



# City of Austin

Office of Mayor Steve Adler  
P.O. Box 1088, Austin, TX 78767  
(512) 974-2250, Fax (512) 974-2337

December 6, 2018

United States Department of Homeland Security  
Citizenship and Immigration Services  
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:

On behalf of the City of Austin, I submit these comments in strong opposition to the DHS's proposed changes regarding inadmissibility of immigrants to the United States on "public charge" grounds published in the October 10, 2018 Federal Register.

## 1) Introduction

At the broadest level, and for the reasons outlined in this letter, the City of Austin strongly opposes this proposal and I urge DHS to forego implementation of new public charge rules.

The City of Austin recognizes that immigration laws and regulations are largely the domain of the federal government and that the public charge test has been part of immigration policy for decades. However, the changes to public charge test outlined in this proceeding would take it to an extreme that would likely have a deleterious impact on the national economy, national public health, safety, and welfare, Austin residents, the Austin economy, and on public health, safety, and welfare in Austin. In addition, based on numerous public comments made by President Trump, Secretary Nielsen, and other Administration officials about this proposal in particular and immigrants to our nation in general, I am forced to conclude that this proposal is driven either by animus and hostility towards immigrants based on unfounded and unsubstantiated fears or is part of a reckless and irresponsible effort to appeal to voters who harbor animus and hostility towards immigrants.

Austin is a vibrant and inclusive city where we celebrate diversity and believe that our community is at its best when all of our residents have the opportunity to achieve the American Dream. Austin is home to 185,000 foreign -born individuals, nearly 19% of the City's total population. If implemented, many of these Austin residents could be chilled from accessing health care, nutrition, housing assistance, and other supports that make families and

our city as a whole healthier and stronger. In addition, I fear that the City and other local public agencies would be forced to shoulder the cost of addressing the harm caused by this proposed rule and of its negative economic and public health impacts on Austin residents. I also fears that this proposal, if implemented, could impose unfunded administrative burdens on Austin and our regional partners.

**2) Discussions and messages about the proposed rule have already had a negative effect on Austin, especially on our immigrant community.**

The public charge determination has long been based on a test where an individual must show when she/he is applying for residence or for a non-immigrant visa that she/he is not likely to rely on federal assistance for sustenance. This “self-sufficiency” definition in practice has largely been based on whether an individual has received long-term institutionalized medical care or cash assistance for income maintenance.

Since the beginning of this year, the City as well as local leaders in the social services and philanthropy sectors and our immigrant community have received mixed messages that the public charge definition would be expanded to include a motley number of social programs which included everything from WIC to school lunch to Pell Grants. Indeed, we even heard that the public charge test could be extended to cover benefits provided to citizens who are children of immigrant parents and could be used to exclude refugees, asylum seekers, victims of domestic violence and other protected groups. I was a greatly relieved to see that the proposed rule published in the Federal Register in October 2018 excludes many of the essential programs that exist to combat poverty and promote public health in Austin and spares vulnerable populations fleeing violence and terror from the public charge test.

Nevertheless, these mixed messages have already impacted these efforts in Austin (an impact I cannot help but suspect the Administration intended). They have created a chill in our immigrant community, creating fear and confusion and discouraging people from seeking benefits for which they are eligible, including nutrition and health care benefits for U.S. citizen children of immigrants. In addition, the proposal dramatically expands the eligibility burden on the intending immigrant that changes the fundamental notion of a nation proud of its immigrant heritage to one that may be viewed as closing the door on any individual likely to use more than a minimal amount of public assistance.

This chill has made a difficult and complex immigration process even more difficult. I fear that if implemented, the expanded public charge test would further exacerbate the difficulty and complexity of our immigration process, with significant negative impact on our community and economy. (I cannot help but think that for the authors of this proposal view such an outcome as positive. Indeed, I fear that purpose of this proposal is to make the immigration process even more complex and expensive to discourage immigration to the United States and to sow fear among immigrants residing in the United States.)

### **3) The Proposed Rule would make the already cumbersome immigration process even harder for current and future Austin families.**

In general, the City agrees that an individual seeking to immigrate to the United States should be able to show under federal law that the individual will sustain herself or himself. But the public charge changes outlined in this proposed rule go well beyond what is necessary to make such an assessment by codifying regulatory barriers vis-a-vis a framework that will inevitably vary from adjudicator to adjudicator and case to case, with similarly situated applicants receiving contrary decisions.

Under current policy, a simple form demonstrating a commitment from a sponsor to support the immigrant at the legally required levels generally establishes to USCIS's satisfaction that, under the totality of circumstances, an individual will not become a public charge. This adjudicative framework is straightforward and efficient and has largely yielded predictable, consistent public charge assessments. The proposed rule would replace this policy with a complex test requiring adjudicators to weigh a potentially unlimited number of "factors" including income, language, and medical backgrounds and apply a host of unclear "considerations," without meaningfully distinguishing "factor" from "consideration" and often referring to specific criteria as both a factor *and* a consideration.

Overall, the proposed rule outlines eleven major amendments to current rules that redefine public charge, public benefits, identifies new roles for sponsors, creates a positive and negative factoring test, creates a new "self-sufficiency" form, and creates a complex and expensive bond process. This proposed regulation goes well beyond what is necessary to definitively state what public charge means in terms of promoting immigrant self-sufficiency. As DHS outlines at several points in this proposal, this increased complexity and increased expense would almost certainly lead to fewer immigrants applying for a visa or for a change in status.

(I would point out that the complexity of the new test runs directly counter to overall Administration policy to reduce regulation and control regulatory costs.<sup>1</sup> As DHS clearly outlines in this proposal, it would increase administrative costs for both DHS and visa applicants and will require DHS and other federal agencies to hire additional staff to administer the more complex public charge test.)

### **4) The proposed rule would negatively impact the Austin economy.**

By replacing a time-worn and effective standard with an incoherent framework, the proposed rule already has had a chilling effect on the local community.

Austin is a diverse community. 32% of Austin households speak a language other than English; the City regards this diversity as a cultural, economic and social asset. Austin's immigrant community is large and diverse, both in terms of nation of origin and socioeconomic level. For example, Austin's share of Asians who are Indian is the highest in the nation – approximately 35% – and this is evidence of the strong ties between our

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<sup>1</sup> Executive Order 13771, Reducing Regulation and Controlling Costs, January 30, 2017

immigrants and our high tech and entrepreneurial economic sectors. Contributions to Austin's economy come from all tiers of its foreign-born community – from small business owners to software engineers to members of the City's professional class to construction workers and service personnel.

Over the last two decades, the size of the United States-born population with a high school degree or less has decreased. This decrease is particularly evident among young workers aged 25-44, the group typically most capable of doing physically demanding work. As this population declined, however, the number of jobs for workers with that education level held steady. Thus, real and persistent gaps in the American workforce have opened-up, especially in agriculture, hospitality, and meatpacking. Foreign-born workers, a group considerably more likely than natives to lack education beyond high school step in to fill those jobs that would otherwise remain vacant. This is the case in Austin where immigrants are represented at higher rates in the workforce than their demographic percentages in the overall population. Austin's working class immigrants are a critical component of the overall vibrant economy that exists in Central Texas. Many local jobs in the construction and service sectors are filled with highly motivated and skilled immigrant individuals, as is the case in most healthy American urban areas. Immigrants are not only a vital part of our existing economy but will become an increasingly important incoming piece of the labor force to an aging nation as a whole.

##### **5) The proposed rule would negatively impact the national economy.**

Over the last two decades, the size of the United States-born population with a high school degree or less has decreased. This decrease is particularly evident among young workers aged 25-44, the group typically most capable of doing physically demanding work. As this population declined, however, the number of jobs for workers with that education level held steady. Thus, real and persistent gaps in the American workforce have opened-up, especially in agriculture, hospitality, and meatpacking. Foreign-born workers, a group considerably more likely than natives to lack education beyond high school step in to fill those jobs that would otherwise remain vacant.

In addition, by creating a much less welcoming environment for new immigrants, we might not only be closing doors on working-class immigrants, but also on highly-skilled immigrants who may no longer view our nation as a desirable home for their families and relatives. We have already seen this scenario unfold with respect to foreign students studying at United States colleges and universities, whose numbers have alarmingly declined in recent years due to the Administration's hostility to immigrants. Historically, our nation's colleges and universities have been a magnet for the best and brightest from around the world. In addition to high profile examples such as Noble Prize winners of how many of these students have contributed to our nation's success, there are literally tens of thousands of examples of foreign students becoming Americans and making major contributions to our economy and our society.

At the broadest level, like many developed "western" nations, the United States has an aging population. Though the aging of our population is not as pronounced as it is in other nations,

we are clearly and rapidly becoming an unbalanced society in which the number of working age adults is too small to provide retirement and health benefits and take care of a disproportionately large population of retired persons. A reduction in immigration, which DHS predicts at several points implementation of this proposal will lead to, will only exacerbate the economic and budgetary challenges of this demographic change.

One need look no further than Japan of the last three decades to see what the economy of a nation with an aging population and severe restrictions on immigration looks like<sup>2</sup>. Indeed, based on Japan's experience, as our nation faces this demographic tipping point, many economists and demographers would argue that we should be implementing policies designed to *increase immigration to the United States*<sup>3</sup>.

#### **6) The proposed rule would negatively impact public health, public safety, and public welfare in Austin.**

Investing in nutrition, health care, and other essential needs keeps children learning, parents working, families strong, and allows all of us to contribute fully to our communities. The policies articulated in the proposed rule would terrify immigrant families, discourage or prevent hard-working people from immigrating, and deter immigrant families (most of which in Austin include U.S. citizen children) from seeking the help they need to lead a healthy and productive life.

The proposed rule would pressure large numbers of immigrants and their families to forego enrolling in vital programs such as nutrition assistance, health coverage and housing that their families are eligible for and need. Because the rules for determining whether someone is a "public charge" are technical and the circumstances under which such a determination is made are often confusing, the number of low-income immigrant families that choose not to receive benefits would likely exceed by a sizable amount the number that would ultimately be subject to a "public charge" determination.

The fear created by these rules would extend far beyond the individuals who forego benefits, harming entire communities as well as the infrastructure that serves all of us, such as schools, hospitals and clinics. All of these consequences are identified in the proposed rule itself, under costs; and a substantial body of evidence demonstrates that they are highly significant and damaging.

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<sup>2</sup> For a good summary of Japan's situation, see:

<https://www.ft.com/content/7ce47bd0-545f-11e8-b3ee-41e0209208ec>

<https://www.cnn.com/2017/08/01/asia/japan-migrants-immigration/index.html>

[https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1034&context=international\\_immersion\\_program\\_papers](https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1034&context=international_immersion_program_papers)

<sup>3</sup> For example, see:

<https://bipartisanpolicy.org/wp-content/uploads/2017/08/BPC-Immigration-Americas-Demographic-Challenge.pdf>

<https://www.theguardian.com/business/2018/apr/09/get-more-migrant-workers-to-offset-strain-of-ageing-population-warns-imf>



According to data from Manatt Health, if implemented, this rule could impact as many as **26 million people** in families nationwide, and 231,905 non-citizens families in Travis County.<sup>4</sup> Any families with non-citizen members could fear consequences of accessing health care and basic need programs.

The widespread “chilling effect” that causes families to withdraw from benefits due to fear is already evident as a result of more than 18 months of leaks and rumors about changes to public charge policy. Community providers have already reported changes in health care use, including decreased participation in Medicaid and other programs due to community fears stemming from the leaked draft regulations. For example, Foundation Communities, a local nonprofit which operates Central Texas’ largest health care navigator program, has reported a noticeable decline in the number of Latinos signing up for health insurance<sup>5</sup>. In addition, local non-profits and faith-based groups have seen an increase in the number of calls they are receiving about the proposed regulation, often from mothers with U.S.-born children who have stopped getting federally funded medical care or nutrition assistance.

The proposed rule would cause major harm to the children of immigrant parents, whether they are immigrants or citizens themselves. This is explicitly acknowledged in the cost-benefit analysis of the proposal. Children’s well-being is inseparable from their parents’ and families’ well-being, so help received by parents is central to children’s health and well-being in the short- and long-term. Children thrive when their parents can access needed health or mental health care, when their families have enough to eat, and a roof over their heads. Conversely, parents’ stress and health challenges impede effective caregiving and can undermine children’s development.

This rule is an attack on Austin families with immigrants. Immigrant children themselves may be directly impacted by the rule, and there is no way to harm our city’s immigrant parents without harming all of their children as well. Citizen-children with immigrant parents are a large and growing segment of the U.S. child population. Nearly 16 million citizen-children under age 18 in the United States—one out of every four children—have one or more parents who are foreign-born. According to the Migration Policy Institute, in Texas 34.7% or 2,412,318 out of 6,948,492 children under age 18 have one or more parents who are foreign-born. This is higher than the national average, which is 25.8%.<sup>6</sup> Children in immigrant families are more likely to face certain hardships and are already less likely to secure help due in part to flawed eligibility rules that create barriers for immigrant families. However, like all children, children in immigrant families benefit when they have access to programs and services that promote their development.

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<sup>4</sup> “Public Charge Rule – Potentially Chilled Population Data Dashboard, by County” Manatt, <https://www.manatt.com/Insights/Articles/2018/Public-Charge-Rule-Potentially-Chilled-Population#DataDashboard>

<sup>5</sup> “Fewer Latinos in Central Texas are Enrolling in the Obamacare Marketplace This Year” (Dec. 2018) Texas Public Radio, <http://www.tpr.org/post/fewer-latinos-central-texas-are-enrolling-obamacare-marketplace-year>

<sup>6</sup> “State Demographics” Migration Policy Institute (2016), <https://www.migrationpolicy.org/data/state-profiles/state/demographics/TX/US/>

The value of access to public benefits has been documented repeatedly. Multiple studies confirm that early childhood or prenatal access to Medicaid and SNAP improves health and reduces reliance on cash assistance. Children of immigrants who participate in the Supplemental Nutrition Assistance Program (SNAP, formerly food stamps) are more likely to be in good or excellent health, be food secure, and reside in stable housing. Compared to children in immigrant families without SNAP, families with children who participate in the program have more resources to afford medical care and prescription medications. An additional year of SNAP eligibility for young children with immigrant parents is associated with significant health benefits in later childhood and adolescence. Children in immigrant families with health insurance coverage are more likely to have a usual source of care and receive regular health care visits, and are less likely to have unmet care needs. Children with access to Medicaid have fewer absences from school, are more likely to graduate from high school and college, and are more likely to have higher paying jobs as adults. Children whose families receive housing assistance are more likely to have a healthy weight and to rate higher on measures of well-being—especially when housing assistance is accompanied by food assistance.

A recent report by Georgetown University Center for Children and Families found that Texas has the highest rate of uninsured children in the United States, at 21%. Between 2016 and 2017, Texas saw an increase of nearly 83,000 uninsured children.<sup>7</sup> Research demonstrates that safety net programs such as SNAP and Medicaid have short and long-term health benefits and are crucial levers to reducing the intergenerational transmission of poverty. For example, according to the Center on Budget and Policy Priorities, economic security and health programs lifted 36 million people above the poverty line in 2016, including 7 million children. Specifically, a study assessing the impact of expanding SNAP benefits found that disadvantaged children who had access to food stamps (now known as SNAP) in early childhood and whose mothers had access during pregnancy experienced better outcomes as adults related to health and education compared to children who didn't have access.<sup>8</sup>

The proposed initiatives would harm a broad swath of children and families in our city. Children in immigrant families do not live in isolation. They live and grow up in communities where their individual success is critical to the strength of the country's future workforce and collective economic security. When families have access to housing assistance, they have more resources to cover the cost of nutritious foods, health care, and other necessities. Where families live is also directly tied to where they work. If parents lose access to affordable housing, they may also be at risk of losing their jobs. As compared to children without health insurance, children enrolled in Medicaid in their early years have better health, educational, and employment outcomes not only in childhood but as adults. By making health insurance

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<sup>7</sup> "Nation's Progress on Children's Health Coverage Reverse Course" (Nov. 2018), Georgetown University Center for Children and Families, [https://ccf.georgetown.edu/wp-content/uploads/2018/11/UninsuredKids2018\\_Final\\_asof1128743pm.pdf](https://ccf.georgetown.edu/wp-content/uploads/2018/11/UninsuredKids2018_Final_asof1128743pm.pdf)

<sup>8</sup> "Economic Security, Health Programs Reduce Poverty and Hardship, with Long-Term Benefits" (Feb. 2018) Center on Budget and Policy Priorities, <https://www.cbpp.org/blog/economic-security-health-programs-reduce-poverty-and-hardship-with-long-term-benefits>

accessible to children and parents, Medicaid keeps families healthy and also protects them from financial hardship. For millions of families, Medicaid is a lifeline that keeps them living above the poverty threshold. America's future depends on ensuring that all children succeed. We need to invest in children, rather than put their healthy development and education at risk by destabilizing their families. Forcing parents to choose between their ability to remain with or reunite their family and their children's access to critical benefits is short-sighted and will harm all of us.

DHS 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 Austin opposes the inclusion of Medicaid, the City adamantly oppose the inclusion of CHIP. Making the receipt of CHIP a negative factor in the public charge assessment, or including it in the "public charge" definition, would exacerbate the problems with this rule by extending its reach further to exclude moderate income working families – and applicants likely to earn a moderate income at some point in the future. Including CHIP in a public charge determination would likely lead to many eligible children foregoing health care benefits, both because of the direct inclusion in the public charge determination as well as the chilling effect detailed elsewhere in these comments. Nearly 9 million children across the U.S. depend on CHIP for their health care. Due to the chilling effect of the rule, many eligible citizen children likely would forego CHIP—and health care services altogether—if their parents think they will be subject to a public charge determination.

In addition to the great harm that would be caused by the inclusion of CHIP, this would 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. Moreover, Congress left it to the discretion to the states to decide whether or not to provide this coverage to pregnant women and children. Overall, we believe the benefits of excluding CHIP and Medicaid strongly outweigh their inclusion in a public charge determination. We firmly 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.

## **7) Conclusion**

The long-term growth and well-being of Austin and its residents depends on the well-being, physical, mental health, and happiness of all our children and all our families. The Administration's ill-intentioned and cruel attempts curtail term immigration to the United States not only run counter to our nation's history of welcoming and assimilating immigrants from throughout the world, they pose a direct threat to our nation's economy, the Austin economy, and to public health, safety, and welfare in Austin.



I urge DHS to forego implementation of these ill-advised and poorly conceived changes to the public charge rules.

Sincerely,

A handwritten signature in blue ink, appearing to read "Steve Adler". The signature is fluid and cursive, with the first name "Steve" written in a larger, more prominent script than the last name "Adler".

Steve Adler  
Mayor, City of Austin

