

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

STATE OF NEW YORK, CITY OF NEW YORK,
STATE OF CONNECTICUT, and STATE OF
VERMONT,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF HOMELAND
SECURITY; KEVIN K. McALEENAN, *in his official
capacity as Acting Secretary of the United States
Department of Homeland Security*; UNITED STATES
CITIZENSHIP AND IMMIGRATION SERVICES;
KENNETH T. CUCCINELLI II, *in his official capacity
as Acting Director of United States Citizenship and
Immigration Services*; and UNITED STATES OF
AMERICA,

Defendants.

**CIVIL ACTION NO.
19 Civ. 07777 (GBD)**

MAKE THE ROAD NEW YORK, AFRICAN
SERVICES COMMITTEE, ASIAN AMERICAN
FEDERATION, CATHOLIC CHARITIES
COMMUNITY SERVICES, and CATHOLIC LEGAL
IMMIGRATION NETWORK, INC.,

Plaintiffs,

v.

KEN CUCCINELLI, in his official capacity as Acting
Director of United States Citizenship and Immigration
Services; UNITED STATES CITIZENSHIP &
IMMIGRATION SERVICES; KEVIN K.
McALEENAN, in his official capacity as Acting
Secretary of Homeland Security; and UNITED STATES
DEPARTMENT OF HOMELAND SECURITY,
Defendants.

**CIVIL ACTION NO.
19 Civ. 07993 (GBD)**

DECLARATION OF THEO OSHIRO

I, Theo Oshiro, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am a Deputy Director for Make the Road New York (“MRNY”), where I am
responsible for overseeing our services teams, which include our legal, health, and adult

education departments. I submit this declaration in support of the Plaintiffs' Motion for a Preliminary Injunction and Stay or Temporary Restraining Order Pending National Emergency in the above-captioned cases. I submitted a declaration dated September 9, 2019 in support of Plaintiffs' motion to enjoin the Rule on a preliminary basis in *MRNY v. Cuccinelli*. Following the Court's issuance of a stay, the Rule became effective on February 24, 2020.

Make the Road New York

2. MRNY is a non-profit community-based membership organization, which has been in existence for over 20 years, and is dedicated to building the power of immigrant and working-class communities to achieve dignity and justice through organizing, policy innovation, transformative education, and survival services. MRNY currently has over 200 staff members, who provide services to thousands of individuals a year, including both members, students and clients from the community. Our membership comprises more than 24,000 low-income New Yorkers, many of them from immigrant communities. We operate five community centers in the state of New York: in Brooklyn, Queens, Staten Island, Long Island and Westchester County, each of which are areas of the State widely affected by the COVID-19 pandemic.

3. Over the past several weeks, we have seen how the COVID-19 pandemic has rapidly caused a pervasive health crisis in the New York City metropolitan area and a massive increase in food instability and unemployment, especially acute in the communities MRNY serves. During this time, MRNY has been at the front lines of working with, supporting, and educating immigrant communities on their rights in the COVID-19 crisis. We are providing food assistance, including distribution of food, to hundreds of families through our food pantries in Queens and Brooklyn, and are raising and disseminating a million dollars to meet immediate needs, including emergency food visa cards, and funds to cover expenses for individuals who

have lost immediate relatives due to COVID-19. We are also holding regular information and Know Your Rights (KYR) sessions on Facebook Live and other online platforms; conducting a high volume of health insurance and services screenings; and handling a similarly high volume of questions through our workers' rights, housing and immigration legal teams. We have also been helping hundreds of community members connect by phone to medical providers who can advise the individual if they should go to the hospital for treatment, or if it is safe for them to stay home. We continue to follow up with these individuals to ensure they are safe and have all the support they need.

The Public Charge Rule and COVID-19

4. Since it was announced, the public charge Rule has placed our clients' and members' health and security in jeopardy. Even before the Rule became effective on February 24, 2020, we saw the Rule cause enormous fear in the immigrant communities MRNY serves, driving people to consider withdrawing from life-saving health and nutritional benefits due to concerns that receipt would endanger their immigration status. This included many people who are not subject to public charge but were nonetheless reluctant to keep or apply for benefits, including benefits that are explicitly not considered under the Rule.

5. When the Court granted the stay of the district court's preliminary injunction on January 27, 2020 and the Rule became effective on February 24, 2020, the impact of the Rule on our members and clients became even greater. We are especially concerned that the COVID-19 crisis has accelerated the deleterious effects of the Rule on our clients and their communities at an alarming rate and actively undermines MRNY's efforts and those of other organizations and state agencies to assist families in need access health care, food, and other assistance.

6. The stakes for families reluctant to access government assistance because of the Rule have become even greater with the unfolding of the COVID-19 crisis. MRNY's communities have been devastated by the current crisis. The organization has provided financial support to the families of 38 of our members, clients or students who have lost a loved one to coronavirus; many of those who have died are from communities or groups (such as trans women of color) that have historically lacked access to healthcare. These consequences show that fear of accessing health care, including COVID-19 testing and treatment, because of public charge implications can have life-altering health consequences for our clients; other members of their households, including U.S. citizens; and their neighbors and communities. Fear of accessing food assistance and other benefits because of public charge consequences can also result in people staying in unsafe work situations, and for those who are unemployed, simply going hungry.

7. Since the first stay-at-home order was issued for New York City on March 22, 2020, we have seen clients reluctant to access health and other benefits in three main areas of our work: (a) screening clients for health insurance and SNAP eligibility and helping individuals access medical care; (b) providing food assistance to clients and members and advising them on how to access other vital social support services; and (c) advising workers about benefits and protections available to them, including unemployment insurance, food assistance, and health insurance. In each area, clients and members express fear that public charge will result in them or their family members being penalized for using such assistance or benefits, including from MRNY's own food pantries and crisis-support funds.

8. MRNY's health team conducts hundreds of individual health consultations per month in order to assist people in accessing healthcare. In the course of these consultations, a

large number of people express fear of accessing health benefits due to concerns about public charge.

9. MRNY's immigration and workers practices have also fielded a large volume of questions and concerns from members and clients about accessing unemployment insurance, healthcare, food assistance, and even school resources based on public charge consequences. For instance, many individuals have expressed concerns over whether accepting food through food pantries, MRNY's own emergency food program, or the NYC meal program will negatively impact their immigration cases. Similarly, MRNY's workers team has fielded questions from several clients who qualify for unemployment insurance but are fearful of accessing it given public charge concerns. The workers team has also referred individuals concerned with accessing healthcare due to public charge concerns to MRNY's health team. Some clients have even expressed fear that accessing resources from their children's schools for purposes of remote learning and food support will have negative immigration consequences.

10. The clients expressing these fears include people to whom public charge is not applicable because they are LPRs or hold other status not affected. For example, parents have expressed concern about applying for SNAP benefits for their U.S.-citizen children and how their immigration cases will be impacted if they were to apply, as have individuals who are not be impacted by the public charge rule at all based on their available immigration relief such as U nonimmigrant visa.

11. Although our counseling and consultations often result in clients resolving their confusion about the public charge rule, the fear that our members and clients express demonstrates that many individuals in New York's immigrant communities are currently actively deterred from accessing benefits. In addition, the need to screen, counsel and reassure people

causes delay in obtaining necessary benefits. And we know based on our work that there are many more New Yorkers for whom the issue is not delay, but downright refusal to access benefits they need because of the public charge consequences.

12. On March 13, 2020, U.S. Citizenship and Immigration Services (USCIS) posted an English-only alert explaining that while the Public Charge rule “does not restrict access to testing, screening, or treatment of communicable diseases, including COVID-19,” USCIS was nonetheless required to “consider the receipt of certain cash and non-cash public benefits, including those that may be used to obtain testing or treatment for COVID-19 in a public charge inadmissibility determination,” including most forms of federally funded Medicaid. *See* <https://www.uscis.gov/greencard/public-charge>. The apparent internal contradiction of the statement has not helped us to alleviate client concerns about benefits use during the COVID-19 pandemic and public charge inadmissibility. In fact, it has only created more confusion for our clients and required us to expend additional resources to adequately provide counsel.

13. *First*, for those clients who are subject to public charge, specifying that the negatively-weighed circumstances related to COVID-19 – which could include the use of benefits that do count in the public charge analysis, reduced income and resources due to unemployment, an interruption in school, and chronic health conditions resulting from the virus – will be considered in the totality of the circumstances is too vague and open to broad interpretation to be helpful. As a result, it provides little clarity or comfort to clients trying to balance their urgent need for assistance during the pandemic with their long-term dreams of permanent residence in the U.S.

14. *Second*, the alert is not being broadly distributed and, as a single website posting in English, is not reaching the communities who need this reassurance. Most of our clients would

never see the USCIS alert unless we showed it to them. The alert is difficult to locate on the agency's website. It is only posted in connection with information on public charge, and does not appear in connection with the information posted about COVID-19. None of the clients we discussed with were familiar with it.

15. Absent relief from the Court, which would send a clear message to immigrants that access to health and other supplemental benefits is of paramount importance during this public health crisis, we will continue to see immigrants in the communities we serve delaying, deferring or avoiding access to life-saving health and food resources.

16. We know that not everyone seeks out our services. While we try our best to reach as many individuals as possible, and even if we are provided with additional resources, there will continue to be frightened and vulnerable members of the immigrant communities that we are unable to reach and who are at risk of getting infected with COVID-19, and who lack access to key information and resources to access healthcare, benefits and support services.

DATED this 28th day of April, 2020

Croton-on-Hudson, NY



Theo Oshiro