

**Before the
Department of Homeland Security
Washington, D.C. 20528**

In the Matter of)
)
Inadmissibility on Public Charge) RIN 1615-AA22
Grounds)
)

**COUNCIL ON AMERICAN-ISLAMIC RELATIONS, NEW YORK
COMMENTS REGARDING PROPOSED RULEMAKING**

INADMISSIBILITY ON PUBLIC CHARGE GROUNDS

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I. Overview

On September 22, 2018, the U.S. Department of Homeland Security (“DHS”) proposed a wide expansion of the rule on public charge that has far-reaching, deleterious implications for immigrant communities, including Muslim immigrant communities. In these Comments Regarding Proposed Rulemaking (“Comments”), the Council on American-Islamic Relations, New York, Inc. (“CAIR-NY”) offers its perspective as the New York State chapter of America’s largest Muslim rights civil liberties organization, addressing the impact of the proposed agency action on one of the most sizable and diverse Muslim immigration populations in the country.

The proposed rule fits into this administration’s systemic hostility towards, and severe restrictions on, immigration from disfavored communities, especially Muslim-majority countries. Recent immigration policies consistently, prominently, and inexcusably disadvantaged Muslim immigrant communities. Federal agencies increased administrative hurdles to obtain immigration documentation, curtailing and scrutinizing applications, and explicitly banning travel by citizens of Muslim-majority countries. The proposed rule is yet another weapon in the arsenal of tactics designed to purge Muslim immigrants from the United States. Additionally, many immigrants who still manage to come to the United States or renew their status will still face the *in terrorem* effect of the rule change. They fear that if they fall on hard times, they will be forced to choose between separation from their families or watching their children or loved ones go homeless, lose healthcare, or starve.

This Comment presents the following arguments against the implementation of the proposed rule:

- The Public Charge Expansion Is Motivated by the Same Animus that Drives Measures Such As the Muslim Ban;
- Significant Discretion Granted in the Proposed Rule Will Put Muslim Immigrant Communities at Risk;
- The Proposed Expansion of Public Charge Will Lead to Extensive Data Collection and Surveillance, Including of U.S. Citizens, and Effectively Promote Creation of a Muslim Immigrant Registry;
- The Proposed Expansion Will Impact Healthcare Providers Who Are Immigrants from Muslim-Majority Countries;
- The Proposed Expansion Will Force Separation of Immigrant Families, Including Muslim Immigrant Families

II. About CAIR-NY

CAIR-NY is a 501(c)(3) non-profit organization based in New York. CAIR-NY’s mission is to protect civil liberties, empower American Muslims, and build coalitions that promote justice and mutual understanding. CAIR-NY provides for important unmet legal needs of these communities by providing support to local community-based organizations serving Muslim communities, providing Know-Your-Rights workshops on related issues, and providing legal representation and consultation.

III. The Public Charge Expansion Is Motivated by the Same Animus that Drives Measures Such As the Muslim Ban

The current administration has not been shy to express its hostility toward Muslims, especially Muslim immigrants.¹ The same nativist agenda drives both restrictions against Muslims and anti-immigration measures more generally.² Sadly, the nativist fear of immigrant communities is nothing new in America; 19th-century public charge laws were rooted in the demonization of diverse, immigrant communities.³ Modern federal public charge restrictions were inspired by restrictions on historically disfavored communities. In fact, the public charge “would not have developed if there was no strong cultural and religious prejudice, especially against Irish Catholics. Ethnic prejudice really facilitated the formation of state policies that targeted the destitute.”⁴ It is no different today. The proposed rule uses pretextual financial concerns as a cover for the Administration’s animus against targeted communities, including Muslim immigrants.

During his campaign, President Donald Trump proposed a “total and complete” ban on Muslims entering the United States, and Trump’s own advisors referred to the policy as a “Muslim Ban.”⁵ In the first “Muslim Ban,” Executive Order 13769, Trump severely limited immigration, revoked visas, and turned away refugees from numerous Muslim-majority countries.⁶ The ban was crudely crafted, impacting existing visa holders, legal permanent residents, and even U.S. Citizens holding a dual nationality.

In response to widespread litigation in multiple jurisdictions, including from the State of Washington, the United States Court of Appeals for the Ninth Circuit upheld a temporary restraining order on enforcement of the Muslim Ban. The first Muslim Ban was then superseded by Executive Order 13780, or “Muslim Ban 2.0,” a “temporary” measure which ordered a worldwide scrutinization of countries and a 90-day ban on visa issuance for nationals of six majority-Muslim countries, including Iran, Libya, Somalia, Sudan, Syria, and Yemen.⁷ This second Muslim Ban led the State of Hawaii to bring a civil action against the Trump administration challenging the order, a decision which was upheld by the Ninth Circuit Court of

¹ See, e.g., Sabrina Siddiqui, *Muslim candidates rise above Trump hostility to focus on issues*, THE GUARDIAN (July 1, 2018).

² A 2014 report found, for instance, that between 2011 and 2013, 80% of 102 anti-sharia bills introduced nationwide were sponsored or co-sponsored by an overlap legislator, or legislator who sponsored or co-sponsored a restrictive law in other issue areas including immigrants. Institute for Social Policy & Understanding, *Manufacturing Bigotry: A State-by-State Legislative Effort to Pushback Against 2050 by Targeting Muslims and Other Minorities*, 2014, available at <https://www.ispu.org/wp-content/uploads/2016/08/ISPU-Manufacturing-Bigotry4.pdf>.

³ Marilyn C. Baseler, “Asylum for Mankind”: America, 1607-1800 (Cornell University Press, 1998), p. 71.

⁴ Emma Green, *First, They Excluded the Irish*, THE ATLANTIC (Feb. 2, 2017), available at <https://www.theatlantic.com/politics/archive/2017/02/trump-poor-immigrants-public-charge/515397/> (quoting HIDEAKA HIROTA, *Expelling the Poor*)

⁵ Amy B. Wang, *Trump Asked for a ‘Muslim ban,’ Giuliani says—and ordered a commission to do it ‘legally,’* WASHINGTON POST (Jan. 29, 2017).

⁶ Donald J. Trump, Executive Order 13769 Protecting the Nation from Foreign Terrorist Entry into the United States (Jan. 27, 2017) (“Muslim Ban 1.0”)

⁷ Donald J. Trump, Executive Order 13780 Protecting the Nation from Foreign Terrorist Entry into the United States (Mar. 6, 2017) (“Muslim Ban 2.0”).

Appeals and was subsequently heard before the U.S. Supreme Court. A similar challenge made its way through federal court in Maryland which found the order unconstitutional.

After the 90-day period of Muslim Ban 2.0 expired, the Administration issued a Presidential Proclamation, or “Muslim Ban 3.0” which put into full effect travel and immigration restrictions for individuals from Iran, Libya, North Korea, Somalia, Syria, Venezuela, and Yemen.⁸ The third Muslim Ban went into effect on December 4, 2017 and applied to individuals who were outside of the United States on that date, who did not have a valid visa on that date, and who did not obtain a waiver. Many of the countries targeted by the Muslim Ban are economically under-developed.⁹ As such, it is more likely that individuals seeking visas, changes of status, or extensions of stay that are from Muslim Ban countries are likely to be turned away on public charge grounds. Absent the proposed rule change, immigration from Muslim-majority countries is already on track to fall by a third.¹⁰

The proposed rule is motivated by the same type of animus that drives measures such as the existing Muslim Ban. Earlier bans restricted the entry into the United States based on national origin. Now, DHS seeks to make life more difficult for visa-holders who already resided here. It would be a “poison pill,” a deterrent to force immigrant families to make impossible choices. Given the overlap between anti-immigrant and anti-Muslim bias, as well as the existing Muslim Bans, the public charge expansion appears designed to target those who the Administration initially targeted in Muslim Ban 1.0, but were unable to target in later, scaled-back bans.

IV. Significant Discretion Granted in the Proposed Rule Will Put Muslim Immigrant Communities at Risk

The proposed rule change likely will exacerbate the Administration’s arbitrary expansion of public charge denials under existing, comparatively narrow, public charge standards. Since the beginning of 2017, without any change in the standards for reaching determinations of public charge, we saw a dramatic increase in such findings.

The U.S. State Department reported that public charge ineligibility findings increased from 1,076 in FY 2016¹¹ to 3,237 in FY 2017.¹² That is over a three-fold increase, in just one year, even as the total number of immigrant visa applications declined. This alarming surge

⁸ Donald J. Trump, Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or Other Public-Safety Threats (Sept. 24, 2017) (“Muslim Ban 3.0”).

⁹ Lucy Pasha-Robinson, *Donald Trump’s travel ban on Muslim countries is not the same as their bans on Israelis, says expert*, THE INDEPENDENT (Jan. 31, 2017).

¹⁰ David Bier, *Trump’s Muslim Ban Is Working. Muslim Immigration Slumps*, NEWSWEEK (Dec. 14, 2017), available at <https://www.newsweek.com/trumps-muslim-ban-working-muslim-immigration-slumps-747922>.

¹¹ U.S. Department of State, Table XX, Immigrant and Nonimmigrant Visa Ineligibilities, Fiscal Year 2016, available at <https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2016AnnualReport/FY16AnnualReport-TableXX.pdf>.

¹² U.S. Department of State, Table XX, Immigrant and Nonimmigrant Visa Ineligibilities, Fiscal Year 2017, available at <https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2017AnnualReport/FY17AnnualReport-TableXX.pdf>.

came after years of relatively consistent denial rates under the prior administration. The only apparent explanation for this sharp and sudden rise in adverse public charge determinations is animus: the same animus that motivated the Muslim bans and the same animus motivating the proposed rule. Providing immigration authorities with *more* discretion will only further risk that they will abuse this powerful and highly discretionary tool to target Muslim immigrant.

V. The Proposed Expansion of Public Charge Will Lead to Extensive Data Collection and Surveillance, Including of U.S. Citizens, and Effectively Promote Creation of a Muslim Registry

Government benefits are not simply a source for aid for individuals—they are a repository of highly sensitive personally identifiable information. As such they are a potential tool for keeping track of, and collecting information on, non-citizens who benefit from federal programs. The proposed expansions to the public charge definition would include widely-used health safety-net programs, such as Medicaid and Medicare part-d. Visa-holders who receive benefits would not only risk being considered a public charge under the proposed rule, but they would be compelled to reveal highly-sensitive information about their medical treatment. Stanford psychiatrist Dr. Rania Awaad, MD reports that many Muslim patients fear that medical records, especially electronic records, could be accessed or misused by immigration officials.¹³

Given President Trump’s past support for a “Muslim registry,” CAIR-NY is especially concerned about the expanded collection of personally-identifiable information on immigrant communities under the proposed rule. For years, the National Security Entry-Exit Registration System (NSEERS) program acted as a *de-facto* Muslim immigrant registry. Under NSEERS, visa holders from predominantly Muslim-majority countries were required to register when they entered the United States, as well as regularly check in with immigration officials.¹⁴ The program caused the deportation of thousands of Muslim men prior to its termination in 2016. Similarly, states and localities have instituted their own, local Muslim registries. In New York City, the NYPD’s Intelligence division maintained a “Demographics Unit” for more than a decade, mapping-out Muslim communities in the tri-state area.¹⁵ Undercover officers called “rakers” and “mosque crawlers” would systematically target law-abiding New Yorkers for the crime of their religion.¹⁶

The proposed public charge expansion’s scrutiny of health status and various federal benefits would, effectively, open deeply private information of individuals and their relatives to the eyes of USCIS. The proposed changes create an overly invasive net of potential data points far beyond what USCIS reasonably requires to make status determinations. Easy, widespread,

¹³ Jennifer Huber, *Stanford psychiatrist focuses on mental health needs of Muslims*, STANFORD SCOPE (Aug. 28, 2018), available at <https://scopeblog.stanford.edu/2018/08/28/stanford-psychiatrist-focuses-on-mental-health-needs-of-muslims/>.

¹⁴ Nadeem Muaddi, *The Bush-era Muslim registry failed. Yet the US could be trying it again*, CNN (Dec. 22, 2016), available at <https://www.cnn.com/2016/11/18/politics/nseers-muslim-database-qa-trnd/index.html>.

¹⁵ Philip Bump, *Surveilling mosques? The NYPD has already tried the things proposed by 2016 Republicans*, WASHINGTON POST (Nov. 23, 2015).

¹⁶ *Id.*

warrantless access to highly personal medical data and other personally-identifiable information violates the Fourth Amendment, but still happens frequently.¹⁷

While we object to USCIS's acquisition of such data for visa-holders, the collection for their relatives is truly beyond the pale. Such a policy would substantially chill benefit use by qualified applicants, harming some of the most needy/deserving families in America.

VI. The Proposed Expansion Will Impact Healthcare Providers Who Are Immigrants from Muslim-Majority Countries

Immigrant healthcare workers are the backbone of the U.S. medical system, including many doctors, nurses, and others from the countries targeted in President Trump's Muslim Ban.¹⁸ Immigrants make up nearly one-fifth of all health care workers—22 percent of the health workforce and 30 percent of doctors and surgeons in the United States.¹⁹ Importantly, Iran and Syria, two banned countries, are among the top ten countries that send physicians and surgeons to the United States. As a result, the proposed rule would likely impact not just immigrant communities, but the healthcare providers upon whom all Americans depend.

In February 2017, The American Medical Association (AMA) wrote DHS, urging careful consideration of the Muslim Ban's impact on patient access to timely medical treatment or restrict the travel of physicians or international medical graduates.²⁰ Specifically, the AMA was "concerned that this executive order is negatively impacting patient access to care and creating unintended consequences for our nation's health care system."²¹ Further, the letter referenced "reports indicating that this executive order is affecting both current and future physicians as well as medical students and residents who are providing much needed care to some of our most vulnerable patients."²²

The proposed rule would likely also impact many medical providers and researchers. This is particularly true for the academics and researchers who make life-saving discoveries, but often are paid quite little. Similarly, the rule could impact students training to become doctors, nurses, and other types of medical professions. Collectively, the proposed rule risks negatively impacting the availability of healthcare services both for immigrants and U.S. citizens.

VII. The Proposed Expansion Will Force Separation of Immigrant Families, Including Muslim Immigrant Families

The proposed rule creates the starkest threat for mixed-status families, especially non-citizen parents of U.S. citizen children. While the proposed rule exempts benefits used by U.S.

¹⁷ ACLU, FAQ on Government Access to Medical Records, *available at* <https://www.aclu.org/other/faq-government-access-medical-records> (last accessed October 25, 2018).

¹⁸ Julia Belluz and Sarah Frostenson, *How Trump's travel ban threatens health care, in 3 charts*, VOX (June 26, 2018), *available at* <https://www.vox.com/2017/2/1/14470746/trump-travel-ban-health-care-doctors>.

¹⁹ *Id.* (citing 2015 data from the Migration Policy Institute)

²⁰ American Medical Association, Letter to John F. Kelly, February 1, 2017, *available at* <https://www.ama-assn.org/sites/default/files/media-browser/public/washington/ama-letter-to-kelly-homeland-security.pdf>.

²¹ *Id.*

²² *Id.*

Citizen children, the public charge expansion still threatens to force those families to make impossible choices. Visa-holder parents who use public benefits would face potential public charge denials and even, potentially, deportations. Those denied legal residency under public charge would either have to endure separation from their children or take them from the only country they know.

As the organization Children’s Rights observes, it is “vulnerable children who will suffer the consequences.”²³ Indeed, numerous rights organizations have pointed out that the proposed rule will require parents to choose between necessary public assistance or separation. Thus, the proposed rule surreptitiously expands the family separation policies that have come under national and international condemnation. Although the law is clear that visa-holders cannot be punished for benefits they use during the proposed rule’s pendency, we already see alarming reports of disenrollments. We urge DHS to avoid this potential humanitarian crisis and to not adopt the proposed rule.

²³ Children’s Rights, Expanded ‘Public Charge’ Regulation Puts Thousands of Children at Risk (Sept. 24, 2018), available at <https://www.childrensrights.org/expanded-public-charge-regulation-puts-children-at-risk/>.