

Mark Koumans
U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Avenue NW
Washington, DC 20529-2140

RE: CIS No. 2655-20; DHS Docket No. USCIS-2019-0023; RIN: 1615-AC39: Comments in Response to Proposed Rulemaking: Affidavit of Support on Behalf of Immigrants

Dear Mr. Koumans,

I am writing on behalf of the Children's Defense Fund of Texas in response to the Department of Homeland Security (DHS) Notice of Proposed Rulemaking, "Affidavit of Support on Behalf of Immigrants" which was published in the Federal Register on October 2, 2020. This proposed rule is yet another attack by the Trump administration to dismantle all types of immigration, and specifically target Black and Brown immigrants. If finalized, this rule will deter U.S. citizens and green card holders from sponsoring their family members in immigration applications, thus further limiting legal family-based immigration. This rule would require sponsors to provide private information and additional documentation that are irrelevant to their ability to sponsor someone, and disproportionately targets low-income Black and Brown families and sponsors because of systemic race-based inequalities. No part of this rule is justifiable or necessary. As such, the Children's Defense Fund of Texas opposes this rule and urges that it be withdrawn in its entirety. Instead, USCIS should dedicate their efforts to expand and streamline legal immigration processes.

For over 15 years, the Children's Defense Fund-Texas has worked to ensure that every child has a Healthy Start, a Safe Start, and a Fair Start in life, as well as a successful passage to adulthood. CDF provides a strong, effective and independent voice for *all* the children of America who cannot vote, lobby, or speak for themselves. We are committed to raising awareness about the challenges facing children in Texas, connecting children and families to resources that help to meet their needs, and working with partners statewide to coordinate broad support for legislative action on behalf of Texas children and families. Since 2016, we have responded to the call to protect immigrant families vulnerable to the nation's punitive immigration policies. The issues that affect this group are of particular concern in the state of Texas due to our location in the U.S.-Mexico border and the large immigrant and refugee population in this state.

The proposed rule will disregard sponsors' incomes and instead require primary sponsors to have a joint sponsor if they or a member of their household member have used public benefits -- including Medicaid, CHIP, SNAP, SSI and TANF -- anytime within 36 months of executing the Affidavit of Support. This new public benefits provision will continue to deter both immigrants and U.S. citizens from using benefits for which they are eligible if they hope to sponsor or jointly sponsor a family member in the future, thus magnifying the confusion and fear already caused by the public charge rule. Furthermore, this will make it harder and more costly for agencies and community based organizations in Texas and across the US to communicate accurate information about the policies. This has already been a challenge we have seen with public charge. Because the list of programs that could disqualify an individual from serving as a sponsor is different from the programs taken into account for the public charge determination, sharing correct information that people trust will become even harder, misinformation will be harder to combat, and community fear will rise.

Due to the climate of fear that the Trump administration has cultivated, we have already seen large numbers of immigrant and mixed status families withdraw from nutrition and health care support

programs for which they are eligible. This is in large part attributable to the new public charge regulation, but also because of the Trump administration's long list of anti-immigrant policies, such as family separation, increased ICE raids, and hostile rhetoric. Immigration policies such as public charge, that create adverse consequences (or create the *fear* of adverse consequences) for the use of public benefits results in a deterrent effect even for those who would not be directly affected. Despite the fact that under the 2019 DHS public charge rule, only a small percentage of non-citizens could be ineligible for green cards based on current benefit use,¹ immigrants and their U.S. citizen family members are continuing to forego benefits for which they are eligible. As a result of the climate of fear new public charge regulation, in Texas, we have seen alarming drops in enrollment for SNAP, Medicaid, and CHIP, among other programs. In our state, CHIP and Children's Medicaid enrollment dropped by 237,000 children, or 7%, between December 2017 and February 2020.² Between December 2017 and April 2019, WIC enrollment dropped 18.8% and SNAP enrollment dropped 13.5% in Texas.³ These drops can be directly attributed to the fear and confusion instilled by the public charge rule.⁴ These drops corresponded with an increased child uninsured rate reaching 12.7% in 2019 - an impact Texas could ill afford, as we already had the highest child uninsured rate in the U.S.⁵ We have also already seen people start to forgo preventive care and routine vaccination. For example, Community Health Choice noted a 20% decrease in their pediatric caseload and a 40% reduction in children receiving the MMR vaccine.⁶ Additionally, this is creating a financial stress on many medical clinics and other public sector service organizations.⁷ The chilling effects of public charge are already widespread, but this proposed rule would exacerbate them, harming not just immigrants, but everyone in the U.S. This puts communities' public health at great risk, in addition to affecting the economy and education.

This rule will also increase USCIS's backlog. The additional documentary requirements included in the proposed rule will require USCIS to review and potentially verify 3 years of tax returns, in-depth bank account information, and credit history for at a minimum one sponsor, and in many cases the sponsor's spouse, a joint sponsor, and his or her spouse as well. This is not only inefficient and unnecessary, but also extremely costly. USCIS staff will likely have to work over a million additional hours to review this additional paperwork, which would cost USCIS at least \$41 million if the wage rate of \$37.55/hr remains the same.⁸ It is counterproductive and impractical to add more work and costs for useless reasons to an agency that is already severely backlogged.

Moreover, the proposed rule would require all sponsors to provide their last three years of federal income tax returns rather than only their past year's return. Requiring all sponsors to provide their past three years of returns will in many cases harm sponsors by slighting their current financial situation and painting a

¹ R. Capps et al, Public Charge Rule: Broad Impacts, But Few Will Be Denied Green Cards Based on Actual Benefit Use, Migration Policy Institute (March 2020).

<https://www.migrationpolicy.org/news/mpi-estimates-non-citizens-ineligible-green-cards-based-current-benefit-use>

² C. Anderson, *Public Charge and Private Dilemmas: Key Challenges and Best Practices for Fighting the Chilling Effect in Texas, 2017-2019*, Children's Defense Fund of Texas, October 2020.

³ "[WIC Participation History - June 2020.](#)" Texas Health and Human Services, updated August 4, 2020; "[Supplemental Nutritional Assistance Program \(SNAP\) Statistics, December 2017- April 2019.](#)" Texas Health and Human Services, updated July 2020.

⁴ C. Anderson, *Public Charge and Private Dilemmas: Key Challenges and Best Practices for Fighting the Chilling Effect in Texas, 2017-2019*, Children's Defense Fund of Texas, October 2020.

⁵ J. Alker & A. Corcoran, *Children's Uninsured Rate Rises by Largest Annual Jump in More Than a Decade*, Center for Children & Families of the Georgetown University Health Policy Institute, October 2020.

⁶ C. Anderson, *Public Charge and Private Dilemmas: Key Challenges and Best Practices for Fighting the Chilling Effect in Texas, 2017-2019*, Children's Defense Fund of Texas, October 2020.

⁷ C. Anderson, *Public Charge and Private Dilemmas: Key Challenges and Best Practices for Fighting the Chilling Effect in Texas, 2017-2019*, Children's Defense Fund of Texas, October 2020.

⁸ AOS NPRM at 62457. This number is close to the five year average of 1,041,077 I-864 forms filed per year; Affidavit of Support on Behalf of Immigrants, 85 Fed. Reg. 62,432 at 62460 (October 2, 2020).

falsely negative portrait of their ability to support the immigrants they are sponsoring. There are numerous circumstances in which a potential sponsor is financially able to meet the affidavit of support standards now but had significantly lower income before. For example, the sponsor could have experienced a short-term layoff at work, been a student, been on leave to take care for a child or parent, been seriously ill and unable to work but are now fully recovered. In each of these cases, the income that the sponsors would have reported on their tax returns would be significantly lower than their current income. Under the proposed rule, USCIS could use that lower income to determine that the sponsors cannot adequately support the sponsored immigrant even if the sponsors' current and prospective income would be adequate. Furthermore, these sponsors should not be required to secure joint sponsors. These sponsors are fully capable of supporting their relatives by themselves *now*. They should not need to turn to another person to meet their support obligation--and should not need to ask that other person to take on the legal responsibility that joint sponsorship entails.

USCIS is proposing to add a new requirement to the Form I-864 and related Forms I-864A and I-864EZ which would require U.S. citizens and lawful permanent residents sponsors and joint sponsors to provide in-depth bank account information. DHS provides no reasonable justification for the massive documentary burdens and invasion of privacy that will result from requiring all sponsors and household members to provide information about their bank accounts. There is no legal authority for USCIS to require this information from all U.S. citizens and lawful permanent residents sponsoring their foreign spouse or relatives for a green card. Bank account information is not necessary or even relevant in order to verify the sponsor or household member's income, which is done through the submission of Federal income tax returns, W-2 wage and tax statements, and letters of employment. This new requirement raises significant and avoidable privacy concerns.

Relying on credit history as a factor has a disproportionate impact on Black and Brown communities. Today's credit scoring system was built upon a credit market that discriminates against people of color and penalizes borrowers for using the type of credit disproportionately used by people of color. Further, neither credit reports nor credit scores were designed to provide information on whether a consumer is more or less likely to maintain his or her income in the future. Nor are credit reports and scores any indication of whether the sponsor will be able to maintain the sponsored immigrant at the required federal poverty income level for the household size. A bad credit report or low score—or even the lack of one—is not a reliable predictor of the likelihood that an adjustment of status applicant will obtain public benefits or that a sponsor will fail to provide necessary financial support to that applicant. A bad credit record is often the result of circumstances beyond a consumer's control, such as illness or job loss, from which the consumer may subsequently recover.⁹

Lastly, we would like to add a note of caution. We are in the midst of a global pandemic. There is never a **good** time to introduce policies that would make anyone afraid to enroll in programs that provide health care, nutrition or other assistance they need to stay healthy. But during a public health emergency such as this is absolutely the worst time to do so. Instead of penalizing sponsors for accessing health care, nutrition or other public benefits, our national policy should encourage people to make sure their families are healthy, fed and safe. We urge strongly that DHS withdraw this proposed policy of penalizing sponsors for use of benefits.

This rule is another attempt by the Trump administration to circumvent Congress to restrict lawful family-based immigration to the U.S. [Children's Defense Fund strongly opposes the Affidavit of Support proposed rule. We call for it to be withdrawn in its entirety.](#)

⁹ Chi Chi Wu, [Solving the Credit Conundrum: Helping Consumers' Credit Records Impaired by the Foreclosure Crisis and Great Recession](#), National Consumer Law Center, 2013.

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