

Memorandum



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TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Nora Frimann
City Attorney

SUBJECT: Amicus Curiae Brief in support
of the federal government
defending its abandonment of
the Public Charge Rule in *Cook
County et al., v. Wolf, et al.,
(N.D. Ill)*

DATE: June 10, 2021

RECOMMENDATION:

Authorize the City Attorney to join in Amicus Curiae brief being drafted by the County of Los Angeles and City of Chicago in support of the federal government opposing a coalition of states seeking to defend the Public Charge Rule and opposing their motion to intervene and motion for relief from judgment in *Cook County, et al., v. Wolf, et al.*

BACKGROUND:

The City of San Jose has been requested to join an amicus brief that is being drafted by the City of Chicago and County of Los Angeles supporting the federal government's opposition to a motion to intervene being made by several states seeking to join litigation filed by Cook County, Illinois challenging what is known as the "public charge rule". A panel of the Seventh Circuit United States Court of Appeals issued a decision in June, 2020 upholding a preliminary injunction issued Judge Gary Feinerman of the Northern District of Illinois. The federal government, as it has in other similar legal challenges to the rule, is no longer defending the rule and is accepting the decision of the Illinois courts and other courts that have found that rule invalid on Constitutional grounds and/or failure to follow the federal Administrative Procedures Act ("APA"). However, several states are now seeking to intervene in the litigation to defend the rule unless and until the new administration complies with the APA in issuing a new rule.

In August, 2019, the Department of Homeland Security (DHS) issued a rule designed to prevent immigrants whom the Executive Branch of the federal government deemed likely to receive public assistance in any amount, at any point in the future, from entering the country or adjusting their immigration status. The rule purported to implement the "public charge" provision in the Immigration and Nationality Act, 8 U.S.C. Section 1182(a)(4). The rule was challenged by states, cities, and non-profit groups in

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several courts across the country. Cook County, Illinois, and the Illinois Coalition for Immigrant and Refugee rights, Inc. (ICIRR) brought a case challenging the rule in the Northern District of Illinois and immediately sought a preliminary injunction to enjoin enforcement of the rule. The district court judge, finding that the criteria for a preliminary injunction were met, issued the injunction and the Seventh Circuit Court of Appeal affirmed that decision on June 10, 2020.

In affirming the district court decision, the Court of Appeal stated that the subject rule “represents a striking departure from the previous administrative guidance — one with a potentially devastating impact on those to whom it applies”. The previous guidance was issued in 1999 by the then entitled Immigration and Naturalization Service defining a public charge. The Court found that the district court “did not abuse its discretion or err as a matter of law when it concluded the Cook County is likely to succeed on the merits of its APA claims against DHS.”

The federal government is no longer intending to defend this legal challenge and as a result, some states are seeking to intervene in the lawsuit to assume the defense of the rule. The amicus brief that San Jose has been asked to join is being filed to support the federal government’s position at this time and to oppose the states effort to intervene and continue the litigation.

CEQA:

Not a Project, File No. PP17-010, City Organizational and Administrative Activities resulting in no changes to the physical environment.

NORA FRIMANN
City Attorney

By: /s/ Nora Frimann
NORA FRIMANN
City Attorney