

ALLIANCE FOR IMMIGRANT SURVIVORS

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Submitted via: www.regulations.gov

Samantha Deshommnes,
Chief, Regulatory Coordination Division,
Office of Policy and Strategy,
U.S. Citizenship and Immigration Services
Department of Homeland Security
5900 Capital Gateway Drive
Camp Springs, MD 20746

Re: DHS Docket No. USCIS-2021-0013, RIN 1615-AC74 - Comments on the Impacts on Survivors of Domestic and Sexual Violence in Response to Advanced Notice of Proposed Rulemaking Inadmissibility on Public Charge Grounds

Dear Ms. Deshommnes,

On behalf of the following 76 national, statewide, and local organizations that serve survivors of domestic violence, sexual assault, and human trafficking, we are submitting comments in response to the Department of Homeland Security's (DHS) Advanced Notice of Proposed Rulemaking Inadmissibility on Public Charge Grounds published in the Federal Register on August 23, 2021. The following comments intend to address the impact that a potential proposed public charge rule will have on immigrant survivors of domestic violence and sexual assault. Our organizations urge DHS to craft a **public charge rule that addresses the needs of victims of domestic violence and sexual assault and supports their ability to obtain and maintain safety and well-being.**

While some victims seeking certain survivor-specific forms of immigration status are exempt from the public charge ground of inadmissibility, such as protections under the Violence Against Women Act, T visas and U visas,¹ the proposed public charge rule should recognize that large numbers of victims who do not seek, or who are ineligible for survivor-specific forms of status, and thus, will be impacted by the public charge

¹ 8 USC 1182(a)(4)(E)

rule. Even in instances where survivors already have secure immigration status and a proposed rule would not directly apply to them, their family members who may be seeking admission or permanent residence, such as those sponsored by survivors, or those living in their households, will be impacted. The proposed public charge rule will therefore have widespread ramifications on the willingness of survivors to access the services and programs they need to escape and overcome violence. Over the last several years, immigrant survivors and their families have been declining, or withdrawing from assistance programs that support their basic needs due to fear.² The result has been significant human suffering and economic costs to immigrant survivors, their families, and our communities at large.

Domestic and sexual violence are widespread in our communities – with one in three women and one in six men experiencing some form of sexual violence in a lifetime,³ and more than 12 million men and women experiencing rape, physical violence, or stalking by an intimate partner each year in the United States.⁴ Over the course of the COVID-19 pandemic, domestic violence has increased in frequency and severity.⁵ On a representative single day (September 10, 2020), 76,525 domestic violence victims were served by 1665 domestic violence victim services programs across the country, and 21,321 contacts were made to domestic violence seeking support, information, safety planning, and resources.⁶ On that same day, 11,047 requests made to these programs for shelter, housing, transportation, legal services, or other supports were left unmet.⁷

² E.g., H. Bernstein, D. Gonzalez, M. Karpman, & S. Zuckerman (2019). “One in Seven Adults in Immigrant Families Avoided Public Benefit Programs in 2018.” DC: Urban Institute, Retrieved from: <https://www.urban.org/research/publication/one-seven-adults-immigrant-families-reported-avoiding-public-benefit-programs-2018>; See also, <https://www.nytimes.com/2018/03/06/us/politics/trump-immigrants-public-nutrition-services.html>

³ Centers for Disease Control and Prevention. (2017). The National Intimate Partner and Sexual Violence Survey (NISVS): 2010-2012 State Report. Retrieved from: <https://www.cdc.gov/violenceprevention/pdf/NISVS-StateReportBook.pdf>

⁴ Centers for Disease Control and Prevention. (2011). Sexual Violence, Stalking, and Intimate Partner Violence Widespread in the US. Retrieved from: https://www.cdc.gov/media/releases/2011/p1214_sexual_violence.html

⁵ D.J. Parrott, M.B. Halmos, C.A. Stappenbeck, & K. Moino, (2021). Intimate Partner Aggression During the COVID-19 Pandemic: Associations With Stress and Heavy Drinking. *Psychology of Violence*. retrieved from: <https://psycnet.apa.org/record/2021-70494-001> ; S. Al-Arshani, (Aug. 2020). COVID-19 lockdowns generated a crisis within a crisis for the victims of domestic violence, new study finds. *Insider*. Retrieved from <https://www.insider.com/covid-19-lockdowns-amplified-the-severity-of-domestic-abuse-cases-2020-8>

⁶ National Network to End Domestic Violence (2021). *15th Annual Domestic Violence Counts Report*. Washington, DC. Retrieved from: [NNEDV.org/DVCounts](https://www.nnedv.org/DVCounts).

⁷ *Id.*

Due to the prevalence of domestic and sexual violence, Congress has provided for many important protections and programs to support victims to escape and overcome abuse through various laws, including the Violence Against Women Act (VAWA),⁸ the Victims of Trafficking and Violence Protection Act,⁹ and the Victims of a Crime Act (“VOCA”),¹⁰ among other enactments. When Congress enacted the federal Temporary Assistance to Needy Families program (TANF),¹¹ it accounted for the role of access to economic supports for victims in escaping and overcoming abuse, and included the Family Violence Option (“FVO”)¹² to prevent TANF program rules from unfairly penalizing or putting family violence victims at further risk.

DHS should issue a public charge rule that contributes to the goals of these policies to support survivor safety and autonomy, recovery from trauma, healthy families, and violence prevention. The proposed public charge rule should support survivors in seeking or utilizing safety net benefits that are crucial to survivors’ ability to escape or recover from abuse and trauma and work to reduce survivors’ isolation from their families, which are often essential sources of support when escaping and recovering from abuse.

Definition and Purpose

DHS should define “public charge” for inadmissibility purposes to consider the impacts of domestic violence, sexual assault, and human trafficking. As such, the proposed regulation should limit the definition of public charge to be someone who has a “more than substantial likelihood of being primarily and permanently dependent on the federal government for survival.” The definition should not serve to punish survivors of domestic violence and sexual assault for having experienced harm, nor discourage them from accessing the supports that they need to escape and overcome abuse.

Furthermore, DHS should limit the prospective and retrospective parts of the public charge test to provide more consistent and equitable results. This would include:

- **Limiting the prospective assessment in the public charge test to a concrete time period.** DHS should propose a timeframe that is reasonably foreseeable or even imminent, such as the time it generally takes for a person with a green card to

⁸ The Violence Against Women Act of 1994, Pub. L. No. 103-222, Title IV, 108 Stat. 1902-55 (codified in scattered sections of 8 U.S.C. and 42 U.S.C.) and subsequent reauthorizations; Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, (2000); Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. No. 109-162, ((2006), and the Violence Against Women Reauthorization Act of 2013, P.L., 113-4, 127 Stat. 54 (2013)

⁹ The Victims of Trafficking Protection Act of 2000, Pub. L. No. 106-386 (2000)

¹⁰ Victims of Crime Act of 1984, Pub. L. No. 98–473, 98 Stat. 2171 (codified in 42 USC 10601 et seq.)

¹¹ See, Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub.L. 104-193 (1996)

¹² 42 U.S.C. § 602 (a)(7)

become eligible to apply for US citizenship (three years through marriage to a U.S. citizen, and otherwise five years). The test would define “in the near future” as in the next three or five years. Without a limiting timeframe, adjudicators will be allowed to reject immigrant survivors and their family members without accounting for the ability of survivors to overcome the impact of abuse or harm they’ve experienced, based on predictions about circumstances that may or may not materialize into the distant future.

- **Defining "primarily and permanently dependent on the federal government for survival" as receiving virtually all of their support from the federal government in the form of the public benefits, while considering the impact of domestic violence or sexual assault on the need for benefits.** Survivors often receive temporary supports, including federal benefits, that supplement their income and resources and improve their access to critical housing, health, food, and other services. These supplemental benefits should not be considered in a public charge assessment. Additionally, even cash assistance received from the federal government should not be taken into account unless an individual has a substantial likelihood to rely on it for virtually all of their support indefinitely.

The proposed rule should consider the impact of domestic and sexual assault on the statutory factors

We highly recommend that the proposed rule, in considering the totality of the circumstances, recognize that domestic violence abusers, sexual assault perpetrators, and human traffickers cause significant physical, emotional, and often, financial injury to their victims, which increases the likelihood of the public charge ground of inadmissibility being applied. DHS should therefore include consideration of the impacts of domestic and sexual violence in the proposed regulation and provide guidance to limit how the statutory factors would unfairly penalize survivors for the violence they have experienced, or make it more difficult for them to escape abuse.

Many abusive partners and employers, and other harm-doers, in order to dominate or control survivors and their children, will try to prevent or sabotage survivors from attaining economic independence or stability by limiting their access to financial resources, interfering with employment, harming credit, and more.¹³ Survivors of domestic violence and sexual assault may also lose their jobs due to intense trauma, reduced productivity, harassment at work by perpetrators, and other reasons stemming

¹³ See, e.g., Postmus, J. L., Plummer, S. B., McMahon, S., Murshid, N. S., & and Mi Sung Kim, M. S. (2012). Understanding economic abuse in the lives of survivors. *Journal of Interpersonal Violence*, 27(3),411–430., Adams, A, Sullivan,C, Bybee, D, & Greeson, M. (2008), Development of the scale of economic abuse. *Violence Against Women*, 13, 563-588.

from the violence.¹⁴ The proposed rule should not punish victims for economic abuse they have experienced.

In considering an applicant's health, the proposed rule should account for circumstances where a survivor has injuries due to the harm they have experienced, or if they lack health having insurance for having escaped an abusive relationship. Many survivors suffer health issues as a result of abuse, including acute injuries, chronic pain, and traumatic brain injuries, and are at an increased risk for suicide, depression, anxiety, posttraumatic stress disorder, and substance abuse.¹⁵ Again, the proposed rule should not punish victims for injury caused by others.

The proposed rule should consider any negative factors *in totality* with the positive factors, including the affidavit of support. DHS should propose that adjudicators look at all the factors together to see if they would make an applicant likely to become a public charge, and that none of the statutory factors, by itself, is to be dispositive. In cases where DHS officials identify a circumstance that would serve as a strong predictor that a person has a "more than substantial likelihood of being primarily and permanently dependent on the federal government for survival," they should look to the totality of circumstances as ways to *overcome* the circumstance.

DHS should clarify that any of the five factors and totality of circumstances test can be used to demonstrate that an applicant would *not* be excludable as a public charge and that they should not be intended to be a list of negative and positive factors to be weighed in every case. For example, if "financial status" is an issue of concern because an immigrant survivor is unemployed due to their abuser's isolation and financial abuse, the fact that the survivor is accessing training and financial literacy support from a domestic violence program should be weighed. In this circumstance, on balance, they do not have a "more than substantial likelihood of being primarily and permanently dependent on the federal government for survival."

DHS should also provide opportunities in the proposed rule for applicants to address or overcome any concerns about the statutory factors. This should include a properly filed affidavit of support being sufficient to help overcome or outweigh any negative factors identified. The proposed rule should also consider the supportive and protective effects of stable immigration status to survivors, and acknowledge how admission to the

¹⁴ See, e.g., Rothman, E.F., Hathaway, J., de Vries, H.F., Stidsen, A. (2007). How Employment Helps Female Victims of Intimate Partner Violence: A Qualitative Study. *Journal of Occupational Health Psychology*, 12, 136-143. DOI: 10.1037/1076-8998.12.2.136;

¹⁵ See M.J. Breiding et. al., Chronic Disease and Health Risk Behaviors Associated with Intimate Partner Violence-18 U.S. States/Territories, 18 *Ann. Epidemiol.*, 538-44 (2005).

United States or adjustment of status can help victims access employment, and increase their ability to escape the violence or overcome the trauma they've suffered.

The proposed regulation should be explicit about which, if any, public benefits that would impact a public charge assessment, and clarify that previous or current use of public benefits is not relevant to a public charge determination.

Access to economic security programs and other safety net benefits can play a pivotal role in a victim's ability to escape and overcome domestic violence and sexual assault, by helping victims afford the basics (such as food, housing, emergency cash assistance and healthcare) and rebuild their lives after violence.

Unfortunately, the promulgation of the enjoined public charge regulation in 2019 had a severe chilling impact on survivors accessing benefits, even for survivors who weren't subject to the rule, and for benefits that would not be considered in a public charge assessment. For example, survivor advocates reported examples of survivors declining housing for victims, including housing specifically provided for victims, resulting in survivors becoming homeless and their children returning to live with abusers. Another advocate reported a survivor of rape declining a Sexual Assault Nurse Examiner ("SANE") forensic exam and accompanying emergency medical treatment,¹⁶ a service not considered in a public charge assessment. To help survivors and advocates best plan for their safety, clearly delineating which benefits, if any, impact a public charge assessment, is critical.

The Centers for Disease Control has concluded that improving financial security for individuals and families can help reduce and prevent intimate partner violence.¹⁷ We urge that the current guidance on public charge that was first promulgated in 1999 be strengthened to consider time for survivors of domestic violence or sexual assault to escape, heal from, or otherwise recover from the harm they have experienced. Considering any length of current or past use of benefits adds to both the chilling effect in accessing benefits and resulting harm to survivors, and the administrative burdens imposed on DHS and state, local, governments.

The proposed rule should exclude consideration of federal, state, local, and private housing programs, food programs, and healthcare programs in a public charge determination. The public charge rule should also explicitly exclude consideration of

¹⁶ Brief of Amici Curiae Nonprofit Anti-Domestic Violence and Sexual Assault Organizations in Support of Plaintiff's Motion for Preliminary Injunction. "State of Washington et al v. DHS et al. (Sept. 19, 2019), Retrieved from <http://bit.ly/2mfArzU>

¹⁷ Centers for Disease Control (2017). Preventing Intimate Partner Violence Across the Lifespan: A Technical Package of Programs, Policies, and Practices. Retrieved from <https://www.cdc.gov/violenceprevention/pdf/ipv-technicalpackages.pdf>

state, local, and private cash assistance programs. Doing otherwise ultimately serves to punish survivors for the harm they've experienced. Ensuring that survivors can get the supports and care they need, when they need it, can improve their health and well-being for the rest of their lives, ultimately reducing any likelihood of becoming a public charge.

The rule should further exclude consideration of any programs that, including federal or state cash programs, that are short term or time-limited, or for emergent needs. For many survivors, cash assistance, such as Temporary Assistance for Needy Families, which is time-limited, or state-funded cash benefits, provides the crucial support they need to begin the journey of restabilizing their lives and achieving self-sufficiency. In a 2017 survey of service providers working with victims of violence, more than two-thirds of respondents said that most domestic violence victims rely on TANF to help address their basic needs and to establish safety and stability, and 45% of respondents said the same is true of most sexual assault victims.¹⁸ With financial instability posing limited options for escaping or recovering from abuse, access to cash assistance is an important factor in victims' decision-making about whether and how they can afford to leave a dangerous situation, and in planning how to keep themselves and their children healthy, well, and housed.¹⁹

3. The proposed public charge rule must promote family reunification

Family members serve as one of the main sources of support for survivors, and the presence of a strong support system can be vital to a survivor's ability to disclose, escape, and heal from the trauma of domestic violence, sexual assault, and other gender-based abuses. Survivors stress that having family in their lives is essential to their recovery, providing survivors with the affirmation, encouragement, stability, and resources they need to grow and move forward.²⁰ The public charge rule should not

¹⁸ S. Goodman, *The Difference Between Surviving and Not Surviving: Public Benefits Programs and Domestic and Sexual Violence Victims' Economic Security* (2018), retrieved at <https://vawnet.org/material/difference-between-surviving-and-not-surviving-public-benefits-programs-and-domestic-and>

¹⁹ Lyon, E., Lane, S., & Menard, A. (2008). Meeting Survivors' needs: A multi-state study of domestic violence shelter experiences. Washington, DC: National Institute of Justice. At: http://www.vawnet.org/Assoc_Files_VAWnet/MeetingSurvivorsNeeds-FullReport.pdf;

Lyon, E., Bradshaw, J., & Menard, A. (2011). *Meeting Survivors' Needs through Non-Residential Domestic Violence Services & Supports: Results of a Multi-State Study*. Harrisburg, PA: National Resource Center on Domestic Violence. At:

http://www.vawnet.org/Assoc_Files_VAWnet/DVServicesStudy-FINALReport2011.pdf; Kimerling, R., Alvarez, J., Pavao, J., Mack, K. P., Smith, M. W., & Baumrind, N. (2009). *Unemployment Among Women: Examining the Relationship of Physical and Psychological Intimate Partner Violence and Posttraumatic Stress Disorder*. *Journal of Interpersonal Violence*, Vol. 24, No. 3, at 450-463.

²⁰ Anderson, K.M., Renner, L.M., Danis, F.S. (2012). Recovery: Resilience and Growth in the Aftermath of Domestic Violence. *Violence Against Women*, 18(11), 1279-1299. DOI: 10.1177/1077801212470543.

work to isolate victims from their families and support system for having accessed critical economic, health, housing, and other programs to escape or heal from violence.

Conclusion

For the reasons detailed in these comments regarding the impact that a proposed public charge rule would have on survivors of domestic violence and sexual assault, we urge USCIS to promulgate a public charge rule that accounts for how having experienced domestic or sexual violence or human trafficking impacts the statutory factors, and supports survivors of violence in accessing critical protections they need to escape or recover from abuse. Please feel free to contact Grace Huang at gjuang@api-gbv.org, or Richard Caldarone at richardc@tahirih.org with any questions or concerns. Thank you for the opportunity to submit comments on the Advance Notice of Proposed Rulemaking on Inadmissibility on Public Charge Grounds.

Sincerely,

Alliance for Immigrant Survivors Co-Chairs

Asian Pacific Institute on Gender-Based Violence
ASISTA Immigration Assistance
Esperanza United (formerly Casa de Esperanza: National Latin@ Network)
Tahirih Justice Center

National Organizations

Alianza Nacional de Campesinas
Alliance of Tribal Coalitions to End Violence
Center for Gender & Refugee Studies
Children's Defense Fund
Futures Without Violence
GBV Consulting
Immigration Hub
Jewish Women International
Legal Momentum, the Women's Legal Defense and Education Fund
Lovelace Consulting Services, Inc.
National Alliance to End Sexual Violence
National Asians & Pacific Islanders Ending Sexual Violence
National Coalition Against Domestic Violence
National Council of Jewish Women

National Domestic Violence Hotline
National Network to End Domestic Violence
National Resource Center on Domestic Violence
NIWAP Inc.
Peaceful Families Project
Tahirih Justice Center
The National Domestic Violence Hotline
Ujima, Inc: The National Center on Violence Against Women in the
Black Community
WOCN, Inc. (Women of Color Network, Inc.)

State and Local Organizations

Al Otro Lado
Americans for Immigrant Justice
Apna Ghar, Inc.
Asian Task Force Against Domestic Violence
Asian Women United Of Minnesota
Asian/Pacific Islander Domestic Violence Resource Project
Ayuda
California Partnership to End Domestic Violence
Chinatown Service Center
Colorado Coalition Against Sexual Assault
Crime Victim Services
DeafHope
Domestic Violence Action Center
Her Justice, Inc.
Human Rights Initiative of North Texas
Illinois Coalition Against Domestic Violence
Immigration Center for Women and Children
Iowa Coalition Against Sexual Assault (IowaCASA)
Jane Doe Inc.
Kansas Coalition Against Sexual and Domestic Violence
Los Angeles Center for Law and Justice
Maine Coalition to End Domestic Violence

Maryland Coalition Against Sexual Assault
Monsoon Asians & Pacific Islanders in Solidarity
NC Coalition Against Sexual Assault
Nebraska Coalition to End Sexual and Domestic Violence
New Jersey Coalition to End Domestic Violence
New Mexico Asian Family Center
NMIC (Northern Manhattan Improvement Corporation)
North Carolina Coalition Against Domestic Violence
Northern Marianas Coalition Against Domestic & Sexual Violence
Northwest Immigrant Rights Project
Ohio Alliance to End Sexual Violence
Ohio Domestic Violence Network
Pennsylvania Coalition Against Rape
Raksha, Inc
Refugee Women's Alliance
Sakhi for South Asian Women
Shelter House, Inc.
South Asian Network
Texas Council on Family Violence
The Arizona Coalition to End Sexual and Domestic Violence
The Network: Advocating Against Domestic Violence
Washington Coalition of Sexual Assault Programs (WCSAP)
Washington State Coalition Against Domestic Violence
Wisconsin Coalition Against Sexual Assault
Wise Hope Shelter and Crisis Center
Vida Legal Assistance
YWCA Utah