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Contact: Matt Baca

Attorney General Balderas Sues President Trump  
Challenging Department of Homeland Securities' Attempt to  
Impose “Public Charge” Rule

New rule would make families and children ineligible to receive food, health care and shelter assistance

Santa Fe, NM--- Today Attorney General Hector Balderas and 13 other attorneys general filed a lawsuit against the U.S. Department of Homeland Security over changes to the “public charge” rule that target immigrants and their families. Under the changes, if an immigrant who is legally in the country uses benefits to which he or she is entitled — such as food assistance to feed their U.S. citizen children or housing assistance — even for a short time, the federal government may revoke their legal status, or even deport them.

“President Trump and his administration continue to spread hate and division in New Mexican communities, where families should feel safe and have access to vital assistance they are legally entitled to,” said Attorney General Balderas. “I will continue to fight any attempt to take legal benefits away from children and families and any threat to their safety and well being.”

As a result of the new rule, fewer families and children will receive services they need, including food, health care and housing. Many children will go without adequate meals, vaccines or shelter, and more families will suffer homelessness. Hundreds of thousands of individuals will lose health care for themselves and their families. Many of these people will go to the emergency room for routine medical care, requiring states to cover the vastly more expensive medical costs. Additionally, women will lose routine reproductive care services, resulting in more unintended pregnancies, more high-risk deliveries and increased costs for newborns whose health is compromised by the lack of adequate pre-natal care.

Federal law allows many lawful immigrants to apply for public benefits if they have been in the country for at least five years. The new rule creates a “bait-and-switch” — if immigrants use the public assistance to which they are legally entitled, they would jeopardize their chances of later renewing their visa or becoming permanent residents. Even if an individual does not use these benefits, the new rule expands the government’s ability to deny visa renewal or permanent residency to anyone they predict will use a broad range of short-term benefits, without any clear formula for making that determination. The states assert that the Department of Homeland Security (DHS) violated federal immigration statutes, the Welfare Reform Act and the Administrative Procedure Act when it unlawfully expanded the definition of “public charge”.

Under long-standing law and policies, a "public charge" is an individual whose survival depends upon a specific public benefit — cash assistance — or who is institutionalized for long-term care at government expense. The existing rule does not include temporary assistance, such as food or
housing assistance or health care, including the Children’s Health Insurance Program (CHIP) under its definition of "public charge." Under the new rule, a public charge now will include lawfully present individuals or families who will use a broad range of federal assistance for housing, food or health care at any time in the future, for as short as four months. The new definition expands immigration officials’ ability to deny visas and permanent residency to any individual who they predict may use these types of assistance in the future. Permanent residents may also be labeled a public charge if they used government assistance and leave the country for less than a year.

In the lawsuit, the attorneys general write that the Trump Administration's rule "effects a radical redirection of federal immigration law from a system that promotes economic mobility among immigrants to one that advantages immigrants with wealth."

The Department of Homeland Security concedes in the rule that it would “deter legally present visa holders from using important assistance programs.” Many visa holders and applicants for permanent residency will refrain from seeking assistance for themselves or their families because it could make them ineligible to renew their legal immigration status or become a permanent resident, exposing them to deportation.

The attorneys general assert that the rule violates the Immigration and Naturalization Act by redefining “public charge” in a way unconnected to its original meaning and Congress’ intent. The lawsuit asserts that the “bait-and-switch” that the rule creates for immigrants who use benefits for which they are legally entitled contradicts Congress’ intent and violates the Welfare Reform Act. The attorneys general also assert that DHS violated the Administrative Procedure Act in numerous ways, including by reversing a decades-old, consistent policy without reasoned analysis and offering an explanation for the rule that runs counter to the evidence before the agency.

Today’s multistate lawsuit against DHS involves Colorado, Delaware, Illinois, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, Pennsylvania, Rhode Island, Virginia and Washington.

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