

No. 19A785

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

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DEPARTMENT OF HOMELAND SECURITY, et al.,

*Applicants,*

v.

NEW YORK, et al.,

*Respondents.*

I, Lisa M. Newstrom, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I have personal knowledge of the facts set forth in this declaration, and, if called as a witness, could and would testify competently to the matters set forth below.
2. I am Managing Attorney of the Santa Clara County Regional Office of Bay Area Legal Aid (“BayLegal”), the largest provider of legal services to the poor in the San Francisco Bay Area and one of the largest in California. BayLegal and its predecessor organizations have practiced poverty law in this region for over 50 years. In the Bay Area, approximately 1.5 million people live in poor or low-income households (under 200% of the federal poverty measure).
3. I submit this declaration in support of Respondents’ application in the above-captioned matter.
4. In this declaration, I explain how the public charge rule—the Final Rule on Inadmissability on Grounds of Public Charge (84 Fed. Reg. 41292)—has impacted the clients of Bay Area Legal Aid (“BayLegal”), particularly during the COVID-19 crisis. The rule has a chilling effect that prevents families from getting needed health care or food assistance even when the assistance is critical in the face of the COVID-19 pandemic, and even when getting the assistance would not actually harm the family’s immigration status under the new public charge rule. Based on my experience, I believe there is a significant risk that the public charge rule will cause some people to avoid testing and treatment for COVID-19, which would endanger their own lives and place entire communities at risk.

### **Background**

5. Bay Area Legal Aid has regional offices serving the counties of Santa Clara, San Francisco, Alameda, Contra Costa, San Mateo, Marin, and Napa. Our staff protects and advances the rights of low-income families, immigrants, and language minorities in domestic violence, public benefits, healthcare, consumer protection, and housing matters before the courts, administrative agencies, and legislative bodies. We have 147 staff members, including 100 attorneys and 10 legal advocates, providing free legal services across these seven counties.

6. BayLegal’s primary client intake mechanism is through our Legal Advice Line and Health Consumer Center hotlines. These hotlines are staffed by attorneys and trained legal advocates

working under the close supervision of attorneys, and perform eligibility screening, including gathering client demographic data, as well as providing advice and counsel to eligible individuals on a wide range of practice areas, including matters related to immigration, domestic violence, Section 8, public housing, Medi-Cal (California's Medicaid program), Supplemental Security Income ("SSI"), CalWORKs (California's TANF program), and CalFresh (California's SNAP, or "food stamps" program). Nearly all the immigrant clients BayLegal serves are lawful permanent residents or humanitarian immigrants such as domestic violence survivors who qualify for U non-immigrant status ("U visa") or human trafficking survivors who qualify for T nonimmigrant status ("T visa"), and all our immigrant clients are eligible for legal services per 45 C.F.R. § 1626.4-5.

7. BayLegal handles over 12,000 cases annually, and our intake units at the Legal Advice Line and Health Consumer Center handle over 26,000 calls per year. We also provide legal services to thousands of individuals each year through pro per clinics.

8. I have served as Managing Attorney in Santa Clara County since 2013. Over the last six years, I have supervised attorneys and advocates who provide free legal services to Santa Clara residents in a number of areas, including eligibility for public benefits, immigration law, rights of survivors of domestic violence and human trafficking, housing law, and others.

9. To demonstrate the way that the public charge rule has impacted BayLegal, I provide information known to me as a longtime legal aid attorney and as a manager at Bay Area Legal Aid, as well as limited information about some people who are suffering harm as a result of the chilling effect caused by the public charge rule. By making this declaration I do not waive any attorney-client privilege or client confidentiality.

### **Systemic Barriers Complicating Application of the Public Charge Rule**

10. It is very difficult for recipients of aid to obtain the information necessary to determine whether the public charge rule applies to them, including: documentation in plain language that explains what benefits they have received, what funding streams were implicated in the provision of that aid,

which members of a household received aid, and in which months the aid was received (especially if that receipt was several years in the past).

11. In my experience, local welfare agencies often provide documentation of aid that is unclear, contains errors, and is rife with abbreviations and terms of art that are unfamiliar to the general public. When an agency has made an error and later corrects it—for example, by granting aid to a household member who is ineligible for benefits, and then rescinding that aid—it is often impossible to get accurate documentation or timelines showing all the relevant facts.

12. USCIS officials regularly display a lack of understanding about public benefits programs. For example, BayLegal often asks USCIS to waive filing fees for indigent clients. In connection with our fee waiver petitions, we regularly provide USCIS with documentation that our clients receive means-tested public benefits. We regularly receive incorrect rejections from USCIS decision-makers who are confused by state-specific names for programs (e.g. in California, Medicaid is called Medi-Cal), or by similar-sounding programs (e.g. confusing Supplemental Security Income (SSI) with State Disability Insurance (SDI)). BayLegal attorneys are usually able to correct the mistakes made by USCIS. However, given our limited resources we are able to help only a small fraction of the people who need assistance.

13. Based on my experience, I believe that immigrants subject to the public charge rule would need the help of skilled legal experts if they are to successfully obtain all relevant information from the benefit-granting agencies needed to show whether they have received benefits that triggered the proposed public charge rule, and to explain and negotiate with USCIS to ensure that the information is reviewed correctly. However, there are not enough lawyers available and with the expertise to provide such help; further, even with legal representation it may at times be impossible to obtain documentation from the benefits programs that USCIS can understand. As a result, I believe many eligible immigrants will be too afraid to seek the aid they need – including testing and care during the COVID 19 pandemic.

### **Public Charge Rule Has a Dangerous Chilling Effect**

14. In my experience as both a public benefits practitioner and a manager of other attorneys practicing in this area, I have observed that the recently enacted public charge rule has caused a chilling

effect, preventing needy immigrants—including those fleeing human trafficking, and asylees—from getting the food and medical care that are essential to survival. It has this effect even for families that are eligible for aid and who are exempt from the public charge rule, and for whom immigration status would be unaffected by receiving aid. And it has this effect even during the current public health emergency. This is because the public charge rule is extremely confusing—both for advocates and for immigrants who are less familiar with our legal system and may have limited English proficiency.

15. As explained above, there are multiple iterations of multiple categories of public benefit programs, and it requires extreme technical proficiency to parse which versions of which aid programs might trigger a presumption that a person is a “public charge,” and which do not. There are also a wide variety of different categories of immigration status, some of which are categorically exempted from the public charge exclusion rule, and others of which are at risk of being deemed a public charge if they receive aid. To complicate things further, many families have members each of which has *different* immigration status, different eligibility for benefits, and different risk of being deemed a public charge if they receive aid. As a result, most immigrants—and most immigration advocates—do not know whether they will put their immigration status at risk if they apply for food aid or medical care that their families need.

16. For our humanitarian immigrant clients who are fleeing abuse or exploitation, being denied the ability to adjust their immigration status, and therefore having to return to their country of origin would be devastating. Clients who are asylees and refugees may face persecution, war, and deadly threats if they return, while survivors of domestic violence or human trafficking may face recurrent abuse, loss of the legal protections from their abuser or trafficker, and retaliation for having cooperated with American law enforcement. In short, for many of these immigrants, risking their ability to stay in the United States is risking death.

17. USCIS can take years to process and approve applications for humanitarian immigration status, and this prolongs the period of uncertainty during which immigrants must make decisions about accessing needed services. For example, anticipated wait time for USCIS to adjudicate a U visa application for a noncitizen survivor of domestic violence is more than 7 years, and it can take another 6

or more years after receiving the U visa before that same immigrant is eligible to apply for lawful permanent residency and have their adjustment of status adjudicated.

18. Even for lawful permanent residents who may have been in the United States for decades, and who are not usually subject to the public charge rule, a decision to apply for benefits can pose risk. As the immigrant or family members abroad get older, I have observed several times how a short trip to visit family can be complicated by a sudden health crisis that requires a lengthier stay, and after 180 days outside the United States, the lawful permanent resident may need to seek readmission—triggering the public charge grounds of exclusion. Predicting whether such a situation may arise in the next 36 months (the look-back period for considering receipt of benefits as a heavily negative factor) can feel like an impossible gamble.

19. I and those under my supervision in the local offices who handle immigration, housing, and public benefits cases have also seen an increase in inquiries from clients, the general public, and community-based organizations concerned that the new public charge rule is causing people to drop essential health or food programs out of fear for their immigration status. Specifically, over the past few weeks our Legal Advice Line and Health Consumer Center hotlines have seen an increase in calls from people who need financial assistance, public benefits, or health care due to the public health crisis. For those callers who are immigrants or in mixed-status households, we are frequently getting questions about whether it is safe for them to get the health care and economic supports they need, and for which they legally qualify, or whether doing so will endanger their immigration status.

20. Most of the fears we have heard in our local offices are from lawful permanent residents and survivors of domestic violence, who are contemplating dropping healthcare and nutrition programs, as well as employment support programs. Many of these clients have U.S. citizen children who will also lose access to public benefits programs if their parents simply drop out or refuse to apply for the programs they need.

21. The aid programs that our clients and potential clients are dropping (or considering dropping) most frequently are those that provide basic essentials: food (CalFresh and the Women Infants and Children nutrition program); health care—particularly for children—under Medi-Cal (the state version of Medicaid); and services for pregnant women.

22. Among the sorts of public charge concerns our staff attorneys have handled are: a crime victim with a U visa dropping health coverage during treatment for cancer due to fear of triggering public charge; multiple calls from people afraid to access work supports and food assistance, such as a U visa holder afraid to get CalWORKs for herself or her U.S. citizen children; immigrants avoiding public food programs and going to food banks; and lawful permanent residents afraid that getting health insurance for their U.S. citizen children will keep them from naturalizing.

23. I and the staff attorneys working under my supervision regularly reassure many of these exempt clients that they should not be subject to the new public charge rule, and can receive the aid they need without fear of immigration consequences; but we are regularly told by our clients that they are still afraid or unwilling to access the public benefits for which they and their children might otherwise qualify.

24. The public health crisis caused by COVID-19 has forced BayLegal to adapt its services to address the most pressing of our clients' legal needs, while keeping up with ever-changing operating rules of courts and administrative agencies, yet we have still had to expend significant resources addressing fears about public charge. Even in the face of this crisis, I have received inquiries from immigration attorneys outside our organization who are afraid that their clients cannot access essential services because of the public charge rule. For example, I have learned of clients who are survivors of human trafficking, and who were laid off when their employers closed down because of COVID-19, but who are too scared to apply for Unemployment Insurance Benefits.

25. In my capacity as Managing Attorney, I am aware that BayLegal attorneys have also spoken with numerous immigrant crime victims in the past few weeks who have lost jobs or income due to COVID-19 and are too worried to get the help they need, including state-funded Medi-Cal and nutrition assistance, for fear it will prevent them from getting U.S. citizenship or lawful permanent residence. Examples include:

- a. a low-income crime victim with a U visa recently gave birth to a U.S. citizen child, but even as the public health crisis was developing, she was afraid to seek public health insurance for herself and her newborn due to public charge;

- b. a crime victim with a U visa whose work hours were cut, and who could no longer afford to feed her family, but is too afraid to get food benefits for herself and her children;
- c. another crime victim with a U visa whose employer closed due to COVID-19 public health restrictions, and although the individual has the right to seek Unemployment Insurance Benefits—and needs those benefits for the economic survival of their family—they are too afraid to apply for aid;
- d. A fourth crime victim with a U visa who cancelled nutrition assistance for herself and her child in the midst of economic hardship because she was worried about public charge; and
- e. another crime victim with a U visa who lost her job due to the pandemic, but was afraid to apply for Unemployment Insurance Benefits—and was even considering whether she should cancel basic nutrition assistance for herself and her U.S. citizen children because of public charge.

26. In my capacity as Managing Attorney, the attorneys staffing our Legal Advice Line and Health Consumer Center hotlines also report numerous calls in the past few weeks from lawful permanent residents or U.S. citizens in mixed-status families suffering under the current pandemic and afraid to get nutrition or health programs they or their families need because of public charge. Examples include:

- a. a single parent with lawful permanent residency who was planning to cancel Medi-Cal coverage for herself and her U.S. citizen children in the midst of the pandemic because she was afraid she would lose her immigration status and be separated from her family;
- b. a mother who is a U.S. citizen with U.S. citizen children, and who needs subsidized healthcare, nutrition assistance, and housing, who was afraid to apply for these benefits because she was afraid it would hurt the immigration status of her husband, a lawful permanent resident;

- c. a young lawful permanent resident who lost her job and was afraid to apply for Medi-Cal health coverage for fear of public charge;
- d. a U.S. citizen who lost his job and needed to make sure his family could get health care, but was worried about getting Medi-Cal for himself and his family because his wife and one child were lawful permanent residents;
- e. a developmentally-disabled U.S. citizen child whose parents, here on employment visas, were afraid to get the Medi-Cal-funded developmental services their child needed; and
- f. a young father who was working despite the pandemic, but was worried he needed to drop necessary Medi-Cal coverage for himself, his spouse, and their children due to public charge.

### **Conclusion**

27. In the midst of the COVID-19 pandemic, BayLegal is regularly responding to inquiries from people who should not be directly impacted by the rule—including citizens, lawful permanent residents, and humanitarian immigrants—but who are nonetheless afraid. My direct impressions based on the nature and type of legal inquiries we are receiving from the general public, from community based organizations providing services to immigrants, and from other legal service providers, is that the numbers of people who will disenroll from benefits or forego benefits for which they or their children are eligible is much higher than the 2.5% estimate USCIS anticipates as the number of eligible immigrants and mixed-status households who will forego needed aid due to the rule.

28. I believe this chilling effect will cause lawful permanent residents, domestic violence survivors, survivors of human trafficking, and U.S. citizen children with immigrant parents to go without healthcare, nutrition assistance, and housing assistance they need to survive during the COVID-19 pandemic. Without access to essential programs, individuals may become sick with the virus and suffer irreparable harm to their physical and economic wellbeing – and also increase the risk of infection in the communities where they live.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on April 3, 2020, in Fremont, Alameda County, California.



Lisa M. Newstrom