December 7, 2018

The Honorable Kirstjen M. Nielsen

Secretary

U.S. Department of Homeland Security

Washington, D.C. 20528

**Re: Comment in Response to the Notice of Proposed Rulemaking Inadmissibility on Public Charge Grounds, DHS Docket No. USCIS-2010-0012**

Dear Secretary Nielsen:

I write to oppose the Department of Homeland Security’s (DHS) proposed rule regarding “Inadmissibility on Public Charge Grounds” (DHS Docket No. USCIS-2010-0012). As I explained in the enclosed October 9, 2018 letter that I and twenty-one other Senators sent to you, the changes proposed radically alter our immigration system and undermine our nation’s longstanding commitment to welcoming immigrants. By dramatically expanding the definition of who is classified as a public charge, the proposed rule will have a profoundly harmful impact on lawfully-present immigrants and their families, and keep them from accessing critical resources necessary for their health and safety. I therefore strongly urge you to withdraw your proposed rule.

Under current law, when an individual seeks admission into the United States or adjustment of status to a permanent resident, immigration officers consider whether the individual will likely become a “public charge”—a person primarily dependent on the government for subsistence. In making this determination, the existing longstanding policy has been to consider a “totality of circumstances” by looking at the person’s age, health, family status, financial status, education and skills, and the “affidavit of support” filed by the sponsor, if applicable. This policy has restricted consideration of benefits used by immigrants to two types – public cash assistance and government-funded long-term institutional care. Certain immigrants, such as refugees, and those seeking asylum or protections under the Violence Against Women Act, are exempt from the public charge test.

The proposed rule would dramatically change how DHS makes public charge determinations and have a detrimental impact on immigrants, including children and older relatives. If finalized, the proposed rule would, among other harmful changes, significantly expand the types of benefits that could be considered in public charge determinations, including certain health care, housing, and food programs. Moreover, the proposed rule would punish immigrants in a biased manner by allowing immigration officers to negatively weigh factors such as limited English language ability, being under age 18 or over 61, or having pre-existing conditions without private health insurance or financial resources. The proposed rule would inflict immense harm on many groups of immigrants, including domestic violence and sexual assault survivors and older noncitizens.

The proposed rule would deter immigrants who are domestic violence and sexual assault survivors from using vital services they need to escape or recover from the violence they have suffered or continue to suffer. Each year, more than 12 million men and women in the United States experience rape, physical violence, or stalking by an intimate partner.[[1]](#footnote-1) In Hawaii, a 2017 report found that, in a single day, domestic violence programs served 156 adults and 132 children.[[2]](#footnote-2) These services include housing, counseling, and support groups for children. Due to fear and misinformation, this chilling effect is already discouraging immigrants and their families from accessing crucial services and will similarly impact even those immigrant survivors who are exempt from the proposed rule. Moreover, the rule would not only cripple the ability of immigrant survivors to overcome their abuse and trauma, it would also increase the long-term economic and societal costs on our communities if such violence goes unmitigated.

Essential benefits such as housing assistance, the Supplemental Nutrition Assistance Program (SNAP), and health care services, help domestic violence and sexual assault survivors overcome key barriers to escaping and recovering from abuse. Two of the most pressing concerns among abused women planning to leave, or having recently left, their abusers are access to safe housing and the resources to maintain such housing.[[3]](#footnote-3) Without access to affordable housing, survivors are at extreme risk of homelessness, and between 22 and 57 percent of all homeless women report that domestic violence was the immediate cause of their homelessness.[[4]](#footnote-4)

Food and health care benefits also help survivors and their children remain in safe conditions. In a survey of service providers, nearly 80 percent of them reported that most domestic violence survivors rely on SNAP to establish their safety and stability.[[5]](#footnote-5) Access to health care for survivors and their children, including through the Children’s Health Insurance Program (CHIP), can be crucial in enabling them to escape and recover from abuse. The health care setting may be the first context in which survivors are asked about abuse and connected with necessary services. In addition to the health care they need to address physical injuries inflicted by their abusers, survivors may suffer severe and long-lasting physical and mental health problems, as they are at increased risk of suicide, depression, and posttraumatic stress disorder, as well as chronic conditions such as asthma, stroke, and cardiovascular disease.[[6]](#footnote-6)

The harmful consequences of the proposed public charge rule is inconsistent with Congress’s efforts to protect domestic violence and sexual assault survivors and eliminate barriers to accessing services that are vital to helping them overcome violence and abuse. In 2013, for example, Congress amended the Immigration and Nationality Act to expressly exempt immigrants who are battered spouses or children or who seek protection under the Violence Against Women Act, U visas, and T visas from inadmissibility based on public charge grounds.[[7]](#footnote-7) Congress also recognized the need for survivors to be able to access financial support as a crucial component of escaping and overcoming abuse when it enacted the Family Violence Option in the 1996 law that established Temporary Assistance for Needy Families (TANF).[[8]](#footnote-8) The Family Violence Option allows states to waive TANF work requirements, time limits of benefits, and child support cooperation for domestic violence survivors that make it more difficult to escape domestic violence or unfairly penalize survivors.

The radical changes in the proposed rule would also hurt older immigrants, including those who use basic programs, such as SNAP, Section 8 housing vouchers, certain Medicaid programs, and low-income subsidies for prescription drug costs under Medicare Part D, to supplement their fixed retirement incomes, savings, or income from low-wage work. By negatively weighing old age, having health conditions without certain resources, and limited English proficiency, the proposed rule would cruelly punish older immigrants. In 2010, more than half of older immigrants had limited English proficiency.[[9]](#footnote-9) Nearly 1.2 million immigrants older than age 61 live in low- or moderate-income households, and more than 8,000 of them are in Hawaii.[[10]](#footnote-10) Instead of recognizing the significant value of intergenerational families who support each other, the proposed rule would penalize families who share housing or provide support to family members, as this would increase the household income that immigrants need to demonstrate to avoid being labeled as a public charge.

The proposed rule is inconsistent with the values of our country. In addition to the widespread, significant harms imposed by the proposed rule, it punishes vulnerable immigrants such as domestic violence and sexual assault survivors and older noncitizens. I therefore urge the administration to withdraw the proposed public charge rule.

 Sincerely,

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Mazie K. Hirono

United States Senator

1. Centers for Disease Control and Prevention*, Sexual Violence, Stalking, and Intimate Partner Violence Widespread in the US* (2011),https://www.cdc.gov/media/releases/2011/p1214\_sexual\_violence.html. [↑](#footnote-ref-1)
2. National Network to End Domestic Violence, *Domestic Violence Counts: 12th Annual Census Report* (2017), <https://nnedv.org/mdocs-posts/2017-report/>. [↑](#footnote-ref-2)
3. U.S. Department of Health and Human Services, Administration for Children & Families, Family & Youth Services Bureau, *Domestic Violence and Homelessness: Statistics* (2016) <https://www.acf.hhs.gov/fysb/resource/dv-homelessness-stats-2016>. [↑](#footnote-ref-3)
4. *Ibid.* [↑](#footnote-ref-4)
5. Shaina Goodman, *The Difference Between Surviving and Not Surviving: Public Benefits Programs and Domestic and Sexual Violence Victims’ Economic Security* (Jan. 2018), <https://vawnet.org/sites/default/files/assets/files/2018-10/NRCDV-TheDifferenceBetweenSurvivingandNotSurviving-UpdatedOct2018_0.pdf>. [↑](#footnote-ref-5)
6. Jeanie Santaularia, et al., *Relationships between sexual violence and chronic disease: a cross-sectional study*, BMC Public Health (Dec. 2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4302144/>; Centers for Disease Control and Prevention, *Sexual Violence: Consequences* (Apr. 10, 2018) <https://www.cdc.gov/violenceprevention/sexualviolence/consequences.html>. [↑](#footnote-ref-6)
7. 8 U.S.C. 1182(a)(4)(E); Pub. Law No. 113-4, <https://www.gpo.gov/fdsys/pkg/PLAW-113publ4/pdf/PLAW-113publ4.pdf>. [↑](#footnote-ref-7)
8. Congressional Research Service, *Welfare Law and Domestic Violence* (May 16, 2001), [https://digital.library.unt.edu/ark:/67531/metacrs2073/m1/1/high\_res\_d/RS20662\_2001May16.pdf](https://digital.library.unt.edu/ark%3A/67531/metacrs2073/m1/1/high_res_d/RS20662_2001May16.pdf). [↑](#footnote-ref-8)
9. Jeanne Batalova, *Senior Immigrants in the United States*, Migration Policy Institute (May 30, 2012), <https://www.migrationpolicy.org/article/senior-immigrants-united-states>. [↑](#footnote-ref-9)
10. Manatt, Phelps & Phillips, LLP, *Public Charge Proposed Rule: Potentially Chilled Population Data Dashboard* (Oct. 11, 2018), <https://www.manatt.com/Insights/Articles/2018/Public-Charge-Rule-Potentially-Chilled-Population#DataDashboard>. [↑](#footnote-ref-10)