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Re: DHS Docket No. USCIS-2010-0012

On behalf of the Boston Bar Association's Civil Rights and Civil Liberties (CRCL) Section, we respectfully submit these comments in opposition to the proposed regulations related to inadmissibility on public charge grounds, DHS Docket No. USCIS-2010-0012.[1] The CRCL Section of the Boston Bar Association is at the forefront of compelling legal issues impacting the field. Led by a steering committee of experienced attorneys with both public and private sector backgrounds, it explores the complexities of current legislative concerns, sponsors issue-specific programs, reviews legislative and regulatory proposals, and seeks to advance the understanding of state and federal civil rights and civil liberties issues.

DHS's Public Charge Proposal represents a significant – and troubling – departure from current federal policy with respect to "public charge" determinations under federal immigration law. Specifically, the Public Charge Proposal would, *inter alia*, make the receipt or use of "public benefits" within the preceding 36 months a "heavily weighed negative factor" rendering immigrants ineligible for adjustment of status (*e.g.*, to become a lawful permanent resident), "[a]bsent heavily weighed positive factors" such as significant income, assets, and resources. The Public Charge Proposal would also expand the categories of "public benefits" the use or receipt of which will weigh against an immigrant in the "public charge" calculus. Besides cash assistance designed for income maintenance (*e.g.*, TANF cash assistance, SSI benefits, state and local general assistance), DHS proposes also to include a wide range of noncash and supplemental benefits, including (for example) nonemergency Medicaid benefits, nutritional assistance benefits such as SNAP, and housing assistance such as the Section 8 program. The proposal would additionally expand the public charge determination to nonimmigrant statuses, including those applying for or switching between work and student visas.

In doing so, DHS's Public Charge Proposal would create the exact problem that the current, longstanding federal policy was meant to avoid. Since at least 1999, following "extensive consultation" between immigration authorities and various benefit-granting agencies, the federal government decided to limit the types of public benefits that would support a "public charge" determination: only public cash assistance and institutionalization for long-term care at government expense would count against the immigrant, while most types of noncash benefits (other than institutionalization for long-term care) as well as special-purpose cash assistance

[1] Please note that the following comment does not reflect a position of the Boston Bar Association and is instead being in submitted on behalf of the interested section.

intended for a purpose other than income maintenance would not.[2] The reasons for that policy are both sound and obvious: "confusion about the relationship between the receipt of public benefits and the concept of 'public charge' [ ] deterred eligible aliens and their families, including U.S. citizen children, from seeking important health and nutrition benefits that they are legally entitled to receive," and "[t]his reluctance to access benefits has an adverse impact not just on the potential recipients, but [also] on public health and the general welfare."[3]

DHS's Public Charge Proposal would create exactly the same chilling effect that the federal government feared would undermine public health and welfare when it adopted the current policy almost two decades ago. Before reports of DHS's Public Charge Proposal surfaced, ample data already demonstrated that low-income immigrants tend to access and use public benefits at lower rates than their native-born counterparts;[4] indeed, the SIPP data on which DHS relies in the Public Charge Proposal are consistent with these findings.[5] And even after the federal government clarified in 1999 that receipt of noncash benefits would not have adverse public-charge consequences, there was still "widespread confusion and concern about the public charge rules...deterring many eligible immigrants from seeking critical services."[6]

DHS's Public Charge Proposal, should it become law, would only exacerbate these fears, leading to an even lower rate of participation among immigrant families in vital programs such as Medicaid, the Affordable Care Act health-insurance exchanges, CHIP, SNAP and WIC. Indeed, a study by the Massachusetts Budget and Policy Center found that twenty-four million people could be impacted by the chilling effect across the country, and 500,000 people, including 160,000 children in Massachusetts could forgo receiving needed benefits even if they are eligible.

As millions choose to forgo crucial housing, healthcare, and nutrition benefits, this will create a corresponding diminution in public health and welfare – much of which will be experienced by the U.S. citizen children of immigrants who are legally entitled to receive the assistance of their government just like any other citizen. The CRCL Steering Committee defers to other BBA Sections (*e.g.*, Health Law) with respect to characterizing those adverse impacts to public health, food security, and the like. It is worth noting, however, that these impacts will likely be even more pernicious in States, like Massachusetts, that have elected to augment the federal safety net by funding public-benefit programs at the State level that go beyond what immigrants are entitled to receive under federal law.[7] DHS's Public Charge Proposal directly

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[2] Immigration and Naturalization Service (INS), *Field Guidance on Deportability and Inadmissibility on Public Charge Grounds*, 64 Fed. Reg. 28,689, 28,692-93 (Mar. 26, 1999).

[3] *Id.*

[4] *See, e.g.*, L. Ku & B. Bruen, *The Use of Public Assistance Benefits by Citizens and Non-Citizen Immigrants in the United States*, Cato Inst. Working Paper (Feb. 19, 2013), *available at* https://object.cato.org/sites/cato.org/files/pubs/pdf/workingpaper-13_1.pdf (last accessed Apr. 30, 2018) (concluding that 2012 Census data "confirm that low-income non-citizen adults and children generally have lower rates of public benefits than native-born adults or citizen children whose parents are also citizens," and that even when former receive public benefits, "the average value of benefits per recipient is almost always lower than for those who are native born").

[5] *See* NPRM, available at https://www.federalregister.gov/documents/2018/10/10/2018-21106/inadmissibility-on-public-charge-grounds.

[6] T. Broder, A. Moussavian, & J. Blazer, *Overview of Immigrant Eligibility for Federal Programs*, National Immigration Law Center (Dec. 2015), *available at* https://www.nilc.org/wp-content/uploads/2015/12/overview-immeligfedprograms-2015-12-09.pdf, at 7.

[7] *See* Office of the Assistant Secretary for Planning and Evaluation, Office of Human Services Policy, Department of Health and Human Services, *Overview of Immigrants' Eligibility for SNAP, TANF, Medicaid, and CHIP* (Mar. 2012), *available at* https://aspe.hhs.gov/system/files/pdf/76426/ib.pdf (last accessed Apr. 30, 2015).

undermines the policies these States have made – in their respective sovereign judgments and with Congress's blessing – with the goal of promoting the general welfare of their citizens. In addition, the Boston Planning and Development Agency identified the following consequences if the regulation was adopted: loss of workers and talent and associated cost, loss of income to the city of Boston, the separation of families, and increased health expenditures and costs, including between $14 million - $57 million per year for the city of Boston alone.[8]

Further, the breadth of the regulatory definition of "public benefits" that DHS appears to be contemplating may chill immigrants from seeking other types of noncash assistance even beyond health insurance, nutritional assistance, and the like, including legal aid. As immigrants become more fearful that seeking services and assistance may carry negative immigration enforcement consequences, it will become more difficult for legal services attorneys to access those clients and provide accurate information about their rights and ability to access benefits.

Finally, it is worth noting that DHS's Public Charge Proposal does not even appear rationally to serve its ostensible purpose of conserving public resources and ensuring that immigrants are self-sufficient. Particularly telling is the Proposal's cost-benefit analysis, which is as long on quantified costs – imposing hundreds of millions of dollars in costs over the first 10 years of implementation – as it is short on quantified benefits. The analysis fails to adequately explain the significant healthcare and other costs that businesses, communities, and the states will face from the resulting loss of workers and the contributions they make to local workforces. On a matter of this significance, it should be incumbent upon DHS to better quantify the costs and the benefits of the Public Charge Proposal to enable the public to make an informed assessment on the merits. DHS's failure to do so calls into question the very basis of the proposed policy.

We appreciate your careful consideration of the above comments. If you would like additional information, please contact BBA Legislative and Public Policy Manager Alexa Daniel at adaniel@bostonbar.org.

Sincerely,

BBA Civil Rights and Civil Liberties Steering Committee

[8] http://www.bostonplans.org/getattachment/e856c564-bf0f-47d4-9a44-75b430903f82