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

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

Dear Ms. Deshommes:

I am writing on behalf of the Legal Aid Society of the District of Columbia 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 changes regarding "public charge," published in the Federal Register on October 10, 2018.

The Legal Aid Society of the District of Columbia is the oldest general legal services program in the District of Columbia. Over the past 86 years, Legal Aid has provided legal assistance to tens of thousands of individuals and impacted many more through our systemic litigation and advocacy. Today, we provide legal services in five broad areas: housing, family law, public benefits, consumer, and immigration, our newest practice area added in 2018.

Legal Aid's mission is to make justice real – in individual and systemic ways – for persons living in poverty in the District. Our work includes individual and systemic advocacy with the District and federal governments to eliminate access barriers to vital public benefits for eligible District residents. In this initiative, as in all of our work, Legal Aid is proud to represent citizens and non-citizens alike as we work to make the District a more equitable and just city.

*The proposed "public charge" rule represents a radical change in current policy that would cause grave harm to individuals, families, and communities in the District of Columbia and nationwide.* The proposed rule is contrary to our nation's expressed values regarding the individual rights and worth of all persons. Specifically, by emphasizing and weighing factors such as age, health, English language proficiency, and level of education and skills, the proposed rule invariably shifts away from our traditional, long-standing family-based immigration system. The additional discretion that the proposed rule requires – in an already flawed and overwhelmed immigration system – would only further erode due process and entrench existing bias by perpetuating discrimination, particularly against working class immigrants of color and women.

Moreover, implementation of the proposed rule would erect additional barriers to eligible low-income individuals who are trying to obtain and keep their public benefits.

Given that the fate of America's citizens and non-citizens are inextricably tied together, the harmful effects of this regulation on the economic security, health, and well-being of immigrants and their families will extend beyond these communities and make our nation as a whole hungrier, sicker, and poorer. As the federal government itself recognized in 1999, when promulgating guidance regarding public charge, "a reluctance to access benefits has an adverse impact not just on the potential recipients, but on public health and the general welfare."<sup>1</sup> Furthermore, given that states will likely have to modify their systems to track, monitor and report the receipt of public benefits by immigrants, adoption of this rule runs the risk of making these programs more difficult to administer, thus making it harder for both citizens and non-citizens to access benefits.

*We therefore urge that the rule be withdrawn in its entirety, and that longstanding principles clarified in field guidance issued in 1999 remain in effect.* We oppose this rule because (1) it represents an unnecessary change from guidance that (while not without problems) was promulgated with the purpose of ensuring that eligible non-citizens would not have to choose between their health, nutritional needs, shelter, and ability to stay in this country or be united with their families; (2) it unfairly and unnecessarily targets immigrants who are people of color, especially women, as well as immigrants who are low-income, young, old, disabled, non- or limited-English proficient, and less educated; and (3) it will cause harm to immigrants and their families, particularly those who are most vulnerable.

### **The Proposed Rule Unnecessarily and Harmfully Expands the Benefit Programs that Would Be Considered in the Public Charge Determination.**

A "public charge" determination is made by U.S. immigration officials when a person applies to enter the U.S. or to adjust to Lawful Permanent Resident status (LPR, otherwise known as "green card" holders). While the "public charge" rule is inherently problematic, the proposed rule unnecessarily expands the definition of "public charge" that has been in effect for almost twenty years, from someone who has become or is likely to become primarily dependent on the government for support through cash assistance or long-term institutionalization to include anyone who is likely to use certain cash, health, nutrition, and housing assistance benefits.

Under current law (promulgated in 1999 after the 1996 "welfare reform" law greatly restricted immigrant eligibility for public benefits), someone is considered a public charge if they are "primarily dependent on the government for subsistence." Currently, immigration officials consider only cash assistance, such as Supplemental Security Income (SSI) and Temporary Assistance for Needy Families (TANF), comparable state or local programs, and government-

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<sup>1</sup> Immigration and Naturalization Service, *Inadmissibility and Deportability on Public Charge Grounds, A Proposed Rule by the Immigration and Naturalization Service*, 64 Fed. Reg. 28676 (May 26, 1999), <https://www.uscis.gov/ilink/docView/FR/HTML/FR/0-0-0-1/0-0-0-54070/0-0-0-56200/0-0-0-56785.html> (last accessed Nov. 12, 2018).

funded long-term institutional care, in the “public charge” test – and only when such benefits represent the majority of a person’s support.

If the proposed rule is finalized, it would radically expand the definition to include any immigrant who simply “receives one or more public benefits.” This change would drastically increase the scope of who would be considered a public charge to include people who use a much wider range of public benefit programs to meet their basic needs, including while they are employed. Under the proposed rule, immigration officials would consider receipt of benefits under the following programs in making a “public charge” determination:

- Medicaid (with limited exceptions including Medicaid coverage of an "emergency medical condition," and certain disability services related to education);
- Supplemental Nutrition Assistance Program (SNAP);
- Medicare Part D Low Income Subsidy (assistance in purchasing medicine for individuals who are elderly and/or disabled and receive Medicare on the basis of the work history of themselves or a spouse or parent); and
- Federal Public Housing, Section 8 housing vouchers, and Section 8 Project Based rental assistance.

**The Proposed Rule Targets Immigrants Who Are People of Color, Especially Women, As Well As Immigrants Who Are Low-Income, Young, Old, Disabled, Non- or Limited English Proficient, and Less Educated.**

Even families who forego public benefits will still be disadvantaged by this rule which would negatively weigh certain factors, including whether a person:

- Has income of less than 125 percent of the Federal Poverty Level (FPL);
- Is younger than 18 or older than 60;
- Has a large family; and
- Has a critical medical condition without insurance coverage.

And the proposed rule would positively weigh other factors, including whether a person:

- Has income above 250 percent of the FPL; and
- Demonstrates English proficiency.

These radical changes in the proposed rule would skew our immigration system in favor of the wealthy, and against those seeking opportunity in this country. If implemented, the proposed rule would also have significant and widespread negative implications for individuals, families, and communities, especially immigrants of color.

- The unprecedented income test, for example, would treat incomes below 125 percent of the FPL for applicable household size as a negative factor and would treat incomes above 250 percent of the FPL as a positive factor – which would effectively create an immigration system that assesses the value of an immigrant’s future contributions based

on their current wealth and skill without regard to the reality that many poor immigrants learn English, gain greater skills and education, and obtain higher-paying jobs.

- The proposed rule’s negative treatment of immigrants younger than 18 and older than 60 represents yet another mechanism for keeping immigrant families apart by making it more difficult for families with young and old members to emigrate and/or achieve permanent residence in this country.
- The proposed rule’s preference for immigrants who speak English is unnecessary and threatens turning xenophobic rhetoric into actual policy.
- Because this rule targets family-based immigration as well as low- and moderate-wage workers, it will also have a disproportionate impact on people of color. The proposed rule would create a higher risk of denial for immigrants from Mexico and Central America (with 60 percent of recent immigrants having two or more negative factors), the Caribbean (48 percent), Asia (41 percent); South America (40 percent); and Africa (34 percent); compared to the risk for immigrants from Europe, Canada, Australia and New Zealand, only 27 percent of whom could be expected to have two or more negative factors.<sup>2</sup>

Moreover, by targeting individuals who receive (or are more likely to receive) public benefits, the proposed rule would fly in the face of these individuals’ efforts to achieve self-sufficiency. There is a large body of research demonstrating positive long-term effects of receipt of many of the benefits that are included in the proposed public charge rule, including SNAP and Medicaid. In particular, the use of these benefits often enables workers (especially those in the low-wage workforce) to remain employed.<sup>3</sup> This is because it is difficult, if not impossible, to support a family on low to moderate income wages alone. In promulgating the original 1999 public charge guidance, INS recognized that “certain federal, state, and local benefits are increasingly being made available to families with incomes far above the poverty level, reflecting broad public policy decisions about improving general public health and nutrition, promoting education, and assisting working-poor families in the process of becoming self-sufficient. Thus, participation in such non-cash programs is not evidence of poverty or dependence.”<sup>4</sup> The proposed rule’s

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<sup>2</sup> Migration Policy Institute, *Gauging the Impact of DHS’ Public-Charge Rule on U.S. Immigration* (Nov. 2018), <https://www.migrationpolicy.org/research/impact-dhs-public-charge-rule-immigration>.

<sup>3</sup> See, e.g., Matthew Desmond & Carl Gershenson, Social Problems, *Housing and Employment Insecurity among the Working Poor* (2016),

<https://scholar.harvard.edu/files/mdesmond/files/desmondgershenson.sp2016.pdf?m=1452638824>; Nat’l Women’s Law Ctr., *Medicaid Is Vital for Women’s Jobs in Every Community* (2017), <https://nwlc.org/resources/medicaid-is-vital-for-womens-jobs-in-every-community/>; Ctr. on Budget & Pol’y Priorities, *Chart Book: The Far-Reaching Benefits of the Affordable Care Act’s Medicaid Expansion* (2018), <https://www.cbpp.org/research/health/chart-book-the-far-reaching-benefits-of-the-affordable-care-acts-medicaid>.

<sup>4</sup> Immigration and Naturalization Service, *Inadmissibility and Deportability on Public Charge Grounds, A Proposed Rule by the Immigration and Naturalization Service*, 64 Fed. Reg. 28676 (May 26, 1999), <https://www.uscis.gov/ilink/docView/FR/HTML/FR/0-0-0-1/0-0-0-54070/0-0-0-56200/0-0-0-56785.html> (last accessed Nov. 12, 2018).

counting SNAP, non-emergency Medicaid, and housing assistance against immigrants therefore makes it more difficult for them to become self-sufficient.

**The Proposed Rule Is Already Harming – and Would Continue to Harm – Immigrants and Their Families, Particularly Those Who Are Most Vulnerable.**

If finalized, the proposed rule will make – and has already made – immigrant families afraid to seek out and utilize programs that support their basic needs. In the current climate of hostility towards immigrants, immigrant families are already suffering from the chilling effect of the proposed rule and have begun foregoing critical services and benefits.

In fact, the Administration estimates that almost 325,000 non-citizens may “disenroll from or forego enrollment in public benefits programs” (or a conservative 2.5 percent rate).<sup>5</sup> Researchers report that the number of impacted individuals could be much higher if the proposed public charge rule were finalized if you take into account family members.<sup>6</sup> Approximately 25.9 million people, or an estimated 8 percent of the U.S. population live in households with income below 250 percent of the Federal Poverty Level and at least one noncitizen.<sup>7</sup> This estimated impact reflects the reality that when one family member fails to receive health care, housing, or nutrition benefits, the resources available to all family members, including children, decline.

People of color are disproportionately represented among these numbers. While people of color account for approximately 36 percent of the total U.S. population, of the 25.9 million people who would potentially be impacted by the proposed rule, approximately 90 percent are people from communities of color (23.2 million).<sup>8</sup> In the District, over 40,000 noncitizens or family members of noncitizens with incomes below 250 percent of the Federal Poverty Level could be impacted (or 6 percent of all District residents). Approximately 80 percent of these individuals are Black or Latino, as opposed to 60 percent of all District residents.<sup>9</sup>

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<sup>5</sup> Immigration and Naturalization Service, *Inadmissibility on Public Charge*, 83 Fed. Reg. 5114, 51269 (Oct. 10, 2018).

<sup>6</sup> Jeanne Batalova, Michael Fix, & Mark Greenberg, Migration Policy Institute, *Chilling Effects: The Expected Public Charge Rule and Its Impact on Legal Immigrant Families’ Public Benefits Use* (2018), <https://www.migrationpolicy.org/research/chilling-effects-expected-public-charge-rule-impact-legal-immigrant-families>. The Administration also acknowledges that the 1996 restrictions on immigrant eligibility for public benefits programs resulted in a 21 to 54 percent reduction in enrollment from public benefits programs. See Immigration and Naturalization Service, *Inadmissibility on Public Charge*, 83 Fed. Reg. at 51266.

<sup>7</sup> 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 percent of the federal poverty level. Custom Tabulation by Manatt Phelps & Phillips LLP, *Public Charge Proposed Rule: Potentially Chilled Population Data Dashboard* (2018), <https://www.manatt.com/Insights/Articles/2018/Public-Charge-Rule-Potentially-Chilled-Population> (using 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).

<sup>8</sup> *Id.* Among people of color who could potentially be affected by the rule, an estimated 70 percent are Latino (18.3 million), 12 percent are Asian American and Pacific Islander (3.2 million), and 7 percent are Black (1.8 million).

<sup>9</sup> *Id.* Data limitations prevent further disaggregation of the data to include figures for other races and income levels.

These chilling effects have already been seen as earlier versions of the proposed rule began to circulate.<sup>10</sup> For example, health and nutrition service providers noticed an increase in canceled appointments and requests to disenroll from means-tested programs in 2017.<sup>11</sup> Researchers also found that early childhood education programs reported drops in attendance and applications, reduced participation from immigrant parents in classrooms and at events, and an uptick in missed appointments at health clinics.<sup>12</sup> In a 2018 survey of health care providers in California, more than two-thirds (67 percent) noted an increase in parents' concerns about enrolling their children in Medi-Cal (California's Medicaid program), WIC and CalFresh (California's SNAP program), and nearly half (42 percent) reported an increase in skipped scheduled health care appointments.<sup>13</sup>

In the District of Columbia, within months of launching our Immigrants' Rights Legal Services Project, we heard many heart-wrenching personal accounts from immigrants who were afraid to seek benefits for themselves or their U.S. citizen children. Many expressed fear despite the fact that the proposed rule would be unlikely to affect them as asylum seekers, asylees or permanent residents' seeking to become naturalized citizens. We have also heard from our community partners about immigrant families who are asking to be disenrolled from needed public benefits (like WIC that have no public charge implications) because of their fears that receipt of such benefits will harm their chances of becoming lawful permanent residents or citizens.

This chilling effect would extend far beyond any individual who may be subject to the "public charge" determination, harming entire families, communities, and the infrastructure that serves all of us, including our schools, hospitals and clinics. The Administration itself acknowledges these potential outcomes:

- worse health outcomes, including increased prevalence of obesity and malnutrition, especially for pregnant or breastfeeding women, infants, or children, and reduced prescription adherence;
- increased use of emergency rooms and emergent care as a method of primary health care due to delayed treatment;
- increased prevalence of communicable diseases, including among members of the U.S. citizen population who are not vaccinated;

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<sup>10</sup> Leaked versions of drafts of the public charge expansion rule earlier in the year have had a demonstrable chilling effect on immigrants' use of WIC benefits, for example, resulting in vulnerable women and children foregoing essential nutrition assistance. See, e.g., Helena Bottemiller Ulrich, Politico, *Immigrants, Fearing Trump Crackdown, Drop Out of Nutrition Programs* (Sept. 3, 2018), <https://www.politico.com/story/2018/09/03/immigrants-nutrition-food-trump-crackdown-806292>.

<sup>11</sup> Jennifer Laird et al., Columbia Population Research Center, *Foregoing Food Assistance Out of Fear Changes to "Public Charge" Rule May Put 500,000 More U.S. Citizen Children at Risk of Moving into Poverty* (2018), <https://static1.squarespace.com/static/5743308460b5e922a25a6dc7/t/5af1a2b28a922db742154bbe/1525785266892/Poverty+and+Social+Policy+Brief+2+2.pdf>.

<sup>12</sup> Hannah Matthews et al., The Center for Law and Social Policy, *Immigration Policy's Harmful Impacts on Early Care and Education* (2018), [https://www.clasp.org/sites/default/files/publications/2018/03/2018\\_harmfulimpactsece.pdf](https://www.clasp.org/sites/default/files/publications/2018/03/2018_harmfulimpactsece.pdf)

<sup>13</sup> The Children's Partnership, *California Children in Immigrant Families: The Health Provider Perspective*, <https://www.childrenspartnership.org/wp-content/uploads/2018/03/Provider-Survey-Infographic-.pdf> (last accessed Nov. 12, 2018).

- increases in uncompensated care in which a treatment or service is not paid for by an insurer or patient;
- increased rates of poverty and housing instability; and
- reduced productivity and educational attainment.<sup>14</sup>

Therefore, if finalized, the proposed rule would only make things worse for immigrants in precarious economic circumstances and their families by preventing access to essential health care, healthy, nutritious food and secure housing. It would increase poverty, hunger, poor health, and unstable housing by discouraging enrollment in programs that have profound consequences for families' well-being and long-term success.

***The proposed rule would harm women.***

While immigrant women only make up a small share of public benefits recipients overall,<sup>15</sup> noncitizen women predominate among noncitizen recipients of income security programs. For example, in 2017, almost 47 percent of noncitizen Medicaid recipients were women (while 40 percent were men and 13 percent children).<sup>16</sup> Almost 48 percent of noncitizen recipients of SNAP benefits were women in 2017, compared to the 40 percent who were men and 12 percent who were children.<sup>17</sup> These benefits reduce poverty and help women, including immigrant women in low-wage jobs, provide a basic standard of living for their families.

In particular, the proposed rule's unprecedented consideration of Medicaid as part of the public charge determination poses a dire threat to the health of immigrant women. Under this proposed rule, immigrant women who are eligible for Medicaid<sup>18</sup> and to whom the proposed rule would apply<sup>19</sup> face having their use of Medicaid counted against them. This puts them in the untenable situation of having to decide between critical health coverage that keeps them healthy and being able to become a lawful permanent resident.

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<sup>14</sup> *Id.* at 51270.

<sup>15</sup> Noncitizen women constituted about 4 percent of all SNAP and Medicaid recipients in 2017. National Women's Law Center calculations based on U.S. Census Bureau, 2017 Current Population Survey, using Sarah Flood, Miriam King, Renae Rodgers, Steven Ruggles, and J. Robert Warren. Integrated Public Use Microdata Series, Current Population Survey: Version 6.0 [dataset]. Minneapolis, MN: IPUMS, 2018. <https://doi.org/10.18128/D030.V6.0>. This share is also roughly proportional to noncitizen women's share of the population (3.3 percent in 2017). *Id.*

<sup>16</sup> National Women's Law Center calculations based on U.S. Census Bureau, 2017 Current Population Survey, using Sarah Flood, Miriam King, Renae Rodgers, Steven Ruggles, and J. Robert Warren. Integrated Public Use Microdata Series, Current Population Survey: Version 6.0 [dataset]. Minneapolis, MN: IPUMS, 2018. <https://doi.org/10.18128/D030.V6.0>.

<sup>17</sup> *Id.*

<sup>18</sup> With certain, limited exceptions, immigrants are barred from obtaining Medicaid for five years after they obtain "qualified" status. This means, for example, that an immigrant must wait five years after becoming a lawful permanent resident before they are eligible to receive Medicaid benefits.

<sup>19</sup> Immigrants for whom the proposed rule would apply, and who are also eligible for Medicaid, include people who have been granted withholding of deportation, such as those eligible for DACA. Also included are people with protected statuses, such as asylees, who then decide to apply for a lawful permanent resident status through a quicker option, such as becoming engaged to a U.S. citizen.

Moreover, even though this proposed rule would not punish those who seek health care services that are unconnected to Medicaid – such as free or subsidized care at health centers or through other state and local safety net insurance programs – some immigrant women may avoid these services for fear of risking their future status. By forgoing medical care, including preventive reproductive health care, easily treatable illnesses or medical conditions can escalate, leading to worsening of existing conditions, lengthening of illness, and even disability or death.<sup>20</sup> When women forego prenatal and post-partum care (a likely consequence of implementation of this proposed rule), the personal and financial costs to these women, their children and society are significant, including increased rates of infant and maternal mortality and incidence of low birthweight babies.<sup>21</sup> Implementation of this rule would particularly harm Black women, who already experience disproportionately high rates of maternal mortality, in part due to existing barriers to health care and systemic inequalities.<sup>22</sup>

***The proposed rule would harm survivors of domestic violence and sexual assault.***

The proposed rule would have a detrimental impact on survivors of domestic violence and sexual assault and their ability to keep themselves and their families safe from abuse. Survivors who seek to adjust their immigration status through VAWA or U pathways are not subject to a public charge determination. However, many survivors do not fall under those named categories and will be harmed by this proposal,<sup>23</sup> because access to health care, housing, food assistance, and other public benefits plays a pivotal role in helping survivors escape and heal from domestic violence and sexual assault.<sup>24</sup>

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<sup>20</sup> Steffie Woolhandler & David U. Himmelstein, Annals of Internal Medicine, *The Relationship of Health Insurance and Mortality: Is Lack of Insurance Deadly* (2017), <http://annals.org/aim/fullarticle/2635326/relationship-health-insurance-mortality-lack-insurance-deadly>; Rachel West, Center for American Progress, *Expanding Medicaid in All States Would Save 14,000 Lives Per Year* (2018); Committee on the Consequences, Board on Health Services, Institute of Medicine, *Care Without Coverage: Too Little, Too Late* (2002); Adam Sonfield, Guttmacher Policy Review, *Beyond Contraception: The Overlooked Reproductive Health Benefits of Health Reform's Preventive Services Requirement*, (2012) <https://www.guttmacher.org/gpr/2012/10/beyond-contraception-overlooked-reproductive-health-benefits-health-reforms-preventive>.

<sup>21</sup> Jacques Balayla & Haim Arie Abenheim, American Journal of Perinatology, *Inadequate Prenatal Care Utilization and Risks of Infant Mortality and Poor Birth Outcome: A Retrospective Analysis of 28,729,765 U.S. Deliveries over 8 Years* (2012), [https://www.researchgate.net/profile/Jacques\\_Balayla2/publication/230573498\\_Inadequate\\_Prenatal\\_Care\\_Utilization\\_and\\_Risks\\_of\\_Infant\\_Mortality\\_and\\_Poor\\_Birth\\_Outcome\\_A\\_Retrospective\\_Analysis\\_of\\_28729765\\_US\\_Deliveries\\_over\\_8\\_Years/links/0deec526dabeb49c3f000000/Inadequate-Prenatal-Care-Utilization-and-Risks-of-Infant-Mortality-and-Poor-Birth-Outcome-A-Retrospective-Analysis-of-28-729-765-US-Deliveries-over-8-Years.pdf](https://www.researchgate.net/profile/Jacques_Balayla2/publication/230573498_Inadequate_Prenatal_Care_Utilization_and_Risks_of_Infant_Mortality_and_Poor_Birth_Outcome_A_Retrospective_Analysis_of_28729765_US_Deliveries_over_8_Years/links/0deec526dabeb49c3f000000/Inadequate-Prenatal-Care-Utilization-and-Risks-of-Infant-Mortality-and-Poor-Birth-Outcome-A-Retrospective-Analysis-of-28-729-765-US-Deliveries-over-8-Years.pdf); The American College of Obstetricians and Gynecologists, *Ob-Gyns Stress the Importance of Postpartum Care: The Fourth Trimester* (2016), <https://www.acog.org/About-ACOG/News-Room/News-Releases/2016/Ob-Gyns-Stress-the-Importance-of-Postpartum-Care-The-Fourth-Trimester?IsMobileSet=false>.

<sup>22</sup> National Partnership for Women and Families, *Black Women's Maternal Health: A Multifaceted Approach to Addressing Persistent and Dire Health Disparities* (2018), <http://www.nationalpartnership.org/research-library/maternal-health/black-womens-maternal-health-issue-brief.pdf>.

<sup>23</sup> See INA 212(a)(4)(E), and proposed 8 C.F.R. § 212.25. While the rule exempts self-petitioners under VAWA and asylees, this rule will nevertheless harm immigrant women who are survivors of domestic violence or sexual assault but do not fall into these specific immigration categories, or survivors who are citizens or have LPR status but have family members who are not.

<sup>24</sup> Eleanor Lyon et al., Nat'l Institute of Justice, *Meeting Survivors' needs: A multi-state study of domestic violence shelter experiences* (2008), [http://www.vawnet.org/Assoc\\_Files\\_VAWnet/MeetingSurvivorsNeeds-FullReport.pdf](http://www.vawnet.org/Assoc_Files_VAWnet/MeetingSurvivorsNeeds-FullReport.pdf);

Domestic violence and sexual assault occur across the socio-economic spectrum, but there are unique challenges and barriers for survivors at the intersection of gender-based violence and economic hardship.<sup>25</sup> Through its project to promote greater economic security for survivors of domestic violence, Legal Aid has seen countless examples of the relationship between domestic violence (and other forms of abuse) and economic insecurity. This is particularly acute for non-citizens who, in addition to fearing for the physical and financial security of themselves and their children, must also contend with threats by their abusers related to their immigration status.

One Legal Aid client, who relied on Medicaid, TANF, and Food Stamps for her son as she waited for her VAWA petition to be approved, repeatedly dealt with her husband's threatening to report her immigration status in court filings and hearings after she filed for a divorce and custody. Fortunately, her VAWA petition was approved and she is now able to work. Had this rule been in place at the time she was pursuing her petition, she would have had to consider whether accessing these benefits would jeopardize her ability to remain in this country with her son in addition to the stress of pursuing a court case against an abusive husband who was already threatening her with deportation.

By erecting barriers to accessing these benefits, implementation of the proposed rule would put the safety of our client and all other immigrant survivors of domestic violence or sexual assault at risk.

***The proposed rule would harm individuals with disabilities.***

Individuals with disabilities rely upon benefits like SNAP and Medicaid so that they can continue to work, stay healthy, and remain productive members of the community. In fiscal year 2016, 20 percent of all SNAP households had a member who was disabled.<sup>26</sup> Likewise, about one-third of adults under age 65 enrolled in Medicaid have a disability, compared with about 12

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Eleanor Lyon et al., National Resource Center on Domestic Violence, *Meeting Survivors' Needs through Non-Residential Domestic Violence Services & Supports: Results of a Multi-State Study* (2011), <https://www.ncjrs.gov/pdffiles1/nij/grants/237328.pdf>; Rachel Kimerling et al., *Unemployment Among Women: Examining the Relationship of Physical and Psychological Intimate Partner Violence and Posttraumatic Stress Disorder*, 24 *Journal of Interpersonal Violence* 450-463 (2009), <https://www.ncbi.nlm.nih.gov/pubmed/18458353>.

<sup>25</sup> Survivors with low incomes face unique challenges and barriers. In order to exercise control over their partners, abusers often actively prevent their partner from attaining economic independence by sabotaging their partner's economic stability, interfering with access to financial resources, employment, child care, or health care, engaging in reproductive coercion, ruining their credit, leaving them with tax debt, and more. *See, e.g.*, Judy Postmus et al., *Understanding economic abuse in the lives of survivors*, 27 *Journal of Interpersonal Violence* 411-430 (2011), <https://journals.sagepub.com/doi/abs/10.1177/0886260511421669>; Adrienne Adams et. al, *Development of the scale of economic abuse*, 13 *Violence Against Women* 563-588 (2008), <https://vaw.msu.edu/wp-content/uploads/2013/10/Scale-of-Economic-Abuse.pdf>.

<sup>26</sup> Sarah Lauffer, U.S. Dep't of Agriculture, Food and Nutrition Service, *Characteristics of Supplemental Nutrition Assistance Program Households: Fiscal Year 2016*, Table 3.2 (2017), <https://www.fns.usda.gov/snap/characteristics-supplemental-nutrition-assistance-program-households-fiscal-year-2016>.

percent of adults in the general population.<sup>27</sup> Because many critical disability services are only available through Medicaid, the proposed rule would prevent many people with disabilities from getting needed services that allow them to manage their medical conditions and participate in the workforce.

Furthermore, many of the proposed rule’s “heavily weighed” negative factors would disproportionately disadvantage people with disabilities, including that the person has a “medical condition that is likely to require extensive medical treatment or institutionalization” or will impact their ability to care for himself, attend school or work; that the person does not have private insurance or the resources to pay for medical costs related to their condition; or that the person received public benefits (including Medicaid and SNAP). This means that many people with disabilities are likely to be seen as a public charge and excluded. Even though the proposed rule states that a person’s disability will not be the only basis for a public charge inadmissibility finding, the factors and heavily weighed negative factors make it clear it will be very difficult, if not impossible, for a person with a significant disability to avoid being considered a public charge.

The rule only proposes one heavily weighed positive factor – that the household has or will make at least 250 percent of the Federal Poverty Guidelines. This means that low- and middle-income families will not have the benefit of a heavily weighed positive factor as part of their calculation to offset any negative factors.<sup>28</sup> Because individuals with disabilities and their families are likelier to live in poverty than those without disabilities, they will be less likely to receive the benefit of this positive factor and more likely to be disproportionately disadvantaged by the negative factor of having income below 125 percent of the Federal Poverty Level.<sup>29</sup>

### ***The proposed rule would harm seniors.***

The number of seniors in the United States who are immigrants is growing. Between 1990 and 2010, the number of immigrants age 65 and older grew from 2.7 million to nearly 5 million.<sup>30</sup> This is due in part to the rise in naturalized citizens who sponsor their parents to emigrate to the U.S. In fact, the number of parents of U.S. citizens who have been admitted as lawful permanent residents nearly tripled between 1994 and 2017; they now account for almost 15 percent of all admissions and almost 30 percent of family-based admissions.<sup>31</sup> Over 1.1 million noncitizens age

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<sup>27</sup> See, e.g., Nationwide Adult Medicaid CAHPS, *Health Care Experiences of Adults with Disabilities Enrolled in Medicaid Only: Findings from a 2014-2015 Nationwide Survey of Medicaid Beneficiaries* (2016), <https://www.medicaid.gov/medicaid/quality-of-care/downloads/performance-measurement/namcahpsdisabilitybrief.pdf>.

<sup>28</sup> Kelly Whitener, “Administration Moves Forward with Proposed Public Charge Regulation; Comments Due in December” (Oct. 5, 2018) at <https://ccf.georgetown.edu/2018/10/05/administration-moves-forward-with-proposed-public-charge-regulation-comments-due-in-december/>.

<sup>29</sup> Results from the American Community Survey (Americans With Disabilities Act Participatory Action Research, 2016) reveal significant disparities in the median incomes for those with and without disabilities, suggesting that “many more people with disabilities and their families live in poverty than people without disabilities and their families, and may struggle to meet basic needs,” at [http://centerondisability.org/ada\\_parc/utills/indicators.php?id=38](http://centerondisability.org/ada_parc/utills/indicators.php?id=38).

<sup>30</sup> Jeanne Batalova, Migration Policy Institute, *Senior Immigrants in the United States* (2012), <https://www.migrationpolicy.org/article/senior-immigrants-united-states>.

<sup>31</sup> *Comparing* Dept. of Homeland Security, Office of Immigration Statistics, *2017 Yearbook of Immigration Statistics*, Table 7,

62 and older live in households with low incomes,<sup>32</sup> meaning that public benefits programs likely play an important role in meeting their basic needs.

The programs targeted by this proposed rule are particularly important for older adults. Nearly 7 million seniors 65 and older are enrolled in both Medicare and Medicaid, and 1 in 5 Medicare beneficiaries relies on Medicaid to help them pay for Medicare premiums and cost-sharing.<sup>33</sup> The proposed rule's targeting of Medicaid coverage as part of the public rule determination will risk older adults' ability to obtain services such as long-term care, home and community-based services, dental care, transportation, and other services not covered by Medicare. Programs such as Section 8 rental assistance, Section 202 supportive housing, and SNAP also help low-income seniors meet their basic needs.<sup>34</sup> Implementation of this rule would therefore increase the risk of food insecurity and other hardships for older adults by making them and their families afraid to access nutrition assistance programs and other health and housing supports. Furthermore, by targeting receipt of these critical benefits (including the Medicare Part D Low Income Subsidy that makes prescription drug prices more affordable) and making age and poor health heavily weighed negative factors, this proposed rule characterizes parents and grandparents as a burden, ignoring their critical contributions, including caregiving that enables others in the family to work.<sup>35</sup>

### ***The proposed rule would harm immigrant caregivers.***

The proposed rule threatens the well-being of caregivers, many of whom are immigrants. Direct care workers provide critical assistance to millions of older adults and people with disabilities who need help with dressing, bathing, eating and other daily tasks. An estimated one million immigrants work in direct care, making up a quarter of the direct care workforce, and almost a third of these immigrants are older than 55.<sup>36</sup> Because caregiving jobs tend to be part-time and low-wage, many direct care workers utilize public benefits programs to support themselves and their families.

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[www.dhs.gov/sites/default/files/publications/2016percent20Yearbookpercent20ofpercent20Immigrationpercent20Statistics.pdf](http://www.dhs.gov/sites/default/files/publications/2016percent20Yearbookpercent20ofpercent20Immigrationpercent20Statistics.pdf) with Immigration & Naturalization Service, Office of Policy & Planning, *Legal Immigration, Fiscal Year 1997*, Table 1, [www.dhs.gov/sites/default/files/publications/INS\\_AnnualReport\\_LegalImmigration\\_1997\\_1.pdf](http://www.dhs.gov/sites/default/files/publications/INS_AnnualReport_LegalImmigration_1997_1.pdf); see also Stacy Torres and Xuemei Cao, N.Y. Times, *The Immigrant Grandparents America Needs*, (Aug. 20, 2018), [www.nytimes.com/2018/08/20/opinion/family-immigration-grandparents.html](http://www.nytimes.com/2018/08/20/opinion/family-immigration-grandparents.html).

<sup>32</sup> Manatt Phelps & Philips LLP, *Public Charge Proposed Rule: Potentially Chilled Population Data Dashboard* (2018), <https://www.manatt.com/Insights/Articles/2018/Public-Charge-Rule-Potentially-Chilled-Population#DataDashboard>.

<sup>33</sup> Kaiser Family Foundation, *Medicaid Enrollment by Age*, [www.kff.org/medicaid/state-indicator/medicaid-enrollment-by-age/?dataView=1&currentTimeframe=0&sortModel=percent7Bpercent22colIdpercent22:percent22Locationpercent22.percent22sortpercent22:percent22ascpercent22percent7D](http://www.kff.org/medicaid/state-indicator/medicaid-enrollment-by-age/?dataView=1&currentTimeframe=0&sortModel=percent7Bpercent22colIdpercent22:percent22Locationpercent22.percent22sortpercent22:percent22ascpercent22percent7D).

<sup>34</sup> See Justice in Aging, *Supporting Older Americans' Basic Needs: Health Care, Income, Housing and Food* (2018), [www.justiceinaging.org/wp-content/uploads/2018/04/Supporting-Older-AmericanspercentE2percent80percent99-Basic-Needs\\_Health-Care-Income-Housing-and-Food.pdf](http://www.justiceinaging.org/wp-content/uploads/2018/04/Supporting-Older-AmericanspercentE2percent80percent99-Basic-Needs_Health-Care-Income-Housing-and-Food.pdf). More than one in ten SNAP recipients is age 60 or older. See *id.*

<sup>35</sup> See, e.g., Stacy Torres & Xuemei Cao, N.Y. Times, *The Immigrant Grandparents America Needs*, (Aug. 20, 2018), [www.nytimes.com/2018/08/20/opinion/family-immigration-grandparents.html](http://www.nytimes.com/2018/08/20/opinion/family-immigration-grandparents.html).

<sup>36</sup> Robert Espinoza, PHI, *Immigrants and the Direct Care Workforce* (2017), <https://phinational.org/resource/immigrants-and-the-direct-care-workforce/>.

Nearly half of immigrant direct care workers live at or below 200 percent of the FPL, and more than 40 percent participate in programs like SNAP and Medicaid to make ends meet.<sup>37</sup> If direct care workers are afraid to access these programs, their own health and well-being will be compromised – and many will be unable to afford to remain in the United States. Alternatively, if care workers use these programs to supplement their low wages, they may be denied lawful permanent status or prevented from coming to the U.S. in the first place. The proposed rule thus could cause a shortage in direct care workers, leaving many older Americans and people with disabilities without access to the caregiving they need.

***The proposed would harm immigrant and citizen children in immigrant families.***

Children thrive when their parents can access needed health care, and when their families have enough to eat and have a roof over their heads. As compared to children without health insurance, children enrolled in Medicaid in their early years have better health, educational, and employment outcomes not only in childhood but as adults. Children whose families receive housing assistance are more likely to have a healthy weight and to rate higher on measures of well-being—especially when housing assistance is accompanied by food assistance.<sup>38</sup> Children of immigrants who participate in SNAP are more likely to be in good or excellent health, be food secure, and reside in stable housing.

Conversely, the impact of the loss of critical food, health care, and housing assistances falls particularly hard upon the children in a family. Children in immigrant families are already more likely to face certain hardships and are already less likely to secure help, due in part to complex eligibility rules that create barriers for immigrant families.<sup>39</sup> Research shows that not having the essentials of food, shelter, and health care can have life-long, irreparable negative impacts on developing children.<sup>40</sup> In addition, the constant stress of struggling to access basic needs can be toxic to young brains and bodies.<sup>41</sup> Moreover, parents’ stress and consequent health challenges impede effective caregiving and can undermine children’s development.<sup>42</sup>

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<sup>37</sup> *Id.*

<sup>38</sup> Kathryn Bailey et al., Children’s HealthWatch, *Overcrowding and Frequent Moves Undermine Children’s Health* (2011), [www.issuelab.org/resources/13900/13900.pdf](http://www.issuelab.org/resources/13900/13900.pdf).

<sup>39</sup> Tanya Broder, Avidah Moussavian, & Jonathan Blazer, National Immigration Law Center, *Overview of Immigrant Eligibility for Federal Programs* (2015), <https://www.nilc.org/issues/economic-support/overview-immeligfedprograms/>; Kinsey Alden Dinan, National Center for Children in Poverty, *Federal Policies Restrict Immigrant Children’s Access to Key Public Benefits*, (2005), [http://www.nccp.org/publications/pdf/text\\_638.pdf](http://www.nccp.org/publications/pdf/text_638.pdf).

<sup>40</sup> See, e.g., Food Res. Action Ctr., *The Impact of Poverty, Food Insecurity, and Poor Nutrition of Health and Well-Being* (2017), <http://frac.org/wp-content/uploads/hunger-health-impact-poverty-food-insecurity-health-well-being.pdf>; Kate Marcal & Patrick J. Fowler, Center for Social Development, *Housing and Child Well-Being* (2015), <https://csd.wustl.edu/Publications/Documents/RB15-40.pdf>; David Murphey, Child Trends, *Health Insurance Coverage Improves Child Well-Being* (May 12, 2017), <https://www.childtrends.org/publications/health-insurance-coverage-improves-child-well>.

<sup>41</sup> See, e.g., Priyanka Boghani, Frontline, *How Poverty Can Follow Children Into Adulthood* (Nov. 22, 2017), <https://www.pbs.org/wgbh/frontline/article/how-poverty-can-follow-children-into-adulthood/>.

<sup>42</sup> Samantha Artiga & Petry Ubri, Kaiser Family Foundation, *Living in an Immigrant Family in America: How Fear and Toxic Stress are Affecting Daily Life, Well-Being, & Health*, (2017), <https://www.kff.org/disparities-policy/issue-brief/living-in-an-immigrant-family-in-america-how-fear-and-toxic-stress-are-affecting-daily-life-well-being-health/>.

The proposed rule would therefore destabilize the lives and undermine the well-being of countless families across the United States. The strength of the country's future workforce and economy would also be jeopardized by the long-term impacts of the proposed rule upon children in these families, both citizens and noncitizens.

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**For all of the foregoing reasons, DHS should immediately withdraw this punitive proposed rule.** If enacted, the rule would force families to choose between accessing needed supports and reuniting or staying together. Moreover, the proposed rule would have significant and widespread negative implications for individuals, families, and communities. This proposal undermines our shared values, and would make our nation hungrier, sicker, and poorer.

Thank you for the opportunity to submit comments on the proposed rulemaking. Please do not hesitate to contact Jennifer Mezey, Supervising Attorney for Public Benefits, at 202-661-5962 or [jmezey@legalaiddc.org](mailto:jmezey@legalaiddc.org) to provide further information.

Sincerely,

A handwritten signature in black ink, appearing to read "E. Angel". The signature is fluid and cursive, with a large initial "E" and a stylized "Angel".

Eric Angel  
Executive Director