

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X

LINDITA COLAJ, on behalf of herself
and all persons similarly situated,
Petitioner-Plaintiff,

and

GOMAA OSMAN, on behalf of himself and
all persons similarly situated,
Plaintiff-Intervenor,

-against-

SAMUEL D. ROBERTS, as Commissioner of the
New York State Office of Temporary and Disability
Assistance,

and

STEVEN BANKS, as Commissioner of the
New York City Human Resources Administration,

Respondents-Defendants,

and

NANCY J. WILLAMS, as Commissioner of the
Broome County Department of Social Services,

Defendant.

-----X

**INTERVENOR COMPLAINT
AND
AMENDED COMPLAINT AND
PETITION**

Index No.: 452243/2017

Hon. Paul A. Goetz

PRELIMINARY STATEMENT

1. Petitioner-Plaintiff LINDITA COLAJ and Plaintiff-Intervenor GOMAA OSMAN (together, "Plaintiffs") bring this proceeding on behalf of themselves and a class of similarly situated individuals, pursuant to the Constitution and laws of New York, and the United States Constitution, seeking a Declaration pursuant to C.P.L.R. § 3001 that the policy and/or practice by Respondents-Defendants New York State Office of Temporary and Disability Assistance ("OTDA") and New York City Human Resources Administration ("HRA"), and Defendant Broome County Department of Social Services ("Broome County DSS") (together,

“Defendants”) of denying applications for Safety Net Assistance on the basis of their immigration status is arbitrary and capricious, and violates their and the class’s rights under the United States Constitution’s Equal Protection Clause, as made actionable under 42 U.S.C. § 1983; the New York Constitution’s Equal Protection Clause and provision guaranteeing “aid, care, and support of the needy”; and New York law.

2. Specifically, Ms. Colaj and Mr. Osman seek a declaration that asylum applicants with work authorization must be classified as immigrants “permanently residing under color of law” (“PRUCOL”) for the purpose of determining their eligibility for Safety Net Assistance. They ask this Court to enjoin Defendants to consider them and other similarly situated asylum applicants with work authorization to be PRUCOL, and accordingly grant them Safety Net Assistance if they are otherwise eligible.

3. Ms. Colaj and Mr. Osman bring this class action on behalf of themselves and all past, present, and future applicants for Safety Net Assistance in New York State who applied for Safety Net Assistance after August 7, 2014 (three years prior to the date on which the original Petition in this action was filed) or will apply for Safety Net Assistance in the future, and who, at the time of their application:

- a) were or are applicants for asylum who have been granted work authorization by the United States Citizenship and Immigration Services (“USCIS”), and
- b) were or will be denied Safety Net Assistance benefits as a result of their immigration status.

4. Petitioner-Plaintiff LINDITA COLAJ also seeks, pursuant to Article 78 of the Civil Practice Law and Rules (“C.P.L.R.”), the Constitution and laws of New York, and the United States Constitution, reversal of the Decision after Fair Hearing (“DAFH”) issued by

Respondent-Defendant OTDA, in which OTDA affirmed Respondent-Defendant HRA's denial of her application for critical Safety Net Assistance on the basis of her immigration status.

5. The DAFH that is the subject of Ms. Colaj's Article 78 proceeding and complaint is identified by Respondent-Defendant OTDA as Fair Hearing No. 7453658K. *In the Matter of the Appeal of Lindita Colaj*, Fair Hearing No. 7453658K (Apr. 28, 2017) ("Colaj DAFH"), Ex. B to the March 16, 2018 Affirmation of Abby Biberman ("Biberman Aff."). This decision upheld the prior determination of Respondent-Defendant Steven Banks, as Commissioner of the New York City HRA, to deny Ms. Colaj's application for Safety Net Assistance benefits due to alien status.

THE PARTIES

6. Petitioner-Plaintiff LINDITA COLAJ is a 35-year-old Albanian immigrant who resides in the Bronx, New York with her severely disabled 4-year-old son.

7. Plaintiff-Intervenor GOMAA OSMAN is a 62-year-old Egyptian immigrant who resides in Johnson City, New York.

8. Respondent-Defendant SAMUEL D. ROBERTS is the Commissioner of OTDA and is responsible for the administration of Public Assistance and Supplemental Nutrition Assistance Programs in New York State, for adjudicating and issuing decisions after hearings requested by Public Assistance and Supplemental Nutrition Assistance Program benefits recipients, and for the compliance of local social services districts with all State, federal, and other applicable law.

9. Respondent-Defendant STEVEN BANKS is the Commissioner of HRA and is responsible for the administration of Public Assistance benefits in New York City and for HRA's compliance with the applicable law and regulations.

10. Defendant NANCY J. WILLIAMS is the Commissioner of the Broome County

DSS and is responsible for the administration of Public Assistance benefits in Broome County, New York, and for Broome County DSS’s compliance with the applicable law and regulations.

VENUE

11. Venue is proper in New York County, pursuant to C.P.L.R. §§ 506(b) and 7804(b), in that it is the county where HRA maintains its principal place of business.

CONSTITUTIONAL, STATUTORY AND REGULATORY FRAMEWORK

12. The Fourteenth Amendment of the United States Constitution provides that no State shall “deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1.

13. Section Eleven of Article I of the New York Constitution states, “No person shall be denied equal protection of the laws of this state or any subdivision thereof.” N.Y. Const. art. I, §11.

14. Section One of Article XVII of the New York Constitution provides, “The aid, care and support of the needy are public concerns and shall be provided by the state and by such of its subdivisions and in such manner and by such means as the legislature may from time to time determine.” N.Y. Const. art. XVII, §1.

15. One of the Public Assistance programs that New York has enacted in fulfillment of its constitutional duty to aid the needy is the Safety Net Assistance program. *See* N.Y. Soc. Serv. Law § 159.

16. The Safety Net Assistance program provides State-funded benefits to eligible individuals and households who do not qualify for federally funded Family Assistance. It consists of cash and non-cash benefits, such as shelter allowance.

17. The Safety Net Assistance program in New York State is administered by OTDA. OTDA supervises local social services districts, such as HRA and Broome County DSS, in the

administration of these benefits to eligible residents. N.Y. Soc. Serv. Law §§ 17, 20, 22, 61.

18. OTDA is responsible for ensuring that the local districts administer the Safety Net Assistance Program in accordance with State law. N.Y. Soc. Serv. Law §§ 20, 22. Social Services Law § 122(1)(c)(ii) defines those immigrants who are eligible for Safety Net Assistance and includes those who are “otherwise permanently residing in the United States under color of law.”

19. Social Services Law § 158(1)(g) similarly provides that “an alien who is permanently residing under color of law but is not a qualified alien” is eligible for Safety Net Assistance.

20. State regulations governing public assistance eligibility also include aliens “otherwise permanently residing in the United States under color of law; as such term was used on August 21, 1996, by the Federal Administration for Children and Families.” 18 N.Y.C.R.R. 349.3(b)(1)(iv).

21. Federal regulations explicitly provide that asylum applicants are “lawfully present” for the purposes of several federal programs, including Social Security and Medicare. *See, e.g.*, 8 C.F.R. § 1.3; 42 C.F.R §§ 417.422, 422.50, 423.30. While their applications are pending, asylum applicants are “permitted to remain in the United States.” Dep’t of Homeland Sec., Instructions to I-589, Application for Asylum or Withholding of Removal (May 16, 2017) at 13.

22. After an application for asylum has been pending for 150 days, the applicant may apply for employment authorization. 8 C.F.R. § 208.7(a)(1). Once work authorization is granted, it is renewable until a final determination has been made on the asylum application. 8 C.F.R. § 208.7(b).

23. On November 21, 2017, after the initial Petition in this action was filed, OTDA issued a new policy, GIS 17 TA/DC047 (the “November 2017 OTDA Policy”), stating that OTDA recognizes asylum applicants with employment authorization as PRUCOL for the purposes of Safety Net Assistance eligibility.

24. The November 2017 OTDA Policy has not been fully or adequately implemented, however. Mr. Osman and other asylum applicants with work authorization have been denied Safety Net Assistance since the policy was implemented, in violation of the policy and those applicants’ rights under state and federal law.

STATEMENT OF FACTS

Lindita Colaj

25. In May 2015, Lindita Colaj left Albania with her then 2-year-old son, G.C., in order to escape political persecution and get urgent medical care for her son. They have lived in the United States for over two years.

26. Ms. Colaj speaks and understands only Albanian.

27. Ms. Colaj submitted an application for asylum and received an I-797C, Notice of Action, stating that USCIS received the Application on November 24, 2015. Biberman Aff. Ex. D.

28. Ms. Colaj was approved for work authorization starting September 13, 2016. Biberman Aff. Ex. C.

29. Ms. Colaj has no income and is presently unable to work because she is the sole caretaker for her severely disabled 4-year-old son.

30. Ms. Colaj and her son are both enrolled in Medicaid.

31. On October 28, 2016, Ms. Colaj first applied for ongoing Safety Net Assistance

and other relief. She was orally denied due to her immigration status on or around December 2, 2016, and denied in writing on December 23, 2016. Biberman Aff. Ex. A.

32. Because she had not yet received a written denial of her first application, Ms. Colaj submitted a second application for Safety Net Assistance on December 14, 2016.

33. On January 6, 2017, Ms. Colaj requested Fair Hearing 7453658K, to challenge the December 23, 2016 denial of her October 28, 2016 Safety Net Assistance application.

34. On January 11, 2017, HRA issued a written denial of the second application, again citing Ms. Colaj's immigration status as the reason for the denial.

35. The Fair Hearing was held on March 16, 2017.

36. On April 28, 2017, OTDA issued a DAFH, upholding HRA's determination that Ms. Colaj was ineligible for Safety Net Assistance. Colaj DAFH 5.

37. The DAFH mistakenly refers to the January 11, 2017 denial of Safety Net Assistance, despite Ms. Colaj having requested the hearing on January 6, 2017 to challenge the December 23, 2016 denial. *See* Colaj DAFH 1.

38. OTDA made several findings of fact in the DAFH, including: "In order to determine the Appellant's eligibility to receive Public Assistance benefits, the Agency asked the Appellant to provide the Agency with proof of citizenship or of being a legal alien resident." Colaj DAFH 1.

39. The DAFH also made the finding of fact that "[t]he Appellant did not provide the Agency with the requested documentation." Colaj DAFH 1.

40. Ms. Colaj did in fact provide documentation of her status as an asylum applicant with work authorization. All of the materials she provided with her application, including her I-797C and employment authorization card, were also submitted as evidence at

the Fair Hearing.

41. The DAFH's applicable law section quotes 18 N.Y.C.R.R. § 349.3(b)(1)(iv), which states that aliens "otherwise permanently residing in the United States under color of law" are eligible for Safety Net Assistance. Colaj DAFH 4.

42. The DAFH concludes that, "Pursuant to the Regulations, an applicant for Asylum has not been granted PRUCOL status for SNA purposes." Colaj DAFH 5. This determination was challenged in Ms. Colaj's initial Petition in this case.

43. On July 31, 2017, in exchange for Ms. Colaj's agreement not to file a proposed application for a Temporary Restraining Order seeking the immediate provision of Safety Net Assistance, OTDA and HRA agreed to provide Ms. Colaj with Safety Net Assistance going forward.

44. Defendants also decided to provide Ms. Colaj with retroactive benefits based on the date of her initial application.

45. Ms. Colaj has been receiving Safety Net Assistance since approximately August 9, 2017. However, she risks being denied Safety Net Assistance in the future if Defendants revoke, modify, and/or fail to adequately implement the November 2017 OTDA Policy, since she will have to reestablish her eligibility for Safety Net Assistance at least annually when she recertifies.

Gomaa Osman

46. In May 1995, Gomaa Osman arrived in the United States from Egypt for the first time. He left for Canada and then re-entered the United States in June 2006.

47. Mr. Osman is a member of a minority religious group in Egypt and cannot return because he fears persecution and violence in his home country.

48. Mr. Osman speaks and understands only Arabic.

49. Mr. Osman submitted an application for asylum that was received by USCIS on January 9, 2008; that application was denied in 2009, but in 2013 Mr. Osman was granted leave to reopen the proceedings. His application is currently pending. Biberman Aff. Ex. J.

50. Mr. Osman was approved for work authorization on March 24, 2015. He currently has work authorization that is valid through February 13, 2020. Biberman Aff. Ex. H.

51. Mr. Osman has no income and is presently unable to work because he suffers from several limiting medical conditions, such as diabetes, cataracts, and profound hearing loss. In addition, he has had two surgeries in the past year for neck and spine injuries.

52. On March 10, 2016, Mr. Osman applied for Safety Net Assistance and other relief. He was denied due to immigration status by a notice dated March 12, 2016. Biberman Aff. Ex. F.

53. On May 9, 2016, Mr. Osman requested Fair Hearing 7299506M, to challenge the March 12, 2016 denial of his March 10, 2016 Safety Net Assistance application.

54. The Fair Hearing was held on October 26, 2016.

55. On November 25, 2016, OTDA issued a DAFH, upholding Broome County DSS's determination that Mr. Osman was ineligible for Safety Net Assistance. *See In the Matter of the Appeal of Gomaa Osman*, Fair Hearing No. 7299506M (Nov. 25, 2016), Biberman Aff. Ex. G ("Osman DAFH") 7.

56. The DAFH's applicable law section quotes 18 N.Y.C.R.R. § 349.3(b)(1)(iv), which states that aliens "otherwise permanently residing in the United States under color of law" are eligible for Safety Net Assistance. Osman DAFH 3.

57. The DAFH goes on to cite policy GIS 00 TA/DC0001 to define aliens

considered PRUCOL for Public Assistance purposes. Osman DAFH 3-4.

58. The DAFH concludes that “Appellant failed to proffer any evidence to establish that he falls into one of the above-referenced PRUCOL categories which would render him eligible for Public Assistance. While, the Appellant did allege that he is an Asylum applicant awaiting a determination from INS as to his application, the Appellant is currently not PRUCOL.” Osman DAFH 7.

59. Mr. Osman is currently enrolled in Medicaid.

60. Over the past two years, Mr. Osman has re-applied for Safety Net Assistance on several occasions. Each time, representatives of Broome County DSS informed him, orally, that they would not process his application because he “does not have a green card.” He has not received a written denial for any of these denials. Declaration of Gomaa Osman ¶ 14, Ex. K to Biberman Aff. (“Osman Decl.”).

61. Most recently, on March 5, 2018, Mr. Osman applied for Safety Net Assistance in person at the Broome County DSS. Osman Decl. ¶ 15.

62. Mr. Osman submitted his employment authorization card, and attempted to submit proof of his pending asylum application. A representative of Broome County DSS informed him orally that Broome County DSS would not process his application until he has a green card. The Broome County DSS representative refused to accept copies of his immigration documents. Osman Decl. ¶ 15.

63. Broome County DSS failed to process Mr. Osman’s application, effectively denying Mr. Osman Safety Net Assistance without notice, in violation of the November 2017 OTDA Policy and Mr. Osman’s state and federal rights.

CLASS ACTION ALLEGATIONS

64. Ms. Colaj and Mr. Osman bring this class action pursuant to C.P.L.R. article 9 on behalf of all past, present, and future applicants for Safety Net Assistance in New York State who applied for Safety Net Assistance after August 7, 2014 (three years prior to the date on which the original Petition in this action was filed) or will apply for Safety Net Assistance in the future, and who, at the time of their application:

- a) were or are applicants for asylum who have been granted work authorization by the United States Citizenship and Immigration Services (“USCIS”), and
- b) were or will be denied Safety Net Assistance benefits as a result of their immigration status.

65. On information and belief, the proposed class is so numerous that joinder of all members is impracticable.

66. There are questions common to the proposed class that predominate over any questions affecting only individual members, namely, whether, Defendants’ practice of denying Safety Net Assistance to asylum applicants with work authorization on the basis of their immigration status violates applicants’ rights under state and federal law.

67. The claims of Ms. Colaj and Mr. Osman are typical of the claims of the plaintiff class. All claims arise from Defendants’ course of practice and administrative conduct, which unconstitutionally and unlawfully deprive the plaintiff class of critical Safety Net Assistance benefits solely on the basis of their immigration status.

68. Ms. Colaj’s and Mr. Osman’s claims that the Defendants’ policies and actions violate their rights under the United States and New York State Constitutions and New York law are identical to the claims that are raised by the proposed class as a whole, as well as by each member of the proposed class.

69. Ms. Colaj and Mr. Osman will fairly and adequately protect the interests of the class.

70. In supporting their own claims, Ms. Colaj and Mr. Osman will simultaneously advance the claims of the other class members.

71. Ms. Colaj and Mr. Osman are represented by the New York Legal Assistance Group. This public interest law firm has extensive experience in public assistance and class action litigation, having litigated such matters in the courts of New York State and in the United States District Courts in New York. Counsel for Ms. Colaj and Mr. Osman will diligently and expeditiously press the claims of the class.

72. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Indeed, only a class remedy will afford relief to those who have been victimized by the challenged policies and practices of Defendants which are denying benefits to individuals solely because of their status as asylum applicants with work authorization.

73. The members of the proposed class have little or no income, and are without the resources that would be necessary to raise their claims in individual actions. Furthermore, due to the complexity of the issues raised by this class action and the scarcity of legal services attorneys available to take public assistance cases, it is unlikely that a substantial number of individual proceedings would be brought by the members of the proposed class.

74. Class certification is therefore essential to ensure that all potential plaintiffs and class members will be protected and that the resources of the judicial system and all counsel will be efficiently utilized.

LEGAL CLAIMS

**FIRST CLAIM ON BEHALF OF
THE PLAINTIFFS AND THE PLAINTIFF CLASS**

75. Defendants' denial of Safety Net Assistance benefits to Ms. Colaj, Mr. Osman, and the members of the plaintiff class as a result of their immigration status violates New York Social Services Law §§ 122(1)(c)(ii) and 131(1).

**SECOND CLAIM ON BEHALF OF
THE PLAINTIFFS AND THE PLAINTIFF CLASS**

76. Defendants' denial of Safety Net Assistance benefits to Ms. Colaj, Mr. Osman, and the members of the plaintiff class as a result of their immigration status violates the Equal Protection Clause of the New York Constitution, and the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution, as made actionable by 42 U.S.C. § 1983.

**THIRD CLAIM ON BEHALF OF
THE PLAINTIFFS AND THE PLAINTIFF CLASS**

77. Defendants' denial of Safety Net Assistance benefits to Ms. Colaj, Mr. Osman, and the members of the plaintiff class as a result of their immigration status violates article XVII, § 1 of the New York Constitution, which guarantees the aid and care of the needy.

FOURTH CLAIM ON BEHALF OF PETITIONER-PLAINTIFF COLAJ

78. Respondents-Defendants' denial of Safety Net Assistance to Ms. Colaj was arbitrary and capricious under C.P.L.R. § 7803(3) because there is no rational basis for excluding an asylum applicant with work authorization from the PRUCOL classification, and by that exclusion rendering her ineligible for Safety Net Assistance benefits.

FIFTH CLAIM ON BEHALF OF PETITIONER-PLAINTIFF COLAJ

79. Respondents-Defendants' denial of Safety Net Assistance to Ms. Colaj is affected by an error of law pursuant to C.P.L.R. § 7803(3) insofar as the decision violates Ms. Colaj's rights under the New York and United States Constitutions and under New York Social Services

Law §§ 122 and 131(1).

RELIEF REQUESTED

WHEREFORE, on behalf of themselves and the proposed class, Plaintiffs respectfully request that the Court issue an Order and Judgment:

- a) CERTIFYING a class, pursuant to C.P.L.R. article 9, defined as: all past, present, and future applicants for Safety Net Assistance in New York State who filed or submitted their applications to their local social services districts after August 7, 2014 (three years prior to the date on which the initial Petition in this action was filed) or will apply for Safety Net Assistance in the future, and who, at the time of their application:
 - i. were or are asylum applicants with work authorization; and
 - ii. were or will be denied Safety Net Assistance benefits as a result of their immigration status;
- b) DECLARING that Defendants' policy and practice of denying Safety Net Assistance benefits to individuals who are asylum applicants with work authorization, like Ms. Colaj, Mr. Osman, and members of the plaintiff class, as a result of their immigration status violates:
 - i. the United States Constitution's Equal Protection Clause, as made actionable under 42 U.S.C. § 1983;" under N.Y. Const. art. I, §11;
 - ii. the New York Constitution's Equal Protection Clause and provision guaranteeing "aid and care to the needy; and
 - iii. New York statutes and regulations;
- c) PERMANENTLY ENJOINING Defendants from denying Safety Net Assistance benefits to Plaintiffs and the plaintiff class as a result of their immigration status;

d) ORDERING Defendants to:

- i. annul and reverse Defendant OTDA's Fair Hearing Decision No. 7453658K, dated April 28, 2017, regarding Ms. Colaj's application for Safety Net Assistance;
- ii. determine Plaintiff Osman's eligibility for Safety Net Assistance benefits retroactive to his March 12, 2016 application, and provide Plaintiff Osman with all benefits to which he is entitled;
- iii. identify all class members who have been denied Safety Net Assistance benefits since August 7, 2014 (three years prior to the filing of the original Petition in this matter) as a result of Defendant's policy of refusing to recognize asylum applicants with work authorization as PRUCOL;
- iv. provide adequate notice and relief to all identified individuals;

e) AWARDING costs and disbursements pursuant to articles 81 and 83 of the C.P.L.R. and counsel fees pursuant to C.P.L.R. 909, article 86 of the C.P.L.R., 42 U.S.C. § 1988, and any other relevant state or federal provision; and

f) GRANTING such other and further relief as the Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE, that pursuant to Section 7804 of the C.P.L.R., Respondents shall file with their answer a certified transcript of the record of the proceedings under consideration, and any answering papers shall be served on the undersigned no later than seven (7) days before the return date of the Petition.

**Dated: March 16, 2018
New York, New York**



**BETH E. GOLDMAN, ESQ.
JANE GREENGOLD STEVENS, Of Counsel
ABBY BIBERMAN, Of Counsel
DANIELLE TARANTOLO, Of Counsel
ELIZABETH JOIS, Of Counsel
JULIA RUSSELL, Of Counsel
NEW YORK LEGAL ASSISTANCE GROUP
7 Hanover Square, 18th Fl.
New York, NY 10004
(212) 613-5000**

Attorneys for Petitioner-Plaintiff and Plaintiff-Intervenor