

IN THE UNITED STATES DISTRICT COURT
No. 19A785

In the
Supreme Court of the United States

DEPARTMENT OF HOMELAND SECURITY, et al.,

Applicants,

v.

NEW YORK, et al.,

Respondents.

I, OXIRIS BARBOT, M.D., pursuant to 28 U.S.C. Section 1746, declare under penalty of perjury as follows:

1. I am the Commissioner of the New York City Department of Health and Mental Hygiene (“DOHMH”). I am familiar with the matters set forth herein, either from professional knowledge, personal knowledge, conversations with DOHMH staff, or on the basis of documents provided to and reviewed by me. I respectfully submit this Declaration in support of the Respondents’ applications in the above-captioned matter.

2. I have over 25 years of experience as a health care provider and public health practitioner. I received a bachelor’s degree from Yale University, earned a medical degree from the University of Medicine and Dentistry of New Jersey, and completed my pediatric residency at George Washington University’s Children’s National Medical Center. From 2014 to 2018, I was First Deputy Commissioner of DOHMH and I oversaw the development and implementation of Take Care New York 2020, New York City’s data-driven health agenda focused on

addressing the social determinants of health and engaging communities on issues of health equity. I served as Commissioner of Health for Baltimore City from 2010 to 2014 where I led the development of Healthy Baltimore 2015, a health policy agenda focused on improving health outcomes by focusing on areas where the largest impact could be made to raise quality of life. From 2003 to 2010, I served as medical director of the Office of School Health at the New York City Department of Health and Mental Hygiene and the New York City Department of Education. I practiced primary care pediatrics at Unity Health Care, Inc., a federally qualified health center in Washington, DC, from 1994 to 2003.

3. DOHMH is one of the largest public health agencies in the world. It is responsible for protecting and promoting the health of everyone who lives in, works in or visits New York City.

4. Currently, DOHMH is on the frontlines of the fight against COVID-19 in the City of New York. DOHMH is performing enhanced surveillance to track disease spread; providing guidance to doctors, hospitals, nursing homes, and other healthcare and congregate facilities regarding pandemic planning, testing, infection control, personal protective equipment (PPE), and other matters; testing for COVID-19 in its Public Health Laboratory; distributing PPE, ventilators, and other medical equipment to hospitals, nursing homes, and other high priority healthcare sites; and assisting in creating increased healthcare capacity, including by assisting in transforming external sites such as the Jacob Javits Center. In addition, DOHMH is educating New Yorkers about how to protect themselves from the virus by publicizing accurate information about COVID-19 through a variety of means including posters, flyers, letters, and other written communications available in over 20 languages; a detailed website; advertising,

videos, and social media campaigns; virtual town halls; webinars and other presentation; and targeted outreach to communities.

5. I submitted a declaration in support of Respondents' motion for preliminary relief in the Southern District of New York, expressing my deep concerns about the chilling effect the new public charge rule—the "Final Rule"—would have on residents of the City of New York and in turn, the impact it would have on health in the City of New York as a whole. Since then, my concerns have only intensified.

6. The Final Rule went into effect on February 24, 2020, just days before New York City's first COVID-19 case was confirmed. The Final Rule is especially destructive at a time like this, when all New Yorkers, including those in immigrant communities, urgently need access to health care and health insurance, and when trust between public health authorities and the community is especially crucial.

7. Studies show that low income, minority, and immigrant populations have greater rates of uninsurance and generally have disproportionately adverse impacts during public health crises. Available data suggest that an increased risk of adverse health outcomes is likely among uninsured and minority populations during a pandemic. These populations experience disproportionately poor health outcomes and greater barriers to care during pandemics and during increases in pneumonia and influenza-like illnesses. These poorer health outcomes include increased mortality, more complications, limited access to health care, lower vaccination rates, and greater socioeconomic, cultural, educational, and linguistic obstacles to adoption of pandemic interventions.¹

¹ See e.g. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4809795/pdf/nihms721441.pdf>; <https://www.sciencedirect.com/science/article/pii/S2352827316300532>; <https://ajph.aphapublications.org/doi/pdf/10.2105/AJPH.2009.161125>; <https://ajph.aphapublications.org/doi/pdfplus/10.2105/AJPH.2009.161505>.

8. Improving the public health infrastructure and community health safety-net, including improving access to health care and health insurance, is important to ensure that people in immigrant communities participate in the healthful behaviors needed during a public health crisis. DOHMH is doing this by promoting understanding of COVID-19, sharing critical information with New Yorkers about minimizing the likelihood of transmission by staying home and practicing physical distancing and good hand hygiene. DOHMH is also providing information to all New Yorkers about how and when they should seek health care services. And DOHMH continues to perform outreach to immigrant communities to encourage enrollment in appropriate insurance coverage, including Medicaid, the Essential Plan, or commercial plans. New York State has created a special enrollment period for the New York State of Health (NYSOH) exchange, created through the Affordable Care Act (ACA), to allow the uninsured to access coverage during the COVID-19 state of emergency. DOHMH has worked to support the state's efforts by having certified application counselors assist New Yorkers with the enrollment process over the phone. The Final Rule is antithetical to all of these efforts because it disincentivizes participation in health insurance programs like Medicaid and encourages non-citizens and their families to avoid contact with health providers and government benefit programs.²

9. In the early stages of the pandemic, in February and early March, when there was still the possibility that COVID-19 could be contained and broader community transmission averted, DOHMH conducted extensive community outreach to encourage people with possible

² Concerns in immigrant communities over seeking health care related to COVID-19 have been documented by many media outlets, including the Wall Street Journal and NBC News. *See e.g.* <https://www.wsj.com/articles/rule-barring-immigrants-from-social-programs-risks-worsening-coronavirus-spread-11585137602?mod=searchresults&page=1&pos=1>; <https://www.nbcnews.com/news/latino/amid-coronavirus-spread-health-advocates-worry-trump-s-immigration-policies-n1150241>.

symptoms of COVID-19 to promptly seek medical care so that they could be tested, isolated if positive, and so that DOHMH could conduct contact investigations to help stop the chain of transmission. In outreach meetings with community-based organizations serving immigrant communities conducted between February 27 and March 11, 2020, DOHMH fielded questions and heard confusion about how seeking care related to COVID-19 would impact a public charge determination under the Final Rule. Although the United States Customs and Immigration Services has announced that treatment and preventive services “will not negatively affect any [person] as part of a future Public Charge analysis,” media reports suggest that these concerns and confusion may persist, and this concerns me greatly.³

10. If people in immigrant communities forego testing or care due to fears about how receipt of such services may affect their immigration status, this could have devastating effects for the individuals themselves and for the larger community. All of New York City benefits when people who are severely ill with COVID-19 disease access the health care services they need. Conversely, if communities avoid testing and care due to fear or confusion, New York City’s efforts to mitigate the virus may be negatively impacted. Several vaccines and treatments are under development, with some treatments are already being piloted. If a vaccine or treatment becomes available, unhindered access to care will be all the more critical to ending this pandemic.

11. Concern and anxiety about having contact with health care providers and governmental authorities may also lead non-citizens and their families to avoid participating in public health initiatives and investigations related to COVID-19 disease. It is extremely important that all New York City residents cooperate with DOHMH when it issues advisories

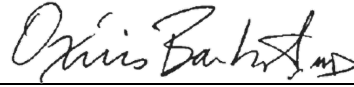
³ See e.g. <https://www.nytimes.com/2020/03/18/us/coronavirus-immigrants.html>.

and investigates outbreaks of communicable disease. Contact investigations will likely become an important part of reducing the spread of COVID-19 in New York City once there is no longer widespread community transmission and contact investigations can be used to identify and contain cases of illness. Contact investigations require the community to trust DOHMH so that people are willing to speak to DOHMH staff and provide the names and contact information of their family members and friends. If non-citizens and their families are deterred from participating in these investigations due to fear of the Final Rule, this could greatly reduce the effectiveness of DOHMH COVID-19 contact investigations.

12. For the reasons described above, and in my prior declaration, DOHMH opposes implementation of the Final Rule, particularly while New York City and the United States as a whole, addresses the threat of COVID-19.

I declare under penalty that the foregoing is true and correct and of my own personal knowledge.

DATED this 9th day of April 2020 at Queens, New York.

A handwritten signature in black ink, reading "Oxiris Barbot, M.D.", written over a horizontal line.

OXIRIS BARBOT, M.D.
Commissioner
New York City Department of Health and
Mental Hygiene