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October 22, 2021

Regulatory Coordination Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Avenue NW
Washington DC 20529-2140
Submitted via www.regulations.gov

Re: DHS- Docket No. USCIS-2021-0013; Comments on Public Charge
Ground of Inadmissibility

Dear: Chief Samantha Deshommes

On behalf of the Boston Bar Association, I respectfully submit these comments on Public Charge Ground of Inadmissibility, DHS Docket No. USCIS-2021-0013, in response to the Department of Homeland Security's (DHS) advance notice of proposed rulemaking (ANPRM) published on August 23, 2021.

The BBA is a professional association with over 13,000 attorney members. Our mission is to facilitate access to justice, advance the highest standards of excellence for the legal profession, foster a diverse and inclusive professional community, and serve the community at large.

As an Association, we have for years spoken in support of measures that ensure the just, humane, and fair treatment of all individuals within our borders, and in opposition to practices that threaten the rights and well-being of immigrants. In 2018, we adopted a set of Immigration Principles¹ rooted in a recognition of the invaluable contributions immigrants of all income levels make to our communities and country. The principles inform our advocacy for immigration policies and practices that protect fundamental rights and human dignity, vindicate immigrants' established constitutional rights to due process and equal protection, and promote the ability of all people to meaningfully exercise their rights and access justice through the legal system.

The continued public faith in our institutions and the health of our democracy depend on this approach, which we hope will inform any future changes to the public-charge rules governing inadmissibility determinations.

The BBA's aforementioned Immigration Principles were drafted in part based on a "distress[]" by the ways in which the current climate has enabled the exploitation of immigrants' fears of deportation to dissuade them

¹ <http://www.bostonbar.org/docs/default-document-library/bba-immigration-workinggroup-statement-of-principles.pdf?sfvrsn=2>

from seeking legal assistance, redress of grievances, or the full protection of the law.” More specifically, the principle concerning access to justice states: “Similarly, immigrants are deterred from asserting their civil rights with respect to housing, healthcare, labor and employment, education, and public benefits when they fear that doing so may lead to immigration enforcement against them or their families or may negatively affect their future ability to pursue U.S. citizenship.”

In 2019, when proposed public-charge regulations were first being considered, we warned that, if implemented, they would produce sweeping chilling effects, causing millions across the country to forgo important benefits to which they are legally entitled, and which serve as supports and bridges to economic stability and prosperity. In addition to the harms this would cause individual immigrants and their families, we cautioned, it would also create widespread public health burdens and costs, the loss of workers and talent necessary to maintaining strong local and national economies, and generally create unfair barriers to accessing benefits and processes to which individuals are otherwise entitled.

Indeed, research on the impacts of that since-vacated rule change has borne out those fears, confirming that a drop in enrollment in such programs occurred—even programs that were not to be counted in public-charge determinations², and even among family members who were not subject to the public-charge rule³. This decline was associated with adverse health outcomes, including higher food insecurity and uninsured rates.⁴ The impact was especially pronounced among children.⁵ What we could not have predicted was the COVID-19 pandemic, which exacerbated these effects among essential workers.⁶

Therefore, we urge that **use of benefits such as Medicaid, Medicare Part D prescription drug assistance, Supplemental Nutrition Assistance Program (SNAP), and housing support not be considered as factors in a public-charge test.** Otherwise, millions of immigrants will likely choose not to enroll (or to disenroll) in programs that provide benefits vital to their basic needs, including housing security, food access and healthcare.

This would affect not only immigrants but also their U.S. citizen children, as well as many others who may technically be exempt from the regulations (such as refugees, asylees, and many other “humanitarian” statuses) but due to fear, confusion, and misinformation might

² Jeremy Barofsky, Ariadna Vargas, Dinardo Rodriguez, and Anthony Barrows, “Spreading Fear: The Announcement of the Public Charge Rule Reduced Enrollment in Child Safety-Net Programs,” Health Affairs, No. 10, p. 1752-1761, October 2020, available at: <https://www.healthaffairs.org/doi/10.1377/hlthaff.2020.00763>.

³ J.M. Haley et al., “One in Five Adults in Immigrant Families with Children Reported Chilling Effects on Public Benefit Receipt in 2019,” Urban Institute, June 2020.

⁴ Suan H. Babey, Joelle Wolstein, Riti Shimkhada, Nine A. Ponce, “One in 4 Low-Income Immigrant Adults in California Avoided Public Benefit Programs, Likely Worsening Food Insecurity and Access to Health Care” UCLA Center for Health Policy Research, March 2021 <https://healthpolicy.ucla.edu/publications/search/pages/detail.aspx?PubID=2072>.

⁵ Randy Capps, Michael Fix, and Jeanne Batalova, Migration Policy Institute, “Anticipated ‘Chilling Effects’ of the Public Charge Rule Are Real: Census Data Reflect Steep Decline in Benefits Use by Immigrant Families,” December 2020. <https://www.migrationpolicy.org/news/anticipated-chilling-effects-public-charge-rule-are-real>. Alexandra Ashbrook, Food Research and Action Center. “New Data Reveal Stark Decreases in SNAP Participation Among U.S. Citizen Children Living With a Non-Citizen”. May 2021

⁶ Sharon Touw, Grace McCormack, David Himmelstein, Steffie Woolhandler, and Leah Zallman. “Immigrant Essential Workers Likely Avoided Medicaid and SNAP Because of a Change to the Public Charge Rule,” Health Affairs, July 2021, <https://www.healthaffairs.org/doi/pdf/10.1377/hlthaff.2021.00059>.

not feel able to safely access these resources. These groups are some of the most vulnerable populations (e.g., unaccompanied minors, survivors of domestic violence and other trauma) and often those most in need of public benefits to achieve safety, independence, and self-sufficiency.

In addition, we have significant equal-treatment and access-to-justice concerns, as the burden of this chilling effect may be borne most by people of color, immigrants, and citizens alike—groups that have disproportionate rates of poverty and health disparities, making supplementary health, food, and nutrition benefits more necessary to their well-being and economic stability.

Opportunities for discretion by those making public-charge assessments could result in subjective—and therefore inconsistent—determinations. Such inconsistencies across the system could in turn lead to bias-based decision-making and unequal applications of the test. For these reasons, **any new public-charge regulations should provide clarity in its guidance as to how the rule would be applied.**

As adjudicators—just like all people—often hold unconscious biases, this may compound the disproportionate impacts anticipated to be felt by people of color as a result of the chilling effect, outlined above. Moreover, it will make it difficult for immigration attorneys and others to advise clients, both in relation to the public-charge determination and in making decisions on matters like receipt of benefits, that could impact future determinations.

As attorneys, we understand how important it is to have clear and rational standards that can be applied equally and consistently, especially when it concerns matters with consequences as significant as family separation and possible eventual deportation. Without this clarity, we cannot provide equal access to justice for all, an essential element in maintaining faith in our public institutions.

Thank you for your careful consideration of these comments. If you would like additional information, please contact the BBA's Director of Government Relations, Michael Avitzur, at mavitzur@bostonbar.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Deborah J. Manus". The signature is fluid and cursive, with a long horizontal flourish at the end.

Deborah J. Manus
President