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December 10, 2018

Samantha Deshommès

Chief, Regulatory Coordination Division, Office of Policy and Strategy

U.S. Citizenship and Immigration Services

Department of Homeland Security

20 Massachusetts Avenue NW

Washington, DC 20529-2410

RE: DHS Docket No. USCIS-2010-0012

Dear Chief Deshommès,

On behalf of ADL (the Anti-Defamation League), we are writing to oppose in the strongest terms the above-referenced proposed rule change to “public charge” and to urge that it be immediately withdrawn.

ADL, founded in 1913 to stop the defamation of the Jewish people and to secure justice and fair treatment to all, is rooted in a community that has experienced the plight of living as refugees throughout its history. ADL has advocated for fair and humane immigration policy since its founding and has been a leader in exposing anti-immigrant and anti-refugee hate that has poisoned our nation’s debate.

In light of our mission, ADL opposes the proposed rule as drafted and calls on the Department of Homeland Security to immediately withdraw it.

The proposed rule would significantly expand the meaning and application of the legal term “public charge” and in doing so would undermine our immigration system and do great harm to immigrants, families and communities. According to U.S. Citizenship and Immigration Services, the existing public charge rule seeks to make certain individuals or immigrants inadmissible if they are likely to become primarily dependent on the federal government based on past or likely future access to specific limited public benefits. By contrast, the proposed rule would substantially expand the types of public benefits that could be considered in the public charge assessment, and it would also impose a complicated test and unclear threshold for determining whether an individual could be excluded.

It is readily apparent that the proposed rule will impact more individuals and families, since more forms of public assistance will be taken into account. Moreover, the complicated nature of the proposed rule is certain to have a chilling effect on individuals who are eligible for public benefits, but are fearful or unclear about the immigration consequences of accessing any benefits.

Under current law, immigration officers apply a totality of circumstances test to determine if an applicant is likely to become *primarily dependent* on the government for certain public benefits in the future. Currently, immigration officials consider cash assistance programs, such as Temporary Assistance for Needy Families (TANF) and

long-term nursing home care paid for by the government. The current public charge test is estimated to affect approximately 3 percent of family-based visa and green card applicants. Under the proposed rule, the list of benefits that could result in public charge determination would expand significantly. The proposed new list of benefits includes non-emergency Medicaid, the Medicare Part D Low Income Subsidy Program, the Supplemental Nutrition Assistance Program (SNAP), and Housing Programs, such as Section 8 Housing Vouchers and Public Housing.

Regarding the measure of whether someone is, or is likely to become a public charge, a number of “heavily negative” factors could lead to a “public charge” determination. The factors include earning under 125% of the federal poverty level; being a child, senior, or person with limited English proficiency; having poor credit history, limited education, or a large family; or requiring a Department of Homeland Security (DHS) fee waiver. DHS estimates this change could affect approximately 382,000 family-based immigrants per year. We are deeply troubled by the targeting of in-need and vulnerable individuals and the challenge they will face navigating this complex rule.

Justifications for this proposal are misleading and false. It is not likely to result in a significant cost savings to American taxpayers, nor is it likely to have a meaningful deterrent impact on those seeking to come here without the necessary documents. With very narrow exceptions, immigrants now must wait for a period of five years before they can access federal public benefits, and undocumented immigrants are ineligible for almost all public benefits. And according to a 2013 study by the Cato Institute, low-income immigrants use public benefits like Medicaid or SNAP at a lower rate than low-income native-born citizens.

The proposed rule will introduce unnecessary complexity and subjectivity into the public charge determination since immigration officials will be tasked with consideration of an extensive number of factors, and will have broad discretion to assess prospective use of benefits. This rule will undoubtedly serve both to disincentivize use of benefits that immigrants and their U.S.-born relatives are permitted to access under the law, and also to allow too much discretion by immigration officials. It will also undercut current laws that make certain public benefits available despite an individual’s immigration status.

The impact of the proposed change on immigrants should also not be minimized. It will increase fear among them that if they access public benefits – including benefits that might be critical to their survival during a crisis or time of need – they may jeopardize their immigration status or that of their family. Its likely disproportionate effect on women, children, the elderly, immigrants of color, LGBTQ immigrants and immigrants with disabilities also deeply distorts the intent of our immigration system.

In a nutshell, we believe the public charge proposal would do nothing more than chill the existing and future legal use of public benefits by immigrants already settled in the U.S. and their U.S.-born relatives.

Most important, when the original architects of immigration law wrote the public charge provision, it applied to those whose conditions were the result of experiences prior to crossing the border. This

proposed rule would contradict the express intent of lawmakers by discouraging vulnerable immigrants from making use of available public benefits for which they are eligible.

America is a nation of immigrants and we are concerned that this proposed rule is unduly harsh and lacks compassion for those in need. This proposed change to immigration law does not improve our immigration system or our economy. Instead, it would increase poverty and hunger, lead to the neglect of health needs, contribute to homelessness, and ultimately prevent families from attaining economic security in the long run. It should be withdrawn, and instead the Department should focus on helping immigrants and their families to thrive and become an integral part of nation's fabric.

Sincerely,

A handwritten signature in black ink, appearing to read "Erika Moritsugu". The signature is fluid and cursive, with a period at the end.

Erika Moritsugu
Vice President,
Government Relations, Advocacy,
and Community Engagement