



December 19, 2025

SUBMITTED VIA WWW.REGULATIONS.GOV

Kristi Noem
Secretary of Homeland Security
Washington, DC 20528

Re: Comments on DHS Docket No. USCIS-2025-0304: Public Charge Ground of Inadmissibility

Dear Secretary Noem,

The American Civil Liberties Union (ACLU) submits these comments in strong opposition to the Department of Homeland Security’s (DHS or the Department) Notice of Proposed Rulemaking published in the Federal Register on November 19, 2025 (NPRM or Proposed Rule), which make changes regarding “public charge.”¹ The NPRM would disrupt decades of established understanding of the concept of public charge and would impose harsh and unnecessary discrimination and exclusions on individuals who are otherwise deemed “admissible” under the Immigration and Nationality Act (INA) and thus eligible to adjust their immigration status. The rules would needlessly harm immigrant families, including women and children. Immigrants with disabilities are especially singled out by the Department for adverse treatment, in contravention of the nondiscrimination principles repeatedly endorsed by Congress.

For more than 100 years, the ACLU has been our nation’s guardian of liberty, working in courts, legislatures, and communities to defend and preserve the individual rights and liberties that the Constitution and laws of the United States guarantee to everyone in this country. With more than six million members, activists, and supporters, the ACLU is a nationwide non-partisan public-interest organization that fights tirelessly in all 50 states, Puerto Rico, and Washington, D.C. to advance the principle that every individual’s rights must be protected equally under the law, regardless of race, religion, gender, sexual orientation, gender identity or expression, disability, national origin, citizenship status, or record of arrest or conviction. The ACLU represents individuals and communities who will be impacted by the Proposed Rule, including immigrants,² Head Start providers and families,³ safety-net providers of effective family planning and sexual health care (including contraceptive methods, cancer screenings, testing and

¹ 90 Fed. Reg. 52169.

² *Barbara v. Trump*, 790 F. Supp. 3d 80 (D.N.H. 2025), cert. granted before judgment, No. 25-365, 2025 WL 3493157 (U.S. Dec. 5, 2025)

³ *Washington State Ass’n of Head Start & Early Childhood Assistance & Educ. Program v. Kennedy*, No. C25-781-RSM (W.D. Wash. Sept. 11, 2025), Dkt. No. 120.



treatment for STIs (including HIV), and other preventive services),⁴ and people with disabilities.⁵ The ACLU works in the legislatures and courts to ensure that automated tools, including artificial intelligence (AI) systems, are transparent, fair, and accountable, and do not perpetuate or enable bias and discrimination.

The ACLU strongly urges DHS to withdraw the Proposed Rule, which would remove the current well-grounded regulations on public charge without replacing them. Under the current regulations, “Likely at any time to become a public charge means likely at any time to become primarily dependent on the government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance or long-term institutionalization at government expense.”⁶ Therefore, the public benefits that are considered relevant are those that provide cash assistance for income maintenance, whether through Supplemental Security Income, TANF, or tribal, territorial, or local programs.⁷ Non-cash or in-kind assistance (such as nutritional programs or immunizations) are not considered,⁸ with the exception of long-term institutionalization at government expense such as in a nursing facility or mental health institution.⁹ Applications or receipt for public benefits solely on behalf a third party, such as a U.S. citizen child, do not constitute receipt of public benefits.¹⁰

The NPRM proposal to remove these regulations without replacement¹¹ would leave voids where there are now clear guidelines about: (1) which programs can and cannot be considered in a public charge assessment, and (2) whether use of benefits by family members not seeking adjustment will be considered. The NPRM will thus create fear and uncertainty that will cause a “chilling effect”—people will avoid applying for or receiving important services and benefits due to fear of jeopardizing their or their family member’s access to legal immigration status—even beyond what has been previously seen. As the NPRM itself indicates, the Proposed Rule will make the nation and its communities—including U.S. citizen children—sicker and poorer.¹²

⁴ *National Family Planning & Reproductive Health Association v. Kennedy*, 1:25-cv-01265-ACR (D.D.C. Apr. 24, 2025).

⁵ *Bread for the City v. District of Columbia*, 1:23-cv-01945-ACR (D.D.C. July 6, 2023); *Nat’l Educ. Ass’n-New Hampshire v. NH Att’y Gen.*, No. 25-CV-293-LM, 2025 WL 2807652 (D.N.H. Oct. 2, 2025).

⁶ 8 C.F.R. § 212.21(a).

⁷ *Id.* § 212.21(b).

⁸ *Id.* § 212.22(a)(3).

⁹ *Id.* § 212.21(c).

¹⁰ *Id.* § 212.21(d).

¹¹ 90 Fed. Reg. at 52170.

¹² *Id.* at 52218 (acknowledging “downstream effects on public health, community stability, and resilience, to include: Worse health outcomes, such as increased prevalence of obesity and malnutrition (especially among pregnant or breastfeeding women, infants, and children)... Higher prevalence of communicable diseases... Increased rates of uncompensated care... Increased poverty, housing instability, reduced productivity, and lower educational attainment”).



The NPRM if finalized is unlawful because it is inconsistent with the statutory text, is arbitrary and capricious, unconstitutionally vague, and violates the procedural requirements of the Administrative Procedure Act (APA). Additionally, the NPRM’s data consolidation plan will likely violate the Privacy Act of 1974 and DHS’s planned use of automated design tools and artificial intelligence in public charge assessments is both dangerous and illegal.

If the Proposed Rule is finalized, it will impose uniquely devastating harms on women, children, and people with disabilities by deterring them from participating in programs, like SNAP, Medicaid, rental assistance, and Head Start, that offer ladders to economic opportunity and financial stability. And it will invite discrimination.

I. SUMMARY OF THE NPRM.

The NPRM gives DHS officers near unfettered discretion to consider any participation in a program they consider a public benefit or public resource, including participation in many public programs that have never before—and cannot lawfully be—considered “public benefits” under the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA). The NPRM proposes to rescind current regulations on evaluating whether an immigrant is likely to become a “public charge” under 8 U.S.C. § 1182(a)(4)(A) (with a limited exception).¹³ The current regulations reflect the long-standing precedent, ratified by Congress, that an individual can be found likely to become a public charge only if they are likely to become “primarily dependent on the government for subsistence, as demonstrated by either (i) the receipt of public cash assistance for income maintenance or (ii) institutionalization for long-term care at government expense.”¹⁴

The NPRM withdraws the current regulation, and it fails to introduce any guidelines, leaving a regulatory void.¹⁵ Instead, the NPRM proposes that individual DHS officers will have “ultimate discretion ... to consider not just the minimum statutory factors but also any other information the officer deems relevant to a public charge inadmissibility determination.”¹⁶ Moreover, while DHS purports that it will issue additional guidance at some future date, after

¹³ Public Charge Ground of Inadmissibility, 87 Fed. Reg. 55472 (Sept. 9, 2022).

¹⁴ Department of Justice, Immigration and Naturalization Service, Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, 64 Fed. Reg. 28689-01, 28692 (May 26, 1999) (hereinafter 1999 Field Guidance).

¹⁵ 90 Fed. Reg. at 52183 (“DHS notes that it is not proposing to replace the rescinded public charge inadmissibility regulations at this time.”).

¹⁶ 90 Fed. Reg. 52169 n.2; *see also* 90 Fed. Reg. at 52183 (“officers will be empowered to consider not only the mandatory statutory factors, but also all evidence and information specific to the alien and relevant to the public charge ground of inadmissibility that is before them as they determine whether that alien is likely at any time to become a public charge”); *id.* at 52186 (“DHS believes that it is any dependence on a means-tested public benefit to meet the alien’s needs—and not just receiving more than a designated public benefit for a specific period of time or being primarily dependent on public cash assistance for income maintenance or long-term institutionalization at government expense—that Congress intended to address with the public charge ground of inadmissibility as it has existed since IIRIRA.”).



this rule is finalized, the Department provides no indication that it intends to offer public notice or the opportunity to comment on that guidance.

In contrast to the longstanding limited definition of “public charge,” the Administration’s NPRM takes the position that there should be *no* “limitations on the types of public resources that are relevant for considering whether an alien is dependent.”¹⁷ Instead, DHS states “that the statute, PRWORA, and the governing caselaw would provide sufficient guidance to officers.”¹⁸ This means that officers could consider any receipt of or even application for any non-cash assistance benefits that are currently excluded— such as “SNAP or other nutrition programs, Children’s Health Insurance Program (CHIP), Medicaid, or housing benefits” *and/or* participation in any other public program that a DHS officer deems to be a “public benefit,” a “federal public benefit,” means-tested public benefits,” or a “public resource.”¹⁹

Moreover, in the last several months, the Administration has purported to reinterpret PRWORA to expand the meaning of “public benefit” in drastic and unprecedented ways through “notices” published by five federal agencies that purport to interpret PRWORA—the very statute that DHS attempts to invoke to justify the proposed changes in the NPRM.²⁰ Although two courts have already found that most of these notices are likely unlawful,²¹ the notices clearly provide the Administration’s view that federal public benefits under PRWORA include programs never before considered to fall into that category.²² Under the PRWORA notices this Administration considers an enormous swath of programs that are critical to our nation’s wellbeing to be “federal public benefits,” which could be used against a noncitizen under the new public charge rule, including Head Start,²³ community health clinics,²⁴ substance abuse

¹⁷ 90 Fed. Reg. at 52186.

¹⁸ 90 Fed. Reg. at 52188.

¹⁹ 90 Fed. Reg. at 52189.

²⁰ Department of Justice (“DOJ”), 90 Fed. Reg. 32023, 32025 (July 16, 2025); Department of Labor (“DOL”), Training and Employment Guidance Letter No. 10-23, Change 2 (July 10, 2025), <https://www.dol.gov/sites/dolgov/files/ETA/advisories/TEGL/2023/TEGL%2010-23%20Change%202/TEGL%2010-23%20Change%202.pdf>; Department of Education (“ED”), 90 Fed. Reg. 30896 (July 11, 2025); Department of Health and Human Services (“HHS”), 90 Fed. Reg. 31232, 31238 (July 14, 2025); Department of Housing and Urban Development (“HUD”), 90 Fed. Reg. 54363 (Nov. 26, 2025).

²¹ *New York v. U.S. Dep’t of Just.*, No. 1:25-CV-00345-MSM-PAS, 2025 WL 2618023, at *2 (D.R.I. Sept. 10, 2025); *Washington State Ass’n of Head Start & Early Childhood Assistance & Educ. Program v. Kennedy*, No. C25-781-RSM (W.D. Wash. Sept. 11, 2025), Dkt. No. 120.

²² *New York v. U.S. Dep’t of Just.*, 2025 WL 2618023, at *2 (“The Government argues that it has somehow interpreted this statute incorrectly for the nearly thirty years that it has been the law. In its view, everyone (from every past administration) has misunderstood it from the start—at least until last month, when the right way to read it became clear to the Government.”).

²³ HHS, 90 Fed. Reg. at 31238.

²⁴ *Id.*



prevention and treatment,²⁵ crisis support and intervention programs,²⁶ disaster relief programs,²⁷ and workforce training programs.²⁸

The NPRM also reverses longstanding interpretation of “receipt” of benefits for purposes of public charge. Applying for or receiving benefits on behalf of family members has not been not considered “receipt” of public benefits for purposes of a public charge assessment.²⁹ But the NPRM appears to allow DHS officers to penalize an applicant based on benefits received by family members, including those who are U.S. citizens or lawful permanent residents.³⁰

Additionally, the NPRM leaves ambiguous whether a Final Rule will be only forward-looking, and whether immigration officers will be directed not to consider any benefits received during a time when the stated policy of the United States was that use of such benefits would not have adverse immigration consequences. Such a clear statement was included in both the 2018 notice of proposed rulemaking and the 2019 final rule, and its omission from this proposal has created, and will continue to create, panic.

A. Regulatory background.

1999 Field Guidance. In 1999, DHS codified in field guidance the longstanding definition of public charge—a definition which has remained unchanged in over a century.³¹ DHS recognized that the then-recent passage of immigration-related statutes like PRWORA and Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA)³² caused confusion about which factors could be considered in a public charge determination and was causing a chilling effect that was deterring immigrants from accessing benefits—for themselves or their children. In the 1999 Field Guidance, the Immigration and Naturalization Service (INS, then part of the Department of Justice (DOJ)) set out to provide additional clarity.³³

²⁵ *Id.*

²⁶ *Id.*; DOJ, 90 Fed. Reg. at 32025.

²⁷ HUD, 90 Fed. Reg. 54363.

²⁸ DOL, Training and Employment Guidance Letter No. 10-23, Change 2 (July 11, 2025),

<https://www.dol.gov/sites/dolgov/files/ETA/advisories/TEGL/2023/TEGL%2010-23%20Change%202/TEGL%2010-23%20Change%202.pdf>.

²⁹ 8 C.F.R. § 212.21(d) (defining “[r]eceipt (of public benefits)” and stating “[a]n individual’s receipt of public benefits solely on behalf of a third party (including a member of the alien’s household as defined in paragraph (f) of this section) does not constitute receipt of public benefits by such individual. The receipt of public benefits solely by a third party (including a member of the alien’s household as defined in paragraph (f) of this section), even if an individual assists with the application process, does not constitute receipt for such individual”).

³⁰ 90 Fed. Reg. at 52187 (“DHS is removing the definition from the 2022 Final Rule for receipt (of public benefits). The definition is not necessary and reflects an inappropriate limitation on immigration officer’s ability to consider relevant evidence.”).

³¹ 1999 Field Guidance, 64 Fed. Reg. 28689.

³² Pub. L. 104–208, 110 Stat. 3009–546 (1996).

³³ 1999 Field Guidance, 64 Fed. Reg. 28689–01; *see also* U.S. Department of Justice, Immigration and Naturalization Service, Michael A. Pearson, Executive Associate Commissioner, Office of Field Operations,

After extensive consultation with other federal agencies,³⁴ the DOJ and INS’s published field guidance provided uniform information and clarity on the rules that adjudicators were directed to follow. This guidance confirmed that the statutes did not alter the long-settled meaning of “public charge” and reaffirmed that the touchstone of the “public charge” inquiry is to “identify those who are primarily dependent on the government for subsistence.”³⁵ “After extensive consultation with benefit-granting agencies, the [INS] has determined that the best evidence of whether an alien is primarily dependent on the government for subsistence is either (i) the receipt of public cash assistance for income maintenance, or (ii) institutionalization for long-term care at government expense.”³⁶

The 1999 guidance confirmed that receipt of any non-cash benefits, with the single exception of government support for long-term institutionalization, would not be considered in the public charge determination, because people did not rely on non-cash benefits for their primary means of support,³⁷ and such benefits “are by their nature supplemental and do not, alone or in combination, provide sufficient resources to support an individual or family.”³⁸ The guidance clarified that benefits such as education, health insurance, food assistance, housing benefits, job training programs, child care subsidies, energy subsidies and in-kind community based services, would not be considered.³⁹

Additionally, the 1999 Field Guidance advanced the purpose of the Rehabilitation Act Amendments of 1992: “to empower individuals with disabilities to maximize employment, economic self-sufficiency, independence, and inclusion and integration into society.”⁴⁰ Specifically, the 1999 Field Guidance stated that for disabled individuals who seek to enter or to adjust their status:

- Only those disabled individuals who are “primarily dependent” upon cash benefits (meaning that cash benefits represent more than half of the person’s income), or who

Memorandum for All Regional Directors (May 20, 1999), <https://niwaplibrary.wcl.american.edu/wp-content/uploads/2015/pdf/PB-Gov-DOJMemoPubCharge-05.20.99.pdf>.

³⁴ Department of Homeland Security, Inadmissibility on Public Charge Grounds, 83 Fed. Reg. 51114 (Oct. 10, 2018) (hereinafter “October 2018 Public Charge NPRM”), at 51133 (“When developing the proposed rule [and 1999 Interim Field Guidance], INS consulted with Federal benefit-granting agencies such as the Department of Health and Human Services (HHS), the Social Security Administration (SSA), and the Department of Agriculture (USDA). The Deputy Secretary of HHS, which administers Temporary Assistance for Needy Families (TANF), Medicaid, the Children’s Health Insurance Program (CHIP), and other benefits, advised that the best evidence of whether an individual is relying primarily on the government for subsistence is either the receipt of public cash benefits for income maintenance purposes or institutionalization for long-term care at government expense.”).

³⁵ 1999 Field Guidance, 64 Fed. Reg. at 28689, 28692.

³⁶ *Id.* at 28692.

³⁷ *Id.* at 28693.

³⁸ *Id.* at 28692.

³⁹ *Id.* at 28693.

⁴⁰ 29 U.S.C. § 701(b).

require long-term institutionalization at government expense, may be considered public charges; and

- All other disabled individuals—including those with significant or complex medical conditions, and those who require Medicaid (or CHIP) to maintain their health and wellness in the short- or long-term while pursuing employment, education, or other productive life activities—are not subject to exclusion under public charge.⁴¹

Through administrations of both political parties, U.S. immigration officials have repeatedly and explicitly reassured immigrant families that participation in programs like Medicaid and SNAP (formerly food stamps) would not affect their ability to become lawful permanent residents. The only benefits that could be considered were public cash assistance for income maintenance and long-term institutionalization at government expense.

Since the issuance of the 1999 guidance, Congress has amended the public charge provision several times through laws that make benefits both more and less available to noncitizens, but it has never disrupted this foundational standard.⁴² These amendments include laws that make benefits more accessible, such as allowing immigrant children to receive SNAP and giving states the option to cover immigrant children and pregnant people under the Children’s Health Insurance Program (CHIP), and laws that make benefits less accessible, such as the recently enacted H.R. 1 (Pub. L. 119-21). If Congress did not agree that the long-standing interpretation of public charge was consistent with the INA or PRWORA, it has had multiple opportunities to direct DHS to act otherwise—it has not done so.

2019 and 2022 Final Rules. In 2019, DHS issued a Final Rule, which upended the longstanding meaning of “public charge” as concerned with those primarily dependent on the government for subsistence. Instead, the 2019 Final Rule defined the term public charge to mean “an alien who receives one or more public benefits [as defined in the 2019 Final Rule] for more than 12 months in the aggregate within any 36-month period (such that, for instance, receipt of two benefits in one month counts as two months).”⁴³ It defined the term “public benefit” to mean any Federal, State, local, or Tribal cash assistance for income maintenance (other than tax credits), SNAP, most forms of Medicaid, Section 8 Housing Assistance under the Housing

⁴¹ 1999 Field Guidance, 64 Fed. Reg. at 28690.

⁴² See Family Sponsor Immigration Act of 2002, Pub. L. 107–150, § 2, 116 Stat. 74 (2002); Violence Against Women and Department of Justice Reauthorization Act—Technical Corrections, Pub. L. 109–271, § 6(b), 120 Stat. 750, 762 (Aug. 12, 2006); Violence Against Women Reauthorization Act of 2013, Pub. L. 113-4, § 804, 127 Stat. 54, 111 (Mar. 7, 2013); see also Victims of Trafficking and Violence Protection Act of 2000, Pub. L. 106–386, § 1505, 114 Stat. 1464, 1525 (Oct. 28, 2000) (exempting certain trafficking victims from public charge assessment); Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) ACT OF 2001, Pub. L. 107–56, § 423, 115 Stat. 272, 360 (Oct. 26, 2001) (exempting certain surviving spouses and children from public charge assessment); Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. 108–193, § 4, 117 Stat. 2875, 2877 (Dec. 19, 2003) (exempting certain trafficking victims from public charge assessment).

⁴³ Inadmissibility on Public Charge Grounds, 84 Fed. Reg. 41292, 41297 (Aug. 14, 2019).



Choice Voucher (HCV) Program, Section 8 Project-Based Rental Assistance, and certain other forms of subsidized housing.⁴⁴

Several courts enjoined the 2019 Rule from taking effect, holding it was likely inconsistent with immigration law and arbitrary and capricious, however some of these decisions were stayed by reviewing courts, and the 2019 Final Rule was in effect in most states for a short period between February 24, 2020 and March 9, 2021.⁴⁵ On March 15, 2021, DHS officially removed the regulations resulting from the 2019 Final Rule.⁴⁶

On September 9, 2022, the Public Charge Ground of Inadmissibility final rule was published.⁴⁷ As the current NPRM states, the 2022 Rule “substantively tracks” the 1999 Field Guidance in most respects.⁴⁸

II. THE NPRM IS UNLAWFUL AND ARBITRARY AND CAPRICIOUS.

A. The NPRM’s definition of “public charge” is inconsistent with the term’s longstanding meaning.

The NPRM’s proposal to “remove all regulatory limitations on the types of public resources that are relevant for considering whether” a noncitizen is likely to become a public charge⁴⁹ is inconsistent with its longstanding limited meaning that the 1999 Field Guidance and the 2022 Rule codify, and which had remained unchanged in over a century.⁵⁰

⁴⁴ *Id.*

⁴⁵ See *New York v. United States Dep’t of Homeland Sec.*, 969 F.3d 42 (2d Cir. 2020), 140 S. Ct. 599 (2020) (staying preliminary injunctions); *Cook Cnty., Illinois v. Wolf*, 962 F.3d 208 (7th Cir. 2020), 140 S. Ct. 681 (2020) (staying preliminary injunction); *City & Cnty. of San Francisco v. United States Citizenship & Immigr. Servs.*, 981 F.3d 742 (9th Cir. 2020). *But cf.*, *CASA de Md. v. Trump*, No. 19-2222 (4th Cir. Dec. 9, 2019), 971 F.3d 220, 242-244 (4th Cir. 2020) (rehearing en banc granted but the case was subsequently dismissed).

⁴⁶ See Inadmissibility on Public Charge Grounds; Implementation of Vacatur, 86 Fed. Reg. 14221 (Mar. 15, 2021).

⁴⁷ 87 Fed. Reg. 55472.

⁴⁸ 90 Fed. Reg. at 52182.

⁴⁹ 90 Fed. Reg. at 52186.

⁵⁰ From its inception the term “public charge” was limited to individuals who are dependent primarily on the government for long-term subsistence and whose dependency would be permanent, habitual, or persistent. It excluded those who were able and willing to work, faced temporary setbacks, or needed supplemental support. The duality of the term was incorporated in federal law when it appeared for the first time in the Immigration Act of 1882, ch. 376, § 2, 22 Stat. 214, 214. That law distinguished between an arriving immigrant who is “unable to take care of himself or herself without becoming a public charge” and an arriving immigrant who is “in distress” or in need of care. See *New York v. United States Dep’t of Homeland Sec.*, 969 F.3d 42, 69 (2d Cir. 2020). “The former were to be excluded; the latter provided with financial support” through an “‘immigrant fund,’ which was to be used, *inter alia*, ‘for the care of immigrants arriving in the United States, [and] for the relief of such as are in distress.’” *Id.*

The Immigration and Nationality Act of 1952, the foundation of our current immigration system, retained the concept of “public charge” as a ground of inadmissibility and deportation. See Pub. L. No. 82-414, § 212(a)(15), § 241(a)(8), 66 Stat. 163, 183 (1952). And in interpreting “public charge” the Board of Immigration Appeals (“BIA”)



DHS justifies this break with the longstanding meaning of “public charge” by equating “public charge” with a lack of “self-sufficiency,” and defining “self-sufficiency” to mean not utilizing any public resources.⁵¹ But such interpretation is inconsistent with statutory text. As courts explained in considering the 2019 Rule, which also equated public charge with self-sufficiency, there is “a textual problem. The INA does not call for total self-sufficiency at every moment; it uses the words ‘public charge.’” *Cook Cnty., Illinois v. Wolf*, 962 F.3d 208, 232 (7th Cir. 2020). And to the extent “self-sufficiency” is a relevant standard, DHS’s definition conflicts with how Congress has used the term. “Had Congress thought that any benefits use was incompatible with self-sufficiency, it could have said so, . . . But it did not.” *New York v. United States Dep’t of Homeland Sec.*, 969 F.3d at 82; *see Cook Cnty., Illinois*, 962 F.3d at 232 (viewing receipt of any public benefit as showing a lack of self-sufficiency “is an absolutist sense of self-sufficiency that no person in a modern society could satisfy; everyone relies on nonmonetary governmental programs, such as food safety, police protection, and emergency services.”); *id.* at 250 (Barrett, J., dissenting) (“the term ‘public charge’ does not implicate self-sufficiency in this absolutist sense.”).

B. The NPRM’s emphasis on individual DHS officer discretion for adjustment of status applications is inconsistent with the statutory text and will invite discrimination.

DHS claims that Congress intended for individual officers to have unfettered discretion in making public charge determinations and determining what information is relevant to making a public charge determination.⁵² But that justification is inconsistent with the statutory text

“focused on the non-citizen’s capacity for work, reversing decisions that put too much weight on temporary setbacks and affirming those where a non-citizen had no prospects for employment by virtue of age or disability.” 969 F.3d at 69; *see Matter of Perez*, 15 I. & N. Dec. 136, 137 (B.I.A. 1974) (“[t]he fact that an alien has been on welfare does not, by itself, establish that he or she is likely to become a public charge.”).

In 1996, Congress adopted the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), Pub. L. No. 104-193, 110 Stat. 2105 (1996), which restricts eligibility of certain categories of noncitizens for certain public benefits but also specified that certain noncitizens are eligible for Medicaid, the Children’s Health Insurance Program (CHIP), and other federal means-tested benefits. Shortly after, Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, div. C, 110 Stat. 3009-546 (1996). IIRIRA codified five factors considered as part of the public charge determination: age; health; family status; assets, resources, and financial status; and education and skills, and added a requirement for sponsored immigrants to obtain legally enforceable affidavits of support from their sponsors, which could be considered in making the public charge determination. 8 U.S.C. § 1182(a)(4)(B)(i); 8 U.S.C. §§ 1182(a)(4)(C), 1183a(a)(1). In enacting the IIRIRA, Congress made no changes to the PRWORA provisions permitting noncitizens to receive certain public benefits—nor chose to amend the longstanding meaning of “public charge.”

⁵¹ 90 Fed. Reg. at 52175, 52186, 52190.

⁵² *See, e.g.*, 90 Fed. Reg. at 52181 (asserting that “the statute requires the officer to determine inadmissibility in his or her opinion, the officer may, in his or her discretion, determine what factors other than the statutory minimum factors are relevant to any individual case.”); *id.* (asserting “officers” have a “statutorily-mandated ability to

governing adjustment of status applications, which states in relevant part that it is “the opinion of the *Attorney General* at the time of application for admission or adjustment of status” that is relevant,⁵³—not the opinion of an individual DHS officer. The same was true of the 1952 INA.⁵⁴

The NPRM mischaracterizes the discretion the INA grants the *Attorney General* with a Congressional mandate allowing individual DHS officers unfettered discretion to decide who is ineligible for adjustment of status based on public charge determinations.

Moreover, this kind of discretion opens the door to biased decision making. The Proposed Rule never explains why such broad, unguided authority is necessary or why it outweighs the obvious risk that discrimination will shape outcomes. The Proposed Rule would also remove the current requirement that immigration officers include in their denial of admission an explanation of the reasons for the determination and the factors that were considered to “help ensure that public charge inadmissibility determinations are fair, consistent with the law, and informed by relevant data and evidence.”⁵⁵

Biased immigration determinations can generally proceed unchecked. Compounding the problem, courts have sometimes declined to review public charge determinations, even those plainly driven by discriminatory reasoning. In *In re Rhagat Singh*, for example, the court affirmed the government’s decision finding that Rhagat Singh is likely to become a public charge because “Hindoo laborers are obnoxious to very many of our people . . . [T]here exists a prejudice against them, and . . . comparatively few avenues are open to them in which to find employment.”⁵⁶

Allowing officers to decide, based on their own subjective views, who is “likely to become a public charge” repeats this history. Broad, unguided discretion all but guarantees that bias—whether conscious or not—will lead to discriminatory outcomes.

C. The failure to provide any guidance on what will be considered in a “public charge” assessment is both arbitrary and capricious and impermissibly vague in violation of due process.

The NPRM’s complete lack of guidance is arbitrary and capricious because it is so vague as to preclude individuals from knowing how to comply with it and avoid being deemed a

determine, in their opinion, whether an alien is likely at any time to become a public charge”); *id.* at 52183 (NPRM “will restore an inadmissibility determination process that trusts in and relies on DHS officers’ good judgment and sound discretion as envisioned by Congress.”).

⁵³ 8 U.S.C. § 1182(4)(A) (emphasis added).

⁵⁴ See Immigration and Nationality Act of 1952, ch. 477, § 212(a)(15), 66 Stat. 163, 183 (“Aliens who... in the opinion of the *Attorney General* at the time of application for admission, are likely at any time to become public charges” (emphasis added)).

⁵⁵ 87 Fed. Reg. at 55487.

⁵⁶ *In re Rhagat Singh*, 209 F. 700, 701 (N.D. Cal. 1913).

“public charge” and because it gives “unfettered discretion” to individual officers without a requirement that they explain their reasoning, leaving no way for the applicant or the agency to gauge whether the decision complies with the law.⁵⁷

Throughout the NPRM the Department uses multiple terms, none of which are defined, to describe the programs that DHS officers will be allowed to consider in a public charge assessment. These include:

- “Means-tested public benefit” (used 29 times, including in the regulatory language regarding bonds and the proposed revisions to Form I-485);⁵⁸
- “Public benefits” (used 165 times), *see, e.g.*, 90 Fed. Reg. at 52183 (“the receipt of *any type of public benefits* by a qualified alien is relevant and indeed critical to determining whether an alien is actually self-sufficient” (emphasis added));
- “Public benefit programs” (used 12 times);
- “Benefits” (used once), *see, e.g.*, 90 Fed. Reg. at 52187 (“DHS proposes to eliminate these definitions that limit the *benefits* that are considered as part of the public charge inadmissibility determination” (emphasis added)); and
- “Public resources” (used 13 times), *see, e.g.*, 90 Fed. Reg. at 52169 (“through this NPRM, DHS proposes...removing limitations on the types of *public resources* that are relevant for considering whether an alien is dependent” (emphasis added)).

There are a vast number of programs and services that an immigration official might decide falls under the heading of a “public benefit” or “public resource” including many that are not limited to low-income people. Without guardrails, immigration officials could adopt their own definitions of which benefits to consider, creating uncertainty about which programs might be counted.

Moreover, the Administration’s recent unprecedented, expansive, and unlawful redefinition of “federal public benefits” under PRWORA includes an enormous swath of programs that are not, and have never before been, considered public benefits. In the (incorrect) view of this Administration, “public benefits” include an astonishing range of programs—including many non-cash benefits designed to promote health or upward mobility rather than provide basic subsistence, including Head Start, community health clinics, substance abuse prevention and treatment, crisis support and intervention programs, disaster relief programs, and workforce training programs.

⁵⁷ *See, e.g., Arizona Cattle Growers’ Ass’n v. U.S. Fish & Wildlife, Bureau of Land Mgmt.*, 273 F.3d 1229, 1233 (9th Cir. 2001).

⁵⁸ PRWORA defines the term “Federal means-tested public benefits” for purposes of PRWORA but DHS does not say if “means-tested public benefits” as used in the NPRM adopts that meaning.



Specifically, in July 2025, HHS reversed its interpretation of nearly three decades that “federal public benefit” does not include certain services or assistance, particularly those providing in-kind services at the community level, including Head Start.⁵⁹ Instead, it declared for the first time that Head Start *is* a “federal public benefit” under PRWORA.⁶⁰ Although two courts have declared that interpretation is likely unlawful,⁶¹ many noncitizens may understandably fear that enrolling their children in Head Start will mark them as a “public charge.” As discussed below, *infra*, this will profoundly chill participation in this vital early education school readiness program among eligible families, including many U.S. citizen children, resulting in profound long-term impacts on individuals, school districts, and society as a whole.

The NPRM’s position that it is inappropriate to limit what programs will—and will not—be considered in the public charge determination is unprecedented. Even the 2019 final rule states clearly that participation in some programs—including Medicaid for those under age 21, pregnant women, and when used to provide IDEA services, school lunch programs, and public health assistance for immunizations—would not be considered as part of the public charge determination.⁶²

Moreover, the NPRM is impermissibly vague under the Fifth Amendment to the U.S. Constitution because it fails to “give the person of ordinary intelligence a reasonable opportunity to know what is prohibited” and it “authorizes or encourages seriously discriminatory enforcement.”⁶³ “[C]larity in regulation is essential to the protections provided by the Due Process Clause of the Fifth Amendment.”⁶⁴

Due process requires that parties “know what is required of them so they may act accordingly.”⁶⁵ DHS’s decision in the NPRM to consider participation in any program a DHS officer deems a “public benefit” or use of a “public resource” denies immigrants fair notice of the standards with which they must comply.⁶⁶

⁵⁹ PRWORA: Interpretation of “Federal Public Benefit,” 63 Fed. Reg. 41658 (Aug. 4, 1998); U.S. Dep’t of Health & Hum. Servs., Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA); Interpretation of “Federal Public Benefit,” 90 Fed. Reg. 31232 (July 14, 2025).

⁶⁰ *Id.* at 31235-37.

⁶¹ *Washington State Ass’n of Head Start & Early Childhood Assistance & Educ. Program v. Kennedy*, No. C25-781-RSM, (W.D. Wash. Sept. 11, 2025), Dkt. No. 120; *New York v. U.S. Dep’t of Just.*, No. 1:25-CV-00345-MSM-PAS, 2025 WL 2618023, at *2 (D.R.I. Sept. 10, 2025).

⁶² 84 Fed. Reg. at 41297, 41312, 41325, 41374.

⁶³ *United States v. Williams*, 553 U.S. 285, 304 (2008).

⁶⁴ *F.C.C. v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012) (citing *United States v. Williams*, 553 U.S. 285, 304 (2008)).

⁶⁵ *Id.*

⁶⁶ *Champlin Ref. Co. v. Corp. Comm’n of State of Okl.*, 286 U.S. 210, 243 (1932) (“It is not the penalty itself that is invalid, but the exaction of obedience to a rule or standard that is so vague and indefinite as to be really no rule or standard at all.”).

Due process also requires sufficient guidance to ensure that “those enforcing the law do not act in an arbitrary or discriminatory way.”⁶⁷ Vague laws “impermissibly delegate[] basic policy matters . . . for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application.”⁶⁸ Because the NPRM removes the long-established boundaries of the meaning of “public charge” while simultaneously providing no guidance to DHS officers on how to determine whether a noncitizen is a “public charge” or even what factors are relevant to that determination, it leaves complete discretion in the DHS officers to decide on an ad hoc and subjective basis whether a noncitizen is eligible to adjust their status—a decision of enormous consequence.

D. The NPRM fails to justify the inclusion of supplemental benefits in the public charge determination and the consideration of benefits to family members.

The NPRM is arbitrary and capricious because it fails to “cogently explain” why participation in public programs that improve health, educational, and financial stability, but are not necessary for subsistence, is relevant to the “public charge” determination.⁶⁹ It ignores the data and evidence relied on in promulgating the agency’s 2022 Rule that shows receipt of supplemental benefits is associated with increased employment and self-sufficiency.⁷⁰ And it fails to provide a reasoned explanation for considering benefits used by family members, including U.S. citizen children.

The 2022 Rule explains that cash assistance for subsistence and long-term institutional care have been the only benefits considered in the public charge assessment because other benefits, even when means-tested, are supplemental and often promote self-sufficiency. Receipt of such supplemental benefits is not an indication that the noncitizen is not working or lacks self-sufficiency, and in fact, some are “intended to help recipients remain self-sufficient.”⁷¹ As DHS explained in 2022:

[P]redicted participation in non-cash programs is not a good indicator that a noncitizen is likely to become a public charge. Many modern public assistance programs take the form of payments or in-kind benefits to help individuals meet particular needs and are not limited to individuals without a separate primary means of support. The Medicaid program, subsidized housing, and SNAP provide benefits to millions of individuals and families across the

⁶⁷ *Fox Television*, 567 U.S. at 253.

⁶⁸ *Grayned v. City of Rockford*, 408 U.S. 104, 108–09 (1972); see *Commodity Futures Trading Comm’n v. EOX Holdings, L.L.C.*, 90 F.4th 439, 444 (5th Cir. 2024) (The agency “must provide a reasonably clear standard of culpability to circumscribe the discretion of the enforcing authority and its agents.”).

⁶⁹ *Motor Vehicle Manufacturers Ass’n of the United States, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 48, (1983) (“an agency must cogently explain why it has exercised its discretion in a given manner”).

⁷⁰ *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 536 (2009) (explaining whether an agency’s action is arbitrary and capricious is “viewed in light of the data available to it”).

⁷¹ 87 Fed. Reg. at 55500.

nation, many of whom also work....Relatedly, all such non-cash program participants require a separate source of income to meet a number of basic needs....an individual who receives only non-cash assistance would need another source of income to acquire various basic necessities like clothing or household items...⁷²

In reaching these conclusions, DHS was “guided by data and input from expert agencies regarding the nature of certain noncash benefits.”⁷³

DHS’s reversal of course entirely fails to provide any data or evidence that participation in the wide-ranging programs that may be considered under the NPRM can be an indication that a noncitizen is “likely to become a public charge” or even an indication that the noncitizen lacks self-sufficiency. And it ignores the data provided in the 2022 Final Rule that shows many of those who receive supplemental benefits are employed.

The Proposed Rule also disregards, without explanation, a large body of research demonstrating that receipt of supplemental benefits is associated with increased employment and self-sufficiency.⁷⁴ For example, as discussed *infra*, strong evidence suggests that access to

⁷² 87 Fed. Reg. at 55522-23; *id.* at 55518 (“DHS will not consider most Medicaid benefits, as well as SNAP, CHIP, WIC, or other non-cash, supplemental, or special-purpose benefit programs. These programs assist many low-income individuals in remaining employed and self-sufficient.”); *id.* at 55528 (“Medicaid, except for long-term institutionalization, does not provide assistance to meet basic subsistence needs... in many States individuals and families are eligible for Medicaid despite having income substantially above the HHS poverty guidelines....among working age adults without disabilities who participate in the Medicaid program, most are employed”); *id.* at 55528 (“SNAP is supplementary in nature as the benefits are calculated to cover only a portion of a household’s food costs with the expectation that the household will use its own resources to provide the rest.... most SNAP recipients work and that there is no research demonstrating that receipt of SNAP benefits is a predictor of future dependency.”).

The average SNAP recipient receives only \$187 a month in benefits. U.S. Dep’t of Agric., Econ. Research Serv., Supplemental Nutrition Assistance Program (SNAP) – Key Statistics & Research, <https://www.ers.usda.gov/topics/food-nutrition-assistance/supplemental-nutrition-assistance-program-snap/key-statistics-and-research> (last visited Dec. 18, 2025). Large numbers of SNAP recipients, far from being incapable of productive employment, work for some of America’s largest corporations. Ctr. on Budget & Policy Priorities, SNAP Helps Millions of Workers in Low-Paying Jobs, <https://www.cbpp.org/research/food-assistance/snap-helps-millions-of-workers-in-low-paying-jobs> (last visited Dec. 18, 2025).

⁷³ 87 Fed. Reg. at 55529.

⁷⁴ See, e.g., U.S. Dep’t of Health & Hum. Servs., *Portfolio of Research in Welfare and Family Self-Sufficiency* (2023), <https://acf.gov/opre/report/portfolio-research-welfare-and-family-self-sufficiency-fy-2023> (cataloguing evaluations showing that supplemental benefit receipt increases employment and self-sufficiency likelihood); Economic Policy Institute, *Work Requirements for Safety Net Programs Like SNAP and Medicaid: A Punitive Solution That Solves No Real Problem* (Jan. 24, 2025), <https://www.epi.org/publication/snap-medicaid-work-requirements/> (discussing evidence that benefit receipt helps families maintain economic stability necessary for work); Nat’l Women’s Law Ctr., *Medicaid Is Vital for Women’s Jobs in Every Community* (2017), <https://nwlc.org/resources/medicaid-is-vital-for-womens-jobs-in-every-community/> (Medicaid promotes employment of women); Ctr. On Budget & Pol’y Priorities, *The Far-Reaching Benefits of the Affordable Care Act’s Medicaid Expansion* (2018), <https://www.cbpp.org/research/health/chart-book-the-far-reaching-benefits-of-the-affordable-care-acts-medicaid> (expanded Medicaid tied to better health outcomes, improved financial security, and

subsidized health insurance such as Medicaid enables low-wage workers to obtain and retain employment.⁷⁵

The NPRM also leaves ambiguous whether use of benefits by family members who are not seeking to adjust their status can be considered in a public charge determination. The NPRM removes the regulatory definition of “receipt (of public benefits)”⁷⁶ that explicitly states that applying for or receiving benefits on behalf of family members is not considered “receipt.” It also fails to provide such reassurance in the preamble, as the 2019 final rule did.⁷⁷

Under the NPRM, it is impossible for immigrants to know whether use of benefits by family members—including U.S. citizen children—will harm them when they seek to obtain legal permanent resident status, and it is impossible for providers to offer immigrants meaningful reassurance. The affirmative choice to remove this clear statement from the regulations provokes fear that such benefits use will be considered. The NPRM provides no justification for this removal beyond a generalized statement that immigration officers should be able to consider all “relevant” evidence without specifying what counts as relevant.⁷⁸

E. The NPRM’s failure to consider costs of uncertainty is arbitrary and capricious.

The NPRM’s decision to forgo any guidance whatsoever has enormous costs. Without clear guidance, states, local governments, and organizations that help families enroll in benefits would be unable to advise immigrants and their family members about which programs are safe to use. The NPRM acknowledges the cost on “immigration lawyers, immigration advocacy groups, benefits-administering agencies, nonprofit organizations, non- governmental organizations, and religious organizations,” to familiarize themselves with provisions of the Proposed Rule.⁷⁹ But it entirely ignores the much more significant costs of having to counsel individuals—and that such

more support for employment); Matthew Desmond & Carl Gershenson, *Housing and Employment Insecurity among the Working Poor*, 63 *Social Problems* 46, 46-67 (2016) (housing loss tied to job loss).

⁷⁵ See Madeline Guth, Rachel Garfield, & Robin Rudowitz, KFF, *The Effects of Medicaid Expansion Under the ACA: Updated Findings from a Literature Review* 6–8 (Mar. 2020), <https://www.kff.org/medicaid/report/the-effects-of-medicaid-expansion-under-the-aca-updated-findings-from-a-literature-review/> (summarizing studies finding improved labor market attachment and reduced absenteeism after gaining coverage).

⁷⁶ 8 CFR § 212.21(d).

⁷⁷ See, e.g., 84 Fed. Reg. at 41313 (“DHS will not consider the receipt of public benefits by U.S. citizens and aliens not subject to public charge inadmissibility, the receipt of public benefits by these individuals will not be counted against or made attributable to immigrant family members who are subject to this rule.”); *id.* at 41309 (“this final rule [will not] take into consideration receipt of public benefits by U.S. citizens who are part of the alien's household, including benefits received by U.S. citizen children.”).

⁷⁸ See 90 Fed. Reg. at 52187.

⁷⁹ *Id.* at 52217.



counseling is much more time-consuming and labor intensive where there is no clarity or even guidance about which benefits will be considered.⁸⁰

F. The NPRM attempts to evade the notice and comment requirements of the administrative procedure act.

DHS’s acknowledgement that DHS officers’ “public charge” determinations will in the future be guided by new “policy” and “tools,” indicates that the current NPRM’s rescission of current regulations without any replacement is an attempt to evade the APA’s notice-and-comment rulemaking requirements. This effort undermines the important purposes of the APA: to ensure informed and reasoned agency decisionmaking by providing fair notice and a meaningful opportunity for public participation;⁸¹ promoting transparency and accountability;⁸² and preventing agencies from adopting rules based on undisclosed data or unexamined assumptions.⁸³

The Department states that it will, following the finalization of the NPRM, “formulate appropriate policy and interpretive tools that will guide DHS officers in making individualized, fact-specific public charge inadmissibility determinations, based on a totality of the alien’s circumstances, that are consistent with the statute and congressional intent, and comply with past precedent.”⁸⁴ But the policy and tools have not been provided, and the rule gives no indication that the Administration intends to submit them for public comment and review.

The vague promise of some future guidance is an attempt to avoid the required public notice and comment. Under the APA, legislative rules require notice and comment because they “create rights, impose obligations, or effect a change in existing law.”⁸⁵ If the NPRM is adopted, each DHS officer will “determine inadmissibility in his or her opinion, [and] the officer may, in his or her discretion, determine what factors other than the statutory minimum factors are relevant to any individual case.”⁸⁶ Thus, any guidance or tools that are created to direct officers’ legal decisions will inevitably “effect a change in existing law” and have a significant impact on the legal rights of applicants.⁸⁷

The NPRM’s assertion that “removing the current regulations would provide DHS greater flexibility to adapt to changing circumstances,” such as the legislative changes that recently

⁸⁰ *Motor Vehicle Mfrs. Ass’n v. State Farm*, 463 U.S. at 43 (“an agency rule would be arbitrary and capricious if the agency ... entirely failed to consider an important aspect of the problem”).

⁸¹ *Motor Vehicle Mfrs. Ass’n v. State Farm*, 463 U.S. at 48–49; *Long Island Care at Home, Ltd. v. Coke*, 551 U.S. 158, 174 (2007).

⁸² *Perez v. Mortg. Bankers Ass’n*, 575 U.S. 92, 96 (2015).

⁸³ *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016).

⁸⁴ 90 Fed. Reg. at 52169.

⁸⁵ *Hemp Indus. Ass’n v. Drug Enf’t Admin.*, 333 F.3d 1082, 1087 (9th Cir. 2003).

⁸⁶ 90 Fed. Reg. at 52181.

⁸⁷ *Hemp Indus. Ass’n*, 333 F.3d at 1087.



occurred under H.R. 1, cannot justify abandoning the notice and comment required by the APA. The solution is to modify the regulations as needed in response to new laws, not to avoid regulations entirely.

G. The NPRM suggests that DHS will rely on illegally obtained data and unproven automated tools, which would likely violate the Privacy Act and perpetuate bias and discrimination.

The Proposed Rule states “as the administration persists in its efforts to reduce the siloing of data, DHS anticipates working toward the integration of immigration records with records from Federal benefit-granting agencies. The analysis of that data will inform the development of the flexible and adaptive policy and interpretive tools that will guide future public charge inadmissibility determinations.”

A threshold problem with this statement is that it does not provide the “notice” required under the APA because it neither provides “the terms or substance of the proposed rule” nor “a description of the subjects and issues involved.”⁸⁸ The Supreme Court has said that “The object [of the APA’s notice requirement], in short, is one of fair notice.”⁸⁹ The NPRM’s description of the changes DHS anticipates for using data and tools to make “public charge inadmissibility determinations” is so ambiguous and unspecific that it fails to provide the required “fair notice.” *Id.*

Although the NPRM fails to provide sufficient notice of the concrete meaning of its plan “to reduce the siloing of data” and to develop “flexible and adaptive policy and interpretive tools,” these plans raise significant concerns about the risks of (1) data consolidation and (2) the use of automated design tools (ADTs) and artificial intelligence (AI). Using consolidated data and automated tools in public charge assessments, where there is no opportunity for appeals, is both dangerous and illegal.

1. Data Consolidation

Although federal data sharing can bring benefits, it also runs the risk of harmful incursions on the privacy rights of individuals, data misuse, and cybersecurity incidents. The limited information that DHS has provided about its plan to “reduce the siloing of data” includes that it plans to integrate “immigration records with records from Federal benefit-granting agencies.” It does not explain how such data “integration” will comply with the Privacy Act of 1974⁹⁰—and it is likely to violate that Act’s (a) prohibition on disclosure, (b) requirements regarding accuracy and (c) requirement of appropriate safeguards.

⁸⁸ 5 U.S.C. § 553(b)(3).

⁸⁹ *Long Island Care at Home, Ltd. v. Coke*, 551 U.S. 158, 174 (2007).

⁹⁰ 5 U.S.C. § 552a.



The Privacy Act of 1974 was passed to address Congress’s concern about “the federal Government’s abuse of technology for surveillance of individuals.”⁹¹ The “McCarthy Era” of the 1950s and investigations related to Watergate fueled Congress’s passage of the Act⁹² to address “the Government’s voracious appetite for personal information about each of us” and to make it “legally impossible for the Federal Government in the future to put together anything resembling a ‘1984’ personal dossier on a citizen.”⁹³ The preamble states that the “privacy of an individual is directly affected by the collection, maintenance, use, and dissemination of personal information by Federal agencies,” and that the “increasing use of computers” had “greatly magnified the harm to individual privacy that can occur.”⁹⁴ Congress deemed it necessary “to regulate the collection, maintenance, use, and dissemination of information collected by... agencies.”⁹⁵ The Privacy Act was amended in 1988 to place safeguards around the computerized consolidation of records.⁹⁶ Those amendments disavowed authorizing “the establishment or maintenance by any agency of a national data bank that combines, merges, or links information on individuals maintained in systems of records by other Federal agencies.”⁹⁷

a. Prohibition on Disclosure

The Privacy Act functions by prohibiting disclosure of records from any federal agency’s “system of records,” including to other agencies.⁹⁸ The law includes a variety of enumerated exceptions, such as disclosures to agency employees for “performance of their duties” and for “a routine use” that are compatible with the original purpose of collection and published in the Federal Register.⁹⁹ In ongoing litigation, courts have enjoined data access by agencies.¹⁰⁰

Here, DHS anticipates that it will gain access to the records of “Federal benefit-granting agencies.” However, it does not appear that such data-sharing would meet any of the required

⁹¹ *Am. Fed’n of Gov’t Emps., AFL-CIO v. U.S. Off. of Pers. Mgmt.*, 786 F. Supp. 3d 647, 662 (S.D.N.Y. 2025).

⁹² H.R. Rep. No. 93-1416, at 4-9 (1974).

⁹³ S. Comm. on Gov’t Operations and H.R. Comm. on Gov’t Operations, 94th Cong., 2d Sess., Legislative History of the Privacy Act of 1974 – S. 3418 (Pub. L. No. 93-579), Source Book on Privacy at 884 (1976), https://www.justice.gov/d9/privacy_source_book.pdf.

⁹⁴ Privacy Act of 1974, Pub. L. 93-579, § 2(a)(1)-(2), 88 Stat. 1896, 1896 (Dec. 31, 1974).

⁹⁵ *Id.* § 2(a)(5). “Congress ‘identified’ an individual’s interest in his information being viewed only by the federal agency that maintains it—and even then, only by those employees with a need to view it—as ‘a modern relative of a harm with long common law roots.’” *Am. Fed’n of Lab. & Cong. of Indus. Orgs. v. Dep’t of Lab.*, 778 F. Supp. 3d 56, 72 (D.D.C. 2025) (quoting *Gadelhak v. AT&T Servs., Inc.*, 950 F.3d 458, 462 (7th Cir. 2020) (Barrett, J.)).

⁹⁶ Computer Matching and Privacy Protection Act of 1988, Pub. L. No. 100-503, 102 Stat. 2507 (codified at 5 U.S.C. § 552a(o)), <https://uscode.house.gov/statutes/pl/100/503.pdf>.

⁹⁷ Pub. L. No. 100-503, sec. 9(1).

⁹⁸ 5 U.S.C. § 552a(b).

⁹⁹ 5 U.S.C. § 552a(b)(1)-(13).

¹⁰⁰ *Am. Fed’n of Gov’t Emps., AFL-CIO v. U.S. Off. of Pers. Mgmt.*, 786 F. Supp. 3d 647, 695 (S.D.N.Y. 2025); *Am. Fed’n of State, Cnty. & Mun. Emps., AFL-CIO v. Soc. Sec. Admin.*, 771 F. Supp. 3d 717, 803 (D. Md. 2025); *cf. Am. Fed’n of Lab. & Cong. of Indus. Organizations v. Dep’t of Lab.*, 778 F. Supp. 3d 56, 83 (D.D.C. 2025) (denying motion to dismiss)

“conditions of disclosure” that attach to “any record which is contained in a system of records” by any agency.¹⁰¹ Thus, it is likely that the plan would violate the Privacy Act.

The most relevant exception is that the record can be disclosed if the disclosure would be used for a “routine use” as defined by the statute.¹⁰² The term “routine use” with respect to the disclosure of a record is defined as “the use of such record for a purpose which is compatible with the purpose for which it was collected.”¹⁰³ Under the statute, each agency must publish in the Federal Register a notice about the “existence and character of the system of records,” including “each routine use of the records contained in the system.”¹⁰⁴

Because the NPRM fails to identify what programs may be considered as part of the public charge assessment, it is also impossible to know all of the benefit-granting agencies’ records that may be impacted by the Proposed Rule. However, the NPRM specifically references the following benefits: Medicaid, Children's Health Insurance Programs (CHIP), Supplemental Nutrition Assistance Program (SNAP), Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), and Federal Rental Assistance.

The agencies that grant benefits identified by the NPRM have not established in a system of records notice (SORN) published in the Federal Register that a “routine use” of their records is to provide DHS with information on whether an individual is likely to become a public charge. *See, e.g.*, Supplemental Security Income Record and Special Veterans Benefits SORNs,¹⁰⁵ SNAP SORN,¹⁰⁶ Medicaid and CHIP SORNs.¹⁰⁷ Nor could they, as such use of the record is not “for a purpose which is compatible with the purpose for which it was collected.”¹⁰⁸

Moreover, some records have additional restrictions on disclosure. For example, the Health Insurance Portability and Accountability Act (HIPAA), restricts certain healthcare providers and other entities, including Medicare and Medicaid, from disclosing protected health information, including to law enforcement and the federal government, unless certain conditions are met.¹⁰⁹ Regulations under Medicaid limit disclosures to “purposes directly related” to administration of the program, such as establishing eligibility or determining the amount of

¹⁰¹ 5 U.S.C. § 552a(b).

¹⁰² *Id.* § 552a(b)(3).

¹⁰³ *Id.* § 552a(a)(7).

¹⁰⁴ *Id.* § 552a(e)(4)(D).

¹⁰⁵ 71 Fed. Reg. at 1830; 72 Fed. Reg. at 69723; 83 Fed. Reg. at 31250; 83 Fed. Reg. at 31251; 83 Fed. Reg. at 54969; 89 Fed. Reg. at 825; 89 Fed. Reg. at 14554.

¹⁰⁶ Department of Agriculture, Food and Nutrition Service, Privacy Act of 1974; System of Records, 90 Fed. Reg. at 26521.

¹⁰⁷ U.S. Dep’t of Health and Human Servs., Centers for Medicare & Medicaid Services (CMS) SORNs (last visited Dec. 15, 2025), <https://www.hhs.gov/foia/privacy/sorns/cms-sorns.html>

¹⁰⁸ 5 U.S.C. § 552a(a)(7).

¹⁰⁹ 45 C.F.R. §§ 164.500–.526.



medical assistance.¹¹⁰ Similarly, the Social Security Act restricts disclosures of individuals' Social Security information.¹¹¹

b. Lack of Appropriate Safeguards.

The Privacy Act also requires that:

Each agency that maintains a system of records shall ... establish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained.¹¹²

Moreover, Federal law mandates that information systems meet minimum security controls.¹¹³

Consolidating data at the federal level also increases the risks of cybersecurity incidents. A single, consolidated database would be attractive to foreign adversaries, who have previously targeted data held by the Office of Personnel Management,¹¹⁴ large school districts,¹¹⁵ and communications networks,¹¹⁶ affecting tens of thousands of businesses and millions of Americans.

Federal agencies have long faced obstacles in meeting the security requirements of federal law. The Government Accountability Office recently stated that agencies have “varied in their efforts to implement key security practices for cloud services, which provide on-demand access to shared resources such as networks, servers, and data storage.”¹¹⁷ Cloud services would be essential for consolidation of federal records, but the necessary cybersecurity measures are

¹¹⁰ 42 C.F.R. § 431.302.

¹¹¹ 42 U.S.C. §§ 405(c)(2)(C)(viii), 1306(a).

¹¹² 5 U.S.C. § 552a(e)(10); see *Am. Fed'n of Gov't Emps., AFL-CIO v. U.S. Off. of Pers. Mgmt.*, 786 F. Supp. 3d 647, 689 (S.D.N.Y. 2025); *Chambers v. U.S. Dep't of Interior*, 568 F.3d 998, 1007 n.4 (D.C. Cir. 2009).

¹¹³ Cybersecurity & Infrastructure Sec. Agency, *Federal Information Security Modernization Act*, <https://www.cisa.gov/topics/cyber-threats-and-advisories/federal-information-security-modernization-act> (last visited Sept. 24, 2025).

¹¹⁴ U.S. Gov't Accountability Off., GAO-17-614, *Information Security: OPM Has Improved Controls, but Further Efforts Are Needed* (2017), <https://www.gao.gov/products/gao-17-614>.

¹¹⁵ Lily Hay Newman, *How Vice Society Got Away With a Global Ransomware Spree*, *Wired* (Oct. 20, 2022), at <https://www.wired.com/story/vice-society-ransomware-gang/>.

¹¹⁶ Chris Jaikaran, Cong. Research Serv., *Salt Typhoon Hacks of Telecommunications Companies and Federal Response Implications* (2025), <https://www.congress.gov/crs-product/IF12798>.

¹¹⁷ U.S. Gov't Accountability Off., GAO-18-622, *High-Risk Series: Urgent Actions Are Needed to Address Cybersecurity Challenges Facing the Nation* (2018), <https://www.gao.gov/products/gao-18-622>.

lagging behind.¹¹⁸ Consolidation could lead to cybersecurity missteps, with potentially disastrous results, and falling further out of compliance with federal law on minimum security controls.

c. Accuracy requirements

Additionally, the Privacy Act requires agencies to maintain records “with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual.”¹¹⁹ The NPRM’s proposal to integrate “immigration records with records from Federal benefit-granting agencies” will likely violate this mandate of the Privacy Act.

To integrate data, DHS will need to ensure that the data from disparate federal records are for the same individual — for example, that the John Henry Doe in a HHS record is the same as John H. Doe in a potentially matching SSA record, and that both are the same as “John Doe” in the immigration file. Consolidating those records is much harder and messier than one might expect, as databases may be in different formats, have been created using different coding languages, have incorrect, incomplete, or outdated information, or may simply be too vague to be definitively connected. Errors in matching individuals — a process known as entity resolution¹²⁰ — has beset previous efforts to consolidate or match data, including records of the very agencies implicated by the NPRM. Numerous researchers have found that public benefits databases maintained by state agencies, including for administration of SNAP and Medicaid benefits, are sometimes plagued by serious data errors. For example, Colorado’s state public benefits system used for administering SNAP, CHIP, TANF and Medicaid has been plagued by severe data errors for decades, with an October 2023 audit finding that 90% of automated notices generated by the system had errors.¹²¹ Predictions based on inaccurate data will be very likely to reflect these inaccuracies and cannot be easily resolved.

There are numerous other examples of even straightforward data matching efforts being hampered by errors:

- **Student Aid and IRS Data Matching:** In 2024, the Department of Education (ED) encountered numerous issues that hampered its efforts to match federal student aid data with data from the IRS. For approximately 15 percent of FAFSA applications submitted that year, the IRS’s Direct Data Exchange tool reported incorrect income information, affecting the amount of financial support awarded to students. Moreover, for a set of students whose families had updated their tax returns after filing, the IRS retrieval tools

¹¹⁸ U.S. Gov’t Accountability Off., GAO-24-107231, High-Risk Series: Urgent Actions Are Needed to Address Cybersecurity Challenges Facing the Nation (2024), <https://www.gao.gov/products/gao-24-107231>.

¹¹⁹ 5 U.S.C. § 552a(e)(5).

¹²⁰ Sonal Goyal, *An Introduction to Entity Resolution – Needs and Challenges*, Towards Data Science (Sept. 15, 2021), <https://towardsdatascience.com/an-introduction-to-entity-resolution-needs-and-challenges-97fba052dde5/>.

¹²¹ Colorado Office of the State Auditor, Medicaid Correspondence: Performance Audit (Sept 2023), https://content.leg.colorado.gov/sites/default/files/documents/audits/2261p_medicaid_correspondence.pdf

inconsistently reported updated information in some instances and the original information in others.¹²²

- **Matching Across State SNAP Databases:** The Department of Health and Human Services (HHS) facilitates a data-matching program across state SNAP programs to help identify individuals claiming benefits in multiple states. The program, however, has been plagued by operational challenges. In 2017, the Government Accountability Office (GAO) surveyed the directors of all 51 state SNAP programs. The directors reported that data often was not sufficiently detailed or recent enough to permit effective matching or was collected for purposes not suited to SNAP’s eligibility requirements.¹²³ A new matching system is currently being launched but is not expected to be implemented until the fall of 2027.¹²⁴
- **Errors in State-Level Anti-Fraud Efforts:** States have long engaged in other data matching and consolidation efforts to address fraud and waste. Those efforts have likewise been hampered by errors. For example, California’s unemployment insurance system froze or delayed support for millions of individuals, often due to faulty data matching: people were wrongly disenrolled due to typos in databases, inconsistent hyphenation, nicknames, the use of initials, incorrect dates, and even names that were too long to fit into the databases.¹²⁵ Similarly, Tennessee wrongly terminated Medicaid support for thousands of families,¹²⁶ often because conversion to a new eligibility system erroneously placed recipients in an administrative category that required further review and delayed benefits.¹²⁷

Recent efforts by the Administration underscore the potential risks; for example, after accessing data at SSA, the Department of Governmental Efficiency purportedly discovered 120-year-olds collecting benefits—a conclusion that arose from a lack of familiarity with the older codebase used for SSA’s databases and how it calculates dates for fields with missing data.

¹²² Federal Student Aid, *Update on Tax Data Received from the FA-DDX and Manually Entered Information*, FSA Partner Connect (Apr. 1, 2024), <https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2024-04-01/update-tax-data-received-fa-ddx-and-manually-entered-information>; Maria Carrasco, *FSA Releases Details on Three Additional Issues With FAFSA Applicant Records*, NASFAA (Apr. 2, 2024), <https://www.nasfaa.org/news-item/33264/FSA-Releases-Details-on-Three-Additional-Issues-With-FAFSA-Applicant-Records>.

¹²³ U.S. Gov’t Accountability Off., GAO-17-111, *Supplemental Nutrition Assistance Program: More Information on Promising Practices Could Enhance States’ Use of Data Matching for Eligibility* (Oct. 2016), <https://www.gao.gov/assets/gao-17-111.pdf>.

¹²⁴ Food and Nutrition Service, *Snap National Accuracy Clearinghouse (NAC)*, USDA (Dec. 16, 2025), <https://www.fns.usda.gov/snap/nac>

¹²⁵ Lauren Hepler, *Internal documents reveal the story behind California’s unemployment crash*, CalMatters (Nov. 7, 2023), <https://calmatters.org/economy/2023/11/california-unemployment-covid/>.

¹²⁶ Brendan Pierson, *Tennessee wrongly kicked thousands off Medicaid, judge rules*, Reuters (Aug. 27, 2024), <https://www.reuters.com/legal/government/tennessee-wrongly-kicked-thousands-off-medicaid-judge-rules-2024-08-27/>.

¹²⁷ Memorandum Opinion, *A.M.C. v. Smith*, No. 3:20-cv-00240 (M.D. Tenn. Aug. 26, 2024), Dkt. No. 412, <https://fingfx.thomsonreuters.com/gfx/legaldocs/zgponxzlmdv/TennCare%20opinion%208-26.pdf>.



Efforts are now underway to quickly re-write the entirety of SSA’s code base,¹²⁸ and efforts to conduct identity proofs have already caused two system outages.¹²⁹

Relying on AI to consolidate federal data, as federal agencies are already doing, increases the risk of inaccurate, unsafe, or unfair results because these systems are untested and not vetted, as discussed *infra*.

2. Automated Decision Tools / Artificial Intelligence:

Again, DHS does not provide concrete detail about its plan for “adaptive policy and interpretive tools” to give sufficient notice. However, this language indicates that DHS likely plans to use Artificial Intelligence (AI) or Automated Decision Tools (ADTs) to “guide future public charge inadmissibility determinations.” This plan is alarming. As noted above, even seemingly straightforward data matching, such as matching FAFSA applications to tax records, have been hampered by inaccuracies and other difficulties. More sophisticated AI systems are affected by underlying human biases and policy decisions. This is true even of algorithmic systems that are derived from statistical modeling and may fall short of popular depictions of “artificial intelligence.”¹³⁰

AI and ADTs carry several well-documented risks of perpetuating or enabling bias and discrimination. These tools are often built and deployed in ecosystems and institutions marked by entrenched discrimination—from the criminal legal system, to the family regulation system, to systems of housing, employment, and financial services. Built and evaluated by humans, these tools are often developed using data that reflects systemic discrimination and abusive data collection practices; attempt to predict outcomes that reflect systemic biases; and can create feedback loops that serve to further systemic discrimination. These compounding issues can rear their heads throughout a system’s design, development, implementation, and use, enabling algorithmic error, algorithmic discrimination, and other harmful effects.¹³¹

We have already seen that AI and algorithmic systems have outsized impacts on individuals’ rights and safety in the immigration system. For example, since 2012, Immigration

¹²⁸ Makena Kelly, *DOGE Plans to Rebuild SSA Code Base in Months, Risking Benefits and System Collapse*, Wired (Mar. 28, 2025), at <https://www.wired.com/story/doge-rebuild-social-security-administration-cobol-benefits/>.

¹²⁹ Natalie Alms, *Musk and DOGE make the case for their efficiency, tech work*, Nextgov/FCW (Ma. 28, 2025), at <https://www.nextgov.com/digital-government/2025/03/musk-and-doge-make-case-their-efficiency-tech-work/404146/>.

¹³⁰ See James Vincent, *Top AI Researchers and CEOs Warn Against ‘Risk of Extinction’ in 22-Word Statement*, The Verge (May 30, 2023), <https://www.theverge.com/2023/5/30/23742005/ai-risk-warning-22-word-statement-google-deepmind-openai>.

¹³¹ See generally ACLU Letter to the Nat’l Inst. of Standards & Tech. re: Call for Comments AI Risk Management Framework: Second Draft (Sept. 29, 2022), <https://www.aclu.org/letter/aclu-comment-nists-second-draft-ai-risk-management-framework>; ACLU Letter to the Nat’l Inst. of Standards & Tech. re: A Proposal for Identifying and Managing Bias within Artificial Intelligence (Spec. Pub. 1270) (Sept. 10, 2021), <https://www.aclu.org/documents/aclu-comment-nists-proposal-managing-bias-ai>.

and Customs Enforcement has used an algorithmic “risk classification assessment” to help determine whether individuals should be held in detention during the pendency of removal proceedings. The algorithmic assessment, however, was tilted in favor of detention, and “over time, the [assessment] became a means of imposing detention in nearly all cases, instead of driving ICE to use alternatives to detention as originally intended.”¹³² As a district court found, ICE used the algorithmic tool to adopt a No-Release Policy, which resulted in ICE changing from “releasing (on bond or recognizance) upwards of 30% of alien arrestees to releasing around 2%.”¹³³

Likewise, an ACLU and Human Rights Data Analysis Group audit of an algorithmic risk-scoring system used to inform child welfare decision-making in Allegheny County, Pennsylvania highlighted several ways in which the algorithm’s design and deployment could enable algorithmic bias.¹³⁴ The risk-scoring system could potentially disproportionately flag Black families and families with disabled people for investigation. The audit highlighted the system’s use of existing government databases, including county child welfare, juvenile probation, and behavioral health records. Problematically, those databases reflect the lives of those who have more contact with government agencies and systems shaped by historical and ongoing discrimination—not necessarily those who pose greater “risk” to their children. Additionally, the outcome the tool predicts is the risk of child removal by the County, based on its historical practices. Because government databases, including those regarding child removal statistics, reflect systems shaped by historical and ongoing discrimination, using them to identify the

¹³² Robert Koulish and Kate Evan, *Punishing with Impunity: The Legacy of Risk Classification in Immigration Detention*, 36 Geo. Immigr. L.J. 1, 36 (2021), <https://www.law.georgetown.edu/immigration-law-journal/in-print/volume-36-number-1-fall-2021/punishing-with-impunity-the-legacy-of-risk-classification-in-immigration-detention-2>; accord Robert Koulish, *Immigration Detention in the Risk Classification Assessment Era*, 16 Conn. Pub. Int. L.J. 3, 29 (2016), <https://cpilj.law.uconn.edu/wp-content/uploads/sites/2515/2018/10/16.1-Immigration-Detention-in-the-Risk-Classification-Assessment-Era-by-Robert-Koulish.pdf> (“[W]here ICE had broad discretion to detain or to release subjects, RCA almost always (94.6 percent of the time) considered individuals to be high or medium flight risks and usually (62.1 percent of the time) considered them to be high or medium public safety risks.”); Adi Robertson, *ICE Rigged Its Algorithms to keep Immigrants in Jail, Claims Lawsuit*, The Verge (Mar. 3, 2020), <https://www.theverge.com/2020/3/3/21163013/ice-new-york-risk-assessment-algorithm-rigged-lawsuit-nyclu-jose-velesaca>.

¹³³ *Velesaca v. Decker*, 1:20-cv-01803-AKH (S.D.N.Y. May 4, 2020) (Op. & Order Granting Pls’ Motion for a Preliminary Injunction), ECF NO. 78 at 24-26.

¹³⁴ Marissa Gerchick et al., *How Policy Hidden in an Algorithm is Threatening Families in This Pennsylvania County*, ACLU (Mar. 14, 2023), <https://www.aclu.org/news/womens-rights/how-policy-hidden-in-an-algorithm-is-threatening-families-in-this-pennsylvania-county>; Marissa Gerchick et al., *The Devil is in the Details: Interrogating Values Embedded in the Allegheny Family Screening Tool*, ACLU (2023), <https://www.aclu.org/the-devil-is-in-the-details-interrogating-values-embedded-in-the-allegheny-family-screening-tool>. Allegheny County and its Department of Human Services receive federal funds. *DHS Funding*, Allegheny County, <https://www.alleghenycounty.us/Human-Services/About/Funding-Sources.aspx> (last visited Nov. 22, 2023); TAGGS, *County of Allegheny*, Department of Health & Human Services, https://taggs.hhs.gov/Detail/RecipDetail?arg_EntityId=swAAHUn5jiXXGX5RfqF%2Fmg%3D%3D (last visited Nov. 22, 2023).

characteristics of households more likely to have a child removed means selecting from a pool of factors that over-represents some groups of people and underrepresents others.

AI systems—including those systems that rely on or are derived from statistical modeling—often function as “black boxes” to those impacted by their decisions, who have no meaningful insight into how an AI system’s outputs were generated, including what information was used to make predictions and whether any of that information contained errors or reflected biases. Sometimes, critical information about an AI system’s design, use, or evaluation is available to some parties (for instance, the entity that developed or deployed the system) but intentionally not revealed to others (e.g., those affected by the system’s outputs), and in these cases, the AI system functions as a black box to those affected.

- For example, a litigator with the ACLU’s Idaho affiliate recently testified before a U.S. Senate Committee about Idaho’s algorithmic system used to determine individuals’ Medicaid benefits,¹³⁵ which reduced or denied benefits—sometimes by more than 30 percent—without explanation.¹³⁶ The algorithmic system was implemented without notice, and the State of Idaho and its private vendor attempted to hide its functioning behind trade secrets claims.¹³⁷ The ACLU of Idaho eventually prevailed in court and learned that Idaho’s system was “a set of formulas in a fairly basic Microsoft Excel spreadsheet,” which computed each person’s benefits in “hidden cells,” leaving state officials unable to explain how or why it reached its benefits determinations.¹³⁸ Despite its outsized impact on individuals’ rights, Idaho’s algorithmic system lacked critical safeguards, based on underlying models that “Department staff had just brainstormed,” but “never validated, standardized, or audited the instrument.”¹³⁹
- Similarly, the PATTERN risk assessment developed by the U.S. Department of Justice is used to inform programming and release decisions for individuals incarcerated in federal facilities. PATTERN scores can be calculated by adding up whole numbers based on roughly a dozen pieces of information about a person, and these scores may be calculated using paper-based forms or processes.¹⁴⁰ While a tool like PATTERN may appear to be simple, the tool was developed using statistical modeling techniques, including “machine learning boosted regression procedures,”¹⁴¹ and it is used in ways that, like seemingly

¹³⁵ Testimony of Ritchie Eppink, Hearing AI in Government Before the S. Comm. On Homeland Security & Government Affairs (May 16, 2023), <https://www.hsgac.senate.gov/hearings/artificial-intelligence-in-government>.

¹³⁶ *Id.* at 2.

¹³⁷ *Id.* at 3.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ See Federal Bureau of Prisons, PATTERN Risk Assessment, <https://www.bop.gov/inmates/fsa/pattern.jsp> (last visited November 27, 2023).

¹⁴¹ National Institute of Justice, 2021 Review and Revalidation of the First Step Act Risk Assessment Tool at 16 (2021), <https://nij.ojp.gov/library/publications/2021-review-and-revalidation-first-step-act-risk-assessment-tool>.

more complex AI systems, raise serious concerns about transparency, accuracy, and fairness.¹⁴²

In other instances, the developers of AI systems may choose to use underlying technologies that function as black boxes even to those with full access to a system’s design and deployment details. While these types of AI systems—including many generative AI systems—are often marketed as more sophisticated or advanced, their black box nature to all parties poses an incredibly high risk that errors, biases, and other issues will not be appropriately detected and addressed.

The real risks that use of AI and ADTs presents demand that any attempt to use them to “guide future public charge inadmissibility determinations” requires testing, transparency, and due process. That is the minimum required of any use of AI or ADTs, but all the more true given this use meets the Administration’s definition of “high-impact” AI, as it appears such tools would involve “[p]reparation or adjudication of risk assessments related to foreign nationals seeking temporary or permanent access to the U.S. or its territories including related to immigration, asylum, detention, or travel approval status” and the “[a]bility to apply for, or adjudication of, requests for critical federal services, processes, and benefits”¹⁴³ Therefore, DHS “must implement the . . . minimum risk management practices” enumerated in OMB Memo M-25-21 including the following:

- Publicly document use of the system, including through an AI use case inventory, a System of Records Notice under the Privacy Act, and a Privacy Impact Assessment under the E-Government Act¹⁴⁴
- Conduct pre-deployment testing
- Complete AI impact assessments
- Conduct ongoing monitoring for performance and potential adverse impacts
- Ensure adequate human training and assessment
- Provide additional human oversight, intervention, and accountability
- Offer consistent remedies or appeals

¹⁴² See Marissa Gerchick & Brandon Buskey, Formal Statement of the American Civil Liberties Union For a Stakeholder Engagement Session on *First Step Act Implementation*, ACLU (September 27, 2022), https://www.aclu.org/wp-content/uploads/document/ACLU_PATTERN_Public_Comment.pdf; Coalition Letter on the Use of PATTERN Risk Assessment in Prioritizing Release in Response to the COVID-19 Pandemic, ACLU (April 3, 2020), <https://www.aclu.org/documents/coalition-letter-use-pattern-risk-assessment-prioritizing-releaseresponse-covid-19-pandemic>; Comment Letter to Department of Justice on PATTERN First Step Act, ACLU (Sept. 3, 2019), <https://civilrights.org/resource/comment-letter-to-department-of-justice-on-pattern-first-step-act/>.

¹⁴³ Russel T. Vought, OMB, M-25-21, Accelerating Federal Use of AI through Innovation, Governance, and Public Trust at 6(k), (m) (Apr. 3, 2025), <https://www.whitehouse.gov/wp-content/uploads/2025/02/M-25-21-Accelerating-Federal-Use-of-AI-through-Innovation-Governance-and-Public-Trust.pdf>.

¹⁴⁴ 44 U.S.C. § 3501 notes, (requiring Privacy Impact Assessments (PIA) prior to developing or deploying information technology that collects, maintains, or distributes information in an “identifiable form” or initiating an information collection from 10 or more members of the public.).

- Consult and incorporate feedback from end users and the public

DHS should abandon these planned data consolidation and ADT efforts. However, if DHS decides to move forward with the use of AI and ADTs, DHS must undertake the foregoing “minimum risk management practices,” which are necessary both to comply with the recent OMB Memo M-25-21 and the mandates of federal law.¹⁴⁵

III. THE NPRM’S PENALIZATION OF PARTICIPATION IN FEDERALLY FUNDED BENEFITS AND SERVICES WILL HARM WOMEN, CHILDREN, AND INDIVIDUALS WITH DISABILITIES.

The NPRM will have devastating impacts on immigrant families nationwide. By permitting officers to consider participation in *any* non-cash assistance programs or federally funded service, the NPRM penalizes individuals who participate in benefits like Medicaid, CHIP, SNAP, WIC, rental assistance, and even programs like Head Start to support and stabilize their families. The Proposed Rule thus targets the people for whom these services are most important: immigrant families, women, children, and people with disabilities.

As an initial matter, if finalized, the Proposed Rule will cause enormous chilling effects in a wide range of public benefits and services programs. The nexus of immigration law and public benefits law is incredibly complex. Confusion about which immigrant statuses qualify for which benefits is a frequent source of error at state welfare agencies.¹⁴⁶ Noncitizens themselves are often unaware of whether they qualify for various benefits, and whether enrolling in public benefits could have negative consequences for future immigration applications.¹⁴⁷ Failure to provide definitive guidance on which public benefits can be considered in public charge determinations will sow confusion among noncitizens and has been associated with a marked decrease in public benefits enrollment.¹⁴⁸ This effect is observed in noncitizens who are directly

¹⁴⁵ The Advancing American AI Act mandates that each agency “prepare and maintain an inventory of the artificial intelligence use cases of the agency.” Advancing American AI Act, Pub. L. No. 117-347, div. G, tit. LXXII, subtit. B, § 7225, 136 Stat. 2395, 3672 (2022). AI in Government Act of 2020 required OMB to provide guidance on identifying “best practices for identifying, assessing, and mitigating any discriminatory impact or bias on the basis of any classification protected under Federal nondiscrimination laws, or any unintended consequence of the use of artificial intelligence.” AI in Government Act of 2020, Pub. L. No. 117-263, div. U, tit. I, sec. 104(a)(3), 134 Stat. 1182, 2287 (2020).

¹⁴⁶ Tanya Broder et al., *Overview of Immigrant Eligibility for Federal Programs*, National Immigration Law Center, 7 (2015), [<https://perma.cc/4R7J-Y74Q>]. (“[M]any ... eligibility workers have turned away eligible immigrants mistakenly.”); *id.* at 8 (describing how benefit agencies sometimes misinterpret verification requirements relating to immigration or citizenship status).

¹⁴⁷ Tanya Broder et al., *Overview of Immigrant Eligibility for Federal Programs*, National Immigration Law Center, 7 (2015), [<https://perma.cc/4R7J-Y74Q>].

¹⁴⁸ See Neeraj Kaushal & Robert Kaestner, *Welfare Reform and Health Insurance of Immigrants*, 40 Health Services Res. 697, 710-715 (2005), [<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1361164/>] [<https://perma.cc/V6P4-EM44>]; Michael E. Fix & Jeffrey S. Passel, *Trends in Noncitizens' and Citizens' Use of Public Benefits Following Welfare Reform*, Urb. Inst. (Mar. 1, 1999), [<https://www.urban.org/research/publication/trends-noncitizens-and->

impacted by changes in law as well as by those who are not directly impacted.¹⁴⁹ Uncertainty about possible consequences of enrollment in public benefits drives the chilling effect.¹⁵⁰

The chilling effect across all programs will uniquely impact the financial security and health of children. Given the existing restrictions on immigrants' eligibility for public benefits, much of the effect will fall on U.S. citizen children in immigrant families. One in four children in the U.S. —19 million children—have at least one immigrant (non U.S.-born) parent.¹⁵¹ The majority of these children are U.S. citizens, either in mixed-immigration status households (with noncitizen parents) or with naturalized citizen parents. Only about three percent of children in the U.S. are themselves noncitizens.¹⁵²

The chilling effect of this Proposed Rule is predictable, based on both historical evidence and what reasonable people would do given the lack of certainty and hostile indications provided by the current proposal. Following the 2019 Rule, immigrant families began forgoing critical services and benefits for which they were legally entitled to, out of fear of immigration consequences.¹⁵³ The chilling effect of the new Proposed Rule is likely to be exacerbated in the current climate due to heightened fears within immigrant communities stemming from increased enforcement threats. Empirical research shows that direct and indirect exposure to immigration enforcement is strongly associated with elevated public charge-related concerns and reduced willingness to access public benefits.¹⁵⁴ The Proposed Rule will deter eligible families from

[citizens-use-public-benefits-following-welfare-reform \[https://perma.cc/VP4P-EPJ3\]](https://perma.cc/VP4P-EPJ3); Namratha R. Kandula et al., *The Unintended Impact of Welfare Reform on the Medicaid Enrollment of Eligible Immigrants*, 39 Health Serv. Res. 1509 (Oct. 2004), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1361081/> [<https://perma.cc/KD3Z-ATLM>]; Rachel Benson Gold, *Immigrants and Medicaid After Welfare Reform*, Guttmacher Inst. (May 1, 2003), <https://www.guttmacher.org/gpr/2003/05/immigrants-and-medicaid-after-welfare-reform> [<https://perma.cc/H7N5-LZCM>]; 83 Fed. Reg. 51114.

¹⁴⁹ See, e.g., Samantha Artiga et al., *Estimated Impacts of the Proposed Public Charge Rule on Immigrants and Medicaid*, Kaiser Fam. Found., 3 (2018), <http://files.kff.org/attachment/Issue-Brief-Estimated-Impacts-of-the-Proposed-Public-Charge-Rule-on-Immigrants-and-Medicaid> [<https://perma.cc/2YLJ-375F>].

¹⁵⁰ *Id.*

¹⁵¹ *Children in U.S. Immigrant Families*, Migration Policy Inst., <https://www.migrationpolicy.org/programs/data-hub/charts/children-immigrant-families> (last visited Dec. 18, 2025).

¹⁵² *Id.*

¹⁵³ See, e.g., Jennifer Laird et al., *Forgoing Food Assistance Out Of Fear: Changes To “Public Charge” Rule May Put 500,000 More U.S. Citizen Children At Risk Of Moving Into Poverty*, Center on Poverty & Social Policy at Columbia University (Apr. 5, 2018), <https://povertycenter.columbia.edu/sites/povertycenter.columbia.edu/files/content/Publications/SNAP-and-Public-Charge-CPSP-2018.pdf>; Hannah Matthews et al., *Immigration Policy’s Harmful Impacts on Early Care and Education*, Center for Law and Social Policy (Mar. 2018), https://www.clasp.org/sites/default/files/publications/2018/03/2018_harmfulimpactsece.pdf.

¹⁵⁴ See, Lei Chen et al., *Immigrants’ Enforcement Experiences and Concern About Accessing Public Benefits or Services*, 25 J. Immigrant & Minority Health 1077, 1081-82 (2023).

accessing important services, undermining public health, family stability, and the very goals these programs are designed to serve.

A. Chilling in Medicaid and CHIP Participation

Medicaid and the Children’s Health Insurance Program (CHIP) are vital public health programs that ensure access to medical care for immigrant families. Medicaid is particularly important to women and people with disabilities because it provides comprehensive health coverage for those who might otherwise be unable to afford it, including preventive care, hospital visits, and long-term services. CHIP fills the gap for children in families who earn too much to qualify for Medicaid but cannot afford private insurance.

Access to health insurance is critical to individual health, financial stability, and workforce participation. Research plainly supports that access to health insurance, like Medicaid and CHIP, improves health outcomes and reduces mortality.¹⁵⁵ Medicaid expansion has also strengthened financial stability for families by reducing unpaid medical bills, collection balances, and out-of-pocket expenses.¹⁵⁶ Similarly, studies show that CHIP reduces unmet medical needs, increases preventive care utilization, and decreases emergency department visits.¹⁵⁷ By contrast, people without insurance often put off seeking medical attention or do not fill prescriptions until their health conditions have worsened, requiring more costly intervention and emergency care.¹⁵⁸ KFF (formerly Kaiser Family Foundation) has further found that access to health insurance supports an individual’s ability to obtain and maintain employment, improves job performance, and reduces absenteeism.¹⁵⁹

¹⁵⁵ See, e.g., Benjamin D. Sommers, Atul A. Gawande & Katherine Baicker, *Health Insurance Coverage and Health — What the Recent Evidence Tells Us*, 377 *New Eng. J. Med.* 586, 586–93 (2017),

<https://www.nejm.org/doi/full/10.1056/NEJMsb1706645> (summarizing extensive empirical research showing that gaining health insurance leads to improved access to care, better self-reported health, and reduced mortality).

¹⁵⁶ See, e.g., Luoia Hu et al., *The Effect of the Patient Protection and Affordable Care Act Medicaid Expansions on Financial Well-Being*, 59 *J. Pub. Econ.* 1, 1–12 (2018).

¹⁵⁷ Kimberly Mukerjee, Sural Shah & Olanrewaju Falusi, *State Policies and Access to Care for Immigrant Children—Implications for Pediatric Health Outcomes*, 8 *JAMA Network Open* e2545833 (2025), <https://jamanetwork.com/journals/jamanetworkopen/article-abstract/2842113>.

¹⁵⁸ See, e.g., Inst. of Med., *America’s Uninsured Crisis: Consequences for Health and Health Care* 87–110 (2009) (documenting that uninsured individuals are more likely to postpone care and less likely to adhere to prescribed treatments, resulting in preventable hospitalizations and emergency care utilization); Benjamin D. Sommers et al., *Changes in Utilization and Health Among Low-Income Adults After Medicaid Expansion or Expanded Private Insurance*, 176 *JAMA Internal Med.* 1501, 1501–09 (2016), <https://jamanetwork.com/journals/jamainternalmedicine/fullarticle/2542420>.

¹⁵⁹ See Madeline Guth, Rachel Garfield, & Robin Rudowitz, KFF, *The Effects of Medicaid Expansion Under the ACA: Updated Findings from a Literature Review* 6–8 (Mar. 2020), <https://www.kff.org/medicaid/report/the-effects-of-medicaid-expansion-under-the-aca-updated-findings-from-a-literature-review/> (summarizing studies finding improved labor market attachment and reduced absenteeism after gaining coverage).

Impact on women and children. Permitting inclusion of Medicaid as part of the public charge determination further threatens the health of immigrant women and their children. Women who have health coverage are more likely to receive preventive care, such as breast cancer and cervical cancer screenings,¹⁶⁰ as well as prenatal care. Fears of accessing Medicaid during pregnancy can have severe negative consequences, including high maternal stress and poor nutrition, which can lead to adverse birth outcomes. A cohort study published in the *American Journal of Perinatology* examining nearly 29 million deliveries found inadequate prenatal care significantly increased the odds of preterm birth, intrauterine growth restriction, stillbirth, and neonatal death.¹⁶¹ Expanding Medicaid eligibility during pregnancy to previously uninsured immigrant populations significantly increases prenatal care utilization and the frequency of prenatal visits, which in turn improves birth outcomes, including longer gestational length and higher birthweight.¹⁶² When women forgo medical care, including preventive reproductive health care, easily treatable illnesses or medical conditions can escalate, leading to worsening of existing conditions, lengthening of illness, and death.¹⁶³

Indeed, recognizing the importance of health care for noncitizen pregnant women and children, most states - including states with high numbers of immigrants such as California, New York, and Texas - have opted to make Medicaid available to pregnant people and/or children prior to the usual five-year waiting period and before they become “qualified” under federal law.¹⁶⁴ These state options are consistent with longstanding congressional intent.

Many studies confirm the significant short and long-term benefits for children who have health coverage. In the short-term, children in immigrant families with health insurance coverage are more likely to have regular health care visits and are less likely to have unmet care

¹⁶⁰ Nicole M. Marlow et al., *The Relationship Between Insurance Coverage and Cancer Care: A Literature Synthesis* (RTI Press May 2009), <https://www.ncbi.nlm.nih.gov/books/NBK542737/>.

¹⁶¹ Sarah Partridge et al., *Inadequate Prenatal Care Utilization and Risks of Infant Mortality and Poor Birth Outcome: A Retrospective Analysis of 28,729,765 U.S. Deliveries over 8 Years*, 29 *Am. J. Perinatol.* 787 (2012).

¹⁶² See, e.g., Laura R. Wherry et al., *Childhood Medicaid Coverage and Later-Life Health Care Utilization*, 100 *Rev. Econ. Stat.* 287, 287-302 (2018) (discussing effects of public insurance eligibility expansions on maternal care and infant health).

¹⁶³ See, e.g., Inst. of Med. (U.S.), *Care Without Coverage: Too Little, Too Late* 3–5, 87–89 (2002) (finding that uninsured individuals frequently delay or forgo needed medical care, resulting in more advanced disease at diagnosis, poorer health outcomes, and increased risk of death); Agency for Healthcare Rsch. & Quality, HHS, *2023 National Healthcare Quality and Disparities Report* (2023) (documenting that lack of timely access to care leads to disease progression, avoidable complications, and premature death).

¹⁶⁴ See 8 U.S.C. § 1613(b)(1) (permitting states to waive the five-year waiting period for Medicaid and CHIP coverage for lawfully residing pregnant women and children); *Medicaid/CHIP Coverage of Lawfully-Residing Immigrant Children and Pregnant Women*, KFF (Jan. 2025), <https://www.kff.org/affordable-care-act/state-indicator/medicaid-chip-coverage-of-lawfully-residing-immigrant-children-and-pregnant-women/> (showing that a majority of states have elected the federal option to provide Medicaid or CHIP to lawfully residing immigrant children, pregnant women, or both prior to the five-year bar, including high-immigrant states such as California, New York, and Texas).

needs.¹⁶⁵ Longer term benefits of health insurance for children include better health, educational, and employment outcomes in adulthood.¹⁶⁶ A summary of two decades of economic research concludes that children’s access to public health insurance improves health outcomes and generates substantial fiscal returns, with government savings outweighing program costs by roughly four to one.¹⁶⁷

The Proposed Rule will also have significant impacts on home care workers who support people with disabilities and seniors. As documented by New America, this workforce is made up predominantly of low-income women of color, with a significant number being immigrant women and Medicaid recipients themselves.¹⁶⁸ Though providing critical daily support to people with disabilities and seniors, these workers face low wages, few benefits, and limited job security—conditions that leave them highly vulnerable.¹⁶⁹ The Proposed Rule threatens to worsen these structural inequities by undermining the already fragile ecosystem of health and safety workers and would reduce the availability of reliable, quality care. In a field where demand is growing rapidly¹⁷⁰ due to demographic shifts, further destabilizing this workforce could lead to widespread care shortages.

Impact on people with disabilities. In our nation’s complex system of disability and health care, being disabled is inseparable from using Medicaid. In fact, Medicaid is often the only program available to and appropriate for people with disabilities, including people with disabilities who are employed. Individuals with significant disabilities typically must retain Medicaid coverage because no other public or private program covers the attendant care and medical equipment they need.¹⁷¹ In addition to providing primary and preventive care, Medicaid covers wheelchairs, lifts, supportive housing services, employment services, and home- and community-based services, such as personal and attendant care services that help people with

¹⁶⁵ See, e.g., Katherine E. Douglas et al., *Health Care Access Outcomes for Immigrant Children and State Insurance Policy*, 8 *JAMA Network Open* e2545826, at e2545826 (2025).

¹⁶⁶ See, e.g., Sarah Miller & Laura R. Wherry, *The Long-Term Effects of Early Life Medicaid Coverage*, 54 *J. Hum. Res.* 785, 785–824 (2019) (finding that childhood Medicaid eligibility is associated with improved adult health outcomes and reduced mortality).

¹⁶⁷ See David W. Brown, Amanda E. Kowalski & Ithai Z. Lurie, *Medicaid as an Investment in Children: What Is the Long-Term Impact on Tax Receipts?*, Nat’l Bureau of Econ. Rsch., Working Paper 20835 (2015).

¹⁶⁸ Abbie Lieberman et al., *Valuing Home and Child Care Workers*, New America (June 28, 2021), <https://www.newamerica.org/new-practice-lab/reports/valuing-home-child-care-workers/>.

¹⁶⁹ Claire Connacher, *Direct Care Worker Pay and Benefits Are Low Despite High Demand for Services*, Center for American Progress (Dec. 8, 2023), <https://www.americanprogress.org/article/direct-care-worker-pay-and-benefits-are-low-despite-high-demand-for-services>.

¹⁷⁰ *Home Health and Personal Care Aides*, U.S. Bureau of Labor Statistics: Occupational Outlook Handbook, <https://www.bls.gov/ooh/healthcare/home-health-aides-and-personal-care-aides.htm> (last visited Dec. 19, 2025).

¹⁷¹ Kirsten J. Colello, Cong. Rsch. Serv., R43328, *Medicaid Coverage of Long-Term Services and Supports* (2022), <https://www.congress.gov/crs-product/R43328>.



disabilities live, attend school, and work in the community.¹⁷² These services are typically not covered by private insurance.¹⁷³

The Proposed Rule would upend the balance between public charge and disability inclusion set out in the 1999 Field Guidance and would revive invidious disability discrimination in immigration determinations. Instead of disregarding Medicaid and other cost-effective non-cash benefits and programs, the Proposed Rule would allow exclusion of qualified individuals with disabilities who need Medicaid and other public benefits to live, work, attend school, and participate in the community. Permitting consideration of Medicaid in the public charge analysis will cause broad decreases in enrollment for individuals with disabilities. Effectively, the Department proposes to permit elimination the ability of people with Down syndrome, autism, cerebral palsy, and countless other disabilities, and their families, to pursue U.S. residency.

The connection between Medicaid and independence for people with disabilities has been repeatedly demonstrated. Across the country, more than 400,000 individuals with disabilities participated in Medicaid buy-in programs from 2009-2019.¹⁷⁴ These programs allow disabled individuals to retain Medicaid coverage while participating in the labor force. Numerous studies have found that Medicaid buy-in participants earn more money, work more hours, contribute more in taxes, and rely less on SNAP benefits than people with disabilities who are not enrolled.¹⁷⁵ The Proposed Rule fails to acknowledge that participation in Medicaid is a positive, not a negative, factor. And it threatens to turn longstanding disability policy on its head by ignoring that disabled individuals, with supports, can care for themselves, attend school, and work.

Further, the Proposed Rule would needlessly harm children with disabilities. Low- and middle-income working families who are raising children with significant disabilities often rely on Medicaid or CHIP so their children can grow up healthy and fully included in their communities. More than seven million children with disabilities or other conditions needing medical attention live in households with at least one noncitizen adult. Due to the direct impacts and the chilling effect of the rule, many eligible children likely would forgo Medicaid and CHIP—and health care services altogether—if their parents fear they will be subject to a public charge determination. Without coverage, families with disabled children are unable to afford

¹⁷² See *Medicaid Works for People with Disabilities*, Center on Budget and Policy Priorities (Aug. 29, 2017), <https://www.cbpp.org/research/health/medicaid-works-for-people-with-disabilities>.

¹⁷³ See Bernadette Fernandez, Vanessa C. Forsberg & Ryan J. Rosso, Cong. Rsch. Serv., R47507, *Private Health Insurance: A Primer* (2023), <https://www.congress.gov/crs-product/R47507>.

¹⁷⁴ Improving Opportunities for Working People With Disabilities Bipartisan Policy Ctr., (Jan. 2021); Ticket to Work, Medicaid.gov (last visited Dec. 19, 2025), <https://www.medicaid.gov/medicaid/long-term-services-supports/employment-initiatives/ticket-work>.

¹⁷⁵ B. Gavin, M. McCoy-Roth & V. Gidugu, *Review of Studies Regarding the Medicaid Buy-In Program*, Boston Univ. Sargent Coll., Ctr. for Psychiatric Rehabilitation (2011), <https://www.bu.edu/drrk/research-syntheses/psychiatric-disabilities/medicaid-buy-in/>.

timely care, and children are likely to go without care or experience delays in getting needed care. Delayed or forgone care contributes to worsening and more costly health conditions. The Proposed Rule would further undermine public health, particularly for disabled individuals who have weakened immune systems, including people with leukemia, HIV/AIDS, or another immune system disorder, as well as those receiving chemotherapy or living with organ transplants. Because these individuals rely on consistent access to preventive care, medications, and routine monitoring, any disruption in care carries serious and sometimes life-threatening consequences. As a result of the direct impacts of the Proposed Rule, combined with the chilling effects, lawfully residing immigrants are likely to forgo vaccinations, prescription medications, and other forms of primary and preventive care out of fear of immigration consequences. Reduced vaccination and treatment rates increase the risk of preventable illness, disease transmission, and medical complications, placing strain on health systems and endangering the broader community.¹⁷⁶ These outcomes are foreseeable and avoidable, and they will harm disabled individuals of all immigration statuses, not just those directly subject to the NPRM.

The Department's proposed changes to the public charge assessment are contrary to decades of bipartisan congressional lawmaking regarding disability inclusion. If finalized, the proposal would result in the exclusion of countless individuals with disabilities who have a right under the ADA's integration mandate to supports that help them live, work, and contribute in their communities. See *Olmstead v. L.C.*, 527 U.S. 581 (1999).

Impact on Healthcare System Overall. Reduced access to health insurance also makes the entire health system more costly and less efficient. When individuals lose coverage, they are significantly more likely to delay or forgo preventive care and routine treatment, leading to lower overall utilization of primary and outpatient services but higher use of emergency departments and hospitals for advanced, acute, and preventable conditions.¹⁷⁷ As a result, health care providers incur substantial uncompensated care costs for services that cannot be reimbursed, particularly for high-cost hospitalizations and emergency care.¹⁷⁸ Research consistently shows that increases in the uninsured rate are associated with higher uncompensated care expenditures, cost shifting to privately insured patients, and reduced resources for patient care, workforce

¹⁷⁶ See Ctrs. for Disease Control & Prevention, *Ten Great Public Health Achievements—United States, 1900–1999*, 48 *Morbidity & Mortality Wkly. Rep.* 241, 243–44 (1999) (explaining that vaccination reduces morbidity, mortality, and disease transmission and that declines in immunization lead to outbreaks of preventable disease); World Health Org., *Immunization Coverage*, <https://www.who.int/news-room/fact-sheets/detail/immunization-coverage> (last visited Dec. 16, 2025); Saad B. Omer et al., *Vaccine Refusal, Mandatory Immunization, and the Risks of Vaccine-Preventable Diseases*, 360 *N. Eng. J. Med.* 1981, 1981–88 (2009) (finding that reduced vaccination rates are associated with increased disease transmission and preventable complications).

¹⁷⁷ Inst. of Med., *America's Uninsured Crisis: Consequences for Health and Health Care* 67–89 (2009).

¹⁷⁸ Jack Hadley et al., *Covering the Uninsured in 2008: Current Costs, Sources of Payment, and Incremental Costs*, 27 *Health Aff.* 399, 401–05 (2008).

investment, and community health initiatives—ultimately driving up system-wide costs while worsening health outcomes.¹⁷⁹

B. Chilling in SNAP and WIC Participation

SNAP (Supplemental Nutrition Assistance Program) and WIC (Women, Infants, and Children) are two cornerstone federal nutrition assistance programs that significantly improve health, economic stability, and food security. SNAP provides essential food purchasing power to low-income individuals and families, reducing hunger and lifting households out of poverty. WIC serves pregnant people, new mothers, and young children, offering not only healthy food but also nutrition education, breastfeeding support, and healthcare referrals. Together, these programs have been shown to improve birth outcomes, reduce childhood malnutrition, and promote healthy development during critical life stages.

SNAP improves children’s immediate health and economic stability. A large cross-sectional study found that participation in SNAP reduced food insecurity among children by approximately one-third.¹⁸⁰ Additional research shows that children in immigrant families who participate in SNAP are more likely to be in good or excellent health, be food secure, and live in stable housing., SNAP participation also increases families’ ability to afford medical care and prescription medications.¹⁸¹

Early access to nutrition programs leads to lasting benefits. An additional year of eligibility for SNAP during early childhood, including for children with immigrant parents, has been associated with significant improvements in health outcomes later in childhood and adolescence.¹⁸² A national study using data from 17.5 million Americans found that access to SNAP during the first five years of life produced statistically significant gains in educational attainment, adult earnings, home ownership, neighborhood quality, and life expectancy, with an estimated net benefit-cost ratio of 62:1.¹⁸³ Similarly, participation in WIC during the prenatal period and early childhood has been linked to improved cognitive development and educational

¹⁷⁹ Teresa A. Coughlin, Haley Samuel-Jakubos, & Rachel Garfield, *Sources of Payment for Uncompensated Care for the Uninsured*, KFF (Apr. 6, 2021), <https://www.kff.org/affordable-care-act/sources-of-payment-for-uncompensated-care-for-the-uninsured/>.

¹⁸⁰ See Hilary W. Hoynes, Diane Whitmore Schanzenbach & Douglas Almond, *Long-Run Impacts of Childhood Access to the Safety Net*, 106 Am. Econ. Rev. 903, 918–21 (2016).

¹⁸¹ See, e.g., Tanya Broder & Jonathan Blazer, *Overview of Immigrant Eligibility for Federal Programs*, Nat’l Immigr. L. Ctr. 8–10 (2011)

¹⁸² See, e.g., Hilary W. Hoynes, Diane Whitmore Schanzenbach & Douglas Almond, *Long-Run Impacts of Childhood Access to the Safety Net*, 106 Am. Econ. Rev. 903, 918–24 (2016) (finding that greater SNAP access in early childhood is linked to improved health in later childhood and adolescence, including lower rates of obesity and poor health).

¹⁸³ See Martha J. Bailey et al., *Is the Social Safety Net a Long-Term Investment? Large-Scale Evidence from the Food Stamps Program*, 91 Rev. Econ. Stud. 1291, 1291–1330 (2024) (using administrative data covering 17.5 million individuals and documenting substantial long-run gains associated with early-life access to food stamps).

outcomes.¹⁸⁴ By meeting both short- and long-term nutritional needs, SNAP and WIC create a stronger foundation for individual and community well-being.

C. Chilling in Rental Assistance Participation

Housing assistance helps low-income families afford safe and stable housing. Programs such as the Housing Choice Voucher Program (Section 8) reduce the risk of homelessness by capping rent payments at an affordable percentage of a household's income, allowing families to better manage expenses. This stability helps households avoid frequent moves, overcrowded living conditions, and unsafe housing, which are common challenges for families facing high housing costs. By lowering rent burdens, housing assistance also frees up limited income for necessities such as food, healthcare, and transportation, helping families maintain stability and plan for the future.

When immigrant families have safe, steady housing, they are better able to maintain employment and establish roots in their communities without constant disruption.¹⁸⁵ Stable housing also expands access to healthier neighborhoods and important health services that support long-term well-being, which can positively impact children later in life and are linked with improvement in long-term earnings. Children whose families receive housing assistance score higher on measures of overall well-being and demonstrate stronger mental health outcomes than comparable children on housing waitlists.¹⁸⁶

Investing in housing stability benefits both families and the public. Federal rental assistance promotes long-term self-sufficiency while reducing reliance on emergency shelters, healthcare systems, and social services, making it both a compassionate and fiscally responsible policy.

D. Chilling in Head Start Participation

The Head Start program plays a critical role in improving school readiness, socioemotional development, and long-term life outcomes for children from low-income families. Research consistently shows that Head Start participation is associated with stronger early academic performance. A comprehensive meta-analysis found that children in Head Start

¹⁸⁴ See Maya Rossin-Slater, *WIC in Your Neighborhood: New Evidence on the Impacts of Geographic Access to Clinics*, J. Pub. Econ. 5151-69 (2013) (finding prenatal and early childhood WIC participation improves birth outcomes and later cognitive development).

¹⁸⁵ Will Fischer, *Research Shows Housing Vouchers Reduce Hardship and Provide Platform for Long-Term Gains Among Children*, Center on Budget and Pol'y Priorities (Oct. 7, 2015), <https://www.cbpp.org/research/housing/research-shows-housing-vouchers-reduce-hardship-and-provide-platform-for-long-term>.

¹⁸⁶ See, e.g., A. Fenelon et al., *The Impact of Housing Assistance on the Mental Health of Children in the United States*, 8 *Health & Place* 16, at Results (2018), <https://pmc.ncbi.nlm.nih.gov/articles/PMC6657339/>.

scored significantly higher on cognitive and achievement tests than their non-participating peers, with particularly strong gains in literacy and math.¹⁸⁷

Head Start also supports children’s behavioral and emotional development, which is essential for success in school and beyond. Studies show that children who participated in Head Start experienced lower levels of hyperactivity and demonstrated stronger emotional regulation compared to peers who did not participate.¹⁸⁸ These socioemotional gains help children engage more effectively in classroom settings, build positive relationships, and sustain learning over time.

The benefits of Head Start extend well beyond early childhood, shaping educational, economic, and health outcomes into adulthood. Research shows that individuals who participated in Head Start were more likely to graduate from high school and more likely to attend college.¹⁸⁹ These educational achievements contribute to stronger employment prospects and higher lifetime earnings.

In addition to educational and economic benefits, Head Start participation is associated with improved long-term well-being. One major study found that individuals who attended Head Start were less likely to be involved with the criminal legal system and experienced better health outcomes in adulthood.¹⁹⁰ Together, these findings demonstrate that Head Start is a long-term investment that supports not only individual success, but also broader public benefits through reduced social and economic costs.

In addition to causing significant disruptions to children’s education, including U.S. citizen children, confusion over whether Head Start may be considered by DHS officers will force parents and other caregivers to miss work and lose their jobs. This outcome directly undermines the self-sufficiency that the Proposed Rule claims to promote. When families are forced to choose between maintaining employment and protecting their immigration status, household stability and economic participation suffer.

These harms will have broader economic consequences. Immigrant women make up 7.9 percent of the U.S. labor force and represent a substantially higher share of the workforce in many essential occupations and industries like “healthcare, domestic work, and agricultural packaging and processing.”¹⁹¹ For example, immigrant women account for 36 percent of home

¹⁸⁷ Janet Currie & Duncan Thomas, *Does Head Start Make a Difference?*, 85 Am. Econ. Rev. 341, 342–345 (1995).

¹⁸⁸ Eliana Garces, Duncan Thomas & Janet Currie, *Longer-Term Effects of Head Start*, 92 Am. Econ. Rev. 999, 1000–1005 (2002).

¹⁸⁹ David Deming, *Early Childhood Intervention and Life-Cycle Skill Development: Evidence from Head Start*, 1 Am. Econ. J. Applied Econ. 111, 126 (2009).

¹⁹⁰ Chloe Gibbs, Jens Ludwig & Douglas L. Miller, *Does Head Start Do Any Lasting Good?* (Nat’l Bureau of Econ. Rsch., Working Paper No. 17452, 2011), pp.8-9, <https://www.nber.org/papers/w17452.pdf>.

¹⁹¹ Ashir Coillberg, *Immigrant Women’s Contributions to Our Economy*, Nat’l Women’s Law Center (May 2025), <https://nwlc.org/wp-content/uploads/2025/05/Immigrant-Workers-FS-5.9.25v1.pdf>.



health aides.¹⁹² 22 percent of early educators are immigrant women,¹⁹³ and their exit from an already understaffed profession will make it more difficult for all mothers of children under age six to work.¹⁹⁴ Immigrant women also play a vital role in the agriculture sector, making up over 50 percent of graders and sorters of agricultural products.¹⁹⁵

IV. CONCLUSION

The Proposed Rule would harm immigrant families and disproportionately exclude and penalize individuals with disabilities, women, and children, without justification. The Department should immediately withdraw its current proposal and dedicate its efforts to advancing policies that strengthen—rather than undermine—the ability of immigrants to support themselves and their families in the future.

Sincerely,

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¹⁹² *Id.*

¹⁹³ Karla Coleman-Castillo et al., *Immigrants Care: How Immigrant Early Educators Hold Up the Care Economy*, Nat’l Women’s L. Ctr. & UnidosUS (June 2025), <https://nwlc.org/wp-content/uploads/2025/06/Immigrant-Care-How-Immigrant-Early-Educators-Hold-Up-the-Care-Economy.pdf>.

¹⁹⁴ Chris M. Herbst & Erdal Tekin, *The Impact of Increased ICE Activity on the Child Care Workforce and Mothers’ Employment*, New America (Dec. 10, 2025), <https://www.newamerica.org/better-life-lab/reports/impact-of-increased-ice-activity/>.

¹⁹⁵ *Id.*