VOLS
VOLUNTEERS of LEGAL SERVICE

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VIA ELECTRONIC SUBMISSION

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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: Notice of proposed rulemaking
CIS No. 2499–10; DHS Docket No. USCIS– 2010–0012
RIN 1615–AA22
Inadmissibility on Public Charge Grounds

Comments of Volunteers of Legal Service

Volunteers of Legal Service ("VOLS") appreciates the opportunity to submit these comments in response to the rules proposed by the Department of Homeland Security ("DHS") in the above-captioned dockets[1].

We believe that the clients of two of VOLS' Projects in particular will be detrimentally impacted by these proposed regulatory changes. 5 U.S.C. § 654 requires that federal agencies take into consideration the impact that proposed rules will have on families, yet we believe that DHS has failed to meaningfully take into consideration the impact this proposal will have on the families we serve and that has compelled us to submit these public comments.

The mission of VOLS is to develop projects to provide pro bono civil legal services to benefit low-income people in New York City. Since 1984, VOLS has identified areas of legal need, created projects to meet these needs, and recruited and trained volunteer lawyers to provide the needed legal services. By providing pro bono legal services to people in need in our city, we

[1] 83 Fed. Reg. 51114 (October 10, 2018).

strive to fulfill the highest aspirations of the legal profession. VOLS projects serve these vulnerable New York City populations: children, the elderly poor, claimants denied unemployment insurance benefits, incarcerated mothers, immigrant high school students and low-income micro-entrepreneurs. We conduct active outreach to the New York City legal community to encourage pro bono work by lawyers. We strive to provide pro bono legal assistance when and where it will be most accessible to our clients, in settings familiar to them, instead of requiring people in desperate need to come to us. We do this by working closely with hospitals, schools, senior centers, and other community organizations, and by integrating pro bono legal assistance into the array of services these organizations already provide.

With over two decades of collective legal services experience, the VOLS Elderly Project staff and our pro bono attorney volunteers provide free legal advice, information, document drafting, and other services to low-income New York City residents aged 60 and over, and to the social workers and advocates who assist them. These services include direct counseling on critical issues involving housing, government benefits, and consumer debt, and the drafting and execution of wills, powers of attorney, and other essential life-planning documents. The Elderly Project emphasizes outreach to underserved populations with the goal of helping vulnerable seniors stay in their homes. A key aspect of our success is our ability to combine social work resources already available to seniors with pro bono legal services. We work closely with senior centers, share information and communicate regularly by e-mail with over 600 social workers and other advocates in the elder services community, and have a roster of dozens of volunteer lawyers who provide free legal services to our clients.

The VOLS' Immigration Project staff has two decades of collective immigration law

experience working directly with people who have needed to regulate their immigration status to gain greater security and financial stability for themselves and their families. The people we serve are at various stages along their immigration journey, and include Untied States citizens and lawful permanent residents hoping to remain or reunify with parents, children, siblings and other family members. We collaborate with New York City schools, community-based organizations and health care centers to identify youth who need legal assistance to address a variety of immigration law challenges, which often threaten to disrupt a young person's education and limit her career options and long-term prospects for economic opportunity. Students who lack immigration status do not qualify for federal financial aid for college, most scholarships, and even New York State funded programs intended to support low-income students. Furthermore, once a young person reaches adulthood, if she has not regulated her immigration status, she no longer qualifies for any state funded programs that provide access to comprehensive health services, and like all individuals who lack immigration status, youth who are unauthorized to work cannot provide for their basic needs.

We urge DHS to reject the proposed rule which will amend 8 C.F.R. Parts 103, 212, 213, 214, 245 and 248 with respect to immigrant inadmissibility on public charge grounds because the current restrictions on immigrant receipt of public benefits are already sufficiently restrictive; and because the proposed rule will have a chilling effect on both immigrants and United States citizens seeking to access life sustaining benefits by broadening the scope of the types of public assistance that must be considered in determining who is likely to become a public charge to include non-cash assistance sources, including Supplemental Nutrition Assistance Program (SNAP) and Medicaid. The implementation of the new proposed rule will also result in delays

and denials in the adjudication of immigration benefits which is inconsistent with this country's objective of family reunification under the current immigration laws.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("PRWORA"), also known as "welfare reform" has already created very strict controls on which categories of immigrants are eligible to receive public benefits. Since the passage of the act, immigrant receipt of public benefits has declined significantly, as the act created two main categories of immigrants, "qualified" and "not qualified," which limits eligibility. Even some immigrants that are "qualified" to receive public benefits, such as lawful permanent residents or "green card holders," have to wait a period of five or seven years before they are eligible, irrespective of whether they are paying sales, income and other taxes during this time period. Although there are a few exceptions to this prohibition, such as for trafficking survivors, even our clients who have obtained legal status as a result of a humanitarian ground called "Special Immigrant Juvenile Status," an ameliorative pathway to permanent residence for children who cannot be reunified with a parent as a result of abuse, neglect, abandonment or a similar basis, are precluded from obtaining safety-net resources for the first five years, even if they are unable to find work or experience additional hardships.

The proposed rule will derail the path to citizenship for individuals who are under the age of 18, over the age of 61, and neither employed nor enrolled in school. As an organization that works with both of these populations, we are concerned that the additional burdens placed on families comprised of some of the most vulnerable members of society are inconsistent with the goals of nation's immigration laws and family reunification policies; in effect the agency will bypass Congress and exclude the intended beneficiaries of the current immigration laws, thereby

reshaping immigration law policy as a matter of discretion. We believe the proposed rule will have a far reaching detrimental impact on our clients and their families, and that these consequences have not been fully considered in the rulemaking process.

Many older parents and grandparents of U.S. Citizens would surely be denied entry to the country if this rule were implemented. The proposed rule will make it practically impossible for older adults to pass the "public charge" test under the new criteria because many will be over the age of 61 and neither employed nor enrolled in school. So many immigrant families in the past have been able to assimilate and thrive because of the support that intergenerational families provide. There is an assumption that these older family member are more likely to become a public charge and therefore a burden because of their age and health needs. This approach ignores the critical roles many grandparents play in caring for their grandchildren and other family members, often enabling others to work. The cost of daycare and other homecare services in New York City is exorbitant and can hold back immigrant families from achieving success and the American dream. By excluding elderly family members from entry to the United States, the proposed rule may in fact have the unintended consequences of forcing more families to rely on public benefits and potentially eroding the tax base by depriving these families of the free care provided by elderly family members.

The proposed rule will also impact seniors living in immigrant families in the U.S. who may deprive themselves of the medical services they need. Access to medical coverage is especially important for the elderly. Medicaid is a life sustaining benefit for the elderly immigrants who may not be eligible for Medicare. Medicaid not only provides coverage for hospital care, doctors' visits, and prescription drugs, but is also critical for long-term care, home

and community-based services. Many seniors who are eligible for Medicare may also need to rely on Medicaid to supplement their care for the services not covered by Medicare.

Many elderly immigrants also benefit from programs such as Section 8 rental assistance and SNAP to meet their most basic needs for food and shelter. The fear of being labeled a public charge may force immigrant seniors to eschew nutrition assistance programs. This will lead to worse health outcomes and greater reliance on already strained food pantries and other programs. If seniors with limited incomes and their families are unable or unwilling to access housing subsides we may see rising numbers of homeless seniors. In New York City, we are already experiencing record levels of homelessness and we cannot afford to see these numbers swell.

Non-immigrant seniors greatly rely on immigrants to provide them with care as well. Direct care workers provide critical assistance to millions of older adults and people with disabilities who need help with their activities of daily living. It is estimated that one million immigrants work in direct care, making up a quarter of the direct care workforce. Because of the low wages paid to direct care workers and the likelihood that they may be subject to one of the negative factors in the public charge determination, many of these immigrants may be denied entry. For those who are already in the country and may be denied or fear accessing health care, mental health services, nutritious food and housing, for fear of being labeled a pubic charge, the proposed rule may create a situation where the care workers will be unable to afford to remain the U.S. This may result in a shortage of direct care workers, leaving many older Americans and people with disabilities without access to the caregiving they need and placing further burdens on families.

Pursuant to 5 U.S.C. § 654, agencies engaged in rule making must determine how a

proposed rule will affect family well-being before implementing policies and regulations. Factors that agencies must consider include determining whether "the action strengthens or erodes the stability or safety of the family," if "the action increases or decreases disposable income or poverty of families and children" and if "the proposed benefits of the action justify the financial impact on the family."

In the statement regarding 5 U.S.C. § 654, DHS admits "that the proposed rule may decrease disposable income and increase the poverty of certain families and children, including U.S. citizen children," but argues that it "has determined that the benefits of the action justify the financial impact on the family." The government offers no explanation for this determination except that the proposed rule may minimize "the financial burden of aliens on the U.S. social safety net."

It is clear that DHS has failed to engage in a thorough and thoughtful analysis of the impact that this proposed rule will have on families as required by the statute. Instead they have simply offered a conclusory statement focused on government budgets rather than the detrimental impact the proposed rule will have on children, the elderly, the disabled and families.

Furthermore, the proposed regulation will have a chilling effect on families accessing even the nominal support systems created by various states to offset the harsh consequences of the 1996 reforms in relation to public health and safety concerns. Families are already de-enrolling from programs that are essential to the health and well-being of their children and we have spoken to several clients that are making decisions that may affect the long-term health outcomes of their children. Shortly after the proposed rule was published our staff received numerous calls from clients who were in the midst of filing cases to gain lawful immigration

status and were concerned by the retroactive impact the rule could have if passed. The most striking of these calls was from a mother who was afraid to have her infant son, a United States citizen, continue to utilize the temporary supports under the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), which provides food for children under the age of five who are found to be at nutritional risk, due to the harsh consequences of the proposed rule. We cannot imagine being faced with such an impossible choice. For this family, and others like them, only one parent is currently able to work. Thus, for the petitioning U.S. Citizen to ensure his spouse will remain in the country and continue to care for him, his medical needs, and their two young children long term, he must forgo a limited source of support that is critical to sustain the good health of one of his children.

In addition to anecdotes that demonstrate the stark reality facing families who are working hard to stay together and seek protection under our immigration laws, research and analysis projects a chilling effect on families beyond what has been adequately examined. As noted by Michael Fix, a nationally recognized expert on welfare use, "After welfare reform in 1996, rates of benefits use fell sharply, even among groups whose eligibility was unchanged, such as refugees and the U.S.-born children of immigrants." Our organization has served Asylees and their family members, as well as individuals who wanted to apply for permanent residence and become United States citizens; many wait years before they can save enough money to pay the full application fees to USCIS, barring themselves from many opportunities and benefits that come with U.S. citizenship in the interim. Few avail themselves of the option to seek the fee waivers they are eligible for, to offset application costs that range in from hundreds to thousands of dollars. Some naturalized citizens do not apply for Certificates of Citizenship for their

children who automatically derive citizenship because they are unable to pay the $1225.00 fee and feel too patriotic to ask for help for this benefit. Even before the proposed rule was drafted, many incorrectly believed that by seeking a fee waiver they would be judged negatively, or worse, barred from becoming citizens, for seeking any kind of support.

Over the years we have assured many people that they would not be prevented from becoming full and thriving citizens of this country because in a moment of need, they asked for help; the fear of being penalized for this perceived weakness was a prevailing theme in the conversations. One father we represented was working two jobs to save money to pay for his daughter's education. He was raising her alone, and had never used public benefits before. But he was struggling to save the $725 extra he needed to apply for naturalization because he always put his daughter's needs first, so the years kept passing; there was never enough left over to file the N400. We convinced him to apply for a fee waiver, but it took many conversations before he was willing to do so. The proposed rule will consider fee waivers as another negative factor and again fails to consider the effect that limiting the options for people to file for immigration benefits will have on families long-term. Immigrants, like our client, are active members of our communities that pay sales and income tax; and support other citizens and members of our communities in a myriad of ways. They already utilize fewer public benefits than native-born Americans despite having a right to avail themselves of the same protections that have been created to help all those in need.

Finally, the proposed rule will result in processing delays and denials of applications, more commonly in applications that are discretionary in nature. Excessive wait times for applications to be adjudicated, or appealed, have wide-reaching consequences which will upend

the lives of immigrants and their U.S. citizen families. People lose their jobs, single-earner households remain so, and families lose income essential to necessities like food, housing, and medical services. Adjudication times at USCIS have increased significantly over the past two years, and additional case processing delays will compound the resulting harm to families who are in limbo waiting for their loved one to obtain the documentation they need to join the workforce, files taxes together and be allowed to contribute fully to their communities. The inchoate test proposed will result in unfair and inconsistent applications by adjudicators and result in a wide variance among adjudicators that will thwart the intended purpose of the current immigration laws, to keep United States citizens and permanent residents together with their family members. The likely consequences of the proposed rule are disproportionately cruel to average families that might need to rely on some form of supplemental benefit for a period of time. The true impact of the proposed rule cannot have been evaluated with rigor if the end result has failed to account for the indefinite separation of families from their loved ones.

Thank you for considering these comments as DHS reviews the proposed rule.

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