



Trump's 'Public Charge' Rule Would Radically Change Legal Immigration

By Shawn Fremstad | November 27, 2018

Despite the Republican Party controlling both houses of Congress for the last two years, the Trump administration has failed in its efforts to push through legislation that would reduce legal immigration levels. Now, it is trying to use the regulatory process to bypass Congress and accomplish the same goal. The regulations proposed by the administration would make it harder for working- and middle-class people to immigrate legally to the United States by denying them green cards and visas based on government predictions that they are “likely” to receive Medicaid coverage or other means-tested public benefits at any time in the future.¹

As authority for its proposal, the administration is pointing to a statutory provision first enacted in 1882 under which most immigrants who are otherwise eligible for green cards and most nonimmigrants seeking admission to the United States on a temporary basis must show that they are not “likely to become a public charge” (LPC).² Over the past five years, an annual average of roughly 900,000 people seeking immigrant visas have been subject to the LPC test, as well as an annual average of approximately 176 million people seeking admission as nonimmigrants.³ As a result, even small changes to the test can have large effects on both immigrants and nonimmigrants.

In order to pass the current LPC test, potential immigrants and nonimmigrants must show that they are not likely in the future—after receiving a green card or other visa—to end up in a long-term care institution, such as a nursing home. They must also show that they are not likely to become “primarily dependent” on forms of “public cash assistance for income maintenance” such as Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF), or General Assistance in order to survive.⁴ Under the Trump administration’s proposal, however, government officials would ultimately be required to deny a green card and most other visas to anyone who they predict may, at any point in the future, receive supplementary forms of public assistance that have not previously been considered under the LPC test. The newly considered forms of assistance include Medicaid, Medicare Part D premium and cost-sharing subsidies, the Supplemental Nutrition Assistance Program (SNAP), and housing assistance.⁵ In addition, under the proposed test, people with incomes under 250 percent of the federal poverty level—approximately \$63,000 per year for a family

of four⁶—or those with pre-existing health conditions would be effectively singled out for discriminatory and arbitrary treatment by immigration officials.⁷

Although put forth as a regulation, the Trump administration’s proposal so fundamentally alters the existing regulatory scheme for family-, employment-, and diversity-based legal immigration that it amounts to new legislation—which should only become law if passed by Congress. The administration is effectively claiming that Congress’ inclusion of the now archaic language, “likely to become a public charge,” in the Immigration and Nationality Act gives the president the unilateral authority to undercut subsequently enacted parts of the law.⁸

There are two common misconceptions about the president’s new proposal that, once corrected, reveal that it is far more radical than commonly reported. The first misconception is that the change would be minimal, subjecting only about 383,000 people to the test annually. However, as explained further below, the test will directly apply to roughly 900,000 immigrants and 176 million nonimmigrants each year. The second misconception is that most of the people at risk of being denied a green card or other visas under the proposed rule have received public benefits in the United States. In reality, most of the people who will be affected by the proposal will have never received public benefits in the United States.

The proposed rule change will affect millions of people annually*

Several media outlets have reported that the proposed LPC test is expected to affect some 383,000 people annually.⁹ However, this figure vastly underestimates the test’s scope.

The current LPC test applies to the vast majority of foreign nationals seeking visas as well as those seeking admission to the United States either permanently or temporarily—immigrants and nonimmigrants, respectively. As detailed below, this amounts to roughly 900,000 immigrants and 176 million nonimmigrants each year. The administration’s proposal does not change the broad applicability of the LPC test; in fact, it expands the applicability of the test to include approximately 500,000 nonimmigrants seeking an extension of stay or a change of status. This means that the total number of people who will have to meet the LPC standard each year is well above 383,000 and greater than the number of people currently subject to the test.

Table 1 details four general categories of immigrants and nonimmigrants who would be subject to the revised LPC test. It shows that each year, the rewritten test would apply to roughly 912,500 people seeking green cards; 10 million people seeking nonimmigrant visas from U.S. State Department (DOS) officials; and roughly 500,000 nonimmigrants seeking extensions of stay or changes of nonimmigrant status from U.S. Department of Homeland Security (DHS) officials. Immigrants and nonimmigrants

grants in the first three rows of Table 1 are subject to the current public charge test, while those in the fourth row are not. Immigrants and nonimmigrants in all four rows would be subject to the revised test proposed by the administration.

TABLE 1
President Trump’s proposal to rewrite the ‘likely to become a public charge’ (LPC) test will apply to millions of people seeking immigrant and nonimmigrant visas

Estimated number of people who would be subject to new test, by category

Category of people subject to new test	Estimated number of people subject to new test annually	Agency/official applying the test
Seeking an immigrant visa		
Applying for adjustment of status to lawful permanent resident	382,264	Department of Homeland Security/immigration officials
Applying for admission to United States as lawful permanent resident	529,247	State Department/consular officials
Total	911,511	
Seeking a nonimmigrant visa		
Applying for a nonimmigrant visa to temporarily stay in the United States	10,010,396	State Department/consular officials
Applying for an extension of stay or change of nonimmigrant status	517,508	Department of Homeland Security/immigration officials
Total	10,527,904	

Sources: The estimate in row 1 is from Table 38 of U.S. Department of Homeland Security, “Inadmissibility on Public Charge Grounds: An unpublished Proposed Rule by the Homeland Security Department on 10/10/2018” (2018), available at <https://www.federalregister.gov/documents/2018/10/10/2018-21106/inadmissibility-on-public-charge-grounds>. This estimate is the annual average of people who applied for adjustment of status from 2012 to 2016 who are not exempt from the LPC test. The estimates in rows 2 and 3 (“Applying for admission” and “Applying for a nonimmigrant visa”) are from the author’s calculations from Table I in U.S. Department of State, “Report of the Visa Office 2017,” available at <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics/annual-reports/report-of-the-visa-office-2017.html> (last accessed October 2018). Both figures are annual averages of visas issued from 2013 to 2017. The figures in rows 2 and 3 are likely conservative estimates, as they are based on the number of visas issued rather than the number of visa applications. The estimate in row 4 is the author’s calculation from Tables 42, 43, and 44 of the Department of Homeland Security proposed rule. It is the annual average of people who applied for an extension of stay or change of nonimmigrant status from 2012 to 2016.

There is also a fifth category of people who will be affected by the rule change, which the table does not fully show: the roughly 176 million nonimmigrants admitted annually to the United States who are mainly temporary visitors for business, tourists, students, and temporary workers and their families.¹⁰ The vast majority of these individuals are currently subject to the LPC test. Importantly, this 176 million figure is not an unduplicated count of individuals who are admitted; it also includes the roughly 10 million people who obtain nonimmigrant visas from State Department officials.

The Trump administration’s proposal only included estimates for categories one and four. This may be because the rule is being promulgated solely by DHS, which is only responsible for immigrants and nonimmigrants seeking admission at U.S. ports of entry. However, the statutory provision the administration is regulating—8 U.S.C. § 1182(a) (4)—is the exact same provision that the State Department must use when determining whether to grant visas to immigrants and nonimmigrants applying from outside of the United States.¹¹ Furthermore, the term “likely to become a public charge,” which DHS is

redefining in this statutory provision, is the same term that the State Department must use when making its determinations.

In the preamble to the proposed rule, DHS acknowledges that it is “likely that DOS will amend its [public charge] guidance to prevent the issuance of visas to inadmissible aliens.”¹² Absent any explicit statement from the president, DHS, or DOS that the new definition will not apply to determinations by the State Department, it is reasonable to estimate its impact based on the assumption that the LPC change will apply to both DHS and DOS. In other words, when assessing the applicability of the proposed test, the public, policymakers, and the media should understand that it could apply to as many as 900,000 immigrants and 176 million nonimmigrants each year.

Historically, a modest number of potential immigrants and nonimmigrants fail the public charge test and are denied entry into the United States each year.¹³ The Trump administration has yet to formally estimate the number of people who will fail the revised test despite meeting all other legal requirements for obtaining a visa and admission, but it will certainly be much higher than it has been in the past.

The best estimate of how many potential immigrants might fail the revised test comes from a new analysis by the Migration Policy Institute (MPI).¹⁴ Using 2012–2016 data from the U.S. Census Bureau’s American Community Survey, MPI estimates how many recent lawful permanent residents (LPRs)—those who were subject to the current LPC test, passed it, and are now living in the United States—have one or more of the five factors that would count against them if they were subject to the proposed rule. According to the study, about 69 percent of recent LPRs have at least one factor that the proposed test would treat negatively; 43 percent have at least two negative factors; and 17 percent have at least three.¹⁵ MPI also notes that only 39 percent of recent LPRs who were subject to the current LPC test have incomes above 250 percent of the federal poverty line—the standard that the proposed rule treats as a heavily weighted positive factor.¹⁶ Notably, MPI does not include health or disability status in its analysis, which suggests that its estimates of how many recent LPRs would be excluded under the proposed test are conservative.

MPI was unable to estimate the precise number of immigrants who are likely to fail the proposed test because “the rule does not specify how many negative versus positive factors someone must have for their application to be denied.”¹⁷ On balance, it seems reasonable to estimate that the proposed rule could result in anywhere from roughly 17 to 61 percent of otherwise eligible immigrants failing the LPC test. The lower bound of 17 percent is the share of recent LPRs who have at least three negative factors. The upper bound of 61 percent is the share of recent LPRs who have incomes below 250 percent of the federal poverty line.¹⁸ That this range is so wide is further evidence of the ill-conceived nature of the DHS proposal. Moreover, as MPI notes, the proposed rule would “disproportionately affect women, children, and the elderly” and “likely result in a shift in the origins of immigrants granted green cards ... away from Mexico and Central America.”¹⁹

No one has made similar estimates of the number of nonimmigrants who are at risk of failing the revised test. The nonimmigrant failure rate will be much lower than the immigrant failure rate because the proposed test is stricter for people seeking permanent residence than it is for people seeking temporary, nonimmigrant status.²⁰ Still, the proposed test is much stricter for nonimmigrants than the current test. Additionally, because there are so many people admitted to the United States as nonimmigrants each year, even small increases in the LPC failure rate could have large effects.

Collateral damage: U.S. citizens' spouses and family members and U.S. employers

If the president's proposal becomes law, hundreds of thousands of U.S. citizens will be denied the opportunity to reunite with their spouses and other close family members. Indeed, the proposed LPC test threatens to separate families on a scale more massive than has been the case to date. Most of the roughly 900,000 people eligible for green cards each year have close family members who are U.S. citizens, including their husbands, wives, parents, children, and other close relatives. The revised rule would affect:

- Approximately 241,000 green cards issued by the State Department annually over the past five years to the spouses, children, parents, and other immediate relatives of U.S. citizens²¹
- Approximately 205,000 visas issued by the State Department annually over the past five years to other eligible family members of U.S. citizens and LPRs²²
- 265,709 people who adjusted to LPR status in 2017 and who are the spouses or other family members of U.S. citizens²³

The proposal will also affect U.S. employers sponsoring immigrant and nonimmigrant workers. Doug Rand, who serves as the president of an online firm called Boundless Immigration that helps with immigration paperwork, explained this potential ripple effect: "I don't think the business community has any clue how much this impacts them. ... This means paying lawyers more money and having every application being a nail-biter."²⁴

Most immigrants at risk of being denied a green card under the proposed test have not received public assistance

News stories about the proposal have commonly run headlines suggesting that immigrants will be denied green cards if they have received benefits.²⁵ The truth is, however, that most of the people who would be denied green cards and other visas under the revised test have never received any public benefits in the United States.

As noted above, the current test requires immigration and consular officials to predict whether a potential immigrant or nonimmigrant is likely to become primarily dependent on SSI or other public cash assistance at any time in the United States before their death, including after they become U.S. citizens. The potential future receipt of supplemental in-kind benefits—benefits that one cannot subsist on in the absence of other income, including Medicaid, SNAP, and rental housing assistance—does not make someone a public charge under long-standing policy and practice. When making LPC predictions, immigration and consular officials may consider a potential immigrant’s or nonimmigrant’s past receipt of public cash assistance, but they may not consider past receipt of supplemental benefits.

Under the Trump administration’s proposal, however, immigration and consular officials would be required to deny admission to a potential immigrant or nonimmigrant deemed likely to receive even a modest amount of Medicaid, Medicare Part D premium and cost-sharing subsidies, SNAP, or rental housing assistance. And in making an LPC prediction, officials would consider whether the person has ever applied for, received, or been approved to receive these types of public supplemental benefits.

The Trump administration’s proposal does not enumerate how many potential immigrants and nonimmigrants subject to the proposed LPC test have received or are currently receiving cash or the supplemental benefits, but it is almost certainly a modest share of the total number of people seeking admission to the United States or adjusting their status each year. This is because relatively few people are eligible to receive such benefits before they obtain a green card. Therefore, the revised LPC test would primarily deny green cards and other visas to people who have never received Medicaid, SNAP, other supplementary assistance, or public cash assistance.²⁶

However, there are some important exceptions. Under a federal law passed by Congress in 2009, pregnant women and children who are lawfully residing in the United States are eligible for Medicaid in most states even if they do not have green cards—as long as they meet the same eligibility requirements that apply to citizens.²⁷ These groups will be particularly at risk under the revised LPC proposal. If adopted, the proposal would force pregnant women and children who are lawfully residing in the United States without green cards to choose between health care and a future green card. Yet it is hard to imagine that Congress would have extended Medicaid coverage to lawfully residing pregnant women and children if it believed that accepting such coverage would make these individuals ineligible for future green cards as public charges. Another important exception involves lawful permanent residents who travel abroad for more than six months. Upon their return, they would again be considered as “seeking admission” and therefore subject to the LPC test.²⁸

The fact that relatively few immigrants and nonimmigrants subject to the proposed LPC test are currently receiving or have received any of the benefits targeted by the rule does not make the proposal any less harmful or ill-conceived. Instead of basing their LPC pre-

dictions on past or current receipt of benefits, officials will base their predictions on factors such as current income and health, which are inherently variable over time and only minimally predictive of whether someone will sign up for Medicaid or other benefits at any point in the future.²⁹ Given that many people who are eligible for voluntary benefits do not necessarily sign up for them, it is hard to imagine that officials will not end up denying green cards to otherwise eligible immigrants based on false predictions.³⁰

Moreover, the proposal, if adopted as a final rule, will increase fear, confusion, and stigma about health, nutrition, and other public services among people in immigrant families—including U.S. citizens and LPRs.³¹ As a result, many people who Congress has specifically designated as eligible for these public services—such as the many lawfully residing immigrants who are exempt from the LPC test—will not sign up for them. As DHS acknowledges in the preamble to the rule, “reductions in federal and state transfers under federal benefit programs may have downstream and upstream impacts on state and local economies, large and small businesses, and individuals.”³² These effects will likely be amplified by the current hostile environment for immigrants in the United States. In a recent national survey conducted by the Pew Research Center, 55 percent of all Latinos in United States said “they are worried that they, a family member or close friend could be deported.”³³

Conclusion

Trump’s proposed change to the LPC rule is more radical and far-reaching in scope than commonly reported. The revised LPC test will directly apply to roughly 900,000 potential immigrants and another 176 million potential nonimmigrants each year. Furthermore, the Trump administration has made no attempt to estimate how many people will fail the test each year. It is not unreasonable to think that somewhere between 17 and 61 percent of otherwise eligible immigrants seeking green cards could fail the proposed test. The proposed rule’s effect on potential nonimmigrants is less clear, but because so many people are admitted as nonimmigrants each year, even a small increase in the percentage of those denied visas and admission on public charge grounds could end up being very large. What’s more, relatively few of these denials will be based on the past or current receipt of benefits; instead, most of the LPC predictions will be based on people having working-class incomes or disabilities.

The Trump administration’s proposal is an ill-conceived attempt to unilaterally restrict legal immigration, and it should be withdrawn before irreversible harm is done. If the public charge rule is not withdrawn, Congress should pass legislation blocking the use of federal funds to implement the proposal.³⁴

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**Correction, November 27, 2018: A heading in this brief has been updated to reflect the accurate number of people who will be affected by the proposed rule change.*

Endnotes

- 1 U.S. Department of Homeland Security, "Inadmissibility on Public Charge Grounds," *Federal Register* 83 (196) (2018): 51114–51296, available at <https://www.federalregister.gov/documents/2018/10/10/2018-21106/inadmissibility-on-public-charge-grounds>.
- 2 Legal Information Institute, "8 U.S.C. § 1182(a)(4) – Inadmissible aliens," available at <https://www.law.cornell.edu/uscode/text/8/1182> (last accessed November 2018). See endnote 8 below for early legislative history of this provision.
- 3 See Table 1 of this issue brief and endnote 10.
- 4 Shawn Fremstad, "The Applicability of 'Public Charge' Rules to Legal Immigrants Who Are Eligible for Public Benefits" (Washington: Center on Budget and Policy Priorities, 2004), available at <https://www.cbpp.org/research/poverty-and-inequality/the-applicability-of-public-charge-rules-to-legal-immigrants-who-are>.
- 5 U.S. Department of Homeland Security, "Inadmissibility on Public Charge Grounds," p. 51159.
- 6 U.S. Department of Health and Human Services, "Annual Update of the HHS Poverty Guidelines," *Federal Register* 83 (12) (2018): 2642–2644, available at <https://www.federalregister.gov/documents/2018/01/18/2018-00814/annual-update-of-the-hhs-poverty-guidelines>.
- 7 Under the proposed test, certain factors would "generally weigh heavily in favor of a finding that an alien is likely to become a public charge," including that "the alien has been diagnosed with a medical condition that is likely to require extensive medical treatment or institutionalization or that will interfere with the alien's ability to provide for him- or herself, attend school, or work." Having "financial assets, resources, and support of at least 250 percent of the Federal Poverty Guidelines" would be treated as a heavily weighed positive factor. See Proposed 8 C.F.R. § 212.22(c) (iv) in U.S. Department of Homeland Security, "Inadmissibility on Public Charge Grounds." As a result, people with incomes above 250 percent of the federal poverty line will generally pass the test, while people with incomes below that threshold will face a much higher risk of failing the test, especially if they have disabilities or health conditions that "interfere" with their ability to work. See Melissa Boteach and others, "Trump's Immigration Plan Imposes Radical New Income and Health Tests" (Washington: Center for American Progress, 2018), available at <https://cdn.americanprogress.org/content/uploads/2018/07/18125135/PublicChargeBrief-7.pdf>.
- 8 Congress first added the term "public charge" to federal immigration law in 1882, the same year that it passed the Chinese Exclusion Act. The 1882 law provided that "if on such examination [by immigration officers] there shall be found among such passengers any convict, lunatic, idiot, or any person unable to take care of himself or herself without becoming a public charge, they shall report the same in writing to the collector of such port, and such person shall not be permitted to land." See Immigration Commission, "Reports of the Immigration Commission: Immigration Legislation" (1911), Appendix B, available at <https://archive.org/details/cu31924021134204>. The law also imposed a 50-cent duty on passengers arriving at any U.S. port. The funds collected were dedicated to regulating immigration and "for the care of immigrants arriving in the United States" and "for the relief of such as are in distress." *Ibid.* In 1891, Congress passed a law that excluded from admission, "in accordance with the existing acts regulating immigration ... idiots, insane persons, paupers or persons likely to become a public charge, persons suffering from a loathsome or a dangerous contagious disease" and various other classes. *Ibid.* In 1907, Congress passed a law excluding from admission "all idiots, imbeciles, feeble-minded persons, epileptics, insane persons, and persons who have been insane within five years previous; persons who have had two or more attacks of insanity at any time previously; paupers; persons likely to become a public charge; professional beggars; persons afflicted with tuberculosis or with a loathsome or dangerous contagious disease; persons not comprehended within any of the foregoing excluded classes who are found to be and are certified by the examining surgeon as being mentally and physically defective, such mental or physical defect being of a nature which may affect the ability of such alien to earn a living." *Ibid.* Earlier usages of the term "public charge" in the United States include colonial and state laws. For example, when the Alabama Legislature authorized grants of emancipation to individual slaves in the 1800s, they were only granted on the condition that emancipated slaves "never become a public charge." See *Alabama Sessions Laws* (Alabama: Skinner Printing Company, 1825).
- 9 See, for example, Jennifer A. Dlouhy, "Trump's Vow to Cut Red Tape Doesn't Extend to Legal Immigrants," *Bloomberg*, September 29, 2018, available at <https://www.bloomberg.com/news/articles/2018-09-29/trump-s-vow-to-cut-red-tape-doesn-t-extend-to-legal-immigrants>; Daniel Shoer Roth, "These legal immigrants might have their path to a green card blocked by Trump," *Miami Herald*, February 10, 2018, available at <https://www.miamiherald.com/news/local/immigration/article199481549.html>; J.B. Wogan, "Trump's Leaked Immigration Rule Already Having Impacts," *Governing*, March 2, 2018, available at <http://www.governing.com/topics/public-justice-safety/gov-leaked-immigration-trump-benefits.html>.
- 10 This is the average of annual nonimmigrant admissions from 2012 through 2016, calculated from U.S. Department of Homeland Security, "Table 25. Nonimmigrant Admissions By Class Of Admission: Fiscal Years 2007 To 2016," available at <https://www.dhs.gov/immigration-statistics/yearbook/2016/table25> (last accessed November 2018). This table is available as a zip file attachment titled "Nonimmigrant Admissions 2016 (Tables 25-32)" in U.S. Department of Homeland Security, "2016 Yearbook of Immigration Statistics" (2017), available at <https://www.dhs.gov/immigration-statistics/yearbook/2016>.
- 11 The LPC test applied by both DHS and the State Department is 8 U.S.C. § 1182(a)(4), which reads: "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." See Legal Information Institute, "8 U.S. Code § 1182 – Inadmissible aliens."
- 12 U.S. Department of Homeland Security, "Inadmissibility on Public Charge Grounds," p. 51135.
- 13 For example, from 1892 through 1900—the earliest time range for which DHS has federal statistics available—fewer than 15,000 people were denied admission on public charge grounds. See James R. Edwards Jr., "Public Charge Doctrine: A Fundamental Principle of American Immigration Policy" (Washington: Center for Immigration Studies, 2001), Table 2, available at <https://cis.org/Report/Public-Charge-Doctrine-Fundamental-Principle-American-Immigration-Policy>. During that same period, slightly more than 3.1 million immigrants were admitted as LPRs. This figure is calculated using data from U.S. Department of Homeland Security, "Table 1. Persons Obtaining Lawful Permanent Resident Status: Fiscal Years 1820 to 2017," available at <https://www.dhs.gov/immigration-statistics/yearbook/2017/table1> (last accessed November 2018). In 2017, DOS denied 3,237 immigrant visas and 51 nonimmigrant visas on LPC grounds. See U.S. Department of State, "Table XX: Immigrant and Nonimmigrant Visa Ineligibilities (by Grounds for Refusal Under the Immigration and Nationality Act) Fiscal Year 2017" (2017), available at <https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2017AnnualReport/FY17AnnualReport-TableXX.pdf>.
- 14 Randy Capps and others, "Gauging the Impact of DHS' Proposed Public-Charge Rule on U.S. Immigration" (Washington: Migration Policy Institute, 2018), available at <https://www.migrationpolicy.org/research/impact-dhs-public-charge-rule-immigration>.
- 15 *Ibid.*
- 16 *Ibid.*
- 17 *Ibid.*
- 18 *Ibid.*
- 19 *Ibid.*
- 20 U.S. Department of Homeland Security, "Inadmissibility on Public Charge Grounds," p. 51197.

- 21 See U.S. Department of State, "Table II: Classes of Immigrants Issued Visas at Foreign Service Posts, Fiscal Years 2013-2017" (2017), available at <https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2017AnnualReport/FY17AnnualReport-TableII.pdf>. These immigrants are included in the "immediate relative" classes of the table.
- 22 Ibid. These immigrants are included in the "family-sponsored preference" classes of the table.
- 23 U.S. Department of Homeland Security, "Table 6. Persons Obtaining Lawful Permanent Resident Status by Type and Major Class of Admission: Fiscal Years 2015 to 2017," available at <https://www.dhs.gov/immigration-statistics/yearbook/2017/table6> (last accessed November 2018).
- 24 Ted Hesson, "Businesses could be surprised by Trump plan to limit immigrant use of benefits," *Politico*, October 16, 2018, available at <https://www.politico.com/story/2018/10/16/immigration-trump-green-card-908820>.
- 25 See, for example, Ted Hesson and others, "Immigrants may be denied green cards if they've received benefits," *Politico*, September 22, 2018, available at <https://www.politico.com/story/2018/09/22/poor-immigrants-green-cards-trump-836456>; Catherine Rampell, "Proposed immigration policy penalizes legal residents for use of public benefits," PBS NewsHour, October 18, 2018, available at <https://www.pbs.org/newshour/show/proposed-immigration-policy-penalizes-legal-residents-for-use-of-public-benefits>; Maya Rhodan, "Trump Administration Targets Immigrants Who Receive Public Benefits," *Time*, September 23, 2018, available at <http://time.com/5384007/trump-administration-public-charge-rule/>.
- 26 In technical terms, "federal public benefits," including SNAP, Medicaid, SSI, and a long list of other benefits, are generally limited to U.S. citizens and "qualified aliens." Most people seeking admission or adjustment of status are "non-qualified" aliens. See Tanya Broder, Avidah Moussavian, and Jonathan Blazer, "Overview of Immigrant Eligibility for Federal Programs" (Los Angeles: National Immigration Law Center, 2015), available at <https://www.nilc.org/issues/economic-support/overview-immeligfedprograms/>; Alison Siskin, "Noncitizen Eligibility for Federal Public Assistance: Policy Overview" (Washington: Congressional Research Service, 2016), available at <https://fas.org/sqp/crs/misc/RL33809.pdf>.
- 27 Medicaid.gov, "Medicaid and CHIP Coverage of Lawfully Residing Children and Pregnant Women," available at <https://www.medicaid.gov/medicaid/outreach-and-enrollment/lawfully-residing/index.html> (last accessed November 2018).
- 28 LPRs are generally ineligible for SSI and SNAP, but LPR children under the age of 18 are not barred from SNAP. LPRs are generally ineligible for TANF and Medicaid during their first five years after obtaining LPR status. After this five-year period, they may be eligible for TANF and Medicaid depending on where they live and other factors. See Broder, Moussavian, and Blazer, "Overview of Immigrant Eligibility for Federal Programs."
- 29 Moreover, given that most potential LPRs subject to the LPC test are ineligible for Medicaid, SNAP, and TANF during their five years in the United States, officials will typically be predicting whether they are likely to receive these benefits at least five or more years into the future.
- 30 According to HHS, only 32.4 percent of TANF-eligible families received TANF cash assistance in 2012. Similarly, only 64 percent of SSI-eligible adults received SSI in 2012. See U.S. Department of Health and Human Services, "Welfare Indicators and Risk Factors: Fourteenth Report to Congress" (2015), tables IND 4a and IND 4c, available at <https://aspe.hhs.gov/report/welfare-indicators-and-risk-factors-fourteenth-report-congress>.
- 31 U.S. Department of Homeland Security, "Inadmissibility on Public Charge Grounds," p. 51266. See also Fiscal Policy Institute, "FPI Estimates Human & Economic Impacts of Public Charge Rule: 24 Million Would Experience Chilling Effects," October 10, 2018, available at <http://fiscalpolicy.org/public-charge>.
- 32 U.S. Department of Homeland Security, "Inadmissibility on Public Charge Grounds," p. 51118.
- 33 Mark Hugo Lopez, Ana Gonzalez-Barrera, and Jens Manuel Krogstad, "More Latinos Have Serious Concerns About Their Place in America Under Trump" (Washington: Pew Research Center, 2018), available at <http://www.pewhispanic.org/2018/10/25/more-latinos-have-serious-concerns-about-their-place-in-america-under-trump/>.
- 34 See *No Federal Funds for Public Charge Act of 2018*, H.R. 7052, 115th Cong., 2nd sess., (Government Publishing Office, 2018), available at <https://www.congress.gov/115/bills/hr7052/BILLS-115hr7052ih.pdf>.