JUDGE RAKOFF

05 CV 10446

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

M.K.B., O.P., L.W., M.A., Marieme Diongue, M.E., P.E., Anna Fedosenko, A.I., L.A.M., L.M., Denise Thomas, and J.Z., on their own behalf, and on behalf of their minor children and all others similarly situated,

Plaintiffs,

- against -

VERNA EGGLESTON, as Commissioner of the New York City Human Resources Administration; ROBERT DOAR, as Commissioner of the New York State Office of Temporary and Disability Assistance; and ANTONIA C. NOVELLO, as Commissioner of the New York State Department of Health,

Defendants.

05 Civ.

CLASS ACTION COMPLAINT

PRELIMINARY STATEMENT

1. Plaintiffs bring this action under 42 U.S.C. § 1983 on behalf of themselves and a class of similarly situated immigrant families and individuals in New York City who are, have been, or will be erroneously denied desperately-needed food stamps, Medicaid, and/or public assistance benefits (collectively public benefits).

2. Plaintiffs challenge the policies and practices of defendant EGGLESTON (hereinafter City defendant or HRA) and defendants DOAR and NOVELLO (hereinafter collectively State defendants and individually State OTDA and State DOH) that systemically and erroneously deny class members' applications for public benefits; deny requests by class members to be added to a public benefits case; and discontinue or reduce public benefits

received by class members, because of the systemic misapplication of rules concerning immigrant eligibility for public benefits.

3. Plaintiffs also challenge the policies and practices of the City and State defendants that systemically deter and discourage class members from applying for public benefits, and/or pressure them to withdraw applications for public benefits, on account of immigration status.

4. Plaintiffs further challenge City and State defendants' policy and practice of failing to provide timely and adequate notice of the denial of benefits to class members: (1) when public benefits are granted to some household members but denied to others; (2) when class members apply to be added to an existing public benefits case and are denied; and (3) when class members are discouraged or prohibited from applying for public benefits, based on immigration status.

5. Plaintiffs further challenge City and State defendants' policy and practice of issuing misleading notices to class members that make it difficult if not impossible to determine whether public benefits were correctly denied or provided in the proper amount and whether to appeal such denial, discontinuance, or reduction.

6. Plaintiffs challenge the policy and practice of State defendants of failing to supervise, train, institute adequate quality assurance measures, and otherwise ensure the correct application by City defendant of immigrant eligibility rules for the federally funded food stamp and federally funded Medicaid programs, and of failing to ensure the provision of timely and adequate notice when federal and/or State public benefits are denied in whole or in part, discontinued, or reduced because of immigration status.

7. Plaintiffs allege that City defendant systemically misapplies immigrant eligibility rules because of faulty policy directives and instructions issued over the course of many years by

the State and City defendants; because of computer-related problems attributable to the State and City defendants that make it difficult, and sometimes impossible, to provide class members with public benefits; and because of poor training and supervision over many years by the City and State defendants.

8. Plaintiffs seek an injunction enjoining the City defendant in her capacity as Commissioner of the New York City Human Resources Administration (HRA):

(a) to refrain from unlawfully denying, discontinuing, and/or reducing class members public benefits on account of immigration status;

(b) to refrain from deterring or discouraging class members from applying for public benefits, or encouraging them to withdraw applications for these benefits, on account of immigration status;

(c) to provide timely and adequate written notice of the denial of public benefits to class members (1) when assistance is granted to some household members but denied to others based on immigration status; and (2) when class members apply to be added to an existing public benefits case and are denied;

(d) to refrain from issuing misleading notices to class members that make it difficult if not impossible to determine whether public benefits were correctly denied or provided in the proper amount and/or whether to appeal;

(e) to ensure that all disabled Qualified Alien class members are referred for Medicaid disability determinations if there is an indication that they may qualify for disability-related Medicaid, and that those determined to be disabled receive the food stamps to which they are legally entitled;

(f) to assist class members who are applying for federal food stamps and federal Medicaid in completing an application for a Social Security number and to provide them with proper documentation that complies with Social Security Administration Program Operations Manual System (POMS) Records Maintenance (RM) 00203.510 Alien without Work Authorization – Non-work Need for an SSN (2002) (available at http://policy.ssa.gov/poms.nsf/).

(g) to refrain from enforcing State regulations, State directives and City directives and instructions that purport to require applicants for public assistance and State Medicaid to furnish a Social Security number as a condition of eligibility when a Social Security number is impossible to obtain.

9. Plaintiffs further seek an order enjoining State defendants to supervise and oversee the conduct and actions of City defendant to ensure that the City defendant complies with all federal mandates regarding immigrant eligibility for federal Medicaid and federal food stamps, and to ensure that timely and adequate notice is provided when State and/or federal public benefits are denied in whole or in part, discontinued, or reduced because of immigration status.

JURISDICTION AND VENUE

10. This action is authorized by 42 U.S.C. § 1983, as an action seeking redress of the deprivation of statutory and constitutional rights under color of law.

11. Jurisdiction over this action is conferred upon the Court by: (a) 28 U.S.C. § 1331, which provides for jurisdiction in the United States district courts of civil actions arising under the Constitution, law, or treaties of the United States; (b) 28 U.S.C. § 1343(a)(3), which provides for jurisdiction in the United States district courts of civil actions to redress deprivation of rights

secured by the Constitution of the United States; and (c) for claims against the City defendant arising under State law, 28 U.S.C. § 1367.

12. Venue properly lies with this district pursuant to 28 U.S.C. § 1391(b).

PARTIES

Plaintiffs

13. Many of the named plaintiff class representatives are using their initials because they are victims of domestic violence who fear that their abusers will find and hurt them.

14. Plaintiff M.K.B. is a 33-year-old battered qualified immigrant (for a definition of battered qualified immigrant, see ¶¶ 42(h) – 44 below) from Jamaica who lives in a homeless shelter in Manhattan with her three children, M.A.B., age 9, S.B., age 7, and, N.B., age 2 months.

15. Plaintiff O.P. is a 39-year-old battered immigrant from Peru who is Permanently Residing Under Color of Law (PRUCOL) (for a definition of PRUCOL, see ¶¶ 69, 70 below) because the USCIS granted her deferred action, who lives in a domestic violence shelter with her two children, ages 5 and 13.

16. Plaintiff L.W. is a 62-year-old disabled battered qualified immigrant from Jamaica who is temporarily living with a friend in Brooklyn.

17. Plaintiff M.A. is a 36-year-old battered qualified immigrant from the Dominican Republic who lives in a homeless shelter in the Bronx with her 3-year-old daughter.

18. Plaintiff Marieme Diongue is a 29-year-old immigrant from Senegal who is PRUCOL because she was granted deferred action and who lives in the Bronx with her 10-month old daughter.

19. Plaintiff M.E. is a 37-year-old battered qualified immigrant from Mexico who lives in New York City with her three children, ages 12, 7, and 9.

20. Plaintiff P.E. is a 31-year-old battered qualified immigrant from Jamaica who lives in New York City with her two sons, ages 12 and 2.

21. Plaintiff Anna Fedosenko is an 88-year-old disabled lawful permanent resident from the Ukraine who lives in Brooklyn with her daughter.

22. Plaintiff A.I. is a 32-year-old battered qualified immigrant from Bangladesh who lives in Brooklyn, New York with her two children, S.A., age 2, and W.A., age 6.

23. Plaintiff L.A.M. is a 34-year-old immigrant from Trinidad who is PRUCOL because the USCIS granted her deferred action. She lives in a domestic violence shelter with her 2-year-old son.

24. Plaintiff L.M. is a 42-year-old lawful permanent resident from Haiti with 40 qualifying work quarters as defined in the Social Security Act who lives with her two children, ages 2 and 16, in a domestic violence shelter in New York City.

25. Plaintiff Denise Thomas is a 26-year-old battered qualified immigrant from Saint Lucia who lives in Brooklyn with her mother, sister, 3-year-old daughter, and 9-month-old son.

26. Plaintiff J.Z. is a 28-year-old battered qualified immigrant from Mexico who lives in the Bronx, New York with her 8-year-old son and her 4-year-old daughter.

Defendants

27. Defendant Verna Eggleston is the Commissioner of the City of New York Human Resources Administration (HRA), which is the local social services agency responsible for the delivery of food stamps, Medicaid, and public assistance for residents of New York City. She is responsible for, *inter alia,* the overall operation and administration of federal and state public benefits programs in New York City, and for ensuring that all agency personnel comply with federal and state law and regulations relating to those programs.

28. Defendant Robert Doar is the Commissioner of the State of New York Office of Temporary and Disability Assistance (State OTDA). He is responsible for, *inter alia*: (a) administration of the food stamp program throughout New York State; and (b) supervision of the administration of the food stamp and public assistance programs by all of the State's local social services districts, including New York City.

29. Defendant Antonia C. Novello is the Commissioner of the State of New York Department of Health (State DOH). She is responsible for, *inter alia:* (a) the administration of New York State's federal and State Medicaid programs throughout New York State; and (b) supervision of the administration of the federal and State Medicaid programs by all of the State's local social services districts, including New York City.

CLASS ACTION ALLEGATIONS

30. Plaintiffs bring this action pursuant to Fed. R. Civ. P. 23(a) and 23(b)(2) and (b)(3) on behalf of themselves, on behalf of their minor children and a class defined as:

> All Affected Immigrants who are, have been, or will be eligible for State or federally funded public assistance, Medicaid, and/or food stamps, and who either (a) have been or will be denied public benefits in whole or in part; (b) had or will have public benefits discontinued or reduced; (c) have been or will be discouraged or prevented from applying for public benefits; and/or (d) have been or will be encouraged to withdraw an application for public benefits, by a New York City job center because of a misapplication of immigrant eligibility rules.
>
> For purposes of the foregoing paragraph, the term "Affected Immigrants" means (1) battered spouses and battered children of U.S. citizens or lawful permanent residents who are Qualified Aliens as defined in 8 U.S.C. § 1641(c); (2) their immigrant children or, in the case of battered children, their immigrant parents, provided that they too are Qualified Aliens as defined in 8 U.S.C. § 1641(c); (3) lawful permanent residents who have been in that status for less than five years; and (4) persons who are Permanently Residing Under Color of Law (PRUCOL).

31. Since 1998, New York City has used the term "job center" to refer to the HRA offices responsible for administering joint public assistance, food stamps, and Medicaid cases.

32. This class is so numerous that joinder of all members is impracticable. Every year, at least hundreds of class members apply, or attempt to apply, for public benefits at New York City job centers. Upon information and belief, hundreds of class members are either denied public benefits in whole or in part, have public benefits discontinued or reduced, are discouraged from applying, or are pressured to withdraw an application, because of a systemic misapplication of immigrant eligibility rules.

33. Joinder of all class members is also impracticable because City Defendant often fails to record accurately the reason for the denial of public benefits to immigrants; because City Defendant often fails to record the immigration status of persons whom they find ineligible and because City Defendant does not record the names of persons who are discouraged or prevented from applying for public benefits or pressured to withdraw applications because of immigration status.

34. There are questions of fact and law common to the class. At issue are City Defendant's policies and practices at New York City job centers of:

(a) systemically and erroneously denying applications for public benefits by class members; denying requests by class members to be added to a public benefits case; and discontinuing or reducing benefits received by class members, because of the systemic misapplication of rules concerning immigrant eligibility for benefits;

(b) systemically deterring and discouraging class members from applying for public benefits, and/or pressuring them to withdraw applications for public benefits, on account of immigration status;

(c) failing to provide adequate and timely written notice of the denial of public benefits to class members: (1) when public benefits are granted to some household members but

denied to others; (2) when class members apply to be added to an existing public benefits case and are denied; and (3) when class members are discouraged or prohibited from applying for public benefits, on account of immigration status;

(d) systemically and erroneously issuing misleading notices to class members that make it difficult if not impossible to determine whether public benefits were correctly denied or provided in the proper amount and whether to appeal the denial, discontinuance or reduction of such benefits;

(e) systemically and erroneously failing to refer all disabled qualified alien class members for Medicaid disability determinations and failing to provide federal food stamps to such disabled class members;

(f) systemically and erroneously failing to assist class members who are applying for federal food stamps and federal Medicaid with their Social Security number applications, as required by 7 C.F.R. § 273.6(b) and 42 C.F.R. § 435.910(e);

(g) to refrain from enforcing State regulations, State directives and City directives and instructions that purport to require applicants for public assistance and State Medicaid to furnish a Social Security number as a condition of eligibility when a Social Security number is impossible to obtain.

35. Also at issue are State defendants' policies and practices of failing to supervise, train, institute adequate quality assurance measures, and otherwise ensure the correct application by the City defendant of immigrant eligibility rules for the federal food stamp and federal Medicaid programs, and of failing to ensure the provision of timely and adequate notice when public benefits are denied in whole or in part, discontinued, or reduced because of immigration status.

36. The individual plaintiffs' claims are typical of the claims of the class. All the named plaintiff class representatives are immigrants who have sought to apply or have applied for public benefits at New York City job centers and whose public benefits application have been denied or whose public benefits have been discontinued; and/or have been deterred, discouraged, and prevented from applying for public benefits due to their immigration status; and/or have not received timely and adequate notice regarding their eligibility for those benefits; and/or have received misleading notices that made it difficult if not impossible to determine whether their public benefits were correctly denied or provided in the proper amount and/or whether to appeal that denial or reduction.

37. Declaratory and injunctive relief are appropriate with respect to the class as a whole because defendants have acted on grounds applicable to the class.

38. The named plaintiffs and the proposed class are represented by The Legal Aid Society, New York Legal Assistance Group, Hughes Hubbard & Reed LLP, and The Empire Justice Center, whose attorneys are experienced in class action litigation and will adequately represent the class.

39. A class action is superior to other available methods for a fair and efficient adjudication of this matter in that the prosecution of separate actions by individual class members would unduly burden the Court and create the possibility of conflicting decisions.

STATUTORY AND REGULATORY SCHEME

40. For purposes of this complaint, the term "public benefits" includes federal food stamp benefits, public assistance (Family Assistance and/or Safety Net Assistance), federal Medicaid, and State Medicaid. When used in reference to the period prior to September 30,

2005, the term public benefits also refers to State food stamps provided through the Food Assistance Program (State food stamps or FAP benefits), which expired on September 30, 2005.

41. In Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("PRWORA"), Pub. L. No. 104-193, 110 Stat. 2260 (1996), Congress imposed limitations on the eligibility of immigrants for federally funded public benefits, including federally funded public assistance, federal Medicaid, and federal food stamps (collectively federal public benefits).

42. With certain exceptions, the PRWORA restricts eligibility for federal public benefits to Qualified Aliens. 8 U.S.C. § 1611(a). As described at greater length below, § 402 of the PRWORA further limits eligibility for federal means-tested public benefits, including federal food stamps, federal Medicaid, and federal public assistance to certain subcategories of Qualified Aliens. 8 U.S.C. § 1612. The term "Qualified Alien" is defined as an alien who:

(a) is lawfully admitted for permanent residence under the Immigration and Nationality Act (INA), 8 U.S.C. §§ 1101 *et seq.*; or

(b) has been granted asylum under § 208 of the INA, 8 U.S.C. § 1158; or

(c) was admitted as a refugee under § 207 of the INA, 8 U.S.C. § 1157; or

(d) has been paroled into the United States for at least one year under § 212(d)(5) of the INA, 8 U.S.C. § 1182(d)(5); or

(e) has been granted withholding of deportation under § 243(h) of the INA, 8 U.S.C. § 1253(h) (as in effect before April 1, 1997), or § 241(b)(3) of the INA, 8 U.S.C. § 1251(b)(3); or

(f) has been granted conditional entry under § 203(a)(7) of the INA, 8 U.S.C. § 1253(a)(7) (as in effect before April 1, 1980); or

(g) is a Cuban or Haitian entrant, as defined in § 501(e) of the Refugee Education Assistance Act of 1980; or

(h) has been battered or subjected to extreme cruelty in the United States and meets the criteria set forth in ¶¶ 43-44 below ("battered qualified immigrants").

8 U.S.C. § 1641(b), (c).

43. "Battered qualified immigrants" as used in ¶ 42(h) above include persons who fall into one of the categories in ¶ 44 below, and who are either (1) Qualified Aliens who are themselves battered, 8 U.S.C. § 1641(c)(1); (2) Qualified Alien parents of a child who has been battered, 8 U.S.C. § 1641(c)(2); or (3) Qualified Alien children of a parent who has been battered, 8 U.S.C. § 1641(c)(3).

44. To establish status as a Qualified Alien pursuant to 8 U.S.C.§ 1641(c), the alien must provide evidence that her petition, or a petition filed on her behalf by her U.S. citizen or lawful permanent resident spouse or parent, under one of the immigration provisions listed below has been approved or has been found to set forth a prima facie case:

(a) the alien's petition for classification as a battered spouse or child of a U.S. citizen pursuant to 8 U.S.C. § 1154(a)(1)(A)(ii), (iii) or (iv) [*see* 8 U.S.C. § 1641(c)(1)(B)(i)], or of a lawful permanent resident pursuant to 8 U.S.C. § 1154(a)(1)(B)(ii) or (iii) [*see* 8 U.S.C. §1641(c)(1)(B)(ii)]; or

(b) a petition filed by the alien's U.S. citizen spouse or parent under 8 U.S.C. § 1154(a)(1)(A)(i) for classification of the alien as a spouse or child of a U.S. citizen, or a petition filed by the alien's lawful permanent resident spouse or parent under 8 U.S.C. § 1154(a)(1)(B)(i) for classification of the alien as the spouse or child of a lawful permanent resident [*see* 8 U.S.C. § 1641(c)(1)(B)(iv)]; or

(c) an application for suspension of deportation [*see* 8 U.S.C. § 1641(c)(1)(B)(iii)]; or

(d) an application for cancellation of removal [*see* 8 U.S.C. § 1641(c)(1)(B)(v)].

45. A battered qualified immigrant as defined in ¶ 44(a) is commonly known as a "VAWA self-petitioner" because the petition for her classification as a spouse or child of a U.S. citizen or lawful permanent resident has been filed by her on her own behalf (and, where applicable in the case of a battered alien parent, on behalf of her alien child) under the Violence Against Women Act of 1994 (VAWA), Pub. L. No. 103-322, Title IV, Subtitle G, 108 Stat. 1902, 1953 (1994). The form for filing such a petition is an I-360. *See* 8 C.F.R. § 204.1(a)(3).

46. A battered immigrant as defined in ¶ 44(b) is not a "self-petitioner." Rather, she is an alien on whose behalf a petition has been filed by a U.S. citizen or lawful permanent resident parent or spouse for classification of the alien as a spouse or child of the U.S. citizen or lawful permanent resident petitioner. The form for filing such a petition is known as an I-130. *See* 8 C.F.R. § 204.1(a)(1).

47. One nuance concerning I-130 petitions should be noted. An unmarried child of the spouse of a U.S. citizen must be the beneficiary of a separate petition filed by the U.S. citizen stepparent or parent. Therefore, a separate I-130 petition must be filed for each child of the spouse of a U.S. citizen. However, an unmarried child of the spouse of a lawful permanent resident can be a derivative beneficiary on the parent's I-130 petition. Therefore, a separate I-130 petition does not need to be filed for a child of the spouse of a lawful permanent resident, as the child is a derivative on the parent's I-130 petition. 8 C.F.R. § 204.2(a)(4).

48. A child of a VAWA self-petitioning spouse can be a derivative beneficiary on the self-petitioner's I-360 petition regardless of whether the self-petitioner's spouse is a U.S. citizen or lawful permanent resident. 8 C.F.R. § 204.2(c)(4); *see also* Preamble to Interim Regulations,

61 Fed. Reg. at 13068-69 (March 26, 1996). A child of a VAWA self-petitioning child cannot be a derivative beneficiary on the self-petitioner's I-360 petition, and a separate petition must be filed for the child. 8 C.F.R. § 204.2(e)(4).

49. In the Victims of Trafficking and Violence Prevention Act of 2000, Pub. L. No. 106-386, § 107(b)(1)(A), 114 Stat. 1464, 1475 (2000), Congress provided that, notwithstanding Title IV of the PRWORA, "an alien who is a victim of a severe form of trafficking in persons shall be eligible for benefits and services . . . to the same extent as an alien who is admitted to the United States as a refugee under section 207 of the Immigration and Nationality Act." Although trafficking victims are not included in the statutory definition of Qualified Alien, 8 U.S.C. § 1641(b), they are eligible under § 107(b)(1)(A) for public benefits to the same extent as refugees. A visa called the T visa has been created for victims of human trafficking. 8 U.S.C. § 1101(a)(15)(T).

50. As discussed below, New York State law provides public benefits to many immigrants who are not eligible for federal public benefits.

A. Federal Food Stamps

51. Congress established the federally funded, state-administered food stamp program in 1964 in order to "safeguard the health and well-being of the Nation's population by raising levels of nutrition among low-income households." 7 U.S.C. § 2011; 7 C.F.R. § 271.1.

52. To be financially eligible for federal food stamps, a household's net income must be at or below the federal poverty line. The resources available to the household may not exceed $2,000 (or, where a household includes a member who is disabled or 60 years of age or older, $3,000). 7 U.S.C. §§ 2014(c), (g).

53. Applicants must be permitted "to apply to participate in the program on the same day that the household first contacts a food stamp office in person during office hours." 7 U.S.C. § (e)(2)(B)(iii). Eligible applicants must be provided federal food stamps no later than 30 days after application. 7 U.S.C. § 2020(e)(3); 7 C.F.R. § 273.2(a), (g)(1). Under federal law, expedited federal food stamps must be provided to certain particularly needy households within seven days. 7 U.S.C. § 2020(e)(9). New York law requires that certain particularly needy households must receive expedited federal food stamps within five days. 18 N.Y.C.R.R. § 387.8(a)(2)(i)(a).

54. The social services district must notify every applicant in writing of its decision to accept or deny a federal food stamp application. All notices must include the action taken by the agency, the specific reason for any denial or the amount of the benefit granted, the laws and regulations on which that action was based, the effective date of the action, and the certification period. 7 C.F.R. § 273.10(g)(1).

55. To be eligible for federal food stamps, an immigrant must be either:

(a) a Qualified Alien who:

(1) is a lawful permanent resident who has worked 40 qualifying quarters of coverage as defined under the Social Security Act, or who can be credited with such quarters, as set forth in 8 U.S.C. § 1645, *see* 8 U.S.C. § 1612(a)(2)(B); or

(2) is receiving benefits or assistance for blindness or disability within the meaning of the Food Stamp Act, 8 U.S.C. § 1612(a)(2)(F)(ii); or

(3) was lawfully residing in the United States and was 65 years of age or older on August 22, 1996, 8 U.S.C. § 1612(a)(2)(I); or

(4) is under 18 years of age, 8 U.S.C. § 1612(a)(2)(J); or

(5) has resided in the United States in a Qualified Alien status for five or more years, 8 U.S.C. § 1612(a)(2)(L); or

(b) is a (1) refugee (or T visa holder, *see* ¶ 49 above), (2) asylee, (3) person whose deportation has been withheld, (4) Cuban/Haitian entrant, (5) Amerasian, (6) American Indian born in Canada or a member of a federally recognized Indian tribe, (7) member of a Hmong or Highland Laotian tribe who rendered assistance to the U.S. military during the Vietnam era, or (8) lawfully residing active duty service member or honorably discharged veteran or a spouse or unmarried dependent child of such individual. 8 U.S.C. § 1612(a)(2)(A), (C), (G), (K). Immigrants in these eight categories are eligible for federal food stamps without any time limitation. (Under 8 U.S.C. § 1612(a)(2)(A), immigrants in the first five categories are eligible for federal food stamps for seven years; thereafter, they remain eligible for federal food stamps under 8 U.S.C. § 1612(a)(2)(L) because they have been in a Qualified Alien status for five or more years.)

56. Qualified Aliens who are in receipt of disability-related Medicaid benefits are receiving "benefits or assistance for blindness or disability" (¶ 55(a)(2) above) for the purposes of 8 U.S.C. § 1612(a)(2)(F)(ii). *See* 7 U.S.C. § 2012(r)(2)(B). An applicant for or recipient of Medicaid must be referred for a Medicaid disability determination if there is an indication that they may qualify for disability-related Medicaid. State DOH, Medicaid Reference Guide (MRG), at 27 (February 2005). State OTDA has advised local districts of this requirement. State OTDA, Informational Letter (INF) 03 INF 14, at 5 (April 2, 2003). If the Medicaid disability determination established that the individual is disabled, then he or she is eligible for federal food stamps. *Id.*

B. New York State Food Assistance Program

57. In 1997, New York established a state and locally funded food stamp program called the Food Assistance Program (FAP) for certain Qualified Aliens who were ineligible for federal food stamps because of their immigration status. Welfare Reform Act of 1997, N.Y. Laws of 1997, ch. 436, Part B § 148-b (1997). Participation in FAP by local social services districts was optional. N.Y. Soc. Serv. Law § 95(10)(2). New York City participated in FAP until the Legislature allowed the program to expire on September 30, 2005.

58. Initially, eligibility for FAP was limited to certain Qualified Aliens who, on August 22, 1996, resided in the local social services district in which they were applying for benefits, were ineligible for federal food stamps due to their immigration status, and were: (1) under eighteen years of age, (2) elderly, or (3) disabled. Welfare Reform Act of 1997, N.Y. Laws of 1997, ch. 436, Part B § 148-b (1997). In 2001, domestic violence victims were added to the list of vulnerable immigrants eligible for FAP. 2001 N.Y. Laws, ch. 232.

59. In 2002, Congress expanded eligibility for federal food stamps to Qualified Aliens who are under 18 or disabled. 8 U.S.C. § 1612(a)(2)(F) & (J). Because they were restored to the federal program, Qualified Aliens who were under 18 or disabled were no longer eligible for FAP benefits. Those who remained eligible for FAP were Qualified Aliens who had been residing in the United States on August 22, 1996 and were victims of domestic violence or elderly (60 years of age or older), but who were ineligible for federal food stamps because they had not been in a qualified status for at least five years after entry.
N.Y. Soc. Serv. Law § 95(10)(b).

60. As set forth below, HRA failed to instruct adequately workers about FAP and to direct workers to provide FAP to eligible immigrants. As a result, workers consistently failed to

provide FAP benefits to immigrants who applied for assistance and who would have been eligible for FAP. Likewise, for most of FAP's existence, State OTDA consistently failed to include reference to FAP in its alien desk aid, which otherwise listed all the public benefits programs for which immigrants might be eligible. Because of these omissions, many class members who should have received FAP benefits did not do so. In September 2005, the New York State Legislature allowed the FAP program to expire without renewal. Upon information and belief, at that time there were five or fewer immigrants enrolled in FAP in New York State.

C. Federal and State Medicaid

61. Congress created the federal Medicaid program in 1965 to provide medical benefits to families with children, pregnant women, the elderly, the disabled, and the blind "whose income and resources are insufficient to meet the costs of necessary medical services." 42 U.S.C. § 1396; *see also* 42 U.S.C. § 1396a(a)(10). The costs of providing medical benefits under the federal Medicaid program are shared among the states and the federal government.

62. The federal Medicaid Act provides that "all individuals wishing to make application for medical assistance under the [Medicaid] plan shall have opportunity to do so, and that such assistance shall be furnished with reasonable promptness to all eligible individuals." 42 U.S.C. § 1396a(a)(8). Federal Medicaid regulations mandate that "[t]he agency must afford an individual wishing to do so the opportunity to apply for Medicaid without delay." 42 C.F.R. § 435.906. Federal Medicaid applications must be processed within 45 days, except in circumstances where the applicant claims to be eligible for Medicaid because of a disability, in which case the application must be processed within 90 days. 42 C.F.R. § 435.911(a)(1)-(2).

63. Federal law requires that the social services district notify every applicant in writing of any decision accepting or denying a Medicaid application. All notices must include the action

taken by the agency, the reason for any denial if the application is denied, the laws and regulations on which that action was based, the effective date of the action if it not a denial, and the certification period. 42 C.F.R. § 435.912; *see also* 18 N.Y.C.R.R. §§ 358-3.3, 358-2.2

64. Only Qualified Aliens are eligible for federal Medicaid. 8 U.S.C. § 1612(b)(1). In Section 403 of PRWORA, Congress enacted a five-year bar on the eligibility of certain Qualified Aliens who entered the United States on or after August 22, 1996 for federal means-tested public benefits, including federal Medicaid. 8 U.S.C. § 1613(a). Nevertheless, as described below in ¶ 65, certain categories of immigrants are exempt from the five-year bar. Immigrants who are eligible for federal Medicaid benefits therefore include:

(a) Qualified Aliens who entered the United States before August 22, 1996 (regardless of the status in which they entered);

(b) Qualified Aliens who entered the United States on or after August 22, 1996, and who have been in a qualified status for five years; and

(c) Qualified Aliens who are exempt from the five-year bar.

65. Qualified Aliens who are exempt from the five-year bar on federal Medicaid benefits include (1) refugees (and T visa holders, *see* ¶ 49 above), (2) asylees, (3) persons granted withholding of deportation, (4) Cuban and Haitian entrants, (5) Amerasians; (6) lawfully residing veterans or individuals on active duty and their lawfully residing dependents; or (7) American Indians born in Canada or members of a federally recognized Indian tribe. 8 U.S.C. §§ 1613(b), (d).

66. New York State provides State Medicaid to several categories of individuals who are not eligible for federal Medicaid. N.Y. Soc. Serv. Law §§ 366(1)(a), 158(1)(b), 369-ee(2); 18 N.Y.C.R.R. §§ 360-3.3(a)(1), (b)(7).

67. Under State law, "[a]ny person requesting medical assistance may make an application therefor in person, through another in his behalf or by mail . . . ." N.Y. Soc. Serv. Law § 366-a(1). Medical assistance "shall be given" to all eligible applicants. N.Y. Soc. Serv. Law §§ 366(1)(a).

68. In 1997, the New York State Legislature adopted the same immigration eligibility restrictions in its State Medicaid program as Congress had imposed in 1996 on the federal Medicaid program with the exception that the Legislature chose to provide State Medicaid to those otherwise eligible persons who are Permanently Residing Under Color of Law (PRUCOL) who, as of August 4, 1997, were residing in certain licensed residential health facilities or were diagnosed with AIDS. N.Y. Soc. Serv. Law § 122(1)(c).

69. The term PRUCOL, an acronym for "Permanently Residing Under Color of Law," is not an official immigration status. Rather, it is a public benefits category referring to immigrants who are permanently residing in the United States with knowledge and either the permission or the acquiescence of the USCIS. *See* State DOH, Administrative Directive (ADM) 04 OMM/ADM-07, at 19-22 (Oct. 24, 2004).

70. State DOH has determined that the following statuses are considered PRUCOL:

(a) Persons paroled into the United States pursuant to Section 212(d)(5) of the INA showing status for less than one year, except Cuban/Haitian entrants;

(b) Persons residing in the United States pursuant to an Order of Supervision;

(c) Persons residing in the United States pursuant to an indefinite stay of deportation;

(d) Persons residing in the United States pursuant to an indefinite voluntary departure;

(e) Persons on whose behalf an immediate relative petition has been approved and their families covered by the petition, who are entitled to voluntary departure, but whose departure the USCIS does not contemplate enforcing;

(f) Persons who have filed applications for adjustment of status pursuant to Section 245 of the INA that USCIS consider "properly filed" or granted and whose departure the USCIS does not contemplate enforcing;

(g) Persons granted stays of deportation by court order, statute, or regulation, or individual determination by USCIS pursuant to Section 243 of the INA and whose departure the USCIS does not contemplate enforcing;

(h) Persons granted voluntary departure pursuant to Section 242(b) of the INA;

(i) Persons granted deferred action status pursuant to USCIS operating instructions;

(j) Persons who entered and have continuously resided in the U.S. since before 1/01/72;

(k) Persons granted suspension of deportation pursuant to Section 244 of the INA; and

(l) Other persons living in the United States with the knowledge and permission or acquiescence of the USCIS and whose departure the USCIS does not contemplate enforcing. Examples include but are not limited to, the following:

- Permanent non-immigrants pursuant to Public Law 99-239 (applicable to Citizens of the Federated States of Micronesia and Marshall Islands);
- Applicants for adjustment of status, asylum, suspension of deportation or cancellation of removal, or deferred action;

- Persons granted extended voluntary departure, or Deferred Enforced Departure (DED) for a specified time due to conditions in their home country;
- Persons granted Temporary Protected Status; and
- Persons having a "K", "V", "S" or "U" visa.

State DOH, 04 OMM/ADM-07, at 19-20.

71. In 2001, the New York Court of Appeals held on State and federal constitutional grounds that New York State may not deny State Medicaid benefits to legal immigrants based on their immigration status. *Aliessa v. Novello*, 96 N.Y.2d 418, 421-22 (2001). As a result of the ruling in *Aliessa*, all Qualified Aliens and PRUCOL individuals who are ineligible for federal Medicaid due to immigrant eligibility restrictions are eligible for State Medicaid.

D. Federal and State Public Assistance

72. Under the New York State Constitution and the State Social Services Law, social services officials are under a duty to provide adequately for those individuals and families who do not have sufficient funds to support themselves and to provide such services as far as possible to ensure that families be kept together and not be separated for reasons of poverty alone. N.Y. Const. Art. XVII; N.Y. Soc. Serv. Law §§ 131(1) & (3).

73. The federal government provides block grants to States for temporary assistance to needy families (TANF) under Part A of Title IV of the Social Security Act, 42 U.S.C. §§ 601 *et seq*.

74. New York has established two public assistance programs for indigent New Yorkers to comply with this duty. The first of those programs, Family Assistance, is funded in part by the federal TANF block grant. Family Assistance is available in general to families with a child under 18 and to pregnant women.

75. The second of those programs, Safety Net Assistance, receives no federal TANF funds. Safety Net Assistance is available generally to childless adults, those ineligible for Family Assistance due to the federal immigrant eligibility restrictions, and those who have reached the federal time limit for receipt of federal public assistance.

N.Y. Soc. Serv. Law §§ 158 & 349.

76. Under New York State regulations, "[a]ny person has the right to make application for that form of public assistance or care that he or she believes will meet his or her needs. The applicant or any adult member of the applicants' family has the right to make application for such assistance or care." 18 N.Y.C.R.R. § 350.3(a)(1). "While documentation is required for the determination of eligibility, it shall not be a prerequisite to filing an application."

18 N.Y.C.R.R. § 350.3(b).

77. All applications for public assistance "shall be processed promptly."

18 N.Y.C.R.R. § 350.3(b). A personal interview to establish eligibility for public assistance must be scheduled within seven working days from the date of filing, except where there is an indication of emergency need, in which case the interview must be held immediately.

18 N.Y.C.R.R. § 350.3(c). The decision to accept or deny the application for public assistance must be made within 30 days from the date of application for Family Assistance and within 45 days from the date of application for Safety Net Assistance, except for specified, acceptable reasons for delay. 18 N.Y.C.R.R. § 351.8(b).

78. Individuals determined by the social services district to be in immediate need of assistance have a right to an emergency or predetermination grant of assistance, even when ongoing eligibility has not yet been established. 18 N.Y.C.R.R. § 351.8(c)(4).

79. The social services district must notify every applicant in writing of its decision to accept or deny an application for public assistance. 18 N.Y.C.R.R. § 351.8(b). All notices must include the action taken by the agency, the specific reason for any denial or the amount of benefits granted, the laws and regulations on which the action is based, and for acceptances the effective date of the action. 18 N.Y.C.R.R. §§ 358-3.3, 358-2.2. When an application for public assistance is withdrawn, the social services district must record the reasons therefor in the case record. 18 N.Y.C.R.R. § 355.3(a)(3).

80. Because Family Assistance is funded in part by the federal TANF block grant, immigrant eligibility restrictions on the use of TANF funds apply to eligibility for Family Assistance. With one exception (concerning eligibility of American Indians born in Canada or members of a federally recognized Indian tribe), these restrictions are the same as those applicable to the federal Medicaid program.

81. As is the case for federal Medicaid, only Qualified Aliens are eligible for Family Assistance. 8 U.S.C. § 1612(b)(1). The five-year bar in § 403 of PRWORA on the eligibility of certain Qualified Aliens who entered the United States on or after August 22, 1996 for federal means-tested public benefits applies to Family Assistance. 8 U.S.C. § 1613(a). The exceptions to the five-year bar are also applicable to Family Assistance. (*See* ¶ 82 below.) As a consequence, immigrants who are eligible for Family Assistance include:

(a) Qualified Aliens who entered the United States before August 22, 1996, regardless of the status in which they entered;

(b) Qualified Aliens who entered the United States on or after August 22, 1996 and who have been in a qualified status for five years; and

(c) Qualified Aliens who are exempt from the five-year bar.

82. Qualified Aliens who are exempt from the five-year bar on Family Assistance include (1) refugees (and T visa holders, *see* ¶ 49 above), (2) asylees, (3) persons granted withholding of deportation, (4) Cuban and Haitian entrants, (5) Amerasians; and (6) lawfully residing veterans or individuals on active duty and their lawfully residing dependents. 8 U.S.C. §§ 1613(b). (The exception concerning eligibility of American Indians born in Canada or members of a federally recognized Indian tribe, 8 U.S.C. § 1613(d), applies to the federal food stamp and federal Medicaid programs but not to Family Assistance.)

83. To be eligible for Safety Net Assistance, an immigrant must be: (1) a Qualified Alien, including an alien who entered the United States after August 22, 1996, who is not exempt from the five-year bar, and who has been in a qualified status for less than five years; or (2) a person who is not a Qualified Alien but who is otherwise Permanently Residing in the United States Under Color of Law (PRUCOL). N.Y. Soc. Serv. Law § 122(1)(c).

E. Requirements Regarding Social Security Numbers

1. Federal food stamps and federal Medicaid

84. All applicants for federal food stamps and federal Medicaid must provide Social Security numbers (SSN). 7 C.F.R. § 273.6(a) (food stamps); 42 C.F.R. § 435.910(a) (Medicaid). If an otherwise eligible applicant does not have a SSN, the agency administering the food stamp or Medicaid program must assist the applicant in completing an application for a SSN and send the applicant to apply for a SSN at the local Social Security Administration (SSA) office. 7 C.F.R. § 273.6(b) (food stamps); 42 C.F.R. § 435.910(e) (Medicaid).

85. The Medicaid "agency must not deny or delay services to an otherwise eligible applicant pending issuance or verification of the individual's SSN by SSA." 42 C.F.R. § 435.910(f).

86. An applicant for or recipient of federal food stamps who "has refused or failed without good cause to provide or apply for an SSN . . . shall be ineligible to participate in the Food Stamp Program." 7 C.F.R. § 273.6(c).

87. SSA will issue a SSN to immigrants not authorized to work by USCIS (non-work SSN) when they need one to "to satisfy a Federal statute or regulation that requires you to have a social security number in order to receive a Federally-funded benefit to which you have otherwise established entitlement . . . ." 20 C.F.R. § 422.104(a)(3)(i).

88. The procedure for obtaining a SSN in this circumstance is set forth in SSA's Program Operations Manual System (POMS), which requires that a local benefit agency provide an applicant with a letter meeting certain specific requirements. The letter must not be a form letter; must be dated; must specifically identify "the non-work reason for which an SSN is required, the relevant statute or regulations requiring the SSN as a condition to receive the benefit or service, and the name and telephone number of an official to contact so that the information provided may be verified." SSA, POMS 00203.510, at 2 (2002).

2. Public assistance and State Medicaid

89. No federal statute or federal regulation requires applicants for or recipients of public assistance (whether federally or state funded) or state Medicaid to furnish a SSN as a condition of eligibility.

90. No New York State statute requires applicants for or recipients of public assistance (whether federally or state funded) or State Medicaid to furnish a SSN as a condition of eligibility. The State Social Services Law requires that an applicant for public assistance "shall, as a condition of receiving such aid, present proof of his identity to the social services official as the department may by regulation require." N.Y. Soc. Serv. Law § 134-a(2). With regard to

Medicaid, the Social Services Law provides that, "[i]n accordance with the regulations of the department of health, it shall be the responsibility of the applicant to provide information and documentation necessary for the determination of initial and ongoing eligibility for medical assistance." N.Y. Soc. Serv. Law § 366-a(2)(a).

91. State regulations impose contradictory requirements regarding the need to furnish a SSN as a condition of eligibility for public assistance and State Medicaid. Two State regulations governing public assistance programs provide that applicants and recipients must furnish *or apply for* a SSN as a condition of eligibility. 18 N.Y.C.R.R. § 370.2(c)(3)(i) ("Any applicant for or recipient of safety net assistance . . . must furnish or apply for a social security number as a condition of eligibility"); 18 N.Y.C.R.R. § 369.2(b)(1)(i) ("when a social security number cannot be furnished, the applicant or recipient shall apply for such number, submit verification of such application, and provide the number upon its receipt").

92. On the other hand, one State regulation for public assistance programs purports to require furnishing a SSN as a condition of eligibility. 18 N.Y.C.R.R. §§ 351.2(c) ("each member of the household for whom an application for assistance is made . . . must apply for and must furnish a social security number as a condition of the household's eligibility for public assistance.").

93. State Medicaid regulations make these inconsistent provisions applicable to the Medicaid program. 18 N.Y.C.R.R.R § 360-1.2 (with exceptions not relevant here, "All departmental regulations relating to public assistance and care apply to medical assistance. . . .").

94. When a state or local law (as opposed to a federal law) requires furnishing a SSN as a condition of eligibility for a public benefit, SSA will issue a SSN only if the immigrant has work authorization. Federal regulations provide that a non-work SSN will be provided to an

immigrant who is eligible for a state or local public benefit that requires the furnishing of a SSN, but only if the immigrant is "legally in the United States." 20 C.F.R. § 422.104(a)(3)(ii). SSA has stated that the phrase "legally in the United States" means that the immigrant must have work authorization. An immigrant who lacks work authorization is not able to obtain a SSN from SSA for the purpose of obtaining public assistance benefits (Family Assistance and Safety Net Assistance) or State Medicaid.

95. Many immigrants are eligible for State-funded benefits but lack work authorization. For example, battered qualified immigrants who are in the process of self-petitioning under VAWA but whose self-petition has not yet been approved, and those with an approved family petition (I-130) but who have no application for permanent residence pending, are not authorized to work. They may be eligible for public benefits for months, and often for a year or more, before they receive employment authorization and are able to get a SSN.

96. State OTDA and City Defendants' policy directives and instructions incorrectly assert that SSA will furnish a SSN to all immigrants who apply and are eligible for federal public assistance or a state public benefit, when in practice, those who lack work authorization will not be issued a SSN by SSA. For example, a 2002 policy directive issued by State OTDA incorrectly states "SSA will issue SSNs to aliens who are otherwise eligible for temporary assistance if State Law requires an SSN." State OTDA, 02 INF-40 at 2 (Nov. 27, 2002). *See also* HRA, Policy Dir. (PD) PD 03-11-ELI, at 1 (February 28, 2003) ("SSA will also issue SSNs to aliens who are otherwise eligible for public benefits if the state law requires an SSN as a condition of eligibility for assistance"). These directives and instructions are incorrect and misleading because SSA will not issue a SSN to an immigrant who is eligible only for public assistance, State Medicaid and State food stamps and who lacks employment authorization.

97. State policy directives and instructions that address the obligation to furnish a SSN as a condition of eligibility for public assistance, State Medicaid, and State food stamps are contradictory, internally inconsistent, and ambiguous. A 2004 State DOH directive entitled "Citizenship and Alien Status Requirements for the Medicaid Program" recites: "New York State's laws and regulations require a Social Security Number for public benefits, including Medicaid," State DOH, 04 OMM/ADM-7, at 28 (citing, *inter alia*, 18 N.Y.C.R.R. §§ 351.2(c), 360-1.2). Despite that statement, the directive continues: "All applicants for Medicaid thus must provide a Social Security Number *or proof that they have applied for one or tried to apply for one*" (emphasis added). *Id.* The directive makes an exception even to this requirement for, *inter alia*, "certain battered women immigrants who prove their status under the Violence Against Women ACT (VAWA), as set forth in the section titled 'Battered Immigrant' of this directive." *Id.*

98. With regard to public assistance, a 2004 Informational Letter issued by State OTDA states, "Furnishing an SSN is a condition of temporary assistance eligibility." State OTDA, 02 INF-40 at 2. It explains that the applicant or recipient "initially complies with this requirement by applying for an SSN . . . . The applicant or recipient fully complies with this requirement by furnishing the SSN when the Social Security card is received." *Id.* In preparing letters to SSA, local social services districts are directed to "[c]ite New York State law that requires an SSN as a condition of eligibility for temporary assistance." *Id.* Local districts are directed to "advise aliens as early as possible of the requirement to furnish an SSN . . . ." *Id.*

99. Notwithstanding these statements about the applicant's obligation to furnish a SSN, this directive refers on five other occasions to an obligation to "furnish or apply for an SSN." For example, the State OTDA policy directive states "Each member of a household that is

applying for temporary assistance must *furnish or apply for* an SSN" (emphasis added). *Id.* The "failure of an applying alien parent/caretaker relative *to furnish or apply for* an SSN will result in an incremental non-durational sanction" (emphasis added). *Id.* If a non-applying household member whose needs are considered "fails *to furnish or apply for* an SSN, the entire household is ineligible for assistance." *Id.* at 3.

F. State Supervision

100. The Food Stamp and Medicaid Acts both require participating states to designate a single state agency to be responsible for administering and supervising the programs. 7 U.S.C. § 2012(n) (food stamps); 42 U.S.C. § 1396a(a)(5), 42 C.F.R. § 431.10 (Medicaid). While states may delegate administrative responsibility for the day-to-day oversight of these programs, ultimate responsibility for compliance with statutory requirements remains at the state level.

101. Under State law, the New York State Department of Health is the single state agency responsible for supervising administration of the Medicaid program in New York State. *See, e.g.*, N.Y. Soc. Serv. Law § 365(1) (local social services districts furnish medical assistance "subject to supervision by the department").

102. Under State law, the State Office of Temporary and Disability Allowance (State OTDA) is the single state agency responsible for supervising administration of the food stamp and public assistance programs in New York State. *See* 1997 Laws of N.Y. ch. 436, § 122(f) (transferring all responsibilities concerning administration of financial support services and food stamps to State OTDA).

103. HRA and each of the 58 social services districts in New York State serve as "agents" of the State Commissioner of Health with regard to Medicaid, and the State

Commissioner of OTDA with regard to federal food stamps and public assistance. N.Y. Soc. Serv. Law § 65(3) ("The county commissioner shall act as the agent of the department . . . ."); § 2(1) ("Department" means "state department of social services" (now State OTDA, 1997 Laws of N.Y. ch. 436, § 122(f)), except that for purposes of title 11 (Medicaid), "department means the state department of health").

104. Under State law, State OTDA is the agency responsible for administering the system of administrative fair hearings in which applicants for and recipients of public benefits may appeal from an adverse determination by a local social services district. N.Y. Soc. Serv. Law § 22.

FACTUAL ALLEGATIONS COMMON TO THE CLASS

105. All plaintiffs and plaintiff class members are immigrants who are, have been, or will be eligible for food stamps, Medicaid, and/or public assistance benefits who did not receive, are not receiving, or will not receive one or more of these public benefits because of a systematic misapplication of immigrant eligibility rules.

106. All plaintiffs and plaintiff class members are indigent and needy. Those seeking public assistance and federal food stamps live at or below the federal poverty level. Those seeking Medicaid lack sufficient income to meet their medical needs.

107. All plaintiffs and plaintiff class members have suffered, are suffering, and/or will continue to suffer severe and irreparable harm as a direct consequence of the defendants' actions and failures to act challenged in this case. They face imminent, and in many cases, life threatening harm because they are being denied or delayed access to food, shelter, medical care, and other basic necessities.

A. Policies, Customs, and Usages Challenged in this Action

108. HRA has a policy, custom, and usage of incorrectly denying battered qualified immigrants and PRUCOL immigrants' applications for public assistance and Medicaid; of erroneously discontinuing and reducing these public benefits to such class members; of falsely informing such class members that they are not eligible for these benefits; of deterring and discouraging such class members from applying for these benefits; of pressuring such class members to withdraw their applications for these benefits; and of refusing to allow such class members to apply for these benefits, on account of immigration status.

109. HRA has a policy, custom, and usage of incorrectly denying class members' applications for food stamps; of erroneously discontinuing and reducing class members' food stamps; of falsely informing class members that they are not eligible for food stamps; of deterring and discouraging class members from applying for food stamps; of pressuring class members to withdraw their applications for food stamps; and of refusing to allow class members to apply for food stamps, on account of immigration status.

110. For example, HRA workers systematically falsely inform class members that they or their family members are not eligible for public benefits because they are not U.S. citizens or lawful permanent residents, or because they have not resided in the United States for five years, or because they lack a particular immigration document when another document suffices to prove eligibility, or because they lack a Social Security number when none is required.

111. So too, HRA systematically finds battered qualified immigrants on whose behalf a pending or approved I-130 family based petition was filed by their citizen or lawful permanent resident spouse or parent batterer, and who submit proof of abuse (the group discussed in

¶¶ 44(b) and 46 above), to be ineligible for public assistance and Medicaid, when in fact they are eligible for those benefits under 8 U.S.C. § 1641(c)(1)(B)(iv).

112. Likewise, HRA systematically finds VAWA self-petitioners (the group discussed in ¶¶ 44(a) and 45) whose petitions have been approved to be ineligible for public benefits, and systematically discontinues their active cases, because their original or extension "prima facie" notice has expired – even though they have an approval notice. The statute defines as a Qualified Alien a battered immigrant whose petition "has been approved" as well as a battered immigrant whose petition "has been found to set forth a prima facie case." 8 U.S.C. § 1641(c)(1)(B).

113. Likewise, HRA systematically finds immigrants who have applied for a U visa, and who have been granted deferred action status on that basis, to be ineligible for public assistance and Medicaid, when in fact they are eligible for those benefits because they are PRUCOL. (*See* ¶ 70(i) above.)

114. HRA has a policy, custom, and usage of denying applications by class members to be added to a household member's public benefits case on account of their immigration status when, in fact, the class members are eligible to be added to the household member's case.

115. HRA has a policy, custom, and usage of falsely informing class members who are eligible for public assistance or State Medicaid, and who lack employment authorization, that SSA will issue a Social Security Number to them when SSA will not in fact do so; and of denying, terminating, or reducing public benefits when those class members are denied a Social Security number by SSA.

116. HRA has a policy, custom, and usage of referring applicants for federal food stamps and federal Medicaid to SSA with documentation that fails to comply with SSA's requirements,

thereby making it likely or certain that SSA will not issue them a Social Security number, and of denying, terminating, or reducing public benefits when those class members are denied a Social Security number.

117. HRA has a policy, custom, and usage of failing to provide timely and adequate written notice of the denial of public benefits to immigrants: (1) when assistance is granted to some household members but denied to others based on immigration status; (2) when immigrants apply to be added to an existing public benefits case and are denied; and (3) when immigrants are discouraged or prohibited from applying for public benefits.

118. HRA has a policy, custom, and usage of issuing misleading notices that make it difficult if not impossible to determine whether public benefits were correctly denied or provided in the proper amount and/or whether to appeal such denial, discontinuance or reduction.

119. HRA has a policy, custom, and usage of failing to refer Qualified Aliens for Medicaid disability determinations when there is an indication that they may qualify for disability-related Medicaid, as required by State law, State OTDA, 03 INF 14, at 5; State DOH, Medicaid Reference Guide (MRG), at 27 (Feb. 2005) and of failing to provide food stamps to those who would be found disabled;

120. State OTDA and State DOH are responsible in part for these systemic errors by HRA because, as set forth below, those State agencies have issued erroneous policies, directives, instructions, and in the case of Social Security number requirements, contradictory and inconsistent regulations; because corrective instructions have been belated and inadequate; because the State computer system is responsible in part for systemic errors regarding immigrant eligibility for benefits; because the State fair hearing system has been and remains inadequate to redress these systemic failings; and because both agencies have failed to supervise and

implement adequate quality assurance measures necessary to prevent systematic errors by HRA personnel.

121. State OTDA, State DOH, and HRA have been deliberately indifferent to the need to provide proper training and supervision to HRA employees at job centers. All three agencies know to a moral certainty that large numbers of class members have applied, and will continue to apply, to HRA for public benefits at job centers. All three agencies have been on notice that subordinate employees of HRA at job centers are making systematic errors regarding immigrant eligibility for public benefits and have taken no effective action to rectify those systemic errors.

B. Causes of Systemic Errors

122. The systematic errors described above are the consequence of: (1) State OTDA, State DOH, and HRA having issued erroneous, incomplete, and inconsistent policy directives and instructions, and having made belated and inadequate corrections to prior erroneous, incomplete, and inconsistent directives; (2) flaws in the City and State computer systems that are used to administer public benefits programs in New York City; and (3) grossly inadequate training and supervision of employees at all levels of HRA, and (4) grossly inadequate training and supervision of HRA by State OTDA and State DOH.

1. Policy directives

123. Since at least 1998, various State and City policy directives and instructions have contained incorrect, materially misleading, and/or confusing information about the categories of immigrants who are eligible for public benefits and the documents they need to provide in order to prove eligibility. Although corrections have been issued sporadically, in many instances the same mistakes and omissions have persisted from one version to the next, year after year. When

corrections have been made, those corrections have often been made in ways that are not calculated to come to the attention of front-line workers and supervisors.

124. State and City policy directives and instructions have been and remain flawed in several respects:

(a) HRA's directives have been flawed regarding the eligibility of battered immigrants for public assistance, Medicaid, and food stamps;

(b) HRA's directives have failed to comply with State instructions to refer immigrants for Medicaid disability determinations necessary for federal food stamp eligibility if there is an indication that they may qualify for disability-related Medicaid;

(c) State OTDA's directives have been flawed regarding the eligibility of battered immigrants for public assistance and food stamps;

(d) State OTDA's and HRA's policy directives contain erroneous information regarding when SSA will issue a Social Security number;

(e) State OTDA, State DOH, and HRA's policy directives contain erroneous and/or confusing information regarding when furnishing a Social Security number is required as a condition of eligibility for public benefits;

(f) State OTDA and HRA's policy directives addressing PRUCOL immigrants are incomplete, either failing to include PRUCOL in relevant sections and/or failing to define or explain it.

125. For the entire duration of the former State Food Assistance Program (FAP), State OTDA's and HRA's policies, directives, and instructions regarding battered immigrants made almost no reference to FAP. Because of these omissions, FAP was grossly underutilized by battered immigrants until the program expired on September 30, 2005.

2. Computer systems

126. Two computer systems are of primary importance here. The Welfare Management System (WMS), which is designed and maintained by State OTDA, is the computer system primarily responsible for the delivery of public benefits to recipients in New York State. HRA has developed a "front end" to WMS called the Paperless Office System (POS). POS is used in all job centers in New York City except one to take actions in WMS.

127. As set forth below, POS and WMS contain numerous programming errors that make it difficult, and sometimes impossible, to provide public benefits to class members.

128. POS has been programmed to prompt caseworkers to enter an applicant's immigration status, and the documentation that supports that status, by choosing from a limited list of options on various drop-down menus. The fields that have been built into POS, and the drop-down menus within those fields, are incomplete and do not correspond correctly to the law.

129. When a class member applies for public benefits, and her status and/or documentation do not correspond to the fields and menus options offered by POS, HRA workers are almost invariably unable to open the case properly.

130. For example, VAWA self-petitioners, and other battered qualified immigrants who are Qualified Aliens because of abuse against them or a family member (such as victims of abuse whose husbands filed I-130 family-based petitions), are not included as an option in the pertinent POS drop-down menus. Nor do these immigration statuses fit into any of the other choices on the menu.

131. HRA workers respond to these shortcomings in POS in ways that result in the wrongful denial of benefits to class members. Some workers misinform eligible applicants that they are ineligible for benefits because their immigration status is not included in POS as an

option. Other workers attempt but are unable to open the case in POS because the case "errors out." Other workers attempt to work around POS's limitations by entering false information about the applicant's immigration status into POS. This stratagem allows the case to be opened, but benefits are later discontinued or terminated because the immigrant does not actually have the immigration status indicated in POS. This may also result in the immigrant not receiving the correct amount or type of public benefits.

132. The computer systems are not adequately programmed to handle situations in which one or more family members are eligible for State public benefits, and one or more other family members are eligible for federal public benefits. These "mixed family" situations are common in cases with immigrant family members. "Mixed family" cases are handled by utilizing one case number for the entire family but creating two "suffixes," one for the family members eligible for federal benefits and another for the family members eligible for State benefits.

133. The POS computer system cannot handle these multi-suffix cases. HRA therefore instructs workers to process them through the WMS system. To do so, the information must be written out on a form and given to the technology department to be entered manually. Most HRA caseworkers do not know how to refer these cases properly to the technology department, and the technology department often has great difficulty getting these "mixed family" cases open.

134. The computer systems are not adequately programmed to handle situations in which a caseworker is attempting to add immigrant parents to a public benefits case that is already open for one or more of their minor children. When HRA opens a case for a minor child only, the child's custodian's name appears on the case as the payee since public benefits cannot be issued directly to a minor. If a caseworker later attempts to add that custodian to the case – for

example, because the custodian recently became an eligible immigrant – the case will be rejected by the computer system as a duplicate case. The custodian can be added to the child's case only if the child's case is closed and then a new case is opened for the child and custodian. Many caseworkers do not know how to or do not attempt to do this. If they do try, sometimes the child's case remains closed because the caseworker is unable to open a new case including the immigrant parent due to other programming errors in the computer system.

135. The computer systems do not correctly handle cases in which class members do not have Social Security numbers. If a Social Security number is not entered for an applicant, a message appears on the screen prompting the caseworker to enter a Social Security number. The case cannot be opened until the caseworker makes an entry. While there is a way to open a case without entering a Social Security number, by entering a specific code in lieu of the Social Security number, most caseworkers do not know that a code that must be entered and the message on the screen leads them mistakenly to believe that a Social Security number is required in order to be eligible for public benefits.

136. Even though many eligible immigrants do not have an Alien number (A number), the computer system requires the entry of an A number for each immigrant with an active public benefits case. This flaw particularly affects immigrant children of VAWA self-petitioners who are derivatives on the petitions of their parents. These derivative beneficiaries do not receive their own A number until after the VAWA self-petition cases are approved, often a year or more after they are filed.

3. Inadequate supervision and training

137. Applicants in New York City who apply for Medicaid together with public assistance and/or food stamps submit such applications at job centers operated by HRA. The

State Department of Health is the single State agency responsible for supervising the Medicaid functions at job centers. The State Office of Temporary and Disability Assistance is the single State agency responsible for supervising the food stamp and public assistance functions at job centers. (*See* ¶¶ 101-103 above.)

138. State DOH and HRA have failed to implement quality assurance mechanisms sufficient to detect and redress the widespread and systemic denial of Medicaid benefits to class members at job centers in New York City.

139. State OTDA and HRA have failed to implement quality assurance mechanisms sufficient to detect and redress the widespread and systemic denial of food stamp and public assistance benefits to class members at job centers in New York City.

140. State OTDA and HRA training materials contain numerous errors that lead to the denial of public benefits to battered qualified immigrants.

141. Examples of these errors are contained in training materials prepared for State OTDA by the University of Albany. University of Albany, Institute for Temporary Assistance Programs, The Professional Development Program at Rockefeller College, Assistance Programs and Participation Requirements (2004) (hereinafter "Assistance Programs and Participation Requirements").

142. These training materials fail to indicate that battered qualified immigrants are eligible for public benefits at all. *Id.* at Lesson 1: Introduction to Assistance Programs, Citizenship Requirements for Participants, 9-15. A separate lesson of these training materials that includes a discussion of immigrant eligibility for federal food stamps also fails to include any domestic violence survivors in the explanation of Qualified Alien status. *Id.* at Lesson 4: Food Stamps Household Composition, 22.

143. Current State training materials erroneously state that the only immigrants who are eligible for State public assistance or State Medicaid are lawful permanent residents. *Id.* at Lesson 1, at 10-11. Not once do these training materials mention immigrants who are PRUCOL, much less explain who falls within this class of immigrants, even though the title of the Lesson section is "Citizenship Requirements for Participation." *Id.* at 10-16.

144. State OTDA's alien eligibility desk aids do mention that an immigrant may be PRUCOL, but the term is not defined except for an explanation of what the letters stand for. State OTDA, 04-ADM-08, attachment LDSS-4579, at 5. Nor does it list the common documents that PRUCOL immigrants might have. Nor do they provide a definition of PRUCOL, though they do state in a footnote that "PRUCOL refers to aliens who are permanently residing in the US under Color of Law." *Id.* at 5, n. 2. The footnote instructs workers to look in a 1988 policy directive or in the Temporary Assistance Source Book for a definition of PRUCOL for purposes of public assistance eligibility and in a 2003 policy directive for purposes of Medicaid eligibility. *Id.* at 5. Caseworkers are unlikely to look up what immigration documents make an immigrant PRUCOL, particularly given that the desk aids do not provide a definition of PRUCOL, only an explanation of what the letters in the acronym stand for.

145. HRA training materials reinforce various mistakes in HRA's and State OTDA's policy directives. For example, in a December 5, 2001 training manual subtitled "Food Stamps for Aliens," HRA defines a battered Qualified Alien as someone who "has been granted or has a petition pending with INS that sets forth a prima facie case." HRA, Training Workbook, Food Stamps for Aliens, at 20-21 (2001). No mention is made of battered qualified immigrants who have approved I-130s or I-360s or other documents showing that they are battered qualified immigrants. *Id.* Likewise, the City's "April 2005 Monthly Staff Meeting Instructor's Guide"

defines a battered alien solely as someone with a prima facie notice. No other battered immigrants are mentioned. HRA, Office of Training Operations, April 2005 Monthly Staff Meeting Instructors Guide, at 13-15 (April 2005).

146. The State administrative fair hearing system administered by State OTDA is wholly inadequate and ineffective in rectifying widespread and persistent errors by HRA. Fair hearing decisions usually fail to direct the job center to take any action other than "process" the application or to "review" the case. Immigrants commonly receive decisions that merely direct the job center to continue to process the application. A general command to process the application or review the case provides no guidance to the worker, and thus no remedy to the appellant.

147. When immigrants return to their job centers after receiving such fair hearing decisions, job centers rarely correct their errors or grant the appropriate level of benefits. Frequently, job centers will refuse to comply with the fair hearing decisions because they mistakenly believe that the individual is not eligible for public benefits due to immigration status.

148. Most immigrants receive fair hearing decisions that fail to cite or misstate the applicable law.

FACTS OF INDIVIDUAL NAMED PLAINTIFFS

Plaintiff M.K.B.

149. M.K.B. is a 33-year-old battered qualified immigrant from Jamaica who lives in a homeless shelter in Manhattan with her three children, M.A.B., age 9, S.B., age 7, and, N.B., age 2 months. M.K.B. and her two older children are battered qualified immigrants because the USCIS has approved an I-130 petition filed by M.K.B.'s abusive husband on M.K.B. and her

two immigrant children's behalf. Because they have an approved I-130 and proof of abuse, they are Qualified Aliens. Because they arrived in the United States after August 22, 1996, they are eligible for State Medicaid and Safety Net Assistance. M.A.B. and S.B. are also eligible for federal food stamps because they are Qualified Alien children. N.B., who is a U.S. citizen and therefore eligible for all federal public benefits, is the only one in the family who is receiving public benefits.

150. M.K.B. and her two immigrant children have been denied all benefits since September 2005 because workers at the Riverview job center do not know that immigrants with I-130 family-based petitions (as evidenced by V-1 and V-3 visas) are eligible for public benefits.

151. M.K.B. moved to the United States in May 2004 with her two immigrant children to reunite with her husband and the children's father. M.K.B. came on a V-1 visa, and the two children came on V-3 visas. They received these visas because M.K.B.'s husband, a lawful permanent resident, had filed an I-130 petition on their behalf. (V-1 and V-3 visas are only available to the beneficiaries of I-130 petitions filed before December 21, 2000.)

152. Shortly after their arrival, M.K.B.'s husband became physically, verbally, and economically abusive towards them. The worst incident occurred on September 7, 2005, when M.K.B. was eight months pregnant. Her husband came at her with an ice pick, threatened to kill her, and threw a bucket at her. He then showed her rat poison and threatened to feed it to the children. He also said he was going to cut up the children's bed with a knife.

153. Fearing for her and her children's lives, M.K.B. called the police and fled with her children that night. Since then, she has lived in a homeless shelter in Manhattan with her children. On September 23, 2005, she gave birth to N.B.

154. As a result of the abuse, M.K.B. received a temporary order of protection from Manhattan Family Court ordering that her husband stay away from her and their three children.

155. On September 30, 2005, M.K.B. applied for public benefits at the Riverview Job Center for herself and her three children. M.K.B. told Mr. Sonde, her HRA worker, that she was a domestic violence victim. She showed him her police reports, her and her children's passports (which contain the V visas), her work permit, and her Social Security card. Mr. Sonde told her that her immigrant children were not eligible for benefits because they do not have Social Security numbers.

156. At the end of October, M.K.B. received a notice stating that her public assistance and Medicaid case was accepted and that she would receive $68.50 semi-monthly, which is the amount a family of one usually receives in cash. She subsequently received another notice stating that her family would receive $119 in food stamps per month, which is the amount a family of one often receives. The notices did not state who in the family had been accepted. M.K.B. never received a notice denying her or her children's application.

157. Because M.K.B. did not know who in her family was accepted, her attorney called the Riverview Job Center. Ms. Medina, a worker at that center, stated that the case was open only for the citizen baby and that the rest of the family had been rejected due to immigration status.

158. Since M.K.B. fled her husband, she has struggled to support her family. She often does not have enough food and cannot afford to buy nutritious foods, such as dairy products, fruits, and vegetables. As a result, she and her children have lost weight and often lack energy because they are not eating enough. M.K.B. also often feels weak and suffers from headaches because she is not eating enough and is breastfeeding.

159. M.K.B. uses most of her public assistance grant to buy baby wipes and diapers for her newborn son, but still she often runs out of diapers. Once when she ran out of diapers, the shelter residents' children each gave her one dollar, charity they received at a church dinner, so that she could buy diapers. The other shelter residents also have given her soap, toothpaste, sanitary pads, and shampoo. M.K.B. fears their kindness will soon end, leaving her and her children with almost nothing at all.

160. Despite donations from charity, M.K.B. and her children do not have enough winter clothing. M.K.B. also often cannot afford to buy a Metrocard and is forced to miss important appointments.

161. Because she was denied Medicaid, M.K.B. has been unable to get treatment for reoccurring eye cysts or the sexually transmitted diseases her husband gave her. S.M., who chipped his two front teeth, also suffers in pain because M.K.B. cannot afford to take him to a dentist.

162. M.K.B. and her children will not be able to afford to move out of the shelter until they are receiving public assistance for the entire family.

Plaintiff O.P.

163. O.P. is a 39-year-old immigrant from Peru who is PRUCOL because the USCIS granted her deferred action. As a PRUCOL immigrant, she is eligible for State Medicaid and Safety Net Assistance. O.P. lives in a homeless shelter in New York City with her two children, ages 5 and 13. Due to their immigration status, her children are only eligible for Child Health Plus B, a low-cost health insurance program for children for which there are no immigration requirements.

164. Since March 2005, O.P. has been repeatedly denied all public benefits because workers at the Hamilton and Riverview Job Centers mistakenly think that only citizens and lawful permanent residents are eligible for benefits.

165. O.P. was granted deferred action in January 2005 because she has a pending U visa application. She is eligible for a U visa because she assisted the District Attorney's Office in the prosecution of the father of her younger child, who abused her for several years. The last incident occurred in July 2004, when he held her down and repeatedly punched her in the head, grabbed her hair, and yelled at her. In March 2005, O.P. fled to a domestic violence shelter with her children because she was afraid of her husband.

166. O.P. is unable to work because she cannot afford childcare.

167. O.P. first applied for public assistance and Medicaid at the Hamilton Job Center in March 2005, shortly after moving into an emergency domestic violence shelter. She submitted copies of her deferred action notice, Social Security card, and a letter from her attorney that explained that she was eligible for benefits as a PRUCOL individual.

168. The caseworker processing O.P.'s application told her she was ineligible because she did not have a green card. O.P. later received a notice stating that her public assistance application was denied because she did not present verification of citizenship or proof of lawful permanent resident status. The notice did not state whether she was denied Medicaid. O.P. never received a notice regarding her Medicaid application.

169. O.P. requested a fair hearing, which was held July 7, 2005, to challenge the denial of her public benefits application. The fair hearing decision, issued August 11, 2005, instructed the center to withdraw the denial notice and to continue to process her public benefits

application. The decision did not mention her immigration status or state whether she is eligible for benefits.

170. On August 5, 2005, O.P. and her children were forced to move to a homeless shelter because they had reached the state mandated time limit in an emergency domestic violence shelter and had no other housing options.

171. Several weeks later, O.P. received a notice that had been mailed to her old domestic violence shelter, even though she had notified the center of her new address at the homeless shelter. She was unable to read the notice because it was written in English.

172. The day she received the notice, she went to the Hamilton Job Center and her caseworker explained that the notice asked her to bring in some documents. O.P. offered to bring in the requested documents the next day, but the caseworker told her that it was too late.

173. O.P. later learned that the letter requested only two things that she had not already submitted when she first applied. One was a letter from her homeless shelter, but she was not living in the homeless shelter when she applied. In any event, HRA was aware she was living in a homeless shelter as HRA is paying for her stay there. The other requested items were "alien cards." There is no such thing as an "alien card." Most likely, HRA was requesting her green card. O.P. does not have a green card but is eligible for public benefits because she has deferred action.

174. On August 8, 2005, O.P. reapplied for public assistance at the Riverview Job Center, which specializes in handling the public benefits cases of individuals living in homeless shelters. O.P. once again submitted all of her documents, including her deferred action notice and the letter from her attorney explaining that she is eligible as a PRUCOL individual. Mr.

Peralta, the caseworker she met with, told her that she was not eligible because of her immigration status.

175. O.P. never received any notice regarding this application, but she later learned that the center denied her application on August 9, 2005 because of her immigration status. O.P. still has not received any benefits, even though the Director of the Riverview Center told her and her attorney on September 23, 2005, that he would look into the case.

176. O.P. reapplied yet again in October 2005 at the Riverview Job Center. Mr. Lorenzo, an HRA worker, told her that she was not eligible for public assistance because she did not have a green card but that she might be eligible for Medicaid. She never received a notice regarding this application or any benefits.

177. O.P. and her two children have suffered great hardship for nine months due to the erroneous denial of O.P.'s applications. O.P. has no money and relies on food pantries to feed herself and her two children. Her family eats mostly canned food, cereal, and rice. They cannot afford nutritious fresh food, and sometimes O.P. goes without food in order to feed her children.

178. O.P. also has not been able to receive necessary medical care because she has been denied Medicaid. O.P. last saw a doctor on March 2005 during a free physical exam at the domestic violence shelter. The doctor referred her to a gynecologist because he found problems with her ovaries and thought she was at risk for cancer. But O.P. cannot afford to see a gynecologist. O.P. frequently suffers debilitating pain in her ovaries. Recently, she fainted in the kitchen at her homeless shelter. Her son discovered her collapsed and unconscious on the floor. She does not know why she lost consciousness or for how long.

179. O.P. is currently learning English. She hopes that, if she receives public assistance, she will get childcare assistance and will be able to find employment and support and feed her family.

Plaintiff L.W.

180. L.W. is a 62 year-old battered qualified immigrant from Jamaica living temporarily with a friend in an apartment in Brooklyn, New York. Because L.W. has an approved I-130 petition and proof of abuse, she is a Qualified Alien. Because she arrived in the United States after August 22, 1996, she is eligible for State Medicaid and Safety Net Assistance. L.W. is disabled and would be in receipt of disability-based Medicaid if HRA had complied with its legal obligation to refer her for a Medicaid disability determination. Had HRA done so, L.W. would be eligible for federal food stamps.

181. L.W. was denied public assistance for five months because workers at the Linden and Dekalb Job Centers did not know that immigrants with I-130 petitions (as evidenced by K-3 visa) are eligible. She received public assistance only after extensive advocacy of her attorneys. Despite this advocacy, however, she still has not received food stamps.

182. L.W. came to the United States on a K-3 visa in October 2003 to be reunited with her husband, who is a U.S. citizen. L.W. was eligible for the K-3 visa because husband filed an I-130 petition on her behalf.

183. Several months after she arrived, L.W's husband became physically abusive. He would demand certain sexual behaviors that she was not comfortable with and threatened to hurt her if she did not engage in them. For example, in January 2005, when she refused to have sex with him, he threatened her, slapped her across the face, and ripped her clothes from her body. He then choked her, threw her onto the bed, and raped her.

184. Shortly after that incident, L.W. moved into a domestic violence shelter in Brooklyn, New York. She lived in this shelter until the shelter could no longer afford to keep her, because she had long exceeded the State mandated time limits for remaining in a domestic violence shelter. On November 14, 2004, she moved in with a friend. She can only stay with this friend temporarily and she does not know where she will go next.

185. L.W. applied twice for public assistance and food stamps: once at the Linden Job Center (first application) on or about March 17, 2005, and once at the Dekalb Job Center (second application) on or about May 31, 2005. She was denied both times. She was already receiving Medicaid through a Medicaid-only center for all times relevant to this Complaint.

186. On the first application, a caseworker told her orally that the application was denied; she never received any further indication of the status of the first application. On the second application, L.W. received a notice stating that she was denied food stamps because of her immigration status. She was later told by a caseworker that she was also denied public assistance, although she was not told the reason for the denial. The Administrative Assistant (AA) to the Director at the Dekalb Job Center later told L.W.'s attorney that the denial was due to immigration status.

187. On or about June 29, 2005, L.W. attended a fair hearing on the denial of her request for public benefits. At the fair hearing, the representative of the Dekalb Job Center testified that the center denied L.W. benefits because personnel at the regular job centers do not know immigrant eligibility law. The representative testified that, as an immigrant, L.W. should have applied for benefits at the "refugee center," where the caseworkers actually understand the law.

188. State OTDA issued a decision on that fair hearing dated July 29, 2005. The decision directed the center to process L.W.'s public assistance and food stamps applications. The center has failed to fully comply with the decision.

189. L.W. began receiving public assistance in September 2005 as a result of the extensive advocacy of her attorneys who repeatedly called and faxed the Dekalb Job Center and personnel in HRA's Brooklyn Regional Manager's office.

190. Despite this advocacy, L.W. has never received food stamps. The caseworkers at the Dekalb Job Center have refused to refer L.W. for a Medicaid disability determination so that she can receive food stamps. If she was referred, there is no doubt that she would be found disabled. L.W. suffers from several severe medical ailments, including kidney stones, a hernia, and high blood pressure. Earlier this year, she had a heart attack and had surgery for kidney stones. She recently had multiple surgeries and is scheduled to have another surgery later this month.

191. L.W. has suffered greatly as a result of the denials of her applications. For five months, until she received public assistance, she received only $20 food vouchers per week from the shelter and had to rely on other shelter residents to share food with her. Because she still does not have food stamps, she still does not have enough food. When she has spent her small public assistance grant and no one has food to give her, she has to go without food. She worries that not eating well will cause her health to deteriorate further. She already suffers from stomach and chest pain almost every day.

192. Because she was denied public assistance for five months, she was unable to apply for a housing subsidy until recently. She was not able to find subsidized housing before she was asked to leave the domestic violence shelter because she had long exceeded the allowable time.

She is staying with a friend temporarily, but she cannot stay there long. She does not know where she will go. She is afraid to go to a shelter for single adults because those shelters are very dirty; she would have to sleep on a cot in a room with many other women, most of them much younger than she. She does not think she would be able to recover from her scheduled surgery if she were forced to live in a dirty shelter.

Plaintiff M.A.

193. M.A. is a 36-year-old battered qualified immigrant from the Dominican Republic who lives in a homeless shelter in the Bronx, New York with her 3-year-old daughter. USCIS has approved an I-130 petition filed on M.A.'s behalf. Because she has an approved I-130 petition and proof of abuse, she is a Qualified Alien. Because she arrived in the United States after August 22, 1996, she is eligible for State Medicaid and Safety Net Assistance. Her daughter, a U.S. citizen, is eligible for all federal public benefits.

194. M.A. has been wrongly denied public assistance and Medicaid since July 2005.

195. M.A. moved to the United States in September 1999 in order to be reunited with her husband, who is a U.S. citizen. On or about October 2003, M.A.'s husband filed an I-130 family-based petition on her behalf. USCIS approved the I-130 petition on February 5, 2004.

196. After she came to the United States, M.A.'s husband became inexplicably angry and violent. He threatened her with weapons and said he would kill her. He also often hit her head and body with his hands. The abuse soon became unbearable and, in the summer of 2004, M.A. fled to a domestic violence shelter with their then two-year-old daughter. They lived there until February 2005, when their allowed time at the shelter expired. Since then, they have lived in a homeless shelter in the Bronx.

197. After M.A. left the domestic violence shelter, her husband continued to threaten her. On February 16, 2005, she obtained an order of protection against her husband.

198. On July 14, 2005, M.A. went to the Crotona Job Center in the Bronx to ask to be added to her daughter's open public assistance case. She spoke with a Ms. Bonilla and gave her a copy of her I-130 receipt notice and the order of protection. Ms. Bonilla told her that she needed a copy of the I-130 approval notice and that M.A. was ineligible unless she had the original approval notice.

199. On July 21, 2005, M.A. went back to the Crotona Job Center with a printout from the USCIS website indicating that her I-130 petition had been approved. M.A. first was directed to Mr. Perreira, an HRA caseworker, but he refused to meet with her and would not look at the USCIS printout. He told her she was not eligible due to her immigration status. M.A. gave the printout to another worker who told M.A. that she would receive a decision in writing.

200. M.A. did not receive any correspondence from the Crotona Job Center after her July 21, 2005 visit. On September 30, 2005, she attended a fair hearing to challenge the failure of the Crotona Job Center to add her to her daughter's case. At the hearing, her attorney gave the judge copies of her order of protection, the I-130 receipt notice, and the USCIS printout showing the petition was approved.

201. M.A. received a decision on her fair hearing dated October 21, 2005. The decision directed the center to continue processing her application, taking into account her approved I-130 status. The decision did not state whether she was an eligible immigrant or explain which immigrants are eligible.

202. M.A. returned to the Crotona Job Center on or about November 15, 2005 and again asked Ms. Bonilla to add her to her daughter's case. She showed Ms. Bonilla all of the papers

she had shown her the first time she came into the center, as well as a copy of the computer printout showing that the I-130 was approved.

203. Ms. Bonilla told M.A. that she was not eligible due to her immigration status. She said that M.A. needed a "prima facie." Ms. Bonilla told M.A. to return to the center on November 18, 2005 to meet with someone else to discuss her eligibility.

204. On November 18, 2005, M.A. returned to the Crotona Job Center and gave her papers to a woman named Delone. Delone said that she is not eligible for public benefits because she is not a lawful permanent resident.

205. M.A. has never received a notice regarding any of her requests to be added to her daughter's case and still has not received public assistance or Medicaid.

206. As a result, M.A. cannot afford to buy enough food for her daughter and herself. Usually she buys only milk, cheese, and bread. She also cannot afford to buy her daughter winter clothes, and is concerned that her daughter will freeze without warmer clothes.

207. M.A. has been unable to find housing outside of the shelter because her application for public assistance was denied.

208. Because she does not have Medicaid, M.A. is unable to receive all of the medical treatment she needs. She suffers from depression as a result of the abuse, but does not have money to pay for counseling. She has also been unable to go to the dentist and suffers daily from pain in her teeth. She also fears that if she gets sick, she will not be able to pay for medical treatment or care for her daughter.

Plaintiff Marieme Diongue

209. Marieme Diongue is 29-year-old immigrant from Senegal who is PRUCOL because the USCIS granted her deferred action. She lives in a one-bedroom apartment in the Bronx, New

York, with her eleven-month-old daughter Mouslymadou. Because she is PRUCOL, Ms. Diongue is eligible for State Medicaid and Safety Net Assistance. Her daughter, who is a U.S. citizen and therefore eligible for all federal public benefits, is the only one in the family receiving any benefits.

210. Ms. Diongue has been wrongly denied public assistance and Medicaid since March 2005 because workers at the Melrose Job Center think she is ineligible until she receives a green card.

211. Ms. Diongue was granted deferred action on April 12, 2004 because she has a pending U visa application. She is eligible for a U-visa because she assisted in the prosecution of her sister's murderer, who was sentenced to 15 years to life in prison.

212. In June 2000 when Ms. Diongue returned to the apartment she shared with her sister, her sister's boyfriend was hiding inside the door. He tortured her for five hours. He pushed her onto a bed and tried to strangle her. He then left her naked with her hands bound behind her back. Because he heard Ms. Diongue's friends outside of the apartment, he panicked and ran away. When he left, she went to her sister's bedroom and found her dead on the floor. He had strangled and murdered her sister.

213. In March of 2004, Ms. Diongue became pregnant and was no longer able to work because of constant illness. Forced to quit her job, she moved in with her brother. Her daughter Mouslymadou was born in December of 2004.

214. In March of 2005, Ms. Diongue applied for public benefits at the Melrose Job Center because she could not afford basic necessities and did not have enough money to pay the rent she owed her brother. She gave Ms. Swaby, a caseworker at the center, her work permit, Social Security card, deferred action notice, and a letter outlining the benefits for which her

daughter and Ms. Diongue were entitled. Ms. Swaby told her that she was not eligible because she did not have a green card.

215. In April of 2005, Ms. Diongue received a notice stating that one person in her family would receive pubic benefits. The notice did not state who was accepted, and Ms. Diongue never received a denial notice for herself.

216. On July 5, 2005, Ms. Diongue attended a fair hearing to challenge HRA's decision to deny her benefits. At the hearing, HRA's representative stated that Ms. Diongue was denied due to her immigration status. The fair hearing decision, dated October 5, 2005, states that the HRA's determination concerning Ms. Diongue's request for public benefits was not correct and should be reversed. The decision does not, however, state whether she is an eligible immigrant or explain which immigrants are eligible.

217. On October 20, 2005, Ms. Diongue received a Fair Hearing Compliance Action Letter from the Melrose Job Center stating, "you are not eligible for assistance due to your alien status which is only temporary and work only."

218. Ms. Diongue is still not receiving any benefits.

219. As a result of being denied public benefits for nine months, Ms. Diongue and her daughter have suffered greatly. Ms. Diongue often does not have enough money for basic necessities like soap, clothing, diapers, toys, or a crib. Because she cannot afford to buy a crib, she sleeps with her baby on a used old mattress placed on the living room floor. She also often runs out of food and has to rely on food pantries.

220. Even though Ms. Diongue recently got a job as a bathroom attendant, the job does not pay much and she still has trouble buying food and other basic necessities.

Plaintiff M.E.

221. M.E. is a 37-year-old battered qualified immigrant from Mexico who lives in New York City with her 12-year-old daughter, E.R., who is also a battered qualified immigrant, and her two citizen children, D.E., age 10, and J.E., age 7.

222. In October 1994, M.E. and E.R. joined M.E.'s husband, a lawful permanent resident, in Texas. In 1997, M.E.'s husband filed I-130 family-based petitions for M.E. and E.R. M.E.'s I-130 petition was approved in December 1998 and E.R.'s was approved in February 2000.

223. Because they have approved I-130s and proof of domestic violence, M.E. and E.R. are Qualified Aliens. As Qualified Aliens who arrived in the country before August 22, 1996, M.E. and E.R are eligible for federal Medicaid and Family Assistance. As a Qualified Alien under the age of eighteen, E.R. is also eligible for federal food stamps. D.E. and J.E., the citizen household members, are the only family members currently receiving public benefits.

224. During M.E.'s relationship with her husband, he physically abused her. On one occasion, he punched M.E. in the face, threw a television at her feet, threw her against a wall, and began to choke her. M.E. later learned that her husband had sexually abused E.R., hit her, and threatened that he would hurt her if she told M.E. what he was doing. In July 2000, M.E. and her children left her husband. In September 2000, while drunk, her husband arrived at her sister's house, got into an argument, pulled out a gun, and shot her brother-in-law in the leg. Fearing for her safety, she left Texas and took the children to New York, moving in with one of her brothers and his family.

225. After seven months, M.E.'s husband came to New York looking for her. They reconciled for a short period. In July 2002, however, he punched M.E. in the face so hard that he

split her lip. In order to get away from him, she moved with her three children to live with another one of her brothers.

226. Left with no means to provide for her children, M.E. applied for public benefits in July 2002. At the time, she applied only for her two younger U.S. citizen children because she assumed she and E.R. were not eligible for benefits because of their immigration status. Her two citizen children' applications for public benefits were approved.

227. In May 2004, M.E.'s husband found her again. He came to the apartment drunk, pushed her, and threatened to kill her. After that incident, M.E. obtained an order of protection from family court prohibiting her husband from contacting her and their children. On May 19, 2004, M.E. and the children entered a domestic violence shelter. In July 2004, she returned to court and obtained a final two-year order of protection.

228. At about this time, a social worker referred M.E. to Sanctuary for Families, where an attorney advised her that she and E.R. were eligible for public benefits based on the approved I-130 petitions and the domestic violence they had suffered. In June 2004, her attorney asked that M.E. be added to her children's public benefits case. In response, HRA asked M.E. to apply for a Social Security number. She did so as requested and was denied around July 1, 2004. After staff at Sanctuary for Families spoke with several workers at the Family Service Call-in Center (#17), M.E. was added to her children's public benefits case.

229. In August 2004, staff at Sanctuary for Families requested that E.R. be added to M.E.'s case as well. M.E. received a Medicaid card for E.R. in September 2004, and a notice dated October 14, 2004 listing E.R. on the case.

230. In November 2004, the Hamilton Job Center advised a counselor at the domestic violence shelter that the Center had made a mistake, that M.E. and E.R.'s case had been

miscoded in the computer system, and that their benefits would be discontinued. Because of advocacy by M.E.'s attorney at Sanctuary for Families, the Center did not close M.E. and E.R's case at that time.

231. On June 9, 2005, M.E. went to the Hamilton Job Center for a recertification appointment. The caseworker told her that she needed a new "prima facie notice" in order to keep her public benefits case open. M.E. tried to explain that the immigration document the worker was reading was not a prima facie notice, but the worker did not understand. A month later, M.E. received a notice removing herself and E.R. from their public benefits case. M.E.'s attorney requested a fair hearing on her behalf to challenge these actions.

232. On July 18, 2005, M.E. went to an appointment at the Hamilton Job Center to discuss why she had requested a fair hearing. A supervisor, Mr. Hane, informed her that she needed to bring in a "prima facie notice" or a form I-797.

233. On August 18, 2005, M.E.'s case was transferred to the Bushwick Job Center. On August 25, she met with Ms. Baptiste, who asked for M.E.'s Social Security number. When M.E. told her she did not have one, Ms. Baptiste responded that she was not eligible for benefits if she did not have a Social Security number.

234. On September 27, 2005, a fair hearing decision was issued in M.E.'s favor finding that she was entitled to continued assistance.

235. At the end of September, M.E.'s case was transferred to the Euclid Job Center. On October 31, she was given forms to use to apply for and verify a Social Security number. After some effort, M.E. was able to secure Social Security number denials for herself and her daughter from the Social Security Administration. She provided copies of these denials to the Euclid Job Center on November 15, 2005.

236. On or about November 30, 2005, M.E. learned that benefits for herself and E.R. had been discontinued without notice because they had been denied Social Security numbers. Ms. Wright, who took the action, stated that if M.E. could not show the SSA a prima facie notice in order to obtain a Social Security number, then she did not have an immigration status that makes her eligible for public benefits. Ms. Wright stated that M.E. needed a Social Security number to get benefits.

237. E.R. attends counseling several times a week and takes prescription medication to address the emotional and psychological effects of enduring and observing years of abuse at the hands of her stepfather. She suffers from depression, anxiety, and has expressed suicidal thoughts. M.E. fears that E.R. will imminently lose her therapy and prescription drugs because her Medicaid has been discontinued. If she loses these, M.E. worries that E.R. may hurt herself, and will not be able to concentrate, sleep at night, and will have behavioral problems in school as she did before she received counseling and medication.

238. Due to the food stamp and public assistance reduction, M.E. will be unable to feed her children enough nutritious food. This will severely impact E.R. who needs to eat nutritious food to prevent adverse side effects of her medication. Also, M.E. will not be able to buy clothes for her three growing children nor pay to use a laundry machine. M.E. will have to wash clothes less frequently and sometimes by hand. She will also not be able to provide her children with needed school supplies, such as their gym uniforms and money for class trips, because HRA has erroneously denied her and E.R. the benefit for which they are eligible.

Plaintiff P.E.

239. P.E. is a 32-year-old battered qualified immigrant from Jamaica who lives with her two sons, ages 12 and 2. P.E. and her older son, E.E. have been Qualified Aliens since June

2003 when they first applied for benefits because they had proof of abuse and were covered by I-130 family-based petitions filed by P.E.'s abusive husband. They now have an approved VAWA self-petition. Because P.E. and her older son arrived in the United States after August 22, 1996, they are eligible for State Medicaid and Safety Net Assistance. P.E.'s older son is also eligible for federal food stamps as a Qualified Alien child, and P.E. was eligible for state food stamps until the program was discontinued in September 2005. Because P.E.'s younger son is a United States citizen, he is eligible for all federal public benefits.

240. For over two years, P.E. and her son E.E. have been attempting to obtain the public benefits they are entitled to from the Euclid, Riverview, and Linden Job Centers. They are now receiving ongoing benefits only due to constant advocacy of their attorneys and a directive from State OTDA that their benefits should remain the same pending a fair hearing decision regarding the discontinuance of their benefits in April 2005. They are also still owed over $2000 in retroactive public assistance benefits and have over $5000 in unpaid medical bills because of HRA's delay in accepting her Medicaid application.

241. P.E. fled from her husband in 2001 because of his physical abuse. Earlier in 2001, her husband had choked her, smothered her with a pillow, and almost suffocated her. When she fled to her mother's home, he found and raped her. Her youngest son is a product of that rape.

242. P.E.'s husband provided no support and she needed milk to feed her baby. As a result, she applied for public benefits for herself and two children in June 2003. An HRA worker told her she was not eligible for public benefits because she was married to a green card holder. She and her son were son denied, in part, due to her immigration status.

243. Desperate and unable to provide for her family, P.E. applied again in early November 2003. HRA accepted only her citizen son's application. P.E. and her older son were

wrongly denied assistance, although HRA never provided her with a notice of denial. The notice she did receive failed to apprise her that only her citizen son would receive any benefits.

244. In November 2004, P.E. received a prima facie notice on her VAWA self-petition, on which E.E. is a derivative beneficiary. She returned to HRA and asked that she and her immigrant son be added to her citizen son's case. Due to her attorney's extensive advocacy, HRA granted the request, providing her and her immigrant son public assistance and Medicaid, and also issuing her immigrant son food stamps.

245. However, starting January 2005, every time P.E. went to an appointment HRA workers said she and her immigrant son were receiving benefits by mistake, either because she is not a citizen or because she has no Social Security number or work authorization. She only remained on benefits because her attorney called the center each time HRA threatened to close her case.

246. On April 19, 2005, P.E. received notice that her family's public assistance and food stamps benefits were being reduced to the amounts payable for one person. The notice did not explain why she and her immigrant son were being removed from the case.

247. On June 21, 2005, P.E. attended a fair hearing challenging HRA's decision to take P.E. and her immigrant son off of the family's case. No decision has been issued on this hearing.

248. On August 19, 2005, P.E. attended a second fair hearing, this one challenging HRA's refusal to add her and her immigrant son to the case until November 2004. The decision on that fair hearing, issued on September 20 2005, found that HRA wrongly denied P.E. and her immigrant son public benefits in June 2003 and again in November 2003 due to a misapplication of the immigrant eligibility rules. The decision directed HRA to provide the missing retroactive public benefits back to July 2003. HRA has only partially implemented that decision: P.E.

received all the retroactive food stamps that her family was owed, but she is still owed $2,233 in public assistance and her medical bills are still unpaid.

249. While P.E. has been waiting for her fair hearing decisions, numerous different HRA workers have repeatedly threatened to discontinue her benefits. For example, on June 29, 2005, Ms. Wright, an HRA caseworker, said that she was going to close P.E.'s case because P.E. did not have a green card or Social Security number.

250. Several other workers have told her that she and E.E. are not eligible because their VAWA prima facie notice has expired. They do not realize that a VAWA approval notice supersedes a prima facie notice and entitles them to benefits. A different worker said they were not eligible because they did not have employment authorization. Recently, several HRA workers have threatened to close their cases because they do not have Social Security numbers or green cards.

251. P.E. has been harmed in several ways because of HRA's inability to apply immigrant eligibility rules correctly. She was unable to pay rent in 2003 and was forced to move into a homeless shelter in March 2004. She did not have enough money for food from March 2004 until November 2004 and had to skip meals or eat only noodles for days. In the fall of 2004, she suffered from excruciating pain for weeks but did not go to a doctor because she had been denied Medicaid and could not afford to pay a doctor. In October 2004, she was rushed to the hospital by ambulance and had her gallbladder removed. P.E. is still harassed by collection agencies because she has over $5,000 in unpaid medical bills from the gallbladder surgery that should have been covered by Medicaid. She was also unable to attend school until October 2005 because HRA refused to provide her with childcare assistance until she received a Social Security number.

252. P.E. desperately needs the $2,233 in retroactive public assistance benefits that she is owed so that she can buy furniture for her apartment, as well as warm coats, clothes, and shoes for her children. She constantly fears that her benefits will be cut off because every time she goes to her job center for an appointment, the caseworkers tell her that she should be removed from the case.

Plaintiff Anna Fedosenko

253. Anna Fedosenko is an 88-year-old disabled lawful permanent resident from the Ukraine who speaks only Russian. She lives in an apartment in Brooklyn with her disabled daughter.

254. Ms. Fedosenko has been a lawful permanent resident since September 27, 2002. Because she came to the United States after August 22, 1996, she is eligible for State Medicaid and Safety Net Assistance. Because she is disabled, she would be eligible for federal food stamps if HRA had complied with its legal obligation to refer her for a Medicaid disability determination.

255. Ms. Fedosenko received public assistance, Medicaid, and food stamps until September 2004 when her food stamps were discontinued without notice. Despite a favorable fair hearing decision, she has not received food stamps since then. She has continued to receive public assistance and Medicaid, however.

256. On June 27, 2005, Ms. Fedosenko's attorney spoke to Ms. Williams, the Deputy Director of the Senior Works Center, who said that Ms. Fedosenko is not eligible for food stamps because she has not had her green card for five years. During that conversation and in subsequent ones, Ms. Fedosenko's attorney explained that she is eligible for food stamps if

Medicaid finds her disabled. Her attorney asked Ms. Williams to refer Ms. Fedosenko for the necessary disability determination. Ms. Williams did not know how to make the referral.

257. If properly referred, Ms. Fedosenko would undoubtedly be found disabled. She is 88 years old. She is legally blind and suffers from age-related macular degeneration, severe arthritis, anemia, depression, and has extremely limited mobility that prevents her from taking public transportation or walking more than a short distance.

258. On July 21, 2005, an attorney represented Ms. Fedosenko at a fair hearing challenging the discontinuance of her food stamps without notice.

259. The decision after the fair hearing, issued on August 29, 2005, found that HRA's determination to discontinue her food stamps without notice was incorrect and was reversed. The decision directed the Senior Works Center to immediately restore her food stamp benefits retroactive to August 31, 2004 based on the lack of notice.

260. On September 7, 2005, the Senior Works Center issued a Fair Hearing Compliance Statement stating that the Center would not comply with the fair hearing decision because "in order to receive food stamps, you must lawfully reside in the United States for five years."

261. On November 18, 2005, Ms. Fedosenko's attorney faxed Ms. Williams, the Deputy Director of the Senior Works Center, a copy of a Medicaid disability determination form that had been completed by Ms. Fedosenko's doctors and requested that Ms. Fedosenko be referred for a Medicaid disability determination. This fax also requested that the center comply with the fair hearing decision and issue Ms. Fedosenko's food stamps retroactive to August 31, 2004. There has been no response from the Center and Ms. Fedosenko is still not receiving food stamps.

262. The discontinuance of Ms. Fedosenko's food stamps has caused and is continuing to cause Ms. Fedosenko irreparable harm. Ms. Fedosenko has anemia so it is vitally important

that her diet contains lots of fresh food that is rich in iron. The food stamps that her disabled daughter receives cannot be stretched to feed them both. Ms. Fedosenko frequently goes without these foods because she cannot afford them, even though her doctor has advised her of the importance of these foods in her diet and the dangers of not treating her anemia in this way.

263. Because Ms. Fedosenko must use her $68.50 semi-monthly public assistance grant to purchase food, she has difficulty pay for other basic necessities, such as laundry, clothing, and travel.

Plaintiff A.I.

264. A.I. is a 32-year-old battered qualified immigrant from Bangladesh who lives in an apartment in Brooklyn, New York with her two children, S.A., who is 2 years old, and W.A., who is 6 years old. USCIS has approved an I-130 petition filed on A.I. and W.A.'s behalf. Because they have an approved I-130 and proof of abuse, they are Qualified Aliens. Because they arrived in the United States after August 22, 1996, they are eligible for State Medicaid and Safety Net Assistance. W.A. is also eligible for federal food stamps because she is a child. S.A., who is a citizen and therefore eligible for all federal public benefits, is the only one in the family who is receiving public benefits.

265. A.I. and W.A. have not received any of the benefits for which they are eligible even though they have applied repeatedly since March 2004.

266. A.I. and W.A. came to the United States in September 2002 on V-1 and V-3 visas, respectively. They received these visas because A.I.'s husband, who is a lawful permanent resident, had filed an I-130 family petition on her and their daughter's behalf.

267. A.I.'s life in the United States has been very difficult. Her husband, who has been hospitalized repeatedly for mental illness, controlled her every move until she fled to a domestic

violence shelter. About a month or two after she arrived, while she was pregnant with their second daughter, he kicked her in the stomach repeatedly, threatened to kill her, and choked her. The abuse continued on a regular basis.

268. After their daughter was born in June 2003, A.I. got a job because her husband was not working and they were barely making ends meet. But this made her husband furious. He accused her of sleeping with other men while she was at work and would beat her or lock the door so that she could not go to work. He cut up all her clothes so that she could not go out.

269. In February 2004, the abuse became unbearable. During an argument about money, A.I.'s husband hit her in the face and threatened to kill her with a knife. He then threw her and their older daughter W.A. out of the house. He would not let her take their baby daughter though. As a result, the police arrested him and took him to a mental hospital for observation. A.I. then received an order of protection from family court that said that her husband must stay away from and refrain from contacting her and the children.

270. Soon after this incident, A.I. and her children fled to a domestic violence shelter in Brooklyn. They lived in the domestic violence shelter until September 2004 when they moved into the apartment where they now live.

271. While living in the shelter, on March 12, 2004, A.I. applied for public benefits for herself and her two children at the Jamaica Job Center. She showed her HRA worker, an Asian-American woman, copies of her and her daughter's V visas, employment authorization cards, and Social Security cards. The V visas and the code on her employment authorization card indicate that A.I.'s husband filed I-130 family-based petitions for her and W.A. Despite this, the caseworker told her that only her citizen daughter was eligible.

272. In April 2004, her citizen daughter started receiving public assistance, food stamps, and Medicaid. A.I. never received a notice stating that she and her immigrant daughter were denied, or that her citizen daughter was accepted. Although A.I. and her immigrant daughter were denied Medicaid at this time, they started receiving Medicaid in June 2004 and October 2004, respectively, when they applied at a local hospital.

273. Starting in July 2004, A.I. repeatedly asked her caseworker Ms. Walker to add her and her immigrant daughter to the case. Each time, she showed Ms. Walker all of her and her daughter's immigration papers. She also gave Ms. Walker a copy of her order of protection and a letter stating that she lived in a domestic violence shelter. Ms. Walker always told A.I. that she could only receive benefits for her citizen daughter because she and her immigrant daughter only have work permits.

274. In the summer of 2005, her citizen daughter's case was transferred to the Greenwood Job Center. A.I. asked her new worker, Mr. Conley, to add her and her immigrant daughter to the case. After looking at her immigration papers and checking in the computer, he too told her that only her citizen daughter is eligible for benefits.

275. On November 14, 2005, A.I. again asked Mr. Conley to add her and her immigrant daughter to the case. This time she took with her a letter from her attorney explaining their eligibility. Attached to the letter was a copy of their V visas, employment authorization cards, I-130 approval notice, and proof of abuse in the form of an order of protection and letter from the domestic violence shelter.

276. After reviewing the letter, Mr. Conley agreed to add her and her immigrant daughter to the case and entered their information into the computer system.

277. But, due to computer problems related to their immigration status, A.I. and her immigrant daughter still have not received public assistance. The case has repeatedly "errored out" of the system. The Deputy Director of the center, Ms. Wallace, and Mr. Conley have both tried on numerous occasions to open the case. But they cannot figure out how to do so.

278. A.I. has never received a notice in response to her multiple requests for her and her immigrant daughter to be added to the case.

279. A.I. and her two children have struggled to survive on the limited public assistance and food stamps they receive.

280. A.I. and her children can barely afford the basics. They survive on good will and charity. Organizations frequently provide food, diapers, Metrocards, and toiletries, and A.I.'s family assists when they visit from Bangladesh. However, this assistance is not enough, and they often go without necessities. A.I. must sometimes subsist on beans and cereal alone. She does not have enough warm clothes for herself or the children. For eight months, she had no phone.

281. A.I. wants a job so that she will no longer depend on public benefits to survive, but her work authorization expired in September 2004. Her immigration attorney filed for renewal and is planning to file Violence Against Women Act petitions and applications to adjust so that A.I. and W.A. can become lawful permanent residents. Until she receives work authorization, A.I. and her children must rely on charity and public benefits.

Plaintiff L.A.M.

282. L.A.M. is a 34-year-old immigrant from Trinidad who is PRUCOL because the USCIS granted her deferred action on June 3, 2005. She lives in a domestic violence shelter with her two-year-old son. Because L.A.M. is PRUCOL, she is eligible for Safety Net

Assistance and State Medicaid. Her son, who is a citizen, is eligible for all federal public benefits.

283. L.A.M. has been wrongly denied public assistance since June 2005 because the workers at the Linden Job Center mistakenly think she is ineligible because she does not have a green card. In October 2005, L.A.M.'s attorney convinced the Administrative Assistant to the Director of Linden to add L.A.M. to her son's case. But due to computer problems related to her immigration status, L.A.M. is still not receiving public assistance.

284. While visiting the United States on vacation, L.A.M. met her abuser, who is a U.S. citizen. After they had been dating for a while, he promised to marry her and file papers so that she could stay in the country and become a lawful permanent resident. In May of 2002, when she found out that she was pregnant, he again promised to marry her, but he kept pushing back the date.

285. In January 2003, L.A.M. moved in with him and his mother. After that, he became abusive. At first the abuse was emotional and financial. But after their baby was born, he became physically abusive too. The worst incident occurred in January 2004 when she told him that she was going to leave him. When she was taking her son's clothes out of the drawers to pack them, he slammed the drawer closed, almost smashing her fingers. He then started punching her repeatedly in the head. Blood dripped from her head all over the floor and her clothes. As a result of the punches, her face swelled, and she got a black eye, bruised lips, and cuts on her nose, eye, tongue, and ear. She had severe head pain and her ear kept bleeding for days. She could not eat, and had to sleep sitting up because it hurt to lie on her ear.

286. The abuser was arrested for this abuse. She helped the District Attorney prosecute him, and he was sentenced to jail until September 2005. Because she assisted in the prosecution

of a violent crime, she was eligible to apply for a U visa. She applied and was granted deferred action on June 3, 2005. She also received employment authorization.

287. While her abuser was in jail, she lived in a small room in an office building with her son. At first she was able to support herself with odd jobs like babysitting and cleaning. But in July 2004, however, she could not find another job. She was desperate and applied for public benefits at the Linden Job Center. Her son began to receive public benefits.

288. In early or mid June 2005, after she received the deferred action notice and employment authorization, she went to her caseworker Ms. Kirkendall and asked to be added to her son's public assistance case. (L.A.M. already had Medicaid through a Medicaid-only center.) She told Ms. Kirkendall that she was a victim of domestic violence and showed her the employment authorization, which has a code C14 on it that indicates that she have been granted deferred action.

289. Ms. Kirkendall told her that she needed a green card and that the employment authorization was not enough. When L.A.M. insisted that her attorney told her that she was eligible, Ms. Kirkendall went to speak with a supervisor. When she came back she said that her boss said L.A.M. was not eligible because the domestic violence occurred in this country (not in her home country), because she did not have a "prima facie," and because she was not a citizen or green card holder. She continued to receive benefits only for her son.

290. When her abuser's parole officer warned her that he would be getting out of jail in September 2005, L.A.M. and her son fled to a domestic violence shelter. They have lived in that shelter since August 5, 2005.

291. On October 4, 2005, L.A.M. again applied to be added to her son's public assistance case once more. When she got to the Linden Job Center, she went to the customer

service counter and asked to apply for public assistance. She presented her work authorization, Social Security card, and a letter from her immigration advocate that explained that she was an eligible immigrant. Attached to the letter was HRA's Alien Eligibility Desk Aid, which states that those with deferred action are eligible for public assistance. She was told that she was not eligible because she was did not have a green card.

292. L.A.M. never received a notice in response to any of her requests to be added to her son's case.

293. October 11, 2005, L.A.M.'s attorney faxed a letter to the Administrative Assistant (AA) to the Director of the Linden Job Center, Ms. Bedford, asking her to add L.A.M. to her son's case retroactive to July 2005. Along with the cover note, L.A.M.'s attorney sent a copy of L.A.M.'s deferred action notice, employment authorization card, Social Security card, the letter from her immigration advocate that she had taken into the center, and the page from HRA's Desk Aid that says that she is eligible. Her attorney then followed up with multiple phone calls.

294. Due to this advocacy, L.A.M. was added to her son's case on October 14, 2005. L.A.M., however, has not received any benefits, not even for her son, since October 13, 2005. She went into the center on multiple occasions to ask why she and her son were not receiving benefits. On November 15, her attorney called the center Linden Job Center's Director's office. She spoke to Ms. Jefferson who said that the case is open for L.A.M. and her son and that $54.50 in public assistance and approximately $150 in food stamps were issued on the card the day before. When asked why L.A.M. was receiving only $54.50 semi-monthly, when families of two usually get twice that amount, Ms. Jefferson said that it must be because L.A.M.'s case has two suffixes – one suffix so that her son can receive state benefits and one so that she can receive federal benefits. Ms. Jefferson said L.A.M. should go to the center to get a new card because

sometimes the cards stop working when a new suffix is created. Ms. Jefferson also promised to leave a message for the AA, Ms. Bedford, so that the other $54.50 could be issued.

295. L.A.M. went to the center and received a new benefits card. But the new card, as well as the old cards, has no benefits on it. L.A.M. has called the number on the back of the card repeatedly, but the people who answer the line say there are no benefits on the cards and that they cannot help her. Her attorney also left repeated messages for the AA, as well as Ms. McCall, the Deputy Director. But no one returned her calls.

296. L.A.M. and her son and have not received any public assistance or food stamps since October 13, 2005 due to computer problems related to L.A.M.'s immigration status.

297. L.A.M. has suffered extreme hardship because she has been denied public benefits for almost six months. She often does not have enough food and has to rely on food pantries and other charities. Even so, she sometimes has to skip meals and does not always have enough milk for her son. She rarely is able to buy the fresh fruit and vegetables her doctor told her to eat to prevent her acid reflux from reoccurring. As a result, she often got stomach pains and headaches.

298. She also frequently runs out of diapers, as well as toilet paper, laundry detergent, shampoo, and other basic necessities. When she is low on diapers, she is forced to stay home with her son so that she does not have to put a diaper on him. She lets him run around without a diaper and tries to get him to go in the toilet. But often he has accidents. At night, instead of putting a diaper on him, she puts a plastic bag on the bed so that only the bag – not the bed – gets soiled if he had an accident. Recently her son's daycare had to take diapers from other children in order to put diapers on her son.

299. She also does not have sufficient winter clothes for her son. She cannot afford to pay for a cellphone. It is very hard for her doctors, lawyers, counselors, potential landlords, and potential employers to get in touch with her.

300. Because the Linden Job Center did not open her case until mid-October 2005, she was certified for a housing voucher for only $765 per month. She looked but could not find an apartment for that amount. Now that she is on the public benefits case (though not receiving benefits), she has been certified for $850. But she has lost a month of time and is having trouble finding apartments because her phone is dead and she does not have money for the subway.

301. If L.A.M. and her son do not receive benefits soon, they will run completely out of food and other basic necessities. Charities and food pantries can only give her a limited amount.

Plaintiff L.M.

302. L.M. is a 42-year-old lawful permanent resident from Haiti who lives with her two children, ages 2 and 16, in a domestic violence shelter in New York City. Because she is a Qualified Alien who entered the country prior to August 22, 1996, L.M. is eligible for federal Medicaid and Family Assistance. Because she has worked 40 qualifying quarters (10 years) in the United States as defined under the Social Security Act, she is eligible for federal food stamps. L.M.'s older son entered the country after 1996 and has been a lawful permanent resident since 2003. As a Qualified Alien child who entered after 1996, he is eligible for State Medicaid, Safety Net Assistance, and federal food stamps. L.M.'s younger son is a citizen and therefore eligible for all federal public benefits.

303. L.M. has been denied the food stamps she is entitled to since at least June 2004 because the workers at the Melrose Job Center never inquired into whether she had 40 qualifying

work quarters. Her two children receive food stamps and all three of them receive public assistance and Medicaid.

304. L.M. moved to the United States in 1989 and became a lawful permanent resident in 2001. As a result of abuse, L.M. suffers from depression as well as memory loss. She is no longer able to work because of severe carpal tunnel syndrome and must rely on public benefits to support her family.

305. Because she never received a notice stating she was denied food stamps, L.M. did not realize that she was not on her children's food stamp case until her attorney told her that HRA's computer records show that she was denied food stamps due to her immigration status. L.M. had never been asked if she worked 40 quarters, and the application that she completed did not ask if she had worked 10 years or 40 quarters.

306. On May 9, 2005, L.M. attended a fair hearing to appeal the denial of her food stamps application. At the hearing, L.M.'s attorneys submitted copies of her green card and Social Security Statement, which shows that she has over 40 quarters of work history. L.M.'s attorneys also submitted City and State policy directives showing that lawful permanent residents with 40 work quarters are eligible for food stamps. While the hearing had been requested to contest the denial of food stamps since June 2004, the ALJ would only let L.M. discuss the period from August 25, 2005 forward.

307. On July 14, 2005, L.M. attended a fair hearing to challenge the denial of food stamps from June 2004 forward. L.M. and her attorney again presented the same documents: her green card, Social Security Statement, and the relevant City and State policy directives explaining that she is eligible.

308. A decision on the first hearing issued on August 5, 2005. That decision found that HRA's denial of L.M.'s food stamp application was incorrect. The decision directed HRA to continue processing her application for benefits and to provide her with benefits retroactive to August 25, 2005 if she is found eligible for food stamps. The decision does not mention L.M.'s immigration status, nor does it explain the immigrant eligibility rules.

309. A decision on the second fair hearing issued on November 2, 2005. That decision stated that the City's denial of L.M.'s June 2004 application for food stamps was incorrect and that her food stamp benefits must be recomputed to include her needs retroactive to that date. The decision explained that lawful permanent residents with 40 qualifying quarters, like L.M., are eligible for food stamps and that HRA had "failed to present any evidence that it properly investigated and determined that issue."

310. Despite these two fair hearing decisions, L.M. is still not on her children's food stamps case. This wrongful denial of food stamps for almost a year and a half has caused great hardship for L.M. and her family.

311. L.M. struggles to pay for food and usually runs out of food half way through the month. She is forced to rely on food pantries to feed her children. Sometimes she also is able to borrow money from friends. But despite this help from charity and friends, she has to skip meals. When she does, she gets headaches and feels dizzy. In April 2005, she had to go to the emergency room twice for dizziness and dehydration because she was not eating enough and was stressed over her living situation and the problems with her benefits.

Plaintiff Denise Thomas

312. Denise Thomas is a 26-year-old battered qualified immigrant from Saint Lucia. She lives in her mother's Brooklyn apartment with her sister, 3-year-old-daughter and her 9-month-

old son. Ms. Thomas has been a Qualified Alien since July 2004, when she received a prima facie notice on her VAWA self-petition. Because she is a Qualified Alien who entered the United States prior to 1996, she is eligible for Family Assistance and federal Medicaid. Until the program was discontinued in September 2005, she was also eligible for state food stamps. Both her children are U.S. citizens and are receiving all the public benefits for which they are eligible.

313. Ms. Thomas was denied public benefits for eleven months because workers at the Greenwood Job Center do not know that VAWA self-petitioners are eligible. Due to efforts of her advocates, she now receives ongoing benefits. But she is still owed almost a year of retroactive public assistance benefits.

314. Ms. Thomas came to the United States from Saint Lucia in 1995 when she was 15 years old. She has not left the country since then, and she is willing to apply for citizenship once she is eligible to do so.

315. Ms. Thomas met her husband at church and they married in January 2002. During the course of their relationship, Ms. Thomas's husband regularly abused her. He even assaulted her while she was pregnant with their first child. After one incident where her husband hit her sister's face, Ms. Thomas filed a police report against him. When he pushed her down the stairs, Ms. Thomas again called the police and obtained a full order of protection against him. In August of 2003, Ms. Thomas took her husband's keys and forced him to move out.

316. Soon thereafter, in August 2003, prior to filing a VAWA self-petition, Ms. Thomas applied for public assistance benefits for herself and her daughter. Her daughter's application was approved.

317. In September 2004, after she had received a prima facie notice on her VAWA self-petition, Ms. Thomas asked to be added to her daughter's public benefits case. Ms. Calendar, a

caseworker at the Greenwood Job Center worker, told Ms. Thomas that she needed either a Social Security number or a green card to obtain benefits and that the prima facie notice was insufficient.

318. In January 2005, Ms. Thomas again asked to be added to her children's public assistance case. Ms. S. Thomas, a Greenwood caseworker, told her that she had to be a citizen for five years to receive benefits.

319. In February 2005, Ms. Thomas's VAWA self-petition was approved.

320. In March 2005, Ms. Thomas's son was born. In June 2005, Ms. Thomas applied for benefits for her newborn and again requested to be added to his case. Her son began receiving benefits, but Ms. Thomas did not. Ms. Thomas requested a fair hearing on the denial of her request to be added to her children's case.

321. Ms. Thomas's advocate sent numerous letters to and persistently called the Greenwood Job Center and the Deputy Regional Manager Regional Manager explaining Ms. Thomas's eligibility. As a result of his advocacy, Ms. Thomas began receiving public assistance and Medicaid in July 2005. She still has not, however, received any of the benefits to which she was entitled for the year she was wrongfully denied benefits. She attended a fair hearing on December 1, 2005 to seek these retroactive benefits. No decision has been issued on the fair hearing.

322. Because Ms. Thomas was wrongfully denied benefits, she had to borrow money from her mother to support her children. She relied on leftover food from charitable organizations and friends to feed her children. She often could not afford soap or detergent. Her children suffered from eczema and Ms. Thomas was sometimes unable to buy the lotion to treat them.

323. She desperately needs the retroactive benefits that she is owed because her mother's landlord has told them that they must move. She could use the retroactive benefits to pay moving expenses, such as the security deposit and first month's rent.

Plaintiff J.Z.

324. J.Z. is a 28-year-old battered qualified immigrant from Mexico who lives in an apartment in the Bronx, New York with her 8-year-old son and her 3-year-old daughter. J.Z. has been a Qualified Alien since July 2004 when she first applied for public benefits. She was a Qualified Alien initially because she had proof of abuse and her husband had filed an I-130 family-based petition on her behalf. She now is a Qualified Alien because she has an approved VAWA self-petition. Because she arrived in the United States before August 22, 1996, J.Z. is eligible for federal Medicaid and Family Assistance. Until the program was discontinued in September 2005, J.Z. was also eligible for state food stamps. Her children are U.S. citizens and therefore eligible for all federal public benefits.

325. J.Z. was denied all public benefits by the Colgate, Crotona, and Greenwood Job Centers for eight months because the workers at these centers wrongly thought she was an *ineligible immigrant*. Then in June 2005, just three months after she was finally added to her children's case, her case was again closed because workers at the Hamilton Job Center, where the case had been transferred, thought she was no longer eligible because her VAWA prima facie notice had expired. These workers did not realize that a VAWA approval notice supersedes the prima facie notice and is sufficient to make her eligible for benefits. J.Z.'s benefits were restored five weeks later due to advocacy of her attorney, but she still has unpaid medical bills and is owed retroactive public assistance and food stamps.

326. J.Z. arrived in the United States in 1984 or 1985, when she was 7 or 8 years old. J.Z. has not left the United States since she arrived, and she is willing to apply for citizenship once she is eligible.

327. J.Z. met her husband in high school, and they got married in the Bronx in 1996. They have two children.

328. In April 2001, J.Z.'s husband, a lawful permanent resident, filed an I-130 family-based petition for her. USCIS approved the I-130 petition on September 30, 2004.

329. In March of 2004, J.Z. called the police when her husband threatened to kill her and tried to throw her out of their apartment. A few months later, in July 2004, J.Z. called the police three more times when her husband punched her in the head, pushed her into the bed, and choked her. J.Z. had to go to the hospital to treat her injuries, bruises, and the pain she suffered as a result of his attacks. J.Z. was very scared and did not want him around her or the children.

330. After the incidents in July 2004, her husband left their home.

331. In July 2004, J.Z. was unemployed. At that time, her husband was receiving food stamps, public assistance, and Medicaid for himself and their children and they supported themselves with those benefits. J.Z. was not on the family's public benefits budget and at that time had never received public benefits herself.

332. In July 2004, after her husband left their apartment, J.Z. went to Colgate Job Center to recertify her children's public benefits case. J.Z. asked Mr. Gonzalez, the caseworker she met with, to add her to the case and showed him police reports concerning her husband's abuse, her marriage certificate, the children's birth certificates, and the receipt notice on her I-130 petition. Mr. Gonzalez re-certified the children, but told J.Z. that she was ineligible for benefits based on her immigration status.

333. On or about September 13, 2004, J.Z. moved into a domestic violence shelter with the children because her husband had been calling her and threatening to hurt her and take away the children. She also obtained an order of protection against her husband.

334. On or about September 17, 2004, J.Z. returned to the Colgate Job Center and spoke with Ms. White, Mr. Gonzalez's supervisor. J.Z. again asked to be added to the children's case and J.Z. showed Ms. White a letter from the domestic violence shelter where J.Z. was staying and the I-130 approval notice J.Z. had recently received. Ms. White told her she was ineligible due to her immigration status.

335. On December 20, 2004, J.Z. received a VAWA prima facie notice from USCIS.

336. Meanwhile, her children's public benefits case was transferred to the Crotona Job Center. On or about January 24, 2005, J.Z. went to the Crotona Job Center and asked Ms. Martinez, an HRA caseworker, to add her to the case and showed him her VAWA prima facie notice, her I-130 approval notice, a letter from her shelter, and the evidence of domestic violence J.Z. had turned in at the Colgate Center.

337. J.Z. did not receive any notice in response to her requests to be added to her children's case until early March 2005. On March 8, 2005, she received a notice stating that she would be added to her children's public assistance and Medicaid case. Even though she was eligible for state food stamps, the notice incorrectly stated that J.Z. would not receive food stamps because J.Z. was an ineligible non-citizen.

338. In or about March 2005, J.Z. and her children had to move into a homeless shelter because they had stayed for the maximum period of time allowed in an emergency domestic violence shelter.

339. On May 20, 2005, J.Z. attended a fair hearing to challenge the fact that she was denied food stamps. The decision, issued June 8, 2005, stated that HRA was incorrect in denying her food stamps and ordered HRA to continue to provide her with ongoing and retroactive food stamps. J.Z. has never received ongoing or retroactive food stamps.

340. Meanwhile, their case was transferred to the Hamilton Job Center. On or about June 14, 2005, J.Z. showed the fair hearing decision to Ms. Scantlebury, her caseworker, and her supervisor, Mr. Sosa. The HRA workers stated that the fair hearing decision did not require them to add her to the food stamp budget and that J.Z. was ineligible for food stamps because of her immigrant status.

341. Further, Ms. Scantlebury and Mr. Sosa stated that even if J.Z. had been eligible for public benefits in the past J.Z. would no longer be eligible for any public benefits because her prima facie notice was expiring on June 18, 2005. J.Z. showed them the approval notice for her self-petition, but they told her that the approval notice did not establish eligibility and that J.Z. would need another prima facie notice. Even though J.Z. explained that the approval notice meant her immigration case was approved and that it was better evidence of lawful immigration status than her prima facie notice, the workers told her that they were going to take her off of the case. That is exactly what happened.

342. J.Z. never received a written notice that she would be removed from the case, but on June 29, 2005, she was taken off the public assistance and Medicaid case. As a result, her housing voucher was reduced from $925 to $820 and J.Z. was unable to find an apartment that she could rent for $820 a month.

343. On or about August 4, 2005, J.Z. attended a fair hearing on HRA's decision to drop her from the case in June 2005 and its failure to grant her public assistance and Medicaid

benefits retroactive to July 2004. At the fair hearing, the center representative agreed to review her case retroactive to July 2004 and to determine whether to include her in the current budget. State OTDA issued a decision dated September 20, 2005 reflecting the stipulation.

344. Although J.Z. is currently on the budget because her attorney advocated for her to receive benefits pending a fair hearing decision, she still has not received the retroactive public assistance she is entitled to and HRA has not paid her old medical bills.

345. In October 2005, J.Z. moved into an apartment with her children.

346. When she was not on the case, J.Z. was unable to pay for food for herself and her children. Even though friends gave her food and she borrowed money, she sometimes had to go without food so that her children could eat.

347. J.Z. developed an ulcer as a result of the stress caused by the uncertainty of her public benefits, the instability of her housing situation, and her poor nutrition. Because J.Z. was denied Medicaid for so long, she was unable to get medical treatment for her ulcer and the other medical conditions she was suffering. In June and July 2005, J.Z. was unable to afford to get her prescription for Nexium filled. Further, J.Z. has over $1,000 in unpaid bills for medical treatment from her husband's abuse in July 2004.

348. J.Z.'s daughter's health also suffered greatly after they moved into the homeless shelter. Her poor nutrition has caused great fluctuations in her weight.

STATEMENT OF CLAIMS

FEDERAL LAW CLAIMS

FIRST CLAIM FOR RELIEF

(Against the City Defendant)

Unlawful Policy and Custom of Denying Federal Food Stamp Benefits to Eligible Class Members

349. HRA's policy, custom, and usage of denying federal food stamp benefits to eligible class members on account of immigration status, and of discontinuing and/or reducing federal food stamp benefits to these class members on account of immigration status, violates 7 U.S.C. § 2020(e)(3) and 7 C.F.R. § 273.2(a), (g)(1).

SECOND CLAIM FOR RELIEF

(Against the City Defendant)

Unlawful Policy and Custom of Denying Federal Medicaid Benefits to Certain Eligible Class Members

350. HRA's policy, custom, and usage of denying federal Medicaid benefits to eligible class members who are not lawful permanent residents on account of immigration status, and of discontinuing and/or reducing federal Medicaid benefits to these class members on account of immigration status, violate 42 U.S.C. § 1396a(a)(8).

THIRD CLAIM FOR RELIEF

(Against the City Defendant)

Unlawful Policy and Custom of Deterring and Discouraging Class Members from Applying for Federal Food Stamps

351. HRA's policy, custom, and usage of deterring and discouraging class members from applying for federal food stamps; refusing to permit class members to apply for federal food stamps; and/or discouraging or refusing to permit class members seeking to apply for

federal food stamps to be added to the existing public benefits case of a household member, violate 7 U.S.C. § 2020(e)(2)(B)(iii).

FOURTH CLAIM FOR RELIEF

(Against the City Defendant)

Unlawful Policy and Custom of Deterring and Discouraging Certain Class Members from Applying for Federal Medicaid

352. HRA's policy, custom, and usage of deterring and discouraging class members who are not lawful permanent residents from applying for federal Medicaid benefits; refusing to permit these class members to apply for those federal Medicaid; and/or discouraging or refusing to permit these class members seeking to apply for federal Medicaid to be added to the existing public benefits case of a household member, violate 42 U.S.C. § 1396a(a)(8) and 42 C.F.R. § 435.906 (Medicaid).

FIFTH CLAIM FOR RELIEF

(Against the City Defendant)

Unlawful Policy and Custom of Failing to Provide Adequate and Timely Notice of the Denial, Discontinuance, or Reduction of Benefits

353. HRA's policy, custom, and usage of failing to provide notice of the denial of federal food stamps and federal Medicaid to class members: (1) when assistance is granted to some household members but denied to others based on immigration status; (2) when immigrants apply to be added to an existing public benefits case and are denied; and (3) when immigrants are discouraged or prohibited from applying for assistance, violate 7 C.F.R. § 273.10(g)(1) (food stamps), and 42 C.F.R. §§ 435.911 & 435.912 (Medicaid).

354. HRA's policy, custom, and usage of failing to provide notice of the denial of public benefits to class members: (1) when assistance is granted to some household members but

denied to others based on immigration status; (2) when immigrants apply to be added to an existing public benefits case and are denied; and (3) when immigrants are discouraged or prohibited from applying for public benefits, violate the due process clause of the U.S. Constitution.

355. HRA's policy, custom, and usage of issuing misleading notices that make it difficult if not impossible to determine whether public benefits were correctly denied or provided in the proper amount and/or whether to appeal, violate 7 C.F.R. § 273.10(g)(1) (food stamps), and 42 C.F.R. §§ 435.911 & 435.912 (Medicaid).

356. HRA's policy, custom, and usage of issuing misleading notices to class members that make it impossible for them to make informed decisions about whether, and to appeal effectively from the denial, when public benefits are denied in whole or in part, discontinued, or reduced because of immigration status, violate the due process clause of the U.S. Constitution.

SIXTH CLAIM FOR RELIEF

(Against the City Defendant)

Unlawful Failure to Administer, Supervise, and Train

357. HRA has been deliberately indifferent to the need to provide proper training and supervision to HRA employees at job centers. HRA's deliberate indifference to the federal rights of class members has caused and/or contributed to the policies, customs, and usages described above; and has resulted in the widespread and systematic denial of the rights under federal law of eligible class members to receive federal food stamps and federal Medicaid.

358. HRA's policy, custom, and usage of referring applicants for federal food stamps and federal Medicaid to SSA with documentation that fails to comply with SSA's requirements,

thereby making it likely or certain that SSA will not issue them a Social Security number, violates 7 C.F.R. ¶ 273.6(b) (food stamps) and 42 C.F.R. § 435.910(e)(Medicaid).

SEVENTH CLAIM FOR RELIEF

(Against the State Defendants)

Unlawful Failure to Administer, Supervise and Train

359. Actions and omissions by State OTDA and State DOH have caused and/or contributed to the policies, customs, and usages of HRA described above. Because HRA functions as a matter of law as the agent of State OTDA (with regard to federal food stamps) and State DOH (with regard to federal Medicaid), State OTDA and State DOH are jointly and severally liable for HRA's violations of federal law.

360. Through their actions and omissions that have caused and/or contributed to the policies, customs, and usages of HRA described above, State OTDA, and State DOH have violated their responsibilities under federal law as the single state agencies responsible for administering and supervising the federal food stamp and federal Medicaid programs, respectively, in New York State, in violation of 7 U.S.C. § 2012(n) (food stamps); 42 U.S.C. § 1396a(a)(5) (Medicaid), and 42 C.F.R. § 431.10 (Medicaid).

361. State OTDA and State DOH have been deliberately indifferent to the need to provide proper training and supervision to HRA employees who administer federal food stamps and federal Medicaid at job centers. Their deliberate indifference to the federal rights of class members has caused and/or contributed to the policies, customs, and usages of HRA described above; and has resulted in the widespread and systematic denial of the rights under federal law of eligible class members to receive federal food stamps and federal Medicaid.

STATE LAW CLAIMS

EIGHTH CLAIM FOR RELIEF

(Against the City Defendant)

Unlawful Policy and Custom of Denying Public Assistance And State Medicaid to Certain Eligible Class Members

362. HRA's policy, custom, and usage of denying public assistance and State Medicaid to eligible class members who are not lawful permanent residents on account of immigration status, and of discontinuing and/or reducing public assistance and State Medicaid benefits to these class members on account of immigration status, violates N.Y. Soc. Serv. Law §§ 122, 131(1) & (3) (public assistance), 366(1)(a) (State Medicaid), and 18 N.Y.C.R.R. §§ 349, *et seq.* (public assistance).

NINTH CLAIM FOR RELIEF

(Against the City Defendant)

Unlawful Policy and Custom of Denying State Food Stamps to Eligible Class Members

363. HRA's policy, custom, and usage of denying State food stamp benefits to eligible class members on account of immigration status, and of discontinuing and/or reducing class members' State food stamps on account of immigration status, violated N.Y. Soc. Serv. Law § 95(10)(b) (State Food Assistance Program).

TENTH CLAIM FOR RELIEF

(Against the City Defendant)

Unlawful Policy and Custom of Deterring and Discouraging Certain Class Members From Applying for Public Assistance and State Medicaid

364. HRA's policy, custom, and usage of deterring and discouraging class members who are not lawful permanent residents from applying for public assistance and State Medicaid;

refusing to permit these class members to submit applications for those benefits; and/or discouraging or refusing to permit class members seeking to apply for those benefits to be added to the existing public benefits case of a household member, violates N.Y. Soc. Serv. Law § 366-a(1) (State Medicaid) 18 N.Y.C.R.R. § 350.3(a) and (b) (public assistance).

ELEVENTH CLAIM FOR RELIEF

(Against the City Defendant)

Unlawful Policy and Custom of Deterring and Discouraging Class Members From Applying for State Food Stamps

365. HRA's policy, custom, and usage of deterring and discouraging class members from applying for State food stamps; refusing to permit class members to submit applications for those benefits; and/or discouraging or refusing to permit class members seeking to apply for those benefits to be added to the existing public benefits case of a household member, violated N.Y. Soc. Serv. Law § 95(10)(b) (State Food Assistance Program).

TWELTH CLAIM FOR RELIEF

(Against the City Defendant)

Unlawful Policy and Custom of Failing to Provide Adequate and Timely Notice of the Denial, Discontinuance, or Reduction of State Benefits

366. HRA's policy, custom, and usage of failing to provide notice of the denial of public benefits to immigrants: (1) when assistance is granted to some household members but denied to others based on immigration status; (2) when immigrants apply to be added to an existing public benefits case and are denied; and (3) when immigrants are discouraged or prohibited from applying for assistance, violates 18 N.Y.C.R.R. §§ 351.8(b) and 358-2.2 (public assistance) and N.Y. Soc. Serv. Law § 366-a(3)(b) (Medicaid).

367. HRA's policy, custom, and usage of issuing misleading notices that make it difficult if not impossible to determine whether public assistance and State Medicaid were correctly denied or provided in the proper amount and/or whether to appeal when such benefits are denied in whole or in part, discontinued, or reduced because of immigration status, violates 18 N.Y.C.R.R. §§ 351.8(b) and 358.2-2.2 (public assistance) and N.Y. Soc. Serv. Law § 366-a(3)(b) (Medicaid).

THIRTEENTH CLAIM FOR RELIEF

(Against the City Defendant)

Unlawful Policy and Custom of Requiring Applicants for Public Assistance and State Medicaid Who Cannot Obtain Social Security Numbers to Furnish Social Security Numbers

368. No provision of the New York State Social Services Law requires applicants for public assistance or State Medicaid to furnish a Social Security number as a condition of eligibility.

369. To the extent that HRA acts to enforce State regulations, State directives, and City directives and instructions that purport to require applicants for public assistance and State Medicaid to furnish a Social Security number as a condition of eligibility when a Social Security number is impossible to obtain, those actions violate N.Y. Soc. Serv. Law §§ 122, 134-a(2) and 366-a(2)(a).

REQUEST FOR RELIEF

WHEREFORE, plaintiffs respectfully request that this Court enter a judgment in their favor as follows:

1. Certify this action as a class action pursuant to Fed. R. Civ. P. 23(a) and 23(b)(2) and (b)(3) with a plaintiff class defined as:

All Affected Immigrants who are, have been, or will be eligible for State or federally funded public assistance, Medicaid, and/or food stamps, and who either (a) have been or will be denied public benefits in whole or in part; (b) had or will have public benefits discontinued or reduced; (c) have been or will be discouraged or prevented from applying for public benefits; and/or (d) have been or will be encouraged to withdraw an application for public benefits, by a New York City job center because of a misapplication of immigrant eligibility rules.

For purposes of the foregoing paragraph, the term "Affected Immigrants" means (1) battered spouses and battered children of U.S. citizens or lawful permanent residents who are Qualified Aliens as defined in 8 U.S.C. § 1641(c); (2) their immigrant children or, in the case of battered children, their immigrant parents, provided that they too are Qualified Aliens as defined in 8 U.S.C. § 1641(c); (3) lawful permanent residents who have been in that status for less than five years; and (4) persons who are Permanently Residing Under Color of Law (PRUCOL).

2. Issue a declaratory judgment declaring:

(a) HRA's policy, custom, and usage of denying federal food stamps to eligible class members on account of immigration status, and of discontinuing and/or reducing federal food stamps on account of immigration status, violates 7 U.S.C. § 2020(e)(3) and 7 C.F.R. § 273.2(a), (g)(1) (food stamps);

(b) HRA's policy, custom, and usage of denying federal Medicaid benefits to eligible class members who are not lawful permanent residents on account of immigration status, and of discontinuing and/or reducing federal Medicaid benefits to these class members on account of immigration status, violates 42 U.S.C. § 1396a(a)(8) (Medicaid);

(c) HRA's policy, custom, and usage of deterring and discouraging class members from applying for federal food stamps; refusing to permit class members to apply for federal food stamps; and/or discouraging or refusing to permit class members seeking to apply for federal food stamps to be added to the existing public benefits case of a household member, violates 7 U.S.C. § 2020(e)(2)(B)(iii);

(d) HRA's policy, custom, and usage of deterring and discouraging class members from applying for federal Medicaid; refusing to permit class members who are not lawful permanent residents to apply for federal Medicaid; and/or discouraging or refusing to permit class members seeking to apply for federal Medicaid to be added to the existing public benefits case of a household member, violates 42 C.F.R. § 435.906 (Medicaid);

(e) HRA's policy, custom, and usage of failing to provide timely and adequate notice of the denial of federal food stamps and federal Medicaid to class members: (1) when assistance is granted to some household members but denied to others based on immigration status; (2) when class members apply to be added to an existing public benefits case and are denied; and (3) when class members are discouraged or prohibited from applying for assistance, violates 7 C.F.R. § 273.10(g)(1) (food stamps), and 42 C.F.R. §§ 435.911 & 435.912 (Medicaid);

(f) HRA's policy, custom, and usage of failing to provide timely and adequate notice of the denial of public benefits to immigrants: (1) when assistance is granted to some household members but denied to others based on immigration status; (2) when class members apply to be added to an existing public benefits case and are denied; and (3) when class members are discouraged or prohibited from applying for assistance, violates the due process clause of the U.S. Constitution;

(g) HRA's policy, custom, and usage of issuing misleading notices that make it difficult if not impossible to determine whether federal food stamps or federal Medicaid were correctly denied or provided in the proper amount and/or whether to appeal when federal food stamps and federal Medicaid are denied in whole or in part, discontinued, or reduced

because of immigration status, violates 7 C.F.R. § 273.10(g)(1) (food stamps), and 42 C.F.R. §§ 435.911 & 435.912 (Medicaid);

(h) HRA's policy, custom, and usage of issuing misleading notices that make it difficult if not impossible to determine whether public benefits were correctly denied or provided in the proper amount and/or whether to appeal when such benefits are denied in whole or in part, discontinued, or reduced because of immigration status, violates the due process clause of the U.S Constitution;

(i) HRA has been deliberately indifferent to the need to provide proper training and supervision to HRA employees at job centers;

(j) HRA's policy, custom, and usage of referring applicants for federal food stamps and federal Medicaid to SSA with documentation that fails to comply with SSA's requirements, thereby making it likely or certain that SSA will not issue them a Social Security number, violates 7 C.F.R. ¶ 273.6(b)(food stamps) and 42 C.F.R. § 435.910(e) (Medicaid);

(k) actions and omissions by State OTDA and State DOH have caused and/or contributed to the violations of federal law by HRA challenged in this action, for which State OTDA and State DOH are jointly and severally liable;

(l) through their actions and omissions that have caused and/or contributed to the federal violations by HRA challenged in this action, State OTDA and State DOH have violated their responsibilities under federal law as the single state agencies responsible for administering and supervising the federal food stamp and federal Medicaid programs, respectively, in New York State, in violation of 7 U.S.C. § 2012(n) (food stamps); 42 U.S.C. § 1396a(a)(5) (Medicaid), and 42 C.F.R. § 431.10 (Medicaid);

(m) State OTDA and State DOH have been deliberately indifferent to the need to provide proper training and supervision to HRA employees who administer federal food stamps and federal Medicaid at job centers;

(n) HRA's policy, custom, and usage of denying public assistance and State Medicaid benefits to eligible class members who are not lawful permanent residents on account of immigration status, and of discontinuing and/or reducing public assistance and State Medicaid benefits to these class members on account of immigration status, violates N.Y. Soc. Serv. Law §§ 122, 131(1) & (3) (public assistance), 366(1)(a) (State Medicaid), and 18 N.Y.C.R.R. §§ 349, *et seq*. (public assistance);

(o) HRA's policy, custom, and usage of deterring and discouraging class members who are not lawful permanent residents from applying for public assistance and State Medicaid; refusing to permit these class members to submit applications for those benefits; and/or discouraging or refusing to permit these class members seeking to apply for those benefits to be added to the existing public benefits case of a household member, violates N.Y. Soc. Serv. Law § 366-a(1) (State Medicaid) and 18 N.Y.C.R.R. § 350.3(a) and (b) (public assistance);

(p) HRA's policy, custom, and usage of failing to provide timely an adequate notice of the denial of public assistance and State Medicaid to immigrants: (1) when assistance is granted to some household members but denied to others based on immigration status; (2) when immigrants apply to be added to an existing public benefits case and are denied; and (3) when immigrants are discouraged or prohibited from applying for assistance, violates 18 N.Y.C.R.R. §§ 351.8(b) and 358-2.2 (public assistance) and N.Y. Soc. Serv. Law § 366-a(3)(b) (Medicaid);

(q) HRA's policy, custom, and usage of issuing misleading notices that make it difficult if not impossible to determine whether public assistance and State Medicaid were correctly denied or provided in the proper amount and/or whether to appeal when public assistance and State Medicaid are denied in whole or in part, discontinued, or reduced because of immigration status, violates 18 N.Y.C.R.R. §§ 351.8(b) and 358-2.2 (public assistance) and N.Y. Soc. Serv. Law § 366-a(3)(b) (Medicaid); and

(r) to the extent that HRA acts to enforce State regulations, State directives, and City directives and instructions that purport to require applicants for public assistance and State Medicaid to furnish a Social Security number as a condition of eligibility when a Social Security number is impossible to obtain, those actions violate N.Y. Soc. Serv. Law §§ 122, 134-a(2) and 366-a(2)(a);

3. Issue a temporary restraining order and preliminary injunction as requested in plaintiffs' Order to Show Cause submitted in conjunction with this complaint.

4. Issue a permanent injunction enjoining the City defendant:

(a) to refrain from unlawfully denying, discontinuing, and/or reducing federal food stamps at job centers on account of immigration status to class members who are eligible for those benefits;

(b) to refrain from denying, discontinuing, and/or reducing Medicaid, and/or public assistance benefits at job centers on account of immigration status to class members who are not lawful permanent residents and who are eligible for those benefits;

(c) to refrain from turning away, deterring, or discouraging class members from applying for federal food stamps, at job centers, or encouraging them to withdraw applications for these benefits, on account of immigration status;

(d) to refrain from turning away, deterring, or discouraging class members who are not lawful permanent residents from applying for Medicaid and public assistance benefits at job centers, or encouraging them to withdraw applications for these benefits, on account of immigration status;

(e) to permit all plaintiff class members to submit an application to HRA for federal food stamps at job centers regardless of their immigration status;

(f) to permit all plaintiff class members who are not lawful permanent residents to submit an application to HRA for Medicaid, and/or public assistance benefits at job centers regardless of their immigration status;

(g) to provide timely and adequate notice of the denial of food stamps, Medicaid, and/or public assistance benefits at job centers to class members (1) when assistance is granted to some household members but denied to others based on immigration status; and (2) when class members apply to be added to an existing public benefits case and are denied;

(h) to refrain from issuing misleading notices that make it difficult or impossible to determine whether public benefits were correctly denied or provided in the proper amount and/or whether to appeal when such benefits are denied in whole or in part, discontinued, or reduced because of immigration status;

(i) to ensure that all disabled Qualified Alien class members are referred for Medicaid disability determinations if there is an indication that they may qualify for disability-related Medicaid, and that those determined to be disabled receive the food stamps to which they are legally entitled;

(j) to refrain from enforcing State regulations, State directives, and City directives and instructions that purport to require applicants for public assistance and State Medicaid to

apply for and furnish a Social Security number as a condition of eligibility when a Social Security number is impossible to obtain;

(k) to provide class members who do not have Social Security numbers and who apply for federal food stamps and federal Medicaid with the necessary documentation so that they can obtain a Social Security number from SSA;

(l) to provide retroactive State food stamps to those eligible class members who were wrongly denied them due to their immigration status; and

(m)to develop and implement a plan of correction that will:

(i) correct all policy memoranda and other instructional material that misstate immigrant eligibility rules for food stamps, Medicaid, and public assistance, or the requirement that applicants and recipients furnish or apply for a Social Security number;

(ii) reconfigure their computer systems so that class members' food stamps, Medicaid, and public assistance cases can be properly entered into those computer systems and opened;

(iii) retrain their employees on the correct immigrant eligibility rules for food stamps, Medicaid, and public assistance benefits and Social Security number requirements; and

(iv) implement a plan for regular monitoring and reporting on applications for food stamps, Medicaid, and public assistance by class members so that corrective action may be taken if noncompliance with immigrant eligibility rules for public benefits is found.

5. Issue a permanent injunction enjoining the State defendants:

(a) to supervise and oversee the conduct and actions of the City defendant to ensure that the City defendant complies with all federal mandates regarding immigrant eligibility for federal food stamps and federal Medicaid, and to ensure that timely and adequate notice is provided when food stamps, Medicaid, and public assistance benefits are denied in whole or in part, discontinued, or reduced because of immigration status; and

(b) to develop and implement a plan of correction that will:

(i) correct all policy memoranda and other instructional material that misstate immigrant eligibility rules for federal food stamps and federal Medicaid benefits;

(ii) reconfigure the computer systems for which State defendants are responsible to the extent necessary so that class members' federal food stamps and federal Medicaid cases can be properly entered into those computer systems and opened;

(iii) retrain their employees on the correct immigrant eligibility rules for federal food stamps and federal Medicaid benefits;

(iv) implement a plan for regular monitoring and reporting on applications for federal food stamps and federal Medicaid benefits by class members so that corrective action may be taken if noncompliance with immigrant eligibility rules for public benefits is found.

6. award reasonable attorneys' fees, costs, and disbursements, pursuant to 42 U.S.C. § 1988;

7. order such other and further relief as the Court may deem just and proper.

Dated: New York, New York
December 13, 2005

Steven Banks, Attorney-in-Chief (SB0987)
THE LEGAL AID SOCIETY
Adriene L. Holder (ALH1872)
Attorney-in-Charge, Civil Practice Area
Scott A. Rosenberg (SAR5579)
Director of Litigation, Civil Practice Area
Christopher D. Lamb (CDL8145)
Attorney-in-Charge, Staten Island Neighborhood Office
Elizabeth Sykes Saylor, of Counsel (ESS8091)
Jennifer Baum, of Counsel (JB4030)
199 Water Street, 3rd Floor
New York, New York 10038
Phone: (718) 422-2871

Yisroel Schulman, Executive Director (YS3107)
NEW YORK LEGAL ASSISTANCE GROUP
Jane G. Stevens, of Counsel (JS4790)
Caroline Hickey, of Counsel (CH1410)
Kevin Kenneally, of Counsel (KK0710)
450 West 33rd Street, 11th Floor
New York, NY 10001
Phone: (212) 613-5000

HUGHES HUBBARD & REED LLP
Ronald Abramson (RA0979)
Russell Jacobs, of Counsel (RJ3657)
One Battery Park Plaza
New York, N.Y. 10004-1482
Phone: (212) 837-6000

By: _____

Attorneys for Plaintiffs and the Plaintiff Class

Of Counsel:

THE EMPIRE JUSTICE
PROJECT
Barbara Weiner
119 Washington Ave.
Albany, N.Y. 12210
Phone: 518-462-6831