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Submitted via www.regulations.gov

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 Women's Law Project in response to the Department of Homeland Security's (DHS, or the Department) Notice of Proposed Rulemaking. We strongly oppose the proposed changes regarding "public charge." The "public charge" rule is inherently unjust and problematic. However, the proposed changes would exacerbate the harm it causes by scaring immigrants away from essential health and safety services, forcing them to choose between basic necessities—such as food, housing, and healthcare—and a pathway to legal status in the United States. The harm caused by the proposed changes to expand public charge would fall heaviest among immigrant Black, Lantix, and Asian American and Pacific Islander women and their families. As such, we submit the following information for your consideration.

The Women's Law Project (WLP) is a non-profit public interest law firm with offices in Philadelphia and Pittsburgh, Pennsylvania. Founded in 1974, the WLP is dedicated to creating a more just and equitable society by advancing the rights and status of all women through high-impact litigation, advocacy, and education. Throughout its history, the WLP has played a leading role in the struggle to eliminate discrimination against women in public assistance benefits, including in healthcare systems and housing programs. WLP believes that all women, regardless of immigration status or financial means, should be able to access support services they need to protect and sustain their own health without fearing their family's wellbeing.

The proposed rule is a radical departure from current policy that would yield harmful consequences on individuals and communities, especially women and their families.

Under current policy, immigration officials can deny certain immigrants a visa or a green card if the official finds the immigrant would be a "public charge," someone found likely to become "primarily dependent" on the government for financial support. Immigrant officials are under current rules only allowed to consider an immigrant's current or past receipt of cash assistance programs like Supplemental Security Income (SSI) and Temporary Assistance for Needy Families when predicting whether someone will become a "public charge."¹ 1999 guidance from

¹ U.S. Citizenship and Immigration Services, *Public Charge*, <https://www.uscis.gov/greencard/public-charge> (last accessed Dec. 10, 2018).

the Clinton administration instructs immigration officers reviewing green card petitions to apply a totality of the circumstances test and while it negatively weighs cash assistance programs, it expressly prohibits the consideration of non-cash assistance programs.² This means many immigrants, especially immigrant women and children, have had access to healthcare, food, and housing while their immigrant petitions are processed.

The public charge rule creates an economic barrier of entry to the United States and should be rejected in its entirety. Immigrants make the United States more prosperous and provide meaningful contributions every day.

The proposed rule would expand the types of programs immigration officials could consider when predicting whether an immigrant is likely to become a “public charge” or not, including:

- 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); and
- Federal Public Housing, Section 8 housing vouchers and Section 8 Project Based rental assistance.

In making the public charge determination, the proposed rule would also negatively weigh certain factors, including whether a person:

- Has income of less than 125% 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.

These radical proposed changes would undermine the health and safety of immigrant families, especially immigrant women who turn to these social and health government programs to care for themselves.

The proposed unprecedented income test would also harm immigrants based on their comparative wealth. It 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 favors immigrants with more wealth. Further, the proposed rule’s preference for immigrants who speak English would turn 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

² 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),

Africa (34 percent); compared to immigrants from Europe, Canada, Australia and New Zealand, 27 percent of whom could be expected to have two or more negative factors.³

1) The proposed rule would have a significant impact on women and their families.

The harm the proposed rules would have on immigrant women and their families cannot be under-estimated. Indeed, immigrant women are more likely to use the targeted benefits than immigrant men. Throughout their lives, immigrant women, especially Black, Latinx,⁴ and Asian American and Pacific Islanders immigrant women, are generally at higher risk of economic insecurity than men because of forms of systematic and institutionalized discrimination, including pay disparities⁵ and overrepresentation in low-wage work,⁶ and the disproportionate share of caregiving responsibilities they shoulder (two-thirds of all family caregivers are female),⁷ among other factors. This heightened risk for economic insecurity means that

³ 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>.

⁴ “Latinx” is a gender-neutral term that challenges the gender binary in the Spanish language and embraces the diversity of genders that often are actively erased from spaces.

⁵ Women on average earn less than men, with even greater wage gaps for women of color, LGBTQ women, older women, and women with disabilities. See Nat’l Women’s Law Ctr., *Frequently Asked Questions About the Wage Gap* (2018), <https://nwlc-ci49tixgw5lbab.stackpathdns.com/wp-content/uploads/2018/09/Wage-Gap-FAQ.pdf>; Nat’l Women’s Law Ctr., *The Wage Gap: The Who, Why, How, and What to Do* (2017), <https://nwlc-ci49tixgw5lbab.stackpathdns.com/wp-content/uploads/2016/09/The-Wage-Gap-The-Who-How-Why-and-What-to-Do-2017-2.pdf>. Immigrant women likewise face a significant wage gap compared to native-born and naturalized men: foreign-born, noncitizen women, on average, earned 58 cents for every dollar earned by native-born men in 2015. Elise Gould, Jessica Schieder & Kathleen Geier, Econ. Pol. Inst., *What is the Gender Pay Gap and Is It Real?* (2015), <https://www.epi.org/publication/what-is-the-gender-pay-gap-and-is-it-real/>.

⁶ Women make up two-thirds of the low-wage workforce (defined for the purposes of this discussion as jobs that pay, on average, \$11.50 per hour or less). Kayla Patrick, Meika Berlan & Morgan Harwood, Nat’l Women’s Law Ctr., *Low-Wage Jobs Held Primarily by Women Will Grow the Most Over the Next Decade* (2018), <https://nwlc-ci49tixgw5lbab.stackpathdns.com/wp-content/uploads/2016/04/Low-Wage-Jobs-Held-Primarily-by-Women-Will-Grow-the-Most-Over-the-Next-Decade-2018.pdf>. Immigrant women are overrepresented in low-wage jobs (such as maid or housekeeper, nursing, psychiatric, or home health aide, or cashier), as are women of color. American Immigration Council, *The Impact of Immigrant Women on America’s Labor Force* (2017), <https://www.americanimmigrationcouncil.org/research/impact-immigrant-women-americas-labor-force>; National Women’s Law Center, *Underpaid & Overloaded: Women in Low-wage Jobs* (2014), https://nwlc.org/wp-content/uploads/2015/08/final_nwlc_lowwagereport2014.pdf. Because many of these jobs, in addition to paying unjustly low wages, are unstable and offer few benefits, many women in the low-wage workforce are unable to support their families on their wages alone. See, e.g., Julie Vogtman & Karen Schulman, Nat’l Women’s Law Ctr., *Set Up to Fail: When Low-Wage Work Jeopardizes Parents’ and Children’s Success* (2016), <https://nwlc-ci49tixgw5lbab.stackpathdns.com/wp-content/uploads/2016/01/FINAL-Set-Up-To-Fail-When-Low-Wage-Work-Jeopardizes-Parents’-and-Children’s-Success.pdf>.

⁷ Women are more likely than men to raise children on their own, see, e.g., U.S. Census Bureau, *America’s Families and Living Arrangements 2018*, Tbl. A3, <https://www.census.gov/data/tables/2018/demo/families/cps-2018.html>, meaning that their incomes must stretch to support more family members.

immigrant women's ability to continue to participate in the programs targeted by the proposed rule is vitally important.

While immigrant women only make up a small share of public benefits recipients overall,⁸ noncitizen women predominate among noncitizen recipients of income security programs. For example, in 2017, almost 47 percent of noncitizen Medicaid recipients were women, whereas 40 percent were men and 13 percent children.⁹ Almost 48 percent of noncitizen recipients of SNAP benefits were women in 2017, compared to the 40 percent who were men and the 12 percent who were children.¹⁰ These benefits reduce poverty and help women, including immigrant women in low-wage jobs, provide a basic standard of living for their families.

Immigrants already face significant barriers to accessing programs like Medicaid, SNAP, and housing assistance. Discouraging immigrant women's use of these programs – as the proposed rule seeks to do – would have a detrimental impact upon the livelihood and wellbeing of immigrant women and their families. And it would be particularly harmful to certain groups of immigrant women who can least afford to be put in the position of choosing between programs that support their safety, independence, and economic security and negatively affecting their immigration status. The proposed rule would force immigrant women into an impossible situation, having to choose between caring for themselves and their families by seeking SNAP or other benefits, or risk their immigration status.

2) The proposed rule would compromise the health and wellbeing of immigrant women.

By expanding the public charge rule to include Medicaid programs, it undermines the autonomy of immigrant women and threatens their health. Medicaid is an indispensable program for women, meeting most of women's health needs throughout the course of their lives. Nevertheless, under this proposed rule, immigrant women who are eligible for Medicaid and to whom the proposed rule would apply face having their use of Medicaid counted against their immigration petition. This places them in the impossible situation of having to decide between critical health coverage that keeps them healthy and being able to become a lawful permanent resident, a decision no person should ever have to make. Already the proposed rule is generating fear and confusion that has had – and will continue to have – a chilling effect

⁸ 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>.

⁹ 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>.

¹⁰ *Id.*

on immigrant women. It is reported that an estimated 2.1 million to 4.9 million Medicaid/CHIP enrollees could disenroll if the proposed rule is approved.¹¹

Already the proposed rule is generating fear and confusion that has had – and will continue to have – a chilling effect on immigrant women. It is reported that an estimated 2.1 million to 4.9 million Medicaid/CHIP enrollees could disenroll if the proposed rule is approved. Moreover, the current climate of hostility towards immigrants is causing real harm to their families, many have already begun foregoing critical services and benefits. Health and nutrition service providers observed a rise in canceled appointments and requests for disenrollment from means-tested programs in 2017.¹² 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 alarmingly an uptick in missed appointments at health clinics.¹³

Losing, disenrolling, or avoiding Medicaid coverage threatens women's health. Without affordable health coverage, women will not get the health care they need. Women who have health coverage are more likely to receive preventive care, such as breast cancer¹⁴ and cervical cancer screenings.¹⁵ People with health insurance also have lower mortality rates.¹⁶ People without health coverage are more likely to forgo needed care, leading to worse health outcomes.¹⁷ Half of uninsured women reported going without health care in 2016 because of cost, compared to 25% of women with Medicaid and 21% of women with private health insurance. Cost poses a particular barrier for women of color; in 2016, Latinx and Black women were more likely than white women to say that cost kept them from seeing a

¹¹ Samantha Artiga, Raphael Garfield, & Anthony Damico, Kaiser Family Foundation, *Estimated Impacts of the Proposed Public Charge Rule on Immigrants and Medicaid* (2018), <https://www.kff.org/disparities-policy/issue-brief/estimated-impacts-of-the-proposed-public-charge-rule-on-immigrants-and-medicaid/>.

¹² 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.

¹³ 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.

¹⁴ According to the Centers for Disease Control and Prevention (CDC), Pennsylvania had one of the highest cancer incidence and death rates in the United States in 2012. The Kaiser Foundation reports that Pennsylvanians were more likely to report difficulty affording healthcare and problems with medical bills compared to the United States overall. KFF, *The Pennsylvania Health Care Landscape* (Apr. 25, 2016), <https://www.kff.org/health-reform/fact-sheet/the-pennsylvania-health-care-landscape/#footnote-186841-8>.

¹⁵ Munira Z. Gunja et al., The Commonwealth Fund, *Women Gain Insurance and Improved Their Ability to Get Health Care* (2017), <https://www.commonwealthfund.org/publications/issue-briefs/2017/aug/how-affordable-care-act-has-helped-women-gain-insurance-and>.

¹⁶ 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>.

¹⁷ Committee on the Consequences, Board on Health Services, Institute of Medicine, *Care Without Coverage: Too Little, Too Late* (2002).

doctor.¹⁸ Already, immigrant women are less likely to be insured than their citizen counterparts. Twenty-seven percent of noncitizen immigrant women are uninsured, compared 11 percent for women overall. Women of reproductive age fare even worse: while 34 percent of noncitizen women of reproductive age are uninsured, nine percent of citizen women of reproductive age are uninsured. The gap widens further for poor immigrant women: nearly half (48 percent) of noncitizen women of reproductive age living in poverty are uninsured, while 16 percent of citizen women of reproductive age living in poverty live without coverage. The proposed rule would only make the situation worse, leading to worse health outcomes for immigrant women.

More specifically, this proposed rule may discourage women from obtaining prenatal care, which has ramifications not only for their health and their pregnancies, but also for birth outcomes. Lack of adequate health care, including prenatal care, contributes to higher rates of maternal mortality, higher rates of infant mortality, and increased risk of low-infant birth weight. This is particularly dangerous for Black women, who already experience disproportionately high rates of maternal mortality, in part due to existing barriers to health care and systemic inequalities. Similarly, the proposed rule may also discourage women from seeking postpartum care, which is crucial to the health and well-being of mothers, newborns, and families. Forgoing postpartum care could mean that women endure postpartum depression without proper medical, social, and psychological care, skip doctor's visits that address infant feeding, nutrition, physical activity and family planning, or leave other postpartum health issues unaddressed.

On all levels, the proposed changes undermine WLP's values and mission to protect the health and safety of *all* women. DHS should immediately withdraw its proposed rule. Should the proposed rules be approved and enforced, the lives and future of immigrant women and their families would be threatened by forcing them to choose between accessing needed benefits or staying together, an impossible decision no person should ever be forced to make.

Respectfully,

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¹⁸ Kaiser Family Foundation, *Percent of Adult Women Who Did Not See a Doctor in the Past 12 Months Due to Cost*, <https://www.kff.org/womens-health-policy/state-indicator/percent-of-adult-women-who-did-not-see-a-doctor-in-the-past-12-months-due-to-cost-by-raceethnicity/?currentTimeframe=0&selectedDistributions=all-women&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D> (last accessed Oct. 18, 2018).