December 7, 2018

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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

To Relevant Parties:


On October 10, 2018, the Department of Homeland Security (the Department) published a Proposed Rule on Inadmissibility on Public Charge Grounds that would fundamentally transform our legal immigration system. This proposed rule would prevent non-citizens of modest means who lawfully participate in vital public support programs—programs designed to ensure stability during times of transition—from obtaining green cards and other visas. The proposal would abandon the longstanding definition of a “public charge” as a non-citizen who depends primarily on the government for subsistence and redefine it as “an alien who receives one or more public benefits,” including non-emergency Medicaid, the Medicare Part D Low-Income Subsidy Program, the Supplemental Nutrition Assistance Program, several housing programs, and “federal, state, local, or tribal cash assistance for income maintenance.” This expanded public charge determination will limit the number of low- and middle-income immigrants who obtain permanent residency in the United States.

In putting forward this proposed rule, the Department has failed to realistically weigh how it will deter entire families, including citizen children not impacted by a public charge determination, from participating in essential public health, nutrition, and housing programs and negatively impact businesses. The Department has failed to adequately justify the proposed rule in context of the threats it poses to the health, wellbeing, safety, and economic stability of California. This proposal represents extreme federal overreach that undermines California’s right to determine how to keep its communities healthy, safe, and economically vibrant. Today we add our voices to the groundswell of Americans who have already submitted comments urging the Department to withdraw this dangerous proposal.

Past changes in public benefit policies based on immigration status have had a “chilling effect” of confusion and fear that discourages a broad range of immigrants and their families—including their citizen children—from participating in vital public programs for which they are eligible. In 1996, the Personal Responsibility and Work Opportunity Reconciliation Act limited certain non-citizen access to some public programs and, while Congress made no corresponding
change to the public charge determination, widespread confusion and fear fueled a broad decline in lawful participation of immigrant families and citizen children in programs designed to promote family health, development, and stability.\textsuperscript{2}

Such a dangerous “chilling effect” appears certain to result from this proposed rule in California. California is home to more than 10 million immigrants, half of whom are non-citizens, more than in any other state.\textsuperscript{3} Millions of California households include both citizens and non-citizens, with 74% of non-citizens living with one or more citizens—often a child.\textsuperscript{4} Half of all children in California have at least one immigrant parent.\textsuperscript{5}

Manatt, Phelps, and Phillips, LLP estimates that if the Department’s proposed rule goes into effect, approximately 10,422,385 non-citizens and their family members in California—including 3,129,157 children—could dis-enroll from or forgo participation in vital health, nutrition, and housing public programs.\textsuperscript{6} This impact will be significantly greater than the Department’s estimated 2.5% rate of disenrollment or foregone enrollment of non-citizens from such programs, which only accounts for the impact on non-citizens presently seeking to adjust their immigration status. The Department erroneously assumes that the proposed rule will narrowly impact the group of non-citizens presently considering status adjustment, therefore subjecting them to a public charge determination. Accordingly, the Department’s calculation ignores the harmful ripple effects on their households and other immigrant families, including citizen children.\textsuperscript{7}

\textbf{Impact on Public Health}

By discouraging non-citizens from lawfully accessing public preventive health programs to avoid risking a public charge determination, this proposed rule will not only have a harmful ripple effect on the health of their family members but imperil the health of all Californians. If this proposed rule takes effect, California will see worse health outcomes for vulnerable populations—especially children and pregnant women, increased contagious and communicable diseases, and increased emergency room costs. This will senselessly undermine and interfere with the public health system California legislators designed to keep families, children, and communities healthy by facilitating access to healthcare services of its residents.\textsuperscript{8}

By discouraging non-citizen families from accessing Medi-Cal, California’s Medicaid program, this proposed rule threatens the health and wellbeing of up to hundreds of thousands of vulnerable children in California. According to the California Health Care Foundation, historical data suggests that if this proposed rule goes into effect, between 15 to 35 percent of approximately 1.3 million California children with a current or recent medical diagnosis, disability, or need for specific medical care who live in households with at least one non-citizen adult will abandon their current Medi-Cal coverage. This means that between 40,000 and 93,000 of California children with a potentially life threatening condition will lose coverage of current treatment; between 27,000 to 64,000 of California children who depend on prescription drugs lose access to affordable drugs; and between 24,000 to 56,000 of new babies born in California will lack health insurance to access critical infant health services.\textsuperscript{9} The American Academy of Pediatrics further found that when an earlier draft of this proposed rule leaked, pediatricians saw a broad range of immigrant parents dis-enroll children from healthcare programs or avoid healthcare services for which their children were eligible.\textsuperscript{10}

Reduced enrollment of children in Medi-Cal will negatively impact California communities and the state economy for years to come. Increased Medicaid access during childhood reduces child and teen mortality.\textsuperscript{11} It also correlates with increased school attendance,
high school and college graduation rates, and adult earnings, and with reduced lifetime rates of use of public disability programs and emergency room and other hospital visits. This proposed rule also threatens maternal and infant health by discouraging non-citizen women from seeking pregnancy-related care under Medi-Cal and other public programs potentially putting their lives and the lives of unborn citizen children at risk. Over past decades, as the national maternal mortality rate doubled, California’s maternal mortality rate declined as a direct result of broadened access to quality, affordable maternal healthcare—including the increased availability of Medi-Cal to pregnant women regardless of immigration status. Women who fail to see a doctor during their pregnancy are at a higher risk for medical complications, miscarriage, and death in-utero. Unforeseen pregnancy complications further increase costs of labor, delivery, and postpartum care.

By discouraging non-citizens and their families from participating in Medi-Cal—a program designed to make preventive healthcare affordable for low- and middle-income workers who often lack employer-sponsored health insurance—this proposed rule exposes California residents to a heightened risk of injury and disease. Without access to Medi-Cal, many non-citizens and their families will delay medical care or in some instances forgo it altogether, exacerbating treatable health conditions. When people are uninsured, diseases and other health issues that are easily managed in a primary care setting can result in an emergency room visit, complications, lasting medical consequences, and even death. Deterring any residents from seeking primary healthcare will increase the risk of contagious and communicable diseases for all Californians. The American College of Physicians has emphasized how providing non-citizens and their families access to affordable, quality healthcare is one of the most effective ways to prevent the spread of contagious and communicable diseases.

Increased emergency room use as a result of this proposed rule will have harmful economic consequences for California families and healthcare providers. This proposed rule is at odds with the evidence-based consensus of health experts supporting broad access to comprehensive primary healthcare for community health and cost-effectiveness. Increased Medicaid access results in more use of recommended preventive healthcare services and access to prescribed medicines, and less reliance on emergency room care. Emergency room visits are expensive for both patients and for hospitals. The National Bureau of Economic Research has found that an uninsured individual who visits the emergency room doubles his or her chances of filing for bankruptcy in the following four years. Such costs could permanently jeopardize the financial stability of low- and middle-income immigrant families in California. When more people using the emergency room are uninsured, hospitals’ uncompensated care costs increase, reducing resources to invest in new technology or equipment, maintain and increase patient capacity, and reduce the likelihood of closure.

We have already seen evidence that immigrant families are withdrawing from critical public health programs nationwide. According to a report issued by Georgetown University's Center for Children and Families, the number of uninsured children in the United States has increased for the first time in almost a decade. The report attributes this disturbing trend, in part, to “policies targeting immigrant communities” that “are likely deterring parents from enrolling their eligible children in Medicaid or CHIP despite the fact that most of these children are United States citizens.” It notes strong evidence that “federal actions…in the case of an immigrant parent, created concern about enrolling their child in public coverage for fear of reprisal.” California’s immigrant communities are not immune or insulated from these concerns.
For these reasons and many more, we agree with the views of the California Association of Public Hospitals and Health Systems, the California Healthcare Foundation, UC Health, the Community Clinic Association of Los Angeles County, the California Primary Care Association, the Association of Asian Pacific Community Health Organizations, the National Association of Community Health Centers, the Alameda Health Consortium, the California Pan-Ethnic Health Network, the Coalition of Orange County Community Health Centers, Golden Valley Health Centers, LifeLong Medical Care, Neighborhood Health Care, California Child Care Resource & Referral Network, California Coverage & Health Initiatives, California Immigrant Policy Center, California Immigrant Youth Justice Alliance, California Latinas for Reproductive Justice, California LGBTQ Health and Human Services Network, California LULAC, California Nurse-Midwives Association, California Physicians Alliance, California WIC Association, CaliforniaHealth + Advocates, Health Center Partners of Southern California, San Francisco Community Clinic and Californians for Disability Rights, who are opposing this proposed rule.

**Impact on Nutrition**

By discouraging non-citizens and their families from participating in CalFresh, California’s Supplemental Nutrition Assistance Program (SNAP) program, this proposed rule will increase food insecurity for non-citizens and their families, particularly children. This will overburden non-profit and charity organizations that focus on alleviating hunger in California communities and strain California’s economy.

According to the University of California at Los Angeles (UCLA) Center for Health Policy Research, as many as 300,000 non-citizens and family members of non-citizens could withdraw or forgo CalFresh benefits based on this rule.\(^{27}\) Between August 2017 and August 2018, California already saw a 4.1 percent reduction in program participation.\(^{28}\) This will continue if this proposed rule goes into effect—shifting the response to hunger to states, localities, and non-profits. The Food Research and Action Center is confident that state and local governments will be unable to meet the increased need for food assistance should this proposed rule go into effect—even with the help of local nonprofits.\(^{29}\)

CalFresh is designed to ensure that Californians can always afford basic, nutritious food that they need to lead healthy, productive lives, regardless of income level. The program—which is particularly important for families who encounter temporary financial setbacks or instability—increases household purchasing power, generates business for local grocers, and stimulates local economies.\(^{30}\) According to the Department of Agriculture, every $1 of SNAP benefits generates $1.79 in economic activity.\(^{31}\) More than half of adult Americans will receive food assistance through SNAP at some point in their lifetime.\(^{32}\) The program particularly helps children, who experience food security at a higher rate than adults. Food insecurity can place children at a greater risk for stunted development, anemia, asthma, and hospitalization and has been linked to lower academic performance and risk for social and behavioral problems.\(^{33}\)

For these reasons and many more, we agree with the views of the California Food Policy Advocates, the California Association of Food Banks, the Western Center on Law and Poverty, California Hunger Action Center, California School-Based Health Alliance, Californians Together, First 5 California, San Francisco Unified School District, the YWCA of San Francisco and Marin, Feeding San Diego, San Diego Hunger Coalition, Orange County Food Access Coalition, Orange County Food Bank, Redwood Empire Food Bank, Sacramento Food Bank & Family Services, Second Harvest Food Bank of Orange County, Second Harvest Food Bank of Santa Cruz County, Second Harvest Food Bank of Santa Clara & San Mateo Counties, SF-Marin Food Bank, Yolo Food Bank, and the Alameda County Foodbank, who are opposing this rule.
Impact on Housing Access

By discouraging low-income non-citizens and their families from lawfully participating in public housing programs, this proposed rule will result in housing instability for thousands of California residents—including children—and put many families at risk for homelessness. Even with access to food assistance, 57 percent of households that face food-insecurity are forced to choose between buying enough food and paying for housing. Without housing assistance, many non-citizens and their families could experience housing instability and be left vulnerable to unfair rental discrimination by landlords.

Due in large part to California’s booming economy, there is a significant need for affordable housing in the state. While more than half of Californians own their homes, renters struggle to find affordable housing, particularly in cities like San Francisco, Los Angeles, and San Diego, where the cost of living is higher than the national average. As a result, nearly one-third of renter households in California spend at least half of their income on rent. Of the approximately 491,000 low-income households in California that use federal housing rental assistance, 90 percent include children, the elderly, or the disabled. Inclusion of use affordable housing programs in a public charge determination will have a disproportionate impact on California families seeking affordable housing assistance, particularly those including children and other vulnerable members.

Affordable, safe, and stable housing is critical to the personal and economic security to families and foundational for the wellbeing of children. Not only can housing instability and unaffordability prevent a family from obtaining basic necessities such as food and clothing, it can lead to frequent school changes, increased absenteeism, and lower educational achievement for children subject to frequent moves. It is counterintuitive to discourage families from using short-term affordable housing programs that will help them to establish themselves for permanent self-sufficiency and economic independence.

For these reasons and many more, we agree with the views of Access California Services, California Family Resource Association, Fair Housing Advocates of Northern California, National Association of Social Workers—California Chapter, the National Housing Law Project, and the National Low Income Housing Coalition, who are opposing this rule.

Impact on Businesses and the Economy

This proposed rule would be devastating for California’s businesses and its economy by deterring the legal immigration of low- and middle-income workers essential to critical state industries—from agriculture to technology—and penalizing these workers for lawfully participating in vital public programs when they encounter challenges. This proposed rule in fact sends a message to non-citizens seeking to contribute to this country that—unless they are already wealthy—they are unwelcome.

Immigrants comprise nearly 40 percent of California’s full-time workers and make integral contributions to the state’s economic growth and continued prosperity. Immigrants—including non-citizens—work in diverse, underserved industries like teaching, healthcare, eldercare, construction, and agriculture. Half of California’s childcare workers are immigrants—and more than a quarter are non-citizens. Immigrants contribute one-third of California’s GDP—approximately $715 billion each year—with immigrant-owned businesses generating nearly $22 billion in annual revenue. California’s immigrants further pay $56.5 billion in federal taxes and $26.4 billion in state and local taxes—tax revenue that supports the very public programs this proposed rule would deter non-citizens and their families from accessing.
This proposed rule will make it more difficult for critical California industries to find skilled and experienced employees. The proposal applies to non-citizens with temporary visas, including the H-1B visa for skilled workers, the H-2A visa for agricultural workers, and the H-2B visa for seasonal, non-agricultural workers. It considers income a “positive factor” in a public charge determination only if it is at least 250% above the federal poverty level—$62,750 for a family of four or $73,550 for a family of five—an amount higher than the U.S. median income. This means that employers in industries that rely heavily on H-1B visa holders—like technology, teaching, and healthcare professions—will find it more difficult and less predictable to extend the status of a highly skilled worker or to help change the status of a potential employee from a student visa. This will also create a labor shortage for California’s agriculture industry, which increasingly relies on the H-2A visa program.\textsuperscript{44} It is clear that this proposed rule will have a disproportionate impact on critical industries for California and the country.

A decline in participation of non-citizens and their families in Medi-Cal and CalFresh will also negatively impact California’s businesses and economy. According to the UCLA Center for Health Policy Research, reduced participation in these two programs could result in tens of thousands of jobs lost in California—especially in the healthcare, food, and agricultural industries. It also could result in billions of dollars in lost federal funding and more than $150 million in lost tax revenue in California.\textsuperscript{45} In all, the state could lose up to $2.8 billion in economic output because of the proposed rule.\textsuperscript{46}

For these reasons, and many more, we agree with the views of the California Community Economic Development Association, Northern California Community Loan Fund, Northern California Grantmakers, Sustainable Economic Enterprises of Los Angeles (SEE-LA), San Francisco Office of Financial Empowerment, and the Los Angeles County Board of Supervisors, who are opposing this rule.

**Conclusion**

Considering the numerous deleterious consequences that would result from this proposed rule to modify inadmissibility on public charge grounds in California that the Department has not considered, we strongly urge the Department to reverse course and withdraw it from consideration. This proposal threatens to prevent hardworking immigrant families from lawfully accessing vital public programs that keep them—and our communities—healthy, safe, and economically thriving. By expanding the definition of non-citizens who may be subject to a public charge determination, the Department would force legal immigrants to choose between putting food on the table and keeping their families together with a green card or other visa.

By proposing a rule that so clearly attacks immigrant families and children, and which has already fueled fear and confusion in our communities, the Department is taking another misguided step in advancing this administration’s cruel, anti-immigrant agenda. The Department should acknowledge that our communities and country were built upon and continue to rely upon contributions of hardworking immigrants and withdraw this rule. California and this country should continue to be a welcome place for all who strive to contribute and build a better future for their families and our country.

Sincerely,

Kimala D. Harris
United States Senator (CA)

Nanette D. Barragán
United States Representative (CA-44)


7 The Department claims that this proposal will result in “a 2.5 percent rate of disenrollment across each of the public benefits programs” now eligible for consideration. With respect to direct impact on those who could be subject to a public charge determination under the proposal, this estimate also fails to account for the many non-citizens that hope to apply for a green card in the future, or are currently waiting for a green card. 83 Fed. Reg. 51266-67.


15 According to the most recent available data from the Center for Disease Control, between 1990 and 2014, the maternal mortality rate more than doubled from 7 to 18 maternal deaths out of every 100,000 live births. Pregnancy Mortality Surveillance System, Centers for Disease Control and Prevention, August 7, 2018, available at: https://www.cdc.gov/reproductivehealth/maternalinfanthealth/pregnancy-mortality-surveillance-system.htm.
16 In that same period, California healthcare providers worked tirelessly to address the growing problem of maternal mortality and ensure that California’s maternal mortality rate declined. Between 2006 and 2013, California’s maternal mortality rate declined by 55 percent, from 16.9 deaths per 100,000 live births to 7.5 deaths per 100,000 live births. Julie Belluz, California decided it was tired of women bleeding to death in childbirth, Vox Media, June 29, 2017, available at: https://www.vox.com/science-and-health/2017/6/29/15830970/women-health-care-maternal-mortality-rate; Pregnancy Mortality Surveillance System, Centers for Disease Control and Prevention, August 7, 2018, available at: https://www.cdc.gov/reproductivehealth/maternalinfanthealth/pregnancy-mortality-surveillance-system.htm.
17 The Office on Women’s Health, a division of the U.S. Department of Health and Human Services (HHS), regular prenatal checkups are necessary to keep an expectant mother and her baby healthy, spot problems if the occur, and prevent problems during delivery. Prenatal Care, The Office of Women’s Health, March 14, 2018, available at: https://www.womenshealth.gov/a-z-topics/prenatal-care. According to a study done by FAIR Health, the average price for a vaginal delivery in California is $7,826 and the average cost for a C-Section is $10,675. These prices do not include the cost of prenatal care or the cost of caring for the newborn, which are both billed separately. Elizabeth O’Brien & Prateek Reba, Find Out How Much It Costs to Give Birth in Every State, Time Money, October 30, 2017, available at: http://time.com/money/4995922/how-much-costs-give-birth-state/.
19 Studies repeatedly show that uninsured people are less likely than those with insurance to receive preventive care and services for major health conditions and chronic diseases. For example, in 2016, one in five uninsured adults in the United States went without necessary medical care due to cost. Julia Foutz et al., The Uninsured: A Primer - Key Facts about Health Insurance and the Uninsured Under the Affordable Care Act, Kaiser Family Foundation, December 14, 2017.
28 Supplemental Nutrition Assistance Program: Number of Participants, United States Department of Agriculture Food and Nutrition Services, November 9, 2018, available at: https://fnsprod.azureedge.net/sites/default/files/pd/29SNAPcurrPP.pdf.


31 In Trump Era, the Long Fight Against Hunger Is Even Tougher, Western Center on Law and Poverty, November 2018, available at: https://wclp.org/in-trump-era-the-long-fight-against-hunger-is-even-tougher/.


44 Phillip Martin, The H-2A farm guestworker program is expanding rapidly: Here are the numbers you need to know, Economic Policy Institute, April 13, 2017, available at: https://www.epi.org/blog/h-2a-farm-guestworker-program-expanding-rapidly/.