



December 10, 2018

Samantha Deshommes
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

To Whom It May Concern:

On behalf of the Human Rights Campaign's more than 3 million members and supporters nationwide, I write in response to the Department of Homeland Security's request for public comments regarding a proposed rule amending regulations regarding "public charge," published in the Federal Register on October 10, 2018. HRC strongly opposes these revisions, and urges the Department to reconsider the proposed problematic policies prior to publication of the final rule.

As the nation's largest organization working to achieve equal rights for the lesbian, gay, bisexual, transgender and queer (LGBTQ) community, we are deeply concerned that the proposed rule would cause major harm to immigrants and their families and communities, with particular harm to LGBTQ individuals.

The proposed rule attacks low-income people and families and is terrible for the public's health and wellbeing. As written, the rule radically lowers the historical standard for determining whether someone is "likely to become a public charge." According to U.S. Citizenship and Immigration Services (USCIS), an individual is determined to be a public charge when they become "primarily dependent on the government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance or institutionalization for long-term care at government expense."

¹ Under the proposed rule, any person who seeks or uses a wide range of lifesaving health and human services programs— from housing assistance to health coverage (including treatment for HIV/AIDS)

¹ <https://www.uscis.gov/greencard/public-charge>

to anti-hunger and anti-poverty benefits— could face barriers to maintaining or improving their immigration status. If the government predicts someone is likely to become a “public charge,” it can deny admission to the U.S. or refuse an application for lawful permanent residency.

Under current policy, only cash “welfare” assistance and government funded long-term care can be taken into consideration in the “public charge” test. The proposed rule would alter the test dramatically, abandoning the enduring meaning of a public charge as a person who depends on the government for subsistence. These proposed changes could mean LGBTQ immigrants will be denied admission or rejected for a green card simply because a government official predicts they will be likely to receive supplementary assistance in their lifetimes, even if on a temporary or emergency basis.

Beyond the harm it will create for LGBTQ immigrants who might fall under the new broad definition of public charge, the proposed rule will create a chilling effect, undermining access to essential health, nutrition, and other critical programs for eligible immigrants and their family members. The fear created by these rules will extend far beyond any individual who may be subject to the “public charge” test, harming entire communities. Individuals petitioning for family members to join them may be too afraid to utilize the assistance they need for fear of endangering their loved one’s ability to come to the U.S. Already, a growing number of LGBTQ community centers that provide services to LGBTQ people have observed LGBTQ immigrants not showing up for health care appointments. They also fear accessing vital services, such as HIV treatment and care, that can support their health and well-being. The rule will result in individuals being deterred from addressing their health care needs, ultimately leading to worse health outcomes for them and their communities.²

The rule also proposes other significant changes, including the introduction of an unprecedented income test and the consideration of numerous personal factors including employment and health status. For example, the proposed rule details how being a child or a senior, having a number of children, or having a treatable medical condition could be held against immigrants seeking permanent legal status. All of these revisions amount to a sea change in U.S. policy towards immigration, counting wealth and income as the primary indicators of a person’s future contribution.

Assumptions that LGBTQ people are likely to become a public charge have historically been used to keep this community out of the U.S., even before immigration laws explicitly excluded LGBTQ people from entry.³ While our country’s immigration laws no longer explicitly exclude LGBTQ people and their families from equal treatment, this sweeping proposed rule once again puts LGBTQ people at risk of being kept out of the U.S. and torn apart from their families. Discrimination and bias

² Statement, National Association of Community Health Centers, Joint Statement of America’s Health Centers Opposing Public Charge Proposal (Oct. 10, 2018) <http://www.nachc.org/news/joint-statement-of-americas-health-centers-opposing-public-charge-proposal/>.

³ Margot Canaday, *The Straight State: Sexuality and Citizenship in Twentieth-Century America* (Princeton University Press, 2011).

based on a person's sexual orientation and gender identity contribute to economic insecurity for LGBTQ people and their families and could be used against them under the proposed rule's income test.

Impact on LGBTQ immigrants struggling to obtain employment

Immigrants make up a significant population of the LGBTQ community. The Williams Institute estimates there are 637,000 LGBT-identified individuals among the adult authorized immigrant population.⁴ There are an estimated 24,700 non-citizens who are part of a same-sex couple with a U.S. citizen; a quarter of the couples are raising children.

LGBTQ people, including those who are immigrants, experience rampant workplace discrimination. At least half of the US population lives in a jurisdiction without explicit nondiscrimination laws prohibiting employment discrimination based on sexual orientation and gender identity.⁵ A 2017 survey found that 1 in 5 LGBTQ people experienced discrimination due to their sexual orientation or gender identity when applying for jobs and 22 percent reported experiencing this discrimination in pay or promotions.⁶ Sixteen percent of respondents to the 2015 U.S. Transgender Survey reported losing their job due to their gender identity or expression.⁷ Respondents to that survey also reported a 15 percent unemployment rate, which was three times higher than the unemployment rate for the total U.S. population at the time.⁸

The proposed rule would heavily favor the wealthy by creating a new bright line test for income. Under the proposed rule, earning under 125% FPL percent of the poverty line (\$31,375 annually for a family of 4) would be considered a negative factor in deciding whether an immigrant could be granted a green card or permanent residency. Having a poor credit history, or being authorized to work but not working would also be considered negative factors. This means that LGBTQ immigrants could be considered to have multiple negative factors, all of which stem from discrimination. Conversely, only earning over 250% of the poverty line (\$62,750 annually for a family of 4) would be a heavily weighted positive factor, even though this is higher than the median income in the U.S.⁹

⁴ Gary J. Gates, "LGBT Adult Immigrants in the United States," (The Williams Institute, 2013) <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBTImmigrants-Gates-Mar-2013.pdf> ("LGBT" rather than "LGBTQ" is used to reference the study's findings, which were limited to LGBT individuals.)

⁵ Persad, Xavier. 2018 Municipal Equality Index. Washington, DC: Human Rights Campaign Foundation.

⁶ Sejal Singh and Laura E. Durso, "Widespread Discrimination Continues to Shape LGBT People's Lives in Both Subtle and Significant Ways," (Center for American Progress, 2017)

<https://www.americanprogress.org/issues/lgbt/news/2017/05/02/429529/widespread-discrimination-continues-shape-lgbt-peoples-lives-subtle-significant-ways/>

⁷ *Id.*

⁸ *Id.*

⁹ <https://www.census.gov/library/publications/2018/demo/p60-263.html>

Discrimination faced by LGBTQ people undermines their ability to attain and maintain economic security, making support systems that help them feed themselves and their families, access health care, and keep a roof over their heads critical to their basic wellbeing and safety. This is even more true for LGBTQ immigrants who face additional challenges due to their multiple and intersecting identities. Non-citizens in same-sex couples who are in the labor force have lower median annual personal incomes than their naturalized citizen counterparts.¹⁰ In effect, this proposed rule would thereby punish LGBTQ immigrants for systemic workplace discrimination.

Impact on LGBTQ immigrants deemed likely to receive benefits

Due to family rejection and anti-LGBTQ discrimination in the workplace, education, housing, and healthcare, many LGBTQ people struggle to become economically secure in our country. Research shows that LGBTQ people, especially those who are black, transgender, and women, are more likely to live in poverty, be food insecure, and experience higher unemployment and homelessness than non-LGBTQ people.¹¹ LGBTQ people and their families are more likely to use SNAP, Medicaid, unemployment insurance and public housing assistance than non-LGBTQ people.¹²

Studies have shown that LGBT people are more likely than non-LGBT people to report experiencing food insecurity, and are more than twice as likely to report receiving SNAP benefits.¹³ LGBTQ people and their families, especially those with disabilities, are also more likely to receive Medicaid. While 12.9% of non-LGBTQ people surveyed reported receiving Medicaid benefits, 20% of LGBTQ people reported receiving Medicaid.¹⁴ LGBTQ people with disabilities were over 3 times more likely

¹⁰ Gary J. Gates, “LGBT Adult Immigrants in the United States,” (The Williams Institute, 2013) <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBTImmigrants-Gates-Mar-2013.pdf>.

¹¹ Lourdes Ashley Hunter, Ashe McGovern, and Carla Sutherland, Eds, *Intersecting Injustice: Addressing LGBTQ Poverty and Economic Justice for All: A National Call to Action*, 2018 https://static1.squarespace.com/static/5a00c5f2a803bbe2eb0ff14e/t/5aca6f45758d46742a5b8f78/1523216213447/FINAL+PovertyReport_HighRes.pdf.

¹² Caitlin Rooney, “Protecting Basic Living Standards for LGBTQ People,” (Center for American Progress 2018) <https://www.americanprogress.org/issues/lgbt/reports/2018/08/13/454592/protecting-basic-living-standards-lgbtq-people/>

¹³ Taylor N.T. Brown, Adam P. Romero, and Gary J. Gates, “Food Insecurity and SNAP Participation in the LGBT Community,” (The Williams Institute, 2016) <https://williamsinstitute.law.ucla.edu/research/lgbt-food-insecurity-2016/> (“LGBT” rather than “LGBTQ” is used to reference the study’s findings, which were limited to LGBT individuals.); Caitlin Rooney, “Protecting Basic Living Standards for LGBTQ People,” (Center for American Progress 2018) <https://www.americanprogress.org/issues/lgbt/reports/2018/08/13/454592/protecting-basic-living-standards-lgbtq-people/><https://www.americanprogress.org/issues/lgbt/reports/2018/08/13/454592/protecting-basic-living-standards-lgbtq-people/>

¹⁴ Caitlin Rooney, “Protecting Basic Living Standards for LGBTQ People,” (Center for American Progress 2018) <https://www.americanprogress.org/issues/lgbt/reports/2018/08/13/454592/protecting-basic-living-standards-lgbtq-people/>

to receive Medicaid than those without.¹⁵ LGBTQ people and their families also rely on housing assistance at 2.5 times the rate of non-LGBTQ people.¹⁶

Penalizing immigrants for actual or predicted usage of a wide-range of supplementary assistance in their lifetimes as the proposed rule would do will likely disproportionately impact LGBTQ immigrants and their families. Access to programs to support LGBTQ immigrants are important safeguards, are critical to ensure basic living standards, and help LGBTQ immigrants and their families build a strong foundation in the U.S. and ensure that they are able to live, thrive, and be healthy, equal, and complete members of our communities. Use of these programs should not be used to bar them from becoming lawful permanent residents.

Particular impact on immigrants living with HIV/AIDS

Approximately 1.1 million individuals in the U.S. are living with HIV/AIDS. Under the proposed rule, the Department will take an immigrant's health, including HIV status and disability status, into consideration when determining whether the applicant has a medical condition that could affect the applicant's ability to work, attend school, care for themselves, or require expensive care or institutionalization. While a person's health has long been a factor considered in the public charge analysis, the heightened burden imposed on immigrants by the proposed rule would cause disastrous health outcomes for those living with HIV and is reminiscent of the reasons publicly put forward for the discriminatory HIV travel ban. During the floor debate over that travel ban in 1993, the ban's Senate sponsor, Senator Don Nickles, was explicit about the role of the assumed financial burden of immigrants living with HIV in the ban, stating "If we change this policy we are going to have countless thousands of people who will want to emigrate to the United States, knowing we have quality health care and knowing we will take care of them."¹⁷ Senator Orrin Hatch also referred to exclusion of immigrants living with HIV as "a question of the need to evaluate properly the economic impact of immigration and AIDS."¹⁸ Representative Cliff Stearns directly referenced public charge prohibitions, asking, "Before we open the doors to just anyone, would it not be a matter of sound public policy to take care of our own citizens, afflicted with the HIV/AIDS virus, before adding infected immigrants to the public charge?"¹⁹ The proposed rule's inclusion of treatable medical conditions like HIV as a negative factor in public charge determinations undermines Congress's express action lifting the HIV travel ban.

Forcing a person living with HIV to choose between subsidized healthcare and their immigration status will cause a public health disaster. HIV/AIDS treatment, known as anti-retroviral therapy, is prohibitively expensive in the United States without assistance. Individuals will forgo their medical

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Congressional Record*, 103rd Cong., 1st sess., February 19, 1993, 139, S1764.

¹⁸ *Congressional Record*, S1765.

¹⁹ *Congressional Record*, 103rd Cong., 1st sess. March 11, 1993, 139, H1208.

regimen to avoid a public charge determination. This will not only be devastating to the health of the person, but will also have negative health consequences on the community at large, as disruptions in HIV care and treatment—especially resulting in reduced adherence or medication rationing—can lead to drug resistant strains of HIV. The proposed rule is terrible public health policy.

Confusion about the proposed rule may also lead U.S. citizens and permanent residents and groups of immigrants who are not subject to the public charge rule (such as refugees and asylees) to believe they would need to terminate their subsidized health care in order to remain eligible to petition for their family. There is strong evidence, cited in the NPRM itself, that many people whose eligibility for benefits was not directly affected by the 1996 legislation nonetheless were deterred from participating in programs.²⁰

Conclusion

For all the reasons stated above, we strongly oppose this rule and urge DHS to rewrite it with an eye toward advancing policies that strengthen, rather than undermine, the ability of immigrants to support themselves and their families in the future. The Human Rights Campaign appreciates the opportunity to weigh in at this time. Thank you for considering our comments. If you have any questions regarding our comments, please do not hesitate to contact Jeremy Kadden on my staff at (202) 216-1515.

Sincerely,

A handwritten signature in black ink that reads "David Stacy". The signature is written in a cursive, slightly slanted style.

David Stacy
Government Affairs Director

²⁰ Fix, Capps and Kaushal 2009