

Carol A. Baldwin Moody, *President and CEO*

### BOARD OF DIRECTORS

Chair: G. Elaine Wood  
*Duff & Phelps, LLC*

First Vice Chair: Loria B. Yeadon  
*Yeadon IP LLC*

Vice Chair: Robert M. Kaufman  
*Proskauer Rose LLP*

Vice Chair: Deborah L. Rhode  
*Stanford Law School*

Vice Chair: Jay W. Waks  
*American Kennel Club*

Vice Chair: Laura A. Wilkinson  
*Weil, Gotshal & Manges LLP*

General Counsel: Beth L. Kaufman+  
*Schoeman Updike Kaufman & Gerber LLP*

Secretary: Eileen Simon  
*Mastercard*

Treasurer: Susan B. Lindenauer  
*The Legal Aid Society (retired)*

Executive Committee At Large:  
Elizabeth J. Cabraser  
*Lieff Cabraser Heimann & Bernstein, LLP*

Esha Bandyopadhyay  
*Fish & Richardson PC*

Dede Thompson Bartlett  
*Woodrow Wilson Visiting Fellow*

Glynn Christian  
*Orrick, Herrington & Sutcliffe, LLP*

Ethan Cohen-Cole, PhD, MPA, MA  
*Vega Economics*

Alexis S. Coll-Verly  
*Simpson Thacher & Bartlett LLP*

Meena Elliott.

Kim Gandy  
*National Network to End Domestic Violence (NINEDV)*

Vilia B. Hayes  
*Hughes Hubbard & Reed LLP*

Matthew S. Kahn  
*Gibson, Dunn & Crutcher LLP*

Amy Dorn Kopelan  
*Bedlam Productions, Inc. (on leave)*

Amy S. Leder  
*Holland & Knight LLP*

Lori B. Leskin  
*Arnold & Porter Kaye Scholer LLP*

Stephanie A. Sheridan  
*Stephoe & Johnson LLP*

Karen E. Silverman  
*Latham & Watkins LLP*

### HONORARY DIRECTORS

Muriel Fox, *Chair*

Barbara M. Cox

Etta Froio  
*Women's Wear Daily (retired)*

Stephanie George  
*Fairchild Fashion Media Inc.*

Ralph I. Knowles, Jr. (deceased)  
*Doffenmyre Shields Canfield & Knowles LLC*

Michele Coleman Mayes  
*New York Public Library*

Lisa Specht  
*Manatt, Phelps & Phillips, LLP*

+Non-voting Board Officer

\*Organizational affiliations for purposes of identification only.

November 12, 2019

**Re: DOS-2019-0035: Comments in Response to Interim Final Rule Prescribing Parameters for Ineligibility Determinations on Public Charge Grounds**

**Submitted via the Federal Rulemaking Portal: [www.regulations.gov](http://www.regulations.gov)**

Legal Momentum welcomes the opportunity to comment on the Department of State's (DOS) interim final rule amending the agency's procedures and definitions for determining whether an alien is ineligible for a visa under the Immigration and National Act on "public charge" grounds.

Advocating for gender equality for over 40 years, Legal Momentum remains committed to achieving economic and personal security for all women and girls by eliminating barriers to equal treatment and advancing access to equal opportunity. Based on our longstanding experience advancing the rights of the most vulnerable, including immigrant women, we respectfully urge you to act expeditiously to work with the Department of Homeland Security (DHS) to withdraw any and all regulatory amendments that revise the public charge process.

Instead of promoting self-sufficiency, the revised process will penalize hard-working low- and moderate-income immigrant families, hurt our economy by increasing poverty and inequality, compromise the health and welfare of women and children, and jeopardize the safety of immigrant survivors of gender-based violence.

### **1. Instead of Promoting Self-Sufficiency, Regulatory Changes Revising the Public Charge Process Will Discriminate Against Low- and Moderate-Income Families and Disproportionately Penalize Women.**

According to DHS, recent amendments "help ensure that aliens who apply for admission to the United States, seek extension of stay or change of status, or apply for adjustment of status are self sufficient, i.e., do not depend on public resources to meet their needs, but rather rely on their own capabilities and the resources of their family, sponsor, and private organizations."<sup>1</sup> To advance self-sufficiency, DHS and DOS now seek to expand the types of benefits considered for public charge determinations, adding nutrition assistance, housing support, and various forms of healthcare. DHS and DOS also seek to take into account a broad range of factors, including a person's income, age, educational and skill attainment, family status and household size, medical condition, and limited English proficiency. The new process will assign a strongly weighted negative factor in certain circumstances, for instance, for individuals earning less than 125% of the federal poverty level.

<sup>1</sup> 83 Fed. Reg. 51115, 51118 (Oct. 10, 2018).



Taking into account current wage dynamics in our economy and employment trends within the immigrant community, this process will not serve its intended purpose of promoting self-sufficiency. Rather, it will primarily serve to discriminate against low- and moderate-income immigrant families, disproportionately penalize immigrant women, and exacerbate poverty and inequality.

The reality is that immigrants in the United States have a lower unemployment rate than native-born citizens, are more active in our economy (either working or looking for work), and yet they make substantially less than native-born citizens.<sup>2</sup> Moreover, across the United States, our communities and our economy depend on the essential contributions of immigrant workers, including immigrant women, many of whom work as domestic workers, farm workers, nurses, home health aides, cashiers, and janitors.

This process, if implemented, will have a disproportionate negative impact on many women working in these professions. Despite their essential role in our economy, immigrant women are often the lowest paid individuals in our country. For example, women day laborers and domestic workers generally make less than their male counterparts, yet many are the primary income earners in their households and are responsible for dependent children at home or elsewhere.<sup>3</sup> Their immigration status, financial insecurity, and lack of access to opportunity drive far too many women into low-wage jobs and employment in the informal economy, where they work tirelessly for wages that fail to cover the cost of living. Because of their financial insecurity, immigrant women are far more vulnerable to a host of other abuses, including wage theft, poor working conditions, discrimination, sexual harassment, retaliation, and gender-based violence at home and at work.

The fact that our economy undervalues immigrant women in the workplace means that many working immigrant women must rely on public benefits to supplement their wages to cover basic necessities—to secure housing, purchase food for their families, and obtain healthcare for their children. All too often, immigrant families that must rely on public benefits are doing so not because they are not working but rather because they are being compensated unfairly or in violation of the law. Advancing self-sufficiency in the immigrant community therefore requires fairer wage practices, not a scheme that punishes immigrant families for trying to make ends meet under impossible circumstances.

By penalizing low-wage immigrant women for having low incomes and *legally* using critical benefits, the new process will not advance self-sufficiency. Instead, it will entrench existing injustices and drive up poverty, hunger, housing needs, and economic insecurity of women. These are all factors that will hurt, rather than strengthen, our economy.

## **2. The New Public Charge Process Puts Immigrant Women, Children, and Families at Risk.**

The persistent undervaluation of work performed by immigrant women, combined with disproportionate family obligations placed on women, mean that immigrant women are far more likely to be financially

---

<sup>2</sup> Patrick Gillespie, *America's Immigrant Economy: More Work, Less Pay*, CNN (Aug. 19, 2016), <https://money.cnn.com/2016/08/19/news/economy/us-immigrant-economy/index.html>.

<sup>3</sup> Figueroa, M., Guallpa, L., Sanchez, Y. & Cabrera, L., *Standing up for Dignity: Women Day Laborers in Brooklyn, NY*, THE WORKER INSTITUTE, 6 (2016), [https://www.ilr.cornell.edu/sites/ilr.cornell.edu/files/FINAL%20WOMEN%20DAY%20LABORERS%20REPORT%208-5-16\\_PS.pdf](https://www.ilr.cornell.edu/sites/ilr.cornell.edu/files/FINAL%20WOMEN%20DAY%20LABORERS%20REPORT%208-5-16_PS.pdf).

insecure and unable to absorb typical financial irregularities that stem from circumstances such as illness, pregnancy, or loss of child care. Because of the nature of the work they do in the low-wage economy, immigrant women are less likely to receive benefits through their employers to help them weather some of these shocks. This means that access to public benefits is critical to ensuring that immigrant women are not forced to choose between staying in the country and seeking prenatal care or healthcare for their children.

The new public charge process will have particularly severe consequences for pregnant and postpartum women and children. It will likely encourage a large number of women to forgo critical health coverage and nutrition assistance, including prenatal and postnatal care for themselves and healthcare for their infants and young children under programs like Medicaid, CHIP, and WIC. The short- and long-term impacts on women, children, and our economy will likely be profound. Lack of early prenatal care and nutrition assistance for mothers can negatively impact birth and early health outcomes, resulting in poor birth outcomes; higher rates of infant and maternal mortality; and poorer health, education, and financial outcomes for children of all ages.<sup>4</sup> Encouraging such negative outcomes will have the opposite of the intended impact—reinforcing shameful inequities and ultimately driving up long-term costs for low-income immigrants.

By penalizing immigrants for accessing essential benefits like healthcare, food assistance, and housing assistance, benefits that many are legally entitled to receive, the revised rules puts women and families at risk and undermines the health and wellbeing of children who are American citizens, compromising their ability to thrive in the long run.

### **3. The New Public Charge Process Jeopardizes the Safety and Security of Immigrant Survivors of Gender-Based Violence.**

Immigrant women face high levels of gender-based violence, and women with fewer economic resources are increasingly susceptible to gender-based exploitation. Many women crossing our border are attempting to escape such violence and too many women who have made it safely into the United States continue to suffer abuse either at home or in the workplace. Lack of financial security, resources and/or stable immigration status render immigrant women all the more susceptible to extreme forms of sexual violence.

The new public charge process will negatively impact immigrant survivors of gender-based violence and their families. Access to healthcare, housing, food assistance, and other supports play a pivotal role in helping victims escape and overcome domestic and sexual violence, whereas lack of access to such support can serve as a major barrier, preventing victims from escaping the abuse.<sup>5</sup>

By penalizing immigrant women for accessing critical benefits, the new process will deter immigrant survivors of gender-based violence (and their families) from obtaining the vital services that allow them to escape and overcome abuse.<sup>6</sup> Instead, these victims, facing the already daunting choice of whether or not to take on the financial and security risks of leaving, now face a heightened risk that that escaping will leave

---

<sup>4</sup> Parrott, S., Gonzales, S., Schott, L., *Trump “Public Charge” Rule Would Prove Particularly Harsh for Pregnant Women and Children*, CENTER ON BUDGET AND POLICY PRIORITIES, 3 (May 1, 2018), <https://www.cbpp.org/sites/default/files/atoms/files/5-1-18pov2.pdf>.

<sup>5</sup> See CENTER FOR DISEASE CONTROL, *Preventing Intimate Partner Violence Across the Lifespan: A Technical Package of Programs, Policies, and Practices* (2017), <https://www.cdc.gov/violenceprevention/pdf/ipv-technicalpackages.pdf>.

<sup>6</sup> See NATIONAL TASK FORCE TO END SEXUAL AND DOMESTIC VIOLENCE, *Public Charge Regulation Harms Immigrant Families and Puts Victims of Sexual Assault and Domestic Violence at Risk* (Sept. 26, 2018), <http://www.4vawa.org/ntf-action-alerts-and-news/>.

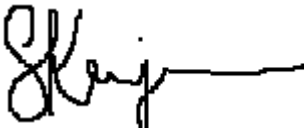
themselves and their children homeless, hungry, and without medical care. Lack of access to healthcare also means that survivors will face challenges receiving medical assistance to address the range of medical issues that survivors often face such as chronic pelvic, back, and abdominal pain; headaches; depression; and anxiety.<sup>7</sup>

While certain individuals seeking immigration status or entry, including refugees, asylees, and survivors of trafficking and other serious crimes, are not subject to the public charge determination, there are domestic violence and sexual assault survivors who do not fall within these exempt categories. Moreover, many survivors may not understand the difference, which risks discouraging both exempt and non-exempt survivors from seeking benefits or encouraging them to withdraw from programs.

\*\*\*\*

In conclusion, Legal Momentum thanks DOS for this opportunity to express its views on its interim final rule prescribing procedures to implement the revised process for ineligibility determinations on “public charge grounds.” As noted above, Legal Momentum strongly opposes the adoption and implementation of this new process because it does not serve the stated purpose of promoting self-sufficiency; its impact will be devastating to the welfare of immigrant women, children, and families in the United States; and it ultimately entrenches the systemic economic and gender-based discrimination these immigrant families already face at an increased cost to all of us. We therefore urge you to promptly withdraw the interim final rule in its entirety.

Sincerely,

A handwritten signature in black ink, appearing to read 'Seher Khawaja', with a long horizontal flourish extending to the right.

Seher Khawaja  
Senior Attorney, Economic Empowerment  
Legal Momentum

---

<sup>7</sup> See UNITED NATIONS POPULATION FUND, *A Practical Approach to Gender-Based Violence: A Programme Guide for Healthcare Providers and Managers* (2001), [https://www.who.int/hac/techguidance/pht/gbv\\_a\\_programme\\_guide\\_health\\_care.pdf](https://www.who.int/hac/techguidance/pht/gbv_a_programme_guide_health_care.pdf).