



Mayor's Office of  
Immigrant Affairs  
Bitta Mostofi  
Commissioner

**September 3, 2019**

Testimony of Commissioner Bitta Mostofi  
NYC Mayor's Office of Immigrant Affairs

Before a hearing of the New York City Council Committee on Immigration:

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**"Public Charge and Pre-considered Introductions T2019-4982, T2019-4983, T2019-4984,  
and T2019-4985, and Pre-considered Resolution T2019-4981"**



Thank you to Chair Menchaca and the members of the Committee on Immigration. My name is Bitta Mostofi and I am the Commissioner of the Mayor's Office of Immigrant Affairs (MOIA). I am joined today by Human Resources Administration (HRA) Administrator Grace Bonilla, as well as staff from other agencies for Q&A.

Just a few weeks ago, the Trump Administration published a regulation that is meant to change when certain immigrants are considered a "public charge" for immigration purposes, and makes it harder for those immigrants to receive a green card or certain visas. This rule, which discriminates against people with disabilities, seniors, and people of color in the name of "self-sufficiency," was fundamentally flawed from its conception.

The City knows firsthand that immigrants make our communities stronger, and that supporting immigrants in accessing the services they need produces long-term benefits. The Trump Administration's view of "self-sufficiency," on the other hand, is based on falsehoods and biased thinking and runs counter to the reality of how immigrants contribute to our country. Immigrants pay the same taxes we all do: federal income tax, social security tax, Medicare tax, property tax, state income tax, sales tax, and so on. Immigrants are business owners, and some of the most successful businesses in the U.S. were started by immigrants or their children. In New York City, immigrants own half of all businesses<sup>1</sup> and are engaged at high levels in the labor force.<sup>2</sup>

Moreover, these benefits grow in the second generation. As adults (25+), the children of immigrants are among the strongest economic and fiscal contributors in the U.S. population, contributing more in taxes per capita than either of their parents or the rest of the native-born population.<sup>3</sup>

Given this reality, it is impossible to see this final rule as anything other than an attack on the American ideal: the vision of Lady Liberty, also known as the Mother of Exiles, welcoming "your tired, your poor, and your huddled masses" for generations.

I am particularly concerned with the widespread fear and confusion that this rule has incited even in those who are not affected by the rule. At the outset, I want to emphasize that this rule has not yet gone into effect. It does not affect all immigration applications and it does not affect all immigrants. For that reason it is extremely important for immigrants to get information and help before unnecessarily withdrawing from or foregoing benefits.

As a City, we have been preparing for this rule since the beginning of the Trump Administration. Our preparation has led to sustained advocacy and public education on this issue. The City submitted two comments on the proposed rule, including one in conjunction with cities across the nation. We have repeatedly engaged stakeholders, including elected officials with

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<sup>1</sup> 2017 1-year American Community Survey Public Use Micro Sample data.

<sup>2</sup> New York City Mayor's Office of Immigrant Affairs, State of Our Immigrant City: MOIA Annual Report for Calendar Year 2018, 19, *available at* [https://www1.nyc.gov/assets/immigrants/downloads/pdf/moia\\_annual\\_report%202019\\_final.pdf](https://www1.nyc.gov/assets/immigrants/downloads/pdf/moia_annual_report%202019_final.pdf).

<sup>3</sup> National Academies of Sciences, Engineering, and Medicine. 2017. *The Economic and Fiscal Consequences of Immigration*. Washington, DC: The National Academies Press. <https://doi.org/10.17226/23550>.

information about the rule and its impact. For almost a year we have prepared our ActionNYC hotline for an influx of calls about the rule by adding staff to provide immediate consultations on the phone to help individuals understand whether the rule applies to them, and by working with partners to create capacity for referrals for urgent legal consultation. And we have developed detailed factsheets and conducted research on messaging.

This testimony will provide a very brief overview of the rule, highlight the City's response and MOIA's role in that response, and address the bills at issue today.

## The Final Rule

### *Categories of affected immigrants*

As I stated, changes to the "public charge" rule have not gone into effect.<sup>4</sup> The final rule was published on August 14, and it will become effective on October 15, 2019, unless the courts say otherwise.

The "public charge" rule applies only to a narrow subset of immigrants. Those applying for a green card, changing or extending certain visas, and applying for "admission" under the immigration laws would be affected by the final rule. But many, if not most, noncitizens in New York City, will not be subject to the "public charge" test or will be able to seek a waiver. This includes refugees, asylees, certified victims of human trafficking or U or T visa recipients, VAWA self-petitioners, Special Immigrant Juveniles, those with Temporary Protected Status, and more. In addition, there is no "public charge" test when green card holders apply for citizenship.

### *What the final rule changes*

Turning now to the final rule itself, the term "public charge" is used in immigration law to deny admission or a green card to someone based on their likelihood to depend on the government for support in the future. For the past two decades this rule has been limited in scope, because studies showed that an overbroad, vague rule could have devastating public health and nutrition consequences.<sup>5</sup>

Despite this longstanding policy, the final rule changes the definition of "public charge" and creates a new, overbroad test that will disproportionately harm immigrants of color, immigrants with disabilities, and immigrants with limited resources when they seek to change status. This will primarily affect family-based immigration. The rule will make it harder for immigrant families who are subject to the rule to obtain green cards or certain types of visas if they use or

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<sup>4</sup> "Public charge" assessments are already happening under this new standard at U.S. consulates. This may affect individuals who are applying for immigration benefits from overseas, sponsoring a family member abroad, or traveling abroad to apply for a green card or visa.

<sup>5</sup> See Fix M, Passel J. Urban Institute Discussion Paper, The scope and impact of welfare reform's immigrant provisions (2002), available at [http://webarchive.urban.org/Uploadedpdf/410412\\_discussion02-03.pdf](http://webarchive.urban.org/Uploadedpdf/410412_discussion02-03.pdf) (finding that the passage of the welfare reform law was associated with a 23 percent decrease in Medicaid enrollment among low income adult LPRs and 58 percent decrease among adult refugees, even though refugees were exempt from the changes.).

may be likely to use certain public benefits.

The final rule changes how closely the federal government scrutinizes factors such as an individual's age, education, employment history, income, assets, and health conditions, among other factors, when determining whether an immigrant is likely to become a "public charge" in the future – even if the individual has never used benefits in the past.

The final rule also increases the number of programs that will be considered when evaluating whether someone is a "public charge." In addition to cash assistance, the government will now consider use of additional benefits as evidence that someone is a "public charge." The additional benefits listed in the final rule are Medicaid, SNAP, public housing, and Section 8 housing assistance. For Medicaid, there are some exceptions, including for pregnant women, children, emergencies, and more. To reemphasize, benefits use is just one factor in addition to the other factors I just mentioned in the overall test for who is likely to become a "public charge."

Logistically speaking, these changes will also lead to increased paperwork, with applicants needing to provide additional documentation.

#### *The harms of the rule*

We have argued against this rule since it was first proposed because it will needlessly harm the public health, safety, and economic security of New York City. This is not news: as I noted, over 20 years ago the federal government came to the same conclusion.<sup>6</sup> While the rule itself only affects a small subset of all non-citizens, we know that it will create fear and confusion in the immigrant population more generally, with our preliminary analysis showing that hundreds of thousands of New Yorkers could be affected by the chilling effects. We have already heard concerning anecdotes of immigrants withdrawing from important benefits due to fear and misunderstanding about who the rule affects.

For example, even before the final rule was published, DOHMH saw that anxiety and confusion was causing some clients to withdraw from or refuse to enroll in Medicaid and CHIP. DOHMH staff have reported that clients sought to disenroll or declined to enroll in Medicaid or CHIP, saying that they were concerned about the program's effect on their immigration status or that their immigration attorneys advised them to do so. In addition to foregoing health insurance, DOHMH staff reported that some of their clients have declined services, while others have shown reluctance to engage with them or use services, even though these services are not covered as "public benefits" under the final rule.

In order to help address the fear, DOHMH's Bureau of Primary Care Access and Planning provided training to its frontline staff for public-facing programs, explaining the "public charge" rule and providing guidance for staff to address client inquiries and concerns. DOHMH is also planning another round of briefing to frontline staff at various divisions and bureaus now that the final rule has been published.

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<sup>6</sup> Inadmissibility and Deportability on Public Charge Grounds, 64 FR 28676, 28680 (1999).



In addition, since rumors of the public charge rule began circulating in 2017, there has been a marked drop in non-citizen SNAP cases. Administrator Bonilla will testify more about this chilling effect and the steps HRA has taken to address it.

### **City's response and MOIA's role**

The City is fighting this rule with every tool at our disposal, including litigation. The City recently partnered with the New York State Attorney General's office in a legal challenge to this final rule.

As the case continues, we are engaged in a variety of other strategies, including engaging partners and community members to share accurate information and resources about public benefits and immigration, connecting immigrants to legal services, and working with agency partners to ensure that immigrant New Yorkers can continue to access the services and resources they need.

#### *Connection to legal services*

The City is committed to assisting all New Yorkers, regardless of immigration status, in getting the information and legal assistance they need to make the best decisions for themselves and their families as to their usage of public benefits. To reemphasize: it is crucial that all New Yorkers who are concerned about whether the "public charge" rule will affect them get trustworthy legal help before taking any action related to their public benefits. As noted above, the new regulation is not yet in effect and, if and when it does come into effect, only certain immigrant New Yorkers will be affected in their immigration applications.

Over the last several months, we have worked closely with the legal service provider community and other partners to ensure the availability of legal assistance about "public charge." The ActionNYC hotline, funded by the City of New York and operated by Catholic Charities, can provide immigrants with information about the rule and, where needed, connect callers to legal help and appointments. ActionNYC is also working with partners at the Legal Aid Society, supported by Robin Hood, and NYLAG, the New York Legal Assistance Group, to coordinate requests for assistance and address urgent cases.

In addition, in a few days on September 9 and 10, we will be holding a two-day phone bank with partners at Catholic Charities, Univision, El Diario, the Office of New Americans, Legal Aid Society, the New York Immigration Coalition, Hispanic Federation, and NYLAG where New Yorkers may call in to speak with an immigration legal expert who can answer questions about "public charge." We will also be holding a Facebook Live panel with legal experts on September 12.

We have also worked to make sure that all immigration legal service providers, including those from smaller organizations, have access to the most up-to-date analysis about the "public charge" regulation. Working with experts at CLINIC, the Catholic Legal Immigration Network Inc., we have disseminated training materials to ActionNYC providers and are also working on a New



York City-specific webinar for immigration legal service providers that will also be made available to private attorneys representing immigrants.

### *Outreach and information-sharing*

The City's leaders have continued to share information and resources with immigrant New Yorkers during the rule-making process. The Mayor, our Cities for Action coalition, and our partners at the Department of Social Services (DSS), NYC Health + Hospitals, and others have publicly condemned the "public charge" final rule and shared information about how to connect with legal services. Our outreach staff on the ground are conducting numerous field engagements as well. Senior administration staff have also spoken at houses of worship and in communities to share information about the final rule.

When news about the final rule broke, we shared information digitally to our many partners. On August 13, when we first received news that the final rule would be published, we sent an update to over 9,000 people, including our community partners, elected officials, and agency partners, including the Department of Social Services, NYC Health + Hospitals, and the Administration for Children's Services. Understanding that this initial information would generate more questions, we then held briefings for elected officials, advocates, faith leaders, and our agency partners. Additionally, MOIA created and shared a social media toolkit so that different City agencies could share relevant and easy-to-understand information about the "public charge" rule with their networks.

On August 25, MOIA hosted a Day of Action to address immigrant New Yorkers' concerns about the new "public charge" rule. MOIA staff, partners, and volunteers handed out thousands of informational flyers at over a dozen grocery stores across the five boroughs to empower residents to make the best decisions for themselves and their families and not needlessly forgo public benefits to which they are entitled.

We have also engaged with the press, recognizing the need for clear, accurate information about this final rule in order to combat the fear and confusion we are already seeing. We have participated in press conferences with our partners at the New York Immigration Coalition and Asian American Federation, and coordinated media appearances with local media outlets including WNYC, 1010 WINS, PIX11, Univision, and NY1.

### *Ensuring continued access to services and resources*

MOIA, in partnership with City agencies, is also involved in planning for mitigation of the harms of the final rule if it goes into effect. Specifically, we are in discussions with various partners about how to ensure that New Yorkers will still be able to get the help that they need, even if the final rule prevents them from accessing certain public benefits or creates fear and chills access.

The City is committed to serving all New Yorkers, regardless of immigration status, and eligibility of City services and benefits have not changed. As just one example, all patients are welcome at NYC Health + Hospitals, regardless of immigration status or ability to pay. Through NYC Health + Hospitals and NYC Care, we are ensuring that even those without insurance have access to the affordable health care they need.

Similarly, the City is in close conversation with those community-based organizations who provide emergency assistance to those in crisis. My colleagues at DSS, for example, have been engaged with emergency food assistance providers to ensure that we understand the current need and keep abreast of any trends. We will continue to monitor the impact of the “public charge” final rule, and are prepared to support immigrant communities.

### **Proposed bills**

Moving now to the pre-considered bills, we are grateful that we have been able to work closely with the Council around “public charge.” We look forward to continuing to work with you as we contend with the fear and confusion already created in the communities we serve.

I want to say at the outset that our goal as a City has always been to address the fear and misinformation circulating around the “public charge” rule. One of the devastating aspects of the “public charge” rule is how much it has harmed people who are not named or subject to the rule. For that reason, our overriding goal is to ensure that we as a City are not feeding the false narrative that the Trump Administration wants immigrants to buy into. We want immigrants to access the services they need. Again, most immigrants who are eligible for public benefits are not subject to the “public charge” rule.

We certainly support the intent of the bills to ensure that New Yorkers are armed with the information and resources they need in this difficult time. As I noted above, MOIA is working closely with our partners at DSS/HRA, Department of Homeless Services, the Department of Housing Preservation and Development, and the New York City Housing Authority and others to insure that relevant staff understand the scope of the rule and how it will affect the populations they serve. In addition, we have engaged those partners on how they should refer people to immigration legal services.

Relatedly, MOIA is developing information to be shared with DOE in multiple languages in order to inform parents and families about the “public charge” final rule and how to seek legal assistance to understand how this rule will affect them. As we found in our survey on “public charge,” the most effective messaging we can share at this time is how to seek legal advice about the rule.<sup>7</sup>

MOIA has also been working since the proposed rule was published to ensure that our ActionNYC hotline would be able to address the influx of calls about “public charge.” This includes adding new staff to provide crucial and immediate screening information for individuals unsure about whether the rule applies to them. We partnered with the Legal Aid Society and New York Legal Assistance Group in addition to our primary ActionNYC partner Catholic Charities to ensure availability of urgent legal consultations for those who need immediate legal

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<sup>7</sup> NYC Mayor's Office of Immigrant Affairs, *NYC Fact Sheet: Public Charge Messaging Survey Findings* (2019), available at <https://www1.nyc.gov/assets/immigrants/downloads/pdf/NYC-Public-Charge-Messaging-Fact-Sheet-2019-05-30.pdf>.



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advice. ActionNYC is the best referral to make for people unsure about how the final rule will affect them.

We look forward to working together with the Council on these bills, to ensure that we are providing links to invaluable information about “public charge” and its effects, without stoking the misinformation circulating in our communities.

### **Conclusion**

We understand that this rule is complicated and frightening. Many of our immigrant families are concerned about how this final rule will affect them. I want to end today’s testimony by reiterating that that the rule is not yet in effect. Our goal is to ensure that the courts strike down this rule. It does not apply to all immigrants. Nor does it apply to all immigration applications. It does not apply to citizenship applications. Many categories of immigrants are exempted.

I urge all of you who have questions and concerns to please get legal advice through ActionNYC. You can call 311 or call 1-800-354-0365 and say “public charge” to be connected with free and safe legal guidance to make an informed and empowered decision for you or your loved ones.

The Trump Administration’s idea of who deserves to be here is based on a racist vision of a white, rich America; a vision that is out of touch both with American principles and with the reality of how the contributions of immigrants to this country improve the lives of all. We will do everything in our power to make sure that idea does not become reality.

Thank you again to Chair Menchaca for calling this hearing today. I look forward to answering your questions.



**Testimony of Administrator Grace Bonilla, New York City Human Resources Administration**

**Before the New York City Council's Committee on Immigration**

**September 3, 2019**

Good Afternoon. Thank you Chair Menchaca and members of the Immigration Committee for giving us the opportunity to testify today. My name is Grace Bonilla and I am the Administrator of the New York City Human Resources Administration.

I want to thank Commissioner Mostofi and the partnership we have with MOIA to ensure immigrant New Yorkers are getting up to date and accurate information concerning public charge. Since the leak of the public charge rule, we have been working to ensure that all New Yorkers in need have access to our agencies' benefits and services. And it is important for me, as the Administrator of the nation's largest social service agency, particularly given the current punitive executive policy climate in Washington D.C, to unequivocally restate our commitment to addressing the social and economic barriers that all New Yorkers face.

**Our Continued Commitment to Immigrant New Yorkers**

Each year HRA addresses the needs of more than three million low-income New Yorkers, including immigrants. To provide context for this hearing, I would like to briefly touch on the services HRA provides, both independently and in partnership with partner agencies, to improve the lives of immigrant New Yorkers.

**Office of Advocacy and Outreach (OAO)**

- In 2014, HRA established the Office of Advocacy and Outreach (OAO) to ensure all New Yorkers have equal access to benefits and services. Following the integration at DSS, this office has been working to ensure equal access to benefits and services at both HRA and DHS. OAO includes the Office of Refugee and Immigrant Affairs (ORIA), which is a unit exclusively dedicated to clients with limited English proficiency (LEP) and immigrants. OAO also houses two additional teams: LGBTQI Affairs, and Disability Affairs. On the outreach side, OAO also works to ensure all eligible New Yorkers, including immigrants, have access to HRA services by conducting ongoing outreach to vulnerable communities across the City.

**Legal Services Programs through the Office of Civil Justice (OCJ)**

- This Administration has made an extraordinary investment in legal services to level the playing field for low-income New Yorkers facing potentially life-changing legal challenges related to housing and immigration through the following programs:
  - **Immigrant Opportunity Initiative (IOI):** Since Fiscal Year 2017, the Administration has funded the IOI program, through which networks of nonprofit legal providers and community-based organizations conduct outreach in immigrant communities across the city and provide legal assistance to low-income immigrant New Yorkers in matters

ranging from citizenship and lawful permanent residency application, to more complex immigration matters, including asylum applications and removal defense work.

- **ActionNYC:** Operated jointly by the Mayor's Office of Immigrant Affairs (MOIA), HRA, and the City University of New York (CUNY) and implemented in collaboration with over 20 community-based organizations and legal services providers across the five boroughs, ActionNYC provides immigrant New Yorkers with free, safe, and high-quality immigration legal services in their community and in their language.
- **Community Service Block Grant (CSBG) Programs:** OCJ oversees immigration legal services programs funded through federal grants, administered in partnership with the Department of Youth and Community Development (DYCD). With CSBG funding, legal services organizations provide a range of services such as legal assistance to help immigrant adults and youth attain citizenship and lawful immigration status, as well as services targeted at groups such as immigrant survivors of domestic violence and human trafficking, low-wage immigrant workers at risk of exploitation and violations of their employment rights, and immigrant youth in foster care.
- **New York Immigrant Family Unity Project (NYIFUP):** Through Council discretionary grants, this program provides legal representation to detained immigrants facing removal proceedings, primarily at the immigration court at Varick Street.
- **The Immigrant Child Advocates' Relief Effort (ICARE)/Unaccompanied Minors and Families Initiative (UMFI):** Established in 2014 through a public-private partnership of the City Council, the New York Community Trust, and the Robin Hood Foundation, ICARE/UMFI provides legal and social services to unaccompanied immigrant children entering and living in New York City.
- **Anti-Eviction Legal Services:** Through this program, HRA contracts with a dozen providers, including both large citywide providers and smaller community-based organizations, to provide free legal representation and advice to low-income tenants facing eviction.
- **Anti-Harassment and Tenant Protection:** This program was launched at HRA by the de Blasio Administration in January of 2015. Whereas the anti-eviction legal services programs target tenants who are already involved in housing court proceedings, this program also provides resources for tenant outreach and pre-litigation services with the goal of preventing eviction and displacement. AHTP legal services providers offer community education, landlord-tenant mediation, and counsel on cooperative tenant actions and building-wide lawsuits.
- **Universal Access to Counsel Program:** In 2017, Local Law 136 set in motion programs that will provide access to eviction defense legal services for all tenants in Housing Court and in New York City Housing Authority (NYCHA) administrative termination of tenancy proceedings.

#### IDNYC

- IDNYC, the largest municipal identification program in the country, is directly operated by DSS through a joint initiative with the MOIA and the Mayor's Office of Operations. Since its launch, more than 1.24 million New Yorkers have obtained their IDNYC and we operate 19 permanent locations with four or five additional pop-up enrollment sites, at any given time, across the five boroughs. We also operate an IDNYC command center which serves as a mobile enrollment center.

### NYCitizenship

- NYCitizenship is a collaboration between HRA, MOIA, and the New York public libraries to provide free naturalization application assistance to all New York City residents. Since the March 2016 launch of the program, HRA has conducted outreach to over 11,500 immigrant clients who are potentially eligible to become U.S. Citizens. As a result, over 700 HRA clients have applied for citizenship with the assistance of this program.
- The program is open to any New Yorker free of charge. HRA specifically works with certain populations that may face additional barriers or hurdles in applying for naturalization, which has been linked to higher pay, enhanced job opportunities, and additional benefits.

### **Final Rule on Public Charge**

I thank my colleague for providing a succinct overview of the final rule and the current state of affairs on this issue. As she mentioned, “public charge” is a term in U.S immigration law currently used to refer to a person who is likely to become primarily dependent on the government for subsistence via receipt of cash assistance and/or government-funded institutionalization for long-term care. Currently, the public charge analysis comes into play when a person applies for admission into the United States, or when someone applies for Lawful Permanent Resident Status. Before the new iteration of the public charge rule that could go into effect on October 15<sup>th</sup>, the only benefits considered in a public charge determination are cash assistance for income maintenance, which includes Temporary Assistance for Needy Families (TANF), Safety Net Cash Assistance, and Social Security Income (SSI), and institutionalization for long-term care at government expense. As the local agency that administers cash assistance benefits among many other services, even under the current rule, it has been and continues to be our ongoing recommendation that people who are applying for Lawful Permanent Resident status for the first time speak with an accredited immigration attorney to understand the benefits and risks of applying for and accepting cash assistance benefits.

The final rule now includes SNAP, Medicaid (with some exceptions), and housing assistance (Section 8 tenant-based and project-based vouchers and project-based rental assistance, and public housing) in the determination of public charge. The rule still only applies in limited circumstances: when a person applies for lawful permanent resident status, when extending or changing their non-immigrant status, or when applying for admission into the United States.

I would like to take this opportunity to again reiterate my statements and those of my colleagues that there will be no changes until the final rule goes into effect on October 15, 2019. Further, the final rule is not retroactive for the newly included benefits – meaning that if you are in receipt of some Medicaid or SNAP benefits, for example, before this rule is finalized, those benefits will not be considered in a determination of public charge. Finally, it is important to note that benefits received by family members will not be considered in that person’s determination of public charge unless the person is a listed beneficiary as well.

This policy is complex, and it may or may not apply to someone based on their particular immigration status and circumstances. For example, Refugees, Asylees, VAWA self-petitioners, special immigrant juveniles, U and T visa holders are generally exempt from the public charge test or they can apply for a

waiver. Lawful Permanent Residents are generally exempt from the public charge test, except in certain and limited circumstances, and public charge does not apply to anyone applying for citizenship. And much discretion is left to the federal Department of Homeland Security to evaluate the totality of circumstances in each individual case. To that end, we recommend that anyone who is thinking about not applying for or withdrawing from participation in benefits programs – because of uncertainty as to how the final public charge rule may impact them – should speak to an accredited immigration attorney before deciding on a course of action.

The new rule expands the list of public benefits considered under public charge. Under the final rule, the determination of whether an individual is likely to become a public charge would also require a more stringent totality of the circumstances test, even for those immigrants who have not used a covered benefit. This may change how closely the federal government scrutinizes factors such as an individual's age, education, employment history, income, assets, and health conditions, among other factors, when determining whether an immigrant is likely to become a "public charge" in the future. Because of this, we are urging any New Yorker who has questions about how the final rule might affect them, to seek legal assistance.

HRA and DHS frontline staff have been made aware of the rule through an official communication from Commissioner Banks and training has been conducted to ensure staff refers clients to the informative flyer created by our colleagues at the Mayor's Office of Immigrant Affairs, which provides information on how to contact ActionNYC. The flyer is being made available at all HRA and DHS client-facing locations. All staff have been told to refer any clients with questions about the impact of the receipt of benefits to ActionNYC. Through these referrals to ActionNYC, clients can speak with trained professionals and ask questions about how accessing public benefits may or may not impact their immigration status. There continues to be information on our internal website about legal service referrals for immigrants so that the entirety of our staff may easily access the information and make appropriate referrals to these free and anonymous legal resources. Lastly, the AccessHRA continues to provide information on immigration legal services for anyone who has questions, which will reach those New Yorkers who are conducting business with us online and not coming into our centers or are seeking information about applying for benefits for the first time.

### **The Chilling Effect**

As of June 2019, SNAP is helping 1.5 million New Yorkers—or nearly 20 percent of the City's population—put food on the table and feed their families. This includes approximately 200,000 eligible non-citizens. To understand the impacts of the federal government's proposed rule HRA conducted an analysis of SNAP enrollment earlier this year. The analysis looked at year-to-year changes between eligible U.S. citizen and non-citizens. In the last two years, since news and media outlets first began reporting of potential changes to the public charge rule, non-citizens who are eligible for and *lawfully* receiving SNAP benefits have either left the SNAP caseload or have decided not to enroll in the program at a higher rate than U.S. citizens. This is particularly concerning as each of these New Yorkers are lawfully receiving SNAP Benefits.

## **Proposed Legislation**

We look forward to working with the sponsors of the two bills that impact HRA. We stand in a position of great responsibility to provide real time, factual information about what public charge is and what it is not as well as who it will impact.

HRA supports providing all our clients with information about the assistance available to them. This legislation would require DSS to share a notice, by mail or email, about the availability of emergency food programs to all SNAP recipients whose case closed on or after January 1, 2016 and to those currently receiving SNAP when they recertify.

We welcome the proposal from the Council, but we want to make it clear that this information would be provided to all SNAP recipients irrespective of public charge, and receipt of such information is not being provided because the recipient is impacted by public charge to prevent any targeting of such clients. This notice would be sent to all recipients who do not recertify, who have income making them ineligible for the benefit and a more exhaustive universe of clients. This approach will enable us to reach a broader group of clients and protect those who may believe they are impacted by public charge.

Again, we remind all New Yorkers who have questions about public charge to consult with an accredited, trusted legal provider to discuss their individual circumstances. We support the intent of the bill and would like to continue working with the Council to ensure that its implementation will not contribute to the chilling effect we have seen.

On Councilman Cabrera's preconsidered bill 2019-4982, as I stated, we are working to ensure our staff and clients have timely, factual information about public charge. We look forward to working with the Council to achieve that end including the use of ActionNYC – one hotline for concerned individuals to obtain accurate information and to limit confusion.

## **Our Doors Are Open**

All this said, our doors are open and we encourage any and all New Yorkers in need to come seek help. There has been no change in our long-standing policy that permits any family or individual to apply for assistance, and there has been no change in current law regarding what benefits immigrants are eligible to receive. We will continue doing what we do best, which is providing critical services to everyone who is eligible.

Since the release of the proposed rule, we have been partnering with our colleague agencies, advocates, and stakeholders to better understand how the recent federal actions are playing out in the community. We will continue working with our partners to keep our ears to the ground and to provide accurate, useful information to New Yorkers on this topic.

While the final rule has not gone into effect yet, this policy direction will harm New Yorkers, including not only those who may be directly impacted by the rule, but also through the chilling effect among those to whom the rule does not apply, but who change their behavior in fear of adverse immigration consequences.

New York City is a proud city of immigrants and we will do everything we can to prevent the Trump administration's proposed harmful actions on public charge from going into effect. We are committed to ensuring that all New Yorkers, including immigrants, have access to the services they need and we will continue taking action against this rule.

Thank you again for the opportunity to testify before the Council today and I look forward to your questions.

Written comments by Rex Chen, Director of Immigration  
for Legal Services NYC. Tuesday, September 3, 2019



Legal Services NYC (“LSNYC”) is the largest civil legal services provider in New York City and the country. LSNYC has been dedicated to fighting for racial, social, and economic justice for all New Yorkers for over 50 years. LSNYC advocates work to provide income security and stability for many of our vulnerable clients by helping them secure, preserve, or increase access to both State and Federal benefits programs. We have government benefits advocates in all five boroughs of New York City and as an organization handle one of the largest volumes of cases in New York State.

Each year, LSNYC helps thousands of individuals and families access, increase, or maintain their benefits. From 2016 to 2018, we assisted over 1,900 people in the Supplemental Nutrition Assistance Program (“SNAP”), about 400 of whom were eligible non-citizens. In addition, we assisted more than 4,600 people with cash welfare issues such as the Temporary Assistance to Needy Families (“TANF”) program, 760 of whom were eligible non-citizens. Every year, LSNYC helps hundreds of HIV positive clients access benefits, including Medicaid and other public health insurance programs. From 2016 to 2018, LSNYC represented more than 7,000 individuals and families in matters related to government benefits; more than 1,200 of those clients were non-citizens eligible to receive those benefits.

The new Public Charge rule adds a number of benefits as negative factors toward finding a ground of inadmissibility. It now includes most non-cash Medicaid benefits as well as treating certain medical conditions and need for subsidized health care as heavily weighed negative factors will result in: (a) adverse effects on general public health and increased financial costs on

Legal Services NYC  
40 Worth Street, Suite 606, New York, NY 10013  
Phone: 646-442-3600 Fax: 646-442-3601 [www.LegalServicesNYC.org](http://www.LegalServicesNYC.org)  
Raun J. Rasmussen, Executive Director  
Susan J. Kohlmann, Board Chair

taxpayers; and (b) a *de facto* reinstatement of the HIV entry ban. Further, the new Public Charge rule's inclusion of Supplemental Nutrition Assistance Program ("SNAP") benefits in the Public Charge determination will have harmful effects on U.S. citizen children and negatively impact New York City's economy. In addition, the new Public Charge rule's inclusion of non-cash housing subsidies and other public benefits that allow immigrants to pay for housing will deepen the city's homelessness crisis. Finally, the Public Charge rule directly interferes with and undermines New York State law and interests.

### **Key Recommendations**

- New York City should proactively take steps to protect the identity of non-citizen household members who are not eligible for SNAP and Medicaid. The City's databases include information about household members, including those who decline SNAP and Medicaid benefits. Households that have a mixture of citizens and non-citizens would be more encouraged to use the benefits they qualify for if NYC took steps to protect the identity of household members who do not sign up for SNAP or Medicaid benefits. Otherwise, there would be a greater fear that by signing up, their information would appear in a database that would highlight household members who are non-citizens. If the Department of Homeland Security gained access to the database, it could target non-citizens in households where qualified citizens obtained SNAP or Medicaid benefits.
- New York City should decouple the administration of its unique City and State housing subsidies from State income maintenance programs. The new Public Charge rule will consider state or local cash benefit programs for income maintenance, which are called "General Assistance" in many states. To avoid being seen as a public charge due to taking income maintenance assistance, non-citizens may decline New York City benefit



programs for income maintenance. New York City should decouple the City and State housing subsidies from State income maintenance programs. That would allow non-citizens to receive that support even if they avoid State income maintenance programs.

- New York City should distinguish its benefits supports, including housing assistance, case management and health insurance based on HIV status, from on-going income maintenance programs. Again, the new Public Charge rule considers state or local cash benefit programs for income maintenance. Therefore, non-citizens will be less likely to use income maintenance programs. New York City should therefore distinguish benefits supports that are based on HIV status from on-going income maintenance programs to increase the likelihood that eligible non-citizens will use the programs.

#### **I. The New Public Charge Rule Poses Increased Risks To Public Health And Increased Taxpayer Costs**

Because the new Public Charge rule includes medical conditions, receipt of non-cash government assistance, and subsidized health care as “heavily weighed negative factors” in its public charge determination, non-citizens in the United States are likely to decline medical treatment for fear of being categorized as public charge, which would have adverse consequences on general public health. For non-citizens who are already in the United States and seeking permanent residency, the new Public Charge rule powerfully deters the use of public health benefits, including treatment for HIV, because using the benefits could jeopardize permanent residency applications and potentially even result in deportation. An academic review of 40 critically appraised articles found “a direct relationship between anti-immigration policies and . . . access to health services.”<sup>1</sup> Indeed, as anti-immigration rhetoric has grown in

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<sup>1</sup> Omar Martinez et al., “Evaluating the Impact of Immigration Policies on Health Status Among Undocumented Immigrants: A Systematic Review,” 17 *J. Immigrant & Minority Health* 947-70 (June 2015), available at <https://link.springer.com/article/10.1007/s10903-013-9968-4> Steven Asch et al., “Does Fear of Immigration

recent years, observers have noted a corresponding decline in immigrants' use of medical services.<sup>2</sup> A concrete example of such effect has been found after the implementation of Alabama's 2011 immigration law, which disqualified undocumented immigrants from specified public health benefits. This law led to declines in county health department visits by Latinx adults by 28% for communicable diseases, 25% for sexually transmitted diseases, and 13% for family planning.<sup>3</sup>

In fact, effects of the new Public Charge rules have already started to manifest. After an earlier draft of the rule was leaked to the public, there have been reports that patients living with HIV/AIDS have told their case managers that they may wait to begin antiretroviral therapy under the AIDS Drug Assistance Program ("ADAP") in order not to jeopardize their permanent residency applications.<sup>4</sup> ADAP is a state- and territory-administered program that uses funds provided by the U.S. government to cover medications for low-income people living with HIV who have limited or no health insurance coverage from private insurance, Medicaid, or Medicare.

The Department of Homeland Security itself had noted the adverse effect that reluctance to access benefits has on public health and general welfare when it issued a clarifying guidance

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Authorities Deter Tuberculosis Patients from Seeking Care?" 161 West J. Med. 373-76 (Oct. 1994), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1022616/pdf/westjmed00062-0027.pdf>.

<sup>2</sup> Drew Gibson, "For Immigrants Living With HIV, an Impossible Choice Between Viral Suppression and Deportation", *The Body* (July 3, 2018) (40% of polled Californian health care service providers reported immigrant families canceling appointments or scheduling fewer visits; 75% of polled Colorado health care service providers reported increases in appointment no-shows and cancellations by immigrant clients; and a national survey by the Migrant Clinicians Network showing roughly two-in-three health care providers polled reporting that their clients attitudes and feelings around health care had changed primarily due to the shift in immigration policies and fear resulting from those policies) available at <http://www.thebody.com/content/81137/for-immigrants-living-with-hiv-an-impossible-choic.html>.

<sup>3</sup> Kari White et al., "Changes in use of country public health services following implementation of Alabama's immigration law," (Nov. 2014), available at <https://www.ncbi.nlm.nih.gov/pubmed/25418247>.

<sup>4</sup> Amanda Lugg, "Newly Proposed 'Public Charge' Rule Could Be Devastating to HIV-Positive Immigrants", *The Body* (May 16, 2018) available at <http://www.thebody.com/content/81028/public-charge-rule-devastating-hiv-immigrants.html>

on the public charge doctrine in 1999. It stated that the clarifying guidance was necessary because ongoing confusion about the application of the public charge doctrine had “deterred eligible [non-citizens] and their families, including U.S. citizen children, from seeking important health and nutrition benefits that they are legally entitled to receive. This reluctance to access benefits has an adverse impact not just on the potential recipients, but on public health and the general welfare.”<sup>5</sup>

Indeed, deterring non-citizens from accessing medical care jeopardizes the health of the general public. Fear of deportation has been cited as one factor in the growth of new HIV diagnoses among Latinx men who have sex with men.<sup>6</sup> While the rate of new HIV diagnoses among the general population has remained steady, medical service providers have noted that the rate of new diagnoses for Latinx men who have sex with men rose by 13% from 2010 to 2014.<sup>7</sup> Fear of deportation contributed to this trend by deterring people from getting tested or accessing care.

The new rule will result in significantly increased financial cost to taxpayers, which cannot be justified. Any short-term financial benefit gained by deterring immigrants from seeking public health benefits is likely to be offset by increased long-term costs and expenses generated by visits to the emergency room. The financial costs associated with blocking non-citizens from public health benefits are illustrated by analyses of a 1996 proposal in California to deny illegal immigrants access to publicly-funded prenatal care. A study found that every dollar saved would have been offset by an increase of \$3.33 in postnatal care and \$4.65 in long-term

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<sup>5</sup> Field Guidance on Deportability and Inadmissibility on Public Charge Grounds,” 64 Fed. Reg. 28689 (May 26, 1999) (“*1999 Field Guidance*”)

<sup>6</sup> <http://www.thebody.com/content/80883/rates-of-hiv-are-rising-among-latinx-gay-men-in-th.html?ic=sanext>.

<sup>7</sup> Center for Disease Control, HIV among Latinos (Feb. 2017) available at <https://www.cdc.gov/nchhstp/newsroom/docs/factsheets/cdc-hiv-latinos-508.pdf>

costs.<sup>8</sup> The adverse pregnancy outcomes linked to sexually transmitted infections alone would have cost the state between \$5 and \$9 million, offsetting any financial savings by 19-35%.<sup>9</sup> As has long been recognized, when non-citizens are denied access to preventive care, they are more likely to require costly emergency room services.<sup>10</sup> Utilization of emergency room services to treat conditions that could have been avoided through access to preventative care will place financial strain on the health care system in the long term.

The new rule's potential financial benefits are further limited by the fact that, under the Affordable Care Act ("ACA"), undocumented non-citizens are already ineligible to purchase private health insurance on the state insurance exchanges, to obtain tax credits, Medicare, and nonemergency Medicaid.<sup>11</sup> Lawfully present non-citizens who do receive limited coverage under the ACA will likely be deterred from obtaining those benefits by the prospect of deportation under the new rule.

Another example of the financial impact of the new Public Charge rule is how it considers almost all uses of Medicaid but does not consider receiving Medicaid to treat an emergency medical condition. This rule gives an incentive to declining Medicaid for receiving preventative care and to treat chronic illnesses until people's health becomes an emergency medical condition, at which point the incentive is to receive Medicaid to treat the emergency condition. Overall, discouraging people from obtaining preventative care and treatment of

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<sup>8</sup> Michael Lu et al., "Elimination of public funding of prenatal care for undocumented immigrants in California: a cost/benefit analysis," 182 *Am. J. Obstetrics & Gynecology* 233-39 (January 2000), available at <https://link.springer.com/article/10.1023/A:1021862113241>.

<sup>9</sup> Heather Kuiper et al., "The Communicable Disease Impact of Eliminating Publicly Funded Prenatal Care for Undocumented Immigrants," 3 *Maternal & Child Health J.* 39-52 (Mar. 1999), available at <https://link.springer.com/article/10.1023/A:1021862113241>.

<sup>10</sup> Esther Yu His Lee, "No, Undocumented Immigrants Aren't A Burden on the Health Care System," *Think Progress* (Jun. 24, 2015), available at <https://thinkprogress.org/no-undocumented-immigrants-arent-a-burden-on-the-health-care-system-39560e0bc7/>

<sup>11</sup> National Immigrant Law Center, *Immigrants and the Affordable Care Act (ACA)*, available at <https://www.nilc.org/issues/health-care/immigrantshcr/>

chronic illnesses while encouraging them to suffer emergency medical conditions will result in an increased cost to taxpayers.

**a. The New Public Charge Rule Represents A De Facto Reinstatement Of HIV-Immigration Ban**

The new rule could operate as a *de facto* ban on admission, whether via an entry visa or permanent residency, of HIV-positive immigrants to the United States, especially because health is a consideration for public charge determination in the rule. Government support is essential for virtually all HIV-positive individuals both domestic and abroad. It is estimated that roughly 40% of the HIV-positive individuals in the United States are treated by Medicaid and that 87% live beneath 400% of the Federal Poverty Line, the baseline criteria for access to subsidized care under the ACA. Government spending on health care has been pivotal in managing HIV/AIDS.<sup>12</sup> The government also offers support in other ways. People unable to work due to HIV/AIDS may be eligible for Social Security benefits.<sup>13</sup>

The government has also passed many federal laws protecting those with HIV/AIDS from discrimination to guarantee access to public benefits like housing, employment, transportation, and other government services.<sup>14</sup> A principal feature of the ACA is that it expanded coverage for those with HIV/AIDS by prohibiting insurance companies from using

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<sup>12</sup> Henry J. Kaiser Family Foundation, *Assessing the Impact of the Affordable Care Act on Health Insurance Coverage of People with HIV* (Jan. 7, 2014), available at <https://www.kff.org/report-section/assessing-the-impact-of-the-affordable-care-act-on-health-insurance-coverage-of-people-with-hiv-issue-brief/>

<sup>13</sup> Social Security Administration, *Social Security For People Living With HIV/AIDS*, available at <https://www.ssa.gov/pubs/EN-05-10019.pdf>

<sup>14</sup> HIV.gov, *Activities Combating HIV Stigma and Discrimination*, available at <https://www.hiv.gov/federal-response/federal-activities-agencies/activities-combating-hiv-stigma-and-discrimination>

their status as a pretext to deny health care coverage.<sup>15</sup> Accordingly, it would be difficult for an HIV-positive non-citizen to withstand the revised public charge analysis under the new rule.<sup>16</sup>

Hence, the new rule functions as a back door reinstatement of the HIV immigration ban, which was in effect from 1993 until January 2010. The shift to lifting the ban resulted from research conducted by the CDC and HHS, which concluded that HIV is not a communicable disease of public health significance. In revisiting this question, CDC and HHS concluded that it is not based on the scientific community's more sophisticated and developed understanding of the virus:

While HIV infection is a serious health condition, scientific evidence shows that it does not represent a communicable disease that is a significant risk for introduction, transmission, and spread to the United States population through casual contact. An arriving alien with HIV infection – or one adjusting status to that of a legal permanent resident – does not pose a public health risk to the general population through casual contact.<sup>17</sup>

Additionally, the *de facto* ban on HIV-positive noncitizens runs against the stated goal of the Trump Administration to lead a global effort against HIV/AIDS and undermines U.S. leadership in this area.<sup>18</sup> Because of the prior ban, the United States could not host important conferences on combating HIV for nearly two decades, as important figures in the effort were

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<sup>15</sup> Henry J. Kaiser Family Foundation, Medicaid and HIV (Oct. 14, 2016), available at <https://www.kff.org/hivaids/fact-sheet/medicaid-and-hiv/>

<sup>16</sup> Henry J. Kaiser Family Foundation, Medicaid and HIV (Oct. 14, 2016), available at <https://www.kff.org/hivaids/fact-sheet/medicaid-and-hiv/>

<sup>17</sup> Medical Examination of Aliens – Removal of Human Immunodeficiency Virus (HIV) Infection From Definition of Communicable Disease of Public Health Significance, 74 Fed. Reg. 56,549 (Nov. 2, 2009) (codified at 42 C.F.R. Pt. 34).

<sup>18</sup> White House, With American Leadership, We Are on the Brink of Controlling AIDS, (Dec. 1, 2017) (“The United States, under the leadership of President Donald Trump and working alongside other governments, private sector companies, philanthropic organizations, multilateral institutions, civil society and faith-based organizations, people living with HIV, and many others – continues to lead the way in the HIV/AIDS response.”) available at <https://www.whitehouse.gov/articles/american-leadership-brink-controlling-aids/>

HIV-positive and could not travel to the United States.<sup>19</sup> A new ban on HIV-positive people would also place the United States out of step with scientific understanding and global practice.

## **II. The New Public Charge Rule Will Harm U.S. Citizen Children and Have a Negative Impact On New York City's Economy Due To The Loss Of Federal Dollars**

The Supplemental Nutrition Assistance Program ("SNAP") is the country's most important food assistance program and it plays a crucial part in New York City's economy. The Fiscal Policy Institute reports that over 2.8 million people (including 1.1 million children) utilize SNAP every year in New York State, and "[m]ore than \$4.9 billion in SNAP benefits were spent at over 18,000 New York retailers in 2016."<sup>20</sup> Thus, if non-citizen parents of U.S. born children decline to access such critical benefits as SNAP for fear of public charge determination, not only will it have grave consequences for the health of children born in the U.S., but it will also have a negative impact on New York City's economy due to the loss of SNAP dollars.

Because federal rules require that eligible parents, including non-citizens, living together with their children under age 22 must be included as one SNAP household,<sup>21</sup> the new rule puts additional pressure on non-citizens, subject to Public Charge, to decline or terminate benefits that would otherwise be available for their U.S. citizen children. Already, non-citizen parents often do not avail themselves of benefits to which their citizen children are legally entitled because of fear that they will be less able to adjust their status and be potentially subject to deportation.<sup>22</sup>

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<sup>19</sup> Andrew Quinn, U.S. to drop HIV ban, host 2012 AIDS meeting, *Reuters* (Nov. 30, 2009) available at <https://www.reuters.com/article/us-aids-usa/u-s-to-drop-hiv-ban-host-2012-aids-meeting-idUSTRE5AT53Q20091130>.

<sup>20</sup> See Fiscal Policy Institute, *Interactive Maps: SNAP Participation Rates and SNAP Retailers*, May 7, 2018, available at <http://fiscalspolicy.org/interactive-maps-snap-retailers-and-snap-participation-rates>.

<sup>21</sup> See 7 CFR 273.1(b)(1).

<sup>22</sup> *Id.* at x; Michael E. Fix & Jeffrey S. Passel, *Trends in Noncitizens' and Citizens' Use of Public Benefits Following Welfare Reform 1994–97*, Urb. Inst. (Mar. 1, 1999), available at <https://www.urban.org/research/publication/trends-noncitizens-and-citizens-use-public-benefits-following-welfare-reform>.

Evidence has shown that restrictions on non-citizens' access to public benefits have spillover effects onto citizen children and family members.<sup>23</sup> Children of non-citizens make up 22% of the 23.4 million children under 6 in the U.S.<sup>24</sup> Almost all children of non-citizens under age 6 (93%) are citizens of the U.S.<sup>25</sup> When Congress enacted the 1996 Welfare Reform Act, it imposed broad limits on legal immigrants' access to public benefits and enacted new barriers on "unqualified immigrants'" access to services.<sup>26</sup> These changes, which mirror the changes in the public charge rule, had demonstrable "chilling effects" that discouraged non-citizens from using benefits despite their continued eligibility.<sup>27</sup> In Los Angeles County, for instance, approved applications of legal noncitizen families for Medi-Cal (California's state public medical program) and for Temporary Assistance for Needy Families ("TANF") fell 71% in the two years following the enactment of the Act.<sup>28</sup> There was a 52% decrease in applications for welfare from non-citizen households with no accompanying decrease in citizen households.<sup>29</sup> Nationally, approved welfare applications fell 35% in non-citizen households versus 14% in citizen households, and welfare use fell 36% in non-citizen households with children, as opposed to 23% for citizen households with children.<sup>30</sup> These drastic decreases in applications occurred despite the fact that these non-citizens continued to remain eligible for the program and denial rates remained steady.<sup>31</sup> In fact, the drop in applications appeared to occur regardless of whether

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<sup>23</sup> Michael E Fix & Wendy Zimmermann, *All Under One Roof: Mixed-Status Families in an Era of Reform*, Urb. Inst (Oct. 6, 1999), <https://www.urban.org/research/publication/all-under-one-roof-mixed-status-families-era-reform>.

<sup>24</sup> Randy Capps et al., *The Health and Well-Being of Young Children of Immigrants*, ix, Urb. Inst. (2014), available at [https://www.urban.org/research/publication/health-and-well-being-young-children-immigrants/view/full\\_report](https://www.urban.org/research/publication/health-and-well-being-young-children-immigrants/view/full_report)

<sup>25</sup> *Id.*

<sup>26</sup> Michael E. Fix & Jeffrey S. Passel

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> Michael E Fix & Wendy Zimmermann

<sup>30</sup> Michael E. Fix & Jeffrey S. Passel

<sup>31</sup> *Id.*



the children in these households were non-citizens or citizens.<sup>32</sup> These chilling effects originate mainly due to “confusion on the part of immigrants and providers about who is eligible for benefits and in fears relating to the application of the public charge doctrine.”<sup>33</sup> Specifically, parents cited concerns that the use of public benefits may, pursuant to the public charge doctrine, render them less able to adjust their status and potentially subject them to deportation.<sup>34</sup> Further, ineligible non-citizen parents of U.S. born children also fear that sharing their information with government agencies that administer these benefits will increase the risk of family separation through deportation.

The Fiscal Policy Institute (FPI) estimates that the chilling effect of the new rule will impact close to 24 million people in the United States, including 9 million children under 18 years old. In New York State, the FPI estimates that the chilling effect of the rule will impact approximately 2.1 million people and 680,000 children in households that include at least one non-citizen, and who are receiving one of the newly defined public benefits for the purposes of the Public Charge determination. “In both cases, the large majority of the impacted kids are U.S. citizens.”<sup>35</sup>

Further, if non-citizen immigrant parents decline to access such critical benefits as SNAP for fear of public charge determination, it will not only have grave consequences on the health of children born in the U.S., but the loss of federal dollars will also hurt New York City’s economy. The Fiscal Policy Institute ran simulations to demonstrate the potential economic impact of the new rule on NY State’s economy based on the three possible levels of non-citizen disenrollment from the SNAP and Medicaid programs. The mid-level simulation (based on a 25%

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<sup>32</sup> Michael E Fix & Wendy Zimmermann

<sup>33</sup> Michael E. Fix & Jeffrey S. Passel

<sup>34</sup> Michael E Fix & Wendy Zimmermann

<sup>35</sup> Fiscal Policy Institute, “FPI Estimates Human & Economic Impacts of Public Charge Rule: 24 Million Would Experience Chilling Effect,” (October 10, 2018), available at <http://fiscalpolicy.org/public-charge>.

disenrollment) shows a loss of \$2.2 billion in direct federal dollars to New York, and a potential loss of up to \$3.6 billion due to the “ripple effects” of these lost dollars. At a lower level of disenrollment (15%), the simulations show a loss of \$1.1 billion in federal dollars to New York, “ripple effects” of up to \$2.2 billion, and the loss of 15,000 jobs.<sup>36</sup>

### III. The New Rule Will Intensify the Homelessness Crisis and Increase Taxpayer Costs

The United States is currently experiencing a disturbing growth in homelessness. In 2017, the U.S. homeless population increased for the first time since 2010, rising by 1% over the previous year to 554,000.<sup>37</sup> The rise was even greater in major cities, with increases of 4% in New York City, 5% in San Diego, and 26% in Los Angeles.<sup>38</sup> In 2017, a record number of 129,803 unique individuals (including 45,242 children) spent at least one night in the NYC shelter system (an increase of 57 percent since 2002) and “[a]t end of 2017, an average of 63,495 men, women, and children slept in NYC homeless shelters each night.”<sup>39</sup> Notably, in 2017, fewer than 500 households used Section 8 vouchers to move out of New York City shelters and only 2,147 families moved out of shelters into NYCHA public housing in fiscal year 2017.<sup>40</sup>

Not much data is available about the number of non-citizens who are currently homeless.<sup>41</sup> However, it is clear that the new Public Charge rule will exacerbate the current homelessness crisis. The new Public Charge rule includes Section 8 Housing Assistance under

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<sup>36</sup> See Fiscal Policy Institute “Only Wealthy Immigrants Need Apply,” (October 10, 2018), available at <http://fiscalpolicy.org/wp-content/uploads/2018/10/NY-Impact-of-Public-Charge.pdf>.

<sup>37</sup> Christopher Weber, *America's homeless population rises for first time in years* (December 7, 2017), available at <https://www.apnews.com/47662ad74baf4bb09f40619e4fd25a94>.

<sup>38</sup> The Week Staff, *America's homelessness crisis* (March 11, 2018), available at <http://theweek.com/articles/759683/americas-homelessness-crisis>.

<sup>39</sup> Coalition for the Homeless: State of Homeless 2018, Page 5 (March, 2018) available at: <http://www.coalitionforthehomeless.org/state-of-the-homeless-2018/>.

<sup>40</sup> *Id.* at Page 17.

<sup>41</sup> The Annual Homeless Assessment Report, released by the U.S. Department of Housing and Urban Development, which provides statistics about the U.S. homelessness population, contains no data about immigrant status or country of origin. U.S. Department of Housing and Urban Development, *The 2017 Annual Homeless Assessment Report (AHAR) to Congress: Part 1: Point-in-Time Estimates of Homelessness* (December 2017), available at <https://www.hudexchange.info/resources/documents/2017-AHAR-Part-1.pdf>.

the Housing Choice Voucher Program, Section 8 Project Based Rental Assistance, Subsidized Housing under the Housing Act of 1937, and other public benefits that allow non-citizens to pay for housing as heavily weighted negative factors in the public charge determination. By deterring non-citizens from securing housing subsidies and accessing other public benefits that would enable them to direct more of their income toward housing, the rule will result in driving non-citizens out of their homes.

Housing is the largest expenditure paid by U.S. consumers,<sup>42</sup> and inability to pay for housing is the number one cause of homelessness: 75% of homeless people are homeless because they cannot afford a permanent residence.<sup>43</sup> Housing unaffordability has two causes: (1) rents have risen over the past two decades while wages have stagnated and (2) there is a shortage of affordable housing units.<sup>44</sup> As a group, non-citizens are particularly vulnerable to a reduction in public housing benefits because they are represented disproportionately in the low-income population. Housing affordability is measured by the ratio of housing costs to income, and those who pay more than 30% of their incomes to housing costs are considered to be cost burdened. Immigrants are more likely to be cost-burdened than non-immigrant Americans.<sup>45</sup> Non-citizens constitute 11% of the population and 20% of low income families.<sup>46</sup> In 2014, 31% of children

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<sup>42</sup> Bureau of Labor Statistics, *Consumer Expenditures Midyear Update: July 2016 Through June 2017 Average* (April 26, 2018), available at <https://www.bls.gov/news.release/cesmy.nr0.htm>.

<sup>43</sup> The Week Staff, *America's homelessness crisis* (March 11, 2018), available at <http://theweek.com/articles/759683/americas-homelessness-crisis>.

<sup>44</sup> The Week Staff, "America's homelessness crisis" (March 11, 2018), available at <http://theweek.com/articles/759683/americas-homelessness-crisis>.

<sup>45</sup> Eileen Diaz McConnell, "Who has housing affordability problems? Disparities in Housing Cost burden by Race, Nativity and Legal Status in Los Angeles" 2013 *Race Soc. Probl.* 179-90 (September 2013), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3784340/>.

<sup>46</sup> Tyler Moran and Daranee Petsod, "Newcomers in the American Workplace: Improving Employment Outcomes for Low-Wage Immigrants and Refugees" (2003), available at <https://www.gcir.org/publications/gcirpubs/newcomers>.

living below 200% of the federal poverty line were children of non-citizens.<sup>47</sup> In New York City, where non-citizens constitute more than one third of the population, more than half of non-citizens dedicate more than 30% of their incomes to rent.<sup>48</sup>

Non-citizens are already burdened by the shortage in affordable housing units. While every U.S. state has a gap between the number of extremely low income families and the number of affordable housing units, the shortages are particularly acute in the four U.S. states that have the most non-citizens. California has 21 affordable housing units for every 100 extremely low income households, Texas has 29, Florida has 27, and New York has 35.<sup>49</sup> The new Public Charge rule will only add to the existing housing affordability crisis and push non-citizen families into homelessness. Moreover, if non-citizens are uprooted from their communities, New York's housing problems may worsen, leaving rent-controlled units deregulated.<sup>50</sup>

An increase in homelessness would place significant strain on public finances. Philip Mangano, who served as the Executive Director of U.S. Interagency Council on Homelessness in the George W. Bush and the Obama administrations, reported that homeless people generate between \$40,000 and \$150,000 in costs per year as compared to non-homeless people, because of the costs they place on hospitals, jails, and courts.<sup>51</sup> Several studies support the observation that homelessness places a significant strain on public finances. The Economic Roundtable of

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<sup>47</sup> Jie Zong and Jeanne Batalova, "Frequently Requested Statistics on Immigration and Immigration in the United States" (April 14, 2016), available at <https://www.migrationpolicy.org/article/frequently-requested-statistics-immigrants-and-immigration-united-states-5>.

<sup>48</sup> Pratt Center for Community Development, "Confronting the Housing Squeeze: Challenges Facing Immigrant Tenants, and What New York Can Do" (Fall 2008), available at [http://prattcenter.net/sites/default/files/confronting\\_the\\_housing\\_squeeze.pdf](http://prattcenter.net/sites/default/files/confronting_the_housing_squeeze.pdf).

<sup>49</sup> National Low Income Housing Coalition, "The Gap: The Affordable Housing Gap Analysis 2017" (March 2017), available at [http://nlihc.org/sites/default/files/Gap-Report\\_2017.pdf](http://nlihc.org/sites/default/files/Gap-Report_2017.pdf).

<sup>50</sup> See Center for New York City Affairs, "Rent Protections Grow Scarcer and Landlord Harassment Gets More Common for Low-Income Tenants" (May 30, 2018) (citing high rent vacancy deregulation as one of two major sources of the decline in rent regulated housing availability for low-income New Yorkers), available at <http://www.centrernyc.org/erosion-of-rent-regulations/>.

<sup>51</sup> Molly Moorhead, "HUD secretary says a homeless person costs taxpayers \$40,000 a year" (March 12, 2012), available at <https://www.politifact.com/truth-o-meter/statements/2012/mar/12/shaun-donovan/hud-secretary-says-homeless-person-costs-taxpayers/>.

Los Angeles found that the typical homeless person generated \$2,897 in public costs per month, whereas a resident in public housing cost the taxpayer \$605 per month.<sup>52</sup> Another study found that homeless hospital patients in New York City stayed in a hospital for an average of 4.1 additional days per visit, at an average cost of \$2,414 per day.<sup>53</sup>

#### IV. CONCLUSION

In New York, the provision of services to low-income non-citizens is a Constitutional mandate. Article XVII, § 1 of the New York Constitution establishes a “positive duty” for the state to provide assistance to the needy, and the government may not discriminate in the provision of these benefits and services on the basis of immigration status. The new Public Charge rule undermines New York’s mandate to support its immigrant communities. Further, by driving current residents underground for fear of being deported as public charges, the new Public Charge rule would erode the productivity gains non-citizens provide for New York.

Immigrants constitute a fifth of the state’s population and a quarter of its workforce.<sup>54</sup> New York City alone has 3.3 million immigrants, making up almost 40% of the City’s total population and 46% of its employed population.<sup>55</sup> With more than \$100 billion in earned income, non-citizens generate 32% of total earnings in New York City.<sup>56</sup> Immigrants’ contributions are an essential component of New York City’s viability as a city. Without

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<sup>52</sup> Daniel Flaming, “Where We Sleep: The Costs of Housing and Homelessness in Los Angeles” (November 1, 2009), available at <https://economicrt.org/publication/where-we-sleep/>.

<sup>53</sup> Sharon Salit and others, “Hospitalization Costs Associated with Homelessness in New York City,” 338 *New England J. Medicine* 1734 (June 11, 1998).

<sup>54</sup> Office of the New York State Comptroller, *A Portrait of Immigrants in New York* (Nov. 2016), available at [https://www.osc.state.ny.us/reports/immigration/immigration\\_2016.pdf](https://www.osc.state.ny.us/reports/immigration/immigration_2016.pdf).

<sup>55</sup> Office of the New York City Comptroller, *Immigrant Population Helps Power NYC Economy* (Jan. 2017), available at <https://comptroller.nyc.gov/newsroom/press-releases/comptroller-stringer-analysis-immigrant-population-helps-power-nyc-economy/>

<sup>56</sup> *Id.*

immigrants, between 2010 and 2015, the population of New York City would have declined.<sup>57</sup> Like other jurisdictions around the country, New York has discovered that extending benefits to immigrants is sound policy.<sup>58</sup> By providing government benefits such as SNAP and Medicaid to eligible non-citizens and facilitating access to stable housing, New York is supporting the development of a productive population that contributes to the state's fiscal health.

The expanded Public Charge rule harms the state's ability to harness its residents' productive power, undermines public health, and increases taxpayer costs. Further, the new rule threatens the gains made in reducing the rate of new HIV infections and HIV-related illnesses and deaths by discouraging access to preventative care through public health insurance and stable housing. Ultimately, this will result in increased costs to the State and undermine the Governor's Blueprint to end the HIV/AIDS epidemic in New York State by the end of 2020.<sup>59</sup> Likewise, barriers to federal housing subsidies and income to pay for housing will increase the well-documented costs associated with homelessness. This reality underscores the need for New York City and New York State to separate its housing assistance programs and HIV-specific assistance programs from its "General Assistance" income maintenance programs. This will mitigate the chilling effect of the new rule and ensure that non-citizens remain eligible to receive these benefits.

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<sup>57</sup> Office of the New York State Comptroller, *A Portrait of Immigrants in New York* (Nov. 2016), available at [https://www.osc.state.ny.us/reports/immigration/immigration\\_2016.pdf](https://www.osc.state.ny.us/reports/immigration/immigration_2016.pdf).

<sup>58</sup> See New York City Comptroller Scott M. Stringer, *Immigrant Rights and Services Manual* (2018) ("New York City is, and must always be, a place that is welcoming to people who want to make a better life for themselves, no matter where in the world they come from."), available at [https://comptroller.nyc.gov/wp-content/uploads/documents/Immigrant-Manual-2018-English\\_fv.pdf](https://comptroller.nyc.gov/wp-content/uploads/documents/Immigrant-Manual-2018-English_fv.pdf); New York City Comptroller Scott M. Stringer, *Immigrant Population Helps Power NYC Economy* (Jan. 2017) ("Anti-immigrant federal policies could undermine city economy."), available at <https://comptroller.nyc.gov/newsroom/press-releases/comptroller-stringer-analysis-immigrant-population-helps-power-nyc-economy/>.

<sup>59</sup> *Blueprint Includes Recommendations to Bend the Curve By Improving HIV Testing, Preventing the Spread of Disease, and Providing Better Treatment*, available at <https://www.governor.ny.gov/news/governor-cuomo-receives-final-blueprint-end-hiv-aids-epidemic-new-york-state-end-2020>



Testimony of Volunteers of Legal Service  
to the New York City Council Committee on Immigration  
September 3, 2019

Good afternoon Council Members Menchaca, Dromm, Moya, Miller, Chin, Gjonaj, and to my own Council Member Eugene. My name is Molly Coe and I am a Senior Staff Attorney with the Immigration Project at Volunteers of Legal Service. Thank you for the opportunity to comment on the proposed bills and resolution relating to the effect of the U.S. Department of Homeland Security's rule regarding immigrant New Yorkers' eligibility for permanent residence which is scheduled to go into effect on October 15, 2019. We would like to thank the New York City Council, and this committee in particular, for your leadership in protecting immigrant New Yorkers and fighting against this presidential administration's efforts to undermine the rule of law.

For background, the mission of Volunteers of Legal Service is to leverage the good will, resources, and talents of New York City's leading law firms to provide pro bono legal assistance to under-resourced New Yorkers. Founded 35 years ago, VOLS' various projects help New Yorkers solve difficult legal problems that have significant consequences for them and their families. Through our staff and volunteer attorneys, we help mothers in prison maintain visitation with their children; provide senior citizens with advance health care directives and other essential life-planning documents; support entrepreneurs in structuring their small business and negotiating commercial leases; and help immigrant youth and their families resolve immigration issues so that they can live, work, and study in their adopted home.

We support the passage of the proposed bills being considered by this committee today. If these proposed bills become law, we encourage the city agencies in charge of their implementation to exercise caution to avoid adding to the fear that this regulation was designed to instill in low-resource families. A main goal of this regulation is to encourage families to unenroll from programs to which they are entitled. Since a draft of a related Executive Order was leaked over a year ago, we have regularly fielded questions from the undocumented parents of young U.S. citizens asking if their children can keep their health care and if they need to forego the food stamps that have been designated for their kids. Last week, after the final rule was published, I was asked by a former client, now a college student with a green card, if she is allowed to re-register for health insurance.

This regulation, however, as it relates specifically to the use of public benefits, actually affects very few of the people we serve for two main reasons: (1) this rule largely affects only people who are eligible to apply for permanent residence in the United States in the near future, and (2) the types of benefits that our clients have access to are exempt from this rule.

On the first issue, the biggest effect of this rule on people already in the U.S. will be felt by those who are eligible to apply for permanent residence in the next few years. There are an estimated 11 million people who are undocumented in the United States and the majority of them are not eligible to apply for permanent residence at all, especially not in the short term. For many undocumented immigrants, there is no line they can wait on, there is no form they can fill out, there is no amount of money they can pay to obtain permanent immigration status in the U.S. This is despite the fact that they may have U.S. citizen or permanent resident spouses, parents, and children. Our immigration laws are so restrictive and out-of-date that where potential options for the relatives of U.S. citizens may exist they can take decades. So, if those non-citizens are somehow receiving public benefits which would count against them under this rule, it's unlikely to matter in this context because they're not going to applying for permanent residence without a change in the law.

Second, it is rare for a non-permanent resident or U.S. citizen to be eligible for any of the public benefits that are enumerated in this rule. My undocumented and DACAmented clients have healthcare through state-funded CHIP or Medicaid, both of which are exempt from this rule. My undocumented and DACAmented clients who are pregnant or new parents receive health care and assistance through WIC, which is also exempt. Where non-citizens are eligible for benefits that would count against them under this rule, they are exempt from the public charge determination entirely because they are seeking permanent residence on humanitarian grounds, whether it's through asylum, Special Immigrant Juvenile Status, or protection for survivors of serious crimes, domestic violence, and human trafficking, and other similar programs.

Looking to the future, we are really concerned about the combined effect of this current rule and the proposed HUD rule which would deny public housing to mixed-status families, and we encourage the City Council to protect access to affordable housing for immigrant New Yorkers, especially should that proposed HUD rule become final.

I will conclude by noting that this regulation, which is based on proposals written by nativist think tanks, is another brick in President Trump's invisible wall -- part of his plan to create fear and keep families apart. We applaud the steps that this committee and the City Council as a whole has taken to support immigrant families, including through the creation and continued funding of New York Immigrant Family Unity Project and Action NYC. Every person's immigration situation is different and access to free, high-quality civil legal services is essential. Thank you again for the opportunity to share the experiences we have had at Volunteers of Legal Service with the Committee.





**BROOKLYN  
DEFENDER  
SERVICES**

**TESTIMONY OF:**

**Sonia Marquez – Immigration Practice**

***BROOKLYN DEFENDER SERVICES***

**Presented before  
The New York City Council  
Committee on Immigration**

**September 3, 2019**

**I. Introduction**

My name is Sonia Marquez and I am Civil Rights and Immigration Senior Staff Attorney at Brooklyn Defender Services (BDS). Our organization provides multi-disciplinary and client-centered criminal defense, family defense, immigration, civil legal services, social work support and advocacy in nearly 30,000 cases involving indigent Brooklyn residents every year. Since 2009, BDS has counseled, advised or represented more than 10,000 immigrant clients. We are a Board of Immigration Appeals-recognized legal service provider and a provider of the New York Immigrant Family Unity Project (NYIFUP). In addition, we represent individuals in applications for immigration relief, adjustment of status, and naturalization before the United States Citizenship and Immigration Services (“USCIS”), and in removal proceeding in New York’s immigration courts. I thank the New York City Council Committee on Immigration for the opportunity to testify about the proposed local laws and resolution in relation to the “Public Charge” rule and its impact on New York City residents.

Please refer to our written testimony about the presented to the New York City Council on November 15, 2018 about the impact of the proposed “Public Charge” rule on NYC.<sup>i</sup>

**II. Impact of the Rule**

As we previously laid out in our November 15, 2018 written testimony on the impact of the proposed “Public Charge” rule on New York City, the final Public Charge rule for inadmissibility targets low-income immigrant families and immigrants of color. The rule is intended to instill widespread fear, and will hurt not only immigrants but also U.S. citizen family members and their larger communities.

In expanding the types of public benefits analyzed during an inadmissibility determination, and lowering the threshold that could trigger inadmissibility, the Federal Administration is using the public benefits system to punish immigrants. The City has determined that access to these benefits promotes stability in the short-term and the long-term. By inducing disenrollment, the rule will negatively impact the ability of immigrant and mixed-status families to maintain employment, stay healthy, achieve stability, and pursue their full potential as New Yorkers.

The final rule also replaces the existing totality of the circumstances test with a weighted-factors scheme, which is perhaps more detrimental to the ability of low-income immigrants to become green card holders. Unlike the existing totality of the circumstances test, which was meant to identify individuals who would permanently and primarily be dependent on government resources, the new weighted analysis is a *de-facto* ban on low-income immigrants becoming lawful permanent residents. This analysis looks to factors such as the immigrant's age, health, education-level and proficiency in English, employment history, and financial status and credit score. Mere employment, living wage, or modest savings will not necessarily be sufficient, and achieving a "heavily weighted positive factor" requires, among other things, an annual income or resources of a hefty 250% of the federal poverty guidelines or private health insurance. Notably, disenrollment from public benefits is just one factor in a myriad of factors, and will not alone result in a positive outcome. The rule turns the American Dream on its head by requiring immigrant families to achieve financial stability and success before getting permanent admission to the United States.

Moreover, the weighted-factors analysis is vague, opaque and complicated, giving immense discretion to the immigration official adjudicating the application. Without adequate legal help to navigate the rule and identify the required documentation, low-income immigrants will be at an even greater disadvantage when filing green card applications.

At Brooklyn Defender Services, we have seen the widespread fear and misinformation in the immigrant community caused by the public charge rule. Even before the rule was finalized, clients have told our social workers that they do not want to sign up for benefits, because they believe it will negatively impact their immigration relief options. One client with asylum status was so afraid of the impact of the public charge rule that our staff was unable to convince him that signing up for health insurance would not harm his ability to adjust his status in the future, even though the final rule excludes asylum-based adjustments. Since the final rule was announced, attorneys and social workers have fielded calls from clients who now fear using public benefits and are asking whether to disenroll. Immigrant clients who are victims of trafficking, victims of crimes, and those who are already green card holders, have expressed concern about the impact of the public charge rule on their ability to maintain legal status in the U.S., even though the rule will not apply to them. Undocumented clients, who may not personally qualify for most public benefits, express fear of limiting potential relief and future deportation because their U.S. citizen children get SNAP and Medicaid benefits.

### **III. Bills**

Brooklyn Defender Services supports all five of the proposed bills and the resolution with the caveat that individuals seeking to disenroll in benefits should be encouraged to seek

individualized legal counsel to analyze their particular circumstances, as well as the impact of enrolment or disenrollment in public benefits on their current and future immigration options.

1. *Int. T2019-4982 - In relation to requiring the department of social services/human resources administration to provide assistance in modification of benefits.*

Brooklyn Defender Services supports this bill. The bill will provide important information and advice for individuals who may be seeking to modify their benefits as a result of the expanded public charge rule. However, individuals seeking to disenroll or modify their benefits should be encouraged to seek individualized legal counsel to analyze their particular circumstances.

2. *Int. T2019-4983 - In relation to requiring training for certain employees of the city of New York on federal regulations relating to inadmissibility on public charge grounds.*

Brooklyn Defender Services supports this bill. This bill will provide training for city employees about the effects of the public charge grounds. We encourage the City to schedule periodic and recurring trainings to ensure that new incoming staff are also trained. Recurring trainings will also reinforce this complex information for existing staff and allow for updates and developments as the implementation and real-time effect of the public charge inadmissibility ground may require changes in advice and training for employees.

3. *Int. T2019-4984 - In relation to requiring the distribution of information on local emergency feeding programs.*

Brooklyn Defender Services supports this bill.

4. *Int. T2019-4985- In relation to the distribution of educational materials about the federal regulations relating to inadmissibility on public charge grounds.*

Brooklyn Defender Services supports this bill. This bill calls for the dissemination of information about the effects of public charge grounds on a family's immigration status. It is important that school-age children and their parents receive simple, straight forward, and accurate information to combat wide-spread confusion and fear, which could lead to disenrolling in benefits that are essential to a family's stability and health.

5. *Res. T2019-4981- Calling on the United States Congress to pass, and the President to sign, legislation that would prohibit the enactment of the federal rule entitled, "Inadmissibility on Public Charge Grounds".*

Brooklyn Defender Services supports this resolution.

#### **IV. Additional Recommendations**

In order to combat the widespread confusion and fear—which is at the heart of the rule's purpose—there is an increased demand for individualized legal consultation for immigrant individuals and know-your-rights presentations to accelerate the dissemination of accurate

information. In response to the expanded public charge rule, the messaging to the immigrant community has been to seek legal guidance to determine whether and how the public charge rule applies to an individual's circumstances. This increased need for legal advice places an additional burden on legal service providers to digest the minutia of the rule and—in the short-term—meet with, screen, and advise immigrants seeking legal guidance on whether to disenroll their family from needed benefits.

As explained above, legal service providers who serve low-income communities are already feeling the impact of the public charge and we anticipate this will be felt in four main ways. *First*, clients who are concerned about their use of public benefits are reaching out to attorneys and social workers to discuss the impact of the rule on their case. Staff must undertake a careful analysis of a client's potential relief options and financial situation, before advising on whether and how the rule will apply. *Second*, adjustment of status applications subject to the rule will become more onerous to prepare. In an attempt to satisfy the weighted-factors analysis, the documentation needed will be substantial and the attorney will have to litigate each of the factors to argue for a positive outcome of the test. For legal service providers who serve low-income clients, the rule will impact nearly all family-based adjustment of status applications. *Third*, the rule's intent is to increase denials of applications from low-income immigrants, which means additional work and resources spent appealing the denials and representing clients in removal proceedings when they are referred to immigration court. *Fourth*, to mitigate misinformation and fear-based disenrollment, providers will need to build materials and deliver Know Your Rights presentations to community organizations.

We recommend that the City ensure that immigrants who need individualized legal advice regarding the impact of the rule on their use of public benefits are connected with legal service providers who have the knowledge and capacity to assist.

Finally, we recommend that the New York City Council consider additional funding for the legal services that are needed to provide advice and representation to potentially affected individuals to ensure that legal service providers have the capacity to help mitigate and combat the impact of this rule on New Yorkers.

## V. Conclusion

The bills and resolution before the Council today are important steps to mitigate the harmful impact of the public charge rule and provide the New York immigrant community with essential information. We thank the sponsors and Immigration Committee Chair Carlos Menchaca for advancing them and urge the full Council to pass them.

If you have any questions about my testimony, please feel free to contact Nyasa Hickey, Immigration Counsel at [NHickey@bds.org](mailto:NHickey@bds.org) by phone at 718-254-0700.

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<sup>i</sup> Brooklyn Defender Services written testimony about "The Impact the Proposed "Public Charge" Rule on NYC," November 15, 2018, available at <http://bds.org/bds-testifies-before-the-nyc-council-committees-on-immigration-health-general-welfare-on-the-impact-of-the-proposed-public-charge-rule-in-nyc/>.



**NEW YORK CITY COUNCIL  
COMMITTEE ON IMMIGRATION**

**THE IMPACT OF THE NEW “PUBLIC CHARGE” RULE ON NYC**

**TESTIMONY OF CATHOLIC CHARITIES COMMUNITY SERVICES  
ARCHDIOCESE OF NEW YORK**

**SEPTEMBER 3, 2019**

Good afternoon, Honorable Chairperson and committee members. My name is Raluca Oncioiu and I am the Director of Immigration Legal Services and Immigration Hotlines for Catholic Charities Community Services. This testimony is being offered on behalf of the agency’s Division of Immigrant and Refugee Services. Thank you for the opportunity to testify about the impact the “public charge” rule change has and will have on our communities, and about possible responses.

Since 1949, Catholic Charities Community Services (CCCS) has been the direct service provider of The Catholic Charities of the Archdiocese of New York, serving over 150,000 individuals annually. CCCS provides high quality human services to all New Yorkers in need, including: information and referral on immigration and social service needs; immigration legal services; refugee resettlement; ESOL classes; case management services to help people resolve financial, emotional and family issues; eviction and homelessness prevention services; relief from hunger through a network of emergency food programs; employment readiness training, placement and support; specialized assistance to the blind and visually impaired; after-school and youth employment programs; and supported housing for adults with severe mental illness. Our programming forms a comprehensive safety net that assists people in achieving long-term income, housing, and nutrition stability. CCCS’ program sites span Manhattan, the Bronx, and Staten Island, as well as Westchester, Putnam, Dutchess, Rockland, Orange, Sullivan and Ulster counties.

Through our emergency food programs, CCCS provides approximately three million meals annually. Beyond food distribution, we help address the root causes of hunger via case management, nutrition and meal planning education, SNAP enrollment, and advocacy. Our Case

Management Department helps families to maintain housing stability by resolving immediate crises and working to prevent future emergencies.

For more than four decades, CCCS has been committed to welcoming New York's immigrants—including families seeking to reunify, children, refugees, the undocumented, and workers. Our commitment to the provision of civil legal services to low-income persons is rooted in respect for the dignity of each person, and for the value added to our communities of work, family, and faith. Our Division of Immigrant and Refugee Services reaches more than 60,000 individuals across New York City and the Lower Hudson Valley each year:

- We assist approximately 1,000 refugees with their resettlement and integration needs, including settling in a new home, finding work, and learning English. These are men, women and children who have fled conflict, persecution, and deprivation.
- We serve thousands of unaccompanied children each year – 5,000 during the last fiscal year - - who have been transferred to federal custodial shelters in the New York City area. We offer these minors and the families with whom they are reuniting legal help, representation, and integration support, including legal and cultural orientations, soccer and English programming, and psychological and medical care.
- We operate the New York State New Americans Hotline, the New York City ActionNYC Hotline, and the national Call Center for Custodians of Unaccompanied Minors, which annually provide basic information and referrals to over 75,000 callers with immigration and reunification questions.
- Our International Center provides English and cultural instruction to 1,000 immigrants who are seeking to move towards citizenship status or, in the case of day laborers, are in need of basic proficiency to navigate day-to-day challenges.
- Our Immigration Legal Services department provides advice and legal representation to more than 5,000 documented and undocumented immigrants every year. Teams of attorneys and paralegals provide advice and application assistance, conduct consultations to determine eligibility for immigration benefits, prepare applications and submissions on behalf of clients, provide case follow-up through case completion, and prepare clients for immigration interviews. Our attorneys handle a wide variety of cases - asylum, U and T visas for victims of serious crimes and trafficking, special immigrant juvenile visas for children who have been abandoned, neglected or abused by their parents, etc. - in the administrative and federal courts, providing direct representation in administrative interviews and hearings, in court proceedings before immigration courts and other federal and state tribunals, and in motions to reopen, appeals, and petitions for review.

## **I. THE PUBLIC CHARGE FINAL RULE**

The changes to federal regulations on “public charge” issued by the Department of Homeland Security (DHS) on August 14, 2019 significantly alter the eligibility landscape, create confusion and uncertainty, and strip away at a structured and reasoned application of law. The regulations change the assessment of who is “likely at any time to become a public charge” and is therefore inadmissible to the United States. They directly affect applicants for adjustment of status (green card) based on a family relationship with a United States citizen or Legal Permanent Resident and non-immigrants seeking to extend or change their status in the United States. When – as expected - the U.S. Department of State adopts guidance consistent with the new DHS

regulations, the changes will also affect those applying for family-based immigrant visas abroad. According to the Catholic Legal Immigration Network, Inc. (CLINIC), approximately two-thirds of the one million green cards that are issued every year are family-based.

Under the new rule, to determine if an applicant for admission is likely to become a public charge, the adjudicator will employ a “totality of circumstances” test that will weigh that applicant’s age, health, family status, assets and financial status, education and skills, in ways that will make it difficult for the elderly, low-income, low-skilled, and those who are not in perfect health to be found admissible to the United States. A new “public charge” form I-944 has onerous requirements for supporting documents, including tax transcripts, evidence of assets and resources (minus civil liabilities), credit reports, degrees and certifications, transcripts, etc. The public charge definition is changed from likely to become “primarily dependent” on certain state and federal benefits to likely to receive certain benefits for more than 12 months in the aggregate within any 36-month period. The list of public benefits to be considered in the public charge determination is expanded from three cash assistance programs – SSI, TANF and general cash assistance – and long-term institutionalization at government expense to also include, after the October 15, 2019 effective date, non-emergency Medicaid (with some exceptions), SNAP, Section 8 housing vouchers and rental assistance, and public housing. Those found likely to become a public charge may be allowed, in the adjudicator’s discretion, to post a public charge bond of at least \$8,100.

CCCS finds the changes problematic for two reasons. First, we are concerned that the public charge regulation will dissuade thousands of New Yorkers – including many who would not be affected by the changes but are nonetheless terrified – from accessing much needed public benefits, resulting in hunger, poor nutrition, untreated illnesses and even health care crises. Most applicants for admission to the United States, whether as immigrants or non-immigrants, are not eligible for the public benefits enumerated in the regulation. Moreover, under the regulation, benefits received by the applicant’s children, spouse, parents, or other family members will not count in the determination whether the applicant is likely to become a public charge. However, due to misinformation, mistrust, and the complexity of the regulation, the chilling effect is pervasive. For example, in the last three months, we have noticed a correlation between the number of people who asked our case managers about the effect that public charge would have on their SNAP benefits and the number of people who refused enrollment. Since applicants for adjustment of status who are subject to public charge are unlikely to be eligible for SNAP benefits, this is particularly alarming.

Second, the changes give adjudicators unfettered discretion, proposing a complicated framework for weighing “totality of the circumstances” that invites disparate treatment of similarly situated applicants, allows for bias and discrimination by adjudicators and gives applicants for immigration benefits – and their advocates - no objective measure as to whether they can overcome the public charge ground of inadmissibility or not. The uncertainty of adjudications in combination with USCIS’ recent policy of placing certain applicants who are denied green cards in removal proceedings, may lead many to avoid applying for adjustment of status and continue to live in the shadows rather than risk applying for legal status.

We would like to share with you some of what we are seeing on the ground and what we believe can be responses.

## II. WHAT WE ARE SEEING ON THE GROUND

Our various programs serve thousands of immigrants every year, so we know first-hand how hard they work to improve their own lives and those of their families, contribute to and invigorate our communities, and enrich the fabric and the economy of our cities, states and nation. Those we serve are in different immigration status categories, each with its own particular challenges as we seek to understand and anticipate the potential impact of the changes in the public charge rule. Here are some examples of the effect of this rule:

**Undocumented individuals and families:** This population may be receiving health related assistance that is not subject to the change in the public charge rule (for example, Emergency Medicaid, Medicaid for children and youth under 21, and Medicaid for women during pregnancy and 60 days after delivery). However, because of fear that any use of benefits places non-citizens at risk of deportation or negatively impacts their ability to get a green card in the future, many will choose to disenroll themselves or their family members from these much needed health benefits.

**Undocumented individuals with children or family members who are United States citizens:** These mixed status households have family members who are eligible for public benefits; the new rule would not take the family member's receipt of benefits into account in the applicant's public charge determination. Nonetheless, this group worries about the break-up of their families and choose to live in dire poverty than run that risk. This is an example of a recent intake:

- An undocumented woman who attends one of CCCS' support groups was expressing fear about the final public charge rule. She stated that she gets public benefits; cash assistance and SNAP. Further questioning revealed that she receives benefits on behalf of her United States citizen children. Staff explained that benefits received by her children would not count in the public charge determination were she eligible to apply for a green card. Even with this explanation, she stated that since her name is on her children's cases she fears there is an increased risk of exposure and deportation. Although she has not disenrolled her children, she is strongly considering it.

Although the change in the public charge rule will not affect every immigrant family, those who believe it does may be making life altering decisions that further entrench them in poverty. It is critically important to inform mixed status families that they can continue to utilize benefits as temporary and transitional measures toward stabilization.

**Undocumented individuals and families who will be adjusting status after October 15, 2019:** This population will be directly affected by public charge changes. The case below is an illustration:



- A September 11 first-responder who developed a debilitating chronic illness receives regular medical care at a local hospital. He is described as a hard worker, law abiding, kindly man. He may be able to adjust status through a family member. For many years, he lived with his brother who supported him, but last year his brother's deteriorating health caused him to move out-of-state to live with his children. The first responder remained in New York but was unable to maintain his apartment. Unable to work and not eligible to pursue public assistance, he had no recourse but to enter the shelter system. It was always his intention to resume employment upon resolving his legal status. Late last year, he appeared uncharacteristically unkempt, and when his nurse took his vitals, it was clear his health was deteriorating. It was then that he relayed that he left the shelter due to the proposed change in the public charge rule; he has been staying in various coffee shops during the day and sleeping in a 24/7 store at night, eating in soup kitchens, and gathering recyclables to redeem for cash.

**Individuals and families with Legal Permanent Residence (Green Card):** Although this group is not subject to the public charge rule, many fear they may lose their status and workers report they are discontinuing benefits. Here is an illustration of how immigrants are choosing to live in increased conditions of poverty rather than jeopardize their legal status:

- A legal permanent resident and her three children were successfully enrolled in SNAP. She has been sending articles to her case manager, concerned that receiving public benefits could jeopardize her family's legal status when she applies for citizenship. The case manager has reiterated many times that legal permanent residents are not subject to the public charge test when seeking to renew their green cards, nor would they be affected should they apply for citizenship. However, the mother of three continues to be frightened and contemplates disenrollment. A single mom, who is working full-time after having recently arrived in the country, she really needs the extra SNAP assistance, at least temporarily, as she makes the adjustment to life in the United States.

**Individuals in protected humanitarian categories:** Although this group (which includes asylees and victims of trafficking or certain crimes) is not subject to the public charge rule, many fear they may lose their status or have their cases denied. Our case workers report that some are discontinuing benefits.

- A single mother of two children who is in the process of applying for a U Visa (for victims of certain crimes) called a CCCS office, seeking to cancel her SNAP benefits. Although she was informed that U-visa applicants are not subject to public charge, she stated that she simply does not want to risk it. She was informed that the final rule would not go into effect until mid-October, giving her time to seek an individualized legal consultation, but she repeated that she just does not want to risk it.

#### IV. WHAT WE ARE HEARING THROUGH OUR HOTLINES

Since 2001, CCCS has operated a statewide information and referral hotline, funded by New York State through the Office for New Americans (ONA) to provide free, multilingual, confidential, and reliable information about immigration benefits and connect callers with

available services. The New Americans Hotline, which can be accessed at 1-800-566-7636, operates from 9 a.m. until 8 p.m. on weekdays, and can expand its operations and work with media partners to offer broader, live coverage when needed. Hotline operators speak English, Spanish, French, Portuguese, Hindi, Urdu, and Punjabi. Additionally, through the use of a language service line, we can answer calls in up to 200 languages. Any given year, the Hotline answers between 27,000 to 35,000 calls and provides between 47,000 and 66,000 referrals.

Since 2017, CCCS has also operated the ActionNYC appointment scheduling hotline. Funded by New York City through the Mayor's Office of Immigrant Affairs (MOIA), the ActionNYC Hotline answers general questions about immigration benefits, makes appointments for legal services with ActionNYC immigration providers throughout the five boroughs, and connects callers with other legal service providers. The ActionNYC Hotline, which can be accessed by calling 311 and stating "ActionNYC" or directly by calling 1-800-354-0365, operates from 9 a.m. until 6 p.m. on weekdays, and can expand its operations when needed. Hotline operators speak English, Spanish, and Russian. Additionally, through the use of a language service line, we can answer calls in up to 200 languages. The ActionNYC Hotline answers an average of 1,950 calls per month.

Trends in call volume since August 14 demonstrate confusion and fear as it relates to receipt of public benefits. Since the rule was published, the hotlines have responded to close to 350 calls (253 on the New Americans Hotline and 95 on the Action NYC Hotline). The majority of callers would not be affected by the change. For example, many callers are already permanent residents who are simply looking to renew their green cards or apply for citizenship, or they are asylees who are not subject to public charge, or are immigrants who have medical insurance (not Medicaid). They are thinking about discontinuing benefits because of fear, misinformation and confusion. The Hotline gives callers basic information about the public charge changes – including that it will not take effect until October 15, 2019 and that it will not affect a legal permanent resident's eligibility to naturalize – and provides referrals to non-profits that can offer individualized advice to those who may be affected by the changes.

Callers who may be affected are directed to ActionNYC or partner agencies for advice prior to the rule becoming effective. There are callers who are not receiving public benefits themselves, but whose U.S. citizen children are. Though benefits received by children are not counted against green card applicants for public charge purposes, the fact that these families are low-income is likely to be a negative factor under the "totality of circumstances" test.

## **V. RESPONSE TO PROPOSED CHANGES**

The public charge regulation has two main negative consequences: 1) a chilling effect on immigrants and even naturalized citizens who are not affected by the changes but who will disenroll from benefits due to fear and misinformation; and 2) complicates the process of applying for a green card and makes it riskier, given the Trump Administration's policy to place those whose adjustment of status applications are denied and who do not have legal status in deportation/removal proceedings.

**Combating misinformation:** Based on the level of confusion and the response we have witnessed in New York City and New York State, where immigrant and mixed-status families are disenrolling from public benefits they and their children are eligible for out of fear of how their immigration status would be impacted, we believe that the proposed rule will put entire communities at risk of poor nutrition, housing insecurity, untreated illnesses and communicable diseases. Misinformation about who will be affected by the rule can be addressed through multi-pronged, multi-lingual outreach: public service announcements, clear and concise informational flyers, community presentations, and training of case management and agency staff.

The state and city hotlines managed by CCCS are well positioned to address the rule's chilling effect by providing basic information about who would be affected by the regulation, what benefits count towards a "public charge" determination, and where to get more information either through a live presentation or one-on-one free legal consultations. In addition to answering calls in the regular course of business, hotline phone banks, broadcast on local television stations, are a streamlined and efficient way to make information and referrals available to the community.<sup>1</sup> In collaboration with partners including the Mayor's Office for Immigrant Affairs, the New York State Office for New Americans, the New York Immigration Coalition, Legal Aid, NYLAG, Mobilization for Justice, and Univision and *El Diario*, the Hotlines have planned a "public charge" phone bank on the evenings of September 9th and September 10th followed by a Facebook Live panel of experts on public charge on September 12th. Similar phone banks can be planned going forward.

We urge city agencies to promote our hotlines' toll-free numbers as the numbers to call with questions about public charge: 1-800-566-7637 for the NYS New Americans Hotline, which is open from 9 a.m. to 8 p.m. Monday through Friday, and 1-800-354-0365 for the NYC ActionNYC Hotline, which is open from 9 a.m. to 6 p.m. Monday through Friday. The hotlines can provide information about the rule, triage those who may be affected by the changes or likely to disenroll from public benefits, and set up appointments with ActionNYC providers or make other referrals for individualized, free consultations.

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<sup>1</sup> Leveraging its in-house expertise on immigration and naturalization laws, CCCS has successfully operated both the New Americans and ActionNYC Hotlines, developing a comprehensive directory of agencies that serve immigrants, refining call and referral processes and procedures, training and updating staff on programmatic and legal developments, and expanding services to respond to ever greater needs for information, outreach, coordination, and communication related to issues of interest to immigrants. The Hotlines partner with the media (*Univision*, *El Diario*, Radio WADO, Telemundo), the New York Immigration Coalition, and attorneys from other non-profits that provide immigration legal services (such as the New York Legal Assistance Group, The Legal Aid Society, and Mobilization for Justice, etc.) to set up large-scale informational phone banks in response to developments that affect immigrant communities. The format of the phone bank is usually 2-3 consecutive days, for about 3 hours, from 5 pm to 8 pm; during this time, CCCS staff and volunteers from partner agencies answer hundreds of calls, providing accurate information and referrals to non-profit legal service providers. In addition to answering calls, CCCS is able to reach a much wider audience through this media partnership: during phone banks, knowledgeable attorneys give live interviews related to immigration policies and developments; the broadcast also features interviews that are pre-recorded in anticipation of the event; some phone banks culminate with a Facebook Live panel of experts answering questions posed online. According to Univision, NY's WXTV Channel 41 claims the most-watched evening local newscast in the country among 18 to 49 year-olds and a total daily viewership of 1.6 million.

**Increasing or redirecting funding for immigration legal service to prioritize family-based adjustment of status & consular processing:** CCCS is thankful for New York City Council’s progressive and visionary commitment to immigrants. We would like to acknowledge and thank this Council for its dedicated support of important legal initiatives – including ActionNYC, Immigrant Opportunities Initiative (IOI), and ICARE – that fund non-profit immigration legal service providers to assist indigent and low-income immigrant New Yorkers. Currently, ActionNYC programming focuses on straight-forward application assistance, including family-based adjustment of status, while IOI funds both straight-forward and complex cases, with an emphasis on removal defense.

Advising non-citizens on adjustment of status or consular processing based on family petitions, and assisting them with these applications, will become more complicated and time-consuming after the regulations take effect on October 15, 2019. The “totality of circumstances” test requires adjudicators to consider a host of factors that could lead to a determination of public charge but is vague in how those decisions will be made. The framework is overly complex, introducing heavily weighted positive and negative factors and a complicated way to calculate who should be included in an applicant’s “household,” but providing little guidance on how these factors interact with each other to arrive at the determination that an applicant is likely or not to become a public charge. To address the complexities posed by the “totality of circumstances” test for family-based immigrants after October 15, 2019, non-profit legal service providers will need additional funding, or at the very least the flexibility to shift existing resources to providing legal advice to immigrant families and application assistance in adjustment of status and consular processing cases affected by the public charge rule.

Because of the uncertain outcome of adjudications that involve one or more negative factors – such as old age, low-income, large households, medical conditions and disabilities, low skill levels – and the new USCIS policy to place applicants who do not have legal status and whose applications for adjustment are denied in removal/deportation proceedings, more people who seek family-based green cards will need thorough advice and counsel. Given the complexity of understanding and preparing the new I-944 and supporting documents, those who decide to apply for adjustment will need quality application assistance and skilled advocacy. Unless funders prioritize advice and counsel and application assistance in family unity cases, already overburdened non-profits will find it difficult to provide assistance and many immigrants may turn to *notarios* and other unscrupulous individuals not authorized to practice law, with potentially devastating consequences (more cases in removal, family separation, etc.). Possible solutions are to increase the number of ActionNYC providers and expand IOI to fund more brief services and family-based adjustment of status and consular processing cases at the complex case rate level.

We thank the New York City Council for its leadership and support of immigrant communities in these turbulent times.



**New York City Council Committee on Immigration**

**Responding to Public Charge**

**Testimony from the New York Immigration Coalition**

**September 3, 2019**

Good Afternoon. My name is Claudia Calhoon and I am the Senior Director of Immigration Advocacy at the New York Immigration Coalition, an umbrella policy and advocacy organization that works statewide with over 200 immigrant-serving member organizations. Thank you to the members of the City Council and the Committee on Immigration for convening this important hearing and to Councilmembers Cabrera, Moya, Menchaca, Levin and Rivera for introducing legislation to improve the New York City's response to the final public charge rule.

As you know, the public charge rule will make it much more difficult for certain individuals to receive their green cards if they receive Medicaid, Supplemental Nutrition Assistance (SNAP), or federal housing benefits after the rule goes into effect on October 15. The impact of the rule extends well beyond individuals who receive these benefits however. The chilling effect of the rule has already prompted a notable reduction in the use of SNAP benefits among immigrant families in New York City.<sup>1</sup> Although the final rule includes many exemptions for vulnerable groups of immigrants, it also increases the complexity of responding effectively and of buffering New York families from the pernicious effects of the rule.

Four bills have been introduced to mandate certain responses to the rule and I would like to highlight our recommendations to strengthen this package today.

1) The legislation introduced by Councilmember Cabrera would require the Department of Social Services/Human Resources Administration (DSS/HRA) to designate a unit on benefits modification to assist individuals impacted by the public charge rule and create a telephone number solely devoted to assisting with questions about disenrollment from federal benefits. We endorse the creation of a centralized phone line to serve as a single point of inquiry on public charge and public benefit programs. Families will need assistance to distinguish between programs that are named within the rule and those that are not, and can explain to individuals which benefits are federally-funded and which are funded by the state. Before we can give this bill our full support, however, we want to note specific concerns.

Our overarching goal should be to assist individuals in remaining on any benefits that they can safely use. Very few immigrants without green cards are eligible for federally funded benefit programs, and many immigrant populations are exempt from the public charge rule. Nonetheless, we know many immigrants and naturalized citizens are disenrolling from vital benefits, so it is important to provide community members with assistance related to these complicated exemptions. Based on the final rule, pregnant women and individuals up to age 21 can use federally funded Medicaid without it being counted against them as part of the public charge test. Additionally WIC, Child Health Plus, and New

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<sup>1</sup> <https://www1.nyc.gov/assets/immigrants/downloads/pdf/Fact-Sheet-June-2019.pdf>

York State's Essential Plan are not named in the final rule as triggering public charge designation. Finally, individuals granted humanitarian relief under an array of different programs are entirely exempt from public charge consideration. We applaud the creation of mechanisms to facilitate easy disenrollment from programs implicated in the rule, but believe that the Council needs more clarity from DSS/HRA on the mechanisms and protocols already in place to facilitate benefits and immigration-related concerns, before supporting the creation of a new office. We are concerned that this new office could inadvertently assist community members with disenrollment, and subsequently amplify the chilling effect of this rule.

2) Legislation introduced by Councilmember Moya would amend the city's administrative code to require the distribution of information on local emergency feeding programs to individuals who used SNAP and closed their case, and to individuals who recertify. This is an important proposal that ensures individuals in danger of food instability know of alternative sources of nutrition support. We have two concerns about the legislation as it is currently written, however.

a) More information should be specified within the language of the legislation about exactly what type of information will be distributed. It is not clear whether existing referral mechanisms would be mandated.

b) Referring individuals and families who disenroll from SNAP to the Emergency Food Assistance Program (EFAP) services will not be a meaningful way to combat food insecurity if the capacity of participating agencies to store food, administer programs, and reach hungry communities is not increased. In our discussions with EFAP participants in preparation for the rule, we have heard that meeting the needs of a dramatic uptick of individuals will not be possible with current capacity. We urge the Council to discuss monitoring and additional support for EFAP providers in the FY 2021 budget. The city needs to establish and strengthen methods to monitor the incidence of food insecurity and hunger.

3) Legislation introduced by Councilmember Rivera mandates creation of educational materials on the rule and for distribution through New York City schools. This is an important effort to make sure every family knows how to access immigration legal services. We recommend that this legislation be expanded beyond the Department of Education and require the distribution of materials produced by the office of immigrant affairs to all public-facing HRA, DOHMH, and NYCHA sites. Additionally, we believe the legislation should mandate hard copy distribution via coordinated large scale flyer drops to ensure that printed materials are successfully made available at sites throughout the city.

4) Finally, legislation introduced by Councilmember Menchaca would require the office of immigrant affairs to conduct training to appropriate employees in the DSS, Homeless Services, Department of Housing Preservation and Development, and NYCHA. This is an important effort to make sure that there is a citywide awareness about the public charge rule among all public facing employees. More specificity is required on what determines an "appropriate employee" in this context. We recommend that city employees determined to have an outreach or benefits enrollment function be required to complete a baseline training on the rule.

Thank you for your time today. We look forward to working with you to protect New York City's immigrant communities.



**New York City Council  
Committee on Immigration  
Hearing  
September 3, 2019, 1:00 PM  
Testimony of The Legal Aid Society**

Thank you to Speaker Johnson and Chairperson Menchaca for your leadership in fighting to preserve and enhance New York City's extraordinary reputation as a beacon to immigrants across the globe. The final public charge rule (the "Rule") published by the U.S. Department of Homeland Security (DHS) in the Federal Register on August 14, 2019 is a serious threat to low-income, immigrant New Yorkers and the City, State and nation as a whole, and The Legal Aid Society welcomes this opportunity to testify about the role the City can play in challenging the Rule and curtailing the harmful impact it is already having on New York's immigrant communities.

**I. Background on The Legal Aid Society**

The Legal Aid Society ("Legal Aid"), the nation's oldest and largest not-for-profit legal services organization, is more than a law firm for clients who cannot afford to pay for private counsel. It is an indispensable component of the legal, social, and economic fabric of New York City — passionately advocating for low-income individuals and families across a variety of civil, criminal, and juvenile rights matters, while also fighting for legal reform. The Society's unique value is in its ability to go beyond any one case to create more equitable outcomes for individuals, and broader, more powerful systemic changes for society as a whole. Through three major practice areas—Civil, Criminal, and Juvenile Rights—the Society's more than 2,000 attorneys, paralegals, support and administrative staff, and volunteers coordinated by our Pro Bono program, together handle approximately 300,000 cases each year in city, state, and federal courts through a network of borough, neighborhood, and courthouse-based offices in 26 locations in New York City. We provide comprehensive legal services to fulfill our mission that no New Yorker should be denied access to justice because of poverty.

Legal Aid's commitment goes back to our founding in 1876 when we sought to defend the individual rights of German immigrants who could not afford to hire a lawyer. Though Legal Aid has broadened its practice, we have remained committed to our original mission: helping low-income immigrant communities in New York City. Our Civil Practice represents low-income individuals and families facing a range of civil legal issues, including those affecting immigration, housing and homelessness, health care, government benefits and disability benefits, family law and domestic violence, aging, HIV/AIDS, tax and consumer, education, and employment. Over the last fiscal year, the Civil Practice worked on approximately 52,500 individual cases and legal matters, benefitting almost 135,000 low-income children and adults.

At the same time, the Society's law reform representation benefits millions of low-income families and individuals in New York City, and the landmark rulings in many of these cases have a statewide and national impact.

Much of our Immigration Law Unit's recent practice has been focused on fighting against federal policy changes that hurt immigrants both on behalf of individual clients and systemically. On the immigrant defense side, this work has taken various forms, including but not limited to filing emergency habeas petitions in federal district court to free our clients from ICE detention and allow them to return home to their families and jobs; filing a federal court class action against the US Department of Homeland Security (DHS) for its wrongful denials of Special Immigrant Juvenile Status to young people aged 18 to 21; filing amicus briefs in several matters; and advocating for separated children and families, including obtaining a Temporary Restraining Order (TRO) preventing the government from moving our minor clients out of Office of Refugee Resettlement (ORR) custody without 48 hours' notice and allowing legal consultation with the child/family to enable informed decisions about their legal rights and potential claims. Following the case's transfer to be litigated in the context of a class action brought by the ACLU, we represented and advocated on behalf of approximately 100 New York children in federal district court in San Diego, until each child's reunification status was satisfactory.

Most recently, our Immigration Law (ILU), Health Law (HLU), and Law Reform Units (LRU) have joined together to fight public charge and thereby preserve the progress we have made over the past 20 years at the state and local levels to expand and maintain access to crucial government benefits that are needed to maintain health and support immigrant families as they seek a foothold in the New York economy.

#### **A. The Legal Aid Society's Response to Public Charge**

The Legal Aid Society has been advocating to prevent changes being made to the public charge ground of inadmissibility since a draft of the Trump administration's executive order on public charge was leaked to the press in January 2017. Since that time we have created community- and advocate-facing tools to explain what public charge is and who is likely affected; together with Make the Road NY and the Empire Justice Center devised a screening tool to determine who is impacted; opened our Immigration Helpline to public charge inquiries from clients and advocates around the City; participated in administrative advocacy encouraging the preparedness of the City and State, as well as legislative advocacy at the federal level through our participation in the national Protecting Immigrant Families Campaign; and all along offered trainings to attorneys and other advocates from around the State.

In addition to wanting the City and State to be prepared, we have sought to prevent the new public charge Rule from ever being issued. In April 2018, we attended a meeting with the Shriver Center encouraging the U.S. Office of Management and Budget's Information and Regulatory Affairs office to consider the impending Rule economically significant and pointing out the harms that the rule would cause low-income New Yorkers. On December 10, 2018 we submitted a detailed public comment on the version of the rule published on October 10, 2018. Most recently, on August 27, 2019, we filed a federal lawsuit on behalf of Make the Road NY, African Services Committee, Asian American Federation, Catholic Charities Community

**Justice in Every Borough.**



Services, and Catholic Legal Immigration Network (CLINIC), together with co-counsel from the Center for Constitutional Rights and Paul, Weiss, Rifkind, Wharton & Garrison LLP. The case, *Make the Road NY, et al. v. Cuccinelli*, 19-civ-7993 (S.D.N.Y.), seeks to have the Rule enjoined, set aside, and declared contrary to law and unconstitutional.

### **B. The Legal Aid Society's History of Expanding and Protecting Immigrant Access to Benefits**

Fighting the public charge Rule is essential to not only protecting our clients and preserving their immigration options, but also to maintain the progress we have made in securing access for immigrants to basic subsistence benefits, including:

- Using litigation to preserve access to Medicaid for non-citizens in the wake of welfare reform through the *Aliessa* class action;
- Advising and advocating with the State on the roll-out of the Affordable Care Act, with particular attention to the impact on non-citizens;
- Monitoring the State and City's compliance with the landmark consent decree on immigrant access to benefits obtained in the *MKB v. Eggleston* class action;
- Securing continued access to health care for pregnant women who are undocumented, through the *Lewis* litigation and related advocacy.

We cannot afford to let the Trump administration punish our clients and erode this hard-won progress.

## **II. Comments on the Five Pieces of Legislation Under Consideration**

The Legal Aid Society applauds the sponsors of the legislation under consideration today for seeking creative ways for the City to protect New Yorkers from the harshest impacts of public charge.

- *T2019-4981*: We support the Resolution of Council Member Levin and Public Advocate Williams to call on the United States Congress to pass and the President to sign legislation that would prohibit the enactment of the Rule.

We support this resolution because we think the public charge regulations that DHS has just issued are inconsistent with the definition of public charge in the statute that Congress has enacted, and consistent application of that statute for over 100 years. Congress has improved that interpretation by re-enacting the statute without any relevant change, and has explicitly rejected the definition of public charge reflected in the Rule. We certainly encourage the City to call on Congress now to stop the Rule.

- *T2019-4982*: We have serious concerns about Council Member Cabrera's bill that would require DSS/HRA to create a public charge disenrollment unit.

**Justice in Every Borough.**

Legal Aid opposes the disenrollment of New Yorkers from public benefits for which they are eligible. The creation of such an unit would stoke fears among immigrant New Yorkers and further exacerbate the chilling effect among communities that are not actually subject to the new public charge rule. Agency clients who are concerned about enrolling or considering disenrolling should be directed to the ActionNYC hotline for referral to an immigration expert who can explore options with the clients. We believe agency workers should not issue advisory opinions about how the Rule will affect clients

- T2019-4983: We strongly support Council Member Menchaca's bill that would require MOIA to conduct training for certain employees of the City of New York on the Rule that includes information on how to connect individuals to immigration legal services.

We support Committee Chair Menchaca's bill that would mandate training on the Rule. It is essential that front line workers from the affected agencies have the correct information regarding the rule and impact on non-citizen agency clients. We do recommend that the training also include however guidance for agency workers so that they do not inadvertently chill clients from accessing benefits by asking unnecessary questions about immigration status, Social Security Numbers and the like. Rather, we appreciate the approach taken to date by DSS, which has been to steer clients with questions to the ActionNYC hotline rather than expect workers to issue advisory opinions about how the Rule will affect clients.

- T2019-4984: We strongly support Council Member Moya's bill that would require HRA to inform individuals who disenroll from SNAP or allow their benefits to lapse about local emergency food programs.

We appreciate that this bill seeks to protect both individuals whose cases are already closed, as far back as January 1, 2017, and individuals who are due for recertification. The former would reach individuals who may have closed their cases as soon as they heard about proposed immigration law changes following the election of the current President, and the latter would reach individuals who may be planning to dis-enroll in the near future or before October 15, 2019.

While we appreciate the spirit of the bill, we do want to sound a note of caution about the way in which the inclusion of information about local emergency food programs may, in some cases, raise additional concerns about public charge. As such, we would also recommend that any information distributed by mail or email further include information about how emergency food aid from pantries is not part of the public charge Rule, as well as information about how to connect with immigration legal services. In this way, individuals will be given access not only to worst-case-scenario alternatives, but also to additional information that that they can use to better inform their decision on SNAP enrollment.

- T2019-4985: We strongly support Council Member Rivera's bill that would require the Department of Education to distribute educational materials created by MOIA on the Rule to students and parents.

We support this bill because the materials would include instructions on how to access immigration legal services to address issues related to the Rule. Through our Immigration Hotline, we have first-hand experience addressing public charge-related concerns and providing callers with enough information to make a truly informed decision about their plans to adjust immigration status or enroll/disenroll from public benefits and we know there is a great demand for this information.

We also believe that it is essential that all educational materials distributed by the City be available in the mandated languages, so that non-English speaking students and parents have access to the distributed information.

### **B. Additional Concerns and Recommendations**

The City should fund legal service providers who specialize in public charge issues, and will be providing technical assistance to other providers and consultations to affected individuals. Currently one private foundation is funding three such providers, but we believe the City should support these services for immigrant New Yorkers, rather than relying on private philanthropy. Depending on whether any of the litigations across the country, including ours, are successful in obtaining an injunction against the Rule, it is possible that considerably greater resources may be needed to be allocated for such services.

### **C. Conclusion**

The Legal Aid Society thanks the Committee for calling this hearing and giving us the opportunity to testify. We welcome any questions you may have and look forward to working with you in the future.

Respectfully,

The Legal Aid Society



**ADVANCING OUR  
COMMUNITY**

**Chinese-American Planning Council, Inc.  
Testimony at the New York City Council  
Immigration Committee Hearing on Public Charge  
Honorable Carlos Menchaca, Chair  
September 3rd, 2019**

Thank you Chair Menchaca and the Members of the City Council for the opportunity to testify today. The mission of the Chinese-American Planning Council, Inc. (CPC) is to promote social and economic empowerment of Chinese American, immigrant, and low-income communities. CPC was founded in 1965 as a grassroots, community-based organization in response to the end of the Chinese Exclusion years and the passing of the Immigration Reform Act of 1965. Our services have expanded since our founding to include three key program areas: education, family support, and community and economic empowerment.

CPC is the largest Asian American social service organization in the U.S., providing vital resources to more than 60,000 people per year through more than 50 programs at over 30 sites across Manhattan, Brooklyn, and Queens. CPC employs over 700 staff whose comprehensive services are linguistically accessible, culturally sensitive, and highly effective in reaching low-income and immigrant individuals and families. With the firm belief that social service can incite social change, CPC strives to empower our constituents as agents of social justice, with the overarching goal of advancing and transforming communities. To that end, we are grateful to testify about issues that impact the individuals and families we serve, and we are grateful to the Council for their leadership on these issues.

The Federal Administration has finalized a public charge rule that will force families to make an impossibly narrow choice between health, stability, and security for themselves and their loved ones or legal status in this country. This is one of the widest-reaching attacks in a series of anti-immigrant laws and policies to come out of the Federal Administration. It enshrines family separation by forcing families to choose between their immigration status and meeting their most basic needs.

The benefits included in the proposed rule are ones that keep families from falling into crisis -- they prevent health emergencies, prevent homelessness, and provide the nutrition needed for healthy, productive lives. Because of this, families may find that once they finally achieve legal permanent residency, they face nutritional, health, housing, or economic ruin because they were stripped of the same benefits that supported generations of immigrant families before them.

Public charge tests have not always been part of US immigration history. The origin of "public charge" was a precursor to the Chinese Exclusion Act, a hateful and destructive policy whose impacts on generations of Chinese-Americans can still be felt today. This proposal is a reflection some of the most shameful and destructive immigration policies in our nation's history and CPC stands firmly in opposition.

By establishing minimum income thresholds that are higher than the median American household, the Federal Administration is demanding more from low-income, immigrant communities while entitling them to less. Immigrants who have spent years building a life here are entitled to the benefits they have contributed tax dollars toward and should have the same opportunity to support their families' security and wellbeing. On average, even undocumented immigrant New Yorkers pay over \$11 billion in taxes each year.

The consequences for New York City are particularly devastating. 3.1 million NYC residents, or 36%, are immigrants. 1,485,000 children in New York State are U.S. citizens with at least one immigrant parent. 2.1 million New Yorkers live in a household with at least one non-citizen immigrant, and where someone in that family has received one of the public benefits named in the public charge rule. The rule and its effect on people who disenroll from Medicaid and SNAP (just two of the benefits) would cause New York State to lose as much as \$2.6 billion in federal funding, feel an up to \$5 billion loss in economic ripple effect. Families aren't the only New Yorkers affected. The \$5 billion loss includes loss to businesses like grocery stores, doctors' offices, hospitals, and could lead to the loss. Affected immigrants with manageable chronic conditions may be forced to abandon their health coverage,



such as Medicaid or Medicare, in order to protect their families, leading to reliance on emergency rooms and other public health consequences like spread of illness and disease.

As an organization that serves the exact people this rule is targeting, CPC has already seen the effects of this rule since it was proposed. We have had seniors coming into CPC community centers since last year when the rumors started, asking to withdraw from their SNAP benefits because they were worried it would hurt their status adjustment application or their children's. SNAP is the only way they can afford to eat. We've had community members decline to enroll their child in high quality early childhood education centers, even though they got subsidies, and community members who have removed themselves off waiting lists for public housing that they've been on for years. In open enrollment month, enrollment in health insurance was lower than usual, and we've had community members ask about whether they should stop taking medication so it doesn't impact their green card application.

When the Notice of Proposed Rule Making was made at the end of last September, I went to our community centers to talk to staff that were working with community members that would be impacted. In fact, many of the staff themselves will be impacted. When I told the teams about the NPRM, multiple people began to cry. One social worker asked me, "am I supposed to tell my NYCHA clients to move out and live on the streets so their green card application doesn't get rejected?"

We urge New York City to put all of its power and resources into fighting this, and are grateful to the Council for acting quickly with these resolutions. CPC stands in support in all of them. In addition, we encourage the Council to ensure the following:

**Language Access and Translations:** Language barriers exacerbate both the public charge ruling and the chilling effect. The rule is complex, and for Limited English Proficient immigrants, nearly impossible to understand. While it is important that the people that will be affected by the rule are able to access information and legal support in their home language, it is also important that people that will not be impacted by the rule, but fear that they may be, are able to access information in their home language. A climate of fear has contributed to misinformation and rumors in the local media. We've seen articles with misinformation and ads telling people to de-enroll from benefits, and have been working to counteract them.

**Community Based Organization Partnership and Support:** We are lucky to live in a sanctuary city that protects immigrant New Yorkers. However, many immigrants New Yorkers do not distinguish between a hostile, anti-immigrant Federal government, and a safe, protective Municipal government. A government seal is seen as a government seal. We've had reports of community members coming into our centers in full on panic attacks because they had a letter with a government seal that they thought might be from ICE and they couldn't read it, only to find out it was a simple school notice. For this reason, it is critical that the City partner with community based organizations that have trust established with the New Yorkers that will be most impacted so that we can reassure community members that it is safe to utilize City resources like Action NYC. We encourage the City to allocate funding to CBOs to conduct outreach, education, and Know Your Rights trainings. We also recommend investing in a community based legal services support wraparound program to embed legal support within CBOs.

CPC appreciates the opportunity to testify on these issues that so greatly impact the communities we serve, and look forward to working with you on them.

If you have any questions, please contact Carlyn Cowen at [ccowen@cpc-nyc.org](mailto:ccowen@cpc-nyc.org)

**WRITTEN TESTIMONY OF  
THE IMMIGRATION & NATIONALITY LAW COMMITTEE AND THE SOCIAL  
WELFARE LAW COMMITTEE**

**NEW YORK CITY COUNCIL COMMITTEE ON IMMIGRATION,  
COMMITTEE ON GENERAL WELFARE AND COMMITTEE ON HEALTH  
OVERSIGHT HEARING: THE IMPACT OF THE  
NEW “PUBLIC CHARGE” RULE ON NYC**

**September 3, 2019**

Good afternoon, my name is Sarika Saxena and I am a member of the Immigration and Nationality Law Committee of the New York City Bar Association.<sup>1</sup> I would like to thank Council Member Menchaca, Chair of the Immigration Committee for holding this important hearing. As has been described this afternoon, a new rule limiting immigration into the United States based on income-level and need for public benefits has been published and will go into effect this October. Through this new rule, the Trump Administration is signaling that it no longer welcomes the “tired,” “poor,” “masses yearning to breathe free,” as we have done for centuries. The Trump Administration, as explicitly stated by the Acting-Director of the U.S. Citizenship and Immigration Services (“USCIS”) Ken Cuccinelli, has changed our immigration laws to favor those who can “stand on their own two-feet.”<sup>2</sup>

The City Bar is opposed to the new rule, which broadens the public charge ground of inadmissibility published by the U.S. Department of Homeland Security (“DHS”) on August 14, 2019 in the Federal Register.<sup>3</sup> This rule will disproportionately impact low-income communities, primarily communities of color. The changes will force immigrant families to make impossible choices between life-saving benefits and future immigration options, including the ability to

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<sup>1</sup> In addition to the Immigration and Nationality Law Committee, to date the following City Bar committees have signed on to an earlier City Bar statement which opposed broadening the public charge ground of inadmissibility: Social Welfare, Bioethical Issues; Civil Rights; Health Law; Labor and Employment Law; Legal Problems of the Aging; Lesbian, Gay Bisexual and Transgender Rights; Mental Health Law; Pro Bono and Legal Services; and Sex and Law. See Statement Opposing Proposed Changes to Broaden “Public Charge” Rule, Oct. 24, 2018, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/statement-opposing-proposed-changes-to-broaden-public-charge-rule>

<sup>2</sup> Sasha Ingber & Rachel Martin, *Immigration Chief: ‘Give Me Your Tired, Your Poor Who Can Stand On Their Own 2 Feet,’* NPR (Aug. 13, 2019 10:38 AM), available at <https://www.npr.org/2019/08/13/750726795/immigration-chief-give-me-your-tired-your-poor-who-can-stand-on-their-own-2-feet> (all websites last visited Aug. 28, 2019).

<sup>3</sup> See Dept. of Homeland Security, Inadmissibility on Public Charge Grounds, 84 Fed. Reg. 41,292 (Aug. 14, 2019) (codified at 8 C.F.R. 103; 8 C.F.R. 212; 8 C.F.R. 213; 8 C.F.R. 214; 8 C.F.R. 245; 8 C.F.R. 248), available at: <https://www.federalregister.gov/documents/2019/08/14/2019-17142/inadmissibility-on-public-charge-grounds>.

remain in the U.S. permanently with their families.<sup>4</sup> It will also change the face of immigrants who are allowed to enter our country and obtain permanent residence here. In fact, the new rule could even impact long-time lawful permanent residents who have already been granted residency and are entering the country after a lengthy absence. There are some low-income immigrants who will not be affected by this rule, namely asylees, refugees, and trafficking and crime victims; this rule, however, introduces a significant, insurmountable hurdle for thousands of immigrant and mixed-status families across the U.S. who are already struggling. The final rule will go into effect on October 15, 2019 unless it is halted through litigation. As you may know, a number of organizations and governmental entities, including the New York State Attorney General's Office, have filed lawsuits to challenge the rule from being implemented.<sup>5</sup>

“Public charge” has long been a feature of U.S. immigration law as a ground of inadmissibility that applies to non-citizen visa holders entering the U.S. and applicants for adjustment to lawful permanent resident (“green card”) status. It applies primarily to those who are seeking admission or adjustment based on their relationship to a family member already in the U.S. In the past, public charge has been defined narrowly to mean only those applicants for admission or adjustment who were assessed to be “primarily dependent” on government cash assistance or long-term institutional care for subsistence.<sup>6</sup> “In-kind” benefits such as Medicaid and Supplemental Nutrition Assistance Program (“SNAP”, or food stamps) have not counted towards the public charge assessment and having a financially sound sponsor has been enough to overcome an applicant’s low income. Under the old definition, relatively few non-citizens have been denied admission or prevented from adjusting to green card status on public charge grounds.<sup>7</sup>

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<sup>4</sup> For further information about the changes to the rule, see CLINIC Legal, *The Public Charge Final Rule: FAQs for Immigration Practitioners*, available at: <https://cliniclegal.org/resources/public-charge-final-rule-faqs-immigration-practitioners>.

<sup>5</sup> *Attorney General James Announces Lawsuit Against Trump Administration Over Public Charge Rule*, NYS ATTORNEY GENERAL (Aug. 20, 2019), available at: <https://ag.ny.gov/press-release/attorney-general-james-announces-lawsuit-against-trump-administration-over-public>.

<sup>6</sup> See 64 Fed. Reg. 28,689, available at: [bit.ly/2KLNdfW](http://bit.ly/2KLNdfW); 8 USC § 1182(a)(4) (providing for public charge ground of inadmissibility); see also USCIS, *Public Charge*, available at: <https://www.uscis.gov/greencard/public-charge>.

<sup>7</sup> While DHS does not publish annual statistics on reasons that applications for LPR status are denied when applied for within the United States, the U.S. Department of State (DOS) does publish these statistics for those applying for LPR status from abroad. For the fiscal year that ended in 2016, DOS initially found 1,076 applicants were inadmissible, but 912 of these applicants were able to overcome the finding. See Department of State, *Immigrant and Nonimmigrant Visa Ineligibilities (by Grounds for Refusal Under the Immigration and Nationality Act)*, Fiscal Year 2016, available at:

<https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2016AnnualReport/FY16AnnualReport-TableXX.pdf>. By way of contrast, in the fiscal year ending in 2017, DOS initially found 3,237 applicants were inadmissible on public charge grounds and 2,016 were able to overcome the denial, a more than 700% increase in denials since the implementation of the public charge rule at the U.S. Consulates abroad. See *Immigrant and Nonimmigrant Visa Ineligibilities (by Grounds for Refusal Under the Immigration and Nationality Act)*, Fiscal Year 2017, available at:

<https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2017AnnualReport/FY17AnnualReport-TableXX.pdf>.

The new rule shifts the focus of the public charge determination away from the ability of a sponsor to provide financially for the applicant<sup>8</sup> to focus almost exclusively on the applicant for admission or adjustment. For the first time, use of in-kind health and nutrition benefits will count against the applicant. The new rule also raises the bar for those who will be excluded by analyzing whether the applicant is “more likely than not” to use public benefits, as opposed to the old rule which only penalized those who might become primarily dependent. DHS’s examination will focus on factors such as: health, education, skills, credit score, English-language proficiency, family size, having physical or mental health conditions that could affect ability to work, or simply being too young or too old to work. Having a financially-eligible sponsor willing to complete a binding affidavit of support is merely one of many factors, instead of being practically determinative, as it properly is today. The rule also adds new public benefits programs that will now be considered a negative factor: Medicaid; food stamps; Section 8 Housing Choice Voucher Program; Section 8 Project-Based Rental Assistance; and public housing. Individuals in receipt of or likely to receive any of these benefits after October 15, 2019 for more than 12 months in the aggregate within any 36-month period will be deemed a public charge.

The new rule states that an applicant’s medical condition that requires extensive medical treatment or otherwise interferes with the person’s ability to work or attend school will be taken into account. In this way, the rule gives preference to applicants who are able-bodied. Applicants with medical conditions must also show that they have access to private health insurance. Not having the means to pay for private unsubsidized health insurance and relying on state-funded insurance will constitute a heavily weighted negative factor and likely result in a finding of public charge. This rule forces sick New Yorkers to choose between their well-being and staying with their families. The new rule makes it very difficult for low-income, low-skilled, under-educated, elderly, or disabled applicants to overcome a public charge finding and thus become permanent residents and/or come out of the shadows to regularize their immigration status.

One of the only heavily-weighted positive factors a non-citizen applying for admission or adjustment can demonstrate, is having an income or resources ample enough to not only cover his or her own expenses but also those of his or her entire family, regardless of their immigration status, at a level over 250 percent of the federal poverty guidelines; that is nearly \$63,000 per year for a family of four. For those immigrants entering from abroad, this rule would measure their income based on their salary and income in their home country, a determination which will be skewed in favor of immigrants from wealthier, predominantly European nations. Even meeting this standard is not determinative under the final rule, however. Regardless of the income of the applicant at the time of admission or adjustment, his or her past receipt of SNAP, Medicaid, federal housing assistance and public housing would still be negative factors that may result in denial of the application for admission or lawful permanent residence.

The new public charge rule has brought public charge assessments back to a much darker past, when it was first asserted as a tool of racial and ethnic discrimination. In the 1800s, not becoming a public charge was a condition imposed on African-Americans seeking freedom from

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<sup>8</sup> Family-based applications for LPR status require the applicant to file a binding affidavit of support by the family member sponsor and, if necessary, by a joint sponsor. *See* USCIS, Instructions for Affidavit of Support available at: <https://www.uscis.gov/sites/default/files/files/form/i-864instr.pdf>



slavery.<sup>9</sup> Public charge was later used as a justification to deny admission to low-income Irish immigrants<sup>10</sup> and to Jews fleeing Nazi persecution.<sup>11</sup> Under DHS's new rule, low-income non-citizens of color will again face a barrier to entry and green card status.

The final rule is due to go into effect on October 15, 2019. The rule is not retroactive, meaning that it will not penalize affected noncitizens for accessing benefits before that date. However, those who have public benefits and who will be applying for permanent residency in the future may be advised to dis-enroll, after consulting with a trusted attorney. Medical experts warn that these changes to the public charge rule will result in decreases in Medicaid enrollment, increased emergency room medical care, and increased patient costs incurred by both patients and hospitals.<sup>12</sup> Even though emergency medical care will not be counted against applicants, there will be increased paranoia and rumors not to use such assistance. Thus, it is important now more than ever to invest in programs like ActionNYC and other citywide outreach efforts to battle the misinformation that will spread throughout our city, especially when it comes to programs that are exempt, like emergency care. We must make sure that families across our neighborhoods have access to accurate information from reliable sources. Given the complexity of the new rule, it is also crucial that your constituents who cannot otherwise afford attorneys have access to high-quality, free legal advice. It is imperative that the City Council and affected city agencies strengthen their partnerships with community-based organizations as well. Lastly, beyond outreach and awareness, the City Council must consider the very real gap in medical access that will be a result of this new rule in low-income, communities of color.

This expansion of the public charge rule will have a devastating impact on children, families, and communities. If concerns about any receipt of public benefits in the household, even for U.S. citizen children to whom the rule changes do not apply, cause households to forego access to nutrition supports under SNAP, the entire family will suffer from increased food insecurity. Similarly, loss of health care will not only make the entire household more susceptible to increased illness but will also undermine overall public health and safety for all individuals in the United States, regardless of immigration status. Children, people with disabilities and the elderly will be particularly affected. This rule may further erode non-citizens' trust in public institutions, even those that are not implicated by the rule change. This is a cause for concern for all city agencies and their community partners. The City Bar supports proposed

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<sup>9</sup> Melissa Boteach, Shawn Fremstad, *et. al.*, *Trump's Immigration Plan Imposes Radical New Income and Health Tests*, CENTER FOR AMERICAN PROGRESS (Jul. 19, 2018), available at: <https://www.americanprogress.org/issues/poverty/reports/2018/07/19/453174/trumps-immigration-plan-imposes-radical-new-income-health-tests/>.

<sup>10</sup> Hidetaka Hirota, *EXPPELLING THE POOR: ATLANTIC SEABOARD STATES AND THE NINETEENTH-CENTURY ORIGINS OF AMERICAN IMMIGRATION POLICY* (Oxford University Press) (2017).

<sup>11</sup> Barbara L. Bailin, *The Influence of Anti-Semitism on United States Immigration Policy with Respect to German Jews During 1933-1939* (CUNY Academic Works) (2011), available at: [http://academicworks.cuny.edu/cc\\_etds\\_theses/262](http://academicworks.cuny.edu/cc_etds_theses/262).

<sup>12</sup> "Proposed Changes to 'Public Charge' Policies for Immigrants: Implications for Health Coverage," Henry J. Kaiser Family Foundation (September 24, 2018), available at: <https://www.kff.org/disparities-policy/fact-sheet/proposed-changes-to-public-charge-policies-for-immigrants-implications-for-health-coverage/>. *See also*, "Estimated Impacts of the Proposed Public Charge Rule on Immigrants and Medicaid," Henry J. Kaiser Family Foundation (October 11, 2018), available at: <https://www.kff.org/disparities-policy/issue-brief/estimated-impacts-of-the-proposed-public-charge-rule-on-immigrants-and-medicaid/>.

Council Resolution T2019-4985, which will require the Department of Education to distribute educational materials to students and parents. The Council should also consider a public education campaign to get crucial information to students and parents.

Ultimately, one of the worst impacts will be the way in which this rule will tear families apart. Many of the persons who will be impacted by this rule are those seeking admission or adjustment to lawful permanent resident status through immediate family members: U.S. citizen spouses, parents, and children. One recent report estimates that this rule could result in the separation of at least 200,000 married couples annually as applications for lawful permanent residence by immediate family members are denied.<sup>13</sup>

New York City has over 3.3 million foreign-born residents<sup>14</sup> and the new rule could negatively affect tens of thousands of New Yorkers.<sup>15</sup> The changes to the public charge rule not only prioritize wealthy, able-bodied, English-speaking immigrants from wealthy nations above other immigrants, including those with sound financial sponsors, but will also force immigrant families to choose between receiving government assistance and improved immigration status. No family members should have to choose between life-sustaining benefits and possible family separation. The diversity of our immigrant community members is a strength of our City and an abiding strength of our nation. For these reasons, the City Bar supports the proposed Council Resolution T2019-4981, which urges the United States Congress to pass, and the President to sign, legislation to prohibit the enactment of the federal rule entitled “Inadmissibility on Public Charge Grounds.” The new rule changes how noncitizen and citizen New Yorkers will utilize public benefits, including vital supports for nutrition and healthcare. Thus, the City Bar also supports proposed Council Resolutions T2019-4982, T2019-4983, and T2019-4984, which respectively, require resources to be made available to city employees to understand the new rule and guide individuals impacted by the changes reflected in the new public charge inadmissibility rule.

Immigration and Nationality Law Committee  
Victoria F. Neilson, Chair

Katharine Deabler, Chair  
Social Welfare Law Committee

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<sup>13</sup> Boundless, *Looming Immigration Directive Could Separate Nearly 200,000 Married Couples Each Year*, Sep. 24, 2018, <https://www.boundless.com/blog/looming-immigration-directive-separate-nearly-200000-married-couples/>; see also, Jeanne Batalova, et. al, Migration Policy Institute, *Through the Back Door: Remaking the Immigration System via the Expected “Public-Charge” Rule*, Aug. 2018, <https://www.migrationpolicy.org/news/through-back-door-remaking-immigration-system-expected-public-charge-rule>.

<sup>14</sup> New York City Comptroller, “Our Immigrant Population Helps Power NYC Economy” (Jan. 11, 2017), available at: <https://comptroller.nyc.gov/reports/our-immigrant-population-helps-power-nyc-economy/>.

<sup>15</sup> Corey Johnson and Carlos Menchaca, *Fight this immigration rule with all we've got: The 'public charge' regulation would do tremendous damage to New York*, THE NEW YORK DAILY NEWS, Oct. 11, 2018, <http://www.nydailynews.com/opinion/ny-oped-fight-this-immigration-rule-with-all-weve-got-20181011-story.html> (estimating that the public charge rule could lead to the denial of immigration benefits to 75,000 New Yorkers.)



FOR THE RECORD

Testimony of Yenny Hernandez  
Committee on Immigration  
September 3<sup>rd</sup>, 2019

Good Afternoon.

My name is Yenny Hernandez. I am a 32BJ member and I work as a commercial cleaner in Midtown. Thank you Chair Carlos Menchaca and the Committee on Immigration for the opportunity to testify today on behalf of 32BJ's 90,000 plus New York City members.

Like many 32BJ members, I am an immigrant. I came to this country from the Dominican Republic for more opportunity. When my son was six months old, I lost my job, and my application for public assistance was denied. I had to send my U.S. born son to the Dominican Republic because I was unable to support him here without help. I didn't see him for 5 years until I got my green card and was finally able to bring him back.

I know what it is like to struggle and to not have access to public assistance when I needed it most. Immigrant families should not have to go without food on the table, a roof over their head, or be forced to be separated simply because they are applying for permanent status.

32BJ is supporting our allies on the federal level who are challenging this racist and anti-immigrant public charge rule change in court. We also support the bills introduced in the City Council which will assist immigrants affected by this rule change.

I believe people should have access to as much information as possible in order to make the best decisions for their families, and they should have access to food programs if they lose their benefits.

Thank you again for the opportunity to testify today, and I hope the City Council passes these bills.

**Testimony:** Susanna Saul, Managing Attorney (written only; will not be testifying in person)  
**Hearing:** Efforts to Mitigate Damage of New Federal Public Charge Regulations  
**Cohosted:** Committee on Immigration  
**Date:** Tuesday, September 3, 2019

Her Justice is a nonprofit organization that takes a pro bono first approach to provide free legal services to women living in poverty in New York City. We train and mentor volunteer lawyers from the City's premiere law firms who enable our clients to access the legal system and obtain the justice they so deserve. We practice in the areas of family, matrimonial and immigration law. Her Justice is in support of all of the bills and the resolution that are the subject of today's hearing.

Our clients come from all five boroughs of New York City. Approximately 80% of our clients are domestic violence survivors and three-quarters of our clients are mothers. 70% of our clients were born abroad. The new public charge regulations do not impact our clients who are able to pursue relief under the Violence Against Women Act (VAWA) and the Trafficking Victims Protection Reauthorization Act (TVPRA). These individuals are completely exempt from the new rules by statutory authority.

Her Justice is not testifying on behalf of those survivors who have sought and received services from our office. Those individuals are receiving legal services related to this issue and have been informed of their rights with respect to the new public charge regulations. Her Justice is deeply concerned about the countless individuals who are currently living in abusive and exploitative situations who have not yet sought legal assistance or information and who are likely hearing that if they or their children access public benefits, including lifesaving medical assistance, they will not be able to get their lawful permanent residence and may be deported. These individuals are already unlikely to seek help because of fear of and isolation by their abusers. They are already likely being told that if they leave the situation, or tell anyone about the abuse, they will be deported. They are likely under a paralyzing fear that if they leave, their children will be taken from them and they will be returned to their home countries. They are probably thinking that if they leave their abusers, they will have no way to feed, clothe or house themselves or their children because they don't have the right to work. In short, they already have a million strikes against them when it comes to escaping an abusive situation. The new public charge regulations add a new barrier to the already insurmountable obstacles to escaping abuse because now survivors are also probably hearing that they cannot rely on any public benefits programs. It does not matter if they are hearing misinformation. It does not matter that there may be legal relief available to them under VAWA and the TVPRA that would



shield them from public charge concerns. Their perception and fear is what will paralyze them, putting them and their children at risk of serious harm.

It is a public health and public safety issue for these survivors to be in safe, stable situations. The Trump Administration enacted these regulations to stop low-income immigrants from accessing vital benefits, creating chaos, confusion and fear among low-income immigrants and their families. As a city we must counter this fear and confusion and do everything possible to get survivors and the communities in which they live accessible, accurate and language-appropriate information and resources so that they know that they do indeed have the right to seek help from our public safety net, and that seeking it will not prejudice them in any way. We would like to note that if the City undertakes massive information campaigns about public charge, which it should do, we will also likely see a big increase in people coming forward to seek immigration legal services. We are already experiencing a shortage of affordable, quality immigration legal services in this City and we would urge the Council to also make more funding available for immigration legal services as part of the effort to counter the new public charge regulations.

Thank you



**Asian American Federation**

**Testimony for New York City Council Committee on Immigration  
Hearings on Legislation to Federal Regulations Relating to  
Inadmissibility on Public Charge Grounds**

*September 3, 2019*

The Asian American Federation is submitting this testimony to the Committee on Immigration, New York City Council, for the Hearings on Legislation to Federal Regulations Relating to Inadmissibility on Public Charge Grounds

The Federation's mission is to raise the influence and well-being of the pan-Asian American community through research, policy advocacy, public awareness, and organizational development. We represent a network of over 60 member organizations and partner agencies in New York City supporting our community with their work in health & human services, education, economic development, civic participation, and social justice. Our policy and demographic research places our organization in a unique position to comment on the social and economic impact of the proposed rule on public charge.

Asian New Yorkers are the fastest growing group in New York State, now making up 15 percent of the population. Any change in immigration policy has a huge impact on the Asian community, where 7 in 10 Asians in the state are immigrants and about 9 in 10 Asian children have at least one immigrant parent. The new rule on inadmissibility on public charge grounds will restrict immigration to those who are well-off, and restrict access to benefits for those residents already living here. By targeting benefits for those hard-working immigrants who need a hand making ends meet, the rule already impacts our community by making it harder for the one in four Asian New Yorkers living in poverty to find their way to their American dream. We have already seen the impact on the Asian community during the public comment period for the new rule. According to the New York City Department of Social Services and the Mayor's Office of Immigrant Affairs, the threat of the expansion of the public charge rule has already had a chilling effect on the immigrant community: Asian non-citizens are disenrolling from SNAP benefits at a rate eight times greater than Asian citizen recipients.

The rule will impact Asian immigrants' ability to access needed services. Nationally, the Migration Policy Institute (MPI) estimates that 4 in 10 Asian immigrants that recently applied for legal

Manhattan:  
120 Wall Street, 9th Floor  
New York, NY 10005

Flushing:  
37-17 Union Street, 2<sup>nd</sup> Floor  
Flushing, NY 11354

permanent residence (LPR) status would have two or more negative factors under the new rules and thus in danger of being labeled a “public charge.” Broken out by country of origin, 57 percent of recent LPR recipients from China, 31 percent from India, 20 percent from the Philippines, 52 percent from Vietnam, 36 percent from Korea, 52 percent from Bangladesh, 47 percent from Pakistan would have difficulty meeting the standards for the public charge test.

The rule will also hurt those already residing in the US and wish to adjust their status. According to [estimates](#) by MPI, roughly 50% of Asian American/Pacific Islander non-citizen individuals and their families in New York State receive one or more of the four major public benefits listed under the Public Charge rule.<sup>1</sup>

The rule will also restrict efforts to reunify families, with children and elderly parents being penalized for merely being too young or too old to support themselves. Nine in ten Asian children in New York State have at least one immigrant parent. As immigrant parents decide to forgo needed food and medical benefits in order to keep their families together, we will see their children’s health impacted by the loss of food benefits and health insurance coverage. Asian children in New York are already less likely than children in general to have health insurance coverage, according to the most recent American Community Survey data.

In New York City, the Asian population is rapidly aging as both new immigrants reunify with their elderly parents and long-term immigrants who arrived after the immigration reforms of 1965 begin to age into retirement. U.S. Census Bureau data show that, from 2000 to 2017, the Asian senior population in the City more than doubled, increasing faster than all other major race and ethnic groups. There are now close to 165,000 Asians age 65 and older living in New York City. These seniors were also among the poorest in the city, with one in four Asian seniors living in poverty.

In November 15, 2018, we proposed at the New York City Council’s Oversight Hearing on Public Charge the following recommendations, many of which are addressed by the proposed legislation:

- The City needs to promote available information on Public Charge, in print and in-language, so that this material is accessible to immigrant communities across the city.
- There should be joint messaging from all city agencies involved or impacted by the proposed Public Charge rule. Consistent messaging is essential in making sure that immigrant New Yorkers are able to access the same information and assistance provided by the City.
- The City should work with our member agencies and other community-based organizations to make sure the message gets out about where immigrant New Yorkers can seek help from the city. This information should also be conducted in partnership with ethnic media in print, television, and radio.
- Emphasize how narrow the scope of those impacted will be – that the rule will impact those adjusting status in seeking legal permanent residency, and not those applying for citizenship, if they are a refugee, asylee, or victim of a serious crime.

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<sup>1</sup> <https://www.migrationpolicy.org/research/chilling-effects-expected-public-charge-rule-impact-legal-immigrant-families>

- Since youth (under 18 years old) and seniors are the most vulnerable populations targeted by this rule, the City should work diligently with both city agencies and organizations that serve these groups and those who support them (i.e. parents and caregivers).

We are also encouraged by the focus on addressing those directly impacted by the rule. Much emphasis has been placed on encouraging people who are eligible and will not be impacted by the rule to continue to enroll in benefits. Ensuring that HRA devotes resources and has a clear mechanism to addressing the needs of impacted families. In addition, ensuring that information about local emergency feeding programs is distributed where immigrants are seeking services, such as at HRA, is important so that impacted immigrants are not forced to make multiple visits over multiple days to cobble together all the information they need. Again, our member agencies and other community-based organizations represent key partners in ensuring correct information is available in central locations. We recommend that the City Council also consider additional resources for those local emergency feeding programs, as they are already oversubscribed, and look for more permanent solutions for those living in hunger.



**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 9/3/19

(PLEASE PRINT)

Name: Bitte Mostof

Address: \_\_\_\_\_

I represent: NYC Mayor's Office of Immigrant Affairs

Address: 253 Broadway

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: Sept. 3, 2019

(PLEASE PRINT)

Name: Chris Keelley

Address: \_\_\_\_\_

I represent: N.Y.C. Health + Hospitals

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 9/3/19

(PLEASE PRINT)

Name: Claudia Calhoun

Address: 131 W 33rd St - NYC 10001

I represent: New York Immigration Coalition (NYIC)

Address: 131 W 33rd St 11218

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

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I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 9/3/19

(PLEASE PRINT)

Name: Rebecca Novick

Address: 199 Water St. NY 10038

I represent: The Legal Aid Society

Address: 199 Water St. NY NY 10038

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

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I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Sonia Marquez

Address: \_\_\_\_\_

I represent: Brooklyn Defender Services

Address: 177 Livingston St. 7th floor

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

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I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 9/3/2019

(PLEASE PRINT)

Name: MOLLY COE

Address: \_\_\_\_\_

I represent: VOLUNTEERS OF LEGAL SERVICE

Address: 40 WORTH ST, STE 820, NY, NY 10013



Please complete this card and return to the Sergeant-at-Arms



**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 9/3/2019

(PLEASE PRINT)

Name: Rex Chen

Address: 40 Worth St #606, NY NY 10013

I represent: Legal Services NYC

Address: 40 Worth St #606, NY, NY 10013

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 9/3/19

(PLEASE PRINT)

Name: Yenny Hernandez

Address: \_\_\_\_\_

I represent: 32BJ SEIU

Address: 25 W 18th St, New York, NY 10011

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 9/3/19

(PLEASE PRINT)

Name: Sarika Sakena

Address: \_\_\_\_\_

I represent: NY City Bar Association

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Carlyn Cowen

Address: 150 Elizabeth Street

I represent: Chinese - American Planning Council

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Administrator Grace Bonilla

Address: \_\_\_\_\_

I represent: HRA

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: RALUCA ONICIOIU

Address: CATHOLIC CHARITIES

I represent: - u -

Address: 80 MAISEY LANE, 13<sup>th</sup> FL  
NY NY 10038

Please complete this card and return to the Sergeant-at-Arms