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BY U.S. MAIL:
Ms. Samantha Deshommes
Chief, Regulatory Coordination Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Avenue NW
Washington, DC 20529-2140

Re: DHS Docket No. USCIS-2010-0012.
RIN 1615-AA22.

To the Department of Homeland Security:

These Comments concern changes to Public Charge Rules proposed by the DHS. The Department's proposed amendments are not authorized by Congress.

The Department of Homeland Security can act only with authority delegated by Congress. Here, the Department's cited Legal Authority does not authorize the DHS to issue a regulation that redefines terms in ways they were not previously defined by statute or are misdirected from their stated purposes.

These Comments address in particular the Department's proposed changes to 8 C.F.R. §§ 212.20 through 212.24 inclusive.

To begin with, over all the DHS proposed rules changes are unauthorized and so they cannot state the law concerning the subjects they address. The DHS's "Legal Authority" for its changes is cited in 83 Federal Register at 51124 (Wed., Oct. 10, 2018), and again at the beginning of the proposed rules changes at 83 FR at 51289. No Congressional statute conveys authority to a federal administrative agency to rewrite the statute. The statutes cited by the DHS are no exception.

The DHS is what lawyers call a "mere" administrative agency, distinguishing its minor status from its enabling legislative body or parent, in this case, distinguishing it from Congress. As a "mere" federal administrative agency, like any other federal administrative agency the DHS has no powers to act apart from those expressly conferred by Congress. Put another way, the DHS has no authority except that given to it by Congress.

The 183 pages published in the Federal Register containing the rationales (83 CFR 51114-511289) and the proposed "Public Charge Rules" changes (83 CFR 51289-51296) offered by the

DHS, substantially if not entirely rewrite statutes enacted by the U.S. Congress, particularly but not only 8 USCA § 1182(a)(4). They are unauthorized and so they are invalid for that reason alone.

For ease of reference, paragraph A of subsection 1182(a)(4) reads in full as follows:

> **(4) Public charge**
> **(A) In general**
> Any alien who, in the opinion of the consular officer at the time of application for a visa, or in the opinion of the Attorney General at the time of application for admission or adjustment of status, is likely at any time to become a public charge is inadmissible.

First and foremost, Congress did not give a definition of "public charge." *See* 8 USCA § 1182(a)(4) and not just paragraph (A) quoted immediately above.

As the DHS noted itself in footnote 21, 83 FR at 51123, the U.S. Senate Judiciary Committee in which this legislation originated in 1952 recommended adopting the phrase, "public charge," which had already been in use in immigration law for a long time as of 1952. "The committee noted that there was no definition of the term 'likely to become a public charge[.]" ***And the committee did not recommend a definition of the term. Nor did Congress provide a definition of the term when Congress voted as a whole to enact this measure into law as a statute.*** .In that process Congress displayed its clear intent not to provide a definition of "likely to become a public charge."

Moreover, interpretation of a word or phrase in a statute requires a look at the structure of the ***entire*** statute to interpret it. This is what a Court would look at, and it is how an administrative agency like the DHS is required to look at a statute as well. The structure of Section 1182 reflects the intent of Congress to leave the determination of who is "likely to become a public charge" to a case-by-case process.

The process fashioned by Congress for admitting and excluding aliens from the U.S. allows for application of this standard in light of future developments and circumstances as yet unknown. The DHS proposed changes do not.

The claim is made in the rationale for these proposed changes published in the Federal Register that the development of "public charge" in immigration law was framed by a "relationship between public charge and receipt of public benefits[.]" 83 FR at 51123. This claim is false.

It is refuted by the clear language of subsection 1182(4)(a) and of all other statutes that Congress wrote regarding immigration issues. None of them links the DHS characterization of "public benefits" with the standard of "likely to become a public charge."

DHS's second claim about the development of "public charge" in immigration law is that "public charge" has been framed by "consideration of a sponsor's affidavit of support within public charge inadmissibility determinations." 83 FR at 51123.

This claim too is refuted by the clear language of subsection 1182(a)(4) and of every other statute written by Congress addressing immigration issues, particularly and uniquely 8 USCA § (a)(4)(B)(ii):

> (B) Factors to be taken into account
>
> * * *
>
> (ii) In addition to the factors under clause (i), the consular officer or the Attorney General ***may also consider*** any affidavit of support under section 1183a of this title for purposes of exclusion under this paragraph.

(Emphasis added.) The word "may" when used in a statute is intended to convey that the act suggested is **discretionary, not mandatory.**

In particular, the DHS stated link between "public charge" and "receipt of public benefits" is unauthorized and misdirected. The DHS proposes to invent and deploy a new definition of "public charge" different from and unlike those set out in the statute, 8 USCA § 1182(a)(4)(A), quoted in full above. The most significant unrelated addition is the proposal that "public charge" exclusion from the U.S. applies to any person who "receives one or more public benefits[.]" There are several problems with this addition, each of which invalidates the proposed change.

It bears repeating that Congress did not equate the receipt of public benefits with a "public charge" liable to being excluded from the United States. The statute as a whole refutes any misdirected attempt to conflate the two concepts.

Congress did not provide a statutory definition of "public charge" beyond establishing a generalized standard for determination on a case-by-case basis of who is "likely to become a public charge." See 8 USCA § 1182(a)(4)(A) and (B).

Instead the Federal Courts for nearly a century have required evidence to support any determination that an alien seeking admission into the United States can be excluded because she or he is likely to become a public charge: "In order to constitute them ***likely to become a public charge***, there must be ***evidence*** that they are ***likely*** to be supported at the expense of the public. I find no evidence in the record of that fact." Similarly, there is no evidence offered by the DHS for its proposed rules changes of "public charge" means "receipt of public benefits."

If public benefits were so important, they would have been listed in the immigration statutes as grounds for exclusion. They were not.

Conclusion.

It may be that the things that DHS asserts are true, but merely asserting them to be true does not make them so. There must be ***evidence*** to support an administrative agency's proposed rules changes, and insufficient if any evidence is provided by the DHS for these proposed rules changes.

In any case, Congress has seen fit to provide a different statutory procedure than the DHS is authorized to write in these proposed rules changes.

All that has been pointed out above is obviously inconsistent with DHS's assertion of "nonexistent" legislative guidance and case language. The guidance is there; DHS just does not want to follow it.

Thank you for your consideration.

Sincerely Yours,
/S/
Dennis J. Wall