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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 20529-2140

Re: DHS Docket No. USCIS-2010-0012, RIN 1615-AA22, Comments in Response to Proposed Rulemaking: Inadmissibility on Public Charge Grounds

Dear Ms. Deshommès:

We are writing as members of the Congressional Black Caucus (CBC) to express our strong opposition to your agency's proposed rule concerning public charge determinations. The proposed rule would cause major harm to immigrants, their families, state and local governments, health care providers, and numerous other parties throughout the nation. Black immigrants, who comprise only 8.7 percent of all non-citizens,¹ but are more likely to be impacted by the proposed rule, would be disproportionately injured. We therefore urge you to immediately withdraw this proposed rule in its entirety.

The CBC was established in 1971 to ensure that African Americans and other marginalized communities in the United States have the opportunity to achieve full equity, equality, justice, and opportunity. The CBC currently has 48 members who represent tens of millions of Americans and serve as ranking members on numerous congressional committees and subcommittees, including the House Committee on Homeland Security, House Committee on Financial Services, House Committee on Education and the Workforce, House Committee on Oversight and Government Reform, and House Committee on Science, Space and Technology. Throughout our existence, we have fought to ensure that our immigration system is in accordance with these principles, including our current efforts to protect the Temporary Protected Status Program, Diversity Visa Immigrant Program, and Deferred Action for Childhood Arrivals.

¹ Juliana Morgan-Trostle & Kexin Zheng, *State of Black Immigrants*, BAJI 11 (2018), <http://stateofblackimmigrants.com/wp-content/uploads/2018/09/sobi-fullreport-jan22.pdf>.

The CBC has numerous objections to this proposed rule and supports the arguments made by prominent immigrant rights groups, state and local elected officials, and other Members of Congress. However, we write to you today to focus on the following core problems. First, the proposed rule represents a massive change of policy that contradicts congressional history and intent. Second, the proposed rule would have a racially discriminatory effect against black immigrants. Third, the proposed rule is clearly the product of the same racially discriminatory intent that has characterized this Administration's immigration policies since its first days in office. Finally, the proposed rule relies on faulty analysis that, among other shortcomings, fails to account for its impact on classes of people that Congress has explicitly decided to protect from public charge determinations. These are irreparable problems that support our request for you to immediately withdraw the proposed rule in its entirety.

The proposed rule would violate decades of congressional intent by forcing agency officials to consider the receipt of public assistance from Medicaid, the Supplemental Nutrition Assistance Program (SNAP), and other government programs when adjudicating immigration applications even though Congress previously rejected this approach. Congress first allowed for immigrants to be excluded from the United States if they were likely to become a public charge in 1882.² However, for more than a century it largely left the term "public charge" for courts to interpret.³ Congress considered this issue in 1996 and refused to add a list of programs that would have to be considered in a public charge analysis to the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA).⁴ The Department's decision to now adopt a list similar to the one that Congress rejected more than twenty years ago would therefore contravene congressional intent and our constitutionally mandated separation of powers.

The proposed rule would also have a racially discriminatory effect against black immigrants. Black immigrants are no less competitive or industrious than immigrants of any other race or from any other region of the world. In fact, a recent study by the Pew Research Center found that black immigrants had high English proficiency levels and that black immigrants from Africa were more likely to have college degrees than Americans overall.⁵ However, the purchasing power parity (PPP) for many African and Caribbean countries is lower than that of most European countries⁶ and Africa's PPP is less than one-third that of the next lowest continent.⁷ Immigrants from these countries are therefore more likely to be impacted by changes to the way in

² AUDREY SINGER & BEN HARRINGTON, CONG. RESEARCH SERV., R45313, IMMIGRATION: FREQUENTLY ASKED QUESTIONS ABOUT "PUBLIC CHARGE", 1 (2018) (citing Act of Aug. 3, 1882, 47 Cong. ch. 376, § 2, 22 Stat. 214).

³ See KATE M. MANUEL, CONG. RESEARCH SERV., R43220, PUBLIC CHARGE GROUNDS OF INADMISSIBILITY AND DEPORTABILITY: LEGAL OVERVIEW 2 (2018).

⁴ H.R. REP. NO. 104-828, at 138 (1996) (Conf. Rep.); JOYCE VIALET, CONG. RESEARCH SERV., RS20265, IMMIGRATION: INS'S PROPOSED PUBLIC RULE 6 (1999) (explaining that the deportation provision of H.R. 2202 "was dropped, however, at the request of the Administration before final passage of the legislation as Division C of P.L. 104-208"); *White House Calls the Shots, As Illegal Alien Bill Clears* 15 (CQ Almanac 1996, 52nd ed., 5-3-5-17, Cong. Q., 1997), <http://library.cqpress.com/cqalmanac/cqal96-1092264> (explaining that at the request of the White House, Congress inserted H.R. 2202 into an appropriations bill that did not include a new list of government programs that were required to be taken into account for the purposes of the public charge deportation provision).

⁵ Monica Anderson & Gustavo Lopez, *Key Facts About Black Immigrants in the U.S.*, PEW RESEARCH CENTER (Jan. 24, 2018), <http://www.pewresearch.org/fact-tank/2018/01/24/key-facts-about-black-immigrants-in-the-u-s>.

⁶ See *GDP per capita, PPP*, THE WORLD BANK, <https://data.worldbank.org/indicator/NY.GDP.PCAP.PP.CD> (last visited Dec. 4, 2018).

⁷ See *id.*

which public charge determinations are calculated,⁸ even if they are no more likely to actually become public charges than immigrants from other countries or of different races. Imposing such a rule would thus undermine the Immigration and Nationality Act of 1965, which abolished national origin quotas, and have a profoundly negative impact on the racial and ethnic composition of our country.

Furthermore, the proposed rule is the product of racially discriminatory intent as evidenced by nearly two years of offensive statements and policies that disproportionately target black immigrants. This Administration terminated Temporary Protected Status (TPS) for tens of thousands of immigrants from Sudan and Haiti, needlessly ended Liberia's Deferred Enforced Departure (DED), and routinely threatens to eliminate the Diversity Immigrant Visa Program, which serves as the largest method for Africans to immigrate to the United States. All of these actions were undertaken against CBC objections and, in the case of Haiti's TPS status, through questionable procedures designed to reach a seemingly foregone conclusion.⁹ Yet, these decisions are not an aberration from presidential intent, but instead the direct result of an administration deeply rooted in the belief that black immigrants are arriving from "shithole countries" and are less worthy of being in the United States.¹⁰

Finally, the DHS justification for the proposed rule fails to account for its impact on groups that Congress has specifically decided to exempt from public charge determinations and is therefore both inaccurate and incomplete. Current law exempts or waives the requirement for numerous individuals, including refugee and asylee applicants,¹¹ VAWA self-petitioners,¹² TPS applicants,¹³ DACA renewal applicants,¹⁴ and others to undergo a public charge analysis. However, news reports,¹⁵ expert analysis,¹⁶ and stories from our own constituents indicate that such individuals are hesitant to seek government benefits that they are legally eligible to receive out of fear that their immigration status will be impacted. This is similar to the chilling effect caused by 1990s era immigration and welfare reforms.¹⁷ Yet, the proposed rule's analysis

⁸ See, e.g., Suzanne Gamboa, *Income test under Trump proposal places tougher hurdles for families to get green cards*, NBCNEWS (Oct. 10, 2018, 5:30 AM EDT), <https://www.nbcnews.com/news/latino/income-test-under-trump-proposal-places-tougher-hurdles-families-get-n917931> (explaining the impact of the income test on immigrants).

⁹ Tal Kopan, *DHS decision to end Haitian immigrant protections questioned*, CNN, (Apr. 17, 2018, 3:47 PM ET), <https://www.cnn.com/2018/04/17/politics/haiti-tps-documents-questions/index.html>.

¹⁰ See Eli Watkins & Abby Phillip, *Trump Decries Immigrants from 'Shithole Countries' Coming to US*, CNN (Jan. 12, 2018, 9:53 AM ET), <https://www.cnn.com/2018/01/11/politics/immigrants-shithole-countries-trump/index.html>.

¹¹ 8 U.S.C. § 1157 (2018).

¹² 8 U.S.C. § 1182 (2018).

¹³ 8 C.F.R. § 244.3(a)(1997).

¹⁴ See Memorandum from Secretary of Homeland Security Janet Napolitano, *Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children* 1-2 (June 15, 2012). (explaining eligibility criteria and not mentioning public charge).

¹⁵ See Helena Bottemiller Evich, *Immigrants, fearing Trump crackdown, drop out of nutrition programs*, POLITICO (Sept. 4, 2018, 01:29 PM EDT), <https://www.politico.com/story/2018/09/03/immigrants-nutrition-food-trump-crackdown-806292>.

¹⁶ Jeanne Batalova, Michael Fix, & Mark Greenberg, *Chilling Effects: The Expected Public Charge Rule and Its Impact on Legal Immigrant Families' Public Benefits Use*, MIGRATION POLICY INSTITUTE (June 2018).

¹⁷ *Id.* at 23.

fails to account for its clear and obvious impact on communities that Congress sought to protect and therefore serves as a flawed justification for the proposed rule.

For these reasons, we object to this proposed rule and urge you to withdraw it immediately in its entirety.

Sincerely,



Cedric L. Richmond
Chair, Congressional Black Caucus



Yvette D. Clarke
Chair, CBC Immigration Task Force



Cory A. Booker
U.S. Senator



Kamala D. Harris
U.S. Senator



Danny K. Davis
Member of Congress



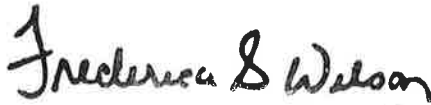
Gwen S. Moore
Member of Congress



Karen Bass
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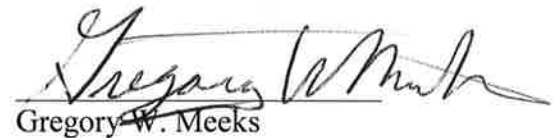


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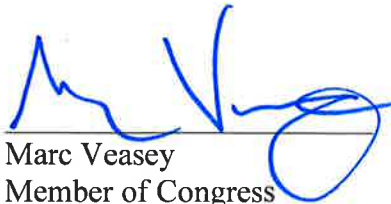
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Eleanor Holmes Norton
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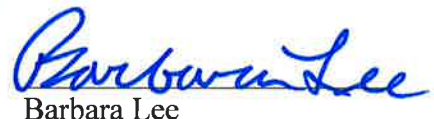
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