



MALDEF

The Latino Legal Voice for Civil Rights in America.

Washington, D.C.
Regional Office
1016 16th Street, NW
Suite 100
Washington, DC 20036
Tel: 202.293.2828

National Headquarters
Los Angeles
Regional Office
634 S. Spring Street
Los Angeles, CA 90014
Tel: 213.629.2512

Chicago
Regional Office
11 East Adams
Suite 700
Chicago, IL 60603
Tel: 312.427.0701

San Antonio
Regional Office
110 Broadway
Suite 300
San Antonio, TX 78205
Tel: 210.224.5476

Sacramento
Policy Office
1512 14th Street
Sacramento, CA 95814
Tel: 916.444.3031

Submitted via www.regulations.gov

December 19, 2025

U.S. Citizenship and Immigration Services
Department of Homeland Security
5900 Capital Gateway Drive
Camp Springs, MD 20746

Re: DHS Docket No. USCIS-2025-0304, Public Charge Ground of Inadmissibility

To whom it may concern:

I write on behalf of MALDEF (Mexican American Legal Defense and Educational Fund), in response to the Department of Homeland Security's (DHS, or the Department) Notice of Proposed Rulemaking (NPRM) to express our strong opposition to the changes regarding inadmissibility based on the "public charge" ground, published in the Federal Register on November 19, 2025.¹ The NPRM seeks to rescind the public charge inadmissibility ground promulgated in 2022 without offering alternative language.² These proposed rescissions raise serious concerns about the adverse effect that they will have on immigrant and Latino families.

Founded in 1968, MALDEF is the nation's leading Latino legal civil rights organization. Often described as the "law firm of the Latino community," MALDEF promotes social change in the areas of education, immigrant rights, employment, and voting rights. MALDEF is particularly concerned with the negative effect this NRPM, if implemented, will have on the Latino community, including immigrants and U.S. citizens living in mixed immigration-status families. MALDEF urges DHS to withdraw this rule in its entirety and to promulgate instead measures that encourage all families in the United States to thrive.

Section 212(a)(4) of the Immigration and Nationality Act (INA) provides that noncitizens seeking entry or admission to the United States or adjustment of status who are "likely at any time to become a public charge" are inadmissible.³ The INA instructs evaluating officers to "consider" the noncitizens' "age...health...family

¹ Public Charge Ground of Inadmissibility, 90 Fed. Reg. 52168 (Nov. 19, 2025) (to be codified at 8 C.F.R. pts. 103 & 212).

² *Id.* at 52169.

³ Immigration and Nationality Act (INA) § 212(a)(4), 8 U.S.C. § 1182(a)(4) (2025).

status...assets, resources, and financial status; and...education and skills.”⁴ The NPRM will rescind the current regulations governing the public charge ground of inadmissibility as codified by the 2022 final rule, Public Charge Ground of Inadmissibility, save “certain public charge bond provisions and technical corrections[.]”⁵ DHS, however, does not offer any replacement language: DHS claims that it “intends...to formulate appropriate policy and interpretive tools...to move away from a bright line primary dependence standard[.]”⁶ Instead, DHS leaves much of the “individualized, fact-specific public charge inadmissibility determinations” to the “good judgment and discretion” of DHS officers, stating that “it is not proposing to replace the rescinded public charge inadmissibility regulations at this time.”⁷ In effect, this means that DHS will leave potential immigration benefits applicants in regulatory limbo for the period of time between the proposed rescissions and the regulatory language that DHS claims is forthcoming.

This comment should not be construed as conceding that there was sufficient notice or opportunity to comment on the proposed public charge change. We address some specific concerns below.

I. The Administration Failed to Provide Adequate Notice and Opportunity for the Public to Comment on the NPRM

While MALDEF opposes the proposed rule on substantive grounds, it also violates the Administrative Procedure Act (APA) by failing to provide the public with adequate notice and opportunity to comment on the proposed change to public charge ground of inadmissibility before it is published as a final rule. A 30-day comment period is inconsistent with the notice-and-comment requirements under federal law.⁸

The APA requires that substantive rules be promulgated through notice-and-comment rulemaking and that all comments on proposed rules be read and considered before the issuance of a final rule.⁹ These procedures 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.”¹⁰ Executive Orders 12866 and 13563 state that agencies should generally provide at least 60 days for public comment on proposed regulations.¹¹ The NPRM fails to allow meaningful public comment on the changes to public charge inadmissibility, raising concerns about whether this process violates the APA’s requirements.

II. The NPRM Will Harm Latino Immigrants and Families

The NPRM’s effort to deter documented immigrants from using critical programs that improve health, nutrition, and well-being will have a disastrous effect on the next generation of Latinos. Nationwide, the

⁴ *Id.*

⁵ 90 Fed. Reg. at 52169; Public Charge Ground of Inadmissibility, 87 Fed. Reg. 55472 (Sept. 9, 2022).

⁶ 90 Fed. Reg. at 52169.

⁷ *Id.* at 52169, 52183.

⁸ 5 U.S.C. § 553 (2023).

⁹ *Id.*

¹⁰ Int’l Union, United Mine Workers v. Mine Safety & Health Admin., 407 F.3d 1250, 1259 (D.C. Cir. 2005).

¹¹ Exec. Order No. 12866, 3 C.F.R. 638 (1994); Exec. Order No. 13563, 76 Fed. Reg. 3821 (2011).

majority of Latino children—fifty-two percent—have at least one immigrant parent.¹² The NPRM’s rescission of existing regulations, without replacement language rooted in sound public policy, will likely lead to confusion among Latino families regarding public benefits to which they are lawfully entitled.

A. Repealing Guidance Without Replacement Leaves Latino Immigrants and Families Without Clarity

DHS claims that the 2022 final rule on public charge inadmissibility “hinder[ed] officers in making public charge inadmissibility determinations” by imposing “overly restrictive criteria,” and even asserts that the 2019 final rule “severely and unduly limited the factors that DHS could consider.”¹³ In reality, the 2022 final rule clarified the factors DHS officers must use to determine whether a noncitizen is, or is likely to become, a public charge, resolving prior ambiguities in line with long-standing guidance.¹⁴ By repealing that guidance without providing a clear replacement, DHS has reintroduced uncertainty not only for adjudicators but, more important, for Latino immigrants and their families who must make life-altering decisions in the shadow of public charge determinations. In that vacuum, public information campaigns cannot counter the fear this administration has generated; given the complexity of immigration law and the multi-layered nature of public charge determinations, it is unsurprising that many individuals remain confused and misinformed about what this rule actually means for them.

B. Repealing the 2022 Final Rule Will Have a Chilling Effect on Latino Families Obtaining the Benefits to Which They Are Entitled

DHS itself predicts that the NPRM will “result in a reduction in transfer payments from the Federal Government to individuals who may choose to disenroll from or forgo enrollment in a public benefits program[,]” including noncitizens “as well as U.S. citizens who are members of mixed-status households.”¹⁵ DHS estimates that federal and state payments may lower by as much as \$8.97 billion due to expected disenrollment resulting from this NPRM.¹⁶ Additionally, DHS notes that it intends to “work[] toward the integration of immigration records with records from Federal benefit-granting agencies.”¹⁷ DHS asserts that rescinding existing public charge regulations will “lead to fewer [noncitizens] remaining in the United States who are likely at any time to become a public charge[.]”¹⁸ Here, DHS reveals its aim: reducing federal expenditures at the cost of families’ well-being, regardless of whether doing so will harm U.S. citizens.

This NPRM will deter lawfully present, working immigrants from using the programs that their tax dollars help support out of fear that using benefits to which they are entitled may prevent them, for instance, from adjusting status in the future. We observed this during the COVID-19 pandemic: approximately forty-six percent of mixed-status families surveyed by the Protecting Immigrant Families

¹² J. S. Passel & D. Cohn, *U.S. Population Projections: 2005-2050*, PEW RESEARCH CENTER (Feb. 2008), available at <http://www.pewhispanic.org/2008/02/11/us-population-projections-2005-2050/>.

¹³ 90 Fed. Reg. at 52170, 52180.

¹⁴ Public Charge Ground of Inadmissibility, 87 Fed. Reg. 55472, 555585 (Sept. 9, 2022).

¹⁵ 90 Fed. Reg. at 52170.

¹⁶ *Id.* at 52172.

¹⁷ *Id.* at 52183.

¹⁸ *Id.* at 52184.

coalition reported that they refrained from obtaining assistance during the pandemic out of fear that doing so would harm their future immigration efforts.¹⁹ This chilling effect will increase poverty and hunger, result in neglected health needs, and contribute to houselessness, thus preventing families from attaining economic security in the long run. Children’s well-being greatly depends upon their parents’ and families’ well-being. Children succeed when their parents can access needed health or mental health care and when their families have enough to eat, as well as safe and affordable housing. On the other hand, when parents face financial or health challenges, children are likely to feel the effect as well. As DHS itself implicitly acknowledges,²⁰ the fear that this NPRM will create extends far beyond immigrants who would be subject to the rule, harming entire communities as well as the infrastructure that serves them, such as schools, hospitals, and clinics.

III. Granting DHS Officers Such Unlimited Discretion Undermines the Administration’s Own Stated Aims

DHS claims that both the 2019 and 2022 public charge final rules “unduly restrict[ed]” DHS officers in determining whether a noncitizen is or is likely to become a public charge, arguing instead that its officers need “opportunity for discretion” in order to consider the “expansive, fact-specific, totality of the circumstances[.]”²¹ DHS notes that its “officers will be empowered to consider not only the mandatory statutory” public charge “factors, but also all evidence and information specific to the [noncitizen] and relevant to the public charge ground of inadmissibility that is before them” in making public charge determinations in the period between the NPRM’s potential finalization and DHS’s promulgation of new public charge guidance.²²

Eliminating articulable standards and rescinding clarifying guidance will increase the burden on DHS officers to make subjective, invasive determinations about public charge. This, in turn, will undoubtedly markedly decrease DHS’s efficiency in issuing those determinations, contrary to the administration’s stated aims to streamline federal bureaucracy, and may increase the likelihood for discrimination in those determinations.²³ Furthermore, empowering officers with sweeping discretion seems to conflict with the administration’s purported aim to reduce alleged waste, fraud, and abuse.²⁴ Accordingly, even taking DHS’s reasoning at face value, the NPRM contradicts its own goals of transparency and efficiency.

IV. Conclusion

In short, the NPRM creates confusion where once there was clarity, and Latino families will suffer for it. For the foregoing reasons, MALDEF strongly urges DHS to withdraw the NPRM in its entirety and instead to promulgate measures that allow families to flourish. Please contact me with any questions or concerns at (202) 293-2828 or efindley@maldef.org.

¹⁹ IMMIGRANT MIXED STATUS FAMILIES TOPLINES SUMMARY, PROTECTING IMMIGR. FAMILIES 1 (2021).

²⁰ See 90 Fed. Reg. at 52170.

²¹ *Id.* at 52180–81.

²² *Id.* at 52183.

²³ *Id.* at 52183 n. 86.

²⁴ See, e.g., 90 Fed. Reg. at 52180.

Thank you.

Sincerely,



Ellen E. Findley
Legislative Staff Attorney