

No. 19A785

**In the
Supreme Court of the United States**

DEPARTMENT OF HOMELAND SECURITY, et al.,

Applicants,

v.

NEW YORK, et al.,

Respondents.

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

1. I am the Director of Community Partnerships at the Center for Health Progress (“CHP”) in Denver, Colorado. In that role, I work to build the capacity of Colorado’s healthcare systems to better serve patients, especially focused on healthcare providers providing care to immigrant communities. In partnership with several organizational partners, I offer trainings and direct support to healthcare providers and communities on issues related to the impact of immigration status on the availability of healthcare. As the Director of Community Partnerships, I also collaborate closely with several colleagues at CHP who are in constant, direct communication with immigrant communities concerning their healthcare needs and associated policies that impact their access to healthcare and related resources. I have worked with CHP for three and a half years and for more than fifteen years in the field of community health. I submit this declaration in support of Respondents’ application in the above-captioned matter.

2. At the Center for Health Progress, our mission is to create opportunities and eliminate barriers to health equity for Coloradans. Our work with communities throughout

Colorado stems from the belief that all Coloradans should have the opportunity to live a healthy life. As part of this work, we center the leadership of people most impacted systemic inequities in the healthcare system to work with healthcare providers and policymakers to ensure that all individuals and families can get the care they need. CHP partners with and serves communities from diverse backgrounds, including Latino, East African, and Somali immigrants.

3. In my work with CHP, I concentrate on building capacity among healthcare providers, especially those serving large immigrant populations, to better provide service to their patients. To do this most effectively, I regularly solicit feedback from hospitals, clinics, and other healthcare providers as to the issues causing the greatest difficulty in reaching underserved populations and promoting community health. I also regularly interact with benefits enrollment workers based in healthcare clinics to assess their needs and maximize enrollment among eligible members of immigrant populations in benefits programs, including enrollment of U.S. citizen children from immigrant households.

4. State organizers at CHP play a critical role in advancing our mission, each providing one-on-one support to between five and ten immigrant clients who are facing difficulties accessing healthcare every day. Prior to the COVID-19 quarantine, CHP organizers also regularly delivered trainings to larger groups. As part of their work, organizers empower leaders from the community to educate their peers and policymakers concerning the realities of accessing healthcare in the United States. CHP organizers have deep knowledge of the communities they partner with because of their personal experiences as immigrants themselves and/or because they spent decades growing up in the communities they serve. In some cases, CHP organizers have personally navigated healthcare systems as immigrants or have done so for family members. This personal expertise is extremely beneficial in identifying the most pressing challenges that

immigrant communities in Colorado face in obtaining necessary healthcare, such as language barriers, affordability, and fears associated with immigration status. Their personal experiences allow them to better assist Colorado's immigrant communities by providing culturally competent support. I regularly speak with CHP organizers and have personal knowledge of their observations and information they gather from communities they work with.

The Public Charge Rule Has Created Fear and Confusion Among CHP Clients

5. Over the past two years — and especially since the Supreme Court stayed lower court orders preventing the DHS public charge rule from being implemented in January — CHP organizers report that addressing healthcare needs in the immigrant community has become significantly more difficult. For example, some families that organizers speak with have withdrawn their U.S. citizen children from healthcare coverage out of a mistaken fear that their children's coverage will trigger immigration consequences related to public charge. Families are also generally frightened and confused about who the rule applies to and how, and are forgoing services they are eligible for because of this fear. These community members believe that they must make an extremely painful choice between accessing assistance they need and are eligible for and keeping their families together.

6. Confusion and fear among immigrants as to how public charge applies is widespread across a variety of programs. Since the mid-January, 2020, CHP staff have encountered many families who withdrew from healthcare, nutrition, and other support systems, often disenrolling or refraining from enrolling eligible citizen children into those programs. For example, CHP staff counseled a single mother of an autistic U.S. citizen child. The client was afraid to enroll her son in necessary healthcare and educational services because of fear that it would complicate her pending application for adjustment to permanent residency in the United

States, despite the rule's exclusion of benefits received by the eligible citizen children from the public charge test. Similarly, classes of immigrants to whom the public charge rule does not apply, such as Lawful Permanent Residents, have also disenrolled from services out of the mistaken fear that they could face immigration consequences for receiving benefits. In other cases, community members have received the incorrect impression that receiving assistance not covered by the public charge rule, such as accepting donations from food banks or allowing their children to access free school lunch, will have immigration consequences associated with public charge. One particularly troubling example involved a pregnant woman in her third trimester who told CHP staff that she was foregoing prenatal care because she believed that any hospital bills she might accrue would complicate her ability to adjust her immigration status in the future even though medical assistance received while pregnant is not considered during the test. Although CHP organizers spend many hours trying to explain how the complex public charge rule operates and connecting clients to services they are eligible for, it is extremely difficult to combat the fear that the individual has without certainty that they will not be affected by the rule. For this reason, many families continue to disenroll or refrain from enrolling despite our efforts.

7. On April 2, 2020, a CHP organizer spoke with an immigrant mother from El Salvador with questions about healthcare options for her U.S. citizen daughter. The caller is in the process of applying for permanent residence and is fearful of accepting any benefits for her daughter at this time. She informed the CHP organizer that she plans to let her daughter's Medicaid coverage lapse, because she fears that her continued enrollment in the program will count against her as she tries to adjust her status.

The Rule Has Erected Barriers to Healthcare Access

8. Like CHP organizers, healthcare providers have similarly expressed deep concern about their ability to provide services to patients in need because of community fears associated with public charge. Since the beginning of the year, each training I have presented to providers related to healthcare access among immigrants has prompted questions from attendees about the impacts of the public charge rule, even where the training was otherwise unrelated to public charge. Interest among hospital and clinic personnel in providing accurate information and learning ways to overcome fear of public charge in the immigrant community has necessitated additional learning by CHP and demonstrates the scope of the rule's impact on healthcare systems in Colorado. I have witnessed first hand a marked increase in questions about public charge from healthcare clinics and other providers, as well as from human and social services organizations since January 2020.

9. Healthcare clinics, which provide low-cost medical services on a sliding scale for people who do not have health coverage, frequently offer to assist eligible immigrants and their children with enrollment in healthcare services like Medicaid, or for other coverage like Colorado's Child Health Plan Plus. As recently as early April, clinics report that many eligible immigrants have refused enrollment in these programs because of mistaken beliefs about potential immigration consequences for receipt of healthcare benefits under public charge and associated fears. Each clinic that I have spoken to this year about their work with immigrant communities has described this problem.

CHP Clients Remain Fearful of Accepting Healthcare Services During the COVID-19 Pandemic

10. The current national crisis has furthered the need for CHP to assist immigrant families. Due to Colorado's state-wide stay-at-home order in response to the COVID-19 pandemic, CHP closed its offices and stopped providing in-person services to communities. CHP's staff has

shifted to providing services over the phone wherever possible. Call volume since CHP staff began working remotely has been extremely high. During this time, CHP has heard from several immigrant clients who are uninsured or at risk of losing their insurance and has assisted them with access to coverage and/or medical services.

11. Since Monday, March 23, 2020, the majority of calls to CHP have been from clients from immigrant communities who are confused or frightened about how their families will be impacted by COVID-19. Clients have asked for information about symptoms, for simple, understandable descriptions of the meaning of shelter-in-place, as well as questions about how to access needed items like school supplies, and who qualifies as an “essential worker.” CHP staff have also received calls from immigrant clients expressing interest in federal support programs available to them due to economic hardship they have experienced because of the pandemic, but who fear accepting assistance because of immigration consequences related to public charge. Some have chosen not to seek out nutritional and health benefits due to public charge related fears.

12. Since closing its offices, CHP has focused on ensuring that individuals without insurance can still access healthcare. As part of this effort, CHP is in frequent contact with healthcare clinics that provide low-cost services and is gathering information about any challenges that healthcare facilities are experiencing in serving immigrant communities, including where community members show symptoms of COVID-19. On Friday, March 27, 2020, I spoke with a community partner concerned with whether and how immigrant clients can access testing for COVID-19 given various barriers to healthcare access they experience. Since then, CHP has increasingly heard from immigrants about their fears related to accessing any COVID-19-related services, other healthcare, or basic support services. While this has always been true to a degree,

we have observed greater anxiety in the community because of the degree of economic uncertainty the country is facing and fears of job loss.

13. On March 20, 2020 at a Pueblo food bank, two CHP organizers spoke with a woman seeking services. She sought out CHP staff to ask whether it was possible to get COVID-19 testing anonymously. Although she and her husband were fearful of flu-like of symptoms, she refused a referral to a clinic because she was afraid that it would impact her immigration status. An executive director of a community development non-profit in Commerce City, Colorado has also reported to me directly that several clients with mixed status families — where some family members have permanent immigration status and others do not — have described flu-like symptoms in their households. These families are afraid to seek medical care at local clinics because they believe that testing and related services could someday count against them under the public charge rule. According to the director, “this puts the rest of their family and the entire community at risk for contracting COVID-19.”

14. We are aware that U.S. Citizenship and Immigration Services (USCIS) posted an alert in English only in March explaining that public charge rule “does not restrict access to testing, screening, or treatment of communicable diseases, including COVID-19.” This notice also stated that USCIS would still “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>. While we have emphasized the notice in sharing information with our clients, communities that CHP works are typically unaware of this notice until we reach them. Despite this notice, the immigrant populations we speak to remain concerned about accessing healthcare coverage or low-cost care and organizations who work with our

communities continue to ask questions about whether immigrant clients can access COVID-19 testing.

15. The dangers of COVID-19 to the immigrant communities that CHP partners with and serves are extremely worrisome to me and to my colleagues. A significant portion of our client population works in rural towns, such as Fort Morgan, Colorado, where many are employed as essential workers in meatpacking plants, dairies, or sugar beet factories. Our clients in those industries will remain exposed to crowds of their coworkers and will therefore be at greater risk for COVID-19 infections than people who are sheltering-in-place. However, most of our clients who work in Fort Morgan are immigrants — many of whom are uninsured — and would avoid healthcare if they were to show signs of COVID-19 infection either because they cannot afford to pay out-of-pocket costs or because they are afraid that receiving free services would subject them to immigration consequences under the public charge rule. The likelihood that they would avoid care because of economic and immigration concerns risks not only their health, but the health of other people in their workplace. Other clients we serve throughout Colorado in various essential industries face similar risks. They are terrified of being separated from their families. This fear is likely to prompt them to not only refuse to seek care — even in times of serious need — for themselves and also for children who may be exposed to COVID-19, as other clients have prior to the pandemic.

DATED this 9th day of April, 2020 at Denver, Colorado



Dana Kennedy