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Submitted via www.regulations.gov

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

Re: DHS Docket No. USCIS-2010-0012, RIN 1615-AA22, Comments in Response to Proposed Rulemaking: Inadmissibility on Public Charge Grounds

Dear Sir/Madam:

The Center for Public Policy Priorities (CPPP) submits these comments in response to the Department of Homeland Security's (DHS) Notice of Proposed Rulemaking (NPRM or proposed rule) to express unreserved and strong opposition to the changes regarding "public charge," published in the Federal Register on October 10, 2018. The proposed rule would cause major harm to Texans, including immigrants and their families, local governments, states, health care and hunger relief agencies, and most sectors of Texas business. **We urge that the proposed rule be withdrawn in its entirety, and that long-standing principles clarified in the 1999 field guidance remain in effect.**

The Benedictine Sisters of Boerne, Texas, founded CPPP in 1985 to advance public policy solutions to improve access to health care. We became an independent, tax-exempt organization in 1999, and over time our focus has expanded to include economic opportunity and fiscal policy. We are based in Austin, Texas, and work statewide. At CPPP, we believe in a Texas that offers everyone the chance to compete and succeed in life. Administrative advocacy is one important way we use data and analysis to enable Texans of all backgrounds to reach their full potential.

CPPP staff have expertise in the complex intersections between federal, state, and local health care and anti-hunger programs, and federal immigration policies. Our agency has pursued this subject since the 1996 passage of the Personal Responsibility and Work Opportunity Reform Act (PRWORA), which restricted access to health care and food benefits for non-citizens, and the adoption of Public Charge guidance in 1999. Federal immigration authorities at that time developed clear guidance language and public education materials designed to reassure Texas' many mixed-immigration families that use of hunger and health care benefits (apart from government-paid long-term institutional care) would not be detrimental to future lawful immigration pathways. The federal government also pledged that U.S. citizen family members of non-citizens need not avoid accessing those benefits for which they were lawfully eligible, out of fear of damaging a family member's petition for lawful permanent residence. It has long been our experience that despite this long-standing position of federal immigration authorities, reassuring

our mixed-immigration status communities that access to health care and nutrition programs was safe for both U.S. citizens and for lawfully eligible non-citizens has been very challenging.

In the last decade, every year, between 90,000 and 110,000 new Lawful Permanent Residents are granted green cards in Texas, according to DHS reports. But this is just the tip of the iceberg. Family-based immigration is slow and complicated, with some immigrants waiting for many years “in line” for their turn to get the Green Card. So, at any given time, several hundreds of thousands of immigrants in Texas are waiting for their chance to get a Green Card. The proposed rules will affect all those seeking a Green Card, unless they are exempt from the Public Charge Test.

The ripple effects of children, teens, and adults going without health care and food would be profound. Schools would face even more hungry students and children with unmet medical and dental needs. More pregnant mothers would avoid or delay accessing prenatal care. Grocery stores would lose business, and food banks and pantries would face overwhelming demand as families turn to them after dropping out of the Supplemental Nutrition Assistance Program (SNAP, formerly “food stamps”)

In this way, the rule as published on October 10, 2018 would result in dramatic and widespread harm to Texas families, communities, and our state economy. The rule is not informed by the true demographic and economic make-up of Texas population, or by the Texas business sector’s profound reliance on the economic contributions of all immigrants and their families. Neither does it take into account the devastating cascading effects that curtailing access to basic health care needs and protection from hunger will have in our state. Our comments below will speak to these concerns.

Immigrants and their families are an integral part of the Texas population. According to analyses of U.S. Census dataⁱ:

- Texas is home to about 2.9 million individual non-citizens, but when you include their immediate family members who are U.S. citizens, a total of 5.6 million Texans are potentially touched by the effects of the proposed rule (out of a total of 27 million Texans).
- An estimated 7 out of 10 of these 5.6 million Texans have family incomes below 250% of the federal poverty income, meaning that the non-citizen family members seeking lawful immigrations would be subject to various provisions of the proposed new potential grounds for exclusion under the Public Charge rule.
- Nearly 4 in 10 of these same Texans are in families below 125% of the federal poverty income, and would be subject to especially high barriers to gaining permanent lawful status under the proposed rule.

Over one quarter of Texas Children live in mixed-immigration families. This proposed rule would affect more than the individual immigrants directly seeking legal immigration status. Over one in four Texas children (an estimated 1.8 to 1.9 million out of Texas’ 7.1 million children) have at least one parent who is not a U.S. citizen; and the overwhelming majority of these children are themselves U.S. citizens (estimated 1.65 million). Experts fear that many of those children – including U.S. citizen children – could lose public health and food assistance for which they lawfully

qualify because a parent moving through the legal immigration system might fear that if their U.S. citizen family members access any federal programs, the parent would be denied immigration.

One recent analysisⁱⁱ estimates that about 1 million of the Texas US citizen kids who have a non-citizen parent are enrolled in Medicaid or CHIP, and are at risk of losing coverage because families fear that income eligibility for benefits will result in denial of lawful immigration for a family member.

The proposed rule's income thresholds applying more restrictive Public Charge standards will reduce Texans' access to medical care and anti-hunger services. Though the proposed rule does not explicitly penalize an applicant for legal permanent residence status because of the use of Medicaid, CHIP, or SNAP benefits by an eligible U.S. citizen or lawfully present immigrant family member, the result of the heavily negative treatment of all applicants with family incomes below 125% of the federal poverty income would be nearly identical.

Texas children's Medicaid serves children ages 1-18 up to 138% of the federal poverty income; SNAP serves households under 130% of federal poverty income, and Texas' "CHIP Perinatal" program provides prenatal and postpartum care to pregnant immigrant women up to 200% federal poverty income. It follows that simply having a household income low enough to allow other family members to participate in Medicaid, SNAP, or CHIP-P will in most cases also mean the immigrant applicant is subject to the harshest barriers to admission in the proposed rule. Experts and Texas care providers agree that word of the proposed income standard has already intimidated many U.S. citizens in mixed-status families into dropping benefits for which they are qualified,ⁱⁱⁱ and that this trend will accelerate dramatically should the rule be finally adopted.

The proposed federal poverty income thresholds targeted represent nearly half of Texas households, and are not realistic or appropriate benchmarks. Just over 45% of all Texans live in a household with income less than 250% of the federal poverty income. DHS' proposal to scrutinize applicants with household incomes below 250% of the federal poverty income suggests that nearly half of Texans are considered to have inadequate incomes. And if all immigrants and their U.S. citizen family members are removed from the Texas population calculation, 39% of Texans in households that include only U.S. citizens have incomes below 250% of the federal poverty income.^{iv}

U.S. citizen Texas households are also heavily represented among families with incomes below 125% federal poverty income: 3.8 million Texans in all-citizen families, versus 2.1 million in mixed-status families fall into the income groups which would face the proposed extraordinary barriers to permanent residence status. CPPP believes that these Texas demographics illustrate that the proposed thresholds are not justifiable as benchmarks of an expected income for families that include immigrants, as they are inconsistent with the economic realities facing millions of working Texas and American families.

Texas' median household income in 2017 was \$59,206, meaning that half of Texas households had income above \$59,206, and half had income below. In 2017, 250% of the federal poverty income for a family of 4 was \$61,500, illustrating again that a very large share—over half—of Texas working

families with children would be considered an economic liability if the proposed income standard were applied to all.

National research has also underscored this point; a recent report calculated that about 16 percent of U.S.-born citizens have cash income (excluding means-tested benefits) below the 125% of federal poverty income threshold, including many low-wage workers. And if the proposed new standard regarding receipt of Medicaid or SNAP were applied to U.S.-born citizens, the researchers found that nearly one-third of Americans would have trouble meeting it.^v

Congress did not intend for the 125% of federal poverty income standard for sponsored household income to act as a threshold for exclusion. The proposed rule attempts to justify the threshold by pointing to the use of 125 percent of the FPL for exclusion by citing this threshold for sponsorship. In contrast, Congress introduced the enforceable affidavit of support that is in use today to help immigrants overcome any public charge issue they might have, and thus to explicitly allow an individual with income below that level to immigrate. This gives family-based immigrants the ability to find a sponsor who agrees to support them at the 125% FPL level, and who is a U.S. citizen or lawful permanent resident, and thus an opportunity to become financially established in the U.S. The current policy further allows applicants to enlist an additional co-sponsor if the petitioning sponsor's resources fall short of the 125% of federal poverty income standard. If Congress had intended to require immigrants to earn over 125 percent FPL before being admitted, it would not have gone to these lengths to create a clear pathway for admission to persons with incomes below that level.

The 250% of the federal poverty income threshold also lacks grounding in data. The only heavily weighted positive factor proposed in the rule is income, assets or resources of at least 250% of the federal poverty income, as adjusted for household size. However, DHS states (footnote 583) that differences in receipt of non-cash benefits between non-citizens living below 125% of federal poverty income, those with incomes between 125% and 250% of the federal poverty income, and those between 250-400% of the federal poverty income are not statistically significant. Again, a standard of 250% percent of the federal poverty income—nearly \$63,000 a year for a family of four—is above both the Texas and U.S. median household incomes for all, and is a threshold that 61% of recently admitted lawful permanent residents did not meet.^{vi}

The proposed 250 percent FPL threshold also disregards and distorts the fundamental meaning of public charge, ignoring that millions of critically needed Texas and U.S. workers have family incomes well below this level. Bureau of Labor Statistics (BLS) data document that average earnings in many key sectors fall below the arbitrary proposed threshold. The seasonally adjusted annual mean wage for private, nonfarm occupations was less than \$50,000 in October, 2018, below 250 percent of federal poverty income for a three-person household.^{vii} Among production and nonsupervisory workers, mean wage was just over \$40,000 - less than 250 percent FPL for a household of two.^{viii} Incorporating a 250 percent FPL income level as the single heavily weighted positive factor in the public charge test would represent a fundamental change to U.S. immigration policy in which full employment and productivity are no longer honored or deemed adequate standards for our immigrant population.

The effect of the proposed income thresholds is to impose a low-income exclusion immigration exclusion standard without the approval of Congress. This proposal would essentially put an unaffordable price tag on legal U.S. residency, turning our immigration system into one that explicitly and heavily favors prospective immigrants with wealth over those who seek to follow the path of upward mobility that for centuries has brought millions of immigrants to our shores and enriched our country and economy in the process. In practical terms, this approach will also cripple Texas industries that rely on less skilled work.

The proposed rule dismisses the value and dignity of low-wage work. Public charge policy was intended to apply to people who could not support themselves and would fully rely on government support, but many people working full-time in Texas do not meet the 125% of FPL standard. Minimum wage work (\$7.25 per hour) at 40 hour per week for 52 weeks in 2018 would yield a gross income of \$15,080, which is just below 125% of the federal poverty income for an individual. To support just one other person (i.e., a family of 2) at an income above that threshold would require an hourly wage in excess of \$10 an hour, with higher hourly wages needed for families of 3 or more. By excluding lawful immigration of workers willing to accept lower-wage jobs, the proposed rule would have a devastating impact on Texas' workforce.

The proposed rule ignores the scale of potential economic damage to Texas and our communities and industries relying on immigrant labor. A recent study of the city of Houston's economic relationship to immigration notes that 1.7 million non-citizens reside in the city, including a 2017 Latino majority, and substantial Asian and African populations. Immigrants are critical to the city's robust economic growths, making up approximately one-third of workers in Greater Houston, and more than half of workers in the local construction sector which was critical in recovery from Hurricane Harvey. ^{ix}

Several Texas sectors rely heavily on immigrant labor, including both immigrants with lawful status and undocumented residents: e.g., construction, food service, accommodations, agriculture, and health care. A prominent Texas economist has estimated that the number of undocumented workers in Texas is about twice as large as the total number of unemployed persons in the workforce, suggesting that even 100% employment in Texas would leave the state with a "*glaring gap of hundreds of thousands of workers if the undocumented workforce were no longer available.*" This study by the Perryman Group of the economic benefits and costs of the undocumented workforce to Texas found net gains of 1.2 million permanent jobs, billions in revenue to taxing entities, direct net benefits exceeding \$326 billion per year, and \$145 billion in gross product output from Texas undocumented workforce. Revenues to governments from this economic activity are estimated at \$32.9 billion each year, including \$20.1 billion to federal government, \$11.8 billion to State of Texas, and \$0.9 billion to local governments.^x While this analysis focused on undocumented workers, Texas' economy will be similarly harmed by any dramatic constriction in lawfully present immigrant workers, and their contributions to the Texas workforce and our communities.

Meeting basic health and nutrition needs is benefits children and society, and is not a measure of economic failure. Many studies^{xi} show that the kinds of assistance that the rule covers have

positive effects on children, improving their health and helping them do better (and go farther) in school, thereby boosting their expected earnings as adults. For example, an early study of the long-term effects of access to food stamps (now known as SNAP) found that young children who had access to food stamps grew up to have higher high school graduation rates and lower rates of heart disease and obesity, compared to similar low-income children without access to food stamps. Women who had access to food stamps as young children had improved economic self-sufficiency in adulthood.

An extensive body of research has shown that access to health care through Medicaid, CHIP, and other insurance yields long lasting health, societal, and economic outcome benefits. Medicaid eligibility for pregnant women and children improves health throughout their lives, from prenatal development to adolescence to adulthood. Medicaid eligibility leads to improvements in educational outcomes at the elementary, high school and college levels. Childhood Medicaid protects the whole family from financial hardship by decreasing the probability of debt and bankruptcy for families. It also produces economic benefits in adulthood, including increased employment, higher tax payments, and returns on public investment in Medicaid.^{xii}

In August 2018, 3.1 million Texas children were enrolled in Medicaid based on income or disability (out of 4 million total Medicaid enrollees), which is 43% of all Texas children. Texas SNAP had 3.7 million enrollees in October 2018, and 2 million of them children—28% of Texas children. The great majority of both Medicaid and SNAP households are working families, whose earnings are simply inadequate to meet basic needs of food, shelter, medical care, and transportation to work and school. The great majority of these beneficiaries are also U.S. citizens. To suggest that use of these vital medical and nutrition services is undesirable behavior is to disregard the fact that these citizens represent a very large share of Texas population, and the dignity and value of their labor.

CPPP therefore opposes both the proposed use of Medicaid or SNAP benefits as a negative factor, and the imposition of income standards that will effectively mirror those of medical and hunger benefits and discourage enrollment by family members along with individuals applying for immigration benefits.

Proposed Public Charge Rule Could Lead to Increased Hunger, and Funding Cuts to Schools Serving Low-Income Students. There is a straight line between a child's ability to enroll in SNAP and Medicaid and the amount of funding schools may receive to serve low-income students. Children who are enrolled in SNAP and Medicaid are automatically eligible for free school meals without requiring their parents to fill out an application. The more automatically eligible students a school or district has, the more financially viable it is for them to feed all of their students for free using the Community Eligibility Provision (CEP).

Currently, 2,700 schools in Texas use CEP to provide breakfast and lunch free to all students which means fewer children going hungry. But if families become afraid to enroll their children in SNAP or Medicaid because it might hurt their chances to become a citizen, fewer schools will be able to use CEP, and children across the state would no longer be assured of free meals. Much of the progress Texas schools have made reducing childhood hunger would be derailed.

And the impact on schools does not end there. In Texas, schools qualify for additional State Compensatory Educational (SCE) funding for every child who qualifies for free or reduced-priced meals. The money goes a long way to helping schools provide the services students need. So when children lose their automatic eligibility for free meals because parents are afraid to enroll them in SNAP or Medicaid, and they also decide not to risk filling out an application for free school meals, schools lose a major source of funding. In addition, schools will struggle with the impact of children and teens coming to school even hungrier than before when families drop SNAP benefits out of fear. Texas schools are already underfunded, the proposed changes to public charge will only make it harder for schools to serve students.

Local food banks, food pantries, other charities that provide nutrition and meals, and local government agencies will all suffer from the unlegislated cost-shifting that would result from this proposed rule. Food banks will be unable to meet the increased need for nutritious foods if large numbers of Texas families drop SNAP benefits. Food banks already must respond to high demand when families exhaust their SNAP benefits before the end of the month; a significant jump in demand due to families exiting SNAP will be overwhelming in many Texas communities.

At FR 51174, the Department specifically requests comment on whether the Children’s Health Insurance Program (CHIP) should be included in a public charge determination. For many of the same reasons that we oppose the inclusion of Medicaid, we equally adamantly oppose the inclusion of CHIP.

CHIP varies in size and structure from state to state, but generally is a program for children in working families who earn too much to be eligible for Medicaid. Since 2007, states have also been able to use CHIP funding to provide prenatal care to women excluded from Medicaid due to immigration status, on behalf of their unborn child who will qualify for either Medicaid or CHIP. Because Texas is one of only 6 states to deny Medicaid to lawful permanent resident adults, Texas’ “CHIP-Perinatal” program serve both lawfully present pregnant women and those lacking current lawful status. Therefore in Texas, inclusion of CHIP in a public charge determination would lead to more women foregoing prenatal care—resulting in poorer birth outcomes and both humanitarian and fiscal harm—and also would lead to even more eligible children foregoing health care benefits, both because of the direct inclusion in the public charge determination, as well as the chilling effect detailed extensively in these comments. Nearly 9 million children across the U.S. depend on CHIP for their health care, and in Texas over 392,000 children and another 33,000 women were served in August 2018.

Adopting the rule would also be counter to Congress’ explicit intent in expanding coverage to lawfully present children and pregnant women. Section 214 of the 2009 Children’s Health Insurance Program Reauthorization Act (CHIPRA) gave states a new option to cover, with regular federal matching dollars, lawfully residing children and pregnant women under Medicaid and CHIP during their first five years in the U.S. This was enacted because Congress recognized the public health, economic, and social benefits of ensuring that these populations have access to care. DHS notes that the reason it does not include CHIP in the proposed rule is that CHIP does not involve the same level of expenditures as other programs that it proposes to consider in a public charge

determination and that noncitizen participation is relatively low (see 83 Fed. Reg. at 51174), but a public charge determination must be an individualized assessment, as required by the Immigration and Nationality Act, and not a backdoor way to try to reduce government expenditures on programs duly and expressed enacted by Congress.

Texas offers both Medicaid and CHIP to lawfully present children today, having recognized since 1999 the social, public health, and economic benefits of all children receiving high-quality comprehensive health care. Since its Congressional inception in 1997, CHIP has enjoyed broad, bipartisan support based on the recognition that children need access to health care services to ensure their healthy development. Medicaid and CHIP together have helped to reduce disparities in coverage that affect children, particularly for children of color. A 2018 survey of the existing research noted that the availability of "CHIP coverage for children has led to improvements in access to health care and to improvements in health over both the short-run and the long-run."^{xiii}

Continuous, consistent coverage without disruptions from Medicaid or CHIP is especially critical for young children, as experts recommend 16 well-child visits before age six, more heavily concentrated in the first two years, to monitor their development and address any concerns or delays as early as possible.^{xiv} As noted by the Georgetown University's Center for Children and Families: a child's experiences and environments early in life have a lasting impact on his or her development and life trajectory. The first months and years of a child's life are marked by rapid growth and brain development.^{xv}

Overall, we believe the benefits of excluding CHIP and Medicaid profoundly outweigh their inclusion in a public charge determination. We recommend that DHS continue to exclude CHIP from consideration in a public charge determination in the final rule but also exclude receipt of Medicaid for the same reasons.

Impact on Texas hospitals and local governments of decreased Medicaid and CHIP enrollment. The proposed rule will put state and local government programs (as well as food banks and other hunger programs) in the position of turning away families without any assistance, because the families have been frightened by the proposed rule and forced to choose between putting lawful immigration at risk, or meeting a family's basic needs for health care and nutrition.

Similar to the unlegislated cost-shift that would result from drops in SNAP enrollment, declining Medicaid and CHIP enrollment due to fears of immigration consequences will drive more uninsured immigrants and their U.S. family members to Emergency Rooms, and to the programs for uninsured offered by most of Texas large urban counties. This will result in a loss of federal funding for the state (Medicaid is the largest source of federal tax revenues in every state's budget), shifting costs instead to local taxpayers. Most local government care programs use protocols today that require applicants to access all federal benefits for which they qualify before allowing access to local funding. The proposed rule will create an ethical and fiscal dilemma for health care systems, and potentially shifting current federal costs onto local Texas property taxpayers.

These concerns have been reflected in an October 2018 letter from four of Texas Urban County Judges (Dallas, Bexar, El Paso, Travis) opposing the proposed rule stated, "*the newly proposed changes would further discourage and scare people away from federal programs, and will further*

shift the burden onto local taxpayers. This fear will be severely aggravated by the anticipated US Department of Justice rule to increase scrutiny of Green Card holders who suffer illness, injury, or economic hardships after being granted permanent resident status. Any policy change that makes it harder for people to get access to the benefits to which they are legally entitled risks increasing the prevalence of communicable and chronic disease and could negatively impact the health of our most vulnerable, including pregnant women and infants.”^{xvi} The county health care system for a fifth county, Harris (Houston, Texas’ largest-population county), submitted comments in December 2018 with this information of anticipated fiscal damage, “A recent study by Manatt Health for America’s Essential Hospitals concluded that the rule changes put \$95 million in annual Medicaid and CHIP reimbursements for Harris Health at risk...a 60% reduction in collections from those two programs...amounting to a massive unfunded mandate from the federal government...The proposed rule would make the uninsured population more reliant on the already over-burdened public hospital system...(which could) cause serious overcrowding in public and private emergency rooms countywide.”^{xvii}

The above-referenced study by Manatt found that, across the United States, an estimated \$68 billion in Medicaid and CHIP health care services were provided to individuals potentially impacted by the proposed rule. Of that total, \$17 billion represents payments for hospital services. It is important to note that uncompensated care costs would rise along with any decrease to the \$17 billion in Medicaid and CHIP payments, as affected individuals still would seek hospital care, even if they forgo coverage.^{xviii} The authors summarize, “*The healthcare needs of the individuals and families who drop coverage or forgo enrollment in coverage as a result of this immigration rule would not disappear. While they are likely to forgo preventive and routine care, some people would still turn to hospitals for services—particularly for expensive acute care and inpatient procedures as people defer or delay care due to lack of insurance coverage—thereby increasing uncompensated care costs. Overall, the public charge proposed rule would have a significant negative impact on hospitals and the communities that rely upon them, particularly in areas with large immigrant populations. As uncompensated care costs rise, the destabilizing impact of the rule could threaten the investments hospitals make in serving their entire communities.*”

The proposed rule promotes discrimination against children with special health care needs and other Texans with disabilities. The proposed regulations would create significant hardships for and discriminate against lawful immigrants with disabilities by denying them an opportunity to benefit from an adjustment in their immigration status equal to that available to immigrants without disabilities.^[1] Under the proposal, the Department will consider a wide range of medical conditions, many of which constitute disabilities, as well as the existence of disability itself, in determining whether an immigrant is likely to become a public charge. Although DHS states that disability will not be the “sole factor” in that determination, the Department fails to offer any accommodation for individuals with disabilities and instead echoes the types of bias and “archaic attitudes” about disabilities that the Rehabilitation Act was meant to overcome.^[2]

The proposed rule would also discriminate against people with disabilities by defining an immigrant as a public charge for using (for the specified periods and amounts) non-cash benefits which individuals with disabilities rely on disproportionately, often due to their disability and the

discrimination they experience because of it. For example, about one-third of adults under age 65 enrolled in Medicaid nationwide have a disability, compared with about 12% of adults in the general population (20% of Texas Medicaid enrollees—over 786,000 Texans—are individuals with disabilities and frail elders). Many of these individuals are eligible for Medicaid, and unable to obtain private insurance, precisely because of their disability. Likewise, more than one-quarter of people who use SNAP benefits for nutritional support are also disabled. Many of these individuals rely upon such benefits so that they can continue to work, stay healthy, and remain productive members of the community.

By deeming immigrants who use such programs as a public charge, the regulations will disparately harm individuals with disabilities and impede their ability to maintain the very self-sufficiency the Department purports to promote and which the Rehabilitation Act sought to ensure. Because many critical disability services are only available through Medicaid, the rule will prevent many people with disabilities from getting needed long term services and supports that allow them to manage their medical conditions, participate in the workforce, and improve their situation over time.

According to estimates from the National Survey of Children's Health, roughly 2.6 million children in immigrant families have a disability or special health care need.^[3] Children with special health and developmental needs tend to require medical, behavioral, and/or educational services above and beyond what typical children need to keep them healthy and promote positive development.

These special needs make children with disabilities in immigrant families vulnerable to hardship due to the economic burdens associated with requiring specialized care. Parents of children with disabilities typically work fewer hours and ultimately earn less income due to their children's caregiving needs.^[4] As a group, children with disabilities are more likely to live in low-income households and to experience food insecurity and housing instability, making programs like SNAP and housing assistance vital to their wellbeing.^[5] Ensuring that kids with special health care needs have access to services helps their parents maintain work and improve earnings. The proposed rule would restrict immigrant families' access to public anti-poverty programs and further exacerbate the economic hardships that children with disabilities and other special needs already experience.

While many children in the U.S.—both in immigrant and native-born families—depend on public health insurance programs, Medicaid is uniquely critical for children with disabilities. Roughly half of all children with a disability or other special health care rely on public insurance for a variety of services and supports, including respite care; occupational, physical, or speech therapies; and prescription drugs.^[6] These services are critical to keep children healthy and thriving, but they are typically costly—even with insurance—and are out of reach for families who lack coverage. The proposed rule would undermine immigrant families' access to Medicaid and other forms of public insurance and force families to pick and choose which services they can pay for on their own while still putting a roof over their heads and food on their tables. At minimum, forgoing critical services could hamper children's developmental progress. For some families, the stakes are even higher: comprehensive coverage through these programs is necessary to keep their children alive.

While the proposed rule includes exceptions for services funded by Medicaid but provided through the Individuals with Disabilities Education Act (IDEA), it is unclear whether and how this carve-out would work in actual practice. Children with special needs cannot and do not receive Medicaid for their educational services alone. For example, private-duty nursing for a child on a ventilator would not fall under an IDEA plan, nor would other major medical interventions. The exclusion of Medicaid-funded IDEA services will likely do little to encourage families who are fearful of participating in Medicaid to maintain their enrollment.

Disproportionate impact on Texans of color. It is clear that the proposed rule will have a disproportionate impact on people of color. While people of color account for approximately 36% of the total U.S. population, of the 25.9 million people potentially chilled from seeking services by the proposed rule, approximately 90% are people from communities of color (23.2 million). Among people of color potentially chilled by the rule, an estimated 70% are Latino (18.3 million), 12% are Asian American and Pacific Islander (3.2 million), and 7% are Black people (1.8 million).

Just over 2.2 million of Texas' non-citizen residents are Hispanic/Latino, with the next largest groups 375,000 Asian (non-Hispanic) non-citizens, followed by 179,000 white (non-Hispanic) non-citizens.

The disproportionate impact on communities of color illustrates the radical effect this rule would have in reshaping the country's population. Not only would it cause disproportionate harm among people of color with unmet health and nutrition needs, but also it would dramatically reduce the diversity of immigrants entering the US and obtaining green cards, reshaping the demographics of this country for decades to come. According to recent analysis by the Migration Policy Institute, the proposed rule would likely cause a significant shift in the origins of immigrants seeking visas and green cards, away from Mexico and Central America and towards Europe. This trend would not only reduce the diversity of immigration to the United States, it would disproportionately increase family separation among immigrants of color – and US citizens - already residing in the US.

The proposed 125 percent of federal poverty income threshold targets people of color disproportionately. One-third of recently admitted lawful permanent residents (LPRs) would not have passed the 125 percent of the FPL test. And, a much higher percentage of recent LPRs from Mexico and Central America, the Caribbean and Africa would have failed to meet the 125 percent of FPL threshold (from 37 to 41 percent) than LPRs from Europe Canada, and Oceania (26 percent). In other words, Latino and Black immigrants were likely to be excluded by the threshold and White immigrants were more likely to meet the threshold.

250 percent thresholds also and targets immigrants of color. The proposed 250 percent of FPL income threshold would also favor white immigrants over people of color. Only a little more than one-third (39 percent) of total recent LPRs had incomes above 250 percent of the FPL.^{xix} And, although more than half of immigrants from Europe, Canada and Oceania had incomes of at least 250 percent of FPL, only one third or less of immigrants from Mexico and Central America, the Caribbean or Africa had incomes at this level.^{xx} In other words, this threshold would likely result an immigration policy that favors white immigrants from Europe rather than Latino and Black immigrants from Mexico and Central America, the Caribbean or Africa.

The CPPP strongly opposes adding English Proficiency as a factor in the public charge test. DHS proposes, for the first time, to add English proficiency as a weighted factor. This poorly justified addition will make it much harder for families to remain together or reunite in this country. Its inclusion disproportionately harms Asian American and Pacific Islander immigrants and other populations with high levels of limited English proficiency. All persons in this country, regardless of their English skills, contribute to the vibrant and rich landscape that makes up America.

This component of the proposed rule is a fundamental change from our historic commitment to welcoming and integrating immigrants; stands in stark contrast with civil rights laws; is not supported by the statute or the agency's justification; makes it harder for people to improve their language skills; and disproportionately harms populations with high levels of limited English proficiency.

The public charge test applies to people when they first enter the U.S. or apply for lawful permanent residence. People from non-English speaking countries who are newly entering the U.S. or applying to adjust status are less likely to have gained proficiency in English. Congress did not impose an English language test on applicants for lawful permanent residence. Instead, our immigration laws explicitly require an English test for lawful permanent residents who have lived in the U.S. for a number of years--**when they apply to become a U.S. citizen.** And, Congress has supported our nation's commitment to welcoming and integrating immigrants by authorizing funds to support English language learners.^{xxi}

The proposed regulation disproportionately harms populations with high levels of limited English proficiency. By giving de-facto preference to individuals from English-speaking nations, DHS is undoing the careful balancing that Congress created to move the country away from an earlier racist quota system. In particular, the proposed standard disproportionately impacts Asian immigrants. Asian people in the U.S. have the highest rates of limited English proficiency. Nearly three out of four Asians speak languages other than English at home, and 35 percent have limited English proficiency.

Public Charge policy has been used in past U.S. history to enforce racial and ethnic discrimination, and the DHS proposal would return the policy sharply to strongly discriminatory practices. Public charge policy has sadly been used in the past to exclude successive groups of potential immigrants who were seen by policymakers as threatening racial, ethnic, or social underclasses. The earliest public charge laws in this country adopted by the states targeted Catholic Irish who often arrived in the United States without the financial resources to support themselves, followed by federal laws first designed to exclude Chinese immigrants. After the establishment of immigration quotas based on national origin in the 1920s, the public charge provision was used to exclude European Jews seeking to escape Nazi genocide.

Today's proposal targets individuals who come from less developed countries, possess modest skills and education, lack English proficiency, and seek primarily low-wage positions in the economy. In footnote 20, DHS notes that "this proposed policy change is consistent with the March 6, 2017 Presidential Memorandum directing DHS to issue new rules, regulations, and/or guidance

to enforce laws relating to such grounds of inadmissibility and subsequent compliance." But the proposed rules are not consistent with these laws.

The Department's proposal ignores immigrants' economic mobility. When determining whether an individual is likely to use certain benefits, immigration officers apply a "totality of circumstances" test by considering a range of factors such as age, education, health, income, and economic resources. The proposed rule introduces new factors that would be weighed against an immigrant, making it more difficult for individuals to adjust status based on demographic and socioeconomic characteristics that the rule considers signs of likely benefit use.

However, the rule fails to consider evidence that immigrants improve their economic status over time. Analysis conducted by the Center for Health Policy Research found that immigrants have substantial economic mobility. When immigrants first arrive in the United States, they have less social capital and their job skills and experience may not align perfectly with the American job market. Over time, immigrants' social capital increases and job skills and experience improve, increasing their income to eventually catch up to that of persons born in the U.S. Immigrants with less education close the immigrant-native income gap even faster, catching up with similar US-born counterparts within seven years.^{xxii} The proposed rule completely ignores the upward mobility of immigrants, denying immigrants future opportunities and stalling our nation's progress.

Research shows that access to lawful permanent residence and citizenship can help lift families out of poverty and create economic prosperity for immigrants and their children—as well as their communities.^{xxiii} Lawful status and citizenship can help parents secure better paying jobs, pulling families out of poverty, and reduces the stress associated with living without legal status. These benefits are passed down to children—especially when parents are able to obtain legal status early in their child's life—leading to better educational and workforce outcomes when their children reach adulthood.^{xxiv}

Texas' population today exemplifies this American story of advancement across generations as strongly as any other state, with many generations of Texans celebrating their German, Czech, Vietnamese, Mexican, Central and South American heritage, while new generations of Asian, Pacific islander, and African communities of all kinds are growing across the state who enrich our culture and our economy.

CPPP believes that the Department should immediately withdraw its current proposal, and dedicate its efforts to advancing policies that strengthen—rather than undermine—the ability of immigrants to support themselves and their families in the future. If we want our communities to thrive, everyone in those communities must be able to stay together and get the care, services and support they need to remain healthy and productive.

Thank you for your full consideration of our comments. If you have any questions about these comments, please contact Associate Director Anne Dunkelberg at dunkelberg@cPPP.org.

Sincerely,

Anne Dunkelberg, Associate Director
Center for Public Policy Priorities

ⁱ Public Charge Proposed Rule: Potentially Chilled Population Data Dashboard; 2012-2016 5-Year American Community Survey Public Use Microdata Sample (ACS/PUMS); 2012-2016 5-Year American Community Survey (ACS) estimates, Manatt Health, October 11, 2018, <https://www.manatt.com/Insights/Articles/2018/Public-Charge-Rule-Potentially-Chilled-Population>; Nearly 20 Million Children Live in Immigrant Families that Could Be Affected by Evolving Immigration Policies, Kaiser Family Foundation April 2018, <https://www.kff.org/disparities-policy/issue-brief/nearly-20-million-children-live-in-immigrant-families-that-could-be-affected-by-evolving-immigration-policies/>; Chilling Effects: The Expected Public Charge Rule and Its Impact on Legal Immigrant Families' Public Benefits Use, Migration Policy Institute, June 2018, <https://www.migrationpolicy.org/research/chilling-effects-expected-public-charge-rule-impact-legal-immigrant-families>.

ⁱⁱ Proposed Public Charge Rule Could Jeopardize Recent Coverage Gains among Citizen Children, Urban Institute, December 2018, <https://www.urban.org/research/publication/proposed-public-charge-rule-could-jeopardize-recent-coverage-gains-among-citizen-children>

ⁱⁱⁱ Study: Following 10-year gains, SNAP participation among immigrant families dropped in 2018, American Public Health Association, November 2018, <https://www.apha.org/news-and-media/news-releases/apha-news-releases/2018/annual-meeting-snap-participation>

^{iv} Public Charge Proposed Rule: Potentially Chilled Population Data Dashboard; 2012-2016 5-Year American Community Survey Public Use Microdata Sample (ACS/PUMS); 2012-2016 5-Year American Community Survey (ACS) estimates, Manatt Health, October 11, 2018, <https://www.manatt.com/Insights/Articles/2018/Public-Charge-Rule-Potentially-Chilled-Population>

^v One-Third of U.S.-Born Citizens Would Struggle to Meet Standard of Extreme Trump Rule for Immigrants, center on Budget and Policy Priorities, September 2018; <https://www.cbpp.org/blog/one-third-of-us-born-citizens-would-struggle-to-meet-standard-of-extreme-trump-rule-for> .

^{vi} Randy Capps, Mark Greenberg, Michael Fix, Jie Zong, "Gauging the Impact of DHS' Proposed Public Charge Rule on U.S. Immigration" (Migration Policy Institute, Nov. 2018).

^{vii} Economic News Release, Table A-1. Current and real (constant 1982-1984 dollars) earnings for all employees on private nonfarm payrolls, seasonally adjusted (Bureau of Labor Statistics, November 14, 2018). <https://www.bls.gov/news.release/realer.t01.htm>

^{viii} Economic News Release, Table A-1. Current and real (constant 1982-1984 dollars) earnings for production and nonsupervisory employees on private nonfarm payrolls, seasonally adjusted (Bureau of Labor Statistics, November 14, 2018). <https://www.bls.gov/news.release/realer.t02.htm>

^{ix} A Profile of Houston's Diverse Immigrant Population in a Rapidly Changing Policy Landscape, Migration Policy Institute, September 2018, <https://www.migrationpolicy.org/research/profile-houston-immigrant-population-changing-policy-landscape> .

^x Texas Needs the Workers: An Analysis of the Economic and Fiscal Impact of Undocumented Workers; Perryman Group, February 2016; <https://www.perrymangroup.com/special-reports/texas-needs-the-workers/>

^{xi} Economic Security Programs Help Low-Income Children Succeed Over Long Term, Many Studies Find, Center on Budget and Policy Priorities, July 2017, <https://www.cbpp.org/research/poverty-and-inequality/economic-security-programs-help-low-income-children-succeed-over> .

^{xii} Medicaid Is A Smart Investment in Children, Georgetown University Center for Children and families, November 2017, <https://ccf.georgetown.edu/wp-content/uploads/2017/03/MedicaidSmartInvestment.pdf>

^{xiii} "CHIP and Medicaid: Filling in the Gap in Children's Health Insurance Coverage. | Econofact". *Econofact*. 2018-01-22. Retrieved 2018-01-23.

^{xiv} Elisabeth Wright Burak, Georgetown Center for Children and Families, *Promoting Young Children's Healthy Development in Medicaid and the Children's Health Insurance Program (CHIP)*, Oct. 2018, <https://ccf.georgetown.edu/wp-content/uploads/2018/10/Promoting-Healthy-Development-v5-1.pdf>.

^{xv} Ibid. (Burak 2018).

^{xvi} Letter from Nelson W. Wolff, Bexar County Judge, Clay Lewis Jenkins, Dallas County Judge, Ruben John Vogt, El Paso County Judge, and Sarah Eckhart, Travis County Judge opposing the proposed public charge rule to Secretary Nielsen, dated October 3, 2018. Attached as PDF to these comments.

^{xvii} Comment letter from Harris Health System opposing the proposed public charge rule to DHS Samantha Deshommes dated December 3, from President and CEO George Masi. Attached as PDF to these comments.

^{xviii} Medicaid Payments at Risk for Hospitals Under Public Charge, Manatt Health, November 2018,

[1] 6 CFR 15.30(b)(1)(ii), (iii), (iv)

[3] Data query, National Survey of Children's Health (2016)

[5] Rebecca Ullrich, *Cuts to Medicaid Would Harm Young Children with Disabilities*, Center for American Progress, 2017, <https://www.americanprogress.org/issues/early-childhood/reports/2017/05/03/431766/cuts-medicaid-harm-young-children-disabilities>; Susan L. Parish, Roderick A. Rose, Megan Andrews, et al., *Material Hardship in US Families Raising Children with Disabilities: Research Summary and Policy Implications*, UNC School of Social Work, 2009, <https://www.realeconomicimpact.org/data/files/reports/outside%20reports/material%20hardship%20children%20with%20disabs.pdf>.

^{xix} Randy Capps, et al, "Gauging the Impact of DHS's Proposed Public-Charge Rule on U.S. Immigration," Migration Policy Institute, November 2018.

^{xx} Randy Capps, et al, "Gauging the Impact of DHS's Proposed Public-Charge Rule on U.S. Immigration," Migration Policy Institute, November 2018.

^{xxi} See U.S. Dept. of Labor Education and Training Administration Training and Education Notice 28-16 https://wdr.doleta.gov/directives/attach/TEN/TEN_28-16_Change_1.pdf

^{xxii} Ku, Leighton and Pillai, Drishti, *The Economic Mobility of Immigrants: Public Charge Rules Could Foreclose Future Opportunities* (November 15, 2018). Available at SSRN: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3285546.

^{xxiii} <https://www.migrationpolicy.org/research/social-mobility-immigrants-and-their-children>

^{xxiv} https://inequality.stanford.edu/sites/default/files/media/media/working_papers/keister_agius-vallejo_borelli_mexican-american-mobility.pdf