



**WASHINGTON LAWYERS' COMMITTEE**  
**FOR CIVIL RIGHTS AND URBAN AFFAIRS**

December 10, 2018

Samantha Deshommès  
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  
via <https://www.regulations.gov/>

Re: Proposed Rulemaking, DHA Docket No. USCIS-2010-0012:  
Inadmissibility on Public Charge Grounds

Dear Ms. Deshommès:

The Washington Lawyers' Committee for Civil Rights and Urban Affairs opposes the proposed rulemaking to exclude certain immigrants who have lawfully received public assistance. The proposed rule is contrary to public health and public safety and at conflict with the compassionate values of the Nation. We write on behalf of our clients, individuals and communities facing discrimination on the basis of race, national origin, and disability.

Immigrants contribute to the economic, social, and cultural life of our nation. They give far more than they receive. The occasional hand up to ensure their economic security, and the health and welfare of their children, helps not only each family, but also the community as a whole. The proposed public charge rule will have a disparate impact on immigrants of color and immigrants with disabilities. Race-based immigration policy should be a relic of our shameful past, not a guiding principle in regulatory decisions today.

The U.S. immigration system should reflect an inclusive vision of a national identity that acknowledges the complexity of our immigrant population, recognizes the positive impact that our immigrant population has on the socio-economic conditions of this country, and lends a helping hand when needed. This proposed rule does none of those things, and we therefore strongly urge the Department of Homeland Security not to adopt it.

**I. The Proposed Rule Will Wrongfully Deem Immigrants Inadmissible Even Though They Are Not Likely to Be Dependent on the Government.**

Currently, the Department of Homeland Security, U.S. Citizenship and Immigration Services, (formerly the Immigration and Naturalization Service), defines a “public charge” as a person who is considered “likely” to become *primarily* dependent on the

government for subsistence.<sup>1</sup> When an individual applies to adjust their status from a family based petition, they must prove that they will not become a public charge in order to obtain legal permanent residence. There are currently only two types of benefits considered in making a public charge determination: cash assistance for income maintenance and institutionalization for long-term care at government expense.<sup>2</sup> No one factor is dispositive of whether a person is likely to become a “public charge.”<sup>3</sup> The current regulation does not determine an immigrant to be a public charge if they enroll in non-cash supports,<sup>4</sup> such as medical care or food assistance, that help families meet their basic needs so they can climb the economic ladder.<sup>5</sup> The current regulation is forward-looking, and the occasional or episodic reliance on a cash benefit can be considered, but does not automatically exclude an immigrant family from becoming legal permanent residents. The analysis for the public charge test today considers the totality of an individual’s circumstances, looking at factors such as age, health, family and financial status, education and skills and whether the individual has the required affidavit of support from a sponsor who is legally bound to provide financial support for that individual.<sup>6</sup>

The proposed rule expands the reach of the public charge rule to include immigrants who receive non-cash public benefits. The Migration Policy Institute estimates that the number of immigrants who use benefits that will be considered under the new proposal will increase from 3% to 47%.<sup>7</sup> The over-breadth of the proposed rule is particularly troubling because non-cash benefits support and lift families out of poverty.<sup>8</sup> Use of programs that temporarily address basic needs like health care, food, and housing does not indicate long-term dependency and in fact helps families become economically secure. For example, in households with at least one working-age, non-disabled adult receiving Supplemental Nutrition Assistance Program (SNAP) benefits – which offer nutrition assistance to millions of eligible, low-income individuals and families – 58

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<sup>1</sup> DEP’T OF HOMELAND SECURITY, U.S. CITIZENSHIP AND IMMIGR. SERVICES, FIELD GUIDANCE ON DEPORTABILITY AND INADMISSIBILITY ON PUBLIC CHARGE GROUNDS (1999).

<sup>2</sup> PROTECTING IMMIGR. FAMILIES, PUBLIC CHARGE 101 (Oct. 17, 2018), <https://protectingimmigrantfamilies.org/wp-content/uploads/2018/10/PIF-Public-Charge-101-Webinar-10.17.18.pdf>.

<sup>3</sup> *Id.*

<sup>4</sup> The Board of Immigration Appeals declared “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.” *See* Matter of Perez, 15 I. & N. Dec. 136, 137 (BIA 1974) (*citing* Matter of Martinez–Lopez, 10 I. & N. Dec. 409, 421–22 (BIA 1962)).

<sup>5</sup> PROTECTING IMMIGRANT FAMILIES, PUBLIC CHARGE 101 (Oct. 17, 2018), <https://protectingimmigrantfamilies.org/wp-content/uploads/2018/10/PIF-Public-Charge-101-Webinar-10.17.18.pdf>.

<sup>6</sup> *Id.* *See also*, Affidavit of Support, (Jun. 26, 2017) <https://www.uscis.gov/greencard/affidavit-support>.

<sup>7</sup> JEANNE BATALOVA, MICHAEL FIX, AND MARK GREENBERG, MIGRATION POL’Y INST., CHILLING EFFECTS: THE EXPECTED PUBLIC CHARGE RULE AND ITS IMPACT ON LEGAL IMMIGR. FAMILIES’ PUB. BENEFITS USE (June 2018), <https://www.migrationpolicy.org/research/chilling-effects-expected-public-charge-rule-impact-legal-immigrant-families>.

<sup>8</sup> *See*, e.g., CTR FOR LAW AND SOCIAL POL’Y, BUILDING BLOCKS OUT OF POVERTY (Aug. 2018), [https://www.clasp.org/sites/default/files/publications/2018/08/2018\\_buildingblocks.pdf](https://www.clasp.org/sites/default/files/publications/2018/08/2018_buildingblocks.pdf).

percent of those adults were employed.<sup>9</sup> People receiving benefits are also likely to be part of the workforce long-term, even if they need temporary help. 82 percent of people receiving SNAP were employed prior to or after receiving SNAP.<sup>10</sup>

The proposed rule would add additional complications for families with different immigration statuses. One in four children in the U.S. have at least one parent born outside of the U.S.<sup>11</sup> As many as 26 million people in families with immigrants may be chilled from lawfully participating in programs that are designed to make their families healthier and stronger.<sup>12</sup> Studies show that an estimated 875,000 to 2,000,000 U.S. citizen children with immigrant parents might decide to drop their Medicaid/ CHIP coverage although they remain eligible.<sup>13</sup> If an immigrant parent chooses to forgo housing assistance because she does not want to be classified as a public charge, her U.S. citizen child will also lose that housing assistance.<sup>14</sup> Because the vast majority (88%) of children with one parent who was born outside of the U.S. are U.S. citizens themselves, this rule in effect would create a generation of young citizens who would be harmed in their physical and mental development.<sup>15</sup> The changes in the rule are effectively subjecting an entire generation of first generation and immigrant children to domestic instability, increasingly their likelihood of poor life outcomes.

This chilling effect is not hypothetical, and it has happened before. The proposed policy has already created fear and confusion among immigrant families. Many families have already chosen to cease enrollment from public assistance programs in the months leading up to this proposal.<sup>16</sup> Families are opting out even when the proposed policy changes do not directly affect them because of confusion about its application. This type of effect is common. Following welfare reform in 1996, immigrant participation in public assistance programs dropped even amongst those that were not impacted by

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<sup>9</sup> CTR FOR LAW AND SOCIAL POL’Y, SNAP AND WORK, (Feb. 26, 2018), [https://www.clasp.org/sites/default/files/publications/2018/01/2018\\_snapandwork.pdf](https://www.clasp.org/sites/default/files/publications/2018/01/2018_snapandwork.pdf).

<sup>10</sup> *Id.*

<sup>11</sup> MIGRATION POL’Y INST., DATA HUB, “CHILDREN IN U.S. IMMIGRANT FAMILIES,” <https://www.migrationpolicy.org/programs/datahub/charts/children-immigrant-families>.

<sup>12</sup> MANATT HEALTH, “PUBLIC CHARGE PROPOSED RULE: IMPLICATIONS FOR NON-CITIZENS AND CITIZEN FAMILY MEMBERS DATA DASHBOARD” (Oct. 2018).

<sup>13</sup> Samantha Artiga, Anthony Damico, and Rachel Garfield, *Potential Effects of Public Charge Changes on Health Coverage for Citizen Children*, HENRY J. KAISER FAM. FOUND. (May 18, 2018), [https://www.kff.org/report-section/potential-effects-of-public-charge-changes-on-health-coverage-for-citizen-children-issue-brief/#endnote\\_link\\_257512-5](https://www.kff.org/report-section/potential-effects-of-public-charge-changes-on-health-coverage-for-citizen-children-issue-brief/#endnote_link_257512-5).

<sup>14</sup> Wendy E. Parmet, *The Health Impact Of The Proposed Public Charge Rules*, HEALTH AFFAIRS (Sept. 27, 2018), <https://www.healthaffairs.org/doi/10.1377/hblog20180927.100295/full/>.

<sup>15</sup> The public charge test would apply to children who are seeking to adjust their status to lawful permanent residency. *See*, PROTECTING IMMIGR. FAMILIES, PIF CAMPAIGN’S ANALYSIS & FAQ DOCUMENT, 3, <https://docs.google.com/document/d/1FMcQYbV4DWPa9bPQn63oQVJkRqxe5dRmjjVFf0Ifg/edit>; LEARNING & DEV.: WORKING PAPER, 4 (Nov. 9, 2010), <https://developingchild.harvard.edu/resources/persistentdevelopment>.

<sup>16</sup> Amanda Holpuch, *US immigrants stop using public benefits over fears of new Trump rule*, THE GUARDIAN (Sept. 27, 2018), <https://www.theguardian.com/us-news/2018/sep/27/us-immigrants-trump-proposals-rule-public-charge>.

welfare reform: for example, refugee participation in food assistance programs fell by 60 percent between 1994 and 1998, even though refugees were not affected by the new restrictions.<sup>17</sup> A U.S. Department of Agriculture study found that food assistance usage fell by 53 percent for families with U.S. citizen children and a noncitizen parent during this period.<sup>18</sup> In 1999, the Immigration and Naturalization Service (INS) acknowledged in its proposed rule to establish public charge determination standards that “immigrants’ fears of obtaining these necessary medical and other benefits are not only causing them considerable harm but are also jeopardizing the general public.”<sup>19</sup> We expect that the fear in response to the proposed regulation will be even greater than the response in the 1990s because of the current anti-immigrant political climate.

## **II. The Proposed Public Charge Rule Disproportionately Harms Vulnerable Communities**

The impact of the proposed rule is disproportionately borne by communities of color, people with disabilities, survivors of domestic violence, low-income communities, and families. The proposed rule is also overly broad and likely to result in arbitrary decisions that exclude individuals who are not likely to be dependent on the government. As such, DHS should reject this rule.

### **i. The Proposed Public Charge Rule Will Negatively Impact Immigrant Communities of Color at Disproportionate Rates**

The proposed public charge regulation will disproportionately and negatively impact immigrant communities of color. Using data from the American Community Survey, analysts estimate that the expanded definition of the public charge rule will impact 18.3 million Latinos, 33.4% of all Latinos living in the United States, 3.2 million Asian and Pacific Islanders, 17.4% of all Asian and Pacific Islanders living in the United States, and 1.8 million Black and African immigrants.<sup>20</sup> Less than 1% of whites living in the United States will be impacted by this change.<sup>21</sup> Part of the reason for this disparity is that many people of color who immigrate to the United States experience disproportionate rates of poverty and racial disparities in economic stability. 20% of Black immigrants, 13% of Asian immigrants, and 24% of Hispanic immigrants live below the poverty line.<sup>22</sup> This is due to the accumulated effects of historical and ongoing structural inequalities and oppression, including the discrimination people of color face in educational and

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<sup>17</sup> Riham Feshir, ‘Public charge’ rule blamed for ‘chilling effect’ among immigrants, MPR NEWS (Oct. 23, 2018), <https://www.mprnews.org/story/2018/10/23/public-charge-rule-blamed-for-chilling-effect-among-immigrants>.

<sup>18</sup> JEANNE BATALOVA, MICHAEL FIX, AND MARK GREENBERG, *supra* note 7.

<sup>19</sup> DEP’T OF JUST., IMMIGR. AND NATURALIZATION SERVICE, INADMISSIBILITY AND DEPORTABILITY ON PUB. CHARGE GROUNDS (1999).

<sup>20</sup> MANATT HEALTH, “PUBLIC CHARGE PROPOSED RULE: IMPLICATIONS FOR NON-CITIZENS AND CITIZEN FAMILY MEMBERS DATA DASHBOARD” (Oct. 2018).

<sup>21</sup> *Id.*

<sup>22</sup> JULIANA MORGAN-TROSTLE, KEXIN ZHENG AND CARL LIPSCOMBE, THE STATE OF BLACK IMMIGR., 12, <http://stateofblackimmigrants.com/wp-content/uploads/2018/09/sobi-fullreport-jan22.pdf>.

employment opportunities.<sup>23</sup> The proposed changes will perpetuate these effects and disproportionately harm people of color.<sup>24</sup>

The fact that the public charge regulation will have a disparate impact on immigrants of color is not an accident. Our concerns about the proposed rule stand on their own but must be considered against the backdrop of other recent policy decisions – many of which have been struck down by the Courts – that also target immigrants from Central America, the Caribbean, the Middle East, and Africa. The public charge designation is rooted in a discriminatory, nativist history and was first enacted to exclude the poor and people of color from immigrating to the United States.<sup>25</sup> “Between 1970 and 2005, the non-Hispanic white majority shrank from more than 80 percent to less than 60 percent.”<sup>26</sup> The DHS announcement of the proposed public charge rule cites to the history of public charges and the Immigration Act of 1882, which was implemented as a barrier to non-whites seeking to access the American Dream and upward mobility.<sup>27</sup> “Rules about public charges have masked discrimination in the immigration process for more than a century.”<sup>28</sup>

**ii. The Proposed Changes to the Public Charge Rule Categorically Excludes Many Persons With Disabilities and Undermine the Ability of Immigrants With Disabilities to Contribute Economically and Socially.**

An immigration policy that assumes people with disabilities are likely to become primarily dependent on government services fails to recognize the economic and social contributions that people with disabilities make, even if they periodically use government benefits. Congress wrote in the Americans with Disabilities Act of 1990 (ADA) that “physical and mental disabilities in no way diminish a person’s right to fully participate in all aspects of society” and further recognizes discrimination against individuals as a “serious and pervasive social problem.”<sup>29</sup> The proposed regulation’s treatment of persons

<sup>23</sup> Shaina Goodman, *The Difference Between Surviving and Not Surviving*, NAT’L RESOURCE CTR. ON DOMESTIC VIOLENCE, 1 (Jan. 2018), [https://vawnet.org/sites/default/files/assets/files/2018-01/TheDifferenceBetweenSurvivingandNotSurviving\\_Jan2018.pdf](https://vawnet.org/sites/default/files/assets/files/2018-01/TheDifferenceBetweenSurvivingandNotSurviving_Jan2018.pdf).

<sup>24</sup> NAPAWF, NAT’L LATINA INST. FOR REPROD. HEALTH & IN OUR OWN VOICE, PUBLIC CHARGE EXPANSION PROPOSED RULE: A THREAT TO WOMEN OF COLOR (Sept. 2018), [https://www.napawf.org/uploads/1/1/4/9/114909119/rj\\_publiccharge\\_factsheet\\_eng.pdf](https://www.napawf.org/uploads/1/1/4/9/114909119/rj_publiccharge_factsheet_eng.pdf).

<sup>25</sup> See also, Hidetaka Hirota, *Expelling the Poor: Atlantic Seaboard States and the Nineteenth-Century Origins of American Immigrant Policy* (2017).

<sup>26</sup> Mary Mederios Kent, *Immigration and America’s Black Population*, POPULATION BULLETIN, 10 (Dec. 2007), <https://assets.prb.org/pdf07/62.4immigration.pdf>. (citing US Census Bureau interim projections, accessed online at [www.census.gov](http://www.census.gov), on July 30, 2007).

<sup>27</sup> Noah Lanard, *An Old Anti-Irish Law Is at the Heart of Trump’s Plan to Reshape Legal Immigration*, MOTHER JONES (Sept. 6, 2018), <https://www.motherjones.com/politics/2018/09/an-old-anti-irish-law-is-at-the-heart-of-trumps-plan-to-reshape-legal-immigration/>.

<sup>28</sup> Chris Richardson, *Trump Has Found a New Way to Make Immigrant Families Suffer*, THE NATION (Oct. 26, 2018), <https://www.thenation.com/article/trump-public-charge-abolish/>.

<sup>29</sup> Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 (a) (1990).

with disabilities conflicts with the ADA’s very premise. Although systematic discrimination against people with disabilities and inaccessibility continue to account for a large difference in the workforce participation rates of people with disabilities and people without disabilities,<sup>30</sup> 29% of working-age adults with disabilities are employed.<sup>31</sup> To assume that people with disabilities will become a public charge is discriminatory and fails to put the blame where it actually lies – society’s unwillingness to fully and equitably accommodate people with disabilities.

The proposed public charge rule will exclude immigrants with disabilities in two significant ways. First, the proposed public charge rule targets low-income people with disabilities who are more likely than others be impoverished due to inaccessible employment, medical care, and other public services.<sup>32</sup> Second, the “totality of the circumstances” review that DHS proposes to determine who will be a public charge assumes that people with disabilities are a drain on resources, and explicitly discriminates against them by designating disability as a negative factor.

**1) People with Disabilities are More Likely to Use the Public Benefits Subject to the Proposed Rule Because of Systemic Barriers to Self-Sufficiency.**

People with disabilities rely on public assistance for healthcare coverage more than people without disabilities. More than one out of three adults under the age of 65 that are enrolled in Medicaid have a disability.<sup>33</sup> In 2016, among working-age adults, private insurance covered 73.1% of people without disabilities, while only 36.1% of people with disabilities were covered by private insurance.<sup>34</sup> It is often difficult for people with disabilities to access private insurance due to both financial constraints and exclusionary practices, making them more likely to need public supported health insurance. People with disabilities also rely on Medicaid Waiver services, which provide services like personal care services, mental health services, and employment supports so that people with disabilities can live in their community – services which are typically not available using private health insurance.<sup>35</sup>

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<sup>30</sup> Half of all persons with disabilities that were not working reported at least one barrier to employment. See U.S. BUREAU OF LABOR STATISTICS, *Persons with a Disability: Barriers to Employment, Types of Assistance, and Other Labor-Related Issues*, (May 2012)

[https://www.bls.gov/news.release/archives/dissup\\_04242013.pdf](https://www.bls.gov/news.release/archives/dissup_04242013.pdf).

<sup>31</sup> U.S. BUREAU OF LABOR STATISTICS, *Persons with a Disability: Labor Force Characteristics Summary*, (Jun. 21 2018), <https://www.bls.gov/news.release/disabl.nr0.htm>.

<sup>32</sup> Shaina Goodman, *supra* note 23, at 1.

<sup>33</sup> CTR. ON BUDGET AND POL. PRIORITIES, *MEDICAID WORKS FOR PEOPLE WITH DISABILITIES* (Aug. 29, 2017).

<sup>34</sup> Jae Kennedy, Elizabeth Geneva Wood, and Lex Frieden, *Disparities in Insurance Coverage, Health Services Use, and Access Following Implementation of the Affordable Care Act: A Comparison of Disabled and Nondisabled Working-Age Adults*, U.S. NAT’L LIBRARY OF MEDICINE NAT’L INST. OF HEALTH (Nov. 22, 2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5798675/>.

<sup>35</sup> THE ARC, *IMPACT OF THE PUBLIC CHARGE RULE CHANGE ON PEOPLE WITH DISABILITIES* (Oct. 17, 2018), <https://blog.thearc.org/2018/10/17/impact-public-charge-rule-change-people-disabilities/>.

The disability community is also more likely to participate in other forms of public assistance, such as Supplemental Nutrition Assistance Program, housing assistance, Women, Infants, and Children Food and Nutrition Service (WIC), Low Income Home Energy Assistance Program (LIHEAP), and Earned Income Tax Credit (EITC) in order to cover basic needs: the Census Bureau reports that 30% of adults receiving public assistance have a disability.<sup>36</sup> One in five households that participate in SNAP include a working-age adult with a disability,<sup>37</sup> and approximately two in five households that received energy assistance through LIHEAP include an adult with disabilities.<sup>38</sup>

Although many immigrants with disabilities are already restricted from accessing Medicaid because of their immigration status,<sup>39</sup> the new regulation will still have a negative impact on those who do enroll: the Migration Policy Institute estimates that over 4 million immigrants that have not yet naturalized receive Medicaid.<sup>40</sup> The proposed rule restricts use of Medicaid Waiver services and targets immigrants with disabilities who receive healthcare coverage from Medicaid and Medicare Part D assistance. Immigrants with disabilities will have three choices, none of which is tenable: enroll in Medicaid and risk being inadmissible, cease enrollment from Medicaid and attempt to purchase costly and often insufficient private health insurance coverage, or have no health insurance coverage. Because the proposed regulation also considers living without health insurance to be a heavily weighted negative factor in public charge determinations, no option is viable. The proposal forces immigrants with disabilities to make sacrifices to either their healthcare or ability to adjust their status. Both choices interfere with the ability to become self-sufficient.

## **2) The Proposed Rules' Public Charge Evaluation Criteria Will Have a Disparate Impact on People with Disabilities and Exclude Immigrants Unlikely to Be Dependent on Government Services.**

The proposed rule lists having a medical condition that requires extensive treatment as a heavily weighted negative factor and lists not having a medical condition or disability as a positive factor. Using medical conditions as a selection process perpetuates ableism and designates individuals with disabilities as an underclass in society. Even if an individual with disabilities does not participate in any of the targeted public assistance programs, DHS would still consider them to be a public charge under the proposed regulation because of their inherent status as a person with disabilities. This discriminates against

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<sup>36</sup> Bernice L. Boursiquot and Matthew W. Brault, *Disability Characteristics of Income-Based Government Assistance Recipients in the United States: 2011*, U.S. Census Bureau: American Community Survey Briefs, (Feb. 2013).

<sup>37</sup> FOOD RES. AND ACTION CTR., U.S. HUNGER SOLUTIONS: BEST PRACTICES FOR IMPROVING ACCESS TO SNAP FOR PEOPLE WITH DISABILITIES (2017).

<sup>38</sup> NAT'L ENERGY ASSISTANCE DIRECTORS ASS'N, ESTIMATED TOTAL # OF HOUSEHOLDS RECEIVING LIHEAP BENEFITS IN FY 2017 (June 2018).

<sup>39</sup> HENRY J. KAISER FAM. FOUND., DISPARITIES POL., HEALTH COVERAGE OF IMMIGRANTS (Dec. 13, 2017), <https://www.kff.org/disparities-policy/fact-sheet/health-coverage-of-immigrants/>.

<sup>40</sup> JEANNE BATALOVA, MICHAEL FIX, AND MARK GREENBERG, *supra* note 7.

immigrants with disabilities on its face, continuing our nation’s lengthy history of discrimination against immigrants with disabilities that began when the United States first established laws to restrict immigration in 1882.<sup>41</sup>

We fundamentally disagree with the premise that any person should be deemed inadmissible because of a disability. To the extent that the proposed rule attempts to categorize people based on the likelihood that they will be dependent on government services, it is overbroad. The rule, for example, specifically lists certain chronic health conditions, including “heart disease, cancer, trauma, mental disorders, and pulmonary conditions,” as heavily weighted negative factors. “Heart disease” can range from controlled high blood pressure to chronic obstructive pulmonary disease (COPD). “Trauma” can be physical or emotional; debilitating or readily accommodated. This is likely to sweep persons unlikely to dependent under the public charge designation.

The factor-based “totality of circumstances” review relies on others factors likely to have a disparate impact on people with disabilities like educational attainment, employment, and English-language level. Inaccessibility of these systems may prevent immigrants with disabilities from furthering their education, keeping steady employment, or learning new languages. Biases and stigmatization against individuals with disabilities might also lead USCIS to discount the educational, employment, and English abilities of an applicant with disabilities. The subjective, complex, and potentially discriminatory system will likely lead to more error in public charge determinations.

Although we recommend that DHS rejects the proposed rule, if it proceeds, we propose that USCIS modifies its totality of circumstances evaluation criteria for people with disabilities so that the rule promotes equal opportunity for all.

### **3) The Impact of the Public Charge Rule on People with Disabilities Will Have Ripple Effects Across the Broader Community**

If an immigrant with disabilities, or an immigrant with a child with disabilities, are not enrolled in public assistance, their whole family, including unpaid caregivers and children, may also lose access to supportive services designed to meet basic needs like health care, food, and housing. As fewer people enroll in the quality care that Medicaid provides, our communities will become less healthy. The proposed regulations would create incentives for immigrant families to forgo preventative care, harming our communities through lower vaccination rates and higher rates of emergency care reliance.<sup>42</sup> The proposed rule will lead to heightened food insecurity, higher utility bills, and less stability in housing, which will create less healthy and stable communities.

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<sup>41</sup> Dr. Douglas Baynton, *Disability and the Justification of Inequality in American History*, DISABILITY HISTORY MUSEUM, <https://www.disabilitymuseum.org/dhm/edu/essay.html?id=70>.

<sup>42</sup> Wendy E. Parmet, *The Health Impact of the Proposed Public Charge Rules*, HEALTH AFFAIRS, <https://www.healthaffairs.org/doi/10.1377/hblog20180927.100295/full/>.



### iii. **The Proposed Public Charge Will Unnecessarily Bar Survivors of Domestic Violence and Sexual Assault from Seeking Support**

The proposed rule will have a significant impact on women in abusive and intimate relationships who are also part of the immigrant community. The public assistance programs that support basic economic security are critical for survivors of domestic violence and sexual assault. More than one in three women and more than one in four men in the U.S. experience rape, physical violence, or stalking from an intimate partner during their lifetime.<sup>43</sup> Significant numbers of low-income women are abused or assaulted, and the violence perpetrated against them can make it nearly impossible to climb out of poverty.<sup>44</sup> More than two-thirds of domestic violence survivors rely on Temporary Assistance for Needy Families (TANF), which provides temporary direct financial assistance for basic needs, to help establish safety and stability.<sup>45</sup> Nearly 80 percent of domestic violence survivors rely on SNAP to help address their basic needs.<sup>46</sup>

Use of these public assistance programs do not necessarily mean that survivors will be public charges; survivors use benefits to become self-sufficient and escape abusive situations. Improving financial security for individuals and families can help reduce and prevent intimate partner violence.<sup>47</sup> Access to benefits programs contributes substantially to victim-survivor empowerment and post-trauma healing because it enables victim-survivors to take steps toward addressing or remediating the trauma they have experienced while their basic needs are (at least partially) met by benefits programs.<sup>48</sup> Being able to access economic security programs like TANF and SNAP plays an enormous part in the safety and security of families in need.<sup>49</sup>

These proposed public charge changes conflict with established public policy like the Violence Against Women Act (VAWA) and the U Nonimmigrant status, both of which

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<sup>43</sup> NAT'L CTR. FOR INJURY PREVENTION AND CONTROL, NAT'L INTIMATE PARTNER & SEXUAL VIOLENCE SURV., SUMMARY REP. (2010).

<sup>44</sup> See, e.g., ELEANOR LYON, WELFARE, POVERTY & ABUSED WOMEN: NEW RESEARCH & ITS IMPLICATIONS, NAT'L RESOURCE CTR. ON DOMESTIC VIOLENCE (Oct. 2000), <https://vawnet.org/material/welfare-poverty-and-abused-women-new-research-and-its-implications>; MARY KAY, INC., MARY KAY TRUTH ABOUT ABUSE SURV. REP. (2012), [http://content2.marykayintouch.com/public/PWS\\_US/PDFs/company/2012Survey.pdf](http://content2.marykayintouch.com/public/PWS_US/PDFs/company/2012Survey.pdf); Lyon, E., Lane, S., & Menard, A. *Meeting Survivors' needs: A multistate study of domestic violence shelter experiences*, WASHINGTON, D.C.: NAT'L INST. OF JUST. (2008), [http://www.vawnet.org/Assoc\\_Files\\_VAWnet/MeetingSurvivorsNeeds-FullReport.pdf](http://www.vawnet.org/Assoc_Files_VAWnet/MeetingSurvivorsNeeds-FullReport.pdf); Lyon, E., Bradshaw, J., & Menard, A., *Meeting Survivors' Needs through Non-Residential Domestic Violence Services & Supports: Results of a Multi-State Study*. NAT'L RESOURCE CTR ON DOMESTIC VIOLENCE (2011), [http://www.vawnet.org/Assoc\\_Files\\_VAWnet/DVServicesStudy-FINALReport2011.pdf](http://www.vawnet.org/Assoc_Files_VAWnet/DVServicesStudy-FINALReport2011.pdf); 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*, J. OF INTERPERSONAL VIOLENCE (2009).

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> Shaina Goodman, *supra* note 23, at 2.

provide support and pathways to legal status to immigrants who are victims of domestic violence and trafficking. The U Nonimmigrant status (U visa) is available for victims of certain crimes who have suffered mental or physical abuse.<sup>50</sup> This visa was created with the passage of the Victims of Trafficking and Violence Protection Act in 2000 to "strengthen the ability of law enforcement agencies to investigate and prosecute cases of domestic violence, sexual assault, trafficking of aliens and other crimes, while also protecting victims."<sup>51</sup> The Violence Against Women Act of 1994,<sup>52</sup> was passed to improve criminal justice and community-based responses to domestic violence, dating violence, sexual assault and stalking in the United States.<sup>53</sup> This legislation, reauthorized in 2000, 2005, and 2013, has had a positive impact on domestic violence advocacy because victims can access services that enable them to rebuild their lives.<sup>54</sup> VAWA and U visa holders are not subject to the proposed public charge rule, but the confusion and fear surrounding the public charge rule may lead individuals who are VAWA self-petitioners applying for a U Visa<sup>55</sup> to withdraw from the public benefits to which they are entitled. This undermines the purpose of the VAWA and U Visa policies to create stability and protections for crime victims and survivors.

The proposed public charge rule will discourage immigrant survivors from seeking these resources and may coerce adults and children living in abusive homes to stay in extremely dangerous conditions rather than jeopardize their immigration status. The proposed rule will force survivors to choose between two pathways to rebuilding their lives: the use of public benefits to escape violence, or an application to permanent legal status in the United States.

### **III. The Proposed Changes will have a Broader Impact on the Nation's Ability to Maintain A Vibrant Economy.**

The proposal to redefine "public charge" so that only those with substantial incomes or resources would qualify to adjust their status is an assault on low-income immigrant families. "It will radically reshape our legal immigration system, putting the wealthy at the front of the line, ahead of hardworking families who have waited years to reunite."<sup>56</sup> The proposed rule adopts new income thresholds for households seeking to overcome a "public charge" test—by giving negative weight to immigrants who earn less than 125

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<sup>50</sup> DEP'T OF HOMELAND SECURITY, U.S. CITIZENSHIP & IMMIGR. SERVICES, VICTIMS OF CRIMINAL ACTIVITY: U NONIMMIGRANT STATUS.

<sup>51</sup> *Id.*

<sup>52</sup> 42 U.S.C. §§13701-14040.

<sup>53</sup> NAT'L DOMESTIC VIOLENCE HOTLINE, WHAT IS THE VIOLENCE AGAINST WOMEN ACT, <https://www.thehotline.org/resources/vawa/>.

<sup>54</sup> *Id.*

<sup>55</sup> IMMGR. LEGAL RESOURCE CTR., AN OVERVIEW OF PUB. CHARGE (Aug. 2018), [https://www.ilrc.org/sites/default/files/resources/overview\\_of\\_public\\_charge-20180808.pdf](https://www.ilrc.org/sites/default/files/resources/overview_of_public_charge-20180808.pdf).

<sup>56</sup> PROTECTING IMMGR. FAMILIES, THE PIF CAMPAIGN, *Protecting Immigrant families, Advancing our Future*, <https://protectingimmigrantfamilies.org/wp-content/uploads/2018/11/PIF-4-pager-11.20.18.pdf>.

percent of the Federal Poverty Level.<sup>57</sup> The proposed rule also considers whether an applicant sought or obtained a fee waiver in applying for an immigration benefit—on or after the effective date of the final rule.<sup>58</sup> The single heavily weighted positive factor is having income or resources of over 250 percent of the federal poverty level—nearly \$63,000 a year for a family of four.<sup>59</sup> This is often unrealistic for working class immigrant communities. Our clients, many of whom are part of this community, are fighting systemic barriers to income and wealth acquisition. They are fighting wage theft, race, gender, and disability discrimination in hiring, firing, and promotion, and sexual harassment and harsh conditions in the workplace.

The proposed rule offers only one way for an immigrant to cure a potential public charge issue: paying a public charge bond. This means that people subject to this rule because of their moderate income, a health condition like cancer, or other factors, may be required to pay a minimum of \$10,000 for admission (or higher if private bond companies are allowed to charge them fees for advancing bond money) and would risk losing this bond if they use any public benefits listed in the rule. As proposed, there is no way to appeal the bond amount, or the determination that an individual has violated the conditions of the bond. We read the proposed changes concerning these surety bonds as a potential due process violation in that the immigrant involved cannot appeal a breach determination or file a motion because the bond contract is between the obligor and the United States government. Thus, the immigrant is not a party to the contract. This absence of due process protections is problematic because there is settled case law, which requires immigrants have access to a bond hearing where financial circumstances, flight risk, and other factors be considered.<sup>60</sup>

The economic impact of this proposal would not only perpetuate systemic barriers to upward mobility for immigrants of color, immigrants with disabilities, and immigrant survivors of intimate-partner violence, but will also negatively affect the economy of the

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<sup>57</sup> NAT'L IMMIGR. F., PUB. CHARGE PROPOSED REGULATIONS, <https://immigrationforum.org/article/public-charge-proposed-regulations-summary/>; PROTECTING IMMIGR. FAMILIES, PROPOSED CHANGES TO PUB. CHARGE: QUICK ANALYSIS AND FREQUENTLY ASKED QUESTIONS (Oct. 10, 2018), <https://www.pwn-usa.org/wp-content/uploads/2018/10/Public-Charge-Quick-Analysis-Updated-10.10.2018.pdf>.

<sup>58</sup> PROTECTING IMMIGR. FAMILIES, PROPOSED CHANGES TO PUB. CHARGE: QUICK ANALYSIS & FREQUENTLY ASKED QUESTIONS (Oct. 10, 2018), <https://www.pwn-usa.org/wp-content/uploads/2018/10/Public-Charge-Quick-Analysis-Updated-10.10.2018.pdf>.

<sup>59</sup> *Id.*

<sup>60</sup> *See* *Sopo v. United States AG*, 825 F.3d 1199, US Ct of Appeals 11th Cir. 2016 (“Because alien had been in continuous detention for four year without bond hearing, at least three-and-a-half of which have been under § 1226(c), there could be no question that detention, without inquiry into whether it was necessary to ensure his appearance or to prevent a risk of danger to community, was unreasonable and violated due process); *Hernandez v. Sessions*, 872 F.3d 976, US Ct. of App. 9th Cir. 2017 (“Aliens were likely to succeed on their challenge under Due Process Clause to government’s policy of allowing ICE and IJs to set immigration bond amounts without considering detainees’ financial circumstances or alternative conditions of release, and government failed to show why those factors should not be considered.”); *Lora v. Shanahan*, 804 F.3d 601, US Ct of App. 2nd Cir. (“The district court’s decision to grant a lawful permanent resident’s petition was affirmed since his indefinite detention without being afforded a bond hearing violated his right to due process; he was neither a flight risk or a danger to the community.”)

nation. The proposed rule will create a less diverse immigrant community and eliminate a significant portion of the population which enables the country, in fact, to function. “[T]he large majority of immigrants have net positive lifetime effects on government budgets, [so] keeping out immigrants based on such a low level of predicted support makes little fiscal sense. It will inevitably end up excluding many immigrants who will contribute to the U.S. Treasury and economy.”<sup>61</sup>

This federal rule will also have significant impacts on local and state benefits administration and the ability of state and local governments invest in supporting basic needs for its residents. The Migration Policy Institute anticipates that these proposed changes will create tension: “[B]y making the receipt of a wider range of federal, state, and local benefits potentially disqualifying factors in immigration decision-making, the new policy would be fundamentally at odds with the right of state and local governments to determine the investments they make in their own residents.”<sup>62</sup> The proposed public charge rule also strains health care providers that service immigrant and low-income communities, such as community health centers, as they will lose Medicaid revenue.<sup>63</sup> The Commonwealth Fund estimates that if the proposed rule is implemented, \$17 billion in Medicaid/ CHIP spending for hospital payments will be at risk.<sup>64</sup> These changes will burden employers and businesses with increased paperwork and regulatory processes.<sup>65</sup>

Rather than punish and bar low-income immigrants, this Administration should be looking for ways to close the many equity gaps that exist to ensure that immigrants can thrive and continue contributing. As only one example, “[b]y 2050, our country stands to realize an \$8 trillion gain in GDP by closing the U.S. racial equity gap. ‘Closing the gap’ means lessening, and ultimately eliminating, disparities and opportunity differentials that impede the human potential and the economic contributions of people of color. Beyond an increase in economic output, advancing racial equity can translate into meaningful increases in consumer spending and federal, state, and local tax revenues, and decreases in social services spending and health-related costs.”<sup>66</sup> Because immigrants make up a significant portion of communities of color within the United States,<sup>67</sup> a broader attempt

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<sup>61</sup> David Bier, *The \$1/Day Standard & Other Problems with DHS’s Public Charge Rule*, CATO INST. (Apr. 19, 2018), <https://www.cato.org/blog/1-day-standard-other-problems-dhss-public-charge-rule>.

<sup>62</sup> JEANNE BATALOVA, MICHAEL FIX, AND MARK GREENBERG, *supra* note 7 at 30.

<sup>63</sup> Geiger Gibson, *How Could the Public Charge Proposed Rule Affect Community Health Centers?*, THE GEORGE WASHINGTON UNIVERSITY MILKEN INSTITUTE SCHOOL OF PUBLIC HEALTH (Nov. 2018).

<sup>64</sup> Allison Orris, April Grady, and Cindy Mann, *Public Charge Rule Would Have Significant, Negative Impact on Immigrants’ Health Care and the Safety-Net Delivery System*, THE COMMONWEALTH FUND (Nov. 20, 2018), <https://www.commonwealthfund.org/blog/2018/public-charge-rule-negative-impact-immigrants-health-care>.

<sup>65</sup> Ted Hesson, *Businesses could be surprised by Trump plan to limit immigrant use of benefits*, POLITICO (Oct. 16, 2018), <https://www.politico.com/story/2018/10/16/immigration-trump-green-card-908820>.

<sup>66</sup> Ani Turner, *The Business Case for Racial Equity*, W.K. KELLOGG FOUND. & ALTARUM INST. (2018), <http://ww2.wkcf.org/2018/bcfre/BCRE-National-Report.pdf>.

<sup>67</sup> 33.4% of all Latinos living in the US, 17.4% of all Asian and Pacific Islanders living in the US and 1.8 Million Black and African Immigrants living in the U.S. MANATT HEALTH, *Public Charge Proposed Rule: Implications for Non-Citizens and Citizen Family Members Data Dashboard* (Oct. 2018).

to close the race equity gap inevitably encompasses closing the immigrant equity gap, yielding positive gains for the nation as a whole.

Public benefits are intended to lift people out of poverty, recognizing that the entire country benefits when more people have economic security.<sup>68</sup> Poverty limits access to health care and other needed services, and increases the likelihood that people live and work in environments that adversely affect their health.<sup>69</sup> Implementing a rule to expand the definition of public charge, minimizes access to benefits designed to support self-sufficiency, and ultimately undermines the goal of creating a safer and stronger United States.

#### **IV. Conclusion**

The proposed public charge rule blocks immigrant communities from having a permanent, secure future in the United States and deters them from seeking access to services that support their basic needs. The rule will discriminate against people of color, people with disabilities, and survivors of intimate violence. This will create cascading harms that extend beyond the communities targeted by this change. This proposal is counter to building and maintaining strong self-sufficient families, which in turn, build strong self-sufficient communities. If the true objective of this rule is to encourage self-sufficiency, the Department of Homeland Security should not force families to choose between the health and stability that public assistance provides and their immigration status. People need access to skill development, work supports such as childcare and transportation, comprehensive health care, and job opportunities that provide living wages. We oppose this proposed rulemaking because it undermines participation in the very programs that enable our communities to thrive.

Sincerely,



Kaitlin Banner, Esq.  
Deputy Legal Director

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<sup>68</sup> “In his State of the Union Address before Congress on January 4, 1935, President Roosevelt declared, ‘the time has come for action by the national government’ to provide ‘security against the major hazards and vicissitudes [uncertainties] of life.’ He went on to propose the creation of federal unemployment and old-age insurance programs. He also called for guaranteed benefits for poor single mothers and their children along with other dependent persons.” See, CONST. RIGHTS FOUND., A NAT’L WELFARE SYS., <http://www.crf-usa.org/bill-of-rights-in-action/bria-14-3-a-how-welfare-began-in-the-united-states.html>.

<sup>69</sup> Shaina Goodman, *supra* note 23, at 1.