

# ALLIANCE FOR IMMIGRANT SURVIVORS

April 25, 2022

Submitted via: [www.regulations.gov](http://www.regulations.gov)

Samantha Deshommes,  
Chief, Regulatory Coordination Division,  
Office of Policy and Strategy,  
U.S. Citizenship and Immigration Services  
Department of Homeland Security

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

Dear Ms. Deshommes,

On behalf of the following 73 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) Notice of Proposed Rulemaking Inadmissibility on Public Charge Grounds published in the Federal Register on February 24, 2022. We believe that there should not be ***any*** public charge barrier to immigrate, especially for survivors of domestic violence, sexual assault, and human trafficking. We generally support the NPRM's framework, and offer the following comments seeking improvements that address the impact that the proposed public charge rule will have on immigrant survivors of domestic violence, sexual assault and human trafficking. Our organizations urge DHS to finalize a **public charge rule as soon as possible 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 many 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 and the Trafficking Victims Protection Act,<sup>1</sup> there are many survivors who do not seek survivor-specific forms of status, including for reasons related to increasing their safety and well-being. Even in instances where survivors already have secure immigration status and a proposed rule would not directly apply to them, family members who may be seeking admission or permanent residence, including those sponsored by survivors, or who are living in their households, are

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<sup>1</sup> 8 USC §1182(a)(4)(E)

impacted by the proposed rule. 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.<sup>2</sup> The result has been significant human suffering and economic costs to immigrant survivors, their families, and our communities at large.

DHS should issue a public charge rule that furthers Congressional intent to support survivor safety and autonomy, recovery from trauma, healthy families, and violence prevention. 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,<sup>3</sup> and more than 12 million men and women experiencing rape, physical violence, or stalking by an intimate partner each year in the United States.<sup>4</sup> Over the course of the COVID-19 pandemic, domestic violence has increased in frequency and severity.<sup>5</sup> On a representative single day (September 9, 2021), 70,032 domestic violence victims were served by 1,536 domestic violence victim services programs across the country, and 20,701 contacts were made to domestic violence hotlines seeking support, information, safety planning, and resources.<sup>6</sup> On that same day, 9,444 requests made to these programs for shelter, housing, transportation, legal services, or other supports were left unmet.<sup>7</sup>

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),<sup>8</sup> the

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<sup>2</sup> 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>

<sup>3</sup> 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>

<sup>4</sup> 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](https://www.cdc.gov/media/releases/2011/p1214_sexual_violence.html)

<sup>5</sup> D.J. Parrott, M.B. Halmos, C.A. Stappenbeck, & K. Moïno, (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>

<sup>6</sup> National Network to End Domestic Violence (2022). *16th Annual Domestic Violence Counts Report*. Washington, DC. Retrieved from: [NNEDV.org/DVCounts](https://www.nnedv.org/DVCounts).

<sup>7</sup> *Id.*

<sup>8</sup> 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), the Violence Against Women Reauthorization Act of 2013, P.L., 113-4, 127 Stat. 54 (2013); Violence Against Women Act Reauthorization Act of 2022 (Division W of Public Law No: 117-103; 136 Stat. 49)

Victims of Trafficking and Violence Protection Act,<sup>9</sup> and the Victims of Crime Act (“VOCA”),<sup>10</sup> among other enactments. When Congress enacted legislation that reformed federal welfare programs in 1996 in the Personal Responsibility and Work Opportunity Reconciliation Act (“PRWORA”), and limited access to certain public benefits to specific classes of non-citizens,<sup>11</sup> Congress also enacted the Family Violence Option (“FVO”)<sup>12</sup> to prevent such reforms from unfairly penalizing or putting domestic violence victims at further risk of abuse. The final 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. In addition, the final public charge rule should not penalize survivors by discouraging them and their family members from seeking physical or mental health care, nutrition, or housing benefits for which they are eligible, nor punish them based on conditions in their countries of origin, or for abuse, exploitation or discrimination they may have faced in the U.S that have made it difficult for them to complete an education, secure professional credentials, or earn a high income.

We further urge DHS to issue a rule that is as clear and succinct as possible as to the impact of accessing services and benefits. This is particularly important for safety planning, because lack of clarity can undermine the ability of survivor advocates to work with survivors in engaging in safety planning, and can cause the same damage as an overly broad rule. Immigrant survivors and their families may to avoid interacting with the government and forgo critical public benefits for which they are eligible as a consequence of fear and confusion. These harms can extend outside of the receipt of public benefits, such as a domestic violence survivor forgoing police protection, a rape victim declining sexual assault services at a hospital, or families declining COVID-19 immunizations or testing.

### **Specific Comments Regarding the Proposed Regulation:**

We commend DHS for proposing a public charge rule that restores and improves upon the 1999 public charge policy guidance that was in effect through 2019, and recognizes that access to health, nutrition and housing assistance programs are vital to community well-being and should not be tied to a public charge analysis. We also support the clarifications in proposed **8 CFR §212.18** and **8 CFR §245.23** that relate to adjustment of status and inadmissibility grounds relating to survivors of human trafficking seeking

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

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

<sup>11</sup> Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub.L. 104-193 (1996).

<sup>12</sup> 42 U.S.C. §602 (a)(7).

adjustment of status. These proposed sections further Congress' intent and implement the 2013 Trafficking Victims Protection Act amendments to the Immigration and Nationality Act, (INA), which clarified that those who were "qualified" noncitizens under 8 USC 1641(c) are exempt from the public charge ground of inadmissibility.<sup>13</sup> These sections appropriately clarify that T non-immigrants seeking adjustment of status are exempt from the public charge ground of inadmissibility.

### **Definitions at 8 CFR §212.21**

We appreciate DHS' improvements over the 2019 rule and the 1999 guidance by including a "primarily dependent" standard for a public charge determination, but further recommend that the final regulation also limit the prospective and retrospective parts of the public charge test to provide more consistent and equitable results. We recommend that **§212.21(a)** define "likely to become a public charge" to mean a "*More than a substantial likelihood, to become primarily and permanently dependent on the federal government for survival.*"

We recommend narrowing the proposed regulation to consideration only of federal public cash assistance for income maintenance. Importantly, the final rule should make clear that receipt of such assistance will not automatically result in a public charge determination, but will simply be considered along with other factors in the totality of the circumstances. Second, the rule should specify that only the applicant's *current* use of such benefits should be considered—a person who has received benefits in the past but is not currently using benefits has had a change in circumstances that may make them unlikely to need safety net programs in the future. Past use of benefits should not be considered in public charge determinations.

We further urge DHS to revise the final rule to exclude State, Tribal, territorial, or local safety net programs, including programs providing cash assistance for income maintenance. Failure to exclude all non-federal programs, including cash assistance programs, would undermine state and local initiatives and efforts to address health and economic equity in their communities, as well as undermining nationwide efforts to combat the persistent chilling effect.

In addition, the rule should exclude long-term institutionalization at government expense. Allowing any type of Medicaid coverage to be considered in a public charge determination causes confusion and perpetuates the chilling effect caused by the 2019 public charge rule. It also discriminates against people, including survivors of domestic violence and sexual assault, with disabilities, because only people with disabilities and

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<sup>13</sup> Pub. Law 113-4 Sec. 804 and codified at INA §212(a)(4)(E)(iii).

older adults experience long-term institutionalization. If long-term institutionalization is considered in a public charge determination, DHS further should clarify that state, Tribal, territorial or locally funded institutionalization is excluded from consideration.

The final rule should also explicitly exclude benefits that are short term or time-limited, or for emergent needs, including cash assistance for income maintenance. For many survivors, cash assistance, including Temporary Assistance for Needy Families, which is **time-limited**,<sup>14</sup> 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.<sup>15</sup>

The final regulation should clarify that receipt of such benefits that is tied to the need to escape, recover from, or otherwise overcome the impacts of domestic violence, sexual assault, human trafficking, or other harm they have experienced, is excluded. 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.<sup>16</sup> Access to 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. The Centers for Disease Control has concluded that improving financial security for individuals and families can help reduce and prevent intimate partner violence.<sup>17</sup>

We further support the proposed rule's definition of "receipt" of benefits for the purpose of public charge determinations, and clarification in **§212.21(d)** that applying for benefits, being approved for benefits in the future, assisting another to apply for benefits, or being in a household or family with someone who receives benefits does

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<sup>14</sup> TANF establishes a maximum 60-month lifetime time limit on receipt of cash assistance for adults. 26 states have adopted the 60-month time limit, and others have chosen shorter time limits. See, <https://www.urban.org/sites/default/files/publication/58396/900769-State-Time-Limit-Policies.PDF>

<sup>15</sup> 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>

<sup>16</sup> R. Kimerling, J. Alvarez, J. Pavao, K.P. Mack, M.W. Smith, & N. Baumrind. (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.

<sup>17</sup> 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>

not count as receipt of benefits. This provision is crucial to ensure the administrability of the public charge rule and to mitigate the “chilling effect” of the 2019 public charge policy, especially on U.S. citizen children in mixed-status households.

### **Public Charge Determination at 8 CFR §212.22**

We support DHS’s decision not to define the five statutory factors described in the INA: the applicant’s age; health; family status; assets, resources, and financial status; and education and skills, especially given the impacts that domestic violence and sexual assault have on how such factors would be considered. Defining the statutory factors would necessarily result in far more complexity and discretion, unnecessarily adding administrative burdens, and opening the door to bias, including against survivors.

In addition, we recommend that DHS retain the proposed language regarding the term “totality of the circumstances,” where no one factor other than an insufficient affidavit of support, if required, should be the sole criterion for determining whether an applicant is likely to become a public charge. In considering the totality of the circumstances, we highly recommend that DHS provide adjudicators with sufficient training, and policy manuals that provide examples in guidance how to identify the impacts of domestic and sexual violence and how to avoid applying the statutory factors in a manner that would unfairly penalize survivors for the violence they have experienced, or make it more difficult for them to escape abuse.

For example, 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.<sup>18</sup> 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 from the violence.<sup>19</sup> The final rule should not punish victims for economic abuse they have experienced. Another proposed example could include demonstrating why a survivor might 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

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<sup>18</sup> See, e.g., J.L. Postmus, S.B. Plummer, S. McMahon, N.S. Murshid, & M.S. Kim, (2012). Understanding economic abuse in the lives of survivors. *Journal of Interpersonal Violence*, 27(3),411–430., A. Adams, C. Sullivan, D. Bybee, & M. Greeson, (2008), Development of the scale of economic abuse. *Violence Against Women*, 13, 563-588.

<sup>19</sup> See, e.g., E.F. Rothman, J. Hathaway, H.F.de Vries, & A. Stidsen. (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;

suicide, depression, anxiety, posttraumatic stress disorder, and substance abuse.<sup>20</sup> Again, the final rule should not punish victims for injury caused by others, and should also consider the supportive and protective effects of stable immigration status to survivors, and acknowledge how admission to the 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.

### Exemptions at **8 CFR §212.23**

We also support the explicit listing of 29 categories of non-citizens listed in the final regulation who are exempt from application of the public charge rule – beginning with refugees and asylees and ending with Syrian nationals under the Syrian Adjustment Act and others exempt under federal law. We also recommend that DHS update the USCIS policy manual to reflect any additional exempt groups, including those with status similar to refugees. Such a comprehensive and responsive list can simplify communications and reduce the chilling effect against use of benefits for those who are clearly exempt.

However, DHS should simplify the application of the included exemptions and strengthen the scope of the final regulation to cover immigrant survivors, such as VAWA self-petitioners, qualified battered immigrants, and individuals who have applied for or obtained U or T status without regard to their path for adjustment of status. The final rule should remove proposed **§212.23(b)** and corresponding language in **§212.23(a)(18), (19), (20), and (21)** that cross-references **§212.23(b)**. The final regulation should add language clarifying that, consistent with the statute, survivors under **§212.23(a)(18)-(21)** inclusive are exempt from a public charge determination, regardless of their pathway to adjustment of status.

We appreciate DHS's invitation to provide input on "how to communicate to parents of U.S. citizen children that the receipt of benefits by such children would not be considered part of the public charge inadmissibility determination for the parents." We recommend the inclusion of a non-exclusive list of exempted benefits within the text of the regulations. Beyond the rule itself, a broad, government-wide outreach and engagement campaign would be the most effective way to meet DHS's goals, especially its stated desire to limit the negative effects of public charge policy on children, including children in mixed-status households. Materials and messages developed for these purposes should be produced in multiple languages and include a clear statement that benefits used by a child or other person in the applicant's

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<sup>20</sup> 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).

household would not be treated as received by the applicant. This would be accomplished most effectively in partnership with states, cities and community-based organizations, including community based domestic violence, sexual assault, and human trafficking survivor-serving organizations and community health clinics. DHS should partner with other federal agencies to support grants for outreach and educations on the scope and application of the public charge rule. Finally, DHS should partner with immigration legal organizations to strengthen education for immigration attorneys to increase their knowledge about the application of the final rule.

## **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 final, clear public charge rule. Unfortunately, the 2019 regulation 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, 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,<sup>21</sup> a service not considered in a public charge assessment, as well as survivors declining food pantry items, or withdrawing children from school-based meal programs. We urge DHS to act quickly to issue a final rule that makes these essential improvements. Please feel free to contact Grace Huang at [gjuang@api-gbv.org](mailto:gjuang@api-gbv.org), or Richard Caldarone at [richardc@tahirih.org](mailto:richardc@tahirih.org) with any questions or concerns. Thank you for the opportunity to submit comments on the 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

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<sup>21</sup> 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>



## **National Organizations**

Alianza Nacional de Campesinas, Inc.

DeafHope

Futures Without Violence

ValorUS

National Coalition Against Domestic Violence

Immigration Hub

National Alliance to End Sexual Violence

National Council of Jewish Women

National Network to End Domestic Violence

NIWAP, Inc.

GBV Consulting

BWJP

Legal Momentum, the Women's Legal Defense and Education Fund

Disciples Immigration Legal Counsel

The National Domestic Violence Hotline

## **Statewide Organizations**

Arizona Coalition to End Sexual and Domestic Violence

Al Otro Lado

California Partnership to End Domestic Violence

California Rural Legal Assistance Foundation (CRLA Foundation)

Colorado Coalition Against Sexual Assault

Rocky Mountain Victim Law Center

CT Alliance to End Sexual Violence

Asian/Pacific Islander Domestic Violence Resource Project

Raksha, Inc

Hawai'i State Coalition Against Domestic Violence

Arab American Family Services

Illinois Coalition Against Domestic Violence

Iowa Coalition Against Domestic Violence

Kansas Coalition Against Sexual and Domestic Violence

Kentucky Association of Sexual Assault Programs

Kentucky Coalition Against Domestic Violence

Maine Coalition Against Sexual Assault

Asian Task Force Against Domestic Violence

Missouri Coalition Against Domestic and Sexual Violence (MOCADSV)

Montana Coalition Against Domestic and Sexual Violence

New York State Coalition Against Sexual Assault

NYS Coalition Against Domestic Violence

Ohio Alliance to End Sexual Violence  
South Dakota Coalition Ending Domestic and Sexual Violence  
Vermont Network Against Domestic and Sexual Violence  
Virginia Sexual and Domestic Violence Action Alliance  
The Women's Center (Virginia)  
Washington State Coalition Against Domestic Violence  
End Domestic Abuse Wisconsin  
Wisconsin Coalition Against Sexual Assault

**Regional and Local Organizations**

Asian Law Alliance  
Asian Women's Shelter  
Chinatown Service Center  
Los Angeles Center for Law and Justice  
South Asian Network, INC  
Thai Community Development Center  
Advocate Safehouse Project  
Alternatives to Violence  
PeaceWorks, Inc.  
Project Hope of Gunnison Valley  
Renew, Inc.  
RESPONSE Help for Survivors of Domestic Violence and Sexual Assault  
Apna Ghar, Inc.  
KAN-WIN  
New Mexico Asian Family Center  
Her Justice, Inc.  
Montgomery County Domestic Violence and Crime Victim Services  
Mujeres Divinas  
Rockland County Immigration Coalition  
Workers Center of Central New York  
The Legal Aid Society of Cleveland  
Mujeres Luchadoras Progresistas  
Daya, Inc  
Project Safeguard