NATIONAL IMMIGRATION PROJECT

Lawyers for the Movement

Submitted via www.regulations.gov

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Kristi Noem
Secretary of Department of Homeland Security
Washington, D.C. 20528

Joseph Edlow
U.S. Citizenship and Immigration Services
5900 Capital Gateway
Drive, Camp Springs, MD 20746

Re: DHS Docket No. USCIS-2025-0304, U.S. Citizenship and Immigration Services, Public Charge Ground of Inadmissibility

Dear Secretary Noem and Director Edlow:

The National Immigration Project[1] submits the following comment in response to the U.S. Citizenship and Immigration Services (USCIS) and Department of Homeland Security's (DHS) request for comment on the Notice of Proposed Rulemaking (NPRM) published in the Federal Register on November 19, 2025. Through this comment, we express our strong opposition to the NPRM, which would rescind existing regulations on the Public Charge Ground of Inadmissibility, and we urge DHS to immediately rescind the proposed rule. This rule would contradict decades of settled practice in applying the public charge ground of inadmissibility; leave USCIS officers with unfettered discretion; and result in family separations.

The National Immigration Project is a national nonprofit membership organization that provides support, referrals, and legal and technical assistance to attorneys, community organizations, families, and advocates seeking to advance the rights of noncitizens. The National Immigration Project fights for fairness and transparency in immigration adjudication systems and believe that all noncitizens should be afforded the right to fair adjudications of their claims to remain in the United States. We are a member-organization and as such are very aware of trends in adjustment of status adjudications. The National Immigration Project strongly opposes the U.S.

[1] The author of this comment is National Immigration Project supervising attorney, Victoria Neilson with input from National Immigration Project director of legal support and training, Michelle N. Méndez.

government's efforts to restrict lawful immigration as part of its "mass deportation" plan by imposing impossible legal standards on common applications for lawful status, such as family-based applications for lawful permanent residence. The 2022 public charge rule codified USCIS practice which had been in effect for decades and which reasonably implements the statute.

I. The National Immigration Project Objects to DHS Issuing This Rule with Only a 30-Day Comment Period

The purpose of notice and comment is to allow the public a meaningful opportunity to comment. In general, the Administrative Procedures Act (APA) § 553 requires that the public as "interested persons" have "an opportunity to participate in the rule making." Therefore, agencies must afford "interested persons a reasonable and meaningful opportunity to participate in the rulemaking process."[2] Courts have found that to comply with this participation requirement, the agencies must offer a comment period that is "adequate" to provide a "meaningful opportunity."[3] Given the importance of the public's participation in the rulemaking process, Executive Order 12866 specifies that rulemaking "in most cases should include a comment period of not less than 60 days."[4] Likewise, Executive Order 13563 explicitly states, "To the extent feasible and permitted by law, each agency shall afford the public a meaningful opportunity to comment through the Internet on any proposed regulation, with a comment period that should generally be at least 60 days."[5] Offering this limited opportunity to respond to changes which have already been implemented and giving only 30 days to comment, contradicts these Executive Orders and makes it less likely that the agencies will receive informed feedback on the proposed change.

Here, DHS has only given 30 days for the public to comment on a rule of major significance that will affect the rights of millions of noncitizens and their U.S. citizen (USC) and lawful permanent resident (LPR) family members. Given the curtailed timeframe to submit comments the National Immigration Project is able to submit only this short comment. If DHS had given 60-days' notice, the National Immigration Project would have been able to submit a more comprehensive comment to this significant rule.

II. The National Immigration Project Strongly Opposes the Substance of This Rule

A. The NPRM Proposes Removing Existing Regulations Leaving USCIS Officers with No Guidance on How to Assess Public Charge Issues

In 2022, USCIS and DHS went through a rulemaking process to promulgate clear regulations which provide guidance to USCIS officers on how to implement the public charge ground of inadmissibility. INA § 212(a)(4) states that noncitizens who are likely to become a public charge are inadmissible and sets forth several factors which USCIS or the Department of State should

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[2] *Forester v. CPSC*, 559 F.2d 774, 787 (D.C. Cir. 1977).
[3] *N.C. Growers' Ass'n v. UFW*, 702 F.3d 755, 770 (4th Cir. 2012).
[4] *See* Exec. Order No. 12866, § 6(a), 58 Fed. Reg. 51735 (October 4, 1993).
[5] Exec. Order No. 13563, 76 Fed. Reg. 3821 Improving Regulation and Regulatory Review (Jan. 18, 2011), https://obamawhitehouse.archives.gov/the-press-office/2011/01/18/executive-order-13563-improving-regulation-and-regulatory-review.

consider in making its determination: (I) age; (II) health; (III) family status; (IV) assets, resources, and financial status; and (V) education and skills.

The 2022 regulations reasonably explained its interpretation of each of these factors, providing definitions that USCIS officers could apply to adjudications. First, the regulations provide an overall definition of public charge as "likely at any time to become primarily dependent on the government for subsistence." 8 CFR § 212.21(a). That regulation then goes on to further define that dependence as relying on means-tested government benefits or residing in government-funded long-term care. 8 CFR § 212.21(b)-(d).

The next section of the regulation, 8 CFR § 212.22, goes through each of the five statutory public charge factors and provides further clarity to USCIS officers on what they should consider in making their admissibility determination. Specifically, the rules define "health" as being based on the civil surgeon's report, 8 CFR § 212.22(a)(1)(ii); "family status" as being based on the household composition, 8 CFR § 212.22(a)(1)(iii); "assets, resources, and financial status" as including the household's income, assets, and liabilities, and explicitly excluding any income obtained through unlawful sources, 8 CFR § 212.22(a)(1)(iv); and "education and skills" as degrees, licenses, and skills gained through employment, 8 CFR § 212.22(a)(1)(v). The existing regulations also include a detailed definition of consideration of receipt of past public benefits. 8 CFR § 212.22(a)(3). These definitions provide clarity to noncitizens in determining whether they are likely to qualify for lawful permanent residence as well as what evidence would be most relevant to include with applications.

These reasonable definitions also provide guidance to adjudicators about the types of questions to ask and evidence to seek. With no regulations to guide them, USCIS officers will either be left completely on their own to assess what constitutes receipt of a public benefit and whether the use of public benefits by household members or other family members will impact the noncitizen's application for lawful permanent residence, or they will make adjudications based on guidance that is not publicly available, as the Department of State (DOS) is now doing. *See* Section C below. Using secretive guidance also undermines public confidence in government decision-making, as the lack of transparency makes it impossible to assess whether these applications are being adjudicated fairly. During the first Trump administration, the use of Supplemental Nutrition Assistance Program (SNAP) benefits by mixed-status households plummeted based on the fear that accessing this vital service for USC household members could negatively affect public charge determinations.[6] Given the Trump administration's stated desire to cut back on SNAP usage—even for USCs[7]—there will almost certainly be a chilling effect of implementing

[6] H. Claire Brown, *Immigrant Food Stamp Use Plummeted after Trump Took Office, New Research Shows*, The New Food Economy (Nov. 20, 2018). https://childrenshealthwatch.org/immigrant-food-stamp-use-plummeted-after-trump-took-office-new-research-shows/#:~:text=By%20mid%2D2018%2C%20that%20figure,participation%20would%20be%20factored%20in.

[7] Tony Romm, *Food Stamp Cuts Expose Trump's Strategy to Use Shutdown to Advance Agenda*, THE NEW YORK TIMES, Nov. 2, 2025, https://www.nytimes.com/2025/11/02/us/politics/trump-strategy-food-stamps.html?searchResultPosition=2.

a public charge rule without clear definitions and parameters. This chilling effect will, in turn, lead to general distrust of reasoned decision-making by the federal government.

Further, USCIS officers may feel compelled to rely on the lack of regulatory guidance to unlawfully deny benefits out of fear of losing their jobs. The Trump administration has already shown a willingness to fire immigration court judges whom it has determined are not sufficiently enforcing the administration's anti-immigrant agenda.[8] It is not difficult to imagine USCIS officers feeling similar pressure to deny cases or potentially lose their jobs. If enough USCIS officers engage in unreasoned assessments of a person's public charge potential, this trend will render USCIS susceptible to lawsuits, wasting taxpayer dollars and further eroding public trust.

B. The NPRM Would Give USCIS Officers Unfettered Discretion, Which Will Likely Lead to Inconsistent Results and Family Separations

In addition to the sections of 8 CFR § 212.21 that provide guidance to the statutory factors that must be applied, the regulation includes two other significant sections to guide officers in their adjudications and to ensure that applicants understand the results in their cases. If DHS rescinds this rule, LPR applicants may have their applications denied without ever understanding the USCIS officer's perceived deficiency in the application.

First, 8 CFR § 212.21(b) directs officers to employ a "totality of the circumstances" approach. That approach permits officers to weigh positive and negative factors against one another to reach a conclusion about the overall likelihood that the noncitizen will become a public charge. Significantly, that section still directs officers to rely on the factors which are laid out at 8 CFR § 212.21(a) and to apply the definition of public charge at 8 CFR § 212.20. In practice, this section of the regulations has allowed noncitizens who may have had a negative factor in the past, such as a health condition that prevented work, to provide evidence of improvement of the condition, to overcome a finding that they would be likely to need means-tested benefits in the future. By way of contrast, if the NPRM is finalized and the existing rules are rescinded, USCIS officers will make decisions with no guidance or based on guidance that is not publicly available. While the current totality of the circumstances regulation, allows a USCIS officer to take a holistic approach within the boundaries set by the regulations, officer adjudications without any regulatory guidance will be unpredictable and may be based on individual bias or misconceptions.

Second, 8 CFR § 212.21(c) requires that an officer provide a written decision when denying a benefit based on public charge. The regulation requires officers to explain how they evaluated each regulatory factor as well as the totality of the circumstances of the application. The regulation requires the officer to "specifically articulate the reasons for the officer's determination." By rescinding this regulation in its entirety, officers would no longer be required by regulation to explain their decision. Thus, officers could base decisions on criteria which go beyond the scope of the factors set forth at INA § 212, but applicants would have no way to know the reason for the denial. Without having to set forth the denial reasons, officers may be

[8] Ana Ley, *Trump Administration Fires 8 Immigration Judges in New York*, THE NEW YORK TIMES, Dec. 1, 2025, https://www.nytimes.com/2025/12/01/nyregion/immigration-judges-fired-trump.html?searchResultPosition=1.

less careful in properly applying the factors set forth at INA § 212(a)(4) or ignore them altogether and the applicant would never know.

C. The Department of State's Recently Issued Public Charge Cable Portends the Secretive and Impossible Standards DHS Is Likely to Impose

Finally, the DOS's response to public charge provides clues to how DHS is likely to approach public charge issues if DHS rescinds the existing regulations and replaces them with non-public guidance. In November 2025, DOS issued a cable applying new standards to public charge determinations. The cable is not publicly available, making it difficult for applicants to adequately prepare their applications, and indicating a lack of transparency in decision-making. Media and legal advocates have reported on the contents of the cable, apparently through a leaked version of it.[9] Applicants for a benefit as important as lawful permanent residence, which in many cases means that families can be reunited or remain together in the same country, should not be subject to rules that are not publicly available. There is no reason for this lack of transparency. If applicants know what is expected of them to succeed in a benefits application, they can make decisions based on those expectations.

In addition to the non-public nature of the DOS cable, the substance of the cable is also deeply troubling. The cable goes through each factor under INA § 212(a)(4) and includes criteria which will make it more difficult for noncitizens to obtain lawful permanent residence and for families to reunite. Some of the most restrictive guidelines in the DOS cable include:

- Age—officers are told to determine whether an applicant can work long enough to fund their own retirement. This guidance does not consider that many USCs and LPRs support their parents during their old age. Further, it does not account for parents of USCs and LPRs coming to the United States to care for their grandchildren, playing a critical role in the lives of two generations of USCs or LPRs, but not making their own salary.
- Health—officers are required to screen for certain chronic illnesses which are not currently grounds of inadmissibility. This guidance also permits officers to determine whether an applicant "seems to be obese," permitting someone who is not a medical professional to discriminate based on their own perceptions of medically appropriate weight. Finally, the officer is instructed to determine whether the applicant will receive health insurance through their job and whether they will be able to maintain that insurance after retirement. Overall, these health criteria set up impossible standards, given that most places of employment do not offer insurance post-retirement. Moreover, the cable perpetuates outdated and discriminatory views of applicants based on disabilities or perceived disabilities.

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[9] Antonio María Delgado, New U.S. *Visa Rules Spark Fears of Discrimination Against the Sick, Overweight*, MIAMI HERALD, Nov. 13, 2025, https://www.miamiherald.com/news/local/immigration/article312903068.html#storylink=cpy; CLINIC, *Spotlight Returns to Public Charge* (Nov. 21, 2025) http://cliniclegal.org/resources/ground-inadmissibility-and-deportability/public-charge/spotlight-returns-public-charge.

- Family status—officers are instructed that having too many dependents, including children or elderly parents, weighs heavily against them. At the same time, single applicants can be denied for having no one to care for them in old age. This criterion would seemingly place the U.S. government in the position of determining ideal family size, which would interfere with constitutional rights to family independence. *See Meyer v. Nebraska*, 262 U.S. 390, 399 (1923) (finding that constitutional liberty interest encompasses the right "to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men."); *Griswold v. Connecticut*, 381 U.S. 479 (1965) (finding "a right of privacy older than the Bill of Rights" in marital decision-making, including whether or not to have children.)
- Assets and financial status—officers are instructed to review assets to ensure that applicants have sufficient assets to withstand job loss, major medical crises, and even long-term institutional care. Given that most USCs could not meet a financial test like this, it is irrational to impose it on people who may come from countries with a lower standard of living and lower salaries than the United States.
- Education and skills—officers are instructed to conduct interviews in English and to determine both the current English level and ability of the applicant to learn English. Expecting people who are outside the United States to be fluent in English is unrealistic and charging officers with evaluating whether the individual will quickly learn English, when they have no training to determine someone's language acquisition skills, is irrational and will lead to unfair denials.
- Use of public assistance—officers are encouraged to cast a wide net in determining whether the applicant has used public benefits, and defines that term broadly, to even include private charity and to include the use of benefits by dependents who are lawfully entitled to their use. This guidance will have a chilling effect on families accessing support to which they are entitled and may lead to family members giving up necessary medical care or food stability to try to maintain benefits eligibility.

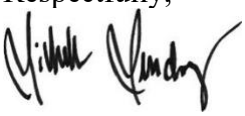
While the leaked DOS cable guidance is not applicable to USCIS adjustment of status adjudications, it may give an indication of the type of guidance DHS intends to share with USCIS officers. Family unity has always been a primary goal of U.S. immigration law, but implementing guidance, like that issued by the DOS cable, will result in a family-based immigration system that is largely closed to all but the wealthiest noncitizens.

Given that family unity has always been a cornerstone of the U.S. immigration system, it is critical for the actual criteria officers will employ to go through a public rulemaking process, as happened in 2022 with the rules that this NPRM seeks to rescind. Further, if DHS issues internal guidance that parallels the DOS guidance, many, if not most family-based petitions will be unfairly denied. Family unification has never required families to be wealthy to have their applications for LPR status approved. We are concerned that the DHS internal communications will lack transparency, like the guidance in the leaked DOS cable, and will include similar guidance that will be designed to result in family separation.

Conclusion

In closing, the National Immigration Project strongly opposes this NPRM which will rescind well-reasoned regulations that were promulgated after significant public commentary, and urges DHS and USCIS to rescind this NPRM in its entirety and leave the existing regulations in place. Please do not hesitate to contact Michelle N. Méndez at michelle@nipnlg.org if you have any questions or need any further information. Thank you for your consideration.

Respectfully,



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