



**BROOKLYN
DEFENDER
SERVICES**

TESTIMONY OF:

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BROOKLYN DEFENDER SERVICES

**Presented before
The New York City Council
Committee on Immigration
Committee on Health and
Committee on General Welfare**

Oversight Hearing: The Impact of the Proposed “Public Charge” Rule on NYC

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My name is Nyasa Hickey and I am Immigration Counsel at Brooklyn Defender Services (BDS). Our organization provides multi-disciplinary and client-centered criminal defense, family defense, immigration, civil legal services, social work support and advocacy in nearly 35,000 cases involving indigent Brooklyn residents every year. Since 2009, BDS has counseled, advised or represented more than 10,000 immigrant clients. We are a Board of Immigration Appeals-recognized legal service provider. I thank the New York City Council Committees on Immigration, Health and General Welfare for the opportunity to testify about the impact of the proposed “public charge” rule on New York City residents.

The Proposed Rule Change

As the Council already knows, this proposed rule significantly changes who will be eligible to obtain Lawful Permanent Resident (LPR, aka “green card”) status in the future. The proposed rule directly discriminates against and excludes middle-income, low-income and poor immigrant families from being able to seek long-term stable status in the United States as a lawful permanent resident. Perhaps most importantly, the rule change sends the message that low-

income immigrants are not valuable community members and are not welcome in the United States.¹

The proposed “public charge” rule change, if it goes into effect, will have tremendous negative effect on immigrant communities. We are already seeing the chilling effect of the proposal, as many of our clients are already too scared to apply for benefits that they are legally entitled to, even after we advise them that the rule change will not affect them. This unnecessarily and harmfully puts the health and safety of our immigrant communities.

We believe that the rule change will have the following impact on New Yorkers:

- Prevents immigrant families from accessing benefits they are entitled to and that their tax dollars help to support;
- Prevents people from accessing services that support their health, food, and secure housing situations—when people do not access these necessary services, it not only harms the individual but their family members as well;
- Will create a catch-22 for many immigrants. They will have to make the choice between seeking essential public support services needed now to stabilize their health, nutritional or housing situation now, or maintaining their ability to receive a green card, permanent lawful status, and securing their family unity in the future; and
- Will result in more difficulty for low-income people to immigrate, reunite or remain with their families.

Indeed, we have already seen how the mere proposal of this rule has already made immigrant families afraid to seek out programs and benefits that support their basic needs. We have been inundated with questions from our clients, many or most of whom would not be affected by the proposed rule, but who are terrified nonetheless. Some are refusing to apply for certain benefits even after we advise them that the rule change will not affect them. Furthermore, many of our clients are being told by other people, agencies, unscrupulous lawyers, and the media, that they are ineligible to apply for certain benefits or should withdraw from any benefits immediately or face deportation. This is inaccurate and unnecessarily spreads fear and concern in immigrant communities.

Our clients’ fear is compounded by the misinformation about benefits eligibility that they receive when they seek to enroll in benefits. Our clients have been informed by City benefits navigators and court-mandated program administrators that they are ineligible for benefits as an immigrant. This is factually incorrect and often requires advocacy by BDS attorneys and social workers to write letters, make phone calls, and personally attend benefits enrollment appointments to correct the misinformation and enable our clients to enroll in public benefits and programs they are entitled to receive. In other instances, when enrolling in public benefits, our clients have been questioned by City employees to disclose the details of their immigration status and the basis for their work authorization, even while presenting a valid Employment Authorization Document

¹ This is a helpful FAQ guide: <https://www.momsrising.org/blog/what-you-need-to-know-on-the-public-charge-rule-immigrant-families>

issued by United States Citizenship and Immigration Services (USCIS). This interrogation into the legalities of immigration status, the basis of their work authorization, and the status of someone's social security number is unnecessary and creates more fear and distrust within immigrant communities, especially under the current national anti-immigrant political climate.

Through the proposed rule, the Federal Administration also seeks to broaden the scope of the public charge bar to include an analysis of negative factors. Such factors include a large family size, limited English proficiency, age, medical conditions that impact ability to work or go to school, physical and mental health conditions, and credit scores. BDS represents thousands of non-citizen New Yorkers every year. Most of them live in mixed-status households, meaning that U.S. citizens, LPRs, visa holders and people without documents are living together, working together, and supporting one another. Many of them will be affected if the proposed rule goes into effect.

Here are some categories of people who will be negatively affected by the proposed rule:

- A person who is applying for a green card now or anytime in the future will have to make the choice between seeking immediate and necessary public benefits to support herself and her family against her future ability to get a green card, which would give her work authorization and long-term stable status to remain with her family in the United States. The list of benefits under the proposed rule change is expanded to include Medicaid, housing, SNAP, Medicare Part D, and assistance programs.
- A person who is applying for a green card may be determined ineligible as a public charge because he or she is determined to be “likely to use certain public benefits in the future” because they have a combination of the following factors:
 - a. Earn less than 125% of the federal poverty level;
 - b. Are a child or a senior;
 - c. Have certain health conditions that require extensive treatment or affect the applicant's ability to work, attend school, care for themselves;
 - d. Have limited English ability;
 - e. Have less than a high school education;
 - f. Have a poor credit history; or
 - g. Have obtained a fee waiver in applying for an immigration benefit, such as a fee waiver for employment authorization for Temporary Protected Status.
- Immigrant families who are afraid to access public benefits for themselves or their children because of the stigma associated with public benefits and immigrants. Individuals and families have already been deterred from applying for public benefits and withdrawn from benefits because of fear and misinformation about the proposed public charge rule, even if they will not be subject to a public charge test.
- Green card holders who receive public benefits or have significant health issues, are seniors, children, or unemployed, would not be able to travel abroad for more than six months because they risk being deemed a public charge upon their return to the U.S. For example, someone with a family emergency in their home country would have to

consider very carefully about leaving the US for more than six months because they would be subject to the public charge assessment upon reentry.

The public charge rule harms immigrant families because it requires an analysis of a whole host of factors that are outside an individual person's control in determining whether or not a person may remain in the U.S. The rule clearly seeks to exclude poor people, people with limited English comprehension, children and the elderly from permanent resident. It officially categorizes any person who potentially fits within these categories as undesirable. The rule change is unfair and unjust and anathema to the American dream. But there is much the City can do to combat this xenophobic policy change.

Recommendations

1. *We call on the City Council to pass Resolutions 608-2018 and 609-2018 and submit a comment to the Federal Register on behalf of the City in opposition to the proposed rule change.*

We also urge you to encourage all New Yorkers to submit individual comments to the Federal Register on this important issue.

2. *Continue funding and supporting organizations like BDS that provide direct legal services and advice to immigrant New Yorkers.*

Brooklyn Defender Services attorneys and social workers are on the front lines serving immigrant New Yorkers. However, under the current Administration's enforcement regime, characterized by constantly changing policies, each immigrant client's intake, legal analysis, and risk advisal has become more challenging and nuanced than ever before. In addition, applications that were previously considered to be simple applications, such as Employment Authorization Documents, or applications without complicating factors, no longer exist. Under new Executive Orders and directives issued at the federal level, each application is complex and requires an enormous amount of BDS' resources. Applications are subject to increasing delay times, often require follow up in the forms of a Request for Evidence, and, if denied, put our clients at risk under the new referral Notice to Appear referral to immigration court policy.

Continued and increased funding for immigration legal services is one of the most important tools that the City Council has to ensure that immigrant New Yorkers can remain in their homes with their families.

3. *Improve training for city benefits navigators and other city staff who interact with and advise immigrant New Yorkers*

Some of our clients who are seeking to enroll in benefits have mistakenly been told by navigators that they do not qualify for benefits because they are non-citizens. Other BDS clients have been interrogated by navigators about their immigration status and the basis for their employment authorization. In many of these cases, the navigators are simply uninformed about all of the

complexities in immigration law. We then have to use attorney and social worker resources to advocate with the benefits navigators to ensure that our clients are allowed to apply for the benefits to which they are entitled. We would be happy to work with the City to improve training for navigators and other City staff who interface with immigrant New Yorkers about the public charge and related issues.

Thank you for your time and consideration of this important issue. If you have any questions, please feel free to reach out to Daniel Ball, Communications & Development Coordinator, 718-254-0700 ext. 579 or dball@bds.org.