Philip Schuh

From: Moe Auster <mauster@mssny.org>
Sent: Monday, August 26, 2019 9:32 AM
To: Erin Sutton
Cc: Philip Schuh
Subject: RE: Request for Participation: Amicus brief regarding public charge rule

Hi Erin,

MSSNY would like to join this amicus.

Moe

From: Erin Sutton [mailto:Erin.Sutton@ama-assn.org]
Sent: Thursday, August 22, 2019 6:21 PM
To: Moe Auster; Philip Schuh
Cc: Leonard Nelson; Julie Campbell; Jennifer Brown
Subject: Request for Participation: Amicus brief regarding public charge rule

Hello Moe and Phil,

Attorneys at the firm Cooley LLP approached the AMA to join the American Academy of Pediatrics in filing an amicus brief in a New York case opposing the Public Charge Rule, which was recently finalized by the Department of Homeland Security (DHS) and the US Citizenship and Immigration Services (USCIS). The rule would allow these agencies to deny lawful immigrants continued status in the U.S. if they have participated in non-cash federal public benefit programs, which include Medicaid and SNAP (food stamps).
The case is *State of New York et al. v. U.S. Dept. of Homeland Security*, Case 1:19-cv-07777 (filed Aug. 20, 2019). The complaint is attached.

Would MSSNY be interested in joining the AMA and AAP in an amicus brief that would highlight the negative effect the rule would have on individuals with chronic conditions and disabilities? This would be at no cost to MSSNY. If MSSNY declines to participate, do you oppose the AMA joining the brief?

We do not yet know when the brief would be due, but we anticipate it may be sometime within the next few weeks.

Best,

Erin

AMA

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From: Krumplitsch, Susan [mailto:skrumplitsch@cooley.com]
Sent: Thursday, August 22, 2019 4:29 PM
To: Jennifer Brown <Jennifer.Brown@ama-assn.org>; Erin Sutton <Erin.Sutton@ama-assn.org>
Cc: Stameshkin, Liz <lstameshkin@cooley.com>; Arora, Priya <PArora@cooley.com>
Subject: RE: Amicus brief regarding public charge rule

[Warning External Email]
Jennifer, Erin:

(I didn't see Julie's email address in the string below, so I could not include her.)

Thanks for the call this morning to discuss the vulnerable populations amicus brief. Here is the list of amicus briefs to be filed in the various cases. As I mentioned, the disability-focused brief (No. 10) will be geared towards addressing policy concerns and disability rights related issues.

1. Economic Harm/Impact Brief
   a. Focus: documenting economic harm caused by new public charge rule
   b. Lead Authors: Fiscal Policy Institute
   c. Pro Bono Counsel: Latham & Watkins
2. Housing/Nutrition Harm Brief
   a. Focus: documenting harms resulting from loss of nutrition and housing benefits
   b. Lead Authors: Center for Law and Social Policy/National Housing Law Project/Food Resource & Action Center
   c. Pro Bono Counsel: Keker, Van Nest & Peters LLP
3. Vulnerable Populations/Health Access Harm Brief
   a. Focus: documenting harms to vulnerable populations due to lack of access to health care, including children, pregnant women, and people with disabilities and chronic conditions
   b. Lead Author: American Academy of Pediatrics
   c. Pro Bono Counsel: Cooley LLP
4. Older Adults Harm Brief
   a. Focus: documenting harms to older adults due to loss of health access, nutrition, housing benefits
   b. Lead Author: Justice in Aging
   c. Pro Bono Counsel: Proskauer Rose LLP
5. Health Advocates/Health Exchanges Brief
   a. Focus: documenting harms to health exchanges and health care systems established by states, with a focus on the Massachusetts health exchange
   b. Lead Author: Health Law Advocates
   c. Pro Bono Counsel: Foley Hoag LLP
6. Racial Justice/Women's Rights Brief
   a. Focus: documenting racial animus motivating the rule and disproportionate impact on communities of color as well as women
   b. Lead authors: Asian-Americans Advancing Justice-DC, Asian American Legal Defense and Education Fund, National Women's Law Center
   c. Pro Bono Counsel: Crowell Moring
7. Historians/Law Professors Brief
   a. Focus: tracing history of public charge rule, including historic animus towards particular racial and ethnic groups and the way the public charge rule has been interpreted over time
   b. Lead authors: Profs. Torrie Hester, Deirdre Moloney (historians) and Kevin Johnson (law profs)
   c. Pro bono counsel: Cohen & Gresser
8. Tri-Caucus Brief

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STATE OF NEW YORK, CITY OF NEW YORK, STATE OF CONNECTICUT, and STATE OF VERMONT, Plaintiffs, v. UNITED STATES DEPARTMENT OF HOMELAND SECURITY; KEVIN K. McALEENAN, *in his official capacity as Acting Secretary of the United States Department of Homeland Security*; UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES; KENNETH T. CUCCINELLI II, *in his official capacity as Acting Director of United States Citizenship and Immigration Services*; and UNITED STATES OF AMERICA, Defendants.	CIVIL ACTION NO. COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. For generations, the United States has been a haven for immigrants seeking opportunity and upward mobility. *See, e.g.*, John F. Kennedy, *Nation of Immigrants* (1958); Emma Lazarus, *The New Colossus* (1883) (welcoming "your tired, your poor, your huddled masses"). Our federal immigration law reflects this history, permitting exclusion of immigrants as a "public charge" only in very narrow circumstances where the immigrants are unwilling or unable to work and have no other source of support, and therefore likely to be primarily dependent on the federal government in the long term.

2. The Final Rule, *Inadmissibility on Public Charge Grounds*, 84 Fed. Reg. 41,292 (Aug. 14, 2019) (to be codified at 8 C.F.R. pt. 103, 212, 213, 214, 245, 248) ("Final Rule") turns this history on its head. The Final Rule upends Defendants' circumscribed authority to exclude an individual as a "public charge," exploding this narrow classification to radically realign national immigration policy in a manner both proscribed by Congress and unauthorized by law. In so doing, the Final Rule implements this Administration's explicit animus against immigrants of color; it is the means by which immigrants from what this Administration has described as "shithole countries" will be excluded to the benefit of white, wealthy Europeans.[1]

3. The Final Rule weaponizes the public charge inquiry to target legal immigrants who are lawfully present in this country, who have close ties to our communities, and who Congress has expressly decided should be entitled to certain federal benefits. The Rule penalizes immigrants for their use of vital, non-cash benefit programs—such as food stamps, Medicaid, and housing assistance—that are designed to encourage upward mobility and promote self-sufficiency. As a result, the Rule will disproportionately harm immigrants of color, immigrants with disabilities, and immigrants with limited resources at the time of their visa or green card applications.

4. The Department of Homeland Security's new definition of "public charge" unlawfully and unreasonably assumes that *any* recipient of certain federal benefits above a *de minimis* threshold of use will become a drain on public resources. But the history and purpose of the benefits programs that the Rule targets do not support such an assumption. Rather, Congress intended to provide temporary, supplemental benefits to working families to enable them to

[1] Ali Vitali et al., *Trump referred to Haiti and African nations as 'shithole' countries*, NBC News (Jan. 11, 2018), https://www.nbcnews.com/politics/white-house/trump-referred-haiti-african-countries-shithole-nations-n836946.

continue to be productive members of our society. Defendants thus contort the meaning of "public charge" beyond recognition by radically expanding its definition to include individuals who receive benefits—however nominal—and by viewing the receipt of such benefits as evidence of long-term dependency rather than, as Congress intended, a means of empowering individuals to continue contributing to their communities.

5. The Final Rule will cause immediate and irreparable injury to the Plaintiffs and their residents. Immigrants, forced to choose between feeding their children and losing their pathway to citizenship, or believing they face such a forced choice due to confusion and fear about the Final Rule, will withdraw from programs that Congress designed to promote stability and upward mobility. And this chilling effect, and the concomitant increase in homelessness, food insecurity, and undiagnosed and untreated medical issues, will force state and local governments to bear severe financial and public health consequences. State and local governments will be forced to expend their own resources to assist low- and middle-class workers and their families, including citizen children, and to cover the public health and other severe consequences that will result from immigrants forgoing non-cash supplemental benefits.

6. As Defendants themselves acknowledge, the Rule will not only drive families away from using the food supplements, health care, and housing assistance programs expressly covered by the Rule, but will also deter households from availing themselves of other benefits to which they are lawfully entitled and which are not directly subject to the Rule. The result will be less preventative health care, less nutritious food, and less stable housing, with enormous financial and public harms to Plaintiffs and their residents. Additionally, immigrants who choose to continue receiving public benefits stand to lose adjustments in their status critical to their stability and success.

7. The Final Rule directly and irreparably interferes with Plaintiff States' and City's sovereign interests in the governance of their jurisdictions. The Rule would upend Plaintiffs' statutes and policies designed to combat homelessness and improve children's health outcomes. It would undermine Plaintiffs' systems designed to promote public health, well-being, and civil rights of their residents. And the Rule will also inflict irreparable harm on Plaintiffs' economies, increasing poverty and housing instability, and reducing economic productivity and educational attainment within the Plaintiffs' jurisdictions.

8. Defendants' radical reversal of longstanding practice and policy violates the Administrative Procedure Act and the Constitution. First, Defendants' effort to overhaul federal immigration policy by redefining the long-established meaning of the term "public charge" exceeds their statutory authority. Second, the Final Rule discriminates against persons with disabilities, in direct contravention of Section 504 of the Rehabilitation Act of 1973. The Final Rule also is arbitrary and capricious in a host of ways, including Defendants' failure to reasonably justify their departure from decades of settled practice and to adequately consider the Rule's varied and extensive harms. And Defendants failed to give the public adequate notice of these changes through the notice and rulemaking process. Finally, the Rule intentionally discriminates against Latino immigrants and immigrants of color, in keeping with Defendants' broader scheme designed to instill fear in those communities and deter and decrease immigration from these communities.

9. Plaintiffs the State of New York, the City of New York, the State of Connecticut, and the State of Vermont bring this action to vacate the Final Rule and enjoin its implementation because it exceeds and is contrary to Defendants' statutory jurisdiction, authority, and limitations in violation of the Administrative Procedure Act ("APA"), 5 U.S.C. § 706(2)(C); is arbitrary,

capricious, an abuse of discretion, and otherwise not in accordance with law under the APA, 5 U.S.C. § 706(2)(A); and violates the equal protection guarantee of the Fifth Amendment to the U.S. Constitution.

JURISDICTION AND VENUE

10. This action is brought pursuant to the Administrative Procedure Act, 5 U.S.C. §§ 701-706. This Court has subject-matter jurisdiction pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 702.

11. This Court has the authority to grant the requested declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201-2202 and 5 U.S.C. §§ 705 and 706.

12. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. §§ 1391(b) and (e)(1) because Defendants are United States agencies or officers sued in their official capacities, Plaintiffs the State of New York and the City of New York are residents of this judicial district, and a substantial part of the events or omissions giving rise to this action occurred and are continuing to occur in this district.

PARTIES

13. Plaintiff the State of New York, represented by and through its Attorney General, is a sovereign state of the United States of America. The Attorney General is New York State's chief law enforcement officer and is authorized to pursue this action pursuant to N.Y. Executive Law § 63.

14. Plaintiff the City of New York is a municipal corporation organized pursuant to the laws of the State of New York. New York City is a political subdivision of the State and derives its powers through the New York State Constitution, New York State laws, and the New York City Charter. New York City is the largest city in the United States by population.