

Public Charge Rule Updates

A federal district court has [ruled](#) that as long as there is a declared national health emergency related to COVID-19, the public charge rule may not go into effect.

Immigrants who are deemed a “public charge” are ineligible to receive green cards/lawful permanent resident status. The most recent definition of public charge, adopted in 1999, included immigrants who demonstrated a need for “institutionalization for long-term care at government expense” or “receipt of public cash assistance for income maintenance.”

In 2019 the Trump administration adopted a new definition of public charge that considers not only cash benefits, but also certain non-cash benefits including: Supplemental Nutrition Assistance Program (SNAP), Section 8 housing, Section 8 project-based rental assistance, Medicaid (with certain exceptions), and Section 9 public housing.

While multiple federal district courts prevented enforcement of the new definition on a nationwide basis in 2019, in January 2020 the U.S. Supreme Court stayed those orders pending the outcome of litigation in the federal courts of appeals. The new definition went into effect in February 2020.

In May 2020 the U. S. Supreme Court refused to lift the stays due to COVID-19 but stated its order didn’t “preclude a filing in the District Court.” Following the Supreme Court’s order, New York City and a number of states and nonprofits, sought and received a preliminary injunction in federal district court preventing the public charge rule from going into effect during the pandemic.

To receive a preliminary injunction the challengers had to show they were likely to succeed on the merits of their legal challenge and that they would face irreparable harm without an injunction.

The district court found many legal deficiencies with the public charge rule. First, the court reiterated its previous conclusion that it may violate Section 504 of the Rehabilitation Act, which prohibits the government from discriminating against a person solely because of his or her disability. The court questioned whether the federal government could “make no distinction between a disabled individual who is not self-sufficient and one who is able to cope with his or her disability, even if it requires extensive medical treatment or accommodation,” and comply with the Rehabilitation Act.

Second, the court agreed the challengers had sufficiently alleged that the rule violated the procedural requirements of the Administrative Procedures Act because the final definition of public charge wasn’t a “logical outgrowth” of the proposed rule.

Finally, the court concluded that the challengers were able to sufficiently state a claim that the rule violated the Equal Protection Clause of the Fifth Amendment. The court noted that the challengers “provide extensive evidence of statements that may evince discriminatory intent made by high-level officials who were allegedly the decision-makers behind the Rule or influenced such decision-makers.”

After concluding that the public charge rule is likely unlawful, the court considered whether it leads to irreparable harm during the pandemic. The court

concluded that it does because it discourages immigrants from seeking testing and treatment for COVID-19, putting them and others at risk.

While informal guidance from the federal government excludes testing, treatment, and preventative care from the public charge inadmissibility determination, the court concluded this isn't enough to mitigate harm caused by the rule. Enrollment in Medicaid itself may be counted against an immigrant as would using Medicaid to receive treatment for a condition that makes a person at greater risk of contracting COVID-19. Likewise, regardless of job loss, the informal guidance "offers no meaningful relief or incentive" for immigrants to access SNAP. Finally, the federal government has no obligation to retain its informal guidance "for any period of time, let alone for the pendency of the public health emergency."

In issuing a nationwide injunction, rather than an injunction applying only to the challengers in this case, the court noted that "the likely unlawful agency action in this case applies universally, to every public charge determination made by immigration officials across the country."

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