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Immigrant Rights Groups in Court to Halt Public Charge Rule

Judge To Make Final Decision to Grant Preliminary Injunction This Week

(October 7, 2019, New York) – Immigrant rights groups appeared today in the United States District Court for the Southern District of New York on *Make the Road New York v Cuccinelli* - litigation brought last month challenging the Trump administration’s unilateral and unconstitutional changes to “public charge.”

Plaintiffs today petitioned the court to grant a preliminary injunction before the proposed changes to “public charge” take effect on October 15, 2019. The parties agreed to submit proposed orders to Federal Judge George B. Daniels by tomorrow at noon ET, and stated that he would issue a decision on the preliminary injunction by the end of this week.

Attorneys from the Center for Constitutional Rights, The Legal Aid Society, and Paul, Weiss, Rifkind, Wharton & Garrison LLP litigated the case on behalf of Make the Road New York, African Services Committee, Asian American Federation, Catholic Charities Community Services, and Catholic Legal Immigration Network (CLINIC).

Today, plaintiffs argued that this dramatic change should be halted until the lawfulness of the proposed rule is determined. New York State Attorney General Letitia James has filed a separate

lawsuit over the rule, and attorneys from the AG's office also asked the court today to enjoin the rule.

Ghita Schwarz, a senior attorney at the Center for Constitutional Rights, said, “This rule discriminates based on race, disability, and income in order to drastically reduce the number of immigrants who win permanent status in this country. It flouts the will of Congress and can't be squared with the principles of our immigration statute.”

Susan Welber, Staff Attorney in the Law Reform Unit at The Legal Aid Society, said, “This unlawful rule upends family-based immigration, which has been the hallmark of our nation's immigration policy for decades. It goes against our nation's fundamental values and seeks to punish hard-working immigrants, sending them the message that if they are not wealthy they are not welcome. Today, we stood before the court to underscore the critical need to protect our plaintiffs and immigrant family clients from harm by stopping the Rule from taking effect on October 15.”

Javier H. Valdés, Co-Executive Director at Make the Road New York, said, “The Trump administration's deliberate attacks to punish immigrants and working class people of color are inhumane and unlawful. Our family-based immigration system should not be a wealth test that disproportionately favors the white and wealthy. This reckless public charge rule change would lead to irreversible damage to immigrant families who need survival services and programs if it is allowed to take effect on October 15th. The courts must act now to protect our legal immigration system and prevent this rule change.”

BACKGROUND

On August 14th, the Department of Homeland Security (DHS) released a final version of a new “public charge” regulation, and litigation teams from across the country quickly filed lawsuits challenging it. On August 27th, Make the Road New York, African Services Committee, Asian American Federation, Catholic Charities Community Services, and Catholic Legal Immigration Network (CLINIC), represented by The Legal Aid Society, the Center for Constitutional Rights, and Paul, Weiss, Rifkind, Wharton & Garrison LLP, filed a complaint seeking a permanent injunction to block the rule from taking effect on October 15th. Attorneys say the rule uses vague, arbitrary, and discriminatory criteria to determine when an individual is likely to become a “public charge,” and that even those who would not fall under the new definition are likely to forgo critical benefits such as housing assistance, food assistance, and healthcare, out of fear that accessing those benefits could threaten their immigration status.

The proposed rule would redefine the way the term “public charge” has been understood for more than a century, namely as a category of people who are institutionalized or otherwise completely dependent upon public assistance. In stark contrast, the rule proposed by the Trump administration—and opposed by the great majority of the 266,000 individuals, advocacy groups, and local governments who opposed it during the public comment period—would define as a public charge anyone the immigration service deems likely to receive, even temporarily, any amount, however minimal, of a wide range of cash and non-cash benefits, including Federal

Medicaid or housing assistance. Those deemed a public charge would be denied permanent immigration status.

To predict the likelihood that a person will receive public benefits, the government would consider as negative factors an income under 125 percent of the federal poverty guidelines, age under 18 or over 62, medical conditions, lack of private health insurance, below-average credit scores, and limited English proficiency.

The lawsuit claims that the rule violates the Immigration and Nationality Act, the Rehabilitation Act, the Administrative Procedure Act and the Constitution because it is motivated by animus towards immigrants of color and intended to disproportionately affect immigrants from countries with primarily non-white populations. Filings in the case point to statements by Trump administration officials involved in drafting the rule demonizing immigrants of color.

In addition to the direct effects upon those deemed a public charge—which attorneys say will tear families apart, lead to increased deportations, and throw the existing immigration system into disarray—the lawsuit further warns that even those who would not technically be covered by the rule will forgo benefits out of fear that accessing them would jeopardize their immigration status—a so-called “chilling effect.” To prevent the resulting upheaval, attorneys today asked the judge to issue a preliminary injunction enjoining the rule for the duration of the lawsuit, until the lawfulness constitutionality of the rule is determined.

For more information, [see the Center for Constitutional rights case page for *Make the Road New York v. Cuccinelli*](#).

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The Legal Aid Society exists for one simple yet powerful reason: to ensure that New Yorkers are not denied their right to equal justice because of poverty. For over 140 years, we have protected, defended, and advocated for those who have struggled in silence for far too long. Every day, in every borough, The Legal Aid Society changes the lives of our clients and helps improve our communities. <https://www.legalaidnyc.org/>

The Center for Constitutional Rights is dedicated to advancing and protecting the rights guaranteed by the United States Constitution and the Universal Declaration of Human Rights. Founded in 1966 by attorneys who represented civil rights movements in the South, CCR is a non-profit legal and educational organization committed to the creative use of law as a positive force for social change. Visit www.ccrjustice.org and follow [@theCCR](https://twitter.com/theCCR).

[Make the Road New York \(MRNY\)](#) builds the power of immigrant and working class communities to achieve dignity and justice through organizing, policy innovation, transformative education, and survival services. We have 23,000+ members and operate five community centers in Bushwick, Brooklyn; Jackson Heights, Queens; Port Richmond, Staten Island; Brentwood, Long Island; and White Plains, Westchester County. On Twitter: [@MaketheRoadNY](https://twitter.com/MaketheRoadNY)