

***VIA ELECTRONIC TRANSMISSION***

December 19, 2025

DHS Secretary Kristi Noem  
Department of Homeland Security  
2702 Martin Luther King Jr Ave SE  
Washington, D.C. 20528

**Re: DHS Docket No. USCIS-2025-0304, U.S. Citizenship and Immigration Services; Public Charge Ground of Inadmissibility (RIN 1615-AD06)**

Dear Secretary Noem,

The Center for Reproductive Rights (“the Center”) submits this comment in opposition to the Department of Homeland Security’s (“DHS” or the “agency’s”) Notice of Proposed Rulemaking, “Public Charge Ground of Inadmissibility” issued on November 19, 2025 (“proposed rule” or “NPRM”).<sup>1</sup> The agency’s rulemaking process violates the Administrative Procedure Act (“APA”). The proposed rule would also create barriers to accessing care for women and pregnant people that would likely result in rising maternal mortality rates and serious health implications for future generations. For these reasons, we urge DHS to withdraw the rule in its entirety.

Since 1992, the Center has used the power of law to advance reproductive rights as fundamental human rights worldwide. Our litigation and advocacy over the past 33 years have expanded access to reproductive health care around the nation and the world. We have played a key role in securing legal victories in the United States, Latin America, Sub-Saharan Africa, Asia, and Eastern Europe on issues including access to life-saving obstetrics care, contraception, safe abortion services, and comprehensive sexuality information. We envision a world where every person participates with dignity as an equal member of society, regardless of gender; where every person is free to decide whether or when to have children and whether or when to get married; where access to quality reproductive health care is guaranteed; and where everyone can make these decisions free from coercion or discrimination. In addition, the Center’s Maternal Health & Rights Initiative promotes the human rights of pregnant, birthing, and postpartum people in the United States. Harnessing the power of law, policy, and strategic advocacy, the Initiative seeks to improve access to safe and respectful maternal health care for all who need it, and to ensure that all people have an opportunity to attain the highest standard of maternal health possible for themselves.

As an organization committed to advancing policies that uphold reproductive rights as fundamental human rights, including the right to available, high quality, accessible, acceptable reproductive health care,<sup>2</sup> we oppose this rule on the grounds that it will severely undermine

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<sup>1</sup> Public Charge Ground of Inadmissibility, 90 Fed. Reg. 52168 (proposed November 19, 2025) [hereinafter “Proposed Rule”].

<sup>2</sup> Committee on Economic, Social and Cultural Rights (ESCR Committee), General Comment No. 14: The right to

immigrants' access to quality health care and appropriate nutrition to support optimal health. We are especially concerned about the impact on immigrants who are pregnant, postpartum, or lactating, and their children.

## I. Background

Since the enactment of the Immigration Act of 1882, the United States government has restricted entry to certain immigrants deemed to be at risk of becoming a “public charge,” which at the time was considered to be “any convict, lunatic, or any personal unable to take care of himself or herself....”<sup>3</sup> Initially, this policy was used to slow the influx of immigrants, particularly from China and other Asian countries, and it was frequently wielded against women, especially pregnant women, since they were presumed to be dependent upon their husbands, even if they were skilled laborers.<sup>4</sup> Over the following century, courts and immigration authorities repeatedly narrowed the doctrine, emphasizing that public charge determinations must rest on evidence of likely long-term dependency on government-run programs rather than speculative assumptions.<sup>5</sup> Congress also aligned with these interpretations and incorporated them into legislation, for example in the Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”) of 1996, a law that significantly tightened immigration rules.<sup>6</sup>

These principles ultimately guided administrative and judicial interpretations through the late twentieth century, culminating in the Immigration and Naturalization Service Agency (“INS”) under the authority of the Department of Justice (“DOJ”) issuing “Field Guidance on Deportability and Inadmissibility on Public Charge Grounds” in 1999 (“1999 Field Guidance”) that codified a more uniform and constrained approach.<sup>7</sup>

The current policy, which was put in place by the Biden administration in 2022 (“2022 Rule”), codified the longstanding 1999 Field Guidance and established specific definitions and limits on what benefits and circumstances factor into a public charge determination.<sup>8</sup> Under the 2022 Rule, public charge is defined as an immigrant who is “likely at any time to become primarily dependent on the government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance or long-term institutionalization at government

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the highest attainable standard of health (Art. 12), (22nd Sess., 2000), in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, at 80, para.12 (a)-(d), U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I) (2008); ESCR Committee, General Comment No. 22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social, and Cultural Rights), U.N. Doc. E/C.12/GC/22 (2016).

<sup>3</sup> Immigration Act of 1882, Ch. 376 § 2, 22 Stat. 214, 214.

<sup>4</sup> See Cori Alonso-Yoder, *Publicly Charged: A Critical Examination of Immigration Public Benefit Restrictions*, (2019) available at [https://digitalcommons.wcl.american.edu/facsch\\_lawrev/804/?utm\\_source=digitalcommons.wcl.american.edu%2Ffacsch\\_lawrev%2F804&utm\\_medium=PDF&utm\\_campaign=PDFCoverPages](https://digitalcommons.wcl.american.edu/facsch_lawrev/804/?utm_source=digitalcommons.wcl.american.edu%2Ffacsch_lawrev%2F804&utm_medium=PDF&utm_campaign=PDFCoverPages); see also *Ekiu v. United States*, 142 U.S. 651, 659 (1892); *Gonzales v. Williams*, 192 U.S. 1 (1904).

<sup>5</sup> See *Gegiow v. Uhl*, 239 U.S. 3 (1915); *Matter of B—*, 9 I. & N. Dec. 57 (BIA 1960); *Matter of Harutunian*, 14 I. & N. Dec. 583 (BIA 1974); *Matter of A—*, 19 I&N Dec. 867, 870 (Comm’r 1988).

<sup>6</sup> See Public Law 104–208, div. C, 110 Stat 3009–546.

<sup>7</sup> DEP’T OF JUSTICE, *Field Guidance on Deportability and Inadmissibility on Public Charge Grounds*, May 26, 1999, 64 Federal Register 28689 [hereinafter “1999 DOJ Field Guidance”].

<sup>8</sup> *Id.*

expense.”<sup>9</sup> The 1999 Field Guidance and the 2022 Rule made it clear that only cash “welfare” assistance for income maintenance and government funded long-term institutional care should be taken into consideration in the public charge test—and only when they represent *most* of the person’s support.<sup>10</sup>

The proposed rule rescinds the 2022 Rule and offers no replacement policy like the one defined in the existing regulation, nor does it even propose something similar to the rule finalized by the Trump administration in 2019 (“2019 Rule”)<sup>11</sup> that, similar in spirit to this proposed rule, greatly expanded the definition of public charge in contravention of law and public policy. DHS states in this proposed rule that both the 2019 Rule and the 2022 Rule “erred in too narrowly defining the relevant terms in section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4), resulting in the inability of DHS to apply the public charge ground of inadmissibility consistent with administration policy and congressional intent.”<sup>12</sup> Instead, the agency indicates that it will revert to the 1999 Field Guidance but, rather than promulgating a rule to articulate an interpretation of that 1999 Field Guidance, DHS intends to apply that guidance in whatever manner best aligns with the administration’s current policy objectives. In effect, the agency proposes to rely on an elastic, arbitrary construction of the guidance to advance its preferred outcomes, without providing the public with notice of, or an opportunity to comment on, those substantive legal interpretations and policy choices.”<sup>13</sup>

The agency promises to provide “appropriate policy and interpretive tools” to guide DHS officers’ determinations at some unknown point in the future.<sup>14</sup> However, the proposed rule provides no meaningful detail on the new tools or guidance that the administration plans to develop. The only thing the administration’s NPRM makes clear is an intent to adopt a more exclusionary concept of public charge by opening the door to weighing the use of non-cash benefits as well as family members’ use of those benefits against applicants, while also encouraging DHS officers to make subjective judgments about immigrants’ personal characteristics, including health conditions and reproductive health needs.<sup>15</sup> These changes would create widespread fear in the public writ large, destabilize economic and health security, and disproportionately harm immigrants and mixed-status families, especially those who already face racial, linguistic, and structural inequities.

If the rule is finalized as proposed, immigration officials will have *carte blanche* to consider a much wider range of government assistance programs, like Medicaid, the Children’s Health Insurance Program (CHIP), or the Supplemental Nutrition Assistance Program (SNAP), when making public charge determinations and can unlawfully and arbitrarily deny qualified immigrants seeking legal status to enter or reside in the country. This will harm the most vulnerable populations of immigrants, including women, pregnant people, and young children.<sup>16</sup>

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<sup>9</sup> 8 C.F.R. § 212.21(a) (2022) [hereinafter “2022 Rule”].

<sup>10</sup> See 1999 DOJ Field Guidance, *supra* note 7; 8 C.F.R. §§ 212.21(b)-(f) (2022); USCIS Public Charge Resources (Archived) <https://www.uscis.gov/archive/public-charge-resources-0>.

<sup>11</sup> 8 C.F.R. §§ 103, 212-214, 245, and 248 (2019) [hereinafter “2019 Rule”].

<sup>12</sup> Proposed Rule, *supra* note 1, at 52180.

<sup>13</sup> Exec. Order No. 14159, 90 C.F.R. 8443 (2025).

<sup>14</sup> Proposed Rule, *supra* note 1 at 52169.

<sup>15</sup> *Id.* at 52186 and 52187.

<sup>16</sup> Kelley Whitener, *Public Charge Changes Will Have Far-Reaching Consequences for Children, Pregnant Women*

Not only will this proposed rule cause a great deal of confusion for those seeking entry, but the proposed rule would also create a dangerous “chilling effect” on immigrant communities’ access to health care.<sup>17</sup> For almost two decades, U.S. immigration officials have explicitly reassured immigrant families that participation in programs like Medicaid and SNAP would not affect their ability to become lawful permanent residents, and families justifiably relied on that reassurance.<sup>18</sup> This rule presents a clear divergence from that reassurance, without sufficient notice or detail to prepare immigrant families for a new regime. It is also inconsistent with clear Congressional intent and administrative action that recognizes the importance of access to preventive care and nutrition benefits for all people, including immigrants and their families.

## II. The Proposed Rule Violates the APA

The proposed rule violates the APA because it is not justified by underlying facts and data, fails to adequately assess the costs and the harms imposed by the proposed rule, and is not in accordance with existing law. Under the APA, “agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law” shall be set aside.<sup>19</sup> An agency must provide “adequate reasons” for its rulemaking, in part by “examin[ing] the relevant data and articulat[ing] a satisfactory explanation for its action including a rational connection between the fact found and the choice made.”<sup>20</sup> In addition, an agency can only change an existing policy if it provides a “reasoned explanation” for disregarding or overriding the basis for the prior policy.<sup>21</sup> In promulgating this proposed regulation, DHS violates the APA, and therefore the rule should be withdrawn in its entirety.

### A. The Agency Fails to Provide a Reasoned Explanation Under the APA

“[A]n agency can only change an existing policy if it provides a ‘reasoned explanation’ for

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*and Families and Sow Fear in Immigrant Communities*, GEO. CTR. FOR CHILD. AND FAM., Nov. 21, 2025, available at <https://ccf.georgetown.edu/2025/11/21/public-charge-changes-will-have-far-reaching-consequences-for-children-pregnant-women-and-families-and-sow-fear-in-immigrant-communities>; Drishti Pillai et al., *KFF/New York Times 2025 Survey of Immigrants: Health and Health Care Experiences During the Second Trump Administration*, KFF, Nov. 18, 2025, available at <https://www.kff.org/immigrant-health/kff-new-york-times-2025-survey-of-immigrants-health-and-health-care-experiences-during-the-second-trump-administration/>.

<sup>17</sup> Samantha Artiga et al., *Potential “Chilling Effects” of Public Charge and Other Immigration Policies on Medicaid and CHIP Enrollment*, KFF, Dec. 2, 2025, available at <https://www.kff.org/medicaid/potential-chilling-effects-of-public-charge-and-other-immigration-policies-on-medicare-and-chip-enrollment/>.

<sup>18</sup> U.S. DEP’T OF HOMELAND SEC., U.S. CITIZENSHIP AND IMMIGR. SERV., Public Charge, *What Publicly Funded Benefits may be Considered for Public Charge Purposed?*, <https://www.uscis.gov/greencard/public-charge>.

<sup>19</sup> 5 U.S.C.A. § 706(2)(A).

<sup>20</sup> *Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2125 (June 20, 2016) (citing *Motor Vehicle Mfrs. Assn. of United States, Inc. v. State Farm Mut. Automobile Ins. Co.*, 463 U.S. 29, 103 (1983)). Typically, a court will find an agency action to be arbitrary and capricious if the agency “has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (internal citations omitted); *Env’tl. Def. Fund, Inc. v. Costle*, 657 F.2d 275, 283 (D.C. Cir. 1981) (“While we are admonished from rubber stamping agency decisions as correct, our task is complete when we find that the agency has engaged in reasoned decision making within the scope of its Congressional mandate.”) (internal citations and quotations omitted).

<sup>21</sup> *Id.* at 2125-26.

disregarding or overriding the basis for the prior policy.”<sup>22</sup> This is especially important when, for example, “its prior policy has engendered serious reliance interests that must be taken into account. It would be arbitrary and capricious to ignore such matters.”<sup>23</sup>

The U.S. Government’s decades-long agency practice confirms that certain benefits should not be included in the public charge determination. The INS, in addition to issuing the 1999 Field Guidance, also issued a notice of proposed rulemaking that same year (1999 NPRM)<sup>24</sup> clarifying the definition of public charge as limited to cash benefits for subsistence income maintenance and government-supported long-term institutional care. The 1999 Field Guidance—which would remain in effect under the 1999 NPRM—specifically listed non-cash programs, such as Medicaid, housing, and food assistance as programs *not* to be considered in the public charge determination.<sup>25</sup> In addition, the preamble to the 1999 NPRM makes clear that the proposed rule was not meant to change policy from previous practice but was issued in response to the need for a “clear definition” so that immigrants could make informed decisions and providers and other interested parties could provide “reliable guidance.”<sup>26</sup>

For more than two decades, many immigrants and their families made decisions to enroll family members in public programs for which they were eligible based on the 1999 Field Guidance, which was formalized by the 2022 Rule. If that rule is rescinded and replaced by a more expansive definition of public charge and paired with the secretive discretion provided to DHS officers, families will be vulnerable to negative immigration consequences based on lawful participation in programs providing non-cash benefits.

The agency fails to provide a reasoned explanation for this rulemaking based on the underlying facts and data. These massive, proposed changes to the public charge determination are not justified by any rationale, as the proposal seeks to upend the individualized assessment required under the Immigration and Nationality Act (“INA”). Rejecting decades-long standing law and policy, the agency is attempting to use this regulation as a backdoor to penalize immigrants and their families for benefits duly conferred on them by Congress, under the guise of reducing government expenditures on programs (again duly enacted and appropriated for by Congress).

In the preamble to the NPRM, the agency admits the proposed rule will likely result in disenrollment or foregone enrollment in benefits programs, including by citizen-members of households that include immigrants.<sup>27</sup> This phenomenon would cause great harm to immigrant communities, as well as the state and local economies they participate in on a daily basis. Previous efforts to expand the definition of public charge were estimated to impact health care access to over 2 million individuals, with coverage losses resulting in spillover health and economic effects within communities.<sup>28</sup> However, the agency fails to provide any rational for

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<sup>22</sup> *Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2125-26 (June 20, 2016) (citing *Motor Vehicle Mfrs. Assn. of United States, Inc. v. State Farm Mut. Automobile Ins. Co.*, 463 U.S. 29, 103 (1983)).

<sup>23</sup> *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009).

<sup>24</sup> 64 Fed. Reg. 28676 (May 26, 1999). The 1999 NPRM was never finalized but has not been withdrawn.

<sup>25</sup> *Id.* at 28689.

<sup>26</sup> *Id.* at 28676.

<sup>27</sup> Proposed Rule, *supra* note 1 at 52170.

<sup>28</sup> Samantha Artiga, Rachel Garfield, and Anthony Damico, *Estimated Impacts of Final Public Charge Inadmissibility Rule on Immigrants and Medicaid Coverage*, HENRY J. KAISER FAMILY FOUND., Sept. 2019,

imposing this harm but cursorily acknowledges these “downstream and upstream impacts.”<sup>29</sup>

The proposed rule provides no reasoned explanation for a change in long-standing interpretation of public charge and instead precipitously hinges this pendulum swing of policy and regulations on the veneer of administration priorities. That is not reason enough under the APA.

## **B. The Proposed Rule Replaces Binding Standards with Arbitrary and Capricious “Discretionary Tools” that Lack Public Oversight**

The proposed rule recommends replacing existing binding standards with the promise of future discretionary tools, which will result in an arbitrary and capricious application of the law. The proposed rule bypasses public scrutiny on the substance of the public charge guidance by simply rescinding the existing 2022 Rule—which was subject to public input through a notice-and-comment rulemaking process—and promises to replace it with a vague promise of “appropriate policy and interpretive tools” to DHS officers, which will conveniently not be subject to public input or scrutiny through the traditional rulemaking process.

DHS purports that its officers will make determinations as to whether an individual would be considered a “public charge,” a determination which has profound immigration consequences, on the statute and case law, including complex and split circuit court precedent.<sup>30</sup> DHS officers across the country, as well as consular officers across the world who conduct similar analysis related to admissibility, need clear rules and regulations to conduct this analysis. Expecting DHS officers to analyze, interpret, and implement statute and case law of their own accord is facially unreasonable.

Shifting from an existing rule with clear guidance to a promise of future “discretionary tools” is administrative malpractice. If ever issued, these future policies and tools will most likely confer sweeping discretion on DHS officers to determine admissibility or change in immigration status. Given the current administration and agency’s animus towards non-citizens, this proposed rule could result in agency actions that are driven, in part, by unlawful bias against immigrant populations and by stereotypes tied to race and national origin.<sup>31</sup> This proposed rule not only

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available at <https://files.kff.org/attachment/Issue-Brief-Estimated-Impacts-of-Final-Public-Charge-Inadmissibility-Rule-on-Immigrants-and-Medicaid-Coverage>.

<sup>29</sup> *Id.*

<sup>30</sup> Proposed Rule, *supra* note 1 at 52186-87.

<sup>31</sup> *See, e.g.*, Exec. Order No. 14159, 90 C.F.R. 8443 (2025) (an Executive Order giving DHS and DOJ sweeping authority to detain and criminalize immigrants, painting them broadly as foreign invaders); Dep’t of Homeland Sec., Memorandum from Acting Secretary Benjamine C. Huffman to U.S. Immigration and Customs Enforcement Acting Director Caleb Vitello on Enforcement Actions in or Near Protected Areas (Jan. 20, 2025) (A memorandum that rescinds a previous policy protecting sensitive locations, such as churches and health care facilities, from immigration enforcement activity) [https://www.dhs.gov/sites/default/files/2025-03/25\\_0120\\_S1\\_enforcement-actions-in-near-protected-areas.pdf](https://www.dhs.gov/sites/default/files/2025-03/25_0120_S1_enforcement-actions-in-near-protected-areas.pdf); Homeland Security (@DHSgov), X (Dec. 18, 2025 at 10:30 AM) (a post with an image of a person in a Santa Clause costume walking away from a Lockheed C-130 Hercules cargo plane with text that says "TIS THE SEASON FOR MASS DEPORTATIONS") <https://x.com/DHSgov/status/2001676430908735853?s=20>; U.S. Customs and Immigr. Enforcement (@ICEgov), X (Dec. 5, 2025, at 3:29 PM ET) (a post with two images of ICE officers wearing Santa hats and multicolored lights with the caption "YOU'RE GOING HO HO HOME.") <https://x.com/DHSgov/status/1997040737880613292?s=20> (reposted from Homeland Security, @DHSgov); White House (@WhiteHouse), X (Dec. 16, 2025 at 6:52 PM ET)

creates uncertainty for immigrants and their families moving through the immigration system but also leaves DHS officers as well as consular staff with no legal, consistent way of making these determinations. As a result, these determinations will intrinsically be arbitrary and capricious and may even create due process violations. This proposed rule invites indefensible administrative error, illegal discrimination, and improper denials related to immigration admissibility and adjustment of status.

### **C. The Agency Does Not Sufficiently Consider the Cost and Impact of the Proposed Rule**

The agency fails to adequately assess the costs imposed by this proposed rule, including by completely neglecting to address the cost of deliberately impoverishing mixed-status and immigrant families; the specific impacts and harms of the proposed rule on immigrant families, including pregnant, postpartum, and lactating people, are discussed in greater detail in Section III, but are also relevant here. While the agency acknowledges that “reduced access to public benefit programs by eligible individuals, including aliens and U.S. citizens in mixed-status households, may lead to downstream effects on public health, community stability, and resilience...,” it fails to provide any meaningful assessment of the costs associated with these so-called downstream effects.<sup>32</sup> Denying families access to necessary public benefits programs will result in poor health outcomes, including for pregnant and postpartum people, shifting financial burden onto these individuals, health care providers, faith-based charities, and local and state jurisdictions. The impacts of limited or no access to health care are well documented, including the impact of reduced prenatal and postpartum care on maternal and infant health outcomes,<sup>33</sup> yet the agency fails to even address these costs and outcomes, let alone attempt to mitigate them.

DHS also fails to calculate the impact and cost to DHS and DOJ.<sup>34</sup> The agency’s conduct directly violates the longstanding Executive Order 12866, which states that agencies engaged in rulemaking “shall assess both the costs and the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify the costs.”<sup>35</sup> The cost analysis in the NPRM only addresses limited costs to the public, and ignores

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<https://x.com/WhiteHouse/status/2001078039635960070?s=20>; Stephen Miller (@StephenM) X, (Dec. 17, 2025, at 5:37 PM ET) <https://x.com/StephenM/status/2001421552496087246>.

<sup>32</sup> Proposed Rule, *supra* note 1 at 52218.

<sup>33</sup> Thomas Waldrop, *Improving Affordability and Advancing Health Equity for Immigrants*, THE CENTURY FOUND., Feb. 27, 2025, available at <https://tcf.org/content/report/improving-affordability-and-advancing-health-equity-for-immigrants/>; Andrea Kovach et al., *Cruel “Public Charge” Proposal Would Drive Immigrant Families Further into the Shadows*, SHRIVER CTR. FOR POVERTY L., Nov. 13, 2018, available at [www.povertylaw.org/article/cruel-public-charge-proposal-would-drive-immigrant-families-further-into-the-shadows/](http://www.povertylaw.org/article/cruel-public-charge-proposal-would-drive-immigrant-families-further-into-the-shadows/); Akeiisa Coleman et al., *What Recent Policy Changes Mean for Immigrant Health Coverage*, THE COMMONWEALTH FUND, Oct. 15, 2025, available at <https://www.commonwealthfund.org/publications/explainer/2025/oct/what-recent-policy-changes-mean-immigrant-health-coverage>.

<sup>34</sup> Separate from the implementation costs, there would be broader social costs associated with the phenomenon of disenrollment or forgone enrollment in benefits programs because of this proposed rule. Such costs and harms imposed on immigrant families will be discussed in later sections of this comment.

<sup>35</sup> Exec. Order 12866 on Regulatory Planning and Review (Sept. 30, 1993); *see also*, *Michigan v. EPA*, 135 S.Ct. 2699, 2711 (2015)(holding that the EPA unreasonably deemed cost irrelevant when deciding to regulate power plants and that “the Agency must consider cost—including, most importantly, cost of compliance—before deciding whether regulation is appropriate and necessary”); Exec. Order.13563 (finding that an agency must “tailor its

the administrative costs to DHS of implementing this rule.<sup>36</sup> Indeed, the rule would impose a substantial new workload on U.S. Citizenship and Immigration Services (“USCIS”), Customs and Border Protections (“CBP”), and Department of State (“DOS”) consular officers and agents, since it would require them to conduct public charge inadmissibility determinations using broader databases or registries, as well as the individual’s past and future circumstances, without clear guardrails.<sup>37</sup> Such operational demands would be imposed on agencies and offices that have already suffered historic capacity shortfalls in addition to more recent reductions in force over the last year, all for the sake of implementing an unlawful, harmful regulation.<sup>38</sup>

Despite these shortfalls, the agency now proposes to use its own limited resources to implement a rule that may require a massive and unjustified expansion of immigration enforcement systems to undertake the requisite assessment and monitoring necessary to enforce the rule.<sup>39</sup> DHS’ failure to analyze the operational costs necessary to execute the additional surveillance and enforcement of the rule underscores its arbitrary and capricious nature.

#### **D. The Proposed Rule is Contrary to Law**

Congress has had several opportunities to amend the public charge test but has instead affirmed the existing administrative and judicial interpretations of the law. Congress purposefully rejected proposals that would have amended public charge provisions to exclude, deny status adjustments to, or deport large segments of the U.S. immigrant population. For example, in 1986, Congress enacted a “special rule” for overcoming the public charge exclusion as part of the legalization program “if the alien demonstrates a history of employment in the United States evidencing self-support without receipt of public cash assistance.”<sup>40</sup> The implementing regulation published in 1989 defined “public cash assistance” as “income or needs-based monetary assistance,” and included programs like Social Security income, but specifically *excluded* Medicaid, food stamps, public housing, or other non-cash benefits programs.<sup>41</sup> In addition, under IIRIRA, Congress did not alter the public charge test but instead codified the case law interpretation of public charge.<sup>42</sup>

Contrary to the proposed rule’s assertions, Congressional intent and actions are clear. Congress

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regulations to impose the least burden on society” and choose “approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity”).

<sup>36</sup> Proposed Rule, *supra* note 1 at 52195-52200.

<sup>37</sup> *Id.* at 52200.

<sup>38</sup> Eric Katz, *State becomes the latest agency to proceed with RIFs despite statutory pause*, GOV. EXEC. (Dec. 3, 2025) <https://www.govexec.com/workforce/2025/12/state-becomes-latest-agency-proceed-rifs-despite-statutory-pause/409882/>; Bilal Rahman, *Green Card Change to Have ‘Tremendous Effect’ on Backlog, Ex-Official Warns*, NEWSWEEK (Dec. 3, 2025, 10:12 AM) <https://www.newsweek.com/green-card-change-tremendous-effect-backlog-ex-official-warns-11149210>.

<sup>39</sup> Kade Crockford, *Beyond Sanctuary: Local Strategies for Defending Civil Liberties*, THE CENTURY FOUND., Mar. 21, 2018, available at <https://tcf.org/content/report/beyond-sanctuary/?session=1>.

<sup>40</sup> INA § 245A(d)(2)(B)(iii). In addition, under the Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”), Congress did not alter the public charge test but instead codified the case law interpretation of public charge. *See* Public Law 104–208, div. C, 110 Stat 3009–546.

<sup>41</sup> 8 CFR § 245a.1(i).

<sup>42</sup> *See* Public Law 104–208, div. C, 110 Stat 3009–546.

intended to confer benefits to a variety of non-cash programs to immigrants; further, use of these non-cash programs by immigrants was not meant to be included in the analysis of public charge. In addition to this Congressional intent, as outlined above, decades-long agency practice and regulation confirm that certain benefits should not be included in the public charge determination.<sup>43</sup> As such, in proposing these changes, the Agency posits an expansive view of the federal bureaucracy’s rulemaking power that is inconsistent with clear Congressional intent, previous rulemaking, and the recent case law on executive branch rulemaking – in sum, the proposed rule is contrary to law.

### **E. The 30-day Comment Period is Insufficient and Inadequate**

Public participation is an essential part of the federal government’s regulatory process. Under the APA, agencies are required to provide interested persons with a meaningful opportunity to comment on a proposed rule. Executive Order 12866, which provides for presidential review of agency rulemaking states that the public’s opportunity to comment “in most cases should include a comment period of not less than 60 days.”<sup>44</sup> The proposed rule itself recognizes the profound impact that it would have on immigrants and their families as well as U.S. citizens, including health care access. As noted throughout this comment, the previous interpretations and regulations related to public charge engendered decades long reliance which merits careful consideration and diligence if the agency seeks to upend and change those regulations. The 30-day comment period provided for this proposed rule is insufficient and inadequate for the public to comment.

### **III. The Proposed Rule Would Deter Immigrant Families, Including Pregnant, Postpartum, or Lactating People, from Seeking Critical Health Care**

The agency shockingly admits that this proposed rule may “increase the poverty of certain families and children, including U.S. citizen children” and then dismisses it with no substantive explanation, pointing to other administration actions that might further impoverish families and children in the United States.<sup>45</sup> Relatedly the agency acknowledges in the preamble to the proposed rule, that the regulation would lead to disenrollment and forgone enrollment in critical benefits programs, but the agency completely fails to justify this threat to public health and the general welfare.<sup>46</sup> The agency even goes so far as to acknowledge that “[s]tudies conducted between 2016 and 2020 have shown reductions in enrollment due to a ‘chilling effect,’ ranging from 4.1 percent to 48 percent.”<sup>47</sup> Evidence from prior rulemakings and from community-based providers demonstrates that even rumors of restrictive public charge policies have led immigrant families, including pregnant people, to withdraw from Medicaid, SNAP, and other vital supports out of fear that enrollment could jeopardize their immigration status.<sup>48</sup> In fact, recent reporting

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<sup>43</sup> See 1999 DOJ Field Guidance, *supra* note 7; 2022 Rule *supra* note 9.

<sup>44</sup> Exec. Order No. 12866, § 6(a), 58 Fed. Reg. 51735 (Oct. 4, 1993).

<sup>45</sup> Proposed Rule, *supra* note 1 at 52221.

<sup>46</sup> Kelley Whitener, *Public Charge Changes Will Have Far-Reaching Consequences for Children, Pregnant Women and Families and Sow Fear in Immigrant Communities*, GEORGETOWN CTR. FOR CHILDREN AND FAMILIES, Nov. 21, 2025, <https://ccf.georgetown.edu/2025/11/21/public-charge-changes-will-have-far-reaching-consequences-for-children-pregnant-women-and-families-and-sow-fear-in-immigrant-communities/>.

<sup>47</sup> Proposed Rule, *supra* note 1, at 52209.

<sup>48</sup> See Randy Capps, et. al., *Anticipated “Chilling Effects” of the Public-Charge Rule Are Real: Census Data Reflect*

demonstrates that increased immigration enforcement activity has created widespread fear among immigrant communities, causing pregnant and postpartum people, parents, and caregivers to delay or forgo prenatal, perinatal, postpartum, and pediatric care, including emergency services, out of concern that seeking care could expose them or their loved ones to detention, deportation, or separation from their newborn or young children.<sup>49</sup> This chilling effect on health care access undermines maternal and infant health outcomes, disrupts continuity of care for children, and exacerbates preventable risks during critical periods of pregnancy, birth, and early childhood. The proposed rule exacerbates these longstanding concerns by dramatically altering decades of settled law and practice without assessing either the current or foreseeable chilling effect of this and other recent policy changes impacting immigrants' access to health care and their U.S. citizen family members' access to health care.

This deterrent effect would be especially acute for Medicaid, a program on which millions of lawfully present immigrants rely and for which many more are eligible but unenrolled due to existing fear, misinformation, and structural barriers.<sup>50</sup> DHS' own estimates suggest significant disenrollment among the 5.7 million immigrants currently covered by Medicaid, and the real impact is likely far higher.<sup>51</sup> Reduced participation in Medicaid not only undermines access to preventive and primary care within these communities, which would undermine public health generally, but it also increases uncompensated-care burdens on hospitals and safety-net systems, affecting state and local health infrastructure.<sup>52</sup>

The consequences for pregnant and postpartum immigrants would be particularly severe.

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*Steep Decline in Benefits Use by Immigrant Families*, MIGRATION POLICY INSTITUTE, Dec. 2020, available at <https://www.migrationpolicy.org/news/anticipated-chilling-effects-public-charge-rule-are-real>; Jennifer M. Haley et al., *One in Five Adults in Immigrant Families with Children Reported Chilling Effects on Public Benefit Receipt in 2019*, URBAN INSTITUTE, Jun. 18, 2020, available at <https://www.urban.org/research/publication/one-five-adults-immigrant-families-children-reported-chilling-effects-public-benefit-receipt-2019>; Samantha Artiga et al., *Potential "Chilling Effects" of Public Charge and Other Immigration Policies on Medicaid and CHIP Enrollment*, KFF, Dec. 2, 2025, available at <https://www.kff.org/medicaid/potential-chilling-effects-of-public-charge-and-other-immigration-policies-on-medicaid-and-chip-enrollment/>.

<sup>49</sup> Halle Parker, *'The baby was completely gray': Immigrants choose between health care and risk of deportation*, VERITE NEWS (Dec. 16, 2025) <https://veritenews.org/2025/12/16/immigrants-health-care-catahoula-crunch/>; Mel Leonor Barclay And Shefali Luthra, *Her baby was in the NICU, she was in ICE detention*, PEOPLE'S WORLD (Dec. 18, 2025, 12:55 PM) <https://peoplesworld.org/article/her-baby-was-in-the-nicu-she-was-in-ice-detention/>; Mel Leonor Barclay and Shefali Luthra, *ICE fears put pregnant immigrants and their babies at risk*, THE 19<sup>TH</sup> NEWS (Oct. 7, 2025, 6:00 AM) <https://19thnews.org/2025/10/pregnant-immigrants-ice-fears-deportation/>; Drishti Pillai et al., *KFF/New York Times 2025 Survey of Immigrants: Health and Health Care Experiences During the Second Trump Administration*, KFF, Nov. 18, 2025, available at <https://www.kff.org/immigrant-health/kff-new-york-times-2025-survey-of-immigrants-health-and-health-care-experiences-during-the-second-trump-administration/>.

<sup>50</sup> Akeiisa Coleman et al., *What Recent Policy Changes Mean for Immigrant Health Coverage*, THE COMMONWEALTH FUND, Oct. 15, 2025, available at <https://www.commonwealthfund.org/publications/explainer/2025/oct/what-recent-policy-changes-mean-immigrant-health-coverage>.

<sup>51</sup> Proposed Rule, *supra* note 1 at 52208 and 52209.

<sup>52</sup> Andrés Argüello and Andrea Ducas, *New CBO Estimates Confirm Massive Rise in Uncompensated Care Costs Under One Big Beautiful Bill Act*, CTR. FOR AM. PROGRESS, Jun. 10, 2025, available at <https://www.americanprogress.org/article/new-cbo-estimates-confirm-massive-rise-in-uncompensated-care-costs-under-one-big-beautiful-bill-act/>; Fredric Blavin et al., *Hospital Revenue Losses And Increased Uncompensated Care If Medicaid Funding Is Cut*, ROBERT WOOD JOHNSON FOUND., Mar. 1, 2025, available at <https://www.rwjf.org/en/insights/our-research/2025/03/hospital-revenue-losses-and-increased-uncompensated-care-if-medicaid-funding-is-cut.html>.

Medicaid finances nearly half of all births nationwide, providing essential prenatal, intrapartum, and postpartum services.<sup>53</sup> By sowing confusion about whether use of these services could later be treated as a negative immigration factor on a pregnant individual or their family members, the proposed rule would force pregnant individuals to choose between preserving their immigration options and securing medically necessary care. The agency itself concedes that worse health outcomes are an expected consequence of the rule, and includes several social determinants of poor maternal health outcomes including malnutrition, reduced prescription adherence, delayed treatment, increased poverty, and housing instability, but cursorily dismisses them.<sup>54</sup> These harms extend to children as well: disruptions in prenatal care, nutritional assistance, and early-life health coverage are associated with increased rates of low birth weight, developmental risks, and long-term health disparities. Inclusion of CHIP in the public charge framework would further endanger children who depend on the program for consistent preventive care.

In short, the proposed rule would deter eligible families from accessing basic services, worsen maternal health outcomes, and undermine the well-being of future generations—without any reasoned explanation from the agency as to why these public health harms are acceptable.

#### **IV. Conclusion**

For the aforementioned reasons, DHS should immediately withdraw its current proposal and continue to adhere to the longstanding principles articulated in the 2022 Rule and 1999 Field Guidance on Public Charge.

The Center appreciates the opportunity to comment on this proposed rule. If you require any additional information about the issues raised in this letter, please contact Vandana Ranjan, Senior Federal Policy Adviser, Maternal Health at [vranjan@reprorights.org](mailto:vranjan@reprorights.org).

Signed,

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Center for Reproductive Rights

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<sup>53</sup> *Fact Sheet: Medicaid*, AM. HOSPITAL ASS'N, Feb. 2025, <https://www.aha.org/fact-sheets/2025-02-07-fact-sheet-medicaid>.

<sup>54</sup> Proposed Rule, *supra* note 1, at 52218.