

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

STATE OF NEW YORK; STATE OF CALIFORNIA;
STATE OF ILLINOIS; STATE OF COLORADO;
STATE OF CONNECTICUT; STATE OF
DELAWARE; STATE OF HAWAI'I; STATE OF
MAINE; STATE OF MARYLAND;
COMMONWEALTH OF MASSACHUSETTS;
STATE OF MICHIGAN; STATE OF MINNESOTA;
STATE OF NEW JERSEY; STATE OF NEW
MEXICO; STATE OF NEVADA; STATE OF
OREGON; JOSH SHAPIRO, in his official capacity
as Governor of the COMMONWEALTH OF
PENNSYLVANIA; STATE OF RHODE ISLAND;
STATE OF VERMONT; COMMONWEALTH OF
VIRGINIA; STATE OF WASHINGTON; STATE OF
WISCONSIN; DISTRICT OF COLUMBIA,

Plaintiffs,

v.

U.S. DEPARTMENT OF HOMELAND SECURITY;
MARKWAYNE MULLIN, in his official capacity as
the SECRETARY OF THE DEPARTMENT OF
HOMELAND SECURITY; U.S. CITIZENSHIP
AND IMMIGRATION SERVICES; and JOSEPH B.
EDLOW, in his official capacity as the DIRECTOR
OF U.S. CITIZENSHIP AND IMMIGRATION
SERVICES,

Defendants.

Case No. 26-cv-7978

COMPLAINT

INTRODUCTION

1. Plaintiff States challenge a final rule issued by Defendants that upends years of established immigration policy. Namely, the final rule challenged here unlawfully removes any meaningful guidelines as to what individual immigration officers may consider in determining if certain non-citizens may be deemed a “public charge”—and therefore denied entry to this country or denied legal permanent residence. Congress never intended for the public charge ground to be weaponized against immigrants and their family members who merely use supplemental or temporary amounts of public assistance to which they are lawfully entitled. Yet that is exactly what Defendants now seek to do through the final rule challenged here.

2. In 1882, Congress enacted a provision of immigration law to allow the United States to deny a non-citizen applicant entry into the United States on the ground that the applicant would be unable to support herself in the future. In its current form, this provision is known as the “public charge ground of inadmissibility.” For over 140 years, the term “public charge” has been understood by Congress, the courts, federal agencies, and states to mean an individual who has become, or is likely to become, primarily dependent on the government for long-term subsistence. Congress has consistently incorporated that core meaning, without change, into federal immigration law, from the first federal immigration statute through enactment of the current public charge ground of inadmissibility in 1996, 8 U.S.C. § 1182(a)(4)(A).

3. In 2022, the United States Department of Homeland Security (“DHS”) promulgated regulations distilling when an individual is likely to become a “public charge.” Consistent with the statutory term’s well-established meaning, the 2022 regulations provided that a “public charge” is someone likely to become primarily dependent on the government for subsistence as demonstrated by receipt of public cash assistance for income maintenance or long-term institutionalization at

government expense. The regulations circumscribed agents' discretion in making public charge determinations to ensure that they stayed within the bounds of the law.

4. Yet now, Defendants DHS and United States Citizenship and Immigration Services ("USCIS"), an agency within DHS, have promulgated a new final rule rescinding the 2022 regulations. Public Charge Ground of Inadmissibility, 91 Fed. Reg. 45324 (July 20, 2026) (to be codified at 8 C.F.R. pts. 103 and 212) (the "2026 Final Rule" or the "Final Rule"). Defendants subsequently published a revised chapter of the USCIS Policy Manual concerning the public charge ground of inadmissibility (the "Guidance"). *See* Ex. A. In doing so, Defendants abandon the long-settled understanding of the term "public charge" that Congress ratified, and attempt to bar far more noncitizens from admission under the public charge provision.

5. Defendants replace the 2022 regulations, which codified well-established law, with unfettered discretion for immigration officials to determine who can be excluded on public charge grounds. The Guidance provides no clear bounds on this discretion and enables individual immigration officers to make public charge inadmissibility determinations in ways that fundamentally depart from the core meaning of the term.

6. Ultimately, under Defendants' Final Rule, and in accordance with the Guidance, immigration officers have unprecedented, sweeping new discretion to deny admission, and to block pathways to lawful permanent residency, based on participation in public programs—programs for which Congress or the states elected to extend eligibility to noncitizens or their citizen family members. Non-citizens will be faced with the impossible task of weighing their or their family members' participation in supplemental state and federal programs that improve health, economic mobility, and general well-being, against the negative impacts that such

participation will have on their ability to obtain lawful permanent resident status (also known as “green cards”).

7. In fact, according to the Final Rule’s expansive new understanding of “public charge,” individual USCIS agents will now be able to rely on *any* public benefits use for *any* period of time—and, really, any information at all—in making a public charge inadmissibility determination. For example, individual immigration officers are now empowered to count U.S. citizen household members’ lawful use of individual benefits—including, for example, a citizen child’s use of state-provided health insurance—against a noncitizen parent. The Final Rule puts families in the untenable position of choosing between a U.S. citizen child’s access to healthcare, and their noncitizen parent’s ability to remain in the country.

8. The Final Rule, and the Guidance, are inconsistent with the settled meaning—or any other reasonable interpretation—of the Immigration and Nationality Act’s (“INA”) public charge provision. 8 U.S.C. § 1182(a)(4)(A). In departing from that settled meaning without express authorization from Congress, Defendants have exceeded their statutory authority.

9. In addition, the federal government’s decision to issue the Final Rule and the Guidance is arbitrary and capricious. Defendants have failed to engage in the reasoned decision-making process required by the Administrative Procedure Act (“APA”), 5 U.S.C. § 706. The Final Rule brushes aside the significant and far-reaching harmful consequences of the regime it creates, while relying on legally erroneous justifications. It fails to consider alternatives that could have minimized the harms that will be caused by the Final Rule, demonstrates no consideration of Plaintiff States’ reliance on the prior rule and decades-old administrative practices, and intentionally fails to explain a host of ambiguities created by this rulemaking.

10. As a result of the Final Rule and the Guidance, Plaintiff States, including their agencies, subdivisions, and instrumentalities, will be harmed in predictable ways when noncitizens and their family members—including U.S. citizen children—disenroll from programs for which they remain eligible. Plaintiff States will ultimately be forced to fill the breach, and staggering costs will follow on multiple fronts: Plaintiff States will lose federal funding due to disenrollment in state programs, and public agencies will face substantial administrative costs as they attempt to mitigate confusion and fear. As households forgo their legal access to benefits—such as preventative healthcare, nutritional assistance, and school lunch—public health, local economies, public education, and public safety will suffer. The Final Rule will increase the prevalence of disease, drive up the costs of medical care, and increase poverty.

11. Plaintiff States respectfully request that this Court declare that the Final Rule violates the APA, because it is contrary to law and in excess of Defendants’ statutory authority, and is arbitrary and capricious. In the alternative, Plaintiff States respectfully request that this Court declare that the Guidance is a final rule that violates the APA, because it is contrary to law and in excess of Defendants’ statutory authority, is arbitrary and capricious, and is a legislative rule improperly not subject to required notice and comment rulemaking.

JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (action arising under the laws of the United States). Jurisdiction is also proper under the judicial review provisions of the APA. 5 U.S.C. §§ 702, 704. An actual controversy exists between the parties within the meaning of 28 U.S.C. § 2201(a), and this Court may grant declaratory relief, injunctive relief, and other relief pursuant to 28 U.S.C. §§ 2201–2202 and 5 U.S.C. § 706.

13. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b)(2) and (e)(1) because a substantial part of the events or omissions giving rise to the claims asserted herein occurred in this district, and Defendants are United States agencies or officers acting in their official capacities.

PARTIES

A. Plaintiffs

14. Plaintiff the State of New York, represented by and through its Attorney General Letitia James, is a sovereign state of the United States of America. The Attorney General is New York State's chief law enforcement officer and is authorized under N.Y. Exec. Law § 63 to pursue this action.

15. Plaintiff the State of California is a sovereign state of the United States of America. California Attorney General Rob Bonta is the chief law officer of the State of California and head of the California Department of Justice. He has the authority to file civil actions to protect California's rights and interests and the resources of the State. Cal. Const., art. V, § 13; Cal. Gov't Code §§ 12510-11; *see Pierce v. Superior Court*, 1 Cal. 2d 759, 761–62 (1934) (the Attorney General "has the power to file any civil action or proceeding directly involving the rights and interests of the state[.]").

16. Plaintiff the State of Illinois, represented by and through its Attorney General Kwame Raoul, is a sovereign State of the United States of America. As the State's chief legal officer, the Attorney General is authorized to act on behalf of the State in this matter.

17. Plaintiff the State of Colorado is a sovereign state of the United States of America. Colorado is represented by Philip J. Weiser, the Attorney General of Colorado. The Attorney General acts as the chief legal representative of the state and is authorized by Colorado Revised Statute § 24 31-101 to pursue this action.

18. Plaintiff the State of Connecticut is a sovereign state of the United States of America. Connecticut is represented by and through its chief legal officer, Attorney General William Tong, who is authorized under General Statutes § 3-125 to pursue this action on behalf of the State of Connecticut.

19. Plaintiff the State of Delaware is a sovereign state of the United States of America. This action is brought on behalf of the State of Delaware by Attorney General Kathleen Jennings, the “chief law officer of the State.” *Darling Apartment Co. v. Springer*, 22 A.2d 397, 403 (Del. 1941). Attorney General Jennings also brings this action on behalf of the State of Delaware pursuant to her statutory authority. Del. Code Ann. tit. 29, § 2504.

20. Plaintiff the State of Hawai‘i, represented by and through its Attorney General Anne Lopez, is a sovereign state of the United States of America. Attorney General Lopez is the “chief legal officer of the State[,]” Haw. Const. art. V, § 6, and is authorized by statute to pursue this action on its behalf, Haw. Rev. Stat. §§ 26-7, 28-1.

21. Plaintiff the State of Maine is a sovereign state of the United States of America. Maine is represented by Aaron M. Frey, the Attorney General of Maine. The Attorney General is authorized to pursue this action pursuant to 5 Me. Rev. Stat. Ann. § 191.

22. Plaintiff the State of Maryland, represented by and through its Attorney General Anthony G. Brown, is a sovereign State of the United States of America. As the State’s chief legal officer, the Attorney General is authorized to act on behalf of the State in this matter.

23. Plaintiff the Commonwealth of Massachusetts is a sovereign state in the United States of America. Massachusetts is represented by Attorney General Andrea Joy Campbell, who is the chief law enforcement officer of Massachusetts.

24. Plaintiff the State of Michigan is a sovereign state of the United States of America. Michigan is represented by Attorney General Dana Nessel, who is the chief law enforcement officer for the State of Michigan.

25. Plaintiff the State of Minnesota is a sovereign state in the United States of America. Minnesota is represented by Keith Ellison, the Attorney General of the State of Minnesota. The Attorney General's powers and duties include acting in federal court in matters of State concern. Minn. Stat. § 8.01. The Attorney General has the authority to file suit to challenge action by the federal government that threatens the public interest and welfare of Minnesota residents and to vindicate the State's sovereign and quasi-sovereign interests.

26. Plaintiff the State of Nevada, represented by and through Attorney General Aaron D. Ford, is a sovereign state within the United States of America. The Attorney General is the chief law enforcement officer of the State of Nevada and is authorized to pursue this action under Nev. Rev. Stat. § 228.110 and Nev. Rev. Stat. § 228.170.

27. Plaintiff the State of New Jersey is a sovereign state of the United States. New Jersey is represented by and through Attorney General Jennifer Davenport, who is the chief legal officer of New Jersey.

28. Plaintiff the State of New Mexico is a sovereign state of the United States of America. New Mexico is represented by Attorney General Raúl Torrez, who is the chief law enforcement officer of New Mexico.

29. Plaintiff the State of Oregon is a sovereign state of the United States. Oregon is represented by Attorney General Dan Rayfield. The Attorney General is the chief legal officer of Oregon and is authorized to institute this action.

30. Plaintiff Josh Shapiro brings this suit in his official capacity as Governor of the Commonwealth of Pennsylvania. The Pennsylvania Constitution vests “[t]he supreme executive power” in the Governor, who “shall take care that the laws be faithfully executed.” Pa. Const. art. IV, § 2. The Governor oversees all executive agencies in Pennsylvania and is authorized to bring suit on their behalf. 71 P.S. §§ 732-204(c), 732-301(6), 732-303.

31. Plaintiff the State of Rhode Island, represented by and through its Attorney General Peter F. Neronha, is a sovereign state of the United States of America. As the State’s chief legal officer, the Attorney General is authorized to act on behalf of the State in this matter.

32. Plaintiff the State of Vermont is a sovereign state of the United States. Vermont is represented by its Attorney General, Charity Clark, who is the chief legal officer of Vermont and has authority to represent the State in this matter.

33. Plaintiff the Commonwealth of Virginia is a sovereign state of the United States of America. Virginia is represented by Attorney General Jay Jones, the chief executive officer of the Department of Law. Va. Code § 2.2-500. Attorney General Jones is authorized to represent the Commonwealth and its interests in controversies with the federal government. Va. Code § 2.2-513.

34. Plaintiff the State of Washington is a sovereign state of the United States of America. Washington is represented by Attorney General Nicholas W. Brown. The Attorney General of Washington is the chief legal advisor to the State and is authorized to act in federal court on behalf of the State on matters of public concern. Chapter 43.10 RCW.

35. Plaintiff the State of Wisconsin is a sovereign state in the United States of America. Wisconsin is represented by Josh Kaul, the Attorney General of Wisconsin. Attorney General Kaul is authorized to sue on behalf of the State.

36. Plaintiff the District of Columbia is a municipal corporation organized under the Constitution of the United States. It is empowered to sue and be sued, and it is the local government for the territory constituting the permanent seat of the federal government. The District is represented by and through its chief legal officer, Attorney General Brian L. Schwalb. The Attorney General has general charge and conduct of all legal business of the District and all suits initiated by and against the District, and is responsible for upholding the public interest. D.C. Code. § 1-301.81.

B. Defendants

37. Defendant United States Department of Homeland Security (“DHS”) is an executive branch agency within the federal government, headquartered in Washington, D.C.

38. Defendant Markwayne Mullin is the Secretary of DHS. He is sued in his official capacity.

39. Defendant the United States Citizenship and Immigration Services (“USCIS”) is a component of DHS, 6 U.S.C. § 271, and is an agency, 5 U.S.C. § 551(1).

40. Defendant Joseph B. Edlow is the Director of USCIS, and its highest-ranking official. He is charged with establishing policies for USCIS, and for overseeing the administration of policies, decisions, and actions of that agency. 6 U.S.C. § 271(a)(3). He is sued in his official capacity.

ALLEGATIONS

41. This case concerns the interpretation and application of the public charge ground of inadmissibility, a longstanding provision of the federal Immigration and Nationality Act (“INA”). The INA requires that noncitizens seeking to be lawfully admitted to the United States, or noncitizens who are already present and seeking to become lawful permanent residents (“LPRs”), prove that they are “not inadmissible.” 8 U.S.C. § 1361.

42. The public charge ground of inadmissibility bars admission of any noncitizen who, “in the opinion of the [Secretary of DHS] at the time of application for admission [to the United States] or adjustment of status, is likely at any time to become a public charge[.]” 8 U.S.C. § 1182(a)(4)(A).

43. A person who is applying to USCIS for “admission” to the United States is typically a noncitizen who has already been subject to inspection and authorized by border officials. *Id.* 8 U.S.C. § 1101(a)(13). Noncitizens applying for admission with USCIS include individuals who are permitted to be in the country for a specified purpose and a temporary period of time, whether they enter with a nonimmigrant intent (e.g., certain tourists or students), or immigrant intent (e.g., limited visas for fiancés of U.S. citizens).¹

44. A person who is “adjusting status” is typically a noncitizen who was already admitted (generally as a visa-holder) or paroled to the United States, is physically present, and is now seeking to adjust to LPR status. *See generally* 8 U.S.C. § 1255(a).

45. Noncitizens who are applying for admission or for an adjustment of status are subject to the public charge ground of inadmissibility. 8 U.S.C. § 1182(a)(4).

A. Historical, Statutory, and Regulatory Background

1. The Immigration Act of 1882

46. The term “public charge” was first introduced into federal law in 1882, when Congress provided that any noncitizen “convict, lunatic, idiot, or any person unable to take care of

¹ Grounds of inadmissibility, including the public charge ground, are assessed at various times for a noncitizen. Because of this, DHS is not the only agency that makes public charge inadmissibility determinations. The United States Department of State (“DOS”) assesses noncitizens’ public charge inadmissibility when considering visa applications and various other immigration benefit applications from noncitizens abroad. The United States Department of Justice (“DOJ”) adjudicates cases concerning deportation of noncitizens who were previously admitted, but alleged to have become “public charges” within 5 years of entry (and therefore may be subject to inadmissibility determinations again, even when previously admitted). *See* 8 U.S.C. § 1227(a)(5). This case concerns the public charge ground of inadmissibility as interpreted and administered by Defendants, including DHS, and not as administered by DOS or DOJ.

[themselves] without becoming a public charge” be excludable and prevented from entering the country. Immigration Act of 1882, Pub. L. No. 47-376, ch. 376, § 2, 22 Stat. 214.

47. At the same time, Congress created a fund “for the support and relief” of arriving immigrants who “may fall into distress or need public aid.” *Id.* §§ 1-2, 22 Stat. at 214. This fund for immigrants was used in part “for protecting and caring for” immigrants from “when they arrive[d]...until they [could] proceed to other places or obtain occupation for their support.” 13 Cong. Rec. 5106 (1882) (Rep. Reagan). In creating this fund, Congress drew a distinction between recently-arriving immigrants who may have needed assistance in transitioning to a new homeland, versus those who would become “public charges” because they would be primarily dependent on public benefits for subsistence.

48. Over the years, Congress repeatedly reenacted public charge provisions, after courts interpreted it as being limited to the few individuals who were unable to support themselves and were thus likely to depend almost entirely on the government for long-term subsistence. *See, e.g., Gegiow v. Uhl*, 239 U.S. 3, 10 (1915) (“public charge” means individuals unable to work due to “permanent personal objections”); *Howe v. United States*, 247 F. 292, 294 (2d Cir. 1917) (“Congress meant the act to exclude persons who were likely to become occupants of almshouses for want of means with which to support themselves in the future.”).

2. The Immigration and Nationality Act of 1952

49. In 1952, Congress ratified the courts’ consistent understanding of “public charge” when it included the public charge ground of inadmissibility “without pertinent change” into the original version of the INA. *New York v. U.S. Dep’t of Homeland Sec.*, 969 F.3d 42, 70 (2d Cir. 2020), *cert. granted*, 141 S. Ct. 1370 (2021), *cert. dismissed*, 141 S. Ct. 1292 (2021).

50. As the Second Circuit concluded, between the 1952 Act and 1996, “[t]he absolute bulk of the caselaw, from the Supreme Court, the circuit courts, and the [Board of Immigration Appeals (BIA)] interpret[ed] ‘public charge’ to mean a person who is *unable* to support herself, either through work, savings, or family ties.” *Id.* at 71 (emphasis added).

3. The 1996 Laws: PRWORA and IIRIRA

51. In 1996, Congress passed two pieces of legislation concerning noncitizen eligibility for public benefits: the Personal Responsibility and Work Opportunity Reconciliation Act (“PRWORA”), Pub. L. No. 104-193, § 403, 110 Stat. 2105, 2265-67 (1996), which became law on August 22, 1996, and the Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”), Pub. L. No. 104-208, § 531, 110 Stat. 3009, 3674-75 (1996), which became law on September 30, 1996.

52. PRWORA limited noncitizen eligibility for certain public benefit programs. The statute’s policy statement explained that Congress intended to create “new rules for eligibility and sponsorship agreements in order to assure that aliens be self-reliant in accordance with national immigration policy.” 8 U.S.C. § 1601(5).

53. Throughout the preamble to the 2026 Final Rule, Defendants rely upon PRWORA’s policy statement and the “spirit of PRWORA” as justification for why, in Defendants’ view, the Final Rule was needed. *See, e.g.*, 91 Fed. Reg. at 45361 (“DHS points to our national policy on welfare and immigration as set forth in PRWORA as a sufficient basis to move forward with this final rule.”).

54. But PRWORA did not address or change the meaning of the term “public charge” in any way, and when Defendants previously argued that PRWORA justified a new definition of

the inadmissibility ground, the Second Circuit was “thoroughly unpersuaded.” *New York*, 969 F.3d at 77.

55. Indeed, PRWORA preserved noncitizen access to a number of public benefits, ranging from optional state-only benefits, 8 U.S.C. § 1621(d), to emergency disaster relief, immunizations, emergency shelter, and more. 8 U.S.C. § 1611. Congress also recognized that certain nutritional programs, including school lunch and breakfast, had independent statutory bases, and those statutes required that these meals be provided to school children irrespective of citizenship or immigration status. *See, e.g.*, Richard B. Russell National School Lunch Act, 42 U.S.C. §§ 1751–1769. PRWORA did not change the independent statutory requirements that access to these programs not be restricted based on citizenship or immigration status, and instead codified Congress’s decision that these benefits continue to be available to citizens and noncitizens alike. 8 U.S.C. § 1615.

56. As the Second Circuit explained, PRWORA does not “indicate any congressional intention that non-citizens who receive the benefits for which Congress did *not* render them ineligible risk being considered ‘public charges.’” *New York*, 969 F.3d at 77.

57. In September 1996, weeks after the enactment of PRWORA, Congress also passed IIRIRA, which amended the INA. In IIRIRA, Congress left the principal statutory language for the public charge ground of inadmissibility intact and amended the law to require that immigration officials consider five factors in making public charge determinations: age, health, family status, financial status, and education. 8 U.S.C. § 1182(a)(4)(B)(i).

58. IIRIRA also imposed a new requirement that noncitizens seeking admission as immigrants based on family ties obtain affidavits of support, in which a sponsor agrees to maintain the would-be immigrant at an income of no less than 125% of the Federal Poverty Guidelines. *Id.*

§§ 1182(a)(4)(C), 1183a(a)(1). Where applicable, these affidavits of support may be considered as a sixth, discretionary factor in making public charge determinations. 8 U.S.C. §§ 1181(a)(4)(B)(ii), 1183a(a)(1).

59. In passing IIRIRA, Congress rejected the inclusion of a provision that would have redefined “public charge” to include noncitizens who received federal public benefits “for an aggregate of 12 months over a period of 7 years.” 142 Cong. Rec. S11872 (daily ed. Sept. 30, 1996) (statement of Sen. Kyl). Congress also chose not to incorporate language it had previously considered to apply a broader “means-tested public benefit” definition to “public charge.” *See* IIRIRA Conference Report - H. Rep. No. 104-828 at 138 (proposing adding “means-tested public benefit” language to public charge ground of deportation), 238 (discussing definition of “means-tested public benefit”), 240-41 (amending public charge ground of inadmissibility).

60. The same Congress that enacted IIRIRA and PRWORA in 1996 also was presented with, and considered and rejected, another attempt to broaden the scope of “public charge.” A proposed Immigration Control and Financial Responsibility Act (“ICFRA”) would have changed the definition of “public charge” for deportability purposes to include noncitizens who used nearly any public benefit for over a year (with some exceptions). H.R. 2202 § 202(a)(5)(D). The Senate rejected this bill. S. Rep. No. 104-249 (1996).

61. The 1996 reenactment of the public charge ground of inadmissibility through IIRIRA thus “remove[d] any doubt” that Congress had ratified the settled meaning of the term “public charge” as it had been construed since the earliest federal immigration laws to have used the term: “a person who is unable to support herself, either through work, savings, or family ties.” *New York*, 969 F.3d at 70–71.

4. 1999 Field Guidance and Proposed Rule

62. After the passage of PRWORA and IIRIRA, the Immigration and Naturalization Services (“INS”), the agency responsible for the administration of immigration law before the creation of DHS, observed widespread “confusion about the relationship between the receipt of federal, state, [and] local public benefits and the meaning of ‘public charge’ under the immigration laws.” Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, 64 Fed. Reg. 28689 (May 26, 1999) (the “1999 Field Guidance”).

63. Concerned that confusion was “detr[act]ing eligible aliens and their families, including U.S. citizen children, from seeking important health and nutrition benefits that they [we]re legally entitled to receive,” INS issued the 1999 Field Guidance memorializing the established meaning of the term “public charge.” 64 Fed. Reg. at 28692. In doing so, INS observed that public benefits—other than public cash assistance for income maintenance and institutionalization for long-term care at government expense—“are by their nature supplemental and do not, alone or in combination, provide sufficient resources to support an individual or family.” *Id.* The 1999 Field Guidance was published in the Federal Register on the same day as the related notice of proposed rulemaking. “Inadmissibility and Deportability on Public Charge Grounds,” 64 Fed. Reg. 28676 (May 26, 1999) (the “1999 Proposed Rule”).

64. In the 1999 Proposed Rule, INS defined “public charge” as a noncitizen who is “primarily dependent on the Government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance or institutionalization for long-term care at Government expense.” 64 Fed. Reg. at 28677. The agency concluded that this interpretation was warranted by “the plain meaning of the word ‘charge,’ the historical context of public dependency when the public charge immigration provisions were first enacted,” “the expertise of the benefit-

granting agencies that deal with subsistence issues,” and the “factual situations presented in the public charge case law.” *Id.* The 1999 Proposed Rule was ultimately not finalized, but the related 1999 Field Guidance remained effective.

65. In developing the 1999 Field Guidance, INS consulted with various federal benefit-granting agencies, including the U.S. Department of Health and Human Services, the Social Security Administration, and the U.S. Department of Agriculture (“USDA”), to determine which types of receipt of public benefits indicated that an individual was or was likely to become a “public charge.” 64 Fed. Reg. at 28692; *see also* 64 Fed. Reg. at 28677.

66. The 1999 Field Guidance identified four specific public benefits for which receipt could be considered for public charge purposes because they demonstrated “primary dependence” on the government for subsistence: (i) Supplemental Security Income (“SSI”), a cash assistance program for older adults and persons who are blind or otherwise disabled; (ii) Temporary Assistance for Needy Families (“TANF”), a cash assistance program for families living in poverty; (iii) state and local cash assistance programs (also known as “General Assistance”); and (iv) any program, including Medicaid, supporting people institutionalized for long-term care purposes. 64 Fed. Reg. at 28692-93.

67. INS explained in the 1999 Field Guidance that, based on their “extensive consultations with [federal] benefit-granting agencies,” receipt of other types of public benefits, especially non-cash benefits, were not relevant to public charge determinations because those benefits are “by their nature supplemental and do not, alone or in combination, provide sufficient resources to support an individual or family.” *Id.* at 28692. Instead, the 1999 Field Guidance directed that immigration officials should determine whether to exclude an individual on public charge grounds by considering the receipt of public cash benefits provided for income maintenance

or long-term institutionalization at government expense, as part of a “totality of the circumstances” test. *Id.* at 28690-92.

68. For the next 20 years, the federal government continued to interpret the term “public charge” consistent with the 1999 Field Guidance and over a century of prior precedent.

5. The 2019 Final Rule

69. During the first Trump administration, the federal government changed course, relying on the policy statement from PRWORA that noncitizens should be “self-sufficient” as a basis for redefining “public charge.” *See* Inadmissibility on Public Charge Grounds, 84 Fed. Reg. 41292 (Aug. 14, 2019) (the “2019 Rule”).

70. The 2019 Rule’s unprecedented interpretation of the term “public charge” redefined this term as “an alien who receives one or more public benefits, as defined [...], for more than 12 months in the aggregate within any 36-month period (such that, for instance, receipt of two benefits in one month counts as two months).” *Id.* at 41501.

71. The 2019 Rule’s regulatory definition of public benefits listed, for the first time, certain federally funded supplemental benefits that are commonly available to individuals above and below the poverty line, and are designed to promote public health, nutrition, and upward mobility, rather than long-term dependency on the government for subsistence. These supplemental benefits included some types of federally funded Medicaid health coverage, benefits under the Supplemental Nutrition Assistance Program (“SNAP”), and federal housing assistance. *Id.*

72. The 2019 Rule led to litigation brought by public and private plaintiffs in multiple jurisdictions across the nation, including in this District. Each district court considering the 2019 Rule concluded that the Rule was likely unlawful, and multiple preliminary injunctions issued

barring the Rule’s enforcement. *See New York v. U.S. Dep’t of Homeland Sec.*, 408 F. Supp. 3d 334 (S.D.N.Y. 2019); *Make the Rd. N.Y. v. Cuccinelli*, 419 F. Supp. 3d 647 (S.D.N.Y. 2019); *CASA de Md., Inc. v. Trump*, 414 F. Supp. 3d 760 (D. Md. 2019); *Cook Cty. v. McAleenan*, 417 F. Supp. 3d 1008 (N.D. Ill. 2019); *City and Cty. of S.F. v. U.S. Citizenship and Immigr. Servs.*, 408 F. Supp. 3d 1057 (N.D. Cal. 2019).

73. The Second Circuit affirmed the District Court’s preliminary injunction and concluded that the term “public charge” had a “sufficiently consistent and settled meaning,” such that courts could “presume Congress ratified that understanding when it created the current public charge statute in 1996.” *New York*, 969 F.3d at 70.

74. The Second Circuit concluded that a “public charge” under the INA means “a person who is unable to support herself, either through work, savings, or family ties.” *Id.* at 71. A public charge “rel[ies] on the government for subsistence.” *Id.* at 74. “[M]ere receipt of benefits from the government” does not, on its own, constitute this type of dependency. *Id.* The Court rejected the 2019 Rule’s legal conclusion that Congress in PRWORA had intended to modify this longstanding definition of “public charge.” *Id.* at 77–78.

75. Other reviewing courts agreed that plaintiffs were likely to succeed in their claims that the 2019 Rule violated the APA because it was contrary to law and arbitrary and capricious. *See Cook Cnty. v. Wolf*, 962 F.3d 208, 229 (7th Cir. 2020), *cert. dismissed*, 141 S. Ct. 1292 (2021); *City and Cnty. of S.F. v. U.S. Citizenship and Immigr. Servs.*, 981 F.3d 742, 756–58 (9th Cir. 2020), *cert. dismissed*, 141 S. Ct. 1292 (2021).

76. In November 2020, an Illinois district court issued a final decision vacating the 2019 Rule as contrary to law and arbitrary and capricious, in violation of the APA. *Cook Cnty. v. Wolf*, 498 F. Supp. 3d 999, 1004–05 (N.D. Ill. 2020).

77. On March 15, 2021, DHS issued a final rule implementing the Northern District of Illinois’s vacatur of the 2019 Rule. Inadmissibility on Public Charge Grounds; Implementation of Vacatur, 86 Fed. Reg. 14221 (Mar. 15, 2021). As a result, the 2019 Rule was removed from the Code of Federal Regulations and public charge assessments were again controlled by the longstanding 1999 Field Guidance.

6. The 2022 Final Rule

78. In 2021, DHS embarked on another rulemaking process, beginning with an “Advance Notice of Proposed Rulemaking” to collect relevant empirical evidence, 86 Fed. Reg. 47025 (Aug. 23, 2021) and then a sixty-day formal notice and comment period, 87 Fed. Reg. 10570 (Feb. 24, 2022).

79. In 2022, DHS promulgated a final rule codifying the long-standing understanding of “public charge.” Public Charge Ground of Inadmissibility Final Rule, 87 Fed Reg. 55472 (Sept. 9, 2022) (the “2022 Rule”).

80. The 2022 Rule affirmed that a “public charge” meant someone who is “likely at any time to become primarily dependent on the government for subsistence as demonstrated by either the receipt of public cash assistance for income maintenance, or long-term institutionalization at government expense.” 8 C.F.R. § 212.21(a) (2022).

81. In addition, the 2022 Rule reflected DHS’s reasoned decision that the harms of the 2019 Rule’s expansive public charge policy outweighed any purported benefits. The 2022 Rule examined extensive, relevant data in the administrative record, including reports and studies about the “chilling effects” caused by the 2019 Rule, *i.e.*, widespread disenrollments from benefits, by both noncitizens and their citizen family members, due to fear and confusion about how the 2019 Rule would be applied. *See, e.g.*, 87 Fed. Reg. at 55491, 55505. It considered “a range of

downstream consequences for the general public and for State and local governments” due to these chilling effects, such as “avoidance of preventive medical care, children’s immunizations, and nutrition programs.” 87 Fed. Reg. at 55529. DHS found that the 2019 Rule had caused severe, negative effects on the health and wellbeing of noncitizens and their U.S. citizen family members, deterred people who were “not subject to the public charge ground of inadmissibility” from using public benefits, and harmed States’ ability to administer a range of programs, from safety net hospitals to school lunch programs. *See, e.g.*, 87 Fed. Reg. at 55504-08.

82. As part of the 2022 Rule’s extensive findings regarding the impact of specific public benefit programs, DHS found that supplemental benefits like Medicaid, SNAP, and other public healthcare and nutrition programs helped to promote public health, employment, and self-sufficiency. *See* 87 Fed. Reg. at 55518.

B. The 2025 Notice of Proposed Rulemaking

83. In November 2025, DHS and USCIS published a Notice of Proposed Rulemaking regarding the public charge ground of inadmissibility (the “2025 NPRM” or “2025 Proposed Rule”) in the Federal Register. Public Charge Ground of Inadmissibility, 90 Fed. Reg. 52168 (Nov. 19, 2025).

84. The 2025 Proposed Rule proposed to “rescind the regulations implemented by the 2022 Final Rule related to the public charge ground of inadmissibility at section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4).” *Id.* at 52180. Specifically, the Proposed Rule would rescind 8 C.F.R. §§ 212.20, 212.21, 212.22, and 212.23, and amend 8 C.F.R. § 103.6(c). *Id.* at 52170.

85. In the 2025 Proposed Rule, Defendants argued that both the 2022 Final Rule and the 2019 Final Rule were “inconsistent with the national policy contained in Executive Order

14218 and PRWORA and the spirit of broad statutory text in section 212(a)(4) of the INA, 8 U.S.C. § 1182(a)(4).” *Id.* at 52180.²

86. The 2025 Proposed Rule also included Defendants’ assertion that they “believe[d] that [they] must completely remove the public charge inadmissibility framework established by the 2022 Final Rule in order to be more consistent with PRWORA’s directive that ‘aliens within the Nation’s borders not depend on public resources to meet their needs, but rather rely on their own capabilities and the resources of their families, their sponsors, and private organizations.’” 90 Fed. Reg. at 52182.

87. The 2025 Proposed Rule reflected DHS’s belief “that an alien’s dependence on any means-tested public benefit to meet his or her needs—and not just his or her dependence on public cash assistance for income maintenance and long-term institutionalization at government expense—is what . . . Congress intended to address with the public charge ground of inadmissibility.” 90 Fed. Reg. 52189. The 2025 Proposed Rule further went on to assert “that the current and/or past receipt of any means-tested public benefit is a key gauge in determining an alien’s likelihood of dependence on the government and therefore to determining whether an alien is inadmissible” under the public charge ground. *Id.*

88. The 2025 NPRM provided only a 30-day comment period, requiring all comments to be submitted on or by December 19, 2025. *Id.* at 52168.

89. Given the complexity and seriousness of the changes proposed in the 2025 Proposed Rule, on November 25, 2025, a group of States (including many Plaintiff States)

² Executive Order 14218, “Ending Taxpayer Subsidization of Open Borders,” is an executive order issued in February 2025 that, inter alia, requires each executive agency to “identify all federally funded programs administered by the agency that currently permit illegal aliens to obtain any cash or non-cash public benefit, and, consistent with applicable law, take all appropriate actions to align such programs with the purposes of this order and the requirements of applicable Federal law.” 90 Fed. Reg. 10581 (Feb. 19, 2025).

submitted a letter to DHS and USCIS requesting reconsideration of the truncated comment period. *See* Ex. B (Nov. 25, 2025 Letter from Attorneys General to DHS and USCIS (the “Extension Request”)). In the Extension Request, the States stated that a shortened comment period of only 30 days was, at the outset, an unexplained departure from the standard 60-day comment period—and that it was furthermore problematic because the short period spanned a major national holiday week. *See* Ex. B at 2; *see also* Executive Order 13563 (Improving Regulation and Regulatory Review, 76 Fed. Reg. 3821; Jan. 21, 2011) (“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.*” (emphasis added)). The Extension Request further expressed that a proposed rule of this complexity, in fact, merited an expanded comment period beyond the standard 60 days. Ex. B at 2.

90. DHS and USCIS did not respond to the Extension Request and did not extend the comment period for the 2025 Proposed Rule.

91. Accordingly, on December 19, 2025, the same group of States (again, including many Plaintiff States) submitted a comment letter concerning the 2025 Proposed Rule. *See* Ex. C (Dec. 19, 2025 letter from Attorneys General to DHS and USCIS (the “Comment Letter”)).

92. The Comment Letter, drafted against a truncated comment period deadline, raised several grave and fundamental infirmities of the 2025 Proposed Rule and requested its withdrawal. Among other things, the Comment Letter explained the extreme ambiguities that would be caused by the rescission of the 2022 Final Rule. *Id.* at 9-16.

93. These ambiguities included, but were not limited to, the 2025 Proposed Rule’s departure from the settled meaning of “public charge” as affirmed by multiple appellate courts, as well as the removal of clear structure around how benefits would be considered by immigration

officers, and the lack of consideration or explanation of how the use of benefits in a mixed-status household, *i.e.*, a household with citizen and noncitizen members, would be considered. *Id.*

94. The Comment Letter explained how the 2025 Proposed Rule would create foreseeable chilling effects on benefits usage by citizens and noncitizens. *Id.* at 17-21. The 2025 Proposed Rule itself conceded that it would cause widespread disenrollment from public benefits, with DHS estimating disenrollment from benefits at a range from 3.3% to an average disenrollment rate of 17.3%. 90 Fed. Reg. at 52209. And while the 2025 Proposed Rule stated that “DHS welcomes public comments on the estimation of the disenrollment or forgone enrollment rate used in this analysis,” it was not clear how the public would be able to conduct such a complex and detailed analysis such as this one within the truncated 30-day comment period. *Id.*

95. In the Comment Letter, Plaintiff States explained how they would also experience a range of downstream costs directly stemming from the changes in the 2025 Proposed Rule. Ex. C at 21-24. For example, in addition to the loss of federal Medicaid funding, Plaintiff States and providers therein would foreseeably need to absorb the associated costs of increased and uncompensated emergency healthcare, increased food insecurity, and others. The Comment Letter explained that the 2025 Proposed Rule did not include an adequate consideration of these increased costs to Plaintiff States.

96. The Comment Letter also noted the 2025 Proposed Rule would subject Plaintiff States to costly administrative burdens associated with increased screening, documentation, and counseling needs for affected families. *Id.* at 21-24.

97. The Comment Letter raised these and other foundational concerns about the 2025 Proposed Rule, with the request that the 2025 Proposed Rule be withdrawn.

C. The 2026 Final Rule and 2026 USCIS Guidance

98. In July 2026, DHS and USCIS published the Final Rule regarding the public charge ground of inadmissibility in the Federal Register. Public Charge Ground of Inadmissibility, 91 Fed. Reg. 45324 (Jul. 20, 2026). The Final Rule’s effective date was, and remains, 60 days from its issuance, or September 18, 2026.

99. The Final Rule was consistent with the NPRM, and Defendants “issu[ed] th[e] final rule as proposed.” *Id.* at 45326. The Final Rule rescinded 8 C.F.R. §§ 212.20, 212.21, 212.22, and 212.23, and amended 8 C.F.R. § 103.6(c). *Id.* at 45325-26.

100. The Final Rule stated that “DHS does not believe that . . . a bright line primary dependence on the government for subsistence standard, as was done in the 2022 Final Rule, is the best implementation of the public charge inadmissibility statute given Congress’s clear statement in PRWORA that aliens should be self-sufficient and not depend on public resources.” 91 Fed. Reg. at 45407. The Final Rule accordingly announced that “DHS is moving away from a bright line primary dependence standard.” *Id.* at 45325.

101. In response to comments that the 2025 Proposed Rule was contrary to law and arbitrary and capricious because it diverged from the well-settled meaning of “public charge,” DHS made clear its erroneous position that “there has never been a single, uniform, or ‘well settled’ definition of public charge” and asserted that the Final Rule was not contrary to such a definition “because no such settled meaning exists.” *Id.* at 45340.

102. The Final Rule authorized DHS immigration officers to consider “whether an alien has applied for, been approved or certified for, received, or will likely receive means-tested public benefits.” *Id.* at 45380. DHS asserted that “[s]uch information is clearly relevant to whether an alien may lack self-sufficiency by being unable to meet basic living needs.” *Id.* DHS declined to

exclude from consideration “any means-tested public benefits related to public health, prenatal care, other health-related issues, or workforce development” or “non-cash means-tested public benefits.” *Id.* at 45388. DHS made clear that all means-tested public benefits, whether “fully or partially funded or administered” by the Federal, State, Tribal, territorial, or local government, will all be considered under the Final Rule. 91 Fed. Reg. 45348; *see also id.* at 45343, 45394.

103. The Final Rule did not provide for any “specific weight” that officers will apply to “any particular factor[.]” *Id.* at 45371, and indicated that DHS is not “designating any factors to be more heavily weighted than others in a public charge inadmissibility determination.” *Id.* at 45404.

104. In response to comments that the 2025 Proposed Rule lacked sufficient explanation, DHS pointed repeatedly to its goal of removing obstacles that “straitjacket[ed] DHS officers’ ability to make public charge inadmissibility determinations that are consistent with Congress’s express national policy on welfare and immigration enacted in the PRWORA.” 91 Fed. Reg. 45340-41. Specifically, DHS represented that the Final Rule was “rationally related to that PRWORA interest to: (1) minimize the incentive for aliens to immigrate to the United States due to the availability of public benefits; and (2) promote the self-sufficiency of aliens within the United States.” *Id.* at 45375 (citing 8 U.S.C. § 1601).

105. The Final Rule noted that it would apply to applications for adjustment of status and admission submitted on or after the effective date of September 18, 2026. *Id.* at 45324, 45326. DHS further stated it “will only consider the receipt of public cash assistance for income maintenance and long-term institutionalization at government expense before the effective date of this final rule and will consider the receipt of any means-tested public benefits on or after that date.” *Id.* at 45326.

106. The Final Rule recognized that individuals, including U.S. citizens who are members of mixed-status households, may choose to disenroll or forgo future enrollment in public benefits programs as a result of the Final Rule, and that such decreases in enrollment “may have downstream and upstream impacts on State and local economies[.]” *Id.*

107. In the Final Rule, Defendants represented that “USCIS will issue nonbinding subregulatory guidance that will go into effect on the effective date of this final rule. This guidance will be a general statement of policy that will not have the force and effect of law and will thus be exempt from notice and comment rulemaking.” *Id.* at 45338.

108. In response to comments that the Final Rule does not provide sufficient guidance to the public on how DHS will make public charge determinations, DHS pointed to its then-forthcoming guidance, which DHS represented “will explain how officers, under this final rule, will be able to consider the alien’s receipt of any means-tested public benefits[.]” 91 Fed. Reg. 45344.

109. On August 18, 2026, almost a month after the Final Rule was published and one month before its effective date, Defendants published the Guidance. *See* Ex. A. The Guidance “stems from the rescission of the Public Charge Ground of Inadmissibility (‘2022 Final Rule’).” *Id.* at 1. The Guidance states that it “is intended to inform, but not prescribe, the outcome of USCIS officers’ individual public charge inadmissibility determinations made in their discretion.” *Id.* at 9.

110. The accompanying Policy Alert states that the Guidance “contained in the Policy Manual is controlling and supersedes any related prior guidance, including the 1999 Interim Field Guidance and any related guidance addressing public charge inadmissibility,” *id.* at 1, and the policy contained in the Guidance “is effective on September 18, 2026.” *Id.* at 4. Nothing in the Guidance or its preceding Policy Alert states or suggests that the policies and practices therein are

tentative or non-final. Like the Final Rule, the Guidance delineates an indisputable change in Defendants' policies concerning public charge inadmissibility determinations from which legal consequences will flow, both in rejecting the core meaning of the term "public charge" and in newly requiring that immigration officers consider the use of any means-tested public benefits when making their determinations. For example, the Guidance states that whether an applicant is likely to become a "public charge" is "typically demonstrated through dependence on means-tested public benefits." Ex. A at 13. The Guidance further states that current or past receipt of means-tested public benefits "will almost always be highly relevant" to determining whether an applicant is likely to become a "public charge," *id.* at 27, and that an application for or receipt of means tested public benefits is "highly relevant" to the public charge determination. *Id.* at 59.

111. The Policy Alert, in a subsection entitled "Additional Considerations: Administrative Procedure Act (APA)," provides that "this revised guidance stems from the rescission of the 2022 Final Rule" and states that "USCIS does not believe that the regulated public has significant reliance interests related to the previous iteration of the public charge ground of inadmissibility guidance that are separate from the reliance interests DHS already addressed at length in the 2026 Final Rule[]" and that are related to the rescinded regulatory framework contained in the 2022 Final Rule." *Id.* at 3. The Guidance indicates that it "is intended to faithfully implement INA 212(a)(4)[.]" *Id.* at 8.

112. The Guidance repeats the Final Rule's erroneous premise that "there is no judicially established or uniformly consistent historical understanding of the term public charge." *Id.* at 13.

113. The Guidance, together with the Final Rule, confer unprecedented, unqualified discretion on immigration officers, as long as the officers' findings are made in the "totality of the circumstances."

1. The Final Rule is contrary to law and exceeds Defendants’ statutory authority.

114. The Final Rule’s rescission of 8 C.F.R. § 212.21(a), a regulation which codified the long-standing meaning of “public charge” to refer to a noncitizen who is “likely at any time to become primarily dependent on the government for subsistence,” is premised on Defendants’ erroneous interpretations of the public charge statute. The Final Rule is contrary to law.

115. The Final Rule is premised on an interpretation of the public charge statute that abandons its core settled meaning of what makes someone a “public charge,” which has existed for over a century and was incorporated by Congress into the INA. Defendants’ stark departure from the statute’s settled meaning is made plain in the Final Rule and the accompanying Guidance alike. For example, in discussing the rescission of the 2022 Rule’s codification of the long-standing meaning of “public charge,” the 2026 Final Rule states that “there has never been” a “‘well-settled’ definition of public charge.” 91 Fed. Reg. 45340. The 2026 Final Rule further states, repeatedly, that “DHS is moving away from a bright line primary dependence standard.” *See, e.g., id.* at 45325; *see also id.* at 45393 (“DHS is eliminating the primary dependence standard”); Guidance at 13 (“[T]here is no judicially established or uniformly consistent historical understanding of the term public charge.”).

116. But this fundamental premise of the Final Rule is wrong. As the Second Circuit has held, “[t]he prevailing administrative and judicial interpretation of ‘public charge’ ratified by Congress understood the term to mean a non-citizen who cannot support himself, in the sense that he is incapable of earning a livelihood, does not have sufficient funds in the United States for his support, and has no person in the United States willing and able to assure that he will not need public support.” *New York*, 969 F.3d at 74–75 (cleaned up) (internal quotations and citations omitted). In other words, “[t]he settled meaning of ‘public charge,’ as the plain meaning of the term already suggests, is dependency: being a persistent ‘charge’ on the public purse . . . [T]he

mere receipt of benefits from the government does not constitute such dependency.” *Id.* at 74. Indeed, as discussed *supra* ¶¶ 59 and 60, Congress specifically rejected proposed legislation to alter and broaden the longstanding meaning of “public charge.”

117. Having abandoned Congress’s core meaning of the term “public charge” to mean an individual incapable of earning a livelihood, the Final Rule purports to accomplish by regulation what Congress declined to legislate—it significantly expands the meaning of the term “public charge” to include use of *any means-tested public benefits*, including even minimal use of supplemental benefits designed by Congress to promote health, nutrition, and general well-being.

118. Throughout the Final Rule and Guidance, Defendants invoke PRWORA as a justification for their abandonment of the settled core meaning of “public charge.” Again and again, Defendants rely on general policy statements in PRWORA, such as the general statement that noncitizens “should be self-sufficient and not depend on public resources.” *See, e.g.*, 91 Fed. Reg. 45331, 45337, 45368, 45379, 45407; *see also* Ex. A at 5. Under Defendants’ interpretation, Congress’s general policy statement in PRWORA “that ‘aliens. . . not depend on public resources to meet their needs’” means that “receipt of *any means-tested public benefit irrespective of the time frame*” is evidence that an applicant is likely to “become a public charge.” Ex. A at 10 (emphases added). Indeed, further confirming that the Final Rule now equates the meaning of “public charge” with dependency on any means-tested benefits, the Guidance states “officers must determine whether an alien is likely *at any time* to become a public charge, *that is, likely at any time to depend on means-tested public benefits.*” *Id.* at 13 (second emphasis added).

119. Defendants’ view that Congress drastically changed the meaning of “public charge” in 1996 is wrong, contrary to law, and exceeds Defendants’ statutory authority. PRWORA did not change the INA’s provision on the meaning of “public charge,” which was amended by IIRIRA,

but *not* PRWORA. PRWORA could not have altered the meaning of the term to mean reliance on any means-tested benefit. Moreover, Congress fully addressed PRWORA's general policy statements about self-sufficiency and immigrants' access to benefits by instituting through PRWORA a complex system that limited certain non-citizens' eligibility for certain means-tested benefits, while allowing other non-citizens to continue to obtain those benefits. As the Second Circuit explained, "PRWORA implemented Congress's goal of self-sufficiency by *restricting* non-citizen eligibility for benefits, including the establishment of the five-year waiting period for LPRs." *New York*, 969 F.3d at 77 (emphasis in original). PRWORA does not "indicate any congressional intention that non-citizens who receive benefits for which Congress did *not* render them ineligible" should be considered "'public charges.'" *Id.* (emphasis in original).

120. The Final Rule allows immigration officers to make public charge determinations in ways that plainly contravene the statute's core settled meaning. The Final Rule gives immigration officers "discretion" to re-define the term "public charge" to mean whatever an officer thinks it may mean—as long as they recite that they have made that determination in the "totality of the circumstances." Indeed, the Final Rule acknowledges that it "does not limit officer discretion." 91 Fed. Reg. at 45348.

121. The Final Rule and the Guidance provide little indication of the acceptable outer bounds of what Defendants believe could lawfully support a public charge inadmissibility determination. *Id.* at 45343. For example, the Final Rule indicates that "officers will be able to consider whether the alien: received means-tested public benefits for only a short period of time, received small dollar amounts of assistance, received any particular public benefit rendering the alien dependent on the benefit, received means-tested public benefits permanently or temporarily, and has good overall prospects for being and remaining self-sufficient." *Id.* However, neither the

Final Rule nor the Guidance provides any indication as to what constitutes a “short period of time,” “small dollar amounts of assistance,” “dependen[ce] on [a] benefit,” “temporar[y]” use of a benefit, or “overall good prospects for being and remaining self-sufficient” such that officers make consistent, non-arbitrary determinations across applications with similar facts.

122. This unqualified discretion opens the door to outcomes that are not contemplated by Congress and are contrary to law—the impact of which may be particularly dire given that noncitizens have limited rights to appeal public charge inadmissibility determinations. 91 Fed. Reg. at 45358 and n.151; 8 C.F.R. § 245.2(a)(5)(ii) (2011).

123. For example, the Final Rule provides that use of supplemental benefits, *i.e.*, benefits that Congress designed to promote health and well-being rather than to provide basic subsistence, should be treated the same in public charge determinations as use of cash assistance designed to provide basic subsistence. As the Final Rule states, “DHS is not drawing distinctions between public benefits based on whether they merely subsidize an alien’s life or provide for the alien’s basic needs.” *Id.* at 45343. But drawing such distinctions is critical to any reasonable interpretation of the term “public charge,” which means “a person who is unable to support herself, either through work, savings, or family ties.” *New York*, 969 F.3d at 71. Supplemental benefits—for example, SNAP and Medicaid benefits—are distinguishable from cash benefits in multiple respects that bear on whether a person is in fact a “public charge.” “[T]hese programs are designed to provide supplemental support, rather than subsistence, to a broad swath of the population[.]” *Id.* at 84. Supplemental benefits are used by people across a range of means, including working people who are able to provide for their needs, and who earn salaries above federal poverty guidelines including, in some cases, above the 125% affidavit of support threshold. *Id.* (“Large numbers of SNAP recipients, far from being incapable of productive employment, work for some of America’s

largest corporations.”). Congress designed these supplemental benefits to be available to working people, and not only those who face dire financial constraints and therefore must rely on the government for subsistence.

124. The Final Rule even allows immigration officers to consider the use of supplemental benefits by a *U.S. citizen family member* whom the noncitizen is “legally obligated to support” when determining if the noncitizen is likely at any time to become a “public charge.” 91 Fed. Reg. at 45350; *see also id.* at 45355, 45365–66. This allows the use of supplemental benefits by a U.S. citizen child to be counted to the same degree as a noncitizen’s use of cash assistance benefits, even though Congress made the choice to make supplemental benefits broadly available to citizens—particularly citizen children—to uplift nutrition, health, and well-being rather than to provide for basic subsistence.

125. The Final Rule provides that “DHS would ... consider the ... child’s receipt of means-tested public benefits under this final rule if the alien is legally obligated to support the child and the child’s receipt of the means-tested public benefits is based on the alien’s income falling below the designated threshold.” 91 Fed. Reg. at 45390. But nearly every means-tested public benefit that a citizen child might apply for—including supplemental benefits like, for example, nutrition benefits under the Special Supplemental Nutrition Program for Women, Infants, and Children (“WIC”) or healthcare benefits under the Children’s Health Insurance Program (“CHIP”)—considers the parents’ or household’s income as an eligibility requirement. 7 C.F.R. § 246.7(d) (2024) (WIC regulation governing income criteria and income eligibility determinations). This is rational; children, generally, have no income. But under the Final Rule and the Guidance, a U.S. citizen child’s use of the supplemental benefits to which they are entitled

will be considered negatively against a noncitizen parent who is subject to a public charge inadmissibility determination.

126. In providing access to supplemental benefits programs such as CHIP to citizen children, Congress made a reasoned judgment that young citizens' access to adequate nutrition and healthcare is in the national interest. And, as with certain other supplemental benefits, income thresholds to qualify for CHIP exceed federal poverty guidelines, and in some cases exceed the 125% affidavit of support threshold, demonstrating that children enrolled in these programs can come from families with working parents who are able to provide for their households and are not dependent on the government.

127. The Guidance even specifies that “financial aid for postsecondary education ... provided to an individual, household, or family eligibility unit” can be considered in a public charge inadmissibility determination. Ex. A at 14. Considering that an *overwhelming* majority of first-time undergraduates attending 4-year public institutions receive financial aid (85.1% for the 2023-24 school year), any throughline from a noncitizen's child taking on student loans to defray educational costs, to a conclusion that that noncitizen is “dependent” on the government is attenuated at best. *See, e.g.* Nat'l Ctr. for Educ. Statistics, *Integrated Postsecondary Education System*, <https://nces.ed.gov/ipeds/trendgenerator/app/build-table/8/34?f=2%3D1&rid=1&cid=51> [<https://perma.cc/4N2D-C45L>] (last visited Sept. 14, 2026).

128. Defendants do not deny the Final Rule's negative effects on children, including citizen children. To the contrary, the Final Rule admits that DHS “assessed the rule's effect on children and determined that the rule may negatively impact the health and education opportunities for children, including U.S. citizen children.” 91 Fed. Reg. at 45364.

129. Moreover, by “not drawing distinctions” between supplemental and other benefits, the 2026 Final Rule authorizes immigration officers to make unlawful public charge determinations that are the same as public charge determinations authorized by the 2019 Rule, which the Second Circuit concluded would be contrary to law. Like the 2019 Rule, the 2026 Final Rule enables Defendants to make a noncitizen’s receipt of supplemental non-cash benefits, including a citizen child’s use of supplemental benefits to which they are statutorily entitled, however minimal or however long ago, indicative of being inadmissible as a “public charge.” The Guidance also supports such unlawful determinations, providing that “any current or past receipt of means-tested public benefits[] by the alien will almost always be highly relevant to assessing an alien’s likelihood at any time of becoming a public charge.” Ex. A at 27.

130. The Final Rule and Guidance are unclear as to whether they enable officers to consider public benefits that are not means-tested at all, and that are instead universally available within a certain school, school district, or other jurisdiction. For example, the Final Rule states that “officers could take into consideration whether an alien participated in a school lunch or summer food program by virtue of a *school’s* certification and availability of meals to *all students*.” 91 Fed. Reg. at 45399 (emphases added). The Guidance, however, implies that DHS officers will only consider “means-tested” benefits, which it describes as a benefit for which eligibility is “determined based on the applicant’s income or assets falling below a certain threshold.” Ex. A at 14. To the extent that the regime established by the Final Rule and the Guidance does allow officers to consider universal benefits that are not means-tested, this is contrary to law.

131. For example, within Plaintiff States, certain schools and school districts are enrollees in the USDA’s Community Eligibility Program (“CEP”). Under this program, qualifying schools or school districts receive reimbursement for providing free breakfast and lunch to

children, and schools or school districts qualify for CEP based on the percentage of students in those schools or districts who are enrolled in other means-tested benefits, such as SNAP or TANF. *See, e.g.,* U.S. Dep’t of Agric., *Community Eligibility Provision*, (last updated March 17, 2026), <https://www.fna.usda.gov/cn/cep> [<https://perma.cc/7GLW-GE8B>]. Within certain Plaintiff States, some municipalities, such as New York City and Chicago, are enrolled in CEP on a citywide basis, meaning that all children attending public schools in these cities have access to free school breakfast and lunch, irrespective of their or their household’s means. Moreover, some Plaintiff States, including New York and California, also have universal school meal programs that all public school students can access (“universal school lunch states”). Public school students of all means participate in these programs, and all students can receive free meals without affirmatively signing up for the program.

132. If the Final Rule enables officers to consider accessing universally available benefits (such as school lunch in a CEP school or in a universal school lunch state), which are not means-tested and have no connection with any of the statutory factors set forth in the INA, this is contrary to law.

133. The fundamental flaws in the Final Rule are further heightened by Defendants’ “declin[ing] to attach specific weight to any particular factor because the public charge inadmissibility determination is a subjective, discretionary, and case-specific determination.” 91 Fed. Reg. at 45371. And the Guidance sheds no further light as to what standards officers would apply to ensure that similar fact patterns result in similar determinations. This lack of standards allows individual immigration officers to recast the meaning of “public charge” in ways that are contrary to law. As just one example, an immigration officer could decide that a noncitizen’s temporary use of supplemental benefits to weather a setback three years prior to adjusting status,

or a noncitizen's teenaged citizen child submitting a FAFSA application, is just as indicative of being a "public charge" as a noncitizen's consistent reliance on cash benefits over the course of multiple years.

134. This regime allows for the possibility that a healthy, working individual may be deemed inadmissible as a "public charge" merely based on a constellation of facts that do not demonstrate a primary dependence on public benefits, or a lack of self-sufficiency, at all: for example, their household's one-time access of SNAP benefits to defray costly grocery expenses, the universal availability of free lunch at their child's elementary school, or their teenager's application for financial aid for college. Under the Final Rule, immigration officers have discretion to attribute any weight to any attenuated piece of information—whether benefits-related or other—and to thereby deem a noncitizen to be a "public charge."

135. Although the Final Rule indicates that evidence would be considered in the totality of the circumstances, the mere recitation of this phrase is not sufficient to demonstrate that the Final Rule is consistent with the statute.

136. While some discretion for immigration agents is proper, that discretion cannot be stretched to allow immigration officers to construe the use of means-tested public benefits in a manner that is inconsistent with the established meaning of "public charge," including by considering benefits that bear no rational relationship to whether a person is likely to become a "public charge" at all. The Final Rule's "totality of the circumstances" standard cannot lawfully be so broad that it is inconsistent with the statute itself, and inconsistent with the settled meaning of the term "public charge."

137. Defendant Mullin is "charged with the administration and enforcement" of the INA and "all other laws relating to the immigration and naturalization of aliens." 8 U.S.C. § 1103(a)(1).

Defendant Mullin is also authorized to adopt regulations as needed in his administration and enforcement of the INA. *Id.* § 1103(a)(3). But no provision of the INA authorizes Defendant Mullin, or any other Defendants, to adopt regulations, rules, guidance, or practices to define or use “public charge” in a manner that is inconsistent with the settled meaning of that term, as ratified by Congress. In now adopting such rule and guidance, Defendants have exceeded their statutory authority.

2. The Final Rule is arbitrary and capricious.

a. Defendants’ explanations rest on erroneous legal and factual conclusions.

138. In abandoning the settled meaning of “public charge,” and abandoning almost all limits on which benefits immigration officials may consider when deciding whether a noncitizen is likely at any time to become a “public charge,” *see* 91 Fed. Reg. 45393 (“all benefits received have bearing on whether an alien is likely at any time to become a public charge”), Defendants rely on a number of unsupported and faulty conclusions.

139. Defendants repeatedly rely on what they describe as “the spirit of the broad statutory text in section 212(a)(4) of the INA,” claiming that the 2022 Final Rule (as well as the 1999 Guidance and even the 2019 Rule promulgated by the first Trump administration) are inconsistent with this provision. *See, e.g.*, 91 Fed. Reg. 45361. Section 212(a)(4)(A) states that immigration officers “shall at a minimum consider the [applicant’s] (i) age, (ii) health, (iii) family status, (iv) assets, resources, and financial status, and (v) education and skills.” 8 U.S.C. § 1182(a)(4)(B). Defendants assert that the “at a minimum” language indicates that “Congress clearly intended officers to consider case-specific additional factors and information relevant to the public charge inadmissibility determination.” 91 Fed. Reg. 45353.

140. Defendants fail to provide a reasoned explanation as to why the “at a minimum” language is best read to mean that agents should be able to consider virtually *any* degree of benefits use, at *any* time, and for *any* duration. And Defendants never argue that the INA prevents the agency from excluding categories of evidence for which the probative value, if any, would be outweighed by harms such as chilling effects, as DHS did in the 1999 Guidance, the 2019 Rule, and the 2022 Rule. Relying on the “at a minimum” language that has been part of the INA since 1996 to avoid weighing the Final Rule’s costs, and to refuse to consider alternatives that could mitigate some of those costs, is not reasonable.

141. Defendants also repeatedly invoke what they describe as Congress’s “national policy” set forth in PRWORA. *See, e.g.*, 91 Fed. Reg. 45361 (summarily dismissing the Final Rule’s chilling effects by asserting that “our national policy . . . as set forth in PRWORA [is] a sufficient basis to move forward with this final rule”).

142. PRWORA’s prefatory statement is not an adequate basis for dismissing all consequences of and harms caused by Defendants’ decision to consider any means-tested public benefits in public charge determinations. While PRWORA restricted immigrant eligibility for some benefits, it expressly preserved access to many others, both in 1996 and in subsequent years. As the Second Circuit found, “Clearly, Congress decided that the benefits it preserved for non-citizens after PRWORA did not interfere with its interest in assuring non-citizen self-sufficiency.” *New York*, 969 F.3d at 77. Further, it was IIRIRA, not PRWORA, that amended the public charge provisions in the INA. Pub. L. No. 104-208, § 531, 110 Stat. 3009, 3674-75 (1996). Defendants cannot rely on PRWORA as an excuse for failing to engage in reasoned decision-making required by the APA.

143. Defendants also explain their decision to disregard the Final Rule’s negative impacts on access to public benefit programs by repeatedly noting that the Final Rule itself does not alter eligibility for those programs. *See, e.g.*, 91 Fed. Reg. 45362 (dismissing concerns that the Final Rule will discourage enrollment of eligible individuals because “the rule does not change eligibility requirements”). To be sure, Defendants lack statutory authority to alter eligibility rules for public benefit programs they do not administer. But this disclaimer fails to grapple with the fact that attaching new, severe negative consequences that deter participation in public programs frustrates and is contrary to Congress’s and the States’ purposes in enacting those programs.

144. As with Medicaid and SNAP, the “goals and eligibility criteria of these benefits programs [...] show that these programs are designed to provide supplemental support, rather than subsistence, to a broad swath of the population.” *New York*, 969 F.3d at 83–84.

145. Many public benefit programs are purposefully designed to incentivize all eligible individuals and families to participate. To achieve that purpose, these programs are premised on well-established immigration law, which does not penalize participation. For example, the Emergency Medical Treatment and Labor Act (“EMTALA”) requires hospitals to provide emergency medical treatment, including in labor and delivery, to any patient needing such care, irrespective of that person’s ability to pay or their immigration status. 42 U.S.C. § 1395dd. The Medicaid Act provides states with funding for this emergency treatment, so long as the patient agrees to accept Emergency Medicaid coverage. 42 U.S.C. § 1396b(v)(2).

146. Defendants acknowledge that the Final Rule will lead to “increased use of emergency rooms . . . and increased rates of uncompensated care, where treatments or services are not paid for,” and nonetheless decline to exempt emergency Medicaid coverage from consideration. 91 Fed. Reg. 45418-19.

147. The Final Rule never even mentions EMTALA, and Defendants fail to explain why Congress’s important policy goals in EMTALA and Emergency Medicaid should be sacrificed just to give immigration officers more discretion.

148. Defendants similarly fail to consider the specific policy goals of many other statutes authorizing public programs in which Congress or the states decided public benefits should be broadly accessible to those in need, resulting in “an agency justification that is unmoored from the nuanced views of Congress.” *New York*, 969 F.3d at 82. This is not reasoned decision-making.

b. By removing virtually all limits on what officers can consider as part of public charge inadmissibility determinations, the Final Rule departs from decades of prior policies.

149. The Final Rule rescinds all prior regulatory limits on the amount, duration, and type of public benefits that immigration officers may consider when deciding who is inadmissible on public charge grounds. *See, e.g.*, 8 C.F.R. §§ 212.21(a)-(d), 212.22(d)-(e) (2022) (limiting types of public benefits considered as part of the totality of the circumstances test; prohibiting consideration of benefits received while a citizen was in an exempt category; and prohibiting consideration of receipt of benefits available to refugees). Instead, officers will be allowed to “consider *any and all public benefits* funded by the government for which eligibility is determined by assessing whether the alien’s means are below the specified level.” 91 Fed. Reg. 45437 (emphasis added); *id.* at 45387.

150. The Final Rule’s removal of all regulatory limitations on the consideration of public benefits is a dramatic departure from all prior DHS policies.

151. The Final Rule is a particularly stark departure from the well-established limits set forth in the 1999 Field Guidance and codified in the 2022 Rule, which ensured that only those public benefits that are directly relevant to the question of primary dependence—namely, cash benefits for income maintenance and institutionalization at government expense—would be

counted against an applicant for admission, while “non-cash” or “supplemental” benefits, like nutrition assistance and regular Medicaid, would not.

152. Even under the short-lived 2019 Rule enacted by the first Trump administration, immigration officers were barred from considering many types of means-tested public benefits, including state-funded benefits, public health benefits, emergency benefits, WIC benefits, CHIP benefits, and more. At that time, Defendants reasoned that these limits were needed in order to “mitigate some of the concerns raised by the public regarding disenrollment impacts.” 84 Fed. Reg. 41313.

153. Defendants’ across-the-board rescission of all prior limitations on which public benefits officers may consider is neither “reasonable [nor] reasonably explained.” *FCC v. Prometheus Radio Project*, 592 U.S. 414, 423 (2021).

c. Defendants’ analysis fails to consider important aspects of the problem and reliance interests.

154. Defendants acknowledge abundant evidence of serious harm in the Final Rule but brush off those harms with repetitive and faulty legal reasoning and generic, unsupported factual statements. In so doing, Defendants fail to consider many important aspects of the many problems raised by the Final Rule.

155. Over and over, Defendants fail to assess whether receiving certain types of benefits actually has probative value in determining whether a particular person will become a “public charge.” Defendants fail to compare that value (if any) to the acknowledged harms of allowing immigration officers to consider those types of benefits. Defendants also fail to consider options to mitigate specific harms by excluding particular public benefits from consideration based on amount, duration, or type of benefit. Defendants’ cursory analysis is particularly deficient in light of the Final Rule’s departure from prior policies, which have engendered serious reliance interests

that the agency should have taken into account when promulgating the Final Rule and Guidance, but did not.

156. Defendants’ failure to engage in reasoned evaluation of alternatives which would have narrowed the evidence immigration officers may consider falls into at least seven broad buckets.

157. First, Defendants failed to consider the specific harms of considering receipt of benefits that are limited in duration or supplemental in nature or amount and that promote the Final Rule’s purported goal of ensuring that immigrants are self-sufficient. As many of the Plaintiff States explained in the Comment Letter, and as Defendants themselves acknowledged in 2022, supplemental benefits like subsidized health insurance or supplemental nutrition assistance are available “to families with incomes far above the poverty level,” and promote “upward mobility, rather than long term subsistence.” Ex. C at 5 (citing 2022 Rule). Defendants’ only response is an across-the-board assertion that receipt of any means tested benefit is “clearly relevant to whether an alien may lack self-sufficiency.” 91 Fed. Reg. 45380. But Defendants never provide any factual basis for that belief. And they ignore that in the United States, “access to insurance is often determined by factors beyond an individual’s control.” *New York*, 969 F.3d at 84. This is not reasoned decision-making.

158. Second, Defendants failed to weigh the harms of discouraging participation in public programs designed by Congress or the states to promote public health, welfare, and safety, and to strengthen families and communities. Such programs include school lunch and nutrition programs, the WIC program, publicly funded vaccination campaigns, CHIP and prenatal healthcare, Head Start, early intervention programs, and more.

159. When individuals avoid preventive care and treatment available through publicly funded healthcare services—such as breast and cervical cancer screening, or long-acting reversible contraception—the costs are enormous. The Final Rule will increase an individual’s risk of late-stage disease detection, unintended pregnancy, poor birth outcomes and increased morbidity and mortality for late-stage disease.

160. Federal and state lawmakers intended such programs to reach all eligible individuals because of their long-term beneficial effects, for both recipients and communities. Defendants acknowledge that the Final Rule will reduce enrollment in these programs, which will cause harms such as worse birth outcomes for babies, more malnutrition (especially among pregnant and breastfeeding women, infants, and children), and worsening “health outcomes and mortality,” including “approximately 3,500 additional premature deaths per year.” 91 Fed. Reg. 45430. Yet Defendants attempt to disavow any obligation to meaningfully consider these consequences, by instead reiterating that the Final Rule does not change eligibility for these benefits. *Id.* This faulty and callous reasoning fails to grapple with those programs’ statutory purposes and the real-world impacts of the Final Rule that Defendants themselves acknowledge. Defendants do not deny the Final Rule’s negative effects on children, including citizen children. *See, e.g.*, 91 Fed. Reg. at 45364 (DHS “assessed the rule’s effect on children and determined that the rule may negatively impact the health and education opportunities for children, including U.S. citizen children.”).

161. Third, Defendants failed to weigh the significant public safety and public health problems that will arise when noncitizens are forced to weigh use of emergency life-saving care for themselves, their children, or their pregnancies, versus the extraordinarily limited probative value of receipt of emergency services. Defendants’ only explanation regarding inclusion of receipt

of emergency healthcare services is that “Congress mandated aliens to be self-sufficient and not depend on public resources to meet their needs.” 91 Fed. Reg. 45388. Defendants’ reliance on PRWORA throughout the Final Rule for the theory that Congress sought self-sufficiency of noncitizens fails to justify DHS’s refusal to exclude emergency services from consideration; indeed, Congress specifically *exempted* emergency services from PRWORA’s noncitizen eligibility restrictions.

162. Fourth, Defendants failed to weigh the harms of consideration of public benefits that Congress or the states make available to individuals and families with a broad range of income levels, or that are universally available, versus the extraordinarily limited probative value of receipt of such benefits. For example, subsidies for purchase of marketplace plans under the Affordable Care Act (the “ACA”) are available to households earning up to 400% of the Federal Poverty Level, well above the 125% affidavit of support threshold, and additional cost-sharing reductions are available to marketplace enrollees with incomes up to 250% of the Federal Poverty Level. 42 U.S.C. § 18071. Medicare and Medicaid often offer working people with disabilities, whose earnings may exceed traditional Medicaid limits, the option to receive needed assistance while being self-supporting. School lunch programs in some Plaintiff States (and in some sub-jurisdictions within them) are available to all school children, regardless of income and with no affirmative application required. And there is no income cut-off to apply for federal student financial aid for postsecondary school. *See, e.g., Financial Aid Eligibility*, Fed. Student Aid, <https://studentaid.gov/understand-aid/eligibility> [<https://perma.cc/BB6R-7Z9K>] (last visited on Sept. 14, 2026).

163. Defendants fail to weigh the limited probative value of considering the receipt of such broadly available benefits, or to consider the purposes or Congress’s statutory intent or goals

for these programs, instead only considering one iteration of legislative intent when mechanically relying on PRWORA's "directive that aliens should be self-sufficient." 91 Fed. Reg. 45368. But it "makes little sense to treat" the receipt of benefits intended for a wide range of people earning low to moderate incomes "as proof of inability to survive by one's own efforts." *New York*, 969 F.3d at 84.

164. Fifth, Defendants failed to weigh the especially grave harms of considering participation of noncitizens' U.S. citizen children in public programs for which those children are eligible. The consequences of disenrollment from public health and educational programs are "direct and severe," leading to "under-utilization of primary care and preventative services; reduced vaccination rates; declines in nutritional supports," and more, plus "higher costs and program churn for state health and human services agencies." Ex. C at 20. While Defendants claim to have "taken steps to mitigate the effects of [the Final Rule] on families," 91 Fed. Reg. at 45443, neither the Final Rule nor the Guidance contains any such mitigating provisions. In fact, in the Final Rule's preamble, Defendants double down on officers' right to "consider the parents' legal obligation to support" their children as part of the totality of the circumstances review. *Id.*; *see also id.* at 45390. This is not reasoned decision-making.

165. Sixth, Defendants failed to weigh the harms of considering public benefits received while a noncitizen is in an immigration category that is statutorily exempt from the public charge ground (such as refugees and asylees, and their family members). *See* 91 Fed. Reg. 45406-07. In some circumstances, individuals receiving those humanitarian benefits will later apply for admission on a non-exempt basis, such as when a child or former spouse of an asylee applies for adjustment on a different basis. Removal of prohibitions on receipt of benefits for individuals in exempt categories and consideration of benefits available to refugees will interfere with state

programs assisting vulnerable arrivals. This is contrary to Congressional intent, and will make it harder for refugees, asylees, and others similarly situated to agree to receive temporary assistance to stabilize circumstances as recent arrivals and to acclimate to the community. In the 2022 Final Rule, DHS decided to “tailor its rule to limit the effects of certain regulatory provisions on discrete populations,” such as refugees and asylees.” 87 Fed. Reg. 55475. Defendants fail to justify this turnaround.

166. Seventh, Defendants pay no more than lip service to the reliance interests engendered by individuals’ enrollment in public benefit programs that involve longer term periods of enrollment and benefit. For example, if a noncitizen, or their family member, had decided to pursue higher education and took advantage of financial support for which they were eligible, in reliance on well-established rules that prevent immigration officials from later considering that support in public charge determinations, the Final Rule now puts them in an impossible position of choosing to continue a course of study to which they are already committed in order to obtain a degree, and jeopardizing their immigration status. Yet Defendants fail to consider these types of reliance interests. *See* 84 Fed. Reg. 41477 (justifying economic harms caused by forgone financial aid by noncitizens based on “principles of PRWORA”).

167. All of these failures are exacerbated by Defendants’ decision to truncate the normal sixty-day comment period into a mere thirty days that included a national holiday. *See supra* ¶ 89. Defendants’ truncated comment period likely contributed to the fact that many acknowledged harms are not reflected in the Regulatory Impact Analysis due to missing data. *See, e.g.*, 91 Fed. Reg. at 45415 (noting that the agency could do only qualitative analysis of downstream impacts, such as on children and uncompensated care, due to failure to receive comments that would allow quantification of those impacts).

d. The Final Rule will lead to arbitrary decisionmaking.

168. Generally, Defendants fail to provide limits or bounds on the evidence that immigration officers can use in public charge determinations, stating that “[o]fficers will be empowered to consider . . . any case-specific evidence that the officer determines is relevant.” 91 Fed. Reg. 45392. The Final Rule and Guidance also fail to provide notice to Plaintiff States and to the regulated public regarding how that evidence will be evaluated. The Final Rule therefore provides no intelligible or administrable standard for public charge determinations, and instead grants unfettered discretion immigration officers, which will lead to inconsistent public charge adjudications.

169. These aspects of the Final Rule and Guidance are inconsistent with Defendants’ stated objective of “ensur[ing] consistent implementation of the public charge ground of inadmissibility and fair adjudications.” 91 Fed. Reg. 45412.

170. Notably, as discussed *supra*, the Final Rule and the Guidance erroneously claim that “there is no judicially established or uniformly consistent historical understanding of the term public charge.” *See* Ex. A at 13. Instead, according to the Guidance, USCIS “generally considers” an applicant seeking admission to be likely at any time to become a “public charge” if the applicant is “likely to become dependent on the government to meet his or her basic needs . . . typically demonstrated through dependence on means tested public benefits.” *Id.* Despite the apparent centrality of such “means tested public benefits” to the Final Rule’s new approach, the Guidance notes that there “is no statutory or regulatory definition of means-tested public benefits for the purpose of public charge inadmissibility determinations” and instead only explains when a “benefit” is “generally considered” to be means-tested. *Id.* at 14. Adding further confusion, the Final Rule states that the use of universally available benefits like, for example, school lunch in

certain jurisdictions, may be considered by immigration officials. 91 Fed. Reg. at 45399 (“[Immigration] officers could take into consideration whether an alien participated in a school lunch or summer food program by virtue of a *school’s* certification and availability of meals to *all students.*”) (emphasis added). By contrast, the Guidance implies that only benefits “based on the applicant’s income or assets falling below a certain threshold” would be considered. Ex. A at 14. Defendants’ refusal to provide clear, administrable standards leaves Plaintiff States and the regulated public in the dark about which benefits may be considered in a public charge determination and what weight or significance their use will be given.

171. For further example, the Final Rule says that immigration officers will consider “statistics . . . regarding long-term outcomes for program participants and impacts on health, employment and employability,” but does not provide those statistics, their sources, or any explanation as to how an officer would use such statistics. 91 Fed. Reg. 45399. Further, neither the Final Rule nor the Guidance provide any clue as to how a noncitizen could overcome or otherwise address inferences drawn from these undisclosed “statistics.” The absence of any concrete guidance or administrable standards regarding how individual immigration officers will weigh information—including statistical information that is presumably not individualized to the noncitizen at all—means that Plaintiff States, and the public at large, must guess about the standards to which applicants for admission will be held. This lack of administrable standards undermines applicants’ ability to make informed choices for themselves or their children about the receipt of benefits, and all but ensures that immigration officers facing similar fact patterns will make arbitrary and inconsistent public charge determinations.

172. Defendants claim that any decision by noncitizens to disenroll from or to forgo public benefits on behalf of their U.S. citizen children would be “unreasonable” because “DHS

has communicated” that such receipt “will not be considered except in limited circumstances.” 91 Fed. Reg. 45361. However, Defendants also assert that they will consider the receipt of means-tested public benefits by a noncitizen’s child if such benefits are “the alien’s source of financial support or the alien is legally obligated to support the child who is receiving the means-tested public benefits” by treating the child’s receipt of such as benefits as “relevant to the alien’s assets, resources, and financial status. . . in the totality of the circumstances.” *Id.* at 45350; *see also id.* at 45355, 45366, 45390. In other words, despite their statements to the contrary, Defendants give every indication that a U.S. citizen child’s receipt of means-tested public benefits would be weaponized against their noncitizen parent and that disenrollment may be the only “reasonable” shield against such a result. But nothing in the Final Rule or the Guidance explains what those “limited circumstances” are, or how the lawful receipt of public benefits by their U.S. citizen children or other family members will be treated by an immigration official. Plaintiff States and the regulated public are left with no clear information enabling them to make informed choices.

173. Defendants’ failure to release adequate explanatory subregulatory guidance at the same time as it released the Final Rule exacerbates harms to reliance interests and also contradicts the Final Rule’s claim that it is not retroactive. In many cases, disenrollment from public benefit programs takes time and many public benefits are designed to operate on a year-to-year basis. For example, Medicaid enrollment is typically certified on a yearly basis. Thus, those who wish to disenroll from benefits to avoid immigration consequences (including citizen family members who wish to prevent adverse immigration consequences for their relatives) are unlikely to be able to do so before the Final Rule takes effect. Consideration of receipt of those benefits after the Final Rule’s effective date effectively gives it retroactive effect.

D. The Final Rule will cause harm to Plaintiff States.

1. The Final Rule will create a chilling effect, reducing lawful participation in valuable public programs.

174. As Defendants acknowledge, the Final Rule will have a chilling effect on noncitizens' and their citizen family members' willingness to avail themselves of public benefits. 91 Fed. Reg. 45460.

175. The Final Rule will result in noncitizens withdrawing from or forgoing enrollment in public programs that their tax dollars support, and that provide supplemental benefits to which they are legally entitled. The Final Rule will also chill citizen family members (including children who are citizens) from lawfully using benefits that Congress intended them to use.

176. Moreover, millions of noncitizens—including many of Plaintiff States' residents—are and will continue to be afraid of and confused about the potential consequences of applying for benefits and will forgo public assistance altogether. Defendants recognize the chilling effects of the Final Rule will not be limited to those who are directly subject to public charge determinations, and will also impact lawful permanent residents, refugees, asylees, and U.S. citizens living in mixed-status families who can lawfully access various public benefits. 91 Fed. Reg. 45461; *see also id.* at 45426 (“DHS recognizes decreased participation in public benefit programs may include those not subject to the public charge ground of inadmissibility, such as children in mixed-status households, longtime [lawful permanent residents], and aliens in categories exempt from public charge.”). Defendants offer only the cursory and cruel response that any choice to forgo benefits by citizens whose families include noncitizens would be “unreasonable.” 91 Fed. Reg. at 45361.

177. The scope of chilling effects will be extensive because the 2026 Rule gives broad, unfettered discretion to immigration officials to consider the receipt of *any* means-tested public

benefits by the noncitizen applying for admission or any family members the noncitizen is “legally obligated to support,” 91 Fed. Reg. 45400, and fails to limit the consideration of such benefits in any way.

178. Extensive research documents the likelihood of chilling effects caused by perceived expansions of the public charge test. For instance, the Kaiser Family Foundation conducted a study similarly finding that the proposed public charge changes will likely lead to decreased participation in public programs, including Medicaid and CHIP, among immigrant families, including U.S. citizen children in those families.³

179. Moreover, history confirms the likelihood of substantial chilling effects. The 1996 changes in law caused widespread confusion and fear, resulting in significant chilling effects, and many immigrants disenrolled from or declined to apply for public benefits for which they were legally eligible under federal and state law.

180. The post-1996 disenrollment rates ranged between 15 percent and 35 percent for all noncitizen immigrants and children in families with mixed immigration status. Chilling effects for refugees have historically been even higher—with up to 60 percent disenrollment found in some cases, even though refugees are exempt from the public charge ground of inadmissibility and have been generally exempted from restrictions on access to benefits.

181. The federal government issued the 1999 Field Guidance in order to “help alleviate public confusion over the meaning of the term ‘public charge’ in immigration law and its relationship to the receipt of Federal, State, and local public benefits” and to provide noncitizens “with better guidance as to the types of public benefits that will and will not be considered in public

³ Samantha Artiga et al., *Potential “Chilling Effects” of Public Charge and Other Immigration Policies on Medicaid and CHIP Enrollment*, KFF (Dec. 2, 2025), <https://www.kff.org/medicaid/potential-chilling-effects-of-public-charge-and-other-immigration-policies-on-medicare-and-chip-enrollment/> [<https://perma.cc/Q3CA-F4KN>].

charge determinations.” 64 Fed. Reg. 28689. The INS assured the public that “certain federal, state, and local benefits are increasingly being made available to families with incomes far above the poverty level” and asserted that “participation in such non-cash programs is not evidence of poverty or dependence.” *Id.* at 28692.

182. More recent evidence of the impact of the 2019 Rule confirms the likelihood of a widespread chilling effect. Following implementation of the 2019 Rule, survey data found that more than one in seven adults (15.6%) in immigrant families reported avoiding a noncash government benefit program—such as Medicaid, SNAP, or housing subsidies—out of fear of risking their future green card status, with the share rising to more than one in four adults (26.2%) for low-income immigrant families.⁴

183. In promulgating the 2022 Rule, DHS acknowledged that “the 2019 Final Rule caused fear and confusion among U.S. citizens and noncitizens and had a significant chilling effect on the use of public benefits by noncitizens, even among those who were not subject to the rule and with respect to public benefits that were not covered by the rule.” 87 Fed. Reg. 55505. DHS further acknowledged “evidence that the 2019 Final Rule, and the rulemaking process that preceded it, resulted in significant disenrollment effects among noncitizens and U.S. citizens in immigrant families.” *Id.*

184. Defendants acknowledged that the 2026 Final Rule will also result in substantial chilling effects, noting that the 2019 Rule resulted in disenrollment rates as high as 35% among

⁴ Hamutal Bernstein et al., *Amid Confusion over the Public Charge Rule, Immigrant Families Continued Avoiding Public Benefits in 2019*, Urb. Inst. 5 (May 2020), https://www.urban.org/sites/default/files/publication/102221/amid-confusion-over-the-public-charge-rule-immigrant-families-continued-avoiding-public-benefits-in-2019_3.pdf [<https://perma.cc/GZ7C-G7KJ>].

mixed-status families in key safety net programs, including Medicaid, SNAP, and TANF. 91 Fed. Reg. at 45461. Defendants estimated a 10.3% rate of disenrollment or forgone enrollment in public benefits programs, while conceding that actual disenrollment rates could be even higher. *Id.* at 45462.

2. The Final Rule will cause harm to Plaintiff States' proprietary interests.

185. The Final Rule's predictable chilling effects and the resulting disenrollment and forgone enrollment will, in turn, cause direct, proprietary harm to the Plaintiff States. The Final Rule will harm Plaintiff States by causing the loss of federal funding associated with all eligible individuals who choose to disenroll or forgo enrollment due to fears about public charge determinations.

186. Defendants' own conservative estimates predict that the Final Rule will result in a significant drop in transfers of federal funds to state governments for programs like Medicaid and SNAP. Specifically, Defendants estimate that nationwide, states will lose an estimated \$4.05 billion in annual transfer payments from the federal government for the States' Medicaid and CHIP programs alone. 91 Fed. Reg. 45468. Of that nationwide total, Plaintiff States stand to lose approximately \$2.2 billion in reduced federal payments.

187. Plaintiffs receive 50 percent or more in federal matching funds for all qualified Medicaid expenditures. When noncitizens, or their citizen family members, choose not to apply for federally funded Medicaid benefits for which they are eligible, Plaintiffs are left with fewer resources for providing their residents with access to healthcare.

188. Plaintiffs will also lose federal funds for programs administered by the States that rely solely on federal funds. Defendants' own conservative estimates predict that the Final Rule will cause states to lose more than \$1 billion in annual federal funding for the SNAP program due

to disenrollment. 91 Fed. Reg. at 45468 n.355; *see also* 90 Fed. Reg. at 52216. Of that total, Plaintiff States stand to lose approximately \$575 million in reduced federal payments.

189. When a child's enrollment in means-tested public benefits programs jeopardizes their noncitizen parent's own immigration status, parents are less likely to enroll their children in those programs, even if their children are U.S. citizens. Therefore, even though a citizen child is eligible for health insurance under CHIP, for example, the Final Rule will still predictably lead to reduced enrollment in CHIP.

190. In addition to causing direct loss of federal transfers for key state programs, the Final Rule will require diversion of the States' own funds and administrative resources. The 2019 Rule required state agencies to make substantial changes to communications, staff training, and coordination with other state and federal systems. Defendants acknowledge that the 2026 Final Rule will again force state Medicaid agencies and other entities to incur administrative costs, including for staff training, changes to communications, and modification of information technology systems. 91 Fed. Reg. at 45447-48. It will also increase the States' administrative costs due to "increased 'churn,' where eligible individuals and families cycle on and off public benefit programs more frequently." *Id.* at 45472.

191. The Final Rule will undermine investments Plaintiff States have made in broad-based, accessible access to public benefit programs that promote integration and upward mobility of state residents. For example, as a part of their implementation of the ACA, many of the Plaintiff States established a single, accessible statewide application for all affordable health programs offered on their health insurance exchange. When designing application and eligibility systems for their ACA marketplaces, Plaintiffs relied upon well-settled judicial and administrative interpretations of the public charge test that strictly limited consideration of healthcare benefits in

public charge determinations. The Final Rule will undermine the effectiveness of those carefully designed systems by creating new, vague, and open-ended risks to immigration status associated with enrollment in subsidized ACA marketplace healthcare plans.

192. The Final Rule's predictable result of reduced participation in public benefit programs by noncitizens, as well as by their citizen family members, will also cause direct harm to Plaintiff States' programs that are intended to promote public health and welfare through broad-based access to publicly funded services.

193. Decreased enrollment in Medicaid and other low-cost insurance programs will reduce the effectiveness of state programs and initiatives that rely on broad-based access to preventive healthcare, such as vaccination campaigns and prenatal coverage and care.

194. Without health insurance, noncitizens and their family members will be more likely to rely on emergency rooms for medical care, and more likely to present with far more complex and expensive conditions to treat due to deferred primary and preventive care. These conditions include diseases that are easy and inexpensive to treat at early stages but can become deadly and more expensive as they progress, such as tuberculosis and syphilis.

195. The Final Rule's predictable effect of leaving more residents uninsured will cause financial harm to the health systems and programs operated by the States, their agencies, and their political subdivisions. Public hospitals rely on enrollment of the States' eligible residents into publicly funded affordable coverage programs like Medicaid, CHIP, Medicare, and subsidized ACA plans to remain financially stable. The 2026 Rule will cause the States' publicly funded safety net healthcare providers to provide more uncompensated care, 84 Fed. Reg. at 41384, 41486; 91 Fed. Reg. 45471, decreasing revenue and undermining those providers' overall financial sustainability.

196. Decreased enrollment in publicly funded affordable coverage programs will make it harder for the States' safety net hospitals to sustain access to quality emergency care for vulnerable populations and to meet their obligations to provide those services under EMTALA. As individuals who fear immigration consequences due to the Final Rule become less willing to enroll in emergency Medicaid to cover their treatment, hospitals (including state-operated facilities) will increasingly incur uncompensated costs for those patients who lack private insurance or the ability to pay out of pocket. And because individuals without health insurance generally wait longer to seek needed care, the care they eventually receive from emergency rooms will be more costly.

197. This loss of funding will disproportionately impact hospitals that operate in low-income communities and community health centers, including community clinics and federally qualified health centers that already operate on very thin margins. Some safety net providers will need to reduce services or even cease operating due to loss of funding.

198. The Final Rule's chilling impact on noncitizens' and their families' willingness to receive federally and state-funded nutrition assistance will also cause direct, proprietary harms that extend far beyond immediate loss of federal funding.

199. For example, Plaintiffs rely on Census Bureau data on SNAP benefits to calculate the Supplemental Poverty Measure, which serves as an additional indicator of economic well-being and provides a deeper understanding of economic conditions and policy effects. Plaintiff States use this measure, along with other poverty and economic data, to assess the need for anti-poverty programs, inform budget and policy decisions, and direct resources to affected communities. Disenrollment from SNAP will undermine the accuracy of this measure and the Plaintiff States' ability to understand national and statewide economic conditions.

200. The Final Rule will also harm the States' administration of school meals programs like the National School Lunch Program and School Breakfast Program. In some Plaintiff States, because the school meal programs' automatic enrollment process is linked to a specific threshold of participation in SNAP and Medicaid, any drop in enrollment of eligible children will lead to a loss of automatic certification for some institutions, and entire schools or districts losing comprehensive access to free or reduced-price school meals. Loss of automatic certification will harm the States' ability to offer some students in lower-income areas—who are not themselves eligible for or enrolled in nutritional assistance but may nevertheless benefit from accessing school meals—access to healthy meals provided by their local school to all children.

201. States also stand to lose other federal funds if families are less likely to report their financial need. For example, federal Title I funding awards for public schools are tied to the number of low-income children served by a particular school. In some instances, Medicaid and SNAP enrollment is used as a metric to determine the number of low-income students served; if children are not enrolled in these programs, low-income students will be present but undercounted, Title I funds will decrease, and public schools will be left to serve the same number of students with fewer funds, or seek state and local funding to replace the lost federal funds.

3. The Final Rule will cause additional harm to Plaintiff States' interests and public health and welfare.

202. In addition to directly harming the Plaintiff States' proprietary interests in funding and administration of key state programs, the Final Rule will cause harm to public health and welfare generally, leading to additional costs and burdens on both the Plaintiff States and the public interest writ large.

203. As DHS acknowledged when finalizing the 2019 Rule, *see* 84 Fed. Reg. at 41313, chilling effects caused by its removal of longstanding limits on public charge determinations will

have far-reaching consequences with respect to food insecurity, housing scarcity, public health and vaccinations, education health-based services, reimbursement to health providers, and concomitant increased costs to the States and localities.

204. The Final Rule’s predictable consequences of decreased rates of enrollment in affordable health insurance programs and decreased access to primary and preventive healthcare will cause significant harm to population health in Plaintiff States’ jurisdictions. Defendants’ own predictions suggest that the Final Rule will cause “[w]orse health outcomes, such as increased prevalence of obesity and malnutrition (especially among pregnant or breastfeeding women, infants, and children), reduced prescription adherence, and increased use of emergency rooms for primary care due to delayed treatment.” 91 Fed. Reg. 45471. Reduced access to contraceptives and other family planning services will lead to higher rates of unintended pregnancy, increasing health costs. Other negative health outcomes stemming from delayed and deferred care include later-stage disease detection, adverse health effects during pregnancy and childbirth, overdose, and increased morbidity and mortality from late-stage diseases. Children who are uninsured in their early years experience worse health, income, and employment outcomes well into adulthood.

205. The Final Rule will reduce the Plaintiff States’ ability to respond effectively to communicable disease outbreaks. Access to preventive care is an essential tool used by Plaintiff States to prevent, prepare for, and respond to the spread of serious, but preventable communicable diseases that can harm the overall health of the population. Defendants concede that the Final Rule may lead to “[h]igher prevalence of communicable diseases, including among U.S. citizens who are not vaccinated.” 91 Fed. Reg. 45471. These preventable diseases include measles, polio, and sexually transmitted infections. Diseases that disproportionately impact agriculture and other

industries with large immigrant workforces, such as avian influenza or “bird flu,” will be disproportionately exacerbated.

206. Ultimately, as the insurers of last resort and the owners and operators of safety net healthcare facilities, States and their localities will bear a portion of any and all costs associated with any delays in diagnosis and treatment of serious medical conditions, unintended pregnancies, and preventable diseases.

207. The Final Rule’s predictable reduction in participation in supplemental nutritional assistance programs will also harm Plaintiffs’ ability to combat hunger and food insecurity in their states.

208. Food banks struggled to fill nutrition gaps that grew, in part, when immigrants began to avoid public food assistance programs due to the 2019 Rule. Food banks in the Plaintiff States provide assistance to millions of individuals, including children. If individuals avoid the SNAP benefits for which they are eligible, the number of individuals turning to emergency food banks will grow and those organizations’ ability to address food insecurity will decrease.

209. Reduced participation in supplemental nutrition assistance programs will harm public health and well-being. Food insecurity can wreak havoc on an individual’s health, including increasing the risk of chronic diseases, such as diabetes and hypertension, harm emotional and mental wellbeing, including driving depression and anxiety, and can also make managing these conditions more difficult. Low-income adults participating in SNAP incur about \$1,400 less in medical care costs in a year than comparable non-participants.

210. Food insecurity has particularly harmful direct and indirect impacts on the health, development, and well-being of children. Food insecurity leads to depression, fatigue, poor self-

efficacy, and behavioral problems. Children who go without sufficient nutrition are more likely to struggle to learn in classrooms, harming their own educational advancement and that of their peers.

211. The 2019 Rule reduced participation in WIC, even though it was formally exempted from consideration. WIC provides supplemental nutrition benefits and other health supports, like nutrition education, breastfeeding support services, and referrals to other health and social services. When mothers and their children participate in WIC, the risks of birth complications, malnutrition, and morbidity are reduced. By deterring non-citizens or their family members from accessing these services, the Final Rule will again put women, infants, and children at increased risk of short- and long-term adverse health effects that are correlated with lack of access to the services and supports offered by WIC.

212. As DHS has acknowledged when finalizing the 2019 Rule, the 2026 Final Rule's chilling effect on participation in SNAP and other nutrition programs will also cause economic harm. *See* 84 Fed. Reg. 41477 (recognizing that reductions in federal and state transfers under benefit programs may have downstream impacts on state and local economies, large and small businesses, and individuals). SNAP benefits generate secondary economic effects that increase overall spending and production; the USDA estimates that every \$1 in SNAP benefits can generate up to \$1.54 in economic activity. Decisions by immigrant families to forgo nutritional benefits for which they are eligible will also result in loss of that economic activity. The Final Rule will particularly harm smaller farms and grocers, and others who operate on small margins.

213. Similarly, decreases in enrollment in health insurance programs will result in decreases in revenue to healthcare providers, which causes additional economic harm within the states.

214. The threat that immigration officials will use this expanded public charge test to deny noncitizens' requests to obtain green cards or otherwise seek admission will also cause broader economic harm by reducing productivity in key sectors of Plaintiff States' economies. Receipt of limited governmental assistance, particularly in the form of food assistance, housing, and health insurance subsidies, enables immigrants and their families to maintain employment, continue healthy and stable lives, and to contribute fully to the federal and state economies. As the Second Circuit recognized, the States "seek to protect the economic benefits that result from healthy, productive, and engaged immigrant communities." *New York*, 969 F.3d at 63. The States are already experiencing labor shortages in key sectors that are critical to the economy such as agriculture, construction, healthcare, childcare and early childhood education, food services, and janitorial and maintenance services. The Final Rule will reduce productivity in Plaintiff States and disrupt their labor markets.

CAUSES OF ACTION

COUNT I

Violation of the Administrative Procedure Act – Contrary to Law and in Excess of Statutory Authority

215. Plaintiffs incorporate by reference the allegations contained in the preceding paragraphs.

216. Defendants include "agenc[ies]" under the APA. 5 U.S.C. § 551(1).

217. The Final Rule and Guidance are "final agency actions" for the purposes of the APA. 5 U.S.C. § 704.

218. The APA requires courts to "hold unlawful and set aside" agency action that is "not in accordance with law, or that is "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(A), (C).

219. Congress ratified “the prevailing administrative and judicial interpretation of ‘public charge,’” to mean “a non-citizen who cannot support himself, in the sense that he is incapable of earning a livelihood, . . . does not have sufficient funds in the United States for his support, and has no person in the United States willing and able to assure that he will not need public support.” *New York*, 969 F.3d at 74–75 (cleaned up).

220. In contrast, the Final Rule improperly replaces the established meaning of “public charge,” which Congress codified in IIRIRA, *see* 8 U.S.C. §§ 1182(a)(4), 1183a, with unbounded discretion for immigration officers to determine the meaning of “public charge” with no administrable standards for how to weigh the type, amount, duration, recency, or purpose of the means-tested benefits they consider when deciding whether someone is likely at any time to become a “public charge.”

221. By Defendants’ own admission, the 2026 Rule’s expansion of the Public Charge ground of inadmissibility would allow officers to classify individuals as “public charges” “even where they are not primarily dependent on the government.” 90 Fed. Reg. at 52186.

222. The 2026 Final Rule and the Guidance eliminate any discernible standards regarding which information immigration officers can consider for purposes of the public charge determination and to what degree, and instead empower them “to consider not only the mandatory statutory factors. . . but also all relevant evidence and information in the record specific to the alien as the officers determine whether that alien is likely at any time to become a public charge.” 91 Fed. Reg. at 45331; *see also* 90 Fed. Reg. at 52183.

223. The 2026 Final Rule and the Guidance exceed what the INA permits by enabling immigration officers to consider, for example, a child’s lawful use of supplemental means-tested

public benefits, in making a public charge determination against the child or against the child's noncitizen parents.

224. The 2026 Final Rule and the Guidance also go beyond what is permitted by the INA by allowing immigration officers to consider use of benefits that are universally available to any resident where they live, irrespective of the individual's income or wealth (for example, participation in school lunch programs that are available to all students, without any means-testing or any other fact that is specific to the noncitizen applying for admission).

225. The Final Rule and Guidance's expansive approach to "public charge" rejects the well-established meaning of the term. 8 U.S.C. §§ 1182(a)(4), 1183a. The new scheme set forth in the Final Rule and the Guidance will allow individual officers to exercise a level of discretion that is contrary to the intent of Congress, based on a statement of congressional intent in PRWORA, while ignoring statements of congressional intent that support broad, unimpeded access to means-tested public benefits by eligible persons. *See, e.g.*, 42 U.S.C. § 1771.

226. Additionally, Defendants may only exercise authority conferred by statute, and when an executive agency administers a federal statute, the agency's power to act is "authoritatively prescribed by Congress." *City of Arlington v. FCC*, 569 U.S. 290, 297 (2013).

227. Through the Final Rule and the Guidance, Defendants have disregarded and set aside the settled meaning of "public charge," ratified by Congress. Nothing in the INA, or any federal statute, empowers Defendants to override Congress. Defendants are not authorized by any federal statute to self-confer such discretion. In so doing, the Final Rule exceeds Defendants' statutory authority. *See* 8 U.S.C. § 1182(a)(4).

228. By promulgating this Final Rule, by itself or as informed by the Guidance, Defendants have acted contrary to the INA. In doing so, Defendants have taken action in violation of the APA. The Final Rule is therefore invalid.

229. Defendants' violation causes ongoing harm to Plaintiff States.

230. Pursuant to 5 U.S.C. § 706 and 28 U.S.C. § 2201, Plaintiff States are entitled to a declaration that the Final Rule violates the APA because it is contrary to law and in excess of statutory authority.

231. Plaintiff States are also entitled to vacatur of the Final Rule pursuant to 5 U.S.C. § 706.

232. In the alternative, to the extent that the Court concludes that the Guidance is independently reviewable agency action or supplies operative standards governing public charge inadmissibility determinations, the Guidance itself is contrary to law and in excess of statutory authority, and that must accordingly be "[held] unlawful and set aside." 5 U.S.C. § 706(2)(A), (C). Pursuant to 5 U.S.C. § 706 and 28 U.S.C. § 2201, Plaintiff States are entitled to a declaration that the Guidance violates the APA because it is contrary to law and in excess of statutory authority, and are also entitled to vacatur of the Guidance pursuant to 5 U.S.C. § 706.

COUNT II

Violation of the Administrative Procedure Act – Arbitrary and Capricious

233. Plaintiff States incorporate by reference the allegations contained in the preceding paragraphs.

234. Under the APA, a court must set aside agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law." 5 U.S.C. § 706(2)(A); *see Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 52 (1983) (agency action must be supported by a "rational connection between the facts found and the choice made")

(quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)); *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) (agency must provide “reasoned explanation” for departing from prior policy and must provide “a more detailed justification than what would suffice for a new policy” when “its prior policy has engendered serious reliance interests that must be taken into account”). A court must also set aside agency action if the agency “failed to consider . . . important aspect[s] of the problem before” it. *Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 25 (2020) (citation omitted).

235. The Final Rule and the Guidance are arbitrary and capricious in numerous ways, including because they institute a new system, departing from established prior policy, under which immigration officials have boundless authority to render public charge determinations based on any benefits use, or any other “fact or circumstance the officer determines is relevant.” 91 Fed. Reg. at 45347; *see also* Ex. A at 13, 53. In fact, the Final Rule and the Guidance provide no clear or administrable standards. Defendants have provided no reasonable explanation for this sweeping policy change, let alone a detailed one as required under the APA.

236. The Final Rule and the Guidance are arbitrary and capricious because they rest on erroneous legal and factual conclusions, such as “all benefits received have bearing on whether an alien is likely at any time to become a public charge.” 91 Fed. Reg. 45393. This is inconsistent with the settled meaning of “public charge.” Similarly, Defendants’ repeated invocation of PRWORA erroneously attempts to justify a new application of public charge determinations based on a statute that did not address “public charge,” and which instead made noncitizens eligible for certain benefits, the use of which Defendants now seek to penalize under their expansive public charge regime. This is not reasoned decision-making.

237. The Final Rule and the Guidance are arbitrary and capricious because they fail to consider many important aspects of the problem. The Final Rule and the Guidance fail to consider the actual probative value that the receipt of particular benefits have on whether an individual will become dependent on the government as a “public charge,” nor do Defendants adequately consider the harms of including those benefits in public charge determinations. The Final Rule and the Guidance also fail to consider that the use of some types of public benefits, or the use of benefits for a limited period, is not evidence of “dependence” on federal benefits programs. Defendants failed to consider alternative rules that would narrow the scope of public benefits that immigration officers can consider. The Final Rule and the Guidance also fail to consider the purpose of the public benefit programs and laws. Finally, the Final Rule and Guidance also do not consider the States’ reliance interests, including the complex administrative systems that Plaintiff States have developed for public benefits administration in reliance on the public benefits programs and eligibility rules created by Congress and Defendants’ longstanding use of a “primary dependence” standard for public charge determinations.

238. The Final Rule and the Guidance are also arbitrary and capricious because they are impermissibly ambiguous. They do not provide Plaintiff States or the public with clear information on the new public charge standards. They fail to provide any limits or bounds on the evidence that immigration officers may rely on in making public charge determinations, repeatedly stating that immigration officers may use “all relevant evidence and information,” 91 Fed. Reg. 45413, including use of a wide range of public benefits. The Final Rule and the Guidance also effectively apply retroactively when it comes to consideration of the use of some public benefits.

239. The Final Rule is therefore “arbitrary, capricious, [or] an abuse of discretion” in violation of the APA. 5 U.S.C. § 706(2)(A).

240. Defendants' violation causes ongoing harm to Plaintiff States.

241. Pursuant to 5 U.S.C. § 706 and 28 U.S.C. § 2201, Plaintiff States are entitled to a declaration that the Final Rule violates the APA because it is arbitrary and capricious.

242. Plaintiff States are also entitled to vacatur of the Final Rule pursuant to 5 U.S.C. § 706.

243. In the alternative, to the extent that the Court concludes that the Guidance is independently reviewable agency action or supplies operative standards governing public charge inadmissibility determinations, the Guidance itself is "arbitrary, capricious, [or] an abuse of discretion" in violation of the APA, and that must accordingly be "[held] unlawful and set aside." 5 U.S.C. § 706(2)(A), (C). Pursuant to 5 U.S.C. § 706 and 28 U.S.C. § 2201, Plaintiff States are entitled to a declaration that the Guidance violates the APA because it is arbitrary and capricious, and are also entitled to vacatur of the Guidance pursuant to 5 U.S.C. § 706.

COUNT III

In the Alternative: Violation of the Administrative Procedure Act – Failure to Adhere to Notice and Comment Procedures

244. Plaintiffs incorporate by reference the allegations contained in the preceding paragraphs.

245. The Guidance is a "final agency action" for the purposes of the APA. 5 U.S.C. § 704.

246. To the extent that the Court concludes that the Guidance supplies the operative standards governing public charge inadmissibility determinations, Plaintiffs further challenge the Guidance as a legislative rule issued without required notice and comment procedures. If the Guidance supplies operative standards governing public charge determinations, then the Guidance does not merely interpret an existing regulatory standard. Instead, the Guidance supplies the

substantive replacement standards for the rescinded legislative rule. When legislative rules are promulgated, notice and comment rulemaking procedures are required under the APA. 5 U.S.C. § 553.

247. In the Final Rule, Defendants represented that USCIS would issue “nonbinding subregulatory guidance” that would be a “general statement of policy,” would “not have the force and effect of law,” and would therefore “be exempt from notice and comment rulemaking.” 91 Fed. Reg. 45338. The Final Rule further stated that this guidance would go into effect “on the effective date of this final rule.” *Id.*

248. The Guidance states that it “stems from” rescission of the 2022 Final Rule and is intended to provide guidance to USCIS officers in making public charge inadmissibility determinations. Ex. A at 3. After the Final Rule rescinds the 2022 regulations that defined “public charge,” limiting the benefits that could be considered and cabining officer discretion, the Guidance will supply the replacement framework USCIS officers will use going forward. Like the Final Rule, the Guidance materially expands the benefits officers may consider, authorizes consideration of applications, approvals, certifications, and receipt of means-tested benefits, and gives officers unfettered discretion to determine how much weight to assign those facts in the totality of the circumstances. *See, e.g., id.* at 50-51.

249. The Guidance gives content to the 2022 Final Rule’s rescission and establishes the framework officers will use to determine whether noncitizens are likely at any time to become “public charges.” If the Guidance supplies operative standards governing public charge inadmissibility determinations after the rescission of the 2022 regulations, it functions as the substantive replacement of those regulations. Under the APA, an agency may not use subregulatory guidance to effectively amend or replace a legislative rule without notice and comment. *See Elec.*

Priv. Info. Ctr. v. U.S. Dep't of Homeland Sec., 653 F.3d 1, 6 (D.C. Cir. 2011) (citing *Am. Mining Cong. v. Mine Safety & Health Admin.*, 995 F.2d 1106, 1112 (D.C. Cir. 1993)); *Am. Tort Reform Ass'n v. Occupational Safety & Health Admin.*, 738 F.3d 387, 395 (D.C. Cir. 2013) (“Of course, if an agency issues a statement that is labeled an interpretive rule or a policy statement and it has all the indicia of a final legislative rule, then the rule will be subject to review.”).

250. If the Guidance supplies operative standards governing public charge inadmissibility determinations, it materially affects the rights and obligations of applicants for admission or adjustment of status. It also materially affects Plaintiff States by chilling participation in Plaintiff States’ public benefit programs and forcing Plaintiff States to respond to the confusion, disenrollment, and administrative burdens it creates.

251. Defendants did not provide notice and an opportunity to comment on the Guidance before issuing it. Nor did Defendants provide Plaintiff States or the public an adequate opportunity during the Final Rule’s rulemaking process to comment on the specific standards later announced in the Guidance.

252. Defendants therefore issued the Guidance without observance of procedure required by law, in violation of 5 U.S.C. §§ 553 and 706(2)(D).

253. Defendants’ violation causes ongoing harm to Plaintiff States. If the Court concludes that the Guidance is a substantive, legislative rule, it should be vacated or set aside for failure to comply with required notice and comment procedures.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff States pray that this Court:

- i. Pursuant to 5 U.S.C. § 706, vacate the Final Rule;

- ii. Issue a judicial declaration that the Final Rule is contrary to law, in excess of statutory authority, and arbitrary and capricious in violation of the Administrative Procedure Act;
- iii. To the extent the Guidance supplies operative standards governing public charge inadmissibility determinations, vacate the Guidance pursuant to 5 U.S.C. § 706, and issue a judicial declaration that the Guidance is contrary to law, in excess of statutory authority, and arbitrary and capricious, and was issued improperly without required notice and comment rulemaking in violation of the Administrative Procedure Act;
- iv. Award the Plaintiff States their reasonable fees, costs, and expenses, including attorneys' fees, pursuant to 28 U.S.C. § 2412; and,
- v. Grant other such relief as this Court may deem proper.

Dated: September 14, 2026

Respectfully submitted,

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EXHIBIT A

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director
Camp Springs, MD 20588-0009



U.S. Citizenship
and Immigration
Services

August 18, 2026

PA-2026-09

Policy Alert

SUBJECT: Public Charge Ground of Inadmissibility

Purpose

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance in the [USCIS Policy Manual](#) to address the public charge ground of inadmissibility under section 212(a)(4) of the Immigration and Nationality Act (INA). This revised guidance stems from the rescission of the Public Charge Ground of Inadmissibility (“2022 Final Rule”).¹

Background

Under [INA 212\(a\)\(4\)](#), any alien applying for a visa, admission, or adjustment of status (unless exempt) who is likely at any time to become a public charge is inadmissible. The public charge ground of inadmissibility and this policy guidance fulfill Congress’ longstanding national policy on immigration and welfare that aliens inside the United States are self-sufficient and do not depend on public benefits to meet their needs.

This guidance, contained in Volume 8 of the Policy Manual, is effective on September 18, 2026, and applies to all applications for adjustment of status (unless exempt) postmarked or electronically submitted on or after that date.

The guidance contained in the Policy Manual is controlling and supersedes any related prior guidance, including the 1999 Interim Field Guidance and any related guidance addressing public charge inadmissibility.²

Policy Highlights

¹ See [87 FR 55472](#) (Sept. 9, 2022) (final rule). The 2022 Final Rule was rescinded by the Public Charge Ground of Inadmissibility, [91 FR 45324](#) (Jul. 20, 2026) (final rule). DHS issued the 2026 Final Rule following notice and comment rulemaking.

² See Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, [64 FR 28689](#) (May 26, 1999) (notice). Due to a printing error, the Federal Register version of the field guidance appears to be dated “March 26, 1999” even though the guidance was actually signed May 20, 1999, became effective May 21, 1999, and was published in the Federal Register on May 26, 1999. Note that adjustment of status applications postmarked or electronically submitted on or after December 23, 2022 but before September 18, 2026, are adjudicated under the 2022 regulations and related policy manual guidance. For adjustment of status applications postmarked or electronically submitted prior to December 23, 2022, follow the 1999 Interim Field Guidance.

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- Removes references to regulatory terms and concepts associated with the rescinded 2022 Final Rule.
- Provides updated guidance for making public charge inadmissibility determinations under INA 212(a)(4).
- Reiterates the categories of aliens who are exempt from, or may obtain a waiver of, the public charge inadmissibility ground.
- Provides scenarios to illustrate the practical application of the totality of the circumstances analysis used in the public charge inadmissibility determination.
- Explains the consideration of mandatory statutory factors and other relevant information, such as current or past receipt of means-tested public benefits, including which means-tested public benefits received before September 18, 2026, will be considered and which means-tested public benefits received on or after September 18, 2026, will be considered, consistent with the 2026 Final Rule.
- Reiterates that no one factor, other than the lack of a sufficient Affidavit of Support Under Section 213A of the INA (Form I-864 or Form I-864EZ), if required, can be the sole basis for determining whether an alien is likely at any time to become a public charge.
- Describes the public charge bond process for an alien who applied for adjustment of status, who has been found inadmissible only under the public charge ground, and who has been invited to post a public charge bond.
- Provides officers with guidance to determine appropriate bond amounts when inviting aliens to post a public charge bond.
- Provides guidance on maintenance, breach, and cancellation of public charge bonds.

Summary of Changes

Affected Section: Volume 8 > Part G, Public Charge Ground of Inadmissibility

- Revises Part G in its entirety.

USCIS may also make other minor technical, stylistic, and conforming changes consistent with this update.

Citation

Volume 8: Admissibility, Part G, Public Charge Ground of Inadmissibility [[8 USCIS-PM G](#)].

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Additional Considerations**Administrative Procedure Act (APA)**

As indicated above, this revised guidance stems from the rescission of the 2022 Final Rule and provides guidance to help officers make public charge inadmissibility determinations that are consistent with the statute and Congressional intent. The previous guidance reflected the regulatory framework established by the 2022 Final Rule. USCIS does not believe that the regulated public has significant reliance interests related to the previous iteration of the public charge ground of inadmissibility guidance that are separate from the reliance interests DHS already addressed at length in the 2026 Final Rule³ and that are related to the rescinded regulatory framework contained in the 2022 Final Rule. However, even if such reliance interests exist, DHS believes that its interest in removing references to rescinded regulatory concepts and providing officers with information and examples to help them faithfully and consistently make public charge inadmissibility determinations in their discretion outweigh any reliance interests the regulated public may have.

³ See 91 FR 45324, 45344 through 45346 (Jul. 20, 2026).

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This policy is effective on September 18, 2026, and will be incorporated into the Policy Manual accordingly.

USCIS Policy Manual, Volume 8: Admissibility
[Part G – Public Charge Ground of Inadmissibility](#)

Chapter 1. Purpose and Background

A. Purpose

Under section 212(a)(4) of the Immigration and Nationality Act (INA), an alien who is applying for a visa, admission, or adjustment of status and who is likely at any time to become a public charge, is inadmissible,¹ unless exempt from this ground of inadmissibility. DHS has the authority to waive this ground of inadmissibility for certain applicants for admission² and, in limited circumstances, also has the authority to waive this ground of inadmissibility for certain applicants for adjustment of status.³

B. Background

1. Public Charge Ground of Inadmissibility General Overview

The INA provides that an alien applying for a visa, admission, or adjustment of status is inadmissible if in the opinion of the consular officer, immigration officer, or immigration judge at the time of application for a visa, admission, or adjustment of status, the alien is likely at any time to become a public charge.⁴

The public charge ground of inadmissibility, therefore, applies to any alien applying for a visa to come to the United States temporarily or permanently, for admission at a port of entry, or for adjustment of status to that of a lawful permanent resident (LPR).⁵ Congress has exempted by statute certain applicants for a visa, admission, or adjustment of status from the public charge ground of inadmissibility.⁶

The INA does not define public charge. It does, however, specify that consular officers, immigration officers, and immigration judges must, at a minimum, consider certain factors when determining whether an alien is likely at any time to become a public charge.⁷

¹ See INA 212(a)(4)(A).

² See INA 212(d)(3)(A).

³ See INA 245(j). See 8 CFR 245.11.

⁴ See INA 212(a)(4).

⁵ See INA 212(a)(4).

⁶ See Chapter 3, Applicability, Section C, Exemptions [8 USCIS-PM G.3(C)].

⁷ See INA 212(a)(4)(B).

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2. National Policy on Immigration and Welfare Under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996

In 1996 and close in time to the enactment of current INA section 212(a)(4), Congress passed the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), which is commonly known as the 1996 welfare reform law. PRWORA set national policy on immigration and welfare, acknowledging that self-sufficiency has been a basic principle of U.S. immigration law since its earliest statutes and that aliens inside the United States should not depend on public resources to meet their needs, but rather, should rely on their own capabilities and the resources of their families, sponsors, and private organizations.⁸ Additionally, under PRWORA, Congress made clear that the availability of public benefits should not constitute an incentive for immigration to the United States.⁹ Moreover, PRWORA significantly restricted an alien's eligibility for federal, state, local, and tribal public benefits.¹⁰

3. History of Public Charge Inadmissibility Statutory and Regulatory Changes

Self-sufficiency has been a basic principle of United States immigration law since its earliest immigration laws.¹¹ In recognition of this principle, Congress has provided, since 1882, a public charge ground of inadmissibility to address this lack of self-sufficiency when aliens apply for visas, admission, or adjustment of status.¹²

Illegal Immigration Reform and Immigrant Responsibility Act of 1996

In 1996 Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA).¹³ IIRIRA amended INA section 212(a)(4), which introduced the mandatory statutory factors and created the enforceable Affidavit of Support Under Section 213A of the INA (Form I-864).¹⁴

⁸ See Section 400 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, (August 22, 1996) (codified at 8 U.S.C. 1601).

⁹ See 8 U.S.C. 1601(2)(B).

¹⁰ See 8 U.S.C. 1601-1646, as amended.

¹¹ See Section 400 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, (August 22, 1996) (codified at 8 U.S.C. 1601).

¹² Immigration Act of 1882, 22 Stat. 214 (Aug. 3, 1882) (excluding "any person unable to take care of himself or herself without becoming a public charge."). Immigration Act of March 3, 1891 (26 Stat. 1084) ("any alien who becomes a public charge within one year after his arrival in the United States from causes existing prior to his landing therein shall be deemed to have come in violation of law and shall be returned as aforesaid.").

¹³ See Division C of Pub. L. 104-208, 110 Stat. 3009 (September 30, 1996).

¹⁴ See Division C of Pub. L. 104-208, 110 Stat. 3009 (September 30, 1996). Congress added requirements for certain immigrant categories by creating INA 213A, making a sponsor's affidavit of support submitted on behalf of an alien legally enforceable under IIRIRA. See Division C, Title V of Pub. L. 104-208, 110 Stat. 3009, 3009-670 (September 30, 1996).

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More specifically, IIRIRA codified the following minimum factors that must be considered when making public charge inadmissibility determinations: age; health; family status; assets, resources, and financial status; and education and skills.¹⁵

Additionally, with IIRIRA, Congress made the legally enforceable Form I-864 a requirement for most family-sponsored and certain employment-based immigrants,¹⁶ and indicated that it may be considered as a factor in a public charge inadmissibility determination.¹⁷

1999 Interim Field Guidance

On May 26, 1999, the legacy Immigration and Naturalization Service (INS) issued interim guidance, titled “Field Guidance on Deportability and Inadmissibility on Public Charge Grounds” (1999 Interim Field Guidance).¹⁸ This guidance identified how the agency would determine if an alien is likely at any time to become a public charge¹⁹ for admission or adjustment of status purposes, and when an alien would be deportable²⁰ as a public charge.²¹

INS incorporated the policies contained in the 1999 Interim Field Guidance in a proposed rule published on May 26, 1999.²² However, INS never finalized the proposed rule. INS, and later DHS, continued to apply the public charge ground consistent with the 1999 Interim Field Guidance for two decades.

Under the 1999 Interim Field Guidance and the 1999 proposed rule, “public charge” for purposes of a public charge inadmissibility determination was defined as an alien who is likely to become primarily dependent on the government for subsistence, as demonstrated by either:

- Receipt of public cash assistance for income maintenance; or
- Institutionalization for long-term care at government expense.²³

Regulatory Changes in 2019

¹⁵ See INA 212(a)(4)(B). See Section 531 of Division C of Pub. L. 104-208, 110 Stat. 3009-546, 3009-674 (September 30, 1996) (amending INA 212(a)(4)).

¹⁶ See INA 212(a)(4)(C), INA 212(a)(4)(D), and INA 213A.

¹⁷ See INA 212(a)(4)(B)(ii). See Chapter 6, Affidavit of Support Under Section 213A of the INA [8 USCIS-PM G.6].

¹⁸ See 64 FR 28689 (May 26, 1999). Due to a printing error, the Federal Register version of the field guidance appears to be dated “March 26, 1999” even though the guidance was actually signed May 20, 1999, became effective May 21, 1999, and was published in the Federal Register on May 26, 1999.

¹⁹ See INA 212(a)(4).

²⁰ See INA 237(a)(5).

²¹ See 64 FR 28689 (May 26, 1999).

²² See 64 FR 28676 (May 26, 1999).

²³ See 64 FR 28689 (May 26, 1999). See 64 FR 28676 (May 26, 1999).

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On August 14, 2019, DHS issued a final rule regarding the public charge ground of inadmissibility, titled “Inadmissibility on Public Charge Grounds” (2019 Final Rule).²⁴ The 2019 Final Rule provided new and expanded definitions for certain terms and provided a multi-factor framework along with associated evidentiary requirements.

The 2019 Final Rule also added provisions that rendered certain nonimmigrants ineligible for extension of stay or change of status if they received specific public benefits for a certain period. Additionally, it revised DHS regulations governing the Secretary’s discretion to accept a public charge bond for those seeking adjustment of status.

The 2019 Final Rule was set to take effect on October 15, 2019. Before it did, numerous plaintiffs filed suits challenging the 2019 Final Rule in five district courts, across four circuits.²⁵ The 2019 Final Rule was ultimately implemented on February 24, 2020. However, following a series of preliminary injunctions and stays or reversals of those injunctions, a partial final judgment vacating the 2019 Final Rule went into effect nationwide on March 9, 2022.²⁶ DHS subsequently formally removed the 2019 Final Rule from the Code of Federal Regulations (CFR).²⁷

After the 2019 Final Rule was vacated and removed from the CFR, DHS returned to making public charge inadmissibility determinations in accordance with the statute and the 1999 Interim Field Guidance.²⁸

Regulatory Changes in 2022

On August 23, 2021, DHS published an Advance Notice of Proposed Rulemaking (ANPRM) to seek broad public feedback on the public charge ground of inadmissibility to inform its development of a future regulatory proposal.²⁹ DHS reviewed the comments and considered them in developing a Notice of Proposed Rulemaking (NPRM).³⁰

²⁴ See 84 FR 41292 (Aug. 14, 2019), as amended by 84 FR 52357 (Oct. 2, 2019).

²⁵ See *CASA de Maryland, Inc., et al. v. Trump*, 19-cv-2715 (D. Md.). See *City and County of San Francisco, et al. v. DHS, et al.*, 19-cv-04717 (N.D. Ca.). See *City of Gaithersburg, et al. v. Trump, et al.*, 19-cv-02851 (D. Md.). See *Cook County et al. v. McAleenan et al.*, 19-cv-06334 (N.D. Ill.). See *La Clinica De La Raza, et al. v. Trump, et al.*, 19-cv-4980 (N.D. Ca.). See *Make the Road New York, et al. v. Cuccinelli, et al.*, 19-cv-07993 (S.D.N.Y.). See *New York, et al. v. DHS, et al.*, 19-cv-07777 (S.D.N.Y.). See *State of California, et al. v. DHS, et al.*, 19-cv-04975 (N.D. Cal.). See *State of Washington, et al. v. DHS, et al.*, 19-cv-05210 (E.D. Wa.).

²⁶ See *Cook County v. Wolf*, 498 F.Supp.3d 999 (N.D. Ill. 2020).

²⁷ See 86 FR 14221 (Mar. 15, 2021).

²⁸ See 64 FR 28689 (May 26, 1999).

²⁹ See 86 FR 47025 (Aug. 23, 2021) (advance notice of proposed rulemaking).

³⁰ See 87 FR 10570, 10597 (Feb. 24, 2022) (proposed rule).

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On February 24, 2022, DHS published an NPRM.³¹ Following consideration of public comments received in response to the NPRM, DHS published a final rule titled, “Public Charge Ground of Inadmissibility,” on September 9, 2022 (2022 Final Rule).³²

The 2022 Final Rule implemented a different policy than the 2019 Final Rule. Under the 2022 Final Rule and similar to the 1999 Interim Field Guidance that was in place before the 2019 Final Rule, aliens were considered likely at any time to become a public charge if they were likely at any time to become primarily dependent on the government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance or long-term institutionalization at government expense.

The 2022 and 2019 Final Rules only addressed the public charge ground of inadmissibility and did not address the public charge ground of deportability, which was addressed in the 1999 Interim Field Guidance and 1999 NPRM.

Regulatory Changes in 2026

On November 19, 2025, DHS published an NPRM.³³ Following review and consideration of public comments received in response to the NPRM, DHS published a final rule titled, “Public Charge Ground of Inadmissibility,” on July 20, 2026 (2026 Final Rule).³⁴ The 2026 Final Rule rescinded the 2022 Final Rule as it pertained to public charge inadmissibility determinations and revised the breach and cancellation of public charge bonds regulations.

C. Implementation and Scope

This guidance is intended to faithfully implement INA 212(a)(4) in a manner that is consistent with Congress’ statement of the immigration policy of the United States in 8 U.S.C. 1601(2)(A) and precedent decisions. This guidance is intended to ensure that aliens seeking adjustment of status who are subject to the public charge ground of inadmissibility are self-sufficient. Such aliens should not depend on means-tested public benefits to meet their needs but rather rely on their own capabilities, as well as the resources of private organizations, family members, and sponsors.³⁵ Officers make prospective public charge inadmissibility determinations on a case-by-case basis in the totality of the alien’s circumstances.³⁶

³¹ See 87 FR 10570 (Feb. 24, 2022) (proposed rule).

³² See 87 FR 55472 (Sept. 9, 2022) (final rule).

³³ See 90 FR 52168 (Nov. 19, 2025) (proposed rule).

³⁴ See 91 FR 45324 (Jul. 20, 2026) (final rule).

³⁵ See INA 213A.

³⁶ See 8 U.S.C. 1601. See *Matter of Vindman*, 16 I&N Dec. 131, 132 (BIA 1977) (“In summation, it is felt that everything in the statutes, the legislative comments, and prior decisions point to one conclusion, that Congress intends that an applicant for a visa be excluded *who is without sufficient funds to support himself*, who has no one under any obligation to support him, and whose chances of *becoming self-supporting* decrease as time passes.”) (emphasis added). *Matter of A-*, 19 I&N Dec. 867, 869 (BIA 1988) (“The traditional test applied by the Service to determine

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This guidance is intended to inform, but not prescribe, the outcome of USCIS officers' individual public charge inadmissibility determinations made in their discretion.

This guidance is effective on September 18, 2026, and applies to Applications to Register Permanent Residence or Adjust Status (Form I-485) that are postmarked or electronically submitted on or after September 18, 2026. Applications postmarked or electronically submitted before September 18, 2026, will be adjudicated consistent with the statute, regulations, and guidance in place at the time they were filed or electronically submitted.

Officers must adjudicate Forms I-485 postmarked on or after December 23, 2022, but before September 18, 2026, consistent with the 2022 Final Rule. 87 FR 55472 (Sept. 9, 2022). Officers must adjudicate Forms I-485 postmarked before December 23, 2022, consistent with the 1999 Interim Field Guidance. 64 FR 28689 (May 26, 1999).

When applying this guidance, with respect to means-tested public benefits the alien received before September 18, 2026, USCIS officers only consider the alien's receipt of public cash assistance for income maintenance and long-term institutionalization at government expense.³⁷ With respect to means-tested public benefits the alien received on or after September 18, 2026, USCIS officers consider the alien's receipt of any and all such benefits.³⁸

The discussion of public charge bonds in Part G is limited to public charge bonds administered and managed by USCIS, including the management of those submitted by immigrant visa applicants with the Department of State (DOS).³⁹

D. Guiding Principles

USCIS' public charge inadmissibility policy is guided by the following longstanding principles.

Dependence on Means-Tested Public Benefits to Meet Needs

USCIS believes that Congress intended to address an alien's dependence on any means-tested public benefits to meet his or her needs when it enacted the public charge ground of

whether an alien is likely to become a public charge is 'a prediction based on the totality of the alien's circumstances' as presented in the individual case . . . Even though the test is prospective, the Service has considered evidence of receipt of prior public assistance as a factor in making the public charge determination. Other factors that have been considered are the alien's age, capacity to earn a living, health, family situation, work history, affidavits of support, and other relevant factors.").

³⁷ See 91 FR 45324 (Jul. 20, 2026) (final rule).

³⁸ See 91 FR 45324 (Jul. 20, 2026) (final rule). For more information about how USCIS officers consider the alien's receipt of public benefits, see Chapter 7, Consideration of Any Current or Past Application for, Approval or Certification to Receive, and Receipt of Means-Tested Public Benefits [8 USCIS-PM G.7].

³⁹ For more information, see Chapter 11, Public Charge Bonds [8 USCIS-PM G.11].

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inadmissibility as it has existed since the IIRIRA. The INA does not define “public charge” or “likely at any time to become a public charge.”⁴⁰ Likewise, USCIS has not defined “likely at any time to become a public charge.”⁴¹

Although Congress was clearly focused on an alien’s dependence on means-tested public benefits, neither the statute nor case law prescribe the degree to which an alien must receive means-tested public benefits to be considered likely at any time to become a public charge.⁴² Given that neither the statute nor relevant precedent decisions prescribe a primary dependence standard or consideration of only a narrow and specific list of public benefits for public charge inadmissibility determinations, USCIS believes that placing limits on the types of benefits and the time frame of receipt of such benefits is not the best implementation of the public charge inadmissibility statute given Congress’ clear statement that “aliens...not depend on public resources to meet their needs.”⁴³ Therefore, USCIS believes that it is appropriate to allow for consideration of the receipt of any means-tested public benefit irrespective of the time frame when determining whether an alien is likely at any time to become a public charge, as this receipt may be indicative of the alien’s dependence on the government to meet their needs.⁴⁴

Prospective Determination in the Totality of the Circumstances

⁴⁰ See INA 212(a)(4).

⁴¹ See *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024) (overruling *Chevron* deference to agency interpretations of ambiguous statutes and acknowledging that courts rather than agencies are in the position to determine the best interpretation of an ambiguous statute. The case acknowledges that in some circumstances, an agency interpretation of a statute may nonetheless have the power to persuade the court consistent with the standard enunciated in *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944), especially to the extent that the agency views are within its area of expertise. In addition, the Court recognized situations in which a statute’s meaning may be that an agency is authorized to exercise a degree of discretion, or a statute empowers an agency to “fill up the details” of a statutory scheme.)

⁴² See *Matter of Harutunian*, 14 I&N Dec. 583, 589 (Reg’l Comm’r 1974) (“Congress intends that an applicant for a visa be excluded who is without sufficient funds to support himself, who has no one under any obligation to support him and who, being older, has an increasing chance of *becoming dependent*, disabled and sick.”) (emphasis added).

⁴³ See 8 U.S.C. 1601(2)(A).

⁴⁴ See *Matter of Harutunian*, 14 I&N Dec. 583, 589 (Reg’l Comm’r 1974) (“Congress intends that an applicant for a visa be excluded who is without sufficient funds to support himself, who has no one under any obligation to support him and who, being older, has an increasing chance of becoming dependent, disabled and sick.”). See *Matter of A-*, 19 I&N Dec. 867, 869 (BIA 1988) (acknowledging consideration of evidence of receipt of any prior public assistance as a factor in making the public charge inadmissibility determination); *Matter of Vindman*, 16 I&N Dec. 131, 132 (BIA 1977) (finding that aliens who are receiving SSI and public funds from the New York Department of Social Services “fall clearly within the confines of section 212(a)(15) of the Act and are excludable as public charges.”). Note that Congress implicitly recognized that past receipt of any public benefit can be considered in determining the alien’s likelihood of becoming a public charge when it prohibited consideration of the receipt of any public benefit that is authorized under 8 U.S.C. 1641(c) for certain battered aliens. See INA 212(s), 8 U.S.C. 1182(s). For more information about how USCIS officers consider the alien’s receipt of public benefits, see Chapter 7, Consideration of Any Current or Past Application for, Approval or Certification to Receive, and Receipt of Means-Tested Public Benefits [8 USCIS-PM G.7].

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An officer's decision as to whether an alien is, in the officer's opinion, likely at any time to become a public charge is an inherently prospective evaluation made in the totality of the circumstances at the time of the alien's application for admission or adjustment of status.⁴⁵ No one factor, other than the lack of a sufficient Form I-864, where required, is outcome determinative. Note that past or current receipt of means-tested public benefits may not be indicative of future receipt.⁴⁶ Such receipt is considered in conjunction with the other factors present in the alien's case in the totality of the circumstances.

An Alien's Willingness and Ability to Work

In applying the public charge ground of inadmissibility, the courts have long focused on whether an alien has the ability to earn a living or meet his or her basic needs through employment. These decisions suggest that an alien who is of working age and who is in good physical and mental condition is capable of earning a living or working to meet his or her basic needs, even if the alien receives certain means-tested benefits. Such an alien would not generally be found inadmissible under the public charge ground.⁴⁷ Even where an alien has a low income, if the alien is healthy, willing, and able to work, he or she is likely to be self-sufficient and therefore, generally not likely at any time to become a public charge.⁴⁸

⁴⁵ See *Matter of A-*, 19 I&N Dec. 867, 869 (BIA 1988) ("The traditional test applied by the Service to determine whether an alien is likely to become a public charge is 'a prediction based on the totality of the alien's circumstances' as presented in the individual case Even though the test is prospective, the Service has considered evidence of receipt of prior public assistance as a factor in making the public charge determination. Other factors that have been considered are the alien's age, capacity to earn a living, health, family situation, work history, affidavits of support, and other relevant factors.").

⁴⁶ See *Matter of Perez*, 15 I&N Dec. 136, 137 (BIA 1974) ("The determination of whether an alien is likely to become a public charge . . . is a prediction based upon the totality of the alien's circumstances at the time he or she applies for an immigrant visa or admission to the United States. The fact that an alien has been on welfare does not, by itself, establish that he or she is likely to become a public charge.").

⁴⁷ See *Matter of A-*, 19 I&N Dec. 867, 869 (Comm'r 1988) (33-year-old employed mother of three not likely to become a public charge notwithstanding having previously received public benefits. The BIA considered other relevant factors, including that a mother's temporary absence from the workforce to care for her children is not by itself sufficient basis to find the mother likely to become a public charge. There may be circumstances beyond the control of the alien which temporarily prevent an alien from joining the workforce. For example, as the applicant states in her appeal, she lives in an area where jobs are scarce and she had been unable to find a job.). See *Matter of Harutunian*, 14 I&N Dec. 583, 588 (Reg'l Comm'r 1974) (Although all factors should be considered in their totality, administrative authorities have also held that "the alien's physical and mental condition, as it affects ability to earn a living, is of major significance."). See *Matter of C-*, 3 I&N Dec. 96, 97 (BIA 1947) (finding that the alien was not likely to become a public charge because "he is in good health and is able and willing to go to work.").

⁴⁸ See *Matter of C-*, 3 I&N Dec. 96, 97 (BIA 1947) (finding that the alien was not likely to become a public charge because "he is in good health and is able and willing to go to work."). See *Matter of Martinez-Lopez*, 10 I&N Dec. 409, 421 (BIA 1962; Att'y Gen. 1962) (considering whether the alien had an employment offer in making a public charge inadmissibility determination and determining that a young alien with low financial means and no job offer who nonetheless had work experience and was willing to work was not excludable.) See *Matter of Perez*, 15 I&N Dec. 136, 137 (BIA 1974) (considering the alien's capability of finding employment and prospective employment opportunities in making public charge determination). See also *Matter of A-*, 19 I&N Dec. 867, 869 (Comm'r 1988) (considering past employment and job prospects in the public charge determinations); *Matter of Vindman*, 16 I&N

However, aliens who are incapable of earning a livelihood may be more likely to become public charges.⁴⁹ For example, an alien who is older, unable to work, and has limited financial resources may be more likely at any time to become a public charge.⁵⁰ Similarly, an alien who has a disability or a medical condition that requires extensive medical treatment or care, is unable to work, and has limited financial resources may also be more likely at any time to become a public charge.⁵¹ In both instances, however, the alien's inability to earn a living is not outcome determinative, but rather, is considered along with all relevant factors present in the alien's case.

Consideration of an Alien's Support from a Sponsor

Congress has made an alien's reliance on the resources of his or her family members, sponsors, and private organizations in addition to his or her own capabilities the cornerstone of the national policy on immigration and welfare. In 1996, Congress made a sponsor's affidavit of support a binding legal contract, which remains the case today.⁵² Under the statute, if an alien has submitted a sufficient Form I-864, USCIS may consider that affidavit as part of the public charge inadmissibility determination.⁵³ Based on the language in PRWORA, USCIS believes that Congress was focused on ensuring that aliens have adequate support as a way to avoid burdening the public benefits system.⁵⁴ This concern suggests that Congress intended for officers to have discretion to consider more than the presence of a sufficient Form I-864, where such is required. Indeed, where the Form I-864 meets the minimum requirements, officers may also consider whether the sponsor is actually willing to provide financial assistance to the alien, the number of additional aliens that the sponsor is obligated to support, and whether the sponsor has faithfully fulfilled his or her past or present financial obligations to other sponsored aliens.

E. Legal Authorities

Dec. 131 (Reg'l Comm'r 1977). See *Matter of T-*, 3 I&N Dec. 641, 644 (BIA 1949) ("We find that the female appellant is quite capable of earning her own livelihood independent of her husband and that the minor male appellant has had considerable training in the tailoring industry which presents a wide field for employment in this country.")

⁴⁹ See *Matter of Vindman*, 16 I&N Dec. 131 (Reg'l Comm'r 1977) (finding aliens who are older and had never worked in the United States and were receiving SSI inadmissible). See *Matter of T-*, 3 I&N Dec. 641, 644 (BIA 1949) ("In order to sustain the [public charge inadmissibility] ground...there must be substantial evidence that these aliens are likely to be supported at the expense of the public because of poverty or some physical handicap.")

⁵⁰ See *Matter of Vindman*, 16 I&N Dec. 131 (Reg'l Comm'r 1977) (finding aliens who are older and had never worked in the United States and were receiving SSI inadmissible).

⁵¹ See *Matter of Harutunian*, 14 I&N Dec. 583, 588 (Reg'l Comm'r 1974) (Although all factors should be considered in their totality, administrative authorities have also held that "the alien's physical and mental condition, as it affects ability to earn a living, is of major significance.").

⁵² See INA 213A. See INA 212(a)(4)(C) and (D).

⁵³ See INA 212(a)(4)(B).

⁵⁴ See 8 U.S.C. 1601(4) and (5).

- INA 212(a)(4); 8 CFR 212 – Public charge inadmissibility
- INA 213A; 8 CFR 213a – Requirements for sponsor’s affidavit of support
- INA 213; 8 CFR 213.1 – Admission of aliens on giving bond or undertaking; return upon permanent departure; admission under bond or cash deposit
- 8 CFR 103.6 – Immigration bonds
- INA 245; 8 CFR 245 – Adjustment of status of nonimmigrant to that of person admitted for permanent residence
- 31 U.S.C. 9304-9308 – Surety corporations

Chapter 2. Key Concepts

The following descriptions and explanations of key concepts are vital to making public charge inadmissibility determinations under INA 212(a)(4)(A).

A. Likely at Any Time to Become a Public Charge

The INA does not define the phrase “likely at any time to become a public charge” or the term “public charge.”⁵⁵ As discussed in Chapter 1 of this Part, there is no judicially established or uniformly consistent historical understanding of the term public charge. For purposes of this guidance, USCIS generally considers an alien likely at any time to become a public charge if the alien is likely to become dependent on the government to meet his or her basic needs, for example shelter, food, or healthcare,⁵⁶ typically demonstrated through dependence on means-tested public benefits.

For purposes of a public charge inadmissibility determination under INA 212(a)(4), officers must determine whether an alien is likely *at any time* to become a public charge, that is, likely at any time to depend on means-tested public benefits. Officers do this by considering the mandatory statutory factors, any current and/or past receipt of means-tested public benefits, and any other information and evidence relevant to the determination in the totality of the alien’s circumstances.

This guidance addresses the prospective nature of public charge inadmissibility determinations in Chapter 4 and the elements of the totality of the circumstances analysis in Chapters 5 through 7.

⁵⁵ See INA 212(a)(4)(A).

⁵⁶ See 8 U.S.C. 1601(2)(A).

B. Means-Tested Public Benefits

There is no statutory or regulatory definition of means-tested public benefits for the purpose of public charge inadmissibility determinations under INA 212(a)(4)(A).⁵⁷ When applying this guidance and the public charge ground of inadmissibility, officers should consider the following when determining if a particular program is a means-tested public benefit:

- A benefit is generally considered to be means-tested if eligibility for the benefit is determined based on the applicant's income or assets falling below a certain threshold;
- A benefit is generally a "public" benefit if the payments or assistance are provided by an agency of the government or by appropriated funds of the government;
- Examples of public benefits that could potentially be means-tested public benefits relevant to a public charge inadmissibility determination include but are not limited to cash assistance, public or assisted housing, financial aid for postsecondary education, food assistance, government-funded health coverage, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit; and
- Earned benefits such as Social Security and Medicare are not means-tested public benefits. Unemployment insurance benefits are similarly not means-tested public benefits.

C. Receipt (of Means-Tested Public Benefits)

Receipt (of means-tested public benefits) only occurs when the alien is listed as a beneficiary of the benefit.

USCIS does not attribute to the alien the receipt of means-tested public benefits if the benefit is received by the applicant's relatives, including children, or received by the applicant solely on behalf of third parties (for example, where the alien is a legal guardian or custodian of another). Officers should also not attribute to the alien the fact that the alien applied for a means-tested public benefit on behalf of another.

While not constituting "receipt," the alien's own application for, or certification or approval to receive, a benefit in the future may be considered in the totality of the alien's circumstances along with any evidence that the alien withdrew his or her application or notified the benefit

⁵⁷ DHS has established, by regulation, a definition for "means-tested public benefit" for purposes of the Affidavit of Support Under Section 213A of the INA (Form I-864). See 8 CFR 213a.1. This definition is distinct from, and should not be confused with, "means-tested public benefits" in the context of public charge inadmissibility determinations, for which no regulatory definition has been established.

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granting agency that he or she wished to disenroll from a benefit he or she was receiving or was approved or certified to receive in the future. Additionally, if an alien's children or any other relative or household member the alien is legally obligated to support receives means-tested public benefits based on the alien's income or assets falling below a certain level, then officers should consider the alien's income or assets falling below the threshold as part of the assets, resources, and financial status factor.⁵⁸

D. Dependence on Means-Tested Public Benefits

Central to the national immigration policy set forth in PRWORA is that aliens within the United States not depend on public resources to meet their needs. In codifying this immigration policy close in time to the enactment of the current iteration of INA 212(a)(4), USCIS believes that Congress intended these two statutes to address aliens' dependence on means-tested public benefits to meet their needs.

Neither PRWORA, INA 212(a)(4), nor case law prescribe the degree to which an alien must receive public benefits to be considered dependent on them and therefore a public charge. Given that neither the statute nor relevant precedent decisions prescribe a primary dependence standard or consideration of only a narrow and specific list of public benefits for public charge inadmissibility determinations, USCIS believes that it is appropriate for officers to consider an alien's dependence on any means-tested public benefits to meet his or her basic needs when determining whether an alien is likely at any time to become a public charge. Therefore, through this policy and consistent with Congress' clear statement that "aliens...not depend on public resources to meet their needs,"⁵⁹ USCIS officers will consider the alien's potential dependence on means-tested public benefits when making public charge inadmissibility determinations.

E. Government

The term "government," for the purpose of implementing the public charge ground of inadmissibility, is generally understood to refer to any federal, state, tribal, territorial, or local government entity or entities of the United States.

F. Household

The concept of an alien's household is relevant to several aspects of public charge inadmissibility determinations, including the alien's family status and assets, resources, and financial status. For the purpose of a public charge inadmissibility determination, it is

⁵⁸ See Chapter 5, Statutory Minimum Factors, Section D, Assets, Resources, and Financial Status [8 USCIS-PM G.5(D)].

⁵⁹ See 8 U.S.C. 1601(2)(A).

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reasonable for officers to consider the following individuals as members of an alien's household:

- The alien;
- The alien's spouse, if physically residing with the alien;
- The alien's parents, if physically residing with the alien;
- The alien's unmarried siblings under 21 years of age, if physically residing with the alien;
- The alien's children,⁶⁰ if physically residing with the alien;
- Any other individuals who are listed as dependents on the alien's federal income tax return;⁶¹ and
- Any other individuals who list the alien as a dependent on their federal income tax return.

Chapter 3. Applicability

The public charge ground of inadmissibility at section 212(a)(4) of the Immigration and Nationality Act (INA) applies to an alien who is applying for a visa, admission, or adjustment of status.⁶² An alien applying for a visa, admission, or adjustment of status must establish that he or she is not inadmissible under any ground of inadmissibility including the public charge ground.⁶³ If an alien is exempt from the public charge ground of inadmissibility, this ground of inadmissibility does not apply to the alien.⁶⁴

As indicated above, this guidance is limited to USCIS public charge inadmissibility determinations conducted in the context of adjudicating the Application to Register Permanent Residence or Adjust Status (Form I-485). This guidance does not apply to applicants for admission at ports of entry, which are adjudicated by U.S. Customs and Border Protection (CBP), or aliens applying for immigrant and nonimmigrant visas before the Department of State (DOS). It also does not apply to the adjudication of adjustment of status applications by the Executive Office of Immigration Review (EOIR) of the Department of Justice (DOJ).

⁶⁰ As defined in INA 101(b)(1).

⁶¹ Including a spouse or child as defined in INA 101(b)(1) not physically residing with the alien.

⁶² See INA 212(a)(4)(A).

⁶³ See INA 291 and INA 212(a)(4).

⁶⁴ See Section C, Exemptions [8 USCIS-PM G.3(C)].

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A. Applicants for Admission

The public charge ground of inadmissibility⁶⁵ generally applies to applicants for admission⁶⁶ as an immigrant⁶⁷ or a nonimmigrant unless the applicant is specifically exempted by statute or regulations.⁶⁸ CBP inspects applicants for admission to the United States. When an applicant for admission demonstrates that he or she is admissible, the applicant may be permitted to enter the United States as an immigrant or nonimmigrant.⁶⁹

1. Nonimmigrants

Under INA 212(a)(4), any alien who is applying for a visa or for admission to the United States as a nonimmigrant is inadmissible if he or she is likely at any time to become a public charge. An alien applies directly to a U.S. consulate or embassy abroad for a nonimmigrant visa to travel to the United States temporarily for a limited purpose, such as to visit for business or tourism.⁷⁰ DOS consular officers assess whether the alien is inadmissible and therefore ineligible for a visa, including under the public charge ground of inadmissibility, as applicable.⁷¹ Eligible aliens may also apply for admission as a nonimmigrant without a visa under, for example, the Visa Waiver Program (VWP).⁷²

Once DOS issues the nonimmigrant visa, or the prospective traveler has obtained any required pre-travel authorization from CBP, the alien generally may travel to the United States using that visa or travel authorization, if applicable, and apply for admission at a port of entry. CBP then determines whether the applicant for admission is inadmissible under any ground, including public charge.⁷³

2. Immigrants

An alien who is abroad and is the beneficiary of an approved immigrant visa petition may apply to DOS for an immigrant visa to allow him or her to travel to the United States and seek

⁶⁵ See INA 212(a)(4).

⁶⁶ See INA 101(a)(4) and INA 101(a)(13)(A).

⁶⁷ An alien, who is a lawful permanent resident (LPR), who travels abroad and seeks to enter the United States again is generally not seeking admission under the Immigration and Nationality Act (INA). See INA 101(a)(13)(C).

⁶⁸ For more information, see Section C, Exemptions [8 USCIS-PM G.3(C)].

⁶⁹ See INA 235. See 8 CFR 235.

⁷⁰ Certain nonimmigrant classifications are subject to petition requirements, and in such cases USCIS generally must approve a petition before the nonimmigrant applies for a visa. See INA 214. In addition, certain aliens are not subject to a visa requirement in order to seek admission as a nonimmigrant. See INA 217. See 8 CFR 212.1.

⁷¹ See INA 221 and INA 222. See 8 CFR 204.

⁷² Examples of other ways in which eligible aliens may apply for admission as a nonimmigrant without a visa include but are not limited to the Guam-CNMI VWP (see 8 CFR 212.1(q)) as well as certain nationals of Canada, Bermuda, the Bahamas, the British Virgin Islands, and Mexico in certain situations (see 8 CFR 212.1(a)-(c)).

⁷³ The public charge ground of inadmissibility does not apply to nonimmigrants seeking extension of stay or change of status in the United States.

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admission to the United States as an immigrant.⁷⁴ As part of the immigrant visa process, DOS determines whether the applicant is eligible for the visa, which includes a determination of whether the alien has demonstrated that he or she is not inadmissible under any of the applicable grounds in INA 212(a).

Once DOS issues the immigrant visa, the alien may travel to the United States and seek admission as an immigrant at a port of entry. CBP determines whether the applicant for admission as an immigrant is inadmissible under any ground, including public charge.

3. Certain Lawful Permanent Residents Returning to the United States

Note that certain lawful permanent residents (LPRs) generally are not considered to be applicants for admission when they present themselves for inspection at a port of entry after a trip abroad and therefore are not subject to inadmissibility determinations. However, in certain limited circumstances, an LPR is considered an applicant for admission and, therefore, subject to an inadmissibility determination upon the LPR's return to the United States.⁷⁵ This inadmissibility determination includes whether the alien is inadmissible under the public charge ground.

B. Aliens Applying for Adjustment of Status

The public charge ground of inadmissibility applies to all aliens applying for adjustment of status unless they are specifically exempt from the public charge ground of inadmissibility.⁷⁶

The tables below indicate which aliens applying for adjustment of status are subject to the public charge ground of inadmissibility:⁷⁷

⁷⁴ See INA 221 and INA 222. See 8 CFR 204.

⁷⁵ See INA 101(a)(13)(C). See Volume 7, Adjustment of Status, Part B, 245(a) Adjustment, Chapter 2, Eligibility Requirements, Section A, "Inspected and Admitted" or "Inspected and Paroled," Subsection 2, Admission [7 USCIS-PM B.2(A)(2)]. An LPR who travels abroad does not undergo another public charge inadmissibility determination upon return to the United States unless CBP determines that the returning LPR is an applicant for admission based on one of the criteria set forth in INA 101(a)(13)(C) (for example, CBP determines that the alien has been absent from the United States for more than 180 days).

⁷⁶ See INA 212(a)(4).

⁷⁷ The tables provided include footnotes indicating the immigrant classes of admission as well as the associated codes that appear on applicants' USCIS-issued documents and in USCIS systems. For additional information about the applicability of the public charge ground of inadmissibility, and in particular whether a Form I-864 is required based on the immigration classification under which an alien is applying for adjustment of status, see the Appendices [8 USCIS-PM G, Appendices Tab] and Chapter 6, Affidavit of Support Under Section 213A of the INA [8 USCIS-PM G.6].

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Family-Based Adjustment of Status Applicants Subject to the Public Charge Ground of Inadmissibility
Spouses, children, and parents of U.S. citizens ⁷⁸
Unmarried sons and daughters of U.S. citizens and their children ⁷⁹
Spouses, children, and unmarried sons and daughters of LPRs ⁸⁰
Married sons and daughters of U.S. citizens and their spouses and children ⁸¹
Brothers and sisters of U.S. citizens ⁸²
Fiancé(e)s of U.S. citizens ⁸³

⁷⁸ Immediate relatives, including the following categories: IR-6 Spouses; IR-7 Children; CR-7 Children, conditional; IH-8 Children adopted abroad under the Hague Adoption Convention; IH-9 Children coming to the United States to be adopted under the Hague Adoption Convention; IR-8 Orphans adopted abroad; IR-9 Orphans coming to the United States to be adopted; IR-0 Parents of adult U.S. citizens. Children adopted abroad generally do not apply for adjustment of status.

⁷⁹ Family-sponsored 1st preference applicants, including the following categories: A-16 Unmarried Amerasian sons/daughters of U.S. citizens; F-16 Unmarried sons/daughters of U.S. citizens; A-17 Children of A-11 or A-16; F-17 Children of F-11 or F-16; B-17 Children of B-11 or B-16.

⁸⁰ Family-sponsored 2nd preference applicants, including the following categories: F-26 Spouses of alien residents, subject to country limits; C-26 Spouses of alien residents, subject to country limits, conditional; FX-6 Spouses of alien residents, exempt from country limits; CX-6 Spouses of alien residents, exempt from country limits, conditional; F-27 Children of alien residents, subject to country limits; C-28 Children of C-26 or C-27, subject to country limits, conditional; B-28 Children of B-26 or B-27, subject to country limits; F-28 Children of F-26 or F-27, subject to country limits; C-20 Children of C-29, subject to country limits, conditional; B-20 Children of B-29, subject to country limits; F-20 Children of F-29, subject to country limits; C-27 Children of alien residents, subject to country limits, conditional; FX-7 Children of alien residents, exempt from country limits; CX-8 Children of CX7, exempt from country limits, conditional; FX-8 Children of FX-7 or FX-8, exempt from country limits; CX-7 Children of alien residents, exempt from country limits, conditional; F-29 Unmarried sons/daughters of alien residents, subject to country limits; C-29 Unmarried children of alien residents, subject to country limits, conditional.

⁸¹ Family-sponsored 3rd preference applicants, including the following categories: A-36 Married Amerasian sons/daughters of U.S. citizens; F-36 Married sons/daughters of U.S. citizens; C-36 Married sons/daughters of U.S. citizens, conditional; A-37 Spouses of A-31 or A-36; F-37 Spouses of married sons/daughters of U.S. citizens; C-37 Spouses of married sons/daughters of U.S. citizens, conditional; B-37 Spouses of B-31 or B-36; A-38 Children of A-31 or A-36, subject to country limits; F-38 Children of married sons/daughters of U.S. citizens; C-38 Children of C-31 or C-36, subject to country limits, conditional; B-38 Children of B-31 or B-36, subject to country limits.

⁸² Family-sponsored 4th preference applicants, including the following categories: F-46 Brothers/sisters of U.S. citizens, adjustments; F-47 Spouses of brothers/sisters of U.S. citizens, adjustments; F-48 Children of brothers/sisters of U.S. citizens, adjustments.

⁸³ Applicants admitted as a K-1 or K-2 nonimmigrant, including the following categories: CF-1 Spouses, entered as fiancé(e), adjustments conditional; IF-1 Spouses, entered as fiancé(e), adjustments.

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Family-Based Adjustment of Status Applicants Subject to the Public Charge Ground of Inadmissibility
Amerasians based on preference category, born on or after December 31, 1950, and before October 22, 1982 ⁸⁴
Spouses, widows, or widowers of U.S. citizens ⁸⁵

Employment-Based Adjustment of Status Applicants Subject to the Public Charge Ground of Inadmissibility
Priority workers ⁸⁶
Professionals with advanced degrees or aliens of exceptional ability ⁸⁷
Skilled workers, professionals, and other workers ⁸⁸
Investors ⁸⁹

⁸⁴ Includes the following categories: Immediate Relative AR-6 Children, Amerasian, First Preference: A-16 Unmarried Amerasian sons/daughters of U.S. citizens; Third Preference A-36 Married Amerasian sons/daughters of U.S. citizens. See INA 204(f). Note that although this program does not have a specific sunset date, it is likely that all potential applicants have already applied.

⁸⁵ Includes the following categories: IW-6 Widows or widowers of U.S. citizens; IW-7 Children of IW-6.

⁸⁶ Employment-sponsored 1st preference applicants, including the following categories: E-16 Immigrants with extraordinary ability; E-17 Outstanding professors or researchers; E-18 Certain Multinational executives or managers; E-19 Spouses of E-11, E-12, E-13, E-16, E-17, or E-18; E-10 Children of E-11, E-12, E-13, E-16, E-17, or E-18.

⁸⁷ Employment-sponsored 2nd preference applicants, including the following categories: E-26 Professionals holding advanced degrees; ES-6 Soviet scientists; E-27 Spouses of E-21 or E-26; E-28 Children of E-21 or E-26.

⁸⁸ Employment-sponsored 3rd preference applicants, including the following categories: EX-6 Schedule - A worker; EX-7 Spouses of EX-6; EX-8 Children of EX-6; E-36 Skilled workers; E-37 Professionals with baccalaureate degrees; E-39 Spouses of E-36 or E-37; E-30 Children of E-36 or E-37; EW-8 Other workers; EW-0 Children of EW-8; EW-9 Spouses of EW-8; EC-6 Chinese Student Protection Act (CSPA) principals; EC-7 Spouses of EC-6; EC-8 Children of EC-6.

⁸⁹ Employment-sponsored 5th preference applicants, including the following categories: C-56 Employment creation, not in targeted area, adjustments, conditional; E-56 Employment creation; I-56 Employment creation, targeted area, pilot program, adjustments, conditional; T-56 Employment creation, targeted area, conditional; R-56 Investor pilot program, not targeted, conditional; NU-6 Investor, non-regional center, unreserved; RU-6 Investor, regional center, unreserved; NR-6 Investor, non-regional center, set aside, rural; NH-6 Investor, non-regional center, set aside, high unemployment; RR-6 Investor, regional center, set aside, rural; RH-1 Investor, regional center, set aside, high unemployment; RI-6 Investor, regional center, set aside, infrastructure; C-57 Spouses of C-51 or C-56, conditional; E-57 Spouses of E-51 or E-56; I-57 Spouses of I-51 or I-56, conditional; T-57 Spouses of T-51 or T-56, conditional; R-57 Spouses of R-51 or R-56, conditional; NU-7 Spouses of NU-1 or NU-6; RU-7 Spouses of RU-1 or RU-6; NR-7 Spouses of NR-1 or NR-6; NH-7 Spouses of NH-1 or NH-6; RR-7 Spouses of RR-1 or RR-6; RH-7 Spouses of RH-1 or RH-6; RI-7 Spouses of RI-1 or RI-6; C-58 Children of C-51 or C-56, conditional; E-58 Children of E-51 or E-56; I-58

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Special Immigrant Adjustment of Status Applicants Subject to the Public Charge Ground of Inadmissibility
Religious workers ⁹⁰
Certain employees or former employees of the U.S. government abroad ⁹¹
Panama Canal Zone employees ⁹²
Foreign medical school graduates ⁹³
Retired employees of international organizations ⁹⁴
U.S. armed forces personnel ⁹⁵
International broadcasters ⁹⁶

Children of I-51 or I-56, conditional; T-58 Children of T-51 or T-56, conditional; R-58 Children of R-51 or R-56, conditional; NU-8 Children of NU-1 or NU-6; RU-8 Children of RU-1 or RU-6; NR-8 Children of NR-1 or NR-6; NH-8 Children of NH-1 or NH-6; RR-8 Children of RR-1 or RR-6; RH-8 Children of RH-1 or RH-6; RI-8 Children of RI-1 or RI-6.

⁹⁰ Includes the following categories: SD-6 Ministers; SD-7 Spouses of SD-6; SD-8 Children of SD-6; SR-6 Religious workers; SR-7 Spouses of SR-6; SR-8 Children of SR-6.

⁹¹ Includes the following categories: SE-6 Employees of U.S. government abroad, adjustments; SE-7 Spouses of SE-6; SE-8 Children of SE-6.

⁹² Includes the following categories: SF-6 Former employees of the Panama Canal Company or Canal Zone Government; SF-7 Spouses or children of SF-6; SG-6 Former U.S. government employees in the Panama Canal Zone; SG-7 Spouses or children of SG-6; SH-6 Former employees of the Panama Canal Company or Canal Zone government, employed on April 1, 1979; SH-7 Spouses or children of SH-6. Note that although this program does not have a specific sunset date, it is likely that all potential applicants have already applied.

⁹³ Includes the following categories: SJ-6 Foreign medical school graduate who was licensed to practice in the United States on Jan. 9, 1978; SJ-7 Spouses or children of SJ-6. Note that although this program does not have a specific sunset date, it is likely that all potential applicants have already applied.

⁹⁴ Includes the following categories: SK-6 Retired employees of international organizations; SK-7 Spouses of SK-1 or SK-6; SK-8 Certain unmarried children of SK-6; SK-9 Certain surviving spouses of deceased international organization employees.

⁹⁵ Also known as the Six and Six Program, includes the following categories: SM-6 U.S. armed forces personnel, service (12 years) after 10/1/91; SM-9 U.S. armed forces personnel, service (12 years) by 10/91; SM-7 Spouses of SM-1 or SM-6; SM-0 Spouses or children of SM-4 or SM-9; SM-8 Children of SM-1 or SM-6.

⁹⁶ Includes the following categories: BC-6 Broadcast (IBCG of BBG) employees; BC-7 Spouses of BC-1 or BC-6; BC-8 Children of BC-6.

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Other Adjustment of Status Applicants Subject to the Public Charge Ground of Inadmissibility
Diplomats or high-ranking officials unable to return home (Section 13 of the Act of September 11, 1957)
Diversity visa immigrants ⁹⁷
Certain entrants before Jan. 1, 1982 ⁹⁸
S (Alien witness or informant) ⁹⁹

C. Exemptions

The public charge ground of inadmissibility does not apply, based on statutory or regulatory authority, to the following applicants for visas, admission, and adjustment of status (or other immigration benefit requests that require admissibility):

- Asylees¹⁰⁰ and refugees;¹⁰¹
- Amerasian immigrants at admission;¹⁰²
- Afghan and Iraqi interpreters or Afghan and Iraqi nationals employed by or on behalf of the U.S. government;¹⁰³
- Cuban and Haitian entrants at adjustment of status under section 202 of the Immigration

⁹⁷ Includes the following categories: DV-1 Diversity immigrant; DV-2 Spouses of DV-1; DV-3 Children of DV-1.

⁹⁸ Includes the following categories: W-16 Previously granted temporary resident status (legalization) who entered United States without inspection before Jan. 1, 1982; W-26 Previously granted temporary resident status (legalization) who entered United States as a nonimmigrant and overstayed visa before Jan. 1, 1982.

⁹⁹ S nonimmigrants applying for adjustment of status may apply for a waiver of the public charge ground of inadmissibility using Inter-Agency Alien Witness and Informant Record (Form I-854). See Chapter 9, Waivers of Inadmissibility Based on Public Charge Ground [8 USCIS-PM G.9].

¹⁰⁰ See INA 208. See 8 CFR 209.2.

¹⁰¹ See INA 207 and INA 209. See 8 CFR 209.1.

¹⁰² See Sections 101(e) and 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988, Pub. L. 100-202, 101 Stat. 1329-183 (December 22, 1987), as amended.

¹⁰³ See Section 1059(a)(2) of the National Defense Authorization Act for Fiscal Year 2006, Pub. L. 109-163, 119 Stat. 3136, 3444 (January 6, 2006), as amended, and Section 602(b), Title VI of the Omnibus Appropriations Act, 2009, Pub. L. 111-8, (March 11, 2009), as amended, and Section 1244(g) of the National Defense Authorization Act for Fiscal Year 2008, Pub. L. 110-181, 122 Stat. 3, 396 (January 28, 2008), as amended.

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Reform and Control Act of 1986;¹⁰⁴

- Applicants seeking adjustment under the Cuban Adjustment Act;¹⁰⁵
- Nicaraguans and other Central Americans who are adjusting status to LPR;¹⁰⁶
- Haitians who are adjusting status to LPR under the Haitian Refugee Immigration Fairness Act of 1998;¹⁰⁷
- Lautenberg parolees;¹⁰⁸
- Special immigrant juveniles;¹⁰⁹
- Applicants for registry;¹¹⁰
- Applicants seeking temporary protected status (TPS);¹¹¹
- Certain nonimmigrant ambassadors, ministers, diplomats, and other foreign government officials, and their families;¹¹²
- Victims of human trafficking (T nonimmigrants);¹¹³

¹⁰⁴ See Section 202 of the Immigration Reform and Control Act of 1986 (IRCA), Pub. L. 99-603, 100 Stat. 3359, 3404 (November 6, 1986), as amended.

¹⁰⁵ See Cuban Adjustment Act, Pub. L. 89-732 (November 2, 1966), as amended.

¹⁰⁶ See Sections 202(a) and 203 of the Nicaraguan Adjustment and Central American Relief Act, Pub. L. 105-100, 111 Stat. 2160, 2193 (November 19, 1997), as amended.

¹⁰⁷ See Section 902 of the Haitian Refugee Immigration Fairness Act of 1998, Pub. L. 105-277, 112 Stat. 2681, 2681-538 (October 21, 1998), as amended.

¹⁰⁸ See Section 599E of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1990, Pub. L. 101-167, 103 Stat. 1195, 1263 (November 21, 1989), as amended.

¹⁰⁹ See INA 245(h).

¹¹⁰ Registry is a section of immigration law that enables certain aliens who have been present in the United States since January 1, 1972, the ability to apply for lawful permanent residence even if currently in the United States unlawfully. See INA 249. See 8 CFR 249.

¹¹¹ See 8 CFR 244.3. INA 244(c)(2)(ii) authorizes DHS to waive any INA 212(a) ground, except for those that Congress specifically noted could not be waived.

¹¹² See INA 101(a)(15)(A)(i), INA 101(a)(15)(A)(ii), and INA 102. See 22 CFR 41.21(d). See INA 101(a)(15)(G)(i), INA 101(a)(15)(G)(ii), INA 101(a)(15)(G)(iii), and INA 101(a)(15)(G)(iv).

¹¹³ See INA 245(l). If the applicant is adjusting based on an employment-based petition where the petition is filed by either a qualifying relative or an entity in which such relative has a significant ownership interest (5 percent or more), and the applicant, at both the time of filing and adjudication of the Application to Register Permanent Residence or Adjust Status (Form I-485), is still in valid T nonimmigrant status, the applicant is not subject to INA 212(a)(4) but is still required to file an Affidavit of Support Under Section 213A of the INA (Form I-864). See 8 CFR 213a.2(b)(2).

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- Victims of qualifying criminal activity (U nonimmigrants);¹¹⁴
- Self-petitioners under the Violence Against Women Act (VAWA);¹¹⁵
- Certain battered aliens who are “qualified aliens” under PRWORA;¹¹⁶
- Applicants adjusting status who qualify for a benefit as surviving spouses, children, or parents of military members;¹¹⁷
- American Indians born in Canada who are not U.S. citizens;¹¹⁸
- Certain members of the Texas Band of Kickapoo Indians of the Kickapoo Tribe of Oklahoma;¹¹⁹
- Nationals of Vietnam, Cambodia, and Laos applying under the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 2001;¹²⁰
- Polish and Hungarian Parolees;¹²¹
- Certain Syrian nationals;¹²²
- Applicants adjusting under the Liberian Refugee Immigration Fairness (LRIF) law,¹²³ and

¹¹⁴ See INA 101(a)(15)(U) and INA 212(a)(4)(E)(ii). See Section 804 of the Violence Against Women Reauthorization Act of 2013, Pub. L. 113-4, 127 Stat. 54, 111 (March 7, 2013). If the applicant is adjusting based on an employment-based petition where the petition is filed by either a qualifying relative or an entity in which such relative has a significant ownership interest (5 percent or more), and the applicant, at both the time of filing and adjudication of the Form I-485, is still in valid U nonimmigrant status, the applicant is not subject to INA 212(a)(4) but is still required to file Form I-864. See 8 CFR 213a.2(b)(2).

¹¹⁵ See INA 212(a)(4)(E)(i).

¹¹⁶ See INA 212(a)(4)(E)(iii). See Section 804 of the Violence Against Women Reauthorization Act of 2013, Pub. L. 113-4, 127 Stat. 54, 111 (March 7, 2013). See Section 431(c) of Pub. L. 104-193, 110 Stat. 2105, 2274 (August 22, 1996). See 8 U.S.C. 1641(c).

¹¹⁷ See Section 1703 of the National Defense Authorization Act, Pub. L. 108-136, 117 Stat. 1392 (November 24, 2003) (posthumous benefits to surviving spouses, children, and parents).

¹¹⁸ See INA 289.

¹¹⁹ See Pub. L. 97-429 (January 8, 1983).

¹²⁰ See Section 586 of Pub. L. 106-429, 114 Stat. 1900, 1900A-57 (November 6, 2000) under 8 CFR 245.21.

¹²¹ Includes certain Polish and Hungarian parolees who were paroled into the United States from November 1, 1989 to December 31, 1991. See Section 646(b) of IIRIRA, Division C of Pub. L. 104-208, 110 Stat. 3009-546, 3009-709 (September 30, 1996).

¹²² See Pub. L. 106-378 (October 27, 2000).

¹²³ See Section 7611 of the National Defense Authorization Act for Fiscal Year 2020, Pub. L. 116-92, 113 Stat. 1198, 2309 (December 20, 2019) (Liberian Refugee Immigration Fairness), later extended by Section 901 of Division O, Title IX of the Consolidated Appropriations Act of 2021, Pub. L. 116-260, 134 Stat. 1182, 2155 (December 27, 2020) (Adjustment of Status for Liberian Nationals Extension).

- Any other categories of aliens exempt from the public charge ground of inadmissibility under any other law.

D. Categories of Aliens Exempt from the Public Charge Ground of Inadmissibility Who Must Still Submit Form I-864

Under INA 212(a)(4)(D), certain aliens applying to adjust status in an employment-based category are required to submit an Affidavit of Support Under Section 213A of the INA (Form I-864). This includes aliens whose employment-based petition was filed by a relative of the alien¹²⁴ or by an entity in which the alien's relative has a significant ownership interest.¹²⁵

Congress did not include an exemption from this requirement for aliens applying to adjust status in the employment-based categories, even for certain categories of aliens who are otherwise exempt from the public charge ground of inadmissibility.¹²⁶

Therefore, if an alien in one of the following categories applies for adjustment of status based on an employment-based petition that requires a Form I-864, the alien must submit a Form I-864 executed by his or her petitioning relative (or the relative with significant ownership interest in the petitioning entity):

- Aliens who have a pending application that sets a prima facie case for eligibility for T nonimmigrant status;
- Aliens who have been granted T nonimmigrant status and are in valid T nonimmigrant status at the time the adjustment of status application is properly filed with USCIS and at the time the adjustment of status is adjudicated;
- Petitioners for U nonimmigrant status;
- Aliens who have been granted U nonimmigrant status and are in valid U nonimmigrant status at the time the adjustment of status application is properly filed with USCIS and at the time the adjustment of status is adjudicated;
- Self-petitioners under the Violence Against Women Act (VAWA); and

¹²⁴ Relatives include spouse, parents, children, adult sons or daughters, brothers, and sisters. See 8 CFR 213a.1. An affidavit of support under this section is not required, however, if the relative is a brother or sister of the intending immigrant, unless the brother or sister is a citizen. See 8 CFR 213a.2(a)(2)(i)(C).

¹²⁵ Significant ownership interest means an ownership interest of 5 percent or more in a for-profit entity that filed an immigrant visa petition to accord a prospective employee an immigrant status under INA 203(b). See 8 CFR 213a.1.

¹²⁶ See INA 212(a)(4)(E).

- Certain aliens who have been battered or subjected to extreme cruelty by a family member in the United States.¹²⁷

Chapter 4. Prospective Determination Based on the Totality of the Circumstances

The public charge inadmissibility determination is a prospective determination based on the totality of an alien's circumstances.¹²⁸ The public charge inadmissibility determination is inherently subjective and discretionary in nature given the express wording of section 212(a)(4)(A) of the Immigration and Nationality Act (INA), which states that the public charge inadmissibility determination is "in the opinion of" DHS.¹²⁹

In making a public charge inadmissibility determination in the context of an adjustment of status application, USCIS reviews all relevant evidence and information in the alien's record.¹³⁰ This evidence includes, but is not limited to, the alien's Application to Register Permanent Residence or Adjust Status (Form I-485), Report of Immigration Medical Examination and Vaccination Record (Form I-693), if required, or any other report of medical examination in the record,¹³¹ any other forms and evidence contained in the alien's record, and statements by the alien during an interview, if applicable. USCIS considers all information and evidence in the record that is relevant to assessing an alien's likelihood at any time of becoming a public charge in the totality of the circumstances.

For all aliens applying for adjustment of status who are subject to the public charge ground of inadmissibility,¹³² the officer will consider the statutory minimum factors: the alien's age;¹³³

¹²⁷ See INA 212(a)(4)(E)(iii). The list of "qualified aliens" included in this exemption is described in 8 U.S.C. 1641(c).

¹²⁸ See INA 212(a)(4). See *Matter of A-*, 19 I&N Dec. 867, 869 (BIA 1988) ("The traditional test applied by the Service to determine whether an alien is likely to become a public charge is 'a prediction based on the totality of the alien's circumstances' as presented in the individual case . . . the test is prospective . . .").

¹²⁹ See *Matter of Harutunian*, 14 I&N Dec. 583, 588 (Reg. Comm. 1974) ("[T]he determination of whether an alien falls into that category [as likely to become a public charge] rests within the discretion of the consular officers or the Commissioner . . . Congress inserted the words 'in the opinion of' (the consul or the Attorney General) with the manifest intention of putting borderline adverse determinations beyond the reach of judicial review." (citation omitted)). See *Matter of Martinez-Lopez*, 10 I&N Dec. 409, 421 (A.G. 1964) ("[U]nder the statutory language the question for visa purposes seems to depend entirely on the consular officer's subjective opinion.").

¹³⁰ See *Matter of Vindman*, 16 I&N Dec. 131, 132 (BIA 1977) ("The elements constituting likelihood of an alien becoming a public charge are varied. They are not defined by statute, but rather are determined administratively upon consideration of all the factors bearing on the alien's ability or potential ability to be self-supporting.").

¹³¹ Note that some aliens applying for adjustment of status who are subject to the public charge ground of inadmissibility may not be required to submit a Form I-693. Instead, they may use the Form DS-7794 or Form DS-2054, and related worksheets, completed by a panel physician abroad. In such cases, officers should review the information contained on those medical forms as part of the public charge inadmissibility determination.

¹³² See INA 212(a)(4).

¹³³ See Chapter 5, Statutory Minimum Factors, Section A, Age [8 USCIS-PM G.5(A)].

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health;¹³⁴ family status;¹³⁵ assets, resources, and financial status;¹³⁶ and education and skills.¹³⁷ The officer may consider a sufficient Affidavit of Support Under Section 213A of the INA (Form I-864) (when required)¹³⁸ and any other factor in the alien's case that is relevant to determining whether the alien is likely at any time to become a public charge.¹³⁹ Among other factors that an officer should consider, any current or past receipt of means-tested public benefits¹⁴⁰ by the alien will almost always be highly relevant to assessing an alien's likelihood at any time of becoming a public charge.¹⁴¹ An alien's application for means-tested public benefits as well as his or her approval or certification to receive means-tested public benefits will generally also be relevant and should be considered.¹⁴²

There is no "bright-line" test in making a public charge inadmissibility determination. As noted previously, no one factor considered by an officer is outcome determinative except for the lack of a sufficient Form I-864 when one is required. The officer must determine whether the alien's individual facts and circumstances, assessed in their totality, suggest that the alien is more likely than not to become a public charge.¹⁴³

Chapter 5. Statutory Minimum Factors

Under section 212(a)(4)(B) of the Immigration and Nationality Act (INA), officers are required to consider specific minimum factors in determining whether an alien applying to adjust status to that of lawful permanent resident is likely at any time to become a public charge. These statutory minimum factors include the alien's:

- Age;
- Health;

¹³⁴ See Chapter 5, Statutory Minimum Factors, Section B, Health [8 USCIS-PM G.5(B)].

¹³⁵ See Chapter 5, Statutory Minimum Factors, Section C, Family Status [8 USCIS-PM G.5(C)].

¹³⁶ See Chapter 5, Statutory Minimum Factors, Section D, Assets, Resources, and Financial Status [8 USCIS-PM G.5(D)].

¹³⁷ See Chapter 5, Statutory Minimum Factors, Section E, Education and Skills [8 USCIS-PM G.5(E)].

¹³⁸ See Chapter 6, Affidavit of Support Under Section 213A of the INA [8 USCIS-PM G.6].

¹³⁹ See *Matter of Vindman*, 16 I&N Dec. 131, 132 (BIA 1977) ("The elements constituting likelihood of an alien becoming a public charge are varied. They are not defined by statute, but rather are determined administratively upon consideration of *all the factors bearing on the alien's ability or potential ability to be self-supporting.*") (emphasis added).

¹⁴⁰ See Chapter 2, Key Concepts, Section B, Means-Tested Public Benefits [8 USCIS-PM G.2(B)].

¹⁴¹ See Chapter 7, Consideration of Any Current or Past Application for, Approval or Certification to Receive, and Receipt of Means-Tested Public Benefits [8 USCIS-PM G.7].

¹⁴² See Chapter 7, Consideration of Any Current or Past Application for, Approval or Certification to Receive, and Receipt of Means-Tested Public Benefits [8 USCIS-PM G.7].

¹⁴³ DHS interprets the term "likely" to mean "more likely than not".

- Family status;
- Assets, resources, and financial status; and
- Education and skills.¹⁴⁴

This chapter discusses the statutory minimum factors. Subsequent chapters discuss the Affidavit of Support Under Section 213A of the INA (Form I-864) and consideration of any current and/or past receipt of means-tested public benefits.¹⁴⁵

A. Age

An officer must consider an alien's age in a public charge inadmissibility determination.¹⁴⁶ The alien provides his or her date of birth on the Form I-485.

USCIS considers the alien's age in relation to its potential impact on the other factors, for example, the health and assets, resources, and financial status factors.¹⁴⁷ For example, in the case of an alien who is a child and who, due to his or her age, is unable to earn a living through employment, the assets, resources, and financial status of his or her parents or guardians, who are part of the alien's household, would be of particular importance in the public charge inadmissibility determination. However, as noted previously, an alien's age alone is not outcome determinative.

Also, individuals depart the workforce at different ages. An officer should scrutinize an alien's plans for current and future employment in the United States. If an alien has already retired, is nearing retirement, or otherwise indicates no employment plans or only short-term employment plans based on the alien's age, an assessment of retirement plans, accounts, benefits, and household assets and resources takes on a more critical role in the public charge inadmissibility determination.

B. Health

An officer must consider an alien's health in a public charge inadmissibility determination.¹⁴⁸

¹⁴⁴ See INA 212(a)(4)(B)(i).

¹⁴⁵ See Chapter 6, Affidavit of Support Under Section 213A of the INA [8 USCIS-PM G.6]. See Chapter 7, Consideration of Any Current or Past Application for, Approval or Certification to Receive, and Receipt of Means-Tested Public Benefits [8 USCIS-PM G.7].

¹⁴⁶ See INA 212(a)(4)(B)(i).

¹⁴⁷ For more information about the totality of the circumstances determination, see Chapter 4, Prospective Determination Based on the Totality of the Circumstances [8 USCIS-PM G.4]. For more information about the totality of circumstances specifically relating to children, see Chapter 10, Adjudicating Public Charge Inadmissibility for Adjustment of Status Applications, Section A, Evidence in the Record [8 USCIS-PM G.10(A)]. See Chapter 8, Other Relevant Factors [8 USCIS-PM G.8].

¹⁴⁸ See INA 212(a)(4)(B)(i).

1. Report of Immigration Medical Examination and Vaccination Record

In considering an alien's health in a public charge inadmissibility determination, an officer must not make health diagnoses and should generally defer to the immigration medical examination report completed and signed by a civil surgeon or a panel physician. A civil surgeon records the results of the immigration medical examination on the Report of Immigration Medical Examination and Vaccination Record (Form I-693). A panel physician records the results of the immigration medical examination on the following Department of State forms: Medical Examination for Immigrant or Refugee Applicant (1991 TB Technical Instructions) (Form DS-2053), the Medical Examination for Immigrant or Refugee Applicant (2007 TB Technical Instructions) (Form DS-2054), or the Electronic Medical Examination for Visa Applicant (DS-7794), and related worksheets.¹⁴⁹

Civil surgeons and panel physicians are instructed to comply with the Centers for Disease Control and Prevention's (CDC) Technical Instructions.¹⁵⁰ As noted in the Technical Instructions, the purpose of the immigration medical examination is to determine whether the alien has:

- A physical or mental disorder (including a communicable disease of public health significance or drug abuse/addiction) that renders him or her ineligible for admission or adjustment of status (Class A condition); or
- A physical or mental disorder that represents a departure from normal health or well-being that is significant enough to possibly interfere with the person's ability to care for him- or herself, to attend school or work, or that may require extensive medical treatment or institutionalization in the future (Class B condition).¹⁵¹

The civil surgeon or panel physician, therefore, should account for any diagnoses of Class A¹⁵² or Class B medical conditions.¹⁵³ As noted above, Class A medical conditions are medical conditions listed in INA 212(a)(1)(A) that render an alien inadmissible and ineligible for a visa or adjustment of status under the health-related grounds.

¹⁴⁹ As of October 1, 2013, panel physicians only use DS-2054 or DS-7794, the DS-2053 is no longer in use. Applicants for adjustment of status generally submit Form I-693; however, immigrants applying for adjustment of status as a refugee, a derivative of an asylee, or a K or V nonimmigrant visa holder, as well as some Afghan nationals who entered the United States as part of Operation Allies Welcome and have already had a medical examination overseas, may submit a medical examination performed by a panel physician.

¹⁵⁰ See Technical Instructions for Civil Surgeons (May 15, 2024) and Technical Instructions for Panel Physicians (May 15, 2024).

¹⁵¹ See "Scope of the Examination" in Technical Instructions for Civil Surgeons (May 15, 2024) and Technical Instructions for Panel Physicians (May 15, 2024).

¹⁵² See 42 CFR 34.2(d).

¹⁵³ See 42 CFR 34.4(b)(2) and 42 CFR 34.4(c)(2). For more information about Class A and Class B conditions, see Volume 8, Admissibility, Part B, Health-Related Grounds of Inadmissibility [8 USCIS-PM B].

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Class B medical conditions, on the other hand, do not render the alien inadmissible. However, such conditions may possibly impact the alien's ability to work, to provide for himself or herself, or require or will likely require extensive medical care or institutional care. As a result, such conditions may be relevant to assessing the alien's likelihood at any time of becoming a public charge. In the case of Class B medical conditions, civil surgeons and panel physicians are required to determine and report:

- The nature and extent of the abnormality;
- The degree to which the alien is incapable of normal physical activity;
- The extent to which the condition is remediable; and
- The likelihood that the alien will require extensive medical care or institutionalization because of the condition.¹⁵⁴

An officer should consider the alien's health, as reflected on the civil surgeon or panel physician's report, and how the alien's health impacts other factors in the totality of circumstances. For example, even if the alien's medical condition prevents the alien from working or requires extensive medical care or institutional care, an alien may still be able to demonstrate sufficient household income, assets, and resources to cover the alien's projected basic needs and medical costs. The alien could also present evidence that he or she is covered under a health insurance policy (that is not a means-tested public benefit) that is sufficient to address the alien's medical costs when considered in combination with the alien's household income, assets, and resources.

When considering the alien's health, an officer may also consider medical reports and information the alien has submitted with previous applications or requests that are part of the alien's administrative record.¹⁵⁵

USCIS may request additional information regarding an applicant's health if the information provided in the report of immigration medical examination is incomplete.

2. Relationship Between Health and Disability

An officer's consideration of an alien's health under INA 212(a)(4)(B)(i) may also include consideration of any disabilities, as defined by Section 504 of the Rehabilitation Act. An alien's

¹⁵⁴ See 42 CFR 34.4(c) and "Other Physical or Mental Abnormality, Disease or Disability - Required Evaluation Components" in Technical Instructions for Civil Surgeons (May 15, 2024).

¹⁵⁵ While USCIS is generally not a covered entity bound by the Health Insurance Portability and Accountability Act (HIPAA), USCIS complies with the Privacy Act of 1974 in safeguarding information in the applicable system of records. Such information is generally confidential and is used primarily for immigration purposes. See 45 CFR 160.103. See also 5 U.S.C. 552.

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disability or disabilities may be identified in the alien's report of immigration medical examination. An alien's disability alone is not a sufficient basis to determine that the alien is likely at any time to become a public charge, and an officer may not find an alien inadmissible on the public charge ground solely based on an applicant's disability.

Many disabilities do not prevent an alien from working and do not require extensive medical care or institutional care. Research, including multiple studies published by the U.S. Department of Health and Human Services, indicates that the majority of people with disabilities do not use institutional care.¹⁵⁶

Therefore, an officer should not presume that an alien having a disability alone means that the alien is in poor health or is likely at any time to become a public charge. Likewise, USCIS does not presume that the alien's disability in and of itself negatively impacts any of the other statutory minimum factors, but rather USCIS considers the disability in the totality of the circumstances.

C. Family Status

USCIS must consider an alien's family status in a public charge inadmissibility determination.¹⁵⁷ An alien's family status is understood to include consideration of the alien's household size. Officers may consider the following individuals as part of an alien's household for purposes of a public charge inadmissibility determination:

- The alien;
- The alien's spouse, if physically residing with the alien;
- The alien's parents, if physically residing with the alien;
- The alien's unmarried siblings under 21 years of age, if physically residing with the alien;
- The alien's children,¹⁵⁸ if physically residing with the alien;

¹⁵⁶ See Population Estimates of Disability and Long-Term Care, HHS Office of the Assistant Secretary for Planning and Evaluation (Jan 31, 1995), available at <https://aspe.hhs.gov/reports/population-estimates-disability-long-term-care-0>. See also 30 Years of Community Living, HHS Administration for Community Living (2021), available at <https://acl.gov/sites/default/files/Aging%20and%20Disability%20in%20America/30%20Years%207-13-21.pdf>. See also von Reichert, Christiane, Disability and the household context: Findings for the United States from the public Use Microdata Sample of the American Community Survey, Frontiers in Research Sciences (Aug. 12, 2022), available at <https://pmc.ncbi.nlm.nih.gov/articles/PMC9397927/>.

¹⁵⁷ See INA 212(a)(4)(B)(i).

¹⁵⁸ As defined in INA 101(b)(1).

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- Any other individuals who are listed as dependents on the alien's federal income tax return;¹⁵⁹ and
- Any other individuals who list the alien as a dependent on their federal income tax return.

As seen in this list, an alien's household may include certain individuals living with the alien (who may or may not contribute financially to the household) as well as certain relatives and close relations who may contribute financially to the alien's household while not residing with the alien. Financial contributions from these non-cohabitating household members are included in the consideration of the alien's assets, resources, and financial status factor, as described below.

D. Assets, Resources, and Financial Status

USCIS must consider an alien's assets, resources, and financial status in a public charge inadmissibility determination.¹⁶⁰ In considering an alien's assets, resources, and financial status, USCIS examines the alien's household's income, assets, and liabilities.

Income

Aliens indicate their household's annual income, which may include income provided to the household from sources who are not members of the household, such as alimony or child support. A household's annual income may also include any cash payments that have been earned, such as Title II Social Security benefits, government pension benefits, unemployment insurance payments, and veterans' benefits. Considering that the purpose of a public charge inadmissibility determination is to determine the alien's likelihood of at any time becoming a public charge, the source of an alien's income is a highly relevant consideration. Specifically, if an alien's income comes exclusively or partially from means-tested public benefits, such income cannot be considered positively in the totality of the circumstances. Therefore, officers should exclude from positive consideration any income from means-tested public benefits. Similarly, officers will exclude from consideration any income from illegal activities or sources such as proceeds from illegal gambling or drug sales.

USCIS does not limit the consideration of income only to income that appears on federal income tax forms and considers all evidence of income from lawful sources. Examples of income that may not appear on income tax forms include child support and alimony. Some households may also have regular income, such as Social Security income, that does not reach the

¹⁵⁹ Including a spouse or child as defined in INA 101(b)(1) not physically residing with the alien.

¹⁶⁰ See INA 212(a)(4)(B)(i).

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minimum required threshold for filing federal income taxes.¹⁶¹ USCIS also considers any evidence an alien submits pertaining to expected future income.

USCIS does not attribute the receipt of means-tested public benefits by an alien's household members to the alien. However, because USCIS considers an alien's household income as part of this factor, there are certain circumstances in which USCIS may consider the receipt of means-tested public benefits by members of the alien's household when considering the alien's assets, resources, and financial status. The receipt of means-tested public benefits by members of the alien's household is only relevant to the public charge inadmissibility determination if:

- The means-tested public benefits received by the alien's household member are the alien's source of financial support; or
- The alien is legally obligated to support the household member who is receiving the means-tested public benefits.

In both of these cases, the receipt by the household member is relevant to the public charge inadmissibility determination for the alien solely because it is potentially indicative of the alien's assets, resources, or financial status. Such information may be consistent with or undermine information or evidence provided by the alien in connection with his or her application for adjustment of status. Note, however, that USCIS does not collect information about the receipt of means-tested public benefits by household members on Form I-485.

In some instances, the alien's household income may include income that has resulted from unauthorized employment. Whether an alien or a member of the alien's household engaged in unlawful employment, and any immigration consequences flowing from such unauthorized employment, is a separate determination from the public charge inadmissibility determination.¹⁶² Therefore, income derived from unlawful employment is not excluded from the household's income calculation unless the income is derived from illegal activities or sources, such as illegal gambling or drug sales.

Assets and Liabilities

When considering the applicant's financial status, USCIS also considers the assets and resources of the alien's household, for example, investments or home equity, excluding any assets from illegal activities or sources, such as proceeds from illegal gambling or drug sales. USCIS also considers the alien's household's liabilities, both secured and unsecured, such as loans,

¹⁶¹ See the Internal Revenue Service's (IRS) Who Should File a Tax Return webpage for more information on the minimum taxable income threshold.

¹⁶² See INA 245(c)(2) and INA 245(c)(8). For more information about the unauthorized employment determination, see Volume 7, Adjustment of Status, Part B, 245(a) Adjustment, Chapter 6, Unauthorized Employment (INA 245(c)(2) and INA 245(c)(8)) [7 USCIS-PM B.6].

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alimony, and child support payments. By taking into account liabilities of an alien's household, USCIS is able to examine the alien's overall financial status in the totality of the circumstances.

USCIS considers financial obligations and debts alongside assets and resources to avoid artificially inflating the calculation of an alien's financial status, as these obligations and debts would decrease the resources that are actually accessible to the alien. However, if an alien has financial obligations and debts, this does not necessarily indicate that the alien is inadmissible under the public charge ground, and USCIS considers this factor in the totality of the circumstances.

E. Education and Skills

USCIS must consider an alien's education and skills in a public charge inadmissibility determination.¹⁶³ In considering an alien's education and skills, USCIS may consider any degrees, certifications, licenses, educational certificates, and skills the alien obtained through work experience or educational programs.

Skills obtained through work experience (including volunteer and unpaid opportunities) include but are not limited to the alien's workforce skills, training, licenses for specific occupations or professions, language skills (including English proficiency), and certificates documenting mastery or apprenticeships in skilled trades or professions. Educational certificates are issued by an educational institution (or a training provider) and certify that an occupation specific program of study was completed.

While some aliens may establish their education and skills through evidence of completed degrees, the statutory education and skills factor does not specify that only formal education is acceptable. USCIS may consider other evidence of attained knowledge and skills, including those skills earned through certifications and licensure, as well as skills obtained through on-the-job training or overall work experience. This consideration allows USCIS to acknowledge those aliens who hold occupations that do not require official licenses or certifications but whose occupations impart skills that otherwise affect the alien's overall employability.

Chapter 6. Affidavit of Support Under Section 213A of the INA

A. Background

The concept of individuals inside the United States agreeing to support intending immigrants has a long history in U.S. immigration. Immigration officers generally considered (among other factors in the totality of the circumstances) whether an alien had family members or friends in the United States who could help support the alien when making public charge exclusion

¹⁶³ See INA 212(a)(4)(B)(i).

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determinations in the early 20th century.¹⁶⁴ This continued to be an important factor for officers considering an alien's request for entry into the United States.¹⁶⁵

Building on that practice, beginning in 1930, each intending immigrant applying for an immigrant visa was generally required to provide evidence of his or her financial status or affidavits of support from sponsoring residents of the United States.¹⁶⁶ As an example, an individual completing the affidavit of support swore, using the 1947 version of the Affidavit of Support (Form I-134), that he or she was "willing and able to receive, maintain, and support the prospective immigrants," and was "ready and willing to deposit a bond, if necessary, with the United States immigration authorities to guarantee that such prospective immigrants will not become public charges during their stay in the United States." Such affidavits carried heavy weight in public charge determinations by the U.S. Department of State (DOS). As the Senate Judiciary Committee wrote in 1950, "[a]n affidavit executed by a responsible party in this country usually is satisfactory evidence that the alien is not likely to become a public charge."¹⁶⁷

In 1952, Congress for the first time established a procedure for certain aliens physically present in the United States to adjust to lawful permanent resident (LPR) status without having to travel abroad and undergo consular processing with DOS.¹⁶⁸ Among other requirements for adjustment of status, the alien must have been "admissible to the United States." As a result, the U.S. Department of Justice (DOJ) began to apply the public charge ground of inadmissibility in the adjustment of status context. Consistent with consular processing and exclusion determinations at ports of entry, in making decisions concerning eligibility for adjustment of status, DOJ considered whether there were persons "in the United States willing and able to assure that [an adjustment of status applicant] will not need public support."¹⁶⁹

However, courts found that the affidavits of support used throughout most of the 20th century were not legally enforceable and did not permit government agencies to seek reimbursement from sponsors when the sponsored aliens received public benefits.¹⁷⁰ The Senate Judiciary Committee, in 1950, wrote that the affidavit of support, "at most, appears to be merely a moral obligation upon the affiant, and the Government apparently could not recover [government

¹⁶⁴ See, for example, *Gegiow v. Uhl*, 239 U.S. 3 (1915) (noting that immigration officers considered, among other factors, that the aliens had "no one legally obligated here to assist them.").

¹⁶⁵ See *United States v. Reimer*, 83 F.2d 166 (2d Cir. 1936), in which the unwillingness of a family member to support the alien, and the willingness of a friend to support the alien, were considered.

¹⁶⁶ See Gordon, Charles, Aliens and Public Assistance, *Immigration and Naturalization Service Monthly Review*, March 1949.

¹⁶⁷ See S. Rep. 81-1515, p. 347 (1950).

¹⁶⁸ See Pub. L. 82-414, sec. 245(a), 66 Stat. 163, 217.

¹⁶⁹ See *Matter of Harutunian*, 14 I&N Dec. 583 (Reg. Comm. 1974).

¹⁷⁰ See *San Diego County v. Vilorio*, 276 Cal. App. 2d 350, 80 Cal. Rptr. 869 (Ct. App. 1969). See *State ex rel. Atty. Gen. v. Binder*, 356 Mich. 73, 96 N.W.2d 140 (1959). See *Dep't of Mental Hygiene of State of Cal. v. Renel*, 10 Misc. 2d 402, 173 N.Y.S.2d 231 (App. Term), aff'd, 6 A.D.2d 782, 175 N.Y.S.2d 556 (1958), aff'd, 6 N.Y.2d 791, 159 N.E.2d 678 (1959).

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expenses related to the sponsored alien] on the strength of the document since there is no contractual obligation involved.”¹⁷¹

Congress recognized that the lack of an enforceable affidavit of support limited its utility both for public charge inadmissibility determinations and for ensuring that, as Congress stated in 1996, that “aliens within the Nation’s borders not depend on public resources to meet their needs, but rather rely on their own capabilities and the resources of their families, their sponsors, and private organizations.”¹⁷² In recognition of the important role that support from families and sponsors plays in preventing aliens from depending on public resources, Congress created the requirement for a legally enforceable affidavit of support to reduce the potential for an intending immigrant to become a public charge in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA).¹⁷³ When required, the alien must submit an Affidavit of Support Under Section 213A of the INA (Form I-864 or Form I-864EZ)¹⁷⁴ completed by a sponsor.

Form I-864¹⁷⁵ is a legally enforceable contract that a U.S. citizen, U.S. national, or LPR signs to accept financial responsibility for an alien, usually a relative, who is coming to the United States to live permanently. Form I-864¹⁷⁶ is legally binding and requires a sponsor to maintain the alien at an annual income of no less than 125 percent of the Federal Poverty Guidelines (FPG).¹⁷⁷ The U.S. citizen, U.S. national, or LPR who signs the Form I-864 becomes the alien’s sponsor once the alien becomes an LPR.

For Form I-864 to be sufficient, a sponsor generally must demonstrate that he or she is able to maintain the sponsored alien at an annual income of not less than 125 percent of the FPG.¹⁷⁸ The presence of a sufficient Form I-864 does not eliminate the need to consider all of the factors of a public charge inadmissibility determination, and USCIS only considers it as one factor in the totality of the circumstances. However, the statute requires a finding of inadmissibility on the public charge ground if the alien is required to submit a sufficient Form I-864 and fails to do so.¹⁷⁹

¹⁷¹ See S. Rep. 81-1515, p. 347 (1950).

¹⁷² See 8 U.S.C. 1601.

¹⁷³ See Title V, Subtitle C of Pub. L. 104-208, 110 Stat. 3009, 3009-675 (September 30, 1996).

¹⁷⁴ A sponsor may use Form I-864EZ if the sponsor is the Petition for Alien Relative (Form I-130) petitioner, there is only one beneficiary on the Form I-130 petition, and the income the sponsor is using to qualify is based entirely on the sponsor’s salary or pension and is shown on one or more Forms W-2 provided by the sponsor’s employer(s) or former employer(s). Hereinafter, any references to the Form I-864 also include the Form I-864EZ.

¹⁷⁵ Filed on Form I-864 or Form I-864EZ.

¹⁷⁶ As required under INA 212(a)(4) and INA 213A.

¹⁷⁷ See INA 213A. See 8 CFR 213a.

¹⁷⁸ See INA 213A. A sponsor who is on active duty (other than active duty for training) in the U.S. armed forces and who is petitioning for a spouse or child only has to demonstrate the means to maintain an annual income equal to at least 100 percent of the FPG. See 8 CFR 213a.2(c)(2).

¹⁷⁹ See INA 212(a)(4)(D).

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B. Applicants Required to Submit Form I-864

The Immigration and Nationality Act (INA) outlines which aliens are required to submit a Form I-864.¹⁸⁰ Most aliens intending to immigrate or to adjust status as immediate relatives or the family-sponsored preference categories, and in certain employment-based categories after December 19, 1997, are required to submit Form I-864 signed by a sponsor.¹⁸¹

Aliens required to submit a Form I-864, and who are not otherwise exempt, are inadmissible on the public charge ground if they do not submit a sufficient Form I-864.¹⁸²

1. Immediate Relatives and Family-Sponsored Preference Immigrants

In general, most aliens applying for an immigrant visa or adjustment of status based on a family relationship are required to submit Form I-864. The following table outlines categories of applicants by immigrant category who must submit Form I-864 unless otherwise exempt:

Immediate Relatives and Family-Sponsored Preference Immigrants	
Immediate Relatives of U.S. Citizens	U.S. citizens' parents, spouses, and unmarried children under the age of 21, including most orphans and Hague Convention adoptees ¹⁸³
First Preference	Unmarried sons and daughters of U.S. citizens who are 21 years of age or older, including their unmarried children ¹⁸⁴
Second Preference	Spouses, children, and unmarried sons and daughters of LPRs, including their unmarried children ¹⁸⁵
Third Preference	Married sons and married daughters of U.S. citizens, including their spouses and unmarried children ¹⁸⁶
Fourth Preference	Brothers and sisters of adult U.S. citizens, including their spouses and unmarried minor children ¹⁸⁷

¹⁸⁰ See INA 212(a)(4) and INA 213A. A sponsor may use Form I-864EZ if the sponsor is the Form I-130 petitioner, there is only one beneficiary on the Form I-130 petition, and the income the sponsor is using to qualify is based entirely on the sponsor's salary or pension and is shown on one or more Forms W-2 provided by the sponsor's employer(s) or former employer(s).

¹⁸¹ See INA 212(a)(4) and INA 213A.

¹⁸² See INA 212(a)(4).

¹⁸³ See INA 201(b)(2). Certain orphans that become U.S. citizens at time of adjustment of status under INA 320 are exempt from filing Form I-864.

¹⁸⁴ See INA 203(a)(1).

¹⁸⁵ See INA 203(a)(2).

¹⁸⁶ See INA 203(a)(3).

¹⁸⁷ See INA 203(a)(4).

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All of these aliens are required to submit Form I-864, unless exempt from the requirement.

2. Certain Employment-Based Immigrants

In general, most aliens applying for an employment-based immigrant visa or adjustment of status are not required to file Form I-864.¹⁸⁸ Aliens seeking LPR status based on an employment-based petition are required to file Form I-864 if:

- The petitioner is a relative of the applicant;¹⁸⁹ or
- The petitioner is an entity¹⁹⁰ in which the applicant's relative has a significant ownership interest.¹⁹¹

These aliens are required to file Form I-864 unless an exception applies.

3. K Nonimmigrants

Principal K nonimmigrants¹⁹² seeking adjustment of status must submit Form I-864.¹⁹³ This requirement also applies to an alien who seeks adjustment after having been admitted as the child of a principal K nonimmigrant.

Any applicant for adjustment of status based on a K nonimmigrant visa must submit a Form I-864 at the time of adjustment of status. Termination of the marriage between the K-1 beneficiary and the petitioner does not end the K-1 nonimmigrant's eligibility for adjustment.¹⁹⁴

A former spouse can still be the sponsor who submits the Form I-864 for a K-1 and a K-2 nonimmigrant to adjust status. However, if the former spouse does not submit the Form I-864,

¹⁸⁸ Even though an affidavit of support is not required, an officer still makes a public charge inadmissibility determination when assessing the applicant's admissibility, unless the applicant is exempt from the public charge ground of inadmissibility.

¹⁸⁹ For employment-based cases, an affidavit of support is required only if the intending immigrant will work for a relative who is eligible to file a Form I-130 petition, on behalf of the intending immigrant. For purposes of the affidavit of support, a relative is defined as a U.S. citizen or LPR who is the intending immigrant's spouse, parent, child, adult son or daughter; or a U.S. citizen who is the intending immigrant's brother or sister. See 8 CFR 213a.1.

¹⁹⁰ An entity includes any petitioning for-profit entity such as a business or corporation.

¹⁹¹ Owning 5 percent or more of an entity constitutes a significant ownership interest. See 8 CFR 213a.1.

¹⁹² This includes a relative who is either a K-1 fiancé(e), a K-3 spouse, or a K-2 or K-4 child of fiancé(e) or spouse. See 8 CFR 213a.2(a)(2)(i)(A).

¹⁹³ See 8 CFR 213a.2(a)(2)(i)(A). K nonimmigrants include the fiancé(e)s of U.S. citizens and their accompanying children, spouse of a U.S. citizen and their accompanying minor children, and step-children of U.S. citizens. A child has to be under 21 years of age. See INA 101(b).

¹⁹⁴ See *Matter of Sesay*, 25 I&N Dec. 431 (BIA 2011).

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or timely withdraws one already submitted, the K-1 and K-2 nonimmigrants are inadmissible based on the public charge ground unless an exception applies.¹⁹⁵

4. Accompanying Spouse or Child

A spouse or child is considered to be accompanying a principal applicant if:

- The spouse or child applies for an immigrant visa or adjustment of status at the same time as the principal applicant; or
- The spouse or child applies for an immigrant visa or adjustment of status within 6 months after the date the principal applicant acquires LPR status.

If the principal applicant is required to have a Form I-864, then any accompanying spouse or child must also be included on that affidavit of support. To meet the requirement, the accompanying spouse or child must submit a photocopy of the principal applicant's Form I-864. A photocopy of the principal's supporting documentation,¹⁹⁶ however, is not required.

5. Following-to-Join Spouse or Child

When a spouse or a child of a principal applicant applies for an immigrant visa or adjustment of status 6 months or more after the principal applicant, the spouse or child is considered to be following-to-join the principal.

If the principal applicant is required to have a Form I-864, then the following-to-join spouse or child must also have a Form I-864. Each following-to-join spouse or child requires a Form I-864, independent of the principal applicant's Form I-864, at the time of adjustment of status or consular processing.¹⁹⁷

6. T and U Nonimmigrants, VAWA Self-Petitioners, and Certain "Qualified Aliens" Subject to Affidavit of Support Under Section 213A of the INA Requirements

In general, INA 212(a)(4)(E) provides that the following provisions do not apply to "qualified alien" victims:

¹⁹⁵ See *Matter of Song*, 27 I&N Dec. 488, 492 (BIA 2018) (noting that the two exceptions to the requirement that the petitioner execute Form I-864 are when the applicant is or was married to an abusive spouse as set forth in INA 204(a)(1)(A)(iii) and INA 204(a)(1)(A)(iv), or when the petitioner died before the adjustment application was adjudicated and the applicant has a qualifying relative execute a Form I-864 as set forth in INA 213A).

¹⁹⁶ Supporting documentation such as federal income tax returns or transcripts, W-2, and employment verification.

¹⁹⁷ See 8 CFR 213a.2(g).

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- Public charge inadmissibility, in general;¹⁹⁸
- Minimum factors to be considered in the public charge inadmissibility determination;¹⁹⁹ and
- Inadmissibility for lack of sufficient affidavit of support for family-based immigrants.²⁰⁰

A “qualified alien” victim²⁰¹ includes:

- A Violence Against Women Act (VAWA) self-petitioner;
- An alien who is an applicant for, or is granted, U nonimmigrant status;²⁰² or
- A “qualified alien” as described in the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA),²⁰³ such as an alien who has a pending application establishing prima facie eligibility for T nonimmigrant status or has been granted T nonimmigrant status.

When Congress created the current version of INA 212(a)(4)(E), it did not exempt qualified “alien victims” from the requirements under INA 212(a)(4)(D). INA 212(a)(4)(D) makes an alien inadmissible on public charge in employment-based cases,²⁰⁴ unless the alien has a properly executed Form I-864 from the alien’s relative if:²⁰⁵

- The alien’s relative filed the employment-based petition; or
- The alien’s relative has a significant ownership interest (of 5 percent or more) in the business or entity that filed the employment-based petition.

If the qualified “alien victim” files for adjustment of status under an employment-based category and his or her petitioning employer meets the above circumstances but does not submit a sufficient Form I-864,²⁰⁶ then the alien is inadmissible on the public charge ground.

C. Applicants Not Required to Submit Form I-864

¹⁹⁸ See INA 212(a)(4)(A).

¹⁹⁹ See INA 212(a)(4)(B).

²⁰⁰ See INA 212(a)(4)(C).

²⁰¹ As outlined in INA 212(a)(4)(E).

²⁰² See INA 101(a)(15)(U).

²⁰³ See Sections 431(b) and 431(c) of PRWORA, Pub. L. 104-193, 110 Stat. 2105, 2274 (August 22, 1996), as amended.

²⁰⁴ See INA 203(b).

²⁰⁵ Under INA 213A. See 8 CFR 213a.

²⁰⁶ As required under INA 212(a)(4)(D) and INA 212(a)(4)(E) and as described in INA 213(a) and 8 CFR 213a.

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Certain aliens are not statutorily required to submit a Form I-864. Other aliens, although generally required to file a Form I-864, may be exempt from this requirement. Being exempt from the Form I-864 requirement is different from being exempt from the public charge inadmissibility ground.

An officer still makes an inadmissibility determination for an alien who is exempt from the Form I-864 filing requirement unless the alien is also exempt from the public charge ground of inadmissibility.²⁰⁷

1. Applicants Exempt from Filing Form I-864

Some categories of adjustment of status applicants are exempt from the Form I-864 requirement but must request an exemption from the Form I-864 requirement when filing their Application to Register Permanent Residence or Adjust Status (Form I-485) to establish that a Form I-864 is not required.²⁰⁸

These categories include children of U.S. citizens who will automatically become U.S. citizens under the Child Citizenship Act of 2000 (CCA)²⁰⁹ upon their admission to the United States, self-petitioning widows and widowers of U.S. citizens, and self-petitioning battered spouses and children. Aliens who have earned (or can be credited with) 40 quarters (credits) of coverage under the Social Security Act may also request an exemption from the Form I-864 requirement to establish that a Form I-864 is not required.²¹⁰

Certain Children of U.S. Citizens

Under the CCA, children born abroad to U.S. citizens may automatically acquire U.S. citizenship if, before their 18th birthday, they are residing in the United States in the legal and physical custody of the U.S. citizen parent pursuant to an admission as an immigrant or adjustment of status to that of an LPR.²¹¹ If qualified for automatic acquisition of citizenship, the child is exempt from the Form I-864 requirement.²¹²

The CCA has specific provisions for alien children adopted by U.S. citizens. An alien child adopted by U.S. citizens, such as orphans or Hague Adoptees (IR-3 or IH-3 classifications)

²⁰⁷ See Chapter 3, Applicability, Section C, Exemptions [8 USCIS-PM G.3(C)].

²⁰⁸ See 8 CFR 213a.2(a)(1)(i)(B). As of December 10, 2024, applicants make a request for an exemption from the Form I-864 requirement using the Application to Register Permanent Residence or Adjust Status (Form I-485).

²⁰⁹ See the Child Citizenship Act of 2000, Pub. L. 106-395 (October 30, 2000). See INA 320.

²¹⁰ See 8 CFR 213a.2(a)(1)(i)(B).

²¹¹ See INA 320. See Volume 12, Citizenship and Naturalization, Part H, Children of U.S. Citizens, Chapter 4, Automatic Acquisition of Citizenship after Birth (INA 320) [12 USCIS-PM H.4].

²¹² See INA 320. For more information on children acquiring citizenship under the Child Citizenship Act of 2000, see Volume 12, Citizenship and Naturalization, Part H, Children of U.S. Citizens, Chapter 4, Automatic Acquisition of Citizenship after Birth (INA 320) [12 USCIS-PM H.4].

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automatically acquires U.S. citizenship if the child enters the United States before the child's 18th birthday and resides with the U.S. citizen parent.²¹³ Therefore, these children are exempt from the affidavit of support requirement.

However, this exception does not apply if:

- The child is “coming to be adopted” as an orphan or Hague Adoptee (IR-4 or IH-4 classification);²¹⁴ or
- The child is admitted as an immediate relative immigrant as the stepchild of a U.S. citizen.²¹⁵

Certain Self-Petitioning Immigrants

The following self-petitioning immigrants are exempt from the Form I-864 requirement:

- An alien who has an approved Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360) as a self-petitioning widow or widower;²¹⁶
- An alien who has an approved Form I-360 as a battered spouse or child;²¹⁷ and
- An alien who has an approved Form I-360 as a VAWA self-petitioner.²¹⁸

Aliens Who Have Earned or Can be Credited with 40 Qualifying Quarters of Work

An alien who has earned or can be credited with 40 qualifying quarters (credits) of work in the United States under the Social Security Act (SSA) is exempt from the requirement to file a Form I-864.²¹⁹ A quarter, as defined by the Social Security Administration, is a period of 3 calendar months ending on March 31, June 30, September 30, or December 31.²²⁰

An alien can acquire 40 qualifying quarters through any of the following circumstances:

²¹³ See the Child Citizenship Act of 2000, Pub. L. 106-395 (October 30, 2000).

²¹⁴ An IR-4 or IH-4 immigrant becomes a citizen under INA 320 only when the adoption is finalized after admission and all eligibility requirements are met. See the Before Your Child Immigrates to the United States webpage.

²¹⁵ The stepchild of a U.S. citizen does not acquire citizenship under INA 320. See *Acevedo v. Lynch*, 798 F.3d 1167, 1171 (9th Cir. 2015). See *Matter of Guzman-Gomez*, 24 I&N Dec. 824 (BIA 2009).

²¹⁶ See INA 212(a)(4)(C)(i)(I).

²¹⁷ See INA 212(a)(4)(C). See INA 212(a)(4)(E)(i). See Section 804 of the Violence Against Women Reauthorization Act of 2013 (VAWA 2013), Pub. L. 113-4, 127 Stat. 54, 111 (March 7, 2013).

²¹⁸ See INA 212(a)(4)(C). See INA 212(a)(4)(E)(i). See Section 804 of the Violence Against Women Reauthorization Act of 2013 (VAWA 2013), Pub. L. 113-4, 127 Stat. 54, 111 (March 7, 2013).

²¹⁹ Qualifying quarter, as defined under Title II of the Social Security Act, is specifically tied to earnings. For more information, see the Social Security Administration's website.

²²⁰ See 42 U.S.C. 413.

- Any quarter during which the alien works in the United States, as long as the alien received the minimum income established by the Social Security Administration during the entire quarter;²²¹
- Being credited with quarters the alien's spouse worked during the marriage;²²²
- Being credited with any quarters during which the alien was under 18 years of age and the alien's parent worked;²²³ or
- A combination of the above.²²⁴

Since 1978, quarters are based on total wages and self-employment income earned during the year, regardless of the months during the year the actual work was performed.²²⁵ An applicant can earn all four credits for the year in less time if the applicant earns the required income.

For example, in 2014, a person must have earned \$1,200 in covered earnings to earn one Social Security or Medicare work credit and \$4,800 to earn the maximum four credits for the year. A person who earned \$4,800 in 2014 earned all four credits for the year regardless of how long that year it took to earn the income.

An officer does not need to calculate the alien's quarters. Aliens who claim they can be credited with sufficient quarters of coverage must submit official Social Security records to support the claim.²²⁶

2. Adjustment Applications Filed Before December 19, 1997

Any applicant for adjustment of status who filed a Form I-485 before December 19, 1997 is exempt from the requirement to file a Form I-864.²²⁷ The exemption is dependent on the filing date and applies even if USCIS conducts the interview or adjudicates the case after that date.

²²¹ Credits are based on total wages and self-employment income during the year. For more information, see the Social Security Administration's website.

²²² See INA 213A(a)(3)(B). An alien cannot claim credit for any quarter worked by a spouse in which the spouse was receiving federal means-tested public benefits.

²²³ See INA 213A(a)(3)(B). An alien cannot claim credit for any quarter worked by a parent in which the parent was receiving federal means-tested public benefits.

²²⁴ However, quarters cannot be counted more than once even if there are multiple circumstances that apply to make a quarter qualifying.

²²⁵ See 20 CFR 404.142.

²²⁶ See 8 CFR 213a.2(a)(2)(ii)(C).

²²⁷ See 8 CFR 213a.2(a)(2)(i) and 8 CFR 213a.2(a)(2)(ii)(B). See Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104-208 (September 30, 1996).

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3. Other Categories of Applicants Not Required to File Form I-864

The following are categories of immigrants who are not required to file a Form I-864 with Form I-485, but who are subject to the public charge ground of inadmissibility:²²⁸

- Diversity immigrants;²²⁹
- Employment-based immigrants, unless the visa petition was filed by a relative or an entity in which the applicant's relative has a significant ownership interest, as described above;²³⁰
- Immigrant investors;²³¹
- Diplomats or high-ranking officials unable to return home (Section 13 of the Act of September 11, 1957);²³²
- Certain entrants before January 1, 1982;²³³
- S nonimmigrants;²³⁴
- Religious workers;²³⁵
- Certain employees or former employees of the U.S. government abroad;²³⁶

²²⁸ For some of these categories, although the applicants are subject to public charge under INA 212(a)(4), the employers generally would not be a relative of the alien or a for-profit entity and therefore the requirement for an affidavit of support under INA 212(a)(4)(D) is inapplicable.

²²⁹ A winner of the diversity visa lottery does not need to file a petition with USCIS. Diversity visas are issued under INA 203(c) which do not fall under INA 212(a)(4)(C) or INA 212(a)(4)(D).

²³⁰ See INA 212(a)(4). This exemption also includes Afghan and Iraqi Interpreters who received a special immigrant visa by filing a petition under INA 203(b)(4).

²³¹ See INA 203(b)(5).

²³² See Section 13 of Pub. L. 85-316 (September 11, 1957), as amended by Pub. L. 97-116 (December 29, 1981). See 8 CFR 245.3.

²³³ See INA 245A(b)(1)(C)(i) and INA 245A(a)(4)(A). See INA 245A(d)(2)(B)(iii) for the special rule for determination of public charge for these applicants. Certain aged, blind, or disabled persons as defined in Section 1614(a)(1) of the Social Security Act, codified at 42 U.S.C. 1382c(a)(1), may apply for a waiver of inadmissibility due to public charge. See INA 245A(d)(2)(B)(ii).

²³⁴ S nonimmigrants may file a waiver of the public charge ground of inadmissibility on Inter-Agency Alien Witness and Informant Record (Form I-854). See INA 245(j) and INA 101(a)(15)(S). See 8 CFR 214.2(t)(2) and 8 CFR 1245.11.

²³⁵ Includes the following categories: SD-6 (ministers), SD-7 (spouses of SD-6), SD-8 (children of SD-6), SR-6 (religious workers), SR-7 (spouses of SR-6), and SR-8 (children of SR-6).

²³⁶ See INA 101(a)(27)(D). See 22 CFR 42.32(d)(2). Includes the following categories: SE-6 (employees of U.S. government abroad, adjustments), SE-7 (spouses of SE-6), and SE-8 (children of SE-6). Note that this program does not have a specific sunset date and technically applicants could apply but should have already applied.

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- Panama Canal Zone employees;²³⁷
- Certain physicians;²³⁸
- G-4 or NATO-6 employees and their family members;²³⁹
- Certain U.S. armed forces members (also known as the Six and Six program);²⁴⁰
- Certain broadcasters;²⁴¹ and
- Immigrants applying under the Amerasian Act of 1982.

The following are categories of immigrants not required to file a Form I-864 with Form I-485, and who are not subject to the public charge ground of inadmissibility:

- Refugees and asylees at time of adjustment of status to lawful permanent resident status;²⁴²
- Immigrants applying under the Amerasian Homecoming Act;²⁴³

²³⁷ See INA 101(a)(27)(E), INA 101(a)(27)(F), and INA 101(a)(27)(G). See 22 CFR 42.32(d)(3). Includes the following categories: SF-6 (former employees of the Panama Canal Company or Canal Zone Government), SF-7 (spouses or children of SF-6), SG-6 (former U.S. government employees in the Panama Canal Zone), SG-7 (spouses or children of SG-6), SH-6 (former employees of the Panama Canal Company or Canal Zone Government, employed on April 1, 1979), and SH-7 (spouses or children of SH-6). Note that this program does not have a specific sunset date and technically applicants could apply but should have already applied.

²³⁸ See INA 101(a)(27)(H) and INA 203(b)(4). Includes the following categories: SJ-6 (foreign medical school graduate who was licensed to practice in the United States on Jan. 9, 1978) and SJ-7 (spouses or children of SJ-6). Note that this program does not have a specific sunset date and technically applicants could apply but should have already applied.

²³⁹ See INA 101(a)(27)(I) and INA 101(a)(27)(L). See 8 CFR 101.5. See 22 CFR 42.32(d)(5). See 22 CFR 41.24 and 22 CFR 41.25. Includes SN-6 (retired NATO-6 civilian employees), SN-7 (spouses of SN-6), SN-9 (certain surviving spouses of deceased NATO-6 civilian employees), and SN-8 (certain unmarried sons and daughters of SN-6).

²⁴⁰ See INA 101(a)(27)(K). Includes the following categories: SM-6 (U.S. armed forces personnel, service (12 years) after October 1, 1991), SM-9 (U.S. armed forces personnel, service (12 years) by October 1991), SM-7 (spouses of SM-1 or SM-6), SM-0 (spouses or children of SM-4 or SM-9), and SM-8 (children of SM-1 or SM-6).

²⁴¹ See INA 101(a)(27)(M). See 8 CFR 204.13. Includes the following categories: BC-6 (broadcast (IBCG of BBG) employees), BC-7 (spouses of BC-1 or BC-6), and BC-8 (children of BC-6).

²⁴² See INA 209(c).

²⁴³ See Section 584 of Pub. L. 100-202, 101 Stat. 1329, 1329-183 (December 22, 1987).

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- Afghan and Iraqi Interpreters, or Afghan and Iraqi nationals employed by or on behalf of the U.S. Government;²⁴⁴
- Cuban and Haitian entrants applying for adjustment of status under section 202 of the Immigration Reform and Control Act of 1986;²⁴⁵
- Immigrants applying under the Cuban Adjustment Act;²⁴⁶
- Nicaraguans and other Central Americans applying under the Nicaraguan Adjustment and Central American Relief Act;²⁴⁷
- Haitians applying under the Haitian Refugee Immigration Fairness Act of 1998;²⁴⁸
- Lautenberg parolees;²⁴⁹
- Special immigrant juveniles;²⁵⁰
- Applicants for Registry;²⁵¹
- Victims of human trafficking (T nonimmigrants);²⁵²

²⁴⁴ See Section 1059(a)(2) of the National Defense Authorization Act for Fiscal Year 2006, Pub. L. 109-163, 119 Stat. 3136, 3444 (January 6, 2006), as amended, and Section 602(b) of the Afghan Allies Protection Act of 2009, Title VI of Pub. L. 111-8, 123 Stat. 524, 807 (March 11, 2009), as amended, and Section 1244(g) of the National Defense Authorization Act for Fiscal Year 2008, as amended, Pub. L. 110-181, 122 Stat. 3, 396 (January 28, 2008).

²⁴⁵ See Section 202 of the Immigration Reform and Control Act of 1986 (IRCA), Pub. L. 99-603, 100 Stat. 3359, 3404 (November 6, 1986), as amended.

²⁴⁶ See Cuban Adjustment Act, Pub. L. 89-732 (November 2, 1966), as amended.

²⁴⁷ See Sections 202(a) and 203 of Pub. L. 105-100, 111 Stat. 2160, 2193 (November 19, 1997), as amended.

²⁴⁸ See Section 902 of Pub. L. 105-277, 112 Stat. 2681, 2681-538 (October 21, 1998), as amended.

²⁴⁹ See Section 599E of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1990, Pub. L. 101-167, 103 Stat. 1195, 1263 (November 21, 1989), as amended.

²⁵⁰ See INA 245(h).

²⁵¹ Registry is a section of immigration law that enables certain aliens who have been present in the United States since January 1, 1972, the ability to apply for lawful permanent residence even if currently in the United States unlawfully. See INA 249. See 8 CFR 249.

²⁵² See INA 245(l). If the applicant is adjusting based on an employment-based petition where the petition is filed by either a qualifying relative, or an entity in which such relative has a significant ownership interest (5 percent or more), and the applicant, at both the time of filing and adjudication of the Form I-485, is still in valid T nonimmigrant status, the applicant is not subject to INA 212(a)(4) but is still required to file Form I-864. See 8 CFR 213a.2(b)(2).

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- Victims of qualifying criminal activity (U nonimmigrants);²⁵³
- Haitians adjusting status under the Help Haiti Act of 2010;²⁵⁴
- Self-petitioners under the VAWA;²⁵⁵
- Certain “qualified aliens” under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA);²⁵⁶
- Applicants adjusting status who qualify for a benefit as surviving spouses, children, or parents of military members;²⁵⁷
- American Indians born in Canada;²⁵⁸
- Nationals of Vietnam, Cambodia, and Laos applying under the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 2001;²⁵⁹
- Polish or Hungarian Parolees;²⁶⁰
- Applicants adjusting under Liberian Refugee Immigration Fairness (LRIF);²⁶¹

²⁵³ See INA 101(a)(15)(U) and INA 212(a)(4)(E)(ii). See Section 804 of the Violence Against Women Reauthorization Act of 2013, Pub. L. 113-4 (March 7, 2013). If the applicant is adjusting based on an employment-based petition where the petition is filed by either a qualifying relative, or an entity in which such relative has a significant ownership interest (5 percent or more), and the applicant, at both the time of filing and adjudication of the Form I-485, is still in valid U nonimmigrant status, the applicant is not subject to INA 212(a)(4) but is still required to file Form I-864. See 8 CFR 213a.2(b)(2).

²⁵⁴ See Help Haitian Adoptees Immediately to Integrate Act of 2010 (Help HAITI Act), Pub. L. 111-293 (December 9, 2010).

²⁵⁵ See INA 212(a)(4)(E)(i).

²⁵⁶ See INA 212(a)(4)(E)(iii). See Section 804 of the Violence Against Women Reauthorization Act of 2013, Pub. L. 113-4 (March 7, 2013). See Section 431(c) of Pub. L. 104-193, 110 Stat. 2105, 2274 (August 22, 1996). See 8 U.S.C. 1641(c).

²⁵⁷ See Section 1703 of the National Defense Authorization Act, Pub. L. 108-136, 117 Stat. 1392, 1693 (November 24, 2003) (posthumous benefits to surviving spouses, children, and parents).

²⁵⁸ See INA 289.

²⁵⁹ See Section 586 of Pub. L. 106-429, 114 Stat. 1900, 1900A-57 (November 6, 2000) under 8 CFR 245.21.

²⁶⁰ Includes certain Polish and Hungarian parolees who were paroled into the United States from November 1, 1989 to December 31, 1991. See Section 646(b) of IIRIRA, Division C of Pub. L. 104-208, 110 Stat. 3009-546, 3009-709 (September 30, 1996).

²⁶¹ See Section 7611 of the National Defense Authorization Act for Fiscal Year 2020, Pub. L. 116-92, 113 Stat. 1198, 2309 (December 20, 2019) (Liberian Refugee Immigration Fairness), later extended by Section 901 of Division O, Title IX of the Consolidated Appropriations Act of 2021, Pub. L. 116-260, 134 Stat. 1182, 2155 (December 27, 2020) (Adjustment of Status for Liberian Nationals Extension).

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- Certain Syrian nationals;²⁶² and
- Any other categories of aliens exempt under any other law from the public charge ground of inadmissibility provisions under INA 212(a)(4).

D. Consideration of Form I-864 as a Factor in the Totality of the Circumstances Analysis

Under INA 212(a)(4)(B)(ii), USCIS officers “may also consider any affidavit of support under” INA 213A for the purpose of making public charge inadmissibility determinations. USCIS officers may²⁶³ only consider a sufficient Form I-864, in the totality of the circumstances.²⁶⁴

Under the statute, the minimum income the sponsor must demonstrate for a Form I-864 to be deemed sufficient is generally 125 percent of the FPG²⁶⁵ based on the sponsor’s household size.²⁶⁶ Officers should carefully review the Form I-864 to ensure that the sponsor has included in the household size:

- Any person for whom he or she has claimed on his or her Federal income tax return for the most recent tax year, whether or not such persons are living with him or her;
- All aliens that have already sponsored under any other Form I-864 for whom his or her support obligation has not terminated; and
- Any aliens to be sponsored under the current Form I-864.²⁶⁷

If all sponsors provided the statutorily required minimum financial support to the aliens they are obligated to sponsor as required by statute and the legally binding Form I-864, the sponsored aliens would be less likely to turn to the government first for financial support.²⁶⁸ Additionally, Federal and State deeming provisions should reduce the likelihood that a

²⁶² See Pub. L. 106-378 (October 27, 2000).

²⁶³ USCIS officers should generally consider a sufficient Form I-864. A USCIS officer should only decide, in his or her discretion, to not consider a sufficient Form I-864 with supervisory concurrence. If the officer finds the alien inadmissible under INA 212(a)(4) in such a case, he or she should articulate the reason(s) why he or she decided to not consider the sufficient Form I-864 in a Notice of Intent to Deny (NOID) or denial notice, as applicable.

²⁶⁴ Aliens required to submit a Form I-864, and who are not otherwise exempt, are inadmissible on the public charge ground if they do not submit a sufficient Form I-864. In such cases, USCIS does not engage in a totality of the circumstances analysis. If an alien submits more than one Form I-864, only those that meet the requirements of INA 213A are relevant to the public charge inadmissibility determination.

²⁶⁵ See INA 213A. See 8 CFR 213a.

²⁶⁶ See INA 213A(a)(1)(A). A sponsor who is on active duty (other than active duty for training) in the U.S. armed forces and who is petitioning for a spouse or child only has to demonstrate the means to maintain an annual income equal to at least 100 percent of the FPG. See 8 CFR 213a.2(c)(2).

²⁶⁷ See 8 CFR 213a.1.

²⁶⁸ See 8 U.S.C. 1601(5).

sponsored alien would be eligible for a means-tested benefit.²⁶⁹ That was the intent of Congress in establishing the legally-binding affidavit of support requirement.²⁷⁰

However, sponsors have been known to fail to fulfill their obligations due to financial distress or unwillingness to support the alien, as demonstrated by suits filed by sponsored aliens to enforce the statutory requirement that sponsors provide financial support to the sponsored aliens at the level required by statute for the period the obligation is in effect.²⁷¹ USCIS also encounters sponsored aliens who have received means-tested public benefits while their sponsors' support obligations are still in effect.²⁷²

Therefore, when USCIS officers decide in their discretion to consider a sufficient Form I-864 when making a public charge inadmissibility determination, they should give that sufficient Form I-864 weight within the totality of the circumstances analysis based on the likelihood, in their opinion, that the sponsor will actually provide the statutorily-required amount of financial support to the sponsored alien.

In assessing the likelihood that a sponsor will actually provide the statutorily-required amount of financial support to the sponsored alien, officers may consider:

- The sponsor's relationship to the sponsored alien, including whether the sponsor lives with or intends to live with the sponsored alien;
- Whether the sponsor has provided the statutorily-required amount of support to any alien(s) he or she has sponsored in the past or is currently sponsoring;
- The degree to which the sponsor's annual income, assets, and resources exceeds the minimum level required by the statute for him or her to serve as a sponsor;
- Whether the sponsor is currently receiving means-tested public benefits;
- Whether the sponsor has received a fee waiver from USCIS for an immigration benefit request; and

²⁶⁹ See Section 564(f) of IIRIRA, Division C of Pub. L. 104-208, 110 Stat. 3009-546, 3009-684 (September 30, 1996). Under INA 291, the sponsor's income and resources, as well as the income and resources of the sponsor's spouse, is counted as the sponsored immigrant's income for the purposes of determining eligibility for any Federal means-tested public benefits.

²⁷⁰ See 8 U.S.C. 1601(5).

²⁷¹ See *Erlor v. Erlor*, 824 F.3d 1173 (9th Cir. 2016). See *Belevich v. Thomas*, 17 F.4th 1048 (11th Cir. 2021). See *Wenfang Liu v. Mund*, 686 F.3d 418 (7th Cir. 2012).

²⁷² USCIS acknowledges that an alien can be eligible for some means-tested public benefits even if the sponsor has fulfilled his or her obligation and maintained the sponsored immigrant at an annual income that is not less than 125 percent of the FPG. This is because many means-tested public benefits have income-based eligibility thresholds higher than 125 percent of the FPG. Sponsors are still required to reimburse the government for the costs of the benefit provided in such cases. See INA 213A(b).

- The sponsor's financial history, including a history of bankruptcy or failure to meet his or her financial responsibilities.

A sufficient Form I-864 does not, alone, result in a finding that an alien is not inadmissible under the public charge ground due to the statute's requirement to consider the statutory minimum factors and officers' consideration of all relevant factors, circumstances, information, and evidence in the record.²⁷³

Chapter 7. Consideration of Any Current or Past Application for, Approval or Certification to Receive, and Receipt of Means-Tested Public Benefits

The public charge inadmissibility determination is prospective, based on the officer's opinion as to whether the alien is likely at any time in the future to become a public charge.²⁷⁴ Under the statute, every public charge inadmissibility determination must include at a minimum the consideration of the alien's age; health; family status; assets, resources, and financial status; and education and skills. The officer may consider a sufficient Affidavit of Support Under Section 213A of the INA (Form I-864) (when required).²⁷⁵

Officers should also consider, in the totality of the circumstances, all information and evidence in the record that is relevant to assessing an alien's likelihood at any time of becoming a public charge. Such relevant information and evidence includes any showing that the alien has in the past received or is currently receiving any means-tested public benefits, if such benefits were received on or after September 18, 2026. With respect to means-tested public benefits received before September 18, 2026, officers will only consider public cash assistance for income maintenance and long-term institutionalization at government expense.²⁷⁶

Additionally, officers will consider any evidence in the record pertaining to whether the alien has applied for any means-tested public benefits and/or whether the alien has been approved or certified to receive any means-tested public benefits on or after September 18, 2026. Officers will not consider any information in the record that the alien applied for, was certified or approved to receive any means-tested public benefits before September 18, 2026. However, where the officers encounter evidence that the alien has applied for or been approved or certified to receive any means-tested public benefits for a period that extends beyond September 18, 2026, officers would consider the application, certification, and receipt of such benefits in the totality of the circumstances that occurs on or after September 18, 2026, unless the alien provides evidence of disenrollment from such benefits or that he or she withdrew such application or notified the relevant agencies he or she no longer wanted to receive the benefits.

²⁷³ See INA 212(a)(4)(B).

²⁷⁴ See INA 212(a)(4)(A).

²⁷⁵ See Chapter 6, Affidavit of Support Under Section 213A of the INA [8 USCIS-PM G.6].

²⁷⁶ See 91 FR 45324 (Jul. 20, 2026) (final rule).

While the alien's application, approval, or certification to receive any means-tested public benefits does not constitute receipt of such benefits, the fact that an alien has applied for means-tested public benefits or has been determined to be eligible for means-tested public benefits by a benefit granting agency and approved or certified to receive those benefits could indicate the alien's likelihood in the future of needing to receive such benefits. Moreover, the fact that an alien has been approved or certified to receive means-tested public benefits is relevant to assessing an alien's self-sufficiency and overall financial status. Therefore, officers should consider the alien's applications to receive, and approvals and certifications to receive, any means-tested public benefits in determining the alien's likelihood at any time to become a public charge.

In considering an applicant's current and/or past applications, approvals or certifications to receive, and receipt of means-tested public benefits in the totality of the circumstances, officers will consider the amount, duration, and recency of means-tested public benefits the alien actually received.²⁷⁷ Additionally, officers will consider any evidence the alien presents as to whether that underlying basis for applying for or receiving the benefits would continue, as well as any evidence the alien submits that he or she has disenrolled from the means-tested public benefit program or has requested withdrawal or disenrollment from the means-tested public benefit program.

The amount and frequency of benefits are also relevant where there is evidence that the alien was approved or certified to receive benefits in the future, or has applied to receive such benefits and there is no evidence in the record that the alien has withdrawn such application, or requested to cancel the approval/certification of such benefits, as the amount and frequency of receipt will have a bearing (particularly in the case of approval or certification) on whether the alien will be dependent on means-tested public benefits in the future.

USCIS officers should also consider the nature of the means-tested public benefit along with these other surrounding circumstances when determining what weight to give an alien's current and/or past applications, approvals, or certifications to receive, or receipt of, that benefit.²⁷⁸ In considering the purpose of the benefit, officers should consider that Congress in enacting PRWORA established that certain Federal public benefits would have exceptions from the immigration-status-related ineligibility provisions of that law (but not from the public charge ground of inadmissibility).

- Section 8 U.S.C. 1611(b) lays out exceptions from the general eligibility limitation for some Federal public benefits;

²⁷⁷ For more information on the totality of the circumstances assessment, see Chapter 4, Prospective Determination Based on the Totality of the Circumstances [8 USCIS-PM G.4].

²⁷⁸ See 90 FR 52168, 52188 (Nov. 19, 2025). See 91 FR 45324 (Jul. 20, 2026) (final rule).

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- Section 8 U.S.C. 1613(c) creates exceptions from that section of law for certain Federal means-tested public benefits; and
- Section 8 U.S.C. 1615(a-b) creates exceptions for the Federal Child Nutrition Programs authorized under the National School Lunch Act and the Child Nutrition Act of 1966.

In addition, under their authority to administer Federal public benefits programs, agencies have also clarified for the public which of the benefits they administer fall within the definition of “Federal public benefit” under 8 U.S.C. 1611(c) for the purposes of the immigration-related eligibility provisions of PRWORA.²⁷⁹

To be clear, exceptions for the purpose of PRWORA implementation do not create exceptions for the purpose of the public charge ground of inadmissibility. If an alien applies for, is approved or certified to receive, or receives any means-tested public benefit, officers will consider that in the totality of the circumstances. However, when determining what weight to give that information in the totality of the circumstances, officers should consider the nature of the benefit and why Congress or the benefit-providing agencies determined that they should be provided to all without limitations based on immigration status.

Officers will also consider any evidence the alien presents regarding the underlying basis for the applications, approvals, certification, or receipt of these means-tested public benefits, such as that the alien received the benefits because he or she, while not a refugee, was eligible for resettlement assistance, entitlement programs, and other benefits available to refugees,²⁸⁰ or that the alien received the means-tested public benefit while present in the United States while in a category that is exempt from the public charge ground of inadmissibility.

For example, if the alien presents evidence that he or she received means-tested public benefits while present in the United States as an asylee, who is exempt from the public charge ground of inadmissibility, the officer will consider that fact in the totality of the circumstances. Similarly, if this alien presents evidence that he or she is no longer an asylee and therefore is no longer eligible for the benefits he or she had previously received while an asylee, USCIS would consider this fact in the totality of the circumstances.

Current and/or past receipt of means-tested public benefits alone, however, is not a sufficient basis to determine that an alien is likely at any time to become a public charge.²⁸¹ Additionally,

²⁷⁹ See 90 FR 31232 (Jul. 14, 2025), 63 FR 41658 (Aug. 4, 1998), 90 FR 30621 (Jul. 10, 2025), 65 FR 70134 (Nov. 21, 2000), 90 FR 30896 (Jul. 11, 2025), Dept. of Education Dear Colleagues Letter Regarding PRWORA (Nov. 19, 1997), 90 FR 32023 (Jul. 16, 2025), and 63 FR 41662 (Aug. 4, 1998).

²⁸⁰ Refugees as admitted under INA 207. Refugee services as described under INA 412.

²⁸¹ See *Matter of Perez*, 15 I&N Dec. 136, 137 (BIA 1974) (“The fact that an alien has been on welfare does not, by itself, establish that he or she is likely to become a public charge.”). See *Matter of Martinez-Lopez*, 10 I&N Dec. 409, 421-22 (BIA 1962) (“It has been the subject of extensive judicial interpretation. The general tenor of the holdings is that the statute requires more than a showing of a possibility that the alien will require public support.”).

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past applications to receive means-tested public benefits and past approvals or certifications to receive means-tested public benefits are not, alone, a sufficient basis to determine that an alien is likely at any time to become a public charge. Similarly, an alien may be found by an officer to be likely at any time to become a public charge even if the alien has never received means-tested public benefits. This is just one piece of information that officers consider in the totality of the circumstances and such receipt, or lack thereof, is insufficient on its own to establish that an alien is or is not inadmissible under section 212(a)(4) of the Immigration and Nationality Act (INA). The public charge inadmissibility determination is always prospective, and officers are to consider the five statutory factors, may consider a sufficient affidavit of support (if required), and all other relevant evidence and information in the record in the totality of the circumstances.

Means-tested Public Benefits Received by Aliens During or After Pregnancy

Aliens who are pregnant or were recently pregnant are not exempt from the public charge ground of inadmissibility based on that pregnancy. If an alien receives means-tested public benefits while pregnant or recently pregnant, officers should consider that receipt in the totality of the circumstances.

Notwithstanding, an officer may take into account the temporary nature of the alien's pregnancy when assessing whether the alien is likely at any time to become a public charge. This includes consideration of the potentially temporary nature of postpartum conditions and how these circumstances may have impacted the alien's receipt of means-tested public benefits in the totality of the circumstances.

Chapter 8. Other Relevant Factors

In addition to the statutory minimum factors discussed in Chapter 5 and the factors discussed in Chapters 6 and 7, officers should also consider, in the totality of the circumstances, any other evidence in the record that is relevant to assessing the alien's likelihood at any time of becoming a public charge.

A. Consideration of an Alien's Willingness and Ability to Work and Employment

While many aliens may demonstrate their ability to work and earn income to meet their needs through their employment history or offers of future employment and associated salaries or wages, some aliens may have periods of unemployment. An officer may consider an alien's employment history in the context of assessing the alien's education and skills and assets, resources, and financial status. Like other factors and considerations, the fact that an alien is currently unemployed or has experienced a period of unemployment, by itself, is insufficient to conclude that an alien will become a public charge in the future. An officer may find it helpful to examine the arc of the alien's education, training, employment history, and employment prospects to determine whether the alien has the necessary skills to reenter the workforce in

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the near term and earn income sufficient to meet his or her basic needs. An officer may request evidence of prospective employment, including job offers with estimated salary or wages.²⁸²

B. USCIS Fee Waivers

While USCIS does not collect information about previously received fee waivers on Application to Register Permanent Residence or Adjust Status (Form I-485), an officer may consider the request, receipt, or approval of an immigration benefit fee waiver in the totality of the circumstances.²⁸³ It is possible that some aliens applying for adjustment of status may have previously requested and received a fee waiver for a prior immigration benefit. In such a case, the officer considers this evidence in the totality of circumstances. The officer may account for when the fee waiver was granted, the amount of the fee waiver, and the grounds of eligibility for the fee waiver. If the fee waiver was received more recently, it is likely to be more relevant to the public charge inadmissibility determination.

As a general matter, the most common eligibility criteria for a fee waiver are receipt of a means-tested benefit or household income below 150 percent of the Federal Poverty Guidelines (FPG), both of which would already be evident in the alien's responses to questions on Form I-485. If the alien requested the fee waiver on the basis of financial hardship, then the officer could request additional evidence on the nature and recency of such hardship in the totality of the circumstances.

C. Fee Exemptions

An officer may not consider a fee exemption as part of the determination of whether an alien is likely to become a public charge. A fee exemption has no bearing on whether an alien would likely become a public charge in the future. Fee exemptions are not synonymous with fee waivers. Fee exemptions are not generally requested by an alien based on an inability to pay. Instead, fee exemptions are approved by USCIS for specific forms or nonimmigrant or immigrant categories based on statutory authority, regulations, or agency policy.

D. Alien is a Child

The statute does not exempt children from the public charge ground of inadmissibility.²⁸⁴ When making a public charge inadmissibility determination for aliens who are children, USCIS must

²⁸² See *Matter of Martinez-Lopez*, 10 I&N Dec. 409, 421 (BIA 1962; Att'y Gen. 1962) (Considering whether the alien had an employment offer in making a public charge inadmissibility determination). For more information about the consideration of an alien's totality of the circumstances, see Chapter 4, Prospective Determination Based on the Totality of the Circumstances [8 USCIS-PM G.4].

²⁸³ Officers should only consider such fee waivers in the totality of the circumstances for adjustment of status applications filed on or after February 24, 2020. Prior to that date, the public was not on notice that fee waivers might be considered in a public charge inadmissibility determination.

²⁸⁴ See INA 212(a)(4)(A).

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consider all of the required factors, may consider a sufficient Form I-864, and should consider all other relevant factors and information, including the current and/or past receipt of means-tested public benefits. As with any alien, USCIS considers the recency, amount, and duration of receipt of such benefits, the nature of the benefit, the reason for receipt, and whether that reason is likely to persist, when determining whether an alien child is likely at any time to become a public charge.

In the rare case that an alien child has received or is receiving means-tested public benefits, an officer may consider the financial contributions of a child's household and the circumstances that resulted in the child's receipt of such public benefits and the likelihood that those circumstances would continue in the future. The officer should also take into account whether the benefits received were due to temporary parental unemployment or other temporary circumstances.

E. Alien is a Primary Caregiver

Certain aliens may claim that they serve as primary caregivers within their households. Officers should consider an alien who is 18 years of age or older who has significant responsibility for actively caring for and managing the wellbeing of a child or an elderly, ill, or disabled person in the alien's household to be a primary caregiver. Due to these responsibilities, some of these aliens may not be employed outside of the home. They also may lack current or recent employment history due to their unpaid role in their household. When considering whether an alien is serving as a primary caregiver, officers should generally find that only one person in a household can serve as the primary caregiver for an individual. If multiple caregivers share the care of a person in a given household, the officer should consider whether the alien has established that he or she has significant caregiving responsibilities that impact the alien's ability to be employed full-time.

An officer may positively consider household contributions through primary caretaking responsibilities in the totality of the circumstances, because the officer may determine that the alien's primary caretaking responsibilities outweigh any deficiencies related to the alien's education and skills and lack of employment history or current employment.

In determining whether the alien's primary responsibilities are a positive factor in the totality of the circumstances, an officer could consider:

- Whether the person receiving the alien's care is a member of the alien's household;
- Whether other members of the household also claim to be the primary caregiver;
- Whether the person being cared for lives in the same residence as the alien;
- The age of the person being cared for; and

- The medical condition, including any disabilities, of the person being cared for.

Examples where an officer may attribute positive consideration of primary caregiving include:

- A parent who stays at home to care for a newborn child or child in school; and
- An adult son or daughter staying at home to care for his or her elderly parent.

Generally, a parent who has joint custody should have primary physical custody of the child in order to be considered a primary caregiver. If an alien is caring for an elderly parent, the alien may choose to provide evidence such as a certification from a doctor indicating the parent's medical condition or copies of the parent's medical record, and documentation of legal guardianship over the parent to help inform the officer's inadmissibility determination.

An officer may consider other cases less favorably. For instance, an alien may indicate that he or she is the primary caregiver for his or her elderly in-laws, but the elderly parent is not living in the same residence as the alien and the alien's spouse (their son or daughter). Instead, the alien is financially providing for the elderly parent's room and board at a nursing home. In such a case, the alien's responsibilities are financial and not something that would occupy a significant amount of their time or preclude the alien from being employed. In addition, there may be cases where two members of the same household claim to be the primary caregiver. If there is no documentation that establishes that the alien is the primary caregiver, then the officer should give less weight to the alien's claims in the totality of the circumstances analysis.

F. Alien is an Active-duty Servicemember or the Spouse or Child(ren) of an Active-duty Service member

Aliens must generally be LPRs to join the United States military and so active-duty U.S. servicemembers are unlikely to apply for adjustment of status.²⁸⁵ However, if they do apply for adjustment of status, they are not exempt from the public charge ground of inadmissibility based on their service.²⁸⁶

²⁸⁵ See the USA.gov Join the Military webpage. However, under the Military Accessions Vital to National Interest (MAVNI) program, certain aliens who were asylees, refugees, temporary protected status beneficiaries, deferred action beneficiaries, or nonimmigrants in certain categories could enlist. The then-U.S. Department of Defense ceased recruiting service members through the MAVNI program in 2016. While not relevant to the adjudication of adjustment of status applications by USCIS officers, LPRs who are active-duty service members may be subject to the public charge ground of inadmissibility when returning to the United States. See Chapter 3, Applicability, Section A, Applicants for Admission, Subsection 3, Certain Lawful Permanent Residents Returning to the United States [8 USCIS-PM G.3(A)(3)].

²⁸⁶ See INA 212(a)(4)(A).

As a consequence of the unique compensation and tax structure afforded by Congress for service members, it is common for active-duty servicemembers, as well as their spouses and children, to receive certain means-tested public benefits. If an active-duty servicemember, their spouse, or their child(ren) has received any means-tested public benefits, the officer may consider any evidence the alien provides regarding circumstances surrounding the duration, amount, and recency of receipt, and how the alien's receipt may have been impacted by such military service. The officer may also consider any evidence the alien submits relating to skills he or she obtained through his or her military service.

When considering the receipt of any means-tested public benefits by an active-duty U.S. servicemember, their spouse, or their child(ren), officers may also consider, in the totality of the circumstances, the sacrifices of members of the armed forces, which are vital to the public's safety and security. Officers may also consider that many of the aliens who enlist in the military are early in their careers, and therefore, consistent with statutory pay authorities, earn relatively low salaries that are supplemented by certain allowances and tax advantages. These salaries may increase over time and in turn decrease the likelihood that these aliens may require means-tested public benefits in the future.

G. Alien is a Victim of Crime, Domestic Violence, or Other Adverse Circumstances

An alien who has experienced crime, domestic violence, or other adverse circumstances may have received means-tested public benefits as a direct or indirect result of those circumstances.²⁸⁷ An officer may consider information or evidence that such an alien chooses to provide relating to the alien's temporary circumstances that may be relevant to a public charge inadmissibility determination. The reasons why an alien received means-tested public benefits in the past, including these adverse circumstances, are relevant to an officer's determination as to whether the alien is likely to become a public charge in the future.

Chapter 9. Waivers of Inadmissibility Based on Public Charge Ground

The availability of a discretionary waiver of the public charge ground of inadmissibility depends on the immigration benefit the alien is seeking.

A. Immigrant Waivers

In general, the public charge ground of inadmissibility cannot be waived for aliens seeking lawful permanent resident (LPR) status. However, the following aliens seeking LPR status may overcome the public charge ground of inadmissibility if they apply for and USCIS grants a waiver of the public charge ground of inadmissibility:

²⁸⁷ Some of these victims may be exempt from the public charge ground of inadmissibility, depending on their circumstances. For a list of those exempted from the public charge ground of inadmissibility, see Chapter 3, Applicability [8 USCIS-PM G.3].

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- Aliens applying for adjustment of status on account of their witness or informant status.²⁸⁸
- Certain aged, blind, or disabled aliens applying for adjustment of status under the legalization program.²⁸⁹

B. Nonimmigrant Waivers

The following nonimmigrants seeking admission may overcome the public charge ground of inadmissibility if the alien applies for and is granted a discretionary waiver of the public charge ground of inadmissibility.

Nonimmigrants seeking admission to the United States

An alien applying for a nonimmigrant visa or seeking temporary admission as a nonimmigrant may seek a temporary waiver of inadmissibility.²⁹⁰ This application for a temporary waiver of inadmissibility is adjudicated by U.S. Customs and Border Protection (CBP) as part of either an alien's application for admission at a port of entry or an alien's application for a nonimmigrant visa at a U.S. consulate or embassy.²⁹¹ If granted, the waiver generally only applies to the nonimmigrant classification for which it was granted.

*Applicants for admission as nonimmigrant witnesses or informants (S nonimmigrants)*²⁹²

A Law Enforcement Agency (LEA) makes a request on behalf of an alien when the LEA seeks to classify the alien as a nonimmigrant witness or informant. The LEA submits the request on the Inter-Agency Alien Witness and Informant Record (Form I-854A) and includes any request for a waiver of a ground of inadmissibility. The waiver is discretionary, and USCIS may grant the waiver if USCIS considers it to be in the national interest to do so.

Chapter 10. Adjudicating Public Charge Inadmissibility for Adjustment of Status Applications

²⁸⁸ See INA 245(j). See 8 CFR 245.11. According to 8 CFR 245.11(c), grounds of inadmissibility that were waived at the time of obtaining S nonimmigrant status are considered waived for purposes of the adjustment.

²⁸⁹ See INA 245A and INA 245A(d)(2)(B). Aged, blind, or disabled applicants, as defined in Section 1614(a)(1) of the Social Security Act, as codified in 42 U.S.C. 1382c(a)(1), for adjustment of status under INA 245A may apply for a waiver of the public charge ground of inadmissibility. The waiver is filed on the Application for Waiver of Grounds of Inadmissibility Under Sections 245A or 210 of the Immigration and Nationality Act (Form I-690) according to the form's instructions.

²⁹⁰ See INA 212(d)(3)(A).

²⁹¹ For more information on applying for a waiver as a nonimmigrant under INA 212(d)(3), visit CBP.gov.

²⁹² See INA 101(a)(15)(S). See 8 CFR 212.23(c)(1). See INA 212(d)(1). See 8 CFR 214.2(t)(5)(i). See 8 CFR 212.4(j)(1). The waiver is granted by USCIS.

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An alien seeking adjustment of status always bears the burden of proof to establish admissibility, including, where applicable, that the alien is not inadmissible under the public charge ground.²⁹³ The burden never shifts to USCIS during the adjudication process.²⁹⁴ After considering all relevant factors, circumstances, and evidence in the totality of the circumstances, the officer determines whether the alien has met his or her burden of proof in establishing that he or she is not likely at any time to become a public charge.²⁹⁵

A. Evidence in the Record

In making a public charge inadmissibility determination, a USCIS officer considers all evidence relevant to the statutory minimum factors. The officer may consider a sufficient Affidavit of Support Under Section 213A of the INA (Form I-864) (when required)²⁹⁶ and any other factor in the alien's case that is relevant to determining whether the alien is likely at any time to become a public charge.²⁹⁷ Among other factors that an officer should consider, any applications, approvals or certifications to receive, or receipt of means-tested public benefits after September 18, 2026,²⁹⁸ by the alien will be highly relevant.²⁹⁹

Evidence that appears or could appear in the record includes:

- The alien's employment history (as stated on the Application to Register Permanent Residence or Adjust Status (Form I-485));³⁰⁰
- Information relating to the statutory minimum factors and receipt of means-tested public benefits collected on Form I-485;
- Information related to an alien's health as reported on Report of Immigration Medical Examination and Vaccination Record (Form I-693) or DOS immigration medical examination report, if required;
- A sufficient Form I-864, if required;

²⁹³ See INA 291. See *Matter of Bett*, 26 I&N Dec. 437 (BIA 2014).

²⁹⁴ See *Matter of Arthur*, 16 I&N Dec. 558 (BIA 1978).

²⁹⁵ See INA 212(a)(4).

²⁹⁶ See Chapter 6, Affidavit of Support Under Section 213A of the INA [8 USCIS-PM G.6].

²⁹⁷ See *Matter of Vindman*, 16 I&N Dec. 131, 132 (BIA 1977) ("The elements constituting likelihood of an alien becoming a public charge are varied. They are not defined by statute, but rather are determined administratively upon consideration of *all the factors bearing on the alien's ability or potential ability to be self-supporting.*") (emphasis added).

²⁹⁸ See Chapter 2, Key Concepts, Section B, Means-Tested Public Benefits [8 USCIS-PM G.2(B)].

²⁹⁹ See Chapter 7, Consideration of Any Current or Past Application for, Approval or Certification to Receive, and Receipt of Means-Tested Public Benefits [8 USCIS-PM G.7].

³⁰⁰ See 87 FR 55472, 55497 (Sept. 9, 2022) (final rule).

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- Information concerning the alien's applications for, approvals or certifications to receive, and receipt of means-tested public benefits provided by benefit-granting agencies;³⁰¹ and
- Any other relevant information.³⁰²

B. Totality of the Circumstances Scenarios

Below are hypothetical scenarios that are intended to help illustrate an officer's review of an alien's factors, circumstances, and evidence, in the totality of the circumstances. These hypothetical scenarios are not meant to be exhaustive or all-inclusive with respect to the scenarios that may give rise to a public charge inadmissibility finding. They are intended to illustrate the adjudicative process and do not dictate the outcome of any particular case.

Although a USCIS officer may encounter similar fact patterns as those presented in the scenarios below, an officer may reasonably reach a different conclusion than what is described below when making a totality of the individual's circumstances determination in an individual case. Public charge inadmissibility determinations are made in the totality of circumstances for each individual case, on a case-by-case basis.

Additionally, for purposes of the following hypothetical scenarios, it is assumed that:

- The applicant is applying for adjustment of status before USCIS and is otherwise eligible for the benefit;
- The applicant submitted the required forms and all other required supporting evidence; and
- The facts asserted are supported by evidence in the record.

Scenario 1

The alien is a single, 25-year-old recent college graduate living with her parent, and she is currently unemployed. Her parent is currently financially supporting the alien, and they are the only two individuals in the alien's household. The household's income and net worth (assets minus liabilities) are relatively low. A sufficient Form I-864 was submitted on behalf of the alien. There is no information in the record to show that the alien is receiving or has received means-tested public benefits or has any Class A or Class B medical conditions.

³⁰¹ See Chapter 7, Consideration of Any Current or Past Application for, Approval or Certification to Receive, and Receipt of Means-Tested Public Benefits [8 USCIS-PM G.7].

³⁰² See Chapter 8, Other Relevant Factors [8 USCIS-PM G.8].

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The officer evaluates each of the factors and concludes that the factors in their totality do not indicate that the alien is likely at any time to become a public charge. The officer finds that the alien's record of current unemployment does not outweigh the other factors and considerations (for example the applicant's education, age, health). As a result, the officer determines that the alien has met her burden of demonstrating she is not inadmissible under section 212(a)(4)(A) of the Immigration and Nationality Act (INA).

*Scenario 2*³⁰³

The alien, who has a high school-level education, is a single 35-year-old with no evidence of any Class A or Class B medical conditions. The alien has one 10-year-old child who lives with the alien. The alien is currently employed with moderate household income and relatively low household net worth. A sufficient Form I-864 was submitted on behalf of the alien. There is evidence in the record that the alien received a small amount of means-tested public benefits for a period of 1 year, about 10 years before applying for adjustment of status.

The officer evaluates each of the factors in the totality of the circumstances, including the recency, amount, and duration of the alien's past receipt of means-tested public benefits. The officer considers the relatively small value of benefits received by the alien and the reason for that receipt, which was temporary unemployment associated with the birth of her child. The officer determines that the alien, who is of working age, is currently employed, in good health, and received means-tested public benefits for a temporary period 10 years ago, has demonstrated that she is not likely at any time to become a public charge. As a result, the officer finds that the alien has met her burden of demonstrating that she is not inadmissible under INA 212(a)(4)(A).

Scenario 3

The alien is a single 55-year-old, living alone, with no evidence of a Class A or Class B medical condition. The alien is an unemployed college graduate who has not been employed for over a decade. The alien has a low income based solely on the receipt of certain means-tested public benefits and low household net worth. A sufficient Form I-864 was submitted on behalf of the alien, who has been receiving public cash assistance for over 5 years.

The officer evaluates each of the factors in their totality and determines that the combination of factors shows that the alien is likely at any time to become a public charge. The officer bases their determination on the fact that the alien is currently receiving public cash assistance, has received this benefit for an extended period of time, has not worked in over ten years, and has demonstrated no prospect of obtaining employment or generating another source of income.

³⁰³ For purposes of this scenario, USCIS is assuming that the alien filed the application and received means-tested public benefits after September 18, 2026, and after the 2022 Final Rule and regulations have been rescinded.

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As a result, even though the alien has a college degree, is of working age, is in good health, and has a sufficient Form I-864, the officer finds that the alien has not met his burden of proof and determines that the alien is inadmissible under INA 212(a)(4).

Scenario 4

The alien is a 70-year-old who is divorced, no longer in the workforce, and living with her U.S. citizen adult son. The alien's immigration medical examination indicates that the alien has a Class B medical condition that requires extensive medical care and prevents the alien from reentering the workforce. The alien has limited retirement savings, assets, and resources and has no health insurance. The alien has not received any means-tested public benefits. A sufficient Form I-864 was submitted on behalf of the alien by her son. The alien's adult son also has 3 other members of the household for whom he is financially responsible in addition to the alien.

The officer evaluates these factors in their totality and determines that the alien is likely at any time to become a public charge. Even though the alien has a sufficient Form I-864 and the officer is satisfied that the alien's adult son is able to provide adequate food and housing, there is no evidence in the record that the alien has access to sufficient financial resources to cover the medical expenses connected to her Class B medical condition considering the size of the household, the needs of other household members, and the fact that the alien can no longer work. The officer concludes that the alien is likely to become dependent on the government for medical care and finds that the alien is inadmissible under INA 212(a)(4).

Scenario 5

A 30-year-old alien is married to a U.S. citizen. They live together with their two U.S. citizen children. The alien has no medical conditions, has a high-school level education, and is currently employed part-time at a job which requires no certifications or higher education. The petitioner submitted a Form I-864 with the alien's application for adjustment of status. While the petitioner satisfied the income requirements at the time she submitted the Form I-864, by the time an officer reviews the adjustment of status application, the petitioner's employer closed their business and the petitioner is unemployed. The petitioner received unemployment insurance benefits until those expired and then applied for and has begun to receive TANF.

While the petitioner was employed, the household income was slightly above federal poverty guidelines, but now the total household income is below federal poverty guidelines. The alien and petitioner rent their apartment, and they have minimal savings. They receive some financial support from the petitioner's parents in the form of clothing, babysitting, and small cash contributions for the children. Since the petitioner lost their job, the petitioner and children also receive SNAP benefits and Medicaid. There is no evidence that the alien has health insurance. Because the petitioner can no longer maintain the income required of a Form I-864 sponsor, the

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officer issued an RFE for a sufficient Form I-864 from a joint sponsor. One of the petitioner's former colleagues came forward as joint sponsor, and the new Form I-864 is sufficient.

The officer evaluates all relevant evidence and information in the totality of the circumstances and determines that the alien is likely at any time to become a public charge. Considering the statutory factors, the officer acknowledges that the alien is of working age and is in good health. The officer considers the family status of the alien in combination with the assets, resources, and financial status of the alien and finds that evidence in the record suggests that the household is in dire financial straits. The alien's spouse is not employed and the alien is employed at a level that does not provide sufficient income to support the household. As a result, all three U.S. citizens in the household, whom the alien is required to support, are currently receiving a variety of means-tested public benefits.

Given the alien's current employment, low level of education, and lack of skills, the officer finds it unlikely that the alien will be able to obtain full-time employment with an income sufficient to support himself and his family. While there is a sufficient affidavit of support from the petitioner's former colleague, the former colleague does not live in the same city as the alien's family, has only a loose connection to the alien through the petitioning spouse, and has an annual income only slightly higher than the minimum required by INA 213A to serve as a sponsor. The officer determines that the alien is likely to depend on public resources to meet his needs after he becomes an LPR and is eligible for those benefits. As a result, the officer concludes that the alien is likely at any time to become a public charge and finds the alien is inadmissible under INA 212(a)(4).

Scenario 6

A 28-year-old married alien with a bachelor's degree, living with her spouse and two young children, applies for adjustment of status. The alien is employed full-time with a stable income, and the household's net worth is moderate. The alien has never received means-tested public benefits and has no medical conditions. The alien's petitioning spouse submitted a sufficient Form I-864, showing a household income more than twice the federal poverty guidelines for a family of four.

The officer evaluates all relevant evidence and information in the totality of the circumstances. The officer finds that the alien's stable employment, college education, good health, moderate level of assets, support from a gainfully employed spouse, and lack of public benefit make it highly unlikely that the alien will become a public charge. As a result, the officer finds that the alien has met her burden of demonstrating that she is not inadmissible under INA 212(a)(4).

Scenario 7

The alien is a 65-year-old widowed individual, living alone. The alien was inspected and admitted to the United States as an H-1B nonimmigrant worker and worked as a college

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professor for several years. During their employment, the alien met and married a U.S. citizen. The alien's spouse, who was also employed in academia, passed away unexpectedly. The spouse had a substantial life insurance policy, which allowed the applicant to pay off the mortgage on their home and put some money into savings. Following the spouse's death, the alien has been receiving a small pension from their previous employment, Social Security retirement benefits based on their own employment in the United States, and survivor Social Security benefits based on their deceased spouse's work record. The alien has limited retirement savings but owns their home outright and has no Class A or Class B medical conditions. The alien has never received means-tested public benefits. The sister of the deceased spouse of the alien submitted a substitute Form I-864, which was sufficient under INA 213A.

The officer considered the applicant's age, the applicant's stable retirement income, home ownership, lack of medical issues, sufficient Form I-864, and absence of history of receipt of public benefits. The officer also considered the alien's high level of education and skills as well as their employment history, finding it likely that the alien could find employment, if needed. Considering all of this information in the totality, the officer determines that the alien is unlikely to become a public charge and has met her burden of demonstrating that she is not inadmissible under INA 212(a)(4).

Scenario 8

A 45-year-old married alien with three children applied for adjustment of status. The alien has a vocational certificate and works part-time. The spouse is employed full-time and the household income is slightly above the federal poverty guidelines. The family rents their home and has minimal savings. The alien received Medicaid for emergency medical care in 2025 but has not received other means-tested public benefits. The immigration medical examination revealed no Class A or Class B medical conditions. A sufficient Form I-864 was submitted.

The officer evaluates all relevant evidence and information in the totality of the circumstances, including the alien's age, good health, skills, current employment, and household income. The officer also considers the sufficient Form I-864 submitted by a close relative, the alien's spouse. While past benefit use is almost always highly relevant to a public charge inadmissibility determination, the officer recognizes that the alien received the benefit prior to September 18, 2026, and it was not cash assistance for income maintenance or long-term institutionalization at government expense. As a result, the officer does not consider the limited receipt of Medicaid for emergency medical care in the public charge inadmissibility determination.

After considering all of the evidence in the record, the officer finds that the alien is not likely at any time to become a public charge. As a result, the officer finds that the alien has met the alien's burden of demonstrating that the alien is not inadmissible under INA 212(a)(4).

Scenario 9

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On June 1, 2026, a 32-year-old alien was admitted to the United States as a K-1 nonimmigrant with her accompanying 12-year-old alien son from a previous marriage. The alien completed high school in her home country. Prior to issuing the K-1 nonimmigrant visa, the Department of State required that the K-1 petitioner submit a Form I-134, Declaration of Financial Support, on behalf of the alien and accompanying child. DOS found the Form I-134 sufficient. Evidence in the record shows the alien married her U.S. citizen petitioner the day after she arrived in the United States, and the record reflects that the couple married in good faith. On October 1, 2026, the K-1 petitioner filed a Form I-864 in conjunction with the alien's Form I-485, and the Form I-864 was found to be sufficient. At the interview on December 1, 2027, the alien presents a divorce decree, and the evidence shows that the alien and the petitioner have been divorced for 4 months. The petitioner has not withdrawn his Form I-864, but the alien is no longer in contact with him.

Although the divorce decree orders the petitioner to pay alimony to the alien, the alien provides evidence that he has failed to do so. The alien is currently employed full-time at a job that requires no certification or higher education, and she lives in a rented apartment with her son. Her income is at the federal poverty guidelines, and she has minimal savings. The alien's son attends a school that is not part of the Community Eligibility Provision (CEP) for school lunches, but the alien has applied for her son to receive free school lunches, which he now receives. Her son also received emergency Medicaid for an emergency room visit on July 4, 2026. There is no evidence in the record that the alien or her son has health insurance. The alien has no Class A or Class B medical conditions.

The Form I-134 and Form I-864 were sufficient, however, there is no evidence in the record suggesting that the petitioner is inclined to provide the statutorily required amount of support (or any support) to the alien. Although the Form I-864 is legally binding, and the alien could sue to enforce it after adjustment, the divorce and subsequent failure to provide alimony suggest that the petitioner would likely pursue a lengthy and costly court case in his defense. The officer concludes that the petitioner is not likely to provide statutorily or court-ordered support to the alien after adjustment of status. The officer evaluates all relevant evidence and information in the totality of the circumstances, including the alien's age, good health, skills, current employment, and income, assets, and financial status. The officer recognizes that the alien has secured full-time employment, at the federal poverty guidelines, within a short time after receiving employment authorization and is able to pay her rent and provide for herself and her child with minimal government support.

During the interview, the alien shared that she recently received a raise at work and has been recommended for management training. The officer also considers the sufficient Form I-864 but gives it little weight in the totality of the circumstances analysis because the petitioner is unlikely to provide the alien support without being ordered to in litigation. While the alien has not received means-tested public benefits, her son (whom she is legally obligated to support) is currently receiving free school lunches based on the alien's income falling below the eligibility threshold for that benefit. The officer considers the alien's income falling below that threshold

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in the totality of the circumstances. The officer also considers the nature of the free school lunch program and the limited impact of the receipt on the household finances. Since the alien's son received emergency Medicaid before September 18, 2026, the officer did not consider such receipt in the context of the alien's assets, resources, and financial status. After considering all of this evidence and information in the totality of the circumstances, the officer concludes that the alien is not likely at any time to become a public charge. As a result, the officer finds that the alien has met her burden of demonstrating that she is not inadmissible under INA 212(a)(4).

Scenario 10

A 70-year-old alien has applied for adjustment of status under INA 245(a) as a parent of a U.S. citizen. The alien lives together with his U.S. citizen petitioner, his son-in-law, and the alien's three biological grandchildren. The alien has a university diploma from his country of origin, where he retired from his career over a decade ago. Although the alien was of moderate income in his country of origin, he has limited savings and no income in the United States. The household income is slightly above the federal poverty guidelines. The petitioner submitted a Form I-864, and the petitioner's spouse is employed and has submitted Form I-864A. The petitioner does not work, but she provides caretaking for the children and the alien. The alien currently receives Medicaid under 42 U.S.C. 1396b(v)(5)(B), and is being treated for diabetes, high blood pressure, and dementia.

The officer evaluates all of the relevant evidence and information in the totality of the circumstances. After considering the alien's age, poor health, family status in combination with household resources, the alien's education and skills, the alien's extremely poor prospects for future employment, the alien's current receipt of Medicaid, and the affidavit of support, the officer determines that the alien is likely at any time to become a public charge and finds the alien is inadmissible under INA 212(a)(4).

Scenario 11

In 1996, an alien was inspected and admitted to the United States using a B-1/B-2 border crossing card. He has not departed the United States since admission. At 50 years of age, he has applied to adjust status based on a petition filed by his U.S. citizen daughter. The petitioner has also filed a sufficient Form I-864. The alien has a college degree and is employed full-time at a middle-income job. Between 1999-2010, the alien periodically received emergency Medicaid. The alien has not received any other means-tested public benefit. The alien is in good health, lives with his alien spouse, who is still working, and owns his home.

The officer evaluates all of the relevant evidence in the totality of the circumstances. Specifically, the officer considers the applicant's age, good health, family status in combination with his assets, resources, and financial status, current employment, and significant education and skills. The officer also considers the sufficient Form I-864 provided by the alien's daughter. The officer does not consider the alien's receipt of emergency Medicaid more than 16 years ago,

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well before September 18, 2026. The officer concludes that the alien is not likely to become a public charge and does not find the alien inadmissible under INA 212(a)(4).

Scenario 12

In 2006, at age 6, the alien was inspected and admitted into the United States as a B-1 visitor. She has not departed the United States since admission. In 2021, she married a U.S. citizen, and in 2030 she filed a Form I-485 to apply for adjustment of status in conjunction with her spouse's Form I-130 petition. They have one U.S. citizen child, born in 2023. During and following her pregnancy, she applied for and received WIC benefits. She completed a certification as a nursing assistant and was employed in that field until 2028, when she left her job and began to provide full-time care for the petitioner's aging parent, who suffers from Parkinson's disease. The alien has no Class A or Class B medical conditions.

The petitioner's income is slightly below the level required to serve as a sponsor under INA 213A, but the petitioner's brother, who owns a successful small business, has submitted a sufficient Form I-864 for joint sponsorship. The petitioner, alien, and their child live together with the petitioner's aging parent in the aging parent's house, where they do not pay rent. The joint sponsor brother lives next door with his family and the broader family is very close. The aging parent receives SNAP and Medicaid benefits in addition to Medicare and Social Security retirement benefits.

The officer evaluates all of the relevant evidence and information in the totality of the circumstances. While the alien is unemployed, the alien makes significant contributions to the household by caring for her father-in-law. These contributions make it possible for him to live with his family and relieve the potential financial burden of institutionalization. While the household income is lower than the 125% of the Federal Poverty Guidelines level, the fact that the family does not have to pay rent or a mortgage, combined with the legally binding Form I-864 from a very close relative, offsets this low income. The officer considers that the alien has not received any means-tested public benefits, nor has anyone in the household she is obligated to support. The alien is young, educated, and has a past history of employment and a willingness to engage in difficult work, even if that work is unpaid at the moment. The alien's receipt of WIC was temporary, associated with her pregnancy, many years ago, low in value, and occurred prior to September 18, 2026, and was therefore not a consideration in the officer's analysis. The officer also considers the alien's good health. Considering all of this in the totality of the circumstances, the officer finds that she is not likely to become a public charge and is not inadmissible under INA 212(a)(4).

Scenario 13

A 45-year-old alien is the parent of a U.S. citizen and a high school graduate. The alien had periodically been admitted to the United States as an H-2B nonimmigrant and departed without overstaying her period of admission. Twenty years before applying for adjustment of status in

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2047, the alien gave birth to her child in the United States and received both emergency Medicaid and WIC in connection with her pregnancy, birth, and postpartum care. This was the only time she received public benefits. The alien is married to the father of her child, and all three reside together. He works as a cook in a restaurant. The alien has worked seasonally in the seafood industry but after receiving employment authorization in connection with her adjustment of status application now works as a cleaning supervisor in a commercial building. The alien's son works part-time at a school cafeteria. The alien's salary is greater than her son's and covers most of the household's monthly living expenses. They live in an apartment with relatively low rent.

While the petitioning son lacks sufficient income and assets on his own to meet the requirements to serve as a sponsor under INA 213A, he includes the income of his alien mother on Form I-864, along with evidence that her current employment is lawful and that the alien's employer intends to continue employing her in the same position after she adjusts status. The immigration medical examination revealed the alien has one minor Class B condition, high cholesterol.

The officer evaluates all of the relevant evidence and information in the totality of the circumstances. The officer considers the alien's age and the identified Class B condition. Given the alien's employment history and current employment, and the notes from the Civil Surgeon on the Form I-693, the Class B condition has little weight in the totality of the circumstances. The officer then considers the alien's family status and her assets, resources, and financial status. She is gainfully employed and is the top wage earner in a family of three working adults. While the alien lacks formal education beyond high school, she has demonstrated that it has not prevented her from being employed. The officer considers the alien's past receipt of Medicaid and WIC, which occurred after September 18, 2026. The officer considers the reason for the receipt (her pregnancy), the recency of the receipt (20 years ago), and the value of the benefits received (not high). The officer determines that this receipt is unlikely to recur.

Considering all of this in the totality of the circumstances, the officer finds that she is not likely to become a public charge and is not inadmissible under INA 212(a)(4).

Scenario 14

In 2023, the alien, age 25, was inspected and admitted to the United States as an H-1B nonimmigrant, to work as a processing systems engineer for a large petrochemical company. Later in 2023, they married a U.S. citizen. In 2025, the alien enrolled in an evenings and weekends MBA program at their local university. That same year, their USC spouse filed a Form I-130 on the alien's behalf, and the alien filed a Form I-485 application to request adjustment of status. The alien also applied for, and received, employment authorization based on having a pending adjustment of status application. The petitioner is a nurse and is studying to be a physician's assistant, and the alien and petitioner co-own a small condo. The couple have no children, and the alien's Form I-693 reveals no Class A or Class B conditions.

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In 2026, about 3 months before their joint interview on the Form I-130/I-485 package, the alien was laid off from their position. Following the lay-off, the alien successfully changed status to an F-1 student. The alien is currently receiving unemployment insurance payments, and the alien's father is paying half of the alien's graduate school tuition. At the interview, the alien presents evidence that they have attended multiple recruitment events through their MBA program's career center, and that they have made it to the second round of interviews for several positions.

The officer evaluates all of the relevant evidence and information in the totality of the circumstances. The officer considers the alien's age, educational attainment, and past employment history. Although the alien is currently unemployed, they show clear evidence that they are financially supported and are actively seeking employment that would result in self-sufficiency. The unemployment insurance benefits the alien is receiving are an earned, not means-tested, benefit, so the officer does not factor these into their assessment of the alien's likelihood to become a public charge. The officer considers the sufficient Form I-864 submitted by the alien's spouse and the likelihood that the spouse will fulfill the support obligations. The officer also considers the ongoing family support, as demonstrated by the father's assistance with the tuition payments. The officer finds that the alien is not likely to become a public charge at any time, and concludes that the alien is not inadmissible under INA 212(a)(4).

C. Summary: Step-by-Step Determination of Public Charge Inadmissibility

The officer should examine all facts and circumstances of the applicant's case when evaluating inadmissibility for public charge.³⁰⁴ The officer should follow the steps in the table below to determine inadmissibility.

Step-By-Step Determination of Public Charge Inadmissibility

Step	If Yes, then ...	If No, then ...	For More Information
Step 1: Is the alien subject to the public charge ground of inadmissibility?	Go to Step 2.	Not inadmissible based on the public charge ground. ³⁰⁵	See Chapter 3, Applicability [8 USCIS-PM G.3].
Step 2: Is the alien required to submit	Go to Step 3.	Go to Step 4.	Chapter 6, Affidavit of Support Under Section

³⁰⁴ See INA 212(a)(4).

³⁰⁵ Self-petitioners under the Violence Against Women Act (VAWA) must request an exemption from the Form I-864 requirement when filing their Application to Register Permanent Residence or Adjust Status (Form I-485) but are not subject to the public charge inadmissibility ground. See INA 212(a)(4)(E)(i). Self-petitioning VAWA applicants (and their derivatives) are therefore not inadmissible under the public charge ground and officers do not make a public charge inadmissibility determination once they determine the applicant qualifies for the exemption.

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Step-By-Step Determination of Public Charge Inadmissibility

Step	If Yes, then ...	If No, then ...	For More Information
an Affidavit of Support Under Section 213A (Form I-864 or Form I-864EZ)?			213A of the INA [8 USCIS-PM G.6].
Step 3: Was the Form I-864 (or Form I-864EZ) submitted and determined sufficient by the officer?	Go to Step 4.	Inadmissible based on the public charge ground. The officer may issue a NOID or deny the application in accordance with USCIS policy.	
Step 4: Was the application postmarked (or, if applicable, submitted electronically) on or after September 18, 2026?	Go to Step 5.	Follow the 2022 Rule and Guidance if the application is postmarked or submitted electronically on or after December 23, 2022, but before September 18, 2026. Follow the 1999 Interim Field Guidance for applications postmarked or electronically submitted prior to December 23, 2022.	Chapter 1, Purpose and Background, Section C, Implementation and Scope [8 USCIS-PM G.1(C)].
Step 5: After reviewing the	Go to Step 6.	Not inadmissible based on the public charge ground.	Chapter 5, Statutory Minimum Factors [8 USCIS-PM G.5] through Chapter 7, Consideration of Any

Step-By-Step Determination of Public Charge Inadmissibility

Step	If Yes, then ...	If No, then ...	For More Information
applicable forms³⁰⁶ and evidence, is the alien likely at any time to become a public charge based on the totality of the circumstances?			Current or Past Application for, Approval or Certification to Receive, and Receipt of Means-Tested Public Benefits [8 USCIS-PM G.7].
Step 6: Is a waiver of inadmissibility available?	The officer may issue a Request for Evidence (RFE) or Notice of Intent to Deny (NOID) to the alien to provide the alien an opportunity to request a waiver, unless already requested. If the waiver is approved, the alien may be admitted despite the public charge ground of inadmissibility. The officer should continue with the adjudication of the application.	Inadmissible based on the public charge ground. Go to Step 7.	Chapter 10, Adjudicating Public Charge Inadmissibility for Adjustment of Status Applications [8 USCIS-PM G.10]. Chapter 9, Waivers of Inadmissibility Based on Public Charge Ground [8 USCIS-PM G.9].
Step 7: Does USCIS offer the alien who is inadmissible only on account of public charge the opportunity to post a public charge bond?	The officer issues a NOID, notifying the alien that the alien may submit a public charge bond. Proceed to Step 8.	The alien is inadmissible on the public charge ground. The officer may issue a NOID or deny the application in	Chapter 11, Public Charge Bonds [8 USCIS-PM G.11].

³⁰⁶ Including Form I-485, Form I-864 or Form I-864EZ, and Report of Immigration Medical Examination and Vaccination Record (Form I-693). Officers may issue a Request for Evidence (RFE) to the applicant to provide the applicant an opportunity to submit additional evidence.

Step-By-Step Determination of Public Charge Inadmissibility

Step	If Yes, then ...	If No, then ...	For More Information
		accordance with USCIS policy.	
Step 8: Was a proper and suitable bond posted on behalf of the alien?	The alien may be admitted despite inadmissibility based on the public charge ground. The officer should continue with the adjudication of the application.	The alien is inadmissible on the public charge ground. The officer should deny the application.	Chapter 12, Public Charge Bonds: Posting and Accepting Bonds [8 USCIS-PM G.12].

D. Decision**1. Request for Evidence or Notice of Intent to Deny**

If the initial evidence submitted by the alien does not establish eligibility or ineligibility, an officer may issue a Request for Evidence (RFE) or Notice of Intent to Deny (NOID) to request more information or evidence from the alien in accordance with USCIS policy.³⁰⁷

If a NOID is issued, the officer must provide an explanation of the consideration of all the factors and why the officer believes that the alien is likely at any time to become a public charge based on the consideration of the totality of the alien's circumstances. If an officer is basing a decision in whole or in part on information of which the alien is unaware or could not reasonably be expected to be aware, the officer must issue a NOID.³⁰⁸

2. Not Inadmissible Based on the Public Charge Ground

After reviewing the application for adjustment of status and supporting evidence, if the officer finds that the alien is not likely at any time to become a public charge based on the consideration of the totality of the alien's circumstances, then the officer should determine that the alien is not inadmissible based on the public charge ground. The officer should continue with the adjudication.

³⁰⁷ See 8 CFR 103.2(b)(8)(i). Generally, USCIS issues written notices in the form of an RFE or NOID to request missing initial or additional evidence. However, USCIS has the discretion to deny a benefit request without issuing an RFE or NOID. See 8 CFR 103.2(b)(8)(iii). For more information, see Volume 1, General Policies and Procedures, Part E, Adjudications, Chapter 6, Evidence, Section F, Requests for Evidence and Notices of Intent to Deny [1 USCIS-PM E.6(F)], and Volume 1, General Policies and Procedures, Part E, Adjudications, Chapter 9, Rendering a Decision, Section B, Denials, Subsection 1, Denials Based on Lack of Legal Basis [1 USCIS-PM E.9(B)(1)].

³⁰⁸ See 8 CFR 103.2(b)(16)(i). See 8 CFR 103.2(b)(8)(iv).

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3. Inadmissible Based on the Public Charge Ground

After reviewing the application for adjustment of status and supporting evidence, if the officer finds that the alien is likely at any time to become a public charge, then the officer should determine that the alien is inadmissible under the public charge ground.

In this case, the officer should determine whether the alien may be eligible to apply for a waiver or whether to offer the alien the opportunity to post a public charge bond.³⁰⁹ If the alien is ineligible to apply for a waiver and USCIS has decided not to offer the alien an opportunity to post a public charge bond, then the alien is ineligible for adjustment of status. The officer either issues a NOID or denies the benefit request in accordance with USCIS policy.³¹⁰

Waiver

If the alien is eligible to apply for a waiver, the officer should inform the alien through the issuance of an RFE or NOID in accordance with USCIS policy.³¹¹ If the alien submits a waiver application and the waiver application is approved, the alien is no longer inadmissible under the public charge ground. The officer should then continue with the adjudication of the adjustment of status application in accordance with the guidance.

Bond

An officer, as a matter of discretion, may offer an alien applying for adjustment of status an opportunity to post a public charge bond³¹² if the alien is only inadmissible based on the public charge ground and is otherwise eligible for adjustment of status.³¹³ In this instance, the officer must issue a NOID in accordance with USCIS policy.³¹⁴

If an alien posts the public charge bond as instructed in the NOID and USCIS accepts the bond, the officer should continue with the adjudication of the immigration benefit request in accordance with the guidance.

Denial

³⁰⁹ For more information, see Chapter 9, Waivers of Inadmissibility Based on Public Charge Ground [8 USCIS-PM G.9] and Chapter 11, Public Charge Bonds [8 USCIS-PM G.11].

³¹⁰ See 8 CFR 103.2(b)(8)(iii). See Volume 1, General Policies and Procedures, Part E, Adjudications, Chapter 6, Evidence, Section F, Requests for Evidence and Notices of Intent to Deny [1 USCIS-PM E.6(F)].

³¹¹ See Volume 1, General Policies and Procedures, Part E, Adjudications, Chapter 6, Evidence, Section F, Requests for Evidence and Notices of Intent to Deny [1 USCIS-PM E.6(F)].

³¹² In accordance with 8 CFR 213.1.

³¹³ See 8 CFR 213.1(a).

³¹⁴ See 8 CFR 103.2(b)(8)(iii). See Volume 1, General Policies and Procedures, Part E, Adjudications, Chapter 6, Evidence, Section F, Requests for Evidence and Notices of Intent to Deny [1 USCIS-PM E.6(F)].

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USCIS officers must explain the reasons for a finding of inadmissibility under the public charge ground based on the totality of the circumstances in the denial decision issued to the alien.³¹⁵ Every written denial decision issued by USCIS based on the totality of the circumstances analysis must reflect consideration of each of the factors in the public charge inadmissibility determination and specifically articulate the reasons for the officer's determination.³¹⁶

Chapter 11. Public Charge Bonds

If an alien is determined to be inadmissible based on the public charge ground,³¹⁷ but is otherwise admissible and eligible for adjustment of status, he or she may be admitted in the discretion of the Secretary of Homeland Security, after posting a suitable and proper bond.³¹⁸ Before an alien may post a public charge bond, USCIS must invite the alien to do so.³¹⁹ Public charge bonds are intended to hold the United States and all states, territories, counties, towns, municipalities, and districts harmless against aliens becoming public charges.³²⁰

This statutory language is further clarified by language used by the former Immigration and Naturalization Service and DHS on previous versions of public charge bond forms, which consistently stated from as early as the 1940s through to 2017 that a purpose of the bond was to “pay to the people of the United States, or to any state, territory, county, town, municipality, or district thereof...any or all charges or expenses arising” from the alien's use of public benefits.³²¹ The BIA has stated that public charge bonds are intended to ensure “that the alien will not in the future become a public charge.”³²² A public charge bond is issued with conditions prescribed by DHS,³²³ one such condition being that the alien not receive any means-tested public benefits while the bond is in effect.³²⁴

³¹⁵ See 8 CFR 103.3(a)(1)(i). For more information about the consideration of the totality of the circumstances, see Chapter 4, Prospective Determination Based on the Totality of the Circumstances [8 USCIS-PM G.4].

³¹⁶ For more information about the factors considered in a public charge inadmissibility determination, see Chapter 5, Statutory Minimum Factors [8 USCIS-PM G.5], Chapter 6, Affidavit of Support Under Section 213A of the INA [8 USCIS-PM G.6], and Chapter 7, Consideration of Any Current or Past Application for, Approval or Certification to Receive, and Receipt of Means-Tested Public Benefits [8 USCIS-PM G.7].

³¹⁷ See INA 212(a)(4).

³¹⁸ See INA 213. See 8 CFR 103.6 and 8 CFR 213.1.

³¹⁹ See 8 CFR 213.1(a).

³²⁰ See INA 213. See *Matter of Viado*, 19 I&N Dec. 252 (BIA 1985). This language has remained substantively unchanged since the Immigration Act of 1907. See Section 26 of the Act of February 20, 1907, Pub. L. 59-96, 34 Stat. 898, 907.

³²¹ See former Form I-354, Bond That Alien Shall Not Become a Public Charge. See former Form I-352, Immigration Bond (12/2017 version).

³²² See *Matter of Viado*, 19 I&N Dec. 252, 253 (BIA 1985).

³²³ See INA 213.

³²⁴ See 8 CFR 103.6(c)(1)(ii).

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If USCIS decides in its discretion that the alien may post a bond, USCIS will issue a Notice of Intent to Deny (NOID) in which it will invite the alien to submit a bond. No public charge bonds will be accepted from aliens applying for adjustment of status without an invitation from USCIS.

In the case of immigrant visa applicants, a bond will be accepted by USCIS only if USCIS receives notification that a consular officer requires the bond. USCIS may accept a public charge bond before the issuance of an immigrant visa upon the receipt of a request directly from a United States consular officer or upon the presentation by an interested person of a notification from the consular officer requiring the bond.³²⁵

A public charge bond is a type of immigration bond.³²⁶ A bond, including a public charge bond, is a contract between the United States (the obligee) and a natural person or a company (the obligor) who pledges a sum of money to guarantee a set of conditions imposed by the U.S. government concerning the alien (also called the principal).³²⁷

If the U.S. government invites the alien to post a public charge bond, and the alien posts the bond in the amount specified by USCIS and complies with all other requirements as provided in the form and form instructions, USCIS accepts the public charge bond and adjusts the applicant's status to that of a lawful permanent resident (LPR) despite the alien's inadmissibility.

A. Background

Historically, bond provisions started with states requiring certain amounts of money to be posted as assurance that an alien would not become a public charge.³²⁸ Beginning in 1893, immigration inspectors served on boards of special inquiry that reviewed exclusion cases of aliens who were likely to become public charges because they lacked funds or relatives or friends who could provide support.³²⁹ In these cases, the board of special inquiry usually

³²⁵ See 8 CFR 213.1(b).

³²⁶ There are many types of immigration bonds prescribed in the Immigration and Nationality Act (INA). Most immigration bonds are currently administered by U.S. Immigration and Customs Enforcement (ICE), and not USCIS. For example, ICE administers the voluntary departure bonds, delivery bonds, and order of supervision bonds. For more information on other immigration bonds, contact ICE.

³²⁷ See *Matter of Allied Fid. Ins. Co.*, 19 I&N Dec. 124, 125-26 (BIA 1984) (discussing the contractual nature of delivery bonds submitted under 8 CFR 103.6).

³²⁸ See *Mayor, Aldermen and Commonality of City of N.Y. v. Miln*, 36 U.S. 102 (1837) (upholding a New York statute that required vessel captains to provide certain biographical information about every passenger on the ship and further permitting the mayor to require the captain to provide a surety of not more than \$300 for each alien passenger to indemnify and hold harmless the government from all expenses incurred to financially support the alien and the alien's children).

³²⁹ See Immigration Act of 1892, Pub. L. 51-551, 26 Stat. 1084 (March 3, 1891), which created the Office of the Superintendent of Immigration within the U.S. Department of the Treasury. The Superintendent oversaw a new corps of U.S. immigration inspectors stationed at the country's principal ports of entry. See the USCIS Origins of Federal Immigration Service webpage.

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admitted the alien if someone could post bond or one of the immigrant aid societies would accept responsibility for the alien.

Bond provisions were codified in federal immigration laws in 1903.³³⁰ The present language of section 213 of the Immigration and Nationality Act (INA) has been in the law without significant variation since 1907.³³¹ Under Section 21 of the Immigration Act of 1917, an immigration officer could admit an alien if a suitable bond was posted.³³² Regulations implementing the public charge bond have been in place since at least 1947,³³³ and are currently found at 8 CFR 103.6 and 8 CFR 213.1. In 1970, Congress amended INA 213 to permit the posting of cash received by the U.S. Department of the Treasury (Treasury) and to eliminate specific references to communicable diseases of public health significance.³³⁴

With the passage of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) in 1996, Congress amended the section by adding a parenthetical that clarified that a bond may be requested in addition to, and not in lieu of, the Affidavit of Support Under Section 213A of the INA (Form I-864) and the deeming requirement under INA 213A.³³⁵

The 1999 Interim Field Guidance explained the IIRIRA changes to the public charge bond statute and noted that officers can offer public charge bonds as they had done in the past, but did not detail procedures for public charge bonds.³³⁶

The 2022 Final Rule added streamlined provisions to clarify acceptance, forms, and amount of USCIS public charge bonds, as well as cancellation of bonds.³³⁷

³³⁰ See Immigration Act of 1903, Pub. L. 57-162, 32 Stat. 1213 (March 3, 1903).

³³¹ See Section 26 of the Act of February 20, 1907, Pub. L. 59-96, 34 Stat. 898, 907.

³³² See Pub. L. 64-301, 39 Stat. 874, 876 (February 5, 1917).

³³³ See 29 FR 10579 (July 30, 1964) and 31 FR 11713 (Sept. 7, 1966). Prior to this, public charge bond regulations were published in 8 CFR 110.20-21 and 8 CFR 169. See, for example, the 1949 and 1947 versions of the CFR, available at [loc.gov](https://www.ecfr.gov).

³³⁴ See Immigration and Nationality Act Amendments of 1970, Pub. L. 91-313, 84 Stat. 413 (July 10, 1970). See 116 Cong. Rec. S 9957 (daily ed. June 26, 1970).

³³⁵ See Section 564(f) of Division C of Pub. L. 104-208, 110 Stat. 3009, 3009-684 (September 30, 1996). The Examinations Handbook included guidance on public charge bond processes and policies in Part VI, at VI-88 through VI-98 (October 1, 1988). After legacy Immigration and Naturalization Service (INS) retired the Examinations Handbook, INS's Operating Instructions provided guidance on the topic at Section 103.6 and 213.1 (November 1997). In 1998, INS removed the Operating Instructions and transferred the parts relating to immigration bonds to the Inspector's Field Manual, Chapter 45. Neither INS nor USCIS appear to have issued new guidance on the topic since that time. With the creation of the Adjudicator's Field Manual (AFM), USCIS incorporated existing public charge bond guidance into Chapter 61.1, but given the affidavit of support, the authority has rarely been exercised since the passage of IIRIRA.

³³⁶ See 64 FR 28689 (May 26, 1999).

³³⁷ See 87 FR 55472 (Sept. 9, 2022) (final rule). See 8 CFR 103.6 and 8 CFR 213.1.

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The 2026 Final Rule amended the regulations governing the cancellation and breach of public charge bonds to reflect the rescission of certain provisions from the 2022 Final Rule,³³⁸ and made amendments to more fully address when a public charge bond is breached and to explicitly address administrative appeals from a determination that the alien breached a bond.

B. Type of Bonds

Public charge bonds may generally be posted as:³³⁹

- A cash bond – This type of bond is posted as cash equivalent as specified by USCIS;³⁴⁰ or
- A surety bond – This type of bond is posted through a surety company certified by the Treasury.³⁴¹

Regardless of the type of public charge bond, the bond must be posted with USCIS by submitting a Public Charge Bond (Form I-945) in accordance with its instructions.³⁴²

Cash Bonds

A cash bond is secured by a deposit of the full face value of the bond. It can be posted by a company or a natural person. If an alien is given the opportunity to post a public charge bond, the bond should be paid in accordance with the Form I-945 instructions.

Once USCIS receives the funds, the money is held in a U.S. Treasury account until it is either forfeited due to breach or the bond is canceled. Funds used to secure a bond accrue interest at the rate set by the Treasury on the date the funds are received.³⁴³

Surety Bonds

A surety bond is a bond that is submitted on the alien's behalf by a company, which guarantees the payment of a certain amount of money if the alien fails to comply with the conditions set by the government as part of the bond. In the case of a surety bond, no cash is exchanged as part of the bond contract; only if and when the alien breaches the conditions of the bond will the surety company pay the promised amount of money to the government.

³³⁸ See 91 FR 45324 (Jul. 20, 2026) (final rule) (amending 8 CFR 103.6).

³³⁹ See 8 CFR 103.6.

³⁴⁰ See 8 CFR 213.1.

³⁴¹ See 8 CFR 103.6.

³⁴² See 8 CFR 103.2(a)(1).

³⁴³ See 8 CFR 293.1.

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Before a surety company can do business with any government entity, it must be certified by the Treasury.³⁴⁴ All certified companies are listed in a document entitled Circular 570.³⁴⁵ USCIS only accepts surety bonds from companies certified by the Treasury to post bonds.³⁴⁶

A surety company can execute a bond on its own or it can do so through authorized agents.³⁴⁷ To establish that an agent is an authorized agent who may act on behalf of the surety company, the agent must provide evidence of the authorization through a power of attorney that must comply with the state laws governing the jurisdiction in which it is executed.

This power of attorney is not the same as the Notice of Entry of Appearance as Attorney or Accredited Representative (Form G-28). Therefore, when submitting a public charge bond on behalf of a certified surety company, the agent must attach either an original power of attorney, or a true copy (as defined under applicable state law), to Form I-945.

If the agent³⁴⁸ also seeks to act in the capacity of an attorney or accredited representative of the surety company, the agent must also submit Form G-28.³⁴⁹

If the surety company posts bonds through an agent, the agent becomes a co-obligor. This means that the agent is jointly and severally liable for the bond amount. If the alien breaches the conditions of the bond, either the surety company or the agent or both can be held liable for and up to the amount of the bond.

Example

Immigration Bonds, Inc. provides public charge bond services on behalf of Bank B, a Treasury-certified surety company. When submitting a public charge bond, Immigration Bonds, Inc. must submit Form I-945 and an original or a true copy (as defined under applicable state law) of the power of attorney that complies with the state laws governing the jurisdiction in which the

³⁴⁴ See 31 U.S.C. 9304-9308. As part of the certification process, the Treasury ascertains the company's credit worthiness.

³⁴⁵ Circular 570 is available at the Treasury's Listing of Certified Companies webpage.

³⁴⁶ The Treasury certifies companies only after having evaluated a surety company's qualifications to underwrite federal bonds, including whether those sureties meet the specified corporate and financial standards. Under 31 U.S.C. 9305(b)(3), a surety (or the obligor) must be able to carry out its contracts and must comply with statutory requirements, including prompt payment of demands arising from an administratively final determination that the bond has been breached.

³⁴⁷ However, a surety bond cannot be posted by a person who is not an authorized agent for a certified company. For example, if an alien is offered the opportunity to post a public charge bond, the alien cannot submit a surety bond on his or her own behalf.

³⁴⁸ An agent or co-obligor may also act through his or her authorized representative, as defined in 8 CFR 1.2 and 8 CFR 292. Such a representative must submit Form G-28 on behalf of the agent or co-obligor.

³⁴⁹ If the Form G-28 is missing, but should have been submitted, USCIS should request the Form G-28 before proceeding.

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power of attorney was executed. The power of attorney demonstrates that Immigration Bonds, Inc. is authorized to submit the bond on behalf of Bank B.

By completing the Form I-945, the agent, Immigration Bonds, Inc., must sign as a co-obligor on the bond. If Immigration Bonds, Inc. also acts as Bank B's attorney or accredited representative, Immigration Bonds, Inc., would also have to submit a properly completed Form G-28. If the public charge bond is accepted, then Immigration Bonds, Inc. and Bank B become co-obligors on the public charge bond.

If the public charge bond is breached because the alien does not comply with the bond conditions, the U.S. government may collect from either Immigration Bonds, Inc. or Bank B or both to obtain the full face value of the public charge bond.

The following table illustrates the differences between the public charge cash and surety bonds.

Differences Between Cash and Surety Bonds

	Cash Bond	Surety Bond
Who can post it?	- Natural person, including the alien; or - Company or other entity	- Certified surety company; or - The certified surety company's authorized agent
The bond is posted by submitting what documents?	- Form I-945, completed in accordance with the form instructions; - Payment submitted according to the form's instructions; and - Form G-28, if necessary	- Form I-945, completed in accordance with the form instructions; - If submitted by an authorized agent of an acceptable surety company: power of attorney complying with state laws of governing jurisdiction in which the power of attorney was executed; and - Form G-28, if the agent is also acting in the capacity of an attorney or accredited representative
Is a payment submitted with the bond?	Yes, payment is submitted in accordance with Form I-945's instructions	No, no payment accompanies the bond submission
Can the bond have a co-obligor?	No	Yes, if the bond is submitted by an authorized agent of an acceptable surety company,

Differences Between Cash and Surety Bonds

	Cash Bond	Surety Bond
		the authorized agent becomes a co-obligor

C. Bond Amount

A public charge bond must be in an amount, of at least \$1,000, that is sufficient to hold harmless the United States and all states, territories, counties, towns, municipalities, and districts (hereinafter, “the government”) against the bonded alien becoming a public charge.³⁵⁰ USCIS determines the appropriate bond amount for each applicant on a case-by-case basis. The BIA has held that setting public charge bond amounts and conditions requires the same “determination of the likelihood of future events” as the inadmissibility determination and that the purpose of the bonds is “to assure that the alien will not in the future become a public charge.”³⁵¹

D. Bond Duration

USCIS only accepts public charge bonds of unlimited duration. This means that the bond will not expire, but instead remains in effect until one of the following events occurs:

- USCIS approves a substitute bond that replaces the bond originally posted;³⁵²
- USCIS cancels the bond;³⁵³ or
- USCIS determines that the bond is breached.³⁵⁴

E. Bond Stages

The decision to allow an alien who is inadmissible only on the public charge ground, and is otherwise eligible for adjustment of status, to submit a public charge bond is within USCIS’ discretion. The posting of a public charge bond by an applicant who is found to be inadmissible only on account of the public charge ground authorizes USCIS, upon accepting the bond, to

³⁵⁰ See INA 213. See 8 CFR 213.1(c).

³⁵¹ See *Matter of Viado*, 19 I&N Dec. 252, 253 (BIA 1985).

³⁵² For more information on bond substitution, see Chapter 13, Public Charge Bonds: Maintaining, Substituting, and Canceling Bonds, Section B, Substituting a Bond [8 USCIS-PM G.13(B)].

³⁵³ For more information on bond cancellation, see Chapter 13, Public Charge Bonds: Maintaining, Substituting, and Canceling Bonds, Section D, Canceling a Bond [8 USCIS-PM G.13(D)].

³⁵⁴ For more information on bond breach, see Chapter 13, Public Charge Bonds: Maintaining, Substituting, and Canceling Bonds, Section C, Breach of Bond [8 USCIS-PM G.13(C)].

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adjust the status of the applicant to that of an LPR. Before posting a public charge bond, USCIS must invite the alien to do so.³⁵⁵ No public charge bonds will be accepted from adjustment of status applicants without an invitation from USCIS.

The public charge bond is posted on such conditions as USCIS prescribes.³⁵⁶ This includes a condition stating that the bond is breached if the bonded alien receives any means-tested public benefit while the bond is in effect.³⁵⁷ If the applicant does not maintain all conditions of the public charge bond, the bond is breached, and the U.S. government will demand payment on the bond.

If the alien does not breach the bond and does comply with all conditions on the bond, and the bond is otherwise eligible for cancellation, then USCIS will cancel the bond upon the request from either the obligor or agent or co-obligor (the one who posted the bond), or the alien.³⁵⁸

The following table summarizes the various stages of a public charge bond.

Public Charge Bond Stages

Stage	For More Information
Posting and acceptance of a public charge bond	Chapter 12, Public Charge Bonds: Posting and Accepting Bonds [8 USCIS-PM G.12]
Maintenance of a public charge bond, including substitution	Chapter 13, Public Charge Bonds: Maintaining, Substituting, and Canceling Bonds, Section A, Maintaining Bonds [8 USCIS-PM G.13(A)] Chapter 13, Public Charge Bonds: Maintaining, Substituting, and Canceling Bonds, Section B, Substituting a Bond [8 USCIS-PM G.13(B)]
Breach of the public charge bond	Chapter 13, Public Charge Bonds: Maintaining, Substituting, and Canceling Bonds, Section C, Breach of Bond [8 USCIS-PM G.13(C)]
Cancellation of the public charge bond	Chapter 13, Public Charge Bonds: Maintaining, Substituting, and Canceling

³⁵⁵ See 8 CFR 213.1(a).

³⁵⁶ See INA 213.

³⁵⁷ See 8 CFR 103.6(c)(1)(ii).

³⁵⁸ See INA 213.

Public Charge Bond Stages

Stage	For More Information
	Bonds, Section D, Canceling a Bond [8 USCIS-PM G.13(D)]

Chapter 12. Public Charge Bonds: Posting and Accepting Bonds

A. Permission to Post Bond

A public charge bond may only be submitted by the alien applying for adjustment of status or on the alien's behalf after USCIS notifies the alien and the alien's representative (if any) that a public charge bond may be submitted. USCIS does not accept requests to submit a public charge bond or unsolicited public charge bonds that are submitted with an Application to Register Permanent Residence or Adjust Status (Form I-485) or while the application is pending.

Because public charge bonds are only made available in USCIS' discretion³⁵⁹ to aliens inadmissible only under the public charge ground and who are otherwise eligible for adjustment of status,³⁶⁰ the officer should adjudicate all aspects of the adjustment of status application before USCIS will consider whether the alien should be offered the opportunity to post a public charge bond.

B. USCIS Discretion to Offer a Bond

Providing the alien with the opportunity to post a public charge bond is wholly within the discretion of the Secretary of Homeland Security.³⁶¹ USCIS, therefore, determines whether to provide an adjustment of status applicant with the opportunity to post a public charge bond on a case-by-case basis and based on the facts of each individual case.³⁶² Not every otherwise eligible alien inadmissible under the public charge ground will receive this opportunity, depending on the facts of the case. Generally, aliens inadmissible under the public charge ground should not be allowed to post a bond and be approved for adjustment of status given Congress' statement of national policy that aliens within the United States should not depend on public resources to meet their needs.³⁶³

An officer should consider all relevant factors and information, including the officer's determination of an appropriate bond amount were they to invite the alien to submit one. If an officer determines that an appropriate bond amount would exceed \$100,000 (based on the

³⁵⁹ See INA 213.

³⁶⁰ See INA 213. See 8 CFR 213.1.

³⁶¹ Or in the case of an immigrant visa applicant, the Secretary of State. See INA 213.

³⁶² See INA 213. See 8 CFR 213.1.

³⁶³ See 8 U.S.C. 1601(2).

estimated value of the public benefits likely to be received by the alien while the bond is in effect), this would be a negative factor in the discretionary determination. The projected receipt of means-tested benefits in such a high amount is indicative of a very high level of likely dependence, a risk that the value of public benefits received by the alien during the bond period would significantly exceed the value of the bond, and potentially (depending on the circumstances) a high likelihood that the alien would continue receiving a high level of government support after the end of the bond period.

USCIS views bonds as an effective way to provide a safeguard to hold the government harmless against the alien receiving means-tested public benefits, and to discourage such receipt by aliens, during the period when the bond is in effect.

USCIS does not offer the opportunity to post a public charge bond if the adjustment application would be denied on any other basis, including discretionary grounds. Moreover, no opportunity to submit a bond should be offered to any alien that is currently receiving any means-tested public benefits.³⁶⁴

1. Public Charge Bond Amounts

The purpose of the public charge bond is to hold the government harmless if an alien becomes a public charge after adjusting to lawful permanent resident (LPR) status while the bond is in effect.

A public charge bond must be at least \$1,000 and provided in such an amount that it will hold harmless the government against the alien becoming a public charge.³⁶⁵ By “hold harmless,” USCIS means that the bond amount should be set based on the value of the public benefits likely to be received by the alien.³⁶⁶ By setting a bond amount at or above the value of the public benefits likely to be received by the alien while the bond is in effect, the bond also helps achieve the deterrent effect identified by the BIA, that the alien “not in the future become a public charge.”³⁶⁷

USCIS determines the appropriate bond amount for each alien on a case-by-case basis. USCIS considers the same factors listed in section 212(a)(4)(A) of the Immigration and Nationality Act (INA), as well as the record as a whole in the totality of the circumstances, when making a determination of the bond amount. The stronger the likelihood that the alien will become a public charge and the greater the anticipated value of the benefits likely to be received by the alien (in the opinion of USCIS when considering these factors), the higher the bond amount.

³⁶⁴ Such an alien would be in immediate breach of the bond conditions.

³⁶⁵ See INA 213. See 8 CFR 213.1.

³⁶⁶ See 8 CFR 213.1(c). See INA 213.

³⁶⁷ See *Matter of Viado*, 19 I&N Dec. 252, 253 (BIA 1985). Logically, if the cost to the alien of breaching the bond is equal to or greater than the value of the means-tested public benefits the alien would receive, there would be a strong disincentive for the alien to breach the bond.

To assist officers in determining appropriate bond amounts, USCIS developed three categories of aliens to estimate the amount of certain means-tested public benefits an alien applying for adjustment of status could receive over a 5-year period³⁶⁸ after adjustment:

- Single/Married Adult with Children;
- Single/Married Adult without Children; and
- Child.³⁶⁹

2. Determining Public Charge Bond Amount for Bonds Accepted On or After September 18, 2026

The below table presents the estimated³⁷⁰ amount of benefits for each category—Single/Married Adult with Children, Single/Married Adult without Children, and Child—through year 5 after adjustment, calculated as the median³⁷¹ of the average amounts that these aliens could receive from the following means-tested public benefits analyzed for the purposes of this table over a 5-year period after adjustment.³⁷² Other means-tested public benefits may also be considered under the 2026 Public Charge Final Rule:

³⁶⁸ This approach assumes that the new LPRs are eligible to receive such benefits during the 5-year period. USCIS estimates the amount of benefits received for up to 5 years because the median timeframe for an alien, including aliens who may not be subject to the public charge ground of inadmissibility, with an approved Form I-485 who later files for naturalization using Application for Naturalization (Form N-400) is 5 years.

³⁶⁹ USCIS limited the categories to these three because most public benefits programs offer similar benefit levels to single or married aliens, older aliens, or aliens with disabilities. The primary distinction in the amount of public benefits received is whether an adult alien has children. See the U.S. Department of Health and Human Services report, “How Many People Participate In the Social Safety Net?”

³⁷⁰ To estimate the amounts presented in this section, the average annual enrollment and average annual payments for each public benefits program were calculated using a five-year average. For each category, the estimate is based on the median value of these averages across the relevant programs, rather than the sum of all programs. The median is used because it provides a more accurate representation of what an individual or household may experience and reduces the impact of unusually high or low estimates from specific programs.

³⁷¹ It is uncommon for an alien adjusting status to use more than 3 benefits simultaneously, making the median a reasonable measure. While multiple benefit use is common among low-income families with children, approximately 41 percent of families receive 1 to 2 benefits, 16 percent receive 3 benefits, and 20 percent receive 4 or more. Most families receiving 1 to 3 benefits typically access food assistance and public health insurance, such as Medicaid and SNAP, with limited use of other public benefits. For more information see, Urban Institute, “Characteristics of Families Receiving Multiple Public Benefits.”

³⁷² Independent, peer-reviewed studies commonly categorize these programs together as core public benefit programs. They are major government programs that are highly utilized and often included in analyses of public benefit programs. While there are additional Federal, State, and local benefits that aliens may be eligible to receive which could result in a higher total benefit amount than what is presented, USCIS cannot quantify the number of individuals receiving benefits across all means-tested public benefits programs and considers the limitation to these specific Federal benefits to be reasonable.

- Medicaid;³⁷³
- Children's Health Insurance Program (CHIP);
- Special Supplemental Nutrition Program for Women, Infants, and Children (WIC);
- Supplemental Nutrition Assistance Program (SNAP);
- Temporary Assistance for Needy Families (TANF);
- Supplemental Security Income (SSI); and
- Federal Rental Assistance.³⁷⁴

Officers may consider this table when setting an appropriate public charge bond amount in their discretion for adjustment of status applications filed or electronically submitted on or after September 18, 2026. Officers should also consider the number of years the alien is likely to receive public benefits, based on the totality of the circumstances, to determine the appropriate bond amount.

Estimated Amounts of Certain Means-tested Public Benefits Received Per Person For Benefits Considered Under the 2026 Public Charge Final Rule

Categories	Total Annual Benefit per Person Year 1	Total Annual Benefit per Person Year 2	Total Annual Benefit per Person Year 3	Total Annual Benefit per Person Year 4	Total Annual Benefit per Person Year 5
Single/Married Adult with Children³⁷⁵	\$8,400	\$16,800	\$25,200	\$33,600	\$42,000

³⁷³ The data reflected for Medicaid depicts enrollment activity for all populations receiving Medicaid benefits in all states. This may include individuals receiving Emergency Medicaid. However, Emergency Medicaid only covers treatment for emergency medical conditions and does not provide comprehensive Medicaid benefits. These emergency benefits can be accessed by aliens who meet eligibility requirements, regardless of immigration status.

³⁷⁴ Federal Rental Assistance includes HUD Section 8 Project-based Rental Assistance, HUD Section 8 Housing Choice Vouchers, HUD Public Housing, HUD Section 202/811, and USDA Section 521.

³⁷⁵ Inclusive of Medicaid, CHIP, SNAP, TANF, SSI, and Federal Rental Assistance. WIC was not included in this estimate since its enrollment is targeted towards pregnant women, breastfeeding women, postpartum women, infants up to 1 year old, and children up to 5 years old. While an individual cannot be simultaneously enrolled in TANF and SSI, they may alternate between the two programs as their eligibility changes. For example, an individual may exhaust their TANF eligibility but, due to an ongoing medical condition that prevents them from working, may become eligible to shift to SSI.

Estimated Amounts of Certain Means-tested Public Benefits Received Per Person For Benefits Considered Under the 2026 Public Charge Final Rule

Categories	Total Annual Benefit per Person Year 1	Total Annual Benefit per Person Year 2	Total Annual Benefit per Person Year 3	Total Annual Benefit per Person Year 4	Total Annual Benefit per Person Year 5
Single/Married Adult without Children³⁷⁶	\$10,686	\$21,372	\$32,058	\$42,744	\$53,430
Child³⁷⁷	\$5,640	\$11,280	\$16,920	\$22,560	\$28,200

This table is intended solely as a helpful resource for officers as they determine an appropriate bond amount. There may be instances when the median amount for the benefits listed in the table above is not as useful to officers in setting an appropriate bond amount because it would be lower than the value of benefits likely to be received by the alien while the bond is in effect.

For example, while the average recipient of means-tested public benefits may be enrolled in one or two benefits programs, TANF recipients have the highest level of means-tested public benefit receipt, with families receiving an average of at least three or more benefits,³⁷⁸ such as SNAP, housing assistance, and Medicaid.³⁷⁹ If an alien reported on his Form I-485 that he received

³⁷⁶ Inclusive of Medicaid, SNAP, SSI, and Federal Rental Assistance. CHIP, TANF, and WIC are not included in this estimate. CHIP is strictly designed for children under 19 and sometimes pregnant individuals. TANF is generally for families with children to help support children and their caregivers. WIC was not included in this estimate since its enrollment is targeted towards pregnant women, breastfeeding women, postpartum women, infants up to 1 year old, and children up to 5 years old.

³⁷⁷ Inclusive of Medicaid, CHIP, SNAP, TANF, WIC, and SSI. For these programs a child can participate even if his or her parent and/or guardian do not qualify for the program. The parent and/or guardian would apply on the child's behalf; however, only the child is eligible for receipt of the benefit. Most children are eligible for these programs; however, CHIP covers children up to age 19, TANF extends up to age 19 if the child is still in high school, WIC is limited to children up to age 5, and SSI extends up to age 22 if the child is regularly attending school and meets disability criteria. SNAP is included because an ineligible parent may apply on behalf of an eligible child. Medicaid and CHIP are both included in this estimate because Medicaid generally covers children from lower-income families, while CHIP covers children from families with incomes too high for Medicaid, but too low to afford private coverage. While a child cannot be simultaneously enrolled in Medicaid and CHIP, he or she can alternate between the two programs, for example, if his or her parent and/or legal guardian's income levels change.

³⁷⁸ About 95 percent of TANF recipient households received assistance from 3 or more programs. See American Institute for Economic Research, "The Work vs Welfare Tradeoff Revisited: Explaining Welfare Benefits at the State level." See Urban Institute, "Characteristics of Families Receiving Multiple Public Benefits." See Department of Commerce, Census Bureau, "Temporary Assistance for Needy Families (TANF): 2022."

³⁷⁹ See American Institute for Economic Research, "The Work vs Welfare Tradeoff Revisited: Explaining Welfare Benefits at the State level."

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TANF, the median amount in the table above may be lower than the appropriate bond amount as the alien could be expected to receive a wider variety and therefore higher overall value of benefits. This contrasts with SNAP recipients, where over 80 percent receive only one or two means-tested public benefits.³⁸⁰

The median may also be too low a starting point for setting an appropriate public charge bond amount if a recipient receives Medicaid and/or SSI benefits, as the estimated annual benefit for Medicaid (\$15,420)³⁸¹ and SSI (\$12,024)³⁸² exceeds the median. Additionally, SNAP participants often received health insurance through Medicaid/CHIP³⁸³ and 82 percent of SSI recipient households were also covered by Medicaid/CHIP and 64 percent received SNAP.³⁸⁴

Conversely, the median may be too high if a recipient receives only WIC, as the estimated annual benefit for WIC (\$576) is well below the median. However, approximately 80.4 percent of recipients approved for WIC benefits also receive SNAP, Medicaid, and/or TANF.³⁸⁵

Officers may consider this table and the evidence in the totality of the alien's circumstances, including the likelihood of an alien receiving multiple means-tested public benefits and institutionalization at government expense when determining a public charge bond amount.³⁸⁶ This table does not include the costs of institutionalization at government expense. If an alien were to be institutionalized at government expense, the value of that benefit annually is estimated at \$109,860 (under Medicaid).³⁸⁷ As noted above, if an alien is projected to receive such a high value of public benefits, it is a negative factor in the determination as to whether the inadmissible alien should be offered the opportunity to submit a bond. Officers may, in their discretion and based on the totality of the alien's circumstances, set a public charge bond amount lower or higher than the estimates reflected in the table above.

³⁸⁰ Urban Institute, "Characteristics of Families Receiving Multiple Public Benefits."

³⁸¹ USCIS Analysis of Medicaid - Data on Medicaid Per Capita Expenditures, "Medicaid Per Capita Expenditures, CY 2023, Median Total."

³⁸² USCIS Analysis of U.S. Social Security Administration, Office of Research, Statistics, & Policy Analysis. Annual Report of the Supplemental Security Income Program, 2024 and SSI Recipients by State and County.

³⁸³ Medicaid and SNAP target low-income individuals, and many individuals receive benefits through both programs. In 2022, approximately eighty percent of SNAP recipients had health insurance through Medicaid or CHIP. See Department of Commerce, Census Bureau, "Supplemental Nutrition Assistance Program (SNAP): 2022."

³⁸⁴ See Department of Commerce, Census Bureau, "Supplemental Security Income (SSI): 2022."

³⁸⁵ USDA, "WIC Participant and Program Characteristics 2022 Final Report."

³⁸⁶ In considering an alien's likelihood of being institutionalized at government expense, an officer must not make health diagnoses and should generally defer to the medical examination results provided by a civil surgeon or a panel physician. See Chapter 5, Statutory Minimum Factors, Section B, Health [8 USCIS-PM G.5(B)].

³⁸⁷ The estimated median per diem Medicaid cost for nursing home residents in 2019 was \$240 per day. Adjusted to June 2025 dollars, this amount is estimated to be \$301 per day (rounded). Calculation: \$301 (estimated costs per day) x 365 (number of days per year) = \$109,860 (rounded). USCIS analysis of U.S. Department of Health and Human Services, Office of Behavioral Health, Disability, and Aging Policy, "Assessing Medicaid Payment Rates and Costs of Caring for the Medicaid Population Residing in Nursing Homes," June 2024.

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C. Inviting an Alien to Submit a Public Charge Bond

If USCIS determines that giving the adjustment of status applicant the opportunity to submit a public charge bond is warranted, as a matter of discretion,³⁸⁸ USCIS will provide the opportunity to submit Public Charge Bond (Form I-945) by issuing a Notice of Intent to Deny (NOID). The NOID should discuss, at a minimum, all of the following items:

- That the alien has been found inadmissible on the public charge ground and the reason(s) why;
- That USCIS decided to favorably exercise its discretion to allow the alien to submit a public charge bond, which would permit, if accepted, the alien to adjust status to that of an LPR;
- The public charge bond amount;
- That the bond must be posted by submitting Form I-945 completed in accordance with the form's instructions;
- The due date (postmark date), that is, by when Form I-945 must be submitted to USCIS;
- The consequences for failure to respond to the notice and for the failure to submit Form I-945, in accordance with the form's instructions. In particular, the NOID should specify that the public charge bond will be rejected or deemed insufficient, and that the adjustment of status will be denied, if the bond is not properly submitted in accordance with the instructions; and
- Any additional information required to properly post the bond.

D. Assessing the Sufficiency of a Submitted Public Charge Bond

Once the public charge bond is submitted, USCIS should determine whether the bond was properly completed as outlined in the form's instructions and the NOID, and that the appropriate bond amount has been paid. The bond is not effective until USCIS accepts the bond.

³⁸⁸ To perform a discretionary analysis, USCIS weighs all positive factors present in a particular case against any negative factors in the totality of the circumstances. Some examples of discretionary considerations include: close family ties in the United States, community standing, length of lawful residence in the United States, evidence of respect for law and order, and violations of immigration law. For more information on the use of discretion in adjudications, see Volume 1, General Policies and Procedures, Part E, Adjudications, Chapter 8, Discretionary Analysis [1 USCIS-PM E.8].

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A public charge bond is a contract between the U.S. government (USCIS) and the obligor. A contract is generally not effective until both parties accept the contract. USCIS accepts a bond when the designated USCIS authority signs the public charge bond on behalf of the U.S. government.³⁸⁹

In general, before a public charge bond can be endorsed with the signature of the authorized designated authority, USCIS must ensure that the public charge bond meets the regulatory requirements,³⁹⁰ is submitted in accordance with instructions outlined in the form's instructions and the NOID, and that the appropriate bond amount has been paid. Otherwise, the bond may be rejected upon submission or ultimately deemed insufficient.

Additionally, the conditions of the public charge bond are outlined in Form I-945 and in the NOID issued by USCIS. The obligor submitting the Form I-945 may not alter these terms in any way. USCIS does not accept a public charge bond as sufficient and acceptable if:

- The obligor or alien submits the Form I-945 with an attachment or rider that contains additional conditions or otherwise alters the terms of the public charge bond;³⁹¹
- The obligor physically alters the terms contained on Form I-945;³⁹² or
- The obligor submits the bond on a contract other than Form I-945.³⁹³

1. Accepting the Bond

If USCIS determines that the public charge bond meets the regulatory requirements, the requirements outlined in the form's instructions, and in the NOID, USCIS may forward the public charge bond documentation to the designated USCIS authority for signature and acceptance of the public charge bond. Once the bond is signed and accepted, USCIS must issue a receipt.

2. Issuing a Receipt for Accepted Bonds

Once the bond is signed by the designated USCIS authority and accepted, the obligor, the authorized agent (in the case of a surety bond), any representative, and the alien and the alien's

³⁸⁹ Officers tasked with evaluating the public charge bond should consult with their supervisory chain to determine to whom to forward a public charge bond so that it can be signed by the designated USCIS authority.

³⁹⁰ See 8 CFR 213.1.

³⁹¹ This is the case even if the obligor generally agrees with the Form I-945 terms but suggests that the contract cover additional conditions. USCIS cannot accept a bond under conditions other than those outlined in Form I-945 and the NOID.

³⁹² For example, the obligor may not strike any of the text on Form I-945 or the obligor may not add any text in writing to the Form I-945. In particular, the obligor may not use the overflow section in Form I-945 to add terms or alter the obligation imposed with Form I-945.

³⁹³ This is the case even if the document submitted by the obligor contains the same text as Form I-945 and the terms as outlined in the NOID but are on a document other than the Form I-945.

representative, if any, are notified that the bond has been accepted. USCIS should also provide a receipt to the obligor and a copy of the receipt to the applicant and his or her representative (if any).

Because USCIS accepted the public charge bond, the officer adjudicating the adjustment of status application should proceed with the final adjudication of the adjustment of status application. If the alien is otherwise eligible for adjustment of status at the time the public charge bond is accepted by USCIS, then the adjustment of status application may be approved.³⁹⁴ If the officer determines, after the acceptance of the bond, that the adjustment of status application should be denied, USCIS will return the bond, notify the obligor and all parties involved, and retain a copy of the communication in the file. If the public charge bond has been secured by a cash deposit or a cash equivalent, USCIS must refund the cash deposit and any interest accrued to the obligor along with the communication.

3. Bond Not Accepted

If the public charge bond does not meet the regulatory requirements, the requirements outlined in the form's instructions, or in the NOID, USCIS cannot accept the public charge bond and denies the adjustment of status application. The denial decision will include a discussion of how the bond did not meet the regulatory requirements.

Chapter 13. Public Charge Bonds: Maintaining, Substituting, and Canceling Bonds

A. Maintaining Bonds

Once an alien has adjusted his or her status to that of a lawful permanent resident (LPR), USCIS must ensure that the bond continues to be enforceable during the bond's validity. Additionally, an obligor, agent or co-obligor, or the alien may experience a change of address, or the obligor or the alien may wish to substitute the bond.

USCIS will send a copy of any communication with the obligor, the obligor's representative, if any, the agent or co-obligor, and the agent or co-obligor's representative, if any, to the alien, and the alien's representative, if any.³⁹⁵ For that reason, any communication relating to the review of the bond should ordinarily be in writing.

If the officer has to communicate with any of the parties involved in the bond orally, USCIS generally transcribes the communication, and sends a copy of the transcribed communication to all parties involved. USCIS also retains a copy of the communication in the alien's file.

³⁹⁴ For more information about adjustment of status, please see Volume 7, Adjustment of Status [7 USCIS-PM].

³⁹⁵ See Public Charge Bond (Form I-945).

B. Substituting a Bond

An alien or an obligor may have an interest in having the bond substituted at any time. For example, an alien may have found a different obligor who provides the alien better financial terms and conditions for purposes of a public charge bond submission. Another example would be if the obligor would like to be released from the public charge bond obligation and therefore, asks the alien to seek a new obligor.

Acceptance of the Substitute Bond

A public charge bond on file with USCIS may be substituted. A substitute bond may either be submitted by the original obligor or a new obligor on behalf of the alien. A substitute bond is submitted on Public Charge Bond (Form I-945) and completed in accordance with the form's instructions.³⁹⁶

When USCIS is reviewing the sufficiency of the substitute bond, USCIS ensures that the following requirements are met before presenting the public charge bond to the designated USCIS authority for signature and acceptance of the bond:

- The bond must meet all of the requirements applicable to the initial bond; and
- The bond must cover all liabilities that the initial obligor incurred, including any breach of the bond conditions, before USCIS accepts the substitute bond. The reason for this requirement is that USCIS may not learn of a breach until after the expiration or cancellation of the bond previously submitted to USCIS. Form I-945 includes this requirement as a term of the condition. When USCIS is verifying the sufficiency of the substitute public charge bond, USCIS must ensure that no text on the Form I-945 has been altered before USCIS accepts the form by having it signed by the designated USCIS authority.

In addition, USCIS follows the steps outlined in this part,³⁹⁷ addressing the acceptance of a public charge bond when reviewing the substitute public charge bond for sufficiency.

If USCIS determines that the substitute bond is sufficient, the officer should forward the public charge bond for acceptance by the designated USCIS authority for signature. The substitute bond is effective on the day it is signed by the designated USCIS authority. USCIS should proceed with issuing the receipt as outlined in this part.³⁹⁸

³⁹⁶ See 8 CFR 103.2(a)(1).

³⁹⁷ See Chapter 12, Public Charge Bonds: Posting and Accepting Bonds [8 USCIS-PM G.12].

³⁹⁸ See Chapter 12, Public Charge Bonds: Posting and Accepting Bonds, Section D, Assessing the Sufficiency of a Submitted Public Charge Bond, Subsection 2, Issuing a Receipt for Accepted Bonds [8 USCIS-PM G.12(D)(2)].

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As part of the acceptance of the new public charge bond, USCIS cancels the bond being substituted, releases any prior obligors from liability, and accepts the substitute bond. A copy of the communication must be sent to all parties involved. If the bond that is returned to the obligor was a cash bond, USCIS must return the original bond amount and any interest accrued to the obligor of the bond being substituted.

If the substitute bond submitted is insufficient, USCIS generally notifies the obligor of the substitute bond so that the obligor may correct the deficiency or deficiencies within the timeframe stipulated in USCIS' notice. This notice should not only be sent to the new obligor, but all parties involved, including the obligor and agent or co-obligor, if any, on file (the bond to be substituted), the agent or co-obligor of the substitute bond, the alien, and any representative of any of the parties involved. If the deficiency is not corrected within the timeframe specified, the bond currently on file remains in effect.

C. Breach of Bond

A condition of the bond is that the alien not receive means-tested public benefits.³⁹⁹ A bond may be breached for non-compliance of any condition imposed on the public charge bond.⁴⁰⁰ While use of a single means-tested public benefit in any amount is sufficient for a bond breach, it is not synonymous with becoming a public charge. Bond breach conditions are specified on the bond form and in the regulations.⁴⁰¹

1. Investigation

USCIS may learn of a potential bond breach from various sources, including Federal and State benefit-granting agencies. USCIS may also learn of a potential bond breach from information provided by the alien as a part of the bond cancellation request. Aliens may also provide information suggesting that they breached a public charge bond on other forms submitted to USCIS. Regardless of the source of the information, USCIS investigates any credible allegation of a public charge bond breach.

Handling Information Prohibited from Disclosure to the Obligor

When investigating the information received about public benefits receipt, USCIS is required to send all communications relating to the bond to all parties involved, including the obligor, the agent or co-obligor, and all parties' representatives, if any. Before sending any communication regarding the bond breach, USCIS consults the Office of the Chief Counsel (OCC) to determine

³⁹⁹ See Chapter 2, Key Concepts, Section C, Receipt (of Public Benefits) [8 USCIS-PM G.2(C)]. See 8 CFR 103.6(c)(1)(ii). For bonds accepted prior to September 18, 2026, the regulations in place and the conditions of the bond at that time continue to govern.

⁴⁰⁰ See INA 213.

⁴⁰¹ See 8 CFR 103.6(c)(1)(ii).

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whether any information USCIS has would be protected by law from the disclosure to the obligor.

If the information may not be disclosed by law, USCIS may not address it in the communication or use it for purposes of the public charge breach determination. Information that is not prohibited from disclosure should be included in the communication to all parties.

2. Adjudication

A bond breach exists because the alien did not comply with the conditions of the bond; however, USCIS must declare the bond breached by notifying the obligor. Before the bond can be declared breached, USCIS must determine whether the information supports a finding that any conditions imposed by the bond were breached.

If USCIS finds that there is insufficient information to determine whether a breach occurred, USCIS should request additional information from the alien or the obligor. However, if the evidence USCIS possesses supports a finding of a breach, then USCIS should inform the obligor and an agent or co-obligor of USCIS' intention to declare the bond breached by issuing a Notice of Intent to Declare the Public Charge Bond Breached. The notice must, at a minimum, comply with the following guidelines:

- Be sufficiently specific to give the obligor or the agent or co-obligor the opportunity to respond and submit rebuttal evidence;
- Include all information in the record that supports the breach determination and is by law permitted to be disclosed to the obligor or agent or co-obligor. Any information that is prohibited, by law, from being disclosed should be redacted and may not be used to support the bond breach determination. USCIS should consult OCC before sending the notice to avoid inadvertent disclosure; and
- Include a date by when the obligor must respond and submit rebuttal evidence.

USCIS must also send a copy of any notification to the obligor or co-obligor regarding the breach to the alien and the alien's representative, if any.

3. Determination

After receiving the obligor's response to the Notice of Intent to Declare the Public Charge Bond Breached, USCIS determines whether the obligor's response and any evidence submitted to rebut the initial breach determination is sufficient to overcome USCIS' initial determination that the bond was breached.

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If the obligor or agent or co-obligor has not provided sufficient evidence to rebut USCIS' determination that the public charge bond was breached or if the obligor did not respond by the date required in the Notice of Intent to Declare the Public Charge Bond Breached, USCIS declares the bond breached, and informs the obligor and agent or co-obligor, if any, of the right to appeal the bond breach determination. USCIS must provide a copy of the determination to all parties involved in the bond.

If the information provided in the response reveals that the alien has not breached the public charge bond conditions, the public charge bond remains in place. USCIS must provide a copy of the determination to all parties involved in the bond.

4. Appeal of Breach Determination

An obligor⁴⁰² may appeal a breach determination to USCIS' Administrative Appeals Office (AAO) by filing a Notice of Appeal or Motion (Form I-290B) together with the appropriate fee and required evidence.⁴⁰³ If the obligor fails to appeal the bond breach determination within the requisite appeal period, or if the appeal is filed untimely, the bond breach determination becomes administratively final unless a motion is granted to reopen or reconsider the proceedings, if permitted under the regulations.

If the obligor appeals the bond breach determination in a timely fashion, USCIS reviews the decision before the appeal is forwarded to the AAO.⁴⁰⁴ If an appeal is warranted, USCIS may treat the appeal as a motion and then take favorable action, which would resolve the appeal. USCIS may reopen a proceeding or reconsider a decision on their own motion.⁴⁰⁵

If the officer is not inclined to take a favorable action, the appeal should be forwarded to the AAO for a decision on the obligor's appeal.

5. Collecting Bond Amount

An administratively final determination that a bond has been breached creates a claim in favor of the United States. The claim may not be released or discharged by an immigration officer.

Cash Bonds

In a cash bond, the actual face value of the bond is deposited with USCIS to be held in case of a bond breach. Upon an administratively final decision that the bond has been breached, the money that was deposited for purposes of the bond becomes the means to satisfy the claim that

⁴⁰² The obligor includes the term agent or co-obligor.

⁴⁰³ See 8 CFR 103.3.

⁴⁰⁴ See 8 CFR 103.3(a)(2).

⁴⁰⁵ See 8 CFR 103.5(a)(5)(i).

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the bond breach created in favor of the U.S. government. At that time, the entire bond amount is forfeited by the obligor. However, USCIS must return the interest accrued on the deposited amount.⁴⁰⁶ After all business is concluded, the obligor is released from the public charge bond.

Surety Bonds

In a surety bond, no cash is exchanged as part of the bond contract when the bond is posted.⁴⁰⁷ Only if the bond is breached will the surety company be required to pay the promised amount of money to the U.S. government. A surety company (or the obligor) must carry out its contracts and comply with statutory requirements, including prompt payment of demands arising from an administratively final determination that the bond had been breached.⁴⁰⁸ USCIS applies the government-wide nonprocurement suspension and debarment procedures found in 2 CFR Part 180 to public charge surety bonds.⁴⁰⁹

D. Canceling a Bond

In general, a public charge bond has to remain in place until the bond can be canceled and USCIS determines that the bond has not been breached.⁴¹⁰

1. Request to Cancel

In general, until either the obligor or the alien has filed a request to cancel the bond and USCIS has favorably adjudicated it, the bond remains in effect.⁴¹¹

The request to cancel the public charge bond must be submitted on a Request for Cancellation of Public Charge Bond (Form I-356). The request must be completed and submitted in accordance with the form's instructions and accompanied by the appropriate fee, if applicable.⁴¹²

Because the form may be submitted either by the obligor or the alien, Form I-356 has several parts that must be completed either by the obligor (the person who has posted the bond) or by the obligor's authorized agent (co-obligor, for surety companies only) who posted the bond on

⁴⁰⁶ See 8 CFR 293.1.

⁴⁰⁷ See Chapter 11, Public Charge Bonds, Section B, Type of Bonds [8 USCIS-PM G.11(B)].

⁴⁰⁸ See 31 U.S.C. 9305(b)(3).

⁴⁰⁹ See 2 CFR Part 3000, in which DHS adopts the Office of Management and Budget Guidance found in subparts A through I of 2 CFR Part 180.

⁴¹⁰ Cancellation of a bond submitted prior to the effective date of the 2026 Final Rule would be based on the version of 8 CFR 103.6 (2023) established by the 2022 Final Rule and the terms and conditions from the version of Form I-945 accepted by USCIS.

⁴¹¹ See 8 CFR 103.6(c)(1).

⁴¹² See 8 CFR 103.5.

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behalf of the alien, or by the alien. If the alien is deceased, the executor of the alien's estate may complete the alien's part on behalf of the alien.

Therefore, it is possible that a cancellation request is submitted without the obligor or any agent or co-obligor, or the alien (or the alien's executor) knowing about it. In the form instructions, USCIS encourages completion of the entire form by all parties before it is submitted. However, it is possible for a request to be submitted when only partially completed, particularly when one party has requested cancellation of the bond without informing or including the other parties in the cancellation request.

Missing Information from the Alien

If the obligor (or the agent or co-obligor) submits the cancellation request but the request does not contain the information from the alien required to cancel the bond, the officer should do the following:

- Copy the request for cancellation of the public charge bond form for all parties involved;
- Send the original request received from the obligor to the alien for completion of his or her parts of the bond cancellation request form, including signature parts;
- Specify the date when the alien's response is due (for purposes of calculating the response due date, the officer should follow USCIS guidance on the issuance of a Request for Evidence); and
- Send a copy of the communication to the obligor and the agent or co-obligor and any representative, even though the request originated from the obligor or agent or co-obligor.

If the alien fails to respond to the communication within the timeframe stipulated, the officer should deny the request to cancel the public charge bond. This denial is without prejudice to the filing of another cancellation request.

Missing Information from Obligor

If the request to cancel the bond is submitted by the alien without involvement of the obligor, USCIS officers should evaluate the information contained in the request to cancel the bond and proceed with the cancellation adjudication. If the alien's information reveals that the bond may have been breached, the officer is required to notify the obligor through a Notice of Intent to Declare the Public Charge Bond Breached and share the information provided by the alien, to the extent permissible by law. This provides sufficient notice to the obligor of the alien's request to cancel the bond, and the opportunity to rebut any derogatory information regarding a possible bond breach.

2. Adjudicating the Request

An alien or obligor may request that USCIS cancel the public charge bond if the alien:

- Died (as evidenced by a certified copy of a death certificate, provided the alien did not breach the bond before death);
- Permanently departed the United States (provided the alien did not breach the bond before departure);
- Naturalized or otherwise obtained U.S. citizenship (provided the alien did not breach the bond before naturalization); or
- Reached his or her 5-year anniversary since admission or becoming an LPR (provided the alien did not breach the bond).

The obligor and the alien must always demonstrate that the bond has not been breached before the cancellation of the public charge bond by USCIS.⁴¹³

Form I-356 lists the pertinent information that the alien has to provide to establish that the bond be canceled.

If there is insufficient information to determine whether a breach occurred, or whether the cancellation requirements are met, USCIS may request additional information from the alien or the obligor.

3. Special Considerations Related to Permanent Departure

USCIS must approve the request to cancel the public charge bond if the alien has not breached the public charge bond and permanently departed the United States.⁴¹⁴

An alien is considered to have permanently departed if the alien has:

- Lost or abandoned LPR status, whether involuntarily by operation of law or voluntarily; and
- Is physically outside the United States.

An alien must establish that both elements have been met before USCIS cancels the bond.

⁴¹³ See Instructions for Request for Cancellation of Public Charge Bond (Form I-356). See 8 CFR 103.6(c)(1)(ii).

⁴¹⁴ See INA 213.

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For these purposes, an alien is deemed to have involuntarily lost LPR status by operation of law only if the alien lost his or her status:

- In removal proceedings with the entry of a final order of removal; or
- Through rescission of adjustment of status.

If an alien loses his or her LPR status through operation of law, the alien would be required to provide evidence of the loss of status by submitting evidence of the official determination of loss of LPR status before USCIS can cancel the bond.

Generally, determining whether an alien has abandoned his or her LPR status voluntarily is fact specific and courts consider factors such as the length of an alien's absence from the United States, family and employment ties, property holdings, residence, and the alien's intent or actions.⁴¹⁵ Any alien may intentionally relinquish LPR status through his or her voluntary actions, such as by submitting a declaration of intent to abandon LPR status. Neither the INA nor DHS regulations direct how aliens may formally inform the U.S. government of their abandonment of their LPR status.

To simplify the process, USCIS created the Record of Abandonment of Lawful Permanent Resident Status (Form I-407) as a means by which an alien may formally record that he or she has abandoned LPR status. The purpose of the form is to create a record and to ensure that the alien acts voluntarily and willingly, and is informed of the right to a hearing before an immigration judge and has knowingly, willingly, and affirmatively waived that right.

An alien may demonstrate voluntary relinquishment of the LPR status for purposes of bond cancellation by showing proof that he or she submitted Form I-407 to the U.S. government from outside the United States.

4. Decision

⁴¹⁵ See *Matter of Huang*, 19 I&N Dec. 749, 755-57 (BIA 1988) (considering the alien's absence from the United States because of her husband's work and study abroad, as well as her own employment abroad, to find that her absence was not temporary in nature and that she had abandoned her LPR status). See *Matter of Kane*, 15 I&N Dec. 258, 265 (BIA 1975) (alien who spent 11 months per year living in her native country operating a lodging house abandoned her LPR status; her desire to retain her status, without more, was not sufficient). See *Matter of Quijencio*, 15 I&N Dec. 95, 97-98 (BIA 1974) (alien's LPR status considered abandoned after 12-year absence). See *Matter of Castro*, 14 I&N Dec. 492, 494 (BIA 1973) (alien who severed his ties to the United States for 6 years, moved abroad, acquired land, built a house and obtained steady employment, but made brief business trips to the United States was not a returning resident and had abandoned his status). See *Matter of Montero*, 14 I&N Dec. 399, 400-01 (BIA 1973) (alien who returned to her native country to join her husband, children, home, employment, and financial resources without fixed intent to return within a fixed period had abandoned her LPR status). See *Khoshfahm v. Holder*, 655 F.3d 1147, 1154 (9th Cir. 2011) (alien child who was out of the country for 6 years and prevented from returning due to the father's heart condition and the events of September 11 did not abandon his LPR status).

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If USCIS determines that the obligor or the alien met the burden of proof to establish that the bond has not been breached since the alien became an LPR and that the conditions for the cancellation of the bond are met, USCIS may cancel the public charge bond. The decision to cancel the bond must be sent to all parties involved. When the public charge bond is canceled, the obligor is released from liability.

USCIS must notify the obligor and all parties involved of the cancellation of the bond and retain a copy of the communication in the file. If the public charge bond has been secured by a cash deposit or a cash equivalent, USCIS must refund the cash deposit and any interest earned to the obligor along with the communication.⁴¹⁶

If USCIS determines that the alien does not meet the requirements for cancellation, other than a bond breach, then USCIS issues a Notice of Intent to Deny (NOID) to the obligor and any agent or co-obligor and any representative, in order to extend the opportunity to rebut USCIS' determination. The notice must include the information provided by the alien in Form I-356, unless protected by law, and any other documentation.

The officer will send a notice of the communication to the alien and the alien's representative. If the obligor's timely response to the NOID reveals that the alien does not meet the cancellation requirements then the officer should not cancel the public charge bond.

If the obligor's response cannot overcome USCIS' determination and the adverse information upon which it is based, then USCIS issues the decision, informing the obligor and the agent or co-obligor and any representative and the alien and the alien's executor, if any, and the alien's representative, if any, that the bond cannot be canceled and that it remains in effect. The obligor may file an appeal to challenge this determination.⁴¹⁷

An obligor may only file a motion⁴¹⁸ after an unfavorable decision on an appeal.

If USCIS determines that the alien has breached the public charge bond, USCIS initiates bond breach proceedings.⁴¹⁹ As part of the notification to the obligor of USCIS' intent to declare the bond breached, the officer should explain why the bond cannot be canceled.

⁴¹⁶ See INA 293. See 8 CFR 293.1.

⁴¹⁷ See generally 8 CFR part 103.

⁴¹⁸ See 8 CFR 103.5.

⁴¹⁹ See Section C, Breach of Bond [8 USCIS-PM G.13(C)].

EXHIBIT B



**Office of the New York State
Attorney General**

**Letitia James
Attorney General**

November 25, 2025

Via Federal eRulemaking Portal and U.S. Mail

Kristi Noem
Secretary, United States Department of Homeland Security
2707 Martin Luther King, Jr. Ave. SE
Washington, DC 20528

Joseph B. Edlow
Director, U.S. Citizenship and Immigration Services
United States Department of Homeland Security
5900 Capital Gateway Drive
Camp Springs, MD 20746

Re: Notice and Comment Period for Public Charge Ground of Inadmissibility (November 19, 2025), CIS No. 2836-25, DHS Docket No. USCIS-2025-0304

Dear Secretary Noem and Director Edlow,

The undersigned Attorneys General are concerned by the Department of Homeland Security (DHS) and the U.S. Citizenship and Immigration Services (USCIS) above-referenced November 19, 2025 proposal (the “Proposed Rule”) to adopt a regulation that would rescind the 2022 public charge ground of inadmissibility regulations (the “2022 Rule”). One of our concerns, expressed herein, arises from the truncated timeline under which DHS and USCIS seek to change fundamental agency policy—particularly given the ambiguities created by the proposal. In light of the far-reaching impacts the Proposed Rule could have on USCIS’s mission to oversee immigration to the United States, as well as the widespread and harmful impacts on access to healthcare and nutritional services that DHS acknowledges the Proposed Rule will cause, we ask that you extend the comment period beyond its current 30-day timeframe by 150 days (until May 19, 2026, for a total of 6 months) to enable sufficient time for all stakeholders, including states, to provide comment on the broad potential impacts of this Proposed Rule. A proposed rule of this importance certainly mandates sufficient rulemaking *beyond* the standard sixty days much less a shortened period of merely thirty days.

Given the extremely broad impacts of the Proposed Rule and its lack of clarity, and considering that one out of the four weeks in the comment period contains a significant federal holiday, thirty days is woefully insufficient to give the affected public adequate opportunity to participate in the rulemaking and comment on the proposal as required by the Administrative

Procedure Act. 5 U.S.C. § 553(c). As you are aware, under section (2)(b) of Executive Order 13563, a standard comment period should be *at least* sixty days. This tremendously consequential Proposed Rule calls for a more deliberate pace.

A full six-month comment period is necessary to provide the public with a meaningful opportunity to evaluate the proposal and its implications. The general purposes of “notice and comment requirements are ‘(1) to ensure that agency regulations are tested via exposure to diverse public comment, (2) to ensure fairness to affected parties, and (3) to give affected parties an opportunity to develop evidence in the record to support their objections to the rule and thereby enhance the quality of judicial review.’” *Prometheus Radio Project v. FCC*, 652 F.3d 431, 449 (3d Cir. 2011) (quoting *Int’l Union, United Mine Workers of Am. v. Mine Safety & Health Admin.*, 407 F.3d 1250, 1259 (D.C. Cir. 2005)); *see also Connecticut Light & Power Co. v. Nuclear Regulatory Comm’n*, 673 F.2d 525, 530 (D.C. Cir. 1982) (“The purpose of the comment period is to allow interested members of the public to communicate information, concerns, and criticisms to the agency during the rule-making process.”). A 30-day comment period spanning a significant holiday week simply cannot provide such an opportunity. This is especially true for state and local agencies that are concerned about the impact of any changes in DHS’s public charge regulation, but are faced with extraordinary demands on their time as a result of the federal government shutdown and recent changes in law.

An extension would also be consistent with DHS and USCIS’s past practices for matters of similar importance and complexity. The notice and comment period for the 2022 Rule itself included two separate rounds for comment, totaling 4 months. *See* 86 Fed. Reg. 47025 (Aug. 23, 2021), 87 Fed. Reg. 10570 (Feb. 24, 2022)). DHS and USCIS have extended the comment periods in other contexts as well. For the proposed rule “Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Report of Immigration Medical Examination and Vaccination Record,” DHS and USCIS extended the comment period from 60 days to roughly 6 months (OMB Control No. 1615-0033, 90 Fed. Reg. 11326 (Mar. 5, 2025); <https://perma.cc/88UK-R7WP>). This change recognized USCIS’s receipt of multiple stakeholder comment letters requesting more time. *Id.* Similarly, DHS and USCIS reopened and extended the comment period for the interim final rule “Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for “T” Nonimmigrant Status” from an initial 60-day period to a total 120-day period. (81 Fed. Reg. 92266 (Dec. 19, 2016), <https://perma.cc/JLF5-8W3G>; *reopened in July 2021* CIS No. 2507-11; DHS Docket No. USCIS-2011-0010, Jul. 16, 2021, <https://perma.cc/6EBQ-9K3F>; *extended in August 2021*, Aug. 13, 2021, <https://perma.cc/VWW6-3647>). DHS and USCIS have also previously provided shorter extensions for comment periods for significant proposed rules. *See* “USCIS Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements,” DHS Docket No. USCIS2019-0010, 84 Fed. Reg. 62280 (Nov. 14, 2019), *extending comment period by two weeks*, <https://perma.cc/4Y92-NL6J>). DHS and USCIS’s 2018 notice of proposed rulemaking regarding public charge, which generated more than 340,000 comments over the course of the standard 60-day comment period, demonstrates the high level of public interest and concern about this policy topic.

The public is entitled to a full, robust comment process considering the complexity and significance the DHS and USCIS’s Proposed Rule. We appreciate your consideration of this important matter, and await your prompt decision regarding our request.

Sincerely,



Letitia James
Attorney General of New York



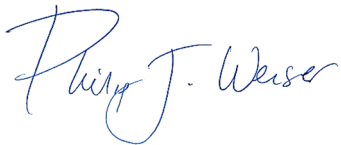
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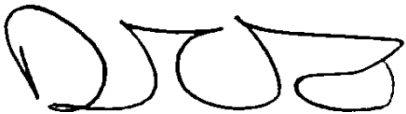
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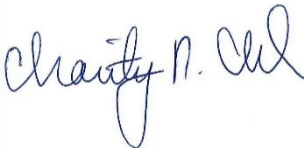
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EXHIBIT C



LETITIA JAMES
ATTORNEY GENERAL



KWAME RAOUL
ATTORNEY GENERAL



ROB BONTA
ATTORNEY GENERAL



KEITH ELLISON
ATTORNEY GENERAL

December 19, 2025

Via Federal eRulemaking Portal and U.S. Mail

Kristi Noem
Secretary, United States Department of Homeland Security
2707 Martin Luther King, Jr. Ave. SE
Washington, DC 20528

Joseph B. Edlow
Director, U.S. Citizenship and Immigration Services
United States Department of Homeland Security
5900 Capital Gateway Drive
Camp Springs, MD 20746

Re: Objection to DHS and USCIS's Proposed Rule concerning Public Charge Ground of Inadmissibility (November 19, 2025), RIN 1615-AD06, CIS No. 2836-25, DHS Docket No. USCIS-2025-0304

Dear Secretary Noem and Director Edlow,

We, the Attorneys General for the States of New York, Illinois, California, Minnesota, Colorado, Connecticut, Delaware, Hawai'i, Maine, Maryland, the Commonwealth of Massachusetts, Michigan, Nevada, Oregon, Rhode Island, Vermont, Washington, the District of Columbia, New Jersey, and New Mexico (the "States") write to object to *Public Charge Ground of Inadmissibility*, RIN 1615-AD06 [CIS No. 2836-25; DHS Docket No. USCIS-2025-0304] (the "Proposed Rule" or "NPRM"), a rule proposed by the U.S. Department of Homeland Security ("DHS") and United States Citizenship and Immigration Services ("USCIS") and published in the Federal Register on November 19, 2025.¹

¹ *Public Charge Ground of Inadmissibility*, 90 Fed. Reg. 52,168 (Nov. 19, 2025).

In 2022, DHS promulgated a public charge rule (the “2022 Rule”), which largely memorialized what had been the nearly-uninterrupted, decades-long understanding of the meaning and application of the “public charge” provision of the Immigration and Nationality Act (“INA”).² The Proposed Rule rescinds the 2022 Rule and signals a radical new approach that would give USCIS officials free rein to penalize immigrants for accessing healthcare and public programs that the States and their communities have determined contribute to health, safety, and economic prosperity. The Proposed Rule is not only bad policy, but it is also inconsistent with the well-settled meaning of the INA’s “public charge” provision. Moreover, the Proposed Rule is vague; may retroactively penalize residents’ lawful use of benefits; and will undermine federal, state, and local benefits programs that were indeed designed to help support immigrants’ upward mobility. Meanwhile, the States will be forced to shoulder increased costs and administrative burdens.

Despite the magnitude of the federal government’s apparent change in policy, the agency has provided a mere thirty days for public comment. This amount of time is inadequate to collect and analyze all of the information relevant to a rule change of this level of importance and complexity, particularly in light of the ambiguities created by the Proposed Rule. As the States explained in their November 25 letter, USCIS should extend the comment period to enable sufficient time for all stakeholders to identify all potential impacts and relevant evidence. The shortened public comment period also makes it all the more important to consider all prior evidence in the administrative record and prior factual findings that were before the agency when it issued the 1999 Guidance and promulgated prior public charge regulations.

For all of the reasons discussed herein, the Proposed Rule should be withdrawn.

I. Background

The INA bars admission of “[a]ny alien who, in the opinion of the consular officer at the time of application for a visa, or in the opinion of the [Secretary of Homeland Security] at the time of application for admission or adjustment of status, is likely at any time to become a public charge.”³ Under federal immigration law, “public charge” is a legal term of art that Congress adopted and maintained for more than a century, including after the federal judiciary and immigration agencies consistently applied that term to exclude only “an individual with the inherent inability to be self-supporting.”⁴

² See Inadmissibility on Public Charge Grounds; Implementation of Vacatur, 86 Fed. Reg. 14,221 (Mar. 15, 2021) (codified at 8 C.F.R. pts. 103, 106, 212–14, 245, 248) (rescinding 2019 Rule); Public Charge Ground of Inadmissibility, 87 Fed. Reg. 55,472 (Sept. 9, 2022) (codified at 8 C.F.R. pts. 103, 212, 213, 245) (implementing the 2022 Rule).

³ 8 U.S.C. § 1182(a)(4)(A).

⁴ *City and County of San Francisco v. U.S. Citizenship and Imm. Servs.*, 981 F.3d 742, 752 (9th Cir. 2020), *cert. dismissed*, 141 S. Ct. 1292 (2021) (citing *Matter of Harutunian*, 14 I & N. Dec. 583, 589-90 (BIA 1974)).

a. Historical usage of public charge

Congress first enacted the public charge provision in 1882, when it rendered any “convict, lunatic, idiot, or any person unable to take care of [themselves] without becoming a public charge” excludable and prevented them from entering the country.⁵ From the beginning, “public charge” thus was understood to refer to the small fraction of immigrants likely to “become life-long dependents on our public charities.”⁶ Congress did not exclude immigrants who might be poor or require some public assistance to promote their well-being or upward mobility; legislators recognized that such persons could “become a valuable component part of the body-politic.”⁷ Indeed, Congress directed the collection of a per-person tax “for the support and relief” of immigrants who “may fall into distress or need public aid,”⁸ to fund support for immigrants “when they arrive . . . until they can proceed to other places or obtain occupation for their support.”⁹

In the decades that followed, Congress repeatedly reenacted substantially similar public charge provisions, which courts interpreted as being limited to the few individuals who were unable to support themselves and were thus likely to depend almost entirely on the government for long-term subsistence.¹⁰ “Public charge” did not include immigrants “able to earn [their] own living,” even if they were not wealthy and were receiving some form of public assistance.¹¹

Congress ratified and incorporated this established meaning of “public charge” into the INA when it reenacted the public charge ground of inadmissibility “without pertinent change” in 1952 and again in 1996.¹² Before and throughout that time period, “[t]he absolute bulk of the caselaw, from the Supreme Court, the circuit courts, and the [Board of Immigration Appeals (BIA)] interpret[ed] ‘public charge’ to mean a person who is unable to support herself, either through work, savings, or family ties.”¹³ For example, in 1962, the U.S. Attorney General “summarize[d] the ‘extensive judicial interpretation’ of the term as requiring a particular

⁵ Immigration Act of 1882, Pub. L. No. 47-376, ch. 376, § 2, 22 Stat. 214.

⁶ 13 Cong. Rec. 5109 (1882) (statement of Rep. Van Voorhis).

⁷ *Id.* at 5108.

⁸ Immigration Act of 1882, §§ 1-2, 22 Stat. at 214.

⁹ 13 Cong. Rec. 5106 (1882) (statement of Rep. Reagan).

¹⁰ *See, e.g., Gegiow v. Uhl*, 239 U.S. 3, 10 (1915) (“public charge” means individuals unable to work due to “permanent personal objections”); *Howe v. United States*, 247 F. 292, 294 (2d Cir. 1917) (“Congress meant the act to exclude persons who were likely to become occupants of almshouses for want of means with which to support themselves in the future.”); *Ex parte Hosaye Sakaguchi*, 277 F. 913, 916 (9th Cir. 1922) (public charge does not include “able-bodied woman” with “disposition to work”); *Lam Fung Yen v. Frick*, 233 F. 393, 396 (6th Cir. 1916) (“public charge” means persons without “permanent means of support, actual or contemplated”).

¹¹ *Ex parte Mitchell*, 256 F. 229, 230 (N.D.N.Y. 1919).

¹² *New York v. U.S. Dep’t of Homeland Sec.*, 969 F.3d 42, 70 (2d Cir. 2020), *cert. granted*, 141 S. Ct. 1370, *cert. dismissed*, 141 S. Ct. 1292 (2021).

¹³ *Id.* at 71.

circumstance, like disability or age, that shows that ‘the burden of supporting the alien is likely to be cast on the public[.]’”¹⁴ “The BIA came to a similar conclusion after its own review of the public charge caselaw and legislative history” and “rejected the notion that receipt of public benefits categorically renders one a public charge.”¹⁵

Consistent with this body of law, exclusion of immigrants on public charge grounds has always, and appropriately, been rare. Indeed, between 1882, when Congress first enacted the public charge provision, and 1980 (the last year for which exclusion data is publicly available), less than one percent of immigrants were excluded on public charge grounds.¹⁶

In 1996, Congress enacted two laws concerning public benefit programs. The Personal Responsibility and Work Opportunity Reconciliation Act (“PRWORA”) restricted noncitizens’ eligibility for public benefits.¹⁷ *See, infra*, Part I(b). And the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”) specified that, “at a minimum,” the public charge determination should consider the noncitizen’s (1) age, (2) health, (3) family status, (4) assets, resources, and financial status, and (5) education and skills.¹⁸ But Congress did not alter the established meaning of “public charge.” On the contrary, that same year Congress rejected a proposal that would have altered the meaning of “public charge” in the deportability context to mean receipt of any supplemental benefits within 12 months.¹⁹

In 1999, the Immigration and Naturalization Service (the “INS,” a predecessor to DHS and USCIS) issued field guidance (the “1999 Guidance”) advising officials how to make public charge determinations in light of PRWORA and IIRIRA.²⁰ This guidance was accompanied by a proposed rule (which was never finalized).²¹

Both the 1999 Guidance and its accompanying proposed rule retained the well-settled judicial and administrative interpretation of the INA that had developed after more than a century of usage when Congress decided to incorporate that interpretation without modification into the 1952 Act. In 1999, the INS defined “public charge” as a noncitizen who is or is likely to become “primarily dependent on the government for subsistence, as demonstrated by either (i) the receipt

¹⁴ *Id.* (quoting *Matter of Martinez-Lopez*, 10 I. & N. Dec. 409, 421 (A.G. 1962)).

¹⁵ *Id.*

¹⁶ *See* Dep’t of Homeland Sec., Table 1. Persons Obtaining Lawful Permanent Resident Status: Fiscal Years 1820 to 2016, (Dec. 18, 2017), <https://www.dhs.gov/immigration-statistics/yearbook/2016/table1>; Immigration and Naturalization Serv., 2001 Statistical Yearbook of the Immigration and Naturalization Service Tables 1, 66 (2003), <https://perma.cc/CLJ5-KM5L>.

¹⁷ *See* Pub. L. No. 104-193, § 403, 110 Stat. 2105, 2265–67 (1996).

¹⁸ *See* Pub. L. No. 104-208, § 531, 110 Stat. 3009, 3674–75 (1996).

¹⁹ H.R. Rep. No. 104-828, at 138, 241 (1996) (Conf. Rep.).

²⁰ *See* Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, 64 Fed. Reg. 28,689 (May 26, 1999).

²¹ *See* Inadmissibility and Deportability on Public Charge Grounds, 64 Fed. Reg. 28,676 (May 26, 1999).

of public cash assistance for income maintenance or (ii) institutionalization for long-term care at government expense.”²² The 1999 Guidance adopted a “totality of the circumstances” test where “[t]he existence or absence of a particular factor should never be the sole criterion for determining if an alien is likely to become a public charge.”²³ In the 1999 Guidance, immigration officials did not give “weight [to] the receipt of non-cash public benefits (other than institutionalization) or the receipt of cash benefits for purposes other than for income maintenance” in making public charge assessments.²⁴ As the federal agency explained, such supplemental benefits are available “to families with incomes far above the poverty level,”²⁵ to further public health and upward mobility, rather than long-term subsistence. The federal government continued to interpret the term “public charge” consistent with this guidance, and with more than a century of precedent, for the next 20 years.²⁶

Beginning in 2018, the first Trump Administration attempted to greatly broaden the scope of the public charge exclusion and unmoor it from its historical roots. In October 2018, DHS published a notice of proposed rulemaking that would withdraw the 1999 Guidance and the accompanying proposed rule, and replace it with a new definition of “public charge” that would have redefined the criteria of admissibility and adjustment to lawful permanent resident status for immigrants living in the United States, vastly expanding the public benefits that could be considered.²⁷ DHS received 266,077 comments regarding the proposed rule, “the vast majority” of them in opposition.²⁸

In August 2019, DHS issued a final rule (the “2019 Rule”).²⁹ The 2019 Rule adopted a novel and expansive definition of “public charge” to mean a noncitizen “who receives one or more public benefits ... for more than 12 months in the aggregate within any 36-month period (such that, for instance, receipt of two benefits in one month counts as two months).”³⁰ And the 2019 Rule defined “public benefit” to include not only cash assistance but also non-cash benefits, including SNAP (Supplemental Nutrition Assistance Program), Section 8 housing assistance, Medicaid, and public housing.³¹ This meant that an individual could be deemed inadmissible if found “likely to receive as little as \$20 a month in SNAP benefits for a year.”³²

²² 64 Fed. Reg. at 28,677, 28,689.

²³ 64 Fed. Reg. at 28,690 (emphasis removed).

²⁴ *Id.*

²⁵ *Id.* at 28,692

²⁶ *See* 87 Fed. Reg. at 55,472, 55,495.

²⁷ *See* Inadmissibility on Public Charge Grounds, 83 Fed. Reg. 51,114 (Oct. 10, 2018).

²⁸ 84 Fed. Reg. at 41,297; *see also id.* at 41,304–484.

²⁹ *See* Inadmissibility on Public Charge Grounds, 84 Fed. Reg. 41,292 (Aug. 14, 2019). In October 2018, on just four days’ notice, the State Department issued its own rule that mirrored DHS’s 2019 Rule. *See* Visas: Ineligibility Based on Public Charge Grounds, 84 Fed. Reg. 54,996 (Oct. 11, 2019).

³⁰ 84 Fed. Reg. at 41,501.

³¹ *Id.*

³² 87 Fed. Reg. at 55,519.

The specified benefits included not just “cash assistance for income maintenance,”³³ and government paid in-kind care at a nursing home or other institution, but also most Medicaid healthcare coverage and SNAP—common, publicly funded supplemental benefits that are available to individuals with incomes above the poverty line and that are designed to promote public health, nutrition, and upward mobility, rather than to provide long-term subsistence.³⁴

The 2019 Rule also prescribed a non-exclusive list of factors to consider in determining whether a noncitizen was likely to become a public charge in the future (*i.e.*, whether they were likely to receive 12 months of benefits in a future 36 month-period).³⁵ They included family size, English proficiency, credit score, and even *application* for public benefits, regardless of whether benefits had ever been received.³⁶

Several courts determined the 2019 Rule was likely unlawful and entered preliminary injunctions enjoining it.³⁷ Those injunctions were eventually stayed,³⁸ and the 2019 Rule went into effect in February 2020, while litigation challenging the Rule proceeded.³⁹ In November 2020, the Northern District of Illinois entered partial final judgment vacating the 2019 Rule.⁴⁰

The Biden Administration returned the public charge exclusion to its historical roots. In 2021, the Department of Justice stopped defending the 2019 Rule and dismissed all pending

³³ *Id.* at 55,518.

³⁴ *See id.* at 55,518-19.

³⁵ *See id.* at 41,502-04.

³⁶ *Id.*

³⁷ *See, e.g., Make the Rd. N.Y. v. Cuccinelli*, 419 F. Supp. 3d 647, 667-68 (S.D.N.Y. 2019), *aff'd as modified sub nom. New York v. DHS*, 969 F.3d 42 (2d Cir. 2020); *Cook Cnty. v. McAleenan*, 417 F. Supp. 3d 1008, 1030-31 (N.D. Ill. 2019), *aff'd sub nom. Cook Cnty. v. Wolf*, 962 F.3d 208 (7th Cir. 2020); *CASA de Md., Inc. v. Trump*, 414 F. Supp. 3d 760, 785-88 (D. Md. 2019), *rev'd and remanded*, 971 F.3d 220 (4th Cir. 2020); *City & Cnty. of S.F. v. USCIS*, 408 F. Supp. 3d 1057, 1129-30 (N.D. Cal. 2019), *aff'd*, 981 F.3d 742 (9th Cir. 2020); *Washington v. DHS*, 408 F. Supp. 3d 1191, 1224 (E.D. Wash. 2019), *aff'd in part, vacated in part sub nom. City & Cnty. of S.F. v. USCIS*, 981 F.3d 742 (9th Cir. 2020); *see also Cook Cnty. v. Wolf*, 498 F. Supp. 3d 999, 1011 (N.D. Ill. 2020) (entering partial final judgment vacating 2019 Rule).

³⁸ *See DHS v. New York*, 589 U.S. 1173 (2020); *CASA de Md., Inc. v. Trump*, No. 19-2222, Dkt. No. 21 at 1 (4th Cir. Dec. 9, 2019); *City & Cnty. of S.F. v. USCIS*, 944 F.3d 773, 781 (9th Cir. 2019).

³⁹ *See New York v. DHS*, 969 F.3d 42, 58 (2d Cir. 2020).

⁴⁰ *Cook Cnty. v. Wolf*, 498 F. Supp. 3d 999, 1011 (N.D. Ill. 2020).

appeals.⁴¹ DHS then rescinded the 2019 Rule and published a new public charge rule (the “2022 Rule”).⁴² The State Department also published a new rule aligning with the 2022 Rule.⁴³

The 2022 Rule restored much of the 1999 Guidance. The 2022 Rule directs immigration officers to consider whether someone is likely to become a public charge by determining whether they are likely “to become primarily dependent on the government for subsistence” based on their receipt of public cash assistance or long-term institutionalization.⁴⁴ Under the 2022 Rule, “public cash assistance” is limited solely to Supplemental Security Income (“SSI”), Temporary Assistance for Needy Families (“TANF”), or other “cash benefit programs for income maintenance.”⁴⁵ DHS must consider “the totality of the alien’s circumstances,” with “[n]o one factor” being “the sole criterion” for determining he or she is likely to become a public charge.⁴⁶ In particular, the 2022 Rule provides that “current and/or past receipt of these benefits will not alone be a sufficient basis to determine whether the alien is likely at any time to become a public charge.”⁴⁷ And DHS may not consider an individual’s receipt of SNAP, CHIP (Children’s Health Insurance Program), Medicaid (other than for long-term institutionalization), housing benefits, or other non-cash public benefits.⁴⁸

b. The Proposed Rule’s reliance on PRWORA and relationship with other statutes

The Proposed Rule, which seeks to rescind the 2022 Rule, implies that PRWORA⁴⁹ provides a basis for the rescission. This reliance is misplaced. PRWORA does not speak to public charge determinations, or even to immigration policies more generally. Instead, PRWORA, enacted under Congress’s Spending Clause powers, is a public benefits law.

PRWORA addresses which noncitizens may be eligible for certain public federal benefits. It is not an immigration law. The statute speaks to both federal public benefits, providing that “an alien who is not a qualified alien . . . is not eligible for any Federal public benefit,”⁵⁰ and also

⁴¹ DHS Statement on Litigation Related to the Public Charge Ground of Inadmissibility (Mar. 9, 2021), <https://www.dhs.gov/archive/news/2021/03/09/dhs-statement-litigation-related-public-charge-ground-inadmissibility>.

⁴² See Inadmissibility on Public Charge Grounds; Implementation of Vacatur, 86 Fed. Reg. 14,221 (Mar. 15, 2021) (codified at 8 C.F.R. pts. 103, 106, 212–14, 245, 248) (rescinding 2019 Rule); Public Charge Ground of Inadmissibility, 87 Fed. Reg. 55,472 (Sept. 9, 2022) (codified at 8 C.F.R. pts. 103, 212, 213, 245) (implementing the 2022 Rule).

⁴³ See Visas: Ineligibility Based on Public Charge, 88 Fed. Reg. 60,574 (Sept. 5, 2023) (codified at 22 C.F.R. pt. 40).

⁴⁴ 8 C.F.R. § 212.21(a).

⁴⁵ *Id.* § 212.21(b).

⁴⁶ *Id.* § 212.22(b).

⁴⁷ *Id.* § 212.22(a)(3).

⁴⁸ *Id.*

⁴⁹ See Pub. L. No. 104-193 (Aug. 22, 1996),

⁵⁰ 8 U.S.C. § 1611(a)–(b).

speaks to “State or local public benefit[s].”⁵¹ PRWORA also provides certain exceptions to this general rule,⁵² and preserves states’ authority to provide state-only benefits to residents irrespective of their status.⁵³

Furthermore, to the extent that PRWORA is at all relevant to the Proposed Rule, the statute allows *more* access to public benefits than the Proposed Rule would for noncitizens asserting admissibility. For example, under the Medicaid statute, states must provide coverage to noncitizens in need of emergency medical services, irrespective of their status or their eligibility for Medicaid otherwise.⁵⁴ The Proposed Rule acknowledges that PRWORA lists “medical assistance for the treatment of an emergency medical condition” among its exceptions, for which immigration status is not an eligibility factor.⁵⁵ Yet, even against this acknowledgement, the Proposed Rule itself does not address how accessing emergency Medicaid coverage would be construed by immigration officers for purposes of admissibility. This leaves open the possibility that individuals will avoid even the most basic and life-saving medical care, access to which is legal under federal law and acknowledged as such by the Proposed Rule, because of the risk that doing so could render them inadmissible.

Indeed, the Proposed Rule lists “increased use of emergency rooms for primary care due to delayed treatment” as among its foreseeable impacts, and one that “may lead to downstream effects on public health, community stability, and resilience.”⁵⁶ This impact will be exacerbated in light of the sweeping cuts to Medicaid eligibility contained in H.R. 1, which will become effective in October 2026.⁵⁷ As a result of the severe cuts, full-scope federally funded Medicaid will become virtually inaccessible for most noncitizens, including those lawfully present and currently eligible for these programs.⁵⁸ A number of undersigned States provide state-funded coverage for certain noncitizens, including refugees and others who are lawfully present, because, *inter alia*, such coverage encourages individuals to seek out preventative healthcare services and improves public health overall. Yet the Proposed Rule does not include any assurance that applying for, and/or receiving, such state-funded coverage will not count against a noncitizen during a public charge determination.⁵⁹

⁵¹ *Id.* § 1621(a), (d).

⁵² 8 U.S.C. § 1611(a)–(b).

⁵³ 8 USC § 1621(d).

⁵⁴ 42 U.S.C. § 1396b(v).

⁵⁵ 90 Fed. Reg. 52,176.

⁵⁶ *Id.* at 52,218.

⁵⁷ Public L. No. 119-21 (Jul. 4, 2025) (“H.R. 1”).

⁵⁸ *Id.* at Sec. 71109.

⁵⁹ The States have already received reports indicating concerning increases in DHS/USCIS's use of the public charge ground for deportability, in ways that amplify concerns about how the agencies will move forward if the 2022 Rule is rescinded under the NPRM. *See* 8 U.S.C. § 1227(a)(5) (INA § 237(a)(5)). Some such reports indicate that individual DHS/USCIS officers are construing the use of state and local

Put differently, at the outset, H.R. 1 will severely reduce access to Medicaid (and CHIP) for noncitizens, and, next, the Proposed Rule would cause those same noncitizens to either (a) forgo state-funded preventative health coverage, or (b) undertake the risk that lawfully applying for or accessing such state-funded coverage will jeopardize their admissibility determination and potentially render them inadmissible. Without access to preventative health coverage, many of these noncitizens will only access healthcare in the most dire, costly, emergency situations. Against the backdrop of H.R. 1, enforcement of the Proposed Rule will not only create substantial cost burdens for the States, but will also undermine public health generally by impeding noncitizens' safe access to state-funded benefits programs.

c. Current interpretations of public charge

The 2022 Rule, which is currently effective and which the Proposed Rule seeks to rescind, uses a “‘primarily dependent’ standard” in considering whether a noncitizen is inadmissible on public charge grounds.⁶⁰ Under this Rule, public charge determinations are made considering “public cash assistance for income maintenance,” and non-cash benefits (including, for example, most benefits under Medicaid) are not considered.⁶¹

The current rule also provides clarity as to various common scenarios that may bear on a public charge determination. For example, the 2022 Rule clarifies that, among other things, whether a noncitizen has received a benefit (for the purposes of this determination) hinges on whether that person is a listed *beneficiary* of the benefit; the Proposed Rule provides no such clarification, enabling the possibility that the receipt of a benefit by a noncitizen's family member (such as a child who is a citizen) may be used against the noncitizen. Similarly, the 2022 Rule clarifies that mere application for a benefit does not constitute the receipt of that benefit for the purposes of a public charge determination; the Proposed Rule lacks clarity on this question, and leaves open the possibility that a noncitizen's simply applying for a benefit could lead to an inadmissibility determination. *Id.*

II. The adoption of the Proposed Rule, rescinding the 2022 Rule, would create extreme ambiguities as to what public charge determinations can be based on, and how those determinations would be made.

The NPRM proposes to rescind the 2022 Rule, creating significant ambiguity regarding how “public charge” will then be understood in the inadmissibility context, while simultaneously providing immigration officials sweeping discretion in making public charge determinations. The preamble of the Rule makes clear that DHS has no intention of returning to the well-

public benefits, or minor family members' use of public benefits, against legal permanent residents in the § 1227(a)(5) public charge deportability context. These reports suggest that under the Proposed Rule, some agency officials are likely to interpret lawful use of state and local benefits, or household members' lawful use of benefits, as grounds for a public charge determination for inadmissibility.

⁶⁰ 8 C.F.R. § 212.21.

⁶¹ *Id.*

established *status quo ante*—such as, for example, the understandings reflected in the 1999 Guidance. Instead, the NPRM seeks to effectuate the administration’s agenda outlined in its executive order titled “Ending Taxpayer Subsidization of Open Borders.”⁶² The Proposed Rule states that the 2022 Rule’s prohibition on consideration of individuals’ receipt of short term, supplemental benefits “may have” prevented USCIS from making a determination that an individual “lacked self-sufficiency” and was therefore “likely at any time to become a public charge.”⁶³ Yet DHS declines to provide any new definition of “public charge” or to substantively amend the standards used for public charge determinations. The Proposed Rule would instead, first, eviscerate existing regulations that provide clarity about who is subject to public charge determinations,⁶⁴ and, next, place unwarranted discretion in the hands of individual immigration officials, suggesting that these officials should consider *any* use of public benefits in public charge determinations. The end result of this overhaul would be a sweeping change to the current understanding of “public charge,” would lack clear limits or guidance, and would be inconsistent with the INA.

a. The term “public charge” has a long-standing and settled meaning under federal law.

In the litigation that followed the 2019 Rule, some brought by the undersigned States, *all* appellate court decisions that reached the merits found that the 2019 Rule was likely contrary to the INA. The U.S. Courts of Appeals for the Second, Seventh, and Ninth Circuits all substantially affirmed preliminary injunctions in their respective jurisdictions,^{65, 66} but the Proposed Rule makes no attempt to engage with their analyses, or grapple with their conclusions.⁶⁷ Instead, it cherry-picks from the available legal authority and ignores the weight of historical judicial and administrative interpretations that have construed the term “public charge” narrowly. This misleading legal analysis, coupled with rescission of the 2022 regulations, would allow immigration officials to apply an astonishingly broad definition of public charge that is not consistent with the INA.

In the 2025 NPRM, DHS relies heavily on PRWORA’s definition of “public benefits.”⁶⁸ But, as discussed in Part I(b), *supra*, that definition of “public benefits” did nothing to alter the meaning of the INA’s term “public charge.” On the contrary, PRWORA’s preservation of public benefits for noncitizens is “in considerable tension” with the Proposed Rule’s suggestions that

⁶² See 90 Fed. Reg. at 52,180 (citing Executive Order 14218).

⁶³ *Id.*

⁶⁴ See, e.g., 90 Fed. Reg. at 52,192 (removing provisions enumerating the categories of noncitizens who are not subject to public charge grounds).

⁶⁵ *Cook Cnty.*, 962 F.3d at 229; see also *New York*, 969 F.3d at 74-80 (2d Cir. 2020); *City and Cnty. of San Francisco*, 981 F.3d at 756-58.

⁶⁶ See *Cook Cnty.*, 498 F. Supp. 3d at 1004-05.

⁶⁷ See 90 Fed. Reg. at 52,179.

⁶⁸ See 90 Fed. Reg. at 52,175 (citing PRWORA, 8 U.S.C. § 1611(c)).

Congress intended to use the public charge statute to penalize noncitizens who use such benefits.⁶⁹ And PRWORA does not “indicate any congressional intention that non-citizens who receive the benefits for which Congress did not render them ineligible risk being considered ‘public charges.’”⁷⁰

The Proposed Rule also relies on the affidavit-of-support provision that allows governments to seek reimbursement from an immigrant’s sponsor for means-tested public benefits used by the sponsored immigrant.⁷¹ DHS suggests that this requirement is an example of a “policy goal” that it may consider when making public charge determinations in a manner that considers receipt of benefits that Congress (or States), have determined immigrants are legally eligible to receive.⁷² But that rationale is not consistent with the history and interpretation of the public-charge provision.⁷³ The affidavit-of-support provision serves “to get sponsors to take their commitments seriously by making them legally enforceable,”⁷⁴ rather than to “depart from the settled meaning of ‘public charge.’”⁷⁵

The Proposed Rule relies on similarly erroneous reasoning when it relies on the Victims of Trafficking and Violence Protection Act of 2000 to posit that Congress’s prohibition of consideration of prior receipt of benefits by a specific class of aliens “suggests that Congress understood and accepted that consideration of an alien’s past receipt of public benefits in other circumstances was appropriate when making a public charge inadmissibility determination.”⁷⁶ The battered immigrant provisions to which the Proposed Rule refers speak broadly about “benefits,” and do nothing to suggest that Congress understood the INA’s public charge provision to be anything different than the settled meaning set forth in then-applicable 1999 Guidance. Instead, Congress was simply speaking broadly to provide assurance to vulnerable immigrants who are victims of interpersonal violence, and who are exempt from public charge admissibility assessments.⁷⁷

Overall, the Proposed Rule in its preamble advances faulty interpretations of the law that run counter to decades of Congressional and judicial consideration that has allowed “public charge” to remain a narrowly defined legal term that is well settled.

⁶⁹ See *New York*, 969 F.3d at 77-78; *Cook Cnty.*, 962 F.3d at 228 (“The statute [PRWORA] did not [...] modify the public-charge provision to penalize receipt of non-cash [...] assistance.”).

⁷⁰ *New York*, 969 F.3d at 77.

⁷¹ See 8 U.S.C. §§ 1182(a)(4)(c)(ii), 1183a(b)(1)(A).

⁷² See 90 Fed. Reg. at 52,177.

⁷³ See *San Francisco*, 981 F.3d at 757-58.

⁷⁴ *New York*, 969 F.3d at 79.

⁷⁵ *Id.* at 80.

⁷⁶ 90 Fed. Reg. at 52,178.

⁷⁷ 8 U.S.C. § 1182(a)(4)(E).

b. The Proposed Rule seeks to expand the meaning of “public charge” far beyond its settled meaning, newly including individuals who use nearly *any* federal or state public benefit.

DHS now seeks to eliminate those clear boundaries for public charge admissibility and to replace them with a chaotic regime whereby every immigration officer is empowered, at their discretion, to consider virtually any factor they deem “relevant” to a public charge determination.⁷⁸

As DHS acknowledges, the original 1999 Interim Field Guidance was issued to “reduce negative public health and nutrition consequences generated by ... confusion [over the meaning of ‘public charge’] and to provide aliens, their sponsors, health care and immigrant assistance organizations, and the public with better guidance as to the types of public benefits that INS considered relevant to the public charge determination.”⁷⁹ But DHS now seeks to eliminate that guidance with no immediate replacement.

DHS acknowledges that the 2022 Rule was an appropriate exercise of DHS’s authority to “enumerate exclusive factors to be considered in making public charge inadmissibility determinations without a catch all provision,” but nevertheless states that the 2022 Rule “contravenes the clear congressional intent of the statute.”⁸⁰ So, on the one hand, DHS acknowledges that Congress intended for DHS to issue better guidance and guardrails for immigration officers to follow when making public charge determinations. But on the other hand, DHS now says that, by providing guidance to immigration officers, the 2022 Rule violated congressional intent. This begs the question as to whether and how DHS can in good faith issue any new rules or guidance as to public charge admissibility determinations without violating its own understanding of congressional intent.

DHS now expects that immigration officers will consider “the receipt of *any* type of public benefits by a qualified alien” as “relevant and indeed *critical* in determining whether an alien is actually self-sufficient and able to rely on their own capabilities and the resources of their families, their sponsors, and private organizations rather than depending on public resources to meet their needs.”⁸¹ The Proposed Rule provides no limiting language to cabin the scope of public benefits that an individual officer may base an inadmissibility determination on—an unrestricted amount of discretion that could lead to absurd results and will surely result in inconsistent and arbitrary outcomes. By contrast, as an example, the PRWORA statute clarifies that “widely available services,” including police and sanitation services, domestic violence programs, and emergency shelters remain among those public benefits and services accessible to

⁷⁸ Proposed Rule at 52,169.

⁷⁹ Proposed Rule at 52,177.

⁸⁰ Proposed Rule at 52,181.

⁸¹ Proposed Rule at 52,183 (emphases added).

any resident irrespective of status.⁸² The Proposed Rule leaves open the possibility that accessing those very same services—the use of which, for some, is virtually inescapable—could be interpreted by individual immigration officers to render a noncitizen “inadmissible.” The result where a noncitizen is deemed a “public charge” for availing themselves of police or sanitation services cannot be what Congress intended, but could flow from the overbroad definition of “public charge” that the Proposed Rule advances.

DHS’s asserted interpretation of the statute is inconsistent with the historical understanding of “public charge” that Congress has adopted, as repeatedly affirmed by courts of appeals across the country in connection with litigation over the 2019 Final Rule.⁸³ At no point has Congress evinced an intent that immigration officers be afforded boundless, unregulated discretion over whether a noncitizen should be disqualified as a public charge, let alone in such far-reaching ways as the Proposed Rule’s Preamble conveys.

c. The Proposed Rule provides no standard as to how benefit use by household members will be treated.

The Proposed Rule does not look at how the policy would affect individual applicants. Instead, it estimates how entire households make benefit decisions when at least one household member is a noncitizen.⁸⁴ There is no explanation of whether, or how, immigration officers will treat the use of benefits by household members who are not the applicant, including household members who are U.S. citizens legally entitled to obtain benefits. The Proposed Rule repeatedly acknowledges that benefit participation and disenrollment decisions occur at the “household” level, and that such decisions, whether by adjustment applicants, spouses, parents, or on behalf of children, including those who are U.S. citizens, are driven by fear, confusion, and attempts to avoid jeopardizing immigration status.⁸⁵ DHS devotes a substantial portion of the Proposed Rule to documenting widespread disenrollment and “chilling effects” among mixed-status families, showing disenrollment rates as high as 35% in key safety net programs, including Medicaid, SNAP, and TANF as a result of the 2019 Rule.⁸⁶ *See, infra*, Part IV(a). It concedes that a 2022 study found that adults in mixed-status families (25%) were more likely to report chilling effects than citizens or green-card holders (13%) or all-citizen families (7%), leading them to avoid seeking non-cash benefits.⁸⁷ Despite this, the Proposed Rule removes all regulatory definitions and exemptions without supplying replacements. It deletes “public cash assistance for income maintenance,” “receipt (of public benefits),” and “long-term institutionalization at government

⁸² 61 Fed. Reg. 45,985 (Aug. 30, 1996) (DOJ interim guidance regarding PRWORA). *See also* 66 Fed. Reg. 3,613 (Jan. 16, 2001) (Final Order).

⁸³ *See New York v. United States Dep’t of Homeland Sec.*, 969 F.3d 42, 75 (2d Cir. 2020); *Cook Cnty., Illinois v. Wolf*, 962 F.3d 208, 228 (7th Cir. 2020); *City & Cnty. of San Francisco v. United States Citizenship & Immigr. Servs.*, 981 F.3d 742, 756 (9th Cir. 2020).

⁸⁴ 90 Fed. Reg. at 52,170, 52,193, 52210-52215 (Tables VI.8; VI.10; VI.11).

⁸⁵ *Id.* at 52,207-52,209, 52,218.

⁸⁶ *Id.* at 52,209.

⁸⁷ *Id.*

expense,” claiming these terms restrict DHS’s ability to act,⁸⁸ and in order to “ensure that officers retain their statutorily mandated ability to determine, in their opinion, whether an alien is likely at any time to become a public charge.”⁸⁹

DHS then attempts to justify this silence on household benefit use by stating only that officers will make case-by-case determinations under the INA totality-of-the-circumstances test, PRWORA, and “governing caselaw”⁹⁰ without offering any explanation of how immigration officers will weigh household benefit use, nor any guardrails to prevent them from treating household benefit use as presumptively indicative of future dependence. (DHS does not identify the case law it sees as “governing,” and the NPRM instead signals an intent to depart from—or to selectively invoke—longstanding unbroken judicial precedent.) DHS acknowledges only that guidance and training of immigration officers will come “in the future” in the form of “policy and interpretive tools,”⁹¹ suggesting that DHS intends to issue such guidance without public input or procedural safeguards.⁹²

It is impossible to predict all of the consequences of the Proposed Rule’s lack of guidance to officers, or the effects of hypothetical future internal guidance. But it is clear that immigration officers would be permitted under the Proposed Rule to penalize immigrants for benefits they did not request, did not control, and/or that were legally accessed by U.S. citizen children or other exempt family members. DHS uses household-level data to justify billions in transfer savings, and leaves open the possibility that the use of benefits by eligible household members will lead to a negative adjudicatory inference. The agency’s failure to identify a standard makes it impossible for States to meaningfully evaluate the full extent of the adverse impacts the Proposed Rule will have on families, safety-net programs, or budgets.

d. The Proposed Rule fails to explain what policy will be in effect after the 2022 Rule is rescinded.

The Proposed Rule represents a significant change in policy without a reasoned analysis of what new policy will replace the 2022 Rule. Rather than announcing a new policy, DHS states that it intends for this rescission to “pave the way” for DHS to—at some indefinite point in the future—“formulate appropriate policy and interpretive tools” to guide DHS officers.⁹³ In the Executive Summary, DHS vaguely explains that this future guidance will aid officers in making “individualized, fact-specific public charge inadmissibility determinations, based on a totality of

⁸⁸ *Id.* at 52,170-52171, 52,185.

⁸⁹ *Id.* at 52,181.

⁹⁰ *Id.* at 52,170-52,171, 52,188-52190, 52,195.

⁹¹ *Id.* at 52,169, 52,188 (directing that the INA, PRWORA, and governing case law is sufficient guidance for officers to make public charge determinations until DHS creates policy and “interpretive tools” at some point in the future).

⁹² *See* 5 U.S.C. 553(b)(A). The guidance exemption covers “interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice.” *Id.*

⁹³ 90 Fed. Reg. 52,169.

the alien’s circumstances, that are consistent with the statute and congressional intent, and comply with past precedent.”⁹⁴ DHS declines to describe in any more detail what policy would take the place of the 2022 Rule, or how that policy would be implemented.

The Proposed Rule does not reinstate the 2019 Rule. Rather, the rulemaking criticizes the 2019 Rule as overly restrictive of DHS/USCIS, because it provided a finite list of factors that the agency could consider in making a public charge inadmissibility determination, without substantively engaging with all of the reasons why DHS settled on that list.⁹⁵ (In any event, that list remains inoperative; DHS removed the 2019 Rule from the Code of Federal Regulations in March 2021, following litigation enjoining and vacating the rule as unlawful.⁹⁶)

The Proposed Rule also does not reinstate the 1999 Interim Field Guidance.⁹⁷ DHS summarily asserts that DHS officers would consider “controlling precedent and case law” that “largely but not exclusively formed the basis for the 1999 Interim Field Guidance.”⁹⁸ DHS hints at, but does not actually explain, precisely how its new public charge policies will differ from this guidance.

Because DHS does not specify the details of the policy that will apply to public charge inadmissibility determinations following the proposed rescission, DHS fails to adequately explain the proposed change in policy. While the NPRM is clear that immigration officers will have seemingly unfettered discretion in public charge determinations, the NPRM does not provide the States, or the public at large, with meaningful notice and opportunity to comment precisely how various aspects of public benefit use will be construed by these officers. Without more detail and a legitimate opportunity to investigate its potential implications, the States cannot fully evaluate the reasons for this new policy or suggest alternatives.⁹⁹

e. The Proposed Rule is likely to have unfair and disproportionate impacts.

The Proposed Rule is likely to have a disproportionate impact on people who are independent and self-supporting but (like many Americans) live with disabilities and other higher healthcare needs. The Rule would allow immigration officials to consider any kind of public supportive services in making public charge determinations, including community-based Medicaid services for people with disabilities and their families. In many states, Medicare and/or Medicaid offers working people with disabilities whose earnings may exceed traditional

⁹⁴ *Id.*

⁹⁵ *Id.* at 52,180.

⁹⁶ *Inadmissibility on Public Charge Grounds*; Implementation of Vacatur (Mar. 2021), 86 Fed. Reg. 14,221.

⁹⁷ 90 Fed. Reg. 52,193.

⁹⁸ *Id.*

⁹⁹ See *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016).

Medicaid limits the option to receive needed assistance while being self-supporting.¹⁰⁰ The Proposed Rule would unfairly force immigrants with disabilities, and their families, to reject health care programs designed for healthy and independent living because it might put their chances of obtaining permanent residency at risk.

III. The Proposed Rule will also upend longstanding practices regarding bonds and risk privacy breaches.

The Proposed Rule's deficiencies are not limited to the many questions it does not answer regarding how public charge-based inadmissibility determinations will be made. The Proposed Rule would also create significant changes as to how public charge bonds would be used and suggests future changes in how residents' data will be shared—without explaining how these changes would be consistent with the INA or with Congressional intent.

a. The Proposed Rule's proposed changes to public charge bonds would create punishing consequences for even minimal use of public benefits.

The Proposed Rule proposes significant changes to the administration of public charge bonds¹⁰¹ that would create uncertainty in the immigration system, invite arbitrary enforcement, and impose substantial financial and administrative burdens on States. Under the current regulatory framework, public charge bonds are used only where DHS determines an individual may become a public charge, but can be admitted on the condition that the United States is financially protected against foreseeable reliance on public benefits.¹⁰² DHS now proposes to dramatically loosen the constraints on bond cancellation and breach by explicitly stating that receipt of “any means-tested benefit” by an applicant noncitizen, without regard to duration, severity, or causation, will constitute a breach of the bond, regardless of whether the benefit bears any actual relation to long-term dependence or financial self-sufficiency.¹⁰³ This “single benefit use = breach” proposal means that accessing short-term Medicaid, enrolling a child in CHIP, or using temporary food assistance during a period of unemployment would breach a bond.

Both the 1999 Guidance and the 2022 Rule advised that receipt of public benefits was relevant only where it indicated ongoing primary dependence.¹⁰⁴ The Proposed Rule discards this and offers no explanation for why it removes “dependent on the government for subsistence” in

¹⁰⁰ Medicaid Eligibility Through Buy-In Programs for Working People with Disabilities, Kaiser Family Foundation (2025), <https://www.kff.org/medicaid/state-indicator/medicaid-eligibility-through-buy-in-programs-for-working-people-with-disabilities/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>.

¹⁰¹ 90 Fed. Reg. at 52,185, 52,224.

¹⁰² 8 U.S.C. § 1183; 8 C.F.R. § 213.1; 8 C.F.R. § 103.6.

¹⁰³ 90 Fed. Reg. at 52,200, 52,172-52,173.

¹⁰⁴ 87 Fed. Reg. 55,472 (Sept. 9, 2022).

favor of enforcement triggered by *de minimus* welfare use. The Proposed Rule offers no basis for recipients to learn in advance which public benefits might affect a noncitizen's status, or how DHS will interpret household benefit use. And there is no identified procedural protection for individuals subject to bond breach. Instead, the proposed bond structure is completely arbitrary. Because states differ in how they structure, fund, and classify public benefit programs, households with identical income, family size, and immigration status may be treated differently for bond purposes depending solely on the state in which they reside. The Proposed Rule will extend the same chilling effects to bonds that DHS expects in disenrollment and forgone enrollment from benefits. Yet here the chilling itself is an enforcement mechanism.

Remarkably, DHS asserts it “does not anticipate an increase in the number of bonds that are cancelled or breached,”¹⁰⁵ while simultaneously making breach automatic and removing all mitigating factors. This contradiction is not reasoned decision-making and demonstrates reckless disregard for real world program interactions.

b. The Proposed Rule's reference to data sharing will create a chilling effect on benefits usage and pose risk of privacy violations.

DHS's preamble contains a vague reference to “data sharing” that will create a predictable chilling effect on the public's willingness to apply for and receive essential public benefits made available to assist families with upward mobility and improve general public health and nutrition.¹⁰⁶ As demonstrated by similar federal actions to share public benefit data, many individuals will avoid benefits for which they, or their families, are eligible if they fear their benefit use will make it more likely that they or their family members will be investigated, detained, or even deported.¹⁰⁷ This chilling effect is not limited to individuals subject to the INA's inadmissibility grounds, but instead includes (i) legal permanent residents who fear their data will be used to detain and deport them, (ii) citizens in mixed status families who fear the information they give will result in ICE targeting their family members, and (iii) anyone

¹⁰⁵ 90 Fed. Reg. 52,173.

¹⁰⁶ 90 Fed. Reg. at 52,183.

¹⁰⁷ See Pls.' Notice of Mot. & Mot. for Prelim. Inj. with Mem. of Points & Authorities at 21-23, *California v. HHS*, No. 3:25-cv-05536-VC (N.D. Cal. July 11, 2025), Dkt. No. 42-2, *see also* Pls.' Notice of Mot. & Mot. for Stay or Prelim. Inj. at 23-24, *California v. USDA*, No. 3:25-cv-06310-MMC (N.D. Cal. Aug. 18, 2025), Dkt. No. 59. Indeed, the federal government has already acknowledged that simply asking applicants for sensitive information chills participation in public benefit programs, for example by asking state agencies to not ask for citizenship, immigration status, and SSNs for household members in SNAP applications because these inquiries “may have a chilling effect on the pursuit of the application” and “deter[] households from filing applications,” and warning that “[f]ear and misinformation may deter many non-citizens from seeking benefits for which they are eligible—particularly if there are other members in the household who may be ineligible because of their immigration status.” U.S. Dep't of Agriculture Memo to SNAP Regional Directors re Conforming to the Tri-Agency Guidance Through Online Applications (Feb. 18, 2011) at 1-2, 5, https://fns-prod.azureedge.us/sites/default/files/Tri-Agency_Guidance_Memo-021811.pdf.

concerned with the privacy of their data.¹⁰⁸ Ultimately, DHS’s reference to data sharing will only add to the widespread fear and confusion regarding application of the Proposed Rule—especially given DHS’s lack of clarity as to which data it plans on gathering, how it plans to use this data, and how it envisions this information will be used to assist public charge determinations. As a result, the chilling effect of the Proposed Rule will be far higher than DHS acknowledges.

Aside from its chilling effect, the data sharing envisioned in DHS’ preamble risks violating several federal privacy laws. These include the Social Security Act and its implementing rules, which limits the use of data collected for the purposes of Medicaid, Medicare, and other Social Security Act programs,¹⁰⁹ the Health Insurance Portability and Accountability Act (“HIPAA”),¹¹⁰ which regulates the use and disclosure of an individuals’ protected health information, the protections outlined in 42 U.S.C. § 290dd-2 and 42 C.F.R. pt. 2, which provide strong protections for the confidentiality of substance use disorder related patient records held by federally assisted programs, and the Privacy Act of 1974, which was designed to “provide certain safeguards for an individual against an invasion of personal privacy,” and which bars the federal government from the unauthorized use or sharing of data on citizens and lawful permanent residents.¹¹¹

IV. The impacts of the Proposed Rule will be dire—including a material chilling effect and resulting costs to States—and demonstrates no consideration of reliance interests.

a. The Proposed Rule will have a chilling effect on residents’ legally accessing public benefits.

The Proposed Rule creates uncertainty and fear around whether past, current, or future participation in vital federal, state, and local benefits programs, including by immigrants or their U.S. citizen family members who were eligible and legally entitled to use such benefits, could result in adverse immigration consequences. This uncertainty will reduce participation in these programs. DHS recognizes this. It estimates an “average” disenrollment rate of 17.3% as a direct result of this rule.¹¹² Eligible immigrant households will avoid food, housing, and health care assistance because of fear that accessing such programs will contribute to a “public charge” finding.¹¹³ Such outcomes are directly at odds with the original understanding of the 1965

¹⁰⁸ See Br. of Amici Curiae Nat’l Health L., et al. in Support of Pls.’ Mot. for Prelim. Inj. at 7-12, *California v. HHS.*, No. 3:25-cv-05536-VC (N.D. Cal. Dec. 3, 2025), Dkt. No. 136-1 (detailing chilling effect of sharing Medicaid data with ICE on lawfully present people, including LPRs and citizens).

¹⁰⁹ 42 U.S.C. § 1306(a), 42 C.F.R. § 401.134(a).

¹¹⁰ Pub. L. 104–191, 110 Stat. 1936 (1996); 45 C.F.R. pts. 160, 164.

¹¹¹ Pub. L. No. 93-579, § 2(b), 88 Stat. 1896 (1974).

¹¹² 90 Fed. Reg. at 52,209.

¹¹³ 90 Fed. Reg. 52,168, 52,209 (Nov. 19, 2025) *citing* Drishti Pillai, Samantha Artiga, “2022 Changes to the Public Charge Inadmissibility Rule and the Implications for Health Care,” Kaiser Family Foundation

Immigration and Nationality Act. In 1970, Under Secretary Veneman testified before the Senate Finance Committee that the “whole purpose of the 1965 [A]ct” was to provide “‘mainstream medical care’ for all the people of this country,” reflecting a broad recognition that essential services were intended to be accessible to all residents, including immigrants.¹¹⁴ The Proposed Rule undermines both the historic purpose and practical functioning of these programs.

DHS recognizes that many who are never or rarely directly subject to public charge determinations—including legal permanent residents; refugees and asylees; and U.S. citizens—will forgo benefits to which they are entitled.¹¹⁵ But rather than treating these consequences as a regulatory defect, DHS treats them as a benefit, noting that the Proposed Rule will result in a reduction of public benefit “transfer payments” estimated at \$8.97 billion annually.¹¹⁶ The agency does not attempt to distinguish between reducing enrollment through restricted eligibility, versus reducing enrollment through fear, misinformation, or misunderstanding; it treats it all as fiscal savings.

For example, the Proposed Rule concedes that disenrollment and forgone enrollment will occur among populations who are not subject to the public charge test, including children and other family members who are U.S. citizens.¹¹⁷ Public benefits for children flow through parents and caregivers. When caregivers perceive legal risk, children lose access, even when their eligibility to receive benefits is unaffected. During the 2019 cycle, pediatricians, WIC agencies, and school nutrition programs all reported declines in enrollment among U.S.-citizen children in immigrant households.¹¹⁸ The authorities that DHS cites acknowledge this: surveys and population-wide analyses show material declines in benefit use across mixed-status families with

(KFF) (May 5, 2022), available at <https://www.kff.org/racial-equity-and-health-policy/2022-changes-to-the-public-charge-inadmissibility-rule-and-the-implications-for-health-care/>

¹¹⁴ Hearings Before the Subcommittee on Medicaid and Medicare of the Senate Finance Committee, 91st Cong., 2d Sess., pt. 1 at 57 (1970) (statement of Honorable John G. Veneman, Under Secretary, Department of Health, Education, and Welfare); *Bay Ridge Diagnostic Laboratory, Inc. v. Dumpson*, 400 F.Supp. 1104, 1106 (E.D. New York 1975) (same).

¹¹⁵ 90 Fed. Reg. at 52,209; 52,220.

¹¹⁶ *Id.* at 52,170-52,173 (Table II.1 “Summary of Major Provisions and Economic Impacts of the Proposed Rule”).

¹¹⁷ *Id.* at 52,218; *see also* 90 Fed. Reg. 52,193, 52,209 (DHS acknowledging studies documenting the 2019 rule’s chilling effects on populations not subject to the actual standard, that disenrollment rates ranged from 4.1% to 48% across immigrant families, and that mixed-status families were disproportionately impacted, including U.S. citizen families).

¹¹⁸ *See* Hamutal Bernstein, Dulce Gonzalez, Paola Echave, and Diana Guelespe, “Immigrant Families Faced Multiple Barriers to Safety Net Programs in 2021,” Urban Institute (Nov. 2022) available at <https://www.urban.org/research/publication/immigrant-families-faced-multiple-barriers-safety-net-programs-2021>; Drishti Pillai, *et al.*, “Health and Health Care Experiences of Immigrants: The 2023 KFF/LA Times Survey of Immigrants,” KFF (Sept. 17, 2023) available at <https://www.kff.org/racial-equity-and-health-policy/health-and-health-care-experiences-of-immigrants-the-2023-kff-la-times-survey-of-immigrants/>

U.S. children, despite those children's eligibility.¹¹⁹ During implementation of the 2019 Rule, 19-21% of adults in immigrant families with children reported that they or a family member avoided or withdrew from non-cash benefits such as SNAP, Medicaid/CHIP, or housing assistance for fear of immigration consequences.¹²⁰ DHS is aware of these studies and admitted its own underestimation of the 2019 Rule's chilling effects,¹²¹ but offers no mitigation or analyses of the consequences of this effect on States.

For States, the consequences are direct and severe. The Proposed Rule will lead to underutilization of primary care and preventative services; reduced vaccination rates; declines in nutritional supports such as SNAP and WIC; increased uncompensated emergency-room and urgent-care use; and greater reliance on emergency food networks. These effects drive higher costs and program churn for state health and human services agencies¹²² by immediately reducing funding streams for essential programs and shifting substantial unmet needs to state and local systems.

The Proposed Rule will likely cause some U.S. citizens with families of mixed status to forgo housing assistance for which they are eligible. It will also reduce participation in temporary housing assistance programs that are essential to life and safety in moments of crisis, such as short-term shelters for people who are homeless, for victims of domestic violence, or for runaway, abused, or abandoned children. As the U.S. Department of Housing and Urban Development has acknowledged in a prior proposed rulemaking, such impacts ultimately are likely to "reduce the quantity and quality of assisted housing."¹²³

A fundamental flaw of the Proposed Rule is that it treats eligible persons forgoing the use of lawfully available public benefits as an economic boon. DHS's estimate of \$8.97 billion in annual benefit savings is comprised of approximately \$5.29 billion in foregone federal payments and \$3.68 billion in foregone state payments.¹²⁴ DHS characterizes this as a mere "reduction in transfer payments,"¹²⁵ but it also represents a devastating cost to struggling and vulnerable families. The federal government's supposed cost savings is, in fact, shifting the cost of unmet

¹¹⁹ 90 Fed. Reg. at 52,218 ("reduced access to public benefit programs by eligible individuals, including aliens and U.S. citizens in mixed-status households, may lead to downstream effects on public health, community stability, and resilience. . .").

¹²⁰ Randy Capps, Michael Fix and Jeanne Batalova, "Anticipated 'Chilling Effects' of the Public Charge Rule Are Real: Census Data Reflect Steep Decline in Benefits Use by Immigrant Families," Migration Policy Institute (December 2020) available at <https://www.migrationpolicy.org/news/anticipated-chilling-effects-public-charge-rule-are-real>

¹²¹ 90 Fed. Reg. at 52,208.

¹²² Multistate Comment Letter from the Attorneys General of California, New York, Illinois, and Other States to DHS on Public Charge Ground of Inadmissibility (Oct. 22, 2021).

¹²³ U.S. Dep't of Hous. & Urban Dev., Regulatory Impact Analysis, Dkt. No. FR-6124-P-01, at 3 (Apr. 15, 2019).

¹²⁴ 90 Fed. Reg. at 52,196, 52,199, 52,208.

¹²⁵ *Id.* at 52,170, 52,215-52,219

health care, food, and housing needs for immigrants and their U.S.-citizen children to state and local emergency systems. *See, infra*, Part IV(b). The Proposed Rule will save little, and instead shifts costs for critical services to states and families less able to bear them.

b. States will bear substantial increased administrative and fiscal costs due to the Proposed Rule.

DHS concedes that immigrant families will respond to the Proposed Rule by avoiding essential programs. While the Rule’s ambiguity and vagueness will cause disenrollment even before the rule is implemented, the underlying medical, housing, and nutrition needs will not disappear; they will simply reappear as uncompensated care and emergency assistance that state and local governments, and their safety net systems, must absorb. DHS acknowledges this dynamic in passing, noting that “other qualitative, unquantified effects” of the rule will likely include adverse health effects, additional medical expenses due to delayed care, potential lost productivity, and administrative changes to business processes for providers and agencies.¹²⁶ However, these downstream costs are not quantified or considered in the Proposed Rule’s presentation of reduced transfer payments. The Proposed Rule ignores that Medicaid, CHIP, and many other programs are jointly financed between the states and federal government. Therefore, every dollar of forgone federal “transfer” typically requires states either to backfill coverage with their own funds, or to absorb greater uncompensated care and emergency assistance burdens.

According to the tables in the NPRM, Medicaid and CHIP will bear the brunt of the projected disenrollment. DHS estimates a 10.3% disenrollment or forgone enrollment rate among households, including noncitizens, which would reduce federal Medicaid/CHIP transfer payments by about \$3.43 billion annually, with a combined federal-state reduction of about \$5.82 billion per year.¹²⁷ Using an average federal medical assistance percentage (“FMAP”) of 59%, DHS calculates that state Medicaid/CHIP contributions would fall by roughly \$2.38 billion annually due to disenrollment among “aliens and their households.”¹²⁸ DHS acknowledges elsewhere that delayed care and reliance on emergency services will increase costs throughout the system,¹²⁹ but it wholly ignores these costs to States, localities, and their safety net hospitals (and the potentially catastrophic costs to individuals) when it characterizes the reduction in benefits to eligible populations as a financial windfall.

These reductions would have massive fiscal and economic consequences for the States. Nationally, total Medicaid spending in FY24 was approximately \$909 billion.¹³⁰ In California,

¹²⁶ 90 Fed. Reg. at 52,198-52,199, 52,218.

¹²⁷ *Id.* at 52,215-52,216.

¹²⁸ *Id.*

¹²⁹ 90 Fed. Reg. 52,218-52,219.

¹³⁰ Kaiser Family Foundation, “Total Medicaid Spending FY 2024” *available at* <https://www.kff.org/medicaid/state-indicator/total-medicaid->

where combined federal and state Medicaid spending totaled approximately \$124 billion and federal funds account for roughly two-thirds of program financing,¹³¹ the projected reductions translate to an estimated loss of approximately \$500 million per year in Medicaid/CHIP funding, or \$5 billion over ten years.¹³² New York faces comparable impacts, with combined federal and state Medicaid spending of approximately \$98 billion.¹³³ The NPRM's projected reductions would result in an estimated loss of roughly \$400 million annually, or nearly \$4 billion over ten years. Illinois's proportionate loss would be similar, where combined federal and state Medicaid spending totaled approximately \$32.3 billion, with roughly \$21 billion—about 65%—financed by the federal government,¹³⁴ resulting in an estimated loss of approximately \$130 million per year, or \$1.3 billion over ten years. Although absolute dollar impacts vary by state size, the NPRM imposes material and proportionate fiscal harms across all undersigned States, each of which depends on stable federal Medicaid financing to sustain access to care for vulnerable populations and to ensure that hospitals are able to meet their obligations to provide emergency services under the Emergency Medical Treatment and Labor Act ("EMTALA").¹³⁵

The fear and uncertainty that will be caused by the Proposed Rule translates into measurable fiscal losses for states and safety-net providers. Urban Institute surveys found that the 2019 Rule that sought to expand "public charge" inadmissibility led one in seven adults in immigrant families to avoid public benefit programs because of green-card concerns, and that *more than 20%* of adults in immigrant families avoided non-cash safety-net programs for immigration-related reasons.¹³⁶ Though implementation of the 2019 Rule was halted in March 2021, fear persisted among immigrant families up through 2022, when one in six adults in immigrant families with children reported avoiding non-cash benefits due to green-card concerns, and nearly one in four adults in mixed-status families did so.¹³⁷ A Manatt analysis of

spending/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D

¹³¹ KFF "Medicaid State Fact Sheet, Percent of People Covered by Medicaid, 2023 (California)," (May 20, 2025) available at <https://files.kff.org/attachment/fact-sheet-medicaid-state-CA>.

¹³² State-level estimates reflect each state's approximate share of national Medicaid expenditures applied to the NPRM's \$3.68 billion annual reduction in state-share transfer payments.

¹³³ KFF "Medicaid State Fact Sheet, Percent of People Covered by Medicaid, 2023 (New York)," (May 20, 2025) available at <https://files.kff.org/attachment/fact-sheet-medicaid-state-NY>.

¹³⁴ KFF "Medicaid State Fact Sheet, Percent of People Covered by Medicaid, 2023 (Illinois)," (May 20, 2025) available at <https://files.kff.org/attachment/fact-sheet-medicaid-state-IL>.

¹³⁵ 442 U.S.C. § 1395dd.

¹³⁶ Hamutal Bernstein, Dulce Gonzalez, Michael Karpman, Stephen Zuckerman, "One in Seven Adults in Immigrant Families Reported Avoiding Public Benefit Programs in 2018," Urban Institute (May 22, 2019) available at <https://www.urban.org/research/publication/one-seven-adults-immigrant-families-reported-avoiding-public-benefit-programs-2018>.

¹³⁷ Dulce Gonzalez, Jennifer M. Haley, Genevieve M. Kenney, "One in Six Adults in Immigrant Families with Children Avoided Public Program in 2022 Because of Green Card Concerns," Urban Institute (Nov. 30, 2023) available at <https://www.urban.org/research/publication/one-six-adults-immigrant-families-children-avoided-public-programs-2022>.

the 2019 Rule estimated billions of dollars in reduced federal Medicaid payments and significant job losses when eligible families disenrolled out of fear.¹³⁸ Federal courts reviewing the 2019 Rule found that it was likely to cause substantial fiscal and public health harms from disenrollment and increased uncompensated care.¹³⁹ The Proposed Rule would magnify the effects of the 2019 Rule because it encourages eligible families to avoid Medicaid, CHIP, SNAP, and housing supports—not because of any change in statutory eligibility, but because of a generalized fear that any connection to means-tested benefits could be used against them in a discretionary public-charge determination.¹⁴⁰ The NPRM’s treatment of these fiscal harms is incomplete, requiring the States to conduct their own detailed analyses of these harms within an already-truncated public comment period.

Furthermore, DHS acknowledges that there will be costs associated with “regulatory familiarization,” staff training, and IT changes for hospitals, nonprofits, and state Medicaid agencies, but offers no quantitative estimate and treats these burdens as minor.¹⁴¹ DHS’s analysis fails to consider the full costs of the 2019 Rule as one indicator of the potential costs of the Proposed Rule. Implementing the 2019 Rule required extensive systems reprogramming, vendor contract modifications, retraining of eligibility workers, development of new compliance protocols, and significant coordination with federal data-matching systems.¹⁴² Providers and community organizations faced higher transactions costs due to increased screening, documentation, and counseling needs for affected families.¹⁴³

¹³⁸ Alice J. Lam, “DHS Public Charge Regulation Could Drive Medicaid Coverage Losses,” Manatt on Health: Medicaid Edition (Aug. 29, 2019) *available at* <https://www.manatt.com/Insights/Newsletters/Manatt-on-Health-Medicaid-Edition/DHS-Public-Charge-Regulation-Could-Drive-Medicaid>.

¹³⁹ See, e.g., *New York v. United States Department of Homeland Security*, 969 F.3d 42 (2020) (holding that states had standing based on anticipated fiscal harms and that DHS’s own analysis acknowledged decreased federal funding and increased uncompensated care); *City and County of San Francisco v. United States Citizenship and Immigration Services*, 981 F.3d 742 (2020) (finding DHS failed to adequately consider detailed economic studies projecting disenrollment and fiscal impacts, violating APA requirements); *Cook County, Illinois v. Wolf*, 962 F.3d 208 (2020) (holding the rule likely violated arbitrary and capricious standard due to DHS’s failure to consider state and local government reliance interests and public health consequences).

¹⁴⁰ 90 Fed. Reg. at 52,183, 52,189.

¹⁴¹ *Id.* at 52,183, 52,189.

¹⁴² See, e.g., *Cook County, Illinois v. Wolf*, 962 F.3d 208, 218-219; 233-234 (2020) (holding that both Cook County and the Illinois Coalition for Immigrant Refugee Rights had standing based on financial harms and resource diversions caused by the 2019 Rule); *La Clinica de la Raza v. Trump*, 706 F. Supp. 3d 903, 917 (2020) (finding organizational standing based on harms caused by diversion of resources and direct financial consequences resulting from implementation of the 2019 Rule); *Cf. City and County of San Francisco v. United States Citizenship and Immigration Services*, 944 F.3d 773, 884 (2019) (granting DHS’ emergency motion to stay injunctions related to implementation of the 2019 Rule).

¹⁴³ *Id.*; see also Samantha Artiga, Drishti Pillai, Sammy Cervantes, Akash Pillai, and Matthew Rae, “Potential ‘Chilling Effects’ of Public Charge and Other Immigration Policies on Medicaid and CHIP

The Proposed Rule’s projected “reductions in transfer payments” are therefore better understood as a combination of lost federal revenue for states and shifted costs. When immigrant families avoid Medicaid, costs move to emergency departments and uncompensated care. When families avoid SNAP, food insecurity rises and local food banks (not federally reimbursed programs) absorb the gap. When families avoid CHIP, state and locally funded children’s health programs absorb treatment costs. In states like Illinois, for example, where Medicaid already constitutes a large share of the budget, the Proposed Rule threatens billions of dollars in forgone federal funds and a substantial increase in uncompensated care and emergency assistance costs that DHS has not meaningfully analyzed.

c. The Proposed Rule does not consider any impacted parties’ reliance interests.

The Proposed Rule fails to account for the reliance interests engendered by DHS’s public charge framework, reflected in decades of agency practice and codified in the 2022 Rule. DHS concedes that “the ... public may be relying on aspects of the regulatory scheme in the 2022 Final Rule,”¹⁴⁴ but does not identify what those interests are, nor analyze how they arose, nor consider alternatives. Instead, the Proposed Rule pivots to the conclusory assertion that the prior rules did not provide an “effective path”¹⁴⁵ for public charge determinations, without conducting any reasoned analysis of reliance interests at all.

When an agency changes course, it must be cognizant that longstanding policies may have engendered serious reliance interests that must be taken into account, and that failure to do so renders the change arbitrary and capricious.¹⁴⁶ DHS has not met its obligation here. The Proposed Rule eliminates entirely the definition of “public charge” and replaces it with discretionary case-by-case enforcement, while failing to account for reliance interests created by the 2022 Rule. While it is appropriate for DHS to solicit information about reliance interests during notice and comment, the Proposed Rule does not itself identify those interests or articulate how the prior framework shaped decision-making. And, tellingly, the Proposed Rule takes away every element that created those reliance interests in the first place.

Enrollment,” KFF (Dec. 2025) available at <https://www.kff.org/medicaid/potential-chilling-effects-of-public-charge-and-other-immigration-policies-on-medicaid-and-chip-enrollment/#:~:text=The%20proposed%20rule%20will%20likely,%2C%20food%2C%20and%20housing%20providers.>

¹⁴⁴ 90 Fed. Reg. at 52,193.

¹⁴⁵ *Id.* at 52,193.

¹⁴⁶ See *Department of Homeland Security v. Regents of the Univ. of Cal.*, 591 U.S. 1, 30 (2020) (it was arbitrary and capricious to ignore the fact that DACA recipients have structured their lives in reliance on the program). See also *Motor Vehicle Mfrs. Assn. of United States, Inc. v. State Farm Mut. Automobile Ins. Co.*, 463 U.S. 29, 41-42 (1983) (an agency rescinding its rule is obligated to supply a reasoned analysis for the change); *FCC v. Fox Television Stations*, 556 U.S. 502 (2009) (when an agency flips long-standing policy, it must acknowledge the change and consider serious reliance interests engendered by the prior policy).

The Proposed Rule rescinds every protection previously provided and consistently relied upon—§§ 212.20, 212.21, 212.22, and 212.23—and eliminates core definitions of “likely at any time to become a public charge,” “public cash assistance,” and “receipt,” which provided clarity and predictability under the prior framework.¹⁴⁷ DHS proposes no replacement standards, instead asserting that officers will exercise individualized discretion based on the “totality of the circumstances.”¹⁴⁸ This shift disregards the reliance interests of individuals, particularly those who lawfully used benefits or qualified under longstanding exemptions, who may now face potential adverse consequences without any explanation of how those reliance interests will be protected.

For more than two decades—from the 1999 Guidance through the 2022 Rule—the public charge test centered on cash assistance for income maintenance and long-term institutionalization, with a corollary understanding that use of nutrition, health, or housing benefits would not jeopardize admissibility. Individuals and families, including applicants in humanitarian categories expressly exempt from public charge determinations, structured decisions about benefit use and immigration pathways in reliance on that framework.

The Proposed Rule also introduces a potentially retroactive effect by failing to exclude past, fully lawful benefit use—previously clearly excluded from consideration—from the discretionary “totality of the circumstances” analysis. Individuals who acted lawfully and rationally under the existing regulatory protections risk being penalized based on conduct that was expressly permitted under prior law. Courts routinely strike down policies that jeopardize individuals who acted in reliance on prior rules without meaningful explanation for disregarding those reliance interests.¹⁴⁹ The Proposed Rule does not even engage the reliance question; it simply states that because discretion will be individualized, applicants can offer evidence to rebut adverse inferences.¹⁵⁰ But reliance on clear rules established over multiple decades is not mitigated by a program of unfettered, individualized discretion.

The destabilization is particularly acute for individuals historically exempt from public charge risk—refugees, asylees, T-visa holders, U-visa holders, special juvenile immigrants, and other humanitarian categories. The 2022 Rule codified the government’s longstanding position that Congress intended these populations to be exempt.¹⁵¹ By deleting § 212.23 without replacement,¹⁵² the Proposed Rule places individuals who adjusted status under exempt pathways—often many years ago—into uncertainty. For example, a refugee who used Medicaid in reliance on prior practice and later adjusted to Lawful Permanent Resident status could, under

¹⁴⁷ 90 Fed. Reg. at 52,171-52,172.

¹⁴⁸ *Id.* at 52,183.

¹⁴⁹ *See, supra*, note 143.

¹⁵⁰ 90 Fed. Reg. at 52,183, 52,188.

¹⁵¹ 87 Fed. Reg. 55,472, 55,474 (Sept. 9, 2022) (codifying exemptions); 8 C.F.R. 212.23.

¹⁵² 90 Fed. Reg. at 52,170-52,171.

the new framework, be deemed likely to become a public charge based, in part, on their past benefit use.

The Proposed Rule offers no analysis of how prior reliance on benefits used within exempt categories will be treated under the new discretionary framework. Any final rule must make clear (as the 2019 Final Rule made clear)¹⁵³ that prior lawful use of eligible benefits—particularly by individuals previously exempt from public charge determinations—cannot be considered a factor in finding any individual likely to become a public charge.

V. To the extent that the 2022 Rule is replaced by sub-regulatory guidance, this process would create significant harms, including lack of transparency, accountability, or opportunity for public comment.

The reliance problems described above are exacerbated by the fact that the NPRM proposes rescinding the 2022 Rule, but does not state what would replace it or even whether DHS intends to redefine “public charge” through formal rulemaking. That lack of clarity creates even more uncertainty for the States and immigrants, which carries significant harms. As with the elimination of clear, publicly available guidance, replacing the 2022 Rule with sub-regulatory guidance would create additional problems.

The Administrative Procedure Act requires agencies to “give interested persons an opportunity to participate in [] rule making[.]”¹⁵⁴ Courts have therefore taken issue with the use of sub-regulatory guidance in place of formal rulemaking.¹⁵⁵ And the Department of Justice recently determined that “[g]uidance documents violate the law when they are issued without undergoing the rulemaking process established by law yet purport to have a direct effect on the rights and obligations of private parties governed by the agency or otherwise act as a substitute for rulemaking.”¹⁵⁶ If DHS and USCIS proceed along the lines implied by the Proposed Rule, and replace the rescinded 2022 Rule with sub-regulatory guidance that was not subject to the rulemaking process, this opaque course would improperly foreclose the robust and transparent public comment period required for changes as significant as those at issue in the context of public charge determinations of inadmissibility.

Moreover, the reliance harms described above would be aggravated if DHS were to rely on sub-regulatory guidance to guide public charge determinations. That guidance would be subject to revocation or alteration at any time, without notice or public participation. Indeed, that is the

¹⁵³ See 84 Fed. Reg. 41,292, 41,320-41,321 (Aug. 14, 2019) (affirming the 2019 Final Rule’s prospective application).

¹⁵⁴ 5 U.S.C. § 553(c).

¹⁵⁵ See *Mendoza v. Perez*, 754 F.3d 1002, 1024 (D.C. Cir. 2014); *Comité de Apoyo a los Trabajadores Agrícolas v. Solis*, 2010 WL 3431761, at *19 (E.D. Pa. Aug. 30, 2010).

¹⁵⁶ Memorandum from Attorney General Pam Bondi (Feb. 5, 2025) (*available at* <https://www.justice.gov/ag/media/1388511/dl?inline>).

very purpose of notice-and-comment procedures, which are not a mere formality but “are designed (1) to ensure that agency regulations are tested via exposure to diverse public comment, (2) to ensure fairness to affected parties, and (3) to give affected parties an opportunity to develop evidence in the record to support their objections to the rule and thereby enhance the quality of judicial review.”¹⁵⁷ They also “attempt[] to provide a ‘surrogate political process’ that takes some of the sting out of the inherently undemocratic and unaccountable rulemaking process.”¹⁵⁸

VI. Conclusion

If finalized, the Proposed Rule will harm the undersigned States, our residents, and our public resources. The proposed, seemingly unbounded expansion of “public charge” will penalize immigrants and their families for lawfully accessing resources that are, indeed, intended in part for them. The Proposed Rule represents an impermissible departure from Congress’s and the courts’ interpretations of “public charge,” is contrary to law, and constitutes an arbitrary and capricious change in longstanding policy. We strenuously object to the Proposed Rule and respectfully request its withdrawal.

Sincerely,

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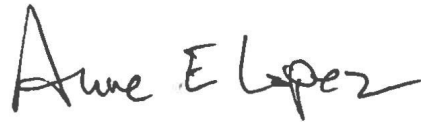
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¹⁵⁷ *Int’l Union, United Mine Workers of Am. v. Mine Safety & Health Admin.*, 407 F.3d 1250, 1259 (D.C. Cir. 2005).

¹⁵⁸ *Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 70 n.13 (2020) (Thomas, J., dissenting).



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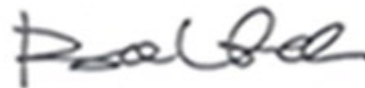
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