

Congress of the United States
Washington, DC 20515

October 31, 2019

The Honorable Michael Pompeo
Secretary
U.S. Department of State
2201 C Street NW
Washington, DC 20520

Secretary Pompeo,

We write to express our urgent concerns regarding the Department of State's (DOS) continued implementation of its Public Charge Inadmissibility Interim Rule. The rule was originally published on October 11, 2019 with an effective date of October 15, 2019 and adopts a definition of "public charge" that the Department of Homeland Security (DHS) had finalized in a previously published rule which was also set to go into effect on October 15, 2019. Since then, five federal courts in separate jurisdictions have issued temporary injunctions blocking this rule from taking effect.¹ Due to the recent court injunctions and ongoing litigation challenging the legality of the DHS rule, we urge DOS to immediately withdraw its rule.

The Commonwealth of Massachusetts is home to more than 1.2 million immigrants² who strengthen our communities, contribute greatly to our state and national economy and help drive innovation and technological advancements.³ The Administration's changes to "public charge" would impose stringent new income, age and health requirements on individuals seeking visas, applications for admission, or adjustments of status. The "public charge" rule has already produced a widespread chilling effect, precipitating disenrollment of immigrants and their children—including U.S. citizen children—from vital healthcare, nutritional assistance, and housing programs for which they are qualified. The DOS rule is likely to have a similar chilling effect if implemented as many immigrants who process their visas abroad live in the United States and have U.S. citizen children.⁴

¹ Three federal courts, in New York, Washington, and Maryland, issued nationwide preliminary injunctions and two courts, in California and Illinois, issued geographically-limited injunctions. Miriam Jordan, *Judges Strike Several Blows to Trump Immigration Policies*, The New York Times (Oct. 11, 2019).

<https://www.nytimes.com/2019/10/11/us/immigration-public-charge-injunction.html>

² Migration Policy Institute, "State Immigration Data Profiles," <https://www.migrationpolicy.org/data/state-profiles/state/demographics/MA>.

³ Massachusetts Immigrant and Refugee Advocacy Coalition, "Public Charge Fact Sheet," <http://miracoalition.org/images/Documents/Mass-Immigrant-Facts-Jan2019.pdf>.

⁴ Hamutal Bernstein, et. al., *With Public Charge Rule Looming, One in Seven Adults in Immigrant Families Reported Avoiding Public Benefit Programs in 2018*, Urban Institute (May 21, 2019) <https://www.urban.org/urban->

DOS's decision to adopt the DHS definition of "public charge" is troubling and legally premature. Five federal district courts issued temporary injunctions blocking DHS's public charge rule from taking effect, finding that that the petitioners were likely to succeed in their argument that the rule is inconsistent with federal law. This is especially troubling because the DOS rule explicitly incorporates and cites provisions of the invalidated DHS rule – including those that would have protected vulnerable groups such as domestic violence victims – and without which the rest of the DOS rule would be difficult to implement.

While DOS announced the postponement of implementing its "public charge" rule following the recent court injunctions, on October 24, 2019 the agency published a 60-Day Notice of Proposed Information Collection for the DS-5540, officially known as its "Public Charge Questionnaire," a necessary step to have the new information collection approved.⁵ These process developments indicate that DOS may be moving forward with implementing these changes regardless of the status of ongoing litigation.

Due to the significant impact that this DOS rule will have on immigrant families throughout the Commonwealth and across the country, we request that DOS withdraw its rule completely and provide documentation and answers to the following questions by November 14, 2019.

1. The DOS regulation, promulgated 3 months after the DHS rule and containing the same "public charge" definition,⁶ appears to rely upon the latter. Does DOS intend to continue to rely on conforming its "public charge" definition to the enjoined DHS definition as a justification for implementing the DOS Interim Rule?
2. Who were/are the most senior officials in the White House who recommended and approved DOS' reliance on the DHS definition?
3. What (if any) internal process has DOS undertaken since the issuance of the injunctions related to the DHS public charge regulation to determine whether the DOS definition may similarly be unlawful?
4. Does DOS intend to reevaluate the propriety of issuing an Interim Regulation rather than a Proposed Regulation now that the emergency basis for foregoing the ordinary public comment period has been eliminated by the temporary injunctions?

⁵ See, <https://www.federalregister.gov/documents/2019/10/24/2019-23219/60-day-notice-of-proposed-information-collection-public-charge-questionnaire>.

⁶ compare 8 CFR § 212.21 (DHS) and 22 CFR § 40.41(a) (DOS)

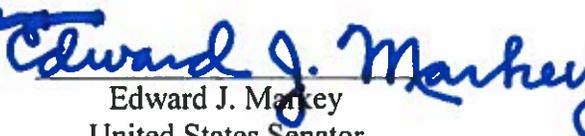
5. Once the new DOS form is approved, how much additional time, if any, will be provided for stakeholder engagement prior to requiring that visa applicants with new or pending cases use the form?
6. What would be the earliest specific date on which the DOS form would be required?
7. What guidance has been given to DOS posts domestically and internationally while this process is under deliberation?
8. How will DOS ensure that visa applicants with pending cases are not burdened with after-the-fact requests for additional evidence or forms because of the implementation of the DOS rule?

We thank you for your cooperation.

Sincerely,


Ayanna Pressley
Member of Congress

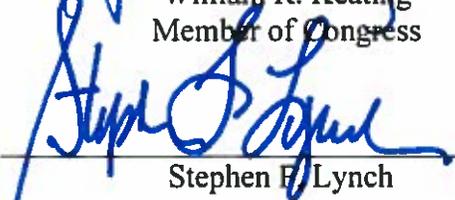

Elizabeth Warren
United States Senator

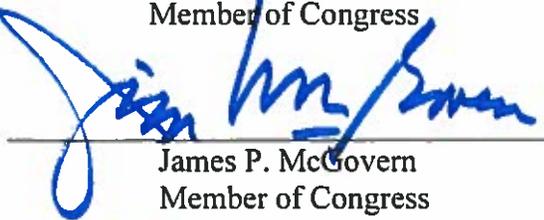

Edward J. Markey
United States Senator

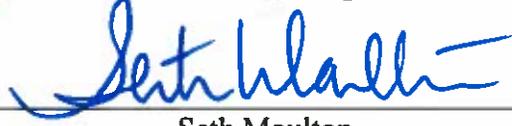

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