



U.S. Department of Justice
Civil Division, Federal Programs Branch

Keri Berman
Trial Attorney

Tel.: (202) 305-7538
E-mail: keri.l.berman@usdoj.gov

March 10, 2021

Hon. George B. Daniels
United States District Court
Southern District of New York
500 Pearl Street, Room 1310
New York, NY 10007

Re: Agency Action Pertinent to *New York v. U.S. Department of Homeland Security*, No. 19-7777, and *Make the Road New York v. Renaud*¹, No. 19-7993

Dear Judge Daniels:

I represent the defendants in the above-captioned case. As Defendants reported previously, on February 2, 2021, the President issued an Executive Order addressing issues pertinent to this action, titled Executive Order on Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans. The Executive Order directs heads of relevant agencies, including the Secretary of Homeland Security, to review agency actions related to implementation of the public charge ground of inadmissibility, 8 U.S.C. § 1182(a)(4)(A), in light of the policy set forth in the Executive Order and certain other considerations.

Defendants hereby notify the Court that, yesterday (March 9, 2021), DHS released a statement indicating that (i) it “has determined that continuing to defend the final rule, Inadmissibility on Public Charge Grounds . . . is neither in the public interest nor an efficient use of limited government resources,” (ii) the Department of Justice is no longer “pursu[ing] appellate review of judicial decisions invalidating or enjoining enforcement of the 2019 Rule,” and (iii) “[o]nce the previously entered judicial invalidation of the 2019 Rule becomes final, the 1999

¹ Tracy Renaud, Senior Official Performing the Duties of the Director of USCIS, is substituted as defendant under Rule 25(d) of the Federal Rules of Civil Procedure.

interim field guidance on the public charge inadmissibility provision (i.e., the policy that was in place before the 2019 Rule) will apply.” Ex. A.

Consistent with DHS’s statement, Defendants in another action related to the Final Rule, *ICIRR v. Mayorkas*, 19-cv-6334 (N.D. Ill.), filed a motion to voluntarily dismiss their appeal of the Court’s Order granting Plaintiffs’ Motion for Summary Judgment (ECF No. 221). *See* Unopposed Motion to Voluntarily Dismiss, No. 20-3150, ECF No. 23 (7th Cir. March 9, 2021). The Seventh Circuit promptly granted this motion, and concurrently issued its mandate. *See* Order Dismissing Appeal, No. 20-3150, ECF No. 24-1 (7th Cir. March 9, 2021); Notice of Issuance of Mandate, No. 20-3150, ECF No. 24-2 (7th Cir. March 9, 2021).

Shortly afterwards, DHS issued another statement, confirming that “[f]ollowing the Seventh Circuit dismissal,” the “final judgment from the Northern District of Illinois, which vacated the 2019 public charge rule, went into effect” and, “[a]s a result, the 1999 interim field guidance on the public charge inadmissibility provision (i.e., the policy that was in place before the 2019 public charge rule) is now in effect.” Ex. B.

Pursuant to the vacatur of the Final Rule, the condition of this Court’s February 22, 2021 Order, *New York v. DHS*, 19-cv-7777, ECF No. 276, entering a stay of proceedings for up to 90 days upon agreement that “no agency action will be taken during that period of time to enforce or apply the public charge rule at issue in this litigation,” has been met.

Respectfully submitted,

/s/
Keri L. Berman

CC: All Counsel of record via ECF.

Exhibit A



DHS Statement on Litigation Related to the Public Charge Ground of Inadmissibility

Release Date: March 9, 2021

On February 2, 2021, the President issued Executive Order 14,012, directing the Secretary of Homeland Security to review the actions of the Department of Homeland Security (DHS or Department) related to the implementation of the public charge ground of inadmissibility. Consistent with the Executive Order, DHS has begun its review, as well as its consultation with other relevant agencies.

As part of its review, DHS has determined that continuing to defend the final rule, *Inadmissibility on Public Charge Grounds*, 84 Fed. Reg. 41,292 (Aug. 14, 2019) (2019 Rule), is neither in the public interest nor an efficient use of limited government resources. Consistent with that decision, the Department of Justice will no longer pursue appellate review of judicial decisions invalidating or enjoining enforcement of the 2019 Rule.

Once the previously entered judicial invalidation of the 2019 Rule becomes final, the [1999 interim field guidance](https://www.federalregister.gov/documents/1999/05/26/99-13202/field-guidance-on-deportability-and-inadmissibility-on-public-charge-grounds) (<https://www.federalregister.gov/documents/1999/05/26/99-13202/field-guidance-on-deportability-and-inadmissibility-on-public-charge-grounds>) on the public charge inadmissibility provision (i.e., the policy that was in place before the 2019 Rule) will apply. Under the 1999 interim field guidance, DHS will not consider a person's receipt of Medicaid (except for Medicaid for long-term institutionalization), public housing, or Supplemental Nutrition Assistance Program (SNAP) benefits as part of the public charge inadmissibility determination. In addition, medical treatment or preventive services for COVID-19, including vaccines, will not be considered for public charge purposes.

DHS and USCIS will provide additional updates regarding the administration of the public charge ground of inadmissibility, including announcing when DHS will cease applying the 2019 Rule.

For more information on equal access to vaccines and vaccine distribution sites specifically, please see DHS's [February 1 statement](https://www.dhs.gov/news/2021/02/01/dhs-statement-equal-access-covid-19-vaccines-and-vaccine-distribution-sites) (<https://www.dhs.gov/news/2021/02/01/dhs-statement-equal-access-covid-19-vaccines-and-vaccine-distribution-sites>) on that subject.

Keywords: [Immigration Reform](#) ([/keywords/immigration-reform](#))

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Exhibit B



DHS Secretary Statement on the 2019 Public Charge Rule

Release Date: March 9, 2021

Today, DHS Secretary Alejandro N. Mayorkas announced that the government will no longer defend the 2019 public charge rule as doing so is neither in the public interest nor an efficient use of limited government resources.

“The 2019 public charge rule was not in keeping with our nation’s values. It penalized those who access health benefits and other government services available to them,” said Secretary of Homeland Security Alejandro N. Mayorkas. “Consistent with the President’s vision, we will continue to implement reforms that improve our legal immigration system.”

President Biden’s Executive Order on Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans called for an immediate review of agency actions on public charge inadmissibility and deportability. DHS’s review, in consultation with the Departments of Justice and State and the federal benefits-granting agencies, is ongoing.

As discussed in DHS’s [litigation statement](http://www.dhs.gov/news/2021/03/09/dhs-statement-litigation-related-public-charge-ground-inadmissibility) (<http://www.dhs.gov/news/2021/03/09/dhs-statement-litigation-related-public-charge-ground-inadmissibility>), and consistent with the government’s decision not to defend the rule, the Department of Justice is no longer pursuing appellate review of judicial decisions invalidating or enjoining enforcement of the 2019 public charge rule. Today, the Department of Justice dismissed its pending appeals in the Supreme Court and Seventh Circuit, and is in the process of doing so in the Fourth Circuit. Following the Seventh Circuit dismissal this afternoon, the final judgment from the Northern District of Illinois, which vacated the 2019 public charge rule, went into effect. As a result, the 1999 interim field guidance on the public charge inadmissibility provision (i.e., the policy that was in place before the 2019 public charge rule) is now in effect.

Topics: [Citizenship and Immigration Services](#) ([/topics/immigration-and-citizenship-services](#)), [Citizenship and Immigration Services Ombudsman](#) ([/topics/citizenship-and-immigration-services-ombudsman](#)), [Homeland Security Enterprise](#)

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