United States Senate
WASHINGTON, DC 20510

August 6, 2012

The Honorable Janet Napolitano
Secretary
U.S. Department of Homeland Security
301 7th Street, SW
Washington, D.C. 20528

The Honorable Hillary Clinton
Secretary
U.S. Department of State
2201 C Street, NW
Washington, D.C. 20520

Dear Secretary Napolitano and Secretary Clinton:

We write to express our concern with your agencies' interpretation of section 212 of the Immigration and Nationality Act (INA) regarding inadmissible aliens. It was recently brought to our attention that the U.S. Department of Agriculture has an ongoing partnership with Mexico through which Mexican consular offices encourage non-citizen enrollment in USDA welfare programs. It is our understanding that the materials distributed by the consular offices assure those being recruited that reliance on SNAP benefits, or food stamps, will not be taken into account when considering the merits of an application for a visa or adjustment of status. Further review of Department of State and Department of Homeland Security protocols indicate that this policy applies to dozens of other welfare programs as well.

Because Congress intended that immigrants who come to the United States should not become dependent on our expanding welfare system, the INA specifically states:

> "An 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."

It has long been a sound principle of immigration law that those who seek citizenship in this country ought to be financially self-sufficient. We were thus shocked

to discover that both the State Department and DHS exclude reliance on almost all governmental welfare programs when evaluating whether an alien is likely to become a public charge. Your agencies apply a cramped interpretation of the law in this regard, considering reliance on only two of nearly 80 federal welfare programs as evidence of likelihood of becoming a public charge: Supplemental Security Income (SSI) and Temporary Assistance for Needy Families (TANF).

In fact, guidance from your agencies specifically prevents consular and DHS officials from considering the likelihood that an alien will receive SNAP benefits, WIC payments, Medicaid, child-care benefits, foster care, energy assistance, educational assistance, other medical and health benefits, and assistance from at least fifteen different nutritional welfare programs. This interpretation of the law, along with the actions of the USDA to recruit new immigrants to sign up for SNAP benefits, undermines both congressional intent and sound immigration policy. Indeed, under your interpretation, an able-bodied immigrant of working age could receive the bulk of his or her income in the form of federal welfare and still not be deemed a "public charge."

Additionally, as you may be aware, food stamp enrollment is being aggressively pushed to individuals solely on the basis of their receipt of non-cash TANF benefits (such as brochures or phone hotlines). If applications from a large number of food stamp recipients—who may have only received that benefit because they were categorically made eligible through TANF—were still approved, it would necessarily raise the question of whether the "public charge" criterion is being meaningfully applied in relation to any form of welfare support.

Given the extraordinary implications for both our nation's finances and the standards of U.S. citizenship, we ask that you provide information responsive to the following:

1. An explanation of why receipt of most welfare benefits is excluded from consideration of citizenship eligibility, and how this complies with the INA and congressional intent.
2. From 2001 to 2011, how many visa applicants and applicants for admission through the Visa Waiver Program were denied visas or admission because they were deemed likely to become a public charge?
3. From 2001 to 2011, how many visa applicants were found likely to become a public charge but were nevertheless granted a visa and admitted into the United States because they presented an affidavit of support?
4. How many aliens issued visas or otherwise admitted into the United States from 2001 to 2011 became public charges as defined by your agency after entering the United States?

5. If your answers to the above questions are that your agencies do not track this information, then please explain why this information is not tracked.

Thank you for your prompt attention to this matter and for responding no later than August 20, 2012. We look forward to your detailed reply.

Very truly yours,

Jeff Sessions
Ranking Member
U.S. Senate Committee on the Budget

Chuck Grassley
Ranking Member
U.S. Senate Committee on the Judiciary

Orrin Hatch
Ranking Member
U.S. Senate Committee on Finance

Pat Roberts
Ranking Member
U.S. Senate Committee on Agriculture, Nutrition and Forestry