

**COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE OF THE WHOLE
COMMITTEE REPORT**

1350 Pennsylvania Avenue, NW, Washington, DC 20004

DRAFT

TO: All Councilmembers

FROM: Chairman Phil Mendelson
Committee of the Whole

DATE: March 3, 2020

SUBJECT: Report on PR 23-696, “Sense of the Council Opposing Implementation of the Public Charge Rule Resolution of 2020”

The Committee of the Whole, to which Proposed Resolution 23-696, “Sense of the Council Opposing Implementation of the Public Charge Rule Resolution of 2020” was referred, reports favorably thereon with amendments, and recommends approval by the Council.

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I. BACKGROUND AND NEED

The purpose of Proposed Resolution 23-696 is to declare the Council’s opposition to the implementation of the updated “public charge” rule regulations by the Trump Administration. Implementation of these regulations will have a severe, negative impact across the United States, and particularly in the District of Columbia, as nearly 15 percent of the District’s population are immigrants who could be affected by the new interpretation of the public charge rule. Given the negative consequences that has and will result from the implementation of the updated public charge rule regulations, the Council is strongly opposed to this federal policy change and urges President Trump to direct the Acting Secretary of the U.S. Department of Homeland Security (DHS) to cease implementation immediately.

In the context of immigration, a “public charge” is an individual who is dependent on government benefits, and therefore ineligible to remain in the United States permanently if here currently or if trying to enter the United States through the legal immigration process. A part of

the United States' immigration laws since the 1800s, the public charge rule serves as grounds for inadmissibility, as Section 212(a)(4) of the U.S. Immigration and Nationality Act states

“[a]ny alien who, in the opinion of the consular officer at the time of application for a visa, or in the public opinion of the Attorney General at the time of application for admission or adjustment of status, is likely to become a public charge is inadmissible . . .”¹

Yet, the interpretation of what “public charge” means and how it is determined is at the crux of the current rule change issue. Since 1999, United States Citizenship and Immigration Services (USCIS) immigration officers have viewed public charges as foreign nationals who have the likelihood of becoming *primarily dependent* on the government in order to subsist.² “Primarily dependent” has been viewed by immigration officers as “a person [who] would receive *at least half* of their *support*, in the form of cash assistance, *from the government*.”³

However, on October 10, 2018, the U.S. Department of Homeland Security (DHS) issued proposed regulations that would drastically alter the interpretation of public charge to mean a foreign national who, at any point in his or her lifetime, has or is likely to use any amount of public benefits. Additionally, to determine whether or not an individual is likely to use any amount of public benefits at any point in his or her lifetime, immigration officers may consider whether an individual exhibits any of the following 15 “negative” factors:

- Being older than 61
- Being younger than 18
- Having several children or other dependents
- Not speaking English
- Having financial liabilities
- Not having “adequate education and skills” to hold a job
- Not having a high school diploma or higher education
- Having “bad credit” or a low credit score
- Not having private health insurance
- Having any medical condition that could interfere with work or school
- Not having sufficient resources to cover such a medical condition
- Having no employment history
- Prior or current use of certain public benefits
- Receiving an application fee waiver from DHS; and
- Having a sworn financial sponsor whom DHS deems is “unlikely” to follow through⁴

On August 14, 2019, DHS decided to move forward with the controversial regulations and published final rules, altering permanently the interpretation of the public charge rule and making it much easier for immigration officers and the Trump Administration to deny entry or permanent

¹ Section 212(a)(4) of the Immigration and Nationality Act of 1952, 8 U.S.C. § 1182(a)(4).

² Community of Hope Written Testimony, March 2, 2020 Roundtable on PR 23-696, page 2.

³ *Id.*

⁴ *Id.* at 3.

legal status to people deemed likely to require, any amount of government assistance and at any point of their lives. Yet, while the Trump Administration was scheduled to begin implementation on October 15, 2019, several lawsuits were brought against the United States government prior to that date in order to enjoin the implementation of the new regulations. Specifically, cases were brought in the Northern District of California, which covered enforcement of the regulation in California, Oregon, Maine, Pennsylvania, and the District of Columbia; the Eastern District of Washington and the District Court of Maryland, which both enjoined enforcement of the regulations globally; the Northern District of Illinois, which was limited to the State of Illinois; and a New York District Court, which would also enjoin enforcement of the regulation nationwide.⁵ All of the district courts ruled to enjoin DHS from enforcing the regulations in the specific areas mentioned in each respective case, but the U.S. Court of Appeals for the Ninth Circuit overturned the decision in California and Washington and the U.S. Court of Appeals for the Fourth Circuit overruled the District Court of Maryland.⁶ However, the U.S. Court of Appeals for the Second Circuit upheld the New York district court's injunction, thereby leading to the U.S. government appealing to the U.S. Supreme Court.⁷ In a 5-4 decision on January 27, 2020, the Supreme Court voted to overturn the injunction while the case worked its way through the Supreme Court, thereby clearing the way for DHS to begin implementation of the updated public charge regulation nationwide on February 24, 2020.

Individuals who are in the U.S. legally and are applying for permanent legal status (i.e. obtaining a green card) and those who are applying to enter the U.S. on a visa will be most affected by this updated interpretation of the public charge rule. Advocacy organizations are fearful that the updated interpretation will have a chilling effect on lawful non-citizens' participation in beneficial public health and education programs, as well as create a "wealth test" that disproportionately impacts non-white immigrants. Foreign nationals will unenroll their children from SNAP programs, leaving them without adequate food supplies, as well as potentially forego important preventative and emergency medical care. Moreover, individuals are more likely to forgo vaccinations or treatments for contagious diseases, fearful that if they seek treatment and have to rely on programs like Medicaid, they will lose the ability to stay in this country permanently. This places individuals in a horrible predicament – seek care and services, to which they are entitled versus risking deportation. No one should have to make such decisions.

The District celebrates and welcomes all of its residents, regardless of their national origin or immigration status, and believes that being able to remain in a country that has become your home is a basic human, and District, value. We wish that our current President and his Administration were not hostile to this value. However, since taking office, the President and his administration has undertaken numerous attacks on the immigrant community in the United States, which especially affects the District. The Council refuses to be silent as these attacks occur. As it did in 2017 when DACA and the Temporary Protected Status programs in our country were under attack, the Council raises its voice and urges the President to cease these attacks – cease this interpretation of the public charge rule and return to the interpretation that was in place for the last

⁵ Gorsuch concurring opinion 1.27.20

⁶ *Id.*

⁷ *Id.*

20 years. Thus, the Committee recommends the Council adopt this Sense of the Council resolution.

II. LEGISLATIVE CHRONOLOGY

- February 18, 2020 PR 23-696, “Sense of the Council Opposing Implementation of the Public Charge Rule Resolution of 2020,” is introduced by Councilmembers Todd, Allen, Bonds, Cheh, Gray, Grosso, Nadeau, and R. White and is referred to the Committee of the Whole.
- February 21, 2020 Notice of Intent to Act on PR 23-696 is published in the *District of Columbia Register*.
- February 28, 2019 Notice of a Public Roundtable on PR 23-69 is published in the *District of Columbia Register*.
- March 2, 2020 The Committee of the Whole holds a public roundtable on PR 23-696.
- March 3, 2020 The Committee of the Whole marks-up PR 23-696.

III. POSITION OF THE EXECUTIVE

The Committee received no comments from the Executive.

IV. COMMENTS OF ADVISORY NEIGHBORHOOD COMMISSIONS

The Committee received no testimony or comments from any Advisory Neighborhood Commission.

V. SUMMARY OF TESTIMONY

The Committee of the Whole held a public roundtable on PR 23-696 on Monday, March 2, 2020. The testimony summarized below is from that roundtable. Copies of written testimony are attached to this report.

Franklin Garcia, United States Representative, District of Columbia, testified

Allison Kokkoros, CEO, Carlos Rosario International Public Charter School, testified

Abel Nunez, Executive Director, Central American Resource Center (CARECEN), testified

Loide Rosa Jorge, U.S. Immigration & Nationality Law, testified

Ricardo Campos, Political Director for DC, MD, & VA, SEIU32BJ, testified

Laurie Bell Cooper, Legal Director, Ayuda, testified

Claudia Zelaya, Student Services Coordinator, Briya Public Charter School, testified

Paul Blackman, Public Witness, testified

Laura Vazquez, Senior Program Manager of Immigration Initiatives, Unidos, testified in support of PR 23-696. Ms. Vasquez expressed opposition to the updated regulations on the public charge rule and put forth several negative health impacts that will result from the implementation of the updated public charge rule regulations.

Gabriela Mossi, President, DC Latino Caucus, testified in support of PR 23-696.

VI. IMPACT ON EXISTING LAW

PR 23-696 has no impact on existing law. It is a statement of the Council opposing implementation of the public charge rule by the Trump Administration.

VII. FISCAL IMPACT

According to District of Columbia Official Code § 1-301.47a, fiscal impact statements are not needed for emergency declaration, ceremonial, or sense of the Council resolutions. As a sense of the Council statement, PR 23-696 has no cost associated with it.

VIII. SECTION-BY-SECTION ANALYSIS

<u>Section 1</u>	States the short title of PR 23-696.
<u>Section 2</u>	Sets forth findings of the Council regarding the implementation of the new public charge rule interpretations and the negative effects of such an interpretation.
<u>Section 3</u>	Declares the sense of the Council to oppose the implementation of the public charge rule implementation.
<u>Section 4</u>	Requires a copy of the resolution, upon adoption, be transmitted to the President of the United States, the Leaders of both the Democratic and Republican party of the United States House of Representatives and of the United States Senate, the Attorney General of the United States, the Acting Secretary of the U.S. Department of Homeland Security, and the Mayor.

Section 5 Provides that PR 23-69 should take effect immediately.

IX. COMMITTEE ACTION

X. ATTACHMENTS

1. PR 23-696 as introduced.
2. Written testimony.
3. Legal Sufficiency Determination for PR 23-696.
4. Committee Print for PR 23-696.

Z.T.F.M

David Grosso

Councilmember David Grosso

Councilmember Brandon T. Todd

Mary M. Cheh

Councilmember Mary M. Cheh

Charles Allen

Councilmember Charles Allen

Brianne K. Nadeau

Councilmember Brianne K. Nadeau

Vincent C. Gray

Councilmember Vincent C. Gray

Anita Bonds

Councilmember Anita Bonds

Robert C. White, Jr.
Councilmember Robert C. White, Jr.

A PROPOSED RESOLUTION

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To declare the sense of the Council opposing the implementation of the Department of Homeland Security's public charge rule because of the negative impact the proposed rule would have on our immigrant communities' access to vital services and cost-saving initiatives that keep families healthy and on the path towards economic self-sufficiency and success.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Sense of the Council Opposing Implementation of Public Charge Rule Resolution of 2020".

Sec. 2. The Council finds that:

(1) On January 27, 2020, by a 5-to-4 vote, the Supreme Court of the United States issued a decision that allowed the Trump administration to begin implementing its public charge rule.

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40 (2) The Supreme Court's decision lifted a nationwide injunction that had prevented the
41 implementation of the public charge rule.

42 (3) The rule, from the Department of Homeland Security (DHS), would make it easier for
43 immigration officials to deny entry or legal status to people deemed likely to require government
44 assistance.

45 (4) The Supreme Court's decision will allow for a policy that creates a "wealth test" that
46 would disproportionately keep out non-white immigrants.

47 (5) The federal regulation on public charge now states that a person who is likely to
48 become primarily dependent on government services is considered a public charge and therefore
49 it may greatly affect their ability to become a legal permanent resident of the United States.

50 (6) Under this modified regulation, an individual's income threshold (earning less than
51 125% of the federal poverty level), age, certain health conditions, limited English proficiency,
52 minimal education background, and prior receipt of certain benefits, may also be taken into
53 account and negatively impact the individual's eligibility to gain permanent legal status, and in
54 the future, attain lawful U.S. admission.

55 (7) DHS announced that their new rule relating to the public charge ground of
56 inadmissibility will go into effect on February 24, 2020.

57 (8) The impact of the public charge rule is not only on individuals who would be denied
58 immigration status under the analysis, but also on individuals who rightfully qualify for these
59 public benefits but who will be deterred from seeking this social safety net for themselves and
60 their family due to fear that the utilization of benefits would negatively impact their immigration
61 status, even if that fear is not based in fact.

62 (9) The Migration Policy Institute estimates that the new standards for determining when
63 an immigrant is likely to become a public charge could cause a significant share of the nearly 23
64 million noncitizens and U.S. citizens in immigrant families using public benefits to disenroll.

65 (10) Implementation of the public charge rule will prevent families from accessing
66 federal benefits like SNAP, Section 8 housing, and Medicaid, leaving many without basic
67 necessities of survival, including food, shelter and medical care.

68 Sec. 3. It is the sense of the Council that:

69 (1) Smart, effective, just, practical, and prudent immigration reform is in the national
70 interest of the United States.

71 (2) The District of Columbia welcomes and celebrates immigrants and their role in our
72 City's history and in the greater fabric and history of the United States.

73 (3) The District of Columbia has long embraced and welcomed individuals of diverse
74 racial, ethnic, religious, and national backgrounds, including a large immigrant population.

75 (4) The District of Columbia is home to a large population of people born outside the
76 U.S, is a city that strives to be child-and family friendly, and will benefit by changes to
77 immigration laws that prioritize family unity, protect vulnerable people and support workers.

78 (5) Immigrants represent nearly fifteen percent of the District's population and have
79 made and continue to make significant economic and social contributions to the District.

80 (6) The District of Columbia has already experienced the effects from the Trump
81 Administration's intent to instill distress among immigrant families in our communities.

82 (7) The United States Congress promptly enact legislation accomplishing comprehensive
83 immigration reform that treats all immigrants justly and reflects the basic principles of human
84 dignity and human rights.

85 (8) The District of Columbia strongly opposes the implementation of the Department of
86 Homeland Security's public charge rule and reaffirms our commitment to defend and protect the
87 rights and safety of the immigrant and refugee community of the District of Columbia.

88 Sec. 4. The Council shall transmit a copy of this resolution, upon its adoption, to the
89 President of the United States, the Leaders of both the Democratic and Republic party of the
90 United States House of Representatives and of the United States Senate, the Attorney General of
91 the United States, the Acting Secretary of the Department of Homeland Security, and the Mayor.

92 Sec. 5. This resolution shall take effect immediately.

10 A PROPOSED RESOLUTION

11
12 23-696
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14 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
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18 To declare the sense of the Council opposing the implementation of the Department of
19 Homeland Security’s public charge rule because of the negative impact the proposed rule
20 would have on our immigrant communities’ access to vital services and cost-saving
21 initiatives that keep families healthy and on the path towards economic self-sufficiency
22 and success.
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24 RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
25 resolution may be cited as the “Sense of the Council Opposing Implementation of Public Charge
26 Rule Resolution of 2020”.

27 Sec. 2. The Council finds that:

28 (1) On January 27, 2020, by a 5-to-4 vote, the Supreme Court of the United
29 States granted an order to stay previous preliminary injunctions issued by lower federal courts,
30 thereby allowing the Trump Administration to begin implementation of the public charge rule on
31 February 24, 2020.

32 (2) Since the 1800s, federal immigration laws have indicated that if an individual
33 is a “public charge,” he or she may be prohibited from entering or staying in the United States.
34 Since 1999, it has been interpreted to mean that United States Citizenship and Immigration

35 Services (USCIS) officers would consider whether a foreign national was likely to become
36 primarily dependent on government services, and “primarily dependent” was interpreted to mean
37 that a person would receive at least half of their support in the form of cash assistance from the
38 government.

39 (3) On October 10, 2018 the U.S. Department of Homeland Security (DHS)
40 issued proposed regulations that would drastically alter this view of public charge, allowing
41 USCIS immigration officers to refuse entry to those lawfully seeking to enter, or deny
42 immigrants lawfully in United States the ability to remain permanently (i.e. those seeking to
43 obtain a green card), if the immigration officer believes that the foreign national would be likely
44 to receive *any* benefits, in *any* amount and at *any* point in the future. Instead of individuals
45 having to be *primarily* dependent, the new regulations would allow an immigration officer to
46 examine 15 “negative factors,” such as whether an individual is older than 61, speaks English,
47 has several dependents, or has inadequate education or skills to hold a job. Based on these and
48 other criteria, an immigration officer will determine if an individual may become a public
49 charge, and thereby deny an individual’s entry or right to stay in the United States.

50 (4) On August 14, 2019, DHS published a final version of the regulations,
51 maintaining the new and much harsher interpretation of the public charge rule, and thus the new
52 regulations promulgated by DHS makes it much easier for immigration officials and the Trump
53 Administration to deny entry or legal status to people deemed likely to require government
54 assistance in any amount or at any point in their lives.

55 (5) Several lawsuits were brought against the United States government in
56 response to the final regulations and several District courts throughout the country enjoined the
57 federal government from enforcing the new regulations. Several United States Courts of

58 Appeals reached mixed verdicts in deciding whether to stay their lower courts' enjoinderment
59 decisions; but the United States Court of Appeals for the Second Circuit (2nd Circuit) agreed with
60 a New York District Court enjoining the implementation of the regulations.

61 (6) Given this enjoinderment, the United States appealed the 2nd Circuit's decision to
62 the Supreme Court. The Supreme Court voted 5-4 to grant the United States' request to stay the
63 2nd Circuit's decision while the Supreme Court decides whether to grant a writ of certiorari to
64 hear the case on its merits and to provide an opinion on the matter.

65 (7) Once the Supreme Court stayed the 2nd Circuit's decision to enjoin the federal
66 government from implementing its new interpretation of the public charge rule, DHS announced
67 that it would begin implementation of the rule on February 24, 2020.

68 (8) Implementation of the new interpretation of the public charge rule creates a
69 "wealth test" that also would disproportionately bar non-white immigrants. Implementation also
70 will likely deter individuals who rightfully qualify for public benefits – including important
71 safety net benefits like SNAP, Section 8 housing, and Medicaid – from seeking them for
72 themselves or their family due to fear that the utilization of benefits would negatively impact
73 their immigration status, even if that fear is not based in fact. Organizations that serve immigrant
74 populations are particularly concerned about the chilling effect this regulation will have on
75 immigrants' healthcare as families may forego preventative and emergency medical care, as well
76 as vaccinations and treatments for contagious diseases, which would have a negative impact on
77 public health as a whole.

78 (9) The Migration Policy Institute estimates that the new standards for
79 determining when an immigrant is likely to become a public charge could cause a significant
80 share of the nation's nearly 23 million noncitizens and U.S. citizens in immigrant families using

81 public benefits to disenroll. Even if this is an overstatement, the impact of the new rule will be
82 substantial.

83 Sec. 3. It is the sense of the Council that:

84 (1) The District of Columbia strongly opposes the implementation of the
85 Department of Homeland Security's public charge rule and reaffirms our commitment to defend
86 and protect the rights and safety of the immigrant and refugee community of the District of
87 Columbia.

88 (2) The District of Columbia believes that all individuals, regardless of their
89 income, ethnicity, or national origin, should be treated fairly, equally, and respectfully, and it
90 does not tolerate policies that evoke fear or discourage individuals from seeking rights to which
91 they are entitled.

92 (3) The District of Columbia embraces a diverse citizenry, welcoming individuals
93 from different racial, ethnic, religious, and national backgrounds, as such is vital to weaving
94 together a strong and vibrant city.

95 (4) The United States Congress should promptly enact legislation accomplishing
96 comprehensive immigration reform that treats all immigrants justly and reflects the basic
97 principles of human dignity and human rights.

98 Sec. 4. The Council shall transmit a copy of this resolution, upon its adoption, to the
99 President of the United States, the Leaders of both the Democratic and Republic party of the
100 United States House of Representatives and of the United States Senate, the Attorney General of
101 the United States, the Acting Secretary of the Department of Homeland Security, and the Mayor.

102 Sec. 5. This resolution shall take effect immediately.