

December 4, 2018

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 Sir/Madam:

I am writing on behalf of the Council on American-Islamic Relations, California chapter (CAIR-CA) in response to the Department of Homeland Security (DHS) Notice of Proposed Rulemaking, "Inadmissibility on Public Charge Grounds," which was published in the Federal Register on October 10, 2018.

CAIR-CA strongly opposes the proposed changes to the public charge rules, which, as we know from our years of experience in immigration law, will cause uncertainty, inconsistency, and chaos in the adjudication of immigration benefits and have a chilling effect on immigration benefits applications. This stands in stark contrast to our country's commitment to family reunification and the inclusion and integration of immigrants into the United States.

CAIR is the largest American-Muslim, advocacy and civil liberties organization in the nation. The CAIR-CA chapter as a 501(c)(3) dedicated to enhancing understanding of Islam, protecting civil rights, promoting justice, and empowering American Muslims. As an established organization since 1994, CAIR-CA has broad outreach to communities of diverse ethnicities. CAIR-CA has four offices located in the San Francisco Bay area (CAIR-SFBA), the Sacramento Valley area (CAIR-SV), the Greater Los Angeles area (CAIR-LA), and the San Diego area (CAIR-SD) serving the Arab, Middle Eastern, Muslim, and South Asian (AMEMSA) communities.

Through CAIR-CA's work, we assisted more than 2,300 community members across the state with legal inquiries in 2017 alone, nearly half of whom were immigrants. CAIR-CA staff attended and held more than 800 educational and outreach events, where we provided information on CAIR-CA's work, commentary on political and social issues impacting our communities, and "know your rights" presentations and materials on key issues impacting AMEMSA community members. CAIR-CA also engages in advocacy work with partner organizations across California and nationally through affiliate CAIR chapters. As with many of the immigration policies created by this Administration, CAIR-CA has worked tirelessly to educate community members on the impact of the proposed public charge rule, and engage in advocacy to combat the negative impact this rule will have on the immigrants we serve, their families, and U.S. communities.

Under the proposed public charge rule, modest receipt of benefits from key programs such as MediCal, CalFresh, subsidized prescription drugs under Medicare Part D, and several housing programs can be heavily weighed against immigrants seeking a green card or other visa. The above listed programs provide no cash support but simply help recipients meet basic needs. By eliminating the distinction between immigrants that are likely to become dependent on cash “welfare” or long-term institutional care at government expense from immigrants who receive non-cash forms of support, the Administration signals to immigrants that only those with substantial financial means are welcome in the United States. This policy places an undue burden on the working-class immigrants that form the backbone of our economy and unfairly preferences the wealthy. In doing so, it constitutes a complete abandonment of the American Dream, and the underlying premise that the United States is a place for those seeking a better life, not just those who already enjoy substantial means. If finalized as written, this rule would foster a vision of America that a majority of Americans rejects: a country that excludes people with disabilities and people who may currently be low-earning, but are contributing to their families and communities. The rule would also have a disproportionately negative impact on women and people of color, preventing them from securing lawful immigration status and reuniting with their families. American history is defined by the contributions of citizens who came to America as immigrants from lower socio-economic backgrounds, with little education, who thrived once afforded the opportunity to pursue the American Dream. These immigrants have made positive contributions to American society for generations and are leaders in the fields of science, medicine, and technology, to name a few.

## **I. Impact on USCIS Adjudications**

### **A. The Proposed Rule’s Adjudicative Framework Endows USCIS with Unfettered Discretion to Deny Applications Based on an Ambiguous Totality of Factors Test**

In addition to heavily weighing receipt of public benefits against applicants, the proposed rule also provides a list of negative factors intended to help an immigration officer determine whether an applicant is likely to become a public charge *in the future*. This focus prejudices immigrants’ ability to receive certain immigration benefits based on a non-scientific correlation between present-day characteristics and future financial viability. Moreover, the proposed rule targets individuals based on a large number of features, many of which are out of an individual’s control and do not have any demonstrated relation to becoming impoverished. For example, being a child is a negative factor. Being a senior citizen is a negative factor. Limited English proficiency is a negative factor. Poor credit history is a negative factor. Limited education is a negative factor. Large family size is a negative factor. A household income below 125% of the federal poverty guideline is a negative factor. Serious medical conditions are highly weighted negative factors. The stark juxtaposition of this nearly all-encompassing list of negative factors with the delineation of a single positive factor speaks volumes about the Administration’s intent to keep immigrants of color out of the U.S. These negative factors have a far-reaching impact on certain visa and green card applicants. According to a report published by the Henry J Kaiser Family Foundation, 94% of “noncitizens who entered the U.S. without LPR status have at least one characteristic that DHS could potentially weigh negatively in a public charge determination

under the proposed rule.”<sup>1</sup> Additionally, 42% of noncitizens have at least one negative characteristic that would be heavily weighted and 34% have a household income below the 125% federal poverty guideline threshold.<sup>2</sup> To give immigration officers such unfettered discretion to scrutinize every aspect of an applicant’s life in such a restrictive and discretionary manner is highly concerning.

The Administration’s expansion of public charge denials under existing, comparatively narrow, public charge standards, exacerbates a pervasive problem within agencies processing immigration benefits. As an organization primarily serving the AMEMSA community, we have witnessed firsthand the injustice carried out by officers given too much discretion. For years, we’ve witnessed lengthy and unwarranted delays of immigration applications due to profiling under the Controlled Application Review and Resolution Program (CARRP) program. Travelers, particularly under the current Administration, have faced detention at ports of entry for hours at a time while unable to speak to counsel or challenge lengthy delays or revocation of visas. Applicants from banned Muslim majority countries have faced confusing and arbitrary processing and denials of Muslim Ban waivers, which have been issued at a rate of less than 2%.

The systematic problems stemming from overreaching discretion extend to processing of public charge determinations. Since the beginning of 2017, without any change in the standards for reaching determinations of public charge, we saw a dramatic increase in such findings. The U.S. State Department reported that public charge ineligibility findings increased from 1,076 in fiscal year 2016<sup>3</sup> to 3,237 in fiscal year 2017,<sup>4</sup> indicating a three-fold increase in denials despite an overall decline in the total number of immigrant visa applications. This alarming surge came after years of relatively consistent denial rates under the prior administration. This sharp and sudden rise in adverse public charge determinations mirrors the current administration’s animus towards immigrants of color. Providing immigration officers with *more* discretion will increase the likelihood of abuse through this powerful and highly discretionary tool to target Muslim immigrants.

## **B. The Proposed Rule Would Establish an Incoherent Adjudicative Framework Resulting in Inconsistent and Unfair Public Charge Determinations**

The proposed rule would replace clear, easier-to-administer public charge guidelines with a nebulous framework all but precluding USCIS adjudicators from reaching fair and consistent public charge determinations. Under current policy, a sufficient Form I-864, *Affidavit of Support*,

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<sup>1</sup> The Henry J Kaiser Family Foundation, "Estimated Impacts of the Proposed Public Charge Rule on Immigrants and Medicaid," (October 2018), *available at* <http://files.kff.org/attachment/Issue-Brief-Estimated-Impacts-of-the-Proposed-Public-Charge-Rule-on-Immigrants-and-Medicaid>.

<sup>2</sup> *Id.*

<sup>3</sup> U.S. Department of State, Table XX, Immigrant and Nonimmigrant Visa Ineligibilities, Fiscal Year 2016, *available at* <https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2016AnnualReport/FY16AnnualReport-TableXX.pdf>.

<sup>4</sup> U.S. Department of State, Table XX, Immigrant and Nonimmigrant Visa Ineligibilities, Fiscal Year 2017, *available at* <https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2017AnnualReport/FY17AnnualReport-TableXX.pdf>.

demonstrating a commitment from a sponsor to support the immigrant, generally establishes to USCIS's satisfaction that, under the totality of circumstances, an individual will not become a public charge. This adjudicative framework is straightforward and efficient and has largely yielded predictable, consistent public charge assessments.

The proposed rule would replace this policy with an amorphous test requiring adjudicators to weigh a potentially unlimited number of "factors" and apply a host of unclear "considerations," without meaningfully distinguishing "factor" from "consideration" and often referring to specific criteria as both a factor *and* a consideration. Moreover, a factor's weight can shift based on various circumstances including that factor's relationship with one or more other factors. DHS appears to assert that factors not specifically identified "may be weighted heavily." In other words, not only would there exist an unknown and possibly infinite universe of factors that adjudicators could assess, it appears that adjudicators could find virtually *any* circumstance ultimately dispositive within the totality of circumstances in a given public charge determination.

This is a prescription for process and outcome ambiguity, rendering inconsistent adjudications a certainty, and leaving the regulated community completely in the dark. Public charge determinations will inevitably vary from adjudicator to adjudicator and case to case, with similarly situated applicants receiving contradicting decisions. The plasticity of the public charge analysis, moreover, opens the door for political pressure, rather than dispassionate adjudication, to shape conclusions.

By replacing a time-worn and effective standard with an incoherent framework, immigration attorneys and accredited representatives will find it next to impossible to advise intending immigrants on their eligibility for lawful permanent residence or other immigration benefits. The process consistently utilized by DHS, DOJ, and DOS for years, involving submission of a legally enforceable I-864 Affidavit of Support, was a straightforward and efficient process for adjudicators and immigrants. The proposed rule will add many layers of confusion to the process, to such an extent that what should be a clear adjustment of status case becomes riddled with uncertainty. This will deepen USCIS case processing delays and compound the resulting harm to the public through heightened job loss, food shortages, and family separation. It will also make it substantially more difficult for an immigrant to navigate the system without legal help, and yet, lawyers will be hard-pressed to offer guidance without a clear legal standard. Combined with USCIS's new policy for placing individuals in removal proceedings, people who are entitled to lawful permanent residence will be too afraid to apply to adjust status, leading to more people in the U.S. without status.

## **II. Impact on HealthCare Services: The Proposed Expansion Will Impact Healthcare Providers By Restricting Visa Issuance to Medical Professionals, Many of Whom are From Muslim-Majority Countries**

Immigrant healthcare workers are the backbone of the U.S. medical system. Immigrant doctors, nurses, and other medical professionals make up nearly one-fifth of all health care workers in the United States—22% of the health workforce and 30% of doctors and surgeons.<sup>5</sup> This

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<sup>5</sup> *Id.* (citing 2015 data from the Migration Policy Institute)

Administration's Muslim Ban has already impacted this group. Iran and Syria, two of the banned countries, are among the top ten countries that send physicians and surgeons to the United States. In February 2017, the American Medical Association (AMA) wrote DHS, urging careful consideration of the Muslim Ban's restriction on visa issuance to physicians and international medical graduates from the impacted countries, expressing concern that the Muslim Ban "is negatively impacting patient access to care and creating unintended consequences for our nation's health care system."<sup>6</sup> Further, the letter referenced "reports indicating that [the Muslim Ban] is affecting both current and future physicians as well as medical students and residents who are providing much needed care to some of our most vulnerable patients."<sup>7</sup>

The proposed rule would similarly impact many medical professionals, including academics and researchers who make life-saving discoveries, but are often paid quite little. This proposed rule would impact students training to become doctors, nurses, and medical researchers. Many health practitioners from AMEMSA backgrounds that come to the U.S. to start their careers often rely on modest benefits due to low paying jobs while awaiting licensure or residency programs. Collectively, the proposed rule risks negatively impacting the availability of healthcare services to the detriment of both immigrants and U.S. citizens.

### **III. Impact on Immigrants**

#### **A. Chilling Effect on Immigration Applications and Public Benefits**

Because CAIR-CA is dedicated to improving access to legal information, we will continue to educate AMEMSA communities about the proposed public charge rule and its impact. Notwithstanding these efforts, uncertainty and confusion about what the proposed rule means and how it will be implemented will prevent many qualified individuals from filing immigration applications out of fear of a denial based on public charge grounds. Although the law is clear that visa-holders cannot be punished for benefits they use during the proposed rule's pendency, we already see alarming reports of disenrollments. As has been well-documented, widespread misinformation and confusion created by drafts of the rule leaked to the press have resulted in a marked decline in the use of a wide variety of life-sustaining benefits by immigrant families,<sup>8</sup> as well as instability and anxiety among individuals with lawful status - including those in exempt categories such as refugees.<sup>9</sup>

This chilling effect will disproportionately impact applicants for lawful permanent residence through the family immigration system and unduly harm women and families of color. DHS recognizes evidence of a chilling effect and notes that previous studies examining the effect of

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> See Migration Policy Institute, "Chilling Effects: The Expected Public Charge Rule and Its Impact on Legal Immigrant Families' Public Benefits Use," (June 2018), available at [https://www.immigrationresearch-info.org/system/files/Chilling\\_Effects\\_Public\\_Charge\\_Rule.pdf](https://www.immigrationresearch-info.org/system/files/Chilling_Effects_Public_Charge_Rule.pdf).

<sup>9</sup> See The Henry J Kaiser Family Foundation, "Living in an Immigrant Family in America: How Fear and Toxic Stress are Affecting Daily Life, Well-Being, & Health," (December 2017), available at <https://www.kff.org/report-section/living-in-an-immigrant-family-in-america-issue-brief/>.

welfare reform changes in 1996 showed disenrollments of public programs at rates of 21% to 54%.<sup>10</sup>

**B. The Proposed Expansion Will Force Separation of Immigrant Families, Including Muslim Immigrant Families**

As noted above, the proposal has already resulted in a marked decline in the use of programs providing integral support to immigrant families. With about one in four children born to at least one immigrant parent, the proposed rule creates the starkest threat for mixed-status families, especially non-citizen parents of U.S. citizen children. As noted by the Henry J Kaiser Family Foundation, “[a]ccording to the SIPP data, there were over 14 million Medicaid/CHIP enrollees living in a household with at least one noncitizen, and half of these enrollees were citizen children.”<sup>11</sup> While the proposed rule exempts benefits used by U.S. Citizen children, the public charge expansion still leaves impacted families with an impossible choice. Potentially eligible immigrant visa applicants would have to decide between accepting benefits that jeopardize their immigration eligibility, or subject their entire family to financial strain and hardship. Visa-holder parents who use public benefits would face potential public charge denials and even deportations. Those denied legal residency under public charge would either have to endure separation from their children or take them from the only country these children know. As the organization Children’s Rights observes, it is “vulnerable children who will suffer the consequences.”<sup>12</sup> Indeed, numerous human rights organizations have pointed out that the proposed rule will require parents to choose between necessary public assistance or separation. Thus, the proposed rule surreptitiously expands the family separation policies that have come under national and international condemnation.

**C. The Proposed Bond Procedures and Penalties are Exceptionally Harsh and Create an Opportunity for Unscrupulous Private Bond Companies to Exploit Immigrant Families**

The proposed rule not only establishes an excessive bond minimum of \$10,000, it also authorizes USCIS to set a dramatically higher bond in its discretion—with no cap—and bars any appeal of that amount. The rule stipulates that the penalty for *any* bond breach is the full bond amount and that *any* use of a specified public benefit while the bond remains in effect constitutes such a breach.

These harsh conditions would drive many noncitizens to accept crippling surety bond terms to avoid family separation. Under those terms, the bond “principal”—in many cases the noncitizen—would have to pay the bond company up to 15 percent of the bond up front. This alone could

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<sup>10</sup> 83 Fed. Reg. 51114-51296 (October 10, 2018) available at <https://www.federalregister.gov/documents/2018/10/10/2018-21106/inadmissibility-on-public-charge-grounds>, accessed November 20, 2018.

<sup>11</sup> The Henry J Kaiser Family Foundation, “Estimated Impacts of the Proposed Public Charge Rule on Immigrants and Medicaid,” (October 2018), *available at* <http://files.kff.org/attachment/Issue-Brief-Estimated-Impacts-of-the-Proposed-Public-Charge-Rule-on-Immigrants-and-Medicaid>.

<sup>12</sup> Children’s Rights, Expanded ‘Public Charge’ Regulation Puts Thousands of Children at Risk (Sept. 24, 2018), *available at* <https://www.childrensrights.org/expanded-public-charge-regulation-puts-children-at-risk/>.

prove destabilizing for low and moderate-income families. For example, for a family of four with an annual income of \$31,000—representing 125% of the U.S. Federal Poverty Guidelines—15% of even the minimum bond amount of \$10,000 could mean foregone rent and meals, stifling rather than promoting a family’s ability to become self-sufficient.

In the event of a breach, the principal would have to reimburse the bond company for the full amount of the breach penalty. For instance, if a \$30,000 public charge bond is in effect for a noncitizen mother who then uses only \$1,500 worth of public benefits, the bond would be breached, and she would be liable for the entire \$30,000—twenty times more than what she received in benefits—and she would face potential separation from her family.

As this example illustrates, the proposed rule would impose strict bond requirements and severe penalties that prioritize the revenue streams of private bond companies over family unity, thus creating an opportunity for unscrupulous bond companies to take advantage of immigrant families.

#### **IV. Conclusion**

For the above-stated reasons, CAIR-CA opposes the proposed public charge rule. The proposed public charge rule is another attempt by this Administration to change the fabric of our society by targeting certain immigrants and making it impossible for them to enter or remain in the United States. If implemented this rule would disproportionately impact AMEMSA immigrant communities, low-income immigrants, immigrants with disabilities, persons of color, the elderly, and vulnerable children. For these individuals this rule would, in effect, deny them a path to come to the U.S. and ultimately gain citizenship.

By imposing these new proposed rules for public charge determinations, we are decimating America’s standing in the world by taking away basic necessities from those most in need. We are sending a clear message that America is no longer a land of liberty and opportunity for all, but only for a select few. If enacted, the proposed rule would have a catastrophic impact on immigrant families by forcing them to choose between suffering without basic necessities and potentially permanent family separation. It would also put the health and wellbeing of millions of people at great risk and violate our core American values. Please do not hesitate to contact me at [oHassaine@cair.com](mailto:oHassaine@cair.com) if you have any questions or need any further information.

Sincerely,



Omar Hassaine  
Board Chair

**Council on American-Islamic Relations**

**California Chapter**

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