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Ms. 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 20529-2140

**RE: DHS Notice of Proposed Rulemaking for Inadmissibility on Public Charge Grounds,
DHS Docket No. USCIS-2010-0012**

Dear Ms. Deshommès,

The Young Center for Immigrant Children's Rights (Young Center) appreciates the opportunity to comment on the Notice of Proposed Rulemaking for Inadmissibility on Public Charge Grounds, published Wednesday, October 10, 2018 (the "Notice") by the Department of Homeland Security (DHS).¹

The Young Center serves as the federally-appointed best interests guardian ad litem (Child Advocate) for trafficking victims and other vulnerable unaccompanied children in government custody as authorized by the Trafficking Victims Protection Reauthorization Act (TVPRA).² The Young Center is the only organization authorized by the Department of Health and Human Services' Office of Refugee Resettlement to serve in that capacity. The role of the Child Advocate is to advocate for the best interests of the child. A child's best interests are determined by considering the child's safety, expressed wishes, right to family integrity, liberty, development needs, and identity. Since 2004, ORR has appointed Young Center Child Advocates for thousands of unaccompanied children in ORR custody, many of whom are reunified with parents or other family members living in the United States.

Many of the children to whom we are appointed will be affected directly by the rules proposed in the Notice. We understand of both the vulnerability of children and immigrant families and their capacity to benefit from critical government programs. As a result, we are well-positioned to comment on the extent to which the Notice will adversely affect the children of immigrant families. We are also uniquely positioned to comment on those areas in which the proposed rules are inconsistent with well-established principles of child protection and child welfare. We are particularly concerned that the Notice will undermine children's ability to access government

¹ See Federal Regulation No. 196, Vol. 83 at 51114-51296.

² William Wilberforce Trafficking Victims Protection Act of 2008, 8 U.S.C.A. § 1232(c)(6)(A) (Westlaw through Pub. L. No. 115-171).

services that foster their growth, development and health, and services that ensure they can remain with their parents in healthy, stable families.

We therefore offer the following comments to persuade DHS to rescind the propose rule, which would jeopardize the health and well-being of individual children and families, as well as the health and safety of the communities in which they live.

I. DHS HAS CONTRADICTED CONGRESS'S CLEAR INTENT WITH ITS DECISION TO CONSIDER PUBLIC ASSISTANCE FROM MEDICAID, THE SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP), AND OTHER GOVERNMENT PROGRAMS FOR THE PUBLIC CHARGE TEST.

From the inception of the public charge rule, the government has balanced criteria for admission with access to programs that ensure the safety of children and families, support self-sufficiency, and advance public health and the well-being of entire communities. Congress first allowed for immigrants to be excluded from the United States if they were likely to become a public charge in 1882.³ However, for more than a century it largely left the term “public charge” for courts to interpret.⁴

When Congress did consider this issue, it rejected the opportunity to limit children’s and families’ access to key benefits programs. In 1996, when Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), it refused to expand the list of programs that would have to be considered in a public charge analysis.⁵ That same year, the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) imposed new restrictions on immigrants’ eligibility for public benefits. However, Congress ensured that the new restrictions did not apply to certain forms of public assistance, including Medicaid, Food Stamps, Temporary Assistance for Needy Families, the Children’s Health Insurance Program (CHIP), the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), and emergency medical assistance and disaster relief.⁶ By excluding these programs from the restrictions on immigrants’ eligibility for public benefits, Congress indicated its intent to ensure that immigrant families could continue to access to benefits necessary for their health, stability and self-sufficiency. Since the passage of PRWORA, Congress has explicitly expanded immigrants’ eligibility for benefits and has also allowed states to expand eligibility under these programs.⁷

³ Audrey Singer & Ben Harrington, Cong. Research Serv., R45313, *Immigration: Frequently Asked Questions about “Public Charge”*, 1 (2018) (referencing Act of Aug. 3, 1882, 47 Cong. ch. 376, § 2, 22 Stat. 214).

⁴ CRS, *Public Charge Grounds of Inadmissibility and Deportability: Legal Overview*, R43220, at 2.

⁵ See *Personal Responsibility and Work Opportunity Reconciliation Act of 1996*, Pub. L. No. 104-193, 110 Stat. 2105 (1996).

⁶ *Id.*; *Inadmissibility and Deportability on Public Charge Grounds*, 64 Fed. Reg. 28,676, 28,676 (May 26, 1999).

⁷ See *Mapping Public Benefits for Immigrants in the States*, Pew Charitable Trusts (Sept. 24, 2014), <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2014/09/mapping-public-benefits-for>

After the enactment of IIRIRA and PRWORA, many Americans were confused about how the public charge test would affect immigrants' eligibility for public assistance programs and use of these public assistance programs by eligible immigrants declined.⁸ In response, the then-Immigration and Naturalization Service (INS) issued administrative guidance and a proposed rule to clarify the public charge ground of inadmissibility. This 1999 guidance and proposed rule specifically recognized that clearly defining "public charge" was necessary to "reduce the negative public health consequences generated by the existing confusion" and give immigrants clarity about which benefits were excluded from public charge determinations.⁹ The proposed rule also noted that "immigrants' fears of obtaining these necessary medical and other benefits are not only causing them considerable harm, but are also jeopardizing the general public" and concluded that a clear public charge definition would help immigrants utilize these programs to become self-sufficient.¹⁰ The proposed rule and the 1999 guidance thus specified that non-cash programs such as Medicaid, food stamps, WIC, child care, school nutrition, housing, energy assistance, and disaster relief as programs that would *not* be considered for determining whether an applicant for benefits might become a public charge.¹¹ The exclusion of these programs from IIRIRA and PRWORA make clear that the care of children and families remained an important government interest.

II. THE PROPOSED RULE IS NOT IN THE BEST INTERESTS OF CHILDREN: IT WOULD HARM IMMIGRANT CHILDREN AND FAMILIES BY DISCOURAGING THE USE OF PROGRAMS THAT CONTRIBUTE TO THEIR HEALTH, DEVELOPMENT, AND WELL-BEING.

The "best interests of the child" principle has no single definition but encompasses consistently-accepted factors. One of the most significant of these is the child's health and safety.¹² The ability of a child to develop—to grow to adulthood—is an equally important consideration.¹³

[immigrants-in-the-states](#) (explaining how Congress expanded immigrant's eligibility for certain public benefits and gave the states the options to expand immigrant coverage under Medicaid and CHIP).

⁸ See Fix, Michael and Jeffrey Passel, *Trends in Noncitizens' and Citizens' Use of Public Benefits Following Welfare Reform: 1994-97*, The Urban Institute (1999).

<https://www.urban.org/research/publication/trends-noncitizens-and-citizens-use-public-benefits-following-welfare-reform>.

⁹ Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, 64 Fed. Reg. 28, 689 (May 26, 1999) [*hereinafter* 1999 Field Guidance].

¹⁰ Inadmissibility and Deportability on Public Charge Grounds, 64 Fed. Reg. 28,676, 28,676-77 (May 26, 1999).

¹¹ 1999 Field Guidance.

¹² See e.g., CHILD WELFARE INFORMATION GATEWAY, DETERMINING THE BEST INTERESTS OF THE CHILD (2016) at p.2, available at https://www.childwelfare.gov/pubPDFs/best_interest.pdf (identifying the "health, safety and/or protection of the child" as a "guiding principle of best interests determinations").

¹³ *Id.* (recognizing another guiding principle of best interests as "the assurance that a child . . . will be given care, treatment, and guidance that will assist the child in developing into a self-sufficient adult.")

These best interests “factors” were recognized in the Interagency Working Group on Unaccompanied and Separated Children’s Subcommittee on Best Interests’ “Framework for Considering the Best Interests of Unaccompanied Children,” released in 2015.¹⁴

As discussed above, the proposed regulations would consider in the public charge determination the use of previously excluded non-cash benefits, such as non-emergency Medicaid, the Supplemental Nutrition Assistance Program (SNAP), and housing programs.¹⁵ Those programs support the health, nutrition, and housing stability of children and their families. Limiting families’ access to these programs directly or indirectly (through a chilling effect) will adversely undermine children’s health, safety and development. In other words, the proposed rule is contrary to the best interests of vulnerable children.

A. The proposed rule disproportionately and negatively affects immigrant children and their families.

The proposed rule will have a significant impact on children in immigrant families. One in four children in the United States, approximately 18 million children, has at least one immigrant parent.¹⁶ More than a third of children in immigrant families live in poverty, as compared to 20 percent of children with U.S.-born parents.¹⁷ In 2006, 31 percent of children enrolled in WIC were immigrant children or U.S. citizen children with immigrant parents.¹⁸ Many of these parents (and in the future, their children) are eligible or will someday be eligible for immigration benefits such as family-based immigrant visas and adjustment of status—for which affidavits of support must be provided to avoid a finding of “public charge.”¹⁹ Those immigration benefits account for 65 percent of legal immigration each year; about 40 percent of the family preference visas are issued to spouses and children of legal permanent residents.²⁰

The proposed rule will also increase the number and types of families at-risk if they use certain government programs. As proposed, the rule will expand the scope of public charge to include those who use basic needs programs to *supplement* their earnings, rather than those who are

¹⁴ SUBCOMM. ON BEST INTERESTS, INTERAGENCY WORKING GRP. ON UNACCOMPANIED AND SEPARATED CHILDREN, FRAMEWORK FOR CONSIDERING THE BEST INTERESTS OF UNACCOMPANIED CHILDREN 5, 9-11 (2016)

¹⁵ 83 FR 51159-60.

¹⁶ Migration Policy Institute, *Children in U.S. Immigrant Families 2016*, <https://www.migrationpolicy.org/programs/data-hub/charts/children-immigrant-families> (last visited December 10, 2018).

¹⁷ *Why the Proposed Public Charge Rules are Especially Harmful to Kids*, Children’s Hospital of Philadelphia (October 22, 2018), <https://policylab.chop.edu/blog/why-proposed-public-charge-rules-are-especially-harmful-kids>.

¹⁸ Tracy Vericker, et al., *Effects of Immigration on WIC and NSLP Caseloads*, Urban Institute, (Sept. 2010), available at <https://www.urban.org/sites/default/files/publication/29156/412214-Effects-of-Immigration-on-WIC-and-NSLP-Caseloads.PDF>.

¹⁹ INA Sec. 212(a)(4)(C),(D), 8 USC 1182(a)(4)(C),(D).

²⁰ Zuzana Cepla, *Fact Sheet: Family -Based Immigration*, National Immigration Forum (Feb. 2018), available at <https://immigrationforum.org/article/fact-sheet-family-based-immigration/>.

primarily dependent on government services.²¹ This drastically broader scope will inevitably increase the number of immigrants found to be a public charge. Finally, the proposed rule details how simply being a child and having a large family could be held against immigrants seeking status.²²

B. The proposed regulations will have a chilling effect on children's access to services, including services that may be necessary for their health and development.

Advocates and the Department agree that the proposed rule could have a significant chilling effect on the willingness of families to access programs for which they are eligible. Families are likely to fear that use of these programs could limit a family member's access to immigration benefits and the stability that comes with permanent immigration status. Previous efforts to limit access to government programs have resulted in just such a chilling effect within immigrant communities. For example, the policy changes resulting from PRWORA led to significant drops in public program participation, even among immigrants who were not subject to the changes.²³ The proposed rule itself anticipates a chilling effect, stating that individuals "may choose to disenroll or forego enrollment in a public benefits program" and that they may choose to do so "due to concern about the consequences to that person receiving public benefits and being found to be likely to be a public charge."²⁴

This chilling effect will have long-term consequences for children and youth. The supplemental support programs at issue in the proposed rule exist today because of their ability to positively impact children's health and well-being. When a child's family has access to health care, enough to eat, and a home to live in, they can grow and thrive. The value of access to public benefits has been documented repeatedly. Children whose parents are insured are more likely to have insurance themselves.²⁵ Research shows that programs like SNAP and Medicaid are crucial to ensuring health and reducing intergenerational transmission of poverty.²⁶ An additional year of SNAP eligibility for young children with immigrant parents has been shown to have significant

²¹ 83 FR 51157.

²² 83 FR 51180, 51184.

²³ Neeraj Kaushal and Robert Kaestner, *Welfare Reform and health insurance of Immigrants*, Health Services Research, 40(3), (June 2005), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1361164/pdf/hesr_00381.pdf.

²⁴ 83 FR 51117.

²⁵ Julie L. Hudon and Asako S. Moriya, *Medicaid Expansion for Adults Had Measurable 'Welcome Mat' Effects on Their Children*, Health Affairs 36 (2017), <https://www.healthaffairs.org/doi/10.1377/hlthaff.2017.0347>; Joan Alker and Alisa Chester, *Children's Health Insurance Rates in 2014: ACA Results in Significant Improvements*, Georgetown University Health Policy Institute, Center for Children and Families, 2015, <http://ccf.georgetown.edu/wp-content/uploads/2015/10/ACS-report-2015.pdf>.

²⁶ Marianne Page, *Safety Net Programs Have Long-Term Benefits for Children in Poor Households*, Policy Brief, University of California, Davis, 2017 https://poverty.ucdavis.edu/sites/main/files/file-attachments/cpr-health_and_nutrition_program_brief-page_0.pdf.

health benefits for later childhood adolescence.²⁷ Children with access to health care, including Medicaid, have better health outcomes, greater school attendance, are more likely to graduate from high school and college, and therefore are more likely to have higher paying jobs as adults.²⁸ Children in families that receive housing assistance are more likely to be healthy and have higher rates on well-being measures.²⁹ Additionally, data shows that generations improve their economic contribution over time, therefore preventing future generations from relying on government services.³⁰ This in turn empowers children to be self-sufficient in the future.

By turning the use of essential public assistance programs into negative factors in the public charge assessment, the proposed rule contradicts its stated purpose of promoting immigrant families' self-sufficiency. The proposed rule's changes to the public charge test will discourage use of the very programs that could help families to achieve stability and self-sufficiency.

III. TO PROTECT THE BEST INTERESTS OF CHILDREN AND THE COMMUNITIES IN WHICH THEY LIVE, THE PROPOSED REGULATIONS SHOULD NOT CONSIDER THE CHILDREN'S HEALTH INSURANCE PROGRAM (CHIP) IN A PUBLIC CHARGE DETERMINATION.

In the proposed rule, DHS specifically requests comment on whether use of CHIP should be included in the public charge determination. CHIP is a vital resource for children and families, providing necessary preventative health care and vital medical attention to children who are ill. The Young Center opposes the inclusion of CHIP for public charge determinations, as it would limit children's access to vital health care services.

CHIP is a health benefits program for working families who earn too much to be eligible for Medicaid without a share of cost. Nearly 9 million children across the US depend on CHIP for their health care. Making 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 even further, to exclude moderate-income, working families as well as 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

²⁷ Chloe N. East, *The Effect of Food Stamps on Children's Health: Evidence from Immigrants' Changing Eligibility*, Working Paper, 2017,

http://www.chloeneast.com/uploads/8/9/9/7/8997263/east_fskids_r_r.pdf.

²⁸ Karina Wagnerman, Alisa Chester, and Joan Alker, *Medicaid is a Smart Investment in Children*, Georgetown University Center for Children and Families, March 2017,

<https://ccf.georgetown.edu/2017/03/13/medicaid-is-a-smart-investment-in-children/>.

²⁹ Kathryn Bailey, Elizabeth March, Stephanie Ettinger de Cuba, et al., *Overcrowding and Frequent Moves Undermine Children's Health*, Children's HealthWatch, 2011,

www.issuelab.org/resources/13900/13900.pdf.

³⁰ See *Second-Generation Americans*, Pew Research Center (Feb. 7, 2013),

<http://www.pewsocialtrends.org/2013/02/07/second-generation-americans/>.

benefits, both because of the direct inclusion in the public charge determination as well as the chilling effect detailed earlier in these comments.

Including CHIP in the proposed rule would also contravene 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 health care.

Since its inception in 1997, CHIP has enjoyed broad, bipartisan support based on the indisputable evidence that children need access to health care services to ensure their healthy development. Senator Orrin Hatch (R-UT), one of the original co-sponsors of CHIP, said that “[c]hildren are being terribly hurt and perhaps scarred for the rest of their lives” and that “as a nation, as a society, we have a moral responsibility” to provide coverage to children. CHIP has been a significant factor in dramatically reducing the rate of uninsured children across the US. According to the Kaiser Family Foundation, between 1997 (when CHIP was enacted) through 2012, the percentage of uninsured children dropped by half, from 14 percent to seven percent. Together, Medicaid and CHIP have helped to reduce disparities in coverage affecting children. A 2018 survey of existing research noted that the availability of “CHIP coverage for children has led to improvements in access to health care and to improvements in health over both the short-run and the long-run.”³¹

CHIP can have a positive impact on health outcomes, including reductions in avoidable hospitalizations and child mortality.³² It also improves health, which translates into educational gains with potentially positive implications for both individual economic well-being and overall economic productivity.³³ Continuous, consistent coverage without disruptions is especially critical for young children, as experts recommend 16 well-child visits before age six, more heavily concentrated in the first two years, to monitor their development and address any concerns or delays as early as possible.³⁴ As noted by the Center for Children and Families, a child's experiences and environments early in life have a lasting impact on his or her

³¹ Lara Shore, Sheppard, *Medicaid and CHIP: Filling in the Gap of Children's Health Insurance Coverage*, Econofact (January 22, 2018), <https://econofact.org/filling-in-the-gap-of-childrens-health-insurance-coverage-medicaid-and-chip>.

³² Kaiser Family Foundation, *The Impact of the Children's Health Insurance Program (CHIP): What Does the Research Tell Us?*, Jul. 2014, <https://www.kff.org/medicaid/issue-brief/the-impact-of-the-childrens-health-insurance-program-chip-what-does-the-research-tell-us/>.

³³ *Id.*

³⁴ Elisabeth Wright Burak, Georgetown Center for Children and Families, *Promoting Young Children's Healthy Development in Medicaid and the Children's Health Insurance Program (CHIP)*, Oct. 2018, <https://ccf.georgetown.edu/wp-content/uploads/2018/10/Promoting-Healthy-Development-v5-1.pdf>.

development and life trajectory. The first months and years of a child's life are marked by rapid growth and brain development.³⁵

DHS notes that the reason it does not include CHIP in the proposed rule is that CHIP does not involve the same level of expenditures as other programs that it proposes to consider in a public charge determination and that noncitizen participation is relatively low.³⁶ The question of which programs to include should not be based on current government expenditures. Whether or not there is a large government expenditure on a particular program is irrelevant to the assessment of whether a particular individual may become a public charge in the future. A public charge determination must be an individualized assessment.³⁷

Overall, the benefits of excluding CHIP and Medicaid clearly outweigh their inclusion in a public charge determination. We therefore recommend that DHS continue to exclude CHIP from consideration in a public charge determination and exclude receipt of Medicaid for the same reasons.

IV. TO PROTECT THE BEST INTERESTS OF CHILDREN AND THE COMMUNITIES IN WHICH THEY LIVE, THE PROPOSED REGULATIONS SHOULD NOT CONSIDER BENEFITS GRANTED TO NON-CITIZEN CHILDREN UNDER THE AGE OF 18 IN ANY PUBLIC CHARGE DETERMINATION.

In the proposed rule, DHS invites comments regarding public charge determinations for non-citizen children under age 18 who receive one or more public benefit programs. The Young Center recommends without reservation that a child's use of benefits for which he or she is eligible should not be considered as a negative factor in the public benefits determination. Use of these benefits, which foster the health, safety and development of children, provides little information on that child's future likelihood of receiving benefits. Moreover, a child's use of benefits while a child is at the direction of his or her parent or caregiver. It would be both illogical and contrary to public policy to penalize those children when they reach adulthood for decisions that were not their own. Finally, penalizing a child's enrollment in health and nutrition programs would be contrary to Congressional intent as expressed in both the 2009 CHIPRA and section 4401 of the Farm Security and Rural Investment Act of 2002, which restored access to what was then called Food Stamps (now SNAP) to immigrant children.

These programs allow children to live in stable families, access preventative health care and medical treatment, and succeed in school. As a result, children are able to grow, develop, learn, integrate into their communities and prepare to contribute to those same communities as they

³⁵ *Id.*

³⁶ 83 Fed. Reg. at 51174.

³⁷ *See* Immigration & Nationality Act, 8 U.S.C. § 1192(4)(b) (mandating that those making a public charge determination take, at minimum, factors of the immigrant's age, health, family status, assets, resources and financial status, and education and skills into account).

reach adulthood. The value of access to public benefits in childhood has been documented repeatedly: for example, 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.³⁸

V. CONCLUSION

The Young Center opposes the adoption of any regulations that would penalize or curtail access by children or adults to programs that ensure the best interests—the safety, health and well-being—of immigrant children and children in immigrant families. Congress has recognized the importance of certain public benefits to the health, well-being, and future economic security of immigrant children and their families. Including these benefits within the scope of the public charge analysis would discourage use of these vital and transformative programs, and thereby undermine the health and safety of our communities right now and well into the future. We therefore urge DHS to rescind the proposed rule.

Respectfully submitted,



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³⁸ Marianne Page, *Safety Net Programs Have Long-Term Benefits for Children in Poor Households*, Policy Brief, University of California, Davis, 2017 https://poverty.ucdavis.edu/sites/main/files/file-attachments/cpr-health_and_nutrition_program_brief-page_0.pdf.