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LOUISIANA’S EXPERIENCE SHOWS THAT INCLUSION OF NON-CASH PROGRAMS WOULD HARM LOW-INCOME IMMIGRANTS AND THE PUBLIC

Comment Opposing DHS’s Proposed “Inadmissibility on Public Charge Grounds” Rule  
Proposed Oct. 10, 2018, 83 FR 51114

December 10, 2018  
Submitted via www.regulations.gov

The Notice of Proposed Rule “Inadmissibility on Public Charge Grounds,” issued by the Department of Homeland Security on October 10, 2018, represents an extreme and dangerous modification to longstanding public charge guidelines. We urge DHS to immediately withdraw the proposed rule.

This comment is submitted by the New Orleans’ Workers Center for Racial Justice. Our history should be familiar to DHS: the Workers’ Center was founded in the aftermath of Hurricane Katrina as Black and immigrant workers came together to build a multiracial movement committed to racial, gender, and immigrant justice in the South. The Workers’ Center is a membership-based organization composed of three organizing projects: Stand with Dignity (composed of structurally unemployed and underemployed Black New Orleans workers), Congreso de Jornaleros/Congress of Day Laborers (composed of immigrant reconstruction workers and their families), and Alianza de Trabajadores de Marisco y Pescado/Seafood Workers’ Alliance (composed of seafood workers throughout Louisiana).

More than a decade after Katrina, our members continue to struggle together, leading economic and racial justice campaigns that have been profiled in the New York Times, Washington Post, and the Los Angeles Times. They have testified before Congress regarding immigration reform and have advised various administrative agencies on the particular needs of reconstruction workers, communities of color, and displaced families. In 2016, they successfully led a campaign through public engagement and a federal lawsuit to challenge the state’s imposition of work requirements on certain Louisiana residents who receive food stamps.

Our membership includes U.S. workers, guestworkers, lawful permanent residents, immigrant victims of human trafficking and serious crimes, and both mixed status and undocumented families, including hundreds of families who are likely to be directly impacted by the proposed rule.

We oppose the proposed rule on two grounds. First, the rule endangers U.S. citizens as well as the lives and families of immigrant residents of Louisiana. Second, the rule promotes
discrimination and exclusion of families who seek assistance, furthering the white nationalist perspective of who deserves to live and thrive in this country.

I. The proposed rule will endanger the lives of immigrant residents, their families, and the general public in Louisiana

According to data from the American Community Survey, there are 110,000 non-U.S.-citizen residents of Louisiana and an additional 70,000 Louisiana residents who have family members who are not U.S. citizens.1 Of these residents, 103,000 have at least one family member who receives a public benefit identified in the proposed rule as newly relevant to public charge inadmissibility analysis. In a small state of only 4.7 million residents, this means that at least 2% of Louisiana residents stand to be directly affected by the proposed rule. The proposed rule will hurt those directly affected families as well as folks in the broader community.

The proposed “totality of circumstances test” puts a path to status for these residents at risk. The most heavily weighted positive factor is income, specifically earning more than 250% of the federal poverty level or $63,000/year for a family of four. But Louisiana is an incredibly poor state: it is dead last in the nation, with almost 20% of all state residents living below the poverty line.2 Its unemployment rate of 7.1% is significantly above the national average of 5.8%.3 In New Orleans alone, there are 82,746 non-citizens and family members of noncitizens, and half of those Louisiana residents fall below 250% of the federal poverty line.4

The poverty epidemic in Louisiana is a legacy of the state’s long history of settler colonialism, slavery, labor exploitation and trafficking, and state-supported racial discrimination. Workers of color in Louisiana—especially Black and Latino workers—do not have a fair chance at full employment or making more than poverty wages. The rates of unemployment for Black workers are more than double the rates for white workers (11% for Black women, 14% for Black men, compared to 5% for white women, 6% for white men).5 The rates of unemployment for all workers of color are also alarmingly high: 12% for male workers of color and 10% for women of color.6 The poverty crisis in New Orleans is acute: 48% of Black men in New Orleans between the ages of 17 and 35 are unemployed.7

These statistics show that immigrant residents—predominantly Black and Latino in Louisiana—are structurally disadvantaged to secure full and fair employment. The proposed rule will effectively punish them for residing in a still-segregated state. The proposed rule will also

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4 Mannat.
5 Crowder at 4.
6 Id.
compound the economic crisis in Southern Louisiana that was precipitated by the disastrous failures of the U.S. government after Katrina and which persist to this day.\(^8\)

Other elements of the “totality of circumstances test” are equally troubling. The rule would deemphasize affidavits of support, inflating the importance DHS assigns to a person’s age, medical condition, family status, household assets, resources, and financial status. Ultimately the new test means that children, older adults, individuals with limited formal education or limited English proficiencies and those with household incomes less than 250% of the federal poverty level will face more difficulty entering the US and gaining lawful status.

Furthermore, this rule is likely to chill and deter individuals who still remain eligible for public benefits, including the most vulnerable members of our society: pregnant women, children and those living in extreme poverty.

This rule will have a profound impact on our members, many of whom are reconstruction workers and Katrina refugees. In a state that has been racked by natural and humanmade disasters, immigrant workers have stepped up time and again to support Louisiana’s communities. Immigrant workers led the state’s rebuilding efforts after Hurricanes Gustav and Katrina and again stepped up when horrific flooding hit Baton Rouge just two years ago. If this rule is promulgated, the same workers who have so generously rebuilt our communities would be stripped of small means of support in their own time of need.

**II. The proposed rule will promote discrimination and exclusion of families who seek assistance, furthering the white nationalist perspective of who deserves to live and thrive in this country**

As mentioned above, the proposed rule also seeks to deemphasize affidavits of support, undermining the statutory intent set forth in INA § 212(a)(4)(B). The agency argues USCIS has not placed enough weight on the five statutory factors set out in INA § 212(a)(4)(B) and has instead put too much emphasis on the affidavit of support. However, the five factors that were added to the statute in 1996—age, health, education, family status, financial resources, and personal income—codified a long-standing practice of weighing *multiple* factors, and only in unusual cases. Rather than clarifying these factors, the new rule proposes that each factor be weighed in a manner akin to a point system—a point system that has been repeatedly rejected by Congress. Furthermore, factors like earning low income, having low levels of formal education, being a child or a senior, and not speaking English are poor predictors of who will likely need institutionalization and so become a public charge. Affidavits of support from a qualifying sponsor are much more persuasive, and should continue to be the focus of public charge determinations.

Ultimately, the proposed rule is an enormous step backward in the historical effort to root out racism in U.S. immigration laws. Public charge rules are in fact a legacy of racially animated anti-immigrant policy in the early years of the United States. As Irish immigrants flocked to the U.S. to escape the Irish potato famine, states and eventually the federal government seized upon

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“public charge” regulation to expel the Irish—viewed as morally corrupt, hopelessly poor, diseased, and unclean. As the Historians’ Comment recounts, in the early and mid-twentieth century, the public charge ground of inadmissibility was applied selectively to certain disfavored ethnic groups: Jewish peddlers, South Asians, and Mexican workers. The discriminatory application of the public charge ground of inadmissibility was only ameliorated through the agency’s implementation of “quantifiable standards” to interpret public charge. The proposed rule’s broad-reaching and poorly-defined “totality of circumstances test” is a direct regression to giving individual agents broad discretion. The rule allows and even invites racial bias on the part of decision-makers.

For the reasons outlined above, DHS should immediately withdraw the proposed rule. The agency has failed to provide evidence-backed justifications to radically alter public charge doctrine that has stood for well over a century. The case of Louisiana makes clear that an elimination of non-cash programs would cause grave danger to public health, safety, and the region’s ability to respond to disasters. Ultimately, the proposed rule aims to supercharge a racially animated ground of exclusion. Instead, immigration law should be moving in the other direction—toward eradicating a long legacy of legally-sanctioned racial and ethnic discrimination by instituting policies that promote the health, financial security, and well-being of all our nation’s residents.

Respectfully submitted,

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11 Id.