



GMS Flash Alert

Immigration Edition

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United States - Appeals Court Places DHS' Public Charge Rule Back into Effect

On November 4, 2020, the U.S. Seventh Circuit Court of Appeals has stayed the lower court's order to vacate the public charge rule, and permitted the U.S. Citizenship and Immigration Services (USCIS) to continue enforcing the rule in adjudicating applications for immigration benefits.¹

This decision comes two days after the U.S. District Court for the Northern District of Illinois ruled that the public charge regulation is arbitrary and capricious, and exceeds the Department of Homeland Security's (DHS) authority under the *Immigration and Nationality Act (INA)*.

The legality of the public charge rule continues to be challenged before several other courts. If the courts' rulings do not align, the cases may reach the U.S. Supreme Court for a final decision on the legality of the regulation.

WHY THIS MATTERS

Based on the recent decision from the Seventh Circuit Court of Appeals, public charge forms and documentation will continue to be required for all I-129 petitions, I-539 applications, as well as adjustment of status applications. Until further notice, applicants must respond to all public charge-related questions as part of their nonimmigrant and immigrant visa processes, including providing any supporting documentation where applicable.

Background

The Seventh Circuit Court of Appeals granted the DHS' request for an immediate stay of the November 2, 2020 decision from the U.S. District Court for the Northern District of Illinois, which vacated the public charge rule nationwide.

In the lower court's decision of *Cook County et al. v Wolf et al.*, Judge Gary Feinerman granted summary judgment in favor of the plaintiffs, effectively preventing DHS from enforcing the public charge rule and putting a bar on such enforcement while any appeal is pending. The court opined that the rule violated the Administrative Procedures Act

(APA), which governs how regulations are developed and implemented, and exceeded the DHS' authority under the public charge provision of the *INA*.

The lower court's decision came after a string of decisions from various jurisdictions, relating to temporary bars on the enforcement of the public charge rule.² As the lower court's decision was a final decision on the merits, it superseded prior preliminary injunction rulings, and was to remain in effect unless and until it was overturned by a higher court.

The DHS appealed the ruling in *Cook County et al. v Wolf* to the Seventh Circuit Court of Appeals on an urgent basis, and requested that the lower court decision be put on hold while the full appeal is heard. The Appeals Court granted the DHS' request on November 4, 2020, allowing the USCIS to continue implementing the public charge rule until another order from the Seventh Circuit Court of Appeals or a higher court states otherwise.

KPMG NOTE

KPMG Law LLP is closely monitoring the administration's response to the recent court ruling, as well as the status of the public charge rule. We will endeavor to keep readers of *GMS Flash Alert* posted on any important developments as and when they occur.

FOOTNOTES:

1 *Cook County et al. v Wolf et al.*, No. 20-3150 (7th Cir. 2020) for the November 4, 2020 decision from the Seventh Circuit Court of Appeals; *Cook County et al. v Wolf et al.*, No. 19 C 6334 (N.D. Ill. 2020) for the November 2, 2020 decision from the U.S. District Court for the Northern District of Illinois.

2 For our prior coverage of the public charge rule, read the following issue of *GMS Flash Alert*: [2020-411](#) (September 24, 2020), [2020-355](#) (August 14, 2020), and [2020-340](#) (August 6, 2020).

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Contact us

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