OFFICE OF THE MAYOR
THE CITY OF NEW YORK

Department of State
Via Federal eRulemaking Portal

RE: ***Visas: Ineligibility Based on Public Charge Grounds***
DOS-2019-0035; RIN: 1400-AE87

The City of New York ("NYC") submits this comment in response to the Department of State's ("DOS") interim final rule entitled "Visas: Ineligibility Based on Public Charge Grounds," which was published in the Federal Register on October 11, 2019 and became effective on October 15, 2019 ("Interim Final Rule"). NYC also incorporates by reference its two prior comments concerning the Department of Homeland Security's ("DHS") proposed public charge rule entitled "Inadmissibility on Public Charge Grounds." Nothing in these comments constitutes a waiver of any arguments that the City may assert in any other forum.

Like the DHS final rule on public charge and inadmissibility ("DHS final rule"),[1] the Interim Final Rule profoundly reinterprets the term "public charge" as it appears in the Immigration and Nationality Act ("INA"), expanding its definition in a manner that departs radically from longstanding policy and is contrary to law. This expansion will result in tremendous negative consequences for New Yorkers, including citizens and Lawful Permanent Residents ("LPRs") who wish to reunify with their family members living abroad. The Interim Final Rule will also impose administrative and other burdens on NYC. Furthermore, ongoing litigation over the legality of the DHS final rule—which is currently enjoined by multiple federal courts—makes it untenable for DOS to achieve with this Interim Final Rule its stated goal of aligning with DHS standards.

It is of the utmost importance that changes to our country's rules avoid creating preventable risks to health, safety, and economic security. Given the likelihood that such harms will be incurred here, NYC strongly opposes the Interim Final Rule and calls upon DOS to withdraw it.

I. INTRODUCTION

NYC's Foreign-Born Population

NYC is broadly recognized as the ultimate city of immigrants. Generations have come here seeking to build a better life for themselves and their families. Our 3.1 million foreign-born New Yorkers (38 percent of NYC's total 8.5 million residents) are deeply integrated into the

[1] 84 FR 41292 (Aug. 14, 2019).

fabric of our city, as evidenced by the fact that approximately 60 percent of New Yorkers (4.9 million people) live in households with at least one foreign-born member.[2]

The vibrancy and diversity of NYC's immigrant communities enrich the civic, economic, and cultural life the city as a whole. In decades where other U.S. cities saw population declines, the arrival and economic activity of immigrants ultimately fostered growth and renewal in NYC.[3] Currently, the foreign-born represent nearly half (45 percent) of NYC's workforce. The labor force participation rate of immigrant New Yorkers (65.6 percent) exceeds that of New Yorkers overall (64.8 percent) as well as that of U.S.-born New Yorkers (64.1 percent).[4] Immigrant New Yorkers are job-creators, owning 52 percent of NYC's businesses,[5] including over half of NYC's 276,000 individual and family-owned businesses.[6] And in 2017, immigrants contributed $195 billion to NYC's Gross Domestic Product (GDP) —approximately 22 percent of NYC's total GDP.[7]

NYC has strong interests in ensuring that all New Yorkers are able to access critical health, nutrition, and housing services and resources, in accordance with federal, state, and local laws. Throughout our longstanding experience as the ultimate city of immigrants, we have seen time and again that inclusive laws and policies are of the utmost importance to the health, safety, and general welfare of NYC as a whole.

The Interim Final Rule

Existing immigration statutes provide that an applicant for admission to the United States who is or is likely to become a "public charge" can be denied a green card or visa.[8] "Public charge" inadmissibility determinations are the purview of two federal agencies. DHS makes the determinations for individuals who have already been lawfully admitted to the U.S. by federal immigration authorities and are seeking to adjust their status. DOS makes inadmissibility determinations for foreign nationals seeking immigrant and nonimmigrant visas. The Interim

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[2] New York City Mayor's Office of Immigrant Affairs, *State of Our Immigrant City* (Mar. 2018), *available at* https://www1.nyc.gov/assets/immigrants/downloads/pdf/moia_annual_report_2018_final.pdf (analyzing 2012-2016 5-Year American Community Survey Public Use Microdata Sample, as augmented by the Mayor's Office for Economic Opportunity).

[3] NYC Department of City Planning, *The Newest New Yorkers: Characteristics of NYC's Foreign-born Population* (Dec. 2013) p. 1, *available at* https://www1.nyc.gov/assets/planning/download/pdf/data-maps/nyc-population/nny2013/nny_2013.pdf.

[4] New York City Mayor's Office of Immigrant Affairs, *State of Our Immigrant City* (Mar. 2018), *available at* https://www1.nyc.gov/assets/immigrants/downloads/pdf/moia_annual_report_2018_final.pdf.

[5] *Id.*

[6] Analysis provided by the NYC Office of Management and Budget, using 2017 American Community Survey data.

[7] New York City Mayor's Office of Immigrant Affairs, *State of Our Immigrant City* (Mar. 2018), *available at* https://www1.nyc.gov/assets/immigrants/downloads/pdf/moia_annual_report_2018_final.pdf.

[8] INA Section 212(a)(4). An individual seeking admission to the United States or seeking to adjust status to that of an LPR (green card holder) is inadmissible if the individual, "at the time of application for admission or adjustment of status, is likely at any time to become a public charge."

Final Rule would affect nearly all individuals abroad seeking immigrant visas, all individuals abroad seeking nonimmigrant visas, and many individuals already present in the US seeking immigrant or nonimmigrant visas.

Over 20 years ago, the federal government issued guidance regarding the public charge basis for inadmissibility based on long-standing principles developed in the public charge case law.[9] This guidance was incorporated into the DOS Foreign Affairs Manual ("FAM"). The FAM provides the guidance that officials in U.S. embassies and consulates use to make decisions about whether to grant non–U.S. citizens admission to the U.S.

On January 3, 2018, DOS published revised sections of the FAM pertaining to public charge.[10] The changes to the FAM broke from longstanding agency practice which limited the public benefits portion of public charge inquiry to the applicant's usage of cash assistance for income maintenance or institutionalization for long-term care at government expense.[11] The revised sections instead instructed consular officers *in every case* to consider receipt of public assistance of *any* type by the visa applicant *and* by family members in the visa applicant's household.[12] After the new expansive standard was implemented, DOS visa denials increased exponentially. For example, between October 1, 2018 and July 29, 2019, DOS denied 5,343 immigrant visa applications for Mexican nationals due to public charge inadmissibility.[13] Comparatively, in federal fiscal year 2016, seven immigrant visas from Mexican nationals were denied on these grounds.[14] The City of Baltimore is challenging the changes to the FAM.[15]

On October 11, 2019, DOS published the Interim Final Rule on visa ineligibility on public charge grounds. This rule applies to all applicants for immigrant and nonimmigrant visas who are outside the U.S., except for those in certain humanitarian categories, as well as many applicants for family-based immigrant visas who are already inside the U.S. but are not lawfully present and therefore must report to a U.S. embassy or consulate as part of their immigration process. In the preamble to this rule, DOS notes that an estimated 12,736,034 visa applications will be affected by the rule per year.

The DOS Interim Final Rule is essentially identical to the DHS final rule on public charge inadmissibility, published on August 14, 2019, and is intended to bring DOS and DHS

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[9] *Inadmissibility and Deportability on Public Charge Grounds*, 64 FR 28676 (May 26, 1999), at 28681-82 ("1999 Regulations"); *see also* Field Guidance, 64 FR 28689 (May 26, 1999).

[10] Foreign Affairs Manual and Handbook, U.S. Dep't of State, 9 FAM 302.8-2(B)(1) (U) WHAT IS "PUBLIC CHARGE" (Jan. 3, 2018), available at: fam.state.gov.

[11] *Id.*

[12] 9 FAM 302.8-2(B)(2)(U)(f)(1)(b)(i) ("Past or current receipt of public assistance of any type by the visa applicant or a family member in the visa applicants household is relevant to determining whether the applicant is likely to become a public charge in the future but the determination must be made on the present circumstances.").

[13] Hesson, Ted, *Exclusive: Visa denials to poor Mexicans skyrocket under Trump's State Department*, Politico (Aug. 12, 2019), https://www.politico.com/story/2019/08/06/visa-denials-poor-mexicans-trump-1637094.

[14] *Id.*

[15] *See Mayor & City Council of Balt. v. Trump*, No. ELH-18-3636, 2019 U.S. Dist. LEXIS 161686, at *1 (D. Md. Sep. 20, 2019)..

practice into alignment. Like the DHS final rule, the Interim Final Rule defines a public charge as a person who receives certain enumerated benefits for 12 months within a 36 month period. These enumerated benefits include: federal, state, local, or tribal cash assistance for income maintenance; Supplemental Security Income; Temporary Assistance for Needy Families; Supplemental Nutrition Assistance Program ("SNAP"), Section 8 Housing Assistance under the Housing Choice Voucher Program; Section 8 Project-Based Rental Assistance; Public Housing under section 9 the Housing Act of 1937, 42 U.S.C. 1437 *et seq*.; and federally funded Medicaid (with certain exclusions).

The DHS final rule has been challenged by several jurisdictions and is enjoined from going into effect nationwide. On August 20, 2019, the New York State Attorney General, along with NYC and the states of Connecticut and Vermont, filed a lawsuit in the United States District Court for the Southern District of New York challenging the DHS final rule.[16] On October 11, 2019, the Court issued a nationwide preliminary injunction preventing DHS's final rule from taking effect and describing it as "simply a new agency policy of exclusion in search of a justification," and a new framework for defining public charge that is illogical and without rational basis.[17] U.S. District Courts in the Northern District of California, Eastern District of Washington, Northern District of Illinois, and District of Maryland have also issued preliminary injunctions blocking the rule from going into effect.[18]

II. THE INTERIM FINAL RULE IS UNLAWFUL

The Interim Final Rule violates the Administrative Procedure Act (the "APA"), and other affirmative obligations of the rulemaking process, in several respects. First, it conflicts with the statutory meaning of public charge as it has existed for over one hundred years—and as embodied in both immigration law and policy. Therefore, it exceeds statutory authority and is contrary to law. Second, it violates the APA because it is arbitrary and capricious, as it is not supported by—and indeed runs counter to—any evidence or reasoned decision making. Finally, DOS failed to adequately consider the impact the Interim Final Rule would have on States and local governments, as well as on family well-being, as it is required to do under separate statutory and executive obligations. For all of these reasons, the Interim Final Rule is unlawful and should be rescinded.

A. The Interim Final Rule Violates The Administrative Procedure Act Because It Exceeds Statutory Authority and is Contrary to Law.

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[16] See *Plaintiffs' Motion for Preliminary Injunction and Stay Pending Judicial Review*, *State of New York v. DHS*, 1:19-cv-07777, (S.D.N.Y. Sept. 9, 2019).

[17] *Memorandum Decision and Order Granting Plaintiffs' Motion for a Preliminary Injunction*, *State of New York v. DHS*, 1:19-cv-07777, (S.D.N.Y. Oct. 11, 2019).

[18] *Preliminary Injunction*, *City and County of San Francisco, et. al. vs. USCIS*, 19-cv-04717, (N.D. Cal. October 11, 2019); *Order Granting Plaintiff States' Motion for Section 705 Stay and Preliminary Injunction*, *State of Washington vs. DHS*, 4:19-cv-05210 (E.D. Wash. Oct. 11, 2019); *Memorandum and Order Granting Plaintiffs' Motion for Preliminary Injunction*, *Cook County, Illinois, et al., v. Kevin K. McAleenan et al.*, 1:19-cv-6334 (N.D. Ill. Oct. 14, 2019); *Memorandum and Order Granting Plaintiffs' Motion for Preliminary Injunction*, *CASA de Maryland Inc. et al. v. Trump et al.*, 8:19-cv-02715, (D. Md. Oct. 14, 2019).

An agency action violates the APA if it is "in excess of statutory jurisdiction, authority or limitations."[19] In determining whether agency action exceeds statutory authority, "the question is always whether the agency has gone beyond what Congress has permitted it to do."[20] Where the applicable statutes are clear, "that is the end of the matter[,] for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress."[21] Where the statutes are ambiguous, an agency is still prohibited from relying on an unreasonable interpretation of that statute.[22] Here, like the unlawful DHS final rule, the Interim Final Rule radically expands the meaning of public charge, stretching the definition beyond the bounds of reasonable statutory interpretation and contravening more than a century of history and common law interpretation. The new definition of public charge implemented in this Interim Final Rule unlawfully conflicts with Congressional policy and intent and thus exceeds DOS's action exceeds statutory authority and is contrary to law.

B. The Interim Final Rule Violates The Administrative Procedure Act Because It Is Arbitrary And Capricious.

Under the "arbitrary and capricious" standard, DOS was required to examine relevant data and articulate a satisfactory explanation for its action, including a "rational connection between the facts found and the choice made," based upon relevant factors.[23] An agency rule is arbitrary and capricious if the agency has: relied on factors that Congress did not intend it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or relied on reasoning so implausible that it could not be ascribed to a difference in view or explained as the product of agency expertise.[24] Applying these standards demonstrates that, if finalized, the Interim Final Rule would violate the APA.

DOS failed to consider that the Interim Final Rule would erode the stability and safety of immigrant families and U.S. citizens at significant cost to States and local governments. The Interim Final Rule will create additional hurdles for NYC families, including U.S. citizens and LPRs, who wish to petition for their relatives abroad and NYC residents who must travel abroad for a consular interview as part of their immigration process. Even in cases where an individual is unlikely to be determined ineligible for a visa on public charge grounds, the new standard will undoubtedly deter individuals from moving forward with a more onerous application process. In addition, as NYC demonstrated in response to the DHS final rule, a significant number of New Yorkers are at risk of being deterred from utilizing public benefits they need, and as a result may

[19] 5 U.S.C. § 706(2)(C), and contrary to law, 5 U.S.C. § 706(2)(A).
[20] *City of Arlington v. FCC*, 569 U.S. 290, 297-98 (2013)
[21] *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 842-43 (1984).
[22] *Id.* at 844.
[23] *See Motor Vehicle Mfrs. Ass'n*, 463 U.S. 29, 43 (1983); *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962).
[24] *See Motor Vehicle Mfrs. Ass'n*, 463 U.S. at 43-44.

face serious harms to their health and well-being.[25] Furthermore, the Interim Final Rule will place substantial administrative and other burdens on states and localities, including NYC.[26]

i. Impact on family-based immigration

The Interim Final Rule will directly impact NYC families, including citizens and LPRs, seeking to sponsor relatives from abroad. As discussed above, the 2018 changes to the FAM sparked a dramatic increase in immigrant visa denials on public charge grounds. While the Interim Final Rule differs from the 2018 FAM guidance in certain aspects, the Interim Final Rule similarly increases the scrutiny applied to each factor and greatly expands the types of public benefits that are considered as part of a public charge determination. Thus, like the 2018 FAM guidance, the Interim Final Rule is likely to result in a sharp increase in immigrant visa denials, as compared with denial rates before the 2018 FAM guidance. Families seeking to reunite through this process are more likely to remain separated, causing harm to NYC residents. Yet, aside from estimating that approximately 450,000 immigrant visa applicants per year—the majority of whom are family-sponsored—will need to spend 60 minutes providing additional information, DOS does not account for the impacts to these families as a result of the Interim Final Rule. Nor does DOS contemplate, as discussed further below, how these families might be chilled from using public benefits.

ii. Anticipated Increased Chilling Effect

NYC has previously estimated that at least 1.2 million New York City residents could be impacted by the DHS final rule, including those that would be "chilled" from using public benefits to which they are legally entitled due to fear and confusion related to the changes to the public charge analysis.[27] DHS conceded that its final rule would have a chilling effect.[28] As NYC has previously asserted, significant withdrawal from or failure to utilize public benefit programs would have negative consequences on the city's public health, food security, and economy.[29] In addition, as individuals and families disenroll from or forgo benefits such as Medicaid and SNAP, there will be a significant cost shift to the city because the city is the provider of last resort.[30] Based on outreach efforts and monitoring of benefits enrollment trends, NYC anticipates that the Interim Final Rule will likely exacerbate the chilling effect that has already begun around the DHS final rule generally.

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[25] *See* NYC comment dated December 10, 2018 in response to *Inadmissibility on Public Charge Grounds*, Notice of Proposed Rulemaking, Fed. Reg. Vol. 83, No. 196; DHS Docket No. USCIS-2010-0012.

[26] In addition, given various injunctions preventing the implementation of the DHS final rule, the Interim Final Rule would not accomplish its stated purpose of achieving consistency in adjudications between DOS and DHS. To the contrary, the Interim Final Rule would in fact render DOS utterly out of alignment with current DHS practice.

[27] *Plaintiffs' Motion for Preliminary Injunction and Stay Pending Judicial Review*, *State of New York v. DHS*, 1:19-cv-07777, Exh. 2 Banks Dec at ¶ 11(f) (S.D.N.Y. Sept. 9, 2019) (Banks Dec.).

[28] 84 FR at 41312-14, 41489.

[29] *See* NYC comment dated December 10, 2018 at pp. 6-19 in response to *Inadmissibility on Public Charge Grounds*, Notice of Proposed Rulemaking, Fed. Reg. Vol. 83, No. 196; DHS Docket No. USCIS-2010-0012.

[30] *See id.* at pp. 18-19.

Between December 2018 and January 2019, NYC administered a public charge survey to nearly 2,500 individuals and found that 76% of non-citizens said they would consider withdrawing from or not applying for services as a result of a change to public charge, even if they felt they needed the services.[31] In connection with heightened public awareness of public charge, NYC has observed a marked chilling effect on noncitizens withdrawing from or failing to recertify for certain public benefits to which they are entitled. Between January 2017 and January 2019, SNAP cases headed by non-citizens decreased over 15%. By contrast, SNAP cases headed by citizens decreased approximately 1%. The drop-off rate among non-citizen headed households is thus over ten times higher than the rate among citizen headed households.[32]

Following the issuance of the DHS final rule in August 2019, NYC held multiple phone banks in September and October 2019 to provide individuals with concerns about the DHS final rule with appropriate information and connect them to legal assistance. Of the over 1,000 calls received, the third most common area of concern was whether and how immigration applications subject to consular processing would be affected. These calls included calls from persons considering or planning to withdraw from public benefits.

DOS has utterly failed to consider whether the Interim Final Rule would result in persons withdrawing from or choosing to forego public benefits, despite intentionally adopting a standard virtually identical to the DHS final rule—a rule that DHS itself predicted would have chilling effects.[33] Implementation of the Interim Final Rule will only add to the confusion and fear surrounding public benefits usage and will exacerbate the chilling effect NYC is already experiencing.

iii. Increase in Administrative Burdens and Resulting Costs

DOS concludes, without evidence, that the Interim Final Rule "will not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government."[34] However, as with the DHS final rule, DOS's Interim Final Rule will impose significant programmatic and administrative burdens on NYC, its agencies, and institutions.

The Interim Final Rule will necessitate an increase in NYC's efforts to coordinate education and outreach. In preparation for implementation of the DHS final rule, NYC expended tremendous resources to coordinate a citywide response, education effort, and outreach engagements. The similarity of the Interim Final Rule to the temporarily-enjoined DHS final rule will only add complexity to the NYC's education and outreach efforts, as two federal agencies will adjudicate inadmissibility on public charge grounds using two vastly different standards until the legal challenges to the DHS final rule are resolved.

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[31] *Plaintiffs' Motion for Preliminary Injunction and Stay Pending Judicial Review*, *State of New York v. DHS*, 1:19-cv-07777, Exh. 5 Fong Dec at ¶¶ 15-19 (S.D.N.Y. Sept. 9, 2019).
[32] Banks Dec. at ¶11.
[33] 84 Fed. Reg. at 41,307
[34] 84 FR 55012

C. DOS Has Not Complied With The Executive Order 13132 Or The Treasury General Appropriations Act.

As explained above, DOS's failure to consider all aspects of the problem—specifically, the significant costs that the Interim Final Rule would shift to state and local governments—violates the APA. The requirement that DOS consider the costs to state and local governments associated with the Interim Final Rule implicates not only the APA but also Section 6 of Executive Order 13132, which mandates that:

> no agency shall promulgate any regulation that imposes substantial direct compliance costs on State and local governments, . . . unless (1) funds necessary to pay the direct costs incurred by the State and local governments in complying with the regulation are provided by the Federal Government; or (2) the agency, prior to the formal promulgation of the regulation, (a) consulted with State and local officials early in the process of developing the proposed regulation; (b) in a separately identified portion of the preamble to the regulation as it is to be issued in the Federal Register, provides to the Director of the Office of Management and Budget (OMB) a federalism summary impact statement, which consists of a description of the extent of the agency's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met; and (c) makes available to the [OMB] Director any written communications submitted to the agency by State and local officials.[35]

DOS gives lip service to this requirement, stating, without data or analysis, that it "does not expect that this interim final rule would impose substantial direct compliance costs on State and local governments."[36] On this unsupported and speculative statement alone, DOS concludes that "the rule will not have federalism implications warranting the application of Executive Orders 12372 and 13132."[37] DOS is incorrect.

As explained above, the Interim Final Rule would likely cause immigrants to withdraw from or forgo public benefits. This would force local governments to make significant expenditures to protect the health and well-being of their residents. Furthermore, as a result of the chilling effect explained above, NYC could suffer federal funding cuts due to decreased enrollment in the enumerated benefits.[38] This could shift to NYC the costs of promoting basic public health goals which Congress has also sought to promote by making these individuals and families eligible for such benefits.

Further, NYC, as administrators of insurance programs and direct providers of healthcare, could be directly impacted financially. By deterring enrollment in federal benefits like Medicaid,

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[35] Exec. Order No. 13,132, 64 Fed. Reg. 43,255 (Aug. 10, 1999).
[36] Interim Final Rule at p. 55012.
[37] *See id.*
[38] See *Plaintiffs' Motion for Preliminary Injunction and Stay Pending Judicial Review*, *State of New York v. DHS*, 1:19-cv-07777, (S.D.N.Y. Sept. 9, 2019).

the chilling effect could increase uncompensated care, thus requiring NYC to expend additional resources to provide treatment to individuals who need it. For example, NYC Health + Hospitals expects to face a net financial loss of $121 to $187 million in the first fiscal year of implementation of the DHS final rule.[39] As NYC expects the Interim Final Rule to only exacerbate this chilling effect and undermine its efforts to disseminate accurate information, these losses will be increased and more challenging to mitigate. For these reasons, DOS must provide a federalism summary impact statement.

DOS's approach to the affirmative obligations imposed on it by the Treasury General Appropriations Act of 1999 is even more (and improperly) dismissive. That Act provides that:

> implementing policies and regulations that may affect family well-being, an agency shall assess whether the action — (1) strengthens or erodes the stability or safety of the family and, particularly, the marital commitment; (2) strengthens or erodes the authority and rights of parents in the education, nurture, and supervision of their children; (3) helps the family perform its functions, or substitutes governmental activity for the function; (4) increases or decreases disposable income or poverty of families and children; (5) is warranted because the proposed benefits justify the financial impact on the family; (6) may be carried out by State or local government or by the family; and (7) establishes an implicit or explicit policy concerning the relationship between the behavior and personal responsibility of youth, and the norms of society. [40]

DOS has wholly ignored this mandate by failing to assess whether the Interim Final Rule strengthens or erodes the stability or safety of the family. However, for the reasons previously explained above and in NYC's prior comments responding to the DHS rule, this Interim Final Rule would undoubtedly erode the stability and safety of immigrant families.

Furthermore, the Interim Final Rule would undermine the purpose of the I-601A Provisional Waiver and add layers of uncertainty to U.S.-based families looking to stabilize their immigration statuses. The I-601A Provisional Unlawful Presence Waiver process allows individuals in the U.S. applying for an immigrant visa at a U.S. consulate abroad the ability to apply for the waiver of inadmissibility for unlawful presence under INA § 212(a)(9)(B), before they leave the U.S.

The availability of a provisional waiver was intended to provide a visa applicant with some level of assurance that if they were otherwise admissible and eligible for LPR status, they could leave the country to attend the consular interview and return without being barred from reentry due to the accrual of unlawful presence. This waiver applies to individuals who can show that relocation to their home country would impose an "extreme hardship" to a qualifying relative. The process is meant to avoid the uncertainty and destabilization of potentially having to wait outside the U.S. for many months, and was specifically designed to avoid lengthy

[39] *Plaintiffs' Motion for Preliminary Injunction and Stay Pending Judicial Review*, *State of New York v. DHS*, 1:19-cv-07777, Exh. 10 Katz Dec (S.D.N.Y. Sept. 9, 2019).
[40] Pub. L. No. 105–277, §654(c)(1-7), 112 Stat. 2681- 528-30 (1998).

separation from loved ones and uncertainty that would otherwise make this pathway to legal status too risky to undertake.

The Interim Final Rule creates an inquiry so broad and far-reaching that applicants and legal service providers will have little ability to properly predict what quantum of evidence would sufficiently establish an individual not at risk for ineligibility on public charge grounds. As such, individuals seeking such a waiver, those whose family members would suffer extreme hardship if they were separated, will be deterred from applying for this waiver specifically designed for them, or, worse, attempt to gain lawful immigration status through a procedure set up by the federal government only to find themselves stranded in their home country after a U.S. consular officer deems them inadmissible on public charge grounds.

The Interim Final Rule adds uncertainty and threatens prolonged family separation. This will directly and negatively impact NYC families. For these reasons, DOS has not properly assessed the impact of the Interim Final Rule on family well-being.

For all the reasons above, NYC opposes the Interim Final Rule, and calls upon DOS to withdraw it in its entirety.