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INTERNATIONAL ACTION NETWORK  
FOR GENDER EQUITY & LAW

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**Comment submitted by International Action Network for Gender Equity & Law (IANGEL) on behalf of IANGEL and Global Fund for Women in response to DHS Notice of Proposed Rule “Inadmissibility on Public Charge Grounds,” FR 2018-21106 (Oct. 5, 2018)**

The Department of Homeland Security proposes to alter current immigration policy by expanding the negative factors included when assessing whether a “person is likely to become a public charge.” The proposed rule, “Inadmissibility on Public Charge Grounds,” would dramatically expand the definition of “public charge” from the current rules that already ban most immigrants from using public benefits. It disproportionately impacts women and children, and will have a substantial harmful impact on U.S. citizens and society as a whole. This comment, written by two established and well-respected non-profit organizations working to improve women’s human rights, will focus on the highly gendered negative impacts of the proposed rule.

As a threshold matter, we share the concerns of organizations that note the scope and manner of the proposed changes are so sweeping and lacking in specificity as to put the constitutionality and legality of the proposed rule in doubt.<sup>1</sup> Below, however, we specifically address the disproportionate impact the proposed changes would have on women and their families, including U.S. citizen children and adults. We believe the proposed rule unfairly targets women and children. It also perpetuates discredited and harmful stereotypes of immigrant women and women and children of color as burdens on the state. By including family members, in the assessment, and targeting access to healthcare, programs for pregnant women, and programs for infants and children, the proposed rule would cause great harm to our entire society, and would force women to choose between keeping their families healthy and keeping their families together.

**Proposal includes factors that do not make one a “public charge”**

The existing public charge rules already deny entry, immigration or citizenship to foreign nationals likely to become a *primary* and *permanent* dependent of the state. Examples include those likely to need full-time elderly care through Medicaid or those likely to subsist on public benefit cash assistance, commonly known as “welfare.” The new rules intend to dramatically

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<sup>1</sup> See Center for American Progress, “Trump’s ‘Public Charge’ Rule Would Radically Change Legal Immigration,” November 27, 2018, available at <https://www.americanprogress.org/issues/poverty/reports/2018/11/27/461461/trumps-public-charge-rule-radically-change-legal-immigration/>.

expand this assessment in two ways: first, by including family members in an individual's assessment, such as children, and secondly, by including *supplemental* and *temporary* benefits that are not commonly understood to be "welfare" benefits. This includes tax credits, such as the Earned Income Tax Credit and the Child Tax Credit, and healthcare programs, such as the Children's Health Insurance Program (CHIP), the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), health insurance subsidies under the Affordable Care Act (ACA), and prescription drug assistance. In the proposed rule, the Department of Homeland Security itself conceded that if immigrants forego enrollment in programs they or their children are eligible for, this could lead to "[w]orse health outcomes, including increased prevalence of obesity and malnutrition, especially for pregnant or breastfeeding women, infants, or children, and reduced prescription adherence; increased use of emergency rooms and emergent care as a method of primary health care due to delayed treatment; increased prevalence of communicable diseases, including among members of the U.S. citizen population who are not vaccinated; increases in uncompensated care in which a treatment or service is not paid for by an insurer or patient; and reduced productivity and educational attainment."<sup>2</sup> Such outcomes would be devastating for the U.S. population as a whole.

### **Disproportionate impact on women and children**

With the inclusion of non-welfare benefits, temporary assistance, and healthcare programs that are part of the ACA, the newly proposed rules disproportionately target women and children.<sup>3</sup> By design, many benefits women access are *temporary*, such as prenatal care or infant nutrition programs. Moreover, many of the programs for children are by definition for children who are U.S. citizens; one source notes that one in four children in the U.S. has at least one foreign-born parent, and that 96% of children with at least one immigrant parent are U.S. citizens.<sup>4</sup> It is these children who will bear the brunt of the harm if their mothers forego prenatal care and hospital births in order to avoid family separation. And it is these children who will go without the healthcare, vaccinations, nutrition, and other services they are eligible for, simply because they have an immigrant family member. Using benefits which are intended to be temporary, such as WIC, does not make one a primary dependent of the state. Moreover, this appears to be another attempt to undermine the ACA and to diminish government responsibility towards its people, regardless of the harm that society as a whole would suffer. We oppose such

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<sup>2</sup>Pages 3701 to 371, Text of proposed rule signed on September 21, 2018.

<sup>3</sup> Center on Budget and Policy Priorities, *Trump "Public Charge" Rule Would Prove Particularly Harsh for Pregnant Women and Children* available at <https://www.cbpp.org/research/poverty-and-inequality/trump-public-charge-rule-would-prove-particularly-harsh-for-pregnant>

<sup>4</sup> Center for Law and Policy Social Research, "Immigrant Eligibility for Federal Child Care and Early Education Programs," Hannah Matthews, 2017, available at <https://www.clasp.org/sites/default/files/public/resources-and-publications/publication-1/Immigrant-Eligibility-for-ECE-Programs.pdf>.

attempts to erode protections and rights for all members of our country by scapegoating the most vulnerable members of society.<sup>5</sup>

The proposed rule also claims to encourage “self-sufficiency,” but would instead force women into dangerous dependency and characterizes them as people not entitled to equal support of the state. Without access to public health programs, women in abusive relationships may be forced to remain in violent relationships to afford healthcare they and their children need. For example, pregnancy is known to increase the risk of domestic violence for women, and homicide is a leading cause of death for pregnant women<sup>6</sup>, yet pregnant women would be forced to stay with an abusive partner if they cannot find alternative means of accessing prenatal care. By targeting programs designed to support women and children through normal life processes such as pregnancy, breastfeeding, or infancy and targeting families with a member with a pre-existing health conditions, the proposed rule stigmatizes and otherizes women. It promotes the inaccurate view that women and children are burdens rather than full members of society who deserve equal support. This is especially true when considering that the rule targets government healthcare services for women and children that the private market does not offer. Finally, the rule seeks to capitalize on dehumanizing and discredited myths of immigrants as a “tax burden” and women of color as undeserving of public support or benefits,<sup>7</sup> even when they are legal immigrants who pay taxes or are the U.S. citizen children who form our future.

### **Increasing family separation**

By targeting healthcare programs for children and prenatal programs for women, the new rule will force immigrant mothers to choose between obtaining healthcare for their U.S. citizen children or risking family separation. If their child uses any of these services, it could risk their ability to obtain green cards or citizenship. With this rule, current lawfully residing immigrant mothers could now be denied citizenship or a green card for their past or current use of prenatal care. Families would be at risk of separation even if one U.S. citizen member used a public benefit, “even if that benefit represents a small share of the family’s income and most of

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<sup>5</sup> We note that immigrant children have previously been used as scapegoats in unsuccessful attempts to erode the right to equal access to education. In *Plyer v. Doe*, 457 U.S. 202 (1982), the Supreme Court rejected an attempt to exclude undocumented children from public schools because any savings would be far outweighed by the harms to society in denying children access to education. Healthcare rights in the U.S. are currently even more precarious and therefore more vulnerable to such attacks.

<sup>6</sup> Homicide and Suicide During the Perinatal Period: Findings from the National Violent Death Reporting System, 2012 Aug 27

<sup>7</sup> See Center for Constitutional Rights, *CCR Condemns Trump’s Cruel Policy Proposal on Immigrants as ‘Public Charge’*, September 24, 2018, available at <https://ccrjustice.org/home/press-center/press-releases/ccr-condemns-trump-s-cruel-policy-proposal-immigrants-public-charge>.

that income comes from employment”<sup>8</sup>, and even if one U.S. citizen family member had a pre-existing health condition or disability. These extreme consequences do not promote self-sufficiency; rather, they force immigrant women into excruciating choices, and if anything, penalize mothers who seek to fulfill a caregiving role for their children in lieu of abandonment.

In sum, we view the proposed rules as part of a larger pattern of attacking the most vulnerable women and children in our society, in a manner that erodes the hard-won protections women have fought hard to obtain for many years in the United States, such as access to healthcare, health coverage for pregnancy, childbirth, breastfeeding, and infancy, and children’s healthcare and nutrition. Moreover, there is no question that such attacks harm our society as a whole. No family should be targeted for having non-citizen members, and no mothers should be forced to choose between protecting their children’s health and safety and keeping their families together. We strongly condemn the proposed rules and urge the Department of Homeland Security to reject the proposed rules.

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<sup>8</sup> Center on Budget and Policy Priorities, *Trump Rule Would Threaten Low-Wage Legal Immigrants in the U.S. If Their Families Receive Any of a Wide Array of Benefits, Including the Earned Income Tax Credit*, available at [insert cite]; see also *Why the Proposed Public Charge Rules are Especially Harmful to Kids*, available at <https://policylab.chop.edu/blog/why-proposed-public-charge-rules-are-especially-harmful-kids>.