

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

MAYOR AND CITY COUNCIL OF
BALTIMORE,
100 N. Holliday Street, Suite 101
Baltimore, MD 21202,

Plaintiff,

vs.

Case No. 1:18-cv-3636-ELH

DONALD J. TRUMP, in his official capacity
as President of the United States of
America,
1600 Pennsylvania Avenue NW
Washington, DC 20500,

U.S. DEPARTMENT OF STATE,
2201 C Street NW
Washington, DC 20520, and

MICHAEL R. POMPEO, in his official
capacity as U.S. Secretary of State,
2201 C Street NW
Washington, DC 20520,

Defendants.

**SUPPLEMENTAL COMPLAINT
FOR DECLARATORY AND INJUNCTIVE RELIEF**

TABLE OF CONTENTS

JURISDICTION AND VENUE	2
PARTIES	3
ADDITIONAL FACTS.....	3
VIII. The Application of the Foreign Affairs Manual Change.	3
IX. The Department of Homeland Security Public Charge Rule.	7
X. The State Department’s Interim Final Rule.....	12
XI. The Interim Final Rule Harms Baltimore.....	17
A. Supplemental Nutrition Assistance Program	21
B. Medicaid	25
C. Other Harms.....	28
ADDITIONAL CLAIMS FOR RELIEF AS TO THE INTERIM FINAL RULE	30
Count Five (Violation of the Administrative Procedure Act, the Immigration and Nationality Act, and the Illegal Immigration Reform and Immigrant Responsibility Act)	30
Count Six (Violation of the Administrative Procedure Act – Arbitrary and Capricious) ..	31
Count Seven (Violation of the Administrative Procedure Act – Notice and Comment) ..	33
Count Eight (Violation of the Fifth Amendment – Equal Protection)	35
REQUEST FOR RELIEF AS TO THE INTERIM FINAL RULE	36

Pursuant to Federal Rule of Civil Procedure 15(d), Plaintiff Mayor and City Council of Baltimore, Maryland hereby supplements its Complaint, *see* ECF No. 1, against Defendants Donald J. Trump, in his official capacity as President of the United States of America, the U.S. Department of State, and Michael R. Pompeo, in his official capacity as U.S. Secretary of State, and alleges as follows:¹³¹

198. In its original Complaint, Baltimore explained how Defendants' January 2018 revisions to the provision of the Foreign Affairs Manual governing the application of the "public charge" ground of inadmissibility (the "FAM change") violate the Administrative Procedure Act and the U.S. Constitution and inflict grievous harm on the City. In ruling on Defendants' Motion to Dismiss, the Court concluded that Baltimore had sufficiently alleged multiple plausible legal challenges to the FAM change as well as its standing to bring those challenges. Sept. 23, 2019 Mem. Op., ECF No. 59.

199. Just over two and a half weeks after the Court issued its opinion, however, Defendants issued a *new* interim final rule purporting again to revise the State Department's understanding of public charge. *Visas: Ineligibility Based on Public Charge Grounds*, 84 Fed. Reg. 54,996 (Oct. 11, 2019) (to be codified at 22 C.F.R. pt. 40) (the "Interim Final Rule" or "IFR"). According to Defendants, the IFR is "intended to align the Department's standards with those of the Department of Homeland Security," and "supersedes all prior inconsistent guidance on the public charge visa ineligibility." *Id.* at 54,996.

200. The IFR is nothing more than old wine in a new bottle. The IFR again drastically and inexplicably expands the meaning of public charge, replacing the longstanding inquiry into

¹³¹ For ease of reference, the paragraphs, footnotes, and section headings in the Supplemental Complaint are numbered consecutively to the original Complaint. All allegations in the original Complaint are incorporated by reference here.

whether an applicant is likely to become primarily dependent on government assistance with a focus on whether the applicant is likely to use even small amounts of non-cash, supplemental benefits.

201. This time, however, the IFR adopts a framework similar to the Department of Homeland Security's final rule, which has been challenged in five separate courts. Notably, even though this Court rejected Defendants' reliance on two exceptions to notice-and-comment rulemaking, Defendants again issued the IFR without advance notice and comment. And even though the Court concluded that Baltimore had plausibly alleged that President Trump's racial animus motivated the FAM change, Defendants again rushed out a rule with the manifest intention of targeting immigrants of color. Nor does the IFR reflect any increased regard for the interests of cities like Baltimore and its residents, immigrant or not.

202. The IFR and the FAM change should meet the same fate. For the reasons explained in Baltimore's original Complaint, and elaborated upon here, the IFR and the FAM change continue to harm the City and its residents, and violate basic principles of administrative process, immigration law, and equal protection. The Court should hold them unlawful, set them aside, and require Defendants to return to processing visa applications under the standards in effect prior to January 3, 2018.

JURISDICTION AND VENUE

203. The Court continues to have subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because this action arises under federal law.

204. Venue remains proper in this district pursuant to 28 U.S.C. § 1391(e) because Defendants are agencies and officers of the United States and Plaintiff Mayor and City Council of Baltimore, Maryland is located in Maryland.

PARTIES

205. The parties to this action are the same as identified in Plaintiff's Complaint.

ADDITIONAL FACTS

VIII. The Application of the Foreign Affairs Manual Change.

206. Since the State Department implemented the FAM change, the number of visa denials on public charge grounds has skyrocketed.

207. In Fiscal Year (FY) 2016, the last full fiscal year before President Trump took office, the Department denied around 1,033 immigrant visas on public charge grounds.¹³² In FY 2017, this number rose to around 3,209.¹³³ Then, in FY 2018, this number jumped to around 12,973.¹³⁴ That is a more than 300 percent increase between FY 2017 and 2018,¹³⁵ and a twelve-fold increase between FY 2016 and 2018.

208. This trend has worsened since. Preliminary data from FY 2019 show that the Department denied 12,179 visas on public charge grounds between October 1, 2018 and July 29,

¹³² *Data on Visas Refused Under Public Charge Grounds*, U.S. Dep't of State (Aug. 2, 2019), <https://www.politico.com/f/?id=0000016d-97fe-da83-a5fd-9ffea2270000> [hereinafter *Data on Visas*]; see also *Ann. Rpt. Table XX*, U.S. Dep't of State (2016), <https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2016AnnualReport/FY16AnnualReport-TableXX.pdf> (showing 1,076 public charge denials in FY 2016).

¹³³ *Data on Visas*; see also *Ann. Rpt. Table XX*, U.S. Dep't of State (2017), <https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2017AnnualReport/FY17AnnualReport-TableXX.pdf> (showing 3,237 public charge denials in FY 2017).

¹³⁴ *Data on Visas*; *Ann. Rpt. Table XX*, U.S. Dep't of State (2018) <https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2018AnnualReport/FY18AnnualReport%20-%20TableXX.pdf> (showing 13,450 public charge denials in FY 2018).

¹³⁵ Stuart Anderson, *New Data Reveal State Department Visa Denials Surged in 2018*, *Forbes* (Mar. 1, 2019), <https://www.forbes.com/sites/stuartanderson/2019/03/01/state-department-visa-denials-surged-in-2018/#1f8ba4e066d4> [hereinafter Anderson, *New Data*].

2019.¹³⁶ At this rate, “the department [was] on pace to surpass last year’s total,”¹³⁷ which, again, already represented a more than 300 percent increase in visa denials between FY 2017 and 2018.¹³⁸

209. In addition to dramatically increasing the overall number of public charge visa denials between FY 2016 and 2019, the FAM change has disparately impacted applicants from certain majority-minority countries. Whereas public charge denials for applicants from, for example, Mexico, Bangladesh, Pakistan, and the Dominican Republic have surged, there has been no statistically significant increase in visa denials for applicants from predominantly white countries.

210. Between FY 2016 and the first ten months in FY 2019, for example, Mexico saw the steepest rise in public charge rejections.¹³⁹ In FY 2016, the Department denied only seven immigrant visas for Mexican applicants.¹⁴⁰ In contrast, during the portion of FY 2019 between October 2018 and July 2019, the Department denied 5,343 immigrant visa applications from Mexican nationals on public charge grounds.¹⁴¹

211. Department data show similar consequences for applicants from other majority-minority countries.¹⁴² In FY 2016, no Bangladeshi applicants were denied on public charge grounds. Then, in FY 2018, the Department refused 1,502 Bangladeshi immigrant visa applicants

¹³⁶ Ted Hesson, *Exclusive: Visa Denials to Poor Mexicans Skyrocket Under Trump’s State Department*, Politico (Aug. 6, 2019), <https://www.politico.com/story/2019/08/06/visa-denials-poor-mexicans-trump-1637094> [hereinafter Hesson, *Visa Denials Skyrocket*].

¹³⁷ *Id.*

¹³⁸ Anderson, *New Data*.

¹³⁹ Hesson, *Visa Denials Skyrocket*.

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Data on Visas*.

on public charge grounds. In the first ten months of FY 2019, the Department has already denied 1,262 Bangladeshi immigrant visa applicants on public charge grounds.

212. The Department turned away 1,246 Pakistani immigrant visa applicants on public charge grounds in FY 2018 compared to just two denials in FY 2016. From October 2018 to July 2019, the Department denied 563 Pakistani immigrant visa applications on public charge grounds.

213. The Department also rejected 168 Dominican immigrant visa applicants in FY 2018 on public charge grounds compared to a single comparable denial in FY 2016. In the first ten months of FY 2019, the Department has already denied 1,012 Dominican immigrant visa applicants on public charge grounds.

214. In sharp contrast, only three Canadian immigrant visa applicants were refused on public charge grounds in FY 2018, each of whom ultimately overcame the public charge determination. In the first ten months of FY 2019, the State Department has denied zero Canadian immigrant visa applicants based on public charge grounds.

215. Only one Belarusian visa application was denied on public charge grounds in FY 2018. In the first ten months of FY 2019, the State Department has denied zero Belarusian immigrant visa applicants based on public charge grounds.

216. Similarly, in FY 2018, two Georgian visa applications were denied on public charge grounds, and only one in the first ten months of FY 2019.

217. Likewise, only four Bulgarian visa applications were denied on public charge grounds in FY 2018, and only two such denials were issued in the first ten months of FY 2019.

218. Jeffrey Gorsky, former Chief of the Legal Advisory Opinion section of the Visa Office in the Department of State, has said that “the most logical explanation for the surge in public charge denials in FY 2018” is the FAM change.¹⁴³

219. Similarly, the National Foundation for American Policy concluded that “[t]he administration’s March 6, 2017, presidential memorandum on ‘heightened screening and vetting of applications for visas’ and the change in public charge standards in the Foreign Affairs Manual are most responsible for the decline in visa issuance.”¹⁴⁴

220. February 2019 press guidance from the State Department Bureau of Consular Affairs confirms these conclusions. It instructs that, if asked about the increase in visa refusals under public charge, Department officials should reply that “[g]uidance on public charge was clarified in January 2018 to better inform consular officers in their adjudication decisions.”¹⁴⁵ Internal emails also reflect the Department’s understanding that the 2018 increase “is based on the new policy and training which accompanied the January 2018 updates to 9 FAM 302.8 on assessing public charge.”¹⁴⁶

221. These records also reflect the Department’s application of the FAM change. Specifically, a webinar conducted after the change in late January 2018 informed consulates that “a properly filed, non-fraudulent Affidavit of Support is no longer sufficient on its own to

¹⁴³ Anderson, *New Data*; see also Defs.’ Mot. to Dismiss at 31, ECF No. 17-1 (“It is true that application of the new guidance, compared to the earlier guidance, could potentially lead to individuals being denied visas on ‘public charge’ grounds more frequently.”).

¹⁴⁴ *State Department Visa Refusals in FY 2018 for Immigrants and Nonimmigrants*, Nat’l Found. for Am. Pol’y (Mar. 2019), <https://nfap.com/wp-content/uploads/2019/03/State-Department-Visa-Refusals-In-FY-2018.NFAP-Policy-Brief.March-2019-1.pdf>.

¹⁴⁵ Exhibit A at 2 (Release of Visa Refusal Data).

¹⁴⁶ Exhibit B (Email from Morgan A. Parker).

overcome public charge concerns.”¹⁴⁷ That statement clarifies that the FAM change meaningfully changed the Department’s treatment of Affidavits of Support.

IX. The Department of Homeland Security’s Public Charge Rule.

222. On October 10, 2018, DHS published a Notice of Proposed Rulemaking proposing to revamp DHS’s interpretation and application of the public charge ground for visa inadmissibility (the “DHS Proposed Rule”). Compl. ¶ 83. It accepted comments on that proposal until December 10, 2018. *Id.*

223. DHS received more than 266,000 comments from “healthcare providers; research institutes and universities; law firms and individual attorneys; federal, state, local, and tribal elected officials; State and local government agencies; religious and community organizations; advocacy groups; unions; Federal Government officials; and trade and business organizations.” *Inadmissibility on Public Charge Grounds*, 84 Fed. Reg. 41,292, 41,304 (Aug. 14, 2019) (rule to be codified at 8 C.F.R. pts. 103, 212, 213, 214, 245, 248).

224. According to DHS, “the vast majority of commenters opposed the rule.” *Id.* Among other things, commenters vigorously opposed: (1) the expanded definition of “public charge”; (2) changes to the benefits that would be newly considered and the manner in which they would be considered; and (3) the introduction of weighted factors into the totality of the circumstances test, which were difficult to understand. *Id.* at 41,346-401.

225. Despite the significant concerns raised in these comments, on August 14, 2019, DHS published the final rule (the “DHS Final Rule”), which was largely unchanged from the DHS Proposed Rule. *Id.* at 41,292-508. In particular:

¹⁴⁷ Exhibit C (Webinar Description); *see also* Exhibit D (Webinar Screen).

- a. The DHS Final Rule continues to redefine public charge to mean “an alien who receives one or more public benefits for more than 12 months in the aggregate within any 36-month period,” rather than one who is likely to become “primarily dependent on the Government for subsistence,” as the term has been historically understood. *Id.* at 41,295.
- b. The DHS Final Rule dramatically expands the range of benefits considered in the public charge analysis “to include cash benefits for income maintenance, [Supplemental Nutrition Assistance Program, or “SNAP” benefits], most forms of Medicaid, Section 8 Housing Assistance under the Housing Choice Voucher (HCV) Program, Section 8 Project-Based Rental Assistance, and certain other forms of subsidized housing.” *Id.* at 41,295.
- c. The DHS Final Rule imposes a complex and confusing scheme of positive and negative “factors,” including certain “heavily weighted” factors, to be used in applying the totality of the circumstances test. *Id.* Chief among the “heavily weighted” negative factors is an applicant’s past or current receipt of public benefits. *Id.*

226. To the extent DHS deviated from the DHS Proposed Rule at all, the revisions reflected in the DHS Final Rule often made the rule even more draconian, increasing the impact of receiving even a small amount of public benefits for a short period of time:

- a. Where the DHS Proposed Rule set a value threshold for evaluating whether an applicant’s use of benefits fell within the “public charge” definition, the DHS Final Rule dispenses with the threshold altogether,

replacing it with a pure durational requirement that looks only to the *fact* of receiving benefits over some period of time rather than the *amount* of such benefits. *Id.* at 41,297.

- b. Unlike the DHS Proposed Rule, the DHS Final Rule authorizes immigration officials to consider, as part of the “totality of the circumstances,” the receipt of all past benefits regardless of the frequency at which they were received (*i.e.*, they need not meet the requirement of one or more for more than twelve months in any 36-month period to be considered). *Id.* In so doing, the DHS Final Rule makes receipt of *any amount of benefit at all* relevant to the public charge determination.
- c. In a further departure from the DHS Proposed Rule, the DHS Final Rule provides that when an individual receives two or more benefits simultaneously, DHS will count each benefit separately in calculating the duration of use. *Id.*

227. Taken together, these changes dramatically expand the circumstances under which applicants will be deemed inadmissible on public charge grounds.

228. The DHS Final Rule is yet another attempt by the Trump Administration to further its anti-immigration policies and target immigrants of color. As detailed in Plaintiff’s Complaint, President Trump has been actively involved in pressing for the public charge rules. *See* Compl. ¶¶ 69-75.

229. While the Trump Administration was finalizing the DHS Final Rule, a White House official told agency officials to “recognize ... that the decision of whether to propose

expanding the definition of public charge, broadly, has been made at a very high level and will not be changing.”¹⁴⁸

230. After promulgating the DHS Final Rule, President Trump told reporters that he was “tired of seeing people come into the country who immediately go on welfare.”¹⁴⁹

231. President Trump has relied on Stephen Miller, a senior White House advisor, to ensure that the public charge rules are finalized as quickly as possible. In one Oval Office meeting, “Trump told Miller he would be in charge of handling all immigration and border affairs, according to officials familiar with the meeting.”¹⁵⁰

232. Leaked emails obtained by the Southern Poverty Law Center show that Miller has “promoted white nationalist literature, pushed racist immigration stories and obsessed over the loss of Confederate symbols after Dylann Roof’s murderous rampage.”¹⁵¹

¹⁴⁸ Dara Lind & Yeganeh Torbati, *The Administration Rushed on a Sweeping Immigration Policy. We Found Substantive, Sloppy Mistakes.*, ProPublica (Aug. 20, 2019), <https://www.propublica.org/article/trump-administration-rushed-on-a-sweeping-immigration-policy-we-found-substantive-sloppy-mistakes>.

¹⁴⁹ Jennifer Jacobs (@JenniferJJacobs), Twitter (Aug. 13, 2019, 12:04 PM), <https://twitter.com/JenniferJJacobs/status/1161307619727990785?s=20>.

¹⁵⁰ Nick Miroff et al., *Trump Ditches His Nominee to Lead ICE, Saying He Wants Someone ‘Tougher’ for Top Immigration Enforcement Role*, Wash. Post (Apr. 5, 2019), https://www.washingtonpost.com/immigration/trump-ditches-his-nominee-to-lead-ice-says-he-wants-someone-tougher-for-top-immigration-enforcement-role/2019/04/05/c184cc6a-57bd-11e9-9136-f8e636f1f6df_story.html.

¹⁵¹ See Michael Edison Hayden, *Stephen Miller’s Affinity for White Nationalism Revealed in Leaked Emails*, S. Poverty L. Ctr. (Nov. 12, 2019), <https://www.splcenter.org/hatewatch/2019/11/12/stephen-millers-affinity-white-nationalism-revealed-leaked-emails>.

233. Miller has specifically focused on and “pushed hard”¹⁵² for expanding the definition of public charge, even directing DHS to “prioritize” it over “other efforts.”¹⁵³

234. Miller’s drive to finalize the DHS Final Rule and other anti-immigration policies despite opposition from officials who questioned their legality was reported to be one of the primary reasons why former DHS Secretary Kirstjen Nielsen was forced to resign, along with other DHS officials.¹⁵⁴

235. Miller also reportedly exerted pressure to force the resignation of U.S. Citizenship and Immigration Services Director L. Francis Cissna because of his perceived lack of urgency in finalizing the DHS Final Rule, which Miller predicted would be “transformative.”¹⁵⁵ Emails obtained through a Freedom of Information Act request show Miller berating Cissna in June 2018 over the perceived delay in publishing the proposed public charge rule, with Miller writing “I don’t care what you need to do to finish it on time.”¹⁵⁶

236. Documents obtained from the Department also show that officials at the White House were involved in preparing the FAM change as early as June 2017, including officials

¹⁵² Michael D. Shear & Emily Baumgaertner, *Trump Administration Aims to Sharply Restrict New Green Cards for Those on Public Aid*, N.Y. Times (Sept. 22, 2018), <https://www.nytimes.com/2018/09/22/us/politics/immigrants-green-card-public-aid.html>.

¹⁵³ Tal Kopan, *Sources: Stephen Miller Pushing Policy to Make It Harder for Immigrants who Received Benefits to Earn Citizenship*, CNN (Aug. 7, 2018), <https://www.cnn.com/2018/08/07/politics/stephen-miller-immigrants-penalize-benefits/index.html>.

¹⁵⁴ See Eileen Sullivan & Michael D. Shear, *Trump Sees an Obstacle to Getting His Way on Immigration: His Own Officials*, N.Y. Times (Apr. 14, 2019), <https://www.nytimes.com/2019/04/14/us/politics/trump-immigration-stephen-miller.html>.

¹⁵⁵ See *id.*

¹⁵⁶ Ted Hesson, *Emails Show Stephen Miller Pressed Hard to Limit Green Cards*, Politico (Aug. 2, 2019), <https://www.politico.com/story/2019/08/02/stephen-miller-green-card-immigration-1630406>.

close to Miller.¹⁵⁷ The Department also submitted the revisions to the Office of Information and Regulatory Affairs (“OIRA”) for their review.¹⁵⁸

237. In response to the DHS Final Rule, a number of states and the District of Columbia, municipalities, non-profit immigrants’ rights, public interest, and health advocacy organizations, and individuals filed a total of nine lawsuits in five different federal courts spanning four circuits. *See Casa de Md., Inc. v. Trump*, 2019 WL 5190689 (D. Md. 2019); *Cook Cty. v. McAleenan*, 2019 WL 5110267 (N.D. Ill. 2019); *Make the Road N.Y. v. Cuccinelli*, 2019 WL 5484638 (S.D.N.Y. 2019); *Washington v. U.S. Dep’t of Homeland Sec.*, 408 F. Supp. 3d 1191 (E.D. Wash. 2019); *San Francisco v. U.S. Citizenship and Immigr. Servs.*, 408 F. Supp. 3d 1057 (N.D. Cal. 2019).

238. Between October 11 and October 14, 2019, all five courts enjoined the DHS Final Rule before it was to take effect on October 15, 2019, three on a nationwide basis. *See id.* After the Fourth and Ninth Circuits stayed two of the nationwide injunctions, the U.S. Supreme Court stayed the nationwide preliminary injunction entered in the Southern District of New York pending disposition of the governments’ appeal before the Second Circuit. *See Dep’t of Homeland Sec. v. New York*, No. 19A785, 2020 WL 413786 (Jan. 27, 2020).

X. The State Department’s Interim Final Rule.

239. On October 11, 2019, the State Department promulgated the Interim Final Rule. *See* 84 Fed. Reg. 54,996.

¹⁵⁷ Exhibit E (Email with Andrew M. Veprek); Exhibit F (Email with White House personnel); Exhibit G (Email with White House notes); *see also* Abigail Tracy, “He Actually Prefers the Chaos”: Stephen Miller, Immigration Warlord, Emerges from the Shadows, *Vanity Fair* (Apr. 14, 2019), <https://www.vanityfair.com/news/2019/04/stephen-miller-dhs-purge-kirstjen-nielsen-immigration> (explaining in April 2019 that “Miller has been building networks of influence inside the Trump administration,” including “Andrew Veprek in the State Department”).

¹⁵⁸ Exhibit H (Email regarding OIRA submission).

240. The Department set October 15, 2019 as the effective date. *Id.* at 54,996.

241. The IFR amends the State Department's regulations to "prescrib[e] how consular officers will determine whether an alien is ineligible for a visa ... because he or she is likely at any time to become a public charge." *Id.*

242. The IFR is "intended to align the Department's standards with those of the Department of Homeland Security," and thereby avoid situations where consular officers and Department of Homeland Security personnel reach different conclusions regarding whether an individual is likely to become a public charge. *Id.*; *see also id.* at 55,000-01.

243. The IFR adopts the central features of the DHS Final Rule:

- a. The IFR radically redefines public charge to mean "an alien who receives one or more public benefits for more than 12 months in the aggregate within any 36-month period," rather than one who is likely to "become primarily dependent on the U.S. Government for subsistence," as the term has been historically understood. *Id.* at 54,998. In other words, the IFR makes it so that use of a single benefit for a relatively brief period of time is sufficient for an applicant to be deemed a public charge.
- b. The IFR treats benefits as cumulative, such that "receipt of two benefits in one month counts as two months' worth of benefits." *Id.* at 55,004-05.
- c. Compared to the pre-January 3, 2018 version of the FAM, the IFR, like the DHS Final Rule, expands the definition of public benefit to include supplemental, non-cash benefits like SNAP, Medicaid (with limited exceptions), and public housing and rental assistance programs under Sections 8 and 9 of the Housing Act of 1937. *Id.* at 54,999.

- d. The IFR imposes a complex and confusing scheme of positive and negative “factors,” including certain “heavily weighted” factors, to be used in applying the totality of the circumstances test. *Id.* at 55,012-13. Many of these factors have no bearing on an applicant’s likelihood of becoming a public charge. Chief among the “heavily weighted” negative factors is an applicant’s past or current receipt of any amount of public benefits, including receipt that falls below the 12-month threshold.

See generally 22 C.F.R. § 40.41.

244. Although the new test largely mimics the DHS Final Rule, the Department stated that the IFR also “reflects the Department’s independent interpretations and policies.” 84 Fed. Reg. at 55,000. The Department clarified that “some aspects of the rule may deviate from the DHS approach due to the differing circumstances of visa applicants ... as contrasted with applicants for USCIS-administered benefits,” stressing that its “standards are in some ways tailored specifically for unique aspects of visa adjudication.” *Id.* at 55,001.

245. Ultimately, the IFR is intended to “supersede[] all prior inconsistent guidance on the public charge visa ineligibility,” *id.* at 54,996, including the pre-1999 understanding of public charge, the 1999 NRPM, the 1999 Field Guidance, and the relevant provisions of the Foreign Affairs Manual prior to and following the January 3, 2018 changes. *See also id.* at 55,007.

246. The IFR also incorporates certain components of the FAM change that are inconsistent with the FAM as it stood prior to January 3, 2018. For example, the IFR expressly requires consular officers to independently “‘consider whether any third party’ listed in the affidavit of support will be ‘willing and able to financially support the alien while the alien is in

the United States,” *id.* at 54,996, and treats valid affidavits as merely a “positive factor,” rather than as determinative, *id.* at 54,998, 55,004.

247. The range of benefits that can trigger a public charge determination under the IFR is strikingly broad: by one estimate, in any one year, 30 percent of U.S.-born citizens receive one of the benefits encompassed by the IFR, compared to 5 percent who would meet the criteria enumerated in the 1999 Field Guidance.¹⁵⁹ For workers in particular, the figures are 16 percent and 1 percent, respectively.¹⁶⁰ A more recent report by the Center for Budget and Policy Priorities concluded that, “[i]f one considers benefit receipt of the U.S.-born citizens over the 1997-2017 period, some 43 to 52 percent received one of the benefits included in the proposed public charge rule,” and that more than 50 percent of the U.S.-born citizen population would receive such benefits over their lifetimes.¹⁶¹

248. Indeed, the Department estimated that 12,736,034 visa applicants would be affected by the IFR per year. *Id.* at 55,011.

249. However, the Department did not consider how its definition of public charge might deter individuals from accepting public benefits, as it did in the 1999 NPRM and Field Guidance, *see Inadmissibility and Deportability on Public Charge Grounds*, 64 Fed. Reg. 28,676, 28,676-77 (May 26, 1999); *Field Guidance on Deportability and Inadmissibility on Public Charge Grounds*, 64 Fed. Reg. 28,689, 28,692 (May 26, 1999), nor did it estimate how

¹⁵⁹ See *Comments – Department of Homeland Security Notice of Proposed Rulemaking: Inadmissibility on Public Charge Grounds*, Ctr. for Budget & Pol’y Priorities 7 (Dec. 7, 2018), <https://www.regulations.gov/document?D=USCIS-2010-0012-37272>.

¹⁶⁰ *Id.* at 8.

¹⁶¹ *Trump Administration’s Overbroad Public Charge Definition Could Deny Those Without Substantial Means a Chance to Come to or Stay in the U.S.*, Ctr. for Budget & Pol’y Priorities (May 30, 2019), <https://www.cbpp.org/research/poverty-and-inequality/trump-administrations-overbroad-public-charge-definition-could-deny>.

many individuals would forgo receiving public benefits as a result of the IFR, as DHS did with its final rule.¹⁶²

250. The Department did not provide the affected community with an opportunity to comment on the IFR before it was promulgated. The Department provided a 30-day post-promulgation comment period. 84 Fed. Reg. at 54,996.

251. The Department asserted that it had “good cause” to dispense with notice and comment prior to the promulgation of the IFR because it would be both “impracticable and contrary to the public interest” to do so. *Id.* at 55,011. Specifically, the Department claimed that “[i]f implementation of the rule is delayed pending completion of notice and comment, consular officers would apply public charge-related ineligibility standards differing from those applied by DHS.” *Id.*

252. Despite this purported interest in aligning the policies of the two departments, counsel for the State Department represented to counsel for Baltimore that the Department was unwilling to stay implementation of the IFR during the period when the DHS Final Rule was enjoined by multiple courts.

253. The IFR has already prompted at least one legal challenge, which asserts that the Rule violates the Immigration and Nationality Act, the Rehabilitation Act, the Administrative Procedure Act, and the Fifth Amendment. *See Compl., Make the Road N.Y. v. Pompeo*, No. 1:19-cv-11633 (S.D.N.Y. filed Dec. 19, 2019), ECF No. 1.

¹⁶² *Regulatory Impact Analysis, Inadmissibility on Public Charge Grounds*, DHS Dkt. No. USCIS-2010-0012, at 93-94 (Aug. 2019), <https://www.regulations.gov/document?D=USCIS-2010-0012-63741> [hereinafter *DHS Final Rule Regulatory Impact Analysis*].

254. Although the IFR became effective on October 15, 2019, the Department has represented that it “will not implement the rule until the use of a new form for information collection is approved by the Office of Management and Budget [“OMB”].”¹⁶³

255. On October 24, 2019, the Department published a notice that it would accept comments concerning that form for 60 days, or until December 23.¹⁶⁴

256. The Department has not yet submitted the revised form to OMB.

257. While the Department represented that its “standards will be implemented through guidance,” 84 Fed. Reg. at 55,001, it has not promulgated any accompanying revisions to the Foreign Affairs Manual.

258. The Department has not stated when it expects the information collection form to be ready, when it expects to promulgate the accompanying revisions to the FAM, or, ultimately, when it expects to begin implementing the IFR.

259. Instead, the Department appears content to allow the specter of the IFR (and the FAM change) to continue deterring immigrants and their families from using public benefits. By its terms, the IFR applies to all benefits received after October 15, 2019, *see id.* at 55,005, even though the Department did not actually begin implementing the IFR on that date.

XI. The Interim Final Rule Harms Baltimore.

260. For the reasons explained in Baltimore’s Complaint, Compl. ¶¶ 121-70, and addressed in the Court’s Memorandum Opinion (at 28-36), the Interim Final Rule, like the FAM change, harms Baltimore and its residents.

¹⁶³ *Information on Public Charge*, U.S. Dep’t of State (Oct. 24, 2019), <https://travel.state.gov/content/travel/en/traveladvisories/ea/Information-on-Public-Charge.html>.

¹⁶⁴ *Id.*; *see 60-Day Notice of Proposed Information Collection: Public Charge Questionnaire*, 84 Fed. Reg. 57,142 (Oct. 24, 2019).

261. Specifically, like the FAM change, the IFR has had a tangible chilling effect on the use of public benefits by Baltimore’s immigrant residents, their family members, and their sponsors. The IFR imposes immigration consequences for the use of public benefits, thereby deterring immigrants and their families from accepting those benefits. Immigrants and their families are therefore forced to choose between accepting necessary benefits and maintaining their ability to come to and remain together in the United States. *See* Compl. ¶¶ 121-32.

262. The IFR therefore continues to perpetuate and/or exacerbate the three categories of injuries identified in the Complaint: (1) it obstructs Baltimore’s efforts to provide benefits and social services to its immigrant residents, *see id.* ¶¶ 137-50; (2) it forces Baltimore to devote time and money to adapt its programs and reach out to immigrant communities, *see id.* ¶¶ 156-61; and (3) it imposes significant downstream costs on Baltimore’s budget and on the City as a whole, *see id.* ¶¶ 162-70.

263. As the Court has concluded, *see* ECF No. 59 at 47-50, the interests Baltimore seeks to protect in this lawsuit are, at the very least, “arguably within the zone of interests” protected by the INA. *Bank of Am. Corp. v. City of Miami, Fla.*, 137 S. Ct. 1296, 1303 (2017) (quoting *Assoc. of Data Processing Serv. Orgs., Inc. v. Camp*, 397 U.S. 150, 153 (1970)).

264. To be sure, the IFR encompasses a different range of benefits than the FAM change. But that difference does not mitigate its harmful impact. To the contrary, confusion over the application of the IFR and fear of its consequences deters immigrants and their families from accepting benefits even if use of those benefits would not actually be subject to the Rule. *Cf. Dep’t of Commerce v. New York*, 139 S. Ct. 2551, 2566 (2019) (finding that plaintiffs had standing to challenge citizenship question because they demonstrated that it would lead to non-

citizen residents not responding to the census, “even if [the residents] do so unlawfully and despite the requirement that the Government keep individual answers confidential”).

265. As DHS reiterated in its Regulatory Impact Analysis for the DHS Final Rule, “[r]esearch shows that when eligibility rules change for public benefits programs there is evidence of a ‘chilling effect’ that encourages immigrants to disenroll or forego enrollment in public benefits programs *for which they are eligible*.”¹⁶⁵ The studies upon which DHS relied, as well as others, confirm that changes in eligibility rules deter “many immigrants entitled to public benefits and services from using them due to confusion about eligibility criteria and fears that users would be unable to sponsor family members in the future.”¹⁶⁶ See Compl. ¶¶ 121-25.

266. Similarly, more recent reports have confirmed that immigrants and their families are avoiding public benefits even where use of those benefits would not yield any adverse immigration consequences. For example, as a result of the DHS Proposed Rule, the Urban Institute observed “chilling effects in families with various mixes of immigration and citizenship statuses,” which resulted in “14.7 percent of adults in families where all noncitizen members had green cards and 9.3 percent of those in families where all foreign-born members were naturalized

¹⁶⁵ DHS Final Rule Regulatory Impact Analysis, at 90 (emphasis added).

¹⁶⁶ Jeanne Batalova et al., *Chilling Effects: The Expected Public Charge Rule and Its Impact on Legal Immigrant Families’ Public Benefits Use*, Migration Pol’y Inst. 14 (June 2018), <https://www.migrationpolicy.org/research/chilling-effects-expected-public-charge-rule-impact-legal-immigrant-families>; see also Sharon Parrott et al., *Trump “Public Charge” Rule Would Prove Particularly Harsh for Pregnant Women and Children*, Ctr. on Budget & Pol’y Priorities 2 (May 1, 2018), <https://www.cbpp.org/sites/default/files/atoms/files/5-1-18pov2.pdf> (“In the late 1990s, widespread confusion and fear about how public charge rules could impact families’ ability to adjust their status among immigrants with children eligible for and in need of federal benefits such as SNAP and Medicaid resulted in many being deterred from applying for benefits.”).

citizens” avoiding taking public benefits.¹⁶⁷ And a study published in JAMA Pediatrics in July estimated that “more than 8 million children, most of whom are U.S. citizens presently participating in Medicaid, the Children’s Health Insurance Program or SNAP, are at risk of being unenrolled due to fear and confusion about the rule, even among immigrant families to which the rule does not technically apply.”¹⁶⁸

267. Regardless, deterring immigrants and their families from accepting the benefits specifically identified in the IFR is likely to cause significant harm to Baltimore and its residents, particularly children. In Baltimore, over 15,000 citizen children under the age of 18 have one or more parents who are foreign-born.¹⁶⁹ Children in immigrant families are more likely to face certain hardships and are less likely to secure help due in part to eligibility rules that create barriers for immigrant families.¹⁷⁰ If a non-citizen parent is afraid to receive public benefits, immigrant families may similarly decline to receive benefits to support their children.

268. The value of access to public benefits has been documented repeatedly. Children thrive when their parents can access needed physical and mental health care, when their families

¹⁶⁷ Hamutal Bernstein et al., *One in Seven Adults in Immigrant Families Reported Avoiding Public Benefit Programs in 2018*, Urban Inst. (May 2019), https://www.urban.org/sites/default/files/publication/100270/one_in_seven_adults_in_immigrant_families_reported_avoiding_public_benefit_programs_in_2018.pdf.

¹⁶⁸ Gavrielle Jacobovitz, *Trump’s Immigration Proposals Don’t Need to Happen to Cause Harm. That’s The Point.*, Huff. Post (Aug. 2, 2019), https://www.huffpost.com/entry/trump-immigration-chilling-effects-public-charge-census_n_5d42ef7ce4b0acb57fc890bc (quotation omitted).

¹⁶⁹ 2017 American Community Survey, U.S. Census Bureau, at tbl. C05009, https://data.census.gov/cedsci/table?text=C05009&y=2017&tid=ACSDT1Y2017.C05009&layer=place&hidePreview=false&cid=C05009_001E&vintage=2017&g=1600000US2404000.

¹⁷⁰ Tanya Broder et al., *Overview of Immigrant Eligibility for Federal Programs*, Nat’l Immigr. L. Ctr. (2015), <https://www.nilc.org/issues/economic-support/overview-immeligfedprograms/>; Kinsey Alden Dinan, *Federal Policies Restrict Immigrant Children’s Access to Key Public Benefits*, Nat’l Ctr. for Children in Poverty (2005), http://www.nccp.org/publications/pdf/text_638.pdf.

have enough to eat, and when they have a roof over their heads.¹⁷¹ Conversely, parents’ stress and health challenges impede effective caregiving and can undermine children’s development.¹⁷²

269. The IFR’s treatment of specific programs also further harms Baltimore and its residents in multiple ways.

A. Supplemental Nutrition Assistance Program

270. The IFR expressly includes “Federal, State or local cash benefit programs for income maintenance, including [SNAP].” 84 Fed. Reg. at 54,999.

271. Congress created the food stamp program (now known as SNAP) in 1964, in order to “safeguard the health and well-being of the Nation’s population and raise levels of nutrition among low-income households.”¹⁷³

272. The Trump Administration’s efforts to include SNAP in public charge determinations has deterred Baltimore’s immigrant residents and their families from accepting SNAP benefits. Specifically, SNAP enrollment has decreased from an average of 202,000 Baltimore City residents per month in FY 2015 to 165,608 in FY 2019.¹⁷⁴ Between July 2019 and November 2019,¹⁷⁵ which accounts for the first five months of FY 2020, the average number

¹⁷¹ *Health Coverage for Parents and Caregivers Helps Children*, Geo. U. Health Pol’y Ctr. (March 2017), <https://ccf.georgetown.edu/wp-content/uploads/2017/03/Covering-Parents-v2.pdf>.

¹⁷² *Id.*

¹⁷³ Food Stamp Act of 1964, Pub. L. No. 88-525, 78 Stat. 703 (1964) (codified at 7 U.S.C. § 2011); *accord* 7 C.F.R. § 271.1 (reiterating same purpose).

¹⁷⁴ *2015 All Program Monthly Statistical Report*, Md. Dep’t of Human Servs., at tbl. FSP2-2 (2015), <http://dhs.maryland.gov/documents/Data%20and%20Reports/FIA/Statistical%20Reports/2015-All-Program-Monthly-Statistical-Report.pdf>; *2019 All Program Monthly Statistical Report*, Md. Dep’t of Human Servs., at tbl. FSP2-16 (2019), <http://dhs.maryland.gov/documents/Data%20and%20Reports/FIA/Statistical%20Reports/2019-All-Prg-MoStat-Public-Web-w-Charts-FINAL-11.pdf>.

¹⁷⁵ November 2019 is the latest month available from the Maryland Department of Human Services’s public SNAP data.

of Baltimore City residents enrolled in SNAP further dropped to 159,806.¹⁷⁶ The statistics also show a significant decrease after the FAM change went into effect: the average number of Baltimore residents enrolled in SNAP dropped by more than 13,000 participants between January 2018, when the revisions went into effect, and November 2019.¹⁷⁷

273. SNAP benefits vastly improve health and self-sufficiency for families. Compared to children in immigrant families without SNAP, families with children who participate in the program have more resources to afford medical care and prescription medications.¹⁷⁸ An additional year of SNAP eligibility for young children with non-citizen parents is associated with significant health benefits in later childhood and adolescence.¹⁷⁹ Research demonstrates that safety net programs such as SNAP and Medicaid have short and long-term health benefits and are crucial levers to reducing the intergenerational transmission of poverty.¹⁸⁰

¹⁷⁶ 2020 All Program Monthly Statistical Report, Md. Dep't of Human Servs., at tbl. FSP2-16 (2020), <http://dhs.maryland.gov/documents/Data%20and%20Reports/FIA/Statistical%20Reports/2020-All-Prg-MoStat-Public-Web-w-Charts-FINAL-4.pdf>.

¹⁷⁷ 2018 All Program Monthly Statistical Report, Md. Dep't of Human Servs., at tbl. FSP2-2 (2018), <http://dhs.maryland.gov/documents/Data%20and%20Reports/FIA/Statistical%20Reports/2018-All-Prg-MoStat-Public-Web-w-Charts-FINAL-7.pdf>; 2020 All Program Monthly Statistical Report, Md. Dep't of Human Servs., at tbl. FSP2-16 (2020), <http://dhs.maryland.gov/documents/Data%20and%20Reports/FIA/Statistical%20Reports/2020-All-Prg-MoStat-Public-Web-w-Charts-FINAL-4.pdf>

¹⁷⁸ Report Card on Food Security and Immigration: Helping Our Youngest First-Generation Americans to Thrive, Children's Health Watch (2018), <http://childrenshealthwatch.org/wp-content/uploads/Report-Card-on-Food-Insecurity-and-Immigration-Helping-Our-Youngest-First-Generation-Americans-to-Thrive.pdf>.

¹⁷⁹ Chloe N. East, *The Effect of Food Stamps on Children's Health: Evidence from Immigrants' Changing Eligibility*, J. Hum. Res. (2018), <http://jhr.uwpress.org/content/early/2018/09/04/jhr.55.3.0916-8197R2.abstract>.

¹⁸⁰ Marianne Page, *Safety Net Programs Have Long-Term Benefits for Children in Poor Households*, Ctr. for Poverty Res. (Mar. 2017), [https://poverty.ucdavis.edu/sites/main/files/file-attachments/cpr-health and nutrition program brief-page 0.pdf](https://poverty.ucdavis.edu/sites/main/files/file-attachments/cpr-health%20and%20nutrition%20program%20brief-page%200.pdf)

274. Enrollment in SNAP is also used, in part, to determine whether high-poverty schools will receive federal and state educational funding. If enough families disenroll or refrain from participating in SNAP out of fear of adverse immigration consequences, Baltimore City Public Schools risks losing its ability to participate in the U.S. Department of Agriculture’s Community Eligibility Provision program. Through the Community Eligibility Provision program, school districts receive federal funding to provide free breakfasts and lunches to all students if at least 40 percent of students participate in SNAP and Temporary Assistance for Needy Families (“TANF”), among other eligibility criteria.¹⁸¹

275. Baltimore City Public Schools has relied on this funding in recent years to provide nutritious meals to all its students—thereby reducing food insecurity and improving students’ well-being and capacity for learning. As fewer students receive SNAP benefits, there will be an increase in unreimbursed costs to the school district under the program. If the rate decreases enough, Baltimore City Public Schools may become unable to afford to participate in the program or may ultimately become ineligible. Several schools in Baltimore that primarily serve non-citizen communities have already lost federal funding because SNAP participation rates decreased too much. When schools lose these sources of funding, Baltimore City Public Schools and the City must find ways to make up for the resulting financial shortfalls.

276. In addition, adults will be harmed because they will be deterred from enrolling in benefits to which they are entitled. In Baltimore, one in five individuals are food insecure, meaning they do not have regular access to nutritious food.¹⁸² SNAP is proven to reduce food

¹⁸¹ *Community Eligibility Provision: Guidance and Updated Q&As*, U.S. Dep’t of Agric. (2016), <https://fns-prod.azureedge.net/sites/default/files/cn/SP54-2016os.pdf>.

¹⁸² *Baltimore Food System Resilience Advisory Report*, Johns Hopkins Ctr. for a Livable Future 7 (2017), <https://clf.jhsph.edu/sites/default/files/2019-01/baltimore-food-system-resilience-advisory-report.pdf>.

insecurity in the most vulnerable populations.¹⁸³ SNAP helps low-income households afford healthier diets “and free[s] up resources that can be used on health-promoting activities and preventive health care.”¹⁸⁴ It can offset some of the stress associated with intermittent or unpredictable meals and having to balance food affordability with medicine, housing, or other necessary expenses.¹⁸⁵

277. Among adults, food insecurity is associated with hypertension, coronary heart disease, diabetes, kidney disease, and poorer physical and mental health.¹⁸⁶ On average, low-income adults on SNAP incur nearly 25% less in medical care costs—about \$1,400 per year—than low-income non-participants.¹⁸⁷ These savings are even greater for those with hypertension (nearly \$2,700 less) and coronary heart disease (over \$4,100).¹⁸⁸ SNAP is thus a preventive strategy both in terms of health outcomes as well as healthcare spending. Non-citizen residents who have disenrolled or have chosen to forgo SNAP benefits because of the IFR and FAM change will likely experience a decline in their health and well-being.

278. The drop in SNAP enrollment due to the IFR and FAM change also affects the local economy in Baltimore. Each SNAP participant spends approximately \$125 per month in the local food economy. The drop in nearly 5,000 SNAP participants equates to approximately \$625,000 in lost spending every month in Baltimore’s food economy.

¹⁸³ Steven Carlson & Brynne Keith-Jennings, *SNAP Is Linked with Improved Nutritional Outcomes and Lower Health Care Costs*, Ctr. on Budget & Pol’y Priorities 2 (2018), <https://www.cbpp.org/sites/default/files/atoms/files/1-17-18fa.pdf>.

¹⁸⁴ *Id.* at 11.

¹⁸⁵ *Id.* at 4.

¹⁸⁶ *Id.* at 16.

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

279. More than 80% of SNAP benefits are redeemed at supermarkets.¹⁸⁹

Supermarkets, which typically operate on small profit margins of 1-3 percent, suffer significant financial harm from a decrease in SNAP enrollment. The Baltimore City Food Environment maps and analyses reveal that of the 47 supermarkets currently in Baltimore, 24 are “preventing” food deserts, meaning that if one store were to close, the area would become a food desert due to surrounding conditions.¹⁹⁰ These are the stores that depend most on customers redeeming SNAP benefits as the primary form of payment, and drastic reductions in SNAP customers could lead to store closures and widespread decreases in food access. The decrease in overall purchasing power could also make it more difficult to establish new supermarkets and other sources for food access in these communities into the future.

280. Moreover, immigrants and their families who forgo SNAP or other public benefits due to the IFR and FAM change (thereby reducing their available resources to purchase food) are likely to look to local food banks for nutritional support. The Baltimore City Department of Housing and Community Development administers a Summer Food Service Program, available to all city minors regardless of immigration status.¹⁹¹ Increased demand for these resources will impose additional costs on the City.

B. Medicaid

281. The IFR also includes Medicaid in the categories of benefits relevant to a public charge determination. 84 Fed. Reg. at 54,999.

¹⁸⁹ *SNAP Retailers Database*, Ctr. on Budget & Pol’y Priorities, <https://www.cbpp.org/snap-retailers-database> (last visited Jan. 30, 2020).

¹⁹⁰ *Baltimore City’s Food Environment: 2018 Report*, Johns Hopkins Ctr. for a Livable Future 23 (2018), <https://clf.jhsph.edu/sites/default/files/2019-01/baltimore-city-food-environment-2018-report.pdf>.

¹⁹¹ *Summer Food Service*, Balt. City Dep’t of Hous. & Cmty. Dev., <https://dhcd.baltimorecity.gov/cs/summer-food-services>.

282. Congress created the federal Medicaid program in 1965 to assist states in furnishing medical assistance to individuals and families.¹⁹² Medicaid provides health coverage to millions of individuals, among them low-income adults, children, pregnant women, elderly adults, and people with disabilities.¹⁹³

283. Baltimore's immigrant residents and their families have likely disenrolled or refused to enroll in Medicaid due to the chilling effect caused by the FAM change and the IFR.

284. Medicaid coverage is essential for families: Children in immigrant families with health insurance coverage are more likely to have a usual source of care and receive regular health care visits, and are less likely to have unmet care needs.¹⁹⁴ Children with access to Medicaid have fewer absences from school, are more likely to graduate from high school and college, and are more likely to have higher paying jobs as adults.¹⁹⁵

285. Separate from the effect on Baltimore's residents, the IFR and FAM change will also significantly increase healthcare costs to the City. Baltimore's health-care services are funded by Medicaid reimbursements. Approximately 76% of the budget for EMS for the Baltimore City Fire Department is funded by Medicaid or Medicare. Because Baltimore residents have likely disenrolled or refused to enroll in Medicaid due to the chilling effect caused by the IFR and FAM change, the City will receive less in reimbursements from Medicaid,

¹⁹² Social Security Amendments of 1965, Pub. L. No. 89-97, 79 Stat. 286 (1965).

¹⁹³ *Medicaid*, Ctrs. for Medicare & Medicaid Servs., <https://www.medicaid.gov/medicaid/index.html>.

¹⁹⁴ Christine Percheski & Sharon Bzostek, *Public Health Insurance and Health Care Utilization for Children in Immigrant Families*, 21 *Maternal & Child Health J.* 2153 (2017), <https://www.ncbi.nlm.nih.gov/pubmed/28702865>.

¹⁹⁵ Karina Wagnerman et al., *Impact of Medicaid on Children: Latest Research Findings*, Geo. U. Health Pol'y Inst. (2017), <https://ccf.georgetown.edu/2017/03/13/medicaid-is-a-smart-investment-in-children/>.

reducing the funding available for its health services at the same time as the demand for free and reduced-cost services increases.

286. Lost federal Medicaid reimbursements will place additional financial strain on the limited funding available for uncompensated care for individuals who are eligible for federally financed health coverage. Baltimore maintains several health services that provide free or reduced-cost services for its uninsured and underinsured populations. These services likely will see increased demand because of the IFR and FAM change, thereby increasing the cost to the City of providing these services. Indeed, DHS admitted that its rule could lead to “increased use of emergency rooms and emergent care as a method of primary health care due to delayed treatment” and “increases in uncompensated care in which a treatment or service is not paid for by an insurer or patient.” 84 Fed. Reg. at 41,384.

287. Some individuals might worry that even receiving care at the City’s health clinics will adversely affect them in a public-charge determination—and therefore go without any health care at all. When city residents go without health care, Baltimore is sicker and less productive as a city. With fewer families seeking preventive care, contagious illnesses may go untreated and spread, endangering the greater public health of Baltimore. The Baltimore City Health Department is responsible for controlling outbreaks of infectious diseases in Baltimore, so an increase in outbreaks will impose greater costs on the City. For example, in response to recent disease outbreaks, the Baltimore City Health Department operated mass-vaccination clinics, quarantined ill patients, and identified and assessed those who encountered infected individuals. The City expended over 2,000 hours of staff time in response to a recent outbreak of measles.

C. Other Harms

288. Similar dynamics apply to the IFR’s treatment of housing programs. *See* 84 Fed. Reg. at 54,999. The IFR includes three types of federal housing assistance in its definition of “public benefit”: (i) public housing; (ii) Section 8 vouchers; and (iii) project-based Section 8. *Id.*

289. Federal aid, issued by the Department of Housing and Urban Development to the local public housing authority that owns and manages the public housing, is intended to cover the gap between tenant rents and operating costs.¹⁹⁶ Section 8 housing choice vouchers provide a rental subsidy to the participant household that can be used to rent a privately-owned housing unit.¹⁹⁷ Households receiving project-based Section 8 benefit from a subsidy that is attached to the residence where they reside.¹⁹⁸

290. Children whose families receive housing assistance are more likely to have a healthy weight and to rate higher on measures of well-being—especially when housing assistance is accompanied with food assistance.¹⁹⁹ But children who are unstably housed, hungry, or lack access to health care—in part because of the IFR and FAM change—will likely have more difficulty at school and may require more remedial services. More broadly, increased homelessness will strain Baltimore’s housing assistance, social services, and emergency response programs.

291. The IFR also threatens broader economic harm upon Baltimore. As DHS noted in its Regulatory Impact Assessment for the DHS Final Rule, echoing the allegations above,

¹⁹⁶ *HUD’s Public Housing Program*, U.S. Dep’t of Hous. & Urban Dev., https://www.hud.gov/topics/rental_assistance/phprog.

¹⁹⁷ 42 U.S.C. §§ 1437f, 1437u.

¹⁹⁸ 42 U.S.C. § 1437f; 24 C.F.R. pts. 5, 402, 880-884, 886.

¹⁹⁹ Kathryn Bailey et al., *Overcrowding and Frequent Moves Undermine Children’s Health*, Children’s HealthWatch (2011), <https://www.issuelab.org/resources/13900/13900.pdf>.

reductions in federal and state transfers under federal benefit programs may have impacts on state and local economies, large and small businesses, and individuals. For example, the rule might result in reduced revenues for healthcare providers participating in Medicaid, companies that manufacture medical supplies or pharmaceuticals, grocery retailers participating in SNAP, agricultural producers who grow foods that are eligible for purchase using SNAP benefits, or landlords participating in federally funded housing programs.²⁰⁰

292. Baltimore has already expended staff resources and time to provide guidance and training to City employees, community partners, and agencies regarding the potential ramifications of the IFR and FAM change. The Mayor's Office of Immigrant Affairs has dedicated staff time and resources to conducting outreach to non-citizen resident communities about the IFR and FAM change. City agencies must now analyze and explain how two different sets of State Department rules—the IFR and the FAM change—interact with the parallel DHS Final Rule and affect the City's residents.

293. Federal courts across the nation have similarly concluded that the states and cities challenging the DHS Final Rule have standing based on the rule's chilling effect, the need to reallocate resources, increased operational costs related to individuals disenrolling from public benefits programs, and increased costs of community health epidemics and of uncompensated care. *San Francisco v. U.S. Citizenship & Immigr. Servs.*, 944 F.3d 773, 787-88 (9th Cir. 2019); *Cook Cty.*, 2019 WL 5110267, at *3-4; *New York v. U.S. Dep't of Homeland Sec.*, 408 F. Supp. 3d 334, 343-44 (S.D.N.Y. 2019); *Washington*, 408 F. Supp. 3d at 1208-09; *San Francisco*, 408 F. Supp. 3d at 1121-25.

294. In sum, the harms resulting from the chilling effect created by the IFR are no different from the harms caused by the FAM change and the DHS Final Rule. These harms to

²⁰⁰ *DHS Final Rule Regulatory Impact Assessment*, at 6.

Baltimore are ongoing and will continue to persist while the IFR and FAM change remain in effect.

ADDITIONAL CLAIMS FOR RELIEF AS TO THE INTERIM FINAL RULE

Count Five

(Violation of the Administrative Procedure Act, the Immigration and Nationality Act, and the Illegal Immigration Reform and Immigrant Responsibility Act)

295. Plaintiff repeats and incorporates by reference each of the foregoing allegations and the allegations in the Complaint, ECF No. 1, as if fully set forth herein.

296. The Interim Final Rule constitutes “final agency action for which there is no other adequate remedy in court” and is “subject to judicial review.” 5 U.S.C. § 704; *see id.* § 702.

297. The Administrative Procedure Act requires courts to “hold unlawful and set aside” agency action that is “not in accordance with law.” 5 U.S.C. § 706(2)(A).

298. For over a century, “public charge” has been understood to refer to a person who is “primarily dependent” upon the government for subsistence. That understanding has been reflected in, among other things, multiple immigration statutes passed by Congress, court decisions interpreting the term “public charge,” consistent agency interpretations of the public charge ground of inadmissibility, and the common usage of the term. *See, e.g., New York*, 408 F. Supp. 3d at 346.

299. The IFR is contrary to the longstanding meaning of public charge because, among other things, it expands the definition of public charge to include any applicant who receives one or more public benefits for 12 months in the aggregate within any 36-month period, expands the definition of public benefits to include even non-cash, supplemental benefits that do not bear on an applicant’s likelihood of becoming primarily dependent on government assistance, and supplants the statutory totality of the circumstances test with a test that is complicated and vague,

and relies on factors that have no bearing on whether an individual is likely to become a public charge, while simultaneously deemphasizing the Affidavit of Support.

300. The IFR is therefore contrary to law and must be held unlawful and set aside.

Count Six
(Violation of the Administrative Procedure Act – Arbitrary and Capricious)

301. Plaintiff repeats and incorporates by reference each of the foregoing allegations and the allegations in the Complaint, ECF No. 1, as if fully set forth herein.

302. The IFR constitutes “final agency action for which there is no other adequate remedy in court” and is “subject to judicial review.” 5 U.S.C. § 704; *see id.* § 702.

303. Under the Administrative Procedure Act, a “reviewing court shall ... hold unlawful and set aside agency action ... found to be ... arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” *Id.* § 706(2)(A).

304. The Interim Final Rule is arbitrary, capricious, and an abuse of discretion because Defendants have relied on factors that Congress did not intend, failed to consider important aspects of the problem the agency was addressing, and offered an explanation for the IFR that was inconsistent with the evidence before the agency. *See Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

305. For example, the IFR, without adequate explanation or support in the evidence, expands the definition of public charge to include any applicant who receives one or more public benefits for 12 months in the aggregate within any 36-month period; expands the definition of public benefits to include even non-cash, supplemental benefits that do not bear on an applicant’s likelihood of becoming a public charge; and supplants the statutory totality of the circumstances test with a test that is complicated and vague, and relies on factors that have no bearing on

whether an individual is likely to become a public charge, while deemphasizing the Affidavit of Support.

306. Defendants also failed to consider the harm to immigrant communities, and to cities like Baltimore with immigrant populations, that will result from a rule that chills immigrants from accessing public benefits.

307. Moreover, these unexplained changes violate the legal requirement that when an agency changes position, it must at a minimum “provide [a] reasoned explanation for its action,” “display awareness that it is changing position,” and “show that there are good reasons for the new policy.” *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 514-15 (2009) (emphasis omitted). The Department did not.

308. The Department’s decision is implicitly based on “factual findings that contradict those which underlay its prior policy” (*id.* at 515), *i.e.*, a different understanding of how immigrants will react to the imposition of immigration consequences for using public benefits and/or a different assessment of the odds that an immigrant who uses certain benefits is likely to become dependent on public assistance. The Department was therefore obligated to “provide a more detailed justification than what would suffice for a new policy created on a blank slate.” *Id.*

309. Similarly, the Department provided no reason for overriding the “serious reliance interests” engendered by its decades-long understanding of public charge (*id.*)—a rule that has allowed immigrants, their families, and their sponsors to use supplemental non-cash benefits without fear of adverse immigration consequences. These interests, too, obligated the Department to provide a more fulsome explanation.

310. The IFR is therefore arbitrary and capricious and must be held unlawful and set aside.

Count Seven
(Violation of the Administrative Procedure Act – Notice and Comment)

311. Plaintiff repeats and incorporates by reference each of the foregoing allegations and the allegations in the Complaint, ECF No. 1, as if fully set forth herein.

312. Under the Administrative Procedure Act, a “reviewing court shall ... hold unlawful and set aside agency action ... found to be ... without observance of procedure required by law.” *Id.* § 706(2)(D).

313. Under the Administrative Procedure Act, an agency must provide “[g]eneral notice of proposed rule making ... published in the Federal Register,” whenever the agency seeks to promulgate a rule. 5 U.S.C. § 553(b). Thereafter, “the agency shall give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments.” *Id.* § 553(c). Any final rule must be published at least thirty days prior to its effective date. *Id.* § 553(d).

314. Only in very limited circumstances does the APA permit an agency to forego notice-and-comment procedures and the 30-day waiting period: “when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedures thereon are impracticable, unnecessary, or contrary to the public interest.” *Id.* § 553(b)(B). “[T]he circumstances justifying reliance on the good cause exception are rare,” and the “exception applies only in emergency situations, or in cases when delay could result in serious harm.” *N.C. Growers’ Ass’n, Inc. v. United Farm Workers*, 702 F.3d 755, 767 (4th Cir. 2012) (quotations omitted).

315. As detailed above, the Department did not provide the public with notice and the opportunity to comment before issuing the IFR. Moreover, the Department set October 15, 2019

as the effective date—just four days after publication and well less than the required 30-day window between the publication and effective date required by the APA.

316. Although the Department claimed “good cause” to justify these departures from the APA, its invocation was legally deficient. The Department’s only explanation for why it had good cause to forego notice and comment and the 30-day waiting period was that such procedures would be impracticable and contrary to the public interest because the Department needed to conform its implementation of the public charge inadmissibility ground with DHS’s implementation of the DHS Final Rule.

317. But the Department’s conduct belies that justification in at least four ways. *First*, despite the Department’s purported need to conform in October with the DHS public charge rule, it has, four months later, still not begun to implement the IFR, or provided any timetable for implementation. *Second*, the Department’s good cause justification does nothing to explain why it could not have opened a public comment period *before* October 11, 2019, given that DHS published its proposed rule a year earlier, on October 10, 2018. *Third*, the Department did not stay its rule while the DHS Final Rule was enjoined—creating the very inconsistency the Department purported to solve. And *fourth*, the Department has applied an inconsistent standard since it enacted the FAM change on January 3, 2018, permitting consular officers to consider supplemental, non-cash benefits that DHS would not.

318. In any event, the claimed need to conform the Department’s rules with those of DHS is not, by itself, sufficient cause to do away with notice and comment.

319. The IFR was therefore promulgated “without observance of procedure required by law” and must be held unlawful and set aside.

Count Eight
(Violation of the Fifth Amendment – Equal Protection)

320. Plaintiff repeats and incorporates by reference each of the foregoing allegations and the allegations in the Complaint, ECF No. 1, as if fully set forth herein.

321. The Due Process Clause of the Fifth Amendment prohibits Defendants from denying any person the equal protection of the laws, including on the basis of race, national origin, nationality, income, or receipt of public benefits.

322. The IFR discriminates on the basis of race, national origin, nationality, income, or receipt of public benefits, and was motivated by animus and a desire to effect such discrimination. Moreover, the IFR was motivated by discriminatory and baseless stereotypes concerning the receipt of public benefits by immigrants, particularly immigrants from Latin American, African, and Asian countries. Defendants' statements provide direct evidence of their discriminatory motives in enacting the IFR.

323. Additionally, the IFR effectively differentiates between persons on the basis of national origin and nationality and is accordingly subject to strict scrutiny.

324. The IFR also differentiates between persons on the basis of income or receipt of public benefits, imposing immigration consequences on immigrants, their families, and their sponsors for taking essential public benefits. *Cf. Plyler v. Doe*, 457 U.S. 202, 223 (1982).

325. The IFR fails strict scrutiny because its broad focus on the receipt of "public assistance" by immigrants, their families, and their sponsors, and the diminished role of the affidavit of support, is not narrowly tailored to the goal of preventing immigrants from becoming primarily dependent upon public benefits.

326. Alternatively, and for the same reasons, the IFR furthers no substantial state interest when weighed against the harm to immigrants, their families, and their sponsors. Nor is the IFR rationally related to any legitimate state interest.

327. Through the actions described in this Supplemental Complaint, Defendants have violated the equal protection guarantee of the Fifth Amendment's Due Process Clause.

328. As the Court has concluded, *see* Mem. Op. at 35-36, Baltimore may assert the equal protection claims of its immigrant residents, their families, and their sponsors. Baltimore is injured by the IFR, as described above.

329. Baltimore also has a close relationship with those who depend upon its public benefits, including its medical, legal, educational, food, and housing services. Because Baltimore is better off when all of its residents can access the public benefits to which they are entitled, regardless of immigration status, Baltimore will serve as an especially effective advocate for their equal protection claims.

330. Finally, Baltimore's immigrant residents, their families, and their sponsors face impediments to bringing their claims in their own names because they fear the potential immigration consequences of coming forward, suffer from language-related and other barriers, and cannot bear the significant economic and logistical burdens of participating in litigation. *Cf. Exodus Refugee Immigr., Inc. v. Pence*, 165 F. Supp. 3d 718, 732 (S.D. Ind.), *aff'd*, 838 F.3d 902 (7th Cir. 2016) (concluding that social services organization could assert equal protection claims of its refugee clients).

REQUEST FOR RELIEF AS TO THE INTERIM FINAL RULE

WHEREFORE, in addition to the relief sought with respect to the FAM change, ECF No. 1, which Plaintiff incorporates by reference, Plaintiff additionally requests that this Court:

1. declare the Interim Final Rule contrary to law, arbitrary and capricious, procedurally infirm, and unconstitutional;
2. vacate the IFR;
3. enjoin Defendants, their officers, their employees, and their agents from adjudicating visas on the basis of the heightened standards implemented through the IFR, and instead apply the FAM “public charge” provision as it stood prior to January 3, 2018;
4. award Plaintiff its costs, attorneys’ fees, and other disbursements for this action; and
5. grant any other relief this Court deems appropriate.

Dated: February 7, 2020

Respectfully submitted,

Mayor and City Council of Baltimore

/s/ John T. Lewis

John T. Lewis (D.C. Bar No. 1033826)

(*pro hac vice*)

Karianne Jones (D.C. Bar No. 187783)

(*pro hac vice*)

Benjamin Seel (D.C. Bar. 1035286)

(*pro hac vice*)

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(*pro hac vice*)

Jonathan E. Paikin (D.C. Bar No. 466445)

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Molly M. Jennings (D.C. Bar No. 1023087)

(*pro hac vice*)

Jamie Yood (D.C. Bar No. 1033919)

(*pro hac vice*)

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emily.farmer@wilmerhale.com

EXHIBIT A

CA Press Guidance
February 28, 2019

RELEASE IN FULL

Release of Visa Refusal Data

- The Report of the Visa Office 2018 provides statistics on immigrant and nonimmigrant visa issuances and refusals worldwide. The yearly report has been published annually since the mid-sixties and includes Table XX indicating immigrant and nonimmigrant visa ineligibilities, broken down by ground of refusal under the Immigration and Nationality Act (INA). Table XX for fiscal year 2018 was released on February 26, 2019.
- Since December 8, 2017, the Department has fully implemented Presidential Proclamation 9645, consistent with the December 4, 2017 Supreme Court order. The data category within Table XX labeled “2017 E.O. on Immigration – Subject to 2017 Executive Order on Immigration” comprises those visa applicants refused under Presidential Proclamation 9645 or the 2017 predecessor orders. The Department began publishing this information in FY 2017.
- Data reflected in Table XX includes all applications refused *that remained in a refused status at the end of FY 2018*. If a waiver of the Proclamation may be available, but the visa had not been issued before the end of the fiscal year, the application would be considered a refusal for purposes of the report. Thus some of the refusals reported could ultimately result in a visa issuance.
- We also refer you to general information on the Proclamation’s implementation published on travel.state.gov at: https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/presidential-proclamation-archive/june_26_supreme_court_decision_on_presidential_proclamation9645.html. As of January 31, 2019, since the implementation of the Proclamation, 2,673 applicants were cleared for waivers after a consular officer determined the applicants satisfied all criteria and completed required processing. Many of those applicants already have received their visas.
- The data category within Table XX labeled “Public Charge” comprises those visa applicants refused under INA Section 212(a)(4) in 2018.

IF ASKED

Q: Does the category “212(f) – Presidential proclamation suspending the entry of any class of aliens” also cover Proclamation 9645 cases?

- No. This category refers to all other Presidential Proclamations that include visa refusal components.

REVIEW AUTHORITY: Barbara Nielsen, Senior Reviewer

Q: How do you respond to concerns over the tens of thousands of visa denials under the Proclamation?

- When an individual applies for a U.S. visa, a consular officer reviews the facts of the case and determines whether the applicant is eligible for a U.S. visa based on U.S. laws, including policies, such as Presidential Proclamation 9645, promulgated under the authority granted in those laws. In FY 2018, the Department of State issued 9 million nonimmigrant visas, and 533,557 immigrant visas.

Q: Members of Congress are reporting only 5.9 percent of proclamation-affected applicants qualified for waivers as of October 31, 2018. Why is that number so low?

- We do not comment on our communications with Congress. We also refer you to general information the Proclamation's implementation published on travel.state.gov at: https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/presidential-proclamation-archive/june_26_supreme_court_decision_on_presidential_proclamation9645.html. As of January 31, 2019, since the implementation of the Proclamation, 2,673 applicants were cleared for waivers after a consular officer determined the applicants satisfied all criteria and completed required processing. Many of those applicants already have received their visas.

Q: Why are 11,000 applicants still waiting for a determination on national security, the final step to obtaining a waiver?

- Every visa decision is a national security decision and we work within the interagency to review all visa applicants to ensure they do not pose a threat to the United States. The review process is comprehensive and takes time to complete.

Q: Why has the number of refusals under Public Charge increased?

- As directed by Section 3 of the March 6, 2017, Presidential Memorandum on Implementing Immediate Heightened Screening and Vetting, the Department of State and the Department of Homeland Security have been reviewing all guidance related to visa ineligibilities provided in the INA. Guidance on public charge was clarified in January 2018 to better inform consular officers in their adjudication decisions.
- Section 9 FAM 302.8 / INA 212(a)(4) provides that an applicant who is likely to become a public charge is inadmissible. All immigrant visa (IV) and nonimmigrant visa (NIV) applicants, except those mentioned in 9 FAM 302.8-2(B)(6), are subject to a public charge ineligibility.

- For additional information about Public Charge, we refer you to USCIS.

Drafted: CA/P Olivia Woods

Cleared: CA: KLChristensen (ok)
CA/P: JWeinshenker (ok)
CA/VO: ERamotowski (ok)
CA/VO: MMesquita (ok)
CA/VO/F: MParker (ok)
CA/VO/F: JCordell (ok)
CA/VO/L: DNewman (ok)
CA/VO/SAC: TSmith (ok)
CA/VO/DO: JNantais (ok)
H: WKennedy (ok)

EXHIBIT B

From: Parker, Morgan A <ParkerMA@state.gov>
Sent: Friday, April 6, 2018 11:56 AM
To: CA-VO-Special Assistant <CA-VO-Special-Assistant@state.gov>
Subject: RE: FOR CLEARANCE: Public Charge

RELEASE IN PART B5,B7(E)

Please use the text immediately below and add the graph! Danke!

[REDACTED] B5
 [REDACTED] In FY 2016 and FY 2017, 1,076 and 3,237 applications were refused for public B7(E)
 charge, respectively. [REDACTED] B5
 [REDACTED] B7(E)

The early 2017 changes were likely due to CA/VO training and outreach with posts on I-864 adjudication standards. The more recent increase is based on the new policy and training which accompanied the January 2018 updates to 9 FAM 302.8 on assessing public charge. These revisions were further highlighted in 18 STATE 942. On January 29, 2018, CA/VO hosted a webinar covering the elements of the public charge ineligibility and the changes to procedures and adjudication standards. Consular officers and LE staff may access the webinar materials as well as the recently posted "Public Charge FAQs" on CA Web. The FAQs are based on some of the common questions raised by consular officers when evaluating public charge under the updated guidance. We will continue to update this document and modify the FAM as appropriate as new inquiries from the field are received.

[REDACTED] B5
 [REDACTED] VO will conti B7(E)
 to monitor and provide updates once sufficient time has passed to analyze these trends.

Official
 UNCLASSIFIED

REVIEW AUTHORITY: Barbara Nielsen, Senior
 Reviewer

From: CA-VO-Special Assistant
Sent: Friday, April 06, 2018 11:26 AM
To: Parker, Morgan A
Cc: CA-VO-Special Assistant
Subject: FOR CLEARANCE: Public Charge

The A/S asked for public charge stats. Please see Joel's draft below for Ed to send along.

JC

Official
 UNCLASSIFIED

From: Nantais, Joel D
Sent: Friday, April 06, 2018 11:23 AM
To: CA-VO-Special Assistant
Cc: Parker, Christine D; Nantais, Joel D
Subject: FW: Public Charge

For clearance with Morgan and Ed please.

EXHIBIT C

From: Ramotowski, Edward J </O=SBUSTATE/OU=GUADALAJARA
AG/CN=RECIPIENTS/CN=RAMOTOWSKIEJ>
Sent: Wednesday, January 31, 2018 1:50 PM
To: CA-VO-Special Assistant <CA-VO-Special-Assistant@state.gov>
Subject: Re: DAR for clearance, please

RELEASE IN PART B6

I clear.

Sent from my BlackBerry 10 smartphone.

From: CA-VO-Special Assistant
Sent: Wednesday, January 31, 2018 1:47 PM
To: Ramotowski, Edward J
Cc: CA-VO-Special Assistant
Subject: DAR for clearance, please

DECONTROLLED

(SBU) Public Charge Webinar: 9 FAM 302.8 Update: VO/F and VO/L/A led two webinars on January 29 to review the recent changes to 9 FAM 302.8 regarding visa ineligibility based on public charge under INA 212(a) (4) ("4A"). More than 100 posts participated in the two webinars and had excellent questions and suggestions for guidance. The webinars discussed key takeaways, such as the revised requirement that a properly filed, non-fraudulent Affidavit of Support is no longer sufficient on its own to overcome public charge concerns, and guided officers through basic 4a eligibility requirements, including the "totality of circumstances" analysis. A copy of the webinar will be posted on CAWeb, as well as additional training resources for posts on these changes. (CA/VO/F:)

B6

CA/VO Special Assistant
SA-17 - 12.208

B6

B6

Official - SBU
UNCLASSIFIED

REVIEW AUTHORITY: Barbara Nielsen, Senior Reviewer

EXHIBIT D

Key Takeaways

- Before: A properly filed, non-fraudulent I-864 was generally sufficient on its own to overcome public charge concerns.
- Now: A properly filed, non-fraudulent I-864 is not sufficient on its own to overcome public charge concerns.
- Posts should use the “totality of circumstances” analysis in all cases. An I-864 is only one positive factor in the totality.
- Applicants who are not likely to overcome public charge even after the presentation of additional evidence should be refused under 4A.



EXHIBIT E

That's a good idea. Does 1 pm work for people?

[REDACTED]

B6

Nick

From: [REDACTED]
Sent: Wednesday, June 7, 2017 8:11 AM
To: Perry, Nicholas; [REDACTED] Nantais, Joel D; [REDACTED]
Subject: RE: Draft FAM on public charge

B6

B6

Thanks, Nick. Could we perhaps have a five minute powwow tomorrow to talk through what additional work is needed, by whom, and in what order? Maybe before or after the VO staff meeting?

[REDACTED]

B6

Best,

[REDACTED]

B6

Official - SBU
UNCLASSIFIED

From: Perry, Nicholas
Sent: Wednesday, June 07, 2017 8:01 AM
To: [REDACTED] Nantais, Joel D; [REDACTED]
Subject: Fw: Draft FAM on public charge

B6

Public charge team,

Attached is what I submitted to [REDACTED] for the meeting that occurred yesterday. This is basically the drafts we were working on without the comments.

B5

[REDACTED]

B5

[REDACTED]

B6

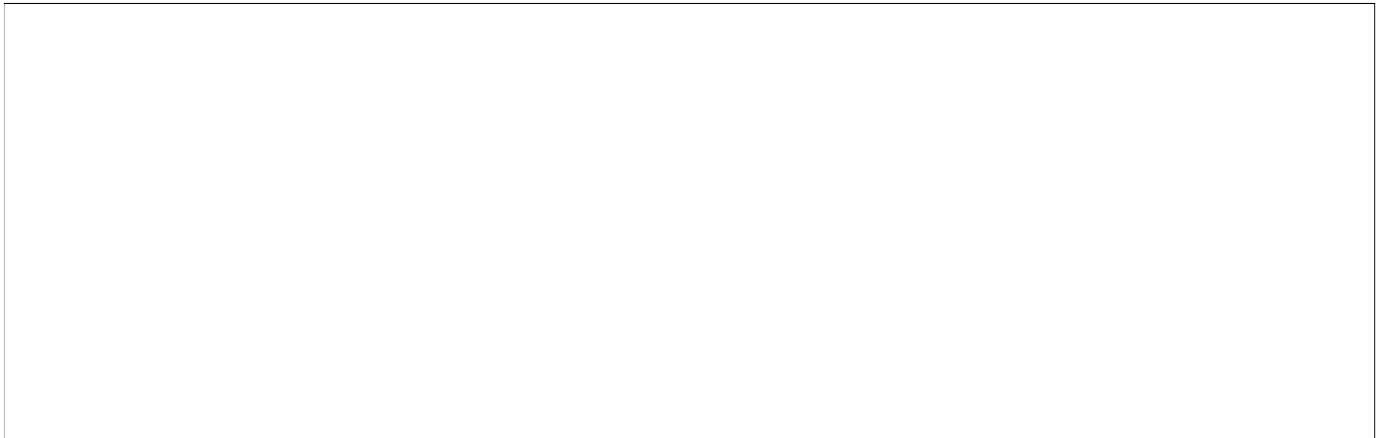
Nick

From: Perry, Nicholas <PerryN1@state.gov>
Sent: Monday, June 5, 2017 6:42 PM
To: Bishop, Melissa A. EOP/NSC; Veprek, Andrew M. EOP/WHO

Cc: King, Karin M; McEvoy, Meredith C; Osborn, Judith L; Baroukh, Nader; Phillips, Mark; Nuebel Kovarik, Kathy; Perry, Nicholas
Subject: Draft FAM on public charge

Melissa and Andrew,

Attached are DRAFT edits to the FAM on public charge.



B5

-Nick

Nicholas J. Perry
Deputy Director of Legal Affairs, Visa Office
Bureau of Consular Affairs, U.S. Department of State
PerryN1@state.gov
(202) 485-7586

Official - SBU
UNCLASSIFIED

EXHIBIT F

From: Perry, Nicholas <PerryN1@state.gov>
Sent: Thursday, July 6, 2017 5:27 PM **RELEASE IN PART B5,B7(C),B6**
To: JCohen [REDACTED] B6
Cc: Ramotowski, Edward J <RamotowskiEJ@state.gov>; King, Karin M
<KingKM@state.gov>; [REDACTED] Hooke, B6
Kathleen H <HOOKEKH@state.gov>; [REDACTED] B6
[REDACTED] CA-VO-Special Assistant <CA-VO-Special- B6
Assistant@state.gov>
Subject: RE: INVITE: [REDACTED] B5
[REDACTED] B5
Attach: [REDACTED] B5

[REDACTED] B6
Please see the State Department summary of taskers from the last [REDACTED] B5

-Nick

Nicholas J. Perry
Deputy Director of Legal Affairs, Visa Office
Bureau of Consular Affairs, U.S. Department of State
PerryN1@state.gov
(202) 485-7586

Official
UNCLASSIFIED

From: Bishop, Melissa A. EOP/NSC [REDACTED] B6
Sent: Friday, June 30, 2017 3:11 PM
To: King, Karin M; Ramotowski, Edward J; [REDACTED] Perry, Nicholas; Hamilton, Gene; B6
nader.baroukh [REDACTED]; 'dimple.shah [REDACTED]; [REDACTED] 'Danielle.Cutrona [REDACTED] B6
McHenry, James (EOIR); 'michael.dougherty [REDACTED]; Hooke, Kathleen H; [REDACTED] B6
[REDACTED]; Nuebel Kovarik, Kathy; [REDACTED] B6
'carl.c.risch [REDACTED]; [REDACTED]; [REDACTED]; 'julie.koller [REDACTED] B6
Nantais, Joel D; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED] B7(C) B6
[REDACTED] 'kenneth.sava [REDACTED]; CA-VO-Special Assistant; 'matthew.sheehan [REDACTED];
[REDACTED]; [REDACTED]; 'roselyn.c.brown-frei [REDACTED]
[REDACTED] B6
Cc: Zadrozny, John A. EOP/WHO; Veprek, Andrew M. EOP/WHO; Walk, John EOP/WHO; Wetmore, David H.
EOP/WHO; Hawkins, Monte B. EOP/NSC; Fausett, Andrew D. EOP/NSC; Klingler, McLaurine E. EOP/WHO; Miller,
Stephen EOP/WHO; Bash, Zina G. EOP/WHO; Arangio, Jennifer EOP/NSC; Schouten, Schuyler J. EOP/WHO;
Mellon, Patrick J. EOP/OMB; Kraninger, Kathleen L. EOP/OMB; Silverberg, Samantha E. EOP/OMB; Holm, Jim S.
EOP/OMB; Bishop, Melissa A. EOP/NSC; CA-VO-Special Assistant; Tomasulo, Gary L. EOP/NSC; Cohen, Joel
EOP/NSC; [REDACTED] Diaz-Rosillo, Carlos E. EOP/WHO
Subject: INVITE: [REDACTED] B6
[REDACTED] B5
[REDACTED] B5

Colleagues -

B5

B5

Melissa

Melissa Bishop
Director for Immigration and Visa Security
Border and Transportation Directorate
National Security Council

Office: [REDACTED]

Blackberry: [REDACTED]

UNCLASS [REDACTED]

B6
B6
B6

EXHIBIT G

From: Perry, Nicholas <PerryN1@state.gov>
Sent: Tuesday, September 26, 2017 5:43 PM
To: Newman, David S <NewmanDS@state.gov>
Cc: Herndon, Megan <HerndonM@state.gov>; [REDACTED]
Subject: FW: 9 FAM 302.8 Public Charge
Attach: 9 FAM 302.8 (U) Public Charge - INA 212(a)(4) (DHS and EOP EditsII).docx

B6

David,

Here is the version of the public charge FAM notes with combined edits from EOP and DHS, with 106 comments.

Nicholas J. Perry
Deputy Director of Legal Affairs, Visa Office
Bureau of Consular Affairs, U.S. Department of State
PerryN1@state.gov
(202) 485-7586

RELEASE IN PART B6

Official
UNCLASSIFIED

REVIEW AUTHORITY: Barbara Nielsen, Senior Reviewer

EXHIBIT H

From: Perry, Nicholas <PerryN1@state.gov>
Sent: Monday, August 28, 2017 11:08 AM
To: CA-VO-Special Assistant <CA-VO-Special-Assistant@state.gov>
Subject: FW: FAM changes on Public Charge for Interagency Review
Attach: Edits -- 9 FAM 302.8 (U) Public Charge - INA 212(a)(4) (8 22 17) (Redline).docx; Edits -- 9 FAM 302.8 (U) Public Charge - INA 212(a)(4) (8 22 17) (Clean).docx

Here is the version that went out, in both redline and clean.

RELEASE IN PART
B5

Nicholas J. Perry
Deputy Director of Legal Affairs, Visa Office
Bureau of Consular Affairs, U.S. Department of State
PerryN1@state.gov
(202) 485-7586

Official
UNCLASSIFIED

REVIEW AUTHORITY: Barbara Nielsen, Senior Reviewer

From: Perry, Nicholas
Sent: Tuesday, August 22, 2017 5:57 PM
To: Peckham, Yvonne M
Cc: [REDACTED]
Subject: FAM changes on Public Charge for Interagency Review

B6

Yvonne,

Could you sent the attached FAM revisions to OIRA for interagency review?

B5

I have attached both a redline and clean version.

Nick

Nicholas J. Perry
Deputy Director of Legal Affairs, Visa Office
Bureau of Consular Affairs, U.S. Department of State
PerryN1@state.gov
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Official
UNCLASSIFIED