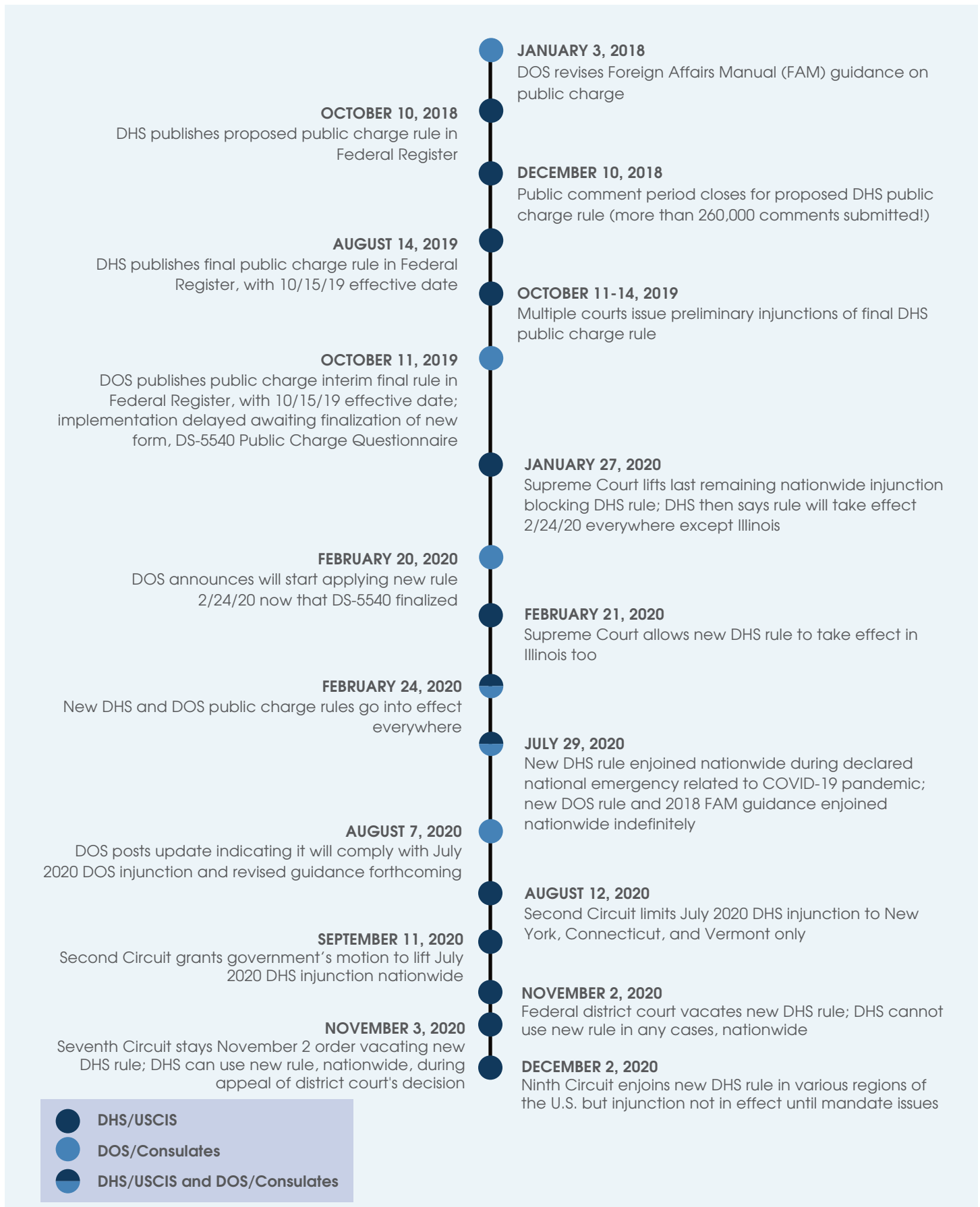




PUBLIC CHARGE TIMELINE



- DHS/USCIS
- DOS/Consulates
- DHS/USCIS and DOS/Consulates

SO WHERE ARE WE NOW?

The Ninth Circuit's December 2, 2020 decision would enjoin DHS from implementing the new public charge rule in 18 states and Washington, D.C. however, the injunction will not go into effect until the mandate issues—check back for updates. DOS is currently enjoined from implementing its new public charge rule at embassies and consulates.

The DHS new public charge rule has stopped and started various times now, from a delayed start date in February 2020, to a brief halt in response to COVID-19 in late July 2020, to court decisions in August and September 2020 that chipped away at the pandemic-related injunction, ultimately permitting USCIS to resume implementation everywhere in September. Then the November 2020 district court decision vacating the new public charge rule nationwide only lasted one day, before the Seventh Circuit permitted USCIS to continue applying the new rule, including requiring submission of Form I-944, while appealing the November decision. Most recently, the Ninth Circuit upheld geographically limited injunctions of the new rule, enjoining DHS from implementing the new rule in California, Colorado, Delaware, Hawai'i, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, Oregon, Pennsylvania, Rhode Island, Virginia, Washington D.C., and Washington State. However, this decision has not yet gone into effect, which will happen when the mandate issues. In the meantime, DHS may continue applying the new rule nationwide including requiring submission of Form I-944. Advocates will want to watch for whether the agency will challenge this decision and what happens with the upcoming administration.

The DOS new public charge rule remains enjoined, in accordance with the July 29, 2020 order. On August 7, 2020, DOS posted an [update](#) conveying its intent to comply with the July 2020 DOS injunction. Visa applicants are not required to complete the DS-5540 Public Charge Questionnaire or present it during visa interviews. DOS has also indicated that it is updating its guidance to consular officers on how to proceed under the preliminary injunction. DOS has provided a limited update to its [FAM guidance on public charge](#), directing consular officers to refuse visa applicants under INA § 221(g) (i.e., a visa refusal because of a “documentary problem”), not INA § 212(a)(4) (i.e., a visa refusal because of a “substantive problem”—in this situation, public charge), if they believe an applicant may be ineligible for a visa under INA § 212(a)(4) or want to ensure they are not relying on enjoined FAM guidance on public charge. Officers who refuse visa applicants under INA § 221(g) must request an advisory opinion explaining the basis for their belief that the applicant may be ineligible under INA § 212(a)(4). The FAM guidance on public charge prohibits consular officers from finding any visa applicants ineligible for admission under INA § 212(a)(4) until they have received a response from the Office of Legal Adviser for Consular Affairs.

Note that litigation challenging the DHS and DOS public charge rules, 2018 FAM revisions, and related issues is ongoing; the state of the law and implementation of these rules could very well change again.

Check our [Public Charge Page](#) for further updates.