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HUMAN RIGHTS INSTITUTE

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Submitted via www.regulations.gov

Samantha Deshombres, Chief
Regulatory Coordination Division, Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Avenue NW
Washington, DC 20529-2140

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

Dear Sir/Madam:

We are writing on behalf of the Center for Constitutional Rights (CCR)¹ and the Human Rights in the U.S. Project of the Columbia Law School Human Rights Institute² in response to the Department of Homeland Security's (DHS, or the Department) Notice of Proposed Rulemaking (NPRM or proposed rule) to express our strong opposition to the proposed changes regarding "public charge," published in the Federal Register on October 10, 2018.

The proposed rule on "Inadmissibility on Public Charge Grounds"³ would cause irreparable harm to communities across the United States, and immigrants and their families, in particular. The proposed change contravenes globally accepted human rights norms, which aim to ensure an adequate standard of living and prohibit discrimination, including specific human rights obligations and commitments of the United States.

¹ The Center for Constitutional Rights works with communities under threat to fight for justice and liberation through litigation, advocacy, and strategic communications. Since 1966, we have taken on oppressive systems of power, including structural racism, gender oppression, economic inequity, and governmental overreach. See <http://ccrjustice.org>.

² The Human Rights Institute advances international human rights through education, advocacy, fact-finding, research, scholarship, and critical reflection. We work in partnership with advocates, communities, and organizations pushing for social change to develop and strengthen the human rights legal framework and mechanisms, promote justice and accountability for human rights violations, and build and amplify collective power in the United States and throughout the world. See <https://www.law.columbia.edu/human-rights-institute>

³ *Proposed Rule-Inadmissibility on Public Charge Grounds*, 83 FR 51114 (Proposed October 10, 2018). <https://www.regulations.gov/document?D=USCIS-2010-0012-0001>

As legal organizations devoted to ensuring justice and human rights accountability in the United States, we submit this joint comment in opposition to the proposed rule, which threatens to destabilize communities, and undermine public health and safety by penalizing individuals who seek to enroll in programs that promote adequate health, housing, and food on an equal basis.

For the reasons detailed in the following pages, the Department should immediately withdraw its current proposal, and dedicate its efforts to advancing policies that strengthen—rather than undermine—the ability of immigrants to support themselves.

I. The Proposed Rule Contravenes Basic Human Rights Standards, Including the Prohibition on All Forms of Discrimination and Guarantee of an Adequate Social Safety Net

Globally-accepted human rights norms, which recognize and promote dignity, fairness, and equality for all people and enable individuals to meet their basic needs, provide a valuable framework for domestic policy-making. Human rights include freedom from all forms of discrimination as well as the right to housing, education, health care, and social security, among other rights. The U.S. has ratified three core human rights treaties,⁴ committing to substantive obligations, and signed several others, agreeing not to take actions that violate their object and purpose.⁵

Human rights laws require governments to identify and address discrimination in all its forms—regardless of intent. This includes eliminating policies that have a disparate impact or those which unintentionally perpetuate discrimination. In order to foster equality, the human rights framework calls for government policies calibrated to promote equal outcomes for all, regardless of economic, racial, or gender status; national or ethnic origins; gender identity; sexual orientation; age; disability; or other status.

The United States is a party to two treaties that squarely address discrimination: the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD), and the International Covenant on Civil and Political Rights (ICCPR). By ratifying these treaties, the U.S. has committed to prohibit and eliminate discrimination on the basis of race, nationality, or ethnicity, obligations that apply to the federal government, as well as state and local authorities.⁶

⁴ International Convention on the Elimination of All Forms of Racial Discrimination G.A. Res. 2106 (XX), U.N. Doc. A/6014 (Dec. 21, 1965), entered into force January 4, 1969, available at <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx> (hereinafter “ICERD”); the International Covenant on Civil and Political Rights, U.N. Gen. Ass. Res. 200A (XXI), UN Doc. A/6316 (1966), entered into force March 23, 1976, available at <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx> (hereinafter “ICCPR”); International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), G.A. Resolution 39/46, entered into force June 26, 1987, available at <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>.

⁵ International Covenant on Economic, Social and Cultural Rights, G.A. Resolution 2200A, entered into force January 3, 1976, available at <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx> (hereinafter CESCR); Convention on the Elimination of All Forms of Discrimination against Women New York, G.A. Resolution 34/180, entered into force September 3, 1981, available at <https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx>.

⁶ See Human Rights Comm., Gen. Comment No. 31, *Nature of the General Legal Obligation on States Parties to the Covenant*, ¶ 7, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004), available at <http://hrlibrary.umn.edu/gencomm/hrcom31.html>; ICERD, *supra* n 4., art. 2. When ratifying the ICCPR, the U.S. attached an understanding that states that the ICCPR “shall be implemented by the Federal Government to the extent that it exercises legislative and judicial jurisdiction over the matters covered therein, and otherwise by the state and local governments; to the extent that state and local governments exercise jurisdiction over such matters, the Federal Government shall take measures appropriate to the Federal system to the end that the competent authorities

Discrimination is broadly defined to include any “distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin” that infringes on the enjoyment of human rights” “in purpose or effect.”⁷ Policies and practices that evince a clear discriminatory intent, as well as those with a disproportionately negative impact on a group based on identity, contravene both ICERD and the ICCPR.⁸ As recently as November of 2018, U.S. representatives expressed an ongoing commitment to fighting racism and discrimination, and implementing ICERD.⁹

Importantly, ICERD specifically calls on governments to guarantee equality in the enjoyment of basic services, including unemployment protection, housing, medical care, social security, and social services.¹⁰ This builds on the foundational principles articulated in the Universal Declaration of Human Rights.¹¹ Indeed, under a human rights framework, governments must take steps to promote and protect economic and social rights, such as adequate housing, progressively over time and in light of available resources, and avoid rollbacks in services. Laws and policies should prioritize expenditures that fulfill basic rights, with a particular focus on the communities most in need. These obligations are fleshed out in the International Covenant on Economic, Social and Cultural Rights (CESCR), which the U.S. has signed, but not ratified.¹² Notably the CESCR prohibits discrimination on the basis of national or social origin, and property.¹³ The U.S. has also signed but not ratified the global treaty on women’s human rights, the Convention on the Elimination of all Forms of Discrimination Against Women, which enumerates universal standards that affirm the fundamental rights of women and girls and offers a framework to foster gender equality and eliminate discrimination against women,¹⁴ as well as

of the state or local governments may take appropriate measures for the fulfillment of the Covenant. *See* Reservations, Understandings and Declarations to the International Covenant on Civil and Political Rights, 138 Cong. Rec. S4781-01 (daily ed. Apr. 2, 1992); *see also* 140 CONG. REC. 14326 (1994) (similar understanding for the Race Convention).

⁷ ICERD, *supra* n. 4, at art 1(1); HRC Gen. Comment 18 (same).

⁸ U.N. Doc Cerd/C/66/D/31/2003, Communication NO. 31/3003, *L.R. v. Slovakia*, ¶ 10.4 (2003), *available at* <http://hrlibrary.umn.edu/country/decisions/31-2003.html>. (The CERD Committee has explained that “the definition of racial discrimination in Article 1 expressly extends beyond measures which are explicitly discriminatory, to encompass measures which are not discriminatory at face value but are discriminatory in fact and effect.”)

⁹ *See* Press Release, Third Committee Approves 13 Drafts on Persons with Disabilities, Ageing, Human Trafficking amid Protracted Votes on Human Rights in Syria, Myanmar (Nov. 16, 2018), *available at* <https://www.un.org/press/en/2018/gashc4254.doc.htm> (“The representative of the United States, speaking in an explanation of vote, said her country is committed to fighting racism, racial discrimination, xenophobia and related intolerance. Acknowledging that this fight remains a challenge, she pointed out that her country continues to implement the International Convention on the Elimination of All Forms of Racial Discrimination.”)

¹⁰ ICERD, *supra* n. 4, at art. 2 & 5.

¹¹ Universal Declaration of Human Rights, G.A. Res. 217A, at 71, U.N. Doc A/810 (Dec. 12, 1948), *available at* <http://www.un.org/en/documents/udhr/>.

¹² Vienna Convention on the Law of Treaties art. 18, opened for signature May 23, 1969, 1155 U.N.T.S. 331 (entered into force Jan. 27, 1980) (defining obligations of states that have signed but not yet ratified treaties) (As a signatory, the United States has committed to refrain from action that defeats the object and purpose of this international agreement.); *see* Michael H. Posner, Assistant Secretary, Bureau of Democracy, Human Rights, and Labor, Address to the American Society of International Law (Mar. 24, 2011), *available at* <https://2009-2017.state.gov/j/drl/rls/rm/2011/159195.htm> (“While the United States is not a party to the Covenant, as a signatory, we are committed to not defeating the object and purpose of the treaty.”)

¹³ CESCR, *supra* n. 5, at art. 2

¹⁴ *See* Convention on the Elimination of All Forms of Discrimination Against Women, Art. 2, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) 193, U.N. Doc. A/34/46 (entered into force Sept. 3, 1981) [hereinafter CEDAW], *available at* <http://www.un.org/womenwatch/daw/cedaw/>

treaties related to the rights of children¹⁵ and people with disabilities.¹⁶ Historically, the U.S. has emphasized a commitment to meeting basic needs on the world stage.¹⁷

In recent years, a number of international human rights experts have examined the United States' human rights record, emphasized the ways that current law and policy can perpetuate discrimination and inequality, and recommended concrete measures to foster equality and non-discrimination. In 2014, during the reviews of U.S. compliance with the ICERD and the ICCPR, U.N. independent experts highlighted that the Affordable Care Act excludes undocumented immigrants and their children, and that Medicare and Children Health Insurance Program (CHIP) provide limited coverage for undocumented immigrants and immigrants residing lawfully in the U.S. for less than five years. These experts called on the U.S. to improve access to affordable access to health care for immigrants and their families,¹⁸ and for other racial and ethnic minorities.¹⁹ In 2017, the U.N. Special Rapporteur on Extreme Poverty and Human Rights visited the U.S. and called for government action to address poverty and inequality through a number of measures, including the extension of social benefits, such as health care and housing for vulnerable communities.²⁰ Other national governments have also called on the U.S. to improve access to the social safety net for non-citizens “so that the basic human rights of immigrants, including the undocumented, are guaranteed, in particular access to health for women and children.”²¹

The proposed rule will violate globally accepted human rights norms, and specific commitments of the United States. The remainder of this comment highlights specific ways that the proposal rule contravenes basic principles of non-discrimination and equality; diminishes access to basic rights, including housing, health, and food; and is further counterproductive because it penalizes

¹⁵ See Convention on the Rights of the Child, G.A. Res. 44/25, 1577 U.N.T.S. 3, entered into force September 2, 1990, available at <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>.

¹⁶ Convention on the Rights of Persons with Disabilities (CRPD), G.A. Res. 61/106, U.N. Doc. A/RES/61/106/Annex II, entered into force May 3, 2008, available at <https://www.ohchr.org/en/hrbodies/crpd/pages/crpdindex.aspx>.

¹⁷ See U.S. Department of State, *UPR Recommendations for Working Group 3: Economic, Social, and Cultural Rights; Indigenous Issues; and the Environment*, Recommendation # 315 (2015), available at <https://www.state.gov/j/drl/upr/2015/272821.htm> (“We continue to improve our domestic laws and policies to promote access to housing, food, health, and safe drinking water and sanitation with the aim of decreasing poverty and preventing discrimination.”).

¹⁸ Human Rights Committee Concluding Observations, ¶ 15 (2014), available at <https://www.state.gov/documents/organization/235641.pdf>.

¹⁹ CERD Concluding Observations, ¶ 15 (2014), available at <https://www.state.gov/documents/organization/235644.pdf>.

²⁰ Alston, Philip, *Report of the Special Rapporteur on Extreme Poverty and Human Rights on his mission to the United States of America*, A/HRC/38/33/Add.1, ¶¶ 15-16 (May 2018), available at <https://digitallibrary.un.org/record/1629536> (“There is no magic recipe for eliminating extreme poverty, and each level of government must make its own good faith decisions. But at the end of the day, particularly in a rich country like the USA, the persistence of extreme poverty is a political choice made by those in power. With political will, it could readily be eliminated. . . . What is known, from long experience and in light of the government’s human rights obligations, is that there are indispensable ingredients for a set of policies designed to eliminate poverty. They include: democratic decision-making, full employment policies, social protection for the vulnerable, a fair and effective justice system, gender and racial equality and respect for human dignity, responsible fiscal policies, and environmental justice.”)

²¹ U.S. State Department, *UPR Recommendations for Working Group 3: Economic, Social, and Cultural Rights; Indigenous Issues; and the Environment* (Dec. 21, 2016), <https://www.state.gov/j/drl/upr/2015/272821.htm> (Cataloguing recommendations made to the United States during a review of its human rights record by UN member-states. At least one recommendations called on the United States to “Facilitat[e] access for undocumented immigrants and their children to healthcare under that Act. Consider the establishment of legislation providing for access to basic services for undocumented migrants, particularly health services, in conformity with the Affordable Care Act. Consider reviewing the eligibility requirements to the public welfare system, so that the basic human rights of immigrants, including the undocumented, are guaranteed, in particular access to health for women and children.”)

individuals and families seeking to improve their basic standard of living, with harmful long-term community effects.

II. Harmful Human Rights Impacts of the Proposed Rule

A. *Withdrawal from Participation in Programs that Ensure Safety and Well-being*

The proposed rule is likely to have immediate negative impacts, including deterring millions of immigrant families from accessing health, nutrition, and social services. History has proven that changes in immigration eligibility requirements lead to dissemination of misinformation and cause significant drops in program participation, as well as withdrawals from services.²² In addition, fear of *potential* negative immigration consequences also causes individuals to withdraw from valuable programs that support their basic needs.²³ Fear and misinformation have already caused a “chilling effect” on participation in government programs as a result of rumors of the rule before its publication.²⁴ This is not an unintended impact—the very design of this rule, the language and its draft form, as well as the confusion as to which programs would be included in the months leading up to its publication, were intended to have a chilling effect on participants considering such services.²⁵ Community providers have already reported changes in health care use, including decreased participation in Medicaid and other programs, due to community fears stemming from the leaked draft regulations.²⁶

The potential for a further chilling effect is even more widespread. Approximately 25.9 million—an estimated 8% of the U.S. population—would potentially withdraw from, or forgo services, if the new proposed public charge rule is adopted. This number represents individuals and family members with at least one non-citizen in the household and who live in households with earned incomes under 250% of the federal poverty level. Of these 25.9 million people, approximately 9.2 million are children under 18 years of age who have at least one non-citizen family member or are non-citizen themselves, representing approximately 13% of our nation’s child population.²⁷

²² Moreover, as cited in the proposed rule, historical evidence from the 1996 PRWORA policy changes demonstrates that public information alone cannot prevent these damaging consequences, because of the complexity of immigration policies (greatly increased by this proposed rule), among other reasons. Even among groups of immigrants who were explicitly excluded from the 1996 eligibility changes, and U.S citizen children in mixed status families, participation dropped dramatically. *Proposed Rule-Inadmissibility on Public Charge Grounds*, 83 FR 51114 at 361 (Proposed October 10, 2018).

²³ Jeanne Batalova, Michael Fix, and Mark Greenberg “Chilling Effects: The Expected Public Charge Rule and Its Impact on Legal Immigrant Families’ Public Benefits Use” (Washington, DC: Migration Policy Institute, 2018) <https://www.migrationpolicy.org/research/chilling-effects-expected-public-charge-rule-impact-legal-immigrant-families>; *Proposed Rule-Inadmissibility on Public Charge Grounds*, 83 FR 51114 at 359-380 (Proposed October 10, 2018).

²⁴ See Leaked Draft Department of Homeland Security, “Inadmissibility on Public Charge Grounds,” 8 CRF RIN 1645-AA22 (February 8, 2018) available at https://cdn.vox-cdn.com/uploads/chorus_asset/file/10188201/DRAFT_NPRM_public_charge.0.pdf; Helena Bottemiller Evich, “Immigrants, Fearing Trump Crackdown, Drop out of Nutrition Programs,” *Politico* (September 3, 2018), available at <https://www.politico.com/story/2018/09/03/immigrants-nutrition-food-trump-crackdown-806292>.

²⁵ Evich, *supra* n. 24.

²⁶ *Id.*

²⁷ 2012-2016 5-Year American Community Survey Public Use Microdata Sample (ACS/PUMS); 20122016 5-Year American Community Survey (ACS) estimates accessed via American FactFinder; Missouri Census Data Center (MCDC) MABLE PUMA-County Crosswalk. Custom Tabulation by Manatt health (September 30, 2018). Found online at <https://www.manatt.com/Insights/Articles/2018/Public-Charge-Rule-Potentially-Chilled-Population>.

The proposed rule anticipates financial savings from massive forgoing of enrollment in, and disenrollment from, benefits programs.²⁸ Declined participation in government programs, which provide a basic social safety net, is presented as an intended effect. The Department considers this chilling effect starting on page 15 of the proposed rule as it predicts a reduction in federal transfer payments due to individuals choosing to “disenroll from or forego enrollment in public benefits programs.”²⁹ In accordance with human rights principles, government policies should be designed with the aim of increasing enjoyment of human rights over time, and this includes employing existing resources to secure basic housing, and health.³⁰ Policies that roll back the protection of economic and social rights run counter to these principles, which call for governments to take steps that help to meet basic needs.

The expansion of the definition of public charge by broadening the programs eligible, coupled with the chilling effect on participation by immigrant families, and the presentation of this rule as a cost-savings measure, run counter to human rights. The proposed rule also represents misguided policy planning. The result will be to undermine the existing social safety net, and to increase the long-term costs to individuals, families, and service providers, ultimately leading to long-term financial and social harms. As such, the proposed rule stands in direct contradiction to the recognition that “indispensable ingredients for a set of policies designed to eliminate poverty [include]... full employment policies, social protection for the vulnerable... gender and racial equality and respect for human dignity, [as well as] responsible fiscal policies[.]”³¹

B. Lack of Equal Access to Supportive Programs and Discriminatory Effects

The discriminatory impact of this proposed rule stands in stark contrast to core human rights principles of equality and non-discrimination, harming individuals on the basis of their race, sex, ethnicity, socioeconomic, and immigration statuses.

i. Discrimination on the Basis of Ethnicity and Gender, and Impact on Communities of Color

The proposed rule will have a disproportionate effect on people of color. While people of color account for approximately 36% of the total U.S. population, of the 25.9 million people who would be potentially chilled by the proposed rule, approximately 90% are people from communities of color (23.2 million). Among people of color potentially chilled by the rule, an estimated 70% are Latino (18.3 million), 12% are Asian American and Pacific Islander (3.2

²⁸ *Proposed Rule-Inadmissibility on Public Charge Grounds*, “Costs and Benefits,” noting, “Moreover, the proposed rule would also result in a reduction in transfer payments from the federal government to individuals **who may choose to disenroll from or forego enrollment in a public benefits program. Individuals may make such a choice due to concern about the consequences to that person receiving public benefits and being found to be likely to become a public charge** for purposes outlined under section 212(a)(4) of the Act, **even if such individuals are otherwise eligible to receive benefits.** For the proposed rule, DHS estimates that **the total reduction in transfer payments from the federal and state governments would be approximately \$2.27 billion annually due to disenrollment or foregone enrollment in public benefits programs by aliens who may be receiving public benefits. DHS estimates that the 10-year discounted transfer payments of this proposed rule would be approximately \$19.3 billion at a 3 percent discount rate and about \$15.9 billion at a 7 percent discount rate.** Because state participation in these programs may vary depending on the type of benefit provided, DHS was only able to estimate the impact of state transfers.” Executive Summary, available at <https://www.regulations.gov/document?D=USCIS-2010-0012-0001> (emphasis added)

²⁹ *Proposed Rule-Inadmissibility on Public Charge Grounds* 83 FR 51114 at 15 (Proposed October 10, 2018).

³⁰ CESCR, *supra* n. 5, at art. 2

³¹ Alston, *supra* n. 20, ¶ 17 (May 2018).

million), and 7% are Black people (1.8 million).³² Moreover, the proposed rule will also have negative ramifications for the health and well-being of women, in particular, those who are pregnant or breastfeeding.³³ The proposed rule anticipates these declining health outcomes for women.³⁴

ii. Discrimination on the Basis of Socioeconomic Status

The proposed rule further discriminates based upon socioeconomic status as it counts wealth and income as the primary indicators of a person's future contribution. In the rule, wealth would be considered as a [heavily-weighted] *positive* factor in the public charge determination, and lack of wealth would be negatively considered. The proposed rule does not contemplate what a change in status could signify for an immigrant's ability to earn a living wage. Instead, the proposed rule discriminates against immigrants solely on the basis of prior financial hardships and places them in greater financial peril by expanding the range of benefits that can be used to deny certain immigration determinations based upon individual's efforts to seek government support.

In response to the Department's invitation to comment on how to consider credit scores, it is important to emphasize that credit scores are an inappropriate basis for a "public charge" determination. As a threshold matter, DHS has provided no support for the claim that a low credit score is an indication of a lack of future self-sufficiency. Neither credit reports nor credit scores were designed to provide information on whether a consumer is likely to rely on public benefits or on the character of the individual.³⁵ Importantly, many immigrants will not even have a credit history for USCIS to consider, and studies show that even when immigrants do have credit histories, their credit scores are artificially low.³⁶ Further, a negative credit record is often the result of circumstances beyond a consumer's control, such as illness or job loss, from which the consumer may subsequently recover.³⁷

The discriminatory impact of the proposed rule and the intent to target communities on the basis of their immigration, socioeconomic, race, sex, gender, age, national or ethnic origins statuses violate basic human rights norms. In particular, the proposed rule places a unique burden on individuals as a result of their ethnicity and socioeconomic status and by doing so, constitutes a prohibited form of discrimination.

³² 2012-2016 5-Year American Community Survey Public Use Microdata Sample (ACS/PUMS); 2012-2016 5-Year American Community Survey (ACS) estimates accessed via American FactFinder; Missouri Census Data Center (MCDC) MABLE PUMA-County Crosswalk. Custom Tabulation by Manatt Health, 9/30/2018. Found online at <https://www.manatt.com/Insights/Articles/2018/Public-Charge-Rule-Potentially-Chilled-Population>.

³³ Wendy E. Parmet and Elizabeth Ryan, New Dangers For Immigrants And The Health Care System, Health Affairs Blog, April 20, 2018. <https://www.healthaffairs.org/doi/10.1377/hblog20180419.892713/full>

³⁴ *Proposed Rule-Inadmissibility on Public Charge Grounds* 83 FR 51114 at 370 (Proposed October 10, 2018)

³⁵ Consumer Financial Protection Bureau, Data Point: Credit Invisibles (May 7, 2015) available at http://files.consumerfinance.gov/f/201505_cfpb_data-point-credit-invisibles.pdf (most credit scoring models built to predict likelihood relative to other borrowers that consumer will become 90 or more days past due in the following two years.)

³⁶ Bd. of Governors of the Fed. Reserve System, Report to the Congress on Credit Scoring and Its Effects on the Availability and Affordability of Credit at S-2 (Aug. 2007) ("Evidence also shows that recent immigrants have somewhat lower credit scores than would be implied by their performance".)

³⁷ See generally Chi Chi Wu, National Consumer Law Center, Solving the Credit Conundrum: Helping Consumers' Credit Records Impaired by the Foreclosure Crisis and Great Recession 9-12 (Dec. 2013), available at www.nclc.org/images/pdf/credit_reports/report-credit-conundrum-2013.pdf.

iii. Discrimination against Individuals Living with Disabilities

The proposed rule would also discriminate against people with disabilities.³⁸ The rule deems an immigrant to be a public charge for using non-cash benefits which individuals with disabilities often rely on as a result of their disability. Additionally, adults under the age 65 who enroll in Medicare have disabilities at a rate higher than individuals in the general population. For example, 8,781,327 of publicly-insured individuals are living with disabilities.³⁹ Many of these individuals are eligible for Medicaid, and unable to obtain private insurance, precisely because of their disability. Likewise, more than one-quarter of people who use SNAP benefits for nutritional support are also disabled. Many of these individuals rely upon such benefits so that they can continue to work, stay healthy, and remain productive members of the community.

C. Undermines Social Protection of Children

Firmly enshrined in human rights law is the need for social protection of children.⁴⁰ In contrast, by design and impact, this proposed rule threatens children's ability to participate in valuable programs and supports that are essential to meeting basic needs and ensuring full development. Should immigrant families seek to maintain an ability to adjust their status, they may be forced to disenroll from benefits programs. Thus, the proposed rules forces families to decide between access to food, housing, and adequate health care and securing one's permanent status.

In light of the significant negative impact on health, and in response to DHS's request, our organizations underscore that CHIP should not be included in a public charge determination. Including CHIP would likely lead to many eligible children foregoing fundamental health care benefits, both because of the direct impacts on immigration status determinations, and as a result of the chilling effect detailed above. Nearly 9 million children across the U.S. depend on CHIP for their health care. It is likely that the chilling effect would reduce the number of participants, not only among non-citizens, but many eligible citizen children as well would likely forgo CHIP—and health care services altogether—if their parents think they may eventually be subject to a public charge determination. Adequate health care for children is an essential, basic right, and is vital for long-term health into adulthood; accordingly, CHIP must not be included in a public charge determination.

Programs that promote and protect an adequate standard of living for all, including the rights to medical care and health, education, and housing, are central to fulfilling basic human rights. Moreover, international law promotes the right to social protection for vulnerable communities, particularly of children. The programs contemplated under the proposed rule were designed to protect children and immigrant families from harm and to promote safe and healthy communities. To include these programs in public charge determinations would violate core human rights protections for children.

³⁸ Discrimination on the basis of disabilities contravenes the CPRD, *supra* n. 16, at art 5.2 (" States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.")

³⁹ Amanda Lee and Beth Jarosz, "Majority of People Covered by Medicaid, and Similar Programs, are Children, Older Adults, or Disabled," (June 29, 2017) available at <https://www.prb.org/majority-of-people-covered-by-medicare-and-similar-programs/>

⁴⁰ See CRC, *supra* n. 15 ("Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance.")

D. Limits Access to Affordable Housing

Access to affordable and adequate housing, housing assistance, and public housing programs are paramount human rights protections. When families have access to housing assistance, they have more resources to purchase nutritious foods, health care, and other necessities, as well as improved access to jobs and school.⁴¹ Where families live is also directly tied to where they work. If parents lose access to affordable housing, they may also be at risk of losing their sources of income, which can lead to long-term destabilization.

Despite the fundamental role that the right to access to housing plays, this rule threatens access by including support programs in public charge determinations. The proposed rule will force immigrant families to decide between safe, stable housing and their ability to adjust their immigration status in the future. For example, the proposed rule seeks to include federally subsidized housing programs, such as Section 8 and public housing, in the public charge determination. Federally subsidized housing programs, although already limited, are some of few options currently available to the individuals and families that would be impacted by the proposed rule.

As the U.N. Special Rapporteur on Poverty noted in his human rights report on the U.S., there is a grave crisis of available, affordable, accessible and safe housing—across the country.⁴² Federal programs and policies should be calibrated to enhance, not limit, access to affordable housing. By curtailing access to housing, the proposed rule contravenes principles found specifically in the CERD, CDESCR, and UDHR.

E. Deters Access to Health Care with Long-Term Health Consequences

Medicaid and Medicare Part D provide valuable health care access for pregnant women, the elderly, disabled individuals, and certain low-income individuals. Without access to safe health care, immigrants may allow minor concerns to develop into life-threatening illnesses.⁴³ Pregnant immigrants will put their lives and the lives of their children at risk for fear of being deemed a public charge. Without justification, this rule seeks to include Medicaid, Medicare part D, and seeks comment on whether to include CHIP. By including these programs, the proposed rule penalizes these vulnerable groups on every front, and all but guarantees that these populations will be unable to adjust their status if they make a decision to sustain basic health by seeking medical care support.

Equally disturbing is that the only Medicaid funds that are not contemplated under the rule are services for emergency medical conditions and emergency life-saving treatment. This is particularly misguided, given that the rule seeks to paradoxically include preventative services, which would likely significantly reduce the need for emergency services in the long term.

⁴¹ Nabihah Maqbool, Janet Viveiros, and Mindy Ault, *The Impacts of Affordable Housing on Health: A Research Summary*, Center for Housing Policy, (2015), available at <https://community-wealth.org/sites/clone.community-wealth.org/files/downloads/paper-maqdool-et-al.pdf> ..

⁴² See Alston, *supra* n. 20, ¶ 39.

⁴³ Kaiser Family Foundation, “Key Facts about the Uninsured Population,” *KFF.org* (November 29, 2017) available at <https://www.kff.org/uninsured/fact-sheet/key-facts-about-the-uninsured-population/>.

Covering *preventative* health care services is a key step towards guaranteeing the well-being of individuals as well as ultimately saving them from costly emergency measures later on.

The human right to health care is fundamental. The establishment of Medicaid, Medicare, and CHIP, and the many large-scale benefits that result when everyone's health care access is increased is undeniable. Including programs listed in the rule will cause great harm to public health, in contravention of basic human rights principles, and recommendations from U.N. human experts, and commitments under the CERD and ICCPR, as well as principles of the UDHR, and CESC.

F. Curtails Access to Basic Food and Nutrition

The critical value of access to public benefits in ensuring access to food and nutrition is well-documented. Children of immigrants who participate in Supplemental Nutrition Assistance Program (SNAP, formerly food stamps) are more likely to be in good or excellent health, be food secure, and reside in stable housing. SNAP improves food security, dietary intake, and health, especially among children, and with lasting positive effects.⁴⁴ For millions of families, SNAP is a lifeline that keeps families healthy and living above the poverty threshold, and the program is associated with significant health benefits for participants.⁴⁵

Health, nutrition and housing assistance programs, including SNAP, prepare children to be productive, working adults. Considering including SNAP and similar programs in the proposed rule is harmful and runs counter to basic human rights principles.

III. Conclusion

This proposed rule reflects a view that any immigrant who “receives one or more public benefits” must choose between their family's current and future health and well-being and the ability to adjust their immigration status. The proposed rule penalizes participation in valuable programs, forces immigrant families to choose between access to health and nutrition and other supports on the one hand, and their ability to keep their family united on the other. In addition, the proposed rule does not adequately consider the collateral consequences of forcing immigrant families to make these choices, instead, the rule disregards these devastating and harmful impacts.

Without access to adequate resources, immigrant families will be unable to meet basic needs and risk losing the ability to pull their families out of poverty. The proposed rule deters efforts to improve health and housing, and discriminates against those with fewer resources, while at the same time perpetuating poverty and lack of basic services for immigrant families. In fact, wealth is the only positive factor that this proposed rule takes in account and yet, the rule itself will increase generational poverty for immigrant families across the United States.

⁴⁴ Hartline-Grafton, H., *SNAP and Public Health: The Role of the Supplemental Nutrition Assistance Program in Improving the Health and Well-Being of Americans*. Food Research & Action Center (2013).

⁴⁵ Chloe N. East, “*The Effect of Food Stamps on Children's Health: Evidence from Immigrants' Changing Eligibility*,” Working Paper at 21 (2017), available at http://www.chloeneast.com/uploads/8/9/9/7/8997263/east_fskids_r_r.pdf.

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

Thank you for the opportunity to submit comments on the proposed rulemaking. Please do not hesitate to contact us to provide further information.

Sincerely,

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