

Mohamed ALIESSA, By His Guardian Ad Litem, Sumaya..., 2000 WL 34030636...

2000 WL 34030636 (N.Y.) (Appellate Brief)

Court of Appeals of New York.

Mohamed ALIESSA, By His Guardian Ad Litem, Sumaya Al Fayad; Helen Nicola; Abdul Monir, By His Guardian Ad Litem, Mohamed Monir; Pajan Kaur, By Her Power of Attorney, Charanjit Singh; Dotsya Kholodenko; Debora Vecherebina; Rasulan Ally; Rafael Agtarap; Fabian Carpio, By His Guardian Ad Litem, Carmelina Carpio; Viana Bouzi, By Her Guardian Ad Litem, Mary Cherismo; Rosalie Cittar, By Her Guardian Ad Litem, Eddie Cittar; and Nuzhet Arican, By Her Power of Attorney, Servet Arican, on behalf of themselves and all others similarly situated, Plaintiffs-Appellants,

v.

Antonia NOVELLO, as Commissioner of the New York State Department of Health, Defendant-Respondent.

December 26, 2000.

New York County Index No. 403748/98

Brief for Plaintiffs-Appellants

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***1 PRELIMINARY STATEMENT**

Plaintiffs-Appellants (“Plaintiffs”) are lawful immigrants who reside in New York State. They will either die or suffer severe physical harm if their eligibility for State-funded Medicaid coverage is terminated solely because of their immigration status. For example, Plaintiff Abdul Monir suffers from end-stage renal disease, for which he needs dialysis treatments three times a week. If his State-funded Medicaid, which pays for his dialysis pending this appeal, is discontinued, Mr. Monir will almost certainly die. He and the other Plaintiffs depend on the State-funded Medicaid program to pay for health care necessary to avert serious physical harm and, in many cases, death.

Because of 1997 amendments to the New York State Social Services Law, DefendantRespondent (“Defendant”) will terminate Plaintiffs' State-funded Medicaid coverage if the Decision below is not reversed. These amendments deny State-funded Medicaid to certain lawful immigrants who reside in New York State based solely on their immigration status.

Under the amended law, Plaintiffs may receive only Emergency Medicaid coverage for extremely curtailed medical care for short term, life-threatening emergency situations. Emergency Medicaid is not adequate to protect Plaintiffs' health and lives. For example, Emergency Medicaid will not pay for Mr. Monir's regular dialysis treatments. If he is eligible for Emergency Medicaid alone, Mr. Monir will probably die.

Plaintiffs allege that the denial of State-funded Medicaid violates their right to necessary medical care and assistance under Article XVII of the New York State Constitution. They also allege that because the Medicaid program at issue in this case is a New York State, not a federal, *2 program the denial of Medicaid violates the Equal Protection Clauses of the New York State and Federal Constitutions.

The trial court initially concurred with the plaintiffs on the Article XVII and the equal protection claims. After the Appellate Division rendered a decision in *Alvarino v. Wing*, 261 A.D.2d 255 (1st Dep't 1999), however, the trial court concluded “regrettably” that *Alvarino* required a modification of its equal protection ruling. The trial court reaffirmed its holding that the denial of necessary medical care to Plaintiffs violates Article XVII of the New York State Constitution.

On July 27, 2000 the Appellate Division reversed the trial court's Order, and held that Section 122 is constitutional under Article XVII of the New York State Constitution and the Equal Protection Clauses of the Federal and State Constitutions. Plaintiffs filed their Notice of Appeal to this Court on August 1, 2000. Defendant has agreed to maintain Plaintiffs' Medicaid coverage, which they need to stay alive, pending this appeal.

QUESTIONS PRESENTED

1. Where, without Medicaid coverage, the medical conditions of the severely and chronically ill Plaintiffs will significantly deteriorate so as to jeopardize their health or life, does the denial of Medicaid coverage under [Section 122 of the New York State Social Services Law](#) solely on the basis of their immigration status violate New York State's mandate to provide for the health care of the needy pursuant to Article XVII of the New York State Constitution?

The Supreme Court, Appellate Division answered in the negative.

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*3 2. Does [Section 122](#)'s denial of Medicaid to Plaintiffs, solely because of their immigration status, violate their rights as lawful New York residents to equal protection under law, as guaranteed by the United States and New York State Constitutions?

The Supreme Court, Appellate Division answered in the negative.

RULE 500.5(d)(1) STATEMENT OF JURISDICTION

This Court has jurisdiction to entertain this appeal as of right, pursuant to N.Y. C.P.L.R. §560 (b)(1), because the Decision and Order from which plaintiffs appeal finally determined this action, because this action involves substantial questions directly involving the construction of the federal and state Constitutions, and because the substantial constitutional questions were properly raised to the courts below. Specifically, Plaintiffs asserted in their Complaint that [Section 122 of the New York Social Services Law](#) is unconstitutional under Article XVII of the New York State Constitution and the Equal Protection Clauses of the federal and state Constitutions. (R. 759-60 at ¶¶215-20). The Supreme Court, New York County ruled in Plaintiffs' favor on their Article XVII claim, and against Plaintiffs, because it felt constrained to do so, on their equal protection claims. (R. 211-17). The Appellate Division, First Department ruled against Plaintiffs on both their Article XVII and equal protection claims. (R. 30-35).

***4 STATEMENT OF FACTS**

I. PLAINTIFFS' FACTS

A. Mohamed Aliessa

Mr. Aliessa, age 44, is a lawful PRUCOL¹ immigrant from Syria who resides in New York City. (R. 223 at ¶8). Mr. Aliessa, a livery driver, lived with his wife and two United States citizen children until he was struck by a car in December 1997. (R. 282-83 at ¶¶2-4). After the car accident, Mr. Aliessa was rushed to Bellevue Hospital, which eventually transferred him to Florence Nightingale Nursing Home. (R. 223-24 at ¶¶9-18, 284 at ¶9). Late in the summer of 1998, Florence Nightingale Nursing Home attempted to discharge Mr. Aliessa when it learned that his Medicaid application was denied solely because of his immigration status and [Section 122 of the New York Social Services Law](#). (R. 225 at ¶¶21-23, 262).

As a result of the trial court's Orders of October 1998 and January 1999, Mr. Aliessa was permitted to remain as a patient in Florence Nightingale Nursing Home and receive Medicaid coverage for intensive rehabilitation services. (R. 302, 585). Mr. Aliessa cannot be maintained at home because he requires assistance with nearly all of his activities of daily living, including walking, washing, toileting, eating and dressing. (R. 272-73 at ¶¶49-52, 279-80 at ¶¶6-10, 580-85).

Without Medicaid coverage, Florence Nightingale will move quickly to discharge Mr. Aliessa, who will then lose all of his medical and nursing care, rehabilitative services, and medications. His medical condition will immediately deteriorate, and what small gains he has *5 made will dissipate. (R. 61-63 at ¶¶15-24, 80-82, 280 at ¶¶14-16). Indeed, without Medicaid coverage, Mr. Aliessa likely will not survive. (R. 82 at ¶11). Moreover, as the trial court observed, Emergency Medicaid will not provide Mr. Aliessa the intensive medical care he needs. (R. 198). Mr. Aliessa continues to receive Medicaid coverage pending this appeal as a result of the parties' November 23, 1999 Stipulation and Order. (R. 51-53).

B. Abdul Monir

Abdul Monir, age 61, is a retired farmer from Bangladesh who entered the United States in February 1998 as a Lawful Permanent Resident (a "green card holder"). (R. 188-89, 359-360 at ¶¶3-5, 364-65). Several months after his arrival, Mr. Monir was rushed

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to Coney Island Hospital and treated for renal failure. The hospital diagnosed Mr. Monir with end stage renal disease (90% kidney failure), and informed his family that he will require dialysis three times a week for the remainder of his life. Mr. Monir also suffers from diabetes mellitus, hypertension, high blood pressure, and a burst ulcer. (R. 360 at ¶¶8-9).

Mr. Monir's Medicaid application was denied solely as a result of his immigration status and [Section 122 of the New York Social Services Law](#). (R. 360-61 at ¶¶12-13, 373). As a result, in December 1998, Mr. Monir could not be discharged from Coney Island Hospital - which cost more than \$2,000 a day - because he would lose his Emergency Medicaid coverage. (R. 198, 360-61 at ¶¶ 11-16, 374, 375).

On December 11, 1999, the trial court permitted Mr. Monir to intervene into this action, and ordered the continuation of his Medicaid coverage so that he could be discharged from the hospital. (R. 345-47). Mr. Monir now receives dialysis and all necessary treatment in the community.

***6** Mr. Monir needs Medicaid coverage to survive. Without Medicaid coverage, Mr. Monir will not be able to receive the thrice weekly dialysis treatments he needs, and his kidneys will shut down. If he is fortunate enough to be readmitted into the hospital for emergency dialysis in time to prevent his death, his condition will stabilize. Once he is discharged from the hospital, however, he will suffer renal failure again and must be readmitted into the hospital to prevent his death. This painful and harmful cycle will continue indefinitely. Without medical treatment, Mr. Monir could die in as little as two weeks. (R. 63-65 at ¶¶26-34, 83-84, 188, 361 at ¶¶16-20, 372).

In short, Mr. Monir needs Medicaid coverage to survive. Mr. Monir continues to receive Medicaid coverage pending this appeal as a result of the parties' November 23, 1999 Stipulation and Order. (R. 51-53).

C. Rafael Agtarap

Rafael Agtarap is a 72 year old Lawful Permanent Resident who has lived in Albany, New York since he arrived in the United States from the Philippines in October 1996. He lives with his United States citizen daughter, her husband and three children. (R.596-97 at ¶¶11-4, 602). In April 1997, Mr. Agtarap was found eligible for Medicaid coverage. (R. 597 at ¶7, R 600 at ¶7).

In August 1998, Mr. Agtarap was diagnosed with prostate cancer. To treat his lifethreatening condition, Mr. Agtarap requires intensive, ongoing, and expensive medical care and prescription drugs. (R. 600 at ¶¶10-13). In January 1999, however, Mr. Agtarap's Medicaid coverage was discontinued solely as a result of his immigration status and [Section 122 of the New York Social Services Law](#). (R. 600 at ¶8, 603).

On February 26, 1999, the trial court permitted Mr. Agtarap to intervene into this action, and ordered the immediate restoration of his Medicaid coverage. (R. 586-87). Emergency ***7** Medicaid will not provide Mr. Agtarap with the medical care he needs to survive. Without Medicaid coverage, Mr. Agtarap will not be able to obtain the medical care and prescriptions he needs to treat his cancer. In short, he will die. (R. 65 at ¶¶36-41, 85-86, 87, 88-89). Mr. Agtarap continues to receive Medicaid coverage pending this appeal as a result of the parties' November 23, 1999 Stipulation and Order. (R. 51-53).

D. Pajan Kaur

Pajan Kaur is a 62 year old Lawful Permanent Resident from Malaysia. Since February 1997, Ms. Kaur has lived in Fayetteville, New York with her daughter, son-in-law, and three grandchildren, all of whom are United States citizens. (R. 523-24 at ¶¶2-6, 530).

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Ms. Kaur suffers from several serious chronic health problems, including diabetes type 2, chronic obstructive airway disease, hypertension, severe degenerative joint disease, and paralysis of the right side, the result of a probable stroke in September 1998. To treat her serious medical conditions, she needs intensive medical care, personal care services, and several prescription medications, none of which would be covered by Emergency Medicaid. (R. 524-25 at ¶¶12-31, 532).

In early 1997, Ms. Kaur applied for and received Medicaid coverage. (R. 524 at ¶11). In September 1998, however, Ms. Kaur was notified that her Medicaid coverage was to be terminated solely as a result of her immigration status and [Section 122 of the New York Social Services Law](#). (R. 526 at ¶25, 531). By requesting a Fair Hearing and receiving Aid-Continuing, Ms. Kaur was able to continue her Medicaid pending the trial court's Decision. (R. 526 at ¶¶26-28). The trial court's Decision and Order directed the continuation of Ms. Kaur's Medicaid coverage. (R. 124, 166). Without Medicaid coverage, Ms. Kaur will not receive the medical *8 care she needs to stay alive. Her medical condition will quickly deteriorate, and she may die. (R. 67-68 at ¶¶53-57, 92-93). Ms. Kaur continues to receive Medicaid coverage pending this appeal as a result of the parties' November 23, 1999 Stipulation and Order. (R. 51-53).

E. Dotsya Kholodenko

Dotsya Kholodenko is a 77 year old Holocaust survivor from Belorussia. She came to the

United States as a Parolee in the Public Interest in order to flee the persecution and anti-Semitism she suffered in Belorussia. (R. 533-34 at ¶¶1-3, 537, 538-39).

Mrs. Kholodenko suffers from mitral stenosis, hypertension, osteochondrosis, arthritis and cataracts in her eyes. She also suffers from severe depression, for which she takes Ambien and Zoloft and Alprazolam to sleep at night. For her serious heart problems, she is prescribed Furosemide, Toprol and Vasotec. Her medications cost approximately \$80 a month and she must be seen by several physicians and a therapist regularly. None of these essential medical treatments is provided by Emergency Medicaid. (R. 189, 534-35 at ¶¶5-8.)

Because of her serious medical conditions, which were deteriorating, and because she could not afford her necessary medical care. Mrs. Kholodenko applied for Medicaid coverage. Solely as a result of her immigration status and [Section 122 of the New York Social Services Law](#), her Medicaid application was denied. (R. 534-35 at ¶¶7-8). Without Medicaid, Mrs. Kholodenko's serious and chronic medical conditions will deteriorate irreparably. (R. 142-44 at ¶¶8-11). Ms. Kholodenko currently receives Medicaid coverage pending this appeal as a result of the parties' November 23, 1999 Stipulation and Order. (R. 51-53).

*9 F. Rasulan Ally

Rasulan Ally, age 81, has lived in the United States as a lawful PRUCOL resident from Guyana since 1990. (R. 545-46 at ¶¶2-4, 562-67). Ms. Ally suffers from diabetes mellitus, hypertension, hyper-kalmia, osteoarthritis in her back, degenerative joint disease, angina attacks in her heart, chronic renal insufficiency, poor vision and dental problems. (R. 546 at ¶9).

Because of her limited income and resources, she cannot afford the critical medical care she needs to treat her conditions. For this reason, she applied for and received Medicaid coverage in September 1990. Ms. Ally's Medicaid coverage enabled her to attend a daily program for medically frail seniors at Hebrew Hospital Home in the Bronx. The program provides virtually all of Ms. Ally's medical and nutritional needs, including her insulin injections, her numerous medications, her doctors, diagnostic tests, medical supplies, and special diet. Emergency Medicaid will not provide this essential medical care to Ms. Ally. (R. 546-49 at ¶¶6-26).

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In August 1998, Ms. Ally's Medicaid coverage was terminated solely as a result of her immigration status and [Section 122 of the New York Social Services Law](#). (R. 548 at ¶23). Fortunately, Hebrew Hospital Home allowed Ms. Ally to remain in her program following the termination of her Medicaid, pending a final decision in this action. However, because of the termination of her Medicaid, she has incurred medical bills amounting to more than \$27,000. (R. 141 at ¶¶15-18).

Without Medicaid coverage, Ms. Ally will not receive the critical medical and nutritional care she needs to survive. (R. 66-67 at ¶¶43-51, R. 90-91). Ms. Ally's Medicaid coverage was restored pending this appeal as a result of the parties' November 23, 1999 Stipulation and Order. (R. 51-53).

***10 G. Fabian Carpio**

Fabian Carpio is a 22 year old Lawful Permanent Resident from Ecuador who lives in Queens, New York. Mr. Carpio lives with his United States citizen father, his Lawful Permanent Resident mother, and his two siblings. (R. 655 at ¶¶2-6). Fabian Carpio's father has lived, worked and paid taxes in the United States for the past 14 years. He was laid off from his factory job on May 10, 1999. (R. 656 at ¶13).

Since birth, Mr. Carpio has had a history of developmental disability and profound mental retardation. He requires on-going psychiatric care and a complex medication regime. (R. 655 at ¶¶7-11). His medications cost \$364 per month, and he has thousands of dollars of unpaid medical bills from different providers and hospitals. (R. 655-56 at ¶¶10-16). If untreated, his behavior can be potentially dangerous to himself and others. (R. 662).

In April 1999, Mr Carpio began to decompensate and was rushed to Mt. Sinai Hospital. There, his family was notified that he was eligible only for Emergency Medicaid solely as a result of his immigration status and [Section 122 of the New York Social Services Law](#). (R. 655-56 at ¶¶9-15, 663-66). However, Emergency Medicaid does not pay for Fabian Carpio's on-going psychiatric care or the complex medication regime necessary to control his impulsive behavior. Without these medications, Fabian Carpio poses a danger to himself and others. (R. 662).

Without Medicaid coverage, Fabian Carpio's vulnerable mental disability will go untreated, he may be involuntarily hospitalized, and his condition will rapidly deteriorate. (R. 662). Mr. Fabio currently receives Medicaid coverage pending this appeal as a result of the parties' November 23, 1999 Stipulation and Order. (R. 51-53).

***11 H. Debora Vecherebina**

Debora Vecherebina is a 64 year old woman from Belorussia who entered the United States as a parolee on October 17, 1997. Ms. Vecherebina came to the United States with her younger daughter, Marina, to flee the persecution and anti-Semitism that they suffered in Belorussia. (R. 540-41 at ¶1-3).

Ms. Vecherebina suffers from many serious chronic health problems, including arthritis, arteriosclerosis, low blood pressure, and trouble with her gall bladder. In the summer of 1998, Ms. Vecherebina's health deteriorated. She started to experience constant pain in her arms, hands, back and legs from her arthritis, terrible headaches two or three days a week, badly swollen legs, tremors in her hands, frequent dizziness, and pain on urination. In addition, she has been suffering from severe depression. (R. 541-42 at ¶¶6-9).

Because she had no money to pay for health care, Ms. Vecherebina applied for Medicaid in June or July 1998. Several weeks later, she was notified that she was not eligible for Medicaid solely as a result of her immigration status and [Section 122 of](#)

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[the New York Social Services Law](#). Because her health continued to deteriorate and her need for medical care continued to increase, Ms. Vecherebina reapplied for Medicaid in September 1998, and was again denied. (R. 542 at ¶¶7-8).

Without Medicaid coverage, Ms. Vecherebina could not receive the medical care and services she critically needs for her chronic and painful medical conditions. Ms. Vecherebina receives Medicaid coverage pending this appeal as a result of the parties' November 23, 1999 Stipulation and Order. (R. 51-53).

***12 I. Viana Bouzi**

Viana Bouzi is an 81 year old Lawful Permanent Resident from Haiti. Ms. Bouzi lives with her United States citizen daughter, Mary Cherismo, who has lived and worked in the United

States since 1985. (R. 668 at ¶¶2-5). She also suffers from hypertension and diabetes mellitus, for which she must take several prescription medications. (R. 668 at ¶9).

Ms. Bouzi suffered a stroke in early December 1998 and was admitted to Franklin Hospital in Nassau County. To pay for her necessary medical care, she applied for Medicaid. While her application was pending, Franklin Hospital transferred her to a nursing home for medical care and rehabilitation. (R. 668 at ¶¶6-10). In May 1999, Ms. Bouzi was notified that solely as a result of her immigration status and [Section 122 of the New York Social Services Law](#), she was eligible only for Emergency Medicaid. (R. 669 at ¶14).

At the end of June, Ms. Bouzi was readmitted to the hospital because of an infection. She was stabilized and should have been transferred back to the nursing home, but the nursing home refused to readmit her without Medicaid coverage. (R. 669 at ¶11). The nursing home finally readmitted Ms. Bouzi only after the trial court ordered the State to provide her with full Medicaid coverage on July 1, 1999. (R. 166-71).

Without Medicaid, Ms. Bouzi will not receive the medical care that she needs to stay alive. (R. 68-69 at ¶¶59-68, 97-98). Ms. Bouzi continues to receive Medicaid coverage pending this appeal as a result of the parties' November 23, 1999 Stipulation and Order. (R. 51-53).

J. Rosalie Cittar

Rosalie Cittar is an 86 year old immigrant from Italy. Mrs. Cittar came to the United States in 1994 to live with her United States citizen son and his wife in Bellerose, New York. *13 Mrs. Cittar was a lawful PRUCOL immigrant when she intervened in this action, and became a Lawful Permanent Resident in August 1999. (R. 677-78 at ¶¶ 6-11).

On March 15, 1999, Mrs. Cittar had a stroke and was admitted to Long Island Jewish Medical Center. Because of her stroke, she is no longer able to eat, speak, toilet or perform any activities of daily living without assistance. She has feeding tubes in her stomach and circulation tubes in her legs. (R. 678-795 at ¶¶12-13). Mrs. Cittar's serious medical condition requires total care in a nursing home setting. (R. 685).

Because she cannot afford her critically necessary medical care, Mrs. Cittar's son applied for Medicaid for her. Solely because of her immigration status and [Section 122 of New York Social Services Law](#), Mrs. Cittar was found eligible only for Emergency Medicaid, which will not provide the nursing home care Mrs. Cittar needs. (R. 679 at ¶¶14-19, 688).

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Mrs. Cittar was admitted to a nursing home after the trial court ordered the State to provide her with full Medicaid coverage on July 1, 1999. (R. 166-71). Without Medicaid, Mrs. Cittar will be threatened with discharge from the nursing home and she will not receive the medical care that she needs to stay alive Mrs. Cittar continues to receive Medicaid coverage pending this appeal as a result of the parties' November 23, 1999 Stipulation and Order. (R. 51-53).

K. Helen Nicola

Plaintiff Helen Nicola is a 69 year old immigrant from Greece who arrived in the United States in 1974. Ms. Nicola was a lawful PRUCOL immigrant when she intervened in this action, and has since become a Lawful Permanent Resident. Ms. Nicola lives with her daughter, who is a Lawful Permanent Resident, and two of her five United States citizen grandchildren in Central *14 Islip, New York. Ms. Nicola's only income is an annuity of \$200 a month that she receives from an insurance company as a result of an accident she had several years ago. (R. 3 15-16 at ¶¶ 2-4 and ¶12, 319, 518-22).

Ms. Nicola suffers from several serious chronic health problems, including coronary artery disease with angina, congestive heart failure, emphysema. diabetes, glaucoma, hyperlipidemia, diabetic neuropathy and chronic arthritis. To treat these health problems, Ms. Nicola needs several life-sustaining medications, on-going medical care and the services of a home care attendant, none of which is covered by Emergency Medicaid. (R. 316-17 at ¶¶6-11, 329).

In late 1988, Ms. Nicola applied for Medicaid coverage because she could not afford the medical care she needs. In January 1989, Ms. Nicola's application for Medicaid coverage was approved retroactive to November 1988. (R. 317 at ¶13). Nine years later, Ms. Nicola was notified that her Medicaid coverage was to be discontinued solely as a result of her immigration status and [Section 122 of the New York Social Services Law](#). (R. 323).

On October 30, 1998, the trial court permitted Ms. Nicola to intervene in this action, and ordered the continuation of her Medicaid coverage. (R. 303-04). Without Medicaid. Ms. Nicola will not receive the medically necessary medications, medical care and home care services she needs to stay alive. (R. 317 at ¶16-19). Ms. Nicola continues to receive Medicaid coverage pending this appeal as a result of the parties' November 23, 1999 Stipulation and Order. (R. 51-53).

L. Nuzhet Arican

Nuzhet Arican is an 89 year old Lawful Permanent Resident from Turkey who has lived in Brockport, New York since November 1996. (R. 691 at ¶¶2-4). Ms. Arican suffers from several *15 severe and chronic medical conditions for which she has frequently been hospitalized, including pulmonary fibrosis, chronic obstructive pulmonary disease, urethrovesical junction urolithiasis, anorexia, recurrent pneumonia, severe constipation and irritable bowel syndrome, depression, stomach pain and nausea, gastritis, and the loss of smell and taste that impede her ability to ingest food. (R. 692-93 at ¶¶8-13).

Ms. Arican's many serious medical problems require on-going medical care and several prescription medications. (R. 692-93 at ¶¶9-15). Because of her limited financial resources, Ms. Arican received Medicaid from late 1996 to November 1997. However, in November 1997, her Medicaid coverage was terminated solely as a result of her immigration status and [Section 122 of the New York Social Services Law](#). (R. 691 at ¶¶6-13, 698, 699).

Without Medicaid coverage, Ms. Arican will be unable to receive the on-going medical care and medications she needs to stay alive, and which Emergency Medicaid does not cover. (R. 693 at ¶18). Ms. Arican receives Medicaid coverage pending this appeal as a result of the parties' November 23, 1999 Stipulation and Order. (R. 51-53).

II. CONSTITUTIONAL AND STATUTORY AUTHORITY AND BACKGROUND

A. Federal Constitution

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides that “No state shall deprive any person of his right to equal protection under law.” [U.S. Const. amend. XIV](#).

*16 B. New York State Constitution

Pursuant to Article XVII of the New York State Constitution, the State has a duty to protect and promote the health of its poorest residents. N.Y. Const. Art. XVII. §§1, 3. Section One of Article XVII states:

The aid, care and support of the needy are public concerns and shall be provided by the state and by such of its subdivisions, and in such manner and by such means, as the legislature from time to time may determine.

Section Three of Article XVII states:

The protection and promotion of the health of the inhabitants of the state are matters of public concern and provision therefor shall be made by the state and by such of its subdivisions and in such manner, and by such means as the legislature shall from time to time determine.

The New York State Constitution, like the Federal Constitution, prohibits New York from denying any New York resident equal protection under law. Section One of Article I of the New York State Constitution states:

No person shall be denied the equal protection of the laws of this state or any subdivision thereof.

C. New York State's Medicaid Program

Pursuant to Sections One and Three of Article XVII of the New York State Constitution, New York has a duty to protect and promote the health of its poorest residents. Since 1966, New York State has met its constitutional obligations under these provisions by providing health insurance to indigent and low-income New Yorkers through the State's Medical Assistance Program, commonly known as Medicaid. N.Y. Soc. Serv. L. §363, *et seq.* New York's Medicaid Program pays for necessary medical, dental, and remedial care for categorically and *17 financially eligible individuals. N.Y. Soc. Serv. L. §365-a(2).

New York Medicaid is funded in two ways. First, New York participates in the federally funded Medicaid program which was established by Title XIX of the Social Security Act in 1965. Under this program, the federal government matches the funds contributed by New York State and its localities to provide Medicaid coverage to certain categories of low income people. New

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York residents entitled to receive this federally funded Medicaid include the elderly, blind, disabled, pregnant women, children, single parent families, and families in which one parent is unemployed. *See* 42 U.S.C. §1396a *et seq.*

Second, New York provides State-funded Medicaid to other residents of New York State who are not financially or categorically eligible for federally funded Medicaid. State-funded Medicaid is provided to New York residents between the ages of 21 and 65 who are not certified blind or disabled, who are not taking care of minor children, and whose income and resources are below New York State's Public Assistance "standard of need." N.Y. Soc. Serv. L. §§363, 366.1.

D. The Personal Responsibility and Work Opportunity Act of 1996

Until 1996, Lawful Permanent Residents and non-citizen residents permanently residing under color of law ("PRUCOL")² were eligible for federally funded Medicaid if they satisfied the federal financial and categorical prerequisites. On August 22, 1996, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("PRWORA") became law. 8 U.S.C. §1612. *18 Under PRWORA, *federally funded* Medicaid is no longer provided to specified "Qualified Aliens,"³ including most Lawful Permanent Residents, who entered the United States on or after August 22, 1996, or to PRUCOL immigrants who lawfully reside in the United States.⁴ Nothing in PRWORA precludes New York State from continuing its longstanding tradition -- and constitutional mandate -- of providing State-funded Medicaid to all New Yorkers, including lawful immigrants who do not qualify for federally funded Medicaid.

E. New York State's Welfare Reform Act of 1997

Until August 4, 1997, New York residents, including lawful immigrants, who did not satisfy the federal Medicaid Act's categorical requirements were eligible for State-funded Medicaid if they otherwise satisfied New York's financial eligibility requirements. These residents included financially eligible single and married adults without children who were never eligible for federally funded Medicaid. After PRWORA became law, Defendant issued an Administrative Directive that clarified and directed the continuation of State-funded Medicaid to lawful immigrants who, as a result of PRWORA no longer qualified for federally funded Medicaid. *See* 97 ADM-8, at 3 (March 28, 1997); *see also* (R. 229).

On August 4, 1997, the New York State legislature adopted the Welfare Reform Act of 1997 that radically restructured New York's Public Assistance program and modified New York's Medicaid program. For the first time, New York's Medicaid program excluded from *19 State-funded Medicaid lawful immigrants who are ineligible for federally funded Medicaid solely as a result of their immigration status, even though they otherwise satisfy the requirements of New York's Medicaid program. *See* N.Y. Soc. Serv. L. §122. Instead, these New Yorkers can receive only extremely limited Emergency Medicaid, which covers only short term emergency care for immediate, life-threatening medical conditions. *See* N.Y. Soc. Serv. L. §§122(c), (d).

There are three exceptions to this dramatic policy change. New York continues to provide State-funded Medicaid to three groups of non-citizens who are ineligible for federally funded Medicaid solely as a result of their immigration status: (1) lawful PRUCOL immigrants who were already living in a nursing home or a residential treatment facility operated by the Office of Mental Health or the Office of Mental Retardation and Developmental Disabilities, and who were receiving Medicaid on August 4, 1997 (the date the new law was enacted); (2) lawful PRUCOL immigrants who were diagnosed with AIDS and were receiving Medicaid on August 4, 1997; and (3) lawful immigrants who were paroled into the United States for less than one year but who have legally resided in the United States for more than five years. *See* N.Y. Soc. Serv. L. §§122(c), (d).

On September 12, 1997, New York State directed local social services districts to implement Section 122 immediately by discontinuing and denying Medicaid coverage for all immigrants who are excluded under the Act. (R. 229-32, 233-37).

III. THE DECISIONS OF THE COURTS BELOW

A. The Supreme Court Decision of May 17, 1999

On May 17, 1999, the trial court issued its first Decision that granted Plaintiffs' Motion *20 for Summary Judgment. (R. 184-200). The court declared that [Section 122 of the New York Social Services Law](#) violates Article XVII, §1 of the New York State Constitution and the Equal Protection Clauses of the United States and New York State Constitutions insofar as [Section 122](#) denies medical assistance to lawful immigrant residents of New York State, including PRUCOLs, solely on the basis of their immigration status. The court also permanently enjoined the State Defendant from enforcing [Section 122](#) with respect to applicants and recipients for medical assistance. The Court entered its first Order on June 8, 1999. (R. 176-79).

B. The Supreme Court Decision of July 1, 1999

Defendant moved to reargue the trial court's comprehensive Decision of May 17, 1999, based upon the May 20, 1999 Decision and Order of the Appellate Division, First Department in *Alvarino v. Wing*, 261 A.D.2d 255 (1st Dep't 1999). On June 30, 1999, the trial court granted Defendant's Motion to the extent that *Alvarino* barred Plaintiffs' equal protection claims, but reaffirmed the ruling in its May 17, 1999 Decision that [Section 122](#) violated Plaintiffs' rights under Article XVII of the New York State Constitution. (R. 211-17). With respect to Article XVII, the trial court sustained its earlier finding the fleeting availability of limited Emergency Medicaid does not provide essential life-sustaining health care for the elderly, disabled and chronically ill Plaintiffs. (R. 198,, 212). Absent Medicaid coverage, Plaintiffs will suffer severe deterioration of their serious medical conditions, if not death.

The trial court also expressed grave concerns about the constitutionality of [Section 122](#) under the Equal Protection Clauses of the Federal and State Constitutions. Reversing its earlier ruling, the court held, albeit “regrettably” (R.214), that [Section 122](#) should be subject to a “rational basis” review under principles of equal protection analysis. While the trial court felt *21 constrained to do so following the First Department's decision in *Alvarino v. Wing*, 261 A.D.2d 255 (1st Dep't 1999), it urged the appellate court to analyze [Section 122](#) instead under a “strict scrutiny” standard, and to find that [Section 122](#) violated Plaintiffs' constitutional equal protection rights. (R. 214-15, 217). The trial court noted, as the United States Supreme Court has repeatedly held, that states may not discriminate among groups of lawful immigrants in their allocations of state-funded benefits. (R. 2 15-17).

On July 1, 1999, the trial court issued its second Order, entered July 7, 1999, directing Defendant to provide State-funded Medicaid to Plaintiffs, directing Defendant to reimburse Plaintiffs for their medical expenses, declaring that [Section 122](#) violates Article XVII of the New York State Constitution with respect to the provision of medical assistance, and permanently enjoining the implementation of [Section 122](#) with respect to the provision of medical assistance. (R. 166-71). On July 21, 1999. Defendant filed her Notice of Appeal. (R. 163-164).⁵

C. The Appellate Division, First Department Decision of July 27, 2000

On July 27, 2000, the Appellate Division, First Department reversed the trial court's July 7, 1999 Order, holding that [Section 122](#) does not violate Plaintiffs' rights under Article XVII of the New York State Constitution. (R. 30-35). The court also affirmed the trial court's conclusion that [Section 122](#) does not violate Plaintiffs' rights under the Equal Protection Clauses of the Federal and State Constitutions.

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*22 Plaintiffs filed their Notice of Appeal from the First Department's Decision on August 1, 2000. (R. 28-29). In its letter of October 13, 2000, this Court instructed the appeal to proceed.

ARGUMENT

POINT I SECTION 122'S DENIAL OF MEDICAID COVERAGE TO PLAINTIFFS SOLELY BECAUSE OF THEIR IMMIGRATION STATUS VIOLATES THE MANDATE TO PROVIDE FOR THE HEALTH CARE OF NEW YORK'S NEEDY, INCLUDING PLAINTIFFS, UNDER ARTICLE XVII OF THE NEW YORK STATE CONSTITUTION.

A. Section 122 Impermissibly Denies Necessary Medical Coverage to Plaintiffs Solely on the Basis of a Criterion Unrelated to Need.

New York's Medicaid program was created to provide all needy New Yorkers with access to medically necessary health care. There is no dispute that every Plaintiff is in desperate need of medical care, relies on Medicaid to obtain the health care he or she needs, and meets the eligibility requirements that all other needy New Yorkers must meet to obtain Medicaid coverage. Yet solely by virtue of their immigration status, every Plaintiff is barred, under [Social Services Law § 122](#), from receiving the life sustaining Medicaid benefits that he or she needs to stay alive. Article XVII of the New York State Constitution forbids New York State from implementing such a prohibition.

Describing Article XVII, its framers declared that the constitutional provision created “a concrete social obligation which no court may ever misread.” Revised Record of the Constitutional Convention of the State of New York, vol. II, at 1084 (1938).⁶ See *23 *Jiggetts v. Grinker*, 75 N.Y.2d 411 (1990), *Tucker v. Toia*, 43 N.Y.2d 1 (1977). Section One of Article

XVII requires New York State to provide aid, care and support to New York's needy residents. Section Three explicitly extends this fiat to “[t]he protection and promotion of the health of the inhabitants of the state.” These commands, and their mandate to provide medical coverage to all needy New York State residents, are compulsory, not discretionary.

As the trial court correctly observed, the New York State Legislature created the Medicaid program expressly to meet its constitutional obligation to provide health care to needy New Yorkers. (R. 196-97). Paraphrasing [Article XVII, Section 3](#), the statute implementing New York's Medicaid program states:

Medical assistance for needy persons is hereby declared to be a matter of public concern and a necessity *in promoting the public health and welfare and for promoting the state's goal of making available to everyone, regardless of race, age, national origin or economic standing, uniform, high-quality medical care.* In furtherance of such goal, a comprehensive program of medical assistance for needy persons is hereby established to operate in a manner which will assure a uniform high standard of medical assistance throughout the state.

R. 196-97, *quoting from* N.Y. Soc. Serv. L. §363 (emphasis added in Supreme Court's Decision).

This Court has consistently stressed that [Article XVII](#) prohibits New York from circumscribing its constitutional obligation by implementing eligibility requirements that are wholly unrelated to a person's need. See *Tucker v. Toia*, 43 N.Y.2d 1, 8 (1977); *Matter of Lee v. Smith*, 43 N.Y.2d 453 (1977). As explained by this Court, [Article XVII](#) “unequivocally prevents the Legislature

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from simply refusing to aid those whom it has classified as needy.” *Tucker*, 43 N.Y.2d at 9. In particular, according to this Court, [Article XVII](#) prohibits the Legislature from *24 denying assistance “solely on the basis of criteria having nothing to do with need.” *Tucker*, 43 N.Y.2d at 9.

Applying this fundamental constitutional principle, this Court, and others, have not hesitated to invalidate State laws that have attempted to impose limits on the provision of state funded public assistance to New Yorkers that are unrelated to a person's need. Accordingly, in *Tucker v. Toia* 43 N.Y.2d 1 (1977), this Court examined a statute that denied State-funded Home Relief cash benefits to minors residing apart from legally responsible relatives until the minors obtained court-ordered support dispositions against those relatives, a process lasting several months. This Court acknowledged the legitimacy of the State's desire to shift the burden of supporting minors to legally responsible relatives. This Court nevertheless ruled that “[t]his valid purpose, however, cannot be achieved by methods which ignore the realities of the needy's plight and the State's affirmative obligation to aid all its needy.” *Tucker*, 43 N.Y.2d at 9. Because the effect of the statute was to deny Home Relief to “concededly needy” minors for a reason having nothing to do with their need, this Court ruled that the law violated [Article XVII](#). *Tucker*, 43 N.Y.2d at 9.

Likewise, in *Minino v. Perales*, 168 A.D.2d 289 (1st Dep't 1990), *aff'd*, 79 N.Y.2d 883 (1992), this Court affirmed the First Department's ruling that New York's denial of State-funded Home Relief cash benefits to needy immigrants based on an immigration-related criterion, unrelated to need, violated [Article XVII](#). The challenged statute barred the *Minino* plaintiffs, immigrants residing in the United States pursuant to sponsorship affidavits, from receiving Home Relief benefits for three years, during which their sponsors' incomes were deemed available to them, even where the sponsors' income was inaccessible. Noting that the State's limitation on *25 assistance had nothing to do with need, the First Department affirmed the trial court's decision that the statute violated [Article XVII](#), holding:

[Article XVII, Sec. 1 of the New York State Constitution](#) imposes a duty on the State to aid the needy and the Legislature may not avoid that constitutional mandate by denying aid to such persons solely on the basis of criteria having nothing to do with need.

Minino, 168 A.D.2d at 289-90. See *Matter of Lee v. Smith*, 43 N.Y. 453, 460-63 (1977)(holding that statute that provided reduced State-funded Home Relief cash benefits to aged, blind and disabled applicants violated [Article XVII](#)); *Brown v. Wing*, 170 Misc.2d 554 (Monroe County 1996), *aff'd for the reasons stated below*, 241 A.D.2d 956 (4th Dep't 1997)(holding that statute that provided no or reduced State-funded Home Relief cash benefits to new residents for six months violated [Article XVII](#)).

Minino is particularly pertinent because its facts and legal claims are virtually identical to those in this action. Both cases challenged a State statute that denied basic State-funded assistance to a needy group of New Yorkers based solely on their immigration status. In both cases the federal government had banned the provision of parallel federally funded benefits, a factor that this Court ruled in *Minino* to be irrelevant to the State's [Article XVII](#) constitutional obligation. In both cases, support was theoretically, but not actually, available from another source: in *Minino*, from the uncooperative sponsor; here, from limited Emergency Medicaid.⁷ In both cases, plaintiffs are eligible for other unrelated benefits: in *Minino* they were eligible for full Medicaid coverage; here they are eligible for Safety Net Cash Assistance. Just as the availability of Medicaid in *Minino* did not fulfill New York's obligation under [Article XVII](#) to provide “aid, *26 care and support” -- *i.e.*, basic cash assistance -- to the needy, here the availability of Safety Net Assistance does not fulfill New York's obligation under [Article XVII](#) to provide “aid, care and support” -- *i.e.*, basic medical assistance -- to the needy.

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Like the unconstitutional statutes in *Tucker*, *Minino*, *Lee* and *Brown*, [Section 122](#) denies State-funded Medicaid benefits to Plaintiffs based on a criterion that has absolutely nothing to do with Plaintiffs' need. Just as [Article XVII](#) bars Defendant from denying benefits based on a needy person's status as a minor living apart from his or her parents (*Tucker*), based on a needy person's status as an immigrant with a sponsor (*Minino*), based on a needy person's status as an aged, blind or disabled Home Relief applicant (*Lee*), and based on a needy person's status as a new resident of New York (*Brown*), [Article XVII](#) bars Defendant from denying State-funded Medicaid benefits based on their status as immigrants

B. Neither [Section 122](#)'s Emergency Medicaid Program Nor New York's Safety Net Cash Assistance Program Provides Constitutionally Adequate "Aid, Care and Support" Under [Article XVII](#).

Rejecting the trial court's conclusion to the contrary, the Appellate Division suggested that because Plaintiffs are theoretically eligible for extremely limited Emergency Medicaid coverage, [Article XVII](#) does not compel the State to provide them with any additional medical "aid, care and support"; *i.e.*, general, non-emergency Medicaid coverage. (R. 32-33). This conclusion, unsupported by factual analysis or legal authority, misconstrues both the scope of Emergency Medicaid and Article XVI's mandate.

Emergency Medicaid provides extremely limited medical care for only acute medical conditions, in only emergency circumstances. As both the trial court and Defendant noted, Emergency Medicaid is provided for only *immediate* medical care, solely for "sudden, severe and *27 short lived physical injuries or illness that require immediate treatment to prevent further harm." (R. 198, 424). See *Greenery Rehabilitation Group v. Hammon*, 150 F.3d 226, 232 (2d Cir. 1998).

Consequently, according to "[D]efendant's admission" and the undisputed Record, "[E]mergency Medicaid is not available to help all needy residents, including plaintiffs, most of whom have chronic health conditions, and one of whom (Plaintiff Aliessa), was injured in a car accident and requires long-term care in a facility." (R. 198, *citing* Defendant's McCloskey Aff. ¶12, located at R. 424). Indisputably, under [Section 122](#), Plaintiffs and other similarly needy lawful resident immigrants with life-threatening cancer, heart disease, hepatitis, renal disease, diabetes and a diagnosis of AIDS after August 4, 1997 cannot obtain any medical coverage at all for their critically serious, life-threatening medical conditions.

United States Supreme Court Justice Thurgood Marshall voiced concerns similar to the trial court's in a decision invalidating an Arizona statute that, like [Section 122](#), denied nonemergency medical coverage to non-residents:

The state could not deny [the plaintiff] care just because, although gasping for breath, he was not in immediate danger of stopping breathing altogether. To allow a serious illness to go untreated until it requires emergency hospitalization is to subject the sufferer to the danger of a substantial and irrevocable deterioration in his health. Cancer, heart disease, or respiratory illness, if untreated for a year may become all but irreversible paths to pain, disability, and even loss of life. The denial of medical care is all the more cruel in this context, falling as it does on indigents who are often without the means to obtain alternative treatment.

Memorial Hospital v. Maricopa County, 415 U.S. 250, 260-61 (1974). Similarly, each Plaintiff here has severe medical needs that cannot be met without full, non-Emergency Medicaid benefits: *28 post-stroke, traumatic brain injury (Mr. Aliessa); congestive heart failure, emphysema, and diabetic neuropathy (Ms. Nicola); end stage renal disease (Mr. Monir); diabetes type 2 and poststroke paralysis (Ms. Kaur); mitral stenosis, hypertension, and severe depression (Ms. Kholodenko); severe

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arthritis, arteriosclerosis, and gall bladder problems (Ms. Vecherebina); diabetes mellitus, hypertension, osteoarthritis and chronic renal insufficiency (Ms. Ally); cancer (Mr. Agtarap); developmental and psychiatric impairments (Mr. Carpio); stroke, hypertension and diabetes mellitus (Ms. Bouzi); stroke (Mrs. Cittar); pulmonary fibrosis, chronic obstructive pulmonary disease. urethrovesical junction urolithiasis. recurrent pneumonia (Ms. Arican). (R. 743-59 at ¶¶ 78, 91, 103, 115, 128, 140-41, 151, 165, 172, 183,206).

Likewise, as the trial court found, New York's Safety Net Cash Assistance program for the needy is not a constitutionally adequate substitute for Medicaid coverage. (R. 198). Safety Net Assistance consists of \$352.10 a month for one person. *See* N.Y. Soc. Serv. L. § 131-a. This small cash grant is intended to provide food, clothing and shelter to needy New Yorkers. However, it was never intended to be a substitute for Medicaid coverage. For example, of this amount, \$215 is allocated to rent, which is generally paid directly to a landlord, and the remaining \$137 must provide for food, clothing and basic needs. Accordingly, the trial court concluded that “the relatively small amounts that are provided (*see* [Social Services Law § 131-a](#)) do not constitute the required care for the needy such as plaintiff Monir, who claims that his hospital costs were over \$2,000.00 per day.” (R. 198). Moreover, Safety Net Cash Assistance only provides cash assistance for *two years* in a lifetime and would never aid those, like the Plaintiffs, who have chronic illnesses that last indefinitely.

*29 Consequently, neither Emergency Medicaid nor Safety Net Cash Assistance amounts to a constitutionally adequate substitute for Medicaid coverage under [Article XVII](#). Nevertheless, the Appellate Division concluded that because of the existence of Emergency Medicaid, as well as the fact that [Section 122](#) has a five year duration for Plaintiffs who are not PRUCOL,⁸ [Section 122](#) is a “manner and level” restriction of care, as opposed to an absolute denial of care, that Defendant is constitutionally entitled to implement. (R. 33-34). This conclusion is erroneous.⁹

Despite [Section 122](#)'s five year durational limit for some, but not all, Plaintiffs (*see supra* and note 8), the statute nonetheless constitutes an unconstitutional denial of assistance solely for a reason unrelated to need. The latitude afforded by [Article XVII](#) does not permit the Legislature to provide needy New Yorkers with “aid, care and support” that is so minimal that it amounts to virtually no care at all. On the contrary, this Court has made it clear that legislative enactments that single out categories of needy New Yorkers for reasons unrelated to need violate [Article XVII](#), *regardless* of whether the enactment is a reduction, limitation, or a complete denial of all care.

Thus, in *Matter of Lee v. Smith*, 43 N.Y.2d 453 (1977), this Court ruled that [Article XVII](#) barred the Legislature from imposing public assistance eligibility requirements that provided “less *30 public assistance [to aged, blind and disabled New Yorkers] than other needy persons” solely “because of [their] age, or disability or blindness.” *Lee*, 43 N.Y.2d at 458. 462-63 (emphasis added). In so doing, this Court unequivocally affirmed that New York's Article XVII “obligation cannot be avoided by irrevocably assigning the aged, disabled and blind to the Federal program without recourse to State aid, when in many cases this means that they must survive on *lesser amounts* than are granted to other needy persons in the State.” *Lee*, 43 N.Y.2d at 463 (emphasis added).

Applying this Court's analysis, the court in *Brown v. Wing*, 170 Misc.2d 554 (Monroe County 1996), *aff'd for the reasons stated below*, 241 A.D.2d 956 (4th Dep't 1997),¹⁰ found unconstitutional a State law that provided, for six months, fewer or no cash assistance benefits to recently arrived residents of New York State than it provided to long time residents. The court analyzed and rejected the State's argument that the statutory limitation of benefits for recent arrivals was “just part of the legislative duty to set benefit levels.” *Brown*, 170 Misc.2d at 562. Instead, pointing to *Matter of Lee v. Smith*, the court concluded that “[a]ny distinction between partial and total reduction of aid ... is one without a difference.” *Brown*, 170 Misc.2d at 562. The court emphasized:

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A statute which reduces benefits for some of the needy is as much an unconstitutional classification as one that eliminates them altogether: in *Matter of Lee v. Smith*, 43 N.Y.2d 453, the petitioners were not completely deprived of assistance, but the controlling statute was nonetheless found to be unconstitutional.

Brown, 170 Misc.2d at 562-63.

*31 Accordingly, for the reasons articulated by this Court, Article XVII's prohibition of public assistance eligibility standards unrelated to need applies *regardless* of whether the application of the standards results in some care, minimal care, or no care. ¹¹

C. Federal Law Denying Federally Funded Medicaid to Plaintiffs Does Not Abrogate New York's Article XVII Obligation to Provide State-Funded Medicaid Coverage to Plaintiffs.

In the Appellate Division, Defendant argued that this case differs from other Article XVII cases because the federal government, not New York State, first restricted Medicaid benefits to Plaintiffs. *See* State Def. App. Div. Brief, p. 13. This argument is without merit for the reasons set forth in *Minino*.

In its appeal to this Court, the State in *Minino* conceded that its sponsor deeming law, which denied State-funded Home Relief to needy immigrants for a reason having nothing to do *32 with need, was unconstitutional under Article XVII. *See Minino*, 79 N.Y.2d at 885. The State argued, however, that its Article XVII obligation to provide State-funded Home Relief to plaintiffs was nullified and preempted by federal law because the State's sponsor deeming law simply incorporated the recently enacted federal restriction in the federally funded Aid to Families with Dependent Children (AFDC) program. The State maintained in *Minino* that:

the doctrine of Federal supremacy prohibits the State courts from holding a State statute as applied to a State-funded program unconstitutional under the State Constitution because such a ruling would impliedly conflict with Federal legislation.

Minino, 79 N.Y.2d at 885.

This Court summarily rejected the State's position. Pronouncing that federal law cannot annul New York's constitutional mandate to provide care and support to the needy, this Court ruled that the federal AFDC sponsor deeming law “does not require this Court to uphold an otherwise unconstitutional restriction on the State's duty to aid the needy.” *Minino*, 79 N.Y.2d at 886. *See Lovelace v Gross*, 80 N.Y.2d 419, 425 (1992) (“[M]ere conformance with Federal law cannot end the [legal inquiry] because of the State's independent constitutional commitment to aid the needy.”).

For identical reasons, this Court should affirm that the federal law denying federally funded Medicaid coverage to several categories of lawful immigrants neither nullifies nor diminishes New York's constitutional obligation to provide State-funded Medicaid coverage to Plaintiffs. First, the absence of federal funding for certain categories of New Yorkers is irrelevant to New York's constitutional obligation to provide for the health care of *all* New Yorkers. To meet its obligation, New York established its *State-only funded* Medicaid program for all needy *33 New Yorkers who have never qualified for federally funded Medicaid since the program's inception in the 1960s.

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Second, New York's State-funded Medicaid program continues to provide coverage for many groups of people who are ineligible to receive federally funded Medicaid. For example, non-disabled childless adults, who have never been eligible for federally funded Medicaid, continue to receive State-funded Medicaid. Similarly, certain PRUCOL residents - the immigration status held by some Plaintiffs - continue to receive State-funded Medicaid, so long as they happen to have been Medicaid recipients and in a nursing home or diagnosed with AIDS on the date of [Section 122](#)'s enactment.

Third, nothing in PRWORA forbids a state from using its own funds to pay for full Medicaid coverage for lawful immigrants like Plaintiffs.¹² More importantly, nothing in PRWORA forbids a state from complying with whatever state constitutional mandates, such as New York's Article XVII, it otherwise might have to provide such coverage to its residents. Had Congress intended to abrogate a state's obligation to use state funds to pay for the health care of lawful immigrants, either by virtue of state legislation or state constitutional mandate, it would have done so specifically. See *Minino v. Perales*, 79 N.Y.2d at 885 (“Defendants have failed to show that ... Congress intended to preempt State [funded] assistance for aliens as a matter of immigration policy.”); *Lee v. Smith*, 43 N.Y.2d at 461 (“There is nothing to indicate that the granting of [plaintiffs' request for State-funded benefits] would jeopardize the State's interest in *34 insuring that its contributions to the SSI program satisfy Federal requirements.”)

Indeed, notwithstanding PRWORA, New York State provides, in limited circumstances, State-funded full Medicaid coverage to certain lawful immigrants who cannot receive federally funded Medicaid. Without jeopardizing a single federal Medicaid dollar, New York uses 100% of its own funds to pay for full Medicaid coverage for certain PRUCOL immigrants with AIDS, certain PRUCOL institutionalized immigrants, and certain paroled immigrants. As in *Minino*, this Court must not permit New York to hide behind federal law to justify disregarding its discrete Article XVII obligations.

POINT I SECTION 122 VIOLATES PLAINTIFFS' RIGHT TO EQUAL PROTECTION UNDER THE UNITED STATES AND NEW YORK STATE CONSTITUTIONS.

A. Introduction

The United States Supreme Court has long made it clear that *states* may not discriminate between citizens and legal immigrants, and between and among categories of legal immigrants. See *Takahashi v. Fish and Game Comm'n.*, 334 U.S. 410 (1948); *Nyquist v. Mauclet*, 432 U.S. 1, 8 (1977). State law classifications based upon alienage, such as the one challenged here, are always subject to the strictest judicial scrutiny. The immigration restrictions in [Section 122](#) do not pass muster under strict judicial scrutiny. Accordingly, they violate the Equal Protection Clauses of the New York State Constitution and the Fourteenth Amendment to the United States Constitution.

The Appellate Division nevertheless dismissed Plaintiffs' federal and state constitutional equal protection claims holding, first, that the “rational basis” standard of review applies to *35 Plaintiffs equal protection claims, and second, that [Section 122](#) is rational because “New York State ... acted in furtherance of constitutionally valid Federal immigration policies.” (R. 34-35). For the reasons discussed below, and identified by the trial court, *see* (R. 190-96, 213-17),¹³ the Appellate Division is wrong on both counts.

B. Constitutional Equal Protection Doctrine Prohibits States From Discriminating Between Citizens and Legal Non-Citizens, and Between and Among Categories of Legal Non-Citizens.

The power of the *federal* government to make classifications affecting the admission and residence of non-citizens is broad. See *Fiallo v. Bell*, 430 U.S. 787, 792 (1977); *Mathews v. Diaz*, 426 U.S. 67, 81-82 (1976). It is well-settled, however, that *state* governments do not enjoy the same broad power to discriminate between citizens and legal non-citizens, and between some

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legal non-citizens and others. The United States Supreme Court has held, without deviation, that legal immigrants are protected against *state* discrimination by the Equal Protection Clause of the Fourteenth Amendment. See *Bernal v. Fainter*, 467 U.S. 216 (1984); *Nyquist v. Mauclet*, 432 U.S. at 8; *Graham v. Richardson*, 403 U.S. 365, 371 (1971) (“Graham”); *Takahashi v. Fish and Game Comm’n.*, 334 U.S. at 418-19; *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886).

Under constitutional equal protection doctrine, the Supreme Court has consistently distinguished between discriminatory classifications of lawful immigrants adopted by the *federal* government and those adopted by a *state* government. The Court has clarified that the rational basis standard of review applies to assess the constitutionality of *federally* created discriminatory classifications of immigrants. See *Mathews v. Diaz*, 426 U.S. at 81-82. In sharp contrast, the *36 Court has consistently reaffirmed that *state* classifications of immigrants must be reviewed under a strict judicial scrutiny test. See *Mathews v. Diaz*, 426 U.S. at 84-85, 86-87; *Graham*, 403 U.S. at 372; *Bernal v. Fainter*, 467 U.S. at 219.

In evaluating a state's discriminatory policies against immigrants, a heightened solicitude is required because “[a]liens as a class are a prime example of a ‘discrete and insular’ minority,” *Graham*, 403 U.S. at 372, who, “pending their eligibility for citizenship, have no direct voice in the political processes.” *Foley v. Connelie*, 435 U.S. 291, 294 (1978). “In undertaking that scrutiny, the governmental interest claimed to justify the discrimination is to be carefully examined in order to determine whether that interest is legitimate and substantial, and inquiry must be made whether the means adopted to achieve the goal are necessary and precisely drawn” *Nyquist*, 432 U.S. at 7 (quoting *Examining Board v. Flores de Otero*, 426 U.S. 572, 605 (1976)); see *Plyler v. Doe*, 457 U.S. 202, 217 (1982) (holding that a state must demonstrate “that its classification has been precisely tailored to serve a compelling governmental interest.”).

This unwavering line of Supreme Court jurisprudence crystallized in *Takahashi v. Fish and Game Comm’n.*, 334 U.S. 410 (1948), which established the principle that states are prohibited from differentiating between citizens and certain groups of aliens in awarding licenses or other benefits.¹⁴ State alienage classifications are unconstitutional even where a state claims, as New York claims here with Section 122, to “follow the Federal Government's lead in adopting classifications” among categories of aliens. 334 U.S. at 418. Rejecting this asserted rationale for state discrimination, the *Takahashi* Court pronounced:

The Federal Government has broad constitutional powers in determining what aliens shall be admitted to the United States, the period they may remain, regulation of their conduct before naturalization, and the terms and conditions of their naturalization. ... Under the Constitution, *the states are granted no such powers*; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization, and residence of aliens in the United States or the several states. State laws which impose discriminatory burdens upon the entrance or residence of aliens lawfully within the United States conflict with this constitutionally derived federal power to regulate immigration, and have accordingly been held invalid.

Takahashi, 334 U.S. at 418-19 (citations and footnote omitted)(emphasis added). The Supreme Court expressly rejected California's claim that “it has the power to single out and ban its lawful alien inhabitants, and particularly certain racial and color groups within this class of inhabitants, from following a vocation simply because Congress has put some such groups in special classifications....” *Takahashi*, 334 U.S. at 420 (emphasis added).

The Supreme Court reaffirmed and extended *Takahashi* in *Graham v. Richardson*, 403 U.S. 365 (1971). At issue in *Graham* were a Pennsylvania law that denied state-funded cash assistance benefits to non-citizens, and an Arizona law that denied state administered federal public assistance benefits to aliens in the United States for fewer than 15 years. Just as New York has done in enacting Section 122, Pennsylvania created distinctions in its state-funded program *38 between citizens and non-citizens, and Arizona created distinctions between groups of aliens. See *Graham*, 403 U.S. at 367. Both states defended their limitations based on the desire to preserve limited welfare benefits for their own citizens.

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Graham categorically reaffirmed the *Takahashi* principle that the Fourteenth Amendment embodies ‘a general policy that all persons lawfully in this country shall abide ‘in any state’ on an equality of legal privileges with all citizens under nondiscriminatory laws.” *Graham*, 403 U.S. at 374. Rejecting Pennsylvania's and Arizona's “cost savings” rationale for their discriminatory policies, the Court emphasized that a state may not “preserv[e] the fiscal integrity of its programs” through “invidious distinctions between classes” of people, including non-citizens as well as citizens. *Graham*, 403 U.S. at 374-75.¹⁵ In *Nyquist v. Mauclet*, 432 U.S. 1 (1977), the Supreme Court reinforced and expanded *Graham*, holding that the Constitution prohibits States from discriminating among and between classes of aliens.¹⁶

Section 122, like the statutes found unconstitutional in *Takahashi*, *Graham*, and *Nyquist*, distinguishes between citizens and lawful immigrants, and among different categories of lawful immigrants, in defining the right to State-funded Medicaid. Such distinctions between citizens *39 and non-citizens, and between different categories of lawful non-citizens, violate Plaintiffs' rights under the federal and state Equal Protection Clauses and controlling Supreme Court precedent.¹⁷

C. The Strict Judicial Scrutiny Test Must Be Applied to Plaintiffs' Claim That Section 122 Violates Their Constitutional Right to Equal Protection Under Law, Regardless of PRWORA.

Despite Supreme Court precedent, the Appellate Division held that the rational relationship standard must be applied to review Section 122's constitutionality under the Equal Protection Clauses of the United States and New York State Constitutions. According to the court, the rational relationship test applies because Section 122's “State-made classifications were “enacted pursuant to Federal immigration legislation.” (R. 34). That holding is squarely in conflict with *Takahashi* and its progeny.

Washington v. Confederated Bands and Tribes of Yakima Indian Nation, 439 U.S. 463 (1979) (“*Yakima*”), upon which the Appellate Division relied, is not to the contrary. *Yakima* does not stand for the principle that a rational basis test must be applied to determine the constitutionality of immigrant based discriminatory classifications, such as the classifications in *40 New York's State-funded Medicaid program. *Yakima* stands merely for the proposition that within the “unique” tripartite relationship among Native American nations, the federal government, and state governments, see 439 U.S. at 501, the rational basis test, not the scrutiny test, applies to assess the constitutionality of the government's classifications. See *Yakima*, 439 U.S. at 499-501.

Without exception, the Supreme Court's equal protection decisions involving Native American nations rely on the historical *sui generis* status of Native American nations as “selfgoverning” entities, rather than groups of people who are classified by their race, nationality, or alien status. See, e.g., *Morton v. Mancari*, 417 U.S. 535, 554 (1974) (in dismissing an equal protection challenge to a federal Bureau of Indian Affairs' employment preference for Native Americans, the Court applied a rational basis test because the preference “is granted to Indians not as a discrete racial group, but, rather, as members of quasi-sovereign tribal entities whose lives and activities are governed by the BIA in a unique fashion.”); *Fisher v. District Court of Sixteenth Judicial Dist. of Montana*, 424 U.S. 382, 390 (1976) (in dismissing an equal protection challenge to a Tribal Court ruling that denied tribal members access to Montana State courts in connection with an adoption proceeding arising on the reservation, the Court pointedly noted that “[t]he exclusive jurisdiction of the Tribal Court does not derive from the race of the plaintiff but rather from the quasi-sovereign status of the Northern Cheyenne Tribe under federal law.”). See also *New York Association of Convenience Stores v. Urbach*, 92 N.Y.2d 204, 212-13 (1998).

These Native American equal protection decisions emphasize the unique historical status of Native American nations, and have no bearing on the relevant test to be applied in determining *41 whether Section 122 violates Plaintiffs' equal protection rights in this action. Plaintiffs, all of whom are lawful immigrants, have no similar, let alone remotely analogous, “unique” historical relationship to the United States government as a “quasi-sovereign” body. As lawful immigrants, they have no unique right

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to self-governance within the United States. As lawful immigrants, they possess no national or quasi-national territory within the confines of the United States. And unlike the classifications as issue in *Yakima, Urbach*, and other related Indian equal protection cases, the discriminatory classification at issue in this action singles Plaintiffs out “as a discrete racial group,” not as “members of quasi-sovereign tribal entities.” *Urbach*, 92 N.Y.2d at 213.¹⁸ See *Rice v. Cayetano*, 528 U.S. 495, 120 S.Ct. 1044, 1057-58 (2000)(Court refused to apply equal protection principles established in its Native American line of cases to state laws favoring native Hawaiians, and instead applied strict scrutiny test to invalidate state laws).¹⁹

Further, nothing in PRWORA authorizes states to discriminate against lawful immigrants in its own state-funded, state-administered benefits programs. If it did, however, such authority would be constitutionally void. *Graham* made this point clear, holding that regardless of the *42 “Federal Government[’s] admittedly ... broad constitutional power to determine what aliens shall be admitted to the United States, the period they may remain, and the terms and conditions of their naturalization, Congress does not have the power to authorize the individual States to violate the Equal Protection Clause.” *Graham*, 403 U.S. at 382. See also *Katzenbach v Morgan*, 384 U.S. 641 (1966) This constitutional principle was recently reaffirmed in *Saenz v. Roe*, 526 U.S. 489 (1999).

The California State defendant in *Saenz* maintained that California was entitled to limit the welfare benefits of newly arrived applicants because, as part of PRWORA, Congress explicitly authorized states to provide lower cash benefits to applicants who arrived from other states within the previous year. See *Saenz*, 526 U.S. at 507-08. The *Saenz* Court flatly rejected this argument. Instead, citing its own precedent, the Court emphasized:

“Congress is without power to enlist state cooperation in a joint federal-state program by legislation which authorizes the States to violate the Equal Protection Clause.” *Shapiro v. Thompson*, 394 U.S. 618, 641 (1969).” *Townsend v. Swank*, 404 U.S. 282, 291 (1971).

Saenz, 526 U.S. at 507 n.21. Stated differently, according to the Court:

Congress has no affirmative power to authorize the States to violate the Fourteenth Amendment and is implicitly prohibited from passing legislation that purports to validate any such violation.

Saenz, 526 U.S. at 508.

Likewise, regardless of Congress' authority to restrict federally funded Medicaid to legal immigrants, federal law cannot transform a state law that violates plaintiffs' equal protection rights, as does Section 122, into a law that survives constitutional analysis. Thus, the trial court *43 correctly declared that a “pronouncement from Congress does not serve to save [Section 122] from a constitutional challenge.” (R. 194-95).²⁰

Here, the principle of *Saenz* must be followed, even if that case itself does not specifically concern classifications based on immigration status. Because “Congress is without power to enlist state cooperation in a joint federal-state program by legislation which authorizes the States to violate the Equal Protection Clause,” it is without power to authorize New York to do so in its State-funded Medicaid program. *Saenz*, 526 U.S. at 507 n.21. See *Printz v. United States*, 521 U.S. 898, 924 (1997); *New York v. United States*, 505 U.S. 144, 161-66 (1992).

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Accordingly, the strict scrutiny standard is applicable to determine the constitutionality of [Section 122](#) under equal protection analysis. Under that standard, [Section 122](#) violates Plaintiffs' right to equal protection under law. *See* Gilbert Paul Carrasco, "Congressional Arrogation of Power: Alien Constellation in the Galaxy of Equal Protection," 74 *B.U.L. Rev.* 591, 638-41 (1994)(concluding that congressional attempts to delegate power to the states to deny statefunded public assistance benefits to aliens are unconstitutional).

D. [Section 122](#) Violates Plaintiffs' Constitutional Right to Equal Protection Under a Rational Basis Test.

Plaintiffs maintain that the Appellate Division erred by holding that a rational basis test, rather than a strict scrutiny test, must be applied to determine the constitutionality of [Section 122](#) under the Equal Protection Clauses of the federal and state constitutions. However, assuming *44 *arguendo* that the court were correct, [Section 122](#) violates Plaintiffs' right to equal protection under law even under a rational basis test.²¹

In the court below, the State advanced two reasons that, in its view, rationally justified its discriminatory policy against lawful immigrants in its State-funded Medicaid program, namely, "increase[d] ... financial burden on the State" and "undermin[ing of] federal policy." State Def. App. Div. Reply Brief, at 30. Neither explanation presents a rational basis to justify depriving lawful immigrant New York State residents of state-funded Medicaid coverage.

First, this Court has firmly established that an increased financial burden on the state government is not a sufficient rational basis to justify discrimination against a class of needy New Yorkers in a state funded public assistance program. *See Lee v. Smith*, 43 N.Y.2d 453 (1977).

As in this action, the State defendant in *Lee* argued that its discriminatory classification in its State-funded cash assistance program was rationally related to its legitimate cost concern because the federal government would not provide federal funding for the additional payments that the plaintiffs sought. This Court acknowledged that New York might have a legitimate interest in reducing its costs, *see Lee v. Smith*, 43 N.Y.2d at 462, but flatly rejected the assertion that such an interest was a rational basis to justify its discriminatory statutory classification. *See Lee v. Smith*, 43 N.Y.2d at 462. To the contrary, this Court concluded that New York's cost savings goal could not be "accomplish[ed] ... by arbitrarily denying one class of persons access to public funds available to all others." *Lee v. Smith* 43 N.Y.2d at 462. As in *Lee*, New York's interest in saving Medicaid costs here is not a sufficient rational basis to "arbitrarily deny[] one *45 class of persons access to public funds available to all others." *Lee v. Smith*, 43 N.Y.2d at 462. *See Jones v Berman*, 37 N.Y.2d 42, 54 (1975)("The counties of this State ... may not shirk their responsibility to provide assistance to destitute persons merely because the higher levels of government refuse to share the cost.").²²

Second, altering *state* program eligibility requirements in a *state-funded* program so that they coincide *with federal* program eligibility requirements in a *federally funded* program is not a legitimate interest so as to justify a policy that discriminates against a category of needy New Yorkers with respect to *state-funded* benefits. As discussed in great detail above. Article XVII of the New York State Constitution obligates New York to care for all needy New Yorkers, not merely those categories of New Yorkers for whom the federal government chooses to pay. To the extent that federal statutory requirements with respect to the use of *federal funds* differ from New York's constitutional mandate with respect to the use of *state funds*, New York State has no legitimate interest in abandoning its Article XVII obligations simply to align its *state-funded* Medicaid program requirements *with federally funded* Medicaid program requirements.

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**POINT III PLAINTIFFS WILL SUFFER IRREPARABLE HARM -
PAIN AND POSSIBLE DEATH - ABSENT MEDICAID COVERAGE.**

At no point in this action has Defendant ever denied that Plaintiffs will suffer irreparable harm without Medicaid coverage. Unless the Decision below is reversed, Plaintiffs will suffer irreparable injury, and, in some cases, death.

*46 For example, should this Court affirm the Decision below, Mohamed Aliessa, Viana Bouzi, and Rosalie Cittar, contrary to the medical judgment of their physicians, will be discharged from their nursing homes, a consequence that could quickly result in their deaths. (Aliessa: R. 61-63 at ¶¶15-24, 80-82, 280 at ¶¶14-16, 82 at ¶11; Bouzi: R. 68-69 at ¶¶59-68, 97-98; Cittar:

R. 678-79). As Defendant concedes, Emergency Medicaid, the only source of medical coverage that will be available to Plaintiffs if the Appellate Division Decision is affirmed, will not provide the intensive nursing home medical care that Mr. Aliessa, Ms. Bouzi, and Mrs. Cittar critically need. (R. 424 at ¶12).

Absent Medicaid, Abdul Monir, who has end stage renal disease, will not receive his thrice weekly dialysis treatment that sustains his life. He will be consigned to an endless cycle of renal failure and short-term emergency hospitalizations. Once stabilized and discharged from the hospital, Mr. Monir will again have no means to pay for his dialysis and medications and he will reenter renal failure. This painful and harmful cycle will continue unabated until he dies. According to Mr. Monir's physician, without proper medical care, Mr. Monir could die in as little as two weeks. (R. 63-65 at ¶¶26-34, 83-84, 188, 361 at ¶¶16-20, 372).

Similarly, Rafael Agtarap cannot afford his \$1,500 monthly cancer medication and other medical care necessary to combat his cancer without Medicaid. (R. 65 at ¶¶36-41, 85-86, 87, 8889). Without Medicaid, Rasulan Ally, an 81 year old frail elderly woman, will no longer be able to go to her daily program for medically frail seniors, or to obtain the medical and nutritional care she critically needs to survive. (R. 66-67 at ¶¶43-51, R. 90-91).

None of Plaintiffs' families has the means to pay for, nor the physical means to provide, the extensive medical care and medications Plaintiffs need to sustain their lives. As set forth *47 throughout the Record, the cessation of Plaintiffs' Medicaid coverage could result in their deaths.

Deterioration of Plaintiffs' mental and physical health and the risk of death manifestly constitute irreparable harm. In contrast. Defendant will not be substantially prejudiced by extending state-funded Medicaid coverage to Plaintiffs, but for the minimal expenditure of state funds. In fact, according to a recent statistical study, the restoration of state-funded full Medicaid coverage to lawful immigrants residing in New York State will cost New York \$132 million *less* than providing them with only far more expensive emergency Medicaid coverage through 2005. See New York Immigration Coalition, "Welfare Reform and Health Care: The Wrong Prescription for Immigrants," p. 31, 39-40 (N.Y. November 2000).

In short, the balance of equities is decidedly in Plaintiffs' favor. Without Medicaid coverage, all Plaintiffs will suffer grave harm, and some will certainly die.

CONCLUSION

For the reasons set forth above, this Court should reverse the Decision and Order of the Appellate Division, and declare that [Section 122](#) violates Article XVII of the New York State Constitution, and the Equal Protection Clauses of the United States and New York State Constitution insofar as it denies Medicaid coverage to Plaintiffs. Further, this Court should direct the entry of

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a permanent injunction prohibiting the implementation of [Section 122](#) to deny Statefunded Medicaid coverage to needy lawful immigrants residing in New York State.

Footnotes

- 1 PRUCOL refers to those immigrants who are “permanently residing under color of law.” *See infra* note 2.
- 2 “PRUCOL” refers to residents who are “Permanently Residing Under Color of Law,” or people who are residing in the United States with the knowledge and/or permission of the Immigration and Naturalization Service. The United States General Accounting Office defines PRUCOL as “an umbrella term used for aliens who are *legally* residing in the United States but who do not fit into other alien categories.” *See Medicaid: Demographics of Nonenrolled Children Suggest State Outreach Strategies*, GAO/HEHS-98-93 at 6 (March 1998)(emphasis added); *see also* [42 C.F.R. §435.408](#).
- 3 “Qualified Aliens” are a statutorily defined strict subset of legal immigrants residing in the United States. For example, Lawful Permanent Residents, certain refugees and asylees are considered “Qualified Aliens.” [8 U.S.C. § 1641](#).
- 4 These immigrants are eligible only for limited Emergency Medicaid that covers only immediate trauma care. *See* [42 U.S.C. §1396b\(v\)](#).
- 5 On August 12, 1999, the First Department denied Plaintiffs' Motion to vacate Defendant's automatic stay of the trial court's Order. (R. 71). On October 7, 1999, the First Department denied Plaintiffs' Motion to renew and reargue the stay decision, or for leave to appeal to this Court from that decision. (R. 54). On November 23, 1999, the parties filed a Stipulation, *inter alia*, to maintain Plaintiffs' Medicaid coverage pending the exhaustion of all appeals in this action. (R. 51-53).
- 6 When moving the adoption of Article XVII, Edward Corsi, Chairman of the Committee on Social Welfare, stated, “[B]y this section, the committee hopes to achieve two purposes: First to remove from the area of constitutional doubt the responsibility of the State to those who must look to society for the bare necessities of life; and secondly, to set down explicitly in our basic law a much needed definition of the relationship of the people to their government.” Revised Record of the Constitutional Convention v. III, p. 2126 (1938), *quoted in Tucker*, [43 N.Y. 2d at 8](#).
- 7 Defendant does not dispute that Emergency Medicaid will not cover the medical care that Plaintiffs need to stay alive. (R. 424 at ¶12).
- 8 The First Department erroneously stated that [Section 122](#)'s Medicaid prohibition is limited to five years. (R. 33). Although [Section 122](#) limits the ban on Medicaid for Lawful Permanent Residents to five years, there is no time limit on the ban on Medicaid coverage for affected PRUCOLs.
- 9 The only case cited by the First Department for its “manner and level” conclusion is its own decision in *Alvarino v. Wing*, [261 A.D.2d 255 \(1st Dep't 1999\)](#). *Alvarino* offered no legal reasoning, and cited no legal authority, when it ruled that [Article XVII](#) did not prohibit the State's refusal to give plaintiffs Food Stamps because “plaintiffs' argument ... addresses the manner and level of assistance, not the denial of any assistance.” *Alvarino*, [261 A.D.2d at 255](#).
- 10 The State defendant chose not to appeal from the Fourth Department's decision.

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- 11 Decisions of this Court that reject Article XVII claims are not to the contrary. An analysis of the decisions reveals that this Court has upheld New York's discretion to impose legislative restrictions only when the restrictions were related to the definition of a needy person, or when applicants intentionally created their "need" in order to qualify for assistance. *See, e.g., Hope v. Perales*, 83 N.Y.2d 563, 578 (1994) (upholding the exclusion of abortions from a prenatal care program's package of services because the program is neither designed to protect public health nor support the needy); *Lovelace v. Gross*, 80 N.Y.2d 419 (1992) (upholding the deeming of grandparents' income to minor children of minor parents living with grandparents because grandchildren with whom they live because the rule relates to definition of needy); *Berstein v. Toia*, 43 N.Y.2d 437 (1977) (upholding a regulation that imposed maximum shelter allowance cap because the cap does not relate to the "impermissible exclusion of the needy from eligibility for benefits"); *Barie v. Levine*, 40 N.Y.2d 565 (1976) (upholding the suspension of benefits for recipients who fail to attend a job interview without good cause because such recipients created their own "need"); *Jones v. Blum*, 101 A.D.2d 330 (3rd Dep't 1984), aff'd, 64 N.Y.2d 918 (1985) (upholding a 150% gross income cap restriction because cap relates to definition of needy). *See also Kircher v. Perales*, 112 A.D.2d 431 (2d Dep't 1985) (upholding the denial of Medicaid benefits for applicants who transfer assets because they "purposely" create their own need); *Crawford v. Perales*, 612 N.Y.S.2d 573, 575 (1st Dep't 1994) (upholding denial of full cash grant to homeless individuals when their food and shelter costs were already provided by State-funded homeless facilities). Here, in contrast, Plaintiffs are denied Medicaid coverage for reasons patently unrelated to their need; namely, their immigration status.
- 12 Nine states provide state-funded full Medicaid coverage to immigrants who cannot receive federally funded Medicaid coverage under PRWORA. *See* New York Immigration Coalition, *Welfare Reform and Health Care: The Wrong Prescription for Immigrants*, p. vii (N.Y. November 2000).
- 13 In its July 1, 1999 Decision, the trial court "regrettably" amended its May 17, 1999 Decision because it was constrained to do so by the First Department's May 20, 1999 Decision in *Alvarino v. Wing*, 261 A.D.2d 255 (1st Dep't 1999). (R. 214).
- 14 Takahashi, a fisherman born in Japan, became a California resident in 1907. Until 1943, California issued commercial fishing licenses to all qualified persons without regard to alienage, and Takahashi received a license every year between 1915 and 1942. In 1943, however, after the commencement of the Second World War, California amended its Fish and Game Code so that a "commercial fishing license may be issued to any person *other than a person ineligible to citizenship.*" *Takahashi*, 334 U.S. at 413 & n.3 (emphasis added). Because Congress had declared persons of Japanese ancestry ineligible for citizenship, California refused to issue Takahashi a fishing license in 1943. 334 U.S. at 413. Like the statute challenged here, the California Code created a classification that attempted to follow federal classifications between citizens and certain groups of aliens.
- 15 Notably, following the passage of PRWORA, the Pennsylvania State Attorney General issued an Official Opinion declaring that Pennsylvania's post-PRWORA enactment, which discontinued state-funded public assistance and medical coverage for certain categories of lawful immigrants, was unconstitutional under *Graham*. (R. 570-74).
- 16 In *Nyquist*, New York sought to defend statutory restrictions on the rights of aliens to receive Regents scholarships on the ground that they did not discriminate between citizens and aliens; rather, they created classifications among groups of aliens. Following *Graham*, the Supreme Court rejected New York's position and held the statute unconstitutional because it was "directed at aliens and ... only aliens are harmed by it." *Nyquist*, 432 U.S. at 9. The Court emphasized that "[t]he fact that the statute is not an absolute bar does not mean that it does not discriminate against the class." *Nyquist*, 432 U.S. at 9.
- 17 Defendant's decision to pick and choose from among its lawful immigrants cannot survive strict judicial scrutiny. Similar efforts by other states have failed in their highest state courts. For example, in Michigan, the State Department of Social Services attempted to impose a "sponsor deeming" rule upon welfare applicants who had lived in Michigan for fewer

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than three years. The Michigan Supreme Court, following the analysis set forth in *Graham* and *Nyquist*, found that the state's policy discriminated on the basis of alienage, was therefore subject to strict scrutiny and, as a result, violated the Equal Protection Clause. See *El Souri v. Dept. of Soc. Servs.*, 429 Mich. 203, 209-11 (Mich. Sup. Ct. 1987); see also *Barannikova v. Town of Greenwich*, 229 Conn. 664, 685-86 (Conn. Sup. Ct. 1994) (holding that Connecticut's restriction of state-funded welfare benefits based on alienage failed to survive strict scrutiny review, and therefore violated the Equal Protection Clause of the United States Constitution). Similarly, when faced with a Pennsylvania state statute identical to [Section 122](#), which was enacted after PRWORA, the State Attorney General of Pennsylvania issued an Official Opinion that refused to enforce the Pennsylvania statute on equal protection grounds. (R. 570-74).

- 18 *Yakima*, which was decided less than three years after *Mathews*, does not suggest that the strict scrutiny test adopted by *Graham* and *Mathews* no longer applies to a state's immigrant based discriminatory classifications in its benefits programs. Had *Yakima*, or any other equal protection decision dealing with Native Americans, intended to modify or revise *Mathew* or *Graham*, it would have done so specifically.
- 19 One commentator who analyzed the ramifications of *Mancari* and its progeny, including *Yakima*, concluded that the Supreme Court has strictly limited the application of a rational basis test to those state classifications involving the governance of Indian tribes, as distinct from those involving Indians as a people. “The Court's analysis revolved around a crucial conclusion -- that the [Bureau of Indian Affairs]'s preference did not constitute racial discrimination, and in fact was not even a racial preference: ‘The preference is not directed towards a “racial” group consisting of “Indians,”’ instead, it applies only to members of “federally recognized” tribes and thus ‘the preference is political rather than racial in nature.’” Stuart Minor Benjamin, “[Equal Protection and the Special Relationship: The Case of Native Hawaiians](#),” 106 *Yale L.J.* 537, 545-548 (1996).
- 20 As the trial court noted, PRWORA's preamble, 8 U.S.C. §1601(7) purports to create a constitutional standard for state laws that adopt federal classifications for public assistance. (R. 194). This federal pronouncement, which neither requires nor authorizes states to discriminate against lawful immigrants in their state funded benefits programs, cannot shield [Section 122](#) from traditional constitutional scrutiny.
- 21 Under the rational basis test, a state's discriminatory policy is unconstitutional unless it is “rationally related to a legitimate State interest.” *Lee v. Smith* 43 N.Y.2d 453, 460 (1977).
- 22 Moreover, according to a recent statistical analysis, the repeal of [Section 122](#) would save New York State \$132 million through 2005. See New York Immigration Coalition, *Welfare Reform and Health Care: The Wrong Prescription for Immigrants*, pp. 31, 39-41 (N.Y. November 2000).

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