

Immigration Practice Clinic



December 6, 2018

Submitted via www.regulations.gov

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

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

Dear Sir/Madam:

The Immigration Practice Clinic at Vanderbilt University Law School (“Clinic”), along with organizations across the state of Tennessee who work with immigrant communities, are writing in response to the Department of Homeland Security’s (DHS, or the Department) Notice of Proposed Rulemaking (NPRM or proposed rule) to express our opposition to the changes regarding “public charge,” published in the Federal Register on October 10, 2018.

For the immigrant community in Tennessee, the proposed rule would cause major harm to their families, localities, states, and health care providers and facilities. The proposed rule fails to adequately explain the purpose of the modification. This failure is of concern to legal and nonprofit organizations across the state of Tennessee who work on behalf of immigrant communities. We respectfully urge that the rule be withdrawn in its entirety.

Impact of Proposed Rule on Immigrants in Tennessee

The Immigration Practice Clinic at Vanderbilt University Law School is an in house public interest law firm where law students, under the supervision of an attorney and law professor, represent individuals who cannot afford counsel *pro bono*. Students in the Immigration Practice Clinic practice before the Memphis Immigration Court, the Board of Immigration Appeals, and the federal courts of appeals. The students focus on humanitarian immigration cases and amicus briefs before the Supreme Court of the United States. The Clinic represent immigrants from across the state of Tennessee.

The authors of this letter and the signatories collectively have multiple years of expertise working with immigrant communities in Tennessee.

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Ms. Muna Abdallah is a law student at Vanderbilt University Law School. She is currently enrolled in Immigration Law and Policy. Prior to enrolling in law school, she worked at Catholic Charities Refugee Resettlement Program, in Cincinnati Ohio. At Catholic Charities, she assisted refugee families in obtaining housing, employment and medical benefits, and provided ongoing case management to help integrate the families into their new homes.

Mr. Alvaro A. Manrique Barrenechea is a Masters of Laws (LLM) student at Vanderbilt University Law School. He is currently enrolled in Immigration Law and Policy. Prior to enrolling in law school, he worked at Justice for our Neighbors (JFON) in Nashville, Tennessee as the Office Director. At JFON, he was responsible for managing information, providing support to attorneys and other office personnel through workflow management and other administrative tasks, as well as managing volunteers and interns.

Ms. Holly Thompson is a law student at Vanderbilt University Law School. She was a 2017 - 2018 Douglass Fellow with the Human Trafficking Institute in McLean, Virginia. She is currently enrolled in Immigration Law and Policy. As a Douglass Fellow, she conducted research on forced labor, specifically for cases involving non-citizen victims, and worked on a project involving trafficking survivors and issues relating to T visas and U visas.

Professor Karla McKanders has been a lawyer for 15 years and an immigration practitioner and professor for 12 years. In her role as a professor, she has taught immigration and refugee law and directed an immigration clinic. In 2012, while on a Fulbright Award in Morocco, she played an instrumental role in establishing Morocco's first pro bono Refugee Legal Aid Clinic. She continues to collaborate with law professors and civil society in the Middle East and North Africa to address implementing clinical legal education and disparities in access to justice for immigrants and refugees.

The Immigration Practice Clinic works with organizations across the state of Tennessee providing legal counsel and guidance to indigent immigrant and refugee populations, including unaccompanied minors, children and diverse immigrant communities. The signatories to this letter include:

Community Legal Center of Memphis
Conexión Américas of Nashville
Latino Memphis, Inc.
Nashville International Center for Empowerment (NICE)
The Tennessee Coalition to End Domestic and Sexual Violence
The Tennessee Immigrant and Refugee Rights Coalition (TIRRC)
Tennessee Justice for Our Neighbors (TNJFON)

all of whom work with diverse population of immigrants. In this capacity and given our collective expertise, this letter addresses how the rule will adversely impact immigrant communities across the state of Tennessee and nationally.

The state of Tennessee has experienced a near 200% increase in its foreign born population over the past ten years. Tennessee is rated as one of the top states for increased immigrant populations. Immigrant populations are moving to the larger cities in Tennessee and also the more rural areas where there are factories, tourism (Smoky Mountains) and also farming industries. This is especially apparent on the eastside of the State of Tennessee.

The proposed rule represents a massive change in current policy. The proposed rule would alter the public charge test dramatically, abandoning the enduring meaning of a public charge as a person who depends on the government for subsistence, changing it to anyone who simply receives assistance with health care, nutrition, or housing. Under current policy, a public charge is defined as an immigrant who is “likely to become primarily dependent on the government for subsistence.” The proposed rule radically expands the definition to include any immigrant who simply “receives one or more public benefits.” This shift drastically increases the scope of who can be considered a public charge to include not just people who receive benefits as the main source of support, but also people who use basic needs programs to supplement their earnings from low-wage work. The proposed expansion of the public charge definition will most likely result in the denial of green cards to thousands of people who are eligible under the current rules. The proposed changes will also instill unnecessary fear in our communities and have a chilling effect on individuals who could otherwise seek critical benefits for which they are eligible.

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

The rule also makes other massive changes, such as introducing an unprecedented income test and weighing negatively many factors that have never been relevant. Tennessee is currently home to many immigrant families. In particular, Nashville, a city that has been steadily growing in the past years, has attracted many immigrant families who have settled down in this part of the United States. The influence that immigrants have in the community is witnessed in streets, events, restaurants and many other venues.

However, there is a side of the immigrant story that is not displayed to the public, and that is the multiple challenges that various immigrant families face in their day to day lives. An immigrant family may be composed of individuals with mixed immigration statuses; some, usually children, may be U.S. citizens, others may be Lawful Permanent Residents, Deferred Action for Childhood Arrivals (DACA) recipients, and some are undocumented.

This leads to a constant fear of family separation, given that not all family members are lawfully present in the United States and therefore could be subject to removal proceedings when facing any kind of encounter with law enforcement. Parents fear being deported and having to choose whether to take their U.S. children back to their home countries with them, or leaving them in the United States, which is the only country they relate to and where their entire lives have been spent.

Some immigrant families obtain their main household income through family members who are undocumented or who are temporary visa-holders. This results in low wages and even exploitation by employers that take advantage of their immigration situation. Many H-2A and H-2B visa-holders are especially vulnerable to exploitation and labor trafficking because they are unable to leave an exploitative labor situation to find a new job. This is a common trend in labor trafficking cases in Tennessee and throughout the nation. These rules will give unethical employers an even greater opportunity to coerce or take advantage of their immigrant employees and their families because these families will have little access to any resources, depend more heavily on their employment and may be unable to adjust their status.

Families strive to succeed and in order to do so, they depend on public benefits when available to their relatives who are eligible for them. The new proposed rules are already having an impact on immigrant families who find themselves wondering if applying for certain benefits will have a negative impact on their immigration status or in the future possibility of obtaining lawful status in the United States.

These new rules hinder the economic growth of many immigrant families, by inhibiting them from requesting public benefits, such as Medicaid programs, housing assistance, SNAP, among others; even when their relatives are entitled to them. This will not only have a negative economic effect on immigrant families, but will also result in poor living and health conditions.

These massive changes are not justified by any rationale. Both research and Congressional actions over the nearly 20 years that the Field Guidance has been in effect provide ample evidence that there is no problem with the existing regulations and their implementation and no persuasive rationale for change. Rather, this rule appears to be motivated by a desire to change America's system of family-based immigration to grant preference to the wealthy, in ways that the Administration has proposed through legislation but that Congress has rejected. It would create a multitude of ways for individuals to fail the public charge test, and very few ways to overcome it.

The 1996 Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) limited immigrant eligibility for federal means-tested public benefits, but Congress did not amend the public charge law to change what types of programs should be considered. That same year, in the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Congress codified the case law interpretation of public charge. After 1996, there was a lot of confusion about how the public charge test might be used against immigrants who were eligible for, and receiving certain non-cash benefits and legal immigrants' use of public assistance programs declined significantly.¹

¹ Fix, 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).

In response to concerns that some consular officials and employees of the then-Immigration and Naturalization Service (INS) were inappropriately scrutinizing the use of health care and nutrition programs, and the strong evidence of chilling effects from the 1996 law, INS issued an administrative guidance in 1999 which remains in effect today -- clarifying that the public charge test applies only to those “primarily dependent on the government for subsistence”, demonstrated by receipt of public cash assistance for “income maintenance”, or institutionalization for long-term care at Government expense. The guidance specifically lists non-cash programs such as Medicare, Medicaid, food stamps, WIC, Head Start, child care, school nutrition, housing, energy assistance, emergency/disaster relief as programs NOT to be considered for purposes of public charge.² 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

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

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

The fear created by these rules would extend far beyond any individual who may be subject to the “public charge” test, harming entire communities as well as the infrastructure that serves all of us, such as schools, hospitals and clinics. All of these consequences are identified in the proposed rule itself, under costs; a substantial body of evidence demonstrates that they are highly significant and damaging.

The widespread “chilling effect” that causes families to withdraw from benefits due to fear is already evident as a result of rumors regarding the proposed rule. Legal service providers have begun to notice that in the recent months, when helping immigrant families, there is an increasing amount of questions related to the use of public benefits and how this could negatively impact their ability to pursue different forms of immigration relief. Parents are scared to apply for food stamps and other public benefits for their qualifying U.S. citizen children, as well as health benefits for other qualifying family members. Non-profit organizations provide legal services to immigrants applying for humanitarian based immigration relief such as U-Visas, T-Visas among others. Most

² 64 Fed. Reg. 28689.

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.

individuals and families applying for this type of relief are facing steep economic challenges, and therefore are in most need of the same public benefits which they are scared to receive.

Likewise, 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. Historical evidence from the 1996 PRWORA policy changes, which is cited in the NPRM itself, 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.⁴

The proposed rule would cause major harm to the children of immigrant parents, whether they are immigrants or citizens themselves. In fact, 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. 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 have a roof over their heads. Conversely, parents' stress and health challenges impede effective caregiving and can undermine children's development. In states that have chosen to provide Medicaid coverage to all lawfully present pregnant women, the link between parent and child well-being is even more direct: a mother's use of health care during her pregnancy could prevent her from later extending or improving her immigration status.

Although the proposed rule acknowledges that the public charge determination is supposed to be prospective, the proposed criteria used to determine whether or not an applicant will be a public charge are actually retrospective, and offered without any evidence that they are relevant to the determination of whether an immigrant will become dependent on the government for support in the future. There is significant data on how generations improve their economic contributions over time. And discouraging families from receiving health, nutrition, housing, or educational supports for their children will only make it harder for them to achieve economic security in the future. It is particularly absurd and horrific to propose denying entry or immigration status to children because they aren't yet old enough to work.

The negative factors outlined in the rule ignore the impact of access to public benefits and family support as positive factors in empowering future self-sufficiency. The rule does not recognize that receipt of benefits that cure a significant medical issue or provide people with the opportunity to complete education and training are highly significant positive factors that contribute to future economic self-sufficiency. There is a large body of research evidence on the positive long-term effects of receipt of many of the benefits that are included in the public charge determination, including SNAP and Medicaid.

⁴ 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.

The criteria are also arbitrary because:

- They require a separate Affidavit of Self-Sufficiency in addition to the existing Affidavit of Support. This requirement is duplicative and therefore unnecessary;
- They mandate denial for anyone who cannot provide an Affidavit of Support yet the presence of an Affidavit of Support is not a heavily weighed positive factor;
- They make being under 18 negative based in part on the fact that people under the age of 18 will have just become eligible to work under state law, when state laws differ on this issue and in some states starts at age 16;
- The criteria requiring immigration officials to look at bank balances unfairly discriminate against immigrants who are not likely to put their money in a bank account;
- The proposal also overweighs receipt of one-time immigration fee waivers to predict whether a person will become a public charge;
- The factors collectively are defined in a negative, unbalanced manner that does not give the average person a fair opportunity to overcome them. In fact, 1/3 of US born citizens would have trouble passing this test.⁵
- By listing multiple correlated experiences (e.g. low income, lack of employment, and poor credit scores) as separate factors, the rule places undue weight on each of them and pretends scientific objectivity while actually putting a thumb on the scales.

For these reasons, the Department should immediately withdraw its current proposal, and dedicate its efforts to advancing policies that strengthen—rather than undermine—the ability of immigrants to support themselves and their families in the future. If we want our communities to thrive, everyone in those communities must be able to stay together and get the care, services and support they need to remain healthy and productive.

Thank you for the opportunity to submit comments on the proposed rulemaking. Please do not hesitate to contact Karla McKanders with the Immigration Practice Clinic at Vanderbilt Law School to provide further information.

Sincerely,

/s/

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⁵ Danilo Trisi, “One-Third of U.S.-Born Citizens Would Struggle to Meet Standard of Extreme Trump Rule for Immigrants,” Center on Budget and Policy Priorities found at: <https://www.cbpp.org/blog/one-third-of-us-born-citizens-would-struggle-to-meet-standard-of-extreme-trump-rule-for>

Concerns of Signatories to Letter on Proposed Public Charge Rule

The **Community Legal Center (CLC)**, a legal aid organization in Memphis, Tennessee. The CLC represents the working class of Memphis and Shelby County. Our clients, many of whom are immigrants, work hard and contribute to our community in many ways. However, they do not earn enough money to pay for private attorneys to meet their legal needs. Based on CLC's 25 years of experience representing the working poor and immigrant communities, we strongly oppose the Department of Homeland Security (DHS) proposal regarding inadmissibility on public charge grounds. Our objection is due to the proposed rule being counterproductive to its stated purpose of encouraging self-sufficiency, its unjust endangerment of the health and safety of millions of Americans, the threat it poses to local and state economies, and the unconscionably low threshold for inadmissibility.

Anne Mathas, *Executive Director*

Brittany Bane, *Legal Intern*

Conexión Américas is a Nashville-based nonprofit organization established in 2002. Its mission is to build a welcoming community and create opportunities where Latino families can belong, contribute and succeed. Every year, Conexión Américas assists more than 8,000 individuals and their families in their desire to start businesses, buy homes, improve their English, help their children succeed in school and go to college, and become an integral part of Nashville's social, cultural and economic vitality. At Conexión Américas, we are already hearing from concerned mothers and fathers with U.S. citizen children wondering how the proposed policy will affect them. Specifically, parents are seeking advice on whether to dis-enroll from sometimes lifesaving safety nets for their children such as health insurance or food stamps. If enacted, U.S. citizen children will bear the brunt of this measure, which will negatively impact the health and well-being of all.

Andres Martinez, *Director of Communications*

Over the past 20 years, **Latino Memphis, Inc.** has become the go to organization for issues impacting the Hispanic community in the Mid-South, raising the voice of Latinos in our region and advocating for a better, more inclusive Memphis. Since our inception at MIFA and our subsequent growth as an independent agency, we have become the largest Latino serving nonprofit in West Tennessee, serving thousands of clients each year and advancing awareness of the many issues impacting the Latino community. As our programs have grown, so too has our capacity to affect positive change in the lives of Latino Memphians. Our mission is to assist Latinos in the Greater Memphis area by connecting, collaborating and advocating for health, education and justice. We envision a future in which every Latino in the Memphis metropolitan area has the opportunity and resources to become an engaged and active member of the larger community.

Latino Memphis would like to express our opposition to the changes regarding “public charge,” published in the Federal Register on October 10, 2018. The proposed rule would cause great harm to the immigrants and newcomers we serve. In our El Centro resource hub, we serve over 7,000 individuals on an annual basis to connect low income Latino community members with support services to aid them on their path to self sufficiency, such as government relief services, non profit resources and general assistance navigating the system. An example, since June of 2018 our Navigator connected 784 individuals to affordable health care. In our legal department we have over 500 clients who are eligible for immigration relief, who could be negatively affected by the proposed changes. The proposed rule would be extremely detrimental to the families we serve and their ability to contribute in a positive fashion to the broader community overall. We respectfully urge that the rule be withdrawn in its entirety.

Mauricio Calvo, *Executive Director*

Nashville International Center for Empowerment (NICE) has served people from more than 72 different nations currently living in Middle Tennessee, with most of our clients being of Asian, African and Middle Eastern decent. We aim to increase our clients’ abilities to effectively read, write, and speak English, facilitating long-term independence and stability by leading to sustainable employment and self-sufficiency for adults and ongoing academic achievement for children, thereby addressing the underlying issues contributing to poverty in our community. Our programs are offered to legal permanent residents with refugee, ayslee, or immigrant statuses. The changes to the public charge regulations are pertinent to NICE as we work to eliminate of the root causes of poverty within greater Nashville’s refugee and immigrant community, the creation of opportunities for upward socioeconomic mobility, and the social integration of those it serves. Our clients are encouraged and even challenged to think beyond their current circumstances and discuss long-term goals. NICE makes every effort to establish the foundation necessary to achieve these goals by placing clients in educational and employment environments that are conducive to ultimate success.

Dr. Gatluak Thach, *Executive Director*

The Tennessee Coalition to End Domestic & Sexual Violence is the statewide network of programs working to end violence in Tennessee. Established in 1983 as a nonprofit agency, the Coalition provides information, education, public policy advocacy and direct legal services and emergency assistance to victims. The Coalition opposes the proposed rule as it unnecessarily re-defines the public charge ground of inadmissibility. The proposed rule will change the focus from someone who will be *primarily* dependent on public benefits, to focusing on anyone who uses a modicum of benefits for any reason. Whether intended or not, this proposed change will discriminate against and negatively impact the most vulnerable in our society: children, domestic violence victims, those with serious mental or physical health issues, and low income immigrant families.

Kathy Walsh, *Executive Director, Tennessee Coalition to End Domestic and Sexual Violence*

The Tennessee Immigrant and Refugee Rights Coalition (TIRRC) is a coalition of immigrants, refugees, and allies working to lift up fundamental American freedoms and human rights and build a strong, welcoming, and inclusive Tennessee. We envision a society in which: immigrants are powerfully engaged as leaders in the civic, political, and cultural life of the community; the human rights and dignity of all people are respected, and diversity is welcomed and valued; people are free from discrimination and oppression, and immigrants are joined with others in a broader movement for religious freedom and social, racial and economic justice.

Lisa Sherman Nikolaus, *Policy Director*

Tennessee Justice for Our Neighbors (TNJFON) is part of a nation-wide network of nonprofit immigration legal service providers founded by the United Methodist Committee on Relief in 1999. TNJFON's clients are largely low-income; most of our legal services are restricted to individuals below 200% of the federal poverty guideline. Though non-citizens' access to public benefits in Tennessee is limited, many of our clients depend on these programs to ensure that their U.S. citizen children can access health care and to prevent food insecurity. Many of our clients are survivors of violence whose experiences put them at higher risk for financial difficulties: they include individuals who have recently left abusive relationships; workers who have cut back their hours out of fear of returning home after dark; and people who face significant bills for the medical and psychological attention required after an attack. The new public charge rule will make it more difficult for these individuals to access the help they need; even those who may not be subject to the public charge rule are less likely to apply for assistance for fear that it may harm their future applications for lawful immigration status, or out of a misunderstanding of the breadth of the policy. We have recently received a number of calls from even permanent residents afraid of how the new policy will affect them. We believe that the proposed rule will have a negative effect on the health and well-being of our already-vulnerable clients and their families, even those who it is not intended to reach.

Adrienne S. Kittos, *Legal Director*