

Center for Constitutional Rights

Discrimination, Detention, and Deportation: Immigration & Refugees

<https://ccrjustice.org/home/what-we-do/our-cases/make-road-new-york-v-pompeo>

Policy Issue Resources

The district court granted a nationwide injunction on July 29, 2020, which the government is appealing.

The Legal Aid Society, The National Immigration Law Center, Paul, Weiss, Rifkind, Wharton & Garrison LLP

Make the Road New York, African Services Committee, Central American Refugee Center New York, Catholic Charities Community Services, Catholic Legal Immigration Network and Alicia, Brenda, Carl, Diana, and Eric Doe

Since taking office, the Trump administration has been committed in its attack against low-income immigrants of color. One of its priorities has been to transform the system of family-based immigration by redefining millions of immigrants as future public charges and to deny them green cards as a result.

Make the Road New York v. Pompeo challenges three interrelated and discriminatory public charge rules that violate the immigration statutes, and the Constitution:

-The Department of State January 2018 changes to the public charge provisions of its Foreign Affairs Manual (FAM), which governs consular processing.

-The Department of State October 11, 2019 Interim Final Rule, which changes the public charge regulations that pertain at the point of consular processing. It would require DOS to apply the same, enjoined DHS public charge criteria to immigrants who must undergo consular processing before entering the country to unify with parents, children, and spouses.

-The October 4, 2019 Presidential Proclamation Suspending the Entry of Immigrants Who Will Financially Burden the Health Care System. The rule would bar entry to any immigrant who cannot demonstrate the ability to obtain private health insurance within 30 days of arrival.

The State Department rules closely track the changes made to public charge determinations under the blocked Department of Homeland Security rule, redefining a public charge from those who are predominantly reliant on government aid for subsistence to include anyone who is likely to use any amount, at any time in the future even long after becoming a U.S. citizen of various cash and non-cash benefits, including Medicaid, food stamps, and housing subsidies. The rules challenged apply to immigrants who must undergo consular processing, including immigrants who must temporarily leave the U.S. in order to obtain Legal Permanent Resident status. Thus, though these immigrants are not subjected to the DHS rule because it is enjoined, their permanent status is threatened by nearly identical provisions via the State Department rule.

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

The Center for Constitutional Rights has filed two other challenges relating to public charge redefinition - [Make the Road New York v. Cuccinelli](#) and [Make the Road New York v. DHS](#).

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