

No. 19A785

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

DEPARTMENT OF HOMELAND SECURITY, et al.,

Applicants,

v.

NEW YORK, et al.,

Respondents.

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

1. I am the Commissioner of the City of New York (the “City”)’s Mayor’s Office of Immigrant Affairs (“MOIA”). I have worked at MOIA since 2014, becoming Acting Commissioner in 2017 and appointed Commissioner in 2018. As Commissioner, I provide advice and guidance to the Mayor, his staff in other divisions of the Mayor’s Office, and to other City agencies, on a range of issues related to immigration. I also guide and oversee the work of approximately 70 City employees assigned to work on fulfilling MOIA’s mission.

2. MOIA, established in the Charter of the City of New York in 2001 by referendum, develops and implements policies designed to assist immigrants across the city by enhancing their economic, civic, and social integration into the community. In order to achieve that mission, MOIA conducts research and analysis, provides guidance to other City agencies, develops partnerships with community-based organizations, and advocates at all levels of government.

3. I swear this declaration to describe the way in which the rule entitled “Inadmissibility on Public Charge Grounds,” (the “Rule”), which the Department of Homeland Security (“DHS”) began implementing on February 24, 2020, has fostered widespread confusion, uncertainty, and fear among members of New York City’s immigrant community in the midst of a public health crisis, when we can least afford the potential devastating consequences of that confusion, uncertainty and fear on the food security and health of immigrant communities in the city, and on the public health of the city as a whole. I base my declaration on my own personal knowledge and observations, on regular briefings that I receive from MOIA’s staff, and on my review of the business records of the City and its agencies.

4. Given MOIA’s mission, and its strong relationships with the immigrant community, ethnic media, as well as with non-governmental organizations that serve the immigrant community, we have taken the lead on and coordinated much of the City’s response to the expanded scope of the Rule. Through this work, we have engaged a wide range of stakeholders—from health care leaders to social service organizations to legal service providers and other local government leaders—to raise awareness about the Rule and to mitigate its impact on New York City’s immigrant communities.

ActionNYC Immigration Hotline

5. Among the many steps that the City has taken to empower immigrants in New York City to make informed decisions about their lives, including their benefit utilization in the face of the expanded Rule, is the expansion of ActionNYC, the City’s central immigration-related telephone hotline. ActionNYC, overseen and funded by the City through MOIA in partnership with the City University of New York, is the City’s program to connect immigrant New Yorkers to free, safe, and high-quality immigration legal services in their community and their language. It

operates through a citywide hotline, a centralized appointment-making system, and accessible service locations at 21 community-based organizations, rotating public school locations, and public hospitals.

6. The City, through MOIA, has expanded the staffing and capacity of the citywide ActionNYC hotline, operated by Catholic Charities, in response to significant developments in immigration law such as the expansion of public charge. In the months leading up to and following publication of the final Rule in August 2019, MOIA worked closely with Catholic Charities to prepare the ActionNYC hotline for an anticipated surge in demand, tasking it with, among other things, (1) expanding its scope to address immigrant New Yorkers' questions about the categories of people to whom public charge applies; (2) connecting immigrants in need of legal assistance with a City-funded ActionNYC navigation team qualified to provide legal screening, advice, and assistance, including assistance in the process of preparing and filing public charge-related immigration forms; and if necessary, (3) referring immigrants with more complex public charge-related legal needs to specialists at the Legal Aid Society.

7. In January and February 2020, with the announcements and attendant media coverage about the fact that the Supreme Court had stayed the nationwide preliminary injunction that had been holding in abeyance the final Rule, and that USCIS would begin implementation of the Rule in late February, the ActionNYC hotline saw considerable spikes in activity. Average monthly call volume to the hotline in 2019 was 1,888, however, the volume of calls to the hotline increased in January and February 2020. Notably, on January 27, 2020, the Supreme Court stayed the nationwide preliminary injunction, and on January 30, 2020, USCIS announced that the Rule would take effect on February 24th. Following those events in late January, there was a spike in calls to the hotline: prior to January 27th, the average daily call volume in FY2020 was 99; on

January 27th and 28th, daily call volume jumped by 35% and 77%, respectively, to 134 and 175 calls. Similarly, on January 30th, the hotline received 137 calls, a 38% increase from the FY2020 daily average.

8. During February 2020, calls to the ActionNYC hotline increased to 2,973, a 57% increase from the monthly average in 2019. In addition, there was another substantial spike in calls beginning when the Rule took effect: 201 calls were received on February 24th, and 263 on February 25th, increases of 103% and 166%, respectively, over the FY2020 average daily call volume. In addition to an increase in total calls to the hotline, the number of those calls that related to the Rule also increased: at least 544 calls to ActionNYC in February and March 2020 concerned public charge. Alarming, in February 2020, nine callers to the hotline were so insistent on disenrolling from public benefits—even though they were entitled to the benefits and not subject to a public charge test—that hotline operators had to refer them to specialists at the Legal Aid Society for more in-depth counseling on the public charge rule.

9. This past month, as the COVID-19 pandemic became an increased threat to the health, safety and well-being of New Yorkers, calls to the ActionNYC continued at rates 15% higher than the 2019 average. For example, in March 2020, the ActionNYC hotline received 2,166 calls, and 7% of those calls related to public charge. In addition, in the second half of March as NYC began to implement stay at home policies, the ActionNYC hotline received 12 calls related to the implications of the Rule for COVID-19. These calls were from immigrants with legal permanent resident status who had lost their jobs, and were concerned about whether having applied for or received unemployment benefits would be held against them if they sought to adjust their immigration status in the future. These calls demonstrate the continued confusion about and chilling effect of the Rule, even amongst those to whom it does not apply.

Community Outreach in Light of COVID-19

10. Over the past two years, as changes to public charge inadmissibility were rumored, proposed, and then enacted, the City became aware of a high likelihood of chilling effect on use of benefits within immigrant communities. First, a survey that MOIA commissioned in 2018 found that 76% of non-citizens surveyed would consider withdrawing from, or not applying for, public benefits, as a result of the public charge rule. Monitoring of calls to the ActionNYC hotline has confirmed that benefit disenrollment is a real concern: just since October 2019, hotline operators have referred 23 callers for a more in-depth public charge-related benefits screening when they insisted on disenrolling from public benefits despite being exempt from a public charge test.

11. As a result, MOIA has focused substantial resources on community outreach, undertaken in coordination with our community partners, in an effort to counteract that chilling effect. MOIA's outreach efforts have continued since the expanded Public Charge Rule came into effect on February 24, 2020, and they continue now during the public health crisis that has engulfed the city. As part of this outreach, MOIA's staff has listened to community concerns about the changes to public charge, and has sought to correct misinformation and misunderstandings about this very complex topic, and to urge immigrants to make use of the substantial legal and informational resources that the City has made available before making any decisions about forgoing medical care, and about enrollment in or disenrollment from benefits. MOIA has also focused its efforts on assessing community needs in light of the COVID-19 crisis.

12. During MOIA's recent outreach engagements, immigrants—directly or through community organizations working on their behalf—have shared the agonizing decisions they face of whether or not to seek out desperately needed SNAP, Medicaid, and other benefits because of fears that it may result in them being separated from their loved ones, or may put at risk their

dreams of obtaining or extending a visa or obtaining a green card, in hopes of eventually becoming American citizens.

13. As troubling as the chilling effect of Public Charge has always been to the City, we are even more concerned that during the COVID-19 pandemic that chilling effect can and will have deadly consequences. Specifically, it has become apparent that certain immigrants are making the decision to forego medical screening and treatment due to fear about the public charge implications of seeking that treatment. While USCIS apparently recognized this potential chilling effect of public charge, and issued guidance aimed at counteracting it, our observations suggest that it has not been successful in achieving that goal.

14. On or around March 13, 2020, the U.S. Citizenship and Immigration Services (USCIS) posted an alert (in English only). This alert explained that while the Public Charge rule “does not restrict access to testing, screening, or treatment of communicable diseases, including COVID-19,” USCIS was nonetheless required to “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>.

15. Since that time, and despite that guidance, we have heard from our community partners that immigrants continue to be hesitant to seek out medical care, even when they are manifesting symptoms of illness. For example, on March 24, 2020, a community partner who provides services to food service workers in the City reported that members of its constituency, despite feeling ill, are afraid to seek treatment in public hospitals for fear of immigration consequences. Similarly, another community partner who works on behalf of youth and their families, described fear within the community about seeking medical care because of immigration

status. Finally, yet another community partner, this one a neighborhood-based family and social services organization serving immigrant communities in Brooklyn, reported that immigrants it served were afraid to seek out and obtain COVID-19 testing due to fear about how that might impact their status.

16. Through our recent community outreach, we have also learned that New York City's immigrant communities have been drastically and negatively impacted by the slowdown and shutdown of so many industries that make up the City's economic engines due to COVID-19, resulting in a desperate need for assistance with rent, food, and medication. Community partners have reported that the city's restaurant and domestic workers have been incredibly hard hit, and with little to no savings, these workers are facing a need to go out and perform jobs that no one else wants to do, despite the fact that doing so would expose themselves to risk. We have also learned that many in the immigrant community are struggling due to a lack of access to paid medical leave, and ineligibility to receive federal aid or unemployment benefits due to either the nature of the work they perform, or their immigration status.

17. On the other hand, other community partners report that even those immigrant New Yorkers who may be eligible for federal disaster aid or other public benefits are hesitant to apply for or accept such benefits, and have expressed a fear that accepting any public benefits might result in a public charge determination that would carry negative immigration consequences. For example, during a conversation among over 400 members of an online chat group operated by a community partner serving a defined immigrant community, at least 10 participants—most of whom had applied for or been granted asylum—asked whether applying for SNAP or cash benefits from the City would adversely affect their applications for green cards and/or citizenship. Another example is a construction worker from Brooklyn who is unemployed due to COVID-19 and has a

pending green card application, including a scheduled interview. This worker asked whether an application for unemployment benefits could negatively impact his green card application, and our staff was able to direct him to the ActionNYC hotline for further guidance.

18. Based on MOIA's information and outreach, it appears likely that USCIS' March 13, 2020 statement that it would "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," contributes significantly to the fear and confusion we are seeing in the immigrant community, despite our efforts to encourage community members to seek and accept public benefits where they are eligible for them.

19. Based on what we have learned in the course of our community outreach efforts, we have serious concerns that the chilling effect of the public charge rule is interfering with the City's ability to effectively respond to the medical, and economic needs of immigrant communities during the COVID-19 pandemic.

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

DATED this __9th__ day of April, 2020 at New York, New York



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