

Congress of the United States
Washington, DC 20510

September 25, 2020

The Honorable Kenneth Cuccinelli
Acting Director
U.S. Citizenship and Immigration Services
U.S. Department of Homeland Security
20 Massachusetts Avenue NW
Washington, D.C. 20529

Dear Acting Director Cuccinelli,

On September 15, 2020, President Trump granted a Presidential Disaster Declaration in Oregon at the request of Governor Kate Brown due to catastrophic wildfires. On the following day, the U.S. Department of Health and Human Services (HHS) declared that a public health emergency exists in Oregon as a result of the wildfires.

Considering that Oregonians need urgent relief as the state responds to and recovers from these fires, we request an immediate moratorium on the Inadmissibility on Public Charge Grounds final rule to ensure that all people, regardless of immigration status, are able to seek necessary medical care, housing, nutrition assistance, and disaster relief for which they are eligible amid this disaster and public health emergency. We also request your agency issue robust and targeted public notices to better inform individuals that receiving disaster aid and certain other forms of assistance will not be negative factors in any subsequent public charge determination.

Wildfires continue to ravage Oregon and tribal lands. From displacing thousands of individuals to destroying millions of dollars in property and scenic areas, these fires have devastated the lives of Oregonians irrespective of immigration status. Families are homeless. Children face greater barriers to accessing nutritious foods. Many seniors require essential medical assistance. As harmful, heavy coats of smoke blanket the state and fires continue to spread to new communities, we must ensure people in need are able to access support without fear.

On February 24, 2020, United States Citizenship and Immigration Services (USCIS) nationally implemented the Inadmissibility on Public Charge Grounds final rule. The rule, as you know, disadvantages or disqualifies certain individuals seeking a visa or green card to remain in the United States who are determined to likely become a “public charge”—that is, reliant on public assistance—based on their use of an expanded scope of benefits. While the federal government has conducted more limited public charge determinations for years based on receipt of cash assistance, the rule dramatically expanded the policy to include consideration of a person’s receipt of Medicaid, federal housing assistance, and nutrition support through the Supplemental Nutrition Assistance Program (SNAP). In July 2020, the U.S. District Court for the Southern District of New York halted the Department of Homeland Security’s ability to enforce, apply, or implement the rule for the duration of the declared coronavirus national health emergency. The court recognized the importance of prioritizing the immediate health and safety of people during a crisis, regardless of their immigration status.

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In response to the devastation caused by the wildfires in Oregon, it is imperative that you suspend the public charge rule in its entirety. While disaster relief is technically exempt from the rule's scope, the rule has had harmful and widespread chilling effects that have led families to avoid seeking the services and coverage they need for fear of jeopardizing their immigration status, even when such services are not included in the rule's scope or when they themselves are not subject to a public charge determination. As a result, the rule could discourage immigrant families from seeking disaster assistance, medical care, and other critical services needed to weather these concurrent crises.

The concurrent coronavirus pandemic and wildfire disaster have resulted in thousands of Oregonians requiring medical care. Health experts warn that wildfire smoke can harm eyes, irritate respiratory systems that are particularly at-risk during the COVID-19 outbreak, and worsen chronic lung and heart diseases. Further, we know numerous Oregonians are in need of health services during the ongoing pandemic. It is unconscionable, and not in the public's best interest, to maintain a rule that would scare individuals and families away from the help they may need simply because of their immigration status.

The wildfires in Oregon and the coronavirus pandemic are unprecedented converging crises. A rule that creates barriers to immigrant families' safety and recovery during a period of unparalleled destruction is not only counterproductive, it is cruel and discriminatory. For this reason, we request an immediate moratorium on any enforcement related to the Inadmissibility on Public Charge Grounds rule during Oregon's wildfire response and subsequent recovery. We also request your agencies issue robust and targeted public notices that alleviate fear and confusion regarding this rule during the time noted above.

Thank you for your attention to this request in ensuring all Oregonians impacted by the wildfire disaster and public health emergency are able to seek necessary care and assistance during these dual crises.

CC: Federal Emergency Management Administration, U.S. Department of Health and Human Services

Sincerely,



Jeffrey A. Merkley
United States Senator



Ron Wyden
United States Senator



Suzanne Bonamici
Member of Congress



Earl Blumenauer
Member of Congress



U.S. Citizenship
and Immigration
Services

November 3, 2020

The Honorable Jeffrey A. Merkley
United States Senate
Washington, DC 20510

Dear Senator Merkley:

Thank you for your September 25, 2020 letter regarding the public charge final rule during Oregon's wildfire response and public health emergency. Mr. Cuccinelli asked that I respond on his behalf.

The public charge final rule and the USCIS implementing guidance already address what public benefits USCIS will consider in light of a public health emergency, as well as in the event of natural disasters, such as the Oregon wildfires. Therefore, suspending the public charge final rule is unnecessary and I request your partnership in amplifying this information to Oregonians.

As set forth in the public charge final rule and the USCIS Policy Manual, USCIS will not consider the receipt of Robert T. Stafford Disaster Relief and Emergency Assistance Act¹ disaster assistance, including financial assistance provided to individuals and households under Individual Assistance under the Federal Emergency Management Agency's Individuals and Households Program (42 U.S.C. 5174) as cash assistance for income maintenance. The same holds true for comparable disaster assistance provided by State, local, or tribal governments.² In addition, the Department of Homeland Security will not consider medical assistance for emergency medical condition (42 U.S.C. 1396(v)(3)) or short-term, non-cash, in-kind emergency disaster relief.³

Moreover, to address the possibility that some aliens impacted by the coronavirus (COVID-19) may be hesitant to seek necessary medical treatment or preventive services, the USCIS website makes clear that USCIS will neither consider testing, treatment, nor preventative care (including vaccines, if a vaccine becomes available) related to COVID-19 as part of a public charge inadmissibility determination, nor as related to the public benefit condition applicable to certain nonimmigrants seeking an extension of stay or change of status, even if such treatment is provided or paid for by one or more public benefits, as defined in the rule (e.g. federally funded Medicaid).⁴

¹ See Pub. L. 100-707 (PDF) (November 23, 1988).

² 84 FR 41292, 41364 (Aug. 14, 2019). *See also*, USCIS Policy Manual Volume 8, Admissibility, Part G, Public charge Ground of Inadmissibility Chapter 10, Public Benefits for a full list of public benefits considered and excluded from consideration.

³ *Id.*

⁴ See <https://www.uscis.gov/green-card/green-card-processes-and-procedures/public-charge>.

In addition, “if an alien subject to the public charge ground of inadmissibility lives and works in a jurisdiction where disease prevention methods such as social distancing or quarantine are in place, or where the alien’s employer, school, or university voluntarily shuts down operations to prevent the spread of COVID-19, the alien may submit a statement with his or her application for adjustment of status to explain how such methods or policies have affected the alien as relevant to the factors USCIS must consider in a public charge inadmissibility determination. For example, if the alien is prevented from working or attending school and must rely on public benefits for the duration of the COVID-19 outbreak and recovery phase, the alien can provide an explanation and relevant supporting documentation. To the extent relevant and credible, USCIS will take all such evidence into consideration in the totality of the alien’s circumstances.”⁵

Thank you again for your letter. The cosigners of your letter will receive a separate, identical response. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative Affairs at (202) 272-1940.

Respectfully,



Joseph B. Edlow
Deputy Director for Policy

⁵ *Id.*