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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON  
AT RICHLAND**

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STATE OF WASHINGTON;  
COMMONWEALTH OF VIRGINIA;  
STATE OF COLORADO; STATE OF  
DELAWARE; STATE OF ILLINOIS;  
STATE OF MARYLAND;  
COMMONWEALTH OF  
MASSACHUSETTS; ATTORNEY  
GENERAL DANA NESSEL ON  
BEHALF OF THE PEOPLE OF  
MICHIGAN; STATE OF  
MINNESOTA; STATE OF  
NEVADA; STATE OF NEW  
JERSEY; STATE OF NEW MEXICO;  
and STATE OF RHODE ISLAND,

Plaintiffs,

v.

UNITED STATES DEPARTMENT  
OF HOMELAND SECURITY, a

NO.

COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF

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federal agency; KEVIN K. McALEENAN, in his official capacity as Acting Secretary of the United States Department of Homeland Security; UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, a federal agency; KENNETH T. CUCCINELLI II, in his official capacity as Acting Director of United States Citizenship and Immigration Services,  
  
Defendants.

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1 Plaintiffs State of Washington, Commonwealth of Virginia, State of  
2 Colorado, State of Delaware, State of Illinois, State of Maryland, Commonwealth  
3 of Massachusetts, Attorney General Dana Nessel on behalf of the People of  
4 Michigan, State of Minnesota, State of Nevada, State of New Jersey, State of  
5 New Mexico, and State of Rhode Island (together, the Plaintiff States) bring this  
6 lawsuit against the United States Department of Homeland Security (the  
7 Department or DHS); its Acting Secretary Kevin K. McAleenan, in his official  
8 capacity; its sub-agency United States Citizenship and Immigration Services  
9 (USCIS); and USCIS's Acting Director Kenneth T. Cuccinelli, in his official  
10 capacity.

## 11 I. INTRODUCTION

12 1. The Department's Final Rule, *Inadmissibility on Public Charge*  
13 *Grounds*, 84 Fed. Reg. 41,292<sup>1</sup> (August 14, 2019) (the Public Charge Rule or the  
14 Rule), effects a radical overhaul of federal immigration law transforming a  
15 system that promotes economic mobility among immigrants into one that  
16 advantages immigrants with wealth. It does so by penalizing legally present  
17 immigrant families who access federally-funded health, nutrition, and housing  
18 programs, even briefly. The Rule achieves this sweeping change unlawfully: it  
19 expansively redefines the term "public charge"—a previously rare designation

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21 <sup>1</sup> *Inadmissibility on Public Charge Grounds*, 84 Fed. Reg. 41,292  
22 (Aug. 14, 2019) (to be codified at 8 C.F.R. § 212.20).



1 that triggers exclusion from the United States—in a manner that is contrary to  
2 congressional intent and agency interpretation that has prevailed for nearly 70  
3 years, and contrary to two 1996 federal statutes.

4 2. Since the late 19th century, federal immigration law has permitted  
5 the government to deny entry to any noncitizen “likely to become a public  
6 charge.” From colonial times to the present day, “public charge” was used  
7 consistently in American law to mean a pauper—that is, someone permanently  
8 and primarily dependent on the government for subsistence. Until the current  
9 Administration, the Department itself, its predecessor agency the Immigration  
10 and Naturalization Service, the U.S. Department of Justice, and the U.S. State  
11 Department have all adhered to the established definition of public charge.

12 3. The Rule departs from this original meaning by redefining a public  
13 charge as a noncitizen who receives common forms of federal and state public  
14 assistance, even in small amounts and for a short period of time. Never before  
15 has the Department considered in a public charge determination an immigrant’s  
16 receipt of non-cash public benefits for which they are legally eligible such as  
17 Medicaid, Supplemental Nutrition Assistance Program benefits, public housing  
18 subsidies under the 1937 U.S. Housing Act, or Section 8 housing assistance.  
19 Under the Rule, however, participation in those benefits—which are commonly  
20 used by working families—would constitute a negative “heavily weighted factor”  
21 triggering a public charge determination.

22

1           4.     People who receive those benefits are neither paupers nor primarily  
2 dependent on the government for subsistence. Over half of all non-elderly adults  
3 receiving Medicaid are employed, and almost 80% are from a home where at  
4 least one household member works. Indeed, more than 20% of the U.S.  
5 population participates in such benefits programs on average each month. Yet,  
6 under the Rule, legally present immigrants’ participation in those programs  
7 would block their path to citizenship under the public charge exclusion.

8           5.     The Public Charge Rule is contrary to law and arbitrary and  
9 capricious in violation of the Administrative Procedure Act for numerous reasons  
10 including:

11           6.     **First**, the Department’s new definition of “public charge” is  
12 contrary to its longstanding meaning in the Immigration and Nationality Act.  
13 Since its origin in colonial residency requirements and through its reception into  
14 state and then federal immigration laws, a “public charge” has been applied to  
15 mean a person primarily dependent on the government for subsistence. The  
16 Department’s Rule is not a clarification of a well-established rule, but marks the  
17 rejection of the core principle underlying the long established unambiguous  
18 definition.

19           7.     **Second**, the Personal Responsibility and Work Opportunity  
20 Reconciliation Act of 1996 allows many lawful immigrants to apply for public  
21 benefits if they have been in the country for at least five years. The Rule  
22

1 eviscerates Congress’s intent by imposing an effective “bait and  
2 switch”—punishing immigrants for using public benefits for which Congress  
3 itself made them eligible. The Rule is contrary to this statute, as well as several  
4 others.

5 8. *Third*, the Rule is arbitrary, capricious, and an abuse of discretion  
6 because—among other reasons—it reverses a decades-old, consistent policy  
7 without reasoned analysis, offers an explanation for the Rule that runs counter to  
8 the overwhelming weight of evidence before the Department, and disingenuously  
9 promotes as its purpose self-sufficiency in the immigrant population when, as  
10 abundantly shown by the administrative record, its effect is precisely the  
11 opposite.

12 9. The radical expansion of the public charge standard will cause  
13 irreparable harm to the working families and children who live in the Plaintiffs  
14 States, as well as the states themselves. The Rule will deter hundreds of thousands  
15 of noncitizens from utilizing essential public assistance programs for which they  
16 are legally eligible, so as not to jeopardize their hopes of becoming Americans.  
17 Those “chilling effects” are of two types.

18 10. First, the Rule will deter lawfully present, legally eligible  
19 immigrants or their family members from participating in the enumerated “public  
20 benefit” programs. Many of these individuals will be forced into state emergency  
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22

1 programs—for example, many will be forced to obtain routine medical care in  
2 the far more expensive setting of state-funded emergency rooms.

3 11. Second, the Rule’s true impact sweeps more broadly by chilling  
4 immigrant families’ participation in state and local assistance programs that the  
5 Rule does not classify as public benefits in the public charge test. Out of both fear  
6 of the Trump Administration’s anti-immigrant agenda and confusion over the  
7 byzantine regulatory scheme that the Rule would create, many immigrant  
8 families will disenroll or forgo enrollment in all public benefit programs to  
9 avoid triggering the Department’s expansive and punitive public charge test.

10 12. Those chilling effects will lead to individuals and families forfeiting  
11 health insurance, medical care, nutrition assistance, and shelter not only for  
12 themselves but also for their entire households—including U.S. citizen adults and  
13 children. In Washington State alone, the state Medicaid agency projects that up  
14 to 140,000 families will lose health insurance, and State residents will forgo up  
15 to \$198 million annually in medical care and up to \$55 million annually in food  
16 and cash assistance. State and private hospitals will be forced to absorb the vastly  
17 more expensive uncompensated care, to the detriment of the State treasury.

18 13. The resulting loss of economic activity will impose uncompensable  
19 social and economic costs on the Plaintiff States that the Department entirely fails  
20 to confront. Disenrollment and non-enrollment in health, nutrition, and other  
21 state-run assistance programs will make many working class immigrant families  
22

1 less healthy, less productive, more reliant on state-covered emergency medical  
2 care, and more likely to experience economic dislocation and homelessness,  
3 which will result in increased strain on state agencies and programs. The broader  
4 chilling effects among all state-run assistance programs will undermine those  
5 programs' administration and effectiveness. And direct costs to the States will  
6 result from immigrants who shift from federal programs to state programs that  
7 do not qualify as "public benefits" under the Rule.

8 14. In Washington State, for example, economic analysis points to the  
9 Rule reducing total economic output by up to \$97.5 million annually, cutting  
10 wages by up to \$36.7 million annually, and eliminating up to 782 jobs. Franklin  
11 County, less than five miles from where this Court sits and where, according to  
12 Census Bureau data, over half the population is Hispanic and over 15% legal  
13 noncitizen, will face particularly harsh increases in public costs and decreases in  
14 economic output as a result of the Rule. These consequences will be replicated  
15 across the Plaintiff States.

16 15. The Department's expansive new public charge test applies to two  
17 groups of lawfully present non-citizens: immigrants such as visa-holders seeking  
18 to adjust to permanent resident status, and nonimmigrant visitors seeking to  
19 extend their visa or change their visa category. It would apply, for example, to:

- 20 • An immigrant mother with a U.S. citizen spouse and U.S.  
21 citizen children who applies for lawful permanent residency. Even if she  
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and her spouse both work full-time, she could be classified as a public charge simply because the family received food stamps for one year in a three-year period.

- A lawful permanent resident who travels abroad to care for his ailing mother and, after her passing, to help with funeral preparations and settle her estate. If previously he had received Section 8 housing assistance vouchers for 12 months in any amount, upon his return to the United States six months later, he could be denied admission under the new public charge test, which applies to lawful permanent residents after a foreign trip longer than 180 days. Although a federal statute entitles this green card holder to receive federal, state, and local public benefits, the Rule would exclude him from the United States for taking advantage of his statutory right.

- And an immigrant granted entry for urgent humanitarian reasons (a “humanitarian parolee”), who has two U.S. citizen children and files for permanent residency. If for just four months in the past three years she received Medicaid coverage, food stamps, and Section 8 housing assistance in any amounts, it could trigger a public charge determination and denial of her green card application because each separate benefit would count as an extra month towards the Rule’s 12-month threshold.

1           16. The Administration, unable to implement its restrictive immigration  
 2 agenda through legislation, now attempts to implement its agenda through an  
 3 administrative overhaul of immigration policy that cannot be squared with the  
 4 terms of statutes duly enacted by Congress or with the United States Constitution.  
 5 To avert irreparable injury to the Plaintiff States and their residents, the Plaintiff  
 6 States bring this suit to vacate and set aside the Public Charge Rule.<sup>2</sup>

7                                   **II. JURISDICTION AND VENUE**

8           17. This Court has personal jurisdiction over the Defendants pursuant to  
 9 28 U.S.C. § 1391(e) because Defendants are agencies and officers of the United  
 10 States.

11           18. This Court has jurisdiction over the subject matter of this lawsuit  
 12 pursuant to 28 U.S.C. § 1331 because this action arises under federal law.

13           19. Defendants’ publication of the Final Rule in the Federal Register on  
 14 August 14, 2019, constitutes a final agency action and is therefore judicially  
 15 reviewable within the meaning of the APA, 5 U.S.C. §§ 704, 706.

16           20. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a)  
 17 because this is a judicial district in which Plaintiff State of Washington resides,  
 18 the Rule will adversely affect the health and welfare of residents in this district,

19 \_\_\_\_\_  
 20           <sup>2</sup> This Complaint uses the terms “immigrant” and “noncitizen”  
 21 interchangeably to refer to a foreign national living in the United States, while  
 22 the Rule generally refers to these individuals as “aliens.”

1 and the finances of the State, and this action seeks relief against federal agencies  
2 and officials acting in their official capacities.

3 **III. PARTIES**

4 21. The States of Washington, Colorado, Delaware, Illinois, Maryland,  
5 Minnesota, Nevada, New Jersey, New Mexico, Rhode Island, and Attorney  
6 General Dana Nessel on behalf of the People of Michigan, and the  
7 Commonwealths of Virginia and Massachusetts, represented by and through their  
8 respective Attorneys General, are sovereign states of the United States of  
9 America.

10 22. Bob Ferguson is the chief legal adviser to the State of Washington.  
11 His powers and duties include acting in federal court on behalf of the State on  
12 matters of public concern.

13 23. Mark Herring is the chief legal adviser to the Commonwealth of  
14 Virginia. His powers and duties include acting in federal court on behalf of the  
15 State on matters of public concern.

16 24. Phil Weiser is the chief legal adviser to the State of Colorado. His  
17 powers and duties include acting in federal court on behalf of the State on matters  
18 of public concern.

19 25. Kathleen Jennings is the chief legal adviser to the State of Delaware.  
20 Her powers and duties include acting in federal court on behalf of the State on  
21 matters of public concern.

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1           26. Kwame Raoul is the chief legal adviser to the State of Illinois. His  
2 powers and duties include acting in federal court on behalf of the State on matters  
3 of public concern.

4           27. Plaintiff State of Maryland is a sovereign state of the United States  
5 of America. Maryland is represented by and through its chief legal officer,  
6 Attorney General Brian Frosh. Under the Constitution of Maryland, and as  
7 directed by the Maryland General Assembly, the Attorney General has the  
8 authority to file suit to challenge action by the federal government that threatens  
9 the public interest and welfare of Maryland residents.

10           28. Maura Healey is the chief legal adviser to the Commonwealth of  
11 Massachusetts. Her powers and duties include acting in federal court on behalf  
12 of the State on matters of public concern.

13           29. Dana Nessel is Michigan's chief law enforcement officer. Her  
14 powers and duties include acting in federal court on behalf of the people of the  
15 State of Michigan on matters of public concern.

16           30. Keith Ellison is the chief legal adviser to the State of Minnesota. His  
17 powers and duties include acting in federal court on behalf of the State on matters  
18 of public concern.

19           31. Aaron D. Ford is the chief legal adviser to the State of Nevada. His  
20 powers and duties include acting in federal court on behalf of the State on matters  
21 of public concern.

22

1           32. Gurbir Singh Grewal is the chief legal adviser to the State of New  
2 Jersey. His powers and duties include acting in federal court on behalf of the State  
3 on matters of public concern.

4           33. Hector Balderas is the chief legal adviser to the State of New  
5 Mexico. His powers and duties include acting in federal court on behalf of the  
6 State on matters of public concern.

7           34. Peter F. Neronha is the chief legal adviser to the State of Rhode  
8 Island. His powers and duties include acting in federal court on behalf of the State  
9 on matters of public concern.

10           35. The Plaintiff States bring this action to redress harms to their  
11 sovereign, proprietary, and quasi-sovereign interests and their interests as *parens*  
12 *patriae* in protecting the health and well-being of their residents. The Plaintiff  
13 States are affected by the Public Charge Rule, are directly injured by it, and the  
14 relief requested will redress their injuries.<sup>3</sup>

15           36. The power to create and enforce a legal code is a uniquely sovereign  
16 interest. The Plaintiff States have adopted health care programs as parts of their  
17 legal codes that operate to improve and protect the health of their residents. These  
18 include cooperative federal-state programs such as Medicaid, which Congress  
19 has given them substantial financial incentives to establish and administer. The  
20 success and effectiveness of the Plaintiff States' legislative health care programs

21 \_\_\_\_\_  
22           <sup>3</sup> A copy of the Final Rule is attached as Exhibit A.

1 will be significantly undercut by the Rule. The Plaintiff States’ sovereign  
2 interests in enforcing their statutory codes and achieving their purposes are  
3 harmed by Defendants’ challenged action.

4 37. As a proprietor, a state is likely to have the same interests as other  
5 similarly situated proprietors. The Plaintiff States have created and operate  
6 programs and institutions to promote and ensure the health, housing stability,  
7 nutrition and well-being of their residents. The success and effectiveness of these  
8 facilities will be harmed by the Rule. The Plaintiff States’ proprietary and  
9 financial interests in programs and institutions they paid for with state taxpayer  
10 funds, and which are managed by their employees and subcontractors are injured  
11 by the Rule.

12 38. A state has a quasi-sovereign interest in the health and  
13 well-being—both physical and economic—of its residents in general. The  
14 Plaintiff States’ have a quasi-sovereign interest in protecting the health, safety,  
15 and well-being of their residents. The Final Rule dissuades state residents from  
16 utilizing the benefits of the Plaintiff States’ benefits programs. It therefore  
17 jeopardizes the health, housing, nutrition, and well-being of their residents,  
18 citizen and noncitizen alike.

19 39. The Plaintiff States and their residents will suffer significant and  
20 irreparable harm if the Final Rule goes into effect.

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1           40. Defendant DHS is an executive agency with responsibility for  
2 administering federal immigration laws.

3           41. Defendant Kevin K. McAleenan is the Acting Secretary of DHS. He  
4 is sued in his official capacity.

5           42. Defendant USCIS is a component agency of DHS. Since  
6 March 1, 2003, USCIS has had primary responsibility for the immigration  
7 service functions of the federal government, including the administration of  
8 applications by foreign nationals in the United States for adjustment of status to  
9 lawful permanent residency, immigrant and nonimmigrant visas, change of status  
10 to a different visa category, or extension of stay.

11           43. Kenneth T. Cuccinelli II is the Acting Director of USCIS. He is sued  
12 in his official capacity.<sup>4</sup>

13           **IV. HISTORY OF THE PUBLIC CHARGE EXCLUSION**

14           44. The term “public charge” has an established meaning in American  
15 law that dates back to the 17th century. Since its origin in colonial residency  
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17           <sup>4</sup> Challenges have been raised to the propriety of Cuccinelli’s appointment  
18 to this position. Joel Rose, *Trump Administration Taps Hard-Liner Cuccinelli*  
19 *For Top Immigration Job*, Nat’l Pub. Radio Jun. 10, 2019 (“Legal experts say  
20 that [allowing] Cuccinelli to serve as acting director . . . would violate the spirit  
21 of the [Federal Vacancies Reform Act], according to Anne Joseph O’Connell, an  
22 expert on administrative law at Stanford Law School.”).

1 requirements and through its reception into state and then federal immigration  
2 laws, a “public charge” has consistently meant a person primarily dependent on  
3 the government for subsistence. The Department’s Final Rule disregards that  
4 unambiguous, centuries-old definition.

5 **A. Origins of Public Charge Exclusion in Colonial, State, and Federal**  
6 **Statutes**

7 45. As early as the 1650s, the American colonies adopted “poor” laws  
8 requiring each town to recognize its permanent residents’ claims for relief if they  
9 became destitute.<sup>5</sup> Based on English models, colonial poor laws made the local  
10 governments responsible for supporting its poor residents, for whom the towns  
11 cared generously.<sup>6</sup> At the same time, however, such laws permitted towns to  
12 expel transient beggars or vagrants as “public charges.”<sup>7</sup>

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15 <sup>5</sup> Historians’ Cmt. at 2, DHS Notice of Proposed Rule “Inadmissibility on  
16 Public Charge Grounds,” FR 2018-21106 (Oct. 5, 2018) (Historians’ Cmt.);  
17 Gerald L. Neuman, *The Lost Century of American Immigration Law*  
18 *(1776-1875)*, 93 Colum. L. Rev. 1833, 1846 (1993).

19 <sup>6</sup> Minor Myers III, *A Redistributive Role for Local Government*, 36 Urb.  
20 Law. 753, 773 (2004).

21 <sup>7</sup> Historians’ Cmt. at 2; *Shapiro v. Thompson*, 394 U.S. 618, 628  
22 (1969), *overruled in part on other grounds by Edelman v. Jordan*, 415 U.S. 651

1           46. After the American Revolution, state governments came to play a  
2 greater role in administration of relief for the poor. When a person without a town  
3 “settlement” (or recognized residency right) fell into extreme need, he became a  
4 charge of the state or a “state pauper,” as distinguished from a “town pauper.”<sup>8</sup>  
5 In each case, in its original public meaning, “public charge” was synonymous  
6 with “pauper.”

7           47. State measures against immigration of “foreign paupers” developed  
8 alongside the state poor laws of the early Republic. As European migration to the  
9 United States grew in the early 19th century, states enacted or expanded laws to  
10 “prevent the introduction of [p]aupers” at ports of entry as “liable to become  
11 chargeable,” *i.e.*, public charges.<sup>9</sup> For example, a New York statute prohibited  
12 landing of “any lunatic, idiot, deaf and dumb, blind or infirm persons . . . likely  
13 to become *permanently* a public charge.”<sup>10</sup> Under that law and similar ones in  
14

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15 (1974) (“Newcomers to a city, town, or county who might become public charges  
16 were ‘warned out’ or ‘passed on’ to the next locality.”).

17           <sup>8</sup> Kunal M. Parker, *State, Citizenship, and Territory: The Legal*  
18 *Construction of Immigrants in Antebellum Massachusetts*, 19 *L. & Hist. Rev.*  
19 583, 591 (2001).

20           <sup>9</sup> Act of Feb. 25, 1820, ch. 290, 1820 Mass. Laws 428.

21           <sup>10</sup> Annual Reps. of the Comm’rs of Emigration of the State of New York,  
22 May 5, 1847, to 1860, 1851 Ch. 105, at 339. (Boston: Dutton and Wentworth,

1 other states, vessel captains were required to post bond or pay a fee to indemnify  
2 the state in the event foreign passengers were to become public charges.<sup>11</sup> Again,  
3 these state immigration statutes used the terms “paupers” and “public charges”  
4 interchangeably and in the “legal, technical sense” as persons “unable to maintain  
5 themselves,” and not “merely” those who temporarily had “no visible means of  
6 support.”<sup>12</sup> “Public charge” thus referred to people unlikely to ever become  
7 self-sufficient.

8 48. Eventually, the U.S. Supreme Court struck down such state statutes  
9 under the Commerce Clause, ushering in the end of the era of state immigration

10 \_\_\_\_\_  
11 1951) (emphasis added); Act of Mar. 20, 1850, ch. 105, § 1, 1850 Mass. Acts &  
12 Resolves 338, 339 (“a pauper, lunatic, or idiot, or maimed, aged, infirm or  
13 destitute, or incompetent to take care of himself or herself without becoming  
14 a public charge as a pauper”).

15 <sup>11</sup> Historians’ Cmt. at 2; Gerald L. Neuman, *The Lost Century of American*  
16 *Immigration Law (1776-1875)*, 93 Colum. L. Rev. 1833, 1849–51, 1901 & n.151  
17 (1993); State, Citizenship, and Territory: The Legal Construction of Immigrants  
18 in Antebellum Massachusetts, 19 Law & Hist. Rev. 583, 624 (2001); Act of  
19 June 1847, 1847 R.I. Acts 27; R.I. Rev. Stat. ch. 51, §§ 5-8 (1857); Act of  
20 June 27, 1820, ch. 26, 1820 Me. Laws 35; Act of Mar. 22, 1838, ch. 339, 1838  
21 Me. Pub. Acts 497.

22 <sup>12</sup> *City of Boston v. Capen*, 61 Mass. 116, 121–22 (1851).

1 laws.<sup>13</sup> In their place, Congress enacted the Immigration Act of 1882, which  
 2 borrowed from state laws in erecting a public charge ground of inadmissibility.<sup>14</sup>  
 3 The Act prohibited the landing of “any convict, lunatic, idiot, or any other person  
 4 unable to take care of himself . . . without becoming a public charge.”<sup>15</sup>  
 5 Consistent with the plain text and historical context, the legislative history  
 6 confirms that “public charges” were those living in “poor-houses and  
 7 alms-houses.”<sup>16</sup> Indeed, in 1891, Congress amended the exclusion to preclude  
 8 admission of “idiots, insane persons, *paupers or persons likely to become a public*  
 9 *charge.*”<sup>17</sup>

10 **B. Early Administrative and Judicial Precedent on Public Charge**

11 49. Judicial and administrative decisions applying the federal public  
 12 charge ground of inadmissibility interpreted the statute consistently with the  
 13 original public meaning of the term “public charge,” namely, as a person  
 14 primarily and permanently dependent on the state for subsistence.

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 17 <sup>13</sup> See, e.g., *Passenger Cases*, 48 U.S. (7 How.) 283 (1849); *Henderson v.*  
 18 *Mayor of New York*, 92 U.S. 259, 274 (1875).

19 <sup>14</sup> 22 Stat. 214 (1882).

20 <sup>15</sup> *Id.*

21 <sup>16</sup> 13 Cong. Rec. 5109 (statement of Sen. Voorhis).

22 <sup>17</sup> 26 Stat. 1084, 1084 (1891) (emphasis added).



1           50. For example, in *Gegiow v. Uhl*, the U.S. Supreme Court read “public  
2 charge” consistent with the surrounding statutory categories of exclusions,  
3 including “paupers and professional beggars, . . . idiots,” and “persons  
4 dangerously diseased [or suffering from] . . . a physical defect of a nature to affect  
5 their ability to earn a living.”<sup>18</sup> In a decision by Justice Holmes, the Court thus  
6 held that a public charge is excludable only “on the ground of *permanent* personal  
7 objections accompanying them.”<sup>19</sup> Likewise, an early Second Circuit case held  
8 that the public charge category only “exclude[s] persons who were likely to  
9 become occupants of almshouses.”<sup>20</sup> Following those precedents, federal courts  
10 in the first half of the 20th century consistently interpreted “public charge” as  
11 “generically similar to ‘paupers,’ . . . ‘professional beggars,’ [and] . . . ‘occupants  
12 of almshouses.’ ”<sup>21</sup> In the context of the public charge deportability provision,  
13 one court defined “public charge” even more narrowly to mean “a person  
14 committed to the custody of a department of the government by due course of  
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16           <sup>18</sup> 239 U.S. 3, 9–10 (1915).

17           <sup>19</sup> *Gegiow*, 239 U.S. at 10 (emphasis added).

18           <sup>20</sup> *Howe v. United States ex rel. Savitsky*, 247 F. 292, 294 (2d Cir. 1917).

19           <sup>21</sup> *Ex parte Mitchell*, 256 F. 229, 233 (N.D.N.Y. 1919); *see also United*  
20 *States v. Williams*, 175 F. 274, 275 (S.D.N.Y. 1910) (L. Hand, J.) (noting that  
21 “the primary meaning of the words, [‘likely to become a public charge’]” was  
22 probably “likelihood of . . . becoming a pauper”).

1 law.”<sup>22</sup> These cases reaffirmed the understanding of “public charge” as a person  
2 permanently and primarily dependent on government for survival.

3 51. Federal agencies charged with enforcing immigration laws also  
4 interpreted the public charge ground of inadmissibility in accordance with the  
5 settled meaning of the term. For example, in 1917, the Bureau of Immigration  
6 ruled that “moral perverts” were not “public charges” under the immigration  
7 laws, absent tangible proof of pauper status.<sup>23</sup>

### 8 **C. Modern Regulatory Framework**

9 52. It was against the foregoing legal backdrop that Congress enacted  
10 the Immigration and Nationality Act of 1952 (INA),<sup>24</sup> which codified the current  
11 public charge ground of inadmissibility. In reenacting the federal public charge  
12 exclusion—which itself borrowed from earlier state laws—Congress adopted the  
13 settled understanding of public charge and ratified the judicial precedents  
14

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16 <sup>22</sup> *Ex parte Tsunetaro Machida*, 277 F. 239, 241 (W.D. Wash. 1921).

17 <sup>23</sup> See Parthenios Colones, Bureau of Immigr., U.S. Dep’t of Labor, INS  
18 File No. 54134/62, Accession 60A600, Box 869, Records of the INS, *cited in*  
19 William N. Eskridge, Jr., *Law and the Construction of the Closet: American*  
20 *Regulation of Same-Sex Intimacy, 1880-1946*, 82 Iowa L. Rev. 1007, 1134  
21 (1997).

22 <sup>24</sup> Pub L. 82–414, 66 Stat. 163.

1 interpreting the term.<sup>25</sup> In the 70 years since the INA’s enactment, numerous  
 2 statutes and administrative decisions have comported with and confirmed the  
 3 settled meaning of public charge as a person permanently and primarily  
 4 dependent on government for survival.

5 **1. Immigration and Nationality Act of 1952**

6 53. The INA overhauled federal immigration law, unifying previously  
 7 scattered sections and adding new provisions in a statutory framework that exists  
 8 to this day.<sup>26</sup> Overriding President Truman’s veto, Congress declared its power  
 9 to “provide for the elimination of undesirable aliens” and set forth numerous new  
 10 categories of inadmissibility, including “anarchists,” “Communist[s],” or  
 11 “affiliated with . . . any . . . totalitarian party.”<sup>27</sup>

12 54. The INA also reenacted the public charge exclusion that had been  
 13 part of federal immigration law since 1882. Section 212(a) excluded from  
 14 admission into the United States “[a]liens who, in the opinion of the consular  
 15 officer at the time of application for a visa, or in the opinion of the Attorney  
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19 <sup>25</sup> *Bragdon v. Abbott*, 524 U.S. 624, 645 (1998); *Lorillard v. Pons*,  
 20 434 U.S. 575, 580 (1978).

21 <sup>26</sup> Act of June 27, 1952, 66 Stat. 163, *codified as amended at* Title 8 U.S.C.

22 <sup>27</sup> 66 Stat. 184, § 212(a)(28).

1 General at the time of application for admission, are likely at any time to become  
2 public charges.”<sup>28</sup>

3 55. In applying the modern public charge exclusion, federal  
4 immigration authorities considered the “totality of the alien’s circumstances,”<sup>29</sup>  
5 including “economic factors” and “the alien’s physical and mental condition, as  
6 it affects ability to earn a living.”<sup>30</sup> The Board of Immigration Appeals (BIA)  
7 held specifically that “[t]he fact that an alien has been on welfare does not, by  
8 itself, establish that he or she is likely to become a public charge.”<sup>31</sup> And in the  
9 government’s appeal from a BIA decision overturning a public charge  
10 determination, Attorney General Robert F. Kennedy affirmed, noting that the

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13 <sup>28</sup> 66 Stat. 183, § 212(a)(15).

14 <sup>29</sup> *In re Perez*, 15 I. & N. Dec. 136, 137 (BIA 1974) (citing Foreign Affairs  
15 Manual, Part III, Vol. 9, Note 1 to 22 CFR 42.91(a)(15)).

16 <sup>30</sup> *In re Harutunian*, 14 I. & N. Dec. 583, 588 (BIA 1974); *see also*  
17 Adjustment of Status for Certain Aliens, 53 Fed. Reg. 43986-01, 43996 (1988)  
18 (“In determining whether an alien is ‘likely to become a public charge’ financial  
19 responsibility of the alien is to be established by examining the totality of the  
20 alien’s circumstances at the time of his or her application for legalization.”),  
21 *codified at* 8 C.F.R. § 245a.3(g)(4)(i).

22 <sup>31</sup> *In re Perez*, 15 I. & N. Dec. at 137.

1 INA “requires more than a showing of a possibility that the alien will require  
2 public support.”<sup>32</sup>

3 56. In 1989, DOJ issued a final rule establishing guidelines for public  
4 charge determinations in various contexts, including adjustment to lawful  
5 permanent resident status.<sup>33</sup> In such determinations, the “financial responsibility  
6 of the alien is to be established by examining the totality of the alien’s  
7 circumstances at the time of his or her application,” and the “existence or absence  
8 of a particular factor should never be the sole criteria for determining if an alien  
9 is likely to become a public charge.”<sup>34</sup> The determination “should be a  
10 prospective evaluation based on the alien’s age, health, income, and vocation.”<sup>35</sup>  
11 And even where an immigrant’s “income may be below the poverty level,” he is  
12 “not excludable” as a public charge if he “has a consistent employment history  
13 which shows the ability to support himself.”<sup>36</sup> Though a noncitizen’s past  
14 acceptance of “public cash assistance” may “enter into this decision,” the 1989  
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16 <sup>32</sup> *In re Martinez-Lopez*, 10 I. & N. Dec. 409, 421 (A.G. 1962).

17 <sup>33</sup> U.S. Dep’t of Justice, Final Rule: Adjustment of Status for Certain  
18 Aliens, 54 FR 29442-01 (July 12, 1989), codified in relevant part at 8 C.F.R.  
19 §§ 245a.2(k)(4), 245a.3(g)(4)(iii), 245a.4(b)(1)(iv)(C)

20 <sup>34</sup> 8 C.F.R. § 245a.3(g)(4)(i).

21 <sup>35</sup> *Id.*

22 <sup>36</sup> *Id.* § 245a.3(g)(4)(iii).

1 DOJ rule does not provide for consideration of non-cash public benefits.<sup>37</sup> This  
2 rule reaffirmed the understanding of a public charge as a person permanently and  
3 primarily dependent on government for survival: a person unlikely to ever  
4 become self-sufficient.

## 5 **2. Current public charge legal framework**

6 57. Congress amended the INA in 1990 to drop the “paupers,  
7 professional beggars, or vagrants” exclusions, but retained the public-charge  
8 inadmissibility ground.<sup>38</sup> The ranking member of the House Judiciary  
9 Committee, Representative Hamilton Fish IV (R-NY), explained that in  
10 eliminating the “paupers, professional beggars, or vagrants” inadmissibility  
11 ground, Congress was replacing an “antiquated” exclusion with “one generic  
12 standard which exclude[s] aliens who are ‘likely to become a public charge.’ ”<sup>39</sup>

13 58. That provision, INA Section 212(a)(4), is one of two public charge  
14 provisions in the INA. In its current form, Section 212(a)(4) provides that “[a]ny  
15 alien who, . . . in the opinion of the [Secretary of DHS] at the time of application  
16 for admission or adjustment of status, is likely at any time to become a public  
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19 <sup>37</sup> *Id.*

20 <sup>38</sup> *See* Immigration Act of 1990, Pub. L. No. 101-649, § 601(a)(4), 104  
21 Stat. 4978, 5072 (codified as amended at 8 U.S.C. § 1182).

22 <sup>39</sup> 136 Cong. Rec. 36,844 (1990).

1 charge is inadmissible.”<sup>40</sup> Under the INA, an application for “adjustment of  
2 status” means an application for lawful permanent residency (*i.e.*, a green card).<sup>41</sup>  
3 USCIS is the agency within DHS that processes applications from foreign  
4 nationals in the United States—including those with immigrant visas and those  
5 with temporary nonimmigrant visas (such as for business or tourism)—for  
6 adjustment of status to lawful permanent residency.<sup>42</sup>

7 59. The same INA provision also provides that “[a]ny alien who, in the  
8 opinion of the consular officer at the time of application for a visa . . . is likely at  
9 any time to become a public charge is inadmissible.”<sup>43</sup> This public charge  
10 exclusion is administered by U.S. embassies and consulates abroad, which  
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12 \_\_\_\_\_  
13 <sup>40</sup> Immigration and Nationality Act of 1952, Pub L. 82–414, 66 Stat. 163.,  
14 § 212(a)(4), *codified as amended at* 8 U.S.C. §1182(a)(4). The text of Section  
15 212(a)(4) refers to the “Attorney General,” but pursuant to Congress’s transfer of  
16 adjudicatory functions of the former Immigration and Naturalization Service  
17 (INS) to DHS, *see* 6 U.S.C. § 271(b)(5), the reference is “deemed to refer to the  
18 Secretary” of Homeland Security.

19 <sup>41</sup> *See, e.g.*, 8 U.S.C. §§ 1255(a), 1101(a)(20).

20 <sup>42</sup> *See* 6 U.S.C.A. § 271 (establishing USCIS under former name).

21 <sup>43</sup> Immigration and Nationality Act of 1952, Pub L. 82–414, 66 Stat. 163.,  
22 § 212(a)(4), *codified as amended at* 8 U.S.C. §1182(a)(4).

1 process visa applications by foreign nationals outside the United States.<sup>44</sup>  
2 Although the Secretary of State may “direct a consular officer to refuse a visa,”<sup>45</sup>  
3 the Homeland Security Act of 2002 vests the DHS Secretary “exclusively with  
4 all authorities to issue regulations . . . relating to the functions of consular  
5 officers . . . in connection with the granting or refusal of visas.”<sup>46</sup>

6 60. A separate section of the INA, Section 237(a)(5), provides that  
7 “[a]ny alien who, within five years after the date of entry, has become a public  
8 charge from causes not affirmatively shown to have arisen since entry is  
9 deportable.”<sup>47</sup> DOJ enforces this public charge provision under its authority to  
10 adjudicate immigration cases, including removal proceedings.<sup>48</sup> DOJ is currently  
11 preparing a proposed public charge rule to “more closely conform [its]  
12 regulations with the DHS public charge rule” challenged here.<sup>49</sup> The Plaintiff  
13 States do not now challenge DOJ’s forthcoming rule.

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15 <sup>44</sup> See 8 U.S.C. § 1201(a) (authorizing consular officers to issue immigrant  
16 and nonimmigrant visas); 9 FAM 302.8.

17 <sup>45</sup> 6 U.S.C. § 236(c)(1).

18 <sup>46</sup> *Id.*

19 <sup>47</sup> 8 U.S.C. § 1227(a)(5).

20 <sup>48</sup> See 8 U.S.C. § 1103(g).

21 <sup>49</sup> Inadmissibility on Public Charge Grounds, RIN 1125-AA84, Spring  
22 2019 Spring Regulatory Agenda, Office of Information and Regulatory Affairs,



1           **3.     Illegal Immigration Reform and Immigrant Responsibility Act**  
 2           **of 1996**

3           61.   Section 212(a)(4)'s public charge exclusion has remained largely  
 4           identical throughout Congress's many reenactments of the INA. The single  
 5           material revision came in the Illegal Immigration Reform and Immigrant  
 6           Responsibility Act of 1996 (Immigration Reform Act), when Congress codified  
 7           the BIA's long-applied totality of circumstances test.<sup>50</sup> Amending the INA, the  
 8           Immigration Reform Act set forth five factors that must be considered "at  
 9           minimum" to determine whether an alien is likely to become a public charge:  
 10          (1) age; (2) health; (3) family status; (4) assets, resources, and financial status;  
 11          and (5) education and skills.<sup>51</sup> Congress also authorized consular and  
 12          immigration officers to consider any "affidavit of support" furnished on behalf  
 13          of an applicant and provide that certain family-sponsored and employment-based  
 14          immigrants are inadmissible without such affidavits.<sup>52</sup>

15          62.   The Immigration Reform Act is also important for what Congress  
 16          did not do. The version of the law adopted by the House would have redefined

17          Office of Management and Budget, [https://www.reginfo.gov/public/do/eAgenda](https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201904&RIN=1125-AA84)  
 18          ViewRule?pubId=201904&RIN=1125-AA84 (last visited Aug. 2, 2019).

19               <sup>50</sup> Pub. L. 104-208, Div. C, 110 Stat. 3009, Sec. 531(a)(4)(B), *codified as*  
 20          *amended at* 8 U.S.C. § 1182.

21               <sup>51</sup> 8 U.S.C. § 1182(a)(4)(B)(i).

22               <sup>52</sup> 8 U.S.C. §§ 1182(a)(4)(B)(ii), 1183a.

1 “public charge” for deportability purposes in a manner strikingly similar to the  
2 Department’s new Rule. The unenacted bill defined “public charge” to “include[]  
3 any alien who receives [means-tested public] benefits for an aggregate period of  
4 at least 12 months.”<sup>53</sup> That public charge definition was stricken from the bill  
5 adopted by the full Congress and signed by the President.<sup>54</sup>

6 63. At no point did Congress ever indicate that it intended to alter the  
7 long-settled meaning of the term, “public charge.” Other than the codification of  
8 the totality of circumstances test, the INA has retained nearly identical language  
9 throughout its many amendments (the most recent in 2013).

#### 10 **4. Personal Responsibility and Work Opportunity Act of 1996**

11 64. The same year it enacted the Immigration Reform Act, Congress  
12 enacted the Personal Responsibility and Work Opportunity Reconciliation Act of  
13 1996 (Welfare Reform Act).<sup>55</sup> Before 1996, lawfully present immigrants were  
14 generally eligible for public benefits on similar terms as U.S. citizens, provided  
15 they met the same means-tested eligibility criteria. The Welfare Reform Act  
16 significantly altered that general rule, classifying immigrants into two general  
17 categories: “qualified” and “non-qualified.”<sup>56</sup> Qualified immigrants include  
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19 <sup>53</sup> H.R. Rep. No. 104-828, at 138 (1996) (Conf. Rep.).

20 <sup>54</sup> Pub. L. 104-208, Div. C, 110 Stat. 3009.

21 <sup>55</sup> Pub. L. 104-193, 110 Stat. 2105.

22 <sup>56</sup> 8 U.S.C. § 1641(b).

1 lawful permanent residents, refugees, asylees, humanitarian parolees, Cuban and  
2 Haitian entrants, noncitizens granted withholding of deportation or conditional  
3 entry, and certain victims of battery or extreme cruelty by a spouse or other family  
4 member.<sup>57</sup> All other immigrants, regardless of their legal status, are non-qualified  
5 under the Welfare Reform Act. With certain exceptions, non-qualified  
6 immigrants are ineligible for federal public benefits.<sup>58</sup>

7 65. Qualified immigrants, however, generally may be eligible for  
8 “federal means-tested public benefits” after five years of entry to the United  
9 States.<sup>59</sup> Such benefits include Medicaid, TANF, and State Child Health  
10 Insurance Program (CHIP), and, with further limitations, food stamp benefits  
11 under the Supplemental Nutrition Assistance Program (SNAP) and Supplemental  
12 Security Income (SSI).<sup>60</sup> For certain “designated federal programs” (namely,  
13 TANF, social services block grants, and Medicaid), a “State is authorized to  
14 determine the eligibility of” qualified immigrants.<sup>61</sup>

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17 <sup>57</sup> 8 U.S.C. § 1641(b)–(c).

18 <sup>58</sup> 8 U.S.C. § 1611(a).

19 <sup>59</sup> 8 U.S.C. § 1613(a); *Pimentel v. Dreyfus*, 670 F.3d 1096, 1100 (9th Cir.  
20 2012) (per curiam).

21 <sup>60</sup> 8 U.S.C. §§ 1611(c), 1612(b)(1).

22 <sup>61</sup> 8 U.S.C. § 1612(b)(1).

1           66. State and local public benefits are less restricted under the Welfare  
2 Reform Act. Not only qualified immigrants, but also temporary, nonimmigrant  
3 visitors, are eligible for state and local public benefits.<sup>62</sup> The Welfare Reform Act  
4 expressly authorizes each state to determine the eligibility for any state public  
5 benefits of any qualified alien or nonimmigrant.<sup>63</sup> In addition, a state may provide  
6 by statute that “an alien who is not lawfully present in the United States is eligible  
7 for any State or local public benefit.”<sup>64</sup>

8           67. In the wake of the Welfare Reform and Immigration Reform Acts,  
9 “public confusion” emerged concerning the relationship between receipt of  
10 federal, state, or local benefits and the public charge provisions of federal  
11 immigration law.<sup>65</sup> According to the U.S. Department of State, “such confusion  
12 led many persons in the immigrant community to choose not to sign up for  
13 important benefits, especially health-related benefits, which they were eligible to  
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18           <sup>62</sup> 8 U.S.C. §§ 1621(a), 1622(a).

19           <sup>63</sup> 8 U.S.C. § 1622(a).

20           <sup>64</sup> 8 U.S.C. § 1621(d).

21           <sup>65</sup> *Field Guidance on Deportability and Inadmissibility on Public Charge*  
22 *Grounds*, 64 Fed. Reg. 28689-01, 28,689 (May 26, 1999) (Field Guidance).

1 receive” out of “concern[s] it would affect their or a family member’s  
2 immigration status.”<sup>66</sup>

3 **5. Agency guidance**

4 68. To alleviate public confusion, the Immigration and Naturalization  
5 Service (INS) issued a memorandum (Field Guidance) providing “new guidance  
6 on public charge determinations in light of the recent changes in law.”<sup>67</sup> The Field  
7 Guidance defined a “public charge” as an immigrant who is “primarily dependent  
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9 <sup>66</sup> U.S. State Department Cable, INA 212(A)(4) Public Charge: Policy  
10 Guidance, Ref: 9 FAM 40.41 (hereinafter State Department cable).

11 <sup>67</sup> 64 Fed. Reg. 28,690. On the same day it issued the Field Guidance, DOJ  
12 also published a proposed rule adding further gloss to the public charge  
13 definition. *See Inadmissibility and Deportability on Public Charge Grounds*,  
14 64 Fed. Reg. 28,676 (May 26, 1999). That proposed rule observed that the  
15 “primary dependence model of public assistance was the backdrop against which  
16 the ‘public charge’ concept in immigration law developed in the late 1800s,” and  
17 “[h]istorically, individuals who became dependent on the Government were  
18 institutionalized in asylums or placed in ‘almshouses’ . . . long before the array  
19 of limited-purpose public benefits now available existed.” *Id.* at 28,677.  
20 Although DOJ never published a final public charge rule, the Field Guidance’s  
21 public charge definition and policies were “adopt[ed] . . . immediately” and have  
22 guided DOJ—and, later, DHS—policy ever since.

1 on the government for subsistence, as demonstrated by either (i) the receipt of  
2 public cash assistance for income maintenance or (ii) institutionalization for  
3 long-term care at government expense.”<sup>68</sup>

4 69. That definition was not a product of INS’s administrative discretion,  
5 but rather a direct application of the traditional, established meaning of the term  
6 “public charge.” As INS explained in a separate regulation it proposed alongside  
7 the Field Guidance, it based its definition on “the plain meaning of the word  
8 ‘charge’” and “the historical context of public dependency when the public  
9 charge immigration provisions were first adopted more than a century ago.”<sup>69</sup>  
10 The ordinary meaning of the word “charge,” as used in the INA, is “a person or  
11 thing committed or entrusted to the care, custody, management, or support of  
12 another”—in the case of a *public* charge, to the government.<sup>70</sup> Because a person  
13 who receives only supplemental public assistance is not “committed” to the  
14 government’s “care” or “custody,” INS concluded that the term “public charge”  
15 encompasses only instances of “complete, or nearly complete, dependence on the  
16 Government rather than the mere receipt of some lesser level of financial  
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19 <sup>68</sup> 64 Fed. Reg. at 28,689.

20 <sup>69</sup> *Inadmissibility and Deportability on Public Charge Grounds*, 64 Fed.  
21 Reg. 28,676, 28,677 (May 26, 1999).

22 <sup>70</sup> *Id.* (quoting *Webster’s Third New International Dictionary* 337 (1986)).

1 support.”<sup>71</sup> Although INS never published a final public charge rule, the  
2 Field Guidance’s public charge definition and policies were  
3 “adopt[ed] . . . immediately” and have guided DOJ—and, later, DHS—policy  
4 ever since.<sup>72</sup>

5 70. The Field Guidance instructed that consular and immigration  
6 “officers should not place any weight on the receipt of non-cash public benefits”  
7 other than long-term institutionalization.<sup>73</sup> INS explained that because “non-cash  
8 benefits . . . are by their nature supplemental and do not, alone or in combination,  
9 provide sufficient resources to support an individual or family,” participation in  
10 such programs “is not evidence of poverty or dependence.”<sup>74</sup> Among the list of  
11 benefits that should not be considered for public-charge purposes, the Field  
12 Guidance expressly listed “Medicaid and other health insurance and health  
13 services,” CHIP, “[n]utrition programs,” and [h]ousing benefits.”<sup>75</sup> Finally, the  
14 Field Guidance made clear that it was designed to address “adverse impact . . . on  
15 public health and the general welfare” caused by confusion over the public charge  
16 standard—namely, that it had “deterred eligible aliens and their families,

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18 <sup>71</sup> *Id.*

19 <sup>72</sup> 64 Fed. Reg. at 28,689.

20 <sup>73</sup> 64 Fed. Reg. at 28,689.

21 <sup>74</sup> *Id.* at 26,692–93.

22 <sup>75</sup> 64 Fed. Reg. at 28,693.

1 including U.S. citizen children, from seeking important health and nutrition  
2 benefits that they are legally entitled to receive.”<sup>76</sup>

3 71. In sum, the Field Guidance embraced the traditional understanding  
4 of a public charge as a person permanently and primarily dependent on  
5 government for subsistence. That definition has guided the government’s  
6 application of federal immigration law’s public charge provisions for 20  
7 years—since the end of the Clinton Administration, and through the entire  
8 George W. Bush and Obama Administrations, and even through the  
9 reorganization of the agencies responsible for enforcing the INA.

10 72. In 2009, DOJ issued a Public Charge Fact Sheet (DOJ Fact Sheet),  
11 which confirmed the Field Guidance’s definition of “public charge” to mean “an  
12 individual who is likely to become ‘primarily dependent on the government for  
13 subsistence.’ ”<sup>77</sup> The DOJ Fact sheet reiterated that “a number of factors must be  
14 considered,” in the public charge determination, “including age, health, family  
15 status, assets, resources, financial status, education, and skills.”<sup>78</sup> It also made  
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18 <sup>76</sup> 64 Fed. Reg. at 28,692.

19 <sup>77</sup> U.S. Dep’t of Justice, Public Charge Fact Sheet, 2009 WL 3453730  
20 (Oct. 29, 2011) (quoting “Field Guidance on Deportability and Inadmissibility  
21 on Public Charge Grounds,” 64 Fed. Reg. 28689 (May 26, 1999)).

22 <sup>78</sup> *Id.*



1 clear that “[n]o single factor—other than the lack of an affidavit of support, if  
2 required—will determine whether an individual is a public charge.”<sup>79</sup>

3 73. The DOJ Fact Sheet echoed the Field Guidance rule that a public  
4 charge determination may not be based on “non-cash benefits and  
5 special-purpose cash benefits that are not intended for income maintenance.”  
6 Further reflecting the understanding of a public charge as someone permanently  
7 and primarily dependent on government for survival, the DOJ Fact Sheet  
8 specifically identified the following public benefit programs as irrelevant to a  
9 public charge determination:

- 10 • Medicaid and other health insurance and health services other  
11 than support for long-term institutional care;
- 12 • Nutrition programs, including SNAP, the Special  
13 Supplemental Nutrition Program for Women, Infants and Children (WIC),  
14 the National School Lunch and School Breakfast Program, and other  
15 supplementary and emergency food assistance programs;
- 16 • Housing benefits;
- 17 • Child care services;
- 18 • Job training programs; and
- 19 • Non-cash benefits under TANF such as subsidized child care  
20 or transit subsidies.

21 \_\_\_\_\_  
22 <sup>79</sup> *Id.*

1           74. The DOJ Fact Sheet further provided that while acceptance of “cash  
2 assistance for income maintenance”—including SSI, TANF, or local cash general  
3 assistance programs—could be considered in the public charge determination,  
4 “the mere receipt of these benefits does not automatically make an individual  
5 inadmissible” or “ineligible to adjust status to lawful permanent resident.”  
6 Rather, “each determination is made on a case-by-case basis in the context of the  
7 totality of the circumstances.”

8           75. In 2011, USCIS issued its own Public Charge Fact Sheet (USCIS  
9 Fact Sheet) which affirmed that many common public benefits are not considered  
10 in making a public charge inadmissibility determination.<sup>80</sup> Those benefits  
11 included Medicaid and other health insurance and health services assistance  
12 (other than support for long-term care); CHIP; nutrition programs, such as food  
13 stamps; housing benefits; child care services; energy assistance; emergency  
14 disaster relief; foster care and adoption assistance; educational assistance; job  
15 training programs; non-cash benefits under TANF; community-based programs  
16 or services; and unemployment compensation.

17           76. Although the USCIS Fact Sheet explained certain cash assistance  
18 programs could be considered in a public charge determination, receiving such  
19 benefits could not, in and of itself, render an immigrant inadmissible on public  
20 charge grounds. Rather, every public charge determination, USCIS confirmed,  
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22           <sup>80</sup> Public Charge Fact Sheet, USCIS., Apr. 29, 2011.

1 must be made on a case-by-case basis in light of all of the available evidence,  
2 considering the totality of the immigrant’s circumstances.

3 77. In sum, from the colonial era through 115 Congresses and 44  
4 presidential administrations, American law uniformly interpreted and applied the  
5 term “public charge” to mean a “pauper” or a person permanently and “primarily  
6 dependent on the government for subsistence.” Specifically, federal agencies  
7 reached consensus that an immigrant’s past receipt of non-cash public  
8 benefits—such as health, nutrition, or housing assistance, all of which bolster  
9 overall public health and economic growth—should not be considered for  
10 purposes of the public charge exclusion. The Department’s Public Charge Rule  
11 rejects that consensus, defying the original meaning of public charge and  
12 substituting its own definition and criteria that cannot be reconciled with statutory  
13 text, history, or precedent.

#### 14 **V. THE DEPARTMENT’S PUBLIC CHARGE RULE**

15 78. During the 2016 campaign, President Trump ran on a platform to  
16 radically transform U.S. immigration policy.

17 79. Having failed to secure passage of any immigration legislation, the  
18 Trump Administration promulgated the Public Charge Rule to circumvent  
19 Congress and implement the President’s anti-immigration agenda through the  
20 regulatory backdoor. In issuing the Rule, the Department ignored hundreds of  
21 thousands of public comments warning of its significant costs to working  
22

1 families, children, patients, health care providers, American businesses, state and  
2 local governments, and others, while failing to identify any tangible benefit the  
3 Rule may conceivably produce.

4 **A. The Trump Administration’s Anti-Immigration Agenda**

5 80. As a candidate and in office, President Trump endorsed significant  
6 cuts to legal immigration and challenged the centrality of family reunification to  
7 federal immigration policy. The official White House website states that “the  
8 President supports ending chain migration, eliminating the Visa Lottery, and  
9 moving the country to a merit-based entry system.”<sup>81</sup>

10 81. Shortly after President Trump’s inauguration in January 2017, the  
11 media obtained a draft of an “Executive Order on Protecting Taxpayer Resources  
12 by Ensuring Our Immigration Laws Promote Accountability and Responsibility.”  
13 The draft Executive Order instructed DHS to “rescind any field guidance” and  
14 “propose for notice and comment a rule that provides standards for determining  
15 which aliens are admissible or deportable on public charge grounds,” including  
16 if a noncitizen receives or is likely to receive non-cash public benefits. The draft  
17 Executive Order was never issued.<sup>82</sup>

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19 <sup>81</sup> White House, Immigration, <https://www.whitehouse.gov/issues/immigration/> (last visited July 27, 2019).

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21 <sup>82</sup> See Memorandum from Andrew Bremberg Regarding Executive Order  
22 on Protecting Taxpayer Resources by Ensuring Our Immigration Laws Promote

1           82. In 2017, two U.S. senators introduced a bill designed to significantly  
2 reduce legal immigration by, for example, curbing the government’s  
3 long-established policy favoring family reunification. The Reforming American  
4 Immigration for a Strong Economy (RAISE) Act would have given visa  
5 preference only to immediate family and eliminated the diversity visa lottery,  
6 which allots a limited number of visas to countries with historically low rates of  
7 immigration to the United States.<sup>83</sup> It also proposed a “merit-based immigration  
8 system,” which gives preference to immigrants between the ages of 26 and 30,  
9 with doctoral degrees, high English proficiency, and a job offer with a high  
10 salary. The RAISE Act would have precluded parents of adult U.S. citizens from  
11 applying for Legal Permanent Resident status and, if they entered as temporary  
12 nonimmigrants, barred those parents from receiving federal, state, or local public  
13 benefit.<sup>84</sup>

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19 Accountability and Responsibility (Jan. 23, 2017), [https://www.nafsa.org](https://www.nafsa.org/uploadedFiles/NAFSA_Dojo/Professional_Resources/Browse_by_Interest/International_Students_and_Scholars/DraftEOtaxprograms.pdf)  
20 [/uploadedFiles/NAFSA\\_Dojo/Professional\\_Resources/Browse\\_by\\_Interest/International\\_Students\\_and\\_Scholars/DraftEOtaxprograms.pdf](https://www.nafsa.org/uploadedFiles/NAFSA_Dojo/Professional_Resources/Browse_by_Interest/International_Students_and_Scholars/DraftEOtaxprograms.pdf).

21           <sup>83</sup> S.B. 354, 115th Cong., 1st sess. (2017).

22           <sup>84</sup> *Id.* § 4(d)(2)(B).

1           83. President Trump supported the RAISE Act.<sup>85</sup> Explaining his  
2 support, President Trump said “The RAISE Act prevents new migrants and new  
3 immigrants from collecting welfare . . . . They’re not going to come in and just  
4 immediately go and collect welfare.” The White House also asserted falsely that  
5 “[m]ore than 50 percent of all immigrant households receive welfare benefits,  
6 compared to only 30 percent of native households in the United States that  
7 receive welfare benefits.”<sup>86</sup> In fact, immigrants are less likely to consume public  
8 assistance benefits than native-born Americans and, when they do, they generally  
9 consume a lower dollar value of benefits. Overall, immigrants consume 27%  
10 fewer benefits on average than native-born Americans with similar incomes and  
11 ages.<sup>87</sup>

12           84. In June 2017, shortly before announcing his support for the RAISE  
13 Act, President Trump received a briefing on immigration from White House  
14 senior adviser Stephen Miller. (Miller, an ardent supporter of the Public Charge  
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16           <sup>85</sup> White House, Fact Sheets, President Donald J. Trump Backs RAISE  
17 Act, Aug. 2, 2017, [https://www.whitehouse.gov/briefings-statements/president-](https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-backs-raise-act/)  
18 [donald-j-trump-backs-raise-act/](https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-backs-raise-act/)

19           <sup>86</sup> *Id.*

20           <sup>87</sup> Alex Nowrasteh & Robert Orr, *Immigration and the Welfare State* at 1,  
21 7, Cato Institute, May 10, 2018, [https://object.cato.org/sites/cato.org/files/pubs/](https://object.cato.org/sites/cato.org/files/pubs/pdf/irpb6.pdf)  
22 [pdf/irpb6.pdf](https://object.cato.org/sites/cato.org/files/pubs/pdf/irpb6.pdf).

1 Rule, had reportedly once told a former White House communications aide,  
2 “I would be happy if not a single refugee foot ever touched American soil.”<sup>88</sup>) At  
3 the briefing, after learning that 15,000 Haitians had received U.S. visas in 2017,  
4 President Trump replied that they “all have AIDS.” When President Trump  
5 learned that 40,000 Nigerians had received visas, he said that they would never  
6 “go back to their huts.”<sup>89</sup>

7 85. Defendant Cuccinelli has expressed similar sentiments. In a 2012  
8 interview, Cuccinelli compared U.S. immigration policy to local laws governing  
9 treatment of rats, stating that a District of Columbia law prohibiting killing of rats  
10 or separating rat families is “worse than our immigration policy—you can’t break  
11 up rat families. Or raccoons or all the rest and you can’t even kill them. It’s  
12 unbelievable.”<sup>90</sup>

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15 <sup>88</sup> Cliff Sims, *Team of Vipers: My 500 Extraordinary Days in the Trump*  
16 *White House* 191 (2019).

17 <sup>89</sup> Michael D. Shear & Julie Hirschfeld Davis, *Stoking Fears, Trump*  
18 *Defied Bureaucracy to Advance Immigration Agenda*, N.Y. Times,  
19 Dec. 23, 2017, [https://www.nytimes.com/2017/12/23/us/politics/trump-](https://www.nytimes.com/2017/12/23/us/politics/trump-immigration.html?module=inline)  
20 [immigration.html?module=inline](https://www.nytimes.com/2017/12/23/us/politics/trump-immigration.html?module=inline).

21 <sup>90</sup> Latino Voices, *Ken Cuccinelli Protested With Live Rats Over Comments*  
22 *About Immigrants*, Huff. Post. Nov. 5, 2013.

1 **B. Rulemaking History**

2 86. In December 2017, DHS noted in the Unified Agenda of Federal  
3 Regulatory and Deregulatory Actions its intent to publish a Notice for Public  
4 Rulemaking regarding the public charge ground of inadmissibility. In early 2018,  
5 it was widely reported that the new rule would dramatically expand the types of  
6 public assistance programs that could be considered in the public charge test,  
7 including non-cash benefits like SNAP and Medicaid.<sup>91</sup> In January 2018, the  
8 State Department revised the Foreign Affairs Manual (FAM) to instruct consular  
9 officers to consider a wider range of public benefits when determining whether  
10 visa applicants who have received or are currently receiving benefits are

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13 <sup>91</sup> See, e.g., Nick Miroff, *Trump proposal would penalize immigrants who*  
14 *use tax credits and other benefits*, Wash. Post. Mar. 28, 2018, [https://](https://www.washingtonpost.com/world/national-security/trump-proposal-would-penalize-immigrants-who-use-tax-credits-and-other-benefits/2018/03/28/4c6392e0-2924-11e8-bc72-077aa4dab9ef_story.html?noredirect=on&utm_term=.e291852f1728)  
15 [www.washingtonpost.com/world/national-security/trump-proposal-would-pen-](https://www.washingtonpost.com/world/national-security/trump-proposal-would-penalize-immigrants-who-use-tax-credits-and-other-benefits/2018/03/28/4c6392e0-2924-11e8-bc72-077aa4dab9ef_story.html?noredirect=on&utm_term=.e291852f1728)  
16 [alize-immigrants-who-use-tax-credits-and-other-benefits/2018/03/28/4c6392e0-](https://www.washingtonpost.com/world/national-security/trump-proposal-would-penalize-immigrants-who-use-tax-credits-and-other-benefits/2018/03/28/4c6392e0-2924-11e8-bc72-077aa4dab9ef_story.html?noredirect=on&utm_term=.e291852f1728)  
17 [2924-11e8-bc72-077aa4dab9ef\\_story.html?noredirect=on&utm\\_term=.e291852](https://www.washingtonpost.com/world/national-security/trump-proposal-would-penalize-immigrants-who-use-tax-credits-and-other-benefits/2018/03/28/4c6392e0-2924-11e8-bc72-077aa4dab9ef_story.html?noredirect=on&utm_term=.e291852f1728)  
18 [f1728](https://www.washingtonpost.com/world/national-security/trump-proposal-would-penalize-immigrants-who-use-tax-credits-and-other-benefits/2018/03/28/4c6392e0-2924-11e8-bc72-077aa4dab9ef_story.html?noredirect=on&utm_term=.e291852f1728); Yeganeh Torbati, *Exclusive: Trump administration may target*  
19 *immigrants who use food aid, other benefits*, Reuters, Feb. 8, 2018,  
20 [https://www.reuters.com/article/us-usa-immigration-services-exclusive/](https://www.reuters.com/article/us-usa-immigration-services-exclusive/exclusive-trump-administration-may-target-immigrants-who-use-food-aid-other-benefits-idUSKBN1FS2ZK)  
21 [exclusive-trump-administration-may-target-immigrants-who-use-food-aid-other](https://www.reuters.com/article/us-usa-immigration-services-exclusive/exclusive-trump-administration-may-target-immigrants-who-use-food-aid-other-benefits-idUSKBN1FS2ZK)  
22 [-benefits-idUSKBN1FS2ZK](https://www.reuters.com/article/us-usa-immigration-services-exclusive/exclusive-trump-administration-may-target-immigrants-who-use-food-aid-other-benefits-idUSKBN1FS2ZK).



1 inadmissible on public charge grounds.<sup>92</sup> As revised, the FAM also allowed State  
2 Department officials to consider whether an applicant's family member has  
3 received public benefits as part of the public charge test.<sup>93</sup>

4 87. Also in January 2018, President Trump rejected a bipartisan  
5 immigration proposal by members of Congress. In reference to the deal's  
6 protections for immigrants from Haiti and Africa, President Trump asked why he  
7 should accept immigrants from "shithole countries" rather than from nations like  
8 "Norway."<sup>94</sup>

9 88. A detailed draft of DHS's proposed public charge rule was leaked  
10 in March 2018. Under the draft proposed rule, new criteria would be considered  
11 as heavily weighted negative factors in public charge determinations, including  
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16 <sup>92</sup> U.S. Dep't of State, "Public Charge" Update to 9 FAM 302.8  
17 (Jan. 4, 2018), [https://fam.state.gov/fam/09FAM/09FAM030208.html#M302\\_8](https://fam.state.gov/fam/09FAM/09FAM030208.html#M302_8).

18 <sup>93</sup> *Id.* at 302.8-2(B)(2)(f)(2)(b)(i).

19 <sup>94</sup> Julie Hirschfeld Davis, Sheryl Gay Stolberg & Thomas Kaplan, *Trump*  
20 *Alarms Lawmakers With Disparaging Words for Haiti and Africa*, N.Y. Times,  
21 Jan. 11, 2018, [https://www.nytimes.com/2018/01/11/us/politics/trump-shithole-](https://www.nytimes.com/2018/01/11/us/politics/trump-shithole-countries.html)  
22 [countries.html](https://www.nytimes.com/2018/01/11/us/politics/trump-shithole-countries.html).

1 whether an immigrant has received non-cash benefits regardless of the  
2 immigrant’s legal entitlement to participate in the benefit program.<sup>95</sup>

3 89. In spring 2018, shortly after the draft rule leaked, DHS informed the  
4 Office of Management and Budget (OMB) that it “will propose regulatory  
5 provisions guiding the inadmissibility determination on whether an alien is likely  
6 at any time to become a public charge.”<sup>96</sup> As first provided to OMB, the proposed  
7 rule was not classified as a “significant regulatory action”<sup>97</sup> or a “major” rule  
8 pursuant to the Congressional Review Act.<sup>98</sup>

9 90. The same month, President Trump said in a meeting at the White  
10 House that the United States has “the dumbest laws on immigration in the world”  
11 and exhorted his administration officials to “do much better” in keeping out  
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13 <sup>95</sup> *Read the Trump administration’s draft proposal penalizing immigrants*  
14 *who accept almost any public benefit*, Wash. Post., <http://apps.washingtonpost.com/g/documents/world/read-the-trump-administrations-draft-proposal-penalizing-immigrants-who-accept-almost-any-public-benefit/2841/>.

17 <sup>96</sup> Office of Management and Budget (OMB), Office of Information and  
18 Regulatory Affairs (OIRA), *Inadmissibility on Public Charge Grounds - Spring*  
19 *2018*, <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201804&RIN=1615-AA22>.

21 <sup>97</sup> Exec. Order 12,866, § 3(f).

22 <sup>98</sup> 5 U.S.C. § 804(2).

1 | undesirable immigrants. “You wouldn’t believe how bad these people are,”  
2 | President Trump said. “These aren’t people, these are animals . . . .”<sup>99</sup>

3 | 91. In June 2018, Miller emailed then-USCIS Director L. Francis Cissna  
4 | regarding DHS’s public charge rule. Miller wrote, “Francis – The timeline on  
5 | public charge is unacceptable.” Miller continued, “I don’t care what you need to  
6 | do to finish it on time.” Miller also wrote, “It’s an embarrassment that we’ve been  
7 | here for 18 months and USCIS hasn’t published a single major reg.”<sup>100</sup>

8 | 92. In the same month, President Trump tweeted that immigrants are  
9 | “invad[ing]” and “infest[ing]” the United States.<sup>101</sup> Of other countries, President  
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13 | <sup>99</sup> Julie Hirschfeld Davis, *Trump Calls Some Unauthorized Immigrants*  
14 | *‘Animals’ in Rant*, N.Y. Times, May 16, 2018, [https://www.nytimes.com/](https://www.nytimes.com/2018/05/16/us/politics/trump-undocumented-immigrants-animals.html)  
15 | [2018/05/16/us/politics/trump-undocumented-immigrants-animals.html](https://www.nytimes.com/2018/05/16/us/politics/trump-undocumented-immigrants-animals.html).

16 | <sup>100</sup> Ted Hesson, *Emails show Miller pressed hard to limit green cards*,  
17 | Politico, Aug. 2, 2019, available at [https://subscriber.politicopro.com/](https://subscriber.politicopro.com/article/2019/08/emails-show-miller-pressed-hard-to-limit-green-cards-1630406)  
18 | [article/2019/08/emails-show-miller-pressed-hard-to-limit-green-cards-1630406](https://subscriber.politicopro.com/article/2019/08/emails-show-miller-pressed-hard-to-limit-green-cards-1630406).

19 | <sup>101</sup> Donald J. Trump (@realDonaldTrump), Twitter (June 24, 2018,  
20 | 8:02 AM), <https://twitter.com/realdonaldtrump/status/1010900865602019329>;  
21 | Donald J. Trump (@realDonaldTrump), Twitter (June 19, 2018, 9:52 AM),  
22 | <https://twitter.com/realdonaldtrump/status/1009071403918864385>.

1 Trump said at a rally that same month, “They’re not sending their finest. We’re  
2 sending them the hell back.”<sup>102</sup>

3 93. At a political campaign event in Arizona in October 2018, President  
4 Trump referred to Latin American immigrants as “bad hombres.”<sup>103</sup>

5 **C. The Department’s Proposed Public Charge Rule**

6 94. On October 10, 2018, DHS published a notice of proposed  
7 rulemaking and proposed rule entitled *Inadmissibility on Public Charge Grounds*  
8 (the Proposed Rule).<sup>104</sup> The Proposed Rule sought to significantly expand the  
9 authority of the USCIS to designate an immigrant as inadmissible on the ground  
10 that he or she is likely to become a “public charge,” far beyond the long-settled  
11 meaning of the term and its prior application in the history of U.S. immigration  
12 law.

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14 <sup>102</sup> Katie Rogers & Jonathan Martin, *We’re Sending Them the Hell Back,*  
15 *Trump Says of Securing the Country’s Borders*, N.Y. Times, June 20, 2018,  
16 <https://www.nytimes.com/2018/06/20/us/politics/trump-minnesota-rally.html>.

17 <sup>103</sup> Christopher Cadelago and Brent D. Griffiths, *Still hopeful of keeping*  
18 *House, Trump torches Democrats in the Desert*, Politico (Oct. 20, 2018).

19 <sup>104</sup> U.S. Citizenship and Immigration Servs., U.S. Dep’t of Homeland  
20 Security, *Inadmissibility on Public Charge Grounds*, 83 Fed. Reg. 51,114-01,  
21 51,198, to be codified at 8 C.F.R. pts. 103, 212, 213, 214, 245, and 248)  
22 (Oct. 10, 2018).

1           95. The Proposed Rule redefined the term “public charge” to mean “an  
2 alien who receives one or more public benefit[s].”<sup>105</sup> The Proposed Rule defined  
3 “public benefit” to include not only a wide range of federal, state, local, or tribal  
4 cash benefits but also, in a reversal of decades of past practice and precedent,  
5 specific federally-funded non-cash benefits—namely SSI, SNAP, Section 8  
6 housing assistance, and Medicaid.<sup>106</sup>

7           96. In fact, the Department’s Final Rule allowing consideration of  
8 SNAP benefits is directly contrary to existing federal law governing those  
9 programs.<sup>107</sup>

10           97. The Proposed Rule would have required DHS in making a public  
11 charge determination to consider the immigrant’s “past receipt of public benefits”  
12 above certain thresholds as a “heavily weighed negative factor” favoring  
13 exclusion.<sup>108</sup> The Proposed Rule’s thresholds differed based on whether the  
14 benefit was “monetizable” or “non-monetizable.”

15           98. For “monetizable” benefits such as SNAP or TANF, the Proposed  
16 Rule imposed a dollar-value and durational threshold: it would have weighed

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18           <sup>105</sup> 83 Fed. Reg. at 51,157 & 51,289 (to be codified at 8 C.F.R.  
19 § 212.21(a)).

20           <sup>106</sup> 83 Fed. Reg. at 51,289–90 (to be codified at 8 C.F.R. § 212.21(b)).

21           <sup>107</sup> 7 U.S.C. § 2017(b)

22           <sup>108</sup> 83 Fed. Reg. at 51,289–90 (to be codified at 8 C.F.R. § 212.22(c)(1)(3)).

1 heavily against an immigrant’s application if, within any one-year period, the  
2 amount of public benefits received exceeds 15% of the Federal Poverty  
3 Guidelines (FPG) for a household of one (the 15% threshold).<sup>109</sup> For  
4 non-monetizable benefits such as Medicaid and subsidized housing, the Proposed  
5 Rule set a purely durational threshold: the heavily weighed negative factor would  
6 apply whenever an immigrant received such benefits for 12 months total in any  
7 36-month period, regardless of the actual value of the benefits received (the  
8 12-month threshold).<sup>110</sup>

9 99. Any amount of cash assistance for income maintenance could be  
10 considered as a negative factor favoring exclusion (though not “heavily  
11 weighed”) under the Proposed Rule.<sup>111</sup> However, it would not have permitted the  
12 Department to consider at all an immigrant’s receipt of non-cash public benefits  
13 below the applicable durational or dollar-value thresholds.

14 100. The Proposed Rule also sought to extend the public charge test into  
15 two areas not provided by statute—noncitizens’ applications for (1) extension of  
16 stay, and (2) change of status. Under the Proposed Rule, as a mandatory  
17 “condition of approval,” a noncitizen would have had to “demonstrate” that since  
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19 \_\_\_\_\_  
20 <sup>109</sup> 83 Fed. Reg. at 51,289–90 (to be codified at 8 C.F.R. § 211.21(b)(1)).

21 <sup>110</sup> 83 Fed. Reg. at 51,290 (to be codified at 8 C.F.R. § 212.22(b)(2)).

22 <sup>111</sup> 83 Fed. Reg. at 51,292 (to be codified at 8. C.F.R. § 212.22(d)).

1 obtaining the nonimmigrant status she seeks to change or extend she has not  
2 received, nor “is likely to receive,” a public benefit.<sup>112</sup>

3 101. The Department acknowledged that it had issued the Proposed Rule  
4 despite “anticipat[ing] that a number of individuals would be likely to disenroll  
5 or forego enrollment in a number of public benefits program as a result of the  
6 proposed rule.”<sup>113</sup> The Department acknowledged that it was “unable to  
7 determine the exact percentage of individuals who would disenroll or forego  
8 enrollment” in public benefit programs.<sup>114</sup> The Department was also unable to  
9 “determine whether immigrants are net contributors or net users of government-  
10 supported public assistance programs.”<sup>115</sup> Finally, the Department was “not able  
11 to estimate potential lost productivity, health effects, additional medical expenses  
12 due to delayed health care treatment, or increased disability insurance claims as  
13 a result of this proposed rule.”<sup>116</sup>

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16 <sup>112</sup> 83 Fed. Reg. 51,295 (to be codified at 8 C.F.R. § 214.1(a)(3)(iv)  
17 extension of stay); 83 Fed. Reg. at 51,296 (to be codified at 8 C.F.R. § 248.1(a)  
18 (change of status).

19 <sup>113</sup> 83 Fed. Reg. at 51,264.

20 <sup>114</sup> 83 Fed. Reg. at 51,274.

21 <sup>115</sup> 83 Fed. Reg. at 51,235.

22 <sup>116</sup> 83 Fed. Reg. at 51,236.

1 **D. Plaintiff States' Opposition to Proposed Rule**

2 **1. Comments to proposed rule**

3 102. During the 60-day comment period, the Department received over  
4 260,000 comments on the Proposed Rule. The vast majority of those public  
5 comments opposed the Proposed Rule. Many comments focused on the  
6 significant hardships the Proposed Rule would cause by deterring individuals and  
7 families—immigrants, nonimmigrant visitors, and U.S. citizens alike—from  
8 accessing public benefits for which they are eligible. Commenters also described  
9 the significant administrative and financial burden the Proposed Rule, if  
10 finalized, would impose on state and local government agencies, U.S. businesses,  
11 families, and individuals.

12 103. The Attorneys General of New Mexico, Virginia, California, the  
13 District of Columbia, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maryland,  
14 Massachusetts, Minnesota, New Jersey, New York, Oregon, Pennsylvania,  
15 Rhode Island, Vermont, and Washington submitted a joint comment letter  
16 opposing the Proposed Rule (the Multistate Comment).<sup>117</sup> The Multistate  
17 Comment urged the Department to modify or withdraw the Proposed Rule  
18 because it would “burden states with additional healthcare costs,” “harm

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20 <sup>117</sup> Comment of Commonwealth of Virginia *et al.* on Proposed Rule:  
21 Inadmissibility on Public Charge Grounds, DHS Dkt. No. USCIS-2010-0012  
22 (Oct. 10, 2018), Dec. 10, 2018 (Multistate Cmt.).



1 families,” “discriminate against people with disabilities,” and “improperly  
2 disfavor non-English speakers.”<sup>118</sup> Fear of the new public charge rule “will cause  
3 many eligible immigrants—including some who are exempt from the Proposed  
4 Rule altogether—to drop their benefits or decline to enroll.”<sup>119</sup> The Multistate  
5 Comment noted that, following leaks of the draft proposed rule, “individuals and  
6 families dropped out in noticeable numbers from support programs that are not  
7 included in the Proposed Rule.”<sup>120</sup> By leading to a reduction in Medicaid program  
8 enrollment, the Proposed Rule would, if finalized, “increase costs to the States  
9 and their residents for state-funded public health clinics, school health programs,  
10 and uncompensated emergency care.”<sup>121</sup>

11 104. In addition to joining the Multistate Comment, Plaintiff State of  
12 Washington submitted its own comment letter opposing the Proposed Rule (the  
13 Washington Comment). Signed by Washington’s Governor and Attorney  
14 General, as well as the Mayor of Seattle, the Washington Comment urged the  
15 Department to withdraw the Proposed Rule because, if adopted, it “will gravely  
16 harm Washingtonians, causing children in our State—noncitizens and citizens  
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19 <sup>118</sup> Multistate Cmt. at 2.

20 <sup>119</sup> Multistate Cmt. at 5.

21 <sup>120</sup> Multistate Cmt. at 11.

22 <sup>121</sup> Multistate Cmt. at 2.

1 alike—to forfeit meals, health insurance and a roof over their heads.”<sup>122</sup> The  
2 Washington Comment projected that the Proposed Rule would (1) cause “[o]ver  
3 140,000 Washington residents [to] lose health insurance”; (2) cause  
4 Washingtonians to forgo up to \$55.3 million in State food and cash benefits and  
5 \$198.7 million in medical care annually; (3) reduce total state economic output  
6 by up to \$97.5 million annually; (4) cut wages up to \$36.7 million per year; and  
7 (5) eliminate up to 782 jobs.<sup>123</sup>

8 105. In addition to joining the Multistate Comment, Plaintiff  
9 Commonwealth of Massachusetts and several of its agencies submitted  
10 comments opposing the proposed rule and detailing harms to its health care,  
11 public health, housing, and public welfare systems.

12 106. By law, the Department was required to review every public  
13 comment received and describe and respond to each “significant” comment in  
14 the preamble of any final regulation.<sup>124</sup>

15 \_\_\_\_\_  
16 <sup>122</sup> Comment of Governor Jay Inslee, Attorney General Bob Ferguson, and  
17 Mayor Jenny Durkan re DHS Dkt. No. USCIS-2010-0012, Proposed Rule:  
18 *Inadmissibility on Public Charge Grounds*, RIN 1615-AA22 (Oct. 10, 2018),  
19 Dec. 10, 2018, at 2 (Wash. Cmt.).

20 <sup>123</sup> Wash. Cmt. at 1–2.

21 <sup>124</sup> *Perez v. Mortg. Bankers Ass’n*, 135 S. Ct. 1199, 1203 (2015); Office of  
22 Information and Regulatory Affairs, *Regulations and the Rulemaking Process*,

1           **2. White House involvement and review**

2           107. By March 2019, the Department had not yet published a final rule.  
3           At a meeting in the White House Situation Room that month, senior adviser  
4           Stephen Miller expressed his frustration that the “transformative” public charge  
5           rule had not yet been finalized. “You ought to be working on this regulation all  
6           day every day,” Miller shouted. “It should be the first thought you have when  
7           you wake up. And it should be the last thought you have before you go to bed.  
8           And sometimes you shouldn’t go to bed.”<sup>125</sup>

9           108. Within weeks of the Situation Room meeting, President Trump  
10           removed multiple DHS senior officials from their positions, including

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15           <https://www.reginfo.gov/public/jsp/Utilities/faq.myjsp> (last visited  
16           July 28, 2019). A “significant comment” is one that “raise[s] relevant points and  
17           which, if adopted, would require a change in the agency’s proposed rule.” *Am.*  
18           *Mining Cong. v. EPA*, 965 F.2d 759, 771 (9th Cir. 1992).

19           <sup>125</sup> Eileen Sullivan & Michael D. Shear, *Trump Sees an Obstacle to Getting*  
20           *His Way on Immigration: His Own Officials*, N.Y. Times, Apr. 14, 2019, [https://](https://www.nytimes.com/2019/04/14/us/politics/trump-immigration-stephen-miller.html)  
21           [www.nytimes.com/2019/04/14/us/politics/trump-immigration-stephen-](https://www.nytimes.com/2019/04/14/us/politics/trump-immigration-stephen-miller.html)  
22           [miller.html](https://www.nytimes.com/2019/04/14/us/politics/trump-immigration-stephen-miller.html).

1 then-Homeland Security Secretary Kirstjen Nielsen and then-USCIS Director L.  
2 Francis Cissna.<sup>126</sup>

3 109. On July 12, 2019, the Department transmitted the Rule to the White  
4 House Office of Management and Budget (OMB) for regulatory review pursuant  
5 to Executive Order 12,866 (E.O. 12,866).<sup>127</sup> As required by law, the OMB Office  
6 of Information and Regulatory Affairs (OIRA) held E.O. 12,866 meetings with  
7 interested parties in the two weeks following its receipt of the Rule. On  
8 July 24, 2019, a coalition of 17 states, including the Plaintiff States, requested a  
9 meeting with OIRA—both through the OIRA online E.O. 12866 meeting request  
10 system and via letter transmitted by e-mail—to further express their “significant  
11 concerns about the severe impact that [the public charge] rule would have on our  
12 states’ residents.” Although OIRA held at least four E.O. 12,866 meetings on  
13 July 25, 2019, for a full week the Plaintiff States’ July 24 meeting request  
14 received no response from OIRA.<sup>128</sup>

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16 <sup>126</sup> *Id.*; Geneva Sands & Priscilla Alvarez, *Trump’s Citizenship and*  
17 *Immigration Services director out*, CNN, May 24, 2019, [https://www.cnn.com](https://www.cnn.com/2019/05/24/politics/l-francis-cissna-citizenship-and-immigration-services/index.html)  
18 [/2019/05/24/politics/l-francis-cissna-citizenship-and-immigration-](https://www.cnn.com/2019/05/24/politics/l-francis-cissna-citizenship-and-immigration-services/index.html)  
19 [services/index.html](https://www.cnn.com/2019/05/24/politics/l-francis-cissna-citizenship-and-immigration-services/index.html).

20 <sup>127</sup> *See* E.O. 12,866 of Sept. 30, 1993.

21 <sup>128</sup> EO 12866 Meetings Search Results, Office of Information and  
22 Regulatory Affairs, Office of Management and Budget, <https://>

1           110. OIRA completed its review of the Rule on July 31, 2019.<sup>129</sup> That  
2 day, OIRA responded to the Plaintiff States declining their E.O. 12,866 meeting  
3 request.

4       **E.     The Final Rule**

5           111. On August 12, 2019, the Department announced the issuance of the  
6 Final Public Charge Rule and it was posted for public inspection. In a press  
7 conference at the White House, Acting USCIS Director Kenneth T. Cuccinelli II  
8 stated that in promulgating “President Trump’s public charge inadmissibility  
9 rule,” the Department was “promoting our shared history” and  
10 “implement[ing] . . . a law passed by Congress in 1996 that has not been given  
11 meaningful effect.”<sup>130</sup> Asked about the 1903 plaque on the Statue of Liberty that  
12 invites “your tired, your poor, your huddled masses,” Cuccinelli said: “I’m  
13 certainly not prepared to take anything down off the Statute of Liberty.”

14 \_\_\_\_\_  
15 [www.reginfo.gov/public/do/eom12866SearchResults?pubId=201904&rin=1615](http://www.reginfo.gov/public/do/eom12866SearchResults?pubId=201904&rin=1615-AA22&viewRule=true)  
16 [-AA22&viewRule=true](http://www.reginfo.gov/public/do/eom12866SearchResults?pubId=201904&rin=1615-AA22&viewRule=true) (last visited July 28, 2019).

17           <sup>129</sup> *OIRA Conclusion of EO 12866 Regulatory Review*, Office of  
18 Information and Regulatory Affairs, Office of Management and Budget, [https://](https://www.reginfo.gov/public/do/eoDetails?rrid=129323)  
19 [www.reginfo.gov/public/do/eoDetails?rrid=129323](https://www.reginfo.gov/public/do/eoDetails?rrid=129323) (last visited Aug. 2, 2019).

20           <sup>130</sup> *Cuccinelli on “public charge” immigration rule*, CBS News,  
21 Aug. 12, 2019, [https://www.cbsnews.com/video/immigration-official-kenneth-](https://www.cbsnews.com/video/immigration-official-kenneth-cuccinelli-immigrants-public-charge-rule/)  
22 [cuccinelli-immigrants-public-charge-rule/](https://www.cbsnews.com/video/immigration-official-kenneth-cuccinelli-immigrants-public-charge-rule/).

1           112. In response to questions about the Rule, Cuccinelli publicly stated  
2 that the famous Emma Lazarus Statue of Liberty sonnet inscribed on the Statue  
3 of Liberty “was referring back to people coming from Europe where they had  
4 class-based societies” not to people coming to the United States from outside  
5 Europe. He also reinterpreted it to “[g]ive me your tired and your poor who can  
6 stand on their own two feet . . . .”<sup>131</sup> When asked if the Rule changes the  
7 definition of the American dream, Cuccinelli said, “[n]o one has a right to  
8 become an American who isn’t born here as an American” and that “it is a  
9 privilege to become an American, not a right for anybody who is not already an  
10 American citizen.”<sup>132</sup> He also said the Rule was “part of President Trump keeping  
11 his promises.”<sup>133</sup>

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17           <sup>131</sup> Rebecca Morin, *Immigration official Ken Cuccinelli: Statue of Liberty*  
18 *poem refers to immigrants from Europe*, USA Today Aug. 13, 2019.

19           <sup>132</sup> Sasha Ingber and Rachel Martin, *Immigration Chief: ‘Give Me Your*  
20 *Tired, Your Poor Who Can Stand On Their Own 2 Feet’*, Nat’l Pub. Radio,  
21 Aug. 13, 2019.

22           <sup>133</sup> *Id.*

1           113. On August 14, 2019, the Department published the Final Rule in the  
2 Federal Register.<sup>134</sup>

3           **1. Summary of the Final Rule**

4           **a. Applicability of the Rule**

5           114. The Public Charge Rule applies to any noncitizen subject to section  
6 212(a)(4) of the INA who, after the October 15, 2019 effective date, applies to  
7 the Department for admission to the United States or for adjustment of status to  
8 that of lawful permanent resident.<sup>135</sup> The Rule catalogues a list of immigrant  
9 groups that are exempted from its provisions, based on preexisting exemptions  
10 created by Congress or DHS regulations. These include, for example, refugees  
11 and asylees, certain Afghan or Iraqi nationals employed by or on behalf of the  
12 U.S. government, and certain Cuban and Haitian entrants. *See* 84 Fed. Reg. at  
13 41,504 (proposed 8 C.F.R. § 212.23).

14           115. The Rule also applies to requests for extension of stay and change  
15 of status by nonimmigrant visitors to the United States. A nonimmigrant is  
16 generally admitted into the United States for a limited period and for a particular  
17 purpose. Section 212(a)(4) does not apply to an extension of stay or change of  
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19           <sup>134</sup> U.S. Citizenship and Immigration Servs., U.S. Dep't of Homeland  
20 Security, *Inadmissibility on Public Charge Grounds*, 84 Fed. Reg. at 41,292, to  
21 be codified at 8 C.F.R. pts. 103, 212-214, 245, and 248) (August 14, 2019).

22           <sup>135</sup> 84 Fed. Reg. at 41,501 (proposed 8 C.F.R. § 212.20).

1 status. Nevertheless, the Department asserts authority to apply its expanded  
 2 public charge provisions to a nonimmigrant's application to extend his or her  
 3 status or change it from one classification to another.<sup>136</sup>

4 **b. Definitions of “public charge” and “public benefit”**

5 116. The Rule defines “public charge” to mean “an alien who receives  
 6 one or more public benefits . . . for more than 12 months in the aggregate within  
 7 any 36-month period (such that, for instance, receipt of two benefits in one month  
 8 counts as two months).”

9 117. “Public benefit” means any of the following six forms of public  
 10 assistance: (1) “[a]ny Federal state, local or tribal cash assistance for income  
 11 maintenance,” including SSI, TANF, or state “General Assistance”; (2) SNAP;  
 12 (3) Section 8 housing assistance vouchers; (4) Section 8 project-based rental  
 13 assistance; (5) Medicaid (with exceptions for benefits or services (i) for an  
 14 emergency medical condition, (ii) under the Individuals with Disabilities  
 15 Education Act, (iii) that are school-based, (iv) to immigrants who are under 21  
 16 years of age or a woman during pregnancy); and (6) public housing under section  
 17 9 of the U.S. Housing Act of 1937.<sup>137</sup>

18 118. In several respects, those core definitions are even more draconian  
 19 than the corresponding provisions of the Proposed Rule. First, the Department

20 \_\_\_\_\_  
 21 <sup>136</sup> See 84 Fed. Reg. at 41,507-08, (proposed 8 C.F.R. §§ 214.1, 248.1).

22 <sup>137</sup> 84 Fed. Reg. at 41,501 (to be codified at 8. C.F.R. § 212.21(b)).



1 eliminated the Proposed Rule’s distinction between monetizable and  
 2 non-monetizable benefits. While the Proposed Rule would have considered  
 3 monetizable benefits received only if they exceeded 15% threshold, in the Final  
 4 Rule the Department applies the 12-month threshold to all public benefits. Thus,  
 5 any amount of benefits received for a total of 12 months in the aggregate in a  
 6 36-month period as a factor weighing “heavily” in favor of a public charge  
 7 determination.<sup>138</sup> An additional benefit counts as an extra month, such that receipt  
 8 of two benefits triggers the threshold after six months; three benefits, after four  
 9 months; and four benefits, after just three months.

10 119. Second, the Final Rule permits the Department to consider as a  
 11 negative factor favoring a public charge determination any past receipt of  
 12 non-cash public benefits, even if below the 12-month threshold.<sup>139</sup> The Proposed  
 13 Rule would have only permitted consideration of cash benefits below the  
 14 applicable thresholds.

15 **c. Heavily weighted negative factors**

16 120. The Rule establishes four factors that will “generally weigh heavily  
 17 in favor of a finding that an alien is likely to become a public charge.”

18 121. First, it is a “heavily weighted negative factor” if the immigrant “is  
 19 not a full-time student and is authorized to work, but is unable to demonstrate

20 \_\_\_\_\_  
 21 <sup>138</sup> 84 Fed. Reg. at 41,504 (to be codified at 8 C.F.R. § 212.22(c)(1)(ii)).

22 <sup>139</sup> 84 Fed. Reg. at 41,503 (to be codified at 8 C.F.R. § 212.22(b)(4)(E)).

1 current employment, recent employment history or no reasonable prospect of  
2 future employment.”<sup>140</sup>

3 122. Second, it is a “heavily weighted negative factor” if the immigrant  
4 “has received or has been certified or approved to receive one or more public  
5 benefits, as defined in § 212.21(b), for more than 12 months in the aggregate  
6 within any 36 month period, beginning no earlier than 36 months immediately  
7 preceding the alien’s application for admission or adjustment of status.<sup>141</sup> The  
8 lookback period can begin no earlier than 36 months before an immigrant’s  
9 application for admission or adjustment of status on or after October 15, 2019.

10 123. Third, it is a “heavily weighted negative factor” if an immigrant both  
11 (a) “has been diagnosed with a medical condition that is likely to require  
12 extensive medical treatment or institutionalization or that will interfere with the  
13 alien’s ability to provide for him- or herself, attend school, or work”; and (b) “is  
14 uninsured and has neither the prospect of obtaining private health insurance, or  
15 the financial resources to pay for reasonably foreseeable medical costs related to  
16 a the medical condition.”<sup>142</sup>

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20 <sup>140</sup> 84 Fed. Reg. at 41,504 (to be codified at 8. C.F.R. § 212.22(c)(1)(i)).

21 <sup>141</sup> 84 Fed. Reg. at 41,504 (to be codified at 8. C.F.R. § 212.22(c)(1)(ii)).

22 <sup>142</sup> 84 Fed. Reg. at 41,504 (to be codified at 8. C.F.R. § 212.22(c)(1)(iii)).

1 124. Fourth, it is a “heavily weighted negative factor” if the “alien had  
2 previously been found inadmissible or deportable on public charge grounds by  
3 an Immigration Judge or the Board of Immigration Appeals.”<sup>143</sup>

4 **d. Heavily weighted positive factors**

5 125. The Rule establishes three factors that “will generally weigh heavily  
6 in favor of a finding that an alien is not likely to become a public charge.” First,  
7 it is a “heavily weighted positive factor” if the noncitizen’s “household has  
8 income, assets, or resources, and support . . . of at least 250 percent of the Federal  
9 Poverty Guidelines for the alien’s household size.”<sup>144</sup>

10 126. Second, it is a “heavily weighted positive factor” if the “alien is  
11 authorized to work and is currently employed in a legal industry with an annual  
12 income . . . of at least 250 percent of the Federal Poverty Guidelines for the  
13 alien’s household size.”<sup>145</sup>

14 127. Third, it is a “heavily weighted positive factor” if the “alien has  
15 private health insurance” that is “appropriate for the expected period of  
16 admission,” except health insurance for which an immigrant receives premium  
17 tax credits under the Patient Protection and Affordable Care Act (ACA).<sup>146</sup>

18 \_\_\_\_\_  
19 <sup>143</sup> 84 Fed. Reg. at 41,504 (to be codified at 8. C.F.R. § 212.22(c)(1)(iv)).

20 <sup>144</sup> 84 Fed. Reg. at 41,504 (to be codified at 8. C.F.R. § 212.22(c)(2)(i)).

21 <sup>145</sup> 84 Fed. Reg. at 41,504 (to be codified at 8. C.F.R. § 212.22(c)(2)(ii)).

22 <sup>146</sup> 84 Fed. Reg. at 41,504 (to be codified at 8. C.F.R. § 212.22(c)(2)(iii)).

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**e. Other criteria**

128. The Rule requires DHS to consider various other criteria in any public charge determination. Those other criteria that will weigh in favor of a public charge determination include whether the immigrant: (1) is under the age of 18 or over the minimum early retirement age for Social Security (currently age 62); (2) has a “medical condition that is likely to require extensive medical treatment or institutionalization” or “interfere with [his] ability to provide and care for himself,” to “attend school,” or “to work”; (3) has an annual household gross income under 125% of the Federal poverty guideline (FPG) (or 100% for active duty service members); (4) has a household size that makes the immigrant “more likely than not to become a public charge at any time in the future”; (5) lacks “significant assets, such as savings accounts, stocks, bonds, certificates of deposit, real estate or other assets”; (6) lacks “sufficient household assets and resources to cover any reasonably foreseeable medical costs related to a medical condition,” (7) has “any financial liabilities”; (8) has applied for, “been certified to receive” or received “public benefits” since [October 15, 2019]; (9) has applied for or has received a USCIS fee waiver for an immigration benefit request since [October 15, 2019]; has a lower “credit history and credit score”; (10) lacks private health insurance or other sufficient assets and resources to cover

1 “reasonably foreseeable medical costs”; (11) lacks a high school diploma (or  
2 equivalent) or a “higher education degree”; or (12) is not proficient in English.<sup>147</sup>

3 129. Under the Rule, the Department must also consider any required  
4 affidavit of support meeting the statutory sponsorship and income requirements.  
5 But an affidavit of support would not be dispositive, and its weight would depend  
6 on the “likelihood that the sponsor would actually provide the statutorily-required  
7 amount of financial support” in the judgment of USCIS.<sup>148</sup> Again, this is a major  
8 departure from prior agency practice and precedent, which had long treated a  
9 compliant affidavit of support as a significant, if not outcome-determinative  
10 factor in favor of the applicant.<sup>149</sup>

11 **f. Other provisions**

12 130. The Rule would apply a more exacting standard to applications for  
13 adjustment of status or immigrant visas than to applications for temporary  
14 nonimmigrant visas. Specifically, USCIS would consider the “immigration status  
15 that the alien seeks and the expected period of admission as it relates to the alien’s  
16 ability to financially support for [sic] himself or herself during the duration of the  
17 alien’s stay.”<sup>150</sup>

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19 <sup>147</sup> 84 Fed. Reg. at 41,502-04 (to be codified at 8. C.F.R. § 212.22(b)).

20 <sup>148</sup> 84 Fed. Reg. at 41,504 (to be codified at 8 C.F.R. § 212(b)(7)).

21 <sup>149</sup> 83 Fed. Reg. at 51,186.

22 <sup>150</sup> 84 Fed. Reg. at 41,504 (to be codified at 8. C.F.R. § 212.22(b)(6)(i)).

1           131. The Rule also authorizes the Department to allow a lawful  
2 permanent resident applicant determined likely to become a public charge to  
3 submit a “public charge bond” as a condition of his or her green card approval.  
4 The decision to allow a public charge bond is discretionary, but the Department  
5 “generally will not favorably exercise discretion” if at least one heavily weighed  
6 negative factors applies. The amount of the bond must be at least \$8,100, which  
7 is breached in full if the applicant receives any public benefits for more than 12  
8 months in the aggregate within any 36-month period after becoming a lawful  
9 permanent resident.<sup>151</sup>

10           132. Like the Proposed Rule, the Final Rule also imposes additional  
11 requirements on nonimmigrants applying for a change of status or an extension  
12 of stay, though the INA’s public charge exclusion applies in neither situation.  
13 The Rule provides that such applications will be denied unless the applicant  
14 demonstrates that he or she has not received public benefits since obtaining the  
15 nonimmigrant status that he is seeking to extend or change for 12 months total  
16 within a 36-month period.<sup>152</sup> Unlike the Proposed Rule, the Final Rule does not  
17 require or permit consideration of whether a nonimmigrant applicant for change  
18 of status or extension of stay is “likely to receive public benefits” in the future.

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20           <sup>151</sup> 84 Fed. Reg. at 41,505-07 (to be codified at 8 C.F.R. § 213.1).

21           <sup>152</sup> 84 Fed. Reg. at 41,507 (amending 8 C.F.R. §§ 214.1(a) & (c) and  
22 248.1(a) & (c).

1           **2. The Department’s failure to provide reasoned analysis,**  
2           **examine relevant data, or address public comments’ significant**  
3           **concerns**

4           133. As mentioned above, the Department received more than 260,000  
5 public comments on the Proposed Rule, the “vast majority” in opposition.<sup>153</sup> The  
6 public comments raised significant concerns regarding the legality and impact of  
7 the Department’s radical proposed transformation of the public charge exclusion.  
8 In the preamble to the Final Rule, the Department failed to provide reasoned  
9 analysis, examine the relevant data, or adequately address the significant  
concerns raised in the public comments.

10                   **a. Definition of public charge**

11           134. First and foremost, the Department failed to account for its decision  
12 to redefine the term public charge in a manner inconsistent with the historical  
13 understanding of public charge, Congressional intent, and more than a century of  
14 judicial and administrative precedent. In response, the Department asserted that  
15 the Rule interprets “ambiguous terms that Congress itself left undefined,”  
16 offering the ipse dixit that it “believes that its definition with what it means to be  
17 a public charge.”<sup>154</sup>

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<sup>153</sup> 84 Fed. Reg. at 41,297 & 41,304.

<sup>154</sup> 84 Fed. Reg. at 41,317.

1                   **b.     The 12-month public benefit threshold**

2           135. Many commenters criticized the Proposed Rule’s thresholds for  
3 consideration of public benefits as arbitrary. Under the Proposed Rule,  
4 monetizable public benefits would weigh in favor of a public charge  
5 determination if they exceeded 15% of FPG in a 12-month period, while  
6 non-monetizable benefits would be a negative factor if received for 12 months  
7 within a 36-month period. Commenters noted that the Department had provided  
8 no data to support its 15% threshold, which would have considered the receipt of  
9 just \$150 per month (or \$5 per day) in benefits as a heavily weighted factor  
10 favoring a public charge finding. Commenters also criticized the 12-month  
11 standard for non-monetizable benefits as arbitrary and irrational, particularly  
12 with respect to specific programs like Medicaid, which is designed for continuous  
13 enrollment.

14           136. Implicitly acknowledging the arbitrariness of the 15% threshold, the  
15 Department correctly abandoned it in the Final Rule—but only to adopt the  
16 flawed 12-month threshold for monetizable benefits as well. Under the Rule’s  
17 public charge test, the receipt of any public benefit—monetizable or not—for 12  
18 or more months in a 36-month period would constitute a heavily weighted  
19 negative factor. Each additional benefit received in the same period would count  
20 as an additional month, such that just three months of Medicaid, housing  
21 vouchers, food stamps, and income assistance could result in a public charge  
22



1 finding—no matter how small the actual dollar value of the benefits. The  
2 Department acknowledged that by ignoring the value of benefits received, its  
3 12-month threshold could result in a public charge finding based on an  
4 immigrant’s receipt of “only hundreds of dollars or less in public benefits.” The  
5 Department did not provide a reasoned explanation to justify the 12-month  
6 threshold’s “incongruities.”<sup>155</sup>

7 137. Indeed, the only justification the Department provided for adopting  
8 this strict 12-month threshold for all public benefits is that it is “simpler and more  
9 administrable” than its 15% of FPG threshold.<sup>156</sup> But just because a regulation is  
10 administrable does not make it rational or non-arbitrary. The Department fails to  
11 provide data, evidence, or reasoned analysis to explain why it believes an  
12 immigrant’s past receipt of public assistance for as little as a few months is at all  
13 predictive of whether she will become a public charge in the future. The  
14 Department cited a Census Bureau study finding that 31.2% of participants in  
15 “one or more means-tested assistance programs” ended their participation within  
16 a year, ignoring that many of those participants may have received more than one  
17 benefit program—rendering the study entirely irrelevant to the Rule’s 12-month  
18 threshold.<sup>157</sup> As the Department’s own analysis reveals, of individuals who

19 \_\_\_\_\_  
20 <sup>155</sup>84 Fed. Reg. at 41,360-61.

21 <sup>156</sup> 84 Fed. Reg. at 41,359.

22 <sup>157</sup> 84 Fed. Reg. at 41,360.

1 receive the enumerated public benefits, “at least nearly 35 percent received two  
2 or more public benefits on average per month.”<sup>158</sup> The Department’s decision to  
3 aggregate multiple benefits in the 12-month threshold overlooks its own findings  
4 on how beneficiaries utilize temporary public assistance in actual practice.

5 **c. Heavily weighted negative factors**

6 138. The Department received multiple comments criticizing the use of  
7 “heavily weighted factors” (or “weighed,” in the Proposed Rule’s terminology),  
8 separate from the enumerated considerations that Congress mandated the  
9 Department to consider in the totality of circumstances test codified in the  
10 Immigration Reform Act. Attempting to defend its decision to create  
11 non-statutory heavily weighted factors, the Department asserts that it “does not  
12 change that the public charge inadmissibility determination is one that is made  
13 based on the totality of the alien’s individual facts and circumstances.”<sup>159</sup> Yet the  
14 Department fails to account for the fact that the Rule’s heavily weighted negative  
15 factors—which overlap considerably to the point of double-counting—will often  
16 be dispositive in operation, contrary to Congressional intent.

17 139. In particular, the public benefit factor is likely to be  
18 outcome-determinative in most cases. That factor weighs heavily in a public  
19 charge determination if an immigrant receives one or more public benefits for 12

20 \_\_\_\_\_  
21 <sup>158</sup> 84 Fed. Reg. at 41,361.

22 <sup>159</sup> 84 Fed. Reg. at 41,442.

1 months total within a 36-month period. The Department asserts that the factor  
2 “will not necessarily be dispositive in the inadmissibility determination,”  
3 overlooking that whenever it applies, at least one other enumerated negative  
4 factor will always also apply. That is so because the Rule requires consideration  
5 of evidence that the immigrant has “applied for,” “received,” or “been certified  
6 or approved to receive” any public benefits.<sup>160</sup> Furthermore, because the  
7 enumerated public benefits are all means-tested, the vast majority of recipients  
8 will also have an annual income below 125 percent of FPG, which would itself  
9 also “generally be a heavily weighed negative factor.”<sup>161</sup>

10 140. So too, is the medical condition negative factor likely to be  
11 dispositive. That heavily weighted factor is triggered where an applicant (1) has  
12 a medical condition “likely to require extensive medical treatment or  
13 institutionalization” and is (2) both uninsured and has neither the prospect of  
14 obtaining private health insurance nor the resources to pay for medical costs.<sup>162</sup>  
15 That standard is literally duplicative with the ostensibly separate “health” factor,  
16 which weighs in favor of a public charge determination when an “alien has been  
17 diagnosed with a medical condition that is likely to require extensive medical  
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20 <sup>160</sup> 84 Fed. Reg. at 41,503.

21 <sup>161</sup> 84 Fed. Reg. at 41,323.

22 <sup>162</sup> 84 Fed. Reg. at 41,445.

1 treatment or institutionalization.”<sup>163</sup> And a person who meets that standard is also  
2 likely to fail under the “assets, resources, and financial status factor,” which  
3 considers whether he has “sufficient household assets and resources to cover any  
4 reasonably foreseeable medical costs.”<sup>164</sup> Here again, the Department stacks the  
5 deck to convert the totality of circumstances inquiry into a bright-line test focused  
6 myopically on non-statutory considerations (such as the receipt of public  
7 assistance and private health insurance coverage) that the Department assigns  
8 talismanic significance.

9 141. These factors thus do not merely “coincide or relate to each other,”  
10 as the Department contends, but instead engender obvious double-counting.<sup>165</sup>  
11 The Department does not provide a reasoned basis for creating duplicative—and  
12 effectively dispositive—“heavily weighted factors” that outweigh the  
13 considerations Congress has expressly set forth in the statutory totality of  
14 circumstances test.

15 **d. Private health insurance**

16 142. Commenters expressed significant concern over the Proposed  
17 Rule’s consideration of private health insurance as a factor in the public charge  
18 test. As numerous commenters pointed out, many immigrants work in industries  
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20 <sup>163</sup> 84 Fed. Reg. at 41,502 (to be codified at 8 C.F.R. § 212.22(b)(2)).

21 <sup>164</sup> 84 Fed. Reg. at 41,502-03 (to be codified at 8 C.F.R. § 212(b)(4)).

22 <sup>165</sup> 84 Fed. Reg. at 41,406.

1 that tend not to provide employer-based health insurance. Many commenters also  
2 noted that considering health insurance and related factors, such as having  
3 sufficient household assets and resources to cover “reasonably foreseeable  
4 medical costs,” would disproportionately and negatively affect certain  
5 populations, including people with disabilities; people with chronic health  
6 conditions; the elderly; and immigrants of color.<sup>166</sup>

7 143. The Department entirely disregarded those concerns, instead  
8 elevating private health insurance coverage to a heavily weighted positive factor  
9 in the Final Rule. The Department stated that it will proceed to consider “whether  
10 a person has health insurance or has the household assets and resources to pay  
11 for reasonably foreseeable medical costs,” and that having private insurance will  
12 generally be weighed as a heavily positive factor (provided the insurance is not  
13 for example offset by tax credits under the ACA).<sup>167</sup> Further, the Department  
14 readily conceded that “certain individuals may choose to forego public health  
15 insurance, such as Medicaid, because of the impact on public charge.”<sup>168</sup> The  
16 Department did not explain how such disenrollment from health coverage could  
17 possibly advance its purported goal to promote immigrants’ self-sufficiency and  
18 economic independence.

19 \_\_\_\_\_  
20 <sup>166</sup> 84 Fed. Reg. at 41,442.

21 <sup>167</sup> 84 Fed. Reg. at 41,428.

22 <sup>168</sup> 84 Fed. Reg. at 41,428.

1           144. Although the Department notably stated it would not consider  
2 programs other than Medicaid as public benefits, its response to these comments  
3 clarifies that the “evaluation may in some cases require DHS to consider an  
4 alien’s publicly funded or subsidized health insurance that is not defined as a  
5 public benefit under this rule.”<sup>169</sup> Finally, regarding the potentially  
6 disproportionate impact on certain populations such as the disabled, the  
7 Department responded simply that it “does not intend to disproportionately affect  
8 such groups.”<sup>170</sup> Such a cursory explanation does not justify the arbitrary and  
9 capricious nature of the factor, which double counts certain evidence to  
10 disadvantage immigrants who use medical benefits they are entitled to receive.

11                           **e. Nonimmigrant applications for change of status or**  
12                           **extension of stay**

13           145. Numerous commenters criticized the Proposed Rule for applying a  
14 public charge-like test to nonimmigrant applicants for a change of status or  
15 extension of stay, neither of which is subject to the INA’s public charge  
16 exclusion. Under the Public Charge Rule, extension of stay and change of status  
17 applicants must establish that they have not received public benefits in an  
18 aggregate of 12 months in the prior 36-month period. The Department denies that  
19 it is “intended to “apply the public charge ground of inadmissibility to extension  
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21                           <sup>169</sup> 84 Fed. Reg. at 41,428.

22                           <sup>170</sup> 84 Fed. Reg. at 41,429.

1 of stay or change of status applicants.” Rather, the Department claims that it is  
2 simply “exercising its statutory authority to set a new condition for approval of  
3 extension of stay and change of status applications.”<sup>171</sup>

4 146. The Department’s denial is implausible. Not only does this “new  
5 condition of approval” appear in the very regulation called “Inadmissibility on  
6 Public Charge Grounds,” but it bootstraps into change of status and extension of  
7 stay applications the central criterion of the Department’s new public charge test  
8 (*i.e.*, the receipt of public benefits above the 12-month threshold). The  
9 Department fails to explain how expanding that core criterion beyond the public  
10 charge exclusion’s statutory bounds comports with its authority under the INA.

11 **f. Application to lawful permanent residents returning**  
12 **from 180-day trips abroad**

13 147. Commenters also criticized the Department for failing to estimate  
14 the consequences or costs of applying its expansive new public charge standard  
15 to lawful permanent residents returning to the United States after 180 or more  
16 days abroad. The Department’s only response is that it “does not believe such a  
17 quantitative estimate is necessary.”<sup>172</sup> That brusque response fails to give due  
18 consideration to a significant concern about how the regulation will affect lawful  
19 permanent residents on the path to U.S. citizenship.

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21 <sup>171</sup> 84 Fed. Reg. at 41,329.

22 <sup>172</sup> 84 Fed. Reg. at 41,327.

1                   **g. Disparate impact**

2           148. Numerous commenters pointed to the racially and ethnically  
3 disparate impact the Department’s public charge test would have by  
4 disproportionately affecting immigrants of color. For example, one analysis  
5 predicted that the public charge test’s income thresholds would have  
6 “disproportionate effects based on national origin and ethnicity, blocking 71  
7 percent of applicants from Mexico and Central America, 69 percent from Africa,  
8 and 52 percent from Asia—but only 36 percent from Europe, Canada and  
9 Oceania.”<sup>173</sup>

10           149. The Department did not dispute that the Rule would have a disparate  
11 impact on immigrants of color. Instead, the Department claimed it did not  
12 intentionally “codify this final rule to discriminate”<sup>174</sup> and that it “does not  
13 understand commenters’ statements about the ‘unequal application’ of the public  
14 charge inadmissibility rule.”<sup>175</sup> Although it provided no evidence, the  
15 Department “disagree[d] that the public charge inadmissibility rule would be  
16 unequally applied to different groups of aliens along the lines of race.”<sup>176</sup> That  
17 bald denial fails to meaningfully address an important aspect of the  
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19           <sup>173</sup> 84 Fed. Reg. at 41,322.

20           <sup>174</sup> 84 Fed. Reg. at 41,309.

21           <sup>175</sup> 84 Fed. Reg. at 41,323.

22           <sup>176</sup> 84 Fed. Reg. at 41,323.



1 | problem—the Rule’s discriminatory effects—and to consider the significant  
2 | disadvantages and injustice of its decision.

3 | **h. Credit history and financial liabilities**

4 | 150. Several commenters expressed concern that the Proposed Rule  
5 | sought to consider an immigrant’s credit history as a factor in the determination  
6 | of whether the immigrant is likely to become a public charge. As these  
7 | commenters noted, credit scores and credit histories were not intended to be used  
8 | in the immigration context; do not assess an immigrant’s likelihood of being  
9 | self-sufficient; have no correlation with the evaluation factor; are often highly  
10 | inaccurate; and may be affected by factors outside the immigrant’s control but  
11 | from which they may recover. Further, commenters noted that credit reports  
12 | contain irrelevant data, such as medical debts that do not measure an individual’s  
13 | financial status, while at the same time omitting potentially more relevant data,  
14 | such as consistency of rent payments. Other commenters noted that considering  
15 | credit scores would essentially “double count” evidence already factoring into  
16 | the public charge determination.

17 | 151. The Department largely disregarded these concerns, however,  
18 | instead stating in conclusory fashion that it believes such information is useful  
19 | “in determining whether aliens are able to support themselves.” According to the  
20 | Department, credit reports “generally assist creditors to determine the credit  
21 | worthiness or risk of a person,” and the Department proposes its use of credit  
22 |

1 reports “focuses on the assessment of these debts, liabilities, and related  
2 indicators, as one indicator of an alien’s strong or weak financial status.” The  
3 Department’s decision is arbitrary and capricious, however, as it elevates private  
4 credit reports into a realm they were never intended to occupy—a lawful  
5 immigrant’s status and admissibility—arbitrarily introducing error, irrelevant  
6 factors, and double counting into the analysis.<sup>177</sup>

7 **i. Immigration fee waiver**

8 152. Many commentators criticized the Proposed Rule for taking into  
9 consideration whether an immigrant had ever received an immigration fee waiver  
10 as a negative factor weighing in favor of a public charge finding. As these  
11 commentators noted, there is no evidence to suggest the one-time receipt of an  
12 immigration fee waiver correlates to whether an immigrant is likely to become a  
13 public charge. For example, commenters noted that an immigrant’s financial  
14 condition often improves after receiving the immigration benefits for which they  
15 received the fee waiver. Further, commenters noted that considering the one-time  
16 receipt of a fee waiver leads to double counting income, which unduly punishes  
17 immigrants who received fee waivers based on temporarily adverse economic  
18 circumstances. Finally, other commentators noted that punishing immigrants for  
19 seeking fee waivers is counter-productive, as immigrants often seek such waivers  
20 for work authorization (as they have no income at the time they apply) or to  
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22 <sup>177</sup> 84 Fed. Reg. at 41,426.

1 ensure their immigration documents are timely filed when they have not had  
2 sufficient time to save enough money for the application fee (perhaps because  
3 they are using the money for other household expenses, thus promoting  
4 self-sufficiency).

5 153. The Department largely brushed these concerns aside, however,  
6 essentially arguing that any problems resulting from consideration of fee waivers  
7 would be minimal, as they constitute “only one evidentiary consideration in the  
8 totality of the circumstances and [are] not heavily weighted.”<sup>178</sup> But, injecting an  
9 arbitrary and unreliable factor into a totality-of-the-circumstances analysis does  
10 not make consideration of the factor any less arbitrary. Here, the Department has  
11 failed to proffer any non-arbitrary or capricious basis for considering the  
12 one-time receipt of a fee-waiver as a factor.

13 **j. High school diploma**

14 154. Many commenters stated that considering whether an immigrant has  
15 a high school diploma or comparable educational background will arbitrarily  
16 discriminate against large categories of immigrants, including farm workers and  
17 other trade workers who may have been lawfully present and working for many  
18 years without obtaining such a degree. Several commenters also noted the factor  
19 discriminates in particular against immigrant women, many of whom come from  
20 countries where women are discouraged or prevented from attending school.

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22 <sup>178</sup> 84 Fed. Reg. at 41,424.

1 Other commenters expressed concerns over the arbitrary and undue burden such  
2 a factor would place on disabled immigrants, many of whom often face  
3 significant educational and employment-related obstacles and benefit from  
4 public assistance programs in their pursuit of these goals. In response, the  
5 Department noted merely that it was required to consider an immigrant’s  
6 educational background in the totality of circumstances review. The Department  
7 conceded that “lack of formal education such as the lack of a high school diploma  
8 or other education are generally a negative consideration,” but noted that  
9 employment history and “occupational skills, certifications or licenses” may also  
10 be considered.<sup>179</sup> The Department’s undue emphasis on a formal diploma—even  
11 despite overwhelming evidence and commentary noting that immigrants  
12 frequently work and contribute without any such educational  
13 background—renders the factor arbitrary and capricious.

14 **k. English proficiency**

15 155. Many commenters objected to including an immigrant’s proficiency  
16 in English as a factor in the public charge determination, noting that “requiring  
17 English proficiency would mark a fundamental change from the nation’s historic  
18 commitment to welcoming and integrating immigrants.”<sup>180</sup> Other commenters  
19 noted that English language learners often benefit from receipt of Medicaid or

20 \_\_\_\_\_  
21 <sup>179</sup> 84 Fed. Reg. at 41,430.

22 <sup>180</sup> 84 Fed. Reg. at 41,432.

1 other non-cash public benefits in their pursuit of attending language classes and  
2 becoming fluent. As numerous commenters noted, the Rule will deter these  
3 immigrants from accepting the very benefits that would better enable them to  
4 improve their employability. Other commenters argued that evaluating English  
5 proficiency will unduly burden immigrant women and deaf immigrants;  
6 constitutes discrimination on the basis of national origin; and has no relation to  
7 the rule’s purported goal, as skilled immigrants may readily obtain employment  
8 in fields that do not require English proficiency. According to these commenters,  
9 the Rule would “improperly reject many people with practical job skills doing  
10 essential work in our economy that have limited formal education and English  
11 proficiency highlighted farmworkers as an example.”<sup>181</sup> The Department largely  
12 shrugged off these concerns, however, noting repeatedly that it was not  
13 “mandating English proficiency for admissibility.”<sup>182</sup> And, although the  
14 Department conceded that individuals who lack English proficiency might  
15 already be working or able to obtain employment, it nevertheless argued that  
16 “people with the lowest English speaking ability tend to have the lowest  
17 employment rate, lowest rate of full-time employment, and lowest median  
18 earnings.”<sup>183</sup> The Department’s willful disregard of these comments

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20 <sup>181</sup> 84 Fed. Reg. at 41,434.

21 <sup>182</sup> 84 Fed. Reg. at 41,432.

22 <sup>183</sup> 84 Fed. Reg. at 41,432.

1 demonstrates that the English proficiency factor is entirely arbitrary and  
2 capricious, and its inclusion as only one factor in a totality of circumstances does  
3 not make it any less so.

4 **I. Federalism summary impact statement**

5 156. Although Executive Order 13,132 requires the Department to  
6 produce a federalism summary impact statement, the Department summarily  
7 asserted that the Rule “does not have substantial direct effects on the States” and  
8 the Rule “requires no further agency action or analysis.”<sup>184</sup>

9 157. The Department’s analysis of its obligations under Executive Order  
10 13,132 was insufficient because the Department did not identify the myriad costs  
11 and effects of the Rule on the Plaintiff States. As discussed throughout this  
12 complaint, the Rule has profound direct effects on state and local governments  
13 and will impose substantial costs on state and local governments.

14 158. The Plaintiff States raised the concern about the Proposed Rule’s  
15 lack of federalism summary impact statement in their comment letter—as did  
16 various other commentators. Had OIRA granted the Plaintiff States an  
17 E.O. 12,866 meeting, the Plaintiff States could have discussed this issue with  
18 OIRA.

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<sup>184</sup> 84 Fed. Reg. at 41,481.

1                   **m. Cost-benefit analysis**

2           159. DHS generally failed to conduct a true or adequate cost-benefit  
3 analysis, instead only aiming to quantify the direct reduction in transfer payments  
4 resulting from the Rule. For example, DHS failed to estimate the chilling effects  
5 of the Rule because it was “difficult to predict the rule’s disenrollment impacts  
6 with respect to people who are not regulated by this rule, such as people who  
7 erroneously believe themselves to be affected.”<sup>185</sup> The preamble also repeatedly  
8 diminishes the significance of impacts to those people, businesses, and state  
9 governments that are not “directly” regulated by the Rule. In neglecting to  
10 conduct deeper quantitative analysis of the costs to states or their economies, the  
11 preamble cites, for example, “great uncertainty” to “the broader economy” as a  
12 result of diminished transfer payments.<sup>186</sup>

13           160. With respect to chilling effects, the preamble makes broad,  
14 unsupported assumptions. DHS dismisses widespread confusion that currently  
15 exists and that will be exacerbated by the Rule, saying only that it would be  
16 “unwarranted” for people to disenroll from a benefit if they were not subject to  
17 the Rule and that DHS “will not alter the rule to account for such unwarranted  
18 choices.”<sup>187</sup> This significantly understates the impacts of a drastic change in  
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20           <sup>185</sup> 84 Fed. Reg. at 41,313.

21           <sup>186</sup> 84 Fed. Reg. at 41,472 & 41,478 & 41,480.

22           <sup>187</sup> 84 Fed. Reg. at 41,313.

1 agency position, particularly when combined with other proposed and final  
2 regulatory actions publicized by federal officials.

3 161. In purporting to analyze the number of noncitizens who would  
4 choose to forego benefits to which they are legally entitled, DHS arbitrarily used  
5 a figure of 2.5% of the estimated number of foreign-born noncitizens  
6 participating in any particular program. Instead of actually attempting to  
7 determine the number of people who were expected to disenroll, DHS apparently  
8 selected this figure by using the number of individuals seeking to adjust status  
9 within a given time period.<sup>188</sup>

10 162. DHS downplays the number of impacted individuals by the Rule in  
11 numerous ways. For example, the preamble states that most applicants are  
12 “unlikely to suffer negative consequences from past receipt of public benefits  
13 because they will have been residing outside the United States. . . .”<sup>189</sup> The  
14 preamble then cites statistics showing that only about 33% of the relevant group  
15 of immigrants between fiscal years 2015 and 2017 adjusted their status while in  
16 the United States. However, because the United States admitted over 541 million

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18 <sup>188</sup> Department of Homeland Security, [CIS No. 2499-10; DHS Docket No.  
19 USCIS-2010-0012]; RIN 1615-AA22, Proposed Rule: Inadmissibility on Public  
20 Charge Grounds, Economic Analysis Supplemental Information for Analysis of  
21 Public Benefits Program, Table 4, n. 1.

22 <sup>189</sup> 84 Fed. Reg. at 41,313.



1 nonimmigrants during this time period, this still leaves over 178 million people  
2 residing in the United States during the cited time period who could have been  
3 affected by the Rule, had it been in place at the time. This is but one example of  
4 arbitrary qualitative analysis minimizing the reach of the Rule.

5 163. DHS does not adequately assess the costs to states. While  
6 acknowledging that state and local governments would “incur costs,” DHS goes  
7 on to dismiss these costs as “unclear” and “indirect,” with no substantive  
8 analysis.<sup>190</sup>

9 164. DHS repeatedly cites the Office of Management and Budget’s  
10 Circular A-4 as excusing quantitative or even qualitative analysis of various  
11 impacts. OMB’s Circular A-4 assists agencies in conducting a regulatory analysis  
12 of economically significant actions consistent with Executive Order 12866. Far  
13 from excusing analysis of “chilling effects” on immigrants, costs to state  
14 governments, private businesses such as hospitals, or the economy, Circular A-4  
15 expressly states that agencies should include the monetary values of  
16 “Private-sector compliance costs and savings” and “Government administrative  
17 costs and savings.” Circular A-4 also does not excuse analysis where there is  
18 uncertainty. Rather, it states that while the precise benefits and costs of regulatory  
19 options are not always known, “the probability of their occurrence can often be  
20 developed.”

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22 <sup>190</sup> 84 Fed. Reg. at 41,469-70.

1           165. By focusing only on the reduction in direct transfer payments, DHS  
2 greatly overstates the benefits of the Rule. In many instances, these “savings”  
3 will be offset by even greater costs that are simply shifted to others, including  
4 other federal or state programs, or private parties. DHS’s treatment of the impacts  
5 to the Medicaid program provides a clear example of this deficiency in analysis.  
6 DHS estimates a reduction in transfer payments related to Medicaid of over  
7 \$1 billion.<sup>191</sup> But this estimate fails to take into account increased costs from  
8 emergency services that will result from delaying health care until conditions  
9 become emergent and they are much more costly to treat. At that time, costs are  
10 borne by other federal programs, states, private hospitals and health providers,  
11 and individuals receiving care. For example, in Washington, the Alien  
12 Emergency Medical Program covers certain emergency care for noncitizens. The  
13 program is funded through both state and federal sources. Private medical  
14 providers will also suffer costs by providing uncompensated care. By making no  
15 effort to analyze these resulting costs, DHS has overstated the actual benefits of  
16 the Rule in its cost-benefit analysis.

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19           <sup>191</sup> Department of Homeland Security, [CIS No. 2499-10; DHS Docket No.  
20 USCIS-2010-0012]; RIN 1615-AA22, Proposed Rule: Inadmissibility on Public  
21 Charge Grounds, Economic Analysis Supplemental Information for Analysis of  
22 Public Benefits Program, Table 5.

1           **VI. THE RULE’S CHILLING EFFECTS ON PARTICIPATION IN**  
2           **FEDERAL AND STATE PUBLIC BENEFITS PROGRAMS**

3           166. As the Department itself recognizes, the Rule will cause lawfully  
4 present noncitizens whom Congress specifically made eligible to participate in  
5 federal benefit programs—and U.S. citizens with participating or eligible family  
6 members—to disenroll or forbear enrollment. The Rule does so by making the  
7 receipt of benefits (including five non-cash federal benefits—SNAP, Medicaid,  
8 Section 8 vouchers, Section 8 rental assistance, and public housing subsidies) a  
9 ground for designating a person a public charge. Even harsher, the Rule makes  
10 an immigrant beneficiary’s exclusion virtually inevitable by making receipt of  
11 such benefits a “heavily weighed negative factor” in the determination.

12           167. The chilling effects of the Rule began to materialize long before its  
13 publication, and were observed quickly following the leaks in January 2017 of  
14 the draft Executive Order and in March 2018 of the draft Rule. Due to the  
15 ambiguity and complexity of the Rule, many noncitizens and their families have  
16 foregone and will forego participation in a wide swath of federal, state, and local  
17 benefits. Widespread confusion over which forms of “public benefits” will  
18 trigger a public charge determination will exacerbate the Rule’s harms to the  
19 Plaintiff States and their residents.

20           168. As eligible noncitizens and their families disenroll or refrain from  
21 seeking federal benefits for fear of jeopardizing their ability to immigrate, many  
22 will turn to the Plaintiff States’ programs to fill the gap. Others will refrain from

1 seeking any government assistance at all—including state-funded non-cash  
2 benefits that would not even be subject to the Rule—leading to increased poverty,  
3 homelessness, hunger, poor health, and other social costs. These harms to  
4 individuals and families will place increased downstream financial strain on the  
5 Plaintiff States, including their housing, public health, and education systems.

6 169. The Department admits that the Rule will deter immigrant  
7 participation in public benefits programs, despite Congress’s express  
8 determination allowing immigrant participation.<sup>192</sup> Indeed, in the Department’s  
9 view, the chilling effects are not a vice of the Rule but a virtue—regardless of the  
10 acknowledged decline in health, income, educational opportunities, housing, and  
11 overall quality of life they will cause among millions in our communities.<sup>193</sup> The  
12 Department even suggests that state agencies “advise potential beneficiaries of  
13 the potential immigration consequences of receiving certain public benefits.”<sup>194</sup>  
14 The manifest intent of the Rule is to exclude immigrants this Administration  
15 deems “undesirable” from the United States and, barring that, to exclude them  
16 and their families from the U.S. social safety net, contrary to congressional and  
17 state determinations regarding eligibility.

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20 <sup>192</sup> 83 Fed. Reg. at 51,267.

21 <sup>193</sup> 83 Fed. Reg. at 51,270.

22 <sup>194</sup> 83 Fed. Reg. at 51,174.

1           170. As a result of those chilling effects, implementation of the Rule will  
2 also cause severe and irreparable harm to the Plaintiff States. First, States will  
3 lose federal dollars from benefits programs that they administer to the benefit of  
4 their residents. Additional direct costs to states will result from immigrants who  
5 shift from federal programs to state programs that do not qualify as “public  
6 benefits” under the Rule. At the same time, disenrollment and non-enrollment in  
7 nutrition, health, and other federal and state assistance programs will make many  
8 working class immigrant families less healthy, less productive, more reliant on  
9 state-covered emergency medical care, more likely to experience economic  
10 dislocation and homelessness—all of which will redound to greater strains on  
11 state agencies and programs. Further, the broader chilling effects among all state-  
12 run assistance programs will undermine those programs’ administration and  
13 effectiveness. Those affected programs include, but are not limited to, medical  
14 and healthcare services, food assistance programs, housing benefits, financial and  
15 cash assistance programs, long-term support services for elderly and disabled  
16 residents, education systems, job and employment training programs, and  
17 programs supporting crime victims.

18           171. For any immigrants reviewing this Complaint for guidance on the  
19 types of programs that are deemed a “public benefit” for purposes of the Rule,  
20 the Plaintiff States strongly urge the immigrant to contact the relevant State  
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1 agency. As mentioned throughout, many state programs do not qualify as “public  
2 benefits” under the Rule.

3 **A. Health Care Programs**

4 172. The Plaintiff States manage and administer medical services and  
5 benefits programs such as Medicaid. Some of these programs are jointly funded  
6 by federal and state funds and others by only state funds. As set forth below, the  
7 Rule would imperil the effectiveness of these programs by reducing enrollment,  
8 jeopardizing public health, and dramatically increasing costs to the Plaintiff  
9 States.

10 **1. Federal health care benefits**

11 173. Congress created Medicaid in 1965 to assist states in furnishing  
12 medical assistance to individuals and families.<sup>195</sup>

13 174. Medicaid is jointly funded by the states and the federal government.  
14 A state’s participation in Medicaid is voluntary, but once a state chooses to  
15 participate it must comply with federal statutory and regulatory requirements to  
16 receive federal matching funds.<sup>196</sup>

17 175. Anyone who qualifies under program rules can receive Medicaid.  
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19 \_\_\_\_\_  
20 <sup>195</sup> See Pub. L. 89-97, 79 Stat. 286, *codified as amended at* 42 U.S.C.  
21 § 1396-1.

22 <sup>196</sup> 42 U.S.C. §§ 1396–1, 1396a, 1396b, 1396c.

1 176. States administer Medicaid and generally determine financial  
2 eligibility criteria for participants.

3 177. Federal law requires coverage for certain groups of individuals,  
4 including some low-income families, qualified pregnant women and children,  
5 and individuals receiving Supplemental Security Income. States may offer  
6 coverage for additional groups, such as people receiving home and  
7 community-based services and children in foster care who are not otherwise  
8 eligible. States may extend Medicaid coverage to all children and pregnant  
9 women, including any immigrants lawfully residing in the United States.<sup>197</sup>

10 178. The Affordable Care Act established a new methodology for  
11 determining Medicaid income eligibility. Some individuals are eligible for  
12 Medicaid based on methodology other than income, such as disability. These  
13 changes resulted in greater participation in the Medicaid Program. Thirty-six  
14 states, and the District of Columbia, participated in the Medicaid expansion.

15 179. Over half of all non-elderly adults receiving Medicaid—about  
16 60%—are working. An even greater number of Medicaid recipients—about  
17 79%—are from a home where at least one household member works. Among  
18 adult Medicaid enrollees who work, over half (about 51%) work full-time for the  
19 entire year.

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21 \_\_\_\_\_  
22 <sup>197</sup> 42 U.S.C. § 1396b(v)(4)(A).

1           180. Under the Welfare Reform Act, states may extend Medicaid  
 2 eligibility to lawful permanent residents and all other “qualified” immigrants  
 3 after a five year waiting period.<sup>198</sup> States may also elect to use state-only funds  
 4 to cover qualified immigrants during the five-year ban.<sup>199</sup> Many of the Plaintiff  
 5 States have done so.<sup>200</sup> Although such state-only health benefits do not constitute  
 6 “public benefits” under the Rule’s public charge test, many noncitizens will fear  
 7 that enrollment in state-funded programs (which often have the same name as the  
 8 state’s Medicaid program) will carry adverse immigration consequences.

9           **2. State health care benefits**

10           181. The Plaintiff States manage and administer numerous health care  
 11 services programs, including Medicaid.

12           182. Certain classes of citizens and noncitizens are eligible to participate  
 13 in these state-run medical services programs. If implemented, the Rule would  
 14 result in many otherwise eligible individuals—including citizens—disenrolling  
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16           <sup>198</sup> See 8 U.S.C. § 1613(a).

17           <sup>199</sup> 8 U.S.C. § 1622(a).

18           <sup>200</sup> See ASPE Issue Brief: Overview of Immigrants’ Eligibility for SNAP,  
 19 TANF, Medicaid, and CHIP, Office of the Ass’t Sec’y for Planning & Eval., U.S.  
 20 Dep’t of Health & Human Servs. (Mar. 2012), [https://aspe.hhs.gov/basic-report/  
 21 overview-immigrants-eligibility-snap-tanf-medicaid-and-chip](https://aspe.hhs.gov/basic-report/overview-immigrants-eligibility-snap-tanf-medicaid-and-chip)  
 22 (HHS Issue Brief).



1 or forbearing enrollment for fear of jeopardizing their own or their family  
2 members' immigration status.

3 183. Individuals who are eligible to enroll in these programs but elect not  
4 to participate because of the Rule will likely delay seeking both routine and  
5 necessary medical treatment (including vital preventative services such as  
6 vaccinations) until they require emergency care. Indeed, the Department  
7 essentially concedes this fact, noting that "DHS acknowledges that increased use  
8 of emergency rooms and emergent care as a method of primary healthcare due to  
9 delayed treatment is possible and there is a potential for increases in  
10 uncompensated care in which a treatment or service is not paid for by an insurer  
11 or patient."<sup>201</sup> Individuals who resort to emergency care as a method of primary  
12 healthcare are more likely to experience severe medical conditions, creating  
13 public health concerns and requiring unnecessarily expensive emergency medical  
14 treatment, the overwhelming cost of which will be borne by the Plaintiff States  
15 and their private hospitals.

16 184. As set forth below, implementing the Rule will cause irreparable  
17 harm to the Plaintiff States by undermining the functions and effectiveness of  
18 these health care services programs.

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22 <sup>201</sup> 84 Fed. Reg. at 41,384.

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**a. The Plaintiff States’ medical assistance programs**

185. Each of the Plaintiff States manages and administers a Medicaid program for its residents. In addition, the Plaintiff States administer numerous other health care programs, some with combined federal and state funds and some with state-only funds. With community, state, and national partners, the Plaintiff States provide evidence-based, cost-effective services that support the health and well-being of individuals, families, and communities in their States.

186. Many of the Plaintiff States’ Medicaid programs include coverage groups encompassing citizens and noncitizens, including adults between the ages of 19 and 65; certain parents and caretakers; the elderly; the blind and disabled; those using long-term support services or hospice; and Medicare Savings Program enrollees.

187. The Washington Health Care Authority (HCA) administers Washington’s Medicaid program, as well as other federal and state-funded medical assistance programs. HCA has over 1,300 employees and a biennial budget of over \$20 billion.

188. Washington Apple Health is the name for Washington’s medical assistance programs, which include not only the state Medicaid program, which is covered under the Rule, but also other programs that are not expressly covered but are likely to be affected, including because of the Rule’s chilling effect on eligible individuals. This chilling effect on programs not expressly covered under

1 the Rule will extend to CHIP and various health-assistance programs funded  
2 solely by the state.

3 189. Through the Apple Health program, Washington purchases health  
4 care for approximately 1.9 million people. In state fiscal year 2019, Washington's  
5 HCA is expected to spend \$10.1 billion to support Apple Health and its  
6 Community Behavioral Health Services program. Of this amount, \$6.8 billion  
7 will come from federal contributions.

8 190. Washington's Apple Health currently covers adults with incomes up  
9 to 138 percent of the federal poverty level under the Adult Medical Program and  
10 provides these individuals with essential health coverage, including preventative  
11 care, inpatient hospitalization, prescription drugs, and many other health services.

12 191. The Massachusetts Executive Office of Health and Human Services  
13 (EOHHS) manages Massachusetts's Medicaid program, which is covered by the  
14 Rule, as well as other health assistance programs that are not expressly covered  
15 but are likely to be affected by the Rule's chilling effect on eligible individuals.  
16 EOHHS comprises 12 agencies, has over 22,000 employees, and oversees an  
17 annual budget of over \$22 billion.

18 192. Massachusetts's Medicaid program and CHIP are combined into  
19 one program, MassHealth, through which Massachusetts provides healthcare  
20 benefits to almost 1.8 million adults, children, and people with disabilities. In  
21 state fiscal year 2019, Massachusetts's MassHealth spent \$16.5 billion to support  
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1 MassHealth medical and behavioral programs and services to covered  
2 populations. Of this amount, \$4.3 billion came from state contributions.  
3 Massachusetts's MassHealth provides essential health coverage to adults and  
4 children, including inpatient and outpatient services, preventive care, mental  
5 health and addiction services, and various other services and benefits.

6 193. The Virginia Department of Medical Assistance Services (DMAS)  
7 administers Virginia's Medicaid program, which is subject to the Rule, as well  
8 as various other programs that the Rule does not expressly cover. Virginia's  
9 Medicaid program currently covers adults with incomes up to 138% of the federal  
10 poverty level and provides a full range of inpatient and outpatient services,  
11 pharmacy, mental health and addiction treatment, long term services and  
12 supports. In 2018, 983,000 Virginians received Medicaid benefits. That number  
13 is projected to rise to as many as 1,406,000 people in 2019.

14 194. The Maryland Department of Health runs the state Medicaid  
15 program. Through Maryland's medical assistance programs, the state provides  
16 assistance to 1,160,067 enrollees.

17 195. In New Mexico, 840,860 people were enrolled in the state Medicaid  
18 program in 2018. The program, which is covered by the Rule, is administered by  
19 the State's Human Services Department.

20 196. In New Jersey, the State's Medicaid and CHIP programs together  
21 serve approximately 1.8 million low- and moderate-income residents—or about  
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1 20% of the State’s population. Notably, New Jersey is one of the most diverse  
2 states in the country, with 22% of its residents having been born in a foreign  
3 country.

4 197. The Rhode Island Executive Office of Health and Human Services  
5 and the Department of Human Services administer the State’s Medicaid program,  
6 as well as other federal- and State- funded medical assistance programs. Under  
7 the State’s Medicaid expansion, eligible Rhode Island residents between the ages  
8 of 19 and 64 with incomes up to 133% of the federal poverty level are eligible  
9 for Medicaid coverage. Rhode Island’s health care services cover approximately  
10 300,000 Rhode Island residents, including citizens and noncitizens.

11 198. The Minnesota Department of Human Services administers  
12 Minnesota’s Medicaid program, known as Medical Assistance, as well as other  
13 related federal and state-funded health care assistance programs, collectively  
14 known as Minnesota Health Care Programs. Through the State’s Medical  
15 Assistance program, Minnesota purchases health care for approximately  
16 1,031,888 people.

17 199. The Plaintiff States also provide supplemental health care programs  
18 specifically targeted to children. Although the Rule exempts from its public  
19 charge test Medicaid benefits received by immigrants under age 21 and pregnant  
20 women,<sup>202</sup> it nevertheless will likely undermine these supplemental children’s

21 \_\_\_\_\_  
22 <sup>202</sup> 84 Fed. Reg. at 41,297.

1 health care programs because of (1) the chilling effect the Rule will have on  
2 eligible participants; and (2) the programs' close and intertwined relationship to  
3 Medicaid benefits (which are generally considered "public benefits"). For  
4 example, Virginia's CHIP program, called Family Access to Medical Insurance  
5 Security (FAMIS), provides free health coverage to children in households at or  
6 below 205% of the poverty level. In fiscal year 2018, Virginia's CHIP program  
7 alone provided medical care services to more than 200,000 children and pregnant  
8 women. Virginia relies on the CHIP Program to assist in providing low-income  
9 children with health insurance coverage and keeping all children in Virginia  
10 healthy. In fiscal year 2017, Virginia received approximately \$291.1 million  
11 federal allotment under the CHIP program.

12 200. Washington Apple Health for Kids similarly provides free coverage  
13 to children in households at or below 210% of the federal poverty level. For a  
14 monthly premium, the program also provides coverage to households at or below  
15 312% of the federal poverty level. Washington Apple Health for Kids is partially  
16 funded through CHIP, which receives matching federal funds under the Social  
17 Security Act<sup>203</sup> and provides low-income children with essential health coverage,  
18 including preventive care, inpatient hospitalization, prescription drugs, and many  
19 other health services.

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21 \_\_\_\_\_  
22 <sup>203</sup> See 42 U.S.C. § 1397dd.

1           201. As part of the Washington Apple Health for Kids program,  
2 Washington uses federal funds related to CHIP to provide services for  
3 low-income children whose families are slightly above the income cutoff for free  
4 child health coverage. CHIP dollars also fund other Washington programs and  
5 services, such as medical coverage for lawfully present noncitizen children, and  
6 prenatal coverage for pregnant women ineligible for Medicaid because of their  
7 citizenship status.

8           202. The Plaintiff States also manage and administer several related  
9 health care programs, which are not considered “public benefits” under the Rule  
10 but which will likely be affected by its chilling effect on eligible participants. For  
11 example, the Washington Family Medical Program provides coverage to adults  
12 with countable income at or below the applicable Medicaid standard who have  
13 dependent children living in their home under age 18. Similarly, Washington’s  
14 Pregnancy and Family Planning Program provides coverage to pregnant women  
15 at or below 193% of the federal poverty level without regard to citizenship or  
16 immigration status.

17           203. Washington provides a host of other medical services programs that  
18 likewise are not directly covered by the Rule but are likely to be harmed by it,  
19 including the Community and Behavioral Health Services Program; the Breast  
20 and Cervical Cancer Treatment Program for Women; the Refugee Medical  
21 Assistance Program; the Alien Emergency Medical Program; the Supplemental  
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1 Security Income Program; Healthcare for Workers with Disabilities; the  
2 Medically Needy Program; the Medicare Savings Program; and Long-Term  
3 Services and Supports and Hospice.

4 204. Similarly, Virginia state agencies administer a host of additional  
5 medical services that are not covered by the Rule but are likely to be affected by  
6 it, including community mental health services through Community Service  
7 Boards; newcomer refugee health program; breast and cervical cancer prevention  
8 and treatment; labor and delivery services, and dialysis services.

9 205. Massachusetts similarly administers various other medical services  
10 programs that, while not covered by the Rule, are likely to be harmed by it. These  
11 include programs targeted towards infectious and chronic disease prevention,  
12 substance abuse treatment and prevention, cancer screening and diagnosis, and  
13 sexual and domestic violence prevention.

14 206. Many of the Plaintiff States also provide state-only-funded health  
15 coverage to qualified immigrants prior to the five-year ban. Those states include  
16 Illinois, Massachusetts, Minnesota, New Mexico, Virginia, and Washington.<sup>204</sup>

17 **b. Irreparable harm to medical assistance programs**

18 207. The Rule will cause irreparable harm to the Plaintiff States' medical  
19 assistance programs. For example, the Rule will result in (1) a loss of medical  
20 care and healthcare insurance for the Plaintiff States' residents; (2) higher and  
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22 <sup>204</sup> HHS Issue Brief at 5–6.



1 more frequent emergency services costs and uncompensated care for the Plaintiff  
2 States; (3) severe public health concerns, including by deterring eligible  
3 individuals from accessing routine preventative medical care such as  
4 vaccinations; and (4) significant harm to the Plaintiff States' sovereign interests  
5 in the effective administration of their health services programs.

6 208. The Rule will cause a devastating loss of health coverage under  
7 government-sponsored health programs in the Plaintiff States. If the Rule is  
8 implemented, the Plaintiff States will experience disenrollment rates for  
9 noncitizens ranging from 15 to 35%, based on metrics and data analysis from the  
10 Kaiser Family Foundation, a non-profit foundation focused on providing the  
11 United States public with unbiased research and journalism on major health care  
12 issues.<sup>205</sup>

13 209. Below are specific examples of the types of harms the Plaintiff  
14 States and their residents will experience.

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18 <sup>205</sup> See S. Artiga, R. Garfield, A. Damico, Estimated Impacts of the  
19 Proposed Public Charge Rule of Immigrants and Medicaid (Henry J. Kaiser  
20 Family Foundation Oct. 11, 2018), [https://www.kff.org/disparities-policy/issue-  
21 brief/estimated-impacts-of-the-proposed-public-charge-rule-on-immigrants-  
22 and-medicaid/](https://www.kff.org/disparities-policy/issue-brief/estimated-impacts-of-the-proposed-public-charge-rule-on-immigrants-and-medicaid/).

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**(1) Plaintiff States’ residents will lose medical care and become uninsured**

210. In Washington, as of October 31, 2017, there were 107,244 noncitizens insured for health coverage under Apple Health. These enrollees will be deterred from using government health insurance and government-funded health services by the Rule.

211. An additional 140,612 Washington families had a member of a household who might be subject to a public charge determination while another household member is receiving Apple Health coverage. Although the Rule does not expressly consider public benefits accessed by another member of the immigrant’s household,<sup>206</sup> members of mixed-status households will fear accessing Apple Health-covered services to which they are legally entitled, resulting in public health concerns and increased costs due to delays in accessing preventative care, vaccinations, prenatal care, and wellness checks.

212. Based on projected disenrollment rates in Washington the Rule will result in an annual reduction in medical and behavioral care in Washington of between \$42.6 million and \$99.4 million.

213. Based on projected disenrollment rates in Washington the Rule will cause approximately 10,000 to 24,000 lawfully present adults to lose medical care annually and become uninsured.

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<sup>206</sup> 84 Fed. Reg. at 41,370.

1           214. Based on projected disenrollment rates in Washington the Rule will  
2 cause approximately 2,600 to 6,000 undocumented adults and children to lose  
3 Medicaid annually and become uninsured.

4           215. The severe effects of such a loss of coverage could also result in a  
5 reduction of health care jobs and supporting services, particularly in rural regions  
6 of Washington.

7           216. In Massachusetts, as of December 2018, approximately 264,000  
8 MassHealth members were noncitizens, including 52,000 children. Six thousand  
9 of these children were enrolled in CHIP.

10           217. Based on projected disenrollment rates in Massachusetts the Rule  
11 will cause approximately 39,600 to 92,400 lawfully present MassHealth  
12 members to lose medical care annually and become uninsured.

13           218. Based on projected disenrollment rates in Massachusetts the Rule  
14 will cause approximately 7,800 to 18,200 citizen or lawfully present noncitizen  
15 children to lose MassHealth medical coverage annually and become uninsured.

16           219. The effects of the Rule, however, are not merely limited to deterring  
17 individuals who may be subject to a public charge determination from  
18 participating in assistance programs specifically defined as “public benefits.” The  
19 Rule will also likely have a chilling effect on individuals who are not subject to  
20 it and on assistance programs that are not considered “public benefits” under the  
21 analysis.

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1           220. For example, for many families in Massachusetts, some household  
 2 members will be subject to a public charge determination while others will not,  
 3 and some family members may receive benefits that are part of the public charge  
 4 analysis while others receive benefits not subject to the rule. The Massachusetts  
 5 Health Connector estimates that as of December 2018, up to 60,000 enrollees live  
 6 in households where participation in Massachusetts’s health care benefits  
 7 programs could result in negative immigration consequences under the Final  
 8 Rule for at least one family member. Because of the complexity of determining  
 9 these impacts and disenrolling only those family members from only those  
 10 benefits that could have negative impacts, however, whole families may opt to  
 11 simply withdraw their participation from the Massachusetts health insurance  
 12 exchange.

13   **(2) Shift of healthcare costs to the Plaintiff States**

14           221. The harms to the Plaintiff States will include an increase in  
 15 emergency and uncompensated care, which refers to unreimbursed medical  
 16 services provided by hospitals to patients resulting in charity care or bad debts.

17           222. Individuals who lose their health insurance coverage will likely  
 18 delay seeking medical care until their conditions require emergency treatment.  
 19 When these individuals present at a hospital emergency room for such treatment,  
 20 the Plaintiff States will ultimately bear the more expensive cost of their care.

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1 Further, because their conditions are more serious, they will require greater  
2 resources to treat.

3 223. Many of the Plaintiff States have made significant gains in reducing  
4 their uninsured populations, all of which will be undermined by implementation  
5 of the Rule. Between 2013 and 2016, for example, Washington significantly  
6 reduced its rate of uninsured residents, from 14% in 2013 to 5.4% in 2016. The  
7 State's reduction in its number of uninsured residents is associated with a parallel  
8 reduction in uncompensated care for medical services, which dropped from  
9 \$2.638 billion in 2013 to \$932 million in 2016.

10 224. Similarly, Virginia has reduced its number of uninsured residents  
11 with the state's January 1, 2019 expansion of its Medicaid program. As of  
12 July 2019, over 300,000 adults in the state have newly enrolled in the program.

13 225. In Maryland, the uninsured rate likewise fell by more than 64%  
14 between 2013 and 2017. The drop in uninsured rates closely aligns with a  
15 reduction in uncompensated care: From fiscal year 2013 to 2015, hospital  
16 uncompensated care costs in Maryland declined by approximately \$311 million.

17 226. Because of the Public Charge Rule, however, the Plaintiff States  
18 stand to lose all these gains. For example, Massachusetts foresees a substantial  
19 increase in the provision of uncompensated care across the Commonwealth due  
20 to loss of health coverage resulting from the Rule. Safety net providers such as  
21 hospitals and community health centers will disproportionately bear the financial  
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1 | burden of providing uncompensated care, and in turn, the demand on state  
2 | programs that compensate providers for such care will increase. The state's  
3 | EOHHS estimates that Massachusetts hospitals are in danger of losing almost  
4 | \$457 million in Medicaid and CHIP funding because of the chilling effect of the  
5 | Rule on otherwise-eligible individuals.

6 |         227. Because the Rule will reduce the number of insured residents and  
7 | increase the amount of individuals who rely on emergency treatment for their  
8 | primary source of medical care, uncompensated care in the Plaintiff States will  
9 | rise. This increase will result in higher medical bills and health care costs charged  
10 | by hospitals, undermining the Plaintiff States' efforts to reduce their uninsured  
11 | populations and harming their economies.

12 |                                   **(3) Significant public health concerns prompted by**  
13 |                                   **reduced preventive care**

14 |         228. By deterring individuals from accessing the government-sponsored  
15 | healthcare coverage to which they are legally entitled, the Final Rule discourage  
16 | these individuals from engaging in routine medical care such as wellness exams  
17 | and vaccinations.

18 |         229. A general decline in engagement with such routine medical  
19 | preventive services, including vaccinations, risks increasing the spread of viruses  
20 | and communicable diseases in the Plaintiff States. As a result, the Rule threatens  
21 | to cause dangerous public health hazards for the Plaintiff States and their  
22 | residents.

1 230. DOJ has previously recognized that discouraging eligible  
2 immigrants from accessing these health care benefits may lead to the very same  
3 public health concerns cited by the Plaintiff States. As noted above, in 1999 DOJ  
4 proposed a rule, 64 Fed. Reg. 28,676, stating: “Immigrants’ fears of obtaining  
5 these necessary medical and other benefits are not only causing them  
6 considerable harm, but are also jeopardizing the general public. For example,  
7 infectious diseases may spread as the numbers of immigrants who decline  
8 immunization services increase.”

9 **(4) Harm to the Plaintiff States’ sovereign interests in**  
10 **the successful operation of their health care**  
11 **systems**

12 231. In addition to the above costs, implementation of the Rule will also  
13 harm the Plaintiff States’ sovereign interests in administering their health benefits  
14 systems.

15 232. The Plaintiff States have carefully developed state-funded health  
16 care programs to fill gaps in Medicaid and to provide coverage to financially or  
17 medically vulnerable individuals, including noncitizens. Although the Rule  
18 expressly applies only to Medicaid-related health benefits, the Plaintiff States’  
19 own programs are often closely intertwined with their Medicaid programs, and  
20 the Rule will cause noncitizens and mixed-status families to forgo health  
21 coverage to which they are legally entitled—even when such coverage would not  
22 be considered a negative factor under the Department’s public charge test. This

1 chilling effect will undermine the comprehensive network of services the Plaintiff  
2 States have developed to address their unique public health needs.

3 233. The Rule would, for example, undermine Massachusetts's ability to  
4 achieve its policy of universal health coverage among its residents. As of 2017,  
5 97.2% of Massachusetts residents are covered by health insurance, the highest  
6 insurance coverage rate in the nation. This is largely due to watershed health  
7 reform legislation enacted by the state in 2006, including state subsidy programs  
8 for low- and moderate-income individuals and a state-level individual mandate  
9 to have health insurance.

10 234. The Department's highly restrictive, complex, and vague treatment  
11 of public benefits, however, threatens to upend the system of incentives and  
12 disincentives that informs the choices of individuals and families enrolling in  
13 health insurance through Massachusetts's health insurance marketplace.

14 235. Since 2006, Massachusetts has required that most adult  
15 Massachusetts residents have health coverage or pay a penalty through their tax  
16 returns. The Rule, however, will interfere with Massachusetts's ability to  
17 maintain this requirement, particularly for any residents who would face adverse  
18 immigration consequences by virtue of accessing health coverage.

19 236. About 260,000 Massachusetts residents individually purchase  
20 health coverage through the Health Connector, which procures high-quality plans  
21 at competitive prices that residents can access. Any disenrollment that will follow  
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1 from the Rule will diminish the collective impact of individuals purchasing health  
2 coverage and make Massachusetts's health insurance marketplace less  
3 competitive. A less competitive health insurance marketplace will put at risk the  
4 progress Massachusetts has made towards universal health coverage for all its  
5 residents.

6 237. In Massachusetts, individuals and small businesses share the same  
7 risk pool, insurance products, and premiums. The Massachusetts Health  
8 Connector's data shows that on average, noncitizen enrollees have 25% lower  
9 medical claims than their citizen counterparts, which is attributable to the overall  
10 lower age of noncitizens and their lower utilization of medical services. A decline  
11 in enrollment or retention of coverage for noncitizens as a result of the Rule could  
12 impact the overall risk pool in Massachusetts, which could in turn lead to monthly  
13 premium increases for citizens and noncitizens alike. Based on the merged  
14 structure of the insurance risk pool in Massachusetts, such impacts can flow  
15 beyond the Health Connector and cause premiums to increase for not only the  
16 small business community but potentially throughout the health insurance  
17 market.

18 238. Federal regulation requires that state health exchanges use a single  
19 streamlined application that collects the information needed to determine an  
20 applicant's eligibility for a qualified health plan, health coverage subsidies,  
21 Medicaid, CHIP, or a basic health plan.

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1           239. In Massachusetts, all applicants for federally funded and state  
2 funded health insurance—including Medicaid, CHIP, and ConnectorCare—use  
3 a uniform application portal, and after applying are matched with the appropriate  
4 program for which they are determined eligible. The chilling effect of the Rule  
5 will likely require Massachusetts to create new forms, policies, and procedures  
6 for its various health care programs and services to ensure that benefits applicants  
7 are aware of the potential public charge consequences of their application and  
8 can choose to apply only for those programs which are not considered as part of  
9 the public charge analysis.

10           240. Additionally, MassHealth and Health Connector may have to  
11 expand its customer service support to answer questions about public charge  
12 consequences from potentially affected individuals. MassHealth and the Health  
13 Connector would have to absorb the costs and administrative burden for these  
14 modifications.

15           241. Further, the Plaintiff States will be required to cover expenses  
16 associated with adopting new laws, regulations, and administrative practices,  
17 policies, and procedures as a result of the Public Charge Rule. Those changes  
18 will be necessary to adapt to and mitigate the effects of enrollment decisions by  
19 noncitizens and mixed-status families, as well as the public health consequences  
20 for their reduced access to health care services.

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1     **B.     Food Assistance Programs**

2           242. The Plaintiff States manage and administer various state and  
3     federally funded food assistance programs for eligible individuals and families,  
4     including noncitizens. Implementation of the Public Charge Rule, however, will  
5     irreparably harm the Plaintiff States by undermining the effectiveness of these  
6     programs, as eligible individuals—including working families and their  
7     children—will opt not to participate for fear of jeopardizing their immigration  
8     status. This reduction in participation will lead to significant public health  
9     concerns, including child hunger and malnourishment.

10          **1.     Federal Food Assistance Benefits**

11          243. In 1977, Congress created the federal Food Stamp Program, known  
12     since 2008 as the Supplemental Nutrition Assistance Program (SNAP), which  
13     provides food purchasing assistance to low-income individuals and families.<sup>207</sup>

14          244. SNAP benefits are provided on a “household” basis. For purposes  
15     of SNAP eligibility, a “household” is defined as “an individual who lives alone  
16     or who, while living with others, customarily purchases food and prepares meals  
17     for home consumption separate and apart from others; or a group of individuals  
18     who live together and customarily purchase food and prepare meals together for  
19     home consumption.”<sup>208</sup>

20     \_\_\_\_\_

21           <sup>207</sup> See 7 U.S.C. § 2013 (2018).

22           <sup>208</sup> 7 U.S.C. § 2012(m).

1           245. Under federal law, SNAP is available to households with income at  
2 or below 130% of the federal poverty level; a net monthly income after  
3 deductions for housing, child care and other expenses at less than or equal to  
4 100% of the federal poverty level; and with assets under the amount set in the  
5 applicable federal regulations.

6           246. The average monthly SNAP benefit per household is  
7 \$253—or \$8.40 per day, per household. SNAP households may purchase food  
8 by using the benefit at one of the quarter million retailers authorized by the  
9 federal Food and Nutrition Service to participate in the program.

10           247. SNAP imposes work requirements on program participants. Federal  
11 law requires that able-bodied adult SNAP recipients who are not exempt register  
12 to work, accept a job if offered, and not quit a job without good cause. The  
13 Welfare Reform Act limits SNAP benefits for able-bodied adults without  
14 dependents to 3 months of assistance within a 36 month period unless they are  
15 participating in work activities for at least 20 hours per week. States also operate  
16 SNAP Employment and Training (E&T) programs, which help participants build  
17 job skills, receive training, find work, and increase work experience.

18           248. About 14.9 million workers—or about 10% of workers  
19 nationwide—are from households that received SNAP benefits over the past  
20 year.

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1           249. Under the Welfare Reform Act, adult immigrants with lawful  
2 permanent residency status, and other “qualified” immigrants, are eligible for  
3 SNAP after five years.<sup>209</sup> The five-year ban does not apply to children,  
4 immigrants with 40 qualifying quarters of work, or to members of the military  
5 and veterans (or their spouses), all of whom are immediately eligible for SNAP  
6 benefits upon adjustment to lawful permanent resident status.<sup>210</sup>

7           250. States have the authority to use state-only funds to provide nutrition  
8 assistance benefits to non-qualified immigrants and qualified immigrants before  
9 the five-year SNAP ban. Plaintiff States Minnesota and Washington have done  
10 so. Although such state-only nutrition benefits do not constitute “public benefits”  
11 under the Department’s public charge test, many noncitizens will fear that  
12 enrollment in state-funded programs will carry adverse immigration  
13 consequences, and therefore disenroll or forbear enrollment.

14           251. As set forth below, implementing the Rule will cause irreparable  
15 harm to the Plaintiff States by undermining the functions and effectiveness of  
16 these food assistance programs.

17           **2. State food assistance programs**

18           252. The Plaintiff States manage and administer various food assistance  
19 programs, including SNAP. These programs are intended to reduce food  
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21           <sup>209</sup> 8 U.S.C. § 1612(a)(2)(L).

22           <sup>210</sup> 8 U.S.C. § 1612(a)(2)(B)–(C) & (J).

1 | insecurity and assist in fulfilling the food and nutritional needs of some of the  
2 | states' most vulnerable populations.

3 |       253. Certain classes of citizens and noncitizens are eligible to participate  
4 | in these state-run food assistance programs. If implemented, the Rule would  
5 | result in many otherwise eligible individuals—including citizens—disenrolling  
6 | or refraining from participating for fear of jeopardizing their or their family  
7 | members' immigration status.

8 |       254. As set forth below, implementing the Rule will cause irreparable  
9 | harm to the Plaintiff States by undermining the functions and effectiveness of  
10 | their food assistance programs.

11 |               **a. The Plaintiff States' food assistance programs**

12 |       255. All Plaintiff States manage and administer a SNAP program for their  
13 | residents. In addition, the Plaintiff States administer numerous other food  
14 | assistance programs, some using combined federal and state funds and some  
15 | using state-only funds. While the Rule considers only SNAP-related benefits as  
16 | “public benefits” under the public charge test, other state-only food assistance  
17 | programs are likely to be harmed because of the broad chilling effects on eligible  
18 | individuals.

19 |       256. Washington's Basic Food program assists eligible children and  
20 | adults in purchasing food. The Basic Food program combines federally funded  
21 | SNAP benefits with the state-funded Food Assistance Program for legal  
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1 immigrants (FAP). FAP is available to individuals who are lawfully present and  
2 meet all eligibility requirements for SNAP except for their citizenship or  
3 immigration status.

4 257. Virginia's food assistance program includes SNAP (including debit  
5 card technology for accessing SNAP benefits); nutrition education; supplemental  
6 nutrition program for women, infants, and children; nutrition program for seniors  
7 (Fresh Market Fresh for Seniors), national school lunch program, food banks, and  
8 meals on wheels.

9 258. Massachusetts's Department of Transitional Assistance (MA-DTA)  
10 assists and empowers low-income individuals and families to meet their basic  
11 needs, improve their quality of life, and achieve long-term economic  
12 self-sufficiency through training programs, and cash and food benefits, such as  
13 SNAP. Massachusetts also funds a supplement to SNAP through the state budget.  
14 In state fiscal year 2019, the SNAP state supplement was \$300,000. Another  
15 \$300,000 for the state supplement has been appropriated for state fiscal year  
16 2020.

17 259. Maryland's Food Supplement Program reached 684,000 Maryland  
18 residents in fiscal year 2017, or 11% of the state population. The state  
19 supplemented the program with approximately \$3.3 million in state funds during  
20 state fiscal year 2019, and over \$4.1 million in fiscal year 2020.

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1           260. In New Mexico, approximately 25% of the State’s residents receive  
2 SNAP benefits, with enrollment capped for a family of four at the federal poverty  
3 limit of \$25,100. In March 2018, for example, there were 456,190 people enrolled  
4 in the state’s program.

5           261. New Jersey administers a SNAP program that helps provide food  
6 assistance to residents suffering from food insecurity. An estimated 1 in 10 New  
7 Jersey residents are food insecure—which translates to more than 900,000  
8 residents, including nearly 270,000 children.

9           262. In Rhode Island, the Department of Human Services administers the  
10 SNAP program to low-income families and individuals with income less than  
11 185% of the federal poverty level. Rhode Island residents who meet eligibility  
12 requirements may receive up to \$642 per month in food-assistance based on their  
13 family size and income level.

14                   **b. Irreparable harm to food assistance programs**

15           263. The Plaintiff States’ food assistance programs will be irreparably  
16 harmed by the Rule, which will result in, among other things, (1) more vulnerable  
17 families and individuals in the Plaintiff States experiencing food insecurity; and  
18 (2) severe public health concerns, including child hunger and malnutrition.

19           264. The Rule will cause a devastating loss of food assistance for working  
20 families and individuals in the Plaintiff States. This will occur in SNAP-related  
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1 programs that are “public benefits” under the Rule as well as other state-only  
2 food assistance programs that are not “public benefits” under the Rule.

3 265. For example, using metrics and data analysis from the above-noted  
4 Kaiser Family Foundation study, the Washington State Department of Social and  
5 Health Services (DSHS) has estimated the effects the Rule will have on food  
6 assistance participation in the state.<sup>211</sup> Specifically, DSHS estimates the Rule will  
7 lead to disenrollment rates ranging from 15 to 35% among food assistance  
8 enrollees in cases involving a noncitizen. DSHS further estimates that full  
9 implementation of the Rule will reduce combined food and cash assistance to  
10 Washington families by up to \$55.3 million.

11 266. In Massachusetts, each year between 2009 and 2012, SNAP benefits  
12 kept 141,000 residents out of poverty, including 57,000 children. It is estimated  
13 the Rule will jeopardize approximately \$122 million in SNAP benefits, or almost  
14 10 percent of Massachusetts’s SNAP program.

15 267. In New Jersey, it is estimated that as many as 50,000 residents who  
16 are eligible for and receiving SNAP benefits might be affected by the chilling  
17 effect of the Rule.

18 268. Below are examples of the specific types of harms the Plaintiff  
19 States and their residents will experience.

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<sup>211</sup> See S. Artiga, R. Garfield, A. Damico, *supra*.

1 **(1) Increased Hunger and Food Insecurity in the**  
2 **Plaintiff States' Residents**

3 269. The Plaintiff States' food assistance programs are specifically  
4 tailored to provide food assistance to low-income individuals who otherwise  
5 likely could not afford to purchase sufficient food for themselves and their  
6 families.

7 270. Individuals who are eligible to participate in the Plaintiff States'  
8 food assistance programs but who forgo participation because of the Rule are  
9 likely to experience greater food insecurity and will struggle to provide food for  
10 themselves and their families.

11 271. In Massachusetts, speculation about the impact of the Rule has  
12 already spurred a decline in numbers of participants in public nutrition programs  
13 such as the Special Supplemental Nutrition Program for Women, Infants, and  
14 Children (WIC), even though the program is not a "public benefit" under the  
15 Rule. Since February 2018, when Reuters released a draft of the Proposed Rule,  
16 which included WIC as a public benefit, there has been a 2,000 person decrease  
17 from 2017 levels in WIC participation in Massachusetts.

18 272. The number of individuals and households disenrolling from or  
19 forgoing participation in the Plaintiff States' SNAP programs, which are  
20 considered "public benefits" under the Rule, is likely to be even greater.

21 273. This increase in food insecurity and hunger directly undermines the  
22 purposes and effectiveness of the Plaintiff States' food assistance programs,

1 which are intended to alleviate hunger and improve nutrition for the States’ most  
2 vulnerable residents.

3 **(2) Significant public health concerns**

4 274. The Plaintiff States’ food assistance programs are specifically  
5 tailored to assist working families who might not otherwise be able to afford  
6 sufficient food for their children.

7 275. The projected reduction in the number of immigrants and  
8 mixed-status families participating in these programs because of fears associated  
9 with the Rule will undermine the programs and lead to significant public health  
10 concerns, including increases in child hunger and malnutrition.

11 276. Children who experience hunger, food insecurity, and  
12 malnourishment are more likely to suffer deficits in cognitive development,  
13 behavioral problems, and poor health, along with reduced learning and academic  
14 achievement, all of which tends to diminish future earning potential. Children  
15 who are hungry will experience more difficulty in school and will require greater  
16 resources from the Plaintiff States’ educational systems.

17 277. Further, eligibility for many federal school breakfast and lunch  
18 programs—which provide free or reduced price meals to eligible students—are  
19 based at least in part on enrollment in SNAP. Thus, although the Rule does not  
20 expressly consider receipt of free or reduced price school meals as a “public  
21 benefit” under the public charge test, the Rule will undoubtedly have a negative  
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1 effect on these programs by limiting enrollment in the underlying programs. In  
2 this way, the Rule will negatively affect far more assistance programs than only  
3 the limited programs it expressly identifies as public benefits.

4 278. The Plaintiff States will ultimately bear the higher healthcare and  
5 other costs associated with treating the medical conditions resulting from this  
6 unnecessary child malnourishment.

7 279. For this reason, the increase in food insecurity resulting from the  
8 Rule would undermine not only the Plaintiff States' interests in healthy, stable,  
9 productive residents and workforces, but also a purported goal of the Rule  
10 itself—to “better ensure” that immigrants “are self-sufficient, i.e., do not depend  
11 on public resources to meet their needs.”

### 12 **C. Housing Assistance Programs**

13 280. The Plaintiff States manage and administer various state and  
14 federally funded housing assistance programs for eligible individuals and  
15 families, including noncitizens. The Rule, however, will irreparably harm the  
16 Plaintiff States by undermining the effectiveness of these programs, as eligible  
17 individuals and their families will disenroll or refrain from seeking housing  
18 assistance for fear of jeopardizing their ability to immigrate.

#### 19 **1. Federal housing assistance benefits**

20 281. In general, individuals and families with incomes at or below 50 to  
21 80% of their area median income are eligible for federal housing assistance.  
22

1 Federal housing assistance is not an entitlement program, and for families that  
2 make it on the waiting list, the average wait time to receive a housing voucher is  
3 2.5 years. Thus, federal housing assistance serves only about 25% of eligible  
4 households.

5 282. The Housing Act of 1937<sup>212</sup> provides for subsidies to be paid from  
6 the U.S. government to local public housing agencies to improve living  
7 conditions for low-income families (Subsidized Housing Program). There are  
8 currently approximately 1 million units in the federal public housing subsidies  
9 program. Nearly two-thirds of public housing subsidies households are  
10 considered “extremely low income,” with incomes below 30% of the Area  
11 Median Income and an average annual income of \$14,605. Approximately 3.3  
12 million children live in such subsidized public housing.<sup>213</sup>

13 283. The Section 8 Housing Choice Voucher Program (Housing Voucher  
14 Program) is the federal government’s major program for assisting low-income  
15 families, the elderly, and the disabled to afford decent, safe, and sanitary housing  
16 in the private market.<sup>214</sup> Housing choice vouchers are administered locally by  
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19 <sup>212</sup> Pub. L. 75-412, 50 Stat. 888.

20 <sup>213</sup> Public Housing, National Housing Law Project, [www.nhlp.org/  
21 resource-center/public-housing/](http://www.nhlp.org/resource-center/public-housing/) (last visited Aug. 14, 2019).

22 <sup>214</sup> 42 U.S.C. §§ 1437f, 1437u.

1 public housing agencies, which receive federal funds from the U.S. Department  
2 of Housing and Urban Development (HUD).

3 284. The Section 8 Project-Based Rental Assistance (PBRA) program  
4 also provides housing assistance to low-income families.<sup>215</sup> This HUD program  
5 provides critical affordable housing stock to more than 2 million people—in 1.2  
6 million households—across the country. HUD contracts with private owners to  
7 rent units in their housing developments, paying a subsidy that helps pay tenants’  
8 rent.

9 285. The Housing Voucher and PBRA programs (together, Section 8  
10 programs) and the Subsidized Housing Program help prevent homelessness and  
11 other kinds of housing instabilities. To participate in the Section 8 programs,  
12 families must demonstrate incomes at or below certain threshold levels; an  
13 absence of criminal- or drug-related records and evictions; and proof of  
14 citizenship or eligible immigrant status.

15 286. Under the Welfare Reform Act and the Housing and Community  
16 Development Act of 1980, lawful permanent residents and certain other qualified  
17 immigrants are eligible for Section 8 programs.<sup>216</sup> The Welfare Reform Act’s five  
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20 <sup>215</sup> 42 U.S.C. 1437f; 24 CFR parts 5, 402, 880–81, 883–84, and 886.

21 <sup>216</sup> Pub. L. 96-399, 94 Stat. 1614, Sec. 214, *codified as amended at*  
22 42 U.S.C. § 1436a(a); 8 U.S.C. § 1611(a) & (c).

1 year ban applicable to Medicaid, SNAP, and other “federal means-tested public  
2 benefits” does not apply to Section 8 programs.<sup>217</sup>

3 287. The Rule treats as “public benefits” (1) Section 8 Housing  
4 Assistance under the Housing Choice Voucher program; (2) Section 8  
5 Project-Based Rental Assistance; and (3) Public Housing under Section 9 of the  
6 Housing Act of 1937. Under the Rule, an immigrant’s participation in any of  
7 these programs could constitute a heavily weighed negative factor favoring a  
8 public charge determination, even though Congress has explicitly authorized  
9 eligible noncitizens to participate in those programs.<sup>218</sup>

## 10 2. State housing assistance programs

11 288. The Plaintiff States manage and administer a variety of housing  
12 assistance programs, including by using a combination of state, federal, and  
13 private funding to provide safe and stable shelter options for eligible individuals  
14 and their families. Certain classes of citizens and noncitizens are eligible to  
15 participate in these housing assistance programs.

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17 <sup>217</sup> 8 U.S.C. § 1613(a); 8 C.F.R. § 213a.1; *Eligibility Restrictions on*  
18 *Noncitizens: Inapplicability of Welfare Reform Act Restrictions on Federal*  
19 *Means-Tested Public Benefits*, Dep’t of Housing and Urban Devel., 65 Fed. Reg.  
20 49994-01, Aug. 16, 2000.

21 <sup>218</sup> 83 Fed. Reg. at 51,289–90 (to be codified at 8 C.F.R.  
22 § 212.21(b)(1)(ii)(B) & (b)(2)(iv)).

1           289. The chilling effect of the Rule, however, will deprive vulnerable  
2 individuals of opportunities to obtain such housing assistance, and irreparably  
3 harm the functioning of the Plaintiff States’ programs.

4                   **a. The Plaintiff States’ housing assistance programs**

5           290. All Plaintiff States manage and administer housing assistance  
6 programs. Working together with community, state, and national partners, the  
7 Plaintiff States provide effective programs seeking to prevent and alleviate  
8 homelessness and housing instability for their most vulnerable residents.  
9 Although the Department does not consider receipt of state-only housing  
10 assistance as a “public benefit”—unlike the federal programs described  
11 above—these state programs are likely to be harmed by the Rule’s broad chilling  
12 effects on eligible individuals and families who forgo participation for fear of  
13 jeopardizing their ability to immigrate.

14           291. For example, the Washington Department of Commerce administers  
15 Washington’s state and federal housing assistance funding. The Department of  
16 Commerce manages the Washington State Housing Trust Fund, a 33-year-old  
17 source of capital to develop and preserve affordable housing for low-income and  
18 vulnerable Washingtonians. County governments act as lead grantees and are  
19 responsible for directing and managing the local homeless response system.  
20 These local homeless response systems assist homeless families and individuals  
21 who need help obtaining or maintaining permanent housing.

22



1           292. Washington’s housing assistance programs receive approximately  
2 \$196 million per year in funding from a variety of sources, including private  
3 funders as well as federal, state, and local governments. Using these funds, the  
4 programs seek to both (1) stabilize households that are currently in permanent  
5 housing but are at risk of homelessness; and (2) provide homeless individuals and  
6 families with emergency shelter, temporary housing, or placement into  
7 permanent housing.

8           293. DSHS administers the Washington Housing and Essential Needs  
9 (HEN) Referral Program, which provides access to essential needs items and  
10 potential rental assistance for low income individuals and families who are  
11 unable to work for at least 90 days due to a physical and/or mental incapacity.  
12 DSHS provides this assistance even if the individuals are ineligible to receive  
13 federal funds.

14           294. The Massachusetts Department of Housing and Community  
15 Development (MA-DHCD) similarly administers numerous federal and state  
16 housing programs and services to promote safe and affordable housing for  
17 residents. In particular, MA-DHCD oversees the operations of approximately 240  
18 local housing authorities as well as programs that provide federal- and  
19 state-funded rental vouchers to low-income families; assist families in moving  
20 from shelter into housing or in avoiding homelessness altogether; and provide  
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1 shelter access for all low-income families that become homeless if they meet  
2 certain eligibility criteria.

3 295. Massachusetts's state budget allocated over \$500 million for  
4 homelessness and housing safety net programs and services in fiscal year 2019.  
5 The Massachusetts Rental Voucher Program (MRVP), which provides both  
6 mobile and project-based vouchers, alone received \$100 million in state funding,  
7 and Massachusetts's Emergency Assistance (MA-EA) program, through which  
8 MA-DHCD funds family shelters, received over \$175 million.

9 296. The Virginia Department of Housing and Community Development  
10 (VDHCD) and Virginia Housing Development Authority (VHDA), under the  
11 oversight of Virginia's Secretary of Commerce and Trade, administer Virginia's  
12 housing assistance programs. VDHCD creates safe and affordable housing by  
13 regulating building and fire codes while investing more than \$100 million each  
14 year into affordable housing and community development projects throughout  
15 Virginia. VHDA promotes access to home loans, homeowner and homebuyer  
16 education to ensure quality, affordable housing for all in Virginia.

17 297. VDHA also administers the federal Housing Choice Voucher and  
18 Housing Credit programs in Virginia, and administers multiple programs that  
19 offer state and federal funding to address homelessness. For example, the  
20 Virginia Homeless Solutions Programs is a homeless and special needs housing  
21 funding source that supports the development and implementation of localized  
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1 emergency crisis response systems with housing-focused, coordinated  
2 community-based activities. VDHC also administers the housing opportunities  
3 for persons with AIDS program, HUD funding dedicated to the housing needs of  
4 low income people living with HIV/AIDS.

5 **b. Irreparable harms to the Plaintiff States' housing**  
6 **assistance programs**

7 298. The Rule will lead to reduced immigrant participation in federal  
8 housing assistance programs for eligible residents of the Plaintiff States.

9 299. Further, while the Rule does not treat the above state housing  
10 assistance programs as "public benefits," because of the complexity of the  
11 regulatory regime and widespread public confusion and fear, it will nevertheless  
12 deter many immigrants and mixed-status families from participating in state-  
13 funded housing assistance programs for which they are eligible.

14 300. For these reasons, the Rule will cause irreparable harm to the  
15 Plaintiff States. Among other harms, the Rule will (1) lead to increased numbers  
16 of homeless individuals and families in the Plaintiff States; and (2) result in  
17 poorer health, educational, and other outcomes for vulnerable children who reside  
18 in the Plaintiff States and who, because of their or their family member's  
19 immigration status, will be deprived of opportunities for emergency shelter or  
20 placement into permanent housing.

21 301. Below are examples of the specific types of harms the Plaintiff  
22 States and their residents will experience.

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**(1) Homelessness and other public health consequences**

302. If the Rule is implemented, it will cause increased numbers of individuals and families to experience homelessness in the Plaintiff States, as individuals who are otherwise eligible for such assistance will forgo seeking it for fear of jeopardizing their or their family member’s ability to immigrate.

303. The Rule provides that officials will consider Public Housing and Section 8 participation in making a determination regarding whether someone is likely to become a public charge. This will deter many eligible households from seeking benefits and will delay placement of homeless families into permanent housing.

304. For example, in Washington, over 78,000 low-income households use Public Housing and Section 8 assistance to afford modest rents and make ends meet. Most of these individuals are either working themselves or come from working families that cannot afford fair market rents.

305. In Massachusetts, approximately 175,000 households receive Section 8 or Public Housing assistance. Massachusetts’s MRVP supported 5,100 households as of January 2013.

306. In Maryland, approximately 84,000 households receive Section 8 or Public Housing assistance. Approximately 48,000 Maryland households receive federal rental assistance through the Section 8 Housing Choice Voucher Program.

1           307. Further, many immigrant workers are employed in typically  
2 low-wage fields such as agriculture, construction, building and grounds cleaning  
3 and maintenance, and food service, which make it difficult for them to afford  
4 current market-based rents.

5           308. In Massachusetts, large numbers of low-wage immigrant workers  
6 are employed in the health care system, serving in positions such as home health  
7 aides and nursing assistants. A minimum wage worker in Massachusetts would  
8 need to work, on average, at least 104 hours per week to afford a two-bedroom  
9 apartment.

10           309. Washington currently provides 50,000 families per year with rental  
11 assistance, and about 15,000 of these families have children. About 14% of these  
12 families who receive rental assistance and have children are immigrant families.

13           310. Washington has recently faced increased homelessness, with an  
14 estimated 3,285 homeless families with children. About 14% of the State's  
15 homeless families with children are immigrant families. Available data suggests  
16 the Rule is likely to compel over 10,000 immigrants and their families in  
17 Washington to give up the lifeline assistance that prevents them from suffering  
18 homelessness. For other eligible families, implementation of the Rule will  
19 significantly delay their placement into permanent housing.

20           311. The homeless population in Massachusetts increased by 2,500  
21 people, or 14%, in 2018. Massachusetts estimates that about 3,600 families with  
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1 children and pregnant individuals are in the MA-EA shelter system on any given  
2 night. This number does not include families who are doubled up, living in unsafe  
3 conditions, or sleeping in their cars.

4 312. Further, because many of the placements into permanent housing  
5 are related to Public Housing or Section 8 programs (17% of placements in  
6 Washington last year), the Rule will hinder the Plaintiff States' ability to  
7 successfully transition homeless individuals and their families into permanent  
8 housing, significantly harming their residents who are otherwise unable to obtain  
9 permanent housing.

10 **(2) Poorer health, educational, and other outcomes**

11 313. The Rule will also lead to other harmful related costs for the Plaintiff  
12 States and their homeless and housing-insecure populations.

13 314. Access to good housing is well-recognized as a social determinant  
14 of public health, as families and individuals without stable housing are more  
15 likely to use emergency services and require hospitalizations.

16 315. Data shows that children who suffer homelessness and housing  
17 insecurity experience dramatically poorer health outcomes, including having  
18 twice as many respiratory infections and being three times more likely to be  
19 hospitalized for asthma. This creates significant public health concerns for the  
20 Plaintiff States.

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1 316. Further, children who experience homelessness and housing  
2 insecurity also tend to suffer worse educational outcomes and generally have  
3 access to fewer and less profitable work opportunities. This results in harm to the  
4 Plaintiff States' economies and job markets.

5 317. Directly contrary to the supposed purpose of the Rule, needlessly  
6 depriving children of access to housing assistance only makes it more likely these  
7 children will require additional assistance as they grow older and will carry with  
8 them the adverse effects of their childhood homelessness.

9 318. The many negative effects of increased homelessness in families  
10 with children will irreparably harm the families, their children, and the Plaintiff  
11 States, which will ultimately bear responsibility for the many increased costs and  
12 other consequences associated with childhood homelessness.

13 **D. Cash Assistance Programs**

14 319. The Plaintiff States manage and administer various state and  
15 federally funded cash assistance programs for eligible individuals and families,  
16 including noncitizens. Under the Rule, however, eligible individuals and their  
17 families will opt not to seek critical financial assistance for fear of jeopardizing  
18 their immigration status.

19 **1. Federal cash assistance benefits**

20 320. Congress created the Temporary Assistance to Needy Families  
21 (TANF) program in 1996 as part of the Welfare Reform Act.  
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1           321. TANF provides grant funds to states to provide families with  
2 financial assistance and related support services including childcare assistance,  
3 job preparation, and work assistance.

4           322. To qualify for TANF, individuals must either be pregnant or  
5 responsible for a child under 19, have a low or very low income, and be  
6 unemployed, under-employed, or about to be unemployed.

7           323. As the first word in the program name suggests, TANF was designed  
8 as a temporary benefit to help otherwise self-sufficient, working families get back  
9 on their feet while experiencing joblessness, unanticipated adverse life events, or  
10 other hard times.

11           324. Federal law imposes work requirements applicable to TANF  
12 participants. It requires states administering TANF to (1) ensure that cash  
13 assistance recipients are working within 24 months of receiving assistance, or  
14 sooner if the state deems them ready for work, and (2) achieve annual work  
15 participation rates. Fifty percent of all TANF families with one work-eligible  
16 adult and 90 percent of families with two work-eligible adults must engage in  
17 specified work or work-related activities for a minimum number of weekly hours.

18           325. The Welfare Reform Act allows qualified immigrants, including  
19 lawful permanent residents, to participate in TANF after five years in qualified  
20 immigrant status. Certain qualified immigrants are exempt from the five year ban,  
21 including members of the military and veterans (and their spouses and children).

22



1           326. States are permitted under the Welfare Reform Act to provide  
2 state-funded cash assistance benefits to nonexempt qualified immigrants during  
3 the five year TANF ban to replace the loss of federal benefits, as well as to  
4 provide state-only-funded assistance to nonqualified immigrants.

5           327. The Rule treats TANF as a “public benefit” program in which an  
6 immigrant’s participation could constitute a heavily weighed negative factor  
7 favoring a public charge determination.

8           328. The Rule also treats some state-only-funded cash assistance as  
9 “public benefits” in which an immigrant’s participation could constitute a heavily  
10 weighed negative factor favoring a public charge determination. The Rule’s  
11 definition of public benefit includes “[s]tate or local cash benefit programs for  
12 income maintenance (often called ‘General Assistance in the State context, but  
13 which may exist under other names).”<sup>219</sup> That ambiguous definition does not  
14 provide clear notice of the state cash assistance programs in which an  
15 immigrant’s participation may “heavily” weigh in favor of a public charge  
16 determination.

17           329. As set forth below, implementing the Rule will cause irreparable  
18 harm to the Plaintiff States by undermining the functioning and effectiveness of  
19 their cash assistance programs.

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22           <sup>219</sup> 84 Fed. Reg. at 41,501 (to be codified at 8 C.F.R. § 212.21(b)(1)(iii)).

1           **2. State cash assistance programs**

2           330. All Plaintiff States manage and administer various financial  
3 assistance programs intended to provide modest monetary assistance to eligible  
4 residents and their families for maintaining financial stability in certain  
5 circumstances. Certain classes of citizens and noncitizens are eligible to  
6 participate in these programs.

7           331. The Rule, however, considers as “public benefits” not only federal  
8 cash assistance programs such as TANF but also state and local cash benefit  
9 programs for income maintenance. As a result, the Rule will deprive vulnerable  
10 individuals and their families of opportunities to access these programs and  
11 achieve financial stability.

12                   **a. The Plaintiff States’ cash assistance programs**

13           332. All Plaintiff States manage and administer cash assistance programs  
14 to assist eligible individuals and their families in dealing with financial hardship.

15           333. For example, the Washington Department of Social and Health  
16 Services administers Washington’s TANF program as well as several other cash  
17 assistance programs for eligible individuals.

18           334. Washington’s TANF program provides cash assistance to certain  
19 parents or caregivers and pregnant individuals to bolster their ability to support  
20 their families’ foundational needs, including a safe home, healthy food, reliable  
21 transportation, and school supplies.

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1           335. During the 2017 to 2019 biennium, the Washington TANF program  
2 cost over \$300 million in combined federal and state service and administrative  
3 costs, including over \$90 million in total state funding.

4           336. Washington complements TANF with a state-funded program  
5 called State Family Assistance (SFA). SFA is available to individuals who meet  
6 TANF's income requirements but are ineligible for TANF for other reasons,  
7 including certain noncitizens. Washington extends SFA cash assistance to  
8 qualified immigrants during the five year TANF ban, as well as to non-qualified  
9 immigrants who are residents of Washington and legally present in the United  
10 States.<sup>220</sup> Some families receive a mix of TANF and SFA based on the eligibility  
11 or immigrant status of each family member. Under the Rule, SFA constitutes a  
12 state cash benefit program for income maintenance in which an immigrant's  
13 participation could constitute a "heavily weighed negative factor" favoring a  
14 public charge determination.

15           337. The Virginia Department of Social Services administers Virginia's  
16 TANF program. Virginia's TANF program provides eligible families with a  
17 monthly cash payment to meet their basic needs. Virginia's TANF program  
18 emphasizes personal responsibility. Participants may be provided with services  
19 such as job skills training, work experience, job readiness training, child care  
20 assistance, transportation and other work related expenses. The Virginia TANF

21 \_\_\_\_\_  
22           <sup>220</sup> WAC 388-400-0010, 388-424-0001, 388-468-0005.

1 program also includes an employment advancement program that is designed to  
2 provide proven service approaches and strategies to help current and former  
3 TANF clients to prepare to enter, succeed, and advance in the workplace. The  
4 expected outcome of this program are improved job placement, improved job  
5 retention, higher employment wages upon entry, and increased wage gains from  
6 job advancement.

7 338. In Massachusetts, MA-DTA manages aid programs designed to help  
8 low-income individuals and families escape poverty, including the Transitional  
9 Aid to Families with Dependent Children (TAFDC), Massachusetts's TANF cash  
10 assistance program.

11 339. Massachusetts's TAFDC program provides cash assistance, child  
12 care, and transportation support for job assistance to families with children and  
13 pregnant women with little or no assets or income, to meet their emergency and  
14 transitional needs.

15 340. In state fiscal year 2019, Massachusetts's TAFDC program spent  
16 \$841 million, including \$382 million in state funds.

17 341. The Plaintiff States administer other programs that, due to the Rule's  
18 ambiguity, may or may not be considered "public benefits" in which an  
19 immigrant's participation would weigh in favor of a public charge determination.

20 342. For example, Washington's Aged, Blind, or Disabled Cash  
21 Assistance Program is a state-funded program that provides financial assistance  
22

1 to certain eligible, low-income individuals who are age 65 or older, blind, or are  
2 determined likely to meet specific Supplemental Security Income disability  
3 criteria expected to last at least 12 consecutive months. Washington also  
4 administers the state-funded Pregnant Women Assistance Program, which  
5 provides financial assistance to certain pregnant noncitizens ineligible for TANF;  
6 the Consolidated Emergency Assistance Program, which provides emergency  
7 assistance to families and pregnant women; the Diversion Cash Assistance  
8 Program, which provides alternative assistance to TANF for families with  
9 short-term financial needs; the State Supplemental Program, which assists certain  
10 individuals while the Social Security Administration determines their eligibility  
11 for Supplemental Security Income; and the Additional Requirements for  
12 Emergent Needs Program, which assists individuals in keeping housing or  
13 utilities.

14 343. In Massachusetts, MA-DTA similarly administers Emergency Aid  
15 for Elderly, Disabled, and Children (EAEDC), a wholly state-funded cash  
16 assistance program for persons who are age 65 or older, disabled adults,  
17 caretakers, and children who are not able to get TAFDC.

18 344. Due to the Rule's ambiguity, it is uncertain whether the Department  
19 would treat an immigrant's participation in these state-only cash assistance  
20 programs as a "heavily weighed negative factor" favoring a public charge  
21 determination. Regardless, the chilling effect of such ambiguity will be  
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1 substantial, resulting in many individuals opting not to seek state-funded cash-  
2 assistance benefits for which they may be eligible.

3 **b. Irreparable harm to the Plaintiff States' cash assistance**  
4 **programs**

5 345. The Rule will cause irreparable harm to the Plaintiff States and their  
6 cash assistance programs, as eligible individuals and families facing financial  
7 hardship will elect not to access the program benefits for fear of jeopardizing  
8 their own or a family member's immigration status. Due to the Rule's ambiguity,  
9 as well as widespread fear and confusion among immigrant communities, those  
10 chilling effects will reduce enrollment both in cash assistance programs in which  
11 a noncitizen's participation could trigger a public charge determination and in  
12 programs the Department would not consider a state or local cash benefit program  
13 for income maintenance.

14 346. The Rule will thus irreparably harm the Plaintiff States by increasing  
15 the number of their residents whose financial hardships lead to loss of medical  
16 coverage or housing.

17 347. For example, Washington's DSHS estimates that full  
18 implementation of the Rule will reduce combined food and cash assistance to  
19 Washington families by approximately \$23.7 to \$55.3 million as eligible  
20 individuals either terminate their benefits or decline to seek assistance.

21 348. The Rule will irreparably harm the Plaintiff States by deterring  
22 individuals from seeking temporary, hardship-based cash assistance they are

1 otherwise eligible to receive. Without access to temporary financial assistance,  
2 these individuals and their families are less likely to be able to weather  
3 unexpected financial hardships, increasing the likelihood they will lose valuable  
4 stability in the form of housing, transportation, or medical coverage or care.

5 349. The resulting economic dislocations will cause significant harm to  
6 the Plaintiff States, which will ultimately bear the greater costs associated with  
7 noncitizens' or mixed-status families' loss of financial stability, medical  
8 coverage, or housing.

9 **E. Other State Benefits Programs**

10 350. In addition to irreparably harming the Plaintiff States by  
11 undermining the proper functioning and effectiveness of their medical, housing,  
12 food, and cash assistance programs, implementation of the Rule will also imperil  
13 a host of other critical, state-managed assistance programs.

14 351. These various state-administered programs include but are not  
15 limited to long-term care for elderly and disabled residents, job and employment  
16 training programs, support and advocacy services for crime victims and energy  
17 assistance.

18 352. Although the Rule does not expressly consider participation in these  
19 programs as a "public benefit" under the public charge test, the programs will  
20 nevertheless be harmed by the chilling effect the Rule has on eligible individuals.  
21 As set forth below, implementing the Rule will cause irreparable harm to the  
22

1 Plaintiff States and their residents by undermining the functions and effectiveness  
2 of these and similar assistance programs.

3 **1. Long term services and supports for elderly and disabled**  
4 **residents**

5 353. The Plaintiff States manage and administer various programs to  
6 provide care for elderly and disabled residents.

7 354. Long Term Services and Supports (LTSS) is a specific category of  
8 care that includes both paid and unpaid medical and personal care services, which  
9 may be provided in a person's home, a community residential setting, or an  
10 institution such as a nursing home.

11 355. For example, in Washington, the Aging and Long-Term Support  
12 Administration (AL TSA) is an agency within DSHS that administers LTSS  
13 services to the State's low-income elderly and disabled individuals.

14 356. In Virginia, DMAS and the Department of Aging and Rehabilitative  
15 Services (DARS) are agencies with the Secretary of Health and Human  
16 Resources (HSS) that administer long terms services and supports for  
17 low-income elderly people and people with disabilities.

18 357. There is rapidly growing demand for workers who provide LTSS  
19 (called Direct Care Workers) because of the increasing population of individuals  
20 over the age of 65.

21 358. According to the U.S. Department of Health and Human Services,  
22 demand for Direct Care Workers nationally will grow from 2.3 million in 2015



1 to 3.4 million in 2030. Without a ready supply of workers, Plaintiff States’  
2 programs and elderly and disabled residents will struggle to recruit sufficient  
3 staff.

4 359. According to the U.S. Government Accountability Office,  
5 approximately 23% of Direct Care Workers are immigrants.

6 360. The average annual earnings for these jobs are at or below the  
7 federal poverty level. Accordingly, many of these workers rely on public  
8 assistance for health care, food, and housing. For example, in Massachusetts over  
9 40 percent of direct care workers depend on Medicaid, SNAP, or other benefits.  
10 Under the Rule, however, these workers will be discouraged from seeking such  
11 benefits, as doing so might jeopardize their immigration status.

12 361. Other factors for consideration under the Rule, including credit  
13 history, education, and language, are all likely to increase the chances many  
14 Direct Care Workers will be considered a “public charge.”

15 362. Under the Rule, many immigrants who are currently Direct Care  
16 Workers or would become employed in such positions would likely be  
17 considered a public charge. A decrease in LTSS labor will increase the risk of  
18 injury, institutionalization, and death for the Plaintiff States’ many vulnerable  
19 elderly and disabled residents, including citizens and noncitizens.

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1           363. This will also increase costs for states like Washington to ensure that  
2 their elderly and disabled residents are properly cared for, including by increasing  
3 costs to Medicaid in the Apple Health program.

4           364. The resulting labor shortage will also force more citizens into  
5 nursing homes, destroying decades of federal and state efforts to keep aging  
6 individuals in their own homes. The Plaintiff States will therefore suffer a  
7 diminished ability to administer elderly and disabled support services in a manner  
8 approved by the States' residents, legislatures, and governors.

9           **2. Job and employment training programs**

10           365. The Plaintiff States manage and administer various job and  
11 employment training programs. Although these programs are not identified as  
12 "public benefits" under the Rule, they are likely to be affected by the chilling  
13 effect the rule will have on eligible populations.

14           366. For example, in Washington, DSHS administers employment and  
15 training programs designed to provide recipients of cash and food benefits with  
16 opportunities to gain skills, secure employment, and escape poverty.

17           367. In combination with other state agencies and community partners,  
18 DSHS develops custom plans to support people in building skills through  
19 employment and education training. DSHS tailors these programs to serve  
20 particular populations, including programs specifically designed to assist  
21 noncitizen families.

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1 368. Washington also has a WorkFirst program for families receiving  
2 TANF or SFA benefits. The WorkFirst program provides families with  
3 opportunities to engage in work activities that support financial stability and  
4 resilience, including a Limited English Proficiency Pathway Program offering  
5 employment services, job skills training, and English-as-a-Second-Language  
6 services to nearly 5,000 people every year. DSHS infuses state funding into this  
7 program to serve noncitizens who are ineligible for federally-funded services.

8 369. Further, the Washington State Basic Food Employment and  
9 Training program (BFET) provides job search training, self-directed job search,  
10 educational services, skills training, and other employment opportunities to Basic  
11 Food (SNAP) recipients. This is an example of a program that, although not  
12 directly identified as a “public benefit” itself under the Rule, is likely to be  
13 severely affected because of its close relation to programs that are considered  
14 public benefits, such as SNAP.

15 370. BFET is an important part of the State’s comprehensive workforce  
16 development system, as the program serves the needs of low-income individuals,  
17 displaced workers, and employers by encouraging financial independence from  
18 public assistance through skill acquisition, personal responsibility, and gainful  
19 employment.

20 371. Washington dedicates state funding to support a BFET program  
21 designed specifically to provide culturally and linguistically appropriate services  
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1 to more than 1,000 noncitizens in Washington. This program is available only to  
2 those individuals eligible to receive other federal benefits.

3 372. In Virginia, the Department of Social Services (DSS) administers  
4 employment and training programs designed to provide recipients of cash and  
5 food benefits with opportunities to gain skills, secure employment, and get out of  
6 poverty. The Department for Aging and Rehabilitative Services provides  
7 employment and vocational rehabilitation services for low-income elderly people  
8 and individuals with disabilities and their families. The Virginia Department for  
9 the Blind and Vision Impaired provides employment services for low-income  
10 blind and visually impaired individuals and their families. In combination with  
11 other state agencies and community partners, DSS supports people in building  
12 skills through employment and education training. DSS has specific programs  
13 that service particular populations, including programs specifically designed to  
14 assist noncitizen families.

15 373. Virginia provides job skills, work experience, job readiness training,  
16 child care assistance, transportation, and other work related expenses to families  
17 receiving TANF. Virginia also provides former TANF clients opportunities to  
18 prepare to enter, succeed, and advance in the workplace.

19 374. In Massachusetts, the Commonwealth's Department of Transitional  
20 Assistance administers and funds, in cooperation with the federal government, a  
21 skills and employment program, Path to Work, for SNAP recipients who need  
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1 help finding work. The program reflects the agency’s statutory mandate to  
2 connect participating SNAP recipients with “education, employment and training  
3 activities.” Because of the program’s close relationship to SNAP, however, it is  
4 likely to be severely affected by implementation of the Rule. Even though the  
5 program is not itself identified as a “public benefit” under the Rule, SNAP  
6 benefits are considered to be “public benefits” that may result in a public charge  
7 determination. Thus, eligible immigrants are likely to forgo participating in either  
8 program, particularly where participation in one is contingent on participation in  
9 the other.

10 375. Due to the Rule’s ambiguity and because it considers SNAP  
11 enrollment in making public charge determinations, eligible immigrants are  
12 likely to be uncertain of whether their participation in one of the above  
13 employment training programs would be a negative factor weighing in favor of a  
14 public charge determination. Immigrants will therefore be strongly discouraged  
15 from accessing the above programs, many of which are based on SNAP  
16 enrollment. In this way, the Rule affects far more benefits programs than are  
17 identified in the text of the rule.

18 376. Reduced participation in the above training programs will  
19 negatively impact the Plaintiff States’ residents, employers, economy, and  
20 pursuit of their policy priorities.  
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1           377. Residents who might otherwise have participated in the programs  
2 will be deprived of the opportunity to develop their skills, increase their earning  
3 potential, and improve their quality of life. Ironically, the change will leave these  
4 residents more vulnerable and more likely, in the long term, to rely on emergency  
5 public assistance. Employers will lose access to a more highly trained pool of  
6 potential employees. The Plaintiff States' economies will lose the benefits of  
7 would-be participants' increased productivity. The Plaintiff States will be unable  
8 to achieve their policy goals of providing the greatest possible access to  
9 workforce development in order to maximize the public welfare.

10           378. Lower participation in job and employment training programs will  
11 also have the self-defeating result of making fewer people capable of becoming  
12 independent from public benefits, directly contradicting the supposed purpose of  
13 the Rule.

14           379. In sum, the Rule will harm the Plaintiff States' sovereign interests  
15 in administering comprehensive work training programs critical to their  
16 continued economic growth and success.

17           **3. Irreparable harm to the Plaintiff States' support services for**  
18           **crime victims**

19           380. The Plaintiff States manage and administer various services to  
20 advocate on behalf of and provide support for crime victims. Although these and  
21 similar programs are not considered "public benefits" under the Rule, they are  
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1 nevertheless likely to be negatively affected by the chilling effect the Rule will  
2 have on individuals who are eligible to access these programs.

3 381. For example, Washington State has established the Office of Crime  
4 Victims Advocacy (OCVA) to serve as an advocate for crime victims in  
5 Washington. OCVA's mission is to support, heal, and assist crime victims in  
6 reaching their full potential.

7 382. OCVA supports crime victims in obtaining services and resources,  
8 assists communities with planning and implementing the provision of services to  
9 crime victims, advises local and state government agencies that assist crime  
10 victims, and administers grant funds for community programs that support crime  
11 victims.

12 383. The Virginia General Assembly promulgated the Virginia Victim  
13 and Witness of Crime Act to service crime victims, including providing support  
14 related to financial assistance and social services in Virginia. The Virginia  
15 Victims Fund (VVF) is a state program created to help victims of violent crimes  
16 with out of pocket expenses, including medical bills, prescriptions, funeral  
17 expenses, lost wages, temporary housing, counseling services, and many other  
18 expenses. The Victims Services Team within the Virginia's Department of  
19 Criminal Justice Services (DCJS) provides grant funding, training, technical  
20 assistance, and written resources to programs and individuals serving crime  
21 victims. The DCJS and the VVF are the lead coordinating agencies in Virginia  
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1 for crime victims during critical events and emergencies under emergency  
2 management plans.

3 384. The Rule will deter immigrant crime victims from accessing vital  
4 benefits for themselves or their families, including children and elderly relatives  
5 trying to escape from or address the trauma of domestic violence, sexual assault,  
6 unlawful labor or sex trafficking, and other crimes.

7 385. The Rule will significantly harm the Plaintiff States' efforts to assist  
8 crime victims, as many victims and their families will sacrifice basic needs,  
9 safety, and health in the form of food assistance, housing assistance, and medical  
10 insurance, all to avoid potentially adverse immigration consequences.

## 11 **VII. THE RULE'S OTHER ADVERSE IMPACTS**

12 386. As set forth in detail above, the Rule's chilling effects will cause  
13 far-reaching harms to the Plaintiff States and their residents due to the loss of  
14 public benefits and services to which they are legally entitled. In addition to those  
15 harms, the Rule will have a vast array of other adverse impacts, including  
16 (1) wrongfully denying marriage-based green cards to half of applicants due to  
17 the irrationally high income threshold; (2) destabilizing the Plaintiff States'  
18 workforces by erecting arbitrary new barriers to immigration and adjustment or  
19 change of status; (3) reducing overall economic output and tax revenues in the  
20 Plaintiff States; (4) imposing a disparate burden on communities of color,



1 particularly Latinos; and imposing a disparate burden on individuals with  
2 physical or mental disabilities.

3 **A. Family Reunification Impacts**

4 387. The INA requires most green card applicants to have a  
5 sponsor—typically a U.S. citizen-spouse or other family member—with a high  
6 enough income to ensure the immigrant would not become a public charge.<sup>221</sup> By  
7 statute, the sponsor must “agree[] to provide support to maintain the sponsored  
8 alien at an annual income that is not less than 125 percent of the Federal poverty  
9 [guide]line” (FPG) based on household size.<sup>222</sup> When the sponsor is the green  
10 card applicant’s spouse, the applicant’s income may be included “to meet the  
11 income requirement” of 125% of FPG.<sup>223</sup> The affidavit of support provision thus  
12 reflects a Congressional determination that an income of at least 125% of FPG is  
13 sufficient to ensure a lawful permanent resident will not become a public charge.

14 388. The Rule eviscerates Congress’s intent in establishing the 125% of  
15 FPG threshold for an affidavit of support. It does so by doubling the income

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17 <sup>221</sup> 8 U.S.C. §§ 1182(a)(4)(C), 1183a.

18 <sup>222</sup> 8 U.S.C. § 1183a(a)(1)(A); *see also* 8 C.F.R. § 213a.2 (“In order for the  
19 intending immigrant to overcome the public charge ground of inadmissibility, the  
20 sponsor must demonstrate the means to maintain the intending immigrant at an  
21 annual income of at least 125 percent of the Federal poverty line.”).

22 <sup>223</sup> 8 C.F.R. § 213a.2(i)(3).

1 threshold to 250% of FPG at which an immigrant’s household income would  
2 constitute a “heavily weighed positive factor” in the public charge test.<sup>224</sup> Even  
3 with a household income exceeding 250% of FPG, the Department would  
4 apparently retain the discretion to deny the sponsored immigrant’s green card  
5 application based on its other public charge factors.<sup>225</sup> The Department provides  
6 no rational reason for disregarding the statutory 125% FPG threshold and  
7 adopting the significantly higher 250% threshold instead. In doing so, the  
8 Department is attempting to rewrite the INA by regulation.

9 389. The Department’s new 250% FPG threshold would significantly  
10 inhibit the goal of family reunification that has long been a cornerstone of U.S.  
11 immigration policy. According to the analysis of one public commenter, 54%of  
12 the foreign-born spouses who are currently eligible for green cards would become  
13 ineligible under the Rule’s higher income threshold.<sup>226</sup> The Rule will force  
14 200,000 U.S. citizens to choose whether to leave the United States or live apart  
15 from their spouse, disrupting family cohesion and stability in the Plaintiff States.

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19 <sup>224</sup> 84 Fed. Reg. at 41,504 (to be codified at 8 C.F.R. § 212.22(2)(c)(2)(i)).

20 <sup>225</sup> *See generally*, 84 Fed. Reg. at 41,504 (to be codified at 8 C.F.R.  
21 § 212.22).

22 <sup>226</sup> Boundless Cmt. at 48.

1     **B. Workforce Impacts**

2           390. Non-cash public assistance benefits are essential for workers to  
3 remain employed, employable, and productive. For example, access to affordable  
4 health insurance helps workers to enter and remain in the workforce.<sup>227</sup> Workers  
5 with health insurance miss approximately 75% fewer work days and are more  
6 productive at work than their uninsured peers.<sup>228</sup> The Rule will therefore make  
7 the workforces in the Plaintiff States less healthy and less productive, reducing  
8 overall economic output.

9           391. As explained above, the Rule will significantly reduce the labor  
10 supply of direct care workers, who provide LTSS to low-income elderly and  
11 disabled individuals. The resulting shortage in the direct care worker labor market  
12 will increase costs for Plaintiff States to administer LTSS programs, endangering  
13 the safety of their elderly and disabled residents.

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17           <sup>227</sup> Larisa Antonisse and Rachel Garfield, *The Relationship Between Work  
18 and Health: Findings from a Literature Review*, Kaiser Fam. Found.  
19 (Aug. 7, 2018), <https://tinyurl.com/KKFRelationship-work-health>.

20           <sup>228</sup> Allan Dizioli and Roberto Pinheiro, *Health Insurance as a Productive  
21 Factor*, 40 *Labour Econ.* 1-24, (June 2016), [https://www.sciencedirect.com  
22 /science/article/abs/pii/S0927537116300021](https://www.sciencedirect.com/science/article/abs/pii/S0927537116300021).

1     **C. Other Macroeconomic Impacts**

2           392. The mass disenrollment from and forgone participation in public  
3 assistance programs by immigrants and their families will have significant  
4 adverse impacts on the Plaintiff States' economies. The loss of medical, food,  
5 cash, and other benefits will reduce revenue to numerous health care providers,  
6 grocers, farmers' markets, and other market participants providing basic goods  
7 and services—constraining overall economic output in the Plaintiff States both  
8 directly and indirectly.

9           393. For example, Washington State estimates that the Rule will directly  
10 reduce total economic output by as much as nearly \$100 million. Economists with  
11 Washington's DSHS used an input-output model to calculate indirect economic  
12 impacts from multiplier effects flowing from the reduced assistance to eligible  
13 families. Under this model, implementation of the Rule will reduce total  
14 economic output in Washington from between \$41.8 million and \$97.5 million.  
15 Under Washington's projections, this will also result in an annual reduction in  
16 wages, salaries, and benefits for workers in the amount of \$15.7 million to \$36.7  
17 million, as well as a loss of approximately 334 to 782 Washington jobs.

18           394. State and local governments benefit from the significant tax  
19 revenues from immigrant taxpayers. Between 2011 and 2013, tax revenues  
20 received from immigrants were \$130 billion higher than public money spent on  
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1 that same population.<sup>229</sup> On average, an immigrant in the United States pays \$900  
2 more per individual in tax revenue than she collects in public expenditures.<sup>230</sup>

3 395. Those state and local tax revenues are likely to decrease  
4 substantially as a result of the Rule, which will cause eligible immigrants to  
5 disenroll from public benefits programs, limit their participation in the  
6 workforce, and not fully participate in the economy.

7 **D. Disparate Impacts**

8 396. The effects of the Rule will have a disparate impact on communities  
9 of color, most severely on Latinos. It is well established that income and wealth  
10 disparities across racial and ethnic groups are substantial. The Rule, by selecting  
11 for wealthy immigrants and punishing the working class—including participation  
12 in common social safety net programs—would severely disadvantage non-white  
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17 <sup>229</sup> Nat'l Academies. Sci., Engineering, Med., *The Economic and Fiscal*  
18 *Consequences of Immigration*, 522 (2017), <https://doi.org/10.17226/23550>; Sang  
19 V. Nguyen and Alice Zawacki, *Health Insurance and Productivity: Evidence*  
20 *from the Manufacturing Sector*, Ctr. for Econ. Studies, U.S. Census Bureau,  
21 *Working Papers* (Jan. 2009), <https://tinyurl.com/Health-Insur-Productivity>.

22 <sup>230</sup> *Id.* at 524.

1 immigrants.<sup>231</sup> In other words, the Rule would effectively implement the  
2 President’s policy of preferring white immigrants like those from “Norway.”

3 397. By one estimate, the chilling effects of the Rule would  
4 disproportionately fall on people of color, prompting as many as 18.3 million  
5 Latino noncitizens or their family members to disenroll or forgo enrollment in  
6 public benefit programs—roughly 70% of the total noncitizen families at risk.<sup>232</sup>  
7 The Department’s arbitrarily high 250% FPG income threshold would have  
8 disproportionate effects based on national origin and ethnicity, blocking 71% of  
9 applicants from Mexico and Central America, 69% from Africa, and 52% from  
10 Asia—compared to only 36% from Europe, Canada, and Oceania.<sup>233</sup>

11 398. Other factors in the Public Charge Rule will cause a disparate impact  
12 on the basis of race, ethnicity, or national origin. Credit scores are lower among  
13 blacks and Hispanics than among non-Hispanic whites and Asians.<sup>234</sup>

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15 <sup>231</sup> That is, the Rule would effectively enact the President’s policy of  
16 preferring white immigrants like those from “Norway.” *See supra* ¶ X.

17 <sup>232</sup> Boundless Cmt. at 65; *Public Charge Proposed Rule: Potentially*  
18 *Chilled Population Data*, Manatt, Phelps & Phillips, LLP (Oct. 11, 2018),  
19 [goo.gl/nWawDr](http://goo.gl/nWawDr).

20 <sup>233</sup> Boundless Cmt. at 65–66.

21 <sup>234</sup> Bd. of Governors of the Fed. Reserve Sys., *Report to the Congress on*  
22 *Credit Scoring and Its Effects on the Availability and Affordability of Credit*,

1           399. The high school degree factor will also have a disparate impact,  
2 since 54% of immigrants from Mexico and 46% of immigrants from Central  
3 America have not obtained a high school degree, while only 10% of immigrants  
4 from Europe or Canada have not obtained one.<sup>235</sup>

5           400. Finally, the English proficiency factor will also exacerbate the  
6 Rule's disparate impact on the basis of race, ethnicity, and national origin. Of the  
7 seven countries with the highest rates of English proficiency, six are in Europe  
8 and none is in Latin America or Africa. Conversely, none of the 24 countries with  
9 the lowest rates of English proficiency is in Europe, while all but one are in Latin  
10 America, Africa, or the Middle East.<sup>236</sup>

11           401. The racial and ethnic animus evident in the President's own  
12 statements indicates that the Rule was adopted because of, and not in spite of, its  
13 disparate impact.

14 \_\_\_\_\_  
15 at O-25 (Aug. 2007), [https://www.federalreserve.gov/boarddocs/rptcongress/  
16 creditscore/creditscore.pdf](https://www.federalreserve.gov/boarddocs/rptcongress/creditscore/creditscore.pdf).

17           <sup>235</sup> Jynnah Radford, *Key Findings About U.S. Immigrants*, Pew Research  
18 Ctr. (June 17, 2019), [https://www.pewresearch.org/fact-tank/2019/06/17/key-  
19 findings-about-u-s-immigrants/](https://www.pewresearch.org/fact-tank/2019/06/17/key-findings-about-u-s-immigrants/).

20           <sup>236</sup> Education First, *EF English Proficiency Index* at 6–7 (2018),  
21 [https://www.ef.edu/~/media/centralefcom/epi/downloads/full-reports/v8/ef-  
22 epi-2018-english.pdf](https://www.ef.edu/~/media/centralefcom/epi/downloads/full-reports/v8/ef-epi-2018-english.pdf).

1 402. Through Section 504 of the Rehabilitation Act of 1973, Congress  
 2 statutorily barred discrimination based on disability in any program or activity of  
 3 any federal executive branch agencies.<sup>237</sup>

4 403. Despite Section 504's prohibition on disability discrimination, the  
 5 Public Charge Rule subjects individuals with disabilities to an increased  
 6 likelihood of a public charge determination. It does so by, for example, requiring  
 7 immigration officers to consider in the negative any medical condition that may  
 8 interfere with self-care or restricts the individual's ability to attend school or  
 9 work, and by targeting non-monetary public benefits, such as Medicaid, which  
 10 such individuals are likelier to receive to pay for medical costs related to their  
 11 conditions.

12 404. DHS knowingly maintained these elements in the Rule despite the  
 13 disproportionate impact it will have on individuals with disabilities.

## 14 VIII. CAUSES OF ACTION

### 15 Count I:

#### 16 Violation of the Administrative Procedure Act—Action Not in Accordance 17 with Law

18 405. All the foregoing allegations are repeated and realleged as though  
 19 fully set forth herein.

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 21 \_\_\_\_\_  
 22 <sup>237</sup> 29 U.S.C. § 794.



1           406. The APA requires a reviewing court to “hold unlawful and set aside  
2 agency action, findings, and conclusions found to be . . . not in accordance with  
3 law.”<sup>238</sup>

4           407. Congress used the term “public charge” in the INA consistent with  
5 its original public meaning which includes determining whether an immigrant is  
6 likely to become “primarily dependent” on the government for subsistence.<sup>239</sup> By  
7 redefining “public charge” as “an alien who receives one or more public  
8 benefit[s],”<sup>240</sup> in even modest amounts, the Rule unmoors the term from its  
9 original public meaning and departs from the unambiguously expressed intent of  
10 Congress in numerous statutes. The Rule’s redefinition of public charge and new  
11 standards governing public charge determinations are not in accordance with the  
12 following statutes:

13           a. INA Section 212(a)(4);<sup>241</sup>

14           b. INA Section 202(a)(1);<sup>242</sup>

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17           <sup>238</sup> 5 U.S.C. § 706(2)(C).

18           <sup>239</sup> 64 Fed. Reg. at 28,689.

19           <sup>240</sup> 83 Fed. Reg. at 51,157 & 51,289 (to be codified at 8 C.F.R.  
20 § 212.21(a)).

21           <sup>241</sup> 8 U.S.C. § 1182(a)(4).

22           <sup>242</sup> 8 U.S.C. § 1152

1 c. Personal Responsibility and Work Opportunity  
2 Reconciliation Act of 1996 (Welfare Reform Act),<sup>243</sup> including Sections  
3 401–03,<sup>244</sup> 411–12,<sup>245</sup> and 431;<sup>246</sup>

4 d. Illegal Immigration Reform and Immigrant Responsibility  
5 Act of 1996 (Immigration Reform Act),<sup>247</sup> including Sections 531<sup>248</sup> and  
6 551;<sup>249</sup>

7 e. Section 504 of the Rehabilitation Act of 1973, which provides  
8 that “[n]o otherwise qualified individual with a disability in the United  
9 States . . . shall, solely by reason of her or his disability, be excluded from  
10 the participation in, be denied the benefits of, or be subjected to  
11 discrimination . . . under any program or activity conducted by any  
12 Executive agency.”<sup>250</sup>

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15 <sup>243</sup> Pub. L. 104-193, 110 Stat. 2105.

16 <sup>244</sup> 8 U.S.C. §§ 1611–13.

17 <sup>245</sup> 8 U.S.C. §§ 1621–22.

18 <sup>246</sup> 8 U.S.C. § 1641.

19 <sup>247</sup> Pub. L. 104-208, 110 Stat. 3009.

20 <sup>248</sup> 8 U.S.C. § 1182.

21 <sup>249</sup> 8 U.S.C. § 1183a.

22 <sup>250</sup> 29 U.S.C. § 794(a).

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408. The Final Rule’s inclusion of SNAP as a negatively weighted consideration for public charge is contrary to federal statutes governing those programs. Specifically, the Final Rule’s allowance of consideration of a noncitizen’s receipt of SNAP benefits is contrary to the express statutory provision prohibiting consideration of those benefits “[as] income or resources for any purpose under any Federal, State, or local laws.” 7 U.S.C. § 2017(b).

**Count II:  
Violation of the Administrative Procedure Act—*Ultra Vires* Conduct**

409. All the foregoing allegations are repeated and realleged as though fully set forth herein.

410. The APA requires a reviewing court to “hold unlawful and set aside agency action, findings, and conclusions found to be . . . in excess of statutory jurisdiction [or] authority.”<sup>251</sup>

411. The Rule expands the public charge exclusion to reach applicants for extension of stay and change of status. The INA does not permit—either expressly or impliedly—the Department to expand its authority in this regard. As the Department itself acknowledges, the public charge exclusion statute “by its terms only applies to applicants for visas, admission, and adjustment of status,

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<sup>251</sup> 5 U.S.C. § 706(2)(C).

1 and thus does not, by its terms, render aliens who are likely to become a public  
2 charge ineligible for the extension of stay or change of status.”<sup>252</sup>

3 412. Congress has specifically confined the categories of immigration  
4 applications to which the “public charge” designation applies. DHS may not  
5 expand those statutory limitations by regulation. Its attempt to do so is ultra vires  
6 and unlawful.<sup>253</sup>

7 **Count III**  
8 **Violation of the Administrative Procedure Act—Arbitrary or Capricious**  
9 **Agency Action**

10 413. All the foregoing allegations are repeated and realleged as though  
11 fully set forth herein.

12 414. The APA requires a reviewing court to “hold unlawful and set aside  
13 agency action, findings, and conclusions found to be . . . arbitrary, capricious,  
14 [or] an abuse of discretion.”<sup>254</sup>

15 415. In general, a rule is arbitrary and capricious where the agency “relied  
16 on factors which Congress has not intended it to consider, entirely failed to  
17 consider an important aspect of the problem, offered an explanation for its  
18 decision that runs counter to the evidence before the agency, or is so implausible

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19 <sup>252</sup> 83 Fed. Reg. at 51,135.

20 <sup>253</sup> *MCI Telecommunications Corp. v. American Telephone & Telegraph*  
21 *Co.*, 512 U.S. 218, 114 S.Ct. 2223, 129 L.Ed.2d 182 (1994).

22 <sup>254</sup> 5 U.S.C. § 706(2)(C).

1 that it could not be ascribed to a difference in view or the product of agency  
2 expertise.”<sup>255</sup> The agency must consider “the advantages and the disadvantages”  
3 of the proposal before taking action.<sup>256</sup>

4 416. When an agency reverses position, it must “supply a reasoned  
5 analysis for the change,”<sup>257</sup> and may not “depart from a prior policy sub silentio  
6 or simply disregard rules that are still on the books.”<sup>258</sup> Further, any “serious  
7 reliance interests must be taken into account,”<sup>259</sup> particularly where “decades  
8 of . . . reliance on the Department’s prior policy” demand a fulsome explanation  
9 for the reversal.<sup>260</sup>

10 417. Under the standards set forth above, the Rule is arbitrary or  
11 capricious in its entirety, including in the following particular respects:

12 a. the redefinition of public charge to mean “an alien who  
13 receives one or more public benefits”;<sup>261</sup>

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15 <sup>255</sup> *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co. (State*  
16 *Farm)*, 463 U.S. 29, 43 (1983) (citation and internal quotation marks omitted).

17 <sup>256</sup> *Michigan v. EPA*, 135 S. Ct. 2699, 2707 (2015).

18 <sup>257</sup> *State Farm* at 42.

19 <sup>258</sup> *FCC v. Fox TV Stations, Inc.*, 556 U.S. 502, 515 (2009).

20 <sup>259</sup> *Id.*

21 <sup>260</sup> *Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2126 (2016).

22 <sup>261</sup> 84 Fed. Reg. at 41,501 (to be codified at 8 C.F.R. § 212.21(a)).

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- b. the inclusion of non-cash public assistance programs in the definition of “public benefit,” reversing a consistent, decades-old policy;
- c. the arbitrary selection of 12 months within a 36 month period as the duration of time at which receipt of public benefits constitutes a heavily weighted negative in public charge determinations;
- d. the creation of “heavily weighed negative factors” in public charge determinations that are not among the enumerated factors Congress directed the Department to consider;
- e. the decision to consider whether a noncitizen is more likely than not to become a public charge “at any time in the future”;
- f. the decision to weigh in favor of a public charge determination a noncitizen’s unfavorable credit history or financial liabilities;
- g. the selection of 250% of FPG as the minimum income level disfavoring a public charge determination as a “heavily weighed positive factor”;
- h. the selection of 125% of FPG as the income level below which a noncitizen’s income will weigh in favor of a public charge determination;

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i. the decision to weigh in favor of a public charge determination a noncitizen’s having applied for or received a fee waiver for an immigration benefit;

j. the decision to weigh in favor of a public charge determination a noncitizen’s lack of private health insurance;

k. the decision to weigh in favor of a public charge determination a noncitizen’s lack of a high school diploma or equivalent;

l. the decision to weigh in favor of a public charge determination a noncitizen’s lack of proficiency in English;

m. the discriminatory animus on the basis of race, ethnicity, or national origin that was a motivating factor in the Rule’s adoption;

n. the pretextual nature of the explanations given for the Rule, which do not match the evidence as a whole;

o. the vague and irrational factor-weighting framework;

p. the decision to weigh in favor of a public charge determination a noncitizen’s mere application for public benefits;

q. the failure to consider, account for, or respond to the significant public comments regarding the Rule;

1 r. the failure to consider the impact of the new public charge test  
2 on lawful permanent residents returning from a trip abroad of 180 days or  
3 more;<sup>262</sup>

4 s. the failure to accurately assess or acknowledging the  
5 substantial costs of the Rule;

6 t. the failure to engage in proper analysis of the Department's  
7 obligations under Executive Order 13,132 and subsequent failure to  
8 provide meaningful analysis of the federalism impacts as required by  
9 Executive Order 13,132; and

10 u. the overestimation of the purported benefits of the Rule.

11 **Count IV:**  
12 **Denial of the Constitutional Right to Equal Protection of the Laws**

13 418. All the foregoing allegations are repeated and realleged as though  
14 fully set forth herein.

15 419. The Due Process Clause of the Fifth Amendment to the U.S.  
16 Constitution forbids the federal government from denying equal protection of  
17 the laws.<sup>263</sup> It is an equal protection violation where a “discriminatory purpose”

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20 <sup>262</sup> 84 Fed. Reg. at 41,327.

21 <sup>263</sup> See, e.g., *Davis v. Passman*, 442 U.S. 228, 234 (1979); *Bolling v.*  
22 *Sharpe*, 347 U.S. 497, 500 (1954).



1 was a “motivating factor” in a government decision.<sup>264</sup>

2 420. The Rule was motivated by Administration officials’ intent to  
3 discriminate on the basis of race, ethnicity, or national origin.

4 421. That discriminatory intent is evidenced by the Rule’s  
5 disproportionate adverse impacts on communities of color, including affecting  
6 as many as 18.3 million Latinos in the United States.<sup>265</sup> While people of color  
7 account for approximately 36% of the total U.S. population, approximately 90%  
8 of those chilled from seeking public services would be people of color (70% of  
9 whom are Latino). In other words, the Rule will cause Latinos and other people  
10 of color to be disproportionately excluded from the United States under the  
11 INA’s public charge provision.

12 422. In addition to that anticipated disparate racial and ethnic impact,  
13 other circumstantial evidence indicates that discrimination against people of  
14 color was a motivating factor behind the Rule. That evidence includes the  
15 historical background of the Rule, the specific sequence of events leading up to  
16 the Rule, departures from normal rulemaking procedures, the rulemaking

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18 <sup>264</sup> *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252,  
19 265–66 (1977).

20 <sup>265</sup> *See Public Charge Proposed Rule: Potentially Chilled Population*  
21 *Data*, Manatt, Phelps & Phillips, LLP (Oct. 11, 2018), [https://www.manatt.com](https://www.manatt.com/Insights/Articles/2018/Public-Charge-Rule-Potentially-Chilled-Population)  
22 [/Insights/Articles/2018/Public-Charge-Rule-Potentially-Chilled-Population](https://www.manatt.com/Insights/Articles/2018/Public-Charge-Rule-Potentially-Chilled-Population). *Id.*

1 history, and remarks by administration officials—including President Trump  
2 and Kenneth Cuccinelli—reflecting animus towards non-European immigrants.

3 423. Because discrimination on the basis of race, ethnicity, or national  
4 origin is a motivating factor in the Rule’s adoption, it violates the Fifth  
5 Amendment’s equal protection guarantee.

6 **IX. PRAYER FOR RELIEF**

7 WHEREFORE, the Plaintiff States request that the Court enter a judgment  
8 against Defendants and award the following relief:

9 a. Declare that the Rule shall be vacated for violation of the  
10 APA on any or each of the following grounds:

- 11 • the Rule is contrary to enacted legislation and  
12 Congressional intent;
- 13 • the Rule is arbitrary and capricious, and issued in  
14 excess of the Department’s authority; and
- 15 • the Department failed to undertake legally required  
16 analyses.

17 b. Declare the Rule unconstitutional as violative of the Equal  
18 Protection Clause;

19 c. Preliminarily and permanently enjoin the Rule; and

20 d. Award Plaintiff States’ reasonable costs and attorney fees and  
21 such additional relief as the interests of justice may require.  
22

1 RESPECTFULLY SUBMITTED this 14th day of August, 2019.

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