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Immigrant Rights Advocates and Individual Immigrants File Petition to Block Three Interrelated "Public Charge" Rules

Plaintiffs Seek A Preliminary Injunction To Protect Immigrants Seeking Green Cards While Litigation Continues

(January 22, 2020—New York, NY) – Today, immigrant rights advocates filed a petition in the U.S. District Court for the Southern District of New York (SDNY) for a preliminary injunction in *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.

Attorneys from The Legal Aid Society, Center for Constitutional Rights, National Immigration Law Center, and Paul, Weiss, Rifkind, Wharton & Garrison LLP, are litigating the case 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 individual plaintiffs.

Plaintiffs argue that these interrelated rules seek, independently and together, to wholly transform the United States' longstanding family-based immigration system, which allows immigrants and their loved ones to seek a new and better life in the United States, into a system that favors the wealthy and discriminates against people of color. These radical proposed changes violate the immigration statutes, and the Constitution.

"Trump's private health insurance proclamation is a stunning and illegal attempt by the administration to rewrite immigration law behind the back of Congress," **said Center for Constitutional Rights Senior Attorney Ghita Schwarz**. "When you add it to the unlawful public charge wealth tests, a clear picture of this administration's goal emerges: keeping out low-income immigrants of color."

"The injunction we are seeking today is critical in protecting millions of immigrant families who are simply pursuing a better life for themselves and their children here in the U.S.," **said Susan Welber, Staff Attorney in the Civil Law Reform Unit at The Legal Aid Society**. "We will not allow Trump's anti-immigrant agenda to reshape 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 repeated unlawful attempts to restrict family-based immigration by executive mandate are already causing immediate irreparable harm. They're denying low and moderate income immigrants of color equal access to legal immigration and family unity, as well as clear access to the health, food, and housing families need to thrive," **said Joanna E. Cuevas Ingram, Staff Attorney at the National Immigration Law Center**. "All three Consular Rules violate the Administrative Procedures Act, and fail to explain how they would prevent harm to public health or the U.S. health system. Experts warn that the health insurance coverage the White House Proclamation requires would actually cause more people to become uninsured and underinsured, driving up uncompensated costs, jeopardizing public health, undermining the U.S. health system, and frustrating the will of Congress."

"The Trump Administration's public charge tests are racist and unlawful," **said Javier H. Valdés, Co-Executive Director of Make the Road New York**. "The administration's first round of public charge rules sought to make life miserable for low-income immigrants, and this set of rules builds on that by seeking to change the composition of who can immigrate to the United States to exclude immigrants of color and low-income families. We urge the court to put a full stop to any attempts to impose these racist wealth tests on our immigration system."

BACKGROUND

The lawsuit challenges the legality of the following three rules:

I. The Department of State's (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 of 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 Department of Homeland Security (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.

Judge George B. Daniels recently enjoined a similar "public charge" rule (*Make the Road New York v Cuccinelli*) issued by the DHS, which targeted low-income immigrants of color seeking to become lawful permanent residents through adjustment of status in the U.S. Last week, a three-judge panel of the Second Circuit Court of Appeals denied the Trump Administration's "emergency" request to stay that injunction, which is in effect nationwide, and on Monday, the Trump Administration made an application to the Supreme Court to again seek a stay.

Two of the rules that advocates asked be enjoined today, both issued by DOS, concern changes to "public charge" determinations at U.S. embassies and consulates around the world. The FAM changes are already in effect and the DOS public charge Rule is nearly identical to the blocked DHS rule, which redefines public charge from a person who is predominantly reliant on government aid for subsistence to include anyone that a government officer predicts 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 abroad, including long-time residents of the U.S. who must temporarily leave the country in order to complete the process for becoming a lawful permanent resident. Thus, though immigrants obtaining their green card from within the U.S. are not subjected to the DHS rule because it is currently enjoined, individuals who are required to complete the process through consular processing are threatened by nearly identical provisions via the DOS rule.

The lawsuit states that denials of admissions and permanent status on public charge grounds are likely to rise dramatically if the DOS public charge rule goes into effect. The FAM changes implemented in early 2018 have already caused a twelve-fold increase in denials between 2016 and 2019, with disproportionate impact on immigrants from non-white countries. The lawsuit cites studies showing that 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 DOS' Interim Final Rule. More than 40 percent of American citizens use the benefits the government seeks to penalize in its new definition of public charge.

Advocates also asked the court to issue a preliminary injunction blocking an unprecedented presidential proclamation and agency implementing actions that bars entry to immigrants who cannot demonstrate the ability to obtain certain private health insurance plans within 30 days of arrival or financial resources to pay for foreseeable medical costs, claiming, with no support, that new lawful permanent residents impose financial burdens on the health care system. No president has ever used the Immigration and Nationality Act's proclamation authority to impose new immigration requirements based on domestic policy goals. Our lawsuit alleges this, too, violates the public charge statute, which requires that the government evaluate immigrants based on a totality of circumstances, not just whether they can purchase expensive private health care plans.

The impacts of the DOS public charge criteria and the healthcare proclamation and agency implementing actions will be particularly severe on immigrant families of color, who are not only more likely to be denied admission and separated as a result of this rule. For example, plaintiff Eric Doe, a U.S. citizen suffering from a chronic form of leukemia requiring ongoing treatment, is sponsoring his wife, an intending immigrant from Mexico. They also reside with their three children. As a result of the proclamation and agency implementing actions, Eric Doe could be separated from his wife upon whom he relies for care; and their three children could be separated from their mother. Plaintiff Carl Doe, a business owner from El Salvador who is the primary financial and emotional support for his U.S. citizen wife, could be barred from entry if he does not purchase highly expensive insurance that does not provide basic coverage. If he is barred, his wife will not be able to support herself in her low-wage job, and may have to access supplemental public benefits as a result. As a further consequence of these draconian policies, more immigrants and mixed-status families like theirs are also more likely to refuse or cease use of benefits such as health care to which they are entitled, even benefits not impacted by the new policies. The new rules impose nonsensical requirements on immigrants and will cause needless hardship and suffering.

For more information, see the Center for Constitutional Rights case page for *Make the Road New York v. Pompeo*.

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