

# U.S. Supreme Court hands immigrants a rare victory

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**ELI M. KANTOR**  
Founder, Eli M Kantor Law Offices

**Email:** [eli@elikantorlaw.com](mailto:eli@elikantorlaw.com)

[See more...](#)



**JONATHAN D. KANTOR**  
Attorney, Eli M Kantor Law Offices

**Email:** [jonathan@elikantorlaw.com](mailto:jonathan@elikantorlaw.com)

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On Wednesday, June 15th, the U.S. Supreme Court handed immigrants a rare victory. The Court dismissed an appeal led by Republicans from several states that sought to reinstate a Trump era immigration policy regarding “public charge” that the Biden Administration had abandoned, in *Arizona v. City and County of San Francisco*. No. 20-1775 (U.S. Jun. 15, 2022). In a one sentence decision, the Court only said that the states’ petition seeking review was “dismissed as improvidently granted.”

## The Public Charge Issue

One of the most daunting issues for non-citizens seeking to become permanent residents or green card holders has been: whether the applicant “is likely to become a public charge.” It is the burden of the applicant to prove to immigration that they will not need to receive public benefits once they become green card holders, and, thus be inadmissible as “public charges” under 212 (a) (4) of the Immigration and Naturalization Act.

This has always been a difficult task for potential immigrants, since the immigration officers are vested with a great deal of discretion. However, until 2019, all that a would be immigrant was required to do was to provide an Affidavit of Support, Form I-864, from a US citizen sponsor, normally their US citizen spouse or parent or other close relative, which is a contract between the sponsor and the alien stating that if ever the alien were to apply to receive a public benefit, the sponsor’s income should be considered, together with the alien’s in order to determine eligibility for the benefit. Since the sponsor has to show income of more than 125% of the poverty level, by submitting their last 3 years of federal tax returns, the alien would never be able to qualify to receive a public benefit. Further, even if the alien was somehow able to receive a public benefit, the sponsor agreed to reimburse the government for all the money that it had paid out. The Affidavit of Support is valid for a period of 10 years.

## The Trump Revised Rules and Form I-944

However, the Trump Administration wanted to make it more difficult for non-citizens to become permanent residents, so they instituted new revised requirements in 2019, forcing the alien to prove that they would not be likely “to become a public charge.” In the past, only substantial and sustained public assistance would disqualify applicants. This was a key part of the Trump Administration’s “invisible wall,” an adjunct to its physical wall, attempting to block legal immigration. In order to implement this policy, they required non-citizens to complete a new form, Form I-944, Declaration of Self-Sufficiency, whereby the potential immigrant was forced to prove that they would never need to become a public charge because they had not received public assistance in the past. This form was in addition to Form I-864, Affidavit of Support. It was dreaded by both the applicants and their lawyers, requiring several hours to complete, and numerous documents to be provided regarding the alien’s education, work history, credit score, etc.

Form I-944 asked numerous intrusive questions concerning every public benefit that the alien had received, including: Medicaid, housing assistance, food stamps, etc. Every public benefit that the alien had received was a potential reason to deny permanent residence under the “public charge” rule. Further, any gaps in Form I-944, such as lack of a credit score, were potential reasons for denial.

The policy was challenged in lawsuits around the nation, and several federal judges blocked it, but in January 2020 by a 5-4 vote the Supreme Court revived the policy while the appeals moved forward.

After the election of President Biden, he issued an Executive Order, 14012, withdrawing the requirement for the applicant to complete Form I-944. However, several Republican states led by Arizona sought to revive the Trump policy in *Arizona v. City and County of San Francisco*.

Now, the US Supreme Court has spoken and this Trump era policy regarding a strict interpretation of the likelihood for an applicant to become a public charge has been abolished and Form I-944 has been withdrawn.