

HOUSTON IMMIGRATION
LEGAL SERVICES COLLABORATIVE

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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 Madam:

I am writing on behalf of the Houston Immigration Legal Services Collaborative (HILSC) in response to the Department of Homeland Security's (DHS) Notice of Proposed Rulemaking (NPRM or proposed rule) to express our strong opposition to the changes regarding "public charge," published in the Federal Register on October 10, 2018. The proposed rule would cause major harm to immigrants and their families, to health care providers and facilities, and to the Greater Houston region more broadly – yet DHS has provided no justification for why changes are needed. HILSC urges that the rule be withdrawn in its entirety, and that long standing principles clarified in the 1999 field guidance remain in effect.

HILSC is a consortium made up of over forty immigration legal services providers, social services agencies, and advocacy organizations serving Houston's immigrant communities. Our mission is to create a coordinated network of effective and efficient services to assist low-income immigrants access the information and legal representation that allows them to make choices in their own best interest. Our member legal services organizations regularly advise and represent adult and minor immigrants and asylum seekers in their proceedings before U.S. Citizenship and Immigration Services (USCIS) and the Executive Office for Immigration Review (EOIR). Our staff members have years of experience working with immigrant children and families, both in the legal context and in social services and mental health.¹

HILSC opposes the NPRM because the proposed rule represents a massive change in current policy – yet it is put forward with no rationale, without any statutory basis for the proposed new threshold test, and in contradiction of the available evidence.

In this public comment, we will outline the ways in which the proposed rule would cause major harm to immigrants and their families, communities, and their health care. The greater Houston region has a particular challenge as many immigrant families are still recovering from the health and housing effects of Hurricane Harvey and we anticipate more storms of that magnitude in the future. Furthermore, the proposed rule would create additional delays in immigration benefit form processing, as well as compounding the backlogs in immigration

¹ See attached document, "HILSC staff resumes.pdf."

court. The rule's incoherent frameworks create confusion around eligibility and is exceptionally harsh – for example, in the proposed bond procedures and penalties. We will also discuss the ways that the consideration of a prior application for a fee waiver creates double-counting problems and is impermissibly retroactive, and consideration of credit history or credit scores is an unfair, inaccurate measure.

Based on our experience, it is reasonable to anticipate that the rule will discourage many Houston area immigrants from accessing health, nutrition, and social services that benefit not only them, but also their U.S.-citizen children. We know that this chilling effect is already taking place, as service providers report immigrant clients dropping out of programs and others failing to access benefits for which they are eligible out of completely legitimate fear and confusion. The proposal could prevent immigrants from using the programs that their tax dollars help support, hindering access to essential health care, 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. Ultimately, however, these regulations are a way to decrease legal immigration and limit pathways to legal status for low-income families and individuals. On the whole, the proposed rule's chilling effects go beyond undocumented and legal immigrants to also include U.S. citizens and the Houston community as a whole.

The proposed rule represents a massive change in current policy – yet it is put forward with no rationale and in contradiction of the available evidence.

The proposed rule would alter the public charge test dramatically, abandoning the long-settled meaning of “public charge” as a person who depends on the government for subsistence, by 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.” 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 financial support. If the proposed 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, SNAP (Supplemental Nutrition Assistance Program) and even assistance for seniors who have amassed the work history needed to qualify for Medicare and need help paying for prescription drugs. This shift drastically increases the scope of who can be considered a public charge to include not only people who receive benefits as their main source of support, but also people who use basic needs programs to supplement their earnings from low-wage work.

It is part of the fabric of our nation that immigrants who start out with low earnings are able to make gains in succeeding years. Immigrant men who entered the country in 1982-1983, for example, started out earning 60 percent of the median earnings of native-born workers. After a decade, their earnings increased to 92 percent of their native-born counterparts. Immigrant women who entered the U.S. at the same time started out earning 76 percent of native-born

women; after ten years their earnings grew to 97 percent of the median for native-born women. The proposed rule penalizes immigrants for their initial low incomes and undermines their ability to improve over time by discouraging them from making use of Medicaid, SNAP, or housing assistance.

The rule also makes other massive changes, such as introducing an unprecedented income test and assigning negative weight to many factors that have never been considered relevant – such as being a child or a senior, having a large family, or having a treatable medical condition. 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 – regardless of language spoken. This rule targets family-based immigration as well as low and moderate wage workers, and will have a disproportionate impact on people of color. All of these changes amount to a sea change in American policy towards immigration, considering wealth and income as the primary indicators of a person's future contribution, yet they are not justified by any rationale. The NPRM itself acknowledges that the proposed rule would cause great harm to individuals, families, and communities, although it fails to quantify this harm and therefore largely ignores it.

This rule appears to be motivated by a desire to change America's system of family-based immigration to grant preference to the wealthy, through methods Congress has already rejected. The 1996 Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) limited immigrant eligibility for federal means-tested public benefits, but Congress did not alter the public charge law. That same year, in the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Congress codified the case law interpretation of public charge. After the passing of these two laws, there was massive confusion about how the public charge test might be used against immigrants who were eligible for, and receiving, certain non-cash benefits and – as a result – legal immigrants' use of public assistance programs significantly declined.²

The Immigration and Naturalization Service (INS) issued administrative guidance in 1999 in response to concerns that some consular officials and INS employees were inappropriately scrutinizing the use of health care and nutrition programs, and because of the strong evidence of chilling effects from the 1996 law. That guidance, which remains in effect today, clarifies that the public charge test applies only to those “primarily dependent on the government for subsistence,” demonstrated by receipt of public cash assistance for “income maintenance,” or institutionalization for long-term care at government expense. The guidance specifically exempts the non-cash programs such as Medicare, Medicaid, food stamps, WIC, Head Start, child care, school nutrition, housing, energy assistance, and emergency/disaster relief from consideration. (64 Fed. Reg. 28689). 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.”³

² Michael and Jeffrey Passel, “Trends in Noncitizens' and Citizens' Use of Public Benefits Following Welfare Reform: 1994-97,” (Washington, D.C.: The Urban Institute, 1999).

³ Inadmissibility and Deportability on Public Charge Grounds, A Proposed Rule by the [Immigration and Naturalization Service](#) on 05/26/1999, 64 Federal Register 28676.

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. 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.

There is no Statutory basis for the proposed new threshold test

The Department of Homeland Security proposes to treat income below 125 percent of the federal poverty guidelines (FPG) for the applicable household size as a negative factor, and, conversely, income above 250 percent of the FPG to be counted as a heavily weighed positive factor. There is no statutory basis for either threshold, and the statement that 125 percent of the FPG has long served as a “touchpoint” for public charge inadmissibility determinations is deeply misleading. The cited statute refers to the income threshold for sponsors who are required to submit an affidavit of support, not to the immigrant subject to the public charge determination, and DHS provides no justification for why this threshold is appropriate. Even less justification is offered for the 250 percent of FPG threshold. At footnote 583, DHS 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.

Setting these 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 that would require Congressional action.⁴ A standard of 250 percent of the federal poverty level is nearly \$63,000 a year for a family of four – more than the median household income in the U.S.⁵ If this test were applied to U.S citizens, up to one out of every three would fail.⁶ 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.

It is worth noting that the combination of these thresholds, which are based on household size, with the proposed rule’s expansive definition of household, will have the perverse effect of discouraging people from supporting family members. For example, if a couple with one child who have 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 no longer qualify for the heavily weighed positive factor.

⁴ See S.354 (115th Congress), the RAISE Act, <https://www.congress.gov/bill/115th-congress/senate-bill/354> and Statement of President Donald J. Trump on August 2, 2017. <https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-backs-raise-act/>

⁵ <https://www.census.gov/library/publications/2018/demo/p60-263.html>

⁶ Melissa Boteach, Shawn Fremstad, Katherine Gallagher Robbins, Heidi Schultheis, and Rachel West, “Trump’s Immigration Plan Imposes Radical New Income and Health Tests,” Center for American Progress (July 2018), available at <https://www.americanprogress.org/issues/poverty/reports/2018/07/19/453174/trumps-immigration-plan-imposes-radical-new-income-health-tests>, and attached here for your review.

A November 2018 study by the Center for Migration Studies suggests that high numbers of working-class persons would be found inadmissible under the NPRM. The study estimates that 2.25 million undocumented persons and 212,000 nonimmigrants would be directly affected by the proposed rule because they live with a US citizen or LPR family member who can petition for them.⁷ While 982,000 of them live in households that earn at least 250 percent of the poverty threshold, the “2.25 million also include many persons with low education levels, lack of proficiency in English, self-care difficulty, and other factors that weigh in favor of inadmissibility under the proposed rule. Therefore, the rule represents a significant departure from the decades-long policy that employed, able-bodied immigrants should not generally be deemed inadmissible on public charge grounds.”⁸

The Proposed Rule Would Cause Major Harm to Immigrants and Their Families in the Greater Houston Region

The immigrants directly affected in the Greater Houston region will be those applying for lawful permanent residence or family reunification visas for family members abroad, as well as those who may be eligible to adjust their status at some point in the future. Current LPRs who travel abroad for more than 180 days (a common occurrence for families who have relatives in home country who may need long-term care) may also get caught up in the public charge net. In a city where one in four people are foreign-born, Houstonian families are often a mix of the relatives who are U.S. citizens, LPRs, and those without permanent status. Forcing people 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.”*

In the Greater Houston Area, 38,686 people were granted lawful permanent residence in 2017.⁹ The number of Houstonians becoming lawful permanent residents has consistently grown over 3% per year. By 2019, if this pattern holds true, there will be over 41,000 granted LPRs.¹⁰ However, many more may be eligible for adjustment. According to a 2018 report, there are 98,000 undocumented immigrants who are married to a U.S. citizen or lawful permanent resident. Many of these would be eligible to adjust their status immediately or with a waiver. There are also many parents who are potentially eligible to adjust their status through their U.S. citizen children, as a majority of the children of immigrants – 86% – are U.S. citizens.¹¹ There are 531,000 LPRs in the Greater Houston Area. If any of them were to travel and stay

⁷ Donald Kerwin, Robert Warren, and Mike Nicholson, “Proposed Public Charge Rule Would Significantly Reduce Legal Admissions and Adjustment to Lawful Permanent Resident Status of Working Class Persons,” Center for Migration Studies (November 2018), available at <http://cmsny.org/wp-content/uploads/2018/11/Public-Charge-Report-FINAL.pdf>, and attached here for your review.

⁸ *Id.*

⁹ DHS Office of Immigration Statistics, U.S. Lawful Permanent Residents: 2017 in Annual Flow Report (August 2018), available at: https://www.dhs.gov/sites/default/files/publications/Lawful_Permanent_Residents_2017.pdf.

¹⁰ *Id.*; and DHS Office of Immigration Statistics, U.S. Lawful Permanent Residents: 2016 in Annual Flow Report (December 2017), available at: https://www.dhs.gov/sites/default/files/publications/Lawful_Permanent_Residents_2016.pdf.

¹¹ Randy Capps and Ariel G. Ruiz Soto, “A Profile of Houston’s Diverse Immigrant Population in a Rapidly Changing Policy Landscape,” Migration Policy Institute (September 2018), available at <https://www.migrationpolicy.org/research/profile-houston-immigrant-population-changing-policy-landscape>, and attached here for your review (hereinafter “Profile of Houston’s Diverse Immigrant Population”).

abroad for over six months, they could be subject to inadmissibility upon their return and barred from re-entering the country if they fail the expanded public charge test.¹² The foreign-born are 25% of the great Houston region's population, and are a key factor in our region's population and economic growth.¹³

For these affected Houstonians and their families, Medicaid and SNAP are lifelines that keep them living above the poverty threshold. Research demonstrates that safety net programs such as SNAP and Medicaid have short and long-term health benefits and are crucial levers to reducing the intergenerational transmission of poverty.¹⁴ Children of immigrants who participate in SNAP are more likely to be in good or excellent health, be food secure, and reside in stable housing.¹⁵ An additional year of SNAP eligibility for young children with immigrant parents is associated with significant health benefits in later childhood and adolescence.¹⁶ The benefits of Medicaid insurance coverage are key to a family's financial stability and provide safe environments for their children; it enables low-wage workers to: find and retain employment,¹⁷ decrease reliance on cash assistance,¹⁸ save more and contribute more to the local economy,¹⁹ address previously unmet medical needs,²⁰ timely pay bills,²¹ purchase better quality food and housing,²² access credit and reduce debt,²³ and achieve financial stability.²⁴ Medicaid coverage improves access to care, which in turn provides short- and long-term health benefits to enrollees, including fewer hospitalizations, better oral health, and lower rates of high blood pressure, diabetes, heart disease, and obesity, in addition to decreased mortality.²⁵ Moreover, when children are eligible for and receive Medicaid, they are more likely to do better in school.²⁶

¹² INA § 101(a)(13)(C)(ii).

¹³ Rhor, Monica, "Immigrants from around the world are transforming Houston," Houston Chronicle (March 2015), www.houstonchronicle.com/local/themillion/article/How-diversity-culture-demographics-of-Houston-6117301.php; New American Economy, "Houston Metro Area," <https://www.newamericaneconomy.org/city/houston>.

¹⁴ Page, Marianne, "Safety Net Programs Have Long-Term Benefits for Children in Poor Households", Policy Brief, University of California Davis, 2017, available at <https://poverty.ucdavis.edu/policy-brief/safety-net-programs-have-long-term-benefits-children-poor-households>.

¹⁵ Children's Health Watch, Report Card on Food Security and Immigration: Helping Our Youngest First-Generation Americans To Thrive (2018), available at <https://childrenshealthwatch.org/publication-snapfirstgeneration/>

¹⁶ 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.

¹⁷ Larisa Antonisse and Rachel Garfield, The Relationship Between Work and Health: Findings from a Literature Review, www.kff.org/medicaid/issue-brief/the-relationship-between-work-and-health-findings-from-a-literature-review/.

¹⁸ Aparna Soni et. al., Medicaid Expansion and State Trends In Supplemental Security Income Program Participation, <https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2016.1632>; Marguerite Burns & Laura Dague, IRP Discussion Paper: The Effect of Expanding Medicaid Eligibility on Supplemental Security Income Program Participation, <https://www.irp.wisc.edu/publications/dps/pdfs/dp143016.pdf>.

¹⁹ Karina Wagerman et. al., Medicaid Is A Smart Investment in Children, <https://ccf.georgetown.edu/wp-content/uploads/2017/03/MedicaidSmartInvestment.pdf>.

²⁰ Robin Rudowitz and Larisa Antonisse, Implications of the ACA Medicaid Expansion: A Look at the Data and Evidence, http://nasuad.org/sites/nasuad/files/KFF_Implications-of-the-ACA-Medicaid-Expansion_May-2018.pdf; Loujia Hu et. al., The effect of the affordable care act Medicaid expansions on financial wellbeing,

<https://www.sciencedirect.com/science/article/abs/pii/S0047272718300707>; Benjamin D. Sommers et. al., Health Insurance Coverage and Health — What the Recent Evidence Tells Us, www.nejm.org/doi/10.1056/NEJMSb1706645.

²¹ *Id.*

²² Medicaid Is A Smart Investment in Children.

²³ Implications of the ACA Medicaid Expansion; see also journals.sagepub.com/doi/full/10.1177/1077558717725164;

²⁴ <http://www.nber.org/papers/w25053>.

²⁵ Medicaid Is A Smart Investment in Children.

²⁶ Sarah Cohoes et. al, The Effect of Child Health Insurance Access on Schooling, <http://www.nber.org/papers/w20178>.

Children’s well-being is inseparable from their parents’ and families’ well-being, so help received by parents is central to children’s health and well-being in the short- and long-term. Children thrive when their parents can access needed health or mental health care, when their families have enough to eat, and a roof over their heads. Conversely, parents’ stress and health challenges impede effective caregiving and can undermine children’s development. Research has consistently shown that a child’s mental health and well-being is tied to that of their parent or caregiver.²⁷ Studies have also shown that when young children endure prolonged periods of stress their bodies are flooded with hormones that can alter brain architecture and disrupt other aspects of healthy development.²⁸

Targeting low-income families will only exacerbate hunger and food insecurity, unmet health care needs, poverty, homelessness, and other serious problems. If it moves forward, the rule will have ripple-effects on the health, development, and economic outcomes of generations of Houstonians to come.

The NPRM Would Hurt Victims of Hurricane Harvey and Make it More Difficult for Victims of Natural Disasters to Get Aid

While emergency disaster relief is exempted by the U.S. Citizenship and Immigration Services (USCIS) from public charge consideration, the public benefits that *are* subject to the NPRM are critical for families in the aftermath, both short- and long- term, of a natural disaster. Houston was hit by a five-hundred-year storm in 2017, and the damage of Hurricane Harvey is still being felt over a year later.

The Houston Immigration Legal Services Collaborative was active in providing information and assistance to immigrant communities during and after the storm.²⁹ We answered questions on Spanish-language media, hosted a Frequently Asked Questions website that was widely referred to by our member and stakeholder agencies (including the City of Houston), and we utilized our established immigrant rights hotline as a resource to provide information about Harvey relief and recovery efforts in multiple languages. HILSC also provided grants to partners to provide direct cash assistance to families still recovering from Harvey. In all of our outreach efforts, we were often asked about how immigration status affected an individual’s access to resources – and how accessing those benefits could harm their immigration case. Hurricane Harvey hit the region in August 2017, several months after an earlier version of the NPRM was leaked in early 2017. That memo was widely discussed in English and Spanish-language media and individuals were concerned that they might not be able to apply for assistance because of that leaked memo, which included language stating that benefit use by

²⁷ Maternal Depression Can Undermine the Development of Young Children, Center on the Developing Child at Harvard University (2009), at: <https://developingchild.harvard.edu/resources/maternal-depression-can-undermine-the-development-of-young-children>.

²⁸ Excessive Stress Disrupts the Architecture of the Developing Brain, Center on the Developing Child at Harvard University (January 2014), available at https://developingchild.harvard.edu/wp-content/uploads/2005/05/Stress_Disrupts_Architecture_Developing_Brain-1.pdf.

²⁹ For more information about HILSC’s work during and after Hurricane Harvey, please visit:

Houston Immigration Legal Services Collaborative Website, Harvey Resource page:

www.houstonimmigration.org/harvey/; and \$4M Fellowship Program Provides Post-Harvey Legal Aid, Houston Public Media (Nov. 20, 2018), available at <https://www.houstonpublicmedia.org/articles/news/hurricane-harvey/2018/11/20/312582/4m-fellowship-program-provides-post-harvey-legal-aid/>; and For Houston’s Undocumented Immigrants, There’s No Promise Of Disaster Relief, KERA News (Sept. 4, 2017), available at <http://www.keranews.org/post/houstons-undocumented-immigrants-theres-no-promise-disaster-relief>.

U.S. citizen children would be used against a parent's ability to naturalize. While HILSC did our best to assure them that they could, in fact, apply for disaster relief, a large number of eligible immigrants did not seek the assistance that they were entitled to.³⁰ The long-lasting effects of Harvey mean that families continue to need assistance. With the chilling effect of this NPRM, we fear that particularly vulnerable victims of natural disasters will not seek Medicaid, SNAP, housing vouchers, and other benefits that they and U.S. citizens in their mixed-status households may be eligible for.

A study by the Kaiser Family Foundation and the Episcopal Health Foundation of the experiences of immigrants under Harvey shows that immigrants were disproportionately impacted and less likely to seek assistance than their native-born counterparts.³¹ Immigrants were greatly impacted by physical damage and the fallout of Hurricane Harvey. About three-quarters (74 percent) of Houston area immigrants were affected by some type of property damage to their home or vehicle and/or some form of job or income loss, compared to 63 percent of native-born residents.³² Sixty-four percent reported employment and income losses while more than half of immigrant households in Houston contained workers whose overtime or regular hours were cut back at work – twice as many as the native-born population.³³

The immigrants who were surveyed reported tenuous financial and social circumstances. Seventy percent said they have little or no nearby support network, and more than half reported incomes below 200% of the federal poverty level.³⁴ The impact of Hurricane Harvey made their already precarious financial situation even more dire. Foreign-born residents were disproportionately more likely to report financial difficulties in the months and years following Harvey; compared to residents born in the United States, “immigrants affected by Harvey were significantly more likely to say that they or any other adult in their household had fallen behind in paying their rent or mortgage since the storm (39 percent versus 24 percent).”³⁵ And 22 percent of immigrant households had a family member who had to borrow money from a payday lender to make ends meet.³⁶ Only twelve percent of immigrants directly affected by Hurricane Harvey said that if they lost their job or source of income, they would be able to live comfortably for at least 6 months.³⁷ In addition to facing financial difficulties, immigrants are more likely to have difficulty accessing health care following a natural disaster. After Hurricane Harvey, for instance, about a quarter of storm-affected immigrants reported needing more help with getting the medical care they and their family needed, as compared to thirteen percent of native-born residents.³⁸

³⁰ Bryan Wu, Liz Hamel, Mollyann Brodie, Shao-Chee Sim, and Elena Marks, “Hurricane Harvey: The Experiences of Immigrants Living in the Texas Gulf Coast,” (March 2018), Kaiser Family Foundation and the Episcopal Health Foundation, available at: https://www.episcopalhealth.org/files/9515/2148/3999/Hurricane_Harvey_-_The_Experiences_of_Immigrants_Living_in_the_Texas_Gulf_Coast.pdf and attached hereto for your review.

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

There is also a particular danger to already-vulnerable immigrant women after a storm, as it is well documented that gender-based violence increases after disasters like hurricanes. For instance, after Hurricane Katrina, there a 45 percent increase in gender-based violence.³⁹ After Harvey, many domestic violence shelters in Houston were either full or flooded. Finding low-cost housing after Harvey was incredibly challenging. For victims of domestic violence, access to public benefits is particularly important – without access to such benefits, victims may go back to abusive partners and unsafe homes rather than be left homeless.⁴⁰

Despite the disproportionate number of immigrants affected by Harvey, immigrants were less likely to report applying for government assistance after the storm. This may be because immigrants feared that seeking assistance would harm their immigration cases or that of their families. Nearly half of immigrants whose homes were damaged said they were worried that if they tried to get help in recovering from Hurricane Harvey, they would draw attention to their or a family member’s immigration status.⁴¹ As a result, only four in ten immigrants whose homes were damaged said they applied for disaster assistance following the hurricane, compared to two-thirds of native-born residents who said they applied.⁴² The NPRM has already contributed to the difficult landscape for immigrants seeking to stabilize their lives after Harvey. It has been our personal experience that the fact disaster relief is exempt from the public charge determination, families make conservative decisions about accessing help because of uncertainty about how rules like these might change in the future. These decisions are rational, given the environment of heightened immigration enforcement, anti-immigrant rhetoric, and rapidly changing policy environment that is pushing immigrants out of the country.

The Widespread Chilling Effect Harms Houston Families

As an organization dedicated to improving access to legal information, we will seek to educate diverse communities about the proposed public charge rule and its impact. Notwithstanding these efforts, uncertainty and confusion about what the proposed rule means and how it will be implemented will prevent many qualified individuals from filing immigration applications out of fear of a denial based on public charge grounds. We are concerned that individuals not directly covered under the rule will drop out of public benefits programs or decide not to apply for benefits for which they would otherwise qualify. Immigrants may make these tough decisions because they are hopeful they would one-day become eligible for permanent residence, because they are misinformed, and for other reasons, as detailed below.

The widespread “chilling effect” that causes families to withdraw from benefits is already evident. It has been well-documented that widespread misinformation and confusion created by drafts of the rule leaked to the press have resulted in a marked decline in the use of a wide variety of life-sustaining benefits by immigrant families,⁴³ as well as instability and anxiety

³⁹ Justine Calma, Here’s how anti-immigrant policies hurt hurricane recovery” Grist (Oct. 31, 2018), *available at* <https://grist.org/article/heres-how-anti-immigrant-policies-hurt-hurricane-recovery/>, and attached hereto for your review.

⁴⁰ *Id.*

⁴¹ Hurricane Harvey: The Experiences of Immigrants Living in the Texas Gulf Coast (attached).

⁴² *Id.*

⁴³ See Chilling Effects: The Expected Public Charge Rule and Its Impact on Legal Immigrant Families’ Public Benefits Use,” (June 2018), *available at* https://www.immigrationresearch-info.org/system/files/Chilling_Effects_Public_Charge_Rule.pdf, and attached here for your review.

among individuals with lawful status – including those in exempt categories such as refugees.⁴⁴ Community providers in Houston have already reported changes in health care use, including decreased participation in Medicaid and other programs due to community fears stemming from the NPRM.⁴⁵ This fear has already been driving immigrant families – who are eligible to receive benefits for themselves or their children – to forgo vital health and nutrition assistance, jeopardizing the health of families and communities alike.

As mentioned above, HILSC runs an immigrant rights hotline that answers questions from the community about policy changes, informs immigrants about their rights, makes referrals to our nonprofit legal services members, and is a source of up-to-date information during emergencies – like Hurricane Harvey. Through this hotline, and in reports from our broad membership, we are seeing that refugees and asylees are asking questions about this rule and are indicating their intent to withdraw from public benefits. Asylum seekers and refugees are particularly vulnerable populations because of past trauma. Many of them may choose to take conservative courses of action, such as complying with a rule that does not directly affect them because they are fearful that a legal misstep in a new country will lead to their being sent back to a place where they fear for their safety.

The chilling effect may also reach immigrants already granted lawful permanent residence yet fear that their use of public benefits could be a negative factor in their application for citizenship. There are currently an estimated 299,000 LPRs eligible to naturalize in Houston.⁴⁶ This may include elderly individuals, who are at particular risk, as older adults have greater health care needs, and nutrition and safe housing are important in supporting a senior’s ability to stay healthy and age in place.

The Houston Immigration Legal Services Collaborative believes it is highly likely that the families who are most likely to drop out of programs that they are currently benefiting from are those who have at least one non-citizen family member. There are 569,000 children under the age of 18 in the Houston area who have at least one non-citizen parent. This comprises one third of Houston’s population of children under 18.⁴⁷ A majority of children of immigrants – 86% – are U.S. citizens, and thus could be eligible for benefits if their household earns below the poverty level.⁴⁸ These statistics show the widespread fallout potential from this NPRM.

In Houston, medical providers have already seen a drop in the number of people accessing services, which they attribute to the chilling effect of the leaked public charge regulations, misinformation and fear surrounding these regulations, and the impact of the NPRM itself. The Harris Health System, which serves low-income and uninsured clients in Houston, saw a 10 percent drop in outpatient visits from March 2017 to February 2018 among immigrants,

⁴⁴ See The Henry J Kaiser Family Foundation, “Living in an Immigrant Family in America: How Fear and Toxic Stress are Affecting Daily Life, Well-Being, & Health,” (December 2017), *available at* <https://www.kff.org/report-section/living-in-an-immigrant-family-in-america-issue-brief/>

⁴⁵ Gamboa, Suzanne, “Immigrants drop subsidized food, health programs — fearing aid will be used against them,” September 8, 2018, *available at* <https://www.nbcnews.com/news/latino/immigrants-drop-subsidized-food-health-programs-fearing-aid-will-be-n906246>

⁴⁶ Profile of Houston’s Diverse Immigrant Population (attached).

⁴⁷ *Id.*

⁴⁸ *Id.*

compared to a 7 percent average for all patients.⁴⁹ For undocumented immigrants, this resulted in 49,763 fewer visits – a decrease from about 526,000 to 476,000 visits.⁵⁰ Legacy Community Health believes that the proposed rule will impact Houstonians, as it will put a financial burden on the taxpayers of Harris County, as “people will end up in the emergency room because they will forgo their care and will end up in an emergency situation, which will cost all of us more.”⁵¹ Community Health Choice, a managed-care plan serving Medicaid, CHIP and ACA exchange enrollees in the Houston area, has seen seven consecutive months of decreased Medicaid enrollment, as well as a 20% decrease in CHIP perinatal program enrollment. The company attributes this to parents being afraid to enroll or re-enroll themselves and their children because of worries about the changes to the public charge rule in this NPRM and the broader immigration crackdown.⁵²

Providers in Houston are also concerned about the impact of the NPRM on the fight against hunger and malnutrition in Houston. Houston already lags in SNAP enrollment, with only one in five of eligible people being enrolled in the program; this means that an estimated 193,551 Houstonians are eligible for but not receiving SNAP benefits.⁵³ The Houston Food Bank conducted an assessment to determine how best to expand SNAP enrollment, finding that a barrier to participation for many is “concern that participation might undermine immigration status for someone in the household.”⁵⁴ The report cites the importance of partnerships, reaching out to vulnerable communities, and creating working groups that include immigrants as ways to increase SNAP participation in Houston. Yet the chilling effect of the NPRM means that the Houston Food Bank will surely not meet their goals. “These proposed changes have already begun to generate fear that may dissuade our region’s diverse immigrant communities, whether they are impacted by the rule or not, from seeking food assistance of any kind,” said Brian Greene, President and CEO of Houston Food Bank. “This is the opposite of why SNAP, our agency, and our network of 1,500 community partners exists.”⁵⁵ Epiphany Community Health Outreach Services (ECHOS), a Houston nonprofit, said it has seen a 33 percent decrease in the number of families signing up for SNAP this year.⁵⁶ At the same time, the group’s food pantry has seen the number of people it serves increase by 266 percent.⁵⁷ Since 2016, WIC caseloads

⁴⁹ Teo Armus, “A proposed federal policy won’t target immigrants for using welfare. In Texas, they might drop out anyway,” *The Texas Tribune* (September 28, 2018) available at <https://www.texastribune.org/2018/09/28/public-charge-immigration-chilling-effects-texas/>.

⁵⁰ Suzanne Gamboa, “Immigrants drop subsidized food, health programs — fearing aid will be used against them,” *NBC News* (Sept. 8, 2018), available at <https://www.nbcnews.com/news/latino/immigrants-drop-subsidized-food-health-programs-fearing-aid-will-be-n906246>.

⁵¹ Houston Matters, “Local Health Provider Speaks Against Rule to Limit Immigration Based on Public Benefits,” *Houston Public Media* (Oct. 16, 2018), available at <https://www.houstonpublicmedia.org/articles/shows/houston-matters/2018/10/16/308255/local-health-provider-speaks-against-rule-to-limit-immigration-based-on-public-benefits/>.

⁵² Harris Meyer, “Trump’s immigrant healthcare rule could hurt low-income populations,” *Modern Health* (August 14, 2018), available at <https://www.modernhealthcare.com/article/20180814/NEWS/180819962>.

⁵³ Houston Food Bank, *Closing the SNAP Gap: Recommendations to Prevent Hunger and Strengthen SNAP in Houston* (October 2018), available at http://www.houstonfoodbank.org/wp-content/uploads/2018/10/Advocacy_HoustonSNAPReport10182018.pdf.

⁵⁴ *Id.*

⁵⁵ Houston Food Bank Opposes Proposed Public Charge Rule, available at <https://www.houstonfoodbank.org/news-houston-food-bank-opposes-proposed-public-charge-rule/>.

⁵⁶ “A proposed federal policy won’t target immigrants for using welfare. In Texas, they might drop out anyway.”

⁵⁷ Teresa Wiltz, “Why Crackdown Fears May Keep Legal Immigrants From Food Stamps,” *PEW* (July 24, 2018), available at <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2018/07/24/why-crackdown-fears-may-keep-legal-immigrants-from-food-stamps>.

have dropped 20 percent in Houston – this is attributable to fear among the immigrant community that using federal assistance could affect their immigration status or lead to deportation.⁵⁸ The NPRM is an additional barrier to families who already feel threatened by the anti-immigrant climate.

School officials fear that the increased climate of fear will lead to lower school enrollment. The Houston Independent School District (HISD), the largest in Texas, serves more than 216,000 students across 287 schools. More than 12,000 students are immigrants, and nearly one-third, or 69,000 students, are English Language Learners. They speak 87 home languages overall, with the large majority (92 percent) speaking Spanish.⁵⁹ In Houston, only 38.5% of children of immigrants with household incomes under 200% of the federal poverty guidelines are enrolled in school.⁶⁰ In September 2018, school officials reported an apparent dip in student enrollments across the greater Houston area, particularly among Hispanic students. This is attributed to a combination of students still displaced by Hurricane Harvey and fears over immigration actions, including the proposed public charge regulations. Some principals of predominantly Hispanic schools in southwest Houston reported a three to five percent dip in enrollment.⁶¹

Attorneys representing indigent immigrants rely on social service agencies to ensure that clients are able to access the services and support they need to keep themselves and their families healthy and secure. This, in turn, allows them to engage in a meaningful attorney-client relationship and comply with their legal obligations because they are not worried about the day-to-day basic needs of food, shelter, and medical care. The chilling effect that will inevitably accompany this rule and has in fact already begun playing out will fundamentally undermine the security and stability of the individuals and families we work with as clients, and in turn weaken their ability to meaningfully interface with legal counsel.

The proposed rule will have economic and public health effects on the non-immigrant population

This fallout is not unexpected, nor is it unprecedented. Historical evidence from the 1996 PRWORA policy changes demonstrates that public information alone cannot prevent these damaging consequences, because of the complexity of immigration policies (greatly increased by this proposed rule), among other reasons. Even among groups of immigrants who were explicitly excluded from the 1996 eligibility changes, and U.S citizen children in mixed status families, participation dropped dramatically.⁶² History is again repeating itself.

⁵⁸ Elizabeth Trovall, “WIC Caseloads Down 20 Percent Houston Health Officials Say, Citing Immigration Fears,” Houston Public Media (Sept. 7, 2018), *available at* <https://www.houstonpublicmedia.org/articles/news/politics/immigration/2018/09/07/303030/wic-caseloads-down-20-health-officials-say-citing-immigration-fears/>

⁵⁹ Erica Greenberg, Molly Michie, and Gina Adams, Expanding Preschool Access for Children of Immigrants, Urban Institute (February 2018), *available at* https://www.urban.org/sites/default/files/publication/96546/expanding_preschool_access_for_children_of_immigrants_0.pdf

⁶⁰ *Id.*

⁶¹ Shelby Webb, “Houston officials fear a potential decline in Hispanic students,” Houston Chronicle (Sept. 7, 2018), *available at* <https://www.chron.com/news/houston-texas/houston/article/Houston-officials-fear-a-potential-decline-in-13211041.php>

⁶² 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.

In Houston, the effects of this NPRM will be broad and will impact people without any ties to immigration because of its economic impact. For instance, Legacy Community Health believes that this will put a financial burden on the taxpayers of Harris County, as “people will end up in the emergency room because they will forgo their care and will end up in an emergency situation, which will cost all of us more.”⁶³ The City of Houston Health Department has also expressed concern that this may be costly to the city, both financially and in terms of severe health consequences for Houstonians, as high numbers of people are projected to drop out of Medicaid as a result of this regulation.⁶⁴ Specifically, the City is concerned that fewer children will be vaccinated, leading to more vaccine-preventable disease outbreaks, and a decrease in school enrollment as children do not meet immunization requirements.⁶⁵ In addition to children, those with chronic diseases could put further stresses on emergency care if their health conditions deteriorate from a lack of on-going care and they become critically ill.⁶⁶ During a recent roundtable discussion with representatives from Houston’s healthcare industry, HILSC’s Executive Director listened to most of the major hospitals report that immigrants were significantly delaying care out of fear about exposure to risk. The impact of this is an increase in tax-payer funded hospitalizations for conditions that could have been addressed or prevented through public health services and preventative education.⁶⁷

A decrease in people applying for public benefits has broader ripple effects. Houston currently has \$110 million of unclaimed SNAP benefits that could otherwise provide groceries for children, seniors and families who need help. This is equivalent to a loss of nearly \$197 million to grocery stores, Texas farmers and other local food retail suppliers, since every \$1 of additional SNAP benefits generates \$1.79 of economic impact.⁶⁸ As noted above, this number is likely to increase given the fear that mixed-status households have about applying for the benefits they are entitled to. The City of Houston Health Department is also concerned that the decreased enrollment in nutrition assistance programs like Women, Infant and Children (WIC) and the Supplemental Nutrition Assistance Program – already happening but projected to further decrease with the implementation of this regulation – could lead to more sick and malnourished children.⁶⁹

The Proposed Rule Would Consume Significant U.S. Citizenship and Immigration Services (USCIS) Resources and Deepen Delays in Immigration Benefit Form Processing

The proposed rule would impose an immense administrative burden on USCIS. Among other obligations, it would require the agency to conduct time-intensive public charge inadmissibility determinations, as well as process Forms I-944, *Declaration of Self-Sufficiency*, in connection

⁶³ Houston Matters, “Local Health Provider Speaks Against Rule to Limit Immigration Based on Public Benefits,” Houston Public Media (Oct. 16, 2018), available at <https://www.houstonpublicmedia.org/articles/shows/houston-matters/2018/10/16/308255/local-health-provider-speaks-against-rule-to-limit-immigration-based-on-public-benefits/>

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ Houston Food Bank, Closing the SNAP Gap: Recommendations to Prevent Hunger and Strengthen SNAP in Houston (October 2018), available at http://www.houstonfoodbank.org/wp-content/uploads/2018/10/Advocacy_HoustonSNAPReport10182018.pdf

⁶⁹ *Id.*

with an estimated 382,264 adjustment of status applications annually. It also compels public charge assessments of an estimated 511,201 applications for extension or change of nonimmigrant status each year. 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.⁷⁰ A review of data just since FY 2017 indicates lengthening processing times for applications for green cards, employment authorization, travel documents, and green card replacements, among others. By the end of FY 2017, 5,606,618 applications and petitions remained unadjudicated by USCIS⁷¹ – 23% more than one year earlier.⁷² In February 2018, DHS conceded, “USCIS continues to face capacity challenges.”⁷³ In fact, processing times for many of the agency’s product lines has doubled in recent years.⁷⁴

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 essential to necessities like food and housing.⁷⁵ 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 who are dependent on case approval for their reunions.

Despite DHS’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 insecurity, 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.

Immigrants in Texas have seen their wait times balloon. The latest federal count available showed that the naturalization application backlog in Texas stood at about 103,300

⁷⁰ USCIS Webpage, “Data Set: All USCIS Application and Petition Form Types: Fiscal Year 2018, 2nd Quarter” (Jul. 17, 2018);

[https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/Quarterly All Forms FY18Q2.pdf](https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/Quarterly%20All%20Forms%20FY18Q2.pdf). DHS, “Annual Report on the Impact of the Homeland Security Act on Immigration Functions Transferred to the Department of Homeland Security” (Apr. 13, 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>.

⁷¹ U.S. Citizenship and Immigration Services. Data set: All USCIS Application and Petition Form Types, 2017, available at [https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/Quarterly All Forms FY17Q4.pdf](https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/Quarterly%20All%20Forms%20FY17Q4.pdf). End of FY 2017 Pending Forms – 5,606,618.

⁷² U.S. Citizenship and Immigration Services. Data set: All USCIS Application and Petition Form Types, 2016, available at https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/all_forms_performance_data_fy2016_qtr4.pdf. End of FY 2016 Pending Forms – 4,316,013.

⁷³ U.S. Department of Homeland Security. Annual Performance Report: Fiscal Years 2017-2019, 2018, available at [https://www.dhs.gov/sites/default/files/publications/DHS%20FY%202017-2019%20APR 0.pdf](https://www.dhs.gov/sites/default/files/publications/DHS%20FY%202017-2019%20APR%200.pdf).

⁷⁴ See USCIS Webpage, “Historical National Average Processing Time for All USCIS Offices” (up to Jul. 31, 2018); <https://egov.uscis.gov/processing-times/historic-pt>.

⁷⁵ See AILA, “Deconstructing the Invisible Wall” (Mar. 19, 2018); <http://www.aila.org/infonet/aila-report-deconstructing-the-invisible-wall>.

applications at the end of March 2018 – up from about 30,500 at the end of March 2014.⁷⁶ In Houston, federal officials set a processing time range between 17.5 and 19 months.⁷⁷ The processing time has now more than doubled for a lawful permanent resident to become a citizen in Texas.⁷⁸ These long delays mean that lawful permanent residents cannot petition for reunification with loved ones and cannot travel to visit family in their county of birth. The stress of waiting for status has significant negative mental health impacts as well.⁷⁹

Consideration of a Prior Application for a Fee Waiver Creates Double-Counting Problems and is Impermissibly Retroactive

Under the proposed rule, the use of a fee waiver (Form I-912) for any immigration benefit would be a factor in determining an immigrant’s financial status. This is improper. Separate consideration of the use of a fee waiver means that factors such as income would be unfairly counted twice. For example, 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 - once for the income and a second for the fee waiver granted because of the 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. The proposal also overweighs receipt of one-time immigration fee waivers to predict whether a person will become a public charge. Furthermore, the factors collectively are defined in a negative, unbalanced manner that does not give the average person a fair opportunity to overcome them.

Second, 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. This is not in line with Congress’s intent.

The Proposed Bond Procedures and Penalties are Exceptionally Harsh

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 dependence on government assistance.

The proposed rule not only establishes an excessive bond minimum of \$10,000, it also authorizes USCIS to set a dramatically higher bond in its discretion – with no cap – and bars any appeal of that amount. The rule stipulates that the penalty for *any* bond breach is the full bond amount and that *any* use of a specified public benefit while the bond remains in effect constitutes such a breach.

⁷⁶ Alexa Ura, “Under Trump, The Backlog of U.S. Citizenship Applications in Texas Is Growing,” Houston Public Media (August 9, 2018), available at <https://www.houstonpublicmedia.org/articles/news/2018/08/09/299370/under-trump-the-backlog-of-u-s-citizenship-applications-in-texas-is-growing/>

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ Rinaldi, Tiziana and Angilee Shah. “Immigration limbo is a ‘tug of emotions. It’s also a mental health issue,” PRI The World (August 22, 2017), available at <https://www.pri.org/stories/2017-08-21/immigration-limbo-tug-emotions-it-s-also-mental-health-issue>

These harsh conditions would drive many noncitizens to accept crippling surety bond terms to avoid family separation. Under those terms, the bond “principal” would have to pay the bond company up to 15 percent of the bond up front. This alone could prove destabilizing for low and moderate-income families. For example, for a family of four with an annual income of \$31,000 – representing 125% of the U.S. Federal Poverty Guidelines—15% of even the minimum bond amount of \$10,000 could mean foregone rent and meals, stifling rather than promoting that family’s ability to become self-sufficient.

In the event of a breach, the principal would have to reimburse the bond company for the full amount of the breach penalty. For instance, if a \$30,000 public charge bond is in effect for a noncitizen mother who then uses only \$1,500 worth of public benefits, the bond would be breached and she would be liable for the entire \$30,000 – 20 times more than what she received in benefits – and she would face potential separation from her family.

Studies show that bonds cause long-term hardship and increase the likelihood of financial instability.⁸⁰ Public charge bonds are even more likely to cause long-term hardship, given the indefinite life of the bond. 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.⁸¹ 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.

DHS Should Not Consider Credit History or Scores in its Public Charge Determination

The new requirement in the proposed rule that USCIS consider an immigrant’s credit report and score in analyzing their financial status is also unfair, unpredictable, and unnecessary. 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.⁸² 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.⁸³ Moreover, credit scores do not take into consideration rent payments, typically a family’s largest recurring expense.

⁸⁰ See, e.g., Color of Change and ACLU, [Selling Off Our Freedom: How insurance companies have taken over our bail system](#) (May 2017) see also Pretrial Justice Institute, [Pretrial Justice: What Does It Cost?](#) (Jan. 2017).

⁸¹ See, e.g., [Selling Off Our Freedom](#) (May 2017); [The High Cost of Bail: How Maryland’s Reliance on Money Bail Jails the Poor and Costs the Community Millions](#) (Nov. 2016); Vera Inst of Justice; [Past Due: Examining the costs and consequences of charging for justice in New Orleans](#) (Jan. 2017); UCLA School of Law Criminal Justice Reform Clinic, [The Devil in the Details: Bail Bond Contracts in California](#) (May 2017); Brooklyn Community Bail Fund, [License & Registration, Please...An examination of the practices and operations of the commercial bail bond industry in New York City](#), (Jun. 2017).

⁸² Consumer Financial Protection Bureau, Data Point: Credit Invisibles, (May 2015), *available at* 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 next two years).

⁸³ See generally Chi Chi Wu, National Consumer Law Center, Solving the Credit Conundrum: Helping Consumers’ Credit Records Impaired by the Foreclosure Crisis and Great Recession 9-12 (Dec. 2013), *available at* www.nclc.org/images/pdf/credit_reports/report-credit-conundrum-2013.pdf.

As DHS correctly indicates in the text of the proposed rule, not all immigrants have a credit report in the United States. DHS states that the lack of a credit report would not “necessarily” be a negative factor in the totality of the circumstances determination. The lack of a credit report should not play a role at all in this determination. Many immigrants, even those who have lived in the United States, are “unbanked” and do not have access to credit.⁸⁴ In the greater Houston area, 11.8 percent of households were unbanked, and an additional 22.4 percent were underbanked.⁸⁵ Though this number covers households in any status, this is a significant number of people who are unlikely to have a credit history and DHS should not penalize them by including this information in their financial status analysis.

Additionally, immigrants should not be penalized by having only a limited credit history in the United States. Many immigrants who do have some credit history have not been in the U.S long enough to develop a substantive credit history. This will likely count as a negative factor for USCIS because the age of various accounts makes up about fifteen percent of a FICO Score.⁸⁶

Studies show that even when immigrants do have credit histories, their credit scores are *artificially* low.⁸⁷ According to FICO, a “High Achiever” in this category will generally have an average age of accounts of eleven or more years.⁸⁸ Other elements of a FICO score, including new credit and credit mix, tend to cut against immigrants who have not developed a substantive credit history. A credit report and score is not an accurate way to determine an immigrant’s financial status.

This requirement will also increase the documentary burden for applicants. DHS notes that an immigrant could show “little to no debt and a history of paying bills timely” if they do not have a U.S. credit report or score. This will be impossible for some applicants, who may not have bills in their own names. It will also be difficult for immigrants who do not have any debt to demonstrate that. Finally, even an immigrant who can provide documentation of timely paid bills and paid off debt will need to spend significant time gathering proof of timely payments.

The Proposed Rule Would Compound the Immigration Court Backlogs and Create Inconsistencies in the Adjudication of Adjustment of Status in Immigration Court

Although immigration judges are not bound by DHS rules, the Department of Justice (DOJ) is in the process of creating a public charge rule that is believed to parallel the DHS proposed rule.⁸⁹ However, until a DOJ rule is finalized, the DHS proposed rule will likely be used as persuasive authority by immigration judges tasked with making public charge assessments. This will occur in at least three scenarios: (1) individuals without lawful status who are seeking to adjust

⁸⁴ “Unbanked” is defined as households that do not have an account at an insured institution.

⁸⁵ “Unbanked and underbanked for Houston-The Woodlands-Sugar Land, TX 2017 by Selected Household Characteristics,” Federal Deposit Insurance Corporation, *available at* www.economicinclusion.gov/surveys/2017household/documents/tabular-results/2017_banking_status_Houston_The_Woodlands_Sugar_Land_TX.pdf.

⁸⁶ Understanding FICO Scores: What you need to know about the most widely used credit scores, https://www.myfico.com/Downloads/Files/myFICO_UYFS_Booklet.pdf

⁸⁷ Bd. of Governors of the Fed. Reserve System, Report to the Congress on Credit Scoring and Its Effects on the Availability and Affordability of Credit at S-2 (Aug. 2007) (“Evidence also shows that recent immigrants have somewhat lower credit scores than would be implied by their performance.”)

⁸⁸ *Id.*

⁸⁹ See DOJ Fall 2018 Unified Agenda, at www.reginfo.gov/public/do/eAgendaViewRule?pubId=201810&RIN=1125-AA84.

status; (2) returning lawful permanent residents who are treated as applicants for admission under INA § 101(a)(13)(C); and (3) lawful permanent residents placed in removal proceedings who are seeking to re-adjust status with a waiver under INA § 212(h). Adjudication of adjustment of status applications by immigration judges are set to increase due to a 2018 policy change at USCIS under which notices to appear will be issued in any case in which USCIS issues a denial and the applicant has no legal status if denied. This will result in additional adjustment of status applications in front of an immigration judge, increasing the frequency of cases requiring a public charge adjudication.

Until a DOJ rule is promulgated, Immigration and Customs Enforcement (ICE) attorneys, who *are* bound by DHS regulations, will likely argue that immigration judges should apply the proposed rule's heightened standards. Lacking any binding precedent on the interpretation of INA § 212(a)(4), some immigration judges will agree and will rely on the proposed rule as a guide, while other immigration judges will not.⁹⁰ This will create inconsistencies in adjudication that will increase administrative inefficiencies through additional appeals and motions. Cases that are before judges that rely on the DHS framework for assessing public charge will take significantly more court time, due to the heightened evidentiary requirements and the need for additional and more detailed testimony. These heightened evidentiary requirements will also impact ICE attorneys, who will be required to review that evidence and prepare a response, as well as the respondent and his or her counsel, if represented.

With an immigration court backlog that is already above one million cases,⁹¹ the public charge rule would further exacerbate an already record high case volume. In Houston, the average person will have to wait 1,457 days before their case is heard.⁹² Increased evidentiary requirements, heightened scrutiny, and uncertainty as to what standard to apply will delay adjudications, add to the backlog, and result in inconsistent court adjudications.

Incoherent Adjudicative Frameworks Creates Confusion Around Eligibility

By replacing a longtime and effective standard with an incoherent framework, immigration attorneys and accredited representatives will find it next to impossible to advise intending immigrants on their eligibility for lawful permanent residence or other immigration benefits. The proposed rule will add many layers of confusion to the process, to such an extent that what should be a clear adjustment of status case becomes riddled with uncertainty. This will make it almost impossible for an immigrant to navigate the system without legal help, and yet, lawyers will be hard-pressed to offer guidance without a clear legal standard. In addition, we are already severely constrained by a lack of experienced immigration attorneys who are able to offer free and low-cost consultations to low-income families. If the proposed rule goes into effect, this scarce resource will become even more scarce. Combined with USCIS's new policy for placing individuals in removal proceedings if their applications are denied, people who are entitled to lawful permanent residence will be too afraid to apply to adjust status, leading to more people in the U.S. without status.

⁹⁰ The Board of Immigration Appeals (BIA) has not issued any precedent decisions interpreting public charge since Congress amended those provisions in the 1996 Illegal Immigration Reform and Immigrant Responsibility Act.

⁹¹ TRAC Immigration, Immigration Court Backlog Surpasses One Million Cases, Nov. 6, 2018, *available at* <http://trac.syr.edu/immigration/reports/536/#f1>.

⁹² TRAC Immigration, Immigration Court Backlog Jumps While Case Processing Slows, June 8, 2018, *available at* <http://trac.syr.edu/immigration/reports/516/>.

Conclusion

The Houston Immigration Legal Services Collaborative opposes the proposed public charge rule. If implemented this rule will disproportionately impact low-income immigrants, immigrants with disabilities, persons of color, seniors and other members of our communities. For these individuals this rule would, in effect, deny them a path to come to the US and ultimately gain citizenship. Immigrants, fearful of navigating this complex rule change will be less likely to file pro se applications or seek adjustment of status. We have already begun to see the chilling effect of rumors of these changes –implementation would worsen these effects.

For these reasons and those stated in more detail above, the DHS 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.

Sincerely,



Kate Vickery
Executive Director
Houston Immigration Legal Services Collaborative



Andrea Guttin
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