December 9, 2018

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 or Madam:

The Center for Migration Studies of New York (CMS) writes in opposition to the proposed rule regarding the public charge ground of inadmissibility. We ask that the rule be withdrawn, but if it is not withdrawn, that it be substantially revised in the ways described below. CMS is a non-partisan think-tank and educational institute dedicated to the study of international migration, to the promotion of understanding between immigrants and receiving communities, and to public policies that safeguard the dignity and rights of migrants, refugees and newcomers. It provides research and analysis on domestic and international migration issues through in-depth studies, reports, and peer-reviewed publications. It was founded by the Missionaries of St. Charles, Scalabrini, a Catholic religious order devoted to the service of migrants. It is a member of the Scalabrini International Migration Network (SIMN) and Scalabrini Migration Study Centers (SMSC).

On November 13, 2018, CMS issued a report on the proposed rule entitled "Proposed Public Charge Rule Would Significantly Reduce Legal Admissions and Adjustment to Lawful Permanent Resident Status of Working Class Persons." We would like to incorporate this report by reference into our comment, as it details why the proposed rule should be withdrawn or, albeit a less appropriate option, should be substantially revised.

Many reports and studies – like the analysis by New York City Mayors' Offices for Immigrants Affairs and Economic Opportunity, and the New York City Department of Social Services -- have demonstrated that the rule would diminish the use of public benefits that are necessary to meet essential food, housing, and medical needs by US citizens, lawful permanent residents (LPRs), and other family members of persons who are directly affected by it. CMS shares these concerns. Even the proposed rule has led many immigrant families to withdraw members from public benefit programs to their detriment and the detriment of their communities.

However, CMS's study focuses more narrowly on the potential effect of the proposed rule on "intending immigrants" who would otherwise be eligible for LPR status based on a qualifying relationship to a US citizen or LPR living in their household. The study is based on estimates of the US undocumented and legal immigrant populations derived from the 2016 American

Community Survey (ACS). This comment will speak to the effect of the rule on the (mostly) undocumented immigrants that would otherwise be eligible for adjustment to LPR status or admission under the US family-based immigration system. It shows that the rule would deny admission and adjustment to large numbers of working class persons who contribute substantially to the US economy, have US citizen and LPR family members, and are and will likely remain self-sufficient.

The United States has an exemplary record of integrating immigrants. A comprehensive 2015 report, titled *The Integration of Immigrants into American Society*, published by the National Academies of Sciences, Engineering and Medicine, found that European immigrants who entered the United States in the early 20th century had little education and high levels of illiteracy. In addition, their children entered the labor market in the midst of the Great Depression. Yet their children and grandchildren successfully integrated into US society. While immigrants face different conditions, today's immigrants share with earlier generations the commitment to hard work, family and the American dream. They are not seeking a hand-out, but overwhelmingly come to work and to advance their own and their families' prospects. CMS's research on the undocumented, for example, reveals an overwhelmingly self-sufficient, productive population that works at high rates and has long tenure and strong family connections in the United States. Thus, even the immigrants that face the greatest barriers to socio-economic advancement and integration have become self-sufficient, deeply embedded and contributing members of US society.

Yet CMS's analysis of the impact of the proposed rule provides strong evidence of its sweeping and deleterious consequences for undocumented and other residents who could be eligible for LPR status based on a close family relationship to a US citizen or LPR. In particular, the report finds that:

- 2.25 million (mostly) undocumented persons would be directly affected by the proposed rule because they live with a US citizen or LPR family member who can petition for them.

- The 2.25 million live in households with an additional 5.32 million persons who would be indirectly impacted by the rule, both because of the barrier the rule provides to LPR status for their (undocumented) family members and because of the well-documented disincentive it provides to their own use of public benefits.

- These figures substantially understate the numbers of persons who would be directly and indirectly affected by proposed the rule because they exclude estimates of several populations, including the millions residing abroad who are waiting for a visa to become current and those who would become subject to the rule in the future.

- A large percentage of the 2.25 million would be found inadmissible under the rule, although this population overwhelmingly consists of working-class persons who are "self-sufficient" and likely to remain so based on any fair understanding of this term.

The proposed rule would change the "public charge" standard from one of likely "dependency" on the government, as evidenced by the need for public cash assistance or institutionalization for

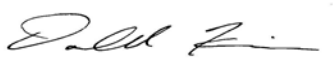
long-term care at government expense, to one of likely lack of "self-sufficiency," as evidenced by the need for non-cash public benefits. This change is not justified by the plain meaning of the term "public charge" or the historic interpretation (over nearly 130 years) of this ground of exclusion/inadmissibility. In addition, rather than a fair test of self-sufficiency, the rule would constitute a significant *barrier* to this goal and to the integration of working class immigrants and their US families. It would mostly deny working class persons admission and adjustment to LPR status. It adds the use of non-cash benefits for food, housing and health care to the criteria that support a public charge determination. Yet working class families often use these benefits on a temporary basis to secure essential services on their path to integration. Finally, the rule is unnecessary and redundant given the existing legal requirement that the petitioner and any other sponsor provide an affidavit of support (AOS) which commits them to maintain the intending immigrant at 125 percent of the federal poverty guidelines. Moreover, the federal government, a state, or a political subdivision that provides the intending immigrant with a "means-tested public benefit" can bring a legal action for the cost of those benefits against the sponsor(s). For all of these reasons, the proposed rule should be withdrawn.

If the rule is not withdrawn, it should be substantially amended in two main ways. First, the use of non-cash benefits should not count as a negative factor in public charge determinations**.** As stated, the rule will mostly hurt working class immigrants and their family members that use non-cash benefits for essential needs. These families use these benefits not because they lack self-sufficiency, but as a bridge to socio-economic advancement and full integration. By adopting this rule, the United States would be denying food, housing and health-care to some of its most vulnerable residents, and impeding their well-being, self-sufficiency and integration.

Second, the rule's totality of the circumstances test affords insufficient weight to factors strongly associated with self-sufficiency. Thus, the rule should "heavily" weigh as positive factors in public charge determinations: close family relationships to a US citizen or LPR; the ability to speak English well or very well; family income at 125 percent of the federal poverty guidelines (consistent with the existing affidavit or support requirement); entrepreneurship; a high school education or beyond; school enrollment; and private health insurance coverage. CMS's study found that 1.32 million of the 2.25 million that would be directly affected by the proposed rule speak English well or very well; 1.1 million have health insurance; 1.2 million aged 18 or over have at least a high school diploma, including 361,000 with at least a bachelor's degree; 379,000 are married to a US citizen and 826,000 to a legal non-citizen; and, 2.1 million US-born children live in their households, including 1.7 million under the age of 21. All of these factors should "heavily" favor admission and adjustment.

These fixes will not, however, undo all the damage that would be caused by this overly broad, unnecessary and counter-productive rule. Thus, we strongly oppose the proposed rule and ask that it be withdrawn.

Sincerely,



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