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Via Federal eRulemaking Portal (Regulations.gov)
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Secretary
U.S. Citizenship and Immigration Services
Department of Homeland Security
45900 Capital Gateway Drive
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Re: *Public Charge Ground of Inadmissibility*, Notice of Proposed Rulemaking, Fed. Reg. Vol. 90, No. 221; DHS Docket No. USCIS-2025-0304

The City of New York as well as City of Austin, Texas; Baltimore City Department of Law, Maryland; Boston City Law Department, Massachusetts; Cambridge City Solicitor's Office, Massachusetts; City of Chicago Department of Law, Illinois; Columbus City Attorney's Office, Ohio; City of Evanston Mayor's Office, Illinois; City and County of San Francisco, California; Los Angeles City Attorney's Office, California; City of New Haven Mayor's Office, Connecticut; Oakland City Attorney's Office, California; Portland City Attorney's Office, Oregon; Saint Paul City Attorney's Office, Minneapolis; City of San Jose, California; San Mateo County Counsel's Office, California (together the "Signatories") submit this comment in opposition to the above-referenced Notice of Proposed Rulemaking, DHS Docket No. USCIS-2025-0304 (the "Proposed Rule" or "NPRM").

I. Introduction

The Proposed Rule published by the United States Citizenship and Immigration Services ("USCIS") of the Department of Homeland Security ("DHS") rescinds existing regulations that guide determinations of whether a noncitizen is inadmissible on the basis that such noncitizen is likely to become a public charge. The existing regulations gave life to over a century of understanding that a person is likely to become a public charge if such person will depend significantly on the government for basic subsistence. In place of these regulations, DHS offers nothing, stating obliquely that it "plans to provide interpretive and policy tools to guide public charge inadmissibility determinations" at an unspecified time in the future. NPRM at 52,193. DHS does not state what such "interpretive and policy tools" will say, nor does it indicate any intention to promulgate replacement regulations that would be subject to notice and comment. In so doing, DHS improperly avoids public scrutiny of the guidance it intends to issue that will articulate the method its officers will use to determine whether a noncitizen is inadmissible based on a finding that such noncitizen is likely to be a public charge.

The Proposed Rule's lack of substance does not save it from its many deficiencies. This Comment focuses on the legal failings of the Proposed Rule, which violates the Administrative Procedure Act ("APA") and other affirmative obligations of the rulemaking process in several

respects. First, the Proposed Rule violates the APA because it is contrary to law and exceeds statutory authority insofar as it conflicts with the origin and purpose as well as the decades-long understanding of the term "public charge," as reflected in case law and ratified into the statute by Congress when it passed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), and because it conflicts with the detailed scheme of noncitizen benefits eligibility Congress enacted in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("PRWORA"). Second, the Proposed Rule violates the APA because it is arbitrary and capricious. The Proposed Rule is not supported by any evidence or reasoned decision-making and instead reflects a failure to consider the economic and public-health impacts the Proposed Rule would have on local governments, including those who are signatories to this Comment, in violation of Executive Order 13132. Third, the Proposed Rule fails to consider family wellbeing, as it is required to do under the Treasury and General Government Appropriations Act. Finally, the Proposed Rule violates the Due Process Clause of the Fifth Amendment insofar as it will have a disparate impact on protected classes and is impermissibly vague. For all these reasons, the Proposed Rule should not be promulgated without significant amendments to bring it in line with the established understanding of public charge and federal law.

II. Summary of the Proposed Rule

The Proposed Rule would remove the regulations codified at 8 C.F.R. §§ 212.20 to 212.23, which set out the current framework to guide USCIS officers in determinations regarding the public charge ground of inadmissibility. Section 212.20 provides that the public charge ground of inadmissibility applies "to an applicant for admission or adjustment of status to that of a lawful permanent resident" except where such applicant is exempt under section 212.23. Section 212.21 defines several terms relevant to public charge determinations. Most critically, it defines the term "likely at any time to become a public charge" as "likely at any time to become primarily dependent on the government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance or long-term institutionalization at government expense." § 212.21(a). Section 212.22 articulates the framework for how USCIS should approach public charge determinations. First, it restates the factors that USCIS is required to consider under the Immigration and Nationality Act ("INA")—age; health; family status; assets, resources, and financial status; education and skills; and an affidavit of support from a sponsor, where required. 8 U.S.C. § 1182(a)(4) ("Public Charge Statute"). Second, it instructs USCIS officers to consider a noncitizen's "current and/or past receipt of public cash assistance for income maintenance or long-term institutionalization at government expense" "in the totality of the circumstances" such as the "amount and duration of receipt, as well as how recently the alien received the benefits" but notes that benefit receipt "will not alone be a sufficient basis" to make a public charge finding and that benefits received while a noncitizen had an immigration status that is exempt from the public charge ground of inadmissibility will not be considered. In addition, it instructs officers that a disability cannot alone form a basis for a public charge finding. Finally, section 212.23 specifies the immigration statuses that are exempt from the public charge ground of inadmissibility either by statute or other regulation.

The current regulations were implemented by a September 2022 rulemaking, 87 Fed. Reg. 55,472 (Sept. 9, 2022) ("2022 Final Rule"), which was modeled heavily on guidance issued by the Immigration and Naturalization Service (INS) in 1999, 64 Fed. Reg. 28,689 (May 26, 1999) ("1999 Field Guidance").[1] The 1999 Field Guidance accompanied a notice of proposed rulemaking, 64 Fed. Reg. 28,676 (May 26, 1999), that would have implemented the approach to public charge determinations articulated in the 1999 Field Guidance, but that rule was never finalized. Because that proposed rule was never implemented, the 1999 Field Guidance was left in place and governed public charge determinations for nearly 20 years. In 2018, USCIS changed tack and issued a proposed rule, 83 Fed. Reg. 51,114 (Oct. 10, 2018), that was formalized in a final rule issued in 2019, 84 Fed. Reg. 41,292 (Aug. 14, 2019), as amended by 84 Fed. Reg. 52,357 (Oct. 2, 2019) ("2019 Final Rule"). The 2019 Final Rule marked a significant departure from the decades-long approach taken by the agency. Rather than define public charge to be someone likely to rely on the government for basic subsistence, the 2019 Final Rule defined the term as a person "who receives one or more public benefits … for more than 12 months in the aggregate within any 36-month period (such that, for instance, receipt of two benefits in 1 month counts as 2 months)." 2019 Final Rule at 41,295. Moreover, the 2019 Final Rule broadened the types of benefits to be considered to include not just cash assistance for income maintenance and long-term institutionalization but also any federal, state, local, or tribal cash assistance, SNAP, many forms of Medicaid, Section 8 housing benefits, and certain other forms of subsidized housing. *Id.* The 2019 Final Rule's construct in which noncitizens were automatically deemed to be public charges based on receipt of benefits, including in-kind benefits, for a relatively short period of time was found by three courts of appeal to be contrary to the standard set forth in the INA and articulated throughout the history of the public charge ground of inadmissibility. *Cook Cty. v. Wolf*, 962 F.3d 208 (7th Cir. 2020); *New York v. United States Dep't of Homeland Sec.*, 969 F.3d 42 (2d Cir. 2020); *City & Cty. of San Francisco v. United States Citizenship and Immigration Services*, 981 F.3d 742 (9th Cir. 2020); *but see CASA de Md. v. Trump*, 971 F.3d 220 (4th Cir. 2020) (upholding 2019 Final Rule), *reh'g en banc granted*, 981 F.3d 311 (4th Cir. 2020), *appeal dismissed*, *Casa de Md., Inc. v. Biden*, No. 19-2222, 2021 U.S. App. LEXIS 7177 (4th Cir. Mar. 11, 2021). The 2019 Final Rule was ultimately abandoned with the change in federal administration in 2021. The 1999 Field Guidance was put back into effect for a brief period until the promulgation of the 2022 Final Rule.

Other than the brief period in 2020 in which the 2019 Final Rule was in effect, DHS' approach to public charge has been consistent for nearly 25 years. By rescinding this well-settled approach in its entirety, the Proposed Rule removes any restriction on the types of benefits that may be considered, the amount of such benefits, or the duration of receipt of such benefits. In addition, the Proposed Rule permits officers to consider non-cash benefits like Medicaid, the Supplemental Nutrition Assistance Program ("SNAP") and the Children's Health Insurance Program ("CHIP") without restriction. NPRM at 52,183; *see also id.* at 52,181 (proposing to delete 8 CFR 212.22 because it lacks a "'catch-all' provision"). DHS states that if the Proposed Rule goes into effect, a USCIS officer "may, in his or her discretion, determine what factors other than the statutory minimum factors are relevant to any individual case." NPRM at 52,181. In essence, a

[1] The INS was subsequently replaced by USCIS.

public charge determination is now wholly left to the whim of individual officers. Indeed, DHS goes even further, stating that "the receipt of any type of public benefits" is "critical" to determining whether a noncitizen is "actually self-sufficient" and that any person who "lacks self-sufficiency should not be admitted to the United States or granted adjustment of status to that of a lawful permanent resident." NPRM at 52,183. DHS effectively concedes that this is a break from how public charge has been assessed in the past, stating that "current administration policy … with respect to welfare and immigration" is an impetus for the recission, "[e]ven if the 2022 Final Rule could be viewed as a faithful implementation" of the law. *Id.* For the reasons that follow, this approach is unlawful and the Proposed Rule must not go into effect in its current form.

III. The Proposed Rule Violates the APA

A. The Proposed Rule Violates the APA Because It Is Contrary to Law and Exceeds Statutory Authority

Agency action that is "not in accordance with law" and in excess of statutory authority must be set aside. 5 U.S.C. §§ 706(2)(A) and (C). In the Proposed Rule, DHS claims that USCIS officers administering the Public Charge Statute should have unlimited discretion to evaluate *any* factors that are relevant to determine whether a noncitizen is likely to become a public charge "in [the officer's] opinion." *See* NPRM at 52,181 ("Indeed, because the statute requires the officer to determine inadmissibility in his or her opinion, the officer may, in his or her discretion, determine what factors other than the statutory minimum factors are relevant to any individual case."). This radical approach to the public charge determination represents a sharp and untenable break from the long-established meaning of the term public charge since its introduction to U.S. immigration law over 140 years ago. Courts, not agencies, are responsible for interpreting statutes and determining whether action falls within the bounds of statutory authority. *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 391-96 (2024). Because the Proposed Rule untethers the public charge determination from the well-settled meaning of the Public Charge Statute, the Proposed Rule is invalid and should not be finalized.

1. <u>The Proposed Rule Is Contrary to the Historical Meaning of Public Charge</u>

The term "public charge" and its use to determine inadmissibility for certain noncitizens has been a feature of U.S. immigration law since the Immigration Act of 1882 (the "1882 Act"), the first general immigration law in U.S. history, which barred entry to "any convict, lunatic, idiot, or any person unable to take care of himself or herself without becoming a public charge." 22 Stat. 214, Chap. 376 § 2 (1882). Because Congress has maintained this term without defining it since the 1882 Act, its meaning at the time of the 1882 Act is particularly relevant. *See New Prime Inc. v. Oliveira*, 586 U.S. 105, 113 (2019) ("It's a fundamental canon of statutory construction that words generally should be interpreted as taking their ordinary meaning at the time Congress enacted the statute."). As set forth below, the historical meaning of a person who may become a "public charge" was a person who was unwilling or unable to work and who was thus likely to become primarily and permanently dependent on the government for subsistence.

The 1882 Act had its origins in state laws that sought to guard against European governments purposefully sending into their jurisdictions individuals "from their respective poor-houses, physically and mentally incapacitated for labor, to become necessarily a permanent charge upon our public or private charities." FRIDRICH KAPP, IMMIGRATION AND THE COMMISSIONERS OF EMIGRATION OF THE STATE OF NEW YORK 91 (1870). In nineteenth century state laws regulating immigration, New York and Massachusetts required bonds to support infirm passengers "likely to become *permanently* a public charge." Ch. 195, § 3, 1847 N.Y. Laws 182, 184 (emphasis added); *see also* Ch. 105, § 1, 1850 Mass. Acts 338, 338-39 (requiring bonds for anyone "infirm or destitute, or incompetent to take care of himself or herself[] without becoming a public charge"). To discourage those likely to become public charges but permit the entrance of industrious immigrants who may be devoid of resources and require some assistance, States used the term "public charge" in these statutes to refer only to "persons utterly unable to maintain themselves." KAPP, *supra,* at 87. The term did not include "courageous and enterprising" immigrants who could work, even if they were quite poor or might receive some form of public assistance. *See id.* at 150. For example, the Massachusetts Supreme Court explained that a statute requiring thousand-dollar bonds for alien passengers who are "incompetent . . . to maintain themselves, or who have been paupers in any other country," referred to "those who have been paupers in a foreign land; that is, for those who have been a public charge in another country; and not merely destitute persons, who, on their arrival here, have no visible means of support." *City of Boston v. Capen*, 61 Mass. 116, 121 (1851). Thus, a public charge was someone who would be a long-term dependent under the care of the state. *See id.* at 122 ("It is only those who, by reason of some permanent disability, are unable to maintain themselves, or who had actually been a public charge in another country, that might become a heavy and long continued charge to the city, town or state, in this country. . . ."). Indeed, the only definition of the noun "charge" that referred to a person in Noah Webster's *American Dictionary of the English Language* is "[t]he person or thing committed to another[']s custody, care or management; a trust." Noah Webster, *American Dictionary of the English Language* (1828 online ed.).

The context and debate surrounding the passage of the 1882 Act demonstrate that the term public charge, when used to describe a person, was understood to mean a person in a state of primary and long-term dependence on the State. As with the state laws, the public charge ground of inadmissibility in the 1882 Act had its roots in concerns that foreign nations were addressing poverty within their own borders by funding immigration to the United States. *See* 13 Cong. Rec. 5,109 (noting that English poor laws contemplate emigration of poor persons to Canada, "and the intent was to get these paupers into the United States," where they would "become at once a public charge . . . get[ing] into our poor-houses and alms-houses"). As a large immigrant-receiving state, New York, in particular, sought to alleviate the burden by imposing taxes and bonds on arriving immigrants, as well as on the shipping companies that transported them, to support the costs of these new arrivals. *Id.* at 5,107. The Supreme Court, however, struck down these statutes as unconstitutional on the grounds that the power to regulate commerce with foreign nations resided with Congress. S*ee, e.g., Henderson v. Mayor of New York*, 92 U.S. 259, 270 (1875).

In response, New York lobbied Congress for the enactment of provisions that ultimately became part of the 1882 Act: the public charge ground of inadmissibility and an immigrant fund. Thus, the 1882 Act directs immigration inspectors to refuse permission to land to any passenger "unable to take care of himself or herself without becoming a public charge," and also establishes an "immigrant fund" to be used, *inter alia*, "for the care of immigrants arriving in the United States, [and] for the relief of such as are in distress." 22 Stat. 214, Chap. 376 § 1 (1882). The simultaneous exclusion of noncitizens likely to become a "public charge" and establishment of a fund for the "care of immigrants" and "relief of such as are in distress" reveal that Congress contemplated that only those who could not or would not support themselves were to be excluded, while recognizing that noncitizens willing and able to support themselves may need aid at one time or another. *Id.* Representatives from New York applauded this two-part design, which would exclude noncitizens likely to become long-term dependents while providing aid to those who go on to "learn our language, adapt themselves readily to our institutions, and become a valuable component part of the body-politic." 13 Cong. Rec. 5,108 (1882).

As these sources make clear, the term "public charge" had a clear meaning at the time of the 1882 Act that related to the person's innate willingness and capacity to support themselves and the likelihood that, in the absence of such willingness and capacity, the person would be fully dependent on the government for support. The Proposed Rule, which would give USCIS officers unlimited discretion to consider factors unrelated to these characteristics and the likelihood of total dependency on the State, is therefore contrary to the meaning of the words "public charge" at the time Congress enacted it in 1882, and which Congress has maintained to the present.

2. The Proposed Rule Conflicts with Repeated Judicial, Congressional and Executive Decisions Reaffirming the Historical Meaning of Public Charge

Over the more than 140 years since the 1882 Act, each branch of the federal government has repeatedly reaffirmed the historical meaning of public charge incorporated into the 1882 Act.[2] These decisions and actions, which have retained the historical meaning of public charge as a person unable or unwilling to support himself, have also clarified how the historical meaning of public charge interacts with the modern welfare state, which provides benefits to people both likely and unlikely to become a public charge. As explained above, the 1882 Act was never intended to exclude immigrants from all public benefits, and indeed it provided for the creation of an immigrant fund expressly for the purpose of caring for recent immigrants who were in distress. *See supra* Section III.A.1. Judicial, congressional and executive decisions since then have confirmed that the level of government dependence necessary to qualify one as a public charge is the level at which the person is primarily and consistently dependent on the state for subsistence, and the determination therefore may not turn on whether the noncitizen receives

[2] The major exception is the 2019 Final Rule, discussed below, which, like the Proposed Rule, gave USCIS officers broad discretion to consider a wide range of factors unrelated to primary and long-term dependence on the State and was found to be unlawful by the Second, Seventh and Ninth Circuits. *See infra* Section III.A.4.

or is likely to receive public benefits that do not demonstrate such primary and continuous dependence.

Since the 1882 Act, Congress reenacted the public charge ground of inadmissibility five separate times, in 1891, 1907, 1917, 1952 and 1996, and in each of those acts retained the phrase "public charge" without definition. The Immigration Act of 1891 excluded from admission, among other classes of persons, "[a]ll idiots, insane persons, [and] paupers or persons likely to become a public charge." 26 Stat. 1084 § 1 (1891). Congress made modest revisions to the public charge ground in the Immigration Act of 1907 (the "1907 Act"), amending it to place "persons likely to become a public charge" between "paupers" and "professional beggars." 34 Stat. 898, 899. Several years after the 1907 Act, the Supreme Court weighed in on the meaning of "public charge" for the first and only time. In *Gegiow v. Uhl*, the Court considered the case of two Russian immigrants who had been found likely to become public charges because they had little money and were bound for Portland, Oregon, where there was a tight labor market. 239 U.S. 3 (1915). In analyzing the public charge ground, the Court found that, like the other categories of persons excluded by the statute, a "public charge" must be defined by some kind of "permanent personal objections." *Id.* at 10. Because the grounds for exclusion related to the Portland labor market, and not any characteristics of the Russian immigrants, the Court reversed the determination.

Following *Gegiow*, several circuit courts considered the term and held that "Congress meant the [1907 Act] to exclude persons who were likely to become occupants of almshouses for want of means with which to support themselves in the future." *Howe v. United States ex rel. Savitsky*, 247 F. 292, 294 (2d Cir. 1917); *see also Ng Fung Ho v. White*, 266 F. 765, 769 (9th Cir. 1920) (adopting *Howe*), *rev'd in part on other grounds*, 259 U.S. 276 (1922). Other courts adopted a somewhat broader interpretation but one that still focused on the likelihood of the noncitizen, by virtue of his intrinsic and problematic characteristics, to become a long-term dependent of the state. *See Lam Fung Yen v. Frick*, 233 F. 393, 396 (6th Cir. 1916) (public charge encompasses "not only those persons who through misfortune cannot be self-supporting, but also those who will not undertake honest pursuits, and who are likely to become periodically the inmates of prisons.") (quoting *United States ex rel. Freeman v. Williams*, 175 F. 274, 275 (1910); *United States ex rel. Medich v. Burmaster*, 24 F.2d 57, 59 (8th Cir. 1928) (holding that one's actual incarceration and confession of commission of federal crime support public charge finding).

In the Immigration Act of 1917 (the "1917 Act"), Congress relocated the public charge ground within the list of excludable persons so that it no longer appeared between paupers and professional beggars, but rather between contract laborers and people who had been deported previously. 39 Stat. 874, 876 (1917). While this amendment may have undermined the reasoning in *Gegiow*, which emphasized the placement of "public charge" between "paupers" and "professional beggars," 293 U.S. at 10, courts interpreting the 1917 Act held that "this change of location of the words does not change the meaning that should be given them, and that it is still to be held that a person 'likely to become a public charge' is one who, by reason of poverty, insanity, or disease or disability, will probably become a charge on the public." *Ex parte Hosaye Sakaguchi*, 277 F. 913, 916 (9th Cir. 1922); *see also Coykendall v. Skrmetta*, 22 F.2d 120, 121 (5th Cir. 1927) ("it cannot well be supposed that ['persons likely to become a public charge'] were

intended to refer to anything other than a condition of dependence on the public for support"); *United States ex rel. Iorio v. Day*, 34 F.2d 920, 922 (2d Cir. 1929) (1917 Act does not require overruling *Howe* as "[t]he language itself, 'public charge,' suggests rather dependency than imprisonment").

In the Immigration and Nationality Act of 1952 (the "INA"), the foundation of our current immigration system, Congress maintained the public charge ground without definition to provide that noncitizens who "are likely at any time to become public charges" are inadmissible. 66 Stat. 163, 183 (1952). Following the INA, administrative interpretations of "public charge" largely aligned with the earlier interpretations and focused on the innate characteristics and capacity for work of the noncitizens, rather than the likelihood of temporary setbacks. *See Matter of Martinez-Lopez*, 10 I. & N. Dec. 409, 421 (A.G. 1964) (public charge determination requires "[s]ome specific circumstances, such as mental or physical disability, advanced age, or other fact reasonably tending to show that the burden of supporting the alien is likely to be cast on the public"); *Matter of Harutunian*, 14 I. & N. Dec. 583, 589 (B.I.A. 1974) (a public charge is one "who is incapable of earning a livelihood, who does not have sufficient funds in the United States for his support, *and* has no person in the United State willing and able to assure that he will not need public support" (emphasis added)); *Matter of Vindman*, 16 I. & N. Dec. 131, 132 (B.I.A. 1977) ("[E]verything in the statutes, the legislative comments, and prior decisions point to one conclusion, that Congress intends that an applicant for a visa be excluded who is without sufficient funds to support himself, who has no one under any obligation to support him, and whose chances of becoming self-supporting decrease as time passes."); *Matter of A-*, 19 I. & N. Dec. 867, 870 (B.I.A. 1988) (finding that while there "may be circumstances beyond the control of the alien which temporarily prevent an alien from joining the work force," these factors are overshadowed where changed circumstances show that "the applicant has now joined the work force, that that she is young, and that she has no physical or mental defects which might affect her earning capacity").

These cases, reenactments of the public charge language, and administrative decisions show that the understanding of the term public charge has remained constant since the 1882 Act: to be likely to become a public charge, a person must exhibit characteristics showing that he is so unwilling or unable to support himself that he is likely to need to rely primarily and continuously on the government for support. None of the cases considered the receipt of short-term, non-cash benefits as evidence that a person was likely to become a public charge, and this remained true even as new supplemental types of federal aid programs were introduced, such as public housing in 1937, the Food Stamp Program (now SNAP) in 1939, and Medicaid and Medicare in 1965. The Proposed Rule's delegation of boundless discretion to USCIS agents to consider whatever factors they like, including the receipt of temporary benefits unrelated to capacity or willingness to work, is therefore contrary to the settled and specific meaning of public charge as someone expected, based on their willingness and capacity to work, to rely entirely on the government for support.

3. The Proposed Rule Is Incompatible with the PRWORA Statutory Scheme Enacted in Conjunction with the Current Public Charge Statute and Embodied in the 1999 Field Guidance

The Proposed Rule is also contrary to the current statutory scheme governing the public charge determination and the provision of public benefits to noncitizens. In 1996, Congress passed two laws aimed at reforming the welfare and immigration systems. First, Congress passed PRWORA, a sweeping set of reforms to various public benefit programs. *See* 110 Stat. 2105 (1996). As it relates to immigration, PRWORA limited noncitizen access to public benefits in response to concerns that noncitizens were "applying for and receiving public benefits . . . at increasing rates." 8 U.S.C. § 1601(3). A little over a month after it passed PRWORA, Congress enacted the IIRIRA, an act aimed at reforming the immigration laws to deter illegal immigration. *See* 110 Stat. 3009-546 (1996). In IIRIRA, Congress maintained the public charge ground of inadmissibility—which applies to, as relevant to the Proposed Rule, adjustments of status for noncitizens seeking legal admission or applying for an adjustment of status to that of a lawful permanent resident—amending it to add five mandatory factors for agencies to consider in determining whether an individual is likely to become a public charge: the noncitizen's age; health; family status; assets, resources and financial status; and education and skills. 8 U.S.C. § 1182(a)(4)(B). In the Proposed Rule, DHS claims that affording its officers unbounded discretion to consider any factors they deem relevant to assess whether a noncitizen is likely to become a public charge is necessary to achieve "a reduction in the number of aliens dependent on public benefits programs, as intended by Congress in PRWORA." NPRM at 52,184. But this explanation impermissibly collapses the purposes and provisions of PRWORA and the Public Charge Statute. Congress achieved PRWORA's goals through the provisions of PRWORA, not the amendments to the public charge ground of inadmissibility in IIRIRA; because the Proposed Rule seeks to implement the Public Charge Statute in a manner that conflicts with PRWORA, it is contrary to law.

When Congress enacted PRWORA, it announced as "national policy" that "[s]elf-sufficiency has been a basic principle of United States immigration law since this country's earliest immigration statutes" and that noncitizens ought not "depend on public resources to meet their needs" such that "the availability of public benefits" will not be "an incentive for immigration to the United States." 8 U.S.C. § 1601. Congress gave life to those policy preferences through the provisions of PRWORA itself, which significantly limited the extent to which noncitizens could receive federal, and even to some extent state and local, public benefits. 8 U.S.C. §§ 1611-1612, 1621; *New York v. United States Dep't of Homeland Sec.*, 969 F.3d 42, 77 (2d Cir. 2020) (PRWORA's "policy statements specifically proclaim that the new eligibility restrictions [in PRWORA] sufficiently achieved the compelling governmental interest of assuring that aliens be self-reliant in accordance with national immigration policy.") (internal quotation marks and citations omitted). Having thus accomplished the goal of preventing overuse of benefits by noncitizens, PRWORA made no change to the INA's provisions regarding the public charge ground of inadmissibility, and nothing in that bill suggests that Congress enacted PRWORA's restrictions on benefits eligibility as a roundabout way of altering the public charge ground of inadmissibility.

Moreover, when Congress enacted PRWORA it expressly allowed lawful permanent residents to receive certain federal public benefits, subject to certain limitations. *See* 8 U.S.C. §§ 1611 (making aliens who are not qualified aliens ineligible to receive federal public benefits), 1641 (including lawful permanent residents in the definition of qualified alien). PRWORA exempted several kinds of benefits from its strict eligibility restrictions, including emergency medical care, short-term in-kind disaster relief, and public health assistance like immunizations. §§ 1611(b); 1621(b). And Congress also left open the option for States to enact their own benefit programs for noncitizens who are not qualified aliens under federal law, recognizing that some States may enact significant benefits for this population. § 1621(d). Congress also made a clear choice not to alter any noncitizen eligibility for public elementary and secondary school in PRWORA. Because the public charge ground of inadmissibility is inherently a forward-looking inquiry, 8 U.S.C. § 1182(a)(4) (defining public charge as an "alien who … is likely at any time to become a public charge"), it strains belief to contend that Congress expected that noncitizens seeking adjustments of status to that of a lawful permanent resident would be denied such adjustment of status on the basis that they may be expected to use the exact benefits that Congress made available to lawful permanent residents. *New York*, 969 F.3d at 77 (PRWORA does not "indicate any congressional intention that noncitizens who receive the benefits for which Congress did not render them ineligible risk being considered public charges") (internal citations and emphasis omitted). This is especially so with regard to public education for children, a benefit that is not restricted by PRWORA, and which is guaranteed to noncitizen children by the Constitution, *see Plyer v. Doe*, 457 U.S. 202, 203 (1982), but which USCIS officers evidently may now consider in the absence of any rule or guidance to the contrary.

To remove any doubt about the relationship (or lack thereof) between PRWORA and the public charge ground of inadmissibility, the INS addressed the issue at the time. In 1999, INS issued the 1999 Field Guidance "to counteract public confusion after IIRIRA and PRWORA." *New York*, 969 F.3d at 70. The 1999 Field Guidance defined a public charge to mean one who is "primarily dependent on the Government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance or institutionalization for long-term care at Government expense." 64 Fed. Reg. at 28,677. On the other hand, the INS explained that the non-cash benefits made available to noncitizens under PRWORA (typically only after five years as a lawful permanent resident) are not to be considered in the public charge determination because they do not demonstrate the lack of self-sufficiency necessary to render one a public charge. Rather, these benefits "generally provide supplementary support in the form of vouchers or direct services to support nutrition, health, and living condition needs" and are "often provided to low-income working families to sustain and improve their ability to remain self-sufficient." *Id*. at 28,677-78. Indeed, a construction of the public charge ground of inadmissibility that would support a finding based on the use of benefits that Congress made available under PRWORA is in significant tension with PRWORA. Had Congress intended to restrict benefit use by noncitizens even further, it could have done so.

Having removed the regulations that previously guided USCIS officers' interpretation of public charge, DHS now expressly condones public charge determinations that rest on a finding of minimal use of benefits, for potentially any duration, including benefits that Congress expressly

chose to permit noncitizens to use. Notably, Congress in PRWORA also granted permission to States to issue benefits to noncitizens who are not qualified aliens. Congress did so knowing that some States may elect to enact broad eligibility for noncitizens to receive benefits while others may not. That discretion is required by core principles of federalism. For DHS to now penalize noncitizens for using State and local benefits that Congress chose to permit is nonsensical and contrary to the scheme designed by PRWORA.

4. The Proposed Rule Is Contrary to Law Under the Circuit Court Decisions Affirming Preliminary Injunctions Invalidating the 2019 Final Rule

As discussed above, *see supra* at Section II, the Proposed Rule is the second time in recent years that DHS has attempted to untether the public charge determination from its settled meaning. In 2019, DHS issued the 2019 Final Rule, which replaced the then-effective 1999 Field Guidance with a regulatory scheme that grounded public charge determinations in whether the noncitizen was likely to receive an aggregate of twelve months of means-tested benefits in any thirty-six-month period, regardless of the value of those benefits, with multiple benefits in a single month counting as multiple months. In 2020, the Second, Seventh and Ninth Circuits affirmed preliminary injunctions invalidating the 2019 Final Rule as contrary to the INA and the rule was ultimately vacated in court and abandoned by DHS. *See Cook County v. Wolf*, 962 F.3d 208, 215 (7th Cir. 2020); *New York v. U.S. Dep't of Homeland Security*, 969 F.3d 42, 50 (2d Cir. 2020); *City & County of San Francisco v. USCIS*, 981 F.3d 742, 763 (9th Cir. 2020); *Cook County v. Wolf*, 498 F. Supp. 3d 999, 1004 (N.D. Ill. 2020).[3] Despite these decisions, the Proposed Rule puts forward an even *broader* interpretation of public charge, claiming that "[b]oth the 2019 Final Rule and the 2022 Final Rule erred in too narrowly defining the relevant terms in section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4), resulting in the inability of DHS to apply the public charge ground of inadmissibility consistent with administration policy and congressional intent." NPRM at 52180. Because the 2019 Final Rule was struck down as overbroad and the Proposed Rule

[3] Only one Circuit Circuit court to consider the merits of the issue found that the 2019 Final Rule was not likely contrary to law. *See Casa de Md., Inc. v. Trump*, 971 F.3d 220, 230 (4th Cir. 2020). This divided decision, however, relied heavily on the Supreme Court's unreasoned decision staying enforcement of the district court preliminary injunctions. *See id.* ("We may of course have the technical authority to hold that, notwithstanding the Supreme Court's view, the plaintiffs are likely after all to succeed on the merits of their challenge. But every maxim of prudence suggests that we should decline to take the aggressive step of ruling that the plaintiffs here are in fact likely to succeed on the merits right upon the heels of the Supreme Court's stay order necessarily concluding that they were unlikely to do so."); *see also City & Cty. of San Francisco v. USCIS*, 981 F.3d at 750 ("The majority [in *Casa*] looked in large measure to the fact that the Supreme Court had stayed injunctions in the Seventh and second Circuits."). Moreover, the Fourth Circuit later granted a motion for rehearing *en banc*. *See Casa de Maryland, Inc. v. Trump*, 981 F.3d 311 (4th Cir. 2020). In 2021, the Biden administration moved to dismiss appeal and the Fourth Circuit never issued an *en banc* decision. *See Casa de Maryland, Inc. v. Biden*, No. 19-2222, 2021 U.S. App. LEXIS 7177 (4th Cir. Mar. 11, 2021).

broadens the application of the Public Charge Statute beyond that unlawful rule, it is contrary to law.

The first Court of Appeal to consider the district court orders blocking the 2019 Final Rule on the merits was the Seventh Circuit.[4] In *Cook County*, the Seventh Circuit held that, while the meaning of "public charge" had "evolved over time," 962 F.3d at 226, there was "a floor inherent in the words 'public charge,' backed up by the weight of history," that "requires a degree of dependence that goes beyond temporary receipt of supplemental in-kind benefits from any type of public agency." *Id.* at 229. In affirming a preliminary injunction invalidating the 2019 Final Rule, the Seventh Circuit emphasized that not only was the particular regulatory scheme contemplated by the 2019 Final Rule unlawful, but DHS' interpretation of its statutory authority "has no natural limitation," noting that "there is nothing in the text of the statute, as DHS sees it, that would prevent the agency from imposing a zero-tolerance rule under which the receipt of even a single benefit on one occasion would result in denial of entry or adjustment of status." *Id.* The Seventh Circuit further found that the 2019 Final Rule "creates serious tensions, if not outright inconsistencies, within the statutory scheme" by "penalizing people for accepting benefits Congress made available to them," including under PRWORA. *Id.* at 228.[5]

The Second Circuit, considering the 2019 Final Rule after *Cook County*, undertook a more detailed analysis of the history and caselaw surrounding the public charge ground. Following its review of the meaning of public charge from the nineteenth century up to the IIRIRA, the Second Circuit found that "there was a settled meaning of 'public charge' well before Congress enacted IIRIRA," *i.e.*, "a person who is unable to support herself, either through work, savings, or family ties." *New York*, 969 F.3d at 71. The Second Circuit therefore applied the ratification doctrine to hold that "Congress ratified the settled meaning of 'public charge' when it enacted IIRIRA," *id.* at

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[4] Before the Seventh Circuit's decision in *Cook County.*, a divided motions panel for the Ninth Circuit granted DHS' motion for a stay of the preliminary injunctions, finding that DHS was likely to prevail because the 2019 Final Rule was a reasonable interpretation of the Public Charge Statute. *See City & Cty. of San Francisco v. USCIS*, 944 F.3d 773 (9th Cir. 2019) (the "Stay Opinion"). As discussed below, the merits panel reversed the Stay Opinion, finding the 2019 Final Rule unlawful. The merits panel emphasized that the Stay Opinion was " based on a prediction of what this panel would hold in reviewing the merits of the preliminary injunctions" and that "[a]lmost none of the extensive documentation relevant to this appeal was before the motions panel." *San Francisco*, 981 F.3d at 753.

[5] In her dissent, then-Circuit Judge Amy Coney Barrett suggested that fears that the 2019 Final Rule would cause noncitizens to forgo benefits to which they were entitled under PRWORA were overblown because the 2019 Final Rule did not apply to such noncitizens. *See Cook County*, 962 F.3d at 236 (noting that 2019 Final Rule is "almost entirely irrelevant" to noncitizens eligible for benefits because such noncitizens had already been admitted to the United States or had their status adjusted to LPR). Here, by contrast, the Proposed Rule's limitless scope would permit USCIS officers to consider benefits for which noncitizens at the admission or adjustment-of-status stage are eligible, including potentially public education for noncitizen children.

74, and "endorsed the settled administrative and judicial interpretation of that ground as requiring a holistic examination of a noncitizen's self-sufficiency focused on ability to work and eschewing any idea that simply receiving welfare benefits made one a public charge." *Id.* at 80. On this basis, the Second Circuit held that the 2019 Final Rule's "exceedingly broad definition [of public charge] is not in accordance with the law." *Id.* Because the Proposed Rule is *even broader* than the 2019 Final Rule, *see* NPRM at 52,180 ("[T]he 2019 Final Rule . . . erred in too narrowly defining the relevant terms in section 212(a)(4) of the INA[.]"), it is necessarily contrary to law under the Second Circuit's decision.

The Ninth Circuit likewise found that the plaintiffs had demonstrated "a high likelihood of success in showing that the [2019 Final] Rule is inconsistent with any reasonable interpretation of the statutory public charge bar and therefore is contrary to law." *San Francisco*, 981 F.3d at 758. Like the Second Circuit, the Ninth Circuit grounded its analysis in the historical understanding of public charge, stating that "[f]rom the Victorian Workhouse through the 1999 Guidance, the concept of becoming a 'public charge' has meant dependence on public assistance for survival," which, up until the 2019 Final Rule, "has never encompassed persons likely to make short-term use of in-kind benefits that are neither intended nor sufficient to provide basic sustenance." *Id.* at 756. Because DHS claims that the Proposed Rule would broaden the discretion of USCIS officers, permitting them to make public charge grounds for the same reasons struck down in the 2019 Final Rule as well as other, yet-to-be-determined reasons, it is contrary to law.

B. The Proposed Rule is Arbitrary and Capricious

The APA requires DHS to examine relevant data and articulate a satisfactory explanation for its action, including a "'rational connection between the facts found and the choice made.'" *Motor Vehicle Mfrs. Ass'n of United States v. State Farm Mut. Automobile Ins. Co.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)). An agency action is arbitrary and capricious if the agency has: "relied on factors that Congress did not intend it to consider; entirely failed to consider an important aspect of the problem; or offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise. *Id.* at 43-44. The Proposed Rule violates the APA because it is arbitrary and capricious.

1. <u>The Proposed Rule failed to consider the substantial harms and costs associated with discouraging use of public benefits.</u>

DHS failed to consider that the Proposed Rule will cause substantial harm to individuals, communities, and local governments in the signatory jurisdictions and across the country. By erasing almost all existing regulatory guidance around public charge determinations without providing a clear replacement, the Proposed Rule makes it extremely difficult for individuals, families, and service providers to gauge the potential consequences of vital life decisions about benefits use, even when individuals are lawfully eligible for such benefits. The Proposed Rule would likely cause hundreds of thousands of noncitizens nationwide to withdraw from or forgo health, nutrition, and housing public benefits for themselves and their children, including U.S.-citizen children, due to confusion and fear of repercussions related to their immigration status.

The expected extensive disenrollment from public benefits will likely lead to substantial costs to states and the Signatories and would result in serious public health consequences. DHS' failure to consider these important aspects of the Proposed Rule is arbitrary and capricious.

First, DHS failed to account for the healthcare impacts and costs associated with encouraging immigrants to dis-enroll themselves and their children (many of whom are U.S. citizens) from publicly funded health insurance programs for fear of impacting their immigration status. Without insurance, immigrants are likely to forgo important preventive health care and services, which would increase costs of uncompensated care, burden local health care systems, increase the likelihood of the spread of disease, and worsen mental health and substance use disorder conditions. When a similar expansion of the definition of public charge was under consideration in 2019, a study by the Boston Foundation found that as many as 510,000 people in Massachusetts, including 160,000 children, were at risk to disenroll from public benefits like MassHealth and SNAP at that time.[6] In the period when the 2019 Final Rule was in effect, Boston Medical Center reported receiving regular calls from immigrants asking whether it was safe to use their insurance or fill a prescription.[7] The Proposed Rule would also likely result in harm specifically to women (including pregnant women), infants, and children because of reduced access to prenatal care and reluctance to using vital public benefits such as Medicaid and Children's Health Insurance Plan (CHIP).

DHS also failed to consider the significant costs to healthcare providers, including local governments, resulting from the necessity of treating uninsured patients in emergency settings. DHS claims that noncitizen disenrollment from publicly funded health insurance would reduce the costs of such insurance to the government, *see* NPRM at 52,208-16, but this assumption ignores the significant costs that an increase in the rate of uninsured patients imposes on States and municipalities. The same would be true in the reverse: by discouraging noncitizens from enrolling in Medicaid and CHIP, the Proposed Rule would impose substantial costs on hospitals and other health care providers, including health care systems run by local governments. In fact, the amount of hospital spending at risk resulting from the 2019 Final Rule in Massachusetts was estimated to be $457 million per year.[8] Uninsured families and individuals tend to lack access to

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[6] *See* Mattos et. al., *The Growing Wave of Federal Immigration Restrictions: What's at Stake for Massachusetts?* Boston Indicators, June 2019, at 18. Available at: https://www.bostonindicators.org/reports/report-website-pages/growing-wave-of-restrictions

[7] *See* Love et. al., *The Final Public Charge Admissibility Rule: Implications for Massachusetts*, September 2020, at 4. Available at: https://www.bluecrossmafoundation.org/sites/g/files/csphws2506/files/2020-10/Public_Charge_Report_final.pdf

[8] *See id.* at 11 (spending at risk defined as MassHealth spending on hospitals for noncitizens and household members).

primary care, and thus are more likely to use emergency rooms for preventative care or nonemergency care.[9]

In New York City, the public hospital system, public health clinics, and other safety-net providers deliver services irrespective of insurance status or ability to pay. The financial impact of increased uncompensated care costs resulting from uninsured individuals seeking care at New York City hospitals, including the City's public hospital system, is estimated to be at least $1.3 billion.[10] Baltimore, for example, provides emergency medical services (EMS) for residents in need of medical assistance and transport, and relies on Medicaid reimbursements. As residents disenroll out of fear of reprisal, Baltimore will likely be forced to absorb costs. In New Haven, this past year, the City's Health Department provided vaccinations, testing, and preventive care to 554 uninsured individuals, making up 44% of our clinic visits. Renewed fear surrounding benefit usage may reduce utilization of these services, increasing public health risks for the broader community.

Second, DHS failed to consider the costs associated with a potential increase of communicable disease and potential for outbreak of infectious diseases due to fears of receiving benefits, including in the form of free or low-cost vaccinations, testing, and other care. Vaccines and disease monitoring help keep communities healthy and safe. The Proposed Rule would undermine this effort by forcing noncitizens to choose between obtaining permanent residency or a change in immigration status, on the one hand, and receiving medical treatment for communicable diseases, on the other.[11] Unlike in the 2019 Final Rule, *see* 84 Fed. Reg. 41,312, the Proposed Rule does not exempt vaccinations and testing or treatment of communicable diseases. Even with the exemption, Los Angeles County health clinics reported families forgoing testing or treatment out of fear of immigration consequences after the 2019 Rule.[12] Though DHS appears to have forgotten about the recent COVID-19 global pandemic, local governments and their healthcare providers have not. The American Rescue Plan Act alone allocated $130 billion

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[9] Wang L, Tchopev N, Kuntz-Melcavage K et al. Patient-reported reasons for ED visits in the urban Medicaid population. American Journal Med Qual. 2015;30(2):156-60.

[10] *NYS Impact Analysis Shows House Reconciliation Proposals' Devastating Impact on State's Essential Plan and Hospitals*, GREATER N.Y. HOSP. ASS'N (May 16, 2025), available at https://www.gnyha.org/news/nys-impact-analysis-shows-house-reconciliation-proposals-devastating-impact-on-states-essential-plan-and-hospitals

[11] DHS acknowledges this cost briefly, NPRM at 52,218, but fails to address it in any detail or explain why the benefits of the Proposed Rule outweigh the significant costs to community health.

[12] Usha Lee McFarling, Fearing deportation, many immigrants at higher risk of Covid-19 are afraid to seek testing or care, STAT (Apr. 15, 2020), https://www.statnews.com/2020/04/15/fearing-deportation-many-immigrants-at-higher-risk-of-covid-19-are-afraid-to-seek-testing-or-care/.

to local governments to combat COVID-19.[13] Aside from COVID-19, communities face a number of infectious diseases each year: influenza costs the United States billions of dollars per year, including medical costs, lost working days, and deaths, much of which is avoidable when vaccination coverage is high.[14] And researchers estimate that the medical cost saved by avoiding just one HIV infection is $229,800.[15] When communicable disease spreads, all levels of government experience significant economic costs to fund efforts to keep residents safe, all of which is in addition to the significant societal and human costs of widespread disease.

Third, DHS failed to assess the impacts of the Proposed Rule on housing stability and the housing market. The Proposed Rule's recissions would allow officers to consider use of Section 8 housing vouchers as public assistance that could result in a public charge determination. This change and the confusion surrounding it could lead to recipients of housing assistance choosing to withdraw from benefits they are already lawfully enrolled in, which, in turn, could increase their housing insecurity and risk of experiencing homelessness. Housing vouchers in New York City are very effective at improving housing security, including decreasing rent burdens, overcrowding, and mitigating the risk of homelessness.[16] One study estimated that households with access to housing vouchers are 74 percent less likely to experience homelessness than households without a subsidy.[17] Localities like Columbus, Ohio, which operate warming and cooling centers and help fund their local emergency shelters will struggle to meet these needs as community members lose housing. Additionally, household disenrollment from housing vouchers will likely increase financial strain on landlords who participate in federal housing assistance programs and rely on rental payments through vouchers to ensure a steady income. The Proposed Rule could even cause noncitizens to avoid seeking temporary shelter, and this may lead to more people living in the streets with reduced access to care and, thus, more medical

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[13] Mildred Warner & Austin Aldag, *Pandemic relief spending by New York local governments*, J. OF RURAL STUDIES (Dec. 2023), available at https://www.sciencedirect.com/science/article/pii/S0743016723002231.

[14] CDC Foundation, *Flue Costs the U.S. More Than $87 Billion Annually*, available at https://www.cdcfoundation.org/pr/flu-costs-United-States-87-billion-annually..

[15] Schackman BR, Fleishman JA, Su AE, Berkowitz BK, Moore RD, Walensky RP, Becker JE, Voss C, Paltiel AD, Weinstein MC, Freedberg KA, Gebo KA, Losina E. The lifetime medical cost savings from preventing HIV in the United States. Med Care. 2015 Apr;53(4):293-301. doi: 10.1097/MLR.0000000000000308. PMID: 25710311; PMCID: PMC4359630. https://pmc.ncbi.nlm.nih.gov/articles/PMC4359630/.

[16] Robert Polner, *Federal Housing Choice Vouchers Can Make the Difference Between Stability and Homelessness*, NYU (June 19, 2025), available at https://www.nyu.edu/about/news-publications/news/2025/june/federal-housing-choice-vouchers-can-make-the-difference-between-.html

[17] Impact of Housing on Families and Communities: A Review of the Evidence Base, ENTERPRISE (2014), available at https://homeforallsmc.org/wp-content/uploads/2017/05/Impact-of-Affordable-Housing-on-Families-and-Communities.pdf.

and mental health emergencies. DHS recognizes that the Proposed Rule may force some families to forgo enrollment in public benefits programs rather than risk a public charge determination, but fails adequately to address these extremely damaging consequences.

It is impossible to comprehensively list the impacts that DHS failed to address because the Proposed Rule leaves no indication of where they draw the line regarding which benefits may be considered in a public charge determination. For example, there is nothing in the Proposed Rule that suggests that education at public schools—a free, public benefit provided by state and local governments—would not factor in to a decision on public charge inadmissibility. If parents fear sending their children to school because it may impact their immigration status, the consequences would have a significant adverse impact on educational outcomes for children. In New Haven, public schools experienced a 7.39 percent decline in Multilingual Learner enrollment from the 2024 to 2026 school year. While this change cannot be attributed to any single policy, increased ambiguity in federal immigration rules may further discourage families from enrolling children in school, with downstream consequences for educational access and school funding.

Fourth, DHS failed to sufficiently consider costs to localities associated with staff education and resident outreach. Local governments across the country will need to invest significant financial and staff resources to ensure accurate resident messaging related to all of the public assistance they offer. Several municipal departments rely on this longstanding interpretation of the Rule when providing residents with navigation services. The City of Baltimore provides support to its immigrant communities, and would need to rework their systems, including staff training on this new regime. Portland, Oregon similarly predicts the need for training for outreach workers on staff. However, with no guidance from DHS to replace the 2022 Final Rule, leadership in Portland is stuck with an impossible task of puzzling out how to train its staff on this arbitrary rule and how to provide residents with coherent advice. This is not unique to these jurisdictions alone. The Proposed Rule affords unchecked and undescribed discretion to immigration officers making public charge determinations, which makes it almost impossible for a noncitizen to assess their individual risk. This lack of clarity makes it exceedingly difficult to provide effective messaging and legal advice, and noticeably increases administrative burdens for local benefit-administering agencies.

Fifth, DHS failed to account for the inevitable and cascading harms caused by disenrollment from SNAP benefits because of the Proposed Rule. In our public schools, children's learning will be undermined by hunger,[18] creating strain on our teachers, and all our systems that support our students. SNAP benefits are an economic multiplier – for every SNAP dollar spent, $1.54 in economic benefits is generated.[19] Such economic benefits manifest in the City of

[18] Yusuf Canbolat, David Rutkowski & Leslie Rutkowski, *Global Pattern in Hunger and Educational Opportunity: A Multilevel Analysis of Child Hunger and TIMSS Mathematics Achievement*, 11 Large Scale Assess. Educ. 13 (2023), https://pmc.ncbi.nlm.nih.gov/articles/PMC10088579/

[19] U.S. Dep't of Agric., Econ. Research Serv., *Supplemental Nutrition Assistance Program (SNAP) – Key Statistics and Research* (updated July 24, 2025), https://www.ers.usda.gov/topics/food-

Baltimore in jobs at grocery stores, convenience stores, and public markets. Such markets are critical to preventing food deserts in places like Baltimore. As hunger increases without SNAP benefits, local food banks, such as those in Boston which are already under stress will be overwhelmed as residents avoid SNAP benefits out of fear.[20] Cities like Baltimore, that have previously stepped in to provide needed meal distribution will be laden with the increased demand. Food insecurity will also result in significant adverse public health consequences. Food-insecure households are likely to have unmet medical needs, and discouraging immigrants from enrolling in SNAP would exacerbate the problem. This chilling effect would negatively impact children, including U.S. citizen children of immigrants.

Finally, DHS has not considered the breach in trust with the government, both local and national, that this Proposed Rule will create. Local governments are only able to prevent or contain the spread of communicable diseases and stem spikes in homelessness and hunger by relying heavily on the trust that they have built with communities over time. History demonstrates the harm that immigration policy changes like the Proposed Rule can do to community trust. In the 1990s, the then-largest rubella outbreak in the nation was associated with a substantial increase in public charge determinations based on Medicaid use.[21] Local governments, particularly those with public health departments such as Los Angeles County, have successfully contained major outbreaks in the past such as Hepatitis A, measles and tuberculosis primarily because of deep trust developed with communities over time. Such strong ties with the community were vital to reducing and preventing deaths during the COVID-19 pandemic.

Trust in government services extends far beyond health services. Portland, Oregon's Office of Civic Life is concerned about the wide-reaching effects of fear and distrust that the Proposed Rule could cause across their many services. Columbus, Ohio relies on deep relationships with the immigrant community to ensure that, for example, residents are willing to report unsafe housing conditions. Creating an unbounded, arbitrary standard for public charge determinations will disrupt years of work building relationships with catastrophic consequences.

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nutrition-assistance/supplemental-nutrition-assistance-program-snap/key-statistics-and-research; See also, Ninez A. Ponce et al., UCLA Ctr. for Health Policy Research, Proposed Changes to Immigration Rules Could Cost California Jobs, Harm Public Health 4 (Dec. 2018), https://perma.cc/TGD5-UY7Z (analysis of 2018 proposed rule predicted enormous economic losses for the California economy).

[20] Diti Kohli, *One in Three Massachusetts Families Don't Have Enough to Eat, Study Finds,* Boston Globe (June 17, 2025), https://www.bostonglobe.com/2025/06/17/business/boston-food-bank-hunger/

[21] Claudia Schlosberg & Dinah Wiley, The Impact of INS Public Charge Determinations on Immigrant Access to Health Care, Mont. Pro Bono (May 22, 1998), https://perma.cc/WX9P-PNDB

2. The Proposed Rule is irrational and contrary to evidence, fails to provide adequate explanation for a change in policy, and fails to account for reliance interests by noncitizens who used public benefits based on a longstanding understanding of "public charge" policies.

An agency engages in rulemaking that is arbitrary and capricious if it fails to acknowledge and explain a change in agency position. *FCC v. Fox Television Stations*, 556 U.S. 502, 515 (2009) (agency must "display awareness that it is changing position."). Critically, in explaining its changed position, "an agency must be cognizant that longstanding policies may have 'engendered serious reliance interests that must be taken into account.'" *Encino Motorcars v. Navarro*, 579 U.S. 211, 222 (2016) (citation omitted). When, as with regulations regarding public charge determinations, reliance interests are involved, an agency changing position must provide a "*more* detailed justification" than usual. *Fox*, 556 U.S. at 515 (emphasis added).

DHS failed to adequately explain the logic behind removing so many definitions and leaving immigration officers without guidance to make public charge determinations. Signatory jurisdictions submit this is because the recissions in the Proposed Rule are, indeed, not logical and in fact contrary to evidence. The Proposed Rule would create a situation where a noncitizen using *any* public benefits could be deemed a public charge, which reflects DHS' misunderstanding of the wide array of available public benefits and how such benefits operate. *See Friends of Back Bay v. U.S. Army Corps of Eng'rs*, 681 F.3d 581, 588 (4th Cir. 2012) ("[a] material misapprehension of the baseline conditions existing in advance of an agency action can lay the groundwork for an arbitrary and capricious" action). For example, the fact that an applicant for adjustment of status resides in public housing or a Section 8-assisted unit with their family actually demonstrates they are *less* likely to become a public charge. Living in stable housing increases the chances that household members will remain in school, or enter or remain in the job market, thus leading to self-sufficiency rather than increased dependence on government benefits.[22]

Furthermore, removing all standards and relying entirely on immigration officer discretion is a drastic step that would inevitably lead to arbitrary enforcement—the complete absence of a standard cannot itself be an adequate standard. Problematically, DHS did not explain why it did not make smaller adjustments to policy without upending an entire centralized system. *See Dep't of Homeland Sec. v. Regents of the Univ. of Ca.*, 591 U.S. 1, 32 (2020) (finding DHS' agency action to be arbitrary and capricious and suggesting that DHS should have considered interim measures other than complete recission specifically because of reliance interests of immigrant families). DHS suggests that there was a long period in history where there was no official guidance on who might qualify as a public charge, and thus its departure from current guidelines is not unprecedented. NPRM at 52,181. But DHS has entirely ignored the fact that now, in 2025, there are a much larger range of government benefits available to noncitizens,

[22] *See, e.g.*, Megan Gallagher et al., *Aligning Housing and Education*, The Urban Inst. (Sept. 2020), available at https://www.urban.org/sites/default/files/publication/102704/aligning-housing-and-education_0.pdf.

including numerous kinds of in-kind and short-term benefits, especially at the state and local level, than at the time the public charge ground of inadmissibility was created. Under the Proposed Rule, many benefits could be swept into public charge determinations even though many kinds of benefits did not previously exist when, many decades ago, immigration officers made decisions without agency standards or direction.[23]

Finally, and perhaps most importantly, DHS has failed to appropriately examine and assess the ways in which noncitizen and mixed-status families are relying on the 1999 Field Guidance and 2022 Rule. For many years, federal statute, judge-made law, and administrative guidelines broadcast a consistent message: immigrants could be considered a "public charge" only if they depend on the government for subsistence through cash assistance for income maintenance or long term care at the government's expense. In the 1999 Field Guidance, the INS made clear that non-cash benefits did not show primary dependence on the government for subsistence. 1999 Field Guidance at 28,690. The 2022 Final Rule was modeled on the 1999 Field Guidance, and emphasized that the definition of "public charge" did not include people simply receiving some public assistance, but rather only included people who have a "primary dependence" on public benefits. 2022 Final Rule at 55,474. Noncitizen and mixed-status families have relied on this interpretation for years, as have local government benefit-administering agencies, and local organizations and officials who support noncitizens in their journey to permanent status. Noncitizens across the country access public benefits such as health insurance coverage, housing vouchers, and childcare offered by numerous levels of government—all with the understanding that accepting this assistance would not impact their ability to seek permanent residency in the United States. If the Proposed Rule goes into effect, these individuals are now likely to be penalized for accepting assistance they accurately understood to be irrelevant to "public charge" determinations. DHS specifically states that it "believes that . . . past receipt of any means-tested public benefit is a key gauge in determining an alien's likelihood of dependence on the government[.]" NPRM at 52,189. This shocking reversal of position disregards the fact that noncitizens across the country made decisions based on previous policies and now may be precluded from adjustments of status because of a plainly arbitrary and capricious change in agency policy. *See Regents*, 591 U.S. at 32-33.

The same is true for DHS' removal of exemptions for noncitizens who have immigration statuses considered exempt by the 2022 Rule. The current Proposed Rule eliminates language that exempts certain categories of immigrants from the public charge ground of inadmissibility entirely. NPRM at 52,192. These categories include refugees, asylees, and immigrants from certain countries. 8 C.F.R. § 212.23. By removing these exemptions, DHS acts in a manner wholly counter to these communities' expectations based on the 2022 Final Rule. This change would impact any asylee or refugee that seeks an adjustment of status through any nonhumanitarian basis. Though DHS makes passing reference to reliance interests in the NPRM, it fails to engage with this critical issue at any level of depth. NPRM at 52,193. Tens—or even hundreds—of

[23] Robert Greenstein, *Changes in the safety net over recent decades and their impact*, BROOKINGS (May 1, 2025), available at https://www.brookings.edu/articles/changes-in-the-safety-net-over-recent-decades-and-their-impact/.

thousands of people have relied on previous guidelines for decades when making decisions on how to keep their family safe, healthy, and housed. DHS' utter disregard for their reliance interests is inappropriate, erratic, and constitutes unlawful agency decision-making under the APA.

C. The NPRM Failed to Observe Procedure Required by Law

Even though the Proposed Rule acknowledges that studies have shown that substantial and fundamental changes in public charge policy would cause a broad chilling effect on enrollment rates across public benefit programs, *see, e.g.*, NPRM at 52,170. DHS has afforded the public only a brief 30-day comment period and gives no reason, whatsoever, for the shortened timeframe. A standard comment period is *at least* 60 days. *See* Exec. Order No. 13,563, 76 Fed. Reg. 3,821, 3,821-22 (Jan. 18, 2011). A 30-day comment period is woefully inadequate to give the affected public a meaningful opportunity to participate in the rulemaking process as required by the APA. *See* 5 U.S.C. § 553(c). The APA's notice-and-comment requirements "are not mere formalities," but rather "serve the public interest by providing a forum for the robust debate of competing and frequently complicated policy considerations." *Nat. Res. Def. Council v. Nat'l Highway Traffic Safety Admin.*, 894 F.3d 95, 115 (2d Cir. 2018). Such notice-and-comment "requirements are designed (1) to ensure that agency regulations are tested via exposure to diverse public comment, (2) to ensure fairness to affected parties, and (3) to give affected parties an opportunity to develop evidence in the record to support their objections to the rule and thereby enhance the quality of judicial review." *United States v. Lott*, 750 F.3d 214, 219 (2d Cir. 2014) (quoting *Int'l Union, United Mine Workers of Am. v. Mine Safety & Health Admin*., 407 F.3d 1250, 1259 (D.C. Cir. 2005)). The monumental and consequential changes in DHS agency policy the Proposed Rule envisions certainly necessitate a more meaningful and adequate public comment period. A condensed 30-day window is simply not enough time for affected members of the public to consider and comment on such seismic changes to the Nation's public charge policy.

The Proposed Rule's 30-day comment period is also inconsistent with prior DHS notices of proposed rulemaking concerning the public charge ground of inadmissibility. For example, the 2022 Rule followed two standard 60-day comment periods. *See* 86 Fed. Reg. 47,025 (Aug. 23, 2021), 87 Fed. Reg. 10,570 (Feb. 24, 2022). The notice of proposed rulemaking for the 2019 Rule provided the standard 60-day comment period. *See* 83 Fed. Reg. 51,114 (Oct. 10, 2018). DHS should have, similarly, provided at least 60 days for public comment on the Proposed Rule.

In addition to only providing a truncated 30-day comment period, DHS intends to remove current substantive public charge regulations and potentially insulate future agency public charge policy from the rulemaking process through the issuance of policy and interpretive guidance. *See* 5 U.S.C. § 553(b)(A) (exempting interpretive rules and statements of policy from notice-and-comment rulemaking). Specifically, the Proposed Rule states that

> DHS intends to remove the regulatory provisions in the 2022 Final Rule with the exception of certain public charge bond provisions and technical corrections,

> which will pave the way for DHS to, in the future, formulate appropriate policy and interpretive tools that will guide DHS officers in making individualized, fact-specific public charge inadmissibility determinations, based on a totality of the alien's circumstances, that are consistent with the statute and congressional intent, and comply with past precedent.

NPRM at 52,169. While the Proposed Rule is silent on whether any such forthcoming policy or guidance will be subject to notice-and-comment rulemaking, "a substantive change in existing [public charge] policy" would be "plainly a legislative rule" subject to the APA's notice-and-comment procedures. *City of Billings v. Transp. Sec. Admin.*, 153 F.4th 46, 52 (D.C. Cir. 2025) (citation omitted). Indeed, issuing only interpretive guidance and removing the public's ability to comment on significant substantive changes in policy would be an improper circumvention of the APA. *See Perez v. Mortgage Bankers Ass'n*, 575 U.S. 92, 109 (2015) (Scalia, J., concurring) ("An agency may use interpretive rules to *advise* the public by explaining its interpretation of the law. But an agency may not use interpretive rules to *bind* the public by making law, because it remains the responsibility of the court to decide whether the law means what the agency says it means.") (emphasis in original). Given the significant level of public interest and widespread impact that the Proposed Rule is expected to have, DHS should have provided the public with a robust, adequate, and meaningful opportunity to participate in the rulemaking process beyond the insufficient 30 days afforded by the Proposed Rule, and should subject any future public charge inadmissibility policy to the notice-and-comment process.

IV. The Proposed Rule Violates Executive Order 13132 and the Treasury and General Government Appropriations Act

DHS failed to adequately consider the economic impact the Proposed Rule would have on States and local governments, as well as on family wellbeing, as it is required to do under separate statutory and executive obligations. As explained above, DHS' failure to consider key aspects of the problem – including, specifically, failing to conduct a federalism analysis and to account for the significant harms and costs to state and local governments – violates the APA. *See supra* Section III.B. The requirement that DHS consider the costs to state and local governments associated with the Proposed Rule implicates not only the APA but also Section 6(b) of Executive Order 13132, which provides that:

> no agency shall promulgate any regulation that has federalism implications, that imposes substantial direct compliance costs on State and local governments, . . . unless (1) funds necessary to pay the direct costs incurred by the State and local governments in complying with the regulation are provided by the Federal Government; or (2) the agency, prior to the formal promulgation of the regulation, (a) consulted with State and local officials early in the process of developing the proposed regulation; (b) in a separately identified portion of the preamble to the regulation as it is to be issued in the Federal Register, provides to the Director of the Office of Management and Budget (OMB) a federalism summary impact statement, which consists of a description of the extent of the agency's prior

> consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met; and (c) makes available to the [OMB] Director any written communications submitted to the agency by State and local officials.

Exec. Order No. 13,132, 64 Fed. Reg. 43,257-58 (Aug. 10, 1999).

The Proposed Rule states, without data or analysis, that it "would not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government." NPRM at 52,221. On this unsupported and speculative statement alone, the Proposed Rule concludes that it "does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement." *Id.* That conclusion is incorrect.

As explained above, the Proposed Rule would likely cause hundreds of thousands of noncitizens nationwide to withdraw from or forgo health, nutrition, and housing public benefits for themselves and their children, including U.S.-born children. *See supra* Section III.B.1. This would force local governments to make significant expenditures to protect the health and well-being of their residents. *See id.* Accordingly, DHS should provide a federalism summary impact statement.

DHS takes a similarly indifferent approach to its affirmative obligations under the Treasury and General Government Appropriations Act of 1999. That Act provides that:

> before implementing policies and regulations that may affect family well-being, an agency shall assess whether the action — (1) strengthens or erodes the stability or safety of the family and, particularly, the marital commitment; (2) strengthens or erodes the authority and rights of parents in the education, nurture, and supervision of their children; (3) helps the family perform its functions, or substitutes governmental activity for the function; (4) increases or decreases disposable income or poverty of families and children; (5) is warranted because the proposed benefits justify the financial impact on the family; (6) may be carried out by State or local government or by the family; and (7) establishes an implicit or explicit policy concerning the relationship between the behavior and personal responsibility of youth, and the norms of society.

Pub. L. No. 105–277, §654(c)(1-7), 112 Stat. 2681- 528-30 (1998).

With respect to this mandate, DHS determined only that "the proposed rule may decrease disposable income and increase the poverty of certain families and children, including U.S. citizen children." NPRM at 52221. Despite acknowledging that the number of noncitizens who would be inadmissible to the United States would likely increase over time as a result of the Proposed Rule, DHS believes that the financial impact on noncitizen families is justified by the purported benefits of the Proposed Rule— ensuring the self-sufficiency of noncitizens, and minimizing the financial

burden of noncitizens on the United States social safety net. *See id.* Contrary to what DHS believes, as explained above, these purported benefits of the Proposed Rule are significantly outweighed by the costs the Proposed Rule imposes not only on noncitizen families but also on state and local governments and their residents. *See supra* Section III.B.1. DHS also references recent changes in federal law that have "limited immigration-status based eligibility for certain benefits[,]" without specifying the changes to which it is referring, and without any actual analysis. NPRM at 52,221.

In addition, DHS concludes that "this proposed rule will not have any impact on the autonomy or integrity of the family as an institution[,]" NPRM at 52,221, without addressing the remaining requirements of the Treasury and General Government Appropriations Act, including the requirement that the agency assess whether the Proposed Rule strengthens or erodes the stability or safety of the family. Although the Proposed Rule is silent on this point, it would undoubtedly erode the stability and safety of noncitizen families. As explained, noncitizens, and their families, who use public benefits have relied on the well-settled understanding of what constitutes a "public charge" when making decisions on how to keep their family safe, healthy, and housed. *See supra* Section III.B.2. The Proposed Rule upends such reliance to the detriment of noncitizen families. Moreover, if, as the Proposed Rule anticipates, noncitizen parents are unable to remain in the United States due to their use of even a single public benefit on a short-term basis, that may result in the parents' separation from their U.S.-born children. Those children would remain in the United States without their parents' emotional and financial support, and wholly dependent upon all the social safety net programs DHS purports to seek to reduce. DHS has not properly assessed the impact of the Proposed Rule on family wellbeing.

V. The Proposed Rule Violates the Fifth Amendment Right to Due Process

A. The Proposed Rule Violates Equal Protection

The Proposed Rule also implicates core constitutional guarantees: that the federal government may not administer its laws in a discriminatory manner that entrenches inequality or disproportionately burdens disfavored groups without adequate justification. *See Arlington Heights v. Metro. Housing Dev. Corp.,* 429 U.S. 252, 264–66 (1977); *see also* U.S. Const. Amend. V; N.Y. Const. art. I, § 11. In many of the Signatories' cities, immigrants of color, women-headed households, and people with disabilities make up a sizeable share of the population. The Proposed Rule threatens to reproduce historical patterns of discrimination through discriminatory purpose and intent in violation of the Fifth Amendment's equal protection guarantee.

1. The Proposed Rule's History and Disproportionate Effect Suggests an Inference of Discriminatory Purpose and Impact

Reviewing the history of the Proposed Rule and its predecessors suggest both discriminatory intent and impact. The public charge doctrine has historically functioned as a tool of exclusion, designed to limit immigration by disfavored racial and ethnic groups. *See Hunter v. Underwood*, 471 U.S. 222, 233 (1985). The Proposed Rule does far more than merely adjust

administrative criteria; it reintroduces a regime with a well-documented discriminatory impact and historical lineage tied to exclusionary, race-based immigration policies. *See supra* Section III.A.1.

As with the 2019 Final Rule, the Proposed Rule is rife with evidence of discriminatory animus. Days after the Proposed Rule was published, the President described immigrants, particularly those from Somalia, as "garbage"[24] and at other times has also stated that immigrants are "poisoning the blood of our country."[25] Without evidence, the President has described cities across the U.S. as "cesspools" simply because they have pro-immigrant policies.[26] Such commentary shows animus towards non-citizens. And the plain language of the Proposed Rule demonstrates DHS' intent to go even further than the 2019 Final Rule and empower individual officers with unfettered discretion to make public charge determinations on any factor, including impermissible discrimination. Proceeding in the face of this record, without meaningful safeguards, standards, or justifications, heightens constitutional concerns.

2. The Proposed Rule Disproportionately Harms People of Color, Women, and Disabled People

Immigrant applicants from the Signatories' most vulnerable communities will bear the brunt of harms from DHS' expansion of the public charge test. The public charge ground of inadmissibility often rests on economic indicators—income level, access to benefits, housing stability—that are inextricably bound to race and national origin, to gender, and to ability. Applying the public charge test without restriction will result in far greater exclusion on the basis of race. In fact, DHS acknowledged that the 2019 Final Rule—which imposed greater restrictions on officers than the Proposed Rule—would have a disparate impact on communities of color. 2019 Final Rule at 41,369 ("DHS recognizes that it is possible that the inclusion of benefits such as SNAP and Medicaid may impact in greater numbers communities of color, including Latinos and [Asian Americans and Pacific Islanders], … and therefore may impact the overall composition of immigration with respect to these groups."). The Proposed Rule threatens even more severe

[24] Isabella Murray, Lalee Ibssa & Ivan Pereira, *Trump Describes Somali Immigrants as 'Garbage' Amid Feud With Minnesota Congresswoman, Governor*, ABC News (Dec. 3, 2025), https://abcnews.go.com/Politics/trump-describes-somali-immigrants-garbage-amid-feud-minnesota/story?id=128069199.

[25] Ginger Gibson, *Trump Says Immigrants Are "Poisoning the Blood of Our Country"; Biden Campaign Likens Rhetoric to Nazi-Era Language*, NBC News (Dec. 17, 2023), https://www.nbcnews.com/politics/2024-election/trump-says-immigrants-are-poisoning-blood-country-biden-campaign-liken-rcna130141

[26] Naftali Bendavid, Trump, *GOP Portray Cities as Chaotic Dystopias in Need of Occupation,* Wash. Post (Aug. 21, 2025), https://www.washingtonpost.com/politics/2025/08/21/trump-cities-crime-washington-dc-los-angeles/

effects, as it proposes to completely remove any limitation as to what can be considered in making a public charge determination.

The chilling effect of the standard (or lack thereof) in the Proposed Rule will also be felt more acutely by non-white immigrants, particularly Latino immigrants.[27] Non-white immigrants may have lower rates of access to healthcare, especially if their employers do not provide health insurance based on hours worked or if they work in industries such as such as service, sales, and construction that are less likely to provide employee supported insurance.[28] Black immigrants make up a large percentage of service and sales workers, particularly in healthcare roles such as personal care aides or nursing assistants.[29] Latino immigrants represent a disproportionate share of construction and agricultural labor in the U.S.[30] More often than not, these jobs do not offer health insurance, and thus Medicaid can be pivotal to help achieve self-sufficiency. Without access to these essential benefits, immigrants of color would face a different harm of decreased health outcomes, housing insecurity and food insecurity. Such disparate harm raises serious constitutional concerns.

DHS concedes that its Proposed Rule "may lead to downstream effects on public health, community stability, and resilience, to include: Worse health outcomes, such as increased prevalence of obesity and malnutrition (*especially among pregnant or breastfeeding women, infants and children*), reduced prescription adherence, and increased use of emergency rooms for primary care due to delayed treatment." NPRM at 52,218 (emphasis added). This is hardly surprising. Women, non-binary and LGBTQ individuals "experience greater barriers to employment due to lack of support, discrimination, and harassment," and women are more likely to rely on public benefits such as Medicaid or SNAP.[31] Women are also more likely to be the sole

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[27] Jeanne Batalova, Michael Fix and Mark Greenberg, *Chilling Effects: The Expected Public Charge Rule and Its Impacts on Legal Immigrant Families' Public Benefits Use.* Migration Policy Institute, June 2018, https://www.migrationpolicy.org/sites/default/files/publications/ProposedPublicChargeRule-Final-Web.pdf

[28] Kaiser Family Foundation**,** *Health Policy 101: Employer-Sponsored Health Insurance*, https://www.kff.org/health-costs/health-policy-101-employer-sponsored-health-insurance/ (last visited Dec. 15, 2025)

[29] American Immigration Council Staff, *Data Snapshot: The Number of Black Immigrants in the US Continues to Rise* (February 9, 2024), https://www.americanimmigrationcouncil.org/blog/data-number-of-black-immigrants-in-the-us/

[30] Ahmad Ismail, Arturo Vargas Bustamante, Jie Zong, and Silvia R. González, *What the United States Economy Stands to Lose: Latino Immigrant Labor in the Crosshairs,* UCLA Latino Policy & Politics Institute, November 19, 2025 https://latino.ucla.edu/research/latino-immigrant-labor-red-blue-states/

[31] National Women's Law Center, *Medicaid Work Reporting Requirements Would Harm Women's and LGBTQ+ People's Health and Economic Security to Fund Tax Breaks for the Rich*

or primary caregivers of children and to aging parents, and yet, also are "overrepresented in low-paid jobs that don't accommodate caregiving responsibilities, including direct care workers who help provide essential health care to other people."[32] Given their disproportionate responsibility in caregiving, threats on their health will not only harm the women excluded from public benefits, but those they care for personally or professionally. The chilling effect from the Proposed Rule will particularly harm immigrant survivors of domestic violence and sexual assault since non-cash benefits are key to a survivor's ability to escape a dangerous or life-threatening living situation.[33]

DHS' inclusion of non-cash benefits, as well as its proposal to allow unlimited discretion for immigration officials making public charge determinations will also severely curtail admission for disabled individuals.[34] Such disparate impact is unconstitutional and illegal the Rehabilitation Act. *See Cleburne v. Cleburne Living Center, Inc.,* 473 U.S. 432 (1985); 42 U.S.C. § 12101; 29 U.S.C. § 794(a). The ADA prohibits discrimination on the basis of disability, and the Rehabilitation Act "prohibits the government from excluding from participation in, denying the benefits of, or subjecting to discrimination under any federally funded program or activity, a person with a disability 'solely by reason of her or his disability." *Cook Cty.,* 962 F.3d at 227. The NPRM's outsized harmful impact on disabled noncitizens violates both the Equal Protection clause and the ADA as it forces individuals to pit their immigration status against life-saving services and health benefits.

By rescinding the 2022 Final Rule with no replacement, DHS will leave a void in guidance that "makes it all but inevitable that a person's disability will be the but-for cause of her being deemed likely to become a public charge." *Cook Cty,* 962 F.3d at 228. Even in the 2019 Final Rule, DHS conceded that an expanded definition of the public charge would have an "outsized impact" on disabled individuals. 2019 Final Rule at 41,368. In the 2019 Final Rule, DHS attempted to create weighted negative and positive factors to govern the public charge analysis – all of which incorporated unlawful and harmful considerations of disability. *Id.* Now, DHS proposes to discard any pretense of outer bounds on unlawful considerations, allowing for far more severe negative impacts on disabled applicants. Under the Proposed Rule, officials applying the test will be empowered to weigh disability—real or perceived—without limit. Access to essential healthcare benefits, such as Medicaid, is crucial to the ability for disabled individuals to become or remain

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(February 6, 2025), https://nwlc.org/resource/medicaid-work-reporting-requirements-would-harm-womens-and-lgbtq-peoples-health-and-economic-security-to-fund-tax-breaks-for-the-rich/.

[32] *Id*.

[33] Shaina Goodman, *The Difference Between Surviving and Not Surviving: Public Benefits Programs and Domestic and Sexual Violence*, National Resource Center on Domestic Violence (January 2018), https://vawnet.org/material/difference-between-surviving-and-not-surviving-public-benefits-programs-and-domestic-and

[34] Alessandra N. Rosales, *Excluding 'Undesirable' Immigrants: Public Charge as Disability Discrimination,* 119 MICH. L. REV. 1613, 1626 (2021).

self-sufficient.[35] Disabled individuals make up approximately a third of Medicaid enrollees—many of which do not also receive disability cash benefits.[36] Moreover, private health insurance often does not cover vital services such as home health services and other needs that allow disabled people to be independent. Chilling the use of the very programs that allow disabled people to actively participate in society runs counter to the purpose of the federal disability laws. *See, e.g.*, *Olmstead v. L.C.* 527 U.S. 581 (1999).

3. The Proposed Rule Fails Even the Most Deferential Constitutional Review

Even assuming the most deferential standard applies, a policy violates equal protection if it lacks a rational relationship to a legitimate governmental interest or is motivated by animus or irrational prejudice. *Romer v. Evans*, 517 U.S. 620, 632 (1996). The public charge test has a long history as a tool of racial and ethnic exclusion, of disproportionate gender impact, and a detrimental effect on disabled people. That history is relevant—and legally significant—when DHS proposes to revive a framework that predictably burdens immigrants of those communities.

DHS has not even attempted to explain how the Proposed Rule would alleviate emergency costs to our jurisdictions and serve as a cost-savings, how it would encourage preventative health care, and stabilize families and workforces—because it cannot. This fails rational basis review. *See Plyler*, 457 U.S. at 227-30. At a minimum, DHS must explain how rescission avoids reviving a system that operates to exclude based on proxies for race, national origin, gender, and disability. The Proposed Rule does not even attempt do so.

B. The Proposed Rule is Unconstitutionally Vague

The void-for-vagueness doctrine is mandated by the Due Process Clause of the Fifth Amendment. *See, e.g.*, *Welch v. United States*, 578 U.S. 120, 124 (2016). A law is unconstitutionally vague if it "authorizes or even encourages arbitrary and discriminatory enforcement." *Hill v. Colorado*, 530 U.S. 703, 732 (2000) (citing *Chicago v. Morales*, 527 U.S. 41 (1999)). Though courts may apply a less searching vagueness inquiry for non-criminal statutes, *see Hoffman Estates v. Flipside, Hoffman Estates*, 455 U.S. 489, 498–99 (1982), the Supreme Court recently reaffirmed that "the most exacting vagueness standard should apply in [civil

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[35] National Council on Disability, 2023 Progress Report: *Toward Economic Security: The Impact of Income and Asset Limits on People with Disabilities* (Oct. 31, 2023), https://www.ncd.gov/report/2023-progress-report-toward-economic-security-the-impact-of-income-and-asset-limits-on-people-with-disabilities

[36] Emily Zylla, Andrea Stewart and Elizabeth Lukanen, *Collection of Self-Reported Disability Data in Medicaid Applications: A Fifty-State Review of the Current Landscape,* State Health and Value Strategies & State Health Access Data Assistance Center, January 2024, https://www.rwjf.org/en/insights/our-research/2024/01/collection-of-self-reported-disability-data-in-medicaid-applications.html#:~:text=In%20spite%20of%20the%20fact,a%20disability%20determination%20in%202021.

immigration] removal cases." *Sessions v. Dimaya*, 584 U.S. 148, 156 (2018); *accord Jordan v. De George*, 341 U.S. 223, 231 (1951) (applying the same standard as criminal cases because of the "grave nature of deportation").

The Proposed Rule is unconstitutionally vague because it invites arbitrary and discriminatory enforcement. A law invites arbitrary and discriminatory enforcement when "there are no standards governing the exercise of discretion" it grants. *Papchristou v. Jacksonville*, 405 U.S. 156, 170 (1972). The Proposed Rule's rescission of 8 C.F.R. 212.22 would remove the existing structure for how officers are to determine whether a noncitizen is likely to become a public charge and gives the immigration officer unbounded discretion. Section 212.22 instructs officers as to how they should assess whether a noncitizen is likely to become a public charge. It lists factors that must be considered, 8 C.F.R. 212.22(a); factors that cannot be considered, *id.* at 212.22 (d), (e); and the standard against which officers should consider the requisite factors and any other non-proscribed factors, *id.* at 212.22(b). The Proposed Rule's rescission of Section 212.22 in its entirety would leave officers merely with their statutory requirement to "consider" five enumerated factors and permission to consider an affidavit of support, where applicable. 8 U.S.C. § 1182(a)(4)(B). Furthermore, the Proposed Rule would render the officers bereft of any guidance as to how they might exercise their discretion in considering these factors. *See Papachristou*, 405 U.S. at 170.

DHS' assurance of possible future interpretive guidance is a concession that the Proposed Rule will leave immigration officers without needed guidance as to how to make public charge determinations. *See* NPRM at 52,169; 52,183; 52,188. DHS does not clarify when it will issue guidance, nor does it indicate whether such guidance will be subject to notice and comment rulemaking. *Compare* 5 U.S.C. § 553(b) *with id.* at §§ 553(A), (B). DHS merely notes that it "intends" to formulate "appropriate policy and interpretive tools that will guide DHS officers in making individualized, fact-specific public charge determinations." NPRM at 52,169; 52,183. This halfhearted commitment to future policymaking does not mitigate the constitutional issues that the Proposed Rule effects, namely, that it eliminates "minimal guidelines to govern law enforcement" and thus leaves immigration officers to make public charge determinations at their own discretion until USCIS issues new guidance. *Kolender v. Lawson*, 461 U.S. 352, 358 (1983).

For all the reasons above, the Signatories strongly oppose the Proposed Rule and call upon DHS to withdraw it.

Sincerely,

City of New York, New York

City of Austin, Texas

Baltimore City Department of Law, Maryland

Boston City Law Department, Massachusetts

Cambridge City Solicitor's Office, Massachusetts

Columbus City Attorney’s Office, Ohio

City of Evanston Mayor’s Office, Illinois

City and County of San Francisco, California

Los Angeles City Attorney's Office, California

City of New Haven Mayor’s Office, Connecticut

Oakland City Attorney’s Office, California

Portland City Attorney’s Office, Oregon

Saint Paul City Attorney’s Office, Minneapolis

City of San Jose, California

San Mateo County Counsel's Office, California