# Congress of the United States

### Washington, DC 20515

December 19, 2025

Submitted via www.regulations.gov

The Honorable Kristi Noem Secretary U.S. Department of Homeland Security 2707 Martin Luther King Jr. Avenue SE Washington, D.C. 20528

The Honorable Joseph B. Edlow Director U.S. Citizenship and Immigration Services 5900 Capital Gateway Dr. Camp Springs, MD 20588

Dear Secretary Noem and Director Edlow,

As Members of the United States Congress, we write in strong opposition to the Department of Homeland Security's (DHS) Notice of Proposed Rulemaking (NPRM) regarding "public charge," published in the Federal Register on November 19, 2025.

We urge the Department to completely withdraw the proposed rule, which would rescind the 2022 public charge regulations without establishing a clear or lawful replacement. The proposed public charge rule will lead to mass uncertainty, disparate and arbitrary outcomes for individuals applying for permanent status or admission into our country, and undue harm to U.S. citizens. The NPRM also defies Congressional intent, seeks to rely on illegal data-sharing from other government agencies, and erodes trust in our legal immigration system. Our immigration laws function only when families, adjudicators, and service providers can rely on transparent standards grounded in statute.

By discarding the existing regulations and signaling that future, undefined "policy and interpretive tools" will guide public charge decisions, DHS creates immediate and widespread uncertainty for immigrants who have followed every requirement of the law. Families seeking adjustment of status — including refugees, survivors of domestic violence or trafficking, children who have been abused, neglected, or abandoned, and others whom Congress has long exempted from punitive public charge treatment — cannot navigate a system where the rules shift without warning and where past, lawful conduct that the federal government had stated was permissible could be reinterpreted as a negative factor. To be very clear, the proposed rule will trigger a massive chilling effect, driving eligible families away from essential assistance in health care, nutrition, childcare, and education, with the heaviest harm falling on U.S. citizen children.

Congress has repeatedly affirmed that public charge must be administered with clarity, fairness, and fidelity to the Immigration and Nationality Act (INA) not through shifting sub-regulatory tools that create fear and confusion. If DHS believes further policy changes are necessary, those changes must be forward-looking, transparent, and subject to full public notice and comment. Families should never be penalized for accessing programs that the federal government has long stated would carry no immigration consequences.

For these reasons, we urge DHS to withdraw this NPRM and maintain the 2022 public charge regulations, which reflect longstanding law, congressional intent, and the stable framework that immigrant families and communities need in order to thrive.

I. By withdrawing the 2022 regulations and leaving no clear replacement, the proposed rule seeks to circumvent public and congressional input, creates mass uncertainty, and will lead to discriminatory and uneven application of our laws.

The proposed rule would rescind the 2022 public charge regulations currently codified in 8 CFR 212.20–212.23 and related provisions in 8 CFR Parts 103, 213, and 245<sup>1</sup>, without replacing them with a binding regulatory standard. Instead, DHS indicates that it will rely on the future issuance of "policy and interpretive tools" to guide public charge determinations. Deferring critical substantive policymaking to later sub-regulatory guidance — outside of notice-and-comment procedures — violates the Administrative Procedure Act's (APA) requirement that agencies provide the public with meaningful opportunity to evaluate and comment on the agency's actual policy.<sup>2</sup> Regulations of this significance cannot lawfully be implemented through internal guidance that bypasses both public scrutiny and congressional oversight.

The INA, 8 U.S.C. § 1182(a)(4), requires public charge assessments to be made based on a totality of the circumstances, considering specific statutory factors including age, health, family status, assets, resources, financial status, education, and skills. The 2022 rule provided a clear and administrable framework consistent with congressional intent and more than a century of agency practice, including the codification of definitions for "likely to become a public charge" and "receipt of public benefits." Removing these definitions invites arbitrary decision-making and creates significant risk that adjudicators will rely on factors that Congress has not authorized, contrary to both INA § 212(a)(4) and long-established precedent. DHS's stated interest in removing "limitations" on the types of public resources considered underscores the agency's intent to expand adjudicator discretion well beyond statutory bounds.

Recent reporting on new guidance issued by the Department of State (DOS) demonstrates the harms already resulting from unbounded discretion in public charge adjudications.<sup>3</sup> Without transparent regulations, DOS has reportedly issued internal guidance directing consular officers to speculate about future health care costs, employability, English proficiency, financial sufficiency, and even the health and perceived economic burden of family members without making this guidance public or seeking input from Congress. Officers are instructed to assess access to employer-sponsored insurance decades into the future and may disregard otherwise valid affidavits of support. These instructions contradict statutory requirements and introduce subjective and inconsistent decision-making into visa adjudications. The NPRM implies DHS will replicate this discretionary approach across USCIS adjudications, creating a patchwork of unpredictable outcomes for similarly situated applicants based solely on assigned adjudicator or processing location.

Finally, the proposed rule's lack of clear standards will create profound uncertainty for immigrants, state and local governments, legal service providers, and Members of Congress constituent services. Families will be confused about how DHS intends to apply public charge law, community organizations will lack reliable information to provide lawful advice, and congressional offices will face new barriers in assisting vulnerable constituents with federal agencies. Because the proposed rule eliminates all certainty and predictability for those

<sup>&</sup>lt;sup>1</sup> U.S. Congressional Research Service, *Immigration: Public Charge 2022 Final Rule*, October 18, 2022 (IN11217). <a href="https://www.congress.gov/crs-product/IN11217">https://www.congress.gov/crs-product/IN11217</a>.

<sup>&</sup>lt;sup>2</sup> See 5 U.S.C. § 553.

<sup>&</sup>lt;sup>3</sup> Amanda Seitz, *Immigrants With Health Conditions May Be Denied Visas Under New Trump Administration Guidance, KFF Health News* (Nov. 6, 2025), <a href="https://www.kffhealthnews.org/news/article/visa-public-charge-health-conditions-trump-state-department/">https://www.kffhealthnews.org/news/article/visa-public-charge-health-conditions-trump-state-department/</a>. Morgan Phillips, *Trump State Department Orders Global Visa Crackdown Under Revived 'Public Charge' Rule*, Fox News (Nov. 6, 2025), <a href="https://www.foxnews.com/politics/trump-state-department-orders-global-visa-crackdown-under-revived-public-charge-rule">https://www.foxnews.com/politics/trump-state-department-orders-global-visa-crackdown-under-revived-public-charge-rule">https://www.foxnews.com/politics/trump-state-department-orders-global-visa-crackdown-under-revived-public-charge-rule</a>.

who anticipate applying for a green card and are not exempt from a public charge determination, it damages the ability of Members of Congress to provide actionable information when approached by constituents. Instead, the proposed rule would lead to a chaotic and inconsistent immigration system that congressional offices and their constituents will be unable to predictably navigate. This is particularly concerning because Congress—not the Executive Branch—retains the authority to make key decisions about the conditions under which noncitizens may access federal safety-net programs. Without clear regulatory direction, DHS and DOS would effectively assume policymaking authority that resides with Congress.

For these reasons, rescinding the 2022 rule without simultaneously proposing a fully developed and transparent replacement is unreasonable, violates core APA requirements, and guarantees discriminatory and uneven application of immigration law across agencies and jurisdictions.

# II. The proposed rule contradicts long-standing practice and law, congressional intent, and seeks to rely on illegal data-sharing from other government agencies.

For more than a century, the meaning of "public charge" under the Immigration and Nationality Act (INA) has been consistently interpreted to refer to a person likely to become primarily dependent on the government for subsistence, demonstrated through reliance on cash assistance for income maintenance or long-term institutionalization at government expense.<sup>4</sup> This understanding is reflected in longstanding agency practice, judicial precedent, and the 1999 Interim Field Guidance, which Congress has repeatedly left undisturbed. See 64 Fed. Reg. 28689 (May 26, 1999). The 2022 DHS regulations formally adopted this longstanding interpretation in 8 CFR 212.21–212.23, creating clear and consistent rules that aligned with congressional intent under INA § 212(a)(4).

The NPRM departs sharply from this settled framework and disregards Congress's deliberate decisions in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). When Congress amended the public charge inadmissibility ground in IIRIRA, it enumerated the five statutory factors—age, health, family status, assets/resources/financial status, and education/skills—yet significantly chose not to list or incorporate any specific public benefit programs into the statute. At the same time, in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Congress imposed detailed restrictions on eligibility for federal benefits but did not tie eligibility for or use of those benefits to public charge. Congress clearly understood how to specify benefit programs when it wished to do so. The omission in INA § 212(a)(4) reflects a deliberate legislative choice not to equate temporary use of safety-net programs with future dependency. Courts addressing the 2019 final rule implemented by the first Trump administration recognized this; as the Second Circuit explained, "Had Congress thought that any benefits use was incompatible with self-sufficiency, it could have said so... but it did not." New York v. DHS, 969 F.3d 42, 77 (2d Cir. 2020).

The proposal's removal of the definitions in 8 CFR 212.21—including what constitutes "public charge," "public cash assistance for income maintenance," and "receipt of public benefits"—signals DHS's intent to authorize officers to consider benefits well beyond those Congress has ever permitted. This contradicts 140 years of consistent interpretation and decades of administrative practice aimed at providing clarity, limiting confusion, and preventing unnecessary public health harms. In 1999, the Immigration and Naturalization Service (INS)

<sup>&</sup>lt;sup>4</sup> Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, 64 Fed. Reg. 27,656 (May 26, 1999), <a href="https://www.govinfo.gov/content/pkg/FR-1999-05-26/pdf/99-13202.pdf">https://www.govinfo.gov/content/pkg/FR-1999-05-26/pdf/99-13202.pdf</a>.

U.S. Citizenship and Immigration Services, *Public Charge — Resources & Historical Guidance* (archived), <a href="https://www.uscis.gov/archive/public-charge-resources">https://www.uscis.gov/archive/public-charge-resources</a>.

<sup>&</sup>lt;sup>5</sup> New York v. United States Department of Homeland Security, No. 2085493 (2d Cir. Sept. 11, 2020). https://caselaw.findlaw.com/court/us-2nd-circuit/2085493.html.

<sup>&</sup>lt;sup>6</sup> Immigrant Legal Resource Center (ILRC), *Legal Services Toolkit: Public Charge* (Dec. 2019), <a href="https://www.ilrc.org/sites/default/files/resources/2019.12\_public\_charge\_legal\_toolkit-final-12.10.pdf">https://www.ilrc.org/sites/default/files/resources/2019.12\_public\_charge\_legal\_toolkit-final-12.10.pdf</a>.

explained that confusion about public charge and benefits eligibility was producing "significant, negative public health consequences," and issued systemwide guidance precisely to prevent the chilling effects that DHS now proposes to recreate<sup>7</sup>. Eliminating the 2022 rule's clear standards revives those same risks without any statutory basis.

The proposed rule contains no assurance that adjudicators will refrain from considering benefits received during periods when the federal government expressly stated that such benefits had no immigration consequences. This omission breaks sharply from the approach taken even in the 2019 rulemaking, where DHS stated explicitly that benefits used before the effective date "would not be considered... because SNAP was not considered in public charge inadmissibility determinations under the 1999 Interim Field Guidance." 84 Fed. Reg. 41292, 41573 (Aug. 14, 2019). Removing decades-old expectations without transition guidance or prospective limitations is an arbitrary and capricious decision, given that families have built their health, nutrition, and economic decisions around clear federal assurances that these programs are safe to use while they work toward self-sufficiency. In fact, DHS acknowledges in the NPRM that "the regulated public may be relying on aspects of the regulatory scheme in the 2022 Final Rule," which substantively aligns with the 1999 guidance.

Finally, the proposed rule also raises serious concerns that DHS may rely on inter-agency data-sharing, including with the Internal Revenue Service (IRS), to obtain information about public benefit use or household financial circumstances. Congress has been unequivocal: IRS data is protected by strict confidentiality rules under 26 U.S.C. § 6103, and executive agencies cannot repurpose tax information for immigration enforcement or adjudications. Many of the undersigned Members of the Congress have a documented history of challenging such illegal data-sharing schemes.

If DHS intends to base public charge determinations on tax data, state benefit records, or other protected sources, such a system would directly violate federal privacy law, exceed statutory authority, and contradict repeated congressional directives. The NPRM's ambiguity on this issue is unacceptable. Agencies cannot expand their statutory reach through backdoor data-sharing arrangements that Congress has expressly forbidden. Any implication that DHS will access IRS or other sensitive data to determine eligibility for immigration benefits must be explicitly rejected, and the Department must clearly affirm that it will not use protected data sources—directly or indirectly—in any public charge determination.

# III. The proposed rule will create a massive chilling effect with undue harm to American communities, U.S. citizens, and especially children; and it will erode faith in our legal immigration system.

The chilling effects triggered by expansions of public charge interpretation are well-documented and severe. Research following the 1996 PRWORA and IIRIRA laws showed that confusion about eligibility led large numbers of eligible immigrant families — including U.S. citizen children — to forego health insurance, nutrition supports, and early childhood programs vital to healthy development. Federal and academic studies following welfare reform found that confusion and fear led to significant declines in Medicaid participation among otherwise eligible immigrant families and their U.S.-citizen children, with researchers warning that rising uninsurance among these children would worsen health outcomes and increase uncompensated care burdens on safety-net providers.<sup>8</sup>

<sup>&</sup>lt;sup>7</sup> Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, 64 Fed. Reg. 27,656 (May 26, 1999), <a href="https://www.govinfo.gov/content/pkg/FR-1999-05-26/pdf/99-13202.pdf">https://www.govinfo.gov/content/pkg/FR-1999-05-26/pdf/99-13202.pdf</a>.

<sup>&</sup>lt;sup>8</sup> U.S. National Library of Medicine, *Welfare Reform and Its Impact on Medicaid: An Update*, in *NCBI Bookshelf* (last updated 2020), <a href="https://www.ncbi.nlm.nih.gov/books/NBK559488/">https://www.ncbi.nlm.nih.gov/books/NBK559488/</a>.

The Unintended Impact of Welfare Reform on the Medicaid Enrollment of Eligible Immigrants, 39 Health Servs. Res. 5 (Oct. 2004), <a href="https://pmc.ncbi.nlm.nih.gov/articles/PMC1361081/">https://pmc.ncbi.nlm.nih.gov/articles/PMC1361081/</a>.

Under the 2019 Trump public charge rule, similar harm reemerged rapidly. Even though many programs were not included in the rule, nearly half (46%) of immigrants in low-income families reported that they or a family member avoided applying for or disenrolled from public benefits due to immigration concerns.<sup>9</sup>

That chilling effect extended far beyond the rule's legal scope, including participation in Medicaid, SNAP, WIC, Head Start, and school meal programs. The consequences were borne disproportionately by U.S. citizen children, who lost access to preventive medical care, early childhood education, and essential nutrition — evidence that fear-driven policy harms American families and public health systems.

The proposed rule will predictably magnify these harms. DHS itself acknowledges that the rule would reduce government spending on benefits by more than \$9 billion per year — a drastic impact that cannot be explained by changes in eligibility since very few immigrants who lack permanent status qualify for the programs implicated. As experts have pointed out, those cost reductions will instead come from reduced use by eligible U.S. citizens and lawful permanent residents, including children. The rule's elimination of key standards — such as the express exclusion of family members' benefit use and clear definitions of "receipt of public benefits" — will create widespread fear that parents' lawful use of critical support for their children will threaten their ability to obtain permanent residence.

That chilling effect will be the most acute among children. Nearly one in four children in the United States lives in a family with an immigrant parent. Many of these children are U.S. citizens who rely on Medicaid or CHIP for healthcare, WIC and school meals for nutrition, and Head Start and childcare subsidies for early learning and economic stability. When parents are forced to choose between enrolling their child in life-saving healthcare or preserving their own chance to stay with their family, the result is poorer child health, delayed development, reduced educational attainment, and heightened food insecurity — all harms Congress has repeatedly acted to prevent.

Uncertainty about how DHS will treat past or current benefit use will also impair state and local governments' ability to meet public health and safety goals. Officials have relied on the clarity provided by the 2022 rule to design outreach campaigns, create eligibility worker training, and expand coverage initiatives for low-income families. If immigrants become afraid to use medical care or food assistance, the resulting rise in communicable disease risk, emergency care usage, and poverty will burden local budgets and undermine federal investments in preventive services.

Finally, the chilling effect of this rule must be understood in the context of the broader campaign of threats against legal immigration being carried out by the current Administration. Immigrants already face pervasive uncertainty regarding visa issuance, humanitarian pathways, family reunification, and agency backlogs. The

<sup>&</sup>lt;sup>9</sup>Center on Budget and Policy Priorities (CBPP), *The INS Public Charge Guidance: What Does It Mean for Immigrants Who Need Public Assistance?* (Jan. 7, 2000), <a href="https://www.cbpp.org/sites/default/files/archive/1-7-00imm.htm">https://www.cbpp.org/sites/default/files/archive/1-7-00imm.htm</a>. State Health & Value Strategies (SHVS), <a href="https://www.shvs.org/wp-content/uploads/2019/10/Public-Charge-FAQ-FINAL.pdf">https://www.shvs.org/wp-content/uploads/2019/10/Public-Charge-FAQ-FINAL.pdf</a>.

<sup>&</sup>lt;sup>10</sup> Center for Children & Families (CCF), *Public Charge Changes Will Have Far-Reaching Consequences for Children, Pregnant Women and Families and Sow Fear in Immigrant Communities* (Nov. 21, 2025), <a href="https://ccf.georgetown.edu/2025/11/21/public-charge-changes-will-have-far-reaching-consequences-for-children-pregnant-women-and-families-and-sow-fear-in-immigrant-communities/">https://ccf.georgetown.edu/2025/11/21/public-charge-changes-will-have-far-reaching-consequences-for-children-pregnant-women-and-families-and-sow-fear-in-immigrant-communities/</a>.

<sup>&</sup>lt;sup>11</sup> Migration Policy Institute, *Children in U.S. Immigrant Families*, <a href="https://www.migrationpolicy.org/programs/data-hub/charts/children-immigrant-families">https://www.migrationpolicy.org/programs/data-hub/charts/children-immigrant-families</a>.

<sup>&</sup>lt;sup>12</sup> Center for Children & Families (CCF), New Report Underscores Need to Help Citizen Children from Mixed-Status Families Enroll in Medicaid/CHIP (Aug. 23, 2021), <a href="https://ccf.georgetown.edu/2021/08/23/new-report-underscores-need-to-help-citizen-children-from-mixed-status-families-enroll-in-medicaid-chip/">https://ccf.georgetown.edu/2021/08/23/new-report-underscores-need-to-help-citizen-children-from-mixed-status-families-enroll-in-medicaid-chip/</a>.

Kaiser Family Foundation (KFF), *Children of Immigrants: Key Facts on Health Coverage and Care*, <a href="https://www.kff.org/racial-equity-and-health-policy/children-of-immigrants-key-facts-on-health-coverage-and-care/">https://www.kff.org/racial-equity-and-health-policy/children-of-immigrants-key-facts-on-health-coverage-and-care/</a>.

proposed rule would dramatically expand that uncertainty to include basic life decisions about children's health, nutrition, and early education. When federal agencies send the message — explicitly or implicitly — that families must avoid lawful programs or face immigration penalties, the result is a collapse in trust in the legal immigration system itself.

For these reasons, DHS's proposal would deter eligible families from accessing essential services, directly harm U.S. citizen children, shift costs to state and local governments, and erode confidence in lawful immigration pathways. Congress cannot tolerate a regulatory change that so clearly and predictably undermines public health, child well-being, and the credibility of federal law.

#### IV. Conclusion

For the reasons detailed above, we urge the Department to withdraw this proposed rule in its entirety and maintain the 2022 public charge regulations currently in effect. The existing framework reflects longstanding congressional intent, ensures consistent and lawful adjudications, and provides immigrant families with the clarity required to make informed decisions about their health, stability, and future in the United States.

If DHS determines that further regulatory changes are necessary, those changes must be prospective only, must undergo full public notice-and-comment review, and must include explicit instructions that adjudicators may not penalize individuals for the lawful use of benefits during a period when federal policy assured them it was safe to do so. The Department must also ensure that any sub-regulatory guidance with practical adjudicatory effect is made public and subject to meaningful oversight.

Congress will continue to uphold its responsibility to ensure that our immigration system operates with fairness, transparency, and fidelity to the rule of law. We stand ready to work with the Department to protect immigrant families, strengthen pathways to lawful status, and maintain the integrity of the public charge ground as Congress intended.

Sincerely,

Adriano Espaillat

Chair

Congressional Hispanic Caucus

Grace Meng

**CAPAC** Chair

Teresa Leger Fernández

Chair

Democratic Women's Caucus

Yvette D. Clarke

Member of Congress

Robert J. Menendez

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Member of Congress

Dave Min Member of Congress

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Raja Krishnamoorthi

Member of Congress

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Member of Congress

Sylvia R. Garcia

Member of Congress

Jonathan L. Jackson Member of Congress

Nanette Diaz Barragán

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Member of Congress

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