



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL

OFFICE OF FEDERAL INITIATIVES

March 11, 2020

Hon. George B. Daniels
Daniel Patrick Moynihan, Courtroom 11A
United States Courthouse
500 Pearl St.
New York, NY 10007-1312

Re: *State of New York, et al. v. U.S. Department of Homeland Security, et al.*, 19 Civ.
7777 (GBD)

Dear Judge Daniels,

In advance of the parties' upcoming conference, and in light of recent events, Plaintiffs write to respectfully notify the Court of recent correspondence between the State Plaintiffs in the above-referenced matter and Defendants. As set forth in the attached letter, Defendants' ongoing implementation of the Public Charge Rule in the wake of the ongoing COVID-19 coronavirus pandemic bears directly on the harms that Plaintiffs have alleged. *See* Ex. 1 (letter from state Attorneys General dated March 6, 2020).

Respectfully submitted,
LETITIA JAMES
Attorney General of the State of New York

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March 6, 2020

Chad Wolf
Acting Secretary
U.S. Department of Homeland Security
2707 Martin Luther King Jr. Ave. SE
Washington, DC 20528

Kenneth T. Cuccinelli
Senior Official Performing the Duties of the Director
U.S. Citizenship and Immigration Services
20 Massachusetts Ave. NW
Washington, DC 20001

Dear Acting Secretary Wolf and Senior Official Cuccinelli:

We urge the Department of Homeland Security (DHS) to immediately stop implementation of the *Inadmissibility on Public Charge Grounds Rule* (“Public Charge Rule”), *see* 84 Fed. Reg. 41,292 (Aug. 14, 2019), in the wake of the COVID-19 coronavirus. During the notice-and-comment period for the Rule, DHS received warnings of the potentially devastating effects of the Rule if its implementation were to coincide with the outbreak of a highly communicable disease – a scenario exactly like the one confronting our communities with the COVID-19 public health emergency. Your agency failed to consider such legitimate concerns.

Communities across America are undertaking extensive efforts to limit the spread of COVID-19. Your agency’s Public Charge Rule undermines those efforts by deterring individuals from accessing critical health benefits to which they are legally entitled. Failure to immediately stay implementation of the Rule so that we can take the steps necessary to contain and mitigate the outbreak of the disease puts the public health and safety of our communities at increased risk.

The overwhelming evidence – including from the World Health Organization (WHO), Department of Health and Human Services (HHS), and the Centers for Disease Control (CDC) – shows COVID-19 is highly communicable and likely to spread in increasing numbers. On February 26, Dr. Nancy Messonnier, the Director of the CDC’s National Center for Immunization and Respiratory Diseases, explained “it’s not so much a question of if [community spread] will happen anymore but rather more a question of exactly when this will happen and how many people in this country will have severe illness.”¹ Analysis by Trevor Bedford, an investigator and expert in vaccines and infectious diseases at the Fred Hutchinson Cancer Research Center in Seattle, suggests that new coronavirus cases in Western Washington are

¹ *See* <https://www.cdc.gov/media/releases/2020/t0225-cdc-telebriefing-covid-19.html>

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likely doubling every six days.² Dr. Messonnier also warned the necessary public health responses may result in “disruption to everyday life [that] may be severe,” including interruptions to work and school closures.³ Despite these warnings, there is still hope the disease may be contained, provided governments at all levels take appropriate and comprehensive steps to limit its transmission. As the Director General of the WHO recently explained, “[w]ith early, aggressive measures, countries can stop transmission and save lives.”⁴

CDC’s data and public statements underscore the urgent importance of such measures. As of February 26 – just two days after DHS began implementation of the Public Charge Rule – CDC had already documented multiple cases of COVID-19 spreading person-to-person within the United States.⁵ CDC further acknowledges “person-to-person spread will [likely] continue to occur, including in the United States.”⁶ If an individual gets sick with suspected COVID-19 symptoms, CDC urges that they consult with their medical and healthcare professionals, including by “seek[ing] prompt medical attention if [their] illness is worsening.”⁷ CDC’s emphasis on coordination with healthcare professionals closely aligns with similar guidance from WHO, which warns that a successful response will require “all countries to educate their populations, to expand surveillance, to find, isolate, and care for every case, to trace every contact, and to take an all-of-government and all-of-society approach.”⁸ Inexplicably, DHS contravenes this guidance by implementing a public charge rule punishing certain lawful immigrants for seeking effective medical treatment that might mitigate COVID-19’s harmful scope and effect.

DHS’s implementation of the Public Charge Rule during this public health crisis is irresponsible and reckless. As noted by Plaintiff States in ongoing litigation challenging the Rule,⁹ DHS openly concedes the Rule could lead to “increased prevalence of communicable diseases,”¹⁰ disenrollment from public programs,¹¹ and increased use of emergency rooms as a primary method of health care.¹² Washington State has already had eleven deaths attributable to COVID-19. The State is doing everything in its power to limit the spread of the disease and prevent

² See <https://bedford.io/blog/ncov-cryptic-transmission/>

³ See <https://www.cdc.gov/media/releases/2020/t0225-cdc-telebriefing-covid-19.html>

⁴ <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19--2-march-2020>

⁵ <https://www.cdc.gov/coronavirus/2019-ncov/cases-in-us.html>

⁶ <https://www.cdc.gov/coronavirus/2019-ncov/summary.html>

⁷ <https://www.cdc.gov/coronavirus/2019-ncov/about/steps-when-sick.html>.

⁸ <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19--28-february-2020>

⁹ See *Washington v. DHS*, Case No. 4:19-cv-05210-RMP, Dkt. No. 158 (E.D. Wa., Sept. 27, 2019); *California v. DHS*, Case No. 4:19-cv-04975-PJH, Dkt. No. 17 (N.D. Cal., Aug. 26, 2019); *New York, et al. v. U.S. Dep’t of Homeland Sec.*, Case No. 1:19-cv-07777-GBD, Dkt. No. 35 (S.D.N.Y. Sept. 9, 2019) (explaining that the Final Rule jeopardizes Plaintiffs’ ability to reduce the spread of communicable diseases, will cause individuals to disenroll from public programs, and will increase use of emergency departments).

¹⁰ 83 Fed. Reg. at 51,270.

¹¹ 84 Fed. Reg. at 41,463.

¹² 83 Fed. Reg. at 51,270.

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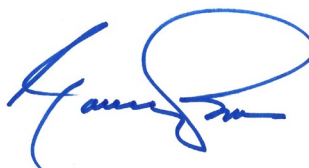
additional fatalities. States, cities, and counties are undertaking similarly dramatic efforts to limit the spread of the disease and mitigate its harmful effects. With this threat looming, however, DHS's policy of deterring immigrants from using the medical benefits to which they are legally entitled directly undermines and frustrates our public health professionals' efforts, putting our communities and residents at unnecessary risk.

You have authority to swiftly correct your agency's failure to consider the Public Charge Rule's risks to public health and safety. We urge that you immediately stay implementation of the Public Charge Rule pending successful containment of COVID-19 to assist our public health professionals and protect our communities.

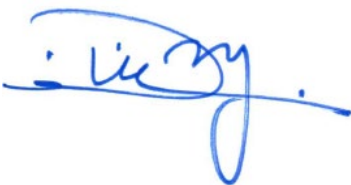
Sincerely,



Bob Ferguson
Washington State Attorney General



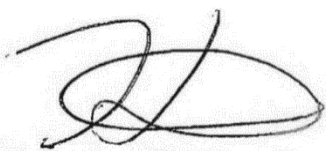
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California Attorney General



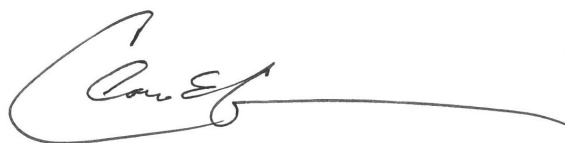
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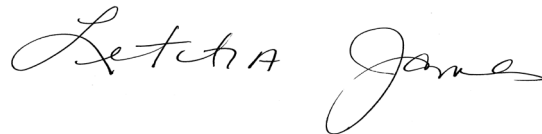
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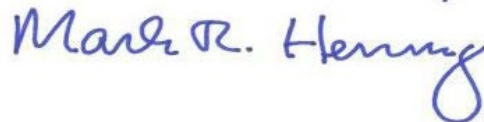
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CC: Vice President Mike Pence
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