

No. 19A785

In the
Supreme Court of the United States

DEPARTMENT OF HOMELAND SECURITY, et al.,

Applicants,

v.

NEW YORK, et al.,

Respondents.

I, John Paul “Jack” Newton, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am over the age of eighteen. I am an attorney licensed to practice law before the State of New York. I am also admitted to appear before the District Court for the Southern District of New York.
2. I am the Director of the Public Benefits Unit (“PBU”) at Bronx Legal Services (“BxLS”).
3. BxLS is a constituent corporation of Legal Services NYC (“LSNYC”), which is the largest provider of free civil legal services in the nation.
4. The public charge rule changes have made us all more vulnerable to this new global health crisis. In the recent weeks and months, COVID-19 has created new emergencies, new problems, and new inequities among and for noncitizen New Yorkers. This virus has created new ways in which the new public charge rules are irreparably harming noncitizens, their families, and the communities in which we live.

The Public Benefits Unit at Bronx Legal Services

5. The PBU of BxLS is the largest single team of public advocates in the State of New York,

with 21 advocates, including attorneys, paralegals, and masters-level social workers. Our PBU works to obtain, retain, or increase a wide spectrum of vital public benefits administered by the New York City Department of Social Services (“DSS”), the New York State of Health (“NYSOH”), the New York State Department of Health (“SDOH”), and other related city and state agencies.

6. From January 1, 2019, through March 25, 2020, we handled almost 3,500 individual public benefits cases, helping over 6,800 Bronx residents. More than one-quarter of our clients are noncitizens, and more than one-third of client households contain at least one noncitizen.
7. Our PBU provides representation, advocacy, advice, and assistance on a number of different public benefits, including:
 - a. Cash public assistance benefits, including those funded by federal Temporary Assistance for Needy Families (“TANF”) monies¹ and those funded by New York,²
 - b. Supplemental Nutrition Assistance Program (“SNAP”) benefits,³ formerly known as Food Stamps;
 - c. Child care benefits for recipients of public assistance with work requirements;⁴
 - d. Women, Infants, & Children (“WIC”) benefits,⁵ which is a voucher program that covers certain nutritious foods for children under age 5, pregnant women, and new mothers;
 - e. Public health insurance such as Medicaid,⁶ Medicare,⁷ and Essential Plans

¹ See, e.g., N.Y. Soc. Serv. L. § 349.

² See, e.g., N.Y. Soc. Serv. L. § 159.

³ See 7 U.S.C. § 2011, *et seq.*

⁴ See N.Y. Soc. Serv. L. § 410-w.

⁵ See 42 U.S.C. § 1786.

⁶ See generally 42 U.S.C. § 1396, *et seq.*; N.Y. Soc. Serv. L. §§ 122, 131, & 363-369.

⁷ 42 U.S.C. § 1395, *et seq.*

administered by NYSOH;⁸

- f. Personal care/home care services⁹ for disabled, infirm, and elderly clients who want to age in place as an alternative to institutionalization;
- g. Veteran's benefits; and,
- h. HIV/AIDS Services Administration ("HASA")¹⁰ benefits.

8. In addition to our direct legal services, which are the heart of our practice, we also maintain deep roots in the communities we serve by running clinics and conducting outreach, community trainings, and other events. Since January 2019, our PBU conducted over 42 different trainings or clinics, reaching over 1,800 people.

Public Charge Trainings & Consultations

9. After the announcement of the proposed public charge changes in October 2017, our PBU immediately saw a spike in requests for advice and information about how the receipt of public benefits will affect people's immigration status. Within the first few days after the proposed public charge rules were initially reported in the press, we received calls from dozens of social services agencies and individual clients who were concerned about the changes. Many of the individuals had closed their public benefits cases, and those of their citizen children, as a precautionary measure even before receiving any advice.

10. Those first two weeks highlighted the fear among noncitizen clients and communities, as well as in the social service agencies helping these communities, and the need for us to provide accurate information expeditiously. We created a flyer with our hotline number and invited people to call our hotline for a consultation on public charge issues.

11. As of late March 2020 and excluding the flood of inquiries we initially received in October

⁸ 42 U.S.C. § 18001, *et seq.*

⁹ See, e.g., N.Y. Soc. Serv. L. § 365-a.

¹⁰ See, e.g., N.Y.C. Admin. Code §§ 26-126, -127, & -128; 18 N.Y.C.R.R. § 352.3(k).

2017, our PBU has conducted almost 600 individual consultations for noncitizens about the public charge rule. Around 75% of our consultations include concerns or questions noncitizens have about the receipt of SNAP and/or Medicaid.

12. PBU has conducted several different public charge-related events, including community-facing trainings, clinics for people with questions about how public charge will affect them, and different trainings on the public charge doctrine for advocates. The community events that we have held were flooded with attendees. We could not possibly meet individually with every person who attended our public charge community clinics and trainings.
13. Attendance at our community trainings markedly increased in winter 2019-2020, drawing in audiences of approximately double the size we had been experiencing in summer 2019.
14. Thus, our perspective about what the changes to the public charge doctrine have done, will do, and are doing to our noncitizen clients is based on our on-the-ground experience providing direct services to thousands of individuals.

COVID-19 Has Accelerated & Amplified the Harm of the Public Charge Rule Changes

15. In a matter of days, our country's economic, public benefits, and public health systems changed due to COVID-19. As employment collapsed practically overnight, we were reminded of the central role that access to health care, nutrition, and subsistence benefits has not only in the well-being of individuals but also in the health and vibrancy of communities, neighborhoods, and cities. Unfortunately, the changes to the public charge rule – and the fear surrounding it – gravely threaten the ability of noncitizens, their families, and our communities to remain healthy.
16. Because SNAP and Medicaid were added to public charge consideration for essentially the first time in history, these benefits quickly became the focus for noncitizens' growing fears

surrounding the consequences of obtaining assistance. In recent months, we have seen noncitizens disenrolling themselves (and, at times, their citizen children or other family members) from Medicaid and nutritional support programs, like SNAP and WIC.

17. As a result, the most frequent questions we receive from noncitizens and their advocates are, “Will using Medicaid cause my children or me to be deported? Is it safe for us to use Medicaid?”
18. Many New Yorkers mistakenly believe they are receiving Medicaid as defined in the public charge rule, due to misunderstanding of the program in general. As a result, thousands of people *think* they receive Medicaid when, in fact, they are in receipt of other low-cost health insurance programs. Unfortunately, the misinformation and fear has taken on a life of its own, and we have seen hundreds of clients close their “Medicaid” cases for themselves, their citizen children, and other family members.
19. Particularly in Queens and the Bronx, we have encountered many noncitizens who are afraid to get COVID-19 testing. First and foremost, the reason we have heard time and again behind the reluctance to get tested is simple: people are afraid that testing requires Medicaid, which would get them deported. Rather than promoting the public good, the public charge doctrine is endangering our communities by deterring people from obtaining COVID-19 testing and assistance that is critical to flattening the curve and reducing transmission.
20. The “guidance” issued by the United States Citizenship and Immigration Services (“USCIS”) in recent weeks about public charge and accessing care for COVID-19 has not offered any comfort or clarity for both advocates and noncitizen community members. If anything, it only introduced more fear among noncitizen communities, since the alert seems to equivocate on how, whether, when or if seeking COVID-19 treatment would trigger public charge issues.

Without Medicaid, Noncitizens Stop Treating Chronic Conditions

21. Disenrollment from Medicaid has a very real consequence: people stop attending primary care appointments and stop seeking medical help, until there are life-threatening emergencies. While this result is dire in any circumstance – from diabetes management to early breast cancer screenings – the COVID-19 pandemic has potentially made early access to care a life-or-death decision for individuals, their families, and their communities. Primary care is critical in treating asthma and hypertension, which, along with diabetes, are underlying conditions that have been associated with more severe COVID-19 complications.
22. In the span of a few weeks, we have begun to see first-hand what delayed primary care has done to noncitizens who were afraid to use Medicaid, though I fear the suffering will continue to grow as the COVID-19 pandemic peaks in New York City. Our clients have left conditions untreated because they closed Medicaid cases to be “safe” and because “it wasn’t worth the risk to treat asthma” only to fall extremely ill with shortness of breath, high fevers, headaches, body aches, and chills. One of our clients is now hospitalized.
23. We also have HIV-positive clients who closed out their HASA benefits when the public charge rules went into effect. HASA benefits include health and nutrition support benefits for people living with HIV/AIDS. Lack of consistent HIV care causes viral loads to skyrocket and immune systems to crash. With COVID-19 now a global pandemic, we are terrified what will happen to HIV-positive noncitizens who have foregone public health insurance, like Medicaid, and other benefits out of fear that they will be deported.

Significant increases in requests for public benefits assistance since COVID-19

24. Comparing the weeks before COVID-19 with the most recent two weeks, we have seen an 850% increase in requests for assistance with public benefits issues.

25. A substantial part of that increase includes requests for assistance from noncitizens who are trying to access health care without insurance. Although almost all of the people seeking our assistance were otherwise eligible for low- or no-cost insurance programs, they had disenrolled from, or wanted to avoid enrolling in, health insurance plans out of fear that they or their families would be deported.

26. Since the public charge changes went into effect in late February 2020, we have seen an increase in noncitizen clients seeking emergency food assistance, including food pantries. Even in families in which only citizen children are eligible for SNAP, we have seen a reluctance to use or receive the benefit out of fear of deportation and family separation. The hunger we have seen in our noncitizen clients has become so severe that we now bring Food Bank NYC booklets to our intake meetings in anticipation of the need for pantry assistance.

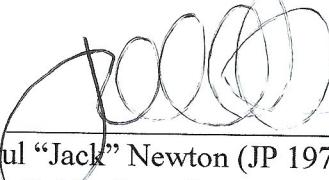
27. The advent of COVID-19 has turned unreliable access to nutrition into a public health crisis, rendering noncitizens and their neighbors more vulnerable to the ravages of COVID-19. We also saw a wave of unemployment crash down on low-income New Yorkers – particularly those most vulnerable to job loss, including noncitizens who are home health aides, caregivers, cleaners, and janitors – which has immeasurably exacerbated and increased the need for SNAP and nutrition supports generally. Right now in the Bronx, virtually all of the food pantries have closed or sharply reduced hours due to COVID-19, which eliminates a vital lifeline for noncitizens who are hungry. The few pantries that remain open during this crisis are running out of food at alarming rates, with a significant portion of people seeking their help being noncitizens.

28. The public charge rule changes drove and are driving noncitizens and their families off of critical benefits, including low-cost health insurance and SNAP, and have rendered low-

income noncitizens even more susceptible to this virus, and in doing so have made all of us less safe.

DATED this 7th day of April, 2020, at New York, NY

Signed:


John Paul "Jack" Newton (JP 1976)
Director, Public Benefits Unit
Bronx Legal Services
349 E. 149th Street, 10th Floor
Bronx, NY 10451
jnewton@lsnyc.org
(718) 928-3691