



**BROOKLYN  
DEFENDER  
SERVICES**

**TESTIMONY OF:**

**Sonia Marquez – Immigration Practice**

***BROOKLYN DEFENDER SERVICES***

**Presented before  
The New York City Council  
Committee on Immigration**

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**I. Introduction**

My name is Sonia Marquez and I am Civil Rights and Immigration Senior Staff Attorney 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 30,000 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 and a provider of the New York Immigrant Family Unity Project (NYIFUP). In addition, we represent individuals in applications for immigration relief, adjustment of status, and naturalization before the United States Citizenship and Immigration Services (“USCIS”), and in removal proceeding in New York’s immigration courts. I thank the New York City Council Committee on Immigration for the opportunity to testify about the proposed local laws and resolution in relation to the “Public Charge” rule and its impact on New York City residents.

Please refer to our written testimony about the presented to the New York City Council on November 15, 2018 about the impact of the proposed “Public Charge” rule on NYC.<sup>1</sup>

**II. Impact of the Rule**

As we previously laid out in our November 15, 2018 written testimony on the impact of the proposed “Public Charge” rule on New York City, the final Public Charge rule for inadmissibility targets low-income immigrant families and immigrants of color. The rule is intended to instill widespread fear, and will hurt not only immigrants but also U.S. citizen family members and their larger communities.

In expanding the types of public benefits analyzed during an inadmissibility determination, and lowering the threshold that could trigger inadmissibility, the Federal Administration is using the public benefits system to punish immigrants. The City has determined that access to these benefits promotes stability in the short-term and the long-term. By inducing disenrollment, the rule will negatively impact the ability of immigrant and mixed-status families to maintain employment, stay healthy, achieve stability, and pursue their full potential as New Yorkers.

The final rule also replaces the existing totality of the circumstances test with a weighted-factors scheme, which is perhaps more detrimental to the ability of low-income immigrants to become green card holders. Unlike the existing totality of the circumstances test, which was meant to identify individuals who would permanently and primarily be dependent on government resources, the new weighted analysis is a *de-facto* ban on low-income immigrants becoming lawful permanent residents. This analysis looks to factors such as the immigrant's age, health, education-level and proficiency in English, employment history, and financial status and credit score. Mere employment, living wage, or modest savings will not necessarily be sufficient, and achieving a "heavily weighted positive factor" requires, among other things, an annual income or resources of a hefty 250% of the federal poverty guidelines or private health insurance. Notably, disenrollment from public benefits is just one factor in a myriad of factors, and will not alone result in a positive outcome. The rule turns the American Dream on its head by requiring immigrant families to achieve financial stability and success before getting permanent admission to the United States.

Moreover, the weighted-factors analysis is vague, opaque and complicated, giving immense discretion to the immigration official adjudicating the application. Without adequate legal help to navigate the rule and identify the required documentation, low-income immigrants will be at an even greater disadvantage when filing green card applications.

At Brooklyn Defender Services, we have seen the widespread fear and misinformation in the immigrant community caused by the public charge rule. Even before the rule was finalized, clients have told our social workers that they do not want to sign up for benefits, because they believe it will negatively impact their immigration relief options. One client with asylum status was so afraid of the impact of the public charge rule that our staff was unable to convince him that signing up for health insurance would not harm his ability to adjust his status in the future, even though the final rule excludes asylum-based adjustments. Since the final rule was announced, attorneys and social workers have fielded calls from clients who now fear using public benefits and are asking whether to disenroll. Immigrant clients who are victims of trafficking, victims of crimes, and those who are already green card holders, have expressed concern about the impact of the public charge rule on their ability to maintain legal status in the U.S., even though the rule will not apply to them. Undocumented clients, who may not personally qualify for most public benefits, express fear of limiting potential relief and future deportation because their U.S. citizen children get SNAP and Medicaid benefits.

### **III. Bills**

Brooklyn Defender Services supports all five of the proposed bills and the resolution with the caveat that individuals seeking to disenroll in benefits should be encouraged to seek

individualized legal counsel to analyze their particular circumstances, as well as the impact of enrolment or disenrollment in public benefits on their current and future immigration options.

1. *Int. T2019-4982 - In relation to requiring the department of social services/human resources administration to provide assistance in modification of benefits.*

Brooklyn Defender Services supports this bill. The bill will provide important information and advice for individuals who may be seeking to modify their benefits as a result of the expanded public charge rule. However, individuals seeking to disenroll or modify their benefits should be encouraged to seek individualized legal counsel to analyze their particular circumstances.

2. *Int. T2019-4983 - In relation to requiring training for certain employees of the city of New York on federal regulations relating to inadmissibility on public charge grounds.*

Brooklyn Defender Services supports this bill. This bill will provide training for city employees about the effects of the public charge grounds. We encourage the City to schedule periodic and recurring trainings to ensure that new incoming staff are also trained. Recurring trainings will also reinforce this complex information for existing staff and allow for updates and developments as the implementation and real-time effect of the public charge inadmissibility ground may require changes in advice and training for employees.

3. *Int. T2019-4984 - In relation to requiring the distribution of information on local emergency feeding programs.*

Brooklyn Defender Services supports this bill.

4. *Int. T2019-4985- In relation to the distribution of educational materials about the federal regulations relating to inadmissibility on public charge grounds.*

Brooklyn Defender Services supports this bill. This bill calls for the dissemination of information about the effects of public charge grounds on a family's immigration status. It is important that school-age children and their parents receive simple, straight forward, and accurate information to combat wide-spread confusion and fear, which could lead to disenrolling in benefits that are essential to a family's stability and health.

5. *Res. T2019-4981- Calling on the United States Congress to pass, and the President to sign, legislation that would prohibit the enactment of the federal rule entitled, "Inadmissibility on Public Charge Grounds".*

Brooklyn Defender Services supports this resolution.

#### **IV. Additional Recommendations**

In order to combat the widespread confusion and fear—which is at the heart of the rule's purpose—there is an increased demand for individualized legal consultation for immigrant individuals and know-your-rights presentations to accelerate the dissemination of accurate

information. In response to the expanded public charge rule, the messaging to the immigrant community has been to seek legal guidance to determine whether and how the public charge rule applies to an individual's circumstances. This increased need for legal advice places an additional burden on legal service providers to digest the minutia of the rule and—in the short-term—meet with, screen, and advise immigrants seeking legal guidance on whether to disenroll their family from needed benefits.

As explained above, legal service providers who serve low-income communities are already feeling the impact of the public charge and we anticipate this will be felt in four main ways. *First*, clients who are concerned about their use of public benefits are reaching out to attorneys and social workers to discuss the impact of the rule on their case. Staff must undertake a careful analysis of a client's potential relief options and financial situation, before advising on whether and how the rule will apply. *Second*, adjustment of status applications subject to the rule will become more onerous to prepare. In an attempt to satisfy the weighted-factors analysis, the documentation needed will be substantial and the attorney will have to litigate each of the factors to argue for a positive outcome of the test. For legal service providers who serve low-income clients, the rule will impact nearly all family-based adjustment of status applications. *Third*, the rule's intent is to increase denials of applications from low-income immigrants, which means additional work and resources spent appealing the denials and representing clients in removal proceedings when they are referred to immigration court. *Fourth*, to mitigate misinformation and fear-based disenrollment, providers will need to build materials and deliver Know Your Rights presentations to community organizations.

We recommend that the City ensure that immigrants who need individualized legal advice regarding the impact of the rule on their use of public benefits are connected with legal service providers who have the knowledge and capacity to assist.

Finally, we recommend that the New York City Council consider additional funding for the legal services that are needed to provide advice and representation to potentially affected individuals to ensure that legal service providers have the capacity to help mitigate and combat the impact of this rule on New Yorkers.

## **V. Conclusion**

The bills and resolution before the Council today are important steps to mitigate the harmful impact of the public charge rule and provide the New York immigrant community with essential information. We thank the sponsors and Immigration Committee Chair Carlos Menchaca for advancing them and urge the full Council to pass them.

If you have any questions about my testimony, please feel free to contact Nyasa Hickey, Immigration Counsel at [NHickey@bds.org](mailto:NHickey@bds.org) by phone at 718-254-0700.

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<sup>1</sup> Brooklyn Defender Services written testimony about “The Impact the Proposed “Public Charge” Rule on NYC,” November 15, 2018, available at <http://bds.org/bds-testifies-before-the-nyc-council-committees-on-immigration-health-general-welfare-on-the-impact-of-the-proposed-public-charge-rule-in-nyc/>.