. DHS offers no evidence suggesting that INS mistook Congress's intent when it issued the Field Guidance in 1999, or that Congress viewed the Field Guidance as inconsistent with its intent.

194. *Third*, DHS offers no reasoned explanation for why it is necessary or appropriate to redefine "public charge" to mean the receipt of even a minimal amount supplemental benefits available to working families. DHS provides no evidence that mere receipt of such benefits has ever triggered a public charge finding, either before or after the Field Guidance was promulgated. DHS identifies no authority suggesting that receipt of noncash benefits has ever factored into a public charge determination, that receipt of public

benefits alone has been sufficient to render someone a public charge, or that receipt of public benefits has ever rendered a working individual a public charge.

195. DHS also offers no reasoned explanation for rejecting the expert views of agencies that administer the relevant public benefits that are reflected in the Field Guidance. In issuing the Field Guidance, INS explained that its definition of public charge—and decision to exclude noncash benefits from consideration—reflected evidence and input it received after "extensive consultation with" the agencies that administer such benefits. 64 Fed. Reg. at 28,692. DHS acknowledges that the Field Guidance reflects these consultations, but simply states that they do not foreclose a different interpretation. 84 Fed. Reg. at 41,351.

196. Indeed, emails between the White House and federal agencies while the Rule was being drafted demonstrate that those agencies were expressly discouraged from providing substantive input on whether to expand the definition of "public charge." In circulating drafts of the proposed rule within the Executive Branch, a White House official stressed that "***the decision of whether to propose expanding the definition of public charge, broadly, has been made at a very high level and will not be changing***" (emphasis in original).[70]

197. *Fourth*, the Rule does not explain the contradiction between the concern about the public health impacts of discouraging use of public benefits as described in the Field Guidance, and DHS's disregard of those impacts. DHS recognizes that the Field Guidance was issued in response to "confusion" about public charge that had resulted in immigrants foregoing benefits and consequent risks to public health. *See* 83 Fed. Reg. at 51,133 (citing 64

[70] *See* Yeganeh Torbati et al., *"No Comment": Emails Show the VA Took No Action to Spare Veterans from a Harsh Trump Immigration Policy*, ProPublica (Aug. 19, 2019), https://www.propublica.org/article/emails-show-the-va-took-no-action-to-spare-veterans-from-a-harsh-trump-immigration-policy.

Fed. Reg. at 28,676–77). DHS also acknowledges that the Rule will have a wide-spread chilling effect and a corresponding negative impact on public health. But it offers no reasoned explanation for its decision to disregard INS's concerns. Instead, DHS simply reiterates that its primary purpose is furthering "self-sufficiency," and that the Rule's chilling effect is an acceptable tradeoff in pursuing that asserted purpose. *See* 84 Fed. Reg. at 41,311–13.

198. *Fifth*, DHS fails to justify its abandonment of the "primary dependence" standard in the Field Guidance in favor of the durational standard in the rule: receipt of any enumerated benefits for 12 cumulative months in a 36-month period. As explained above, the "primary dependence" standard was based on more than a century of case law and Congress's recent intent in enacting PRWORA and IIRIRA. *See supra* ¶¶ 86–89. The new durational standard, by contrast, is based on DHS's conclusory assertion "that it is permissible and reasonable to propose a different approach." 83 Fed Reg. at 51,164. DHS acknowledges that its durational standard—which does not account for the *amount* of benefits received—will result in "potential incongruities," *i.e.*, arbitrary results. 84 Fed. Reg. at 41,361. DHS attempts to justify the durational standard based on inapposite data, such as data that measures the duration of time that individuals receive means-tested assistance, but fails to distinguish between use by citizens and noncitizens or otherwise explain how this data justifies its approach. *See* 84 Fed. Reg. at 41,360.

199. *Sixth*, DHS fails to address the legitimate reliance interests engendered by the Field Guidance. The Field Guidance, and the long history of public charge on which it is based, has permitted generations of immigrant families to build lives in the U.S. without fearing that their choices, including whether to seek public benefits, may have a negative impact on their immigration status (other than the choice to receive cash assistance or long-

term institutional care). U.S. immigration lawyers and advocates have likewise relied upon the simplicity and clarity of the Field Guidance to aid clients in making decisions about their lives and the consequences of using public benefits. The Rule fails to consider adequately the existence of these reliance interests and how they might affect implementation of the Rule.

200. For example, previous receipt of "any" cash assistance is now scored as a negative factor, even if the applicant was never primarily dependent on the benefit. Other choices made by applicants in the past similarly cannot be undone, such as having another child, choosing to work instead of improving English language skills, or defaulting on a loan from one creditor in favor of paying the rent. None of these decisions can be renegotiated. This policy effectively punishes individuals who legitimately relied on decades of agency interpretation to make important decisions in their lives. DHS provides no reasoned explanation for doing so.

VIII. The Rule Is Motivated by Impermissible Animus Against Immigrants of Color

201. The Rule is motivated by animus against immigrants from predominantly nonwhite countries, and, as designed, will disproportionately affect those nonwhite individuals.

202. The Rule, which originated in a "wish list" created by an anti-immigrant think tank associated with white supremacists, *see supra* ¶¶ 91–94, continues the pattern of hostility to immigrants that has characterized the Trump Administration's rhetoric and policies. The stated rationale for the Rule—to ensure that immigrants are self-sufficient—is, at best, a pretext for discrimination against immigrants, and in particular nonwhite immigrants, even those who are complying with the country's long-standing rules for obtaining lawful residence.

A. The President Has Repeatedly Expressed Hostility Toward Nonwhite Immigrants

203. President Trump has a long and well-documented history of disparaging and demeaning immigrants, particularly those from Latin American, African, and Arab nations—or, as he has put it while considering changes to immigration rules, immigrants from "shithole countries."[71] Through his words and deeds, he has repeatedly portrayed immigrants—and particularly nonwhite immigrants—as dangerous criminals who are "invading" or "infesting" this country and draining its resources.[72]

204. In announcing his presidential campaign, then-candidate Trump compared Mexican immigrants to rapists. He said: "When Mexico sends its people, they're not sending their best. . . . They're sending people that have lots of problems, and they're bringing those problems with us. They're bringing drugs. They're bringing crime. They're rapists. And some, I assume, are good people."[73]

205. Throughout his primary campaign, candidate Trump derided the ethnic backgrounds of his political foes. For instance, he retweeted a post stating that fellow-candidate Jeb Bush must like "Mexican illegals because of his wife," who is Mexican,[74] and insinuated that Senator Ted Cruz was untrustworthy because of his Cuban heritage.[75] In May 2016, candidate Trump called into question the integrity and impartiality of U.S. District Judge

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71 BBC, *Donald Trump's 'racist slur' provokes outrage* (Jan. 12 2018), https://www.bbc.com/news/world-us-canada-42664173.

72 Donald J. Trump (@realDonaldTrump), Twitter (June 19, 2018, 9:52 AM), https://twitter.com/realDonaldTrump/status/1009071403918864385.

73 Washington Post, *Transcript of Donald Trump's Presidential Bid Announcement* (June 16, 2015), https://www.washingtonpost.com/news/post-politics/wp/2015/06/16/full-text-donald-trump-announces-a-presidential-bid/.

74 Jacob Koffler, *Donald Trump Tweets Racially Charged Jab at Jeb Bush's Wife*, Time (July 6, 2015), https://time.com/3946544/donald-trump-mexican-jeb-bush-twitter/.

75 *See* Rebecca Sinderbrand, *In Iowa, Trump Makes a Play for Cruz's Evangelical Base*, Wash. Post (Dec. 29, 2015), https://www.washingtonpost.com/news/post-politics/wp/2015/12/29/in-iowa-trump-makes-a-play-for-cruzs-evangelical-base/.

Gonzalo Curiel—an Indiana native who was presiding over a lawsuit against Trump University—because of Judge Curiel's ethnic heritage: "He's a Mexican. We're building a wall between here and Mexico. The answer is, he is giving us very unfair rulings—rulings that people can't even believe."[76]

206. Among President Trump's first actions as president—at the same time that the draft Executive Order from which the Rule derives was being developed—was to sign another executive order on January 26, 2017, banning all immigration from six Muslim majority countries. President Trump repeatedly made clear that his decision was driven by anti-Muslim sentiment, including by expressly "calling for a total and complete shutdown on Muslims entering the United States"[77]; justifying that by citing the internment of Japanese Americans during World War II[78]; and calling for the surveillance of mosques in the United States.[79]

207. In a June 2017 Oval Office meeting, the President is said to have berated administration officials about the number of immigrants who had received visas to enter the country that year, complaining that 2,500 Afghanis should not have gained entry because the country was "a terrorist haven," that 15,000 Haitians "all have AIDS," and that 40,000

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[76] Sean Sullivan & Jenna Johnson, *Trump Calls American-Born Judge 'a Mexican,' Points out 'My African American' at a Rally*, Wash. Post (June 3, 2016), https://www.washingtonpost.com/news/post-politics/wp/2016/06/03/trump-calls-american-born-judge-a-mexican-points-out-my-african-american-at-a-rally/.

[77] Jenna Johnson, *Trump Calls for 'Total and Complete Shutdown of Muslims Entering the United States,'* Wash. Post (Dec. 7, 2015), https://www.washingtonpost.com/news/post-politics/wp/2015/12/07/donald-trump-calls-for-total-and-complete-shutdown-of-muslims-entering-the-united-states/.

[78] Meghan Keneally, *Donald Trump Cites These FDR Policies to Defend Muslim Ban*, ABC News (Dec. 8, 2015), https://abcnews.go.com/Politics/donald-trump-cites-fdr-policies-defend-muslim-ban/story?id=35648128.

[79] Jeremy Diamond, *Trump Doubles Down on Calls for Mosque Surveillance*, CNN (June 15, 2016), https://www.cnn.com/2016/06/15/politics/donald-trump-muslims-mosque-surveillance/index.html.

Nigerians would never "go back to their huts" after seeing the United States.[80] Shortly thereafter, the Department of Homeland Security announced that it would be withdrawing Temporary Protected Status ("TPS") from immigrants from Haiti, El Salvador, and the Sudan.

208. The President's attacks on immigrants have only escalated since 2017. When discussing how to prosecute immigrants in sanctuary cities, Trump equated immigrants with "animals," stating "[y]ou wouldn't believe how bad these people are. These aren't people. These are animals."[81] He has repeatedly characterized immigration at the southern border, including a caravan of Central American asylum-seekers passing through Mexico as an "invasion."[82] He asserted falsely that the caravan consisted of both Middle Eastern terrorists and members of the Central American gang MS-13, thereby conflating the ethnicities of two minority groups that he reviles.[83] More recently, the President endorsed a proposal to transport and "release" migrants detained at the border into sanctuary cities, in the hopes that doing so would stoke racial and anti-immigrant tensions, thereby putting pressure on his political enemies.[84]

209. Most recently, as widely reported, the President told four members of Congress, all women of color, to "go back . . . [to] the totally broken and crime infested places

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80 Michael Shear & Julie Hirschfeld Davis, *Stoking Fears, Trump Defied Bureaucracy to Advance Immigration Agenda*, N.Y. Times (Dec. 23, 2017), https://www.nytimes.com/2017/12/23/us/politics/trump-immigration.html.

81 Héctor Tobar, *Trump's Ongoing Disinformation Campaign Against Latino Immigrants*, The New Yorker (Dec. 12, 2018), https://www.newyorker.com/news/daily-comment/trumps-ongoing-disinformation-campaign-against-latino-immigrants.

82 *Id.*

83 *See id.*

84 *See* Rachael Bade & Nick Miroff, *White House Proposed Releasing Immigrant Detainess in Sanctuary Cities, Targeting Political Foes*, Wash. Post (Apr. 11, 2019), https://www.washingtonpost.com/immigration/white-house-proposed-releasing-immigrant-detainees-in-sanctuary-cities-targeting-political-foes/2019/04/11/72839bc8-5c68-11e9-9625-01d48d50ef75_story.html?utm_term=.bfdb455e37c4; Eileen Sullivan, *Trump Says He Is Considering Releasing Migrants in "Sanctuary Cities,"* N.Y. Times (Apr. 12, 2019), https://www.nytimes.com/2019/04/12/us/politics/trump-sanctuary-cities.html?action=click&module=Top%20Stories&pgtype=Homepage.

from which they came."[85] And, in reference to Representative Ilhan Omar, a former refugee from Somalia who arrived in the United States as a child and became a citizen in 2000, smiled as supporters at a campaign rally chanted "send her back."[86]

210. In contrast to these expressions of hostility to nonwhite immigrants, the President has repeatedly expressed support for immigration of whites and Europeans. In March 2013, for instance, President Trump warned that Republicans are on a "suicide mission" if they support immigration reform, before calling for more immigration from Europe:

> Now I say to myself, why aren't we letting people in from Europe? . . . Nobody wants to say it, but I have many friends from Europe, they want to come in. . . . Tremendous people, hard-working people. . . . I know people whose sons went to Harvard, top of their class, went to the Wharton School of finance, great, great students. They happen to be a citizen of a foreign country. They learn, they take all of our knowledge, and they can't work in this country. We throw them out. We educate them, we make them really good, they go home—they can't stay here—so they work from their country and they work very effectively against this. How stupid is that?[87]

211. Likewise, in a January 2018 meeting, Trump reportedly expressed dismay that we do not "have more people from places like Norway, contrasting such immigrants with those from "shitholes countries" such as Haiti and countries in Africa."[88] According to sworn

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85 Katie Rogers & Nicholas Fandos, *Trump Tells Congresswomen to 'Go Back' to the Countries They Came From*, N.Y. Times (July 14, 2019), https://www.nytimes.com/2019/07/14/us/politics/trump-twitter-squad-congress.html.

86 *See* Meagan Flynn, *'Malignant, dangerous, violent': Trump rally's 'Send her back!' chant raises new concerns of intolerance*, Wash. Post (July 8, 2019), https://www.washingtonpost.com/nation/2019/07/18/malignant-dangerous-violent-trump-rallys-send-her-back-chant-raises-new-concerns-intolerance/?noredirect=on.

87 Pema Levy, *Trump: Let In More (White) Immigrants*, Talking Points Memo (Mar. 15, 2013), https://talkingpointsmemo.com/dc/trump-let-in-more-white-immigrants.

88 Jen Kirby, *Trump Wants Fewer Immigrants from "Shithole Countries" and More from Places Like Norway*, Vox (Jan. 11, 2018 5:55 PM), https://www.vox.com/2018/1/11/16880750/trump-immigrants-shithole-countries-norway.

Congressional testimony by Trump's former lawyer Michael Cohen, Trump once asked Cohen whether he could "name a country run by a black person that wasn't a shithole."[89]

B. President Trump Has Repeatedly Expressed Hostility Toward Immigrants Who Receive Public Benefits

212. President Trump has directed particular hostility toward the precise group at issue in this case: immigrants who receive public benefits.

213. In November 2018, President Trump advocated for the complete elimination of public benefits for immigrants who are already U.S. lawful permanent residents. Although undocumented immigrants are eligible for virtually no federal assistance, much less cash benefits, President Trump retweeted a post falsely claiming that "[i]llegals can get up to $3,874 a month under Federal Assistance program. Our social security checks are on average $1200 a month. RT [retweet] if you agree: If you weren't born in the United States, you should receive $0 assistance."[90] In an interview with Breitbart News published on March 11, 2019, President Trump was quoted as saying "I don't want to have anyone coming in that's on welfare."[91]

214. Similarly, during the presidential campaign, candidate Trump wrote a Facebook post falsely asserting: "When illegal immigrant households receive far more in federal welfare benefits—than []native American households—there is something CLEARLY

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89 Miles Parks, *GOP Attacks After Opening Focused on Trump: Highlights from Cohen's Testimony*, NPR (Feb. 27, 2019), https://www.npr.org/2019/02/27/698631746/gop-attacks-after-opening-focused-on-trump-highlights-from-cohens-testimony.

90 Héctor Tobar, *Trump's Ongoing Disinformation Campaign Against Latino Immigrants*, The New Yorker (Dec. 12, 2018), https://www.newyorker.com/news/daily-comment/trumps-ongoing-disinformation-campaign-against-latino-immigrants.

91 Alexander Marlow, et al., *Exclusive—President Donald Trump on Immigration: "I Don't Want to Have Anyone Coming in That's on Welfare"* (Mar. 11, 2019), https://www.breitbart.com/politics/2019/03/11/exclusive-president-donald-trump-on-immigration-i-dont-want-to-have-anyone-coming-in-thats-on-welfare/.

WRONG with the system!"[92] And in the first Republican presidential debate, he falsely complained that the Mexican government was sending immigrants to the United States "because they don't want to pay for them. They don't want to take care of them."[93]

C. Other Senior Trump Advisors Have Expressed the Same Animus Toward Immigrants Who Receive Public Benefits

215. President Trump's senior advisors on immigration, including those with significant responsibility for promulgating the Rule, have made similar statements. Several of President Trump's appointees and associates involved in his Administration's immigration policy, including former Attorney General Jefferson Sessions, Campaign Manager and Counselor to the President Kellyanne Conway, Senior Advisor to U.S. Immigration and Customs Enforcement Jon Feere, current USCIS official and former member of the White House's Domestic Policy Council John Zadrozny, former Kansas Secretary of State and member of President Trump's transition team Kris Kobach, Senior Policy Advisor Stephen Miller, and Policy Advisor for the "Trump for President" campaign and Ombudsman of USCIS Julie Kirchner, also have past and present ties to anti-immigrant organizations founded by John Tanton and designated as hate groups by the Southern Poverty Law Center, including CIS and the Federation for American Immigration Reform ("FAIR").[94]

216. President Trump's principal advisor on immigration policy, Senior Policy Advisor Stephen Miller, has asserted that the United States' current immigration system "cost[s] taxpayers enormously because roughly half of immigrant head[s] of households in the

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92 *Trump: I'll Fix Welfare System that Helps Illegal Immigrants More than Americans*, Fox News Insider (May 11, 2016), http://insider.foxnews.com/2016/05/11/trump-rips-welfaresystem-gives-illegal-immigrants-more-americans

93 Andrew O'Reilly, *At GOP debate, Trump says 'stupid' U.S. leaders are being duped by Mexico*, Fox News, (Aug. 6, 2015), https://www.foxnews.com/politics/at-gop-debate-trump-says-stupid-u-s-leaders-are-being-duped-by-mexico.

94 Southern Poverty Law Center, *Federation for American Immigration Reform* (2019), https://www.splcenter.org/fighting-hate/extremist-files/group/federation-american-immigration-reform.

United States receive some type of welfare benefit," and that "a recent study said that as much as $300 billion a year may be lost as a result of our current immigration system in terms of folks drawing more public benefits than they're paying in."[95] These statements are apparently based on misleading assertions by CIS, which do not distinguish between immigrants exempt from public charge determinations, other non-LPRs, LPRs, U.S. citizen children of noncitizens, and naturalized citizens.

217. Miller has taken an active role in agency processes focused on furthering the Trump Administration's anti-immigrant policies, including the Rule. For example, when he discovered that an agency had drafted a report describing the benefits of refugees to the economy, he "swiftly intervened," and the report was "shelved in favor of a three-page list of all the federal assistance programs that refugees used."[96] He has baselessly blamed immigrants who enter from the southern border for "thousands" of American deaths annually.[97]

218. Miller has specifically focused on expanding the definition of public charge, even directing federal agencies to "prioritize" this matter over their "other efforts."[98] Miller's drive to push the Rule and other anti-immigration policies ahead despite opposition from officials who questioned their legality, practicability, or reasonability, was reported to be one of the primary reasons why former Secretary Nielsen was forced to resign, along with

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95 The White House, *Press Briefing by Press Secretary Sarah Sanders and Senior Policy Advisor Stephen Miller* (Aug. 2, 2017), https://www.whitehouse.gov/briefings-statements/pressbriefing-press-secretary-sarah-sanders-senior-policy-advisor-stephen-miller-080217/.

96 Michael D. Shear & Julie Hirschfeld Davis, *Stoking Fears, Trump Defied Bureaucracy to Advance Immigration Agenda*, N.Y. Times (Dec. 23, 2017), https://www.nytimes.com/2017/12/23/us/politics/trump-immigration.html?_r=0.

97 *See* Glenn Kessler, *Stephen Miller's claim that 'thousands of Americans die year after year' from illegal immigration*, Wash. Post (Feb. 21, 2019), https://www.washingtonpost.com/politics/2019/02/21/stephen-millers-claim-that-thousand-americans-die-year-after-year-illegal-immigration/?utm_term=.299854358dbc.

98 Tal Kopan, *Sources: Stephen Miller Pushing Policy to Make It Harder for Immigrants Who Received Benefits to Earn Citizenship*, CNN (Aug. 7, 2018), https://www.cnn.com/2018/08/07/politics/stephen-miller-immigrants-penalizebenefits/index.html.

other officials at DHS.[99] Miller reportedly exerted pressure to force the resignation of USCIS Director Cissna because of the perceived lack of urgency in finalizing the Rule, which Miller predicted would be "transformative."[100] During a meeting with administration officials in March 2019, Miller reportedly became furious that the public charge rule was not yet finished, shouting: "You ought to be working on this regulation all day every day . . . It should be the first thought you have when you wake up. And it should be the last thought you have before you go to bed. And sometimes you shouldn't go to bed."[101] Emails obtained through a FOIA request show Miller berating Cissna in June 2018 over the perceived delay in publishing the proposed public charge rule, with Miller writing "I don't care what you need to do to finish it on time."[102]

219. Other senior officials have similarly expressed animus against nonwhite immigrants. Former Chief of Staff and Secretary of Homeland Security John Kelly has called Haitians "welfare recipients," and, during the weeks leading up to the withdrawal of TPS to Haitians, solicited data regarding the TPS beneficiaries' use of public and private assistance.[103] Kelly also took a leadership role in formulating and promoting the family separation policy formally implemented by DHS in 2018, at several points denying that taking mostly Central

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99 *See* Eileen Sullivan & Michael D. Shear, *Trump Sees an Obstacle to Getting His Way on Immigration: His Own Officials*, N.Y. Times (Apr. 14, 2019), https://www.nytimes.com/2019/04/14/us/politics/trump-immigration-stephen-miller.html?action=click&module=Top%20Stories&pgtype=Homepage.

100 *See id.*

101 *Id.*

102 Ted Hesson, *Emails show Stephen Miller pressed hard to limit green cards*, Politico (Aug. 2, 2019), https://www.politico.com/story/2019/08/02/stephen-miller-green-card-immigration-1630406.

103 Patricia Hurtado, *As the Wall Consumes Washington, Another Immigrant Drama Unfolds in Brooklyn*, Bloomberg (Jan. 11, 2019), https://www.bloomberg.com/news/articles/2019-01-11/as-wall-consumes-washington-another-immigrant-drama-in-brooklyn.

American children from their parents at the border was "cruel" and casually adding that separated children would be placed in "foster care or whatever."[104]

D. President Trump and Other White House Officials Have Expressed Hostility Toward Family-Based Immigration, Which is Primarily Utilized by Immigrants from Predominantly Nonwhite Countries

220. President Trump has also repeatedly spoken about his disdain for family-based immigration preferences. The primary beneficiaries of family-based immigration preferences are individuals from predominantly nonwhite countries, with the most applicants originating in Mexico, China, Cuba, India and the Dominican Republic.[105]

221. President Trump has referred to family-based immigration with the derogatory term "chain migration," repeatedly calling it a "disaster" and falsely claiming that it allows citizens to bring in relatives who are "15 times removed."[106] He has associated family-based immigration preferences with terrorism, using discrete events to launch into attacks on what he calls the "sick, demented" statutory scheme that has been in place for decades. He has called immigrants who arrive pursuant to family preferences "the opposite of [origin countries'] finest," "truly EVIL," and "not the people that we want."[107]

222. President Trump strongly supported the RAISE Act, a bill introduced in the Senate which seeks to reduce the number of green cards issued by more than 50 percent.

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104 Matthew Yglesias, *Cruelty is the Defining Characteristic of Donald Trump's Politics and Policy*, Vox (May 14, 2018), https://www.vox.com/policy-and-politics/2018/5/14/17346904/john-kelly-foster-care-cruelty-judith-shklar.

105 Jie Zong et al., *Frequently Requested Statistics on Immigrants and Immigration in the United States*, Migration Policy Institute, https://www.migrationpolicy.org/article/frequently-requested-statistics-immigrants-and-immigration-united-states (last updated July 10, 2019).

106 Meghan Keneally, *8 Times Trump Slammed "Chain Migration" Before It Apparently Helped His Wife's Parents Become Citizens*, ABC News (Aug. 10, 2018), https://abcnews.go.com/US/times-trump-slammed-chain-migration-apparently-helped-wifes/story?id=57132429.

107 Jessica Kwong, *Donald Trump Says 'Chain Migration' Immigrants 'Are Not the People That We Want'—That Includes Melania's Parents*, Newsweek (Jan. 14, 2019), https://www.newsweek.com/donald-trump-chain-migration-immigrants-melania-1291210.

The bill would create a so-called "merit-based" immigration system that would reduce admissions based on family ties to current citizens or LPRs,[108] The bill obtained only two sponsors in the Senate.

E. Anti-Immigrant Animus of Defendants Cuccinelli and McAleenan and Other Top Officials at DHS and USCIS

223. This hostility towards nonwhite immigrants was and is shared by high-level officials at DHS and USCIS, including defendant Cuccinelli; former USCIS Director Cissna, who promulgated the proposed rule and oversaw much of the public comment and review before he was abruptly forced out of office in June 2019; defendant McAleenan; and former DHS Secretary Kirstjen Nielsen, who oversaw the Department when it first proposed this Rule.

224. Acting USCIS Director Cuccinelli assumed his position in July 2019, after the White House forced the resignation of USCIS Director Cissna because it viewed him as too slow in promulgating the Rule.[109] John Zadrozny, a member of the White House Domestic Policy Council previously employed by FAIR, was installed as Cuccinelli's deputy chief of staff.[110]

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[108] David Nakamura, *Trump, GOP Senators Introduce Bill to Slash Legal Immigration Levels*, Wash. Post (Aug. 3, 2017), https://www.washingtonpost.com/news/post-politics/wp/2017/08/02/trump-gop-senators-to-introduce-bill-to-slash-legal-immigration-levels/.

[109] Molly O'Toole et al., *Trump Aide Stephen Miller 'Going to Clean House' as Immigration Policy Hardens*, Los Angeles Times (April 8, 2019), https://www.latimes.com/politics/la-na-pol-trump-nielsen-tougher-border-immigration-whats-next-20190408-story.html. The unusual process for appointing Cuccinelli circumvented the Federal Vacancies Reform Act, which requires the Director of USCIS officials to be drawn from the deputy ranks within the federal agency. Instead, after firing Cissna, President Trump ordered the creation a new deputy position for Cuccinelli, and then promoted him to Acting Director of USCIS, a position for which he was reported to be unlikely to win Senate confirmation. *See* Louise Radnofsky, *High Turnover Roils Trump's Immigration Policy Ranks*, The Wall Street Journal (June 12, 2019), https://www.wsj.com/articles/high-turnover-roils-trumps-immigration-policy-ranks-11560355978.

[110] Rebecca Rainey, *More Moves at USCIS*, Politico (June 14, 2019), https://www.politico.com/newsletters/morning-shift/2019/06/14/more-moves-at-uscis-655114.

225. Cuccinelli is an immigration restrictionist who has advocated for the end of birthright citizenship for children of immigrants, compared immigrants to "rats" and "pests," and who founded State Legislators for Legal Immigration, a nativist group formed to advocate for immigration and public benefits restrictions.[111] Since at least 2007, Cucinnelli (echoing the President's rhetoric) has repeatedly described the United States as being "invaded" by immigrants along the Southern border.[112]

226. In 2008, when Cuccinelli was a state senator in Virginia, he introduced legislation that would have allowed employers to fire those who did not speak English in the workplace. Under his plan, those fired would have subsequently been ineligible for unemployment benefits. One of Cuccinelli's colleagues in the Virginia Senate called it "the most mean-spirited piece of legislation I have seen in my 30 years."[113]

227. Cuccinelli announced the finalization of the Rule in a press briefing on August 12, 2019, stating that the rule would "reshape" the system of obtaining lawful permanent residence.[114] Asked on television the next day whether the poem inscribed on the Statute of Liberty—"give us your tired, your poor, your huddled masses yearning to breathe

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111 Jessica Cobain, *The Anti-Immigrant Extremists in Charge of the U.S. Immigration System*, Center for American Progress (June 24, 2019), https://www.americanprogress.org/issues/immigration/news/2019/06/24/471398/anti-immigrant-extremists-charge-u-s-immigration-system/

112 Andrew Kaczynski, *Trump Official Has Talked About Undocumented Immigrants as 'Invaders' Since at Least 2007*, CNN (Aug. 17, 2019 9:00 AM), https://www.cnn.com/2019/08/17/politics/kfile-ken-cuccinelli-immigration-invasion-rhetoric/index.html.

113 Elaina Plott, *The New Stephen Miller*, The Atlantic (Aug. 14, 2019), https://www.theatlantic.com/politics/archive/2019/08/who-is-ken-cuccinelli/596083/?utm_source=feed.

114 Kadia Tubmanm *The Trump Administration Ties Green Cards and Citizenship to Public Assistance*, Yahoo News (Aug. 12, 2019), https://news.yahoo.com/trump-administration-ties-green-cards-and-citizenship-to-public-assistance-202741361.html.

free"—represented "what America stands for," Cuccinelli responded that the poem was addressed to "people coming from Europe."[115]

228. Former Director Cissna was similarly consistent about his hostility to immigrants. During his oversight of the development and promulgation of the Rule, he repeatedly condemned the family preferences system. Like Trump, Cissna referred to family-based immigration to it with the derogatory phrase "chain migration," and associated incidents of crime or terrorism with the INA's mandate to unify families. For example, in a press conference at the White House, Cissna used a pipe bomb attack by a Bangladeshi immigrant to make a speech criticizing family-based preferences as "not the way that we should be running our immigration system" and claiming to be unaware of data demonstrating that immigrants have a lower rate of crime than U.S.-born citizens.[116] Cissna oversaw the decision to close all 23 of USCIS's international offices—which handle, among other things, citizenship applications, family visa applications, international adoptions, and refugee processing.[117]

229. Under Cissna, Ian M. Smith, a policy analyst with ties to neo-Nazi groups, helped draft the Rule. Smith resigned in August 2018, just two months before the publication of the NPRM, when these neo-Nazi ties became publicly exposed.[118]

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115 Baragona, *Ken Cucinelli: Statue of Liberty Poem Was About 'People Coming From Europe'*, Daily Beast (Aug. 13, 2019), https://www.thedailybeast.com/ken-cuccinelli-statue-of-liberty-poem-was-about-people-coming-from-europe.

116 White House, *Press Briefing by Press Secretary Sarah Sanders* (Dec. 12, 2017), https://www.whitehouse.gov/briefings-statements/press-briefing-press-secretary-sarah-sanders-121217/.

117 Hamed Aleaziz, *The Trump Administration Has Set Projected Dates For Closing Foreign Immigration Offices*, Buzzfeed News (Apr. 19, 2019), https://www.buzzfeednews.com/article/hamedaleaziz/trump-administration-overseas-immigration-offices; *Tracking USCIS International Field Office Closures*, American Immigration Lawyers Association (Aug. 15, 2019), https://www.aila.org/infonet/uscis-to-close-all-international-offices-by-2020.

118 Nick Miroff, *Homeland Security Staffer with White Nationalist Ties Attended White House Policy Meetings*, The Washington Post (Aug.30, 2018), https://www.washingtonpost.com/world/national-security/homeland-security-staffer-with-white-nationalist-ties-attended-white-house-policy-meetings/2018/08/30/7fcb0212-abab-11e8-8a0c-70b618c98d3c_story.html?utm_term=.a461d9bc633b.

230. Both Acting Secretary McAleenan in his role as Commissioner for U.S. Customs and Border Protection and Former Secretary Nielsen shared President Trump's animus towards immigrants and sought to implement his anti-immigrant policies, including the public charge rule. Both have defended the Trump Administration's policy of separating immigrant children at the border, largely Central Americans and Mexicans, from their families, a widely excoriated policy that resulted in the separation of as many as 6,000 children from their parents.[119] McAleenan was one of three officials to support the family separation policy, which continues today despite class action litigation and official claims that it has ceased.

231. In McAleenan's role at CBP, he oversaw an agency accused of rampant abuses of nonwhite immigrants, where numerous agents have assaulted or killed immigrants at the border. CBP agents have stated in court filings that the use of ethnic and racial slurs and the articulation in writing of violent urges toward migrants is "part of agency culture."[120] McAleenan led CBP during a period of years when up to 10,000 agents participated in a Facebook group rife with deeply offensive racist, sexist, and homophobic commentary.[121] McAleenen and other high officials at CBP were aware of the nature of the group, but did not shut it down.[122] On McAleenan's watch, five Guatemalan children have died in CBP custody in the past six months, Central American migrants at the border have been tear-gassed, and families have been forced to sleep outside in the dirt because of CBP refusals to process their

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119 Miriam Jordan & Caitlin Dickerson, *U.S. Continues to Separate Families Despite Rollback of Policy*, N.Y. Times (Mar. 9, 2019), https://www.nytimes.com/2019/03/09/us/migrant-family-separations-border.html.

120 Tim Elfrak, *Mindless Murderous Savages: Border Agent Used Slurs Before Hitting Migrant With His Truck*, Wash. Post (May 20, 2019), https://www.washingtonpost.com/nation/2019/05/20/mindless-murdering-savages-border-agent-used-slurs-before-allegedly-hitting-migrant-with-his-truck/.

121 A.C. Thompson, *Inside the Secret Border Patrol Facebook Group Where Agents Joke About Migrant Deaths and Post Sexist Memes*, ProPublica (July 1, 2019), https://www.propublica.org/article/secret-border-patrol-facebook-group-agents-joke-about-migrant-deaths-post-sexist-memes.

122 Ted Hesson & Cristiano Lima, *Border Agency Knew About Secret Facebook Group for Years*, Politico (July 3, 2019), https://www.politico.com/story/2019/07/03/border-agency-secret-facebook-group-1569572.

requests for asylum. McAleenan also oversaw CBP during the implementation of the first and second "Muslim bans," which were struck down by appellate courts across the country for violation of the equal protection clause. (A revised third ban eventually survived Supreme Court review.)

232. The unusual sudden purges of high-level officials at DHS in the spring of 2019 reflect President Trump's desire to move immigration policy in a "tougher direction."[123] These firings sent unmistakable signals to current officials that speedy action, regardless of potential legal vulnerabilities, was encouraged and even required.

233. Multiple courts adjudicating claims over the Trump Administration's immigration policies have concluded that "even if the DHS Secretary or Acting Secretary did not 'personally harbor animus . . . , their actions may violate the equal protection guarantee if President Trump's alleged animus influenced or manipulated their decisionmaking process.'"[124] Another court adjudicated the specific question of whether "statements by Trump . . . [can] be imputed to [DHS Deputy Secretary] Duke or Nielsen." It ruled in the affirmative, finding that statements from "people plausibly alleged to be involved in the

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[123] John Fritze & Alan Gomez, *Trump to Name Ken Cuccinelli to Immigration Job as White House Seeks 'Tougher Direction'*, USA Today (May 21, 2019), https://www.usatoday.com/story/news/politics/2019/05/21/donald-trump-ken-cuccinelli-take-job-homeland-security/3750660002/.

[124] *Ramos* v. *Nielsen*, 336 F. Supp. 3d 1075, 1098 (N.D. Cal. 2018); *see also CASA de Maryland, Inc.* v. *Trump*, 355 F. Supp. 3d 307, 326 (D. Md. 2018) ("Defendants contend that the Secretary was the decision-maker, not the President, and that the Secretary's decision did not involve classification of a group of foreign nationals on the basis of their individual characteristics, but rather the classification of a foreign state. As to the first of these contentions, there can be no doubt that if, as alleged, the President influenced the decision to terminate El Salvador's TPS, the discriminatory motivation cannot be laundered through the Secretary."); *Centro Presente* v. *U.S. Dep't of Homeland Security*, 332 F. Supp. 3d 393, 414–15 (D. Mass. 2018) ("Defendants argue that the allegations regarding statements by Trump are irrelevant because animus held by the President cannot be imputed to Duke or Nielsen, the two officials who terminated the TPS designations at issue, notwithstanding allegations that the White House was closely monitoring decisions regarding TPS designations. . . . [B]ecause the exact time that the new policy regarding the criteria for TPS designations was made and the exact participants involved in that decision are unclear, it would be premature to conclude that President Trump had nothing to do with that decision such that his statements would be irrelevant.").

decision-making process, and an allegedly unreasoned shift in policy [are] sufficient to allege plausibly that a discriminatory purpose was a motivating factor in a decision."[125]

234. Courts have looked at facts such as these and found that the Trump Administration's actions can plausibly be traced to the President's personal anti-immigrant animus. For example, Judge Furman of this Court recently held that statements and actions by the President render "plausible" plaintiffs' allegation that Administration action in adding citizenship questions to the upcoming census was motivated by unconstitutional animus.[126] Likewise, Judge Garaufis of the Eastern District of New York recently held that President Trump's statements about immigrants were "racially charged, recurring, and troubling" enough to raise "a plausible inference that the DACA rescission was substantially motivated by unlawful discriminatory purpose."[127] The Ninth Circuit affirmed a district court's similar finding, considering not only Trump's "pre-presidential" and "post-presidential" statements, but also the "unusual history" of that agency action and the evidence of the disparate impact it would have on "Latinos and persons of Mexican heritage."[128] And in litigation over President Trump's travel ban, the Fourth Circuit found that the relevant executive order "sp[oke] in vague words of national security," but still facially "drip[ped] with religious intolerance, animus, and discrimination."[129]

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125 *Centro Presente*, 332 F. Supp. 3d at 415.

126 *State of New York* v. *United States Dep't of Commerce, et al.*, 315 F. Supp. 3d 766, 780 (S.D.N.Y. 2018) (Furman, J.).

127 *Batalla Vidal* v. *Nielsen*, 291 F. Supp. 3d 260, 277 (E.D.N.Y. 2018).

128 *Regents of the Univ. of Cal.* v. *U.S. Dep't of Homeland Security*, 908 F.3d 476, 518–20 (9th Cir. 2018).

129 *Int'l Refugee Assistance Project* v. *Trump*, 857 F.3d 554, 572 (4th Cir. 2017) (en banc), *vacated as moot without expressing a view on the merits*, 138 S. Ct. 353 (2017); *see also Int'l Refugee Assistance Project* v. *Trump*, 241 F. Supp. 3d 539, 558–59 (D. Md. 2017) (finding the same at the district court: "[D]irect statements of President Trump's animus towards Muslims and intention to impose a ban on Muslims entering the United States, present a convincing case that the First Executive Order was issued to accomplish, as nearly as possible, President Trump's promised Muslim ban."); *Hawai'i* v. *Trump*, 245 F. Supp. 3d 1227, 1236 (D. Haw. 2017) ("[H]ere the historical context and the specific sequence of events leading up to the adoption of the challenged

F. As Intended, the Rule Disproportionately Affects Immigrants from Nonwhite Countries

235. The Rule will also have a disproportionate effect on nonwhite immigrants. Evidence submitted to DHS as part of its notice-and-comment process showed that the Rule's most heavily weighted positive factor, an income of at least 250 percent of the FPG, is unlikely to be met by 71 percent of applicants from Mexico and Central America, 69 percent from Africa, 75 percent from the Philippines, and 63 percent from China; by comparison, only 36 percent of applicants from Europe, Canada, and Oceania who will be unlikely to meet this threshold.[130]

236. Another comment on the proposed rule estimated, for every country in the world, the percentage of the population that would be assigned a "negative factor" under the Rule due to having a family income below 125 percent of the FPG.[131] The results confirm that the "125 percent test will disproportionately affect immigrants from poor countries and have a racially disparate impact on who is allowed into the U.S."[132] For example, 99.2 percent of the population of South Asia, 98.5 percent of the population of Sub-Saharan Africa, and 79.1 percent of the population of Latin America and the Caribbean would fall below the 125 percent

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Executive Order are as full of religious animus, invective, and obvious pretext as is the record here, it is no wonder that the Government urges the Court to altogether ignore that history and context." (internal quotation marks omitted)).

130 Jeanne Batalova et al., *Through the Back Door: Remaking the Immigration System via the Expected "Public-Charge" Rule*, Migration Policy Institute (Aug. 2018), https://www.migrationpolicy.org/news/through-back-door-remaking-immigration-system-expected-public-charge-rule. This study was referenced in numerous public comments, including, *e.g.*, those submitted by the National Hispanic Leadership Agenda, and the Service Employees International Union. *See also* Legal Aid Justice Center, Comment, at 8 (Dec. 10, 2018) (citing Boundless Immigration Inc., *Looming Immigration Directive Could Separate Nearly 200,000 Married Couples Each Year* (Sept. 24, 2018), https://www.boundless.com/blog/looming-immigration-directive-separate-nearly-200000-married-couples/ (citing the same figures)).

131 CBPP Comment at 11–17 & Table 2.

132 *Id.* at 12.

threshold. By contrast, less than 10 percent of the populations of countries like Norway, Germany, and France fall below the threshold.[133]

237. The Rule's standardless requirement that applicants obtain "English language proficiency" will similarly have a disproportionate impact on immigrants from Latin American countries.

238. The Rule is arbitrary and capricious because it arbitrarily discriminates against immigrants of color.

239. The Rule is also arbitrary and capricious because it is pretextual. The Rule purports to identify immigrants who will become public charges, but the factors that it adopts as part of the Rule bear no reasonable relationship to the public charge inquiry. This demonstrates that defendants were seeking to reduce immigration by immigrants of color.

IX. The Rule Will Cause Irreparable Harm to Immigrant Families, the Public, and Plaintiffs

240. The Rule will cause irreparable harm to hundreds of thousands or millions of immigrants by penalizing them for past or anticipated future use of benefits to which they are legally entitled. Individuals receive these benefits during the most vulnerable times in their lives. Effectively forcing individuals to forego benefits so as to protect their immigration statuses will have broad negative repercussions on the health and safety of noncitizens, and will impede their integration into American society. The Rule itself acknowledges massive impacts on society at large, including public health, the economy, and workforce. The Rule will also impede the fundamental missions of plaintiffs, and will force them to divert resources to support their clients, members, and the public in dealing with the fallout from the Rule.

[133] *See id.* at 12–13.

A. Harms to Immigrant Families

241. As DHS concedes, the Rule will cause a flight of immigrants away from benefits to which they are lawfully entitled and that are not currently part of the public charge analysis, including benefits for healthcare, nutrition, and housing. Some of this will occur because immigrants will correctly conclude that the benefits will harm their ability to achieve LPR status. In other cases, it will occur because of understandable and predictable fear and confusion, abetted by the complexity of the Rule and the Administration's consistently expressed hostility to immigration and immigrants, as discussed above. In all such cases, the loss of such benefits will cause irreparable harm to immigrant households across the country.

242. DHS concedes the existence of these chilling effects, but grossly understates their severity. While acknowledging that it is "difficult to predict" the Rule's chilling effect on noncitizens, 84 Fed. Reg. at 41,313, DHS estimates that about 2.5 percent of public benefits recipients who are members of households including foreign-born noncitizens—or approximately 232,288 individuals—will forego benefits to which they are legally entitled every year.[134] DHS further estimates that, as a result, these individuals will lose nearly $1.5 billion in federal benefits payments, and more than $1 billion in state benefits payments, ever year.[135] DHS estimates that these numbers could be higher in the first year the Rule is in effect, causing as many as 725,760 individuals to disenroll from benefits programs, and denying them access to as much as $4.37 billion in federal benefits that year alone.[136]

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[134] *See* DHS, Economic Analysis Supplemental Information for Analysis of Public Benefits Programs, at 7 & Table 5, https://www.regulations.gov/document?D=USCIS-2010-0012-63742.

[135] *See id.*; Regulatory Impact Analysis, Inadmissibility on Public Charge Grounds, at 10–11 & Table 1, https://www.regulations.gov/document?D=USCIS-2010-0012-63741 [hereinafter "Regulatory Impact Analysis"].

[136] *See* Regulatory Impact Analysis, at 98–99 & Table 18.

243. These DHS estimates are not based on any data of actual disenrollment. Instead, they are based on DHS's estimate of the average percentage of immigrants (out of the total population of foreign-born noncitizens in the United States who receive any of the specified benefits) who adjust status every year. *See* 83 Fed. Reg. at 51,266. DHS thus rests its conclusion on the unsupported assumption that only immigrants who intend to apply for status adjustment will forego public benefits as a result of the Rule, and that they will do so only in the year in which they intend to make such an application.

244. DHS's assumptions are unwarranted, and its conclusions grossly understate the Rule's chilling effects, as evidenced by comments provided to DHS on the proposed rule. A study conducted by the Migration Policy Institute, based upon data showing the effects of reducing noncitizen access to public benefit programs under PRWORA, has estimated that, as a result of the rule in the form proposed in the NPRM, "5.4 million to 16.2 million of the total 27 million immigrants and their U.S.- and foreign-born children in benefits-receiving families could be expected to disenroll from programs."[137] The nonpartisan Fiscal Policy Institute estimated that "the chilling effect [of the proposed rule] would extend to 24 million people in the United States, including 9 million children under 18 years old."[138] Similarly, Manatt Health estimated that "[n]ationwide, 22.2 million noncitizens and a total of

[137] Jeanne Batalova et al., *Chilling Effects: The Expected Public Charge Rule and Its Impact on Legal Immigrant Families' Public Benefits Use*, Migration Policy Institute, at 4 (June 2018), https://www.migrationpolicy.org/research/chilling-effects-expected-public-charge-rule-impact-legal-immigrant-families. This study was referenced in numerous public comments, including, *e.g.*, those of the Southern Poverty Law Center, the Alabama Coalition for Immigrant Justice, the Coalition of Florida Farmworker Organizations, the Farmworker Association of Florida, the Florida Immigrant Coalition, the Hispanic Interest Coalition of Alabama, the MQVN Community Development Corporation, and the Southeast Immigrant Rights Network, and the Center for Law and Social Policy.

[138] Fiscal Policy Institute, *FPI Estimates Human & Economic Impacts of Public Charge Rule: 24 Million Would Experience Chilling Effects*, (Oct. 10, 2018), http://fiscalpolicy.org/public-charge. This study was referenced in public comments, including, *e.g.*, those of Advancement Project California, and the Community Legal Center.

41.1 million noncitizens and their family members currently living in the United States (12.7% of the total U.S. population) could potentially be impacted as a result of the proposed changes in public charge policy."[139] More recently, a study published by the Journal of the American Medical Association estimated that the proposed Rule "is likely to cause parents to disenroll between 0.8 million and 1.9 million children with specific medical needs from health and nutrition benefits."[140] Certain of these estimates are more than 50 times greater than DHS's estimates. DHS does not contend (and certainly offers no reason to believe) that the modest changes made in the final Rule will ameliorate this harm.

245. The chilling effects of the Rule are already well documented and have been observed by the organizational plaintiffs among their clients and constituencies—and, again, were called to DHS's attention in comments on the proposed rule. Following the leak of President Trump's draft Executive Order in January 2017 and early drafts of the Rule in February and March 2018, many immigrants and their families chose to forego participation in federal, state, and local benefits to avoid being labeled public charges. For example, just months after the first leaks of the executive order, a Los Angeles-based health care provider serving a largely Latino community reported a 20 percent drop in SNAP enrollment and a 54 percent drop in Medicaid enrollment among children, as well as an overall 40 percent decline in program re-enrollments.[141] In late 2017, benefits administrators continued to see declining

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[139] Manatt Health, *Public Charge Proposed Rule: Potentially Chilled Population Data Dashboard* (Oct. 11, 2018), https://www.manatt.com/Insights/Articles/2018/Public-Charge-Rule-Potentially-Chilled-Population. This study was referenced in public comments, including, *e.g.*, those of the American Civil Liberties Union, and Loyola University Chicago's Center for the Human Rights of Children.

[140] Leah Zallman et al., *Implications of Changing Public Charge Immigration Rules for Children Who Need Medical Care*, JAMA Pediatrics (July 1, 2019), https://jamanetwork.com/journals/jamapediatrics/article-abstract/2737098.

[141] CBPP Comment at 59 (citing Annie Lowrey, *Trump's Anti-Immigrant Policies Are Scaring Eligible Families Away from the Safety Net*, The Atlantic (Mar. 24, 2017), https://www.theatlantic.com/business/archive/2017/03/trump-safety-net-latino-families/520779/).

program participation over the prior year, including an 8.1 percent decrease in New Jersey SNAP programs, a 9.6 percent decrease in Florida WIC participation, and a 7.4 percent decrease in Texas WIC participation.[142] By September 2018, WIC agencies in at least 18 states reported drops of up to 20 percent in enrollment, a change they attributed "to fears about the [public charge] immigration policy."[143] A study released in November 2018 found that participation in SNAP "dropped by nearly 10 percentage points in the first half of 2018 for immigrant households that are eligible for the program and have been in the United States less than five years."[144] For the period from January 2018 through January 2019, New York City found a 10.9 percent drop in non-citizens leaving the SNAP caseload or deciding not to enroll, compared to a 2.8 percent drop among citizens.[145] Even more recently, a survey by the Urban Institute found that in 2018—before the NPRM was published, but after extensive reporting that it was under consideration—***one in seven adults*** in immigrant families reported that they or a family member had disenrolled from or chosen not to apply for a noncash benefit program "for fear of risking green card status."[146] Another study published by the Urban Institute in

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142 CBPP Comment at 60 (citing Emily Bumgaertner, *Spooked by Trump Proposals, Immigrants Abandon Public Nutrition Services*, N.Y. Times (Mar. 6, 2018), https://www.nytimes.com/2018/03/06/us/politics/trump-immigrants-public-nutrition-services.html).

143 CBPP Comment at 60 (citing Helena Bottemiller Evich, *Immigrants, Fearing Trump Crackdown, Drop out of Nutrition Programs*, Politico (Sept. 4, 2018), https://www.politico.com/story/2018/09/03/immigrants-nutrition-food-trump-crackdown-806292).

144 Helena Bottemiller Evich, *Immigrant Families Appear to Be Dropping out of Food Stamps*, Politico (Nov. 14, 2018), https://www.politico.com/story/2018/11/14/immigrant-families-dropping-out-food-stamps-966256. This article was cited by several commenters, including, *e.g.*, the City of Chicago, and 111 Members of Congress led by Reps. Jerrold Nadler, Zoe Lofgren, and Adriano Espaillat. *See also* Allison Bovell-Ammon, et al., *Trends in Food Insecurity and SNAP Participation Among Immigrant Families of U.S.-Born Young Children*, Children's Healthwatch, at 1 (Apr. 4, 2019) (finding that "SNAP participation decreased in all immigrant families in 2018, but most markedly in more recent immigrants, while employment rates were unchanged").

145 N.Y.C. Dep't of Social Servs., *Fact Sheet: SNAP Enrollment Trends in New York City* (June 2019), https://www1.nyc.gov/assets/immigrants/downloads/pdf/Fact-Sheet-June-2019.pdf.

146 Hamutal Bernstein et al., *One in Seven Adults in Immigrant Families Reported Avoiding Public Benefit Programs in 2018*, Urban Institute, at 2 (May 22, 2019), https://www.urban.org/sites/default/files/publication/100270/one_in_seven_adults_in_immigrant_families_reported_avoiding_publi_7.pdf.

August 2019 showed that numerous adults in immigrant families have avoided participating in SNAP, Medicaid, and housing benefits due to fear and confusion about the public charge rule.[147] This effect will only become more pronounced with the publication of the final Rule.

246. DHS acknowledges, but does not quantify, other dire harms to immigrants, their families, and their communities that will result when noncitizens forego benefits to avoid harming their immigration status. These include:

- "Worse health outcomes, including increased prevalence of obesity and malnutrition, especially for pregnant or breastfeeding women, infants, or children, and reduced prescription adherence;
- Increased use of emergency rooms and emergent care as a method of primary health care due to delayed treatment;
- Increased prevalence of communicable diseases, including among members of the U.S. citizen population who are not vaccinated;
- Increases in uncompensated care in which a treatment or service is not paid for by an insurer or patient; and
- Increased rates of poverty and housing instability; and
- Reduced productivity and educational attainment."

83 Fed. Reg. at 51,270. DHS further acknowledges the possibility that ***not*** adopting the Rule might "alleviate food and housing insecurity, improve public health, decrease costs to states and localities, [and] better guarantee health care provider reimbursements." 84 Fed. Reg. at 41,314. But it apparently views these consequences as an acceptable cost of its stated goal of furthering immigrant "self-sufficiency."

247. Here, too, DHS understates the severe harms in the form of food insecurity, worse health, and homelessness that have been, are being, and will be suffered by immigrants, their children (including U.S. citizen children), and other family members—harms that, once again, many commenters to the NPRM called to DHS's attention.

[147] Hamutal Bernstein et al., *Safety Net Access in the Context of the Public Charge Rule: Voices of Immigrant Families*, Urban Institute (Aug. 7, 2019), https://www.urban.org/sites/default/files/publication/100754/safety_net_access_in_the_context_of_the_public_charge_rule_1.pdf.

248. Going without SNAP will increase food insecurity, which leads to adverse health impacts and increased spending on medical care.[148] Studies show that participation in SNAP for six months reduced the percentage of SNAP households that were food insecure by 6–17 percent, reducing obesity, improving dietary intake, and contributing to more positive overall health outcomes.[149] According to one estimate, SNAP decreases annual healthcare expenditures by an average of $1,409 per participant as compared to non-participants.[150]

249. Similarly, declines in Medicaid participation will restrict access to medical care and increase the rates of uninsured persons, negatively impacting the health of already strained communities.[151] Medicaid significantly increases access to health care, leading to better composite health scores, lower incidences of high blood pressure, fewer emergency room visits, and reduced hospitalizations.[152] The positive effects of Medicaid go beyond just health. For example, Medicaid (including CHIP) has been shown to reduce childhood poverty rates by 5.3 percentage points.[153]

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148 *See* CLASP Comment at 32; CBPP Comment at 61–62.

149 Institute for Policy Integrity at New York University School of Law, Comment, at 10 (Dec. 10, 2018) (citing Food Research & Action Center, *The Role of the Supplemental Nutrition Assistance Program in Improving Health and Well-Being*, at 5 (Dec. 2007), https://frac.org/wp-content/uploads/hunger-health-role-snap-improving-health-well-being.pdf).

150 Food Research & Action Center, *The Role of the Supplemental Nutrition Assistance Program in Improving Health and Well-Being*, at 7 (Dec. 2017), https://frac.org/wp-content/uploads/hunger-health-role-snap-improving-health-well-being.pdf (cited in Institute for Policy Integrity at New York University School of Law, Comment, at 10 (Dec. 10, 2018)).

151 *See* CLASP Comment at 33; CBPP Comment at 62–64.

152 CLASP Comment at 33 (citing Alisa Chester & Joan Alker, *Medicaid at 50: A Look at the Long-Term Benefits of Childhood Medicaid,* Georgetown Univ. Health Policy Inst. Ctr. for Children and Families (2015), https://ccf.georgetown.edu/wpcontent/uploads/2015/08/Medicaid-at-50_final.pdf; Sarah Miller & Laura R. Wherry, *The Long-Term Effects of Early Life Medicaid Coverage,* SSRN Working Paper (2014), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2466691).

153 Loyola University Chicago's Center for the Human Rights of Children, Comment, at 5 (citing Dahlia Remler, et al., *Estimating the Effects of Health Insurance and Other Social Programs on Poverty Under the Affordable Care Act*, Health Affairs (Oct. 2017), https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2017.0331).

250. Going without rental assistance will increase homelessness and housing instability,[154] which lead to a host of individual and societal harms including increased hospital visits, loss of employment, and mental health problems.[155] Current housing assistance lifts about a million children out of poverty each year,[156] leads to significantly higher college attendance rates and higher annual incomes,[157] and improves long-term economic mobility.[158]

251. Children in particular—including U.S.-citizen children of noncitizen parents—will lose access to programs that support healthy development. Numerous studies have found that children who lack these basic needs will feel repercussions throughout their lives, as they perform worse in school and suffer adverse health consequences. For example, housing instability negatively impacts a child's cognitive development, decreases student retention rates, and limits student opportunity.[159] The Robin Hood Foundation found that the proposed rule could increase the number of poor New York City residents by as much as 5 percent.[160] DHS "recognizes that many of the public benefits programs aim to better future

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154 Gregory Mills et al., *Effects of Housing Vouchers on Welfare Families*, U.S. Dep't of Housing and Urban Development, at 139 (2006), https://www.huduser.gov/publications/pdf/hsgvouchers_1_2011.pdf (finding that between 1999 and 2004, housing vouchers reduced the percentage of homeless families living in the streets or in shelters from 7 percent to 5 percent, and the percentage of homeless families living with friends or relatives from 18 percent to 12 percent). This study was referenced in public comments, including, *e.g.*, those submitted by the Institute for Policy Integrity at New York University School of Law, and Loyola University Chicago's Center for the Human Rights of Children.

155 National Housing Law Project, Comment, at 4 (Dec. 10, 2018) (citing Will Fischer, *Research Shows Housing Vouchers Reduce Hardship and Provide Platform for Long-Term Gains Among Children*, Center on Budget & Policy Priorities (Oct. 7, 2015), https://www.cbpp.org/research/researchshows-housing-vouchers-reduce-hardship-and-provide-platform-for-longterm-gains); CBPP Comment at 64–65.

156 Trudi Renwick & Liana Fox, *The Supplemental Poverty Measure: 2016*, U.S. Census Bureau (Sept. 2017). This study was referenced in numerous public comments, including, *e.g.*, those submitted by Michigan Immigrant Rights Center, the Massachusetts Law Reform Institute, the Disability Law Center, and the National Housing Law Project.

157 CLASP Comment at 34 (citing Raj Chetty et al., *The Effects of Exposure to Better Neighborhoods on Children: new Evidence from the Moving to Opportunity Experiment*, Am. Econ. Rev. 855 (2016)).

158 National Housing Law Project, Comment, at 8 (Dec. 10, 2018).

159 *Id.* at 9.

160 Christopher Wimer et al., *Public Charge: How a New Policy Could Affect Poverty in New York City*, Robin Hood (Dec. 2018), https://robinhoodorg-

economic and health outcomes" for children, *see* 84 Fed. Reg. at 41,371, but makes no effort to address the impact that the loss of benefits will have on the well-being of children both now and in the future.

252. DHS similarly acknowledges the severe harm from the Rule to vulnerable populations, but, again, does nothing to ameliorate these harms. Women, persons with disabilities, persons with HIV/AIDS, and elderly individuals all use benefits programs at higher than average rates.[161] These categories of people, then, particularly stand to suffer if they are unable to access benefits due to operation of the Rule, as several commenters pointed out.[162]

253. Finally, the Rule will harm immigrants and their families by depriving them of the ability to remain in this country and keep their families together. DHS is aware of this harm, too, but makes no effort to address it. On the contrary, Rule is designed to affect primarily family-based immigrants.

254. DHS acknowledges a chilling effect on "people who erroneously believe themselves to be affected" and therefore forego public benefits due to fear or confusion about the Rule's scope, but blandly responds that it "will not alter this rule to account for [the]

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production.s3.amazonaws.com/uploads/2018/12/Public_Charge_Report_FINAL-4.pdf. This study was cited in several public comments, including, *e.g.*, those submitted by Legal Services NYC, and the New York City Comptroller.

161 *See, e.g.,* American Civil Liberties Union, Comment (Dec. 10, 2018).

162 *E.g.*, 84 Fed. Reg. at 41,310–11 ("Some commenters stated that including SNAP in the public charge determination would worsen food insecurity primarily among families with older adults, children, and people with disabilities. . . . Several commenters stated that the sanctions associated with the use of Medicaid and Medicare Part D benefits would result in reduced access to medical care and medications for vulnerable populations, including pregnant women, children, people with disabilities, and the elderly. . . . Many commenters said that reduced enrollment in federal assistance programs would most negatively affect vulnerable populations, including people with disabilities, the elderly, children, survivors of sexual and domestic abuse, and pregnant women. . . . Several commenters said the proposed rule would adversely affect immigrant women, because they will be more likely to forego healthcare and suffer worsening health outcomes.")

unwarranted choices" of these individuals. 84 Fed. Reg. at 41,313. DHS does not and cannot contend, however, that all noncitizens who forego benefits in order not to be penalized by the Rule are misinformed and confused. On the contrary, it concedes that discouraging benefits use by noncitizens is precisely one of the Rule's goals. Moreover, in light of the repeated expressions of hostility by members of the Trump Administration to immigrants and immigrants' purported heavy use of public benefits, including not least of all those by President Trump himself, it is difficult to avoid concluding that such confusion was intended. More fundamentally, DHS cannot credibly disclaim responsibility for the damage the Rule will predictably cause by attributing that damage to supposed confusion about the Rule. At the least, the enormously complex nature of the Rule, as discussed above, and the Rule's heavy reliance on subjective assessments by USCIS officers of the "totality of the circumstances," make such confusion inevitable.

B. Harms to the General Public

255. Large numbers of immigrant families foregoing public benefits to which they are entitled will have significant adverse impacts on the national and local economies, state and local governments, and the public generally.

256. DHS acknowledges the significant negative impact the Rule will have "on the economy, innovation, and growth." 84 Fed. Reg. at 41,472. As multiple commenters pointed out, these harms are very large. For example, assuming a 35 percent disenrollment rate—a rate derived from studies of the chilling effect on immigrants of other major policy changes, such as the enactment of PRWORA in 1996—the Fiscal Policy Institute estimates that former public benefits recipients will forego $17.5 billion in public benefits, the lost spending of which would result in the potential loss of 230,000 jobs and $33.8 billion in

potential economic ripple effects.[163] Another study estimated an even more severe economic impact of the rule, explaining: "The total annual income of workers who would be affected by the public charge rule is more than $96.4 billion. Should they leave the United States, our economy would suffer negative indirect economic effects of more than $68 billion dollars. The total cost to the U.S. economy could therefore amount to ***$164.4 billion***" (emphasis added).[164]

257. Health care systems will be particularly affected. Medicaid supports hospitals, health centers, and other community care providers that provide needed medical access to low-income people throughout the United States, not just immigrants. By reducing Medicaid enrollment and effectively limiting immigrants' access to health care, these providers will be negatively impacted and may have to limit their services to all persons. Studies cited in public comments estimated that nearly $17 billion in Medicaid and CHIP hospital payments could be at risk as a result of the chilling effect of the Rule,[165] and that community health centers stood to lose $624 million in Medicaid revenue, resulting in 538,000 fewer patients and a loss of 6,100 medical staff jobs.[166]

258. Similar examples abound. Businesses that accept SNAP benefits, such as grocery stores, will be harmed: they will have to cut back on the foods that they offer to the

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[163] CLASP Comment at 38 (citing Fiscal Policy Institute, *Only Wealthy Immigrants Need Apply: How a Trump Rule's Chilling Effect Will Harm the U.S.*, at 5 (Oct. 10, 2018), http://fiscalpolicy.org/wp-content/uploads/2018/10/US-Impact-of-Public-Charge.pdf).

[164] *See* New American Economy, *How the "Public Charge" Rule Change Could Impact Immigrants and U.S. Economy* (Oct. 31, 2018), https://research.newamericaneconomy.org/report/economic-impact-of-proposed-rule-change-inadmissibility-on-public-charge-grounds/. This study was referenced in public comments, including, *e.g.*, those submitted by the Institute for Policy Integrity at New York University School of Law, and the New American Economy.

[165] *E.g.*, CLASP Comment at 38 (citing Cindy Mann et al., *Medicaid Payments at Risk for Hospitals Under Public Charge*, Manatt Health (Nov. 16 2018), https://www.manatt.com/Insights/White-Papers/2018/Medicaid-Payments-at-Risk-for-Hospitals-Under-Publ).

[166] *E.g.*, CLASP Comment at 38 (citing Leighton Ku et al., *How Could the Public Charge Proposed Rule Affect Community Health Centers?*, RCHN Community Health Foundation Research Collaborative (Nov. 2018), https://publichealth.gwu.edu/sites/default/files/downloads/GGRCHN/Public%20Charge%20Brief.pdf).

entire community, not just immigrants. Moreover, SNAP benefits have a high multiplier effect as they circulate through the economy. Studies have found that every dollar of SNAP translates to roughly $1.79 in local economic activity.[167] Decreasing the use of SNAP benefits deprives entire communities of this multiplier effect.

259. Even utilizing the final rule's inadequate and vastly underestimated 2.5 percent rate of disenrollment or foregone enrollment, DHS estimates that SNAP disenrollment alone will result in $197.8 million in foregone benefit payments, leading to a $354 million decrease in total economic activity, a $51.4 million decrease in retail food expenditures, a $146.3 million decrease in expenditures on nonfood goods and services, and a loss of more than 1,900 jobs.[168] Assuming a far more justifiable higher rate of disenrollment or foregone enrollment, the fallout from SNAP disenrollment will be even more consequential.

C. Harms to Plaintiffs

260. The effects described in the previous sections are already being felt, and will only become more pronounced when the Rule goes into effect on October 15, 2019, unless it is enjoined. Since even before the Rule was published on August 14, 2019, noncitizens increasingly have been forced to grapple with the potential effects of the Rule on their immigration statuses, and have increasingly turned to advocacy organizations for help. As discussed above, *supra* ¶¶ 21–46, plaintiffs are the front-lines for dealing with this well-

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[167] *See* Kenneth Hanson, *The Food Assistance National Input-Output Multiplier (FANIOM) Model and Stimulus Effects of SNAP*, U.S. Dep't of Agriculture, at iv (Oct. 2010), https://www.ers.usda.gov/webdocs/publications/44748/7996_err103_1_.pdf ("The FANIOM analysis of SNAP expenditures is estimated to increase economic activity (GDP) by $1.79 billion."); *accord* Nune Phillips, *SNAP Contributes to a Strong Economy*, Center for Law and Social Policy (Aug. 2017) ("[E]ach $1 increase in SNAP payments generates $1.73 of economic activity, a fiscal impact greater than any other public benefit program or tax cuts."). Hanson's study for the U.S. Department of Agriculture was referenced in several public comments, including, *e.g.*, those submitted by the Harvard Law School Food Law and Policy Clinic, the National Immigration Law Center, USCIS-2010-0012-39659 and the City and County of San Francisco.

[168] Regulatory Impact Analysis at 104–06.

founded panic, which will continue unless and until the Rule is enjoined. The Rule threatens the mission of each of the plaintiffs, and requires them to devote substantial resources—in money, time, and personnel—that cannot otherwise be devoted to serving their constituents.

261. Plaintiff CCCS-NY operates the New York state and New York City hotlines that answer questions and, where needed, makes emergency referrals for people who may be trying to adjust before October 15, 2019, or may be deciding whether to close their cases or apply for benefits they need, or who may require emergency assistance to deal with the loss of benefits. CCCS-NY's legal team is required to answer urgent questions from noncitizens about the Rule and its implications, and to assist eligible clients in seeking adjustment before the deadline. By prioritizing these cases, CCCS-NY is unable to serve other clients with other serious issues.

262. Plaintiff MRNY is holding emergency meetings and answering questions from clients and members concerned about whether the Rule applies to them. MRNY's staff help its members and other noncitizens navigate the processes of applying for health insurance and SNAP benefits. Since the Rule was announced, these staff have had to spend significant time learning about the new rule; engaging in community education trainings and workshops; and conducting screenings and intakes and answering questions from MRNY's members and the public. In the short time since the Rule was issued on August 14, 2019, MRNY has held eight workshops on public charge, in addition to the approximately 29 workshops held in October and November 2018 after the NPRM was first published. These workshops are in demand and serve hundreds of members, clients, and the public. MRNY will continue to conduct such workshops after October 15, 2019 if the Rule is not enjoined

263. Like CCCS-NY, the legal teams at MRNY and ASC must, by necessity, prioritize adjustments that can be filed before October 15, 2019, so as to protect their clients from being subject to the Rule. Also like CCCS-NY, the MRNY and ASC legal teams are unable to deal with other issues facing their clients due to this need to prioritize muting the effects of the Rule.

264. Plaintiffs CLINIC and AAF are likewise on the receiving end of urgent questions from members and affiliates brought through their clients and constituents. CLINIC's consultation service is already at maximum capacity, unable to address other emergency needs of its affiliates.

265. These harms will be greatly amplified if the Rule is allowed to go into effect on October 15, 2019. Plaintiffs will have to address questions from clients, members of their organizations, and the public who are planning adjustment about how the Rule affects them, and those same clients will require extra assistance when they go forward with an adjustment application. Not only will clients need assistance filling out the burdensome Form I-944, they will need extra counseling to understand fully their options, including not going forward with an application at all. Plaintiffs will also have to assist clients and members with questions about continuing to receive or applying for benefits. Because the consequences of applying for or receiving benefits will be far more dire, tasks that used to be relatively routine will now require plaintiffs' staff to conduct a grueling analysis to attempt to determine whether the application could render the client a public charge.

266. Plaintiffs will need to devote substantial resources to educating their members, constituents, and immigrant communities generally regarding the Rule. For instance, AAF held a special press briefing after the Rule was issued featuring information

provided in seven Asian languages for the benefit both of those present and for consumers of Asian ethnic media generally. MRNY has held eight workshops on public charge since the final rule was announced, bringing the total number of its workshops on public charge since the rule was proposed to over three dozen. Preparing such educational sessions requires plaintiffs to devote time, personnel, and resources that cannot then be spent on addressing other consequential issues facing those same constituencies.

267. Plaintiffs like CCCS-NY and AAF that have access to charity funds also will face extra demands on those resources. Because noncitizens will be unable to access public benefits, they will instead turn to these organizations to help fill the gaps and make ends meet. The plaintiffs will be unable to use these funds for other programs or to address the needs of their other constituents.

268. The Rule goes to the heart of the core mission of each of the plaintiffs. Where plaintiffs seek a world where immigrants have choices and are treated with dignity and respect as they make their way towards permanent residence and greater economic success, the Rule has the opposite effect. In application, the Rule will prevent low-income immigrants of color from applying to adjust, and will limit their choices about accessing benefits that get them through hard times. To address this harm and fulfill their missions, plaintiffs will be forced to devote time, money, personnel, and other resources to this issue.

269. In October 2018, USCIS began a policy of issuing Notices to Appear in immigration court for removal hearings to immigrants whose adjustment of status the agency had denied. Intending immigrants are thus facing not only a higher likelihood of denial of adjustment once the Rule goes into effect, but also, for many, an accompanying risk that such denial will lead to placement in removal proceedings. Implementation of the Rule will thus

force many adjustment applicants and their families to leave the lives they have built and cherished over years in the United States. For Plaintiffs MRNY, ASC, and AAF, these effects will in turn hinder the organizations' ability to mobilize community members and impede their ability to fulfill their mission of strengthening the political voice and well-being of immigrant communities. For all plaintiffs, these effects will cause a substantial increase in resources dedicated to mitigating the harms of the Rule, educating clients about the dangers of adjustment, and evaluating the risks of accessing important health care, nutritional, and housing assistance. And, where the Rule results in denials of adjustment of status, plaintiffs will be forced to spend additional resources counseling individuals through subsequent removal proceedings.

270. The Rule will potentially result in denial of status adjustment to hundreds of thousands of applicants, including the thousands of adjustment applicants who receive representation, counseling, and other immigration-related services from plaintiffs. The Department of State, which processes applicants immigrant visas from abroad, has seen a significant increase in immigrant visa denials on public charge grounds in the year since it implemented a policy change similar to the Rule. That pattern will repeat itself as to applications for adjustment of status if the Rule goes into effect. Implementation of the Rule will lead to immigrants losing their opportunity to adjust, and will threaten families with instability far into the future.

CAUSES OF ACTION

COUNT ONE

(Violation of Administrative Procedure Act – Substantively Arbitrary and Capricious, Abuse of Discretion, Contrary to Constitution or Statute)

271. Plaintiffs reallege and incorporate by reference the allegations set forth in each of the preceding paragraphs of this Complaint.

272. The APA, 5 U.S.C. § 706(2), prohibits federal agency action that is, among other things, "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law"; "contrary to constitutional right"; or "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right."

273. DHS and USCIS are each an "agency" under the APA. 5 U.S.C. § 551(A).

274. In implementing the Rule, defendants took unconstitutional and unlawful action, in violation of the APA, by, among other things, as set forth herein: (a) expanding the definition of "public charge" in a manner contrary to the statutory meaning of the term; (b) seeking to establish a framework for making public charge determinations that will deny status adjustment to large numbers of intending immigrants who would be approved for status adjustment under an approach consistent with the Act; (c) identifying "negative factors" and "heavily weighted negative factors" for public charge determinations that are contrary to law; (d) establishing a Rule that is so confusing, vague, and broad that it fails to give applicants notice of the conduct to avoid and inviting arbitrary, subjective, and inconsistent enforcement; (e) seeking to establish a framework for public charge determinations that undermines the Congressional goal of promoting family unity; (f) promulgating a rule that discriminates

against individuals with disabilities in violation of the Rehabilitation Act of 1973;

(g) promulgating a Rule that, in purpose and effect, is improperly retroactive; and

(h) promulgating a rule that is motivated by animus against nonwhite immigrants.

275. Defendants acted arbitrarily and capriciously, otherwise not in accordance with law, and contrary to constitutional right, and abused their discretion, in violation of the APA.

276. Defendants' violations have caused and will continue to cause ongoing harm to plaintiffs and the general public.

COUNT TWO

(Violation of Administrative Procedure Act – Procedurally Arbitrary and Capricious, Notice and Comment)

277. Plaintiffs reallege and incorporate by reference the allegations set forth in each of the preceding paragraphs of this Complaint.

278. The APA, 5 U.S.C. §§ 553 and 702(2)(D), prohibits federal agency action that affects substantive rights "without observance of procedure required by law."

279. DHS and USCIS are each an "agency" under the APA. 5 U.S.C. § 551(A).

280. In implementing the Rule, defendants will change the substantive criteria regarding evaluating whether an individual is a public charge.

281. The Rule must comply with the APA process for notice-and-comment rulemaking. 5 U.S.C. § 553.

282. Under the APA, agencies engaged in notice-and-comment rulemaking must, among other things, (a) provide reasonable basis for departing from prior agency actions;

(b) support their actions with appropriate data and evidence; and (c) provide a reasoned response to significant public comments.

283. Defendants have failed to comply with these obligations.

284. These violations will cause ongoing harm to plaintiffs.

COUNT THREE

(Violation of the Administrative Procedure Act – In Excess of Statutory Jurisdiction, Authority, or Limitations)

285. Plaintiffs reallege and incorporate by reference the allegations set forth in each of the preceding paragraphs of this Complaint.

286. The APA, 5 U.S.C. § 706(2)(C), prohibits federal agency action that is made "in excess of statutory jurisdiction, authority, or limitations."

287. DHS and USCIS lack rulemaking authority to promulgate the Rule.

288. Section 103 of the INA denies DHS authority over the "powers, functions, and duties conferred upon the . . . Attorney General." 8 U.S.C. § 1103(a)(1).

289. The INA confers upon the Attorney General, not DHS, the authority to regulate adjustment of status applications, 8 U.S.C. § 1255(a), and to make public charge inadmissibility determinations for noncitizens seeking admission or adjustment of status, 8 U.S.C. § 1182(a)(4)(A).

290. The promulgation of the Rule by DHS and USCIS is in excess of the agencies' statutory jurisdiction, authority, or limitations.

291. This violation will cause ongoing harm to Plaintiffs.

COUNT FOUR

(Violation of the Fifth Amendment – Equal Protection and Due Process)

292. Plaintiffs reallege and incorporate by reference the allegations set forth in each of the preceding paragraphs of this Complaint.

293. The Due Process Clause of the Fifth Amendment prohibits the federal government from denying persons due process of law and the equal protection of the laws.

294. The Rule targets individuals for discriminatory treatment based on their race, ethnicity, and/or national origin, without lawful justification.

295. The Rule was motivated, in whole or in part, by a discriminatory motive and/or a desire to harm a particular group, nonwhite immigrants.

296. Nonwhite immigrants will be disproportionately harmed by the Rule.

297. By issuing the Rule, defendants violated the equal protection and due process guarantees of the Fifth Amendment.

298. This violation will cause ongoing harm to plaintiffs.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully request that the Court:

a. Issue a declaratory judgment stating that the Rule is unauthorized by law and contrary to the Constitution and laws of the United States;

b. Vacate and set aside the Rule;

c. Preliminarily and permanently enjoin defendants from implementing the Rule or taking any actions to enforce or apply it;

d. Award plaintiffs attorneys' fees; and

e. Grant such additional relief as the Court considers just.

Dated: New York, New York
August 27, 2019

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Trump Administration's Overbroad Public Charge Definition Could Deny Those Without Substantial Means a Chance to Come to or Stay in the U.S.

By Danilo Trisi

The Trump Administration's proposed public charge rule unveiled last October could result in large numbers of individuals being denied lawful permanent residence status, the ability to extend their stay, to change their status, or to enter the United States, despite extensive research on the benefits of immigration to the country and immigrants' demonstrated upward mobility.[1]

Under longstanding immigration law, certain individuals can be denied entry to the United States or permission to remain here if they are determined likely to become a "public charge," which for decades has been defined as being primarily dependent on government for monthly cash assistance or long-term institutional care. The proposed rule would significantly alter the public charge definition and, in turn, change the character of the country to one that only welcomes those who already have substantial wealth and income.

Under the proposed rule from the Department of Homeland Security (DHS), individuals who are determined likely to receive even modest assistance from a far broader set of benefits — including benefits that help many workers like SNAP (formerly known as food stamps) and Medicaid — at any point over their lifetimes would be considered a public charge. Immigration officials would look at many factors to determine the likelihood of benefit receipt, including whether the immigrant's current family income is above 125 percent of the federal poverty level.

The proposed policy is so radical and would change the public charge definition to one so broad that *more than half* of all U.S.-born citizens could be deemed a public charge — and by extension and implication, considered a drag on the United States — if this definition were applied to them. The proposed rule does not apply to U.S. citizens.[2] It is instructive, however, to consider the share of

[1] The full text of the administration's proposed rule can be found here: https://www.govinfo.gov/content/pkg/FR-2018-10-10/pdf/2018-21106.pdf.

[2] Lawful permanent residents are not reevaluated for public charge as part of the application process to become a U.S. citizen.

U.S.-born citizens whom the proposed rule would characterize as a public charge when considering the reasonableness of the standard.

- If one considers benefit receipt of the U.S.-born citizens over the 1997-2017 period, some 43 to 52 percent received one of the benefits included in the proposed public charge definition.
- In just a single year, 3 in 10 U.S.-born citizens receive a benefit included in the proposed public charge definition.
- If data allowed us to look at U.S.-born citizens over the course of their full lifetimes, benefit receipt would *exceed 50 percent of the population*.
- A significant share of individuals working in the United States — 16 percent — receive one of the benefits included in the proposed definition in just a single year. These are workers upon whom our economy relies.

The current definition is, by contrast, far narrower. In a single year, just 5 percent of U.S.-born citizens and 1 percent of individuals working in the United States meet the current benefit-related criteria in the public charge determination.

The proposed public charge criteria are not only broad, but would discriminate against individuals from poorer countries, regardless of their talents, because the incomes of the vast majority of people from many countries fall below the new 125 percent-of-poverty threshold included as a consideration in the public charge determination under the proposed rule. This criterion would have racially disparate impacts, as people from countries with low incomes are disproportionately people of color. This threshold would be particularly problematic for immigrants from poor countries seeking entry to the United States, even if they have some family already here, because their own income is likely to be very low compared to U.S. poverty standards. In addition, given the more complex prediction that immigration officials would have to make, their discretion, which could be influenced by implicit (or explicit) racial/ethnic bias, would likely affect the outcome for more people. This bias could lead immigration officials to keep out large numbers of people from certain countries or racial/ethnic groups, and to deny adjustment or entry to people of color at higher rates than similarly situated white individuals.

The proposed rule is a shortsighted attempt to remake the U.S. immigration system — without congressional approval — into one that welcomes only those with significant wealth. Immigrants fill important jobs and contribute to economic growth, and research has shown that immigrants raise children who demonstrate substantial upward mobility, attaining more education than their parents and moving up the economic ladder.[3] Had this rule been in effect in prior decades, the United States would have been deprived of the talents of many hardworking immigrants who moved to this country to build a better life for themselves and their children and, in turn, made important contributions to their communities and the United States as a whole.

[3] See, for example, David Card, "Is New Immigration Really So Bad?" National Bureau of Economic Research Working Paper 11547, Revised August 2005, https://www.nber.org/papers/w11547. For a more recent and comprehensive review of the literature, see: National Academy of Sciences, "The Economic and Fiscal Consequences of Immigration," 2017, https://www.nap.edu/read/23550/chapter/2.

The Trump Administration's proposed public charge rule has not been finalized yet, and the government is required to review and consider the evidence and views presented in the more than 266,000 public comments it received before finalizing it. Moreover, the proposed rule indicates that immigration officials will not apply the new definition of public charge until the rule becomes effective (likely 60 days after the rule is finalized). Benefits that the public charge determination previously excluded (such as Medicaid and SNAP) will be considered only if applicants receive them after the final rule becomes effective.[4] Nonetheless, many families that include immigrants already have forgone needed services due to extensive media coverage about the proposed rule and confusion caused by the Administration implementing policy changes similar to those in the rule when considering applications for entry into the United States.[5] Additional Administration actions, such as a reported forthcoming proposed rule by the Department of Justice (DOJ) on deportability, could further increase fear and confusion in immigrant communities. (See box, below, for more details on the potential DOJ rule.)

Proposed DHS Rule Significantly Expands Definition of "Public Charge"

Under federal law back to the late 1800s, immigration officials can turn down people seeking to enter the United States and/or become lawful permanent residents (also known as green card holders) if officials determine that they are, or are likely to become, a "public charge." Longstanding federal policy considers someone a public charge if they receive more than half of their income from cash assistance programs, such as Temporary Assistance for Needy Families (TANF) and Supplemental Security Income (SSI), or receive long-term care through Medicaid.

The proposed rule significantly expands the definition of public charge in two major ways. First, it broadens the list of public benefit programs considered in a public charge determination to also include health coverage through Medicaid, food assistance through SNAP (food stamps), housing assistance, and Medicare Part D low-income subsidies to help beneficiaries afford prescription drugs. Second, instead of looking at whether more than half of a person's income comes (or would likely come in the future) from cash assistance tied to need, as they do now, immigration authorities would consider whether the individual received, or is likely to receive, modest amounts of any of these benefits — even if the benefits reflect only a small share of an immigrant's total income.[6]

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[4] For more details, see: National Immigration Law Center, "How to Talk About Public Charge with Immigrants and Their Families," updated January 2019, https://www.nilc.org/issues/economic-support/how-to-talk-about-public-charge-pif/.

[5] National Immigration Law Center, "Changes to 'Public Charge' Instructions in the U.S. State Department's Manual," updated August 7, 2018, https://www.nilc.org/wp-content/uploads/2018/02/PIF-FAM-Summary-2018.pdf. For evidence on immigrants forgoing assistance, see Hamutal Bernstein *et al.*, "One in Seven Adults in Immigrant Families Reported Avoiding Public Benefit Programs in 2018," Urban Institute, May 22, 2019, https://www.urban.org/research/publication/one-seven-adults-immigrant-families-reported-avoiding-public-benefit-programs-2018.

[6] The rule directs immigration officials to disregard projected program participation if the official believes the benefit amounts or durations would fall below thresholds established in the rule. However, those provisions would be difficult for officials to apply when they are trying to predict whether or not an individual is likely to become a public charge in the future. To apply those provisions, an immigration officer would need to calculate the amount of benefits that an individual immigrant might receive in the future which would require in-depth knowledge about program benefit rules and predictions about the income and characteristics of an immigrant's future household members. That is so difficult that as a practical matter, immigration officials will likely default to only determining whether there is a likelihood of

The proposed rule creates new criteria and standards for immigration officials to use when evaluating whether an individual is likely to become a public charge. Particularly concerning is a new income criterion that would count as a negative factor in the public charge determination. Under this "income test," having family income below 125 percent of the poverty line — currently about $31,375 for a family of four — would count against an individual in the public charge determination. Many low-wage workers have earnings below this level and could be deemed "likely to become a public charge" under the proposed rule, even if they receive no benefits. And many seeking admission to the United States from a poorer country would be unable to have current earnings (in their home country) above this level.

Department of Justice Will Likely Seek to Conform to DHS' Public Charge Definition

A recent media report indicates that the Department of Justice (DOJ) plans to propose a rule related to grounds for deporting individuals determined to have become a public charge.[a] That rule would likely conform the public charge definition for deportability purposes to the definition used in the Department of Homeland Security's rule on inadmissibility discussed in this paper. The details of the DOJ proposed rule are not known but the scope of the changes would be limited by certain statutory requirements. To be deportable as a public charge, a person would need to have received the relevant benefits within the first five years after entry based on circumstances that predated their entry. Most immigrants are not eligible for the major benefits during their first five years in the country, And, immigrants could still show that they received the benefits based on conditions that arose after entry, e.g., they lost their job, had an accident, became pregnant, or lost their housing. Still, some immigrants and their families would be affected and the publication of such a rule is certain to generate more confusion and fear in immigrant communities, and lead families to forgo assistance that they need and are eligible for.

[a] Yeganeh Torbati, "Exclusive: Trump administration proposal would make it easier to deport immigrants who use public benefits," Reuters, May 3, 2019, https://www.reuters.com/article/us-usa-immigration-benefits-exclusive/exclusive-trump-administration-proposal-would-make-it-easier-to-deport-immigrants-who-use-public-benefits-idUSKCN1S91UR.

More Than Half of U.S.-Born Citizens Likely to Participate in Programs Included in Proposed Definition During Their Lifetimes

The breadth of the rule's expansive definition of public charge is clear when one considers the share of U.S.-born citizens who would be considered a public charge if the proposed definition were applied to them. The rule, of course, applies only to individuals seeking entry or adjustment of status, but it is instructive to consider the share of U.S.-born citizens whom the proposed rule would characterize as a public charge when considering the reasonableness of the standard.

Looking at the U.S.-born citizen population in 2017 and considering benefit receipt over the 1997-2017 period, some 43 to 52 percent received one of the benefits in the public charge

receiving any amount of benefits. Therefore, any projected future receipt would likely result in a person being deemed "likely to become a public charge."

definition. If data allowed us to look at U.S.-born citizens over their full lifetimes, benefit receipt would exceed 50 percent of the population.

The benefits included in the proposed definition serve a far broader group of low- and moderate-income families than those served by cash assistance and institutional care programs (those considered under the current definition). Looking at just one year of program participation shows that 28 percent — nearly 3 in 10 — of U.S.-born citizens receive one of the main benefits included in the proposed definition.[7] By contrast, about 5 percent of U.S.-born citizens meet the *current* benefit-related criteria in the public charge determination.[8]

Under the rule, immigration authorities are tasked with predicting whether someone will ever, over the course of their lifetimes, receive one of the benefits included in the public charge definition. To understand the breadth of this definition, we'd ideally want to look at U.S.-born citizens over their lifetimes and measure the share who receive one of the named benefits. Unfortunately, data limitations preclude that. But we can look at the share of U.S.-born citizens who receive these benefits both in a single year using Census data and over a 19-year period using the Panel Study of Income Dynamics (PSID), a longitudinal data set.[9]

Approximately 43 to 52 percent of U.S.-born individuals present in the PSID survey in 2017 participated in either SNAP, Medicaid, TANF, SSI, or housing assistance over the 1997-2017 period.[10] If we were able to capture more years and a higher share of people's childhoods with data that are corrected for underreporting, we estimate that *more than half* of the U.S.-born population participate in SNAP, Medicaid, TANF, SSI, or housing assistance over their lifetimes.[11]

Additional PSID analyses make this clear. Benefit receipt is higher during childhood than during adulthood, so capturing childhood years increases the share receiving benefits at some point. We find that 59 percent of children born during 1999-2017 (in non-immigrant PSID households) received one of the five benefits over the period. This makes clear that a majority of U.S.-born citizens will receive one of these benefits at some point over the course of their lives.

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[7] See methodological appendix for further details.

[8] The current definition is modeled as: Personally receiving more in TANF, SSI, and General Assistance than in earnings, or a member of a family that receives more in TANF, SSI, and General Assistance than earnings. Due to data limitations we did not include participation in institutional care programs.

[9] The PSID, conducted by the University of Michigan's Institute of Social Research, began in 1968 and follows about 5,000 families (and the families that branched off from the original survey respondents) annually.

[10] This is based on a CBPP update of an analysis done by Diana Elliott from the Urban Institute using a PSID dataset created by Sara Kimberlin from the California Budget & Policy Center and Noura Insolera from the University of Michigan's Institute of Social Research, which runs the PSID. The survey data were collected between 1999 and 2017, but the program participation questions generally ask about participation in the current and previous two calendar years. The PSID does not include data on Medicare Part D Low-Income Subsidies. We also did not include General Assistance in our PSID analysis due to concerns about the quality of the data for that variable. The inclusion of those programs would increase our estimates of the share of U.S.-born citizens who receive benefits included in the proposed rule.

[11] See methodological appendix for a detailed explanation of how we reached this estimate.

Many Workers Participate in Programs Included in Proposed Definition

Another way to examine the breadth of the rule's definition of public charge is to apply it to all individuals working in the United States, regardless of citizenship status. If all U.S. workers were subjected to a public charge determination, a significant share would be considered a public charge under the proposed rule. Looking at just one year of program participation shows that 16 percent of U.S. workers receive one of the main benefits included in the proposed definition. By contrast, just 1 percent of U.S. workers meet the *current* benefit-related criteria in the public charge determination.

The reality of the current U.S. labor market is that many workers combine earnings with government assistance to make ends meet. Table 1 shows that a significant share of workers in all major industry groups would be defined as a public charge if the definition were applied to them, despite the important role that these workers play in these industries and in the economy.

TABLE 1

Many U.S. Workers Use Benefits Considered Under Proposed Public Charge Definition

	Percent that use benefits under current definition*	Percent that use benefits under proposed definition**
All workers	1%	16%
Leisure and hospitality	1%	28%
Other services (repair and maintenance, private household workers, etc.)	1%	20%
Wholesale and retail trade	1%	20%
Agriculture, forestry, fishing and hunting	4%	19%
Construction	1%	17%
Transportation and utilities	1%	15%
Educational and health services	1%	15%
Professional and business	1%	14%
Manufacturing	0%	13%
Information (publishing, broadcasting, telecommunications, etc.)	0%	10%
Financial activities	0%	9%
Public administration	0%	8%
Mining	0%	7%

Note: Estimates are based on benefit receipt in the current year.

*Current definition is modeled as: Personally receiving more in TANF, SSI, and General Assistance than in earnings, or a member of a family that receives more in TANF, SSI, and General Assistance than earnings.

**Proposed definition is modeled as: Personally receiving any SNAP, Medicaid/Children's Health Insurance Program, housing assistance, SSI, TANF, or General Assistance.

Source: CBPP analysis of Census Bureau data from the Current Population Survey (CPS) and SPM public use files, with corrections for underreported government assistance from the Department of Health and Human Services/Urban Institute. These data are for 2016, the most recent year for which these corrections are available. Data are presented using the major industry classification recodes found in the CPS.

Income Test Likely to Keep Many out of United States

The proposed rule creates a variety of new criteria and standards for immigration officials to use when evaluating whether an individual is likely to become a public charge. Particularly concerning is a new income criterion that would be considered as a negative factor in the public charge determination. Under this "income test," having family income below 125 percent of the poverty line — about $31,375 for a family of four, which is more than twice what full-time work at the federal minimum wage pays in the United States — would count against an individual in the public charge determination.

Many low-wage U.S. workers have earnings below this level and could be deemed "likely to become a public charge" under the proposed rule, even if they receive no benefits. This test could prevent individuals with low or modest incomes from being granted status adjustment or lawful entry/re-entry to the United States.

That standard could also be out of reach for many people seeking to enter from a country where incomes in general are much lower than in the United States. The 125 percent test would disproportionately affect immigrants from poor countries (especially those who are not in families already living and working in the United States) and have a racially disparate impact on who is allowed into the United States. The World Bank provides an online data tool that allows users to estimate the percent of the population from various countries that's below different poverty thresholds.[12] To approximate 125 percent of the U.S. poverty line, one can use a $20 per-person, per-day poverty line in the World Bank online tool. According to the tool, 13 percent of the U.S. population is below the $20 per-person, per-day poverty line. (Similarly, 15 percent of the U.S. population is below 125 percent of the U.S. poverty line.)

If we apply that $20 a day threshold to the rest of the world, many individuals would fall below that threshold, including:

- 80.8 percent of the world population;
- 99.2 percent of the population of South Asia;
- 98.5 percent of the population of Sub-Saharan Africa; and
- 79.0 percent of the population of Latin America and the Caribbean.

Of course, the figures are much different in wealthy countries. In countries the World Bank defines as "high income," 14.4 percent of people in those countries would fall below the 125 percent threshold.

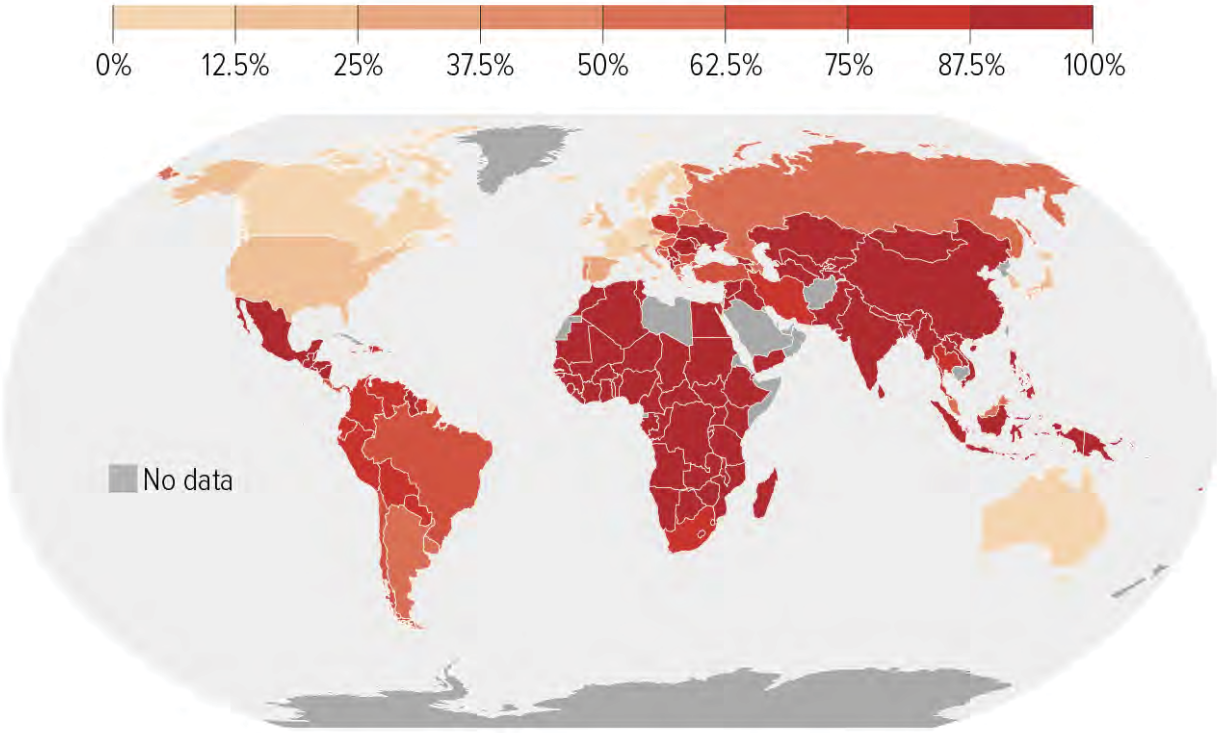
The map below color codes countries based on the percent of their populations with income below the $20 per-person, per-day poverty line. (These calculations use the March 2019 update of 2013 data because they are available for more countries. Currently, the World Bank tool includes 2015 data for a more limited number of countries.)

[12] PovcalNet: the online tool for poverty measurement developed by the Development Research Group of the World Bank: http://iresearch.worldbank.org/PovcalNet/povDuplicateWB.aspx.

FIGURE 1

Income Test in Proposed Public Charge Rule Likely to Keep Many out of United States

Percent of population with income below $20 per person per day – roughly the income that immigrants would need to avoid having immigration officials view them as likely to become a public charge



Note: This is an analysis of the income test in the Department of Homeland Security's public charge inadmissibility proposed rule.

Source: CBPP analysis of March 2019 update of World Bank PovcalNet online analysis tool using 2013 reference year and $20/day poverty line. http://iresearch.worldbank.org/PovcalNet/povDuplicateWB.aspx

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These data show that the application of the 125 percent threshold to potential immigrants living abroad could have a dramatic effect on who would be allowed to come in to the United States lawfully. To be sure, many immigrants seeking to rejoin family in the United States will be joining families that also have income that can count toward this 125 percent of poverty test. The test will remain hard, however, for those joining family of modest means, because the arriving individual will have income on the wage scale of their home country.

A country's low wage rates are not determinative of a potential immigrant's core traits and skills or their ability to develop skills and succeed in the United States. Indeed, throughout our history, poor individuals have come to the United States and have achieved significant upward mobility for themselves and their children, helping to grow the nation and its middle class, its industries, and its innovation sector.

Broadened Public Charge Definition Could Lead to Racial Bias in Immigration Decisions

Broadening the definition of public charge opens the door to increased discrimination in the adjudication of adjustment and lawful entry applications based on race, ethnicity, and country of origin.

Under current policy, immigration officials are trying to answer a very narrow question: Is someone likely to become *primarily dependent* on a narrow range of benefits that only a small share of Americans receive? Individuals who are determined likely to become a public charge under the current policy can generally overcome the finding with a legally enforceable affidavit of support from a sponsor.

In contrast, under the proposed rule, immigration officials would be asked to predict whether an individual is likely to receive at some point in the future any of a much broader range of benefits that a significantly larger share of Americans receive. (It also appears likely that fewer individuals would be able to overcome a public charge determination through an affidavit of support, raising the stakes of the determination for individuals seeking entry or permission to remain in the United States.)

Given the more complex prediction that immigration officials would have to make, their discretion, which could be influenced by implicit (or explicit) racial/ethnic bias, would likely affect the outcome for more people. Some immigration officials, faced with the difficult task of predicting future benefit use, may assume that immigrants from certain countries or racial/ethnic groups will be more likely to receive benefits than similarly situated white immigrants and use that assumption to deny adjustment or entry to people of color at higher rates than their circumstances justify.

Higher rates of poverty and benefit receipt in the United States among people of color are due to (among other factors) a history of slavery and discrimination leading to a large and persistent racial wealth gap; unequal education, job, and housing opportunities; and for some recent immigrants, lower educational opportunities in their home countries. These opportunities are more plentiful in the United States, resulting in higher educational attainment among the children of lower-skilled immigrants.[13]

The rule could have a discriminatory impact and result in applicants for status adjustment or lawful entry being denied at higher rates based on their race or ethnicity, all else being equal.

Immigrants' Children Tend to Be Highly Upwardly Mobile

By using such a broad public charge definition, the proposed rule appears to presume that both immigrants themselves and by extension and implication, U.S.-born citizens who receive government assistance contribute little to the economy which, as the data above indicate, is untrue. In the case of immigrants, the proposed rule is saying that the nation would be better off without their offspring, as well. Yet when immigrants' children are considered, the economic case for this rule is even harder to support.

[13] See National Academy of Sciences, "The Economic and Fiscal Consequences of Immigration," 2017, Table 8-8, https://www.nap.edu/read/23550/chapter/13#425.

Studies have long found that the children of immigrants tend to attain more education, have higher earnings, and work in higher-paying occupations than their parents. Economist David Card observed in 2005 that "Even children of the least-educated immigrant origin groups have closed most of the education gap with the children of natives."[14] The National Academy of Sciences' 2015 immigration study similarly concluded that second-generation members of most contemporary immigrant groups (that is, children of foreign-born parents) meet or exceed the schooling level of the general population of later generations of native-born Americans.[15] Even for immigrants without a high school education, the overwhelming majority of their children graduate from high school. According to the National Academy of Sciences 2017 report, 36 percent of new immigrants lacked a high school education in 1994-1996; two decades later, only 8 percent of second-generation children (i.e., children of foreign-born parents) lacked a high-school education.[16]

The United States remains a country with a dynamic economy and opportunity for upward mobility, educational attainment, creativity, and entrepreneurship. Given the inevitable inaccuracies in immigration officials' predictive capabilities, removing individuals or keeping them out of the country based on an extremely broad definition of "public charge" would cost the United States many needed workers, including those who care for children and seniors and build homes as well as those who start businesses, go to college, and have children who become teachers, inventors, and business leaders. Forfeiting this talent would weaken the entire nation and our local communities.

Methodological Appendix

To calculate the percent of U.S.-born citizens that participate in a single year in programs included in the Administration's proposed rule, we used the Current Population Survey. Our calculations include SNAP, TANF, SSI, Medicaid, housing assistance, and state General Assistance programs. We corrected for underreporting of SNAP, TANF, and SSI receipt in the Census survey using the Department of Health and Human Services/Urban Institute Transfer Income Model (TRIM). The figures are for 2016, the latest year for which these corrections are available. Our estimates understate the share of U.S.-born citizens who participate in a single year in programs included in the definition because we do not correct for the underreporting of Medicaid or account for low-income subsidies in the Medicare Part D program, which are also included in the rule.

The PSID, a longitudinal dataset, shows that 24 percent of the U.S.-born population interviewed in 2017 recently participated in at least one of the five programs.[17] This estimate is lower than

[14] Card.

[15] National Academy of Sciences, "The Integration of Immigrants into American Society," 2015, p. 3, https://www.nap.edu/read/21746/chapter/2#3.

[16] National Academy of Sciences, "The Economic and Fiscal Consequences of Immigration," 2017, Table 8-5, https://www.nap.edu/read/23550/chapter/13#425.

[17] Throughout this PSID analysis, "U.S. born" refers to individuals in the PSID's main sample, and excludes a later, supplemental sample of immigrants added to the PSID in 1997-1999 and in 2017. The main sample actually includes a small number of immigrants, including some who were present in the United States since 1968 when the PSID began or those who joined existing PSID households in later years. PSID respondents in 2017 were asked about current receipt of

CBPP's single-year figures presented above (28 percent) because the PSID data are not corrected for survey respondents' tendency to underreport receipt of government benefits.[18]

The PSID-based figures undoubtedly would have been higher if we could have corrected for the underreporting of benefit receipt in the PSID. The CPS/TRIM-based estimate of the share of individuals who participated in one of the benefit programs in 2016 is about 1.2 times as large as the PSID-based estimate.[19] We use this adjustment factor to estimate that as many as roughly 52 percent of U.S.-born citizens participated in SNAP, Medicaid, TANF, SSI, or housing assistance in at least one year over the 1997-2017 period.[20]

But underreporting is only one reason that the 43 percent estimate described above is lower than the share of U.S.-born citizens who receive benefits in at least one year over this period and well below the figure for the share of U.S.-born citizens who receive one of these benefits at some point over their lifetimes.

In looking at benefit receipt over the 1997-2017 period, the PSID only provides data on benefit receipt for most programs every other year. The PSID dataset thus lacks any measure of participation in alternate years for some programs such as Medicaid.

More importantly, these data do not measure benefit receipt over individuals' entire lives. Using PSID data for 1997-2017 is an important improvement over using a single year of data to analyze the share of U.S.-born citizens who receive one of the benefits included in the proposed rule's public charge definition, but it still captures only a portion of most respondents' lifetimes and significantly underestimates the share of U.S.-born citizens who receive a benefit at some point during their lives. If we were able to capture more years and a higher share of people's childhoods with data that are corrected for underreporting, as described above, we estimate that more than half of the U.S.-born population participate in SNAP, Medicaid, TANF, SSI, or housing assistance over their lifetimes.

To be sure, not all citizens who participate in the programs listed in the proposed rule would technically meet the proposed definition of a public charge. The rule directs immigration officials to disregard program participation if the benefit amounts or durations fall below thresholds established

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Medicaid and housing assistance, receipt of TANF and SSI in the past year, and receipt of SNAP last month, last year, and two years ago.

[18] Using the Current Population Survey and baseline data from the Health and Human Services/Urban Institute Transfer Income Model version 3 (TRIM3) to correct for the underreporting of TANF, SSI, and SNAP, we find that 28 percent of the U.S.-born population participated in one of the five programs in 2016. The CPS/TRIM figure would be even higher if we were able to correct for the underreporting of Medicaid.

[19] To calculate the adjustment factor of 1.2 we divide the CPS/TRIM share of U.S.-born citizens participating in 2016 (28.4 percent before rounding) by the comparable point-in-time figure from the PSID (23.6 percent). In calculating the latter figure, we include people who reported receiving SNAP during the last month, last year, or two years ago. If we only count those in the PSID who report receiving SNAP last year (as our TRIM figure does), the PSID point-in-time participation rate for the five programs would be 22.1 percent, the undercount adjustment factor would be 1.3, and our adjusted estimate of the share of U.S.-born citizens ever participating over the 1997-2017 period would be even higher at 56 percent.

[20] We estimate this upper bound by applying the annual underreporting factor (1.2) to the estimate of benefit receipt over the full period (43.4 percent).

in the rule. Due to data limitations, we cannot appropriately model all of those provisions. However, we think that those provisions would be extremely difficult for officials to apply when making a prospective determination, so any projected future receipt would likely bar an applicant from status adjustment or entry.

Finally, when the Census Bureau asks about health coverage in the Current Population Survey, it asks about Medicaid and the Children's Health Insurance Program (CHIP) together, so the data on Medicaid also include CHIP recipients. CHIP is not included among the benefits in the proposed rule, however; in many states Medicaid and CHIP programs are so closely aligned that parents wouldn't be able to tell whether their children were Medicaid or CHIP recipients, and it is unclear whether immigration officials projecting future benefit receipt would be able to distinguish either.

EXHIBIT 3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MAKE THE ROAD NEW YORK, AFRICAN SERVICES COMMITTEE, ASIAN AMERICAN FEDERATION, CATHOLIC CHARITIES COMMUNITY SERVICES, and CATHOLIC LEGAL IMMIGRATION NETWORK, INC.,

Plaintiffs,

- against -

KEN CUCCINELLI, in his official capacity as Acting Director of United States Citizenship and Immigration Services; UNITED STATES CITIZENSHIP & IMMIGRATION SERVICES; KEVIN K. McALEENAN, in his official capacity as Acting Secretary of Homeland Security; and UNITED STATES DEPARTMENT OF HOMELAND SECURITY,

Defendants.

1:19-cv-07993 (GBD)

DECLARATION OF KIM NICHOLS

KIM NICHOLS declares:

Introduction

1. I am the co-Executive Director of African Services Committee (ASC), where I am responsible for oversight of all agency fiscal and programmatic functions, including policy-setting, senior staff supervision, liaison with the Board of Directors, contract management and fundraising. I have held this position since 1998. Prior to 1998, I was the Director of Development at ASC.

2. I submit this declaration in support of the Plaintiffs' Motion for a Preliminary Injunction to enjoin the rule published by the Department of Homeland Security ("DHS"), titled Inadmissibility on Public Charge Grounds, 84 Fed. Reg. 41,292 (Aug. 14, 2019) (to be codified at 8 C.F.R. pts. 103, 212, 213, 214, 245, 248) (the "Rule"). The Rule will burden ASC in its efforts to pursue its mission of mobilizing and empowering immigrants, refugees, and asylees from Africa and across the African Diaspora, as they pursue the pathway to greater economic stability.

The Work of African Services Committee

3. African Services Committee was founded in 1981 and has grown to a staff of 40 people with a 4 million dollar budget. We are the largest and most sought out African community services organization in New York City. We provide comprehensive services to our clients through the work of inter-related divisions including Health, Housing, Legal, Social Services Support, and international human rights advocacy. We also provide direct health services delivery through our three clinics in Ethiopia.

4. ASC is a primary, trusted source for information about law and policy changes that affect our clients and constituents. We have earned the trust of the people we serve through the delivery of high-quality, culturally sensitive, essential services, including health screening; diagnostic and referral services; mental health services; assistance with locating, securing and maintaining housing; individual and group counseling; English as a second language classes (ESL); case management; and food pantry and nutrition services. We also provide legal services, including in family-based immigration matters such as adjustment of status and removal defense.

5. At any given time, our staff who deliver these services speak up to twenty-five languages used by our clients, including French, English, Spanish, Portuguese, Italian, Arabic, Japanese, Haitian Creole, Amharic, Abbey, Attie, Bambara, Baoule, Balengou, Bemba, Dioula, Dogon, Douala, Fulani, Kiswahili, Luvale, Luganda, Mandingo, Malenke, Medumba, Moghamo, Nyanja, Pulaar, Rukiga, Ruoro, Runyankore, Senoufo, Serere, Soninke, Tiggriggna, Tonga, and Wolof.

6. We often make initial contact with clients through our health screening services, which provide high-quality, free and confidential screening for HIV, TB, STI, Hepatitis B and C, hypertension, and diabetes. When clients are diagnosed with HIV and other conditions for which we screen, it is often a vulnerable time in their lives, where concerns about availability and cost of treatment, the prospect of discrimination at work, the impact on personal relationships and other areas of their lives are often of immediate concern. We aim to provide services to address all of these needs. As a result, our clients look to us for advice and counseling on a range of issues, including how their health needs impact whether they may be deemed a public charge. In seeking to educate and organize the communities we serve, we also publish Know Your Rights fact sheets, newsletters, and policy notes, which include updates and information on immigration policies with the potential to impact clients.

7. We also stand up and speak out on issues of concern to our clients: federal anti-immigrant policies, health equity, discrimination on the basis of race and disability, and issues abroad like slavery and apartheid in Mauritania and Libya.

8. We have been outspoken in advocating against earlier versions of the public charge rule, and last December submitted a detailed public comment documenting numerous harms the Rule would inflict on our clients and immigrant communities generally, with a particular focus on the risks to health care access for those with HIV/AIDS. That comment is attached to this declaration as Exhibit A.

The Public Charge Rule Will Cause Significant Harm to ASC And Its Clients

9. If the Rule is not enjoined before October 15, 2019, it will cause direct and lasting harm to ASC, our clients and the communities we serve in multiple, immediate ways that we have no ability to rectify.

Need to Get Quality Information to Community Members

10. Because we are looked to as a central source for leadership and information on policy issues, we are duty-bound to provide accurate and timely information regarding the changes to the public charge rule out to our client communities.

11. ASC is already planning a Public Charge Public Service Announcement (PSA) campaign in order to provide information to new and existing clients and all who may be impacted by the Rule. Radio production of ASC's Public Charge PSA campaign is planned to begin later this month. Due to our limited communications budget, ASC prioritizes our campaigns to utilize only platforms we believe to be the most effective in reaching the African immigrant community in New York City. The materials aim to educate immigrants about the Rule, mitigate the chilling effect on those who might choose to disenroll from or forego receiving vital benefits, advise immigrants to speak to a licensed attorney, and provide contact information for free resources. The ads will run

primarily in French. In addition, expansion of coverage is generated by radio hosts, who often preface and translate ads in local languages (such as Wolof) to best engage with audience language capacity. We estimate that the Public Charge PSA campaign will cost in the range of $2,000-3,000 of our $25,000 annual communications budget. Written materials will be available at our testing center and throughout our organization in West Harlem, where we see heavy foot traffic and are likely to get the widest audience. Despite these efforts, we are aware that our message will reach only a fraction of the affected population. Our communications budget is restricted by our funders to primarily target program-specific community outreach and recruitment for direct health services.

Impact on Health Services

12. We anticipate that the Rule will cause a great demand on our health services, particularly our testing and diagnostic center. Our health services are free of charge and available to uninsured New Yorkers. In 2018 we provided approximately 1,000 people free HIV testing and counseling. We provide clients who are diagnosed with HIV comprehensive care and support from our other departments as well, including not only legal and housing services, but support from our food pantry, case management, ESL classes, and client support groups. In this way our testing services are a pathway for clients to connect with our other services.

13. Because of the chilling effect we are already seeing with respect to non-citizens maintaining health benefits – even benefits that are not considered "public benefits" under the Rule – we anticipate that there will be more uninsured immigrants seeking our health services. On average we serve ten people a day on-site for health services and

reach another 40 a day offsite through outreach and health screenings. There is a limit to how many people we can serve and still maintain the highest quality service and care. If more people seek our services, we will likely have to start turning some away. Being forced to refuse service to people for whom our testing would be their first link to treatment would be a serious impediment to fulfilling our mission, and to the health of those individuals. When we conduct health fairs on-site at ASC, offering our array of tests plus vision screening and mammograms, we often have to turn away an overflow of attendees. The Rule will also frustrate the mission of our group level intervention, a program through which we advise and navigate groups of uninsured individuals seeking a connection to health services.

14. We anticipate a similar impact on our mental health counseling services, which are provided free of charge by a licensed clinical social worker on-site at ASC. She can only see so many clients and the demand is likely to increase as clients forego health insurance because of the Rule.

Impact on Housing Services

15. ASC provides housing services to low-income immigrants diagnosed with HIV. Where someone is homeless or unstably housed, we find them a placement in safe and affordable housing though our HOPWA housing placement assistance and MAC AIDS Fund. We also provide direct case assistance in the form of brokers' fees and two months of rent. We provide assistance with supplemental rent payment and rent arrears if, needed. When clients become eligible for certain forms of government-based cash assistance, they may also be eligible for assistance with their rent. Our initial investment

in getting these clients settled pays off when they ultimately secure affordable housing and achieve the ability to pay their rent long-term. The Rule makes the application for government cash assistance and associated help very dangerous for clients who have a path to family-based adjustment as well as for those who hope to have a path for adjustment in the future. We anticipate that many clients who would otherwise access such benefits will refrain from doing so. As a result, ASC likely will have to allocate additional funds to assisting these clients.

16. Currently, we allot $80,000 per calendar year for such housing assistance. Because of the demand for this service – historically driven by the lack of affordable housing in New York City – the fund is often depleted before the end of the year, leaving us without the ability to provide this assistance for the last quarter of the year. We expect that the increased demand for housing assistance because of the Rule will mean that we deplete our limited pot of housing assistance even more quickly, both because of the additional number of people needing help and the fact that they will likely need assistance for a longer period of time. This budget line will have $0 remaining by October 1. Not only does the inability to provide this assistance frustrate our mission, it puts these individuals at risk of homelessness.

17. Already we see clients refusing to apply for the cash assistance program and stretching their reliance on the HOPWA-funded short-term programs indefinitely, in order to avoid cash assistance. If this trend continues, our housing program will cease to exist, because we will no longer be able to place new clients into the HOPWA-funded programs.

Impact on Nutrition Services and ESL classes

18. For the same reason that housing assistance will be in demand, our food pantries and other nutritional services will be in even greater demand, as clients turn away from public benefits to private sources of support. We have already seen an increase in the demand on our food pantries and we attribute this demand to public charge. The demand will be even greater after October 15, 2019, if the Rule becomes effective. Short of additional funding, having to serve people less food to make our supply stretch for more households undermines our mission and does grave harm to our clients. Hunger is a harm that we cannot rectify.

19. Likewise, given that applicants for adjustment will be penalized for having limited English proficiency, and given the lack of standards for how such a lack of proficiency is measured, we anticipate an increased demand for our English as a second language ("ESL") classes after October 15; we are already seeing a surge in enrollment. Our ESL budget for the year is only $30,000. Short of turning people away, we will have to offer shorter courses of study to accommodate greater numbers of students. Under either scenario – turning people away or providing less education to more students – our purpose in offering the communities we serve ESL classes – helping individuals attain English proficiency – will be frustrated.

Impact on Public Benefits Counseling Services

20. As referenced above, the Rule is affecting ASC's ability to connect clients with the benefits and services they need, due to the justified fear that receiving benefits today will be held against them in the future when they pursue their goals of seeking adjustment

of status. The consequences of choosing to forego benefits, especially healthcare and housing assistance, would be detrimental for ASC clients living with chronic health conditions and would derail their efforts to work, pursue education and training, and achieve their goals of success. We will also be able to see fewer clients with our limited staff, as each benefits consultation will be more complex as we determine whether the benefit comes with a risk of public charge. The Rule will therefore impair our ability to offer public benefits counseling services, which will frustrate our mission and result in our clients going without the assistance they need.

Impact on Legal Services

21. ASC has had to prioritize assisting applicants for adjustment who can file before the Rule's October 15, 2019 effective date, and at the same time counsel staff, community partners, and clients with urgent questions about whether receiving the benefits and services that keep them healthy and secure will undermine their ability to remain permanently in their communities surrounded by their networks of support. In the event that adjustment applications are denied on public charge grounds, ASC will also have to devote resources to responding to requests for additional evidence or notices of intent to deny from USCIS; submitting appeals to the Administrative Appeals Office; and if those efforts are unsuccessful, eventually representing its clients in removal proceedings before the Immigration Court.

22. Already, ASC has had to divert legal resources necessary for family stabilization — from housing and family law issues, to affirmative immigration applications that address the day to day needs of the families we serve, such as employment authorization,

travel documents and green card renewals as well as naturalization. To be clear, every adjustment application impacted by the Rule is central towards our mission of stabilizing families of mixed immigration status, who were prioritized by Congress; every denial would leave a broken home, and a new generation of American children brought up without a parent or a bread-winner.

23. ASC's clients who are preparing to file for adjustment face the prospect of denial and ultimately removal from the U.S. should the Rule take effect. ASC's clients are at particular risk because many live with chronic health conditions currently protected under the Americans with Disabilities Act and lack "private, unsubsidized health insurance" required by the Rule in order to overcome any disability. The Rule reinforces the concept of disability being a public burden, and will adversely affect immigrants with disabilities, who, like many of ASC's clients, are more likely than non-disabled immigrants to be living at or below the poverty line and utilizing public benefits. For example, people with disabilities often need help with daily activities that are covered by Medicaid, but typically are not covered by private insurance. As another example, children whose immigrant parents have disabilities will suffer due to being denied access to programs that provide them shelter and food, even if they were born in the U.S. In the worst-case scenario, children may be forcibly separated from their parents and placed into foster care.

24. ASC provides increasing levels of assistance with legal application fees and emergency financial support to fill one-time needs, from private sources of funding. However, this year, that fund has been overburdened by requests from clients who would

have qualified for a fee waiver but were reasonably concerned that applying for a fee waiver could trigger public charge inadmissibility. In particular, ASC has covered filing fees for numerous clients seeking to renew their Employment Authorization Documents while they await adjudication of their adjustment of status applications. We have also used the fund to pay for clients' humanitarian applications, concerned that a fee waiver should not prejudice a future family-based application.

25. Because client counseling, screening and adjustment applications are all more complex under the Rule, our free, grant-funded legal services team will be forced to see fewer clients as consultations and case evaluations will take more time and effort in order for attorneys to obtain all necessary evidence from clients, review that information, and then carefully and thoroughly explain how the new rule affects their case and the consequences of filing an application if they are negatively affected by the new rule. For several of our legal programs, which are performance-based, the economic consequence will be reduction in revenue generated as attorneys close fewer cases, and serve fewer clients, due to the burdensome requirements of the rule. Additionally, it will also negatively affect ASC's ability to meet contract requirements for legal work funded by outside sources as the number of people advised and represented will be reduced due to the additional work and time needed in order to properly advise both potential and existing clients about how the new rule impacts their cases. Further, as mentioned above, for those ASC clients whose applications will be challenged or denied under this new rule, there will be significant additional work needed for those cases that will limit our attorneys' ability from assisting with new evaluations or representations.

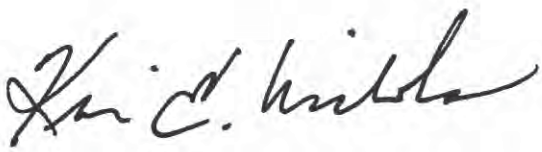
26. The Rule will also adversely impact our ability to offer clients low-fund legal services through our Immigrant Community Law Center ("ICLC"). ICLC is staffed by just two attorneys and one accredited representative, who offer legal assistance on a sliding scale to over 200 active clients. We are already running the clinic at a deficit, in that the revenue we receive in fees does not cover the cost. While adjustment applications have always been relatively simple, starting October 15, they will become much more complex and require more time, especially to counsel clients on their risk of public charge and completing the new Form I-944. Given that we run ICLC on a fee for service model, we anticipate an even a larger deficit. Our staff time is limited, so more time needed on cases will mean we see fewer individual clients (and therefore bring in less in fees). If we are unable to break even on this program, or even maintain our deficit at the current level, we risk having to terminate staff, to the great detriment to ASC and our clients.

Conclusion

27. Each of the harms delineated – diversion of resources, diminished services, deepening budget shortfalls and the devastating impact on our clients – frustrates ASC's mission. Yet the Rule still stands to frustrate our mission in an even more profound way. Motivated by racial animus, and designed to exclude low-income immigrants of color, the Rule is directed at the diminishment of the very community it is our mission to serve, African-descended immigrants from all over the world. Given the Rule's profound impact on immigrants with disabilities, the Rule is even more poisonous to our organization, our clients, and the communities we serve.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 9, 2019
New York, New York



Kim Nichols

EXHIBIT A

AFRICAN SERVICES COMMITTEE

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December 10th 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

Dear Chief Deshommes:

I am writing on behalf of African Services Committee 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 proposed "public charge" regulations published in the Federal Register on October 10, 2018. The proposed rule would cause major harm to immigrants and their families, localities, states, and health care providers and facilities, and DHS provides no justification for why changes are needed. We urge that the rule be withdrawn in its entirety, and that long standing principles clarified in the 1999 Field Guidance remain in effect.

Founded in 1981, African Services Committee (ASC) is the oldest and largest non-profit organization in the country, dedicated to improving the health and self-sufficiency of the African and Caribbean immigrant community in New York City providing health, housing, legal, educational, and social services to more than 6000 newcomers each year. ASC is a well-known and trusted community partner and ally in the fight against HIV/AIDS. ASC staff have served on a number of prestigious boards in the field of HIV/AIDS including UNAIDS Programme Coordinating Board as the NGO board member for North America; Communities Delegation member to the Board of the Global Fund to Fight AIDS, TB, and Malaria; New York City AIDS Fund Advisory Board; New York City Commission on AIDS and the New York City HIV Planning Council.

The proposed rule would alter the public charge test dramatically, abandoning the enduring meaning of a public charge as a person who depends on the government for subsistence, changing it to anyone who simply receives assistance with health care, nutrition, or housing. Under current policy, a public charge is defined as an immigrant who is "likely to become primarily dependent on the government for subsistence." The proposed rule radically expands the definition to include any immigrant who simply "receives one or more public benefits." This shift drastically increases the scope of who can be considered a public charge to include not just people who receive benefits as the main source of support, but also people who use basic needs programs to supplement their earnings from low-wage work.

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Additionally, under longstanding guidance, only cash "welfare" assistance for income maintenance and government funded long-term institutional care can be taken into consideration in the "public charge" test – and only when it represents the majority of a person's support. If the rule is finalized, immigration officials could consider a much wider range of government programs in the "public charge" determination. These programs include most Medicaid programs, housing assistance such as Section 8 housing vouchers, Project-based Section 8, or Public Housing, SNAP (Supplemental Nutrition Assistance Program, formerly Food Stamps) and even assistance for seniors who have amassed the work history needed to qualify for Medicare and need help paying for prescription drugs.

The rule also makes other massive changes, such as introducing an unprecedented income test and weighing negatively many factors that have never been relevant. For example, the proposed rule details how being a child or a senior, having a large family, or having a treatable medical condition could be held against immigrants seeking a permanent legal status. The rule also indicates a preference for immigrants who speak English, which would mark a fundamental change from our nation's historic commitment to welcoming and integrating immigrants. Because this rule targets family-based immigration as well as low and moderate wage workers, it will also have a disproportionate impact on people of color. All of these changes amount to a sea change in American policy towards immigration, counting wealth and income as the primary indicators of a person's future contribution.

Both research and Congressional actions over the nearly 20 years that the Field Guidance has been in effect provide ample evidence that there is no problem now and no persuasive rationale for change. Rather, this rule appears to be motivated by a desire to change America's system of family-based immigration to grant preference to the wealthy, in ways that the Administration has proposed through legislation but that Congress has rejected.

The 1996 Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) limited immigrant eligibility for federal means-tested public benefits, but Congress did not amend the public charge law to change what types of programs should be considered. That same year, in the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Congress codified the case law interpretation of public charge. After 1996, there was a lot of confusion about how the public charge test might be used against immigrants who were eligible for, and receiving certain non-cash benefits, and legal immigrants' use of public assistance programs declined significantly.

In response to concerns that some consular officials and employees of the then-Immigration and Naturalization Service (INS) were inappropriately scrutinizing the use of health care and nutrition programs, and the strong evidence of chilling effects from the 1996 law, INS issued an administrative guidance in 1999 which remains in effect today -- clarifying 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. The guidance

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specifically lists 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. The 1999 NPRM preamble makes clear that it was not seen as changing policy from previous practice, but was issued in response to the need for a "clear definition" so that immigrants can make informed decisions and providers and other interested parties can provide "reliable guidance."

The 1999 guidance is consistent with Congressional intent and case law, has been relied upon by immigrant families for decades, and should continue to be used in interpreting and applying the public charge law. Contrary to the rationale put forward in the proposed rule, in 1996 Congress made changes to program eligibility, not to the public charge determination. Since that time, Congress has made explicit choices to expand eligibility (or permit states to do so) under these programs.

As a New York City based organization we are reminded daily of the promises of the Lady in the harbor, "Give me your tired, your poor, your huddled masses yearning to breathe free, the wretched refuse of your teeming shore. Send these, the homeless, tempest-tost to me, I lift my lamp beside the golden door!" Nowhere does it read, "Give me your healthy and wealthy yearning to breathe free!"

The proposed regulation would make—and has already made—immigrant families afraid to seek programs that support their basic needs. The proposal could prevent immigrants from using the programs their tax dollars help support, preventing access to essential health care, healthy, nutritious food and secure housing. It would increase poverty, hunger, ill health and unstable housing by discouraging enrollment in programs that improve health, food security, nutrition, and economic security, with profound consequences for families' well-being and long-term success.

Simply by defining a "public charge" as someone who accepts a lawful "public benefit" provided by the state or has a "medical condition" that could "interfere with . . [their] ability to work," the proposed rule would cause disproportionate and discriminatory harm to both U.S. citizen/permanent resident petitioners and immigrant beneficiaries pursuing family-based immigration, if either is living with HIV/AIDS.

In the U.S., approximately 1.1 million individuals are living with HIV/AIDS.[1] Persons with HIV disease, either symptomatic or asymptomatic are protected by the Americans with Disabilities Act (ADA).[2] Unlike Social Security Income ("SSI") or Disability Income ("SSDI"), disability discrimination law guarantees certain public welfare benefits to all persons with disabilities regardless of their ability to work, where reasonable and necessary to ensure their right to participate in community life.[3] Further, federal law prohibits disability discrimination by its executive agencies, requiring that they provide reasonable accommodation to disabled individuals so they cannot be denied meaningful access to agencies' services and benefits—including immigration benefits—based on their disabilities.[4] However, this proposed rule rather than provide accommodation for HIV, would use this disability to exclude disabled applicants for conduct that is both lawful and protected by statute: accessing reasonable accommodations the state has seen fit to provide.

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Not only does this send the signal that individuals with HIV/AIDS and other chronic health conditions are "undesirable," -- drawing disturbing parallels to the 1987 HIV travel and immigration ban overturned in 2010[5] -- but the proposed ruling ignores the reality that a disability, or chronic illness such as HIV/AIDS, is not necessarily an accurate indicator of future self-sufficiency and full-time employment capabilities. In June this year the U.S. Bureau of Labor Statistics released a Current Population Survey (CPS) showing that in 2017 the labor force participation rate for those with a disability had actually increased.[6]

The rule does not recognize that receipt of benefits that assist individuals with a significant medical issue such as HIV/AIDS or provide people with the opportunity to complete education and training are highly significant positive factors that contribute to future economic self-sufficiency. There is a large body of research evidence on the positive long-term effects of receipt of many of the benefits that are included in the public charge determination, including SNAP and Medicaid.

Indeed, today in the U.S., with appropriate treatment, care and support, persons living with HIV/AIDS can expect to live long, healthy and productive lives. These key elements of an integrated care package are recognized as essential to not only improving the health of people living with HIV/AIDS but also as a highly effective strategy to maximize viral suppression and prevent further HIV transmission.[7] Across the U.S. an increasing number of states, cities and counties are now developing their own plans to end AIDS as an epidemic through comprehensive healthcare plans which include both clinical and supportive services.[8]

Directly threatening the success of these public health initiatives, the proposed rule imposes an insurance mandate exclusive to applicants whose "medical condition" could "interfere with . . . [their] ability to work" – practically the legal definition of a disabled person. HIV-positive applicants and others with chronic health conditions would be required to purchase private, "health insurance." HIV/AIDS treatment, known as anti-retroviral therapy (ART), is prohibitively expensive in the United States and copayments can be extremely high unless subsidized by government programs.[9]

Reports are already emerging in the community of individuals who are considering waiting to begin life-saving ART, and others who are refusing lawfully entitled housing assistance to safely house themselves and their loved ones in the belief that this will ensure their eligibility to reunite their families.

Such scenarios call to attention the catastrophic public health implications that this proposed rule threatens to create, undoing hard won progress towards ending the HIV/AIDS epidemic in the US Unfairly, and against the public interest, applicants will be asked to choose between their own health and welfare, and their legal right to family reunification.

The criteria also penalize the basis on which a person qualified for a non-cash benefit received prior to the effective date of the rule (e.g. medical condition, lack of education/skills). The proposal also overweighs receipt of one-time immigration fee waivers to predict whether a person will become a public charge and the

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factors collectively are defined in a negative, unbalanced manner that does not give the average person a fair opportunity to overcome them. By listing multiple correlated experiences (e.g. low income, lack of employment, and poor credit scores) as separate factors, the rule places undue weight on each of them and pretends scientific objectivity while actually putting a thumb on the scales.

For many of the same reasons that we oppose the inclusion of Medicaid, we adamantly oppose the inclusion of CHIP. CHIP is a program for working families who earn too much to be eligible for Medicaid without bearing a share of cost. Making the receipt of CHIP a negative factor in the public charge assessment, or including it in the "public charge" definition, would exacerbate the problems with this rule by extending its reach further to exclude moderate income working families – and applicants likely to earn a moderate income at some point in the future.

Including CHIP in a public charge determination would likely lead to many eligible children foregoing health care benefits, both because of the direct inclusion in the public charge determination as well as the chilling effect detailed elsewhere in these comments. Nearly 9 million children across the U.S. depend on CHIP for their health care. Due to the chilling effect of the rule, many eligible citizen children likely would forego CHIP—and health care services altogether—if their parents think they will be subject to a public charge determination.

In addition to the great harm that would be caused by the inclusion of CHIP, this would be counter to Congress' explicit intent in expanding coverage to lawfully present children and pregnant women. Section 214 of the 2009 Children's Health Insurance Program Reauthorization Act (CHIPRA) gave states a new option to cover, with regular federal matching dollars, lawfully residing children and pregnant women under Medicaid and CHIP during their first five years in the U.S. This was enacted because Congress recognized the public health, economic, and social benefits of ensuring that these populations have access to care.

Since its inception in 1997, CHIP has enjoyed broad, bipartisan support based on the recognition that children need access to health care services to ensure their healthy development. Senator Orrin Hatch (R-UT), one of the original co-sponsors of CHIP, said that "Children are being terribly hurt and perhaps scarred for the rest of their lives" and that "as a nation, as a society, we have a moral responsibility" to provide coverage. CHIP has been a significant factor in dramatically reducing the rate of uninsured children across the U.S. According to the Kaiser Family Foundation, between 1997 when CHIP was enacted through 2012, the uninsured rate for children fell by half, from 14 percent to seven percent. Medicaid and CHIP together have helped to reduce disparities in coverage that affect children, particularly children of color. A 2018 survey of the existing research noted that the availability of "CHIP coverage for children has led to improvements in access to health care and to improvements in health over both the short-run and the long-run."[10]

As noted by the Kaiser Family Foundation, CHIP:

- Can have a positive impact on health outcomes, including reductions in avoidable hospitalizations and child mortality.
- Improves health which translates into educational gains, with potentially positive implications for both individual economic well-being and overall economic productivity.[11]

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Continuous, consistent coverage without disruptions is especially critical for young children, as experts recommend 16 well-child visits before age six, more heavily concentrated in the first two years, to monitor their development and address any concerns or delays as early as possible.[12] As noted by the Center for Children and Families: A child's experiences and environments early in life have a lasting impact on his or her development and life trajectory. The first months and years of a child's life are marked by rapid growth and brain development.[13]

We are also concerned that DHS notes that the reason it does not include CHIP in the proposed rule is that CHIP does not involve the same level of expenditures as other programs that it proposes to consider in a public charge determination and that noncitizen participation is relatively low.[14] The question of which programs to include should not at all consider government expenditures. Whether or not there is a large government expenditure on a particular program is irrelevant to the assessment of whether a particular individual may become a public charge. A public charge determination must be an individualized assessment, as required by the Immigration and Nationality Act, and not a backdoor way to try to reduce government expenditures on programs duly enacted by Congress.

Overall, we believe the benefits of excluding CHIP and Medicaid certainly outweigh their inclusion in a public charge determination. We recommend that DHS continue to exclude CHIP from consideration in a public charge determination in the final rule but also exclude receipt of Medicaid for the same reasons.

ASC strongly opposes adding any additional programs to the list of counted programs, or in any way considering the use of non listed programs in the totality of circumstances test. No additional programs should be considered in the public charge determination. The programs enumerated in the proposed rule already go far beyond what is reasonable to consider and will harm millions of immigrant families. The addition of any more programs would increase this harm to individuals, families and communities.

For all of these reasons listed, the Department should immediately withdraw its current proposal, and dedicate its efforts to advancing policies that strengthen—rather than undermine—the ability of immigrants to support themselves and their families in the future. If we want our communities to thrive, everyone in those communities must be able to stay together and get the care, services and support they need to remain healthy and productive.

Thank you for the opportunity to submit comments on the proposed rulemaking. Please do not hesitate to contact me to provide any further information.

Amanda Lugg
Director of Advocacy
African Services Committee

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Reference Numbers

[1] www.cdc.gov/hiv/basics/statistics.html

[2] Bragdon v. Abbott, 524 U.S. 624 (1998).

[3] See Olmstead v. L.C. in rel. Simring, 527 U.S. 581, 601 (1999) (holding disability discrimination law may require unequal treatment, where an accommodation is reasonable and necessary to ensure equal opportunity for a person with disabilities); see also Cleveland v. Policy Management Systems Corp., 526 U.S. 795 (1999) (distinguishing disability insurance law, which provides income replacement for those unable to work, from disability discrimination law, which requires reasonable accommodation , to protect the disabled person's right to work.)

[4] 29 U.S.C. §794(a), Rehabilitation Act of 1973, section 504

[5] Human Rights Campaign www.hrc.org/press/after-22-years-hiv-travel-and-immigration-ban-lifted

[6] Current Population Survey, 2016 and 2017 annual averages. U.S. Bureau of Labor Statistics

[7] US Centers for Disease Control and Prevention www.cdc.gov/hiv/basics/whatishiv

[8] National Alliance of State and Territorial AIDS Directors www.nastad.org/resource/ending-hiv-epidemic-jurisdiction-plans

[9] https://betablog.org/hiv-drugs-price/

[10] "CHIP and Medicaid: Filling in the Gap in Children's Health Insurance Coverage. | Econofact". Econofact. 2018-01-22. Retrieved 2018-01-23.

[11] Kaiser Family Foundation, The Impact of the Children's Health Insurance Program (CHIP): What Does the Research Tell Us?, Jul. 2014, https://www.kff.org/medicaid/issue-brief/the-impact-of-the-childrens-health-insurance-program-chip-what-does-the-research-tell-us/.

[12] Elisabeth Wright Burak, Georgetown Center for Children and Families, Promoting Young Children's Healthy Development in Medicaid and the Children's Health Insurance Program (CHIP), Oct. 2018, https://ccf.georgetown.edu/wp-content/uploads/2018/10/Promoting-Healthy-Development-v5-1.pdf.

[13] Ibid.(Burak 2018).

[14] 83 Fed. Reg. at 51174.

EXHIBIT 4

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MAKE THE ROAD NEW YORK, AFRICAN SERVICES COMMITTEE, ASIAN AMERICAN FEDERATION, CATHOLIC CHARITIES COMMUNITY SERVICES, and CATHOLIC LEGAL IMMIGRATION NETWORK, INC.,

Plaintiffs,

- against -

KEN CUCCINELLI, in his official capacity as Acting Director of United States Citizenship and Immigration Services; UNITED STATES CITIZENSHIP & IMMIGRATION SERVICES; KEVIN K. McALEENAN, in his official capacity as Acting Secretary of Homeland Security; and UNITED STATES DEPARTMENT OF HOMELAND SECURITY,

Defendants.

1:19-cv-07993 (GBD)

DECLARATION OF THEO OSHIRO

THEO OSHIRO declares:

Introduction

1. I am the Deputy Director at Make the Road New York ("MRNY"), where I am responsible for overseeing our services teams, which include our legal, health, and adult education departments. I directly supervise the Directors of each team and support the direction of each team's work. I am part of the Executive Leadership Team of MRNY and am responsible for fundraising and shaping many of MRNY's organizational priorities. I have held this position since 2012. Prior to becoming the Deputy Director, I was the Director of Health Advocacy for 6

years. I joined MRNY in 2005. My academic focus[1] has been rooted in the integration of immigrant communities in the United States, and understanding what barriers exist for immigrant families to thrive.

2. I submit this declaration in support of the Plaintiffs' Motion for a Preliminary Injunction to enjoin the Rule published by the Department of Homeland Security ("DHS"), titled Inadmissibility on Public Charge Grounds, 84 Fed. Reg. 41,292 (Aug. 14, 2019) (to be codified at 8 C.F.R. pts. 103, 212, 213, 214, 245, 248) (the "Rule"). The Rule has and will continue to deter millions of people from accessing life-saving services and invite unpredictable and biased public charge inquiries. The Rule will burden MRNY in its efforts to provide survival services for immigrant and working-class communities and inflict grave harm on MRNY and the communities we serve.

3. Because the Rule has caused enormous fear in the immigrant communities MRNY serves, driving people to consider withdrawing from life-saving health and nutritional benefits due to concerns that receipt would endanger their immigration status, MRNY has diverted significant resources from its core organizational priorities to conduct outreach to counteract the Rule's chilling effects. If the Rule goes into effect, the need for MRNY to devote resources to counteract the Rule's chilling effects will increase.

4. MRNY has diverted and will continue to divert substantial resources away from other programming in order to train legal providers, survival services personnel, and support staff on the Rule's dramatic and confusing changes to the public charge inquiry. The Rule's many vague and inconsistent portions have rendered applications for admission and adjustment of status a confusing process for our clients and staff members. MRNY will need to undertake

[1] In particular, I have a Bachelor of Arts in Latin American Studies from New York University and a Masters in Latin American Studies from the University of Chicago.

significant training and education internally to effectively serve our membership, clients and community. Finally, MRNY will also be injured because the Rule decreases our ability to build power in the communities we serve. MRNY highlighted the proposed Rule's many deficiencies through a submission during the public notice-and-comment period. Unfortunately, Defendants failed to adequately address the concerns we presented when issuing the final Rule.

MRNY's Work and Services

5. MRNY is a non-profit community-based membership organization, in existence for over 20 years, with more than 23,000 low-income members dedicated to building the power of immigrant and working-class communities to achieve dignity and justice through organizing, policy innovation, transformative education, and survival services. Members are involved in the day-to-day operation at MRNY, participating in multiple organizing committees across numerous issues and program areas of concern to the organization. Members take on leadership roles in campaigns, determine priorities, and elect the representatives who comprise most of the Board of Directors. We operate five community centers in the state of New York: in Brooklyn, Queens, Staten Island, Long Island and Westchester County. MRNY currently has over 200 staff members, who provide services to thousands of individuals a year.

6. To fulfill our mission, MRNY engages in four core strategies: Legal and Survival Services, Transformative Education, Community Organizing, and Policy Innovation.

7. MRNY's services teams, which include legal, health, and adult education, are on the front line with immigrant communities in New York and serve thousands of immigrants each year. Specifically, our legal team represents thousands of immigrants in various areas of law each year, focusing on housing and benefits, employment, and immigration. Our immigration legal team covers a wide range of cases, including working on adjustment applications, pursuing affirmative applications for relief, assisting with removal defense,

working with youth eligible for juvenile visas and with survivors of violence, and assisting legal permanent residents to naturalize. In addition, the legal team assists other departments in advocacy, planning, and training related to pending laws or regulations.

8. MRNY's health team promotes the health and well-being of our community members, by advocating for improved access to healthcare for immigrants and providing health services to community members. The health team through one-on-one assistance, helps individuals and families navigate the health system and apply for health insurance. It also administers a "promotora" program that trains community members to do outreach, screening, and referrals for SNAP and certain benefits programs. The health team runs two food pantries, a community working training program, and a community health worker asthma home visiting program. The health team also leads campaigns at the city and state level to increase access to care and coverage for immigrants in New York.

9. Lastly, MRNY's adult education team empowers immigrants across New York to gain the skills necessary to pursue their dreams. MRNY's education team provides English classes for hundreds individuals for whom English is not their first language and assists immigrants with civics, adult basic education, and citizenship classes. In addition, MRNY provides classes that lead directly to greater employment opportunities such as computer classes and Bridge to Health Careers classes. Through MRNY's programming participants are equipped with skills necessary to procure and maintain stable and productive jobs.

The Effects of the Draft Executive Order and the Proposed Rule

10. For more than two and a half years, MRNY has had to divert substantial resources to address the effects of the Trump Administration's threats to broaden the basis for denying adjustment of status or admission based on the "public charge" provisions of the Immigration and Nationality Act. Within a week of President Trump's taking office in 2017, an Executive

Order was leaked to the press, which, had it been signed, would have (1) dramatically expanded the number of benefits whose receipt could be relevant to the public charge determination; (2) retroactively considered the receipt of these benefits; and (3) become effective upon signing. Our response to the leaked Executive Order included advocacy and mobilization. We addressed their concerns mainly through one-on-one interactions with community members. We also educated staff members to respond to community members and created Know Your Rights materials.

11. In March 2018, another predecessor of the Rule, a purported draft Notice of Proposed Rulemaking ("NPRM"), was leaked to the public via the *Washington Post*. Like the Executive Order, it sought to dramatically expand the number of benefits that could trigger a public charge finding. Further, it included a myriad of factors that seemed directed towards excluding low-income workers and families of color. MRNY staff conducted community outreach and one-on-one education in order to address the fear inspired by the leak of the draft NPRM. We also began participating in a nationally-based public education and advocacy campaign, Protecting Immigrant Families, to combat the Administration's plans to undermine immigrants' stability and well-being.

12. Following the release of the Notice of Proposed Rulemaking in October 2018, MRNY again diverted resources in order to address the effects of the proposed Rule. Our work included organizing dozens of workshops to educate our members and their communities about the expected impacts of the Rule; developing fact sheets and other educational materials; and training employees in our social services and legal units to advise and assist members and clients facing exposure to the new public charge inquiry and to make decisions about their benefits.

MRNY's Comment

13. In December, 2018, MRNY submitted a comment to USCIS opposing the proposed Rule as a whole and identifying numerous ways in which the Rule would cause harm and violate the law should it take effect.[2] MRNY's comment identified concerns including the risks to public health and to children; the economic suffering caused by individuals removing themselves from needed benefits; the negative impact on health care providers; the irrationality of the English-language proficiency requirement; and the incoherent framework that replaces the established totality of circumstances test. Our comment is attached hereto as Exhibit A.

14. Our comment outlined the Rule's impact on families, including those with U.S. citizen children, as those households will forego and have already foregone important essential benefits for fear of risking their immigration status. We outlined how the proposed Rule's perceived "cost-savings" were undermined by the increased costs that loss of access to critical health and nutrition benefits will have on the community at large. We drew USCIS' attention to the chilling effects that are a certain consequence of the Rule: immigrants will be deterred from participating in essential benefits. Access to these benefits provide immigrants with the flexibility to take advantage of courses that can improve their skills. Limiting their ability to take advantage of these programs will severely limit their ability to utilize their time for English language courses.

15. The Rule is part of a series of policies issued by this Administration that are motivated by racial animus and have a disproportionate impact on immigrants of color. Our comment discussed the many degrading comments made by President Trump and his aides, including references to Mexican immigrants as killers and rapists and descriptions of undocumented immigrants as animals.

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[2] Make the Road New York, Public Comment in Response to the Department of Homeland Security's proposed rule, DHS Docket No. USCIS-2010-0012, December 10, 2018.

16. MRNY's comment also pointed out the Rule's racist intent and its disproportionate impact on Latinx communities, who form the large majority of MRNY's membership. Drawing from scholarly reports available to us at the time we commented, we explained that the Rule will have a disproportionate impact on people of color, explaining that while people of color comprise approximately 36% of the total U.S. population, of the 25.9 million people potentially chilled from seeking services and assistance as a result of the Rule, approximately 90% are people from communities of color.[3] Among people of color chilled by the Rule, an estimated 70% are Latinx, 12% are Asian American and Pacific Islander, and 7% are Black.[4]

17. Further, MRNY's comment, like many others, showed that the proposed Rule's confusing and complex analysis of weighted factors to be considered in a public charge determination contradicts the existing legal framework and lacks any coherent means of implementation, making legal relief unpredictable and inconsistent. Under the INA's statutory provision regarding public charge, and the implementing Field Guidance issued by the INS in 1999, service providers like MRNY and members of the public had clear notice of how the public charge determination was to be administered. In contrast, the Rule requires USCIS personnel to weigh a large number of factors without meaningfully explaining the weight that should be afforded a given factor. The Rule, we pointed out, would be nearly impossible to apply consistently and thus invites discriminatory application.

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3 MRNY Public Comment, at 6 (citing 2012-2016 5-Year American Community Survey Public Use Microdata Sample (ACS/PUMS); 20122016 5-Year American Community Survey (ACS) estimates accessed via American Fact Finder; Missouri Census Data Center (MCDC) MABLE PUMA-County Crosswalk. Custom Tabulation by Manatt health, 9/30/2018. Found online at https://www.manatt.com/Insights/Articles/2018/Public-Charge-Rule-Potentially-Chilled-Population.)

4 *Id.*

18. Lastly, our comment explained that the Rule will tear at the social fabric holding communities together by directly undermining immigrants' ability to learn English, encouraging families who are lawfully eligible to receive assistance to withdraw from essential benefits, and causing increased suffering, hunger, and untreated health conditions.

19. Most of all, as we stated in our comment, the Rule's effect in fact will work against the proposed Rule's stated goal of ensuring "self-sufficiency." Our comment explained that an immigrant's ability to learn English is vital to his or her success in this country.[5] For many immigrants and working-class people, the possibility of spending time taking English classes depends on their ability to take advantage of nutritional and health insurance programs; those that do not have access to supplemental benefits often must work multiple jobs to keep their families fed and healthy.[6] Our comment warned that the Rule will not only diminish the health of immigrant communities but also make it far more difficult for immigrants to become successful in this country.

20. MRNY also assisted 300 of our members to submit their own comments during the public comment process.

Workshops, Trainings, and Member Consultations

21. Since the release of the Rule for public comment, MRNY has diverted substantial resources from other programming to address the needs of those affected by the Rule. Since October 2018, MRNY has utilized nearly 25 staff members to conduct workshops addressing the public charge rule. In October and November 2018, we conducted over 29 educational workshops that reached over 400 community members, in order to address community's

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5 MRNY Public Comment at 5 (citing OECD (2013), Time for the U.S. to Reskill?: What the Survey of Adult Skills Says, OECD Skills Studies, OECD Publishing, Paris, https://doi.org/10.1787/9789264204904-en.)

6 MRNY Public Comment, at 6.

concerns. At these workshops, MRNY staff provided a thorough analysis of the Rule's likely impact, reassured community members of their ability to continue to use benefits, and comforted for those who expressed concerns over their likelihood of becoming a public charge. To date, MRNY has also met with hundreds community members in one-on-one meetings, providing them with vital information concerning the Rule.

22. To help educate our members and their communities, MRNY legal and health teams, with assistance of other community organizations, have created a toolkit for advocated and other service providers. This toolkit, developed over several months and involving the efforts of over a dozen staffers in consultation with other advocates, includes a Know Your Rights training, a facilitator's guide, a volunteer training manual, infographics, and one-page fact sheets designed specifically to address questions for those who may be impacted by the Rule. This toolkit was offered English and Spanish. The toolkit allows users to evaluate their vulnerabilities under the Rule and directs them to seek assistance from service providers like MRNY.

Expected Diversion of Resources from Issuance of the Final Rule

23. If the Rule goes into effect, MRNY will have to divert even greater resources than we do now to conduct outreach and community educational workshops.

24. MRNY is a central and welcoming force in the communities we serve. MRNY expects that it will need to interact multiple times with members and clients to answer questions and educate, and to convince those not subject to the Rule to maintain supplemental benefits and services. Further, MRNY will need to spend significant effort to train staff and members to evaluate risks under the Rule.

25. Since the release of the final Rule less than a month ago, MRNY has conducted ten additional workshops on public charge. More than 350 people attended these workshops,

among them MRNY members, MRNY clients, and individuals from the general public. In these workshops MRNY staff members provided an overview of the Rule's new definition of public charge; explained the Rule's complicated criteria; summarized the benefits that will be newly-contemplated in public charge determinations; and discussed the implications of the Rule for immigrant communities. In preparation for these workshops, MRNY developed one-page fact sheets to respond to workshop attendees' fears and concerns.

26. At the workshops, MRNY staff have interacted extensively with members and the public. Staff have answered questions and addressed fears and concerns from those who attended the workshops. For example, MRNY health staff responded to members who reported a desire to withdraw from their public benefits, even if the Rule would not impact their immigration status. MRNY staff have been informing and advising those who are not impacted by the Rule to remain or even seek out benefits that are in place to help them, a challenge given the widespread fear from the cumulative impact of the Trump Administration's rhetoric and policies toward immigrants of color.

27. Many individuals who were planning to submit adjustment applications have also sought the counsel of MRNY legal staff regarding their likelihood of being deemed a public charge and the risks of deportation. MRNY legal staff tasked with explaining the Rule have conveyed the difficulty of predicting community members' likelihood of being deemed a public charge, as the Rule itself is complex and confusing, and does not adequately explain how a determination will be made.

28. In addition, MRNY staff have heard concerns from members and clients regarding past decisions that would be subject to new scrutiny under the Rule. Many workshop attendees were scared about reporting benefits that they had utilized, even if those benefits were

not previously considered in the public charge inquiry. The Rule purports not to retroactively penalize intending immigrants for use of public benefits that until now have not been evaluated in public charge determinations. But given that the Rule now requires individuals to report if they have ever applied for, been approved for or received public benefits, it was difficult for staff to adequately address their members' concerns.

29. Since the release of the Final Rule, MRNY staff have also had concerns and heard member concerns regarding the ambiguous nature of the Rule. For example, many community members receive New York- specific public benefits that would not be subject to the public charge determination. MRNY staff expect that they will need to address many more such concerns in the future, as the text of the Rule does not make a clear distinction between state-funded programs and Federal programs. It is not necessarily clear to beneficiaries that the Rule penalizes receipt of federally-funded Medicaid rather than state-funded Medicaid, and individuals often do not know if their benefits are federal-funded or state-funded. MRNY expects to expend significant time and work teasing out these issues for applicants for adjustment and advising them as to their options and risks.

30. MRNY members and workshop attendees, including many who work full-time at low-wage jobs, also have expressed a concern that they cannot meet one or more of the Rule's new criteria in order to avoid a public charge finding. Among MRNY's concerns are that low-wage workers who may earn less than 125% of the Federal Poverty Guidelines may be denied admission or adjustment merely because their employers don't pay them enough. Similarly, MRNY members generally take English classes for years leading up to their naturalization application because it is well-known that naturalization requires a specific level of English language facility for many immigrants. But many members have not contemplated that an

uncertain standard for "English language proficiency" would be required far earlier, at adjustment.

31. MRNY has also had to undergo organizational and staffing changes because of the Rule. Since the release of the final version of the Rule, MRNY has trained intake personnel in answering calls and questions from individuals regarding the Rule. We have had to hire two additional part-time health team staffers to help with screenings and workshops.

32. MRNY will continue to conduct workshops and expend resources in order to address the Rule.

33. In addition to the workshops, we are diverting resources to update and develop new material. MRNY has, together with The Legal Aid Society and the Empire Justice Center, developed a screening tool to help advocates guide members to evaluate whether the Rule will impact their immigration applications and to advise them whether to apply for benefits. Several health team and legal team staff dedicated substantial time, along with partner organizations, to ensure that the tool was accessible to advocates.

34. If the Final Rule goes into effect, the materials and the screening tool will be widely distributed. As a result, MRNY will need to make available legal and health staff to host workshops, address concerns of community members, and develop additional fact sheets and educational materials. Moreover, once disseminated, the materials and the screening tool will, by design, trigger an outpouring of demand for MRNY to respond to members of the community who learn through use of the disseminated materials that they are subject to the Public Charge Rule. We also anticipate seeing an increased demand at our food pantries, if individuals ultimately decide to forego essential benefits.

35. MRNY has extensive experience aiding the communities we serve to navigate the complexities of immigration law. As a result, communities trust MRNY to assist them with their immigration cases. Due to the work we have done to address the Rule's impacts, MRNY anticipates an increase in demand for our legal immigration services. Because the Rule is likely to increase denials of adjustment on public charge grounds, MRNY legal staff will face increased need from clients who may be facing not just denial of adjustment but also possible placement in removal proceedings.

The Rule's Impact on MRNY's Mission

36. A core piece of MRNY's mission is to organize and mobilize immigrant and low-income communities to build a more just society that prioritizes dignity and safety for all. A key aspect of achieving this mission is being able to provide resources, hope and stability that empower members to fight for their own rights and for justice for their communities.

37. On a monthly and sometimes weekly basis since January 2017, the Trump Administration has issued draconian immigration-related rules, regulations, policies, and decisions that threaten the communities that MRNY serves. The Public Charge Rule is the latest in a consistent stream of actions by the Administration designed to increase suffering among immigrants, particularly Latinos. The Administration's goal in issuing the Rule appears to be to close off any future hope of adjustment and family stability for low-income immigrants of color.

38. The effect of the Rule, like so many of the Administration's immigration-related policies, is to spread fear and anguish in our communities. The Rule impacts not just non-citizens, but also family, household and community members of non-citizens. Many of our members, including those not directly impacted by the Rule, have expressed concern that participating in benefit programs may endanger their loved ones. Some members who plan to petition and sponsor family members for adjustment fear that efforts at keeping the family stable

and unified may in fact lead to removal and deportation of the applicant for adjustment. Fear can keep members from participating in the political and community activity that is essential to MRNY's mission.

39. MRNY's staff and members expended a substantial amount of time attempting to advocated against the proposed public charge rule, supporting members to submit individual comments opposing the rule, as well as drafting organizational comments; organized events, held press conferences, conducted Know Your Rights trainings, and coordinated with City and State agencies as well as other community organizations—all aimed at preventing the release of the Rule as drafted. MRNY members expended hours of their time and a significant amount of resources with the understanding that the Trump administration was required to hear and adequately address the concerns they presented. The Administration's failure to take these concerns into account – indeed, their dismissal of the harms and the chilling effects the Rule will cause– creates the sense that the notice and comment process was a sham, and discourages participation and involvement in the political process.

40. MRNY's work on the effects of the Rule takes staff and members away from other activities that would further our mission. For example, the health team could instead be devoting more of its resources to proactive campaigns such as the Coverage for All Campaign, which advocated to expand access to health insurance options at the state level for all immigrants, regardless of immigration status. In past years, we have fought successfully to, among other things, ensure language access rights in government offices, win drivers' licenses for immigrants, end the investment of banks in private prison companies, and boost the city and state minimum wage. These proactive efforts to build power for immigrant and working-class communities are hampered when we spend so much time and resources defending our members

from harm. MRNY's mission to fight for immigrant and working-class communities is vital to the betterment of New Yorkers, and the Rule is diminishing and will continue to diminish our ability to achieve it.

41. The Rule's pending effective date has placed a clock on MRNY's staff. Currently, our staff are trying to help as many people as possible apply to adjust their status before the rule become effective; training staff to understand the Rule; and arming hundreds of community members with the necessary information in order to prepare for its implementation. Should the Rule go into effect, MRNY anticipates 1) a delay in our ability to aid members with adjustment applications, as each application becomes more complex and time consuming; 2) an increase in the number of individuals seeking with questions about withdrawing from benefits or seeking advice about what benefits they are safe to receive given the new Rule; and 3) an increase in demand for removal defense for applicants denied admission or adjustment.

42. The time, resources, and human capital we are expending to deal with the Rule cannot be returned to us if the Rule is eventually found unlawful. The harm MRNY will suffer is irreparable.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 9, 2019
New York, New York

Theo Oshiro

EXHIBIT A

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

Dear Commissioner Deshommes:

Make the Road New York submits these comments in response to the Department of Homeland Security's proposed rule, DHS Docket No. USCIS-2010-0012, published to the Federal Register on October 10, 2018, detailing changes to the rules regarding inadmissibility on Public Charge grounds. We object to the proposed rule in its entirety, and request that the Department of Homeland Security withdraw this proposed notice of rulemaking and proposed regulation immediately.

Make the Road New York (MRNY)[1] is a non-profit community-based membership organization, in existence for close to 20 years, with over 23,000 low-income members dedicated to building the power of immigrant and working class communities to achieve dignity and justice through organizing, policy innovation, transformative education, and survival services. We operate five community centers in the state of New York: in Brooklyn, Queens, Staten Island, Long Island and Westchester County.

MRNY's survival services teams -- which include legal, health, and adult education -- are on the front line with immigrant communities in New York and serve tens of thousands of immigrants each year to assist in their ability to thrive. Specifically, our legal team represents thousands of immigrants in various cases each year, including pursuing affirmative applications for relief,

[1] www.maketheroadny.org

assisting with removal defense, working with youth eligible for juvenile visas and with survivors of violence, and assisting green card holders to naturalize. Our health team promotes the health and well-being of our community members, specifically by advocating for improved access to healthcare for immigrants and providing health services to community members. The health team 1) offers one-on-one assistance, helping individuals and families navigate the health system and apply for health insurance, and 2) administers a promotora program, training community members to do outreach and screening for SNAP and health insurance benefits and refers eligible families to apply. The health team also leads campaigns at the city and state level to increase access to care and coverage for immigrants in New York. Lastly, our adult education team focuses on ESOL, civics, adult basic education, and citizenship classes for immigrant New Yorkers.

Last year alone, and across our five community centers, our services teams in total served over 10,000 individuals, which does not include the number of additional family members who directly benefit from those same services.

Given the scope of our work as described above, and given our expertise on issues that impact the immigrant community, we oppose the proposed public charge rule. It has the potential to create a public health crisis while imposing increased costs on the healthcare and related industries; it undermines immigrants' ability to integrate into society; it is racially motivated and will have a disproportionately negative impact on immigrants of color; it provides an unlawfully unreliable framework for analyzing public charge cases, and finally it aims to weaken the social fabric that connects us all as Americans, immigrants and non-immigrants alike.

1. ***This rule will have a detrimental impact on families and has the potential to create a public health crisis, while at the same time will impose increased costs on the healthcare and related industries.***

    a. *Families otherwise eligible for health and nutrition benefits may forego seeking them out or may dis-enroll for fear of the rule's impact on their immigration status, contributing to a potential health crisis*

MRNY's health department works tirelessly to assist eligible immigrants to enroll in the necessary public health and nutrition programs that allow their families to receive necessary medical care and stay safe and healthy. In our work, we understand that receiving necessary medical care, such as childhood vaccinations, flu shots, and antibiotics for serious viruses, as well as access to healthy and nutritious food, is the most effective way to keep communities healthy and prevent the spread of serious illness. Indeed, in 2017, the American Medical Association adopted key policies that focused on prevention, and that in their estimation would improve the health of the nation, including 1) increased access to healthy foods for underserved populations, and 2) continued support of a robust vaccination program.[2]

Adoption of this rule will decrease preventative care and increase the number of uninsured, potentially destabilizing families and our communities, and we've already seen that very thing start to take place. For example, a MRNY member recently came to our offices concerned about the potential public charge changes. Rosa[3] is a 53-year-old woman who came to the United States from Mexico 20 years ago with her oldest son who was 4 years old at the time. Rosa and

[2] https://www.ama-assn.org/press-center/press-release/ama-adopts-new-public-health-policies-improve-health-nation-1

[3] Name changed to protect identity.

her husband have three U.S. citizen children, one of whom has Down Syndrome. He is in therapy 3 days a week, and Rosa is his primary care taker. He would not be alive today if it wasn't for treatment provided by Medicaid, and food assistance provided by SNAP, which has allowed the family to eat healthy. Without those benefits, the family would not be able to cover all of the costs of living, including rent, food and therapy. Despite her U.S. Citizen children being fully eligible to receive those benefits, Rosa came to a MRNY office extremely worried and scared when she heard about the potential public charge changes, thinking it would impact her children's ability to receive SNAP and Medicaid benefits. She told one of our advocates, with tears in her eyes, that if the rule goes into effect, she and her husband will not have the resources to help her daughter pay for school or physical therapy and health needs for her son.

In another example, Sonia,[4] an immigrant from Honduras and a single mother of 3 children, recently came to our office for assistance out of fear related to news about changes to the public charge determination. She is in the process of applying for asylum and recently received employment authorization. She just started working at a company earning approximately $33,000/year. Sonia and her children recently became eligible for health insurance for the first time. Sonia saw various news stories on the news about the potential changes to public charge regulations and was extremely nervous that it could impact her and her children's ability to adjust their status. Because of this news coverage, she mistakenly believed that she was required to dis-enroll from her insurance in order to continue adjusting their status, and she missed the renewal date for her family's insurance. Sonia came to our office to meet with someone to see if she had made the right decision to let her health insurance lapse. After consulting with an advocate, she decided to re-enroll in health insurance since as a single mother, she needs insurance for herself and her children. Having health insurance will ensure she can stay healthy as the main provider for her family. If Sonia had not spoken to someone at a community-based organization like MRNY, Sonia and her children, like so many others who will not seek out the correct assistance, would have continued to remain uninsured even though they are not subject to the public charge test.

Further, by discouraging enrollment in Medicaid, individuals will no longer be able to receive critical services for the many benefit categories Medicaid covers, including preventive care, maternity care, prescription drugs, and in many states like New York, oral health care services for both children and adults.[5] Preventing individuals from accessing these critical types of services will cause their health conditions to worsen.

For example, denying individuals the ability to access oral health services will affect their ability live their lives: to sleep, study and work, along with adversely affecting their nutrition, diet and emotional wellbeing.[6] MRNY worked with a child named Maria[7] through our Community Health Worker (CHW) Project. When our CHW first met Maria, she had cavities, fear of the dentist and did not like to brush her teeth. However, after visiting her and her family for a 6-month period, the same little girl who was scared to open her mouth during dental visits is now brushing her teeth on a daily basis and regularly going for follow up appointments. The combination of regular dentist visits and the support of a CHW has greatly helped improve Maria's oral health. This new

[4] Name changed to protect identity.
[5] Center for Healthcare Strategies, *Medicaid Adult Dental Benefits, an Overview*, July 2018, https://www.chcs.org/resource/medicaid-adult-dental-benefits-overview/
[6] U.S. Department of Health and Human Services; National Institute of Dental and Craniofacial Research, National Institutes of Health, Oral Health in America: A Report of the Surgeon General, 2000, https://profiles.nlm.nih.gov/ps/access/NNBBJT.pdf

[7] Name changed to protect identity.

proposed public charge regulation change will cause Maria to revert back to being fearful of going to the dentist and using her insurance, and will develop cavities again.

As demonstrated in these stories, the proposed rule if enacted will prevent both those who might be subject to the rule, and those who will not, from receiving the medical care they need to thrive. Without healthy food, preventative care, or access to treatment, this group of individuals could in turn pose a health risk to others. Overall, the proposed rule will worsen individual health and significantly contribute to creating a less productive and prosperous society.

b. The proposed rule will have a negative impact on health care providers and other industry stakeholders

While the proposed public charge rule contemplates and considers as part of the cost savings the disenrollment of eligible immigrants from government benefit programs, this calculation is undermined by the increased costs that loss of access to critical health and nutrition benefits will have on the community writ large.

The draft rule recognizes that it "might result in reduced revenues for healthcare providers participating in Medicaid, pharmacies that provide prescriptions to participants in the Medicare Part D Low Income Subsidy (LIS) program [and] companies that manufacture medical supplies or pharmaceuticals."[8] It also states, "the primary sources of the consequences and indirect impacts of the proposed rule would be costs to various entities that the rule does not directly regulate, such as hospital systems."[9] Since the new public charge rule may discourage individuals from applying for public health insurance programs such as Medicaid and Medicare, hospitals,[10] in addition to states, may see a rise in uninsured patients, increasing costs of uncompensated care. The rule also acknowledges[11] that the proposed changes may result in adverse health effects and additional medical costs due to delayed health care treatment—burdens which hospitals are likely to bear.

Additionally, hospitals and other public health providers and stakeholders frequently work directly with community-based organizations, such as MRNY, to increase enrollments in programs such as Medicaid. With decreased enrollments, we anticipate these partnerships to be significantly weakened and may result in lost jobs and lost community supports for vulnerable populations, whether impacted by the proposed rule or not. While the need for quality medical care and health services will not decrease, available resources will, and our communities will in turn suffer as a result.

c. MRNY strongly opposes inclusion in the public charge analysis 1) the Children's Health Insurance Program and 2) the use of benefits while under the age of majority.

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[8] Notice of Proposed Rulemaking, *Inadmissibility on Public Charge Grounds*, October 10, 2018, Federal Register page 51188, https://www.gpo.gov/fdsys/pkg/FR-2018-10-10/pdf/2018-21106.pdf

[9] *Id.* at page 51260.

[10] Mitchell H. Katz, MD; Dave A. Chokshi, MD, MSc; *The "Public Charge" Proposal and Public Health Implications for Patients and Clinicians*, JAMA, October 1, 2018 https://jamanetwork.com/journals/jama/fullarticle/2705813

[11] *Supra*, note 8 at 51236.

Medicaid successfully provides health coverage to 74 million of our nation's most vulnerable citizens. Of that number, approximately 37 million are children, making Medicaid the country's largest insurer of children. On top of this, the Children's Health Insurance Program (CHIP) covers an additional 9.4 million children. Together, these two programs serve more than one in three children in the United States. Thanks to Medicaid and CHIP, the number of uninsured children has dipped to record lows. The rate of uninsured children was reduced by half between 2009 and 2016, from 8.6 percent to 4.5 percent.

Obtaining access to healthcare through Medicaid also offers many long-term benefits for children. Children eligible for Medicaid tend to do better in school, miss fewer days due to illness or injury, and have a higher likelihood to graduate high school and college. As adults, studies have shown that, on average, people enrolled in Medicaid as children fare better as adults by having better health, fewer hospitalizations and emergency room visits, earning more money, and paying more taxes.

The inclusion of CHIP to the public charge analysis would unnecessarily target children and result in the long-term harm of those children whose families decide to dis-enroll. Including CHIP is overwhelmingly misguided because it directly contradicts DHS's goal of self-sufficiency. CHIP is a program for children whose parents have too high an income to qualify for Medicaid, which means the vast majority of those families are fully employed, yet do not have health benefits provided through employment. To include CHIP in the public charge analysis is an unwarranted attack on hardworking families. CHIP should not be included in public charge determinations.

In addition to our position regarding the inclusion of CHIP, MRNY strongly believes that receipt of benefits as a child should not be taken into account in the public charge analysis because it provides little information on their future likelihood of receiving benefits. If anything, receipt of benefits that allow children to live in stable families, be healthy and succeed in school will foster kids who grow up, develop, learn and complete their education and training in the United States and become self-sufficient. The value of access to public benefits in childhood has been documented repeatedly. Safety net programs such SNAP and Medicaid have short and long-term health benefits and are crucial levers to reducing the intergenerational transmission of poverty. Investing in children is the most important investment we can make in our country's future. It is not only cruel, but counterproductive to penalize a child for being a child. Moreover, negatively weighing a child's enrollment in health and nutrition programs would be counter to Congressional intent under both the 2009 CHIPRA and section 4401 of the Farm Security and Rural Investment Act of 2002, which restored access to what was then called Food Stamps (now the Supplemental Nutrition Assistance Program, SNAP) to immigrant children.

2. **Should this rule be adopted, it would directly undermine immigrants' ability to effectively integrate into society by learning English, as those opportunities will be foreclosed to them.**

MRNY's adult education program aims to increase the ability of immigrants to improve job prospects and to better integrate into society by learning English, yet this proposed rule will work to punish immigrants for attempting to improve their English skills.

Research from the Organization for Economic Cooperation and Development (OECD) demonstrates that in the U.S., there is a strong connection between better basic English skills

and higher earning -- even more so than in other industrialized nations.[12] This means that as an immigrant improves their reading, math, and spoken English skills, they will be better able to contribute economically to American society. We see this demonstrated in the trajectory and ultimate success of our own students.[13] Indeed, the proposed regulation acknowledges the central importance of English language skills to economic self-sufficiency because those skills would be characterized as a positive factor in the totality of circumstances test.

Individuals commonly improve their English skills through participation in education programs, including those offered at offices like MRNY, as well as at community colleges and other higher education institutions. While learning English is a goal of many immigrants, there is a dearth of available classes all over the country because of under-resourcing. For example, in New York, fewer than 5% of New Yorkers in need of adult education classes have access to them. For a large majority of immigrants and working class individuals who look to enroll in those programs, they are only able to do so by taking advantage of programs such as Medicaid or SNAP to supplement their resources while they take classes, many offered during working hours only, to ultimately improve their job prospects. Access to English classes may be further limited because those individuals who rely on public benefits in order to pursue English classes may be discouraged from participating in those programs for fear of being deemed a public charge.

3. **The proposal continues a pattern by the administration to propose immigration restrictions that are motivated by racial animus and have a disproportionate impact on immigrants who are of color.**

The Trump administration has continued to demonstrate racial and ethnic animus in its representations and policies, and this proposed rule is no exception. MRNY has confronted this pattern of animus directly, and has alleged it specifically in our pending case, *Batalla Vidal, et al. v. Nielson*. Specifically, our complaint details the racist comments made by Donald Trump both as a candidate for president and later as president, specifically against those with Latinx and Mexican heritage. His comments have included calling Mexican immigrants "killers and rapists'; criticizing U.S. District Judge Gonzalo Curiel for his Mexican heritage; and describing undocumented immigrants as "animals." There have been a number of other incidents in addition to the examples raised in our lawsuit, none more revealing than President Trump's comment on January 11, 2018, where he complained about "these people from shithole countries" coming to the United States and added that the United States should accept more immigrants from countries like Norway.[14] Our case, and the claim that the rescission of the Deferred Action for Childhood Arrivals (DACA) program was in part motivated by racial animus, is still pending in the courts.

Given what we have already characterized as racial animus by the Trump administration broadly, it is no surprise that the data shows that this rule will have a disproportionate impact on people of color. While people of color account for approximately 36% of the total U.S. population, of the 25.9 million people potentially chilled from seeking services by the proposed rule, approximately

[12] OECD (2013), Time for the U.S. to Reskill?: What the Survey of Adult Skills Says, OECD Skills Studies, OECD Publishing, Paris, https://doi.org/10.1787/9789264204904-en.

[13] https://eldiariony.com/2018/10/22/inmigrante-colombiana-saca-provecho-de-las-clases-de-ingles-para-adultos/

[14] Dawsey, Josh. *Trump Derides Protections for Immigrants from 'Shithole' Countries.* The Washington Post, January 12, 2018. https://www.washingtonpost.com/politics/trump-attacks-protections-for-immigrants-from-shithole-countries-in-oval-office-meeting/2018/01/11/bfc0725c-f711-11e7-91af-31ac729add94_story.html?noredirect=on&utm_term=.b0aa21c01f06

90% are people from communities of color (23.2 million). Among people of color potentially chilled by the rule, an estimated 70% are Latinx (18.3 million), 12% are Asian American and Pacific Islander (3.2 million), and 7% are Black people (1.8 million). [15]

a. Impact on the Latinx (Latino) population

MRNY overwhelmingly serves Latinx immigrants, and we are especially concerned about the negative impact this proposed rule will have on the Latinx community. The proposed changes to limit the use of benefits by lawfully residing and eligible immigrants of critical programs that improve health, nutrition and well-being would significantly harm our nation's Latinx community and their future prospects. Today, the U.S. Hispanic population stands at close to 58 million and approximately 34% of Latinxs are immigrants.[16] By 2050, it is projected that nearly one-third of the U.S. workforce will be Latinx.[17] Among Latinx children, who account for a quarter of all U.S. children, the majority (52%) have at least one immigrant parent.[18] Despite the clearly documented and overwhelming contributions by Latinxs to the economy, some Latinxs continue to confront challenges in meeting their basic needs. However, access to federal programs like SNAP, Medicaid, and affordable housing have allowed millions of Latinxs to lift themselves out of poverty: 22% of Latinx households received SNAP by a 2017 report;[19] approximately 32% of Latinxs are covered by Medicaid;[20] and approximately 740,000 Latinx households received federal rental assistance in 2015.[21] Latinx Immigrants must be afforded opportunities to support the upward mobility and stability of their families -- it's critical not only for this population but for the nation as a whole. The proposed changes fail in this respect as Latinx immigrant families would be limited in their use of support programs that help families put food on the table, access health care, and afford a roof over their heads.

Take, for example, the experience of Blanca, who was born in South America. Blanca is now a U.S. citizen after applying for a green card through a family-based petition, and there was a time she relied on Medicaid to access crucial healthcare services, which later assisted with a life-threatening illness. Without public insurance, her medical expenses would have weighed her down with crushing debt and it would have been impossible for her to meet even the basic needs of her family. If the proposed rule had been in effect at that time, she would have had to make the impossible choice of receiving medical care or preserving her chance to obtain a green card. Since she was able to access Medicaid and stay healthy, she was able to find work as a health and nutrition promoter to help vulnerable communities stay healthy themselves. Through her gainful employment she no longer relies on Medicaid and is able to provide for her family and

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[15] 2012-2016 5-Year American Community Survey Public Use Microdata Sample (ACS/PUMS); 20122016 5-Year American Community Survey (ACS) estimates accessed via American FactFinder; Missouri Census Data Center (MCDC) MABLE PUMA-County Crosswalk. Custom Tabulation by Manatt health, 9/30/2018. Found online at https://www.manatt.com/Insights/Articles/2018/Public-Charge-Rule-Potentially-Chilled-Population.
[16] http://www.pewresearch.org/fact-tank/2017/09/18/how-the-u-s-hispanic-population-is-changing/
[17] J. S. Passel & D. Cohn, "U.S. Population Projections: 2005-2050," Pew Research Center (February 2008). Found online at http://www.pewhispanic.org/2008/02/11/us-population-projections-2005-2050/

[18] Richard Fry and Jeffrey S. Passel "Latino Children: A Majority Are U.S.-Born Offspring of Immigrants" (Washington, DC: Pew Research Center, 2009). Found online at http://www.pewhispanic.org/2009/05/28/latino-children-a-majority-are-us-born-offspring-of-immigrants/.
[19] http://publications.unidosus.org/bitstream/handle/123456789/1748/Fact_sheet_Anti-poverty_UnidosUS2.pdf?sequence=5&isAllowed=y

[20] *Supra,* note 19.
[21] *Supra,* note 19.

help them thrive. If Blanca had been subject to the restrictions proposed under this rule, and prevented from pursuing her path to legal permanent resident and then U.S. Citizen, the outcome of her life would have likely been drastically different. There are millions of Latinx immigrants currently who would be disproportionately negatively impacted by this racially motivated proposal, and because of this, it cannot stand.

4. **The proposed rule's complex analysis of weighted factors lacks a coherent framework that contradicts the existing totality of the circumstances analysis, making the pursuit of legal relief unpredictable and inconsistent for those who are eligible.**

One of many goals of the immigration legal team at MRNY is to assist immigrants who are in need of representation, ultimately seeking relief to stay in this country. Our team screens thousands of immigrants to evaluate potential relief; represents those facing deportation, and assists individuals with affirmative applications for a wide variety of potential relief. We also assist hundreds of legal permanent residents to naturalize and make their final dreams of obtaining U.S. Citizenship a reality. While the cases and the legal strategies may be different, our clients are all seeking the same outcome: to be afforded the opportunity to build a life in this dynamic country, and have a shot at the American Dream.

This proposed rule, with the addition of heavily weighted "negative" and "positive factors" to the public charge analysis, fails to create a coherent standard for adjudicating applications for a green card, making this analysis unnecessarily complex, and undermines the statutorily required totality of the circumstances test. This will result in more immigrants staying in the shadows and fewer pursuing a clear path to legal status. Immigrants will be fearful to pursue their legal cases, and immigration attorneys will not be able to provide reliable guidance on individual cases where a public charge determination could potentially be at play. These negative factors, such as lack of a certain level of English proficiency, suffering from various medical conditions, and receipt of one or more public benefit, all leave a wide-margin of interpretation, and immigrants will not know how to counter-balance the heavily weighted negative factors. As it stands, we have already encountered numerous stories from our members, who in working with immigration attorneys from the private bar, have already been told to dis-enroll from public benefit programs where their continued receipt should not impact their application if this rule is adopted.[22]

The proposed rule would replace what has been clear, easier-to-administer public charge guidelines with a complicated framework that nearly ensures that adjudicators at USCIS will fail to reach fair and consistent public charge determinations.

The proposed rule would implement a new public charge test requiring adjudicators to weigh a potentially unlimited number of "factors" and apply a host of unclear "considerations," without meaningfully distinguishing "factor" from "consideration" and often referring to specific criteria as both a factor *and* a consideration.[23] DHS even appears to assert that factors not specifically

[22] Blitzer, Jonathan. *Trump's Public-Charge Rule Is a One-Two Punch Against Immigrants and Public Assistance.* The New Yorker, September 28, 2018. https://www.newyorker.com/news/dispatch/trumps-public-charge-rule-is-a-one-two-punch-against-immigrants-and-public-assistance

[23] *Supra,* note 8 at 51178: "DHS's proposed totality of the circumstances standard would involve weighing all the positive and negative considerations related to an alien's age; health; family status; assets, resources, and financial status; education and skills; required affidavit of support; and any other factor or circumstance that may warrant consideration in the public charge inadmissibility determination."

identified "may be weighted heavily."[24] This language fails to provide a framework that is consistent with the current totality of the circumstances test. By giving greater negative weight to specific factors or circumstances, the new analysis creates a rigidity that rejects the statutorily prescribed test as it exists, and subsequent guidance from this Department, detailing that each factor must be given equal weight ("The existence or absence of a particular factor should never be the sole criterion for determining if an alien is likely to become a public charge").[25]

Such complexity in the law is disastrous for families looking to make life decisions that will be impacted by this proposed rule, and it will cause undue confusion for the professionals tasked with assisting to guide those decisions. The new analysis as it is proposed will lead to potentially incorrect and life-threatening advice from the private bar, unreliable guidance for immigration attorneys to utilize across the board, and will lead to inconsistent outcomes for immigrants seeking relief.

5. **This rule tears at the social fabric holding communities together, and specifically will require localities to increase alternative services needed by families experiencing additional hunger, suffering from untreated medical conditions, and who are at risk of falling into deeper poverty if traditional forms of benefits are not being accessed.**

At MRNY, we advocate for change in the systems that prolong poverty and use all tools at our disposal to battle the direct effects of poverty.

The proposed rule would have devastating and lasting consequences for immigrant families, whether certain members have U.S. Citizenship or not. We have already received hundreds of questions from families looking to dis-enroll from essential programs out of fear that participation will harm their family's chance at a permanent future here. This chilling effect on participation in public benefit programs, especially Medicaid and SNAP, will without a doubt increase the poverty rate in our communities. In New York City, it is estimated that up to 20% could withdraw from public benefits programs, and if so, the poverty rate for this group will increase 3.8%, with childhood poverty rising 9.1%.[26] The proposed rule would increase poverty, hunger, worsen health outcomes as previously noted, and increase unstable housing by discouraging enrollment in those programs that are geared towards improving or alleviating those very concerns.

Further, localities are at risk of economic loss and will be on the hook to provide alternative services for those who fall deeper into economic crisis while they avoid the public benefits programs. An estimated $420 million will be lost in economic activity in New York City should the projected number of families withdraw from utilizing public benefit programs.[27] Localities will be forced to put additional resources into services that are already often overburdened, such as

[24] *Supra,* note 8 at 51179: "Any factor or circumstance that decreases the likelihood of an applicant becoming a public charge is positive; any factor or circumstance that increases the likelihood of an applicant becoming a public charge is negative. Multiple factors operating together may be weighed more heavily since those factors in tandem may show that the alien is already a public charge or is or is not likely to become one."
[25] Dep't of Justice, "Field Guidance on Deportability and Inadmissibility on Public Charge Grounds," 64 Fed. Reg. 28,689 (May 26, 1999).
[26] Expanding Public Charge Inadmissibility: The Impact on Immigrants, Households, and the City of New York Research Brief – December 2018. Found online at https://www1.nyc.gov/assets/immigrants/downloads/pdf/research_brief_2018_12_01.pdf

[27] *Ibid.*

homeless shelters, health clinics, and direct food supports to food pantries. MRNY operates a weekly food pantry out of both our Jackson Heights and Bushwick offices. Jackson Heights, Queens, is home to one of the largest populations of South Asian and Latin American immigrants in New York City. 63% of residents are immigrants, and 48% have limited English proficiency. Bushwick, Brooklyn is one of the most underserved neighborhoods in New York City. 30% of residents live below the federal poverty level, and roughly 83% of foreign-born residents are Latinx. Our food pantries are over-subscribed every week, and like many food providers in New York City, we cannot meet current needs. With the adoption of this proposed rule, community-based organizations will be forced to fill an even larger gap between need and resources around hunger and nutrition, and will be hard-pressed to do so. According to a recent report by Hunger Free America, in New York City 27.4% of food pantries and kitchens surveyed indicated that they were not able to distribute enough food to meet demand, and 34% indicated that they had to turn people away, reduce the amount of food, or limit their hours of operation.[28] Given the current challenge in meeting the need of food insecurity, the proposed rule may very well set off a food crisis both here in the city and beyond.

Forcing parents to choose between their ability to remain with or reunite their family and accessing critical benefits is shortsighted and will harm all of us. By the Department's own admission, the rule "*has the potential to erode family stability and decrease disposable income of families and children because the action provides a strong disincentive for the receipt or use of public benefits by aliens, as well as their household members, including U.S. children.*"

We cannot accept the erosion of our community stability at the direction of this short-sighted proposal.

In sum, MRNY opposes the proposed public charge rule published on October 10th, 2018 as it fails on all accounts to accomplish anything in the interest of a strong, healthy, thriving society -- we request that the Department withdraw the rule immediately.

Sincerely,

/sf/
Sienna Fontaine, Co-Legal Director
Make the Road New York

/rt/
Rebecca Telzak, Director of Health Programs

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28 https://www.hungerfreeamerica.org/sites/default/files/atoms/files/NYC%20and%20NYS%20Hunger%20Report%202018_0.pdf

EXHIBIT 5

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MAKE THE ROAD NEW YORK, AFRICAN SERVICES COMMITTEE, ASIAN AMERICAN FEDERATION, CATHOLIC CHARITIES COMMUNITY SERVICES (ARCHDIOCESE OF NEW YORK), and CATHOLIC LEGAL IMMIGRATION NETWORK, INC., Plaintiffs, - against - KEN CUCCINELLI, in his official capacity as Acting Director of United States Citizenship and Immigration Services; UNITED STATES CITIZENSHIP & IMMIGRATION SERVICES; KEVIN K. McALEENAN, in his official capacity as Acting Secretary of Homeland Security; and UNITED STATES DEPARTMENT OF HOMELAND SECURITY, Defendants.	1:19-cv-07993 (GBD)

DECLARATION OF C. MARIO RUSSELL

C. MARIO RUSSELL declares:

1. My name is Mario Russell, and I serve as the Director of the Division of Immigrant and Refugee Services, for Catholic Charities Community Services ("CCCS-NY"), Archdiocese of New York, a Plaintiff in the above-captioned case.

2. I submit this declaration in support of the Plaintiffs' Motion for a Preliminary Injunction to enjoin the Rule published by the Department of Homeland Security (DHS), titled "Inadmissibility on Public Charge Grounds," 84 Fed. Reg. 41,292 (Aug. 14, 2019) (to be codified at 8 C.F.R. pts. 103, 212, 213, 214, 245, 248) (the "Rule"). Unless enjoined, the Rule

will cause immediate and irremediable harm to CCCS-NY and the clients and communities we serve.

Background

3. CCCS-NY is a nonprofit social services provider with program sites and affiliate agencies located throughout New York City and the Lower Hudson Valley. Our staff serves immigrant and rural community residents in all five New York City boroughs and seven upper counties, including Westchester, Rockland, Putnam, Orange, Ulster, Sullivan, and Dutchess.

4. CCCS-NY's mission is to provide high quality human services to New Yorkers of all nationalities and religions who are in need, especially the most vulnerable: the newcomer, the family in danger of becoming homeless, the hungry, adults struggling with their mental health and developing youth. CCCS-NY's mission is grounded in the belief in dignity of each person and the building of a just and compassionate society.

5. CCCS-NY has been pursuing this mission since 1949 through a network of programs and services that enable participants to access eviction/homelessness prevention; tenant education and financial literacy training; case management services to help people resolve financial, emotional and family issues; long-term disaster case management services to help hurricane survivors rebuild their homes and lives; emergency food and access to benefits and other resources; immigration legal services; refugee resettlement; English as a second language services; specialized assistance for the blind; after-school and recreational programs for children and youth; dropout prevention and youth employment programs; and supportive housing programs for adults with severe and persistent mental illness.

Immigrant Legal Services

6. The Immigrant and Refugee Services Division has 150 staff-members, including approximately 45 attorneys who provide legal services directly to immigrant clients as well as training and other support on immigration legal issues that arise throughout the agency. We help newcomers reunify with their families, resettle in a safe place, and contribute their talents and skills in building New York. Our services include assistance with immigration applications, including adjustment applications, removal defense, and work authorization, integration and case management support, support to unaccompanied minors, job development, English and civics, and citizenship preparation. We also assist immigrants in avoiding exploitation by unscrupulous practitioners by providing reliable information and counsel about immigration status. During 2018, the Immigrant and Refugee Services programming directly assisted over 20,000 individuals—children, families, workers—in New York. In that same period, our office coordinated the work of hundreds of volunteers who assisted in legal and integration programming, dedicating thousands of hours.

Operation of City (ActionNYC) and State (Office of New Americans) Hotlines

7. Immigrant and Refugee Services facilitates and coordinates the dissemination of legal services and legal information to immigrants in both New York City and New York State through the operation of two separate hotlines – the ActionNYC Hotline and the New Americans Hotline. The ActionNYC hotline partners with the New York City Mayor's Office of Immigrant Affairs ("MOIA") and is operated by CCCS-NY. The hotline serves as the primary number City residents can call when they have immigration law questions, and depending on the issue they present will be referred to one of several legal services providers, including CCCS-NY, who are

contracted with MOIA to handle cases. We handle calls in English, Spanish, Russian, and Arabic and use a language service line for other languages. We have two hotline counselors serving Action-NYC callers, four to five assistants who schedule appointments, and a managing attorney and director of operations.

8. The New Americans Hotline partners with the New York Department of State Office of New Americans ("ONA") and is operated by CCCS-NY. The hotline is toll-free; it refers immigrants from around the state to immigration services and provides callers with accurate information regarding issues of concern in the immigrant community. We take calls in Chinese, Spanish, French, Urdu, Hindi, Punjabi, and Portuguese. We have eight hotline counselors serving callers, a managing attorney, and a hotline supervisor.

9. Last year, between these two hotlines, we answered approximately 43,000 calls in 18 languages and made referrals to legal service providers throughout New York State.

Resettlement and Integration

10. Every year, more than 700 individuals in need of resettlement assistance—be they refugees, asylees, victims of human trafficking, or unaccompanied children—are provided comprehensive case management and employment services to support them in their efforts to become self-sufficient, stabilize, and to integrate into their new community. In the face of a federal administration hostile to refugees, the Refugee Resettlement program continues to serve vulnerable populations in need of complex care, advocacy and support.

11. The mission of Catholic Charities' Refugee Resettlement is to meet social services, educational, and employment needs for refugees in New York and the Lower Hudson

Valley. We undertake this complex work in partnership with networks of individual volunteers, faith groups, and community groups to welcome and integrate refugees into their new homes.

12. Consistent with that mission, our Refugee Resettlement program also provides ongoing supportive and integrative services to vulnerable newcomers and long-time residents and develops enhanced internal case-support programming for staff engaged in the work of integrating newcomers with a trauma-informed lens.

13. This integration work also encompasses the provision of English as a Second Language (ESOL) classes. Catholic Charities' ESOL program, the International Center, serves immigrant and refugee newcomers from over 80 different countries, many of them newly arrived and from vulnerable communities. Of the 800 learners we serve each year, the majority are green card holders looking to naturalize as soon as they are able.

External Advocacy

14. In addition to the provision of legal and resettlement services directly to clients and our operation of the hotlines, CCCN-NY engages in advocacy on a range of issues that are critical to our mission and the communities we serve. This advocacy work includes, among other things, meeting with partners and stakeholders to develop coordinated and networked support and testifying and conducting administrative and legislative advocacy at all levels of government.

15. During the public notice-and-comment period on the proposed Rule, CCCS-NY submitted a comment to USCIS documenting the harms the Rule would inflict on immigrant communities, including increased suffering for families and children due to immigrants

foregoing food and health care assistance for fear of losing access to immigration status.[1] CCCS-NY's comment also criticized the Rule's unlawful and confusing alteration of the test to determine whether an immigrant is or may become a public charge; the likelihood of arbitrary and discriminatory application of the new standards; and the arbitrary, costly, and inequitable increase in the Rule's public bond requirements.

The Impact the Public Charge Rule Will Have on CCCS-NY, Our Clients and Community

16. If the Rule is permitted to become effective, there will be an adverse impact to CCCS-NY. At a minimum, the Rule will result in: (1) the immediate need for the reallocation of increased legal services resources to the provision of counsel, adjustment application assistance, and removal defense to clients seeking to stay permanently in the U.S. with a spouse, child or parent and to train our staff and other divisions of the agency on the same, thus diverting these resources away from our current caseload makeup; (2) increased, and in some cases, unmet demand on our ActionNYC and New Americans Hotlines operator teams and the diversion of time and resources to support those teams; and (3) diversion of our limited advocacy resources. By targeting poor, vulnerable, and marginalized immigrants, the Rule will also cause tangible and intangible injury to our core mission.

17. My conviction about the severe impact the Rule will have on CCCS-NY once it becomes effective is born of experience. We have already seen many of these harms begin to increase over the many months that versions of the rule have been revealed to the public and the corresponding spikes in demand for our legal services, the services of our hotline operators, the

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[1] Catholic Charities Community Services, Archdiocese of New York, Comment (Dec. 10, 2018). CCCS-NY's public comment is attached hereto as Exhibit A.

community services we provide and the psychic toll on staff as they encounter clients, callers and service users facing emergency situations.

a. Impact on Immigrant Legal Services

18. If the Rule becomes effective, it will have multiple, negative impacts on CCCS-NY's provision of legal services to the communities we serve. As a result of the Rule, our legal service programs are already experiencing increased pressure points both during consultations and in our client representation work. Attorneys receive incoming inquiries from individuals about the public charge ruling, regardless of whether the ruling has direct implications on their situation. Based on the influx of information requests we have seen over the past several months we reasonably anticipate that these inquiries will only increase if the Rule becomes effective.

19. The heightened scrutiny required during consultations for individuals seeking affirmative relief is compounded by recent announced United States Citizenship Immigration Services ("USCIS") changes, which cause further harm through the undue burden of evidentiary requirements, automatic denials of applications without requisite evidence leaving no opportunity to respond to Requests for Evidence (RFE), as well as the issuance of a Notice to Appear (NTA) in Immigration Court for denied applications. Additionally, because of the complexity and uncertainty of the Rule, information on inadmissibility or public charge issues that could have been distributed in group sessions now require individualized consultation. In addition, staff have been and will be redirected from their other responsibilities to develop new materials for tailored information sessions and trainings to audiences and stakeholders serving immigrant communities, including our state-wide volunteer network.

20. As a whole, the DHS public charge Rule and its strain on our resources will negatively affect our capacity to represent clients with other complex needs, including children

and families seeking humanitarian relief before USCIS and the Immigration Court. The increasing number of cases affected by public charge, as well as our correlated strained capacity to represent individuals with other complex matters, will ultimately place individuals at increased risk of becoming the victims of immigration fraud. This will further strain our immigration legal services providers long-term, as individuals will seek our representation or *pro se* help at Immigration Court when fraudulently filed applications by unscrupulous providers are denied. These factors will result in a significant increase of attorney time and resources toward client consultations and representation services.

21. As a threshold matter, the Rule will also affect our ability to get critical information to our clients and community partners. Because of the chilling effect caused by this public charge Rule and other anti-immigrant policies, CCCS-NY and others like us have had to already adapt to this new environment by committing additional staff time to connect with communities on the ground. Previously, outreach for larger events, such as community clinics and presentations, was performed through announcements during church services or community events. However, because of the confusion and fear that this Rule has triggered within these vulnerable groups, increased one-on-one outreach is required to ensure immigrants will be and will feel safe at these events. This more direct outreach is also difficult given the broad geographical area of the Archdiocese of New York and the limited number of staff who can reasonably be dedicated solely to this work.

22. The complexity and uncertainty of the Rule also impose additional burdens on CCCS-NY. Because the public charge rule has few bright line rules and many unknowns, many more clients will require individualized screenings. As the new forms and requirements for public charge present both complicated substantive questions and allow adjudicators broadened

discretionary power, many consultation inquiries, which previously were addressed in group sessions, will similarly require longer individualized attention, reducing the amount of consultations available to other potential clients.

23. The Rule will not only impact where we advise clients, but will also affect who is dedicated to handling the clients' needs. CCCS-NY's current service model strives to maximize otherwise limited resources by assigning affirmative adjustment of status cases to paralegals who are supervised by staff attorneys and to Department of Justice ("DOJ") accredited representatives. This division of labor allows our licensed staff attorneys to concentrate on complex cases, including removal defense.

24. Because the impact of the Rule will elevate the complexities and risks involved in advising on and preparing adjustment of status applications for individuals subject to public charge, attorneys will now have to spend significantly more time on these cases. Consultations and eligibility assessments will take longer, as will the review and preparation of supporting documentation required by the Form I-944 and other application requirements. Moreover, because CCCS-NY clients are generally low-income – a negative factor in the public charge determination under the Rule – the need for attorney representation at adjustment interviews will be critical to positively affect outcome. The additional time staff attorneys will spend on affirmative adjustment of status application will adversely and significantly affect the agency's ability to represent individuals in the cases it has traditionally handled, including, but not limited to, complex matters such as asylum, applications for U and T visas, and removal defense.

25. The Rule comes with the added risk that an application for adjustment being denied will trigger removal proceedings, a predictable consequence of the Rule given the enormous discretion given to DHS officers in the first instance. They are also a consequence of

a U.S. Citizenship and Immigration Services ("USCIS") policy memorandum effective June 28, 2018, regarding the issuance of Notices to Appear to noncitizens whose status-impacting applications, such as adjustment of status, have been denied. Further compounding this harm and threat is the July 13, 2018 USCIS policy memorandum permitting the outright denial of applications submitted without all required initial evidence, i.e., without first issuing a Request for Evidence. These policy memoranda, in tandem, mean that USCIS may deny an application for status adjustment on the ground that the evidence submitted is insufficient, without giving the applicant a chance to supplement, and that removal proceedings may then automatically commence.

26. Due to the risk of triggering removal proceedings and to ensure that the CCCS-NY clients are competently and zealously represented, the time dedicated to determining whether a noncitizen who is affected by the Rule may be eligible to adjust status will increase significantly and will likely require multiple consultation appointments. These consultations will involve repeated and time-consuming attorney involvement to explain the intricacies of the public charge determination and to review and assess admissibility under the Rule, resulting in a proportional diminution in consultation time and representation time afforded to other individuals.

27. As a result of this increased demand, and as a result of the increased amount of discretion being handed over to adjudicators to deny or grant cases, the Rule will render it necessary for attorneys to accompany noncitizens to many adjustment of status interviews to provide public charge-specific advocacy. The current time necessary for an adjustment of status interview will now likely increase to allow the adjudicator to review supporting documentation and conduct pointed inquiries and cross examinations about the public charge factors. Together

with time and travel factored in, we estimate the representation at adjustment of status interviews will increase by a factor of three to five times. This again limits an attorney's ability to represent other individuals in more complex matters and to serve the most vulnerable.

28. In addition to the diversion of resources caused by the increasing demands on client-centered work, CCCS-NY faces a very high demand for training services across our entire agency and within the community. Considerable time and resources have already been invested in trainings about the Rule for the different segments of our agency. For example, in the days immediately following the Rule's announcement, we assigned staff to review the changes, provide talking points for hotlines/staff, and conduct a training to cover high-level changes and outline what might be next steps for education and messaging. This process took significant amounts of attorney time which was diverted away from current caseloads.

29. Already with limited staff available to lead Know Your Rights and Group Information Sessions, these resources will also become increasingly strained as attorneys focus additional time and resources to analyzing eligibility, assisting with evidence collection, and preparing applications that meet the Rule's burden. They will become less available – if not unavailable altogether – to lead sessions across our service delivery area, including in remote counties where travel time can be up to two hours one way. Educational materials need to be developed, updated, and printed for distribution, both for "train-the-trainer" and community engagement efforts, each of which are tailored to the communities Catholic Charities serves through its legal programs, including students, social workers, parents, parishioners, and the homeless.

30. Fulfilling these multiple requests will come at the cost of other needed presentations and trainings, such as safety planning for families at risk of separation, addressing

the shifting policy memoranda issued by the federal government, as well as information on municipal benefits programs and law enforcement responses for victims of crimes.

31. We anticipate the demand for these training and know your rights services being even greater after October 15, 2019. As we gain experience with the way in which DHS implements the Rule, particularly given its many ambiguous features, the scope, breadth, and sophistication of our trainings on this will have to inevitably increase and intensify, thus requiring more time and energy. Translating materials into multiple languages likewise takes time. The creation of a single announcement with appropriate research, review, branding, and more, currently absorbs approximately four days of staff time. Internal trainings also require intensive supervision, in addition to the administrative burden of coordinating efforts across the divisions throughout CCCS-NY. Finally, given the geographic range of CCCS-NY — through New York City and various parts of the Lower Hudson Valley — there is the added burden of travel to deliver such essential training to our staff and partners.

32. Taken together, these changes will harm CCCS-NY by causing an increased strain on already limited resources, thereby reducing the number of individuals we serve, limiting the scope of services rendered, and more fundamentally, constraining our mission to serve and assist the greatest number of vulnerable immigrants in need.

b. Impact on Hotline Operation

33. Given that the ActionNYC and the New Americans Hotlines are the primary, toll-free, language accessible hotlines available in New York City and New York State respectively, we anticipate a surge in callers when the Rule becomes effective on October 15, 2019. In fact, CCCS-NY is seeing first-hand an increase in hotline activity related to public charge in advance of the Rule taking effect. We experienced significant spikes in calls made corresponding to

previous regulatory events relating to the proposed rule. In October 2018, when the proposed Rule was published in the Federal Register, the New Americans Hotline had some of the highest call volume in FY19 (which runs from September 2018 to August 2019) with hundreds of phone calls related to public charge alone. The next highest call volume of public charge related calls was in August 2019, at the time the final Rule was published. The ActionNYC Hotline saw similar spikes corresponding to the October 2018 and August 2019 regulatory activity. The phone bank that we organized on October 2 and 3 of 2018, when the proposed Rule was first released, handled many hundreds of calls and provided over 1,000 referrals in the approximately six hours the phone bank ran.

34. In response to the increase in hotline call volume, CCCS-NY organized a Facebook Live one-hour segment which took place on October 4, 2018, during which three experienced attorneys answered questions about the proposed changes, reached tens of thousands of people and received many thousands of views.

35. To meet this increasing demand for support and information, we are in the midst of planning similar events. For example, in collaboration with partners including MOIA, ONA, the New York Immigration Coalition, The Legal Aid Society, New York Legal Assistance Group, Mobilization for Justice, and Univision and *El Diario*, both ActionNYC and the New Americans Hotlines have planned a "public charge" phone bank on the evenings of September 9 and September 10, 2019 to be followed by a Facebook Live panel of experts on public charge on September 12, 2019.

36. Although we are constantly evaluating new and efficient ways to manage call volume, it is understood that neither the phone systems nor the dedicated staff (and volunteers) have unlimited capacity. It is, therefore, foreseeable that certain callers will not get access to the

information they need on a timely basis. This very evening, phone banks are scheduled in the evening to maximize participation from working parents. This may necessitate overtime and additional staffing from other departments and divisions of CCCS-NY. Where there are more hotline calls than counselors available we can expect that calls will be dropped.

37. The Rule will not only affect our ability to handle the call volume but also will require special training for hotline staff so that they can effectively triage calls and prioritize assignment to legal services providers, thus ensuring that those affected are properly referred and those not affected receive accurate information in real time without the need to refer all callers to a legal services provider. When the Rule was published in August 2019, we had to suspend handling any hotline calls for several hours so that we could coordinate collective emergency training for our hotline staff. We were able to gradually re-open the hotline to calls on a diminished level to ensure that we were prepared to competently and tactically address questions related to the Rule. As with any call center, unavailability for any period of time is a hindrance to callers not only in the short term, but in the long term as well.

38. In October 2018 and again in August 2019, the calls we received illustrated a high level of confusion, panic and misinformation concerning the Rule. We estimate that the phone banks we held last October required many hundreds of hours of staff and volunteer time. The harm caused by this kind of demand on the hotlines is significant and undercuts a core mission of CCCS-NY. Ensuring the dignity of a stranger and of providing high quality human services can be fundamentally compromised if our staff is unable to respond to each caller, in which case some may seek out the advice of an unscrupulous provider.

39. The amount of time spent on efforts to mitigate the confusion, anxiety, misinformation, and harm caused to immigrants – organizing and staffing phone banks,

coordinating with stakeholders and partners, conducting internal planning meetings, devising training materials, recruiting, coordinating and training volunteers, and working to prevent the irreparable harm caused when clients reach out to unscrupulous providers – cannot be recovered and comes at the expense of serving other clients with pressing legal needs.

c. Impact on General Advocacy

40. When it is both just and appropriate, CCCS-NY will speak out against policies that harm those whom we serve, but, as with any organization, we do not have unlimited resources and capacity to do so. In these difficult times for immigrants and refugees, when new policies adversely affecting them are continually being rolled out, time spent on an issue of enormous consequence and scope such as public charge will take up significant, albeit limited, resources in this sphere. In addition to the comment we submitted on the proposed public charge Rule, discussed above, we have already devoted significant time and resources to the preparation and development of testimony to the New York City Council – on November 15, 2018, and most recently on September 3, 2019 – as well as substantial organizational and logistical resources elsewhere, in discussion with local, regional, and statewide governmental and non-governmental partners. Additional advocacy requiring similar marshaling, diversion, and allocation of resources, time, and more, will be taking place in September 2019 and in the months to come.

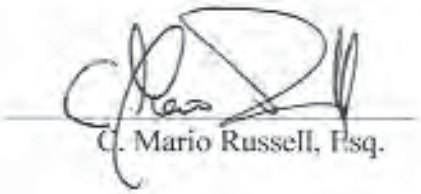
41. In addition to the training we provide internally to our own staff, as discussed above, there is also a demand for expertise in the form of external training on public charge. In September 2019 alone, we have twelve public charge training and Know Your Rights events scheduled throughout the jurisdiction of the Archdiocese, from the Bronx and Manhattan to, Brewster, Newburgh, Peekskill and Poughkeepsie.

d. Harm to our mission

42. The aforementioned pressures on our representation and casework capacity, as well as the added strains on resources across our outreach and legal teams, have caused and will continue to cause significant harm to our mission to protect the dignity and humanity of the individuals and families we serve. The level of resources needed to respond to the impact already felt by the Rule, even before its formal enforcement, is significant. But, more concerning, once the October 15, 2019, implementation date passes, we are sure that significant and magnified pain and harm will be experienced even more deeply and felt each day on all levels—within the communities we serve and thus within our programming. Our organization will be forced to reprioritize where resources are placed, shift more support to cases involving matters involving public charge, and diminish our response in areas where traditionally we have supported immigrants so that we can attempt to uphold our mission without sacrificing quality of services. In so doing we will be forced to make difficult decisions about how to allocate our already strained and limited resources. This will result in an unbalanced distribution of services, the victims of which will be the vulnerable and at-risk individuals this organization was established to protect. We must be reminded that our faith tradition includes a scriptural call to provide care and welcome to newcomers, be they families seeking to be reunited or those who are vulnerable seeking safe haven. We, like our nation, derive meaning, purpose, strength, and hope when, together with our immigrant and refugee sisters and brothers, build a society that is compassionate and just.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 9th day of September, 2019
New York, New York



C. Mario Russell, Esq.

EXHIBIT A

December 10, 2018

Submitted via www.regulations.govs

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

To Whom It May Concern:

On behalf of Immigrant and Refugee Services for Catholic Charities Community Services, Archdiocese of New York, we write this response to the Department of Homeland Security's ("DHS") Notice of Proposed Rulemaking ("proposed rule"). Catholic Charities here expresses its strong opposition to the administration's intention significantly to alter the test by which an applicant for immigrant or non-immigrant admission to the United States would be deemed a "public charge" and formally requests that DHS withdraw this proposal.

Catholic Charities fundamentally opposes the proposed rule because it will significantly empower this administration to exclude immigrants and non-immigrants who are not well-off, are elderly, or suffer from disabilities; it will create confusion and uncertainty that will chill usage of benefits crucial for health and welfare; and will chip away at structured and reasoned application of the law. We are particularly concerned that the proposed regulations will dissuade thousands of New Yorkers and millions around the country from accessing much needed public benefits, resulting in hunger, poor nutrition, untreated illnesses and even health care crises.

As such, Catholic Charities condemns this proposal as legally and morally deficient, socially shortsighted, historically blind, and fundamentally out of sync with basic human rights norms as it affects primarily those with diminished economic status. Catholic Charities believes that

concerns for the rule of law and for human dignity must be equal, core principles that are properly balanced when policies are designed to advance national and individual interests. Arbitrarily punishing or discriminatory laws that serve only to exacerbate injustice, harm families, increase hunger, deepen health needs, trigger child poverty, increase homelessness, and more, alter the face of our nation and send a signal to the those who are poor, vulnerable, and new to our communities that they are not wanted or welcome.

I. Who We Are And What Inspires Our Work

Catholic Charities Community Services (CCCS) promotes the preservation and strengthening of family life and the empowerment of individuals. Since 1949, CCCS has been the primary direct service provider of The Catholic Charities of the Archdiocese of New York. Our programming forms a comprehensive safety net that assists people in achieving long-term income, housing, and nutrition stability. CCCS' program sites span Manhattan, the Bronx, and Staten Island, as well as Westchester, Putnam, Dutchess, Rockland, Orange, Sullivan and Ulster counties. Every year, we deliver high quality human services to more than 150,000 New Yorkers of all religions who are in need. The newcomer, the family in danger of becoming homeless, the hungry child, the emotionally challenged and developing youth are among those for whom we have a particular concern. Our work is grounded in the belief in the dignity of each person as made in the image of God and the building of a just and compassionate society – especially for the most vulnerable among us.

Our Catholic social teaching guides our work and our position that we as a nation must welcome immigrants, no matter their national origin or socioeconomic status, out of respect for the dignity of the human person. Pope Benedict XVI recalled that throughout history, the United States "have opened their doors to the tired, the poor, the 'huddled masses yearning to breathe free.' These are the people whom America has made her own."[1] This administration's proposed changes to the public charge rule would exclude classes of people based on lack of wealth and access to opportunity. We request that this proposal be withdrawn to ensure that immigrants of any socioeconomic status have the opportunity to reunite with family members in the United States and seek dignity, security, and stability.

II. What We Do

Through our emergency food programs, CCCS provides approximately three million meals annually. Beyond food distribution, we help address the root causes of hunger via case management, nutrition and meal planning education, SNAP enrollment, and advocacy. Our Case Management Department helps families to maintain housing stability by resolving immediate crises and working to prevent future emergencies. Each year, we support hundreds of individuals with physical and emotional challenges. Compassionate environments like our Beacon of Hope residential housing and our Catholic Guild for the Blind help these individuals function and thrive within the community. Our Alianza Division provides afterschool programming and job

[1] Pope Benedict XVI, "Celebration of Vespers and Meeting with the Bishops of the United States of America," National Shrine of the Immaculate Conception in Washington, D.C., 16 Apr. 2008. *Available at:* http://w2.vatican.va/content/benedict-xvi/en/speeches/2008/april/documents/hf_ben-xvi_spe_20080416_bishops-usa.html.

training and readiness to thousands of at-risk youth in Washington Heights and the Bronx, while our Catholic Youth Organization (CYO) facilitates sports and activities for more than 25,000 youth throughout the Archdiocese.

For more than four decades, CCCS has been committed to welcoming New York's immigrants—including families seeking to reunify, children, refugees, the undocumented, and workers. Our commitment to the provision of civil legal services to low-income persons is rooted in respect for the dignity of each person, and for the value added to our communities of work, family, and faith. Our Division of Immigrant and Refugee Services reaches more than 60,000 individuals across New York City and the Lower Hudson Valley each year:

- We assist approximately 1,000 refugees with their resettlement and integration needs, including settling in a new home, finding work, and learning English. These are men, women and children who have fled conflict, persecution, and deprivation.
- We serve thousands of unaccompanied children each year – 5,000 during the last fiscal year -- who have been transferred to federal custodial shelters in the New York City area. We offer these minors and the families with whom they are reuniting legal help, representation, and integration support, including legal and cultural orientations, soccer and English programming, and psychological and medical care.
- We operate the New York State New Americans Hotline and the national Call Center for Custodians of Unaccompanied Minors, which provide basic information and referrals to over 50,000 callers with immigration and reunification questions.
- Our International Center provides English and cultural instruction to 1,000 immigrants who are seeking to move towards citizenship status or, in the case of day laborers, are in need of basic proficiency to navigate day-to-day challenges.
- Our Immigration Legal Services department provides advice and legal representation to more than 5,000 documented and undocumented immigrants every year. Teams of attorneys and paralegals provide advice and application assistance, conduct consultations to determine eligibility for immigration benefits, prepare applications and submissions on behalf of clients, provide case follow-up through case completion, and prepare clients for immigration interviews. Our attorneys handle a wide variety of cases - asylum, U and T visas for victims of serious crimes and trafficking, special immigrant juvenile visas for children who have been abandoned, neglected or abused by their parents, etc. - in the administrative and federal courts, providing direct representation in administrative interviews and hearings, in court proceedings before immigration courts and other federal and state tribunals, and in motions to reopen, appeals, and petitions for review.

Our various programs serve thousands of immigrants every year, so we know first-hand how hard they work to improve their own lives and those of their families, contribute to and invigorate our communities, and enrich the fabric and the economy of our cities, states and nation[2].

III. The Proposed Rule Will Injure Families And Cause Fear Among Many

[2] For example, according to the New York City Office of Management and Budget, in 2017 immigrants contributed an estimated $195 billion to NYC's Gross Domestic Product (GDP), or 22% of its total GDP. Click here for more information.

According to DHS, these proposed changes are ostensibly proposed to promote self-sufficiency. However, many families utilize benefits as temporary and transitional measures toward stabilization. Even though the proposed changes will not affect all immigrant or mixed-status families, confusion and fear will lead many to forego needed benefits, further entrenching them into poverty and leading to poor nutrition, disease and homelessness: the opposite of self-sufficiency.

The fear is manifest. After the proposed regulations were posted on DHS' website, CCCS hosted a phone bank on the evenings of October 2nd and October 3rd when its legal staff and volunteers from other non-profits answered more than 830 calls about public charge in about 6 hours. The calls we answered illustrated a high level of confusion and panic over the proposed rule. About 40% of the calls were from legal permanent residents worried that receipt of public benefits would affect their eligibility to naturalize, travel outside the United States, or renew their green cards. Some were also worried that the proposed changes would render them ineligible for subsidized housing, Medicaid or food stamps. Approximately 14 % of the calls were from United States citizens concerned about the effect receipt of public benefits would have on their ability to successfully petition for their family members and wondering if they should dis-enroll. Another 10% of the calls were from people with pending green card applications, pending or approved provisional waivers, or intending to apply for green cards, worried because someone in their family – a United States citizen - had received benefits. And another 6% of the calls were from asylees and asylum applicants, U visa holders and applicants, and others receiving Medicaid and/or food stamps for themselves or their United States citizen children. About 6% of the calls were about benefits that would not factor in the "public charge" determination under the proposed rule, including the Special Supplemental Program for Women, Infants, and Children (WIC), emergency Medicaid, health insurance under the Affordable Care Act, and unemployment benefits. Approximately 13% of the callers reported receiving Medicaid, 10% food stamps, and 5% subsidized housing.

In October, CCCS' Hotline answered 337 other calls about public charge in addition to the 837 calls received during the phone bank, for a total of 1,174 calls. Similar to the phone bank, close to 40% of the calls were from legal permanent residents worried about losing benefits, or not being able to naturalize or renew their green cards because of past or current receipt of benefits. Another 23% of calls concerned receipt of public benefits by United States citizens, including children, how that would affect family members applying for green cards or visas, and whether a 'safer' option would be to dis-enroll. About 17% of the callers were undocumented, some with pending green card applications. Approximately 38% of the callers reported receiving Medicaid, 33% food stamps, 17% subsidized housing, and 8% SSI. Approximately 17% of the calls concerned WIC or other benefits that would not be included in the public charge determination under the proposed rule. Two of the calls were from United States citizens afraid they could be denaturalized for taking public benefits.

According to New York City's Mayor's Office of Immigrant Affairs ("MOIA") annual report released in March 2018, 3.1 million immigrants live in New York City, 1 million of whom live

in mixed status families where a household member is undocumented.[3] New York City estimates that 75,000 immigrants who are currently eligible for the benefits added by the proposed rule may dis-enroll to avoid future adverse immigration consequences.[4]

Though the proposed rule excludes receipt of public benefits by a United States citizen child from the applicant's public charge determination, if the parent dis-enrolls from these benefits it will affect the whole family. If adults in mixed-status families are discouraged from using SNAP, entire households – including United States citizen children - will have less food to eat. It is well documented that food insecurity puts people at higher risk of behavioral and cognitive problems, coronary heart disease, diabetes, obesity (caloric, less nutritious food being less expensive), hypertension, and depression. Moreover, hunger and poor nutrition negatively impacts children's academic performance. Also, if parents lose housing assistance, the entire family may become homeless.

Finally, if families dis-enroll from Medicaid out of fear, chronic conditions will go unaddressed and communicable diseases will spread. [5] The proposed rule includes counting enrollment in Medicaid for more than 12 months in a three year period as a heavily weighted negative factor. This would discourage pregnant immigrant women – or women who are United States citizens but are in mixed-status families – from enrolling in Medicaid for the duration of their pregnancies and postpartum, putting both mothers and newborns at risk. For immigrants to stop enrolling in Medicaid – other than emergency Medicaid – is a departure from the mantra that preventive and regular medical care reduces public health risks and costly emergency department utilization.

In conclusion, based on the level of confusion and the response we have witnessed in New York City and New York State, where immigrant and mixed-status families are dis-enrolling from public benefits they and their children are eligible for out of fear of how their immigration status would be impacted,[6] we believe that the proposed rule will put entire communities at risk of poor nutrition, housing insecurity, untreated illnesses and communicable diseases.

IV. Expanding The Kinds Of Benefits That Trigger Exclusion Violates The Law And Is Contrary To General Welfare Concerns

Passage of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) and of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) in 1996 created confusion about the public benefits that would cause recipients to be regarded as a public charge, In 1999, finding that the confusion "created significant public health consequences across the country," DHS' precursor, the Immigration and Naturalization Service (INS) recognized the need to define "public charge" in order to provide clear information to

[3] NYC Mayor's Office of Immigrant Affairs, "State of Our Immigrant City – Annual Report," March 2018, available here.
[4] Mayor De Blasio's October 11, 2018 announcement can be found here.
[5] A recent outbreak of measles is an example of a contagious disease that can become widespread if children are not vaccinated. Read more about the recent measles outbreak in New York City, Rockland County in New York State, and other parts of the United States here.
[6] See "City Immigrants Fear Being a Public Charge," WNYC, November 1, 2018, available here.

immigrants so that they could make informed choices as well as to dispel fear in the community that receiving a benefit could harm immigration status.[7]

Finding that:

> "This situation is becoming particularly acute with respect to the provision of emergency and other medical assistance, children's immunizations, and basic nutrition programs, as well as the treatment of certain communicable diseases. Immigrants' fears of obtaining these necessary medical and other benefits are not only causing them considerable harm, but are also jeopardizing the general public. For example, infectious diseases may spread as the number of immigrants who decline immunization services increase"[8]

the INS issued field office guidance and a proposed rule that defined "public charge," clarifying that:

> "*It has never been Service policy* that the receipt of any public service or benefit must be considered for public charge purposes. The nature of the program is important. For instance, attending public schools, taking advantage of school lunch or other supplemental nutrition programs, such as WIC, obtaining immunizations, and receiving public emergency medical care typically do not make a person inadmissible or deportable. *Non-cash benefits, such as these and others, are by their nature supplemental and frequently support the general welfare*."[9]

For almost 20 years immigrants have relied on the 1999 field guidance to inform whether to apply for and receive certain supplemental benefits. The 1999 policy defined "public charge" to mean a noncitizen likely to become "primarily dependent on the Government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance or institutionalization for long-term care at Government expense."[10] Receipt of Medicaid, SNAP and subsidized housing was outside the purview of this definition.

The use of supplemental public benefits often breaks the poverty loop and helps people to become self-sufficient, as demonstrated by the fact that the majority of public benefit recipients voluntarily end participation within a few years.[11] Therefore, as federal authorities and the INS understood in 1999 and it is certainly still the case today, it is critically important that families experiencing hard times be able to continue to utilize benefits as temporary and transitional measures toward stabilization. The government has failed to state a sufficient reason justifying a change that would have significant economic implications and adverse consequences for immigrant and mixed-status low-income and middle-income families and, particularly when it comes to access to healthcare, the welfare of the community as a whole.

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[7] INS, Proposed Rule on Deportability and Inadmissibility on Public Charge Grounds, 64 FR 28676 (May 26, 1999).
[8] *Id.*
[9] *Id.* at 28678. (emphasis added).
[10] *Id.*
[11] Irving, Shelley K. and Tracy A. Loveless, "Dynamics of Economic Well-Being: Participation in Government Programs, 2009 – 2012: Who Gets Assistance?" U.S. Department of Commerce, May 2015.

V. The Proposed Rule's Altered "Totality of the Circumstances" Test Is Burdensome, Leads To Discriminatory Abuse, And Skews Applicable Statute

Section 212(a)(4) of the Immigration and Nationality Act (INA) requires certain factors to be weighed and allows consideration of the affidavit of support in making a public charge determination. For the past 20 years, a sufficient Form I-864, *Affidavit of Support*, demonstrating a commitment from the petitioner/sponsor to support the immigrant at the level required by law was generally sufficient to demonstrate that an individual will not become a public charge. This general framework is straightforward and has resulted in more efficient, consistent and predictable public charge determinations. In contrast, this proposed rule attempts to create complicated and confusing framework for adjudicators to weigh factors and make determinations.

- **The proposed framework invites inconsistent "public charge determinations."**

The proposed framework requires adjudicators to consider a host of "circumstances" that could lead to a determination of public charge but is vague in how those decisions will be made. The framework is overly complex, differentiating between public benefits that can or cannot be monetized and providing little guidance on how adjudicators can analyze the different public charge considerations and how these interact with each other in arriving at a determination. Take for example a 9/11 first responder, a man with Temporary Protected Status (TPS), who has lived, worked and paid taxes in the United States for decades and is now eligible to apply for a green card through a family petition. After working and paying taxes for decades, this man – now 62 years of age – is diagnosed with cancer, has to stop working, and enrolls in Medicaid to pay for medical treatment, a benefit he is eligible for based on his TPS status. At home while undergoing treatment, he cares for his grandson so that his daughter, a single mother, can work. After a year and a few months, the treatment is effective, he is in remission and able to return to work. The income for a household of three is at 150 percent of the federal poverty level, more than sufficient for the affidavit of support, but below the level proposed for it to count as a heavily weighted positive factor. After a lifetime of work, will he be determined likely to become a public charge due to his age, medical history, benefits usage and household income? Would the determination change if, once he gets better he gets a job that raises the household income to 250 percent of the federal poverty level? He has a heavily weighted negative factor (Medicaid usage) and one heavily weighted positive factor (income at 250 percent of the poverty guidelines), but he is nearing retirement age. Moreover, should the adjudicator find that his health condition will interfere with his ability to work, that would be another heavily weighed negative factor. Will the fact that he is in remission and back at work counteract it? It is unclear. The proposed rule does not provide insight into how such complex circumstances would be analyzed and what the final determination would be.

Based on decades of experience with family-based adjustment of status applications, affidavits of support, and consular processing, CCCS believes that the proposed regulation makes consistent and fair adjudication difficult. The unwieldy nature of the framework is an invitation for disparate treatment of similarly situated applicants, allows for bias and discrimination by

adjudicators and gives applicants for immigration benefits – and their advocates - no objective measure as to whether they can overcome the public charge ground of inadmissibility or not.

Instead, because of the ambiguity and uncertainly of adjudications in combination with USCIS' recent policy changes related to issuance of Notices to Appear, immigrants are likely to avoid the risk and continue living a life of poverty rather than seek supplemental benefits and legal status that could help them to achieve economic security in the future for themselves and their families.

- **The proposed framework creates a bias for immigrants from affluent countries and allows for discriminatory determinations.**

The proposed rule acknowledges that the "totality of circumstances" test used to weigh the statutory factors and usage of benefits is to help make a prospective determination regarding the likelihood that the applicant will become a public charge. However, many of the "considerations" are retrospective and serve only to give an indication of the applicant's circumstances at the time of application and therefore favor those who have already had the opportunity to achieve education, skills, and economic security and punishes low-income immigrants who are working in important, but low-wage jobs to sustain themselves and their families.

Discouraging these hard-working, lower-skilled immigrants from access to healthcare, nutrition, or housing support will only make it harder for them to achieve the economic security necessary to be self-sustaining in the future. In fact, considering receipt of benefits as a heavily weighted negative factor ignores the situations where access to public benefits and family support are actually used to empower self-sustainability. Receipt of benefits to prevent and cure illness or provide shelter or food assistance that would help to focus on getting better skills and a better paying job are positive factors that show that future benefits will **not** be needed.

- **The proposed framework is unbalanced.**

As stated above, Section 212(a)(4) of the INA requires certain factors to be weighed in making a determination as of public charge. Those factors are (I) age; (II) health; (III) family status; (IV) assets, resources, and financial status; and (V) education and skills. The proposed rule seeks to outline circumstances under each statutory factor that should be considered. Items like medical history and employment history are included as a separate factor as well as part of the consideration in the assets, resources, and financial status factor analysis. The result is that a negative event, say a medical diagnosis, is counted twice as "negative" at the onset, already placing the applicant at a disadvantage in having the scale tipped towards a public charge determination based on total number of negative circumstances. This is further compounded by addition of only two "heavily weighted positive" circumstances in comparison to the five "heavily weighted negative" circumstances, thus further tipping the scale to favor a determination of public charge.

- **Heavily weighing household income at or above 250 percent of the Federal Poverty Guideline confuses the threshold for the affidavit of support.**

As adjudicators struggle with making determinations based on the proposed framework, there may be a tendency to rely on something concrete such as total household assets, resources, and support at or above 250 percent of the Federal Poverty Guidelines for the applicant's household size. The inclusion of this threshold as a heavily weighted positive factor confuses the statutory threshold for the affidavit of support and could result in the adjudicator expecting more than the 125 percent of the Federal Poverty Guidelines required from the sponsor as a basis for overcoming a possible public charge determination.

- **The proposed rule places unjustified burdens on adjudicators, practitioners and immigrants.**

In March of 2018 DHS acknowledged that USCIS lacks the resources to timely process its existing workload.[12] With this proposed rule would come additional documents, forms and analysis that will further bog down adjudicators with an analysis of the 23 circumstances outlined within the proposed rule framework and further delay adjudications and prolong processing times. As stated above, the government has failed to state a sufficient reason for making a change of this magnitude, and therefore the additional workload that the proposed rule would create is an unjustified use of government resources.

In addition to the burden on USCIS' resources, immigration practitioners also face significant burdens in learning the new regulations and assisting clients in trying to navigate the murky waters. The "ramp" up time for learning the new regulations was estimated by DHS at 10 hours. That estimate falls very short as it does not take into consideration ongoing education and training, including monitoring trends in implementation to better advise clients. Further, the proposed rule estimates 4 hours and 30 minutes to read the instructions and prepare the necessary documents for the new form I-944.[13] Based on the experience of our legal department, it takes from 1 hour and 30 minutes to 2 hours to read the instructions, complete the existing I-864 affidavit of support form, and review and attach the required documents, and that is a much less complicated form that involves far fewer factors and supporting documents. Due to the complex nature of the proposed framework, the documentation that will be necessary to support/prove each factor, we believe the timeframe envisioned by DHS is grossly underestimated, particularly for immigrants whose first language is not English, or with a lower level of education.

Based on more than four decades of experience as immigration legal service providers, we believe that more applicants will need legal assistance given the complexity of understanding and preparing the new I-944 and supporting documents, which will be problematic for already overburdened non-profits and a boon for *notarios* and other unscrupulous individuals not authorized to practice law.

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[12] See USCIS Webpage, "Data Set: All USCIS Application and Petition Form Types: Fiscal Year 2018, 2nd Quarter" (Jul. 17, 2018) here; DHS, "Annual Report on the Impact of the Homeland Security Act on Immigration Functions Transferred to the Department of Homeland Security" (Apr. 13, 2018) here.

[13] 83 F.R. 51114, 51254 (Oct. 11, 2018).

Finally, delays in processing that will inevitably follow the implementation of this proposed rule will cause significant harm to immigrants who are seeking benefits due to possible job loss and prolonged separation of family.

VI. The Proposed Bond Provisions Are Arbitrary, Costly, And Inequitable

The proposed rule establishes procedures in which a USCIS adjudicator may, after a finding of inadmissibility as a public charge, use their discretion to invite the applicant to post a public charge bond. The bond amount is set by the adjudicator, starting at a minimum $10,000, adjusted each year for inflation, but can be higher. The bond is considered breached and the entire amount is lost if the applicant receives any of the listed benefits prior to the bond being canceled. Additionally, USCIS may impose other "conditions." Those possible conditions are not spelled out in the proposed rule.

Allowing a USCIS adjudicator to first determine that an applicant is inadmissible and then offer the chance for a bond will lead to inconsistent and arbitrary decisions. This is further compounded by allowing the adjudicator to add unspecified "conditions." Adjudicators may see the bond option as an opportunity to deny applications where applying the "totality of circumstances" test proves to be challenging and then invite the applicants to post bond. Finally, not providing guidance related to who would be invited to post a bond has a chilling effect on applicants who may otherwise seek immigrant or non-immigrant status knowing that there is an option to cure a negative public charge determination with a bond. Without more specificity about who, when, and why an applicant denied on public charge grounds would be invited to post bond, applicants will be discouraged from seeking immigrant and non-immigrant visas.

In addition to the arbitrary nature of who would even be invited to post a bond, the amount of the bond is exorbitant. It would force a family that is already struggling into a situation where they are beholden to a private bonding company with no option to apply for public benefits if they have a health or financial emergency or if the crush of the premiums prevents them from putting enough food on the table. The harsh consequences for a breach of conditions would result in a loss of the entire bond, even if the value of the benefit was of a few hundred dollars.

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In conclusion, Immigrant and Refugee Services for Catholic Charities Community Services, Archdiocese of New York, opposes the proposed public charge rule. This rule, if implemented, would prevent low- and middle-income immigrants, immigrants with disabilities, persons of color, seniors and other members of our communities from being able to pursue a path to legal status and self-sufficiency.

Thank you for the opportunity to submit comments on this proposed rule. Please do not hesitate to contact C. Mario Russell, Esq., mario.russell@archny.org // 917-806-9134 to provide further information.

Division of Immigrant and Refugee Services
Catholic Charities Community Services, Archdiocese of New York

EXHIBIT 6

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MAKE THE ROAD NEW YORK, AFRICAN SERVICES COMMITTEE, ASIAN AMERICAN FEDERATION, CATHOLIC CHARITIES COMMUNITY SERVICES, and CATHOLIC LEGAL IMMIGRATION NETWORK, INC.,

Plaintiffs,

- against -

KEN CUCCINELLI, in his official capacity as Acting Director of United States Citizenship and Immigration Services; UNITED STATES CITIZENSHIP & IMMIGRATION SERVICES; KEVIN K. McALEENAN, in his official capacity as Acting Secretary of Homeland Security; and UNITED STATES DEPARTMENT OF HOMELAND SECURITY,

Defendants.

1:19-cv-07993 (GBD)

DECLARATION OF CHARLES WHEELER

CHARLES WHEELER declares:

1. I am the director of the Training and Legal Support program of the Catholic Legal Immigration Network, Inc. ("CLINIC"), where I supervise a staff of seven attorneys. I have held this position since 2000. Prior to that, I was the director of the Immigration Detention program at CLINIC. Prior to working at CLINIC, I directed the National Immigration Law Center in Los Angeles.

2. I submit this declaration in support of the Plaintiffs' Motion for a Preliminary Injunction to enjoin the rule published by the Department of Homeland Security ("DHS"), titled Inadmissibility on Public Charge Grounds, 84 Fed. Reg. 41,292 (Aug. 14, 2019) (to be codified at 8 C.F.R. pts. 103, 212, 213, 214, 245, 248) (the "Rule"). The Rule will burden CLINIC in its

efforts to pursue its mission to embrace the Gospel value of welcoming the stranger by supporting its 370 affiliate immigration programs, which deliver direct services to immigrants in over 400 offices located in 49 states and the District of Columbia.

Background

3. CLINIC is a national, non-profit organization focused on equipping immigration practitioners with the tools necessary to provide comprehensive immigration representation. CLINIC's network employs more than 2,300 attorneys and Department of Justice ("DOJ") accredited representatives who, in turn, serve hundreds of thousands of low-income immigrants each year, including aid with applications for adjustment of status. The 370 affiliate programs pay CLINIC a fee to be part of the network. In return, they turn to us for critical support, particularly in the area of training and legal support, which I direct.

4. In order to train lawyers and accredited representatives situated across the nation and to extend its reach, CLINIC conducts e-learning courses and webinars, and hosts in-person trainings on immigration-related matters. Our attorneys also publish newsletter articles, Practice Advisories, books and other written materials to aid immigration practitioners. CLINIC, in some instances, also provides funding for affiliates working directly with immigrant communities. We also provide information about immigration issues on our website and in social media, and use online courses with multiple classes, online self-directed courses, periodic webinars, annual in-person trainings on family-based immigration law, and workshops during our annual affiliate convening to disseminate information out about changes in immigration law and practice.

5. Among other things, CLINIC affiliates rely on our services to support the work of DOJ-accredited representatives. Accredited representatives are non-attorney staff or volunteers who are approved by DOJ to represent noncitizens in immigration court or before the Board of

Immigration Appeals or USCIS. An accredited representative must work for a non-profit or social service organization that provides low- or no-cost immigration legal services. Many CLINIC affiliates rely on accredited representatives for the day-to-day work of their organization in assisting their clients. In turn, those accredited representatives rely on CLINIC's resources for training and guidance.

6. CLINIC provides technical support to its affiliates through the "Ask-the-Expert" portal on its website and through daily consultations with affiliate staff around the country.

7. Approximately half of the content my section of CLINIC provides to our affiliates through trainings and technical support concerns family-based adjustment, including grounds of inadmissibility like public charge.

CLINIC's Work on Public Charge to Date

8. Public charge is a critical area for CLINIC and its affiliates because of our focus on low-income immigrants. Since the statutory change in 1996 that added the affidavit of support requirement, CLINIC has played a major role in analyzing and explaining the public charge ground of inadmissibility. I participated in several trainings with government officials as the affidavit of support requirements were being implemented and assisted these officials in the wording of the proposed and final regulations, as well as the forms. I co-authored a book on the affidavit of support in 1998 and recently authored a separate book on the public charge ground of inadmissibility and affidavit of support. This topic has been an area we have included in other books, articles, and trainings during the last 20 years.

9. During the public notice-and-comment period, CLINIC submitted to USCIS a detailed comment documenting the harms and burdens the Rule would inflict on immigrant communities and legal representatives and pointing out significant legal and practical flaws in the Rule's scheme. These flaws included, among others, the Rule's failure to justify changes to

longstanding practice; it's bypassing of the legislative process; and its inconsistency with congressional intent and the plain meaning of "public charge." Our comment also highlighted the vague and standardless new elements of the Rule, including the limited English proficiency (LEP) requirement and the focus on credit scores. Our comment is attached as Exhibit A.

The Public Charge Rule Will Cause Significant and Irremediable Harm to CLINIC

10. CLINIC's mission is to embrace the Gospel value of welcoming the stranger by promoting the dignity and protecting the rights of immigrants in partnership with a dedicated network of Catholic and community immigration legal programs. CLINIC seeks to enhance and expand delivery of legal services to indigent and low-income immigrants principally through diocesan immigration programs and to meet the immigration needs identified by the Catholic Church in the United States. The public charge Rule, should it become effective, will impair CLINIC's mission to welcome the stranger by resulting in the denial of low-income immigrant adjustment applications and putting the denied applicants at risk of removal.

11. Although CLINIC has already started conducting webinars aimed at providing legal services providers around the country information about the Rule, the demands on CLINIC's team will grow significantly if the Rule is not enjoined. To address these demands, CLINIC will have to divert resources from other important areas of immigration law to provide training and resource support on the issue of public charge. Diversion of CLINIC's resources to address the implications of the Rule has already occurred. CLINIC's affiliates need immediate information on public charge and how it will affect their clients. Attorneys and accredited representatives from affiliates submit inquiries regarding individual immigration matters that are particularly complex, and CLINIC staff provide an expert consultation.

12. Prior to the Rule being published on August 14, 2019, CLINIC attorneys provided an average of five to ten consultations a week on public charge related issues. Since the Rule was

released, CLINIC has experienced a tripling in volume of technical support questions related to public charge. To address these technical support questions in a more systemic way, we have had to prioritize updating our legal reference materials, conducting webinars, and modifying our training curricula. Since the Rule was finalized, CLINIC has conducted three 90-minute webinars on public charge, written a five-page summary of the regulation, and produced a 17-page Frequently Asked Questions document. Within the next three months, CLINIC will need to update and expand two books that it has written and published through the American Immigration Lawyers Association ("AILA"): *Immigration Law and the Family* and *Affidavit of Support: A Practitioner's Guide*. We will also need to create sample forms, document checklists, and other resources to assist practitioners in completing the Form I-944, Declaration of Self-Sufficiency, and preparing clients for adjustment of status or immigrant visa interviews.

13. I anticipate that the demand for consultations and training will be that much greater when the Rule becomes effective on October 15, 2019. Trainings and written materials also will need to be updated to reflect experiences with implementation of the Rule, including the best way to complete the burdensome new Form I-944, the degree to which officers appear to take into account use of benefits before the effective date, and how vague factors in the Rule are interpreted on the ground, such as LEP and credit scores. Since many applicants for adjustment who are denied will lose lawful presence and face removal, consultations regarding removal defense will be particularly complex, as will training materials walking lawyers and representatives throughout the country on how to handle these cases.

14. Given the stakes for low-income immigrants and the demands on our affiliates, CLINIC has no choice but to apply its resources to addressing the urgent need for information

and guidance precipitated by the Rule, both advising on individual cases brought to us by affiliates, and getting accurate information out to our network.

15. The demand comes at a price for CLINIC. Given our limited staff and resources, we may not be able to address other issues of concern for our affiliates or we will lack the capacity to update materials as we would otherwise have done. We may be unable to create e-learning courses and webinars on other legal topics, such as legal writing and research, cancellation of removal, and U visas that we had planned to create. We will have to postpone updating another AILA book, *Provisional Waivers: A Practitioner's Guide*, or creating other legal materials. To respond to an anticipated increase in technical support questions, we expect that we may have to redirect staff from other projects they are working on, such as on DACA, TPS, asylum law, and unaccompanied minors.

16. There is also a potential economic harm to CLINIC caused by the public charge Rule. All of the affiliates provide representation for low or even no fees. The new public charge Rule makes the process of counseling and applying for adjustment more complicated and time-consuming. Just filling out the I-944 form and compiling the necessary documentation will take an attorney or representative an estimated three to four hours. Affiliates may have to raise prices or face serving fewer people and losing revenue. This frustrates the mission of affiliates and CLINIC, which is focused on enabling affiliates to keep costs down and serving as many low-income immigrants as possible. If the Rule results in fewer low-income immigrants willing to apply for adjustment of status or an immigrant visa, this will in turn impact affiliates' revenue and could cause some affiliates to reduce staff and seek other ways to lower costs, including canceling their memberships to CLINIC.

17. Lastly, as a result of the Rule, CLINIC will have to expend additional resources aiding the international religious workers who pursue religious vocations with religious orders, whom CLINIC directly represents, with their applications for adjustment. Like many of the practitioners we train, CLINIC will be required to compile the necessary documents, complete additional forms, and assist our clients in understanding the Rule. In the Catholic Church, religious orders require members to profess vows of poverty (e.g. religious brothers and sisters), which means the member will renounce all individual property and assets to instead pursue a simple life of community, prayer, and dedication to the mission of the order. This type of religious worker will not have records of assets, resources, or financial status, factors used to determine the likelihood of becoming a public charge. They do not receive a salary, may only have limited benefits, and some may live a cloistered life. As formal education is not required to become a vowed member of a religious order, many of these workers do not have the education or skills seen as valuable for the public charge determination. An immigration officer may focus on these factors under the new public charge rule and they may be unfairly weighed against a religious worker whose core way of life is poverty, as required by that Catholic vocation.

18. Given the needs of our network and our mission, CLINIC will need to divert resources addressing the Rule. Again, we operate on limited resources and with a limited staff. Our time and resources are vital to practitioners who serve immigrant communities and are vital to our clients and our mission. In the event the Rule is deemed unlawful, CLINIC, our staff, and our network will be unable to recoup the significant resources expended. The harm CLINIC will suffer is irreparable.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 9, 2019
Silver Spring, Maryland

Charles Wheeler

EXHIBIT A

CATHOLIC LEGAL IMMIGRATION NETWORK, INC.

NATIONAL OFFICE
8757 Georgia Avenue • Suite 850 • Silver Spring, MD 20910• Tel: 301.565.4800• Fax: 301.565.4824 • Website: www.cliniclegal.org

December 9, 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, D.C. 20529-2140

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

Dear Chief Deshommes:

The Catholic Legal Immigration Network, Inc. (CLINIC) respectfully submits the following comments in connection with the Department of Homeland Security's (DHS) above-referenced Notice of Proposed Rulemaking (hereinafter, NPRM) entitled, "Inadmissibility on Public Charge Grounds." CLINIC strongly opposes the proposed rule in its entirety and, for the reasons set forth below, request that the proposed rule be withdrawn.

Embracing the gospel value of welcoming the stranger, CLINIC promotes the dignity and protects the rights of immigrants in partnership with a dedicated network of immigration legal services programs. This network includes approximately 330 programs operating in 47 states, as well as Puerto Rico and the District of Columbia. CLINIC's network employs roughly 1,400 attorneys and accredited representatives who, in turn, serve hundreds of thousands of low-income immigrants each year. Over ninety percent of CLINIC's affiliates offer family-based immigration services, including assistance with applications for adjustment of status to lawful permanent residency.

CLINIC's attorneys conduct training and provide technical support on all of the immigration-related legal problems faced by low-income immigrants. The Training, Litigation and Support Section focuses on family-based immigration issues, including the issues surrounding adjustment of status. By the end of the third quarter for 2018, CLINIC attorneys trained 4,035 people online and in-person. Further, CLINIC's Religious Immigration Services (RIS) section specializes in assisting international religious workers and their U.S. organizational sponsors. RIS represents approximately 160 dioceses and religious communities throughout the U.S. and over 820 individual clients.[1]

U.S. immigration policy reflects the importance of family reunification. Of the 1,183,505 foreign nationals admitted to the United States in FY2016 as lawful permanent residents (LPRs), 804,793, or 68 percent, were

[1] CLINIC, *Mid-year report to the board for 2018* (Nov. 2018).

admitted on the basis of family ties.[2] Similarly, the sanctity of the family is a dominant element of Catholic social teaching and a high priority of the Catholic Church. Accordingly, CLINIC supports immigration policies and procedures that promote and facilitate family unity and welcomes changes to the adjustment of status process that assist families in obtaining this immigration benefit. Unfortunately, this proposal is irreconcilable with our nation's values, as it would create unnecessary barriers to achieving the American Dream – a dream that was not intended to be limited to only the affluent. It is also contrary to our Catholic values and faith teachings, as it would negatively affect family unity, stability, and threaten public health.

Our values are best expressed by Pope John XXIII who wrote in *Pacem in Terris*, "Now among the rights of a human person there must be included that by which a man may enter a political community where he hopes he can more fittingly provide a future for himself and his dependents. Wherefore, as far as the common good rightly understood permits, it is the duty of that state to accept such immigrants and to help to integrate them into itself as new members."[3] The proposed regulation would not only deprive immigrants of the support they need to integrate into our society successfully, it would exponentially harm families and communities.

In short, we oppose the rule for the following reasons:

- DHS has failed to provide appropriate justification and evidence-based reason for deviating from long-standing past practices
- DHS's proposal would bypass the legislative process required to change an established, 300-year definition of who is deemed a public charge
- DHS' proposal is contrary to legislative intent, case law, and the ordinary meaning of "public charge"
- DHS's proposal to include non-cash programs is contrary to public policy and would unnecessarily jeopardize public health, safety, and family stability
- DHS's proposal assigns weight to the various factors in a way that does not achieve the stated goal of immigrant self-sufficiency
- DHS' proposal to reestablish public charge bonds is unnecessary and burdensome
- DHS's proposal is counterproductive and would create tremendous burdens on USCIS, legal representatives, and immigrants

I. DHS's Proposal Lacks Justification and Evidence-based Reasoning

On October 10, 2018, DHS published an NPRM that proposes to change the definition and scope of the public charge ground of inadmissibility.[4] The NPRM would change the current definition of public charge from one who is "primarily dependent" or relies on public benefits for more than 50 percent of their income and support, to a significantly lower threshold of using public benefits valued at 15 percent of the Federal Poverty Guideline. The NPRM would also change the scope of the public charge test, expanding it to applicants for extensions of nonimmigrant stay.

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[2] U.S. Congressional Research Service. U.S. Family-based Immigration Policy (R43145; Feb. 9, 2018), by William A. Kandel. *Available at*: https://fas.org/sgp/crs/homesec/R43145.pdf.

[3] Pope John XXIII. Encyclical Letter "Pacem in Terris: Encyclical of Pope John XXIII on Establishing Universal Peace in Truth, Justice, Charity, and Liberty" at para. 106, (April 11, 1963). *Available at*: http://w2.vatican.va/content/john-xxiii/en/encyclicals/documents/hf_j-xxiii_enc_11041963_pacem.html

[4] Inadmissibility on Public Charge Grounds, 83 Fed. Reg. 51114 (proposed October 10, 2018) (to be codified at 8 CFR Parts 103, 212, 213, 214, 245 and 248) [hereinafter "NPRM"].

DHS does not state a reasonable explanation for deviating from its long-standing practices. The NPRM describes the current method of evaluating public charge, but does not provide any evidence that the results of this method have fallen short of the congressional intent of the underlying statute. The NPRM presents data regarding the number of noncitizens that use various public benefit programs, but DHS acknowledges that this data from the Survey of Income and Program Participation includes immigrant populations who receive benefits legally and are not subject to public charge inadmissibility.[5] DHS does not present any internal data to demonstrate that its current adjudications are not reliably determining applicants' likelihood to become a public charge.

The NPRM also acknowledges that other agencies including HHS and IRS use the same 50 percent standard to determine dependency, but then states DHS's conclusory "belief" that receiving even small amounts of benefits for a short duration renders one a public charge.[6] Under the Administrative Procedure Act (APA) and its associated case law, an agency action is deemed "arbitrary and capricious"[7] if it does not "articulate a satisfactory explanation for its action, including a 'rational connection between the facts found and the choice made.'"[8]As described above, DHS's omission of internal evidence of adjudicatory shortcomings due to the current public charge policy, and its conclusory decision to propose a new definition despite opposing evidence, call into question its consistency with the APA.

Since there is no rational or evidence-based reason provided in the NPRM for issuing this proposed regulation, stakeholders must resort to considering the policy context surrounding the proposal to determine a reasonable explanation for this action. This administration has taken the following actions to reduce family immigration or separate families present in the United States:

- On January 26, 2017, less than a week after taking office, the President issued the first of three executive orders banning people from predominantly Muslim countries from entering or reentering the United States. The ban currently affects millions of people, including hundreds of thousands of U.S citizens and permanent residents, who are prevented from reuniting with family members who live in the designated countries.
- On September 7, 2017, it terminated the Deferred Action for Childhood Arrivals (DACA) program, which threw approximately 700,000 residents into legal limbo. By March 5, 2018, more than 20,000 DACA recipients had already lost this protection. When the Senate introduced a bill that month that would have remedied the situation, the president said he would only support legislation that included funding for the Mexican border wall, increased enforcement personnel, elimination of the Diversity Visa Lottery program, and a vastly reduced family-based immigration process.
- On October 4, 2017, the administration capped the number of refugee admission for Fiscal Year 2018 at 45,000, which was the lowest number since Congress created the current refugee program in 1980. But due to the implementation of new security screening requirements ("extreme vetting"), a three-month suspension of refugee admissions in the beginning of that fiscal year, and other slow-downs in refugee processing, only 22,491 were actually admitted. On September 24, 2018, the administration capped the number of refugees for Fiscal Year 2019 at 30,000—a one-third reduction of the previous official number—during the worst global displacement and refugee crisis since World War II.

[5] Notice of Proposed Rulemaking (NPRM) at 51160.
[6] NPRM at 51164.
[7] 5 U.S.C. § 706.
[8] *Motor Vehicle Manufacturers Association v. State Farm Auto Mutual Insurance Co.* 463 U.S. 29, 43 (1983).

- Over a six-month period, the administration formally terminated Temporary Protected Status (TPS) for six countries—Sudan, Nicaragua, Nepal, Haiti, El Salvador and Honduras—affecting over 300,000 people. Most of these immigrants have built strong ties to the United States over many years and have little or nothing to return to. The two largest populations of TPS holders, from El Salvador and Honduras, have been living in the United States for more than 20 years. An estimated 270,000 U.S. citizen children have parents who are TPS holders from just three countries: El Salvador, Honduras and Haiti. These terminations—when they take effect and are enforced—will leave TPS holders with a Hobbesian choice: abandon their children and return to their home countries alone, or relocate with them and subject them to high levels of crime, violence and poverty.
- In April 2018, the administration began a "Zero Tolerance" policy that led to the Department of Homeland Security (DHS) separating asylum-seeking parents from their children. This policy affected both families who presented themselves at a port of entry and those who entered unlawfully between ports of entry. While the parents were being prosecuted for illegal entry, immigration authorities took their children from them, sometimes under false pretenses, and refused to tell them where they were going. In fact, the administration made little or no effort to even keep track of where the children were being placed, which came to light after a court stepped in and ordered that the families to be reunited. Approximately 3,000 children were separated from their parents during this humanitarian crisis created by the administration and an estimated 200 remain separated.

In addition, throughout his campaign and time in office, President Trump has made clear his intent to limit the number of immigrants from developing countries. He has made blanket statements regarding migrants arriving in the United States from developing countries: "[T]hey're not sending their finest. We're sending them the hell back."[9] With respect to migrants fleeing violence and grinding poverty in Guatemala, El Salvador and Honduras and traveling north through Mexico, the president had these comments: "These are tough, tough people, and I don't want them, and neither does our country."[10]

Shortly after President Trump's inauguration in January 2017, an official within his administration leaked a draft of an Executive Order titled "Executive Order on Protecting Taxpayer Resources by Ensuring Our Immigration Laws Promote Accountability and Responsibility."[11] The Executive Order instructed DHS to "rescind any field guidance" and "propose for notice and comment a rule that provides standards for determining which aliens are inadmissible or deportable on public charge grounds"—*i.e.*, if a non-citizen is "likely to receive" or does receive means-tested "public benefits."[12] Although the draft Executive Order was never officially released or signed by President Trump, it is now being implemented through this NPRM.

It is against this policy backdrop that this administration has now proposed changing the way the public charge ground of inadmissibility has been defined and interpreted for the last three centuries. Based on this voluminous restrictive policy record, DHS's rationale for changing this regulation is not to promote self-

[9] *Trump: 'We're Sending Them the Hell Back,'* NBC News (June 20, 2018), www.nbcnews.com/video/trump-we-re-sending-them-the-hell-back-1260491331685?v=raila&.
[10] Emily Cochrane, *Playing Up Support Among Hispanic Voters, Trump Takes Aim at Immigration Laws,* New York Times (October 20, 2018), www.nytimes.com/2018/10/20/us/politics/trump-arizona-rally-immigration.html.
[11] *See* Memorandum from Andrew Bremberg Regarding Executive Order on Protecting Taxpayer Resources by Ensuring Our Immigration Laws Promote Accountability and Responsibility (Jan. 23, 2017), www.nafsa.org/uploadedFiles/NAFSA_Dojo/Professional_Resources/Browse_by_Interest/International_Students_and_Scholars/DraftEOtaxprograms.pdf.
[12] *Id.* at 3.

sufficiency in immigrants, but rather, it is the latest effort to achieve the administration's stated goal of reducing family immigration, especially given that federal courts have enjoined most of its prior attempts.

II. DHS' Proposed "Public Charge" Definition Contradicts its Centuries-old Definition

The first federal statute precluding the admission of aliens based on potential public charge was passed by the 47th Congress and signed into law on August 3, 1882,[13] three months after it had passed the infamous Chinese Exclusion Act.[14] It authorized the boarding of vessels, the examination of passengers, and the denial of permission to land "if on such examination there shall be found among such passengers any convict, lunatic, idiot, or any person unable to take care of himself or herself without becoming a public charge…"[15] Notable, however, was the deletion by the Senate of language passed by the House that would have excluded "all foreign paupers, convicts, or accused persons of other than political offenses, or persons suffering from mental alienation, in the United states who are a public charge on their arrival in this country…"[16] That language did not appear until 1891 when the federal government expanded the inadmissible classes to include "persons likely to become a public charge"[17] and also authorized the deportation of those who became a public charge within one year.

This language—likely to become a public charge—was in fact modeled on existing immigration laws and policies developed in New York and Massachusetts years earlier. Those two states helped mold the legal and administrative frameworks of what later became the federal authority for excluding indigent persons. Representatives from those two states actually played a central role in developing our national immigration policy and in drafting the Immigration Act of 1882. The enactment of that statute was motivated by the Supreme Court's declaring that state passenger laws—the imposition of head taxes and the exclusion and deportation of certain classes of entrants—were unconstitutional and that only the federal government could impose such restrictions.[18]

Prior to that year, the regulation and control of immigrants lay largely within the jurisdiction of the states—not the federal government—and the enactment and enforcement of these laws took place at the local level. Statutes prohibiting the admission of poor and indigent immigrants date back to the colonies with the earliest laws being passed in Massachusetts in 1645.[19] A law in 1700, for example, targeted "lame, impotent, or infirm persons, incapable of maintaining themselves."[20] That same colony enacted a law in 1722 that required the posting of a bond, not to exceed £100 and with a term of five years, that would be forfeited if the immigrant in question became a public charge.[21]

Similar laws were passed at that time in other Atlantic seaboard states, in addition to laws allowing for the deportation of those who had become indigent. For example, New York State passed a law in 1847 that prohibited the landing of "any lunatic, idiot, deaf and dumb, blind or infirm persons, not members of

[13] Immigration Act of August 3, 1882, 22 Stat. 214.
[14] Immigration Act of May 6, 1882, 22 Stat. 58.
[15] *Id.*
[16] H.R. 6596, Section 4, p. 1506.
[17] Immigration Act of March 3, 1891, 26 Stat. 1084.
[18] *Chy Lung v. Freeman*, 92 U.S. 275 (1876).
[19] Albright, *Colonial Immigration Legislation*, p. 445.
[20] E.E. Proper, *Colonial Immigration Laws* (New York: Columbia University Press, 1900), p. 29.
[21] *Acts and Resolves of Massachusetts Bay*, vol. 2 (Boston: Wright and Porter, 1874), pp. 244-45.

emigrating families, and who . . . are likely to become permanently a public charge," unless the shipmaster provided a bond for each affected passenger.[22]

The motivation for these laws derived from both financial concerns and cultural prejudice against the Catholic Irish. A disproportionate number of those who were excluded and deported were Irish women, especially those who were single, divorced, widowed, pregnant, or arriving with children, who were viewed as more economically vulnerable.

Federal legislation continued with a law in 1903 that raised the head tax on alien passengers, continued the exclusion of paupers and persons likely to become a public charge, and added "professional beggars" to the list of those barred entry.[23] Four years later a new provision added the excludability of those who are found to be "mentally or physically defective, such mental or physical defect being of a nature which may affect the ability of such alien to earn a living."[24] The 1917 Act altered the ground of exclusion slightly to cover "paupers; professional beggars; vagrants" and "persons likely to become a public charge," while repeating the provision against those with a mental or physical defect.[25]

This public charge language remained unchanged for the next 35 years until the 1952 Act, which became the modern codification of immigration and naturalization law. For the first time, admissibility expanded to include not only those applying for an immigrant visa from abroad, but also those admitted as nonimmigrants who wished to adjust their status to legal permanent resident (LPR) within the United States. It also formalized the numerous nonimmigrant categories for those entering the United States on a temporary basis to visit, work, or study. The public charge provision included three potential groups: (1) those with a physical "defect, disease, or disability" that would "affect the ability of the alien to earn a living"; (2) those who are "paupers, professional beggars, or vagrants"; and (3) those "who, in the opinion of the consular officer at the time of application for a visa, or in the opinion of the Attorney General at the time of application for admission, are likely at any time to become public charges."[26] It is the language in this third section that has survived, almost verbatim, into current law, while the first two sections were subsequently deleted.

In 1953, a presidential commission expressed its concern over a lack of uniformity with State Department findings regarding public charge and "recommends that the immigration law provide that no alien should be deemed likely to become a public charge who (1) has a firm assurance of employment in the United States, and (2) has assurances furnished on his behalf by a responsible individual or organization in the United States that the alien will not become a burden on the community."[27] Thereafter, the State Department, and later the INS, began asking immigrant visa applicants to submit a job offer from an employer in the United States and an affidavit of support, Form I-134, from a family member. Those affidavits were found to be legally unenforceable by several state courts,[28] thus motivating Congress in 1996 to mandate the creation of one that would be binding. In 1986, Congress passed the Immigration Reform and Control Act, which made it illegal for employers to hire workers who were not either citizens or authorized to work.

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[22] *Annual Reports of the Commissioners of Emigration of the State of New York: From the Organization of Commission, May 5, 1847, to 1860, Inclusive* (New York: John F. Trow, 1861).
[23] Act of March 3, 1903, 32 Stat. 1213.
[24] Act of February 20, 1907, 34 Stat. 898.
[25] Act of February 5, 1917, 39 Stat. 874.
[26] The Immigration and Nationality Act of 1952, Pub.L. 82–414, 66 Stat. 163, sections 212(a)(7), (8), and (15).
[27] "Whom We Shall Welcome: Report of the President's Commission on Immigration and Naturalization" (1953), at pp. 190-91, available at https://hdl.handle.net/2027/mdp.39015004969005.
[28] *San Diego County v. Viloria*, 276 Cal. App. 2d 350, 80 Cal. Rptr 869 (Cal. App. 1969); *Michigan ex rel. Attorney General v. Binder*, 356 Mich. 73, 96 N.W. 2d 140 (Mich. 1959); *California Dept. Mental Hygiene v. Renel*, 10 Misc.2d 402, 173 N.Y.S. 2d 231 (N.Y. App. Div. 1958).

The 1996 immigration law significantly tightened the public charge ground of inadmissibility affecting all family-based visa applicants and some employment-based applicants.[29] The law imposed four requirements:

- The petitioner in all family-based immigrant visa petitions must submit an affidavit of support on Form I-864 or I-864EZ
- The definition of a sponsor excludes anyone who is not a U.S. citizen, U.S. national, or lawful permanent resident (LPR), at least 18 years of age, and domiciled in the United States or a U.S. territory or possession[30]
- The sponsor must evidence "the means to maintain an annual income equal to at least 125 percent of the Federal poverty line,"[31] and
- The sponsor must agree to "provide support to maintain the sponsored alien at an annual income that is not less than 125 percent of the Federal poverty income line," reimburse any federal or state agency that provides a means-tested benefit to the sponsored alien, agree "to submit to the jurisdiction of any Federal or State court" for enforcement of the affidavit, and inform the U.S. Citizenship and Immigration Services (USCIS) of any change of address.[32]

While anti-Irish nativism reached its peak in the mid-1800s, as evidenced by the Know-Nothing party and sporadic outbreaks of mob violence, the legislation that emerged from Massachusetts and New York at that time continued to expand for decades before it evolved into the statutory language at issue with this proposed federal rule change. Today's targets, of course, are not the Irish Catholics but rather a wider swath of the world's population who come from less developed countries, possess only modest skills and education, lack English proficiency or a formal credit rating, and seek only entry-level or manual labor positions in the economy. Catholic Church teachings opposed religious discrimination when the church itself was targeted, and it still opposes discrimination against those from developing nations as it conflicts with the Church's support for the dignity of the human person.

As explained in these comments, what is being proposed by this regulation is a dramatic shift in purpose from its origins almost 300 years ago—from excluding the destitute, the famine-stricken, and those permanently relegated to almshouses—to a potential banning of those who simply lack formal educational degrees and whose income falls below the federal "affluence" level.[33] What remains imbedded in this history is a deep-rooted prejudice against those who comprise a certain racial, ethnic, or social underclass; what stands out now, however, is a demonstrated desire by this administration to reduce immigration levels from any countries that are not affluent.

III. DHS's Proposal Oversteps the Boundaries of Regulation, Taking a Legislative Posture

In the NPRM, the DHS justifies its change to the definition of public charge from "dependence" on three cash-assistance programs to "receipt" of any of eight cash and non-cash programs as "consistent with

[29] Sec. 551 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104-208, 110 Stat. 3009, codified in INA §§ 212(a)(4), 213A.
[30] INA § 213A(f)(1).
[31] INA § 213A(f)(1)(E).
[32] INA § 213A(a)(1).
[33] See www.financialsamurai.com/what-is-considered-mass-affluent-definition-based-off-income-net-worth-investable-assets/ ("To be considered affluent by income, one must make at least 50% more than the median per capita GDP of your surrounding area. If you consider your surrounding area all of America, than you must earn at least $67,000 a year individually since the per capita GDP in America is currently around $45,000.").

legislative history, case law, and the ordinary meaning of public charge."[34] In fact, the agency's proposed definition is at direct odds with all of them. First, legislative history, as explained above, evidences a very narrow definition of public charge, rather than the broad one proposed. Second, the ordinary meaning of the term of "public charge" follows the dictionary definition, which is "a person or thing committed or entrusted to the care, custody, management, or support of another."[35] In other words, someone who receives a non-cash benefit intended to supplement their health or nutrition would not be understood to be "entrusted to the care" of the government. Indeed, an analysis of the history of the term for a prior proposed public charge regulation found that "[t]his primary dependence model of public assistance was the backdrop against which the "public charge" concept in immigration law developed in the late 1800s."[36] Third, case law has consistently applied a restrained approach and confined its application to those who are primarily dependent on the government for survival.

The "long-standing legal presumption," as interpreted by the State Department in 1998, has been that "an able-bodied, employable individual will be able to work upon arrival in the U.S." and therefore that person is not likely to become a public charge.[37] The 1996 statutory change adding the affidavit of support requirement did not change that presumption.[38] The State Department interpretation encapsulates a significant body of judicial and administrative case law. The following is a brief summary of the more significant administrative cases interpreting the public charge ground of inadmissibility:

- *Matter of T—*,[39] where the BIA sustained the appeal of a mother and child who had been excluded on public charge grounds after their husband/father was excluded for having committed a crime involving moral turpitude. The mother and son sought permanent residence in the United States independent of the father, but were denied. In reversing this denial, the BIA noted that the mother was "quite capable of earning her own livelihood independent of her husband," and the child had training in a field that represented "a wide field of employment for this country."[40]

- *Matter of Martinez-Lopez*,[41] where the Attorney General held that "[some] specific circumstances, such as mental or physical disability, advanced age, or other facts reasonably tending to show that the burden of supporting the alien is likely to be cast on the public, must be present. A healthy person in the prime of life cannot ordinarily be considered likely to become a public charge, especially where he has friends or relatives in the United States who have indicated their ability and willingness to come to his assistance in case of emergency."[42]

- *Matter of Harutunian,*[43] where the BIA reaffirmed a "totality of the circumstances" test for grounds of inadmissibility, which included age, health, educational level, financial status, and family assets and support. This was consistent with the long-standing approach that considered an alien's economic circumstances, as well as physical and mental conditions. Applying this test, the BIA found that immigration officials had properly determined that the applicant was ineligible for

[34] NPRM at 51157.
[35] Webster's Third New Int'l Dictionary of the English Language 377 (1986).
[36] *Inadmissibility and Deportability on Public Charge Grounds*, 64 Fed. Reg. 28,676 (May 26, 1999).
[37] Department of State, "I-864 Affidavit of Support: Update No. 14 – Commitment to Provide Assistance," UNCLAS STATE 102426 (June 1998).
[38] *Id.* ("Moreover, the new AOS requirements have not changed the long-standing legal presumption…").
[39] 3 I&N Dec. 641 (BIA 1949).
[40] *Id*. at 644.
[41] 10 I&N Dec. 409 (AG 1964).
[42] *Id*. at 421-22.
[43] 14 I&N Dec. 583 (BIA 1974).

adjustment of status on public charge grounds. She was aged (70 years old), unskilled, uneducated, without family or other support, and had been on welfare since her arrival in the United States.

- *Matter of Vindman,*[44] where the BIA examined "everything in the statutes, the legislative comments, and prior decisions" and found that they "point to one conclusion, that Congress intends that an applicant for a visa be excluded who is without sufficient funds to support himself, who has no one under any obligation to support him, and whose chances of becoming self-supporting decrease as time passes."[45] Applying this test, the Board found that the couple had properly been found excludable for public charge given their age (66 and 54 years old), their unemployment and lack of employment prospects, their dependence on Federal and state cash assistance programs for the last three years, and the absence of any family member who could contribute to their support.

- *Matter of A—*,[46] where the BIA sustained an alien's appeal of a decision finding her ineligible for adjustment of status on public charge grounds. The INS district director had determined that the alien was ineligible because the alien's family had received "public cash assistance" for nearly four years, and neither the alien nor her spouse had worked for four years prior to filing the application for adjustment of status. The district director thus viewed the alien as "unable to support herself and her family without public assistance."[47] The Board, however, disagreed, noting that the alien was "young" and had no "physical or mental defect which might affect her earning capacity." It also noted that the alien had recently begun working, and that during the time when she was absent from the workforce, she had been caring for her children.

Memoranda from the Department of State and INS interpreting the statutory changes following the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA")[48] and the implementation of the new affidavit of support requirements are also illustrative. The following convey the agencies' analysis and application of the public charge ground shortly after passage of IIRIRA:

- "In most cases, the public charge requirements will be satisfied by the submission of a verifiable Affidavit of Support that meets the 125 percent minimum income requirement…A finding of ineligibility in cases where the 125 percent minimum has been met must be well-documented and demonstrate a clear basis for the determination that the applicant is likely to become a public charge."[49]

- "If there is a sufficient Affidavit of Support and the applicant appears to be able to support him/herself and dependents, a public charge finding may not be appropriate notwithstanding the petitioner's reliance on public assistance."[50]

- "It is important to note that public charge provisions are generally forward looking and findings of ineligibility should be based on the likelihood of the applicant becoming a public charge…There is

[44] 16 I&N Dec. 131 (BIA 1977).
[45] *Id.* at 132.
[46] 19 I&N Dec. 867 (BIA 1988).
[47] *Id.*
[48] The Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Division C of Pub. L. 104–208, 110 Stat. 3009-546, enacted September 30, 1996.
[49] Department of State, "I-864 Affidavit of Support Update No. One – Public Charge Issues," UNCLAS STATE 228862 (Dec. 1997).
[50] *Id.*

> no ground of ineligibility based solely on the prior receipt of public benefits…Thus in most cases, prior receipt of benefits, by itself, should not lead to an automatic finding of ineligibility. Prior receipt of public benefits is a factor which may be considered in making public charge determinations, along with evidence of the applicant's current financial situation and the sponsor's ability to provide support."[51]

- "Consular officers must base their determination of the likelihood that the applicant will become a public charge on a reasonable future projection of the alien's present circumstances. Consular officers should point to circumstances which make it not merely possible, but likely that the applicant will become a public charge, as defined in N.1, above. Consular officers must not, however, refuse a visa by asking 'What if' type questions, e.g., 'What if the applicant loses the job before reaching the intended destination', or 'What if the applicant is faced with a medical emergency.' Instead consular officers must assess only the 'totality of the circumstances' existing at the time of visa application."[52]

- "Except for the new requirements concerning the enforceable affidavit of support, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) has not altered the standards used to determine the likelihood of an alien to become a public charge nor has it significantly changed the criteria to be considered in determining such a likelihood. The law remains that all aliens seeking admission are inadmissible, and themselves subject to removal under the provisions of section 212(a)(4), if they are likely at any time to become public charges."[53]

In 1999, the Immigration and Naturalization Service (INS) published in the Federal Register a Notice of Proposed Rulemaking that defined the public charge ground of inadmissibility.[54] INS determined that the rule was necessary to reduce public confusion about the meaning of public charge and noted that it had been contacted by "many State and local officials, Members of Congress, immigrant assistance organizations, and health care providers who are unable to give reliable guidance to their constituents and clients on this issue."[55] As the INS explained:

> Although Congress has determined that certain aliens remain eligible for some forms of medical, nutrition, and child care services, and other public assistance, numerous legal immigrants and other aliens are choosing not to apply for these benefits because they fear the negative immigration consequences of potentially being deemed a "public charge." This tension between the immigration and welfare laws is exacerbated by the fact that "public charge" has never been defined in statute or regulation. Without a clear definition of the term, aliens have no way of knowing which benefits they may safely access without risking deportation or inadmissibility.[56]

INS stressed that when aliens are deterred or prevented from using a wide array of public benefits, local communities bear the costs. It explained:

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[51] *Id.*
[52] Department of State, "INA 212(A)(4) Public Charge: Policy Guidance," REF: 9 FAM 40.41 (May 1999).
[53] Immigration and Naturalization Service, Office of Programs, "Public Charge: INA Sections 212(a)(4) and 237(a)(5) – Duration of Departure for LPRs and Repayment of Public Benefits" (Dec. 16, 1997).
[54] Inadmissibility and Deportability on Public Charge Grounds, 64 Fed. Reg. 28,676 (May 26, 1999).
[55] *Id.*
[56] *Id.*

> According to Federal and State benefit-granting agencies, this growing confusion is creating significant, negative public health consequences across the country. This situation is becoming particularly acute with respect to the provision of emergency and other medical assistance, children's immunizations, and basic nutrition programs, as well as the treatment of communicable diseases. Immigrants' fears of obtaining these necessary medical and other benefits are not only causing them considerable harm, but are also jeopardizing the general public. For example, infectious diseases may spread as the numbers of immigrants who decline immunization services increase. Concern over the public charge issue is further preventing aliens from applying for available supplemental benefits, such as child care and transportation vouchers, that are designed to aid individuals in gaining and maintaining employment.[57]

Rulemaking was necessary because, "[i]n short, the absence of a clear public charge definition is undermining the Government's policies of increasing access to health care and helping people to become self-sufficient."[58] INS proposed to define "public charge" to mean an individual "who is likely to become … primarily dependent on the Government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance or institutionalization for long-term care at Government expense."[59]

This definition was consistent with the advice provided by federal benefit-granting agencies, including the Department of Health and Human Services, the Department of Agriculture, and the Social Security Administration. Each concurred that "receipt of cash assistance for income maintenance is the best evidence of primary dependence on the Government" because "non-cash benefits generally provide supplementary support … to low-income working families to sustain and improve their ability to remain self-sufficient."[60]

In addition to publishing the proposed rule, INS also published its Field Guidance on the public charge issue, "which both summarize[d] longstanding law with respect to public charge and provide[d] new guidance on public charge determinations."[61]

The Field Guidance was published alongside the 1999 proposed rule to "help alleviate public confusion over the meaning of the term 'public charge' in immigration law and its relationship to the receipt of Federal, State, and local public benefits" and to "provide aliens with better guidance as to the types of public benefits that will and will not be considered in public charge determinations."[62] In promulgating the Field Guidance, INS intended to adopt its definition of public charge "immediately, while allowing the public an opportunity to comment on the proposed rule."[63]

To that end, the Field Guidance adopted the same definition of public charge stated in the proposed rule. Specifically, INS defined a "public charge" as "an alien who has become … or is likely to become primarily dependent on the government for subsistence, as demonstrated by either (i) the receipt of public cash assistance for income maintenance or (ii) institutionalization for long-term care at government expense."[64]

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[57] *Id.* at 28,676-77.
[58] *Id.*
[59] *Id.* at 28,677.
[60] *Id.*
[61] Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, 64 Fed. Reg. 28,689 (May 26, 1999).
[62] *Id.*
[63] *Id.*
[64] 64 Fed. Reg. at 28,681.

In publishing the 1999 proposed rule and the Field Guidance, INS expressly took "into account the law and public policy decisions concerning alien eligibility for public benefits and public health considerations, as well as past practice by the Service and the Department of State."[65] Moreover, INS specifically acknowledged that its definition of public charge conformed to the policy "codif[ied] … in the Foreign Affairs Manual," and described it as "taking a similar approach."[66] Once again, INS defended its parallel interpretations as adopting "uniform standards."[67]

INS also clarified that "[i]t has never been Service policy that any receipt of services or benefits paid for in whole or in part from public funds renders an alien a public charge, or indicates that the alien is likely to become a public charge."[68] Instead, INS stressed that "[t]he nature of the public program must be considered."[69] "For instance, attending public schools, taking advantage of school lunch or other supplemental nutrition programs, or receiving emergency medical care would not make an alien inadmissible as a public charge, despite the use of public funds."[70]

INS gave four reasons for deciding to adopt the definition of public charge in both the 1999 proposed rule and the Field Guidance. First, INS noted that "confusion about the relationship between the receipt of public benefits and the concept of 'public charge'" had "deterred eligible aliens and their families, including U.S. citizen children, from seeking important health and nutrition benefits that they are legally entitled to receive."[71] As INS explained, this "reluctance to access benefits has an adverse impact not just on the potential recipients, but on public health and the general welfare."[72]

Second, INS observed that non-cash benefits "are by their nature supplemental and do not, alone or in combination, provide sufficient resources to support an individual or family."[73] Thus, by focusing only on cash assistance for income maintenance, the Service could "identify those who are primarily dependent on the government for subsistence without inhibiting access to non-cash benefits that serve important public interests."[74]

Third, INS acknowledged that "federal, state, and local benefits are increasingly being made available to families with incomes far above the poverty level, reflecting broad public policy decisions about improving general public health and nutrition, promoting education, and assisting working-poor families in the process of becoming self-sufficient."[75] INS therefore concluded that "participation in such non-cash programs is not evidence of poverty or dependence."[76]

Fourth, INS concluded that in light of the "complex" rules governing eligibility for federal, state, and local public benefits, "INS Officers are not expected to know the substantive eligibility rules for different public benefit programs."[77] Limiting the types of programs considered for public charge purposes would therefore

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[65] 64 Fed. Reg. at 28,692.
[66] *Id.*
[67] *Id.*
[68] *Id.*
[69] *Id.*
[70] *Id.*
[71] *Id.*
[72] *Id.*
[73] *Id.*
[74] *Id.*
[75] *Id.*
[76] *Id.*
[77] *Id.*

produce "simpler and more uniform" public charge determinations, "while simultaneously providing greater predictability to the public."[78]

INS did not anticipate that adopting the 1999 definition of "public charge" would "substantially change the number of aliens who will be found deportable or inadmissible as public charges" primarily because "under the stricter eligibility rules of the welfare reform laws, many legal aliens are no longer eligible to receive certain types of public benefits."[79]

INS instructed officers to "not place any weight on the receipt of non-cash public benefits (other than institutionalization) or the receipt of cash benefits for purposes other than for income maintenance with respect to determinations of admissibility or eligibility for adjustment on public charge grounds."[80]

INS then provided a non-exclusive list of non-cash benefit programs and stated clearly that "past, current, or future receipt of these benefits should not be considered in determining whether an alien is or is likely to become a public charge."[81] That list included Medicaid, food stamps (SNAP), and housing benefits, which the NPRM proposes adding to the totality of the circumstances test.

As for the affidavit of support, INS acknowledged that the Form I-864 "asks whether the sponsor or a member of the sponsor's household has received means-tested benefits within the past 3 years."[82] However, INS clarified that "[t]he purpose of this question is not to determine whether the sponsor is or is likely to become a public charge, but to ensure that the adjudicating officer has access to all facts that may be relevant in determining whether the 125-percent annual income test is met."[83] INS therefore specified that "[a]ny cash benefits received by the sponsor cannot be counted toward meeting the 125-percent income threshold," but that the "receipt of other means-tested benefits, such as Medicaid, is not disqualifying for sponsorship purposes."[84]

As demonstrated above, the current implementation of public charge policy applies to those who are likely to primarily rely on the government for survival, intentionally excluding from consideration lesser amounts and non-cash benefits, which maintain public health and wellbeing, and assist people to maintain self-sufficiency. This current policy is supported by legislative history, case law, and the ordinary definitions of the terms in question.

IV. Inclusion of Non-Cash Programs Would Harm Immigrants, Families, and the Public

Over the last several decades, Department of Health and Human Services, the Department of Agriculture, and the Social Security Administration have concluded that the past, current, or anticipated future receipt of non-cash benefits, such as the Supplemental Nutrition Assistance Program ("SNAP," previously referred to as "food stamps") and Medicaid, by an intending immigrant or a member of his or her household, should not be considered for purposes of the public charge determination. They reasoned that such an approach helps to bolster overall public health, nutrition, and economic growth.

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[78] *Id.*
[79] *Id.*
[80] *Id.* at 28,693.
[81] *Id.*
[82] *Id.*
[83] *Id.*
[84] *Id.*

The NPRM proposes the addition of six non-cash benefits that it would consider as part totality of the circumstances test, either received by the applicant or likely to be received in the future: nonemergency Medicaid, Premium and Cost Sharing Subsidies for Medicare Part D, SNAP, Section 8 Housing Assistance and Project-Based Rental Assistance, and Subsidized Public Housing.

CLINIC opposes the addition of these programs for the following reasons:

- The inclusion of Medicaid would jeopardize the health care safety net and undermine nation's public health and patient access to care.

- The inclusion of three housing programs—Section 8 Housing Choice Vouchers, Section 8 Project Based Rental Assistance and Public Housing—would exacerbate an already critical problem in this country. Lack of access to affordable housing is one of the main barriers to economic stability. Access to affordable housing provides stability for families, including mixed-status families with U.S. citizen children who will achieve more and grow up healthier with housing security. It also increases self-sufficiency by facilitating residency near areas with more employment opportunities.

- The inclusion of SNAP would reverse a 20-year-old interpretation of public charge that specifically excluded this program as part of the totality of the circumstances analysis. The reasoning was sound at the time and should not be overturned now. In addition to harming low-income children and other family members, it would hurt local retailers. For instance, in 2017, more than $22.4 million in SNAP benefits were spent at farmers markets. Many small farmers, farm workers, and their families are beneficiaries of SNAP, meaning they would be hit doubly hard.

As a Catholic organization, we reject the social disdain expressed by this proposed regulation that would force families to reject aid during difficult times, or else lose the inclusion, integration, and opportunities that come with improved immigration status. We are called to welcome the stranger, but this regulation would withhold that welcome from those who are not affluent.

V. DHS's Proposal is Precluded by Existing Legislative Provisions

The driving force behind the DHS's proposed regulation appears to be based on a concern that the measures put in place by Congress to implement its statutes on immigrants' eligibility for benefits and the financial responsibility of sponsors are not being properly enforced. These concerns include enforcement of sponsor-to-alien deeming, sponsor reimbursement obligations, and LPRs' access to public benefits not restricted by statute.

Rather than addressing these specific concerns through stepped-up enforcement of existing laws or legislative efforts to further restrict LPRs' access to public benefits, DHS seeks to re-define public charge in a way that would make it more difficult for applicants who are not affluent to ever become LPRs. In short, the agency's action does not address its claimed concerns, but instead has the effect of disproportionately reducing immigration from less developed countries. Or, in other words, it is proceeding as if the most efficient and effective way of reducing low-income immigrants' potential access to cash and non-cash programs is to simply bar them from ever becoming LPRs.

In addition to the above concerns, the NPRM also suggests that under the current public charge policy the Affidavit of Support is accorded too much weight, and should be considered just one of the factors to be

considered in the totality of the circumstances, not even a heavily-weighed positive factor.[85] There are excellent reasons why the affidavit of support has been given "great weight" in determining public charge inadmissibility and why "in many cases, the affidavit will be enough to issue a visa."[86] By executing Form I-864, the sponsor agrees to provide the financial support necessary to maintain the sponsored immigrant at an income that is at least 125 percent of the Federal poverty line, unless the contract has terminated. The sponsor also agrees to reimburse any agencies that provide means-tested public benefits to a sponsored immigrant. Should the sponsored immigrant obtain any means-tested public benefit, with certain exceptions, the agency that provides the means-tested public benefit may, after first making a written request for reimbursement, sue the sponsor in Federal or State court to recover the unreimbursed costs of the means-tested public benefit, including costs of collection and legal fees. This is why the State Department issued the following statement in a cable to all diplomatic and consular posts six months after the affidavit of support was implemented:

> Department notes that for several reasons a properly filed, non-fraudulent I-864 shall normally be considered sufficient to overcome the 212(a)(4) requirements. The I-864 is a legally enforceable contract, and therefore shall be granted significantly more evidentiary weight than the previous [Form I-134] affidavit of support…The presumption that the applicant will find work coupled with the fact that the I-864 is a legally enforceable contract will provide in most cases a sufficient basis to accept a sponsor's or a joint sponsor's technically sufficient [affidavit of support] as overcoming the public charge ground.[87]

Undocumented immigrants residing in the United States are ineligible for federal or state cash benefits. They are also ineligible for non-cash benefits, except in limited circumstances, such as emergency Medicaid or the Special Supplemental Program for Women, Infants, and Children (WIC). After the applicant for adjustment of status or an immigrant visa obtains LPR status, he or she remains barred from means-tested federal or state benefits for a five-year period, except in those states that have elected to provide eligibility with their state funding. If the LPR applies for these benefits, the sponsor's income will be deemed to him or her, which usually renders the applicant financially ineligible. This sponsor-to-alien deeming lasts for as long as the affidavit of support is in effect. These preclusions and requirements are set forth in the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996,[88] and in IIRIRA. This explains the INS concluding that:

> "First, under the stricter eligibility rules of the welfare reform laws, many legal aliens are no longer eligible to receive certain types of public benefits, so they run no risk of becoming public charges by virtue of receiving such benefits. Many of those who remain eligible for federal, state, and local public benefits are LPRs, refugees, and asylees, who are unlikely to face public charges screening in any case in light of the section 101(a)(13)C) and the statutory exceptions."[89]

There is a very large body of research and guidance demonstrating the long-term understanding that LPRs have been rendered ineligible for practically any of the benefits that would subject them to risk of becoming

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[85] NPRM at 51177-51178; 51197-51198.
[86] "I-864 Affidavit of Support: Update No. 14 – Commitment to Provide Assistance, UNCLAS STATE 102426 (June 1998).
[87] *Id*.
[88] P.L. 104-193, title IV, §§ 401-435, 110 Stat. 2261-2276 (Aug. 22, 1996) (generally codified, as amended, in 8 USC §§ 1601-1646).
[89] Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, 64 Fed. Reg. 28689, 28692 (May 26, 1999).

a public charge through direct preclusion or through deeming. And further, when Congress made affidavits of support legally enforceable, they were intentionally bestowed with the power to ensure that if applicants fall on hard times, they would be legally dependent on their sponsors rather than the government.

VI. DHS' Proposal to Deemphasize Affidavits of Support Would Not Achieve the Goal of Immigrant Self-Sufficiency

As mentioned in the previous section, a central premise of the agency's proposed regulation is that the USCIS has not placed enough weight on the five statutory factors set out in INA § 212(a)(4)(B) and has instead put too much emphasis on the affidavit of support.[90] But the agency historically has had the power to examine—and in fact has examined—multiple factors in determining the likelihood that an adjustment of status applicant would become a public charge. The 1996 statutory change merely codified the agency's prior policy and practice. The NPRM is not an attempt to flesh out and clarify these factors, but rather to impose additional requirements not intended by Congress. It is akin to DHS attempting to adopt a point system—giving certain weight to various factors—such as that used in Canada and other countries when evaluating eligibility to immigrate. Such a point system has so far been rejected by Congress.

The five factors that were added to the statute in 1996 were not new at that time and did not need to be explained or described more than they have been. They were lifted directly from prior INS instructions and the State Department Foreign Affairs Manual (FAM). For example, the State Department FAM in 1991 enumerated the "Factors in Reviewing Public Charge Requirements."[91] They were listed as the applicant's: age[92]; health[93]; education[94]; family status[95]; financial resources[96]; and personal income.[97] In other words, when Congress in 1996 enacted INA § 212(a)(4)(B), Factors to be Taken into Account, it was simply repeating in statutory format what was already current practice. When it crafted the five statutory factors, it kept the words "age," "health," and "education" from the FAM; it added the words "and skills" to "education"; and it combined "financial resources" and "personal income" into "assets, resources, and financial status."

After INS and the State Department implemented INA § 213A, which required the applicant to submit a legally-enforceable affidavit of support, it continued to consider the five factors set forth in 212(a)(4)(B). The affidavit of support was simply an additional requirement, albeit a mandatory one.

The Department of State summarized its final regulation implementing the 1996 statutory change in the following way: "The rule makes clear that although Form I-864 is a necessary part of certain immigrant visa applications, it is not, in and of itself, wholly adequate to find that an applicant satisfies the public charge requirements. It is a threshold requirement necessary to begin public charge considerations, but it is not an end."[98] The addition of the five statutory factors appeared to add more complexity to the public charge

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[90] "Although INS issued a proposed rule and Interim Field Guidance in 1999, neither the proposed rule nor the Interim Field Guidance sufficiently described the mandatory factors or explained how to weigh these factors in the public charge inadmissibility determination." NPRM at 51123.
[91] 9 FAM 40.41 Notes N2.1 (8/26/91).
[92] 9 FAM 40.41 Notes N2.2 (8/30/87).
[93] 9 FAM 40.41 Notes N2.3 (8/30/87).
[94] 9 FAM 40.41 Notes N2.4 (8/30/87).
[95] 9 FAM 40.41 Notes N2.5 (8/30/87).
[96] 9 FAM 40.41 Notes N3 (8/30/87).
[97] 9 FAM 40.41 Notes N3.4 (8/26/91).
[98] 64 Fed. Reg. 50752 (September 20, 1999) (finalizing 22 CFR Part 40).

determination, but in reality they added "no change in this respect … since public charge determinations historically have contemplated numerous factors."[99]

The State Department guidance pre-IIRIRA confirms that the agency had been employing these statutory factors when weighing potential public charge inadmissibility. The pre-IIRIRA FAM included the following interpretation of what became the five statutory factors:

- "The age of the applicant should be taken into consideration. If the applicant is under the age of 16, the support of a sponsor will be needed. On the other hand, if the applicant is 16 years or older, any skills employable in the United States should be considered."[100]

- "The determination made by the panel physician regarding the applicant's health should also be considered, especially if there is a prognosis that might prevent or ultimately hinder the applicant from maintaining employment successfully."[101]

- A review of the education or work experience of the applicant should be made to determine if these are compatible with the duties of the job offer. The applicant's skills, length of employment, and frequency of job changes should also be considered. In instances in which a job offer is not involved, the above factors are relevant to assessing the likelihood of the alien's ability to become self-sufficient, if necessary, within a reasonable time after entry into the United States."[102]

- "Marital status and the number of dependents for whom the applicant would have financial responsibility should also be taken into consideration."[103]

- "An alien who is relying solely on personal financial resources for support after admission into the United States may establish the adequacy of such resources by submitting evidence of bank deposits, ownership of property or real estate, ownership of stocks and bonds, insurance policies, or income from business investments."[104]

- "An alien relying solely on personal income for support of self and dependent family members after admission should be presumed ineligible for an immigrant visa under 212(a)(4) unless such income, including that to be derived from prearranged employment, will equal or exceed the poverty income guideline level for the alien's family size. The consular officer should refer to the most recent poverty income guideline table published by the Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services. When considering this factor for the purpose of evaluating the prospective income against the poverty income guideline levels, consideration should be given to any other considerations which indicate or suggest that the applicant will probably become a public charge. Normally all accompanying dependent family members and other dependent family members already in the United States are considered to be within the family unit for purposes of applying the poverty income guidelines. However, an applicant seeking to join a lawfully admitted permanent resident and two citizen children in the United States who are

[99] *Id.*
[100] 9 FAM 40.41 N2.2 (1993).
[101] 9 FAM 40.41 N2.3 (1993).
[102] 9 FAM 40.41 N2.4 (1993).
[103] 9 FAM 40.41 N2.5 (1993).
[104] 9 FAM 40.41 N3 (1993).

> receiving public assistance may be determined eligible under the public charge provision even though the applicant's prospective income will be below that shown in the poverty income guideline table for a family of four if the applicant's prospective income will exceed that shown on the poverty income guideline for a single person. There would be no question about the applicant's personal eligibility with respect to INA 212(a)(4) in such a situation. It is also quite possible that the admission of the alien and the alien's income in the United States may permit the lowering of the public assistance benefits the family now receives."[105]

The FAM had to be updated after IIRIRA imposed the legally enforceable affidavit of support and outlawed the hiring of immigrants who were not work authorized. For example, the focus necessarily shifted away from the intending immigrant's future employability and onto the sponsor and his/her ability to maintain the immigrant at 125 percent of poverty. In addition, employers were no longer willing to sign job offers, and the agency made their submission optional. Nevertheless, the FAM from at least 2003 up until January 3, 2018[106] included the following interpretation of what became the five statutory factors:

> "When considering the likelihood of an applicant becoming a 'public charge,' consular officers must take into account, at a minimum, the five factors specified in INA 212(a)(4)(B [see 9 FAM 40.41 N4] (in addition to any required affidavit of support), in order to base the determination on the totality of the alien's circumstances at the time of the visa application."[107]

> "In making a determination whether an applicant is inadmissible under INA 212(a)(4)(B), a consular officer must consider, at a minimum the alien's: (1) Age; (2) Health; (3) Family status; (4) Assets; (5) financial status and resources; and (6) Education or skills. These factors, and any other factors thought relevant by a consular officer in a specific case, will make up the "totality of the circumstances" that the officer must consider when making a public charge determination. As noted in 9 FAM 40.41 N3.2, a properly filed, non-fraudulent Form I-864, Affidavit of Support Under Section 213A of the Act, in those cases where it is required, should normally be considered sufficient to meet the INA 212(a)(4) requirements and satisfy the "totality of the circumstances" analysis. Nevertheless, the factors cited in 9 FAM N4 above could be given consideration in an unusual case in which a Form I-864 has been submitted and should be considered in non Form I-864 cases."[108]

The agency defined the "health" factor as follows:

> "Consular officers must take into consideration the panel physician's report regarding the applicant's health, especially if there is a prognosis that might prevent or ultimately hinder the applicant from maintaining employment successfully."[109]

The agency defined the "family status" factor as follows:

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[105] 9 FAM 40.41 N3.4 (1993).
[106] On January 3, 2018, the State Department, with no opportunity for public notice and comment, changed its agency's interpretation of the public charge ground of inadmissibility to mirror many of the DHS's proposed changes in the NPRM.
[107] 9 FAM 40.41 N2(b) (2017).
[108] 9 FAM 40.41 N4(a)-(b) (2017).
[109] 9 FAM 40.41 N4.2 (2017).

> "Consular officers should consider the marital status of the applicant and, if married, the number of dependents for whom he or she would have financial responsibility."[110]

The agency defined the "age" factor as follows:

> **"**Consular officers should consider the age of the applicant. If the applicant is under the age of 16, he or she will need the support of a sponsor. If the applicant is 16 years of age or older, consular officers should consider what skills the applicant has to make him or her employable in the United States."[111]

The agency defined the "education and work experience" factor as follows:

> "Consular officers should review the applicant's job offer (if any). Consular officers should consider the applicant's skills, length of employment, and frequency of job changes. Even if a job offer is not required, consular officers should assess the likelihood of the alien's ability to become or remain self-sufficient, if necessary, within a reasonable time after entry into the United States"[112]

The agency defined the "financial resources" factor when an I-864 is required as follows:

> "An alien who must have Form I-864, Affidavit of Support Under Section 213(A) of the Act, will generally not need to have extensive personal resources available unless considerations of health, age, skills, etc., suggest the likelihood of his or her ever becoming self-supporting is marginal at best. In such cases, of course, the degree of support that the alien will be able and likely to provide becomes more important than in the average case."[113]

VII. Specific Comments Regarding Proposed Definitions of the Five Statutory Factors

CLINIC opposes the DHS's proposed prioritization of the five statutory factors over the affidavit of support for the above reasons. The focus should remain on the sponsor and the ability of that person to maintain the intending immigrant at 125 percent of poverty. It should maintain the policy of prioritizing this legally-binding contract and should look at the five factors only in "unusual cases." [114] CLINIC provides the following specific comments regarding each of the proposed definition of the five factors.

a. Age

The NPRM states that applicants under 18 are "more likely to qualify for and receive public benefits"[115] and their age is therefore "a negative factor," "unless [the applicants is] working or has adequate means of support."[116] As support, DHS cites the U.S. Census Bureau that indicated that "18 percent of persons under the age of 18" lived below the poverty line and that "persons under the age of 18 were more likely to receive means-tested benefits than all other age groups."[117]

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[110] 9 FAM 40.41 N4.3 (2017).
[111] 9 FAM 40.41 N4.4 (2017).
[112] 9 FAM 40.41 N4.5 (2017).
[113] 9 FAM 40.41 N4.6 (2017).
[114] 9 FAM 40.41 N4(a)-(b) (2017).
[115] NPRM at 51180.
[116] NPRM at 51180.
[117] NPRM at 51180.

CLINIC objects to this reasoning. First, the percentage of children under 18 who live in poverty has no meaning unless it is compared directly to other age groups. Is 18 percent high or low, for example, when compared with those between the ages of 18 and 36? Or is it within the normal expected range? Second, there is no breakdown for citizens and LPRs under the age of 18 who live in poverty. If the U.S. Census Bureau had indicated, for example, that LPR children are more likely to live in poverty than U.S. citizen children, then the statistic might have some meaning. Third the U.S. Census Bureau reports are not measuring the percentage of non-citizens under the age of 18 versus their citizen counterparts' receipt of means-tested programs. DHS is ignoring the fact that most LPRs are disqualified from receiving means-tested benefits for at least the first five years after immigrating. So to say that children under 18 are more likely to receive benefits doesn't speak to the likelihood of LPR children's receiving benefits; the question is not whether all children are likely to receive benefits, but rather whether children applying for LPR status will. Finally, it is axiomatic that children in their first years of life are more vulnerable and thus prone to qualify for means-tested benefits, such as SNAP and health care. But that has no applicability to a 15-year-old's likelihood of qualifying for benefits after immigrating. The DHS cites no authority for its assertion that applicants who obtain LPR status are more likely to become public charges simply due to their being under 18 years of age at the time of application.

For decades, the State Department has used the age of 16 as the cut-off for when the child be able to show employable job skills. With this NPRM, the agency is unilaterally raising the age to 18, without providing any justification to the change.

Similarly, the age of applicants 61 years and over is presumed to be "a negative factor," unless the applicants is "working or has adequate means of support."[118] The DHS provides the following justification: "11.8% of noncitizens age 62 and older received SSI, TANF, or state GA in 2013 compared with 4.5% of USCs."[119] Yet this figure of noncitizen participation in federal benefit programs does not distinguish between those who are refugees and asylees and those who obtained it through a family or employment-based petition. Refugees and asylees are eligible for SSI for a seven-year period in order to ease the transition into this country's workforce and social environment. In contrast, LPRs who immigrate or adjust through other means are barred for their first five years from accessing SSI, and they are subject to sponsor-to-alien deeming of income thereafter. So it is inappropriate to lump this latter group of LPRs in with those who are in fact encouraged to participate in federal benefit programs, and it is disingenuous to use it as a basis to make age above 61 years a negative factor.

Similarly, DHS states "studies show a relationship between advanced age and receipt of public benefits." There is no debate that seniors require greater amounts of health care than persons in the prime of life. But the Survey of Income and Program Participation (SIPP) does not distinguish between refugee/asylees and other LPRs in their receipt of cash and non-cash benefits. The statistics that are relied upon do not support DHS's conclusions; only the results of a study that measured elderly non-refugee/asylee LPRs' access to these programs would have any bearing on likelihood of becoming a public charge.

b. Health

The NPRM proposes that if an applicant "has been diagnosed with a medical condition that is likely to require extensive medical treatment or institutionalization or interfere with the alien's ability to provide and care for himself or herself, to attend school, or to work upon admission or adjustment" it would be

[118] NPRM at 51180.
[119] NPRM at 51180.

considered a heavily-weighed negative factor.[120] CLINIC objects to DHS's determination that the Rehabilitation Act of 1973 467 and the Americans with Disabilities Act (ADA) of 1990 does not affect its ability to assign a negative weight on the basis of health to an individual with a disability.

The proposed regulation would create significant hardships for and discriminate against lawful immigrants with disabilities by denying them an opportunity to benefit from an adjustment in their immigration status equal to that available to immigrants without disabilities.[121] Under the proposal, the Department will consider a wide range of medical conditions, many of which constitute disabilities, as well as the existence of disability itself, in determining whether an immigrant is likely to become a public charge. Although DHS states that disability will not be the "sole factor," in that determination, the Department fails to offer any accommodation for individuals with disabilities and instead echoes the types of bias and "archaic attitudes" about disabilities that the Rehabilitation Act was meant to overcome.[122]

The proposal would also discriminate against people with disabilities by defining an immigrant as a public charge for using (for the specified periods and amounts) non-cash benefits which individuals with disabilities rely on disproportionately, often due to their disability and the discrimination they experience because of it. Many of these individuals are eligible for Medicaid, and unable to obtain private insurance, precisely because of their disability. They also rely upon such benefits so that they can continue to work, stay healthy, and remain productive members of the community.

By deeming immigrants who use such programs as a public charge, the regulations will disparately harm individuals with disabilities and impede their ability to maintain the very self-sufficiency the Department purports to promote and which the Rehabilitation Act sought to ensure. Because many critical disability services are only available through Medicaid, the rule will prevent many people with disabilities from getting needed services that allow them to manage their medical conditions, participate in the workforce and improve their situation over time.

c. Family Status

The DHS asserts that an applicant's larger family size is correlated with fewer assets and resources, and therefore increases the likelihood of becoming a public charge.[123] For that reason, family size would be a factor in whether the intending immigrant is more or less likely to become a public charge.

The NPRM indicates that the applicant's household size would be counted in both the family status factor and the assets, resources, and financial status factor.[124] CLINIC objects to this potential double-counting. If DHS were correct in its assertion that larger family size correlates with fewer assets and resources, then an applicant's large family size would result in two negative factors in the determination. If, however, DHS is incorrect in its assertion about the correlation between family size and available assets, at least in one particular case, and the applicant has a large family but sufficient assets and resources to support them, then he may have one negative mark for the size of his family and one positive mark for his sufficient resources. But why should he have a negative mark for the size of his family when he has proven that he has sufficient income and resources? If DHS is logically consistent and gives such a case two positive marks for family size and resources, then small or large family size would always result in two marks one way or the other. If

[120] NPRM at 51292, proposing § 212.22(b)(2)(i).
[121] 6 CFR 15.30(b)(1)(ii), (iii), (iv).
[122] *School Bd. of Nassau Cty. v. Arline*, 480 U.S. 273, 279 (1987).
[123] NPRM at 51175.
[124] Id.

family status will naturally be weighed as part of the assets, resources, and financial status determination, then it is being considered in the totality of the circumstances and should not count a second time independently.

Finally, DHS only indicates that family status will be a factor in "whether the alien's household size makes the alien more or less likely to become a public charge."[125] DHS does not indicate what family size or number of household members would indicate a "positive" or a "negative" factor. DHS does not provide sufficient data or explanation for stakeholders to meaningfully comment on the way it will evaluate family status in a public charge determination, so the requirement to provide sufficient notice under the APA has not been met.

d. Assets, Resources, Financial Status

The DHS is proposing to look at the intending immigrant's household's annual gross income; if it is under 125 percent of the federal poverty guidelines, this would be a negative factor. In calculating income, the applicant would be able to include assets and resources, assuming they are at least five times the shortfall of income.[126] The following would "frequently carry considerable positive weight, because they are the most tangible factors to consider":

- annual gross household income
- income from non-family members residing with alien
- income provided to the alien on a continuing monthly or yearly basis
- cash assets and resources in bank
- assets that can be converted to cash within 12 months (real estate) or other assets
- annuities, securities, retirement and educational accounts

Within this factor, DHS will also consider whether the alien has:

- applied for or received public benefits, or been certified or approved for receipt
- whether the applicant applied for or received a fee waiver
- credit history and credit scores, and
- private health insurance or ability to pay for it.[127]

DHS concludes that "an alien's lack of assets and resources, including income, makes an alien more likely to receive public benefits."[128] It states that "financial status also includes alien's liabilities as evidenced by the credit report and score as well as past or current receipt of public benefits."[129] It will find that current and past receipt of designated public benefits is a negative factor, as well as consider receipt of any immigration filing fee waivers[130].

DHS is "proposing that USCIS would review any available U.S. credit reports as part of its public charge inadmissibility determinations."[131] Having a "good or better is a positive factor." "Having private health

[125] NPRM at 51291, proposing § 212.22(b)(3)(i).
[126] NPRM at 51291, proposing § 212.22(b)(4)(i)(A).
[127] NPRM at 51291, proposing §212.22(b)(4)(ii).
[128] NPRM at 51187.
[129] NPRM at 51187.
[130] NPRM at 51188.
[131] NPRM at 51189.

insurance is a positive factor," while "lack of health insurance or lack of resources to pay for medical costs would be a negative factor." [132]

CLINIC opposes the changes to the current factors that define "assets, resources, and financial status." To begin, the proposed rule states: "DHS has chosen a household income of at least 125 percent of the FPG, which has long served as a touchpoint for public charge inadmissibility determinations."[133] This is incorrect. The "touchpoint" for the public charge inadmissibility determination has always been 100 percent of the poverty guidelines. Congress added a statutory requirement of 125 percent of poverty level in 1996, but only applied it to the sponsor, not the intending immigrant. Even when Congress codified the five-factor test into the statute, it did not add any language specifying the necessary income level of the intending immigrant.

The Department of State has consistently determined that the immigrant visa applicant only has to establish prospective income at or above the poverty income guideline, not at 125 percent of it. For example, it confirmed in 1997:

> An immigrant visa applicant, not subject to the requirements of INA 213A, and relying solely on personal income to establish eligibility under INA 212(a)(4), who does not demonstrate an annual income above the Federal poverty line…and who is without other adequate financial resources, shall be presumed ineligible under INA 212(a)(4)."[134]

In other words, for those seeking an immigrant visa who are subject to the public charge ground of inadmissibility but exempt from the affidavit of support requirement, they are required to show income and resources at 100 percent of the poverty guidelines.

Five years prior to IIRIRA, the State Department issued a final regulation defining public charge. It stated:

> (d) Significance of income poverty guidelines. An immigrant visa applicant relying solely on personal income to establish eligibility under INA 212(a)(4), who does not demonstrate an annual income above the income poverty guidelines published by the Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, and who is without other adequate financial resources, shall be presumed ineligible under INA 212(a)(4).[135]

The FAM in 1991 also stated:

> An alien relying solely on personal income for support of self and dependent family members after admission should be presumed ineligible for an immigrant visa under 212(a)(4) unless such income, including that to be derived from prearranged employment, will equal or exceed the poverty income guideline level for the alien's family size. The consular officer should refer to the most recent poverty income guideline table published by the Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services.[136]

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[132] NPRM at 51189.
[133] NPRM at 51187.
[134] 62 Fed. Reg. 67564 (Dec. 29, 1997). The State Department on January 3, 2018, with no notice and without providing public comment amended the FAM to raise the required income level from 100 to 125 percent of poverty.
[135] 56 Fed. Reg. 30422, 30425 (July 2, 1991)(finalizing 22 CFR § 40.41(d)).
[136] 9 FAM 40.41 N3.4 (1991). *See also* 9 FAM 40.41 N4.6-2 (2002).

The DHS states that it "welcomes comments on whether 125 percent of the FPG is an appropriate threshold in considering the alien's assets and resources…"[137] CLINIC opposes the raising of the standard and recommends maintaining the necessary income level for the applicant at 100 percent of the poverty guidelines rather than arbitrarily raising it to 125 percent. Raising the requirement from 100 to 125 percent would have the effect of possibly disqualifying a large percent of the applicants. For example, 4.4 percent of persons residing in the United States have an income that falls between 100 and 125 percent of poverty.[138]

DHS lifted the "at least 125 percent of the Federal poverty line" requirement from IIRIRA's income standard for the sponsor and is proposing to apply it to the applicant, but it has not incorporated the other aspects of the statute and regulations governing how income is to be measured. For example:

- The NPRM draws no comparable distinction between applicants who have family members on active duty in the Armed Forces and those who do not. The NPRM fails to take into consideration that the statute lowers that level to 100 percent of poverty for a sponsor who is on active duty in the Armed Forces.[139]
- The regulations allow the sponsor to include the income of any household member who is considered a "relative" and who is residing with the sponsor. Therefore, the sponsor's spouse, adult or married children, parents, or sibling can include their income as part of the total household income to satisfy the 125 percent requirement.[140] The NPRM does not clearly propose how income of the intending immigrant should be measured.
- The law allows for sponsors to use significant assets that can be converted into cash within one year to meet the required income level, assuming the assets total at least five times the shortfall between income and the 125 percent of poverty level.[141] But the law also provides that petitioners who are U.S. citizens and are sponsoring their spouse or child over 18 only have to demonstrate assets that are three times the shortfall. The NPRM does not incorporate that exception.

CLINIC also objects to the NPRM's emphasis on employment and income, since many immigrants—particularly the elderly—stay at home to raise their children and grandchildren. The Migration and Policy Institute conducted a study recently that indicated that lack of employment skills outside the household, coupled with young or advanced age, would disqualify many low-income immigrant children and the elderly. Based on U.S. Census data, it found that about 45 percent of children had two or more negative factors, as did 72 percent of adults over age 61.[142] Also, the proposed rule is silent on how immigration officers should treat applications where a working family member passes the public charge test but a nonworking spouse and children fail it.

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[137] NPRM at 51187.
[138] United States Census Bureau, "Historical Poverty Tables: People and Families – 1959 to 2017: Table 6. People below 125 Percent of Poverty Level and the Near Poor." Available at: www.census.gov/data/tables/time-series/demo/income-poverty/historical-poverty-people.html.
[139] INA § 213A(f)(3).
[140] 8 CFR §213a.1 (definition of relative).
[141] INA § 213A(f)(6)(A)(ii); 8 CFR § 213a.2(c)(2)(iii)(B).
[142] Migration Policy Institute, "Gauging the Impact of DHS' Proposed Public-Charge Rule on U.S. Immigration," available at www.migrationpolicy.org/research/impact-dhs-public-charge-rule-immigration.

e. Credit Reports and Scores

DHS proposes that USCIS consider an intending immigrant's U.S. credit report and score as part of the financial status factor.[143] DHS claims that credit reports and credit scores can indicate whether a person is likely to be self-sufficient and support a household.[144] However, DHS does not provide any support for this assertion.

Credit reports and credit scores have a very narrow and specific purpose. Credit scoring models are designed to predict future credit performance, meaning the likelihood, relative to other borrowers, that a consumer will become 90 or more days past due on a credit obligation in the following two years.[145] A bad credit score does not reflect how likely a person is to use public benefits or become a public charge. Credit reports and credit scores do not reflect the reasons for any late payments, including circumstances beyond the consumer's control, such as a major illness, an emergency expense, or a loss of employment – all situations from which the individual may ultimately recover.

DHS recognizes that many intending immigrants will not have a credit history or credit score to consider.[146] Studies show that even when immigrants do have credit histories, their credit scores are artificially low.[147] Credit history is established over a lifetime in the United States. Intending immigrants who have never before been to the United States will not have a credit history as foreign credit history cannot be transferred to the U.S.[148] Those who have a temporary legal status or are undocumented, but now eligible for permanent residency, also face significant barriers to establishing a good credit history. Depending on the creditor, a Social Security Number may be required to apply for a credit card or a loan. In other cases, an Individual Taxpayer Identification Number is sufficient. Most banks will also require a prior banking or credit history to make a loan.[149] To establish a credit history, one must have a credit account opened in their name. Those looking to build credit for the first time must consider creative approaches to qualifying for credit in their own name. One might be added as a joint user for a family member's established credit card or apply for a secured credit card, which requires cardholders to pay a security deposit to protect the lender in case of default. Intending immigrants, who often lack an understanding of United States financial systems, are often at a disadvantage in these endeavors. While intending immigrants, including those who are undocumented, may legally obtain credit cards, studies show that many immigrants do not[150]. Many immigrants face

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[143] NPRM at 51188-51189.
[144] NPRM at 51189.
[145] Consumer Financial Protection Bureau, Data Point: Credit Invisibles, May 7, 2015, available at https://files.consumerfinance.gov/f/201505_cfpb_data-point-credit-invisibles.pdf (most credit scoring models are built to predict the likelihood relative to other borrowers that the consumer will become delinquent on payments).
[146] NPRM at 51189.
[147] Bd. of Governors of the Fed. Reserve System, *Report to the Congress on Credit Scoring and Its Effect on the Availability and Affordability of Credit* at S-2 (Aug. 2007), available at www.federalreserve.gov/boarddocs/rptcongress/creditscore/creditscore.pdf, ("Evidence also shows that recent immigrants have somewhat lower credit scores than would be implied by their performance.").
[148] MyFICO, *Frequently Asked Questions* available at www.myfico.com/credit-education/faq/credit-reports/migrating-your-credit-history, (last accessed Nov. 27, 2018) ("Credit reports and credit histories do not transfer from country to country. There are legal, technical and contractual barriers that prevent a person from transferring their credit report to a different country. Unfortunately, this often means that a new immigrant to the US will need to begin to build a new credit history.").
[149] NYC Department of Consumer Affairs, "Immigrant Financial Services Study," available at www1.nyc.gov/assets/dca/downloads/pdf/partners/Research-ImmigrantFinancialStudy-FullReport.pdf.
[150] NYC Department of Consumer Affairs, "Immigrant Financial Services Study," available at www1.nyc.gov/assets/dca/downloads/pdf/partners/Research-ImmigrantFinancialStudy-FullReport.pdf; see also "Giving Credit Where Credit is Due: What We Can Learn from the Banking and Credit Habits of Undocumented Immigrants," Nathalie Martin, 2015 Mich. St. L. Rev. 989.

significant barriers to establishing credit related to documentation status, language skills, lack of trust in or understanding of the U.S. financial system, and cultural and educational experiences."[151] On average, immigrants are less likely to have a bank account in the United States than native-born citizens.[152] In many immigrant communities there is an aversion to borrowing or accruing debt because of uncertainty regarding how long an individual may stay in the United States and other barriers to access."[153]

As a result, many immigrants operate outside the formal financial system, often saving through informal channels rather than banks.[154] Credit scores are calculated using multiple factors, including an individual's credit history (patterns in paying credit card or loan debt and applications for new credit); the amount of current debts that are carried, and the types of current credit they carry.[155]

A United States credit report from Experian, Equifax or TransUnion is based on mortgages, car loans, student loans, personal loans, credit cards, and other loans obtained in the United States.[156] Checking accounts generally have little affect on a credit score[157]. Many intending immigrants do not have access to these types of financial resources and will not have a credit history or sufficient credit history to generate a reliable score. For many intending immigrants, day-to-day transactions such as receiving wages, paying rent and other bills, and buying food often take place in cash.[158] Credit reports and credit scores do not take these transactions into account, and thus do not provide an accurate view of an intending immigrant's financial history.

DHS acknowledges that not all intending immigrants will have a credit history; adding this as a factor for consideration is therefore misguided. A lack of a credit history or a poor credit score has no bearing on someone's likelihood of becoming a public charge. Instead, it invites adjudicators to make judgments about an individual's character, trustworthiness, responsibility, and reliability based on an imperfect tool that was never designed for such a purpose.

DHS also recognizes that credit scores may contain errors and proposes that it will not consider any error on a credit score that has been "verified by the credit agency."[159] This places an added burden on intending immigrants to monitor their credit histories continually and advocate with the credit agency to make any necessary corrections – an involved process that would be difficult for many intending immigrants to navigate and complete before the public charge assessment is made.

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[151] *Id.*
[152] NYC Department of Consumer Affairs, "Immigrant Financial Services Study," available at www1.nyc.gov/assets/dca/downloads/pdf/partners/Research-ImmigrantFinancialStudy-FullReport.pdf; see also "Giving Credit Where Credit is Due: What We Can Learn from the Banking and Credit Habits of Undocumented Immigrants," Nathalie Martin, 2015 Mich. St. L. Rev. 989.
[153] NYC Department of Consumer Affairs, "Immigrant Financial Services Study," available at https://www1.nyc.gov/assets/dca/downloads/pdf/partners/Research-ImmigrantFinancialStudy-FullReport.pdf.
[154] NYC Department of Consumer Affairs, "Immigrant Financial Services Study," available at https://www1.nyc.gov/assets/dca/downloads/pdf/partners/Research-ImmigrantFinancialStudy-FullReport.pdf.
[155] "Credit Reports and Scores," USA.gov, available at www.usa.gov/credit-reports (last accessed Nov. 27, 2018).
[156] Bd. of Governors of the Fed. Reserve System, *Consumer's Guide, Credit Reports and Credit Scores* available at www.federalreserve.gov/creditreports/pdf/credit_reports_scores_2.pdf, (last accessed Nov. 27, 2018).
[157] Experian, *Does an overdraft on my checking account affect my credit score?*, available at www.experian.com/blogs/ask-experian/does-an-overdraft-on-my-checking-account-affect-my-credit-score/ (last accessed Dec. 5, 2018); Investopedia, *What affects my credit score?*, available at www.investopedia.com/ask/answers/040715/how-does-your-checking-account-affect-your-credit-score.asp (last accessed Dec. 5, 2018).
[158] NYC Department of Consumer Affairs, "Immigrant Financial Services Study," available at https://www1.nyc.gov/assets/dca/downloads/pdf/partners/Research-ImmigrantFinancialStudy-FullReport.pdf.
[159] NPRM at 51189.

Credit reporting and credit scoring are not entirely objective. For decades, studies have documented racial disparities reflected in credit histories and scores. Black and Hispanic people are notably more likely than Caucasian people to have no credit history records or to have a credit record with insufficient information to generate a reliable score.[160] Immigrants are particularly disadvantaged in this system.

While DHS states that a good credit score is a positive factor and that a bad score is a negative factor, there are no specifics that describe how USCIS will evaluate credit reports that DHS acknowledges can be flawed and incomplete. Allowing an adjudicator unfettered access to these records would be concerning. Credit reports and credit scores are a poor tool for assessing a person's likelihood of becoming a public charge and CLINIC opposes the use of such records in the public charge assessment. The lack of a credit score, or a credit score that is considered less than "good" should not be a factor in the public charge determination.

f. Education and Skills

DHS proposes to require "adequate education and skills to either obtain or maintain employment sufficient to avoid becoming a public charge."[161] It proposes to consider recent history of employment; high school degree (or its equivalent) or higher education; occupational skills, certifications, or licenses; and proficiency in English or proficiency in other languages in addition to English.[162]

Congress made English proficiency a requirement for citizenship and not the initial stage of becoming an LPR.[163] The proposed rule would bypass Congress in imposing this new standard. The only time English proficiency has been expected at the LPR stage was with the limited 1986 legalization program, where Congress specified that applicants had to have "a minimal understanding of ordinary English"[164] that could be satisfied of having taken 40 hours of classes. This requirement was imposed at the second of two stages for becoming an LPR, after the applicant had been residing in the United States for several years.

Equally troubling is how this English "proficiency" would be measured. The NPRM does not indicate what tests might be employed, whether they would be standardized, and what questions might be asked so that whatever test that is employed is done uniformly. Would the test be administered by the adjustment officer? Would there be any exception for those who are developmentally disabled or who have a physical or mental impairment? Would the test have both a reading and writing component, in addition to an oral one? Would those who are unable to pass the test initially be able to be re-tested within a certain period of time before a formal finding of public charge inadmissibility was made? What type of accommodations would be available to those who are blind, deaf, or have other handicaps short of disability? How would officers measure the applicant's proficiency in other languages, in addition to English? CLINIC strongly opposes the insertion of an English proficiency standard into the public charge test.

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[160] Consumer Financial Protection Bureau, *Data Point: Credit Invisibles*, May 7, 2015, available at https://files.consumerfinance.gov/f/201505_cfpb_data-point-credit-invisibles.pdf; *See also* National Consumer Law Center, "Past Imperfect: How Credit Scores and other Analytics "Bake In" and Perpetuate Past Discrimination," May 2016, available at www.nclc.org/images/pdf/credit_discrimination/Past_Imperfect050616.pdf.

[161] NPRM at 51291, proposed § 212.22(b)(5)(i).

[162] NPRM at 51291, proposed § 212.22(b)(5)(ii).

[163] *Compare* INA § 312(a)((1) *with* INA § 245(a), 245(c).

[164] INA 245A(b)((1)(D).

g. Affidavit of Support

The NPRM would require USCIS officers to consider the "likelihood that the sponsor would actually provide the statutorily-required amount of financial support… and any other related considerations.[165] The agency "would look at how close of a relationship the sponsor has to the alien, as close family members would be more likely to financially support the alien."[166] Officers would be expected to "[i]nterview the sponsor to determine whether the sponsor is willing and able to support the alien on a long-term basis."[167]

CLINIC opposes any new preference that the joint sponsor be a relative, be residing with the applicant, or that it demonstrate past financial contributions. Congress did not impose such requirements when they provided for a joint sponsor to step in and guarantee financial support, in addition to that of the petitioner/sponsor. They set out the following requirements for the joint sponsor: be a U.S. citizen, LPR, or U.S. national; at least 18 years of age; domiciled in the United States; and evidence the necessary income to maintain the sponsored immigrant(s) at 125 percent of the poverty line.[168] Had Congress wanted to add other requirements, such as the relationship to the applicant or the credibility of the joint sponsor, it would have done so.

In fact, the USCIS and State Department officers have been specifically instructed *not* to consider "the credibility of an offer of support from a person who meets the definition of a sponsor and who has verifiable resources."[169] The reason is simple: "the affidavit of support is enforceable regardless of the sponsor's actual intent."[170] The State Department instruction goes on to emphasize:

> absent fraud, however, Department believes that the enforcement measures provided by the Act should be considered a sufficient safeguard in all cases in which there are no significant public charge concerns…If the consular officer finds the I-864 meets the technical requirements of Section 213A, a determination must then be made whether there are significant public charge concerns. Only if the officer determines there are significant public charge concerns might the issue of credibility of the affidavit arise.[171]
>
> These significant public charge concerns are defined as:
> specific, identifiable personal characteristics of the applicant that would lead the consular officer to believe that the applicant would require considerable resources from either the sponsor or the public once the applicant is in the U.S. Such identifiable characteristics might be chronic illness, physical or mental handicaps, extreme age or other serious condition that in the absence of significant available personal resources or insurance would normally result in the expenditure of public funds on an individual's behalf.[172]

In response to a question as to whether the joint sponsor has to be related to the applicant or can merely be an acquaintance, the State Department recently reaffirmed that: "A joint sponsor who meets the citizenship,

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[165] NPRM at 51292, proposing §212.22(b)(7)(i)(A)(3).
[166] NPRM at 51198.
[167] NPRM at 51198.
[168] INA § 213A(f).
[169] "I-864 Affidavit of Support: Update No. 14 – Commitment to Provide Assistance," Department of State, UNCLAS STATE 102426 (June 1998).
[170] *Id.*
[171] *Id.*
[172] *Id.*

residence, age, domicile, and household income requirements may execute a separate Form I-864 on behalf of the intending immigrant. The joint sponsor can be a friend or third party who is not necessarily financially connected to the sponsor's household."[173]

The essential problem in imposing this additional requirement is that DHS officials are not in a position to determine the likelihood that the joint sponsor will provide support based on the information in the Form I-864 and thus will be relying on superficial evidence such as family relationship and residence. Furthermore, there is no call for administrative officers adjudicating immigration cases to second-guess the binding nature of a contract established and made binding by Congress.

VIII. Heavily Weighed Factors

DHS proposes that the following factors or circumstances weigh heavily in favor of inadmissibility on public charge grounds:[174]

- Lack of employability, as demonstrated by current unemployment, poor employment history, or [few] reasonable prospects for future employment;
- Current receipt of one or more public benefit, as defined by the rule.
- Receipt of one or more public benefit within 36 months prior to filing an application for a visa or admission.
- Lack of private health insurance or the financial resources to pay for a diagnosed medical condition "that is likely to require extensive medical treatment or institutionalization" and that will interfere with the intending immigrant's ability to provide for herself, attend school, or work.
- A previous finding of inadmissibility on public charge grounds.
- A combination of assets and resources that fall below 125 percent of the FPG, as required by the affidavit of support.[175]

The NPRM also includes one heavily weighed positive factor, "if the alien has financial assets, resources, support, or annual income of at least 250 percent of the FPG in the totality of circumstances."[176] DHS suggests a level of income or assets that is double what an affidavit of support sponsor would be required to demonstrate.

As stated previously, CLINIC opposes DHS' prioritization of the five statutory factors over the affidavit of support. Emphasizing the five factors and these "heavily weighed" factors radically changes the longstanding totality of the circumstances evaluation and replaces it with a vague test that requires adjudicators to weigh multiple factors against individual circumstance using guidance that is unclear. Adding additionally heavily weighed factors do not bring any additional clarity to the adjudication process. In fact, DHS asserts that even factors that are not specifically enumerated in the rule "may be weighted heavily in individual determinations...." [177] There is no real limitation as to what adjudicators can consider. Essentially, adjudicators could find almost any circumstance to be dispositive within the totality of circumstances in a particular case. This ambiguity will lead to inconsistent adjudications and create confusion in the community.

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[173] Minutes of meeting with Department of State and AILA on 10/25/2018, available at: https://travel.state.gov/content/travel/en/News/visas-news/20181018_dept-of-state-meeting-with-aila.html.
[174] NPRM at 51198.
[175] DHS Proposed Public Charge Rule, § V L 1.
[176] NPRM at 51204.
[177] NPRM at 51198.

Many immigrants are likely to have some heavily weighed negative factor present. According to some studies, "42 percent of noncitizens who originally entered the U.S. without LPR status have characteristics that DHS could consider a heavily weighed negative factor, including current enrollment in a public benefit (26%), not being employed and not a full-time student (and aged 18 or older) (27%), and having a disability that limits the ability to work and lacking private health coverage (3%). Those with characteristics that DHS could potentially consider a heavily weighed negative factor are significantly more likely to be a parent (65% vs. 34%) and to be a woman (59% vs. 27%) compared to those without characteristics that DHS could consider a heavily weighed negative factor."[178] The proposed heavily weighed factors would greatly disadvantage women, children, and seniors.

While DHS states that the presence of a heavily weighed factor is not dispositive, the proposed structure, which allows countless factors to be considered in each unique case, will lead to unpredictable and conflicting determinations.

IX. DHS' Proposal to Reestablish Public Charge Bonds is Unnecessary and Burdensome

DHS proposes reestablishing the public charge bond, which is authorized under INA §§ 103(a)(3) and 213, but has rarely been employed during the last 20 years after the affidavit of support was added as a requirement.[179] The proposed rule would amend corresponding regulations at 8 CFR §§ 103 and 213.1. Under the proposed rule, a public charge bond could be posted to overcome a finding of inadmissibility. The bond would serve as a contract between DHS (the obligee) and an individual or company (the obligor) who pledges money to guarantee that a noncitizen will not receive public benefits. If the bond is breached the obligor must pay the full bond amount to DHS. CLINIC opposes the proposed implementation of a public charge bond for the following reasons:

First, the stated intent for implementing a public charge bond is to hold the government harmless against aliens becoming a public charge.[180] However, the long established affidavit of support already serves that purpose. DHS draws distinctions between the affidavit of support and the public charge bond, but it does not provide support for the idea that the affidavit of support is an insufficient safeguard.[181] The affidavit of support is a legally enforceable contract that requires a sponsor to maintain an immigrant's income at a level that is above the federal poverty guidelines. It allows sponsored immigrants and the agencies that provide public benefits a cause of action to recover expenses, ensuring that the government does not bear the financial burden of any benefits used by a sponsored immigrant. DHS does not cite any evidence to show that the affidavit of support is inadequate for protecting the government against a sponsored immigrant's use of public benefits.

Second, DHS proposes creating a new and complicated bond process that will be very burdensome on immigrants and legal service providers. By failing to provide a mechanism for the direct payment of a cash bond, the government forces intending immigrants into a high-risk contract with private surety companies that will profit at the expense of immigrants. The time and expense involved for intending immigrants, their families, and legal service providers will increase greatly. Applicants will be burdened with the task of

[178] Kaiser Family Foundation, *Estimated Impacts of the Proposed Public Charge Rule on Immigrants and Medicaid*, Oct. 11, 2018, available at www.kff.org/report-section/estimated-impacts-of-the-proposed-public-charge-rule-on-immigrants-and-medicaide-key-findings/) (last accessed Dec. 5, 2018).
[179] NPRM at 51219.
[180] NPRM at 51218.
[181] NPRM at 51220.

identifying a surety company to contract with, reviewing complex terms of service and costs that may vary greatly. Intending immigrants will be required to pay a percentage of the bond amount to the surety company, and will likely need to provide collateral in the event the bond is breached. The bond process will be effectively out of reach for many immigrants. Those who are able to post bond would be subject to a high risk contract with a surety company yet have no real access to a DHS review process. It is concerning that the intending immigrant, who is directly affected by decisions regarding bond cancellation and has the greatest interest at stake, has no power to appeal a denied application for bond cancellation or a USCIS determination that bond has been breached. Only the surety company would have that right.[182]

Third, the proposed rule does not provide a clear standard for who should qualify for a public charge bond. Adjudicators will weigh positive and negative factors, which have been enumerated in the proposed rule, but it is unclear how these factors, including "heavily weighed negative factors" will be evaluated in practice.[183] With no clear standard, there is a risk that adjudicators will make these decisions in an inconsistent and unpredictable manner. Depending on how this case-by-case analysis is implemented, many applicants who should be able to post bond may be denied an opportunity to do so. Fourth, under the proposed rule applicants cannot affirmatively request bond and present a case for their eligibility.[184] Applicants will be at the mercy of the adjudicating officer's discretion. While some decisions regarding the public charge bond may be appealed, no process is provided for challenging an adjudicator's decision not to allow a bond application.

Fifth, DHS offers no guidance regarding how USCIS should set an individual bond amount. While USCIS will consider individual circumstances, there is no explanation of how the evaluation will be made.[185] What factors might merit a lower or higher bond? Where will the upper limit on bond be set? There is a risk that adjudicators may set arbitrarily high bond amounts and make inconsistent decisions across cases. CLINIC proposes that the amount of the bond be set at a fixed amount for all applicants rather than vary depending on the whims of adjudicators.

Finally, the penalty for breaching bond is excessive. If any public benefit is used, the entire bond amount is forfeited, regardless of the value of the benefit used. For example, under the proposed rule, an applicant who becomes a permanent resident and receives $1,821 worth of SNAP benefits in 2018 would forfeit at least $10,000. DHS acknowledges that the $10,000 amount does not reflect the type of public benefit received or how long the person received the benefit,[186] thus the proposed minimum bond amount bears no real relationship to the value of the public benefit that is received. This arbitrary minimum amount will not be in reach for many immigrants.

X. The Proposed Rule Would Create Tremendous Administrative Burdens on USCIS, Compounding Current Backlogs

The proposed rule would create new burdens on USCIS, which would have to process additional forms like the I-944 and Declaration of Self-Sufficiency, and would have additional time burdens to evaluate the evidence required under this rule. These additional burdens would exacerbate USCIS' ongoing backlogs of the past few years. Data show that there have been lengthening processing times of applications for

[182] NPRM at 51226.
[183] NPRM at 51221.
[184] NPRM at 51221.
[185] NPRM at 51121.
[186] NPRM at 51221.

employment authorization, travel documents, green cards, green card replacements, and more.[187] DHS has admitted in 2018 that USCIS has and continues to face capacity challenges.[188] The agency has not articulated a compelling reason to significantly change the public charge evaluation process in a way that would so significantly overburden itself.

XI. The Rule Would Increase Processing Times, Unreasonably Increasing Burdens on Immigrants and Their Representatives

This rule would add significant complexity to the public charge analysis, very likely resulting in increasing the already lengthy USCIS processing times. Processing delays significantly affect the lives of both U.S. citizens and immigrants. Delays can financially impair immigrants during the time that an immigrant cannot work due to a delay. Every day that a delay prevents an immigrant from working is a day they are not earning enough to support themselves and their families. The goal of this policy is self-sufficiency, but that goal cannot be achieved if processing times are made even longer. Delays also may affect the validity of immigrants' driver's licenses, which are essential for employment, medical treatment, banking, and air travel.

Delays also have deep emotional impacts on families beyond just a monetary cost. Families that are separated from each other may be waiting for adjudication to be reunited with their parent, child, or sibling. A processing delay extends that separation of families for months or years, causing trauma to young family members. Processing delays could also prevent a student from enrolling in school, a professional from advancing their career, or a family member from traveling to care for a sick relative.

In summary, the proposed rule would expand and make the agency's case processing delays even worse, make an operational crisis appreciably worse, and individuals and families throughout the United States would endure the negative ramifications.

XII. Conclusion

Based on the above explanations regarding the proposed rule's many inconsistencies, its failure to properly account for public health and wellbeing, and failure to provide sufficient data and reasoning behind its decision, we strongly oppose the proposed regulation and request that it be withdrawn. We respectfully request that USCIS continue to make public charge determinations pursuant to its current policy and practices as established in 1999.

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[187] U.S. Citizenship and Immigration Services, "Historical National Average Processing Time for All USCIS Offices." *Available at*: https://egov.uscis.gov/processing-times/historic-pt (last accessed Dec. 7, 2018).

[188] Department of Homeland Security, "Annual Performance Report, Fiscal Years 2017-2019," at page 31. *Available at*: www.dhs.gov/sites/default/files/publications/DHS%20Overveiw%20FY19%20CJ.pdf (last accessed Dec. 7, 2018).

Thank you for the opportunity to submit these comments. We appreciate your consideration. Please do not hesitate to contact Jill Marie Bussey, CLINIC's Advocacy Director, at jbussey@cliniclegal.org should you have any questions about our comments or require further information.

Sincerely,

Jeanne Atkinson
Executive Director

EXHIBIT 7

CLASP
Policy solutions that work for low-income people

December 7, 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

Dear Sir/Madam:

The Center for Law and Social Policy (CLASP) is grateful for the opportunity to comment on the proposed public charge regulation published in the Federal Register on October 10, 2018.

Established in 1969, CLASP is a national, non-partisan, non-profit, anti-poverty organization that advances policy solutions for low-income people. Our comments draw upon the work of CLASP experts in the areas of immigration and anti-poverty policies. As a national anti-poverty organization, we understand the critical importance of federal programs that support the health and economic well-being of low-income families.

CLASP strongly opposes the Department of Homeland Security's proposed regulation regarding public charge. We urge that the rule be withdrawn in its entirety, and that long standing principles clarified in the 1999 field guidance remain in effect. The proposed regulation is unjustified, contradictory to available research, and goes far beyond the agency's authority and Congressional intent. It would make—and has already made—millions of immigrant families afraid to seek programs that support their basic needs. Research indicates that the proposal will deter immigrants and their families from using the programs their tax dollars help support, preventing access to essential health care, healthy, nutritious food and secure housing.[1] The proposal also makes fundamental and deeply damaging changes to the criteria for long-term permanent resident status that will elevate wealth over traditional criteria such as work and family - representing a sharp break with the past and particularly harming immigrants with low-wage jobs, parents caring for children, and their families.

[1] 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; 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

Both of these massive changes -- discouraging enrollment by immigrants and their families in crucial health and nutrition programs and destabilizing working families through denial of lawful permanent residency -- would increase poverty, hunger, ill health and unstable housing. This rule would exclude low- and moderate-income working families whose contributions are essential to the economy and likely to grow over time and generations. These proposed changes also have profound and damaging consequences for the well-being and long-term success of immigrants and their families, including US citizen children. And beyond immigrants themselves, the proposal harms localities, states, and health care providers and facilities.

We summarize below and explain in more detail in the comments that follow five reasons why the Department should immediately withdraw this proposed regulation. Specifically, the proposal:

(1) Is a radical change that goes far beyond the agency's authority and far beyond congressional intent;

(2) Would harm a far larger population and far more seriously than the rule acknowledges, potentially tens of millions of people;

(3) Would cause permanent harm to children, women, young adults, and families;

(4) Would significantly harm communities, schools, health care systems, states, localities, businesses and higher education; and

(5) Would disproportionately harm certain vulnerable and/or legally protected populations.

At the close of our detailed comments, we also address the proposed rule section by section and directly answer the specific questions raised by the Department in the Notice of Proposed Rulemaking.

The proposed rule is a radical change that goes far beyond the agency's authority and far beyond Congressional intent.

The rule makes two massive backdoor changes in current policy. First, under current policy, only cash "welfare" assistance for income maintenance and government funded long-term care received or relied upon by an applicant can be taken into consideration in the "public charge" test – and only when a person is "primarily dependent" on it. The proposed rule would alter the test dramatically, abandoning the enduring meaning of a public charge as a person who depends on the government for subsistence. Instead, the proposed rule would include a wide range of low-wage workers and others with modest incomes who get help paying for health, nutrition, or housing.

Specifically, the proposed rule would consider a much wider range of government programs in the "public charge" determination, many of which typically go to working families: most Medicaid programs (including program options explicitly available to states to support immigrants), housing assistance such as Section 8 housing vouchers, Project-based Section 8, or Public Housing, SNAP (Supplemental Nutrition Assistance Program) and even assistance for seniors who need help paying for prescription drugs. To give a sense of the scale of the change, if the old criterion were applied to U.S.-born citizens, it would exclude one in twenty people. But the new

criterion would exclude more than six times as many, one in three U.S.-born citizens, or tens of millions of people who get help in any given year paying for health, food, or housing.[2]

Second, the proposed rule also makes massive changes to existing policy regarding the criteria for lawful permanent residency. Although the proposal claims to maintain a "totality of the circumstances" approach, weighing the person's age, health, resources, education, family situation, and a sponsor's affidavit of support, in fact it greatly increases the chances of a negative outcome for ordinary working families without wealth or high incomes, by assigning a negative weight to many factors that are closely correlated (such as having a low income, having a poor credit score, and having requested an immigration fee waiver). . In addition, the proposed rule details how being a child or a senior, having a number of children, or having a treatable medical condition could be held against immigrants seeking a permanent legal status.

A recent study by the Migration Policy Institute gives a sense of the scale here. When recent green card recipients are compared to the new criteria, over two-thirds would have at least one negative factor and more than 40% had two or more.[3] Thus, denials for lawful permanent residency applications would likely skyrocket under the new proposal.

Thus, the effects of the rule would be radical – not a modest change or clearer definition or "improved efficiency" as the summary suggests. The proposed rule would reshape the structure of our legal immigration system and redefine who is 'worthy' of being an American – shifting immigration away from working people and the world's dreamers and strivers and towards those who bring high incomes, and financial assets.

The radical changes embodied in the proposed rule would reverse more than a century of existing law, policy, and practice in interpreting the public charge law, under which the receipt of non-cash benefits has never been the determining factor in deciding whether an individual is likely to become a public charge. For almost two decades, U.S. immigration officials have explicitly reassured, and immigrant families have relied on that assurance, that participation in programs like Medicaid and SNAP (formerly food stamps) would not affect their ability to become lawful permanent residents.

Congress has had several opportunities to amend the public charge law but each time has instead affirmed the existing administrative and judicial interpretations of the law. This includes an explicit opportunity just after the passage of the 1996 Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), in the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), where Congress merely codified the case law interpretation of public charge. When the passage of PRWORA led to confusion about the implications for non-cash benefits, the then-Immigration and Naturalization Service issued an administrative guidance and a notice of proposed rulemaking in 1999 to provide clarity on the existing practice – administrative guidance that remains in effect today. Thus, there is no evidence at all in the record of Congressional or administrative action to support

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[2] Danilo Trisi "One-Third of U.S.-Born Citizens Would Struggle to Meet Standard of Extreme Trump Rule for Immigrants" (Washington, DC: CBPP, September 2018), https://www.cbpp.org/blog/one-third-of-us-born-citizens-would-struggle-to-meet-standard-of-extreme-trump-rule-for.

[3] Randy Capps, Mark Greenberg, Michael Fix, and Jie Zong "Gauging the Impact of DHS' Proposed Public-Charge Rule on U.S. Immigration" (Washington, DC: MPI, November 2018), https://www.migrationpolicy.org/research/impact-dhs-public-charge-rule-immigration .

the assertion in this October 2018 proposed rule that the radical new proposals envisioned today follow from PRWORA.

The proposed public charge regulation also conflicts with Congressional actions that recognize the importance of access to health care and nutrition benefits for immigrants and explicitly remove barriers to access, including the 2002 Farm Bill and the 2009 Children's Health Insurance Program Reauthorization. Thirty-three states have elected to provide Medicaid coverage to lawfully residing children and/or pregnant women without a five-year waiting period.[4] And the regulation conflicts with Congress's recognition in PRWORA that Medicaid should be de-linked from cash assistance and its associated time limits, because health coverage under Medicaid is an important support to families pursuing self-sufficiency, not an obstacle.

The proposed regulatory provisions that ostensibly implement the totality of circumstances test for denial are deeply problematic and would substantially disadvantage workers, families, and seniors who are not wealthy. Specifically, the listing of factors and additional criteria is arbitrary, unrelated to the statute, and has the effect of undermining statutory intent by creating a large number of ways to fail and very few ways to pass. The whole approach of the rule – in creating multiple reasons for low-income workers to fail – is directly at odds with the prospective nature of the public charge determination and completely fails to consider the clear evidence that immigrants improve their economic status over time.[5]

The rule is also inconsistent with Congressional intent as expressed through other laws. The treatment of disability as purely a burden is inconsistent with modern understanding of disability and reflects a perspective that Congress has explicitly rejected in multiple statutes, including the Americans with Disabilities Act. The inclusion of English-language proficiency as a factor in the public charge test raises major concerns given the Supreme Court's finding that discrimination on the basis of language or English proficiency is a form of national origin discrimination.

Finally, the Department's proposal appears to be driven by the Administration's racial animus and desire to restrict immigration from certain countries. While not consistent with DHS' statutory authority, the rule is consistent with the Administration's consistent public record of explicit hostility to immigrants from Latin America and Africa, and it will have a disproportionately damaging impact on people of color, particularly Latino, AAPI, and Black immigrants.

The proposed rule would harm a far larger population and far more seriously than the text acknowledges, potentially tens of millions of people.

The proposed rule would harm far more people than the estimates it presents acknowledge, based on extensive research that documents and estimates the scale of the "chilling effect" – meaning the effect of making individuals afraid to access programs and undermining access to critical health, food, and other supports for

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[4] National Immigration Law Center, "Medical Assistance Programs for Immigrants in Various States," https://www.nilc.org/wp-content/uploads/2015/11/med-services-for-imms-in-states.pdf

[5] Leighton Ku and Drishti Pillai, The Economic Mobility of Immigrants: Public Charge Rules Could Foreclose Future Opportunities (November 15, 2018). Available at SSRN: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3285546.

eligible immigrants and their families. Among the most harmed by the proposed rule are children, including U.S. citizen children, who would likely decrease participation in support programs, despite remaining eligible. Previous research that studied use of benefits by immigrant and mixed status families after the eligibility changes in the 1990s showed decreased enrollment in Medicaid and CHIP even among those who remained eligible.[6] Based this research, social scientists project that immigrants' use of health, nutrition, and social services could decline significantly if the proposed public charge rule were finalized.[7] Research suggests that these estimates from the past (often from the period after PRWORA) may underestimate the chilling effect today, because of the many factors already causing fear and withdrawal from crucial supports among immigrant families.

Our detailed comments include estimates by independent researchers of the effect on the lives of immigrants and their families, using multiple methodologies. All show large impacts. For example, researchers estimate that approximately 25.9 million people would be potentially chilled by the proposed public charge rule, accounting for an estimated 8% of the U.S. population. This number represents individuals and family members with at least one non-citizen in the household and who live in households with earned incomes under 250% of the federal poverty level. Of these 25.9 million people, approximately 9.2 million are children under 18 years of age who are family members of at least one noncitizen or are noncitizen themselves, representing approximately 13% of our nation's child population.[8] In another estimate focused specifically on health impacts, researchers found that up to 4.9 million individuals, including U.S. citizen children, could lose health insurance.[9] Researchers are also finding that both administrative data and interviews with immigrant families are already showing this effect.[10]

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[6] Neeraj Kaushal Robert Kaestner, "Welfare Reform and Health Insurance of Immigrants," Health Services Research,40(3), (2005), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1361164/; Michael Fix, Jeffrey Passel, *Trends in Noncitizens' and Citizens' Use of Public Benefits Following Welfare Reform 1994-97* ,The Urban Institute, 1999, https://www.urban.org/sites/default/files/publication/69781/408086-Trendsin-Noncitizens-and-Citizens-Use-of-Public-Benefits-Following-Welfare-Reform.pdf; Namratha R. Kandula, et. al, "The Unintended Impact of Welfare Reform on the Medicaid Enrollment of Eligible Immigrants, Health Services Research, 39(5), (2004), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1361081/; Rachel Benson Gold*, Immigrants and Medicaid After Welfare Reform*, The Guttmacher Institute, 2003), https://www.guttmacher.org/gpr/2003/05/immigrants-and-medicaid-after-welfare-reform.

[7] Jeanne Batalova, Michael Fix, Mark Greenberg *Chilling Effects: The Expected Public Charge Rule and Its Impact on Legal Immigrant Families' Public Benefits Use*, Migration Policy Institute, 2018, https://www.migrationpolicy.org/research/chilling-effects-expected-public-charge-rule-impact-legal-immigrant-families. Fix, Trends in Noncitizens' and Citizens' use of Public Benefits; Michael Fix, JeffreyPassel, *The Scope and Impact of Welfare Reform's Immigrant Provisions*, Urban Institute, 2002, https://www.urban.org/research/publication/scope-and-impact-welfare-reforms-immigrant-provisions; Kandula The Unintended Impact of Welfare Reform on Medicaid Enrollment of Eligible Immigrants.

[8] Manatt Health, *2012-2016 5-Year American Community Survey Public Use Microdata Sample (ACS/PUMS); 20122016 5-Year American Community Survey (ACS) estimates accessed via American FactFinder; Missouri Census Data Center (MCDC) MABLE PUMA-County Crosswalk*, 2018, https://www.manatt.com/Insights/Articles/2018/Public-Charge-Rule-Potentially-Chilled-Population.

[9] Manatt Health "Public Charge Proposed Rule: Potentially Chilled Population Data Dashboard" (New York, NY: Manatt Health, October 2018), https://www.manatt.com/insights/articles/2018/public-charge-rule-potentially-chilled-population; Samantha Artiga, Rachel Garfield, Anthony Damico "Estimated Impacts of the Proposed Public Charge Rule on Immigrants and Medicaid" (Washington, DC: KFF, October 2018), http://files.kff.org/attachment/Issue-Brief-Estimated-Impacts-of-the-Proposed-Public-Charge-Rule-on-Immigrants-and-Medicaid.

[10] Allison Bovell-Ammon, Boston Medical Center, Stephanie Ettinger de Cuba, Boston University School of Medicine, Diana Cutts, Hennepin County Medical Center, and Sharon M. Coleman, Boston University School of Public Health, "Trends in food insecurity and SNAP participation among immigrant families of US born young children" (November 2018), https://apha.confex.com/apha/2018/meetingapp.cgi/Paper/416646.

A very large body of research, cited in our detailed comments, finds that participation in health, nutrition, housing, and other basic needs programs positively influences children's and adults' health in both the short- and long-run as well as educational and economic attainment. Because the rule fails to acknowledge this extensive evidence, it drastically understates the harm that arises from immigrants' and their families' withdrawal from benefits.

Finally, the Department fails to adequately evaluate impacts of the proposed rule, including in its discussions of the costs and benefits in both the rule and preamble. It leaves out whole categories of impact to individuals and families, state and local economies, and sectors of the economy and provides neither quantitative nor qualitative estimates of those costs it does mention. For example, it makes no effort to measure the economic impact of the rules on states, despite the considerable evidence of economic and fiscal losses associated with the rule. The Fiscal Policy Institute estimates $17.5 billion in loss of health care and food supports, $33.8 billion in potential economic ripple effects of this lost spending, and 230,000 in potential jobs lost because of this reduction in federal spending, under a 35 percent disenrollment scenario.[11] As a result of its failure to identify and estimate the impacts of the proposed regulation, and its neglect of the extensive research record, the Department fails to provide the information needed to seriously assess the rule and consistently and substantially underestimates its damage and costs.

The proposed regulation would cause permanent harm to children, women, young adults, and families.

The changes in the proposed rule undercut the foundations that children need to thrive and families to succeed, causing both immediate and long-term harm. Evidence from decades of research using many different methods shows that essential health, nutrition, and housing assistance prepares children to be productive working adults – and that children's access to these benefits is highly dependent on their parents' and families' access and economic stability, not separable.

The damaging consequences of the proposed rule would affect millions of women and children in communities across the United States and produce ripple effects on the health, development, and economic outcomes of generations to come. One in four children in the U.S. – nearly 18 million children – has at least one immigrant parent, and the vast majority (about 88 percent or 16 million) are U.S.-born citizens.[12] Immigrant women comprise 52 percent of the U.S. immigrant population, and many are parents of U.S. citizen children.[13] Young adults who are immigrants, also crucial to America's economic future, represent 8 percent of the immigrant population and 10 percent of all young adults.[14] For all these groups, the rule moves policy in exactly the wrong direction both morally and in terms of the nation's self-interest – towards placing a generation of children and families more at risk instead of investing in their futures.

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[11] Fiscal Policy Institute "Only Wealthy Immigrants Need Apply: How A Trump Rule's Chilling Effect Will Harm the U.S." (New York, NY: FPI, 2018) http://fiscalpolicy.org/public-charge.
[12] State Immigration Data Profiles, "United States - Demographics & Social," Migration Policy institute, n.d., https://www.migrationpolicy.org/data/state-profiles/state/demographics/US.
[13] Jie Zong, Jeanne Batalova, and Jeffrey Hallock, "Frequently Requested Statistics on Immigrants and Immigration in the United States," Migration Policy Institute, February 8, 2018, https://www.migrationpolicy.org/article/frequently-requested-statistics-immigrants-and-immigration-united-states.
[14] CLASP analysis of 2016 American Community Survey Data

The proposed rule would be particularly harmful to the economic security, health, and wellbeing of immigrant women, who make up more than half of the U.S. immigrant population and are already more likely to be economically insecure. On nearly every dimension of the proposed public charge definition, immigrant women would face disadvantages making them far less likely to pass the public charge test: immigrant women—as all women—have lower earnings then men,[15] immigrant women are more likely to be primary caregivers[16] and less likely to be employed;[17] immigrant women are more likely to live in household with children, and therefore, have larger household sizes; and immigrant women are more likely to receive Medicaid or SNAP benefits, compared to their male counterparts.[18] Moreover, the proposed rule's unprecedented consideration of Medicaid as part of the public charge determination poses a dire threat to the health of immigrant women, because of Medicaid's importance to women's health needs throughout their lives. For pregnant immigrant women, research suggests that restricted access to Medicaid and SNAP risks increasing maternal mortality and have serious health implications for their U.S. citizen children. The rule also places barriers in the way of economic success for young adults in immigrant families, particularly by making it harder for young people to access supports like Medicaid and housing subsidies that make it possible for low-income students to complete post-secondary credentials.

The rule will also disproportionately disadvantage immigrant children, immigrant women, and parents of young children in denials of lawful permanent residency as a result of the proposed negative factors. The MPI study of current green card holders highlights the disproportionate impact of the new criteria on women and especially mothers, particularly the negative weight given to neither working nor being in school.[19] Disqualifying mothers in low-income families dramatically disadvantages their children, including citizen children, by destabilizing families, making it harder for a remaining wage-earner to make ends meet, and preventing a mother's return to the labor force in the future.

Finally, the rule imposes major damage on citizen children, despite saying that they are not included. The rule effectively creates a second class of children who are less likely to access health, nutrition, and housing programs and therefore less likely to achieve their full potential. The transfer payment analysis provided by the Department explicitly depends on citizen children losing benefits – and it sharply underestimates the number of children who we already know are losing access and the likely consequences, as explained earlier Extensive historical evidence shows that the only way to protect children's access to health care and nutrition is to make it simple and keep these programs out of the public charge determination – otherwise, parents cannot take the risk of enrolling their families.

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[15] Ariel G. Ruiz, Jie Zong, Jeanne Batalova, *Immigrant Women in the United States,* Migration Policy Institute, 2015, https://www.migrationpolicy.org/article/immigrant-women-united-states.

[16] D'Vera Cohn, Gretchen Livingstone, and Wendy Wang, *After Decades of Decline, a Rise in Stay-At-Home Mothers,* Pew Research Center, 2014, http://www.pewsocialtrends.org/2014/04/08/chapter-2-stay-at-home-mothers-by-demographic-group/.

[17] Ruiz, *Immigrant Women in the United States*.

[18] Sarah Flood, Miriam King, Renae Rodgers, Steven Ruggles, and J. Robert Warren National Women's Law Center calculations based on U.S. Census Bureau, 2017 Current Population Survey, Integrated Public Use Microdata Series, Current Population Survey: Version 6.0 : IPUMS, 2018. https://doi.org/10.18128/D030.V6.0.

[19] Randy Capps, Mark Greenberg, Michael Fix, and Jie Zong, "Gauging the Impact of DHS' Proposed Public-Charge Rule on U.S. Immigration," Migration Policy Institute, November 2018, https://www.migrationpolicy.org/research/impact-dhs-public-charge-rule-immigration.

Further, the increased denial of lawful permanent residency to low-income mothers and fathers will also target citizen children, destabilizing families economically and placing parents who do not achieve permanent status at risk of becoming undocumented, with attendant risks to children's wellbeing. Research consistently points to the importance of immigrant parents' long-term status for family economic stability and children's outcomes. Yet with the explicit use of the poverty line and household size as criteria, parents with children are disproportionately targeted for denial by the rule.

The proposed regulation would significantly harm localities, states, businesses, schools and health care providers.

The impacts of the proposed regulation go far beyond individuals and families. Mass disenrollment from SNAP and Medicaid will have devastating ripple effects on states and communities nationwide. The impacts begin with health care providers (for Medicaid) and grocery stores (for SNAP) losing money and spread as struggling families spend less in other areas. In addition, the consequences of mass disenrollment within the health care industry, particularly for safety net hospitals and clinics are dire. The effects of hospital closures include a sharp decrease in access to care and even death rates for all residents of their service areas – that is, far more than immigrant families alone -- as well as economic effects, since hospitals are major employers. The loss of jobs associated with a hospital closure is especially devastating in rural areas, which have smaller populations and a historic reliance on declining industries.[20] Moreover, some industries and employers will not locate in an area without a hospital, leaving communities without hospitals unable to attract some employers. [21]

States and localities also suffer when they must deal with the public health and fiscal consequences of choices by immigrants and their families to forego health care. The proposed rule would effectively override state options to extend coverage to all lawfully residing pregnant women and/or children – an option that 33 states have chosen to take up.[22] Covering low-income pregnant women and children improves their health and the health of their babies and saves states money. Studies have found that every state dollar spent on prenatal care saves states between $2.57 and $3.38 in future medical costs.[23]Disruption and costs to K-12 education are also a major concern for states, localities, businesses, and schools. Inadequate nutrition, a lack of routine medical care, and unstable housing directly affect educational outcomes and the health and wellbeing of students.

In addition to costs related to added health and educational burdens, state and local agencies that administer health, nutrition, and housing programs will also face new administrative challenges. Additions to the workload of state and local agencies include providing documentation of benefit receipt to green card applicants as required

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[20] Jane Wishner, Patricia Solleveld, et al., *A Look at Rural Hospital Closures and Implications for Access to Care: Three Case Studies,* Kaiser Family Foundation, 2016, www.kff.org/medicaid/issue-brief/a-look-at-rural-hospital-closures-and-implications-for-access-to-care.

[21] Wishner, *A Look at Rural Hospital Closures and Implications for Access to Care*.

[22] National Immigration Law Center, *Health Care Coverage Maps, 2018,* https://www.nilc.org/issues/health-care/healthcoveragemaps/.

[23] Robin D. Gorsky, John. P. Colby, "The Cost Effectiveness of Prenatal Care in Reducing Low Birth Weight in New Hampshire," Health Services Research 23, no. 5 (1989): 583-598, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1065587/; Institute of Medicine, "Preventing Low Birth Weight," (1985).

by draft from I-944, responding to consumer inquiries related to the new rule, duplicative work for agencies resulting from families disenrolling and returning to the caseloads, and modifying existing communications and forms related to public charge. Furthermore, the inclusion of Medicaid and SNAP in public charge review will undermine state efforts to streamline enrollment processes between different public assistance programs.

Finally, the proposed changes will have a direct impact on businesses big and small, hurting workers across all wage ranges and damaging state and local governments' ability to support their residents in achieving higher education and workforce policy goals. Particularly for low-wage workers, the proposed changes will destabilize their lives and make it harder for them to sustain steady employment, making it more difficult for employers such as home care agencies or retail businesses to attract and retain workers and potentially disrupting local economies.

The proposed regulation would disproportionately harm certain vulnerable and/or legally protected populations.

In addition to the consequences for people of color, women, children, and young adults already analyzed, the proposed rule is particularly damaging to other specific populations. Our comments address the disproportionate harms caused to victims of domestic violence and sexual abuse, individuals living with disabilities (including individuals living with HIV/ AIDS and children with special health care needs), seniors, and lesbian, gay, bisexual, and transgender immigrants and their families. These groups should be of special concern because they are particularly vulnerable and/or legally protected.

For these reasons and those detailed in the comments that follow, the Department should immediately withdraw its current proposal. The damage on all these dimensions cannot be mitigated merely by narrowing the scope of the rule; it must be withdrawn. We encourage the Department to dedicate its efforts to advancing policies that truly support economic security, self-sufficiency, and a stronger future for the United States by promoting – rather than undermining – the ability of immigrants, their families and children, their communities, and the businesses and nonprofit institutions in those communities to thrive. Similarly, we urge the Department to support rather than undermine the efforts of states to promote healthy and economically secure families and communities including immigrant families and communities – rather than to impose costs and barriers to state budget, policy, and legislative choices.

We present our detailed comments under the five broad themes identified above and refer within the thematic sections to the specific provisions addressed. In Section VI, we offer as section by section analysis of the proposed rule and answer questions posed by the Department. Due to the length of our comments and for your convenience, we have also provided a table of contents.

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

TABLE OF CONTENTS

I. THE PROPOSED REGULATION IS A RADICAL CHANGE THAT GOES FAR BEYOND THE AGENCY'S AUTHORITY AND FAR BEYOND CONGRESSIONAL INTENT

Shortly after President Trump's inauguration in January 2017, an official within his administration leaked a draft of an Executive Order titled "Executive Order on Protecting Taxpayer Resources by Ensuring Our Immigration Laws Promote Accountability and Responsibility."[24] The Executive Order instructed DHS to "rescind any field guidance" and "propose for notice and comment a rule that provides standards for determining which aliens are inadmissible or deportable on public charge grounds"—i.e., if a non-citizen is "likely to receive" or does receive means-tested "public benefits."[25] Although the draft Executive Order was never officially released or signed by President Trump, it is now being implemented through this NPRM. It is against this political backdrop that this administration has now proposed changing the way the public charge ground of inadmissibility has been defined and interpreted for the last three centuries.

a. The Proposed Regulation Is A Radical Expansion of The Public Charge Concept

While DHS repeatedly claims that this rule is simply providing "clarification and guidance" regarding existing law, the truth is that it would radically expand the concept of "public charge." The proposed rule would alter the test dramatically, abandoning the enduring meaning of a public charge as a person who is primarily dependent on the government for subsistence, and changing it to mean anyone who receives "financial support from the general public through government funding (i.e. public benefits)."

Under the proposed rule, receiving benefits worth just 15% of the federal poverty level for a household of one in public benefits—just $5 a day regardless of family size -- would make one a public charge. This absolute standard overlooks the extent to which the person is supporting themselves. For example, a family of four that earns $43,925 annually in private income but receives just $2.50 per day per person in monetizable public benefits would be considered a public charge. This is true even though they would be receiving just 8.6 percent of their income from the government programs, meaning that they are 91.4 percent self-sufficient.[26]

The proposed rule would also greatly expand the programs considered in a public charge determination. Under current policy, only cash "welfare" assistance for income maintenance and government funded long-term care received or relied upon by an applicant can be taken into consideration in the "public charge" test. The proposed rule would include a wide range of low-wage workers and others with modest incomes who get help paying for health, nutrition, or housing. Specifically, the proposed rule would consider a much wider range of government programs in the "public charge" determination, many of which typically go to working families: most Medicaid

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[24] See Memorandum from Andrew Bremberg Regarding Executive Order on Protecting Taxpayer Resources by Ensuring Our Immigration Laws Promote Accountability and Responsibility (Jan. 23, 2017), https://www.nafsa.org/uploadedFiles/NAFSA_Dojo/Professional_Resources/Browse_by_Interest/International_Students_and_Scholars/DraftEOtaxprograms.pdf.

[25] See Memorandum from Andrew Bremberg Regarding Executive Order on Protecting Taxpayer Resources by Ensuring Our Immigration Laws Promote Accountability and Responsibility (Jan. 23, 2017), https://www.nafsa.org/uploadedFiles/NAFSA_Dojo/Professional_Resources/Browse_by_Interest/International_Students_and_Scholars/DraftEOtaxprograms.pdf.

[26] David Bier, *New Rule to Deny Status to Immigrants Up to 95% Self-Sufficient*, The Cato Institute, 2018, https://www.cato.org/blog/new-rule-deny-status-immigrants-95-self-sufficient.

programs (including program options explicitly available to states to support immigrants), housing assistance such as Section 8 housing vouchers, Project-based Section 8, or Public Housing, the Supplemental Nutrition Assistance Program (SNAP), and even assistance for seniors who need help paying for prescription drugs (Medicare Low Income Subsidy).

To give a sense of the scale of the change, if the current standard for receipt of benefits were applied to U.S. born citizens, it would exclude one in twenty people. But the new standards would exclude more than six times as many people -- nearly one in three U.S.-born citizens, or tens of millions of low-and moderate-income people who get help in any given year paying for health, food or housing. And these figures are based only on one year of assistance, while the rule actually proposes to look back over three years.[27]

In part because of statutory limitations on which lawfully present immigrants are eligible to receive public benefits, immigrants subject to the public charge test are actually far less likely than low-income U.S. born-citizens to receive these benefits.[28] As recognized by DHS, the data offered in Table 11 of the proposed rule do not allow distinguishing between individuals subject to the public charge determination and those who are not. However, as discussed in more detail in the following sections, because of the sweep and complexity of the proposed rule, it is likely to deter or "chill" immigrants who are not subject to the public charge test (such as refugees and asylees) as well as citizens with immigrant family members, from receiving these benefits, as well as frighten people away from receiving benefits that are not listed in the proposed rule.

b. The Proposed Regulation Would Drastically Reshape Our System of Family-Based Immigration

The proposed rule also makes massive changes to existing policy regarding the criteria for lawful permanent residency. The proposed rule would reshape the structure of our legal immigration system and redefine who is 'worthy' of being an American– shifting immigration away from working people and the world's dreamers and strivers and towards those who bring high incomes, and financial assets.

Although the proposal claims to maintain a "totality of the circumstances" approach, weighing the person's age, health, resources, education, family situation, and a sponsor's affidavit of support, in fact it greatly increases the chances of a negative outcome for ordinary working families without wealth or high incomes, by assigning a negative weight to many factors that are closely correlated such as having a low-income, having a poor credit score, and having requested an immigration fee waiver. In addition, the proposed rule details how being a child or a senior, having a number of children, or having a treatable medical condition could be held against immigrants seeking a permanent legal status. The rule also indicates a preference for immigrants who speak English, which would mark a fundamental change from our nation's historic commitment to welcoming and integrating immigrants over time. Because this rule targets family-based immigration, it will also have a disproportionate impact on people of color.

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[27] Danilo Trisi. Center on Budget and Policy Priorities. One-Third of U.S.-Born Citizens Would Struggle to Meet Standard of Extreme Trump Rule for Immigrants. September 27, 2018, https://www.cbpp.org/blog/one-third-of-us-born-citizens-would-struggle-to-meet-standard-of-extreme-trump-rule-for.

[28] Leighton Ku and Brian Buen. Cato institute. Poor Immigrants Use Public Benefits at a Lower Rate than Poor Native-Born Citizens. March 4, 2013, https://www.cato.org/publications/economic-development-bulletin/poor-immigrants-use-public-benefits-lower-rate-poor.

A recent study by the Migration Policy Institute gives a sense of the scale here, finding that when recent green card recipients are compared to the new criteria, over two-thirds would have at least one negative factor under the proposed rule and more than 40% would have two or more negative factors. Just 39 percent of green card applicants subject to a public charge test in 2017 had incomes at or above 250% of the federal poverty level - the one "heavily weighed" negative factor in the proposed rule.[29] While the proposed rule is unclear about how exactly this new test would be applied, it is likely that denials for applications for permanent residency would sky-rocket. Moreover, there is a risk that the public charge standard will be inconsistently applied -- and could be applied in a discriminatory manner.

c. The Rule Is Inconsistent with How Public Charge Has Been Historically Understood

The proposed rule would reverse more than a century of existing law, policy, and practice in interpreting the public charge law. When the concept of public charge was first created, the current system of public benefits that support working families did not exist. A public charge was understood to refer to a person who fell completely dependent on public facilities, such as poor houses, hospitals, and asylums for the mentally ill, for support.

The first federal immigration laws excluded "any convict, lunatic, idiot, or any person unable to take care of himself or herself without becoming a public charge"[30] -- but this did not include people who were simply impoverished. This is evidenced by Emma Lazarus' famous poem, written the following year, and subsequently attached to the Statue of Liberty, which boldly invited the world to send us "your tired, your poor, your huddled masses yearning to breathe free, the wretched refuse of your teeming shore."

As our system of public benefits developed in the 20th century, there has never been an expectation that individuals who received support for health care, food or housing would be considered to be "public charges." For almost two decades, U.S. immigration officials have explicitly reassured, and immigrant families have relied on that reassurance, that participation in programs like Medicaid and SNAP (formerly food stamps) would not affect their ability to become lawful permanent residents.[31]

Congress has had several opportunities to amend the public charge law but has only affirmed the existing administrative and judicial interpretations of the law. For example, in 1986, Congress enacted a "special rule" for overcoming the public charge exclusion as part of the legalization program "if the alien demonstrates a history of employment in the United States evidencing self-support without receipt of public cash assistance."[32] 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.[33] This special rule and its implementing

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[29] Randy Capps, Mark Greenberg, Michael Fix, and Jie Zong, "Gauging the Impact of DHS' Proposed Public-Charge Rule on U.S. Immigration," Migration Policy Institute, November 2018, https://www.migrationpolicy.org/research/impact-dhs-public-charge-rule-immigration.

[30] An Act to Regulate Immigration, 22 Stat. 214 (1882), https://www.loc.gov/law/help/statutes-at-large/47th-congress/session-1/c47s1ch376.pdf.

[31] U.S. Citizenship and Immigration services, "Public Charge," n.d. https://www.uscis.gov/greencard/public-charge.

[32] INA §245A(d)(2)(B)(iii), https://www.uscis.gov/ilink/docView/INT/HTML/INT/0-0-0-65/0-0-0-7121.html. IRCA also created a waiver of the public charge exclusion for applicants who were aged, blind, or disabled (and might be in need of long-term institutional care), INA §245A(d)(2)(B)(ii)(IV).

[33] See 8 CFR §245a.1(i): https://www.gpo.gov/fdsys/granule/CFR-2017-title8-vol1/CFR-2017-title8-vol1-part245a; there was a

regulation is consistent with the case law on public charge.

The 1996 Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) limited eligibility for "federal public benefits" to "qualified immigrants" and limited eligibility of many lawful permanent residents for "means-tested public benefits" during their first five years or longer 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.

Memoranda from the Department of State and INS interpreting the statutory changes following IIRIRA are also illustrative. The following convey the agencies' analysis and application of the public charge ground shortly after passage of IIRIRA:

- "If there is a sufficient Affidavit of Support and the applicant appears to be able to support him/herself and dependents, a public charge finding may not be appropriate notwithstanding the petitioner's reliance on public assistance."[34]
- "Except for the new requirements concerning the enforceable affidavit of support, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) has not altered the standards used to determine the likelihood of an alien to become a public charge nor has it significantly changed the criteria to be considered in determining such a likelihood."[35]

In the preamble to the proposed rule at 83 FR 51118, DHS states that "the primary benefit of the proposed rule would be to help ensure that aliens who apply for admission to the United States, seek extension of stay or change of status, or apply for adjustment of status are self-sufficient, *i.e.,* do not depend on public resources to meet their needs, but rather rely on their own capabilities and the resources of their family, sponsor, and private organizations." However, the mere statement of a goal for legislation does not mean that Congress has given DHS the authority to do anything it chooses in pursuit of this goal. In fact, the statutory citation given here, to 8 USC 1601(2) is to language added by PRWORA -- legislation in which Congress chose to restrict the eligibility of certain immigrants for benefits and did not make any changes to the public charge statute. Moreover, as discussed below, Congress subsequently made further legislative changes that expanded access to these programs for some groups of immigrants.

In the preamble at 83 FR 51123, DHS states that "within this administrative and legislative context, DHS's view of self-sufficiency is that aliens subject to the public charge ground of inadmissibility must rely on their own capabilities and secure financial support, including from family members and sponsors, rather than seek and

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similar regulatory interpretation for special agricultural workers, 8 C.F.R. §210.3(e)(4).

[34] Department of State, "I-864 Affidavit of Support Update No. One – Public Charge Issues," UNCLAS STATE 228862 (Dec. 1997), http://www.americanlaw.com/affidavitrule3.html.

[35] Immigration and Naturalization Service, Office of Programs, "Public Charge: INA Sections 212(a)(4) and 237(a)(5) – Duration of Departure for LPRs and Repayment of Public Benefits" (Dec. 16, 1997), https://www.uscis.gov/ilink/docView/SLB/HTML/SLB/act.html.

receive public benefits to meet their needs." This incorrectly suggests that the proposed regulation is a simple codification of current practice, rather than a radical change that is driven by this Administration's agenda of reducing family-based immigration and cutting access to public benefits.

Nonetheless, after 1996, there was a lot of confusion about how the public charge test might be used against immigrants who were eligible for and receiving certain non-cash benefits. In response to concerns that some consular officials and employees of the then-Immigration and Naturalization Service (INS) were inappropriately scrutinizing the use of health care and nutrition programs, and the strong evidence of chilling effects from the 1996 law, INS issued administrative guidance in 1999 and a notice of proposed rulemaking clarifying the definition of public charge as primarily dependent on the government for subsistence – as demonstrated by the receipt of cash assistance benefits, and/or government-supported long-term institutional care. It specifically **excluded** non-cash programs such as Medicare, Medicaid, food stamps, WIC, Head Start, child care, school nutrition, housing, energy assistance, emergency/disaster relief as programs to be considered for purposes of public charge.[36]

The 1999 NPRM preamble makes clear that it was not seen as changing policy from previous practice, but was issued in response to the need for a "clear definition" so that immigrants can make informed decisions and providers and other interested parties can provide "reliable guidance."[37] INS proposed to define "public charge" to mean an individual "who is likely to become … primarily dependent on the Government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance or institutionalization for long-term care at Government expense." This definition was consistent with the advice provided by federal benefit-granting agencies, including the Department of Health and Human Services, the Department of Agriculture, and the Social Security Administration. Each concurred that "receipt of cash assistance for income maintenance is the best evidence of primary dependence on the Government" because "non-cash benefits generally provide supplementary support … to low-income working families to sustain and improve their ability to remain self-sufficient."

In publishing the 1999 proposed rule and the Field Guidance, INS also explained the logic behind the current policy. INS expressly took "into account the law and public policy decisions concerning alien eligibility for public benefits and public health considerations, as well as past practice by the Service and the Department of State."[38] INS also gave several reasons for deciding to adopt the definition of public charge in both the 1999 proposed rule and the Field Guidance. INS observed that non-cash benefits "serve important public interests," "are by their nature supplemental" and participation in such non-cash programs is "not evidence of poverty or dependence." [39] INS also recognized that benefits are "increasingly being made available to families with incomes far above the poverty level, reflecting broad public policy decisions about improving general health and nutrition, promoting

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[36] Department of Justice, "64 Fed. Reg. 28689," U.S. Government Publishing Office, May 1999, https://www.gpo.gov/fdsys/granule/FR-1999-05-26/99-13202.

[37] Inadmissibility and Deportability on Public Charge Grounds, A Proposed Rule by the Immigration and Naturalization Service on 05/26/1999, 64 Federal Register 28676, https://www.federalregister.gov/agencies/immigration-and-naturalization-service.

[38] 64 Fed. Reg. at 28,692, U.S. Government Publishing Office, May 26, 1999, https://www.gpo.gov/fdsys/pkg/FR-1999-05-26/html/99-13202.htm.

[39] 64 Fed. Reg. at 28,692, U.S. Government Publishing Office, May 26, 1999, https://www.gpo.gov/fdsys/pkg/FR-1999-05-26/html/99-13202.htm.

education, and assisting working poor families in the process of becoming self-sufficient."[40]

In the current NPRM, DHS acknowledges that the Departments of Health and Human Services, Agriculture, and the Social Security Administration agreed on the approach taken in the 1999 rule but claims that the "passage of time" makes these arguments no longer "fully relevant" without actually refuting them. 83 FR 51133. In fact, legislative decisions made since 1999, including the 2002 and 2008 Farm Bills, which made it easier for low-income working families to receive SNAP benefits and the 2010 Patient Protection and Affordable Care Act, which expanded Medicaid access for millions of low-income working families, make the argument from 1999 even more compelling.

At 83 FR 51123, DHS notes that the 1999 Field Guidance and companion proposed rule did not provide additional detail on the mandatory factors included in the totality of circumstances tests and did not explain how to weigh these factors in the public charge inadmissibility determination. DHS states that the 1999 guidance did not "sufficiently" describe these factors but provides no evidence of any problems that have been caused by the 1999 Guidance. In fact, this guidance has remained in effect through both Democratic and Republican administrations and there has not been any indication that INS or DHS have had any difficulties in implementing. Congressional actions over the nearly 20 years that the Field Guidance has been in effect provide ample evidence that there is no problem now and no persuasive rationale for change

d. The Rule Is Inconsistent with Clear Congressional Intent That Recognizes the Importance of Access to Preventive Care and Nutrition Benefits for Immigrants

The proposed public charge regulation undermines Congressional actions that recognize the importance of access to preventive care and nutrition benefits for immigrants. Following the 1996 welfare reform law that overhauled immigrant eligibility for programs and the 1999 INS field guidance, Congress has passed several laws that explicitly loosened or created new eligibility for means tested programs for immigrant populations. Because immigrants and their families will be penalized for using these programs that they are lawfully allowed to use, this proposal effectively ends their eligibility.

- *The Agricultural Research, Extension and Education Reform Act of 1998* [PL 105-185], restored eligibility to children, seniors, and individuals with disabilities who had been qualified immigrants as of the date of enactment of PRWORA.

- *The 2002 Farm Bill expanded SNAP for immigrant children.* Section 4401 of Farm Security and Rural Investment Act of 2002 restored access to what was then called Food Stamps (now the Supplemental Nutrition Assistance Program, SNAP) to immigrant children, immigrants receiving disability benefits and qualified immigrant adults living in the U.S. for more than five years.

[40] Inadmissibility and Deportability on Public Charge Grounds, A Proposed Rule by the Immigration and Naturalization Service on 05/26/1999; 64 Federal Register 28678, U.S. Government Publishing Office, May 26, 1999, https://www.gpo.gov/fdsys/pkg/FR-1999-05-26/html/99-13188.htm.

- *The 2009 Children's Health Insurance Program Reauthorization bill expanded access to Medicaid and CHIP for immigrant women and children.* Section 214 of the 2009 Children's Health Insurance Program Reauthorization Act (CHIPRA) gave states a state plan amendment option to cover, with regular federal matching dollars, lawfully residing children and pregnant women on Medicaid and CHIP regardless of their date of entry. As of January 2018, 35 states had taken the option to cover children and 25 states had taken the option to cover pregnant women.[41]

Statutory text, congressional debate and contemporary media coverage demonstrate these decisions were an intentional use of legislative power that should not be undermined by a regulation. For example, Newt Gingrich, one of the primary creators of the 1996 law, was quoted in 2002 as saying ''I strongly support the president's initiative [to restore SNAP benefits to immigrant children]. In a law that has reduced welfare by more than 50 percent, this is one of the provisions that went too far. In retrospect, it was wrong."[42]

Families should be able to seek and use the benefits they are eligible for, focused on remaining healthy and productive, without compromising their ability to remain permanently in the United States. Congress has clearly understood this over time, intentionally avoiding and removing barriers to immigrant access to programs like SNAP, CHIP and Medicaid. The administration can't cite PRWORA's goal as justification for their changed policy while ignoring subsequent laws which support health and nutrition assistance for immigrants and highlight their effectiveness in promoting self-sufficiency.

In a few places in the rule, DHS recognizes Congressional intent outside of the Immigration and Nationality Act. For example, at 83 FR 51171, DHS explains the exclusion of Medicaid services for children who will be adopted by U.S. citizens, noting that Congress has enacted numerous laws over the last two decades to ensure that such children are not subject to adverse consequences. DHS' interest in this intent and disregard of other laws that express clear Congressional intent to expand health and nutrition benefits is a clear sign of cherry-picking the legislative history in support of their desired policies.

At 83 FR 51123, DHS states that the proposed rule would remove the "artificial distinction" between cash and non-cash benefits. This distinction is not artificial, but a long-standing part of policy and practice. For example, it is not legal for SNAP recipients to sell their benefits for cash.[43] Moreover, the SNAP statute explicitly states that "the value of benefits that may be provided under this chapter shall not be considered income or resources for any purpose under any Federal, State, or local laws."[44]

Similarly, DHS repeatedly claims that the PRWORA concept of self-sufficiency requires that an individual not receive any public support; however, one of the main features of PRWORA was a sharp distinction between cash assistance, which was made time limited and subject to strict work requirements, and Medicaid, which was "de-

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[41]Kaiser Family Foundation. Medicaid/CHIP Coverage of Lawfully-Residing Immigrant Children and Pregnant Women. January 2018. https://www.kff.org/health-reform/state-indicator/medicaid-chip-coverage-of-lawfully-residing-immigrant-children-and-pregnant-women/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D

[42]Robert Pear, "Bush Plan Seeks to Restore Food Stamps for Noncitizens," New York Times, January 10, 2002, https://www.nytimes.com/2002/01/10/us/bush-plan-seeks-to-restore-food-stamps-for-noncitizens.html.

[43] USDA Food and Nutrition Service, "Fraud," n.d., https://www.fns.usda.gov/fraud/what-snap-fraud.

[44] 7 USC 2017(b), "Benefits not deemed income or resources for certain purposes," https://www.law.cornell.edu/uscode/text/7/2017.

linked" from cash assistance. In this law, Congress recognized that health coverage under Medicaid was an important support for families pursuing self-sufficiency, not an obstacle. At 83 FR 51163, DHS states that "certain non-cash benefits, just like cash benefits, provide assistance to those who are not self-sufficient." This is a tautological statement, the Department having arbitrarily defined self-sufficiency based on the absence of receipt of any benefits.

At 83 FR 51164, the regulation justifies the expansion of included programs by stating that "DHS considers the current policy's focus on cash benefits to be insufficiently protective of the public budget, particularly in light of significant public expenditures on non-cash benefits." However, it is inappropriate and outside of DHS's lawful jurisdiction for the Department of Homeland Security to save money by trying to discourage people from utilizing benefits for which Congress has made them eligible. This impermissible goal is reflected throughout the proposed rule; for example, at 83 FR 51165, where DHS explains that the selected programs were identified based on "the Federal government's expenditures."

e. The Department's Re-Definition of The Totality of Circumstances Test Factors and Addition of "Heavily Weighed" Factors Is Deeply Problematic and Inconsistent with The Plain Meaning of The Totality of The Circumstances Test

At 83 FR 51178, DHS correctly describes the totality of circumstances test: "Other than an absent or insufficient required affidavit of support, no single factor or circumstance that Congress mandated DHS to consider, or which DHS may otherwise determine to consider, would determine the outcome of a public charge inadmissibility determination." However, the detailed listing of factors and evidence that will be considered -- and the arbitrary selection of certain factors as "heavily weighed" -- suggests that in practice it would be nearly impossible for immigrants to overcome certain negative factors.

The proposed rule explicitly says that "assets, resources and financial status" together would carry considerable positive weight, since they are the most "tangible" factors to consider. This is not grounded in either Congressional language or previous practice -- the case law examples cited in the proposed rule make clear that historically having prospects of employment and/or a sponsor has been sufficient to overcome previous lack of employment or low income. The listing of multiple highly correlated items such as income below a specific level, receipt of fee waiver, and credit score as separate items further biases the determination against low-income applicants.

The Department's proposal to heavily weigh certain factors is also arbitrary as the statutory language does not provide a basis for weighing some factors more heavily than others. Moreover, the proposed rule does not heavily weight the only factor that is singled out in statute as absolutely essential -- the provision of a valid affidavit of support. As discussed further in our comments that follow, the 125 and 250 percent of poverty thresholds are arbitrary and without statutory basis.

The lack of clarity about how it will be possible to overcome negative factors means that the proposed rule will have a much greater chilling effect -- making immigrants afraid to access public benefits even if those supports would help them thrive and become more stable in the future. For example, the proposed rule gives an example of an immigrant who has received benefits in the past and is now unemployed, but is graduating college and has a pending offer of employment with benefits, and says that "it is possible that in the review of the totality of the circumstances, the alien would not be found likely to become a public charge." A straightforward reading of the

totality of circumstances test is clearly that the circumstances that led to use of benefits are about to change, and that such an individual is not at risk of becoming a public charge. However, the anemic language offered in the proposed rule, that it is "possible" this individual will not be found a public charge, makes it impossible to offer this person assurances that they will not be penalized for having received benefits. Moreover, because having been previously found to be a public charge is itself a heavily weighed negative factor, if rejected, this individual will find it even harder to be approved in the future.

At 83 FR 51123, the preamble states that "DHS's view of self-sufficiency also informs other aspects of this proposal. DHS proposes that immigrants who seek to change their nonimmigrant status or extend their nonimmigrant stay generally should also be required to continue to be self-sufficient and not remain in the United States to avail themselves of any public benefits for which they are eligible, "*even though the public charge inadmissibility determination does not directly apply to them.* " In other words, DHS directly admits that they have no statutory basis for this proposal, but simply think it would be a good idea based on their ideological hostility to use of public benefits.

f. The Rule Is Directly at Odds with The Prospective Nature of The Public Charge Determination

i. The Rule Ignores Immigrants' Economic Mobility Over Time

When determining whether an individual is likely to use benefits, immigration officers apply a "totality of circumstances" test by considering a range of factors such as age, education, health, income, and resources. The proposed rule broadens this list, meaning that more individuals seeking to adjust status will face the risk of being denied because of demographic and socioeconomic characteristics the rule considers signs of likely benefit use.

Based on the Migration Policy Institute's study of recent green-card recipients, approximately 69 of recent green card recipients had at least one negative factor, 43 percent had at least two negative factors, and 17 percent had at least three negative factors in the proposed rule. In particular, children, seniors, and individuals from Mexico and Central America are at a higher risk of denial as 45%, 72%, and 60%, respectively, have two or more negative factors. The same researchers found that only 39 percent of recent green card recipients had incomes at or above 250 percent of the poverty level – a heavily weighed positive factor in the proposed rule.[45] Further, another study by the Center for Migration Studies suggests that a large number and share of working class immigrants would be denied admission and prevented from adjusting to LPR status under the proposed rule.[46]

However, the rule fails to consider evidence that immigrants improve their economic status overtime. Analysis conducted by the Center for Health Policy Research found that immigrants have substantial economic mobility. When immigrants first arrive to the United States, they have less social capital and their job skills and experience may not align perfectly with the American job market. Over time, immigrants' social capital increases and job skills and experience improve, increasing their income to eventually catch up to non-immigrants. Additionally,

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[45] Randy Capps, Mark Greenberg, Michael Fix, Jie Zong, *Gauging the Impact of DHS' Proposed Public-Charge Rule on U.S. Immigration* ,Migration Policy Institute, MPI2018, https://www.migrationpolicy.org/research/impact-dhs-public-charge-rule-immigration.

[46] Donald Kerwin, Robert Warren, Mike Nicholson *Proposed Public Charge Rule Would Significantly Reduce Legal Admissions and Adjustment to Lawful Permanent Resident Status of Working Class Persons* ,CMS, 2018 http://cmsny.org/wp-content/uploads/2018/11/Public-Charge-Report-FINAL.pdf.

immigrants with low education close the immigrant-native income gap even faster, catching up with similar US-born counterparts within seven years.[47] The proposed rule completely ignores the upward mobility of immigrants, denying immigrants future opportunities and stalling our nation's progress.

Research also shows that access to lawful permanent residence and citizenship can help lift families out of poverty and create economic prosperity for immigrants and their children.[48] Lawful status and citizenship can help parents secure better paying jobs, pulling families out of poverty, and reduces the stress associated with living without legal status. These benefits are passed down to children—especially when parents are able to obtain legal status early in their child's life—leading to better educational and workforce outcomes when their children reach adulthood.[49]

ii. The Rule Fails to Consider the Positive Long-Term Effects of Receipt of Health, Nutrition and Housing Programs

Case law regarding public charge includes numerous examples where even decades-long past receipt of cash benefits did not result in a public charge finding because of the "totality of circumstances" test was used in the applicant's favor, including showing changes in employment history and other life circumstances. The proposed rule ignores the fact that public programs are often used as work supports which contribute to the long-term self-sufficiency the Department purports to promote.

At 83 FR 51174, DHS recognizes that by statute, the public charge test is required to be prospective -- to look at *the likelihood of future use* of benefits. It acknowledges that on face value, the proposed policy is not prospective "DHS understands that its proposed definition of public charge may suggest that DHS would automatically find an alien who is *currently* receiving public benefits, as defined in this proposed rule, to be inadmissible as likely to become a public charge." It then attempts to salvage its proposal by saying "DHS does not propose to establish a *per se* policy whereby an alien is likely at any time to become a public charge if the alien is receiving public benefits at the time of the application for a visa, admission, or adjustment of status." However, by heavily weighing previous receipt of public benefits and providing no heavily weighed prospective factors, this is to all extents and purposes what DHS is proposing to do.

Numerous studies point to the positive long-term effects of receipt of health, nutrition and housing programs.[50] These studies are further discussed in the sections below. The proposed rule ignores the fact that public programs are often used as work supports which empower future self-sufficiency. Using benefits can help

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[47] Leighton Ku and Drishti Pillai, The Economic Mobility of Immigrants: Public Charge Rules Could Foreclose Future Opportunities (November 15, 2018). Available at SSRN: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3285546.

[48] Demetrios G. Papademetriou, Madeleine Sumption, and Will Somerville, "The Social Mobility of Immigrants and Their Children," Migration Policy Institute, June 2009, https://www.migrationpolicy.org/research/social-mobility-immigrants-and-their-children.

[49] Lisa A. Keister, Jody Agius Vallejo, E. Paige Borelli, "Mexican American Mobility," Stanford Center on Poverty and Inequality, April 2013, https://inequality.stanford.edu/sites/default/files/media/_media/working_papers/keister_agius-vallejo_borelli_mexican-american-mobility.pdf.

[50] Tazra Mitchell and Arloc Sherman, "Economic Security Programs Help Low-Income Children Succeed Over Long Term, Many Studies Find," Center on Budget and Policy Priorities, July 17, 2017, https://www.cbpp.org/research/poverty-and-inequality/economic-security-programs-help-low-income-children-succeed-over.

individuals and their family members become healthier, stronger, and more employable in the future. Receipt of benefits that cure a significant medical issue or provide an individual with the opportunity to complete their education can be highly significant positive factors that contribute to future economic self-sufficiency.

g. The Rule Is Inconsistent with Congressional Intent as Expressed Through Other Laws

i. The Treatment of Disability as Purely a Burden Is Inconsistent with Modern Understanding of Disability

The proposed rule reflects a harmful, outdated and inaccurate prejudice that people with disabilities are not contributors to society – a perspective that Congress has explicitly rejected in multiple statutes, including the Americans with Disabilities Act. Under the proposal, the Department will consider a wide range of medical conditions, many of which constitute disabilities, as well as the existence of disability itself, in determining whether an immigrant is likely to become a public charge. Although DHS states that disability will not be the "sole factor," in that determination, the Department fails to offer any accommodation for individuals with disabilities and instead echoes the types of bias and "archaic attitudes" about disabilities that the Rehabilitation Act was meant to overcome.[51] By treating immigrants with disabilities as public charges, the proposed rule would reinforce prejudice and negative attitudes towards all people with disabilities, viewing them as burdens on society. This punitive and prejudicial approach would reverse decades of disability discrimination law and add to the stigma and discrimination experienced by all individuals who have a disability.

ii. English Proficiency as A Factor in The Public Charge Test Is A Fundamental Change from Our Historic Commitment to Welcoming and Integrating Immigrants and Stands In Stark Contrast With Civil Rights Laws

The language requirement in the proposed rule stands in stark contrast to Federal Civil Rights Laws prohibiting discrimination on the basis of English proficiency. This is not a country with a national language. There is no law that allows the government to give preference to those who speak English over those who are limited English proficient (LEP). In contrast to this proposal, there are clear federal civil rights laws protecting LEP persons from discrimination on the basis of English proficiency. Title VI, 42 U.S.C. § 2000d of the Civil Rights Act prohibits discrimination on the basis of race, color and national origin in programs and activities receiving federal financial assistance. Title VII, 42 U.S.C. § 2000e of the Civil Rights Act prohibits discrimination in employment on the basis of race, color, national origin, sex, or religion. The Supreme Court has held that discrimination on the basis of language or English proficiency is a form of national origin discrimination. Executive Order 13166 provides that all persons who are Limited English Proficient (LEP) should have meaningful access to federally conducted and federally funded programs and activities and directs federal agencies to ensure they are in compliance.

The English proficiency proposal is not supported by the statute or the agency's Justification. The public charge statute does not include English proficiency as a factor to be considered in an individual's assessment and instead refers only to "education and skills," among other factors. The agency offers a limited number of justifications for its proposal to add English proficiency to the list of factors, all of which are without merit. For example, the agency states that those who cannot "speak English may be unable to obtain employment in areas where only

[51] School Bd. of Nassau Cty. v. Arline, 480 U.S. 273, 279 (1987).

English is spoken." There is a significant difference between English proficiency and having no ability to speak the language, which the agency appears to conflate here. Many individuals who have limited English proficiency are able to serve important employment roles. Second, the U.S. is a deeply multilingual country, where 63 million people speak a language other than English at home. In fact, there are at least 60 counties in the United States where over 50 percent of the population speaks a language other than English including some of the most heavily populated.[52] In 2016, approximately 49 percent (21.3 million) of the 43.4 million immigrants ages 5 and older were LEP.[53] There are a myriad of areas where a person who speaks a language other than English can meaningfully contribute to the workforce and to civic society.

h. Public Charge Is A Concept Historically Rooted in Discrimination, And the Department's Proposal Appears to Be Driven by The Administration's Racial Animus And Desire To Restrict Immigration From Certain Countries

The history of public charge is steeped in a deep-rooted prejudice against those who comprise a racial, ethnic, or social underclass. The first public charge laws in this country were adopted by the states. For example, New York State passed a law in 1847 that prohibited the landing of "any lunatic, idiot, deaf and dumb, blind or infirm persons, not members of emigrating families, and who . . . are likely to become permanently a public charge."[54] The motivation for these laws derived from both financial concerns and cultural prejudice against the Catholic Irish who often arrived in the United States without the financial resources to support themselves.[55] The first federal statute precluding the admission of immigrants based on potential public charge was passed by the 47th Congress and signed into law on August 3, 1882,[56] three months after it had passed the Chinese Exclusion Act.[57] After the establishment of immigration quotas based on national origin in the 1920s, the public charge provision was used to exclude European Jews seeking to escape Nazi genocide.[58]

Today's proposal targets individuals who come from less developed countries, possess modest skills and

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[52] U.S. Census Bureau, *2012-2016 American Community Survey Estimates, Table S1601*.
[53] Migration Policy Institute, *Frequently Requested Statistics on Immigrants and Immigration in the United States*, 2018, https://www.migrationpolicy.org/article/frequently-requested-statistics-immigrants-and-immigration-united-states.
[54] Annual Reports of the Commissioners of Emigration of the State of New York: From the Organization of Commission, May 5, 1847, to 1860, Inclusive (New York: John F. Trow, 1861), https://books.google.com/books?id=nVdNAQAAMAAJ&pg=PA184&lpg=PA184&dq=%22any+lunatic,+idiot,+deaf+and+dumb,+blind+or+infirm+persons,+not+members+of+emigrating+families,+and+who,+from+attending+circumstances,+are+likely+to+become+permanently+a+public+charge%22&source=bl&ots=ij-lXsIeii&sig=Lyr85eEdyMmz42df37RArAdZrjs&hl=en&sa=X&ved=2ahUKEwiNycr-vvzeAhVpp1kKHZi0DKgQ6AEwAnoECAMQAQ#v=onepage&q=%22any%20lunatic%2C%20idiot%2C%20deaf%20and%20dumb%2C%20blind%20or%20infirm%20persons%2C%20not%20members%20of%20emigrating%20families%2C%20and%20who%2C%20from%20attending%20circumstances%2C%20are%20likely%20to%20become%20permanently%20a%20public%20charge%22&f=false.
[55] Hidetaka Hirota, Expelling the Poor: Atlantic Seaboard States & the 19th-Century Origins of American Immigration Policy, Oxford University Press 2017, p. 2., http://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780190619213.001.0001/acprof-9780190619213.
[56] Immigration Act of August 3, 1882, 22 Stat. 214, "Fees for execution and issuance of passports; persons excused from payment," August 3, 1882, https://www.law.cornell.edu/uscode/text/22/214.
[57] Immigration Act of May 6, 1882, 22 Stat. 58, https://www.law.cornell.edu/wex/chinese_exclusion_act.
[58] Barbara Bailin, The Influence of Anti-Semitism on United States Immigration Policy With respect to German Jews During 1933-1939, City University of New York 2011, https://academicworks.cuny.edu/cgi/viewcontent.cgi?article=1261&context=cc_etds_theses.

education, lack English proficiency, and seek primarily low-wage positions in the economy. In footnote 20, DHS notes that "this proposed policy change is consistent with the March 6, 2017 Presidential Memorandum directing DHS to issue new rules, regulations, and/or guidance to enforce laws relating to such grounds of inadmissibility and subsequent compliance." But the proposed rules are not consistent with these laws.

Donald Trump has expressed his support for dramatic changes to family-based immigration, particularly when the immigrants come from certain countries. Since the start of his Presidential bid, Trump has made numerous and frequent statements that explicitly express hostility to immigrants from Latin America, Africa, and the Middle Eastern countries where the majority of people are not white and have low incomes, which are directly relevant to understanding the administration's motivations. Examples include:

- During his first campaign speech, Trump said: “When Mexico sends its people, they’re not sending their best. They’re sending people that have lots of problems. They’re bringing drugs. They're bringing crime. They’re rapists.”[59]
- In a July 2015 Statement, Trump released a statement against Mexican immigrants, saying: “What can be simpler or more accurately stated? The Mexican Government is forcing their most unwanted people into the United States. They are, in many cases, criminals, drug dealers, rapists, etc.”[60]
- In December 2015, Trump called for a “a total and complete shutdown of Muslims entering the United States,” including refusing to readmit Muslim-American citizens who were outside of the country at the time.[61]
- On June 2, 2016, President Trump told the Wall Street Journal that a federal judge hearing a case about Trump University was biased because of the judge’s Mexican heritage.[62]
- On January 26, 2017, less than a week after taking office, President Trump issued the first of three executive orders banning people from predominantly Muslim countries from entering or reentering the United States. The ban currently affects millions of people, including hundreds of thousands of U.S citizens and permanent residents, who are prevented from reuniting with family members who live in the designated countries.
- In June 2017, Trump said 15,000 recent immigrants from Haiti “all have AIDS” and that 40,000 Nigerians, once seeing the United States, would never “go back to their huts” in Africa.[63]
- On July 26, 2017, President Trump expressed his support for the RAISE Act and promised "to create a new immigration system for America. Instead of today’s low-skill system, just a terrible system where anybody comes in.”[64] However, this bill only received support from three Senators, and was never even heard in committee.[65]

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[59] Washington Post Staff, “Full text: Donald Trump announces a presidential bid,” The Washington Post, June 16, 2015, https://www.washingtonpost.com/news/post-politics/wp/2015/06/16/full-text-donald-trump-announces-a-presidential-bid/?utm_term=.c35512e917ef.

[60] Hunter Walker, “Donald Trump just released an epic statement raging against Mexican immigrants and ‘disease,’” Business Insider, July 6, 2015, https://www.businessinsider.com/donald-trumps-epic-statement-on-mexico-2015-7#ixzz3fF897ElH.

[61] Tessa Berenson, “Donald Trump Calls For 'Complete Shutdown' of Muslim Entry to U.S.,” Time Magazine, December 7, 2015, http://time.com/4139476/donald-trump-shutdown-muslim-immigration/.

[62] Brent Kendall, “Trump Says Judge’s Mexican Heritage Presents ‘Absolute Conflict,’” The Wall Street Journal, June 3, 2016, https://www.wsj.com/articles/donald-trump-keeps-up-attacks-on-judge-gonzalo-curiel-1464911442.

[63] Michael D. Shear & Julie Hirschfeld Davis, “Stoking Fears, Trump Defied Bureaucracy to Advance Immigration Agenda,” The New York Times, December 23, 2017, https://www.nytimes.com/2017/12/23/us/politics/trump-immigration.html.

[64] President Donald J. Trump Backs RAISE Act, The White House, August 2, 2017,https://www.whitehouse.gov/briefings-

- On January 11, 2018 President Trump complained about "these people from shithole countries" coming to the United States and added that the United States should accept more immigrants from countries like Norway.[66]
- On May 16, 2018, President Trump commented that "[w]e have people coming into the country, or trying to come in. . . . You wouldn't believe how bad these people are. These aren't people, these are animals . . ." [67]
- On October 19, 2018, in response to a question on migrants fleeing violence and grinding poverty in Guatemala, El Salvador and Honduras, the president had these comments: "These are tough, tough people, and I don't want them, and neither does our country."[68]
- In a rally in Arizona on October 20, 2018 as well as at other campaign stops, President Trump repeated his claim that immigrants from Latin America are "bad hombres."[69]

In addition to expressing hostility towards immigrants and people of color, President Trump has frequently displayed friendliness with proud racists and white nationalists. For example, he called some of those who marched alongside white supremacists in Charlottesville, Va., last August "very fine people." After David Duke, the former leader of the Ku Klux Klan, endorsed him, Trump was reluctant to disavow Duke even when asked directly on television.[70] Trump endorsed and campaigned for Roy Moore, the Alabama Senate candidate who spoke positively about slavery.[71] Trump also pardoned – and praised – Joe Arpaio, the Arizona sheriff sanctioned for racially profiling Latinos and for keeping immigrants in brutal prison conditions.[72]

It is clear that the proposed rule will have a disproportionate impact on people of color. While people of color account for approximately 36% of the total U.S. population, of the 25.9 million people potentially chilled from seeking services by the proposed rule, approximately 90% are people from communities of color (23.2 million). Among people of color potentially chilled by the rule, an estimated 70% are Latino (18.3 million), 12% are Asian American and Pacific Islander (3.2 million), and 7% are Black people (1.8 million). [73]

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statements/president-donald-j-trump-backs-raise-act/.
[65] S.1720 - RAISE Act, U.S. Congress, August 2, 2017, https://www.congress.gov/bill/115th-congress/senate-bill/1720.
[66] Josh Dawsey, "Trump derides protections for immigrants from 'shithole' countries," January 12, 2018, The Washington Post, https://www.washingtonpost.com/politics/trump-attacks-protections-for-immigrants-from-shithole-countries-in-oval-office-meeting/2018/01/11/bfc0725c-f711-11e7-91af-31ac729add94_story.html?utm_term=.7fc895490993
[67] Remarks by President Trump at a California Sanctuary State Roundtable, The White House, May 16, 2018, https://www.whitehouse.gov/briefings-statements/remarks-president-trump-california-sanctuary-state-roundtable/.
[68] Emily Cochrane, Playing Up Support Among Hispanic Voters, Trump Takes Aim at Immigration Laws, New York Times (October 20, 2018), https://www.nytimes.com/2018/10/20/us/politics/trump-arizona-rally-immigration.html.
[69] Emily Cochrane, Playing Up Support Among Hispanic Voters, Trump Takes Aim at Immigration Laws, New York Times (October 20, 2018), https://www.nytimes.com/2018/10/20/us/politics/trump-arizona-rally-immigration.html.
[70] Glenn Kessler, "Donald Trump and David Duke: For the record," The Washington Post, March 1, 2016,https://www.washingtonpost.com/news/fact-checker/wp/2016/03/01/donald-trump-and-david-duke-for-the-record/?utm_term=.7126e49478f7.
[71] German Lopez, "Roy Moore was once again caught making remarks that can be interpreted as okay with slavery," Vox, December 11, 2017, https://www.vox.com/identities/2017/12/11/16761348/roy-moore-racism-sexism.
[72] Kevin Liptak, Daniella Diaz and Sophie Tatum, "Trump pardons former Sheriff Joe Arpaio," CNN, August 27, 2017, https://www.cnn.com/2017/08/25/politics/sheriff-joe-arpaio-donald-trump-pardon/index.html.
[73] 2012-2016 5-Year American Community Survey Public Use Microdata Sample (ACS/PUMS); 20122016 5-Year American Community Survey (ACS) estimates accessed via American FactFinder; Missouri Census Data Center (MCDC) MABLE PUMA-County Crosswalk. Custom Tabulation by Manatt health, 9/30/2018. Found online at

The disproportionate impact on communities of color provides additional evidence of the radical effect this rule would have in reshaping the country's population. Not only would it cause disproportionate harm among people of color with unmet health and nutrition needs, it would dramatically reduce the diversity of immigrants entering the US and obtaining green cards, reshaping the demographics of this country for decades to come. According to recent analysis by the Migration Policy Institute, the proposed rule would likely cause a significant shift in the origins of immigrants seeking visas and green cards, away from Mexico and Central America and towards Europe.[74] This trend would not only reduce the diversity of immigration to the United States, it would disproportionately increase family separation among immigrants of color – and US citizens - already residing in the US.

- ***Impact on Latino Immigrants***

The proposed changes would significantly harm our nation's Latino community and future. Today, the U.S. Hispanic population stands at more than 55 million and approximately one in four (23%) Latinos are non-citizens.[75] And by 2050, it is projected that nearly one-third of the U.S. workforce will be Latino.[76] Among Latino children, who account for a quarter of all U.S. children, the majority (52%) have at least one immigrant parent.[77]

Based on analysis by Manatt Health, the proposed rule would have a significant impact on a large share of the Latino community. Of the approximately 25.9 million people potentially impacted by the proposed rule, an estimated 18.3 million Latinos would be potentially chilled by the proposed public charge rule, accounting for an estimated 33% of the entire U.S. Latino population and an estimated 71% of the total potentially impacted population.[78] For progress to continue in the Latino community and our nation, immigrants should have an opportunity to support the resilience and upward mobility of their families. The proposed changes fail in this respect as Latino families would chill the use of support programs that help families put food on the table, access health care, and afford a roof over their heads because of fear of immigration consequences.

- ***Impact on Asian American and Pacific Islander Immigrants***

The proposed rule would have a dramatic impact on Asian American and Pacific Islander families. Asian Americans

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https://www.manatt.com/Insights/Articles/2018/Public-Charge-Rule-Potentially-Chilled-Population.

[74] Randy Capps, Mark Greenberg, Michael Fix, and Jie Zong, "Gauging the Impact of DHS' Proposed Public-Charge Rule on U.S. Immigration," Migration Policy Institute, November 2018, https://www.migrationpolicy.org/research/impact-dhs-public-charge-rule-immigration.

[75] U.S. Census Bureau, American FactFinder: Selected Population Profile in the United States: 2016 American Community Survey 1-Year Estimates, https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk; and 2017 Current Population Survey, Annual Social and Economic Supplement.

[76] J. S. Passel & D. Cohn, "U.S. Population Projections: 2005-2050," Pew Research Center (February 2008). Found online at http://www.pewhispanic.org/2008/02/11/ us-population-projections-2005-2050/.

[77] Richard Fry and Jeffrey S. Passel "Latino Children: A Majority Are U.S.-Born Offspring of Immigrants" (Washington, DC: Pew Research Center, 2009) http://www.pewhispanic.org/2009/05/28/latino-children-a-majority-are-us-born-offspring-of-immigrants/.

[78] 2012-2016 5-Year American Community Survey Public Use Microdata Sample (ACS/PUMS); 20122016 5-Year American Community Survey (ACS) estimates accessed via American FactFinder; Missouri Census Data Center (MCDC) MABLE PUMA-County Crosswalk. Custom Tabulation by Manatt health, 9/30/2018. Found online at https://www.manatt.com/Insights/Articles/2018/Public-Charge-Rule-Potentially-Chilled-Population.

and Pacific Islanders are among the fastest growing populations in the U.S.,[79] in large part to changes in U.S. immigration law in the 1960s that finally repealed restrictions on Asian immigration dating back to the Chinese Exclusion Act of 1882. Ironically, the original "public charge" exclusion was enacted in that same year, seeking to restrict Irish immigrants fleeing the potato famine.[80]

In recent years, three out of every ten individuals obtaining permanent residence status are from Asia and Pacific Island nations.[81] Forty percent of the millions of individuals and families waiting in long backlogs for family-based immigration are from Asia and Pacific Island nations.[82] All of these potential new Americans would be scrutinized under the new proposed rule and many would be deterred from participation in programs that they are eligible for and need to improve their health and well-being and the health and well-being of their families. While there is no evidence that the utilization of any government programs by Asian Americans and Pacific Islanders is higher than other populations, the proposed rule would deter many of these individuals and families from continuing to participate in programs such as Medicaid, SNAP, and government-assisted housing. Progress made since the passage of the ACA, that had partially equalized the disparities in uninsured rates between Whites and Asian Americans and Pacific Islanders through the expansion of Medicaid and establishment of health insurance marketplaces, could easily be wiped out.[83] Subgroups that are particularly at risk of poverty, such as Marshallese (41% poverty rate), Burmese (38%), Hmong (26.1%) and Tongans (22.1%), would be particularly likely to be being forced to choose between access to health and nutrition and their ability to keep their family united.[84]

- ***Impact on Black Immigrants***

The proposed rule would have a chilling effect on an estimated 1.8 million Black immigrants and their families. Nearly one in ten (7%) of all the people affected by the proposed rule, or one in twenty Black people in the U.S. (4%) would be potentially affected by the rule.[85] Although there are fewer total Black immigrants than Latinos or Asian Pacific Islanders, Black immigrants made up nearly one-quarter of people who became lawful permanent residents in one year.[86] In the aftermath of the 1996 Welfare Reform Acts, cuts to public benefits had lasting and

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[79] U.S. Census Bureau, The Asian Population: 2010 (2012), https://www.census.gov/prod/cen2010/briefs/c2010br-11.pdf and U.S. Census Bureau, The Native Hawaiian and Other Pacific Islander Population: 2010 (2012), https://www.census.gov/prod/cen2010/briefs/c2010br-12.pdf

[80] Green E. First, "They Excluded the Irish," The Atlantic. (February 2, 2017) https://www.theatlantic.com/politics/archive/2017/02/trump-poor-immigrants-public-charge/515397

[81] Department of Homeland Security, Yearbook of Immigration Statistics 2016, https://www.dhs.gov/immigration-statistics/yearbook/2016

[82] Department of State, Annual Report of Immigrant Visa Applicants (2017), https://travel.state.gov/content/dam/visas/Statistics/Immigrant-Statistics/WaitingList/WaitingListItem_2017.pdf

[83] Park et al, "Health Insurance for Asian Americans, Native Hawaiians, and Pacific Islanders Under the Affordable Care Act," JAMA Internal Medicine. (April 30, 2018). https://jamanetwork.com/journals/jamainternalmedicine/article-abstract/2678830?redirect=true

[84] American Community Survey 2015 Five Year Estimates, table DP03, U.S. Census Bureau, https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk.

[85] 2012-2016 5-Year American Community Survey Public Use Microdata Sample (ACS/PUMS), U.S. Census Bureau, https://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t; 2012-2016 5-Year American Community Survey (ACS) estimates accessed via American FactFinder; Missouri Census Data Center (MCDC) MABLE PUMA-County Crosswalk. Custom Tabulation by Manatt health, 9/30/2018. Found online at https://www.manatt.com/Insights/Articles/2018/Public-Charge-Rule-Potentially-Chilled-Population.

[86] D'Vera Cohn, Neil G. Ruiz, *More than half of new green cards go to people already living in the U.S*, PEW, July 2,

devastating repercussions on Black people, including Black immigrants.[87] In the decade after these laws passed, extreme poverty doubled to 1.5 million.[88] The proposed public charge rule would have a similarly chilling effect on Black immigrants and their families. In addition, like all Black people in America, Black immigrants face employment discrimination. This means that, Black immigrant women and men also earn considerably lower wages than U.S.-born non-Hispanic white women and men.[89] This makes it more likely that they or their families would benefit from programs that support work by helping them access health care, nutritious food, and stable housing.

II. THE PROPOSED REGULATION WOULD HARM A FAR LARGER POPULATION AND FAR MORE SERIOUSLY THAN THE RULE ACKNOWLEDGES, POTENTIALLY TENS OF MILLIONS OF PEOPLE

The proposed regulation, if implemented, would cause widespread harm by deterring a large number of people from receiving critical public supports. Although many immigrants and members of mixed-status families are not subject to the public charge determination, there is compelling historical evidence that the "chilling effect" will impact a much broader population than those who are directly subject to the determination. Moreover, just the existence of rumors about this proposed rule, combined with fears about immigration enforcement, have already had an impact on program participation.

Similarly, there is an extensive research literature that proves the benefits of these core basic needs programs for recipients, their children, and society as a whole. This rule would worsen health, nutrition, and self-sufficiency. The Department nods to the possibility of these negative effects but fails to quantify them or take them seriously. The Department therefore vastly underestimates the negative impacts of the rule, failing to accurately assess the likely chilling effect on families and individuals, the downstream economic effects, and other costs. Later sections of these comments go into far greater detail on the research showing the harm to specific populations and organizations.

a. The Rule Would Potentially Deter as Many As 26 Million People in The United States from Accessing Critical Supports

The proposed rule would create a chilling effect -- making individuals afraid to access programs and undermining access to critical health, food, and other supports for eligible immigrants and their families. Among the most harmed by the proposed rule are children, including U.S. citizen children, who would likely decrease participation in support programs, despite remaining eligible. It is important to note that immigrants and their children have historically faced unique barriers to accessing critical public benefits, including lack of transportation, language

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http://www.pewresearch.org/fact-tank/2017/07/06/more-than-half-of-new-green-cards-go-to-people-already-living-in-the-u-s/.

[87] Clarke, V. "Impact of the 1996 Welfare Reform and Illegal Immigration Reform and Immigrant Responsibility Acts on Caribbean Immigrants", *Journal Of Immigrant & Refugee Services*, *2*(3/4), (2004) https://www.tandfonline.com/doi/abs/10.1300/J191v02n03_10.

[88] H. Luke Shaefer, Kathryn Edin, *Rising Extreme Poverty in the United States and the Response of Federal Means-Tested Transfer Programs*, University of Michigan and, Harvard University, 2013, http://npc.umich.edu/publications/u/2013-06-npc-working-paper.pdfhttp://npc.umich.edu/publications/u/2013-06-npc-working-paper.pdf.

[89] Randy Capps, Kristen McCabe, Michael Fix, "Diverse Streams: African Migration to the United States," Migration Policy Institute, 2012, https://www.migrationpolicy.org/research/CBI-african-migration-united-states?pdf=AfricanMigrationUS.pdf.

barriers, confusion regarding immigrant eligibility rules, and concerns related to becoming a public charge. Research shows that these barriers have already impacted participation rates and that increased immigration enforcement and other anti-immigrant policies further deter immigrants from seeking out benefits that they and/or their children are eligible for.[90]

Previous research that studied use of benefits by immigrant and mixed status families after the eligibility changes in the 1990s showed decreased enrollment in Medicaid and CHIP even among those who remained eligible.[91] Based on this research, social scientists project that immigrants' use of health, nutrition, and social services could decline significantly if the proposed public charge rule were finalized.[92]
For estimates of potential changes in coverage due to public charge policies, researchers present several scenarios using different disenrollment rates. Using this 25% disenrollment rate as a midrange target, researchers assume a range of disenrollment rates from a low of 15% to a high of 35%. Moreover, it is worth noting that the worst thing that could happen to someone who was ineligible under the 1996 rules who applied for benefits is that they would have their application rejected. By contrast, under the proposed rule, applying for benefits could have permanent negative effects on immigration status.

Approximately 25.9 million people would be potentially chilled by the proposed public charge rule, accounting for an estimated 8% of the U.S. population. This number represents individuals and family members with at least one non-citizen in the household and who live in households with earned incomes under 250% of the federal poverty level. Of these 25.9 million people, approximately 9.2 million are children under 18 years of age who are family members of at least one noncitizen or are noncitizen themselves, representing approximately 13% of our nation's child population.[93]

A large share of the people potentially chilled by the proposed public charge rule reside in five states – California, Florida, Illinois, New York, and Texas – that account for approximately 61% of the total impacted population (15.9 million). Among children potentially chilled, California and Texas account for more than 40% of all children potentially chilled by the rule (3.9 million). Families in other regions of the United States, like those in the Midwest and Northeast, will also be among those potentially impacted. Altogether, approximately 2.8 million Midwesterners and 4.1 million Northeasterners may be potentially chilled by the proposed rule.[94]

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.[95] Further, researchers from the Institute for Community Health report that 700,000 to 1.7 million children in need of medical attention living with a noncitizen adult could be disenrolled from Medicaid/CHIP coverage, if 15 to 35 percent disenrolled. This includes approximately 143,000 to 333,000 children with at least one potentially life-

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[90] Krista M. Perreira, et al., (2012). Barriers to Immigrants' Access to Health and Human Services Programs, U.S. Department of Health and Human Services *ASPE Issue Brief,*https://aspe.hhs.gov/system/files/pdf/76471/rb.pdf.
[91] Kaushal, Welfare Reform and Health Insurance of Immigrants; Kandula, The Unintended Impact of Welfare Reform on the; Benson Gold, Immigrants and Medicaid After Welfare Reform.
[92] Batalova, *Chilling Effects: The Expected Public Charge Rule*. Fix, Trends in Noncitizens' and Citizens' Use of Public Benefits; Fix, *The Scope and Impact of Welfare Reform's Immigrant Provisions*; Kandula, *The Unintended Impact of Welfare Reform*
[93] Manatt Health, 2012-2016 5-Year American Community Survey Public Use Microdata Sample..
[94] Manatt Health, 2012-2016 5-Year American Community Survey Public Use Microdata Sample
[95] Artiga, Estimated Impacts of the Proposed Public Charge Rule on Immigrants and Medicaid.

threatening condition, including asthma, influenza, diabetes, epilepsy, or cancer, 122,000 to 285,000 children on prescribed medications, 102,000 to 238,000 newborns, and 53,000 to 124,000 children with musculoskeletal and rheumatologic conditions, like fractures and joint disorders.[96] In California alone, the Children's Partnership estimates that between 269,000 to 628,000 children would lose Medicaid/CHIP coverage and 113,000 to 311,000 children would lose food assistance, despite remaining eligible, if the proposed rule is finalized.[97] Also, independent researchers find that up to an estimated 3 million U.S citizen children could lose access to SNAP as a result of the proposed regulation.[98]

b. Families are already afraid to access basic needs programs and this proposal will exacerbate those fears

Additionally, 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.[99] Research conducted in 2017 and 2018 confirms anti-immigrant federal policy and rhetoric is already creating barriers in access to health and nutrition programs for people in immigrant families, who have already historically faced significant barriers in accessing public benefit programs. Health and nutrition service providers have noticed an increase in canceled appointments and requests to disenroll from means-tested programs in 2017.[100] Preliminary data for the first half of 2018 showed a 10 percent drop in enrollment among immigrant families eligible for SNAP who have been in the country less than five years, after steady increases for the previous decade.[101] 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.[102] 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.[103] 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

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[96] Leah Zallman, Karen Finnegan *Changing Public Charge Immigration Rules: The Potential Impact on Children Who Need Care*, California Health Care Foundation, 2018, https://www.chcf.org/publication/changing-public-charge-immigration-rules/.

[97] The Children's Partnership *Potential Effects of Public Charge on California Children*,, 2018, https://www.childrenspartnership.org/wp-content/uploads/2018/11/Potential-Effects-of-Public-Charge-Changes-on-California-Children-FINAL-1.pdf. .

[98] Jennifer Laird, Isaac Santelli, et al., "Forgoing Food Assistance out of Fear: Simulating the Child Poverty Impact of a Making SNAP a Legal Liability for Immigrants" SocArXiv, (2018), https://doi.org/10.31235/osf.io/6sgpk

[99] 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.

[100] Jennifer Laird et al, Foregoing Food Assistance Out of Far 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.

[101] American Public Health Association, *Study: Following 10-year gains, SNAP Participation Among Immigrant Families dropped in 2018,* 2018, https://www.apha.org/news-and-media/news-releases/apha-news-releases/2018/annual-meeting-snap-participation.

[102] 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.

[103] Samantha Artiga and Petry Ubri, "Living in an Immigrant Family in America: How Fear and Toxic Stress are Affecting Daily Life, Well-Being, & Health," Kaiser Family Foundation, Dec 13, 2017, https://www.kff.org/disparities-policy/issue-brief/living-in-an-immigrant-family-in-america-how-fear-and-toxic-stress-are-affecting-daily-life-well-being-health/.

Medicaid program), WIC and CalFresh (California's SNAP program), and nearly half (42 percent) reported an increase in skipped scheduled health care appointments.[104]

CLASP documented the climate of fear in immigrant communities around the country firsthand in our report, *Our Children's Fear: Immigration Policy's Effects on Young Childre*n, based on focus groups and interviews conducted last year. Among our findings, we heard that immigrant families are increasingly wary of utilizing government services, including for their US citizen children. For example:

- A home visitor in North Carolina said, "We've seen a major reluctance to enroll or re-enroll in public benefits. Moms are afraid to sign back up for Medicaid, food stamps, and other [governmental] services."
- Early education programs reported drops in attendance, fewer applications, trouble filling available spaces, and lower parent participation in the classroom and events.[105]

Many of the service providers and parents we spoke to told us that immigrant families hesitate to access public benefits and government services out of fear that it will impact their immigration status in the future. If finalized, the proposed rule will legitimize those fears, thereby increasing poverty, hunger, ill health and unstable housing by discouraging enrollment in programs that support basic needs.

For these reasons, researchers from the Kaiser Family Foundation suggest that their analysis based on historical data may underestimate the impact the proposed rule would have on participation in Medicaid/CHIP.[106] Researchers from the Migration Policy Institute land a similar conclusion – usage of public assistance programs could fall even more sharply than the observations from the 1990s. In discussing the extent of the proposed rule's chilling effect, Migration Policy Institute researchers write, "In the current political climate, with sharper rhetoric about the value of immigration, efforts to reduce legal immigration for the first time in decades, and ramped-up arrests and deportation, fear of the immigration consequences of using public benefits could be even greater." [107] This suggests that the projected impacts based on 1990s data are conservative estimates of the potential impact of the rule on benefit usage.

c. Access to Health, Nutrition, And Other Key Supports for Working Families Has Positive Effects on Individuals' Long-Run Economic and Educational Attainment, Which in Turn Contribute to Self-Sufficiency

There is extensive evidence of how participation in basic needs programs positively influence children's and adults' health in both the short and long-term as well as educational, and economic outcomes.

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[104] The Children's Partnership, California Children in Immigrant Families: The Health Provider Perspective," https://www.childrenspartnership.org/wp-content/uploads/2018/03/Provider-Survey-Inforgraphic-.pdf.

[105] Wendy Cervantes, Rebecca Ullrich, Hannah Matthews "Our Children's Fear: Immigration Policy's Effects on Young Children" (Washington, DC: CLASP, 2018) https://www.clasp.org/publications/report/brief/our-childrens-fear-immigration-policys-effects-young-children.

[106] Samantha Artiga, Anthony Damico, Rachel Garfield "Potential Effects of Public Charge Changes on Health Coverage for Citizen Children,"Kaiser Family Foundation,, 2018, http://files.kff.org/attachment/Issue-Brief-Potential-Effects-of-Public-Charge-Changes-on-Health-Coverage-for-Citizen-Children.

[107] Batalova*Chilling Effects: The Expected Public Charge Rule and Its Impact on Legal Immigrant Families' Public Benefits Use.*.

SNAP. Children of immigrants who participate in the Supplemental Nutrition Assistance Program (SNAP, formerly food stamps) are more likely to be in good or excellent health, be food secure, and reside in stable housing. Compared to children in immigrant families without SNAP, families with children who participate in the program have more resources to afford medical care and prescription medications.[108] An additional year of SNAP eligibility for young children with immigrant parents is associated with significant health benefits in later childhood and adolescence.[109]

Another study examined whether increasing the family's economic resources when a child is in utero and during childhood improves later life health and economic outcomes. Using data from the Panel Study of Income Dynamics to link family background and county of residence with adult health and economic outcomes, the researchers found that access to food assistance leads to a significant reduction in the incidence of metabolic syndrome and, for women, an increase in economic self-sufficiency.[110]

Conversely, children living in food insecure households are more likely to suffer from poor health and frequent illness and to be hospitalized more frequently.[111] Specifically, child food insecurity is associated with chronic diseases and health conditions, including asthma, behavioral and social-emotional problems (e.g., hyperactivity), birth defects, mental health problems (such as depression and anxiety), frequent colds and stomachaches, and oral care problems.[112] Not having enough to eat also affects children's ability to perform in

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[108] Children's Health Watch, *Report Card on Food Security and Immigration: Helping Our Youngest First-Generation Americans To Thrive,* 2018, http://childrenshealthwatch.org/wp-content/uploads/Report-Card-on-Food-Insecurity-and-Immigration-Helping-Our-Youngest-First-Generation-Americans-to-Thrive.pdf

[109] Chloe N. East, "The Effect of Food Stamps on Children's Health: Evidence from Immigrants' Changing Eligibility," Working Paper, 2017, http://www.chloeneast.com/uploads/8/9/9/7/8997263/east_fskids_r_r.pdf.

[110] Hilary Hoynes, Diane Whitmore Schanzenbach, and Douglas Almond, "Long-Run Impacts of Childhood Access to the Safety Net," American Economic Association (April 2016), pp. 903-934. Found online at https://gspp.berkeley.edu/assets/uploads/research/pdf/Hoynes-Schanzenbach-Almond-AER-2016.pdf.

[111] Craig Gundersen and James P. Ziliak, "Food Insecurity and Health Outcomes," *Health Affairs* 34(2015), https://www.healthaffairs.org/doi/10.1377/hlthaff.2015.0645; John T Cook, Deborah A. Frank, Carol Berkowitz, et al., "Food insecurity is associated with adverse health outcomes among human infants and toddlers," *The Journal of Nutrition* 134 (2004), https://academic.oup.com/jn/article/134/6/1432/4870889.

[112] Lauren D. Mangini, Mark D. Hayward, Yong Quan Dong, et al., "Household food insecurity is associated with childhood asthma," *The Journal of Nutrition,* 145(2015), https://academic.oup.com/jn/article/145/12/2756/4585668; Rachel Tolbert Kimbro and Justin T. Denney, "Transitions into Food Insecurity Associated with Behavioral Problems and Worse Overall Health Among Children," *Health Affairs* 34 (2015), https://www.healthaffairs.org/doi/pdf/10.1377/hlthaff.2015.0626; Anna D. Johnson and Anna J. Markowitz, "Associations Between Household Food Insecurity in Early Childhood and Children's Kindergarten Skills," *Child Development* 89 (2018), https://onlinelibrary.wiley.com/doi/pdf/10.1111/cdev.12764; Suzan L. Carmichael, Wei Yang, Amy Herring, et al., "Maternal Food Insecurity is Associated with Increased Risk of Certain Birth Defects," *J Nutr* 137(2007), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2063452/; Natalie Slopen, Garratt Fitzmaurice, David R. Williams, et al, "Poverty, Food Insecurity, and the Behavior for Childhood Internalizing and Externalizing Disorders," *Journal of the American Academy of Child & Adolescent Psychology* 49 (2010), http://scholar.harvard.edu/files/davidrwilliams/files/2011-poverty_food_insecurity-williams.pdf; Priya Shankar, Rainjade Chung, and Deborah A. Frank, "Association of Food Insecurity with Children's Behavioral, Emotional, and Academic Outcomes: A Systemic Review," *Journal of Developmental and Behavioral Pediatrics* 38 (2017), https://pdfs.semanticscholar.org/4655/0ad7196155123c70dcd1cc5af710879ae27a.pdf; Katie A. McLaughlin, Jennifer Greif Green, Margarita Alegria, et al, "Food Insecurity and Mental Disorders in a National Sample of U.S. Adolescents," *J Am Acad Child Adolesc Psychiatry* 51 (2012), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3632292/; Katherine Alaimo, Christine M. Olson, Edward A. Frongillo Jr., et al., "Food Insufficiency, Family Income, and Health in US Preschool and School-Age Children," *American Journal of Public Health* 91 (2001),

school. Food insecurity is associated with lower scores on reading and math assessments and a greater likelihood of grade retention.[113] Among low-income seniors, receipt of SNAP is associated with reduced hospitalization costs.[114]

Medicaid. Overall, there is an extensive and strong research literature that shows, as a recent New England Journal of Medicine review concludes "Insurance coverage increases access to care and improves a wide range of health outcomes."[115]

Children in immigrant families with health insurance coverage are more likely to have a usual source of care and receive regular health care visits, and are less likely to have unmet care needs.[116] Low-income children with Medicaid use well-child and dental health services compared to similar children with private insurance.[117] Duration of insurance coverage matters greatly: children who are insured consistently throughout a given year are far more likely to receive necessary health care services than those whose coverage is volatile.[118]

Insurance coverage in childhood promotes positive development and good health, which in turn enable better health, educational, and employment outcomes later in life. Individuals exposed to Medicaid during early childhood have better composite health scores, lower incidences of high blood pressure, lower rates of obesity, fewer emergency room visits, and reduced hospitalizations as adults.[119] Similarly, childhood Medicaid

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https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1446676/pdf/11344887.pdf; Donald L. Chi, Erin E. Masterson, Adam C. Carle, et al., "Socioeconomic Status, Food Security, and Dental Caries in US Children: Mediation Analyses of Data from the National health and Nutrition Examination Survey, 2007-2008," *American Journal of Public Health* 104 (2014), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3987603/.

[113] Priya Shankar, Rainjade Chung, and Deborah A. Frank, "Association of Food Insecurity with Children's Behavioral, Emotional, and Academic Outcomes: A Systemic Review," *Journal of Developmental and Behavioral Pediatrics* 38 (2017), https://pdfs.semanticscholar.org/4655/0ad7196155123c70dcd1cc5af710879ae27a.pdf; Diana F. Hyoti, Edward A. Frongillo, and Sonya J. Jones, "Food Insecurity Affects School Children's Academic Performance, Weight Gain, and Social Skills," *J Nutr* 135 (2005), https://pdfs.semanticscholar.org/7d09/8555673094109056fd3beb58dc4464570bc0.pdf; Bergen B. Nelson, Rebecca N. Dudovitz, Tumaini R. Coker, et al., "Predictors of Poor School Readiness in Children Without Developmental Delay at Age 2," *Pediatrics* 138 (2016), http://pediatrics.aappublications.org/content/138/2/e20154477.

[114] Laura J. Samuel, Sarah L. Szanton, Rachel Cahill, Jennifer L. Wolff, Pinchuan Ong, Ginger Zielinskie, Charles Betley. *Does the Supplemental Nutrition Assistance Program Affect Hospital Utilization Among Older Adults? The Case of Maryland*, Population Health Management.(2018) http://doi.org/10.1089/pop.2017.0055 .

[115] Benjamin D. Sommers, M.D., Ph.D., Atul A. Gawande, M.D., M.P.H., and Katherine Baicker, Ph.D., Health Insurance Coverage and Health — What the Recent Evidence Tells Us, New England Journal of Medicine, July 21, 2017, http://www.nejm.org/doi/full/10.1056/NEJMsb1706645.

[116] Christine Percheski and Sharon Bzostek, "Public Health Insurance and Health Care Utilization for Children in Immigrant Families," *Maternal and Child Health Journal* 21 (2017), https://link.springer.com/article/10.1007/s10995-017-2331-y.

[117] Lisa Dubay and Genevieve M. Kenney, "Health Care Access And Use Among Low-Income Children: Who Fares Best?" *Health Affairs* 20 (2001), https://www.healthaffairs.org/doi/full/10.1377/hlthaff.20.1.112.

[118] Lindsey J. "Partial-Year Insurance Coverage and the Health Care Utilization of Children," *Med Care Res Rev* 66 (2009), https://www.ncbi.nlm.nih.gov/pubmed/18981264/; Thomas Buchmueller, Sean M. Orzol, and Lara Shore-Sheppard, "Access to Care: Evidence from the Survey of Income and Program Participation," *International Journal of Health Care Finance and Economics* 14 (2014), https://www.ncbi.nlm.nih.gov/pubmed/24504692.

[119] Alisa Chester Joan Alker, *Medicaid at 50: A Look at the Long-Term Benefits of Childhood Medicaid,* Georgetown University Health Policy Institute Center for Children and Families, 2015, https://ccf.georgetown.edu/wp-content/uploads/2015/08/Medicaid-at-50_final.pdf; Sarah Miller and Laura R. Wherry, *The Long-Term Effects of Early Life Medicaid Coverage,* Working Paper, Social Science Research Network, 2014, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2466691.

eligibility is associated with high school graduation rates, college attendance, and higher incomes in adulthood.[120] Another study using data from the IRS to measure long-term impacts of childhood Medicaid expansion on outcomes in adulthood, found that greater Medicaid eligibility increases college enrollment, lowers mortality, and increases the amount individuals pay in taxes.[121]

Conversely, children who are uninsured or inconsistently insured often face difficulty obtaining the health care services necessary to prevent illnesses and treat medical conditions when they arise. Therefore, they are more likely to have unmet care needs, to delay medical care, and to need but not receive mental health services than their peers with private or public health insurance.[122] Uninsured children are also far more likely to utilize emergency care.[123] Lack of insurance can be a matter of life or death: One analysis found that uninsured children were 3.32 times more likely to die as a result of traumatic injury compared to children with commercial (non-public) insurance, even after controlling for other factors.[124]

Housing assistance. Eviction due to inability to afford rent often leads to residential instability, moving into poor quality housing, overcrowding, and homelessness, all of which are associated with negative health among adults and children. Even just the threat of eviction can lead to high blood pressure, depression, anxiety, and psychological distress.[125] Research also shows that children whose families take up a housing voucher to move to a lower-poverty neighborhood when they are less than 13 years of age have significantly higher college attendance rates and an annual income that is 31 percent higher, on average.[126]

Children whose families receive housing assistance are more likely to have a healthy weight and to rate higher

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[120] Karina Wagnerman, Alisa Chester, Joan Alker, *Medicaid is a Smart Investment in Children*, Georgetown University Center for Children and Families, March 2017, https://ccf.georgetown.edu/2017/03/13/medicaid-is-a-smart-investment-in-children/.
[121] David W. Brown, Amanda E. Kowalski, and Ithai Z. Lurie, "Long-Term Impacts of Childhood Medicaid Expansions on Outcomes in Adulthood," Yale University Department of Economics (June 2018). Found online at http://www.econ.yale.edu/~ak669/medicaid.latest.draft.pdf.
[122] Jennifer E. DeVoe, Moira Ray, Lisa Krois, et al, "Uncertain Health Insurance Coverage and Unmet Children's Health Care Needs," *Health Services Research* 42 (2010), http://www.stfm.org/fmhub/fm2010/February/Jennifer121.pdf; Steven G. Federico, John F. Steiner, Brenda Beaty, et al., "Disruptions in Insurance Coverage: Patterns and Relationship to Health Care Access, Unmet Need, and Utilization Before Enrollment in the State Children's Health Insurance Program," *Pediatrics* 120 (2007), http://pediatrics.aappublications.org/content/120/4/e1009.long; Christine Percheski and Sharon Bzostek, "Public Health Insurance and Health Care Utilization for Children in Immigrant Families," *Maternal and Child Health Journal* 21 (2017), https://link.springer.com/article/10.1007/s10995-017-2331-y; Sheryl H. Kataoka, Lily Zhang, and Kenneth B. Wells, "Unmet Need for Mental Health Care Among U.S. Children: Variation by Ethnicity and Insurance Status," *Am J Psychiatry* 159 (2002), https://ajp.psychiatryonline.org/doi/pdf/10.1176/appi.ajp.159.9.1548.
[123] William G. Johnson, Mary E. Rimza, "The Effects of Access to Pediatric Care and Insurance Coverage on Emergency Department Utilization," *Pediatrics* 113 (2004), https://www.researchgate.net/profile/William_Johnson14/publication/5848895_The_Effects_of_Access_to_Pediatric_Care_and_Insurance_Coverage_on_Emergency_Department_Utilization.
[124] Heather Rosen, Fady Saleh, Stuart R. Lipsitz, et al., "Lack of insurance negatively affects trauma mortality in U.S. children," *Journal of Pediatric Surgery* 44 (2009), http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.903.8114&rep=rep1&type=pdf.
[125] http://www.mapc.org/wp-content/uploads/2017/11/HIA_Just_Cause_final.pdf
[126] Raj Chetty, Nathaniel Hendren, and Lawrence F. Katz, "The Effects of Exposure to Better Neighborhoods on Children: new Evidence from the Moving to Opportunity Experiment," Harvard University and NBER (August 2015). Found online at http://scholar.harvard.edu/files/hendren/files/mto_paper.pdf.

on measures of well-being—especially when housing assistance is accompanied by food assistance.[127] Without housing assistance, children are more likely to live in overcrowded conditions, become homeless, and move frequently.[128] They are also more likely to remain in high-poverty neighborhoods, which is associated with poor health and educational outcomes.[129] Research demonstrates that when housing subsidies are permanent, reliable, and consistent, they are more likely to have positive impacts on children's behavior, access to health care, and food security.[130]

Various forms of housing instability have adverse outcomes on child development, including poor health and developmental risk.[131] Mothers who experience homelessness or frequent moves while pregnant are more likely to have preterm deliveries and babies with low birth weights.[132] Children in poverty who move frequently during early childhood have higher rates of attention difficulties and behavior problems.[133] Housing instability in childhood is also associated with poor health and more hospitalizations over the course of a child's life.[134] Housing instability is directly correlated to decreases in student retention rates and contributes to homeless students' high suspension rates, school turnover, truancy, and expulsions, limiting students' opportunity to obtain the education they need to succeed later in life.[135]

Income. Using data from seven random-assignment studies conducted by MDRC that collectively evaluated 10 welfare and antipoverty programs in 11 sites, the researchers found that a $1,000 increase in annual income sustained for between 2- and 5-years boosts child achievement in school and standardized test scores

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[127] Kathryn Bailey, Elizabeth March, Stephanie Ettinger de Cuba, et al., *Overcrowding and Frequent Moves Undermine Children's Health*, Children's HealthWatch, 2011, www.issuelab.org/resources/13900/13900.pdf.

[128] Michelle Wood, Jennifer Turnham, Gregory Mills, "Housing Affordability and Family Well-Being: Results from the Housing Voucher Evaluation," *Housing Policy Debate* 19 (2008), www.abtassociates.com/reports/Woods_Turnham_Mills_[11]_HPD.pdf; Janet Currie, Aaron Yelowitz, "Are Public Housing Projects Good for Kids?" *Journal of Public Economics* 75 (2000), www.yelowitz.com/CurrieYelowitzJPubE2000.pdf; Will Fischer, *Research Shows Housing Vouchers Reduce Hardship and Provide Platform for Long-term Gains Among Children*, Center on Budget and Public Policy, 2015, www.cbpp.org/sites/default/files/atoms/files/3-10-14hous.pdf.

[129] Barbara Sard,Douglas Rice, *Realizing the Housing Voucher Program's Potential to Enable Families to Move to Better Neighborhoods,* Center on Budget and Policy Priorities, 2016, https://www.cbpp.org/research/housing/realizing-the-housing-voucher-programs-potential-to-enable-families-to-move-to.

[130] Aletha C. Huston, "U.S. Commentary: Effects of Housing Subsidies on the Well-Being of Children and Their Families in the Family Options Study," *Cityscape: A Journal of Policy Development and Research* 19 (2017), https://www.huduser.gov/portal/periodicals/cityscpe/vol19num3/ch15.pdf.

[131] Diana Becker Cutts, Alan F. Meyers, Maureen M. Black, et al, "US Housing Insecurity and the Health of Very Young Children," *Am J Public Health* 101 (2018), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3134514/.

[132] Diana B. Cutts, Sharon Coleman, Maureen M. Black, et al., "Homelessness During Pregnancy: A Unique, Time-Dependent Risk Factor of Birth Outcomes," *Matern Child Health J* 19 (2015), https://link.springer.com/article/10.1007%2Fs10995-014-1633-6; Bianca V. Carrion, Valerie A. Earnshaw, Trace Kershaw, et al, "Housing Instability and Birth Weight among Young Urban Mothers," *J Urban Health* 92 (2015), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4338127/.

[133] Kathleen M. Ziol-Guest,Claire C. McKenna, "Early Childhood Housing Instability and School Readiness," *Child Development* 85 (2014), https://onlinelibrary.wiley.com/doi/abs/10.1111/cdev.12105.

[134] Megan Sandel, Richard Sheward, Stephanie Ettinger de Cuba, et al, "Unstable Housing and Caregiver and Child Health in Renter Families," *Pediatrics* 141 (2018), https://www.researchgate.net/profile/Mariana_Chilton/publication/322642849_Unstable_Housing_and_Caregiver_and_Child_Health_in_Renter_Families.

[135] Mai Abdul Rahman, "The Demographic Profile of Black Homeless High School Students Residing in the District of Columbia Shelters and the Factors that Influence their Education" 55 (Mar. 2014) (Ph.D. dissertation, Howard University), available at http://gradworks.umi.com/3639463.pdf.

by 6% of a standard deviation.[136]

Taken together, this and other research on access to health,[137] nutrition,[138] and housing[139] assistance shows the strong, positive, and long-run effects on children and individual's health, educational, and economic attainment.

d. The Department Fails to Adequately Evaluate the Impacts of the Rule

The proposed rule will have negative consequences for individuals, families, communities, health care providers, state and local governments and businesses. In fact, the notice of proposed rulemaking itself acknowledges in multiple places that that the proposed rule would cause great harm to, although it fails to quantify this harm and therefore largely ignores it.

The Department fails to adequately evaluate the impacts of the proposed rule, including in its discussion of costs and benefits in the Executive Summary and the "Cost-Benefit Analysis" section, leaving out considerable impacts to individuals and families, state and local economies, as well as specific sectors of the economy in their analysis. In fact, the only costs that are actually reported are the direct and opportunity costs of the time spent filing the required forms. Because the Department does not provide a rigorous qualitative discussion or reliable quantitative estimates of the proposed rule's impact, the Department makes impossible for the public to understand and comment on the justification of the rule or its effects.

The Office of Management and Budget has published a primer that summarizes what is involved in a cost-benefit analysis as required under Executive Order 13563, Executive Order 12866, and OMB Circular A-4. [140] This primer

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[136] Greg J. Duncan, Pamela A. Morris, and Chris Rodrigues, "Does Money Really Matter? Estimating impacts of family income on young children's achievement with data from random-assignment experiments," Developmental Psychology (September 2011), pp. 1263-1279. Found online at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3208322/pdf/nihms-330900.pdf.

[137] Christine Percheski and Sharon Bzostek, "Public Health Insurance and Health Care Utilization for Children in Immigrant Families," *Maternal and Child Health Journal* 21 (2017), https://link.springer.com/article/10.1007%2Fs10995-017-2331-y; and Karina Wagnerman, Alisa Chester, and Joan Alker, *Medicaid is a Smart Investment in Children*, Georgetown University Center for Children and Families, March 2017, https://ccf.georgetown.edu/2017/03/13/medicaid-is-a-smart-investment-in-children/.

[138] Children's Health Watch, *Report Card on Food Security and Immigration: Helping Our Youngest First-Generation Americans To Thrive,* 2018, http://childrenshealthwatch.org/wp-content/uploads/Report-Card-on-Food-Insecurity-and-Immigration-Helping-Our-Youngest-First-Generation-Americans-to-Thrive.pdf; and Chloe N. East, "The Effect of Food Stamps on Children's Health: Evidence from Immigrants' Changing Eligibility," Working Paper, 2017, http://www.chloeneast.com/uploads/8/9/9/7/8997263/east_fskids_r_r.pdf.

[139] Kathryn Bailey, Elizabeth March, Stephanie Ettinger de Cuba, et al., *Overcrowding and Frequent Moves Undermine Children's Health*, Children's HealthWatch, 2011, www.issuelab.org/resources/13900/13900.pdf; Michelle Wood, Jennifer Turnham, Gregory Mills, "Housing Affordability and Family Well-Being: Results from the Housing Voucher Evaluation," *Housing Policy Debate* 19 (2008), www.abtassociates.com/reports/Woods_Turnham_Mills_[11]_HPD.pdf; Janet Currie, Aaron Yelowitz, "Are Public Housing Projects Good for Kids?" *Journal of Public Economics* 75 (2000), www.yelowitz.com/CurrieYelowitzJPubE2000.pdf; Will Fischer, *Research Shows Housing Vouchers Reduce Hardship and Provide Platform for Long-term Gains Among Children*, Center on Budget and Public Policy, 2015, www.cbpp.org/sites/default/files/atoms/files/3-10-14hous.pdf; and Barbara Sard and Douglas Rice, *Realizing the Housing Voucher Program's Potential to Enable Families to Move to Better Neighborhoods,* Center on Budget and Policy Priorities, 2016, https://www.cbpp.org/research/housing/realizing-the-housing-voucher-programs-potential-to-enable-families-to-move-to.

[140] Office of Information and Regulatory Affairs, *Regulatory Impact Analysis: A Primer, N-d,* https://reginfo.gov/public/jsp/Utilities/circular-a-4_regulatory-impact-analysis-a-primer.pdf.

states that agencies must produce:

> "an estimate of the benefits and costs —both quantitative and qualitative—of the proposed regulatory action and its alternatives: After identifying a set of potential regulatory approaches, the agency should conduct a benefit-cost analysis that estimates the benefits and costs associated with each alternative approach. The benefits and costs should be quantified and monetized to the extent possible, and presented in both physical units (e.g., number of illnesses avoided) and monetary terms. When quantification of a particular benefit or cost is not possible, it should be described qualitatively. The analysis of these alternatives may also consider, where relevant and appropriate, values such as equity, human dignity, fairness, potential distributive impacts, privacy, and personal freedom. The agency's analysis should be based on the best available scientific, technical, and economic information. To achieve this goal, the agency should generally rely on peer-reviewed literature, where available, and provide the source for all original information. In cases of particular complexity or novelty, the agency should consider subjecting its analytic models to peer review. In cases in which there is no reliable data or research on relevant issues, the agency should consider developing the necessary data and research."

DHS has completely failed to meet this regulatory standard. This section sets out key examples of the inadequacies of the Department's evaluation of the rule.

- *Chilling Effect*

The Department fails to seriously account for the chilling effect of the rule in its estimates of disenrollment. For example, the Department estimates that approximately 142,000 individuals would disenroll from Medicaid. Rather than account for the chilling effect, the Department assumes that all individuals applying to adjust status drop coverage, but no other individuals would drop coverage, such as family members or other noncitizen families. The Department, however, recognizes that, "when eligibility rules change for public benefits programs there is evidence of a chilling effect that discourages immigrants from using public benefits programs for which they are still eligible." The Department also notes that previous studies examining the effect of welfare reform changes showed enrollment reductions ranging from 21% to 54% due to this chilling effect. Despite this recognition and the evidence in the literature cited above, the Department does not account for a chilling effect in its estimate of disenrollment.[141]

The Department identifies a list of potential consequences of the proposed rule but does not quantify their effects. In particular, at 83 FR 51270 the Department recognizes that disenrollment or foregoing enrollment in public benefits programs could lead to "worse health outcomes, including increased prevalence of obesity and malnutrition, especially for pregnant or breastfeeding women, infants, or children, and reduced prescription adherence; increased use of emergency rooms and emergent care as a method of primary health care due to delayed treatment; increased prevalence of communicable diseases, including among members of the U.S. citizen population who are not vaccinated; increases in uncompensated care in which a treatment or service is not paid for by an insurer or patient; increased rates of poverty and housing instability; and reduced productivity and

[141] Samantha Artiga, Rachel Garfield, and Anthony Damico "Estimated Impacts of the Proposed Public charge Rule on Immigrants and Medicaid" (Washington, DC: Kaiser Family Foundation, 2018) http://files.kff.org/attachment/Issue-Brief-Estimated-Impacts-of-the-Proposed-Public-Charge-Rule-on-Immigrants-and-Medicaid.

educational attainment." However, the Department makes no attempt to quantify the extent of these harmful outcomes, let alone to quantify the cost to society. This is true even though there are rigorous studies that have assessed the cost of many of these outcomes. For example, research has found that greater Medicaid eligibility increases college enrollment, lowers mortality, and increases the amount individuals pay in taxes.[142] Studies have found that every state dollar spent on prenatal care saves states between $2.57 and $3.38 in future medical costs.[143] Similarly, spending on SNAP for seniors has been shown to reduce hospitalization costs.[144] A meaningful cost-benefit analysis would include a comprehensive review of the literature in order to create upper and lower bounds for plausible estimates of the impacts of the rule.

Similarly, the Department mentions but fails to take into account economic impacts of the rule to states. In particular, at 83 FR 51228-29, the Department recognizes that "reductions in federal and state transfers under federal benefit program may have downstream and upstream impacts on state and local economies, large and small businesses, and individuals." However, it makes no attempt to measure this impact. As described in more detail in section IV, there are considerable economic and fiscal losses associated with the rule. The Fiscal Policy Institute estimates $17.5 billion in loss of health care and food supports, $33.8 billion in potential economic ripple effects of this lost spending, and 230,000 in potential jobs lost because of this reduction in federal spending, under a 35 percent disenrollment scenario. The ten hardest hit states would be Arizona, California, Florida, Georgia, Illinois, Massachusetts, New Jersey, New York, Texas, and Washington, accounting for approximately three-quarters of the total losses of federal funds to individuals in states, potential economic ripple effects, and potential jobs lost, under the 35% disenrollment scenario.[145]

The Department's analysis also fails to address how the rule will affect providers and key sectors within the economy. Based on analysis from Manatt Health, researchers estimate that approximately $17 billion worth of hospital payments are at risk under the proposed rule.[146] In addition, researchers also estimate the devastating impact of the rule on community health centers. As a result of the chilling effect of the rule, community health centers could lose up to $624 million in Medicaid revenue, resulting in 538,000 fewer patients served by the reduction in capacity and a loss of 6,100 medical staff jobs.[147] Additionally, based on independent analysis of the proposed rule's impact on the economy in California, researchers of the UCLA Center for Health Policy Research found that key sectors would be affected by the rule using IMPLAN, an industry-standard input-output economic modeling software package. Under a 35% disenrollment scenario, researchers found that 13,200 jobs would be

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[142] David W. Brown, Amanda E. Kowalski, and Ithai Z. Lurie, "Long-Term Impacts of Childhood Medicaid Expansions on Outcomes in Adulthood," Yale University Department of Economics (June 2018). Found online at http://www.econ.yale.edu/~ak669/medicaid.latest.draft.pdf.

[143] Gorsky, "The Cost Effectiveness of Prenatal Care in Reducing Low Birth Weight in New Hampshire".; Institute of Medicine, "Preventing Low Birth Weight".

[144] Samuel, *Does the Supplemental Nutrition Assistance Program Affect Hospital Utilization.*

[145] Fiscal Policy Institute "Only Wealthy Immigrants Need Apply: How A Trump Rule's Chilling Effect Will Harm the U.S." (New York, NY: FPI, 2018) http://fiscalpolicy.org/public-charge.

[146] Cindy Mann, April Grady, Allison B. Orris "Medicaid Payments at Risk for Hospitals Under Public Charge" (New York, NY: Manatt Health, November 2018) https://www.manatt.com/Insights/White-Papers/2018/Medicaid-Payments-at-Risk-for-Hospitals-Under-Publ.

[147] Leighton Ku, Jessica Sharac, Rachel Gunsalus, Peter Shin, Sara Rosenbaum "How Could the Public Charge Proposed Rule Affect Community Health Centers?" (Washington, DC: Geiger Gibson / RCHN Community Health Foundation Research Collaborative, November 2018) https://publichealth.gwu.edu/sites/default/files/downloads/GGRCHN/Public%20Charge%20Brief.pdf.

lost due to reduced federal support for Medicaid and 4,600 jobs lost due to reduced federal SNAP benefits. Of these more than 17,000 combined jobs lost in California, approximately 47% would be from the healthcare sector, including hospitals, doctors' offices, and labs, approximately 10% would be from food-related industries, including food retail stores, manufacturing, and agriculture, and 4% would be from real estate, including businesses primarily engaged in renting real estate, managing real estate for others, and selling, buying, or renting real estate for others.[148]

- *Effects on immigration*

At 83 FR 51230, the Department acknowledges that it "anticipates a likely increase in the number of denials for adjustment of status applicants based on public charge inadmissibility determinations." As noted before, a recent study by the Migration Policy Institute gives a sense of the scale here, finding that when recent green card recipients are compared to the new criteria, over two-thirds would have at least one negative factor under the proposed rule and more than 40% would have two or more negative factors.[149] However the Department fails to provide any estimate of the number of people who would be denied adjustment, or any analysis of the impacts of these denials on the individuals, their families and communities, their employers, or society as a whole.

For example, extensive research shows that parental detention and deportation harms a child's mental and physical health, economic security, and educational outcomes.[150] A parent's deportation can drastically undercut the economic security of families already struggling to make ends meet, especially when that parent is the primary or sole breadwinner. One study estimates that the sudden loss of a deported parent's income can reduce a family's household income by 73 percent.[151]

Overall, the Department fails to adequately assess the likely impacts of the rule. The Department's current evaluation of the rule does not provide the necessary information to determine the justification of the rule and how the rule will affect our nation in the short and long term. Moreover, it consistently neglects to take into account the research evidence presented throughout these comments and readily available upon even a cursory examination of the literature. By focusing on the relatively minor costs involved in filling out the new forms, the Department consistently and drastically underestimates the costs, to a degree that makes it impossible to justify

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[148] Ninez Ponce, Laurel Lucia, and Tia Shimada "How Proposed Changes to the 'Public Charge' Rule Will Affect Health, Hunger and the Economy in California'" (Los Angeles, CA: UCLA Center for Health Policy Research, November 2018) https://healthpolicy.ucla.edu/newsroom/Documents/2018/public-charge-seminar-slides-nov2018.pdf.

[149] Randy Capps, Mark Greenberg, Michael Fix, and Jie Zong, "*Gauging the Impact of DHS' Proposed Public-Charge Rule on U.S. Immigration*," Migration Policy Institute, November 2018, https://www.migrationpolicy.org/research/impact-dhs-public-charge-rule-immigration.

[150] Ajay Chaudry, Randy Capps, Juan Manuel Pedroza, et al., *Facing our Future: Children in the Aftermath of Immigration Enforcement*, The Urban Institute, 2010, http://www.urban.org/sites/default/files/publication/28331/412020-Facing-OurFuture.PDF; Brian Allen, Erica M. Cisneros, Alexandra Tellez, "The Children Left Behind: The Impact of Parental Deportation on Mental Health," *Journal of Child and Family Studies* 24 (2015), https://link.springer.com/article/10.1007/s10826-013-9848-5; Luis H. Zayas, Segio Aguilar-Gaxiola, Hyunwoo Yoon, et al., "The Distress of Citizen-Children with Detained and Deported Parents," *Journal of Child and Family Studies* 24 (2015), . https://link.springer.com/article/10.1007%2Fs10826-015-0124-8.

[151] Randy Capps, Heather Koball, James D. Bachmeier, et al., *Deferred Action for Unauthorized Immigrant Parents: Analysis of DAPA's Potential Effects on Families and Children*, MPI, 2016, http://www.migrationpolicy.org/research/deferred-action-unauthorized-immigrant-parents-analysis-dapas-potential-effectsfamilies.

the rule.

Even just with regard to the paperwork, the Department's analysis falls short, as it also fails to adequately analyze the costs to both public and private agencies who will need to help impacted families comply with the new requirements, including the costs of understanding the rule and communicating with immigrant families about the rule. Also, the Department omits any discussion of its own burden in handling a more complex determination.

III. THE PROPOSED REGULATION WOULD CAUSE PERMANENT HARM TO CHILDREN, WOMEN, YOUNG ADULTS, AND FAMILIES

The rule poses significant harm to the health and wellbeing of children, women, young adults, and families. The changes in the proposed rule undercut the foundations that children need to thrive and would dramatically alter the lives of countless families across the U.S.

Children in immigrant families comprise a large share of the child population in the U.S. As of 2016, nearly 18 million children under the age of 18 had one or more parents who were born outside of the U.S. The vast majority—88 percent—were U.S.-born citizens.[152] Just 12 percent were immigrants themselves. Immigrant women comprise 52 percent of the U.S. immigrant population, and many are parents of U.S citizen children.[153] An estimated 3.6 million immigrants are between the ages of 18 and 25, 8 percent of the immigrant population and 10 percent of all young adults.[154]

The expanded definition of public charge will lead to millions of children, women, and young adults losing access to the programs and services they need to thrive out of fear of immigration consequences. Without the programs that make food, housing, and/or health care more affordable and accessible, many families will be financially destabilized and potentially thrown into poverty. Children's health and development will be compromised, with long-term consequences for their wellbeing into adulthood. Women may face greater barriers to accessing critical health care services—especially pregnant women, for whom affordable care is often in short supply. And young adults may be less likely to pursue the higher education and career pathway opportunities that set them on a path to success in the future.

The standards proposed in the "totality of circumstances" determinations will also have a disproportionate impact on immigrant children, women, and parents—particularly mothers with young children. The standards favor wealth and constant employment, and disfavor characteristics overwhelmingly held by these populations, such as being a full-time caregiver, having lower income, having a large household size, having dependent children, or simply being a child. To the extent that these standards lead to more parents being denied lawful permanent residency, children's lives will be further destabilized.

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[152] Migration Policy Institute, "Children in U.S. Immigrant Families," n.d., https://www.migrationpolicy.org/programs/data-hub/charts/children-immigrant-families.
[153] Jie Zong, Jeanne Batalova, and Jeffrey Hallock, "Frequently Requested Statistics on Immigrants and Immigration in the United States," Migration Policy Institute, February 8, 2018, https://www.migrationpolicy.org/article/frequently-requested-statistics-immigrants-and-immigration-united-states.
[154] CLASP analysis of 2016 American Community Survey Data

Finally, a very large number of children who stand to be harmed by the rule are U.S. citizens. The Department acknowledges the likely harm to them in its cost estimates but vastly underestimates the damage imposed by less access to health, nutrition, and other support programs; by parents' and families' stress and poverty; and by the effects of denial of long-term permanent residence to a parent. The consequence of the rule would be to create a second-class of U.S.-born children who are treated less favorably than other citizen children and denied an opportunity to reach their potential solely because of their parents' nativity and economic status.

a. The Expanded Definition of Public Charge Will Deter Families from Using Public Assistance Programs That Promote Their Health and Economic Security

The rule proposes to change the definition of who may be deemed a public charge and, as a result, denied entrance to the United States or lawful permanent residency. Proposed section 212.21 lays out the Department's proposed definition of "public charge," which would allow government officials to consider an applicant's use of benefits beyond the existing standards of cash assistance and long-term institutional care to include Medicaid, the Supplemental Nutrition Assistance Program (SNAP), housing assistance, and Medicare Part D subsidies. This change would likely lead individuals to withdraw or disenroll from benefit programs that support their health, wellbeing, and financial security.

On page 51270, in the cost-benefit analysis section, the Department explicitly acknowledges that the rule could lead to "worse health outcomes, including increased prevalence of obesity and malnutrition, especially for pregnant or breastfeeding women, infants, or children...increased prevalence of communicable diseases...increased rates of poverty and housing instability; and reduced productivity and educational attainment." Yet the Department does not acknowledge just how extensive these impacts would be, particularly for children, women, and young adults.

i. <u>Children Will Face Increased Familial Stress and Hardship and Lose Access to The Programs That Keep Them Healthy, Fed, and Housed</u>

Like all children, children in immigrant families do best when they have a safe place to live and enough food to eat; when their family's income is stable; and when their parents and caregivers are mentally and physically healthy and able to care for them. Yet the proposed changes to "public charge" provisions in immigration law undercut these very foundations that children need to thrive and dramatically alter the lives of countless families across the U.S.

Proposed sections 212.21 through 212.22 and the preamble to the rule assert that only the use of benefits by an individual would be considered in public charge determinations, and any benefits received by dependents—including U.S. citizen-children—would not be considered. However, there is no way to influence immigrant parents' access to benefits without also affecting the health, safety, and economic security of their children. Parents' access to these services matters greatly for their own health and wellbeing, which in turn has direct consequences on their children's developmental trajectories. Parents' access to public benefits is also correlated with children's access to services as well. If parents—and therefore their children—lose access to the programs that keep them healthy, fed, and housed, their economic security will be threatened, as will their long-term health and developmental outcomes.

Parents' health and wellbeing is inextricably linked with that of their children.

Low-income families are more likely to experience substantial and persistent adversity--sometimes called toxic stress--in their day-to-day lives. Not having enough food to eat; inadequate or unstable housing; economic insecurity; child neglect or abuse; domestic violence; and parental mental health problems are examples of adverse experiences that can lead to toxic stress. Experiencing any single form of toxic stress--particularly in early childhood--can interfere with children's healthy development, altering how they learn and their ability to manage their emotions.[155] It can also lead to physical and mental health problems that last into adulthood.[156] Children living in poor and low-income households are at greater risk of experiencing multiple forms of hardship, which does far greater damage to their long-term development than simply adding up the effects of each individual risk factor.[157]

A supportive, nurturing parent-child relationship acts as a buffer against the effects of toxic stress on children, making parents' own wellbeing an important determinant of their children's health and development.[158] In the earliest years of life, children's interactions and relationships with their primary caregivers lay the foundation for healthy development.[159] Responsive caregiving lets children know they are safe and protected. That helps them regulate stress, encourages them to explore their environments, and supports early learning.[160] When parents are healthy, well, and cared for, they're better able to provide financially for their families and support their children's development.[161] Parents who report they are in good health are more likely to have children who are in good

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[155] National Scientific Council on the Developing Child, Persistent Fear and Anxiety Can Affect Young Children's Learning and Development: Working Paper No. 9, 2010, https://developingchild.harvard.edu/resources/persistent-fear-and-anxiety-can-affect-young-childrens-learning-and-development/; Clancy Blair and C. Cybele Raver, "Poverty, Stress, and Brain Development: New Directions for Prevention and Intervention," *Acad Pediatr* 16 (2016), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5765853/.

[156] Jack P. Shonkoff, Andrew S. Garner, et al. "The Lifelong Effects of Early Childhood Adversity and Toxic Stress," Pediatrics 129 (2012), http://pediatrics.aappublications.org/content/129/1/e232.

[157] Karen Hughes, Mark A. Bellis, Katherine A. Hardcastle, et al., "The Effect of Multiple Adverse Childhood Experiences on Health: A Systematic Review and Meta-Analysis," The Lancet Public Health 2 (2017), https://www.thelancet.com/journals/lanpub/article/PIIS2468-2667(17)30118-4/fulltext; Elizabeth A. Schilling, Robert H. Aseltine, and Susan Gore, "The Impact of Cumulative Childhood Adversity on Young Adult Mental Health: Measures, Models, and Interpretations," Social Science & Medicine 66 (2008), https://www.sciencedirect.com/science/article/pii/S0277953607006065?via%3Dihub; Natalie Slopen, Karestan C. Koenen, Laura D. Kubzansky, "Cumulative Adversity in Childhood and Emergent Risk Factors for Long-Term Health," The Journal of Pediatrics 164 (2014), https://www.sciencedirect.com/science/article/pii/S0022347613013899?via%3Dihub.

[158] National Scientific Council on the Developing Child, *Young Children Develop in an Environment of Relationships: Working Paper No. 1,* 2009, http://developingchild.harvard.edu/wp-content/uploads/2004/04/Young-Children-Develop-in-an-Environment-of-Relationships.pdf.

[159] Catherine Ayoub, Claire D. Vallotton, and Ann M. Mastergeorge, "Developmental Pathways to Integrated Social Skills: The Roles of Parenting and Early Intervention", Child Development 82 (2011), https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1467-8624.2010.01549.x; Richard Lerner, Fred Rothbaum, Shireen Boulos, et al., "Developmental Systems Perspective on Parenting," in Handbook of Parenting: Volume 2 Biology and Ecology of Parenting, ed. Marc H. Bornstein (2002), http://psycnet.apa.org/record/2002-02628-011.

[160] Mary D Salter Ainsworth, Mary C. Blehar, Everett Waters et al., "Patterns of Attachment: A Psychological Study of the Strange Situation," 1978, http://psycnet.apa.org/record/1980-50809-000; T. Berry Brazelton and Bertrand Cramer, "The Earliest Relationship: Parents, Infants, and the Drama of Early Attachment," 1990, http://psycnet.apa.org/record/1990-97173-000.

[161] Elisabeth Wright Burak, Healthy Parents and Caregivers are Essential to Children's Healthy Development, Georgetown

health, too.[162]

Conversely, when parents face significant adversity themselves and don't have the supports they need, their mental and physical health suffers. Among caregivers renting their homes, various forms of housing instability are associated with poor health and symptoms of maternal depression.[163] Parents whose families are food insecure also report higher rates of serious psychological distress.[164] And parents who are uninsured face greater financial stressors--and subsequent psychological challenges--associated with affording basic medical care on top of other every day expenses.[165]

Parents' own stress and health challenges can impede effective caregiving and have the effect of exacerbating rather than buffering against the effects of adversity on young children,[166] with lasting consequences for their health and development. For example, children are more likely to experience mental health and developmental challenges when their parents have a mental health condition.[167]
Parental health is also associated with children's educational outcomes, with adolescents being less likely to graduate from high school if their parents report "fair" or "poor" health.[168]

University Health Policy Institute, Center for Children and Families, 2016, https://ccf.georgetown.edu/2016/12/12/healthy-parents-and-caregivers-are-essential-to-childrens-healthy-development/; Anne Case and Christina Paxson, "Parental Behavior and Child Health," Health Affairs 21 (2002), http://content.healthaffairs.org/content/21/2/164.full; Stephanie Schmit and Christina Walker, Seizing New Policy Opportunities to Help Low-Income Mothers with Depression, CLASP, 2016, www.clasp.org/resources-and-publications/publication-1/Opportunities-to-Help-Low-Income-Mothers-with-Depression-2.pdf; National Scientific Council on the Developing Child and National Forum on Early Childhood Program Evaluation, "Maternal Depression Can Undermine the Development of Young Children," Center on the Developing Child, Harvard University, Working Paper 8, 2009, http://developingchild.harvard.edu/resources/maternal-depression-can-undermine-the-development-of-young-children/.

[162] Anne Case and Christina Paxson, "Parental Behavior and Child Health," *Health Affairs* 21 (2002), http://content.healthaffairs.org/content/21/2/164.full.

[163] Megan Sandel, Richard Sheward, Stephanie Ettinger de Cuba, et al., "Unstable Housing and Caregiver and Child Health in Renter Families," *Pediatrics* 141 (2018), http://pediatrics.aappublications.org/content/141/2/e20172199.

[164] Katie K. Tseng, Su Hyun Park, Jenni A. Shearston, et al., "Parental Psychological Distress and Family Food Insecurity: Sad Dads in Hungry Homes," *Journal of Developmental and Behavioral Pediatrics,* 38 (2017, https://insights.ovid.com/crossref?an=00004703-201710000-00006.

[165] Stacey McMorrow, Jason A. Gates, Sharon K. Long, et al., "Medicaid Expansion Increased Coverage, Improved Affordability, and Reduced Psychological Distress for Low-Income Parents," *Health Affairs* 36 (2017), https://www.healthaffairs.org/doi/10.1377/hlthaff.2016.1650.

[166] Caroline Ratcliffe and Signe-Mary McKernan, *Child Poverty and Its Lasting Consequence*, Urban Institute, 2012, http://www.urban.org/UploadedPDF/412659-Child-Poverty-and-ItsLasting-Consequence-Paper.pdf; Clancy Blair and C. Cybele Raver, "Poverty, Stress, and Brain Development: New Directions for Prevention and Intervention," *Acad Pediatr* 16 (2016), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5765853/.

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[168] Jason D. Boardman, Kari B. Alexander, Richard Miech, et al., "The Association BEtween Parent's Health and th Educational

When parents lose access to public benefits, their children lose access too.

What's more, children are inherently dependent upon their parents for material support. Penalizing immigrant parents for using publicly funded health, nutrition, and housing programs for which they are legally eligible will likely result in children losing these services as well. Research demonstrates that the likelihood that a child is insured increases significantly when their parents are insured.[169] And insurance coverage is associated with greater access to critical acute and preventive care, including vaccinations and well visits, for parents and children alike.[170] Programs such as housing assistance are received by a family, not an individual—if parents lose access to safe and stable housing, their children do too.

Based on the definition of public charge laid out in §212.21 of the proposed rule, researchers estimate that between 2.1 million and 4.9 million Medicaid/CHIP enrollees in immigrant families--including 875,000 to 2 million citizen-children--would disenroll from health coverage despite remaining eligible.[171] Another analysis estimates as many as 628,000 children could disenroll from public health insurance coverage in California alone, increasing the state's child uninsurance rate from 3% to as high as 8.2%.[172] Researchers at the Boston Medical Center found that, among eligible immigrant families who have been in the U.S. for less than five years, participation in SNAP decreased by nearly 10 percent in the first half of 2018--before the rule was even published or implemented.[173] As described in detail above, mass disenrollment of this nature is incredibly concerning in light of what we know about how important these programs are in promoting children's health and wellbeing.

Loss of public benefits will be detrimental to families' economic security, with lasting impacts on children's

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Attainment of Their Children," *Soc Sci Med* 75 (2012)https://www.sciencedirect.com/science/article/pii/S0277953612003966?via%3Dihub.

[169] Jennifer E. DeVoe, Courtney Crawford, Heather Angier, et al, "The Association Between Medicaid Coverage for Children and Parents Persists: 2002-2010," *Matern Child Health J* 19 (2015), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4864606/; Julie L. Hudon and Asako S. Moriya, "Medicaid Expansion for Adults Had Measurable 'Welcome Mat' Effects on Their Children," *Health Affairs* 36 (2017), https://www.healthaffairs.org/doi/10.1377/hlthaff.2017.0347; Joan Alker and Alisa Chester, *Children's Health Insurance Rates in 2014: ACA Results in Significant Improvements,* Georgetown University Health Policy Institute, Center for Children and Families, 2015, http://ccf.georgetown.edu/wp-content/uploads/2015/10/ACS-report-2015.pdf.

[170] Stacey McMorrow, Jason A. Gates, Sharon K. Long, et al., "Medicaid Expansion Increased Coverage, Improved Affordability, and Reduced Psychological Distress for Low-Income Parents," Health Affairs (2017), https://www.healthaffairs.org/doi/10.1377/hlthaff.2016.1650; Maya Venkataramani, Craig Evan Pollack, and Eric T. Roberts, "Spillover Effects of Adult Medicaid Expansions on Children's Use of Preventive Services," Pediatrics 140 (2017), http://pediatrics.aappublications.org/content/140/6/e20170953; Michael Karpman, Jason Gates, Stacey McMorrow, et al., "Uninsurance among Parents, 1997-2014: Long-Term Trends and Recent Patterns," Urban Institute, 2016, https://www.urban.org/research/publication/uninsurance-among-parents-1997-2014-long-term-trends-and-recent-patterns.

[171] Samantha Artiga, Rachel Garfield, and Anthony Damico, *Estimated Impacts of the Proposed Public Charge Rule on Immigrants and Medicaid,* Kaiser Family Foundation, 2018, http://files.kff.org/attachment/Issue-Brief-Estimated-Impacts-of-the-Proposed-Public-Charge-Rule-on-Immigrants-and-Medicaid.

[172] The Children's Partnership and KidsData.org, *Potential Effects of Public Charge Changes on California Children,* 2018, https://www.childrenspartnership.org/wp-content/uploads/2018/11/Potential-Effects-of-Public-Charge-Changes-on-California-Children-FINAL-1.pdf.

[173] American Public Health Association, "Study: Following 10-year gains, SNAP participation among immigrant families dropped in 2018," November 12, 2018, https://www.apha.org/news-and-media/news-releases/apha-news-releases/2018/annual-meeting-snap-participation.

development.

Losing access to any one of these supports will also have a negative effect on a family's economic circumstances and increase material hardship. For millions of families, Medicaid and SNAP are lifelines that keep them living above the poverty threshold.[174] In fact, Medicaid has a larger effect on reducing child poverty than *all non-health means-tested programs combined.*[175] Without the programs and services that make food, housing, and/or health care more affordable and accessible, many families will be financially destabilized and potentially thrown into poverty. If parents lose access to affordable housing, they may also be at risk of losing their jobs.[176] And on top of being less able to keep their families fed and housed, they will have fewer resources to afford other essentials, including utilities, clothing, diapers, school supplies, transportation, and prescription medications.

The chronic, unrelenting stress and instability associated with immense financial hardship has immediate and lasting consequences on children's health and development, beginning even before a child is born.[177] Young children with low incomes are more likely to experience obesity, asthma, developmental delays, and poor mental health.[178] Disparities in cognitive and social-emotional skills between low- and higher-income children are evident as early as 9 months of age. By age 2, low-income toddlers have smaller vocabularies and demonstrate poorer skills in early literacy and numeracy.[179]

These early disadvantages persist—and in some cases worsen—over time. Low-income children enter kindergarten up to a full year behind their higher-income peers in math and reading, and consistently score lower on measures of achievement and social-emotional skills over their academic careers.[180] As adolescents and young

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[174] Karina Wagnerman, *Medicaid: How Does it Provide Economic Security for Families?* Georgetown University Health Policy Institute, Center on Children and Families, 2017, https://ccf.georgetown.edu/2017/03/09/medicaid-how-does-it-provide-economic-security-for-families/

[175] Dahlia K. Remler, Sanders D. Korenman, and Rosemary T. Hyson, "Estimating the Effects of Health Insurance and Other Social Programs on Poverty Under the Affordable Care Act," Health Affairs 36 (2017),https://www.healthaffairs.org/doi/10.1377/hlthaff.2017.0331.

[176] Matthew Desmond and Carl Gershenson, "Housing Employment Insecurity among the Working Poor," *Social Problems* 63 (2016), https://academic.oup.com/socpro/article/63/1/46/1844105.

[177] Center on the Developing Child, *The Science of Early Childhood Development*, Harvard University, http://46y5eh11fhgw3ve3ytpwxt9r.wpengine.netdna-cdn.com/wp-content/uploads/2007/03/InBrief-The-Science-of-Early-Childhood-Development2.pdf.

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[179] Tamara Halle, Nicole Forry, Elizabeth Hair, et al., Disparities in Early Learning and Development: Lessons from the Early Childhood Longitudinal Study—Birth Cohort (ECLS-B), The Council of Chief State School Officers and Child Trends, 2009, http://www.elcmdm.org/Knowledge%20Center/reports/Child_Trends-2009_07_10_FR_DisparitiesEL.pdf; Annemarie H. Hindman, Barbara A. Wasik, and Emily K. Snell, "Closing the 30 Million Word Gap: Next Steps in Designing Research to Inform Practice," Child Development Perspectives, 2016, https://www.researchgate.net/profile/Barbara_Wasik/publication/301714377_Closing_the_30_Million_Word_Gap_Next_Steps_in_Designing_Research_to_Inform_Practice/links/572bd99308ae057b0a0958c7.pdf.

[180] Allison Freidman-Krauss, W. Steven Barnett, and Milagros Nores, "How Much Can High-Quality Universal Pre-K Reduce Achievement Gaps?," Center for American Progress, 2016, http://nieer.org/wp-content/uploads/2017/01/NIEER-AchievementGaps-report.pdf; Sean F. Reardon and Ximena A. Portilla, "Recent Trends in Income, Racial, and Ethnic School Readiness Gaps at Kindergarten Entry," AERA Open 2 (2016), http://journals.sagepub.com/doi/abs/10.1177/2332858416657343; Sean F. Reardon, "The Widening Achievement Gap between the Rich and the Poor: New Evidence and Possible Explanations," 2011,

adults, they have poorer mental health and are less likely to graduate from high school, to enroll in postsecondary education, and to earn a college degree.[181] As adults, they experience greater unemployment, have lower incomes themselves, and are in poorer mental and physical health.[182]

Children in immigrant families do not live in isolation. They live and grow up in communities where their individual success is critical to the strength of the country's future workforce and collective economic security. We need to invest in children, rather than put their healthy development and education at risk by destabilizing their families.

ii. Women's Health, Employment, and Economic Success Would Be Disproportionately Harmed by The Proposed Rule

The proposed rule would be particularly harmful to the economic security, health, and well-being of immigrant women, who make up more than half of the U.S. immigrant population.[183] Women's overall economic status, relative to men, is widely understood to be lower—as is their likelihood of being caregivers and living in larger households, relative to men—suggesting that the Department was aware in drafting the rule of the significant harm it would have on women. Immigrant women, especially those who are Black, Latina, and Asian American and Pacific Islander (AAPI), generally are at higher risk of economic insecurity than men because of pay disparities, discrimination, overrepresentation in low-wage work, and disproportionate responsibility for caregiving.

Across the board, women earn less than men on average.[184] Immigrant women face an even greater wage gap compared to native-born and naturalized men: foreign-born, noncitizen women, on average, earned 58 cents for every dollar earned by native-born men in 2015.[185] Immigrant women also earn less on average than US-born

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https://cepa.stanford.edu/sites/default/files/reardon%20whither%20opportunity%20-%20chapter%205.pdf.

[181] Gary W. Evans and Rochelle C. Cassells, "Childhood Poverty, Cumulative Risk Exposure, and Mental Health in Emerging Adults," *Clinical Psychological Science* 2(2013), https://journals.sagepub.com/doi/abs/10.1177/2167702613501496; Civic Enterprises and Everyone Graduates Center at Johns Hopkins University, "Building a GradNation: Progress and Challenge in Raising High School Graduation Rates," 2017, http://gradnation.americaspromise.org/report/2017-building-grad-nation-report; Drew DeSilver, "College Enrollment Among Low-Income Students Still Trails Richer Groups," FactTank, 2014, http://www.pewresearch.org/fact-tank/2014/01/15/college-enrollment-among-low-income-students-still-trails-richer-groups/; National Center for Education Statistics, "The Condition of Education: Postsecondary Attainment," 2016, https://nces.ed.gov/programs/coe/pdf/coe_tva.pdf.

[182] Raj Chetty, Nathaniel Hendren, Frina Lin, et al., "Childhood Environment and Gender Gaps in Adulthood," Working Paper, NBER, 2016, http://www.equality-of-opportunity.org/images/gender_paper.pdf; Ye Luo and Linda J. White, "The Impact of Childhood and Adult SES on Physical, Mental, and Cognitive Well-Being Later in Life," *Journal of Gerontology, Psychological Sciences and Social Sciences* 60 (2005), https://academic.oup.com/psychsocgerontology/article-lookup/doi/10.1093/geronb/60.2.S93; Robert Lee Wagmiller and Robert M. Adelman, *Childhood and Intergenerational Poverty: The Long-Term Consequences of Growing Up Poor,* National Center for Children in Poverty, 2009, http://www.nccp.org/publications/pub_909.html.

[183] Jie Zong, Jeanne Batalova, and Jeffrey Hallock, "Frequently Requested Statistics on Immigrants and Immigration in the United States," Migration Policy Institute, February 8, 2018, https://www.migrationpolicy.org/article/frequently-requested-statistics-immigrants-and-immigration-united-states.

[184] National Women's Law Center, *Frequently Asked Questions About the Wage Gap*, 2018, https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2018/09/Wage-Gap-FAQ.pdf; National Women's Law Center, *The Wage Gap: The Who, Why, How, and What to Do*, 2017, https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2016/09/The-Wage-Gap-The-Who-How-Why-and-What-to-Do-2017-2.pdf.

[185] Elise Gould, Jessica Schieder, Kathleen Geier, *What is the Gender Pay Gap and Is It Real?*, Economic Policy Institute, 2016, https://www.epi.org/publication/what-is-the-gender-pay-gap-and-is-it-real/.

women.[186] Women collectively comprise two-thirds of the low-wage workforce[187] and immigrant women are overrepresented to an even greater extent in low-wage jobs.[188] Women are also more likely than men to raise children on their own, which means that low wages often result in an even lower household income (based on the number of household members).

Given widespread economic insecurity among women working in low-wage jobs, immigrant women are more likely to use the benefits proposed under the expanded definition of public charge than immigrant men. While immigrant women only make up a small share of public benefits recipients overall,[189] noncitizen women predominate among noncitizen recipients of income security programs. For example, in 2017, almost 47 percent of noncitizen Medicaid recipients were women (while 40 percent were men and 13 percent children).[190] Almost 48 percent of noncitizen recipients of SNAP benefits were women in 2017, compared to the 40 percent who were men and the 12 percent who were children.[191] If immigrants are deterred from accessing Medicaid and SNAP—as they will surely be by the proposed rule—the result would be far greater economic insecurity among immigrant women and their families.

Moreover, the proposed rule's unprecedented consideration of Medicaid as part of the public charge determination poses a dire threat to the health of immigrant women. Medicaid is a critically important program for women, meeting most of women's health needs throughout their lives. Losing, disenrolling, or avoiding Medicaid coverage would put women's health at risk. Without affordable health coverage, women will not get the health care they need. Women who have health coverage are more likely to receive preventive care, such as breast cancer and cervical cancer screenings.[192] People with health insurance also have lower mortality rates.[193]

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[186] Institute for Women's Policy Research, *Status of Women in the States: The Employment and Earnings of Immigrant Women, 2018,* https://statusofwomendata.org/immigrant-women/.
[187] Kayla Patrick, Meika Berlan, Morgan Harwood*, Low-Wage Jobs Held Primarily by Women Will Grow the Most Over the Next Decade*, National Women's Law Center, 2018, https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2016/04/Low-Wage-Jobs-Held-Primarily-by-Women-Will-Grow-the-Most-Over-the-Next-Decade-2018.pdf.
[188] American Immigration Council, *The Impact of Immigrant Women on America's Labor Force*, 2017, https://www.americanimmigrationcouncil.org/research/impact-immigrant-women-americas-labor-force; National Women's Law Center, *Underpaid & Overloaded: Women in Low-wage Jobs*, 2014, https://nwlc.org/wp-content/uploads/2015/08/final_nwlc_lowwagereport2014.pdf.
[189] Noncitizen women constituted about 4 percent of all SNAP and Medicaid recipients in 2017. National Women's Law Center calculations based on U.S. Census Bureau, 2017 Current Population Survey, using Sarah Flood, Miriam King, Renae Rodgers, Steven Ruggles, and J. Robert Warren, Integrated Public Use Microdata Series, Current Population Survey: Version 6.0 [dataset]. Minneapolis, MN: IPUMS, 2018. https://doi.org/10.18128/D030.V6.0.This share is also roughly proportional to noncitizen women's share of the population (3.3 percent in 2017).
[190] Sarah Flood, Miriam King, Renae Rodgers, Steven Ruggles, and J. Robert Warren, National Women's Law Center calculations based on U.S. Census Bureau, 2017 Current Population Survey, using . Integrated Public Use Microdata Series, Current Population Survey: Version 6.0 [dataset]. Minneapolis, MN: IPUMS, 2018. https://doi.org/10.18128/D030.V6.0.
[191] National Women's Law Center calculations based on U.S. Census Bureau, 2017 Current Population Survey, using Sarah Flood, Miriam King, Renae Rodgers, Steven Ruggles, and J. Robert Warren. Integrated Public Use Microdata Series, Current Population Survey: Version 6.0 [dataset]. Minneapolis, MN: IPUMS, 2018. https://doi.org/10.18128/D030.V6.0.
[192] Munira Z. Gunja et al., *Women Gain Insurance and Improved Their Ability to Get Health Care*, The Commonwealth Fund, 2017, https://www.commonwealthfund.org/publications/issue-briefs/2017/aug/how-affordable-care-act-has-helped-women-gain-insurance-and.
[193] Steffie Woolhandler, David U. Himmelstein, *The Relationship of Health Insurance and Mortality: Is Lack of Insurance Deadly*, Annals of Internal Medicine, 2017, annals.org/aim/fullarticle/2635326/relationship-health-insurance-mortality-lack-insurance-deadly.

When people do not have health coverage, they are more likely to forgo needed care, leading to worse health outcomes.[194] Half of uninsured women reported going without health care in 2016 because of cost, compared to 25 percent of women with Medicaid and 21 percent of women with private health insurance.[195] Already, immigrant women are less likely to be insured than their citizen counterparts[196] and the gap widens for poor immigrant women: nearly half (48 percent) of noncitizen women of reproductive age living in poverty are uninsured, compared to 16 percent of citizen women.[197] The proposed rule would only make the situation worse, leading to worse health outcomes for immigrant women and their children.

Moreover, as a result of fear and confusion created by the proposed rule, immigrant women may avoid health care services that are unconnected to Medicaid such as free or subsidized care at health centers. When women forgo medical care, including preventive reproductive health care, easily treatable illnesses or medical conditions can escalate, leading to worsening of existing conditions, lengthening of illness, and even disability or death.[198] More specifically, this proposed rule may discourage women from obtaining prenatal care, which has ramifications not only for their health and their pregnancies, but also for birth outcomes (detailed further in the section below on pregnant women).[199]

The proposed rule would also undermine women's employment and economic success. The proposed rule ignores the positive impact of public benefits in facilitating economic self-sufficiency. There is a large body of research demonstrating positive long-term effects of receipt of many of the benefits that are included in the public charge determination, including SNAP and Medicaid. In particular, the use of these benefits often enables workers (especially those in the low-wage workforce) to remain employed.[200] This is because it is difficult, if not impossible, for women working in such jobs to support themselves and their families on their wages alone. Thus,

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[194] Committee on the Consequences of Uninsurance, *Care Without Coverage: Too Little, Too Late,* Institute of Medicine, 2002, https://www.ncbi.nlm.nih.gov/pubmed/25057604.
[195] Usha Ranji et al., *Overview: 2017 Kaiser Women's Health Survey,* Kaiser Family Foundation, 2018, https://www.kff.org/report-section/executive-summary-2017-kaiser-womens-health-survey/.
[196] Kaiser Family Foundation, *Women's Health Insurance Coverage*, 2017, https://www.kff.org/womens-health-policy/fact-sheet/womens-health-insurance-coverage-fact-sheet/.
[197] Guttmacher Institute, *Dramatic Gains in Insurance Coverage for Women of Reproductive Age Are Now in Jeopardy*, 2018, https://www.guttmacher.org/article/2018/01/dramatic-gains-insurance-coverage-women-reproductive-age-are-now-jeopardy.
[198] Woolhandler, *The Relationship of Health Insurance and Mortality: Is Lack of Insurance Deadly*; Rachel West, *Expanding Medicaid in All States Would Save 14,000 Lives Per Year,* Center for American Progress, 2018, https://www.americanprogress.org/issues/healthcare/reports/2018/10/24/459676/expanding-medicaid-states-save-14000-lives-per-year/; Committee on the Consequences of Uninsurance, *Care Without Coverage*; Adam Sonfield, *Beyond Contraception: The Overlooked Reproductive Health Benefits of Health Reform's Preventive Services Requirement,* Guttmacher Policy Review, 2012, *https://www.guttmacher.org/gpr/2012/10/beyond-contraception-overlooked-reproductive-health-benefits-health-reforms-preventive*.
[199] Megan M. Shellinger, et al., *Improved Outcomes for Hispanic Women with Gestational Diabetes Using the Centering Pregnancy Group Prenatal Care Model,* Maternal and Child Health Journal, 2016, https://link.springer.com/article/10.1007/s10995-016-2114-x.
[200] See for example Matthew Desmond, Carl Gershenson, Social Problems, *Housing and Employment Insecurity among the Working Poor*, 2016, https://scholar.harvard.edu/files/mdesmond/files/desmondgershenson.sp2016.pdf?m=1452638824; National Women's Law Center, Medicaid Is Vital for Women's Jobs in Every Community, 2017, https://nwlc.org/resources/medicaid-is-vital-for-womens-jobs-in-every-community/; Center On Budget and Policy Priorities, *Chart Book: The Far-Reaching Benefits of the Affordable Care Act's Medicaid Expansion*, 2018, https://www.cbpp.org/research/health/chart-book-the-far-reaching-benefits-of-the-affordable-care-acts-medicaid.

the proposed rule's counting SNAP, non-emergency Medicaid, and housing assistance against women for the purposes of their immigration status may actually make it more difficult for immigrant women to be self-sufficient.

The inclusion of Medicaid and SNAP pose particular threats to pregnant women.

The proposed rule would create barriers to accessing care for pregnant immigrant women that could hasten the rise in maternal mortality and have serious health implications for their US citizen children. Prenatal, maternity, and newborn care is vital to monitor mothers' own health as well as the development of their babies. Routine care during pregnancy ensures that treatable but serious complications, such as gestational diabetes and preeclampsia, are identified and treated immediately. Prenatal care services also identify any problems with fetal development and ensure that pregnant women are getting the right nutrition to promote healthy growth. Adequate prenatal care is associated with reduced incidences of low birth weight, lower rates of infant and maternal mortality, and reduced risk of avoidable maternity complications. Medicaid coverage helps to ensure that pregnant women receive health care services necessary for a healthy birth.[201]

In addition to access to prenatal care, nutrition assistance also helps promote healthy birth outcomes. Researchers compared the long-term outcomes of individuals in different areas of the country when SNAP expanded nationwide in the 1960s and early 1970s and found that mothers exposed to SNAP during pregnancy gave birth to fewer low-birth-weight babies.[202]

If pregnant women avoid medical care and nutrition services out of fear, the negative outcomes would extend decades into the future, diminishing their children's opportunity to thrive in tangible and entirely preventable ways.[203] Low-income women are already more likely to have poorer nutrition and greater stress, which can impair fetal brain development and health during pregnancy.[204] Economic stressors, combined with inadequate prenatal care for low-income pregnant women, are associated with higher rates of pre-term births and infant mortality.[205] A lack of adequate health care, including prenatal care, would contribute to higher rates of maternal mortality,

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[201] Laura R. Wherry, "State Medicaid Expansions for Parents Led to Increased Coverage and Prenatal Care Utilization among Pregnant Mothers," *Health Services Research,* 53 (2018), https://onlinelibrary.wiley.com/doi/pdf/10.1111/1475-6773.12820

[202] Douglas Almond, Hillary Hoynes, and Diane Schanzenbach, "Inside the War on Poverty: The Impact of Food Stamps on Birth Outcomes," *The Review of Economics and Statistics*, 93(2), May 2011, https://www.mitpressjournals.org/doi/pdfplus/10.1162/REST_a_00089; and Hilary Hoynes, Diane Whitmore Schanzenbach, and Douglas Almond, "Long-Run Impacts of Childhood Access to the Safety Net," *American Economic Review*, 106(4):903–934, April 2016, https://pdfs.semanticscholar.org/c94b/26c57bb565b566913d2af161e555edeb7f21.pdf.

[203] Sharon Parrot, et al., *Trump "Public Charge" Rule Would Prove Particularly Harsh for Pregnant Women and Children*, Center on Budget and Policy Priorities, (May 1, 2018), *available at* https://www.cbpp.org/research/poverty-and-inequality/trump-public-charge-rule-would-prove-particularly-harsh-for-pregnant.

[204] Tess Lefmann, Terri Combs-Orme, "Prenatal Stress, Poverty, and Child Outcomes," Child and Adolescent Social Work Journal 31 (2014),https://link.springer.com/article/10.1007/s10560-014-0340-x.

[205] Maternal and Child Health Bureau, *Child Health USA 2014: Prenatal Care*, Health Resources and Services Administration, 2014, https://mchb.hrsa.gov/chusa14/health-services-financing-utilization/prenatal-care.html ; Maternal and Child Health Bureau, Child Health USA 2013: Barriers to Prenatal Care, Health Resources and Services Administration, 2014, https://mchb.hrsa.gov/chusa13/health-services-utilization/p/barriers-to-prenatal-care.html ; Centers for Disease Control and Prevention, *Preterm Birth*, 2016, https://www.cdc.gov/reproductivehealth/MaternalInfantHealth/PretermBirth.htm; Child Trends, *Preterm Births*, 2015, https://www.childtrends.org/indicators/preterm-births/.

higher rates of infant mortality, and increased risk of low-infant birth weight.[206] Losing access to affordable prenatal care would be particularly dangerous for Black women, who already experience disproportionately high rates of maternal mortality at all income levels due in part to existing barriers to health care and systemic inequalities.[207]

Similarly, the proposed rule may also discourage women from seeking postpartum care, which is crucial to the health and well-being of mothers, newborns, and families.[208] Forgoing postpartum care could mean that women endure postpartum depression without proper medical, social, and psychological care, skip doctor's visits that address infant feeding, nutrition, physical activity and family planning, or leave other postpartum health issues unaddressed--all of which can result in poor health outcomes.

With maternal mortality on the rise, a bipartisan group of Senators support increasing federal funding to expand access to services that can prevent maternal death.[209] The proposed rule flies in the face of this effort to improve maternal and child health. What's more, it runs counter to evidence cited in previous versions of Field Guidance on Public Charge, which included detailed accounts of pregnant women with gestational diabetes terrified of seeking care and farmworker women afraid to enroll in a state-funded perinatal case management program.[210]

iii. Young Adults Will Lose Access to Higher Education and Career Pathway Opportunities

The increased fear and confusion generated by the proposed rule will deter immigrant young adults from applying for federal and state-funded student financial aid programs and from applying to college altogether, which will reduce their prospects for improved economic outcomes. Research studies have shown that a postsecondary education can increase economic mobility and improve lives.[211] Over a career, an average high school graduate earns at least $1.4 million; an Associate's degree earns at least $1.8 million, and a bachelor's degree holder earns $2.5 million; a master's degree holder earns $2.9 million; and a PhD holder earns $3.5 million; and a professional degree earns at least $4 million.[212] Furthermore, research has found that a college degree improves health

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[206] Christine T. Loftus, Orion T. Stewart, Mark D. Hensley, et al., "A Longitudinal Study of Changes in Prenatal Care Utilization Between First and Second Births and Low Birth Weight," *Maternal and Child Health Journal* 19 (2015), https://rd.springer.com/article/10.1007%2Fs10995-015-1783-1; Sarah B. Laditka, James N. Laditka, Melanie P. Mastanduno, et al., "Potentially Avoidable Maternity Complications: An Indicator of Access to Prenatal and Primary Care During Pregnancy," *Women and Health* 41 (2005), http://www.tandfonline.com/doi/abs/10.1300/J013v41n03_01.

[207] National Partnership for Women and Families, *Black Women's Maternal Health: A Multifaceted Approach to Addressing Persistent and Dire Health Disparities*, 2018, http://www.nationalpartnership.org/research-library/maternal-health/black-womens-maternal-health-issue-brief.pdf.

[208] The American College of Obstetricians and Gynecologists, *Ob-Gyns Stress the Importance of Postpartum Care: The Fourth Trimester*, 2016, https://www.acog.org/About-ACOG/News-Room/News-Releases/2016/Ob-Gyns-Stress-the-Importance-of-Postpartum-Care-The-Fourth-Trimester?IsMobileSet=false.

[209] Nina Martin, U.S. Senate Committee Proposes $50 Million to Prevent Mothers Dying in Childbirth (June 28, 2018). https://www.propublica.org/article/us-senate-committee-maternal-mortality-prevention-proposal

[210] Note: The following report is an example of the date that was collected and shared at the time the Field Guidance was written. Claudia Schlosberg, National Health Law Program, and Dinah Wiley, National Immigration Law Center, "The Impact of INS Public Charge Determinations on Immigrant Access to Health Care," (May 22, 1998),). https://www.montanaprobono.net/geo/search/download.67362.

[211] Department of the Treasury and the Department of Education, *The Economics of Higher Education*, 2012, https://www.treasury.gov/connect/blog/Documents/20121212_Economics%20of%20Higher%20Ed_vFINAL.pdf.

[212] Anthony P. Carnevale, *Reauthorizing the Higher Education Act: Accountability and Risk to Taxpayers, Testimony Before the*

status.[213] Post-secondary education also improves prospects for employment; since 2008, the majority of the new jobs created in the economy are going to college-educated individuals.[214]

The proposed rule will also make it more difficult for low-income students to remain in school full-time if they are afraid to access programs that support their physical, mental and financial wellbeing. Health, nutrition and housing benefits help young adults to complete higher levels of education that prepare them for higher-paying jobs and to meet the needs of our nation's employers. For example, a recent study found that food insecurity negatively impacts first-year university students' academic performance, even after adjusting for high school academic performance and socioeconomic background.[215]

To treat such benefits as a negative factor in a public charge assessment is contrary to the purpose of the public charge statute. In 2016, 710,000 immigrant young adults had Medicaid, which is 22.7% of all immigrant young adults and 11.3% of all young adults receiving Medicaid; and 446,000 immigrant young adults received SNAP, which is 14.5% of all immigrant young adults.[216] In addition, 45,000 immigrant young adults were in a household that received Housing Assistance.[217]

By contributing to fewer individuals with post-secondary degrees, the proposed rule undermines our nation's global competitiveness. A highly-educated workforce spurs economic growth and strengthens state and local economies.[218] The chilling effect of this rule will discourage immigrant young adults from acquiring postsecondary degrees and credentials and pursuing areas of national need, including the fields of science, technology, engineering, and mathematics (STEM). In short, the public charge proposal would weaken the STEM educational pipeline and thwart efforts to increase educational attainment levels.

Like their peers, immigrant young adults deserve an opportunity to access an affordable, postsecondary education and to contribute their knowledge, skills, and talents to our nation's workforce and economy. Immigrant young adults also enrich the racial and cultural diversity of our nation's college campuses. By acquiring a postsecondary education and applying their skills in the workforce, they strengthen our nation's economy and global competitiveness.

b. The Proposed Criteria for Public Charge Inadmissibility Determinations Disproportionately Disadvantage Immigrant Children, Immigrant Women, and Parents of Young Children

Section 212.21 of the proposed rule further outlines specific standards for income, health, English language

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Committee on Health, Education, Labor and Pensions, U.S. Senate, 2018 https://www.help.senate.gov/imo/media/doc/Carnevale2.pdf.

[213] Centers for Disease Control and Prevention, *Higher Education and Income Levels: Keys to Better Health*, 2012, https://www.cdc.gov/media/releases/2012/p0516_higher_education.html.

[214] Robert Shapiro, *The New Economics of Jobs is Bad News for Working-Class Americans and Maybe for Trump*, Brookings Institute, 2018, https://www.brookings.edu/blog/fixgov/2018/01/16/the-new-economics-of-jobs-is-bad-news-for-working-class-americans-and-maybe-for-trump/.

[215] Irene van Woerden et al., . "Food Insecurity Negatively Impacts Academic Performance." *J Public Affairs* (2018). https://doi.org/10.1002/pa.1864.

[216] U.S. Census Bureau, *Current Population Survey: 2016*, https://www.census.gov/programs-surveys/cps/data-detail.html.

[217] U.S. Census Bureau, *Current Population Survey: 2016*, https://www.census.gov/programs-surveys/cps/data-detail.html.

[218] Noah Berger and Peter Fisher, *A Well-Educated Workforce is Key to State Prosperity*, Economic Policy Institute, 2013, https://www.epi.org/press/states-investing-education-key-economic/.

proficiency, and other factors that officials will consider during public charge determinations. These standards place significant weight upon factors that overwhelmingly disadvantage immigrant children in low-income families seeking to adjust their own status. Moreover, these standards would make it difficult for low-income women and immigrant parents to obtain permanent status and achieve long-term stability for their families.

A recent analysis of recent green card holders found that the rule would disproportionately affect women and children, making it more difficult for them to pass the public charge test. Specifically, the study found that women comprised 70 percent of the population of recent green card holders that were unemployed and not enrolled in school, often due to the need to stay at home with children due to the high cost of child care.

Immigrant Children

The vast majority of children in immigrant families in the U.S. are citizens, and therefore not subject to the proposed changes to the public charge test. However, a small number of children who would be affected—as immigrants themselves—would find their chances of being approved for lawful permanent residency disproportionately harmed by the inadmissibility determination criteria laid out in §212.22. For example, the following factors would count negatively towards an immigrant child's public charge determination:

- **Age:** In the preamble to §212.22, DHS states that it intends to consider an immigrant's age "primarily in relation to employment or employability" (p. 51179). Given that "children under the age of 18 generally face difficulties working full-time" (p. 51180), DHS proposes to consider being age 18 or younger a negative factor in the totality of circumstances.
- **Public benefit receipt:** While immigrant children have lower rates of access to programs like SNAP and Medicaid compared to U.S.-born children, they participate in these programs at much higher rates than immigrant adults.[219] DHS acknowledges this in the discussion of the totality of circumstances. Essential health, nutrition and housing assistance prepares children to be productive, working adults. Counting it as a negative factor in the public charge assessment is contrary to the purpose of the public charge ground of inadmissibility and unfairly bases a child's future potential for self-sufficiency on their use of benefits as a child which runs contrary to the research that shows that access health and nutrition assistance improve children's educational attainment and other developmental outcomes.[220] In fact--as described above--access to these benefits in childhood can prevent the need for benefits in the future as children will be able to grow up into healthier more productive adults.
- **Household income**: Children in immigrant families are more likely to be low-income, comprising 30 percent of low-income children in the United States, despite their parents being more likely to be employed.[221]

The proposed rule increases the extent to which immigrant children who are subject to the public charge test may

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[219] Alex Nowrasteh and Robert Orr, *Immigration and the Welfare State,* CATO Institute, 2018, https://object.cato.org/sites/cato.org/files/pubs/pdf/irpb6.pdf.
[220] Marianne Page, *Safety Net Programs Have Long-Term Benefits for Children in Poor Households*, University of California, Davis, 2017, https://poverty.ucdavis.edu/sites/main/files/file-attachments/cpr-health_and_nutrition_program_brief-page_0.pdf
[221] The Annie E. Casey Foundation, *KIDS COUNT Data Book*, Children living in Low-Income Families (below 200 percent of the poverty threshold) by family nativity, 2018, https://www.aecf.org/resources/2018-kids-count-data-book//.

be denied lawful permanent residence. A recent study by the Migration Policy Institute found that, among recent green-card applicants, about 45 percent of children had two or more negative factors under the proposed standards, including age, lack of employment, and a higher likelihood of living in poverty.[222] Being denied lawful permanent status will be to the detriment of children's long-term well-being and success. Similar to the research on parents' access to legalization and economic mobility, it is well documented that providing immigrant children with the stability of legal status, particularly before they reach adulthood, can help improve their physical and mental health as well as their educational and workforce outcomes. For example, studies on the Deferred Action for Childhood Arrivals (DACA) program show that DACA has enabled immigrant youth to receive higher paying jobs than their undocumented peers, with their incomes increasing 69 percent after receiving DACA.[223] Similarly, DACA helped beneficiaries improve their educational attainment by removing barriers to postsecondary education, with nearly half currently enrolled in school or post-secondary education, including 72 percent that are pursuing a Bachelor's degree or higher.[224] In addition to poorer educational and job outcomes, research also shows that children and youth who are not able to secure the stability of long-term lawful status before adulthood face significant mental health risks associated with the stresses of living without status.[225]

Immigrant Women

Women comprise a large share of those seeking green cards and stand to be disproportionately negatively impacted by the proposed changes to the "totality of circumstances" test:

- **Income:** In 2017, approximately 27 percent of noncitizen women lived below 125 percent FPL (compared to 23 percent of noncitizen men).[226] Immigrant women are overrepresented among low-wage workers: one-third of immigrant women work in the low-wage service sector, making them more likely to live in poor or low-income households despite being employed. [227]
- **Household size:** More than half of all immigrant women live in a household with children, compared to 43 percent of immigrant men and 28 percent of native-born women.[228]
- **Benefit use:** Immigrant women have greater rates of benefit receipt compared to other noncitizens.[229] This is largely driven by women having lower incomes and being more likely to have children in the home.[230]

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[222] Randy Capps, Mark Greenberg, Michael Fix, and Jie Zong, "Gauging the Impact of DHS' Proposed Public-Charge Rule on U.S. Immigration," Migration Policy Institute, November 2018, https://www.migrationpolicy.org/research/impact-dhs-public-charge-rule-immigration.

[223] Tom K. Wong, Greisa Martinez Rosas, Adam Luna, Henry Manning, Adrian Reyna, Patrick O'Shea, Tom Jawetz, and Philip E. Wolgin, "DACA Recipients' Economic and Educational Gains Continue to Grow," Center for American Progress, August 28, 2017, https://www.americanprogress.org/issues/immigration/news/2017/08/28/437956/daca-recipients-economic-educational-gains-continue-grow/.,

[224] "Who are the Dreamers?," American Council on Education, 2017, https://www.acenet.edu/Pages/Protect-Dreamers-Higher-Education-Coalition.aspx#tabContent-3.

[225] Roberto G. Gonzales, Carola Suárez-Orozco and Maria Cecilia Dedios-Sanguineti. "No Place to Belong: Contextualizing Concepts of Mental Health Among Undocumented Immigrant Youth in the United States." American Behavioral Scientist, published online 24 May 2013, DOI: 10.1177/0002764213487349.

[226] U.S. Census Bureau, 2018 Current Population Survey, CPS Table Creator, https://www.census.gov/cps/data/cpstablecreator.html.

[227] Ariel G. Ruiz, Jie Zong, Jeanne Batalova, *Immigrant Women in the United States,* Migration Policy Institute, 2015, https://www.migrationpolicy.org/article/immigrant-women-united-states.

[228] Ariel G. Ruiz, Jie Zong, and Jeanne Batalova, *Immigrant Women in the United States,* Migration Policy Institute, 2015, https://www.migrationpolicy.org/article/immigrant-women-united-states.

- **Employment:** Overall, immigrant women participate in the workforce at a rate comparable to that of native-born women (56 percent versus 59 percent, respectively).[231] However, immigrant *mothers* are much more likely to stay at home with their children: in 2012, an estimated 40 percent of immigrant mothers stayed at home, compared to 25 percent of native-born mothers.[232]

A recent study by the Migration Policy Institute found that women may be more likely to be denied their green cards under the proposed rule because, as compared to immigrant men, they are less likely to be employed, more likely to be primary caregivers for children and family members, more likely to live in larger households, and more likely to have lower incomes.[233] In fact, among recent green card recipients, women comprised 70 percent of those not employed nor enrolled in school.[234] A study by the Kaiser Foundation found that among noncitizens who originally entered the United States without LPR status, women were more than twice as likely to have characteristics that DHS could potentially consider as heavily weighted negative factors in a public charge determination (59 percent of women vs. 27 percent of men).[235]

Therefore, immigrant women are more likely to be deemed a public charge based on negative factors and thus denied legal permanent residency as compared to immigrant men—a disproportionate impact clearly established by the Department's proposed criteria. Given that women are also more likely to be the primary caregivers of children, a consequence of these proposed changes could be increased economic instability—and potentially family separation—among millions of households with children (the consequences of which are detailed further below).

Immigrant Parents with Young Children

The public charge test would penalize immigrant parents based on the following negative factors.

- **Family size:** Having one or more child in the household counts against an individual.
- **Income:** Families with children have lower overall household incomes, particularly those with young children.[236]

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[229] National Women's Law Center calculations based on U.S. Census Bureau, 2017 Current Population Survey, using Sarah Flood, Miriam King, Renae Rodgers, Steven Ruggles, and J. Robert Warren. Integrated Public Use Microdata Series, Current Population Survey: Version 6.0 [dataset]. Minneapolis, MN: IPUMS, 2018. https://doi.org/10.18128/D030.V6.0.
[230] Pew Charitable Trusts, *Mapping Public Benefits for Immigrants in the States,* 2014, https://www.pewtrusts.org/~/media/assets/2014/09/mappingpublicbenefitsforimmigrantsinthestatesfinal.pdf.
[231] Ariel G. Ruiz, Jie Zong, and Jeanne Batalova, *Immigrant Women in the United States,* Migration Policy Institute, 2015, https://www.migrationpolicy.org/article/immigrant-women-united-states.
[232] D'Vera Cohn, Gretchen Livingstone, and Wendy Wang, *After Decades of Decline, a Rise in Stay-At-Home Mothers,* Pew Research Center, 2014, http://www.pewsocialtrends.org/2014/04/08/chapter-2-stay-at-home-mothers-by-demographic-group/.
[233] Randy Capps, Mark Greenberg, Michael Fix, Jie Zong, *Gauging the Impact of DHS's Proposed Public Charge Rule on U.S. Immigration,* Migration Policy Institute, 2018, https://www.migrationpolicy.org/research/impact-dhs-public-charge-rule-immigration.
[234] Capps, *Gauging the Impact of DHS' Proposed Public Charge Rule.*
[235] Samantha Artiga, Rachel Garfield, Anthony Damico *Estimated Impacts of the Proposed Public Charge Rule on Immigrants and Medicaid* Kaiser Family Foundation, 2018, http://files.kff.org/attachment/Issue-Brief-Estimated-Impacts-of-the-Proposed-Public-Charge-Rule-on-Immigrants-and-Medicaid.
[236] Amy Traub, Robert Hiltonsmith, Tamara Draut, "The Parent Trap: The Economic Insecurity of Families With Young

- **Public benefit use:** Families with children are more likely to receive or have received public benefits.
- **Employment:** Immigrant parents with young children face particular barriers to employment related to the cost of child care. However, the proposed standards lay out an expectation that low-income immigrants will be constantly employed, ignoring the challenges that parents face in balancing employment with caregiving duties and the immense economic benefit of unpaid care work. As described above, a substantial share of immigrant women are stay-at-home mothers.[237] These mothers would be penalized in a public charge determination for choosing to stay at home.

One study found that among noncitizens who originally entered the United States without LPR status, parents were nearly twice as likely to have a characteristic that could be considered a heavily weighted factor (65 percent vs. 34 percent).[238] The increased likelihood that low-income immigrant parents will fail the public charge test means many more will be denied lawful permanent residency, which has negative consequences for entire families, particularly children. The inability of parents to secure permanent legal residency means they will be at risk of losing their lawful status, leaving them unable to establish long-term stability and economic mobility for themselves and their families. Research shows that lawful status helps immigrant parents secure better paying jobs and reduces the stress associated with exploitative working conditions and the uncertainties of living without lawful status--the benefits of which are passed down to children, leading to better short-term and long-term outcomes.[239] One study showed that children whose parents were able to obtain lawful status under the 1986 immigration laws were able to achieve higher levels of education and higher paying jobs than those whose parents were not able to adjust status.[240]

Conversely, the inability of parents to obtain lawful permanent status under the proposed rule means that they will be at risk of falling out of lawful status and consequently becoming deportable, creating additional stress, impeding economic mobility, and reducing access to critical services--all consequences which again trickle down to their children. Children with undocumented immigrant parents face increased economic hardship and developmental challenges due to their parents' higher levels of poverty, lower levels of education, and higher likelihood to work in low-wage, unstable jobs without paid time off.[241] Extensive research also shows that parental detention and deportation harms a child's mental and physical health, economic security, and educational outcomes.[242] For example, a parent's deportation can drastically undercut the economic security of families

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Children," Demos, December 13, 2016, https://www.demos.org/publication/parent-trap-economic-insecurity-families-young-children.

[237] D'Vera Cohn, Gretchen Livingstone, and Wendy Wang, *After Decades of Decline, a Rise in Stay-At-Home Mothers,* Pew Research Center, 2014, http://www.pewsocialtrends.org/2014/04/08/chapter-2-stay-at-home-mothers-by-demographic-group/.

[238] Artiga, *Estimated Impacts of the Proposed Public Charge Rule.*

[239] Demetrios G. Papademetriou, Madeleine Sumption, and Will Somerville, "The Social Mobility of Immigrants and Their Children," Migration Policy Institute, June 2009, https://www.migrationpolicy.org/research/social-mobility-immigrants-and-their-children.

[240] Lisa A. Keister, Jody Agius Vallejo, E. Paige Borelli, "Mexican American Mobility: An Exploration of Wealth Accumulation Trajectories," Stanford Center on Poverty and Inequality, April 2013, https://inequality.stanford.edu/sites/default/files/media/_media/working_papers/keister_agius-vallejo_borelli_mexican-american-mobility.pdf.

[241] Hirokazu Yoshikawa, *Immigrants Raising Citizens: Undocumented Parents and Their Young Children*, August 2012, https://www.tandfonline.com/doi/abs/10.1080/10705422.2012.699714.

[242] Ajay Chaudry, Randy Capps, Juan Manuel Pedroza, et al., *Facing our Future: Children in the Aftermath of Immigration*

already struggling to make ends meet, especially when that parent is the primary or sole breadwinner. One study estimates that the sudden loss of a deported parent's income can reduce a family's household income by 73 percent.[243] Research also shows that the fear alone of possibly losing a parent to deportation can contribute to the toxic stress experienced by children in mixed legal status families. One study found that nearly 30 percent of children with one or more undocumented parent reported being afraid nearly all or most of the time, and three-quarters of undocumented parents reported their children were experiencing symptoms of post-traumatic stress disorder (PTSD).[244]

c. The rule imposes major damage on citizen children, despite saying that they are not included.

This rule effectively creates a second class of children who are less likely to access health, nutrition and housing programs. Simply because of their parents' nativity and economic status, millions of U.S.-born children will be denied the ability to achieve their full potential. Ultimately, the rule is internally contradictory: it claims to exempt citizen-children, but in fact evidence shows that many provisions will be detrimental to their health and well-being, and that it is impossible to impose such a radical change in the public charge definition without affecting citizen-children.

Because the vast majority of children in immigrant families were born in the U.S., any negative outcomes that children experience as a result of the proposed rule—through loss of benefits, heightened economic insecurity and material hardship, and increased likelihood that their parents will be denied lawful permanent status—will disproportionately fall on U.S. citizens. Estimates show that more than 9 million children, the majority of whom are U.S. citizens, may be negatively impacted by the proposed changes.[245] Yet the Department's analysis falls short of acknowledging the many ways in which citizen-children could be adversely affected by its proposed changes.

i. Research shows that immigrant parents will withdraw their children from benefits out of fear—yet the Department is dramatically underestimating the extent of the "chilling effect" for citizen-children.

In the preamble to the rule and cost-benefit analysis, the Department acknowledges an anticipated "chilling effect," whereby immigrants and their household members—including children—are likely to "disenroll from or

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Enforcement, The Urban Institute, 2010, http://www.urban.org/sites/default/files/publication/28331/412020-Facing-OurFuture.PDF; Brian Allen, Erica M. Cisneros, Alexandra Tellez, "The Children Left Behind: The Impact of Parental Deportation on Mental Health," *Journal of Child and Family Studies* 24 (2015), https://link.springer.com/article/10.1007/s10826-013-9848-5; Luis H. Zayas, Segio Aguilar-Gaxiola, Hyunwoo Yoon, et al., "The Distress of Citizen-Children with Detained and Deported Parents," *Journal of Child and Family Studies* 24 (2015), . https://link.springer.com/article/10.1007%2Fs10826-015-0124-8.

[243] Randy Capps, Heather Koball, James D. Bachmeier, et al., *Deferred Action for Unauthorized Immigrant Parents: Analysis of DAPA's Potential Effects on Families and Children*, MPI, 2016, http://www.migrationpolicy.org/research/deferred-action-unauthorized-immigrant-parents-analysis-dapas-potential-effectsfamilies.

[244] Sara Satinsky, Alice Hu, Jonathan Heller, et al., *Family Unity, Family Health: How Family Focused Immigration Reform Will Mean Better Health for Children and Families*, Human Impact Partners, 2013, http://www.familyunityfamilyhealth.org/.

[245] 2012-2016 5-Year American Community Survey Public Use Microdata Sample (ACS/PUMS); 20122016 5-Year American Community Survey (ACS) estimates accessed via American FactFinder; Missouri Census Data Center (MCDC) MABLE PUMA-County Crosswalk. Custom Tabulation by Manatt health, 9/30/2018. Found online at https://www.manatt.com/Insights/Articles/2018/Public-Charge-Rule-Potentially-Chilled-Population.

forgo enrollment in public benefits programs, even if they remain legally eligible." This is, in fact, a feature of the rule, and the primary way that DHS anticipates cost savings as a result. DHS explicitly states that the proposed rule would "result in a reduction in transfer payments from the federal government to individuals who may choose to disenroll from or forego enrollment in a public benefits program. Individuals who might choose to disenroll from or forego future enrollment in a public benefits program include foreign-born non-citizens as well as *U.S. citizens who are members of mixed-status households*." (emphasis added)

The Department bases their analysis on previous research conducted following the implementation of PRWORA, including findings that enrollment in public benefits by foreign-born headed households fell by about 21 percent between 1994-1997.[246] However, the Department's consideration of potential impacts of the proposed rule in general is limited at best, and it dramatically underestimates the extent and damage of the "chilling effect" that will result, including the long-term developmental harm to citizen-children. It also fails to recognize the additional fear and stress that immigrant families are experiencing as a result of the constant anti-immigrant rhetoric being perpetuated by the Administration and numerous federal immigration policy changes, including increased immigration enforcement in the interior of the United States that has also targeted immigrant parents.

The cost-benefit analysis in the rule is based on the flawed assumption that the "population likely to disenroll from or forego enrollment in public benefits programs would be individuals intending to apply for adjustment of status or those who have adjusted status within the past five years." It also assumes a lesser chilling effect than that which followed the implementation of PROWA, stating that "PROWA was directly changing eligibility requirements, whereas this proposed rule, if finalized, would change enrollment incentives." As such, the Department bases its estimates of potential disenrollment at 2.5 percent of the number of foreign-born noncitizens seeking to adjust status, which we believe to be a gross underestimate based on previous research regarding PROWA and recent studies on immigrants' reluctance to access benefits in the current political climate. It is also important to note that previous studies on PROWA found that much of chilling effect was caused by confusion regarding the new eligibility rules, and confusion is likely to continue to contribute to the chilling effect created by this rule as has already been documented.

In reality, we know that entire families, including U.S. citizen children, are withdrawing from services, *even services not included in the proposed rule*. Much of this chilling effect has been a result of the onslaught of anti-immigrant policy changes from the Administration, including the 2017 immigration executive order that increased immigration enforcement measures in the interior of the United States and removed enforcement priorities that provided protection for certain parents of citizen children, as well as several other categories of immigrants.[247] As detailed above, CLASP conducted research between May and December of 2017 based on interviews with early childhood and community-based social service providers in 6 states, and providers consistently shared that parents were refusing to enroll or disenrolling in programs like SNAP, WIC, and Medicaid and refusing early

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[246] Michael Fix, Jeffrey Passel, *Trends in Noncitizens' and Citizens' Use of Public Benefits Following Welfare Reform: 1994-1997,* The Urban Institute, 1999, https://www.urban.org/research/publication/trends-noncitizens-and-citizens-use-public-benefits-following-welfare-reform.

[247] The White House Office of the Press Secretary, "Executive Order: Enhancing Public Safety in the Interior of the United States," 2017, https://www.whitehouse.gov/presidential-actions/executive-order-enhancing-public-safety-interior-united-states/.

intervention services.[248] The study was conducted during 2017, long before the public charge rule was published in the federal register, demonstrating the significant chilling effect created by rumors and misinformation, including alarm associated with previously leaked versions of the proposed rule. A national study by the Kaiser Family Foundation and a California-based study conducted by The Children's Partnership and the California Immigrant Policy Center, both conducted prior to publication of the proposed rule, also found that immigrant families-- including those with lawful status--were experiencing high levels of fear and anxiety leading to decreased enrollment and disenrollment of their children in basic health and nutrition programs.[249]

The fear and anxiety prevalent among immigrant communities is likely to continue given the ongoing uncertainty created by federal immigration policy proposals – such as this proposed rule on public charge, the 2017 immigration executive orders on immigration enforcement, removing protections for Temporary Protected Status holders and beneficiaries of the Deferred Action for Childhood Arrivals (DACA) – all of which destabilize immigrant families and inhibit their ability to provide and care for their children. We believe this heightened climate of fear will lead to an even greater chilling effect than that from the 1990s should this rule be finalized.

Thus, the rule has long-term implications for millions of our nation's youngest citizens, denying them vital health care, nutritious food, housing, as well as other critical services that their parents may be reluctant to enroll them in despite their being eligible. Citizen-children are eligible for a broad range of benefits specifically designed to foster their healthy development in recognition of the importance of meeting their basic needs from birth through adulthood—not only for their own healthy development, but for the health and vitality of their communities, including the children they attend child care or school with. As a result, more than half the states have adopted policies to ensure that even noncitizen children—specifically those who are lawfully present immigrants—in their state have access to government funded low-cost, high-quality health care.[250] As discussed previously, the link between access to benefits and a child's future health and social outcomes is well documented. Receipt of health insurance, housing assistance, and nutrition assistance during childhood is associated with better health and educational outcomes and lower rates of material hardship, with benefits into adulthood.[251]

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[248] Cervantes, Our Children's Fear.

[249] Samantha Artiga, Petry Ubri, *Living in An Immigrant Family in America: How Fear and Toxic Stress Are Affecting Daily Life, Wellbeing, and Health*, The Henry J. Kaiser Family Foundation, 2017, https://www.kff.org/report-section/living-in-an-immigrant-family-in-america-issue-brief/; The Children's Partnership and California Immigrant Policy Center, *Healthy Mind, Healthy Future: Promoting the Mental Health and Wellbeing of Children in Immigrant Families in California,* 2018, https://www.childrenspartnership.org/wp-content/uploads/2018/08/Healthy-Mind-Healthy-Future-Report-Promoting-the-Mental-Health-and-Wellbeing-of-Children-in-Immigrant-Families.pdf.

[250] National Immigration Law Center, *Health Care Coverage Maps, 2018,* https://www.nilc.org/issues/health-care/healthcoveragemaps/.

[251] See for example, Chloe N. East, "The Effect of Food Stamps on Children's Health: Evidence from Immigrants' Changing Eligibility," Working Paper, 2017, http://www.chloeneast.com/uploads/8/9/9/7/8997263/east_fskids_r_r.pdf; Karina Wagnerman, Alisa Chester, Joan Alker, *Medicaid is a Smart Investment in Children*, Georgetown University Center for Children and Families, March 2017, https://ccf.georgetown.edu/2017/03/13/medicaid-is-a-smart-investment-in-children/; Aletha C. Huston, "U.S. Commentary: Effects of Housing Subsidies on the Well-Being of Children and Their Families in the Family Options Study," *Cityscape: A Journal of Policy Development and Research* 19 (2017), https://www.huduser.gov/portal/periodicals/cityscpe/vol19num3/ch15.pdf.

ii. There is a clear correlation between parents' and children's access to health care—and the harm done to children when their parents forego support for themselves.

Parents' and children's wellbeing is inextricably linked in many ways, including their access to benefits. While health insurance coverage is not the only support at stake as a result of the public charge rule, the connection between children's and parents' insurance status demonstrates how difficult it is to penalize parents without imposing harm on citizen-children.

Research focused on Medicaid expansion consistently shows that children are more likely to have insurance coverage when their parents are also insured, and that parents' own receipt of health care services often dictates that of their children.[252] While citizen-children in immigrant families generally have lower rates of coverage compared to children with parents who are U.S.-born, this gap has been closing in recent years.[253] Between 2008 and 2016, various policy changes prioritized investments toward outreach and enrollment for immigrant families, contributing to a significant increase in Medicaid and CHIP participation and a decline in the uninsurance rate among citizen-children with immigrant parent(s). The proposed rule threatens to undermine this progress, particularly for the 2.2 million Medicaid/CHIP-enrolled citizen-children whose have an immigrant parent also enrolled in Medicaid and who may experience a "reverse welcome mat" if their parent drops coverage.[254]

If parents themselves disenroll from or refuse to participate in Medicaid, forgo care from community health centers, and otherwise avoid other publicly funded programs and services that promote their health and wellbeing, it won't just be their health that suffers. As described extensively above, children's health and development is negatively affected by their parents' untreated mental and physical health challenges.[255] And loss

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[252] Jennifer E. DeVoe, Courtney Crawford, Heather Angier, et al, "The Association Between Medicaid Coverage for Children and Parents Persists: 2002-2010," *Matern Child Health J* 19 (2015), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4864606/; Julie L. Hudon and Asako S. Moriya, "Medicaid Expansion for Adults Had Measurable 'Welcome Mat' Effects on Their Children," *Health Affairs* 36 (2017), https://www.healthaffairs.org/doi/10.1377/hlthaff.2017.0347; Joan Alker and Alisa Chester, *Children's Health Insurance Rates in 2014: ACA Results in Significant Improvements,* Georgetown University Health Policy Institute, Center for Children and Families, 2015, http://ccf.georgetown.edu/wp-content/uploads/2015/10/ACS-report-2015.pdf.

[253] Genevieve M. Kenney, Jennifer M. Haley, and Robin Wang, *Proposed Public Charge Rule Could Jeopardize Recent Coverage Gains Among Citizen Children,* Urban Institute, 2018, https://www.urban.org/sites/default/files/publication/99453/proposed_public_charge_rule_could_jeopardize_recent_coverage_gains_among_citizen_children_0.pdf.

[254] Genevieve M. Kenney, Jennifer M. Haley, and Robin Wang, *Proposed Public Charge Rule Could Jeopardize Recent Coverage Gains Among Citizen Children,* Urban Institute, 2018, https://www.urban.org/sites/default/files/publication/99453/proposed_public_charge_rule_could_jeopardize_recent_coverage_gains_among_citizen_children_0.pdf.

[255] Stephanie Schmit and Christina Walker, *Seizing New Policy Opportunities to Help Low-Income Mothers with Depression*, CLASP, 2016, www.clasp.org/resources-and-publications/publication-1/Opportunities-to-Help-Low-Income-Mothers-with-Depression-2.pdf; National Scientific Council on the Developing Child and National Forum on Early Childhood Program Evaluation, "Maternal Depression Can Undermine the Development of Young Children," Center on the Developing Child, Harvard University, Working Paper 8, 2009, http://developingchild.harvard.edu/resources/maternal-depression-can-undermine-the-development-of-young-children/; Stephen M. Amrok and Michael Weitzman, "Parental Psychological Distress and Children's Mental Health: Results of a National Survey," *Academic Pediatrics,* 14 (2014), https://www.academicpedsjnl.net/article/S1876-2859(14)00057-6/fulltext; Colorado Health Institute, *The Link Between Parent and Child Mental Health in Colorado*, 2016, https://www.coloradohealthinstitute.org/sites/default/files/file_attachments/Final%20Brief_0.pdf.

of insurance imposes major financial strain on low-income families, who will then be even less likely to afford medical care and have to make trade-offs between doctor's visits, prescription medications, and other medical needs and basic essentials like housing, food, clothing, and diapers. This means many more citizen-children will be living in economic insecurity and may even be thrown into poverty. As a country with one of the highest child poverty rates[256], we cannot afford to scare millions of citizen-children away from one of the most effective anti-poverty tools we have available.

iii. Research consistently points to the importance of immigrant parents' long-term status for children's outcomes—but many more parents may be denied lawful permanent residency under the proposed standards.

Many of the provisions laid out in the proposed standards would inherently penalize immigrant parents, who are more likely to have caregiving duties that impede full-time employment; to work in low-wage jobs that perpetuate poverty *despite* working full time; and to have larger households that include dependent children. To the extent that the rule would lead to more low-income working parents failing the public charge test and being denied long-term status, citizen-children will also be penalized.

Without long-term lawful permanent residency, parents – and therefore their children – also lose the improved economic opportunities that come with lawful status such as more employment opportunities, higher wages, employer-sponsored health care, and access to other important benefits and income supports.[257] As a result, the rule would strip access to improved economic mobility that can help parents lift their citizen children out of poverty and result in low-income immigrant families falling deeper into poverty to the detriment of their citizen children's healthy development.

Furthermore, by not being able to secure lawful permanent residency, parents who choose to remain in the United States would be at risk of becoming undocumented. Research has found that a parent's undocumented status can harm a child's well-being as undocumented immigrants have higher levels of poverty, lower levels of education, are disproportionately more likely to work in low-wage, unstable jobs without paid time off compared to legal residents and citizens, and are less likely to seek out critical benefits for their citizen children.[258] Parents

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[256] Gonzalo Fanjul, *Children of the Recession: The Impact of The Economic Crisis on Child Well-Being in Rich Countries,* UNICEF, 2014,https://www.unicef-irc.org/publications/733-children-of-the-recession-the-impact-of-the-economic-crisis-on-child-well-being-in.html.

[257] Demetrios G. Papademetriou, Madeline Sumpton, Will Somerville, *The Social Mobility of Immigrants and Their Children,* Migration Policy Institute, 2009, https://www.migrationpolicy.org/research/social-mobility-immigrants-and-their-children; Lisa A. Keister, Jody Agius Vallejo, E. Paige Borelli, *Mexican American Mobility: An Exploration of Wealth Accumulation Trajectories,* Stanford Center on Poverty and Inequality, 2013, https://inequality.stanford.edu/sites/default/files/media/_media/working_papers/keister_agius-vallejo_borelli_mexican-american-mobility.pdf .

[258] Hirokazu Yoshikawa, *Immigrants Raising Citizens: Undocumented Parents and Their Young Children*, 2011; Annette Bernhardt, Ruth Milkman, Nik Theodore, et al., *Broken Laws, Unprotected Workers,* Center for Urban and Economic Development, National Employment Law Project, UCLA Institute for Research on Labor and Employment, 2009, http://www.nelp.org/content/uploads/2015/03/BrokenLawsReport2009.pdf?nocdn=1; Krista M. Perreira, Robert Crosnoe, Karina Fortuny, et al., *Barriers to Immigrants' Access to Health and Human Services Programs,* Office of the Assistant Secretary for Planning and Evaluation, 2012, http://webarchive.urban.org/UploadedPDF/413260-Barriers-to-Immigrants-Access-to-Health-and-Human-Services-Programs.pdf; Sara Satinsky, Alice Hu, Jonathan Heller, et al., *Family Unity, Family*

who were once lawfully present would also be at risk of deportation, which research shows also creates significant harm to their children's mental and physical health, as the constant worrying about deportation creates toxic stress.[259] Children who have lost a parent to deportation often experience symptoms of PTSD and suffer from increased economic hardship--including crowded housing conditions, less access to food, and lower household income--particularly when the parent deported is the primary breadwinner.[260] Parents who leave the United States—voluntarily or as a result deportation—must make the difficult choice of whether to bring their citizen children with them to a country they have never known or leave them behind in the care of family or friends—both decisions which have dire consequences for children's long-term development.[261]

IV. THE PROPOSED REGULATION WOULD CAUSE MAJOR HARM TO COMMUNITIES, SCHOOLS, HEALTH CARE SYSTEMS, STATES, LOCALITIES, BUSINESSES AND HIGER EDUCATION.

The impacts of the proposed regulation go far beyond individuals and families. Mass disenrollment from SNAP and Medicaid will have devastating economic ripple effects on communities nationwide. For example, when immigrants and their families are deterred by the rule from gaining access to Medicaid, the consequences for safety net hospitals and clinics are dire. When families lose Medicaid health coverage, hospitals and doctors lose income.

Disruption and costs to K-12 education are also a major concern. Inadequate nutrition, a lack of routine medical care, and unstable housing situations directly impact the health and wellbeing of students and educational outcomes. States and localities also suffer when they must deal with the public health and fiscal consequences when immigrants and their families choose to forego health care.

The rule will create new challenges for state and local agencies that administer health, nutrition, and housing programs. State and local agencies will face an increased workload to provide documentation of benefit receipt to green card applicants as required by draft from I-944, respond to consumer inquiries related to the new rule, and modify existing communications and forms related to public charge. Furthermore, the inclusion of Medicaid and SNAP in public charge review will undermine state efforts to extend coverage to pregnant women and children and to streamline enrollment processes between different public assistance programs.

The proposed changes will also have a direct impact on businesses big and small, hurting workers across all wage ranges and damaging state and local governments' ability to support their residents in achieving higher education and workforce policy goals. Particularly for low-wage workers, the proposed rule will destabilize their lives and

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Health: How Family Focused Immigration Reform Will Mean Better Health for Children and Families, Human Impact Partners, 2013, http://www.familyunityfamilyhealth.org/.

[259] Luis H. Zayas, Segio Aguilar-Gaxiola, Hyunwoo Yoon, et al., "The Distress of Citizen-Children with Detained and Deported Parents," *Journal of Child and Family Studies* 24 (2015); Ajay Chaudry, Randy Capps, Juan Manuel Pedroza, et al., *Facing our Future: Children in the Aftermath of Immigration Enforcement*, The Urban Institute, 2010, http://www.urban.org/sites/default/files/publication/28331/412020-Facing-OurFuture.PD.

[260] https://www.migrationpolicy.org/research/implications-immigration-enforcement-activities-well-being-children-immigrant-families

[261] Brian Allen, Erica M. Cisneros, and Alexandra Tellez, "The Children Left Behind: The Impact of Parental Deportation on Mental Health," *Journal of Child and Family Studies* 24 (2015); IMUMI, *Where Do We Go From Here?* http://uf.imumi.org/recursos/where_challenges.pdf

will make it harder for them to sustain steady employment. When businesses lose workers, it disrupts industries and our economy suffers.

Finally, the fear and confusion generated by proposed rule could deter immigrant students from pursuing postsecondary education and deter foreign talent from pursuing education and employment opportunities in the U.S. For immigrant students already pursuing higher education opportunities, the proposed rule would undermine access to essential health, nutrition and other critical programs which would impact college campuses and impede state efforts to increase college completion rates.

a. Mass Disenrollment from SNAP and Medicaid Will Have Devastating Economic Ripple Effects on Communities Nationwide

The Fiscal Policy Institute models the economic and fiscal losses associated with the proposed public charge rule if 15, 25, and 35 percent of people currently receiving benefits who experience the chilling effect feel compelled to disenroll from two of the biggest supports – Medicaid and SNAP.[262]

If 15 to 35 percent of people disenrolled from SNAP and Medicaid, the Fiscal Policy Institute shows a loss of approximately $7.5 billion to $17.5 billion in health care and food supports. As a result of this money withdrawn from the economy, economic ripple effects would spread to businesses and workers. For instance, withdrawal from SNAP would mean a reduction in spending in grocery stores and supermarkets and, when families lose Medicaid health coverage, hospitals and doctors lose income. Further, when families struggle to pay food and health care costs, spending would be reduced in other areas. In total, the Fiscal Policy Institute shows a potential loss of approximately $14.5 billion to $33.8 billion due to economic ripple effects. Lastly, as businesses have less revenue, employers lay off workers. As a result of the economic loss, our nation stands to lose approximately 99,000 to 230,000 jobs.[263]

b. Harm to Schools: K-12

The proposed public charge rule would have a harmful impact on our nation's schools. Superintendents, principals, teachers, nurses, counselors, and other school personnel can attest to the adverse effects of inadequate nutrition, a lack of routine medical care, and unstable housing situations on the educational outcomes and the health and wellbeing of students. These critical factors contribute to absenteeism, inattention in class, incomplete school work, poor health, and a decrease in access to a quality education. The proposed rule would drastically increase these barriers to education and undermine schools in their efforts to prepare all students, especially immigrant students, to be college and career ready.

Schools deliver health services effectively and efficiently to children since school is where children spend most of their day. Increasing access to health care services through Medicaid improves health care and educational outcomes for all students, including immigrant children. Providing health and wellness services for immigrant

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[262] Fiscal Policy Institute "Only Wealthy Immigrants Need Apply: How A Trump Rule's Chilling Effect Will Harm the U.S." (New York, NY: FPI, 2018) http://fiscalpolicy.org/public-charge.
[263] Fiscal Policy Institute "Only Wealthy Immigrants Need Apply: How A Trump Rule's Chilling Effect Will Harm the U.S." (New York, NY: FPI, 2018) http://fiscalpolicy.org/public-charge.

children who need through school-based Medicaid programs helps enable these children to become employable, attend higher-education and be productive contributors to American society.

The inclusion of Medicaid as a program that can disqualify someone from becoming a lawful permanent resident or maintaining a visa in the U.S. will have immediate repercussions for children's healthcare access inside and outside of school. While school-based services are excluded from impacting a child's future status in the U.S. by this regulation, school districts are already challenged in annually enrolling children into the Medicaid/CHIP program and obtaining parental consent that allows districts to be reimbursed by Medicaid for the direct healthcare services they provide children.

Since the news of the proposed regulations broke, some districts have reported that immigrant parents are proactively revoking consent for districts to bill Medicaid for costly services under the Individuals Disabilities Education Act (IDEA). Medicaid reimbursement for special education services is a critical funding source for school districts. Districts with large numbers of immigrant children will struggle to meet their commitments under IDEA if parents are scared to give their consent to billing Medicaid.

If this regulation is finalized, we expect a significant number of immigrant parents will refuse to consent to allowing districts to bill Medicaid for healthcare or special education expenses for their children. As a result, districts that rely on Medicaid to meet the healthcare and special education needs of immigrant children will have to dip into local dollars to continue ensuring immigrant children are healthy enough to learn and receive the special education services they are entitled to under IDEA. The loss of Medicaid funding will place a considerable burden on school districts to raise local revenue through taxes or reallocate existing local resources to fill the gaps left by substantial decreases in Medicaid reimbursement. If school districts are unable to raise new revenue, the loss of Medicaid funding could compromise educational quality and resources for all children regardless of immigration status or income level.

Research has shown that public health insurance coverage positively impacts education attainment.[264] Public health coverage, which is mainly available through Medicaid, increases high school graduation rates.[265] Without Medicaid, families will be forced to forego or delay doctors' visits, immunizations, and prescriptions. Forcing immigrant families to make such choices has a negative effect on entire classrooms, interrupting and delaying the learning of immigrant students and their peers.

To make matters worse, the threats to housing assistance in the proposed rule place added pressures on schools and increase stress levels for immigrant children and families. When children are in an unstable housing environment, their education suffers.[266] The loss of federal housing assistance will increase the risk of students living in unsafe, overcrowded, and unstable housing. Housing instability, coupled with other stressors, results in

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[264] Sarah Cohodes et al., "The Effect of Child Health Insurance Access on Schooling: Evidence from Public Insurance Expansions" 4, 5 & 23 National Bureau of Economic Research, Working Paper No. 20178, (2014), https://www.nber.org/papers/w20178.

[265] Sarah Cohodes et al., "The Effect of Child Health Insurance Access on Schooling: Evidence from Public Insurance Expansions" 4, 5 & 23 National Bureau of Economic Research, Working Paper No. 20178, (2014), https://www.nber.org/papers/w20178.

[266] U.S. Department of Education, *Press Release: Education Department Releases Guidance on Homeless Children and Youth*, 2016, https://www.ed.gov/news/press-releases/education-department-releases-guidance-homeless-children-and-youth; U.S. Department of Education, U.S. Department of Health and Human Services, *Dear Colleague Letter: Elementary and Secondary Education Act,* 2016, https://www2.ed.gov/policy/elsec/leg/essa/edhhsfostercaredcl.pdf .

high levels of stress on immigrant parents that can harm their children's cognitive development and lower educational attainment.[267]

While parents do their best to shield their children from these realities, children inevitably absorb the stress as well. Severe parental stress of this kind affects a child's brain development and capacity to learn.[268] The proposed rule would only increase the risk that children will experience this often-irreversible harm.[269] Both parents and pediatricians report that children are experiencing high levels of fear related to current immigration-related policies and rhetoric, which are negatively affecting their behavior and performance in school.[270]

We believe that all children, including immigrant children, deserve the fundamental security and health benefits provided by adequate food, health care, and housing to succeed in school and beyond. It is only with such vital supports in place that students can meaningfully engage at school and reach their greatest potential.

c. Harm to Health Care Systems: Immigrant's Fears About Using Medicaid will Deprive Financially Vulnerable Safety Net Providers of Vital Revenue

Medicaid is an indispensable funding source for safety net hospitals and clinics, which are financially vulnerable. More than 35% of visits to safety-net hospitals are covered by Medicaid.[271] Medicaid is the single largest source of funding for community health centers in both Medicaid expansion and non-expansion states.[272] In California, where one of every two children has an immigrant parent, more than half of all children are enrolled in the state's Medicaid program. [273] In addition, some studies have found that immigrants constitute a low-risk population that

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[267] Hirokazu Yoshikawa, "Immigrants Raising Citizens Undocumented Parents and Their Young Children,," 2011;, https://www.tandfonline.com/doi/abs/10.1080/10705422.2012.699714; Heather Sandstrom, Sandra Huerta, *The Negative Effects of Instability on Child Development: A Research Synthesis*, *Low-Income Working Families, Discussion Paper No. 3,* Urban Institute, 2013, https://www.urban.org/sites/default/files/publication/32706/412899-The-Negative-Effects-of-Instability-on-Child-Development-A-Research-Synthesis.PDF.

[268] National Scientific Council on the Developing Child, *Persistent Fear and Anxiety Can Affect Young Children's Learning and Development Working Paper No. 9,* Center on the Developing Child at Harvard University, 2010, https://developingchild.harvard.edu/resources/persistent-fear-and-anxiety-can-affect-young-childrens-learning-and-development/; Maya Rossin-Slater, "Promoting Health in Early Childhood",," The Future of Children vol 25 (2015).), https://files.eric.ed.gov/fulltext/EJ1062947.pdf.

[269] American Academy of Pediatrics, "Early Childhood Adversity, Toxic Stress, and the Role of the Pediatrician: Translating Developmental Science Into Lifelong Health," Vol 129 Pediatrics, (2012), http://pediatrics.aappublications.org/content/129/1/e224; National Scientific Council on the Developing Child, *Persistent Fear and Anxiety Can Affect Young Children's Learning and Development*, 2010, https://developingchild.harvard.edu/wp-content/uploads/2010/05/Persistent-Fear-and-Anxiety-Can-Affect-Young-Childrens-Learning-and-Development.pdf.

[270] Samantha Artiga and Petry Ubri, *Living in an Immigrant Family in America: How Fear and Toxic Stress are Affecting Daily Life*., Kaiser Family Foundation, 2017, https://www.kff.org/disparities-policy/issue-brief/living-in-an-immigrant-family-in-america-how-fear-and-toxic-stress-are-affecting-daily-life-well-being-health/.

[271] America's Essential Hospitals, *Essential Data: Our Hospitals, Our Patients,* 2017, https://essentialhospitals.org/wp-content/uploads/2017/06/AEH_VitalData_2017_Spreads_NoBleedCropMarks.pdf.

[272] Julia Paradise, et al., *Community Health Centers: Recent Growth and the Role of the ACA,* Kaiser Family Foundation, 2017, https://www.kff.org/report-section/community-health-centers-recent-growth-and-the-role-of-the-aca-issue-brief/.

[273] California Department of Health Care Services Research and Analytic Studies Division, *Proportion of California Population Certified Eligible for Medi-Cal By County and Age Group – September 2015,* 2016, http://www.dhcs.ca.gov/dataandstats/statistics/Documents/Medi-Cal_Penetration_Brief_ADA.PDF. Note: pre-dates eligibility for children regardless of immigration status.

effectively subsidize the insurance market for U.S. born individuals.[274]

There is a direct relationship between the number of patients covered by Medicaid in a safety-net facility's service area and the facility's financial health. Community Health Centers in Medicaid expansion states have more locations, see more patients and have better provider to patient ratios as compared to non-expansion states.[275] Studies confirm a strong relationship between Medicaid coverage and hospital closures, with hospitals in Medicaid expansion states 84% less likely to close than those in non-expansion states.[276]

The impacts of hospital closures are far-reaching. Hospital closures affect access to care for all residents of their service areas. A study of California hospitals found increased rates of deaths among inpatients in facilities located in hospital service areas where an emergency department had closed. Rates of death increased by 10 percent among nonelderly adults and 15 percent among patients who had heart attacks. The impact of hospital closure on access to care is particularly significant in rural communities, which generally have difficulty attracting health care providers and which providers often leave in the wake of a hospital closure.[277] The effects of hospital closures extend beyond reduced access to healthcare and poorer health outcomes. Hospitals are major employers and purchasers of goods and services. The loss of jobs associated with a hospital closure is especially devastating in rural areas, which have smaller populations and a historic reliance on declining industries.[278] Moreover, some industries and employers will not locate in an area without a hospital, leaving communities without hospitals unable to attract some employers. [279]

There are numerous immigrants in the healthcare workforce. Among home health aides, 25% are foreign-born and a third receive public benefits.[280] If these workers forego health coverage, they will miss more days of work, burdening their employers and the vulnerable people for whom they provide care.[281] Moreover, it is accepted wisdom that there will be an increased need for home care workers as the U.S. population ages.[282] If candidates for these low-wage jobs are denied admission on public charge grounds, or are unable to extend/ change their nonimmigrant status due to low incomes, vulnerable seniors may be forced to leave their homes and receive more expensive care in nursing homes.

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[274] Lila Flavin, et al., "Medical Expenditures on and by Immigrant Populations in the United States: A Systematic Review," International Journal of Health Services, (2018), http://www.pnhp.org/docs/ImmigrationStudy_IJHS2018.pdf
[275] Paradise, *Community Health Centers: Recent Growth*.
[276] Richard Lindrooth et al., *Understanding The Relationship Between Medicaid Expansions And Hospital Closures,* Health Affairs, 2018 https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2017.0976.
[277] Jane Wishner, Patricia Solleveld, et al., *A Look at Rural Hospital Closures and Implications for Access to Care: Three Case Studies,* Kaiser Family Foundation, 2016, www.kff.org/medicaid/issue-brief/a-look-at-rural-hospital-closures-and-implications-for-access-to-care.
[278] Wishner, *A Look at Rural Hospital Closures and Implications for Access to Care*.
[279] Wishner, *A Look at Rural Hospital Closures and Implications for Access to Care*.
[280] Wendy E. Parmet, Elizabeth Ryan, *New Dangers For Immigrants And The Health Care System*, Health Affairs,, 2018, https://www.healthaffairs.org/do/10.1377/hblog20180419.892713/full .
[281] Allan Dizioli, Roberto Pinheiro, "Health Insurance As a Productive Factor" *Labor Economics*, (2012), https://pdfs.semanticscholar.org/998c/e59138c5ef43be4e20ed5f6fdb8900e34260.pdf.
[282] E. Tammy Kim, *Americans Will Struggle to Grow Old At Home*, Bloomberg Businessweek, 2018, https://www.bloomberg.com/news/features/2018-02-09/americans-will-struggle-to-grow-old-at-home .

d. Harm to States and Localities: The Proposed Rule Would Effectively Override State Options to Extend Coverage and Impose Additional Health Care Costs on States

States largely support providing healthcare to all lawfully residing pregnant women and children. The 1996 welfare reform law limited eligibility for most federal benefits to a subset of lawfully present immigrants it deemed 'qualified,' and imposed a five-year bar to eligibility for most newly qualified immigrants. Legal and policy changes after 1996 allow states to extend eligibility for CHIP-funded pregnancy services to all pregnant women, regardless of their immigration status, and eligibility for Medicaid and CHIP to all lawfully residing children and pregnant women, without a five-year bar.[283] Recognizing the importance of providing prenatal and early childhood health and nutrition support, 33 states currently provide Medicaid coverage to lawfully residing children and/or pregnant women without a five-year waiting period.[284] Additionally, 21 states use CHIP funding to provide coverage for income-eligible pregnant women regardless of immigration status.[285] Sixteen of these states also provide prenatal care to immigrant women who are not income eligible for Medicaid and/or CHIP under the CHIP pregnancy-related services option.[286] This allocation of federal and state funding for health and nutrition support, specifically for pregnant women and children, shows direct state effort to ensure the health and well-being of these groups where federal policy allows.

Covering low-income pregnant immigrant women improves their health and saves states money. Since the babies born to these women will be eligible for Medicaid or CHIP regardless of whether their mothers are covered, it is to the state's advantage to ensure that their mothers have access to comprehensive prenatal care. Covering these mothers means that they give birth to healthier babies, which saves the state money in the long run by reducing health care costs.[287] Timely prenatal care can identify mothers who are at risk of delivering premature or low birth weight infants, and it provides the medical, nutritional, and educational interventions that lead to better birth outcomes.[288] Women without access to prenatal care are four times more likely to deliver low birth weight infants and seven times more likely to deliver prematurely than women who receive prenatal care.[289] Expanding coverage to previously uninsured pregnant women allows them to get the prenatal care they need. For example, a Florida study showed that expanding a public program to provide more women with access to prenatal care resulted in significantly fewer low birth weight babies compared with low-income women who were not enrolled

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[283] The Kaiser Family Foundation, *New Option for States to Provide Federally Funded Medicaid and CHIP Coverage to Additional Immigrant Children and Pregnant Women*, 2009, http://kff.org/medicaid/fact-sheet/new-option-for-states-to-provide-federally/.

[284] National Immigration Law Center, *Table: Medical Assistance Programs For Immigrants in Various States,* 2018, https://www.nilc.org/wp-content/uploads/2015/11/med-services-for-imms-in-states.pdf .

[285] Kaiser Family Foundation, *Where Are States Today? Medicaid and CHIP Eligibility Levels for Children*, *Pregnant Women, and Adults,* 2018, https://www.kff.org/medicaid/fact-sheet/where-are-states-today-medicaid-and-chip/.

[286] Kaiser Family Foundation, Where Are States Today? Medicaid and CHIP Eligibility Levels for Children, Pregnant Women, and Adults, 2018, https://www.kff.org/medicaid/fact-sheet/where-are-states-today-medicaid-and-chip/.

[287] Laura Parisi, Rachel Klein, *Covering Pregnant Women: CHIPRA Offers a New Option,* Families USA, *2010,* https://familiesusa.org/sites/default/files/product_documents/Covering-Pregnant-Women.pdf .

[288] National Governors Association, Center for Best Practices, H*ealthy Babies: Efforts to Improve Birth Outcomes and Reduce High Risk Births*, 2004, https://fhop.ucsf.edu/sites/fhop.ucsf.edu/files/wysiwyg/ip_HealthyBabies.pdf.

[289] Michael C. Lu, Yvonne G. Lin, Noelani M. Prietto, and Thomas J. Garite, "Elimination of Public Funding of Prenatal Care for Undocumented Immigrants in California: A Cost/Benefit Analysis," American Journal of Obstetrics and Gynecology 182, part 2, no. 1 (2000), https://www.ajog.org/article/S0002-9378(00)70518-7/fulltext.

in public health coverage.[290] Providing these women with adequate access to prenatal care means they give birth to healthier babies, who then have fewer health problems, which saves states money. Studies have found that every state dollar spent on prenatal care saves states between $2.57 and $3.38 in future medical costs.[291] Research also shows that children born to women who receive adequate prenatal care are significantly more likely to receive well-child visits and proper immunizations.[292] Covering uninsured children and pregnant women through Medicaid can cut unnecessary hospitalizations, producing substantial savings by reducing expensive hospital care costs.[293]

Similarly, a recent paper found that the decreases in immigrant access to SNAP benefits in the late 1990s had a significant impact on the health of their U.S. born citizen children. Among U.S.-born children of immigrants, whose mothers have a high school education or less, an additional year of parental eligibility in early life reduces the likelihood children are reported in "Poor", "Fair" or "Good" health (relative to "Excellent" or "Very Good" health), with the primary impacts on a reduction in the incidence of developmental health conditions. In turn, this reduced health has immediate consequences on government spending, as the researchers calculate based on the Medical Expenditure Panel Survey, that the average health care costs of a child who is in "Poor", "Fair", or "Good" health is $2450, compared to $1462 for children in "Excellent" or "Very Good" health.[294]

e. Financial Impact on States and Localities: The Proposed Rule Creates Significant Administrative Burdens on The Agencies Which Administer Public Benefit Programs

The proposed rule would pressure large numbers of immigrants and their families to forgo enrolling in vital programs such as nutrition assistance, health coverage and housing that their families are eligible for and need. The rule will create new challenges for state and local agencies administering these programs and will result in an increased workload.

Issues state and local agencies will face include:

- *Need to provide immigrants with documentation regarding their history of benefit receipt.* The draft form I-944, Declaration of Self-Sufficiency, instructions provided with the NPRM direct individuals to provide documentation if they have ever applied for or received the listed public benefits in the form of "a letter, notice, certification, or other agency documents" that contain information about the exact amount and

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[290] Stephen Long, Susan Marquis, "The Effects of Florida's Medicaid Eligibility Expansion for Pregnant Women," American Journal of Public Health 88, no. 3 (1998).3 (1998), https://ajph.aphapublications.org/doi/10.2105/AJPH.88.3.371.

[291] Robin D. Gorsky, John. P. Colby, "The Cost Effectiveness of Prenatal Care in Reducing Low Birth Weight in New Hampshire," Health Services Research 23, no. 5 (1989): 583-598, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1065587/; Institute of Medicine, "Preventing Low Birth Weight," (1985).

[292] Michael Kogan, Greg Alexander, Brian Jack, and Marilee Allen, "The Association between Adequacy of Prenatal Care Utilization and Subsequent Pediatric Care Utilization in the United States," Pediatrics 102, no. 1 (1998).1 (1998), https://www.ncbi.nlm.nih.gov/pubmed/9651409.

[293] Leemore Dafny, Jonathan Gruber, "Does Public Insurance Improve the Efficiency of Medical Care? Medicaid Expansion and Child Hospitalizations," Working Paper 7555, National Bureau of Economic Research, (2000), available online at http://www.nber.org/papers/w7555.

[294] Chloe East, "The Effect of Food Stamps on Children's Health: Evidence from Immigrants' Changing Eligibility" *Human Resources,* (2018), https://www.chloeneast.com/uploads/8/9/9/7/8997263/east_fskids_r_r.pdf.

dates of benefits received.[295] This will generate a huge workload for agencies, and in many cases may require access to information that has been archived from no longer functional eligibility systems that have been replaced.

- *Responding to consumer inquiries related to the new rule.* In addition, state and local agencies will have to prepare to answer consumer questions about the new rule. They will experience increased call volume and traffic from consumers concerned about the new policies. Advising a family on whether they would be subject to a public charge determination and how receipt of various benefits might play out can require technical knowledge of immigration statuses. Yet, state and local agencies will be put in an impossible position when answering questions if they simply tell all consumers that they must speak to an immigration attorney to get their questions answered about the impact of access benefits on their immigration status. And such advice would likely deter eligible people from enrolling in programs, including many who would never be subject to a public charge determination. Moreover, people who seek public benefits are also unlikely to be able to afford to seek legal counsel to see if getting services will jeopardize their family's immigration goals.
- *Increased "churn" among the caseload.* As consumers learn about the new rule, some families will terminate their participation programs as already experienced in response to draft public charge-related proposed rule changes being leaked to the media.[296] But, because these programs meet vital needs for families, some of these families would likely return to the caseload, resulting in duplicative work for agencies that will experience a new kind of churn in their caseloads. Some families may return if they come to understand that they are not subject to a public charge determination, for example, if they have refugee status. Others may reapply when circumstances become even more dire, for example a child may be withdrawn from Medicaid coverage, but without treatment—such as asthma medication—the child's condition may worsen, and the family will re-enroll the child even though they are fearful the act may jeopardize a family member's chance to become a lawful permanent resident. This on again off again approach to benefit enrollment—often referred to as churn—not only yields negative results for families, it also results in duplicative work for state and local agencies. Churn is expensive for state, in one study of SNAP-related churn, the costs averaged $80 for each instance of churn that requires a new application.[297]
- *Modifying existing communications and forms related to public charge.* For almost twenty years, agencies have worked under the consistent and clear rules about when a consumer's use of benefits could result in a negative finding in their public charge determination. Agencies have incorporated these messages on a variety of consumer communications including application, application instructions, website, posters used in lobbies, in notices and in scripts and trainings for staff. All of these consumer communications will have to be identified and taken down and as noted above, the new rules would be so far reaching and complicated, it's unclear states could replace them with messages that don't inappropriately deter eligible people.

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[295] U.S Citizenship and Immigration Services, *Instructions for Declaration of Self-Sufficiency,* 2018, https://www.regulations.gov/document?D=USCIS-2010-0012-0047.

[296] Emily Baumgaertner, *Spooked by Trump Proposals, Immigrants Abandon Public Nutrition Services*, New York Times, 2018, https://www.nytimes.com/2018/03/06/us/politics/trump-immigrants-public-nutrition-services.html.

[297] Gregory Mills et al., ,"Understanding the Rates, Causes, and Costs of Churning in the Supplemental Nutrition Assistance Program (SNAP) - Final Report," Prepared by Urban Institute for the US Department of Agriculture, Food and Nutrition Service, 2014, https://fns-prod.azureedge.net/sites/default/files/ops/SNAPChurning.pdf.

- *Undermining adjunctive eligibility for WIC.* Congress permitted WIC to presume any individual on Medicaid, SNAP, or TANF to be income-eligible for WIC, thus reducing the paperwork burden during WIC certification. In 2016, 74.9% of WIC participants were eligible for WIC due to eligibility for another program. A National WIC Association survey estimated significant increases in administrative expenditures on the certification process if adjunctive eligibility was undermined. Due to WIC's funding formula, increased administrative expenditures will also result in decreased funding for WIC's nutrition education, breastfeeding support, and client services. WIC complements the work of Medicaid and SNAP to ensure healthy families with adequate access to nutritious foods. Congress has recognized that connection by authorizing adjunctive eligibility, which has helped to reduce paperwork burdens on both clinics and participants, freeing up WIC funding to be used for nutrition education and breastfeeding support. The inclusion of Medicaid or SNAP in public charge review would undercut WIC's efforts to improve efficiency, streamline certification processes, and focus WIC services on its core public health mission.

Furthermore, the inclusion of Medicaid and SNAP in public charge review will undermine state efforts to streamline enrollment processes between different public assistance programs. Certain states have explored universal online applications that permit an individual to apply for or pre-screen eligibility for multiple public assistance programs at one time.[298] The proposed rule would permit immigration officials to review an individual's attempt to simply *apply* for Medicaid or SNAP benefits.[299] This provision will discourage states from continuing with efforts to develop innovative enrollment processes, and likewise discourage individuals from using uniform or joint applications or pre-screening tools where an implicated program is listed.

f. Harm to The Business Sector and U.S. Workforce

The proposed changes will have a direct impact on businesses big and small, creating wasteful red tape for employers in diverse communities across the country and hurting workers across all wage ranges. Simply put, this decision will not create American jobs, and it will harm our economy.

We all get sick, and we all face adversity at times—in fact, two-thirds of Americans between the ages of 20 and 65 will reside in a household that uses a social welfare program such as SNAP or Medicaid at some point in their life.[300] For low-wage workers and their families, health, food, and other programs can supplement earnings and enable them to thrive. Contrary to the assumptions underlying the proposed rule, benefits like health and nutrition programs encourage and enable people to work and be a source of support for themselves and their families, not public charges. Many low-wage workers cannot work in a stable and sustained way without these

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[298] Julia Isaacs, Michael Katz, David Kassabian, *Changing Policies to Streamline Access to Medicaid, SNAP, and Child Care Assistance,* Urban Institute, 2016, https://www.urban.org/sites/default/files/publication/78846/2000668-Changing-Policies-to-Streamline-Access-to-Medicaid-SNAP-and-Child-Care-Assistance-Findings-from-the-Work-Support-Strategies-Evaluation.pdf; Zoe Neuberger, *Modernizing and Streamlining WIC Eligibility Determination and Enrollment Processes,* Center for Budget and Policy Priorities, 2017, https://www.cbpp.org/sites/default/files/atoms/files/1-6-17fa.pdf.

[299] Department of Homeland Security, *Proposed Rule: Inadmissibility on Public Charge Grounds*, 83 Fed. Reg. 51,114, 51,291 (Oct. 10, 2018) (to be codified in 8 C.F.R. § 212.22(b)(4)(i)(F)(i)).)), https://www.federalregister.gov/documents/2018/10/10/2018-21106/inadmissibility-on-public-charge-grounds.

[300] Mark R. Rank, Thomas A. Hirschl, "Welfare Use as a Life Course Event: Toward a New Understanding of the U.S. Safety Net," *Social Work*, Volume 47, Issue 3, (2002), https://doi.org/10.1093/sw/47.3.237.

supports – which in turn will mean less sustained and regular work and will disrupt industries.

- *Low-wage workers*

Businesses that largely employ individuals at low wages would suffer, as legally present non-citizens could become too encumbered to continue their employment. The proposed rule will destabilize their lives and will make it harder for them to sustain steady employment. Nearly 1 in 3 workers in low-income jobs earn under $12 an hour. Six of the 20 largest occupational fields in the country — including retail salespeople, cashiers, food preparation and serving workers, waiters and waitresses, stock clerks, and personal care aides—have median wages close to or below the poverty threshold for a family of three ($20,420). May lawfully present non-citizens who have jobs within these sectors simply may not earn enough to provide quality health care, nutritious food and safe, stable housing to their families. Programs like SNAP, CHIP, and Medicaid are designed to serve as work supports that help individuals meet their families' basic needs to stay healthy and safe.

- *Workforce development*

The public charge rule would also damage state and local governments' ability to support their residents in achieving higher education and workforce policy goals. State and local governments regularly advance policies to improve the education and employability of their residents. For example, more than 40 states have established goals for postsecondary credential attainment, such as a goal of having 60 percent of state residents earn a college degree or other postsecondary credential by 2025.[301] Many states won't be able to reach their ambitious goals without including their immigrant residents.[302] To accomplish these goals, states have established programs and services to equip returning adult students to persist and succeed in their education, including through navigation and case management assistance to help students access essential health and nutrition benefits. But the public charge rule would penalize immigrants who use many of these public benefits, thus creating a disincentive for immigrants to participate in the very programs that are intended to help them succeed in their education and contribute economically.

g. Harm to Higher Education

The proposed rule could decrease enrollments on higher education and deter immigrant students from pursuing postsecondary education. While public education benefits, such as Pell Grants or other financial aid, are not included under the rule, the fear and confusion generated by the rule would deter greater numbers of immigrant students who are eligible for federal and state-funded aid programs from applying to college altogether. Over a quarter of undergraduates nationally in higher education are first- or second-generation immigrant students, and one in five come from a household in which English is not the primary language spoken.[303]

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[301] See overview of all states here: https://www.wsac.wa.gov/sites/default/files/2017.04.19.04.Attainment%20Goals%20are%20Critical.pdf and details on 29 of the state goals here: http://strategylabs.luminafoundation.org/wp-content/uploads/2013/10/State-Attainment-Goals.pdf.
[302] National Skills Coalition, *Middle-Skill Credentials and Immigrant Workers: Texas' Untapped Assets,* 2015, https://m.nationalskillscoalition.org/resources/publications/file/Middle-Skill-Credentials-and-Immigrant-Workers-Texas-Untapped-Assets.pdf.
[303] U.S. Department of Education, National Center for Education Statistics, 2011-12 National Postsecondary Student Aid

Pell Grants are targeted to meet students with the greatest financial need at public and private institutions, providing the largest awards to the lowest-income students. Public institutions account for more than two-thirds of Pell recipients (68%), with 36 percent of public four-year students receiving Pell Grants, and 32% of community college students who are Pell recipients.[304] In addition, community colleges have a much higher proportion of low-income and immigrant students than other higher education sectors. Fearing that the public charge would pertain to Pell Grants or other public education benefits, many immigrant students may mistakenly avoid applying for Pell or any state or financial aid and will be unable to afford college without it.

Further, as noted by the National Skills Coalition, "the rule would increase college students' financial instability and heighten their risk of dropping out. Many college students are part of larger households – either as adult children or as spouses and parents themselves."[305] We know that when students and their families are unable to meet core living and housing needs or face higher costs, the students are less likely to pursue educational and career pathways, more likely to cut back on their educational course load, or drop out altogether. While not directly affected by the public charge, the proposed regulations could discourage undocumented immigrant students from pursuing a postsecondary education and who in the future may have the opportunity to adjust their status and further contribute to our communities and our country.

i. <u>The Proposed Rule Would Impede Efforts to Increase College Completion</u>

Colleges and universities serve as key generators of social and economic mobility for all students in our nation. Immigrant and low-income students especially benefit from the transformative power of higher education. Research shows that postsecondary education boosts economic mobility, improves lives, and helps the economy. Since 2008, the majority of the new jobs created in the economy are going to college-educated individuals,[306] and research studies have shown that a postsecondary education can increase economic mobility and improve lives.[307]

To be sure, colleges help to fuel economic growth and prosperity in their communities. The college and career success of immigrant students is critical to meeting state educational goals and addressing acute skills shortages. According to the nonprofit National Skills Coalition (NSC), many states won't be able to reach their goals without including their immigrant residents.[308] More than 40 states have established goals for postsecondary credential attainment, such as a goal of having 60% of state residents earn a college degree or other postsecondary credential by 2025.[309] Community colleges have often aligned their own institutions' student completion goals

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Study; 2016 American Community Survey, U.S. Department of the Census.

[304] Spiros Protopsaltis and Sharon Parrot, "Pell Grants--A Key Tool for Expanding College Access and Economic Opportunity--Need Strengthening, Not Cuts," Center on Budget and Policy Priorities, July 27, 2017 https://docs.google.com/document/d/1FVKs_KDat81WvqZTg8Sm_4Wyk25pYsLmUinsgxKqltE/edit?ts=5bc61576 , https://www.cbpp.org/research/federal-budget/pell-grants-a-key-tool-for-expanding-college-access-and-economic-opportunity.

[305] Taken with permission from the National Skills Coalition's template on the proposed Public Charge order.

[306] Robert Shapiro, "The New Economics of Jobs is Bad News for Working-Class Americans and Maybe for Trump," 2018, https://www.brookings.edu/blog/fixgov/2018/01/16/the-new-economics-of-jobs-is-bad-news-for-working-class-americans-and-maybe-for-trump/.

[307] Department of the Treasury and the Department of Education, "The Economics of Higher Education, , December 2012,https://www.treasury.gov/connect/blog/Documents/20121212_Economics%20of%20Higher%20Ed_vFINAL.pdf.

[308] National Skills Coalition, *Middle-Skills Credentials and Immigrant Workers: Texas' Untapped Assets*, https://www.nationalskillscoalition.org/resources/publications/file/Middle-Skill-Credentials-and-Immigrant-Workers-Texas-Untapped-Assets.pdf ..

[309] See overview at https://www.luminafoundation.org/lumina-goal.

with their states' higher education goals and plans. These colleges depend upon state funding for programs to close achievement gaps and provide students with the skills needed to succeed in college and the workforce. The proposed rule would significantly diminish prospects for immigrant student success and impede state efforts to increase college completion rates.

ii. The Proposed Rule Would Increase the Burden on Campus Student Health Centers

The proposed rule would undermine access to essential health, nutrition and other critical programs for eligible immigrant students, which would impact college campuses. The fear created by these rules would extend far beyond any individual who may be subject to the "public charge" test. Increased numbers of uninsured students as well as students coming from uninsured families will increase the burden on campus student health centers; changes in healthcare usage and coverage also can cause additional public health concerns for campus communities.

iii. The Proposed Rule Would Discourage Adult Immigrant Learners from Participating in Workforce Training, Certification Programs, and Adult Education Programs That Help to Improve Their English Language Skills

Many adult immigrant learners have enrolled in community colleges to improve their English skills, participate in job training and career development programs, and support their families. These programs have enabled them to pursue productive, meaningful employment and become actively engaged in our communities. One third of community college students have family incomes of less than $20,000, according to the National Center for Education Statistics (see Community Colleges FAQs).[310] Research has shown that supportive services that help individuals access public benefits programs are often vital to ensuring that working adults succeed in postsecondary education.[311] Yet, penalizing low-income adult immigrant learners for using these benefits creates a disincentive for them to participate in the educational and job training programs that are intended to help them succeed and contribute economically.

A National Skills Coalition analysis of Bureau of Labor Statistics data shows that 84% of American jobs today require education and skills beyond the high school level.[312] These middle-skills jobs, requiring more than a high school diploma but less than a four-year degree, "remain the largest segment of the U.S. economy and represent a crucial pathway to good, family sustaining employment."[313] Immigrants are critical to meeting the demand for middle-skill positions, and specialized training is often provided by community colleges. Restricting immigrants' access to public benefits that allow them to obtain these in-demand skills hurts adult immigrant learners and hurts our economy.

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[310] "Community College FAQs," Community College Research Center, Teachers College, Columbia University, https://ccrc.tc.columbia.edu/Community-College-FAQs.html .
[311] Rand Corp, Connecting College Students to Alternative Sources of Support The Single Stop Community College Initiative and Postsecondary Outcomes, , 2016, http://www.singlestopusa.org/wp-content/uploads/2016/11/RAND-Report_Executive-Summary-1.pdf ..
[312] "United States' Forgotten Middle," National Skills Coalition, https://www.nationalskillscoalition.org/resources/publications/2017-middle-skills-fact-sheets/file/United-States-MiddleSkills.pdf ..
[313] Amanda Bergson-Shilcock, "At the Intersection of Immigration and Skills Policies: A Roadmap to Smart Policies for State and Local Leaders," National Skills Coalition, September 2018, p. 2, https://www.nationalskillscoalition.org/resources/publications/file/At-the-intersection-of-immigration-and-skills-policy_web.pdf ..

According to the non-partisan Migration Policy Institute, "tapping into the skills of" recently arrived and increasingly educated immigrant populations "represents an important potential source of skilled labor," and is especially needed given the labor and skills shortages that have been documented in various fields.[314] A National Academies of Science study cited in this report notes that "a typical recent immigrant with a bachelor's degree contributes almost $500,000 more in taxes than he or she uses in public benefits over a lifespan."[315] Immigrant professionals often turn to community colleges and universities as "they seek to improve their language skills, fill content gaps, or attain industry-recognized credentials through apprenticeships."[316] Creating any additional barriers for these highly-skilled adult learners is counterproductive.

iv. The Proposed Rule Would Be A Burden on Individuals and Employers and Would Serve as a Deterrent to International Talent Coming to The United States to Study and Work

The proposed public charge test would apply when individuals apply for a green card or seek admission to the U.S. For nonimmigrants, including F-1 students, J-1 exchange visitors, H-1B specialty workers, or their dependents, the public charge test would be applied when they apply to extend or adjust their nonimmigrant status. The increased uncertainty imposed by the new regulations is likely to deter even well-qualified international students from attempting to study and pursue careers in the US.

Employers who sponsor highly skilled foreign professionals and workers, including educational institutions, also would be burdened by the new procedures, as their employees would have to navigate the additional new barrier of proving that they are not likely to become a public charge each time they file for an extension or change of status. This will cause complications in the adjudication of nonimmigrant visa petitions filed by employers and the increased unpredictability creates new uncertainties and risk for employers, which is costly.

Beyond the individual and administrative burdens detailed above, the proposed rule would present another harmful deterrent to international talent coming to the United States to study and work, regardless of their financial status. This will adversely impact colleges and universities, their ability to provide educational programs to all students, and the vibrancy of their communities. From 2004 to 2016, first-time enrollments of international students in U.S. colleges and universities increased significantly, from 138,000 in 2004 to 364,000 in 2016; during this period of time, first-time enrollments of international students doubled or more at public and private baccalaureate institutions, public community colleges, and master's granting institutions.[317] NAFSA has estimated that international students contribute $36.9 billion annually to the economy.[318] Declining enrollments of

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[314] Jeanne Batalova and Michael Fix, "Tapping the Talents of Highly Skilled Immigrants in the United States. Takeaways from Experts Summit," Migration Policy Institute, August 2018, pp. 6-7. https://www.migrationpolicy.org/research/tapping-talents-highly-skilled-immigrants-united-states-takeaways-experts-summit
https://www.migrationpolicy.org/research/tapping-talents-highly-skilled-immigrants-united-states-takeaways-experts-summit

[315] Batalova, "Tapping the Talents of Highly Skilled Immigrants in the United States"

[316] Batalova, "Tapping the Talents of Highly Skilled Immigrants in the United States"

[317] See Pew Research Institute, "Facts on International Students," November 20, 2017.

[318] NAFSA, http://www.nafsa.org/Policy_and_Advocacy/Policy_Resources/Policy_Trends_and_Data/NAFSA_International_Student_Economic_Value_Tool/ NAFSA, http://www.nafsa.org/Policy_and_Advocacy/Policy_Resources/Policy_Trends_and_Data/NAFSA_International_Student_Economic_Value_Tool/

international students coming to the U.S. will be economically detrimental to regions across the country. There is already evidence that first-time international student enrollments in U.S. colleges and universities are declining.[319] This proposed rule would only further exacerbate this disturbing trend and requires a careful analysis and quantification of the costs to U.S. higher education and regional economies.[320]

The Department should immediately withdraw its current proposal and dedicate its efforts to advancing policies that strengthen—rather than undermine—the ability of immigrants to access postsecondary pathways and support themselves and their families in the future.

V. THE PROPOSED REGULATION INCLUDES PROVISIONS WHICH WOULD CAUSE ADDITIONAL HARMS TO CERTAIN POPULATIONS

In addition to the consequences for people of color, women, and children discussed at length in sections I and III of our comments, the proposed rule is particularly damaging to other specific populations. The proposed rule will also cause disproportionate harm to victims of domestic violence and sexual abuse, individuals living with disabilities, seniors, as well as lesbian, gay, bisexual, and transgender immigrants and their families. These groups should be of special concern for one or more of several reasons: they are particularly vulnerable, protected legally, and/or central to the nation's economic future.

a. Victims of domestic violence and sexual assault

The public charge rule will have a detrimental impact on victims of domestic violence and sexual assault and their ability to obtain and maintain safety as a result of abuse. While victims seeking immigration status are exempt from the application of the public charge ground of inadmissibility when adjusting through the VAWA or U pathways, *i.e,, see* INA 212(a)(4)(E), and proposed 8 CFR 212.25, many victims of domestic violence and sexual assault and their family members do not seek immigration status in those named categories, and will be harmed as a consequence. The proposed public charge rule will harm not only victims who are seeking immigration status or entry into the United States, but also U.S. born victims, or victims who already have lawful status in households

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[319] In fall 2017, Open Doors released their annual survey showing a total of 291,000 new international students enrolled at U.S. institutions in 2016–17, a 3.3% decrease from 2015–16 (see https://www.iie.org/Research-and-Insights/Open-Doors and the 2017 Open Doors data: https://www.iie.org/Research-and-Insights/Open-Doors/Fact-Sheets-and-Infographics).https://www.iie.org/Research-and-Insights/Open-Doors/Fact-Sheets-and-Infographics).
In a "snapshot" survey by Open Doors, 45% of U.S. colleges responding reported a decline in international student enrollments for fall 2017, with an average decline of 7% (see this Inside Higher Ed article, https://www.insidehighered.com/news/2017/11/13/us-universities-report-declines-enrollments-new-international-students-study-abroad).https://www.insidehighered.com/news/2017/11/13/us-universities-report-declines-enrollments-new-international-students-study-abroad). A Student Exchange and Visitor Program (SEVP) report released in April 2018 showed overall declines in international student enrollments (see the SEVP report and these Inside Higher Ed and Wall Street Journal articles on declining enrollments). Declines of international student enrollments were even more pronounced when OPT participants were excluded from the analysis (see this Inside Higher Ed article).

[320] See Jie Zong and Jeanne Batalova, "International Students in the United States," Migration Policy Institute, May 9, 2018. Zong and Batalova conclude, "(m)ultiple factors contribute to slowed enrollment, including the rising cost of U.S. higher education, student visa delays and denials, and an environment increasingly marked by rhetoric and policies that make life more difficult for immigrants, as well as changing conditions and opportunities in home countries and increasing competition from other countries for students." https://www.migrationpolicy.org/article/international-students-united-states https://www.migrationpolicy.org/article/international-students-united-states.

where family members will be seeking entry or immigration status in the future.

For example, under the rule, a parent may fear seeking critical health-care benefits for a non-citizen child sexual abuse victim to help recover from both the physical and psychological trauma if the child might be negatively impacted by her or his usage of subsidized health care benefits. Another example is a dependent domestic violence survivor married to an abusive non-immigrant temporary worker being discouraged from accessing cash assistance for domestic violence victims for fear that it might jeopardize her ability to renew her status or obtain residence in the future. Access to health care, housing, food assistance, and other safety net benefits play a pivotal role in helping victims overcome domestic violence and sexual assault. Victims should not be discouraged from seeking or relying on economic security programs to escape abuse or recover from the trauma they've experienced.

In weighing the factors to be applied to those seeking admission, domestic violence and sexual assault survivors will be negatively impacted by the application of the public charge rule. While domestic violence and sexual assault occur across the socio-economic spectrum, there are unique challenges and barriers at the intersection of gender-based violence and economic hardship: Abuse can result in victims falling into poverty: Victims who might not have previously been considered low income may experience financial abuse or because the consequences of abuse or assaults have undermined the victim's ability to work or maintain their housing, health, or otherwise access financial security.[321] For example, many abusive partners, in order to exercise control over their partners and their children, will actively seek to prevent and sabotage their partner from attaining economic independence or stability by limiting their access to financial resources, interfering with employment, ruining credit, and more.[322] Sexual assault survivors may be forced to leave their housing and/or employment as a result of the violence, and become even more at risk for sexual violence as a result.[323] In these instances, the public charge rule's primary focus, for example, on the health, financial status, family size, and education, on the applicant for admission will unduly punish victims for the consequences of abuse they've faced. Not only does the public charge rule undermine federal and state policies to support victims by discouraging them from accessing critical services, the proposed rule exacerbates the harmful impacts of the abuse, possibly by keeping them trapped in abusive situations.

Nutrition, health care, and housing programs benefits are a necessity for survivors of domestic violence and sexual assault, allowing them to rebuild their lives after violence. In a 2017 survey of service providers working with victims of violence, over 88% of respondents said that SNAP is a very critical resource for a significant number of domestic violence and sexual assault victims. Specifically, nearly 80% of respondents reported that most domestic violence victims rely on SNAP to help address their basic needs and to establish safety and stability, and 55% of respondents said the same is true of most sexual assault victims.[324] Access to assistance

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[321] Eleanor Lyon, *Welfare, Poverty and Abused Women: New Research and its Implications*, National Resource Center on Domestic Violence, 2000, https://vawnet.org/material/welfare-poverty-and-abused-women-new-research-and-its-implications.

[322] J. L. Postmus, et al., *Understanding economic abuse in the lives of survivors. Journal of Interpersonal Violence, 2014,* https://www.ncbi.nlm.nih.gov/pubmed/21987509*; and* Adams, A, Sullivan,C, Bybee, D, & Greeson, M., Development of the scale of economic abuse, *Violence Against Women*, 2008, https://www.ncbi.nlm.nih.gov/pubmed/18408173.

[323] Loya, R. M, *Rape as an economic crime: The impact of sexual violence on survivor's employment and economic well-being,* Journal of Interpersonal Violence, 2014, https://www.ncbi.nlm.nih.gov/pubmed/25381269.

[324] Shaina Goodman, *The Difference Between Surviving and Not Surviving: Public Benefits Programs and Domestic and Sexual*

programs is an important factor in victims' decision-making about whether and how they can afford to leave a dangerous situation, and in planning how to keep themselves and their children healthy, well, and housed.[325] As this data illustrates, publicly-funded resources are imperative for women's safety.[326] The Centers for Disease Control has concluded that improving financial security for individuals and families can help reduce and prevent intimate partner violence.[327] Without sufficient resources, victims are either compelled back into an abusive relationship, or face destitution and homelessness.[328]

b. Individuals Living with Disabilities

The proposed regulations would create significant hardships for and discriminate against lawful immigrants with disabilities by denying them an opportunity to benefit from an adjustment in their immigration status equal to that available to immigrants without disabilities.[329] The proposal would also discriminate against people with disabilities by defining an immigrant as a public charge for using (for the specified periods and amounts) non-cash benefits which individuals with disabilities rely on disproportionately, often due to their disabilities and the discrimination they face because of them.[330] For example:

- 1/3 of the adults under aged 65 who are enrolled in the Medicaid program have disabilities; as compared to only 12 % of adults in the general population.[331]
- 3 in 10 nonelderly adults with disabilities are enrolled in Medicaid.[332]
- 41 % of children with special needs are enrolled in Medicaid or CHIP only; another 7 % are dually enrolled in private insurance and Medicaid and CHIP.[333]

Violence Victims' Economic Security, 2018, https://vawnet.org/material/difference-between-surviving-and-not-surviving-public-benefits-programs-and-domestic-and

[325] Eleanor Lyon, Shannon Lane, and Anne Menard, *Meeting Survivors' needs: A multi-state study of domestic violence shelter experiences*, VAWnet, 2008, https://vawnet.org/material/meeting-survivors-needs-multi-state-study-domestic-violence-shelter-experiences; Eleanor Lyon, Jill Bradshaw, and Anne Menard, *Meeting Survivors' Needs through Non-Residential Domestic Violence Services & Supports: Results of a Multi-State Study,* National Resource Center on Domestic Violence, 2011, https://www.ncjrs.gov/pdffiles1/nij/grants/237328.pdf; and Kimerling, R., Alvarez, J., Pavao, J., Mack. K. P., Smith, M. W., & Baumrind. N, *Unemployment Among Women: Examining the Relationship of Physical and Psychological Intimate Partner Violence and Posttraumatic Stress Disorder,* Journal of Interpersonal Violence, 2009, https://www.ncbi.nlm.nih.gov/pubmed/18458353.

[326] Eleanor Lyon, Shannon Lane, and Anne Menard, *Meeting Survivors' needs: A multi-state study of domestic violence shelter experiences*, VAWnet, 2008, https://vawnet.org/material/meeting-survivors-needs-multi-state-study-domestic-violence-shelter-experiences.

[327] Centers for Disease Control, *Preventing Intimate Partner Violence Across the Lifespan: A Technical Package of Programs, Policies, and Practices*, 2017, https://www.cdc.gov/violenceprevention/pdf/ipv-technicalpackages.pdf.

[328] Eleanor Lyon, Poverty, *Welfare and Battered Women: What Does the Research Tell Us?*, National Electronic Network on Violence Against Women, 1997, http://citeseerx.ist.psu.edu/viewdoc/summary?doi=10.1.1.597.6886.

[329] 6 CFR 15.30(b)(1)(ii), (iii), (iv).

[330] In enacting the Americans with Disabilities Act, Congress noted that people with disabilities "have been precluded from" fully participating in all aspects of society "because of discrimination." 42 U.S.C. 1201(a).

[331] Center on Budget and Policy Priorities, *Medicaid Works for People with Disabilities*, 2017, https://www.cbpp.org/research/health/medicaid-works-for-people-with-disabilities

[332] MaryBeth Musumeci, Julia Foutz, *Medicaid Restructuring under the American Health Care Act and Nonelderly Adults with Disabilities*, Kaiser Family Foundation Issue Brief, March 2017, http://files.kff.org/attachment/Issue-Brief-Medicaid-Restructuring-Under-the-American-Health-Care-Act-and-Nonelderly-Adults-with-Disabilities.

[333] MaryBeth Musumeci, Julia Foutz, *Medicaid's Role for Children with Special Health Care Needs: A Look at Eligibility, Services and Spending* , Kaiser Family Foundation, Issue Brief, Feb. 2018, https://www.kff.org/medicaid/issue-brief/medicaids-role-for-children-with-special-health-care-needs-a-look-at-eligibility-services-and-spending/

- More than ¼ of individuals who use SNAP have a disability.[334]

Many of these individuals rely upon such benefits so that they can continue to work, stay healthy, and remain productive members of the community. By deeming immigrants who use such programs as a public charge, the regulations will disparately harm individuals with disabilities and impede their ability to maintain the very self-sufficiency the Department purports to promote and which the Rehabilitation Act sought to ensure. Because many critical disability services are only available through Medicaid, the rule will prevent many people with disabilities from getting needed services that allow them to manage their medical conditions, participate in the workforce and improve their situation over time.

i. Individuals living with HIV/ AIDS

The proposed rule would cause disproportionate and discriminatory harm to individuals living with HIV/AIDS. Approximately 1.1 million individuals in the U.S. are living with HIV/AIDS.[335] People with HIV, either symptomatic or asymptomatic are protected by the Americans with Disabilities Act (ADA).[336] Federal law prohibits disability discrimination by its executive agencies, requiring that they provide reasonable accommodation to disabled individuals so they cannot be denied meaningful access to agencies' services and benefits—including immigration benefits—based on their disabilities. [337] The proposed rule would use an HIV diagnosis to exclude both applicants and applicants seeking to unite with disabled family members.

Not only does this send the signal that individuals with HIV/AIDS and other chronic health conditions are "undesirable"—drawing disturbing parallels to the 1987 HIV travel and immigration ban overturned in 2010[338]—but the proposed rule ignores the reality that a chronic illness such as HIV/AIDS is not an accurate indicator of future self-sufficiency and full-time employment capabilities. In June this year, the U.S. Bureau of Labor Statistics released a Current Population Survey (CPS) showing that in 2017 the labor force participation rate for those with a disability had actually increased.[339] Indeed, with appropriate treatment, care and support, persons living with HIV/AIDS can expect to live long, healthy and productive lives.

Under the proposed rule, HIV-positive applicants and others with chronic health conditions would be required to purchase private, "non-subsidized medical insurance." HIV/AIDS treatment, known as anti-retroviral therapy (ART), is prohibitively expensive in the United States and not normally covered through private insurance.[340] Even those with private insurance or certain employer-based insurance, usually have no choice but to apply for

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[334] Steven Carlson, Brynne Keith-Jennings & Raheem Chaudhry, Center on Budget and Policy Priorities, SNAP Provides Needed Food Assistance to Millions of People with Disabilities, June 14, 2017, https://www.cbpp.org/research/food-assistance/snap-provides-needed-food-assistance-to-millions-of-people-with

[335] Centers for Disease and Control and Prevention, *Basic Statistics*, www.cdc.gov/hiv/basics/statistics.html.

[336] Bragdon v. Abbott, 524 U.S. 624 (1998).

[337] 29 U.S.C. §794(a), Rehabilitation Act of 1973, section 504.

[338] Human Rights Campaign, *After 22 Years, HIV Travel and Immigrant Ban Lifted*, 2010, www.hrc.org/press/after-22-years-hiv-travel-and-immigration-ban-lifted.

[339] U.S. Bureau of Labor Statistics, *Current Population Survey, 2016 and 2017 annual averages.*

[340] Emily Land, *Why do some HIV drugs cost so much? Pharma, insurers, advocacy groups and consumers weigh in*, BETA, 2017, https://betablog.org/hiv-drugs-price/.

government subsidies for the substantial portion that their insurance plan does not cover.[341] In fact, the rule may actually incentivize U.S citizens/permanent residents to terminate their subsidized healthcare in order to remain eligible to petition for their family members living abroad. Reports are already emerging of individuals who are considering waiting to begin life-saving ART in the belief that this will ensure their eligibility to reunite their families.[342] Such scenarios call to attention the catastrophic public health implications that this proposed rule threatens to create, undoing hard won progress towards ending the HIV/AIDS epidemic in the US.

ii. Children with Special Health Care Needs

According to estimates from the National Survey of Children's Health, roughly 2.6 million children in immigrant families have a disability or special health care need.[343] Children with special health and developmental needs tend to require medical, behavioral, and/or educational services above and beyond what typical children need to keep them healthy and promote positive development.

These special needs make children with disabilities in immigrant families vulnerable to hardship due to the economic burdens associated with requiring specialized care. Parents of children with disabilities typically work fewer hours and ultimately earn less income due to their children's caregiving needs.[344] As a group, children with disabilities are more likely to live in low-income households and to experience food insecurity and housing instability, making programs like SNAP and housing assistance vital to their wellbeing.[345] Ensuring that kids with special health care needs have access to services helps their parents maintain work and improve earnings. The proposed rule would restrict immigrant families' access to public anti-poverty programs and further exacerbate the economic hardships that children with disabilities and other special needs already experience.

While many children in the U.S.—both in immigrant and native-born families—depend on public health insurance programs, Medicaid is uniquely critical for children with disabilities. Roughly half of all children with a disability or other special health care needs rely on public insurance for a variety of services and supports, including respite care; occupational, physical, or speech therapies; and prescription drugs. [346] These services are critical to keep children healthy and thriving, but they are typically costly—even with insurance—and are out of reach for families who lack coverage. Recognizing the immense financial burden that disabilities and special health care needs can

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[341] US National Institute of Health, *Guidelines for the Use of Antiretroviral Agents in Adults and Adolescents Living with HIV*, https://aidsinfo.nih.gov/guidelines/html/1/adult-and-adolescent-arv/459/cost-considerations-and-antiretroviral-therapy.
[342] Amanda Lugg, *Newly Proposed 'Public Charge' Rule Could Be Devastating to HIV-Positive Immigrants*, The Body, 2018, http://www.thebody.com/content/81028/public-charge-rule-devastating-hiv-immigrants.html?ic=tbhtrump.
[343] National Survey of Children's Health, 2016.
[344] Sloan Work and Family Research Network, *Questions and Answers about Employed Parents Caring for Children with Disabilities*, https://wfrn.org/wp-content/uploads/2018/09/Factsheet_Caring_Child_Disability.pdf.
[345] Rebecca Ullrich, *Cuts to Medicaid Would Harm Young Children with Disabilities*, Center for American Progress, 2017, https://www.americanprogress.org/issues/early-childhood/reports/2017/05/03/431766/cuts-medicaid-harm-young-children-disabilities; Susan L. Parish, Roderick A. Rose, Megan Andrews, et al., *Material Hardship in US Families Raising Children with Disabilities: Research Summary and Policy Implications,* UNC School of Social Work, 2009, https://www.realeconomicimpact.org/data/files/reports/outside%20reports/material%20hardship%20children%20with%20disabs.pdf.
[346] MaryBeth Musumeci and Julia Foutz, *Medicaid's Role for Children with Special Health Care Needs: A Look at Eligibility, Services, and Spending*, Kaiser Family Foundation, 2018, https://www.kff.org/medicaid/issue-brief/medicaids-role-for-children-with-special-health-care-needs-a-look-at-eligibility-services-and-spending/.

place on families, most states offer alternative eligibility pathways that allow children in households with higher incomes to receive Medicaid.[347]

By including Medicaid in the definition of "public benefit" for the purposes of public charge determinations (as described in §212.21), the proposed rule would undermine immigrant families' access to Medicaid and other forms of public insurance and force families to pick and choose which services they can pay for on their own while still putting a roof over their heads and food on their tables. At minimum, forgoing critical services could hamper children's developmental progress. For some families, the stakes are even higher: comprehensive coverage through these programs is necessary to keep their children alive.

While §212.21 outlines exceptions for services funded by Medicaid but provided through the Individuals with Disabilities Education Act (IDEA), it is unclear how this carve-out would work in practice. Children with special needs cannot and do not receive Medicaid for educational services alone. The exclusion of Medicaid-funded IDEA services will likely do little to encourage families who are fearful of participating in Medicaid to maintain their enrollment.

Families with children with special health care needs would also be disproportionately disadvantaged by the standards for public charge determinations laid out in §212.22. In general, these families would be less likely to reach the "heavily weighted positive factor" of having financial assets, resources, and support of at least 250 percent FPL. And unless the family has an extremely high income, it would be difficult to demonstrate a financial ability to fully meet a child's special health care needs without the help of public insurance.

c. Seniors

The number of seniors in the United States who are immigrants is growing. Between 1990 and 2010, the number of immigrants age 65 and older grew from 2.7 million to nearly 5 million.[348] This is due to aging of the immigrant population who arrived during the 1980s and 90s as well as the rise in naturalized citizens who sponsor their parents to immigrate to the U.S. In fact, the number of parents of U.S. citizens who have been admitted as legal permanent residents nearly tripled between 1994 and 2017 and now account for almost 15% of all admissions and almost 30% of family-based admissions.[349]

If this rule were implemented, many U.S. citizens may no longer be able to welcome their own parents into the country because it will be nearly impossible for older adults to pass the "public charge" test under the new criteria. Instead of recognizing the value of intergenerational families who support each other, the proposed rule

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[347] MaryBeth Musumeci and Julia Foutz, *Medicaid's Role for Children with Special Health Care Needs: A Look at Eligibility, Services, and Spending*, Kaiser Family Foundation, 2018, https://www.kff.org/medicaid/issue-brief/medicaids-role-for-children-with-special-health-care-needs-a-look-at-eligibility-services-and-spending/.

[348] Jeanne Batalova, *Senior Immigrants in the United States*, Migration Policy Institute, 2012, https://www.migrationpolicy.org/article/senior-immigrants-united-states.

[349] *Comparing* Dept. of Homeland Security, Office of Immigration Statistics, *2017 Yearbook of Immigration Statistics*, Table 7, www.dhs.gov/sites/default/files/publications/2016%20Yearbook%20of%20Immigration%20Statistics.pdf *with* Immigration & Naturalization Service, Office of Policy & Planning, *Legal Immigration, Fiscal Year 1997*, Table 1, www.dhs.gov/sites/default/files/publications/INS_AnnualReport_LegalImmigration_1997_1.pdf.; *and* Stacy Torres Xuemei Cao, *The Immigrant Grandparents America Needs*, New York Times, 2018, www.nytimes.com/2018/08/20/opinion/family-immigration-grandparents.html.

callously labels parents and grandparents as a burden because of their age and health needs and ignores the critical roles many grandparents play in caring for their grandchildren and other family members, often enabling others to work. Furthermore, this rule will impact seniors living in immigrant families in the U.S. who will be afraid to access services they need. Over 1.1. million noncitizens age 62 and older live in low-income households,[350] meaning they are likely to rely on public assistance programs to meet their basic needs.

Having health insurance is especially important for older adults because they have greater health care needs. Medicare is a lifeline for most seniors, providing coverage for hospital, doctors' visits, and prescription drugs, but many immigrant seniors are not eligible for Medicare. Moreover, many Medicare beneficiaries rely on other programs to help them afford out-of-pocket costs. Almost 1 in 3 Medicare beneficiaries enrolled in Part D prescription drug coverage get "Extra Help" with their premiums and copays through the low-income subsidy.[351] Nearly 7 million seniors 65 and older are enrolled in both Medicare and Medicaid, and 1 in 5 Medicare beneficiaries relies on Medicaid to help them pay for Medicare premiums and cost-sharing.[352] Medicaid is also critical for long-term care, home and community-based services, dental, transportation, and other services Medicare does not cover and older adults could otherwise not afford.

Low-income seniors also greatly benefit from programs such as Section 8 rental assistance and SNAP to meet their basic needs.[353] If immigrant families are afraid to access nutrition assistance programs, more older adults will be food insecure and at risk of unhealthy eating which can cause or exacerbate other health conditions. If immigrant families are afraid to seek housing assistance, seniors with limited fixed incomes and their families will have fewer resources to spend on other basic needs, including food, medicine, transportation, and clothing.

d. Lesbian, Gay, Bisexual, and Transgender Immigrants and Their Families

The proposed public charge regulation would have significant harmful effects on lesbian, gay, bisexual, and transgender (LGBT) immigrants and their families. There are an estimated 904,000 LGBT immigrants living throughout the U.S.[354] While there are no specific data collected or reported by the Departments of Homeland Security or State about LGBT immigrants, LGBT individuals always have, and will continue to, use family-based, employment-based, and other available categories to apply for lawful permanent residence in the U.S.[355] For example, LGBT immigrants in same-sex marriages are recognized as spouses under U.S. immigration law after the 2013 U.S. Supreme Court decision in U.S. v. Windsor, declaring the misnamed-Defense of Marriage Act unconstitutional. LGBT individuals with higher education and skills often are able to use employment-based visas

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[350] Manatt Health, *Public Charge Proposed Rule: Potentially Chilled Population Data Dashboard*, 2018, https://www.manatt.com/Insights/Articles/2018/Public-Charge-Rule-Potentially-Chilled-Population#DataDashboard.
[351] Kaiser Family Foundation, *Medicare Part D in 2018: The Latest on Enrollment, Premiums, and Cost Sharing,* 2018, www.kff.org/medicare/issue-brief/medicare-part-d-in-2018-the-latest-on-enrollment-premiums-and-cost-sharing/.
[352] Kaiser Family Foundation, *Medicaid Enrollment by Age*, https://www.kff.org/medicaid/state-indicator/medicaid-enrollment-by-age/?dataView=1&currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D.
[353] Justice in Aging, *Supporting Older Americans' Basic Needs: Health Care, Income, Housing and Food,* 2018, www.justiceinaging.org/wp-content/uploads/2018/04/Supporting-Older-Americans%E2%80%99-Basic-Needs_Health-Care-Income-Housing-and-Food.pdf.
[354] Gary J. Gates, *LGBT Adult Immigrants in the United States*, The Williams Institute, 2013, https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBTImmigrants-Gates-Mar-2013.pdf.
[355] Immigration Equality, *Legal Resources*, https://www.immigrationequality.org/get-legal-help/our-legal-resources/#.W8Thd2hKhPY.

to work in multi-national and domestic corporations that welcome and support diverse employees, including LGBT employees. Since the 1990's, LGBT refugees who are fleeing persecution based on their sexual orientation or gender identity have been able to find legal protection in the U.S., but often face many hurdles in proving their claims to persecution.

Similar to other immigrants, not all LGBT immigrants and their families have achieved economic success and financial security. Many LGBT immigrants and their families struggle economically and use some of the government programs that would make them ineligible for permanent residence under the proposed public charge regulation. As an intersectional subset of both the immigrant and LGBT populations, it is likely that tens of thousands of LGBT immigrants and their families, including those with U.S. citizen children, are using Medicaid, SNAP, and other government programs to assist themselves and their families with health insurance, nutrition, and other supports. For example, an estimated 11% of LGBT adults ages 18-64 use Medicaid as their health insurance program.[356] An estimated 27% of LGBT adults ages 18-44 use SNAP, with higher utilization rates among racial and ethnic minority LGBT adults and those with children.[357] Some subset of these LGBT adults are LGBT immigrants and their families, who will be impacted by the proposed public charge regulation.

Moreover, because of continuing discrimination based on their sexual orientation and gender identity, LGBT immigrants, similar to all LGBT individuals, face additional challenges in accessing and maintaining education, employment, housing, and health care, and may be more likely to need assistance with basic family supports such as health insurance and nutrition programs. The multiple and intersectional identities of LGBT immigrants means greater risk for a lifetime of discrimination that restricts educational, employment, and other opportunities. These cumulative and compounding experiences of discrimination make transgender immigrants, especially transgender women of color, and lesbian immigrants, especially lesbians of color, particularly vulnerable. The proposed public charge regulation threatening denial of permanent residence for simply using government programs that provide low-income families with health care, nutrition, and other basic support would impose the untenable choice on LGBT immigrants and their families between disenrolling from these safety net programs or jeopardizing their future immigration status.

VI. SECTION BY SECTION DISCUSSION AND RESPONSES TO QUESTIONS RAISED BY THE DEPARTMENT

The majority of our comments to this point have addressed the harmful impact of the rule as a whole, because different sections interact in ways that have a greater impact than any individual section. In order to ensure that our input is fully captured in the Department's analysis of the comments received, the following section addresses the rule section by section.

In addition, in the notice of proposed rulemaking, the Department explicitly poses several questions regarding specific elements of the rule. We are responding to them to ensure that our voice is heard, and that the rule is

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[356] Kerith J. Conron & Shoshana Goldberg, *LGBT Adults on Medicaid*, The Williams Institute, 2018, https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Medicaid.pdf.
[357] Taylor N.T. Brown, Adam P. Romero, Gary J. Gates, *Food Insecurity and SNAP Participation in the LGBT Community*, The Williams Institute, 2016, https://williamsinstitute.law.ucla.edu/wpcontent/uploads/Food-Insecurity-and-SNAP-Participation-in-the-LGBT-Community.pdf.

not made even more punitive and harmful, but our response to them should in no way be interpreted to indicate that the rule would be acceptable in its current form.

Proposed section 212.21: Definitions for public charge

212.21(a) The Department proposes to define Public Charge as "an alien who receives one or more public benefit as defined in paragraph (b) of this section."

CLASP strongly opposes this definition and recommends that the current definition of public charge be retained. Specifically, public charge should continue to be defined as a non- U.S. citizen who is "likely to become primarily dependent on the Government for subsistence as demonstrated by either the receipt of public cash assistance for income maintenance purposes, or institutionalization for long-term care at Government expense (other than imprisonment)."

The proposed language is a dramatic change to the long-understood meaning of public charge and is inconsistent with Congressional intent in providing non-cash benefits as supports for low-income working families as well as the prospective nature of the public charge determination. (See section I for detailed analysis).

212.21(b) The Department proposes to look at receipt of cash assistance for income maintenance, SNAP benefits, Section 8 Housing assistance under the Housing Choice Voucher Program, Section 8 Project-Based Rental-Assistance (including Moderate Rehabilitation), Medicaid (with certain listed exceptions, Premium and Cost Sharing Subsidies for Medicare Part D, and Subsidized Housing under the Housing Act of 1937 in making determinations of public charge.

This section also sets out the thresholds for when receipt of these benefits will be counted and makes an exception for benefits received by an individual serving in the U.S. armed forces or the spouse or child of such an individual. We respond to these issues separately.

Listed benefits

As previously mentioned, at 83 FR 51164, the regulation explains that the list of included programs was identified based in large part on the relative levels of Federal government expenditures. However, it is inappropriate and outside of DHS's lawful jurisdiction for the Department of Homeland Security to save money by trying to discourage people from utilizing benefits for which Congress has made them eligible. Whether or not there is a large government expenditure on a particular program is irrelevant to the assessment of whether a particular individual may become a public charge. A public charge determination must be an individualized assessment, as required by the Immigration and Nationality Act, and not a backdoor way to try to reduce government expenditures on programs duly enacted by Congress.

<u>Any Federal, State, local or tribal cash assistance for income maintenance, including but not limited to Supplemental Security Income (SSI) and Temporary Assistance for Needy Families (TANF)</u>

The regulation does not make any justification for the inclusion of these benefits, other than their dollar value,

presumably because they may already be considered in the determination of public charge under the 1999 guidelines already in place. However, the change from only counting these programs when people are "primarily dependent" on them to counting them when someone receives as little as $1,821 per year, even if combined with income from employment, means that further justification is needed. Keeping these benefits in the public charge determination will continue to be detrimental to children and families' economic stability.

The goal of SSI is to offset the financial burden associated with disabilities for families with limited incomes and resources.[358] Continuing to include SSI benefits in the public charge determination is not only cruel to children with disabilities and to the families caring for them, it's short sighted. SSI enhances the opportunity for a child with disabilities to achieve an independent and rewarding life. Once a child begins receiving SSI, the likelihood they will experience poverty decreases by about 11 percent.[359] Families receiving SSI relied less on other benefits such as SNAP, WIC, and TANF.[360]

While the overwhelming majority of TANF recipients are children, fewer and fewer children are receiving cash assistance, with just under 25 percent of all poor families with children receiving cash assistance today. [361] Keeping TANF as part of the public charge determination will only further restrict the limited access that children and families have to cash assistance. Reaching economic security is a long road for many families. While parents and caregivers are working towards upward mobility, we need to ensure that every family is provided with enough cash assistance to provide sufficient resources for children while their brains are undergoing critical stages of development. The proposed rule also fails to recognize that states are increasingly choosing to provide supplemental TANF benefits to working families who earn too much to qualify for the basic cash assistance programs. Research has shown that such policies that "make work pay" improve employment outcomes because they serve as an effective incentive for families to find and keep jobs.[362]

SNAP

The inclusion of SNAP as a listed program is not justified. The proposed rule fails to recognize that many people receive SNAP as a supplement to earnings. It is inconsistent with the SNAP statute which states that "the value of benefits that may be provided under this chapter shall not be considered income or resources for any purpose under any Federal, State, or local laws,"[363] and inconsistent with Congressional actions to expand SNAP eligibility to immigrant children.

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[358] Council on Children with Disabilities, *Supplemental Security Income (SSI) for Children and Youth with Disabilities*, American Academy of Pediatrics, 2009, http://pediatrics.aappublications.org/content/124/6/1702.

[359] Mark Duggan, Melissa Schettini Kearney, *The Impact of Child SSI Enrollment on Household Outcomes: Evidence from the Survey of Income and Program Participation*, The National Bureau of Economic Research Working Paper No. 11568, 2007, http://www.nber.org/papers/w11568.

[360] Mark Duggan, Melissa Schettini Kearney, *The Impact of Child SSI Enrollment on Household Outcomes: Evidence from the Survey of Income and Program Participation*, The National Bureau of Economic Research Working Paper No. 11568, 2007, http://www.nber.org/papers/w11568.

[361] Ife Floyd, LaDonna Pavetti, Liz Schott, *TANF Reaching Few Poor Families*, Center on Budget and Policy Priorities, 2017, https://www.cbpp.org/research/family-income-support/tanf-reaching-few-poor-families.

[362] Charles Michalopoulos, *Does Making Work Pay Still Pay? An Update on the Effects of Four Earnings Supplement Programs on Employment, Earnings, and Income*, MDRC, 2005, http://www.mdrc.org/publications/414/full.pdf.

[363] 7 USC 2017(b), *Benefits not deemed income or resources for certain purposes*, https://www.law.cornell.edu/uscode/text/7/2017.

Moreover, the rule does not take into account any of the harms that will be caused by the inclusion of SNAP. As discussed in detail elsewhere in these comments, the reduced use of SNAP by both those subject to the public charge determination and those affected by the chilling effect will lead to harms to the health and well-being of citizen children as well as the immigrants themselves, additional costs to health care systems, and increased costs on public schools and public health care providers.

Medicaid

The inclusion of Medicaid as a listed program is not justified. The proposed rule is inconsistent with the history of how public charge has been understood and with Congressional intent. It completely fails to recognize the reality of low-wage work in the U.S. and the fact that just one-third of low-wage workers (those in the first quarter of the earnings distribution) have access to employer-sponsored insurance through their jobs.[364] The rule tries to justify the inclusion of Medicaid based on the high costs of health care, but does not recognize that immigrants use less health care, on average, than U.S. born residents.[365]

Moreover, the rule does not take into account any of the harms that will be caused by the inclusion of Medicaid. As discussed in detail elsewhere in these comments, the reduced use of Medicaid by both those subject to the public charge determination and those affected by the chilling effect would lead to major harms to the health and well-being of citizen children as well as the immigrants themselves, additional costs to health care systems, public health care providers, schools, and society as a whole.

DHS proposes to exempt certain services provided under Medicaid from consideration in the public charge determination, those received for an "emergency medical condition" and those provided under the Individuals with Disabilities Education Act (IDEA) or through school-based benefits. In addition, benefits provided to certain children of U.S. citizens or children in the process of adoption will not be counted. While the intent of these exceptions -- to reduce the harm to health care providers and schools-- is worthy, the reality is that these provisions are far too complicated and confusing to actually mitigate the harm. For example, as explained at 83 FR 51170, in order to for a school to receive reimbursement for IDEA services, parents must consent for their personally identifiable information to be shared with Medicaid. It is difficult to imagine any immigrant parent providing this consent if the NPRM is finalized.

Medicare Part D low-income subsidies.

The inclusion of this program is not justified. The proposed rule is inconsistent with the history of how public charge has been understood and with Congressional intent. DHS' sole justification for inclusion of Low-Income Subsidies under Medicare Part D appears to be that it has a large overall cost to the U.S. Government. However, only immigrants who have a work history of 40 quarters in the U.S. (as individuals or through their spouse) will qualify for Medicare in the first place. DHS is not able to make any estimate of how many non-citizens qualify for

[364] Bureau of Labor Statistics, *Healthcare benefits: Access, participation, and take-up rates*, 2018, https://www.bls.gov/ncs/ebs/benefits/2018/ownership/private/table09a.htm.
[365] Lila Flavin, et al., "Medical Expenditures on and by Immigrant Populations in the United States: A Systematic Review," International Journal of Health Services, (2018), http://www.pnhp.org/docs/ImmigrationStudy_IJHS2018.pdf .

the Low-Income Subsidies.

However, inclusion of this program could give DHS the justification for excluding nearly anyone as a public charge if they so choose. Incorporation by reference of this program into the "likely at any time to become a public charge" definition at 212.21(c) means that an immigration officer could potentially find that nearly anyone -- if they lived and worked long enough -- would eventually receive low-income subsidies, as nearly 30 percent of all Medicare Part D enrollees do.[366] It is absolutely horrifying to think that someone who worked and contributed in the U.S. for 10 years or more could be considered a "public charge" because at the end of that time, they applied for low-income subsidies to help pay for prescription drugs.

Housing Benefits

The inclusion of these housing programs is not justified. The proposed rule is inconsistent with the history of how public charge has been understood and with Congressional intent.

The rule does not take into account any of the harms that will be caused by the inclusion of housing programs. As discussed in detail elsewhere in these comments, the reduced use of Medicaid by both those subject to the public charge determination and those affected by the chilling effect would lead to major harms to the health and well-being of citizen children as well as the immigrants themselves. Having safe and stable housing is crucial to a person's good health, sustaining employment, and overall self-sufficiency. Studies have shown that unstable housing situations can cause individuals to experience increased hospital visits, loss of employment, and mental health problems.[367]

Other benefits

At 83 FR 51173, the Department asks about unenumerated benefits -- both whether additional programs should explicitly be counted, and whether use of other benefits should be counted in the totality of circumstances. We strongly oppose adding any additional programs to the list of counted programs, or in any way considering the use of non-listed programs in the totality of circumstances test. No additional programs should be considered in the public charge determination. The programs enumerated in the proposed rule already go far beyond what is reasonable to consider and will harm millions of immigrant families. The addition of any more programs would increase this harm to individuals, families and communities.

At 83 FR 51174, the Department specifically requests comment on whether the Children's Health Insurance

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[366] Juliette Cubanski, Anthony Damico, and Tricia Neuman, *Medicare Part D in 2018: The Latest on Enrollment, Premiums, and Cost Sharing*, Kaiser Family Foundation, 2018, https://www.kff.org/medicare/issue-brief/medicare-part-d-in-2018-the-latest-on-enrollment-premiums-and-cost-sharing/.

[367] Will Fischer, *Research Shows Housing Vouchers Reduce Hardship and Provide Platform for Long-Term Gains Among Children*, Center on Budget and Policy Priorities, 2015, https://www.cbpp.org/research/research-shows-housing-vouchers-reduce-hardship-and-provide-platform-for-longterm-gains; and Linda Giannarelli et al., *Reducing Child Poverty in the US: Costs and Impacts of Policies Proposed by the Children's Defense Fund,* 2015), http://www.childrensdefense.org/library/PovertyReport/assets/ReducingChildPovertyintheUSCostsandImpactsofPoliciesProposedbytheChildrensDefenseFund.pdf.

Program (CHIP) should be included in a public charge determination. For many of the same reasons that we oppose the inclusion of Medicaid, we adamantly oppose the inclusion of CHIP. CHIP is a program for working families who earn too much to be eligible for Medicaid without a share of cost. Making the receipt of CHIP a negative factor in the public charge assessment or including it in the "public charge" definition, would exacerbate the problems with this rule by extending its reach further to exclude moderate income working families – and applicants likely to earn a moderate income at some point in the future.

Including CHIP in a public charge determination would likely lead to many eligible children foregoing health care benefits, both because of the direct inclusion in the public charge determination as well as the chilling effect detailed elsewhere in these comments. Nearly 9 million children across the U.S. depend on CHIP for their health care. Due to the chilling effect of the rule, many eligible citizen children likely would forego CHIP—and health care services altogether—if their parents think they will be subject to a public charge determination.

In addition to the great harm that would be caused by the inclusion of CHIP, this would be counter to Congress' explicit intent in expanding coverage to lawfully present children and pregnant women. Section 214 of the 2009 Children's Health Insurance Program Reauthorization Act (CHIPRA) gave states a new option to cover, with regular federal matching dollars, lawfully residing children and pregnant women under Medicaid and CHIP during their first five years in the U.S. This was enacted because Congress recognized the public health, economic, and social benefits of ensuring that these populations have access to care.

Since its inception in 1997, CHIP has enjoyed broad, bipartisan support based on the recognition that children need access to health care services to ensure their healthy development. Senator Orrin Hatch (R-UT), one of the original co-sponsors of CHIP, said that "Children are being terribly hurt and perhaps scarred for the rest of their lives" and that "as a nation, as a society, we have a moral responsibility" to provide coverage. CHIP has been a significant factor in dramatically reducing the rate of uninsured children across the U.S. According to the Kaiser Family Foundation, between 1997 when CHIP was enacted through 2012, the uninsured rate for children fell by half, from 14 percent to seven percent. Medicaid and CHIP together have helped to reduce disparities in coverage that affect children, particularly children of color. A 2018 survey of the existing research noted that the availability of "CHIP coverage for children has led to improvements in access to health care and to improvements in health over both the short-run and the long-run."[368]

As noted by the Kaiser Family Foundation, CHIP:

- Can have a positive impact on health outcomes, including reductions in avoidable hospitalizations and child mortality.
- Improves health which translates into educational gains, with potentially positive implications for both individual economic well-being and overall economic productivity.[369]

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[368] Lara Shore-Sheppard, *Medicaid and CHIP: Filling in the Gap in Children's Health Insurance Coverage*, Econofact, 2018, https://econofact.org/filling-in-the-gap-of-childrens-health-insurance-coverage-medicaid-and-chip.

[369] Kaiser Family Foundation, *The Impact of the Children's Health Insurance Program (CHIP): What Does the Research Tell Us?,* 2014, https://www.kff.org/medicaid/issue-brief/the-impact-of-the-childrens-health-insurance-program-chip-what-does-the-research-tell-us/.

Continuous, consistent coverage without disruptions is especially critical for young children, as experts recommend 16 well-child visits before age six, more heavily concentrated in the first two years, to monitor their development and address any concerns or delays as early as possible.[370] As noted by the Center for Children and Families: A child's experiences and environments early in life have a lasting impact on his or her development and life trajectory. The first months and years of a child's life are marked by rapid growth and brain development.[371]

Overall, we believe the benefits of excluding CHIP and Medicaid certainly outweigh their inclusion in a public charge determination. We recommend that DHS continue to exclude CHIP from consideration in a public charge determination in the final rule but also exclude receipt of Medicaid for the same reasons.

Thresholds

At 212.21(b)(1), the regulation proposes a 15% of the FPL as a threshold for when "monetizable" benefits should be counted. CLASP strongly opposes the use of this threshold. This proposed threshold is arbitrary, with zero basis in either legislation or research. DHS acknowledges that in other contexts, such as the determination of whether an individual is a dependent for tax purposes, or HHS's indicators of welfare dependence, the test that is applied is whether the individual or household receives more than half of their total annual income from the designated source. These determinations are based on statute, in the case of the IRS, and the recommendations of a bi-partisan Congressionally mandated Advisory Board comprised of established a 12-member bipartisan Advisory Board, composed of experts in the fields of welfare research and welfare statistical methodology, representatives of State and local welfare agencies, and representatives of other organizations concerned with welfare issues, in the case of the indicators report.[372].

However, DHS rejects this definition simply because it "**believes** that receipt of such benefits even in a relatively small amount or for a relatively short duration would in many cases be sufficient to render a person a public charge." (83 FR 51164 -- emphasis added). The only justification provided for the lower threshold is that the current policy is "insufficiently protective" of the public budget, which is not a relevant factor for DHS to take into account.

The proposed rule would penalize people who are, by definition, nearly self-sufficient. If an individual used even the smallest amount of benefits for a relatively short amount of time, they could be blocked from gaining lawful permanent residence in the United States. The proposal defines "public charge" to include anyone who uses more than 15 percent of the poverty line for a household of one in public benefits—just $5 a day regardless of family size. This absolute standard overlooks the extent to which the person is supporting themselves. For example, a family of four that earns $43,925 annually in private income but receives just $2.50 per day per person in

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[370] Elisabeth Wright Burak, *Promoting Young Children's Healthy Development in Medicaid and the Children's Health Insurance Program (CHIP),* Georgetown Center for Children and Families, 2018, https://ccf.georgetown.edu/wp-content/uploads/2018/10/Promoting-Healthy-Development-v5-1.pdf.
[371] Elisabeth Wright Burak, *Promoting Young Children's Healthy Development in Medicaid and the Children's Health Insurance Program (CHIP),* Georgetown Center for Children and Families, 2018, https://ccf.georgetown.edu/wp-content/uploads/2018/10/Promoting-Healthy-Development-v5-1.pdf.
[372] Department of Health and Human Services, *Indicators of Welfare Dependence and Well-Being. Interim Report to Congress*, 1996, https://eric.ed.gov/?id=ED461676.

monetizable public benefits would be receiving just 8.6 percent of their income from the government programs, meaning that they are 91.4 percent self-sufficient.[373] Yet the rule would still consider the receipt of assistance as a heavily weighed negative factor in the public charge determination.

At 83 FR 51165, the Department seeks input on whether to consider the receipt of designated monetizable public benefits at or below the 15 percent threshold. CLASP strongly opposes taking into account any receipt of benefits below the designated threshold. As DHS acknowledges in the preamble, consideration of any lower level of benefits could have significant unintended consequences.

Similarly, at 212.21(b)(3), DHS proposes that any receipt of "monetizable" benefits would be counted when combined with receipt of "non-monetizable" benefits for at least 9 months This would have a similar effect to having no threshold at all, as people would be afraid to apply for and receive any benefits, no matter how token, for fear of it being held against them. There is no justification for not using the already outrageously low threshold in this circumstance as well.

Exemptions

Individuals in the armed forces. At 212.21(b)(4), the regulation proposes not to consider any benefit received by an individual serving in the Armed Forces, or if received by such an individual's spouse or child. We believe that this exception shows the fundamental problem with the rule: Armed Forces members are working individuals receiving benefits to supplement their work. This is true for many other groups of workers who provide our society with needed services for which they receive low pay. All should have the opportunity to get health and nutrition support.

Non-citizen children. At FR 51174, the Department asks about public charge determinations for non-citizen children under age 18 who receive one or more public benefit programs. CLASP strongly believes that receipt of benefits as a child should not be taken into account in the public benefits determination as it provides little information on their future likelihood of receiving benefits. If anything, receipt of benefits that allow children to live in stable families, be healthy and succeed in school will contribute to the future integration and contribution to society of kids who grow up, develop, learn and complete their education and training in the United States. The value of access to public benefits in childhood has been documented repeatedly. Safety net programs such SNAP and Medicaid have short and long-term health benefits and are crucial levers to reducing the intergenerational transmission of poverty.[374]

Investing in children is the most important investment we can make in our country's future. It is not only cruel, but counterproductive to penalize a child for being a child. Moreover, negatively weighing a child's enrollment in health and nutrition programs would be counter to Congressional intent under both the 2009 CHIPRA and section

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[373] David Bier, *New Rule to Deny Status to Immigrants Up to 95% Self-Sufficient*, The Cato Institute, 2018, https://www.cato.org/blog/new-rule-deny-status-immigrants-95-self-sufficient.
[374] Marianne Page, *Safety Net Programs Have Long-Term Benefits for Children in Poor Households*, University of California, Davis, 2017, https://poverty.ucdavis.edu/sites/main/files/file-attachments/cpr-health_and_nutrition_program_brief-page_0.pdf .

4401 of the Farm Security and Rural Investment Act of 2002, which restored access to what was then called Food Stamps (now the Supplemental Nutrition Assistance Program, SNAP) to immigrant children.

Timeline

At FR 51174, the Department asks about whether the effective date of the rule should be delayed in order to help "public benefit granting agencies" adjust systems. Implementation of the proposed rule would create new challenges and impose a tremendous burden on state and local agencies that administer public benefit programs. The proposal should not be implemented at all, but if it is, implementation should be delayed for as long as possible. It is standard practice for government agencies to spend years before implementing major changes. For example, the Advance Planning Document process for technology procurements that involve federal financial participation indicates that it will take a three-year period between the start of the planning process and the actual rollout of new technologies.[375] In many cases, implementation timelines must be further extended due to unanticipated delays and other challenges.[376]

The proposed new form I-944 suggests that agencies would be asked to provide individuals with information on the total amount of benefits received, the exact dates and household composition, as well as information regarding whether any of the benefits count as Medicaid for emergency medical conditions or otherwise fall into one of the exceptions to the overall rule. This would be extremely burdensome for agencies, increase administrative costs, and delay them in the performance of their actual responsibilities. Moreover, in the case of programs that have shifted data systems in recent years, it may not be possible to extract this information from legacy systems no longer in use.

In addition, states, counties and cities will also need to update forms and notices and train their staff on the many questions that applicants will have regarding the new rules.

212.21(c) Likely at any time to become a public charge.

In this section, the Department proposes to attempt to estimate the likelihood of future use of any of the public benefits listed. This section therefore incorporates all of the problems with the broad definition of public charge proposed. For example, looking just at SNAP benefits, one study found that more than half of all people in the U.S. would use SNAP benefit at some point in their adult (20-65) life.[377] Therefore, if DHS were to take this definition seriously, it could reject nearly all applicants for permanent status as at risk of at someday receiving one of these benefits. Alternatively, there is a real risk that this definition would be used arbitrarily, creating an excuse for DHS to deny immigration benefits to anyone it deems undesirable.

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[375] U.S. Department of Agriculture, FNS Handbook 901 The Advance Planning Document Process: A State Systems Guide to America's Food Programs, Version 2.0, 2017, https://fns-prod.azureedge.net/sites/default/files/apd/FNS_HB901_v2.2_Internet_Ready_Format.pdf.

[376] *See, e.g.,* Victoria Wachino, Kevin Concannon, et al., Letter to Medicaid, Children's Health Insurance Program, and Health and Human Services Directors and State Marketplace CEOs, July 20, 2015, U.S. Department of Health and Human Services, U.S. Department of Agriculture, https://www.medicaid.gov/federal-policy-guidance/downloads/smd072015.pdf.

[377] Rank MR and Hirschl TA, *Likelihood of using food stamps during the adulthood years*, 2005, Journal of Nutrition Education and Behavior, https://www.ncbi.nlm.nih.gov/pubmed/15904577.

In addition, the preamble language at 83 FR 51174, the Administration acknowledges that "its proposed definition of public charge may suggest that DHS would automatically find an alien who is *currently* receiving public benefits, as defined in this proposed rule, to be inadmissible as likely to become a public charge." It claims that this is not the case: "DHS does not propose to establish a *per se* policy whereby an alien is likely at any time to become a public charge if the alien is receiving public benefits at the time of the application for a visa, admission, or adjustment of status." However, this appears to be a distinction without a difference, as given the heavy weight applied to both recent and current receipt of benefits, it is difficult to imagine any circumstances in which a person currently receiving benefits would not be found to be a public charge under DHS's proposed definitions.

212.21(d) Definition of household

In this section, DHS proposes a novel definition of a household that includes people to whom an immigrant provides financial support, even if they do not live with the immigrant. This definition is then used in determining whether the household has income sufficient to meet the 125% and 250% of the federal poverty level thresholds that this rule creates. This can lead to several unintended and harmful consequences:

- An immigrant can, in effect, be penalized for providing family support to a sibling or parent to whom they have no legal obligation. This is true even if this support means that the sibling or parent does not need to receive public benefits that they would otherwise qualify for.

- Many immigrants provide financial support to family members who remain in their countries of origin, where the cost of living is often lower. In some countries, as little as $100 a month could well constitute more than 50 percent of an individual's financial support. However, this would mean that the person should be counted as part of the immigrant's household size, which would drive up the earnings they would need to meet the threshold by much higher amounts.

Proposed section 212.22: Public Charge Inadmissibility Determination

a) Prospective determination based on the totality of circumstances.

This section accurately reflects the statutory language about the totality of circumstances. However, the subsequent listing of factors and additional criteria have the effect of undermining this intent by creating a large number of ways to fail, and very few ways to pass. For example, the discussion of public bonds at 83 FR 51221 suggests that a person with U.S. citizen family members who has a health condition, but has access to employment-based health insurance, received SNAP more than three years ago, but has not used any public benefit more recently, and has household income of 120 percent of the federal poverty line would fail the public charge test and would only qualify for admissibility if able to post a public charge bond. This example highlights the ways in which this rule, while claiming to maintain the totality of circumstances test, would actually make it nearly impossible for low-and moderate-income individuals to qualify.

(b) Minimum factors to consider.

We strongly oppose the addition of additional criteria to the statutory totality for the circumstances test.

(1) Age

While age is one of the statutory criteria to include in the public charge test, the proposal to treat being under age 18 or over age 61 as a negative factor is arbitrary.

For children, branding them a public charge because they are not working now would make a mockery of the claim that this is a forward-looking test; unemployment at age 16 or 17 provides zero evidence of their future employability. Similarly, the very data that DHS offers regarding the higher levels of public benefit use by children than for adults is further proof that use of benefits by children does not indicate that they will continue to use them as adults. It is axiomatic that children in their first years of life are more likely to qualify for means-tested benefits, such as SNAP and health care. But that has no applicability to a 15-year-old's likelihood of qualifying for benefits after immigrating. The Department cites no authority for its assertion that applicants who obtain LPR status are no more likely to become public charges simply due to their being under 18 years of age at the time of application. As discussed above, we do not believe that any receipt of benefits by children should be taken into account for the public charge determination; similarly, their age should not be held against them.

At the older end of the spectrum, it is arbitrary to treat age as a negative factor starting at age 62. DHS bases this on the minimum age at which one can start to claim retirement benefits under social security; however, this was never meant to be used to say that people are unable or even unlikely to work after that age. Moreover, only a few immigrants will have the work history to claim social security at this age. Census data confirm that immigrants are more likely to work at older ages than native-born workers.[378] DHS provides no justification for its choice of the minimum retirement age rather than the Medicare eligibility age, the full retirement age, or any other possibility.

(2) Health

While health has always been a factor in the public charge test, the proposed rule codifies and unduly weights the specific standard for evaluating an individual's health. The new standard includes any medical condition likely to require extensive medical treatment or institutionalization or that will interfere with a person's ability to provide and care for him- or herself, to attend school, or to work. This category will include most people with disabilities – including people with intellectual and developmental disabilities, psychiatric disabilities, or physical disabilities who need personal care services. Thus, most people with disabilities will have this factor weigh against them in the public charge determination.

The harmful impact of this new health standard is intensified against people with disabilities when combined with a person's ability to pay for their health care costs (an element in the assets factor) and with the ability to pay for medical costs or have them covered under private insurance (a "heavily weighed negative factor"). In sum, this new interpretation of the health factor, particularly when combined with the other components related to health in the proposed rule, will exclude people simply because they have a disability. Moreover, the inclusion of health in this way creates a huge incentive for people to avoid treatment, especially for mental illness and other "invisible illnesses."

[378] U.S. Census Bureau, *CPS Table Creator*, https://www.census.gov/cps/data/cpstablecreator.html.

(3) Family status

Under the heading of "family status" DHS proposes to consider the number of people in a household as defined in the proposed 212.21(d). It appears that having a large household will be counted as a negative factor in itself, in addition to making it harder for families to achieve the income thresholds required to avoid a negative factor under "assets, resources and financial status." This is double counting of the same factor, which will make it harder for immigrants to avoid being considered a public charge. As noted previously, this will also have the perverse effect of discouraging people from supporting family members. For example, if a couple with one child who has an income just over the 250 percent of poverty threshold for a family of 3, takes in a brother who is temporarily unemployed and do not charge rent, they will become a household of four and their income would no longer qualify as a heavily weighed positive factor.

It is important to note that this is a radical change from how "family status" has historically been treated as part of the public charge test. Historically, having family members who give you strong ties to the United States and who can be expected to help support you has always been treated as a *positive* factor under the totality of circumstances test. This understanding is reflected in the finding in the *Matter of Martinez-Lopez*, as discussed at 83 FR 51178-79. In this case, the Attorney General found it a positive factor that "the respondent had a brother and other close family members who could provide financial support." As written, the proposed rule does not allow for family status to be a positive factor in the totality of circumstances.

(4) Assets, resources and financial status

In this section, DHS lists a large number of criteria that will be taken in account in assessing assets, resources and financial status. It proposes to treat failing each of these criteria as a separate "strike" against an immigrant that must be offset by a corresponding positive factor. However, these circumstances are highly correlated, and DHS has provided no evidence to suggest that each of them has predictive value when others have already been taken into account. In practice, the multiplication of criteria under this factor has the effect of weighing this factor more heavily than any of the other statutorily mandated factors -- even beyond the additional weighting DHS explicitly proposes of certain elements of this factor.

Moreover, as discussed at length in sections I and III of our comments, the new wealth test imposed by the proposed rule will disproportionately harm immigrant women and immigrants of color. Women collectively comprise two-thirds of the low-wage workforce[379] and immigrant women are overrepresented to an even greater extent in low-wage jobs.[380] Women are also more likely than men to raise children on their own, which means that low-wages often result in an even lower household income (based on the number of household members). Due to persisting racial economic disparities and discrimination in hiring practices, average hourly wages for black

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[379] Kayla Patrick, Meika Berlan, Morgan Harwood, *Low-Wage Jobs Held Primarily by Women Will Grow the Most Over the Next Decade*, National Women's Law Center, 2018, https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2016/04/Low-Wage-Jobs-Held-Primarily-by-Women-Will-Grow-the-Most-Over-the-Next-Decade-2018.pdf.
[380] American Immigration Council, *The Impact of Immigrant Women on America's Labor Force*, 2017, https://www.americanimmigrationcouncil.org/research/impact-immigrant-women-americas-labor-force; and National Women's Law Center, *Underpaid & Overloaded: Women in Low-wage Jobs*, 2014, https://nwlc.org/wp-content/uploads/2015/08/final_nwlc_lowwagereport2014.pdf.

and Hispanic workers are substantially lower than their white counterparts[381] -- making it more likely that immigrants of color will be harmed by the additional negative factors related to income and financial status under the rule.

212.22(b)(4)(i)(A) Wealth Test

At FR 51187, the Department invites comments on the 125 percent of FPG threshold. The Department proposes to treat income below 125 percent of the federal poverty guidelines (FPG, often referred to as the federal poverty level or FPL) for the applicable household size as a negative factor. We strongly oppose the use of this arbitrary and unreasonable threshold, which lacks any statutory basis and is contrary to clear congressional intent.

Congress did not impose an income test on the intending immigrant. In fact, Congress rejected income tests *for sponsors* at 200% FPL (and 140% FPL for a spouse or minor child of the petitioner), in favor of the lower 125% FPL test for sponsors ultimately adopted in 8 USC 1183A.[382] At footnote 583, the Department admits that the differences in receipt of non-cash benefits between noncitizens living below 125 percent of FPG and those living either between 125 and 250 percent of the FPG or between 250 and 400 percent of the FPG was not statistically significant.

A single individual who works full-time year-round -- who does not miss a single day of work due to illness or inclement weather-- but is paid the federal minimum wage would fail to achieve the 125% of FPG threshold. This is clearly not the person that Congress envisioned when they directed DHS to deny permanent status to those at risk of becoming a public charge.

Moreover, the arbitrary use of an income threshold does not take into account the value of unpaid labor that family members may provide. For example, if a married couple family with two children earns $32,000 per year, they would exceed this threshold. However, if they have to pay $12,000 a year for child care (an extremely modest amount for two children), they are actually less economically secure than if they earned just $24,000 but did not need to pay for child care because they only work opposite shifts. However, under the proposed rule, they would be considered to have a negative factor against them.

212.22(b)(4)(i)(B) and 212.22(b)(4)(ii)(I) Financial means to pay for Medical costs, including through private health insurance

Yet again, the Department is essentially penalizing people multiple times for essentially the same factor -- not only

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[381] Eileen Patten, *Racial, gender wage gaps persist in U.S. despite some progress,* Pew Research Center, 2016, http://www.pewresearch.org/fact-tank/2016/07/01/racial-gender-wage-gaps-persist-in-u-s-despite-some-progress/.
[382] Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Conference Report 104-828, Sec. 551, 1996, https://www.congress.gov/104/crpt/hrpt828/CRPT-104hrpt828.pdf; 142 Cong. Rec. S11712, 1996, https://www.congress.gov/crec/1996/09/28/CREC-1996-09-28-pt1-PgS11711.pdf; 142 Cong. Rec. H12096, 1996, https://www.congress.gov/crec/1996/09/28/CREC-1996-09-28-bk2.pdf; and H.R. Rept. 104–469, Part I, 1996, https://www.congress.gov/104/crpt/hrpt469/CRPT-104hrpt469-pt1.pdf. Congress members objected to an earlier version's requirement that a sponsor earn more than 200% of the Federal poverty income guideline, declaring that the "200% income requirement constitutes nothing less than 'class warfare,' and tells the world that immigration is only for the wealthy" (*Id.* at 544).

on their low or moderate income but also on their inability to pay for medical care. Individuals with incomes near or below the federal poverty line are at the highest risk of being uninsured. In 2016, eight in ten of the uninsured were in families with incomes below 400% FPL and nearly half of uninsured families had incomes below 200% of the FPL. [383] Furthermore, requiring financial ability to pay for health care is a standard that many U.S. Citizens are unable to meet. Nearly one in two sick Americans cannot afford health care, even those with health insurance.[384]

The impact of this factor on individuals living with disabilities or chronic health conditions is even more insidious. Private insurance does not cover many disability-services and 46.4% of all people in fair or poor health are uninsured or have affordability problems despite having coverage.[385]

Like many provisions of the proposed rule, this negative factor will disproportionality people of color, who are at higher risk of being uninsured. Hispanics and Blacks have significantly higher uninsured rates (16.9% and 11.7%, respectively) than Whites (7.6%).[386]

212.22(b)(4)(i)(C) and 212.22(b)(4)(ii)(F) Applying for, receiving, or being approved to receive public benefits, as defined in the proposed CFR 212.21(b)

In this section, DHS proposes to take into account any receipt of -- or application for or approval for -- any of the specified public benefits on or after the effective date of the final rule, no matter how long ago it occurred, or whether the immigrant was a child at the time of receipt.

In the preamble at 83 FR 51188, DHS attempts to make this inclusion consistent with the totality of circumstances test by noting that benefits received longer ago, and for shorter periods of time, would be weighed less than more recent or longer use of benefits, and by suggesting that previous use of benefits could be overcome by more recent factors. However, this language is not reflected in the regulatory text. DHS attempts to justify this section by saying that most people who receive benefits do so for an extended period of time, but that data is irrelevant (and also from the period of highest unemployment in recent history). DHS provides no evidence that supports the claim that someone who received benefits 5 or even 10 years ago but who has not received them more recently is more likely to receive benefits than someone who never received them in the first place.

As discussed at length in sections II of our comments, numerous studies point to the positive long-term effects of receipt of health, nutrition and housing programs.[387] The proposed rule ignores the fact that public programs are

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[383] Kaiser Family Foundation, *Key Facts about the Uninsured Population,* 2017, https://www.kff.org/uninsured/fact-sheet/key-facts-about-the-uninsured-population/.
[384] Drew Altman, *It's not just the uninsured — it's also the cost of health care*, 2017, https://www.axios.com/not-just-uninsured-cost-of-health-care-cdcb4c02-0864-4e64-b745-efbe5b4b7efc.html.
[385] Drew Altman, *It's not just the uninsured — it's also the cost of health care*, 2017, https://www.axios.com/not-just-uninsured-cost-of-health-care-cdcb4c02-0864-4e64-b745-efbe5b4b7efc.html.
[386] Kaiser Family Foundation, *Key Facts about the Uninsured Population,* 2017, https://www.kff.org/uninsured/fact-sheet/key-facts-about-the-uninsured-population/.
[387] Tazra Mitchell and Arloc Sherman, *Economic Security Programs Help Low-Income Children Succeed Over Long Term, Many Studies Find*, Center on Budget and Policy Priorities, 2017, https://www.cbpp.org/research/poverty-and-inequality/economic-security-programs-help-low-income-children-succeed-over.

often used as work supports which empower future self-sufficiency. Using benefits can help individuals and their family members become healthier, stronger, and more employable in the future. Receipt of benefits that cure a significant medical issue or provide an individual with the opportunity to complete their education can be highly significant positive factors that contribute to future economic self-sufficiency.

The consideration of any use of public benefits, no matter how long ago, will greatly increase the chilling effect of this rule. Many lawfully present immigrants who have no immediate path to legal permanent residency status nonetheless hope that they may someday have this option. If they fear that receipt of health care or nutritional supports today could affect their options years --- or even decades -- down the road, they will be unwilling to participate in these programs, even if it puts their health and well-being at risk.

The lack of clarity about how it will be possible to overcome negative factors means that the proposed rule will have a much greater chilling effect -- making immigrants afraid to access public benefits even if those supports would help them thrive and become more stable in the future. For example, the proposed rule gives an example of an immigrant who has received benefits in the past and is now unemployed, but is graduating college and has a pending offer of employment with benefits, and says that "it is possible that in the review of the totality of the circumstances, the alien would not be fond likely to become a public charge." A straightforward reading of the totality of circumstances test is clearly that the circumstances that led to use of benefits are about to change, and that such an individual is not at risk of become a public charge. However, the anemic language offered in the proposed rule, that it is "possible" this individual will not be found a public charge, makes it impossible to offer this person assurances that they will not be penalized for having received benefits. Moreover, because having been previously found to be a public charge is itself a heavily weighed negative factor, if rejected, this individual will find it even harder to be approved in the future.

212.(b)(4)(ii)(G) Fee waivers

Under the proposed rule, the use of a fee waiver (Form I-912) for any immigration benefit would be considered a negative factor in determining an immigrant's financial status. We strongly oppose consideration of fee waivers in the public charge determination. The consideration of fee waiver usage is improperly retroactive. The statute calls for a forward-looking analysis of whether the immigrant is likely to become a public charge in the future. Because a fee waiver is not a continuing benefit, the proposed rule's consideration of *prior* receipt of a fee waiver impermissibly penalizes applicants for their financial status on the date of the application for the fee waiver and not on the date of application for admission, adjustment of status, or for a visa.

Separate consideration of the use of a fee waiver means that applicants with low income would be penalized twice for the same factor. An immigrant who received a fee waiver based on their household income would have two strikes against them for what is essentially the same factor -- one strike for the low income and a second for the fee waiver granted because of the applicant's low income. As a result, consideration of the use of a fee waiver has the unintended effect of double-counting negative factors related to financial status.

212.(b)(4)(ii)(H) Credit history and credit scores

At FR 51189, the Department invites comments on how to use credit scores. Credit scores aren't meant as a judge of character or admissibility and should not be used as part of the "public charge" determination. Neither credit

reports nor credit scores were designed to provide information on whether a consumer is likely to rely on public benefits or on the character of the individual.[388] DHS offers no evidence to support its claim that a low credit score is an indication of lack of future self-sufficiency. A bad credit record is often the result of circumstances beyond a consumer's control, such as illness or job loss, from which the consumer may subsequently recover.[389] Moreover, credit scores do not take into consideration rent payments, typically a family's largest recurring expense. Using credit reports and credit scores to determine public charge status is also inappropriate because many immigrants will not even have a credit history for USCIS to consider, and studies show that even when immigrants do have credit histories, their credit scores are artificially low.[390]

(5) Education and skills

The rule proposes to count as evidence of education and skills the immigrant's history of employment, whether the individual has a high school degree (or its equivalent) or higher education, and whether the individual has occupational skills, certifications or licenses. While these are all reasonable to consider as contributing factors, it is critical that they not be treated as separate elements, but as distinct ways to prove education and skills.

For example, consider an immigrant who has recently graduated college and has limited work history and no professional license. However, because of her grades and major, she has a strong prospect of employment. This should be considered a positive factor in its totality, rather than the lack of work history or license being held against her. Alternatively, another immigrant might not have graduated high school due to the lack of educational opportunities in his home country but has a long history of work as a landscaper. Again, this should be considered a total positive factor, rather than considered a mix of positive and negative factors.

Treating each of these elements as separate factors is inconsistent with Congressional intent and the general concept of a totality of circumstances. In fact, it would be a backdoor way to enact the RAISE Act, which would award points to potential immigrants based on their age, English language fluency, levels of education and majors. President Trump has advocated for this proposal and contrasted it with what he describes as "today's low-skill system, just a terrible system where anybody comes in."[391] However, this bill only received support from three Senators, and was never even heard in committee.[392]

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[388] Consumer Financial Protection Bureau, *Data Point: Credit Invisibles*, 2015, http://files.consumerfinance.gov/f/201505_cfpb_data-point-credit-invisibles.pdf (most credit scoring models built to predict likelihood relative to other borrowers that consumer will become 90 or more days past due in the following two years).

[389] Chi Chi Wu, *Solving the Credit Conundrum: Helping Consumers' Credit Records Impaired by the Foreclosure Crisis and Great Recession*, National Consumer Law Center, 2013, www.nclc.org/images/pdf/credit_reports/report-credit-conundrum-2013.pdf.

[390] Board of Governors of the Federal Reserve System, R*eport to the Congress on Credit Scoring and Its Effects on the Availability and Affordability of Credit*, 2007, https://www.federalreserve.gov/boarddocs/rptcongress/creditscore/creditscore.pdf.

[391] The White House ,"President Donald J. Trump Backs RAISE Act,", August 2, 2017,https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-backs-raise-act/.

[392] U.S. Congress, "S.1720 - RAISE Act,", August 2, 2017, https://www.congress.gov/bill/115th-congress/senate-bill/1720.

(D) English Language Requirement

As discussed at length in section I of our comments, adding English Proficiency as a factor in the public charge test is a fundamental change from our historic commitment to welcoming and integrating immigrants. The public charge test applies to people when they first enter the U.S. or apply for lawful permanent residence. People from non-English speaking countries who are newly entering the U.S. or applying to adjust status are less likely to have gained proficiency in English. Congress did not impose an English language test on applicants for lawful permanent residence. Instead, our immigration laws explicitly require an English test for lawful permanent residents who have lived in the U.S. for a number of years--when they apply to become a U.S. Citizen. And, Congress has supported our nation's commitment to welcoming and integrating immigrants by authorizing funds to support English language learners.[393]

DHS cites the 2014 Survey of Income and Program Participation (SIPP) data about the use of benefits by populations at various levels of English language ability. Yet DHS fails to provide any causal linkage between the data cited and its conclusions and fails to consider alternative reasons why people who are more limited English proficient may be more likely to secure services. For example, states such as New York and California, which have higher numbers of LEP populations, also have higher income thresholds for Medicaid. In addition, DHS claims that "numerous studies have shown that immigrants' English language proficiency or ability to acquire English proficiency directly correlate to a newcomer's economic assimilation into the United States," yet three out of the four studies cited use data derived from Europe, while the fourth relies on Current Population Survey data, which is nearly 30 years old. This evidence is insufficient to support DHS' proposed change.

In addition, by proposing to consider the potential use of housing assistance, Medicaid and SNAP in public charge determinations, DHS is making it more difficult for people who are LEP to improve their skills through English language classes. Barriers to education already make access to these courses difficult, but by deterring people from securing health care, food assistance or stable affordable housing, the proposed rule could leave affected populations with little time or ability to focus on skills development.[394]

Finally, by giving de-facto preference to individuals from English speaking nations, the proposed regulation disproportionately harms populations with high levels of limited English proficiency. DHS is effectively reworking the careful balancing that Congress created to move the country away from the racist quota system. In particular, this standard disproportionately impacts Asian immigrants. Asian people in the U.S. have the highest rates of limited English proficiency. Nearly three out of four Asians speak languages other than English at home, and 35 percent have limited English proficiency.[395]

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[393] U.S. Department of Labor, *Education and Training Administration Training and Education Notice*, 2017, https://wdr.doleta.gov/directives/attach/TEN/TEN_28-16_Change_1.pdf.
[394] Jennifer Ludden, *Barriers Abound for Immigrants Learning English*, National Public Radio, 2007, https://www.npr.org/templates/story/story.php?storyId=14330106.
[395] Karthick Ramakrishnan and Farah Z. Ahmad, *State of Asian Americans and Pacific Islanders Series*, Center for American Progress, 2014, https://cdn.americanprogress.org/wp-content/uploads/2014/09/AAPIReport-comp.pdf.

(7) Affidavit of support

At 51198, the Department clarifies that under the proposed rule, it would only consider the affidavit of support as one factor in the totality of the circumstances. The Department also indicates that it will scrutinize the relationship of the sponsor to the applicant, looking at both familial status and whether or not the sponsor lives with the applicant, suggesting without citing a single basis for support, that "this could be indicative of the sponsor's willingness to support the alien." CLASP opposes this dramatic shift from decades of established practice and policy.

A properly filed I-864 has long been considered sufficient to overcome public charge concerns in the totality of the circumstances analysis.[396] Guidance in the Foreign Affairs Manual explained that a joint sponsor "can be a friend or a non-relative who does not reside in and is not necessarily financially connected with the sponsor's household."[397] This guidance was consistent with the statutory language at 8 U.S.C. § 1183a which defined the requirements of a "sponsor" but does not include a requirement that a joint sponsor have a familial relationship to the immigrant.

The information provided on the Affidavit of Support is intended to allow the government to determine whether the applicant has adequate means of financial support in the United States. The form itself is considered a contract between the visa applicant and the sponsor, as well as between the sponsor and the United States government, in which the sponsor promises to support the applicant if he or she is unable to do so on his or her own. That promise is essential; an immigrant who can depend on a reliable source of support from a sponsor is dramatically less likely to need any public benefits.

(c) Heavily weighed factors

The Department's proposal to heavily weigh certain factors is inconsistent with the statutory language which does not provide any basis for weighing some factors more heavily than others. Moreover, the proposed rule fails to heavily weigh the only factor that is singled out in statute as absolutely essential -- the provision of a valid affidavit of support.

The rule only proposes one heavily weighed positive factor – that the household has or will make at least 250% of the Federal Poverty Guidelines. This means that low- and middle-income families will not have the benefit of a heavily weighed positive factor as part of their calculation to offset any negative factors.

(1) Heavily weighed negative factors

(i) "The alien is not a full-time student and is authorized to work, but is unable to demonstrate current employment, recent employment history, or no reasonable prospect of future employment"

CLASP opposes this heavily weighed factor as it deeply penalizes individuals who are caregivers, whether for children, seniors, or other family members. Such caregiving work is often a major contribution to the financial as

[396] See, e.g., 9 FAM § 302.8-2(B)(3)
[397] 9 FAM § 302.8-2(C)(7)

well as emotional well-being of a family, as paid care of the same quality would cost thousands of dollars. Unpaid caregiving is often essential for other family members to work.[398] Unpaid caregiving for seniors also saves government programs billions of dollars, both by substituting for paid caregivers and by preventing the need for nursing home care.[399]

This provision disproportionately impacts women and individuals living with disabilities. Women are far more likely to be caregivers for both children and seniors. For people living with disabilities, unemployment rates in the United States are drastically higher than those for people without disabilities,[400] and the disparity is even more dramatic internationally.[401] Similarly, many people with disabilities around the world have been denied access to equal educational opportunities, putting them at a significant disadvantage with respect to this factor.

(ii) "The alien is current receiving or is currently certified or approved to receive one or more public benefit, as defined in 212.21(b)" and (iii) "The alien has received one or more public benefit, as defined in 212.21(b), within the 36 months immediately preceding the alien's application for a visa, admission, or adjustment of status."

The agency's proposal to heavily weigh receipt of benefits – including benefits previously considered – is deeply problematic and inconsistent with the plain meaning of the statutory totality of the circumstances test. The public charge determination was designed to be a narrow tool to identify individuals likely to become primarily dependent on the government for support. The test was never designed to prevent immigration of low- and moderate-income families that may at some point need access to public programs that provide support which allows them to help them continue working. Even if an individual has received cash assistance or long-term care at government expense, the agency must assess the individual's overall circumstances with respect to the future likelihood of the applicant becoming a public charge**.**

The inclusion of previous and current use of benefits as *separate* heavily weighed factors is a further abuse of the totality of circumstances test. Congress did not direct DHS to weigh use of benefits more heavily than other factors, and counting it twice adds yet further weight to this factor.

The studies cited in the preamble to the proposed rule (83 FR 51199) that indicate that families that stop receiving cash assistance under TANF frequently continue to receive nutrition and health assistance are irrelevant to this question, as cash assistance is only available to an extremely limited population of families with children, living in deep poverty. When the preamble says that "of those who left Medicaid," the accurate description of the population would be "of those who stopped receiving cash assistance and also lost Medicaid coverage in spite of specific Congressional intent to delink these benefits." These studies provide zero evidence that previous receipt of the newly added benefits is an indicator of future use.

At 83 FR 51200, the Department asks whether 36 months is the right lookback period for considering previous use of public benefits and whether a shorter or longer timeframe would be better. We strongly oppose any arbitrary

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[398] Lynda Laughlin, *Who's Minding the Kids? Child Care Arrangements: Spring 2011,* Household Economic Studies, U.S. Census Bureau, 2013, https://www2.census.gov/library/publications/2013/demo/p70-135.pdf.
[399] R. Schulz, J. Eden, "Economic Impact of Family Caregiving", Committee on Family Caregiving for Older Adults; Board on Health Care Services, National Academies Press, (2016) https://www.ncbi.nlm.nih.gov/books/NBK396402.
[400] U.S. Dep't of Labor's Bureau of Labor Statistics, *Persons with a Disability: Labor Force Characteristics -2017*, https://www.bls.gov/news.release/pdf/disabl.pdf.
[401] World Health Organization, The World Bank, *World Report on Disability*, 235 - 237 (2011),) http://www.who.int/disabilities/world_report/2011/report.pdf.

lookback period for use of public benefit programs. Inclusion of a retrospective test is fundamentally inconsistent with the forward-looking design of the public charge determination as mandated by law. Past use of a government-funded program is not necessarily predictive of future use. If the specific circumstances that led to the use of public benefits no longer apply, the previous use of benefits is irrelevant.

(iv) (A) The alien has been diagnosed with a medical condition that is likely to require extensive medical treatment or institutionalization or that will interfere with the alien's ability to provide for him- or herself, attend school, or work;

CLASP strongly opposes this provision of the proposed rule as it targets individuals with disabilities, effectively treating disability as an inadmissible category. This heavily weighed factor is tantamount to saying that disability itself is a heavily weighted negative factor, as significant chronic medical conditions are usually disabilities.[402, 403] By treating immigrants with disabilities as public charges, the proposed rule would reinforce prejudice and negative attitudes towards all people with disabilities, viewing them as burdens on society. This punitive and prejudicial approach would reverse decades of disability discrimination law and add to the stigma and discrimination experienced by all individuals who have a disability.

(iv) (B) The alien is uninsured and has neither the prospect of obtaining private health insurance, or the financial resources to pay for reasonably foreseeable medical costs related to a medical condition"

Here again, the proposed rule employs circular reasoning to disproportionately harm individuals living with disabilities. Individuals with disabilities are significantly less likely to have non-subsidized health insurance than those without disabilities (41 % compared to 74 %).[404]Individuals with disabilities often rely on Medicaid/CHIP or the ACA exchanges either because they lack access to other forms of insurance because of their disability,[405] or because private insurance may not cover services they need due to their disability, such as durable medical equipment or occupational therapy.[406] Medicaid also provides wrap-around services to children with disabilities, allowing children to stay at home.[407]For many individuals with a disability, access to government health insurance

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[402] Under Sec. 504 of the Rehabilitation Act, which prohibits discrimination by federal agencies, an individual has a disability if he or she has a "(a) physical or mental impairment that substantially limits one or more major life activities of such individual, (b) a record of such an impairment; or "[is]regarded as having such an impairment." 29 U.S.C. 705 referencing 42 U.S.C. 12102; 29 U.S.C. 12102.

[403] The INA lists health as a factor for public charge, but by treating all chronic medical conditions in persons without unsubsidized health insurance as heavily weighted negative factors, and considering the health of dependents with disabilities, the PR go far beyond the scope of the INA in giving adverse weight to disability.

[404] MaryBeth Musumeci & Julia Foutz, *Medicaid Restructuring under the American Health Care Act and Nonelderly Adults with Disabilities*, Kaiser Family Foundation Issue Brief, March 2017, http://files.kff.org/attachment/Issue-Brief-Medicaid-Restructuring-Under-the-American-Health-Care-Act-and-Nonelderly-Adults-with-Disabilities.

[405] Studies undertaken prior to the ACA showed that less than half of individuals with significant disabilities had far lower rates of insurance coverage than the general population. National Council on Disability, The Current State of Health Care for People with Disabilities (2009), https://www.ncd.gov/publications/2009/Sept302009#Health%20Coverage%20and%20Benefits.

[406]MaryBeth Musumeci, Julia Foutz, *Medicaid's Role for Children with Special Health Care Needs: A Look at Eligibility, Services and Spending* , Kaiser Family Foundation, Issue Brief, Feb. 2018, https://www.kff.org/medicaid/issue-brief/medicaids-role-for-children-with-special-health-care-needs-a-look-at-eligibility-services-and-spending/.

[407] MaryBeth Musumeci, Julia Foutz, *Medicaid's Role for Children with Special Health Care Needs Id*.

is critical to their ability to live independently in the community, and to be self-sufficient and economically productive.[408]

We believe it is illogical and counterproductive to penalize people with disabilities as public charges simply for using the non-cash benefits that Congress and the states have established to enable them to participate fully in society and be self-sufficient. By so doing, the proposed rule fails to appreciate that people with disabilities often need to rely on such programs precisely because they lack access to private insurance or full-time employment due to "prejudice, antiquated attitudes, or the failure to remove societal and institutional barriers" recognized by Congress in the Americans with Disabilities Act.[409]

(v) "The alien had previously been found inadmissible or deportable on public charge grounds."

DHS provides no justification for why this should be a factor at all, let alone a heavily weighed negative factor. This is an arbitrary addition to the statutory factors that serves no purpose except to deter individuals who might conceivably be found to be a public charge from applying, for fear that such a finding would tarnish their future efforts to obtain legal permanent resident status. Imagine two immigrants both applying for status, with exactly the same income, employment history, age, family status, health condition and past use of public benefits. Suppose that one of them had applied for status a few years back and had been found to be a public charge because of their recent use of public benefits and low-income. DHS provides no valid explanation for why these two immigrants should be treated differently today.

(2) Heavily weighed positive factors

(i) The alien's household has financial assets, resources, and support of at least 250 percent of the Federal Poverty Guidelines for a household of the alien's household size; or (ii) The alien is authorized to work and is currently employed with an annual income of at least 250 percent of the Federal Poverty Guidelines (FPG) for a household of the alien's household size.

The Department proposes that income above 250 percent of the FPG be required to be counted as the single heavily weighed positive factor. USCIS provides even less justification for the 250 percent of FPL threshold than provided for the similarly arbitrary 125 FPG threshold used as a negative factor.

The proposed 250 percent FPL threshold disregards the fundamental meaning of public charge, as well as the efforts and contributions of many workers. A standard of 250 percent of the FPL is nearly $63,000 a year for a family of four -- more than the median household income in the U.S.[410] According to Bureau of Labor Statistics (BLS) data, the seasonally adjusted annual mean wage for private, nonfarm occupations was less than $50,000 in October, 2018 - below 250 percent FPL for a three-person household.[411] Among production and nonsupervisory

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[408] Center on Budget and Policy Priorities, Aug. 29, 2017, *Medicaid Works for People with Disabilities*, https://www.cbpp.org/research/health/medicaid-works-for-people-with-disabilities
[409] 42 U.S.C. 12102(a)(2)
[410] U.S. Census Bureau, Income and Poverty in the United States: 2017, 2018, https://www.census.gov/library/publications/2018/demo/p60-263.html.
[411] Bureau of Labor Statistics, *Table A-1. Current and real (constant 1982-1984 dollars) earnings for all employees on private*

workers, mean wage was just over $40,000 - less than 250 percent FPL for a household of two.[412] Indeed, 61% of recently admitted lawful permanent residents did not meet the 250% FPL threshold.[413]

Incorporating a 250 percent FPL income level as the single heavily weighed positive factor in the public charge test would represent a fundamental change to U.S. immigration policy -- and our immigrant population. Migration Policy Institute analysis found that only 39 percent of persons recently granted LPR status had incomes at or above 250 percent FPL.[414]

The 250 percent threshold also does not appear in immigration law, disregards work, relies on circular reasoning, has the perverse effect of discouraging people from supporting family members, and targets immigrants of color. While the Department states that persons with incomes below 250% FPL are more likely to receive public benefits, USCIS admits in footnote 583 that the differences in receipt of non-cash benefits between non-citizens living below 125 percent of FPG and those living either between 125 and 250 percent of the FPG or between 250 and 400 percent of the FPG was not statistically significant.

Furthermore, the 250 percent threshold is based on circular reasoning: The only justification USCIS offers for this arbitrary threshold is that families earning incomes below this level are more likely to receive public benefits - and eligibility for public benefits is, of course, largely based on income. USCIS is essentially penalizing people multiple times - based on not only on their income but on their credit history, access to private health insurance, and potential need for programs like SNAP, Medicaid or housing assistance -- for the same reason: they have a low or moderate income.

The proposed 250 percent of FPL income threshold would also favor white immigrants over people of color. Only a little more than one-third (39 percent) of total recent LPRs had incomes above 250 percent of the FPL.[415] And, although more than half of immigrants from Europe, Canada and Oceania had incomes of at least 250 percent of FPL, only one third or less of immigrants from Mexico and Central America, the Caribbean or Africa had incomes at this level.[416] In other words, this threshold would likely result an immigration policy that favors white immigrants from Europe rather than Latino and Black immigrants from Mexico and Central America, the Caribbean or Africa.

Setting these income standards goes well beyond reasonable interpretation of the law and is in fact an attempt to achieve by regulation a change to the immigration policy of the U.S. that the Administration has sought but

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nonfarm payrolls, seasonally adjusted, 2018, https://www.bls.gov/news.release/realer.t01.htm.

[412] Bureau of Labor Statistics, *Table A-1. Current and real (constant 1982-1984 dollars) earnings for production and nonsupervisory employees on private nonfarm payrolls, seasonally adjusted,* 2018, https://www.bls.gov/news.release/realer.t02.htm.

[413] Randy Capps, et al, *Gauging the Impact of DHS's Proposed Public-Charge Rule on U.S. Immigration*, Migration Policy Institute, 2018, https://www.migrationpolicy.org/research/impact-dhs-public-charge-rule-immigration.

[414] Randy Capps, et al, *Gauging the Impact of DHS's Proposed Public-Charge Rule on U.S. Immigration*, Migration Policy Institute, 2018, https://www.migrationpolicy.org/research/impact-dhs-public-charge-rule-immigration.

[415] Randy Capps, et al, *Gauging the Impact of DHS's Proposed Public-Charge Rule on U.S. Immigration*, Migration Policy Institute, 2018, https://www.migrationpolicy.org/research/impact-dhs-public-charge-rule-immigration.

[416] Randy Capps, et al, *Gauging the Impact of DHS's Proposed Public-Charge Rule on U.S. Immigration*, Migration Policy Institute, 2018, https://www.migrationpolicy.org/research/impact-dhs-public-charge-rule-immigration.

that would require Congressional action-- and that Congress has chosen not to adopt.[417]

(d) Treatment of cash assistance

In this section, DHS states that it will "consider as a negative factor **any amount** of cash assistance for income maintenance, including Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF), State and local cash assistance programs that provide benefits for income maintenance (often called "General Assistance" programs), and programs (including Medicaid) supporting aliens who are institutionalized for long-term care, received, or certified for receipt" received before the effective date of the final rule. (Emphasis added.) Under the 1999 guidance, only receipt of such benefits to the extent that an individual was primarily dependent upon them for subsistence was taken into account. Since 1999, immigrants have relied upon this guidance -- it is unacceptable to retroactively change the test so that receipt of a modest amount of benefits by someone with other income sources would be held against them. The 1999 Guidance, in its entirety, should be applied to any receipt of benefits prior to the effective date of the final rule.

Proposed section 212.23: Exemptions and waivers for public charge ground of inadmissibility

We believe this section accurately captures the exemptions and waivers for the public charge ground inadmissibility. However, much more work is needed to ensure that immigrant communities and service providers are aware of these exemptions.

Proposed section 212.24: Valuation of monetizable benefits

Although the rule appears intended to focus only on receipt of benefits by the individual applicant, in many respects it will hurt the entire family. The regulatory text isn't crystal clear on this point and will cause confusion, fear, administrative burdens on social services agencies. More fundamentally, families are highly likely to avoid seeking these services if they believe it could put any of them at risk.

Proposed section 213: Public charge bonds

At FR 21220, the Department invites comments about the public bond process in general. The use of public charge bonds is impractical and would place an impossible burden on immigrant families. There is no evidence demonstrating that public charge bonds will achieve the desired outcome of preventing people from becoming dependent on government assistance. Years of reliance on monetary bonds in the criminal pretrial context has demonstrated the critical importance of empirical study identifying both predictors and effective mitigators of risk.[418] Monetary bonds in the criminal pretrial context have been discredited as inefficient and unfair, lacking

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[417] S.354 (115th Congress), the RAISE Act, https://www.congress.gov/bill/115th-congress/senate-bill/354; and Statement of President Donald J. Trump, August 2017, https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-backs-raise-act/.

[418] Denise L. Gilman, *To Loose the Bonds: The Deceptive Promise of Freedom from Pretrial immigration Detention, 2016, https://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=11234&context=ilj*.

evidence that money motivates people to appear for court.[419] Moreover, public charge bonds would necessarily have a disparate negative impact on minorities, including U.S. citizens, as financially-based pretrial detention systems have had.[420]

Additionally, studies show that bonds cause long-term hardship and increase the likelihood of financial instability.[421] Public charge bonds are even more likely to cause long-term hardship, given the indefinite life of the bond.[422] Families will face years of annual fees, non-refundable premiums, and liens on the homes and cars put up as collateral charged by for-profit surety companies and their agents.[423] Moreover, the indefinite term and extremely broad and vague conditions governing breach only heightens the risk of exploitation by for-profit companies managing public charge bonds. Impoverishing immigrants and their families will make them more, not less, likely to need assistance. Moreover, at 83 FR 51222, DHS states its intent to require surety bonds, rather than allow for cash or cash equivalent to be placed in escrow. This puts immigrants fully at the mercy of commercial bond companies, who are likely to charge excessive fees, since immigrants will have no alternative to purchasing such a bond. The cost to immigrants of acquiring such a bond (on top of the fees payable to DHS for the posting, substitution, or canceling of a bond) are not included in the cost estimate for this rule.

While DHS creates a new market segment for commercial bond companies, it leaves states and localities, responsible for regulating bond insurers and bond agents--including those issuing immigration detention bonds--holding the bag for consumer protection. Many states already struggle to adequately regulate their current bond industries.[424] By expanding the market without any consideration for the increased burden on states and localities, DHS imposes an unfunded mandate on state and local insurance and financial services regulators.

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[419] Gilman, *To Loose the Bonds.*

[420] Color of Change, ACLU, *Selling Off Our Freedom: How insurance companies have taken over our bail system*, 2017,https://d11gn0ip9m46ig.cloudfront.net/images/059_Bail_Report.pdf; *The High Cost of Bail: How Maryland's Reliance on Money Bail Jails the Poor and Costs the Community Millions*, 2016, http://www.opd.state.md.us/Portals/0/Downloads/High%20Cost%20of%20Bail.pdf; Vera Institute of Justice, *Past Due: Examining the costs and consequences of charging for justice in New Orleans*, 2017, https://www.vera.org/publications/past-due-costs-consequences-charging-for-justice-new-orleans.

[421] Color of Change, ACLU, *Selling Off Our Freedom*; Pretrial Justice Institute, *Pretrial Justice: What Does It Cost? Pretrial Justice: What Does It Cost?*, 2017, https://university.pretrial.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=4c666992-0b1b-632a-13cb-b4ddc66fadcd&forceDialog=0.

[422] Both leaked drafts of the proposed regulation revise the current regulations to eliminate the automatic cancellation of the public charge bond upon naturalization, death, or permanent departure. *See* 8 C.F.R. § 103.6(c)(1). Instead, DHS seeks to impose an affirmative obligation on the immigrant or obligor to request the cancellation of the bond upon naturalization, death, or permanent departure. Most LPRs are not eligible to naturalize until at least five years after becoming an LPR, and many more are unable to naturalize for longer than that for a variety of reasons.

[423] *Selling Off Our Freedom*; *High Cost of Bail*; Past Due; UCLA School of Law Criminal Justice Reform Clinic, *The Devil in the Details: Bail Bond Contracts in California*, 2017, https://static.prisonpolicy.org/scans/UCLA_Devil%20_in_the_Details.pdf; Brooklyn Community Bail Fund, *License & Registration, Please...An examination of the practices and operations of the commercial bail bond industry in New York City*, 2017, https://static1.squarespace.com/static/5824a5aa579fb35e65295211/t/594c39758419c243fdb27cad/1498167672801/NYCBailBondReport_ExecSummary.pdf.

[424] *Selling Off Our Freedom*, at 34-37; Jessica Silver-Greenberg, Shaila Dewan, *When Bail Feels Less Like Freedom, More Like Extortion,* New York Times, 2018, https://www.nytimes.com/2018/03/31/us/bail-bonds-extortion.html?mabReward=CTM4&recid=12eCxx0XJ509HkP8Jk98Q8kEubA&recp=3&action=click&pgtype=Homepage&region=CColumn&module=Recommendation&src=rechp&WT.nav=RecEngine.

Proposed section 214: Nonimmigrant Classes and proposed section 248: Change of Nonimmigrant classification

The Department's proposal to require a public charge assessment of applicants to extend/change status is unnecessary and a waste of USCIS resources. Under the proposed rule, USCIS would be required to conduct public charge assessments of an estimated 511,201 individuals seeking an extension or change of nonimmigrant status each year. In each of these cases, USCIS would have discretion to require the applicant to submit Form I-944, Declaration of Self-Sufficiency. In key respects, this is duplicative of work done by the Department of State (DOS) and U.S. Customs and Border Protection (CBP). Consular offices already conduct public charge assessments of most nonimmigrants when processing their visas, and CBP conducts an admissibility determination when processing nonimmigrants at the port of entry.[425] Requiring these forms would be burdensome to the applicants for change/extension of status, but also to USCIS, which would delay the processing of status for both these individuals and others.

In addition, many nonimmigrant classifications require the applicant to prove they can support themselves financially. F-1 and M-1 students, for example, must provide evidence of "sufficient funds available for self-support during the entire proposed course of study."[426] B-1 and B-2 tourists also need to show that they have adequate means of financial support during the course of their stay in the U.S.[427] Meanwhile, by definition, most employment-based nonimmigrant visas mandate sponsorship and compensation by employers. Financial stability is therefore already built into most nonimmigrant visa categories. Given these existing safeguards, any investment of USCIS resources to assess nonimmigrants on public charge would be an unnecessary administrative burden assumed by an already overstretched agency.

This proposal is yet another example of a needlessly restrictive and bureaucratic process imposed by the current administration that has fostered a growing perception among foreign nationals that the U.S. has become an undesirable destination. The proposed rule will reinforce that view, damaging the long-held perception of the U.S. as a country of welcome and chilling international travel and commerce.

Proposed section 245: Adjustment of Status to that of a Person Admitted for Permanent Residence

The proposed rule would require the agency to process Forms I-944, Declaration of Self-Sufficiency, in connection with an estimated 382,264 adjustment of status applications annually. CLASP strongly opposes the requirement of this overly broad form which will be an impossible burden for many applicants and will deepen existing processing delays.

The draft form I-944 instructions direct individuals to provide documentation if they have ever applied for or received the listed public benefits in the form of "a letter, notice, certification, or other agency documents" that contain information about the exact amount and dates of benefits received.[428] This requirement includes no limit

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[425] Department of State, 9 FAM 302.8; https://fam.state.gov/fam/09fam/09fam030208.html.
[426] USCIS, Students and Employment (Feb. 6, 2018); Noncitizen Eligibility for Federal Public Assistance: Policy Overview.
[427] Department of State, Visitor Visa, https://travel.state.gov/content/travel/en/us-visas/tourism-visit/visitor.html.
[428] U.S Citizenship and Immigration Services, *Instructions for Declaration of Self-Sufficiency,* 2018, https://www.regulations.gov/document?D=USCIS-2010-0012-0047.

on the amount or duration of benefits. The form also includes no provision limiting information required to benefits received after effective date of final rule. Furthermore, the form requires information that may not be contained in typical agency notices. With no time limit, it's likely that applicant may no longer have old notices and will need to contact the agency that administered the benefit to obtain a copy. In many cases this will require a special request to the agency to prepare an individualized letter. This will generate a huge workload for agencies and may require access to information that has been archived from no longer functional eligibility systems that have been replaced.

The proposed I-944 form will also be burdensome for individuals who must track down documentation of past receipt of benefits. Interactions with government agencies that administer benefit programs like SNAP and Medicaid can be incredibly time-consuming. For example, one study that found the average food stamp application took about five hours of time to complete, including two trips to a food stamp office.[429] The Department's estimate that it will only take applicants 4 hours and 30 minutes to file Form I–944 **and** to receive certified documents is both inaccurate and out of touch with the burdens that benefit recipients face when interfacing with state and local agencies.

Requiring a Declaration of Self-Sufficiency for immigrants seeking adjustment of status to lawful permanent residence would consume significant U.S. Citizenship and Immigration Services (USCIS) resources and deepen existing delays in immigration benefit form processing. The Department's time estimate for completing the I-944 purportedly includes "the time for reviewing instructions, gathering the required documentation and information, completing the declaration, preparing statements, attaching necessary documentation, and submitting the declaration." However, this appears to be grossly underestimated. In addition to preparing the form and gathering supporting documentation from agencies which provided public benefits to an applicant at any time in the past, the time spent by lawyers to advise, document and fill out forms will increase significantly. Lawyers must assess every factor in the rule that might impact the public charge assessment.

These operational demands would be levied upon an agency that already suffers profound capacity shortfalls. With nearly 6 million pending cases as of March 31, 2018, DHS has conceded that USCIS lacks the resources to timely process its existing workload.[430] In fact, processing times for many of the agency's product lines has doubled in recent years.[431]

Processing delays upend the lives of immigrants and their U.S. citizen families. Lengthy wait times can result in applicants losing their jobs, thus depriving their families—including families with U.S. citizen children—of income

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[429] Julia Isaacs, *The Costs of Benefit Delivery in the Food Stamp Program,* Brookings Institution, *2008,* https://www.brookings.edu/wp-content/uploads/2016/06/03_food_stamp_isaacs.pdf.
[430] USCIS, *Data Set: All USCIS Application and Petition Form Types: Fiscal Year 2018, 2nd Quarter,* 2018, https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/Quarterly_All_Forms_FY18Q2.pdf; and DHS, Annu*al Report on the Impact of the Homeland Security Act on Immigration Functions Transferred to the Department of Homeland Security*, 2018, https://www.uscis.gov/sites/default/files/reports-studies/Annual-Report-on-the-Impact-of-the-Homeland-Security-Act-on-Immigration-Functions-Transferred-to-the-DHS.pdf.
[431] USCIS, *Historical National Average Processing Time for All USCIS Offices,* 2018, https://egov.uscis.gov/processing-times/historic-pt.

essential to necessities like food and housing.[432] Adjudication delays also lead to expiration of driver's licenses, which immigrants may rely upon to access banking, medical treatment, and other indispensable services, as well as for transportation to school and work. Delays also prolong the separation of families dependent on case approval for their reunion.

Despite the Department's admission of USCIS's inability to accommodate its current inventory, the proposed rule would substantially increase the agency's workload. This would, in turn, deepen USCIS case processing delays and compound the resulting harm to the public through heightened job loss, food shortages, and family separation. In short, the proposed rule will make an operational crisis appreciably worse, and immigrant families throughout the country will suffer the consequences.

In conclusion, we urge DHS to withdraw the proposed regulation in its entirety. As anti-poverty experts, we believe that the proposed changes will have profound and damaging consequences for the well-being and long-term success of immigrants and their families. We encourage the Department to dedicate its efforts to advancing policies that truly support economic security, self-sufficiency, and a stronger future for the United States by promoting – rather than undermining – the ability of immigrants, their families and children, and their communities to thrive.

Thank you for the opportunity to submit these comments.

Sincerely,

Olivia Golden, Executive Director
Center for Law and Social Policy

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[432] American Immigration Lawyers Association (AILA), *Deconstructing the Invisible Wall*, 2018, http://www.aila.org/infonet/aila-report-deconstructing-the-invisible-wall.

APPENDIX I: CLASP'S CONTRIBUTORS TO OUR PUBLIC COMMENTS

Listed Alphabetically

Wendy Cervantes is a senior policy analyst at CLASP, where she works across the organization's policy teams to develop and advocate for policies that support low-income immigrants and their families. As a member of the child care and early education team, she also focuses on improving access to these programs for children of immigrants and children of color. Ms. Cervantes is an expert on the cross-sector policy issues that impact children of immigrants, including family economics, child welfare, immigration, education, healthcare, and human rights. Prior to joining CLASP, Ms. Cervantes was vice president of immigration and child rights at First Focus, where she led the organization's federal policy work on immigration and established the Center for the Children of Immigrants. She also served as director of programs at La Plaza, a Latino community-based organization in central Indiana, where she oversaw the implementation and evaluation of education, health, and social service programs. Earlier in her career, Ms. Cervantes worked at the Annie E. Casey Foundation where she managed the national immigrant and refugee families and the District of Columbia portfolios. She also has experience as a community organizer and an adult ESL instructor. Ms. Cervantes currently serves on the advisory board of the Center on Immigration and Child Welfare and the Board of Welcome.US. She previously served on the steering committee of the U.S. Campaign for Ratification of the UN Convention on the Rights of the Child. In 2011, she was selected as an ALL IN fellow with the National Hispana Leadership Institute. The proud daughter of Mexican immigrants, Ms. Cervantes holds an M.A. in Latin American studies and political science from the University of New Mexico and a bachelor's in communications from the University of Southern California.

Rosa M. García is a senior policy analyst with CLASP's Center for Postsecondary and Economic Success, where she works to expand access to postsecondary opportunities and career pathways for low-income students, low-skilled adults, students of color, and immigrants. Rosa also works across CLASP's policy teams to help advance CLASP's racial equity agenda. Prior to joining CLASP, Rosa worked to promote access, affordability, equity and diversity, and student success in higher education through her roles as a public servant and advocate at the federal, state, and local level. Her previous positions include Deputy Chief of Staff/Legislative Director to a senior member of the Congressional Hispanic Caucus, Executive Director of Legislative Affairs at the Hispanic Association of Colleges and Universities (HACU), Special Assistant/Legislative Aide to a County Councilmember in Montgomery County, Maryland and a gubernatorial appointment to the Maryland State Board of Education. Rosa has also worked at the Mexican American Legal Defense and Educational Fund (MALDEF), the U.S. Census Bureau, and the Morris K. Udall Foundation. Early in her career, Rosa served as an Assistant Dean of Admission at Wesleyan University and Swarthmore College, where she worked to increase the representation of students of color on campus. As an educator, Rosa has provided academic counseling, coaching and mentoring to low-income students, immigrants, and students of diverse backgrounds and taught underserved youth and adult learners in various educational settings.

Olivia Golden is CLASP's executive director. An expert in child and family programs at the federal, state, and local levels, she has a track record of delivering results for low-income children and families in the nonprofit sector and at all levels of government. During the eight years she served as Commissioner for Children, Youth, and Families and then as Assistant Secretary for Children and Families at the U.S. Department of Health and Human Services (1993-2001), Ms. Golden was a key player in expanding and improving Head Start and creating Early Head Start, implementing landmark welfare reform, tripling the level of funding for child care, and doubling adoptions from foster care. As an Institute fellow at the Urban Institute from 2008 to 2013, Ms. Golden spoke, wrote, and led major initiatives on poverty and the safety net, families' economic security and children's well-being. She brings to CLASP the leadership role in a major multi-state initiative, Work Support Strategies, which provides six states with the opportunity to design, test, and implement reforms to improve low-income working families' access to health reform, nutrition assistance, and child care subsidies.

Under her leadership from 2001 to 2004, the D.C. Children and Family Services Agency emerged from federal court receivership and markedly improved the lives of children in the District. Her book *Reforming Child Welfare* [2009] melds this experience with original research to recommend policy, practice, and leadership strategies to improve outcomes for very vulnerable children and their families. During 2007, she oversaw the management of all state government agencies as New York's director of state operations. She was also director of programs and policy at the Children's Defense Fund (1991-1993), a lecturer in public policy at Harvard University's Kennedy School of Government at (1987-1991), and budget director of Massachusetts's Executive Office of Human Services (1983-1985). Her book, *Poor Children and Welfare Reform* [1992], draws lessons from welfare programs around the country that tried to make a difference to families by serving two generations, both parent and child. Ms. Golden holds a doctorate and a master's degree in public policy from the Kennedy School of Government at Harvard, where she earned a B.A. in philosophy and government.

Tanya L. Goldman is a senior policy analyst/attorney with CLASP's job quality team. Ms. Goldman focuses on policy solutions that improve job quality for workers, strengthen worker protections, and increase economic security for low-income working families. She brings expertise in the strategic enforcement of workplace labor standards. Prior to joining CLASP, Ms. Goldman had several positions in the federal government focused on protecting and upholding labor and employment laws. She worked at the U.S. Department of Labor, first as the Deputy Chief of Staff and Senior Policy Advisor to the Administrator of the Wage and Hour Division, focusing on strategic enforcement and protection of workers' labor standards. She also served as an Administrative Appeals Judge, issuing decisions in cases arising under a wide range of worker protection laws. Before working at the U.S. Department of Labor, Ms. Goldman prosecuted violations of federal employment laws at the U.S. Equal Employment Opportunity Commission. Early in her career, Ms. Goldman clerked for a federal judge and taught at Tulane University Law School. An adjunct professor at the Georgetown University Law Center, Ms. Goldman holds an undergraduate degree from Stanford University and a law degree from Harvard Law School.

Madison Hardee is a senior policy analyst/attorney at CLASP, where she focuses on issues affecting access to health care and public benefits for immigrants and mixed-status families. Ms. Hardee co-leads the Protecting Immigrant Families, Advancing Our Future Campaign in collaboration with the National Immigration Law Center. Prior to joining CLASP, Ms. Hardee spent five years as an attorney with Charlotte Center for Legal Advocacy, where she provided direct legal representation to low-income clients across public benefit programs and saw first-hand how programs like Medicaid, SNAP and SSI reduce economic hardship, improve health, and increase stability. She successfully challenged state agency decisions and identified several areas for systemic advocacy. Working together with partner organizations, Ms. Hardee negotiated significant changes to Medicaid and ACA eligibility policies, providing access to health care for tens of thousands of low-income immigrants. Ms. Hardee holds a Juris Doctor from Tulane Law School and a bachelor's degree in public health from George Washington University. In 2016, she was presented with the New Leader in Advocacy Award by the National Legal Aid and Defender Association.

Elizabeth Lower-Basch is director of CLASP's income and work supports team. Her expertise is federal and state welfare (TANF) policy, other supports for low-income working families (such as refundable tax credits), systems integration, and job quality. From 1996 to 2006, Ms. Lower-Basch worked for the Office of the Assistant Secretary for Planning and Evaluation at the U.S. Department of Health and Human Services. In this position, she was a lead welfare policy analyst, supporting legislative and regulatory processes and managing research projects. She received a Master of Public Policy from Harvard University's Kennedy School of Government.

Hannah Matthews is Deputy Executive Director for Policy. In this role, she provides leadership, strategic guidance, and support for the organization's policy and advocacy agenda. She is an expert on federal and state child care and early education policies and cross-sector policies that affect young children, including children of immigrants. Previously, Ms. Matthews was CLASP's director of child care and early education. In that role,

she advocated for public policies that advanced healthy child development, parent wellbeing, and family economic stability. She was also a leader on improving access to quality child care and early education for children of immigrants and children of color. Ms. Matthews is a nationally recognized expert on the federal Child Care and Development Block Grant (CCDBG) and worked with advocates and policymakers nationally and in states to improve child care subsidy policies for low-income children and families. Her work helped to inform the 2014 reauthorization of CCDBG, its implementation in the states, and to secure the largest federal funding increase in CCDBG's history in 2018. Ms. Matthews also held policy analyst and senior policy analyst roles at CLASP and served as a senior advisor on child care policy in the U.S. Department of Health and Human Services in 2015. Prior to joining CLASP, she worked in research assistant positions at the National Assembly of Health and Human Service Organizations, the Levitan Center for Social Policy Studies, and Voices for America's Children. She also worked at Human Rights Watch. Ms. Matthews earned a bachelor's degree from The George Washington University, and a master's degree in public policy from Johns Hopkins University.

Renato Rocha is a policy analyst within CLASP's Income and Work Supports team. He focuses on issues regarding work requirements and other related provisions across programs as well as access to public benefits for immigrant families. Prior to CLASP, Renato was an economic policy analyst at UnidosUS (formerly National Council of La Raza), where he conducted analysis of consumer protection, budget, tax, disaster relief, and labor issues that impact the wellbeing of Latino and immigrant communities. Earlier in his career, Renato engaged in efforts to promote comprehensive immigration reform and advocate for enforcement of farmworker labor-protection laws at Farmworker Justice. In graduate school, he also had the opportunity to work at the National Immigration Law Center, where he analyzed policy issues affecting deferred action recipients. Renato holds a Master in Public Affairs from Princeton University's Woodrow Wilson School of Public and International Affairs and a B.A. in Politics from Occidental College. In 2013, Renato served as a Fulbright Public Policy Initiative Fellow to Mexico.

Shiva Sethi is a research assistant for the child care and early education team at CLASP. He provides research support and analysis on various early education issues. Before joining CLASP, Mr. Sethi interned in the U.S. Department of State's Office of Civil Rights and at the Santa Fe Institute. He also served as a resident advisor, teaching assistant, and orientation leader during his undergraduate career. He recently graduated from the University of North Carolina at Chapel Hill with a B.A. in economics and global studies.

Darrel Thompson is a research assistant with CLASP's Income and Work Supports team. He provides research support and analysis on various low-income and work support programs. Prior to joining CLASP, Darrel interned at the Center on Budget and Policy Priorities and the Lou Frey Institute of Politics and Government. He holds a bachelor's degree in political science from the University of Central Florida.

Rebecca Ullrich is a policy analyst with CLASP's child care and early education team. She uses qualitative and quantitative analysis to advocate for state and federal policies that support young children and their families. Prior to CLASP, Ms. Ullrich was a policy analyst with the Center for American Progress' early childhood team. In that capacity, she focused on the early childhood workforce, early intervention, and measures of quality in early childhood programs. Ms. Ullrich holds a master's degree in applied developmental psychology from George Mason University as well as a bachelor's degree in human development from Virginia Tech.

EXHIBIT 8

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Comments

Department of Homeland Security
Notice of Proposed Rulemaking:

Inadmissibility on Public Charge Grounds

RIN 1615-AA22

Docket ID: USCIS-2010-0012

Submitted by:

Center on Budget and Policy Priorities

December 7, 2018

Table of Contents

Appendix II has been submitted in separate files.

I Introduction

This comment is submitted on behalf of the Center on Budget and Policy Priorities in response to the Department of Homeland Security's Notice of Proposed Rulemaking on Inadmissibility on Public Charge Grounds (NPRM or "proposed rule" hereafter) published in the Federal Register on October 10, 2018. The Center on Budget and Policy Priorities (CBPP) is a nonpartisan research and policy institute. CBPP pursues federal and state policies designed to reduce both poverty and disparity, to promote opportunity, and to achieve fiscal responsibility in equitable and effective ways. We apply our expertise in programs and policies to inform debates on issues affecting low- and moderate-income people and fiscal policy. Through our work we have developed a deep knowledge of eligibility and enrollment policies and processes as well as the short- and long-term benefits of major federal benefit programs, including benefits specifically implicated in the proposed public charge rule: SNAP, Medicaid, Medicare, and federal rental assistance. Our staff has deep knowledge and expertise on analysis of statistical data including poverty, income and employment trends, and the impact of safety net programs on poverty and social mobility. Appendix I provides brief biographies of CBPP experts who contributed to these comments. We appreciate the opportunity to comment on the important policy issues presented by the NPRM.

The NPRM proposes significant changes to decades-old policies and practices for determining who is "likely to become a public charge." The public charge determination is a critical part of the nation's immigration laws because many individuals seeking to adjust their immigration status or seeking to enter the U.S. lawfully are subject to a public charge determination.[1] Those subject to the determination who are found likely to become a public charge are denied status adjustment or lawful entry. ("Lawful entry" throughout these comments means initial entry or re-entry of lawful permanent residents [LPRs] who have left the country and are subject to a public charge determination in order to return.) Those seeking a status adjustment already reside in the U.S.; many have family members who are permanent residents or U.S. citizens. And, many seeking lawful entry have family members they are seeking to reunify with who are permanent residents of the U.S. or U.S. citizens. When individuals are denied status adjustment, they often are forced to leave the U.S., while those denied lawful entry are unable to come or return to the U.S. Decisions about public charge, then, will affect whether families will be unified or separated and who will be part of our communities.

These decisions are about the basic character of our nation. For decades, caselaw has held that individuals "incapable of earning a livelihood" should be considered public charges, and the public charge determination was based on the likelihood that an individual would rely on government cash assistance for more than half of his income or on government-provided institutional care. The public charge standard was not used to keep people out of the country — or to remove them — if they worked hard at lower-paying jobs and thus contributed to their communities and the economy but sometimes needed supplemental assistance. In short, public charge has not generally been used

[1] The proposed rule would also extend certain aspects of the newly defined public charge assessment to non-immigrants seeking to extend or change their status. We object to this extension. Except for very narrow circumstances, most non-immigrants would not qualify for public benefit programs identified in the proposed rule, but changes in the rule for non-immigrants would result in more confusion among immigrant families and in some cases result in eligible non-immigrants (such as pregnant women or children) forgoing needed services. such as treatment for a serious medical condition.

to keep out or remove individuals who are able and willing to work hard to build a life in the United States but who start out with modest means. Moreover, the country has been better for this policy. Extensive research has documented the positive impact of immigrants on the nation. Immigrants fill important jobs and contribute to economic growth, and research has shown that immigrants raise children who demonstrate substantial upward mobility, attaining more education than their parents and moving up the economic ladder.

The proposed rule would significantly broaden the public charge definition and, in turn, change the character of the country to one that only welcomes those already with substantial wealth and income. Rather than denying entry or status adjustment to individuals who are or are likely to become *primarily dependent* on government cash assistance and institutional care, the proposed changes would put in place a public charge definition so broad that more than half of all U.S.-born citizens could be deemed a public charge — and, by extension and implication, considered a drag on the United States — if this definition were applied to them.

The proposed rule would deprive the United States of the contributions of many hard-working immigrants who want to build a better life for themselves as well as their children, and it would result in immigrant families forgoing assistance they need out of fear of negative immigration consequences. It should be rejected in whole.

These issues are discussed briefly in this introduction and in depth in our full comments.

A. Summary of impacts

Under the proposed rule, individuals determined likely to receive not only cash assistance or government-provided institutional care but also nutrition assistance through SNAP, health care through Medicaid, affordable drugs through the Medicare Part D Low-Income Subsidy program, and assistance affording housing through federal rental assistance programs at *any time* over the succeeding *decades* of their lives would be deemed "likely to become a public charge" and would generally be denied status adjustment or lawful entry into the U.S., except in narrow circumstances where they can present a bond (which as described below, is unlikely to provide a path to a favorable immigration decision for many individuals).

The proposed rule would have two main impacts.

- It would increase, likely dramatically, the number of individuals denied status adjustment or lawful entry/reentry due to a public charge determination because they come from modest means rather than on the basis of their abilities, their family ties, or their (and their families') willingness to work hard to build a life in the U.S.
- It would cause immigrant families — many of whom will not face a public charge determination and include children who are U.S. citizens — to forgo participation in programs such as SNAP, Medicaid, and housing assistance out of fear that receiving benefits or health coverage through these programs would have negative immigration consequences. The policies embedded in the NPRM send a clear message: in the federal government's view, immigrants who access benefits for which Congress has made them eligible are harming the country and are not welcome. This message is far clearer than the confusing details of

immigration law and the nuances of who is, and who is not, subject to a public charge determination.

The NPRM appears premised on several assumptions, including: (1) immigration officials can accurately predict which individuals will receive any of a far broader set of benefits, at levels above confusing thresholds, at any point decades into the future; and (2) denying status adjustment or entry to individuals based on immigration officials' predictions — faulty or not — of future benefit receipt would be a positive for the United States. There is strong evidence that these assumptions are wrong and that proceeding with this proposed rule would harm families, communities, and the economy. Much of this evidence is missing from the NPRM's explanation of the proposed rule and its likely consequences.

B. Guide to CBPP comments

The remainder of these comments will discuss the deep flaws with the NPRM. Specifically, the comments proceed as follows:

- **Section II: New Public Charge Definition Is Overbroad and Would Result in Many Who Work and Contribute to their Communities and the Economy Being Denied Status Adjustment or Lawful Entry.** This section analyzes the extent to which the definition is overbroad and would, if applied to US.-born citizens, result in likely more than half of all such individuals being determined a public charge. It shows that in just a single year, some 3 in 10 native-born U.S. citizens receive a benefit included in the proposed public charge definition; over longer periods of time, benefit receipt is significantly higher. If one looks at the U.S. native-born citizen population in 2014 and considers benefit receipt over the 1998-2014 period, some 40 to 50 percent received one of the benefits in the public charge definition. If we had data that allowed us to look at native-born U.S. citizens over the course of their full lifetimes, benefit receipt would exceed 50 percent of the population.

  The section also explores how the proposed public charge criteria would discriminate against individuals from poorer countries, regardless of their talents, because the incomes of the vast majority of people from many countries fall below the new 125 percent-of-poverty threshold included as a consideration in the public charge determination under the proposed rule. The section also discusses why the proposed rule could lead to more incidents in which statistical discrimination or implicit bias affects immigration officials' decisions on status adjustment and entry for people of color.

  There is an extensive academic literature on the contributions of immigrants to the U.S. economy and the upward mobility exhibited by both immigrants and their children; this section reviews this research and its relevance to consideration of the proposed rule. Immigrants play an important role in a broad set of industries, and the most authoritative evidence does not show that recently arrived immigrants impose a difficult burden on taxpayers. As the comments discuss, the proposed rule reflects a flawed understanding of the U.S.'s dynamic labor market and the upward economic trajectory of most immigrants; many individuals, including both immigrants and native-born U.S. citizens, rely on public benefits at some point during their lives, but of those who do either work at the same time or go on to work and contribute their labor to the economy.

The proposed rule also sets forth policies and processes for public charge bonds — and our comments discuss why these bonds are unlikely to provide a pathway for many individuals to overcome a public charge determination. Finally, our comments discuss the ways in which the proposed rule skews the long-standing "totality of circumstances" test. In particular, the comments discuss why the changes undermine the test by creating heavily weighed factors and a large number of financial considerations that heighten the likelihood that individuals of modest means — regardless of their talents and willingness to work hard — will be denied status adjustment or entry on a public charge basis.

- **Section III: Medicaid, Medicare Part D Low-Income Subsidies, SNAP, and Federal Rental Assistance Should Not Be Added to the Public Charge Definition.** This section discusses the problems that arise from the inclusion of each of these benefit programs in the expanded definition of public charge, including both why they should not be considered when determining whether someone should be denied entry or status adjustment and why their inclusion would result immigrant families forgoing needed assistance. There is a substantial body of research on the positive impacts of these programs on short- and longer-term outcomes for those who participate in them; this section reviews that research and discusses its relevance to consideration of this NPRM. The section discusses the ways in which the proposed "threshold" for the amount or duration of benefits received would lead to individuals being defined as a public charge based on low levels of benefit receipt and why immigration officials would not be able to implement these thresholds when predicting future benefit receipt. And the comments discuss why benefit receipt within the last 36 months should not be a heavily weighed factor and concerns about retroactively applying the new thresholds to past receipt of cash benefits. Finally, this section of the comments discuss the steps states and localities would have to take to try to reduce confusion about the proposed rule and reduce the degree to which families that are unlikely to face a public charge determination forgo benefits their families need.
- **Section IV: Proposed Policy Changes Would Lead Immigrant Families to Forgo Needed Assistance and Health Care and Cause Significant Harm to Communities, States, and Individuals.** This section reviews the evidence suggesting that the rule would lead a significant number of immigrant families — including many who will never face a public charge determination — to forgo participation in programs such as SNAP and Medicaid, and the negative impacts this "chill effect" would have on individuals, families, and health providers, as well as the country overall, over the short and longer term. The section also explains why the thresholds for benefit receipt will not reduce confusion or fear among immigrant families.
- **Section V: Use of Benefits Among Children Should Not Be Considered in Public Charge Determinations.** This section responds to a request by DHS for comment on whether benefits received by children should be considered as part of the public charge determination and explains why such benefits should not be considered. The comments describe the research evidence about the ways in which children would be harmed if they (and pregnant women) forgo needed assistance, including the long-lasting negative impacts on children's health and educational outcomes.
- **Section VI: The Cost-Benefit Analysis Exemplifies and Compounds the Serious Deficiencies in DHS's Evaluation of and Justification for the Proposed Rule.** This section of our comments discusses a myriad of ways that the NPRM fails to provide the analyses needed by both the public and policymakers to evaluate the likely impact of the

> proposed rule and weigh the costs and benefits. DHS's overall analysis of the proposed rule, including its discussion of costs and benefits in the Executive Summary and "Cost-Benefit Analysis," does not provide the sound qualitative discussion or quantitative estimates needed to evaluate the proposed rule's likely impacts. DHS's analysis fails to answer basic questions related to the individuals and entities the proposed rule would harm, how the proposed rule would affect the economy in the short and long term, and how it would affect key sectors within the economy. This means that the public, whose comments are sought on this proposed rule, lacks the information and data necessary to fully evaluate the proposed rule or comment on key aspects of the justification for the proposed rule. Moreover, if such information was also unavailable to policymakers, the lack of analysis also means that they have crafted policies without the information they need to understand its impacts.

Our comments include an extensive Appendix (divided into multiple files for purposes of submission through the online portal) that provides the text of all of the source materials referenced throughout our comments, to ensure that DHS and other agencies considering the policy issues raised by the proposed rule will have complete and simple access to the relevant research across multiple fields that should be considered. The Appendix with this reference material is organized by the first author's last name, so that for any reference, it is clear which file the document resides in. Each Appendix file is searchable, so that a user can quickly find any particular reference and has a table of contents.

It is important to note that we have confined our comments to the set of issues on which we have significant expertise. As a result, there are many elements of the proposed rule that these comments do not discuss. We have deep concerns about elements on which we have not commented, such as the degree to which individuals with medical conditions will be kept out of or removed from the country.

C. Conclusion

This proposed rule makes broad and troubling changes in our nation's immigration policies, denying status adjustment and lawful entry to a broad set of individuals who are not already wealthy but who are committed to their families and the work of building a life in the United States. The proposed rule reflects a dark vision of the United States — as an unwelcoming nation that wants to keep out people who seek to re-join family and climb the economic ladder, due to their current modest means and the erroneous assumption that they will not contribute to our communities, our economy, and our nation.

Had this rule been in effect in prior decades, the United States would have been deprived of the talents of large numbers of immigrants who moved to this country, worked hard and raised families, and saw their children attain more education and move up the economic ladder. The U.S. is a dynamic economy that has benefitted over many decades — including recently, when immigrants, often young people with many years of work ahead of them, have not only built lives here but helped invigorate our communities. One only need look around at our communities — and take seriously the rich data and academic literature — to see the contributions immigrants make, including immigrants who perform important jobs, from agriculture workers to home health aides to construction workers to custodial staff, and often (at least initially) for low pay.

On this basis alone, this proposed rule should be jettisoned. But, unfortunately, the harm goes even further. This proposed rule would add to the fear and confusion in immigrant communities that could translate into immigrant families, including U.S. citizen children and pregnant women, forgoing benefits and the health care they need.

This proposed rule is unsupported by evidence and will hurt families, communities, and the country. It should not become a Final Rule.

II New Public Charge Definition Is Overbroad and Would Result in Many Who Work and Contribute to Their Communities and the Economy Being Denied Status Adjustment or Lawful Entry

The proposed rule could result in large numbers of individuals being forced out of the country or denied entry based on the erroneous assumption that they — and their children — would not contribute in important and meaningful ways to local communities and the U.S. economy.

Under the proposed rule, immigration officials would deny status adjustment or lawful entry to those they judge likely to become a public charge at any point in the future. The proposed rule significantly expands the definition of "public charge" in two major ways.

First, it broadens the list of public benefit programs considered in a public charge determination. Second, instead of looking at whether more than half of an immigrant's income comes (or would likely come in the future) from cash assistance tied to need, as they do now, immigration authorities would consider whether the individual received, or is likely to receive, modest amounts of any of these benefits — even if the benefits reflect only a small share of an immigrant's total income. While the proposed rule does include a threshold for benefit receipt (discussed in Section III.E.), the threshold is constructed in such a way that *any* projected future receipt would likely bar an applicant from status adjustment or entry.

This section analyzes the overbroad nature of the definition and the evidence on the apparent underlying premise — that individuals denied entry or status adjustment under the proposed rule would fail to contribute to the nation's economy.

A. Analysis of data for a single year shows that 3 in 10 U.S.-born citizens participate in one of the programs included in the proposed public charge definition

The breadth of the rule's expansive definition of public charge is clear when it is applied to U.S.-born citizens. If U.S.-born citizens were subjected to a public charge determination, a significant share would be considered a public charge. Looking at just one year of program participation shows that 3 in 10 of U.S.-born citizens receive one of the main benefits included in the proposed definition. By contrast, about 5 percent of U.S.-born citizens meet the *current* benefit-related criteria in the public charge determination. The benefits included in the proposed definition serve a far broader group of low- and moderate-income families than those served by cash assistance and institutional care programs (those considered under the current definition), many of whom include working adults who need help at some points to make ends meet.

These U.S. citizens — and hard-working immigrants who also earn low wages and may at some point need assistance — are assets to our country, communities, and economy. They work in important fields and help our economy function.

To calculate the figures above we used the Current Population Survey, and we corrected for underreporting of SNAP, TANF, and SSI receipt in the Census survey using the Department of

Health and Human Services/Urban Institute Transfer Income Model. The figures are for 2015, the latest year for which these corrections are available.

Our program participation calculations include SNAP, TANF, SSI, Medicaid, housing assistance, and state General Assistance programs. There are several ways in which our estimates *understate* the share of U.S.-born citizens who would be deemed a public charge under the proposed rule:

- Because these figures reflect benefits received only during a *single* year, the 3 in 10 figure understates the share of U.S.-born citizens who would be determined a public charge if such a determination were applied to them. The rule calls on immigration officials to determine whether someone seeking status adjustment or lawful entry is receiving this set of benefits or is likely to receive them at any point in the future. If immigration authorities had perfect foresight, virtually anyone who would receive a benefit (above the threshold set forth in the rule) would be barred from adjustment/entry into the country. Thus, when considering how many U.S.-born citizens would be considered a public charge under the proposed rule, we would want to look at receipt over each person's lifetime because the share receiving one of these benefits over their lifetime is far higher than the share receiving a benefit in a single year. The impact of analyzing benefit receipt over a longer period of time is explored in more detail below.
- The one-year estimates do not correct for the underreporting of Medicaid or account for subsidies in the Medicare Part D program.

There are some modest ways that the one-year estimate overstates the share of U.S.-born citizens who meet the public charge test in that year. The rule disregards program participation if the benefit amounts or durations fall below thresholds established in the rule. Due to data limitations, we cannot appropriately model all of those provisions. However, as discussed in Section III.E(1), we think that those provisions would be extremely difficult to apply when making a prospective determination, so any projected future receipt would likely bar an applicant from status adjustment or entry. And, when the Census Bureau asks about health coverage, it asks about Medicaid and the Children's Health Insurance Program (CHIP) together, so the data on Medicaid also include CHIP recipients.

B. Analysis of Census data for a single year shows that many workers participate in one of the programs included in the proposed public charge definition

Another way to examine the breadth of the rule's definition of public charge is to apply it to U.S. workers. If all U.S. workers were subjected to a public charge determination, a significant share would be considered a public charge under the proposed rule. Looking at just one year of program participation shows that 16 percent of U.S. workers receive one of the main benefits included in the proposed definition. By contrast, 1 percent of U.S. workers meet the *current* benefit-related criteria in the public charge determination.

The reality of the current U.S. labor market is that many workers combine earnings from their jobs with government assistance in order to make ends meet. Table 1 shows that a significant percent of workers in all major industry groups would be defined as a public charge if the definition

were applied to them. Defining these workers as a public charge is inconsistent with the fact that these workers play an important role in these industries.

TABLE 1

If Applied to *all* Workers, Percent That Would be Defined as a Public Charge Under Current Rules Compared to Proposed Rule, by Major Industry Group

	Percent defined as public charge under current rules*	Percent defined as public charge under proposed rule**
All workers	1%	16%
Leisure and hospitality	1%	27%
Wholesale and retail trade	1%	19%
Other services (repair and maintenance, private household workers, etc.)	1%	19%
Agriculture, forestry, fishing and hunting	3%	18%
Construction	1%	18%
Transportation and utilities	0%	15%
Educational and health services	1%	15%
Professional and business	1%	14%
Manufacturing	0%	13%
Information (publishing, broadcasting, telecommunications, etc.)	0%	13%
Financial activities	0%	10%
Mining	0%	9%
Public administration	0%	8%

*Current definition is modeled as: Personally receiving more in TANF, SSI, and General Assistance than in earnings, or member of a family that receives more in TANF, SSI, and General Assistance than earnings.

**Proposed definition is modeled as: Personally receiving any SNAP, Medicaid/CHIP, housing assistance, SSI, TANF, or General Assistance.

Source: CBPP analysis of Census Bureau data from the Current Population Survey and SPM public use files, with corrections for underreported government assistance from the Department of Health and Human Services/Urban Institute. These data are for 2015, the most recent year for which these corrections are available.

C. Analysis of longitudinal data from the Panel Survey of Income Dynamics shows that share of U.S.-born citizens receiving assistance over their lifetimes would be significantly higher

The Panel Study of Income Dynamics (PSID) is a long-running longitudinal survey that measures, among many other characteristics, families' income and receipt of public benefits. The PSID, conducted by the University of Michigan's Institute of Social Research, began in 1968 and follows about 5,000 families (and the families that branched off from the original survey respondents) annually.

Analysts at the Urban Institute have used PSID data to analyze program participation in 2014 and over the 1998-2014 period.[2] According to a forthcoming analysis by the Urban Institute[3], the PSID shows that 22 percent of the U.S.-born population participated in 2014 in at least one of five main programs included in the public charge rule, namely, SNAP, Medicaid, TANF, SSI, and housing assistance.[4] (The PSID does not include data on state General Assistance or Medicare Part D Low Income Subsidies.) This estimate is lower than the single-year figures presented above because, unlike the data in Section II.A, the PSID data are not corrected for the tendency of survey respondents to underreport receipt of government benefits. (Using the Current Population Survey and baseline data from the Health and Human Services/Urban Institute Transfer Income Model version 3 (TRIM3) to correct for the underreporting of TANF, SSI, and SNAP, we find that 29 percent of the U.S.-born population participated in one of the five programs in 2014. The CPS/TRIM figure would be even higher if we were able to correct for the underreporting of Medicaid.)

Nevertheless, the strength of the PSID is its ability to collect data about program participation over a longer period of a person's life. *The Urban Institute finds that 40 percent of U.S.-born individuals present in the PSID survey in 2015 participated in one of the five programs over the 1998-2014 period.*

If the analysis could have corrected for the underreporting of benefit receipt in the PSID, the corrected figure undoubtedly would have been higher. The CPS/TRIM-based estimate of the share of individuals who participated in one of the benefit programs in 2014 is about 1.3 times as large as the PSID-based estimate. Using this adjustment factor, we can calculate a likely upper bound on the share of individuals in the PSID sample who received one of the benefits over the full period by applying the annual underreporting factor (1.3) to the estimate of benefit receipt over the full period. When we do this, we estimate an upper bound of roughly 50 percent of U.S.-born citizens who participated in SNAP, Medicaid, TANF, SSI, or housing assistance in at least one year over the 1998-2014 period.

But underreporting is only one reason that the 40 percent estimate described above is lower than the share of U.S.-born citizens who receive benefits in at least one year over this period and well below the figure for the share of U.S.-born citizens who receive one of these benefits at some point *over their lifetimes.*

In looking at benefit receipt over the 1998-2014 period, the PSID only provides data on benefit receipt for most programs every other year. The PSID dataset analyzed by the Urban Institute thus lacks any measure of participation in odd-numbered years for some programs (such as Medicaid) and, in the case of SNAP (where the data include a question on program participation covering each

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[2] The survey data were collected between 1999 and 2015, but the program participation questions generally ask about participation in the previous calendar year, or 1998-2014.

[3] Analysis was done by Diana Elliott from the Urban Institute using a PSID dataset created by Sara Kimberlin from the California Budget & Policy Center and Noura Insolera from the University of Michigan's Institute of Social Research, which runs the PSID.

[4] Throughout this PSID analysis, "U.S. born" refers to individuals in the PSID's main sample, and excludes a later, supplemental sample of immigrants added to the PSID in 1997-1999. The main sample actually includes a small number of immigrants, including some who were present in the U.S. since 1968 when the PSID began or those who joined existing PSID households in later years.

of the last two years), likely suffers from decreased reporting in the odd years because of the longer, two-year recall period.

More importantly, these data do not measure benefit receipt over individuals' entire lives. Using PSID data for 1998-2014 is an important improvement over using a single year of data to analyze the share of U.S.-born citizens who receive one of the benefits included in the proposed rule's public charge definition, but it still captures only a portion of most respondents' lifetimes and significantly underestimates the share of U.S.-born citizens who receive a benefit at some point during their lives. If we were able to capture more years and a higher share of people's childhoods with data that are corrected for underreporting, we would find that *more than half of the U.S.-born population participated in SNAP, Medicaid, TANF, SSI, or housing assistance over their lifetimes.*

Additional PSID analyses make this clear. Benefit receipt is higher during childhood than during adulthood, so capturing childhood years increases the share receiving benefits at some point. In our own calculations using the same longitudinal PSID dataset used by the Urban Institute, from 1998-2014, we find that 55 percent or more of children born during this period (in non-immigrant PSID households) are ever observed to receive one of the five benefits over the period. From the latter finding alone, it is clear that a majority of U.S.-born citizens will receive one of these benefits at some point over the course of their lives.

The fact that the proposed public charge definition effectively could deem more than half of all U.S.-born citizens as "public charges" based on their actual benefit receipt over their lifetimes shows the sweeping nature of the proposed rule.

D. New income criterion would keep many out of the United States despite their likely future contributions to the country

Both currently and under the proposed rule, immigration officials must decide whether certain individuals seeking status adjustment or lawful entry are likely to become a public charge. Under the proposed rule, that means immigration officials must determine whether someone seeking status adjustment or lawful entry is likely to receive one of the named benefits (at a level above the threshold) at any point over the rest of their lifetimes. The proposed rule sets forth various criteria that immigration officials are supposed to weigh when making this forward-looking prediction.

The proposed rule establishes a new income criterion that would count as a negative factor in the public charge determination. Under this "income test," having family income below 125 percent of the poverty line — about $31,375 for a family of four, which is more than twice what full-time, minimum-wage work pays – would count against an individual in the public charge determination.

Many low-wage workers have earnings below this level and could be deemed "likely to become a public charge" under the proposed rule, even if they receive no benefits. That suggests that few individuals with low or modest incomes would be granted status adjustment or lawful entry to the United States. The impact would be significant both for families and for communities. Families would be separated by the denial of status or lawful entry, harming those individuals — including many U.S. citizens — who would be deprived of the presence of their family members. Children in the U.S. separated from parents under this policy would suffer trauma that could have lifelong negative impacts and reduce their future educational and job success in the U.S. (As discussed in Section VI, the proposed rule does not adequately analyze these negative impacts.)

For many people seeking to enter from a country where incomes in general are much lower than in the U.S., that standard could be out of reach. The 125 percent test will disproportionately affect immigrants from poor countries and have a racially disparate impact on who is allowed into the U.S. The World Bank provides an online data tool that allows users to estimate what percent of the population from different countries is below different poverty thresholds. (http://iresearch.worldbank.org/PovcalNet/povDuplicateWB.aspx) To approximate 125 percent of the U.S. poverty line, one can use a $20 per person per day poverty line in the World Bank online tool. According to the World Bank tool, 13 percent of the U.S. population is below the $20 per person per day poverty line. (Similarly, 15 percent of the U.S. population is below 125 percent of the U.S. poverty line.)

If we apply that $20 a day threshold to rest of the world, many individuals — including those who would bring hard work, ingenuity, creativity, and an entrepreneurial spirit to this country — would be below that threshold, including:

- 80.8 percent of the world population;
- 99.2 percent of the population of South Asia;
- 98.5 percent of the population of Sub-Saharan Africa; and
- 79.1 percent of the population of Latin America and the Caribbean.

Of course, the figures are much different in wealthy countries. In countries the World Bank defines as "high income," only 14.4 percent of people in those countries would fall below the 125 percent threshold.

Table 2 shows the percent of the population of each country with income below the $20 per person per day poverty line in the World Bank online tool. It ranks countries by the percent of the population with income below that threshold. (These calculations use data for 2013 because the data for that year are available for more countries. The World Bank tool allows users to use 2015 data for a more limited number of countries.)

TABLE 2

Percent of population with income below $20 per person per day

Country	Percent of Population
Norway	2.0
Luxembourg	2.5
Switzerland	2.7
Iceland	4.2
Denmark	5.0
Finland	5.3
Austria	5.5
Germany	7.0
Netherlands	7.2
France	7.7

TABLE 2

Percent of population with income below $20 per person per day

Country	Percent of Population
Australia	7.7
Belgium	8.2
Sweden	8.2
Canada	10.2
United States	13.0
Cyprus	13.5
Malta	14.0
United Kingdom	14.2
Japan	15.2
Ireland	17.0
Korea, Republic of	17.7
Slovenia	19.0
Italy	21.2
Spain	28.5
Czech Republic	33.0
Israel	38.0
Slovak Republic	47.7
Portugal	48.7
Estonia	50.2
Uruguay	53.3
Argentina–Urban	55.3
Malaysia	55.6
Greece	56.2
Russian Federation	56.9
Lebanon	57.2
Belarus	59.3
Lithuania	61.7
Hungary	63.8
Latvia	64.7
Costa Rica	65.1
Bosnia and Herzegovina	66.9
Seychelles	67.0
Panama	67.5
Croatia	70.5
Bulgaria	71.3
Brazil	71.8
Chile	72.3
Trinidad and Tobago	73.7
Turkey	73.9
Poland	75.1

TABLE 2

Percent of population with income below $20 per person per day

Country	Percent of Population
Iran, Islamic Republic of	75.3
Paraguay	76.8
Thailand	79.6
Bolivia	80.3
Ecuador	82.4
Colombia	82.6
Montenegro	83.3
Venezuela, Republica Bolivariana de	83.3
Peru	84.3
South Africa	85.2
Suriname	85.5
Dominican Republic	86.5
Azerbaijan	86.6
Botswana	87.3
Jamaica	87.4
Mauritius	88.7
Tunisia	88.8
Ukraine	89.2
Namibia	89.5
West Bank and Gaza	90.1
Kazakhstan	90.4
Mexico	90.7
El Salvador	91.0
Nicaragua	91.4
Guyana	91.5
Tonga	91.6
Serbia	91.7
Morocco	91.7
Belize	91.9
Macedonia, former Yugoslav Republic of	92.0
Jordan	92.2
Mongolia	92.3
Samoa	92.3
China	92.3
Guatemala	92.8
Honduras	92.9
Cabo Verde	93.1
Gabon	93.3
Bhutan	94.0
Tuvalu	95.0

TABLE 2

Percent of population with income below $20 per person per day

Country	Percent of Population
Turkmenistan	95.2
Sri Lanka	95.3
Moldova	95.4
Vietnam	95.9
Fiji	96.2
Comoros	96.4
Algeria	96.7
Georgia	96.9
Ghana	97.0
Romania	97.0
Maldives	97.1
Zimbabwe	97.2
Philippines	97.4
Kosovo	97.6
Cameroon	97.8
Eswatini	97.9
Indonesia	98.1
Albania	98.1
Congo, Republic of	98.1
Djibouti	98.2
Guinea-Bissau	98.4
Syrian Arab Republic	98.5
Sudan	98.6
Gambia, The	98.6
Tajikistan	98.7
Egypt, Arab Republic of	98.8
Zambia	98.8
Micronesia, Federated States of	98.8
Kiribati	98.8
Angola	98.8
Vanuatu	98.8
Myanmar	98.9
Haiti	99.0
Armenia	99.0
Iraq	99.0
Mauritania	99.0
Mozambique	99.2
Lao People's Democratic Republic	99.2
India	99.2
St. Lucia	99.2

TABLE 2

Percent of population with income below $20 per person per day

Country	Percent of Population
Cote d'Ivoire	99.3
Yemen, Republic of	99.3
Lesotho	99.3
Rwanda	99.3
Pakistan	99.3
Uganda	99.4
Nepal	99.4
Kenya	99.4
Kyrgyz Republic	99.5
Benin	99.5
Papua New Guinea	99.5
Chad	99.5
Uzbekistan	99.6
Central African Republic	99.6
Solomon Islands	99.6
Malawi	99.6
Ethiopia	99.6
Bangladesh	99.6
Nigeria	99.6
Tanzania	99.7
Togo	99.7
Burkina Faso	99.7
Senegal	99.8
Guinea	99.8
Burundi	99.9
Sierra Leone	99.9
Madagascar	99.9
Niger	99.9
Timor-Leste	99.9
Liberia	99.9
South Sudan	100.0
Congo, Democratic Republic of	100.0
Sao Tome and Principe	100.0
Mali	100.0

Source: CBPP analysis of World Bank PovcalNet online analysis tool using 2013 reference year and $20/day poverty line.
http://iresearch.worldbank.org/PovcalNet/povDuplicateWB.aspx

These data show how the application of the 125 percent threshold to potential immigrants living abroad would have a dramatic effect on who would be allowed to come in to the U.S. lawfully to re-join family.

The fact that wage rates in a country are low is not determinative of a potential immigrant's core traits and skills or ability to develop skills and succeed in the United States, or the likelihood that (as discussed below) the immigrant's children will attain significantly more education than the immigrant him/herself. Indeed, throughout our history, poor individuals have come to the United States and have achieved significant upward mobility, helping to grow the nation and its middle class, its industries, and its innovation sector.

E. Broadened public charge definition could lead to racial bias — including implicit bias — in immigration decisions

Broadening the definition of public charge to include a much larger set of benefits whose receipt is common among all Americans opens the door to increased discrimination in the adjudication of adjustment and lawful entry applications based on race, ethnicity, and country of origin.

Under current policy, immigration officials have significant discretion when making the public charge determination to weigh various factors and make a judgment, but that discretion will effectively broaden under the proposed rule. Currently, immigration officials are trying to answer a very narrow question: Is someone likely to become *primarily dependent* on a narrow range of benefits that only a small share of Americans receive? And, some immigrants who are determined likely to become a public charge can overcome the finding with a legally enforceable affidavit of support.

In contrast, under the proposed rule, immigration officials would be asked to predict whether an individual is likely to receive at some point in the future any of a much broader range of benefits — benefits that a significantly larger share of Americans receive. (And, under the proposed rule, it appears likely that fewer individuals would be able to overcome a public charge determination through an Affidavit of Support.) The Administration apparently expects that immigration officials would deny a larger group of individuals adjustment or permission to lawfully enter under the new standards (though, as discussed in Section VI.C., the proposed rule fails to provide any estimates of the extent to which individuals would be denied adjustment or entry as a result of these changes).

Given the more complex prediction that immigration officials would have to make, their discretion would likely affect the outcome for a larger group of individuals. That discretion, in turn, could be influenced by implicit (or explicit) racial bias. Specifically, given higher rates of benefit receipt among U.S. citizens of color for the benefits now included in the public charge definition, immigration officials may feel justified in using "statistical discrimination"[5] to keep out large numbers of people from certain countries or racial groups, and deny adjustment or entry to people of color at higher rates than similarly situated white individuals.

Using just one year of benefit receipt, Table 3 shows the percent of people who would be defined as a public charge using the current rules compared to the proposed rule, if those rules were applied to U.S.-born citizens. If one applied the new public charge definition of the proposed rule to U.S.-born citizens, roughly half of Black U.S.-born citizens (47 percent) and Hispanic U.S.-born citizens (50 percent) could be defined as a public charge, compared to 21 percent of Non-Hispanic white U.S.-born citizens

[5] Statistical discrimination refers to the phenomenon of a decision-maker using observable characteristics of a group as a proxy for unobservable characteristics of an individual that belongs to that group.

TABLE 3

Percent of U.S.-Born Citizens Defined as a Public Charge Under Current Rules Compared to the Proposed Rule, by Race/Ethnicity

	Percent defined as public charge under current rules*	Percent defined as public charge under proposed rule**
U.S.-Born Citizens		
All races and ethnicities	5%	29%
White, Non-Hispanic	3%	21%
Black, Non-Hispanic	11%	47%
Hispanic	9%	50%

*Current definition is modeled as: Personally receiving more in TANF, SSI, and General Assistance than in earnings, or member of a family that receives more in TANF, SSI, and General Assistance than earnings.

**Proposed definition is modeled as: Personally receiving any SNAP, Medicaid/CHIP, housing assistance, SSI, TANF, or General Assistance.

Source: CBPP analysis of Census Bureau data from the Current Population Survey and SPM public use files, with corrections for underreported government assistance from the Department of Health and Human Services/Urban Institute. These data are for 2015, the most recent year for which these corrections are available.

Immigration officials are likely aware that Black and Hispanic U.S.-born citizens are more likely to receive benefits than white U.S.-born citizens, and this may cause them to assume — consciously or unconsciously — that individuals from certain racial and ethnic groups (or from certain countries or regions) are more likely to receive a benefit at some point in the future than similarly situated white individuals seeking entry or status adjustment.

Higher rates of poverty and benefit receipt in the U.S. among people of color are due to (among other factors) a history of slavery and discrimination, unequal education, job and housing opportunities, and for some recent immigrants, lower educational opportunities in their home countries. As discussed below, these opportunities are more plentiful in the U. S., resulting in higher educational attainment among the children of lower-skilled immigrants.

The rule could result in applicants for status adjustment or lawful entry being denied at higher rates based on their race or ethnicity, all else being equal. This would mean the rule had a discriminatory impact and would deprive the nation of the skills and talents of immigrants – and their children – who come to the U.S. to build a better life.

F. Rule appears to be based on erroneous assumptions about immigrants, program participation, and the economy

The proposed rule appears to be premised on the erroneous assumptions that a large share of immigrants are a drain on the U.S. economy and that immigrants who enter the United States with low income or receive benefits even for a modest period of time will typically continue to have low income, continue to receive assistance, and become a burden on native-born taxpayers — and that the contributions of their children are unimportant to the nation. (The proposed public charge definition also implies that the Administration similarly regards a sizable share of U.S.-born citizens to be "public charges" and, by extension, a drain on the economy and our communities, a troubling view.)

These assumptions are at odds with the evidence on several key points.

- Immigrants, even those who are not currently well paid, work at a high rate. They perform work that is important in their communities and in the economy. Immigrants who sometimes receive the government assistance programs listed in the proposed rule work at a high rate. Many immigrants with important jobs would be excluded from the country under the proposed public charge rule.
- The degree of immigrants' contributions to the economy is not always evident from their earnings alone. For example, they help labor markets adjust faster to local labor shortages and surpluses due to their greater willingness to move from place to place.
- Immigrants are the most likely candidates for generating net labor force growth in an aging population. For example, they counter the decline in the ratio of workers to dependents. And, as working families, they increase demand for housing and consumer durables, which are a significant component of overall demand for goods and services.
- Immigrants' children tend to be highly upwardly mobile, completing far more education than their parents and acquiring an occupational profile similar to other Americans. When we keep out individuals seeking to reunify with family and build a life in the United States, we lose not only their contributions, but those of their children who, like the children of immigrants for generations, help build communities and companies alike.
- On average, new immigrants and their children can be expected to strongly contribute to the economy and be net contributors to consolidated federal, state, and local government finances. This is true for immigrants in general and for the types of immigrants likely to be excluded under the proposed public charge rule.
- Immigration officials would be unable to accurately identify only those individuals who, along with their children, will not be net economic contributors. Officials required to attempt to do so would almost inevitably exclude many individual net contributors, and would be at high risk of selecting a group that are net contributors in the aggregate. And, as discussed above, if given the impossible task of accurately identifying future benefit participants, immigration officials may head down unacceptable paths, such as conscious or unconscious racial profiling.

Evidence on each of these points follows.

1. Immigrants, even those who are not currently well paid, work at a high rate

In 2017, the labor force participation rate of foreign-born adults was 66.0 percent, which is higher than the 62.2 percent rate for the native born, according to the U.S. Bureau of Labor Statistics. Some 26.3 million foreign-born adults (63.3 percent of all foreign-born adults) were employed that year, compared with 59.5 percent of the native-born.[6]

[6] U.S. Department of Labor, Bureau of Labor Statistics, "Foreign-Born Workers: Labor Force Characteristics – 2017," News Release, May 17, 2018, Table 1, https://www.bls.gov/news.release/archives/forbrn_05172018.htm; figures for

2. Immigrants perform work that is important to their communities and in the economy

While in any given year, the number of individuals who are seeking status adjustment or lawful entry and are subject to a public charge determination is modest compared to the size of the labor market, the proposed rule, if finalized, would become permanent policy and would appear to have the effect of significantly reducing the number of individuals granted status adjustment or lawful entry. Thus, the impact on the nation's labor force would grow over time, and the impact in certain industries and occupations would be appear to be significant (as discussed in Section VI.C., the rule itself lacks any estimates of the projected impact on applications for adjustment or lawful entry in a single year, let alone over time). A significant number of immigrants in the U.S. (naturalized or otherwise) came to this country through a process that included a public charge determination.

Given this cumulative effect, it is instructive to look at the extent to which immigrant workers play a role in certain industries and occupations and, in particular, the extent to which immigrants without a college degree — presumably a prime target of the proposed rule — fill these jobs. In many occupations and industries, such immigrants make up a large and disproportionate share of the workforce.

In March 2018, according to our own analysis of the Census Bureau's Current Population Survey public use microdata sample, immigrants with less than a four-year college degree made up 10 percent of all persons (and 11 percent of all U.S. workers) but:

- 36 percent of workers in farming, fishing, and forestry occupations;
- 36 percent of workers in building and grounds cleaning and maintenance occupations;
- 29 percent of textile and apparel manufacturing industry workers;
- 27 percent of food manufacturing industry workers;
- 27 percent of accommodation industry (e.g., hotel) workers;
- 24 percent of construction industry workers;
- 24 percent of administrative and support services industry workers; and
- 21 percent of home health care industry workers.[7]

Although not necessarily high-paying, these are important jobs. They provide needed services, many of which are necessary for native-born workers to hold better-paying jobs. To cite just two examples, well-paid white-collar workers typically rely on construction workers to build — and building maintenance workers to maintain — the buildings they work in.

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percent employed are calculated by Center on Budget and Policy Priorities as number employed divided by civilian non-institutional population.

[7] Center on Budget and Policy Priorities analysis of the Census Bureau's March 2018 Current Population Survey public use microdata sample for detailed occupation group, detailed industry group, and exact industry, among workers employed in the week preceding the survey.

As a 2015 National Academy of Sciences panel of experts noted:

> The high employment levels for the least educated immigrants indicate that employer demand for low-skilled labor remains high. There are still many jobs in the United States for low skilled workers (Lockard and Wolf, 2012). Among the important reasons cited for this high demand have been the substantial shrinkage since 1990 of the U.S.-born, younger, less-skilled working-age population (those who are native born, ages 25-44, and with educational attainment of a high school diploma or less), owing to the aging of Baby Boomers; higher educational attainment among the U.S.-born; and a fertility rate below the replacement rate for the U.S.-born (Alba, 2009; Bean et. al., 2011; Bean et al., 2015). In other words, *immigrants appear to be taking low-skilled jobs that natives are either not available or unwilling to take*.[8] (Emphasis added.)

3. Immigrants have been found to contribute to the economy to a degree not evident from their earnings alone

Immigrants contribute in additional ways not captured in their wages. They tend to be unusually mobile workers, quicker than their native-born peers to move around the country in response to shortages that appear in local labor markets. This helps native-born workers by filling gaps that could otherwise make their jobs impossible or reduce their productivity and lower their wages. As Harvard's George Borjas has written, "immigration improves labor market efficiency. Moreover, it turns out that part of this efficiency gain accrues to natives, suggesting that existing estimates of the benefits from immigration may be ignoring a potentially important source of these benefits" of immigration to native-born workers. The effect is not small. "Back-of-the-envelope" calculations suggest efficiency gains for native-born workers of "between $5 billion and $10 billion annually," Borjas writes, noting that "the estimates of the efficiency gain roughly double the measured benefits from immigration." [9] Other researchers have reached similar conclusions.[10] Professor Borjas is not known for exaggerating the economic benefits of immigration, and we urge you to read this study carefully and consider the findings as you consider the true costs and benefits of this proposed rule and whether the policy approach is sound.

Immigrants also lower the price of a variety of services in the community. A 2008 study found that a 10 percent increase in the share of low-skilled immigrants in a city's labor force reduces local prices for immigrant-intensive services, such as gardening, housekeeping, babysitting, and dry cleaning, by approximately 2 percent, at current levels of immigration. The magnitude of the effect suggests that the immigration wave of the 1980-2000 period decreased the prices of immigrant-

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[8] National Academy of Sciences Panel on the Integration of Immigrants into American Society, *The Integration of Immigrants into American Society,* National Academies Press, 2015, page 266, https://www.nap.edu/read/21746/chapter/8#260.

[9] Geroge J. Borjas, "Does Immigration Grease the Wheels of the Labor Market?" Brookings Papers on Economic Activity, 2001, pp. 69 – 134, https://www.brookings.edu/wp-content/uploads/2001/01/2001a_bpea_borjas.pdf.

[10] In a 2016 study, "Mexican mobility reduced the incidence of local demand shocks on natives, such that those living in metro areas with a substantial Mexican-born population experienced a roughly 50 percent weaker relationship between local shocks and local employment probabilities." B.C. Cadena and B.K. Kovak, "Immigrants equilibrate local labor markets: Evidence from the Great Recession" *American Economic Journal: Applied Economics*, 8(1) (January 2016), pages 257-290.

intensive services in an average city by at least 9 to 11 percent.[11] This in turn can facilitate employment for native-born workers: the same immigration wave increased by close to 20 minutes a week the amount of time women in the top quartile of the wage distribution devoted to paid work, a later study found.[12]

Immigration also drives growth in a number of industries. In the housing industry, for example, slowing growth rates in the U.S.-born population mean that immigrant households make up a rising share of total growth in U.S. occupied housing. Immigrants accounted for 8.7 percent of total growth in households the 1970s, 15.7 percent in the 1980s, and 31.9 percent — or nearly one-third — in the 1990s.[13]

Although immigrants are sometimes blamed for "stealing jobs" from native-born workers in communities to which they move in large numbers, a number of researchers have recently concluded that this is not the case. A 2015 study by Gihoon Hong of Indiana University and John McLaren of the University of Virginia finds that "Each immigrant creates 1.2 local jobs for local workers, most of them going to native workers."[14] The authors explain that, unlike some previous studies, their study takes into account immigrants' impact on increasing local consumer demand by increasing the variety of services available in the community and attracting native-born workers and consumers from outside the area. "For this reason, immigrants can raise native workers' real wages, and each immigrant could create more than one job." Taken together, these effects mean that local real wages can rise as a result of immigration. They then test this model on decennial U.S. census data from 1980 to 2000. A 1-percent increase in local population due to immigration is projected to increase total employment by an amount equal to between 1.2 percent and 3.5 percent of the initial population, depending on the measure used, and to increase native employment by between 0.9 and 2.5 percent. "Overall, it appears that local workers benefit from the arrival of more immigrants," the study concludes. We urge you to read this study carefully.

While some studies (often based on strong assumptions and theoretical models) have asserted that low-skilled wages result in significant wage loss for less-educated native-born workers, "Overall, evidence that immigrants have harmed the opportunities of less educated natives is scant," according to economist David Card (2005).[15]

Economic theory recognizes that the value of an infusion of new workers into the economy is not captured in those workers' wages alone. According to a consensus report of the National Academy

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[11] Patricia Cortés, "The Effect of Low-Skilled Immigration on U.S. Prices: Evidence from CPI Data,) *Journal of Political Economy* (2008), pp. 381 - 422.

[12] P. Cortés and J. Tessada, "Low-skilled immigration and the labor supply of highly skilled women," *American Economic Journal: Applied Economics* 3(3) (2011), pages 88-123.

[13] Dowell Myers and Cathy Yang Liu, "The Emerging Dominance of Immigrants in the US Housing Market 1970 - 2000," *Urban Policy and Research* (2005), pages 347 - 366.

[14] Gihoon Hong and John McLaren, "Are Immigrants a Shot in The Arm For The Local Economy?" National Bureau of Economic Research Working Paper 21123, April 2015, https://www.nber.org/papers/w21123.pdf.

[15] David Card, "Is New Immigration Really So Bad?" National Bureau of Economic Research Working Paper, revised August 2005, https://www.nber.org/papers/w11547.

of Sciences, "the arrival of immigrants raises the overall income of the native population that absorbs them," thereby creating an "immigration surplus," at least in the short term. [16]

Finally, a common claim is that, whatever good they do for the economy, immigrants drive up crime. But studies find the opposite, with significantly lower incarceration rates for immigrants than natives. Exploring the reasons for this large — and growing — gap, economists Kristin F. Butcher and Anne Morrison Piehl[17] also conclude that the reason is *not* selective deportation of criminals: "deportation does not drive the results. Rather, the process of migration selects individuals who either have lower criminal propensities or are more responsive to deterrent effects than the average native."

4. Immigrants help counter the effects of the aging population

Immigrants bolster a national birth rate that, among the native-born population, has recently dropped to historically low levels.[18] A low birth rate can lead to a decline in the labor force, reduced demand in growth-driven industries such as housing (and reduced home prices due to weaker demand), and a slowing and less dynamic economy. Immigrants, however, can counteract these effects.

Moreover, a low birth rate combined with the aging of the Baby Boom generation means that immigrants are vital to helping us improve our ratio of workers to retirees and support the Baby Boom population, including the native-born population, in its retirement years. As the 2017 NAS report notes, "The vast majority of current and future net workforce growth — which, at less than 1 percent annually, is very slow by historical standards — will be accounted for by immigrants and their U.S.-born descendants."[19]

This is particularly important now, given our current demographic realities. The retirement of the Baby Boom generation represents an economic and fiscal challenge; by 2035, the Census Bureau projects, there will be only about 2.4 working-age adults in the United States for each elderly person age 65 or older, fewer than in any prior decade on record and down from 4.7 working-age adults in 2016. The ratio of working-age adults (ages 18 to 64) to children and elderly combined is expected to fall from 1.6 to 1.3 between 2016 and 2030 and then remain level at 1.3 until at least 2060.[20] Thus, adding younger workers now can ease this demographic shift.

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[16] See National Academy of Sciences, *The Economic and Fiscal Consequences of Immigration*, 2017, Chapter 4.

[17] Kristin F. Butcher and Anne Morrison Piehl, "Why are Immigrants' Incarceration Rates so Low? Evidence on Selective Immigration, Deterrence, and Deportation," National Bureau of Economic Research Working Paper 13229, July 2007, https://www.nber.org/papers/w13229.

[18] NAS 2017, page 50

[19] National Academy of Sciences, *The Economic and Fiscal Consequences of Immigration*, 2017, page 21.

[20] U.S. Census Bureau, Population Division, "Projected Age Groups and Sex Composition of the Population: Main Projections Series for the United States, 2017-2060," Table 2, revised October 2018, https://www.census.gov/data/tables/2017/demo/popproj/2017-summary-tables.html. Calculations by Center on Budget and Policy Priorities. Data back to 1900 are available at https://www.census.gov/prod/2014pubs/p25-1140.pdf, Figure 5.

Without immigrants, there would be fewer working-age adults and workers, and they would make up a smaller proportion of the total population. As the Census Bureau notes:

> Today, about 78 percent of the foreign-born population is of working age, between 18 and 64 years, compared with just 59 percent of the native born. Both of these figures are projected to fall within the next decade, but the gap will remain almost as large (falling to 72 percent and 56 percent, respectively, by 2030). This gap is important because the foreign born are more likely to be in the labor force. What is more, young first-generation immigrants [that is, the foreign born] are more likely to have full-time jobs than their native peers.[21]

Immigration, if not reduced, is thus likely to help the United States avoid the more severe demographic strains affecting Europe, observes the Pew Research Center. Although "one-in five U.S. residents are expected to be 65 and older by mid-century, greater than the share of seniors in the population of Florida today," Pew notes, America is not aging as rapidly as European nations — an advantage over Europe that is chiefly attributable to America's higher rate of immigration:

> The Pew Research Center estimates that, from 1960 to 2005, immigrants and their descendants accounted for 51% of the increase in the U.S. population. Looking ahead, from 2005 to 2050, immigrants and their descendants are projected to contribute 82% of the total increase in the U.S. population. Without immigration, U.S. population growth from 2005 to 2050 would be only 8.5%, more on par with that of European nations.[22]

We urge you to read the Pew analysis carefully.

Partly for this reason, increases in immigration improve the health of the Social Security trust funds. The program's trustees estimate that increasing average annual net immigration by 100,000 persons improves Social Security's long-range actuarial balance by .08 percent of taxable payroll.[23] Increasing immigration now will also improve the actuarial balance in Medicare over the next several decades, an important timeframe given the near-term need to shore up the program's finances and the difficulty of accurately estimating Medicare costs over a longer time horizon.

Nothing in the analysis of the rule presented by DHS suggests that the age distribution of those likely to be denied status adjustment or entry by the provisions in the proposed rule is likely to be significantly different than the age distribution of immigrants overall. Indeed, the rule may well target younger immigrants — both children and working-age adults — to a larger degree than the immigrant population overall. Ironically, the rule specifically indicates that being a child should be considered a negative factor in a newly prescriptive test designed to increase adjustment and entry denials, despite the fact that the U.S. needs more young people to counterbalance an aging U.S.-born

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[21] Johnathan Vespa, David M. Armstrong, and Lauren Medina, "Demographic Turning Points for the United States: Population Projections for 2020 to 2060," Census Bureau, revised March 2018. https://www.census.gov/content/dam/Census/library/publications/2018/demo/P25_1144.pdf.

[22] Rakesh Kochhar et al., "Attitudes About Aging: A Global Perspective," Pew Research Center, Revised January 30, 2014, http://www.pewresearch.org/wp-content/uploads/sites/2/2014/01/Pew-Research-Center-Global-Aging-Report-FINAL-January-30-20141.pdf.

[23] Board of Trustees of the Federal Old-Age and Survivors Insurance and Federal Disability Insurance Trust Funds, *2018 Annual Report*, June 5, 2018, pp. 180-81.

population. If the agency believes the age distribution to be significantly different, that information should have been presented in the proposed rule and taken into account in the analysis of likely effects of the rule.

5. Immigrants who sometimes participate in the government assistance programs listed in the proposed rule work at a high rate

Longitudinal data powerfully illustrate the fallacy in presuming that future program participants will remain predominantly dependent on government support. To assess long-term patterns of assistance and employment, CBPP analyzed a sample of longitudinal survey data covering 1998-2014 from the PSID, drawn from the same sample analyzed by the Urban Institute, as described previously.[24] (See Section II.B above.) In this analysis, we focused on individuals in the survey's immigrant sample (that is, individuals in immigrant families added to the PSID in 1997-1999). We looked at young adults, ages 18-to-44 in 1999, who received any of the five programs that are both covered by the proposed rule and recorded in the PSID: Medicaid, SNAP, SSI, TANF, or housing assistance.

We find that the large majority of those who ever used benefits were also employed a majority of the time, and even more were either employed or had an employed spouse:[25]

- At least 93 percent were either employed in the majority of the observed years (5 or more of the 9 years observed in our PSID sample) or were married to someone who was.
- 77 percent of such immigrant program participants were themselves employed in a majority of the observed years.
- At least 87 percent were either employed themselves at the time of the final interview in 2015 or were married to someone who was.
- Fully 96 percent were themselves employed in at least one year.

[24] As previously noted, the sample used is an extract of the Panel Study of Income Dynamics created by Sara Kimberlin of the California Budget and Policy Center and Noura Insolera from the PSID staff of the University of Michigan Institute of Social Research. It contains 77,223 individuals interviewed in odd-numbered years from 1999 and 2015. The analysis shown here contains 286 unweighted sample adults from the PSID immigrant supplement, a sample of 511 post-1968 immigrant families added to the PSID in 1997-1999, weighted with the survey's person-level panel weights. As previously noted, the sample extract includes data regarding Medicaid participation at the time of the interview; SNAP participation in the two calendar years preceding each interview; and participation in AFDC, SSI, and housing assistance in the prior calendar year. Medicaid, AFDC, and SSI participation are measured at the individual level, SNAP and housing assistance at the family level. Two assistance programs covered by the proposed rule, state General Assistance and Medicare Part D Low Income Subsidies, are not available in the extract. A small number of survey participants in this extract leave the sample and later return so are present for fewer than 9 interviews. If these were excluded, the share who work or are known to be married to someone who works would rise slightly from 93 percent to 94 percent.

[25] Figures that include spouses' employment are lower bounds because, due to data limitations, they include spouses' employment only if one member of the married couple is the household head. The figures exclude spouses of a couple that lives, for example, in their parents' home or in the home of a non-relative.

The first fact, in particular, bears restating. Looking at young adult immigrants (under age 45 in the survey's immigrant sample) in 1999, most of those who would go on to receive benefits – at least 93 percent – would also be employed most of the time or married to someone who was.

This finding – that *over a period of several years* most immigrants who receive the listed forms of assistance are usually working or are married to a worker – reflects both the frequently temporary nature of program participation and the frequent overlap between assistance and work within any given year. Annual survey data confirm that the majority of working-age adult immigrants who participate in the listed programs work at some point *even in the same year they receive benefits* or are married to a worker. (Specifically, a CBPP analysis of data from the March 2018 Current Population Survey finds that, among the 8.4 million immigrants ages 18 to 64 who participated in Medicaid, SNAP, rental subsidies, SSI, TANF, or state General Assistance[26] at any point in 2017, 68 percent worked during that same calendar year or were married to a worker. Fully 5.2 million or 62 percent worked themselves. Those workers worked an average of 37 hours per week and 46 weeks per year. Their median estimated wage, based on annual earnings divided by weeks worked and usual hours worked per week, was $12.50 an hour.[27])

These data show a major flaw in the proposed rule. Because of the turbulent nature of the labor market, illness, or bad luck, many immigrants (as well as many citizens) will sometimes need assistance for varying periods. Even if it were possible to identify future participants in the listed programs, it would be incorrect to assume that these individuals will not contribute to the economy or be largely reliant on assistance programs. Moreover, if these individuals are kept out or removed from the country, we will all lose out on their contributions and U.S. families will be worse off.

6. Many immigrants with important jobs could be excluded under the proposed rule

In many of the low-wage jobs worked by immigrants, at least occasional participation in the listed programs is common.

For example, among immigrants employed in the agriculture industry, 36 percent participated in one of the six listed programs in the previous calendar year. So did 27 percent of those in the food manufacturing industry, 29 percent of those in administrative and support services industries, 22 percent of those in construction, and 30 percent of those in building and grounds maintenance and cleaning occupations, according to our analysis of recent Census Bureau data.[28]

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[26] This analysis omits the Medicare Part D Low Income Subsidy program because the March CPS does not ask about it.

[27] Source: Center on Budget and Policy Priorities analysis of public use data from the March 2018 Current Population Survey Annual Social and Economic Supplement. Benefit participation is defined as receiving family-level TANF or state General Assistance income (FPAW_VAL+F_MV_FS>0), individual-level SSI or Medicaid (SSI_YN or MCAID = 1), or household-level rent subsidies (HPUBLIC or HLORENT = 1). The analysis is based on an unweighted sample size of more than 4,600 immigrant program participants.

[28] Source: Center on Budget and Policy Priorities analysis of public use data from the March 2016-2018 Current Population Survey Annual Social and Economic Supplement. Three years of data are averaged to improve statistical reliability (denominators for all percentages include greater than 200 unweighted observations). Benefit participation is defined as receiving family-level TANF or state General Assistance income (FPAW_VAL+F_MV_FS>0), individual-level SSI or Medicaid (SSI_YN or MCAID = 1), or household-level rent subsidies (HPUBLIC or HLORENT = 1)

While a smaller share of individuals seeking status adjustment or lawful entry will be current or recent recipients of these programs, the intent of the rule is to deny status adjustment or entry to all applicants who are determined likely to receive one of the listed benefits *at some point in the future.* This suggests that, if immigration officials had perfect predictive ability, the rule would deny adjustment and entry to a very large share of immigrants who work in these industries.

7. Immigrants' children tend to be highly upwardly mobile

By casting such a broad net for immigrants who should be denied status adjustment or lawful entry, the proposed rule appears to presume both that immigrants themselves contribute little to the economy — which, as the data above indicate, is untrue — and that the nation would be better off without their offspring, as well. Yet when immigrants' children are considered, the economic case for this rule is even harder to support.

Studies have long found that the children of immigrants tend to attain more education, have higher earnings, and work in higher-paying occupations than their parents.[29] Economist David Card observed in 2005 that "Even children of the least-educated immigrant origin groups have closed most of the education gap with the children of natives."[30]

The National Academy of Sciences' 2015 immigration study similarly concludes:

- Second-generation members of most contemporary ethno-racial immigrant groups (that is, children of the foreign born) meet or exceed the schooling level of the general population of later generations of native-born Americans (page 3).
- Second and later generations are generally acquiring English at roughly the same rates as their historical predecessors, with English monolingualism usually occurring within three generations. Acquisition of English is slightly slower among Spanish-speaking immigrants but even in the large Spanish-speaking population in Southern California, Mexican Americans' transition to English dominance is all but complete by the third generation (page 6).
- The nation's dependence on the contributions of immigrants is likely to grow as the baby boomer generation retires from the work force (page 283).

Even for immigrants without a high school education, the overwhelming majority of their children acquire a high school education. According to the National Academy of Sciences 2017 report, 36 percent of new immigrants lacked a high school education in 1994-1996; two decades later, only 8 percent of second-generation children (i.e., children of the foreign born) lacked a high-school education. [Table 8-5]

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[29] See, for example, the 1997 study from the National Academy of Sciences Panel on the Demographic and Economic Impacts of Immigration, *The New Americans: Economic, Demographic, and Fiscal Effects of Immigration,* (Washington, DC: The National Academies Press, 1997).

[30] David Card, "Is New Immigration Really So Bad?" National Bureau of Economic Research Working Paper 11547, Revised August 2005, https://www.nber.org/papers/w11547.

8. On net, each additional new immigrant and his or her children can be expected to strongly contribute to the economy and be a net contributor to government finances

From the American taxpayer's perspective, immigration overall pays off, a National Academy of Sciences study has determined. This appears to be true even for immigrants at the education levels that characterize participants in the listed programs.

The most authoritative and recent estimates of the impact of immigration on government finances — the "fiscal impact," or taxpayer perspective — are from the exhaustive 2017 NAS report, *The Economic and Fiscal Consequences of Immigration.*[31] That report explores multiple alternative estimation methods and determines that "under the CBO Long-term Budget Outlook scenario, the total fiscal impact of a new immigrant who most resembles recent immigrants in terms of average age and education creates a positive fiscal balance flow to all levels of government with an NPV [net present value] of $259,000" over 75 years, including $173,000 from the immigrant and $85,000 from their descendants.[32]

These particular findings rely on the assumption that the arrival of immigrants does not add to the cost of national defense and other "pure public" goods. This assumption is appropriate. A pure public good by definition is one whose availability does not change when consumed by some of the population, as the NAS report notes;[33] therefore, it is clearly more plausible to presume that such costs do *not* increase when new immigrants arrive than that they increase in proportion to the change in total population. The NAS report observes that some analysts believe that such costs increase *to some degree* when the amount of immigration is large. The report therefore provides alternative estimates that include such costs allocated on a per capita basis; these, however, serve as *an upper bound* to the marginal costs of even a large influx of immigrants.

We request that you read the panel's report carefully in its entirety, including Chapters 7 through 9, in order to understand those and other choices underlying the alternative NAS cost projections.

9. Immigrants with only a high school diploma are net contributors

The 2017 NAS report's findings vary by education level. For immigrants with only a high school degree, the fiscal impact is a positive contribution of $49,000, compared with $259,000 for all education groups together (see Table 8-12 of the NAS panel's report). A high school education is common for immigrants who ever participate in the programs listed in the proposed rule. According to our own analysis of the latest Census Bureau data from the March 2018 Current Population Survey, the modal and median recent immigrant who arrived between 2010 and 2018 and who reports receiving benefits listed in the proposed rule (TANF, GA, SSI, SNAP, housing assistance, or Medicaid) had exactly a high school degree. Among recent immigrants (ages 25 and older, who arrived in the U.S. between 2010 and 2018) who received any of the listed benefits during the year, 27 percent had no high school education, 30 percent had only a high school degree, 15

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[31] National Academy of Sciences, Panel on the Economic and Fiscal Consequences of Immigration, *The Economic and Fiscal Consequences of Immigration,* National Academies Press, 2017.

[32] *Ibid.,* page 434.

[33] *Ibid.,* footnote 4 on page 8.

percent had some college but no bachelor's degree, 20 percent had exactly a bachelor's degree, and 8 percent had more than a bachelor's degree, according to our analysis.

10. Immigration officials won't be able to accurately identify only those individuals who, along with their children, will not be net economic contributors

One of the premises of the proposed rule appears to be that immigration officials, with a reasonable degree of accuracy, would be able to predict which individuals seeking entry or status adjustment will receive a benefit at some point in the future and that accurately predicting future benefit receipt and keeping out or removing such individuals from the United States would be a net positive for the economy and government budgets over the long run.

This premise suffers from multiple flaws.

First, immigration officials would not be able to accurately determine who will receive assistance and, in particular, who would receive significant amounts of benefits over long periods of time. Most individuals facing a public charge determination will not be current benefit recipients. Based on very little information, immigration officials would have to make predictions — guesses, really — about whether an individual will or won't receive benefits at some point over the coming *decades*. They would guess wrong frequently; they might exclude an individual who has little education but can find good work in the construction industry while approving entry or adjustment to someone with a college degree who struggles in his or her new community. And, some immigration officials might decide that, given the realities of business cycles in the U.S., virtually *anyone* could need assistance during an economic downturn, and use the public charge determination process to keep out or deny status adjustment to almost anyone.

Second, many of those excluded — including those who ultimately do receive some benefits and those who never do — would, indeed, be net contributors to the country's economy and public finances, particularly when their children's contributions are considered. Suppose an immigration official simply denied entry or status adjustment to anyone who does not have more than a high school degree; the NAS study shows that those with high school degrees are net fiscal contributors (though they will have higher benefit receipt on average than college graduates).

Third, lacking a reasonable basis for predicting future benefit participation on an individualized basis, immigration officials might be tempted to ground their decisions on unjustified and unacceptable forms of discrimination. For example, immigration officials might consciously or unconsciously base decisions on race or country of origin, thus engaging in racial or religious profiling. They might reason that people of color in the U.S. have higher rates of poverty and benefit receipt than white people and approach the public charge determination of individuals from certain countries or racial backgrounds differently from similarly situated individuals who are white. Even seemingly objective or merit-based criteria such as educational attainment may reflect little more than prejudices in the country of origin; for example, a person's lack of education may reflect their country's discrimination against women rather than talent or ability.

The United States remains a country with a dynamic economy and opportunity for upward mobility, educational attainment, creativity, and entrepreneurship. Given the inevitable inaccuracies in immigration officials' predictive capabilities, removing individuals or keeping them out of the

country based on an extremely broad definition of "public charge" would cost the U.S. many needed workers, including those who care for seniors and clean our offices as well as those who start businesses, go to college, and have children who go on to be everything from teachers to inventors to business leaders. Losing this talent would weaken the entire nation.

G. Unworkable bond proposal would not provide reasonable opportunities for entry or adjustment of status to those deemed inadmissible on public charge grounds

Because of the proposed rule's vast expansion of inadmissibility based on a determination that an individual is likely to become a public charge, a significantly larger group of individuals could be denied entry into the country or adjustment of status on public charge grounds. As a result, there could be a substantial increase in the number of immigrants who, if otherwise inadmissible due to a public charge determination, would seek to be granted entry or adjustment of status based on the posting of a public charge surety bond, as authorized by law. Public charge bonds rarely have been used since the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 made the Affidavit of Support enforceable. In practice, these Affidavits of Support have provided sufficient assurance that an individual will not become a public charge, generally obviating the need for public charge bonds.

Among the changes proposed by DHS is how Affidavits of Support would be considered in an admissibility decision. DHS proposes that, for those immigrants required to submit an Affidavit of Suppor , a sufficient Affidavit is not necessarily *sufficient* for admissibility. This is a change from current policy and practice. Instead, a sufficient Affidavit of Support would become a positive factor in the totality of the circumstances test, to be weighed along with other factors and considerations. One result of this change would be that posting of a public charge surety bond would become the only way an individual could overcome a determination that they are likely to become a public charge, but the bond requirements in the proposed rule are likely to foreclose this as a viable option, particularly for those immigrants without significant assets.

Posting a public charge bond is a statutorily authorized mechanism through which an immigrant who would be deemed inadmissible on public charge grounds may nonetheless be admitted. (See, INA, sec. 213, 8 U.S.C. 1183.) The proposed rule changes, which would significantly restrict the availability of public charge bonds and impose an unreasonable and arbitrary cost on using a bond, are generally unworkable. Taken as a whole, the changes related to bonds mean that they would be unlikely to offer a pathway of admission to very many individuals; instead those changes would add to the proposed rule's overall impact — namely, to severely restrict individuals' ability to enter or remain in the United States, particularly those of modest means and those from poorer nations. DHS invites comments on any aspect of its proposed rule changes on the public charge bond process (83 Fed. Reg. 51220). We oppose the restrictive and onerous DHS proposal for public charge bond changes.

The proposed rule limits the circumstances under which a bond might be offered. Under the proposed rule, an individual cannot seek to provide a public charge bond; instead, he or she can only do so if DHS exercises its discretion to allow a bond. The proposed rule constrains DHS's discretion by generally not allowing a bond if the individual has one or more heavily weighed negative factors, such as receipt of a public benefit within the prior three years or inability to demonstrate current, recent, or reasonable prospective employment. Thus, at the outset, many

individuals would not have an option of using a bond, barred either by a DHS official's discretionary decision not to allow a bond or by the rule's limiting of the official's discretion to offer a bond.

Moreover, even those who might be offered the option to use a bond may well find the cost prohibitive, including the cost of posting and maintaining the bond as well as the consequences of public benefit receipt. The rule sets the *minimum* bond amount at $10,000, and an official could require an even higher amount at their discretion; the rule allows no appeal of the amount at which the bond is set. Even using a surety, these are prohibitive amounts for many. A surety company likely would require collateral to secure the bond (surety companies often require collateral for immigration-related bonds), and those who are deemed otherwise inadmissible on the public charge basis are unlikely to have access to collateral to support a bond of $10,000 or greater.

The proposed rule adds a high risk of forfeiture in light of the broadened scope of benefits considered and the minimal amount of benefit receipt that triggers breach of the bond. Federal rules at 8 CFR 103.6 (which the proposed rule would not change) require that there be a "substantial violation" to be considered breach of the bond, and DHS unreasonably proposes to interpret this term so that any receipt of public benefits (in excess of the thresholds set forth in section 212.21) would constitute breach of the bond, requiring forfeiture of the entire amount. Prior procedures looked at the extent of the benefit receipt, requiring repayment in that amount. Under the proposed rule, an immigrant might receive a modest amount of public benefits due to an unforeseen and exigent circumstance beyond the immigrant's control — such as loss of a job or need for care for a temporary medical condition — and be required to forfeit an entire $10,000 (or greater) bond. This penalty is vastly disproportionate to the triggering benefit amount and is irrational, arbitrary, and capricious. Contrary to the preamble statement at 83 Fed. Reg. 51225, this breach definition is not a reasonable incorporation of the "substantial violation" concept.

It is also problematic for a substantial bond to come due if the amount of benefits received is more significant but those benefits have become necessary for reasons outside the individual's control. With the scope of benefits in the public charge definition so substantially expanded under the proposed rule, the type of circumstances — a serious health condition or car accident that necessitates Medicaid benefits, for example, or a broad-scale recession during which someone needs SNAP — that would trigger forfeiture is far broader than under the current public charge definition and is highly problematic.

Forfeiture of a bond when an individual receives benefits that become necessary could lead to real harm. Consider a person who has posted a bond and worked steadily for four years, becomes ill with a serious condition such as cancer or is involved in a serious car accident, and temporarily is unable to work and requires extensive medical care. Congress has made this individual eligible for Medicaid, but if she accesses care, she will forfeit a $10,000 bond at a time when she is facing a serious financial and health crisis. This individual will have worked and paid taxes up until this crisis and, if medical care results in a positive health outcome, will again work and contribute taxes. This does not further the broadly shared values of assisting those in times of crisis and recognizing that all future risks cannot be foreseen and prevented.

The very large financial penalty facing individuals with a bond who then receive benefits such as Medicaid or SNAP, even in crisis situations, would likely lead individuals to forgo assistance, even in dire circumstances. This could have very large, negative effects, shift costs to medical providers and community groups, and increase serious hardship, including among children who may themselves

have a bond or whose parents may have a bond. Hardship would not be limited to non-citizens; many with bonds will live in families with U.S. citizens, including U.S. citizen children.

As noted, bonds can be posted today to overcome a public charge determination, but they are rarely used. Moreover, today bonds would be used to insure against receipt of a much more limited set of benefits — government cash assistance or long-term institutional care — and thus would be less likely to be forfeited and less expensive for those with bonds. Overall, the proposed rule serves to *foreclose* use of bonds rather than to implement the statutory mandate that an immigrant may post a public charge bond. The proposed rule is an unreasonable and impermissible interpretation of the scope of authority granted to the agency under the statute. The proposed rule would further limit, rather than offer an additional pathway to, opportunities for immigrants to enter or remain in the country.

DHS has done little to justify its bond-related proposals. The sections of the NPRM that set out "costs and benefits" of the proposed rule fail to provide adequate evaluation of the impacts of the proposed regime, such as the degree to which these bonds would be used, the cost to individuals posting the bonds, how many individuals would have to forfeit their bonds, and the harm caused when those with bonds forgo needed assistance even in crisis situations. These analytic deficiencies are discussed in more detail in Section VI.H.

H. Proposed scheme distorts the "totality of circumstance" test

The proposed rule sets forth a scheme for applying the longstanding "totality of circumstances" test in a manner that reshapes, with no statutory basis, how the agency will determine whether an individual is likely to become a public charge. The proposed totality of circumstances framework, along with the proposed rule's expanded definition of public charge, aim to accomplish — without congressional action — a rewrite of our immigration policy to keep out those who are not already affluent, effectively closing our nation's doors to those from poorer nations, including many people of color.

In 1996, Congress codified longstanding caselaw and policy setting forth five factors of a public charge determination: age; health; family status; assets, resources, and financial status; and education and skills. The statute also authorizes consideration of an Affidavit of Support as part of the determination.

Under the rubric of these five factors, the proposed rule adds new tests — most notably a 125 percent of federal poverty guidelines income test — skewing determinations against those with limited financial resources. As illustrated in Table 33 of the NPRM (p. 51211-5), the revised totality of circumstances framework effectively expands these five factors into a larger list of 22 considerations and attaches a negative or positive value to *each* consideration. The proposed scheme places half of these considerations under just one of the five factors: assets, resources and financial status. In so doing, DHS attaches greater weight to the financial factor, essentially giving this factor as much weight as the other four factors combined and thereby undermining and distorting the statutory approach to the totality of circumstances test.

The redesigned totality of circumstances test, which would look at whether the positive considerations outweigh the negative ones or vice versa, would thus become skewed against

individuals without significant assets or income. It would essentially multiply this single statutory factor and create more opportunities for negative findings related to income or assets, even though some of these financial considerations are highly correlated to each other rather than representing different aspects of an immigrant's circumstances.

The rule also attaches a heavily weighed negative or positive value to selected circumstances, particularly those related to financial circumstances. The introduction of heavily weighed elements within the scheme, also without statutory basis, is an additional way in which the proposed framework places outsized emphasis on current financial circumstances. Taken as a whole, the scheme's emphasis on considerations related to the financial factor would likely mean that individuals who are from poorer countries or have modest means but also have talents and drive will be denied entry or adjustment of status, and that the United States' doors will remain open only to those with assets or income.

The new 125 percent of the federal poverty guidelines test is particularly problematic. Many individuals — particularly those from poorer countries — would "fail" this factor, despite the fact that it is a highly imperfect measure of how an individual will fare as s/he makes a new life in the United States. (See Section II.D. above.) Because it is bright-line test, the 125 percent consideration could play an outsized role and would likely be accorded significant weight in practice, even though it is not heavily weighed in the rule. We do not think that there should be any standard income criteria set in the rule, as such standards undercut the totality of circumstances test and disadvantage those from poorer countries who will be able to find jobs in the U.S. Therefore, we oppose both the proposal to consider whether income is under 125 percent of poverty negatively and the proposal to consider and heavily weigh income over 250 percent of poverty positively.

The proposed scheme places too high an emphasis on financial status, particularly with the 125 percent of poverty income test. Had such a test been in place over the past 100 years, countless immigrants who went on to succeed in the U.S. and raise children who succeeded would have been kept out or forced out.

Another troubling consideration is seeking a credit score. At FR 51189, the Department invites comments on how to use credit scores. Using credit reports and credit scores to determine public charge status is inappropriate because many individuals seeking status adjustment or lawful entry will not have a credit history, particularly individuals who have been in the U.S. for a short period or are applying for entry from a poorer country. This may be particularly true for children and for women (particularly women from poorer countries. who may be even less likely than men to have access to credit). Neither credit reports nor credit scores were designed to provide information on a consumer's likelihood of relying on public benefits or on their character.

The proposal also wraps the Affidavit of Support into the totality of circumstances test as just another factor that would have a positive weight if the Affidavit is sufficient. (Under current and continuing policy, if a required Affidavit of Support is insufficient, the immigrant is inadmissible). Since Congress made the Affidavit of Support enforceable in 1996, it has served in public charge determinations to provide assurance that the immigrant would not become a public charge, since the sponsor is legally bound to help the immigrant if needed and to reimburse the government if benefits are received within five years. (This is also why public charge bonds have been rarely used in recent decades; see Section II.G above.) The proposed scheme effectively demotes the role of the Affidavit of Support, treating it as a single positive factor while also requiring that the immigrant

have more positive findings than negative in the totality of the circumstances, with half of the considerations falling under the financial factor.

This demotion of the Affidavit of Support is yet another way that the re-framed totality of circumstances scheme would allow only those already with resources to enter or remain in this county. The combination of the other changes in the rule on public charge determinations and the reduced role of the Affidavit of Support would mean that many more individuals would be determined inadmissible. The remaining avenue for admission would only be a discretionary public charge bond, but, as discussed in Section II.G., that avenue too would effectively be unavailable.

III. Medicaid, Medicare Part D Low-Income Subsidies, SNAP, and Federal Rental Assistance Should Not Be Added to the Public Charge Definition

Under longstanding federal policy, a person is considered a public charge if he or she relies on cash government benefits (such as TANF or SSI) or is supported at government expense in an institutional setting (such as through Medicaid long-term care benefits), as the primary means of support. Caselaw has long held that an alien who is "incapable of earning a livelihood" could be considered a public charge. The proposed rule expands the definition of public charge so that an individual who receives housing, health, or food benefits in amounts or for durations above certain thresholds is also considered a public charge, even if the individual works and if benefit receipt is of a modest amount or duration. The proposed change equates receipt of such benefits with dependence on government as a means of support.

This proposed expansion is based in a flawed analysis of who receives food, health, and housing benefits and the role that these benefits play in supplementing earnings of many recipients who primarily meet their needs through their own capabilities and efforts, as reflected in their earnings. These benefits do not provide the means of support in the manner that cash benefits or institutionalized long-term care benefits purport to do. Instead, they provide important yet *supplemental* help for recipients, many of whom generally support their families with earnings that are low enough that they may also qualify for benefits, often for relatively modest periods of time.

The benefit and eligibility details, as well as the circumstances of recipients, differ by program, and the program-by-program detail below includes background on each program and a discussion of why a recipient of each of the benefits should not be considered a public charge.[34] There are common themes, however, across programs:

- **Many of those who receive benefits from these programs are workers who primarily meet their needs through their own capabilities and efforts**. Individuals or families with earnings at levels well above the federal poverty guidelines may qualify for housing, health, or food benefits. These include individuals who work at important but low-paid jobs as well as those who may be between jobs because of the instability of the labor market or temporary circumstances of the family.
- **Unlike cash assistance, these benefits are supplemental and cannot meet a family's full basic needs.** Housing and food benefits provide *partial* coverage of housing or food needs, not total support of all needs. Health coverage, while very important to life and ability to work, does not in itself cover the most basic living expenses.

[34] The proposed rule would also extend certain aspects of the newly defined public charge assessment to non-immigrants seeking to extend or change their status. We object to this extension. Except for very narrow circumstances, most non-immigrants would not qualify for public benefit programs identified in the proposed rule, but changes in the rule for non-immigrants would result in more confusion among immigrant families and in some cases result in eligible non-immigrants (such as pregnant women or children) forgoing needed services. such as treatment for a serious medical condition.

- **Receipt of these housing, health, or food benefits can support participation in the workforce and lead to better outcomes for immigrants and their families**. These benefits support not only healthier and more secure present circumstances, but a better future, particularly for children. In some cases they also help adults get back on their feet or stay healthy so they can work and contribute to the economy.

The definition of public charge should not be expanded to include receipt of benefits from the health, housing, or food programs included in the proposed rule. Such expansion is an arbitrary and unreasonable distortion of longstanding public charge law from a decades-long standard on what constitutes a public charge — a standard that Congress has chosen not to change.

Nor should any other benefit programs be added to the definition of public charge. At 83 FR 51173, the Department asks about unenumerated benefits, both whether additional programs should explicitly be counted and whether use of other benefits should be considered in the totality of circumstances. The answer is no. The programs enumerated in the proposed rule already go far beyond what is reasonable to consider; counting them will harm millions of immigrant families and their communities.

The expansion of the definition goes far beyond the inclusion of a broader set of benefits. This is because most individuals determined to fail the public charge test would likely be individuals who have never received any of these benefits but who immigration officials predict will receive a benefit *at some point over the course of their lifetimes* (in amounts or durations that exceed the thresholds established by the rule, which could mean receipt for part of a single year). The benefits that have been added are ones that a very large share of native-born U.S. citizens receive over the course of their lifetimes. (See, Section II (C).) During recessions, the share of individuals who receive help goes up, and over the course of someone's lifetime, they typically live through multiple recessions (with business cycles often lasting ten or fewer years). Under the current standard, immigration officials determine whether someone is likely to receive a benefit that only a very small share of Americans receive. When the expansion of the set of programs considered — to include those received by perhaps half of all U.S.-born citizens over their lifetimes — is coupled with the long-term horizon over which potential receipt is supposed to be predicted, the resulting test would designate a very large share of native-born U.S. citizens a public charge.

A. Medicaid

Receiving Medicaid should not factor into public charge determinations as proposed in section § 212.21 (b). Medicaid is a key component of the U.S. health care system, providing quality, affordable health coverage to millions of people who would otherwise lack access to the health care services they need. Including Medicaid in the definition of public charge is a radical shift in immigration policy that would greatly limit individuals' ability to immigrate to the United States because such a large share of the U.S. population relies on Medicaid at some point in their lives. More than a fifth of people in the United States are enrolled in Medicaid in the course of a year and a larger share are enrolled at some point in their lifetime.[35] Considering the use of Medicaid as a factor in public

[35] Shelley Irving and Tracy Loveless, "Dynamics of Economic Well-Being: Participation in Government Programs, 2009-2012: Who Gets Assistance?," United States Census Bureau, May 2015, https://www.census.gov/content/dam/Census/library/publications/2015/demo/p70-141.pdf.

charge determinations would result in eligible people forgoing services that have proven effective in improving health outcomes, providing financial stability for families, hospitals, and other health care providers, reducing uncompensated care costs that states and localities must absorb, and improving children's longer-term educational and earnings trajectories.

While health coverage through Medicaid plays a significant role in ensuring the well-being of families and society, Medicaid is, by definition, a supplemental benefit, except for those who receive institutional long-term care. Medicaid does not provide shelter, food, or other basic expenses of daily living. Since Medicaid beneficiaries cannot rely on the health coverage Medicaid provides to meet their basic living expenses, those who receive Medicaid for their health care should not be considered public charges.

The inclusion of Medicaid in the public charge definition would result in individuals who work in jobs that are important in our economy and communities being denied entry or status adjustment. This would hurt the nation's economy and needlessly separate family members from each other.

Including Medicaid receipt in the definition of public charge would also result in individuals who need coverage forgoing Medicaid because they feared it would have a future negative immigration consequence, either because they might face a public charge determination in the future or because the rule engenders fear beyond those who will be subject to a public charge determination. (See Section IV.B) This means that individuals who needed health care would go without it, to the detriment of their health and ability to work, of their children's future, and of health care providers' finances.

These downside consequences — both the harm done from denying entry or status adjustment to a large number of individuals and the harm done as people who need care forgo Medicaid coverage — are not fully explored in the proposed rule, including in the "cost benefit analysis" section (see Section VI). This lack of analysis makes a full accounting of the rule's likely benefits and harm impossible to adequately determine.

1. Medicaid plays a key role in ensuring a large share of the U.S. population has access to health coverage

Medicaid has a broad reach. It provided health coverage for 97 million low-income individuals during 2017, and far more people get their health coverage through Medicaid if participation is measured over longer periods of time. If receiving Medicaid makes someone a public charge — and, by extension, someone who does not "contribute" to the U.S. in a positive manner — then a very large share of American citizens are public charges.

Each month, Medicaid serves 33 million children, 27 million non-elderly, non-disabled adults (mostly in low-income working families), 6 million seniors, and 9 million people with disabilities. Medicaid plays a particularly critical role for certain populations, covering nearly half of all births in the typical state, 76 percent of poor children, 48 percent of children with special health care needs, and 45 percent of adults with disabilities. More than 2 in 5 Medicaid enrollees have family income

at or above 138 percent of the federal poverty line, with most of these enrollees having income between 138 percent and 200 percent of the poverty line.[36]

Because Medicaid is used by such a large portion of the U.S. population, including it as a factor in the public charge determination could lead immigration authorities to limit entry or status adjustment only to those who have substantial wealth — a new and extreme interpretation of the public charge concept that is out of line with decades of caselaw and policy. No one can predict whether they will have heightened health needs due to the onset of cancer or other health conditions or due to an accident, and even people with the levels of resources held by most middle-class Americans can end up needing Medicaid for the health care they need when they get injured or sick. Considering whether someone might rely on Medicaid in the future would radically shift our immigration system and close the door to immigrants who would be important contributors both to our communities and our economy.

2. Medicaid eligibility varies significantly by state and immigration authorities would not be able to accurately predict whether individuals would likely qualify in the future

Medicaid is a federal-state program; it is funded jointly by the federal government and the states, and each state operates its own program within broad federal guidelines. States have numerous options as to the people and benefits they cover and a great deal of flexibility in designing and administering their programs. As a result, Medicaid eligibility and benefits vary widely from state to state.

States must cover certain "mandatory" groups, including children through age 18 in families with income below 138 percent of the federal poverty line, pregnant women with income below 138 percent of the poverty line, parents whose income is less than the state's cash assistance eligibility limit in place prior to welfare reform, and most seniors and persons with disabilities who receive cash assistance through the Supplemental Security Income (SSI) program.

States can also cover "optional" groups, including pregnant women, children, and parents with income above limits for mandatory coverage; seniors and persons with disabilities with income below the poverty line who don't receive SSI; and "medically needy" people — those with medical expenses that reduce their disposable income below a certain threshold, in which case Medicaid covers their expenses after they "spend down" their excess income. The Affordable Care Act (ACA) expanded Medicaid for all non-elderly adults with incomes below 138 percent of the poverty line, but a Supreme Court decision made the expansion optional for states.

Thirty-two states have expanded Medicaid coverage to low-income adults under the ACA, but eligibility levels for adults without disabilities remain low in states that have not expanded. For parents, Medicaid eligibility in non-expansion states ranges from 18 percent of the poverty line in Alabama ($2,185 annual income for a single person) to 105 percent of the poverty line in Maine ($12,750 annual income), with the average in the 18 non-expansion states at 50 percent of the

[36] "MACStats: Medicaid and CHIP Data Book," Medicaid and CHIP Payment and Access Commission, December 2017, https://www.macpac.gov/wp-content/uploads/2015/12/MACStats-Medicaid-CHIP-Data-Book-December-2017.pdf.

poverty line ($6,070 annual income). Wisconsin is the only non-expansion state to cover childless adults at *any income level*.[37]

Immigration authorities would have no way of predicting which states individuals would likely live in throughout their lives and therefore would not know which income thresholds would be relevant to consider when making a public charge determination, potentially leading them to assume that most people could end up using Medicaid at some point. It would be unfair to assume that an adult immigrant may one day qualify for Medicaid because he is likely to have income of about 130 percent of the poverty line and therefore could qualify for Medicaid as an adult; yet if he lives in one of the 19 states that hasn't yet expanded Medicaid eligibility for adults, there is no way he could qualify for Medicaid.

Inclusion of Medicaid would also result in discrimination against children and women who are of child-bearing age, as all states cover children and pregnant women up to at least 138 percent of the poverty line and generally significantly higher. Because Medicaid eligibility limits are higher for these groups, immigration officials could be far more likely to deny applications for adjustment or entry for these groups. Given the variability in eligibility based on age, gender, parental status, disability status, and state of residence, immigration authorities would likely assume that most individuals who currently have modest means would rely on Medicaid at some point in their lives.

3. Medicaid is a powerful work support

Most Medicaid beneficiaries who can work, *do* work. More than 60 percent of Medicaid beneficiaries are either children, adults with work-limiting disabilities, or over the age of 65 and not expected to work.[38] Of the remaining non-elderly, non-disabled adult Medicaid beneficiaries, nearly 4 in 5 are in working families, with most of those in families where someone works full-time. Of those who aren't working, some receive Medicaid during temporary periods of joblessness and then return to work and no longer need coverage.

Work rates are particularly high among Hispanic and Asian Medicaid beneficiaries. Medicaid beneficiaries work in a variety of major industries that serve as the backbone of the U.S. economy: 40 percent of working beneficiaries are in the agriculture or service industry; 21 percent work for education or health care systems; 18 percent work in professional services or public administration; and 14 percent work in manufacturing.[39]

Medicaid is a vital source of health care for low-income workers, filling in the gaps for those who do not have access to affordable coverage through their employers. Working Medicaid beneficiaries are less likely to work in jobs offering affordable health insurance coverage. Some 42 percent of

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[37] *Where Are States Today? Medicaid and CHIP Eligibility Levels for Children, Pregnant Women and Adults*, Kaiser Family Foundation, March 2018, https://www.kff.org/medicaid/fact-sheet/where-are-states-today-medicaid-and-chip/.

[38] *Medicaid, CBO's April 2018 Baseline*, Congressional Budget Office, April 2018, https://www.cbo.gov/system/files?file=2018-06/51301-2018-04-medicaid.pdf.

[39] Rachel Garfield, Robin Rudowitz, and Anthony Damico, *Understanding the Intersection of Medicaid and Work*, Kaiser Family Foundation, January 2018, https://www.kff.org/medicaid/issue-brief/understanding-the-intersection-of-medicaid-and-work/.

working beneficiaries work in small firms (fewer than 50 employees),[40] as compared to only 28 percent of the overall work force.[41] Only 55 percent of small firms offer health coverage benefits, as compared to over 98 percent of firms with 200 or more employees.[42] Working Medicaid beneficiaries also are more likely to receive low wages and o 1 in 3 workers in the bottom quartile of the income distribution are offered employer-sponsored coverage.[43] The expansion of Medicaid coverage to low-income adults is a critical support for low-wage workers. More than 4 in 5 working beneficiaries in Ohio's expansion said their coverage made it easier to work, and 60 percent of unemployed beneficiaries said coverage made their job search easier.[44] Similarly, 69 percent of working beneficiaries in Michigan's expansion said coverage made it easier to work, and 55 percent of unemployed beneficiaries said coverage made their job search easier.[45]

That's not surprising, given the relationships between health care, health, and employment. When manageable health conditions like diabetes, heart disease, or depression are treated and controlled, individuals with these conditions are better able to hold down a steady job. For example, a long-term randomized trial found that providing older adults with regular care for heart disease increased their earnings, likely by reducing their time out of work due to illness.[46] In contrast, if chronic conditions are not well-managed, work may become impossible.

In addition, many low-income adults have undiagnosed physical or mental health conditions and receive treatment only after gaining Medicaid coverage. Among Ohio Medicaid expansion enrollees, 27 percent were newly diagnosed with one or more serious physical health conditions after gaining Medicaid coverage, with many then starting treatment.[47]

Reviewing the available evidence on health coverage, work, and health outcomes, Kaiser Family Foundation researchers conclude that "access to affordable health insurance and care, which may help people maintain or manage their health, promotes individuals' ability to obtain and maintain

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[40] Rachel Garfield, Robin Rudowitz, and Anthony Damico, 2018, *op.cit.*

[41] United States Bureau of Labor Statistics, *Business Employment Dynamics,* Summary, 2015, https://www.bls.gov/web/cewbd/table_f.txt.

[42] Gary Claxton *et al., Employer Health Benefits: 2018 Annual Survey*, Kaiser Family Foundation, 2018, http://files.kff.org/attachment/Report-Employer-Health-Benefits-Annual-Survey-2018.

[43] David Wile, *Employer-sponsored Healthcare Coverage Across Wage Groups*, United States Bureau of Labor Statistics, June 2017, https://www.bls.gov/spotlight/2017/employer-sponsored-healthcare-coverage-across-wage-groups/pdf/employer-sponsored-healthcare-coverage-across-wage-groups.pdf.

[44] *2018 Ohio Medicaid Group VIII Assessment: A Follow-up to the 2016 Ohio Medicaid Group VIII Assessment*, The Ohio Department of Medicaid, August 2018, https://medicaid.ohio.gov/Portals/0/Resources/Reports/Annual/Group-VIII-Final-Report.pdf.

[45] Susan Dorr Goold and Jeffrey Kullgren, *Report on the 2016 Healthy Michigan Voices Enrollee Survey*, University of Michigan Institute for Healthcare Policy and Innovation, January 2018, https://www.michigan.gov/documents/mdhhs/2016_Healthy_Michigan_Voices_Enrollee_Survey_-_Report__Appendices_1.17.18_final_618161_7.pdf.

[46] Melvin Stephens, Jr., and Desmond J. Toohey, *The Impact of Health on Labor Market Outcomes: Experimental Evidence from MRFIT*, National Bureau of Economic Research Working Paper, January 2018, https://www.nber.org/papers/w24231.pdf.

[47] Ohio Department of Medicaid, 2018, *op. cit.*

employment." Conversely, research shows that unmet need for health care, especially mental health or substance use treatment, impedes employment.[48] Accessing Medicaid should not label a person a public charge because accessing Medicaid helps individuals work and contribute to the economy.

4. Medicaid helps promote children's future success; the proposed rule would hinder coverage and harm families and children

As noted, a key impact of the rule is that many families would likely forgo participation in Medicaid and other programs out of fear that it could result in a negative immigration consequence. This chill effect would have a particularly harmful impact on children — including children who may themselves face a public charge determination as well as a much larger group of children (including U.S. citizen children) whose families fear a negative immigration consequence even though they would not face a public charge determination.

Medicaid is primarily a health coverage program, but its impact reaches beyond health, particularly for children because of Medicaid's Early and Periodic, Screening Diagnostic and Treatment (EPSDT) program. EPSDT guarantees that children and adolescents under the age of 21 have access to a robust set of comprehensive and preventive health services, including regular well-child exams; hearing, vision, and dental screenings; and other services to treat physical, mental, and developmental illnesses and disabilities. The loss of EPSDT would be particularly harmful to children with special health care needs, as Medicaid serves as the sole source of coverage for over one-third of these children.[49] Because of the EPSDT guarantee Medicaid plays a critical role in children's health and long-term development. For example, Medicaid ensures that children have access to important health services that promote school readiness, such as ensuring access to well-child exams, vaccines, and other important health screenings. Children covered by Medicaid during their childhood have better health as adults, with fewer hospitalizations and emergency room visits.[50] Moreover, children covered by Medicaid are more likely to graduate from high school and college, have higher wages, and pay more in taxes.[51]

Forgoing Medicaid also would make children and their families less financially secure, as they would be at risk of going without needed medical care and incurring medical debt for any care they did receive. (See Section VI.G for more information about how the NPRM fails to fully analyze and quantify the harm done by a reduction in Medicaid enrollment among eligible individuals due to the proposed rule.)

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[48] Larisa Antonisse and Rachel Garfield, *The Relationship Between Work and Health: Findings from a Literature Review*, Kaiser Family Foundation, August 2018, https://www.kff.org/medicaid/issue-brief/the-relationship-between-work-and-health-findings-from-a-literature-review/.

[49] MaryBeth Musumeci and Julia Foutz, "Medicaid's Role for Children with Special Health Care Needs: A Look at Eligibility, Services, and Spending," Kaiser Family Foundation, February 22, 2018, https://www.kff.org/medicaid/issue-brief/medicaids-role-for-children-with-special-health-care-needs-a-look-at-eligibility-services-and-spending/

[50] Laura Wherry *et al.,* "Childhood Medicaid Coverage and Later Life Health Care Utilization," National Bureau of Economic Research, February 2015, http://www.nber.org/papers/w20929.pdf

[51] Sarah Cohodes *et al.*, "The Effect of Child Health Insurance Access on Schooling: Evidence from Public Insurance Expansions," National Bureau of Economic Research, October 2014, http://www.nber.org/papers/w20178.pdf; David Brown, Amanda Kowalski, and Ithai Lurie, "Medicaid as an Investment in Children: What is the Long-Term Impact on Tax Receipts?" National Bureau of Economic Research, January 2015, http://www.nber.org/papers/w20835.pdf.

5. Proposed rule would result in more uncompensated care and hurt health care providers and states

Hospitals rely on Medicaid revenue to pay for services that may otherwise remain unpaid, so if individuals forgo Medicaid coverage out of fear of immigration consequences, health providers can be left holding the bag. As discussed in the Section VI.G(4), this is another area where there is inadequate analysis presented in the NPRM to judge the potential implications for providers.

State budgets also benefit from more people having coverage by lowering state costs for uncompensated care and services that Medicaid covers, such as mental health care. Medicaid expansion has produced savings in Arkansas, Louisiana, Kentucky, Michigan, and elsewhere, partly because of reduced uncompensated care, research shows.[52] As more low-income people have gained Medicaid coverage, demand for state-funded health programs that serve this population, including payments to hospitals to cover uncompensated care, has dropped, providing net savings. For example, Louisiana saved $199 million in the first fiscal year of its expansion and is projected to save an additional $350 million in the current fiscal year, in large part because of lower state payments to hospitals for uncompensated care.[53] Colorado's Medicaid expansion is expected to produce $134 million in net savings through 2026.[54]

In short, including Medicaid in the set of benefits considered to make someone a public charge would deny entry and status adjustment to many hard-working individuals and children who will become workers in the future. Individuals who largely support themselves with earnings but do not have access to affordable employer-provided coverage do not fall within the common understanding of "public charge" or "primarily dependent." The proposed rule also would cause a significant number of individuals — many of whom will never face a public charge determination — to forgo Medicaid. When individuals who will reside in the U.S. throughout their lifetimes forgo Medicaid coverage, their health and capacity to work are imperiled, their children are hurt, and uncompensated care rises.

B. Supplemental Nutrition Assistance Program (SNAP)

SNAP, the nation's most important anti-hunger program, provides important nutritional support for millions of low-income individuals, including workers and their families that struggle to make

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[52] Jesse Cross-Call, "Medicaid Expansion Producing State Savings and Connecting Vulnerable Groups to Care," Center on Budget and Policy Priorities, June 15, 2016, https://www.cbpp.org/research/health/medicaid-expansion-producing-state-savings-and-connecting-vulnerable-groups-to-care; Jesse Cross-Call and Matt Broaddus, "Medicaid Expansion Would Benefit Maine in Far-Reaching Ways, Contrary to Governor's Claims," Center on Budget and Policy Priorities, October 25, 2017, https://www.cbpp.org/research/health/medicaid-expansion-would-benefit-maine-in-far-reaching-ways-contrary-to-governors#.

[53] Louisiana Department of Health, "Medicaid Expansion 2016/2017," http://www.dhh.louisiana.gov/assets/HealthyLa/Resources/MdcdExpnAnnlRprt_2017_WEB.pdf.

[54] The Colorado Health Foundation, "Medicaid Expansion: Examining the Impact on Colorado's Economy," http://www.coloradohealth.org/sites/default/files/documents/2017-01/EXECUTIVE%20SUMMARY%20-%20Medicaid%20Expansion_Examining%20the%20Impact%20on%20Colorado_s%20Economy%202.11.2013.pdf; John Z. Ayanian *et al.*, "Economic Effects of Medicaid Expansion in Michigan," *The New England Journal of Medicine*, February 2, 2017, http://www.nejm.org/doi/full/10.1056/NEJMp1613981#t=article.

ends meet due to low wages or unsteady employment. After unemployment insurance, SNAP is the most responsive federal program providing additional assistance during economic downturns.

1. Basic eligibility criteria

SNAP is available to a broad set of low-income households.[55] SNAP eligibility rules and benefit levels are, for the most part, set at the federal level and uniform across the nation, though states have flexibility to tailor aspects of the program, such as the value of a vehicle a household may own and still qualify for benefits. Under federal rules, to qualify for SNAP benefits, a household's gross monthly income generally must be at or below 130 percent of the poverty line, or $2,213 (about $26,600 a year) for a three-person family in fiscal year 2018. Households with an elderly or disabled member need not meet this limit. States also have an option called categorical eligibility, which allows them to raise income limits by aligning SNAP's income limit to that of a household's Temporary Assistance for Needy Families-funded benefit. This option allows states to elect to provide SNAP to households with gross incomes above the regular threshold, but SNAP participants who are categorically eligible for benefits generally have incomes only modestly above 130 percent of the federal poverty level because those with higher incomes are generally eligible for a $0 benefit under the benefit calculation formula. Widely used to support working families, this option capitalizes on SNAP's role as a support for working adults in low-paying jobs, helping to stabilize and support their work efforts.

2. SNAP serves working households who contribute to the economy

The proposed rule labels those receiving SNAP even for modest periods of time as a public charge, contradicting extensive research showing that SNAP provides supplemental assistance to a large number of *workers*, both while they are employed in low-paying jobs and during brief periods of unemployment. Most non-disabled adults who participate in SNAP — including eligible immigrants — work in a typical month or within a year of that month. Over half of individuals who were participating in SNAP in a typical month in mid-2012 were working in that month; 74 percent worked in the year before or after that month.

Household work rates are even higher. Just over 80 percent of SNAP households with a non-disabled adult, and 87 percent of households with children and a non-disabled adult, included at least one member who worked either in a typical month while receiving SNAP or within a year of that month.[56]

For many working-age SNAP participants, SNAP supplements their wages. Treating SNAP receipt as an indication that an individual is incapable of earning a livelihood and primarily dependent on public benefits ignores the reality that many low-wage workers who work hard in jobs that are important to our economy and communities need modest assistance to afford an adequate diet.

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[55] In addition to limits on eligibility for some groups of immigrants, some people are not eligible for SNAP, such as strikers and many college students.

[56] Brynne Keith-Jennings and Raheem Chaudhry, "Most Working-Age SNAP Participants Work, But Often in Unstable Jobs," Center on Budget and Policy Priorities, March 15, 2018, https://www.cbpp.org/research/food-assistance/most-working-age-snap-participants-work-but-often-in-unstable-jobs.

SNAP participation among non-disabled adults is often short term, but those who receive SNAP for longer periods still work most of the time. In one study, nearly two-thirds (64 percent) of the adults who participated in SNAP at some point over a roughly 3.5-year period received it for a total of less than two years. And regardless of how long these adults participated in SNAP, they worked in the majority of months in which they received SNAP assistance. Over one-third of non-disabled adults worked in *every* month they participated in SNAP. These individuals primarily depend on work, not benefits, to make ends meet.[57]

3. SNAP provides important but supplemental benefits

SNAP by its very nature is supplemental. Its modest assistance provides an important nutritional boost to households that must rely on other income to meet the bulk of their basic needs, as well as some of their food needs. The benefit formula assumes families will spend 30 percent of their net income for food; SNAP supplements the family's out-of-pocket food spending with additional resources so that the household's total food budget can meet the cost of the Thrifty Food Plan, which is an estimate of a minimal nutritiously adequate diet. A growing body of research suggests that the Thrifty Food Plan is not sufficient, given changes to the costs of food acquisition and preparation and that many families spend more than 30 percent of their net income on food as a result.

In addition, SNAP benefits average only about $1.40 per meal, or about $126 per month per person. The average benefit does not reach the proposed rule's 15 percent of the federal poverty guideline threshold. However, as discussed in Section III. E. below, immigration officials charged with predicting whether an individual is likely to receive benefits at some point across future decades would not be able to accurately predict receipt, and they certainly wouldn't be able to predict the *level* of benefits an individual is likely to receive, which would require a detailed prediction of earnings and income levels (for each month over decades) and knowledge of the SNAP benefit calculation formula. Given the impossibility of immigration officials accurately predicting future benefit receipt above threshold levels, immigration officials instead would likely default into trying to determine whether someone is likely to receive *any amount* of SNAP benefits over coming decades.

SNAP benefits alone do not enable most households to purchase a minimally adequate diet. Average food expenditures exceed the average SNAP benefit by about 40 percent.[58] Recipients do not rely on these benefits alone to support themselves.

4. SNAP benefits help participants thrive

The inclusion of SNAP receipt in the definition of public charge would have two main effects. The broader definition would be used to deny entry and status adjustment to a potentially large group of individuals, including many low-wage workers, and would result in individuals whom Congress has made eligible for SNAP forgoing nutrition assistance out of fear that it would have negative immigration consequences. The individuals likely to forgo benefits would extend well beyond those who will face a public charge determination, because the rule would ramp up fear in

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[57] *Ibid.*

[58] Laura Tiehen, Constance Newman, and John Kirlin, *The Food-Spending Patterns of Households Participating in the Supplemental Nutrition Assistance Program: Findings From USDA's FoodAPS*, Economic Research Service, USDA, August 2017, https://www.ers.usda.gov/webdocs/publications/84780/eib-176.pdf?v=42962.

immigrant communities and confuse many. (See Section IV.) Those forgoing benefits are likely to include children, both immigrant children and U.S. citizen children who live in families with immigrants.

When needy individuals forgo SNAP, their households have more difficulty affording adequate food. SNAP benefits have a demonstrable impact on reducing food insecurity, or lack of consistent access to nutritious food because of limited resources. Food insecurity increases the risk of adverse health outcomes, complicates individuals' ability to manage illness, and is linked to higher health care costs. (See Section IV.)

Early access to SNAP can improve birth outcomes and long-term health, which in turn can reduce future reliance on public benefit programs, including SNAP. Poor nutrition during childhood may harm health and earnings decades later by altering physical development and the ability to learn. Researchers compared the long-term outcomes of individuals in different areas of the country when SNAP expanded nationwide in the 1960s and early 1970s and found that mothers exposed to SNAP during pregnancy gave birth to fewer low-birthweight babies. Prenatal exposure to SNAP may also have reduced infant mortality. Improvements in health outcomes were largest for the smallest babies.

The benefits of participating in SNAP while young last well into adulthood. Adults with access to SNAP in early childhood had significantly lower risks of obesity, high blood pressure, and other conditions related to heart disease and diabetes, with increases in educational attainment, earnings, and income and decreases in welfare use for women.[59] Children who had access to SNAP in early childhood and whose mothers had access during their pregnancy had better health and educational outcomes than children without access.[60] A similar study using SNAP's county-by-county rollout in California found that the introduction of SNAP was associated with improved birth outcomes.[61]

One study found that food insecurity among children fell by roughly a third after their families received SNAP benefits for six months.[62] Another study found that providing SNAP benefits over the summer to families with students who received free or reduced-price meals during the school

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[59] Hilary Hoynes, Diane Whitmore Schanzenbach, and Douglas Almond, "Long-Run Impacts of Childhood Access to the Safety Net," *American Economic Review*, 106(4):903–934, April 2016, https://pdfs.semanticscholar.org/c94b/26c57bb565b566913d2af161e555edeb7f21.pdf.

[60] Douglas Almond, Hillary Hoynes, and Diane Schanzenbach, "Inside the War on Poverty: The Impact of Food Stamps on Birth Outcomes," *The Review of Economics and Statistics*, 93(2), May 2011, https://www.mitpressjournals.org/doi/pdfplus/10.1162/REST_a_00089; Hilary Hoynes, Diane Whitmore Schanzenbach, and Douglas Almond, "Long-Run Impacts of Childhood Access to the Safety Net," *American Economic Review*, 106(4):903–934, April 2016, https://pdfs.semanticscholar.org/c94b/26c57bb565b566913d2af161e555edeb7f21.pdf.

[61] Currie, Janet and Enrico Moretti, "Did the Introduction of Food Stamps Affect Birth Outcomes in California?" National Poverty Center Working Paper Series, June, 2006, http://www.npc.umich.edu/publications/workingpaper06/paper20/working-paper06-20.pdf.

[62] James Mabli *et al.,* "Measuring the Effect of Supplemental Nutrition Assistance Program (SNAP) Participation on Food Security," Food and Nutrition Service, USDA, 2013, https://www.fns.usda.gov/measuring-effect-snap-participation-food-security-0.

year reduced very low food security by nearly one-third.[63] (Very low food security among children occurs when caregivers report that children skip meals or do not eat because their family cannot afford enough food.) Children receiving SNAP are less likely than low-income non-participants to be in fair or poor health or underweight, and their families are less likely to make tradeoffs between paying for health care and paying for other basic needs, like food, housing, heating, and electricity.[64]

Participation in SNAP by low-income households has demonstrable health benefits and reduces medical costs. Research shows that SNAP improves a number of health outcomes. Adult SNAP participants are more likely to assess their own health as excellent or very good than similar adults not participating in SNAP. The same is true for parents when assessing their child's health. Adults who receive SNAP have fewer sick days, make fewer visits to a doctor, are less likely to forgo needed care because they cannot afford it, and are less likely to exhibit psychological distress.[65]

SNAP participation is also linked with lower overall health care expenditures and Medicaid and Medicare costs. An analysis of national data on overall health care expenditures links SNAP participation to lower health care costs. On average, after controlling for factors expected to affect spending on medical care, low-income adults participating in SNAP incur about $1,400, or nearly 25 percent, less in medical care costs in a year, including costs paid by private or public insurance, than non-participants. The differences are even greater among adults with hypertension (nearly $2,700 less) and coronary heart disease (about $4,100 less).[66] The importance of SNAP as an investment in children, and thus not an appropriate indicator of future dependence on public benefits, is also supported by research showing that SNAP participation can lead to improvements in reading and mathematics skills among elementary school children, especially young

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[63] Ann Collins *et al.*, "Summer Electronic Benefits Transfer for Children (SEBTC) Demonstration: Summary Report," prepared for the Food and Nutrition Service, USDA, May 2016, www.fns.usda.gov/sites/default/files/ops/sebtcfinalreport.pdf.

[64] Katherine M. Joyce *et al.*, "Household Hardships, Public Programs, and Their Associations with the Health and Development of Very Young Children: Insights from Children's HealthWatch," *Journal of Applied Research on Children: Informing Policy for Children at Risk*, 3(1), 2012, www.childrenshealthwatch.org/wp-content/uploads/KJ_JARC_2012.pdf; Stephanie Ettinger de Cuba *et al.*, "The SNAP Vaccine: Boosting Children's Health," Children's HealthWatch, February 2012, www.childrenshealthwatch.org/publication/the-snap-vaccine-boosting-childrens-health-2/.

[65] Christian A. Gregory and Partha Deb, "Does SNAP Improve Your Health?" *Food Policy*, 50:11-19, 2015, http://www.sciencedirect.com/science/article/pii/S0306919214001419; Daniel P. Miller and Taryn Morrissey, "Using Natural Experiments to Identify the Effects of SNAP on Child and Adult Health," University of Kentucky Center for Poverty Research, Discussion Paper Series, DP2017-04, January 2017, https://uknowledge.uky.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1103&context=ukcpr_papers; Vanessa M. Oddo and James Mabli, "Association of Participation in the Supplemental Nutrition Assistance Program and Psychological Distress," *American Journal of Public Health*, 6:e30-e35, June 2015, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4431109/pdf/AJPH.2014.302480.pdf.

[66] Seth A. Berkowitz *et al.*, "Supplemental Nutrition Assistance Program (SNAP) Participation and Health Care Expenditures Among Low-Income Adults," *JAMA Internal Medicine*, November 2017, https://jamanetwork.com/journals/jamainternalmedicine/article-abstract/2653910?amp%3butm_source=JAMA+Intern+MedPublishAheadofPrint&utm_campaign=25-09-2017; Seth Berkowitz, Hilary K. Seligman, and Sanjay Basu, "Impact of Food Insecurity and SNAP Participation on Healthcare Utilization and Expenditures," University of Kentucky Center for Poverty Research Discussion Paper Series, DP2017-02, 2017, http://uknowledge.uky.edu/cgi/viewcontent.cgi?article=1105&context=ukcpr_papers.

girls, and can increase the chances of graduating from high school by as much as 18 percentage points.[67]

Receipt of SNAP can thus support work and improve a family's immediate and long-term prospects, decreasing the odds that the individuals will become primarily dependent on government benefits to support themselves. The proposed rule, by demonizing SNAP receipt, would lead many individuals who need help to forgo it, with the result that individuals would have poorer nutritional outcomes and children's futures would be shortchanged — lowering their economic productivity and hurting the economy.

C. Federal rental assistance: Housing Choice Vouchers, Section 8 Project-Based Rental Assistance, and Public Housing

Federal rental assistance programs make housing more affordable for nearly 10 million people, including nearly 4 million children, in roughly 5 million households. Nine out of ten of these households are assisted under one of three programs that the Department of Housing and Urban Development administers: the Housing Choice Voucher, Section 8 Project-Based Rental Assistance, and Public Housing programs.[68] As explained in more detail below, federal rental assistance sharply reduces homelessness and other hardships, lifts 4 million people, including 1.5 million children, out of poverty, and can help families to live in safer, less poor neighborhoods. These benefits, in turn, are closely linked to educational, developmental, and health benefits that can improve children's chances of success over the long term.

DHS argues that an individual who receives housing assistance is a public charge: "[t]hese programs impose a significant expense upon multiple levels of government, and because these benefits relate to a basic living need (i.e., shelter), receipt of these benefits suggests a lack of self-sufficiency" (p. 51167). DHS argues that the proposed rule would reduce annual federal transfer payments by $1.5 billion (Table 52, p. 51268). For the reasons explained below, these arguments are problematic; DHS should not consider receipt of federal rental assistance as part of any public charge determination.

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[67] Edward Frongillo, Diana F. Jyoti, and Sonya J. Jones, "Food Stamp Program Participation is Associated with Better Academic Learning among School Children," *Journal of Nutrition*, 136(4): 2006, 1077-80, http://jn.nutrition.org/content/136/4/1077.full.

[68] "Policy Basics: Federal Rental Assistance," Center on Budget and Policy Priorities, https://www.cbpp.org/research/housing/policy-basics-federal-rental-assistance. About 90 percent of those receiving federal housing assistance are helped by one of three programs: Housing Choice Vouchers, Section 8 Project-Based Rental Assistance, or Public Housing.

1. Immigration officials would be particularly unable to predict future housing assistance receipt

Unlike entitlement programs such as SNAP and Medicaid, not every household that seeks or qualifies for federal housing assistance can receive it. Only a small fraction (1 in 4) of eligible households receive housing assistance because funding has always been limited. Waiting lists for assistance are long.[69] Most individuals seeking lawful entry or status adjustment will not be receiving housing assistance and, thus, its inclusion in the definition of public charge would likely matter primarily when immigration officials attempted to predict future benefit receipt. But given that such a small share of individuals and households *eligible* for housing assistance actually receive it — and that the reasons why some households receive help while similarly situated households do not depend heavily on local housing conditions, wait list sizes, and preferences — there is no basis on which to predict that someone seeking status adjustment or lawful entry is *likely* to receive housing benefits. It would be unreasonable for a DHS official to ever make a determination that it is *more likely than not* that any individual would ever receive housing assistance, no matter how meager his or her resources or potential. Therefore, it would be unreasonable to include such considerations in a public charge determination.

Even if immigration officials understood the small likelihood of future housing assistance receipt and did not deny status adjustment or entry on that basis, including housing assistance in the public charge definition would remain highly problematic. Households eligible for and selected to receive housing assistance — often households that have significant housing challenges and are at risk of homelessness — might forgo that help out of a fear that it could have negative immigration consequences. This chill would likely extend well beyond the group of households in which anyone is likely to face a public charge determination.

2. Most working-age, non-disabled adults receiving rental assistance are workers

Of the non-elderly, non-disabled households receiving federal rental assistance, about two-thirds are headed by working adults (defined as adults who are either currently working or worked in the prior year).[70] Moreover, work rates among non-citizen housing assistance recipients are significantly higher than average: well over three-quarters of non-elderly, non-disabled households with non-citizens receiving aid reported wage income in the current year.[71] About 40 percent of working households using federal rental assistance have wage earnings above the federal poverty line.[72] Housing assistance supplements the earnings of working families, helping them afford more adequate housing.

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[69] Alicia Mazzara and Barbara Sard, "Chart Book: Employment and Earnings for Households Receiving Federal Rental Assistance," Center on Budget and Policy Priorities, February 5, 2018, https://www.cbpp.org/research/housing/chart-book-employment-and-earnings-for-households-receiving-federal-rental

[70] Alicia Mazzara and Barbara Sard, "Chart Book: Employment and Earnings for Households Receiving Federal Rental Assistance," Center on Budget and Policy Priorities, February 5, 2018, https://www.cbpp.org/research/housing/chart-book-employment-and-earnings-for-households-receiving-federal-rental.

[71] Center on Budget and Policy Priorities analysis of HUD administrative data.

[72] Mazzara and Sard, *op cit.*

Moreover, income eligibility limits vary greatly across states and localities, and households with significant earnings are therefore eligible for housing assistance in some communities. To receive federal rental assistance, household income may not exceed 80 percent of the local area median income. (Some programs limit initial eligibility to households at or below 50 percent of the local median, although after admission, households remain eligible if their incomes rise above this initial limit.) This limit varies greatly across communities; for a three-person household, 80 percent of area median income in 2018 is $33,850 in Washington County, MS, and $69,750 in Los Angeles, CA, for example, while the initial eligibility limits for a one-person household are $26,350 and $54,250, respectively, according to the Department of Housing and Urban Development.[73]

The availability of housing assistance differs across jurisdictions as well, with some areas having significantly longer waiting lists than others.[74]

The combination of different eligibility criteria across jurisdictions, different levels of access to housing assistance, and immigration officials' inability to predict accurately where an individual is likely to live for decades into the future means that immigration officials could not make a meaningful judgment about the likelihood of housing assistance receipt.

3. Federal rental assistance provides supplemental support to address housing affordability

Rental assistance is best understood as a supplemental benefit that reduces housing costs for low-income households but does not provide support for all of an individual's basic needs. Indeed, it does not even fully support their housing costs. It enables recipients to access rental housing generally without spending more than of 30 percent of income on housing; recipients are generally required to cover housing costs up to this 30 percent standard.[75] They are meeting their needs, including a portion of their housing needs, with their income — generally earnings — rather than solely relying on housing assistance.

The typical working family receiving federal rental assistance is headed by a 38-year-old woman with two school-age children. She has an annual income of roughly $18,200, the majority of which comes from working at a low-wage job. Her housing assistance reduces the high cost of housing, but a substantial portion of her rent is covered by her own earnings.[76]

While housing assistance help makes housing more affordable — and, thus, plays an important role in reducing economic hardship and promoting housing stability — a large majority of the

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[73] https://www.huduser.gov/portal/datasets/il.html#2018_data.

[74] National Low Income Housing Coalition, "Housing Spotlight: The Long Wait for a Home," October 2016, https://nlihc.org/article/housing-spotlight-volume-6-issue-1.

[75] More specifically, the required tenant contribution is typically the higher of: (1) 30 percent of adjusted income; (2) 10 percent of gross income; or (3) the minimum rent set by the local housing agency.

[76] Alicia Mazzara and Barbara Sard, "Chart Book: Employment and Earnings for Households Receiving Federal Rental Assistance," Center on Budget and Policy Priorities, February 5, 2018, https://www.cbpp.org/research/housing/chart-book-employment-and-earnings-for-households-receiving-federal-rental.

households that receive rental assistance would be housed even without assistance. In fact, most are living in housing (that is, are not homeless) when they are first offered rental assistance.[77] Housing assistance eases these families' burdens, but they met their most basic need for shelter without assistance — evidence that housing benefits are generally supplemental and do not mean that families are primarily dependent on government.

A review of the housing circumstances of those who are eligible for federal housing assistance but do not receive it also shows that the vast majority are housed without aid. In 2015, for example, 17 million low-income renter households had housing affordability problems (that is, either they paid more than 30 percent of their income in rental costs or lived in substandard housing) and received no housing assistance, according to HUD's analysis of American Housing Survey data.[78] In the same year, however, fewer than 1.2 million households — about 7 percent of the unassisted low-income households with affordability problems — experienced homelessness, according to data collected by HUD.[79] This implies that the great majority of eligible-but-unassisted households are able to secure housing, although at a cost in terms of the hardships they bear, and should not be considered dependent or a public charge.

Moreover, because the large number of eligible-but-unassisted households and the 5 million households receiving federal rental assistance are very similar in terms of income and other characteristics, it's reasonable to infer that the great majority of the latter also would not become homeless without that assistance — and should therefore be deemed self-sufficient in terms of meeting basic housing needs.

Rental housing affordability is a challenge that is endemic among households across a wide range of incomes, as it is driven by broader structural trends in the labor and housing markets across the country and the resulting growing gap between the earnings of workers in low-paid jobs and rental costs. One-half of all renter households pay housing costs that exceed 30 percent of income, including one-quarter of renter households with annual incomes between $45,000 and $75,000.[80] While it's true that larger shares of lower-income households have unaffordable housing costs than do renter households with moderate incomes, significant shares of families in the latter group also face affordability challenges. The spread of rental affordability problems up the income scale, and the structural factors that underlie this trend, provide further evidence that rental assistance receipt does not indicate lack of self-sufficiency.

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[77] In the rigorous Housing Voucher Evaluation (also known as the Welfare-to-Work study), a study of the effects of housing vouchers on families with children eligible for TANF, researchers found that about two-thirds of study families were renting a place of their own at baseline (excluding the small share that were already in assisted housing), despite the fact that study families were significantly poorer than the average family receiving federal rental assistance. Michelle Wood *et al.,* "Housing Affordability and Family Well-Being: Results from the Housing Voucher Evaluation," *Housing Policy Debate,* 19-2, 2008, pp. 367-412.

[78] U.S. Department of Housing and Urban Development, *Worst-Case Housing Needs: 2017 Report to Congress*, https://www.huduser.gov/portal/publications/Worst-Case-Housing-Needs.html.

[79] U.S. Department of Housing and Urban Development, *The 2016 Annual Homeless Assessment Report (AHAR) to Congress,* https://www.hudexchange.info/onecpd/assets/File/2015-AHAR-Part-2.pdf.

[80] Joint Center for Housing Studies at Harvard University, *State of the Nation's Housing, 2018*, http://www.jchs.harvard.edu/state-nations-housing-2018.

In addition, low-income housing assistance receipt tends to be temporary, and low-income households that exit assistance programs are not likely to return. HUD data indicate that the average working-age, non-disabled household that receives federal housing assistance uses it for less than three years (somewhat longer for households headed by people who are elderly or have disabilities).[81] The chances of any household returning to a housing assistance program after exiting are likely small, in part because incomes of assisted household tend to increase over time, but also because only a small fraction of eligible households receive assistance. As a result, the total amount of aid that most assisted households receive over their lifetimes is likely small in proportion to their earnings over many years. This is another reason to reject the idea that housing assistance receipt is a meaningful indicator of a lack of self-sufficiency.

4. Federal rental assistance enables recipients to succeed and contribute to society

As noted above, including housing assistance receipt within the definition of public charge would likely to mean that some households forgo assistance for fear that it would result in a negative immigration consequence. Many of the families that chose to forgo benefits likely would not include anyone who will actually face a public charge determination, including many families with children.

Those who forgo needed assistance would be harmed.

Federal rental assistance sharply reduces homelessness and other hardships, lifts 4 million people, including 1.5 million children, out of poverty, and can help families to live in safer, less poor neighborhoods.[82] These benefits, in turn, are closely linked to educational, developmental, and health benefits that can improve children's chances of success over the long term.[83]

Frequent family moves have been linked to attention and behavioral problems among preschool children.[84] Low-income children who switch schools frequently tend to perform less well academically,[85] are less likely to complete high school, and as adults obtain jobs with lower earnings

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[81] Mazzara and Sard, *op cit.*

[82] Arloc Sherman and Danilo Trisi, "Safety Net More Effective Against Poverty Than Previously Thought," Center on Budget and Policy Priorities, May 6, 2015, https://www.cbpp.org/research/poverty-and-inequality/safety-net-more-effective-against-poverty-than-previously-thought.

[83] Will Fischer, "Research Shows Housing Vouchers Reduce Hardship and Provide Platform for Long-Term Gains Among Children," Center on Budget and Policy Priorities, October 7, 2015, https://www.cbpp.org/research/housing/research-shows-housing-vouchers-reduce-hardship-and-provide-platform-for-long-term.

[84] Kathleen M. Ziol-Guest and Claire C. McKenna, "Early Childhood Housing Instability and School Readiness," Child Development, 2013.

[85] David T. Burkam *et al.,* "School Mobility in the Early Elementary Grades: Frequency and Impact from Nationally Representative Data," prepared for workshop on Impact of Mobility and Change on the Lives of Young Children, Schools, and Neighborhoods, June 4, 2009; Arthur J. Reynolds, Chin-Chih Chen, and Janette Herbers, "School Mobility and Educational Success: A Research Synthesis and Evidence on Prevention," prepared for workshop on Impact of Mobility and Change on the Lives of Young Children, Schools, and Neighborhoods, June 22, 2009.

and skill requirements.[86] Housing instability also affects the classmates of students who move; in schools with high turnover, teachers are less able to gauge the effects of instruction, lessons become review-oriented, the pace of curriculum slows,[87] and student achievement is substantially lower.[88]

By allowing families to rent a unit of their choice in the private market, vouchers enable them to move to safer neighborhoods with less poverty.[89] Children whose families move to low-poverty neighborhoods when they are young are far more likely to attend college and less likely to become single parents, and they earn significantly more as adults, research shows.[90] Research also shows that adults who used a housing voucher to move to a less poor neighborhood are less likely to suffer from depression, psychological distress, extreme obesity, and diabetes — results that could reflect reduced stress due to lower crime and better access to public exercise space.[91]

5. Contrary to DHS's argument in the preamble, the proposed rule would not reduce federal housing assistance payments

DHS estimates that the rule would reduce housing assistance payments by $71 million per year. This estimate, like all of the estimates related to the number of people likely to forgo assistance because of the rule, is highly problematic. (See Section VI.F.) But beyond the issue of how many households would forgo rental assistance, the DHS assertion of federal savings in housing programs is incorrect because HUD rental assistance programs are discretionary programs, not entitlements, and are provided with a fixed amount of funding that falls very far below what is needed to serve all eligible households. Therefore, net transfer payments for housing assistance would remain roughly the same as a result of the proposed rule and would yield no net savings for the federal government.

D. Medicare Part D Low-Income Subsidy Program

The final rule should not include the Medicare Part D Low Income Subsidy (LIS) in the definition of benefits to be considered under public charge determinations as proposed in section § 212.21 b. The LIS provides subsides to low-income Medicare beneficiaries with Medicare Part D prescription drug coverage to help them pay Part D premiums, deductibles, and co-insurance. Current LIS

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[86] Janette Herbers *et al.,* "School Mobility and Developmental Outcomes in Young Adulthood," *Development and Psychopathology,* Vol. 25, pp. 501-515, 2013.

[87] David Kerbow, "Patterns of Urban Student Mobility and Local School Reform: Technical Report," Center for Research on the Education of Students Placed At Risk, October 1996.

[88] Stephen W. Raudenbush, Marshall Jean, and Emily Art, "Year-by-Year and Cumulative Impacts of Attending a High-Mobility Elementary School on Children's Mathematics Achievement in Chicago, 1995-2005," in *Whither Opportunity? Rising Inequality, Schools, and Children's Life Chances,* eds. Greg J. Duncan and Richard J. Murnane, Russell Sage Foundation and Spencer Foundation, pp. 359-375; Eric A. Hanushek *et al.,* "Disruption versus Tiebout Improvement: the Costs and Benefits of Switching Schools," *Journal of Public Economics,* Vol. 88, pp. 1721-1746, 2004.

[89] Michael Lens *et al.,* "Do Vouchers Help Low-Income Households Live in Safer Neighborhoods? Evidence on the Housing Choice Voucher Program," *Cityscape,* Vol. 13, No. 3, 2011; Wood *et al.,* note 2.

[90] Raj Chetty, Nathaniel Hendren, and Lawrence F. Katz, "The Effects of Exposure to Better Neighborhoods on Children: New Evidence from the Moving to Opportunity Experiment," May 2015, http://scholar.harvard.edu/files/lkatz/files/mto_manuscript_may2015.pdf.

[91] Lisa Sanbonmatsu *et al.,* "Moving to Opportunity for Fair Housing Final Demonstration Program: Final Impacts Evaluation," prepared for U.S. Department of Housing and Urban Development, Office of Policy Development and Research, 2011, http://www.huduser.org/portal/publications/pubasst/MTOFHD.html.

enrollment exceeds 12 million persons, or about 30 percent of all Part D enrollees. The LIS is only available to Medicare enrollees, which means LIS enrollees, or their spouses, must have a sufficient work history to qualify for Medicare or have end-stage renal disease. (Generally, individuals must work for 40 quarters or ten years to qualify for Medicare.) Medicare enrollees receiving SSI or Medicaid are automatically enrolled in the LIS, but the LIS is also available to Medicare enrollees who don't receive these benefits who apply at the Social Security Administration. The LIS is available for individuals with incomes up to 150 percent of the poverty line and up to $12,320 ($24,600 for a couple) in assets.

The help that seniors receive with premiums and cost-sharing for prescription drugs makes a big difference in ensuring they get the medication they need to maintain their health. While Medicare Part D subsidies can play an important role in helping retired workers to afford their medication, it is a supplemental benefit and does not provide overall support to meet the recipient's basic needs. It does not cover shelter, utilities, food, toiletries, transportation, or other expenses of daily living. Those who receive it cannot be reasonably viewed as relying on government benefits to support themselves.

Moreover, the LIS likely saves money for Medicare, which would otherwise have to pay for avoidable hospital care and other services that can result from seniors skipping their medications because of costs.

Finally, very few individuals applying for status adjustment or lawful entry and subject to a public charge determination will already be receiving Medicare or the LIS. Thus, its inclusion in the public charge definition would primarily be relevant in predicting who is *likely* to receive benefits in the future. For many, this would be a prediction about benefit receipt decades in the future, which will be highly uncertain.

E. Change to the benefit receipt "threshold" in public charge definition should be rejected

Currently, a public charge is one who is "primarily dependent" on — that is, receiving more than half of one's income or support from — cash benefits such as SSI or TANF or receives government-provided institutional long-term care. In addition to adding other types of benefits relating to housing, health coverage, and food, the NPRM proposes to alter the extent of use of public benefits that would make an individual a public charge. It defines one to be a public charge based on receipt of monetizable benefits in the amount of 15 percent of the federal poverty guidelines for one person (currently $1,821 per year). For non-monetizable benefits, the rule sets the threshold at receipt for 12 cumulative months in a 36-month period, or 9 months if a monetizable benefit is also received. At 83 Fed. Reg. 51165-6, DHS seeks comment whether the proposed 15 percent threshold is an appropriate measure of reliance on public benefits, as well as whether receipt of benefits in amounts below the threshold should be considered in some manner in a public charge determination. DHS similarly seeks comment on its proposed duration-of-receipt approach to benefits that cannot be monetized.

The thresholds in the proposed rule should be withdrawn; instead, DHS should retain the current standard of "primarily dependent." (As we comment elsewhere, the benefits considered for a public charge determination should be limited to those currently considered: cash benefits like TANF or SSI and Medicaid long-term care.) The new thresholds proposed are arbitrary, unworkable, and do

not represent a reasonable measure of whether an immigrant is a public charge. Nor should receipt of benefits at or below the threshold levels be considered as part of the totality of the circumstances test. If any benefit receipt below the threshold were to be considered in the totality of circumstances, the thresholds would become entirely meaningless.

The rule not only sets thresholds that are arbitrary and low, but switches the role the threshold plays in making a public charge assessment by examining whether benefits received exceed a standardized amount or duration rather than whether they support the majority of the individual immigrant's basic needs. Any evaluation of whether an individual relies on public benefits for support or to meet basic needs would necessarily need to look at an individual's income and the degree to which it is used to meet an individual's basic needs, as the current "primarily dependent" standard does. Looking at a standardized amount of monetizable benefits bears no relation to the extent to which the individual relies on benefits to meet basic needs and is not a reasonable approach to a public charge determination. The amount of SNAP benefits, for example, that could exceed the 15 percent threshold might represent only part of the individual's or household's food budget and a small fraction of its income. In this circumstance, the threshold would represent an arbitrary and unreasonable interpretation of the statutory concept of a public charge.

1. Thresholds would be very unlikely to matter in prospective determinations

Moreover, as a practical matter, the thresholds would likely be meaningless in the context of any prospective determination of whether someone who has never received any public benefits (and may not even have entered the country) is likely to become a public charge. This is true for both monetizable and non-monetizable benefits.

For monetizable benefits, an immigration officer making such prospective determination would not be in a position to calculate the amount of, for example, SNAP benefits, that an individual immigrant might receive at some point in the future. Those benefits would depend on the income of the immigrant's household (and of other non-family members with whom they share meals); it also could vary depending on shelter costs (which vary widely across jurisdictions) or other deductions including for medical care and child care. In fact, while the average annual SNAP benefit per person of $1,527.59 (Table 10 at FR 51160) is less than this threshold, an immigration officer would likely presume that any SNAP receipt would exceed the threshold and certainly could not make nuanced distinctions between the benefit that one individual would receive as compared to another's benefit level.

Prospectively estimating the value of, for example, a Housing Choice Voucher under Section 8 would be even more unworkable. First, as noted above, a DHS official could never assume that an individual is likely to receive housing assistance since only a small fraction of eligible households receive housing assistance.[92] Moreover, the value of a subsidy would depend on the location and the contract with the landlord for the rental amount. Here too, an immigration officer would have no capacity to estimate any of this, particularly with respect to decades into the future.

[92] "Three Out of Four Low-Income At-Risk Renters Do Not Receive Federal Rental Assistance," Center on Budget and Policy Priorities, https://www.cbpp.org/three-out-of-four-low-income-at-risk-renters-do-not-receive-federal-rental-assistance.

For prospective determination of possible receipt of nonmonetizable benefits, a durational estimate of receipt is also not feasible. As hard as it would be to predict future Medicaid receipt, it would be even harder to accurately predict months of Medicaid receipt in any given future year.

As a practical matter, these thresholds cannot be applied in a prospective determination and, thus, DHS officials would simply determine whether there is a likelihood of receiving *any* amount or duration of benefits. The fact that this aspect of the rule would be meaningless for prospective determinations is not a side issue; prospective determinations would be the main application of the proposed public charge rule. With some exceptions, immigrants who do not already have LPR status are not eligible for most of the public benefit programs implicated here, so their potential prospective receipt, not past or current receipt, will most typically be considered.

2. For monetizable benefits, the threshold would mean that someone receiving $5 per day in benefits would be deemed a public charge

The proposed threshold of 15 percent of the federal poverty guidelines for an individual is not a reasonable measure of dependence on public benefits and is too low to represent any significant provision for basic needs. The 15 percent threshold of $1,821 annually represents $152 a month, or $5 a day. Benefit receipt in this amount could represent a small fraction of a household's income and is not a marker of someone largely or substantially dependent on government assistance. For an individual working full-time at the minimum wage, this threshold represents about 12 percent of earnings (and an even smaller percentage of total income if the benefits are considered). Defining an individual whose earnings largely support his or her basic expenses as a public charge is at odds with the longstanding caselaw and congressional intent.

With respect to the request for comments on the 15 percent level chosen, as discussed above, any measure of reliance on public benefits should look at the immigrant's income and needs; benefits should only be considered for public charge purposes if the immigrant is primarily dependent upon the benefits — that is, receives more than half of their income from the benefits. As noted elsewhere, the benefits considered here should not expand beyond those in the 1999 Field Guidance.

3. Non-monetizable benefit threshold is also problematic

The fact that certain benefits cannot be monetized, most notably health coverage, underscores that they should not be included in any public charge considerations. For example, health coverage can provide important benefits for individual and community well-being but do not constitute basic support.

Moreover, durational receipt measures are meaningless in the context of health coverage since duration does not represent the extent of benefits actually used. An individual applying for Medicaid for a single instance of care for a medical problem would likely be enrolled for a full year — and in a managed care situation, premiums would be paid each month — even if he or she only uses the health coverage for a single medical visit.

F. Receipt of benefits within prior 36 months should not be a heavily weighed negative factor

As DHS notes repeatedly, a public charge determination must be made on the totality of the circumstances, and receipt of benefits is apparently included as one aspect of the statutory financial status factor. The proposed rule, however, weighs some circumstances differently than others — considering current receipt of benefits, or receipt within the 36 months prior to application for a visa, admission, or adjustment of status, as a heavily weighed negative factor. (Section 212.22(c)) By weighing current or (not so) recent receipt of benefits as heavily negative, DHS essentially puts a thumb on the scale, undercutting the totality of the circumstances test. (For the same reason, we also object to including certain medical conditions as a heavily weighed negative factor.) While the preamble states that the weight given receipt of benefits within the prior 36 months would depend on how recently the benefits had been received and for how long (see, e.g., p. 51199), the rule in fact undercuts this continuum analysis and instead labels benefit receipt within the past 36 months as a heavily weighed negative factor, even if the receipt is for a brief time or occurred, for example, two to three years prior. In order to implement the totality of circumstances test, there should be no heavily weighed factors. (See Section II.H.)

G. Changes in how cash assistance is considered are problematic

Under the current policy as set forth in the 1999 Field Guidance, an individual who is primarily dependent on cash benefits for income maintenance, or institutionalized long-term care, is considered a public charge. Cash benefits include Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), and state and local cash programs such as General Assistance.

The proposed regulation carries forward this list of cash or long-term care benefits as part of its definition of public charge. But, unlike the food, health and housing programs whose receipt would only be considered if received beyond 60 days after the publication of the final rule, the rule proposes to consider receipt of "any amount" of cash (or long-term care) benefits as a negative factor even if the receipt occurred prior to the adoption of a final rule. At p. 51210, DHS invites comment on whether it should consider receipt of benefits previously considered under the 1999 Field Guidance at all or in some way other than as a negative factor in the totality of the circumstances.

DHS should not consider benefits received prior to 60 days after the new rule becomes final as a negative factor in its newly configured public charge determination. DHS may have reasoned that this portion of the policy has not changed, but that would not be correct. DHS is proposing to change the standard under which individuals receiving cash would be considered a public charge, replacing the "primarily dependent" test of the current policy. Proposed section 212.22(d) would consider receipt of "any amount" of cash assistance for income maintenance under the old policy as a negative factor for public charge purposes. (FR 51292). DHS is thus impermissibly retroactively applying a change in how receipt of cash assistance during the period controlled by the 1999 Field Guidance is considered.

The proposed rule also changes the way that benefits that were considered for public charge purposes under the prior policy will be considered if received in the future, after the effective date of the rule. Any cash benefits received after the proposed rule has been final for 60 days would be

considered based on the 15 percent of federal poverty guidelines thresholds rather than the "primarily dependent" standard of the 1999 Field Guidance. As discussed elsewhere, the "primarily dependent" standard should be retained for any public charge determination, including cash benefits for income maintenance. Moreover, receipt of cash benefits (or any other public benefits) after the new rule goes into effect would be a heavily weighed negative factor if within 36 months prior to the application for visa, entry, or adjustment of status. As discussed elsewhere, adding past receipt of benefits as a heavily weighed factor is contrary to the totality of circumstances test as well as to the prospective nature of the public charge determination.

H. The rule would create administrative burden on states and localities

The rule would create new challenges for state and local agencies administering these programs. Issues state and local agencies would face include:

- **Increased "churn" among the caseload.** As families learned about the new rule, some would terminate their participation in programs, as we have already seen in response to draft public charge-related proposed rule changes leaked to the media.[93] But, because these programs meet vital needs for families, some of these families would likely return to the caseload, resulting in duplicative work for agencies that would experience a new kind of churn in their caseloads. Some families might return if they came to understand that they were not subject to a public charge determination. Others might reapply when their family or health circumstances became more serious; for example, a child might be withdrawn from Medicaid coverage, but without treatment — such as asthma medication — the child's condition might worsen, and the family would then re-enroll the child despite fears of potential immigration-related consequences. This on-again off-again approach to enrollment not only yields negative results for families, but also results in duplicative work for state and local agencies. Churn is expensive for state; in one study of SNAP-related churn, the costs averaged $80 for each instance of churn that requires a new application.[94]
- **Increased work to provide information and verification of benefit application and receipt for people undergoing a public charge determination.** The rule's associated form I-944 would require all individuals undergoing a public charge determination to report if they applied for or received any benefit considered under the rule. They would have to provide detail information about the amount and dates of benefit receipt and documentation issued by agencies to support these statements, as well as information regarding whether any of the benefits count as Medicaid for emergency medical conditions or otherwise fall into one of the exceptions to the overall rule. They also would be required to document if they have discontinued benefit receipt. These requirements would result in significant work for agency staff to produce documentation and respond to families' questions, increasing administrative costs and impeding the agency's ongoing work to administer benefits to eligible applicants and recipients.

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[93] Emily Baumgaertner, "Spooked by Trump Proposals, Immigrants Abandon Public Nutrition Services," *New York Times,* March 6, 2018, https://www.nytimes.com/2018/03/06/us/politics/trump-immigrants-public-nutrition-services.html

[94] Gregory Mills *et al.,* "Understanding the Rates, Causes, and Costs of Churning in the Supplemental Nutrition Assistance Program (SNAP) - Final Report," Prepared by Urban Institute for the US Department of Agriculture, Food and Nutrition Service, November 2014, https://fns-prod.azureedge.net/sites/default/files/ops/SNAPChurning.pdf.

- **Responding to inquiries related to the new rule.** State agencies would have to prepare to answer questions from families (as well as service providers and community organizations) about the new rule. Agencies would experience increased call volume and visits from families concerned about the new policies. Advising a family on whether they would be subject to a public charge determination and how receipt of various benefits might play out can require technical knowledge of immigration statuses and laws. Yet, if state and local agencies simply told all families making such inquiries that they must speak to an immigration attorney to get their questions answered, this almost surely would exacerbate the chill effect and lead many who will never face a public charge determination to forgo benefits their families need. Those who need public benefits are unlikely to be able to afford to seek legal counsel to see if getting benefits will jeopardize their family's immigration goals; if advised to seek legal counsel, they may well determine that receipt of benefits is simply too risky. Given this, state and local agencies should try to provide accurate information to families, but that would require training and staff time.
- **Modifying existing communications and forms related to public charge.** For almost 20 years, agencies have worked under the consistent and clear rules about when an individual's receipt of benefits could result in a negative finding in a public charge determination. Agencies have incorporated these messages on a variety of communications, including applications, application instructions, websites, posters, notices, and in scripts and trainings for staff. All of these communications would have to be identified and replaced. And, as noted above, the new rules would be so far reaching and complicated that states might not be able to replace them with messages that didn't inappropriately deter eligible people.

At FR 51174, DHS seeks input on whether the effective date of the rule should be delayed in order to help agencies that administer benefits adjust systems. As noted above, implementation of the proposed rule would create new administrative burdens and increase tasks on state and local agencies that administer public benefit programs. The proposal should not be implemented at all, but if it is, implementation should be delayed for as long as possible to enable adjustment of systems and processes including updating forms, notices, training staff.

IV. Proposed Policy Changes Would Lead Immigrant Families to Forgo Needed Assistance and Health Care and Cause Significant Harm to Communities, States, and Individuals

There is substantial evidence that modifying the public charge rules to consider utilization of programs such as Medicaid and SNAP — programs that serve a large share of the U.S. population — would sow fear and confusion, resulting in large numbers of people forgoing benefits for which they are eligible, including those who will never undergo a public charge determination and who will reside in the U.S. throughout their lifetimes. Moreover, the confusion caused by the rule would likely cause people to forgo benefits not listed under the rule as well. People "chilled" from participating in programs would have unmet immediate needs during hard times, resulting in long-term negative effects for individuals and society.

A. The proposed rule would depress benefit participation

The rule would be certain to foster confusion and widespread fear in immigrant communities. These rules are complicated, and even rumors of the rule changes have already led many to forgo benefits for which they qualify out of fear that their families could suffer negative immigration-related consequences. Shortly after the first media stories detailing the Administration's plan to modify public charge policy, numerous reports appeared of how fears associated with these potential changes resulted in eligible people forgoing benefits. For example, just months after the first leaks of the executive order, a Los Angeles-based health care provider serving a largely Latino community reported a 20 percent drop in SNAP enrollment and a 54 percent drop in Medicaid enrollment among children, as well as an overall 40 percent decline in program re-enrollments.[95] Such reports of drops in participation persisted[96] as additional leaks of the public charge policy changes emerged; service providers reported that immigrant families "canceled appointments, urgent requests for disenrollment and even subsequent requests to have any record of families purged from the

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[95] Annie Lowrey, "Trump's anti-immigrant policies are scaring eligible families away from the safety net," *The Atlantic,* March 24, 2017, https://www.theatlantic.com/business/archive/2017/03/trump-safety-net-latino-families/520779/.

[96] Victoria Pelham, "Generation of Sicker Kids Feared Under Immigration Proposal,"

Bloomberg Law, August 30, 2018, https://news.bloomberglaw.com/health-law-and-business/generation-of-sicker-kids-feared-under-immigration-proposal/;

Natasha Lennard, "Trump's Plan to Deny Green Cards to People on Medicaid or Food Stamps Is a Full-Blown Attack on the Immigrant Poor," Intercept, September 26, 2018,

https://theintercept.com/2018/09/26/public-charge-immigration-green-card/; Kathleen Page, "Cutting Off Immigrants from Public Benefits Means American Children Will Pay the Price," *Baltimore Sun,* September 25, 2018,

https://www.baltimoresun.com/news/opinion/oped/bs-ed-op-0926-public-charge-20180924-story.html; Christina Jewett *et al.,* "Under a Trump Proposal, Lawful Immigrants Might Shun Medical Care," NPR, May 10, 2018,

https://www.npr.org/sections/health-shots/2018/05/10/609758169/under-a-trump-proposallawful-immigrants-might-shun-medical-care; Bob Hennelly, "Warn U.S. Immigration Crackdown May Yield Greater Health Risks," The

Chief, August 20, 2018, http://thechiefleader.com/news/news_of_the_week/warn-u-s-immigration-crackdown-may-yield-greater-health-risks/article_513da722-a22a-11e8-b2d8-474316eb8b97.html.

database."[97] Some groups, such as agencies that oversee the WIC nutrition program for low-income women, infants, and children, began to track declines in participation. In at least 18 states, WIC agencies reported enrollment declines of up to 20 percent, citing fear related to changes in immigration policy.[98]

In our own work providing training and technical assistance to thousands of service providers and state and county officials who assist people in enrollment in public benefit programs, we began hearing concerns that program participants were requesting termination of their enrollment in programs and others were requesting to withdraw applications that were in process shortly after the first leak of the Administration's planned public charge changes. These reports have intensified since new information has become public, especially since DHS released the draft proposal on its website and the proposed rule was published in the federal register.

B. People unlikely to face a public charge determination would forgo benefits

The rule sends a very strong message that the federal government frowns upon immigrant families accessing benefits, even when necessary for their health, and that receiving benefits could harm an individual's immigration status down the road.

This message may resonate to a much larger degree than the details of a complex policy that applies to some, but not all, immigrant families. Immigration policies are complicated, the rules for determining whether someone is a public charge are technical, and the circumstances under which the authorities make a determination can be hard to understand; therefore, the number of low-income immigrant families that would choose not to receive benefits would likely exceed by a sizable amount the number that would ultimately be subject to a public charge determination. For example, while the naturalization process to become a U.S. citizen does not include a public charge test, there have been numerous accounts in the media of immigrants forgoing benefits out of fear that they would be denied the opportunity to become a U.S. citizen.[99]

This has happened previously. In the late 1990s, widespread confusion and fear about how public charge rules could impact families' ability to adjust their status among immigrants with children eligible for and in need of federal benefits such as SNAP and Medicaid deterred many from applying for benefits. Partly as a result, the share of eligible individuals among these groups who were participating in benefits was low. For example, in 1999, just 40 percent of eligible citizen children (who themselves are *not* subject to a public charge determination) living in households with immigrants participated in SNAP, compared to 70 percent of all eligible children.[100]

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[97] Emily Baumgaertner, "Spooked by Trump Proposals, Immigrants Abandon Public Nutrition Services," *New York Times,* March 6, 2018, https://www.nytimes.com/2018/03/06/us/politics/trump-immigrants-public-nutrition-services.html.

[98] Helena Bottemiller Evich, "Immigrants, fearing Trump crackdown, drop out of nutrition programs," *Politico,* September 3, 2018, https://www.politico.com/story/2018/09/03/immigrants-nutrition-food-trump-crackdown-806292.

[99] Suzanne Gamboa, "Immigrants drop subsidized food, health programs — fearing aid will be used against them," NBC News, September 8, 2018, https://www.nbcnews.com/news/latino/immigrants-drop-subsidized-food-health-programs-fearing-aid-will-be-n906246.

[100] Karen Cunnyngham, "Trends in Food Stamp Program Participation Rates: 1999 to 2002," September 2004, Table 6.

C. Chill would have harmful short- and long-term impacts on people and society

The proposed rule would result in eligible people forgoing the benefits newly considered under the rule — Medicaid, SNAP, housing assistance, and low-income subsidies for Medicare — as well as other government supports such as WIC. Those choosing to forgo benefits would largely be individuals who would never undergo a public charge determination since most people subject to a determination do not meet the restrictive immigration-related eligibility requirements to participate in the programs. But the rules are complicated. Even if individuals understand them, they may well fear that the rules can change and that anything that could threaten their ability to remain with their families in their communities here in the U. S. could be simply too risky.

This broader chill would likely to have the largest effect on children's participation in benefit programs (though some children who will face a public charge determination are eligible for benefits such as SNAP, Medicaid, and federal rental assistance). Nearly 80 percent of children of immigrants are U.S. citizens, and, thus, are not subject to a public charge determination; nor are many of their immigrant parents, based on their current status. But a parent who does not understand the rules and who does understand the overriding message of the rule — that immigrant families' receipt of benefits can put their ability to remain in the U.S. in jeopardy — may decide that it is too risky for their children to participate in Medicaid or SNAP.

1. Consequences of forgoing nutrition assistance

For eligible low-income people in need of food assistance, the consequences of not participating in SNAP can be significant. Going without SNAP would result in increased food insecurity, which has been linked to a range of negative and costly impacts. Recent research has looked at the loss of immigrant eligibility in SNAP following the 1996 welfare law and the subsequent restoration for some immigrants in the late 1990s and early 2000s to examine how losing benefits affected participants. This research uses the variation in immigrant eligibility across states from 1998 to 2003, as states restored eligibility for some immigrants who were made ineligible due to the 1996 welfare law, to isolate the impact of SNAP eligibility. Based on findings that an additional year of SNAP eligibility in early life is associated with improvements in health outcomes of school-age children, researchers estimate that the elimination of one year of parental eligibility for SNAP in early life leads to a $140 increase in health expenditures per child between the ages of 6 and 16.[101]

More broadly, as discussed in Section III B(4)**,** receipt of SNAP benefits among young children is associated with better long-term outcomes for children, including better health and education outcomes — both of which are important for future productivity and well-being and earnings as adults.[102] When children's life trajectories are shortchanged, not only do those children lose, but the nation loses out on their full potential as well.

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[101] Chole N. East, "The Effect of Food Stamps on Children's Health: Evidence from Immigrants' Changing Eligibility," https://www.chloeneast.com/uploads/8/9/9/7/8997263/east_fskids_r_r.pdf.

[102] Hilary Hoynes, Diane Whitmore Schanzenbach, and Douglas Almond, "Long-Run Impacts of Childhood Access to the Safety Net," *American Economic Review*, 106(4):903–934, April 2016.

When eligible low-income households lose SNAP benefits, many experience negative outcomes. Similar negative outcomes are likely for individuals who forgo needed SNAP benefits because of the fear of accessing government assistance. Cutting SNAP benefits is associated with an increase in food insecurity. When the temporary increase in SNAP benefits provided under the Recovery Act ended in November 2013, food insecurity began to rise. The prevalence of food insecurity among households that consistently participated in SNAP increased by 8 percent — and the prevalence of very low food security increased by 14 percent — compared to other low-income households.[103] This is significant because food insecurity is associated with increased health care costs. For example, one recent paper found that people in food-insecure households spend roughly 45 percent more on medical costs in a year ($6,100) than people in food-secure households ($4,200).[104]

SNAP receipt has also been linked to *reduced* health care costs, suggesting that participation by eligible households, including legal immigrants, is an important preventive health strategy. An analysis of national data on overall health care expenditures finds that after controlling for factors expected to affect spending on medical care, low-income adults participating in SNAP incur an average of about $1,400, or nearly 25 percent, less in medical care costs in a year (including costs paid by private or public insurance) than non-participants.[105]

2. Consequences of forgoing Medicaid

If eligible people forgo enrolling in Medicaid due to fear related to public charge, uninsured rates would rise, access to care would diminish, and health outcomes would worsen. Children would see both worse short-term health outcomes and diminished long-term outcomes extending well beyond health. States, health providers, and local charitable organizations would also face significant challenges.

Research shows that Medicaid improves health across a variety of indicators. For example, one recent study compared Arkansas and Kentucky, which have adopted the Affordable Care Act's (ACA) Medicaid expansion, with Texas, which hasn't.[106] In the expansion's first three years, the uninsured rate among the group eligible for expansion coverage dropped more than 20 percentage points more in Arkansas and Kentucky than in Texas. In Arkansas and Kentucky, the expansion

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[103] The prevalence of food insecurity among households that participated less frequently in the prior 12 months increased by 7 percent — and the prevalence of very low food security by 9 percent. Bhagyashree Katare and Jiyoon Kim, "Effects of the 2013 SNAP Benefit Cut on Food Security," *Applied Economic Perspectives and Policy*, 39(4): 662–681, 2017, https://academic.oup.com/aepp/article-abstract/39/4/662/3755270?redirectedFrom=fulltext.

[104] Seth A. Berkowitz *et al.,* "Food Insecurity and Health Care Expenditures in the United States, 2011-2013," Health Services Research, June 13, 2017, http://onlinelibrary.wiley.com/doi/10.1111/1475-6773.12730/full.

[105] Seth A. Berkowitz *et al.*, "Supplemental Nutrition Assistance Program (SNAP) Participation and Health Care Expenditures Among Low-Income Adults," *JAMA Internal Medicine*, November 2017, https://jamanetwork.com/journals/jamainternalmedicine/article-abstract/2653910?amp%3butm_source=JAMA+Intern+MedPublishAheadofPrint&utm_campaign=25-09-2017; Seth Berkowitz, Hilary K. Seligman, and Sanjay Basu, "Impact of Food Insecurity and SNAP Participation on Healthcare Utilization and Expenditures," University of Kentucky Center for Poverty Research Discussion Paper Series, DP2017-02, 2017, http://uknowledge.uky.edu/cgi/viewcontent.cgi?article=1105&context=ukcpr_papers.

[106] Benjamin Sommers *et al.,* "Three-Year Impacts of the Affordable Care Act: Improved Medical Care and Health Among Low-Income Adults," *Health Affairs,* June 2017, http://content.healthaffairs.org/content/early/2017/05/15/hlthaff.2017.0293.full.

fueled a 29 percent increase in the share of people with a personal doctor and a 24 percent increase in the share of people who received a checkup in the past year. With greater access to care came better outcomes: Medicaid expansion resulted in a 42 percent increase in the share of people who said they were "excellent" health. In Arkansas and Kentucky, Medicaid expansion has made people more financially secure: the share of people having trouble paying their medical bills dropped by 25 percent.[107] Forgoing Medicaid coverage due to fear would undermine these positive health outcomes.

Children — most of whom are U.S. citizens— would be particularly harmed by the proposed rule. Medicaid provides children access to important health services that promote school readiness, such as ensuring access to well-child exams, vaccines, and other important health screenings. As we explain in more detail in Section III.A4., children covered by Medicaid during their childhood have better health as adults, with fewer hospitalizations and emergency room visits.[108] Moreover, children eligible for Medicaid are more likely to graduate from high school and college, have higher wages, and pay more in taxes.[109]

While a precise single estimate of the impact of the proposed rule on Medicaid participation is challenging to calculate, reasonable ranges can be explored. A recent analysis by the Kaiser Family Foundation illustrated potential Medicaid disenrollment rates ranging from 15 to 35 percent due to the proposed rule. Kaiser researchers found that potentially 875,000 to 2 million U.S. citizen children with a noncitizen parent could lose coverage, raising the uninsured rate among these children from 8 percent to between 14 and 22 percent.[110] This is consistent with research documenting the significant decline in Medicaid enrollment for eligible immigrants after welfare reform in the 1990s.[111]

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[107] These figures based on CBPP calculations comparing the 2017 Sommers study and Benjamin Sommers *et al.,* "Changes in Utilization and Health Among Low-Income Adults After Medicaid Expansion or Expanded Private Insurance," *Journal of the American Medical Association,* October 2016, http://jamanetwork.com/journals/jamainternalmedicine/article-abstract/2542420.

[108] Laura Wherry *et al.,* "Childhood Medicaid Coverage and Later Life Health Care Utilization," National Bureau of Economic Research, February 2015, http://www.nber.org/papers/w20929.pdf

[109] Sarah Cohodes *et al.*, "The Effect of Child Health Insurance Access on Schooling: Evidence from Public Insurance Expansions," National Bureau of Economic Research, October 2014, http://www.nber.org/papers/w20178.pdf; David Brown, Amanda Kowalski, and Ithai Lurie, "Medicaid as an Investment in Children: What is the Long-Term Impact on Tax Receipts?" National Bureau of Economic Research, January 2015, http://www.nber.org/papers/w20835.pdf.

[110] Samantha Artiga, Anthony Damico, and Rachel Garfield, "Potential Effects of Public Charge Changes on Health Coverage for Citizen Children," Kaiser Family Foundation, May 2018, http://files.kff.org/attachment/Issue-Brief-Potential-Effects-of-Public-Charge-Changes-on-Health-Coverage-for-Citizen-Children.

[111] Namratha Kandula *et al.,* "The Unintended Impact of Welfare Reform on the Medicaid Enrollment of Eligible Immigrants," Health Services Research, October 2004, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1361081/; Edward Vargas, "Immigration enforcement and mixed-status families: The effects of risk of deportation on Medicaid use," *Children and Youth Services Review,* October 2015, https://www.sciencedirect.com/science/article/pii/S0190740915300177; Tara Watson, "Inside the Refrigerator: Immigration Enforcement and Chilling Effects in Medicaid Participation," National Bureau of Economic Research, August 2010, https://www.nber.org/papers/w16278.pdf. Note: There was also 9.9 to 10.7 percentage-point increase in the proportion of foreign born, low-educated, unmarried, uninsured women. compared to a negligible increase among U.S.-born women with the same characteristics; researchers partially attribute this difference to fear among immigrants that prevented them from accessing safety-net programs. Neeraj Kaushal and Robert Kaestner, "Welfare Reform and

A large chilling effect on Medicaid participation would increase uncompensated care and hurt safety net providers. The higher the uninsured rate, the greater the likelihood of safety net providers treating the uninsured and incurring uncompensated care costs. Hospitals saw significant reductions in uncompensated care costs as the ACA's Medicaid expansion to low-income adults, marketplace subsidies, and major insurance market reforms took effect in 2014. From 2013 to 2015, the nationwide uninsured rate fell 35 percent, and nationwide hospital uncompensated care costs fell by about 30 percent as a share of hospital budgets — a $12 billion drop in 2015 dollars. But such costs fell even more precipitously in states that adopted the Medicaid expansion, where hospitals' uncompensated care costs fell by roughly half.[112] And in the ten expansion states (Kentucky, West Virginia, Washington, Oregon, Rhode Island, California, Vermont, Minnesota, Michigan, and Illinois) where uninsured rates dropped the most, uncompensated care costs fell by 57 percent on average.

There is a tight relationship between the magnitude of a state's uninsured rate reductions and its drop in uncompensated care: overall, each 10 percent decline in uninsured rates translates into a roughly 8.6 percent decline in hospital uncompensated care costs.[113] By causing eligible individuals to forgo coverage, the proposed rule would increase the number of people lacking insurance and drive up the level of uncompensated care — costs that will be borne in large part by safety net providers. As discussed in Section VI.G(4), the proposed rule lacks adequate analysis of this issue, failing to estimate either the number of people who would forgo Medicaid coverage or the resulting increase in uncompensated care.

3. Consequences of forgoing rental assistance

If families forgo rental assistance due to fear related to the public charge rules, they would miss out on the opportunity to attain the educational, developmental, and health benefits we describe in Section III.C(4) and ultimately risk missing the chance to improve children's success over the long term.[114] A rigorous evaluation conducted from 2000 to 2004 examined the effect of Housing Choice Vouchers on low-income families with children. When researchers compared families that were randomly selected to receive vouchers (and then used a voucher for at least part of the year in which a follow up survey was conducted) to families in a control group who did not use vouchers, they found that vouchers:

Health Insurance of Immigrants," Health Services Research, June 2005, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1361164/pdf/hesr_00381.pdf.

[112] Except where otherwise noted, all uncompensated care data come from Medicaid and CHIP Payment and Access Commission (MACPAC), "Report to Congress on Medicaid and CHIP," March 2018, https://www.macpac.gov/wp-content/uploads/2018/03/Report-to-Congress-on-Medicaid-and-CHIP-March-2018.pdf.

[113] This estimate is based on a CBPP regression of percent changes in uncompensated care on percent changes in state uninsured rates, weighted by state population size. CBPP used Medicaid and CHIP Payment and Access Commission data on uncompensated care costs and Census Bureau data on uninsured rates by state.

[114] Will Fischer, "Research Shows Housing Vouchers Reduce Hardship and Provide Platform for Long-Term Gains Among Children," Center on Budget and Policy Priorities, October 7, 2015, https://www.cbpp.org/research/housing/research-shows-housing-vouchers-reduce-hardship-and-provide-platform-for-long-term.

- reduced the share of families that lived in shelters or on the street by three-fourths, from 13 percent to 3 percent;
- reduced the share of families living in crowded conditions by more than half, from 46 percent to 22 percent; and
- reduced the number of times that families moved over a five-year period, on average, by close to 40 percent.[115]

Research also links the housing problems that rental assistance addresses to a range of other adverse outcomes with long-term consequences. Among children, homelessness is associated with increased likelihood of cognitive and mental health problems,[116] physical health problems such as asthma,[117] physical assaults,[118] accidental injuries,[119] and poor school performance.[120] Studies have found that children in crowded homes score lower on reading tests and complete less schooling than their peers, perhaps because they lack an appropriate space to do homework and experience higher stress that interferes with academic performance.[121]

4. Families could forgo benefits not included in the public charge definition

The chill effect the rule would produce is unlikely to be limited to receipt of benefits included in the public charge definition. By dramatically expanding the set of benefits considered in the public

[115] Data are from a follow-up survey conducted four and a half to five years after random assignment. Data show the percentage of families that were homeless and without homes of their own during the 12 months preceding the survey, the percentage in overcrowded housing at the time of the survey, and the total number of moves during the period after random assignment. This study targeted families who received, had recently received, or were eligible for Temporary Assistance for Needy Families (TANF), and 80 percent of participants received TANF benefits at the start of the evaluation. By the end of the study period, however, only about 30 percent of participants received TANF benefits. By comparison, 19 percent of all voucher holders with children received TANF benefits in 2010, according to HUD data. Michelle Wood, Jennifer Turnham, and Gregory Mills, "Housing Affordability and Family Well-Being: Results from the Housing Voucher Evaluation," *Housing Policy Debate,* Vol. 19, issue 2, pp. 367-412, 2008; Gregory Mills *et al.,* "Effects of Housing Vouchers on Welfare Families," prepared for U.S. Department of Housing and Urban Development Office of Policy Development and Research, September 2006.

[116] Marybeth Shinn *et al.*, "Long-Term Associations of Homelessness with Children's Well-Being," *American Behavioral Scientist,* Vol. 51, No. 6, February 2008; Linda C. Berti *et al.,* "Comparison of Health Status of Children Using a School-Based Health Center for Comprehensive Care," *Journal of Pediatric Health Care,* Vol. 15, pp. 244-250, September/October 2001.

[117] Berti *et al.*

[118] Stanley K. Frencher *et al.*, "A Comparative Analysis of Serious Injury among Homeless and Housed Low Income Residents of New York City," *Trauma,* Vol. 69, No. 4, October 2010.

[119] Frencher *et al.*

[120] Jelena Obradovic *et al.,* "Academic Achievement of Homeless and Highly Mobile Children in an Urban School District," *Development and Psychopathology,* 2009.

[121] Lorraine E. Maxwell, "Home and School Density Effects on Elementary School Children: The Role of Spatial Density," *Environment and Behavior,* Vol. 35, No. 4, pp. 566-578, 2003; Frank Braconi, "Housing and Schooling," The Urban Prospect, Citizens Housing and Planning Council, 2001; Dalton Conley, "A Room with a View or a Room of One's Own? Housing and Social Stratification," *Sociological Forum,* Vol. 16, No. 2, 2001, pp. 263-280.

charge determination — and the share of both U.S-born citizens and immigrants alike who meet the standards set forth in the definition — the rule would likely lead some families that include immigrants to fear accessing other important benefits, such as WIC (the Special Supplemental Nutrition Program for Women, Infants, and Children). Forgoing the vital support that WIC provides, including nutritious foods, nutrition education, breastfeeding support, and referrals to health care and social services, can put pregnant and nursing women's and young children's health at risk. Research shows that WIC improves children's diets and that when women participate, their babies are healthier, are more likely to survive infancy, and go further in school.[122]

D. Thresholds and limited exemptions would not be enough to halt fear of using benefits

The proposed rule includes thresholds for the amounts or duration (in the case of non-monetizable benefits) of benefit receipt that counts against an individual in a public charge determination. It also includes certain exemptions of Medicaid benefits. As described in Section III.E, the thresholds would be unlikely to meaningfully impact the outcome of public charge determinations, in which immigration officials would make predictions about future benefit receipt based on so little information that consideration of the thresholds would not be possible. And, as discussed below, the Medicaid exemptions are drawn so narrowly as to be essentially meaningless. Finally, the thresholds and exemptions would not likely be well understood by the general public or do much to reduce the number of people who chose to forgo benefits out of fear of negative immigration consequences.

1. Medicaid

For Medicaid, the "threshold" of 12 months of receipt (or 9 months in combination with other benefits) would provide little assurance to eligible individuals. If they learned about the thresholds at all, they might still be concerned about signing up for coverage, fearing that they might experience more acute health care needs later and should refrain from using Medicaid until or unless that occurred. This would undermine access to preventative care and could result in people experiencing significant gaps in coverage, delaying or avoiding getting treatments, and ultimately seeking out services after conditions have worsened. They also might know that Medicaid eligibility periods typically last a year and may be unclear about how that period can be shortened. And they might fear, even if told of the threshold, that any Medicaid receipt would be frowned upon by immigration officials.

The proposed rule includes two kinds of exemptions for certain Medicaid services: services required under the Individuals with Disabilities Education Act (IDEA), which ensures that children with disabilities have access to public education in the least restrictive environment based on their individual needs, and services considered emergency services. Neither exemption is meaningful.

- **IDEA:** Under the IDEA, children's needs are identified in an individualized education plan (IEP), which details the education and related services they need. In many cases the IEP

[122] Steven Carlson and Zoe Neuberger, "WIC Works: Addressing the Nutrition and Health Needs of Low-Income Families for 40 Years," Center on Budget and Policy Priorities, March 29, 2017, https://www.cbpp.org/research/food-assistance/wic-works-addressing-the-nutrition-and-health-needs-of-low-income-families.

includes services that Medicaid covers for children, such as physical and speech therapy.[123] Medicaid provides reimbursement for health care services that are necessary for students with disabilities to succeed in school when the following conditions are met: the services are listed in the child's IEP; the *child is enrolled in Medicaid*; Medicaid covers the service; and the school is recognized as a Medicaid provider. If a family does not enroll a child in Medicaid out of fear of negative immigration consequences, the school will not be eligible for reimbursement for services provided to that child. Even if a child enrolled in Medicaid and only accessed IDEA-related services, the child would still be a full Medicaid participant; in states that use managed care for Medicaid services, full managed care payments would be made to the managed care partner on the child's behalf.

- **Emergency services:** The rule also exempts Medicaid payments for emergency conditions from being considered during public charge determinations. However, many people would not know that this exemption exists. Those who did know it exists might not know when they are truly experiencing a medical emergency or trust that what they believe is a medical emergency will be viewed as a medical emergency by an immigration official. Finally, people who experience medical emergencies often need to have follow-up treatment to fully recover from their injury or illness. People might not understand to what extent this exemption applies, and many would not be able to get follow-up treatment if they fear continuing enrollment in Medicaid, thus undermining their ability to fully recover.

2. SNAP

First, as discussed in the Section III.E, the threshold concept is very unlikely to matter in the prospective predictions that immigration officials would have to make. Most applicants for entry or adjustment would not be current or former SNAP recipients, so the benefit-related question would concern the individual's likelihood of prospective receipt. Immigration officials would struggle to answer this accurately even without the added complication of trying to predict the *amount* of benefits someone could receive up to decades in the future.

For immigrant families potentially concerned about receiving SNAP out of fear of negative immigration consequences down the road — including, as noted above, many individuals who will never face a public charge determination — the threshold would be unlikely to make a fearful family decide to receive needed SNAP benefits.

People applying for SNAP do not know how much in benefits they will receive; indeed, the amount can fluctuate as their circumstances change. Households would be unlikely to understand the threshold, particularly since it is based on the amount of benefits an *individual* receives but their SNAP benefit is calculated as a *household* benefit. Households do not know how long they will continue to need and qualify for SNAP and might be rightfully wary of their ability to calculate the threshold correctly and then disenroll from the program before they hit the limit. Moreover, households might be concerned that they should "save up" their ability to receive SNAP in case their circumstances worsened later in the year.

[123] Centers for Medicare & Medicaid Services, "Medicaid and School Health: A Technical Assistance Guide," August 1997, https://www.medicaid.gov/medicaid/financing-and-reimbursement/downloads/school_based_user_guide.pdf.

Ultimately, complex policy details such as benefit amount and duration thresholds and exemptions for receipt of certain kinds of medical services would be unlikely to affect immigration officials' judgments about the likelihood of future benefit receipt or a family's concern about the immigration risks associated with benefit receipt. The proposed rule sends a clear message that benefit receipt makes an individual unwelcome and unwanted in the country. Many people, deeply focused on keeping their families together and building a life in the U.S., would likely forgo assistance for themselves and their children as a result. The NPRM fails to account sufficiently for these foreseeable and substantial impacts, including in its sections purporting to account for the rule's costs and benefits e, as discussed at Section VI below.

V. Use of Benefits Among Children Should Not Be Considered in Public Charge Determinations

At FR 51174, DHS seeks comment about public charge determinations for non-citizen children under age 18 who receive one or more public benefit programs. Given the evidence that inclusion of children's benefits in the public charge definition would result in significant numbers of children forgoing benefits they need for their healthy development, and given that receipt of benefits in childhood is a reflection of the parent's income rather than the child's future earning potential, we urge that the final rule exclude any benefit receipt by children from consideration in public charge determinations.

If finalized, the proposed rule would cause significant harm to children (both those who would and would not face a public charge determination) whose families would be fearful of accessing vital benefits needed at critical stages in their lives. Going without these supports can have life-long negative consequences. Moreover, benefits received by pregnant women are also vital to the short- and long-term wellness of children and healthy birth outcomes for both mothers and children. Thus, to protect children from some of the negative impacts of the proposed rule, benefits provided to pregnant and postpartum women should be excluded.

Excluding benefits to children and pregnant women whose health is inextricably linked to their children would allow states, consumer groups, health providers, schools, and other service providers and trusted sources to try to send a clearer message to these populations that they could access critical supports without fear of immigration consequences. However, this change alone would not eliminate fear or the chill effect, even on benefit participation among children and pregnant women. Nor would it eliminate negative impacts on children in families in which some or all members may forgo needed assistance, affecting the children's economic well-being and health. To fully eliminate the chill and harm, the proposed rule should be fully withdrawn.

At FR 51174, DHS also requests comments related to adding receipt of health coverage through the Children's Health Insurance Program (CHIP) to the public charge determination. Including CHIP — which serves children at significantly higher income levels than Medicaid — would increase the number of individuals in working families who would be denied status adjustment or entry and expand still further the chill effect, leading more children and pregnant women to forgo needed health coverage, and by extension, health care. Most, though not all, of those forgoing benefits would never face a public charge determination; thus, the main impact adding CHIP to the public charge definition would be to expand chill and the negative health effects of the proposed rule.

A. Nutrition assistance is vital to children and pregnant women

Nutrition assistance provides important supplemental support to children and pregnant women at a critical period in their lives. These modest investments in young children and pregnant women result in positive health outcomes in the short, medium, and long term. A wide body of research documents the negative consequences of poverty and other adversity on children in their earliest years, which can affect their physical, mental and economic well-being as adults. Restricting access to SNAP and Medicaid or creating fear that discourages access to these programs would result in

poorer health, increased health care costs, and reduced well-being immediately and in the long run for children and pregnant women.

SNAP serves a vital role in reducing food insecurity among low-income children. A recent rigorous study of the relationship between participation in SNAP and food security found that food insecurity among children dropped by about one-third after their families received SNAP benefits for six months.[124]

Children in families with access to SNAP also fare better later in life, which demonstrates that participation in SNAP can actually reduce health-related costs. Researchers comparing the long-term outcomes of individuals in different areas of the country when SNAP expanded nationwide in the 1960s and early 1970s found that mothers exposed to SNAP during pregnancy gave birth to fewer low-birthweight babies. Adults who had access to SNAP in early childhood had lower risks of obesity and other conditions related to heart disease and diabetes. Children with access to SNAP in early childhood and whose mothers had access during their pregnancy had better health and educational outcomes than children who didn't have access.[125]

One result of decreasing access to SNAP for families with immigrant household members is that these households will have fewer resources to make ends meet, resulting in tradeoffs with harmful consequences. Without SNAP benefits, households eligible but not participating must spend more of their income on food. Research using geographical differences in food prices shows that when food prices are higher and SNAP benefits don't stretch as far, children have worse health outcomes. Children in areas with higher food costs receive less preventive and ambulatory care, are at more risk of food insecurity, and have marginally worse nutritional outcomes. Specifically, a 10 percent increase in SNAP purchasing power increases the chances of a check-up in the past year by 8 percent and the chances of any doctor's visit by 3 percent, reduces the prevalence of food insecurity by 22 percent, raises an index of healthy eating among children by 3 percent, and may be associated with better school attendance.[126] The proposed rule would result in some immigrant families forgoing SNAP benefits, which would lead to worse health outcomes as they struggled to afford an adequate diet.

While excluding SNAP benefits received by children from public charge determinations would be positive, it would also be inadequate to protect the well-being of children. If adults forgo benefits and only children receive them, the amount the household has to purchase food for all household

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[124] James Mabli and Julie Worthington, "Supplemental Nutrition Assistance Program Participation and Child Food Security," *Pediatrics*, 133(4), 2014, pediatrics.aappublications.org/content/early/2014/02/25/peds.2013-2823.abstract; Yiran Li *et al.*, "Child Food Insecurity and the Food Stamp Program: What a Difference Monthly Data Make," *Social Services Review*, 88(2), 2014, uknowledge.uky.edu/cgi/viewcontent.cgi?article=1021&context=ukcpr_papers.

[125] Douglas Almond, Hillary Hoynes, and Diane Schanzenbach, "Inside the War on Poverty: The Impact of Food Stamps on Birth Outcomes," *The Review of Economics and Statistics*, 93(2), May 2011, https://www.mitpressjournals.org/doi/pdfplus/10.1162/REST_a_00089; Hilary Hoynes, Diane Whitmore Schanzenbach, and Douglas Almond, "Long-Run Impacts of Childhood Access to the Safety Net," *American Economic Review*, 106(4):903–934, April 2016, https://pdfs.semanticscholar.org/c94b/26c57bb565b566913d2af161e555edeb7f21.pdf.

[126] Erin Bronchetti, Garret Christensen, and Hilary Hoynes, "Local Food Prices, SNAP Purchasing Power, and Child Health," NBER Working Paper No. 24762, June 2018, http://www.nber.org/papers/w24762.pdf; and Bronchetti *et al.*

members will be inadequate; both children and adults in the household will be likelier to face economic insecurity and potential food insecurity.

Finally, as noted earlier, some families that include immigrants might also fear accessing benefits that are *not* included in the rule. If this results in pregnant women and young children missing out on WIC, these groups will also experience poorer health outcomes. Forgoing the vital support that the WIC nutrition program provides — including nutritious foods, nutrition education, breastfeeding support, and referrals to health care and social services — can put women's and young children's health at risk. Research shows that WIC improves children's diets and that when women participate, their babies are healthier, are more likely to survive infancy, and go further in school.[127]

B. Medicaid provides essential health coverage to children and pregnant women

Medicaid also plays a vital role in the health and future well-being of children and pregnant women. Medicaid coverage has a significant positive impact on children's long-term outcomes. Children covered by Medicaid during their childhood have better health as adults, with fewer hospitalizations and emergency room visits.[128] Moreover, children eligible for Medicaid are more likely to graduate from high school and college, have higher wages, and pay more in taxes.[129]

Also, if children forgo Medicaid because of the rule, they will no longer have access to Medicaid's Early Periodic Screening, Diagnostic and Treatment (EPSDT) benefit. This benefit guarantees that children and adolescents under the age of 21 have access to comprehensive and preventive health services, including regular well-child exams; hearing, vision, and dental screenings; and other services to treat physical, mental, and developmental illnesses and disabilities. The loss of EPSDT would be particularly harmful to children with special health care needs, as Medicaid serves as the sole source of coverage for more than one-third of these children.[130] See Section III.A(4) for more information about the importance of EPSDT in children's long-term development.

Medicaid also provides prenatal and maternity care to low-income women and essential health and developmental care for newborns and children. In 2017, 43 percent of all births were paid for by Medicaid.[131] Having health insurance coverage while pregnant and after is critical to the health and

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[127] Steven Carlson and Zoe Neuberger, "WIC Works: Addressing the Nutrition and Health Needs of Low-Income Families for 40 Years," Center on Budget and Policy Priorities, March 29, 2017, https://www.cbpp.org/research/food-assistance/wic-works-addressing-the-nutrition-and-health-needs-of-low-income-families.

[128] Laura Wherry *et al.,* "Childhood Medicaid Coverage and Later Life Health Care Utilization," National Bureau of Economic Research, February 2015, http://www.nber.org/papers/w20929.pdf.

[129] Sarah Cohodes *et al.*, "The Effect of Child Health Insurance Access on Schooling: Evidence from Public Insurance Expansions," National Bureau of Economic Research, October 2014, http://www.nber.org/papers/w20178.pdf; David Brown, Amanda Kowalski, and Ithai Lurie, "Medicaid as an Investment in Children: What is the Long-Term Impact on Tax Receipts?" National Bureau of Economic Research, January 2015, http://www.nber.org/papers/w20835.pdf.

[130] MaryBeth Musumeci and Julia Foutz, "Medicaid's Role for Children with Special Health Care Needs: A Look at Eligibility, Services, and Spending," Kaiser Family Foundation, February 22, 2018, https://www.kff.org/medicaid/issue-brief/medicaids-role-for-children-with-special-health-care-needs-a-look-at-eligibility-services-and-spending/

[131] Joyce Martin *et al.,* "Births in the United States, 2017," Centers for Disease Control and Prevention, August 2018, https://www.cdc.gov/nchs/data/databriefs/db318.pdf.

safety of both the mother and child. For example, research shows that when Oregon provided prenatal care for pregnant women who previously only qualified for labor and deliver services under emergency Medicaid, the state reduced the number of women who didn't receive ongoing, regular prenatal care by nearly 32 percent. The reduction among high-risk pregnancies was larger — nearly 39 percent. The state also increased the diagnosis of gestational diabetes by 6 percent; and increased the diagnosis of poor fetal growth by 7 percent.[132] Research shows that the absence of prenatal care increases the relative risk for preterm birth, low birth weight, increased mortality, and higher postnatal costs.[133] Prenatal care helps manage pregnant women's health conditions that could lead to health problems during pregnancy and adverse health outcomes for both the mother and child.[134] Prenatal care improves maternal health and the subsequent use of pediatric care for newborns and children; it also serves as an entry point for newborns into the health care system, making it more likely that they get preventive care and other necessary services. Postpartum care is also crucial in ensuring women have access to services including breastfeeding support and screenings and treatment for maternal depression, which are critical to protecting children from the potential adverse physical and developmental effects of maternal depression.

Lack of prenatal care can create a ripple effect for safety net providers and schools. Providers, particularly safety net providers, would experience higher uncompensated care costs due to the higher likelihood that their maternity patients — and the newborns they give birth to — would be uninsured *and* have complex health care needs. Due to a lack of prenatal care, some children may develop complex health care needs that make getting an education challenging and may require the provision of special health care services, such as speech therapy, audiology services, or physical therapy. Schools, as described earlier, have to pay for these services in accordance with the IDEA requirements. Schools could claim Medicaid reimbursements for these services if these children are eligible for and enrolled in Medicaid, but the proposed rule would likely deter immigrant families with children with complex health care needs from enrolling.

Here, too, excluding only the health coverage of children from public charge consideration would not adequately address the harm to children, since health coverage for parents (not just pregnant and postpartum women) also is critical to children's health outcomes. Healthy parents help ensure their children's health and development. Children's relationships with their parents can influence their brain structure and function, and in turn, mitigate the negative effects of trauma or adverse childhood experiences, including poverty.[135]

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[132] Jonas Swartz *et al.,* "Oregon's Expansion of Prenatal Care Improved Utilization Among Immigrant Women," *Maternal and Child Health Journal* (July 2018), pp. 1-10.

[133] Michael C. Lu *et al.,* "Elimination of public funding of prenatal care for undocumented immigrants in California: A cost/benefit analysis," *American Journal of Obstetrics and Gynecology*, January 2000, https://www.sciencedirect.com/science/article/pii/S0002937800705187.

[134] Deborah Rosenberg *et al.,* "Prenatal care initiation among very low-income women in the aftermath of welfare reform: does pre-pregnancy Medicaid coverage make a difference?" *Maternal and Child Health Journal,* January 2007, https://link.springer.com/article/10.1007/s10995-006-0077-z.

[135] Georgetown University's Center for Children and Families, "Healthy Parents and Caregivers are Essential to Children's Healthy Development," December 2016, https://ccf.georgetown.edu/wp-content/uploads/2016/12/Parents-and-Caregivers-12-12.pdf.

C. Rental assistance results in better outcomes for children

As noted in the Sections III.C and IV.C(3), federal rental assistance reduces homelessness and frequent moves and allows families to live in safer, less poor neighborhoods. Research has found that these benefits thus support better outcomes for children, in school performance as well as future trajectories, as they are linked to educational, developmental, and health benefits that can improve children's chances of success over the long term.[136]

In contrast, the detrimental effects of families forgoing housing assistance would be greater for children. It might lead to increased housing instability and frequent family moves, which have been linked to attention and behavioral problems among preschool children as well as lower academic achievement. (See discussion in Section II.C).

[136] Will Fischer, "Research Shows Housing Vouchers Reduce Hardship and Provide Platform for Long-Term Gains Among Children," Center on Budget and Policy Priorities, October 7, 2015, https://www.cbpp.org/research/housing/research-shows-housing-vouchers-reduce-hardship-and-provide-platform-for-long-term.

VI. The Cost-Benefit Analysis Exemplifies and Compounds the Serious Deficiencies in DHS's Evaluation of and Justification for the Proposed Rule

We have explained in Sections I-V above that there are serious deficiencies in the proposed rule and in DHS's justification and evaluation of its impacts. What DHS titles its "Cost-Benefit Analysis" (p. 51244 to 51274 of the NPRM) fails to remedy those deficiencies, and instead exemplifies and exacerbates them. Indeed, reasoning and conclusions from the "Cost-Benefit Analysis" are repeated in other parts of the NPRM. For instance, the section in the Executive Summary titled "Costs and Benefits" (p. 51117 to 51122 of the NPRM) and the section "Purpose of the Proposed Rule" both summarize benefits and quantified costs set out in the "Cost-Benefit Analysis,"[137] and so suffer the same inadequacies of that analysis as discussed below.

This means that DHS's overall analysis of the proposed rule, including in its discussion of costs and benefits in the Executive Summary and "Cost-Benefit Analysis," does not provide the sound qualitative discussion or quantitative estimates needed to evaluate the proposed rule's likely impacts. DHS's analysis fails to answer basic questions related to whom the proposed rule would hurt, how it would affect the economy in the short and long term, and how it would affect key sectors within the economy. This means that the public, whose comments are sought on this proposed rule, lacks the information and data necessary to fully evaluate the proposed rule or comment on key aspects of the justification for it.

Furthermore, as Sections I-V demonstrate, this is an important proposed rule because of its likely far-reaching impacts — both about who is kept out or removed from the United States and how immigrant families (many of which include U.S. citizen children) likely fare under the proposed rule. If the potential impacts were limited in scope and magnitude, this lack of a fulsome analysis of the proposed rule's costs and benefits might be less alarming, but this rule would mean that more families would be separated, businesses would lose workers, and families would forgo needed assistance, increasing hardship — impacts that warrant a careful and detailed evaluation. DHS's failure to discuss or evaluate a great many aspects of the impacts makes the proposed rule difficult to comment on or to see what effect it would have if promulgated.

The following are some of the serious deficiencies in DHS' analysis, including in the section titled "Cost-Benefit Analysis" and the "Costs and Benefits" section of the Executive Summary: DHS fails to evaluate a key *likely* impact of the proposed rule, namely, the increased denials for admission, change of status, or re-entry based on the new rule; DHS provides only a circular and conclusory assertion of the proposed rule's purported benefits; DHS omits key foreseeable and quantifiable costs; DHS incorrectly claims a lack of relevant literature for identifying and evaluating costs when there is such literature; and DHS fails to identify or draw on substantial literature relevant to describing and evaluating various costs of the proposed rule. DHS should correct these and other deficiencies in its justification for the proposed rule. DHS should have published more in-depth analysis of the basis for the proposed rule so that stakeholders and the public could use that

[137] For example, in Table 36.

information to understand and evaluate the proposal, and because such an analysis should be central to policymakers' decisions about whether and how to revise the proposed rule.

This section sets out key examples of the inadequacies of DHS's current evaluation of the proposed rule, including in the section titled "Cost-Benefit Analysis" and the "Costs and Benefits" section of the Executive Summary. And as noted, DHS should *also* fully review the information and citations presented in sections I to V above regarding the deficiencies of the proposed rule and its basis, and incorporate that information into a revised evaluation of the impacts of the proposed rule.

A. DHS fails to evaluate a key likely impact of the proposed rule: lower immigration

The justification for the proposed rule, including in the section titled "Cost-Benefit Analysis" and the "Costs and Benefits" section of the Executive Summary, does not address the key direct likely consequence of the proposed rule, which is to reduce the number of people who would be granted approval to adjust their status or come to the country lawfully, often to re-join family. In particular, DHS offers no qualitative or quantitative assessment of how many fewer people would be granted status adjustment annually, how many fewer people would be approved for lawful entry into the United States, and the characteristics of those no longer granted adjustment or entry — including race, age, country of origin, and ethnicity. Nor does the analysis include any assessment of the costs and benefits attributable to those changes.

The analysis laid out in the cost-benefit section also is too narrow in scope. It focuses on individuals applying for adjustment of status, extension of stay, or change of status from within the United States (see p. 51117, Table 1; p51236). It provides *historical* information about the number of applicants and denials in these categories under the existing public charge criteria, but fails to even provide this basic backward-looking information on individuals abroad applying for a visa and legal permanent residents returning from abroad, who also would be affected by the public charge determination in the proposed rule. And, of course, it fails to estimate for either group the increase in denials that would result from the proposed rule.

The National Environmental Policy Act section of the NPRM states that DHS has not sought to estimate the impact on denials or whether other immigrants would come in place of those who would be denied status: "Even if larger numbers of aliens were now found to be inadmissible on public charge grounds as a result of this rule, there may be some replacement effect from others who would, in turn, be considered for the existing visas. Therefore, DHS cannot estimate with any degree of certainty to what extent the potential for increased findings of inadmissibility on public charge grounds would result in fewer individuals being admitted to the United States." (page 51277) But this strains credulity. DHS controls status adjustment and entry decisions. The agency has historical data on how many people have sought status adjustment through a process that requires a public charge determination. The agency has put forward a proposed rule indicating that, in its view, it is important to change the requirements for status adjustment and entry, and it would be the agency to implement the changes. It seems problematic that the agency would put forward such a sweeping change to immigration procedures and have no idea how it would affect adjustment and entry denials or whether the result would be a net reduction in individuals allowed to remain in or come into the country or a change in the composition of individuals permitted in or allowed to stay. If, indeed, the agency has no idea how this proposed rule would affect the target of its rule changes,

then it should not have put it forward, but instead sought to find a way to gather the evidence needed to understand the likely impact of its proposed changes.

Having failed to estimate the increase in denials, DHS then fails to evaluate the economic costs or benefits from that change in entry and adjustment adjudication. But there is a significant research literature on the economic and fiscal impacts of immigration. Two major National Academy of Sciences reports have explored this issue in ways that should inform an appropriate evaluation of this rule. The most recent, published in 2017, includes 10 chapters with well over 500 pages of substantive analysis, including discussions of its similarities to and updating of the analysis and findings in the earlier 1997 report, *The New Americans: Economic, Demographic, and Fiscal Effects of Immigration.*[138]

National Academy reports document the evidence-based consensus of an authoring committee of experts. Reports typically include findings, conclusions, and recommendations based on information gathered by the committee and committee deliberations. Reports are peer reviewed and are approved by the National Academies of Sciences, Engineering, and Medicine.[139] Given the relevance of the authoritative 2017 report to the questions of costs and benefits of reducing immigration, it is notable that the analysis is not used as the basis of quantitative estimates in the NPRM, nor are its findings refuted; it is absent entirely from the discussion. The final rule should reflect its findings.

B. Proposed rule lacks analysis of purported "benefits" of the proposed rule

The discussion of the gross *benefits* of the proposed rule is spare, purely qualitative, and, in large part, circular. It claims that the primary benefit of the proposed rule is "to better ensure that aliens who are admitted would not receive one or more public benefits … and instead will rely on their financial resource [*sic*], and those of family members, sponsors, and private organizations" (p. 51274). That, however, is just a restatement of the *intent* of the proposed rule and offers no explanation or analysis of *how* removing more individuals seeking status adjustment and denying entry to more people will benefit the country or the extent or distribution of those benefits. In fact, a widely recognized benefit of *greater* immigration is that it ameliorates problems associated with the aging of the population and results in greater economic growth, as discussed in Section II.F(4) above. Hence, the consequences of *less* immigration, which would do the opposite, include real costs that should be compared to any benefits the proposed rule provides. The cost-benefit analysis in the NPRM, however, fails to document or quantify any such benefits.

The 2017 NAS report, *The Economic and Fiscal Consequences of Immigration,* summarizes the consensus on the overall impact of immigration on the U.S. economy, with particular focus on the implications of an aging population:

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[138] National Research Council, *The New Americans: Economic, Demographic, and Fiscal Effects of Immigration*, Washington, DC: The National Academies Press, 1997.

[139] National Academies of Sciences, Engineering, and Medicine. The Economic and Fiscal Consequences of Immigration, Washington, DC: The National Academies Press, 2017.

> Importantly, immigration is integral to the nation's economic growth. Immigration supplies workers who have helped the United States to avoid the problems facing stagnant economies created by unfavorable demographics—in particular, an aging (and, in the case of Japan, a shrinking) workforce. (p. 6)
>
> Cutler et al. (1990) and many others have discussed the implications of population aging on secular stagnation in Japan and Europe while finding the United States less affected because of higher immigration rates.[140] Population aging is a major policy issue in part because of slowing labor force growth and a declining ratio of workers to dependents but also because, relative to other adult age groups, older people purchase fewer houses and durable goods, which drive a significant component of economic demand. (p. 25)

(The ways in which immigration affects the nation's age distribution are also discussed in Section II.F. of these comments.)

In addition, the very limited discussion of the benefits of this proposed rule may be read as implying that "clarification" is a potential benefit of the proposed rule when it states that the proposed process under the proposed rule "would also help clarify to applicants the specific criteria that would be considered as inadmissible under public charge determinations."[141] Compared with current policy, however, the proposed rule and process may lead to *less* clarity and greater confusion, due to the wider scope of benefits covered by the proposed rule and the broad authority that it would give immigration officials to make far more complicated determinations. Indeed, as discussed in Section IV, the broad scope of the proposed rule would likely generate very substantial harm for many immigrant families that are confused by the rule and forgo benefits they need out of fear that receiving assistance their families qualify for could have negative immigration consequences. Moreover, as also discussed below in Subsection G, the confusion caused by the proposed rule would impose direct costs on a variety of entities that seek to help families understand the rules.

Indeed, if estimates of denials are not available only because any estimate would be so dependent on how immigration officials decide to apply the proposed rule — and this cannot be determined in advance — then DHS should acknowledge this lack of clarity and that the impact of the proposed rule could vary widely in practice because of the very broad authority it would afford to immigration officials (see also discussion at Section II). Relatedly, an adequate analysis of the costs, benefits, and impacts of the proposed rule should contain an assessment of how likely immigration officials would be to identify public charge risks accurately and the consequences of inaccurate assessments (see Section II).

C. Lack of estimate of denials of status adjustment and lawful entry means that key costs to the country are missing from analysis

A key consequence of the proposed rule will be an increase in denials for admission, change of status, or re-entry. As set out below, DHS's identification of these impacts and the costs that flow from them is wholly inadequate. They should be included in DHS's evaluation of the proposed rule,

[140] David M. Cutler *et al., Brookings Papers on Economic Activity,* 1990, pp. 1-56.

[141] P. 21574.

and certainly should be included in any discussion of the costs and benefits of the proposed rule, such as those that DHS purports to set out in the Executive Summary and "Cost-Benefit Analysis."

1. Estimates needed for both denials and reduced applications for admission, change of status, or re-entry

The proposed rule aims to provide "a standard for determining whether an alien who seeks admission into the United States as a nonimmigrant or as an immigrant, or seeks adjustment of status, is likely at any time to become a public charge." (p. 51116) DHS acknowledges that increased denials will flow from this, stating in Table 1 under the heading "Expected Impact of Proposed Rule" that a quantitative cost is that "DHS anticipates a likely increase in the number of denials for adjustment of status applicants based on public charge inadmissibility determinations due to formalizing and standardizing the criteria and process for public charge determinations." (p. 51119) This statement also appears in Table 36 in the "Cost-Benefit Analysis" section.

Yet, as noted above, DHS provides no estimate (in the "Cost-Benefit Analysis" section, the Executive Summary section on Costs and Benefits, or elsewhere in the NPRM) either of how many denials there would be or how other impacts of the proposed rule on people's behavior would affect the size and characteristics of the immigrant population. For example, legal permanent residents might face denial of readmission when returning from a period of time abroad to care for a dying parent; or they might be discouraged from leaving the U.S. out of fear that they would be denied readmission.

Changes in the size and characteristics of the immigrant population could arise not only from actual denials of admission or adjustments of status based on the proposed rule's new public charge criteria, but also because people who would meet the standard might nevertheless be deterred from seeking admission (or, if already in the country, from seeking a change in status) due to uncertainty about how they would be evaluated under the proposed rule.

Finally, when projecting the change in the number of immigrants in the United States and their composition, it is critical that DHS provide a realistic assessment of immigration officials' ability to accurately predict whether an individual applying for status adjustment or entry would or would not receive a benefit and whether that prediction can realistically take into account the thresholds in the proposed rule designed to disregard small amounts of benefit receipt. The proposed rule is premised on the ideas that immigration officials can make accurate predictions, that excluding individuals who receive benefits in as little as a single year at some point in the future is good for the nation overall, and that if accurate predictions are not possible, the resulting errors will not be harmful to the nation. Yet DHS presents no analysis to support these premises.

2. Proposed rule needs to analyze the economic costs incurred as a result of increased denials of status adjustment and entry under the rule

Once DHS has more fully detailed and quantified the scope and scale of denials and fear of denials under the proposed rule and the ways in which immigration officials may have difficulty perfectly predicting benefit receipt (as well as the implications of those errors), it should then draw on the large economic literature on the economic effects of immigration to estimate the economic costs and any asserted benefits associated with estimated changes in the size and composition of the

immigrant population that would arise under the proposed rule. Section II.F of our comments discusses both data and research on the economic impacts of immigrants.

These impacts go well beyond the much-studied impacts of immigration on wages and employment. As summarized in the 2017 NAS report:

> Empirical research in recent decades has produced findings that by and large remain consistent with those in *The New Americans*. When measured over a period of more than 10 years, the impact of immigration on the wages of natives overall is very small. However, estimates for subgroups span a comparatively wider range, indicating a revised and somewhat more detailed understanding of the wage impact of immigration since the 1990s. To the extent that negative wage effects are found, prior immigrants — who are often the closest substitutes for new immigrants — are most likely to experience them, followed by native-born high school dropouts, who share job qualifications similar to the large share of low-skilled workers among immigrants to the United States. Empirical findings about inflows of skilled immigrants, discussed shortly, suggest the possibility of positive wage effects for some subgroups of workers, as well as at the aggregate level.
>
> The literature on *employment* impacts finds little evidence that immigration significantly affects the overall employment levels of native-born workers. However, recent research finds that immigration reduces the number of hours worked by native teens (but not their employment rate). Moreover, as with wage impacts, there is some evidence that recent immigrants reduce the employment rate of prior immigrants — again suggesting a higher degree of substitutability between new and prior immigrants than between new immigrants and natives.
>
> …With so much focus in the literature on the labor market (and much of this on the short run), other economic consequences — such as the role of immigrants in contributing to aggregate demand, in affecting prices faced by consumers, or as catalysts of long-run economic growth — are sometimes overlooked by researchers and in policy debates. By construction, labor market analyses often net out a host of complex effects, many of which are positive, in order to identify direct wage and employment impacts.
>
> The contributions of immigrants to the labor force reduce the prices of some goods and services, which benefits consumers in a range of sectors including child care, food preparation, house cleaning and repair, and construction. Moreover, new arrivals and their descendants are a source of demand in key sectors such as housing, which benefits residential real estate markets. To the extent that immigrants flow disproportionately to where wages are rising and local labor demand is strongest, they help equalize wage growth geographically, making labor markets more efficient and reducing slack.
>
> Importantly, immigration is integral to the nation's economic growth. Immigration supplies workers who have helped the United States to avoid the problems facing stagnant economies created by unfavorable demographics — in particular, an aging (and, in the case of Japan, a shrinking) workforce. Moreover, the infusion by high-skilled immigration of human capital has boosted the nation's capacity for innovation, entrepreneurship, and technological change. The literature on immigrants and innovation suggests that immigrants raise patenting per capita, which ultimately contributes to productivity growth. The

prospects for long-run economic growth in the United States would be considerably dimmed without the contributions of high-skilled immigrants. (NAS 2017 pages 4-7)

The discussion in Section II.F expands on some of these points and adds others, including:

- Immigrants, even those who are not currently well paid, work at a high rate.
- Immigrants perform work that is important in their communities and in the economy. Even the least educated immigrants enjoy high employment levels, suggesting that they meet an important labor market need.
- Immigrants contribute in ways that are not captured in their wages. Their greater willingness to move makes labor markets function more efficiently and they provide skills that complement those of native workers.
- Immigrants' children tend to be highly upwardly mobile, completing far more education than their parents and acquiring an occupational profile similar to other Americans.

Neither policymakers nor the public can accurately evaluate the pros and cons of the proposed rule without an actual analysis of the impacts on employment, earnings, employers, economic growth, productivity, sector-specific impacts, and all the other factors discussed in the NAS reports and related literature. DHS currently ignores this body of evidence and potential costs entirely. DHS should incorporate an understanding of these factors and others discussed at Section II into its evaluation of the impacts of the proposed rule. And such an evaluation should certainly be included in any discussion of the costs and benefits of the proposed rule.

DHS's analysis of the economic impacts of the proposed rule should examine the economic effects of both denials and fear of denials. For example, U.S. productivity and economic growth would be adversely affected if immigrants whose skills would complement the existing U.S. labor force were discouraged from seeking admission or if lawful permanent residents are hesitant to travel abroad for productivity-enhancing education or experience.

This analysis should also take into account the impact of the proposed rule on the age distribution of the United States.

And the analysis needs to take into account the evidence on the upward mobility of immigrants and the children of immigrants. Evidence on the substantial upward mobility of immigrants is reviewed in Section II.F.(7). That review shows, for example, that the children of immigrants attain far more education than their parents attained and, thus, have significantly higher potential earnings, and that economic mobility is not limited to the children of immigrants, with immigrants themselves seeing significant income gains over time. But while there is a rich academic literature related to the upward mobility of immigrants themselves and their children, the proposed rule lacks any discussion of this research and how it would affect a full accounting of benefits and costs of the proposed rule.

Finally, the analysis also needs to take into account the impact of errors on the part of immigration officials. As discussed earlier, there is significant doubt that even if immigration officials could predict future benefit receipt perfectly, the country would be better off keeping such individuals out. The NPRM needs to do far more to analyze and document those supposed benefits. But DHS provides no grounds for the premise that immigration officials will be able to

accurately predict who will receive one or more of the listed benefits above the thresholds. Many of those who may excluded under the proposed rule because of officials' inability to predict the future accurately (as well as many of those excluded who may receive some benefits in the future) would be net contributors to the country's economy and public finances, particularly when their children's contributions are considered.

The U.S. remains a country with a dynamic economy and opportunity for upward mobility, educational attainment, creativity, and entrepreneurship — particularly for immigrants, who show greater upward mobility than U.S.-born citizens. If individuals were removed or kept out of the country based on an over-broad definition of public charge as well as inaccurate predictions by immigration officials, the nation would lose out on workers it needs, including those who care for seniors and clean our offices as well as those who start businesses, go to college, and have children who go on to be everything from teachers to inventors to business leaders. These are costs to the economy that policymakers and the public should understand before such a sweeping change is made to our immigration system.

The premises of the proposed rule appear to be that immigration officials: a) will be able to predict which individuals seeking entry or status adjustment will receive a benefit at some point in the future with a reasonable degree of accuracy, b) by accurately predicting future benefit receipt, will be able to keep out or remove such individuals from the United States, and c) will thereby generate a net positive for the economy and government budgets over the long run.

There appear to be no grounds for these assumptions; if there are, DHS should justify them. That justification is lacking in the current NPRM. This deficiency is particularly glaring in sections of the NPRM that purport to lay out the costs and benefits of the proposed rule, such as the portion of the Executive Summary titled "Costs and Benefits" and the section titled "Cost-Benefit Analysis."

D. DHS provides no estimates of the overall impact of immigrants denied entry or status adjustment to public finances

The NPRM inaccurately claims that there is a lack of academic literature and economic research examining the link between immigration and public benefits, citing a single source for that claim.[142] In fact, the 2017 National Academy of Sciences report devotes three chapters to this question (chapters 7, 8, 9). That analysis, in fact, represents an updating and improvement on similar material in a prior NAS report.

Key findings from the NAS Report that should be reflected in any cost-benefit analysis or general statement of DHS's justification for the proposed rule include:

> All population subgroups contribute to government finances by paying taxes and add to expenditures by consuming public services — but the levels differ. On average, individuals in the first generation are more costly to governments, mainly at the state and local levels, than are the native-born generations; however, immigrants' children — the second generation — are among the strongest economic and fiscal contributors in the population. Estimates of the long-run fiscal impact of immigrants and their descendants would likely be

[142] P. 51235

> more positive if their role in sustaining labor force growth and contributing to innovation and entrepreneurial activity were taken into account. (p. 7)
>
> Viewed over a long time horizon (75 years in our estimates), the fiscal impacts of immigrants are generally positive at the federal level and negative at the state and local levels. State and local governments bear the burden of providing education benefits to young immigrants and to the children of immigrants, but their methods of taxation recoup relatively little of the later contributions from the resulting educated taxpayers. Federal benefits, in contrast, are largely provided to the elderly, so the relative youthfulness of arriving immigrants means that they tend to be beneficial to federal finances in the short term. In addition, federal taxes are more strongly progressive, drawing more contributions from the most highly educated. (p. 11)

As the 2017 NAS report explains, estimates of the present value of the net fiscal impact associated with a new immigrant vary widely, depending on several assumptions, and the report provides results that capture that variation (Table 8-12). Such variation is germane to providing a range of uncertainty in a cost-benefit analysis, but the NAS report clearly demonstrates that a fiscal analysis is indeed feasible.

For example, the report finds that under long-term assumptions used by the Congressional Budget Office, the total fiscal impact of a new immigrant who most resembles recent immigrants in terms of average age and education creates a positive fiscal balance flow to all levels of government, with a net present value discounted at 3 percent of $259,000. The report attributes $173,000 of this total impact to the immigrant as an individual and $85,000 to that immigrant's descendants. Other scenarios in Table 8-12 show that "net fiscal impacts vary by an immigrant's age at arrival and level of education. As one might expect, the net fiscal impact is less positive (or more negative) when the immigrant arrives during youth or at retirement ages," according to the report.

Here, too, the question of the predictive skill of immigration officials making public charge determinations is important. If immigration officials' capacity to make accurate predictions about benefit receipt is limited, then those excluded under the proposed rule will more closely mirror typical immigrants (many of whom receive benefits at some point in their lives and have high levels of employment, work in important occupations, and are net fiscal contributors).

E. Analysis needs to consider extent and costs of family separation

As noted, the likely impact of the proposed rule would be that more people would be denied permission to remain legally in the U.S., more people would be denied entry into the U.S., and more lawful permanent residents who have left the country for more than six months would be denied reentry on the basis of being deemed a public charge.[143] This, in turn, would increase family separation, as many of those denied entry, change of status, or reentry will have families already in the U.S., including children. The discussion of the costs of the proposed rule in the "Cost Benefit Analysis" and discussion of "Costs and Benefits" in the Executive Summary fail to mention this impact and the harms that would flow from it.

[143] Section VI.A.

A proper evaluation of the proposed rule — and especially any discussion of its costs and benefits — should consider the extent to which it would increase the number of children separated from their parents and then evaluate the immediate and long-lasting impacts on children in the U.S. from increased family separation and fear of family separation, including impacts on their future health and productivity and ability to contribute to their communities. These impacts can flow from factors including:

- Children being deprived of their own parents' care and needing to live with other family members or family friends who are unable to provide them with the same parental care.
- Children experiencing separation from their parents as a source of long-term stress and trauma.
- Children living in communities affected by family separation internalizing fear and anxiety due to their potential separation from their own parents.
- Children suffering from lack of financial stability due to their separation from a parent who was the sole or primary earner of their household.

To understand and set out an evaluation of the scope and scale of the harm to children from family separation and fear of family separation, DHS should consult the substantial body of public health research on the immediate and lasting impacts of adverse childhood experiences. These are "potentially traumatic experiences and events, ranging from abuse and neglect to living with an adult with a mental illness. They can have negative, lasting effects on health and well-being in childhood or later in life."[144] The fear of separation, the event of separation, and being deprived of a parent's presence and parenting are undeniably traumatic, and there is substantial evidence that family separation can inflict profound long-term harm on children — many of whom will be U.S. citizens — who experience it. DHS should consult that research, which includes:

- The evidence and research collated by the Society for Research in Child Development that family separation has long-term negative effects on children's health and psychological and social well-being, which are not easily reversed. As SCRD concludes, and as DHS's appraisal of the proposed rule should acknowledge:[145]

  > The scientific evidence is conclusive. Parent-child separations lead to a host of long-term psychological, social, and health problems that are not necessarily resolved upon reunification.[…] The science is clear: policies that separate immigrant families upon entry to the U.S. have devastating and long-term developmental consequences for children and their families.

- The broader literature documenting the array of serious harms from adverse childhood experiences. DHS should use this literature to detail the full range of costs, including public

[144] Vanessa Sacks and David Murphey. "The Prevalence of Adverse Childhood Experiences, Nationally, by State, and by Race/ethnicity," *Child Trends,* revised February 20, 2018, https://www.childtrends.org/wp-content/uploads/2018/02/ACESBriefUpdatedFinal_ChildTrends_February2018.pdf.

[145] Johayra Bouza *et al.*. "The Science is Clear: Separating Families has Long-term Damaging Psychological and Health Consequences for Children, Families and Communities," *Society for Research in Child Development*, June 20, 2018, https://www.srcd.org/policy-media/statements-evidence/separating-families

health costs, that could flow from family separation. For example, a summary of the research on adverse childhood experiences explains that such experiences

> can cause stress reactions in children, including feelings of intense fear, terror, and helplessness. When activated repeatedly or over a prolonged period of time (especially in the absence of protective factors), toxic levels of stress hormones can interrupt normal physical and mental development and can even change the brain's architecture. ACEs [adverse childhood experiences] have been linked to numerous negative outcomes in adulthood, and research has increasingly identified effects of ACEs in childhood. Negative outcomes associated with ACEs include some of society's most intractable (and, in many cases, growing) health issues: alcoholism, drug abuse, depression, suicide, poor physical health, and obesity. There is also some evidence that ACEs are linked to lower educational attainment, unemployment, and poverty. In childhood, children who have experienced ACEs are more likely to struggle in school and have emotional and behavioral challenges.[146]

- Findings from a report highlight that harsh immigration policy has several impacts: poorer child health, poorer child behavioral outcomes, poorer child educational outcomes, poorer adult health and shorter lifespans, higher rates of poverty, and diminished access to food.[147] Substantial evidence suggests that all of these are likely to occur as direct and indirect effects of family separation and greater fear and anxiety.[148],[149],[150],[151],[152]
- The findings from the literature on adverse childhood experiences, which note the strongly cumulative nature of the damage inflicted on children by such events. This is particularly relevant to family separation in at least two ways:
    - As Child Trends notes, the research finds that, "more important than exposure to any specific event of this type is the accumulation of multiple adversities during

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[146] Vanessa Sacks and David Murphey, "The Prevalence of Adverse Childhood Experiences, Nationally, by State, and by Race/ethnicity," *Child Trends,* revised February 20, 2018, https://www.childtrends.org/wp-content/uploads/2018/02/ACESBriefUpdatedFinal_ChildTrends_February2018.pdf.

[147] Sara Satinsky *et al.,* "Family Unity, Family Health: How Family-Focused Immigration Reform Will Mean Better Health for Children and Families," Human Impact Partners, June 2013, https://humanimpact.org/wp-content/uploads/2017/09/Family-Unity-Family-Health-2013.pdf.

[148] Nancy Berlinger and Michael K. Gusmano, "Undocumented Patients: Undocumented Immigrants and Access to Health Care," The Hastings Center, revised March 2013, http://undocumentedpatients.org/wp-content/uploads/2013/03/Undocumented-Patients-Executive-Summary.pdf.

[149] Hirokazu Yoshikawa and Ariel Kalil, "The Effects of Parental Undocumented Status on the Development Contexts of Young Children in Immigrant Families," *Child Development Perspectives*, September 2011, pp. 291–297, https://onlinelibrary.wiley.com/doi/pdf/10.1111/j.1750-8606.2011.00204.x.

[150] A.N. Ortega *et al.,* "Documentation Status and Parental Concerns About Development in Young US Children of Mexican Origin," *Academic Pediatrics*, 2009, 278–282, https://www.ncbi.nlm.nih.gov/pubmed/19394914.

[151] Patricia A. Cavazos-Rehg, Luis H. Zayasand Edward L. Spitznagel, "Legal status, emotional well-being and subjective health status of Latino immigrants," *Journal of the National Medical Association*, 2007, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2574408/pdf/jnma00209-0050.pdf.

[152] Sara Satinsky *et al.,* "Family Unity, Family Health: How Family-Focused Immigration Reform Will Mean Better Health for Children and Families," *Human Impact Partners,* June 2013, https://humanimpact.org/wp-content/uploads/2017/09/Family-Unity-Family-Health-2013.pdf.

childhood, which is associated with especially deleterious effects on development."[153] DHS should consider that the family separation caused by its proposed public charge rule is likely to affect children in families that experience periods of socioeconomic vulnerability, given that the proposed rule targets those likely to receive benefits at some point in the future. And, denying a parent the ability to remain or come to the U.S. may make it more likely that the children suffer economic deprivation because those parents, even if they earn low wages, are likely to raise the economic security of the children. Moreover, immigrant families often have endured stressful events related to leaving their country of origin (and related to the reasons they left).

- DHS should acknowledge that, given the cumulative nature of the harm flowing from adverse childhood experiences, parental separation may be especially damaging because it removes one of the buffers against the impacts of other adverse experiences. As Child Trends notes, the research suggests that "the mechanism responsible for [the harms caused by ACEs] — toxic levels of stress — can be substantially buffered by a stable and supportive relationship with a caregiver."[154] Family separation removes that buffer.

- Research that documents the intense and harmful anxiety and trauma that children in immigrant families may experience in *fearing* family separation, and that this fear may itself create many of the immediate and long-lasting harms associated with adverse childhood events. This research focuses on prior immigration policies that create the fear of family separation (such as from deportation), but is relevant to the proposed rule which would also result in increased separations and fear. Examples from this body of research includes:
  - **The Society for Research in Child Development (SRCD)'s recently published review of the research on the effects of fear of parental deportation on children, which DHS should consult and also review the underlying research that SRDC cites.** This evidence collectively highlights the adverse impacts that recent anti-immigration policy and overall threatening political climate are having on children of immigrant families. SDRC explains, based on that evidence, that, "the *threat* of familial separation and chronic uncertainty regarding familial safety is also experienced by many Latino children in immigrant households as psychological violence."[155] In other words, an immigrant child does not need to have their parent separated from them to experience the trauma, fear, and stress that comes with such policies.[156] SRDC's report provides evidence of recent changes in the DHS guidelines for approaching immigration. The agency recently stopped prioritizing deportation

[153] Vanessa Sacks and David Murphey, "The Prevalence of Adverse Childhood Experiences, Nationally, by State, and by Race/ethnicity," *Child Trends,* revised February 20, 2018, https://www.childtrends.org/wp-content/uploads/2018/02/ACESBriefUpdatedFinal_ChildTrends_February2018.pdf .

[154] *Ibid.*

[155] Barajas-Gonzalez, Gabriela R, Cecilia Ayon, and Franco Torres, "Applying a Community Violence Framework to Understand the Impact of Immigration Enforcement Threat on Latino Children," *Social Policy Report*, September 25, 2018, pp. 1-24 https://onlinelibrary.wiley.com/doi/epdf/10.1002/sop2.1.

[156] "Applying a Community Violence Framework to Understand the Impact of Immigration Enforcement Threat on Latino Children," The Society for Research in Child Development, September 25, 2018, https://onlinelibrary.wiley.com/toc/23793988/2018/31/3.

of immigrants that posed a real threat to national security and instead began arresting individuals in "sensitive locations" such as schools, medical centers, and churches. The proposed rule would only worsen the fearful environment in immigrant communities.

Reactions to this harmful climate by immigrant families fearing separation include social isolation and worsened school performance by their children. The report notes: "Threat and uncertainty regarding familial safety are linked to children's ability to attend school, focus, and learn." In addition to this, children of immigrant families also show "lower utilization of healthcare services, social services, and public health, nutrition, and educational programs." This proposed rule feeds into a climate of fear. DHS should consider the negative educational, psychological, and health impacts that it would have on citizen children of immigrant families in the costs of the proposed rule.

- **CBPP's recent report, which cites highly relevant research that DHS should review and incorporate into its assessment of the impacts of the proposed rule.**[157] The report provides an overview of recent evidence of high levels of stress and fear among immigrant families:

> Numerous articles and studies have documented the growing fear, stress, and hardship among immigrant families…
>
> Although immigrant parents often try to shield their children from these issues, children apparently are experiencing acute stress as well, either directly or more generally through their parents. For example, nearly 90 percent of school administrators representing over 730 schools in 12 states noted observing behavioral or emotional problems with their students that appear related to concerns about immigration enforcement, a survey done between October 2017 and January 2018 found.[158] These behavioral problems usually included crying, refusing to speak, being distracted, and acting anxious or depressed…[159]
>
> Fear of familial separation has disrupted children's daily routines as well. In fact, many citizen children with undocumented parents feel the need to take on "parent-like" roles to protect their parents. These children are thus exercising extreme caution and hyper-vigilance within their communities and withdrawing themselves. For example, children are reportedly more fearful and distrusting of police, possibly because they cannot distinguish

[157] Danilo Trisi and Guillermo Herrera, "Administration Actions Against Immigrant Families Harming Children Through Increased Fear, Loss of Needed Assistance," Center on Budget and Policy Priorities, revised May 15, 2018, https://www.cbpp.org/research/poverty-and-inequality/administration-actions-against-immigrant-families-harming-children.

[158] Patricia Gándara and Jongyeon (Joy) Ee, "U.S. Immigration Enforcement Policy and Its Impact on Teaching and Learning in the Nation's Schools," UCLA Civil Rights Project, February 28, 2018, https://www.civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/u.s.-immigration-enforcement-policy-and-its-impact-on-teaching-and-learning-in-the-nations-schools.

[159] *Ibid.*

> confidently between the roles of immigration officers and local law enforcement…[160,161]
>
> The climate of fear and anxiety extends beyond the unauthorized population, in part due to confusion about existing policy or concerns about future policy changes. In a recent survey of 213 Latino parents of adolescent children, published in the *Journal of Adolescent Health,* 33 percent reported changes in daily routines, 39 percent avoided medical care, police, and services, and 66 percent feared familial separation.[162] This fear extended across the immigrant population, regardless of legal status…
>
> In addition, 23 percent of a representative sample of Los Angeles County residents were afraid that they, a family member, or a friend would be deported because of their immigration status, a poll released in April 2018 found. Of those, 71 percent said that enrolling in a government health, education, or housing program would raise the risk of deportation…[163,164]"

The CBPP report also explains, drawing on substantial evidence that this fear can have detrimental effects on children:

> Studies have begun to document harmful effects of the Administration's immigration policies on children's mental health and well-being.[165] Experts note that rising fear is affecting children's behavior and could do lasting harm. Immigrant parents and pediatricians who serve immigrant communities have indicated that growing fear and anxiety among children are contributing to behavioral issues, psychosomatic symptoms, and mental

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[160] Wendy Cervantes, Rebecca Ullrich, and Hannah Matthews, "Our Children's Fear: Immigration Policy's Effects on Young Children," Center for Law and Social Policy, March 1, 2018, https://www.clasp.org/publications/report/brief/our-children%E2%80%99s-fear-immigration-policy%E2%80%99s-effects-young-children.

[161] Ruben Castaneda, "Immigrant Kids Protective of Their Parents Face Anxiety, Substance Misuse," *U.S. News & World Report,* December 18, 2017, https://health.usnews.com/wellness/articles/2017-12-18/immigrant-kids-protective-of-their-parents-face-anxiety-substance-misuse.

[162] Kathleen M. Roche *et al.,* "Impacts of Immigration Actions and News and the Psychological Distress of U.S. Latino Parents Raising Adolescents," *Journal of Adolescent Health,* January 29, 2018, https://www.jahonline.org/article/S1054-139X(18)30054-5/pdf.

[163] George Foulsham, "Rising Housing Costs Cause Serious Concerns — Especially for Young People — New UCLA Luskin Survey Finds," UCLA Luskin School of Public Affairs, April 16, 2018, https://luskin.ucla.edu/rising-housing-costs-cause-serious-concerns-especially-for-young-people-new-ucla-luskin-survey-finds/.

[164] Gándara and Ee; Roche *et al.*; and Alexia Elejalde-Ruiz, "Fear, anxiety, apprehension: Immigrants fear doctor visits could leave them vulnerable to deportation," *Chicago Tribune,* February 22, 2018, http://www.chicagotribune.com/business/ct-biz-immigration-fears-hurt-health-care-access-0225-story.html.

[165] Cervantes, Ullrich, and Mathews; Artiga and Ubri; Ganara and Ee; Roche *et al.*; and The Children's Partnership, "The Effect of Hostile Immigration Policies on Children's Mental Health," March 2017, http://www.childrenspartnership.org/wp-content/uploads/2017/03/The-Effect-of-Hostile-Immigration-Policies-on-Childrens-Mental-Health.pdf.

health issues, according to interviews during the fall of 2017.[166] For example, children are experiencing problems sleeping and eating, restlessness and agitation, headaches, nausea, panic attacks, and depression. Some pediatricians mentioned an increase in school reports of attention-deficit/hyperactivity disorder as well, which they believe may stem from anxiety or stress. Children also may not be receiving needed care and attention if their parents are likewise experiencing significant stress and anxiety.[167]

Previous research has shown that fear and stress about immigration enforcement aren't limited to unauthorized immigrants. Sociologist Joanna Dreby finds that children in immigrant families, regardless of their immigration status or whether a family member has been deported, were prone to emotional distress, fears of separation, and conflating immigration with illegality…[168,169,170]

Experts warn that the fear may be severe enough in some cases to physically harm children, such as by altering the architecture of their developing brains. Young children who live in severely stressful situations, and whose parents or caregivers cannot effectively cushion against this stress, may experience what is called "toxic stress." This stress can alter the physical growth and functioning of children's brains in ways that impede their ability to thrive in school and develop the social and emotional skills to function well in adulthood, according to researchers at Harvard's Center on the Developing Child.[171]

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[166] Samantha Artiga and Petry Ubri, "Living in an Immigrant Family in America: How Fear and Toxic Stress are Affecting Daily Life, Well-Being, & Health," Kaiser Family Foundation, December 2017, https://www.kff.org/disparities-policy/issue-brief/living-in-an-immigrant-family-in-america-how-fear-and-toxic-stress-are-affecting-daily-life-well-being-health/.

[167] *Ibid.*

[168] Joanna Dreby, "The Burden of Deportation on Children in Mexican Immigrant Families," *Journal of Marriage and Family,* 2012, http://heartland.wdfiles.com/local--files/start/JMFdeportationpyramidl.pdf.

[169] Nicole L. Novak, Arline T. Geronimus, and Aresha M. Martinez-Cardoso, "Change in Birth Outcomes Among Infants Born to Latina Mothers After a Major Immigration Raid," *International Journal of Epidemiology,* January 23, 2017, https://academic.oup.com/ije/article-abstract/doi/10.1093/ije/dyw346/2936776/Change-in-birth-outcomes-among-infants-born-to?redirectedFrom=fulltext.

[170] Janet Currie, "Inequality at Birth: Some Causes and Consequences," *American Economic Review,* May 2011, http://www.nber.org/papers/w16798.

[171] National Scientific Council on the Developing Child, "Excessive Stress Disrupts the Architecture of the Developing Brain: Working Paper 3," 2005/2014, updated edition, http://developingchild.harvard.edu/wp-content/uploads/2005/05/Stress_Disrupts_Architecture_Developing_Brain-1.pdf.

> … High childhood stress has been linked to "a host of inflammatory diseases later in life" such as early-onset arthritis, according to Kathleen M. Ziol-Guest, Greg Duncan, and their colleagues.[172]
>
> For this reason, the current climate of fear puts children at risk of adverse health effects and poor outcomes. In fact, in January 2017, the American Academy of Pediatrics (AAP) assessed President Trump's immigration executive orders as harmful for the health of children in immigrant families.[173]"

- **An Urban Institute report that sets out more evidence of the short- and long-term harm from family separation on citizen children of non-citizen adults.**[174] The report's findings include: "Psychologists interviewed for the study associated this pervasive sense of insecurity and the anxiety it produced in children with conditions ranging from separation anxiety to attachment disorder and post-traumatic stress disorder." They also find that in the short term, the educational performance of these children worsens, and in the long term, mental health issues such as depression can be exacerbated.[175] DHS should review and incorporate an evaluation of these negative effects of family separation into its justification for the proposed rule.
- **The academic research that examines the impact that *both* personal experiences of deportation and the *existence* of deportation in broader communities has on children in immigrant families.** It finds, "(1) parents with higher levels of legal vulnerability report a greater impact of detention/deportation on the family environment (parent emotional well-being, ability to provide financially, and relationships with their children) and children's well-being (child's emotional well-being and academic performance) and (2) parents' legal vulnerability and the impact of detention/deportation on the family predict outcomes for children."[176] The analysis of the proposed rule's impact should take the *fear* of separation into account.

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[172] Kathleen M. Ziol-Guest *et al.,* "Early Childhood Poverty, Immune-Mediated Disease Processes, and Adult Productivity," *Proceedings of the National Academy of Sciences,* Vol. 109, October 16, 2012, pp. 17289–17293, http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3477379/.

[173] Fernando Stein, "American Academy of Pediatrics Statement on Protecting Immigrant Children," January 25, 2017, https://www.aap.org/en-us/about-the-aap/aap-press-room/Pages/AAPStatementonProtectingImmigrantChildren.aspx.

[174] James D. Kremer, Kathleen A. Moccio, and Joseph W. Hammell, "Severing a Lifeline: The Neglect of Citizen Children in America's Immigration Enforcement Policy," Urban Institute, 2009, http://cw.routledge.com/textbooks/9780415996945/human-rights/ui-2009.pdf.

[175] *Ibid.*

[176] Kalina Brabeck and Qingwen Xu, "The Impact of Detention and Deportation on Latino Immigrant Children and Families: A Quantitative Exploration." *Hispanic Journal of Behavioral Sciences*, July 2010, pp. 341-361, https://journals.sagepub.com/doi/10.1177/0739986310374053.

- Research that shows that family separation can weaken the financial stability of U.S. resident families. DHS should consult the literature documenting the harm that this can have on U.S. resident children in those families, including over the long term. For example, in a report about the effects of immigration enforcement on children, the Urban Institute finds that following separation from their parents, children face economic hardship, particularly when a breadwinner is removed. The loss of income led is associated with housing instability, food hardship, and significant changes in child behavior.[177]

  In the case of this proposed rule, the parent who is forced to leave the country or prohibited from entering could represent a lost opportunity to improve the family's financial status. The harms flowing from family separation and fear of it would be borne most intensely by the children in these families, and, as the research suggests, may be long-lasting, and should be accounted for in the proposed rule.

  DHS should also consider and acknowledge the potential for broader harm throughout immigrant communities and the nation. These include economic costs, as some children who undergo adverse childhood experiences may ultimately be less successful and productive in the labor force as a result, for reasons that include the disruption to their schooling due to the impacts of those experiences. Further, costs will be borne by parents or immediate family members who are left to parent without the financial and emotional support of the parent who is unable to join, remain with, or rejoin the family unit.[178,179] And, schools and communities, including health care providers, may require additional training and resources to adequately support children who experience fear of family separation or actual family separation according to best practices.

F. DHS' evaluation of the extent to which immigrant families forgo benefits out of fear of negative immigration consequences is incomplete and inaccurate

As discussed in Section IV. A-B, one of the key risks of the proposed rule is that large numbers of individuals in immigrant families — including U.S. citizen children — would forgo needed health, nutrition, and housing assistance out of fear that receiving such assistance would result in a negative immigration-related consequence. As discussed in Section IV.C, significant short- and long-term harm can arise from such a chill effect. Yet despite these important negative impacts, the NPRM fails to incorporate a sound qualitative or quantitative assessment of the extent to which the proposed rule would cause people to forgo needed assistance and of the impacts of those forgone benefits. DHS's inadequate estimate of chill is primarily set out in the "Cost-Benefit Analysis"

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[177] Ajay Chaudry *et al.,* "Facing Our Future: Children in the Aftermath of Immigration Enforcement," Urban Institute, February 2010, https://www.urban.org/sites/default/files/publication/28331/412020-Facing-Our-Future.PDF.

[178] Joanna Dreby, "The Ripple Effects of Deportation Policies on Mexican Women and Their Children: Chapter 5," *The Other People,* New York: Palgrave Macmillan, 2013, pp. 74-91, https://link.springer.com/chapter/10.1057/9781137296962_5.

[179] Elizabeth Mosley and William D. Lopez, "Deportation Is Turning Pregnant Women Into Single Mothers," *Huffington Post,* June 5, 2018, https://www.huffingtonpost.com/entry/mosley-lopez-deportation-suddenly-single-mothers_us_5b155064e4b02143b7cea942.

section and repeated in truncated form on p. 51117 in the Executive Summary section titled "Costs and Benefits."

To estimate the extent to which the proposed rule would reduce the receipt of benefits, DHS first estimates the five-year average number of people who adjusted to LPR status as compared to the total non-citizen population, and finds that 2.5 percent of non-citizens apply to adjust status annually.[180] Then, DHS applies that percentage to an estimate of the population of people who are in households that include foreign-born non-citizens and who receive public benefits covered by the proposed rule.

DHS acknowledges that the number of people who could forgo benefits as a result of the proposed rule could be as many as three times the one-year estimate, "Because DHS plans to heavily weigh the receipt of public benefits within the past 36 months as a negative factor, individuals may begin to disenroll or forgo enrollment in public benefits programs as early as three years prior to applying for adjustment of status."

1. DHS basic estimates are deeply flawed

DHS's approach results in a faulty and unsound estimate of the likely reductions in benefit receipt caused by the proposed rule. Most importantly, it does not incorporate the fact that the group of people who would likely forgo benefits out of fear of negative immigration consequences would extend far beyond the population *directly affected* by a public charge determination under the proposed rule. Many individuals and households who will not or are highly unlikely to face a public charge determination may forgo benefits. As explained in Section IV. B, given that many individuals are not eligible for benefits at the time they seek status adjustment or lawful entry, the *primary* impact on benefit receipt would come from individuals who are eligible for benefits but fear that receipt would lead to a negative immigration consequence, including many individuals who will never face (or likely never face) a public charge determination.

As explained above at Section IV, the scope of chill due to fear, confusion, and other factors would likely be significantly larger than discussed in the NPRM, which fails to take this broader effect into account. Immigration rules are confusing; many immigrants not only have difficulty understanding them but worry that they will change — a legitimate concern, given recent efforts to change immigration rules substantially. The message of the proposed rule is quite clear: the federal government is making the case that when immigrants receive benefits, they hurt the country and do not represent good members of our communities. Against this backdrop, many immigrants might conclude that the safest course of action is to forgo benefits even if they are unlikely to face a public charge determination (or, indeed will never face one, as is the case for U.S. citizen children), even if doing so puts themselves or their children at risk of lacking adequate health care, housing or nutrition. Immigrants have often sacrificed a tremendous amount to come to the U.S. to create a better life for themselves and their children; against this backdrop, they may conclude that benefit receipt is simply too risky.

This means that the chill effect may well extend:

[180] P. 51266

- to programs not directly covered by the proposed rule; and
- to people and families beyond those directly affected by the proposed rule.

There may be confusion about the extent to which benefit receipt by children, other related and unrelated household members, or even extended family members not living in the household could negatively impact immigration determinations of other family members. Likewise, lawful permanent residents may think the rule would apply to them when they seek to become naturalized citizens. U.S. citizens or LPRs who have family members abroad who wish to enter the U.S. could also believe that benefit receipt could affect family members' immigration prospects. Others who might believe that benefit receipt could harm themselves or others include: family members of immigrants — including U.S. citizens — who are planning to adjust their status, and LPRs and U.S. citizens who fear their status could be revoked.

For the public and policymakers to understand the likely impact of the proposed rule, they need a complete and accurate analysis of both the extent and consequences of this chill effect. Thus, DHS should review Section IV. A-D of these comments, which evaluates the potential extent and scope of chill in more detail; review the literature that this section references (and attached in the Appendices to this comment); incorporate all of the above into a proper evaluation of the scale and scope of chill; and incorporate all of the above into a quantitative estimate of the forgone enrollment due to chill.

To complement this information in conducting an adequate evaluation and estimate of the scale and scope of chill, DHS should take into account and incorporate into its evaluation and estimate:

- **The ample evidence that fear and confusion have already led to chill, as evidenced by households disenrolling or forgoing enrollment in programs, even though the proposed rule has not been finalized and is not currently proposed to be retroactive.** The fact that there already has been a chill effect underscores the concerns in immigrant communities and the lack of trust of the federal government's assurance in the proposed rule that changes would not be retroactive. DHS should take into account the numerous reports of people dropping out of benefit programs such as WIC, SNAP, and Medicaid due to fear that receiving such benefits now will cause them to fail a future public charge determination and thereby ruin their families' chances of staying (or reuniting) in the United States.[181] The discussion above at Section IV elaborates.
- **The literature and evidence on chill drawn from the Personal Responsibility and Work Opportunity Act (PRWORA) of 1996.** DHS's analysis misapprehends the relevance of reductions in enrollment following changes to eligibility for public benefits under the 1996 law.[182] DHS simply dismisses the research around enrollment declines after the law passed

[181] Emily Baumgaertner, "Spooked by Trump Proposals, Immigrants Abandon Public Nutrition Services," *New York Times,* March 6, 2018, Https://www.nytimes.com/2018/03/06/us/politics/trump-immigrants-public-nutrition-services.html.

[182] P. 51266

because PRWORA changed eligibility rules rather than the rules related to immigration determinations and program participation by eligible individuals.[183]

- The PRWORA experience is *highly relevant*. Research shows that following PRWORA, enrollment declined both in programs whose eligibility PRWORA did not change and among individuals and families that remained eligible (that is, who were unaffected by the *eligibility* changes but were fearful of receiving benefits). This suggests that even when programs or people enrolled in them may not be *directly* affected by a policy change, confusion, fear, or similar mechanisms may lead families to disenroll or forgo enrollment.[184]
- DHS should therefore consult and incorporate in its analysis this study and the other highly relevant literature on PRWORA, discussed above. (See Section IV.)

- Published attempts to quantitatively estimate chill should be consulted and discussed, rather than ignored. These include:
  - The analysis "Estimated Impacts of the Proposed Public Charge Rule on Immigrants and Medicaid" from Kaiser Family Foundation."[185]
  - The report "Public Charge Proposed Rule: Potentially Chilled Population Data Dashboard."[186]
  - Other relevant literature referenced at Section IV.
- Factors specific to the proposed rule's content, the way in which it has been proposed, and the context in which it has been promulgated are likely to increase fear, confusion, and chill. DHS should discuss and incorporate these factors into its assessment and estimate of the scope and scale of potential chill, including that:
  - **Multiple, widely reported leaked draft versions of the proposed rule were different in scope**. This is likely to increase fear and confusion about what would be covered in the final rule, and increase fear that changes in line with the leaked drafts might be incorporated in the future.[187,188]

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[183] Michael E. Fix and Jeffrey S. Passel, "Trends in Noncitizens' and Citizens' Use of Public Benefits Following Welfare Reform," Urban Institute, revised March 1, 1999, https://www.urban.org/research/publication/trends-noncitizens-and-citizens-use-public-benefits-following-welfare-reform.

[184] Steven J. Haider *et al.,* "Immigrants, Welfare Reform, and the Economy," *Journal of Policy Analysis and Management,* 2004, pp. 745-764, https://msu.edu/~haider/Research/2004-jpam-hsbd.pdf.

[185] Samantha Artiga, Rachel Garfield, and Anthony Damico, "Estimated Impacts of the Proposed Public Charge Rule on Immigrants and Medicaid," Kaiser Family Foundation, October 2018, https://www.kff.org/disparities-policy/issue-brief/estimated-impacts-of-the-proposed-public-charge-rule-on-immigrants-and-medicaid/.

[186] "Public Charge Proposed Rule: Potentially Chilled Population Data Dashboard," https://www.manatt.com/Insights/Articles/2018/Public-Charge-Rule-Potentially-Chilled-Population

[187] Nick Miroff, "Trump proposal would penalize immigrants who use tax credits and other benefits," *Washington Post,* March 28, 2018, https://www.washingtonpost.com/world/national-security/trump-proposal-would-penalize-immigrants-who-use-tax-credits-and-other-benefits/2018/03/28/4c6392e0-2924-11e8-bc72-077aa4dab9ef_story.html?noredirect=on&utm_term=.d0eac2f9e153,

[188] "Read the Trump administration's draft proposal penalizing immigrants who accept almost any public benefit," *Washington Post.* http://apps.washingtonpost.com/g/documents/world/read-the-trump-administrations-draft-proposal-penalizing-immigrants-who-accept-almost-any-public-benefit/2841/.

- **Some of the benefits included are closely linked with or similar to others not currently included.** For example, Medicaid, which is included, is closely intertwined with the Children's Health Insurance Program (CHIP), which is not included. Most participants can be expected to have a hard time distinguishing between a program funded by Medicaid and one funded by CHIP. (As discussed in Section V, we strongly oppose adding CHIP to the programs included in the proposed rule.) Similarly, while SNAP is included in the rule's definition of public charge but other nutrition programs (like WIC and school meals) are not, many families may not understand the distinction and choose to forgo all nutrition-related benefits.
- **The proposed rule asks for comments about the advisability of including benefits not presently included, which is likely to create further confusion about which benefits are covered.** Regardless of which benefits are covered in any final rule, such deliberations may add to the sense that the Administration may try to further broaden the scope of any final rule over time. For example, the proposed rule does not presently include CHIP, but the notice announcing the proposal explains that the Administration is considering including it, potentially adding to confusion and fear that CHIP could be incorporated later.

  Confusion and fear among immigrant families claiming public benefits is already high. In such a climate, families may be confused about what the proposed rule does and/or adopt very risk-averse behavior given their strong interest in ensuring that their families can remain together in their U.S. communities.[189]
- **The chill effect is likely to be larger because families know that other immigration policy changes recently put in place have resulted in – or have been intended to result in – reducing individuals' ability to enter the U.S. or remain here.** Those other changes include:[190]
  - Stepping up immigration arrests in line with the President's January 2017 executive order listing virtually any immigrant without legal immigration status as a priority for deportation.[191] This is a departure from the prior policy, which identified specific categories of undocumented immigrants as priorities.

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[189] Kathyrn Pitkin Derose, Jose J. Escarce, and Nicole Lurie, "Immigrants and Health Care: Sources of Vulnerability," *Health Affairs,* pg. 1262-1263, October 2017, https://www.healthaffairs.org/doi/pdf/10.1377/hlthaff.26.5.1258.

[190] Danilo Trisi and Guillermo Herrera, "Administration Actions Against Immigrant Families Harming Children Through Increased Fear, Loss of Needed Assistance," Center on Budget and Policy Priorities, revised May 15, 2018, https://www.cbpp.org/research/poverty-and-inequality/administration-actions-against-immigrant-families-harming-children.

[191] Sarah Pierce and Andrew Selee, "Immigration under Trump: A Review of Policy Shifts in the Year Since the Election," Migration Policy Institute, December 2017, https://www.migrationpolicy.org/research/immigration-under-trump-review-policy-shifts; National Immigration Law Center, "Understanding Trump's Executive Order Affecting Deportations and 'Sanctuary' Cities," revised February 24, 2017, https://www.nilc.org/issues/immigration-enforcement/exec-order-deportations-sanctuary-cities/; Brian Bennett, "Not Just 'Bad Hombres': Trump is Targeting up to 8 Million People for Deportation," *Los Angeles Times,* February 4, 2017, http://www.latimes.com/politics/la-na-pol-trump-deportations-20170204-story.html.

- Declaring an end to the Deferred Action for Childhood Arrivals (DACA) program, which shielded about 800,000 young undocumented immigrants from deportation and permitted them to legally work and drive in the United States. (Court injunctions have temporarily halted the Administration action.)[192]
- Announcing that it will end Temporary Protected Status (TPS) for about 390,000 immigrants from Central America, Haiti, Nepal, and Sudan.[193] An estimated 273,000 U.S.-born children whose parents are TPS recipients from El Salvador, Honduras, and Haiti will have to leave or separate from their parents due to this policy change.[194]
- Endorsing legislation that would harm immigrant communities, including the Reforming American Immigration for a Strong Economy (RAISE) Act, which would deny basic food and medical assistance to family members of new immigrants; the No Sanctuary for Criminals Act, which would bar federal grants from sanctuary cities; and Kate's Law, which would increase penalties for those charged criminally for reentry into the United States.
- Using rhetoric that has amplified fear and stress among immigrants both directly and indirectly by fomenting discriminatory acts against them.[195,196]

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[192] Courts have issued injunctions that have halted the cancellation of DACA and required U.S. Citizenship and Immigration Services to continue accepting DACA renewal applications. For more, see Miriam Jordan, "U.S. Must Keep DACA and Accept New Applications, Federal Judge Rules," *New York Times,* April 24, 2018, https://www.nytimes.com/2018/04/24/us/daca-dreamers-trump.html and National Immigration Law Center, "DACA," April 25, 2018, https://www.nilc.org/issues/daca/.

[193] Currently, TPS protects immigrants from ten countries, six of which will lose their TPS designation at varying points in 2018 and 2019: Sudan, Nicaragua, El Salvador, Haiti, Nepal, and Honduras. The effective date of termination of TPS for Hondurans has been delayed until January 5, 2020, as announced at https://www.dhs.gov/news/2018/05/04/secretary-homeland-security-kirstjen-m-nielsen-announcement-temporary-protected. For more, see Nick Miroff, Seung Min Kim, and Joshua Partlow, "U.S. embassy cables warned against expelling 300,000 immigrants. Trump officials did it anyway," *Washington Post,* May 4, 2018, https://www.washingtonpost.com/world/national-security/us-embassy-cables-warned-against-expelling-300000-immigrants-trump-officials-did-it-anyway/2018/05/08/065e5702-4fe5-11e8-b966-bfb0da2dad62_story.html.

[194] Robert Warren and Donald Kerwin, "A Statistical and Demographic Profile of the US Temporary Protected Status Populations from El Salvador, Honduras, and Haiti," Center for Migration Studies, August 2017, http://cmsny.org/publications/jmhs-tps-elsalvador-honduras-haiti/ ; The preliminary injunction in October of 2018 halted the current administration's efforts to end TPS for immigrants from El Salvador, Haiti, Nicaragua and Sudan; see https://www.vox.com/policy-and-politics/2018/10/4/17935926/tps-injunction-chen-news

[195] Josh Dawsey, "Trump derides protections for immigrants from 'shithole' countries," *Washington Post,* January 12, 2018, https://www.washingtonpost.com/politics/trump-attacks-protections-for-immigrants-from-shithole-countries-in-oval-office-meeting/2018/01/11/bfc0725c-f711-11e7-91af-31ac729add94_story.html; German Lopez, "Donald Trump's long history of racism, from the 1970s to 2018," Vox, January 14, 2018, https://www.vox.com/2016/7/25/12270880/donald-trump-racism-history.

[196] Dara Lind, "Trump wants immigrants to be afraid. 2 new studies show it's working," Vox, March 5, 2018, https://www.vox.com/policy-and-politics/2018/3/5/17071648/impact-trump-immigration-policy-children; Samantha Artiga and Petry Ubri, "Living in an Immigrant Family in America: How Fear and Toxic Stress are Affecting Daily Life,

In addition, the President signed into law a tax bill denying the Child Tax Credit to roughly 1 million low-income children in working families who lack a Social Security number even though their parents pay payroll taxes and other taxes.[197] Families losing the CTC may believe that they have similarly become ineligible for other benefit programs.

Beyond DHS' failure to adequately evaluate and incorporate an estimate of a potentially very large chill effect, its estimate of disenrollment and forgone enrollment among those directly affected by the proposed rule is faulty in a number of other ways that should be corrected to provide an adequate basis for evaluating the impacts of the proposed rule. These unsound elements of the estimate include:

- There is no attempt to estimate the number of individuals and families who may forgo benefits despite having LPR status but who may be concerned that they could face a public charge determination if they need to leave the country for more than six months and return.
- DHS employed a cursory and inadequate method for translating its estimate of the number of disenrollments and forgone enrollments from programs affected by the proposed rule into a dollar impact.

  For example, to estimate per-enrollee Medicaid dollars for the immigrant families who disenroll or forgo enrollment, DHS uses a national average Medicaid per-enrollee dollar amount. This is a poor proxy of the per-enrollee dollar impact for those individuals who disenroll or forgo enrollment because of the rule. Per-enrollee Medicaid costs vary significantly by age and other characteristics, and the population that disenrolls or forgoes enrollment because of the rule may differ quite substantially from the entire U.S. Medicaid population — so the per-enrollee Medicaid dollar amounts for the two populations may differ quite substantially as well.

  DHS appears somewhat aware of this, with the footnote to Table 50 stating, "Note that per enrollee Medicaid costs vary by eligibility group and State." Nevertheless, DHS does not go on to either explain how those per-enrollee costs vary substantially by eligibility group, demographic, or other characteristics, or discuss *how* the per-enrollee dollar amount due to disenrollment or forgone enrollment among the immigrant family population affected by the proposed rule would differ from the national average. Those differences could be large. For example, the immigrant population potentially affected by the rule is likely to be substantially younger than the overall Medicaid-enrolled population, as explained by research that DHS should consult.[198]

Well-Being, & Health," Kaiser Family Foundation, December 13, 2017, https://www.kff.org/disparities-policy/issue-brief/living-in-an-immigrant-family-in-america-how-fear-and-toxic-stress-are-affecting-daily-life-well-being-health/.

[197] Jacob Leibenluft, "Tax Bill Ends Child Tax Credit for About 1 Million Children," Center on Budget and Policy Priorities, December 18, 2017, https://www.cbpp.org/blog/tax-bill-ends-child-tax-credit-for-about-1-million-children.

[198] Samantha Artiga, Rachel Garfield, and Anthony Damico, "Estimating Impacts of the Proposed Public Charge Rule on Immigrants and Medicaid," Kaiser Family Foundation, October 2018, http://files.kff.org/attachment/Issue-Brief-Estimated-Impacts-of-the-Proposed-Public-Charge-Rule-on-Immigrants-and-Medicaid; Amanda Lee and Beth Jarosz, "Majority of People Covered by Medicaid, and Similar Programs are Children, Older Adults, or Disabled," Population

> This failure is even more glaring because a more accurate average dollar amount per Medicaid disenrollment or forgone enrollment for the population affected by the proposed rule is entirely estimable. Kaiser provides one example of an approach.[199] As the Kaiser analysis notes, the SIPP data that it uses provide information on age and various other characteristics, which can be used to determine a more accurate per-enrollee Medicaid cost.
>
> DHS should redo this part of the analysis to calculate a per-enrollee dollar amount for the population specifically affected by the proposed rule — both those directly targeted and those who may disenroll or forgo enrollment because of chill — rather than using a national average taken from a very different total population. Also, it should undertake a similar analysis for the other programs that are affected by the proposed rule or might experience disenrollment or forgone enrollment due to chill.

DHS specifically requests comment on one part of its calculation of the population directly affected by the proposed rule: whether it should look at people who received covered benefits in one year or over a prior three-year period.[200] On this narrow question, DHS should look at a three-year period, *as the proposed rule actually considers a period far beyond one year*. Indeed, benefits received within the prior three years are a heavily weighted negative factor. Receipt even further in the past can also be considered as a negative factor.

But simply using the three-year calculation would not address the many other inadequacies of the disenrollment/forgone enrollment calculation, which render DHS' evaluation of the proposed rule incomplete and inaccurate. DHS needs to redo this calculation much more fundamentally to address these inadequacies, as described above.

2. Calculations of the state share of benefits forgone are cursory and inadequate

Not only are DHS's total dollar changes in program amounts due to disenrollment and forgone enrollment inadequately calculated, as described above, but DHS fails to make any serious attempt to quantify the state share of payments flowing from disenrollment and forgone enrollment.201 An adequate evaluation of the proposed rule's impact on states should be part of any sound justification for the rule.

In the footnote to Table 54, DHS notes that:

> The amount of transfer payments presented includes the estimated amounts of transfer payments to the federal government and to state governments from foreign-born non-citizens and their households who may disenroll or forgo enrollment in public health benefits programs. DHS assumes that the state governments' share of the total amount of transfer payments is 50 percent of the estimated total transfer payments to the federal

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Reference Board, revised June 29, 2017, https://www.prb.org/majority-of-people-covered-by-medicaid-and-similar-programs/.

[199] *Ibid.*

[200] P. 51269.

[201] These shares are discussed and calculated (cursorily, as noted in the text) in the "Cost-Benefit Analysis" section, and the shares restated in Table 1, p.51121.

> government. For a breakout of the estimated total federal and state transfer payment amounts, see the summary table above at the beginning of the economic analysis (Table 36, Summary of Major Provisions and Economic Impacts of the Proposed Rule).

Table 36, in turn, states:

> … total annual transfer payments of the proposed rule would be about $2.27 billion from foreign-born non-citizens and their households who disenroll from or forgo enrollment in public benefits programs. The federal-level share of annual transfer payments would be about $1.51 billion and the state-level share of annual transfer payments would be about $756 million.

DHS provides *no factual basis* for its assertion that the state share of the total transfer impact of the proposed rule would be 50 percent of the federal share. In fact, for each of the major programs that would be affected by disenrollment, the state share is knowable and calculable based on basic information sources that are readily available. DHS references these sources but then ignores them, substituting a 50 percent share without any explanation. DHS should undertake the proper analysis using readily available information that can be used to calculate state shares. This information includes:

- State Medicaid share

  The formula for calculating FMAPs (for Medicaid) is known. See https://www.federalregister.gov/documents/2017/11/21/2017-24953/federal-matching-shares-for-medicaid-the-childrens-health-insurance-program-and-aid-to-needy-aged.

  DHS should use these actual state shares. DHS acknowledges they exist but ignores them entirely: stating, "Federal Medical Assistance Percentages (FMAP) in some HHS programs like Medicaid can vary from between 50 percent to an enhanced rate of 100 percent in some cases.[6] However, assuming that the state share of federal financial participation (FFP) is 50 percent…." DHS goes on to use 50 percent instead of factoring in the actual rates. DHS gives no reason for failing to use the available, actual rates.

- State SNAP costs

  DHS acknowledges that states share in the cost of administrative funding for programs but fails to estimate the impact. The NPRM states, "DHS was unable to quantify the impact of state transfers. For example, the federal government funds all SNAP food expenses, but only 50 percent of allowable administrative costs for regular operating expenses."[202] DHS should evaluate the total state impact from SNAP disenrollment and foregone enrollment:

  - An assessment of how sensitive state administrative costs are to SNAP caseloads. If those costs come largely from personnel and building costs, they may not be very sensitive to caseloads.
  - To the extent that state administrative costs are sensitive to SNAP caseloads, state-by-state administrative costs will be relevant. State administration costs for SNAP are

[202] P. 51268

> readily available from the Administration's own state activity reports for SNAP https://www.fns.usda.gov/pd/snap-state-activity-reports.

Other impacts on states discussed at Section IV — including the costs of increased caseload churn, responding to inquiries related to the new rule, and modifying existing communications and forms related to public charge — should also be evaluated and incorporated in the discussion of state fiscal impacts.

An additional, and potentially substantial, impact on states from disenrollment and forgone enrollment will be the resulting effect on state revenues from changes in the level and composition of consumption. (See Section VI.G.(5).) These impacts should also be evaluated and estimated.

G. DHS fails to adequately describe or estimate the potential harm caused when immigrant families forgo needed assistance due to the proposed rule.

DHS's discussion of the scope and scale of the impacts from people forgoing benefits due to the proposed rule is cursory. DHS offers only a very brief qualitative discussion, in which it lists some broad *categories* of potential harm in the section titled "Cost-Benefit Analysis":[203]

> There are a number of consequences that could occur because of follow-on effects of the reduction in transfer payments identified in the proposed rule. DHS is providing a listing of the primary non-monetized potential consequences of the proposed rule below. Disenrollment or forgoing enrollment in public benefits program by aliens otherwise eligible for these programs could lead to:
>
> • Worse health outcomes, including increased prevalence of obesity and malnutrition, especially for pregnant or breastfeeding women, infants, or children, and reduced prescription adherence;
> • Increased use of emergency rooms and emergent care as a method of primary health care due to delayed treatment;
> • Increased prevalence of communicable diseases, including among members of the U.S. citizen population who are not vaccinated;
> • Increases in uncompensated care in which a treatment or service is not paid for by an insurer or patient; and
> • Increased rates of poverty and housing instability; and
> • Reduced productivity and educational attainment.

DHS notes that the proposed rule is likely to produce various other unanticipated consequences and indirect costs. For example, community-based organizations, including small organizations, may provide charitable assistance, such as food or housing assistance, for individuals who forgo enrollment in public benefit programs. DHS requests comments on other possible consequences of the rule and appropriate methodologies for quantifying these non-monetized potential impacts."

[203] P. 51270. The discussion of these harms in the Executive Summary section titled "Costs and Benefits" is even more truncated.

This is the *entirety* of DHS' discussion of these categories of harm and is an inadequate evaluation of a set of entire classes of far-reaching costs that would result from the proposed rule. The scope and scale of each of these potentially substantial costs should be evaluated, drawing on the highly relevant empirical research available. Many of these harms are quantifiable based on that substantial existing research. The research and evidence that DHS should have consulted and used in attempting a proper evaluation of these costs includes studies produced by agencies in the Administration itself. These are discussed below.

Where DHS does not consider the research a sufficient basis for quantifying the harm, or even producing a range of estimates, it should explain why. Instead, the NPRM simply states that DHS is not monetizing these costs and does not explain why, leaving it to commenters to suggest "appropriate methodologies" for evaluating and monetizing these potential impacts. Furthermore, DHS fails to discuss entirely some categories of harm that would result from reduced enrollment under the proposed rule.

Illustrative examples are provided below. This is not a complete evaluation of the sort that DHS should itself undertake; instead, these examples demonstrate that there is an abundance of highly relevant research that DHS could have consulted and should now review and incorporate into its understanding and evaluation of proposed rule's impacts.

1. Immediate and long-term harms, creating further long-term costs for individuals, families, communities, and the country

In Sections III-V. of this comment, we set out research identifying a variety of damaging immediate and long-term consequences for individuals and children that may come from forgoing various types of benefits. DHS should review this discussion and the research that it references and incorporate those findings into a proper evaluation of the costs of the proposed rule. The categories of costs identified by this research include (but are not limited to):

- **The long-term harm to children when their families forgo needed benefits.** Research shows that receipt of benefits such as SNAP and Medicaid can not only support healthier and more secure present circumstances for families, but also have positive long-term impacts on children's health and educational outcomes. The proposed rule, by leading individuals and families to forgo benefits, therefore would likely reduce children's future productivity and have a negative economic impact. Section IV.C. above discusses and refers DHS to the research suggesting that the negative impacts on children's health and well-being from reduced enrollment in benefits can also reduce their likelihood of attaining educational qualifications and higher wages when those children are older. DHS should fully assess the potentially significant long-run harm to these children's labor market outcomes. These long-run costs will depend in part on the expectation of these children's success in the labor market absent the proposed rule, so this analysis should incorporate the evidence reviewed in Section II on the substantial upward mobility among children of immigrants.
- **The negative impacts on health from reduced participation in programs that support health, including Medicaid as well as other benefit programs**. Sections III and IV also document many of the health harms that the research suggests would occur if fewer people have health coverage through Medicaid, receive SNAP, and so on. These health harms — which themselves constitute a cost or impact of the proposed rule — in turn could prevent

people from staying healthy enough to work or from receiving the care they need to return to work. A host of harms related to likely poorer health should be considered. For example, as discussed at Section IV.G.(4), given the strong correlation between food insecurity and chronic health conditions, increasing food insecurity by restricting access to SNAP would likely raise health care costs, with some of those added costs shifted to clinics and other health care providers.

2. Monetization of harms

DHS's cost-benefit analysis asks commenters to recommend "appropriate methodologies for quantifying these non-monetized potential impacts," but DHS does not indicate what methodologies it has considered or rejected and why. Without knowing this, it is difficult to comment on DHS's potential approach to monetization. Nevertheless, the following discussion provides some of the basic sources and literature that DHS can consult when evaluating whether and how these impacts might be monetized:

- Many of the impacts from forgone enrollment will be immediate and long-run health harms; there is an established literature on monetizing health harms that DHS should consult to develop a methodology for monetizing these impacts. For example, the Institute of Medicine (IOM) assembled a panel and published a report that explains whether and how health outcomes from regulations can be monetized. While DHS's proposed rule does not directly regulate health and safety, it does have substantial health impacts, so the IOM volume on methodology is highly relevant for DHS to consult when considering methodologies for quantifying health impacts of the proposed rule.[204] Past administrative practices and evaluations of the impacts of regulations also set out potential methodologies and sources to consider.[205] DHS gives no indication that it has considered any of these approaches, and it should do so and explain whether and why they are appropriate.
- For some health costs and benefits, DHS should evaluate whether it can draw on the highly relevant body of literature related to quantifying and monetizing *specific* health-related impacts. One example is the substantial literature on quantifying and monetizing net benefits from prevention and treatment of communicable disease, as discussed in Section VI.G.(3) below. DHS can consult similarly relevant literature on other specific health harms caused by the proposed rule.

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[204] Institute of Medicine, "Valuing the Health for Regulatory Cost-Effective Analysis," Washington, DC: The National Academies Press, 2006, https://doi.org/10.17226/11534

[205] For example, DHS should consider and evaluate the methodologies laid out in The White House, "Circular A-4: To The Heads of Executive Agencies and Establishments," September 17, 2003, https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/assets/regulatory_matters_pdf/a-4.pdf; DOT/PHMSA Final Regulatory Impact Analysis (RIA) https://www.regulations.gov/document?D=PHMSA-2012-0082-3442; and in evaluations of other regulations that have health impacts, such as Department of Health and Human Services 42 CFR Parts 70 and 71 Control of Communicable Diseases: Final Rule, https://www.gpo.gov/fdsys/pkg/FR-2017-01-19/pdf/2017-00615.pdf#page=1

3. Costs associated with poorer prevention and treatment of communicable diseases

The proposed rule would cause harm from poorer prevention and reduced treatment of communicable diseases, yet DHS fails to adequately evaluate or quantify the serious consequences of this category of harm, which include (but are not limited to) likely loss of life. Instead, DHS states only a single bullet: "Increased prevalence of communicable diseases, including among members of the U.S. citizen population who are not vaccinated."

The NPRM gives no factual basis for understanding or weighing the types and severity of these costs. The bullet presumably refers to the fact that under the proposed rule, immigrant households would be chilled from receiving preventative and primary care through Medicaid, leading to lower rates of vaccination for communicable diseases and less uptake of primary care among that population. That in turn could lead to:

- Increased rates of contracting communicable diseases among those who forgo Medicaid receipt and lower levels of early detection, treatment, and containment of disease among those who forgo Medicaid. This is because individuals without health insurance may be less likely to seek out early primary care or treatment when they experience symptoms associated with communicable disease.
- Increased rates of communicable diseases among a broader set of households and communities (beyond those who forgo benefits). Such increases could occur particularly among the unvaccinated population, such as newborns and people with chronic illnesses, and those with weak immune systems, such as people with HIV and people receiving certain kinds of medical treatment.

There is a robust public health literature quantifying the net benefits of vaccination and primary care interventions to halt the spread of communicable diseases. The benefits include fewer deaths and chronic conditions (lower mortality and morbidity) due to vaccinations and early detection and treatment to reduce and halt the spread of childhood communicable disease. The benefits also include fewer large-scale outbreaks and the costs associated with such outbreaks. DHS's cost-benefit analysis fails to draw upon this robust research, and so failed to explain the scale of the corresponding costs associated with poorer prevention and treatment of communicable diseases or weigh them adequately in considering and attempting to justify the proposed rule.

This section does not attempt to identify or summarize the extensive literature exhaustively, but gives examples from the literature demonstrating that DHS's analysis ignores a substantial body of evidence that is highly relevant to understanding and quantifying the proposed rule's cost. The literature includes:

- Extensive Centers for Disease Control (CDC) evaluations of major and proposed vaccination programs, including attempts to document their costs and benefits. These include "Benefits from Immunization during the Vaccines for Children Program Era — United States, 1994-

2013, *MMWR,"*[206] which is the basis for CDC's estimate that "vaccinations will prevent more than 21 million hospitalizations and 732,000 deaths among children born in the last 20 years" and that, "According to analysis by the CDC, hospitalizations avoided and lives saved through vaccination will save nearly $295 billion in direct costs and $1.38 trillion in total societal costs."[207] Costs considered by CDC include death, hospitalization, productivity loss from death and illness, and productivity loss from days off to care for sick children.[208]

- The well-established finding in epidemiology and public health research that many of the benefits of vaccination are enjoyed by the community at large through "community immunity," because "… a high level of vaccination coverage must be maintained for a community to benefit from the public health impact of indirect protection. This occurs when vaccinated people block the chain of disease transmission, which protects unvaccinated and under vaccinated people by limiting spread."[209]
- Literature on the broader social contributions of vaccination, including effects on health equity and the social integration of minority groups.[210]

These examples show that DHS has a basis both for evaluating the proposed rule's potential harm due to poorer prevention and treatment of communicable diseases, and for potentially quantifying that harm or giving a range of potential harm. Such an analysis could:

- Start with a more careful estimate of the number of people who would be chilled from receiving Medicaid, estimate the number of vaccinations thereby forgone, and from there, discuss and evaluate the costs of those forgone vaccinations based on the extensive research.
- Incorporate the costs of reduced early diagnosis and treatment of communicable diseases, drawing on similar extensive literature on mortality and morbidity from communicable diseases and the benefits of early detection, treatment, and outbreak containment.
- Consider factors specific to immigrant families that might *increase* the harms to such families of chilling access to preventative care and treatment for communicable diseases. For example, CDC research finds that children among some immigrant families are already less likely than

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[206] Cynthia G. Whitney *et al.,* "Benefits from Immunization During the Vaccines for Children Program Era – United States, 1994-2013," Center for Disease Control and Prevention, *Morbidity and Mortality Weekly Report,* April 25, 2014, https://www.cdc.gov/mmwr/preview/mmwrhtml/mm6316a4.htm.

[207] "Report Shows 20-year US immunization program spares millions of children from disease," Center for Disease Control and Prevention, April 24, 2014, https://www.cdc.gov/media/releases/2014/p0424-immunization-program.html. Also see, as another example, Fangjun Zhou *et al.,* "Economic evaluation of the routine childhood immunization program in the U.S., 2009" *Pediatrics,* 2014;133:577–85, http://pediatrics.aappublications.org/content/133/4/577.

[208] Appendix: Methods for the cost-benefit analyses presented in "Benefits from Immunization during the Vaccines for Children Program Era — United States, 1994–2013," *Morbidity and Mortality Weekly Report,* 2014;63:352-5, https://www.cdc.gov/vaccines/programs/vfc/pubs/methods/index.html.

[209] Julia C. Haston and Larry K. Pickering, "Young children of immigrants may be behind on vaccines," AAP Publications, July 9, 2018, http://www.aappublications.org/news/2018/07/09/mmwr071018.

[210] Jeroen Luyten and Philippe Beutels, "The Social Value of Vaccination Programs: Beyond Cost-Effectiveness," *Health Affairs,* Vol. 35, No. 2, February 2016, https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2015.1088.

the general population to be vaccinated.[211] The literature suggests that this stems from the systematic barriers to immigrant families accessing health care generally (such as complex application processes compounded by language barriers) and lack of adequate outreach to such families.[212] Thus, the marginal costs of *further* depressing vaccination and primary care treatment rates among children and communities with already below-average vaccination rates may be even greater than for the population at large.

- Draw on the expertise of agencies that are best placed to undertake this evaluation and have deep experience of it, such as CDC.

Furthermore, much of the extensive literature on the net benefits of prevention (through vaccination) and early treatment of communicable disease has been used extensively to support evaluations and quantifications of the impacts of policies with public health effects. For example, the CDC's extensive review cited above includes an Appendix setting out cost-benefit analyses of vaccination. Also, there is extensive academic research evaluating the costs and benefits of various policy changes that would affect vaccination rates[213] and comparing different frameworks for conducting such evaluations of policy changes.[214,215]

In short, not only is there a large body of primary empirical and clinical studies relevant to this group of harms from the proposed rule, but there is also a substantial literature providing frameworks for agencies to consider when evaluating whether and how to translate that literature into quantified and monetized estimates when considering policy changes that affect the prevention and treatment of communicable diseases.

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[211] Maureen Leeds and Miriam Halstead Muscoplat, "Timeliness of Recipient of Early Childhood Vaccinations Among Children of Immigrants – Minnesota, 2016," Center for Disease Control and Prevention, *Morbidity and Mortality Weekly Report,* 66(42): 1125-1129, October 27, 2017, https://www.cdc.gov/mmwr/volumes/66/wr/mm6642a1.htm.

[212] As the AAP notes, "The reasons for variation in vaccination status are incompletely understood but may include lack of public health education programs, misunderstanding of vaccination safety, inadequate access to health care, and economic and social factors surrounding emigration." Julia C. Haston and Larry K. Pickering, "Young children of immigrants may be behind on vaccines," AAP Publications, July 9, 2018, http://www.aappublications.org/news/2018/07/09/mmwr071018. DHS should also consider the broader literature on barriers to immigrant families' access to health and human services. "ASPE Issue Brief: Barriers to Immigrants' Access to Health and Human Services Programs," Office of the Assistant Secretary for Planning and Evaluation, Office of Human Services Policy – U.S. Department of Health and Human Services, May 2012, https://aspe.hhs.gov/system/files/pdf/76471/rb.pdf.

[213] Kristen L. Nichol, "Cost-Benefit Analysis of a Strategy to Vaccinate Healthy Working Adults Against Influenza," *Jama Internal Medicine,* 161(5):749-759, March 12, 2001, https://jamanetwork.com/journals/jamainternalmedicine/fullarticle/647568.

[214] For example, Minah Park, Mark Jit, and Joseph T. Wu, "Cost Benefit Analysis of Eight Approaches for Valuing Changes to Mortality and Morbidity Risks," BMC Medicine 16:139, September 5, 2018, https://bmcmedicine.biomedcentral.com/articles/10.1186/s12916-018-1130-7.

[215] T. Szucs, "Cost-benefits of vaccination programmes," US National Library of Medicine National Institutes of Health, 18 Suppl 1: S49-51, February 18, 2000, https://www.ncbi.nlm.nih.gov/pubmed/10683547.

4. Uncompensated care

DHS acknowledges that the proposed rule may result in "Increases in uncompensated care in which a treatment or service is not paid for by an insurer or patient."

In other words, the proposed rule would increase the number of uninsured people, therefore increasing the cost of uncompensated care. DHS does not discuss or evaluate the scale or scope of uncompensated care increases. There is, however, a body of highly relevant empirical research that shows an undeniable relationship between health coverage and uncompensated care costs. DHS should consult and incorporate this research in its evaluation of the impacts of the proposed rule, including evaluating and discussing whether the research provides an appropriate basis for quantification (and if not, why).

A wealth of empirical studies and literature reviews have examined the extent to which various coverage increases, such as through Medicaid expansions, have decreased uncompensated care. Illustrative examples include:

- A 2018 report to Congress on Medicaid and CHIP by the Medicaid and CHIP Payment and Access Commission that sets out data highlighting the inverse relationship between Medicaid expansion and uncompensated care costs.216
- Research on the extent to which coverage increases due to Medicaid expansions reduced uncompensated care in various states. For example, a study of the Michigan expansion finds:

> Consistent with our earlier analysis using a subset of hospitals, these data indicate that the cost of uncompensated care provided by Michigan hospitals fell dramatically after the implementation of the Healthy Michigan Plan. For the average hospital, uncompensated care fell roughly in half, from $8.1 million to $3.9 million between 2013 and 2015. Expressed as a percentage of total hospital expenses, uncompensated care decreased from 4.8 percent to 2.2 percent. A total of 124 out of 138 hospitals (90 percent) saw a decline in the amount of uncompensated care provided between 2013 and 2015.[217]

An HHS report estimated that uncompensated care costs fell by $5.7 billion in 2014 due to the Medicaid expansion's reduction in the number of uninsured.[218]

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[216] "Report to Congress on Medicaid and CHIP," MACPAC: Medicaid and CHIP Payment and Access Commission, March 2018, https://www.macpac.gov/wp-content/uploads/2018/03/Report-to-Congress-on-Medicaid-and-CHIP-March-2018.pdf.

[217] Thomas Buchmueller *et al.,* "The Healthy Michigan Plan PA 107 § 105(d)(8-9) 2016 Report on Uncompensated Care and Insurance Rates," Michigan Department of Health and Human Services, December 21, 2017, https://www.michigan.gov/documents/mdhhs/2013_PA_107_Section_105d8-9_Required_Report_2017_618079_7.pdf.

[218] "Commonwealth of Kentucky: Medicaid Expansion Report of 2014," Deloitte Development, February 2015, https://jointhehealthjourney.com/images/uploads/channel-files/Kentucky_Medicaid_Expansion_One-Year_Study_FINAL.pdf.

- A study from the Urban Institute finding a drop in past-due medical debt between 2012 and 2015 and discussing relevant literature associating that decline with expansions in health insurance coverage.[219]
- An academic study published by the National Bureau of Economic Research finding a significant decline in medical bills sent to collection in states that expanded Medicaid.[220]
- A CBPP review of the impact of the Medicaid expansion on uncompensated care costs[221] that references empirical evaluations, each of which DHS should review and incorporate in a discussion of the likely increases in uncompensated care increases and related harms from the proposed rule.
- A Manatt report that estimates the increase in uncompensated care costs due to a drop in Medicaid and CHIP coverage as a result of the public charge rule. "[B]ecause hospitals provide a substantial share of the care delivered to Medicaid and CHIP enrollees, their payments at risk under the public charge rule total an estimated $17 billion in 2016," it found.[222]

DHS should also draw on this research on uncompensated care to acknowledge the broad set of people and entities, beyond providers, that could be hurt by an increase in uncompensated care, as discussed at Section III.A(5) and Section IV.C(2). For example, as discussed above, there is evidence that health coverage expansions through Medicaid not only reduce the cost of uncompensated care, but also improve households' overall financial health. Medicaid not only has a direct impact on out-of-pocket expenditures, but also indirectly affects outcomes for households such as access to credit and disposable income for other goods and services.[223] State budgets will also likely be affected by a rise in uncompensated care, which is often provided by safety net providers funded with state (and local) resources.[224]

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[219] Michael Karpman and Kyle J. Caswell, "Past-Due Medical Debt among Nonelderly Adults, 2012-15," Urban Institute, March 2017, https://www.urban.org/sites/default/files/publication/88586/past_due_medical_debt.pdf.

[220] Kenneth Brevoort, Daniel Grodzicki, and Martin B. Hackmann, "Medicaid and Financial Health," National Bureau of Economic Research, Working Paper No. 240002, November 2017, https://www.nber.org/papers/w24002.pdf.

[221] Jessica Schubel and Matt Broaddus, "Uncompensated Care Costs Fell in Nearly Every State as ACA's Major Coverage Provisions Took Effect," Center on Budget and Policy Priorities, revised May 23, 2018, https://www.cbpp.org/sites/default/files/atoms/files/5-23-18health.pdf.

[222] Cindy Mann,, April Grandy, and Allison Orris, "Medicaid Payments at Risk for Hospitals Under the Public Charge Proposed Rule," *Mannat,* November 2018, https://www.manatt.com/Insights/White-Papers/2018/Medicaid-Payments-at-Risk-for-Hospitals-Under-Publ

[223] Brevoort, Grodzicki, and Hackmann.

[224] Larisa Antonisse, Rachel Garfield, and Robin Rudowitz, "The Effects of Medicaid Expansion under the ACA: Updated Findings from a Literature Review," *Kaiser Family Foundation*, March 2018, https://www.kff.org/medicaid/issue-brief/the-effects-of-medicaid-expansion-under-the-aca-updated-findings-from-a-literature-review-march-2018/.

5. DHS does not adequately evaluate the impacts to businesses and states

DHS states in both the Executive Summary and "Cost-Benefit Analysis" section:[225]

> DHS recognizes that reductions in federal and state transfers under federal benefit programs may have downstream and upstream impacts on state and local economies, large and small businesses, and individuals. For example, the proposed rule might result in reduced revenues for healthcare providers participating in Medicaid, pharmacies that provide prescriptions to participants in the Medicare Part D low- income subsidy (LIS) program, companies that manufacture medical supplies or pharmaceuticals, grocery retailers participating in SNAP, agricultural producers who grow foods that are eligible for purchase using SNAP benefits or landlords participating in federally funded housing programs.

This discussion is cursory and incomplete. It fails to provide any discussion or evaluation of how levels and composition of consumption may change, and how those changes would affect producers, suppliers, and state budgets.

For example, households that forgo SNAP may not only eat less (thereby reducing food purchases) and be at higher risk of food insecurity, but also reduce their consumption of other goods to try to offset the loss of SNAP benefits and meet their basic food needs. A study of young children receiving health care in Philadelphia found that families that lost SNAP due to increased income from earnings were twice as likely to forgo seeking medical care, prescriptions, and/or oral health care for their young child because they weren't able to pay, compared with families with young children that consistently received SNAP. In addition, they were 61 percent more likely to forgo medical care, prescriptions, and/or oral health care for one or more household members other than the young child because of inability to pay, and 95 percent more likely to report having to make health care trade-offs (that is, not paying for other basic living expenses such as rent, food, or utilities because they had to pay for medical care or prescription medicines.[226]

DHS should acknowledge this potential impact on non-food producers and retailers, landlords, and other sectors.

Further, to the extent this were to occur, it could mean that a lower share of those household purchases may be subject to state sales tax, reducing revenues for states. DHS should acknowledge this potential impact on state budgets and estimate it. For example, in 2004 the California governor proposed to restrict California Food Assistance Program eligibility for certain immigrant households. The California Legislative Analysts Office's analysis of the proposal's fiscal impacts estimated that, by reducing consumption of non-food goods subject to General Fund Sales Taxes, the proposal would reduce state General Fund revenues by about $4.5 million annually.[227]

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[225] P51118, repeated at 51268-51269.

[226] Allison Bovell *et al.,* "Making SNAP work for Families Leaving Poverty," Children's HealthWatch, revised November 2014, http://www.centerforhungerfreecommunities.org/sites/default/files/pdfs/Making%20SNAP%20Work%20for%20Families%20Leaving%20Poverty.pdf.

[227] "Analysis of the 2004-05 Budget Bill: Food Stamp Program," The California Legislature's Nonpartisan Fiscal and Policy Advisor, February 2004, https://lao.ca.gov/analysis_2004/health_ss/hss_20_foodstamps_anl04.htm.

The proposed rule fails to explain these impacts and the research evidence related to them. DHS should incorporate these potential impacts into a sounder evaluation of the potential state budget impacts from disenrollment and forgone enrollment due to the proposed rule. This is just one example of how DHS's acknowledgement and evaluation of downstream impacts from changes in the level and composition of consumption from disenrollment and forgone enrollment is incomplete. DHS should more fully evaluate and discuss each of the potential impacts it lists.

6. DHS does not adequately address costs to entities that will assist families facing hardship

DHS notes that "the proposed rule is likely to produce various other unanticipated consequences and indirect costs. For example, community based organizations, including small organizations, may provide charitable assistance, such as food or housing assistance, for individuals who forgo enrollment in public benefit programs."[228]

These consequences are not "unanticipated" but fully foreseeable (as evidenced by their inclusion by reference in the proposed rule's cost-benefit analysis) and could mean substantial impacts for states, localities, and private actors. DHS should incorporate a proper evaluation of this category of potential impacts in its analysis of the impact of the proposed rule. This evaluation should review and reference:

- The discussion and research listed above at Section IV explaining that states, localities, and private charitable programs will face new challenges to meet the needs of residents who are fearful of accessing benefit programs; that clinics, including federally qualified health centers and other local health safety net providers, will see more uninsured patients; and that food banks and other private nutrition providers will see increased volume.
- As discussed above in Sections III.A.(5) and IV.C.(2), hospitals and other providers will experience more uncompensated care, and there is a large body of literature on uncompensated care costs. DHS should evaluate and explain whether that body of empirical literature provides a basis for quantifying the impacts of the proposed rule on this dimension.

H. DHS does not adequately evaluate the impacts of the proposed bond regime, including transfers to surety companies

DHS states:[229]

> USCIS plans to establish a process to accept and process public charge bonds, which would be available on the effective date of the final rule. DHS welcomes comments on any aspect of the public charge bond or public charge bond process, including whether the minimum public charge bond amount should be higher or lower, and possible ranges for that amount.

The proposed rule suggests a base amount for a public charge bond of $10,000. DHS notes:

[228] P. 51270

[229] P. 51220

> For all public charge surety bonds, an acceptable surety company is generally one that appears on the current Treasury Department Circular 570 as a company holding the requisite certificate of authority to act as a surety on Federal bonds.[636] Treasury-certified sureties have agents throughout the United States from whom aliens could seek assistance in procuring an appropriate bond.[637] The Department of the Treasury certifies companies only after having evaluated a surety company's qualifications to underwrite Federal bonds, including whether those sureties meet the specified corporate and financial standards. Under 31 U.S.C. 9305(b)(3), a surety (or the obligor) must carry out its contracts and comply with statutory requirements, including prompt payment of demands arising from an administratively final determination that the bond had been breached.

As explained above at Section II.G, the NPRM — in both the cost-benefit analysis and the section setting forth the bond requirements — fails to clearly evaluate the impact of the bond regime as proposed, including the degree to which it would reduce the number of individuals otherwise denied status adjustment or lawful entry under the proposed rule, the costs of these bonds, and who bears those costs. Such an evaluation should incorporate an understanding and assessment of the features of the proposed bond regime that give rise to costs and transfers, including how many people will secure these bonds, the bonds' costs for those who hold them, the harm done when an individual with a public charge bond falls on hard times, the benefits for bond surety companies, and the costs borne by states and localities.

1. How many people will secure public charge bonds

As discussed in Sections II.G and II.H, the proposed rule seeks to reduce the extent to which a sufficient Affidavit of Support is actually sufficient to overcome a public charge finding. That is, under the proposed rule, more individuals with legally sufficient Affidavits of Support will be denied adjustment or entry under the proposed rule than is the case today. Given this, more individuals might wish to secure a public charge bond to overcome a public charge finding. But the NPRM does not estimate how many individuals would be permitted to present such a bond for this purpose, how many would be able to secure such a bond, and how many would, because of the bond, be granted admission or status adjustment. These are fundamental impacts of the bond provisions, but DHS provides no estimates on which to evaluate the extent to which these bonds would be used. If DHS thinks it is impossible to know or estimate this key feature of its proposal, it should explain why — and also explain why proceeding with the rule without this information is a sound approach.

2. The costs of bonds for those using them to overcome the proposed public charge definition

The DHS evaluation of the bond provision fails to acknowledge or attempt to quantify the costs to families that represent a direct transfer to bond surety companies. But the NPRM does obliquely recognize that such costs exist. At p. 51275 in the section titled "Regulatory Flexibility Analysis," DHS states, "We expect that obligors would be able to pass along the costs of this rulemaking to aliens." Thus, DHS acknowledges that surety companies will impose costs on families in the form of fees, penalties, and other conditions of the bonds. And while DHS's discussion occurs in the context of small business impacts, the logic applies equally to larger surety companies. DHS should explicitly acknowledge and evaluate this transfer in its broader evaluation of the costs and benefits of the regime.

Costs imposed on families should be identified and quantified. They include:

- Upfront and ongoing fees and other costs that families will have to pay to surety companies to secure and maintain a bond, and other conditions of securing a bond that families will have to comply with, at cost to themselves and to the benefit of the surety company. Families will face years of annual fees, non-refundable premiums, and liens on the homes and cars put up as collateral charged by for-profit surety companies and their agents.[230] Potential penalty costs may also be incurred. As part of this analysis, DHS should explain how long it thinks individuals will hold these bonds; this is a key element in the question of the costs facing individuals holding these bonds. [231]
- Bond cancellation fees and other costs associated with cancelling the bond. The proposed rule lays out the circumstances under which the bonds can be cancelled, such as naturalization or permanently leaving the U.S. When conditions for cancellation are met, individuals must request cancellation, but there is no information in the NPRM about this process and its costs. If there is to be a greater number of individuals holding and ultimately cancelling bonds, these costs should be explained and quantified.
- Additional costs in securing, maintaining, and ending a bond, including but not limited to search costs to identify and confirm the authority of providers and time spent requesting information from state and local agencies.

Finally, evaluation of all these costs should consider the extent to which the potentially long timeframe for holding these bonds and the broad conditions potentially leading to forfeiture heighten the risk of exploitation by for-profit companies managing public charge bonds.

3. Harm to families that fall on hard times and include a family member with a public charge bond

The DHS evaluation should include the costs and steep penalties families would face if they fall on hard times, including for reasons entirely beyond their control (such as an illness or recession), and have to access program benefits. These costs should be estimated and the analysis should explain why the benefits of the bond regime are worth the hardship in these circumstances.

DHS' evaluation of the costs and benefits of the proposed rule should incorporate an analysis of the potential harms when a family in which an individual holds a public charge surety bond falls on hard times, including the harm arising from forfeiting the bond or choosing to forgo needed benefits because of the steep cost associated with forfeiting the bond. The analysis should include

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[230] See, *e.g.*, Selling Off Our Freedom, n.45 *supra*; High Cost of Bail, n.45 *supra*; Past Due, n.45 *supra*; UCLA School of Law Criminal Justice Reform Clinic, *The Devil in the Details: Bail Bond Contracts in California,* May 2017, https://static.prisonpolicy.org/scans/UCLA_Devil%20_in_the_Details.pdf. *See also* Brooklyn Community Bail Fund, "License & Registration, Please...An examination of the practices and operations of the commercial bail bond industry in New York City," June 2017, https://static1.squarespace.com/static/5824a5aa579fb35e65295211/t/594c39758419c243fdb27cad/1498167672801/NYCBailBondReport_ExecSummary.pdf.

[231] DHS seeks to impose an affirmative obligation on the immigrant or obligor to request the cancellation of the bond upon naturalization, death, or permanent departure. Most LPRs are not eligible to naturalize until at least five years after becoming an LPR, and many more are unable to naturalize for longer than that for a variety of reasons.

impacts on children from the added financial hardship and instability from forgoing needed benefits or accessing them and having the bond forfeited. These impacts include both immediate and long-lasting health, education, and other harms that research shows can result from such hardship.

Finally, in evaluating these costs, DHS should consult the literature on the use of bonds in the pretrial context. For example, studies show that bonds cause long-term hardship and increase the likelihood of financial instability. Public charge bonds may have similar impacts, particularly given the likely long time horizon the bonds would be in effect.

4. Benefits for bond surety companies

Many of the costs noted above create a transfer from families to bond surety companies. DHS should evaluate and quantify the extent to which bond surety companies will capture monetary benefits from the proposed regime in the form of fees or other conditions for the bonds.

5. Costs to states and localities

DHS should also evaluate the costs to states and localities created by the regime. These may include:

- The administrative burden on federal, state, and county agencies, which would be required to verify non-receipt of benefits upon requests for cancellation of bonds.
- The regulatory burden that states and localities would bear if they seek to regulate what could be an expanded market for these bonds (since they are not in significant use currently).
- The potential creation of a new market for public charge bonds (again, the NPRM's lack of analysis on the degree to which this is likely to happen hinders our efforts to comment on the implications here). States and localities would be responsible for regulating bond insurers and bond agents (including those issuing immigration detention bonds) if they are concerned with protecting consumers in this market — as would be reasonable, given the issues noted above with bond companies in the criminal justice context. Many states already struggle to adequately regulate their current bond industries.[232] DHS should evaluate and quantify the costs for states and localities, including state and local insurance and financial services regulators, of expanding the market.

Further, if the bond regime is workable (as DHS presumably believes), assessment should consider that states and localities may respond to the added administrative and enforcement needs stemming from this new bond market segment either by bearing the cost of expand those activities into the new market segment or by reducing administration and enforcement in existing bond industry market segments. As noted above, the literature suggests that enforcement is already inadequate.

[232] DHS should consult and incorporate relevant literature on state and local regulation of existing bond markets, for example, Selling Off Our Freedom, n.45 *supra* at 34-37; Jessica Silver-Greenberg and Shaila Dewan, "When Bail Feels Less Like Freedom, More Like Extortion," *New York Times,* Mar. 31, 2018. https://www.nytimes.com/2018/03/31/us/bail-bonds-extortion.html.

I. The NPRM fails to fully evaluate costs associated with both understanding the proposed rule and, more importantly, communicating with immigrant families — and organizations that work with immigrant families such as religious institutions, schools, and social service agencies — about the proposed rule

DHS briefly discusses "familiarization costs," which it defines narrowly as the time that various actors will spend reading any final rule to understand it.[233] The NRPM states:

> **Familiarization costs involve the time spent reading the details of a rule to understand its changes**. A foreign-born non-citizen (such as those contemplating disenrollment or forgoing enrollment in a public benefits program) might review the rule to determine whether they are subject to the provisions of the proposed rule. To the extent an individual or entity that is directly regulated by the rule incurs familiarization costs, those familiarization costs are a direct cost of the rule. In addition to those being directly regulated by the rule, a wide variety of other entities would likely choose to read the rule and also incur familiarization costs. For example, immigration lawyers, immigration advocacy groups, health care providers of all types, non-profit organizations, non-governmental organizations, and religious organizations, among others, may want to become familiar with the provisions of this proposed rule. DHS believes such non-profit organizations and other advocacy groups might choose to read the rule **in order to provide information to those foreign born non-citizens and associated households that might be impacted by a reduction in federal transfer payments**. Familiarization costs incurred by those not directly regulated are indirect costs. DHS estimates the time that would be necessary to read the rule would be approximately 8 to 10 hours per person, resulting in opportunity costs of time. An entity, such as a non-profit or advocacy group, may have more than one person who reads the rule." (bolded emphases added)

DHS's discussion of these costs is incomplete in several significant ways. As a result, DHS fails to acknowledge or assess important substantial costs stemming from the proposed rule, including costs associated with communicating with individuals who could be directly affected by the proposed rule and the costs associated with efforts to reduce the number of families that forgo benefits but will not face a public charge determination.

1. Communicating to those directly affected

While DHS acknowledges that various entities such as non-profits and advocacy groups will familiarize themselves with the rule "in order to provide information" to people who might be directly affected, it fails to acknowledge that this may be resource-intensive and so carry substantial costs, such as costs associated with:

- Time creating new materials, or revising existing materials, to explain in plain terms for non-experts how the new rule operates. These materials would need legal review in many cases to ensure accuracy.

[233] p. 51270. DHS includes a truncated summary of familiarization costs at p. 51118 in the Executive Summary, and Table 1.

- Time and outlays spent on translating new and updated materials into multiple languages.
- Time and outlays spent updating software (such as benefit calculators), websites, print materials, and other resources to reflect the proposed rule.
- Time and outlays spent to search websites and social media sites (Facebook, Twitter, Instagram, etc.) for outdated descriptions of the rule or proposed rule that users may come across when doing a broad web search, and then to pull down any outdated materials or mark them to make clear that they are no longer accurate.
- Time and outlays spent on outreach and dissemination to alert communities that the rule has changed and that old materials and guidance no longer apply.
- Training costs, such as:
    - Holding community meetings and webinars to inform affected communities and other entities that work with those communities.
    - Training front-line service providers or outreach staff who will not read the rule themselves but will need to answer questions or inform clients about it.
- Time spent fielding questions from potentially affected individuals and communities, and further updating materials to address common areas of confusion and uncertainty as they arise. This may include time spent collecting questions, triaging them for urgency, and tracking them, as well as time spent responding.

Private entities also would likely incur costs monitoring and communicating about how the proposed rule (once finalized) is being applied in practice. As discussed in Section II above, the proposed rule would give immigration officials very broad authority. This means that entities would need to monitor how immigration officials approach the determination in practice in order to advise individuals and communities about how they might expect the rule to be applied in general and in specific circumstances. This work is time- and resource-intensive.

Such costs of communicating the impact of the proposed rule are an extension of the narrow "familiarization costs" that DHS discusses in the NPRM, but the costs of communicating the impact of the proposed rule to potentially affected people who are not experts (and the other costs listed above) will often exceed the quantified costs of staff simply reading any final rule.

2. Communicating to reduce chill

Second, DHS's evaluation of "familiarization costs" is inadequate because it fails to acknowledge that various entities' efforts to communicate the impact of the proposed rule would have to reach *far beyond* those whom it would directly affect — that is, those who will face a public charge determination and who would be at heightened risk for a denial of status adjustment or entry as a result of this rule. Indeed, much of the communication that entities would undertake would involve making clear to people *not* directly affected by the proposed rule that they still can claim the benefits to which they are entitled without putting at risk the outcomes of immigration determinations for themselves, their households, or their broader families.

As noted above,[234] many entities are *already* seeing the proposed rule (and prior leaked drafts) cause confusion and fear among the populations they serve. The chill impact of the proposed rule is far wider than those directly affected by the rule and is leading people to forgo benefits, with substantial costs for people, communities, and providers. Community groups and other entities would likely do what they can to reduce chill, given these impacts, but they almost certainly would not be able to eliminate the chill effects entirely. Notably, the Administration has not indicated that it will undertake any efforts to tamp down confusion about the proposed rule to reduce the chill impact; thus, much of the work to reduce the negative effects of chill would likely fall to states, communities, and providers.

Given the widespread impact of the chill, all the activities and costs listed in the subsection above would be needed not just for people directly targeted by the new rule, but also those who might wrongly believe it could affect them and so might forgo assistance for which they are eligible.

The costs of communicating to those directly affected by the proposed rule and reducing chill are already being incurred. Many entities are already expending time and resource producing and disseminating materials that explain the proposed rule and attempt to explain to potentially affected communities how it might work, including who would *not* be directly affected and could continue to access benefits without risking a negative immigration consequence. This work includes explaining to service providers what they might say to immigrant families.

For example, CBPP runs a Health Reform: Beyond the Basics project designed to provide training and resources that explain health coverage available through Medicaid, CHIP, and the marketplaces. It is aimed at navigators, advocates, state and local officials and others who help consumers get and keep their health coverage.[235] Due to the proposed rule, CBPP has updated its Beyond the Basics webinars to incorporate the latest understanding of the impact of the proposed rule for immigrant families, specifically adding a new section on "Concerns related to use of public benefits and proposed 'public charge'" rule"[236] to address common concerns and potential misunderstanding. CBPP alone spent many hours of staff time at multiple levels of seniority for this update. Further, CBPP needed to consult organizations more expert in immigration law and messaging to immigrant families in order to ensure that the update was accurate and clear for non-legal audiences who directly serve marketplace consumers.

This is just one example for one product focused on one program, so is a tiny window into the substantial costs that many other entities are incurring or would incur to communicate the impacts of the proposed rule.

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[234] Sections VI .F and IV.

[235] See http://www.healthreformbeyondthebasics.org/about/

[236] "Immigrant Eligibility for Health Coverage Programs Coverage Year 2019," Center on Budget and Policy Priorities with National Immigration Law Center, October 23, 2018, http://www.healthreformbeyondthebasics.org/wp-content/uploads/2018/10/Webinar-OE6_2018-10-23_NILC_Immigrant-Eligibility-for-Coverage-Programs.pdf#page=24.

The list below is far from exhaustive but highlights the many health organizations and providers at the national, state, and local levels creating and releasing new materials that address the potential impact of the proposed rule for communities they serve:

- California Primary Care Association[237]
- National WIC Association[238]
- La Clínica del Pueblo[239]
- Colorado Health Institute[240]
- Legal Aid Society[241]

Many other entities that work on different programs or with different parts of immigrant communities already are likewise updating and disseminating new resources to alert affected households of how they might be affected and to reduce chilling and unnecessary fear among those who would not be directly subject to an unfavorable public charge determination under the proposed rule.[242]

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[237] "Patient Talking Points – Public Charge Rule," California Primary Care Association, October 24, 2018, https://californiahealthplusadvocates.informz.net/CaliforniaHealthPlusAdvocates/data/images/Public%20Charge/PC_Talking%20Points_Patient_FINAL_10.24.18.pdf.

[238] "Resources on WIC and Public Charge," National WIC Association, February 26, 2018, https://www.nwica.org/blog/resources-on-wic-and-public-charge-#.XAGOQ9tKgdU.

[239] "Statement on Public Charge," *La Clinica del Pueblo,* 2018, https://www.lcdp.org/news-resources/press-room/statement-public-charge.

[240] "Changing the "Public Charge" and Health Insurance in Colorado," Colorado Health Institute, October 15, 2018, https://www.coloradohealthinstitute.org/research/changing-public-charge-and-health-insurance-colorado.

[241] "Public Charge? Screening Tool and Attorney Referral Information for Community-Based, Social Services, and Advocacy Organizations," The Legal Aid Society, November 27, 2018, https://static1.squarespace.com/static/59578aade110eba6434f4b72/t/5bfeb9f76d2a737720f245ad/1543420408161/Screening+Tool+%28ver+11-28-2018%29.pdf.

[242] Just a few illustrative examples include resources produced for immigrants or service providers who serve immigrant populations on the proposed rule or earlier leaked drafts: Xochitl Oseguera, "What You Need to Know On the Public Charge Rule & Immigrant Families," Momsrising, revised September 24, 2018, https://www.momsrising.org/blog/what-you-need-to-know-on-the-public-charge-rule-immigrant-families; "Protecting Immigrant Families Advancing Our Future: How Talk About Public Charge with Immigrants and their Families," CLASP, August 7, 2018, https://www.clasp.org/sites/default/files/publications/2018/08/2018_piftalkingwithimmigrantfamilies.pdf;

"Health Care Providers and Immigration Enforcement: Know Your Rights, You're your Patients' Rights," National Immigration Law Center, April 2017, https://www.nilc.org/wp-content/uploads/2017/04/Protecting-Access-to-Health-Care-2017-04-17.pdf; "Know Your Rights: Is It Safe to Apply for Health Insurance or Seek Health Care?," National Immigration Law Center, November 2016, "Patient Talking Points – Public Charge Rule," California Primary Care Association, revised October 24, 2018, https://californiahealthplusadvocates.informz.net/CaliforniaHealthPlusAdvocates/data/images/Public%20Charge/PC_Talking%20Points_Patient_FINAL_10.24.18.pdf; "National WIC Association Talking Points on Public Charge," The National WIC Association, February 14. 2018, https://s3.amazonaws.com/aws.upl/nwica.org/nwa-public-charge-talking-points-2.14.18.pdf; and "Federal Government's "Public Charge" Announcement: What It Means For Immigrant Access to Public Benefits," NYC Mayor's Office of Immigrant Affairs, revised September 24, 2018, https://www1.nyc.gov/site/immigrants/help/legal-services/public-charge.page.

It is important to note that if private entities were not to undertake this work, the number of individuals and families that forgo benefits would be far higher. Thus, the smaller DHS assumes the chill effect to be, the more it is implicitly assuming that community groups — as well as states, localities, and providers — are effectively (and at substantial cost) explaining the proposed rule to communities.

Finally a sound discussion of the costs of communicating the impact of the proposed rule should also take into account the administrative burden on states and localities from addressing fear and confusion among families. States and localities would have to modify outreach and consumer education materials to attempt to address the fear and confusion created by the proposed and then finalized rule, and would have to train staff on how to answer questions about it. This may mean shifting resources from other activities. DHS should acknowledge and evaluate the potential burdens on states and localities, including those discussed in sections above.

3. Costs to individuals and families go far beyond reading time

The discussion of familiarization costs also fails to consider that for potentially affected individuals and households, time spent familiarizing themselves with the rule would not be limited to simply reading any published final rule.

Any published final rule will likely be incomprehensible to most non-experts, let alone those whose first language is not English. Furthermore, any published rule will lack important information that matters to individuals and families making decisions that could affect their immigration status and participation in programs. Because the determination under the proposed rule is so fact-specific and gives immigration officials broad authority to make public charge determinations, potentially affected individuals will often need guidance that incorporates an understanding of how the rule is being applied in practice and that is tailored to their circumstances.

Seeking out such plainly worded information on the rule and how it might work from reliable sources will entail substantial and foreseeable costs for individuals and families, which might include:

- Search costs to identify information about the rule and how it might apply to their situation, and to attempt to confirm sources of information as reputable and reliable.
- Identifying and seeking out affordable expert advice.
- Outlays for advice from immigration attorneys or other advocates tailored to a household's specific situation.
- Finding all the above in a language that the individual is fluent in, or additionally seeking interpretation services.

Because DHS does not acknowledge these costs, let alone attempt to evaluate them, it vastly understates the costs of an ill-conceived policy with entirely predictable harm that the federal government would be imposing deliberately.

J. The NPRM fails to address other administrative and compliance costs

The NPRM's discussion of administrative and compliance costs is inadequate in important ways. For example, the instructions to the I-944 form state that the applicant is supposed to get much of the detail required by the form from the relevant state agency.[243] The form states:

> If you applied for, are currently receiving, or previously received, any of the public benefits listed above, provide evidence in the form of a letter, notice, certification or other agency documents that contain the following:
> 1. Your Name;
> 2. Name and contact information for the public benefit granting agency;
> 3. Type of Benefit;
> 4. Amount of benefit(s) received (indicate whether weekly, monthly, or annually. If other, explain);
> 5. Date Benefit Was Granted;
> 6. Date the Benefit Ended or Expires (mm/dd/yyyy) (if applicable); and
> 7. Number of Household Members Receiving the Benefit (if applicable).

DHS fails to discuss and evaluate either the costs to the immigrant of obtaining that information from state agencies, or the costs to states of providing that information in formats that make it useable for the purposes of the I-944. DHS should do so in order to properly evaluate the impacts of the proposed rule.

K. Compliance cost opportunity cost estimate

DHS assumes for the purpose of quantifying compliance costs that many categories of applicants for admission or status adjustment are paid the federal minimum wage, adjusted for average benefits. But for those already in the U.S., a minimum wage *by definition* cannot be the average wage (unless there are massive wage theft and labor law violations). The analysis neither asserts nor provides any supporting evidence that a large share of workers who are affected by the proposed rule's compliance costs and are already in the country are being paid less than federal minimum wage. Nor does it estimate the shares of those facing compliance costs who are already in the country versus outside of it.

The fact that DHS did not seek to determine the wage distribution of those affected by new filing requirements and instead uses a minimum wage rate points to a far more fundamental problem with DHS's assessment of the proposed rule. It is a further symptom of the fact that DHS has done no analysis of the group of individuals who would face the proposed public charge rule or their basic characteristics, including the wage distribution or location of those affected.

[243] Department of Homeland Security, "Instructions for Declaration of Self-Sufficiency, USCIS Form I-944," revised September 25, 2018, https://www.regulations.gov/document?D=USCIS-2010-0012-0047.

APPENDIX I

Center on Budget and Policy Priorities' Contributors to our Public Comments

(listed alphabetically)

Jennifer Beltrán is a Research Assistant at CBPP and works with federal fiscal experts at CBPP on budget and tax policy as well as on issues related to immigrants. Beltrán joined the Center in 2018 and holds B.A. degree from Swarthmore College.

Ed Bolen joined the Center in 2010 as a Senior Policy Analyst. His work focuses on state and federal issues in the Supplemental Nutrition Assistance Program. Prior to joining the Center, Bolen was Senior Policy Analyst at California Food Policy Advocates. While there, he worked toward administrative and legislative improvements to food assistance programs and provided training and technical assistance to community-based organizations. He also has worked in public health law, most recently consulting on legal strategies to combat childhood obesity with the National Policy and Legal Analysis Network. Prior to that, Bolen was senior staff attorney at the Child Care Law Center, specializing on licensing, subsidy and legislative issues affecting low-income families in child care and early education settings. He received his law degree from University of California Hastings.

Matt Broaddus is a Senior Research Analyst in CBPPs Health Division. He has 19 years of experience conducting and evaluating research on the consumer benefits of health insurance coverage and the critical role of public health care benefits for low-income families. He is an expert in sources of data on health coverage and on research related to the impacts of health coverage and Medicaid on health and other outcomes.

Stacy Dean joined CBPP in 1997 and current serves as the Vice President for Food Assistance Policy at the Center on Budget and Policy Priorities and has [2X] years of experience on food assistance and other programs that serve low- and moderate-income individuals and households. She directs CBPP's food assistance team, which publishes frequent reports on how federal nutrition programs affect families and communities and develops policies to improve them. Dean's team also works closely with program administrators, policymakers, and non-profit organizations to improve federal nutrition programs and provide eligible low-income families with easier access to benefits. In addition to her work on federal nutrition programs, Dean directs CBPP efforts to integrate the delivery of health and human services programs at the state and local levels. Dean has testified before Congress and spoken extensively to national and state non-profit groups.

Previously, as a budget analyst at the Office of Management and Budget, she worked on policy development, regulatory and legislative review, and budgetary process and execution for a variety of income support programs. She currently sits on the Board of Social Interest Solutions, a non-profit technology firm.

Shelby T. Gonzales is a Senior Policy Analyst at CBPP. Gonzales has more than twenty years of experience in conducting effective outreach to increase participation in public benefit programs. Her work has included advancing policies that promote enrollment while protecting program integrity and designing interventions that address systemic barriers to enrollment for groups disproportionately eligible for but not participating in programs, including immigrants. Gonzales

directed a children's health coverage outreach program in Virginia for almost a decade, sits on the Virginia Children's Health Advisory Committee, and served two terms as a member of the U.S. Health and Human Services' Advisory Panel on Outreach Education.

Chye-Ching Huang is the Director of Federal Fiscal Policy at CBPP, where she focuses on the fiscal and economic effects of federal tax and budget policy. She has worked as a solicitor, legal academic, and economic policy analyst in New Zealand. She holds an LL.M. from Columbia Law School, and a Bachelor of Commerce in Economics and a Bachelor of Laws from the University of Auckland in New Zealand. She first joined the Center in 2008-2009 as a Research Fellow and rejoined the Center in July 2011.

Sharon Parrott is a Senior Fellow and Senior Counselor at CBPP. She has more than 25 years of experience working on a broad range of policy issues that affect the lives of low- and moderate-income individuals and families, including the intersection of immigration and program policies. Parrott rejoined the Center in 2017 after serving for two years as Associate Director for the Education, Income Maintenance, and Labor (EIML) Division at the Office of Management and Budget (OMB). At OMB she had budget and oversight responsibilities for the Departments of Labor and Education, the Social Security Administration, the human services programs at the Department of Health and Human Services, and the nutrition programs at the Department of Agriculture. Parrott also served at the Department of Health and Human Services from 2009 to 2012 as Secretary Kathleen Sebelius' Counselor for Human Services Policy. At HHS, she served as a lead advisor to the Secretary on the broad range of human services programs within the Department's purview.

Parrott previously worked at the Center from 1993 through August 2009 and from November 2012-December 2014. During her previous work at the Center, she focused on a broad set of cross-cutting poverty issues and programs that serve low- and moderate-income people as well as on the impact of federal budget decisions on low-income populations.

Douglas Rice is a senior policy analyst at CBPP on the Housing Policy team. Doug is an expert on budgetary and policy issues in federal housing assistance programs, and has a strong interest in policies that reduce instability and homelessness, and improve children's well-being and chances of long-term success. Before joining CBPP in 2005, Doug was director of housing and community development policy at Catholic Charities USA, which represents one of the nation's largest networks of social service providers. He has degrees from Harvard College and the University of Massachusetts at Amherst.

Liz Schott is a Senior Fellow at CBPP on the Family Income Support team. She is an attorney with over 40 years of experience in low-income benefit programs. She worked for 19 years at legal services in Washington State, including 10 years as the statewide coordinator for public benefits issues. During this time, she litigated numerous class actions relating to public benefits in federal and state courts. She has worked at CBPP for 15 years, focusing on public benefit issues. She also has served as a consultant for national research organizations, including MDRC and Mathematica Policy Research, and as an adjunct professor at Seattle University School of Law teaching courses in Poverty Law and Public Benefits Law.

Arloc Sherman is a Senior Fellow in CBPP's data analysis division. His work focuses on income trends, income support policies, and the causes and consequences of poverty. He has written extensively about the effectiveness of government poverty-reduction policies, the influence of

economic security programs on children's healthy development, the depth of poverty, tax policy for low-income families, welfare reform, economic inequality, material hardship, parental employment, and the special challenges affecting rural areas. He has deep expertise on Census and other data sources and which data sources are most reliable for measuring program participation and anti-poverty impacts. He was a member of the National Academy of Sciences Committee on National Statistics Panel to Review and Evaluate the 2014 Survey of Income and Program Participation's Content and Design. His book Wasting America's Future was nominated for the 1994 Robert F. Kennedy Book Award.

Judy Solomon is a Senior Fellow and her work focuses on Medicaid and other health programs with a concentration on policies to make coverage and health care services available and affordable for low-income people. She has testified before state legislatures and spoken extensively to national and state nonprofit groups and is often cited by national and state media, including the New York Times, USA Today, Wall Street Journal, and Washington Post. Previously, Solomon was a Senior Policy Fellow at Connecticut Voices for Children and Executive Director of the Children's Health Council. She directed the Council's work on policy analysis, outreach, education and training, and independent oversight of health care services provided through Connecticut's Medicaid managed care program. She has also worked as a legal services attorney specializing in the area of public benefits and taught at the Yale University School of Medicine. Solomon is a graduate of the University of Connecticut and Rutgers University School of Law in Newark.

Chad Stone is Chief Economist at the Center on Budget and Policy Priorities, where he specializes in the economic analysis of budget and policy issues. He was the acting executive director of the Joint Economic Committee of the Congress in 2007 and before that staff director and chief economist for the Democratic staff of the committee from 2002 to 2006. He was chief economist for the Senate Budget Committee in 2001-02 and a senior economist and then chief economist at the President's Council of Economic Advisers from 1996 to 2001. Stone has been a senior researcher at the Urban Institute and taught for several years at Swarthmore College. His congressional experience also includes two previous stints with the Joint Economic Committee and a year as chief economist at the House Science Committee. He has worked at the Federal Trade Commission, the Federal Communications Commission, and the Office of Management and Budget. Stone is co-author, with Isabel Sawhill, of Economic Policy in the Reagan Years. He holds a B.A. from Swarthmore College and a Ph.D. in economics from Yale University.

Danilo Trisi is a Senior Research Analyst in the Family Income Support Division, where his research has focused on poverty and income trends, labor market analyses, income inequality, the TANF program, and the effectiveness of the safety net. He has worked in public policy research for over 15 years. His research draws on national survey data, administrative data, and micro-simulation of tax and transfer programs. Trisi also provides support to many of the Center's cross-cutting research projects such as the design of policies to help current food assistance recipients enroll in Medicaid. Trisi is an expert in Census data sources. He holds a Ph.D. from the University of Maryland's School of Public Policy, a Master's degree in Latin American Studies from the University of California, Berkeley, and a B.A. degree from Pomona College.

The contributors would like to thank Francisca Alba and Lorena Roque for excellent research assistance.

EXHIBIT 9

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MAKE THE ROAD NEW YORK, AFRICAN SERVICES COMMITTEE, ASIAN AMERICAN FEDERATION, CATHOLIC CHARITIES COMMUNITY SERVICES (ARCHDIOCESE OF NEW YORK), and CATHOLIC LEGAL IMMIGRATION NETWORK, INC.,

Plaintiffs,

vs.

KEN CUCCINELLI, in his official capacity as Acting Director of United States Citizenship and Immigration Services; UNITED STATES CITIZENSHIP & IMMIGRATION SERVICES; KEVIN K. McALEENAN, in his official capacity as Acting Secretary of Homeland Security; and UNITED STATES DEPARTMENT OF HOMELAND SECURITY,

Defendants.

19–cv-07993 (GBD)

DECLARATION OF DIANE SCHANZENBACH, Ph.D.

I, **Diane Whitmore Schanzenbach**, declare pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. My name is Diane Whitmore Schanzenbach. I make this declaration in support of Plaintiffs' Request for a preliminary injunction.

Background

2. I am the Director of the Institute for Policy Research at Northwestern University, where I am also the Margaret Walker Alexander Professor of Social Policy and Economics. For the past two decades, I have conducted and published numerous peer-reviewed research studies and book chapters on the Supplemental Nutrition Assistance Program, commonly known as SNAP. I recently served as a member of the Institute of Medicine's Committee on Examination

of the Adequacy of Food Resources and SNAP Allotments, and the Committee on National Statistics of the National Academy of Sciences Committee on Improving Consumer Data for Food and Nutrition Policy Research for the Economic Research Service, United States Department of Agriculture (USDA). I was previously the Director of the Hamilton Project, an economic policy initiative at the Brookings Institution. I hold a Ph.D. in economics from Princeton University. My declaration draws primarily from research that I have conducted or reviewed that use economic and econometric methods to consider the role of SNAP and other influences on food consumption, food insecurity, economic well-being, and other outcomes. My Curriculum Vitae is attached as Exhibit A to this declaration.

3. I have previously testified before the House Agriculture Committee and the U.S. Senate Committee on Agriculture, Nutrition and Forestry regarding SNAP. I have previously provided an expert declaration in *Texas Taxpayer & Student Fairness Coalition, et al. v. Edgewood Independent School District, et al. v. Robert Scott*, Cause No. D-1-GN-11-003130 (200th Judicial District, Texas). I have not provided testimony in any other litigation.

4. I have been engaged by counsel for Plaintiffs in this case to evaluate the effect of the new public charge rule ("the public charge rule" or "the Rule")[1] on the use of SNAP benefits and the resulting effects on individuals, communities, and the nation.

Summary

5. As described below, from my expert review, I conclude that because of the chilling effects of the public charge rule, enrollment among SNAP households with immigrant members will decline by nearly 20 percent and that 524,897 households will not participate in SNAP due to the Rule. These households include 1.78 million individuals, many of whom are

[1] Inadmissibility on Public Charge Grounds, 84 Fed. Reg. 41,292 (Aug. 14, 2019) (to be codified at 8 C.F.R. pts. 103, 212, 213, 214, 245, 248).

citizens. The loss of SNAP benefits will cause substantial harm to households and their communities, and will especially cause harm to young children in those households; 35 percent of participating SNAP households with noncitizen members had a young child between ages 0 and 4 in the household. Research reviewed below suggests that the loss of these benefits will have lasting impacts on health and well-being in the short-, medium, and long-term. I also conclude that the annual economic loss from foregone SNAP benefits due to the Rule will be $2.0 billion and that the economic multiplier impacts of these losses yields a likely annual economic loss of $3.2 billion.

6. My findings show that the Department of Homeland Security (DHS) and U.S. Citizenship and Immigration Service (USCIS) misunderstand the supplemental nature of SNAP. Participating SNAP households with immigrant members on average receive a minority of their total resources from SNAP payments. In data from 2017, over half of SNAP households with immigrant members that did not contain an elderly or disabled member had earnings in the month they received benefits.

7. I also found significant problems in DHS's estimates. First, DHS substantially understates the number of immigrant households that may be impacted. I estimate that there are 2.6 million households on SNAP that include noncitizen members, and these households include 6.5 million people who receive SNAP, and 8.9 million individuals overall in the households, whereas DHS estimates that there are 1.5 million households on SNAP that include noncitizen members, and these households include 5.1 million individuals.

8. Second, DHS compounds this error by making an unreasonable estimate of a likely disenrollment effect based on chilling effects estimates that are substantially outside of the range of credible social science estimates. A justifiable estimate is that enrollment among SNAP

households with immigrant members will decline by around 20 percent. I estimate that 524,897 households will not participate in SNAP due to the Rule. These households include 1.78 million individuals, whereas DHS estimates that there will be 65,612 households and 222,868 households that will not participate.

9. I predict the annual total amount of foregone SNAP benefits due to the Rule will be $2.0 billion. This figure is about 10 times greater than DHS's estimates,[2] which are flawed both in terms of the number of SNAP households with immigrant members and in the likely rate of disenrollment or foregone enrollment. Including the economic multiplier impacts of these losses yields a likely annual economic loss of $3.2 billion. The estimated lost benefits to the state of New York will be $179 million annually, which will result in $287 million in lost economic activity. Connecticut is estimated to lose $22.7 million in benefits and $36.3 million in economic activity. Vermont is estimated to lose $1.0 million in benefits and $1.6 million in economic activity.

I. Background on SNAP

A. Overview of SNAP

10. The Supplemental Nutrition Assistance Program (SNAP), previously known as the Food Stamp Program, is a cornerstone of the U.S. safety net. SNAP is the only social benefits program universally available to low-income Americans, and, in 2018, it assisted 40 million people in a typical month—about one out of every eight Americans. Overall, $60.6 billion was spent on benefits in 2018. SNAP benefits typically are paid once per month on an electronic benefits transfer card that can be used in a food retailer's checkout line like a debit card, to purchase eligible goods which include most foods that are intended to be taken home and eaten.

[2] *See* Regulatory Impact Analysis, Inadmissibility on Public Charge Grounds, Table 22.

11. SNAP is designed to prop up families' purchasing power when their incomes are low, and helps to buffer households' economic shocks due to job loss or other income declines. SNAP also has a stated goal of strengthening the agricultural economy, and every $1 increase in SNAP benefits has been shown to increase economic activity in the economy by $1.60.[3] In addition, SNAP plays an important role as an automatic stabilizer, responding powerfully and quickly in times of economic downturns. During a recession, as unemployment rises, many families' incomes fall, making more of them eligible for SNAP benefits (or making those already eligible for SNAP eligible for larger benefits). Benefits are quickly spent, generally in the local economy, providing an economic stimulus.[4]

12. SNAP benefits are designed to fill the gap between a family's resources that are available to purchase food and the price of a low-cost food diet. Maximum benefits vary by household size. The maximum monthly benefit for a family of three in fiscal year 2019 is $505, or about $17 per day. Most families do not receive the maximum benefit because they have some resources (for example, earnings) that they can spend on groceries, and SNAP benefits are reduced accordingly. The average monthly SNAP benefit received for a family of three in 2019 is $378, or a little over $12 per family per day (approximately $4 per person per day).[5]

13. By design, SNAP can very quickly adapt to declining economic conditions. During a recession as more households become eligible for the program they can be quickly enrolled, with total program outlays automatically increasing along with need. SNAP payments and caseloads increased in the wake of the Great Recession, and, at their peak in 2012, 15

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[3] Bivens, Josh. 2011. Method memo on estimating the jobs impact of various policy changes. Report, Economic Policy Institute.

[4] Hoynes, Hilary and Diane Whitmore Schanzenbach. 2019. Strengthening SNAP as an Automatic Stabilizer. In Boushey, Heather, Ryan Nunn and Jay Shambaugh, eds., Recession Ready: Fiscal Policies to Stabilize the American Economy.

[5] *See* CBPP, A Quick Guide to SNAP Eligibility and Benefits, https://www.cbpp.org/research/food-assistance/a-quick-guide-to-snap-eligibility-and-benefits.

percent of the population participated in SNAP.[6] As the economy has recovered and unemployment rates have declined, caseloads have fallen such that by 2018 the participation rate fell to 12.3 percent of the population, with the Congressional Budget Office predicting further declines in the coming years as long as the economy continues to thrive.[7] This feature of SNAP means that a household's likelihood of participating in SNAP varies due to macroeconomic conditions that are out of their control.

B. Eligibility for SNAP

14. Under federal rules, to be eligible for SNAP a household's income and assets must meet three tests. First, their gross monthly income (before any deductions are applied) must be no higher than 130 percent of the poverty line, unless there is an elderly or disabled member in the household. Second, their net income must be no higher than 100 percent of the poverty line (after a series of deductions—including a standard deduction available to all households, some earned income, childcare expenses, legally obligated child support, housing costs that exceed half of the family's net income, and medical expenses for elderly or disabled household members).[8] Third, the household's assets must fall below $2,250, or $3,500 (which generally include bank accounts, but not other significant assets such as retirement savings, most automobiles, or homes of residence) for households with an elderly or disabled member. States have the option to raise the gross income and asset limits; in 2019, 31 states have adopted higher income and asset limits, and another nine states have adopted higher asset limits only.[9] As a result, many SNAP participants have income above the poverty line and many have significant

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6 Schanzenbach, Diane Whitmore. 2017. The Future of SNAP: Continuing to Balance Protection and Incentives. In Reforming the Farm Bill, American Enterprise Institute.

7 Greenstein, Robert, Brynne Keith-Jennings, and Dottie Rosenbaum. 2018. Factors Affecting SNAP Caseloads. Center on Budget and Policy Priorities.

8 All SNAP households are eligible for the standard deduction, 69 percent claim the shelter deduction, and 31 percent claim the earnings deduction. Childcare, child support, and medical expense deductions are claimed by four, two, and six percent, respectively (CBPP, A Quick Guide to SNAP Eligibility and Benefits).

9 Schanzenbach, Diane. 2019. Who Would Be Affected by Proposed Changes to SNAP? Econofact.

assets.[10,11] During normal economic times, unemployed, nondisabled childless adults (also known as ABAWDs, or "able-bodied adults without dependents") are subject to a 20-hour-per-week work requirement in order to receive benefits.

15. Some noncitizens are eligible for SNAP, and may be awarded benefits if they also satisfy the program's other eligibility requirements such as income and resource limits. Noncitizens may be eligible if they are in a qualified aliens category and, in most cases, meet one additional condition. Qualified aliens include: lawfully admitted for permanent residence (LPRs, or green card holders) also including Amerasian immigrants; asylees; parolees; deportation (or removal) withheld; conditional entrants; Cuban or Haitian entrants; battered noncitizens; refugees; trafficking victims; Iraqi and Afghan Special Immigrants; certain American Indians born abroad; and certain Hmong or Highland Laotian tribal members. In addition, most qualified aliens must also meet one of the following conditions to be eligible for SNAP: five years of United States residence; 40 qualifying work quarters; under the age of 18; blind or disabled; elderly who lawfully resided in the U.S. on August 22, 1996; and active duty military (excluding National Guard) or honorably discharged veterans. Noncitizens that are tourists or students are generally not eligible. Undocumented noncitizens have never been eligible for SNAP, though such individuals may live in a household that receives SNAP benefits for other members.

16. In some cases, an intending immigrant undergoing adjustment would be eligible for SNAP before his or her green card application is approved. More commonly, the applicant undergoing the public charge determination only would be eligible for SNAP five years after he or she adjusts. But an adjusted LPR may be eligible for SNAP sooner if he or she is under age 18, in receipt of a disability-based benefit, can be credited with 40 qualifying quarters of work,

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[10] Schanzenbach, Diane. 2019. Who Would Be Affected by Proposed Changes to SNAP? Econofact.

[11] Ratcliffe, Caroline, Signe-Mary McKernan, Laura Wheaton, Emma Kalish, Catherine Ruggles, Sara Armstrong, and Christina Oberlin. 2016. Asset Limits, SNAP Participation and Financial Stability. Urban Institute Report.

or was lawfully residing in the United States and 65 or older when PRWORA was signed into law on August 22, 1996.

C. Background on Characteristics of SNAP Users

17. USDA collects information on participating SNAP households in its "Quality Control (QC) Data," which are publicly available on the agency's website.[12] In this section, I use these data to describe SNAP households in the 50 states plus the District of Columbia, broken into two groups: (1) all households on SNAP, for comparison; and (2) households that receive SNAP benefits and contain at least one member who is a noncitizen, whether or not the noncitizen member(s) are eligible for or themselves participate in SNAP. DHS's Regulatory Impact Analysis issued with the Rule stated that it based its calculations on the total share of foreign-born noncitizens as a percentage of the U.S. population,[13] and my analysis mirrors that approach. As shown in Table 1, 11.3 percent of SNAP households have a noncitizen household member (column 2).

18. As shown in Table 1, 11.3 percent of SNAP households have a noncitizen household member (column 2). Households with noncitizens are more likely than households on SNAP in general to have any child or a young child (age 0 to 4) in the household and less likely to have an elderly or disabled member as the overall caseload. Households with noncitizens have larger household sizes than SNAP households overall, and all else equal, that implies that they will receive larger SNAP benefits due to the larger household size.

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[12] The SNAP QC data are generated from monthly reviews of SNAP cases conducted by state SNAP agencies, to assess the accuracy of eligibility determinations and benefit calculations. The public-use database contains detailed demographic, economic, and SNAP eligibility information for a nationally representative sample of approximately 45,500 SNAP units. The data are released annually, and are available at the following website: https://www.fns.usda.gov/resource/snap-quality-control-data.

[13] *See* Regulatory Impact Analysis, Inadmissibility on Public Charge Grounds, Table 14.

Table 1: Demographic Characteristics of SNAP Households (2017)

	All SNAP Households (1)	SNAP Households with Any Noncitizen (2)
Share of HH's on SNAP	100.0%	11.3%
Share of HH's with children aged 0–4	20.4%	34.6%
Share of HH's with children < age 18	41.7%	67.4%
Share of HH's w/elderly or disabled member	44.4%	28.3%
Average household size	2.18	3.33

19. SNAP households with noncitizens are substantially more likely to include someone who is employed (measured as having earnings greater than zero) than the overall SNAP caseload. Among SNAP households that do not contain an elderly or disabled member, 58.7 percent of households with noncitizen members have earnings in a given month, compared with 31.4 percent of SNAP households overall. In my calculations, earnings are measured as a snapshot — measuring those having positive earnings in the month that they participated in the SNAP QC data collection. Studies that use different datasets that can follow SNAP participants over time (including in months that they do not receive SNAP benefits) estimate even higher shares of employment.[14] SNAP participants tend to work in sectors that have variable hours and higher rates of job turnover and unemployment.[15] As a result, measuring employment in a single month for this population understates the share that will be employed at some point in the months surrounding SNAP receipt. Consistent with this increased likelihood of having earnings,

[14] These studies follow SNAP participants in general, and due to data limitations cannot reliably separate immigrant SNAP participants. Longitudinal studies find that 74 percent of adults on SNAP work in the year before or after they receive SNAP benefits. About two-thirds of SNAP recipients are not expected to work, primarily because they are children, elderly or disabled. See Center on Budget and Policy Priorities. 2019. Policy Basics: The Supplemental Nutrition Assistance Program (SNAP).

[15] Butcher, Kristin F. and Diane Whitmore Schanzenbach. 2018. Most Workers in Low-Wage Labor Market Work Substantial Hours, in Volatile Jobs. Center on Budget and Policy Priorities. Policy Futures Report.

SNAP comprises a smaller share of the total household budget for households with noncitizen members than it does for the overall caseload.[16] Reflecting in part larger household sizes, households with noncitizens receive more in monthly SNAP benefits than the overall caseload.

Table 2: Economic Characteristics of SNAP Households (2017)

	All SNAP Households (1)	SNAP Households with Any Noncitizen (2)
Share with earnings (among households without elderly/disabled members)	31.4%	58.7%
SNAP as a share of total income	36.9%	35.0%
Average monthly SNAP benefits	$244.90	$305.60

Because the data contains information on detailed citizenship status for each household member, I can describe mixed-status households which include noncitizens as well as citizens. Among SNAP households with a married couple head and at least one child in the household, I calculate that 13.6 percent of spouses have different immigration statuses from one another. As shown in Table 3 below, 5.7 percent of SNAP households overall have at least one noncitizen parent and at least one citizen child (including 4.8 percent with only a citizen child or children, and 0.9 percent that have at least two children, at least one of whom is a citizen and at least one of whom is not). The majority of mixed-status families have young children, ages 0 to 4, in the household. Prior research (further described below) suggests that a substantial share of citizen children with immigrant parents dropped off SNAP when many immigrants were temporarily barred from the program in 1996, even though citizen children were still eligible for SNAP.[17] Research also shows that the impact of SNAP on later-life economic and health outcomes is important for

[16] SNAP as a share of total income is calculated as SNAP benefits as a share of SNAP benefits plus earnings plus unearned income.

children through age 18, and is particularly large for young children, underscoring the need to protect young children from the loss of SNAP benefits.[18]

Table 3: Characteristics of Households Receiving SNAP, by Citizenship of Parents and Children (2017)

	Citizen Parent, Citizen Child (1)	Noncitizen Parent, Citizen Child (2)	Noncitizen Parent, Mixed-status Children (3)	Noncitizen Parent, Noncitizen Child (4)
Share of total caseload	33.5%	4.8%	0.9%	0.6%
Household contains a young child (0–4)	49.6%	53.1%	60.4%	14.0%
Average benefit	$402.12	$353.71	$337.02	$340.84

D. Positive Impacts to Individuals and Families Who Receive SNAP

20. Many studies have documented a range of positive impacts of SNAP benefits on those who participate, both in the short-run and for children in the medium- and long-run. Loss of access to SNAP benefits will cause substantial harm to households and their communities, and will especially cause harm to young children in those households.[19]

21. Studies show that SNAP reduces poverty: SNAP kept 8.4 million people out of poverty in 2015 (the most recent data available), including 3.8 million children. It also lifted 4.7 million people, including 2.0 million children out of deep poverty, defined as household income

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[17] East, Chloe N. Forthcoming. The Effect of Food Stamps on Children's Health: Evidence from Immigrants' Changing Eligibility. *Journal of Human Resources.*

[18] Hoynes, Hilary, Diane Whitmore Schanzenbach, and Douglas Almond. 2016. Long-run impacts of childhood access to the safety net. *American Economic Review* 106 (4): 903–34.

[19] Most of the SNAP studies described below measure the impact on participants generally—not just on immigrants, however, it is reasonable to assume that SNAP impacts on immigrants are similar to those on participants overall. This assumption can be tested in the case of pregnant women's access to SNAP. Studies of the overall SNAP population and those limited to immigrants show that SNAP benefits have similar positive impacts on birth outcomes for both groups. *See* Almond, Douglas, Hilary W. Hoynes, and Diane Whitmore Schanzenbach. 2011. Inside the war on poverty: The impact of food stamps on birth outcomes. *The Review of Economics and Statistics* 93.2 (2011): 387–403. *See also* East, Chloe N. Forthcoming. The Effect of Food Stamps on Children's Health: Evidence from Immigrants' Changing Eligibility. *Journal of Human Resources.*

below half of the poverty threshold.[20] SNAP participation has been shown to reduce food insecurity and improve dietary quality,[21] and also improves measures of economic distress such as falling behind on mortgage or utility payments or forgoing medical treatment due to lack of resources.[22]

22. SNAP has long-lasting positive effects: Recent research has documented important benefits of SNAP beyond the short-term "in the moment" reductions in poverty and food insecurity. SNAP is a very good investment that helps prevent lasting negative effects of inadequate childhood resources, demonstrably improving children's health in the short, medium, and long run, and children's economic outcomes in the long run.

23. Some of the best evidence comes from studies of birth cohorts that had differential access to SNAP—then called the food stamp program—when it was originally introduced in the 1960s as part of the War on Poverty. Congress phased in the program across different counties over the span of a decade, which provides researchers the opportunity to statistically isolate the program's impact by comparing children born at different times—and living in different counties in the same states—during the rollout period.

24. One study using this design demonstrates that when a pregnant woman had access to the program during her third trimester, her baby weighed more at birth, and was also less likely to weigh below the clinical threshold of low birth weight.[23] This outcome was significant

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[20] Wheaton, Laura and Victoria Tran. 2018. The Antipoverty Effects of the Supplemental Nutrition Assistance Program. The Urban Institute.

[21] Bitler, Marianne P. 2016. The Health and Nutrition Effects of SNAP: Selection into the Program and a Review of the Literature on its Effects. In *SNAP Matters: How Food Stamps Affect Health and Well-Being*, J. Bartfeld, C. Gundersen, T. Smeeding, and J. Ziliak (eds.), Redwood City, CA: Stanford University Press, 134-160.

[22] Shaefer, H. Luke and Italo. A. Gutierrez. 2013. The Supplemental Nutrition Assistance Program and material hardships among low-income households with children. *Social Service Review* 87 (4): 753–779.

[23] Almond, Douglas, Hilary W. Hoynes, and Diane Whitmore Schanzenbach. 2011. Inside the war on poverty: The impact of food stamps on birth outcomes. *The Review of Economics and Statistics* 93.2 (2011): 387–403.

because a child that has a weight below this clinical threshold is more likely to encounter health and development problems.[24]

25. Subsequent studies evaluate adult outcomes for those given access to SNAP during childhood, and find that SNAP causes improvements in education, health, and economic outcomes. In particular, access to SNAP from conception through age 5 increased a child's likelihood of graduating from high school by 18 percentage points.[25]

26. Adult health—measured as an index comprising obesity, high blood pressure, diabetes, heart disease and heart attack—was markedly improved if the individual had access to the program during early childhood.[26] Looking at a broader range of economic and education outcomes, among women SNAP access improved an index of adult economic outcomes including educational attainment, employment, earnings, family income, and reduced the likelihood that they would be poor or participate in SNAP or TANF (the cash welfare program) during adulthood. There were positive impacts on economic and education outcomes for SNAP access from age 6 through 18 as well as from conception through age 5.[27]

27. More recent research extends this work and finds that early life access to SNAP benefits leads to improvements in long-term earnings and education, and reductions in mortality and criminal activity.[28] In other words, SNAP provides critical benefits to children, which increases their health and human capital accumulation during childhood, which, in turn, helps

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[24] Figlio, D., Guryan, J., Karbownik, K. and Roth, J., 2014. The effects of poor neonatal health on children's cognitive development. *American Economic Review*, 104 (12), 3921–55.

[25] Hoynes, Hilary, Diane Whitmore Schanzenbach, and Douglas Almond. 2016. Long-run impacts of childhood access to the safety net. *American Economic Review* 106 (4): 903–34.

[26] *Ibid.*

[27] Impacts of SNAP access in later childhood did not impact health outcomes, though. See Hoynes, Hilary, Diane Whitmore Schanzenbach, and Douglas Almond. 2012. Long-run impacts of childhood access to the safety net. *NBER Working Paper 18535*.

[28] Bailey, Martha, Hilary Hoynes, Maya Rossin-Slater, and Reed Walker. 2019. Is the Social Safety Net a Long-Term Investment? Large-Scale Evidence from the Food Stamps Program. *Goldman School of Public Policy Working Paper*.

them to escape poverty when they grow up. A decline in the availability of benefits is likely to lead to worse outcomes for these children in adulthood.[29]

28. Other high-quality evidence on the impact of SNAP are based on a policy change which temporarily barred many legal immigrants from the program. In 1996 after the passage of the Personal Responsibility and Work Opportunity Act as part of welfare reform, many legal immigrants were barred from SNAP participation.[30] In 1998 and 1999, a few states began restoring benefits using their own state funds. At the Federal level, benefits were restored in April 2003 for many immigrants. One study focuses on these SNAP immigrant eligibility changes to investigate the impact on U.S. citizen children born to immigrants.[31] Even though the children's eligibility for SNAP remained unchanged, a substantial share of them stopped participating in SNAP when their parent(s) lost access to the program. The study finds that SNAP participation rates among children of immigrants declined by eight percentage points when their parent(s) lost access, and that on average this policy change resulted in $185 in monthly SNAP benefits lost per household. The study then estimates the impact of this decline in SNAP participation during early childhood (conception through age 4) on subsequent health (measured at ages 6–16), and finds declines in parent-reported health and increases in school absences. Furthermore, loss of access to SNAP among pregnant women in their third trimester due to this policy change resulted in lower birth weights and an increased likelihood of a low birth weight birth.

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29 Hoynes, Hilary W. and Diane Whitmore Schanzenbach. 2018. Safety Net Investments in Children. *Brookings Papers on Economic Activity*, Spring.

30 The rules were different for immigrants who were in the country before August 22, 1996 when welfare reform was enacted and for those who arrived after welfare reform. This study is limited to those who arrived prior to welfare reform.

31 East, Chloe N. Forthcoming. The Effect of Food Stamps on Children's Health: Evidence from Immigrants' Changing Eligibility. *Journal of Human Resources.*

E. Positive Impacts to Society of SNAP for Immigrant Families.

29. There are a number of spillover impacts onto society at large from SNAP participation among immigrant families. SNAP has an important direct stimulus impact on the economy. Its recipients quickly spend the benefits, providing a relatively rapid fiscal stimulus to the local economy including the retail, wholesale, and transportation systems that deliver the food purchased. The USDA estimates that every $5 in new SNAP benefits generates as much as $9 of economic activity.[32] This translates into almost 10,000 jobs from $1 billion dollars in additional SNAP spending. The Congressional Budget Office estimates that on average $1 in changed SNAP spending yields $1.50 in economic benefits, while Mark Zandi of Moody's Analytics' Economy.com estimates the benefits to be $1.70 for every dollar in changed SNAP spending. In the simulations that follow, I adopt the midpoint between these estimates, $1.60 for every $1 in changed SNAP spending.[33]

30. Many of the direct effects described in the section above also have spillover impacts to the broader society. Increased food insecurity will likely increase demand at food banks and other food charities.[34] Decreases in SNAP participation result in worse health outcomes,[35,36] and are associated with increased health care expenditures.[37] There are expected education costs as well. Declines in SNAP participation increase school absence rates[38] and

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[32] Hanson, Kenneth. 2010. The Food Assistance National Input-Output Multiplier (FANIOM) Model and Stimulus Effects of SNAP. USDA, Economic Research Service, *Economic Research Report Number 103*.

[33] *See* Bivens, Josh. 2011. Method memo on estimating the jobs impact of various policy changes. Report, Economic Policy Institute.

[34] Bazerghi, C., McKay, FH, and Dunn M. 2016. The Role of Food Banks in Addressing Food Insecurity: A Systematic Review. *Journal of Community Health* 41(4): 732–40.

[35] East, Chloe N. Forthcoming. The Effect of Food Stamps on Children's Health: Evidence from Immigrants' Changing Eligibility. *Journal of Human Resources.*

[36] Hoynes, Hilary, Diane Whitmore Schanzenbach, and Douglas Almond. 2016. Long-run impacts of childhood access to the safety net. *American Economic Review* 106 (4): 903–34.

[37] Berkowitz, Seth, Hilary K. Seligman, and Sanjay Basu. 2017. Impact of Food Insecurity and SNAP Particpation on Healthcare Utilization and Expenditures. University of Kentucky Center for Poverty Research White Paper.

[38] East, Chloe N. Forthcoming. The Effect of Food Stamps on Children's Health: Evidence from Immigrants' Changing Eligibility. *Journal of Human Resources.*

reduce participation in school meals.[39] Another study has shown that math and reading test scores in grades 3 through 8 are lower when SNAP benefits are inadequate.[40] Fewer resources for children can drive up education costs in the short- and medium-run due to increased need for special education, more grade retentions, and higher absenteeism.[41] Many of the long-run impacts on economic and health outcomes from children's access to SNAP also have social aspects. For example, increased earnings result in decreased costs for future social benefits programs and increased tax revenues; removing children from SNAP would reverse these long-term gains.[42]

II. Likely Adverse Impacts of Public Charge Rule

A. Impact on Noncitizen Households

31. To determine the likely impact of the Public Charge rule, one must estimate the number of people living in households that participate in SNAP that also have a noncitizen member of the household, in order to determine the population "at risk" of nonparticipation in SNAP. One must also estimate the share of this group who will drop off of SNAP or will forego applying for benefits due to the Rule. Multiplying the "at risk" population by the share who are likely to drop off gives the number of people expected to exit or forego SNAP due to the Rule. Estimating the average benefit per person in households with immigrants allows for calculation of the total dollar amount of benefits expected to be lost. Finally, to assess the overall economic impact of the lost SNAP payments one must multiply benefits by an accepted macroeconomic

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39 Davis, Lisa. 2019. Protecting Children's Access to School Meals by Maintaining Broad-Based Categorical Eligibility in SNAP. Testimony before the House Committee on Agriculture, Subcommittee on Nutrition, Oversight and Operations, U.S. House of Representatives.

40 Gassman-Pines, Anna and Laura Bellows. 2018. Food Instability and Academic Achievement: A Quasi-Experiment Using SNAP Benefit Timing. *American Educational Research Journal* 55(5): 897-927.

41 Shepard, Donald S., Elizabeth Setren, and Donna Cooper. 2011. Hunger in America: The Suffering We All Pay For. Center for American Progress Report.

42 Hoynes, Hilary, Diane Whitmore Schanzenbach, and Douglas Almond. 2016. Long-run impacts of childhood access to the safety net. *American Economic Review* 106 (4): 903-34.

"multiplier." This is an underestimate of the true costs of the lost SNAP benefits, however, because it fails to quantify the long-term costs to children in these households and the attendant social costs described above.

32. It is important to base the analysis on all SNAP households that contain noncitizens, because research has shown that there are important spillover effects from SNAP rule changes that affect noncitizens, even onto groups that are not directly affected by the rule changes. For example, studies of the 1996 policy change which temporarily barred many legal immigrants from the program document that groups living in households with noncitizens who generally were not themselves barred from participation reduced their participation in SNAP, including refugees[43] and citizen children of noncitizen parents.[44] A recent study asked adults in immigrant families whether they or a family member did not participate in a government benefits program in 2018 for fear of risking future green card status, and found that adults in 20.7 percent of low-income immigrant families reported avoiding public benefits. Even though the Rule would only directly impact adults who do not hold a green card, nonetheless there were reports of benefit avoidance even among households with immigration and citizenship statuses that would never be subject to the Rule.[45] These studies imply that analysis of the impact of the Rule should be based on all SNAP households with noncitizen members.

33. Table 4 below presents estimates of the number of SNAP households, and the number of individuals residing in those households, that contain noncitizen members. Columns 1

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43 Fix, Michael E. and Jeffery S. Passel. 1999. Trends in Noncitizens' and Citizens' Use of Public Benefits Following Welfare Reform. Urban Institute Report.

44 East, Chloe N. Forthcoming. The Effect of Food Stamps on Children's Health: Evidence from Immigrants' Changing Eligibility. *Journal of Human Resources.*

45 Bernstein, Hamutal, Dulce Gonzalez, Michael Karpman, and Stephen Zuckerman. 2019. One in Seven Adults in Immigrant Families Reported Avoiding Public Benefit Programs in 2018. Urban Institute.

and 2 list the average annual number of households and persons on SNAP from fiscal year 2013 to 2017, drawn from publicly available USDA sources.[46]

34. In column 3, I present the number of SNAP households containing a noncitizen member, which I calculated from the 2013–2017 USDA SNAP Quality Control (QC) data, using sampling weights provided in the dataset. The number of SNAP households containing a noncitizen member I calculate is 2.6 million, which is 1.7 times the number reported by DHS. The implied share of SNAP households with noncitizen members (dividing column 3 by column 2 in row A) is 11.83 percent. In column 4, I calculate from the SNAP QC data the number of people residing in SNAP households that contain noncitizen members, and find that the population is 8.9 million people.[47] This number includes 4.5 million children under the age of 18, and 1.6 million children aged 0 to 5.

Table 4: Estimates of Numbers of People in SNAP Households with Noncitizens

	People on SNAP(1)	**Households on SNAP**(2)	**# HH's on SNAP w/ Noncitizen Members**(3)	**# People in SNAP HH's w/ Noncitizen Members**(4)	**% HH w/ Noncitizen Member**(5)
A. QC estimates: Any noncitizen in SNAP HH	45,291,847	22,193,029	2,624,483	8,896,997	0.1183
B. DHS reported	45,294,831	22,195,369	1,547,017	5,182,502	0.0697

35. Next, in Table 5, I estimate annual SNAP benefits received by households with noncitizen members.[48] I calculate annual SNAP benefits per recipient[49] to be $1,556, and annual SNAP benefits per participating household to be $3,794.

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[46] Data are available here: https://fns-prod.azureedge.net/sites/default/files/resource-files/SNAPsummary-8.pdf.

[47] Note that not all of these individuals living in SNAP households are themselves receiving SNAP benefits; some are ineligible or otherwise not participating, although other member(s) of their households participate in SNAP. The average household size among SNAP households with noncitizen members in the SNAP QC data is 3.39.

[48] The SNAP QC data measure monthly SNAP benefits, and to translate this into an annual estimate I multiply the monthly benefit by 12.

Table 5: Estimates of Annual SNAP Benefits in SNAP Households with Noncitizens

	Average SNAP/Recipient Annual Benefits(1)	Average SNAP/Household Annual Benefits(2)
A. QC estimates: Any noncitizen in SNAP HH	$ 1,556.10	$ 3,793.68
B. DHS reported	$ 1,527.59	$ 3,117.41

36. Next, I calculate the number of individuals and households that would be expected to disenroll from SNAP or avoid enrolling in SNAP due to the public charge rule. The social science research indicates that many immigrants will avoid participating in SNAP even if they are still eligible for the program. A number of research estimates, described below, imply that participation will decline by around 20 percent.

37. Some of the best estimates from the research literature of the likely disenrollment impact come from studies that investigated the barring of many immigrants from SNAP in 1996, followed by the subsequent restoration of eligibility for many immigrants. These studies show that disenrollment impacts will not only impact those who lose eligibility directly, but also establish a chilling effect onto other populations that also reduce their participation in response to policy changes. One study finds that U.S. citizen children, who did not experience any changes in SNAP eligibility, were less likely to enroll in SNAP when their immigrant parent(s) lost access.[50] The magnitude of the enrollment decline implies a 19.3 percent decline in the levels of SNAP participation among U.S. citizen children with immigrant parents.[51] A different study

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[49] SNAP benefits per recipient are calculated as household SNAP benefits divided by the number of household members participating in SNAP. On average, there are 2.46 household members who receive SNAP benefits, and 3.42 household members in total, including those who do not receive SNAP benefits.

[50] East, Chloe N. Forthcoming. The Effect of Food Stamps on Children's Health: Evidence from Immigrants' Changing Eligibility. *Journal of Human Resources.*

[51] To arrive at an estimate of implied caseload decline, I estimated the likelihood that citizen children living with noncitizen adults participate in SNAP in 2016, and calculated the decline in number of participants if the likelihood were to decline by eight percentage points, as estimated by East. *See* East, Chloe N. Forthcoming.

using a broader measure of participation in social benefits programs after many immigrants lost access to SNAP estimated a 21 percent decline in immigrants' use of social benefits programs after welfare reform.[52] This study also found similar sharp declines among refugees, even though few refugees lost their eligibility to participate in the programs.

38. Studying the landscape today, a 2019 Urban Institute report finds that 20.7 percent of adults in low-income immigrant families did not participate in a social benefits program because of the "chilling effects" of the proposed changes to the public charge rule.[53]

39. Together, these studies have two implications. First, the expected decline in participation will impact more than the groups directly impacted by the Rule, but will also impact other groups such as refugees and citizen members of households containing noncitizens. Second, a reasonable assumption of the likely magnitude of the decline in SNAP participation will be around 20 percent.[54]

40. In Table 6 below, I calculate the predicted declines in SNAP participation based on the range of findings from the studies described above. Assuming a 20 percent nonparticipation rate, I predict that 1.78 million people will be living in the 524,897 households that are predicted not to participate in SNAP. I also provide predictions based on each study described above, with nonparticipation rates estimated to be 19.3 percent, 20.7 percent, and 21.0

The Effect of Food Stamps on Children's Health: Evidence from Immigrants' Changing Eligibility. *Journal of Human Resources.*

[52] Fix, Michael E. and Jeffery S. Passel. 1999. Trends in Noncitizens' and Citizens' Use of Public Benefits Following Welfare Reform. Urban Institute Report.

[53] Bernstein, Hamutal, Dulce Gonzalez, Michael Karpman and Stephen Zuckerman. 2019. One in Seven Adults in Immigrant Families Reported Avoiding Public Benefit Programs in 2018. Urban Institute.

[54] Although there have already been reports of disenrollment, there will be more. The prior studies (East; Fix and Passel) find that disenrollment continues for several years after a policy change until the total impact on enrollment is realized, and the same is expected in this case. In addition, the recent Urban Institute study (Bernstein et al.) finds that 31 percent of adults in immigrant families who had heard a lot about the Rule avoided benefits. The avoidance rates were smaller for those who had heard "some" about the proposed rule (fifteen percent avoided benefits) and those who had heard "nothing at all" about the proposed rule (six percent avoided benefits). As the Rule receives additional publicity while it is scheduled to go into effect, more families will know more about it, and they will become more likely to avoid benefits.

percent, respectively. For completeness, I also present estimates based on the DHS preferred estimate for nonparticipation, which is 2.5 percent, well out of the range of the prior studies. DHS also considers a 54 percent nonparticipation effect, which is from an estimate of the impacts of welfare reform on SNAP participation among immigrants published by the USDA's Food and Nutrition Service's Office of Analysis, Nutrition and Education. The number of non-participating households are 65,612 at DHS's 2.5 percent rate, and 1.42 million at the 54 percent rate.

Table 6: SNAP Non-participation due to Public Charge Rule, Various Assumptions

	Person-level Analysis(1)	**Household-level Analysis**(2)
A. 20% Assumption	1,782,947	524,897
B. 19.3% Assumption (East 2018)	1,720,544	506,525
C. 20.7% Assumption (Urban Institute 2019)	1,845,350	543,268
D. 21% Assumption (Urban Institute 1999)	1,872,094	551,141
E. DHS's 2.5% Assumption	222,868	65,612
F. 54% Assumption (Genser, FNS, USDA)	4,813,957	1,417,221

41. To calculate the economic impacts of SNAP non-participation due to the public charge rule, I multiply annual SNAP benefits per SNAP household containing noncitizens (Table 5, row A, column 2) by the predicted number of households that will not participate (Table 6, row A, column 2).

42. The estimated dollar value of annual foregone SNAP benefits is shown below in Table 7 in row C, and is estimated to be $2.0 billion.[55] As described above, since SNAP benefits are quickly spent, generally in the recipient's local community, this will have spillover effects to other aspects of the economy such as food retailers. As discussed above, to account for these

[55] Parallel calculations using person-level predictions instead of household-level predictions yield estimates that are 11 percent larger.

spillover effects, macroeconomists multiply changes in SNAP payments by a fiscal multiplier to account for the total economic impact. The median SNAP fiscal multiplier described in a recent report on fiscal multipliers is 1.6.[56] Accounting for this SNAP fiscal multiplier effect, the estimated annual direct economic cost of the public charge rule will be $3.2 billion. The USDA estimates that the SNAP multiplier could be as high as 1.8. On the low side, Blinder and Zandi estimate that during good economic times it could be 1.22. Using these fiscal multipliers, the range of total economic impact could be as high as $3.6 billion or as low as $2.4 billion.[57] Note that these estimates do not include all costs. For example, they do not include the long-term harm that would be expected to occur for children in affected households, and they do not include administrative costs to SNAP.

Table 7: Estimated Cost of SNAP Non-Participation due to Public Charge Rule

A. Annual benefits per HH	$ 3,793.68
B. Number of nonparticipating HH's	524,897
C. Estimated annual foregone SNAP benefits	$ 1,991,289,733
D. Row C times 1.6 fiscal multiplier	$ 3,186,063,574
E. Comparison: DHS estimate of foregone SNAP benefits	$ 197,919,143
F. Ratio: Economic cost/DHS calculations (Row D/Row E)	16

43. The noncitizen population is not uniformly distributed across states, so some states will incur larger costs than others. Table 8 below, presents estimates of the share of the total noncitizen population by state, averaged over 2013–2017 and including the District of

[56] As described above, I took the median SNAP multiplier of a range of estimates used by experts. *See* Bivens, Josh. 2011. Method memo on estimating the jobs impact of various policy changes. Economic Policy Institute Report. The United States Department of Agriculture has used a slightly higher multiplier of 1.79. *See* https://www.ers.usda.gov/publications/pub-details/?pubid=44749.

[57] *See* Hanson, Kenneth. 2010. The Food Assistance National Input-Output Multiplier (FANIOM) Model and Stimulus Effects of SNAP. USDA, Economic Research Service, *Economic Research Report Number 103*. *See also* Schanzenbach, Diane Whitmore, Ryan Nunn, Lauren Bauer, David Boddy, and Greg Nantz. 2016. Nine Facts about the Great Recession and Tools for Fighting the Next Downturn. The Hamilton Project at the Brookings Institution Report.

Columbia, for New York, Connecticut, and Vermont.[58] I estimate the cost of foregone SNAP benefits to each state, assuming the costs per state are in proportion to the share of the noncitizen population that reside in each state. New York is predicted to lose $179 million in SNAP benefits annually, which translates to a predicted decline in economic activity of $323 million. The estimated annual total in the states of New York, Connecticut, and Vermont together is $203 million in SNAP benefits and $366 million in economic activity.

Table 8: Estimated Cost of SNAP Nonparticipation due to Public Charge Rule, Selected States

	State's Share of Noncitizen Population(1)	**Estimated Annual Foregone SNAP Benefits**(2)	**Including Economic Multiplier Effect**(3)
New York	0.0902	$ 179,634,190	$ 287,414,704
Connecticut	0.0114	$ 22,673,423	$ 36,277,477
Vermont	0.0005	$ 990,145	$ 1,584,233
NY + CT + VT	0.1021	$ 203,297,758	$ 325,276,413

B. Basis of My Conclusions and Flaws in DHS Analysis

44. My estimated cost of SNAP nonparticipation is 16 times the DHS estimate.[59] My estimate is based on sound social science principles using appropriate data. In contrast, DHS's analysis is not based on reasonable assumptions and does not use appropriate data.

45. The DHS deficiencies are revealed by examining three differences in calculations. *First*, I estimate that the number of households on SNAP with noncitizen members is 1.7 times

[58] Numbers drawn from Kaiser Family Foundation reports on state noncitizen populations, see https://www.kff.org/other/state-indicator/distribution-by-citizenship-status/

[59] *See* Regulatory Impact Analysis, Inadmissibility on Public Charge Grounds, Table 17.

the number estimated by DHS.[60] *Second*, I assume a 20 percent nonparticipation impact, 8 times larger than the DHS assumption of 2.5 percent. *Third*, I estimate the costs based on a direct measure of benefits paid to SNAP households with noncitizens. I describe each difference in more detail below.

46. First, DHS's incorrect estimates of the number of SNAP households including noncitizens are presented in row B of Table 4.[61] I calculate this number from the SNAP QC data, which are the appropriate source for this information and is the administrative data source that USDA uses to measure characteristics of the SNAP caseload.[62] DHS could have also done this analysis. The data on actual SNAP participation is readily available. Instead, DHS chose a crude method of calculating the number of these households—it simply assumed that the percentage of households containing foreign-born noncitizens on SNAP was equal to the proportion of households containing foreign-born noncitizens relative to the overall number of U.S. households (*i.e.*, 6.97%). DHS estimated the number of households containing foreign-born noncitizens participating in SNAP by multiplying the number of households on SNAP by the 6.97 percent, which DHS reports to be the Census Bureau's estimate of the share of the overall U.S. population that are foreign-born noncitizens.[63] DHS's method results in a substantial underestimate; calculated from the SNAP QC data, we see that the share of households on SNAP with noncitizen members is actually 11.83 percent. Correcting the flawed DHS assumption

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60 I also estimate SNAP benefits per household containing noncitizen members to be 94 percent of the DHS estimate. This difference would imply that in this step I would calculate a smaller total cost than DHS.

61 These are reproduced from Regulatory Impact Analysis, Inadmissibility on Public Charge Grounds, Table 14.

62 *See* Lauffer, Sarah, Alma Vigil, Chrystine Tadler, and Elaine Wilcox-Cook. 2018. Technical Documentation for the Fiscal Year 2017 Supplemental Nutrition Assistance Program Quality Control Database and the QC Minimodel. Mathematica Policy Research Report.

63 The DHS estimate of the average number of people on SNAP and households on SNAP (2013–2017) differs slightly from my calculations; this is likely due to the release of revised data between the time when their analysis was conducted in 2018 and when mine was conducted in 2019. Note that DHS reports in the footnotes to Table 14 that they estimate the number of households by dividing the number of people by an average household size of 2.64. This appears to be incorrect, and they appear to have obtained the data on household participation directly from USDA.

increases the number of SNAP households with noncitizens by 70 percent, to 2.6 million households.[64]

47. Second, DHS estimates the potential SNAP nonparticipation rate due to the public charge rule change to be 2.5 percent. They come to this by estimating that 2.5 percent of foreign-born noncitizens apply for an adjustment of status, and that the impact of the public charge rule will primarily impact this group. This ignores potential spillover impacts onto other groups, and assumes that the impacts are limited only to the group applying for an adjustment of status in one particular year. As described above, research suggests the DHS assumption is far too low. Research based on the impacts of welfare reform as well as current estimates on the share of immigrants avoiding participation in public benefits clearly show that the nonparticipation impacts will spill over to a larger group. For example, prior research found declines in participation among refugees and citizens residing in households with noncitizens, even though their eligibility for SNAP and other benefits programs was not substantially changed.[65] This prior research estimates a nonparticipation response around 20 percent, which is eight times the DHS estimate.

48. Third, DHS underestimates the average SNAP benefit for households with noncitizens. In its calculations, DHS uses overall average SNAP benefits per recipient. This is an inaccurate estimate, because it does not account for different characteristics among households with noncitizens that affect benefit amounts, such as larger household sizes and a higher

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[64] As shown in Table 5, the DHS estimates of average SNAP benefits per person or household differ from the ones I calculate from the SNAP QC data. At the household level, I estimate SNAP benefits to be 22 percent higher than those estimated by DHS.

[65] *See* East, Chloe N. Forthcoming. The Effect of Food Stamps on Children's Health: Evidence from Immigrants' Changing Eligibility. *Journal of Human Resources. See also* Fix, Michael E. and Jeffery S. Passel. 1999. Trends in Noncitizens' and Citizens' Use of Public Benefits Following Welfare Reform. Urban Institute Report.

likelihood of having earnings.[66] As above, DHS could have used SNAP QC administrative data to produce a more appropriate estimate for its calculations.

Together, these differences imply that my estimate of the economic cost of the predicted decline in SNAP participation due to the public charge rule is 16 times the cost predicted by DHS (see Table 7, Row F).[67]

[66] *See* Tables 1 and 2 in this Declaration.

[67] Without the fiscal multiplier effect, my estimates of the value of foregone SNAP benefits is 10 times the DHS estimate.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 9 day of Sept, 2019.

Diane Whitmore Schanzenbach

Diane Whitmore Schanzenbach

EXHIBIT A

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Nonresident Senior Fellow, The Brookings Institution, Washington, DC (August 2017 – present).
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Director, The Hamilton Project, Washington, DC (August 2015 – August 2017).

Assistant Professor, Harris Graduate School of Public Policy Studies, The University of Chicago, Chicago, IL (July 2004 – June 2010).

Scholar in Health Policy Research, Robert Wood Johnson Foundation, University of California-Berkeley (August 2002 – July 2004).

EDUCATION

Ph.D., Economics, Princeton University, November 2002.
M.A., Economics, Princeton University, November 1999.
A.B., magna cum laude, Economics and Religion, Wellesley College, June 1995.

PUBLICATIONS

"Understanding Recent Trends in Childhood Obesity in the United States," with Patricia Anderson and Kristin Butcher. *Economics and Human Biology*. Forthcoming.

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UNDER SUBMISSION AND WORKING PAPERS

Related to the Effectiveness of Social Policy

"Expanding the School Breakfast Program: Impacts on Children's Consumption, Nutrition and Health," with Mary Zaki, NBER Working Paper #20308. Revise and resubmit, *Journal of Policy Analysis and Management*.

"Understanding Food Insecurity during the Great Recession," with Patricia Anderson, Kristin Butcher and Hilary Hoynes. Mimeo.

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"What Are Food Stamps Worth?" Princeton University Industrial Relations Section Working Paper #468.

"Teen Motherhood, Labor Market Involvement and the Receipt of Public Assistance," with Phillip B. Levine, *Joint Center for Poverty Research* Working Paper #84, November 1997.

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"The Effect of Court-Ordered Hiring Guidelines on Teacher Composition and Student Achievement," with Cynthia DuBois, NBER Working Paper #24111.

"Experimental Estimates of Peer Effects." Mimeo.

"Assessing the Impacts on Students of Closing Persistently Failing Schools," with Lisa Barrow and Kyung Park. Mimeo.

POLICY BRIEFS

"Food Support Programs and their Impacts on Very Young Children," with Betsy Thorn, Health Policy Brief, *Health Affairs*, March 28, 2019.

"Work Requirements and Safety Net Programs," with Lauren Bauer and Jay Shambaugh, The Hamilton Project at the Brookings Institution, October 2018.

"Can Benefits and Incentives Promote Work?" Point-Counterpoint, *Journal of Policy Analysis and Management*, 37(4): 903-911. 2018.

"Children's Exposure to Food Insecurity is Still Worse Than It Was Before the Great Recession," with Lauren Bauer, The Hamilton Project at the Brookings Institution, June 2018.

"Reducing Chronic Absenteeism under the Every Student Succeeds Act," with Lauren Bauer, Patrick Liu, and Jay Shambaugh, The Hamilton Project at the Brookings Institution, April 2018.

"The Future of SNAP: Continuing to Balance Protection and Incentives," in *Agricultural Policy in Disarray: Reforming the Farm Bill*, American Enterprise Institute, November 2017.

"The Recent Decline in Women's Labor Force Participation," with Sandra Black and Audrey Breitwieser, in *The 51%: Driving Growth through Women's Economic Participation*, The Hamilton Project, October 2017.

"Who is Out of the Labor Force?" with Lauren Bauer, Ryan Nunn, and Megan Mumford, The Hamilton Project at the Brookings Institution, August 2017.

"The Closing of the Jobs Gap: A Decade of Recession and Recovery," with Ryan Nunn, Lauren Bauer and Audrey Breitwieser, The Hamilton Project at the Brookings Institution, August 2017.

"Is Your Child Ready for Kindergarten? 'Redshirting' May Do More Harm than Good," with Stephanie Howard Larson, *Education Next*, 17(3), Summer 2017.

"Putting Your Major to Work: Career Paths after College," with Ryan Nunn and Gregory Nantz. The Hamilton Project at the Brookings Institution, May 2017.

"Eight Economic Facts on Higher Education," with Lauren Bauer and Audrey Breitweiser. The Hamilton Project at the Brookings Institution, April 2017.

"In Order That They Might Rest Their Arguments on Facts: The Vital Role of Government-Collected Data," with Nicholas Eberstadt, Ryan Nunn, and Michael R. Strain. The Hamilton Project at the Brookings Institution and AEI, March 2017.

"Twelve Economic Facts on Energy and Climate Change," with Ryan Nunn, Audrey Breitwieser, Megan Mumford, Gregory Nantz, Michael Greenstone, and Sam Ori. The Hamilton Project at the Brookings Institution, March 2017.

"If You Build It: A Guide to the Economics of Infrastructure Investment," with Ryan Nunn and Greg Nantz. The Hamilton Project at the Brookings Institution, February 2017.

"Money Lightens the Load," with Ryan Nunn, Megan Mumford, and Lauren Bauer. The Hamilton Project at the Brookings Institution, December 2016.

"Lessons for Broadening School Accountability under the Every Student Succeeds Act," with Lauren Bauer and Megan Mumford. The Hamilton Project at the Brookings Institution, October 2016.

"Twelve Facts about Incarceration and Prisoner Reentry," with Ryan Nunn, Lauren Bauer, Audrey Breitwieser, Megan Mumford, and Gregory Nantz. The Hamilton Project at the Brookings Institution, October 2016.

"Seven Facts on Noncognitive Skills from Education to the Labor Market," with Ryan Nunn, Lauren Bauer, Megan Mumford, and Audrey Breitwieser. The Hamilton Project at the Brookings Institution, October 2016.

"The Economics of Private Prisons," with Megan Mumford and Ryan Nunn. The Hamilton Project at the Brookings Institution, October 2016.

"The Long-Term Impact of the Head Start Program," with Lauren Bauer. The Hamilton Project at the Brookings Institution, August 2016.

"The Changing Landscape of American Life Expectancy," with Ryan Nunn and Lauren Bauer. The Hamilton Project at the Brookings Institution, June 2016.

"Who is Poor in the United States?" with Lauren Bauer and Ryan Nunn. The Hamilton Project at the Brookings Institution, June 2016.

"Where Does All the Money Go: Shifts in Household Spending Over the Past 30 Years," with Ryan Nunn, Lauren Bauer, and Megan Mumford. The Hamilton Project at the Brookings Institution, June 2016.

"Nine Facts about the Great Recession and Tools for Fighting the Next Downturn," with Ryan Nunn, Lauren Bauer, David Boddy and Greg Nantz. The Hamilton Project at the Brookings Institution, May 2016.

"Are Nutrition Policies Making Teenagers Hungry?" with Lauren Bauer. The Hamilton Project at the Brookings Institution, April 2016.

"Twelve Facts about Food Insecurity and SNAP," with Lauren Bauer and Greg Nantz. The Hamilton Project at the Brookings Institution, April 2016.

"Who Has Access to Charter Schools?" with Megan Mumford and Lauren Bauer. The Hamilton Project at the Brookings Institution, March 2016.

"Fourteen Economic Facts on Education and Economic Opportunity," with David Boddy, Megan Mumford and Greg Nantz. The Hamilton Project at the Brookings Institution, March 2016.

"An Additional Measure of the Hamilton Project's Jobs Gap Analysis," with David Boddy. The Hamilton Project at the Brookings Institution, February 2016.

"Workers and the Online Gig Economy," with Jane Dokko and Megan Mumford. The Hamilton Project at the Brookings Institution, December 2015.

"Six Economic Facts about Health Care and the Health Insurance Market after the Affordable Care Act," with David Boddy, Jane Dokko, and Greg Nantz. The Hamilton Project at the Brookings Institution, October 2015.

"Expanding Preschool Access for Disadvantaged Children," with Elizabeth Cascio, in Melissa S. Kearney and Benjamin H. Harris, eds., *Policies to Address Poverty in America*, The Hamilton Project at the Brookings Institution, June 2014.

"Does Class Size Matter?" Policy brief, National Education Policy Center. February 2014.

Strengthening SNAP for a More Food-Secure, Healthy America, discussion paper, The Hamilton Project at the Brookings Institution, December 2013.

"The Safety Net: An Investment in Kids," with Hilary Hoynes, Spotlight on Poverty. July 2013.

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"Leaving children behind … by design," *Milken Institute Review* Quarter 1 2008, pp. 18-25.

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"Beneficiaries of Proposed Social Security-Related Tax Cut Have Significant Wealth," with Robert Greenstein, *Center on Budget and Policy Priorities Policy Brief*, September 2000.

GRANTS AND FUNDED PROJECTS

Related to Social Policy

Research, Innovation, and Development Grant in Economics, US Department of Agriculture (administered by University of Wisconsin), "The Impacts of School Lunch Reforms on Student Outcomes," Principal Investigator, $39,932, 2015-2016.

University of Kentucky Center for Poverty Research, *Research Program on Childhood Hunger*, "New Evidence on Why Children's Food Security Varies across Households with Similar Incomes," Principal Investigator, $244,254, 2012-2014.

Russell Sage Foundation, "Understanding Food Insecurity During the Great Recession," Principal Investigator, $146,614, 2011-2013.

Robert Wood Johnson Foundation, Changes in Health Care Financing and Organization, "Evaluating the Impact of SCHIP Expansions on Household Spending and Consumption using Consumer Expenditure Survey Data," Co-Investigator, $124,694, 2008-2009.

Food Assistance and Nutrition Research Program (FANRP), US Department of Agriculture, "Identifying Behavioral Economics Factors Affecting Food Consumption," Principal Investigator, $399,773, 2007-2009.

Research, Innovation, and Development Grant in Economics, US Department of Agriculture (administered by University of Wisconsin), "Measuring the Impacts of Stigma and Time Cost in the Food Stamp Enrollment Decision," Principal Investigator, $29,921, 2006-2007.

Research, Innovation, and Development Grant in Economics, US Department of Agriculture (administered by University of Chicago), "The Introduction of the Food Stamp Program: Impacts on Food Consumption and Family Well-Being," Principal Investigator, $37,748, 2005-2006.

Related to Education and Children

Robert Wood Johnson Foundation, "A Policy Agenda for Improving Child Outcomes," Principal Investigator, $730,700, 2019-2020.

Spencer Foundation Grant, "School Finance Reform and the Distribution of Student Achievement," Principal Investigator, $305,469, 2014-2016.

Institute for Educational Sciences, Predoctoral Interdisciplinary Research Training Programs in the Education Sciences Grant, "Multidisciplinary Program in Education Sciences," Principal Investigator, $3,908,332, 2014-2019.

Smith Richardson Foundation, Grant, "Assessing the Impacts on Students of Closing Persistently Failing Schools," Principal Investigator, $60,000, 2008-2011.

Institute for Educational Sciences, Research on High School Reform Grant, "Assessing the Effectiveness of Chicago's Small High School Initiative," Principal Investigator, $336,664, 2006-2008.

Robert Wood Johnson Foundation, Healthy Eating Research Grant, "The Effect of School Accountability Policies on Childhood Obesity," Principal Investigator, $74,995, 2006-2008.

NICHD University of Chicago Population Research Center pilot award, "Does Accountability Promote General or Test-Specific Skills?" Principal Investigator, $8000, 2005-2006.

NAEP Secondary Analysis Grant, US Department of Education, "Advancing Education Improvement by Improving Child Health: An Analysis of NAEP Data," Principal Investigator, $99,912, 2005-2006.

AWARDS AND FELLOWSHIPS

- Elected to the National Academy of Education, 2019
- Raymond Vernon Memorial Award, 2013
- Excellence in Refereeing Award, *American Economic Review*, 2012

- Woodrow Wilson Fellowship, Princeton University, 2000–2002
- Peggy Howard Fellowship, Wellesley College, 2001
- National Science Foundation Traineeship in the Economics of Education, 1997–2000
- Social Science Research Council Program in Applied Economics, 1998

PROFESSIONAL ACTIVITIES

Editorial Service

- Coeditor, *Journal of Human Resources*, 2018-present.
- Associate Editor, *Journal of Human Resources,* 2014-2018.
- Editorial Board Member, *Journal of Policy Analysis and Management*, 2016-present.
- Editorial Board Member, *American Economic Journal—Applied Economics*.

National Committee Service

- Robert Wood Johnson Foundation, Policies for Action, National Advisory Committee, Chair, 2016-present.
- Institute of Medicine CNSTAT Panel on Improving USDA's Consumer Data for Food and Nutrition Policy Research, 2018-present.
- Society for Research in Education Effectiveness, Program Committee for 2017 Annual Meeting.
- Society of Labor Economists, Program Committee for 2016, 2017 Annual Meetings.
- American Economic Association, Program Committee for 2015 Annual Meeting.
- Institute of Medicine Committee on Examination of the Adequacy of Food Resources and SNAP Allotments, 2011-13.
- Technical Work Group, Healthy Incentives Pilot (HIP) Evaluation, 2010-13.

Keynote Addresses

- BKK Bureau Kwaliteit Kinderopvang "Creating Opportunities" Conference, Berlin, Germany, November 2018.
- VATT Institute for Economic Research, Helsinki, Finland, October 2018.
- International Workshop on Applied Economics of Education, Catanzaro, Italy, 2018.
- Early Childhood Education Impact Evaluation Workshop, World Bank, Abu Dhabi, 2018.
- Hunger Action Summit, Second Harvest Food Bank, 2017.
- Early Childhood Inequality Workshop, Nuremberg Germany, 2016.
- Dennis Hastert Center, Wheaton College, 2014.
- Calderwood Lecture, Wellesley College, 2014.
- Illinois Education Research Council, 2012.
- Francis Marion University, Center of Excellence to Prepare Teachers of Children of Poverty, 2011.

Referee: *American Economic Review, American Economic Journal: Applied Economics, American Economic Journal: Economic Policy, The B.E. Journals in Economic Analysis and Policy*, *Canadian Journal of Economics, Developmental Psychology, Economic Inquiry, Economic Journal*, *Economics and Human Biology, Economics of Education Review*, *Economics Letters, Education Finance and Policy, Educational Evaluation and Policy Analysis*, *Health Economics, Industrial and Labor Relations Review, Journal of Health Economics, Journal of Human Resources, Journal of Labor Economics, Journal of Policy Analysis and Management, Journal of Political Economy, Journal of Public Economics, Labour Economics, Oxford University Press, Quarterly Journal of Economics, Review of Economics and Statistics, Review of*

Economic Studies, Scandinavian Journal of Economics, Science, State and Local Government Review, Social Science Quarterly, Social Service Review, Southern Economic Journal.

Grant Reviewer: U.S. Department of Agriculture; National Institutes of Health; National Science Foundation; Robert Wood Johnson Foundation; Smith Richardson Foundation; Spencer Foundation.

TEACHING EXPERIENCE

Northwestern University (2010 to date)
Quantitative Methods I (PhD course)
Economics of Social Policy (Undergraduate course)
Education Policy (PhD course)
Contemporary Issues in Education (Undergraduate course)

University of Chicago (2004 to 2010)
Statistical Methods for Policy Research (Graduate course)
Economics of Education Policy (Graduate course)
Education Policy & Reform (Graduate course)
Program Evaluation (Graduate course)

OTHER EMPLOYMENT

Economic Counselor, Sebago Associates, Inc., Santa Monica, CA, September 1998–August 2001.

Research Assistant, Council of Economic Advisers, Washington, D.C., April 1996–May 1997.

Research Assistant, Survey of Consumer Finances, Board of Governors of the Federal Reserve System, Washington, D.C., August 1995–April 1996.

EXHIBIT 10

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MAKE THE ROAD NEW YORK, AFRICAN SERVICES COMMITTEE, ASIAN AMERICAN FEDERATION, CATHOLIC CHARITIES COMMUNITY SERVICES (ARCHDIOCESE OF NEW YORK), and CATHOLIC LEGAL IMMIGRATION NETWORK, INC.,

Plaintiffs,

vs.

KEN CUCCINELLI, in his official capacity as Acting Director of United States Citizenship and Immigration Services; UNITED STATES CITIZENSHIP & IMMIGRATION SERVICES; KEVIN K. McALEENAN, in his official capacity as Acting Secretary of Homeland Security; and UNITED STATES DEPARTMENT OF HOMELAND SECURITY,

Defendants.

1:19–cv-07993 (GBD)

DECLARATION OF RYAN ALLEN, Ph.D.

Declaration of Ryan Allen

I, **Ryan Allen**, declare pursuant to 28 U.S.C. § 1746 that the following is true and correct:

Background

1. My name is Ryan Allen, and I make this declaration in support of Plaintiffs' Request for a preliminary injunction. I am an Associate Professor of Urban and Regional Planning at the Humphrey School of Public Affairs at the University of Minnesota in Minneapolis, Minnesota. In addition to my role as a faculty member, I am also the Director of Graduate Studies for the Urban and Regional Planning Program at the Humphrey School of Public Affairs.

2. I am a housing and community development researcher with over 12 years of experience as a faculty member. I have conducted substantial research about the experience of immigrants in U.S. housing. I have authored or co-authored over one dozen journal articles and reports about immigrants and housing, including publications in peer-reviewed journals such as *Housing Policy Debate*, *Urban Studies*, *Ethnic and Racial Studies*, and the *Journal of Planning Education and Research*. I have taught graduate courses on immigration, urban planning and policymaking for over 10 years at the University of Minnesota. I am a faculty affiliate of University of Minnesota Extension, the Minnesota Population Center, and the Department of Sociology, and have served as a visiting scholar at the University of New South Wales in Sydney, Australia. I am frequently invited to give guest lectures on topics related to immigration, housing, economic development, and urban planning, and I serve as a commentator on regional and national media outlets, including National Public Radio and the *Los Angeles Times*.

3. I have a Ph.D. in Urban Studies and a Master's Degree in City Planning, both from the Massachusetts Institute of Technology. Training in both of these degrees emphasizes an interdisciplinary approach, drawing from geography, sociology, economics, political science, and other disciplines, and a mixed-method research approach that incorporates quantitative and qualitative methodologies. Prior to my graduate studies, I was on the staff of the Urban Institute. I have attached my Curriculum Vitae as Exhibit A to this Declaration.

I. Overview and Key Findings

4. The Department of Homeland Security's recently released rule, *Inadmissibility on Public Charge Grounds*, 84 Fed. Reg. 41,292 (August 14, 2019) ("Final Rule"), which directs officials at the Department of Homeland Security (DHS) in U.S. Citizenship and Immigration Services (USCIS) to consider—for the first time—a noncitizen's use or potential use of specified federally subsidized housing programs when determining

whether an applicant for legal permanent residency in the United States (a "green card") or an individual applying to enter the United States on certain visas is subject to the "public charge" ground of inadmissibility.

5. The specific federally-subsidized housing programs included in the Final Rule are: Section 8 Housing Choice Voucher Program, Project-Based Section 8 Rental Assistance, and Public Housing (collectively referred to herein as "Federal housing programs"). In addition to Federal housing programs, the Final Rule specifies receipt or potential receipt of SNAP and Medicaid benefits as well as other non-cash benefits that officials should consider when assessing public charge.

6. According to the Final Rule, living in federally subsidized housing and receiving a subsidy in aggregate for more than 12 months during a 36-month period would be considered a heavily-weighted negative factor in determining whether a given applicant for adjustment is a public charge. The Final Rule contains many other features that go beyond the scope of this Declaration.

7. The Final Rule is scheduled to go into effect on October 15, 2019. This declaration describes the following: (1) the Federal housing benefits included in the Final Rule, including supply and demand for these programs, financial eligibility, and immigrant eligibility; (2) the benefits of living in federal housing programs for individuals; and (3) the negative impact the Final Rule will have on noncitizens if it is not enjoined by the Court.

8. It is my opinion that if the Final Rule goes into effect, a certain number of noncitizens who reside in federally-assisted housing will choose to disenroll from the Federal housing programs encompassed by the Final Rule. Using the estimates of disenrollment from DHS (2.5 percent), the result would be substantial harm. As explained herein, given the well-

documented positive impact living in federally-assisted housing has on residents, especially children, even a minimal amount of disenrollment can be expected to result in substantial harm. Individuals who disenroll will lose an affordable source of housing and other benefits in the areas of health, educational attainment, and earnings.

II. Background

A. Characteristics of Federal Housing Programs Included in the Final Rule

9. I have been asked by counsel to describe the key features and eligibility criteria of the Federal housing programs included in the Final Rule, including the income households can receive while maintaining eligibility for public housing.

Section 8 Housing Choice Vouchers

10. The Section 8 Housing Choice Voucher Program ("HCV" program) is the largest federally subsidized housing program in the United States, serving approximately 2.5 million households and 5.3 million residents in 2018. First established by the Housing and Community Development Act of 1974, Section 8 Housing Choice Vouchers are used by low-income families to rent housing in the private market. A low-income family that uses a voucher pays 30 percent of its income for rent and utilities (or $50, whichever is larger), and the voucher pays the balance of the rent and utility costs, up to a limit. Local public housing authorities set these limits as a proportion of Fair Market Rents (FMRs), which are adjusted by apartment size and calculated annually by HUD for over 2,600 housing markets across the U.S.[1] FMRs vary considerably in municipalities across the United States and sometimes within municipalities, depending upon rental housing costs in each area.

[1] Schwartz, Alex F. 2015. *Housing Policy in the United States (Third Edition)*. New York: Routledge.

11. *Initial Eligibility*. To participate in the program, an apartment must be inspected and certified to meet minimum standards related to space and physical quality. In terms of financial eligibility, vouchers tend to be targeted to very needy families, with 75 percent of new families receiving a voucher each year classified as "extremely low income" (generally, household incomes not exceeding 30 percent of the area median income ("AMI") or the federal poverty line, whichever is higher).[2] The balance of new families receiving a voucher must have household incomes no more than 80 percent of the AMI.

Project-Based Section 8 Rental Assistance

12. The Project-Based Section 8 Rental Assistance program ("PBRA") creates multi-year rental assistance agreements with owners of private multi-family properties to make all or some of the units available to low-income families. The PBRA program includes about 1.3 million housing units and approximately 2 million residents nationwide.

13. Similar to the HCV Program, families renting housing in the PBRA program pay 30 percent of their household income (or $25, whichever is greater) each month. A monthly payment to the owner of the building and the PBRA program supplies the balance of the costs associated with maintaining and operating the apartment. In addition, about two-thirds of households living in PBRA housing are headed by seniors (i.e., individuals over age 65) or people with disabilities.

14. *Financial eligibility*. At least 40 percent of units in each building that become vacant are allocated for "extremely low income" families (defined as households earning

[2] "Policy Basics: The Housing Choice Voucher Program." Center on Budget and Policy Priorities, Washington, DC (https://www.cbpp.org/research/housing/policy-basics-the-housing-choice-voucher-program, last accessed on August 21, 2019).

30 percent or less of the AMI) and most of the remainder of units are allocated to very low-income families (household incomes of no more than 50 percent of AMI).[3]

Public Housing

15. In contrast to the HCV and PBRA programs described above, public housing is housing that is owned and operated by the federal government under the auspices of local public housing authorities. Families living in public housing contribute 30 percent of their income each month toward rent or a minimum rent set by the housing authority. Nationwide the public housing program includes about 1 million units and serves nearly 2 million residents.

16. *Financial eligibility*. At least 40 percent of families newly admitted to the program each year must be "extremely low-income" households, with the balance of households earning no more than 80 percent of the AMI.[4]

Continued eligibility for HCV, PBRA and Public Housing.

17. In order to maintain eligibility for each of the Federal housing benefits, the household's income may not exceed household income limits determined by HUD, generally no greater than 80 percent of the AMI. The below chart lists 50 percent and 80 percent AMI income limits for four-person households in each of the key jurisdictions encompassed by the cases in which I am serving as an expert for fiscal year 2019:

[3] *Ibid.*
[4] *Ibid.*

Geographic Area	50% AMI Family Income Limit ($)	80% AMI Family Income Limit ($)
Connecticut	50,450	75,500
New York	41,100	65,750
New York City (Metro Area)	53,350	85,350
Vermont	39,750	63,600

Note: Income limit data are from HUD's FY 2019 Income Limits Documentation System (https://www.huduser.gov/portal/datasets/il/il2019/select_Geography.odn, accessed on September 5, 2019).

18. Note that each of these income limits exceeds 125 percent of the Federal Poverty Guideline for a family four which is $32,187.50. As discussed below, and as these numbers show, many families who use federal housing benefits start out with low income, but having the stability that comes with subsidized rent, they are able to achieve greater economic stability while maintaining eligibility for the Federal housing programs.

B. Volume of Federal Housing Program Units and Demand

19. As Table 1 in Exhibit B describes, in 2018 these programs in aggregate represented 4,827,662 housing units, or 96 percent of the federally subsidized units of housing available in the United States. The supply of these subsidized housing units has shrunk in recent years. In 2015, the available number of housing units in these three programs numbered 4,798,257, about 29,000 more units than in 2018. In addition to representing the vast majority of the federally subsidized housing units, these programs also represent nearly all of the residents living in federally subsidized housing. In 2018, the programs accommodated 9,308,020

individual residents, or about 98 percent of the total residents living in federally subsidized housing units.[5]

20. The current demand for federally subsidized housing units is substantial. Most public housing authorities maintain a wait list for families that are eligible to live in federally subsidized housing, but are unable to move into a unit because none are available. Recent estimates indicate that nationally there are 1.5 families waiting for every Housing Choice Voucher program unit under contract and 1.7 families waiting for every public housing unit.[6]

21. However, these are underestimates because so many public housing authorities ("PHAs") have closed their wait lists. In 2012, about 60 percent of HCV wait lists and 17 percent of public housing wait lists were closed, effectively limiting the number of families that appear on wait lists. If wait lists remained open for all PHAs then presumably the number of eligible families waiting for federally subsidized housing would be significantly larger. After correcting for closed wait lists, nationally there are about 4 families waiting for each HCV unit and 1.8 families for each public housing unit.[7] This translates into a wait of 1.5 years for the median family on the waitlist for HCV and nine months for the median family on the waitlist for public housing.[8] These median values obscure significant variation in wait times, particularly at the high end of the distribution. For example, 25 percent of HCV waitlists had a wait time of 3 years or longer and 25 percent of public housing waitlists had a wait time of 1.5 years or longer.[9]

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[5] While there are a variety of other subsidized housing programs operated by HUD, the three programs described above are the largest in terms of number of housing units and number of residents.
[6] Housing Agency Waiting Lists and the Demand for Housing Assistance, 2019. https://www.housingcenter.com/wp-content/uploads/2017/11/waiting-list-spotlight.pdf
[7] *Ibid.*
[8] These estimates come from a survey of PHAs in 2015-2016 by the National Low Income Housing Coalition (NLIHC) (https://nlihc.org/sites/default/files/HousingSpotlight_6-1.pdf, last accessed August 21, 2019).
[9] *Ibid.*

22. In some cases, waitlists for public housing and HCV are particularly long. For example, counsel has advised me that in New York City the waits can be substantially longer due to low turn-over, high demand, and depending on the type of housing, factors like household size and the availability of the requisite size apartment and other priority factors.

C. Immigrant Eligibility for Federal Public Housing

23. Counsel has advised me that under current law, the following categories of noncitizens are eligible for Federal housing benefits: (a) lawful permanent residents ("LPRs") (regardless of time in LPR status); (b) refugees; (c) asylees; (d) persons granted parole; (e) persons granted withholding of removal; (f) persons granted 1986 amnesty status (entered U.S. pre-January 1, 1982); (g) lawful U.S. residents under the Compacts of Free Association with Micronesia, the Marshall Islands, Palau, and Guam; (h) certified victims of trafficking; and (i) VAWA self-petitioners (includes VAWA cancellation of removal applicants; VAWA suspension of deportation applicants).

24. Noncitizens who do not fall into one of the above categories can live in Federal housing program units, but are required to pay a *pro rata* share of the rent. It is important to note that the income of non-eligible members of families is included in the family income figure used to determine eligibility for living in the housing and the rent that the family owes, despite the fact that non-eligible family members cannot receive a subsidy.

25. A new Rule introduced by HUD for notice and comment on May 10, 2019 (the "Proposed HUD Rule"), would change these rules. Under the proposed new rule, non-eligible noncitizens would not be permitted to remain in HUD-sponsored housing, including

public housing, and would not be permitted to live in a household in which HCV or PBRA subsidizes the rent.[10]

26. Noncitizen eligibility for Federal housing programs is limited under current law, but noncitizens have always been present in such programs and have never been categorically excluded by Congress.

27. The United States Housing Act of 1937, sponsored by Representative Henry B. Steagall (D-AL) and Senator Robert F. Wagner (D-NY), created a United States Housing Authority that worked through newly created public housing agencies at the sub-national level to create subsidized rental housing for low-income families. This legislation specified income eligibility criteria, but was silent on other eligibility requirements such as nativity or citizenship. The historical record indicates that many PHAs awarded a substantial number of units to households with noncitizen members. Of the 101,482 residents living in public housing in 1940, a total of 11,174 (11 percent) were foreign born with 8,161 residents naturalized citizens (8 percent) and 3,013 noncitizens (3 percent).[11] While some local PHAs limited access to public housing to citizens in the early years of the program,[12] Congress passed

[10] Housing and Community Development Act of 1980: Verification of Eligible Status." Federal Register 84(91), RIN 2501-AD89, Docket No. FR-6124-P-01.

[11] These figures are based on the author's analysis of a unique dataset of all public housing residents in the United States at the time of the 1940 Census. For more information about the dataset, see the following reference: Allen, Ryan and Van Riper, David. Forthcoming. "The New Deal, the Deserving Poor and the First Public Housing Residents in New York City." *Social Science History*. Of the naturalized citizens, it is unclear what percentage began residence in public housing prior to attaining citizenship, but it can be assumed that a number of them did given the noncitizens in public housing in that same year. In comparison, 8.8 percent of the U.S. population was foreign born in 1940 including 5.5 percent naturalized citizens, 2.6 percent noncitizens and 0.6 percent with unreported citizenship status. "1940 Census of Population: Volume 2. Characteristics of the Population." U.S. Census Bureau: Washington, DC. https://www2.census.gov/library/publications/decennial/1940/population-volume-2/33973538v2p1ch2.pdf

[12] Vale, Lawrence J. 2000. *From the Puritans to the Projects: Public Housing and Public Neighbors.* Cambridge, MA: Harvard University Press.

no legislation that prohibited access to public housing by immigrants regardless of citizenship status.

28. Over the course of the next four decades, Congress modified the public housing program in the United States incrementally in terms of its budget and goals for the number of public housing units it created, while core eligibility features remained consistent. Proposed eligibility requirements for public housing residents changed starting with provisions included in Section 214 of the Housing and Community Development Act of 1980. The next year, Congress proposed wider exclusions for immigrants through a revision of Section 214 in the Omnibus Reconciliation Act of 1981, but the proposed rules for interpreting the regulatory changes were not implemented immediately because Congress did not appropriate funds necessary for implementation and the regulatory changes were challenged by various lawsuits.[13]

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[13] In published notices in the Federal Register, the Department of Housing and Urban Development developed rules for implementation of the new regulations, but failed to specify an effective date for these rules. Dzubow, Jason. 1995. "HUD Shuts the Door: Restrictions on Housing Assistance to Noncitizens." *Georgetown Immigration Law Journal* 9:801-826. Subsequently, Congress barred HUD from implementing the rule and HUD submitted multiple revised versions of the rule to implement the regulations in Section 214 throughout 1986, and delayed implementation of the rule until October 1, 1987.

Immediate implementation of the rule was delayed for two primary reasons. First, Congress did not allocate to HUD the additional funding required to implement the rule. The failure to allocate the necessary funds is most readily explained by the fact that Congress passed the Immigration Reform and Control Act of 1986 (IRCA), which changed the process used to verify immigrant status. Dzubow, Jason. 1995. "HUD Shuts the Door: Restrictions on Housing Assistance to Noncitizens." *Georgetown Immigration Law Journal* 9:801-826. As a result, it remained unclear what protocols HUD should use to verify immigrant status before Congress issued final guidelines associated with IRCA. Second, a district court in California issued a nation-wide preliminary injunction on implementing the regulation based on arguments made in *Yolano-Donnelly Tenants' Association v. Pierce*. *Yolano-Donnelly Tenants' Association v. Pierce,* E.D. Cal. No. CIV. S-86-846-MLS (1986). In this case the court recognized that implementing the new regulation would result in the eviction of thousands of families currently residing in federally-subsidized housing because either they or some members of their households were ineligible to live in the housing due to a lack of documentation. Dzubow, Jason. 1995. "HUD Shuts the Door: Restrictions on Housing Assistance to Noncitizens." *Georgetown Immigration Law Journal* 9:801-826. The court reasoned that in some cases this would result in the eviction of citizens and properly documented aliens.

An additional lawsuit in 1986, *City of New York v. Pierce,* charged that the regulations would unduly burden the City of New York because it would increase the homeless population and the administrative

29. In 1987 Congress amended Section 214 once again to respond to the issues raised in the lawsuits. As amended, Section 214 allowed aliens in federally-subsidized housing who had been temporarily admitted or paroled into the United States as specified in Section 245A of the Immigration and Naturalization Act or who had family members who were ineligible. In the latter case, this provision preserved the integrity of mixed-status families by letting families with some members who are ineligible noncitizens continue to live in subsidized housing. After publishing a rule in 1988 related to this version of Section 214, HUD failed to implement the rule citing a lack of authorization to collect information on citizenship or alien status from residents or applicants to federally subsidized public housing. A final rule to implement Section 214 was published in the Federal Register on March 20, 1995, about 15 years after Congress passed the original restrictions from federally subsidized housing.[14]

30. Although the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 called for widespread changes to the eligibility criteria and structure of many parts of the U.S. welfare system, it ultimately did not have a meaningful impact on Federal housing programs.[15] Battered qualified aliens were only recognized as eligible for public housing in 2016.[16]

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burden experienced by the City. *City of New York v. Pierce,* 86-CIV-6068, U.S. District Court, Southern District of New York (1986). Together these lawsuits resulted in delayed implementation of the original restrictions to federally subsidized housing for certain groups of immigrants contemplated and enacted by Congress.

[14] Dzubow, Jason. 1995. "HUD Shuts the Door: Restrictions on Housing Assistance to Noncitizens." *Georgetown Immigration Law Journal* 9:801-826.

[15] P.L. 104-193 §431(c) (1) (A); 8 U.S.C. §1641, as cited in McCarty, Maggie and Siskin, Alison. 2015. "Immigration: Noncitizen Eligibility for Needs-Based Housing Programs." Congressional Research Service, RL31753.

[16] https://nlihc.org/sites/default/files/Eligibility-of-VAWA-Self-Petitioners_121416.pdf (accessed on September 5, 2019).

31. HUD anticipates that the Proposed HUD Rule, if implemented, would have a large impact on the number of noncitizens residing in Federal housing programs. HUD's Regulatory Impact Analysis estimates that 25,045 households living in federally subsidized housing would be affected by this rule change, including a total of 108,104 people.[17] HUD believes that over three-quarters of the households that would be affected by this rule change will terminate housing assistance, with the remaining households splitting apart so that members of the household eligible to receive a subsidy remain in assisted housing. Overall, HUD estimates that 76,141 of the 108,104 individuals living in households that would be affected by this proposed rule change are eligible to receive federal housing subsidies. It is difficult to determine the likely degree of overlap between the households that HUD has estimated would be affected by the Proposed HUD Rule change and the households that may be affected by the Final Rule, but it is safe to assume that there will be at least some overlap given the focus on noncitizens by each rule change. Despite this potential for overlap, in the discussion below regarding the likely effect of the Final Rule on households with foreign-born members, I do not attempt to capture any of the effects associated with the Proposed HUD Rule.

D. Characteristics of Households Living in Federally Subsidized Housing

32. Table 1 in Exhibit B describes some basic descriptive information about residents living in public housing, the Housing Choice Voucher Program, Project-Based Section 8 developments, and all HUD programs in 2018 in the U.S., Connecticut, New York, Vermont, and New York City. While households earning less than 80 percent of the AMI are eligible for living in public housing or Project Based Section 8 units, or using a Housing Choice Voucher, the majority of households in these programs are classified as very low-income (earning less than

[17] "Housing and Community Development Act of 1980: Verification of Eligible Status, Regulatory Impact Analysis." Docket No. FR-6124-P-01, April 15, 2019.

50 percent of AMI). In 2018, 96 percent of households living in Project Based Section 8 units earned less than 50 percent of the AMI in the United States. In the Section 8 Housing Choice Voucher program and public housing 95 percent and 91 percent of households earned less than 50 percent of the AMI in the United States in 2018, respectively. Given the geographical variation in the AMI as described above, even families with income less than 50 percent of the AMI, do not necessarily have income below 125 percent of the FPG.

33. Compared to public housing and the Housing Choice Voucher program, the Project Based Section 8 program tends to have smaller family sizes living in its units. Nationally, the average size of a family in Project Based Section 8 in 2018 was 1.7 people, compared to 2.1 in public housing and 2.3 in Housing Choice Vouchers.

34. I do not have data on the length of stay in Federal housing programs among noncitizens, and they may vary considerably from the length of stay statistics for tenants generally. Nationally, households living in a federally subsidized housing unit typically do not remain in these units for an extended period of time. Based on the most current and comprehensive analysis available using HUD administrative data on exits from assisted housing,[18] average households living in federally subsidized housing leave assisted housing after about six years.[19] Differences in length of stay in federally subsidized housing by household type can be substantial. For example, in New York City, given the demand for public housing and lack of availability of affordable housing, the low vacancy rate, and the relatively high income a household can have and maintain eligibility, families stay in public housing much longer.

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[18] In this case, "assisted housing" is a general term that includes the three largest federally subsidized housing programs specified in the Final Rule, plus several smaller programs not included in the Final Rule.

[19] McClure, Kirk. 2018. "Length of Stay in Assisted Housing." *Cityscape* 20(1): 11-38. (https://www.jstor.org/stable/10.2307/26381219)

Another estimate of length of stays in public housing uses longitudinal data from the Panel Survey of Income Dynamics (1987-2011) and found that most individuals who entered public housing stayed less than five years, with only 12 percent staying longer than 10 years.[20] This evidence suggests that federally-assisted housing serves as a temporary source of support for most families that use it, but that there can be exceptions in housing markets characterized by high rents and low vacancy rates.

[20] Dantzler, Prentiss A. 2019. "Reconsidering Poverty Dynamics by Analyzing Housing Spells." *The Social Science Journal* (In Press, https://doi.org/10.1016/j.soscij.2019.06.004).

III. Benefits of Living in Federally Subsidized Housing

35. In connection with preparing this declaration, I have undertaken a review of research conducted regarding the positive impacts of living in housing subsidized by the Federal housing programs that are included in the Final Rule because the benefits, in turn, speak to the harm caused to noncitizen families who lose access to Federal housing programs because of the Final Rule.

36. Research on residents living in federally-assisted housing shows that residing in such housing is associated with positive health and economic outcomes.[21] Living in public housing has positive associations with (a) better health outcomes, (b) educational attainment, (c) employment earnings, and (d) other benefits.

37. *Health outcomes.* A number of studies have found a positive association between living in assisted housing and positive health outcomes for children and adults. Relative to children in families on a waitlist for federally-assisted housing and controlling for neighborhood context, children in families living in public housing have fewer symptoms of mental health stress and experience fewer emotional difficulties.[22] Similarly, relative to adults in families on a waitlist for federally-assisted housing and after controlling for neighborhood-level characteristics, adults in families in public housing had lower odds of being in fair or poor health

[21] It is important to note that the most methodologically sound research on outcomes associated with living in Federal housing program appropriately controls for the selection bias inherent to applying for and obtaining a unit of assisted housing. Selection criteria for admission to Federal housing programs mean that families are low income, a characteristic that has an independent relationship with educational, employment, health, and other outcomes. It is important to distinguish the relationship between living in housing supplied by a Federal housing program with these outcomes and the relationship between living in a poor family and these outcomes.

[22] Fénelon, Andrew, Slopen, Natalie, Boudreaux, Michel, and Newman, Sandra J. 2018. "The Impact of Housing Assistance on the Mental Health of Children in the United States." *Journal of Health and Social Behavior* 59(3): 447-463.

and lower odds of psychological distress.[23] Children living in assisted housing have lower Blood Lead Levels (BLLs) than children who did not receive housing assistance.[24] Many residents of public housing have poor health, but frequently health problems exist for residents prior to becoming residents of public housing. For example, in a study of Atlanta public housing residents 19 percent were diagnosed with diabetes and 23 percent were diagnosed with asthma, but of those diagnosed with these health problems at least three-quarters received the diagnosis prior to entering public housing.[25] In general, research indicates that public housing tends to provide a safety net for residents that had existing health problems when they arrived in assisted-housing rather than cause these health problems.[26]

38. *Educational achievement.* Much of the available evidence suggests that children living in federally-assisted housing experience comparable or better educational achievement than children who do not live in federally-assisted housing. Children living in public housing are less likely to be held back a grade than those not living in public housing[27] and those living in voucher-assisted housing experience better math achievement.[28] Research that compares educational outcomes for children living in public housing and voucher-assisted

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[23] Fenelon, Andrew, Mayne, Patrick, Simon, Alan E., Rossen, Lauren M., Helms, Veronica, Lloyd, Patricia, Sperling, Jon, and Steffen, Barry L. 2017. "Housing Assistance Programs and Adult Health in the United States." *American Journal of Public Health* 107(4): 571-578.

[24] Ahrens, Katherine A., Haley, Barbara A., Rossen, Lauren M., Lloyd, Patricia C., and Aoki, Yutaka. 2016. "Housing Assistance and Blood Lead Levels: Children in the United States." *American Journal of Public Health* 106(11): 2049-2056; Chiofalo, Jacqueline M., Golub, Maxine, Crump, Casey, and Calman, Neil. 2019. "Pediatric Blood Lead Levels Within New York City Public Versus Private Housing, 2003-2017." *American Journal of Public Health* 109(6): 906-911.

[25] Ruel, Erin, Oakley, Deirdre, Wilson, G. Elton, and Maddox, Robert. 2010. "Is Public Housing the Cause of Poor Health or a Safety Net for the Unhealthy Poor?" *Journal of Urban Health* 87(5): 827-838.

[26] *Ibid.*

[27] Currie, Janet and Yelowitz, Aaron. 2000. "Are Public Housing Project Good for Kids?" *Journal of Public Economics* 75:99-124.

[28] Carlson, Deven, Miller, Hannah, Haveman, Robert, Kang, Sohyun, Schmidt, Alex, and Wolfe, Barbara. 2019. "The Effect of Housing Assistance on Student Achievement: Evidence from Wisconsin." *Journal of Housing Economics* 44(1): 61-73.

housing finds no differences in educational outcomes, suggesting that these housing programs have indistinguishable effects on educational outcomes.[29]

39. *Employment outcomes and earnings.* A variety of research indicates that living in federally-assisted housing either has no effect or improves employment outcomes and earnings. Despite the frequent location of federally-assisted housing in neighborhoods with high rates of poverty, which might be associated with reduced labor force activity, analysis of employment outcomes in the Multi-City Study of Urban Inequality (MSCUI) found no relationship between living in public housing and labor force activity.[30] However, in a study that focused on the effects of living in public housing for a time between 1968 and 1982 on outcomes for young adults, researchers found that every year of residence in public housing between the ages of 10 and 16 increased the probability of working by seven percentage points when the youth was between the ages of 25 through 27.[31] The result of this increased chance of employment increased annual earnings by $1,860.[32]

40. Based on a particularly strong longitudinal research design that compares the earnings of siblings from around the United States who lived in public housing for different lengths of time, the most recent study focused on the relationship between living in federally-assisted housing and earnings found that living in assisted housing as a teenager has a positive association with higher earnings and lower rates of incarceration as an adult. Females receive

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[29] Jacob, Brian A. 2004. "Public Housing, Housing Vouchers, and Student Achievement: Evidence from Public Housing Demolitions in Chicago." *American Economic Review* 94(1): 233-258.
[30] Reingold, David A., Van Ryzin, Gregg G., and Ronda, Michelle. 2001. "Does Urban Public Housing Diminish the Social Capital and Labor Force Activity of Its Tenants?" *Journal of Policy Analysis and Management* 20(3): 485-504.
[31] Newman, Sandra J. and Harkness, Joseph M. 2002. "The Long-Term Effects of Public Housing on Self-Sufficiency." *Journal of Policy Analysis and Management* 21(1): 21-43.
[32] *Ibid.*

about a five percent increase in earnings for each additional year in either public housing or voucher housing, while males receive about a five percent increase in earnings for each additional year in public housing and a 2.6 percent increase in earnings for each additional year in voucher housing.[33] Each additional year of living in public housing as a teenager increased estimated total discounted lifetime pre-tax earnings by $45,400 for females and $47,300 for males.[34] For each additional year of living in voucher-assisted housing as a teenager, the estimated total discounted lifetime pre-tax earnings increased by $43,600 for females and $24,100 for males.[35] Based on assumptions about increased tax revenues due to the increased estimated total discounted lifetime pre-tax earnings attributable to living in assisted housing and the cost to the federal government of providing a subsidy for assisted housing, the study concludes that providing public housing and voucher programs are nearly cost-neutral.[36] It is important to point out that the study likely underestimates the benefit of federally-assisted housing because it only estimates the intergenerational financial benefit to the federal government from providing assisted housing to poor families. With increased lifetime earnings, individuals who lived in assisted-housing as teenagers will probably be less likely to use welfare benefits as adults.[37]

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[33] Andersson, Fredrik, Haltiwanger, John C., Kutzbach, Mark J., Palloni, Giordano E., Pollakowski, Henry O., and Weinberg, Daniel H. 2018. "Childhood Housing and Adult Earnings: A Between-Siblings Analysis of Housing Vouchers and Public Housing." NBER Working Paper Series, Working Paper 22721 (https://www.nber.org/papers/w22721).

[34] *Ibid.*

[35] *Ibid.*

[36] *Ibid.*

[37] One concern registered about Federal housing programs is that using assisted housing discourages employment and encourages dependence on government benefits. A review of the available early scholarship on the relationship between living in assisted housing and employment found no relationship between the two. Shroder, Mark. 2002. "Does Housing Assistance Perversely Affect Self-Sufficiency? A Review Essay." *Journal of Housing Economics* 11(4): 381-417. A more recent study found a small suppressive effect of using a voucher on labor supply and earnings, though this study is limited to public housing residents in Chicago raising questions about its external validity. Jacob, Brian A. and Ludwig,

41. *Other benefits.* Emerging evidence indicates that children growing up in assisted housing have relatively small chances of returning to assisted housing as adults[38] and living in public housing has no effect on teenage parenthood for females and may decrease the probability of teenage parenthood for males.[39] For families receiving housing assistance as well as cash assistance ("welfare") benefits, receiving federal housing assistance does not appear to have a positive relationship with remaining on welfare[40] and there is some evidence that living in public housing as a child reduces welfare use as an adult by 0.70 of a year.[41] More recent research indicates that welfare use among families living in assisted housing declined after moving into assisted housing, although the rate of welfare use still exceeded that of families not living in assisted housing.[42]

42. At least two causal mechanisms could explain the relationship between living in assisted housing and better health outcomes, educational achievement and increased employment and earnings.

Jens. 2012. "The Effects of Housing Assistance on Labor Supply: Evidence from a Voucher Lottery." *American Economic Review* 102(1): 272-304. Analysis of the Panel Study of Income Dynamics, which included assisted housing residents from across the U.S., found no evidence that moving into assisted housing was associated with sustained reductions in employment, work hours, or earnings. Newman, Sandra, Holupka, C. Scott, and Harkness, Joseph. 2009. "The Long-Term Effects of Housing Assistance on Work and Welfare." *Journal of Policy Analysis and Management* 28(1): 81-101.

[38] Kucheva, Yana A. 2014. "The Receipt of Subsidized Housing across Generations." *Population Research and Policy Review* 33(6): 841-871.

[39] *Ibid.*

[40] Haley, Barbara A. and Dajani, Aref N. 2015. "Addicted to Government? The Impact of Housing Assistance on Program Participation of Welfare Recipients." *Poverty and Public Policy* 7(4): 307-335.

[41] Newman, Sandra J. and Harkness, Joseph M. 2002. "The Long-Term Effects of Public Housing on Self-Sufficiency." *Journal of Policy Analysis and Management* 21(1): 21-43.

[42] *Ibid.*

43. *First*, evidence suggests that families living in voucher-supported housing are less prone to moving[43] and have more stable household compositions.[44] Moving, particularly when it is precipitated by economic necessity or stress, is associated with increased anxiety and depression.[45] Other measures of housing insecurity, such as doubling up, overcrowding, and frequent moves, are associated with poor health outcomes for children, including food insecurity, lower weight, and developmental risk.[46] Women experiencing eviction, a particularly dramatic form of housing insecurity, experienced difficulty obtaining necessities and were more likely to experience depression, poor health outcomes and parenting stress.[47] Finally, frequent moves that include a change in schools for children are associated with poor education outcomes for children.[48] Increased residential stability that accompanies living in assisted housing may promote better health and educational outcomes for children, and improved mental and physical health for adults, eventually leading to better economic outcomes.

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[43] Berger, Lawrence M., Heintze, Theresa, Naidich, Wendy B., and Meyers, Marcia K. 2008. "Subsidized Housing and Household Hardship among Low-Income Single-Mother Households." *Journal of Marriage and the Family* 70:934-949; Gubits, Danile et al. 2016. "Family Options Study: 3-Year Impacts of Housing and Services Interventions for Homeless Families." Office of Policy Development and Research: U.S. Department of Housing and Urban Development.

[44] Carlson, Deven, Haveman, Robert, Kaplan, Thomas, and Wolfe, Barbara. 2012. "Long-Term Effects of Public Low-Income Housing Vouchers on Neighborhood Quality and Household Composition." *Journal of Housing Economics* 21(2): 101-120.

[45] Burgard, Sarah A., Kristin S. Seefeldt, and Sarah Zelner. 2012. "Housing Instability and Health: Findings from the Michigan Recession and Recovery Study." *Social Science & Medicine* 75(12):2215–24.

[46] Cutts, Diana Becker, Alan F. Meyers, Maureen M. Black, Patrick H. Casey, Mariana Chilton, John T. Cook, Joni Geppert, Stephanie Ettinger de Cuba, Timothy Heeren, and Sharon Coleman. 2011. "US Housing Insecurity and the Health of Very Young Children." *American Journal of Public Health* 101(8):1508–14.

[47] Desmond, Matthew, and Rachel Tolbert Kimbro. 2015. "Eviction's Fallout: Housing, Hardship, and Health." *Social Forces* 94(1):295–324.

[48] Crowley, Sheila. 2003. "The Affordable Housing Crisis: Residential Mobility of Poor Families and School Mobility of Poor Children." *The Journal of Negro Education* 72(1): 22-38.

44. *Second*, living in assisted housing is associated with decreased housing cost burden, allowing households to spend a larger proportion of their household incomes on other household expenses that may lead to improved educational, health and economic outcomes. For example, a family spending around 30 percent of its income on housing is associated with increased investment in enrichment activities for children, leading to higher cognitive outcomes.[49] Similarly, living in assisted housing is associated with less material hardship, including food insecurity, residential overcrowding, and postponed healthcare investments, resulting in better health and behavioral outcomes for children.[50] In turn, these outcomes are related to improved educational outcomes, which lead to better employment and earnings outcomes.

IV. The Effect of the Final Rule on Immigrant Use of Assisted Housing

45. The Final Rule requires immigration officials at DHS to determine whether applicants for adjustment of status not exempt from public charge are currently enrolled in a Federal housing program that supplies them with a housing subsidy or whether they are likely to be enrolled in such a program and receive a subsidy at any point in the future.[51] Accordingly, of those persons currently eligible to adjust, or who will be eligible in the future, the Final Rule will likely have a greater impact on those noncitizens predicted to be likely to receive Federal housing benefits at any time in the future than those who are currently receiving Federal housing benefits and who are applying for adjustment. The reasoning behind this

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[49] Newman, Sandra J. and Holupka, C. Scott. 2015. "Housing Affordability and Child Well-Being." *Housing Policy Debate* 25(1): 116-151.
[50] Harkness, Joseph and Newman, Sandra J. 2005. "Housing Affordability and Children's Well-Being: Evidence from the National Survey of America's Families." *Housing Policy Debate* 16(2): 223-255.
[51] There are only a few categories of noncitizens eligible for Federal housing programs who are subject to public charge review at the time of adjustment – specifically, citizens of Micronesia, Marshall Islands. Palau and Guam, persons granted withholding of removal and parolees.

assertion is that given supply limitations in Federal housing programs there are many more noncitizens living in families that are eligible for Federal housing programs than there are noncitizens in families that are currently living in housing that is part of a Federal housing program.

46. Counsel has asked me for purposes of this declaration to base my projections of harm on the numbers provided by DHS in the Regulatory Impact Analysis ("RIA") accompanying the Final Rule.[52] I reserve the right to provide additional analyses using different assumptions at a later date.

47. DHS estimates that 8,801 households will disenroll from public housing, the Section 8 Housing Choice Voucher Program, or the Project Based Section 8 Rental Assistance Program. DHS arrives at this number using the fact that 6.97 percent of the U.S. population is a foreign-born noncitizen (based on the 2012-2016 American Community Survey (ACS) 5-year Estimates from the U.S. Census Bureau). DHS multiplies this percentage by 5,051,000, the number of households residing in federally subsidized housing, to arrive at 352,055 as the number of households residing in federally-subsidized housing that contain at least one noncitizen. DHS further assumes that noncitizens that adjust their visa status and trigger a public charge review and determination by immigration officials at USCIS will be affected by the Final Rule. They estimate that approximately 2.5 percent of the foreign-born adjust their status on an annual basis. To determine the number of households that are likely to disenroll, DHS multiplies 2.5 percent and 352,055 households with at least one noncitizen to arrive at a figure of 8,801. They do not estimate the number or citizenship status of people living

[52] "Regulatory Impact Analysis," Inadmissibility on Public Charge Grounds, Final Rule (8 CFR Parts 103, 212, 213, 214, 245, and 248), RIN: 1615-AA22, CIS No. 2637-19, DHS Docket No.: USCIS-2010-0012, August 2019.

in these families, nor do they attempt to estimate the costs or harm that disenrollment will create for these families or individuals.

48. As discussed below, the harm caused by 8,801 households disenrolling from federally-assisted housing benefits is substantial. There are multiple reasons to assume that the actual harm is likely to be greater and to view the 8,801 estimate as very conservative.

49. *First*, the Final Rule indicates that immigration officials will assess the use of benefits over a three year period when determining whether an immigrant should be designated a public charge. Using the logic DHS describes —that is, 2.5 percent of people will disenroll annually—it would be more appropriate to assume 7.5 percent of foreign born noncitizens would disenroll from a benefit at some point in a given three-year period. This would effectively triple DHS's estimate of households that would disenroll from public housing and more closely match the estimate produced by HUD of the number of households living in federally subsidized housing that include at least one non-eligible immigrant (about 25,000).[53]

50. *Second*, DHS's use of the 6.97 percent of the foreign born population to estimate the number of noncitizen households residing in federally subsidized housing is likely to result in an underestimation of the households containing at least one noncitizen residing therein and consequently the number of individuals and households affected by the Final Rule. Using this figure to produce the estimates involves two faulty assumptions. The first mistake is to assume that the distribution of noncitizens in the U.S. population matches the distribution of noncitizens enrolled for or using one of the non-cash benefits named in the Final Rule (SNAP, Medicaid, and Federal housing programs). According to 2017 ACS data, 35 percent of households that contain at least one foreign born member are headed by noncitizens. Among

[53] "Housing and Community Development Act of 1980: Verification of Eligible Status, Regulatory Impact Analysis." Docket No. FR-6124-P-01, April 15, 2019.

households eligible to live in federally-assisted housing, 46 percent of households that contain at least one foreign born member are headed by noncitizens. Being eligible to live in public housing is different than actually living in public housing, but the larger proportion of noncitizens in the eligible pool suggests that DHS underestimates the households with at least one noncitizen in its analysis. The second mistake is to assume that the 6.97 percent of the population who are noncitizens are the only residents that will disenroll due to the Final Rule. Evidence suggests that noncitizens are not alone in changing their behavior because of the Final Rule. A report by researchers at the Urban Institute indicates that noncitizen legal permanent residents and naturalized citizens withdrew from public benefits named in the Final Rule or declared that they would not apply, despite the fact that their immigration status would not be affected by the Final Rule.[54]

51. These flaws in the methodology used by DHS to estimate the chilling effect on foreign-born resident use of federally subsidized housing due to the Final Rule suggest a significant underestimate by DHS of the chilling effect related to the Final Rule.

52. Although I adopt DHS's definition of the chilling effect as a dynamic that causes disenrollment for the purposes of this declaration, other studies have noted that the Final Rule is also likely to cause noncitizens to refrain from applying for benefits implicated by the Final Rule.[55] DHS does not estimate the number of people who would not apply to Federal

[54] Bernstein, Hamutal, Gonzalez, Dulce, Karpman, Michael, and Zuckerman, Stephen. 2019. "One in Seven Adults in Immigrant Families Reported Avoiding Public Benefit Programs in 2018." Washington, DC: The Urban Institute. (https://www.urban.org/research/publication/one-seven-adults-immigrant-families-reported-avoiding-public-benefit-programs-2018, accessed on August 28, 2019).

[55] Based on research results from a study by the Urban Institute that documented adults living in households with at least one foreign-born member reporting disenrolling from or choosing to not apply to federal benefit programs named in the Final Rule, individuals eligible for Federal housing programs by virtue of their family incomes will likely choose to not apply to Federal housing programs due to concerns about how the Final Rule could affect their immigration status or the immigration status of a

housing programs due to the Final Rule. Nonetheless, the omission of such an estimate from DHS's analysis is another reason the agency's estimates should be viewed as conservative. In future analyses of the chilling effect I may elect to calculate a different chilling effect, using different data and a different methodology.

53. Using the DHS calculation of 8,801 households that would disenroll from Federal housing programs due to Final Rule, I can quantify some of the categories of harm, beyond the immediate harm to the individuals forced to move from their homes after disenrolling.

54. ***Loss of lifetime earnings.*** Given the benefits associated with living in federal housing, discussed above in Part III, the chilling effect associated with the Final Rule will be costly for the people who, absent the implementation of the Final Rule, would have continued to live in federal housing. Recent research estimates a substantial increase in life-time earnings for each additional year that a teenager lives in either public housing or voucher-assisted housing.[56] While there are also benefits for young children and adults who live in federal housing, the estimates of increased lifetime earnings for teenagers allow me to make a conservative estimate of the future harm that will occur for people that disenroll from Federal housing programs because of the chilling effect of the Final Rule.

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family member. Bernstein, Hamutal, Gonzalez, Dulce, Karpman, Michael, and Zuckerman, Stephen. 2019. "One in Seven Adults in Immigrant Families Reported Avoiding Public Benefit Programs in 2018." Washington, DC: The Urban Institute. (https://www.urban.org/research/publication/one-seven-adults-immigrant-families-reported-avoiding-public-benefit-programs-2018, accessed on August 28, 2019).

[56] Andersson, Fredrik, Haltiwanger, John C., Kutzbach, Mark J., Palloni, Giordano E., Pollakowski, Henry O., and Weinberg, Daniel H. 2018. "Childhood Housing and Adult Earnings: A Between-Siblings Analysis of Housing Vouchers and Public Housing." NBER Working Paper Series, Working Paper 22721 (https://www.nber.org/papers/w22721).

55. The increased lifetime earnings (discounted to 2000 U.S. dollars) for each additional year that a teenager (aged 13-18) lives in public housing is $24,700 for females and $25,700 for males, or an average of $25,200.[57] The increased lifetime earnings (discounted to 2000 U.S. dollars) for each additional year that a teenager lives in voucher-housing is $23,700 for females and $13,100 for males, or an average of $18,400.[58] According to Table 1 in Exhibit B, public housing and Project-Based Section 8 housing units together accounted for about 47.6 percent of federal housing units, while vouchers accounted for 52.4 percent of federal housing units.[59] Using these proportions, a weighted average of the life-time earnings for each additional year that a teenager lives in federal housing is $21,637. The lifetime earnings figures in this paragraph are discounted to present value.

56. Given that families with children live in public housing for an average of four years,[60] I assume that teenagers who are 13 and 14 live in federal housing for four years before moving out. For teenagers aged 15, 16, 17, and 18, I assume that they live in federal housing for 4, 3, 2, and 1 years respectively. Given variation in length of stay in Federal housing programs by jurisdiction, using this approach will likely underestimate the number of years that teenagers between the ages of 13 and 14 stay in housing in New York and especially the high rent, low vacancy market of New York City. As a result, this approach will likely underestimate the lifetime earnings that these teens could expect to earn if they had not disenrolled from Federal housing programs.

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[57] *Ibid.*
[58] *Ibid.*
[59] I assume that Project-Based Section 8 are more similar to public housing than they are to HCVs, so I treat them as public housing units for the purposes of understanding what effect living in a Project-Based Section 8 unit will have on a teenagers life-time earnings.
[60] McClure, Kirk. 2018. "Length of Stay in Assisted Housing." *Cityscape* 20(1): 11-38. (https://www.jstor.org/stable/10.2307/26381219).

57. Estimating the lifetime earnings that do not accrue to teenagers because they are chilled from living in federal housing due to the Final Rule is a simple matter of arithmetic: ((number of 13-year olds chilled from federal housing x 4 years x $21,637) + (number of 14-year olds chilled from federal housing x 4 years x $21,637) + (number of 15-year olds chilled from federal housing x 4 years x $21,637) + (number of 16-year olds chilled from federal housing x 3 years x $21,637) + (number of 17-year olds chilled from federal housing x 2 years x $21,637) + (number of 18-year olds chilled from federal housing x 1 year x $21,637)) = foregone lifetime earnings.

58. To estimate foregone lifetime earnings it is necessary to calculate the number of people living in the 8,801 families that DHS estimates will disenroll from Federal housing programs if the Final Rule is implemented. To produce this estimate, I use the ACS 50 percent of AMI sample to calculate the average family size of families eligible to live in Federal housing programs. ACS data indicate that 18,352,744 people in the United States live in 6,400,436 families that contain at least one foreign-born member and earn less than 50 percent of AMI.[61] Therefore, the average family size among this population in the United States is 2.87 (18,352,744 / 6,400,436 = 2.867). Using this average family size estimate for the U.S., the 8,801 families estimated to disenroll from Federal housing programs by DHS contain 25,232 people (8,801 x 2.87 = 25,232).

59. To estimate foregone earnings for the people included in the national estimate from DHS I need to calculate the number of people aged 13 to 18 in the estimated

[61] The population estimate comes from Table 2 in Exhibit B. The number of families is based on the author's analysis of 2017 ACS and HUD determined family income limits based on 50 percent AMI. Steven Ruggles, Sarah Flood, Ronald Goeken, Josiah Grover, Erin Meyer, Jose Pacas and Matthew Sobek. IPUMS USA: Version 9.0 [dataset]. Minneapolis, MN: IPUMS, 2019. https://doi.org/10.18128/D010.V9.0.

chilled population of 25,232 people. To achieve this I use the ACS 50 percent AMI data on the distribution of teenagers in the eligible population in Table 3 in Exhibit B. I divide the number of 13 through 18 year olds in this population by the total population amount to calculate the proportion of the total population that is each age. Next I multiply the proportion of each age group by the chilled population estimated by DHS (25,232) to determine the number of people for each age in the population. I present these results in Table 4 in Exhibit B.

60. Once I have estimated the number of teenagers in this population it is a simple matter of arithmetic to estimate the total foregone earnings among teenagers that DHS estimates would disenroll from Federal housing programs ((number of 13 year olds x 4 years x $21,637) + …+ (number of 18 year olds x 1 year x $21,637)). For the United States, the foregone earnings total $183,569,800.

61. As stated earlier, it is also important to note that DHS estimates of the number of people subject to a chilling effect are likely to be an underestimate. The Urban Institute's report indicates that nearly 20 percent of adults living in low income families reported disenrolling from or choosing to not apply to federal non-cash benefits named in the Final Rule (compared to 13.7 percent in the overall sample).[62] Since families living in Federal housing programs are low income, they may disenroll at greater rates than the 2.5 rate DHS estimates.

62. With these limitations in mind, the analysis of the chilling effect presented in this declaration has erred on the side of caution by using conservative estimates of the chilling effect. I also confine my estimates of the foregone earnings to teenagers disenrolling from Federal housing programs due to the Final Rule despite the fact that the benefits of public

[62] Bernstein, Hamutal, Gonzalez, Dulce, Karpman, Michael, and Zuckerman, Stephen. 2019. "One in Seven Adults in Immigrant Families Reported Avoiding Public Benefit Programs in 2018." Washington, DC: The Urban Institute. (https://www.urban.org/research/publication/one-seven-adults-immigrant-families-reported-avoiding-public-benefit-programs-2018, accessed on August 28, 2019).

housing for young children and adults are substantial and their disenrollment will presumably cause them harm as well.

63. In this declaration I come to the conclusion that implementation of the Final Rule will result in harm to families that disenroll from Federal housing programs because they fear that remaining in these programs will affect their immigration status or the immigration status of a family member. Because living in Federal housing programs confers substantial benefits to residents, disenrolling will cause these individuals to experience substantial costs, including worse educational outcomes, lower earnings, and poorer health. Using the DHS estimate of chilling effect, I estimate that the foregone lifetime earnings of the teenagers who would disenroll due to the Final Rule would be $183,569,800.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 9th day of September, 2019.

Ryan P. Allen

Ryan Allen

EXHIBIT A

RYAN PATRICK ALLEN

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EDUCATION AND EMPLOYMENT

Academic Rank

Associate Professor, University of Minnesota, Humphrey School of Public Affairs
Affiliated Faculty Member, Minnesota Extension, Center for Community Vitality
Affiliated Faculty Member, Minnesota Population Center
Affiliated Faculty Member, Department of Sociology

Education

PhD	Massachusetts Institute of Technology Urban Studies Advisor: Xavier de Souza Briggs	2007
MCP	Massachusetts Institute of Technology Urban and Regional Planning	2002
BA	The College of William and Mary Economics (*Phi Beta Kappa, Cum Laude*)	1997

Academic Employment

University of Minnesota, Twin Cities	
Associate Professor	2015-present
Director, Urban and Regional Planning Program	2015-present
Area Chair, Urban and Regional Planning Area	2015-present
Assistant Professor	2007-2015
University of New South Wales, Sydney, Australia	
Senior Visiting Fellow	2017-2019

Professional Employment

U.S. Department of Justice, Civil Rights Division

Expert Witness, *United States v. St. Anthony Village, MN*	2014
MIT, Center for Reflective Community Practice (renamed CoLab)	
Research Fellow	2002-2004
Northeastern University, Center for Urban and Regional Policy	
Research Associate	2001-2002
The Urban Institute	
Research Associate	1998-2000
Bureau of Labor Statistics, Office of Current Employment Statistics	
Economist	1997-1998

Membership in Professional Organizations

Association of Collegiate Schools of Planning	2007-present
Midwest Sociological Society	2007-2008
National Association of Community Development Extension Professionals	2009-present
Population Association of America	2014-2015, 2019-present
Social Science History Association	2017-present
Urban Affairs Association	2007-present

AWARDS AND HONORS

University of Minnesota

Dean's Award for Distinguished Diversity and Inclusion, University of Minnesota Extension, 2017

Outstanding Advising and Mentoring Award, Professional Student Government, University of Minnesota, 2016.

Dean's Award for Distinguished Diversity and Inclusion, University of Minnesota Extension, 2013 (awarded to Leadership and Civic Engagement staff at Minnesota Extension Center for Community Vitality)

Required Course Instructor of the Year, Humphrey School of Public Affairs, 2012

External Sources

Award for Excellence in Research, "Integrating Latino Leadership in Rapidly Diversifying Communities," Minnesota Association of Community & Leadership Education Professionals, 2013 (with Tobias Spanier, Scott Chazdon, and Amanda Hane)

Junior Scholar Writing Workshop, *Journal of Planning Education and Research*, 2008

Junior Scholar, SSRC Summer Institute on International Migration at the Center for Research on Immigration, Population and Public Policy, University of California at Irvine, 2005

RESEARCH

Grants and Contracts

External Sources

Ryan Allen, Co-Principal Investigator
National Institute of Food and Agriculture
U.S. Department of Agriculture
"The Rural Workforce and Entrepreneur Recruitment and Retention Grant"
April 1, 2017 – March 31, 2020
$500,000

Ryan Allen, Principal Investigator
Charles F. Kettering Foundation
"Centers for Public Life: Bringing New Organizations into Deliberative Practice"
February 24, 2015 – July 1, 2016
Expenses associated with travel for training

Ryan Allen, Principal Investigator
Norwegian Ministry of Foreign Affairs
"The Somali Diaspora's Role in Somalia: Implications of Return," with Peace Research Institute Oslo (Norway) and the Heritage Institute for Policy Studies (Somalia)
July 1, 2013 – June 30, 2015
$361,306 ($136,840 for University of Minnesota)

Ryan Allen, Principal Investigator
Hennepin University Partnership
"Programmatic Review of Hennepin County's Tax Forfeited Land (TFL) Program"
April 1, 2013 – October 1, 2014
$50,000

Ryan Allen, Co-Investigator
Xavier de Souza Briggs, Principal Investigator
US Department of Housing and Urban Development
Doctoral Dissertation Research Grant
"'Sometimes it's Hard Here to Call Someone to Ask for Help': Social Capital in a Refugee Community in Portland, Maine"
2005-2007
$25,000

University of Minnesota Sources

Jack DeWaard, Principal-Investigator
Erika Lee, Co-Investigator
Ryan Allen, Co-Investigator
Interdisciplinary Collaborative Workshop Grant
College of Liberal Arts
August 2018 – May 2020
$84,440

Ryan Allen, Co-Investigator

Benjamin Casper, Co-Investigator
Office of the Vice President for Research
"Immigration Law and Public Policy Research"
September 1, 2016 – August 31, 2017
$40,000

Ryan Allen, Co-Investigator
Scott Chazdon, Principal Investigator
Center for Integrative Leadership
"Integrative Leadership in Rapidly Diversifying Communities"
January 1, 2012 – December 31, 2014
$10,000

Ryan Allen, Principal Investigator
Office of Equity and Diversity, IDEA Multicultural Research Award
"The Role of Immigrant Entrepreneurs in Creating Bridging Social Capital"
June 1, 2011 – August 31, 2011
$6,896

Ryan Allen, Principal Investigator
Center for Urban and Regional Affairs
"The Unraveling of the American Dream: Foreclosures and Communities of Color in Minneapolis"
July 1, 2009 – June 30, 2010
$35,518

Ryan Allen, Principal Investigator
Minnesota Population Center, Proposal Development Grant
"Immigrant Transfers and the New Immigrant Survey"
July 14, 2008 – August 13, 2008
$10,000

Publications
(Authors listed in order of contribution unless otherwise noted)

Refereed Journal Articles

1. **Allen, Ryan** and David Van Riper. Forthcoming. "The New Deal, the Deserving Poor and the First Public Housing Residents in New York City." *Social Science History*.

2. **Allen, Ryan** and Carissa Schively Slotterback. Forthcoming. "Building Immigrant Engagement Practice in Urban Planning: The Case of Somali Refugees in the Twin Cities." *Journal of Urban Affairs*. (DOI: 10.1080/07352166.2017.1360745)

3. Colburn, Gregg and **Ryan Allen**. 2018. "Rent Burden and the Great Recession in the USA." *Urban Studies* 55(1): 226-243. (DOI: 10.1177/0042098016665953)

4. **Allen, Ryan**. 2017. "What Explains the Resolution of Property Tax Delinquency Prior to Forfeiture? Evidence from Hennepin County, Minnesota." *Journal of Urban Affairs* 39(4): 528-546. (DOI: 10.1080/07352166.2016.1255525)

5. **Allen, Ryan** and Erika Busse. 2016. "The Social Side of Ethnic Entrepreneur Break-Out: Evidence from Latino Immigrant Entrepreneur Malls." *Ethnic and Racial Studies* 39(4): 653-670. (DOI:10.1080/01419870.2015.1078481)

6. **Allen, Ryan** and Hiromi Ishizawa. 2015. "State-Level Political Context and Immigrant Homeownership in the U.S." *Journal of International Migration and Integration* 16(4): 1081-1097.

7. Fan, Yingling, **Ryan Allen** and Tieshan Sun. 2014. "Spatial Mismatch in Beijing, China: Implications of Job Accessibility for Chinese Low-Skilled Workers." *Habitat International* 44(1): 202-210.

8. **Allen, Ryan**. 2013. "The Distribution and Evolution of Neighborhood Problems during the Great Recession." *City & Community* 12(3): 260-279.

9. **Allen, Ryan**. 2013. "Post-Foreclosure Mobility for Households with Children in Public Schools." *Urban Affairs Review* 49(1): 111-140.

10. Hirasuna, Donald and **Ryan Allen**. 2012. "Mortgage Discrimination and the Resurgence of Denial Rates for Home Loans: An Examination of the Upper Midwest." *Housing Policy Debate* 22(4): 573-603.

11. **Allen, Ryan** and Paul Lachapelle. 2012. "Can Leadership Development Act as a Rural Poverty Alleviation Strategy?" *Community Development* 43(1): 95-112.

12. **Allen, Ryan**. 2011. "Who Experiences Foreclosure? Evidence from Minneapolis, Minnesota." *Housing Studies* 26(6): 845-866.

13. **Allen, Ryan**. 2011. "The Relationship between Residential Foreclosures, Race, Ethnicity, and Nativity Status." *Journal of Planning Education and Research* 31(2): 125-142.

14. **Allen, Ryan**. 2010. "The Bonding and Bridging Roles of Religious Institutions for Refugees in a Non-Gateway Context." *Ethnic and Racial Studies* 33(6): 1049-1068.

15. **Allen, Ryan** and Edward G. Goetz. 2010. "Nativity, Ethnicity and Residential Relocation: The Experience of Hmong Refugees and African-Americans Displaced from Public Housing." *Journal of Urban Affairs* 32(3): 321-344.

16. **Allen, Ryan**. 2009. "Benefit or Burden? Social Capital, Gender and the Economic Adaptation of Refugees." *International Migration Review* 43(2): 332-365.

Book Chapters (Peer Reviewed)

1. **Allen, Ryan**, Scott Chazdon, Barbara Radke, and Tobias Spanier. 2012. "Ready to Vision? Evidence from Social Capital Assessments in Four Minnesota Towns." *Community Visioning Programs: Processes and Outcomes*, pp. 53-73, Norman Walzer and Gisele F. Hamm, eds. New York: Routledge Press.

Manuscripts Currently in Development

1. **Allen, Ryan** and Jueyu Wang. 2019. "Driving and Unauthorized Immigrants in the U.S."

2. Van Riper, David, **Ryan Allen**, and Scott Dallman. 2019. "Race, Socioeconomic Status and the First Public Housing Residents of the United States."

3. **Allen, Ryan**. 2017. "Religious and Ethnic Residential Segregation in Sydney, Australia."

4. **Allen, Ryan**. 2017. "Legal Status and Housing Cost Burden for Immigrants in the U.S."

5. **Allen, Ryan**. 2015. "The Historical and Contemporary Access to Public Housing by Immigrants in the U.S."

Book Reviews

1. **Allen, Ryan**. 2017. Review of *Global Migration: The Basics* (Bernadette Hanlon and Thomas J. Vicino), *Journal of Planning Education and Research* 37(2): 260-262.

2. **Allen, Ryan**. 2016. Review of *Immigrant Experiences in North America: Understanding Settlement and Integration* (Harald Bauer and John Shields, eds.), *Ethnic and Racial Studies* 39(13): 2418-2420.

3. **Allen, Ryan**. 2012. Review of *Derelict Paradise: Homelessness and Urban Development in Cleveland, Ohio* (Daniel R. Kerr), *Ethnic and Racial Studies* 35(2): 362-363.

Other Professional Publications

1. **Allen, Ryan** and Goetz, Edward G. 2019. "Public Housing Is Suffering from a Lack of Funding, Not an Overflow of Immigrants." Op-ed, July 10, *Los Angeles Times* (https://www.latimes.com/opinion/op-ed/la-oe-allen-goetz-hud-public-housing-immigrants-20190710-story.html)

2. **Allen, Ryan**. 2017. "Immigrants and Minnesota's Workforce." January, University Economic Development, Office of the Vice President of Research, University of Minnesota. (https://drive.google.com/file/d/0B7644h9N2vLcdkk3WUFFeVNYZGM/view)

3. Colburn, Gregg and **Ryan Allen**. 2017. "After the Great Recession, Many Low and Middle-Income Households Are Struggling to Pay the Rent." USApp – American Politics and Policy Blog, The London School of Economics and Political Science. (http://eprints.lse.ac.uk/69329/)

4. **Allen, Ryan**. 2016. "The Future of Immigration Policy during the Trump Administration." Commentary, November 30, Humphrey School of Public Affairs (https://www.hhh.umn.edu/news/associate-professor-ryan-allen-immigration-policy-under-trump-administration).

5. **Allen, Ryan**. 2015. "What Obstacles Will Syrian Refugees Face in Coming to the US?" Commentary, November 11, Minnesota Public Radio News (http://blogs.mprnews.org/todays-question/2015/11/what-obstacles-will-syrian-refugees-face-in-coming-to-the-u-s/).

6. **Allen, Ryan**. 2013. "At Minneapolis City Hall, a Fresh (and Familiar) Story." Commentary, November 13, *Star Tribune* (op-ed piece commenting on the election of three immigrants to the Minneapolis City Council, http://www.startribune.com/at-minneapolis-city-hall-a-fresh-and-familiar-story/231816191/).

7. Chazdon, Scott, **Ryan Allen**, Jody Horntvedt, and Donna Rae Scheffert. 2013. "Developing and Validating University of Minnesota Extension's Social Capital Model and Survey." Center for

Community Vitality: University of Minnesota, 12 pp. (http://www.extension.umn.edu/community/research/docs/Validating-Social-Capital-Report.pdf)

8. Radke, Barb, Lisa Hinz, Jody Horntvedt, Scott Chazdon, Mary Ann Hennen, and **Ryan Allen**. 2012. "Civic Engagement: ResourceFULL Decisions and Collective Action on Public Issues." Center for Community Vitality: University of Minnesota, 2 pp. (http://www.extension.umn.edu/community/civic-engagement/engage-citizens-decisions/docs/civic-engagement-ataglance.pdf)

9. **Allen, Ryan**. 2011. "The Unraveling of the American Dream." *CURA Reporter* 41(1): 3-11.

10. **Allen, Ryan** and Eric Tollefson. 2010. "Urban Growth in the Context of Evolving Political Economy: The Case of Beijing," Urban Planning Case Study for use in PA 5004, Introduction to Urban and Regional Planning, Humphrey School of Public Affairs, University of Minnesota, 42 pp.

11. **Allen, Ryan**. 2006. "Employment and Earnings Outcomes of Recently Arrived Refugees in Portland, Maine," Report to the Maine Department of Labor, 121 pp, November 2006.

12. Amulya, Joy, Christie O.Connor, Cesar McDowell, and **Ryan Allen**. 2004. "Vital Difference: The Role of Race in Building Community," The Center for Reflective Community Practice, Massachusetts Institute of Technology, 47 pp.

13. **Allen, Ryan**, Barry Bluestone, Bonnie Heudorfer, and Gretchen Weismann. 2002. "The Greater Boston Housing Report Card 2002," The Center for Urban and Regional Policy, Northeastern University, 58 pp, October 2002.

14. Bluestone, Barry, Jerold Kayden, **Ryan Allen**, and Nicole Lindstrom. 2002. "The Impact of Cambridge Office Development on Cambridge Housing Prices," Report to the City of Cambridge, The Center for Urban and Regional Policy, Northeastern University, 18 pp, July 2002.

15. Liner, E. Blaine, Harry Hatry, Elisa Vinson, **Ryan Allen**, Pat Dusenbury, Scott Bryant, and Ron Snell. 2001. *Making Results-Based Government Work*, Washington, DC: The Urban Institute, 150 pp.

16. Kornblum, William, Christopher Hayes, and **Ryan Allen**. 2001. "The Public Use of Urban Parks: A Methods Manual for Park Managers and Community Leaders," Report to the Lila-Wallace Reader's Digest Fund Urban Parks Initiative, Washington, DC: The Urban Institute, 70 pp, July 2001.

Refereed Conference Presentations
(* denotes presenter for co-authored presentations)

1. Van Riper, David*, **Ryan Allen** and Scott Dallman. "Race, Socioeconomic Privilege, and the First Public Housing Residents in the US." Population Association of America Annual Meeting, Austin, TX, April 11, 2019.

2. **Allen, Ryan*** and Jueyu Wang. "Driving and Undocumented Immigrants in the U.S." Urban Affairs Association Annual Meeting, Los Angeles, CA, April 25, 2019.

3. **Allen, Ryan*** and David Van Riper. "Race, Socioeconomic Privilege, and the First Public Housing Residents in the US." Association of Collegiate Schools of Planning Annual Meeting, Buffalo, NY, October 26, 2018.

4. **Allen, Ryan*** and David Van Riper "The New Deal, Legislative Intent and the First Public Housing Residents in New York City," International Association for China Planning Annual Meeting, Xi'an, China, July 1, 2018.

5. **Allen, Ryan*** and David Van Riper. "The New Deal, Legislative Intent and the First Public Housing Residents in New York City." Social Science Historical Association Annual Conference, Montreal, QC, November 3, 2017.

6. **Allen, Ryan*** and David Van Riper. "The New Deal, Legislative Intent and the First Public Housing Residents in New York City." Association of Collegiate Schools of Planning Annual Meeting, Denver, CO, October 12, 2017.

7. **Allen, Ryan**. "The Role of Legal Status on Rent Burden for Immigrants in the U.S." Association of Collegiate Schools of Planning Annual Meeting, Portland, OR, November 5, 2016.

8. **Allen, Ryan**. "The Historical and Contemporary Access to Public Housing by Immigrants in the U.S." Immigrant America Conference: New Immigration Histories from 1965 to 2015, Minneapolis, MN, October 23, 2015.

9. Slotterback, Carissa Schively* and **Ryan Allen**. "Public Engagement Strategies to Build Capacity in Diverse Communities." Urban Affairs Association Annual Meeting, Miami, FL, April 10, 2015.

10. **Allen, Ryan*** and Carissa Schively Slotterback. "Building Immigrant Engagement Practice in Planning: The Case of Somali Immigrants in the Twin Cities." Urban Affairs Association Annual Meeting, Miami, FL, April 10, 2015.

11. Rugh, Jacob*, **Ryan Allen**, Conrad Ashby, and Alejandra Bradford. "Latino Disparities in Foreclosure: Using Ordinal Data to Reconsider Cultural Affinity as Structural Disadvantage." Urban Affairs Association Annual Meeting, Miami, FL, April 9, 2015.

12. **Allen, Ryan**. "What Explains the Resolution of Property Tax Delinquency Prior to Forfeiture? Evidence from Hennepin County, Minnesota." Urban Affairs Association Annual Meeting, San Antonio, TX, March 20, 2014.

13. Busse, Erika*and **Ryan Allen**. "Midtown, Where Cultures Meet: Really?" American Sociological Association, New York, NY, August 12, 2013.

14. **Allen, Ryan**. "Urban Planners and Immigrant Communities." Association of Collegiate Schools of Planning and Association of European Schools of Planning Joint Congress, Dublin, Ireland, July 15, 2013.

15. **Allen, Ryan*** and Erika Busse. "The Social Role of Immigrant Entrepreneur Spaces." Urban Affairs Association Annual Meeting, San Francisco, CA, April 6, 2013.

16. **Allen, Ryan*** and Erika Busse."The Social Role of Immigrant Entrepreneurs and Entrepreneurial Spaces." Association of Collegiate Schools of Planning Annual Meeting, Cincinnati, OH, November 3, 2012.

17. Busse, Erika* and **Ryan Allen**. "Building an Ethnic Community Identity? Latino Entrepreneurs in Minneapolis." Midwest Sociological Society Annual Conference, Minneapolis, MN, March 31, 2012.

18. **Allen, Ryan**. "The Effect of the Housing Crisis on Neighborhood Problems." Association of Collegiate Schools of Planning Annual Meeting, Salt Lake City, UT, October 14, 2011.

19. **Allen, Ryan**. "Post-Foreclosure Household Mobility Patterns: Evidence from Minneapolis, Minnesota." Association of Collegiate Schools of Planning Annual Meeting, Minneapolis, MN, October 9, 2010.

20. **Allen, Ryan**. "The Unraveling of the American Dream: Foreclosures in the Immigrant Community of Minneapolis." Association of Collegiate Schools of Planning Annual Meeting, Crystal City, VA, October 3, 2009.

21. **Allen, Ryan**. "The Unraveling of the American Dream: Foreclosures in the Immigrant Community of Minneapolis," American Association of Geographers Annual Meeting, Las Vegas, NV, March 24, 2009.

22. **Allen, Ryan**. "The Unraveling of the American Dream: Foreclosures in the Immigrant Community of Minneapolis." Urban Affairs Association Annual Meeting, Chicago, IL, March 5, 2009.

23. **Allen, Ryan**. "Immigration in the Heartland: Extension and Diverse Populations." University of Minnesota Extension Service Annual Conference, Duluth, MN, October 22, 2008.

24. **Allen, Ryan*** and Edward G. Goetz. "The Effects of Involuntary Relocation on Foreign Born and Native Born Public Housing Residents." Association of Collegiate Schools of Planning – Association of European Schools of Planning Joint Annual Meeting, Chicago, IL, July 10, 2008.

25. **Allen, Ryan**. "The Bonding and Bridging Roles of Religious Institutions for Refugees." Urban Affairs Association Annual Meeting, Baltimore, MD, April 24, 2008.

26. **Allen, Ryan**. "Benefit, Burden or Both? The Effect of Co-Ethnic Social Capital on Refugee Earnings," Urban Affairs Association Annual Meeting, Seattle, WA, April 26, 2007.

Other Conference Participation

1. **Allen, Ryan**, Jack DeWaard, and Erika Lee. "Migration and Migrants in Terrifying Times," Midwest Sociological Society Annual Meeting, Minneapolis, Minnesota. March 23, 2018.

2. **Allen, Ryan**. "Building Immigrant Engagement Practice in Planning: The Case of Somali Immigrants in the Twin Cities." Journalism and Refugees: Media coverage and public discourses about refugees' flows and integration in the European Union and the Americas, School of Journalism and Mass Communication, University of Minnesota. Minneapolis, MN, November 10, 2017.

3. **Allen, Ryan**. "An Assessment of the 1965 Immigration Act and the Future of Immigration Policy in the U.S." Panel Chair, featuring Douglas Massey, Charles Hirschman, Guillermina Jasso, and Douglas Hartmann as panelists. Immigrant America Conference: New Immigration Histories from 1965 to 2015. Minneapolis, MN, October 23, 2015.

4. **Allen, Ryan**. "Engaging Stakeholders through Effective Strategic Planning." National Association of Schools of Public Affairs and Administration, Austin, TX, October 19, 2012.

5. **Allen, Ryan**. "From Counter-Culture to Multi-Cultural: The Cedar-Riverside Neighborhood of Minneapolis." Mobile Tour Organizer and Leader, Association of Collegiate Schools of Planning Annual Meeting, Minneapolis, MN, October 8, 2010.

6. **Allen, Ryan**. "Foreclosure Policy in Central City Neighborhoods." Panel Participant, Association of Collegiate Schools of Planning Annual Meeting, Minneapolis, MN, October 8, 2010.

7. **Allen, Ryan**. "Community Development, Faith and Education." Panel Moderator/Discussant, Association of Collegiate Schools of Planning Annual Meeting, Minneapolis, MN, October 10, 2010.

8. **Allen, Ryan** and Jody Horntvedt. "Assessing Social Capital in Rural Communities." National Association of Community Development Extension Professionals Annual Conference, Minneapolis, MN, April 13, 2010.

9. **Allen, Ryan**. "Participation: Access and Community Capacity." Panel Moderator/Discussant, Association of Collegiate Schools of Planning Annual Meeting, Crystal City, VA, October 4, 2009.

10. **Allen, Ryan**. "Parental Leave Issues in the Planning Academy." Panel Participant, Association of Collegiate Schools of Planning Annual Meeting, Crystal City, VA, October 2, 2009.

Invited Presentations

1. **Allen, Ryan**. "Immigrants and Minnesota's Workforce: An Economic Imperative for Policy Reform." Southeast Minnesota Workforce Development Board, State of the Workforce Conference, January 11, 2019.

2. **Allen, Ryan.** "Immigrants and Minnesota's Workforce," Regional Economics Conference: Immigration and the Ninth District, Federal Reserve Bank of Minneapolis. November 13, 2018.

3. **Allen, Ryan.** "Immigrants and Minnesota's Workforce," Hennepin University Partnership. November 8, 2018.

4. **Allen, Ryan.** "Changing Demographics, Religious Diversity and Land Use in the U.S." Federal Religious Land Use Protections Panel, U.S. Attorney's Office, Minneapolis, MN. September 20, 2018.

5. **Allen, Ryan.** "What Part of Labor Shortage Do You Not Understand? Immigrants and Minnesota's Workforce," Race, Indigeneity, Gender & Sexuality Studies (RIGS) Immigration Teach-In. September 14, 2018.

6. **Allen, Ryan.** "Immigration Policy in the Age of Trump," Beyond the Beltway: Embassy of the Netherlands, Minneapolis, Minnesota. August 28, 2018.

7. **Allen, Ryan.** "Immigration Policy in the Age of Trump," World Press Institute, Minneapolis, Minnesota. August 17, 2018.

8. **Allen, Ryan.** "Policy Implications of Projected Demographic Change in the U.S.," The Bowhay Institute for Legislative Leadership Development, The Council of State Governments, Center for Politics and Governance, Minneapolis, Minnesota. August 11, 2018.

9. **Allen, Ryan** and Jueyu Wang. "The Relationship between Immigrant Legal Status and Travel Behavior in the U.S.," Northwest University, Xi'an, China. July 3, 2018.

10. **Allen, Ryan** and David Van Riper. "The New Deal, Legislative Intent and the First Public Housing Residents in New York City," Harbin Institute of Technology, Harbin, China. June 28, 2018.

11. **Allen, Ryan** and Jueyu Wang. "The Relationship between Immigrant Legal Status and Travel Behavior in the U.S.," Harbin Institute of Technology, Harbin, China. June 26, 2018.

12. **Allen, Ryan.** "The Urban and Regional Planning Program at the Humphrey School of Public Affairs," Harbin Institute of Technology, Harbin, China. June 25, 2018.

13. **Allen, Ryan.** "Immigration Trends in Minnesota," Immigration Roundtable Discussion, Detroit Revitalization Fellows, Minneapolis, Minnesota. May 8, 2018.

14. **Allen, Ryan**. "The Promise and Success of the Community Land Trust Model." Minnesota Community Land Trust Summit, St. Paul, MN, April 11, 2018.

15. **Allen, Ryan** and Carissa Schiveley Slotterback. "Building Immigrant Engagement Practice in Planning: The Case of Somali Immigrants in the Twin Cities," University of Minnesota - Duluth, Geography Department, Duluth, Minnesota. March 30, 2018.

16. **Allen, Ryan**. "The Urban and Regional Planning Program at the Humphrey School of Public Affairs," University of Minnesota - Duluth, Duluth, Minnesota. March 30, 2018.

17. **Allen, Ryan**. "The First Public Housing Residents of New York City," Admitted Student Open House, Humphrey School of Public Affairs, Minneapolis, Minnesota. March 26, 2018.

18. **Allen, Ryan**. "Immigrants and Minnesota's Workforce," Association of Minnesota Counties Legislative Conference, Association of Minnesota Counties, St. Paul, Minnesota. March 1, 2018.

19. **Allen, Ryan.** "The Political and Legal Realities of DACA in the Age of Trump," DACA Roundtable Discussion, JAMF Software, Minneapolis. (March 1, 2018).

20. **Allen, Ryan**. "International Partnerships and Practice Opportunities at the Humphrey School of Public Affairs." Sun Yat-sen University, Guangzhou, China, December 8, 2017.

21. **Allen, Ryan**. "Immigration and Minnesota's Workforce." Association of Minnesota Counties, Fall Policy Conference, Breezy Point, MN, September 14, 2017

22. **Allen, Ryan**. "Religious and Ethnic Residential Segregation in Western Sydney." Blacktown Council, Blacktown, NSW, Australia, June 5, 2017.

23. **Allen, Ryan**. "The Trump Administration's Immigration Policies and Urban Planning in the U.S." City Futures Research Centre, University of New South Wales, Sydney, NSW, Australia, February 24, 2017.

24. **Allen, Ryan**, Lori Hendrickson, Mary Jo Katras, and Ryan Pesch. "The Housing Cost Crisis and Consequences for Renters in our Communities." Webinar for Minnesota Extension, University of Minnesota, December 6, 2016.

25. Schwartz, Eric, **Ryan Allen**, Art Rolnick, Christina Ewig, Anu Ramaswami, and Ragui Assaad. "Policy Changes in the Trump Administration." Humphrey School of Public Affairs, University of Minnesota, November 30, 2016.

26. **Allen, Ryan**. "The Somali Diaspora Project: A Critical Review of Qualitative Methods." Guest lecturer in PA 5041, Qualitative Methods for Policy Analysis, University of Minnesota, September 28, 2016.

27. **Allen, Ryan**. "American Immigration Policy: A Local and National Perspective." Standing Committee on Local Government and Public Administration, Norwegian Parliament, Humphrey School of Public Affairs, University of Minnesota, September 21, 2016.

28. **Allen, Ryan** and Fernando Burga. "Considering Race in Urban Planning." Diversity and Equity Staff Training, Metropolitan Council, Humphrey School of Public Affairs, University of Minnesota, August 4, 2016.

29. **Allen, Ryan** and Fernando Burga. "Considering Race in Urban Planning." Diversity and Equity Staff Training, Metropolitan Council, Humphrey School of Public Affairs, University of Minnesota, August 1, 2016.

30. **Allen, Ryan**. "The Distribution and Evolution of Physical Neighborhood Problems during the Great Recession." Institute of Real Estate Studies, Tsinghua University, June 22, 2016.

31. **Allen, Ryan**. "The Relationship between Residential Foreclosures, Race, Ethnicity, and Nativity Status." School of Social Development and Public Policy, Beijing Normal University, June 20, 2016.

32. **Allen, Ryan**. "The Distribution and Evolution of Physical Neighborhood Problems during the Great Recession." College of Architecture and Urban Planning, Tongji University, June 16, 2016.

33. **Allen, Ryan**. "Somali Diaspora: The Minnesota Experience." Minnesota Extension Staff Conference, Minnesota Landscape Arboretum, May 19, 2016.

34. **Allen, Ryan**. "The Historical and Contemporary Access to Public Housing by Immigrants in the U.S." Freeman Seminar Series, University of Minnesota, February 23, 2016.

35. **Allen, Ryan**. "The Somali Diaspora Project: A Critical Review of Qualitative Methods." Guest lecturer in PA 5041, Qualitative Methods for Policy Analysis, University of Minnesota, November 23, 2015.

36. **Allen, Ryan**. "Somali Diaspora: The Minnesota Experience." Minnesota Extension Program Conference, Bloomington, MN, October 6, 2015.

37. **Allen, Ryan**. "U.S. Immigration Policy Reform as a Social Justice Imperative." Speaker Day 2015, St. Paul Academy, St. Paul, MN, March 6, 2015.

38. **Allen, Ryan**. "Tax Delinquent and Tax Forfeited Properties in Hennepin County." Hennepin County Commissioners Meeting, Minneapolis, MN, January 15, 2015.

39. **Allen, Ryan**. "U.S. Immigration Policy Reform as a Social Justice Imperative." Westminster Presbyterian Church Social Justice Forum, Minneapolis, MN, September 28, 2014.

40. **Allen, Ryan**. "Strategic Planning to Enhance Diversity in Graduate Schools of Urban Planning." Association of Collegiate Schools of Planning Administrator's Meeting, Columbus, OH, November 14, 2013.

41. **Allen, Ryan**. "The Somali Diaspora's Role in Somalia: Implications of Return." Humphrey School Advisory Council Meeting, November 5, 2013.

42. **Allen, Ryan**. Humphrey International Fellows Seminar Series, Respondent to "Housing Issues in Montenegro," by Suzana Miljevic, Minneapolis, MN, October 4, 2013.

43. **Allen, Ryan**. "The Implications of State Demographic Change for Minnesota Extension." Webinar for University of Minnesota Extension's New Employee Orientation, St. Paul, MN, June 6, 2013.

44. **Allen, Ryan**. "Pitfalls and Promises of Incorporating Service Learning into Classroom Instruction." Community-Service Learning Center, Urban Research and Outreach-Engagement Center – University of Minnesota, Minneapolis, MN, May 22, 2013.

45. **Allen, Ryan**. "The Social Role of Immigrant Entrepreneur Spaces." Institute for Diversity, Equity, and Advocacy (IDEA) at the University of Minnesota's Office for Equity and Diversity, Minneapolis, MN, April 26, 2013.

46. **Allen, Ryan** and Jeff Strand. "Tax Delinquency and Forfeiture in Hennepin County, Minnesota." Hennepin University Partnership, Minneapolis, MN, March 29, 2013.

47. **Allen, Ryan**. "The Social Role of Immigrant Entrepreneur Spaces." Global Race, Ethnicity and Migration Seminar Series, Immigration History Research Center (IHRC), University of Minnesota, Minneapolis, MN, March 12, 2013.

48. **Allen, Ryan**. "The Implications of State Demographic Change for Minnesota Extension." Minnesota Extension Program Conference, Bloomington, MN, October 9, 2012.

49. **Allen, Ryan**. "The Multiracial Marketplace and the Effects of Changing Demographics on the U.S. Economy." Panel Participant, YWCA Racial Justice Program, Minneapolis, MN, October 19, 2010.

50. **Allen, Ryan**. "Household Resettlement Patterns Following Residential Foreclosures: Evidence from Minneapolis." Sociology Workshop Series, University of Minnesota, April 13, 2010.

51. **Allen, Ryan**. "The Impact of Foreclosures on Minority Communities." Executive Leadership Institute (National Forum for Black Public Administrators), University of Minnesota, Minneapolis, MN, October 22, 2009.

52. **Allen, Ryan**. "Latino Immigration, Social Capital and Entrepreneurship." Town Craft Center, Iowa State University, Perry, IA, September 23, 2009.

53. **Allen, Ryan**. "The Unraveling of the American Dream: Foreclosures in the Immigrant Community of Minneapolis." American Planning Association (Minnesota Chapter) Annual Conference, Brooklyn Park, MN, September 17, 2009.

54. **Allen, Ryan**. "The Unraveling of the American Dream: Foreclosures in the Immigrant Community of Minneapolis." HIRED Annual Staff Meeting, Bloomington, MN, July 31, 2009.

55. **Allen, Ryan**. "The Unraveling of the American Dream: Foreclosures in the Immigrant Community of Minneapolis." National Neighborhood Indicators Project (The Urban Institute), Minneapolis, MN, May 14, 2009.

56. **Allen, Ryan**. "The Benefits and Burdens of Social Capital." Keynote Speaker at the North Central Region Urban Extension Conference, Milwaukee, WI, May 6, 2009.

57. **Allen, Ryan**. "The Unraveling of the American Dream: Foreclosures in the Immigrant Community of Minneapolis." Institute for Advanced Studies, University of Minnesota, Minneapolis, MN, April 20, 2009.

58. **Allen, Ryan**. "A Discussion of Richard Alba's Bright vs. Blurred Boundaries." Perspectives on Public Affairs, University of Minnesota, Minneapolis, MN, April 14, 2009.

59. **Allen, Ryan**. "Racism vs. Xenophobia: A Transatlantic Perspective." Moderator with Ruth Wodak (Lancaster University) and Michele Lamont (Harvard University), University of Minnesota, Minneapolis, MN, March 13, 2009.

60. **Allen, Ryan**. "The Unraveling of the American Dream: Foreclosures in the Immigrant Community of Minneapolis." Research, Evaluation and Assessment Division of Minneapolis Public Schools, Minneapolis, MN, March 10, 2009.

61. **Allen, Ryan**. "The Unraveling of the American Dream: Foreclosures in the Immigrant Community of Minneapolis." Minnesota Housing Finance Agency, St. Paul, MN, February 23, 2009.

62. **Allen, Ryan**. "The Unraveling of the American Dream: Foreclosures in the Immigrant Community of Minneapolis." Center for Urban and Regional Affairs Housing Forum, University of Minnesota, Minneapolis, MN, February 20, 2009.

63. **Allen, Ryan**. "The Unraveling of the American Dream: Foreclosures in the Immigrant Community of Minneapolis." Minnesota State Demographic Center, St. Paul, MN, February 19, 2009.

64. **Allen, Ryan**. "The Impact of Mortgage Foreclosures on the Immigrant Population of Minneapolis." Minnesota Population Center Fall Speaker Series, University of Minnesota, Minneapolis, MN, October 27, 2008.

65. **Allen, Ryan**. "Immigration in the Heartland: Latinos in Minnesota." American Democracy Project Speaker Series, Winona State University, Winona, MN, March 25, 2008.

66. **Allen, Ryan**. "Demographic and Economic Trends in the Rural Midwest," North Central Community Resources and Economic Development Planning Roundtable, Iowa State University, Perry, IA, February 25, 2008.

67. **Allen, Ryan**. "Refugee Employment: A Review of Emerging Research." Employment Training Institute: International Refugee Employment Trends, RefugeeWorks, Lutheran Immigration and Refugee Service, Providence, RI, April 17, 2007.

68. **Allen, Ryan**. "Refugee Employment: A Review of Emerging Research." Employment Training Institute: International Refugee Employment Trends, RefugeeWorks, Lutheran Immigration and Refugee Service, Baltimore, MD, May 24, 2006.

69. **Allen, Ryan.** "Refugee Employment: A Review of Emerging Research." Employment Training Institute: International Refugee Employment Trends, RefugeeWorks, Lutheran Immigration and Refugee Service, Austin, TX, February 23, 2006.

70. **Allen, Ryan.** "Economic Outcomes for Recently Arrived Refugees in Portland, Maine." The Maine Office of Multicultural and Immigrant Affairs and the Office of the Governor, Augusta, ME, July 26, 2006.

71. **Allen, Ryan.** "Constraints and Opportunities of Social Capital: The Case of Refugees in Portland, Maine." The Migration Immigrant Incorporation Workshop, Sociology Department, Harvard University, Cambridge, MA, April 12, 2006.

TEACHING

University of Minnesota, Graduate Instruction

PA 5004 Introduction to Urban and Regional Planning
PA 5042 Urban Economics
PA 5281 Immigrants, Urban Planning and Policymaking in the US
PA 8081 Urban Planning Capstone: Planning and Policymaking in Diverse Contexts

Massachusetts Institute of Technology, Graduate Instruction

11.203 Microeconomics (Teaching Assistant)
11.202 Planning Economics (Teaching Assistant)
11.945 Urban Design Studio: Urban Planning in a Diverse Context (Teaching Assistant)
11.201 Gateway: Planning Action (Teaching Assistant)

University of Minnesota, Undergraduate Instruction

PA 4200 Introduction to Urban and Regional Planning
Global Transit Innovations (GTI) Program, Introduction to Urban and Regional Planning

Faculty Development Teaching Activities

Early Career Teaching Program, Center for Teaching and Learning, University of Minnesota, 2011-2012

Graduate Student Writing Workshop, Center for Writing, University of Minnesota, October 13, 2010

SERVICE AND PUBLIC OUTREACH

Professional Service

Referee:
Community Development
Ethnic and Racial Studies
Housing Policy Debate
Housing Studies
International Migration Review

Journal of Criminal Justice
Journal of Planning Education and Research
Journal of Urban Affairs
Qualitative Sociology
Sociological Focus
Social Forces
Sociological Quarterly
Urban Affairs Review
Russell Sage Foundation
National Science Foundation

Urban Affairs Association, 2017 Local Host Program Committee

Population Association of America, 2015 Annual Meeting Program Committee
Migration and Urbanization Sub-Committee Member

University of Minnesota Service

Selection Committee Member, President's Community-Engaged Scholar Award, University of Minnesota, 2019

Human Rights Faculty Committee Member, Human Rights Program, 2018-present

Population Minor Faculty Promotion and Evaluation Guidelines, Working Group Member, Minnesota Population Center, 2013

Minnesota Population Center Cluster Hire Search Committee Member, Minnesota Population Center, 2012-2013

Advisory Council Member, Immigration History Research Center, 2010-present

Advisory Board Member (elected), Minnesota Population Center, 2009-2012, 2018-2019

Advisory Board Member, Housing Studies (Department of Design, Housing, and Apparel), 2009-2010

Humphrey School Service

Environmental Planning Faculty Search Committee, Chair, 2018

Urban and Regional Planning Program Strategic Planning Process, Chair, 2017

Humphrey School of Public Affairs Executive Council (elected), 2015-2017

Admissions Committee, Committee Member, 2015-2018

Curriculum Committee, Committee Member, 2015-2019

Merit Review Committee, Committee Member (2017-2019) and Chair (2019-2020)

Faculty Mentor (Fernando Burga), 2015-present

Humphrey School-Minnesota Extension Community Engagement Faculty Search Committee, Co-Chair, 2014-2015

Diversity Paper Award, Committee Member, 2014

Einsweiler Paper Award, Committee Member, 2011 and 2014

Planning Student Organization Faculty Liaison, 2012-present

Diversity Committee Member (2011-2013) and Co-chair (2013-2014)

One Humphrey One Community working group of the Humphrey School Diversity Committee, Co-chair, 2011-2013

Humphrey School Diversity Strategic Planning Process, Co-chair, 2011-2012

Housing and Community Development Concentration Head, 2009-present

Fellows Merit Review Committee, Member, 2009

Minnesota Extension Service

Strategic Planning Committee Member, Minnesota Extension, 2018-2019

Civic Engagement Curriculum Team, Leadership and Civic Engagement, Minnesota Extension Center for Community Vitality, 2013-present

Leadership and Civic Engagement Extension Educator Search Committee Member, Minnesota Extension Center for Community Vitality, 2012, 2014 and 2016

Center for Community Vitality Promotion Review Committee, Member, Minnesota Extension, 2012-2013

Multicultural Literacy Work Team, Member, Leadership and Civic Engagement, Minnesota Extension Center for Community Vitality, 2010-2012

Theory of Change Work Team, Member, Minnesota Extension Center for Community Vitality, 2010

Instructor, Theory of Civic Engagement Professional Development Opportunity, Minnesota Extension, Center for Community Vitality, January 14 2009- January 16, 2009

Community Service

Board Member and Secretary, Northcountry Cooperative Foundation, Minneapolis, MN, 2017-present

Member, Housing Research Group, *Minneapolis 2040* Comprehensive Planning Process, City of Minneapolis, Community Planning and Economic Development, 2016.

Allen, Ryan. "The Housing Crisis and the National Economy." Jefferson Center Citizen's Jury on the U.S. Economy and Federal Debt, St. Louis Park, MN, May 18, 2012.

Allen, Ryan. "Foreclosure Moratorium and Neighborhood Stabilization." Speaking on behalf of the Minnesota Coalition for a People's Bailout, Minnesota State Legislature, St. Paul, MN, March 7, 2012.

Allen, Ryan. "The Impact of Foreclosures on Minority Communities." Labor and Consumer Protection Division of the Commerce and Labor Committee, Minnesota State House of Representatives, March 20, 2009.

Board Member, Linden Hills Food Cooperative, Minneapolis, MN, 2009-2010

MEDIA APPEARANCES

"New U of M study seeks to improve economic development in Greater Minnesota." KSTP-ABC Affiliate, December 21, 2018 (https://kstp.com/news/new-u-of-m-study-seeks-to-improve-economic-development-in-greater-minnesota/5188108/)

"Immigrants play key role in Minnesota's future workforce." *St. Cloud Times*, November 16, 2018 (https://www.sctimes.com/story/news/2018/11/16/immigration-labor-minnesota-future-workforce-ron-johnson-federal-reserve-trump/1989106002/)

"Human capital, demographics, economic growth, and immigrants." *FedGazette*, November 14, 2018 (https://www.minneapolisfed.org/publications/fedgazette/human-capital-demographics-economic-growth-and-immigrants)

"Some Republican candidates want to suspend refugee resettlement in Minnesota. Can they do that?" *Pioneer Press*, November 3, 2018 (https://www.twincities.com/2018/11/03/republican-candidates-jeff-johnson-jim-newberger-hagedorn-want-to-suspend-mn-refugee-resettlement/)

"On immigration, guv candidates Walz and Johnson 'fundamentally disagree' on policy priorities." *MinnPost*, August 29, 2018 (https://www.minnpost.com/politics-policy/2018/08/immigration-guv-candidates-walz-and-johnson-fundamentally-disagree-policy-pr/)

"New data reveals a drastic drop in U.S. refugee resettlement. Here's why it matters." *Deseret News*, July 19, 2018 (https://www.deseretnews.com/article/900025239/new-data-reveals-a-drastic-drop-in-us-refugee-resettlement-heres-why-it-matters.html)

"Echoing Trump's emphasis, former Gov. Tim Pawlenty focuses on immigration in bid for old job." *Star Tribune*, July 14, 2018 (http://www.startribune.com/echoing-trump-s-emphasis-former-gov-tim-pawlenty-focuses-on-immigration-in-bid-for-old-job/488199891/)

"Catholic Charities of St. Paul and Minneapolis cuts refugee resettlement, adoption programs." *Star Tribune*, May 3, 2018 (http://www.startribune.com/catholic-charities-of-st-paul-and-minneapolis-cuts-refugee-resettlement-adoption-programs/481538461/)

"Worthington undercount a real possibility in 2020 census." *The Worthington Globe*, April 4, 2018. (https://www.dglobe.com/news/government-and-politics/4426710-worthington-undercount-real-possibility-2020-census)

"Job skills with a foreign accent." *Fedgazette*, January 11, 2018 (https://www.minneapolisfed.org/publications/fedgazette/job-skills-with-a-foreign-accent)

"Why Trump's latest travel ban may stick." *MinnPost*, September 28, 2017 (https://www.minnpost.com/politics-policy/2017/09/why-trump-s-latest-travel-ban-may-stick)

"MN industry leaders want more immigrant workers as restrictive policies loom." *Star Tribune*, September 14, 2017 (https://www.mprnews.org/story/2017/09/14/minnesota-immigrant-workforce)

"Stretched for workers, Minnesota businesses lament immigration pushback." *Star Tribune*, September 5, 2017 (http://www.startribune.com/stretched-for-workers-minnesota-businesses-lament-immigration-pushback/442705443/)

"Former U.S. officials urge balance in refugee cost reports." *Reuters*, August 31, 2017 (https://www.reuters.com/article/us-usa-trump-refugees/former-u-s-officials-urge-balance-in-refugee-cost-reports-idUSKCN1BB1X8)

"The complicated reality behind the story of the Somali community's success in Minnesota." *MinnPost*, August 14, 2017 (https://www.minnpost.com/politics-policy/2017/08/complicated-reality-behind-story-somali-communitys-success-minnesota)

"The unusually popular summer travel spots for each state." *New York Times*, August 3, 2017 (https://www.nytimes.com/interactive/2017/08/03/sunday-review/summer-vacation-travel-destinations.html?_r=2)

"For Minnesota's immigrants, where they come from can impact what jobs they do." *Twin Cities Business*, June 6, 2017 (http://tcbmag.com/news/articles/2017/june/for-minnesota%E2%80%99s-immigrants,-where-they-come-from-c)

"How Minnesota's Success Is Dependent on Immigrants." *Twin Cities Business*, March 31, 2017 (http://tcbmag.com/news/articles/2017/february/how-minnesota%E2%80%99s-success-is-dependent-on-immigrants)

"Refugee resettlement costs rise, but are a small part of Minnesota welfare." *Star Tribune*, March 10, 2017 (http://www.startribune.com/refugee-resettlement-costs-are-up-but-still-a-small-part-of-welfare-programs/415829614/)

"America's Affordable Housing Shortage, Mapped." *CityLab*, March 2, 2017 (https://www.citylab.com/equity/2017/03/americas-affordable-housing-shortage-mapped/518391/)

"Why strict limits on immigration could seriously damage Minnesota's economy." *MinnPost*, February 8, 2017 (https://www.minnpost.com/new-americans/2017/02/why-strict-limits-immigration-could-seriously-damage-minnesota-s-economy)

"Trump's man in Minnesota: Even as his colleagues cry foul over immigration orders, Emmer stays loyal to the administration." *MinnPost*, January 31, 2017 (https://www.minnpost.com/politics-policy/2017/01/trump-s-man-minnesota-even-his-colleagues-cry-foul-over-immigration-orders-e)

"Kaler vows support for undocumented students," *Minnesota Daily*, December 1, 2016 (http://www.mndaily.com/article/2016/12/kaler-responds-to-sanctuary-campus-petition)

"Panel discusses expectations for Trump presidency," Fox 9, November 30, 2016 (http://www.fox9.com/news/220750798-story)

"America's Real Refugee Problem," *The Atlantic*, October 24, 2016 (https://www.theatlantic.com/business/archive/2016/10/the-challenge-of-integrating-americas-refugees/505031/)

"Trump Jr. likens Syrian refugees to poisoned Skittles," KARE-11, September 20, 2016 (http://www.kare11.com/news/trump-jr-likens-syrian-refugees-to-poisoned-skittles/322114108)

"Why do more people move to Houston than Minneapolis?," Minnesota Public Radio, Daily Circuit, April 5, 2016 (http://www.mprnews.org/story/2016/04/06/why-do-more-people-move-to-houston-than-to-minneapolis)

"Minnesota prepares to receive more refugees in 2016," *Star Tribune*, December 29, 2015 (http://m.startribune.com/minnesota-is-gearing-up-to-receive-more-refugees-in-2016/363692201/)

"Will millennials dig Rochester's ambitious downtown plan?," Minnesota Public Radio, November 30, 2015 (http://www.mprnews.org/story/2015/11/30/rochester-millennials-mayo-development)

"Teardowns, 'McMansions' and the changing character of Twin Cities neighborhoods," Minnesota Public Radio, Daily Circuit, September 23, 2015 (http://www.mprnews.org/story/2015/09/23/best-teardowns-mcmansions-and-the-changing-character-of-twin-cities-neighborhoods)

"Syria's Strife Gives Minnesota a Chance to Shine, Says a Former Refugee," *City Pages*, September 21, 2015 (http://www.citypages.com/news/syrias-strife-gives-minnesota-a-chance-to-shine-says-a-former-refugee-7676956)

"As U.S. considers admitting more Syrian refugees, will Minnesota be a top destination?," *MinnPost*, September 17, 2015 (https://www.minnpost.com/dc-dispatches/2015/09/us-considers-admitting-more-syrian-refugees-will-minnesota-be-top-destination)

"Syrian Refugee Crisis," TPT Almanac (with Daniel Wordsworth, American Refugee Committee), September 11, 2015 (http://www.mnvideovault.org/mvvPlayer/customPlaylist2.php?id=28793&select_index=0&popup=yes#1)

"How U.S. regulation may keep remittances from some Somali families," PBS NewsHour, July 18, 2015 (http://www.pbs.org/newshour/bb/u-s-terrorism-policy-keeping-remittances-somali-families/)

"Amid development boom, Rochester worries about affordable housing," Minnesota Public Radio, June 25, 2015 (http://www.mprnews.org/story/2015/06/25/rochester-affordable-housing)

"Tax Delinquent Properties Litter Landscapes of Hennepin County," KTSP News, February 5, 2015 (http://kstp.com/news/stories/S3699256.shtml)

"Pittsburgh's New Immigrants: The Twin Cities diversified with an influx of Hmong, Somali refugees," *Pittsburgh Post-Gazette*, September 28, 2014 (http://www.post-gazette.com/newimmigrants/2014/09/28/Pittsburghs-New-Immigrants-Minneapolis-St-Paul-diversified-with-influx-Hmong-Somali-refugees/stories/201409280003)

"How Diaspora is Changing the Face of Somalia," Minnesota Public Radio, Daily Circuit, April 1, 2014 (http://www.mprnews.org/story/2014/04/01/daily-circuit-somalia-diaspora)

"Warsame to Bring Rising Clout of Minneapolis City Hall," *Star Tribune*, November 17, 2013 (http://www.startribune.com/politics/statelocal/232213411.html?page=1&c=y)

"How Did Warsame Win in a Landslide?" WCCO Early Sunday Morning, November 10, 2013 (http://minnesota.cbslocal.com/video/9512336-how-did-abdi-warsame-win-in-a-landslide/)

"Warsame Makes History on Minneapolis City Council," Minnesota Public Radio, Daily Circuit, November 6, 2013 (http://www.mprnews.org/story/2013/11/06/daily-circuit-warsame-elected)

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"Tough Rental Market Hits Families Hard," *Twin Cities Daily Planet*, March 4, 2009 (http://www.tcdailyplanet.net/article/2009/03/03/tough-rental-market-hits-families-hard.html)

"U of M Study Tells Story of Foreclosed Homeowners," CBS Minnesota WCCO, February 20, 2009 (http://www.tchabitat.org/u-of-m-study-tells-story-of-foreclosed-homeowners-wcco-tv/)

"Who's Getting Hurt? UM Study Crunches the Numbers on Minneapolis Foreclosures," *MinnPost*, February 19, 2009 (http://www.minnpost.com/politics-policy/2009/02/whos-getting-hurt-um-study-crunches-numbers-minneapolis-foreclosures)

"Minnesota's Refugee Communities," The Kojo Nnamdi Show, WAMU-American University Public Radio, September 3, 2008 (http://thekojonnamdishow.org/shows/2008-09-03/minnesotas-refugee-communities)

EXHIBIT B

Table 1: Characteristics of Federally Subsidized Housing Programs

	Public Housing	Housing Choice Vouchers	Project Based Section 8	Summary of All HUD Programs
United States				
Subsidized units available	1,015,505	2,527,803	1,284,354	5,035,824
Total number of residents	1,985,172	5,259,207	2,063,641	9,535,360
People per unit	2.1	2.3	1.7	2.1
Household income per year (mean)	$ 15,183	$ 14,863	$ 12,863	$ 14,347
% very low income (< 50% AMI)	91	95	96	94
Connecticut				
Subsidized units available	14,104	42,329	23,731	82,830
Total number of residents	25,824	87,246	36,173	152,497
People per unit	2.0	2.3	1.6	2.0
Household income per year (mean)	$ 15,986	$ 16,722	$ 15,172	$ 16,090
% very low income (< 50% AMI)	96	96	99	97
New York				
Subsidized units available	200,076	258,322	107,384	592,467
Total number of residents	408,772	526,365	169,931	1,134,562
People per unit	2.2	2.3	1.7	2.1
Household income per year (mean)	$ 22,550	$ 17,318	$ 17,260	$ 19,046
% very low income (< 50% AMI)	87	95	94	92
Vermont				
Subsidized units available	1,291	7,756	3,392	12,866
Total number of residents	2,035	13,589	4,851	20,911
People per unit	1.7	2.0	1.5	1.8
Household income per year (mean)	$ 16,722	$ 15,431	$ 15,624	$ 15,579
% very low income (< 50% AMI)	93	95	93	95
New York City				
Subsidized units available	170,039	146,134	62,785	393,993
Total number of residents	357,293	292,078	106,883	773,577
People per unit	2.2	2.3	1.8	2.1
Household income per year (mean)	$ 23,534	$ 17,830	$ 18,658	$ 20,388
% very low income (< 50% AMI)	87	95	92	91

Note: Picture of Subsidized Housing (POSH), Department of Housing and Community Development, 2018 (https://www.huduser.gov/portal/datasets/assthsg.html).

Table 2: People Living in Households with a Foreign-Born Person, Eligible to Live in Federal Housing (50% AMI), 2017

	Estimate	Lower Bound	Upper Bound
Native-Born Citizen	**7,464,412**	7,334,584	7,594,240
Foreign-Born Naturalized Citizen	**4,409,184**	4,346,268	4,472,100
Foreign-Born Non-Citizen	**6,479,148**	6,371,779	6,586,517
Total	**18,352,744**	18,143,312	18,562,176

Note: Based on author's analysis of 2017 ACS and HUD determined family income limits based on 50% AMI. Steven Ruggles, Sarah Flood, Ronald Goeken, Josiah Grover, Erin Meyer, Jose Pacas and Matthew Sobek. IPUMS USA: Version 9.0 [dataset]. Minneapolis, MN: IPUMS, 2019. https://doi.org/10.18128/D010.V9.0

Table 3: Number and Percent of People Aged 13 to 18 Eligible to Live in Federal Housing Programs (50 Percent AMI), 2017

	Number	Lower Bound	Upper Bound	Percent	Lower Bound	Upper Bound
Age 13	**368,873**	352,100	385,646	**2.0%**	1.9%	2.1%
Age 14	**366,068**	349,473	382,663	**2.0%**	1.9%	2.1%
Age 15	**330,126**	314,863	345,389	**1.8%**	1.7%	1.9%
Age 16	**337,771**	322,407	353,135	**1.8%**	1.8%	1.9%
Age 17	**312,068**	297188.3817	326947.618	**1.7%**	1.6%	1.8%
Age 18	**273,140**	258454.8185	287825.181	**1.5%**	1.4%	1.6%
Total	**1,988,046**	1940189.006	2035902.99	**10.8%**	10.7%	11.0%

Note: Based on author's analysis of 2017 ACS and HUD determined family income limits based on 50% AMI. Steven Ruggles, Sarah Flood, Ronald Goeken, Josiah Grover, Erin Meyer, Jose Pacas and Matthew Sobek. IPUMS USA: Version 9.0 [dataset]. Minneapolis, MN: IPUMS, 2019. https://doi.org/10.18128/D010.V9.0

Table 4: Number of Teenagers in the Department of Homeland Security's Chilling Estimate for the U.S.

	Number	Lower Bound	Upper Bound
Age 13	**507**	484	530
Age 14	**503**	480	526
Age 15	**454**	433	475
Age 16	**464**	443	486
Age 17	**429**	409	450
Age 18	**376**	355	396
Total	**2,733**	2667	2799

Note: Based on the proportion of people from each age group in the population eligible to live in Federal housing programs (Table 3), multiplied by the number of people estimated to live in families that DHS estimates will disenroll from Federal housing programs due to implementation of the Final Rule (25,232).

EXHIBIT 11

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MAKE THE ROAD NEW YORK, AFRICAN SERVICES COMMITTEE, ASIAN AMERICAN FEDERATION, CATHOLIC CHARITIES COMMUNITY SERVICES (ARCHDIOCESE OF NEW YORK), and CATHOLIC LEGAL IMMIGRATION NETWORK, INC.,

Plaintiffs,

vs.

KEN CUCCINELLI, in his official capacity as Acting Director of United States Citizenship and Immigration Services; UNITED STATES CITIZENSHIP & IMMIGRATION SERVICES; KEVIN K. McALEENAN, in his official capacity as Acting Secretary of Homeland Security; and UNITED STATES DEPARTMENT OF HOMELAND SECURITY,

Defendants.

19–cv-07993 (GBD)

DECLARATION OF

LEIGHTON KU, Ph.D., M.P.H.

I, **Leighton Ku**, declare pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. My name is Leighton Ku. I have personal knowledge of and could testify in Court concerning the following statements of fact.

2. I am a Professor of Health Policy and Management and Director of the Center for Health Policy Research at the Milken Institute School of Public Health, George Washington University in Washington, DC. I have attached my Curriculum Vitae as Exhibit A to this Declaration.

3. I am a nationally-known health policy researcher with over 25 years of experience. I have conducted substantial research about immigrant health, and health care and

costs. I have authored or co-authored more than a dozen articles and reports about immigrant health issues, including articles in peer-reviewed journals such as Health Affairs and American Journal of Public Health, as well as scholarly reports published by diverse non-profit organizations including the Social Science Research Network, the Migration Policy Institute, the Cato Institute and the Commonwealth Fund, as well as many more articles and reports on other subjects. I have testified before the U.S. Senate Finance Committee about immigrant health issues and provided analyses and advice to state governments and non-governmental organizations in many states about immigrant health.

4. I have expertise in quantitative data analysis and have conducted quantitative analyses for most of my career, including analyses for a federal agency, two think tanks and now at a university. I have taught statistical analysis and research methods at the graduate school level for over 25 years, training hundreds of graduate students, as well as dozens of federal and state budget and policy analysts. I have authored or co-authored more than 90 papers in peer-reviewed journals and hundreds of other reports, most of which were quantitative analyses. As a quantitative health data analyst I have consulted with the Congressional Budget Office and numerous federal and state agencies.

5. I provided expert declarations about the effects of terminating DACA on health insurance coverage and states in *State of New York, et al. v Trump, et al.*[1] in November 2017 and in *State of Texas v. United States, et al. and Karla Perez, et al.* in June 2018.[2] On September 1, 2019 I provided an expert declaration very similar to the current one regarding the public charge

[1] Declaration of Leighton Ku in *State of New York, et al. v Donald Trump, et al.* in U.S. District Court for the Eastern District of New York. Nov. 22, 2017.

[2] Declaration of Leighton Ku in *State of Texas v. United States of America, et al. and Karla Perez, et al., Defendant-Intervenor* in U.S. District Court for the Southern District of Texas, Brownsville Division, June 14, 2018.

rule in *La Clinica de la Raze, et al, v Donald Trump, et al.,* in the U.S. District Court, Northern District of California..[3] I have not provided testimony in any other court cases in the past four years.

6. I also have knowledge of health insurance and employment through my role as a voluntary (unpaid, appointed) Executive Board member for the District of Columbia's Health Benefits Exchange Authority, which governs the District's health insurance marketplace, formed under the federal ACA. This includes oversight of health insurance for small businesses as well as individual health insurance in the District of Columbia.

7. I have a PhD. in Health Policy from Boston University (1990) and Master of Public Health and Master of Science degrees from the University of California at Berkeley (1979). Prior to becoming a faculty member at George Washington University, I was on the staff of the Urban Institute and the Center on Budget and Policy Priorities.

8. I have been engaged by counsel for the Plaintiffs in this case to evaluate the effect of the new public charge rule on Medicaid enrollment, public health, and health systems.

Overview

9. This declaration examines the potential effects of the final regulation issued by the U.S. Department of Homeland Security (DHS) regarding inadmissibility on public charge grounds on August 14, 2019 ("the public charge rule" or "the rule"),[4] specifically the health

[3] Ku L. Declaration in Support of Plaintiffs' Motion for a Preliminary Injunction, *La Clinica de la Raza, et al. v. Donald Trump, et al.* United States District Court, Northern District of California, September 1, 2019. https://healthlaw.org/resource/declaration-of-leighton-ku-in-la-clinica-de-la-raza-v-trump/.

[4] Department of Homeland Security. Final Regulations: Inadmissibility on Public Charge Grounds. Federal Register. *Federal Register.* Vol. 84, No. 157, pg: 41290-508. Aug. 14, 2019.

consequences and effects of the rule related to the receipt of health insurance benefits under the federal Medicaid[5] program. In this declaration I:

(A) summarize key aspects of the public charge rule,

(B) describe the Medicaid program, and provisions related to lawful immigrants,

(C) demonstrate how the public charge rule will have severe repercussions and create "chilling effects" that cause substantial numbers of members of immigrant families, including citizens in those families, to disenroll or forego Medicaid or other public benefits, even if they are not applying for adjustment in immigration status,

(D) describe serious flaws in estimates by the Department of Homeland Security about the number of members of immigrant families who may forego or drop Medicaid coverage due to the public charge rule,

(E) produce independent, evidence-based analyses and estimate that between 1.0 million and 3.1 million members of immigrant families would drop or forego Medicaid coverage or disenroll due to the public charge rule,

(F) explain the documented benefits of Medicaid coverage and discuss the serious health harms that are likely to befall members of immigrant families, including premature death, due to dropping Medicaid coverage in response to the public charge rule,

[5] Unless otherwise specified, my use of the term "Medicaid" refers only to federally-funded Medicaid which is considered a "public benefit" under the public charge rule.

(G) analyze other consequences of the public charge rule including financial harm to state and local governments, such as New York and California, and to health care providers, such as community health centers and safety net hospitals, and to the patients they serve,

(H) discuss other health-care-related harms from other provisions of the rule, such as provisions related to private health insurance or savings for medical care, and

(I) explain why public charge policies, which rely on current or past characteristics of immigrants, specifically receipt of Medicaid, do not accurately predict immigrants' future economic status.

I conclude that the public charge rule will lead between 1.0 to 3.1 million members of immigrant families, many of whom are United States citizens, to disenroll from or forego Medicaid benefits each year, even though they are eligible. Those harmed are disproportionately low-income members of racial and ethnic minority groups, especially Latino and Asian families, and many have serious chronic health problems. The loss of Medicaid will substantially reduce their ability to access affordable health care and will lead to serious health problems for many, such as diabetics who will no longer be able to afford insulin or other medications or medical services. As a result, there could be as many as 1,300 to 4,000 excess premature deaths per year. The reduction in Medicaid revenue, and subsequent increase in the number of low-income uninsured people will also cause financial harm to health care providers, especially safety net facilities like community health centers and safety net hospitals, as well as to local and state governments.

A. Summary of the Revised Public Charge Rule

10. Section 531 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) included five criteria that could be considered when making public charge determinations for admissibility to the United States, approval of lawful permanent residency (LPR) or other adjustments of immigration status: age; health; family status; assets, resources and financial status; and education and skills.[6] In 1999, the Immigration and Naturalization Service (INS), which oversaw the immigration system at the time, specified that being primarily dependent on cash assistance income maintenance (e.g., Supplemental Security Income (SSI) or Temporary Assistance for Needy Family (TANF) benefits) or institutionalized for long-term care at government expense (e.g., nursing home expenses paid by Medicaid) could result in public charge determinations.[7] The INS explained that this was consistent with a historical approach to the concept of public charge, that it would apply to those who were "primarily dependent" on the government for income or for institutionalization. Non-cash benefits, such as Medicaid (other than the long-term care benefits mentioned above), the Children's Health Insurance Program (CHIP), or the Supplemental Nutrition Assistance Program (SNAP), were not to be considered in determining public charge status under the 1999 guidance.

11. Under the new public charge rule, DHS will now include the receipt of non-cash benefits such as Medicaid, SNAP, and public housing as grounds to make a public charge determination to deny status adjustments, including approval for lawful permanent residency.

12. Under § 212.22(c)(1)(ii) of the final regulation, the following will be considered a "heavily weighted negative factor" in consideration of a determination of public charge

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6 Public Law 104-208, Div C. Section 531, 8 USC 1182(1)(4).

7 Immigration and Naturalization Service. Notice: Field Guidance on Deportability and Inadmissibility on Public Charge Grounds. (Federal Register. Mar. 26, 1999. Pg. 28689-92).

inadmissibility: "The alien has received or has been certified or approved to receive one or more of the public benefits, as defined in § 212.21(b) for more than 12 months in the aggregate within any 36-month period, beginning no later than 36 months prior to the alien's application for admission for admission or adjustment of status on or after October 15, 2019." The public benefits in § 212.21(b) include non-cash benefits like Medicaid, SNAP, and public housing, and cash benefits like Temporary Assistance for Needy Families (TANF) and Supplemental Security Income (SSI). Section 212.21(b) indicates that receipt of Medicaid counts as a highly weighted negative factor, except for certain circumstances, such as the receipt of Medicaid due to emergency medical conditions, Medicaid services received under the Individuals with Disabilities Education Act, school-based Medicaid services and services provided to immigrants under the age of 21 or a woman who is pregnant (up to 60 days postpartum).

13. If the immigrant receives two or more benefits, the receipt of each benefit will be summed in reaching the 12-month limit; i.e., an immigrant who receives Medicaid, SNAP and public housing benefits for more than four months each would exceed the 12-month criterion. An immigrant may be considered "likely to become a public charge" if the immigration officer believes he or she will receive one or more of these benefits. Applying for Medicaid (or related benefits) after October 15, 2019 will not be considered "receipt" of benefits, but can be considered in determining public charge status (§ 212.22(b)(4)(E)).

14. Other factors which will be considered negative factors include: having an income below 125% of Federal Poverty Guidelines ("FPG"), being a child or elderly, low education, poor health, being uninsured and having been denied entry or adjustment in the past.

15. Although certain exclusions apply with respect to receipt of Medicaid benefits, many Medicaid enrollees with such exclusions are still at risk of public charge determinations for

other reasons. For example, children or pregnant women enrolled in Medicaid could still be deemed public charges because they are: under 18 (§ 212.22(b)(1)), have serious health problems (§212.22(b)(2) and §212.22(c)(1)(iii)(A)), are members of large families (§212.22(b)(3)), have incomes below 125 percent of federal poverty guidelines (§212.22(b)(4)), or for other related reasons. For example, an immigration officer could interpret that pregnancy (and subsequent labor and delivery) constitutes a "medical condition that is likely to require extensive medical treatment or institutionalization" (§212.22(b)(2) and §212.22(c)(1)(iii)(A)) which therefore authorizes a public charge determination, even though the child born would be a native-born U.S. citizen. In fact, a pregnant woman could be considered a public charge even if she has not been enrolled in Medicaid, simply because of her health condition.

B. Brief Description of Medicaid

16. Medicaid, authorized under Title XIX of the Social Security Act, provides health insurance coverage to low-income populations. As of May 2019, 65.7 million individuals were enrolled in federally-funded Medicaid, about 20% of the U.S. population. (An additional 6.6 million children were enrolled in CHIP; as noted below some of these children could be considered Medicaid recipients as well, depending on how states have decided to structure their programs.)[8] Medicaid is the nation's largest health insurance program. Medicaid is an entitlement program whose eligibility rules and benefit levels are established by federal and state laws and regulations; total spending is not limited by appropriations limits. The Centers for

[8] Centers for Medicare and Medicaid Services. May 2019 Medicaid & CHIP Enrollment Data Highlights. https://www.medicaid.gov/medicaid/program-information/medicaid-and-chip-enrollment-data/report-highlights/index.html. Accessed Aug. 19, 2019. This is the number reported by the federal agency, there may be many others, as described below, who are enrolled in state-funded Medicaid plans, who might also disenroll or forego coverage due to the public charge rule.

Medicare and Medicaid Services, which administers Medicaid, does not provide detailed information about the immigration status of Medicaid participants.

17. Medicaid serves a wide range of low-income beneficiaries including children, the elderly, persons with disabilities, non-elderly adults and pregnant women. Eligibility is based on multiple criteria including age, income, category (e.g., child, adult, elderly, pregnant woman), disability status, state residency and immigration status. Medicaid offers a broad health benefit, including preventive and primary health care, acute medical care, emergency and inpatient hospital care, and long-term care services. Children on Medicaid receive other important services, including dental care and therapies that address developmental problems. For the elderly or disabled who also participate in Medicare, Medicaid can provide "wrap around" insurance that covers fees not covered by Medicare, such as Medicare deductibles or copayments, or for certain services like long-term care or hearing aids not covered by Medicare.

18. Medicaid is a joint federal-state program. Within the federal regulatory framework, states have great flexibility to establish policies. The federal government funds the majority of Medicaid expenditures based on a federal medical assistance percentage (FMAP), which annually establishes the percent of total Medicaid expenditures that will be paid by the federal government, while state or local governments fund the remaining costs. Under Medicaid, 36 states (plus the District of Columbia) cover non-elderly adults with family incomes up to 138 percent of the federal poverty level (about $29,435 per year for a family of three), but 14 states have not expanded Medicaid as permitted by the Patient Protection and Affordable Care Act, and many do not provide any coverage to non-elderly adults without dependent children.[9] The range

[9] Kaiser Family Foundation. Medicaid Income Eligibility Limits as a Percent of the Federal Poverty Level. https://www.kff.org/health-reform/state-indicator/medicaid-income-eligibility-limits-for-adults-as-a-percent-of-the-federal-poverty-

of income eligibility criteria in Medicaid is very broad. At the high end, in the District of Columbia, adults with incomes up to 221 percent of the poverty level are eligible for Medicaid. Thirty-six states use 138 percent of the poverty level as the income cutoff. At the low end, twelve states use a threshold below 50 percent of the federal poverty level.[10] The lowest threshold is in Texas where Medicaid eligibility for parents ends at 17 percent of poverty ($3,600 per year for a family of three) and non-disabled, non-elderly adults without dependent children are not eligible at all, regardless of income. Thus, eligibility criteria related to use of Medicaid would only affect very poor parents in Texas, but may affect low-income working class adults in 36 states and the District of Columbia. Moreover, predicting future Medicaid use would depend heavily on predicting where an individual will live in the future.

19. Medicaid Eligibility for Legal Immigrants. Special policies exist for Medicaid eligibility for legal immigrants. Citizens, including naturalized citizens and citizen children with noncitizen parents, are eligible for Medicaid and CHIP on the same terms as U.S.-born citizens. Undocumented immigrants are not eligible for Medicaid or CHIP benefits. The Personal Responsibility and Work Opportunities Reauthorization Act of 1996 (PRWORA)[11] restricted legal immigrants' eligibility for certain means-tested programs, including Medicaid. In 2009, Congress modified the rules under Section 214 of the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) and gave states the option to expand eligibility for lawfully residing children and pregnant women. This section is sometimes called the "ICHIA" provision, named after a legislative proposal, Immigrant Children's Health Improvement Act,

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.level/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D. Accessed July 26, 2019.

[10] *Ibid.*

[11] See 8 USC 1601-1646.

that evolved into Section 214.[12] Federal policies as of July 23, 2019 (prior to issuance of the final regulation) are summarized by the Department of Health and Human Services' HealthCare.gov website:

> Immigrants and Medicaid and CHIP
>
> Immigrants who are "qualified non-citizens" are generally eligible for coverage through Medicaid and the Children's Health Insurance Program (CHIP), if they meet their state's income and residency rules.
>
> In order to get Medicaid and CHIP coverage, many qualified non-citizens (such as many LPRs or green card holders) have a 5-year waiting period. This means they must wait 5 years after receiving "qualified" immigration status before they can get Medicaid and CHIP coverage. There are exceptions. For example, refugees, asylees, or LPRs who used to be refugees or asylees don't have to wait 5 years.
>
> The term "qualified non-citizen" includes:
>
> - Lawful Permanent Residents (LPR/Green Card Holder)
> - Asylees
> - Refugees
> - Cuban/Haitian entrants
> - Paroled into the U.S. for at least one year
> - Conditional entrant granted before 1980
> - Battered non-citizens, spouses, children, or parents
> - Victims of trafficking and his or her spouse, child, sibling, or parent or individuals with a pending application for a victim of trafficking visa
> - Granted withholding of deportation
> - Member of a federally recognized Indian tribe or American Indian born in Canada
>
> Medicaid & CHIP Coverage for Lawfully Residing Children and Pregnant Women.
>
> States have the option to remove the 5-year waiting period and cover lawfully residing children and/or pregnant women in Medicaid or CHIP. A child or pregnant woman is "lawfully residing" if they're "lawfully present" and otherwise eligible for Medicaid or CHIP in the state….
>
> Getting emergency care
>
> Medicaid provides payment for treatment of an emergency medical condition for people who meet all Medicaid eligibility criteria in the state (such as income and state residency), but don't have an eligible immigration status.

[12] Public Law No: 111-3 (02/04/2009).

> Medicaid, CHIP, and "public charge" status
>
> Applying for Medicaid or CHIP, or getting savings for health insurance costs in the Marketplace, doesn't make someone a "public charge." This means it won't affect their chances of becoming a Lawful Permanent Resident or U.S. citizen.
>
> There's one exception. People receiving long-term care in an institution at government expense may face barriers getting a green card.

Department of Health and Human Services. Coverage for lawfully present immigrants. https://www.healthcare.gov/immigrants/lawfully-present-immigrants/. Accessed July 23, 2019

20. The provisions decribed above concern eligibility for immigrants under *federal* Medicaid policies that govern the availability of federal funds (i.e., FMAP). But many states extend Medicaid or similar health insurance coverage to additional immigrants, including legal immigrants who do not meet federal criteria as well as undocumented immigrants, using state funds. In July 2019, California enacted Senate Bill 104 which will extend "eligibility for full-scope Medi-Cal benefits to individuals 19 to 25 years of age, inclusive, and who are otherwise eligible for those benefits but for their immigration status."[13] (Medi-Cal is California's name for Medicaid.) This expands upon a 2015 California law (SB 75) that expanded Medi-Cal eligibility for children 0 to 18 regardless of immigration status.[14] The District of Columbia, Illinois, Maryland (in some counties), Massachusetts, New York and Oregon provide state-funded health insurance coverage to income-eligible children regardless of immigration status.[15] Sixteen states provide prenatal care coverage to income-eligible women regardless of immigration status

[13] California Senate Bill 104. https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200SB104. Accessed July 23, 2019.

[14] California Senate Bill 75. https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB75. Accessed July 23, 2019.

[15] National Immigration Law Center. Medical Assistance Programs for Immigrants in Various States. Jan. 2018 update. https://www.nilc.org/wp-content/uploads/2015/11/med-services-for-imms-in-states.pdf.

(Arkansas, California, Illinois, Louisiana, Massachusetts, Michigan, Missouri, Nebraska, New Jersey, New York, Oklahoma, Oregon, Rhode Island, Tennessee, Texas and Washington)[16]

21. The public charge rule only applies to federally-funded Medicaid and does not count state-funded assistance in public charge determinations.[17] However, it is important to note that numerous state programs are called or considered Medicaid (often under a state-specific name, like Medi-Cal in California, Arizona Health Care Cost Containment System (AHCCCS) in Arizona or MassHealth in Massachusetts) although the source of funds may not include federal Medicaid funds. As a result, many participants may not know whether the "Medicaid" in which they are enrolled is Medicaid that counts under the rule or instead another form of government subsidized health insurance.

22. New York offers health coverage to residents who are not eligible for federally-funded Medicaid, including many immigrants. These programs include state-funded Medicaid, Child Health Plus (New York's version of CHIP) and Essential Plan, a Basic Health Program authorized under the Affordable Care Act.[18] These programs provide services similar to Medicaid.. These programs are not federal Medicaid, and are not cited as a heavily-weighted negative factor under the public charge rule, but many recipients may not be able to distinguish these programs from federal Medicaid. State and federal Medicaid are indistinguishable to participants. Most Medicaid recipients in New York are covered through private Medicaid managed care plans, and most health insurance companies that offer Medicaid plans also provide

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16 *Ibid.*

17 *E.g.*, the preamble (Federal Register, Aug. 14, 2019, page 41313) says: "Notwithstanding the inclusion of SNAP as a designated public benefit, DHS will not consider for purposes of a public charge inadmissibility determination whether applicants for admission or adjustment of status are receiving food assistance through other programs, such as exclusively state-funded programs, food banks, and emergency services, nor will DHS discourage individuals from seeking such assistance."

18 https://info.nystateofhealth.ny.gov.

coverage in the other programs listed above. In many cases, the insurance cards for these various programs look almost identical. Thus, many New Yorkers who are covered under these programs could be confused about whether they are in federally-funded Medicaid. As I explain below, this confusion will likely result in New Yorkers mistakenly disenrolling from healthcare coverage programs that are not federally-funded Medicaid in order to avoid potential negative consequences when seeking an adjustment of status for immigration purposes.

23. The draft form USCIS I-944, titled "Declaration of Self-Sufficiency,"[19] must be completed by those applying for adjustment of status and will be used by DHS officials to determine public charge status. It is long and extremely complicated; its complexity (and lack of clarity) could lead to many erroneous determinations of public charge status by DHS officials. The form is 19 pages long and asks for detailed information and documentation related to income, prior year tax filings, assets (including bank accounts, homes and cars), home value appraisals, mortgages, a credit score from within the past year, proof of education (such as degrees or transcripts), and occupational licenses, in addition to information about public benefit use. More pertinent to Medicaid, Form I-944 asks "Have you EVER received or are currently certified to receive in the future any of the following benefits," one of which is "federal-funded Medicaid." If the answer is yes, it asks for the beginning and ending dates of receiving Medicaid and the total value of benefits received.

24. There are at least three flaws that could lead to erroneous reporting using Form I-944. First, it is not clear whether "you" in the sentence above applies to the individual or to his or her whole household. Because this question is in a section titled "You and Your Household Members' Assets, Resources and Financial Status," the implication is that "you" means the

[19] US Citizenship and Immigration Service. Declaration of Self Sufficiency. USCIS I-944. OMB No. 1615-0142. https://www.regulations.gov/document?D=USCIS-2010-0012-63772.

entire household. This can produce errors since an immigrant applicant might not receive Medicaid him or herself, while another family member, such as a U.S.-born citizen child, spouse or other household member is the recipient. But the public charge rule is supposed to apply only to the applicant's use of benefits, not the use of benefits by other family members. The form, however, could lead to the determination that the immigrant applicant used Medicaid and is therefore a public charge, even though the immigrant him or herself did not actually receive Medicaid, only another household member. Second, many, perhaps most, applicants will not know if the Medicaid they received is "federal-funded Medicaid" or not. Presumably, DHS used this phrase to differentiate the benefit from state-funded medical assistance programs, such as those described above. But the definitions and names may not be clear to enrollees. All Medicaid programs are state-administered, they sometimes have names other than Medicaid (e.g., Medi-Cal in California, Arizona Health Care Cost Containment System (AHCCCS) in Arizona or MassHealth in Massachusetts) and the insurance card many enrollees receive may only have the name of a private managed care plan (e.g., Aetna or United) that is contracted to provide Medicaid benefits; thus many applicants will be unable to report if they used "federal-funded Medicaid." Finally, Form I-944 asks for the dollar amount received. Almost no Medicaid recipient knows the dollar value of benefits received; it is not reported to them, and it is unclear whether such information could be obtained on demand, so how could they know? DHS provides no guidance on this point. The net effect is that it will be extremely difficult for an immigrant applying for adjustment of status to complete these parts of the I-944 correctly, leading to a substantial risk of erroneous public charge determinations. There is the further risk that many applicants may simply give up due to confusion and will therefore not apply for

permanent residency or other status adjustments—even if they are individuals who are unlikely to be deemed public charges based on their receipt of public benefits.

C. The Public Charge Rule Will Have Substantial and Broad Effects in Reducing Immigrants' Participation: the "Chilling Effect"

25. The public charge rule is ostensibly targeted at certain federal public benefits, including Medicaid. In reality, a substantial share of candidates for adjustment of status do not receive these benefits because they are already ineligible to receive them under existing law. Thus, the rule is not only disconnected from the reality of immigrants' actual federal benefits usage, it also poses a significant threat to lawful use of benefits by members of immigrant families who are not covered by the rule. In both the preamble to the rule and the regulatory impact analysis that accompanies the rule,[20] DHS acknowledges that a large number of immigrants and members of their families who are eligible for Medicaid will lose benefits but declares that these are "indirect effects" of the rule, as the rule itself does not change the eligibility criteria for Medicaid or other programs. DHS concedes, however, that many members of immigrant families who are lawfully eligible for these programs will disenroll or forego enrollment in order to avoid a public charge determination, though as explained below its estimates of the number of people who will drop coverage is seriously flawed.

26. While the specifics of who is subject to the public charge rule are detailed in the more than 200-page regulation and preamble, experience and research indicates there will be much broader "chilling effects" for those in immigrant families, including U.S.-born citizen children, naturalized citizens, lawful permanent residents and others who are not specifically

[20] Dep't of Homeland Security. "Regulatory Impact Analysis: Inadmissibility on Public Charge Grounds." Aug. 2019. https://www.regulations.gov/document?D=USCIS-2010-0012-63741.

described by the rule. In this context, "chilling effect" refers to the likelihood that many members of immigrant families will disenroll or forego participation in public benefit programs, even if they are lawfully eligible, because they are fearful of harmful repercussions for themselves or members of their family. As described below, these fears extend beyond the directly affected immigrants, but creep out to other family members, who may be citizens, already have green cards, or whose benefit use is excluded from consideration. Stated differently, the chilling effect extends far beyond the specific individuals eligible for an adjustment of status who, in DHS's view, rationally choose to forego public benefits in order to reduce the odds of a public charge determination. Many who are supposed to be exempt from the rule, such as pregnant women or refugees fleeing persecution in their homelands, will be understandably confused about the rule and will avoid Medicaid too.

27. While the details of the public charge rule matter, the effects can be much larger and broader because of the ways that immigrant families perceive these rules. DHS references the existence of chilling effect in its regulatory impact analysis.[21] On pages 90 and 91, DHS cites one study from the US Department of Agriculture which estimated that legal immigrants' food stamp participation fell by 54 percent after the immigrant restrictions in the 1996 PRWORA went into effect[22] and another Urban Institute report which found that welfare enrollment by foreign-born individuals, including both citizens and non-citizens, fell by 21 percent in the years

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[21] *Ibid.*

[22] Genser J. Who is leaving the Food Stamp Program: An analysis of Caseload Changes from 1994 to 1997. Food and Nutrition Service, USDA. 1999. Available at https://www.fns.usda.gov/snap/who-leaving-food-stamp-program-analysis-caseload-changes-1994-1997.

after PRWORA's immigrant restrictions.[23] DHS, moreover, was well aware of potential chilling effects because various comments on the proposed rule raised concerns about them.

28. The most direct, recent evidence of the magnitude of the chilling effects comes from a study conducted by the non-partisan Urban Institute,[24] which was based on a nationally representative survey conducted in December 2018, after the proposed rule was released in October 2018 and included a sample of 2,950 adults in immigrant families (i.e., at least one person in the family was an immigrant). The survey, called the Well-Being and Basic Needs Survey, was a nationally representative sample of adults 18 to 64. It is based on a stratified random sample drawn from Ipsos' Knowledge Panel, a probability-based online basis; it included an oversample of noncitizen respondents. The survey was conducted in English and Spanish. To ensure that the findings corresponded to nationally accepted representativeness, the data were weighted based on benchmarks drawn from the Census Bureau's American Community Survey. The researchers found that:

- Overall, about one-seventh (13.7%) of all adults in immigrant families reported that they avoided noncash public benefits in the past year because of concerns that they or a family member could be disqualified from obtaining a green card (lawful permanent resident status). Hispanics, low-income members of immigrant families, and immigrant families with children were more likely than other groups to avoid such benefits.

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[23] Fix M, Passel J. Trends in Noncitizens' and Citizen' Use of Public Benefits Following Welfare Reform: 1994-1997. 1999. The Urban Institute. https://www.urban.org/research/publication/trends-noncitizens-and-citizens-use-public-benefits-following-welfare-reform.

[24] Bernstein H, Gonzalez D, Karpman M, Zuckerman S. One in Seven Adults in Immigrant Families Reported Avoiding Public Benefit Programs in 2018. Urban Institute. May 2019. https://www.urban.org/sites/default/files/publication/100270/one_in_seven_adults_in_immigrant_families_reported_avoiding_publi_2.pdf.

- The rate of avoidance was higher (20.7%) among low-income members of immigrant families whose incomes were below 200% of the federal poverty line ($25,100 for a family of four in 2018); this subpopulation is more likely to need public benefits and more prone to suffer long-term consequences from their avoidance.
- Of those who said they avoided noncash benefits, 46% said they avoided receiving Supplemental Nutrition Assistance Program (SNAP) benefits, 42% said they avoided Medicaid or CHIP, and 33.4% said they avoided public housing subsidies.
- These concerns were greatest among Hispanics (20.6%), more than double the levels expressed by non-Hispanic whites (8.5%).
- The share avoiding benefits was higher (17.4%) among immigrant families with children, but was still substantial in families without children (8.9%).
- Avoidance of public benefits occurred even in families where all the foreign-born members were naturalized citizens (9.3%) and where all the noncitizen family members were already permanent residents (14.7%). In other words, avoidance occurred even in families in which *no one* was subject to denial of an adjustment of status due to a public charge determination.
- Awareness of the public charge rule was related to avoidance: Most adults in immigrant families reported awareness of the public charge rule (62.9 %). Adults who had heard "a lot" about the proposed rule were the most likely to report chilling effects in their families (31.1%).

These data form a credible lower bound of the impact of the public charge rule; it is reasonable to believe that the effects will be even larger once the public charge rule is implemented and enforced. Implementation, denials of adjustment applications, and word of mouth in the

immigrant community will cause far more members of immigrant families to avoid Medicaid and related programs.

29. An example of the dramatic effect of the implementation of public charge rules can be seen from statistics from the State Department reporting on visa denials following the January 2018 issuance of a revised public charge policy in its *Foreign Affairs Manual*, which is used by consular offices across the globe in determining who can receive visas to enter the United States.[25] The revised State Department policy was a precursor to DHS's public charge rule. It revises how sponsor affidavits of support and the use of noncash benefits by applicants, family members, and sponsors are evaluated prior to entry to the United States. The number of visa applications denied on the basis of public charge determinations rose from 1,076 in 2016, using earlier public charge guidance, to 3,237 in 2017, at which time public charge restrictions first came under discussion. The number of public-charge visa denials jumped to 13,450 in 2018 after more restrictive guidance was issued.[26] By comparison, the number of visa applications denied due to drug abuse, criminal activity or terrorism remained relatively stable: 4,991 denied in 2016, 4,652 in 2017 and 4,916 in 2018.[27] In other words, in 2018, after the public charge changes were implemented, the State Department denied about 12 times as many visa applicants due to public charge than in 2016 before the rule was modified, whereas the number of denials

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[25] National Immigration Law Center. Changes to "Public Charge" Instructions in the U.S. State Department's Manual. Aug. 7, 2018. https://www.nilc.org/issues/economic-support/public-charge-changes-to-fam/ https://www.nilc.org/wp-content/uploads/2018/02/PIF-FAM-Summary-2018.pdf.

[26] Based on statistics from Table XX of the State Department's Annual Reports of the Visa Office for 2016, 2017 and 2018. https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics.html. These statistics do not include counts of cases subsequently overturned. Since then, the State Department issued slightly lower numbers, as cited by Hesson T, Exclusive: Visa denials to poor Mexicans skyrocket under Trump's State Department. Politico, Aug. 7, 2019. https://www.politico.com/story/2019/08/06/visa-denials-poor-mexicans-trump-1637094

[27] Based on statistics from Table XX of the State Department's Annual Reports of the Visa Office for 2016, 2017 and 2018. https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics.html.

based on these other categories remained relatively constant. The level of denials rose even in 2017, when the issue was being discussed and then surged after formal adoption. These data collectively suggest that the rise in public charge denials was not due to a fundamental change in the composition of applicants but instead due to increasingly stringent criteria in public charge determinations. As rates of denials increase under the new rule, the corresponding chilling effect will also increase. Similarly, after the DHS public charge rule is implemented, the number of denials of adjustment applications on the basis of public charge can also be expected to surge. As the rate of denial increases under the rule, the corresponding chilling effect will also increase.

30. Other research on the chilling effect has also shown that policies designed to limit participation by noncitizen immigrants have repercussions on others, including citizen children in immigrant families. Soon after the 1996 PRWORA immigrant restrictions were enacted, data showed that there were significant reductions in use of Medicaid and similar benefits among citizen children in immigrant families, despite the fact that these citizen children remained eligible. Participation also fell sharply among refugees, who were exempt from PRWORA eligibility changes.[28] A rigorous analysis by researchers at Columbia University and the University of Illinois at Chicago found that the reduction in participation by U.S.-born citizen children in immigrant families was slightly higher than for children in immigrant families born

[28] Zimmerman W, Fix M. Declining Immigrant Applications for Medi-Cal and Welfare Benefits in Los Angeles County. Urban Institute. July 1998. https://aspe.hhs.gov/basic-report/declining-immigrant-applications-medi-cal-and-welfare-benefits-los-angeles-county. Fix M, Passel J. Trends in Noncitizens' and Citizens' Use of Public Benefits Following Welfare Reform: 1994-97. Urban Institute. March 1999. https://www.urban.org/research/publication/trends-noncitizens-and-citizens-use-public-benefits-following-welfare-reform.

outside the U.S. (18% reduction for U.S.-born citizen children vs. 14% reduction for foreign-born children).[29]

31. It is clear from its regulatory impact analysis that DHS was aware of at least two research reports[30] about chilling effects and, given the numerous comments in response to the proposed regulation received, ought to have been aware of other related evidence, such as the reports cited above, but disregarded them in its final analysis. All of the available analyses, including those two studies cited by DHS and other reports cited in the paragraph above, find that changes in policies aimed at noncitizen immigrants have substantial and broad repercussions and lead to reductions in participation by others, including citizen members in immigrant families.

32. There could be multiple reasons for the chilling effect. First of all, the policies are very complicated and difficult to understand. For example, the final public charge rule is 217 pages long in the *Federal Register* (three columns with a small font size) and is highly technical. Even the DHS website[31] which tries to summarize the rule in plain language is 15,572 words long, or about 60 double-spaced, typed pages. According to a readability scoring system called the Gunning Fog index, a person would need over 14 years of formal education (completed

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[29] Kaushal N, Kaestner R. Welfare Reform and Health Insurance of Immigrant. *Health Services Researc*h. 2005; 40(3): 697-721.

[30] The DHS regulatory impact analysis cites Genser J. Who is leaving the Food Stamp Program: An analysis of Caseload Changes from 1994 to 1997. Food and Nutrition Service, USDA. 1999. Available at https://www.fns.usda.gov/snap/who-leaving-food-stamp-program-analysis-caseload-changes-1994-1997 and Fix M, Passel J. Trends in Noncitizens' and Citizen' Use of Public Benefits Following Welfare Reform: 1994-1997. 1999. The Urban Institute. https://www.urban.org/research/publication/trends-noncitizens-and-citizens-use-public-benefits-following-welfare-reform.

[31] US Citizenship and Immigration Services, DHS. Final Rule on Public Charge Grounds of Inadmissibility. Aug. 2019. https://www.uscis.gov/legal-resources/final-rule-public-charge-ground-inadmissibility. Accessed Aug 15, 2019.

sophomore year of college) in order to read the information in the website easily.[32] Many, whether immigrant or U.S.-born, lack the literacy or time to comprehend such policies. (About half of Americans 18 to 64 have less than this level of education.[33]) Moreover, there are many technical immigration and public assistance issues embedded in the rule that require sophisticated understanding of policies to comprehend.

33. The extent to which immigrants take actions to avoid Medicaid or similar benefits after implementation of the rule is intensified by the climate of fear that already exists in immigrant communities. Since the rule was released, there has been substantial publicity pointing out that immigrants may face negative consequences for using these benefits, turning speculative suspicions into concrete hazards. As described earlier, the implementation of public charge policies in the State Department led to a massive increase in public charge denials.

D. Serious Flaws in the Department of Homeland Security's Regulatory Impact Analysis

34. The DHS analysis of the impact of the rule is flawed because it relies on faulty assumptions to determine that only 2.5% of Medicaid recipients will be affected, fails to account for the three-year lookback of benefit use as provided by the DHS rule, and uses a severe undercount of the total number of Medicaid recipients in its calculations.

35. DHS presented its analysis of the potential effects of the public charge rule in a Regulatory Impact Analysis.[34] Evidence cited by DHS in its regulatory impact statement

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[32] To get this assessment, I copied the entire text of the DHS website notice into an online Tests Document Readability Calculator found at https://www.online-utility.org/english/readability_test_and_improve.jsp on Aug. 15, 2019.

[33] Author's analysis of the Census Bureau's 2018 Current Population Survey. https://www.census.gov/cps/data/cpstablecreator.html.

[34] Dept of Homeland Security. "Regulatory Impact Analysis: Inadmissibility on Public Charge Grounds." Aug. 2019. https://www.regulations.gov/document?D=USCIS-2010-0012-63741. Department of Homeland Security. Economic Analysis Supplemental Information for Analysis of

indicates that participation reductions among members of immigrant households have been as high as 21 percent[35] or 54 percent[36] following prior changes to laws affecting immigrants' access to public benefits. The preamble to the final rule itself, however, relies on the lowest of the agency's estimates of the potential impact. DHS's analyses of the chilling effect included critical omissions and was seriously flawed.

36. In Table 14 of the impact analysis, DHS begins by reporting that 34,706,865 people are Medicaid recipients and, based on 2012-2016 Census data, proceeds to estimate that 3,069,651 Medicaid recipients are members of households including foreign-born non-citizens. In Table 16, it estimates that 2.5 percent of the estimated Medicaid recipients (76,741 people) are "members of households that include foreign-born non-citizens expected to disenroll or forego enrollment based on a 2.5% rate of disenrollment or foregone enrollment." The 2.5 percent avoidance rate is based on DHS's estimate of the share of non-citizens who seek to adjust their immigration status each year, such as applying for lawful permanent resident status. DHS presumes that all immigrants who are adjusting status that year drop Medicaid, but that no others do so. (Using a similar logic, DHS estimates that 129,563 will disenroll or forego SNAP benefits and 8,801 will avoid federal rental assistance.) In Table 17, DHS estimates that this would lead to a $1.06 billion reduction in federal spending for Medicaid benefits per year, which is about two-thirds of the $1.46 billion in federal public benefit payments foregone annually; the

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Public Benefits Programs. Undated. https://www.regulations.gov/document?D=USCIS-2010-0012-63742.

[35] Genser J. Who is leaving the Food Stamp Program: An analysis of Caseload Changes from 1994 to 1997. Food and Nutrition Service, USDA. 1999. Available at https://www.fns.usda.gov/snap/who-leaving-food-stamp-program-analysis-caseload-changes-1994-1997.

[36] Fix M, Passel J. Trends in Noncitizens' and Citizen' Use of Public Benefits Following Welfare Reform: 1994-1997. 1999. The Urban Institute. https://www.urban.org/research/publication/trends-noncitizens-and-citizens-use-public-benefits-following-welfare-reform.

remainder is other lost benefits, including SNAP, TANF, Supplemental Security Income and federal rental assistance.

37. In Table 18, DHS provides alternative budget estimates that acknowledge that it might be more appropriate to consider a three-year lookback period given that public charge determinations focus on receipt of public benefits during the prior 36-month period. Assuming people avoid benefits for three years, not just one, the total projected annual foregone benefits (from all public benefit programs including Medicaid) would total $4.4 billion, or three times the $1.46 billion cited in the final regulation as the official estimate. It also notes that "the number of people who may disenroll from or forego enrollment in public benefit programs in one year could be as many as the combined three-year total," i.e., it could be three times higher based on the three-year lookback period in the rule. In Table 19, DHS provides alternative evidence-based participation loss estimates much higher than 2.5 percent of the immigrant population that could reach as high as 21 percent or 54 percent, based on prior research about chilling effects; these lead DHS to estimate Medicaid enrollment losses between 644,627 and 1,657,612 individuals.[37]

38. Despite these alternative estimates, the official estimate used by DHS in the final rule is based on the lowest of these estimates, shown in Table 8 of the preamble for the rule, based on the reduction in federal benefit payments that would otherwise have been made on behalf of members of immigrant families who avoided Medicaid and other benefits.[38] Table 8 also notes that there could be other costs, including "Potential lost productivity, Adverse health

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[37] For the 21 percent estimate, DHS cites Genser J. Who is leaving the Food Stamp Program: An analysis of Caseload Changes from 1994 to 1997. Food and Nutrition Service, USDA. 1999. Available at https://www.fns.usda.gov/snap/who-leaving-food-stamp-program-analysis-caseload-changes-1994-1997. For 54 percent, it cites Fix M, Passel J. Trends in Noncitizens' and Citizens' Use of Public Benefits Following Welfare Reform: 1994-1997. 1999. The Urban Institute. https://www.urban.org/research/publication/trends-noncitizens-and-citizens-use-public-benefits-following-welfare-reform.

[38] Dept of Homeland Security. *Federal Register*, Vol. 84, Issue 157, Aug. 14, 2019, pg. 41489.

effects, Additional medical expenses due to delayed health care treatment," but makes no effort to quantify them.

39. Although the regulatory impact analysis included alternative estimates of effects that could be over twenty times larger -- up to 1.66 million losing Medicaid (Table 19, page 100 of the impact analysis) rather than 76,741 – DHS chose to use the lowest estimates as the basis of impact for the final rule. DHS says: "While previous studies examining the effect of PRWORA in 1996 showed a reduction in enrollment from 21 to 54 percent, it is unclear how many individuals would actually disenroll from or forego enrollment in public benefits programs due to the final rule. The previous studies had the benefit of retrospectively analyzing the chilling effect characterized by disenrollment or forgone enrollment after passage of PRWORA using actual enrollment data, instead of being limited to prospectively estimating the number of individuals who may disenroll or forego enrollment in the affected public benefits programs. This economic analysis must rely on the latter."[39] In essence, DHS says that although there is historical evidence that there could be a large chilling effect, it cannot use that evidence because it is about retroactive analysis of a somewhat different policy and DHS must assess changes prospectively before the public charge policy goes into effect. DHS furthermore says that its estimate should be related to the number who have to adjust status each year, but it presents no evidence that effects would occur only in that year (and in fact it also indicates that a three-year timeframe might be more appropriate).

40. DHS's estimate flouts substantial evidence, including the recent Urban Institute report, that chilling effects are often far broader than the targeted individuals. I note that the Urban Institute report was released in May 2019; those data were available before DHS

[39] DHS, Regulatory Impact Analysis, pages 91-92, just before Table 16.

completed its August 2019 impact analysis. DHS disregards standard methods for sound policy analysis and research by rejecting actual evidence-based research findings and substituting a flawed metric that yields disenrollment estimates far below the range of other estimates. (The alternative estimates that I produce in the next section are more strongly based on recent and directly relevant evidence.)

41. It is noteworthy that DHS only discusses its estimate of 2.5 percent of immigrants adjusting status annually, rather than its own alternative estimate that the rate could be three times higher, based on the three-year lookback period actually included in the rule. DHS disregards the research evidence of the scope of effects caused by prior immigration policy changes to select a much lower number and also disregards a three-times higher rate that better corresponds with the rule.

42. The only estimate in the preamble of the number who are expected to disenroll from or forego Medicaid, SNAP or public housing benefits is the reference to 2.5 percent of members of non-citizen households receiving benefits on page 41313 of the rule. It is only in the regulatory impact analysis that DHS converts this to actual human terms – reporting that 76,741 people would lose Medicaid. But this estimate is far too low.

43. As noted before DHS primarily assumes that 2.5 percent of members of non-citizen households will avoid Medicaid participation because 2.5 percent of immigrants seek to adjust immigration status each year. But since the public charge rule uses a three-year lookback period – receipt of benefits of at least 12 months out of the last 36 months – a more appropriate factor, even accepting DHS's baseline estimate, would be three times higher, or 7.5 percent.[40] In

[40] This is because each year there would be a new group of individuals looking ahead to an adjustment of status in 36 months, so the dollar value associated with their Medicaid avoidance must be added to the group that already began avoiding Medicaid. In any given year, three years' worth of expected

addition, as the Urban Institute analyses and other prior studies of chilling effects described earlier indicate, chilling effects are much broader and affect many who are in naturalized citizen households, mixed-status households and are likely to deter participation regardless of when the immigrant is considering applying for adjustment.

44. There are additional serious flaws with the DHS analysis. First of all, DHS begins with an estimate that there are 34.7 million Medicaid recipients, based on a five-year average of data from 2012 to 2016.[41] However, more recent reports show that 65.7 million individuals were enrolled in Medicaid in May 2019.[42] DHS begins by underestimating the total number of people on Medicaid by about half, which affects all subsequent calculations. Because the Affordable Care Act's Medicaid expansion was largely implemented in 2014, inclusion of data from earlier years vastly reduces the average number of Medicaid participants per year. Further, several states, including Virginia, Pennsylvania, and Indiana expanded Medicaid after 2014, making the use of this five-year average even more flawed. Even if one accepted other parts of the DHS methodology, this flaw alone leads to a serious underestimate, even if the 2.5 percent assumption was correct.

45. Moreover, because DHS uses this flawed participation estimate to compute the average Medicaid expenditure per person, this leads to an unjustifably high estimate of the cost of federal Medicaid benefits per person, $13,755 per person (Table 17.) In contrast, an official

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adjusters—those applying in one year, those applying in two years, and those applying in three years—would be avoiding Medicaid.

41 Department of Homeland Security. Economic Analysis Supplemental Information for Analysis of Public Benefits Programs. Undated. https://www.regulations.gov/document?D=USCIS-2010-0012-63742.

42 Centers for Medicare and Medicaid Services. May 2019 Medicaid & CHIP Enrollment Data Highlights. https://www.medicaid.gov/medicaid/program-information/medicaid-and-chip-enrollment-data/report-highlights/index.html. Accessed Aug. 20, 2019.

estimate by the Department of Health and Human Services of federal Medicaid expenditures per person was $5,522 per person for 2019.[43]

E. Evidence-Based Estimates of the Effect of the Public Charge Rule in Reducing Medicaid Participation by Members of Immigrant Families

46. In this section, I provide an evidence-based analysis of the potential effects of the public charge rule on Medicaid participation by members of immigrant families, based on research and experience regarding the chilling effects. The summary of these calculations are shown in Table 1 below. Overall, these estimates indicate that between 1.0 million and 3.1 million members of immigrant families will forego Medicaid or disenroll due to the final public charge rule, each year after full implementation. This includes between 0.6 and 1.8 million adults 21 or older who will not receive Medicaid and between 0.4 and 1.2 million children 21 or younger who will not receive Medicaid because they are members of immigrant families, even if they remain eligible for benefits.

[43] US Department of Health and Human Services. 2017 Actuarial Report on the Financial Outlook for Medicaid. https://www.cms.gov/Research-Statistics-Data-and-Systems/Research/ActuarialStudies/Downloads/MedicaidReport2017.pdf

Table 1.
Estimates of Medicaid Enrollment Losses Due to the Final Public Charge Regulation

Number of People Potentially at Risk	**Number or % Affected**
1. Number of Medicaid Enrollees, May 2019 (1)	65,663,268
2. Percent of Medicaid Enrollees Who Are Members of Low-income Immigrant Families (b)	25.17%
3. Estimated Number of Members of Low-Income Immigrant Families Enrolled in Medicaid (#1 times #2)	16,526,558
4. Adults 21 or Older Who Are Members of Low-Income Immigrant Families Enrolled In Medicaid (b)	6,946,405
5. Children Under 21 Who Are Members of Low-Income Immigrant Families Enrolled in Medicaid (b)	9,580,153
Low and High Estimates of Number of Members of Immigrant Families Who Disenroll or Forego Medicaid Benefits Due to Public Charge Regulation	
6. Low Estimate Adult Medicaid Reduction (c)	603,920
7. High Estimate Adult Medicaid Reduction(d)	1,813,012
8. Low Estimate of Child Medicaid Reduction(e)	416,258
9. High Estimate of Child Medicaid Reduction (f)	1,248,773
10. Low Estimate of Total Medicaid Reduction (#6 + #8)	**1,020,178**
11. Low Percent Reduction in Total Medicaid Enrollment (#10/#3)	**6.2%**
12. High Estimate of Total Medicaid Reduction (#7 + #9)	**3,061,785**
13. High Percent of Total Medicaid Reduction (#12/#3)	**18.5%**

a. Centers for Medicare and Medicaid Services. May 2019 Medicaid & CHIP Enrollment Data Highlights.
b. Author's analysis of CDC's 2017 National Health Interview Survey. Low-income means family income below 200% of the poverty line. Immigrant family means the head of household and/or spouse is a foreign-born immigrant. Line 3 = lines 4 plus 5.
c. Based on estimates from Bernstein, et al. (2019): 20.7% of members of immigrant families avoiding public benefits times 42.0% = 8.69% of adults in immigrant households.
d. Assumes that after implementation and enforcement begin, the impact is three times higher = 26.1%.
e. Assumes half the level of adult loss because receipt of Medicaid by children under 21 is not counted as a heavily weighted factor. 8.69%* times 50% = 4.35%.
f. Assumes that after implementation and enforcement, the impact is three times higher = 13.0%.
Note: Numbers may not sum due to rounding.

47. My estimates are conservative and evidence-based, using the most recent data and evidence available, and present a range of effects due to the uncertainty surrounding

implementation and application of the rule, public awareness and behavioral responses. Although there is ample evidence, cited earlier, that a chilling effect will reduce immigrants' use of public benefits, some uncertainty exists because it is not completely clear how these rules will be implemented, publicized, or perceived by the immigrant community. Thus, I provide low and high estimates, expecting that the "true" impact would fall in between those limits. Although my estimates of those who lose coverage are higher than the 76,741 estimate used by DHS, they are more conservative than other independent estimates. For example, in October 2018, the Kaiser Family Foundation estimated that between 2.1 and 4.9 million members of immigrant families could lose Medicaid due to the proposed public charge rule.[44] The Migration Policy Institute estimated, based on earlier estimates of chilling effect losses under PRWORA, that 5.4 million to 16.2 million immigrants and members of their families could disenroll from public benefit programs.[45]

48. My calculations begin with the number of people receiving Medicaid as of May 2019, as reported by the Centers for Medicare and Medicaid Services, 65.7 million.[46] Note that because this data represents only federally-funded Medicaid, it is a conservative starting point because it does not include individuals enrolled in state-funded programs who may drop coverage. The federal agency does not have administrative data showing the immigration status

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44 Artiga S, Garfield R, Damico A. Estimated Impacts of the Proposed Public Charge Rule on Immigrants and Medicaid. Kaiser Family Foundation. Oct. 2018. https://www.kff.org/report-section/estimated-impacts-of-the-proposed-public-charge-rule-on-immigrants-and-medicaide-key-findings/.

45 Batalova J, Fix M, Greenberg M. Chilling Effects: The Expected Public Charge Rule and Its Impact on Legal Immigrant Families' Public Benefit Use. Migration Policy Institute. June 2018. https://www.migrationpolicy.org/research/chilling-effects-expected-public-charge-rule-impact-legal-immigrant-families.

46 *Ibid*.

of Medicaid participants, so I analyzed data from the 2017 National Health Interview Survey, [47] which is a nationally representative survey conducted by the Centers for Disease Control and Prevention of demographic and health characteristics of the non-institutionalized American population, often used for research like this that includes immigration, socioeconomic and health characteristics. I identify immigrant-headed families, i.e., where the respondent or spouse is a foreign-born immigrant.[48] Because Medicaid is a program for low-income people, I limit the analyses to those who report having incomes below 200 percent of the federal poverty line. As seen in Table 1, about one-quarter of Medicaid enrollees, 16.5 million, are members of a low-income immigrant family. Of the 16.5 million members of immigrant families, 6.9 million are adults 21 or older and 9.6 are children under 21. A large share of the members of immigrant families, especially children, are U.S. citizens. As described above, there is ample evidence that policies aimed at non-citizen immigrants also have harmful effects on their citizen children, because of the chilling effect.

49. To estimate the effects of the public charge rule in causing people to forego or disenroll from Medicaid, I use estimates from the Urban Institute's May 2019 study,[49] described

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[47] Centers for Disease Control and Prevention. National Center for Health Statistics. National Health Interview Survey. https://www.cdc.gov/nchs/nhis/index.htm. I downloaded the 2017 data and conducted statistical analyses using standard statistical methods; 2017 is the last year for which population characteristics and income were available as of August 2019.

[48] I use the population of immigrant families, which includes some naturalized citizens, rather than of families containing one or more non-citizens, as DHS used. I use this population to align with the estimates of the Urban Institute report by Bernstein, et al. (2019), which found that 20.7% of adults in immigrant households avoided noncash benefits due to the chilling effect. While DHS used a base of non-citizen households, in that case the percentage of people avoiding benefits would be higher. That would produce a smaller population base, but a higher percentage of people affected, which ought to produce a similar level of estimates. Moreover, as the Urban Institute report found, and other studies corroborate, even citizens are affected by the chilling effect.

[49] Bernstein H, Gonzalez D, Karpman M, Zuckerman S. One in Seven Adults in Immigrant Families Reported Avoiding Public Benefit Programs in 2018. Urban Institute. May 2019. Adults in Immigrant Families Report Avoiding Routine Activities Because of Immigration Concerns. Urban Institute. July 24, 2019. https://www.urban.org/research/publication/adults-immigrant-families-report-avoiding-routine-activities-because-immigration-concerns.

earlier, which is the only study that provides direct evidence about the extent to which the public charge rule and fears about risking permanent resident (green card) status influence use of noncash benefits, including Medicaid. The public charge rule was proposed in October 2018, and the survey was fielded soon thereafter in December 2018. Its findings are comparable to prior studies about the effects of PRWORA immigrant benefit restrictions, but more specific about the reaction to the public charge rule and based on data from late 2018. The study found that 20.7% of members of low-income immigrant families avoided non-cash benefits due to green card concerns and that 42 percent of those who avoided noncash benefits specifically avoided Medicaid or CHIP; this leads to an estimate that 8.7 percent of low-income adults in immigrant families (20.7 percent times 42 percent) will forego or disenroll from Medicaid as the low estimate. This is the low estimate because those levels of avoidance were occurring before there was any implementation or enforcement of the policy and before there was as much publicity about impending changes in the public charge rules.

50. Because of evidence that effects increase after policies are adopted (including data about public charge denials at the State Department and about the consequences of implementation of PRWORA immigrant restrictions), I set a high estimate at three times that level (26.1 percent reduction), assuming that additional awareness increases avoidance. A few factors led me to conservatively determine that a three-fold increase is reasonable. First, the Urban Institute found that almost one third (31 percent) of immigrants who avoided benefits said they had heard a lot about the proposed rule; it is reasonable to assume that awareness and avoidance will rise sharply after implementation and enforcement.[50] Second, visa denials rose from 1,076 in 2016, prior to the implementation of recent State Department public charge

[50] *Ibid.*

policies, to roughly three times more (3,237) in 2017 when the changes were under consideration, to an additional four-fold increase (to 13,450) in 2018 after the change was implemented.[51] Large reductions in applications occurred in the wake of implementation of PRWORA immigrant restrictions; for example, in Los Angeles County the number of enrolled citizen children with immigrant parents fell by 48 percent from 1996-98, despite the fact that citizen children remained eligible for coverage.[52] It is reasonable to assume that awareness of risks associated with public charge and avoidance will increase substantially after implementation, based on prior experiences.

51. For children, I use a similar approach, but reduce the estimated effects for children by 50 percent, compared to the level for adults. The final regulation excludes Medicaid benefits received by children under 21 from being considered as a heavily weighted factor. Despite this shift from the proposed rules, there is still strong evidence that children in immigrant families will be harmed, including citizen children, as found in the research on the impact of PRWORA immigrant restrictions, cited earlier. Moreover, as explained before, the confusing directions for Form I-944 about how to report use of Medicaid by the family suggest that erroneous determinations of public charge status could be common because immigrants might report other family members' use of Medicaid rather than their own, such that families could be penalized for their children's use of Medicaid benefits.

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[51] Based on statistics from Table XX of the State Department's Annual Reports of the Visa Office for 2016, 2017 and 2018. https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics.html. These statistics do not include counts of cases subsequently overturned. Since then, the State Department issued slightly lower numbers, as cited by Hesson T, Exclusive: Visa denials to poor Mexicans skyrocket under Trump's State Department. Politico, Aug. 7, 2019. https://www.politico.com/story/2019/08/06/visa-denials-poor-mexicans-trump-1637094

[52] Zimmerman W, Fix M. Declining Immigrant Applications for Medi-Cal and Welfare Benefits in Los Angeles County. Urban Institute. July 1998. https://aspe.hhs.gov/basic-report/declining-immigrant-applications-medi-cal-and-welfare-benefits-los-angeles-county.

52. Finally, there is ample evidence indicating that parental participation in Medicaid affects children's participation: when parents gain Medicaid coverage, their children are more likely to enroll, even if the eligibility criteria for children do not change. My research demonstrated this relationship about twenty years ago[53] and the effect has been confirmed in multiple studies since.[54] Evidence indicates that the reverse holds true too; when parents lose Medicaid coverage, many of their children disenroll too, even though the children remain eligible. For example, in 2012 the state of Maine cut Medicaid eligibility for parents. Although eligibility levels for children did not change, about 6,000 Maine children lost Medicaid benefits.[55] Insurance coverage is often considered as a family matter, so policies that force parents off trigger the loss of children's insurance coverage too. Since DHS only announced the change in policy that exempts consideration of Medicaid benefits received by children under 21 as a heavily weighted negative factor in early August, I am not aware of any direct evidence showing how this might reduce effects for children, so I determined that a 50 percent reduction was a reasonable estimate, splitting the difference between no effect and the full adult effect. Thus, in Table 1, I estimate that the number of children in immigrant families who lose Medicaid will range from 0.4 million to 1.25 million.

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[53] Ku L, Broaddus M. The Importance of Family-Based Insurance Expansions: New Research on the Effects of State Health Reforms, Center on Budget and Policy Priorities, September 5, 2000.

[54] *E.g.*, Georgetown University Health Policy Institute. Health Coverage for Parents and Caregivers Helps Children. Mar. 2017. https://ccf.georgetown.edu/wp-content/uploads/2017/03/Covering-Parents-v2.pdf. Hudson J, Moriya A. Medicaid Expansion for Adults Had Measurable 'Welcome Mat' Effects on Their Children. *Health Affairs.* 36(9): 1643-51. Haley J, et al. Uninsurance and Medicaid/CHIP Participation among Children and Parents. Urban Institute. Sept. 2018. https://www.urban.org/sites/default/files/publication/99058/uninsurance_and_medicaidchip_participation_among_children_and_parents_updated_1.pdf. Hamersma S. Kim M, Timpe B. The Effect of Parental Medicaid Expansions on Children's Health Insurance Coverage. *Contemporary Economic Policy.* 37(2):297-311.

[55] Maine Children's Alliance. Ensuring Health Coverage for Maine Families with Children in 2014. 2014. http://www.mekids.org/assets/files/issue_papers/healthcoverage_children_2014.pdf.

53. Taken together, these analyses indicate that between 1.02 million and 3.06 million members of low-income immigrant families will lose Medicaid coverage after the public charge rule is fully implemented and enforced. This corresponds to a 6.2 percent to 18.5 percent loss of Medicaid among those who are members of low-income immigrant families.

54. Using additional data from the 2017 National Health Interview Survey, we can also describe some characteristics of those who could be harmed by the public change rule.

- The low-income adults on Medicaid in immigrant families are about twice as likely to have serious health problems as adults who are not in immigrant families and not on Medicaid. Almost one-third (29 percent) of the low-income immigrant group report being in fair or poor health, compared with 11 percent of non-immigrant non-Medicaid adults. About one-quarter (27 percent) of the immigrant group report having a functional limitation, such as difficulty walking, vision problems or having a health problem that impairs work versus 15 percent of the non-immigrant, non-Medicaid adults. The burdens of the public charge rule will fall disproportionately on those with poorer health. Because the low-income adults on Medicaid in immigrant families are less healthy, they are more likely to need medical care and are more likely to experience harm to their health if they must forego Medicaid. In addition, the public charge rule also penalizes applicants in general if they are in poor health.
- Those affected by the public charge rule are far more likely to be members of racial/ethnic minorities. The low-income members of immigrant families receiving Medicaid group are 56 percent Hispanic, 13 percent non-Hispanic white, 9 percent non-Hispanic black and 21 percent Asian. In comparison, those who are not in immigrant families and not on Medicaid are 80 percent white, 7 percent Hispanic, 11

percent non-Hispanic black, 2 percent Asian and 1 percent other/mixed race. Those who are harmed by the public charge rule are far more likely to be Hispanic or Asian and much less likely to be non-Hispanic whites.

F. Harm to Members of Immigrant Families Due to the Loss of Medicaid Benefits Due to the Public Charge Rule

55. A substantial body of research has demonstrated how Medicaid helps improve access to health care, helps people recover from illness or stay healthy, reduces mortality and has other important socially beneficial effects. Much of this literature has developed because of the Medicaid expansions that occurred under the Affordable Care Act or other high quality research studies. In turn, this means that the loss of Medicaid benefits, as caused by the public charge rule, will create serious harm for those who lose Medicaid benefits due to the public charge rule.

56. A March 2018 review of the literature by the Kaiser Family Foundation identified over 200 studies about the effects of Medicaid expansions across a variety of areas.[56] The review found that Medicaid expansions (a) increased insurance coverage and reduced the number of uninsured, benefiting both rural and urban residents and those who are African-American, white and Latino, (b) strengthened access to health care services, increasing the ability of people to obtain preventive, primary and acute care services, medication and mental health care, (c) increased low-income families' financial security, (d) improved a variety of health outcomes, and (e) reduced uncompensated care costs and stabilized safety net health care providers. A more focused review on health benefits conducted by faculty at Harvard University and

[56] Antonisse L, Garfield R, Rudowitz R, Artiga S. The Effects of Medicaid Expansion under the ACA: Updated Findings from a Literature Review. Kaiser Family Foundation. Mar. 2018. https://www.kff.org/medicaid/issue-brief/the-effects-of-medicaid-expansion-under-the-aca-updated-findings-from-a-literature-review-march-2018/.

published in the *New England Journal of Medicine* found consistent evidence that expanding health insurance coverage, especially Medicaid, improves access to and utilization of appropriate health care such as cancer screening, improves assessments of health, eases depression and increases financial security.[57] A recent study demonstrated that receiving Medicaid during pregnancy or early childhood can lead to demonstrable long-term benefits, including reductions in chronic disease hospitalizations for problems like diabetes or obesity as well as higher high school graduation rates.[58]

57. A new analysis by researchers at the University of Michigan, the National Institutes of Health, the Census Bureau and the University of California at Los Angeles found that expanding Medicaid eligibility was associated with significantly lower mortality, particularly disease-related deaths (e.g., as opposed to accidents) and the effect increases over time.[59] Specifically, it estimated that Medicaid expansions were associated with 0.13 percent reduction in the mortality rate. If we assume that this estimated change in mortality rates can be applied to the number of persons that I have projected to lose Medicaid coverage, the public charge rule could eventually increase the number of premature deaths by between 1,300 and 4,000 (0.13 percent times 1.02 million to 3.06 million losing Medicaid coverage). This corroborates an earlier study that examined the reduction in mortality after Massachusetts increased insurance coverage under its state health reform, which found that every increase in

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[57] Sommers B Gawande A, Baicker K. Health Insurance Coverage and Health — What the Recent Evidence Tells Us. *New England Journal of Medicine.* 2017 Aug 10; 377(6): 586-93.

[58] Miller S, Wherry L. The Long-Term Effects of Early Life Medicaid Coverage. *J Human Resources*. 2019; 54(3): 786-821.

[59] Miller S, Altekruse S, Johnson N, Wherry L. Medicaid and Mortality: New Evidence from Linked Survey and Administrative Data. NBER Working Paper No. 26081. July 2019. **Error! Hyperlink reference not valid.**.

insurance coverage by 830 people prevented one death per year, (0.12 percent),[60] almost the same as the rate cited above. I note that mortality rates might be slightly lower among those in immigrant families. Other research indicates that immigrants have slightly lower mortality rates than those who are native-born, so the effect might be less pronounced.[61] On the other hand, evidence indicates that the loss of health services for low-income people, many with poor health, would lead to more serious health problems, including higher mortality.

58. As noted earlier, a significant share of the immigrants who could be affected by the public charge rule have fair or poor health or have limitations because of health problems. This is because the final rule assigns negative weight to individuals who have a serious medical condition. Analyses of the 2018 Medical Expenditure Panel Survey reveal more detail about disease prevalence among immigrant adults now covered by Medicaid.[62] About 14 percent of low-income immigrant adults enrolled in Medicaid report having diabetes, 27 percent have high blood pressure, 29 percent have high cholesterol, 3.4 percent have a history of cancer, and 5 percent have a history of coronary heart disease. These are all serious chronic diseases, which generally require ongoing medical care and/or medication.

59. To illustrate the consequences of the loss of Medicaid insurance coverage, I present a hypothetical example about problems for a person with diabetes. Loss of Medicaid would make it much harder for a diabetic to continue to afford insulin or other diabetes-related

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60 Sommers B, Long S, Baicker K, Changes in Mortality after Massachusetts Health Care Reform: A Quasi-Experimental Study, *Ann. Intern. Med*. 2014; 160(9): 585-93.

61 Singh G, Miller B. Health, Life Expectancy, and Mortality Patterns Among Immigrant Populations in the United States. *Can J Public Health.* 2004; 95(3): I14-21. Singh G, et al. Immigrant Health Inequalities in the United States: Use of Eight Major National Data Systems. *Scientific World Journal*. 2013; Article ID 512313, 21 pages http://dx.doi.org/10.1155/2013/512313.

62 Author's analysis of the 2017 Medical Expenditure Panel Survey, conducted by the federal Agency for Healthcare Research and Quality. https://meps.ahrq.gov/mepsweb/index.jsp.

medications or other medical care. The average cost of insulin (without insurance) was $450 per month in 2016, compared to $234 in 2012.[63] When diabetes is adequately controlled, diabetics can function well in work and other normal activities of life, but the loss of medical care could lead to severe medical problems, including death and impairments such as heart disease, loss of vision or amputation.[64] With adequate medical care, an immigrant could hold a job, go to school, support a family and pay taxes, but the loss of Medicaid could put all of that at risk and lead to serious, long-term health problems.

60. A recent study examined some of the medical needs of children who could be affected by the public charge rule, looking at children who lived with at least one noncitizen adult, based on analyses of the 2015 Medical Expenditure Panel Survey. Of these children: 11 percent had asthma, 18 percent had experienced gastrointestinal problems, 14 percent had the flu, and 9 percent had neuromuscular problems. Forty percent needed care for an illness or injury and 18 percent needed medication.[65] Forgoing Medicaid could have serious medical consequences for these children that could not only impair their health, but reduce their opportunities to function well in school.

61. The public charge rule creates other harms for immigrants. As noted earlier, many in immigrant families are already under serious psychological stress due to the public charge rule and perceptions of other Trump Administration policies. The loss of Medicaid would compound these problems. Research has shown that receiving Medicaid helps reduce

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63 Thomas K. Express Scripts Offers Diabetes Patients a $25 Cap for Monthly Insulin. *New York Times*. Apr. 3, 2019.

64 American Diabetes Association. Standards of Medical Care in Diabetes—2019. *Diabetes Care*. 2019 Jan. (supplement)

65 Zallman L, et al. Implications of Changing Public Charge Immigration Rules for Children Who Need Medical Care. *JAMA Pediatr*. Published online July 1,m 2019. https://jamanetwork.com/journals/jamapediatrics/fullarticle/2737098.

depression and increases the ability to get access to mental health care services.[66] It also increases financial security, since beneficiaries know that their medical expenses will be covered.

62. Another harm of the public charge rule is the risk of family separation. As noted by the Cato Institute, about 40 percent of those subject to the public charge rule are spouses or minor children.[67] If they do not meet the public charge rule's requirements, their ability to remain in the United States – and their ability to remain with their citizen or permanent resident spouses or children – is jeopardized, increasing the risk of family separation. This risk increases the pressure for immigrant families to avoid public benefits, while also adding to their psychological distress.

G. Harm to State and Local Governments and Health Care Facilities Due to the Public Charge Rule

63. The harm caused by the public charge rule extends beyond the harm caused to members of immigrant families; there are broader repercussions that would create serious harm to state and local governments, health care providers and other members of these communities who are not in immigrant families. Safety net health care providers will lose Medicaid revenue, which will threaten their ability to serve their communities, including patients who are not members of immigrant families. Many state or local governments will be forced to spend more to provide health care to indigent patients, increasing their state and local budget pressures. Finally, the loss of federal Medicaid revenue (as well as the loss of federal SNAP benefits) would have broader effects on state and local economies and employment.

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[66] Baicker K, et al. The Effect of Medicaid on Management of Depression: Evidence from the Oregon Health Insurance Experiment. *Milbank Q*. 2018 Mar; 96(1): 29–56.

[67] Bier D. An Explanation of the Public Charge Rule: Frequently Asked Questions. Cato Institute. Aug. 12, 2019. https://www.cato.org/blog/explanation-public-charge-rule-frequently-asked-questions

64. The problem can be clearly understood in the case of health care. If fewer people have Medicaid coverage, then health care providers, such as hospitals or community health centers, will collect less insurance revenue; this is particularly a problem for safety net health care providers that care for a large number of Medicaid patients. But uninsured patients still need medical care and often seek care at these facilities as uninsured patients. Safety net facilities often continue to care for uninsured patients, whether because of legal mandates or because of their mission to serve needy patients. For example, as a condition of receiving federal funds under Section 330 of the Public Health Service Act, community health centers must serve all patients, regardless of their ability to pay for care.[68] Thus, the health center must continue to provide care, even if patients are uninsured and cannot pay.

65. In this section, I summarize data from several reports that were released in late 2018 that examine the effects of the public charge rule, as it was proposed in October 2018. If these analyses were conducted now the results might be slightly different because of changes in the final regulation, such as the exclusion of consideration of Medicaid benefits used by children and pregnant women or the availability of more recent information. But the general methods used in these reports appear technically reasonable and the direction of findings should be approximately valid, even if they were revised in light of the final regulation or more recent data.

66. In a November 2018 report, I and colleagues at George Washington University examined the financial impact of the then-proposed public charge rule for community health centers.[69] The key results from that report are reproduced in Table 2 below. Nationwide, we

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[68] 42 U.S.C. 254b(k)(3)(G).

[69] Ku L, Sharac J, Gunsalus R, Shin P, Rosenbaum S. How Could the Public Charge Proposed Rule Affect Community Health Centers? Policy Brief # 55. Geiger Gibson RCHN Community Health Research Collaborative. Nov 2018. https://publichealth.gwu.edu/sites/default/files/downloads/GGRCHN/Public%20Charge%20Brief.pdf.

estimated that health centers would sustain between $345 and $623 million in lost Medicaid revenue. In order to make up for that loss in revenue, we considered scenarios in which they would either reduce the number of patients served or reduce their staffing. We estimated that this would cause health centers to serve between 295,000 and 538,000 fewer patients or reduce staffing by around 3,400 to 6,100 staff. Because health centers cannot discriminate and must serve all patients regardless of their ability to pay (or their immigration status), they must lower their overall patient caseloads, which would result in losses in the broader patient community and most of those patients would not be immigrants or members of immigrant families, or reduce staff, most of whom are not immigrants. The public charge rule would have repercussions that reduce services for broader communities, not just members of immigrant families.

67. The report estimated that community health center losses in New York state could be between $55 and $102 million, in California from $126 to $240 million, in Connecticut from $4.4 to 11.4 million and in Vermont from $166,000 to $293,000.

Table 2.
Potential Effect of Proposed Public Charge Rule on Community Health Center Revenue and the Potential Reduction in the Number of Patients Served or the Number of Health Center Staff Needed to Compensate for the Loss of Medicaid Revenue

	Loss of Health Center Medicaid Revenue Due to Public Charge Rule		Potential Compensatory Actions Due to the Loss of Medicaid Revenue			
			Reduce Number of Patients Served		Reduce Number of Health Center Staff	
	Low Estimate	High Estimate	Low Estimate	High Estimate	Low Estimate	High Estimate
Total, U.S.	**-$345,673,184**	**-$623,753,853**	**-294,642**	**-537,683**	**-3,373**	**-6,075**
Alabama	-$225,564	-$526,557	-365	-851	-2	-6
Alaska	-$471,897	-$996,953	-149	-315	-3	-7
Arizona	-$10,595,610	-$12,817,305	-9,900	-11,976	-116	-141
Arkansas	-$394,544	-$771,900	-425	-832	-5	-9
California	-$126,143,256	-$240,183,200	-102,201	-194,595	-1,139	-2,169
Colorado	-$5,696,253	-$11,848,222	-5,143	-10,697	-63	-131
Connecticut	-$4,408,901	-$11,391,917	-4,208	-10,873	-44	-113
Delaware	-$553,818	-$852,250	-696	-1,071	-6	-9
Dist. of Columbia	-$9,953,898	-$14,464,689	-4,258	-6,188	-106	-154
Florida	-$7,813,025	-$15,909,023	-9,334	-19,006	-94	-192
Georgia	-$254,034	-$820,574	-310	-1,003	-3	-10
Hawaii	-$1,008,457	-$1,650,632	-736	-1,205	-10	-16
Idaho	-$225,677	-$900,226	-202	-805	-2	-9
Illinois	-$5,948,171	-$13,574,467	-7,417	-16,927	-64	-147
Indiana	-$1,817,859	-$2,930,27 4	-2,312	-3,727	-20	-32
Iowa	-$1,963,423	-$2,414,045	-2,249	-2,765	-19	-24
Kansas	-$471,669	-$789,340	-623	-1,042	-6	-10
Kentucky	-$1,951,046	-$2,143,024	-2,062	-2,265	-22	-24
Louisiana	-$155,599	-$563,779	-164	-595	-2	-6
Maine	-$233,447	-$457,375	-224	-438	-2	-5
Maryland	-$1,782,988	-$3,300,834	-1,628	-3,013	-20	-37
Massachusetts	-$32,471,101	-$44,392,363	-23,251	-31,787	-335	-458
Michigan	-$3,839,013	-$6,084,838	-3,899	-6,180	-40	-64
Minnesota	-$2,658,967	-$5,351,271	-2,530	-5,093	-25	-49
Mississippi	-$9,842	-$210,900	-15	-312	0	-2
Missouri	-$345,504	-$1,286,065	-417	-1,552	-4	-15
Montana	-$137,605	-$197,994	-124	-179	-1	-2
Nebraska	-$623,129	-$849,313	-742	-1,012	-8	-11
Nevada	-$581,865	-$1,463,941	-390	-981	-8	-20
New Hampshire	-$366,666	-$666,839	-290	-528	-4	-7
New Jersey	-$2,799,363	-$7,001,699	-3,406	-8,520	-27	-66
New Mexico	-$3,349,127	-$5,363,475	-2,693	-4,313	-35	-56
New York	-$55,237,669	-$101,597,422	-41,733	-76,758	-495	-911
North Carolina	-$1,070,195	-$3,276,186	-1,376	-4,211	-12	-38
North Dakota	-$273,951	-$370,515	-300	-405	-3	-5
Ohio	-$1,401,176	-$2,540,892	-1,799	-3,262	-16	-29
Oklahoma	-$312,067	-$1,079,861	-373	-1,291	-4	-12
Oregon	-$8,251,838	-$15,300,182	-4,890	-9,066	-80	-148
Pennsylvania	-$7,616,148	-$12,335,111	-7,967	-12,903	-83	-135
Rhode Island	-$3,003,273	-$4,439,375	-3,036	-4,488	-33	-49
South Carolina	-$209,046	-$1,263,821	-203	-1,227	-2	-15
South Dakota	-$485,598	-$597,119	-614	-755	-6	-7
Tennessee	-$347,224	-$938,841	-533	-1,440	-5	-12
Texas	-$13,410,285	-$26,466,577	-17,137	-33,822	-156	-308
Utah	-$1,369,508	-$2,516,979	-1,426	-2,622	-16	-29
Vermont	-$166,063	-$293,264	-167	-295	-2	-3
Virginia	-$458,375	-$1,173,334	-577	-1,477	-5	-13
Washington	-$19,832,337	-$32,646,223	-17,036	-28,043	-190	-312
West Virginia	-$172,518	-$330,056	-214	-409	-2	-4
Wisconsin	-$2,708,512	-$4,285,574	-2,806	-4,439	-28	-44

Source: Ku, Sharac, Gunsalus, Shin & Rosenbaum. 2018.

68. Similar analyses were conducted about the impact of the proposed public charge rule on the Medicaid revenues of hospitals across the country by Manatt Health, on behalf of America's Essential Hospitals, the Association of American Medical Colleges, the American Hospital Association, the Catholic Health Association of the United States, the Children's Hospital Association, and the Federation of American Hospitals.[70] Like the community health center report, this November 2018 report was issued before the final regulation was issued. Results today might differ somewhat, although the general nature and magnitude of results ought to remain similar. This report analyzed the potential effect of the loss of Medicaid revenues in every state and in many metropolitan areas across the nation. Like health centers, hospitals would need to compensate for the loss of revenue by reducing the number of patients served, including many who are not in immigrant families, reducing services and/or reducing staffing. Overall, the report concluded that American hospitals could lose an estimated $17 billion, harming them and the communities they serve. Because hospitals are so much larger and provide much costlier care, the size of the losses is far higher for hospitals than community health centers. The losses reported in this report include all types of hospitals, but the losses will be higher in hospitals that serve more Medicaid patients or in areas with higher immigrant populations, many of which are public hospitals or hospitals that receive substantial state or local subsidies. Table 3 provides the estimates of hospital losses by state; Table 4 shows them instead arrayed by metropolitan areas.

[70] Mann C, Grady A, Orris A. Medicaid Payments to Hospitals at Risk Under the Proposed Public Charge Rule. Nov. 2018. https://www.manatt.com/Manatt/media/Documents/Articles/Medicaid-Payments-at-Risk-for-Hospitals-Under-the-Public-Charge-Proposed-Rule_Manatt-Health_Nov-2018.PDF.

Table 3.
Potential Medicaid/CHIP Hospital Payment Losses Due to Proposed Public Charge Rule by State (2016, $ in millions)

State	$ millions	State	$ millions
Alabama	$48	Montana	$6
Alaska	$23	Nebraska	$32
Arizona	$383	Nevada	$223
Arkansas	$24	New Hampshire	$25
California	$5,168	New Jersey	$608
Colorado	$234	New Mexico	$126
Connecticut	$163	New York	$2,710
Delaware	$31	North Carolina	$216
District of Columbia	$117	North Dakota	$7
Florida	$785	Ohio	$170
Georgia	$243	Oklahoma	$98
Hawaii	$51	Oregon	$186
Idaho	$27	Pennsylvania	$216
Illinois	$554	Rhode Island	$51
Indiana	$117	South Carolina	$54
Iowa	$57	South Dakota	$5
Kansas	$40	Tennessee	$96
Kentucky	$85	Texas	$1,923
Louisiana	$52	Utah	$70
Maine	$7	Vermont	$3
Maryland	$254	Virginia	$112
Massachusetts	$457	Washington	$329
Michigan	$246	West Virginia	$8
Minnesota	$157	Wisconsin	$68
Mississippi	$17	Wyoming	$1
Missouri	$93	**Total, U.S.**	**$16,771**

Source: Mann, Grady & Orris, 2018.

Table 4.
Potential Medicaid/CHIP Hospital Payment Losses Due to Proposed Public Charge Rule by Metropolitan Area (2016, $ in millions)

Metropolitan Area	$ millions
Atlanta-Sandy Springs-Roswell, GA	$183
Baltimore-Columbia-Towson, MD	$136
Boston-Cambridge-Newton, MA-NH	$365
Chicago-Naperville-Elgin, IL-IN-WI	$548
Dallas-Fort Worth-Arlington, TX	$421
Denver-Aurora-Lakewood, CO	$169
Detroit-Warren-Dearborn, MI	$136
El Paso, TX	$156
Fresno, CA	$214
Houston-The Woodlands-Sugar Land, TX	$634
Las Vegas-Henderson-Paradise, NV	$132
Los Angeles-Long Beach-Anaheim, CA	$1,978
McAllen-Edinburg-Mission, TX	$124
Miami-Fort Lauderdale-West Palm Beach, FL	$529
Minneapolis-St. Paul-Bloomington, MN-WI	$136
New York-Newark-Jersey City, NY-NJ-PA	$3,113
Philadelphia-Camden-Wilmington, PA- NJ-DE-MD	$232
Phoenix-Mesa-Scottsdale, AZ	$301
Portland-Vancouver-Hillsboro, OR-WA	$137
Riverside-San Bernardino-Ontario, CA	$572
Sacramento–Roseville–Arden-Arcade, CA	$198
San Antonio-New Braunfels, TX	$181
San Diego-Carlsbad, CA	$387
San Francisco-Oakland-Hayward, CA	$506
San Jose-Sunnyvale-Santa Clara, CA	$365
Seattle-Tacoma-Bellevue, WA	$178
Washington-Arlington-Alexandria, DC- VA-MD-WV	$256
Yuba City, CA	$115
All other	$4,365
Total, U.S.	**$16,771**

Source: Mann, Grady & Orris, 2018.

69. The Manatt report estimated that hospital losses due to the proposed public charge rule in New York State could total $2.7 billion, in California $5.2 billion, in Connecticut $163 million and in Vermont $3 million. In the New York City-Newark metropolitan area the losses could be $3.1 billion and losses could reach $2.0 billion in the Los Angeles area.

70. Public health directors have commented on the major damage engendered by the public charge policies. In November 2018, Mitchell Katz, MD, MPH, who directs New York City's Health and Hospitals system and previously led the health departments of Los Angeles County and San Francisco and is one of the nation's foremost authorities on public health and health care systems stated: "If enacted as proposed, this public charge provision could decrease access to medical care and worsen the health of individuals, threaten public health, and undercut the viability of the health care system."[71]

71. The results of the loss of Medicaid benefits would spill over into harm for hospitals, clinics and related facilities, both because of their underlying commitments to serve disadvantaged patients, but in many cases because of state laws that require them to provide care to the indigent who are otherwise uninsured. For example, under Section 2807-k(9-a) of the New York State Public Health Law, the state requires that hospitals must limit what they can charge low-income uninsured patients, effectively requiring them to accept losses to care for such patients.[72] Section 17000 of the California Welfare and Institutions Code requires cities and counties to assume responsibilities for care: "Every county and every city and county shall relieve and support all incompetent, poor, indigent persons, and those incapacitated by age, disease, or accident, lawfully resident therein, when such persons are not supported and relieved

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[71] Katz M, Chokshi D. The "Public Charge" Proposal and Public Health: Implications for Patients and Clinicians. *Journal of the American Medical Association*. 2018;320(20):2075-2076. Nov. 27, 2018.

[72] New York State Department of Health. Understanding Your Financial Aid Rights. https://profiles.health.ny.gov/hospital/pages/financial_aid_info. Accessed Aug. 22, 2019.

by their relatives or friends, by their own means, or by state hospitals or other state or private institutions." Similar laws at state and local levels across the country that require efforts to provide indigent care and the loss of Medicaid coverage by millions of members of immigrant families would shift costs and burdens onto states, local governments and health care providers, as well as reducing access to care by those who lose their insurance.

72. Other researchers have analyzed broader economic consequences of the public charge rule. For example, a report by researchers at the University of California[73] estimated the impact of the proposed public charge rule on California. The researchers began by estimating the potential loss of Medicaid and SNAP (called Medi-Cal and CalFresh in California) benefits by members of immigrant families in California, then estimated the level of federal revenue (Medicaid matching funds and federal SNAP payments) would be lost, a combined loss of $1.7 billion in federal benefits received in California. Because these benefits pay for health care services and food, the lost federal revenue decreases money going to pay hospitals, doctors' offices, grocery stores, and other businesses, and this in turn lower payments made to staff and to vendors, such as food producers, which have effects that multiply through the economy. The researchers then used economic models to estimate the number of jobs that would be lost due to the reduction in federal revenue. They estimated that this could cost California 17,700 jobs, about half of which are in health care, 10 percent in the food sector and the rest in other areas of the state's economy.

73. The reports cited above are just a portion of the analyses, mostly conducted soon after the proposed public charge rule was released, that attempt to demonstrate the economic

[73] Ponce N, Lucia L, Shimada T. Proposed Changes to Immigration Rules Could Cost California Jobs, Harm Public Health. UCLA Center for Health Policy Research. Dec. 2018. https://healthpolicy.ucla.edu/publications/Documents/PDF/2018/publiccharge-factsheet-dec2018.pdf.

harm that would occur among community health centers, hospitals, states and local areas. Despite the diversity in data, methods and issues examined, they are consistent in indicating that the public charge rule would have broad and harmful effects on state and local governments, health care providers and the communities they serve.

H. Other Harmful Health Care Aspects of the Public Charge Rule

74. The public charge rule includes other provisions that relate to health insurance coverage or health status. Not only is the receipt of Medicaid a heavily weighted negative factor, so are: (a) having a serious medical condition that could result in hospitalization or extensive medical care or interfere with the ability to work or (b) being uninsured with no prospect of obtaining private insurance, nor having the ability to pay for care (§212.22(c)(1)(iii)). In contrast, heavily weighted positive factors include having an income greater than 250 percent of the federal poverty line or having private insurance, not including private coverage obtained through the Health Insurance Marketplace (also known as "Obamacare") subsidized with premium tax credits (§212.22(c)(2)).

75. Table 5 presents data on the health insurance coverage of adults who are low-income (with incomes below 200 percent of poverty) members of immigrant families and of low-income and upper-income families without immigrants, based on further analyses of the 2017 National Health Interview Survey.[74] Low-income members of immigrant families are much more likely to be uninsured (38 percent) than low-income adults not in immigrant families (19 percent) and higher-income adults not in immigrant families (7 percent). Moreover, members of

[74] Author's analysis of the 2017 National Health Interview Survey. https://www.cdc.gov/nchs/nhis/index.htm.

low-income immigrant families are less likely to be covered by private insurance, Medicaid or other insurance than low-income adults who are not in immigrant families.

Table 5.
Health Insurance Coverage of Adult (21-64) Members of Immigrant Families and Those Who are Not Members of Immigrant Families, 2017

	Low-income Member of Immigrant Family	Low-income Not Member of Immigrant Family	Not Low-income Not Member of Immigrant Family
Private Insurance	28.5%	35.4%	83.4%
Health Insurance Marketplace	1.5%	1.2%	1.3%
Medicaid /CHIP	29.0%	35.7%	4.2%
Other (e.g., Medicare, military)	3.0%	8.6%	3.8%
Uninsured	38.0%	19.1%	7.3%
Total	100.0%	100.0%	100.0%

Source: Author's analysis of 2017 National Health Interview Survey

76. Medicaid eligibility for non-citizen immigrants was sharply restricted by PRWORA; analyses show that non-citizen immigrants are much less likely to get Medicaid than low-income citizens.[75] But the largest reason that immigrants are less insured is that, although they have high labor participation rates, immigrants often work in jobs, such as construction, agriculture, hospitality or food processing jobs, that do not offer insurance to their employees.[76] Immigrants are simply less likely to be offered insurance, whether by the government or by their employers. The public charge rule creates a further disadvantage to the uninsured, which

[75] Ku L, Bruen B. Poor Immigrants Use Public Benefits at a Lower Rate than Poor Native-Born Citizens, *Economic Development Bulletin* No. 17, Washington, DC: Cato Institute. March 4, 2013 http://www.cato.org/sites/cato.org/files/pubs/pdf/edb17.pdf.

[76] Buechmuller T, LoSasso T, Lurie I, Dolfin S. Immigrants and Employer-Sponsored Health Insurance. *Health Services Research* 2007; 42(1): 286-310.

disproportionately harms low-income members of immigrant families, particularly Latinos, despite their participation in the workforce.

77. Having private insurance is a heavily weighted positive factor in public charge determinations, but immigrants have lower opportunities to get private insurance than those who are not in immigrant families. Data from the 2017 National Health Interview Survey indicate that 21 percent of immigrants who lack coverage report that it was because it was not offered in their jobs, because they were rejected by an insurance company, lost their job or changed companies, changed family status (e.g., divorced), or because the cost was too high, compared to 10 percent of low-income adults not in immigrant families and 4 percent of higher income adults not in immigrant families. In addition, since those who get insurance through the Health Insurance Marketplaces with federal tax subsidies cannot count that insurance as a heavily weighted positive factor, about 1.5 percent of the low-income members of immigrant families will not receive this positive factor either.

78. Under the public charge rule, members of immigrant families can be penalized if they use Medicaid or are uninsured. Any expectation that they may make up this gap by gaining private insurance is unrealistic. For example, in 2018, the average total cost of health insurance in an employer-sponsored plan was $6,715 for single person and was $19,565 for a family; these levels are out of reach for almost all low-income immigrants if they are not offered insurance by their employers or get federal tax premiums to help them buy coverage through Health Insurance Marketplaces. Less than a third of the adults in low-income immigrant families (28.5 percent) have the private insurance that could count as a highly weighted positive factor; most of the rest would face negative immigration consequences under the rule.

I. Current or Past Status of Immigrants Does Not Predict Their Future Economic Success

79. According to DHS, the overarching goal of its revised public charge policies is to "better ensure that applicants for admission to the United States and applicants for adjustment of status to lawful permanent residency…are self-sufficient."[77] To accomplish this DHS will use current or past characteristics of immigrant applicants, such as use of public benefits, being uninsured or having a low income, to effectively predict the future economic status of immigrants.

80. A fundamental question is whether receiving Medicaid interferes with a recipient's economic status or employment. The strongest evidence comes from a rigorous study conducted in Oregon by Harvard University researchers that found that receiving Medicaid did not significantly discourage employment or lower earnings by low-income adults.[78] Medicaid did not harm their chances of employment or earnings; it just gave them health insurance coverage to address their medical needs. This study used a randomized experiment, the strongest possible evaluation design, to compare those who received Medicaid and those who did not and found that those who gained Medicaid coverage had equivalent employment rates and earnings levels as those who did not. Receiving Medicaid does not make recipients less likely to work or able to meet their economic needs. Instead it provides health insurance coverage that helps them meet their health care needs that can help them maintain employment and well-being.

81. Research and experience also indicates the hazard of predicting future economic status based on past performance. Immigrants are often initially disadvantaged when they first arrive in the United States; they have limited American job experience and have not developed

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[78] Baicker K, Finkelstein A, Song J, Taubman A. The Impact of Medicaid on Labor Market Activity and Program Participation: Evidence from the Oregon Health Insurance Experiment. *American Economic Review.* 2014, 104(5): 322–328.

the social and business networks that enable people to find better work, but their status improves rapidly. Research consistently shows that when immigrants first enter, they tend to have lower incomes than similar U.S.-born adults, but their earnings grow rapidly as they remain in the US and gain experience, skills and opportunities, enabling them to integrate into the economic mainstream.[79] The prototypical immigrant success story is one of a person who comes to the U.S. with nothing in his or her pocket, but, through hard work and persistence, eventually becomes a success. For example, analyses of Census data reveal that immigrants without a high school education, such as those targeted by the public charge rule, initially have lower average incomes than similar U.S.-born citizens (with the same gender, age, and education), but the immigrants' incomes catch up and then surpass their U.S.-born peers within six or seven years.[80] Public charge policies make it harder for the immigrant to remain in the U.S. and thus jeopardize their ability to improve their economic status. There is even stronger evidence of the economic and educational success of "second generation" immigrants, the U.S.-born children of immigrants.[81] Public charge policies that reduce the ability of immigrants or their children to remain in the United States could short-circuit their subsequent economic well-being.

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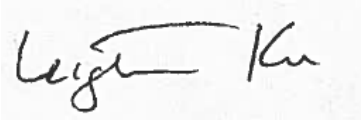
79 *See, e.g.*, Chiswick B. The effect of Americanization on the earnings of foreign-born men. *Journal of Political Economy* October 1978: 897–922; Duleep H, Dowhan D. Research on immigrant earnings. *Social Security Bulletin*. 2008; 68(1): 31-50; Kaushal N, et al. Immigrant employment and earnings growth in Canada and the USA: evidence from longitudinal data. *Journal of Population Economics*. 2016; 29(4): 1249–1277; Borjas G, Friedberg R. Recent trends in the earnings of new immigrants to the United States. National Bureau of Economic Research Working Paper 15406. Oct.2009.

80 Ku L, Pillai D. The Economic Mobility of Immigrants: Public Charge Rules Could Foreclose Future Opportunities. Nov. 15, 2018. Social Science Research Network. http://ssrn.com/abstract=3285546.

81 Pew Research Center. Second-Generation Americans: A Portrait of the Adult Children of Immigrants. Feb. 2013. https://www.pewresearch.org/wp-content/uploads/sites/3/2013/02/FINAL_immigrant_generations_report_2-7-13.pdf; Doung M, et al. Generational Differences in Academic Achievement Among Immigrant Youths: A Meta-Analytic Review. *Review of Education Research*. 2016; 86(1): 3-41.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 9th day of September, 2019.



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Leighton Ku

EXHIBIT A

CURRICULUM VITAE

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Summary

Leighton Ku, PhD, MPH, is a professor of health policy and management at the George Washington University (GW). He is a nationally known health policy and health services scholar with more than 25 years of experience. He has examined topics such as national and state health reforms, access to care for low-income populations, Medicaid, preventive services, the health care safety net, cost and benefits of health services, and immigrant health. He has authored or co-authored more than 90 peer-reviewed articles and 200 policy briefs and other translational reports. He directs the Center for Health Policy Research, a multidisciplinary research center, which includes physicians, attorneys, economists, health management and policy experts and others, with more than 20 faculty and dozens of staff; it has a research portfolio in excess of $25 million. He has been principal investigator for a large number of studies with support from the National Institutes of Health, Centers for Disease Control and Prevention, Centers for Medicare and Medicaid Services, the Commonwealth Fund and Robert Wood Johnson Foundation, and other sources. In the course of his career at GW, the Center on Budget and Policy Priorities and the Urban Institute, he has worked with federal and state executive and legislative agencies, health care organizations, advocates and others in research, technical assistance, strategic advice and advocacy. As a faculty, he has taught research methods and policy analysis at the graduate level for more than 20 years and guided numerous students through dissertations and other research. As a member of his community, he helped establish and guide the District of Columbia's Health Benefits Exchange Authority as a founding member of its Executive Board.

Education

1990	Ph.D., Health Policy, Boston University (Pew Health Policy Fellow in a joint program of Boston University and Brandeis University)
1979	M.P.H., Public Health, University of California, Berkeley
1979	M.S., Nutritional Sciences, University of California, Berkeley
1975	A.B. (honors), Biochemistry, Harvard College

Professional Background

2015 – present	Co-Director, PhD Health Policy Program. First at GW Trachtenberg School of Public Policy and Administration, now at Milken Institute School of Public Health.
2012 - present	Executive Board, District of Columbia Health Benefit Exchange Authority (voluntary position).
2008 - present	Director, Center for Health Policy Research, The George Washington University

2008 - present	Professor of Health Policy and Management (with tenure), Department of Health Policy and Management, Milken Institute School of Public Health, The George Washington University.
2015- 2016	Interim Chair, Department of Health Policy and Management
2000 - 2008	Senior Fellow, Center on Budget and Policy Priorities, Washington, DC
1992 - present	Professor in Public Policy and Public Administration, Trachtenberg School of Public Policy and Administration, The George Washington University. Secondary appointment. Began as Associate Professorial Lecturer.
1990 - 2000	Principal Research Associate. The Urban Institute, Washington, DC. Began as Research Associate I.
1989 - 1990	Research Manager, SysteMetrics/McGraw-Hill, Cambridge, MA.
1987 - 1989	Pew Health Policy Fellow, Health Policy Institute, Boston University and the Heller School, Brandeis University
1980 - 1987	Program Analyst, Office of Analysis and Evaluation and Supplemental Food Programs Division, Food and Nutrition Service, U.S. Dept. of Agriculture, Alexandria, VA and Washington, DC.
1975 - 1976	Registered Emergency Medical Technician, Dept. of Health and Hospitals, Boston, MA

Publications Authored or Co-authored in Peer-Reviewed Journals

[Aggregate measures of scholarly productivity: H-index = 44, I10-index = 119 (according to Google Scholar as of June 26, 2019.]

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[Note between 2000 and 2008, I was working at the Center on Budget and Policy Priorities and was not principally working on refereed publications.]

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Sonenstein FL., Pleck JH, Ku L. Why Young Men Don't Use Condoms: Factors Related to Consistency of Utilization, Sexuality and American Policy Seminar Series, Kaiser Family Foundation and American Enterprise Institute for Public Policy Research, Washington, D.C., May 1995.

Ku L and the NSAM Study Team, Preliminary Results of the Pretest for the National Survey of Adolescent Males, Report to the Centers for Disease Control and Prevention and the National Institute for Child Health and Human Development, November 1994.

Ku L, Levine G, Sonenstein F, State STD Reporting Rules and Research Surveys, Report to the Centers for Disease Control and Prevention, September 1994.

Sonenstein F, Pleck J, Ku L, The Male Side of the Equation, TEC Networks, 33:3-4, June 1992.

Sonenstein F, Pleck J, Ku L, Influences on Adolescent Male Premarital Sexual Behavior, Final Report to the Office of Population Affairs, DHHS from Urban Institute, May 1992.

Sonenstein F, Pleck J, Ku L, Sex and Contraception Among Adolescent Males, TEC Networks, 29:1-3, June 1991.

Sonenstein F, Pleck J, Calhoun C, Ku L, 1988 National Survey of Adolescent Males: A User's Guide to the Machine Readable Files and Documentation, Data Set G6, Data Archives on Adolescent Pregnancy and Pregnancy Prevention, Los Altos, CA: Sociometrics Corp, 1991.

Sonenstein F, Pleck J, Calhoun C, Ku L, Determinants of Contraceptive Use by Adolescent Males, Final Report to the National Institute for Child Health and Human Development, Urban Institute, February 1991.

Food and Nutrition Policy

Ku L, Debating WIC, The Public Interest, 135: 108-12, Spring 1999. [PR]

Ku L, Cohen B, Pindus N. Full Funding for WIC: A Policy Review, Washington, DC: Urban Institute Press, 1994.

Ku L, Long S, Brayfield A. and others, Low-Income Children's Nutritional Needs and Participation in USDA's Food Assistance Programs. Final Report to the Food and Nutrition Service, USDA from the Urban Institute, September 1993.

Ku L, Institutional Participation in the National School Lunch and Breakfast Programs, Final Report to the Food and Nutrition Service, USDA from the Urban Institute, March 1993.

Ku L, Reported Meal Production Costs and Reimbursement Rates in the National School Lunch Program, Draft Report to the Food and Nutrition Service, USDA from the Urban Institute, April 1992.

Ku L, Brayfield A, and others, Evaluation of Low-Income Children's Nutritional Needs and Participation in USDA's Food Assistance Programs: Conceptual Assessment. Report to Food and Nutrition Service, USDA from the Urban Institute, February 1992.

Ku L, McKearn M. Effects of the Temporary Emergency Food Assistance Program (TEFAP) on Displacement of Commercial Sales, (with the Economic Research Service and Mathematica Policy Research), Report to Congress, U.S. Dept. of Agriculture, August 1987.* [PR]

Ku L, Dalrymple R., Differences Between SIPP and Food and Nutrition Service Program Data on Child Nutrition and WIC Program Participation, Survey of Income and Program Participation (SIPP) Working Papers, No. 8707, Bureau of the Census, May 1987.

Ku L, Nutritional Research Relating to Infant Feeding in the WIC Program, Report to the Assistant Secretary for Food and Consumer Services, June 1986.*

Richman L, Hidelbaugh T, McMahon-Cox N, Ku L, Dayton CM, Goodrich N. Study of WIC Participant and Program Characteristics, Report to Congress, Food and Nutrition Service, U.S. Dept. of Agriculture (with Ebon Research Systems and Abt Associates Inc.), April 1986. [PR]

Ku L, Abbot J, Forchheimer M. The Feasibility, Costs and Impacts of a Universal School Lunch Program, Draft Report to Congress, U.S. Dept. of Agriculture, June 1985.

Puma M, Ku L, Economic Analysis of the Temporary Emergency Food Assistance Program, Report to Congress, Food and Nutrition Service, U.S. Dept. of Agriculture, May 1985.* [PR]

Ku L, Nichols A. Report on the Food Bank Demonstration Project, Report to Congress, Food and Nutrition Service, U.S. Dept. of Agriculture, April 1984.* [PR]

* These reports were issued as official Agency or Department reports with no listed authors. In addition, Leighton Ku wrote numerous proposed and final regulations and legislative and budget reports while on the staff of the Food and Nutrition Service. In many cases, these were published in the Federal Register, Congressional Record and related Federal series.

Selected Presentations and Testimony

Ku, L. Testimony: Economic and Employment Benefits of Expanding Medicaid in North Carolina. Field Hearing, North Carolina Assembly. Winston-Salem, NC. Aug. 16, 2019.

Ku L. Current Threats to Medicaid. Dialogue on Diversity. UnidosUS. Washington, DC. June 26, 2019.

Ku, L, Rosenbaum S, Keith K, Blumberg L, Sidhu A. Health Policy Goes to Court: Collaborations of Law and Research. AcademyHealth Annual Research Conf. Washington, DC. June 2, 2019

Ku L, Brantley E, Pillai D. The Effects of SNAP Work Requirements in Reducing Participation and Benefits. AcademyHealth Annual Research Conf. Washington, DC. June 4, 2019

Brantley E, Pillai D, Ku L. Factors Affecting Enrollment in Public Programs. AcademyHealth Annual Research Conf. Washington, DC. June 2, 2019

Ku, L. Immigrants and American Health Policy. Boston College. Global Migration Conference: Inclusion and Exclusion. Boston MA April 12, 2019.

Ku, L. Medicaid Policy in the States. Scholars Strategy Network National Leadership Conference, Washington DC. Jan. 18, 2019.

Ku, L. Health Insurance Coverage for DC Latinos. DC Latino Health Leadership Symposium. Washington DC. Jan. 9, 2019.

Seiler N, Ku L. Medicaid's Role in Addressing the Opioid Crisis. GW seminar, Nov. 16, 2017.

Ku L. Medicaid: Addressing Tobacco & Opioid Addictions. Presentation at Addressing Addiction: Policy Prescriptions to Preventing Opiate Abuse and Tobacco Use. Health Policy Institute of Ohio, Columbus, OH, Sept. 26, 2017.

Ku L. Economic and Employment Effects of the Better Care Reconciliation Act. Testimony to the Maryland Legislative Health Insurance Coverage Protection Commission, Maryland House of Delegates, Annapolis, MD. Aug. 1, 2017. Similar presentation at REMI webinar, Aug. 2, 2017.

Ku L. Economic and Employment Effects of the American Health Care Act. Presentation at AcademyHealth Annual Research Conference, New Orleans, June 25, 2017. Similar presentations at Policy in the Trump Era: National, State, and Regional Economic Impacts Conference, Hall of States, Washington, D.C. June 19, 2017 and at Medicaid Policy Conference, Council of State Governments, Washington, DC, June 29, 2017.

Ku L. Repealing Obamacare: Effects on the Health Workforce. Presentation at AcademyHealth Annual Research Conference, New Orleans, June 26, 2017.

Brantley E, Ku L. Promoting Tobacco Cessation: The Role of Medicaid and Other Policies. Poster at AcademyHealth Annual Research Conference, New Orleans, June 26, 2017.

Ku L. The Future of Medicaid. Conference on Obamacare After Obama. Southern Illinois Healthcare/Southern Illinois University School of Law. Springfield, IL, May 19, 2017.

Brantley E, Ku L. Linking Data to Uncover Medicaid's Role in Cessation. National Conference on Tobacco or Health, Austin TX, March 23, 2107.

Ku L. The Future of Medicaid and the Safety Net. Health Policy Expert Series. Milken Insitute School of Public Health. March 21, 2017.

Ku L. Financial Consequences of ACA Repeal. Podcast, Feb. 15, 2017
http://www.commonwealthfund.org/interactives-and-data/multimedia/podcasts/new-directions-in-health-

care/the-impact-of-aca-repeal

Ku L. Repealing Health Reform: Economic and Employment Consequences for States. REMI Seminar, Washington, DC. Jan. 27, 2016. Similar national webinar Feb. 1, 2017.

Ku L. Pay for Success Demonstrations of Supportive Housing for Chronically Homeless Individuals: The Role of Medicaid. Association for Public Policy and Management Research Conference, Washington, DC. Nov. 4, 2016.

Ku L. Immigrants and Community Health Centers. Pennsylvania Association of Community Health Centers, Lancaster PA. Oct. 12, 2016.

Ku L. Moving Medicaid Data Forward (discussant). Mathematica Policy Research, Washington, DC Oct. 11, 2016.

Ku L. Medicaid Can Do More to Help Smokers Quit, Michael Davis Lecture, University of Chicago, Oct. 4, 2016. Similar seminar at Univ. of Maryland, Sept. 15, 2016.

Ku L, Borkowski L. Publish or Perish: Advice for Publishing for Peer-Reviewed Journals in Health Policy. GW Department of Health Policy & Management seminar, Sept. 20, 2016.

Ku L . Family Planning, Health Reform and Potential Restrictions on Coverage or Access, presented at Contraception Challenged: Putting *Zubik v. Burwell* in Context, sponsored by National Family Planning and Reproductive Health Association meeting at Capitol Visitors Center, Washington, DC, June 7, 2016.

Ku L Russell T. et al. Debate on the Role of Public Programs in Care for the Poor. Benjamin Rush Institute, Washington, DC, April 1, 2016.

Brantley E, Ku L. Improved Access and Coverage Under The ACA: Are Immigrants at the Table?, presented at GW Research Day, March 30, 2016. (Won prize for best policy and practice research.)

Ku L. The Role of the Health Care Safety Net, Virginia Commonwealth University, Richmond, March 17, 2016.

Ku L, Steinmetz E, Bysshe T. Medicaid Continuity of Coverage in an Era of Transition. Webinar for Association of Community-Affiliated Plans, Nov. 2, 2015.

Ku L Bruen B, Steinmetz E, Bysshe T. Trends in Tobacco Cessation Among Medicaid Enrollees, presented at AcademyHealth Annual Research Meeting, Minneapolis, June 15, 2015.

Ku L. Using Economic Impact Analysis in Medicaid Advocacy, presented at AcademyHealth Annual Research Meeting, Minneapolis, June 13, 2015.

Ku L. The Translation of Health Services Research into Policy Related to the Affordable Care Act, Presented at American Association of Medical Colleges, March 20, 2015.

Ku L. Policy and Market Pressures on Safety Net Providers, National Health Policy Conference, Feb. 10, 2015.

Ku L. 'Economic and Employment Costs of Not Expanding Medicaid in North Carolina, Cone Health Foundation, Greensboro, NC, Jan. 9, 2015.

Ku L . Health Reform: How Did We Get Here, What the Heck Is Going On and What Next? Keynote Address: Medical Librarians Association, Alexandria VA, Oct. 20, 2014.

Ku L. Health Reform and the Safety Net. Testimony before Maryland Community Health Resources Commission. Annapolis, MD, Oct. 2, 2014.

Ku L. Some Key Issues in Health Reform. Presented at American Association for the Advancment of Science Health Policy Affinity Group Meeting, Washington, DC July 24, 2014.

Ku L, Curtis D. Barlow P. District of Columbia's Health Benefits Exchange at the Launch of a State-Based Exchange: Challenges and Lessons Learned Georgetown Law School Summer Session on Health Reform, July 23, 2014.

Ku L. The Big Picture on Medicaid for State Legislators Presented at Council of State Governments. Medicaid Workshop for Health Leaders, Washington, DC June 20, 2014.

Ku L, Frogner B, Steinmetz E, Pittman P. Many Paths to Primary Care: Flexible Staffing and Productivity in Community Health Centers, Presented at Annual Research Conference AcademyHealth, San Diego, CA, June 10, 2014.

Ku L, Zur J., Jones E, Shin, P, Rosenbaum S. How Medicaid Expansions and Post-ACA Funding Will Affect Community Health Centers' Capacity. Presented at Annual Research Conference AcademyHealth, San Diego, CA, June 9, 2014.

Ku L. Critical Issues for Community Health Centers, Alliance for Health Reform briefing, Commonwealth Fund, Washington, DC. May 16, 2014.

Ku L. Immigrants' Health Access: At the Nexus of Welfare, Health and Immigration Reform, Keynote talk at Leadership Conference on Health Disparities, Harvard Medical School, Boston, MA May 6, 2014.

Ku L. Wellness and the District of Columbia. District of Columbia Chamber of Commerce forum, Washington, DC, March 11, 2014.

Ku L. Health Care for Immigrant Families: A National Overview. Congressional Health Justice Summit, Univ. of New Mexico - Robert Wood Johnson Center for Health Policy, Albuquerque, NM, Sept. 7, 2013.

Ku L. Health Reform: Promoting Cancer Prevention and Care. Talk to DC Citywide Navigators Network, Washington, DC, July 15, 2013.

Ku L. Analyzing Policies to Promote Prevention and Health Reform. Seminar at the Centers for Disease Prevention and Promotion, Atlanta, GA. July 10, 2013.

Ku L. Medicaid: Key Issues for State Legislators. Council on State Governments, Medicaid Workshop for Health Leaders, Washington, DC, June 22, 2013.

Ku. L.Steinmetz E. Improving Medicaid's Continuity of Care: An Update. Association of Community Plans Congressional Briefing, May 10, 2013.

Ku L (with Brown C, Motamedi R, Stottlemeyer C, Bruen B) Economic and Employment Impacts of Medicaid Expansions. REMI Monthly Policy Seminar, Washington, DC, April 24, 2013.

Ku L. Building Texas' Primary Care Workforce, Legislative Briefing: Health Care Coverage Expansion & Primary Care Access in Texas, Center on Public Priorties and Methodist Healthcare Ministries, Texas Capitol, Austin, TX, Mar. 8, 2013

Ku L, Jewers M. Health Care for Immigrants: Policies and Issues in a New Year. Presentation to Conference on After the Election: Policies Affecting Young Children of Immigrants, Migration Policy Institute, Washington, DC, Jan. 17, 2013.

Ku L. Health Reform and the New Health Insurance Exchanges: Issues for Indiana Families, Indiana Family Impact Seminar at Indiana State Legislature, Nov. 19, 2012.

Ku L. Pediatric Preventive Medical and Dental Care: The Role of Insurance and Poverty, AcademyHealth Annual Research Meeting, Orlando, FL, June 24, 2012.

Ku L. A Medicaid Tobacco Cessation Benefit: Return on Investment, Webinar for Partnership for Prevention and Action to Quit, Feb. 8, 2012.

Ku L. Safety Net Financing Issues, Webinar for National Workgroup on Integrating a Safety Net, National Academy for State Health Policy, Feb. 6, 2012

Ku L. How Medicaid Helps Children: An Introduction. Briefing to Congressional Children's Health Caucus, Jan. 25, 2012

Ku L. Market Access Webinar: Provider Access: Coordinating Medicaid & Exchanges: Continuity of Services & the Role of Safety Net Providers, Webinar for Center for Consumer Information and Insurance Oversight, Centers for Medicare & Medicaid Services, Dec. 15, 2011.

Ku L. The Safety Net: An Evolving Landscape, Presented to Grantmakers in Health, Washington, DC. Nov. 3, 2011. [Similar talks in Orlando, FL to Blue Cross Blue Shield of Florida Foundation, Feb. 17, 2012 and in Williamsburg, VA to Williamsburg Community Health Foundation Apr. 3, 2012 and to Virginia Health Foundation, Nov. 13, 2012]

Ku L. Open Access Publishing. Presented at forum for GW Medical Center faculty and staff, Oct. 24, 2011.

Ku L, Levy A. Implications of Health Reform for CDC's Cancer Screening Programs: Preliminary Results, Presentation to National Breast and Cervical Cancer Early Detection Program and Colorectal Cancer Control Program Directors Meeting, Atlanta, GA, Oct. 21, 2011.

Ku L. Coordinating Medicaid & Exchanges: Continuity of Services & the Role of Safety Net Providers, Presented to America's Health Insurance Plans, Washington, DC. Sept. 16, 2011.

Ku L. The Potential Impact of Health Reform on CDC's Cancer Screening Programs: Preliminary Results, Presented to NBCCEDP Federal Advisory Committee Meeting, Atlanta, GA, Jun. 17, 2011. (Similar presentations to the American Cancer Society, Sept. 2011.)

Ku L. Crystal Balls and Safety Nets: What Happens After Health Reform? Presented at AcademyHealth, Seattle, WA, June 2011.

Ku L. Strengthening Primary Care to Bend the Cost Curve: Using Research to Inform U.S. Policy, International Community Health Center Conference, Toronto, Canada, June 2011

Ku L. Integrating/Coordinating Care for Safety Net Providers: Issues and Local Examples, International Community Health Center Conference, Toronto, Canada, June 2011.

Ku L. Health Reform: Federal Implementation and More Unanswered Questions Presented at American Society of Public Administration, Baltimore, MD, Mar. 14, 2011.

Ku L. Key Issues in the Confusing World of Health Reform, Presented to Industrial College of the Armed Forces, National Defense University, Washington, DC, Feb. 25, 2011.

Ku L. Reducing Disparities and Public Policy Conflicts, Institute of Medicine Workshop on Reducing Disparities in Life Expectancy, Washington, DC, Feb. 24, 2011.

Ku L. Primary Care, Hospitalizations and Health Reform, American Enterprise Institute Workshop, Washington, DC, Feb. 17, 2011.

Ku L. The Promise and Perils of Health Policy for Asians in the United States, Invited keynote talk at 4th International Asian Health and Wellbeing Conference, Univ. of Auckland, New Zealand, NZ, July 6, 2010. Similar talk at symposium sponsored by the New Zealand Office of Ethnic Affairs, Wellington, NZ, July 8, 2010.

Ku L, Strengthening Primary Care to Bend the Cost Curve: The Expansion of Community Health Centers Through Health Reform, Briefing for Senate and House staff and media, convened by Sen. Bernie Sanders (VT), Russell Senate Office Building, June 30, 2010.

Ku L. Ready, Set, Plan, Implement. Executing Medicaid's Expansion, *Health Affairs* Conference on Health Reform, Washington, DC, June 8, 2010.

Ku L. Coordinating Care Among Safety Net Providers, Primary Care Forum, National Academy of State Health Policy, Alexandria, VA, June 2, 2010.

Ku L.Title VI: The Role of Culturally Competent Communication in Reducing Ethnic and Racial Health Care Disparities, National Minority AIDS Education and Training Center Spring Symposium, Howard Univ. May 29, 2010.

Ku L. American Health Reform as Massive Incrementalism, American Association for Budget and Program Analysis, Nov. 24, 2009.

Ku L. The Health Care Safety Net and Health Reform, National Academy of Public Administration, Conference on Health Care for the Future, Nov. 22, 2009.

Ku L. The Health of Latino Children, National Council of La Raza Symposium on Latino Children and Youth, Oct. 22, 2009.

Ku L. What the Obama Administration Will Mean for Child Health, AcademyHealth preconference session on Child Health, Chicago, IL June 2009.

Ku L. Immigrants and health reform, 6th Annual Immigration and Law Conference, Georgetown Univ. Law School, Migration Policy Institute and Catholic Legal Immigration Network, Washington, DC, June 24, 2009.

Ku L. From the Politics of No! to the Potential for Progress, invited keynote talk about immigrant policy and research to Society for Research in Child Development, Denver, CO, April 1, 2009.

Ku L. Strengthening the Primary Care Safety Net, National Association of Community Health Centers, Policy and Issues Conference, March 26, 2009.

Ku L. The Dial and the Dashboard: Assessing the Child Well-Being Index, Presentation to the Board of the Foundation for Child Development, March 3, 2009.

Ku L. Key Data Concerning Health Coverage for Legal Immigrant Children and Pregnant Women, invited presentation to Senate staff, Jan. 13, 2009.

Ku L. Comparing the Obama and McCain Health Plans, George Washington Univ. Medical School Alumni Conference, Sept. 27, 2008.

Ku L. The Future of Medicaid, Medicaid Congress, sponsored by Avalere Health and Health Affairs, Washington, DC, June 5, 2008.

Ku L. A Brief Appreciation of Health Advocates: Progress Made, Some Setbacks, Challenges Ahead, Public Interest Law Center of Philadelphia Conference, Philadelphia, PA, May 14, 2008.

Ku L. Financing Health Care Reform in New Jersey: Making Down Payments on Reform, Rutgers-AARP Conference, New Brunswick, NJ. Mar. 18, 2008

Ku L, Perez T, Lillie-Blanton M. Immigration and Health Care-What Are the Issues, Kaiser Family Foundation HealthCast, webcast interview March 12, 2008.

Ku L. How Research Might Affect SCHIP Reauthorization, Child Health Services Research Meeting at AcademyHealth, Orlando, FL, June 2, 2007.

Ku L. Immigrant Children and SCHIP Reauthorization, Capital Hill Briefing conducted by the Population Resource Center, April 20, 2007.

Ku L. Health Policy and Think Tanks, Robert Wood Johnson Health Policy Fellows, Institute of Medicine, June 2006. Similar talk in other years.

Ku L. Medicaid Reform and Mental Health, National Alliance for the Mentally Ill, Annual Conference, Austin, TX, June 20, 2005.

Ku L. Cost-sharing in Medicaid and SCHIP: Research and Issues, National Association of State Medicaid Directors, Washington, DC, Nov. 18, 2004. Similar talk given to National Academy of State Health Policy, St. Louis, MO, Aug. 2, 2004.

Ku L. Coverage of Poverty-Level Aged and Disabled in Mississippi's Medicaid Program, Testimony to Mississippi Senate Public Health and Welfare Committee, Aug. 24, 2004

Ku L. Medicaid Managed Care Issues, Testimony to Georgia House of Representatives Appropriations Committee, March 2, 2004.

Ku L. Medi-Cal Budget Issues, Testimony to Joint Hearing of California Senate Budget and Health and Human Services Committees, Feb. 26, 2003.

Ku L .New Opportunities to Improve Health Care Access and Coverage, American College of Emergency Physicians, May 1, 2001.

Ku L,. Medicaid DSH and UPL: Perplexing Issues, National Association of Public Hospitals Health Policy Fellows Conference, Washington, DC, Mar. 20, 2001.

Ku L, Insurance Coverage and Health Care Access for Immigrant Families, Testimony Before the U.S. Senate Finance Committee, Washington, DC, March 13, 2001.

Ku L. Increasing Health Insurance Coverage for Low-Income Families and Children, Insuring the Uninsured Project Conference, Sacramento, CA, Feb. 13, 2001.

Ku L, Concerning the Healthy Families Program Parent Expansion Proposal, Testimony Before a Joint Hearing of the California Senate Health and Human Services and Insurance Committees and Budget and Fiscal Review Subcommittee # 3, Sacramento, CA, January 30, 2001.

Ku L, Insurance Trends and Strategies for Covering the Uninsured, National Health Law Program Conference, Washington, DC, Dec. 3, 2000.

Ku L, Improving Health Care Access and Coverage: New Opportunities for States in 2001, Midwest Leadership Conference, Council of State Governments, Minneapolis, MN, August 6, 2000.

Ku L, Health Care for Immigrants: Recent Trends and Policy Issues, Alliance for Health Reform, Washington, DC, August 2, 2000. Similar talks in Miami at Florida Governor's Health Care Summit and in San Diego at California Program on Access to Care conference.

Ku L, Matani S, Immigrants' Access to Health Care and Insurance on the Cusp of Welfare Reform, presented at Association for Health Services Research Conference, Los Angeles, CA, June 25, 2000.

Ku L, Matani S. Immigrants and Health Care: Recent Trends and Issues, presented to the Association of Maternal and Child Health Programs meeting, Washington, DC, March 7, 2000.

Ku L, Ellwood MR., Hoag S, Ormond B, Wooldridge J. Building a Newer Mousetrap: the Evolution of Medicaid Managed Care Systems and Eligibility Expansions in Section 1115 Projects, presented at American Public Health Association meeting, Chicago, IL, Nov. 10, 1999.

Ku L. Young Men's Reproductive Health: Risk Behaviors and Medical Care", presented at D.C. Campaign to Prevent Teen Pregnancy Meeting, Washington, DC, Oct. 19, 1999.

Ku L, Medicaid and Welfare Reform: Recent Data, presented at Getting Kids Covered Conference, sponsored by National Institute for Health Care Management and Health Resources and Services Administration, Washington, DC, Oct. 6, 1999.

Ku L, Garrett B. How Welfare Reform and Economic Factors Affected Medicaid Participation, presented at Association for Health Services Research meeting, Chicago, IL, June 29, 1999.

Ku L. Recent Factors Affecting Young Men's Condom Use, presented to conference sponsored by National Campaign to Prevent Teen Pregnancy and Advocates for Youth, Washington, DC, February 1999.

Medicaid, Welfare Reform and CHIP: The Growing Gulf of Eligibility Between Children and Adults, presented to National Association of Public Hospitals and Health Systems, Washington, DC, and to Generations United, Washington, DC, September 1998.

Ku L. Sliding Scale Premiums and Cost-Sharing: What the Research Shows presented at workshop on CHIP: Implementing Effective Programs and Understanding Their Impacts, Agency for Health Care Policy and Research User Liaison Program, Sanibel Island, FL, June 30, 1998.

Ku L, Sonenstein F, Boggess S, Pleck J. Understanding Changes in Teenage Men's Sexual Activity: 1979 to 1995, presented at 1998 Population Association of America Meetings, Chicago, IL, April 4, 1998.

Ku L. Welfare Reform, Immigrants and Medicaid presented at Annual Meeting of the Association of Maternal and Child Health Programs, Washington, DC, March 9, 1998. Similar talk presented at Association for Health Services Research Meeting, Washington, DC, June 23, 1998.

Ku L. Medicaid Policy and Data Issues: An Overview presented to National Committee on Vital and Health Statistics, DHHS, September 29, 1997.

Ku L. How Welfare Reform Will Affect Medicaid Coverage presented to National Ryan White Title IV Program Conference, Washington, DC, November 8, 1996.

Ku L, Rajan S, Wooldridge J, Ellwood MR, Coughlin T, Dubay L. Using Section 1115 Demonstration Projects to Expand Medicaid Managed Care in Tennessee, Hawaii and Rhode Island, presented at Association of Public Policy and Management, Pittsburgh, Nov. 1, 1996.

Ku L. The Federal-State Partnership in Medicaid: Is Divorce Inevitable or Would Therapy Be Enough? presented to Council of State Governments Conference on Managing the New Fiscal Federalism, Lexington, KY, May 10, 1996.

Ku L. The Male Role in the Prevention of Teen Pregnancy, presented to the Human Services Committee, National Council of State Legislatures, Washington, DC, May 9, 1996

Ku L. Implications of Converting Medicaid to a Block Grant with Budget Caps, presented to American Medical Association State Legislation Meeting, Aventura, FL, Jan. 1996 and to the American Psychiatric Association Public Policy Institute, Ft. Lauderdale, FL, March 1996.

Ku L. Medicaid: Program Under Reconstruction, presented at Speaker's Forum at New York City Council, September 12, 1995.

Ku L. State Health Reform Through Medicaid Section 1115 Waivers, presented at Pew Health Policy Conference, Chicago, IL, June 3, 1995.

Ku L. Setting Premiums for Participants in Subsidized Insurance Programs, presented at Conference on the Federal-State Partnership for State Health Reform, sponsored by HCFA, the National Academy of State Health Policy and RTI, March 15, 1995.

Ku L. Medicaid Disproportionate Share and Related Programs: A Fiscal Dilemma for the Federal Government and the States, with Teresa Coughlin, presented to the Kaiser Commission on the Future of Medicaid, November 13, 1994.

Ku L. Full Funding for WIC: A Policy Review, with Barbara Cohen and Nancy Pindus, presented at Dirksen Senate Office Building, Washington, DC, in a panel hosted by the Center on Budget and Policy

Priorities, Bread for the World, the Food Research and Action Center and the National Association of WIC Directors, May 5, 1994.

Ku L. The Financing of Family Planning Services in the U.S., presented at the Institute of Medicine, National Academy of Sciences on February 15, 1994 and at the American Public Health Association meeting, San Francisco, CA, October 25, 1993.

Ku L. Using SUDAAN to Adjust for Complex Survey Design in the National Survey of Adolescent Males, with John Marcotte and Karol Krotki, briefing at National Institute of Child Health and Human Development, Rockville, MD, April 2, 1992.

Ku L. The Association of HIV/AIDS Education with Sexual Behavior and Condom Use Among Teenage Men in the United States with Freya Sonenstein and Joseph Pleck, presented at the Seventh International Conference on AIDS, Florence, Italy, June 1991.

Ku L. Patterns of HIV-Related Risk and Preventive Behaviors Among Teenage Men in the United States, with Freya Sonenstein and Joseph Pleck, paper presented at the Sixth International Conference on AIDS, San Francisco, CA, June 23, 1990.

Ku L. Trends in Teenage Childbearing, Pregnancy and Sexual Behavior, paper presented at the American Sociological Association Meeting, Washington, D.C., August 15, 1990.

Ku L. Research Designs to Assess the Effect of WIC Participation by Pregnant Women on Reducing Neonatal Medicaid Costs, briefing to Congressional staff, February 1987.

Ku L. Testimony about the Special Supplemental Food Program for Women, Infants and Children (WIC), with Frank Sasinowski, presented to House Education and Labor Committee on behalf of the American Public Health Association, March 1983.

Media

Leighton Ku has extensive experience with electronic and print media. He has been interviewed by ABC, NBC, CBS, Fox, PBS, National Public Radio, CNN, Bloomberg TV, BBC and other television or radio news broadcasts and webcasts. He has been quoted or his research has been cited in the *New York Times, Los Angeles Times, Washington Post, Wall Street Journal, USA Today, Christian Science Monitor, Huffington Post, Forbes, Fortune, US News and World Report, Politico, The Hill, Buzzfeed,* and trade publications, such as *Modern Health Care, Nation's Health* or *CQ HealthBeat, Kaiser Health News*, etc. He has been an online contributor to the *Washington Post.* He was a regular panelist on a radio talk show about health policy, broadcast on WMAL in the Washington DC region. He has been cited as an expert by *PolitiFact* and related fact-checking sources.

Service and Honors

Member, Executive Board, District of Columbia Health Benefits Exchange Authority (2012-now) (The board governs the new health insurance exchange for the District of Columbia, based on the Patient Protection and Affordable Care Act. This is a voluntary, unpaid position, appointed by the Mayor and approved by the City Council. I was reappointed in 2018.) Chair of the Research Committee and Information Technology Committee. Led working groups that developed the financial sustainability plan for the Exchange, dental plans, standardized benefit plans and changes required in light of threats to the Affordable Care Act.

Social Science Research Network, one of five most downloaded papers in field, Oct-Dec. 2018.

Commonwealth Fund, two of the top ten most frequently downloaded reports (2017).

Commonwealth Fund, one of top ten most frequently downloaded reports (2006).

Award for promoting racial and economic justice, Mississippi Center for Justice, 2005

Service award from the National WIC Directors Association (2002).

Choice (the magazine of the American Library Association for academic publications), top ten academic books of the year (1994)

Pew Health Policy Fellow, Boston University and Brandeis University, 1987-1990.

Other Service

Helped develop and cosigned *amicus* briefs on behalf of public health scholars in key federal lawsuits, including *King v Burwell* (health insurance exchanges), *Stewart v Azar* (approval of Kentucky work requirement waiver, versions 1 and 2), *Gresham v Azar* (approval of Arkansas work requirements). *Texas v Azar* (constitutionality of ACA), *Philbrick v Azar* (approval of New Hampshire work requirement) and *Massachusetts v. US Dept of Health and Human Service* (contraceptive mandate).

Member, Technical Expert Panel, AHRQ Panel on Future of Health Services Research, RAND, 2019.

Served as expert witness in federal lawsuits on immigration and health, including *State of Texas v United States and Perez* and *State of New York v Trump* (Deferred Action for Childhood Arrivals). 2018.

Co-Director, PhD Health Policy Program. First at GW Trachtenberg School of Public Policy and Administration, now at Milken Institute School of Public Health, 2015-now

Search committee, Associate Provost for Graduate Studies, GW, 2019

Faculty Advisor, GW Health Policy Student Association, 2016-now

Member, AcademyHealth/NCHS Health Policy Fellowship Program board. 2016-17.

Affiliated faculty, Jacobs Institute of Women's Health, 2015-now.

Advisory Board, Remaining Uninsured Access to Community Health Centers (REACH) Project, Univ. of California Los Angeles, 2015-17.

Member, DC Metro Tobacco Research and Instruction Consortium (MeTRIC). 2014- present

Member, Health Workforce Research Institute, GW, 2013-present.

Member, National Advisory Board, Public Policy Center of University of Iowa, 2014-18.

Chair/Vice Chair, Advocacy Interest Group, AcademyHealth, 2014-17.

Member, Advisory Committee on Non-Health Effects of the Affordable Care Act, Russell Sage Foundation, Dec. 2013.

Member, Technical Expert Group on the Affordable Care Act and the National Survey of Family Growth, National Center for Health Statistics, Centers for Disease Control and Prevention, Nov. 2013

Member, Steering Committee, GW Institute of Public Policy, 2013-now

Member, External Review Committee for Department of Family Science for the University of Maryland School of Public Health, 2012.

GW Faculty Senator, representing School of Public Health and Health Services, 2010-12.

Member of numerous University, School and Departmental committees. 2008-present.

Member or chair, numerous faculty and dean search committees, Milken Institute School of Public Health and School of Nursing, George Washington University. 2008-present.

National Institutes of Health, member of various grant review study sections (1996-now).

Invited reviewer. Committee on National Statistics. National Academy of Sciences. Databases for Estimating Health Insurance Coverage for Children. 2010-11.

Grant reviewer. Robert Wood Johnson Public Health and Law program. 2010.

Invited reviewer, Institute of Medicine report on family planning services in the U.S., 2009.

External reviewer for faculty promotion and tenure for Harvard School of Public Health, Harvard Medical School, Univ. of California at Los Angeles and at San Diego, Boston University, Baruch College, George Mason University, University of Maryland, University of Iowa, Kansas University, Portland State University, etc., 2008-present.

Submitted expert witness affidavits/declarations in federal, state and local lawsuits including: *Texas v United States* and *New York, et al. v. Trump* (Deferred Action for Childhood Arrivals), *Wood, et al. v. Betlach,* (Medicaid cost sharing), *Lozano v. City of Hazleton* (immigrant rights), *Spry, et al., v. Thompson* (Medicaid cost-sharing), *Dahl v. Goodno* (Medicaid cost-sharing), *Newton-Nations, et al., v. Rogers* (Medicaid cost-sharing) and *Alford v. County of San Diego* (cost-sharing for a local health program).

Board Member and Treasurer, Alliance for Fairness in Reforms to Medicaid (2002-2008)

Urban Institute, founding member, Institutional Review Board (1997-2000)

National Health Research Institute (Taiwan's NIH) grant reviewer (1999).

Urban Institute, member, Diversity Task Force (1995)

Pew Health Policy Fellow, Boston University and Brandeis University, 1987-1990.

Consultant Services

Mexican American Legal Defense and Educational Fund, 2018
New Jersey State Attorney General, 2018
New York State Attorney General, 2017
First Hospital Foundation, Philadelphia PA, 2017
Wilmer Hale/Planned Parenthood Federation, 2017

Centers for Disease Control and Prevention, 2016

Professional Society Memberships and Service

AcademyHealth (formerly Association for Health Services Research), Program Selection Committees (multiple years), chair Advocacy Interest Group (2014-16).
American Public Health Association
Association of Public Policy and Management, Program Selection Committees (many years)

Editorial Peer Review Service

Associate editor, *BMC Health Services Research,* 2009 – 2013.

Reviewer for numerous journals, including *Health Affairs, New England Journal of Medicine, Journal of the American Medical Association, Pediatrics, American Journal of Public Health, Inquiry, Medical Care, HSR, Medicare and Medicaid Research Review, American Journal of Preventive Medicine, Family Planning Perspectives, Journal of Association of Public Policy and Management, Nicotine and Tobacco Research, Maternal and Child Health, Journal of Health Care for the Poor and Underserved, JAMA-Internal Medicine*, *Public Administration Review* (1990 to now). In 2017, I reviewed 16 manuscripts for journals. External reviewer for RAND Corporation, National Academy of Science, Oxford Univ. Press, etc.

Public Health Practice Portfolio

Member, Executive Board, District of Columbia Health Benefits Exchange Authority (2012-now). The board governs the new health insurance exchange for the District. (Nominated by the Mayor and appointed by the City Council; reappointed in 2017). Chair of the IT and Eligibility Committee, Research Committee and various working groups.

Member, Technical Expert Group, the Future of Health Services Research, for Agency for Healthcare Research and Quality, conducted by RAND. Jan. 2019.

Expert Advisor, Russell Sage Foundation. Non-health effects of the Affordable Care Act. (2013).

Expert Advisor, Revisions to the National Survey of Family Growth, National Center for Health Statistics, CDC (2013)

Member, Technical Advisory Committee for Monitoring the Impact of the Market Reform and Coverage Expansions of the Affordable Care Act, sponsored by ASPE. (2013)

Member, Technical Advisory Group for the Design of the Evaluation of the Medicaid Expansion Under the ACA, sponsored by ASPE (2012)

Member, National Workgroup on Integrating the Safety Net, National Academy of State Health Policy, July 2011 – 2013.

Member, National Advisory group for Iowa Safety Net Integration project, 2011-2013.

Foundation for Child Development, Selection Committee, Young Scholars Program, 2008-2015.

Foundation for Child Development, Advisory Committee, Child Well-Being Index, 2008-present

Member, National Advisory Board, Center on Social Disparities on Health, University of California at San Francisco, 2005-2008.

National Campaign to Prevent Teen Pregnancy, Member, Effective Programs and Research Task Force (2000)

Doctoral Students Mentored/Advised

Dissertations Completed
Prof. Peter Shin (chair)
Prof. Megan McHugh
Dr. Sarah Benatar
Dr. Emily Jones (chair)
Dr. Saqi Cho (chair)
Dr. DaShawn Groves (chair)
Dr. Heitor Werneck
Dr. Brad Finnegan (chair)
Dr. Maliha Ali
Dr. Christal Ramos
Dr. Qian (Eric) Luo
Dr. Bill Freeman
Dr. Serena Phillips
Dr. Julia Strasser
Dr. Kristal Vardaman (chair)
Dr. Brian Bruen
Dr. Xinxin Han (chair)

In Progress
Evelyn Lucas-Perry (chair)
Nina Brown
Kyle Peplinski (chair)
Shin Nozaki
Jessica Sharac (chair)
Mariellen Jewers (chair)
Erin Brantley
Leo Quigley (chair)
Brent Sandmeyer (chair)

Other Student Advising

Co-Director, Health Policy PhD Program.

Faculty advisor, MPH, health policy. Provide guidance to about a dozen MPH students per cohort.

EXHIBIT 12

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

MAKE THE ROAD NEW YORK, *et al.*,

Plaintiffs,

v.

KEN CUCCINELLI, *et al.*,

Defendants.

No. 19-cv-07993 (GBD)

MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

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INTRODUCTION

For over 135 years, Congress has restricted the admissibility of aliens who are likely, in the judgment of the Executive Branch, to become "public charges." Congress has never defined the term "public charge," but it has long been understood to mean a person who cannot provide himself with the basic needs of subsistence, and therefore imposes a burden on the public fisc to provide him with aid in obtaining the necessities of daily life. A major purpose of the public charge ground of inadmissibility is to set the expectation for immigrants that they be self-sufficient and refrain from entering the United States with the expectation of receiving public benefits, thereby ensuring that persons unable or unwilling to provide for themselves do not impose an ongoing burden on the American public. For the past two decades, the public charge ground of inadmissibility, which applies in various ways to both applications for admission to the United States and for adjustment of status to lawful permanent resident, has been governed by interim field guidance adopted without the benefit of notice-and-comment procedures.

On August 14, 2019, the Department of Homeland Security ("DHS") published *Inadmissibility on Public Charge Grounds* ("Rule") in the Federal Register. 84 Fed. Reg. 41292. This final rule is the culmination of an extensive, multi-year process to adopt regulations that prescribe how DHS will determine whether an alien applying for admission or adjustment of status is inadmissible under section 212(a)(4) of the Immigration and Nationality Act ("INA") because he is "likely at any time to become a public charge." 8 U.S.C. § 1182(a)(4). This Rule is long overdue: in 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. L. No. 104-208, 110 Stat. 3009 (1996), "to expand the public charge ground of inadmissibility" after concluding that "only a negligible number of aliens who become public charges have been deported in the last decade." H.R. Rep. 104-828, at 240-241 (1996); *see also* IIRIRA § 531 (enumerating "minimum" factors to be considered in every public charge determination). Congress therefore provided the INS with a list of factors to consider "at a minimum" in forming an "opinion" about whether an alien is "likely at any time to become a public charge." Yet for two decades, DHS has provided its officers, current and prospective

immigrants, and the public with nothing more than an interim guidance document to specify how the factors are being implemented.

The Rule revises the anomalous definition of "public charge" set forth for the first time in that 1999 interim guidance to better reflect Congress's legislated policy making aliens who are likely to require public support to obtain their basic needs inadmissible. The Rule also reflects Congress's delegation of broad authority to the Executive Branch concerning the meaning of "public charge" and the establishment of procedures for forming an "opinion" about whether individual aliens are "likely at any time to become a public charge." The Rule is the product of a well-reasoned process that considered the plain text of the statute, legislative intent, statistical evidence, and the substance of hundreds of thousands of comments submitted by the public. Finally, the Rule has a limited scope: it does not apply to naturalization applications filed by lawful permanent residents ("LPRs"), or lead to public charge inadmissibility determinations based on the receipt of Emergency Medicaid, disaster assistance, school lunches, or benefits received by U.S.-born children. Nor does it apply to refugees or asylum recipients.

Plaintiffs—a group of five nonprofit organizations providing services to aliens and others—nevertheless seek a nationwide preliminary injunction against the Rule. This Court should deny the motion. Plaintiffs, who are organizations rather than aliens actually governed by the Rule, cannot meet basic jurisdictional requirements, and their claims in any event are meritless. The Rule accords with the longstanding meaning of "public charge" and complies with the APA and other relevant statutes. In short, Plaintiffs provide no basis for turning their abstract policy disagreement with the Executive Branch into a stay of the effective date of the Rule or a nationwide injunction.

BACKGROUND

"Self-sufficiency has been a basic principle of United States immigration law since this country's earliest immigration statutes." 8 U.S.C. § 1601(1). "[T]he immigration policy of the United States [is] that aliens within the Nation's borders not depend on public resources to meet their needs." *Id*. § 1601(2)(A). Rather, aliens must "rely on their own capabilities and the resources of their families, their sponsors, and private organizations." *Id*. Relatedly, "the availability of

public benefits [is] not [to] constitute an incentive for immigration to the United States." *Id.* 1601(2)(B).

These statutorily enumerated policies are effectuated in part through the public charge ground of inadmissibility in the INA. With certain exceptions, the INA provides that "[a]ny alien who, in the opinion of the consular officer at the time of application for a visa, or in the opinion of the Attorney General at the time of application for admission or adjustment of status, is likely at any time to become a public charge is inadmissible." *Id.* § 1182(a)(4)(A). An unbroken line of predecessor statutes going back to 1882 has contained a similar inadmissibility ground for public charges, and those statutes have, without exception, delegated to the Executive Branch the authority to determine who constitutes a public charge for purposes of that provision. *See* Immigration Act of 1882, 47th Cong. ch. 376, §§ 1-2, 22 Stat. 214 ("1882 Act"); 1891 Immigration Act, 51st Cong. ch. 551, 26 Stat. 1084 ("1891 Act"); Immigration Act of 1907, 59th Cong. ch. 1134, 34 Stat. 898 ("1907 Act"); Immigration Act of 1917, 64th Cong. ch. 29 § 3, 39 Stat. 874, 876 ("1917 Act"); INA of 1952, 82nd Cong. ch. 477, 66 Stat. 163. In IIRIRA, Congress added to these predecessor statutes by instructing that, in making public charge determinations, "the consular officer or the Attorney General shall at a minimum consider the alien's: (1) age; (2) health; (3) family status; (4) assets, resources, and financial status; and (5) education and skills," 8 U.S.C. § 1182(a)(4)(B) (Arabic numerals substituted), but otherwise left in place the broad delegation of authority to the Executive Branch to determine who constitutes a public charge.

The longstanding denial of admission of aliens believed likely to become public charges dates from the colonial era, when a principal "concern [in] provincial and state regulation of immigration was with the coming of persons who might become a burden to the community," and "colonies and states sought to protect themselves by [the] exclusion of potential public charges." E. P. Hutchinson, Legislative History of American Immigration Policy, 1798-1965 at 410 (1981). Provisions requiring the exclusion and deportation of public charges emerged in federal law in the late 19th century. *See, e.g.*, 1882 Act at 214 (excluding any immigrant "unable to take care of himself or herself without becoming a public charge"); 1891 Act § 11 (providing for deportation

of "any alien who becomes a public charge within one year after his arrival in the United States from causes existing prior to his landing").

In 1996, Congress enacted immigration and welfare reform statutes that bear on the public charge inadmissibility determination. IIRIRA strengthened the enforcement of the public charge inadmissibility ground in several ways. Besides codifying mandatory factors for immigration officers to consider, *see supra*, it raised the standards and responsibilities for persons who must "sponsor" an alien by pledging to bear financial responsibility for that immigrant and requiring that sponsors demonstrate sufficient means to support the alien. Contemporaneously, the Personal Responsibility and Work Opportunity Reconciliation Act ("PRWORA"), Pub. L. No. 104-193, 110 Stat. 2105 (1996), restricted most aliens from accessing many public support programs, including Supplemental Security Income ("SSI") and nutrition programs. PRWORA also made the sponsorship requirements in IIRIRA legally enforceable against sponsors.

In light of the 1996 legislative developments, the INS attempted in 1999 to engage in notice and comment rulemaking to guide immigration officers, aliens, and the public in understanding public charge determinations. *See Inadmissibility and Deportability on Public Charge Grounds*, 64 Fed. Reg. 28676 (May 26, 1999) ("1999 NPRM"). No final rule was ever issued, however. Instead, the agency adopted the 1999 NPRM interpretation on an interim basis by publishing *Field Guidance on Deportability and Inadmissibility on Public Charge Grounds*, 64 Fed. Reg. 28689 (May 26, 1999) ("1999 Interim Field Guidance"). The Interim Field Guidance dramatically narrowed the public charge inadmissibility ground by defining "public charge" as a person "primarily dependent on the government for subsistence," *id*., and by barring immigration officers from considering any non-cash public benefits, regardless of the value or length of receipt, as part of the public charge determination. *See* 1999 NPRM at 28678. Under that standard, an alien receiving Medicaid, food stamps, and public housing, but no cash assistance, would have been treated as no more likely at any time in the future to become a public charge than an alien who was entirely self-sufficient.

The Rule revises this approach and adopts, through notice-and-comment rulemaking, a

well-reasoned definition of public charge providing practical guidance to Executive Branch officials making public charge inadmissibility determinations. DHS began by publishing a Notice of Proposed Rulemaking, comprising 182 pages of description, evidence, and analysis. *See Inadmissibility on Public Charge Grounds*, 83 Fed. Reg. 51114 (Oct. 10, 2018) ("NPRM"). The NPRM provided a 60-day public comment period, during which 266,077 comments were collected. *See* Rule at 41297. After considering these comments, DHS published the Rule, addressing comments, making several revisions to the proposed rule, and providing over 200 pages of analysis in support of the Rule. Among the Rule's major components are provisions defining "public charge" and "public benefit" (neither of which are defined in the statute), an enumeration of factors to be considered in the totality of the circumstances when making a public charge inadmissibility determination, and a requirement that aliens seeking an extension of stay or a change of status show that they have not received public support in excess of the Rule's threshold since obtaining the nonimmigrant status they seek to extend or change. The Rule supersedes the Interim Field Guidance in its entirety, establishing a new definition of "public charge" based on a minimum duration threshold for the receipt of public benefits. Under this "12/36 standard," a public charge is an alien who receives designated public benefits for more than 12 months in the aggregate within any 36-month period. *Id*. at 41297. Such "public benefits" are extended by the Rule to include many non-cash benefits: with some exceptions, an alien's participation in the Supplemental Nutrition Assistance Program ("SNAP"), Section 8 Housing Programs, Medicaid, and Public Housing may now be considered as part of the public charge inadmissibility determination. *Id*. at 41501-02. The Rule also enumerates a non-exclusive list of factors for assessing whether an alien is likely at any time to become a public charge and explains how DHS officers should apply these factors as part of a totality-of-the-circumstances decision. *Id.* at 41295.

ARGUMENT

I. STANDARD OF REVIEW.

Preliminary injunctions are "extraordinary and drastic remed[ies]" that are "never . . . awarded as of right." *Munaf v. Geren*, 553 U.S. 674, 689-90 (2008) (quotations omitted). A party

seeking to enjoin "government action taken in the public interest pursuant to a statutory or regulatory scheme" in a way that would "alter, rather than maintain, the status quo . . . must demonstrate irreparable harm and a clear or substantial likelihood of success on the merits," *VIP of Berlin v. Town of Berlin*, 593 F.3d 179, 185-86 (2d Cir. 2010) (quotation omitted),[1] and must also show that the balance of equities tips in their favor and that an injunction is in the public interest. *Winter v. NRDC*, 557 U.S. 7, 20 (2008). Where, as here, there are serious questions as to the Court's jurisdiction, it is "more *unlikely*" that the plaintiff can establish a "likelihood of success on the merits." *Munaf*, 553 U.S. at 690.

In the alternative, Plaintiffs seek a stay of the effective date of the Rule under Section 705 of the APA. *See* Mem. of Law in Support of Pls. Mot. for Prelim. Inj. (Mot.) at 16, ECF No. 39. As they correctly observe, the Court should "appl[y] the same test" to determine whether relief is available under Section 705. Mot, at 16 (citing *Texas v. United States*, 95 F. Supp. 3d 965, 973 (N.D. Tex. 2015)). Plaintiffs have not met this standard.

II. PLAINTIFFS ARE UNLIKELY TO SUCCEED ON THE MERITS.

A. Plaintiffs Have Not Established Standing Or Ripeness.

As the party invoking federal jurisdiction, Plaintiff bears the burden of establishing standing, "an essential and unchanging part of the case-or-controversy requirement of Article III." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). "To seek injunctive relief, a plaintiff must show that [it] is under threat of suffering 'injury in fact' that is concrete and particularized; the

[1] Plaintiffs allege that their proposed injunction would maintain the status quo, and that they therefore they need not demonstrate a "substantial" likelihood of success on the merits. Mot. at 16 & n. 20. This assertion is belied, however, by their effort to demonstrate irreparable harm by describing the activities they have already engaged in. *See* Mot. at 36 (explaining the dozens of workshops two of the plaintiffs have held describing the effects of the Rule). As Plaintiffs make clear, the expectations on the part of aliens (and, for that matter, Plaintiffs) have already adjusted to the Rule, and entry of a preliminary injunction would thereby *disrupt*, rather than *maintain*, the status quo. DHS is likewise well along the road to preparing the agency for the October 15, 2019 effective date. As the Second Circuit has explained, where an order "would require a dramatic shift" in current agency policy, such injunction should be characterized as mandatory and subject to the "substantial likelihood" standard. *Jolly v. Coughlin*, 76 F.3d 468, 474 (2d Cir. 1996). Nor can the Second Circuit's lesser "serious questions" test be relied upon here where Plaintiffs challenge a "governmental action taken in the public interest pursuant to a statutory or regulatory scheme." *Monserrate v. New York State Senate*, 599 F.3d 148, 154 (2nd Cir. 2010).

threat must be actual and imminent, not conjectural or hypothetical; it must be fairly traceable to the challenged action of the defendant; and it must be likely that a favorable judicial decision will prevent or redress the injury." *Summers v. Earth Island Inst.*, 555 U.S. 488, 493 (2009).

Plaintiffs rely on an "organizational" standing theory. Mot. at 35-37. Generally, for an organization to have standing, the challenged conduct must "perceptibly impair[]" the "organization's activities," with a "consequent drain on the organization's resources." *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982). It is insufficient to allege only "a setback to the organization's abstract social interests." *Id*. In addition, an organization must show that "defendant's conduct or policy interferes with or burdens [its] ability to carry out its usual activities." *Citizens for Responsibility & Ethics in Washington ("CREW") v. Trump*, 276 F. Supp. 3d 174, 190 (S.D.N.Y. 2017), vacated and remanded on other grounds, No. 18-474, 2019 WL 4383205 (2d Cir. Sept. 13, 2019). An organization must show that it was compelled to direct resources towards activities it would not have performed "in the ordinary course." *Id.* at 191-92; *see also Food & Water Watch, Inc. v. Vilsack*, 808 F.3d 905, 920 (D.C. Cir. 2015) ("an organization does not suffer an injury in fact where it expend[s] resources to educate its members and others unless doing so subjects the organization to operational costs beyond those normally expended") (cleaned up).

Here, Plaintiffs do not allege they were forced to direct resources towards activities that they do not perform in the ordinary course. Instead, Plaintiffs allege that they will have to direct resources into education and legal services for their clients, *see* Mot. 36-37, precisely the services they regularly provide. *See*, *e.g.*, Oshiro Decl. ¶ 6 (Make the Road New York is in the business of providing "legal and survival services," and "transformative education"); Russell Decl. ¶¶ 4, 6-7 (Catholic Charities Community Services regularly provides education and advocacy services to immigrant populations). Plaintiffs are "not wasting resources by educating the public" and providing legal services. *CREW*, 276 F. Supp. 3d at 191. "This is exactly how" organizations like Plaintiffs "spend[] [their] resources in the ordinary course," and thus they have suffered no "concrete or particularized injury." *Id.* at 191-92.

This case is thus distinguishable from the cases on which Plaintiffs rely. In *Valle del Sol*

Inc. v. Whiting, certain organizations challenged an Arizona law criminalizing, under certain circumstances, the transportation or harboring of unauthorized aliens. 732 F.3d 1006, 1012-13 (9th Cir. 2013). The plaintiff organizations—whose volunteers helped transport and shelter aliens—submitted declarations stating that they had to divert resources into educating their volunteers over the law, lest they "be deterred from conducting these functions." *Id.* at 1018. These organizations were not in the business of providing educational services for their employees concerning new changes to the immigration laws, and thus they were forced to direct funds into an entirely new service. *See id.* Likewise, in *Centro de la Comunidad Hispana de Locust Valley v. Town of Oyster Bay*, the plaintiff organization was in the business of organizing day laborers, and challenged an ordinance that restricted their ability to gather in a single place to seek employment. 868 F.3d 104, 108 (2d Cir. 2017). To establish standing, the plaintiffs alleged that the ordinance would result in the "disbursement of day laborers," forcing the plaintiff to divert funds into locating them—an extraneous activity it would not undertake but for the ordinance.[2] *Id.* at 110. Plaintiffs here, by contrast, simply claim they must update the services they already provide to account for changed circumstances. If this were sufficient for standing, Plaintiffs would be authorized to challenge *any* change to the immigration laws.

Separately, Plaintiffs have asserted no coherent theory of standing for their Fifth Amendment claim, which they appear to assert on behalf of their members or constituents rather than themselves. *See* Mot. at 31-34 (citing equal protection component of the Fifth Amendment); Compl. at 115, ECF No. 1. Because Plaintiffs have not even alleged the necessary elements of associational standing, much less provided evidence in support, they cannot pursue their Fifth Amendment claim. *See New York State Psychiatric Ass'n v. UnitedHealth Grp.*, 798 F.3d 125, 130 (2d Cir. 2015) ("An association has standing to bring suit on behalf of its members when (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief

[2] Plaintiffs also argue that the Rule harms their mission to empower certain communities by "threatening" their members with a "denial of adjustment." Mot. at 37. But any such effect would only impact the organizations' "abstract social interests," which is insufficient to support standing. *Havens*, 455 U.S. at 379.

requested requires the participation of individual members in the lawsuit.") (quotations omitted); *Summers*, 555 U.S. at 499; *NRDC v. FDA*, 710 F.3d 71, 79 (2d Cir. 2013).

Plaintiffs' claims of irreparable harm also fail to establish standing. Those claims consist of potential future harms that, if they ever came to pass, would be spurred by decisions of third parties not before the Court. Such speculative allegations are insufficient to establish Article III standing, particularly at the preliminary injunction stage. *See Cachillo v. Insmed*, 638 F.3d 401, 404 (2d Cir. 2011) ("When a preliminary injunction is sought, a plaintiff's burden to demonstrate standing will normally be no less than that required on a motion for summary judgment.") (internal quotation marks omitted). Here, the Rule governs DHS personnel and certain aliens. It "neither require[s] nor forbid[s] any action on the part of" Plaintiffs, nor does it expressly interfere with any of their programs applicable to aliens. *Summers*, 555 U.S. at 493.

To be justiciable, a cause of action must also be ripe. *Nat'l Org. for Marriage, Inc. v. Walsh*, 714 F.3d 682, 687 (2nd Cir. 2013). "Ripeness 'is peculiarly a question of timing,' and "[a] claim is not ripe if it depends upon 'contingent future events that may not occur as anticipated, or indeed may not occur at all.'" *Id.* (quoting *Thomas v. Union Carbide Agric. Prods. Co.*, 472 U.S. 568, 580-81 (1985)). The constitutional "aspect of the ripeness doctrine overlaps with the standing doctrine, 'most notably in the shared requirement that the plaintiff's injury be imminent rather than conjectural or hypothetical.'" *In re MTBE Prods. Liab. Litig.*, 725 F.3d 65, 110 (2nd Cir. 2013) (quoting *Ross v. Bank of America, N.A.*, 524 F.3d 217, 226 (2nd Cir. 2008)). Thus, for the same reasons stated above regarding lack of standing, Plaintiffs' claims fail to demonstrate constitutional ripeness. *See, e.g., Ollie v. Univ. of Conn.*, 364 F. Supp. 3d 143, 153-55 (D. Conn. 2019).

Prudential ripeness also counsels against consideration of Plaintiffs' claims. This doctrine "protect[s] agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties." *Entergy Nuclear Vt. Yankee, LLC v. Shumlin*, 733 F.3d 393, 429 (2nd Cir. 2013) (quoting *Abbott Labs. v. Gardner*, 387 U.S. 136, 148-49 (1967)). In resolving ripeness questions, courts examine "whether an issue is fit for judicial decision," and "whether and to what extent the parties will endure hardship if decision is withheld."

Simmonds v. INS, 326 F.3d 351, 359 (2nd Cir. 2003). Fitness is generally lacking where the reviewing court "would benefit from further factual development of the issues presented." *Ohio Forestry Ass'n v. Sierra Club*, 523 U.S. 726, 733 (1998). Here, Plaintiffs' claims are premised on speculation about the potential future effects of the Rule and disagreement with DHS's predictions based on the available evidence. Thus, "judicial appraisal of these [questions]" should await the "surer footing [of] the context of a specific application of this regulation." *Toilet Goods Ass'n v. Gardner*, 387 U.S. 158, 164 (1967).

Additionally, withholding judicial consideration of Plaintiffs' claims will not cause them any significant hardship. With respect to the organizations here, the Rule "do[es] not create adverse consequences of a strictly legal kind, that is, effects of a sort that traditionally would have qualified as harm," and therefore cannot serve as the basis for a ripe claim. *Ohio Forestry Ass'n*, 523 U.S. at 733. Instead, the harms alleged are possible cumulative side effects of third party individuals' decisions to take action not required by the Rule, so they do not create a ripe facial challenge.

B. Plaintiffs Are Outside The Zone Of Interests Regulated By The Rule.

Even if Plaintiffs could meet their standing and ripeness burdens, Plaintiffs' claims would still fail because they are outside the zone of interests served by the limits of the "public charge" inadmissibility provision in § 1182(a)(4)(A) and related sections. The "zone-of-interests" requirement limits the plaintiffs who "may invoke [a] cause of action" to enforce a particular statutory provision or its limits. *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 129-30 (2014). Under the APA, a plaintiff falls outside this zone when its "interest[s] are . . . marginally related to or inconsistent with the purposes implicit in the statute." *Clarke v. Sec. Indus. Ass'n*, 479 U.S. 388, 399 (1987). This standard applies with equal force where, as here, Plaintiffs seek to challenge the government's adherence to statutory provisions in the guise of an APA claim. *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, 567 U.S. 209, 224 (2012).

Plaintiffs plainly fall outside the zone of interests served by the limits of the meaning of public charge in the inadmissibility statute. At issue in this litigation is whether DHS will deny admission or adjustment of status to certain aliens deemed inadmissible on public charge grounds.

By using the term "public charge" rather than a broader term like "non-affluent," Congress ensured that only certain aliens could be determined inadmissible on the public charge ground. It is aliens improperly determined inadmissible, not organizations providing health care, advocacy, or community services, who "fall within the zone of interests protected" by any limitations implicit in §§ 1182(a)(4)(A) and 1183, because they are the "reasonable—indeed, predictable—challengers" to DHS's inadmissibility decisions. *Patchak*, 567 U.S. at 227; *see* 8 U.S.C. § 1252 (providing individuals who have a final order of removal from the United States based on a public charge determination an opportunity to file a petition for review before a federal court of appeals to contest the definition of public charge as applied to them). The interest in avoiding a purported "diversion" of "resources to educating their clients, members, and the public" asserted by the Plaintiffs, Mot. at 35-36, is not even "marginally related" to the interests of an alien seeking to demonstrate that the "public charge" inadmissibility ground has been improperly applied to his detriment. *Cf. INS v. Legalization Assistance Proj.*, 510 U.S. 1301, 1304-05 (1993) (O'Connor, J., in chambers) (concluding that relevant INA provisions were "clearly meant to protect the interests of undocumented aliens, not the interests of organizations [that provide legal help to immigrants]," and that the fact that a "regulation may affect the way an organization allocates its resources . . . does not give standing to an entity which is not within the zone of interests the statute meant to protect"); *Fed'n for Am. Immigration Reform, Inc. v. Reno*, 93 F.3d 897, 904 (D.C. Cir. 1996) (dismissing under zone-of-interests test a suit challenging parole of aliens into this country, where plaintiffs relied on incidental effects of that policy on workers). Likewise, Plaintiffs' equal protection claim seeks to assert the interests of third party individuals allegedly suffering from discrimination, and it would be those individuals, not non-profit organizations providing community services, that fall within the zone of interests of the Constitution's equal protection clause. *See generally Lexmark*, 572 U.S. at 127-28.

C. Plaintiffs' Substantive Claims Lack Merit.

1. The Rule Is Consistent With The Plain Meaning Of "Public Charge."

The definition of "public charge" in the Rule is consistent with the plain meaning of the

statutory text, which "is to be determined as of the time that it became law." *One West Bank v. Melina*, 827 F.3d 214, 220 (2d Cir. 2016); *see Wisc. Central, Ltd. v. U.S.*, 138 S. Ct. 2067, 2070 (2018) (a court's "job is to interpret the words consistent with their ordinary meaning ... at the time Congress enacted the statute") (internal quotations omitted). To do so, a court begins by "consulting 'dictionaries in use when Congress enacted [the] statute in question' for ordinary meaning." *Continental Terminals, Inc. v. Waterfront Comm'n of N.Y. Harbor*, 782 F.3d 102, 109 (2d Cir. 2015) (quoting *Taniguichi v. Kan Pac. Saipan, Ltd.*, 566 U.S. 560, 566 (2012)). Here, it is undisputed that since 1882, Congress has consistently provided for the exclusion of indigent aliens determined by the Executive Branch as likely to become "public charges," *compare* Mot. at 6-7 *with* NPRM at 51125, making that era the appropriate time for determining the plain meaning.

Contemporary dictionaries from the 1880s define "charge" as "an obligation or liability," such as "a pauper being chargeable to the parish or town." Stewart Rapalje *et al.*, Dict. of Am. and English Law (1888) ("Rapalje 1888"); *accord* Frederic Jesup Stimson, Glossary of the Common Law (1881) (defining "charge" as "[a] burden, incumbrance, or lien; as when land is charged with a debt") ("Stimson 1881"). As to the term "public," such dictionaries explain the term "public" as meaning "[t]he whole body of citizens of a nation, or of a particular district or city, [or] [a]ffecting the entire community." Rapalje 1888.[3] Together, these early definitions make clear that an alien becomes a "public charge" when his inability to achieve self-sufficiency imposes an "obligation" or "liability" on "the body of the citizens" to provide for his basic necessities, as reflected in early legal sources addressing the term "public charge." *See* Arthur Cook *et al.*, Immigration Laws of the U.S., § 285 (1929) ("Public charge means any maintenance, or financial assistance, rendered from public funds.").[4]

[3] *See also* C.H. Winfield, Words and Phrases, A Collection of Adjudicated Definitions of Terms Used in the Law, with References . . ., 501 (1882) ("Public" means "not any corporation like a city, town, or county but the body of the people at large." (quoting *Baker v. Johnston*, 21 Mich. 319 (Mich. 1870)).

[4] The original public meaning of "public charge," as derived from the definitions of "public" and "charge," is consistent with modern dictionary definitions of the term "public charge." For example, the online "Merriam-Webster Dictionary defines public charge simply as 'one that is supported at public expense.'" NPRM at 51158 (quoting "Public Charge", http://www.merriamwebster.com/dictionary/public%20charge (last visited Sept. 9, 2019)). Similarly, "Black's Law Dictionary (6th ed.) . . . defines public charge as 'an indigent; a person whom it is necessary

Nothing about the plain meaning of this term suggests that a person must be "destitute and unable to work," or "wholly unable to care for themselves," as Plaintiffs contend. Mot. at 1, 6. When Congress originally enacted the public charge inadmissibility ground, the distinct term "pauper" was in common use for a destitute person. *See, e.g.*, Century Dictionary & Cyclopedia (1911) (defining "pauper" as "[a] very poor person; a person entirely destitute"); *see also Overseers of Princeton Twp. v. Overseers of S. Brunswick Twp.*, 23 N.J.L. 169, 172 (N.J. 1851) (treating "a pauper" and "a person likely to become chargeable" as two separate classes). And in early versions of the statute, Congress provided a *separate* inadmissibility ground for paupers. *See, e.g.*, 1891 Act.[5] Congress thereby made "clear that the term 'persons likely to become a public charge' is *not* limited to paupers or those liable to become such; 'paupers' are mentioned as in a separate class." *Lam Fung Yen v. Frick*, 233 F. 393, 396 (6th Cir. 1916) (emphasis added).

The expansiveness of the meaning of "public charge" relative to "pauper" is underscored by the response of the Executive Branch and Congress to a 1916 Supreme Court opinion reasoning that the term "public charge" must be read as "generically similar" to terms "mentioned before and after" (such as "pauper"). *Gegiow v. Uhl*, 239 U.S. 3 (1915). Shortly after the decision, the Secretary of Labor sent a letter to Congress, requesting that the statute be amended to supersede the Supreme Court's ruling. *See* H.R. Doc. No. 64-886, at 3-4 (Mar. 11, 1916). The Secretary defined "public charge" as "a charge (an economic burden) upon the community" to which an alien is going. The Secretary then explained that the Court's opinion in *Gegiow* had highlighted a never-before recognized "defect in . . . the arrangement of the wording," which, if left uncorrected, would "materially reduce[] the effect of the clause" as the "chief measure of protection in the law . . . intended to reach economic . . . objections to the admission" of aliens. *Id.* Congress acted and explained why: "The purpose of this change [is to overcome recent decisions of the courts limiting

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to support at public expense by reason of poverty alone or illness and poverty.'" *Id.*

[5] The 1891 Act provided "[t]hat the following classes of aliens shall be excluded from admission . . . : "All idiots, insane persons, paupers or persons likely to become a public charge, persons suffering from a loathsome . . . disease, [those] convicted of a felony or other infamous crime or misdemeanor involving moral turpitude, polygamists, and also any person whose ticket or passage is paid for with the money of another . . . unless it is affirmatively . . . shown . . . that such person does not belong to one of the forgoing excluded classes." 1891 Act at 1094.

the meaning of the description of the excluded class because of its position between other descriptions conceived to be of the same general and generical nature. (See especially Gegiow v. Uhl)." S. Rep. 64-352 at 5 (1916).[6] Subsequent authorities recognized that the 1917 Act negated the Court's interpretation in *Gegiow* by underscoring that the term "public charge" is "not associated with paupers or professional beggars." *Ex Parte Horn*, 292 F. 455, 457 (W.D. Wash. 1923) (explaining that "public charge" in the 1917 Act "is differentiated from the application in *Gegiow*"); *accord* Arthur Cook, Immigration Laws, §§ 128-34; *but see Ex Parte Mitchell*, 256 F. 229, 232 (N.D.N.Y. 1919) (declining to give effect to relocation of "public charge").[7]

Although Plaintiffs assert that the "primarily dependent" standard they urge has been applied consistently for "more than 130 years," Mot. at 5, they identify no source—and Defendants are aware of none—that defines "public charge" using those words or their cognates prior to 1999, when INS issued the nonbinding, interim field guidance.[8] In contrast, there is longstanding evidence that the term "[p]ublic charge means *any* maintenance, or financial assistance, rendered from public funds." Cook, Immigration Laws, § 285 (emphasis added); *see also* 26 Cong. Rec.

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[6] In *Gegiow*, the Court analyzed the terms adjacent to "public charge" in the statute to conclude that the "overstocked" "state of the labor market" in plaintiffs' destination city could not serve as the basis for exclusion. 239 U.S. at 9. Although issued after enactment of the 1917 Act, the question before the Second Circuit in *Howe v. United States*, 247 F. 292, 294 (2d Cir. 1917), involved an interpretation of the 1907 Act and the court relied on a similar adjacent-terms analysis, citing *Gegiow*. In *U.S. ex rel. Mantler v. Comm'r of Immigration*, the Second Circuit quoted *Howe* without comment in a review of past interpretations of the "public charge" exclusion. 3 F.2d 234, 235 (2d Cir. 1924).

[7] The 1917 Act listed, *inter alia*, "idiots, imbeciles, feeble-minded persons, epileptics, insane persons; . . . persons with chronic alcoholism; paupers; professional beggars; vagrants; persons afflicted with tuberculosis in any form or with a . . . disease; persons . . . certified by the examining surgeon as being mentally or physically defective . . . of a nature which may affect the ability . . . to earn a living; [felons]; polygamists . . . ; anarchists, or persons . . . who advocate . . . the unlawful destruction of property; prostitutes . . .; persons . . . induced, assisted, encouraged, or solicited to migrate . . . by offers . . . of employment [or] . . . advertisements for laborers . . . in a foreign country; persons likely to become a public charge; persons deported [within the previous year]; stowaways," and others. 1917 Act at 875-76

[8] Plaintiffs veer inconsistently between a claim that the plain meaning of public charge is limited to those "wholly unable to care for themselves," and an incompatible claim that the plain meaning of a public charge is one who is "primarily dependent on the government." *Compare* Mot. at 5 *with* Mot. at 6. As explained herein, neither of these is the plain meaning of public charge as it was understood in 1882, 1917, 1929, or most of the intervening years.

657 (1894) (statement of Rep. Warner) (explaining that under the public charge inadmissibility ground, "[i]t will not do for [an alien] [to] earn half his living or three-quarters of it, but that he shall presumably earn all his living . . . [to] not start out with the prospect of being a public charge"). Courts have also suggested that the exclusion of public charges extended to those who, although earning a modest living, might need assistance with "the ordinary liabilities to sickness, or . . . any other additional charges . . . beyond the barest needs of existence." *U.S. v. Lipkis*, 56 F. 427, 428 (S.D.N.Y. 1893) (holding that immigration officers properly required a bond from a poor family on account of poverty, even though the ultimate reliance on public aid occurred through commitment to an insane asylum); *see also In re Feinknopf*, 47 F. 447, 447 (E.D. N.Y. 1891) (determining that an alien was not likely to become a public charge after considering, as distinct evidence, whether the alien "received public aid or support" or had been an "inmate of an almshouse"). Such individuals impose a "liability" on "the body of citizens," even if they are not fully destitute. This interpretation of "public charge" conforms with Congress's explicit instruction that "the immigration policy of the United States [is] that . . . [a]liens within the Nation's borders [should] not depend on public resources to meet their needs." 8 U.S.C. § 1601(2)(A).

2. The Plain Meaning of Public Charge Does Not Require Permanent Receipt Of Government Benefits Or That Such Benefits Be Paid In Cash.

An alien's temporary receipt of public benefits also constitutes an obligation on the public to support the basic necessities of life, and is therefore encompassed by the plain meaning of public charge. Both administrative practice and the analysis in early cases confirm that the plain meaning of "public charge" is not limited to an alien who receives assistance on a "long-term" or "permanent" basis, as Plaintiffs briefly assert. *See* Mot. at 6, 7.

First, as the NPRM in this case explained, short-term receipt has been "a relevant factor under the [previous] guidance with respect to covered benefits." NPRM at 51165 & n.304 ("In assessing the probative value of past receipt of public benefits, 'the length of time . . . is a significant factor.'") (quoting 1999 Interim Field Guidance at 28690). In fact, the 1999 Field Guidance made no suggestion that an alien needed to receive cash benefits for an extended period for the totality of the circumstances to trigger a public charge determination and set no minimum period below which the receipt of such benefits would be less meaningful. 1999 Interim Field

Guidance at 28690. Nothing in the 1999 standard would ensure that an alien who received, in the previous 36 months, 12 months of a public benefit considered relevant under that guidance (such as Supplemental Security Income) would not be treated as a public charge. And nothing in the plain meaning of "public charge" precludes DHS from clarifying the standard by adopting a recognizable and meaningful threshold for receipt of public benefits in a given period. *Cf. Harris v. FCC*, 776 F.3d 21, 28-29 (D.C. Cir. 2015) ("An agency does not abuse its discretion by applying a bright-line rule.").

DHS's treatment of recurring, but non-permanent, receipt of public relief is also consistent with early case law. For example, a lower court in New York in the mid-nineteenth century recognized that "the modes in which the poor become chargeable upon the public" extend to "all expenses lawfully incurred," including "temporary relief." *People ex rel. Durfee v. Comm'rs of Emigration*, 27 Barb. 562, 569-70 (N.Y. Gen. Term 1858). Similarly, in *Poor Dist. of Edenburg v. Poor Dist. of Strattanville*, a Pennsylvania appellate court recognized that even a landowner with a long track record of supporting herself as a teacher, artist, and writer, could become "chargeable to" the public by temporarily receiving "some assistance" while ill, despite having "plenty of necessaries to meet her immediate wants." 5 Pa. Super. 516, 520-24 (Pa. Super. Ct. 1897).[9] Although the court ultimately rejected the landowner's classification as a pauper, it did so not because her later earnings or payment of taxes barred this conclusion, but because, under the specific facts of the case, she was "without notice or knowledge" that receipt even of limited assistance would "place[] [her] on the poor book." *Id.* at 527-28; *see also Town of Hartford v. Town of Hartland*, 19 Vt. 392, 398 (1847) (widow and children with a house, furniture, and a likely future income of $12/year from the lease of a cow were nonetheless public charges after receiving relief in "the amount of some five dollars").

[9] *Yeatman v. King*, 51 N.W. 721, 723 (N.D. 1892), relied on by Plaintiffs, is not to the contrary. See Mot. at 6 n.6. That case uses the phrase "temporary relief" to describe the receipt of seed grain by a farmer on two occasions, separated by one year, a far more occasional receipt of aid than the recurring receipt needed to satisfy the Rule's 12/36 standard. *Davies v. State ex rel. Boyles*, 17 Ohio Cir. Dec. 593, 595-96 (Ohio Cir. Ct. 1905), is equally inapposite, addressing aid provided to a blind person as a substitute for institutionalization. Plaintiffs themselves acknowledge that "persons who are institutionalized" for health or disability reasons form a separate class of "public charges" from those likely to become public charges for financial reasons. *See, e.g.*, Mot. at 5.

Nor does anything in the plain meaning of "public charge" suggest a distinction between benefits provided in cash and benefits provided as services, as the 1999 Interim Field Guidance required. *See* 64 Fed. Reg. at 28691. Both types of assistance create an obligation on the public and both equally relieve recipients from the conditions of poverty. For this reason, consideration of an alien's receipt of public benefits for "housing, food and medical care," as "examples of the obvious basic necessities of life," falls within the reasonable parameters of determining whether that person creates a liability on the body of the public. *Am. Sec. & Tr. Co. v. Utley*, 382 F.2d 451, 453 (D.C. Cir. 1967). Plaintiffs concede that receipt of in-kind services such as health care, food, and housing—the equivalents of modern benefits covered by the Rule such as Medicaid, SNAP, and public housing—were among the types of public support that rendered a person a public charge in the past by acknowledging that such persons included those who were provided relief through almshouses. *See* Mot. at 6. And because the fact that the modern mores governing public assistance have appropriately deinstitutionalized the poor by providing assistance through subsidies for private housing, food purchases, and the like does not in any way change the fact that receipt of such subsidies imposes an "obligation" or "burden" on the body of the public.

3. The Rule Exercises Interpretive Authority That Congress Delegated To The Executive Branch, A Delegation Congress Has Maintained.

The statutory term "public charge" has "never been [explicitly] defined by Congress in the over 100 years since the public charge inadmissibility ground first appeared in the immigration laws." Rule at 41308. Congress implicitly delegates interpretive authority to the Executive Branch when it omits definitions of key statutory terms, thereby "commit[ting] their definition in the first instance to" the agency, *INS v. Jong Ha Wang*, 450 U.S. 139, 144 (1981), to be exercised within the reasonable limits of the plain meaning of the statutory term. *See Chevron, U.S.A., Inc. v. NRDC*, 467 U.S. 837, 844 (1984). Congress has long recognized this implicit delegation of authority to interpret the meaning of "public charge." *See, e.g.*, S. Rep. No. 81-1515, at 349 (1950) (recognizing that because "there is no definition of the term [public charge] in the statutes, its meaning has been left to the interpretation of the administrative officials and the courts"). This delegation is reinforced by Congress's explicit directive that the determination be made "in the opinion of the Attorney General" or a "consular officer." 8 U.S.C. § 1182(a)(4)(A). This expansive delegation of

authority grants DHS wide latitude to interpret "public charge" within the reasonable limits set by the broad, plain meaning of the term itself.[10]

Congress's comprehensive delegation of interpretive authority is well-established in precedent dating back to the early public charge statutes. *See, e.g., Ex Parte Pugliese*, 209 F. 720, 720 (W.D.N.Y. 1913) (affirming the Secretary of Labor's authority "to determine [the] validity, weight, and sufficiency" of evidence going to whether an individual was "likely to become a public charge"); *Wallis v. U.S. ex rel. Mannara*, 273 F. 509, 510 (2d Cir. 1921) (deference required even if "evidence to the contrary [is] very strong"). It is also recognized in Executive Branch practice. Administrative decisions have explained that Congress's broad delegation of authority in this area was necessary because "the elements constituting likelihood of becoming a public charge are varied." *Matter of Harutunian*, 14 I. & N. Dec. 583, 588-90 (BIA 1974) (quoting S. Rep. No. 81-1515 at 349 (1950) (holding that alien's receipt of "old age assistance benefits" in California was sufficient to render the alien a "public charge")); *see also Matter of Vindman*, 16 I. & N. Dec. 131, 132 (BIA 1977) (citing regulations in the visa context, and explaining that the "elements constituting likelihood of an alien becoming a public charge are varied . . . [and] are determined administratively"). Indeed, Plaintiffs themselves seek to preserve a *prior* exercise of this delegated interpretive authority by requiring DHS to revert to the "primarily dependent" standard for public charge determinations that appeared for the first time in the 1999 Interim Field Guidance and simultaneous 1999 NPRM. *See* Mot. at 39 (seeking to require Defendants to "continu[e] to apply" the 1999 Interim Field Guidance).

The long history of congressional delegation of definitional authority over the meaning of "public charge" demonstrates the error in Plaintiffs' claim that Congress has, by choosing not to impose a definition of "public charge" when revising the statute, "endorse[d] [the] agency's interpretation" and thereby commanded DHS "to preserve" the 1999 Interim Field Guidance. Mot.

[10] These delegations of authority specific to the public charge ground of inadmissibility are reinforced by the explicit overall delegation of authority by Congress to the Secretary of Homeland Security the authority to "establish such regulations . . . as he deems necessary for carrying out" the INA, 8 U.S.C. § 1103(a)(3). Congress has also provided the Secretary with specific responsibility to carry out the INA and to make public charge inadmissibility decisions, as spelled out in detail in the NPRM and Rule. *See* NPRM at 51124; Rule at 41295.

at 20. By its inaction in 1996 and 2013, the occasions Plaintiffs cite, Congress left the public charge provision unchanged. This inaction cannot plausibly be read to withdraw the longstanding delegation to the Executive Branch to exercise definitional authority over the "varied" elements of the meaning of "public charge." S. Rep. No. 81-1515, at 349. Certainly the INS, when it adopted the 1999 Interim Field Guidance and proposed to issue a sweeping new definition of "public charge" through notice-and-comment rulemaking in 1999, did not understand Congress's 1996 action to have altered the statute by withdrawing the long-understood delegation. At a minimum, the likelihood that Congress intended to preserve the delegation means that, under the circumstances, "[c]ongressional inaction lacks persuasive significance" because competing "inferences may be drawn from such inaction." *Competitive Enter. Inst. v. DOT*, 863 F.3d 911, 917 (D.C. Cir. 2017). But the more plausible of the competing inferences is that Congress intended for DHS to retain the authority delegated to it to analyze the "totality of the alien's circumstances" to make "a prediction" about the likelihood that an alien will become a public charge, *Matter of Perez*, 15 I. & N. Dec. 136, 137 (BIA 1974), including the delegated authority for DHS to adopt further procedures to guide its officers, aliens, and the public at large in understanding the application of the public charge ground of inadmissibility.

Nor could Congress's 1952 or 1996 decisions not to adopt a specific definition of "public charge" have "demonstrate[d] . . . approval" of the cramped meaning of the term that Plaintiffs urge, Mot. at 19, for the simple reason that Plaintiffs misconstrue the agency's interpretations of "public charge" from these eras. Contrary to Plaintiffs' assertion in the portion of their argument mislabeled as "Facts," the administrative interpretations they cite did *not* conclude that "public charge" is limited to those "wholly unable to care for themselves." Mot. at 6. Because this was not the "longstanding administrative interpretation" of "public charge" in the inadmissibility context, congressional inaction cannot possibly make that interpretation "the one intended by Congress." Mot. at 19 (quoting *CFTC v. Schor*, 478 U.S. 833, 846 (1986)).

As a threshold matter, many of the decisions Plaintiffs cite arise in the context of *deportation*, not inadmissibility, and it is widely recognized that "administrative authorities [have] interpreted *public charge* differently for purposes of the grounds of inadmissibility than for the

grounds of deportability." Summary, *Public Charge Grounds of Inadmissibility and Deportability: Legal Overview*, Cong. Research Svc. (Jan. 5, 2016) ("CRS 2016"). "Public charge" deportation is a different statutory provision, 8 U.S.C. § 1227(a)(5), and, as a 1974 agency decision explained, the agency viewed it as "incorrect to interpret 'public charge" in the context of inadmissibility, "as narrowly as in the deportation section." *Matter of Harutunian*, 14 I & N Dec. 583, 589 (BIA 1974); *see id.* at 588 ("[T]he deportation statute must be strictly construed. The rule is otherwise as to exclusion"). In the deportation context only, the agency developed a test—not at issue in the inadmissibility context addressed by the Rule—that examined whether the government agency providing public benefits had demanded repayment of the benefits and whether the alien had failed to do so. *See* CRS 2016 at 3-4 (citing, *e.g.*, *Matter of B—*, 3 I & N Dec. 323, 326 (BIA 1948)).

Plaintiffs also misread the substance of these decisions as supporting their position, but they do not. In *Matter of Martinez-Lopez*, for example, then-Attorney General Robert F. Kennedy explained that a "specific circumstance," which he described as any "fact reasonably tending to show that the burden of supporting the alien is likely to be cast on the public," is the standard for demonstrating a likelihood to become a public charge. 10 I. & N. Dec. 409, 421 (A.G. 1962) (rejecting argument that an alien's misrepresentation of an offer of employment was sufficient to render the alien deportable). The receipt of public benefits—whether cash or non-cash—for an extended period such as to fall within the 12/36 standard set forth in the Rule readily qualifies as a "specific circumstance" demonstrating that a burden of support has been "cast on the public." *Id.* Similarly, although the applicant in *Matter of A—*, 19 I. & N. Dec. 867, 870 (BIA 1988), was held not to be deportable based on the past receipt of public benefits, that decision emphasized that such indicia of financial status *may* properly be considered in the totality of the circumstances analysis; the agency simply concluded that a specific type of temporary unemployment—that of "a mother to stay at home to care for her children, especially when the children have not started school"—did not outweigh the applicant's current employment in making a *prospective* determination (now that the children were six years of age or greater). *Id.*

Finally, although Plaintiffs argue that the 1999 Interim Field Guidance and the 1999 NPRM demonstrate that the exclusion of non-cash benefits in those documents "confirmed the settled

interpretation of public charge," Mot. at 11, the reverse is true. Both documents describe the exclusion of "non-cash public benefits" at that time as "reasonable," highlighting that although they did not conclude that the meaning of "public charge" required consideration of such benefits, they also did not conclude that the meaning of public charge foreclosed their consideration. 1999 NPRM at 28677-78 ("It has never been [the] policy that the receipt of any public service or benefit *must* be considered. . ."") (emphasis added). Indeed, the only examples of prior exclusion of non-cash benefits from consideration that the drafters of the interim guidance could identify were: (1) broadly-available public benefits such as "public schools"; and (2) the exclusion of food stamps (i.e., "SNAP") under State Department guidance that apparently did not exclude other forms of non-cash benefits. *See, e.g.*, 1999 Interim Field Guidance at 28692. The 1999 Interim Field Guidance and 1999 NPRM thereby illustrate an exercise of the authority Congress has delegated to the Executive Branch to define "public charge" within the broad limits of its plain meaning, and do not shed light on the limits of that meaning.

4. The Rule Does Not Violate Section 504 Of The Rehabilitation Act.

Plaintiffs note that the Rule requires DHS to consider disability as a factor in a public charge determination, and claim, incorrectly, that the Rule "explicitly discriminates against individuals with disabilities in violation of Section 504 of the Rehabilitation Act." Mot. at 21. That section provides that "[n]o otherwise qualified individual with a disability . . . shall, *solely by reason of her or his disability*, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under . . . any program or activity conducted by any Executive agency . . . ." 29 U.S.C. § 794(a) (emphasis added); *see also* 6 C.F.R. § 15.30 (DHS implementing regulation). The statute imposes a "strict[] 'solely' causation standard," *Natofsky v. City of New York*, 921 F.3d 337, 350–51 (2d Cir. 2019), and Plaintiffs cannot satisfy it.

As a threshold matter, the INA explicitly lists "health" as a factor that DHS officials "shall . . . consider" in making a public charge determination. 8 U.S.C. § 1182(a)(4)(B)(i). "Health" certainly includes an alien's disability, and it is therefore Congress, not the Rule, that requires DHS to take this factor into account. *See*, *e.g.*, *In Re: Application for Temporary Resident Status*, USCIS AAO, 2009 WL 4983092, at *5 (Sept. 14, 2009) (considering application for disability benefits in

public charge in case of an irreconcilable inconsistency between them the later and more specific statute usually controls the earlier and more general one inquiry). A specific, later statutory command, such as that contained in the INA, supersedes section 504's general proscription to the extent the two are in conflict (which they are not, as explained below). *See*, *e.g.*, *Knutzen v. Eben Ezer Lutheran Hous. Ctr.*, 815 F.2d 1343, 1353 (10th Cir. 1987) ("[A] general . . . statute, § 504" may not "revoke or repeal . . . a much more specific statute . . . absent express language by Congress." (internal quotation marks omitted)); *Nutritional Health All. v. FDA*, 318 F.3d 92, 102 (2d Cir. 2003) ("a later-enacted, more specific, comprehensive statute . . . controls the construction of a more general statute when there is a potential conflict or discrepancy").

In any event, the Rule is fully consistent with section 504 of the Rehabilitation Act. The Rule does not deny any alien admission into the United States, or adjustment of status, "solely by reason of" disability. All covered aliens, disabled or not, are subject to the same inquiry: whether they are likely to use one or more covered federal benefits for the specified period of time. Although disability is one factor (among many) that may be considered, it is not dispositive, and is relevant only to the extent that an alien's particular disability tends to show that he is "more likely than not to become a public charge" at any time. Rule at 41368. Further, any weight assigned to this factor may be counterbalanced by other factors, including "[an] affidavit of support," "employ[ment]," "income, assets, and resources," and "private health insurance." *Id.* Thus, any public charge determination cannot be based "solely" on an applicant's disability. Furthermore, to fall within the coverage of the Rehabilitation Act, an individual must be "otherwise qualified," 29 U.S.C. § 794(a), which means that the individual "must be able to meet all of a program's requirements in spite of his handicap." *St. Johnsbury Acad. v. D.H.*, 240 F.3d 163, 173 (2d Cir. 2001). An alien who is likely to become a public charge because of his or her medical condition is not otherwise qualified for admission or adjustment of status.[11] *See Cushing v. Moore*, 970 F.2d

[11] Plaintiffs also fail to make out a Rehabilitation Act claim by alleging the possibility that "[o]ther negative factors may also flow from a person's disability status," and so the Rule uniquely harms those with disabilities. Mot. at 22. Such factors are considered in the analysis regardless of disability, and there is no evidence that disabled persons are likely to be found to be public charges *solely* because of their disability under the totality-of-the-circumstances determination.

1103, 1109 (2d Cir. 1992) (explaining that "an institution is not required to disregard . . . disabilities . . . , provided the handicap is relevant to reasonable qualifications").

5. The Homeland Security Act Confers On The Secretary of Homeland Security The Authority To Promulgate The Rule.

Plaintiffs' assertion that the Secretary of Homeland Security lacks rulemaking authority because the INA references the "Attorney General" is meritless. *See* Mot. at 22-24. In the Homeland Security Act of 2002, Congress established the Secretary of Homeland Security as the head of DHS, and provided the Secretary with "direction, authority and control" over the Department as well as "vested" in him "[a]ll functions of all officers, employees, and organizational units of the Department." Pub. L. No. 107-296, § 102(a)(3), 116 Stat. 2135 (6 U.S.C. §112(a)(3). Congress further conferred general authority to issue regulations, 6 U.S.C. § 112(e), and specific authority to promulgate regulations implementing the immigration laws, 8 U.S.C. § 1103(a)(3) (providing that the Secretary "shall establish such regulations . . . as he deems necessary for carrying out" the immigration laws).[12] *See also* 6 U.S.C. § 202(3) (Secretary is responsible for "[c]arrying out the immigration enforcement functions vested by statute in, or performed by" the INS or its Commissioner); *id.* § 202(4) (Secretary is responsible for "[e]stablishing and administering rules . . . governing the granting of visas or other forms of permission, including parole, to enter the United States to individuals who are not a citizen or an alien lawfully admitted for permanent residence in the United States").

Having transferred the *functions* of INS, as overseen by the Attorney General, to DHS under the control of the Secretary of Homeland Security, Congress then provided for all assignments of specific authority to a designated official to be transferred as well:

[12] Because all relevant functions have been transferred away from the Attorney General, 8 U.S.C. § 1103(a)(1), relied on by Plaintiffs, does not leave rulemaking authority in the Attorney General's hands. Rather, the Attorney General has independent authority to promulgate regulations implementing authorities and functions exercised by the Executive Office for Immigration Review ("EOIR"). 8 U.S.C. § 1103(g)(2). Plaintiffs misunderstand *Sarango v. U.S. Att'y Gen.*, which addressed a unique situation in which Congress specifically amended the INA in 2006 with the clear "intent to divest the Attorney General of authority to consider consent [to reapply for admission] requests [under 8 U.S.C. § 1182(a)(9)(C)(ii)] and to endow the Secretary . . . with this authority." 651 F.3d 380, 386 (3d Cir. 2011). *See* Mot. at 24.

> With respect to any function transferred by or under this chapter (including under a reorganization plan that becomes effective under section 542 of this title)[13] and exercised on or after the effective date of this chapter, reference in any other Federal law to any department, commission, or agency or any officer or office the functions of which are so transferred shall be deemed to refer to the Secretary, other official, or component of the Department to which such function is so transferred.

Pub. L. No. 107-296 § 1517 (codified at 6 U.S.C. § 557). Thus, any reference to the Attorney General in a provision of the INA describing functions transferred from DOJ to DHS must be read as conferring upon the Secretary—either exclusively or concurrently with the Attorney General—the authorities described therein. *See, e.g.*, *Scheerer v. U.S. Att'y Gen.*, 513 F.3d 1244, 1251 & n.6 (11th Cir. 2008) (holding that, in light of 6 U.S.C. §§ 271(b) and 557, Congress conferred upon *both* the Secretary and the Attorney General adjustment of status authority under INA § 245(a), 8 U.S.C. § 1255(a), even though that section referred only to the "Attorney General").

Congress specifically "transferred from the Commissioner of Immigration and Naturalization to the Director of [USCIS]"—a component of DHS—all functions relating to immigrant visa petitions, naturalization petitions, asylum and refugee applications, adjudications performed at service centers, and all other adjudications performed by the INS. *Id.* § 451(b) (6 U.S.C. § 271(b)); *see La. Forestry Ass'n v. Dep't of Labor*, 745 F.3d 653, 659 (3d Cir. 2014) (explaining that "the authority to determine nonimmigrant visa petitions" no longer resides with the Attorney General); 6 U.S.C. §§ 251, 271 (transferring border-security and port-of-entry functions to Secretary of Homeland Security). As the Eleventh Circuit has explained, this transfer of authority includes, among other things, authority to grant adjustment of status to aliens who are not in removal proceedings. *Scheerer*, 513 F.3d at 1251 n.6.

6. The Rule Is Not Arbitrary And Capricious.

a. DHS Reasonably Concluded That The Rule Will Promote Self-Sufficiency.

Although Plaintiffs contend that the Rule is arbitrary and capricious because it provides for immigration officials to take into account benefits that Plaintiffs believe "promote rather than

[13] 6 U.S.C. § 542 provides for the establishment of "a reorganization plan regarding . . . [t]he transfer of agencies, personnel, assets, and obligations" to establish DHS.

impede self-sufficiency," Mot. at 25, this conflates the meaning of "self-sufficiency" in two distinct contexts. For specific purposes of the public charge inadmissibility ground, Congress's intent is "that aliens should be self-sufficient before they seek admission or adjustment of status," not that they should someday attain self-sufficiency by drawing on public resources to improve their financial condition. Rule at 41308; *see* 8 U.S.C. § 1601. This protects American citizens—who are already taxed heavily to provide public benefits for the support of American citizens and eligible qualified aliens, including LPRs—from shouldering increased burdens to support newly-eligible aliens who would be likely to become at any time public charges. The "self-sufficiency" purpose of public benefits programs is similar, but separate: to encourage the termination of receipt of public benefits (when recipients attain self-sufficiency) so as to limit the cost to taxpayers of those currently in need of public support. Nothing about the existence of public benefit programs intended to serve (and assist in attaining self-sufficiency) some categories of persons obligates Congress or DHS to admit to the United States or adjust to LPR status every "working-poor famil[y]" who has not achieved self-sufficiency, as Plaintiffs seek to require. Mot. at 25.

In this context, DHS's explanation regarding how the Rule will advance self-sufficiency meets the standards of the APA. Although aliens may face a five-year waiting period prior to eligibility for public benefits, they can be expected to base their present decisions on the availability of those future benefits. *Cf. Lewis v. Thompson*, 252 F.3d 567, 583-84 (2d Cir. 2001) (Congress could reasonably "believe that some aliens would be less likely to hazard the trip to this country if they understood that they would not receive government benefits"). By making clear that receipt of such benefits will be considered as part of the totality of the circumstances determination of the public charge ground of inadmissibility, the Rule helps "ensure that aliens coming to or opting to stay in the United States permanently are self-sufficient." Rule at 41317.

b. The Rule Preserves and Clarifies The Application Of The Totality of the Circumstances Test And Is Not Vague.

In a brief subsection with a paucity of explanation, Plaintiffs allege that the Rule is vague because it provides insufficient guidance about how the "totality of the circumstances"

determination of the public charge ground of inadmissibility is to be applied. Mot. at 25-26. Plaintiffs' objection lacks logic because, under past administrative practice (including the 1999 Interim Field Guidance), DHS officers were required to apply an identical "totality of the circumstances" analysis but in a far more "vague, broad, and standardless" context. Mot. at 25.

As the Rule makes clear, the statute itself requires that DHS make public charge determinations by considering, "at a minimum," eight elements: age, health, family status, assets, resources, financial status, education, and skills. 8 U.S.C. § 1182(a)(4). The statute provides no further guidance about these elements. The totality of the circumstances test, in turn, has been applied by the agency for decades, including in administrative decisions relied on in Plaintiffs' brief. *See, e.g.*, Mot. at 8 (citing *Matter of A—*, 19 I. & N. Dec. 867). Since 1996, DHS has been employing this analysis with respect to the eight elements, as required by IIRIRA, and the 1999 Interim Field Guidance confirmed that this approach is correct. By providing *additional* information to DHS officers to guide their consideration, including by enumerating specific benefits to consider and providing relative weightings of how DHS officers should account for various elements, DHS has *clarified* the application of this test, contrary to Plaintiffs' claim.[14]

Plaintiffs' specific arguments regarding particular factors are similarly meritless. Mot. at 25-26. The Rule properly includes proficiency in English and other languages as a factor to be considered as part of the totality of the circumstances, particularly given the statutory requirement to consider an applicant's "education and skills." 8 U.S.C. § 1182(a)(4)(B)(i). By including language proficiency, the Rule is providing *more* specificity than offered by the statute, and there

[14] Plaintiffs have failed to offer more than passing references to explain their claims that specific factors, such as proficiency in a language, are vague. As an initial matter, Plaintiffs cannot challenge the Rule as vague under the Fifth Amendment, because the Constitution's protections extend only to the deprivation "of life, liberty, or property" and it is well-established that aliens do not "have a constitutionally protected liberty or property interest in a grant of adjustment of status because it is a discretionary form of relief." *Krasniqi v. Holder*, 316 F. App'x 7, 8 (2d Cir. 2009); *see Yuen Jin v. Mukasey*, 538 F.3d 143, 156-57 (2d Cir. 2008). As to language proficiency, the term "proficiency," as part of the totality of the circumstances determination, is not at all vague because "proficiency" means "the degree of competence attained," a spectrum which can appropriately be accounted for as part of an analysis weighing the many different mandatory and other factors. "Proficiency," Oxford Eng. Dict. (3d ed. 2007).

is no requirement that DHS also define a more specific "level of proficiency" in the Rule, as Plaintiffs argue. Mot. at 26. Next, the Rule is clear that DHS will not consider noncash public benefits received before the Rule's effective date, Rule at 41504 (8 C.F.R. § 212.22(d)), and the fact that a non-final draft immigration form asks if applicants have "ever" received certain public benefits does not change the Rule or suggest it is arbitrary or capricious. Plaintiffs also believe two provisions relating to health coverage for medical conditions are inconsistent, Mot. at 26, but Plaintiffs ignore that the Rule does not count a severe medical condition as a heavily weighted negative factor if the alien has "the financial resources to pay for reasonably foreseeable medical costs related to such medical condition." Rule at 41504. Such "financial resources" can include "health insurance not designated as a public benefit." *See id*. (8 C.F.R. § 212.22(b)(4)(ii)(H) provides that "resources . . . to pay for reasonably foreseeable medical costs" includes "health insurance not designated as a public benefit under 8 C.F.R. § 221.21(b)"). Lastly, the fact that the Rule considers some Medicaid benefits but not state public health insurance benefits does not render it arbitrary or capricious. DHS excluded such state benefits "because of the number of public benefits that exist and the administrative burden such a rule would have imposed on DHS and the state and local public benefit granting agencies." *Id*. at 41390. "In addition, including all state and local benefits would add vagueness and confusion as to what public benefits would be considered." *Id*.

c. DHS Reasonably Responded To Comments.

An agency's obligation to respond to comments on a proposed rulemaking is "not particularly demanding." *Ass'n of Private Sector Colls. & Univs. v. Duncan*, 681 F.3d 427, 441–42 (D.C. Cir. 2012). "[T]he agency's response to public comments need only 'enable [courts] to see what major issues of policy were ventilated . . . and why the agency reacted to them as it did.'" *Pub. Citizen, Inc. v. FAA*, 988 F.2d 186, 197 (D.C. Cir. 1993). Plaintiffs claim that DHS did not adequately respond to certain comments about the potential that the Rule could cause individuals to disenroll from public benefits or forgo enrollment, but under these standards, cannot plausibly show any deficiency in the agency's responses. Mot. at 27.

The Rule provided a detailed discussion of the comments raising concerns regarding the disenrollment impact and offered a lengthy, reasoned discussion explaining precisely why DHS believed the Rule was justified notwithstanding this potential harm. Rule at 41310-14. As DHS stated, notwithstanding the disenrollment impact, the "rule's overriding consideration, *i.e.*, the Government's interest" in (1) minimizing the incentive of aliens to immigrate or adjust status to obtain public benefits and (2) promoting self-sufficiency of aliens in the United States "is a sufficient basis to move forward." *Id*. at 41312. DHS explained that it is not "sound policy to ignore the longstanding self-sufficiency goals set forth by Congress" because of the potential for disenrollment. *Id*. at 41314. Thus, DHS did not "abdicate" the responsibility to consider potential harms, Mot. at 27; rather, it found those harms insufficient to override the legitimate policy goals of the Rule. This case is therefore distinguishable from *New York v. DOJ*, 343 F. Supp. 3d 213, 240 (S.D.N.Y. 2018), in which there was not "any discussion of the negative impacts" from the agency's decision and which did not involve a rulemaking. Likewise, in *NRDC v. DOE*, 362 F. Supp. 3d 126, 148 (S.D.N.Y. 2019), another case cited by Plaintiffs, the agency "refused even to look at the arguments against" its intended course of action. Plaintiffs show nothing similar here.

Plaintiffs fault DHS for noting the difficulty of accurately predicting the disenrollment impact, Mot. at 27, but their own cited studies and comments agree with that conclusion. For instance, one cited comment observed that "a precise single estimate of the impact of the proposed rule on Medicaid participation is challenging to calculate" and that only "reasonable ranges can be explored." Pls' Ex. 20 at 63, ECF No. 50-20. A study cited by Plaintiffs likewise noted that "it is difficult to predict the effect of the policy change," and therefore the authors "applied disenrollment rates of 15%, 25%, and 35%," which merely "illustrate a range of potential impacts[.]"[15] DHS proceeded similarly. In its Regulatory Impact Analysis that accompanies the

[15] *See* Samantha Artiga, Rachel Garfield, Anthony Damico "Estimated Impacts of the Proposed Public Charge Rule on Immigrants and Medicaid" (October 2018), http://files.kff.org/attachment/Issue-Brief-Estimated-Impacts-of-the-Proposed-Public-Charge-Rule-on-Immigrants-and-Medicaid, cited at Pls' Ex. 37 at 5 n.9, ECF No. 50-37.

Rule, DHS attempted to calculate the disenrollment impact and, like the study cited by Plaintiffs, applied a range of disenrollment rates (up to 54%) based on DHS's recognition that the rate could be higher than predicted. Ex. A at 99-100.

As for Plaintiffs' argument that DHS did not "quantify" other costs such as lost productivity, adverse health effects, and medical expenses, Plaintiffs cite no cases holding that, to comply with the APA, an agency must "quantify" all potential effects of a rule. Nor could they. S*ee Inv. Co. Inst. v. CFTC*, 720 F.3d 370, 379 (D.C. Cir. 2013) (the "law does not require agencies to measure the immeasurable"); *Defs. of Wildlife v. Zinke*, 856 F.3d 1248, 1263 (9th Cir. 2017) (finding agency action was not arbitrary and capricious notwithstanding agency's "failure to quantify" effects). Plaintiffs fail to identify any methodology DHS could have followed to reliably measure these costs. DHS reasonably considered these potential costs qualitatively, Rule at 41488, and the APA requires nothing more.

Plaintiffs acknowledge that DHS addressed comments about the English proficiency factor but argue that DHS failed to respond to the specific point that the factor lacks adequate standards. *See* Mot. at 28. But the Rule includes a lengthy response to comments claiming the totality of the circumstances test generally lacks sufficient standards. Rule at 41321-22. Thus, DHS met its obligation to respond to comments. *Envtl. Def. Fund v. EPA*, 922 F.3d 446, 458 (D.C. Cir. 2019) ("an agency need not discuss every item of fact or opinion included in comments . . . [n]othing in the APA saddles agencies with the crushing task of responding to every single example cited in every single comment").

Finally, there is no merit to Plaintiffs' argument that they were deprived of an opportunity to comment on the provision making private health insurance a heavily weighted positive factor but excluding plans subsidized via tax credits. Mot. at 28. An "agency's final rule need only be a logical outgrowth of its notice." *Agape Church, Inc. v. FCC*, 738 F.3d 397, 411 (D.C. Cir. 2013). A final rule qualifies as the logical outgrowth of the proposed rule if interested parties should have anticipated that the change was possible. *Id*. Here, the NPRM expressly stated that it "would consider whether the alien has private health insurance" and explained that "[h]aving private health

insurance would be a positive factor in the totality of the circumstances." NPRM at 51182, 51189. Thus, there should be no surprise that DHS decided to treat private health insurance as a heavily weighted positive factor, nor any surprise that DHS decided not to treat insurance purchased using tax subsidies as such a factor. Rule at 41448-49.

d. The Rule Meets The Standards Required For An Agency To Change Its Position Through Notice-and-Comment Rulemaking.

There is "no basis in the Administrative Procedure Act . . . for a requirement . . . [of] more searching review" when an agency changes its position. *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 514 (2009). This is particularly true here, where the "prior policy" to which the Plaintiffs seek to revert is nonbinding guidance that could not possibly foreclose DHS from adopting a different reasonable interpretation through notice-and-comment rulemaking. *See Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 982-83 (2005).[16] As the Supreme Court explained in *Fox*, all that DHS was required to do to permissibly change course from the 1999 Interim Field Guidance was to acknowledge that the Rule sets forth a policy change, provide a reasoned explanation for the change, and explain how it believes the new interpretation is reasonable. *See Fox*, 556 U.S. 514-16. The Rule readily meets these standards, and so DHS is entitled to full deference to its changed interpretations, consistent with its obligation to "consider varying interpretations and the wisdom of its policy on a continuing basis." *Chevron*, 467 U.S. at 863-64 (recognizing agencies receive deference to a "changed . . . interpretation of [a] term").

First, the NPRM and Rule acknowledged that DHS was changing course. In the former, DHS announced it was proposing "major changes," *see, e.g.*, NPRM at 51116, and that these changes included "a new definition of public charge." *Id.* at 51158; *see also id.* at 51163 (describing DHS's intent to make "a change from the standard" of "primary dependence" set forth in the 1999 Interim Field Guidance). DHS also stated that it would change and "improve upon the 1999 Interim Field Guidance" by changing the treatment of non-cash benefits. *Id.* at 51123. In the Rule, DHS "agree[d] with commenters that the public charge inadmissibility rule constitutes a

[16] As explained *supra*, the standards of "primary dependency" (or "primarily dependent") and exclusion of non-cash benefits were newly-adopted by the 1999 Interim Field Guidance.

change in interpretation from the 1999 Interim Field Guidance," Rule at 41319, and repeatedly explained that it was "redefin[ing]" public charge and adopting a "new definition" of "public benefit" that would be "broader" than before. *Id.* at 41295, 41297, 41334; *see also id.* at 41347 (explaining that the agency may justifiably change course).

Second, DHS explained the reasons for the change in course. DHS described how the "focus on cash benefits" in the 1999 Interim Field Guidance had proved "to be insufficiently protective of the public budget, particularly in light of significant public expenditures on non-cash benefits." NPRM at 51164. DHS quantified the "significant federal expenditure on low-income individuals" specifically associated with "benefits directed toward food, housing and healthcare." NPRM at 51160; *see id*. at Table 10. Recognizing that these benefits are provided to citizens and aliens alike, DHS also examined the substantial participation rate among foreign-born aliens for these programs. *See id*. at 51161 & Table 11. In this analysis, DHS found that public benefits programs provide, on average, thousands of dollars of "assistance to those who are not self-sufficient" and who are aliens, *id*. at 51163, and that millions of aliens receive such benefits: 3.1 million receive Medicaid alone. *Id*. at 51161-62 & Table 12. These statistics reasonably support DHS's conclusion that, under the 1999 Interim Field Guidance, the agency was failing to carry out the principles mandated by Congress that "aliens . . . not depend on public resources to meet their needs," and instead "rely on their own capabilities" and support from families, sponsors, and private organizations. 8 U.S.C. § 1601; *see also* Rule at 41308, 41319 (explaining that the prior guidance "failed to offer meaningful guidance for purposes of considering the mandatory factors and was therefore ineffective"). This amply demonstrates the reasonableness of DHS's decision to adopt a new definition and approach in exercise of the delegated authority to make public charge inadmissibility determinations.

Relevantly, Plaintiffs misread 8 U.S.C. § 1601 and PRWORA when they suggest that DHS has acted contrary to law or arbitrarily and capriciously by interpreting "public charge" in light of the principles of self-sufficiency set forth in PRWORA. Mot. at 21, 29. The statutory provision describes these principles as the "continu[ing] . . . *immigration policy* of the United States," 8

U.S.C. § 1601(2) (emphasis added), and *not* the continuing "public benefits policy." And rather than locate these provisions in Title 42 with other provisions governing public benefits, *see, e.g.*, 42 U.S.C. § 607(e) (codifying PRWORA's work requirement for receipt of benefits), Congress located this language in Title 8, "Aliens and Nationality," thereby choosing to require that these principles guide immigration policy, not just public benefits policy. Further, as explained above, DHS looked to specific evidence regarding the extensive receipt of public benefits by millions of aliens and reasonably relied on that evidence to conclude that the 1999 Interim Field Guidance was "overly permissive," "disserved the goal of furthering immigrant self-sufficiency," and should be revised to better achieve that goal, thereby preempting the summary allegations Plaintiffs raise. *See* Mot. at 29. Indeed, the need for a change in course is underscored by Plaintiffs' claim that the Rule will interfere with the efforts of "generations of immigrant families to build lives." In short, DHS has reasonably justified the changes made from the 1999 Interim Field Guidance, consistent with the standards of the APA.

e. The Rule Is Not Impermissibly Retroactive.

A regulation has retroactive effect if "it would impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed." *Landgraf v. USI Film Prod.*, 511 U.S. 244, 280 (1994). Courts must exercise "commonsense, functional judgment about whether the new provision attaches new legal consequences to events completed before its enactment." *Herrera-Molina v. Holder*, 597 F.3d 128, 134 (2d Cir. 2010). "[D]eciding when a statute operates 'retroactively' is not always a simple or mechanical task." *Landgraf*, 511 U.S. at 268.

Here, the Rule was carefully crafted to avoid any material retroactive effect. In particular, when administering the Rule, DHS personnel will only consider benefits received prior to the Rule's effective date if those benefits would have been considered under the prior public charge standard. *See* Rule at 41321 ("[A]ny benefits received before that date will only be considered to the extent they would have been covered by the 1999 Interim Field Guidance"). Thus, for example, since TANF benefits were covered by the prior standard, immigration personnel may consider any

receipt of these benefits prior to the Rule since aliens were aware that use of these benefits may support a public charge determination. *See* Rule at 41459. By contrast, SNAP benefits were not covered by the prior standard, and so immigration personnel may only consider SNAP benefits received after the Rule's effective date. *See id.* [17]

Plaintiffs argue that the Rule is retroactive since it considers an applicant's credit score for the first time, thus penalizing prior financial decisions. But "a statute is not made retroactive merely because it draws upon antecedent facts for its operation." *Landgraf*, 511 U.S. at 270 n.24. After the Rule takes effect, immigration personnel will consider an alien's operative credit scores at the time of the public charge inquiry. The Rule is not unlawfully "retroactive" simply because an alien's current credit score will reflect prior financial decisions. *See McAndrews v. Fleet Bank of Massachusetts, N.A.*, 989 F.2d 13, 16 (1st Cir. 1993) ("Even when the later-occurring circumstance depends upon the existence of a prior fact, that interdependence, without more, will not transform an otherwise prospective application into a retroactive one" and so a regulation "may modify the legal effect of a present status . . . without running up against the retroactivity hurdle"). [18]

Plaintiffs then argue that the Rule unsettles prior expectations since affidavits of support are now only one non-dispositive factor to be considered. Mot. at 31. But this is not a departure from the 1999 Field Guidance, which states that "an alien may be found to be inadmissible" on public charge grounds "[n]otwithstanding the filing of a sufficient affidavit of support." *See* 64

[17] Plaintiffs note that a non-final draft of the I-944 form requires aliens to disclose whether they have ever received benefits covered by the Rule. *See* Mot. at 30. But this does not mean immigration personnel may consider all of these benefits when rendering a public charge determination. *See* Rule at 41470 ("Adjudicators will be appropriately trained on Form I–944.").

[18] Plaintiffs relatedly argue that the Rule penalizes prior receipt of cash assistance. Plaintiffs argue that any amount of cash assistance may be considered as a factor under the Rule, whereas under the prior standard aliens would be considered public charges only if they were likely to be "primarily dependent" on cash benefits. Plaintiffs, however, conflate the public charge definition with the evidence immigration personnel consider when determining if that definition is met in a particular case. Even under the prior public charge standard, immigration personnel could generally consider prior receipt of cash assistance as evidence. *See* Rule at 41459. Thus, aliens have had "fair notice" that receipt of these benefits may lend support to a public charge determination. *Samuels v. Chertoff*, 550 F.3d 252, 260 (2d Cir. 2008).

Fed. Reg. at 28690 (1999 Field Guidance stating that an affidavit of support is one factor "taken into account under the totality of the circumstances test," quoting 8 C.F.R. § 213a.2(C)(2)(iv)). In any event, a "statute does not operate 'retrospectively' merely because" it "upsets expectations based in prior law." *Landgraf*, 511 U.S. at 269. This aspect of the Rule does not impose a unique legal consequence for any past conduct.

f. The Rule Does Not Violate Equal Protection.

Plaintiffs' claim alleging a violation of the equal protection component of the Fifth Amendment is not likely to succeed under any conceivable standard, but particularly not under the highly deferential standard applicable to immigration cases such as this. It is well-established that the government has "broad power over naturalization and immigration" and therefore "rational basis scrutiny applies to immigration and naturalization regulation." *Lewis*, 252 F.3d at 582 ("We have recently recognized that a 'highly deferential' standard is appropriate in matters of immigration."). The Supreme Court's recent decision in *Trump v. Hawaii* reaffirms these principles and makes clear that, at most, rational basis would be the appropriate standard of review in this case for the same reasons as in *Hawaii*: the deference accorded the political branches in this arena. 138 S. Ct. 2392, 2418-19 (2018) ("Because decisions [in the admission and exclusion of foreign nationals] may implicate 'relations with foreign powers,' or involve 'classifications defined in the light of changing political and economic circumstances,' such judgments 'are frequently of a character more appropriate to either the Legislature or the Executive.'" (citation omitted)).

Plaintiffs fall far short of satisfying their heavy burden under rational basis review. Under that standard, courts "will uphold the policy so long as it can reasonably be understood to result from a justification independent of unconstitutional grounds." *Hawaii* at 2420 (noting that "the Court hardly ever strikes down a policy as illegitimate under rational basis scrutiny"). "Any reasonably conceivable state of facts" will suffice to satisfy rational basis scrutiny. *Lewis*, 252 F.3d at 582. "The burden falls to the party attacking the statute as unconstitutional to 'negative every conceivable basis which might support it.'" *Id.* (quoting *Madden v. Kentucky*, 309 U.S. 83, 88

(1940)). Here, the Rule easily falls within DHS's broad authority to regulate immigration matters and is indeed rationally related to the government's compelling, statutorily-codified interest in minimizing the incentive of aliens to immigrate to the United States due to the availability of public benefits and promoting the self-sufficiency of aliens within the United States. *See* 8 U.S.C. § 1601; *see also* Rule at 41323. It is certainly "reasonably conceivable" that the Rule will promote these governmental interests. *See Lewis*, 252 F.3d at 583 ("[I]t is reasonable for Congress to believe that some aliens would be less likely to hazard the trip to this country if they understood that they would not receive government benefits upon arrival[.]"). Indeed, not even Plaintiffs contend that the Rule will fail to achieve the desired ends. The Rule is "expressly premised on legitimate purposes," *Hawaii*, 138 S. Ct. at 2421, and it cannot be said that the Rule is "inexplicable by anything but animus." *id*. at 2420.

Rather than address the applicable legal standard, Plaintiffs discuss some of the factors specified in *Arlington Heights v. MHDC*, 429 U.S. 252 (1977), for identifying a discriminatory purpose. Mot. at 31-32. But the *Arlington Hts.* factors are not relevant under the highly deferential rational basis standard of review. And even were the Court to apply those factors, they still would not show a likelihood of success. Plaintiffs assert that the Rule will have a disparate impact on immigrants of color, Mot. at 32-33, but *Arlington Hts.* itself reaffirmed that "official action will not be held unconstitutional solely because it results in a racially disproportionate impact" and that "[p]roof of racially discriminatory intent or purpose is required to show a violation of the Equal Protection Clause." 429 U.S. at 264-65. Plaintiffs fail to provide such proof. In particular, although Plaintiffs point to alleged statements by various administration officials, those statements are not part of the "legislative or administrative history" that might be relevant under *Arlington Hts.*. 429 U.S. at 268; *see also Carcano v. Cooper*, 350 F. Supp. 3d 388, 419-20 (M.D.N.C. 2018) (statements made by legislators "in the press and through their social media" about the "purpose and effect" of the challenged statute "are not 'legislative history'" under *Arlington Hts.* and therefore not relevant). Moreover, the statements are disconnected from the Rule; none suggests that a purpose of the Rule is to discriminate against immigrants of color. Plaintiffs' claim is

ultimately based on speculation that animus may have motivated the Rule, but that speculation does not establish a likelihood of success. Moreover, Plaintiffs ignore the other *Arlington Hts.* factors and do not even argue that they show any discriminatory animus, nor could they. *See* 429 U.S. at 267. For instance, Plaintiffs fail to allege any "[d]epartures from the normal procedural sequence" in the promulgation of the Rule that could suggest discriminatory intent. *Id*.

III. PLAINTIFFS FAIL TO ESTABLISH IRREPARABLE HARM.

"[I]rreparable harm is the single most important prerequisite for the issuance of a preliminary injunction, and . . . accordingly, the moving party must first demonstrate that such injury is likely before the other requirements for the issuance of an injunction will be considered." *Grand River Enter. Six Nations, Ltd. v. Pryor*, 481 F.3d 60, 66-67 (2nd Cir. 2007) (citation omitted). "To satisfy the irreparable harm requirement, Plaintiffs must demonstrate that absent a preliminary injunction they will suffer 'an injury that is neither remote nor speculative, but actual and imminent,' and one that cannot be remedied 'if a court waits until the end of trial to resolve the harm.'" *Freedom Holdings, Inc. v. Spitzer*, 408 F.3d 112, 114 (2nd Cir. 2005) (quoting *Rodriguez by Rodriguez v. DeBuono*, 175 F.3d 227, 234-35 (2nd Cir. 1998)). Plaintiffs have failed to carry this burden because they have not alleged any diversion of resources from their core activities or any concrete harms to their core missions.

Plaintiffs are incorrect that irreparable harm can be presumed in this case. First, presuming irreparable harm on the basis of a violation of federal law is not the binding law of this Circuit, and indeed the Court of Appeals for the Second Circuit has rejected such presumptions in other contexts. *See, e.g., Salinger v. Colting*, 607 F.3d 68, 79-80 (2nd Cir. 2010) (rejecting presumption of irreparable harm in copyright cases as "inconsistent with principles of equity" and *Winter*). Moreover, the Rule does not violate any statutes, as discussed *supra*, and there has been no finding to the contrary on which to base a presumption of harm. Second, although Plaintiffs have not articulated a coherent theory of standing, it appears that they are asserting their Equal Protection claims on behalf of their members or constituents rather than themselves. Mot. 31-33; Compl. at 115. Because Plaintiffs have not even alleged the necessary elements of associational standing,

much less provided evidence to support that standing, their Equal Protection allegations cannot serve as the basis of a presumption of irreparable harm. *See New York State Psychiatric Ass'n,* 798 F.3d at 130 ("An association has standing to bring suit on behalf of its members when (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.") (citation omitted); *Summers*, 555 U.S. at 499 ("[T]he Court has required plaintiffs claiming an organizational standing to identify members who have suffered the requisite harm."); *NRDC, Inc. v. FDA*, 710 F.3d at 79 ("A membership organization . . . may assert the standing of its members if . . . it establishes that at least one of its members has standing to sue individually.").

Neither do Plaintiffs' allegations concerning diversion of resources and frustration of their missions satisfy the irreparable harm standard. Irreparable harm is a more demanding standard than standing, *see, e.g. Freedom Holdings*, 408 F.3d at 114, which itself Plaintiffs' claims do not satisfy, *see supra*. In the same breath Plaintiffs assert their organizational purposes are to educate clients and provide legal services, primarily in the realm of immigration law, they complain that they are being harmed by doing so. *See* Mot. at 36-37. Plaintiffs are "not wasting resources by educating the public" and providing legal services because "this is exactly how" organizations like Plaintiffs "spend[] [their] resources in the ordinary course." *CREW*, 276 F. Supp. 3d. at 191-92. Thus they have suffered no "concrete or particularized injury" that can satisfy the irreparable injury standard. *Id*; *see also, e.g.*, *Blunt v. Lower Merion Sch. Dist.*, 767 F.3d 247, 285-86 (3d Cir. 2014) ("additional expenditures . . . consistent with [an organization's] typical activities" are not an injury); *NAACP v. City of Kyle*, 626 F.3d 233, 238 (5th Cir. 2010) (actions that did not "differ from the [organization]'s routine . . . activities" did not confer standing); *Knowledge Ecology Int'l v. Nat. Insts. of Health*, No. PJM 18-1130, 2019 WL 1585285, at *6 (D. Md. Apr. 11, 2019) (finding no standing because providing advice about the challenged policies was "very much in line with [the organization's] core mission."). Nor have Plaintiffs even alleged that these ephemeral purported harms are either irreparable or "so imminent as to be irreparable if a court waits until

the end of trial to resolve the harm." *Rodriguez*, 175 F.3d at 235.

IV. THE REMAINING EQUITABLE FACTORS REQUIRE DENIAL OF PLAINTIFFS' MOTION.

Even if Plaintiffs had made a sufficient showing on either likelihood of success on the merits or likelihood of irreparable injury, and they have not, they would still be obligated to make a satisfactory showing both that the balance of equities tips in their favor and that the public interest favors injunction. *See Metro. Life Ins. Co. v. Bucsek*, 919 F.3d 184, 188 n.2 (2nd Cir. 2019). These two factors merge when the government is a party, *Vidal v. Neilsen*, 279 F. Supp. 3d 401, 435 (E.D.N.Y. 2018), but Plaintiffs have not made a sufficient showing to meet the standard for either factor. Plaintiffs assert that the balance of equities and public interest favor an injunction because they have alleged economic and public health harms, Mot. at 39, and that Defendants will not suffer comparable harm because an injunction allegedly maintains Defendants' existing practice. *Id.*[19]

This analysis is facially incorrect and self-serving. The economic and public health harms alleged by Plaintiffs are wholly speculative, premised on the cumulative effects of the independent decisions of thousands of individual third parties. Moreover, there is no support for their assertions that these harms would be realized during the pendency of this case. Conversely, there can be no doubt that the Defendants have a substantial interest in administering the national immigration system, a *solely federal* prerogative, according to the expert guidance of the responsible agencies as contained in their regulations, and that the Defendants will be harmed by an impediment to doing so. Quite obviously, Defendants have made the assessment in their expertise that the existing Field Guidance referred to by Plaintiffs is insufficient or inappropriate to serve the purposes of proper immigration enforcement. Therefore, imposing the extraordinary remedy of a preliminary injunction and requiring the prior practice to continue before a determination on the merits would

[19] Plaintiffs also contend that the balance favors an injunction because there is a public interest in lawful agency action and no public interest in unlawful agency action. However, the interests of the Defendants, as federal regulators, are also served by proper compliance with the law, which was undertaken in this case. *See supra*. Thus, this factor is merely neutral in the balance.

significantly harm Defendants.

Plaintiffs' speculative harms have no weight in the balance of hardships compared to the Defendants' interest in avoiding roadblocks to administering the national immigration system. Consequently, Plaintiffs have failed to demonstrate that the balance of hardships tips in their favor or that the public interest favors injunction. On this ground alone, their motion for a preliminary injunction must fail. *See Winter*, 555 U.S. at 26.

V. THE COURT SHOULD NOT GRANT NATIONWIDE RELIEF.

Were the Court to order a preliminary injunction or a stay of the effective date of the Rule, it should be limited to redressing only any established injuries to the individual Plaintiffs who establish standing and irreparable harm. Under Article III, a plaintiff must "demonstrate standing . . . for each form of relief that is sought." *Town of Chester v. Laroe Estates, Inc.*, 137 S. Ct. 1645, 1650 (2017); *see also Gill v. Whitford*, 138 S. Ct. 1916, 1930, 1933 (2018) ("The Court's constitutionally prescribed role is to vindicate the individual rights of the people appearing before it."). Plaintiffs have requested either a stay of the effective date of the regulation or a preliminary injunction, but have neither established nor alleged any facts in support of a nationwide injunction or a stay with that effect. Equitable principles require that an injunction "be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs." *Madsen v. Women's Health Ctr., Inc.*, 512 U.S. 753, 765 (1994). Accordingly, Courts of Appeals have repeatedly vacated or stayed the nationwide scope of injunctions, including in a challenge to a federal immigration rule. *See, e.g., E. Bay Sanctuary Covenant v. Barr*, 934 F.3d 1026, 1029 (9th Cir. 2019) ("Under our case law . . . all injunctions—even ones involving national policies—must be 'narrowly tailored to remedy the specific harm shown.'"); *see also California v. Azar*, 911 F.3d 558, 584 (9th Cir. 2018) (collecting cases).

Relief under 5 U.S.C. § 705 is similarly limited, as that provision permits a court to stay the effective date of an agency action only "to the extent necessary to prevent irreparable injury." *Id*. Although Plaintiffs have requested a stay of the effective date of the Rule without limitation, narrower relief is both available under § 705 and required by equitable principles applicable to

extraordinary forms of relief. *See Texas v. EPA*, 829 F.3d 405, 435 (5th Cir. 2016) (indicating that courts should consider any "brief[ing] [regarding] how [to] craft a limited stay"); 5 U.S.C. § 705 (Courts "may issue all necessary and appropriate process to postpone the effective date of an agency action *or* to preserve status or rights pending conclusion of the review process." (emphasis added)). Plaintiffs acknowledge that relief under § 705 is governed by equitable principles under the "same" standards as govern preliminary injunctions, Mot. at 40, and nothing in § 705 speaks clearly enough to work "a major departure from the long tradition of equity practice." *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 320 (1982).

Here, Plaintiffs have not established that nationwide relief is necessary to remedy their alleged harms. Only one Plaintiff—CLINIC—alleges any connection between its operations and individuals outside New York State, and CLINIC does not serve such individuals directly and instead has only "affiliate organizations" undertaking activities in those locations. Mot. at 40. Plaintiffs identify no case in which an attenuated harm via the client of a Plaintiff organization's client organization was held to justify a finding of irreparable harm to the Plaintiff, let alone to require nationwide relief. Nor can the mere possibility that the Plaintiff organizations' clients may choose to voluntarily move out-of-state, Mot. at 40, during the pendency of a preliminary injunction justify extending an injunction to every alien in the nation. Any injunction should be limited to clients of the Plaintiffs, and only to those clients and patients for whom Plaintiffs have demonstrated injury, and even then, only after the Court has conducted the required balancing of any demonstrated harm against the other equitable considerations. *Winter*, 555 U.S. at 26. A nationwide injunction that applies to countless individuals lacking any non-speculative, irreparable harm tied to their specific relationships with these plaintiff organizations is not "narrowly tailored to remedy the specific harm shown." *East Bay*, 934 F.3d at 1029.

CONCLUSION

Defendant respectfully requests that the Court deny Plaintiffs' motion for a preliminary injunction or stay of the effective date of the Rule.

Dated: September 27, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 27, 2019 I electronically filed a copy of the foregoing. Notice of this filing will be sent via email to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's CM/ECF System.

/s/ *Joshua M. Kolsky*
JOSHUA M. KOLSKY

Exhibit A

(Also available at https://www.regulations.gov/document?D=USCIS-2010-0012-63741)

Regulatory Impact Analysis

Inadmissibility on Public Charge Grounds

FINAL RULE
(8 CFR Parts 103, 212, 213, 214, 245 and 248)

RIN: 1615-AA22

CIS No. 2637-19;
DHS Docket No.: USCIS-2010-0012

August 2019

A. Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs)

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs) directs agencies to reduce regulation and control regulatory costs.

This final rule is designated a "significant regulatory action" that is economically significant since it is estimated that the final rule would have an annual effect on the economy of $100 million or more, under section 3(f)(1) of Executive Order 12866. Accordingly, OMB has reviewed this final regulation.

This rule is an E.O. 13771 regulatory action.

1. Summary

As previously discussed, DHS is modifying its regulations to add new regulatory provisions for inadmissibility determinations based on the public charge ground under the INA. DHS is prescribing how it will determine whether an alien is inadmissible because he or she is likely at any time in the future to become a public charge and is identifying the types of public benefits that will be considered in the public charge determinations. An alien applying for admission at the port of entry, or adjustment of status generally must establish that he or she is not likely at any time in the future to become a public charge. DHS will weigh certain factors

positively or negatively, depending on how the factor impacts the immigrant's likelihood to become a public charge. DHS is also revising existing regulations to require all aliens seeking an extension of stay or change of status to demonstrate that they have not received public benefits, as defined in this final rule unless the nonimmigrant classification that they seek to extend or to which they seek to change is exempt from the public charge ground of inadmissibility. Finally, DHS is revising its regulations governing the Secretary's discretion to accept a public charge bond or similar undertaking under section 213 of the Act, 8 U.S.C. 1183. Similar to a waiver, a public charge bond permits an alien deemed inadmissible on the public charge ground to obtain adjustment of status, if otherwise admissible.[1]

This final rule will impose new costs on the population applying to adjust status using Application to Register Permanent Residence or Adjust Status (Form I-485) that are subject to the public charge ground of inadmissibility who will now be required to file the new Declaration of Self-Sufficiency (Form I-944) as part of the public charge inadmissibility determination. DHS will require any adjustment applicants subject to the public charge inadmissibility ground to submit Forms I-944 with their Form I-485 to demonstrate they are not likely at any time in the future to become a public charge. The final rule will also impose additional costs for completing Forms I-485, I-129, I-129CW, and Application to Extend/Change Nonimmigrant Status (Form I-539 as the associated time burden estimate for completing each of these forms will increase. Moreover, the final rule will impose new costs associated with the new public charge bond process, including new costs for completing and filing a Public Charge Bond (Form I-945) and Request for Cancellation of Public Charge Bond (Form I-356). DHS estimates that the

[1] There is no mention of "waiver" or "waive" in INA section 213, 8 U.S.C. 1183. However, the BIA has viewed that provision as functioning as a waiver of the public charge ground of inadmissibility. *See Matter of Ulloa*, 22 I&N Dec. 725, 726 (BIA 1999).

additional total cost of the final rule will be approximately $35,202,698 annually to the population applying to adjust status who is also required to file Form I-944, for the opportunity cost of time associated with the increased time burden estimates for Forms I-485, I-129, I-129CW, and I-539, and for requesting or cancelling a public charge bond using Form I-945 and Form I-356, respectively.

Over the first 10 years of implementation, DHS estimates the total quantified new direct costs of the final rule will be about $352,026,980 (undiscounted). In addition, DHS estimates that the 10-year discounted total direct costs of this final rule will be about $300,286,154 at a 3 percent discount rate and about $247,249,020 at a 7 percent discount rate.

The final rule will also potentially impose new costs on obligors (individuals or companies) if an alien has been determined to be likely at any time in the future to become a public charge and will be permitted to submit a public charge bond, for which USCIS will use the new Form I-945. DHS estimates the total cost to file Form I-945 will be, at minimum, about $34,166 annually.[2]

Moreover, the final rule will potentially impose new costs on aliens or obligors who submit Form I-356 as part of a request to cancel the public charge bond. DHS estimates the total cost to file Form I-356 would be approximately $824 annually.[3]

The final rule will also result in a reduction in transfer payments from the Federal Government to individuals who may choose to disenroll from or forego enrollment in a public benefits program. Individuals who might choose to disenroll from or forego future enrollment in a public benefits program include foreign-born non-citizens, as well as U.S. citizens who are

[2] Calculation: $35.59 (cost per obligor to file Form I-945) * 960 (estimated annual population who would file Form I-945) = $34,166.40 = $34,166 (rounded) annual total cost to file Form I-945.
[3] Calculation: $32.94 (cost per obligor to file Form I-356) * 25 (estimated annual population who would file Form I-356) = $823.50 annual total cost to file Form I-356.

members of mixed-status households,[4] who otherwise may be eligible for the public benefits. DHS estimates that the total reduction in transfer payments from the Federal and State governments will be approximately $2.47 billion annually due to disenrollment or foregone enrollment in public benefits programs by members of households that include foreign-born non-citizens. DHS estimates that the 10-year discounted federal and state transfer payments reduction of this final rule will be approximately $21.0 billion at a 3 percent discount rate and about $17.3 billion at a 7 percent discount rate. However, DHS notes there may be additional reductions in transfer payments, or categories of transfers such as increases in uncompensated health care or greater reliance on food banks or other charities, that we are unable to quantify.

There may also be additional reductions in transfer payments from states to individuals who may choose to disenroll from or forego enrollment in a public benefits program. For example, the Federal Government funds all Supplemental Nutrition Assistance Program (SNAP, formerly called "Food Stamps") food expenses, but only 50 percent of allowable administrative costs for regular operating expenses.[5] Similarly, Federal Medical Assistance Percentages (FMAP) in some U.S. Department of Health and Human Services (HHS) programs, like Medicaid, can vary from between 50 percent to an enhanced rate of 100 percent in some cases.[6] Since the state share of federal financial participation (FFP) varies from state to state, DHS uses the average FMAP across all states and U.S. territories of 59 percent to estimate the amount of

[4] DHS uses the term "foreign-born non-citizen" since it is the term the U.S. Census Bureau uses. DHS generally interprets this term to mean alien in this analysis. In addition, DHS notes that the Census Bureau publishes much of the data used in this analysis.

[5] Per section 16(a) of the Food and Nutrition Act of 2008, Pub. L. 110-234, tit. IV, 122 Stat. 923, 1092 (May 22, 2008) (codified as amended at 7 U.S.C. 2025). *See also* USDA, FNS Handbook 901, at p. 41 (2017). Available at: https://fns-prod.azureedge.net/sites/default/files/apd/FNS_HB901_v2.2_Internet_Ready_Format.pdf, (accessed May 7, 2019).

[6] *See* Dept. of Health and Human Servs. Notice, Federal Financial Participation in State Assistance Expenditures; Federal Matching Shares for Medicaid, the Children's Health Insurance Program, and Aid to Needy Aged, Blind, or Disabled Persons for October 1, 2016 through September 30, 2017, 80 FR 73779 (Nov. 25, 2015).

state transfer payments. Therefore, the estimated 10-year undiscounted amount of state transfer payments that could occur as a result of the provisions of this final rule is about $1.01 billion annually. The estimated 10-year discounted amount of state transfer payments of the provisions of this final rule would be approximately $8.63 billion at a 3 percent discount rate and about $7.12 billion at a 7 percent discount rate. Finally, DHS recognizes that reductions in federal and state transfers under federal benefit programs may have impacts on state and local economies, large and small businesses, and individuals. For example, the rule might result in reduced revenues for healthcare providers participating in Medicaid, companies that manufacture medical supplies or pharmaceuticals, grocery retailers participating in SNAP, agricultural producers who grow foods that are eligible for purchase using SNAP benefits, or landlords participating in federally funded housing programs.

Additionally, the final rule will have new direct and indirect impacts on various entities and individuals associated with regulatory familiarization with the provisions of the rule. Familiarization costs involve the time spent reading the details of a rule to understand its changes. A foreign-born non-citizen (such as those contemplating disenrollment or foregoing enrollment in a public benefits program) might review the rule to determine whether he or she is subject to its provisions of the final rule and may incur familiarization costs. To the extent that an individual or entity directly regulated by the rule incurs familiarization costs, those familiarization costs are a direct cost of the rule. In addition to those individuals or entities the rule directly regulates, a wide variety of other entities would likely choose to read and understand the rule and, therefore, would incur familiarization costs. For example, immigration lawyers, immigration advocacy groups, health care providers of all types, non-profit organizations, non-governmental organizations, and religious organizations, among others, may

need or want to become familiar with the provisions of this final rule. DHS believes such non-profit organizations and other advocacy groups might choose to read the rule in order to provide information to those households including foreign-born non-citizens that might be affected by a reduction in federal and state transfer payments. Familiarization costs incurred by those not directly regulated are indirect costs.

DHS estimates the time that would be necessary to read this final rule would be approximately 16 to 20 hours per person depending on an individual's average reading speed and level of review, resulting in opportunity costs of time. An entity, such as a non-profit or advocacy group, may have more than one person that reads the rule. Using the average total rate of compensation as $36.47 per hour for all occupations, DHS estimates that the opportunity cost of time will range from about $583.52 to $729.40 per individual who must read and review the final rule.

The final rule will produce some quantified benefits due to the regulatory changes DHS is making. The final rule will produce some benefits for T nonimmigrants applying for adjustment of status based on their T nonimmigrant status as this population will no longer need to submit Application for Waiver of Grounds of Inadmissibility (Form I-601) seeking a waiver on the public charge ground of inadmissibility. DHS estimates the total benefits for this population is $15,176 annually.[7]

The primary benefit of the final rule would be to better ensure that aliens who are admitted to the United States, seek extension of stay or change of status, or apply for adjustment of status will be self-sufficient, i.e., will rely on their own financial resources, as well as the

[7] Calculation: $14,880 (Filing fees for Form I-601) + $296.48 (Opportunity cost of time for Form I-601) = $15,176.48 = $15,176 (rounded) total current estimated annual cost for filing T nonimmigrants filing Form I-601 seeking a waiver of grounds of inadmissibility. Therefore, the estimated total benefits of the final rule for T nonimmigrants applying for adjustment of status using Form I-601 seeking a waiver on grounds of inadmissibility will equal the current cost to file Form I-601 for this population.

financial resources of the family, sponsors, and private organizations.[8] DHS also anticipates that the final rule will produce some benefits from the elimination of Form I-864W. The elimination of this form will potentially reduce the number of forms USCIS would have to process. DHS estimates the amount of cost savings that will accrue from eliminating Form I-864W will be about $36.47 per petitioner.[9] However, DHS is unable to determine the annual number of filings of Form I-864W and, therefore, currently is unable to estimate the total annual cost savings of this change. Additionally, a public charge bond process will also provide benefits to applicants as they potentially will be given the opportunity for adjustment if otherwise admissible, at the discretion of DHS, after a determination that he or she is likely to become a public charge.

Table 1 provides a more detailed summary of the final provisions and their impacts.

Table 1. Summary of Major Provisions and Economic Impacts of the Final Rule

Provision	**Purpose**	**Expected Impact of Final Rule**
Revising 8 CFR 212.18. Application for Waivers of Inadmissibility in connection with an application for adjustment of status by T nonimmigrant status holders. Revising 8 CFR 245.23. Adjustment of aliens in T nonimmigrant classification.	To clarify that T nonimmigrants seeking adjustment of status are not subject to public charge ground of inadmissibility.	**Quantitative:** <u>Benefits</u> • Benefits of $15,176 annually to T nonimmigrants applying for adjustment of status who will no longer need to submit Form I-601 seeking a waiver on public charge grounds of inadmissibility. <u>Costs</u> • None

[8] 8 U.S.C. 1601(2).
[9] Calculation of savings from opportunity cost of time for no longer having to complete and submit Form I-864W: ($36.47 per hour * 1.0 hours) = $36.47.

Adding 8 CFR 212.20. Purpose and applicability of public charge inadmissibility.	To define the categories of aliens that are subject to the public charge determination.	**Quantitative**: Benefits • Benefits of $36.47 per applicant from no longer having to complete and file Form I-864W. Costs • DHS anticipates a likely increase in the number of denials for adjustment of status applicants based on public charge inadmissibility determinations due to formalizing and standardizing the criteria and process for inadmissibility determinations. **Qualitative**: Benefits • Better ensure that aliens who are seeking admission to the United States or apply for adjustment of status are self-sufficient through an improved review process of the mandatory statutory factors.
Adding 8 CFR 212.21. Definitions.	To establish key definitions, including "public charge," "public benefit," "likely to become a public charge," "household," and "receipt of public benefits."	
Adding 8 CFR 212.22. Public charge determination.	Clarifies that evaluating public charge is a prospective determination based on the totality of the circumstances. Outlines minimum and additional factors considered when evaluating whether an alien immigrant is inadmissible based on the public charge ground. Positive and negative factors are weighed to determine an individual's likelihood of becoming a public charge at any time in the future.	
Adding 8 CFR 212.23. Exemptions and waivers for public charge ground of inadmissibility.	Outlines exemptions and waivers for inadmissibility based on the public charge ground.	

Adding 8 CFR 214.1(a)(3)(iv) and amending 8 CFR 214.1(c)(4)(iv). Nonimmigrant general requirements. Amending 8 CFR 248.1(a) and adding 8 CFR 248.1(c)(4). Change of nonimmigrant classification eligibility.	To provide, with limited exceptions, that an application for extension of stay or change of nonimmigrant status will be denied unless the applicant demonstrates that he or she has not received public benefits since obtaining the nonimmigrant status that he or she is seeking to extend or change, as defined in final 8 CFR 212.21(b), for 12 months, in the aggregate, within a 36 month period.	**Quantitative**: Costs • $6.1 million annually for an increased time burden for completing and filing Form I-129; • $0.12 million annually for an increased time burden for completing and filing Form I-129CW; • $2.4 million annually for an increased time burden for completing and filing Form I-539. **Qualitative**: Benefits • Better ensures that aliens who are seeking to extend or change to a status that is not exempt from the section 212(a)(4) inadmissibility ground who apply for extension of stay or change of status continue to be self-sufficient during the duration of their nonimmigrant stay.

Amending 8 CFR 245. Adjustment of status to that of person admitted for lawful permanent residence.	To outline requirements that aliens submit a declaration of self-sufficiency on the form designated by DHS and any other evidence requested by DHS in the public charge inadmissibility determination.	**Quantitative**:
		Costs
		• $25.8 million to applicants who must file Form I-944;
		• $0.69 million to applicants applying to adjust status using Form I-485 with an increased time burden;
		• $0.34 million to public charge bond obligors for filing Form I-945; and
		• $823.50 to filers for filing Form I-356.
		• Total costs over a 10-year period will range from:
		  • $352.0 million for undiscounted costs;
		  • $300.1 million at a 3 percent discount rate; and
		  • $247.2 million at a 7 percent discount rate.
		
		Transfer Payments
		• Total annual transfer payments of the final rule would be about $2.47 billion from foreign-born non-citizens and their households who disenroll from or forego enrollment in public benefits programs. The federal-level share of annual transfer

		payments will be about $1.46 billion and the state-level share of annual transfer payments will be about $1.01 billion.
		• Total transfer payments over a 10-year period, including the combined federal- and state-level shares, will be:
		  • $24.7 billion for undiscounted costs;
		  • $21.0 billion at a 3 percent discount rate; and
		  • $17.3 billion at a 7 percent discount rate.
		
		Qualitative:
		
		<u>Benefits</u>
		• Potential to make USCIS' in the review of public charge inadmissibility more effective.
		
		<u>Costs</u>
		• DHS anticipates a likely increase in the number of denials for adjustment of status applicants based on public charge inadmissibility determinations due to formalizing and standardizing the criteria and process for public charge determination.
		• Costs to various entities and individuals associated with regulatory familiarization with the provisions of the final rule. Costs will include the opportunity cost of time to read the final rule and subsequently determine applicability of the final rule's provisions. DHS estimates that the time to read this final rule in its entirety would be 16 to 20 hours per individual. DHS estimates that the opportunity cost of time will range from about $583.52 to $729.40 per individual who must read and review the final rule. However, DHS cannot determine the number of individuals who will read the final rule.

Public Charge Bond Provisions		

Amending 8 CFR 103.6. Public charge bonds.	To set forth the Secretary's discretion to approve bonds, cancellation, bond schedules, and breach of bond, and to move principles governing public charge bonds to final 8 CFR 213.1.	**Quantitative**: <u>Costs</u> • $34,166 annually to obligors for submitting Public Charge Bond (Form I-945); and • $823.50 annually to filers for submitting Request for Cancellation of Public Charge Bond (Form I-356). • Fees paid to bond companies to secure public charge bonds. Fees could range from 1 – 15 percent of the public charge bond amount based on an individual's credit score. **Qualitative**: <u>Benefits</u> • Potentially enable an alien who was found inadmissible only on the public charge ground to adjust his or her status by posting a public charge bond with DHS.
Amending 8 CFR 103.7. Fees.	To add fees for new Form I-945, Public Charge Bond, and Form I-356, Request for Cancellation of Public Charge Bond.	
Amending 8 CFR 213.1. Admission or adjustment of status of aliens on giving of a public charge bond.	In 8 CFR 213.1, to add specifics to the public charge bond provision for aliens who are seeking adjustment of status, including the discretionary availability and the minimum amount required for a public charge bond.	
Source: USCIS analysis.		

In addition to the impacts summarized above and as required by OMB Circular A-4, Table 2 presents the prepared accounting statement showing the costs associated with this final regulation.[10]

Table 2. OMB A-4 Accounting Statement ($, 2018)				
Category	**Primary Estimate**	**Minimum Estimate**	**Maximum Estimate**	**Source Citation**

[10] OMB Circular A-4 is *available at* https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf.

BENEFITS				
Monetized Benefits	The final rule will produce some benefits for T nonimmigrants applying for adjustment of status based on their T nonimmigrant status, as this population will no longer need to submit Form I-601 seeking a waiver on grounds of inadmissibility. DHS estimates the total benefits for this population is $15,176 annually. Form I-485 applicants will no longer have to file Form I-864W. Benefits to applicants will be approximately $36.47 per petition based on the opportunity cost of time.			RIA
Annualized quantified, but un-monetized, benefits				RIA
Unquantified Benefits	The primary benefit of the final rule is to ensure that aliens who are admitted to the United States or apply for adjustment of status will not use or receive one or more public benefits for which they are entitled to receive, and instead, will rely on their financial resources, and those of family members, sponsors, and private organizations. Potential to improve the efficiency for USCIS in the review process for public charge inadmissibility.			RIA
COSTS				
Annualized monetized costs (discount rate in parenthesis)	(3%) $35,202,698	N/A	N/A	RIA
	(7%) $35,202,698	N/A	N/A	
Annualized quantified, but un-monetized, costs	N/A			
Qualitative (unquantified) costs	DHS anticipates a likely increase in the number of denials for adjustment of status applicants based on public charge inadmissibility determinations due to formalizing and standardizing the criteria and process for public charge determination. Costs to various entities and individuals associated with regulatory familiarization with the provisions of the rule. Costs will include the opportunity cost of time to read the final rule and subsequently determine applicability of the final rule's provisions. DHS estimates that the time to read this final rule in its entirety would be 16 to 20 hours per individual. DHS estimates that the opportunity cost of time will range from about $583.52 to $729.40 per individual who must read and review the final rule. However, DHS cannot determine the number of individuals who will read the final rule. Fees paid by aliens to obligors to secure public charge bond. Other qualitative, unquantified effects of the final rule could include:			RIA

	• Potential lost productivity, • Adverse health effects, • Additional medical expenses due to delayed health care treatment, and • Increased disability insurance claims • Administrative changes to business processes such as reprogramming computer software and redesigning application forms and processing.			
TRANSFERS				
Annualized monetized transfers: "on budget"	($1,455,724,086)	N/A	N/A	RIA
From whom to whom?	Reduction in transfer payments from the federal government to public benefits recipients who are members of households that include foreign-born non-citizens. This amount includes the estimated federal-level shares of transfer payments to members of households that include foreign-born non-citizens.			RIA
Annualized monetized transfers: "off-budget"	($1,011,604,874)	N/A	N/A	
From whom to whom?	Reduction in transfer payments from state governments to public benefits recipients who are members of households that include foreign-born non-citizens. This amount includes the estimated state-level shares of transfer payments to members of households that include foreign-born non-citizens. DHS estimates that the state-level share of transfer payments is 59 percent of the estimated amount of federal transfer payments. DHS estimates the annual federal-level share would be about $1.46 billion and the annual state-level share of transfer payments would be about $1.01 billion.			
Miscellaneous Analyses/Category	***Effects***			***Source Citation***
Effects on state, local, and/or tribal governments	DHS believes that the rule may have indirect effects on state, local, and/or tribal government, but DHS does not know the full extent of the effect on state, local, and/or tribal governments. There may be costs to various entities associated with familiarization of and compliance with the provisions of the rule, including salaries and opportunity costs of time to monitor and understand regulation requirements, disseminate information, and develop or modify information technology (IT) systems as needed. It may be necessary for many government agencies to update guidance documents, forms, and webpages. It may be necessary to prepare training materials and retrain staff at each level of government, which will require additional staff time and will generate associated costs.			RIA
Effects on small businesses	DHS believes there may be some impacts to those small entities that file Form I-129 or Form I-129CW for beneficiaries that extend stay or change status. These petitioners will have an increase in time burden for completing and filing Form I-129 or Form I-129CW and possibly have labor turnover costs if the Form I-129 or Form I-129CW EOS/COS request is denied and the beneficiary has to leave the United States or the Commonwealth of the Northern Mariana Islands (CNMI), respectively. DHS also believes that some surety companies that are small entities may be impacted by filing Form I-356. DHS estimates the total annual cost to file Form I-356 will be about $823.50.			RIA
Effects on wages	None			None
Effects on growth	None			None

2. Background and Purpose of the Rule

As discussed in the preamble, DHS seeks to ensure appropriate application of the public charge ground of inadmissibility. Under the INA, an alien who, at the time of application for admission, or adjustment of status, is deemed likely at any time to become a public charge is inadmissible to the United States.[11]

While the INA does not define public charge, Congress has specified that when determining if an alien is likely at any time to become a public charge, consular and immigration officers must, at a minimum, consider certain factors including the alien's age; health; family status; assets, resources, and financial status; and education and skills.[12] Additionally, DHS may consider any affidavit of support submitted under section 213A of the Act, 8 U.S.C. 1183a, on behalf of the applicant when determining whether the applicant may become a public charge.[13] For most family-based and some employment-based adjustment of status applications, applicants must have a sufficient affidavit of support or they will be found inadmissible as likely to become a public charge.[14]

However, in general, there is a lack of academic literature and economic research examining the link between immigration and public benefits (i.e., "welfare"), and the strength of that connection.[15] It is also difficult to determine whether aliens are net contributors or net users of government-supported public benefits since much of the answer depends on the data source,

[11] *See* INA section 212(a)(4); 8 U.S.C. 1182(a)(4).
[12] *See* INA section 212(a)(4)(B)(i); 8 U.S.C. 1182(a)(4)(B)(i).
[13] *See* INA section 212(a)(4)(B)(ii); 8 U.S.C. 1182(a)(4)(B)(ii). When required, the applicant must submit Form I-864, Affidavit of Support Under Section 213A of the INA.
[14] *See* INA section 212(a)(4)(C) and (D), 8 U.S.C. 1182(a)(4)(C) and (D).
[15] See Borjas, G.J. (2016) *We wanted workers: Unraveling the immigration narrative*. Chapter 9, pp. 175-176, 190-191. W.W. Norton & Company, New York.

how the data are used, and what assumptions are made for analysis.[16] Moreover, DHS also was not able to estimate potential lost productivity, health effects, additional medical expenses due to delayed healthcare treatment, or increased disability insurance claims as a result of this final rule.

Currently, the public charge inadmissibility ground does not apply to all applicants seeking admission, or adjustment of status. Several immigrant and nonimmigrant categories, by law or regulation, are exempt from the public charge ground of inadmissibility.[17]

The costs and benefits for this final rule focus on individuals applying for adjustment of status using Form I-485. Such individuals apply from within the United States, rather than apply for a visa from outside the United States at a DOS consulate abroad. In addition, this analysis also examines the impact of this final rule on nonimmigrants who are seeking an extension of stay or a change of status.

The new DHS process for making a determination of inadmissibility based on public charge incorporates a new form—Form I-944—into the current process to apply for adjustment of status. Currently, as part of the requirements for filing Form I-485, applicants submit biometrics collection for fingerprints and signature, and also file Form I-693 which is to be completed by a designated civil surgeon. Form I-693 is used to report the results of a medical examination to USCIS.

Most family-based immigrants and some employment-based immigrants must also submit Form I-864 (Affidavit of Support Under Section 213A of the INA) to satisfy the requirements of section 213A of the Act as part of the public charge requirements. When a sponsor completes and signs Form I-864 in support of an intending immigrant, the sponsor

[16] *See* Borjas, G.J. (2016) We wanted workers: Unraveling the immigration narrative. Chapter 9, p. 175. W.W. Norton & Company, New York.
[17] *See* final 8 CFR 212.23(a).

agrees to use his or her resources, financial or otherwise, to support the intending immigrant named in the affidavit if it becomes necessary.

Categories of immigrants required to submit Form I-864 completed by a sponsor in order to demonstrate eligibility for adjustment of status include: 1) immediate relatives of U.S. citizens (spouses, unmarried children under 21 years of age, and parents of U.S. citizens 21 years of age and older); 2) family-based preference immigrants (unmarried sons and daughters of U.S. citizens, spouses and unmarried sons and daughters of lawful permanent residents, married sons and daughters of U.S. citizens, and brothers and sisters of U.S. citizens 21 years of age and older); and 3) employment-based preference immigrants in cases only when a U.S. citizen, lawful permanent resident, or U.S. national relative filed the immigrant visa petition or such relative has a significant ownership interest (5 percent or more) in the entity that filed the petition. However, immigrants seeking certain visa classifications are exempt from the requirement to submit a Form I-864, as are intending immigrants who have earned or can receive credit for 40 qualifying quarters (credits) of work in the United States.

Additionally, some sponsors for intending immigrants may be able to file an Affidavit of Support Under Section 213A of the INA (Form I-864EZ). Form I-864EZ is a shorter version of Form I-864 and is designed for cases that meet certain criteria. A sponsor may file Form I-864EZ only if: 1) the sponsor is the person who filed or is filing a Petition for Alien Relative (Form I-130) for a relative being sponsored; 2) the relative being sponsored is the only person listed on Form I-130; and 3) the income the sponsor is using for qualification is based entirely on salary or pension and is shown on one or more Internal Revenue Service (IRS) Form W-2s provided by employers or former employers.

Form I-864 includes an attachment, Contract Between Sponsor and Household Member (Form I-864A), which may be filed when a sponsor's income and assets do not meet the income requirements of Form I-864 and the qualifying household member chooses to combine his or her resources with the income and/or assets of a sponsor to meet those requirements. A sponsor must file a separate Form I-864A for each household member whose income and/or assets the sponsor is using to meet the affidavit of support income requirements. The Form I-864A contract must be submitted with Form I-864. The Form I-864A serves as a contractual agreement between the sponsor and household member that, along with the sponsor, the household member is responsible for providing financial and material support to the sponsored immigrant.

In cases where the petitioning sponsor cannot meet the income requirements by him or herself, an individual applying to adjust status may also meet the affidavit of support requirement by obtaining a joint sponsor who is willing to accept joint and several liability with the petitioning sponsor as to the obligation to provide support to the sponsored alien. The joint sponsor must demonstrate income or assets that independently meet the requirements to support the sponsored immigrant(s) as required under section 213A(f)(2) and (f)(5)(A) of the Act, 8 U.S.C. 1883a(f)(2) and (f)(5)(A). The joint sponsor's income and assets may not be combined with the income/assets of the petitioning sponsor or the sponsored immigrant. Both the petitioning sponsor and the joint sponsor must each complete a Form I-864.

Certain classes of immigrants currently are exempt from the requirement to file Form I-864 or Form I-864EZ and therefore must file Form I-864W. DHS is eliminating Form I-864W with this final rule and instead individuals will be required to provide the information previously

requested on Form I-864W using Form I-485. Based on the information provided in Form I-485, an officer can verify whether an alien is statutorily required to file an affidavit of support.

Some applicants seeking adjustment of status may be eligible for a fee waiver when filing Form I-485. An applicant who is unable to pay the filing fees or biometric services fees for an application or petition may obtain a fee waiver by filing a Request for Fee Waiver (Form I-912). If an applicant's Form I-912 is approved, the agency will waive both the filing fee and biometric services fee. Therefore, DHS assumes for the purposes of this economic analysis that the filing fees and biometric services fees required for Form I-485 are waived if an approved Form I-912 accompanies the application.

When filing Form I-485, a fee waiver is only available generally to the following categories:

- Special Immigrant Status based on an approved Form I-360 as an Afghan or Iraqi Interpreter, or Afghan or Iraqi national employed by or on behalf of the U.S. Government; or
- An adjustment provision that is exempt from the public charge ground of inadmissibility under section 212(a)(4) of the INA, including but not limited to the Cuban Adjustment Act, the Haitian Refugee Immigration Fairness Act (HRIFA), and the Nicaraguan Adjustment and Central American Relief Act (NACARA), or similar provisions; continuous residence in the United States since before January 1, 1972, "Registry," Asylum Status under section 209(b) of the INA, Special Immigrant Juvenile Status, and Lautenberg parolees.
- Battered spouses of A, G, E-3, or H nonimmigrants;

- Battered spouses or children of a lawful permanent resident or U.S. citizen under INA section 240A(b)(2);
- T nonimmigrants;
- U nonimmigrants; or
- VAWA self–petitioners.

DHS will facilitate the current Form I-485 application process by creating a new form—Form I-944—which will collect information to the extent allowed by relevant laws based on factors such as age; health; family status; assets, resources, and financial status; education and skills; and any additional financial support through an affidavit of support, so that DHS can determine whether an applicant applying for adjustment of status who is subject to public charge review is inadmissible to the United States based on the public charge inadmissibility ground. For the analysis of this final rule, DHS assumes that all individuals who apply for adjustment of status using Form I-485 are required to submit Form I-944, unless he or she is in a class of applicants that is exempt from review for determination of inadmissibility based on public charge at the time of adjustment of status according to statute or regulation.

In addition to those applying for adjustment of status, any alien applying for an extension of stay or change of status as a nonimmigrant in the United States is now required to demonstrate that he or she has not received public benefits, as defined in this final rule unless the applicant is in a class of admission or is seeking to change to a class of admission that is exempt from the public charge inadmissibility ground.

DHS is establishing a bond process for applicants seeking adjustment of status who are determined to be likely to become a public charge. DHS currently does not have a specific process or procedure in place to accept public charge bonds, though it has the authority to do so.

The new public charge bond process will include DHS acceptance of a public charge bond posted on an adjustment of status applicant's behalf if the adjustment of status applicant was deemed inadmissible based on public charge. The process will also include the possibility to substitute an existing bond, the DHS determination of breach of a public charge bond, the possibility to file an appeal upon a breach determination, cancellation of a public charge bond, and the possibility to submit an appeal upon denial of the cancellation request.

3. Population

This final rule will affect individuals who are present in the United States and are seeking adjustment of status to that of a lawful permanent resident. According to statute, an individual who is seeking adjustment of status and is at any time likely to become a public charge is ineligible for such adjustment.[18] The grounds of inadmissibility set forth in section 212 of the Act also apply when certain aliens seek admission to the United States, whether for a temporary purpose or permanently. However, the public charge inadmissibility ground (including ineligibility for adjustment of status) does not apply to all applicants since there are various classes of admission that Congress expressly exempted from the public charge inadmissibility ground. Within USCIS, this final rule will affect individuals who apply for adjustment of status since these individuals will be required to be reviewed for a determination of inadmissibility based on the public charge ground as long as the individual is not in a class of admission that is exempt from review for public charge. In addition, the final rule affects individuals applying for an extension of stay or change of status because these individuals will have to demonstrate that they have not received designated public benefits above the rule's threshold, . This analysis estimates the populations from each of these groups that are subject to review for receipt of

[18] *See* INA section 245(a), 8 U.S.C. 1255(a). *See also* INA section 212(a)(4), 8 U.S.C. 1182(a)(4).

public benefits. DHS notes that the population estimates are based on aliens present in the United States who are applying for adjustment of status or extension of stay or change of status, rather than individuals outside the United States who must apply for an immigrant visa through consular processing at a DOS consulate abroad.

a. Population Seeking Adjustment of Status

With this final rule, DHS intends to ensure that aliens who apply for adjustment of status are self-sufficient and will rely on their own financial resources, as well of those of their families, sponsors, and private organizations. Therefore, DHS estimates the population of individuals who are applying for adjustment of status using Form I-485.[19] Under the final rule, these individuals would undergo review for determination of inadmissibility based on the public charge ground, unless an individual is in a class of admission that is exempt from review for public charge determination.

Table 3 shows the total population in fiscal years 2012 to 2016 that applied for adjustment of status. In general, the annual population of individuals who applied to adjust status was consistent year to year. Over the 5-year period, the population of individuals applying for adjustment of status ranged from a low of 530,802 in fiscal year 2013 to a high of 565,427 in fiscal year 2016. In addition, the average population of individuals over 5 fiscal years who applied for adjustment of status over this period was 544,246.

Table 3. Total Population that Applied for Adjustment of Status, Fiscal Years 2012 to 2016.

[19] Data on the population of individuals who are applying for adjustment of status and the class of admission come from U.S. Department of Homeland Security, Yearbook of Immigration Statistics for years 2012 to 2016. *See* U.S. Department of Homeland Security. Yearbook of Immigration Statistics. Office of Immigration Statistics. Available at https://www.dhs.gov/immigration-statistics/yearbook/ (accessed Jan. 24, 2018).

Fiscal Year	Total Population Applying for Adjustment of Status
2012	547,559
2013	530,802
2014	535,126
2015	542,315
2016	565,427
Total	**2,721,229**
5-year average	**544,246**

Source: USCIS analysis of United States Department of Homeland Security, Yearbook of Immigration Statistics for years 2012 to 2016. Available at https://www.dhs.gov/immigration-statistics/yearbook. Accessed Jan. 24, 2018. For example, *see* United States Department of Homeland Security. Yearbook of Immigration Statistics: 2016, Table 7. Washington, D.C., U.S. Department of Homeland Security, Office of Immigration Statistics, 2017.

i. Exemptions from Determination of Inadmissibility Based on the Public Charge Ground

There are exemptions and waivers for certain classes of admission that are not subject to review for determination of inadmissibility based on the public charge ground. Table 4 shows the classes of applicants for admission, adjustment of status, or registry according to statute or regulation that are exempt from inadmissibility based on the public charge ground.

Table 4. Classes of Applicants for Admission, Adjustment of Status, or Registry Exempt from Inadmissibility Based on Public Charge According To Statute or Regulation.	
• Refugees and asylees as follows: at the time admission under section 207 of the Act (refugees) or grant under section 208 of the Act (asylees adjustment of status to lawful permanent resident under sections 207(c)(3) and 209(c) of the Act;	• Amerasian immigrants at the time of application for admission as described in sections 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988, Public Law 100-202, 101 Stat. 1329-183, section 101(e) (Dec. 22, 1987), as amended, 8 U.S.C. 1101 note;
• Afghan and Iraqi Interpreter, or Afghan or Iraqi national employed by or on behalf of the U.S. Government as described in section 1059(a)(2) of the National Defense Authorization Act for Fiscal Year 2006 Public Law 109–163 (Jan. 6, 2006), as amended, section 602(b) of the Afghan Allies Protection Act of 2009, Public Law 111–8, title VI (Mar. 11, 2009), as	• Cuban and Haitian entrants applying for adjustment of status under in section 202 of the Immigration Reform and Control Act of 1986 (IRCA), Public Law 99-603, 100 Stat. 3359 (Nov. 6, 1986), as amended, 8 U.S.C. 1255a note;

amended, 8 U.S.C. 1101 note, and section 1244(g) of the National Defense Authorization Act for Fiscal Year 2008, as amended Public Law 110-181 (Jan. 28, 2008);	
• Aliens applying for adjustment of status under the Cuban Adjustment Act, Public Law 89-732 (Nov. 2, 1966), as amended, 8 U.S.C. 1255 note;	• Nicaraguans and other Central Americans applying for adjustment of status under sections 202(a) and section 203 of the Nicaraguan Adjustment and Central American Relief Act (NACARA), Public Law 105-100, 111 Stat. 2193 (Nov. 19, 1997), as amended, 8 U.S.C. 1255 note;
• Haitians applying for adjustment of status under section 902 of the Haitian Refugee Immigration Fairness Act of 1998, Public Law 105-277, 112 Stat. 2681 (Oct. 21, 1998), as amended, 8 U.S.C. 1255 note;	• Lautenberg parolees as described in section 599E of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1990, Public Law 101-167, 103 Stat. 1195, title V (Nov. 21, 1989), as amended, 8 U.S.C. 1255 note;
• Special immigrant juveniles as described in section 245(h) of the Act;	• Aliens who entered the United States prior to January 1, 1972 and who meet the other conditions for being granted lawful permanent residence under section 249 of the Act and 8 CFR part 249 (Registry);
• Aliens applying for or re-registering for Temporary Protected Status as described in section 244 of the Act in accordance with section 244(c)(2)(A)(ii) of the Act and 8 CFR 244.3(a);	• A nonimmigrant classified under section 101(a)(15)(T) of the Act, in accordance with section 212(d)(13)(A) of the Act;
• An applicant for, or individual who is granted, nonimmigrant status under section 101(a)(15)(U) of the Act in accordance with section 212(a)(4)(E)(ii) of the Act;	• Nonimmigrants classified under section 101(a)(15)(U) of the Act applying for adjustment of status under section 245(m) of the Act and 8 CFR 245.24;
• An alien who is a VAWA self-petitioner under section 212(a)(4)(E)(i) of the Act;	• A qualified alien described in section 431(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 8 U.S.C. 1641(c), in accordance with section 212(a)(4)(E)(iii) of the Act;
• Applicants adjusting status who qualify for a benefit under section 1703 of the National Defense Authorization Act, Public Law 108-136, 117 Stat. 1392 (Nov. 24, 2003), 8 U.S.C. 1151 note (posthumous benefits to surviving spouses, children, and parents);	• American Indians Born in Canada as described in section 289 of the Act;
• Nationals of Vietnam, Cambodia, and Laos applying for adjustment of status under section 586 of Public Law 106-429 under 8	• Polish and Hungarian Parolees who were paroled into the United States from November 1, 1989 to December 31, 1991 under section 646(b) of the Illegal

CFR 245.21; and	Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Public Law 104-208, Div. C, Title VI, Subtitle D (Sept. 30, 1996), 8 U.S.C. 1255 note.
Source: USCIS.	

To estimate the annual total population of individuals seeking to adjust status who would be subject to review for inadmissibility based on the public charge ground, DHS examined the annual total population of individuals who applied for adjustment of status for fiscal years 2012 to 2016. For each fiscal year, DHS removed individuals from the population whose classes of admission are exempt from public charge review for inadmissibility, as shown in table 4, leaving the total population that would be subject to such review. Further discussion of these exempt classes of admission can be found in the preamble.

Table 5 shows the total estimated population of individuals seeking to adjust status under a class of admission that is exempt from review for inadmissibility based on the public charge ground for fiscal years 2012 to 2016 as well as the total estimated population that would be subject to public charge review.[20] In fiscal year 2016, for example, the total number of persons who applied for an adjustment of status across various classes of admission was 565,427 (see table 3). After removing individuals from this population whose classes of admission are exempt from examination for public charge, DHS estimates the total population of adjustment applicants in fiscal year 2016 that would be subject to public charge review for inadmissibility is 382,769.[21]

[20] Calculation of total estimated population that would be subject to public charge review: (Total Population Applying for Adjustment of Status) – (Total Population Seeking Adjustment of Status that is Exempt from Public Charge Review for Inadmissibility) = Total Population Subject to Public Charge Review for Inadmissibility.
[21] Calculation of total population subject to public charge review for inadmissibility for fiscal year 2016: 565,427 – 182,658 = 382,769.

Table 5. Total Estimated Population of Individuals Seeking Adjustment of Status Who Were Exempt from Public Charge Adjudication.		
Fiscal Year	**Total Population Seeking Adjustment of Status that is Exempt from Public Charge Review for Inadmissibility**	**Total Population Subject to Public Charge Review for Inadmissibility**
2012	163,333	384,226
2013	132,814	397,988
2014	154,912	380,214
2015	176,190	366,125
2016	182,658	382,769
Total	**809,907**	**1,911,322**
5-year average	**161,981**	**382,264**

Source: USCIS analysis of United States Department of Homeland Security, Yearbook of Immigration Statistics for years 2012 to 2016. Available at https://www.dhs.gov/immigration-statistics/yearbook. Accessed Jan. 24, 2018. For example, see United States Department of Homeland Security. Yearbook of Immigration Statistics: 2016, Table 7. Washington, D.C., U.S. Department of Homeland Security, Office of Immigration Statistics, 2017.

DHS estimates the projected annual average total population of adjustment applicants that would be subject to public charge review for inadmissibility by DHS is 382,264. This estimate is based on the 5-year average of the annual estimated total population subject to public charge review for inadmissibility from fiscal year 2012 to fiscal year 2016. Over this 5-year period, the estimated population of individuals applying for adjustment of status subject to public charge review ranged from a low of 366,125 in fiscal year 2015 to a high of 397,988 in fiscal year 2013. DHS notes that it is possible that some affected immigrants seeking to adjust status may respond to this rule by delaying their applications for adjustment of status until they are on a better financial footing or until there are revisions to public charge policies.

ii. Exemptions from the Requirement to Submit an Affidavit of Support

In addition to the exemptions from inadmissibility based on public charge, certain classes of admission are exempt from the requirement to submit an affidavit of support in connection with applications for admission, adjustment of status, or registry. Certain applicants applying for

adjustment of status are required to submit an affidavit of support from a sponsor or otherwise be found inadmissible as likely to become a public charge. When an affidavit of support is submitted, a contract is established between the sponsor and the U.S. Government to establish a legally enforceable obligation to support the applicant financially.

Table 6 shows the estimated total population of individuals seeking adjustment of status who were exempt from the requirement to submit an affidavit of support from a sponsor over the period from fiscal year 2012 to fiscal year 2016.[22] The table also shows the total estimated population that was required to submit an affidavit of support over the same period. Further discussion of these exempt classes of admission can be found in the preamble. The estimated annual average population of individuals seeking to adjust status who were required to submit an affidavit of support from a sponsor over the 5-year period was 257,610. Over this 5-year period, the estimated population of individuals required to submit an affidavit of support from a sponsor ranged from a low of 247,011 in fiscal year 2015 to a high of 272,451 in fiscal year 2016.

Table 6. Total Estimated Population of Individuals Seeking Adjustment of Status Who Are Exempt from the Requirement to Submit an Affidavit of Support.

Fiscal Year	Total Population Exempt from Submitting an Affidavit of Support	Total Population Required to Submit an Affidavit of Support
2012	288,951	258,608
2013	272,222	258,580
2014	283,726	251,400
2015	295,304	247,011
2016	292,976	272,451
Total	**1,433,179**	**1,288,050**

[22] Data on the population of individuals who are applying for adjustment of status and the class of admission come from U.S. Department of Homeland Security, Yearbook of Immigration Statistics for years 2012 to 2016. *See* U.S. Department of Homeland Security. Yearbook of Immigration Statistics. Office of Immigration Statistics. Available at https://www.dhs.gov/immigration-statistics/yearbook/ (accessed Jan. 24, 2018).

5-year average	**286,636**	**257,610**
Source: USCIS analysis of United States Department of Homeland Security, Yearbook of Immigration Statistics for years 2012 to 2016. Available at https://www.dhs.gov/immigration-statistics/yearbook. Accessed Jan. 24, 2018. For example, *see* United States Department of Homeland Security. Yearbook of Immigration Statistics: 2016, Table 7. Washington, D.C., U.S. Department of Homeland Security, Office of Immigration Statistics, 2017.		

DHS estimates the projected annual average total population of adjustment applicants that would be subject to the requirement to submit an affidavit of support from a sponsor is 257,610. This estimate is based on the 5-year average of the annual estimated total population of applicants applying for adjustment of status that would be subject to the requirement to submit an affidavit of support from a sponsor from fiscal year 2012 to fiscal year 2016. Over this 5-year period, the estimated population of such individuals applying for adjustment of status ranged from a low of 247,011 in fiscal year 2015 to a high of 272,451 in fiscal year 2016.

b. Population Seeking Extension of Stay or Change of Status

An employer uses Form I-129 to petition USCIS for a beneficiary to enter the United States temporarily as a nonimmigrant to perform services or labor, or to receive training. An employer may also use form I-129 to request may also apply for an extension of stay or change of status for a nonimmigrants worker in the United States. In addition, an employer may use Form I-129CW to petition USCIS for a foreign national who is ineligible for another employment-based nonimmigrant classification to work as a nonimmigrant in the Commonwealth of the Northern Mariana Islands (CNMI) temporarily as a CW-1, CNMI-Only Transitional Worker. Moreover, an employer may also use Form I-129CW to request an extension of stay or change of status for a CNMI-Only Transitional Worker.

A nonimmigrant may file Form I-539, Application To Extend/Change Nonimmigrant Status, so long as he or she is currently in an eligible nonimmigrant category. A nonimmigrant generally must submit an application for extension of stay or change of status before his or her

current authorized stay expires. If a nonimmigrant is applying for more than one person such as a spouse or children using a Form I-539 application, the nonimmigrant must use the separate Form I-539A, Supplemental Information for Application to Extend/Change Nonimmigrant Status, to provide all of the requested information for each additional applicant listed. In addition to determining inadmissibility based on public charge for individuals seeking adjustment of status, DHS will conduct reviews of nonimmigrants who apply for extension of stay or change of status to determine whether the applicant has demonstrated that he or she has not received public benefits, as defined in the final rule.[23] However, DHS' determinations will not require applicants seeking extension of stay or change of status to file Form I-944.

Table 7 shows the total estimated population of beneficiaries seeking extension of stay or change of status through an employer petition using Form I-129 for fiscal years 2012 to 2016. DHS estimated this population based on receipts of Form I-129 in each fiscal year. Over this 5-year period, the estimated population of individuals who would be subject to the public benefits condition ranged from a low of 282,225 in fiscal year 2013 to a high of 377,221 in fiscal year 2012. The estimated average population of individuals seeking extension of stay or change of status through an employer petition using Form I-129 over the five-year period fiscal year 2012 to 2016 was 336,335. DHS estimates that 336,335 is the average annual projected population of beneficiaries seeking extension of stay or change of status through an employer petition using Form I-129 and therefore subject to the discretionary RFEs requiring submission of Form I-944.

Table 7. Total Estimated Population of Beneficiaries Seeking Extension of Stay or Change of Status through an Employer Petition Using Form I-129, Fiscal Year 2012 – 2016.

[23] Past or current receipt of public benefits, alone, would not justify a finding of ineligibility based on the new public benefits condition.

Fiscal Year	Receipts	Approvals	Denials
2012	377,221	249,172	127,555
2013	282,225	221,229	60,413
2014	306,159	242,513	63,087
2015	340,338	277,010	62,175
2016	375,733	321,783	52,430
Total	**1,681,676**	**1,311,707**	**365,660**
5-year average	**336,335**	**262,341**	**73,132**

Source: USCIS analysis of data provided by USCIS, Office of Performance & Quality.
Notes: Denials include the number of applications that were denied, terminated, revoked, or withdrawn during the reporting period. Cases may have been adjudicated in a later year than the one in which they were received.

Table 8 shows the total estimated population of beneficiaries seeking extension of stay or change of status through an employer petition using Form I-129CW for fiscal years 2012 to 2016. DHS estimated this population based on receipts of Form I-129CW in each fiscal year. Over this 5-year period, the estimated population of individuals who would be subject to the public benefits condition ranged from a low of 5,249 in fiscal year 2013 to a high of 8,273 in fiscal year 2016. The estimated average population of individuals seeking extension of stay or change of status through Form I-129CW over the five-year period fiscal year 2012 to 2016 was 6,307. DHS estimates that 6,307 is the average annual projected population of beneficiaries seeking extension of stay or change of status through an employer petition using Form I-129CW and, therefore, subject to discretionary RFEs for submission of Form I-944.

Table 8. Total Estimated Population of Beneficiaries Seeking Extension of Stay or Change of Status through an Employer Petition Using Form I-129CW, Fiscal Year 2012 – 2016.

Fiscal Year	Receipts	Approvals	Denials
2012	5,973	4,083	238
2013	5,249	5,053	521

2014	6,700	5,554	535
2015	5,339	4,906	340
2016	8,273	7,580	540
Total	**31,534**	**27,176**	**2,174**
5-year average	**6,307**	**5,435**	**435**

Source: USCIS analysis of data provided by USCIS, Office of Performance & Quality.

Note: Denials include the number of applications that were denied, terminated, revoked, or withdrawn during the reporting period. Cases may have been adjudicated in a later year than the one in which they were received.

Table 9 shows the total estimated population of individuals seeking extension of stay or change of status using Form I-539 for fiscal years 2012 to 2016. DHS estimated this population based on receipts of Form I-539 in each fiscal year. Over this 5-year period, the estimated population of individuals who would be subject to the public benefits condition ranged from a low of 149,583 in fiscal year 2013 to a high of 216,749 in fiscal year 2016. The estimated average population of individuals seeking extension of stay or change of status over the 5-year period from fiscal year 2012 to 2016 was 174,866. DHS estimates that 172,076 is the average annual projected population of individuals who would seek an extension of stay or change of status using Form I-539.

Table 9. Total Estimated Population of Individuals Seeking Extension of Stay or Change of Status Using Form I-539, Fiscal Year 2012 – 2016.

Fiscal Year	Receipts	Approvals	Denials
2012	154,309	135,379	18,781
2013	149,583	130,600	18,826
2014	158,515	136,298	22,053
2015	181,226	154,184	26,162
2016	216,749	138,870	17,492
Total	**860,382**	**695,331**	**103,314**

5-year average	**172,076**	**139,066**	**20,663**

Source: USCIS analysis of data provided by USCIS, Office of Performance & Quality.

Note: Denials include the number of applications that were denied, terminated, revoked, or withdrawn during the reporting period. Cases may have been adjudicated in a later year than the one in which they were received.

In March 2019, USCIS published the new Form I-539A for nonimmigrants using a Form I-539 application to apply for more than one person such as spouses or unmarried children under age 21. Due to data limitations, however, data on specific numbers of multiple applicants included on Form I-539A are not yet available. Therefore, to estimate the number of Forms I-539A that for spouses and children will file, DHS uses the total estimated population of individuals who filed Form I-539 for fiscal years 2012 to 2016, based on receipts, to first estimate the number of Form I-539 applications filed by single applicants and applications that include family members. See table 10. As shown in the table, the 5-year average number of Form I-539 applications that include family members is about 47,921. However, these applications only account for the primary applicant and not any family members included on the application.

Table 10. Form I-539 Applications Filed by Single Applicants or by Applicants with Family Members Included, Fiscal Years 2012 - 2016.

Fiscal Year	Single Applicant	Percent of Total	Applications that Include Family Members	Percent of Total
2012	114,766	74.37%	39,391	25.53%
2013	109,151	72.97%	40,207	26.88%
2104	113,404	71.54%	44,992	28.38%
2015	127,830	70.54%	52,724	29.09%
2016	148,398	68.47%	62,289	28.74%

Total	**613,549**	**71.31%**	**239,603**	**27.85%**
5-yr. Avg.	**122,710**	**71.31%**	**47,921**	**27.85%**

Source: USCIS analysis of data provided by USCIS, Office of Performance & Quality.
Notes: A small percentage of Form I-539 applications did not indicate whether they were filed by a single applicant or by an applicant with family members included. The percentage of such applications is about 0.84 percent of the total and 5-year average.

Based on the 5-year average number of Form I-539 applications that include family members, DHS estimates the number of spouses and children by using the U.S. Census Bureau's estimated average household size of 2.64 for the U.S. total population.[24] DHS estimates that the average annual total number of individuals included in the Form I-539 application that include family member is about 126,510 individuals.[25] After removing the primary applicants from this total, DHS estimates that the average annual total number of spouses and children who must file Form I-539A is about 78,590.[26]

4. Cost-Benefit Analysis

DHS expects this final rule to produce costs and benefits associated with the procedures for making eligibility determinations for aliens seeking adjustment of status, extension of stay, or change of status.

For this final rule, DHS generally uses the federal minimum wage plus weighted average benefits of $10.59 per hour ($7.25 federal minimum wage base plus $3.34 weighted average benefits) as a reasonable proxy of time valuation to estimate the opportunity costs of time for individuals who are applying for adjustment of status and must be reviewed for determination of

[24] U.S. Census Bureau American FactFinder Database. "S0501: Selected Characteristics of the Native and Foreign-born Populations 2012 – 2016 American Community Survey (ACS) 5-year Estimates." Available at https://factfinder.census.gov/. Accessed June 16, 2018.
[25] Calculation: Form I-539 applications that include family members * Estimates average household size for the U.S. population = 47,921 * 2.64 = 126,511 estimated average annual total number of individuals included on Form I-539 applications.
[26] Calculation: Total number of individuals included on Form I-539 applications – Total number of primary applicants for Form I-539 = 126,511 – 47,921 = 78,590 estimated average annual total number of spouses and children who must file Form I-539A.

inadmissibility based on the public charge ground.[27] DHS also uses $10.59 per hour to estimate the opportunity cost of time for individuals who cannot, or choose not to, participate in the labor market as these individuals incur opportunity costs and/or assign valuation in deciding how to allocate their time. Moreover, this analysis uses the federal minimum wage rate since approximately 80 percent of the total number of individuals who obtained lawful permanent resident status were in a class of admission under family-sponsored preferences and other non-employment-based classifications such as diversity, refugees and asylees, and parolees.[28] Moreover, approximately 70 percent of the total number of individuals who obtained LPR status were in a class of admission that were also subject to the public charge inadmissibility determination. Therefore, DHS assumes many of these applicants hold positions in occupations that are likely to pay around the federal minimum wage.

The federal minimum wage of $7.25 is an unweighted hourly wage that does not account for worker benefits. DHS accounts for worker benefits when estimating the opportunity cost of time by calculating a benefits-to-wage multiplier using the most recent Department of Labor, BLS report detailing the average employer costs for employee compensation for all civilian workers in major occupational groups and industries. DHS estimates that the benefits-to-wage multiplier is 1.46 and, therefore, is able to estimate the full opportunity cost per applicant, including employee wages and salaries and the full cost of benefits such as paid leave, insurance,

[27] *See* 29 U.S.C. section 206 - Minimum wage, *available at* https://www.gpo.gov/fdsys/pkg/USCODE-2011-title29/html/USCODE-2011-title29-chap8-sec206.htm (accessed Jan. 24, 2018). *See also* U.S. Department of Labor, Wage and Hour Division. The minimum wage in effect as of May 24, 2018. Available at https://www.dol.gov/general/topic/wages/minimumwage.

[28] *See* United States Department of Homeland Security. Yearbook of Immigration Statistics: 2016, Table 7. Washington, D.C., U.S. Department of Homeland Security, Office of Immigration Statistics, 2017. Available at https://www.dhs.gov/immigration-statistics/yearbook/2016 (accessed Jan. 24, 2018).

and retirement.[29] DHS notes that there is no requirement that an individual be employed in order to file Form I-485 and many applicants may not be employed. Therefore, in this final rule, DHS calculates the total rate of compensation for individuals applying for adjustment of status as $10.59 per hour using the benefits-to-wage multiplier, where the mean hourly wage is $7.25 per hour worked and average benefits are $3.34 per hour. [30]

However, DHS uses the unweighted mean hourly wage of $24.98 per hour for all occupations to estimate the opportunity cost of time for some populations in this economic analysis, such as those submitting an affidavit of support for an immigrant seeking to adjust status and those requesting extension of stay or change of status. For populations such as this, DHS assumes that individuals are dispersed throughout the various occupational groups and industry sectors of the U.S. economy. For the population submitting an affidavit of support, therefore, DHS calculates the average total rate of compensation as $36.47 per hour, where the mean hourly wage is $24.98 per hour worked and average benefits are $11.49 per hour.[31,32]

a. Baseline Estimate of Current Costs

The baseline estimate of current costs is the best assessment of costs and benefits absent the regulatory action. For this final rule, DHS estimates the baseline according to current operations and requirements and compares that to the estimated costs and benefits of the

[29] The benefits-to-wage multiplier is calculated as follows: (Total Employee Compensation per hour) / (Wages and Salaries per hour) = $36.32 / $24.91 = 1.458 = 1.46 (rounded). *See* Economic News Release, *Employer Cost for Employee Compensation (March 2019)*, U.S. Dept. of Labor, BLS, Table 1. Employer costs per hour worked for employee compensation and costs as a percent of total compensation: Civilian workers, by major occupational and industry group. March 19, 2019, available at https://www.bls.gov/news.release/archives/ecec_03192019.pdf (viewed April 1, 2019).

[30] The calculation of the weighted federal minimum hourly wage for applicants: $7.25 per hour * 1.46 benefits-to-wage multiplier = $10.585 = $10.59 (rounded) per hour.

[31] The national mean hourly wage across all occupations is reported to be $24.98. *See* Occupational Employment and Wage Estimates United States. May 2018. Department of Labor, BLS, Occupational Employment Statistics program; available at https://www.bls.gov/oes/2018/may/oes_nat htm.

[32] The calculation of the weighted mean hourly wage for applicants: $24.98 per hour * 1.46 = $36.4708 = $36.47 (rounded) per hour.

provisions set forth in the final rule. Therefore, DHS defines the baseline by assuming "no change" to DHS regulations to establish an appropriate basis for evaluating the provisions of the final rule. DHS notes that costs detailed as part of the baseline include all current costs associated with completing and filing Form I-485, including required biometrics collection and medical examination (Form I-693) as well as any affidavits of support (Forms I-864, I-864A, I-864EZ, and I-864W) or requested fee waivers (Form I-912). As noted previously in the background section, the source of additional costs imposed by this final rule would come from the new requirement to submit Form I-944 detailing information about an applicant regarding factors such as age, health, family status, finances, and education and skills. These costs are analyzed later in this economic analysis.

Table 11 shows the estimated population and annual costs of filing for adjustment of status and requesting an extension of stay or change of status for the final rule. These costs primarily result from the process of applying for adjustment of status, including filing Form I-485 and Form I-693 as well as, if necessary, an affidavit of support and/or Form I-912. The costs are derived from the process of applying for extension of stay or change of status, including filing Form I-129, Form I-129CW, or Form I-539.

Table 11. Total Average Annual Baseline (Current) Costs.

Form	Estimated Average Annual Population	Estimated Total Annual Cost
I-485, Application to Register Permanent Residence or Adjust Status	**382,264**	**$519,519,712**
Filing Fee		$435,780,960
Opportunity Cost of Time (OCT)		$25,302,054
Biometrics Services Fee		$32,492,440
Biometrics Services OCT		$14,858,602
Biometrics Services Travel Costs		$11,085,656

I-693, Report of Medical Examination and Vaccination Record	**382,264**	**$198,865,201**
Medical Exam Cost		$187,309,360
Opportunity Cost of Time (OCT)		$10,122,351
Postage Costs		$1,433,490
I-912, Request for Fee Waiver	**58,558**	**$945,147**
Opportunity Cost of Time (OCT)		$725,554
Postage Costs		$219,593
Affidavit of Support Forms (I-864, I-864A, I-864EZ, I-864W)	**257,610**	**$56,370,220**
Opportunity Cost of Time (OCT)		$56,370,220
I-129, Petition for a Nonimmigrant Worker	**336,335**	**$184,678,185**
Filing Fee		$154,714,100
Opportunity Cost of Time (OCT)		$28,702,829
Postage Costs		$1,261,256
I-129CW, Petition for a CNMI-Only Nonimmigrant Transitional Worker	**6,307**	**$5,168,019**
Filing Fee		$4,477,970
Opportunity Cost of Time (OCT)		$690,049
I-539, Application to Extend/Change Nonimmigrant Status	**172,076**	**$118,868,380**
Filing Fee		$63,668,120
Opportunity Cost of Time (OCT)		$12,551,223
Biometrics Services Fee		$14,626,460
Biometrics Services OCT		$23,032,373
Biometrics Services Travel Costs		$4,990,204
I-539A, Supplemental Information for Application to Extend/Change Nonimmigrant Status	**78,590**	**$20,912,013**
Opportunity Cost of Time (OCT)		$1,433,481
Biometrics Services Fee		$6,680,150
Biometrics Services OCT		$10,519,272
Biometrics Services Travel Costs		$2,279,110
Total Baseline Costs		**$1,105,326,877**

Source: USCIS analysis.

i. Determination of Inadmissibility Based on the Public Charge Ground

a. Form I-485, Application to Register Permanent Residence or Adjust Status

The basis of the quantitative costs estimated for this final rule is the cost of filing for adjustment of status using Form I-485, the opportunity cost of time for completing this form, any other required forms, and any other incidental costs (e.g., travel costs) an individual must bear that are required in the filing process. DHS reiterates that costs examined in this section are not additional costs that would be imposed by the final rule, but costs that applicants currently incur as part of the application process to adjust status. The current filing fee for Form I-485 is $1,140. The fee is set at a level to recover the processing costs to DHS. As previously discussed in the population section, the estimated average annual population of individuals who apply for adjustment of status using Form I-485 is 382,264. Therefore, DHS estimates that the annual filing cost associated for Form I-485 is approximately $435,780,960.[33]

DHS estimates the time burden of completing Form I-485 is 6.25 hours per response, including the time for reviewing instructions, gathering the required documentation and information, completing the application, preparing statements, attaching necessary documentation, and submitting the application.[34] Using the total rate of compensation for minimum wage of $10.59 per hour, DHS estimates the opportunity cost of time for completing and submitting Form I-485 is about $66.19 per applicant.[35] Therefore, using the total population

[33] Calculation: Form I-485 filing fee ($1,140) * Estimated annual population filing Form I-485 (382,264) = $435,780,960 annual cost for filing Form I-485.
[34] Source: Paperwork Reduction Act (PRA) Supporting Statement for Form I-485 (OMB control number 1615-0023). The PRA Supporting Statement can be found at Question 12 on Reginfo.gov at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201706-1615-001.
[35] Calculation for opportunity cost of time for filing Form I-485: ($10.59 per hour * 6.25 hours) = $66.188 = $66.19 (rounded) per applicant.

estimate of 382,264 annual filings for Form I-485, DHS estimates the total opportunity cost of time associated with completing Form I-485 is approximately $25,302,054 annually.[36]

USCIS requires applicants who file Form I-485 to submit biometric information (fingerprints and signature) by attending a biometrics services appointment at a designated USCIS Application Support Center (ASC). The biometrics services processing fee is $85.00 per applicant. Therefore, DHS estimates that the annual cost associated with biometrics services processing for the estimated average annual population of 382,264 individuals applying for adjustment of status is approximately $32,492,440.[37]

In addition to the biometrics services fee, the applicant will incur the costs to comply with the biometrics submission requirement as well as the opportunity cost of time for traveling to an ASC, the mileage cost of traveling to an ASC, and the opportunity cost of time for submitting his or her biometrics. While travel times and distances vary, DHS estimates that an applicant's average roundtrip distance to an ASC is 50 miles and takes 2.5 hours on average to complete the trip.[38] Furthermore, DHS estimates that an applicant waits an average of 1.17 hours for service and to have his or her biometrics collected at an ASC, adding up to a total biometrics-related time burden of 3.67 hours.[39] Using the total rate of compensation of minimum wage of $10.59 per hour, DHS estimates the opportunity cost of time for completing

[36] Calculation: Form I-485 estimated opportunity cost of time ($66.19) * Estimated annual population filing Form I-485 (382,264) = $25,302,054.16 = $25,302,054 (rounded) annual opportunity cost of time for filing Form I-485.
[37] Calculation: Biometrics services processing fee ($85) * Estimated annual population filing Form I-485 (382,264) = $32,492,440 annual cost for associated with Form I-485 biometrics services processing.
[38] *See* "Employment Authorization for Certain H-4 Dependent Spouses; Final rule," 80 FR 10284 (25 Feb. 2015); and "Provisional and Unlawful Presence Waivers of Inadmissibility for Certain Immediate Relatives; Final Rule," 78 FR 536, 572 (3 Jan. 2013).
[39] Source for biometric time burden estimate: Paperwork Reduction Act (PRA) Supporting Statement for Form I-485 (OMB control number 1615-0023). The PRA Supporting Statement can be found at Question 12 on Reginfo.gov at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201706-1615-001.

the biometrics collection requirements for Form I-485 is $38.87 per applicant.[40] Therefore, using the total population estimate of 382,264 annual filings for Form I-485, DHS estimates the total opportunity cost of time associated with completing the biometrics collection requirements for Form I-485 is approximately $14,858,602 annually.[41]

In addition to the opportunity cost of time for providing biometrics, applicants will incur travel costs related to biometrics collection. The cost of travel related to biometrics collection is about $29.00 per trip, based on the 50-mile roundtrip distance to an ASC and the General Services Administration's (GSA) travel rate of $0.58 per mile.[42] DHS assumes that each applicant travels independently to an ASC to submit his or her biometrics, meaning that this rule imposes a travel cost on each of these applicants. Therefore, DHS estimates that the total annual cost associated with travel related to biometrics collection for the estimated average annual population of 382,264 individuals applying for adjustment of status is approximately $11,085,656.[43]

In sum, DHS estimates the total current annual cost for filing Form I-485 is $519,519,712, including Form I-485 filing fees, biometrics services fees, opportunity cost of time for completing Form I-485 and submitting biometrics information, and travel cost associated with biometrics collection.[44] DHS notes that a medical examination is generally

[40] Calculation for opportunity cost of time to comply with biometrics submission for Form I-485: ($10.59 per hour * 3.67 hours) = $38.865 = $38.87 (rounded) per applicant.
[41] Calculation: Estimated opportunity cost of time to comply with biometrics submission for Form I-485 ($38.87) * Estimated annual population filing Form I-485 (382,264) = $14,858,601.68 = $14,858,602 (rounded) annual opportunity cost of time for filing Form I-485.
[42] *See* U.S. General Services Administration website for Privately Owned Vehicle (POV) Mileage Reimbursement Rates, https://www.gsa.gov/travel/plan-book/transportation-airfare-rates-pov-rates/privately-owned-vehicle-pov-mileage-reimbursement-rates (accessed January 9, 2019).
[43] Calculation: (Biometrics collection travel costs) * (Estimated annual population filing Form I-485) = $29.00 * 382,264 = $11,085,656 annual travel costs related to biometrics collection for Form I-485.
[44] Calculation: $435,780,960 (Annual filing fees for Form I-485) + $25,302,054 (Opportunity cost of time for filing Form I-485) + $32,492,440 (Biometrics services fees) + $14,858,602 (Opportunity cost of time for biometrics

required as part of the application process to adjust status. Costs associated with the medical examination are detailed in the next section. Moreover, costs associated with submitting an affidavit of support and requesting a fee waiver are also detailed in subsequent sections since such costs are not required for every individual applying for an adjustment of status.

b. Form I-693, Report of Medical Examination and Vaccination Record

USCIS requires most applicants who file Form I-485 seeking adjustment of status to submit Form I-693 completed by a designated civil surgeon. Form I-693 is used to report results of a medical examination to USCIS. For this analysis, DHS assumes that all individuals who apply for adjustment of status using Form I-485 are required to submit Form I-693. DHS reiterates that costs examined in this section are not additional costs that would be imposed by the final rule, but costs that applicants currently incur as part of the application process to adjust status. The medical examination is required to establish that an applicant is not inadmissible to the United States on health-related grounds. While there is no filing fee associated with Form I-693, the applicant is responsible for paying all costs of the medical examination, including the cost of any follow-up tests or treatment that is required, and must make payments directly to the civil surgeon or other health care provider. In addition, applicants bear the opportunity cost of time for completing the medical exam form as well as sitting for the medical exam and the time waiting to be examined.

USCIS does not regulate the fees charged by civil surgeons for the completion of a medical examination. In addition, medical examination fees vary by physician. DHS notes that the cost of the medical examinations may vary widely, from as little as $20 to as much as $1,000 per respondent (including vaccinations to additional medical evaluations and testing that may be

collection requirements) + $11,085,656 (Travel costs for biometrics collection) = $519,519,712 total current annual cost for filing Form I-485.

required based on the medical conditions of the applicant).[45] DHS estimates that the average cost for these activities is $490 and that all applicants would incur this cost.[46] Since DHS assumes that all applicants who apply for adjustment of status using Form I-485 must also submit Form I-693, DHS estimates that based on the estimated average annual population of 382,264 the annual cost associated with filing Form I-693 is $187,309,360.[47]

DHS estimates the time burden associated with filing Form I-693 is 2.5 hours per applicant, which includes understanding and completing the form, setting an appointment with a civil surgeon for a medical exam, sitting for the medical exam, learning about and understanding the results of medical tests, allowing the civil surgeon to report the results of the medical exam on the form, and submitting the medical exam report to USCIS.[48] DHS estimates the opportunity cost of time for completing and submitting Form I-693 is $26.48 per applicant based on the total rate of compensation of minimum wage of $10.59 per hour.[49] Therefore, using the total population estimate of 382,264 annual filings for Form I-485, DHS estimates the total

[45] Source for medical exam cost range: Paperwork Reduction Act (PRA) Report of Medical Examination and Vaccination Record (Form I-693) (OMB control number 1615-0033). The PRA Supporting Statement can be found at Question 13 on Reginfo.gov at https://www reginfo.gov/public/do/PRAViewDocument?ref_nbr=201609-1615-004.
[46] Source for medical exam cost estimate: Paperwork Reduction Act (PRA) Report of Medical Examination and Vaccination Record (Form I-693) (OMB control number 1615-0033). The PRA Supporting Statement can be found at Question 13 on Reginfo.gov at https://www reginfo.gov/public/do/PRAViewDocument?ref_nbr=201609-1615-004.
[47] Calculation: (Estimated medical exam cost for Form I-693) * (Estimated annual population filing Form I-485) = $490 * 382,264 = $187,309,360 annual estimated medical exam costs for Form I-693.
[48] Source for medical exam time burden estimate: Paperwork Reduction Act (PRA) Report of Medical Examination and Vaccination Record (Form I-693) (OMB control number 1615-0033). The PRA Supporting Statement can be found at Question 12 on Reginfo.gov at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201609-1615-004.
[49] Calculation for medical exam opportunity cost of time: ($10.59 per hour * 2.5 hours) = $26.475 = $26.48 (rounded) per applicant.

opportunity cost of time associated with completing and submitting Form I-693 is approximately $10,122,351 annually.[50]

In addition to the cost of a medical exam and the opportunity cost of time associated with completing and submitted Form I-693, applicants must bear the cost of postage for sending the Form I-693 package to USCIS. DHS estimates that each applicant will incur an estimated average cost of $3.75 in postage to submit the completed package to USCIS.[51] DHS estimates the total annual cost in postage based on the total population estimate of 382,264 annual filings for Form I-693 is $1,433,490.[52]

In sum, DHS estimates the total current annual cost for filing Form I-693 is $198,865,201. The total current annual costs include medical exam costs, the opportunity cost of time for completing Form I-693, and cost of postage to mail the Form I-693 package to USCIS.[53]

c. Form I-912, Request for Fee Waiver

Some applicants seeking adjustment of status may be eligible for a fee waiver when filing Form I-485. An applicant who is unable to pay the filing fees or biometric services fees for an application or petition may be eligible for a fee waiver by filing Form I-912. If an applicant's Form I-912 is approved, USCIS, as a component of DHS, will waive both the filing fee and biometric services fee. Therefore, DHS assumes for the purposes of this economic analysis that the filing fees and biometric services fees required for Form I-485 are waived if an approved

[50] Calculation: (Estimated medical exam opportunity cost of time for Form I-693) * (Estimated annual population filing Form I-485) = $26.48 * 382,264 = $10,122,350.72 = $10,122,351 (rounded) annual opportunity cost of time for filing Form I-485.
[51] Source for medical exam form package postage cost estimate: Paperwork Reduction Act (PRA) Report of Medical Examination and Vaccination Record (Form I-693) (OMB control number 1615-0033). The PRA Supporting Statement can be found at Question 13 on Reginfo.gov at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201609-1615-004.
[52] Calculation: (Form I-693 estimated cost of postage) * (Estimated annual population filing Form I-693) = $3.75 * 382,264 = $1,433,490 annual cost in postage for filing Form I-693.
[53] Calculation: $187,309,360 (Medical exam costs) + $10,122,351 (Opportunity cost of time for Form I-693) + $1,433,490 (Postage costs for biometrics collection) = $198,865,201 total current annual cost for filing Form I-693.

Form I-912 accompanies the application. Filing Form I-912 is not required for applications and petitions that do not have a filing fee. DHS also notes that costs examined in this section are not additional costs that would be imposed by the final rule, but costs that applicants currently could incur as part of the application process to adjust status.

Table 12 shows the estimated population of individuals that requested a fee waiver (Form I-912), based on receipts, when applying for adjustment of status in fiscal years 2012 to 2016, as well as the number of requests that were approved or denied each fiscal year. During this period, the number of individuals who requested a fee waiver when applying for adjustment of status ranged from a low of 42,126 in fiscal year 2012 to a high of 76,616 in fiscal year 2016. In addition, the estimated average population of individuals applying to adjust status who requested a fee waiver for Form I-485 over the 5-year period fiscal year 2012 to 2016 was 58,558. DHS estimates that 58,558 is the average annual projected population of individuals who would request a fee waiver using Form I-912 when filing Form I-485 to apply for an adjustment of status.[54]

Table 12. Total Population Requesting A Fee Waiver (Form I-912) when Filing Form I-485, Adjustment of Status.

Fiscal Year	Receipts	Approvals	Denials
2012	42,126	34,890	7,236
2013	52,453	41,615	10,838
2014	58,534	47,629	10,905
2015	63,059	53,615	9,444
2016	76,616	68,641	7,975
Total	**292,788**	**246,390**	**46,398**
5-yr average	**58,558**	**49,278**	**9,280**

[54] DHS notes that the estimated population of individuals who would request a fee waiver for filing Form I-485 includes all visa classifications for those applying for adjustment of status. We are unable to determine the number of fee waiver requests for filing Form I-485 that are associated with specific visa classifications that are subject to public charge review.

Source: USCIS analysis.

To provide a reasonable proxy of time valuation for applicants, as described previously, DHS assumes that applicants requesting a fee waiver for Form I-485 earn the total rate of compensation for individuals applying for adjustment of status as $10.59 per hour, where the value of $10.59 per hour represents the federal minimum wage with an upward adjustment for benefits. The analysis uses this wage rate because DHS expects that applicants who request a fee waiver are asserting that they are unable to afford to pay the USCIS filing fee. As a result, DHS expects such applicants to hold positions in occupations that have a wage below the mean hourly wage across all occupations. DHS also notes that this final rule may reduce the number of fee waiver requests received, but, at this time, we cannot determine the extent to which this will occur.

DHS estimates the time burden associated with filing Form I-912 is 1 hour and 10 minutes per applicant (1.17 hours), including the time for reviewing instructions, gathering the required documentation and information, completing the request, preparing statements, attaching necessary documentation, and submitting the request.[55] Therefore, using $10.59 per hour as the total rate of compensation, DHS estimates the opportunity cost of time for completing and submitting Form I-912 is $12.39 per applicant.[56] Using the total population estimate of 58,558 requests for a fee waiver for Form I-485, DHS estimates the total opportunity cost of time associated with completing and submitting Form I-912 is approximately $725,554 annually.[57]

[55] Source for fee waiver time burden estimate: Paperwork Reduction Act (PRA) Request for Fee Waiver (Form I-912) (OMB control number 1615-0116). The PRA Supporting Statement can be found at Question 12 on Reginfo.gov at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201506-1615-006.
[56] Calculation for fee waiver opportunity cost of time: ($10.59 per hour * 1.17 hours) = $12.39.
[57] Calculation: (Estimated opportunity cost of time for Form I-912) * (Estimated annual population of approved Form I-912) = $12.39 * 58,558 = $725,533.62 = $725,554 (rounded) annual opportunity cost of time for filing Form I-944 that are approved.

In addition to the opportunity cost of time associated with completing and submitting Form I-912, applicants must bear the cost of postage for sending the Form I-912 package to USCIS. DHS estimates that each applicant will incur an estimated average cost of $3.75 in postage to submit the completed package to USCIS.[58] DHS estimates the annual cost in postage based on the total population estimate of 58,558 annual approved requests for a fee waiver for Form I-485 is $219,593.[59]

In sum, DHS estimates the total current annual cost for filing a fee waiver request (Form I-912) for Form I-485 is $945,147. The total current annual costs include the opportunity cost of time for completing Form I-912 and cost of postage to mail the Form I-912 package to USCIS.[60]

d. Affidavit of Support Forms

As previously discussed, submitting an affidavit of support using Form I-864 is required for most family-based immigrants and some employment-based immigrants to show that they have adequate means of financial support and are not likely to become a public charge. Additionally, Form I-864 includes attachment Form I-864A, which may be filed when a sponsor's income and assets do not meet the income requirements of Form I-864 and the qualifying household member chooses to combine his or her resources with the income and/or assets of a sponsor to meet those requirements. Some sponsors for intending immigrants may be able to file an affidavit of support using Form I-864EZ, provided they meet certain criteria. Moreover, certain classes of immigrants currently are exempt from the requirement to file Form I-864 or Form I-864EZ and therefore must file Form I-864W, Request for Exemption for

[58] Source for fee waiver postage cost estimate: Paperwork Reduction Act (PRA) Request for Fee Waiver (Form I-912) (OMB control number 1615-0116). The PRA Supporting Statement can be found at Question 13 on Reginfo.gov at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201506-1615-006.
[59] Calculation: (Form I-912 estimated cost of postage) * (Estimated annual population of approved Form I-912) = $3.75 * 58,558 = $219,592.50 = $219,593 (rounded) annual cost in postage for filing Form I-912 that is approved.
[60] Calculation: $725,554 (Opportunity cost of time for Form I-912) + $219,593 (Postage costs for biometrics collection) = $945,147 total current annual cost for filing Form I-912.

Intending Immigrant's Affidavit of Support. However, DHS is eliminating Form I-864W, and instead individuals would be required to provide the information previously requested on the Form I-864W using Form I-485. Based on the information provided in the Form I-485, an officer can verify whether an immigrant is statutorily required to file an affidavit of support.

There is no filing fee associated with filing Form I-864 with USCIS. However, DHS estimates the time burden associated with a sponsor filing Form I-864 is 6 hours per petitioner, including the time for reviewing instructions, gathering the required documentation and information, completing the affidavit, preparing statements, attaching necessary documentation, and submitting the affidavit.[61] Therefore, using the average total rate of compensation of $36.47 per hour, DHS estimates the opportunity cost of time for completing and submitting Form I-864 would be $218.82 per petitioner.[62] DHS assumes that the average rate of total compensation used to calculate the opportunity cost of time for Form I-864 is appropriate since the sponsor of an immigrant, who is agreeing to provide financial and material support, is instructed to complete and submit the form. Using the estimated annual total population of 257,610 individuals seeking to adjust status who are required to submit an affidavit of support using Form I-864, DHS estimates the opportunity cost of time associated with completing and submitting Form I-864 is $56,370,220 annually.[63] DHS estimates this amount as the total current annual cost for filing Form I-864, as required when applying to adjust status.

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[61] Source for I-864 time burden estimate: Paperwork Reduction Act (PRA) Affidavit of Support Under Section 213A of the INA (Forms I-864, I-864A, I-864EZ, I-864W) (OMB control number 1615-0075). The PRA Supporting Statement can be found at Question 12 on Reginfo.gov at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201705-1615-004.

[62] Calculation opportunity cost of time for completing and submitting Form I-864, Affidavit of Support Under Section 213A of the INA: ($36.47 per hour * 6.0 hours) = $218.82 per applicant.

[63] Calculation: (Form I-864 estimated opportunity cost of time) * (Estimated annual population filing Form I-864) = $218.82 * 257,610 = $56,370,220.20 = $56,370,220 (rounded) total annual opportunity cost of time for filing Form I-864.

There is also no filing fee associated with filing Form I-864A with USCIS. However, DHS estimates the time burden associated with filing Form I-864A is 1 hour and 45 minutes (1.75 hours) per petitioner, including the time for reviewing instructions, gathering the required documentation and information, completing the contract, preparing statements, attaching necessary documentation, and submitting the contract.[64] Therefore, using the average total rate of compensation of $36.47 per hour, DHS estimates the opportunity cost of time for completing and submitting Form I-864A will be $63.82 per petitioner.[65] DHS assumes the average total rate of compensation used for calculating the opportunity cost of time for Form I-864 since both the sponsor and another household member agree to provide financial support to an immigrant seeking to adjust status. However, the household member also may be the intending immigrant. While Form I-864A must be filed with Form I-864, DHS notes that we are unable to determine the number filings of Form I-864A since not all individuals filing I-864 need to file Form I-864A with a household member.

As with Form I-864, there is no filing fee associated with filing Form I-864EZ with USCIS. However, DHS estimates the time burden associated with filing Form I-864EZ is 2 hours and 30 minutes (2.5 hours) per petitioner, including the time for reviewing instructions, gathering the required documentation and information, completing the affidavit, preparing statements, attaching necessary documentation, and submitting the affidavit.[66] Therefore, using

[64] Source for I-864A time burden estimate: Paperwork Reduction Act (PRA) Affidavit of Support Under Section 213A of the INA (Forms I-864, I-864A, I-864EZ, I-864W) (OMB control number 1615-0075). The PRA Supporting Statement can be found at Question 12 on Reginfo.gov at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201705-1615-004.
[65] Calculation opportunity cost of time for completing and submitting Form I-864A, Contract Between Sponsor and Household Member: ($36.47 per hour * 1.75 hours) = $63.823 = $63.82 (rounded) per petitioner.
[66] Source for I-864EZ time burden estimate: Paperwork Reduction Act (PRA) Affidavit of Support Under Section 213A of the INA (Forms I-864, I-864A, I-864EZ, I-864W) (OMB control number 1615-0075). The PRA Supporting Statement can be found at Question 12 on Reginfo.gov at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201705-1615-004.

the average total rate of compensation of $36.47 per hour, DHS estimates the opportunity cost of time for completing and submitting Form I-864EZ is $91.18 per petitioner.[67] However, DHS notes that we are unable to determine the number filings of Form I-864EZ and, therefore, rely on the annual cost estimate developed for Form I-864.

There is also no filing fee associated with filing Form I-864W with USCIS. However, DHS estimates the time burden associated with filing this form is 60 minutes (1 hour) per petitioner, including the time for reviewing instructions, gathering the required documentation and information, completing the request, preparing statements, attaching necessary documentation, and submitting the request.[68] Therefore, using the average total rate of compensation of $36.47 per hour, DHS estimates the opportunity cost of time for completing and submitting Form I-864EZ will be $36.47 per petitioner.[69] However, DHS notes that we are unable to determine the number filings of Form I-864W and, therefore, rely on the annual cost estimate developed for Form I-864. Moreover, the final rule eliminates Form I-864W as a form for use in filing an affidavit of support. Filers who would have been required to file Form I-864W instead will be instructed to provide the information previously requested on the Form I-864W using Form I-485, as amended by this final rule. Based on the information provided in the Form I-485, an officer could verify whether an immigrant is statutorily required to file an affidavit of support.

[67] Calculation opportunity cost of time for completing and submitting Form I-864EZ, Affidavit of Support Under Section 213A of the INA: ($36.47 per hour * 2.5 hours) = $91.175 = $91.18 (rounded) per petitioner.
[68] Source for I-864W time burden estimate: Paperwork Reduction Act (PRA) Affidavit of Support Under Section 213A of the INA (Forms I-864, I-864A, I-864EZ, I-864W) (OMB control number 1615-0075). The PRA Supporting Statement can be found at Question 12 on Reginfo.gov at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201705-1615-004.
[69] Calculation opportunity cost of time for completing and submitting Form I-864W: ($35.78 per hour * 1.0 hours) = $35.78.

With this final rule, DHS is also amending the HHS Poverty Guidelines for Affidavit of Support (Form I-864P) by removing certain language describing means-tested public benefits. Form I-864P is used to determine the minimum level of income required to sponsor most family-based immigrants and some employment-based immigrants. These income requirements are to show that a sponsor has adequate means of financial support and is not likely to rely on the government for financial support. Form I-864P is for informational purposes and used for completing Form I-864. DHS does not anticipate additional costs or benefits as a result of any changes to Form I-864P.

ii. Consideration of Receipt of Public Benefits Defined in Final 8 CFR 212.21(b) for Applicants Requesting Extension of Stay or Change of Status

Nonimmigrants in the United States may seek extension of stay or change of status by either having an employer file Form I-129 or Form I-129CW, as applicable, on his or her behalf, or by filing Form I-539 and Form I-539A (if applicable), so long as the nonimmigrant is currently in an eligible nonimmigrant category. This final rule seeks to require nonimmigrants who are seeking extension of stay or change of status to demonstrate that they have not received public benefits, as defined in final 8 CFR 212.21(b) of this rule. DHS also notes that costs examined in this section are not additional costs that the final rule imposes, but costs that petitioners and applicants currently incur as part of the petition or application process to request an extension of stay or change of status.

a. Form I-129, Petition for a Nonimmigrant Worker

The current filing fee for Form I-129 is $460.00. The fee is set at a level to recover the processing costs to DHS. As previously discussed, the estimated average annual population of employers filing on behalf of nonimmigrant workers seeking EOS/COS using Form I-129 is

336,335. Therefore, DHS estimates that the annual cost associated with filing Form I-129 is approximately $154,714,100.[70]

DHS estimates the time burden for completing Form I-129 is 2 hours and 20 minutes (2.34 hours), including the time for reviewing instructions, gathering the required documentation and information, completing the request, preparing statements, attaching necessary documentation, and submitting the request.[71] Using the average total rate of compensation of $36.47 per hour, DHS estimates the opportunity cost of time for completing and submitting Form I-129 is $85.34 per petitioner.[72] Therefore, using the total population estimate of 336,335 annual filings for Form I-129, DHS estimates the total opportunity cost of time associated with completing and submitting Form I-129 is approximately $28,702,829 annually.[73]

In addition to the filing fee and the opportunity cost of time associated with completing and submitting Form I-129, petitioners must bear the cost of postage for sending the Form I-129 package to USCIS. DHS estimates that each petitioner will incur an estimated average cost of $3.75 in postage to submit the completed package to USCIS.[74] DHS estimates the total annual

[70] Calculation: (Form I-129 filing fee) * (Estimated annual population filing Form I-129) = $460 * 336,335 = $154,714,100 annual estimated cost for filing Form I-129 seeking an extension of stay or change of status.
[71] Source for petition for nonimmigrant workers time burden estimate: Paperwork Reduction Act (PRA) Petition for Nonimmigrant Worker (Form I-129) (OMB control number 1615-0009). The PRA Supporting Statement can be found at Question 12 on Reginfo.gov at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201610-1615-001.
[72] Calculation for estimated opportunity cost of time for completing Form I-129: ($36.47 per hour * 2.34 hours) = $85.3398 = $85.34 (rounded) per applicant.
[73] Calculation: (Form I-129 estimated opportunity cost of time) * (Estimated annual population filing Form I-129) = $85.34 * 336,335 = $28,702,828.90 = $28,702,829 (rounded) annual estimated opportunity cost of time for filing Form I-129.
[74] Source for petition for nonimmigrant workers form package postage cost estimate: Paperwork Reduction Act (PRA) Petition for Nonimmigrant Worker (Form I-129) (OMB control number 1615-0009). The PRA Supporting Statement can be found at Question 12 on Reginfo.gov at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201610-1615-001.

cost in postage based on the total population estimate of 336,335 annual filings for Form I-129 is approximately $1,261,256.[75]

In sum, DHS estimates the total current annual cost for filing Form I-129 is $184,678,185. The total current annual costs include Form I-129 filing fees, opportunity cost of time for completing Form I-129, and cost of postage to mail the Form I-129 package to USCIS.[76]

b. Form I-129CW, Petition for a CNMI-Only Nonimmigrant Transitional Worker

The current filing fee for Form I-129CW is $460.00. The fee is set at a level to recover the processing costs to DHS. In addition, an employer filing Form I-129CW for a CNMI-Only Nonimmigrant Transitional Worker must submit an additional $200 for a supplemental CNMI education fee per beneficiary, per year and a $50 fee for fraud prevention and detection with each petition. Thus, the total fees associated with filing Form I-129CW is $710 per beneficiary.[77] As previously discussed, the estimated average annual population of employers filing on behalf of nonimmigrant workers seeking EOS/COS using Form I-129CW is 6,307. Therefore, DHS estimates that the annual cost associated with filing Form I-129 is approximately $4,477,970.[78]

DHS estimates the time burden for completing Form I-129CW is 3 hours (3.0 hours), including the time for reviewing instructions, gathering the required documentation and information, completing the petition, preparing statements, attaching necessary documentation,

[75] Calculation: (Form I-129 estimated cost of postage) * (Estimated annual population filing Form I-129) = $3.75 * 336,335 = $1,261,256.25 = $1,261,256 (rounded) annual cost in postage for filing Form I-129.
[76] Calculation: $154,714,100 (Filing fees for Form I-129) + $28,702,829 (Opportunity cost of time for Form I-129) + $1,261,256 (Postage costs for Form I-129) = $184,678,185 total current estimated annual cost for filing Form I-129.
[77] This economic analysis assumes that each Form I-129CW filed will also be required to include the additional $200 supplemental CNMI education fee and the $50 fraud prevention and detection fee.
[78] Calculation: (Form I-129CW filing fee) * (Estimated annual population filing Form I-129CW) = $710 * 6,307 = $4,477,970 annual estimated cost for filing Form I-129 seeking an extension of stay or change of status.

and submitting the request.[79] Using the average total rate of compensation of $36.47 per hour, DHS estimates the opportunity cost of time for completing and submitting Form I-129CW is $109.41 per petitioner.[80] Therefore, using the total population estimate of 6,307 annual filings for Form I-129CW, DHS estimates the total opportunity cost of time associated with completing and submitting Form I-129CW is approximately $690,049 annually.[81]

In sum, DHS estimates the total current annual cost for filing Form I-129CW is $5,168,019. The total current annual costs include Form I-129CW filing fees and opportunity cost of time for completing Form I-129.[82]

c. Form I-539, Application to Extend/Change Nonimmigrant Status, and Form I-539A, Supplemental Information for Application to Extend/Change Nonimmigrant Status

The current filing fee for Form I-539 is $370 per application.[83] The fee is set at a level to recover the processing costs to DHS. As previously discussed, the estimated average annual

[79] Source for petition for nonimmigrant workers time burden estimate: Paperwork Reduction Act (PRA) Petition for CNMI-Only Nonimmigrant Transition Worker (Form I-129CW) (OMB control number 1615-0111). The PRA Supporting Statement can be found at Question 12 on Reginfo.gov at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201803-1615-006.
[80] Calculation for estimated opportunity cost of time for completing Form I-129: ($36.47 per hour * 3.0 hours) = $109.41 per petitioner.
[81] Calculation: (Form I-129CW estimated opportunity cost of time) * (Estimated annual population filing Form I-129CW) = $109.41 * 6,307 = $690,048.87 = $690,049 (rounded) annual estimated opportunity cost of time for filing Form I-129CW.
[82] Calculation: $4,477,970 (Filing fees for Form I-129CW) + $690,049 (Opportunity cost of time for Form I-129CW) = $5,168,019 total current estimated annual cost for filing Form I-129CW.
[83] Source for petition for nonimmigrant workers time burden estimate: Paperwork Reduction Act (PRA) Application to Extend/Change Nonimmigrant Status (Form I-539) (OMB control number 1615-0003). The PRA Supporting Statement can be found at Question 13 on Reginfo.gov at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201610-1615-006. DHS notes that certain A and G nonimmigrants are not required to pay a filing fee for Form I-539. In addition, a biometrics services fee of $85 is required for V nonimmigrants and for certain applicants in the CNMI applying for an initial grant of nonimmigrant status.

population seeking EOS/COS using Form I-539 is 172,076. Therefore, DHS estimates that the annual cost associated with filing Form I-539 is approximately $63,668,120.[84]

DHS estimates the time burden for completing Form I-539 is 2 hours, including the time necessary to read all instructions for the form, gather all documents required to complete the collection of information, obtain translated documents if necessary, obtain the services of a preparer if necessary, and complete the form.[85] Using the average total rate of compensation of $36.47 per hour, DHS estimates the opportunity cost of time for completing and submitting Form I-539 is $72.94 per applicant.[86] Therefore, using the total population estimate of 172,076 annual filings for Form I-539, DHS estimates the total opportunity cost of time associate with completing and submitting Form I-539 is approximately $12,551,223 annually.[87]

USCIS requires applicants who file Form I-539 to submit biometric information (fingerprints and signature) by attending a biometrics services appointment at a designated USCIS Application Support Center (ASC). The biometrics services processing fee is $85.00 per applicant. Therefore, DHS estimates that the annual cost associated with biometrics services processing for the estimated average annual population of 172,076 individuals applying for EOS/COS using Form I-539 is approximately $14,626,460.[88]

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[84] Calculation: (Form I-539 filing fee) * (Estimated annual population filing Form I-539) = $370 * 172,076 = $63,668,120 annual cost for filing Form I-539.

[85] Source for petition for nonimmigrant workers time burden estimate: Paperwork Reduction Act (PRA) Application to Extend/Change Nonimmigrant Status (Form I-539) (OMB control number 1615-0003). The PRA Supporting Statement can be found at Question 12 on Reginfo.gov at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201903-1615-002.

[86] Calculation for the opportunity cost of time for completing Form I-539: ($36.47 per hour * 2.0 hours) = $72.94 per applicant.

[87] Calculation: (Form I-539 estimated opportunity cost of time) * (Estimated annual population filing Form I-539) = $72.94 * 172,076 = $12,551,223.44 = $12,551,223 (rounded) annual estimated opportunity cost of time for filing Form I-539.

[88] Calculation: Biometrics services processing fee ($85) * Estimated annual population filing Form I-539 (172,076) = $14,626,460 annual cost for associated with Form I-485 biometrics services processing.

In addition to the biometrics services fee, the applicant will incur the costs to comply with the biometrics submission requirement as well as the opportunity cost of time for traveling to an ASC, the mileage cost of traveling to an ASC, and the opportunity cost of time for submitting his or her biometrics. While travel times and distances vary, DHS estimates that an applicant's average roundtrip distance to an ASC is 50 miles and takes 2.5 hours on average to complete the trip.[89] Furthermore, DHS estimates that an applicant waits an average of 1.17 hours for service and to have his or her biometrics collected at an ASC, adding up to a total biometrics-related time burden of 3.67 hours.[90] Using the total rate of compensation for all occupations of $36.47 per hour, DHS estimates the opportunity cost of time for completing the biometrics collection requirements for Form I-539 is $133.85 per applicant.[91] Therefore, using the total population estimate of 172,076 annual filings for Form I-539, DHS estimates the total opportunity cost of time associated with completing the biometrics collection requirements for Form I-539 is approximately $23,032,373 annually.[92]

In addition to the opportunity cost of providing biometrics, applicants will incur travel costs related to biometrics collection. The cost of travel related to biometrics collection is about $29.00 per trip, based on the 50-mile roundtrip distance to an ASC and the General Services

[89] *See* "Employment Authorization for Certain H-4 Dependent Spouses; Final rule," 80 FR 10284 (25 Feb. 2015); and "Provisional and Unlawful Presence Waivers of Inadmissibility for Certain Immediate Relatives; Final Rule," 78 FR 536, 572 (3 Jan. 2013).
[90] Source for biometric time burden estimate: Paperwork Reduction Act (PRA) Supporting Statement for Form I-485 (OMB control number 1615-0023). The PRA Supporting Statement can be found at Question 12 on Reginfo.gov at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201706-1615-001.
[91] Calculation for opportunity cost of time to comply with biometrics submission for Form I-485: ($36.47 per hour * 3.67 hours) = $133.845 = $133.85 (rounded) per applicant.
[92] Calculation: Estimated opportunity cost of time to comply with biometrics submission for Form I-485 ($91.68) * Estimated annual population filing Form I-539 (172,076) = $23,032,372.60 = $23,032,373 (rounded) annual opportunity cost of time for filing Form I-539.

Administration's (GSA) travel rate of $0.58 per mile.[93] DHS assumes that each applicant travels independently to an ASC to submit his or her biometrics, meaning that this rule imposes a travel cost on each of these applicants. Therefore, DHS estimates that the total annual cost associated with travel related to biometrics collection for the estimated average annual population of 172,076 individuals applying for adjustment of status is approximately $4,990,204.[94]

In sum, DHS estimates the total current annual cost for filing Form I-539 is $111,611,935, including Form I-539 filing fees, biometrics services fees, opportunity cost of time for completing Form I-539 and submitting biometrics information, and travel cost associated with biometrics collection.[95]

In sum, DHS estimates the total current annual cost for filing Form I-539 is $118,868,380, including Form I-539 filing fees, biometrics services fees, opportunity cost of time for completing Form I-539 and submitting biometrics information, and travel cost associated with biometrics collection.[96]

For the recently published Form I-539A, there is currently no filing fee.[97] However, DHS estimates the time burden for completing Form I-539A is 30 minutes (0.5 hours), including

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[93] *See* U.S. General Services Administration website for Privately Owned Vehicle (POV) Mileage Reimbursement Rates, https://www.gsa.gov/travel/plan-book/transportation-airfare-rates-pov-rates/privately-owned-vehicle-pov-mileage-reimbursement-rates (accessed January 9, 2019).

[94] Calculation: (Biometrics collection travel costs) * (Estimated annual population filing Form I-539) = $29.00 * 172,076 = $4,990,204 annual travel costs related to biometrics collection for Form I-539.

[95] Calculation: $63,668,120 (Annual filing fees for Form I-539) + $12,551,223 (Opportunity cost of time for filing Form I-539) + $14,626,460 (Biometrics services fees) + $23,032,373 (Opportunity cost of time for biometrics collection requirements) + $4,990,204 (Travel costs for biometrics collection) = $118,868,380 total current annual cost for filing Form I-539.

[96] Calculation: $435,780,960 (Annual filing fees for Form I-485) + $25,302,054 (Opportunity cost of time for filing Form I-485) + $32,492,440 (Biometrics services fees) + $14,858,602 (Opportunity cost of time for biometrics collection requirements) + $11,085,656 (Travel costs for biometrics collection) = $519,519,712 total current annual cost for filing Form I-485.

[97] *See* USCIS. *Instructions for Form I-539A, Supplemental Information for Application to Extend/Change Nonimmigrant Status.* OMB No. 1615-0003. Expires 08/31/2020. Available at: https://www.uscis.gov/i-539 (accessed May 3, 2019); and USCIS. *Instructions for Form I-539.* OMB No. 1615-0003. Expires 08/31/2020. Available at: https://www.uscis.gov/i-539 (accessed May 3, 2019).

the time for reviewing instructions, gathering the required documentation and information, completing the application, preparing statements, attaching necessary documentation, and submitting the application.[98] Using the total rate of compensation for all occupations of $36.47 per hour,[99] DHS estimates the opportunity cost of time for completing and submitting Form I-539A is $18.24 per applicant.[100] Therefore, using the total population estimate of 78,590 annual filings for Form I-539A, DHS estimates the total opportunity cost of time associate with completing and submitting Form I-539A is approximately $1,433,481 annually.[101]

USCIS requires applicants who file Form I-539A to submit biometric information (fingerprints and signature) by attending a biometrics services appointment at a designated USCIS Application Support Center (ASC). The biometrics services processing fee is $85.00 per applicant. Therefore, DHS estimates that the annual cost associated with biometrics services processing for the estimated average annual population of 78,590 individuals filing Form I-539A is approximately $6,680,150.[102]

In addition to the biometrics services fee, the applicant will incur the costs to comply with the biometrics submission requirement as well as the opportunity cost of time for traveling to an ASC, the mileage cost of traveling to an ASC, and the opportunity cost of time for submitting his or her biometrics. While travel times and distances vary, DHS estimates that an applicant's average roundtrip distance to an ASC is 50 miles and takes 2.5 hours on average to

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[98] *See* Ibid.
[99] DHS assumes that the Form I-539 principle applicant would complete Form I-539A for the spouses and children.
[100] Calculation for the opportunity cost of time for completing Form I-539: ($36.47 per hour * 0.5 hours) = $18.235 = $18.24 per applicant.
[101] Calculation: (Form I-539 estimated opportunity cost of time) * (Estimated annual population filing Form I-539) = $18.24 * 78,590 = $1,433,481.60 = $1,433,481 (rounded) annual estimated opportunity cost of time for filing Form I-539.
[102] Calculation: Biometrics services processing fee ($85) * Estimated annual population filing Form I-539 (78,590) = $6,680,150 annual cost for associated with Form I-485 biometrics services processing.

complete the trip.[103] Furthermore, DHS estimates that an applicant waits an average of 1.17 hours for service and to have his or her biometrics collected at an ASC, adding up to a total biometrics-related time burden of 3.67 hours.[104] Using the total rate of compensation for all occupations of $36.47 per hour, DHS estimates the opportunity cost of time for completing the biometrics collection requirements for Form I-539A is $133.85 per applicant.[105] Therefore, using the total population estimate of 78,590 annual filings for Form I-539A, DHS estimates the total opportunity cost of time associated with completing the biometrics collection requirements for Form I-539A is approximately $10,519,272 annually.[106]

In addition to the opportunity cost of providing biometrics, applicants will incur travel costs related to biometrics collection. The cost of travel related to biometrics collection is about $29.00 per trip, based on the 50-mile roundtrip distance to an ASC and the General Services Administration's (GSA) travel rate of $0.58 per mile.[107] DHS assumes that each applicant travels independently to an ASC to submit his or her biometrics, meaning that this rule imposes a travel cost on each of these applicants. Therefore, DHS estimates that the total annual cost associated with travel related to biometrics collection for the estimated average annual

[103] *See* "Employment Authorization for Certain H-4 Dependent Spouses; Final rule," 80 FR 10284 (25 Feb. 2015); and "Provisional and Unlawful Presence Waivers of Inadmissibility for Certain Immediate Relatives; Final Rule," 78 FR 536, 572 (3 Jan. 2013).
[104] Source for biometric time burden estimate: Paperwork Reduction Act (PRA) Supporting Statement for Form I-485 (OMB control number 1615-0023). The PRA Supporting Statement can be found at Question 12 on Reginfo.gov at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201706-1615-001.
[105] Calculation for opportunity cost of time to comply with biometrics submission for Form I-539A: ($36.47 per hour * 3.67 hours) = $133.845 = $133.85 (rounded) per applicant.
[106] Calculation: Estimated opportunity cost of time to comply with biometrics submission for Form I-539A ($133.85) * Estimated annual population filing Form I-539A (78,590) = $10,519,271.50 = $10,519,272 (rounded) annual opportunity cost of time for filing Form I-539A.
[107] *See* U.S. General Services Administration website for Privately Owned Vehicle (POV) Mileage Reimbursement Rates, https://www.gsa.gov/travel/plan-book/transportation-airfare-rates-pov-rates/privately-owned-vehicle-pov-mileage-reimbursement-rates (accessed January 9, 2019).

population of 78,590 individuals applying for adjustment of status is approximately $2,279,110.[108]

In sum, DHS estimates the total current annual cost for filing Form I-539A is $20,912,013, including biometrics services fees, opportunity cost of time for completing Form I-539A and submitting biometrics information, and travel cost associated with biometrics collection.[109]

b. Direct Costs of Final Regulatory Changes

The primary source of quantified new costs for the final rule will be from the creation of Form I-944. This form will be used to collect information based on factors such as age; family status; assets, resources and financial status; and education and skills, so that USCIS can determine whether an applicant is inadmissible to the United States based on the public charge ground. The final rule requires individuals who are applying for adjustment of status to complete and submit the form to establish that they are not likely to become a public charge.

The final rule will also add costs from an additional 10-minute increase in the time burden estimate to complete Form I-485.

Additionally, based on the additional condition for extension or stay and change of status applications, the rule will addition additional costs to the related forms. The final rule will add costs from an additional time burden increase of 30 minutes for completing and filing Form I-129 and Form I-129CW. The final rule also will add new costs from an additional time burden of 23 minutes for completing and filing Form I-539.

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[108] Calculation: (Biometrics collection travel costs) * (Estimated annual population filing Form I-539) = $29.00 * 78,590 = $2,279,110 annual travel costs related to biometrics collection for Form I-539.

[109] Calculation: $435,780,960 (Annual filing fees for Form I-485) + $25,302,054 (Opportunity cost of time for filing Form I-485) + $32,492,440 (Biometrics services fees) + $14,858,602 (Opportunity cost of time for biometrics collection requirements) + $11,085,656 (Travel costs for biometrics collection) = $519,519,712 total current annual cost for filing Form I-485.

The final rule also imposes new costs by establishing a public charge bond process. At the agency's discretion, certain aliens who are found likely to become a public charge may be provided the opportunity to post a public charge bond. As part of the public charge bond process, an individual will have an obligor submit a public charge bond using a new Form I-945, Public Charge Bond, on the alien's behalf, and the alien or an acceptable surety (individual or a company) would use Form I-356, Request for Cancellation of Public Charge Bond, as part of a request to cancel a public charge bond. DHS notes that if the alien permanently departed the United States, as defined in final 8 CFR 213.1, and the loss of LPR status was voluntarily, submission of Form I-407 also will be required. If the request for cancellation is denied, DHS will notify the obligor and inform the obligor of the possibility to appeal the determination to the USCIS Administrative Appeals Office (AAO) using Form I-290B, Notice of Appeal or Motion.[110] In addition, upon learning of a breach of public charge bond, DHS will notify the obligor that the bond has been declared breached and inform the obligor of the possibility to appeal the determination to the AAO using Form I-290B. [111]

The following costs are new costs that will be imposed on the population applying to adjust status using Form I-485 or on the population that is seeking extension of stay or change of status using Forms I-129, I-129CW, I-539, or I-539A. Table 13 shows the estimated annual costs that the final rule imposes on individuals seeking to adjust status using Form I-485 who also are required to file Form I-944. The table also presents the estimated new costs the final rule imposes that are associated with a 10-minute increase in the time burden estimate for completing Form I-485, from additional time burden increases of 30 minutes each for completing

[110] *See* final 8 CFR 213.1(g).
[111] *See* final 8 CFR 213.1(h).

and filing Form I-129, Form I-129CW, and Form I-539. Finally, the table includes the estimated new costs associated with the public charge bond process.

Table 13. Total New Quantified Direct Costs of the Final Rule.

Form	Estimated Annual Population	Total Annual Cost
Form I-944, Declaration of Self-Sufficiency	**382,264**	**$25,844,869**
Opportunity Cost of Time (OCT)		$18,218,702
Credit Report/Credit Score Costs		$7,626,167
Form I-485, Application to Register Permanent Residence or Adjust Status	**382,264**	**$688,075**
OCT – Additional to Baseline (Current) Costs		$688,075
Form I-129, Petition for a Nonimmigrant Worker – To Request Extension of Stay/Change of Status	**336,335**	**$6,134,750**
OCT – Additional to Baseline (Current) Costs		$6,134,750
Form I-129CW, Petition for a CNMI-Only Nonimmigrant Transitional Worker – To Request Extension of Stay/Change of Status	**6,307**	**$115,040**
OCT – Additional to Baseline (Current) Costs		$115,040
Form I-539, Application to Extend/Change Nonimmigrant Status	**172,076**	**$2,384,974**
OCT – Additional to Baseline (Current) Costs		$2,384,974
Form I-945, Public Charge Bond	**960**	**$34,166**
Filing Fee		$24,000
OCT		$10,166
Form I-356, Request for Cancellation of Public Charge Bond	**25**	**$823.50**
Filing Fee		$625
OCT		$198.50
Total New Quantified Costs of the Final Rule		**$35,202,698**

Source: USCIS analysis.

i. Form I-944, Declaration of Self-Sufficiency and Form I-485, Application to Register Permanent Residence or Adjust Status

In this final rule, DHS is creating a new form for collecting information from those requesting immigration benefits from USCIS, to demonstrate that the alien is not likely to become a public charge under section 212(a)(4) of the Act. Form I-944 will collect information based on factors such as age; family status; assets, resources, and financial status; and education and skills, so that USCIS can determine whether or not an applicant or beneficiary is eligible for certain immigration benefits. For the analysis of this final rule, DHS assumes that all individuals who apply for adjustment of status using Form I-485 are required to submit Form I-944, unless the individual is in a class of applicants that is exempt from review for determination of inadmissibility based on the public charge ground at the time of adjustment of status according to statute or regulation.

There is currently no filing fee associated with Form I-944. However, DHS estimates the time burden associated with filing Form I-944 is 4 hours and 30 minutes (4.5 hours) per applicant, including the time for reviewing instructions, gathering the required documentation and information, completing the declaration, preparing statements, attaching necessary documentation, and submitting the declaration. Therefore, using the total rate of compensation of minimum wage of $10.59 per hour, DHS estimates the opportunity cost of time for completing and submitting Form I-944 would be $47.66 per applicant.[112] Using the total population estimate of 382,264 annual filings for Form I-485, DHS estimates the total

[112] Calculation for declaration of self-sufficiency opportunity cost of time: ($10.59 per hour * 4.5 hours) = $47.655 = $47.66 (rounded) per applicant.

opportunity cost of time associated with completing and submitting Form I-944 is approximately $18,218,702 annually.[113]

In addition to the opportunity cost of time associated with completing and filing Form I-944, applicants must bear the cost of obtaining a credit report and credit score from any one of the three major credit bureaus in the United States to be submitted with the application.[114] Consumers may obtain a free credit report once a year from each of the three major consumer reporting agencies (i.e., credit bureaus) under the Fair Credit Reporting Act (FCRA).[115] However, consumers are not necessarily entitled to a free credit score, for which consumer reporting agencies may charge a fair and reasonable fee.[116] DHS does not assume that all applicants are able to obtain a free credit report under FCRA specifically for fulfilling the requirements of filing Form I-944 and acknowledges that obtaining a credit score would be an additional cost. Therefore, DHS assumes that each applicant would bear the cost of obtaining a credit report and credit score from at least one of the three major credit bureaus. DHS estimates the cost of obtaining a credit report and credit score is $19.95 per applicant, as this is the amount that two of the three major credit bureaus charge.[117] DHS notes that all applicants who apply for

[113] Calculation: (Estimated opportunity cost of time for Form I-944) * (Estimated annual population filing Form I-485) = $47.66 * 382,264 = $18,218,702.24= $18,218,702 (rounded) annual opportunity cost of time for filing Form I-944.

[114] The three major credit bureaus are Equifax, Experian, and TransUnion. Each of these bureaus is a publicly-traded, for-profit company that is not owned by the Federal Government. DHS notes that there may be differences in the information contained in the credit reports from each of the three major credit bureaus since one credit bureau may have unique information on a consumer that is not captured by the other credit bureaus.

[115] *See* FCRA, *Section 612, Charges for Certain Disclosures*. 15 U.S.C. 1681j. *Available at* https://www.consumer ftc.gov/articles/pdf-0111-fair-credit-reporting-act.pdf (accessed Jan. 26, 2018).

[116] *See* FCRA, *Section 609(f), Disclosures to Consumers, Disclosure of Credit Scores*. 15 U.S.C. 1681g. *Available at* https://www.consumer.ftc.gov/articles/pdf-0111-fair-credit-reporting-act.pdf (accessed Jan. 26, 2018).

[117] Each of the three major credit charge the following prices for a credit report, including a credit score:
Experian - $19.95, *available at* https://www.experian.com/consumer-products/compare-credit-report-and-score-products.html (accessed Jan. 26, 2018);
Equifax - $19.95, *available at* https://www.equifax.com/personal/products/credit/report-and-score (accessed Jan. 26, 2018); and
TransUnion - $11.50, *available at* https://disclosure.transunion.com/dc/disclosure/disclosure.jsp (accessed Jan. 26, 2018).

adjustment of status using Form I-485, unless applying in a category exempt from the public charge inadmissibility ground, will also be required submit Form I-944 and comply with its requirements. Therefore, based on the estimated average annual population of 382,264, DHS estimates that the total annual cost associated with obtaining a credit report and credit score as part of the requirements for filing Form I-944 would be $7,626,167.[118]

In sum, DHS estimates that the total cost to complete and file Form I-944 is approximately $25,844,869. The total estimated annual costs include the opportunity cost of time to complete the form and the cost to obtain a credit report and credit score as required for the total population estimate of 382,264 annual filings for Form I-485.[119]

The final rule includes additional instructions for filing Form I-485 and, as a result, applicants will spend additional time reading the instructions, thereby increasing the estimated time to complete the form. The current estimated time to complete Form I-485 is 6 hours and 15 minutes (6.25 hours). For the final rule, DHS estimates that the time burden for completing Form I-485 will increase by 10 minutes. Therefore, in the final rule, the time burden to complete Form I-485 is estimated at 6 hours and 25 minutes (6.42 hours).

The time burden includes the time for reviewing instructions, gathering the required documentation and information, completing the application, preparing statements, attaching necessary documentation, and submitting the application.[120] Using the total rate of compensation for minimum wage of $10.59 per hour, DHS currently estimates the opportunity

[118] Calculation: (Estimated cost for credit score and credit report) * (Estimated annual population filing Form I-485) = $19.95 * 382,264 = $7,626,166.80 = $7,626,167 (rounded) annual estimated costs for obtaining a credit report and credit score as part of the requirements for filing Form I-944.
[119] Calculation: $18,218,702 (Opportunity cost of time to complete Form I-944) + $7,626,167 (Cost of credit report and credit score) = $25,844,869 total estimated cost to complete Form I-944.
[120] Source: Paperwork Reduction Act (PRA) Supporting Statement for Form I-485 (OMB control number 1615-0023). The PRA Supporting Statement can be found at Question 12 on Reginfo.gov at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201706-1615-001.

cost of time for completing and filing Form I-485 is $66.19 per applicant.[121] Therefore, using the total population estimate of 382,264 annual filings for Form I-485 in categories subject to the public charge inadmissibility ground, DHS estimates the current total opportunity cost of time associated with completing Form I-485 is approximately $25,302,054 annually.[122]

For the final rule, DHS estimates that the time burden for completing Form I-485 is 6.42 hours per response. Using the total rate of compensation for minimum wage of $10.59 per hour, DHS estimates the opportunity cost of time for completing and filing Form I-485 is $67.99 per applicant.[123] Therefore, using the total population estimate of 382,264 annual filings for Form I-485 in categories subject to the public charge inadmissibility ground, DHS estimates the total opportunity cost of time associated with completing Form I-485 is approximately $25,990,129 annually.[124]

The new costs imposed by this final rule is the difference between the current estimated opportunity cost of time to complete Form I-485 and the final estimated opportunity cost of time due to the increased Form I-485 time burden estimate. As a result, DHS estimates that the final rule would impose additional new costs of approximately $688,075 to Form I-485 applicants.[125]

[121] Calculation for opportunity cost of time for filing Form I-485: ($10.59 per hour * 6.25 hours) = $66.188 = $66.19 (rounded) per applicant.
[122] Calculation: Form I-485 estimated opportunity cost of time * Estimated annual population filing Form I-485 = $66.19 * 382,264 = $25,302,054.16 = $25,302,054 (rounded) annual opportunity cost of time for filing Form I-485.
[123] Calculation for opportunity cost of time for filing Form I-485: ($10.59 per hour * 6.42 hours) = $67.988 = $67.99 (rounded) per applicant.
[124] Calculation: Form I-485 estimated opportunity cost of time * Estimated annual population filing Form I-485 = $67.99 * 382,264 = $25,990,129.36 = $25,990,129 (rounded) annual opportunity cost of time for filing Form I-485.
[125] Calculation of estimated new costs for completing Form I-485: Final rule estimate of opportunity cost of time to complete Form I-485 ($25,990,129) – Current estimate of opportunity cost of time to complete Form I-485 ($25,302,054) = $688,075 estimated new costs of the final rule.

ii. Extension of Stay/Change of Status Using Form I-129, Petition for a Nonimmigrant Worker; Form I-129CW, Petition for a CNMI-Only Nonimmigrant Transitional Worker; or Form I-539, Application to Extend/Change Nonimmigrant Status, including Form I-539A, Supplemental Information for Application to Extend/Change Nonimmigrant Status

The final rule requires petitioners to read additional instructions and provide additional information on Form I-129, which increases the estimated time to complete the form. The current estimated time to complete Form I-129 is 2 hours and 20 minutes (2.34 hours). For the final rule, DHS estimates that the time burden for completing Form I-129 will increase by 30 minutes to account for the additional time petitioners will spend reading the form and providing additional information. Therefore, the time burden to complete Form I-129 to petitioners is estimated at 2 hours and 50 minutes (2.84 hours).

The time burden for Form I-129 includes the time for reviewing instructions, gathering the required documentation and information, completing the request, preparing statements, attaching necessary documentation, and submitting the request.[126] Using the average total rate of compensation of $36.47 per hour, DHS estimates the current opportunity cost of time for completing and submitting Form I-129 is $85.34 per petitioner.[127] Therefore, using the total population estimate of 336,335 annual filings for Form I-129, DHS estimates the total current

[126] Source for petition for nonimmigrant workers time burden estimate: Paperwork Reduction Act (PRA) Petition for Nonimmigrant Worker (Form I-129) (OMB control number 1615-0009). The PRA Supporting Statement can be found at Question 12 on Reginfo.gov at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201610-1615-001.

[127] Calculation for estimated opportunity cost of time for completing Form I-129: ($36.47 per hour * 2.34 hours) = $85.3398 = $85.34 (rounded) per applicant.

opportunity cost of time associated with completing and submitting Form I-129 is approximately $28,702,829 annually.[128]

For the final rule, DHS estimates that the opportunity cost of time for completing and filing Form I-129 would be $103.58 per petitioner based on the 30-minute increase in the time burden estimate.[129] Therefore, using the total population estimate of 336,335 annual filings for Form I-129, DHS estimates the total opportunity cost of time associated with completing and filing Form I-129 is approximately $34,837,579 annually.[130]

The new costs imposed by this final rule is the difference between the current estimated opportunity cost of time to complete Form I-129 and the final estimated opportunity cost of time to complete the form due to the increased time burden estimate. As a result, DHS estimates that the final rule will impose additional new costs of $6,134,750 to Form I-129 applicants.[131]

The final rule requires petitioners to read additional instructions and provide additional information on Form I-129CW, which will increase the estimated time to complete the form. The current estimated time to complete Form I-129CW is 3 hours (3.0 hours). For the final rule, DHS estimates that the time burden for completing Form I-129CW will increase by 30 minutes to account for the additional time petitioners will spend reading the form and providing additional information. Therefore, the time burden to complete Form I-129CW to petitioners is estimated at 3 hours and 30 minutes (3.5 hours).

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[128] Calculation: (Form I-129 estimated opportunity cost of time) * (Estimated annual population filing Form I-129) = $85.34 * 336,335 = $28,702,828.90 = $28,702,829 (rounded) annual estimated opportunity cost of time for filing Form I-129.

[129] Calculation of final rule opportunity cost of time for completing Form I-129: ($36.47 per hour * 2.84 hours) = $103.575 = $103.58 (rounded) per applicant.

[130] Calculation: (Form I-129 estimated opportunity cost of time for final rule) * (Estimated annual population filing Form I-129) = $103.58 * 336,335 = $34,837,579.30 = $34,837,579 (rounded) final rule annual estimated opportunity cost of time for filing Form I-129.

[131] Calculation of estimated new costs for completing Form I-129: Final rule estimate of opportunity cost of time to complete Form I-129 ($34,837,579) – Current estimate of opportunity cost of time to complete Form I-129 ($28,702,829) = $6,134,750 estimated new costs of the final rule.

The time burden for Form I-129CW includes the time for reviewing instructions, gathering the required documentation and information, completing the request, preparing statements, attaching necessary documentation, and submitting the request.[132] Using the average total rate of compensation of $36.47 per hour, DHS estimates the current opportunity cost of time for completing and submitting Form I-129CW is $109.41 per petitioner.[133] Therefore, using the total population estimate of 6,307 annual filings for Form I-129CW, DHS estimates the total current opportunity cost of time associated with completing and submitting Form I-129CW is approximately $690,049 annually.[134]

For the final rule, DHS estimates the opportunity cost of time for completing and filing Form I-129CW is $127.65 per petitioner based on the 30-minute increase in the time burden estimate.[135] Therefore, using the total population estimate of 6,307 annual filings for Form I-129CW, DHS estimates the total opportunity cost of time associated with completing and filing Form I-129CW is approximately $805,089 annually.[136]

The new costs imposed by this final rule is the difference between the current estimated opportunity cost of time to complete Form I-129CW and the estimated opportunity cost of time

[132] Source for petition for nonimmigrant workers time burden estimate: Paperwork Reduction Act (PRA) Petition for CNMI-Only Nonimmigrant Transition Worker (Form I-129CW) (OMB control number 1615-0111). The PRA Supporting Statement can be found at Question 12 on Reginfo.gov at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201803-1615-006.
[133] Calculation for estimated opportunity cost of time for completing Form I-129: ($36.47 per hour * 3.0 hours) = $109.41 per petitioner.
[134] Calculation: (Form I-129CW estimated opportunity cost of time) * (Estimated annual population filing Form I-129CW) = $109.41 * 6,307 = $690,048.87 = $690,049 (rounded) annual estimated opportunity cost of time for filing Form I-129CW.
[135] Calculation of final rule opportunity cost of time for completing Form I-129: ($36.47 per hour * 3.5 hours) = $127.645 = $127.65 (rounded) per applicant.
[136] Calculation: (Form I-129 estimated opportunity cost of time for final rule) * (Estimated annual population filing Form I-129) = $127.65 * 6,307 = $805,088.55 = $805,089 (rounded) final rule annual estimated opportunity cost of time for filing Form I-129.

to complete the form due to the increased time burden estimate. As a result, DHS estimates that the final rule will impose additional new costs of $115,040 to Form I-129CW applicants.[137]

The final rule also includes additional instructions and collection of information for filing Form I-539, which increases the estimated time to complete the form. Applicants, therefore, will spend additional time reading the form instructions and providing additional information about the request, use, or receipt of public benefits. The current estimated time to complete Form I-539 is 2 hours.[138] For the final rule, DHS estimates that the time burden for completing Form I-539 will increase by 23 minutes. Therefore, in the final rule, the time burden for completing Form I-539 is estimated at 2 hours and 23 minutes (2.38 hours).

The time burden for Form I-539 includes the time necessary to read all instructions for the form, gather all documents required to complete the collection of information, obtain translated documents if necessary, obtain the services of a preparer if necessary, and complete the form.[139] Using the average total rate of compensation of $36.47 per hour, DHS estimates the current opportunity cost of time for completing and submitting Form I-539 is $72.94 per applicant.[140] Therefore, using the total population estimate of 172,076 annual filings for Form I-539, DHS estimates the current total opportunity cost of time associate with completing and submitting Form I-539 is approximately $12,551,223 annually.[141]

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[137] Calculation of estimated new costs for completing Form I-129CW: Final rule estimate of opportunity cost of time to complete Form I-129CW ($805,089) – Current estimate of opportunity cost of time to complete Form I-129CW ($690,049) = $115,040 estimated new costs of the final rule.

[138] Source for petition for nonimmigrant workers time burden estimate: Paperwork Reduction Act (PRA) Application to Extend/Change Nonimmigrant Status (Form I-539) (OMB control number 1615-0003). The PRA Supporting Statement can be found at Question 12 on Reginfo.gov at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201903-1615-002.

[139] *See id*.

[140] Calculation for the opportunity cost of time for completing Form I-539: ($36.47 per hour * 2.0 hours) = $72.94 per applicant.

[141] Calculation: (Form I-539 estimated opportunity cost of time) * (Estimated annual population filing Form I-539) = $72.94 * 172,076 = $12,551,223.44 = $12,551,223 (rounded) annual estimated opportunity cost of time for filing Form I-539.

For the final rule, DHS estimates the opportunity cost of time for completing and filing Form I-539 is $86.80 per applicant based on the 23-minute increase in the time burden estimate.[142] Therefore, using the total population estimate of 172,076 annual filings for Form I-539, the estimated total opportunity cost of time associated with completing and filing Form I-539 is approximately $14,936,197.[143]

The new costs imposed by this final rule is the difference between the current estimated opportunity cost of time to complete Form I-539 and the final estimated opportunity cost of time to complete the form due to the increased time burden estimate. As a result, DHS estimates that the final rule imposes additional new costs of approximately $2,384,974 to Form I-539 applicants.[144]

iii. Public Charge Bond

DHS does not currently have a process or procedure in place to accept public charge bonds, though it has the authority to do so. DHS is amending its regulations and establishing a bond process for those seeking adjustment of status to that of a lawful permanent resident who have been deemed likely to become a public charge. A public charge bond may generally be secured by cash or cash equivalents such as cashier's checks or money orders in the full amount of the bond, or may be underwritten by a surety company certified by the Department of Treasury under 31 U.S.C. 9304-9308.[145] DHS approval of the public charge bond and DHS determination of whether the bond has been breached will be based on whether the alien has

[142] Calculation of final rule opportunity cost of time for completing Form I-539: ($36.47 per hour * 2.38 hours) = $86.799 = $86.80 (rounded) per applicant.
[143] Calculation: (Form I-539 estimated opportunity cost of time per applicant for final rule) * (Estimated annual population filing Form I-539) = $86.80 * 172,076 = $14,936,196.80 = $14,936,197 (rounded) final rule annual estimated opportunity cost of time for filing Form I-539.
[144] Calculation of estimated new costs for completing Form I-539: Final rule estimate of opportunity cost of time to complete Form I-539 ($14,936,197) – Current estimate of opportunity cost of time to complete Form I-539 ($12,551,223) = $2,384,974 estimated new costs of the final rule.
[145] *See generally* 8 CFR 103.6. However, USCIS plans to initially allow for only surety bonds only.

received public benefits as defined in the final rule or whether the alien has breached any other condition imposed as part of the public charge bond.

As discussed in the preamble, DHS has the broad authority to prescribe forms of bonds as is deemed necessary for carrying out the Secretary's authority under the provisions of the Act.[146] Additionally, an adjustment of status applicant whom DHS has determined to be inadmissible based on the public charge ground may be admitted, if otherwise admissible, at the discretion of the Secretary upon giving a suitable and proper bond.[147] The purpose of issuing a public charge bond is to better ensure that the alien will not become a public charge in the future. If an alien receives public benefits, as defined in final 8 CFR 212.21(b), after the alien's adjustment of status to that of a lawful permanent resident, DHS will declare the bond breached. A bond breach may also occur if the conditions that are otherwise imposed as part of the public charge bond are breached.[148]

DHS will issue public charge bonds at the Secretary's discretion when an alien seeking adjustment of status is found to be inadmissible based on the public charge ground. DHS may require an alien to submit a surety bond to secure a public charge bond.[149] DHS will notify the alien if he or she is permitted to post a public charge bond and of the type of bond that may be submitted. Moreover, the amount of a public charge bond DHS will accept cannot be less than $8,100, annually adjusted for inflation and rounded up to the nearest dollar, but the amount of the bond required would otherwise be determined at the discretion of the adjudication officer. After reviewing an alien's circumstances and finding of inadmissibility based on the public

[146] *See* INA section 103(a)(3), 8 U.S.C. 1103(a)(3).
[147] *See* INA section 213, 8 U.S.C. 1183.
[148] *See* 8 CFR 213.1(h).
[149] USCIS plans to initially allow surety bonds.

charge ground, an adjudication officer will notify the alien through the issuance of a RFE or a Notice of Intent to Deny (NOID) that the alien may submit a surety bond to USCIS.

An individual or entity may submit a public charge bond on behalf of the alien by using the new Public Charge Bond form (Form I-945), and related forms. DHS will use Form I-356, Request for Cancellation of Public Charge Bond, as part of a request to cancel a public charge bond.

The final rule would require that an alien must complete and submit Form I-407 Record of Abandonment of Lawful Permanent Resident Status when the alien or obligor/co-obligor seeks to cancel the public charge bond on account of the alien's permanent departure from the United States. Form I-407 records an alien's abandonment of status as a LPR. When filing Form I-407, an alien abandoning their LPR status is informed of the right to a hearing before an immigration judge who would decide whether the alien lost his or her lawful permanent resident status due to abandonment and that the alien has knowingly, willingly, and affirmatively waived that right. Lawful permanent resident aliens who want to abandon LPR status may only use Form I-407 to do so when they are outside the United States or at a Port of Entry.

A public charge bond is considered breached if the alien receives any public benefits, as defined in final 8 CFR 212.21, after DHS accepts a public charge bond submitted on that alien's behalf. The bond also is breached if the alien does not comply with the conditions that are otherwise imposed with the public charge bond.[150] Upon learning of a breach of public charge bond, DHS will notify the obligor that the bond has been declared breached and inform the

[150] See final 8 CFR 213.1(h)

obligor of the possibility to appeal the determination to the AAO.[151] Form I-290B, Notice of Appeal or Motion, is used to file an appeal or motion to reopen or reconsider certain decisions.

Moreover, a public charge bond must be canceled when an alien with a bond dies, departs the United States permanently, or is naturalized or otherwise obtains U.S. citizenship, provided the individual has not received public benefits, as defined in final 8 CFR 212.21, prior to death, departure, or naturalization (or otherwise obtaining U.S. citizenship), and a request for cancellation has been filed.[152] DHS must also cancel the bond following the fifth anniversary of the admission of the lawful permanent resident provided that he or she files a request for cancellation of the public charge bond and provided that the alien has not received any public benefits, as defined in final 8 CFR 212.21, after the alien's adjustment of status to that of a lawful permanent resident. Additionally, the public charge bond must be cancelled if the alien obtains an immigration status that is exempt from public charge inadmissibility after the initial grant of lawful permanent resident status, provided that a request for cancellation of the public charge bond has been filed and provided that the alien did not breach the bond conditions.[153] To have the public charge bond cancelled, an obligor (individual or entity) would request the cancellation of the public charge and as part of the request, submit Form I-356. If DHS determines that the bond cannot be cancelled, the bond remains in place; the obligor may appeal the denial to the AAO by filing Form I-290B Notice of Appeal or Motion.[154] Additionally, a public charge bond may be cancelled by DHS after a suitable substitute has been submitted for an unlimited bond or a bond of limited duration that bears an expiration date. For this type of

[151] See final 8 CFR 213.1(h).
[152] *See* INA section 213, 8 U.S.C. 1183; *see* 8 CFR 103.6(c).
[153] *See* final 8 CFR 213.1(d) [Conditions of the bond] and final 8 CFR 213.1(h) [Breach].
[154] *See* final 8 CFR 213.1(g).

cancellation, no request to cancel the bond must be filed to allow substitution of another bond, as outlined in final 8 CFR 213.[155]

Finally, an alien may be required to forfeit the full amount of public charge bond in the event of breach. The amount is based on a review of the amount originally provided by 8 CFR 213.1 in 1964,[156] adjusted for inflation, to represent present dollar values.[157] Further, the face value of the bond constitutes liquidated damages for a breach of the conditions of that bond. As explained in the preamble of the NPRM,[158] liquidated damages are an appropriate remedy in situations such as the public charge bond, where the total damages to the government are difficult, if not impossible to calculate. Additionally, these damages go beyond the simple amount of the benefits received, encompassing not only the monetary value of the benefits received but also the overhead of the benefit agency in administering the benefit.

The public charge bond is offered to allow aliens who are otherwise inadmissible due to a likelihood of becoming a public charge an opportunity to overcome that finding of inadmissibility. The conditions that constitute breach of a bond are delineated fully in 8 CFR 213.1(h)(1) and (2), and any alien offered a bond has ample opportunity to review them before agreeing to these terms. Additionally, as explained in the preamble of the NPRM,[159] under the current breach of bond provisions of 8 CFR 103.6 an immigration bond is considered breached if there has been a substantial violation of the stipulated condition. The term "substantial

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[155] *See* final 8 CFR 213.1(f) [Substitution]. Because USCIS does not examine whether the bond could be breached, the substitution does not have to be accompanied with a filing of Form I-356.
[156] Miscellaneous Amendments to Chapter, 29 FR 10579 (July 30, 1964).
[157] DHS uses the semi-annual average for the first half of 2018 and the annual average from 1964 from the historical CPI-U for U.S. City Average, All Items. *See* https://www.bls.gov/cpi/tables/supplemental-files/historical-cpi-u-201806.pdf.
Calculation: Annual average for 1st half of 2018 (250.089) / annual average for 1964 (31) = 8.1; CPI-U adjusted present dollar amount = $1,000 * 8.1 = $8,100.
[158] *See* Inadmissibility on Public Charge Grounds, 83 FR 51114, 51226 (proposed Oct. 10, 2018).
[159] *See* Inadmissibility on Public Charge Grounds, 83 FR 51114, 51125 (proposed Oct. 10, 2018).

violation" is generally interpreted according to contractual principles.[160] However, in the preamble of the NPRM, DHS proposed to incorporate the substantial violation standard via incorporating principles that govern the public charge and public charge benefits definitions.[161] Whether the public charge bond is punitive is a matter for Congress; per the Act, the public charge bond's purpose is to hold the United States, and all states, territories, counties, towns and municipalities and districts harmless against bonded aliens becoming public charges.[162]

When posting a surety bond, an individual generally pays between 1 to 15 percent of the bond amount for a surety company to post a bond.[163] The percentage that an individual must pay may be dependent on the individual's credit score where those with higher credit scores would be required to pay a lower percentage of the bond to be posted. DHS notes that an individual may be allowed to submit cash or cash equivalent, such as a cashier's check or money order as another possible option for securing a public charge bond.

With the creation of Form I-945, DHS will charge a filing fee of $25.00 to submit a public charge surety bond, which would cover administrative costs of processing the form. DHS estimates the time burden associated with filing Form I-945 is 60 minutes (1.0 hour) per obligor, including the time for reviewing instructions, gathering the required documentation and information, completing the form, preparing statements, attaching necessary documentation, and submitting the form. Therefore, using the total rate of compensation of minimum wage of

[160] *See, e.g., Aguilar v. United States*, 124 Fed. CL 9, 16 (2015) (discussing substantial violation under 8 CFR 103.6(a) in relation to a delivery immigration bond.)
[161] *See* 8 CFR 212.21(a) and (b).
[162] *See* INA section 213, 8 U.S.C. 1183.
[163] For example, see https://suretybondauthority.com/frequently-asked-questions/ and https://suretybondauthority.com/learn-more/. DHS notes that the company cited is for informational purposes only.

$10.59 per hour, DHS estimates the opportunity cost of time for completing and submitting Form I-945 is $10.59 per applicant.[164]

In addition to the opportunity cost of time associated with completing Form I-945, aliens who may be permitted to have a public charge bond posted on their behalf, must secure a surety bond through a surety bond company that is certified by the Department of Treasury, Bureau of Fiscal Service. DHS notes that the public charge bond amount required will be determined at the discretion of an adjudication officer, so long as it is over the minimum amount. However, DHS estimates the cost per obligor will be about $35.59 per obligor at minimum, including $25.00 to file Form I-945 and $10.59 per obligor for the opportunity cost of time to complete the form. In addition, each alien posting a public charge bond through a surety company will be required to pay any fees required by the surety company to secure a public charge bond. While the public charge bond process will be new and historical data are not available, DHS estimates that approximately 960 aliens will be eligible to file for a public charge bond annually. Therefore, in sum, DHS estimates the total cost to file Form I-945 will be at minimum about $34,166 annually.[165]

As noted previously, an obligor (individual or a company) or the alien would file Form I-356 as part of a request to cancel a public charge bond. With the creation of Form I-356, DHS will charge a filing fee of $25.00 to request cancellation of a public charge bond, which will cover administrative costs of processing the form. DHS estimates the time burden associated with filing Form I-356 is 45 minutes (0.75 hours) per obligor or alien requesting cancellation of a public charge bond, including the time for reviewing instructions, searching existing data

[164] Calculation for public charge surety bond opportunity cost of time: ($10.59 per hour * 1.0 hour) = $10.59 per applicant.
[165] Calculation: $35.59 (cost per obligor to file Form I-945) * 960 (estimated annual population who would file Form I-945) = $34,166.40 = $34,166 (rounded) annual total cost to file Form I-945.

sources, gathering and maintaining data needed, and completing and reviewing the required information. Using the total rate of compensation of minimum wage of $10.59 per hour, DHS estimates the opportunity cost of time for completing and submitting Form I-356 is $7.94 per filer.[166] Therefore, DHS estimates the cost per filer will be about $32.94, including $25.00 to file Form I-356 and $7.94 per obligor or alien for the opportunity cost of time for completing the form. While the public charge bond process will be new and historical data are not available, DHS estimates that approximately 25 aliens will request to cancel a public charge bond annually. Therefore, in sum, DHS estimates the total cost to file Form I-356 is approximately $823.50 annually.[167]

Obligors may choose to file Form I-290B themselves, or have a legal representative file the form on their behalf. For this analysis, DHS includes this time to the opportunity costs of time for filing a Form I-290B. DHS calculates the opportunity cost of the time for filing Form I-290B based on who may prepare the form: an obligor, an in-house lawyer, or an outsourced lawyer.[168]

The filing fee for Form I-290B is $675 per obligor wishing to file an appeal to challenge the denial of a request to cancel the public charge bond or the breach determination. The fee is set at a level to recover the processing costs to DHS. However, the fee for Form I-290B may be

[166] Calculation for opportunity cost of time for completing Form I-356: ($10.59 per hour * 0.75 hours) = $7.942 = $7.94 (rounded) per applicant.
[167] Calculation: $32.94 (cost per obligor to file Form I-356) * 25 (estimated annual population who would file Form I-356) = $823.50 annual total cost to file Form I-356.
[168] In addition to beneficiaries, DHS limited this analysis to in-house lawyers and outsourced lawyers to present potential costs. However, we understand that not all entities have these departments or occupations and therefore, recognize equivalent occupations may also prepare these petitions. DHS uses the terms "in-house lawyer" and "outsourced lawyer" to differentiate between the types of lawyers that may file Form I-290B on behalf of an employer and assumes that a lawyer hired by a beneficiary would be compensated at the "outsourced lawyer" hourly rate.

waived using Form I-912 if the party appealing the adverse decision can provide evidence of an inability to pay.[169]

In addition, DHS estimates the time burden associated with filing Form I-290B is 1 hour and 30 minutes (1.5 hours) per obligor, including the time for reviewing instructions, gathering the required documentation and information, completing the form, preparing statements, attaching necessary documentation, and submitting the form.[170] Using the total rate of compensation of minimum wage of $10.59 per hour, DHS estimates the opportunity cost of time for completing Form I-290B is about $15.89 per obligor.[171]

According to the BLS, a lawyer's average hourly wage is currently $69.34 per hour.[172] As previously discussed, DHS accounts for worker benefits when estimating the opportunity cost of time by calculating a benefits-to-wage multiplier using the most recent BLS report detailing the average employer costs for employee compensation for all civilian workers in major occupational groups and industries. DHS estimates that the benefits-to-wage multiplier is 1.46 and, therefore, is able to estimate the full opportunity cost per applicant, including employee wages and salaries and the full cost of benefits such as paid leave, insurance, and retirement.[173] Therefore, in this final rule, DHS calculates the total rate of compensation for in-house lawyers

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[169] *See* 8 CFR 103.7(c).
[170] Source for notice for appeal or motion time burden estimate: Supporting Statement for Notice of Appeal or Motion (Form I-290B) (OMB control number 1615-0095). The PRA Supporting Statement can be found at Question 12 on Reginfo.gov at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201609-1615-002.
[171] Calculation for appeal or motion opportunity cost of time: ($10.59 per hour * 1.5 hours) = $15.885 = $15.89 (rounded) per applicant.
[172] U.S. Department of Labor, BLS. "May 2017 National Occupational Employment and Wage Estimates, United States, Occupational Code 23-1011 Lawyers." Available at https://www.bls.gov/oes/2018/may/oes_nat.htm#23-0000.
[173] The benefits-to-wage multiplier is calculated as follows: (Total Employee Compensation per hour) / (Wages and Salaries per hour) = $36.32 / $24.91 = 1.458 = 1.46 (rounded). *See* Economic News Release, *Employer Cost for Employee Compensation (March 2019)*, U.S. Dept. of Labor, BLS, Table 1. Employer costs per hour worked for employee compensation and costs as a percent of total compensation: Civilian workers, by major occupational and industry group. March 19, 2019, available at https://www.bls.gov/news.release/archives/ecec_03192019.pdf (viewed April 1, 2019).

who may file Form I-290B on behalf of an obligor as $101.24 per hour using the benefits-to-wage multiplier, where the mean hourly wage is $69.34 per hour worked and average benefits are $31.90 per hour. [174] However, DHS recognizes that a firm may choose, but is not required, to outsource the preparation of petitions and, therefore, the wage rate for an outsourced lawyer. To determine the full opportunity costs if a firm hires an outsourced lawyer, DHS multiplied the average hourly U.S. wage rate for lawyers by 2.5 for a total of $173.35 per hour to approximate an hourly billing rate for and outsourced lawyer. [175]

DHS estimates the time burden associated with a lawyer filing Form I-290B is 1 hour and 30 minutes (1.5 hours) per obligor, including the time for reviewing instructions, gathering the required documentation and information, completing the form, preparing statements, attaching necessary documentation, and submitting the form. [176] Using the total rate of compensation of $101.24 per hour for an in-house lawyer, DHS estimates the opportunity cost of time for completing Form I-290B on behalf of an obligor is about $151.86 per obligor. [177] In addition, using the total rate of compensation of $173.35 per hour, DHS estimates the opportunity cost of time for completing Form I-290B on behalf of an obligor is about $173.35 per hour [178]

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[174] The calculation of the weighted federal minimum hourly wage for applicants: $69.34 per hour * 1.46 benefits-to-wage multiplier = $101.236 = $101.24 (rounded) per hour.

[175] In a previous analysis, DHS used a multiplier of 2.5 to convert in-house lawyer wages to the cost of outsourced lawyer wages. DHS believes the methodology remains sound for this analysis to use 2.5 as a multiplier for outsourced lawyer wages. *See* Dept. of Homeland Security, "Exercise of Time-limited Authority to Increase the Fiscal Year 2018 Numerical Limitations for the H-2B Temporary Nonagricultural Worker Program." 83 FR 24905. May 31, 2018. Available at: https://www.federalregister.gov/documents/2018/05/31/2018-11732/exercise-of-time-limited-authority-to-increase-the-fiscal-year-2018-numerical-limitation-for-the.

[176] Source for notice for appeal or motion time burden estimate: Supporting Statement for Notice of Appeal or Motion (Form I-290B) (OMB control number 1615-0095). The PRA Supporting Statement can be found at Question 12 on Reginfo.gov at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201609-1615-002.

[177] Calculation for appeal or motion opportunity cost of time: ($101.24 per hour * 1.5 hours) = $151.86 per in-house lawyer filing Form I-290B on behalf of an obligor.

[178] Calculation for appeal or motion opportunity cost of time: ($173.35 per hour * 1.5 hours) = $260.025 = $260.03 (rounded) per outsourced lawyer filing Form I-290B on behalf of an obligor.

If a legal representative submits a Form I-290B on behalf of an affected party, a Notice of Entry of Appearance as Attorney or Accredited Representative, Form G-28, must accompany the motion or appeal.[179] DHS estimates that a lawyer would take 30 minutes to complete and submit Form G-28. Using the total rate of compensation of minimum wage of $101.24 per hour for an in-house lawyer, DHS estimates the opportunity cost of time for completing Form G-28 is about $50.62 per obligor.[180] Using the total rate of compensation of minimum wage of $173.35 per hour for an in-house lawyer, DHS estimates the opportunity cost of time for completing Form G-28 is about $86.68 per obligor.[181]

In sum, DHS estimates the opportunity cost of time for completing Form I-290B on behalf of an obligor and completing Form G-28 is approximately $202.48 per in-house lawyer.[182] Additionally, DHS estimates the opportunity cost of time for completing Form I-290B on behalf of an obligor and completing Form G-28 is approximately $202.48 per outsourced lawyer.[183]

In addition to the filing fee and the opportunity cost of time associated with completing Form I-290B, obligors must bear the cost of postage for sending the Form I-290B package to

[179] *See* USCIS. "Instructions for Notice of Appeal or Motion." Available at https://www.uscis.gov/sites/default/files/files/form/i-290binstr.pdf. Accessed September 20, 2018. *See also* USCIS. "Instructions for Notice of Entry of Appearance as Attorney or Accredited Representative." Available at https://www.uscis.gov/sites/default/files/files/form/g-28instr.pdf. Accessed September 20, 2018.
[180] Calculation for appeal or motion opportunity cost of time: ($101.24 per hour * 0.5 hours) = $50.62 per in-house lawyer filing Form G-28 with Form I-290B.
[181] Calculation for appeal or motion opportunity cost of time: ($173.35 per hour * 0.5 hours) = $86.675 = $86.68 per outsourced lawyer filing Form G-28 with Form I-290B.
[182] Calculation: Opportunity cost of time for filing Form I-290B + Opportunity cost of time for filing Form G-28 = $151.86 + $50.62 = $202.48 per lawyer.
[183] Calculation: Opportunity cost of time for filing Form I-290B + Opportunity cost of time for filing Form G-28 = $260.03 + $86.68 = $346.71 per lawyer.

USCIS. DHS estimates that each obligor or lawyer will incur an estimated average cost of $3.75 in postage to submit the completed package to USCIS.[184]

Additionally, the public charge bond process will be new and historical data are not available to predict future estimates. Therefore, DHS also is not able to estimate the total annual cost of the new public charge bond process. However, DHS estimates the total cost per obligor submitting a bond will be $694.64 for completing and filing Form I-290B, excluding the cost of obtaining a bond.[185] If an obligor chooses to have an in-house lawyer file on his or her behalf, DHS estimates the total cost per obligor submitting a bond will be $881.23 for completing and filing Forms I-290B and G-28, excluding the cost of obtaining a bond.[186] If an obligor chooses to have an outsourced lawyer file on his or her behalf, DHS estimates the total cost per obligor submitting a bond will be $1,025.46 for completing and filing Forms I-290B and G-28, excluding the cost of obtaining a bond.[187]

Finally, in this final rule, DHS is implementing a new requirement that an alien must complete and submit Form I-407 when seeking to cancel the public charge bond upon permanent departure from the United States. However, this final rule will not impose additional new costs to Form I-407 filers.

i. Other Direct Costs

There are other direct costs of the final rule. For example, individuals present in the United States who are found to be inadmissible on the public charge ground will need to leave

[184] Source for notice for appeal or motion time burden estimate: Supporting Statement for Notice of Appeal or Motion (Form I-290B) (OMB control number 1615-0095). The PRA Supporting Statement can be found at Question 13 on Reginfo.gov at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201609-1615-002.
[185] Calculation: $675 filing fee + $15.89 opportunity cost of time for filing Form I-290B + $3.75 postage cost = $694.64 per obligor.
[186] Calculation: $675 filing fee + $202.48 opportunity cost of time for filing Forms I-290B and G-28 + $3.75 postage cost = $881.23 per obligor having an in-house lawyer file on his or her behalf.
[187] Calculation: $675 filing fee + $346.71 opportunity cost of time for filing Forms I-290B and G-28 + $3.75 postage cost = $1,025.46 per obligor having an outsourced lawyer file on his or her behalf.

the country and may incur various departure costs such as plane tickets or broken leases or contracts for individuals. However, due to a lack of information on who will incur these costs and how many individuals will be required to leave, DHS is unable to quantify these costs.

c. Transfer Payments of Final Regulatory Changes

DHS estimates the direct costs of the final rule, but also estimates the reduction in transfer payments from federal and state governments to certain individuals who receive public benefits and discusses certain indirect impacts that are likely to occur because of the final regulatory changes. These indirect impacts are borne by entities that are not specifically regulated by this final rule, but may incur costs due to changes in behavior caused by this final rule. The primary sources of the reduction in transfer payments from the federal government of this final rule are the disenrollment or foregone enrollment of individuals in public benefits programs. The primary sources of the consequences and indirect impacts of the final rule are costs to various entities that the final rule does not directly regulate, such as hospital systems, state agencies, and other organizations that provide public assistance to aliens and their households. Indirect costs associated with this rule include familiarization with the rule for those entities that are not directly regulated but still want to understand the changes in federal and state transfer payments due to this final rule.

Moreover, this final rule could lead to additional reductions in transfer payments because some aliens outside the United States who are likely to become a public charge in the United States would not be admitted and, therefore, would not receive public benefits in the United States. For example, U.S. Customs and Border Protection (CBP) could find that an alien arriving at a port of entry seeking admission, either pursuant to a previously issued visa or as a traveler for whom visa requirements have been waived, is likely to become a public charge if he or she is

admitted. However, DHS is not able to quantify the number of aliens who would possibly be deemed inadmissible based on a public charge determination pursuant to this final rule, but is qualitatively acknowledging this potential impact. DHS notes that CBP may incur costs pursuant to this final rule, but we are unable to determine this potential cost at this time due to data limitations.

Under the final rule, DHS would consider past or current receipt of public benefits, defined in final 8 CFR 212.21(b), as identified as a heavily weighed factor for purposes of public charge determination. Earlier in the preamble, DHS provides a list and description of public benefits programs the final rule identifies for consideration of public charge inadmissibility ground. Should an individual be found to have received certain public benefits identified in the final rule, he or she may be found likely to become a public charge. Individuals who might choose to disenroll from or forego future enrollment in a public benefits program include foreign-born non-citizens as well as U.S. citizens who are members of mixed-status households even if they are not subject to the public charge inadmissibility determination or whose public benefit receipt would not be considered in the alien's public charge inadmissibility determination.

DHS finds it difficult to predict how this rule will affect aliens subject to the public charge ground of inadmissibility, because data limitations provide neither a precise count nor reasonable estimate of the number of aliens who are both subject to the public charge ground of inadmissibility and are eligible for public benefits in the United States. This difficulty is compounded by the fact that most applicants subject to the public charge ground of inadmissibility and therefore this rule are generally unlikely to suffer negative consequences resulting from past receipt of public benefits because they will have been residing outside of the

United States and therefore, ineligible to have ever received public benefits. For example, most nonimmigrants and most immediate relative, family-sponsored, and diversity visa immigrants seek admission to the United States after issuance of a nonimmigrant or immigrant visa, as appropriate. The majority of these individuals are likely to have been ineligible for public assistance in the United States, because they generally have resided abroad and are not physically present in the United States.

Aliens who are unlawfully present and nonimmigrants physically present in the United States also are generally barred from receiving federal public benefits other than emergency assistance.[188] For example, applicants for admission and adjustment of status – are generally ineligible for SNAP benefits and therefore, would not need to disenroll from SNAP to avoid negative consequences.[189] Once admitted, lawful permanent residents are generally prohibited from receiving SNAP benefits for a period of five years.[190] Notwithstanding the inclusion of SNAP as a designated public benefit, DHS will not consider for purposes of a public charge inadmissibility determination whether applicants for admission or adjustment of status are receiving food assistance through other programs, such as exclusively state-funded programs, food banks, and emergency services, nor will DHS discourage individuals from seeking such assistance.

Table 14 shows the estimated population of public benefits recipients who are members of households that include foreign-born non-citizens. The table also shows estimates of the number of households that include at least 1 foreign-born non-citizen family member who may

[188] DHS understands that certain aliens may be eligible for state-funded cash benefits. As there are multiple state, local, and tribal programs that may provide cash benefits, DHS does not have a specific list of programs or data on the number of aliens that may be affected by the rule by virtue of their enrollment in such programs.
[189] *See* 8 U.S.C. 1611(a); 8 U.S.C 1612(a)(2)(D)(ii).
[190] *See* 8 U.S.C. 1613(a).

be receiving public benefits.[191,192] Based on the number of households that include foreign-born non-citizen family members, DHS estimated the number of public benefits recipients who are members of households that include foreign-born non-citizens using the U.S. Census Bureau's estimated average household size for foreign-born households.[193,194]

Table 14. Estimated Population of Public Benefits Recipients Who Are Members of Households that Include Foreign-Born Non-Citizens.

Public Benefits Program	Average Annual Total Number of Recipients[1]	Households that May Be Receiving Benefits[2]	Households with at Least 1 Foreign-Born Non-Citizen that May Be Receiving Benefits[3]	Public Benefits Recipients Who Are Members of Households Including Foreign-Born Non-Citizens[4]
Medicaid[5]	34,706,865	13,146,540	916,314	3,069,651
Supplemental Nutrition Assistance	45,294,831	22,195,369	1,547,017	5,182,508

[191] *See* U.S. Census Bureau. *American Community Survey 2016 Subject Definitions*. Available at https://www2.census.gov/programs-surveys/acs/tech_docs/subject_definitions/2016_ACSSubjectDefinitions.pdf. Accessed June 18, 2018. The foreign-born population includes anyone who was not a U.S. citizen or a U.S. national at birth, which includes respondents who indicated they were a U.S. citizen by naturalization or not a U.S. citizen. The ACS questionnaires do not ask about immigration status, but uses responses to determine the U.S. citizen and non-U.S. citizen populations as well as to determine the native and foreign-born populations. The population surveyed includes all people who indicated that the United States was their usual place of residence on the survey date. The foreign-born population includes naturalized U.S. citizens, lawful permanent residents (i.e. immigrants), temporary migrants (e.g., foreign students), humanitarian migrants (e.g., refugees), and unauthorized migrants (i.e. people illegally present in the United States.

[192] To estimate the number of households with at least 1 foreign-born non-citizen family member that have received public benefits, DHS calculated the overall percentage of total U.S. households that are foreign-born non-citizen as 6.97 percent. Calculation: [22,214,947 (Foreign-born non-citizens) / 318,558,162 (Total U.S. population)] * 100 = 6.97 percent. *See* U.S. Census Bureau American FactFinder Database. "S0501: Selected Characteristics of the Native and Foreign-born Populations 2012 – 2016 American Community Survey (ACS) 5-year Estimates." Available at https://factfinder.census.gov/. Accessed June 16, 2018.

[193] *See* U.S. Census Bureau American FactFinder Database. "S0501: Selected Characteristics of the Native and Foreign-born Populations 2012 – 2016 American Community Survey (ACS) 5-year Estimates." Available at https://factfinder.census.gov/. Accessed June 16, 2018. The average foreign-born household size is reported as 3.35 persons. DHS multiplied this figure by the estimated number of households with at least 1 foreign-born non-citizen that may be receiving benefits to estimate the population of members of households that include foreign-born non-citizen who may be receiving benefits.

[194] In this analysis, DHS uses the American Community Survey (ACS) to develop population estimates along with beneficiary data from each of the benefits program. DHS recognizes that in other places in this preamble, the SIPP data is used rather than the ACS data, which may cause differences in estimates. DHS notes that the ACS data was used for the purposes of this analysis because it provided a cross-sectional survey based on a random sample of the population each year including current immigration classifications. Both surveys reflect substantial reliance by aliens on the public benefits included in the final rule.

Program (SNAP)[6]				
Temporary Assistance for Needy Families (TANF)[7]	3,449,124	1,306,486	91,062	305,058
Supplemental Security Income (SSI)[8]	8,302,356	3,144,832	219,195	734,303
Federal Rental Assistance[9]	*N/A*	5,051,000	352,055	*N/A*

Sources and Notes: USCIS analysis of data provided by the federal agencies that administer each of the listed public benefits program or research organizations.
[1] Figures for the average annual total number of recipients are based on 5-year averages, whenever possible, for the most recent 5-year period for which data are available. For more information, please see the document "Economic Analysis Supplemental Information for Analysis of Public Benefits Programs" in the online docket for the final rule.
[2] DHS estimated the number of households by dividing the number of people that received public benefits by the U.S. Census Bureau's estimated average household size of 2.64 for the U.S. total population. *See* U.S. Census Bureau American FactFinder Database. "S0501: Selected Characteristics of the Native and Foreign-born Populations 2012 – 2016 American Community Survey (ACS) 5-year Estimates." Available at https://factfinder.census.gov/. Accessed June 16, 2018. Note that HUD Rental Assistance and HUD Housing Choice Vouchers programs report data on the household level. Therefore, DHS did not use this calculation to estimate the average household size and instead used the data as reported.
[3] To estimate the number of households with at least 1 foreign-born non-citizen that may be receiving benefits, DHS multiplied the estimated number of households that may be receiving benefits in the United States by 6.97 percent, the foreign-born non-citizen population as a percentage of the U.S. total population using U.S. Census Bureau population estimates. *See* Ibid.
[4] To estimate the population of public benefits recipients who are members of households that include foreign-born non-citizens, DHS multiplied the estimated number of households with at least 1 foreign-born non-citizen that may be receiving benefits by the average household size of 3.35 for those who are foreign-born using the U.S. Census Bureau's estimate. *See* Ibid.
[5] Medicaid – *See* U.S. Department of Health and Human Services (HHS), Centers for Medicare & Medicaid (CMS). *Monthly Medicaid & CHIP Application, Eligibility Determination, and Enrollment Reports & Data*. Available at https://www medicaid.gov/medicaid/program-information/medicaid-and-chip-enrollment-data/monthly-reports/index html. Accessed May 31, 2018. Note that each annual total was calculated by averaging the monthly enrollment population over each year. The numbers that were used for the average can be found in Table 1A: Medicaid and CHIP for each month, using the number listed as the "Total Across All States." Also, note that per enrollee Medicaid costs vary by eligibility group and State.
[6] SNAP – *See* U.S. Department of Agriculture, Food and Nutrition Service, Supplemental Nutrition Assistance Program. "Persons, Households, Benefits, and Average Monthly Benefit per Person & Household." Available at https://www fns.usda.gov/pd/supplemental-nutrition-assistance-program-snap. Accessed May 31, 2018.
[7] TANF – *See* U.S. HHS, Office of Family Assistance. "TANF Caseload Data." Available at https://www.acf hhs.gov/ofa/resource/tanf-caseload-data-2016. Accessed June 11, 2018. Note: The number of participants are listed for the fiscal year, not calendar year since the dollar amount of assistance received is only presented for fiscal years.
[8] SSI – *See* U.S. Social Security Administration, Office of Research, Statistics, & Policy Analysis. *Annual Report of the Supplemental Security Income Program, 2017*. Table IV.B9, p. 46. Available at: https://www.ssa.gov/oact/ssir/SSI17/ssi2017.pdf. Accessed July 31, 2018.; *See also* U.S. Social Security Administration, Office of Research, Statistics, & Policy Analysis. "SSI Monthly Statistics, January 2018." Available at https://www.ssa.gov/policy/docs/statcomps/ssi_monthly/2018-01/table01 html. Accessed July 31, 2018.
[9] Federal Rental Assistance – Data on annual total recipient households: *See* Center on Budget and Policy Priorities. National and State Housing Fact Sheets & Data. See Federal Rental Assistance, "Download the Data." Available at https://www.cbpp.org/research/housing/national-and-state-housing-fact-sheets-data. Accessed Aug. 15, 2018. Note that "Federal Rental Assistance" includes HUD Section 8 Project-based Rental Assistance, HUD Section 8 Housing Choice Vouchers, HUD Public Housing, and USDA Section 521.

Consistent data are not available on the number of individuals receiving public benefits who are members of households that include foreign-born non-citizens. In order to estimate the

economic impact of the final rule, it is necessary to estimate the size of this population. To arrive at the population estimates as shown in table 14, DHS first calculated the average annual number of people who received benefits over a 5-year period, whenever possible, as reported by the benefit granting agencies.[195] However, data for public benefits programs do not identify the nativity status of benefits recipients, i.e., foreign-born or U.S. native. Therefore, DHS estimated the foreign-born non-citizen population by converting the average annual number of benefits recipients using the U.S. Census Bureau's American Community Survey (ACS) estimates. First, DHS estimated the number of households receiving benefits. Then, DHS estimated the number of households with at least one foreign-born non-citizen that may be receiving benefits based on the percentage of foreign-born non-citizens compared to the total U.S. population. Finally, the number of members of households that include foreign-born non-citizens that may be receiving benefits was estimated based on the average household size of households with at least one foreign-born individual.

For each of the public benefits programs analyzed, DHS estimated the number of households by dividing the number of people that received public benefits by the U.S. Census Bureau's estimated average household size of 2.64 for the U.S. total population.[196] According to the U.S. Census Bureau population estimates, the foreign-born non-citizen population is 6.97 percent of the U.S. total population.[197] While there may be some variation in the percentage of foreign-born non-citizens who receive public benefits, including depending on which public

[195] DHS estimated the annual average number of people who receive public benefits based on 5-year averages generally over the period fiscal year 2013 – 2017, including LIS, SNAP, and SSI. DHS calculated 5-year averages over the period fiscal year 2012 – 2016 for Medicaid and TANF.
[196] U.S. Census Bureau American FactFinder Database. "S0501: Selected Characteristics of the Native and Foreign-born Populations 2012 – 2016 American Community Survey (ACS) 5-year Estimates." Available at https://factfinder.census.gov/. Accessed June 16, 2018.
[197] Ibid. Calculation: [22,214,947 (Foreign-born non-citizens) / 318,558,162 (Total U.S. population)] * 100 = 6.97 percent.

benefits program one considers, DHS assumes in this economic analysis that the percentage holds across the populations of the various public benefits programs. Therefore, to estimate the number of households with at least one foreign-born non-citizen who receives public benefits, DHS multiplied the estimated number of households for each public benefits program by 6.97 percent. This step may introduce uncertainty into the estimate because the percentage of households with at least one foreign-born non-citizen may be greater or less than the percentage of foreign-born non-citizens in the population. However, if foreign-born non-citizens tend to be grouped together in households, then an overestimation of households that include at least one foreign-born non-citizen is more likely. DHS then estimated the number of foreign-born non-citizens who received benefits by multiplying the estimated number of households with at least one foreign-born non-citizen who receives public benefits by the U.S. Census Bureau's estimated average household size of 3.35 for those who are foreign-born.[198]

In this analysis, DHS uses the Census' ACS to develop population estimates along with beneficiary data from each of the benefits program. DHS recognizes that elsewhere in this preamble, data from the SIPP are used rather than the ACS data, which may cause differences in estimates. DHS notes that the ACS data were used for the purposes of this economic analysis because it provided a cross-sectional survey that is based on a random sample of the population each year including current immigration classifications. Both surveys reflect substantial reliance by aliens on the public benefits included in the final rule.

In the following analysis, the population estimates are adjusted to reflect the percentage of aliens intending to apply for adjustment of status, but not to reflect the possibility that less

[198] U.S. Census Bureau American FactFinder Database. "S0501: Selected Characteristics of the Native and Foreign-born Populations 2012 – 2016 American Community Survey (ACS) 5-year Estimates." Available at https://factfinder.census.gov/. Accessed June 16, 2018.

than 100 percent of their household members will be sufficiently concerned about potential consequences of the policies to be implemented in this final rule to disenroll or forego enrollment in public benefits. The resulting transfer estimates may therefore have a tendency toward overestimation in some respects.

DHS anticipates that a number of individuals will be likely to disenroll or forego enrollment in a public benefits program as a result of the final rule, which will result in a reduction of transfer payments from the federal government to such individuals. However, to estimate the economic impact of disenrollment or foregone enrollment from public benefits programs, it is necessary to estimate the average annual amount of public benefits a person receives for each public benefits program included in this economic analysis. Therefore, DHS estimated the average annual benefit received per person for each public benefit program in table 15. The average benefit per person is calculated for each public benefit program by dividing the average annual program payments for public benefits by the average annual total number of recipients.[199] To the extent that data are available, these estimates are based on 5-year averages.

Table 15. Estimated Average Annual Benefit per Person, by Public Benefit Program

Public Benefits Program	Average Annual Total Number of Recipients or Households	Average Annual Public Benefits Payments	Average Annual Benefit per Person or Household[1]
Medicaid[2]	34,706,865	$477,395,691,240	$13,755.08
Supplemental Nutrition Assistance Program (SNAP)[3]	45,294,831	$69,192,042,274	$1,527.59
Temporary Assistance for Needy Families (TANF)[4]	3,449,124	$4,389,219,525	$1,272.56

[199] DHS notes that the amounts presented may not account for overhead costs associated with administering each of these public benefits programs. The costs presented are based on amounts recipients have received in benefits as reported by benefit-granting agencies.

Supplemental Security Income (SSI)[5]	8,302,356	$54,743,370,400	$6,593.72
Federal Rental Assistance[6]	5,051,000	$41,020,000,000	$8,121.16

Sources and notes: USCIS analysis of data provided by the federal agencies that administer each of the listed public benefits program or research organizations.
Note that figures for the average annual total number of recipients and the annual total public benefits payments are based on 5-year averages, whenever possible, for the most recent 5-year period for which data are available. For more information, please see the document "Economic Analysis Supplemental Information for Analysis of Public Benefits Programs" in the online docket for the final rule.
[1] Calculation: Average Annual Benefit per Person = (Average Annual Public Benefits Payments) / (Average Annual Total Number of Recipients). Note: Calculations may not be exact due to rounding.
[2] Medicaid – Data on annual program expenditure on public benefits: *See* U.S. Department of Health and Human Services (HHS), Centers for Medicare & Medicaid (CMS). *Expenditure Reports From MBES/CBES.* Available at https://www medicaid.gov/medicaid/finance/state-expenditure-reporting/expenditure-reports/index html. Accessed Aug. 2, 2018. Note that per enrollee Medicaid costs vary by eligibility group and State.
[3] SNAP – Data on the annual program expenditure on public benefits: *See* U.S. Department of Agriculture, Food and Nutrition Service, Supplemental Nutrition Assistance Program. "Persons, Households, Benefits, and Average Monthly Benefit per Person & Household." Available at https://www fns.usda.gov/pd/supplemental-nutrition-assistance-program-snap. Accessed May 31, 2018.
[4] TANF – Data on annual program expenditure on public benefits: *See* U.S. HHS, Office of Family Assistance. "TANF Financial Data - FY 2016." See Table A.1.: Federal TANF and State MOE Expenditures Summary by ACF-196 Spending Category, Federal Funds for Basic Assistance. Available at https://www.acf hhs.gov/ofa/resource/tanf-financial-data-fy-2016. Accessed June 11, 2018. Note that the link shows fiscal year 2016 TANF financial data, but links to financial data for other fiscal years can also be accessed.
[5] SSI – Data on the annual program expenditure on public benefits: *See* U.S. Social Security Administration, Office of Research, Statistics, & Policy Analysis. *Annual Report of the Supplemental Security Income Program, 2017.* Table IV.B9—SSI Recipients with Federally Administered Payments in Current-Payment Status, p. 46 (recipients) and Table IV.C1.—SSI Federal Payments, p. 47. Available at: https://www.ssa.gov/oact/ssir/SSI17/ssi2017.pdf. Accessed July 31, 2018.; *See also* U.S. Social Security Administration, Office of Research, Statistics, & Policy Analysis. "SSI Monthly Statistics, January 2018." Available at https://www.ssa.gov/policy/docs/statcomps/ssi_monthly/2018-01/table01 html. Accessed July 31, 2018.
[6] Federal Rental Assistance – Data on annual total expenditure on public benefits: *See* Center on Budget and Policy Priorities. *National and State Housing Fact Sheets & Data.* Federal Rental Assistance, "Download the Data." Available at https://www.cbpp.org/research/housing/national-and-state-housing-fact-sheets-data. Accessed Aug. 15, 2018.

Research shows that when eligibility rules change for public benefits programs there is evidence of a "chilling effect" that encourages immigrants to disenroll or forego enrollment in public benefits programs for which they are eligible. For example, the U.S. Department of Agriculture (USDA) published a study shortly after the Personal Responsibility and Work Opportunity Act of 1996 (PRWORA) took effect and found that the number of people receiving

food stamps[200] fell by over 5.9 million between summer 1994 and summer 1997.[201] The study notes that enrollment in the food stamps program was falling during this period, possibly due to strong economic growth, but the decline in enrollment was steepest among legal immigrants. Under PRWORA, legal immigrants were facing significantly stronger restrictions through which most would become ineligible to receive food stamps. The study also found that enrollment of legal immigrants in the food stamps program fell by 54 percent. Moreover, another study found evidence of a "chilling effect" characterized by disenrollment or foregone enrollment due to enactment of PRWORA where non-citizen enrollment in public benefits programs declined more steeply than U.S. citizen enrollment over the period 1994 to 1997.[202] Overall, the study found that welfare enrollment in households headed by foreign-born individuals fell by about 21 percent.

To estimate the total transfer payments, DHS calculated the number of individuals who are likely to disenroll from or forego enrollment in a public benefit program equal to the previously estimated 2.5 percent of the number of members of households that include foreign-born non-citizens. While previous studies examining the effect of PRWORA in 1996 showed a reduction in enrollment from 21 to 54 percent, it is unclear how many individuals would actually disenroll from or forego enrollment in public benefits programs due to the final rule. The previous studies had the benefit of retrospectively analyzing the chilling effect characterized by

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[200] The law changed the Food Stamp program name to SNAP effective on October 1, 2008. See The Food, Conservation, and Energy Act of 2008, Pub. L. 110–234 (May 22, 2008).

[201] *See* Genser, J. (1999). *Who is leaving the Food Stamps Program: An analysis of Caseload Changes from 1994 to 1997*. Washington, D.C.: U.S. Department of Agriculture, Food and Nutrition Service, Office of Analysis, Nutrition, and Evaluation. Available at https://www.fns.usda.gov/snap/who-leaving-food-stamp-program-analysis-caseload-changes-1994-1997. (Accessed June 17, 2018).

[202] *See* Fix, M.E., and Passel, J.S. (1999). *Trends in Noncitizens' and Citizens' Use of Public Benefits Following Welfare Reform: 1994 – 1997*. Washington, D.C.: The Urban Institute. Available at https://www.urban.org/research/publication/trends-noncitizens-and-citizens-use-public-benefits-following-welfare-reform. (Accessed June 17, 2018).

disenrollment or foregone enrollment after passage of PRWORA using actual enrollment data, instead of being limited to prospectively estimating the number of individuals who may disenroll or forego enrollment in the affected public benefits programs. This economic analysis must rely on the latter. Moreover, PRWORA was directly changing eligibility requirements, whereas this final rule changes enrollment incentives. Therefore, DHS estimates this annual rate based on the number of foreign-born immigrants adjusting status as a percentage of the foreign-born non-citizen population in the United States, under the assumption that the population likely to disenroll from or forego enrollment in public benefits programs would be individuals in households with those intending to apply for adjustment of status or individuals who have adjusted status within the past five years.[203] DHS notes that this is likely an overestimate since it is unknown how many foreign-born non-citizens adjusting status are in households actually using public benefits. For the 5-fiscal year period 2012 – 2016, the foreign-born non-citizen population is estimated to be 22,214,947.[204] During the same 5-fiscal year period, 544,246 immigrants adjusted status annually in the United States on average.[205,206] Therefore, DHS assumes a 2.5 percent rate of disenrollment or foregone enrollment across each of the public benefits programs since the individuals intending to adjust status are most likely to disenroll

[203] DHS estimates the rate of disenrollment/foregone enrollment based on the number of foreign-born immigrants adjusting status as a percentage of the foreign-born non-citizen population in the United States. Calculation: (Individuals adjusting status / Estimated foreign-born non-citizen population) *100 = Rate of disenrollment/foregone enrollment. To estimate the population that could choose to disenroll/forego enrollment, DHS multiplied the population of public benefits recipients who are members of households that include foreign-born non-citizens receiving benefits or the number of households with at least 1 foreign-born non-citizen by 2.5 percent.

[204] U.S. Census Bureau American FactFinder Database. "S0501: Selected Characteristics of the Native and Foreign-born Populations 2012 – 2016 American Community Survey (ACS) 5-year Estimates. Available at https://factfinder.census.gov/. Accessed June 16, 2018.

[205] See United States Department of Homeland Security. Yearbook of Immigration Statistics: 2016, Table 7. Washington, D.C., U.S. Department of Homeland Security, Office of Immigration Statistics, 2017. Available at https://www.dhs.gov/immigration-statistics/yearbook/2016 (accessed Jan. 24, 2018).

[206] Note that the population seeking extension of stay or change of status were not included in the calculation due to the nature of the populations involved, namely people employed in jobs and their dependents. DHS assumes that these individuals generally do not receive public benefits and have means of supporting themselves and their dependents.

from or forego enrollment in public benefits programs in order to preserve their chances of adjusting status.[207] Table 16 shows the estimated population that is likely to disenroll or forego enrollment in a public benefits program as a result of this final rule.

Table 16. Estimated Population of Members of Households Including Foreign-Born Non-Citizens Expected to Disenroll or Forego Enrollment in a Public Benefits Program.

Public Benefits Program	Public Benefits Recipients Who Are Members of Households Including Foreign-Born Non-Citizens	Households with At Least 1 Foreign-Born Non-Citizen that May Be Receiving Benefits	Members of Households that Include Foreign-Born Non-Citizens Expected to Disenroll or Forego Enrollment Based On A 2.5% Rate of Disenrollment or Foregone Enrollment[1]	Households that Include At Least 1 Foreign-Born Non-Citizen Expected to Disenroll or Forego Enrollment Based On A 2.5% Rate of Disenrollment or Foregone Enrollment[1]
Medicaid[2]	3,069,651		76,741	
Supplemental Nutrition Assistance Program (SNAP)	5,182,508		129,563	
Temporary Assistance for Needy Families (TANF)	305,058		7,626	
Supplemental Security Income (SSI)	734,303		18,358	
Federal Rental Assistance		352,055		8,801
Totals	**9,291,520**	**352,055**	**232,288**	**8,801**

Source : USCIS analysis.

Notes:
[1] DHS estimates the rate of disenrollment/foregone enrollment based on the number of foreign-born immigrants adjusting status as a percentage of the foreign-born non-citizen population in the United States. Calculation: (Individuals adjusting status / Estimated foreign-born non-citizen population) *100 = Rate of disenrollment/foregone enrollment. To estimate the population that could choose to disenroll/forego enrollment, DHS multiplied the population of public benefits recipients who are members of households that include foreign-born non-citizens receiving benefits or the number of households with at least 1 foreign-born non-citizen by 2.5 percent.
[2] Per enrollee Medicaid costs vary by eligibility group and State.

[207] Calculation, based on 5-year averages over the period fiscal year 2012 – 2016: (544,246 adjustments of status / 22,214,947 estimated foreign-born non-citizen population) * 100 = 2.45 = 2.5 percent (rounded)

Table 17 shows the estimated total reduction in transfer payments paid by the federal government to the population of foreign-born non-citizens, or to households with at least 1 foreign-born non-citizen, that are likely to disenroll from or forego enrollment in public benefits programs due to the provisions of the final rule. The table also presents the previously estimated average annual benefit per person, or per household with at least 1 foreign-born non-citizen, who received benefits for each of the public benefits programs.[208] This final rule will result in a reduction of transfer payments from the federal government to those foreign-born non-citizens and associated household members who choose to disenroll from or forego future enrollment in a public benefits program. Transfer payments are payments from one group to another that do not directly affect total resources available to society.[209] DHS estimates the total annual reduction in transfer payments paid by the federal government to individuals who may choose to disenroll from or forego enrollment in public benefits programs is approximately $1.46 billion for an estimated 232,288 individuals and 8,801 households across the public benefits programs examined.

Table 17. Total Estimated Annual Reduction in Transfer Payments Paid By the Federal Government Due to Disenrollment or Foregone Enrollment in Public Benefits Programs.

Public Benefits Program	Public Benefits Recipients Who Are Members of Households that Include Foreign-Born Non-Citizens Based On A 2.5% Rate of	Households Receiving Benefits that Include At Least 1 Foreign-Born Non-Citizen Based On A 2.5% Rate of	Average Annual Benefit per Person or Household	Estimated Annual Reduction in Transfer Payments to Members of Households that Include Foreign-Born

[208] As previously noted, the average annual benefits per person amounts presented may not account for overhead costs associated with administering each of these public benefits programs since they are based on amounts recipients have received in benefits as reported by benefit -granting agencies. Therefore, the costs presented may underestimate the total amount of transfer payments to the federal government.
[209] *See* Office of Management and Budget (OMB). *Circular A-4*. September 17, 2003. Available at https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf.

	Disenrollment or Foregone Enrollment	Disenrollment or Foregone Enrollment		Non-Citizens or Households that Include At Least 1 Foreign-Born Non-Citizens Based On A 2.5% Rate of Disenrollment or Foregone Enrollment
Medicaid[1]	76,741		$13,755.08	$1,055,582,452
Supplemental Nutrition Assistance Program (SNAP)	129,563		$1,527.59	$197,919,143
Temporary Assistance for Needy Families (TANF)	7,626		$1,272.56	$9,704,543
Supplemental Security Income (SSI)	18,358		$6,593.72	$121,047,512
Federal Rental Assistance		8,801	$8,121.16	$71,474,329
Totals	**232,288**	**8,801**	***N/A***	**$1,455,724,086**

Source: USCIS analysis.

Notes:
[1] Neither HHS nor DHS are able to disaggregate emergency and non-emergency Medicaid expenditures. Therefore, this rule considers overall Medicaid expenditures. Note that per enrollee Medicaid costs vary by eligibility group and State.

Based on the rate of disenrollment or foregone enrollment calculated, DHS estimated the annual reduction in the amount of transfer payments paid by the federal government to foreign-born non-citizens and members of their households by multiplying the average annual benefits per person, or household, by the population of foreign-born non-citizens, or households with at least 1 foreign-born non-citizen member, who are likely to disenroll from or forego enrollment in a public benefit program.[210]

However, DHS notes there may be additional reductions in transfer payments that we are unable to quantify. As these estimates reflect only federal financial participation in programs

[210] DHS analyzes federal funds only as we are not readily able to track down and identify the state funds.

where states may share costs, there may also be additional reductions in transfer payments from states to individuals who may choose to disenroll from or forego enrollment in a public benefits program. Because state participation in these programs may vary depending on the type of benefit provided, DHS was unable to fully and specifically quantify the impact of state transfers. For example, the federal government funds all SNAP food expenses, but only 50 percent of allowable administrative costs for regular operating expenses.[211] Similarly, Federal Medical Assistance Percentages (FMAP) in some HHS programs like Medicaid can vary from between 50 percent to an enhanced rate of 100 percent in some cases.[212] Since the state share of federal financial participation (FFP) varies from state to state, DHS uses the average FMAP across all states and U.S. territories of 59 percent to estimate the amount of state transfer payments. Since the FMAP applies to both Medicaid and TANF, which account for almost 75 percent of the federal transfer payment reduction, it is reasonable to use it to estimate the state transfer payments. Therefore, the 10-year undiscounted amount of state transfer payments of the provisions of this final rule is about $1.01 billion annually. The 10-year discounted amount of state transfer payments of the provisions of this final rule would be approximately $8.63 billion at a 3 percent discount rate and about $7.12 billion at a 7 percent discount rate. Finally, DHS recognizes that reductions in federal and state transfers under federal benefit programs may have impacts on state and local economies, large and small businesses, and individuals. For example, the rule might result in reduced revenues for healthcare providers participating in Medicaid, companies that manufacture medical supplies or pharmaceuticals, grocery retailers participating

[211] Per section 16(a) of the Food and Nutrition Act of 2008. *See also* USDA, FNS Handbook 901, p. 41 available at: https://fns-prod.azureedge net/sites/default/files/apd/FNS_HB901_v2.2_Internet_Ready_Format.pdf
[212] *See* Dept. of Health and Human Servs. Notice, Federal Financial Participation in State Assistance Expenditures; Federal Matching Shares for Medicaid, the Children's Health Insurance Program, and Aid to Needy Aged, Blind, or Disabled Persons for October 1, 2016 through September 30, 2017, 80 FR 73779 (Nov. 25, 2015).

in SNAP, agricultural producers who grow foods that are eligible for purchase using SNAP benefits, or landlords participating in federally funded housing programs.

However, the rate of disenrollment or foregone enrollment may result in an underestimate, to the extent that covered aliens may choose to disenroll from or forego enrollment in public benefits programs sooner than in the same year that the alien applies for adjustment of status. For instance, because DHS will consider past receipt of public benefits within at least 36 months (3 years) as a heavily weighed factor under the final rule, prospective adjustment applicants may choose to disenroll or forego enrollment at least 36 months in advance of such application. Some aliens and members of their households may adjust their behavior in anticipation of eventually applying for adjustment of status, but not know exactly when they will submit such applications. In addition, because the final rule also affects inadmissibility and eligibility determinations in contexts aside from adjustment of status, some percentage of the alien population is likely to disenroll from or forego enrollment in covered programs, for such non-adjustment-related purposes as well.

On the other hand, the 2.5 percent rate of disenrollment or foregone enrollment estimate may result in an overestimate, insofar as it does not correct for those categories of aliens (such as asylees and refugees) that are exempt from the public charge ground of inadmissibility and assumes 100 percent of these populations are using public benefits, which may not be true. However, DHS expects the effects of the final rule on public benefit program enrollment and disenrollment by such categories of aliens and their households will be less pronounced. Additionally, some prospective adjustment applicants and associated household members may not choose to disenroll or forego public benefits because they may have other factors that counterbalance acceptance of public benefits when considering the totality of circumstances.

However, in order to examine the impact of prospective adjustment applicants choosing to disenroll or forego enrollment in public benefits at least 36 months in advance, DHS conducted a sensitivity analysis based on this issue of the proximity of time to a review of public charge inadmissibility. In such cases, DHS will consider past receipt of public benefits within at least 36 months (3 years) that were received for the applicable duration standard as a heavily weighed negative factor under the final rule and that a prospective adjustment applicant may choose to disenroll or forego enrollment for at least 36 months in advance of such application. Table 18 presents the potential range of the population who may disenroll from or forego enrollment in public benefits programs as well as the potential total reduction in transfer payments paid by the federal government to this population. DHS estimates that the population range of members of households that include foreign-born non-citizens who may disenroll from or forego enrollment in public benefits programs would range from approximately 241,920 to 725,760. In addition, the estimated annual reduction in transfer payments paid by the federal government to this population ranges from about $1.46 billion to $4.37 billion. For this economic analysis, the primary estimate upon which DHS bases its analysis is the 1-year estimate, as shown below in the table.

Table 18. Estimated Annual Range of the Population of Members of Households Including Foreign-Born Non-Citizens that May Disenroll from or Forego Enrollment in Public Benefits Programs and the Reduction in Transfer Payments.

Years Prior to Application	Households or Public Benefits-Receiving Members of Households that Include At Least 1 Foreign-Born Non-Citizen Based On A 2.5% Rate of Disenrollment or Foregone Enrollment	Estimated Reduction in Transfer Payments Based On A 2.5% Rate of Disenrollment or Foregone Enrollment
1 Year	241,920	$1,455,724,086
2 Years	483,840	$2,911,448,173

3 Years	725,760	$4,367,172,259
Source: USCIS analysis.		

DHS presents this range since it is possible that the number of people who may disenroll from or forego enrollment in public benefits programs in one year could be as many as the combined three-year total of people who may disenroll or forego enrollment. Because DHS will heavily weigh the receipt of public benefits within the past 36 months that were received for the applicable duration standard as a negative factor, individuals may begin to disenroll or forego enrollment in public benefits programs as early as three years prior to applying for adjustment of status. As a result, the annual reduction in transfer payments could range between the three estimates presented in table 18.

As noted previously in this economic analysis, studies referenced by commenters that examined the effect of PRWORA in 1996 showed a reduction in enrollment ranging from 21 to 54 percent for various populations and benefit types, it is unclear how many individuals would actually disenroll from or forego enrollment in a public benefits program due to the final rule.[213] Based on comments DHS received regarding the rate of disenrollment/foregone enrollment in this analysis and the range of rates presented in the literature, table 19 shows the estimated number of individuals who may choose to disenroll from or forego enrollment in a public benefits program. The table presents estimates for a range of disenrollment rates, including the

[213] *See* Genser, J. (1999). *Who is leaving the Food Stamps Program: An analysis of Caseload Changes from 1994 to 1997*. Washington, D.C.: U.S. Department of Agriculture, Food and Nutrition Service, Office of Analysis, Nutrition, and Evaluation. Available at https://www.fns.usda.gov/snap/who-leaving-food-stamp-program-analysis-caseload-changes-1994-1997. (Accessed June 17, 2018).
See also Fix, M.E., and Passel, J.S. (1999). *Trends in Noncitizens' and Citizens' Use of Public Benefits Following Welfare Reform: 1994 – 1997*. Washington, D.C.: The Urban Institute. Available at https://www.urban.org/research/publication/trends-noncitizens-and-citizens-use-public-benefits-following-welfare-reform. (Accessed June 17, 2018).

primary rate of 2.5 percent on which this analysis bases its estimates, and the rates of 21 and 54 percent.

Table 19. Range of Potential Disenrollment or Foregone Enrollment in Public Benefits Programs.

Public Benefits Program	2.5% Rate -- Public Benefits Recipients (Households) Who Are Members of Households that Include Foreign-Born Non-Citizens	21% Rate -- Public Benefits Recipients (Households) Who Are Members of Households that Include Foreign-Born Non-Citizens	54% Rate -- Public Benefits Recipients (Households) Who Are Members of Households that Include Foreign-Born Non-Citizens
Medicaid[1]	76,741	644,627	1,657,612
Supplemental Nutrition Assistance Program (SNAP)	129,563	1,088,327	2,798,554
Temporary Assistance for Needy Families (TANF)	7,626	64,062	164,731
Supplemental Security Income (SSI)	18,358	154,204	396,523
Federal Rental Assistance (Households)	8,801	73,931	190,110
Total	**232,288**	**1,951,219**	**5,017,421**
Total (Households)	**8,801**	**73,931**	**190,110**

Source: USCIS analysis.

Notes:
[1] Neither HHS nor DHS are able to disaggregate emergency and non-emergency Medicaid expenditures. Therefore, this rule considers overall Medicaid expenditures. Note that per enrollee Medicaid costs vary by eligibility group and State.

Based on the estimated number of individuals who may choose to disenroll from or forego enrollment in a public benefits program at rates of 2.5, 21, and 54 percent, table 20 shows the range of total estimated annual reduction in transfer payments paid by the Federal Government. DHS estimates that the total annual reduction in transfer payments paid by the Federal Government would range from about $12.2 billion at a disenrollment/foregone

enrollment rate of 21 percent to about $31.4 billion at a disenrollment/foregone enrollment rate of 54 percent. By comparison, the total annual reduction in transfer payments paid by the Federal Government is about $1.4 billion based on DHS's primary disenrollment/foregone enrollment rate of 2.5 percent.

Table 20. Range of Total Estimated Annual Reduction in Transfer Payments Paid By the Federal Government Due to Disenrollment or Foregone Enrollment in Public Benefits Programs.

Public Benefits Program	Average Annual Benefit per Person or Household	2.5% Rate of Disenrollment or Foregone Enrollment: Estimated Public Benefits Recipients / Households	21% Rate of Disenrollment or Foregone Enrollment: Estimated Public Benefits Recipients / Households	54% Rate of Disenrollment or Foregone Enrollment: Estimated Public Benefits Recipients / Households
Medicaid[1]	$13,755.08	$1,055,582,452	$8,866,892,596	$22,800,580,962
Supplemental Nutrition Assistance Program (SNAP)	$1,527.59	$197,919,143	$1,662,516,859	$4,275,043,353
Temporary Assistance for Needy Families (TANF)	$1,272.56	$9,704,543	$81,522,984	$209,630,530
Supplemental Security Income (SSI)	$6,593.72	$121,047,512	$1,016,774,874	$2,614,563,963
Federal Rental Assistance	$8,121.16	$71,474,329	$600,409,435	$1,543,909,976
Totals	*N/A*	**$1,455,724,086**	**$12,228,116,749**	**$31,443,728,783**

Source: USCIS analysis.

Notes:
[1] Neither HHS nor DHS are able to disaggregate emergency and non-emergency Medicaid expenditures. Therefore, this rule considers overall Medicaid expenditures. Note that per enrollee Medicaid costs vary by eligibility group and State.

d. Indirect Impacts of Final Regulatory Changes

A likely impact of the final rule is that various individuals and other entities will incur costs associated with familiarization with the provisions of the rule. Familiarization costs involve the time spent reading the details of a rule to understand its changes. A foreign-born

non-citizen (such as those contemplating disenrollment or foregoing enrollment in a public benefits program) might review the rule to determine whether or not they are subject to the provisions of the final rule. To the extent that an individual or entity is directly regulated by the final rule incurs familiarization costs, those familiarization costs are a direct cost of the rule. In addition to those being directly regulated by the final rule, a wide variety of other entities will likely choose to read the final rule and will incur familiarization costs. For example, immigration lawyers, immigration advocacy groups, health care providers of all types, non-profit organizations, non-governmental organizations, and religious organizations, among others, may want to become familiar with the provisions of this final rule. DHS believes such non-profit organizations and other advocacy groups might choose to read the rule in order to provide information to those foreign-born non-citizens and associated households that might be affected by a reduction in federal transfer payments. Familiarization costs incurred by those not directly regulated are indirect costs.

DHS estimates the time that would be necessary to read the rule is approximately 16 to 20 hours per person depending on an individual's average reading speed and level of review, resulting in opportunity costs of time. DHS assumes the average professional reads technical documents at a rate of about 250 to 300 words per minute. An entity, such as a non-profit or advocacy group, may have more than one person who needs to read the final rule. Using the average total rate of compensation as $36.47 per hour for all occupations, DHS estimates that the opportunity cost of time will range from about $583.52 to $729.40 per individual who must read and review the final rule.

Another source of indirect costs of the final rule would be costs to various entities associated with familiarization of and compliance with the provisions of the rule, such as for

hospitals or state Medicaid agencies. Regulatory compliance costs are all of the costs entities incur in order to ensure they are aware of and follow all applicable government regulations. Compliance costs may include salaries of employees who monitor current and potential regulations, opportunity costs of time related to understanding the requirements of regulations, disseminating information to the rest of an organization (e.g., training sessions), and developing or modifying information technology (IT) systems as needed. For example, health systems, hospitals, and post-acute care (PAC) providers (hereafter referred to as "hospitals") in the U.S. would need to become familiar with the provisions of this final rule. Based on a recent study the American Hospital Association (AHA) conducted,[214] DHS developed an estimate of hospital familiarization and compliance costs associated with the final rule. See table 21.

Table 21. Estimated Familiarization and Compliance Costs of the Final Rule for Health Systems, Hospitals, and Post-acute Care (PAC) Providers.

Total Number of All Registered Hospitals in the United States[1]	5,534
Number of discrete regulatory requirements with which health systems, hospitals, and post-acute care (PAC) providers must maintain compliance	629
Annual hospital spending on administrative activities related to regulatory compliance	$38,600,000,000
Total estimated annual hospital spending on regulatory compliance per regulation	$61,367,250
Total estimated annual spending per hospital on regulatory compliance per regulation	$11,089

Source: USCIS Analysis of AHA data, *see* American Hospital Association (AHA). Regulatory Overload: Assessing the Regulatory Burden on Health Systems, Hospitals, and Post-acute Care Providers. Oct. 2017. Available at: https://www.aha.org/system/files/2018-02/regulatory-overload-report.pdf, (accessed June 6, 2018).

Notes:
[1] Registered hospitals are those that meet AHA's criteria for registration as a hospital facility. Registered hospitals include AHA member hospitals as well as nonmember hospitals.

[214] American Hospital Association (AHA). *Regulatory Overload: Assessing the Regulatory Burden on Health Systems, Hospitals, and Post-acute Care Providers*. Oct. 2017. Available at: https://www.aha.org/system/files/2018-02/regulatory-overload-report.pdf, (accessed June 6, 2018).

According to the AHA study, there are 5,534 hospitals that spend a total of approximately $38.6 billion annually on administrative activities related to maintaining compliance with 629 discrete regulatory requirements specific to these entities. Therefore, DHS estimates that total annual hospital spending on regulatory compliance for one discrete set of regulatory requirements is about $61,367,250 on average.[215] On a per hospital basis, the average cost for each hospital to maintain compliance with one particular regulation is about $11,089 annually.[216]

While this economic analysis presents the quantified indirect costs of this final rule based on the estimated costs hospitals would incur for familiarization with the rule and regulatory compliance, DHS notes that the final rule may produce various unquantified indirect costs related to unintended consequences. For example, there could be reduced economic activity for small businesses in the vicinity of hospitals due to fewer individuals seeking medical care under the Medicaid program who may purchase items, or there could be reduced economic activity for grocery stores, especially those run as small-businesses, due to fewer grocery purchases by families that had received SNAP benefits.

DHS is generally not able to estimate all of the additional indirect costs that would likely be incurred because of follow-on economic effects of the initial indirect costs identified in the final rule due to the wide range of these costs. However, to provide an example, DHS estimated these additional indirect costs for SNAP using economic multipliers for the program developed

[215] Calculation: $38,600,000,000 (Estimated annual hospital spending on regulatory compliance) / 629 (Number of regulatory requirements with which to maintain compliance) = $61,367,250 (Total estimated annual hospital spending on regulatory compliance).
[216] Calculation: $61,367,250 (Total estimated annual hospital spending on regulatory compliance) / 5,534 (Number of registered hospitals in the U.S) = $11,089 (Total estimated annual spending per hospital on regulatory compliance per regulation).

in a USDA study.[217] See table 22. The USDA study details the data sources and underlying assumptions and structure of the Food Assistance National Input-Output Multiplier (FANIOM) model and illustrates its use to estimate the multiplier effects from benefits issued under SNAP. The FANIOM model is used to represent and measure linkages between USDA's domestic food assistance programs, agriculture, and the U.S. economy.

Table 22. Estimated Follow-on Economic Effects of SNAP Disenrollment or Foregone Enrollment

Number of members of households that include foreign-born non-citizens who disenroll or forego enrollment in SNAP	129,563
SNAP annual economic impact of disenrollment or foregone enrollment at a 2.5% rate	$197,811,137
Decrease in total economic activity	$354,081,935
Decrease in retail food expenditures	$51,430,896
Decrease in expenditures on nonfood goods and services (as households shift cash income from nonfood to food expenditures)	$146,380,241
Jobs lost (full-time, part-time, and self-employed)	1,939

Source: DHS analysis using USDA's FANIOM model, see Hanson, K. (2010). The Food Assistance National Input-Output Multiplier (FANIOM) Model and Stimulus Effects of SNAP. Washington, D.C.: U.S. Department of Agriculture, Food and Nutrition Service, Economic Research Service. Available at https://www.ers.usda.gov/webdocs/publications/44748/7996_err103_1_.pdf. (Accessed June 22, 2018).

Using the USDA FANIOM economic multiplier of 1.79 for SNAP benefits,[218] DHS estimates that the loss of SNAP benefits for the estimated 129,563 individuals who would disenroll or forego enrollment would result in a decrease in annual total economic activity of

[217] *See* Hanson, K. (2010). *The Food Assistance National Input-Output Multiplier (FANIOM) Model and Stimulus Effects of SNAP*. Washington, D.C.: U.S. Department of Agriculture, Food and Nutrition Service, Economic Research Service. Available at https://www.ers.usda.gov/webdocs/publications/44748/7996_err103_1_.pdf. (Accessed June 22, 2018).
[218] *See* ibid., p. *iv*.

approximately $354 million. In addition, DHS estimates that the amount of retail food expenditures would decreased by about $51.4 million annually and the amount of expenditures on nonfood goods and services would decrease by approximately $146.4 million annually as households shift cash income from nonfood to food expenditures due to the loss of SNAP benefits.

DHS appreciates concerns expressed in public comments we received about the nexus between public benefit enrollment reduction and food insecurity and hunger, and increased costs to states and localities. Commenters on the rule noted that disenrollment from programs like SNAP would worsen food insecurity in the United States as many families, children, older adults, and people with disabilities may choose to disenroll or forego enrollment in SNAP. DHS acknowledges that individuals subject to this rule may decline to enroll in or may choose to disenroll from public benefits for which they may be eligible under PRWORA, in order to avoid negative consequences as a result of this final rule. DHS has authority to take past, current, and likely future receipt of public benefits into account, even where it may ultimately result in discouraging aliens to receive public benefits. However, in response to comments, DHS will take a number of steps that should alleviate public confusion, concern about reduced enrollment in public benefit programs, and concern about the cascading effects of that reduced enrollment. USCIS will publicly engage immigrant communities, advocacy groups, healthcare workers, social service professionals, and public assistance officials. Although covered at length in the NPRM and explained in the preamble of the final rule, DHS will emphasize the groups of individuals who are not subject to this rule, including, but not limited to, U.S. citizens, lawful permanent residents returning from a trip abroad who are not considered applicants for admission, and refugees.

There may also be additional indirect impacts of this rule associated with foregone use of benefits that may also affect a number of small businesses. For example, with reduced use of Medicaid, medical providers and possibly pharmacies could have a reduced number of patients and customers, respectively, thereby reducing revenues. Similarly, with reduced individual receipts of SNAP benefits, small retailers and grocers, farmer's markets, and agricultural producers may experience less demand for their products.

In addition, the final rule may impose costs that DHS is unable to quantify. It may be necessary for many federal agencies, such as USDA in administering the SNAP program, to update and re-write guidance documents or to update forms, guidance, and webpages currently in use. Moreover, there may be additional unquantified costs associated with similar activities that state and local governments may incur. Further, at each level of government, it will be necessary to prepare training materials and retrain staff. Changes such as these will require additional staff time and will generate associated costs.

In addition, DHS acknowledges that the final rule will add new direct and indirect impacts on various entities and individuals associated with the provisions of the rule. However, in response to public comments we received about the availability of older documentation related to receipt of public benefits, DHS does not agree that the new requirements associated with public charge inadmissibility determinations would pose an unnecessary administrative burden, as DHS has determined that it is necessary to establish a public charge inadmissibility rule. While age and availability of record of public benefits receipts may vary among Federal and State agencies, it is the responsibility of the individual seeking immigration benefits to provide the required documents and information. Beyond the indirect costs and other economic effects

described in the economic analysis of this rule, it is unclear the effect that this rule will have on the entities mentioned by the commenters.

DHS also notes that although school lunch programs provide for nutrition similar to SNAP, these benefits account for a relatively low overall expenditure, are specific to children in a school setting, and are administered by schools. It could be a burden on schools to conduct additional administrative adjudication to determine if a child is eligible based on income. In addition, assistance or benefits under the National School Lunch Act, (NSLP and the SBP)[219] and the Child Nutrition Act of 1966 are excluded under the limitations for qualified aliens from federal means-tested public benefits.[220] Under 8 U.S.C. 1613, qualified aliens are generally not eligible for "means-tested public benefits" until after five years of entry. However, the child nutrition programs, including the NSLP, are excluded from this ineligibility. In addition, the law prescribes that a person who receives free public education benefits under State or local law shall not be ineligible to receive benefits provided under the school lunch program under the Richard B. Russell National School Lunch Act[221] or the SBP under section 4 of the Child Nutrition Act of 1966[222] on the basis of citizenship, alienage, or immigration status.[223] Therefore, DHS believes the NSLP is appropriately excluded from this final rule. Further, DHS understands that a child may no longer automatically enroll in the school lunch programs or be automatically certified for the school programs. However, the child would still qualify for the programs based on the eligibility criteria and this rule does not change the programs' eligibility criteria or restrict who may apply for the programs.

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[219] *See* USDA, The School Breakfast Program, available at https://fns-prod.azureedge.net/sites/default/files/sbp/SBPfactsheet.pdf (last visited June 30, 2018).
[220] *See* Pub. L. 104-193, Section 403, 110 Stat. 2105, 2266 (Aug. 22, 1996), codified at 8 U.S.C. 1613(c)(2)(D).
[221] *See* 42 U.S.C. 1751 et seq.
[222] *See* 42 U.S.C. 1773.
[223] *See* 8 U.S.C. 1615.

A number of consequences could occur because of follow-on effects of the reduction in transfer payments due to disenrollment or forgone enrollment in public benefits programs as identified in the final rule.[224] DHS is providing a list of the primary non-monetized potential consequences of the final rule below. Disenrollment or foregoing enrollment in public benefits programs by aliens who are otherwise eligible could lead to the following:

- Worse health outcomes, including increased prevalence of obesity and malnutrition, especially for pregnant or breastfeeding women, infants, or children, and reduced prescription adherence;
- Increased use of emergency rooms and emergent care as a method of primary health care due to delayed treatment;
- Increased prevalence of communicable diseases, including among members of the U.S. citizen population who are not vaccinated;
- Increases in uncompensated care in which a treatment or service is not paid for by an insurer or patient;
- Increased rates of poverty and housing instability; and
- Reduced productivity and educational attainment.

[224] *See* Kaushal, N. & Kaestner, R. (2005). *Welfare Reform and Health Insurance of Immigrants*. Health Services Research Journal, June 40(3): 697-722.; *See also* Kandula, N.R., et al. (2004). *The Unintended Impact of Welfare Reform on the Medicaid Enrollment of Eligible Immigrants*. Health Services Research Journal, Oct. 39(5): 1509-1526.; *See also* Kaestner, R. (2004). *Welfare Reform, Health Insurance and Health*. The National Bureau of Economic Research (NBER), Winter.; *See also* Batalova, J., et al. (2018). *Chilling Effects: The Expected Public Charge Rule and Its Impact on Legal Immigrant Families' Public Benefits Use*. Migration Policy Institute, June.; *See also* Bernstein, H., et al. (2019). *One in Seven Adults in Immigrant Families Reported Avoiding Public Benefit Programs in 2018*. Urban Institute, May.; *See also* Artiga, S., et al. (2019). *Potential Effects of Public Charge Changes on Health Coverage for Citizen Children*, Kaiser Family Foundation (KFF), May 18. Available at: https://www.kff.org/disparities-policy/issue-brief/potential-effects-of-public-charge-changes-on-health-coverage-for-citizen-children/. Accessed: July 26, 2019.

DHS notes that the final rule is likely to produce various other unanticipated consequences and indirect costs. For example, community based organizations, including small organizations, may provide charitable assistance, such as food or housing assistance, for individuals who forego enrollment in public benefit programs.

e. Discounted Direct Costs and Reduced Transfer Payments

To compare costs over time, DHS applied a 3 percent and a 7 percent discount rate to the total estimated costs associated with the final rule. Table 23 presents a summary of the quantified direct costs and reduced transfer payments from the federal and states governments included in the final rule. The summary table presents costs in undiscounted dollars as well as dollars discounted at 3 percent and 7 percent rates over a 10-year period.

Table 23. Summary of Estimated Direct Costs and Reduced Transfer Payments from the Federal and State Governments of the Final Rule.

	Direct Costs		Reduced Transfer Payments[1]	
	Annual Cost	Costs over 10-year Period	Annual Transfers	Transfers over 10-year Period
Total Undiscounted Costs	$35,202,698	$352,026,980	$2,467,328,960	$24,673,289,600
Total Costs at 3 Percent Discount Rate		$300,286,154		$21,046,816,492
Total Costs at 7 Percent Discount Rate		$247,249,020		$17,329,486,137

Source: USCIS analysis.

Note:
[1] The amount of transfer payments presented includes the estimated amounts of transfer payments to the federal government and to state governments from foreign-born non-citizens and their households who may disenroll or forego enrollment in public benefits programs. DHS assumes that the state governments' share of the total amount of transfer payments is 59 percent of the estimated total transfer payments to the federal government. For a breakout of the estimated total federal and state transfer payment amounts, see below.

i. Discounted Direct Costs

DHS presents the total estimated costs for filing Form I-944 as part of the review for determination of inadmissibility based on public charge when applying for adjustment of status and the opportunity cost of time associated with the increased time burden estimate for completing Forms I-485, I-129, I-129CW, and I-539. See table 24. The total estimated costs are presented in undiscounted dollars, at a 3 percent discount rate, and at a 7 percent discount rate.

Table 24. Total Estimated Direct Costs of the Final Rule with Total Estimated Direct Costs Discounted at 3 Percent and 7 Percent.

Form	Source of Cost	Total Estimated Annual Cost (Undiscounted)	Total Estimated Costs Over 10-year Period
Form I-944, Declaration of Self-Sufficiency	Opportunity cost of time (OCT) for completing form and credit report/credit score costs.	$25,844,869	$258,448,690
Form I-485, Application to Register Permanent Residence or Adjust Status	OCT associated with the increased time burden for completing form	$688,075	$6,880,750
Form I-129, Petition for a Nonimmigrant Worker	OCT associated with the increased time burden for completing form	$6,134,750	$61,347,500
Form I-129CW, Petition for a CNMI-Only Nonimmigrant Transitional Worker	OCT associated with the increased time burden for completing form	$115,040	$1,150,400
Form I-539, Application To Extend/Change Nonimmigrant Status	OCT associated with the increased time burden for completing form	$2,384,974	$23,849,740
Form I-945, Public Charge Bond	Filing fee OCT for completing form	$34,166	$341,660
Form I-356, Request for Cancellation of Public Charge Bond	Filing fee OCT for completing form	$823.50	$8,235

Total Undiscounted Costs		**$35,202,698**	**$352,026,980**
Total Costs at 3 Percent Discount Rate			**$300,286,154**
Total Costs at 7 Percent Discount Rate			**$247,249,020**
Source: USCIS analysis.			

Over the first 10 years of implementation, DHS estimates the quantified direct costs of the final rule would range from about $352,026,980 (undiscounted). In addition, DHS estimates that the 10-year discounted cost of this final rule to individuals applying to adjust status who will be required to undergo review for determination of inadmissibility based on public charge would be about $300,286,154 at a 3 percent discount rate and about $247,249,020 at a 7 percent discount rate.

This economic analysis presents the quantified costs of this final rule based on the estimated population applying to adjust status subject to review for public charge determination and the opportunity cost of time associated with the increased time burden estimates for completing Forms I-485, I-129, I-129CW, and I-539. The economic analysis also presents the quantified costs associated with the public charge bond process, including costs associated with completing and filing Forms I-945 and I-356.

ii. Discounted Reduction in Transfer Payments

DHS presents the total estimated quantified reduction in transfer payments from the federal and state governments of the final rule in table 25. The total estimated costs are presented in undiscounted dollars, at a 3 percent discount rate, and at a 7 percent discount rate.

Table 25. Total Estimated Reduction in Transfer Payments from the Federal and State Governments to Members of Households that Include Foreign-Born Non-Citizens Who May Be Receiving Public Benefits (Estimates Discounted at 3 Percent and 7 Percent).

Source of Costs	Total Estimated Annual Reduction in Transfer Payments (Undiscounted)[1]	Total Estimated Reduction in Transfer Payments Over 10-year Period
Estimated reduced transfer payments due to disenrollment / foregone enrollment from public benefits programs	$2,467,328,960	$24,673,289,600
Total Undiscounted Transfer Reductions	**$2,467,328,960**	**$24,673,289,600**
Total Transfers Reductions at 3 Percent Discount Rate		**$21,046,816,492**
Total Transfer reductions at 7 Percent Discount Rate		**$17,329,486,137**

Source: USCIS analysis.

Note:

[1] The amount of transfer payments presented includes the estimated amount of the reduction in transfer payments from the federal and state governments to members of households that include foreign-born non-citizens who may disenroll or forego enrollment in public benefits programs. DHS assumes that the state governments' share of the total amount of transfer payments is 59 percent of the estimated total transfer payments from the federal government.

Over the first 10 years of implementation, DHS estimates the total quantified reduction in transfer payments from the federal and state governments to members of households that include foreign-born non-citizens would be about $24.7 billion (undiscounted). In addition, DHS estimates that the 10-year discounted costs of this final rule would be approximately $21.0 billion at a 3 percent discount rate and about $17.3 billion at a 7 percent discount rate due to disenrollment or foregone enrollment in various federal public benefits programs. In addition, since the state share of federal financial participation (FFP) varies from state to state,[225] DHS uses the average FMAP across all states and U.S. territories of 59 percent to estimate the amount of state transfer payments. Since the FMAP applies to both Medicaid and TANF, which account for almost 75 percent of the federal transfer payment reduction, it is reasonable to use it to estimate the state transfer payments. Table 26 shows the state share of the total estimated amount of transfer payments of the final rule.

[225] *See* Dept. of Health and Human Servs. Notice, Federal Financial Participation in State Assistance Expenditures; Federal Matching Shares for Medicaid, the Children's Health Insurance Program, and Aid to Needy Aged, Blind, or Disabled Persons for October 1, 2016 through September 30, 2017, 80 FR 73779 (Nov. 25, 2015).

Table 26. State Share of the Total Estimated Reduction in Transfer Payments from the Federal and State Governments to Members of Households that Include Foreign-Born Non-Citizens Who May Be Receiving Public Benefits (Estimates Discounted at 3 Percent and 7 Percent).

Source of Costs	State Share of the Total Estimated Annual Reduction in Transfer Payments (Undiscounted)[1]	State Share of the Total Estimated Reduction in Transfer Payments Over 10-year Period
Estimated reduced transfer payments due to disenrollment / foregone enrollment from public benefits programs	$1,011,604,874	$10,116,048,740
Total Undiscounted Transfer Reductions	**$1,011,604,874**	**$10,116,048,740**
Total Transfers Reductions at 3 Percent Discount Rate		**$8,629,194,762**
Total Transfer reductions at 7 Percent Discount Rate		**$7,105,089,316**

Source: USCIS analysis.

Note:

[1] The amount of transfer payments presented includes the state share of the total estimated amount of the reduction in transfer payments from the federal and state governments to foreign-born non-citizens and their households who may disenroll or forego enrollment in public benefits programs. DHS assumes that the state governments' share of the total amount of transfer payments is 59 percent of the estimated total transfer payments from the federal government.

The 10-year undiscounted amount of state transfer payments of the provisions of this final rule is about $1.01 billion annually. The 10-year discounted amount of state transfer payments of the provisions of this final rule would be approximately $8.63 billion at a 3 percent discount rate and about $7.12 billion at a 7 percent discount rate.

Disenrollment or foregone enrollment in public benefits programs could occur whether or not such immigrants are directly affected by the provisions of the final rule, however, USCIS is unable to determine the exact percentage of individuals who would disenroll or forego enrollment. DHS notes there may be a number of additional sources of transfer payments that could result from the final rule that DHS is not able to estimate and quantify at this time.

f. Costs to the Federal Government

The INA provides for the collection of fees at a level that will ensure recovery of the full costs of providing adjudication and naturalization services, including administrative costs and services provided without charge to certain applicants and petitioners. *See* INA section 286(m), 8 U.S.C. 1356(m). DHS notes that USCIS establishes its fees by assigning costs to an adjudication based on its relative adjudication burden and use of USCIS resources. Fees are established at an amount that is necessary to recover these assigned costs such as clerical, officers, and managerial salaries and benefits, plus an amount to recover unassigned overhead (e.g., facility rent, IT equipment and systems among other expenses) and immigration benefits provided without a fee charge. Consequently, since USCIS immigration fees are based on resource expenditures related to the benefit in question, USCIS uses the fee associated with an information collection as a reasonable measure of the collection's costs to USCIS. Therefore, DHS has established the fee for the adjudication of Form I-485, Application to Register Permanent Residence or Adjust Status; Form I-129, Petition for a Nonimmigrant Worker; Form I-129CW, Petition for a CNMI-Only Nonimmigrant Transitional Worker; and Form I-539, Application to Extend/Change Nonimmigrant Status in accordance with this requirement. Other forms affected by this final rule do not currently charge a filing fee, including Form I-693, Medical Examination and Vaccination Record; Affidavit of Support forms (Form I-864, Form I-864A, Form I-864EZ, and I-864W); Form I-912, Request for Fee Waiver, and Form I-407, Record of Abandonment of Lawful Permanent Resident Status. DHS notes that the time necessary for USCIS to review the information submitted with each of these forms includes the time to adjudicate the underlying benefit request. While each of these forms does not charge a fee, the cost to USCIS is captured in the fee for the underlying benefit request form.

g. Benefits of Final Regulatory Changes

DHS expects the final rule to produce some quantified benefits for victims of a severe form of trafficking in persons (T nonimmigrants) based on the exemption from the public charge inadmissibility ground for T nonimmigrants. DHS has revised several regulatory provisions relating to individuals who have a pending application setting forth a prima facie case for eligibility for T nonimmigrant status, or who are present in the United States in valid T nonimmigrant status. DHS has clarified that these individuals are not subject to the public charge ground of inadmissibility when seeking an immigration benefit, to accurately reflect changes codified by Congress in the Violence Against Women Reauthorization Act of 2013 (VAWA 2013).[226] DHS has revised the public charge inadmissibility exemption provision proposed in the NPRM, 8 CFR 212.23(a)(17), created new 8 CFR 212.23(a)(18), and amended current 8 CFR 212.18(b)(2) as well as 8 CFR 245.23(c)(3) to align these regulations with the changes to the law made by VAWA 2013. T nonimmigrants applying for adjustment of status will no longer need to submit a waiver for public charge purposes.

Due to the regulatory changes, DHS is making in this final rule, it will no longer be necessary for T nonimmigrants to file Form I-601, Application for Waiver of Grounds of Inadmissibility, for public charge purposes. Table 27 shows the total estimated population of T nonimmigrants applying for adjustment of status who filed Form I-601 for fiscal years 2014 to 2018. DHS estimated this population based on receipts of Form I-601 in each fiscal year. Over this 5-year period, the estimated population of T nonimmigrants who filed Form I-601 seeking a waiver of grounds of inadmissibility ranged from a low of 8 in fiscal year 2018 to a high of 35 in fiscal year 2014. The estimated average population of T nonimmigrants who filed Form I-601

[226] *See* Pub. L. 113-4, 127 Stat. 54.

over the 5-year period fiscal year 2014 to 2018 was 16. T nonimmigrants applying for adjustment of status file Form I-601 to seek a waiver of several different inadmissibility grounds. For the purpose of this analysis, DHS assumes that every Form I-601 filed by a T nonimmigrant in connection with an application for adjustment of status seeks a waiver of the public charge inadmissibility ground. Therefore, DHS estimates that 16 is the average annual projected population of T nonimmigrants applying for adjustment of status who would have sought a waiver on grounds of inadmissibility.

Table 27. Receipts of Form I-601, Application for Waiver of Grounds of Inadmissibility for Applicants with a T Nonimmigrant Status Applying for Adjustment of Status, Fiscal Years 2014 - 2018.

Fiscal Year	Receipts
2014	35
2015	11
2016	9
2017	19
2018	6
Total	**80**
5-year Average	**16**

Source: USCIS analysis.

Note: This data represents the number of Form I-601 receipts filed annually meeting the following criteria:
1) The individual has an approved Form I-914 or Form I-914A;
2) The individual filed a Form I-485 with a receipt date after the approval of the Form I-914 or Form I-914A; and
3) The individuals identified in step 2 filed a Form I-601.
All matching between these forms was done according to Alien Number.

The current filing fee for Form I-601 is $930. The fee is set at a level to recover the processing costs to DHS. As previously discussed, the estimated average annual population of T nonimmigrants applying for adjustment of status using Form I-601 seeking a waiver of grounds

of inadmissibility is 16. Therefore, DHS estimates that the annual cost associated with filing Form I-601 for this population is approximately $14,880.[227]

DHS estimates the time burden for completing Form I-601 is 1 hour and 45 minutes (1.75 hours), including the time for reviewing instructions, gathering the required documentation and information, completing the application, preparing statements, attaching necessary documentation, and submitting the application.[228] Using the average total rate of compensation of $10.59 per hour, DHS estimates the opportunity cost of time for completing and submitting Form I-601 is $18.53 per petitioner.[229] Therefore, using the total population estimate of 16 annual filings for Form I-601, DHS estimates the total opportunity cost of time associated with completing and submitting Form I-601 is approximately $296.48 annually.[230]

In sum, DHS estimates the total current annual cost for T nonimmigrants filing Form I-601 seeking a waiver on grounds of inadmissibility is $15,176, which includes filing fees and opportunity costs of time for completing Form I-601.[231]

Since T nonimmigrants applying for adjustment of status will no longer need to submit a waiver on grounds of inadmissibility, the final rule will produce some benefits from this population no longer having to file Form I-601. The estimated total benefits of the final rule for T nonimmigrants applying for adjustment of status using Form I-601 seeking a waiver on grounds of inadmissibility will equal the current cost to file Form I-601 for this population.

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[227] Calculation: (Form I-601 filing fee) * (Estimated annual population filing Form I-601) = $930 * 16 = $14,880 annual estimated cost for T nonimmigrants filing Form I-601 seeking a waiver of grounds of inadmissibility.
[228] For time burden estimate, see USCIS, *I-601, Application for Waiver of Grounds of Inadmissibility, Instructions for Form I-601*. OMB No. 1615-0029. Expires 3/31/2019. Available at: https://www.uscis.gov/i-601, (accessed May 8, 2019).
[229] Calculation for estimated opportunity cost of time for completing Form I-601: ($10.59 per hour * 1.75 hours) = $18.5325 = $18.53 (rounded) per applicant.
[230] Calculation: (Form I-601 estimated opportunity cost of time) * (Estimated annual population filing Form I-601) = $18.53 * 16 = $296.48 annual estimated opportunity cost of time for filing Form I-601.
[231] Calculation: $14,880 (Filing fees for Form I-601) + $296.48 (Opportunity cost of time for Form I-601) = $15,176.48 = $15,176 (rounded) total current estimated annual cost for filing T nonimmigrants filing Form I-601 seeking a waiver of grounds of inadmissibility.

Therefore, DHS estimates the total benefits of the final rule for T nonimmigrants applying for adjustment of status using Form I-601 seeking a waiver on grounds of inadmissibility is $15,176 annually.

DHS also expects the final rule to produce other benefits, but can only provide qualitative analyses of these benefits. The primary qualitative benefit of the final rule is to better ensure that aliens who are admitted to the United States or apply for adjustment of status will not receive one or more public benefits as defined in the final 8 CFR 212.21(b) and instead, will rely on their financial resources, and those of family members, sponsors, and private organizations. As a result, DHS is establishing a more formal review process and improving the current review process to standardize the determination of inadmissibility based on the public charge ground. The process DHS is establishing also will help provide clarification for applicants about the specific criteria that will be considered during public charge inadmissibility determinations.

DHS anticipates that the final rule will produce some benefits from the elimination of Form I-864W for use in filing an affidavit of support. The information previously requested on the Form I-864W will now be captured using Form I-485. Applicants, therefore, will not be required to file a separate form apart from the Form I-485. As noted previously, there is no filing fee associated with filing Form I-864W, but DHS estimates the time burden associated with filing this form is 60 minutes (1 hour) per applicant.[232] Therefore, using the average total rate of compensation of $36.47 per hour, DHS estimates the amount of benefits that would accrue from eliminating Form I-864W is about $36.47 per applicant, which equals the opportunity cost of

[232] Source for I-864W time burden estimate: Paperwork Reduction Act (PRA) Affidavit of Support Under Section 213A of the INA (Forms I-864, I-864A, I-864EZ, I-864W) (OMB control number 1615-0075). The PRA Supporting Statement can be found at Question 12 on Reginfo.gov at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201705-1615-004.

time for completing Form I-864W.[233] However, DHS notes that we are unable to determine the annual number filings of Form I-864W and so cannot provide an estimate of the total benefit to applicants resulting from its elimination.

In addition, a benefit of establishing and modifying the public charge bond process, despite the costs associated with this process, would potentially allow an immigrant the opportunity to adjust status even if he or she is deemed likely to become a public charge.

[233] Calculation opportunity cost of time for completing and submitting Form I-864W: ($36.47 per hour * 1.0 hours) = $36.47.

EXHIBIT 13

The Washington Post
Democracy Dies in Darkness

Leaked Stephen Miller emails show Trump's point man on immigration promoted white nationalism, SPLC reports

By **Kim Bellware**

November 13, 2019 at 4:59 p.m. EST

In the lead-up to the 2016 election, White House senior adviser Stephen Miller sought to promote white nationalism, far-right extremist ideas and anti-immigrant rhetoric through the conservative website Breitbart, a report released Tuesday by the Southern Poverty Law Center claims.

The report is the first installment in a series that draws on more than 900 emails that Miller sent to a Breitbart writer over a 15-month period between 2015 and 2016 and that were given to the SPLC. The report describes emails from Miller as overwhelmingly focused on race and immigration and characterizes him as obsessed with ideas such as "white genocide" (a conspiracy theory associated with white supremacists) and sharply curbing nonwhite immigration.

In the wake of the news Tuesday, at least three members of Congress, including Rep. Alexandria Ocasio-Cortez (D-N.Y.), called for Miller to resign.

Miller declined to comment Wednesday. White House press secretary Stephanie Grisham said via email Tuesday that she had not seen the report but called the SPLC “an utterly-discredited, long-debunked far-left smear organization.”

“They are beneath public discussion, even in The Washington Post,” Grisham said of the civil rights nonprofit.

Among the more damning exchanges highlighted in the SPLC report, one describes how Miller directed a Breitbart reporter to aggregate stories from the white supremacist journal American Renaissance, or “AmRen,” for stories that emphasize crimes committed by immigrants and nonwhite people. According to emails excerpted by SPLC, Miller moved the conversation from email to a phone call; Katie McHugh, the recipient of the call, confirmed to The Post the timeline and that Miller discussed an American Renaissance story.

In another email SPLC highlights, Miller is apparently upset that Amazon removed Confederate battle flag merchandise from its marketplace in the wake of the 2015 Charleston church shooting. (Amazon chief executive Jeff Bezos owns The Post.)

Others reportedly show him promoting "The Camp of the Saints," a racist French novel popular among white nationalists.

SPLC's report indicates that Miller was widely successful in molding the race- and immigration-focused stories that appeared on Breitbart. It repeatedly details how an email from Miller corresponded to a related article later appearing on the site.

According to an August 2019 Post profile, Miller is "the singular force behind the Trump administration's immigration agenda," which produced the family separation policy affecting people seeking asylum at the U.S.-Mexico border and the 2017 executive order to ban travelers to the United States from majority-Muslim countries. He is aware of the criticism of his beliefs. In response to claims that he holds racist views, Miller, who is Jewish, previously told The Post that anyone who labels him a racist is "an ignorant fool, a liar and a reprobate who has no place in civilized society."

The emails were provided to the SPLC by McHugh, a former Breitbart writer and editor who exchanged scores of messages with Miller during his time transitioning from a press aide for then-U.S. Sen. Jeff Sessions (R-Ala.) to a senior adviser with then-candidate Donald Trump's presidential campaign.

Breitbart fired McHugh in 2017 over anti-Muslim tweets; McHugh has since denounced her association with white nationalism and the far right.

McHugh "is well aware of the risks she took in giving us the material and confirming information," said SPLC investigator Michael Edison Hayden, who wrote the report. "I think that's incredibly brave."

The SPLC shared with The Post seven pages of emails that are directly cited in the report by Hayden.

The Post has not independently verified the emails, though McHugh confirmed to The Post on Wednesday that she exchanged the emails with Miller referenced in the SPLC report. Hayden told The Post that he made contact with McHugh earlier this year as she was formerly on the periphery of several extremist groups he was following. McHugh was familiar with his work, Hayden said, and mentioned having materials she wanted to show him. After allowing him to view the emails on what Hayden recalled was "a very old computer," McHugh ultimately decided to release the emails to him.

"What Stephen Miller sent to me in those emails has become policy at the Trump administration," McHugh said to the SPLC.

During his time as a press aide for Sessions, Miller was known to send a "massive volume of information regarding U.S. immigration policy to reporters at all times," McHugh told The Post. The narrative of that information conformed to Miller's views of immigration and immigration restrictions, she said.

While Miller references mainstream news outlets — including Vox and MSNBC — among the links in the seven pages of emails reviewed by The Post, McHugh said the fact that Miller's emails also include links to sites prominent within white nationalism is notable.

"I would ask why a high-level staffer working in a senator's office is distributing links from white nationalists' sites — and [ask] how he became familiar with them, or why he was comfortable sharing them with a news outlet," she said, referring to Breitbart. Sites like American Renaissance would not be known by mainstream readers, she said. "It's well-known in white nationalist circles but very obscure to even Republicans."

Several years on from the email exchanges, Miller is probably at the height of his power within the West Wing. As The Post previously reported, Miller is one of Trump's longest-tenured advisers — along with Kellyanne Conway, and Trump's daughter Ivanka Trump and son-in-law Jared Kushner — and the most influential adviser shaping the Trump administration's immigration policies.

Hayden, who typically reports on white nationalism and neo-Nazis, said that while he was conscious of the Trump administration "as any American would be," he wasn't paying particular attention to Miller.

"I never had any ambition of writing any kind of piece exposing Stephen Miller. I took him to be part of the Trump culture but not something that was in my lane." Looking at Miller's emails changed that, Hayden said.

Excerpted emails shared with The Post show Miller drawing on stories from outlets such as the anti-immigration white nationalist site VDare and the conspiracy theory website Infowars and sending them to McHugh. Miller appears to urge McHugh to write about the stories and discusses how to frame them and push them to prominence on Breitbart's site.

After reading several profiles about Miller to understand his background, Hayden said he was struck by how Miller was portrayed — and dismayed that there was seemingly little effort made to examine the sources from which Miller drew his beliefs.

"I remember The Washington Post profile had at the end: 'He was running' — this idea that [Miller's] always busy, he's always working." Another profile, in the Atlantic, Hayden recalled, described Miller looking like he was "posing for a cologne ad."

"A lot of profiles in the liberal press have treated him like some sort of policy wonk bad boy — almost romanticized him," Hayden said. "The most important takeaway for me is that Stephen Miller found the basis for his ideas on websites that traffic in hate, and made it clear in his emails."

Clarification: An earlier version of this report characterized a discussion between McHugh and Miller about the American Renaissance website as an email. According to McHugh, it took place across email and a phone call.

Read more:

The GOP attacked Ilhan Omar for calling Stephen Miller a 'white nationalist.' She says his leaked emails prove her right.

New evidence shows contact between Trump official and Republican redistricting expert over census citizenship question, contradicting earlier DOJ claims

GQ, Nat Geo and Cosmo are banned in Arizona prisons. A judge said the rules need to explain why.

EPA pushes ahead with effort to restrict the science it uses to craft regulations

Kim Bellware
Kim Bellware covers national and breaking news for The Washington Post. She previously worked for City Bureau, The Huffington Post and as a nationally-focused freelance reporter. Follow

EXHIBIT 14

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MAKE THE ROAD NEW YORK, AFRICAN SERVICES COMMITTEE, ASIAN AMERICAN FEDERATION, CATHOLIC CHARITIES COMMUNITY SERVICES (ARCHDIOCESE OF NEW YORK), and CATHOLIC LEGAL IMMIGRATION NETWORK, INC.,

Plaintiffs,

vs.

KEN CUCCINELLI, in his official capacity as Acting Director of United States Citizenship and Immigration Services; UNITED STATES CITIZENSHIP & IMMIGRATION SERVICES; KEVIN K. McALEENAN, in his official capacity as Acting Secretary of Homeland Security; and UNITED STATES DEPARTMENT OF HOMELAND SECURITY,

Defendants.

19–cv-07993 (GBD)

DECLARATION OF JENNIFER L. VAN HOOK, Ph.D.

DECLARATION OF JENNIFER L. VAN HOOK

I, **Jennifer L. Van Hook**, declare pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. I am Roy C. Buck, Professor of Sociology and Demography at the Pennsylvania State University. I served as director of the Population Research Institute at Penn State from 2011 through 2016 and co-editor of *Demography*, the official journal of the Population Association of America, from 2016-2019. Currently, I am the director of graduate studies in Sociology at Penn State. I am also a non-resident fellow at the Migration Policy Institute.

2. The facts stated herein are of my own personal knowledge, and I could and would competently testify to them.

EXPERT BACKGROUND

3. I am trained as a sociologist and demographer. I obtained a PhD in Sociology in 1996 from the University of Texas at Austin. I have an M.S. in Sociology from the University of Wisconsin at Madison and a B.A. from Carleton College. After obtaining my PhD, I worked at the Urban Institute on projects related to education and program participation among immigrants. In 1999, I joined the faculty at Bowling Green State University, and then moved to Penn State University in 2007.

4. I have over 20 years of research experience analyzing large demographic data sources on topics related to immigration. My publications have appeared in major sociology and demography journals, including *Demography*, *Journal of Health and Social Behavior*, *Social Science and Medicine*, *Sociology of Education*, *Social Forces*, and *American Sociological Review*, and I have received external funding for my work from the National Institutes of Health, the National Science Foundation, the Foundation for Child Development, the Russell Sage Foundation, and the U.S. Census Bureau. In recognition of my contributions to research, I was awarded the Clifford C. Clogg Award for Mid-Career Achievement in 2016 by the Population Association of America, and I was elected to the Sociological Research Association in 2019.

5. My work uses demographic methods to estimate the size, characteristics, and dynamics of the foreign-born population. Since the mid-1990s, my research has focused on the socioeconomic incorporation of immigrants, particularly on public assistance use, poverty, food insecurity, school segregation, and family-level strategies for managing these challenges. Across multiple journal articles and book chapters, my colleagues and I documented the patterns and trends in public benefit use among immigrant groups in the United States. One study found that Mexican immigrant women who receive welfare tend to have shorter welfare spells and are more likely to exit welfare for work than their U.S.-born counterparts (Van Hook and Bean 2009).

This study was published in *American Sociology Review*, the flagship journal of the American Sociological Association. I have attached a true and complete list of all of my publications over the past ten years as Exhibit B to this Declaration (those referenced here are bolded entries in my publication list).

6. My colleagues and I have also evaluated and improved estimates of the unauthorized foreign-born population. This line of research resulted in several high-profile publications, including new estimates of the size and heterogeneity of the unauthorized Mexican-born population (Bean et al. 2001); the development of a new method and estimates of foreign-born emigration (Van Hook et al. 2006; Van Hook & Zhang 2011) and coverage error (Van Hook et al. 2014); new assessments of the quality of self-reported data on citizenship and legal status (Van Hook and Bachmeier 2013; Bachmeier, Van Hook and Bean 2014); and monte carlo simulations that tested a variety of legal status imputation approaches (Van Hook et al. 2015). The work on legal status led to important innovations that have enabled researchers at the Migration Policy Institute and elsewhere to produce estimates of the characteristics and geographic distribution of the unauthorized population in greater detail than possible with earlier methods. Attached is a true and correct copy of my curriculum vitae as Exhibit C to this Declaration, which includes a complete list of my professional publications.

7. I served as a member of the Census Advisory Committee of Professional Organizations, PAA, from 2008 to 2011. I also served as an expert for the 2010 Census Demographic Analysis Program (Net International Migration Team) and am currently serving on the 2020 Census Demographic Analysis Program (Net International Migration Team). In such capacities, I advise the Census Bureau on various issues related to the measurement of population trends and immigrant characteristics.

8. I have also served as an expert witness in *State of New York v. United States Department of Commerce* at the Federal District Court for the Southern District of New York, November 5, 2018. I provided a written report and live testimony regarding the impact the addition of a question on citizenship will have on the accuracy of the 2020 U.S. Census.

9. I was asked by Counsel to bring my scientific expertise and experience to bear on the question of the disparate impacts of the Public Charge Rule issued by the Department of Homeland Security on August 14, 2019 (the "Public Charge Rule" or "Rule"). 84 Fed. Reg. 41,292. Based on my experience, training, knowledge, and education, I offer expert opinions on the disparate impact of the Public Charge Rule. I hold my opinions in this case to a strong degree of professional certainty.

SUMMARY OF OPINIONS

10. My analyses of the disparate impact of the public charge Rule focus primarily on the aspects of the Rule related to the Totality of Circumstances (TOC) test, omitting any past or present benefit use as a factor. I use recently-adjusted Lawful Permanent Residents (LPRs) and legal nonimmigrants (LNI) as a proxy for assessing what their risk level would be were they to adjust under the new public charge Rule.[1] My analyses point to a number of key findings regarding these noncitizen groups:

THE UNITED STATES

- Latinos are more likely to be at risk of being deemed inadmissible by the TOC test than Asians and non-Hispanic whites (hereafter "whites"). Blacks are also more likely to be at risk but to a lesser degree than Latinos.
- Mexicans/Central Americans and, to a lesser degree, those from the Caribbean are much more likely to be at high risk of being deemed inadmissible by the TOC test

[1] I explain the reasons for the decision to focus on these groups in paragraph 25.

than those of European origin.[2] Other groups (South Americans, Middle Easterners/Central Asians, sub-Saharan Africans, and South/East Asians) are also at significantly higher risk than those of European origin, but lower risk than Mexicans/Central Americans and those from the Caribbean.

- Latinos' and Mexicans/Central Americans' relatively high risk of being deemed inadmissible is disproportionate to the level at which they use public benefits.

STATE OF NEW YORK

- Latinos are more likely to be at risk of being deemed inadmissible than whites. Blacks and Asians also are more likely to be at risk than whites, but to a lesser degree than Latinos.

- Mexicans/Central Americans and, to a lesser degree, those from the Caribbean, are more likely to be at risk of being deemed inadmissible than those of European origin. Other groups (South Americans, Middle Easterners/Central Asians, sub-Saharan Africans, and South/East Asians) are also significantly more likely to be at risk than those of European origin, but less likely than Mexicans/Central Americans and those from the Caribbean.

- Members of vulnerable groups (namely the working poor, the disabled, those with limited English proficiency, those living in large families, and the elderly) would face very high risks of being deemed inadmissible. By definition, nearly all would be at least some risk and two out of five or more may be at high risk because they often have multiple negative factors and few positive factors.

- Latinos' and Mexicans/Central Americans' relatively high risk of being deemed inadmissible is disproportionate to the level at which they use public benefits.

11. I conducted several sensitivity analyses and found that my findings were robust to alternative measures and specifications. First, the findings about the disparate impacts of the Rule were consistent regardless of whether or not I included public benefit use as a negative factor in the TOC test. This suggests that even if potential applicants use public benefits prior to admission (which is unlikely due to non-LPRs' ineligibility for most federally-funded public benefits), my conclusions are unlikely to be different.

[2] As explained in paragraph 41, I use the phrase "European origin" to describe immigrants from Europe and from countries that were predominately settled by Europeans (Canada and Oceania–i.e., mostly Australia and New Zealand).

12. Second, I found that the conclusions regarding the disparate impacts of the Rule are consistent across measures of the risk of inadmissibility. The share of potential applicants defined to be at "high" risk does vary across measures due to the ambiguousness of the Rule regarding the precise number and combination of factors required for a public charge designation. It is precisely because of this ambiguity that I do not attempt to predict the precise share of individuals who would be deemed inadmissible. Instead, I confine my opinion to comparisons of the relative risks of inadmissibility designations between groups, and my conclusions about relative risks are consistent regardless of how I measured risk.

13. Third, I found that the conclusions are robust to the inclusion of other foreign-born groups as proxies for the population that could potentially be impacted by the Rule, such as newly-arrived LPRs and unauthorized immigrants. While I found that the share with high, medium, and low risk of inadmissibility differs somewhat depending on which groups are used as proxies, the key findings reported here concerning Latino-white disparities in risk of inadmissibility are consistent regardless of whether I included or excluded the other foreign-born groups in the analysis.

14. Overall, I have a high degree of confidence in the conclusions that Latinos, Mexicans/Central Americans, and to a lesser degree other non-white and non-European origin groups, are more likely to experience risk of being deemed inadmissible by the TOC test than are whites and applicants of European origin, and the high risk observed among Latinos and Mexicans/Central Americans is disproportionate to their current levels of public program use. This finding holds for the entire United States and for New York. Vulnerable groups in New York—the working poor, the disabled, those with limited English proficiency, those living in

large families, and the elderly—also face an elevated risk of inadmissibility determinations (I did not provide estimates for these groups for the entire United States).

OVERVIEW OF ANALYSIS

15. Under the Immigration and Nationality Act (INA) Section 212(a)(4), inadmissibility based on public charge grounds is currently determined by the statute's "totality of the circumstances" test (TOC), which includes, at minimum, consideration of the following factors: (1) age; (2) health; (3) family status; (4) assets, resources, and financial status; and (5) education and skills. 8 U.S.C. § 1182(a)(4)(B).

16. On October 10, 2018, the U.S. Department of Homeland Security (DHS) issued a Notice of Proposed Rulemaking that proposed to expand the definition of public charge.[3]

17. On August 14, 2019, the Department for Homeland Security issued the final Rule.[4]

I. The Rule's Enumerated Public Benefits and Factors

18. The Rule, among other things, establishes a list of new enumerated public benefit programs (in addition to the previously considered cash benefits) and a set of positive and negative factors that are considered when determining a noncitizen's inadmissibility on public charge grounds. The Rule is forward-looking and seeks to determine, through the TOC test, not only whether an applicant used an expanded set of public benefits, but also whether they are more likely than not to use public benefits in the future.

A. Federally-funded Programs

19. Federally-funded programs newly-designated as public benefit programs for the purpose of the Rule include: (1) Medicaid, with certain exceptions; (2) Supplemental Nutrition

[3] 83 Fed. Reg. 51,114.
[4] 84 Fed. Reg. 41,292.

Assistance Program (SNAP); (3) Section 8 housing; (4) Section 8 Housing Assistance under the Housing Choice Voucher Program; (5) Section 8 Project-Based Rental Assistance; and (6) Federal Public Housing.

B. Heavily-weighted negative factors

(1) Economic Inactivity: The noncitizen is "not a full-time student and is authorized to work, but is unable to demonstrate current employment, recent employment history, or a reasonable prospect of future employment;"[5]

(2) Public Benefit Use: The noncitizen has "received or has been certified or approved to receive one or more public benefits, as defined in § 212.21(b) [including Medicaid, Supplemental Nutrition Assistance Program (SNAP), Section 8 housing, Section 8 Project-Based rental assistance, Federal public housing, SSI, and TANF or other state income-support means-tested programs] for more than 12 months in the aggregate within any 36 month period prior to the…application;"[6]

(3) Health Condition: The noncitizen "has been diagnosed with a medical condition that is likely to require extensive medical treatment or institutionalization or that will interfere with the alien's ability to provide for himself or herself, attend school, or work; and…is uninsured and has neither the prospect of obtaining private health insurance, or the financial resources to pay for reasonably foreseeable medical costs;"[7] and

(4) Previous Public Charge Finding: The noncitizen "was previously found inadmissible or deportable on public charge grounds."[8]

C. Heavily-weighted positive factors

(1) Household Income: The noncitizen has a "household income, assets, or resources, and support…of at least 250 percent of the Federal Poverty Guidelines [(FPG)];"[9]

(2) Employment Income: The noncitizen is authorized to work and is currently employed in a legal industry with an annual income…250

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5 8 C.F.R. §212.22(c)(1)(i).
6 8 C.F.R. §212.22(c)(1)(ii).
7 8 C.F.R. §212.22(c)(1)(iii).
8 8 C.F.R. §212.22(c)(1)(iv).
9 8 C.F.R. §212.22(c)(2)(i).

percent of the Federal Poverty Guidelines [(FPG)] for the [applicant's] household size;"[10] and

(3) Private Insurance: The noncitizen "has private health insurance…private health must be appropriate for the expected period of admission, and does not include health insurance for which the [applicant] receives subsidies in the form of premium tax credits under the [ACA]."[11]

D. Additional Factors & Considerations

20. Additionally, pursuant to the statute, age, health, family status, assets, resources, and financial status, and education and skills must also be considered when determining whether an applicant is "more likely than not" to become a public charge in the future.[12] The weight given to these factors when compared to the new list of heavily weighted negative/positive factors is unclear.

21. The Rule is ambiguous about the precise number or combination of positive and negative factors that will lead to an applicant being deemed inadmissible, or the degree to which heavily weighted factors are likely to override several other negative or positive factors. The preamble to the Rule states: "The presence of a single positive or negative factor, or heavily weighted negative or positive factor, will never, on its own, create a presumption that an applicant is inadmissible as likely to become a public charge or determine the outcome of the public charge inadmissibility determination. Rather, a public charge inadmissibility determination must be based on the totality of the circumstances presented in an applicant's case." 84 Fed. Reg. 41,295.

E. Factors Exempted from Consideration Under Rule[13]

(1) Public benefits received by family members

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[10] 8 C.F.R. §212.22(c)(2)(ii).
[11] 8 C.F.R. §212.22(c)(2)(iii).
[12] 8 C.F.R. §212.22(b).
[13] The final Rule exempts from consideration the following public benefit programs and receipt thereof. Some of these benefits were to be considered in the Department's proposed rulemaking issued on

(2) Medicaid use by Children under 21 or Pregnant women, including 60 days after giving birth[14]

(3) Children's Health Insurance Program (CHIP)

(4) Women, Infants, and Children (WIC) Program

(5) Medicare Part D Low Income Subsidy

(6) ACA Marketplace coverage subsidies[15]

22. Finally, pursuant to §§207(c)(3) and 209(c) of the Act, 8 U.S.C. §§1157(c)(3), 1159(c), certain categories of noncitizens are exempt from the public charge test, such as refugees and asylees.

II. Structure of Analysis

23. I was asked by Counsel to bring my scientific expertise and experience to bear on the question of the disparate impacts of the new Rule, particularly its impact on the share of applicants for LPR status who would be at risk of being denied admission (i.e., adjustment) due to the Rule's expanded definition of the meaning of public charge, by race/ethnicity and nationality, for the entire United States and separately for the State of New York. I was also asked to assess the impact on certain vulnerable groups in New York: the elderly, working poor, disabled, limited English proficient, and those with large household size.

III. Methodology

24. To assess the likely impact of the Rule on the number of immigrants granted LPR status, I followed the approach taken by Capps and his colleagues at the *Migration Policy*

October 10, 2018. In the final Rule, the Department determined that these benefits would not in fact be considered.

[14] 8 C.F.R. §212.21(b)(5)(iv). Additionally, Emergency Medicaid, Medicaid services provided under the Individuals with Disabilities Education Act (IDEA) and school-based services are also exempt.

[15] With respect to purchase of private insurance as a heavily weighted positive factor, the Rule requires this not be purchased with any ACA premium tax credits. *See* 84 Fed. Reg. 41,506; 8 C.F.R. §213.1(c)(2).

Institute (2018) (hereafter, the "Capps study").[16] They analyzed recently-arrived LPRs in the American Community Survey (ACS) to answer this question.[17] When they conducted their study, the final Rule had not yet been made public, so they evaluated the likely impacts of the draft of the proposed public charge rule that was leaked in January and March 2018 by *Vox*.[18] They found that the leaked public charge rule could dramatically change the national origin make-up of immigrants who are granted LPR status. This would happen because the application of negative and positive factors according to the leaked rule could lead to Latinos being deemed inadmissible more often than other groups.

A. Test Group: Potential Applicants

25. Counsel asked me to analyze the share of LPR applicants who may be deemed inadmissible due to the application of the Rule, with a focus on those seeking to adjust their status. Ideally, I would have examined the characteristics of recent applicants for adjustment to LPR status, as this group is likely to resemble LPR adjustees in the near future. I would have compared the share at risk of being deemed inadmissible under the old public charge rule versus under the new Rule to gauge the impact of the Rule. However, I do not have access to information about the qualifications of LPR applicants at the time of their application to LPR status because DHS does not produce or distribute detailed data on the characteristics of this population. Therefore, as the next-best-option, I used two groups as proxies for future LPR applicants: (1) those who recently adjusted as LPRs ("adjustees") over the last five years, and

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[16] Capps, Randy, Mark Greenberg, Michael Fix, and Jie Zong. 2018. "Gauging the Impact of DHS' Proposed Public-Charge Rule on U.S. Immigration." Migration Policy Institute: Washington, DC. https://www.migrationpolicy.org/research/impact-dhs-public-charge-rule-immigration.

[17] In their analysis, recently-arrived LPRs served as a proxy for future Green Card applicants.

[18] https://docs.google.com/viewerng/viewer?url=https://cdn.vox-cdn.com/uploads/chorus_asset/file/10188201/DRAFT_NPRM_public_charge.0.pdf and https://apps.washingtonpost.com/g/documents/world/read-the-trump-administrations-draft-proposal-penalizing-immigrants-who-accept-almost-any-public-benefit/2841/.

(2) recently-arrived legal nonimmigrants (LNI), which includes temporary visas holders, such as student or special skilled worker visas, some of whom could adjust to LPR status in the near future. LPRs who adjusted in the last five years[19] are likely to resemble future applicants for LPR adjustment, although they may have more favorable profiles than they had at the time of their adjustment given that they have had up to five years to learn English, gain education or training, and become more integrated into the labor force. Therefore, my decision to use recently-adjusted LPRs as a proxy probably leads to conservative estimates of the risk of inadmissibility by the Rule. LNIs represent another proxy for future adjustees because they could eventually become adjustees providing they have a pathway to LPR status (e.g., under employment or family provisions). Legal nonimmigrants tend to have more favorable socioeconomic profiles than all adjustees[20] because their status as legal nonimmigrants often requires them to be students or be working in skilled occupations, so their inclusion as proxies also leads to conservative estimates of the risk of inadmissibility under the Rule.

26. To gauge the impact of the Rule on the proxy population, I took advantage of the likelihood that many, if not most, of the proxies would probably have been admitted under the old public charge rule because they had either already adjusted status or they had been admitted as legal nonimmigrants. They help establish a baseline because they represent the types of people who would have qualified under the old rule. I then estimated the percentage of these noncitizens who would be vulnerable to being deemed inadmissible if their case were evaluated under the expanded criteria of the Public Charge Rule, specifically focusing on the TOC test and its several factors, regardless of any public benefits use. This percentage represents the

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[19] I did not restrict the sample to those who adjusted even more recently than five years ago (say, within one or two years) due to limitations in sample size.

[20] Sensitivity analyses indeed show that the inclusion of LNIs in the analysis reduces estimates of the share of potential applicants at risk of inadmissibility.

additional impact of the Public Charge Rule above and beyond any pre-existing admission criteria before 2019.

B. American Community Survey Dataset

27. I rely primarily on data obtained from the 2013-2017 years of the ACS.[21] The ACS is a very large survey that is continuously conducted by the U.S. Census Bureau across all communities in the United States. An important strength of the ACS is that it has a very large sample size and therefore supports analyses of recently-adjusted LPRs for the nation as well as for New York for small-sized national origin groups. The Capps study also relied on the ACS for this reason.

28. I limit my analysis to adults age 18 years and older,[22] who compose 90 percent of the sample of adjustees and LNIs.[23] I also limited my analysis to those adjustees who adjusted status in the last five years and had lived in the country no more than ten years, or in the case of LNIs, arrived in the country in the previous five years.[24]The focus on recent arrivals makes it more likely that the proxy population resembles LPR adjustees in the near future. In addition, I exclude from my analysis foreign-born persons who are less likely to be LPR applicants (i.e., unauthorized immigrants, although there may exist pathways to adjustment for this group under family-based petitions), and those who are exempt from the Public Charge Rule (refugees,

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[21] I downloaded the ACS data from the IPUMS-USA archive (Steven Ruggles, Sarah Flood, Ronald Goeken, Josiah Grover, Erin Meyer, Jose Pacas and Matthew Sobek. IPUMS USA: Version 9.0 [dataset]. Minneapolis, MN: IPUMS, 2019. https://doi.org/10.18128/D010.V9.0).

[22] Sensitivity analyses show no substantive differences in the results for adults versus both children and adults (see Figure 11).

[23] I included people with Temporary Protected Status ("TPS") because they are subject to the Rule when they apply to adjust, even though the public charge ground of inadmissibility does not apply to their eligibility for TPS. 8 C.F.R.§244.3(a). My analysis accounts for the fact that the Rule provides that public benefits received by people with TPS are not counted as a negative factor when those individuals apply to adjust. 8 C.F.R.§212.21(b)(8).

[24] I also excluded immigrants credited with 40 quarters or more of work, who are overwhelmingly likely to have arrived in the United States more than ten years ago and thus fall outside the parameters of my dataset.

asylees, parolees, those admitted under a Special Immigrant Visa, Cuban and Haitian entrants and asylum seekers, NACARA, American Indians born in Canada). I was unable to remove other exempt categories (e.g., VAWA, Amerasians, Special Immigrant Juveniles) because the ACS lacks the information necessary to identify them. I use the same methodology and computer algorithms as the Migration Policy Institute developed and uses for identifying these groups.[25] These methods are well documented and validated. I assessed how sensitive the results are to the decision to exclude these groups in supplementary analyses by comparing the results with results that do not exclude the likely unauthorized and new arrivals from the sample. These analyses show that my decision to exclude these individuals leads to conservative estimates of the disparate impacts of the Rule on Latinos compared with whites.

29. After excluding the aforementioned groups, the sample includes a large number of LPRs who adjusted status in the last five years, or in the case of LNI adults, arrived in the United States in the past five years: 108,314 in the entire United States and 8,574 in New York. For

[25] Many of the exempt categories are dropped from my analysis by virtue of the fact that I include only recently-arrived immigrants in my analysis; by definition, this means that most NACARA and Amerasians are excluded from my sample. Refugees and asylees are identified as individuals who were born in countries and arrived in years during which over 40% of the immigrants from those country-year combinations were admitted as refugees or over 20% are admitted as asylees, special immigrant visa holders, and Cuban and Haitian entrants (prior to 2017). Non-immigrants are identified as noncitizens who arrived in the last six years whose occupations and family/household characteristics are congruent with the eligibility criteria for specific nonimmigrant visa categories, such as foreign-student, diplomat, au pair, and high-tech worker. For example, foreign students must be enrolled in post-secondary school, not working, not on public assistance, and if married, their spouse must not be employed. Adjustees, new arrivals, and other (residual) foreign-born are identified using a unique imputation methodology as developed and validated by myself and James D. Bachmeier and used by the Migration Policy Institute for their estimates (Van Hook et al. 2015; Capps, Bachmeier, and Van Hook 2018). This methodology assigns noncitizens in the ACS an immigration status (adjustee, new arrival, other) by linking the ACS data to the Survey of Income and Program Participation, which includes a question on immigrants' legal status, using multiple imputation methods. For a more detailed description of this methodology, see Batalova, Jeanne, Sarah Hooker, and Randy Capps. 2014. "DACA at the Two-Year Mark: A National and State Profile of Youth Eligible and Applying for Deferred Action." Migration Policy Institute: Washington, DC, available online at https://www.migrationpolicy.org/research/daca-two-year-mark-national-and-state-profile-youth-eligible-and-applying-deferred-action.

brevity, I refer to this group as "potential applicants" as they constitute the pool of people who are likely to have recently adjusted status or who could seek to adjust their status in the near future (such as LNIs). The large sample sizes make it possible to examine the impact of the Rule with precision by race/ethnicity and national origin for the nation as a whole and for New York separately.

C. Public Charge Factors Identified

30. I created measures that indicate whether potential applicants would be at risk of being classified as having negative and positive factors according to the 2019 Public Charge Rule if they were to apply for LPR status.

31. Using the ACS data, I am able to measure the following factors.[26] It is important to note that ACS survey data is limited by how the questions have been posed or categorized. I note these parameters below.

1. Heavily-weighted negative factors

(1) The ACS included measures of means-tested public assistance receipt in the past year (TANF or other means-tested income assistance,[27] SSI, and current receipt of Medicaid, or other means-tested health benefits)[28]. Those with TPS are not counted as having a negative factor if they use

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[26] I exclude the heavily weighted negative factor of having been previously found to be inadmissible or deportable on public charge grounds, as these individuals are not identified in the data sample.

[27] Individuals were asked whether they received "Any public assistance or welfare payments from the state or local welfare office."

[28] The ACS questionnaire asks respondents, whether they received "Medicaid, Medical Assistance, or any kind of government- assistance plan for those with low incomes or a disability." The ACS data does not provide a breakdown of federally funded Medicaid coverage alone, only whether respondents answered yes or no to that question (subpart d.). NOTE: The public charge Rule does not consider state-funded Medicaid receipt or emergency Medicaid as a negative factor, only federally-funded Medicaid. In addition, Medicaid programs vary across states, and individuals may not be aware of what type of coverage program they are enrolled in—whether it is a state-only or federally-funded program—when responding to this question. For example, in New York, "Medicaid" is the name used for both federally-funded Medicaid and the equivalent state-funded program.

public benefits.[29] Women who gave birth in the past year are not counted as having a negative factor if they receive Medicaid;[30] I did not include food assistance (e.g, SNAP) because the ACS measures food assistance at the household level rather than individual level[31] and the Public Charge Rule specifies that individual receipt—not receipt of benefits by family members—is to be considered. *Because most noncitizen applicants are ineligible for all of the federally funded public benefits programs listed in the Rule, and the limitations of the ACS measures of public assistance that I describe further below, I exclude public benefit use from my main assessment of risk but I do consider SSI, TANF, and Medicaid benefit use in my sensitivity analyses below. The Capps study omitted benefit use within the last year in their analysis for the same reason.*

(2) Health condition (having at least one chronic condition or functional limitation[32] and not having private health insurance or an income that is 250% of FPG or greater, not counting public assistance income); and

(3) Economic inactivity (not attending school and not employed or in the armed forces among adults age 16+, excluding persons age 18+ who are the parent of a pre-school child or who live with a parent with one or more functional limitations (primary care givers under the Rule)).

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[29] 8 C.F.R. 212.21(b)(8) provides that "those present in the United States in an immigration category that is exempt from the public charge ground of inadmissibility," such as TPS, will not have public benefits received during that time counted in the public charge analysis.

[30] ACS available data does not capture women's pregnancy term or length of coverage during pregnancy. Data indicate whether a woman gave birth in past year and the age of the child only in years, not months.

[31] The ACS questionnaire asks: "did you or any member of this household receive benefits from the Food Stamp Program or SNAP"? In contrast, the TANF, SSI, and Medicaid measures are more clearly ascribed to the individual rather than to the individual's family, asking: When reporting SSI and TANF income, individuals are instructed to report only the share of income that they personally received. With regard to Medicaid, ACS respondents are asked "is *this person* CURRENTLY covered by…Medicaid, Medical Assistance, or any kind of government-assistance plan for those with low incomes or a disability" (italics added).

[32] These conditions include whether individuals have serious difficulty "concentrating, remembering, or making decisions" (cognitive difficulty), "walking or climbing stairs" (ambulatory difficulty), "doing errands alone such as visiting a doctor's office or shopping" (independent living difficulty), "dressing or bathing" (self-care difficulty), "seeing even when wearing glasses" (vision difficulty), and being deaf or having a hearing difficulty.

2. Other negative factors:

(1) Low income (<125% of FPG; <100% of FPG for active armed forces personnel and their spouse and children; this measure excludes public assistance income);[33]

(2) Low skills (having less than a high school degree);

(3) Low English proficiency;[34] the Rule is unclear about the definition of low English proficiency; I used the definition used in the Capps study, which defined speaking English "not well" or "not at all" as low English proficiency;

(4) Age-related criteria (being 62 or older and having an income that is less than 125% of the FPG, not counting public assistance income; 100% FPG is used as cut-off for armed services personnel and their spouse and children); and

(5) Large household size (the Rule is unclear about the meaning of large household. I defined large household size as six or more persons, which is more than twice the average U.S. household size in 2017, 2.54).

3. Heavily weighted positive factors:

(1) High household income (250% of FPG or higher, excluding public assistance income);

(2) Currently working with individual earnings greater than 250% of FPG for a single adult; and

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[33] The Rule indicates that assets for low income applicants would be considered, so I attempted to code low-income immigrants with sufficient assets as NOT having a "low income" negative factor. The ACS does not specify the amount a wealth a person has, but it provides some indirect indicators that a person has some assets: home ownership and investment income. I counted those who own a home free and clear and those who reported more than $2,500 income from investments (at a 4% interest rate, this implies a principle greater than $60,000) as having sufficient assets to offset having low income. Eight percent of the recently-adjusted LPRs or LNIs in my sample with low income had these indicators of wealth (95% due to home ownership), so this reduced the overall share with the low-income negative factor by about two percentage points. The Rule also indicates that resources worth 250% or more of the FPG would be considered as a heavily-weighted positive factor, but because the ACS measures of the amount of wealth—including the most common form of wealth, a home—are unclear about the value of an individual's assets, I omitted wealth as a heavily-weighted positive factor.

[34] ACS measures limited English proficiency by asking respondents who report speaking a language other than English at home to indicate how well they speak English: "very well," "well," "not well" or "not at all." Based on these responses, I consider "not well" or "not at all" to indicate low English proficiency.

(3) Private health insurance coverage.[35]

4. Three-Tier Inadmissibility Risk Scale

32. Because the Rule is ambiguous about the number or combination of factors that would lead to an inadmissibility designation, I provide a variety of estimates to gauge the disparate impact of the Rule. First, I present the percentage of each group that would be classified as having each of the negative and positive factors separately. Second, I developed a three-tiered risk scale (high, medium, low) to summarize the number and weight of positive and negative factors. This scale gives greater weight to strongly-weighted negative and positive factors than the other negative factors. It also takes into consideration how positive factors may offset negative factors, and it accounts for the statement in the Rule that a single negative factor would be insufficient for a public charge designation. The high-risk group is defined as having a combination of at least one heavily weighted negative factor or two more other negative factors, and having no positive factors at all. As shown in Supplemental Table S1, 10.8% of the potential applicants in the high-risk group have a health condition, 31.8% are economically inactive, 64.3% are low income, 63.2% are low-skilled, and 76.1% have low English proficiency. At the other end of the risk scale, the low-risk group is defined as having no negative factors at all. This group is also the most likely to have positive factors (76.5% high household income, 47.2% working with high earnings, and 86.6% have private health insurance). Finally, the medium risk group includes everyone else not already classified in the high- and low-risk groups. It includes those who have a combination of negative and positive factors, or who have only one non-heavily-weighted negative factor but no positive factors. This medium-risk group is less likely to have heavily-weighted negative factors and other negative factors than the high-risk group,

[35] With regard to private insurance, ACS data provides when respondent is covered by "Insurance purchased directly from an insurance company (by this person or another family member)."

and often has a positive factor (37.9% have high household income, 3.7% are working with high earnings, and 69.3% have private health insurance).

33. This three-tiered risk scale has broad categories that are simply intended to differentiate low, medium, and high risk. Due to the ambiguity of the Rule, it is difficult to predict the share of individuals within each risk category that would be deemed inadmissible by the TOC test. Because the Rule is unclear about the ways in which negative and positive factors would be considered in combination, however, I also tested alternative measures in sensitivity analyses.

IV. Analysis Limitations

34. It is important to note the limitations of the analysis. First, I was unable to focus directly on those who are subject to the Rule at the point in time they would be evaluated by the TOC test, namely when they are applying for adjustment to LPR status. Due to data limitations, I examined two proxy populations as a next-best-approach, namely those who adjusted status in the last five years and legal nonimmigrants who could potentially adjust status in the near future. As argued earlier, the choice of these two proxies most likely leads to conservative estimates of the impacts of the Rule on the share that would be deemed inadmissible, given that those who adjusted status in the last five years are likely to be better off and more English proficient than they were at the point of time when they applied for LPR status, and given that many legal nonimmigrants are students or in high-skilled occupations and therefore more likely that other applicants to have English proficiency, educational credentials, and high income.

35. Second, it is important to note the limitations of the ACS measures. I was unable to examine credit scores, wealth, whether the applicant received a fee waiver, their relationship to their sponsor, or their sponsor's financial information, because this information was not collected in the ACS. The ACS also does not contain measures of public benefit use that are

consistent with those used by Rule for making a public charge determination. I was therefore unable to measure participation in SNAP because, as noted in ¶ 31 above, ACS measures food assistance at the household level rather than individual level. Additionally, I was unable to measure participation in public housing or federal rental assistance programs because the ACS does not collect data on these programs.

36. Notably important, the ACS public assistance/benefits measures do not capture participation in these programs during the 36-month period prior to when noncitizens applied for LPR status. Instead, the TANF and SSI measures pertain to the 12 months prior to the interview, and the Medicaid measure reflects current health insurance coverage (and is further limited by its grouping with other public health insurance benefits not at issue in the Rule). So, while the ACS measures provide an indication of a person's use of certain public programs *contemporaneous or just prior to the ACS survey*, they are not good indicators of a person's *past* use of public programs. For the adjustees in my sample, this distinction is important because very few adjustees would have been eligible to receive federal public assistance in the past, prior to their adjustment to LPR status (and LNIs are unlikely to qualify for benefits both contemporaneously and in the past). In fact, it is highly likely that federal public benefit use for the potential applicants in my sample was very low in the 36 months prior to their application. Apart from refugees and asylees (whom I exclude from my analysis), this group is ineligible for most federally public assistance programs newly listed in the Rule, including all federally funded cash assistance programs (SSI, TANF, General Assistance), SNAP, and Medicaid (although non-LPRs may receive emergency medical services), and federal public housing assistance. In short, and as noted in the Rule, most potential applicants become eligible for these federal programs

enumerated in the Rule only after obtaining LPR status, and even then, many must wait several years before becoming eligible (the specific rules vary by program and state).

A. Survey of Income and Program Participation

37. I conducted supplementary analyses of the 2008 Survey of Income and Program Participation (SIPP). The SIPP is a small-sized Census survey[36] designed in part to measure public assistance trends for the U.S. population. I rely on the ACS rather than the SIPP for my main analysis because of ACS's greater sample size. Nevertheless, the SIPP can provide useful insights about immigrants' history of public benefit use. One unique feature of the SIPP is that it collects data on when an individual started receiving SNAP, TANF/AFDC, and SSI. Additionally, the 2008 SIPP included information on whether and when LPRs adjusted status. I examined the 2008 SIPP to see what percentage of adjustees reported having received any of these types of assistance prior to their year of adjustment to LPR status. The results confirm that very few adjustees received cash assistance prior to the time of adjustment (0.6 percent AFDC/TANF/state cash assistance and 0.9 percent SSI, and neither estimate is significantly different from zero). A small but statistically significant share reported receiving SNAP (4 percent), which may reflect receipt by eligible household members rather than receipt by the LPR applicant.

B. Sensitivity Analysis

38. I conducted several sensitivity analyses. First, I evaluated the sensitivity of the results to the inclusion of public benefit use as a negative factor. On the one hand, public benefit

[36] For example, the 2008 SIPP interviewed 10,501 foreign-born individuals in its first wave. While this sample size is typical among social science surveys (and large compared with most public opinion polls), it is small relative to the ACS, which samples about 1 percent of the U.S. population, over 3 million individuals, every year. The large sample size of the ACS is the primary reason I use it for my primary analyses.

use is weighted heavily in the Rule, and the Rule will consider whether immigrants have not just received but also "applied for, [or] been certified to receive" public benefits as evidence suggesting a likelihood of future receipt, as well as utilize this as a negative evaluation of their financial status, 8 C.F.R. § 212.22(b)(4)(i)(E); 8 C.F.R. § 212.21(e). On the other hand, the ACS does not adequately capture public benefit receipt in the precise time period specified by the Rule and is therefore not a good data source to evaluate the share of applicants who would be found to have used public benefits for 12 months of the last 36 months prior to application. Moreover, my analysis of the SIPP data suggests that immigrants' use of federal public benefits prior to their adjustment was very rare, and future immigrants are likely to avoid using all public benefits in response to the Rule, including food assistance, public health insurance, and housing assistance, which should drive public benefit use down further still.

39. Considering the flaws of the ACS public benefits measures, the fact that immigrants are ineligible for public benefits prior to adjustment, and that their use of public benefits during the most relevant time period is likely to be very low, I decided to exclude public benefits use as one of the negative factors in my main assessment of risk. It is for this reason that I confine my analysis to the disparate impacts of the forward-looking TOC portion of the Rule. The Capps study omitted public benefits from their analysis and focused on evaluating the impact of the TOC portion of the Rule for the same reason. This is another reason why my estimates represent *conservative* estimates of risk, and I show that they are conservative estimates in sensitivity analyses, in which I provide supplementary estimates of risk that account for immigrants' current use of Medicaid and use of TANF and SSI in the previous year.

40. As noted above, I also tested the sensitivity of the results to the inclusion of different immigrant status groups in the analysis, and I assessed the sensitivity of the results across different measures of risk of inadmissibility.

C. Groups Identified

41. Among the noncitizen population sample identified, I distinguish among the following racial-ethnic groups: Latino, and non-Latino white, Black, and Asian, based on Census racial and ethnic classifications (which does not currently include a category for Middle Eastern/North African). I also distinguish among the following national origin groups based on the respondent's place of birth: Mexicans and Central Americans, those from the Caribbean, South Americans, those from Middle East and Central Asia,[37] sub-Saharan Africans, South/East Asians, and those from Europe or countries that were predominately settled by Europeans (Canada and Oceania–i.e., mostly Australia and New Zealand), whom I refer to as "European-origin." It should be understood that my analysis pertains to groups of noncitizens, as I have identified them above.

42. Counsel also requested estimates for the following vulnerable groups: working poor (defined as those in families with at least one fulltime worker yet a family income less than 125% FPG), the disabled (having at least one functional limitation), those with limited English proficiency (speaking English "not very well" or "not at all"), those living in large households (>=6 persons), and the elderly (age 65+). These groups were defined based on their responses to the ACS questionnaire and not based on standards or measures that might be used by DHS or other government agencies for official purposes.

[37] Afghanistan, Armenia, Azerbaijan, Bahrain, Cyprus, Iran, Iraq, Israel, Jordan, Kuwait, Lebanon, Oman, Palestine, Gaza Strip, West Bank, Qatar, Saudi Arabia, Syria, Turkey, United Arab Emirates, Yemen, Pakistan, Republic of Georgia, Kazakhstan, Kirghizia, Tadzhik, Turkmenistan, Uzbekistan, Algeria, Egypt, Libya, Morocco, Sudan, Tunisia, and Western Sahara.

D. Data Sampling

43. All estimates generated from randomly-selected samples such as the ACS are subject to uncertainty due to sampling variability. This means that if we were to draw another independent sample of equal size, there is a chance that we would obtain different results. However, we can quantify how much the estimates are likely to vary by calculating standard errors (SE). Larger standard errors signal more uncertainty about the estimates than smaller standard errors. I provide standard errors for all of the estimates in a set of appendix tables (A1-A9).[38]

44. I use the standard errors to estimate 95 percent confidence intervals, which provide a more intuitive indicator of how much the estimates are likely to vary. 95% confidence intervals can be interpreted as the range within which we are 95% confident that the true value falls. If we were to draw 100 equal-sized samples, the true value would fall within the 95% confidence interval about 95 times. I indicate the 95% confidence intervals with error bars for all the estimates shown in Figures 1-11 and 17-20.

45. I also use the standard errors to compare the characteristics of two groups by conducting "t-tests." These tests assess the likelihood that two groups are significantly different from one another on a given characteristic and that the difference observed between the groups is not due to sampling variability. A difference between two groups is considered to be statistically significant if the absolute difference in the estimate is greater than 1.96 times the standard error

[38] To account for the complex sample design of the ACS, I estimated the standard errors using the 80 replicate weights as recommended by the U.S. Census Bureau for the ACS (https://usa.ipums.org/usa/repwt.shtml). Because immigrants' legal status assignments are made on a probabilistic basis, I also adjusted for uncertainty related to their status assignments using Reuben's Rules (Rubin, D. B. 1987. *Multiple imputation for nonresponse in surveys*. New York, NY: John Wiley and Sons).

of the difference, where $SE_{diff} = \sqrt{SE^2_{group\ 1} + SE^2_{group\ 1}}$. I denote with asterisks (*) in the tables the results of t-tests to signify the instances whereby groups are significantly different from a reference group (e.g., whites in analyses of racial/ethnic differences, and European-origin in analyses of national origin differences). In analyses of the vulnerable groups (e.g., working poor, disabled, elderly, etc.), I tested whether each group was significantly different from the average applicant given that the different groups overlapped in their membership and there was therefore no common reference group for those analyses.

RESULTS

V. Results for the Entire United States Population

46. Excluding refugees, asylees, and certain parolees, an average of 383,000 people adjusted to LPR status each year,[39] cumulating to 1.9 million, over the last five years. Two-thirds of these adjustees qualified under family-sponsored or immediate relatives of U.S. citizens preferences, while the remainder qualified under employment-based or some other preference (many of whom may have been previously living in the country under a nonimmigrant visa). About 37% come from Asia, 19% from Mexico, 22% from other Latin American countries, 15% from Europe, Canada, or Oceania, and 6% from Africa. Additionally, as of FY2016, there were about 2.3 million legal nonimmigrants living in the country.[40] In what follows, I provide an assessment of disparate risk posed to these groups of noncitizens by the implementation of the Rule.

47. I first present estimates of the percentage with negative and positive factors by race/ethnicity for potential applicants in Table 1 and Figure 1a. Recall that the term "potential

[39] Office of Immigration Statistics, Immigration Yearbook (various years), Table 6.
[40] Baker, Bryan. 2018. Nonimmigrants residing in the United States: Fiscal Year 2016. Office of Immigration Statistics, Department of Homeland Security.

applicants" here refers to recently-arrived adjustees and LNIs. Looking first at the heavily weighted negative factors, we see only small racial/ethnic differences. Latino and Black potential applicants are significantly more likely to have a health condition although the share with a health condition is low for all groups (3.4%, 2.5%, and 1.1% for Latino, Blacks, and whites, respectively).

48. Turning next to the other negative factors, Latino, Black, and Asian potential applicants are significantly more likely to have low income, be low-skilled, have low English proficiency, and live in a large household compared with whites. Latinos are the most likely of the four groups to have these negative factors: 35.7% are low income, 42.3% are low-skilled, 53.7% have low English proficiency, and 20.5% have large households; comparable estimates for whites are, respectively: 21.2%, 5.3%, 11.2%, and 5.7%. The only negative factor for which racial/ethnic minorities have a significant advantage relative to whites is that Asians are less likely to be 62 or older, but the share with this age-related negative factor is very low—1.8% or less—for all groups.

49. With respect to the heavily-weighted positive factors, Latino and Black potential applicants are significantly less likely than whites to have a household income greater than 250% of FPG (28.7%, 38.2% for Latino and Blacks, respectively, compared with 60.4% among whites), to work and have earnings above 250% FPG (7.6%, 11.6%, and 32.7% for Latino, Blacks, and whites, respectively), and to have private health insurance (33.2%, 55.0%, and 79.4% for Latino, Blacks, and whites, respectively). Asians are much more similar to whites on these characteristics than are Latinos and Blacks and are even significantly more likely than whites to have private health insurance.

50. Looking next at the three-tiered inadmissibility risk scale at the bottom of Table 1 and in Figure 1a, 40% of Latino potential applicants are in the high-risk category, meaning that they have no positive factors combined with at least one heavily-weighted negative factor or at least two other negative factors. This is 2.5 times as high as among Blacks (16%), and more than six times as high as among Asians (6%) and whites (6%). Only 22% of Latino potential applicants are in the low-risk category (having no negative factors), compared with 44% among Blacks, 52% among Asians, and 58% among whites. This means that about four out of five Latinos would experience at least some risk of being deemed inadmissible, and about two out of five would face high risk.

51. To summarize, the data presented in Table 1 and Figure 1a suggests that, even without considering public benefits use, Latino potential applicants would experience the greatest risk of being deemed inadmissible due to the implementation of the Rule. Latinos' higher risk is due to their higher likelihood of having other negative factors such as low income, low skills, and low English proficiency, and less often having positive factors to offset the negative factors. Black potential applicants would experience the next highest risk. Compared with Latino applicants, they are less likely to be low-skilled and to have low English proficiency, and more often have high incomes and private health insurance. Finally, Asian and white applicants would experience the lowest risks due to a combination of less often having negative factors and more often having positive factors.

52. I next present estimates of risk by national origin for the entire United States in Table 2 and Figure 2a. The patterns are similar to the results for racial-ethnic groups because of the way that racial/ethnic categories tend to overlap with world regions. One benefit of breaking out the results by national origin, however, is that it permits a separate evaluation of Middle

Eastern and South Asian potential applicants, many of whom are classified as "white" in the ACS's racial-ethnic classification.

53. With regard to the heavily-weighted negative factors, and like the results in Table 1, very few potential applicants have health conditions, and all non-European-origin groups, except those from the Caribbean, are either less likely than European-origin applicants to be economically inactive or are no different from them. Those from the Caribbean are more likely than European-origin applicants to be economically inactive by about five percentage points. Additionally, all non-European groups are significantly more likely to have low income, low skills, low English proficiency, and live in a large household compared with applicants of European origin. Applicants from Mexico/Central America stand out as particularly low income (38.2%), low-skilled (49.5%), low English proficient (58.1%), and likely to live in large households (23.0%). For European-origin applicants, these figures are, respectively: 16.2%, 4.2%, 7.5%, and 4.9%. Middle Eastern/Central Asian applicants also are likely to have low household income (37.6%).

54. Non-European-origin groups are also significantly less likely than potential applicants of European origin to have heavily-weighted positive factors. Applicants from Mexico/Central America and the Caribbean stand out as among the least likely to have a household income greater than 250% of FPG, to work with earnings above 250% FPG, and to have private health insurance. South/East Asians are the most advantaged among the non-European-origin groups (for example, their rate of private health insurance coverage is not statistically different from European-origin applicants), but they are still significantly less likely to have high household income and earnings than European-origin applicants.

55. Considering the three-tiered risk scale (Figure 2a), all of the non-European-origin groups are significantly more likely to be at the high-risk category of being deemed inadmissible, and significantly less likely to be in the low-risk category, compared with European-origin applicants. Mexicans/Central Americans would face the highest risks under the Rule. 45% are in the high-risk category and only 17% are in the low-risk category. Caribbean applicants also experience high risk of being deemed inadmissible; 27% are in the high-risk category, and only 31% are in the low-risk category. Applicants from South/East Asia experience lower risk (5% are high-risk and 52% are low-risk). Finally, European-origin applicants face the lowest risk (4% are high-risk and 64% are low-risk).

56. Overall, the results in Table 2 and Figure 2a suggest that potential applicants from Europe, Canada, or Oceania (i.e., Australia and New Zealand) would experience the least risk of being deemed inadmissible due the implementation of the TOC test. In contrast, Mexicans and Central Americans would experience the greatest risk.

57. To summarize, my analysis finds that in the United States, even without accounting for public benefit use, Latinos and Mexican/Central Americans are at substantially higher risk for being deemed inadmissible under the Rule compared with whites and European-origin applicants. They are at higher risk not so much because they are more likely to have heavily-weighted negative factors, but rather because they are more likely to have multiple "other" negative factors and have few heavily-weighted positive factors to offset these negative factors. Other groups would also be impacted by the Rule, but to a lesser degree, including Blacks, Asians, those from the Caribbean, South Americans, sub-Saharan Africans, and Middle Easterners and Central Asians. The risks faced by these groups may be even higher than

depicted here because the ACS does not permit me to measure all of the positive and negative factors.

VI. Results for New York

58. Over the past five years, about 215,000 New Yorkers adjusted to LPR status, not refugees, asylees, and certain parolees.[41] About 31% come from Latin America and 25% from Asia. Additionally, as of FY2016, there were about 280 thousand legal nonimmigrants living in the state.[42] Below, I provide an assessment of disparate risk posed to these groups by the Rule.

59. Table 7 and Figure 7a shows the percentages of potential applicants in New York with negative and positive factors by race/ethnicity. There are small- to moderately-sized racial/ethnic differences on the heavily weighted negative factors that I was able to measure. Latinos potential applicants are significantly more likely to have a health condition although the share with a health condition is 3.5% or less for all groups. Also, Latinos, Blacks, and Asians are significantly more likely than whites to be economically inactive by about four to six percentage points.

60. Turning next to the other negative factors, Latino, Black, and Asian potential applicants tend to be more likely to have other negative factors compared with whites, including low income (Latinos, Blacks, and Asians), low skills (Latinos, Blacks, and Asians), low English proficiency (Latinos and Asians), and large households (Latinos, Blacks, and Asians). Latinos are the most likely of the four groups to have these negative factors: 38.1% are low income, 37.2% are low-skilled, 56.1% have low English proficiency, and 24.7% live in large households; comparable estimates for whites are, respectively: 18.3%, 4.8%, 10.2%, and 4.9%. Latinos were

[41] Office of Immigration Statistics. Profiles on Legal Permanent Residents: State (2013-2014, 2015, 2016, and 2017).

[42] Baker, Bryan. 2018. Nonimmigrants residing in the United States: Fiscal Year 2016. Office of Immigration Statistics, Department of Homeland Security.

significantly more likely than whites to have a negative age-related factor but the difference was substantively small (2.0% versus 0.8%).

61. Of all four racial/ethnic groups, Latinos are also the least likely to have heavily-weighted positive factors. They are significantly less likely than whites to have a household income greater than 250% of FPG (32.2% versus 66.9% among whites), to work and have earnings above 250% FPG (9.3% versus 45.0% among whites), and to have private health insurance (31.9% versus 77.6% among whites). Blacks are the second-most disadvantaged group (except that they are similar to Asians with regard to high household income) and Asians are more similar to whites on these characteristics, although they too show significant disadvantages relative to whites on all three positive factors.

62. Looking next at the three-tiered risk scale (Figure 7a), 38% of Latino potential applicants are in the high-risk category. This is 2.6 or more time as high as among Blacks (14%), Asians (11%) and whites (5%). Only 20% of Latino potential applicants are in the low-risk category (having no negative factors), compared with 47% among Blacks, 42% among Asians, and 66% among whites. This means that about 80% of Latinos would experience at least some risk of being deemed inadmissible, and close to 2 out of 5 would face high risk due to the application of the TOC test.

63. To summarize, the data presented in Table 7 and Figure 7a suggests that in New York, Latino potential applicants would experience the greatest risk of being deemed inadmissible due the implementation of the Rule. Latinos' higher risk is due not so much because they are more likely to have heavily-weighted negative factors, but rather because they are more likely to have multiple other negative factors such as low income, low skills, and low English proficiency, and they less often have positive factors to offset the negative factors.

64. I next present estimates of risk by national origin for New York in Table 8 and Figure 8a. With regard to the heavily-weighted negative factors, those from the Caribbean, South Americans and Middle Eastern/Central Asian are more likely to have health conditions than European-origin potential applicants, although the differences are substantively small. Also, those from the Caribbean, South Americans, Middle Eastern/Central Asians, and South/East Asians are more likely to be economically inactive than European-origin potential applicants. In most cases, the difference is on the moderate side – about four percentage points – but the difference is larger in the case of those from the Caribbean, among whom 21.1% are economically inactive compared with 8.8% among those of European origin, a difference of 12.3 percentage points.

65. All non-European-origin groups are also significantly more likely to have low income, low skills, low English proficiency (except sub-Saharan Africans, many of whom come from English-speaking countries), and live in large households. Applicants from Mexico/Central America stand out as particularly low income (43.7%), low-skilled (46.6%), low English proficient (58.0%), and more likely to live in large households (32.5%). For European-origin applicants, these figures are quite a bit lower, 15.2%, 2.7%, 6.8%, and 3.1%, respectively.

66. The non-European-origin groups are also significantly less likely than European-origin potential applicants to have heavily-weighted positive factors. Potential applicants from Mexico/Central America and the Caribbean are among the least likely to have a household income greater than 250% of FPG, to work with earnings above 250% FPG, and to have private health insurance.

67. Considering the three-tiered risk scale, all of the non-European-origin groups are significantly more likely to be at the high-risk category of being deemed inadmissible, and

significantly less likely to be in the low-risk category, compared with European-origin applicants. Mexicans/Central Americans would face the highest risks under the Rule. 45% are in the high-risk category and only 14% are in the low-risk category. European-origin applicants face the lowest risk, with only 3% in the high-risk and 71% in the low-risk categories.

68. Overall, the results in Table 8 and Figure 8a suggest that in New York, European-origin potential applicants would experience the least risk of being deemed inadmissible due the implementation of the TOC portion of the Rule, and Mexicans and Central Americans would experience the largest impact.

69. Finally, I present results for vulnerable groups in New York, as requested by Counsel, in Table 9 and Figure 9a, namely the working poor, the disabled, those with limited English proficiency, those living in large households, and the elderly. I also included estimates for all potential applicants for comparison purposes. With respect to the heavily-weighted negative factors, the disabled are very likely to have a health condition combined with the lack of health insurance or low income (48.6%), and both the disabled (56.0%) and elderly (82.7%) have very high rates of economic inactivity.

70. These groups are also likely to have other negative factors, sometimes by definition. For example, 96.3% of the working poor have low income (the figure is not 100% because certain groups with household incomes less than 125% FPG are not treated as having a negative factor, such as those in the armed forces and those with assets), 100% of limited English proficient have a "limited English proficiency" negative factor, and 100% of those in a large household have a "large household" negative factor. Yet many people in these groups have other negative factors too, which further compounds their risk. For example, 49.4% of the working

poor, 56.3% of the disabled, 50.6% of those in large households, and 71.2% of the elderly also have low English proficiency.

71. These groups are also less likely to have a positive factor relative to the average applicant, which makes it more difficult to offset their negative factors. Among the working poor, for example, only 30.1% have private health insurance. The other groups tend to be somewhat more likely to have high household income, especially the disabled (39.4%) and elderly (40.8%), but the share who have private health insurance is 32.2% or less in all cases, compared with 60.3% for the average applicant.

72. Considering the three-tiered risk scale, members of all of the vulnerable groups are significantly more likely to be in the high-risk category of being deemed inadmissible, and significantly less likely to be in the low-risk category, compared with the average applicant. The working poor would face the highest risks under the Rule. 56% are in the high-risk category and almost none are in the low-risk category. The disabled, the limited English proficient, those in large families, and the elderly also face high risks, with the share in the high-risk category ranging from 45% to 49%.

73. To summarize, my analysis finds that in New York, Latinos, Mexicans/Central Americans, the working poor, disabled, limited English proficient, those with large families, and the elderly are all at significantly higher risk for being deemed inadmissible under the Rule than other groups, particularly whites and European-origin applicants. These disadvantages are largely due to the fact that many of these groups are more likely to have multiple other negative factors such as low income, low skills, low English proficiency and large families, and are less likely to have positive factors such as high household income, high earnings, and private health

insurance to offset the negative factors. Of all the racial/ethnic and national origin groups examined, Latinos and Mexicans/Central Americans would be most impacted by the Rule.

VII. Sensitivity Analysis of Disparate Impacts Analysis

74. The proceeding analyses assessed the risk of being deemed inadmissible due to the Rule posed to recently-adjusted LPRs and legal nonimmigrants because they represent the best-available proxy of those who will be impacted by the Rule. How would the assessment change if other groups were included in the assessment, namely new arrivals—who could face similar scrutiny when they apply for admission at a foreign consulate—and the unauthorized—some of whom could also seek to adjust their status? Supplemental Table S2 shows the share in each risk category (excluding public benefit use) by race/ethnicity for three groups:

Group 1: recently-adjusted LPRs and legal nonimmigrants (just as used in the analyses presented above);

Group 2: recently-adjusted LPRs, legal nonimmigrants, and new arrivals; and

Group 3: all recently-arrived foreign-born except for those exempt from the Rule (e.g., refugees and asylees).

75. Results show some variations across the groups; the share at high risk generally increases from Group 1 to Group 2 to Group 3. Among Latinos, the group for whom I observe the greatest levels of risk, the share in the high-risk category increases from 39.7%, 42.3%, and 45.9% in Groups 1, 2, and 3, respectively, as the analysis expands to include new arrivals and other (likely unauthorized) foreign born. However, the difference between Latinos' share and whites' share in the high-risk group remain very similar across groups (33.4%, 32.0%, and 33.9% for Groups 1, 2, and 3, respectively). This suggests that, had I expanded the analysis to include other potentially-impacted groups rather than focus only on adjustees and LNIs, I would have found even larger shares in the high-risk category and similar disparities between Latinos and whites in the level of risk.

76. I also evaluated the sensitivity of the results to the way that risk of inadmissibility is measured, that is, whether current public benefit use is considered and how the positive and negative factors are summarized. I tested four different measures in Figure 10. The measures I tested include:

Measure 1: Number of negative factors (e.g., 1, 2, 3 or more). This is a simple count of the number of negative factors and is similar to the risk measure in the Capps study.

Measure 2: Number of negative factors while having no positive factors. This measure is an elaboration of the first risk measure. It considers whether the applicant has a positive factor, which could balance out a negative factor. Persons are coded as having no heavily weighted positive factors while having 1, 2, or 3 or more negative factors.

Measure 3: Three-tiered risk scale (high, medium, low). This is the scale developed and used in my analysis.

Measure 4: No positive factors and at least one heavily negative factor. This measure focuses only on the heavily weighted factors and ignores the other factors in the TOC test.

77. I constructed two versions of each risk measure, one that includes current public benefit use as a heavily-weighted negative factor (Measures 1a, 2a, 3a, and 4a), and another that excludes it (Measures 1b, 2b, 3b, and 4b). As shown in Figure 10 and Supplemental Table S3, the share of individuals designated as being at risk differs depending on which risk measure is used. The measures that account for the number of negative factors (Measures 1a, 1b, 2a, 2b, 3a, and 3b) tend to show more gradations and higher levels of risk than the dichotomous measure that focuses only on the heavily-weighted factors (Measures 4a and 4b). Additionally, the measures that account for current public benefit use (Measures 1a, 2a, 3a, and 4a) tend to show higher shares in the high-risk category than the measures that do not (Measures 1b, 2b, 3b, and 4b). For example, 39.7% of Latinos are classified as being at high risk when public program use is not considered, and this increases to 42.1% when it is.

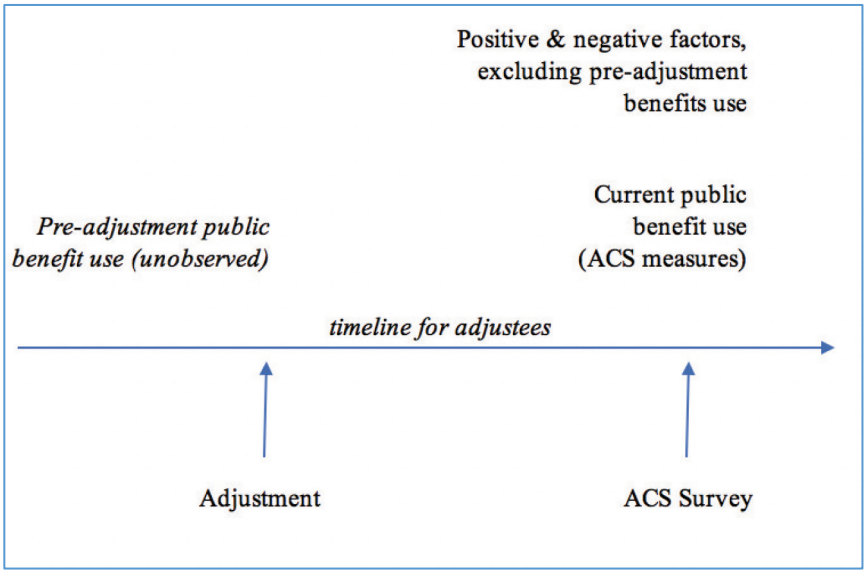
78. Nevertheless, all measures – whether they account for public program use or not – show statistically significantly higher levels of risk among Latinos than whites. Additionally, Blacks are consistently shown to face moderate levels of risk (more than whites but less than Latinos), regardless of which measure is used. Notably, the difference between whites' share and Latinos' share in the high-risk group is nearly identical when public programs are excluded and when they are included. For example, the Latino-white gap in the high-risk category of the three-tiered risk scale is 34.1 percentage points when public benefits are considered, and 33.4 percentage points when they are not.

VIII. Assessment Analysis

79. Counsel also asked me to assess whether there are disparities in the accuracy with which the TOC portion of the Rule identifies applicants who are more likely than not to become a public charge (as now defined by DHS). Ideally, I would have followed applicants over several years (indeed, their lifetime) to assess how strongly correlated the risk of inadmissibility is to future public benefits use, but no such data exist that permit this type of analysis. As a next-best strategy, I conducted a correlational analysis, in which I compared the share of individuals who currently use public benefits across the low-, medium- and high-risk categories on the three-tiered inadmissibility risk scale (while excluding public benefits use as a negative factor).

80. I focused on use of any of three programs identified in the ACS that can be ascribed to an individual rather than a household or family (TANF/Cash assistance, SSI, and Medicaid/state-funded health insurance). As noted earlier and as depicted in the figure below, the ACS public benefits measures have limited value for measuring risk of admissibility because they measure *current* public benefit use at or just prior to the ACS survey and are not pinpointed to the time prior to adjustment. However, the ACS public benefits measures are helpful for assessing whether the risk of admissibility based on the positive and negative factors is

correlated with the share that *currently* use public programs. Because the ACS measures of the negative and positive factors pertain to the same time period as the ACS measures of public benefit use, these two factors *should be* strongly correlated if the risk of inadmissibility due to the TOC test is at all predictive of the tendency to use public benefits. The presence of a strong correlation does not necessarily mean that risk of inadmissibility is predictive of public benefits use many years in the future, but a weak correlation would call into question the predictive value of the TOC test.



81. I measure the strength of the relationship between inadmissibility risk and public benefits use by examining the difference in the percentage using public benefits between the high- and low-risk group, referred to below as the "gradient." I also examined the share who use public benefits among those in the high-risk category. This is referred to as "positive predictive value" in social science research, and it indicates the percentage of those who are predicted to have some attribute through some type of screening process (e.g., to be or become a public charge) who actually have that attribute. Even though the ACS measures have several flaws as

discussed already, we should still see a strong gradient and high positive predictive values if the negative and positive factors in the TOC test are valid predictors of the likelihood that an applicant is more likely than not to be or become a public charge. If there are disparities in the gradient or the positive predictive value, this would suggest that the TOC test is more predictive for some groups than others.

82. For this analysis, I focused only on those who adjusted status in the previous five years. Those who had not yet adjusted were excluded because they are ineligible for most federal public benefits at the time of the ACS interview (although they are eligible for some state-funded programs). If I had included groups with limited eligibility for public benefits, this would have artificially depressed my estimates of the predictive validity of the TOC test. Public benefits use for these groups would be low regardless of their level of risk because they are ineligible for many public programs (it would be like testing how high a bird can fly while keeping it in a cage). By excluding LNIs, I obtain stronger evidence of the predictive validity of the TOC test than if I had included them.

83. Results for the United States are shown in Figures 12 and 13, and results for New York are shown in Figures 14 and 15. Estimates underlying Figures 12-15 and the results of t-tests are also shown in Table 10. The results show that public benefit use increases across the risk categories. In other words, the TOC test – as measured by the three-tiered inadmissibility risk scale – is correlated with public benefits use. However, there is also wide racial/ethnic and national origin variation in the strength of the relationship. Latinos (shown with the bold line) have weaker gradients than Asians, whites, and Blacks (Figure 12). The difference between the low- and high-risk categories is 16 percentage points for Latinos compared with 50, 38, and 28 percentage points for Asians, whites, and Blacks, respectively. T-tests confirm that the gradients

for Latinos are significantly weaker than the other racial/ethnic groups. Mexicans/Central Americans also have significantly weaker gradients (confirmed by t-tests) than Middle Easterners, S/E Asians, those from the Caribbean, sub-Saharan Africans, European-origin groups and South Americans (Figure 13).

84. Additionally, Latinos (Figure 12) and Mexicans/Central Americans (Figure 13) stand out as the least likely to use public benefits among those in the high-risk category. That is, they have lower positive predictive values. T-tests show that the differences in positive predictive values between Latinos and the other racial/ethnic groups, and between Mexicans/Central Americans and the other national origin groups are all statistically significant.

85. Similar patterns can be seen for New York (Figures 14 and 15). T-tests confirm that the gradients for Latinos and Mexicans/Central Americans are significantly weaker than the other racial and national origin groups, and that the positive predictive value for Latinos and Mexicans/Central Americans is significantly lower than most other racial/ethnic and national origin groups. The only exception is that the gradient and positive predictive value for blacks is not significantly different from Latinos (Figure 14). Overall, in both the nation and the State of New York, the correlation between risk of inadmissibility and public benefits use is weaker and the positive predictive value is lower for Latinos and Mexicans/Central Americans than other groups in nearly every instance.

86. I conducted sensitivity analyses to assess whether these findings hold across other measures of risk (Measures 1, 2, and 4 described above). The results are shown in Figure 16. In nearly all cases, Latinos and Mexicans/Central Americans have significantly weaker gradients and lower positive predictive values than other racial/ethnic and national origin groups. The exceptions occur for the risk measure that is based solely on heavily-weighted factors (Measure

4: "has at least one heavily weighted negative factor and no heavily-weighted positive factors"). For this measure, Latinos still have significantly weaker gradients and lower positive predictive values than whites and Asians, but their gradient and positive predictive value is not significantly different from Blacks. Also, Mexicans/Central Americans have weaker gradients and lower positive predictive values than those from the Caribbean, Middle East/Central Asia, South and East Asia, and those of European origin, but their gradient and positive predictive value is not significantly different from sub-Saharan Africans and South Americans.

Implications of a Weaker Gradient and Lower Positive Predictive Value for Latinos and Mexicans/Central Americans

87. The preceding analyses suggest that the correlation between risk of inadmissibility and current public benefits use (gradient) and the share who use public benefits among those in the high-risk category (positive predictive value) are lower for Latinos and Mexicans/Central Americans than other groups. This means that these groups could be at high risk of receiving a public charge determination even if their rate of public benefits use is not particularly high.

88. To illustrate this point, I compared the share of each group of recently-adjusted LPRs in the high-risk category on the three-tiered inadmissibility risk scale with the share that use public benefits. I used the three-tiered inadmissibility risk scale that excludes public benefit use. Results are shown in Figures 17 and 18 for the United States, and Figures 19 and 20 for New York. Estimates underlying Figures 17-20 and the results of t-tests are also shown in Table 11.

89. As shown in Figure 17, the share that use public benefits is very similar to the share in the high-risk category for Blacks, Asians, and whites. However, Latinos are 2.7 times more likely to be in the high-risk category than they are to use public programs. We see a

similar pattern when we break the results down by national origin in Figure 18. For most national origin groups, the share that uses public benefits is within a few percentage points of the share in the high-risk group. However, nearly half of Mexicans/Central Americans are in the high-risk group even though only 15% use public benefits. We see similar patterns in New York as for the nation. The share using public benefits in New York is higher than the share in the high-risk category for all groups except Latinos and Mexicans/Central Americans. For them, the share in the high-risk category is 12 and 35 percentage points higher than the share using public benefits, respectively. In fact, in New York, Mexicans/Central Americans are among the least likely to use public benefits (they are not significantly different from those of European origin) but the most likely of all national origin groups to be in the high-risk category.

90. Overall, the findings suggest that both in the United States and in the State of New York, the risk of being deemed inadmissible by the TOC test for Latinos and Mexicans/Central Americans is disproportionately high compared with their current levels of public benefit use.

Conclusions of Assessment Analysis

91. It is important to note the limitations of the preceding analysis. First, not all relevant public benefit programs are examined, including SNAP, Section 8 housing, Section 8 Housing Assistance under the Housing Choice Voucher Program, Section 8 Project-Based Rental Assistance, and Federal Public Housing. It is possible that public benefits use is higher than shown here. On the other hand, some of the public benefit programs measured in the ACS encompass both Federal and State programs, even though only Federal benefits will be considered under the Rule (e.g., federally-funded Medicaid but not New York-funded Medicaid), which could lead to an overestimation of the relevant federal public programs.

92. Additionally, the analysis does not capture lifetime public benefits use even though the TOC test seeks to determine whether an applicant is more likely than not to become a public charge in his/her lifetime. On the one hand, the correlation between the risk of inadmissibility and public benefits use could weaken over time as immigrants adapt to the U.S. society by learning English, gaining skills and credentials, build savings, and gain work experience. On the other hand, public benefits use could increase as immigrants age, particularly for the 14 percent of LPRs who are admitted as elderly or near-elderly (age 55 or older)[43] and have not been credited for work in the United States for 40 quarters prior to retirement age.[44] Without a longitudinal study with a long follow-up period, it is difficult to predict immigrants' future public benefits use.

93. Despite the limitations of the analysis, the results reveal a consistent pattern across multiple specifications for the Nation as a whole and for the State of New York, whereby the relationship between the risk of inadmissibility and public program use (the gradient) is weaker, and the share using public programs among those in the high-risk category (the positive predictive value) is significantly lower, for Latinos and Mexicans/Central Americans than other racial/ethnic and national origin groups. This suggests that the combination of positive and negative factors specified in the Rule and as reflected in my three-tiered risk scale as well as alternative risk measures, are not as strongly correlated with public program use for Latinos and Mexicans/Central Americans as for other groups. This means that Latinos and Mexicans/Central Americans could be at the highest risk of being deemed inadmissible by the application of the

[43] Office of Immigration Statistics. Immigration Yearbook 2017, Table 7.

[44] Van Hook, J. and Bean, F.D., 2009. Explaining Mexican-immigrant welfare behaviors: The importance of employment-related cultural repertoires. *American Sociological Review*, *74*(3), pp.423-444.

TOC test of all the racial/ethnic and national origin groups examined here, even though they have relatively moderate levels of benefit usage.

94. This finding is consistent with past research conducted with data collected prior to the 1996 Personal Responsibility and Work Opportunity Reconciliation Act ("PRWORA"), which confirms that even in the time period when legal immigrants were eligible for most public benefit programs, those from Mexico and Central America, most of whom came to the United States as labor migrants, tended to use cash public assistance programs less often than natives with comparable socioeconomic characteristics. The only exception was that older immigrants who entered the United States, having not worked long enough to qualify for Social Security, were more likely to use SSI. This research is reviewed in an article that I published in the *American Sociological Review*, in which my co-author Frank Bean and I argue that this pattern is related to Mexican immigrants' employment-based labor migration pattern, which orients these immigrants more toward work than welfare.[45]

IX. Conclusions

95. My analyses of the disparate impact of the public charge Rule, focusing on the TOC test, on recently-adjusted LPRs and legal nonimmigrants point to a number of key findings:

THE UNITED STATES:

- Latinos are more likely to be at risk of being deemed inadmissible by the TOC test than Asians and whites. Blacks are also more likely to be at risk but to a lesser degree than Latinos.

- Mexicans/Central Americans and, to a lesser degree, those from the Caribbean, are much more likely to be at high risk of being deemed inadmissible by the TOC test than those of European origin. Other groups (South Americans, Middle Easterners/Central Asians, sub-Saharan Africans, and South/East Asians) are also at significantly higher risk than those of European origin, but lower risk than

[45] Van Hook, J. and Bean, F.D., 2009. Explaining Mexican-immigrant welfare behaviors: The importance of employment-related cultural repertoires. *American Sociological Review*, *74*(3), pp.423-444.

Mexicans/Central Americans and those from the Caribbean.

- Latinos' and Mexicans/Central Americans' relatively high risk of being deemed inadmissible is disproportionate to the level at which they use public benefits.

STATE OF NEW YORK:

- Latinos are more likely to be at risk of being deemed inadmissible than whites. Blacks and Asians also are more likely to be at risk than whites, but to a lesser degree than Latinos.

- Mexicans/Central Americans and, to a lesser degree, those from the Caribbean, are more likely to be at risk of being deemed inadmissible than those of European origin. Other groups (South Americans, Middle Easterners/Central Asians, sub-Saharan Africans, and South/East Asians) are also significantly more likely to be at risk than those of European origin, but less likely than Mexicans/Central Americans and those from the Caribbean.

- Members of vulnerable groups (namely the working poor, the disabled, those with limited English proficiency, those living in large families, and the elderly) would face very high risks of being deemed inadmissible. By definition, nearly all would be at least some risk and two out of five or more may be at high risk because they often have multiple negative factors and few positive factors.
- Latinos' and Mexicans/Central Americans' relatively high risk of being deemed inadmissible is disproportionate to the level at which they use public benefits.

96. I conducted several sensitivity analyses and found that my findings were robust to alternative measures and specifications. First, I found that the conclusions are robust to the inclusion of other foreign-born groups such as new arrivals LPRs and unauthorized immigrants, in the analysis. Second, I found that the findings about the disparate impacts of the Rule were consistent regardless of whether or not I included public benefit use as a negative factor. This suggests that even if potential applicants use public benefits prior to LPR adjustment (an unlikely possibility given their ineligibility for most federally funded public benefits), the share in the high-risk group would be slightly larger for most groups and large disparities in inadmissibility would still occur. This also suggests that my assessments of the risk of inadmissibility—which omit public benefit use—are conservative. Third, I found that the conclusions regarding the

disparate impacts of the Rule and the correlational assessment of the TOC test are consistent, regardless of how I summarized the negative and positive factors to measure the risk of inadmissibility.

97. Overall, I have a high degree of confidence in the conclusions that applicants who are Latinos, Mexicans/Central Americans, and to a lesser degree other non-white and non-European-origin groups, are more likely to experience risk of being deemed inadmissible due to the application of totality of circumstances test as described in the Rule than are applicants who are white and of European origin, and that for Latinos and Mexicans/Central Americans, this risk is disproportionate to the levels at which these groups use public benefits. This finding holds for the entire United States and for New York. Vulnerable groups in New York—the working poor, the disabled, those with limited English proficiency, those living in large families, the elderly—also face an elevated risk of inadmissibility determinations (I did not provide estimates for these groups for the entire United States).

98. A complete list of Figures and Tables corresponding to this analysis and discussed in this report are attached to this Declaration as Exhibit A.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 9th day of September, 2019.

Jennifer L. Van Hook

EXHIBIT A

List of Figures and Tables

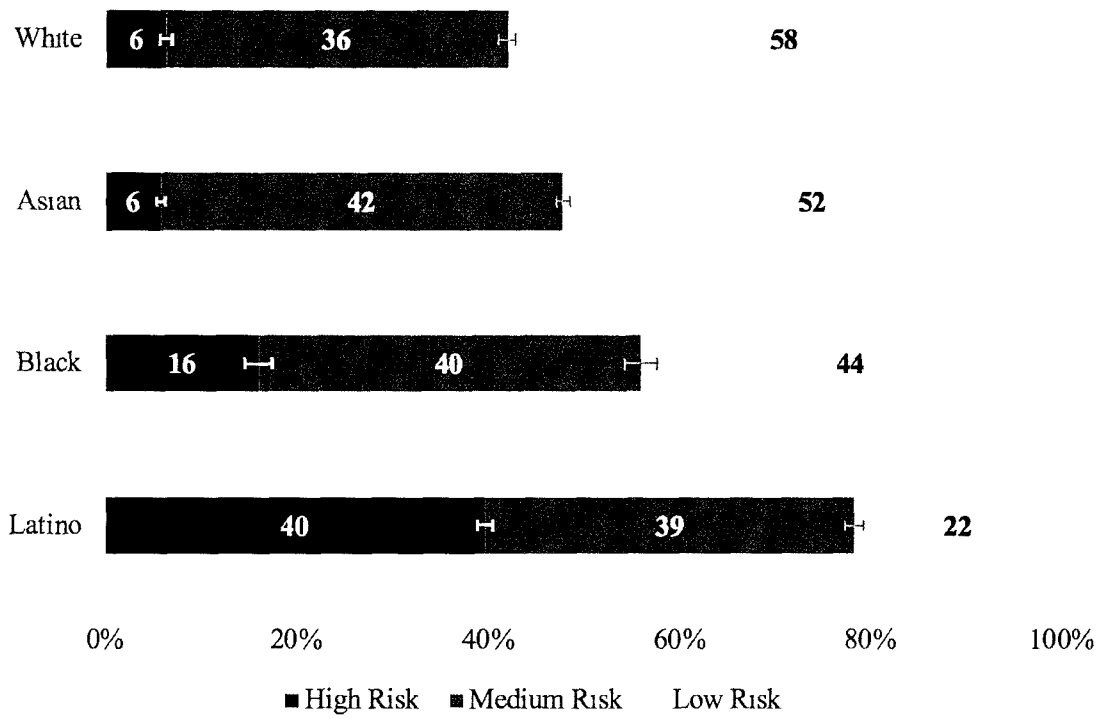
Figures

Tables

Supplemental Tables

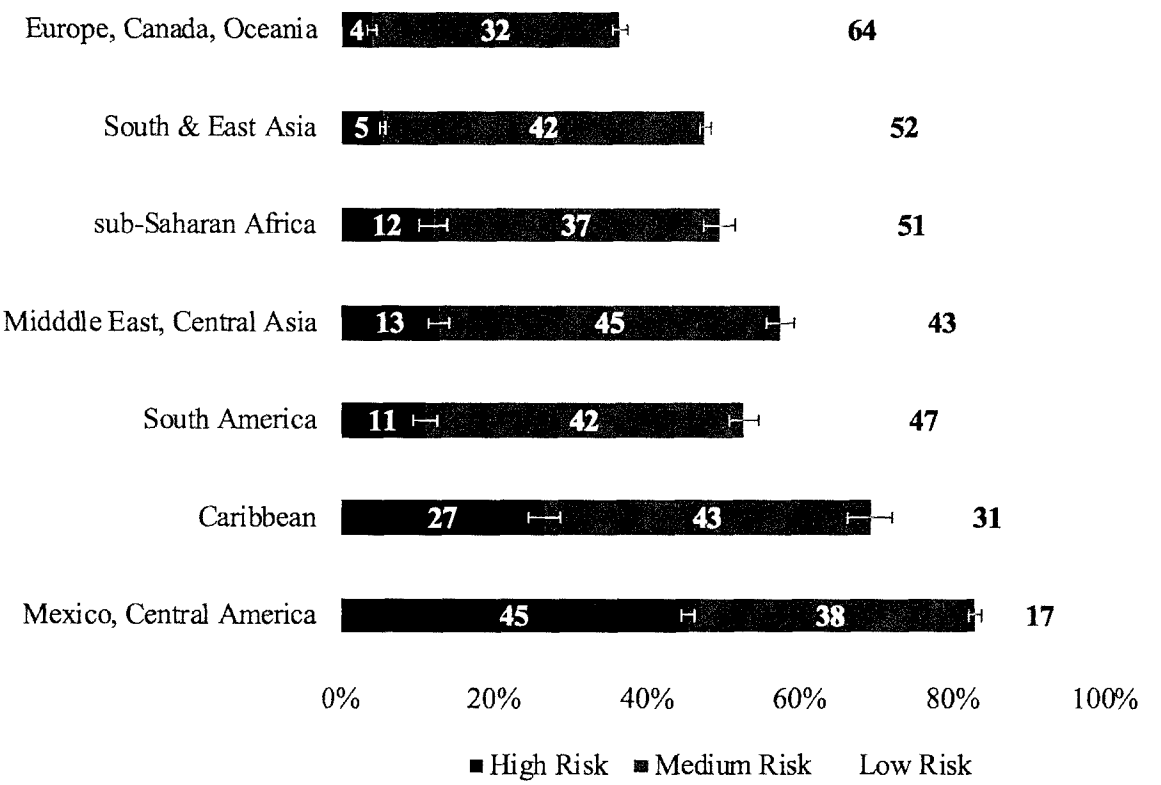
Tables A1 through A9 contain the same information as Tables 1-9, except that they include standard errors for all estimates.

Figure 1a. Estimated Risk of Being Deemed Inadmissible by the Public Charge Rule*, By Race/Ethnicity



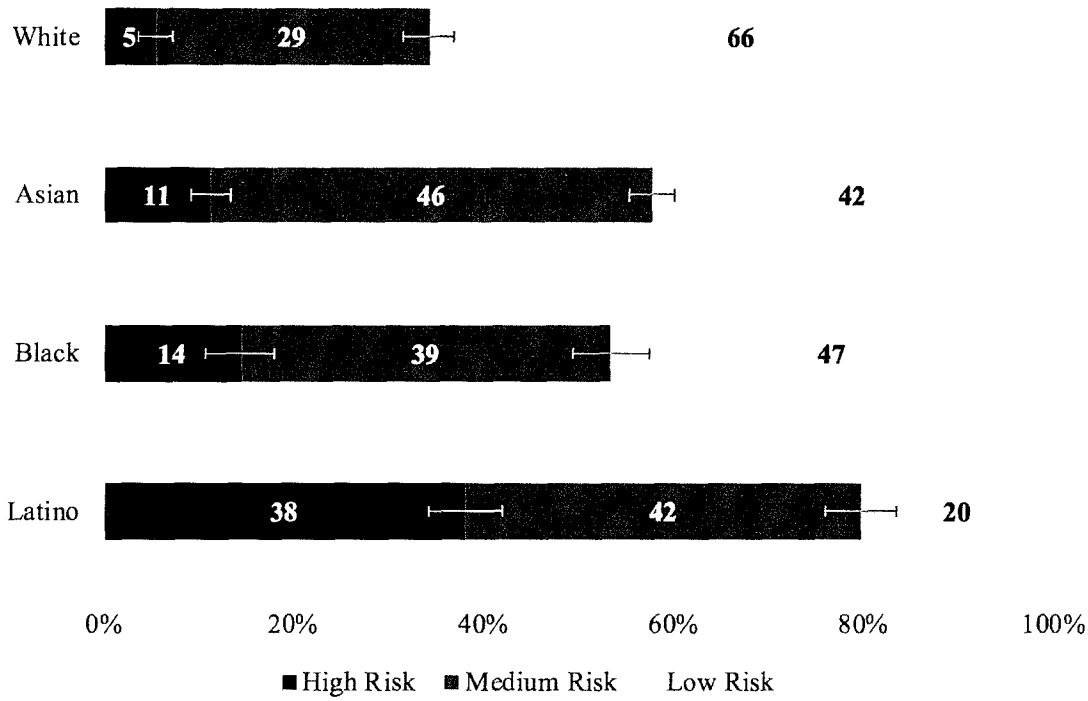
*High risk = No heavily weighted positive factors, and at least 1 heavily weighted negative factor or 2 or more other negative factors, Medium risk = At least 1 heavily weighted positive factor and at least 1 negative factor, or only one "other" negative factor, Low risk = no negative factors Public program use is not included as a negative factor in this analysis, so these are conservative estimates 95% confidence intervals are shown with the error bars

Figure 2a. Estimated Risk of Being Deemed Inadmissible by the Public Charge Rule* By National Origin



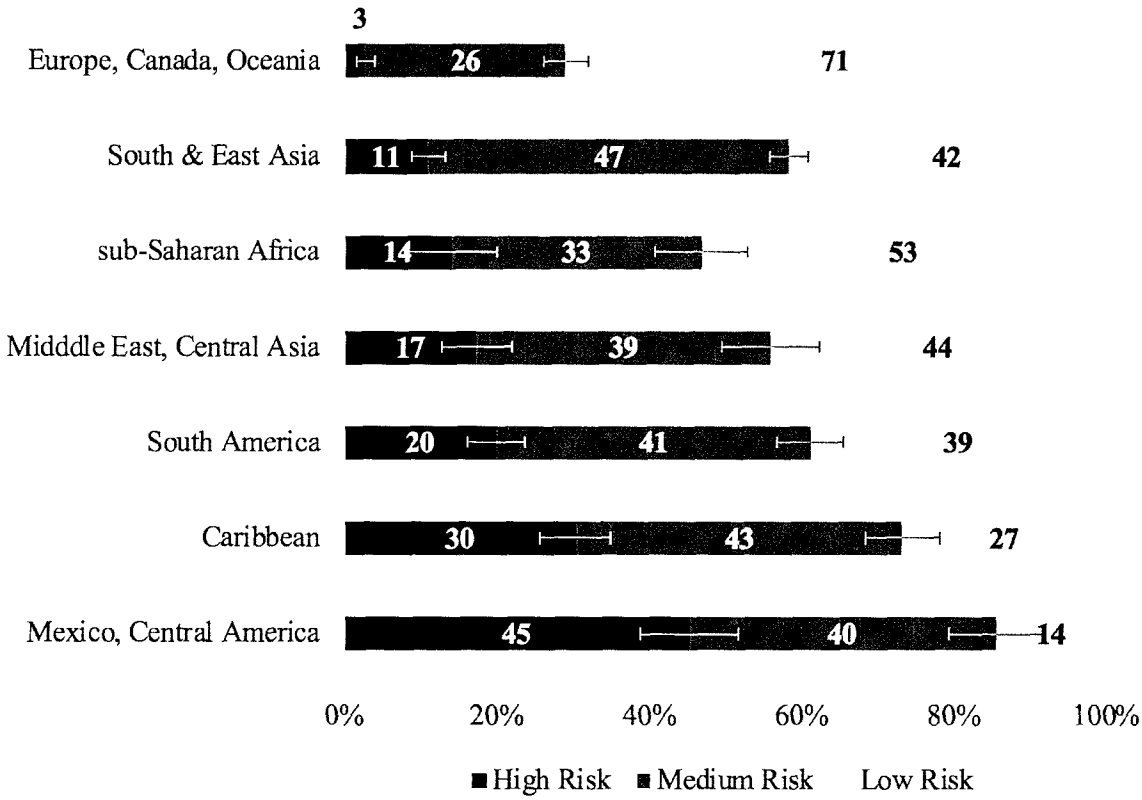
*High risk = No heavily weighted positive factors, and at least 1 heavily weighted negative factor or 2 or more other negative factors; Medium risk = At least 1 heavily weighted positive factor and at least 1 negative factor, or only one "other" negative factor; Low risk = no negative factors. Public program use is not included as a negative factor in this analysis, so these are conservative estimates. 95% confidence intervals are shown with the error bars.

Figure 7a. Estimated Risk of Being Deemed Inadmissible by the Public Charge Rule* By Race/Ethnicity, New York



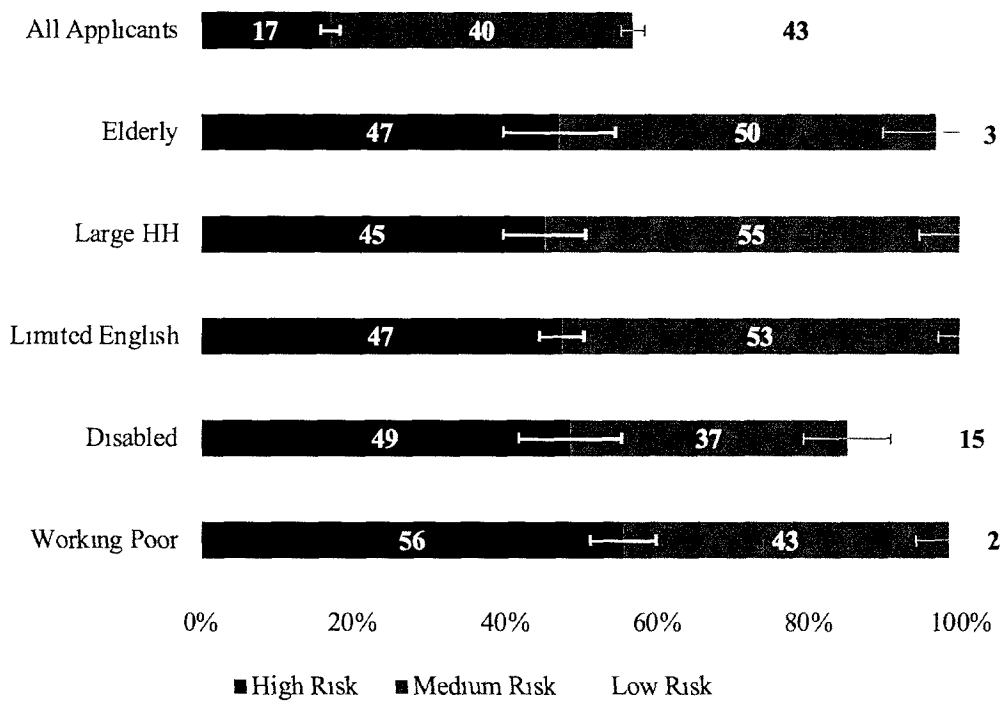
*High risk = No heavily weighted positive factors, and at least 1 heavily weighted negative factor or 2 or more other negative factors; Medium risk = At least 1 heavily weighted positive factor and at least 1 negative factor, or only one "other" negative factor; Low risk = no negative factors. Public program use is not included as a negative factor in this analysis, so these are conservative estimates. 95% confidence intervals are shown with the error bars.

Figure 8a. Estimated Risk of Being Deemed Inadmissible by the Public Charge Rule* By National Origin, New York



*High risk = No heavily weighted positive factors, and at least 1 heavily weighted negative factor or 2 or more other negative factors; Medium risk = At least 1 heavily weighted positive factor and at least 1 negative factor, or only one "other" negative factor; Low risk = no negative factors. Public program use is not included as a negative factor in this analysis, so these are conservative estimates. 95% confidence intervals are shown with the error bars.

Figure 9a. Estimated Risk of Being Deemed Inadmissible by the Public Charge Rule* For Designated Groups, New York



*High risk = No heavily weighted positive factors, and at least 1 heavily weighted negative factor or 2 or more other negative factors, Medium risk = At least 1 heavily weighted positive factor and at least 1 negative factor, or only one "other" negative factor; Low risk = no negative factors Public program use is not included as a negative factor in this analysis, so these are conservative estimates 95% confidence intervals are shown with the error bars

Figure 10. Sensitivity Analysis of Risk Measures

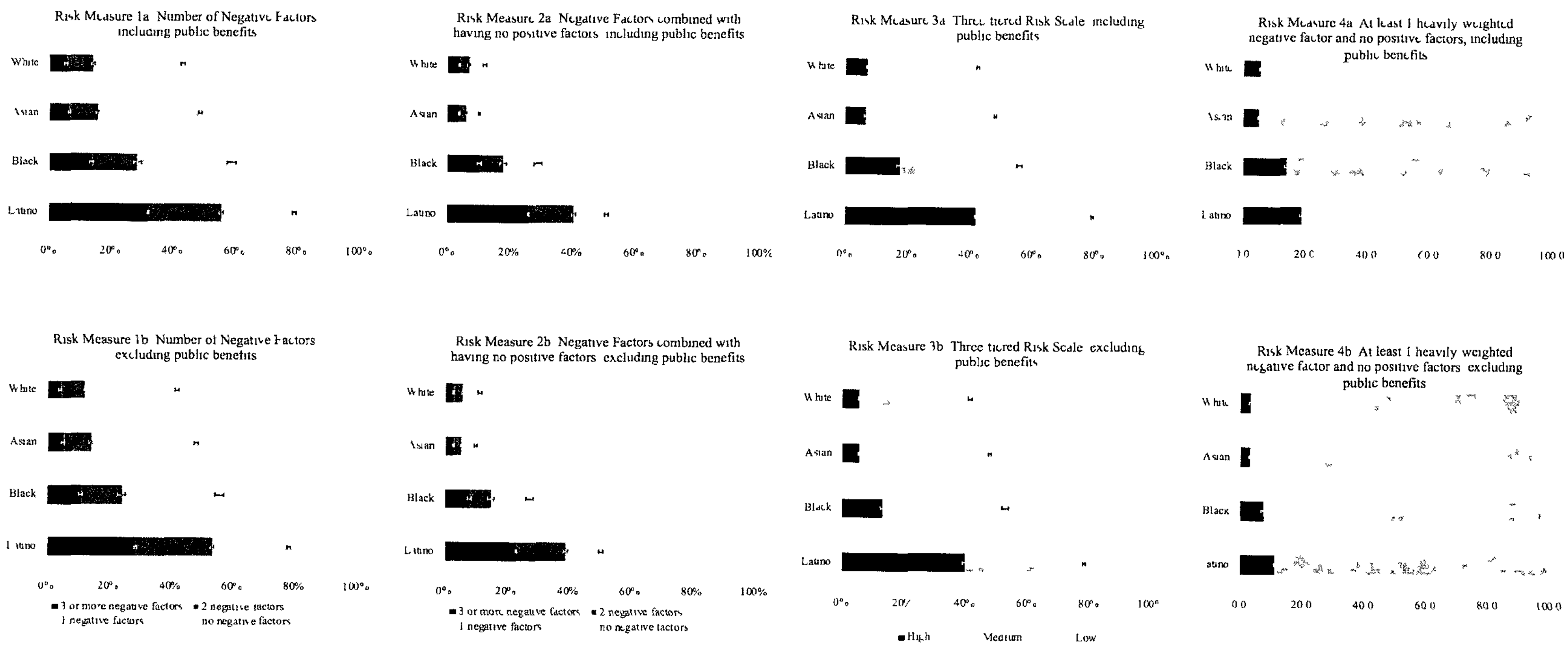
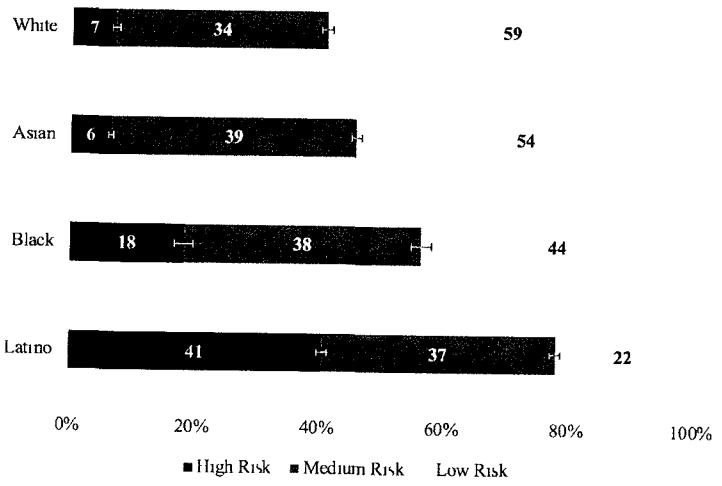
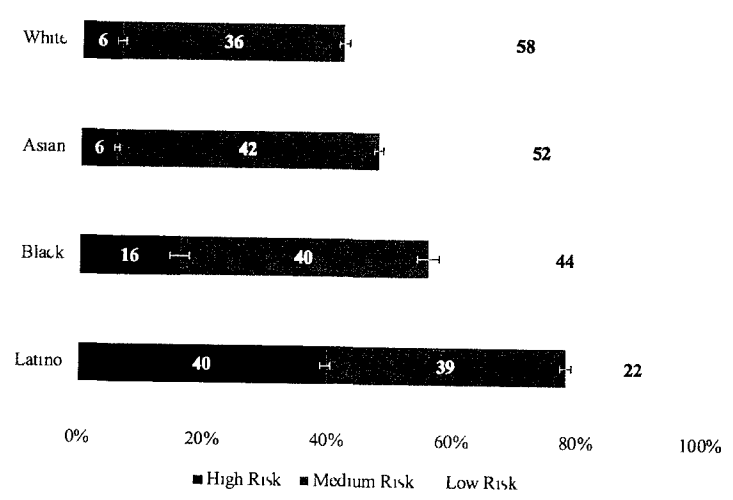


Figure 11a Estimated Risk of Being Deemed Inadmissible by the Public Charge Rule*, Including Children in Analysis



*High risk = No heavily weighted positive factors, and at least 1 heavily weighted negative factor or 2 or more other negative factors, Medium risk = At least 1 heavily weighted positive factor and at least 1 negative factor or only one "other" negative factor; Low risk = no negative factors Public program use is not included as a negative factor in this analysis, so these are conservative estimates 95% confidence intervals are shown with the error bars

Figure 11b Estimated Risk of Being Deemed Inadmissible by the Public Charge Rule*, Excluding Children in Analysis



*High risk = No heavily weighted positive factors and at least 1 heavily weighted negative factor or 2 or more other negative factors, Medium risk = At least 1 heavily weighted positive factor and at least 1 negative factor or only one "other" negative factor; Low risk = no negative factors Public program use is not included as a negative factor in this analysis so these are conservative estimates 95% confidence intervals are shown with the error bars

Fig. 12. Percentage Using Public Benefits, by Risk of Inadmissibility (three-tiered scale) and Race/Ethnicity

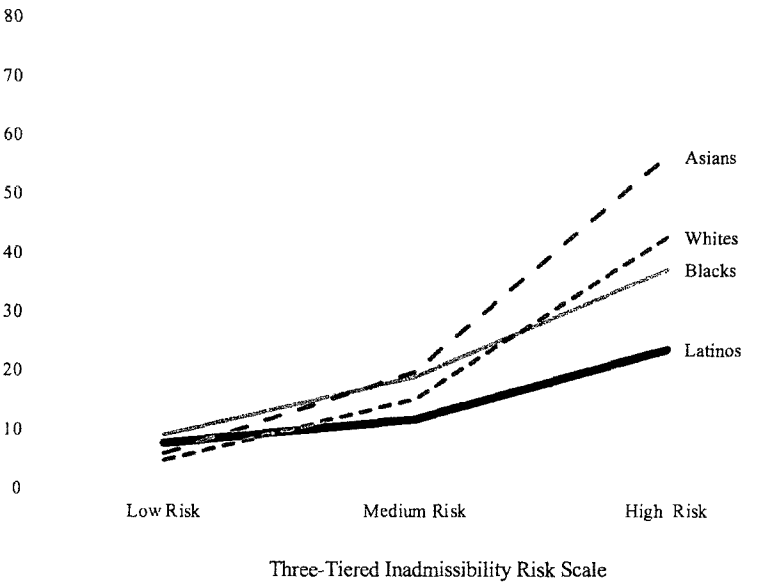


Fig. 13. Percentage Using Public Benefits, by Risk of Inadmissibility (three-tiered scale) and National Origin

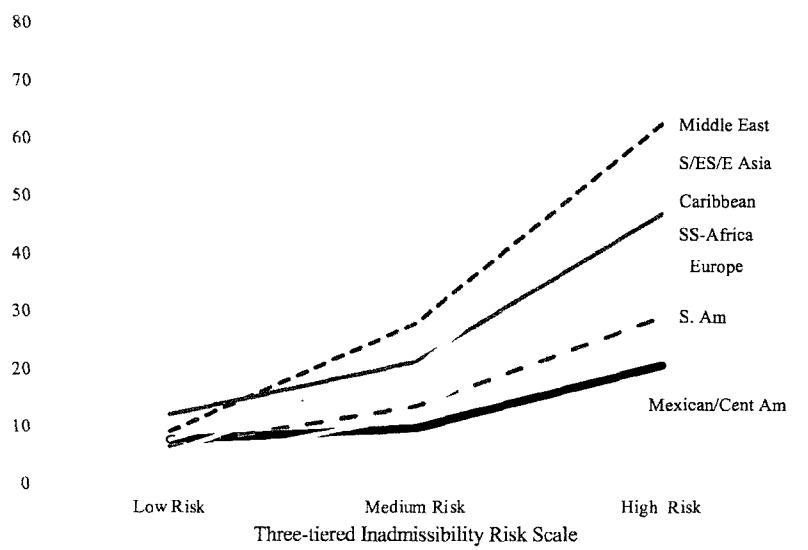


Fig. 14. Percentage Using Public Benefits, by Risk of Inadmissibility (three-tiered scale) and Race/Ethnicity, New York

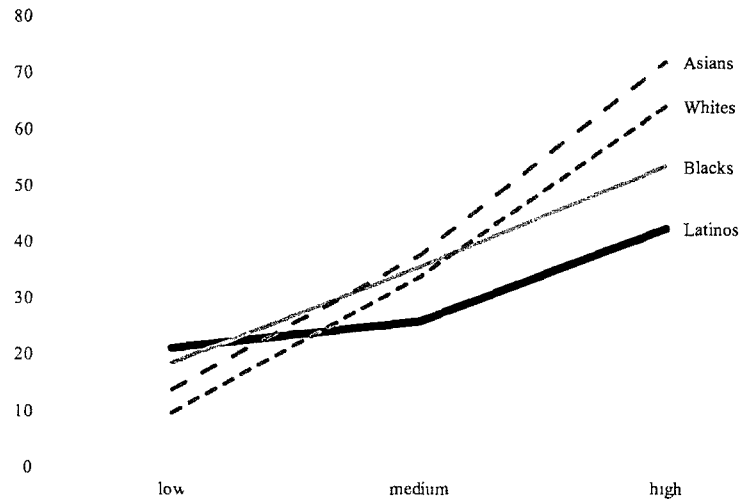


Fig. 15. Percentage Using Public Benefits, by Risk of Inadmissibility (three-tiered scale) and National Origin, New York

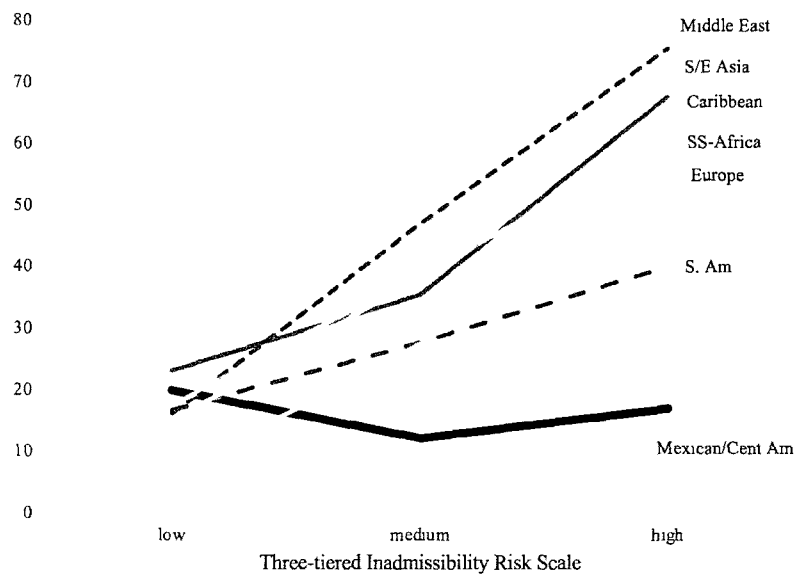
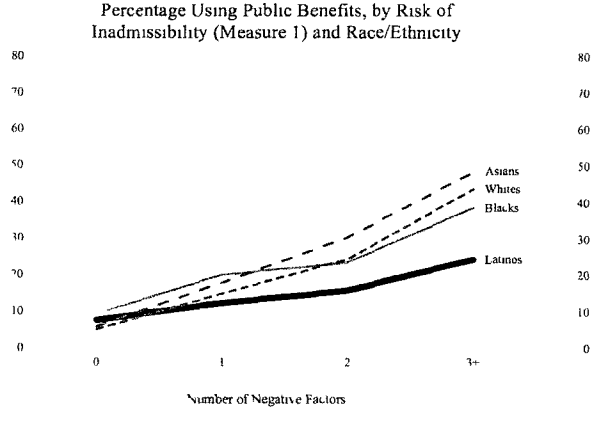
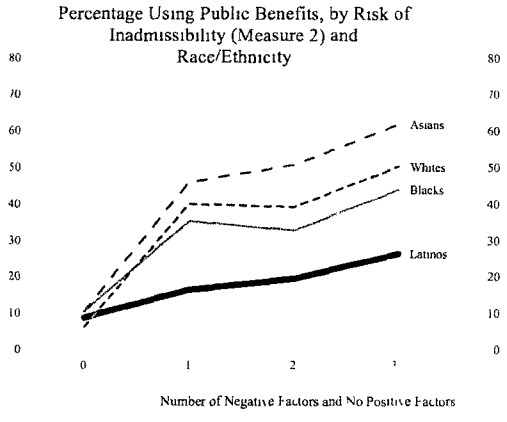
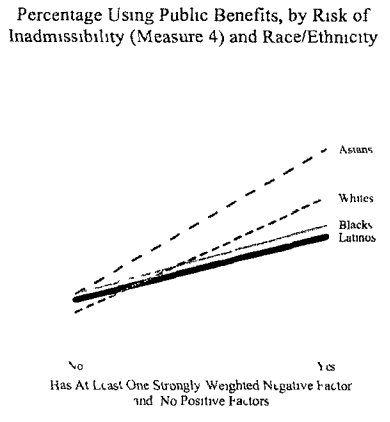
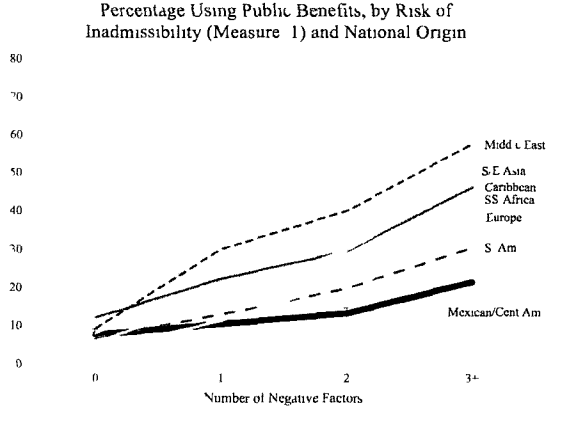


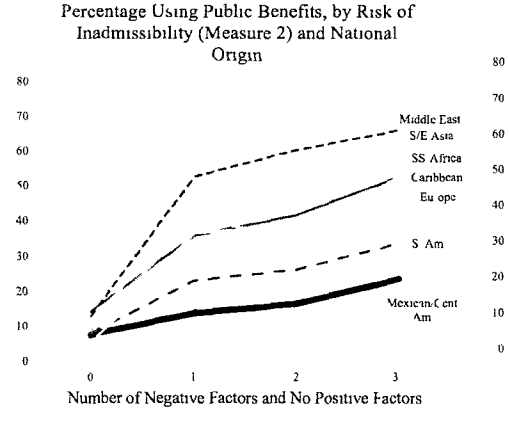
Figure 16. Sensitivity Analysis By Various Measures of Inadmissibility Risk











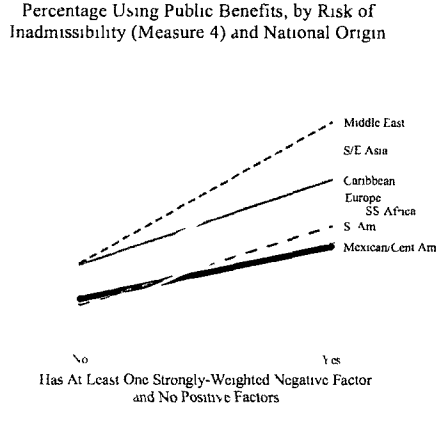


Figure 17. Comparison of Public Benefits Use and Share in High-Risk Category Among Adjustees, by Race/ethnicity

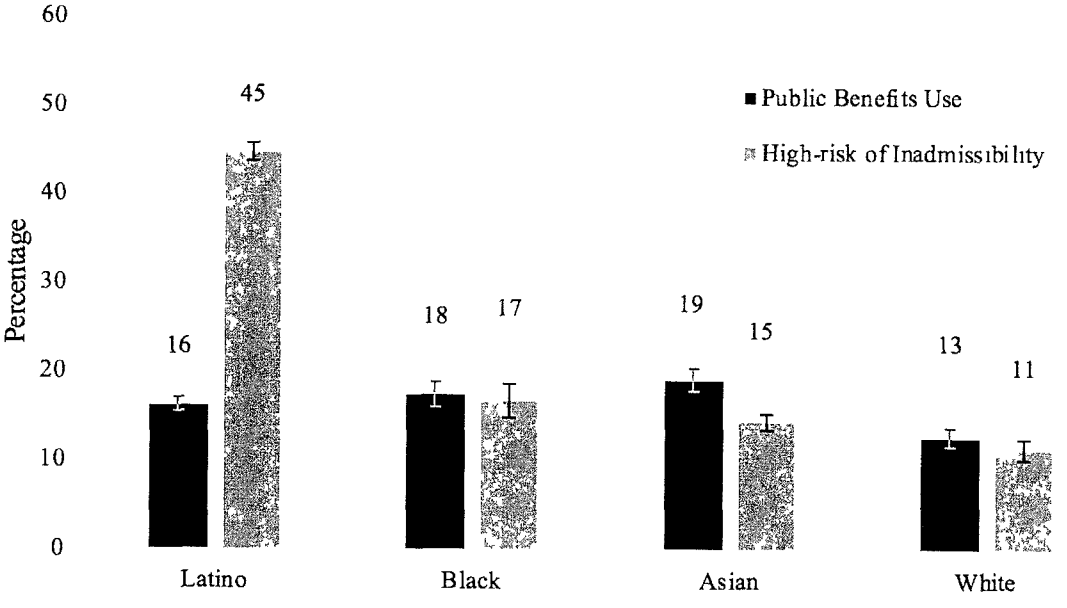


Figure 18. Comparison of Current Public Benefits Use and Share in High-Risk Category Among Adjustees, by National Origin

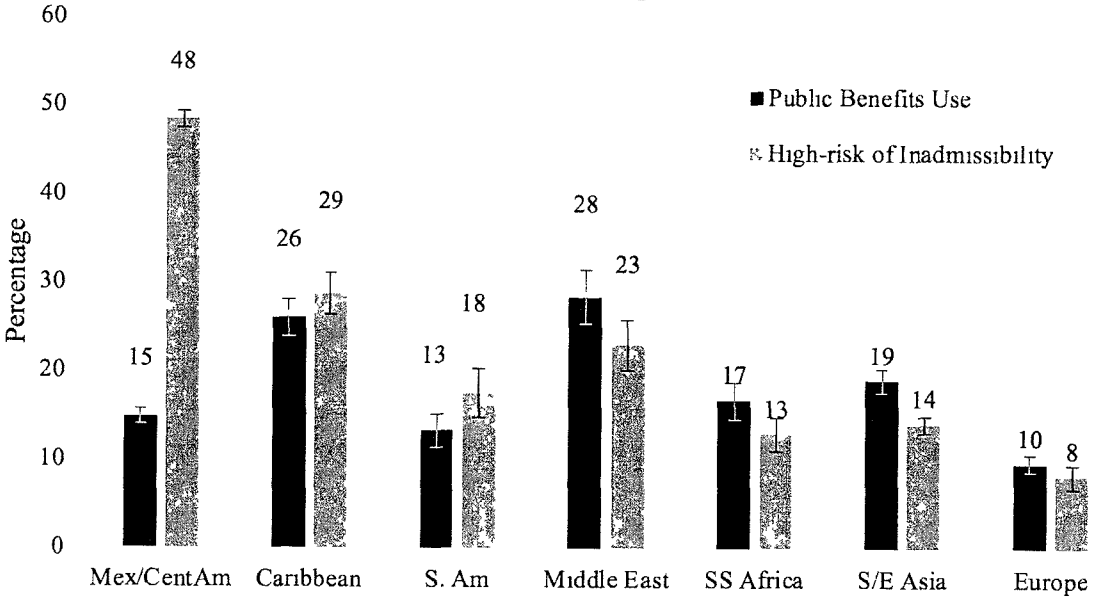


Figure 19. Comparison of Public Benefits Use and Share in High-Risk Category Among Adjustees, by Race/ethnicity, New York

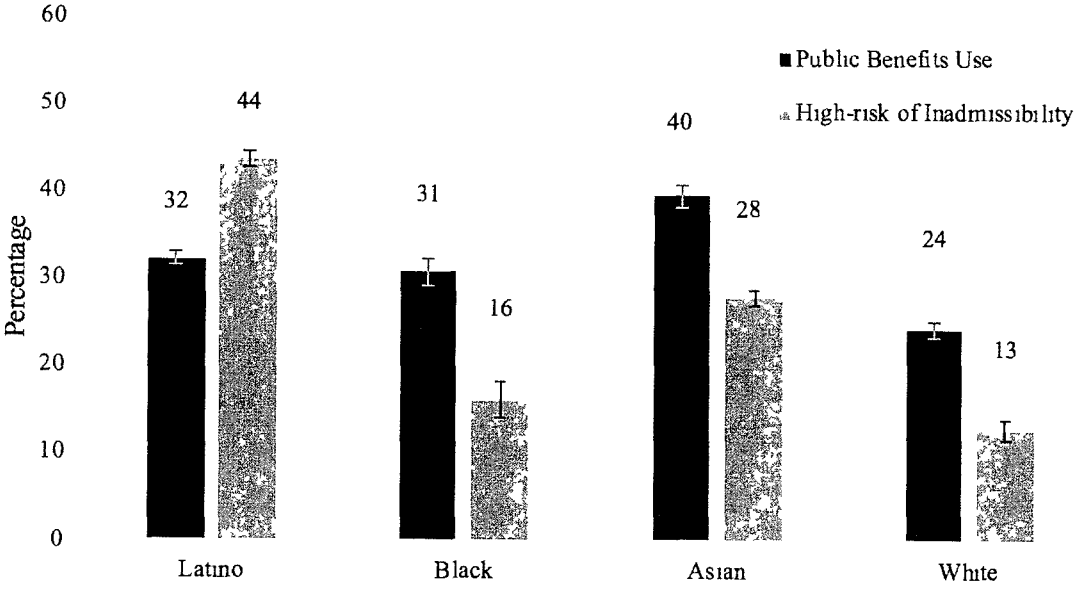


Figure 20. Comparison of Current Public Benefits Use and Share in High-Risk Category Among Adjustees, by National Origin, New York

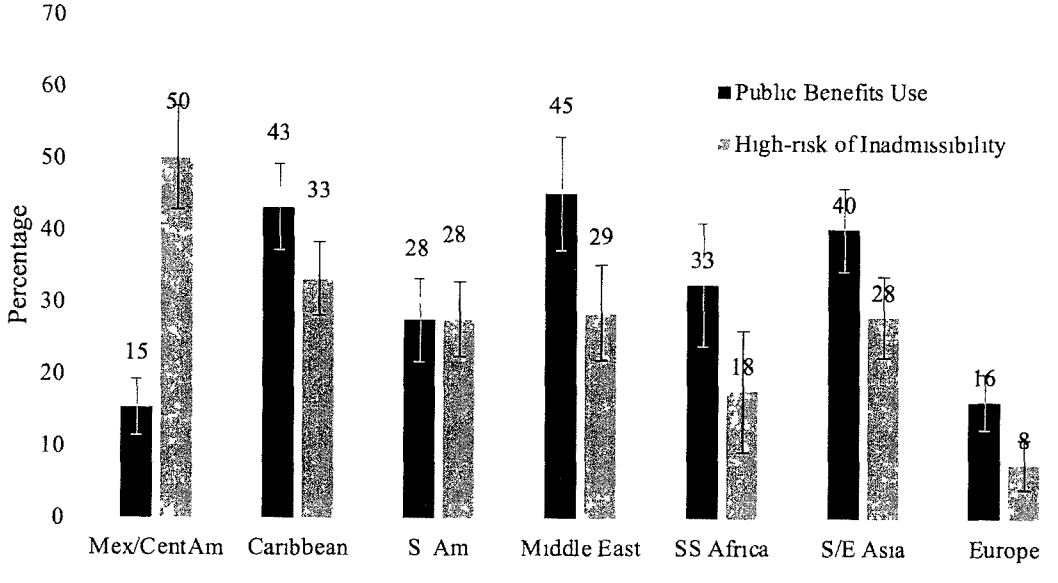


Table 1. Percentage With Negative and Positive Factors by Race/Ethnicity, Recent Adjustees & Legal Nonimmigrants

	Latino	Black	Asian	White
Heavily-weighted Negative Factors				
Health Condition	3.4 *	2.5 *	0.9 *	1.1
Economic Inactivity	15.2	14.5	14.1	14.6
Other Negative Factors				
Low Income	35.7 *	31.4 *	24.9 *	21.8
Low Skill	42.3 *	17.0 *	6.3 *	5.3
Low English Proficiency	53.7 *	15.5 *	15.6 *	11.2
Age >= 62 & Low Income	1.6	1.8	0.7 *	1.4
Large Household Size	20.5 *	15.3 *	7.0 *	5.7
Heavily-weighted Positive Factors				
High HH Income	28.7 *	38.2 *	58.4 *	60.4
Earning > 250% FPL	7.6 *	11.6 *	29.2 *	32.7
Private Health Insurance	33.2 *	55.0 *	82.8 *	79.4
Three-tiered Inadmissibility Risk Scale				
High	39.7 *	16.0 *	5.8	6.3
Medium	38.6 *	39.9 *	42.1 *	35.7
Low	21.7 *	44.1 *	52.1 *	57.9
Sample Size	29,391	7,059	48,642	23,146

* significantly different from Whites.

Source: 2013-2017 American Community Survey.

See text for definitions of negative and positive Factors. High risk = No heavily weighted positive factors, and at least 1 heavily weighted negative factor or 2 or more other negative factors; Medium risk = At least 1 heavily weighted positive factor and at least 1 negative factor, or only one "other" negative factor; Low risk = no negative factors.

Table 2. Percentage With Negative and Positive Factors by National Origin, Recent Adjustees & Legal Nonimmigrants

	Mexico, Central America	Caribbean	South America	Middle East, Central Asia	sub-Saharan Africa	South & East Asia	Europe, Canada, Oceania
Heavily-weighted Negative Factors							
Health Condition	3.5 *	4.4 *	1.7 *	2.4 *	2.1 *	0.8	0.7
Economic Inactivity	14.9	19.9 *	13.6	14.3	11.7 *	14.0	14.8
Other Negative Factors							
Low Income	38.2 *	31.7 *	23.3 *	37.6 *	30.3 *	24.8 *	16.2
Low Skill	49.5 *	26.0 *	9.0 *	8.2 *	13.0 *	6.1 *	4.2
Low English Proficiency	58.1 *	36.1 *	24.7 *	19.4 *	10.6 *	15.7 *	7.5
Age >= 62 & Low Income	1.4	3.3 *	1.4	1.5	1.1	0.7 *	1.4
Large Household Size	23.0 *	18.6 *	8.1 *	10.6 *	12.7 *	6.6 *	4.9
Heavily-weighted Positive Factors							
High HH Income	24.6 *	32.9 *	51.0 *	37.9 *	43.5 *	58.8 *	68.4
Earning > 250% FPL	5.2 *	7.0 *	20.6 *	15.1 *	16.6 *	29.5 *	39.5
Private Health Insurance	26.6 *	44.8 *	65.4 *	67.4 *	60.6 *	83.3	84.5
Three-tiered Inadmissibility Risk Scale							
High	45.3 *	26.6 *	11.1 *	12.9 *	12.0 *	5.5 *	4.1
Medium	37.6 *	42.7 *	41.6 *	44.5 *	37.4 *	42.1 *	32.3
Low	17.1 *	30.7 *	47.3 *	42.6 *	50.5 *	52.4 *	63.6
Sample Size	22,922	4,868	6,128	5,929	4,251	46,520	17,696

* significantly different from Europe/Canada/Oceania.

Source: 2013-2017 American Community Survey.

See text for definitions of negative and positive Factors. High risk = No heavily weighted positive factors, and at least 1 heavily weighted negative factor or 2 or more other negative factors; Medium risk = At least 1 heavily weighted positive factor and at least 1 negative factor, or only one "other" negative factor; Low risk = no negative factors.

Table 7. Percentage With Negative and Positive Factors by Race/Ethnicity, Recent Adjustees & Legal Nonimmigrants in New York

	Latino	Black	Asian	White
Heavily-weighted Negative Factors				
Health Condition	3.5 *	1.6	1.3	1.0
Economic Inactivity	15.7 *	16.0 *	13.8 *	10.0
Other Negative Factors				
Low Income	38.1 *	25.1 *	33.8 *	18.3
Low Skill	37.2 *	15.9 *	10.8 *	4.8
Low English Proficiency	56.1 *	9.5	22.7 *	10.2
Age >= 62 & Low Income	2.0 *	2.0	1.2	0.8
Large Household Size	24.7 *	18.0 *	8.6 *	4.9
Heavily-weighted Positive Factors				
High HH Income	32.2 *	47.9 *	46.5 *	66.9
Earning > 250% FPL	9.3 *	14.1 *	23.9 *	45.0
Private Health Insurance	31.9 *	49.0 *	71.2 *	77.6
Three-tiered Inadmissibility Risk Scale				
High	38.1 *	14.4 *	11.3 *	5.5
Medium	41.7 *	39.0 *	46.4 *	28.8
Low	20.2 *	46.6 *	42.3 *	65.7
Sample Size	1,810	961	3,378	2,419

* significantly different from Whites.

Source: 2013-2017 American Community Survey.

See text for definitions of negative and positive Factors. High risk = No heavily weighted positive factors, and at least 1 heavily weighted negative factor or 2 or more other negative factors; Medium risk = At least 1 heavily weighted positive factor and at least 1 negative factor, or only one "other" negative factor; Low risk = no negative factors.

Table 8. Percentage With Negative and Positive Factors by National Origin, Recent Adjustees & Legal Nonimmigrants in New York

	Mexico, Central America	Caribbean	South America	Midddle East, Central Asia	sub-Saharan Africa	South & East Asia	Europe, Canada, Oceania
Heavily-weighted Negative Factors							
Health Condition	1.9	4.1 *	3.1 *	2.9 *	0.8	1.2	0.4
Economic Inactivity	11.6	21.1 *	14.2 *	14.5 *	9.6	13.7 *	8.8
Other Negative Factors							
Low Income	43.7 *	32.3 *	24.4 *	32.3 *	29.7 *	34.8 *	15.2
Low Skill	46.6 *	28.8 *	21.9 *	14.1 *	13.0 *	10.4 *	2.7
Low English Proficiency	58.0 *	42.8 *	30.6 *	23.6 *	10.2	23.5 *	6.8
Age >= 62 & Low Income	0.6	3.3 *	1.3	1.8	1.8	1.2	0.4
Large Household Size	32.5 *	21.7 *	15.3 *	14.2 *	15.8 *	7.9 *	3.1
Heavily-weighted Positive Factors							
High HH Income	28.0 *	37.2 *	47.9 *	41.1 *	47.1 *	45.6 *	72.7
Earning > 250% FPL	6.9 *	6.7 *	18.2 *	20.4 *	24.9 *	23.1 *	51.9
Private Health Insurance	21.6 *	36.2 *	50.2 *	59.5 *	57.0 *	71.3 *	83.4
Three-tiered Inadmissibility Risk Scale							
High	45.2 *	30.4 *	19.9 *	17.3 *	14.1 *	11.0 *	2.7
Medium	40.4 *	43.0 *	41.3 *	38.6 *	32.8	47.3 *	26.3
Low	14.4 *	26.7 *	38.8 *	44.0 *	53.2 *	41.6 *	71.0
Sample Size	682	1,233	685	556	325	3,082	2,011

* significantly different from Europe/Canada/Oceania.

Source: 2013-2017 American Community Survey.

See text for definitions of negative and positive Factors. High risk = No heavily weighted positive factors, and at least 1 heavily weighted negative factor or 2 or more other negative factors; Medium risk = At least 1 heavily weighted positive factor and at least 1 negative factor, or only one "other" negative factor; Low risk = no negative factors.

Table 9. Percentage With Negative and Positive Factors for Designated Groups in New York

	Working Poor	Disabled	Limited English	Large HH	Elderly	All Applicants
Heavily-weighted Negative Factors						
Health Condition	2.9	48.6 *	4.3 *	2.5	15.3 *	1.8
Economic Inactivity	14.0	56.0 *	25.8 *	19.5 *	82.7 *	13.6
Other Negative Factors						
Low Income	96.3 *	32.8	38.5 *	38.7 *	26.5	29.9
Low Skill	35.5 *	46.2 *	43.5 *	37.2 *	58.6 *	16.6
Low English Proficiency	49.4 *	56.3 *	100.0 *	50.6 *	71.2 *	26.5
Age >= 62 & Low Income	3.6	11.0 *	3.9 *	2.7	28.5 *	1.4
Large Household Size	29.8 *	18.0	24.5 *	100.0 *	25.9 *	12.9
Heavily-weighted Positive Factors						
High HH Income	0.0 *	39.4 *	30.6 *	32.9 *	40.8 *	48.3
Earning > 250% FPL	1.1 *	8.6 *	4.9 *	2.1 *	2.2 *	24.5
Private Health Insurance	30.1 *	32.2 *	27.3 *	31.2 *	23.6 *	60.3
Three-tiered Inadmissibility Risk Scale						
High	55.6 *	48.6 *	47.4 *	45.1 *	47.1 *	17.0
Medium	42.8	36.6	52.6 *	54.9 *	49.8 *	39.8
Low	1.6 *	14.8 *	0.0 *	0.0 *	3.1 *	43.2
Sample Size	1,072	350	2,033	1,074	310	8,574

* significantly different from the average potential applicant

Source: 2013-2017 American Community Survey.

See text for definitions of negative and positive Factors. High risk = No heavily weighted positive factors, and at least 1 heavily weighted negative factor or 2 or more other negative factors; Medium risk = At least 1 heavily weighted positive factor and at least 1 negative factor, or only one "other" negative factor; Low risk = no negative factors.

Table 10. Percentage Using Public Benefits by Three-Tiered Risk of Inadmissibility Scale by Race/ethnicity and National Origin, for the Nation and New York (estimates for Figures 12-15)

	% Public Benefit Use x Risk				Positive	Standard Errors		
	Low Risk	Med Risk	High Risk	Gradient	Predictive Value	Low	Medium	High
United States								
Race/Ethnicity								
Latino	7.8	11.8	23.6	15.8	23.6	0.6	0.4	0.7
Black	9.3	19.1	37.2	27.9 *	37.2 *	0.8	1.4	2.6
Asian	5.9	20.0	56.4	50.5 *	56.4 *	0.4	0.8	2.8
White	5.0	15.3	42.7	37.7 *	42.7 *	0.4	0.8	2.1
National Origin								
Mexican/Cent Am	7.8	9.9	20.8	13.0	20.8	0.7	0.5	0.7
Caribbean	12.0	21.3	47.0	35.0 *	47.0 *	1.2	1.9	2.1
South American	6.8	13.5	29.3	22.5 *	29.3 *	1.0	1.8	2.9
Middle East/ Central Asia	9.2	28.0	62.6	53.4 *	62.6 *	1.7	2.1	2.9
Sub-Saharan African	8.0	20.5	42.0	34.1 *	42.0 *	0.9	1.9	4.5
South & East Asia	5.8	20.1	55.9	50.1 *	55.9 *	0.4	0.9	2.6
Europe/Canada/Oceania	3.8	12.3	41.1	37.3 *	41.1 *	0.4	0.9	3.2
New York								
Race/Ethnicity								
Latino	21.1	25.8	42.2	21.1	42.2	3.7	2.7	2.8
Black	18.7	35.7	53.3	34.6	53.3	3.0	4.3	5.9
Asian	13.9	37.6	71.9	58.0 *	71.9 *	2.2	4.0	5.4
White	9.8	33.7	63.9	54.1 *	63.9 *	2.1	3.9	7.8
National Origin								
Mexican/Cent Am	20.0	12.1	16.9	-3.1	16.9	7.7	2.6	3.0
Caribbean	23.2	35.6	67.6	44.4 *	67.6 *	3.5	4.3	3.4
South American	16.7	27.6	40.2	23.4 *	40.2 *	5.3	5.8	5.7
Middle East/ Central Asia	16.2	47.1	75.5	59.4 *	75.5 *	4.9	6.2	6.7
Sub-Saharan African	17.7	38.9	59.7	42.0 *	59.7 *	4.4	8.0	12.5
South & East Asia	14.9	38.3	71.8	56.9 *	71.8 *	2.3	4.6	5.7
Europe/Canada/Oceania	6.6	27.5	55.7	49.1 *	55.7 *	1.6	4.2	9.8

* significantly different from Latinos or Mexicans/Central Americans
Source: 2013-2017 American Community Survey. Recent Adjustees only.

See text for definitions of negative and positive Factors. High risk = No heavily weighted positive factors, and at least 1 heavily weighted negative factor or 2 or more other negative factors; Medium risk = At least 1 heavily weighted positive factor and at least 1 negative factor, or only one "other" negative factor; Low risk = no negative factors.

Table 11. Percentage in the High-risk Category and Using Public Benefits by Race/ethnicity and National Origin, for the Nation and New York (estimates for Figures 17-20)

				Standard Errors	
	Public Benefit Use	High-risk	Difference	Public Benefit Use	High-risk
United States					
Race/Ethnicity					
Latino	16.4	44.8	28.4	0.4	0.5
Black	17.6	16.7	-0.8 *	0.8	1.0
Asian	19.3	14.6	-4.7 *	0.6	0.4
White	12.8	11.4	-1.3 *	0.5	0.6
National Origin					
Mexican/Cent Am	14.9	48.4	33.6	0.5	0.5
Caribbean	26.0	28.8	2.7 *	1.1	1.2
South American	13.3	17.5	4.2 *	1.0	1.4
Middle East/ Central Asia	28.5	23.0	-5.5 *	1.5	1.4
Sub-Saharan African	16.7	12.9	-3.8 *	1.1	1.0
South & East Asia	19.0	14.1	-4.9 *	0.6	0.5
Europe/Canada/Oceania	9.6	8.2	-1.5 *	0.5	0.7
New York					
Race/Ethnicity					
Latino	32.3	43.7	11.4	1.0	2.2
Black	30.9	16.2	-14.7 *	1.4	2.1
Asian	39.6	27.8	-11.7 *	1.3	2.4
White	24.3	12.8	-11.4 *	1.1	2.4
National Origin					
Mexican/Cent Am	15.4	50.2	34.7	2.0	3.7
Caribbean	43.3	33.3	-10.0 *	3.1	2.6
South American	27.6	27.6	0.0 *	2.9	2.7
Middle East/ Central Asia	45.3	28.6	-16.7 *	4.0	3.4
Sub-Saharan African	32.6	17.8	-14.8 *	4.3	4.3
South & East Asia	40.3	28.0	-12.2 *	3.0	2.9
Europe/Canada/Oceania	16.3	7.7	-8.6 *	1.9	1.8

* significantly different from Latinos or Mexicans/Central Americans
Source: 2013-2017 American Community Survey. Recent Adjustees only.

See text for definitions of negative and positive Factors. High risk = No heavily weighted positive factors, and at least 1 heavily weighted negative factor or 2 or more other negative factors; Medium risk = At least 1 heavily weighted positive factor and at least 1 negative factor, or only one "other" negative factor; Low risk = no negative factors.

Supplemental Table S1. Risk profiles among Recent Adjustees & Legal Nonimmigrants

	High Risk		Medium Risk		Low Risk	
Heavily-weighted Negative Factors						
Health Condition	10.8	(0.4)	0.0	(0.0)	0.0	(0.0)
Economic Inactivity	31.8	(0.6)	23.2	(0.3)	0.0	(0.0)
Other Negative Factors						
Low Income	64.3	(0.7)	43.5	(0.5)	0.0	(0.0)
Low Skill	63.2	(0.5)	17.8	(0.4)	0.0	(0.0)
Low English Proficiency	76.1	(0.5)	33.5	(0.7)	0.0	(0.0)
Age >= 62 & Low Income	5.9	(0.3)	0.6	(0.1)	0.0	(0.0)
Large Household Size	30.1	(0.8)	16.0	(0.3)	0.0	(0.0)
Heavily-weighted Positive Factors						
High HH Income	0.0	(0.0)	37.9	(0.4)	76.5	(0.3)
Earning > 250% FPL	0.0	(0.0)	3.7	(0.1)	47.2	(0.3)
Private Health Insurance	0.0	(0.0)	69.3	(0.4)	86.6	(0.3)
Sample Size	16,311		42,320		49,683	

Standard errors are shown in parentheses.

Source: 2013-2017 American Community Survey.

See text for definitions of negative and positive Factors. High risk = No heavily weighted positive factors, and at least 1 heavily weighted negative factor or 2 or more other negative factors; Medium risk = At least 1 heavily weighted positive factor and at least 1 negative factor, or only one "other" negative factor; Low risk = no negative factors.

Supplemental Table S2. Estimated Risk By Race/ethnicity For Different Immigrant Status Groups

	Latino	Black	Asian	White
Group 1: Recent Adjustees & LNIs				
High	39.7 * (0.4)	16.0 * (0.7)	5.8 (0.2)	6.3 (0.3)
Medium	38.6 * (0.5)	39.9 * (0.9)	42.1 * (0.4)	35.7 (0.4)
Low	21.7 * (0.4)	44.1 * (1.1)	52.1 * (0.5)	57.9 (0.5)
Group 2: Recent Adjustees, LNIs, & New Arrivals				
High	42.3 * (0.3)	20.8 * (0.6)	11.0 * (0.2)	10.3 (0.3)
Medium	40.6 * (0.3)	40.3 (0.6)	45.3 * (0.3)	39.4 (0.4)
Low	17.1 * (0.3)	39.0 * (0.6)	43.6 * (0.4)	50.4 (0.4)
Group 3: Recent Adjustees, LNIs, New Arrivals, & other FB				
High	45.9 * (0.3)	22.0 * (0.5)	12.6 (0.2)	12.0 (0.2)
Medium	39.1 (0.3)	40.5 (0.5)	46.2 * (0.3)	39.8 (0.4)
Low	15.0 * (0.2)	37.5 * (0.5)	41.2 * (0.3)	48.2 (0.4)

* significantly different from Whites.

Source: 2013-2017 American Community Survey.

See text for definitions of negative and positive Factors. High risk = No heavily weighted positive factors, and at least 1 heavily weighted negative factor or 2 or more other negative factors; Medium risk = At least 1 heavily weighted positive factor and at least 1 negative factor, or only one "other" negative factor; Low risk = no negative factors.

Supplemental Table S3. Sensitivity Analyses of Risk Measures by Race/ethnicity

	Latino	Black	Asian	White
Including Public Benefits				
1a. Number of negative factors				
1+ negative factors	79.4 * (0.4)	59.0 * (1.1)	48.7 * (0.5)	43.2 (0.5)
2+ negative factors	55.7 * (0.5)	28.6 * (1.0)	15.6 * (0.5)	14.1 (0.5)
3+ negative factors	32.1 * (0.4)	13.9 * (0.6)	6.6 * (0.3)	5.5 (0.3)
2a. Number of negative factors, no positive factors				
1+ negative factors	51.1 * (0.4)	29.1 * (1.0)	10.3 * (0.3)	11.9 (0.4)
2+ negative factors	40.7 * (0.4)	18.2 * (0.8)	6.3 (0.2)	7.0 (0.4)
3+ negative factors	26.1 * (0.4)	10.2 * (0.5)	3.7 (0.2)	3.8 (0.3)
3a Risk Scale				
High	42.1 * (0.4)	19.4 * (0.8)	6.9 * (0.3)	8.0 (0.4)
Medium	37.4 * (0.5)	38.9 * (0.8)	41.8 * (0.4)	35.2 (0.4)
Low	20.6 * (0.4)	41.8 * (1.0)	51.4 * (0.5)	56.8 (0.5)
4a. No Positive Factors and 1+ heavily-weighted negative	19.0 * (0.3)	13.5 * (0.6)	5.3 * (0.3)	6.1 (0.3)
Excluding Public Benefits				
1b. Number of negative factors				
1+ negative factors	78.3 * (0.4)	55.9 * (1.1)	47.9 * (0.5)	42.1 (0.5)
2+ negative factors	53.3 * (0.5)	24.2 * (1.0)	14.0 * (0.4)	12.3 (0.4)
3+ negative factors	28.5 * (0.4)	10.9 * (0.6)	5.0 (0.3)	4.3 (0.3)
2b. Number of negative factors, no positive factors				
1+ negative factors	50.3 * (0.4)	27.3 * (1.0)	10.0 * (0.3)	11.3 (0.4)
2+ negative factors	39.0 * (0.4)	15.0 * (0.7)	5.4 (0.2)	5.7 (0.3)
3+ negative factors	23.2 * (0.3)	8.0 * (0.5)	2.8 (0.2)	2.9 (0.3)
3b. Risk Scale				
High	39.7 * (0.4)	16.0 * (0.7)	5.8 (0.2)	6.3 (0.3)
Medium	38.6 * (0.5)	39.9 * (0.9)	42.1 * (0.4)	35.7 (0.4)
Low	21.7 * (0.4)	44.1 * (1.1)	52.1 * (0.5)	57.9 (0.5)
4b. No Positive Factors and 1+ heavily-weighted negative	11.2 * (0.2)	8.8 * (0.6)	3.1 (0.2)	3.6 (0.2)
Sample Size	29,391	7,059	48,642	23,146

* significantly different from whites

Source: 2013-2017 American Community Survey.

Table A1. Percentage With Negative and Positive Factors by Race/Ethnicity, Recent Adjustees & Legal Nonimmigrants

	Latino		Black		Asian		White	
Heavily-weighted Negative Factors								
Health Condition	3.4 *	(0.2)	2.5 *	(0.3)	0.9 *	(0.1)	1.1	(0.1)
Economic Inactivity	15.2	(0.3)	14.5	(0.7)	14.1	(0.3)	14.6	(0.3)
Other Negative Factors								
Low Income	35.7 *	(0.5)	31.4 *	(0.9)	24.9 *	(0.4)	21.8	(0.5)
Low Skill	42.3 *	(0.5)	17.0 *	(1.0)	6.3 *	(0.3)	5.3	(0.2)
Low English Proficiency	53.7 *	(0.5)	15.5 *	(0.7)	15.6 *	(0.5)	11.2	(0.4)
Age >= 62 & Low Income	1.6	(0.1)	1.8	(0.2)	0.7 *	(0.1)	1.4	(0.2)
Large Household Size	20.5 *	(0.6)	15.3 *	(0.6)	7.0 *	(0.3)	5.7	(0.3)
Heavily-weighted Positive Factors								
High HH Income	28.7 *	(0.4)	38.2 *	(0.9)	58.4 *	(0.4)	60.4	(0.6)
Earning > 250% FPL	7.6 *	(0.2)	11.6 *	(0.6)	29.2 *	(0.4)	32.7	(0.4)
Private Health Insurance	33.2 *	(0.4)	55.0 *	(1.1)	82.8 *	(0.4)	79.4	(0.6)
Three-tiered Inadmissibility Risk Scale								
High	39.7 *	(0.4)	16.0 *	(0.7)	5.8	(0.2)	6.3	(0.3)
Medium	38.6 *	(0.5)	39.9 *	(0.9)	42.1 *	(0.4)	35.7	(0.4)
Low	21.7 *	(0.4)	44.1 *	(1.1)	52.1 *	(0.5)	57.9	(0.5)
Sample Size	29,391		7,059		48,642		23,146	

* significantly different from Whites.

Source: 2013-2017 American Community Survey.

See text for definitions of negative and positive Factors. High risk = No heavily weighted positive factors, and at least 1 heavily weighted negative factor or 2 or more other negative factors; Medium risk = At least 1 heavily weighted positive factor and at least 1 negative factor, or only one "other" negative factor; Low risk = no negative factors.

Table A2. Percentage With Negative and Positive Factors by National Origin, Recent Adjustees & Legal Nonimmigrants

	Mexico, Central America	Caribbean	South America	Middle East, Central Asia	sub-Saharan Africa	South & East Asia	Europe, Canada, Oceania
Heavily-weighted Negative Factors							
Health Condition	3.5 * (0.2)	4.4 * (0.4)	1.7 * (0.3)	2.4 * (0.3)	2.1 * (0.4)	0.8 (0.1)	0.7 (0.1)
Economic Inactivity	14.9 (0.4)	19.9 * (0.8)	13.6 (0.7)	14.3 (0.6)	11.7 * (0.7)	14.0 (0.4)	14.8 (0.4)
Other Negative Factors							
Low Income	38.2 * (0.6)	31.7 * (1.1)	23.3 * (0.8)	37.6 * (1.0)	30.3 * (1.1)	24.8 * (0.4)	16.2 (0.6)
Low Skill	49.5 * (0.6)	26.0 * (1.2)	9.0 * (0.6)	8.2 * (0.6)	13.0 * (0.8)	6.1 * (0.3)	4.2 (0.2)
Low English Proficiency	58.1 * (0.5)	36.1 * (1.2)	24.7 * (0.9)	19.4 * (0.8)	10.6 * (0.8)	15.7 * (0.5)	7.5 (0.4)
Age >= 62 & Low Income	1.4 (0.1)	3.3 * (0.4)	1.4 (0.2)	1.5 (0.2)	1.1 (0.2)	0.7 * (0.1)	1.4 (0.2)
Large Household Size	23.0 * (0.7)	18.6 * (0.9)	8.1 * (0.6)	10.6 * (0.9)	12.7 * (0.6)	6.6 * (0.2)	4.9 (0.2)
Heavily-weighted Positive Factors							
High HH Income	24.6 * (0.5)	32.9 * (1.0)	51.0 * (1.0)	37.9 * (1.0)	43.5 * (1.2)	58.8 * (0.4)	68.4 (0.7)
Earning > 250% FPL	5.2 * (0.2)	7.0 * (0.7)	20.6 * (0.6)	15.1 * (0.6)	16.6 * (0.7)	29.5 * (0.4)	39.5 (0.6)
Private Health Insurance	26.6 * (0.4)	44.8 * (1.0)	65.4 * (0.9)	67.4 * (1.0)	60.6 * (1.5)	83.3 (0.4)	84.5 (0.6)
Three-tiered Inadmissibility Risk Scale							
High	45.3 * (0.4)	26.6 * (1.0)	11.1 * (0.8)	12.9 * (0.7)	12.0 * (0.9)	5.5 * (0.2)	4.1 (0.3)
Medium	37.6 * (0.4)	42.7 * (1.5)	41.6 * (1.0)	44.5 * (0.9)	37.4 * (1.0)	42.1 * (0.4)	32.3 (0.5)
Low	17.1 * (0.4)	30.7 * (1.2)	47.3 * (0.8)	42.6 * (0.9)	50.5 * (1.2)	52.4 * (0.5)	63.6 (0.6)
Sample Size	22,922	4,868	6,128	5,929	4,251	46,520	17,696

* significantly different from Europe/Canada/Oceania.

Source: 2013-2017 American Community Survey.

See text for definitions of negative and positive Factors. High risk = No heavily weighted positive factors, and at least 1 heavily weighted negative factor or 2 or more other negative factors; Medium risk = At least 1 heavily weighted positive factor and at least 1 negative factor, or only one "other" negative factor; Low risk = no negative factors.

Table A7. Percentage With Negative and Positive Factors by Race/Ethnicity, Recent Adjustees & Legal Nonimmigrants in New York

	Latino	Black	Asian	White
Heavily-weighted Negative Factors				
Health Condition	3.5 * (0.6)	1.6 (0.7)	1.3 (0.4)	1.0 (0.3)
Economic Inactivity	15.7 * (1.0)	16.0 * (2.2)	13.8 * (1.1)	10.0 (0.8)
Other Negative Factors				
Low Income	38.1 * (1.8)	25.1 * (1.7)	33.8 * (1.2)	18.3 (1.2)
Low Skill	37.2 * (1.7)	15.9 * (1.9)	10.8 * (0.9)	4.8 (0.8)
Low English Proficiency	56.1 * (1.9)	9.5 (1.6)	22.7 * (1.1)	10.2 (1.0)
Age >= 62 & Low Income	2.0 * (0.4)	2.0 (0.7)	1.2 (0.3)	0.8 (0.3)
Large Household Size	24.7 * (2.1)	18.0 * (1.9)	8.6 * (0.8)	4.9 (0.8)
Heavily-weighted Positive Factors				
High HH Income	32.2 * (2.1)	47.9 * (2.3)	46.5 * (1.4)	66.9 (1.5)
Earning > 250% FPL	9.3 * (1.0)	14.1 * (1.7)	23.9 * (1.0)	45.0 (1.4)
Private Health Insurance	31.9 * (1.9)	49.0 * (3.1)	71.2 * (1.3)	77.6 (1.3)
Three-tiered Inadmissibility Risk Scale				
High	38.1 * (1.9)	14.4 * (1.9)	11.3 * (1.1)	5.5 (0.9)
Medium	41.7 * (1.9)	39.0 * (2.1)	46.4 * (1.2)	28.8 (1.3)
Low	20.2 * (1.3)	46.6 * (2.3)	42.3 * (1.3)	65.7 (1.4)
Sample Size	1,810	961	3,378	2,419

* significantly different from Whites.
Source: 2013-2017 American Community Survey.
See text for definitions of negative and positive Factors. High risk = No heavily weighted positive factors, and at least 1 heavily weighted negative factor or 2 or more other negative factors; Medium risk = At least 1 heavily weighted positive factor and at least 1 negative factor, or only one "other" negative factor; Low risk = no negative factors.

Table A8. Percentage With Negative and Positive Factors by National Origin, Recent Adjustees & Legal Nonimmigrants in New York

	Mexico, Central America	Caribbean	South America	Midddle East, Central Asia	sub-Saharan Africa	South & East Asia	Europe, Canada, Oceania
Heavily-weighted Negative Factors							
Health Condition	1.9 (0.8)	4.1 * (0.9)	3.1 * (1.0)	2.9 * (1.1)	0.8 (0.6)	1.2 (0.4)	0.4 (0.2)
Economic Inactivity	11.6 (1.7)	21.1 * (1.8)	14.2 * (1.7)	14.5 * (2.0)	9.6 (3.0)	13.7 * (1.2)	8.8 (0.8)
Other Negative Factors							
Low Income	43.7 * (2.9)	32.3 * (2.0)	24.4 * (2.7)	32.3 * (3.1)	29.7 * (3.3)	34.8 * (1.4)	15.2 (1.2)
Low Skill	46.6 * (2.9)	28.8 * (2.2)	21.9 * (2.2)	14.1 * (2.2)	13.0 * (2.2)	10.4 * (1.0)	2.7 (0.5)
Low English Proficiency	58.0 * (2.7)	42.8 * (2.6)	30.6 * (2.4)	23.6 * (2.3)	10.2 (2.2)	23.5 * (1.2)	6.8 (0.8)
Age >= 62 & Low Income	0.6 (0.3)	3.3 * (0.9)	1.3 (0.5)	1.8 (0.8)	1.8 (1.2)	1.2 (0.4)	0.4 (0.3)
Large Household Size	32.5 * (3.7)	21.7 * (2.2)	15.3 * (2.5)	14.2 * (2.4)	15.8 * (3.9)	7.9 * (0.7)	3.1 (0.6)
Heavily-weighted Positive Factors							
High HH Income	28.0 * (3.0)	37.2 * (2.1)	47.9 * (2.7)	41.1 * (3.3)	47.1 * (3.6)	45.6 * (1.5)	72.7 (1.4)
Earning > 250% FPL	6.9 * (1.3)	6.7 * (1.1)	18.2 * (1.9)	20.4 * (2.2)	24.9 * (3.5)	23.1 * (1.0)	51.9 (1.5)
Private Health Insurance	21.6 * (2.4)	36.2 * (2.2)	50.2 * (2.9)	59.5 * (2.8)	57.0 * (3.9)	71.3 * (1.4)	83.4 (1.1)
Three-tiered Inadmissibility Risk Scale							
High	45.2 * (3.3)	30.4 * (2.4)	19.9 * (1.9)	17.3 * (2.3)	14.1 * (3.1)	11.0 * (1.1)	2.7 (0.6)
Medium	40.4 * (3.2)	43.0 * (2.4)	41.3 * (2.2)	38.6 * (3.3)	32.8 (3.1)	47.3 * (1.3)	26.3 (1.4)
Low	14.4 * (1.8)	26.7 * (2.0)	38.8 * (2.4)	44.0 * (3.3)	53.2 * (3.9)	41.6 * (1.3)	71.0 (1.4)
Sample Size	682	1,233	685	556	325	3,082	2,011

* significantly different from Europe/Canada/Oceania.

Source: 2013-2017 American Community Survey.

See text for definitions of negative and positive Factors. High risk = No heavily weighted positive factors, and at least 1 heavily weighted negative factor or 2 or more other negative factors; Medium risk = At least 1 heavily weighted positive factor and at least 1 negative factor, or only one "other" negative factor; Low risk = no negative factors.

Table A9. Percentage With Negative and Positive Factors for Designated Groups in New York

	Working Poor	Disabled	Limited English	Large HH	Elderly	All Applicants
Heavily-weighted Negative Factors						
Health Condition	2.9 (0.7)	48.6 * (3.5)	4.3 * (0.6)	2.5 (0.6)	15.3 * (2.7)	1.8 (0.2)
Economic Inactivity	14.0 (1.7)	56.0 * (3.4)	25.8 * (1.8)	19.5 * (2.2)	82.7 * (4.3)	13.6 (0.8)
Other Negative Factors						
Low Income	96.3 * (0.6)	32.8 (3.8)	38.5 * (1.7)	38.7 * (2.3)	26.5 (3.7)	29.9 (0.7)
Low Skill	35.5 * (2.1)	46.2 * (5.7)	43.5 * (1.6)	37.2 * (2.0)	58.6 * (4.7)	16.6 (0.9)
Low English Proficiency	49.4 * (2.2)	56.3 * (3.9)	100.0 * (0.0)	50.6 * (2.3)	71.2 * (4.3)	26.5 (1.0)
Age >= 62 & Low Income	3.6 (1.1)	11.0 * (2.3)	3.9 * (0.8)	2.7 (1.0)	28.5 * (3.7)	1.4 (0.3)
Large Household Size	29.8 * (2.4)	18.0 (2.9)	24.5 * (1.6)	100.0 * (0.0)	25.9 * (3.7)	12.9 (0.7)
Heavily-weighted Positive Factors						
High HH Income	0.0 * (0.0)	39.4 * (3.6)	30.6 * (1.4)	32.9 * (2.4)	40.8 * (3.7)	48.3 (0.8)
Earning > 250% FPL	1.1 * (0.4)	8.6 * (2.2)	4.9 * (0.5)	2.1 * (0.5)	2.2 * (1.0)	24.5 (0.7)
Private Health Insurance	30.1 * (2.0)	32.2 * (4.1)	27.3 * (1.4)	31.2 * (2.0)	23.6 * (3.4)	60.3 (0.9)
Three-tiered Inadmissibility Risk Scale						
High	55.6 * (2.2)	48.6 * (3.5)	47.4 * (1.5)	45.1 * (2.8)	47.1 * (3.7)	17.0 (0.6)
Medium	42.8 (2.2)	36.6 (3.0)	52.6 * (1.5)	54.9 * (2.8)	49.8 * (3.6)	39.8 (0.8)
Low	1.6 * (0.5)	14.8 * (2.8)	0.0 * (0.0)	0.0 * (0.0)	3.1 * (1.1)	43.2 (1.0)
Sample Size	1,072	350	2,033	1,074	310	8,574

* significantly different from the average potential applicant

Source: 2013-2017 American Community Survey.

See text for definitions of negative and positive Factors. High risk = No heavily weighted positive factors, and at least 1 heavily weighted negative factor or 2 or more other negative factors; Medium risk = At least 1 heavily weighted positive factor and at least 1 negative factor, or only one "other" negative factor; Low risk = no negative factors.

EXHIBIT B

PUBLICATIONS OF JENNIFER L. VAN HOOK

1. Van Hook, Jennifer and Jennifer E. Glick. Forthcoming. "Spanning Borders, Cultures, and Generations: A Decade of Research on Immigrant Families." *Journal of Marriage and Family*.

2. Van Hook, Jennifer, Alain Bélanger, Patrick Sabourin, and Anne Morse. Forthcoming. "Immigration Selection and the Educational Composition of the U.S. Labor Force: A Microsimulation Approach." *Population and Development Review*.

3. Van Hook, Jennifer. Forthcoming. "Nominal versus Variable Approaches for Understanding Group Differences." *Ethnic and Racial Studies Review 42*(13): 2279-2284.

4. Bélanger, Alain, Patrick Sabourin, Guillaume Marois, and Jennifer Van Hook, and Samuel Vézina. 2019. "A Framework for the Prospective Analysis of Ethno-Cultural Super-Diversity." *Demographic Research* 41 (article 11): 293-330.

5. Frisco, Michelle L., Jennifer Van Hook, and Robert Hummer. 2019. "Would the Elimination of Obesity and Smoking Reduce U.S. Racial/Ethnic/Nativity Disparities in Total and Healthy Life Expectancy?" *Social Science and Medicine: Population Health*.

6. Frisco, Michelle L., Molly A. Martin, and Jennifer Van Hook. 2019. "Socioeconomic Status and Acculturation: Why Mexican-Americans are Heavier than Mexican Immigrants and Whites." Advances in Medical Sociology, "Immigration and Health". Emerald Publishing Limited, pp. 71-96.

7. Frisco, Michelle L, Jennifer Van Hook, and Erin Baumgartner. 2019. "The weight of school entry: Weight gain among Latino children of immigrants during the early elementary school years." Demographic Research 40 (article 5): 95-120.

8. Van Hook, Jennifer. 2019. "Counting 11 Million Undocumented Immigrants is Easier Than Trump Thinks." The Conversation, July 18, 2019. https://theconversation.com/counting-11-million-undocumented-immigrants-is-easier-than-trump-thinks-120459.

9. Van Hook, Jennifer, Susan McHale, and Valarie King**.** (Eds.). 2018. Families and Technology. New York: Springer.

10. Dondero, Molly, Jennifer Van Hook, Michelle Frisco and Molly Martin. 2018. "Dietary Assimilation among Mexican Children in Immigrant Households: Code-switching and Healthy Eating across Social Institutions." Journal of Health and Social Behavior 59(4): 601-624. (PMCID: PMC6495556)

11. Capps, Randy, Julia Gelatt, Jennifer Van Hook, and Michael Fix. 2018. "Commentary on 'The Number of Undocumented Immigrants in the United States: Estimates Based on Demographic Modeling with Data from 1990-2016.'" PLOS-ONE 13(9), e0204199. (PMCID: PMC6150498)

12. Gelatt, Julia, Michael Fix, and Jennifer Van Hook. 2018. "People Leave Footprints: Millions More Unauthorized Immigrants Cannot Be 'Hidden' in Data Estimates." Migration Policy Institute, September 20, 2018. https://www.migrationpolicy.org/news/people-leave-footprints-millions-more-unauthorized-immigrants-cannot-be-hidden

13. Van Hook, Jennifer. 2018. "Why the 2020 Census Shouldn't Ask About Your Citizenship Status." The Conversation, February 22, 2018. https://theconversation.com/why-the-2020-census-shouldnt-ask-about-your-citizenship-status-91036

14. Van Hook, Jennifer, Susana Quiros, Molly Dondero, and Claire Altman. 2018. "Healthy Eating Among Mexican Immigrants: Migration in Childhood and Time in the U.S." Journal of Health and Social Behavior 59(3): 391-410. (PMCID: PMC6416786).

15. Randy Capps, James D. Bachmeier, and Jennifer Van Hook. 2018. "Estimating the Characteristics of Unauthorized Immigrants using US Census Data: Combined Sample Multiple Imputation." The Annals of the American Academy of Political and Social Science 677(1), 165-179.

16. Burton, Linda, Damian Burton, Susan McHale, Valarie King, and Jennifer Van Hook. (Eds.). 2017. Boys and Men in African American Families. New York: Springer.

17. Van Hook, Jennifer and Barrett Lee. 2017. "Diversity is on the Rise in Urban and Rural Communities, and it's Here to Stay." The Conversation, February 20, 2017. https://theconversation.com/diversity-is-on-the-rise-in-urban-and-rural-communities-and-its-here-to-stay-69095

18. Altman, Claire E., Jennifer Van Hook, and Jonathan Gonzalez. 2017. "Becoming Overweight Without Gaining a Pound: Weight Evaluations and the Social Integration of Mexicans in the United States." International Migration Review 51(1): 3-36.

19. McHale, Susan M., Valarie King, Jennifer Van Hook, and Alan Booth. (Eds.). 2016. Gender and Couple Relationships. New York: Springer.

20. Van Hook, Jennifer. 2016. "Counting 11 Million Undocumented Immigrants is Easier Than You Think." The Conversation, November 1, 2016. https://theconversation.com/counting-11-million-undocumented-immigrants-is-easier-than-you-think-67921

21. Frisco, Michelle L., Susana Quiros, and Jennifer Van Hook. 2016. "One Size May Not Fit All: How Obesity among Mexican-Origin Youth Varies by Generation, Gender, and Age." Demography 53(6): 2031–2043. (PMCID: PMC5138860)

22. Van Hook, Jennifer, Susana Quiros, Michelle Frisco, and Emnet Fikru. 2016. "It is Hard to Swim Upstream: Dietary Acculturation among Mexican-origin Children." Population Research and Policy Review 35(2): 177-196. (PMCID: PMC4852553)

23. Dondero, Molly and Jennifer Van Hook. 2016. "Generational Status, Neighborhood Context, and Mother-Child Resemblance in Dietary Quality in Mexican-origin Families." Social Science and Medicine 150: 212-220. (PMCID: PMC4733591)

24. Altman, Claire E., Jennifer Van Hook, and Marianne Hillemeier. 2016. "What does self-rated health mean? Changes and variations in the association of obesity with objective and subjective components of self-rated health." Journal of Health and Social Behavior 57(1): 39-58.

25. Amato, Paul R., Booth, Alan, McHale, Susan M., & Van Hook, Jennifer (Eds.). 2015. Families in an Era of Increasing Inequality: Diverging Destinies. New York: Springer.

26. Zhou, Nan, Charrisa Cheah, Jennifer Van Hook, Darcy A. Thompson, Shelby S.

Jones. 2015. “A Cultural Understanding of Chinese Immigrant Mothers' Feeding Practices: A Qualitative Study.” Appetite 87: 160-167.

27. Martin, Molly A., Jennifer Van Hook, and Susana Quiros. 2015. “Is Socioeconomic Incorporation Associated with a Healthier Diet? Dietary Patterns among Mexican-origin Children in the United States.” Social Science and Medicine 147: 20-29 (PMCID: PMC4689621).

28. **Van Hook, Jennifer, James D. Bachmeier, Donna Coffman, and Ofer Harel. 2015. “Can We Spin Straw Into Gold? An Evaluation of Immigrant Legal Status Imputation Approaches”. Demography 52(1): 329-354. (PMCID: PMC4318768)**

29. Van Hook, Jennifer, Susana Quiros, and Michelle Frisco. 2015. “The Food Similarity Index: A Dimension of Dietary Acculturation Based on Dietary Recall Data”. Journal of Immigrant and Minority Health 17(2): 441-449 (PMCID: PMC4378569)

30. **Bachmeier, James D., Jennifer Van Hook, and Frank D. Bean. 2014. “Can We Measure Immigrants’ Legal Status? Lessons from Two U.S. Surveys.” International Migration Review 48(2), 538-566. (PMCID:PMC4267286)**

31. **Van Hook, Jennifer, Frank D. Bean, James D. Bachmeier, and Catherine Tucker. 2014. “Recent Trends in Coverage of the Mexican-Born Population of the United States: Results from Applying Multiple Methods Across Time.” Demography 51(2): 699-726. (PMCID: PMC24570373)**

32. Gubernskaya, Zoya, Frank D. Bean, and Jennifer Van Hook. 2013. “(Un)Healthy Immigrant Citizens: Naturalization and Activity Limitations in Older Age” Journal of Health and Social Behavior 54(4): 427-443. (PMCID: PMC3969823)

33. **Van Hook, Jennifer, and James D. Bachmeier. 2013. “How Well Does the American Community Survey Count Naturalized Citizens?” Demographic Research 29(1), 1-32. (PMCID:** PMC3783022)

34. Van Hook, Jennifer and Claire E. Altman. 2013. “Using Discrete-time Event History Fertility Models to Simulate Total Fertility Rates and Other Fertility Measures.” Population Research and Policy Review 32(4), 585-610. (PMCID: PMC3734869)

35. Tucker, Catherine, and Jennifer Van Hook. 2013. “Surplus Chinese Men: Demographic Determinants of the Sex Ratio at Marriageable Ages in China.” Population and Development Review 39(2): 209-230. (PMCID: PMC3734869)

36. Van Hook, Jennifer, Claire Altman, and Kelly Balistreri. 2013. “Global Patterns in Overweight Among Children and Mothers in Less Developed Countries.” Public Health Nutrition 16(4): 573-581. (PMCID: PMC3422412**)**

37. Capps, Randy, Bachmeier, James D., Fix, Michael, & Van Hook, Jennifer. 2013. A demographic, socioeconomic, and health coverage profile of unauthorized immigrants in the United States. Washington, DC: Migration Policy Institute.

38. Bean, Frank D., Susan K. Brown, Mark A. Leach, James D. Bachmeier, and Jennifer Van Hook. 2013. "Unauthorized Mexican migration and the socioeconomic integration of Mexican Americans." Pp 341-374 in Diversity and disparities: America enters a new century (John Logan, Editor). New York: Russell Sage Foundation.

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42. Van Hook, Jennifer, Elizabeth Baker, Claire E. Altman, and Michelle Frisco. 2012. "Canaries in a Coalmine: Immigration and Obesity among Mexican-origin Children." Social Science and Medicine 74(2): 125–134. (PMCID: PMC3259272)

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48. **Van Hook, Jennifer and Weiwei Zhang. 2011. "Who Stays? Who Goes? Selective Emigration Among the Foreign Born." Population Research and Policy Review 30(1): 1-24. (PMCID: PMC3367327)**

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50. Van Hook, Jennifer and Elizabeth Baker. 2010. "Big Boys, Little Girls: Gender, Acculturation, and Weight among Young Children of Immigrants." Journal of Health and Social Behavior 51: 200-214. (PMCID: PMC3245318)

51. Van Hook, Jennifer. 2010. "Structure and Acculturation: Explaining Outcomes

for Children in Mexican American Families " pp. 145-154 in Growing up Latino: Health and Development of Children of Immigrants, edited by Nancy S. Landale, Susan M. McHale, and Alan Booth. Washington, DC: Urban Institute Press.

52. Balistreri, Kelly S. and Jennifer Van Hook. 2009. "Socioeconomic Status and Body Mass Index Among Latino Children of Immigrants and Children of Natives." American Journal of Public Health 99(12): 2238-2246. (PMCID: PMC2775779)

53. Zhang, Yuanting and Jennifer Van Hook. 2009. "Marital Dissolution among Interracial Couples." Journal of Marriage and the Family 71: 95-107. (PMCID: PMC4183451)

54. **Van Hook, Jennifer and Frank D. Bean. 2009. "Explaining Mexican-Immigrant Welfare Behaviors: The Importance of Employment Related Cultural Repertoires." American Sociological Review 74(3): 423-444. (PMCID: PMC3906684)**

55. Bean, Frank D., Cynthia Feliciano, Jennifer Lee, and Jennifer Van Hook. 2009. "The New U.S. Immigrants: How do they affect our Understanding of the African-American Experience?" The Annals *621: 202 – 220. (*PMCID: PMC3244721)

56. Baker, Elizabeth, Kelly S. Balistreri, and Jennifer Van Hook. 2009. "Maternal Employment and Overweight among Latino Children of Immigrants and Children of Natives." Journal of Immigrant and Minority Health 11(3): 158-167 (PMCID: PMC3305809).

57. Van Hook, Jennifer, Elizabeth Baker, and Claire Altman. 2009. "Does it begin at school or home? The institutional origins of overweight among young children of immigrants." Pp. 205-224 in Immigration, Diversity, and Education, edited by Elena L. Grigorenko and Ruby Takanishi. New York: Routledge/Taylor and Francis Group.

58. Van Hook, Jennifer and Frank D. Bean. 2009. "Immigrant Welfare Receipt: Implications for Immigrant Settlement and Integration." Pp. 93-122 in Immigrants and Welfare: The Impact of Welfare Reform on America's Newcomers*,* Michael Fix and Kirin Kalia (eds.). Russell Sage Foundation: New York.

59. Buelow, Victoria and Jennifer Van Hook. 2008. "Timely Immunization Series Completion Among Children of Immigrants." Journal of Immigrant and Minority Health 10(1): 37-44 (PMCID: PMC3298969).

60. Brown, Susan L., Jennifer Van Hook, and Jennifer E. Glick. 2008. "Generational Differences in Cohabitation and Marriage in the U.S." Population Research and Policy Review 27(5): 531-550. (PMCID: PMC3242441)

61. Glick, Jennifer E. and Jennifer Van Hook. 2008. "Through Children's Eyes: Families and Households of Latino Children in the United States," pp. 72-86 in Latinos/as in the United States: Changing the Face of América, edited by Havidán Rodríguez and Cecilia Menjivar. New York: Springer.

62. Van Hook, Jennifer, and Jennifer E. Glick. 2007. "Immigration and Living Arrangements: Moving Beyond Economic Need Versus Acculturation." Demography 44(2): 225-249.

63. Van Hook, Jennifer, and Jason Snyder. 2007. "Immigration, Ethnicity, and the Loss of White Students From California Public Schools, 1990-2000." Population Research and Policy Review 26: 259-277.

64. Van Hook, Jennifer and Kelly S. Balistreri. 2007. "Immigrant Generation, Socioeconomic Status, and Economic Development of Countries of Origin: A Longitudinal Study of BMI among Children." Social Science and Medicine 65: 976-989.

65. Ryabov, Igor K. and Jennifer Van Hook. 2007. "School Segregation and Academic Achievement among Latino Adolescents." Social Science Research 36(2): 767-788.

66. **Van Hook, Jennifer, Weiwei Zhang, Frank D. Bean, and Jeffrey Passel. 2006. "Foreign-born Emigration: A New Approach and Estimates Based on Matched CPS Files." Demography 43(2): 361-382.**

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68. Van Hook, Jennifer and Kelly Stamper Balistreri. 2006. "Ineligible Parents, Eligible Children: Food Stamps Receipt, Allotments and Food Insecurity among Children of Immigrants." Social Science Research 35(1): 228-251.

69. Van Hook, Jennifer, Susan L. Brown, and Maxwell Kwenda. 2004. "A Decomposition of Trends in Poverty Among Children of Immigrants." Demography 41(4): 649-670.

70. Balistreri, Kelly and Jennifer Van Hook. 2004. "The more things change the more they stay the same: Mexican Naturalization Before and After Welfare Reform." International Migration Review 38(Spring): 113-130.

71. Van Hook, Jennifer. 2003. "Welfare Reform's Chilling Effects on Non-citizens: Changes in Non-citizen Recipiency or Shifts in Citizenship Status?" Social Science Quarterly 84(3): 613-631.

72. Van Hook, Jennifer. 2003. "Easier Said Than Done: A Review of Migration Theory: Talking Across Disciplines." Journal of American Ethnic History 22(3): 92-93.

73. Bean, Frank D., Gillian Stevens, and Jennifer Van Hook. 2003. "Immigration and Immigrant Welfare Receipt." In Frank D. Bean and Gillian Stevens, Americas Newcomers and the Dynamics of Diversity. New York: Russell Sage and ASA Arnold Rose Monograph Series. (winner of the American Sociological Association's 2003 Otis Dudley Duncan book award)

74. Van Hook, Jennifer. 2002. "Immigration and African American Educational Opportunity: The Transformation of Minority Schools" Sociology of Education 75(2): 169-189.

75. Van Hook, Jennifer, and Kelly Balistreri. 2002. "Diversity and Change in the Institutional Context of Immigrant Adaptation: California Schools 1985-2000." Demography 39(4): 639-654.

76. Glick, Jennifer E. and Jennifer Van Hook. 2002. "Parents' Coresidence with Adult Children: Can Immigration Explain Racial and Ethnic Variation?" Journal of Marriage and the Family 64: 240-253.

77. **Bean, Frank D., Rodolfo Corona, Rodolfo Tuiran, Karen Woodrow-Lafield, and Jennifer Van Hook. 2001. "Circular, Invisible, and Ambiguous Migrants: Components of Difference in Estimates of the Number of Unauthorized Mexican Migrants in the United States." Demography 38(3): 411-422.**

78. Van Hook, Jennifer. 2000. "SSI Eligibility and Participation Among Elderly Naturalized Citizens and Noncitizens," Social Science Research 29: 51-69.

79. Van Hook, Jennifer and Michael Fix. 2000. "A Profile of the Immigrant Student Population." Pp. 9-33 in Jorge Ruiz DeVelasco, Michael Fix and Toni Clewell (eds.), Overlooked and Underserved: Immigrant Children in U.S. Secondary Schools. The Urban Institute Press: Washington, D.C.

80. Van Hook, Jennifer, Jennifer E. Glick, and Frank D. Bean. 1999. "Public Assistance Receipt among Immigrants and Natives: How the Unit of Analysis Affects Research Findings," Demography 36(1): 111-120.

a. 2007. Reprinted in Diane Kholos Wysocki (ed.), Readings in Social Research Methods, third edition. Stamford, CT: Wadsworth Group.

b. 2001. Reprinted pp. 84-98 in Diane Kholos Wysocki (ed.), Readings in Social Research Methods. Stamford, CT: Wadsworth Group.

81. Van Hook, Jennifer and Frank D. Bean. 1999. "The Growth in Noncitizen SSI Caseloads 1979-1996: Aging Versus New Immigrant Effects," Journal of Gerontology: Social Sciences 54(1): S16-S23.

82. Bean, Frank D., Jennifer Van Hook and Mark Fossett. 1999. "Immigration, Spatial and Economic Change, and African American Employment," pp. 31-63 in Frank D. Bean and Stephanie Bell-Rose (eds.), Immigration and Opportunity: Race, Ethnicity, and Employment in the United States. New York: Russell Sage Foundation.

83. Glick, Jennifer E. and Jennifer Van Hook. 1998. "The Mexican Origin Population of the United States in the Twentieth Century," pp. 571-586 in Migration Between Mexico and the United States, Research Reports and Background Materials, Mexico City and Washington, D.C.: Mexican Ministry of Foreign Affairs and U.S. Commission on Immigration Reform.

84. Van Hook, Jennifer and Frank D. Bean. 1998. "Estimating Unauthorized Migration to the United States: Issues and Results," pp. 511-550 in Migration Between Mexico and the United States, Research Reports and Background Materials, Mexico City and Washington, D.C.: Mexican Ministry of Foreign Affairs and U.S. Commission on Immigration Reform.

85. Van Hook, Jennifer and Frank D. Bean. 1998. "Estimating Underenumeration among Unauthorized Mexican Migrants to the United States: Applications of Mortality Analyses," pp. 551-570 in Migration Between Mexico and the United States, Research Reports and Background Materials, Mexico City and Washington, D.C.: Mexican Ministry of Foreign Affairs and U.S. Commission on Immigration Reform.

86. Van Hook, Jennifer V. W. and Frank D. Bean. 1998. "Welfare Reform and SSI Receipt among Immigrants in the United States," pp. 139-158 in H. Kurthen, J. Fijalkowski, and G. Wagner (eds.), Immigration, Citizenship, and the Welfare State. Greenwich, CT: JAI Press.

87. Glick, Jennifer E., Frank D. Bean, and Jennifer V.W. Van Hook. 1997. "Immigration and Changing Patterns of Extended Family Household Structure in the United Status: 1970-1990," Journal of Marriage and the Family 59 (February): 177-191.

88. Bean, Frank D., Robert G. Cushing, Charles Haynes, and Jennifer V.W. Van

Hook. 1997. "Immigration and the Social Contract," Social Science Quarterly 78(2): 249-268.

a. 1999. Reprinted in C. Zelinsky (ed.), Readings: Racial and Ethnic Groups in America. Dubuque, Iowa: Kendall Hunt Publishing.

b. 1999. Reprinted in C. Ellison and A. Martin (eds.), Race and Ethnic Relations in the United States: Readings for the 21st Century. Los Angeles: Roxbury Publishing Company.

89. Bean, Frank D., Jennifer V.W. Van Hook and Jennifer E. Glick. 1997. "Country of Origin, Type of Public Assistance and Patterns of Welfare Recipiency Among U.S. Immigrants and Natives," Social Science Quarterly 78(2): 432-451.

90. Van Hook, Jennifer V.W., Frank D. Bean and Jennifer E. Glick. 1996. "The Development and Assessment of Census-Based Measures of AFDC and SSI Recipiency," Journal of Economic and Social Measurement 22(1): 1-23.

91. Bean, Frank D., Ruth R. Berg, and Jennifer V. W. Van Hook. 1996. "Socioeconomic and Cultural Incorporation and Marital Disruption Among Mexican Americans," Social Forces 75(2): 593-617.

EXHIBIT C

CURRICULUM VITAE

Jennifer Van Hook

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State College, PA 16803
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EDUCATION

1996 Ph.D. Sociology, The University of Texas at Austin.
1991 M.S. Sociology, The University of Wisconsin at Madison.
1990 B.A. Sociology and Anthropology, Carleton College, Northfield, Minnesota.

POSITIONS

2017-	Director of Graduate Studies, Sociology, Pennsylvania State University
2016-2018	Co-editor, *Demography*
2011-2016	Director, Population Research Institute, Pennsylvania State University
2017-	Roy C. Buck Professor of Sociology and Demography, Pennsylvania State University
2016-2017	Liberal Arts Research Professor of Sociology and Demography, Pennsylvania State University
2010-	Non-resident Fellow, Migration Policy Institute
2007-2016	Associate to Full Professor of Sociology and Demography, Pennsylvania State University
1999-2007	Assistant to Associate Professor, Department of Sociology, Bowling Green State University.
1998-1999	Research Associate, Center for Population Research, The Urban Institute, Washington, D.C.

HONORS

Clifford C. Clogg Award for Mid-Career Achievement, 2016
Raymond Lombra Award for Distinction in the Social or Life Sciences, 2016
Sociological Research Association, 2019-present

RESEARCH INTERESTS

International immigration, health and well-being of children of immigrants, unauthorized migration, immigrant incorporation, welfare and poverty

TEACHING INTERESTS

Migration, Population and Society, Demographic Techniques, Research Methods, Secondary Data Analysis, Race and Ethnicity

GRANT ACTIVITY

2018-2019	Russell Sage Foundation. “Summer Institute in Migration Methods”, Pennsylvania State University, Jennifer Van Hook and Irene Bloemraad, co-PIs.
2018-2019	Russell Sage Foundation. “Educational Integration Across Generations Among Mexicans and Other National Origin Groups”, Pennsylvania State University, Jennifer Van Hook, P.I.

2013-2015	National Science Foundation. "Pennsylvania State University Census Research Data Center", Pennsylvania State University, Jennifer Van Hook, P.I.
2011-2016	National Institutes of Health. 2 R24 HD041025. "Population Research Institute Infrastructure Support", Pennsylvania State University, Jennifer Van Hook, P.I.
2010-2014	National Institutes of Health. 1 P01 HD062498. PI of a project ("Obesity among Mexican Children of Immigrants ") in a larger P01 ("The Mexican Children of Immigrants Program Project"), Pennsylvania State University, Nancy Landale, P.I.
2009-2011	National Institutes of Health. RC2 HD064497. "Generating Linked NCHS and OIS Data for Immigrant Health and Mortality Research," Pennsylvania State University, Jennifer Van Hook and Frank D. Bean, co-P.I.s.
2009-2011	National Institutes of Health. R21 HD058142. "A Demographic Analysis of Socioeconomic Instability and Well-being Among Children of Immigrants", Bowling Green State University, (Jennifer Van Hook and Kelly Balistreri, co-P.I.s.)
2008-2011	Department of Homeland Security. "Improving estimates of unauthorized migration," University of Arizona, UC-Irvine, and Penn State University. Co-investigator with Frank D. Bean, $840,000.
2006-2007	U.S. Census Bureau (research contract) "Estimates of the foreign-born emigration and internal migration", Bowling Green State University, Jennifer Van Hook, Principal Investigator, $153,000.
2005-2008	Foundation for Child Development. "Obesity Among Young Children of Immigrants", Bowling Green State University, Jennifer Van Hook, Principal Investigator, $233,633.
2006	Center for Family and Demographic Research. "Extended Family Living Arrangements and Adult Health," Bowling Green State University, Jennifer Van Hook, P-I, $5,000.
2004-2006	National Institutes of Health. R03 HD44700-01A1: "Stability of Extended Family Living Arrangements Among Mexican Immigrants," Bowling Green State University. Jennifer Van Hook, Principal Investigator, with Jennifer E. Glick, Arizona State University, $100,000.
2003-2006	U.S. Census Bureau (research contract) "Estimates of the foreign-born Population of the United States by Migration Status and Geography," Bowling Green State University. Jennifer Van Hook, Principal Investigator, $176,000.
2002-2003	Joint Center for Poverty Research, USDA-funded Research Development Grant. "Welfare Reform and Long-term Stability in Food Security among Children of Immigrants," Bowling Green State University. Jennifer Van Hook, Principal Investigator, $40,000.
1999-2002	National Institutes of Health. R01 HD-39075-1 "Naturalization and Immigrant Public Assistance Receipt," The University of California at Irvine. Co- investigator, with Frank D. Bean as Principal Investigator, $750,000.
1997-1998	National Institute of Aging. R03 "Patterns of SSI Receipt among Elderly Immigrants", The University of Texas at Austin. Co-Investigator with Frank D. Bean as Principal Investigator, $50,000.

PUBLICATIONS

Books

Van Hook, Jennifer, Susan McHale, and Valarie King. (Eds.). 2018. *Families and Technology.* New York: Springer.

Burton, Linda, Damian Burton, Susan McHale, Valarie King, and Jennifer Van Hook. (Eds.). 2017. *Boys and Men in African American Families.* New York: Springer.

McHale, Susan M., Valarie King, Jennifer Van Hook, and Alan Booth. (Eds.). 2016. *Gender and Couple Relationships.* New York: Springer.

Amato, Paul R., Booth, Alan, McHale, Susan M., & Van Hook, Jennifer (Eds.). 2015. *Families in an Era of Increasing Inequality: Diverging Destinies*. New York: Springer.

Referred Journal Articles

Van Hook, Jennifer and Jennifer E. Glick. Forthcoming. "Spanning Borders, Cultures, and Generations: A Decade of Research on Immigrant Families." Journal of Marriage and Family.

Van Hook, Jennifer, Bélanger, Alain, Patrick Sabourin, and Anne Morse. Forthcoming. "Immigration Selection and the Educational Composition of the U.S. Labor Force: A Microsimulation Approach." *Population and Development Review*.

Van Hook, Jennifer. 2019. "Nominal versus Variable Approaches for Understanding Group Differences." *Ethnic and Racial Studies Review 42*(13): 2279-2284.

Bélanger, Alain, Patrick Sabourin, Guillaume Marois, and Jennifer Van Hook, and Samuel Vézina. 2019. "A Framework for the Prospective Analysis of Ethno-Cultural Super-Diversity." *Demographic Research* 41 (article 11): 293-330.

Frisco, Michelle L., Jennifer Van Hook, and Robert Hummer. 2019. "Would the Elimination of Obesity and Smoking Reduce U.S. Racial/Ethnic/Nativity Disparities in Total and Healthy Life Expectancy?" *Social Science and Medicine: Population Health.*

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TEACHING

Undergraduate Courses

Introduction to Demographic Methods, 2 semesters, The University of Texas
Population and Society (Sociology 312), 2 semesters, BGSU
Principles of Sociology (Sociology 101), 1 semester, BGSU
Population and Policy, 1 semester, PSU
Sociology of Immigration, 1 semester, PSU

Graduate Courses

Event History Analysis (Sociology 577), 2 semesters, PSU
Introduction to Demographic Techniques, 6 semesters, PSU
Applied Demography (Sociology 627), 3 semesters, BGSU
Market Demography (Sociology 629), 1 semester, BGSU
Techniques of Demographic Analysis I (Sociology 520), 2 semesters, BGSU
Techniques of Demographic Analysis II (Sociology 726), 2 semesters, BGSU
W. Wilson: Race and Urban Poverty (Sociology 680), 1 semester, BGSU

Supervision of graduate dissertations and theses

Candidate's Name	Degree	Year	University
Kelly Balistreri	MA	2000	BGSU (Chair)
Katrina Wengert	MA	2003	BGSU (Chair)
Jason Snyder	MA	2004	BGSU (Chair)

Amy Wenmoth	MA	2004	BGSU (Chair)
Maxwell Kwenda	PhD	2004	BGSU (Chair)
Dana Haddox	MA	2005	BGSU (Chair)
Victoria Buelow	MA	2005	BGSU (Chair)
Kelly Jeffreys	MA	2005	BGSU (Chair)
Igor Ryabov	PhD	2005	BGSU (Co-Chair)
Weiwei Zhang	MA	2006	BGSU (Chair)
Kelly Balistreri	PhD	2006	BGSU (Chair)
Yuanting Zhang	PhD	2007	BGSU (Chair)
Stefan Jonsson	PhD	2008	PSU (Co-Chair)
Elizabeth Baker	PhD	2010	PSU (Chair)
Jonathon Gonzalez	MA	2012	PSU (Chair)
Claire Altman	PhD	2013	PSU (Chair)
Catherine Tucker	PhD	2014	PSU (Chair)
Emnet Fikru	MA	2015	PSU (Chair)
Anne Morse	MA	2017	PSU (Chair)
Susana Quiros	PhD	2018	PSU (Chair)
Anne Morse	PhD		PSU (Chair)
Kendal Lowrey	MA		PSU (Chair)
Juliana Levchenko	MA		PSU (Chair)

Other Experience and Professional Memberships

-	Member, PAA
-	Member, ASA
2007 - 2009	Reengineering the SIPP, National Academy of Sciences Panel Member
2008 - 2011	Census Advisory Committee of Professional Organizations, PAA
2010 - 2013	Board of Directors, Population Association of America
2010 - 2013	Population Section Council Member, American Sociological Association
2010	Summer at the Census, International Migration Branch, U.S. Census Bureau (May 17-21, 2010)
2010	Expert for the 2010 Demographic Analysis Program (Net International Migration Team)
2013 - 2016	Editorial Board Member, Demography
2014 - 2016	Treasurer, Association of Population Centers
2014	Summer at the Census, International Migration Branch, U.S. Census Bureau (June 22-25, 2014)
2015 - 2016	Associate Editor, Population Research and Policy Review
2015 - 2016	Nominations Committee Member, PAA
2016 -	Editorial Board Member, Journal of Health and Social Behavior
2016	Summer at the Census, Center for Administrative Records and Applications, U.S. Census Bureau (September 18-23, 2016)
2016 - 2018	Co-editor, Demography
2017 -	IPUMS-USA Advisory Board Member
2018	Expert for the 2020 Demographic Analysis Program (Net International Migration Team)
2018	State of New York v. United States Department of Commerce. Federal District Court for the Southern District of New York, (November 5, 2018). I provided a written report and live testimony regarding the impact the addition of a question on citizenship will have on accuracy of the 2020 U.S. Census.