

April 25, 2022

U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Avenue NW
Washington, DC 20529-2140

Submitted via www.regulations.gov

Re: DHS - Docket No. USCIS-2021-0013; Comments on Public Charge Ground of Inadmissibility

The 110 undersigned organizations dedicated to the health and well-being of children are writing in support of the public charge published in the federal register on February 24, 2022. We write to support the public charge rule and the NPRM. In implementing the 2019 rule, DHS ignored extensive data and research that organizations provided to the agency which clearly demonstrated the harmful effects it would have. As expected, immigrants and their families including U.S. citizen children suffered due to the widespread chilling effect that caused immigrants to avoid enrolling themselves or their family members in a wide range of public benefit programs. We believe the newly proposed NPRM reflects adequate consideration of public policy data and corrects the gravest errors of the 2019 rule.

While confusing eligibility rules and harmful immigrant restrictions have historically created barriers for immigrants and their families, the 2019 public charge rule, coupled with additional anti-immigrant policies, exacerbated fear and confusion among immigrant communities, with severe consequences. For example, research shows that 48 percent of immigrant families avoided the Supplemental Nutrition Assistance Program (SNAP), 45 percent avoided Medicaid and CHIP, and 35 percent avoided housing subsidies because of the fear of risking their ability to obtain a green card.¹ Parents were also reluctant to send their children to school or child care.² Even following the start of the COVID-19 pandemic, research shows that immigrant families avoided non-cash benefits or other assistance to meet their basic needs because of public charge or other immigration concerns.³ These alarming trends have significant implications for the long-term health and well-being of children in immigrant families who currently comprise 1 in 4 of all children in the United States and therefore

¹ Hamutal Bernstein et al., Amid Confusion over the Public Charge Rule, Immigrant Families Continued Avoiding Public Benefits in 2019, Urban Institute (May 2020),

v \$ ³ WHPSRUDU\ VLWXDWLRQ' VKRXOG DOVR LQFOXGH

emergency. The harms of including such benefits in a public charge determination were made clear during the COVID-19 pandemic. Though USCIS stated that COVID-19 testing, treatment, and vaccines would not be used against immigrants in a public charge determination early in the pandemic, surveys by state-

explain, reducing confusion. Furthermore, we recommend that only current use of these two programs should be considered.

- | DHS should clarify that state, tribal, or local government funded programs ² even if they provide cash assistance ² will not be counted as factors in a public charge test. States and localities have a compelling interest in promoting the health and safety of children in their communities, and that includes providing benefits at their own expense without barriers caused by federal policies. For example, a recent study suggests that direct cash payments to families might meaningfully alter the neurological development of newborns in families that receive the money.¹¹
- | DHS should exclude long-term institutionalization at government expense from a public charge determination. We are concerned that allowing any type of Medicaid coverage to be included in the rule will cause confusion and perpetuate the chilling effect caused by the 2019 rule. It is also important to note that not all children who receive long-term care may require it into adulthood, and considering its use would discriminate against children with disabilities.

3. We agree that it is crucially important that the child-only TANF cases be excluded from a public charge determination as in the current proposed rule. The majority of TANF recipients — 72% — are children and more than half of TANF households (53.8%) are child-only cases which do not include any adults in the benefit calculations.¹² In 2020, the program lifted over 200,000 children out of poverty, and a 2019 landmark study from the National Academy of Sciences confirmed that cash assistance like TANF reduces child SRYHUW\ DQG LPSURRHHV Health and Educational and Economic outcomes.¹³ Child-only cases provide roughly \$64 million in support to about 200,000 children per month and immigration-related concerns should not impede children from receiving these critical benefits.¹⁴

4. :H VXSSRUW WKH SURSRQHMLQJLXORQVRQKDWZFRQVWLWXWHV public benefits, which explicitly excludes adults who have applied for benefits on behalf of their children or whose children are currently receiving benefits. Making it clear that it is safe

¹¹ Sonya V. Troller-Renfree et al., The impact of a poverty reduction intervention on infant brain activity Psychological and Cognitive Sciences 119, no. 5 (Jan. 24, 2022), <https://www.pnas.org/doi/10.1073/pnas.2115649119>.

¹² Gene Falk and Patrick A. Landers, The Temporary Assistance for Needy Families (TANF) Block Grant: Responses to Frequently Asked Questions Congressional Research Service (Updated Mar. 31, 2022), <https://sgp.fas.org/crs/misc/RL32760.pdf>; Characteristics and Financial Circumstances of TANF Recipients Fiscal Year (FY) 2020 U.S. Department of Health & Human Services Office of Family Assistance (Nov. 1, 2021), [https://www.acf.hhs.gov/sites/default/files/documents/ofa/fy2020_characteg_08oAc_ET_Q_q_0E\(e\)-4\(\)-3\(No\)-6\(v\)-5\(.\)-2\(\)9\(1\)-5\(,](https://www.acf.hhs.gov/sites/default/files/documents/ofa/fy2020_characteg_08oAc_ET_Q_q_0E(e)-4()-3(No)-6(v)-5(.)-2()9(1)-5(,)

- v DHS, in partnership with benefits granting agencies, should launch an interagency campaign to clearly communicate the new public charge rule in multiple languages. For children in particular, it is important that agencies like the Departments of Education, Health and Human Services, Agriculture, and Housing and Urban Development partner to ensure that the campaign reaches families with children in trusted spaces where they receive services like schools and early education centers. This campaign should include updates to agency websites, similar to the public charge webpage that DHS currently has, explaining the new rule, the difference between the new rule and the 1999
- v DHS and other federal agencies should also launch a public relations campaign using all mediums, including social media and ethnic media, to explain the new public charge rule. Research shows that immigrant communities trust TV news, social media, friends, family, and government officials for information.¹⁷
- v DHS and benefits granting agencies should support states and service providers in creating materials specifically for families in multiple languages. States and community groups who work directly with families must be given accessible, multilingual outreach materials suited to their populations and their ways of interacting with their clients.
- v DHS should provide funding to trusted community organizations that can provide outreach and education to immigrants and their families. Research also shows that community organizations are trusted sources of information for immigrant families.¹⁸ DHS should provide funding for these organizations, particularly organizations serving families with children, so that trusted community leaders can share information about the new public charge rule directly to families and in public settings like in the media.

5. :H VXSSRUW WKH SURSRVHG UXOH¶V IDYRUDEOH FRQVLGHU DFKDUJH WHVW FRQVLVWHQW ZLWK WKH 86&,6 DGMXGLFDWRU guidance, the longstanding Department of State instructions, and legislative history. An immigrant who has a sponsor who has committed to providing financial support if needed can be safely assumed to not be OLNHOL³ WR EHFRPH SULPDULO\ UHOLDQW FJRYHUQPHQW IRU VXEVLVWHQFH ´ \$ OHJDODOLG DIILGDY any other factor that may indicate a person is likely to become a public charge in the future.

6. :H VXSSRUW ODQJXDJH LQ WKH SURSRVHG UXOH UHJDUGLQJ FLUFXPV Specifically, we support and recommend that DHS retain the proposed

UXOHIV ODQJXDJH WKDW DQ DSSOLFDQWIV XVH RI FRXQWDE
not automatically make an individual a public charge. As mentioned above, we also recommend that an affidavit of support be sufficient to overcome a public charge test, and that age be considered favorable for children and establish a presumption that they are not a public charge as detailed in our recommendation below.

7. We strongly recommend that DHS establish a presumption that children are not a public charge. While we are generally supportive of the totality of the circumstances framework proposed in the NPRM, we recommend that DHS set out an additional criterion for applying this VWDQGDUG WR FKLOGUHQ ,Q WKH SURSHUFDCHLR WKH 1350 FRQFHUQHG DERXW WKH SRWHQWLDO HIIHFWV RI SXEOLF FK³H[HPSWLRQ´ RU ³H[FOXGHG FRQFHUQHG DERXW WKH PLQLXP IDFWRUV´ 7R EH FONDH XSJOREHU FDORQHG DWLRQ LV of age; we recommend that DHS interpret the statutory factor of age. DHS should develop a presumption that children cannot be a public charge, barring compelling evidence to the contrary. (DHS should also require this to be documented in § 212.22(c), as per our recommendation above.) DHS should issue implement this policy in light of the following considerations, among others:

- | Use of benefits by a child does not indicate their likelihood to be a future public charge. Child development research shows that benefit use by children in fact leads to increased income throughout their lifetimes and gains for our economy.¹⁹ In 2020, TANF lifted over 200,000 children above the federal poverty line and due to SSI benefits, over 350,000 fewer children experienced poverty in 2020.²⁰ A 2019 landmark study from the National Academy of Sciences confirmed that cash assistance like TANF reduces child SRYHUW\ DQG LPSURYHV FKLQGLQJ DVNQRQJ outcomes.²¹ Furthermore, over half of SSI child recipients are found not to qualify for SSI when they turn 18 and are evaluated using the adult standards for eligibility.²²

income support, and other assistance to children can break the cycle of generational poverty and increase economic mobility and educational attainment.

- | Children are not accountable for their presence in the United States nor any application for public benefits on their behalf. Children should not be held accountable as public charges since they are generally not responsible for immigrating to the United States or being enrolled in benefits.
- | There is no legal impediment to DHS providing further criteria to officers about how to interpret the statutory factor of age or any of the other statutory factors based on these considerations. Addressing the overrepresentation and irrelevance of child benefit use to public charge determinations through a presumption against determinations that children are a public charge (or some other similar heightened standard) is in fact, based on evidentiary data, the most reasonable interpretation of the statutory factors. Such a standard is most appropriate in regulation since it would be a substantive regulatory change and will have a binding effect. If DHS chooses not to implement this standard in regulation, the agency should include it in future guidance.

8. We support the proposal to require detailed written denial decisions, and recommend the requirement be strengthened for children.

- | :H V X S S R U W W K H 1 3 5 0 ¶ V U H T X L U H P H Q W I R U Z U L W W H Q G F R Q V L G H U D W L R Q R I H D F K R I W K H > U H T X L U H G @ I D F W R U V W K H R I I L F H U ¶ V G H W H H P L o n g - D a w n i n g R e q u i r e m e n t 7 K H I N E 1 9 9 1 f o r guidance, which was altered in the 2019 final rule with no reasonable explanation and in conflict with § 8 C.F.R. 103.3(a)(1)(i), should be reinstated. Such a policy is critical to the equitable implementation of the public charge standard, because evidence shows that the accuracy increases when evaluators are accountable.²⁴ This policy will make officers less likely to make erroneous decisions rooted in implicit bias and will create written records that allow DHS to investigate patterns of bias, intentional or not. DHS must take this step to counteract the legacy of racism, xenophobia, and other forms of discrimination in the U.S. immigration system.
- | We recommend that DHS improve this policy by conforming it to our recommendation above that DHS apply a heightened standard for a finding that a child is a public charge. DHS could accomplish this by specifically referencing the standard for children in the regulation or other Z L V H F O D U L I \ L Q J L Q W K H S U H D P E O H W R W K H I H D F K R I W K H I D F W R U V ' L Q † D L Q F O X G H V F R Q V L G I D U W L F X O D W L Q J ' U H D V R Q L Q J I R U W K H K H L J K W H Q H G V W D

Conclusion

We thank you for the opportunity to weigh in on this important policy and urge DHS to move quickly on finalizing the rule with these critical improvements. Doing so will help millions of families and children across the country access the healthcare and benefits they need to thrive and help our country continue a path to full recovery from the COVID-19 pandemic.

²⁴ Neal P. Mero and Stephan J. Motowidlo, Effects of Rater Accountability on the Accuracy and the Favorability of Performance Ratings, *Journal of Applied Psychology* 80, no. 4 (1995), <https://info.catme.org/wp-content/uploads/Mero-accountability.pdf>.

Signed,

National Organizations

AASA, The School Superintendents Association

Abriendo Puertas / Opening Doors

AIDS Alliance for Women, Infants, Children, Youth & Families

American Academy of Family Physicians

American Academy of Pediatrics

American Federation of Teachers (AFT)

Association of Children's Residential & Community Services (ACRC)

Center for Law and Social Policy

Center for the Study of Social Policy

Child Care Aware of America

Children's HealthWatch

Children's Rights

Church World Service

Coalition for Juvenile Justice

Congressional Policy Practice Institute

Educare Learning Network

Family Voices

First Focus on Children

Georgetown Center for Children and Families

Integrated Care for Kids - InCK Marks Initiative

Justice for Migrant Women

Kids in Need of Defense (KIND)

MomsRising

National Association for Children's Behavioral Health

National Association for the Education of Young Children

National Association of Councils on Developmental Disabilities

National Association of Counsel for Children

National Association of Pediatric Nurse Practitioners

National Association of Social Workers

National Center for Parent Leadership, Advocacy, and Community Empowerment (National PLACE)

National Center for Transgender Equality

National Education Association

National Immigrant Justice Center

Partnership for America's Children

PolicyLab, Children's Hospital of Philadelphia

Prevent Blindness

Prevention Institute

Save the Children

The Children's Advocacy Institute

The National Alliance to Advance Adolescent Health

7KH <RXQJ &HQWHU IRU ,PPLJUDQW &KLOGUHQ¶V 5LJKWV

Hispanic Services Council, Inc. (FL)
Hispanic Unity of Florida
Kansas Action for Children
Kentucky Voices for Health
Kids Forward (WI)
Maternity Care Coalition (PA)
MCCOY (Marion County Commission on Youth. Inc.) (IN)
McNeilly Center for Children (TN)
Michigan League for Public Policy
Mississippi Low Income Child Care Initiative
NC Pediatric Society
New Mexico Pediatric Society
New Mexico Voices for Children
Our Children Oregon
Partners for Our Children (WA)
Partnership for Community Action (NM)
Pennsylvania Association for the Education of Young Children
Pennsylvania Partnerships for Children
SPAN Parent Advocacy Network (NJ)
Tennessee Justice Center
Texans Care for Children
Texas Pediatric Society
The Children's Agenda (NY)
7 K H & K L O G U H Q ¶ V 3 D U W Q H U V K L S
University of California Student Association
Voices for Utah Children
Voices for Vermont's Children