

Congress of the United States
Washington, DC 20515

September 21, 2022

The Honorable Alejandro Mayorkas
Secretary
Department of Homeland Security
2707 Martin Luther King Jr Ave SE
Washington, DC 20528

RECEIVED

By ESEC at 1:20 pm, Sep 21, 2022

Dear Secretary Mayorkas:

We are writing today to express our pressing concerns about the Department of Homeland Security's (DHS) decision to exclude non-cash federal assistance programs from the public charge rule. The impact of this ill-considered action, set to begin on December 23, 2022, will fundamentally destabilize the necessary reform the Trump Administration made in this area of the U.S. immigration system. *Therefore, we request that you immediately rescind your September 2022 public charge rule¹ and issue a new rule to reinstate the use of non-cash federal assistance programs in inadmissibility determinations.*

The United States welcomes more immigrants to its shores than any other country, with more than one million people arriving every year as permanent legal residents, asylum-seekers, and refugees.² Our nation prides itself on having hard-working and self-reliant immigrants that contribute to the country's economic prosperity. In passing the public charge law,³ Congress explained that immigrants should not rely on public resources, but rather rely on their own capabilities and the resources of their sponsors.⁴ It is irresponsible for the Biden Administration to counter congressional intent by disregarding this goal.

In 2019, the Trump Administration implemented the public charge rule to allow for the inclusion of non-cash entitlement programs in its calculations.⁵ Including these programs when determining public charge grounds for inadmissibility was a step in the right direction and a net plus for our economy. As the welfare state continues to grow, so do the country's trillion-dollar budget deficits and increase in public debt. Currently, there are more non-cash federal programs for low-income individuals than there are cash-based programs.⁶ In fact, federal dollars spent on Medicaid alone amount to more than the government spends on all cash programs combined.⁷ This demonstrates the impracticality of excluding a significant source of federal funds when determining whether an immigrant will be a public charge.

¹ Public Charge Ground of Inadmissibility, 87 Fed. Reg. 55472 (Sept. 9, 2022).

² *International Migration*, U.S. DEPARTMENT OF STATE, <https://www.state.gov/other-policy-issues/international-migration/#:~:text=The%20United%20States%20hosts%20more,and%20in%20other%20immigration%20categories> (last visited Sept. 13, 2022).

³ 8 U.S. Code § 1182 (a)(4).

⁴ 8 U.S. Code § 1183 (a)(1)(A).

⁵ Inadmissibility on Public Charge Grounds, 84 Fed. Reg. 41292 (Aug. 14, 2019).

⁶ *Federal Spending on Benefits and Services for People with Low Income: FY2008-FY2020*, CONG. RESEARCH SERV., Dec. 8, 2021, <https://crsreports.congress.gov/product/pdf/R/R46986>.

⁷ *Id.*

The Biden Administration's failed agenda, under your stewardship, has caused a humanitarian crisis at our southern border and eliminated public confidence in our immigration system. Since President Biden took office nearly 4.9 million immigrants have illegally crossed U.S. borders.⁸ It is estimated this will cost taxpayers an additional \$20.4 billion a year on top of the \$140 billion burden illegal immigration imposes on the U.S. each year⁹ Senseless policies such as reinstating catch-and-release, ending the Migrant Protection Protocols, and failing to finish the southwest border wall are all direct causes of these record-breaking numbers. The intended change to the public charge rule is the latest in this long list of failures and will further cripple our immigration system.

Consideration of whether an immigrant will become a public charge when determining admissibility is meant to guarantee the success of U.S. immigration policies. Equally important, this consideration is meant to create an environment where legal immigrants are encouraged to work and prosper. This is vital to a functioning and modern immigration system. Therefore, we request that you immediately rescind your September 2022 public charge rule¹⁰ and issue a new rule to reinstate the use of non-cash federal assistance programs in inadmissibility determinations.

In addition, we request the following specific information regarding the DHS's final rule on the changes to the interpretation of "public charge":

1. What process was used to determine which types of benefits (cash-versus non-cash-based) will be considered?
2. Why will non-cash benefits not be considered given they amount to a significant source of federal funding for low-income individuals?
3. Compared to the previous six years, how many fewer people does DHS estimate will be considered public charges under this new rule?
4. Compared to the previous six years, how many more people does DHS estimate will apply for non-cash benefits once this rule is implemented?

Thank you for your attention to this urgent matter. We respectfully request a response to these questions by September 30, 2022.

Sincerely,



Mike Johnson
Member of Congress



Troy E. Nehls
Member of Congress

⁸ Press Release, FAIR, FAIR Analysis: 4.9 Million Illegal Aliens Have Crossed our Borders Since President Biden Took Office (Aug. 16, 2022), <https://www.fairus.org/press-releases/border-security/fair-analysis-49-million-illegal-aliens-have-crossed-our-borders>.

⁹ Press Release, FAIR, FAIR Reveals that Illegal Aliens Released Into the U.S. Under Biden Will Cost American Taxpayers an Additional \$20.4 Billion Annually (Sept. 13, 2022), <https://www.fairus.org/press-releases/presidential-administration/workforce-economy/fair-reveals-illegal-aliens-released>.

¹⁰ Supra, note 1.



Louie Gohmert
Member of Congress



Darrell Issa
Member of Congress



Ken Buck
Member of Congress



Andy Biggs
Member of Congress



Brian Babin
Member of Congress



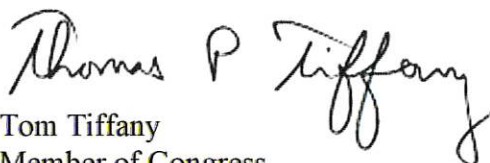
Ralph Norman
Member of Congress



Randy Weber
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Tom McClintock
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Tom Tiffany
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Ronny L. Jackson
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Matt Rosendale
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Cliff Bentz
Member of Congress



**U.S. Citizenship
and Immigration
Services**

November 29, 2022

The Honorable Mike Johnson
U.S. House of Representatives
Washington, DC 20515

Dear Representative Johnson:

Thank you for your September 21, 2022, letter to the U.S. Department of Homeland Security (DHS) concerning the Public Charge Ground of Inadmissibility Final Rule (2022 Final Rule) published on September 9, 2022. Secretary Mayorkas asked that I respond on his behalf, and I apologize for the delay in my response.

We acknowledge your request that DHS rescind the recently published 2022 Final Rule. However, USCIS does not intend to pursue this course of action. This rule will become effective on December 23, 2022.

The 2022 Final Rule provides clarity and consistency for noncitizens on how DHS will administer the public charge ground of inadmissibility. This rule is the culmination of an intensive rulemaking process during which DHS received and considered public comments on various substantive topics, including which types of benefits DHS should consider in the context of public charge inadmissibility determinations. This process consisted of an advance notice of proposed rulemaking, public listening sessions, a notice of proposed rulemaking, and the publication of the 2022 Final Rule. During the rulemaking process, DHS also engaged with federal interagency partners.

The 2022 Final Rule restores the historical understanding of a “public charge” that had been in place for decades, in considering public benefits relevant to the admissibility determination. In addition, under laws passed by Congress, relatively few noncitizens in the United States are both subject to the public charge ground of inadmissibility and eligible for public benefits – whether cash or non-cash benefits – prior to adjustment of status. DHS also noted in the 2022 Final Rule that while the 2019 Final Rule was in effect, of the 47,555 applications for adjustment of status to which the rule was applied, DHS issued only 3 denials (which were subsequently reopened and approved) and 2 Notices of Intent to Deny (which were ultimately rescinded, and the applications were approved) under the public charge ground of inadmissibility.

The Honorable Mike Johnson

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Please see the enclosure for specific answers to your questions. Thank you again for your letter and interest in this important issue. The cosigners of your letter will receive a separate, identical response. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative Affairs at (240) 721-3801.

Respectfully,

A handwritten signature in black ink, appearing to read "Ur M. Jaddou", followed by a long horizontal flourish.

Ur M. Jaddou
Director

Enclosure

**The U.S. Department of Homeland Security's Response to
Representative Mike Johnson's September 21, 2022 Letter**

1. What process was used to determine which types of benefits (cash-versus non-cash-based) will be considered?

In the Notice of Proposed Rulemaking (NPRM), DHS thoroughly explained its reasoning for including only cash benefits in its definitions and for only considering these benefits as part of the inadmissibility determination. *See* 87 FR 10570, 10608-10615. DHS received many comments from the public on this topic in response to the NPRM and considered them in drafting the final rule. Some commenters suggested including a broader range of benefits in the public charge inadmissibility consideration, while others suggested a narrower range of benefits. DHS responded to these comments and thoroughly explained its reasoning in the final rule. *See* 87 FR 55472, 55520-55538.

2. Why will non-cash benefits not be considered given they amount to a significant source of federal funding for low-income individuals?

The 2022 final rule contains a discussion of this topic, which is generally found at 87 FR at 55520-55538 and specifically addressed at 87 FR at 55527-55530.

3. Compared to the previous six years, how many fewer people does DHS estimate will be considered public charges under this new rule?

Unfortunately, DHS is unable to pinpoint denial reasons to INA 212(a)(4)(B) before the 2019 rule, so we are unable to estimate the number of adjustment of status applications that USCIS will deny under this new rule. Accordingly, our response is limited to denials under the 2019 Final Rule. Setting aside denials under INA 212(a)(4)(C) and (D) (*i.e.*, denials where a noncitizen failed to have a sufficient Form I-864, Affidavit of Support Under Section 213A of the INA when required), the 2019 Final Rule, which was in effect from February 24, 2020 to March 9, 2021, ultimately did not result in any denials of adjustment of status based on the public charge ground of inadmissibility.

4. Compared to the previous six years, how many more people does DHS estimate will apply for non-cash benefits once this rule is implemented?

In the Regulatory Impact Analysis accompanying the final rule, DHS assessed the potential effects of an alternative rule similar to the 2019 Final Rule. *See* 87 FR at 55619-55633. With respect to public benefits disenrollment, DHS estimated that under that alternative, a significant number of individuals, including U.S. citizen children in mixed-status families, would likely disenroll from public benefits programs as a consequence of fear and confusion regarding the alternative. Primary numerical estimates of reductions in enrollment on a per-program basis, which are necessarily subject to uncertainty, are set forth at tables 20 and 21 of the final rule. *See* 87 FR at 55629-55631.