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Immigrant Rights Advocates in New York File First Federal Lawsuit to Jointly Block Three Interrelated “Public Charge” Rules

*Litigation Represents Broadest Challenge to Government’s Attempt to
Redefine Longstanding Definition of “Public Charge”*

(December 19, 2019—New York, NY) – Today, immigrant rights advocates in New York filed [*Make the Road New York v. Pompeo*](#), the first federal lawsuit seeking to jointly block three interrelated “Public Charge” rules promulgated by the Trump administration. These rules seek, independently and together, to wholly transform the United States’ longstanding family-based immigration system, which allows all immigrants to seek a new and better life in the United States regardless of their means, into a system that favors the wealthy and discriminates against people of color. These radical proposed changes violate the immigration statutes, and the Constitution.

The complaint was filed in the United States District Court for the Southern District of New York by [The Legal Aid Society](#), [Center for Constitutional Rights](#), [National Immigration Law Center](#), and [Paul, Weiss, Rifkind, Wharton & Garrison LLP](#), on behalf of [Make the Road New York](#) (MRNY), [African Services Committee](#) (ASC), [Central American Refugee Center New York](#) (CARECEN-NY), [Catholic Legal Immigration Network, Inc.](#) (CLINIC), [Catholic Charities Community Services](#) (CCCS), and five individual plaintiffs.

The lawsuit challenges the legality of the following three rules:

- I. The Department of State (DOS) January 3, 2018 changes to the public charge provisions of its Foreign Affairs Manual (FAM) governing consular processing, which led to a twelve-fold increase in visa denials, largely against nonwhite immigrants;
- II. The DOS October 11, 2019 Interim Final Rule, which changes the public charge regulations that pertain at the point of consular processing and would require DOS to apply the same enjoined DHS “public charge” criteria to immigrants who must undergo consular processing before entering the country to unify with their parents, children, and spouses;

III. The “Presidential Proclamation Suspending the Entry of Immigrants Who Will Financially Burden the Health Care System,” issued on October 4, 2019, which would bar entry to any immigrant who cannot demonstrate the ability to obtain certain types of private health insurance within 30 days of arrival.

“The Trump administration aims to transform immigration in the U.S. from a system that prioritizes keeping families together to a privilege for the wealthy,” said **Center for Constitutional Rights Senior Attorney [Ghita Schwarz](#)**. “Unsurprisingly, like so many other Trump policies, these immigration rules harm people of color the most. The courts should not allow the administration to circumvent numerous court injunctions, based on determinations that the public charge criteria are likely unlawful and unconstitutional, simply by applying that criteria via different agencies.”

“Public charge has meant people wholly unable to take care of themselves for over 100 years in the U.S., not members of working families who may use government benefits to supplement their income. We will not allow Trump’s xenophobic interpretation to proliferate across the nation,” said **Susan Welber, Staff Attorney in the Civil Law Reform Unit at The Legal Aid Society**. “We will challenge every new attempt to redefine public charge, and consequently, the very fabric of this country, and look forward to fighting in court on behalf of our clients and all low-income noncitizens and their families.”

“The Trump administration’s multiple attempts to restrict family-based immigration by executive mandate are an unlawful and discriminatory attack on diverse low-and moderate-income families of color,” said **Joanna E. Cuevas Ingram, Staff Attorney at the National Immigration Law Center**. “These actions dramatically alter longstanding immigration policy, and undermine the goals of the Affordable Care Act (ACA) and other health insurance programs established by Congress. We stand with our plaintiffs and their families and with immigrant communities across the country as we continue to fight against these dangerous, unlawful, and racially motivated attacks.”

“We wholeheartedly reject the administration’s shameless attempts to impose a racist wealth test on our immigration system,” said **Javier H. Valdés, Co-Executive Director of Make the Road New York**. “We’ve seen in the first round of public charge litigation that the law is on our side on this issue, and we urge the courts to stop this latest attempt by the administration to deny status to immigrants based on a reckless and illegal attempt to redefine ‘public charge.’”

“The FAM Revisions, the DOS IFR, and the Health Insurance Proclamation are the latest bricks in Trump’s invisible wall that is cruelly separating immigrant families across the United States,” said **Elise de Castillo, Legal Director of CARECEN – NY**. “The detrimental impact of all three policies is not only felt by those who are needlessly separated from their loved ones, but also by organizations such as ours, dedicated to serving and providing clear legal advice to immigrant families and communities, and the local communities across the country that are being denied the social and economic benefits new Americans would bring to them.”

“The U.S. immigration system is based on family unity. These new public charge rules tear

families apart, preventing citizens from reuniting with parents and children,” **CLINIC’s Executive Director Anna Gallagher** said. “We are a nation founded on faith-based values. There is no place in this country for requiring a wealth test for families trying to be reunited.”

"The Trump Administration’s recent attempts to unlawfully undermine and restrict family-based immigration threatens serious harm to immigrant families who are trying to reunite with eligible relatives both living in the United States and abroad. African Services Committee represents some of the most vulnerable populations who will be devastated by the implementation of these illegitimate policies,” said **Franco Torres, Supervising Attorney at African Services Committee**. "African Services Committee will continue to challenge these arbitrary and capricious attempts to redefine public charge into a virtual wall that prevents lawful immigration and family unification.”

BACKGROUND

The State Department rules closely track the changes made to “public charge” determinations under the blocked Department of Homeland Security rule, redefining a public charge from those who are predominantly reliant on government aid for subsistence to include anyone who is likely to use any amount, at any time in the future—even long after becoming a U.S. citizen—of various cash and non-cash benefits, including Medicaid, food stamps, and federal housing subsidies. The rules challenged today apply to immigrants who must undergo consular processing, including immigrants who must temporarily leave the U.S. in order to obtain LPR status. Thus, though immigrants obtaining their green card from within the U.S. are not subjected to the DHS rule because it is enjoined, intending immigrants seeking immigrant visas through consular processing are threatened by nearly identical provisions via the State Department rule. The lawsuit states that denials of admissions and permanent status on public charge grounds rose dramatically— by twelve-fold following the change—denials of immigrants from some countries rose from single digits in 2016 to thousands in 2019. According to one study, *81 percent* of the world’s population would fail to satisfy the wealth test that is a factor in the public charge determination under the State Department’s proposed Interim Final Rule (IFR).

The lawsuit also challenges a presidential proclamation that bars entry to immigrants who cannot demonstrate an ability to obtain private health insurance within 30 days of arrival or financial resources to pay for foreseeable medical costs. Attorneys say this, too, is a wealth test for immigrants, and note that the proclamation provides no support for assertions that immigrants are more burdensome to healthcare resources than U.S. citizens.

The changes to State Department public charge criteria and the healthcare proclamation are racially discriminatory, the lawsuit says—driven by racial animus, and having a disparate impact on nonwhite immigrants. The complaint references Trump’s longstanding hostility to non-white immigrants from what he has referred to as “shithole countries.” It further describes how the challenged changes originated in a policy memo by the Center for Immigration Studies, “a far-right group founded by white supremacist John Tanton and dedicated to immigration restrictionism.” The architect of Trump’s immigration policies, White House Advisor Stephen Miller, is similarly associated with white nationalist groups. The revised “public charge” criteria

include vague evaluations of English proficiency, and lawyers say that the new criteria and the health insurance requirement disproportionately impact immigrants with disabilities and those from countries with low incomes and largely non-white populations.

For more information, visit the [Center for Constitutional Rights' case page](#).

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