

ATTACHMENT

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

MAKE THE ROAD NEW YORK, AFRICAN SERVICES COMMITTEE, ASIAN AMERICAN FEDERATION, CATHOLIC CHARITIES COMMUNITY SERVICES (ARCHDIOCESE OF NEW YORK), and CATHOLIC LEGAL IMMIGRATION NETWORK, INC.,

Plaintiffs,

v.

KEN CUCCINELLI, in his official capacity as Acting Director of United States Citizenship and Immigration Services; UNITED STATES CITIZENSHIP & IMMIGRATION SERVICES; KEVIN K. McALEENAN, in his official capacity as Acting Secretary of Homeland Security; and UNITED STATES DEPARTMENT OF HOMELAND SECURITY,

Defendants.

Case No. 1:19-cv-07993-GBD

BRIEF OF AMICI CURIAE NATIONAL HOUSING LAW PROJECT, FOOD RESEARCH & ACTION CENTER, CENTER FOR LAW & SOCIAL POLICY, AND OTHER HOUSING, NUTRITION, AND HEALTH-FOCUSED GROUPS IN SUPPORT OF PLAINTIFFS

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I. INTRODUCTION

The Trump Administration’s radical expansion of the Public Charge Rule¹ damages the wellbeing and economic stability of immigrants and communities across the United States. It inflicts these insidious harms without any evidence-based rationale, contrary to congressional intent and against the expert opinions of thousands of researchers, service-providers, and public officials who submitted detailed criticism of the new Rule. The Rule arbitrarily targets wide swaths of the United States’ immigrant community based on the erroneous assumption that recipients of certain public benefits are not, and cannot be, productive members of our communities. But people—whether native born or immigrant—with access to basic housing, food, and healthcare are better able to develop to their full potential and prosper economically. Indeed, the public benefit programs targeted by the Rule support, rather than undercut, self-sufficiency, economic advancement, and upward mobility. The programs at issue are used in large part by middle-class and working-class families to stabilize their lives when wages are insufficient to cover the high costs of housing, food, and medical care.

The Rule will not only have a negative impact on individual immigrants, it will harm the communities and economies to which they contribute. The Rule’s impacts are further magnified by the fact that it has led to a “chilling effect” whereby persons not directly impacted by the Rule also decline the benefits to which they are entitled. And the Rule’s negative impacts also extend to program agencies and administrators, who will experience additional administrative burdens, as well as to local and state governments, which will face grave economic and health consequences. In short, the cascading damage caused by the Rule will be felt by all Americans.

¹ Inadmissibility on Public Charge Grounds, 84 Fed. Reg. 41,292 (Aug. 14, 2019) (to be codified at 8 C.F.R. pts. 103, 212–14, 245, 248).

II. ARGUMENT

A. **The principal public benefits at issue are critical to promoting self-sufficiency.**

In this brief, *Amici* with expertise in housing, nutrition, and health detail the principal public benefits at issue and the Rule’s disastrous impact in these areas.

1. **Safe, stable, and affordable housing leads to a strong economy and better life outcomes.**

a. **Congress long ago recognized the foundational importance of housing subsidies for families at a range of income levels.**

Realizing the importance of stable housing to a good economy and individual success, Congress enacted the United States Housing Act in 1937 and established the Department of Housing and Urban Development (“HUD”).² Today, HUD oversees numerous critical programs, the most utilized of which, as explained below, are: Public Housing, Section 8 Housing Assistance under the Housing Choice Voucher Program, and Section 8 Project-Based Rental Assistance.³ To be eligible for any of these housing programs, a family must have one member of a household who is a citizen or who has eligible immigration status as established in 42 U.S.C. § 1436a(a). If any members of a household are not citizens or lack eligible immigration status, the assistance for such a “mixed-status” family is prorated to exclude that member.⁴

In total, HUD’s federal housing assistance programs serve approximately 4.5 million households, at least 281,300 of which have a non-citizen residing at the home. Roughly two-thirds of the working age, non-disabled persons in the households receiving HUD federal rental

² See 42 U.S.C. § 1437 *et seq.*; *see also id.* § 13601 *et seq.*; 24 C.F.R. pt. 5.

³ See generally National Low Income Housing Coalition, *2019 Advocates’ Guide: A Primer on Affordable Housing & Community Development Programs*, [hereinafter “2019 Advocates’ Guide”], https://nlihc.org/sites/default/files/AG-2019/Advocates-Guide_2019.pdf.

⁴ 24 C.F.R. §§ 5.500-5.528.

assistance are employed. In fact, the typical working household receiving this assistance is a family with two school-age children and a parent who works at a job that does not pay enough to cover the market rent for a modest apartment.⁵ Expanding the definition of public charge to encompass these families—who often earn close to, or even more than, the median income, but still qualify for HUD subsidies because they live in an area with an expensive housing market—is absurd and contrary to congressional intent.

(i) Public Housing

The country's oldest rental assistance program, public housing first became available in 1937 as a way to provide decent and safe rental units for low-income families, the elderly, and people with disabilities.⁶ Today, there are approximately one million units of public housing serving 2.1 million individuals.⁷ Thirty-three percent of these residents are seniors, 30% experience a disability, and 38% are families with children.⁸

(ii) Section 8 Housing Choice Voucher Program

The vouchers program is the largest of HUD's rental assistance programs, with more than 5 million people in 2.2 million households using vouchers in 2019.⁹ The program helps make housing more obtainable for families by awarding vouchers so that recipients can pay rent at

⁵ See Alicia Mazzara & Barbara Sard, *Chart Book: Employment and Earnings for Households Receiving Federal Rental Assistance*, Ctr. on Budget & Policy Priorities, 1 (Feb. 5, 2018), <https://www.cbpp.org/sites/default/files/atoms/files/2-5-18hou-charbook.pdf>; *U.S. Federal Rental Assistance Fact Sheet*, Ctr. on Budget & Policy Priorities, 1-2 (May 14, 2019), <https://apps.cbpp.org/4-3-19hou/PDF/4-3-19hou-factsheet-us.pdf>.

⁶ See 42 U.S.C. § 1437.

⁷ 2019 Advocates' Guide at § 4-25.

⁸ See HUD's Public Housing Program, https://www.hud.gov/topics/rental_assistance/phprog (last visited Sept. 12, 2019); see also 2019 Advocates' Guide at § 4-26.

⁹ 2019 Advocates' Guide at § 4-1; see also *Section 8 Housing Choice Vouchers Overview*, Nat'l Housing Law Project, 1 (Sept. 2016), <https://www.nhlp.org/wp-content/uploads/2018/03/3-NHLP-Voucher-Outline.pdf>.

privately-owned units in locations of their choice. A household participating in this program must generally pay 30% of its gross income to the cost of rent, with the government covering the difference between the household's contribution and the fair market rent as calculated by HUD.¹⁰

(iii) Section 8 Project-Based Rental Assistance

Under this program, HUD provides private owners of multi-family housing a long-term project-based rental assistance contract, a subsidized mortgage, or, in some cases, both.¹¹ This type of rental assistance is fixed to a property, and does not follow the tenant. As of 2019, nearly 1.2 million households lived in homes with project-based rental assistance. Sixty-four percent of these households are headed by someone who is disabled or elderly.¹²

b. The Public Charge Rule will increase housing instability and the risk of homelessness.

The financial strain of securing housing is not limited to low-income families or immigrant families. In 90% of U.S. counties, a person working fulltime and earning the average renter's wage cannot afford a modest two-bedroom rental home at fair market rent. And in 59% of U.S. counties, the same worker cannot afford a modest one-bedroom apartment.¹³ For low-income renters, stable housing can be even more difficult to obtain. Nationwide, 71% of low-

¹⁰ 42 U.S.C. § 1437f(o).

¹¹ 42 U.S.C. § 1437f; 24 C.F.R. pts. 880–81, 883, 884, 886 & 983.

¹² 2019 Advocates' Guide at § 4-47.

¹³ *Out of Reach 2019*, Nat'l Low Income Housing Coal., 1 (2019) https://reports.nlihc.org/sites/default/files/oor/OOR_2019.pdf.

income renters spend more than 50% of their income on rent and utilities.¹⁴ California—the state with the largest immigrant population—has eight of the ten highest rental cost metropolitan counties in the country,¹⁵ and no county in the state recorded a median rent below \$1,095 per month.¹⁶ In many parts of the state, the median cost of housing is so expensive that households with two people earning well above the minimum wage or the federal poverty guidelines are still priced out of the market.¹⁷ As a result, a significant portion of the population faces housing costs that exceed 30% of their incomes, making them eligible for HUD assistance.

Not having stable and affordable housing can cause individuals to experience increased hospital visits, loss of employment, and mental health problems.¹⁸ For children, the impacts are especially severe. Housing instability has been associated with impaired cognitive development, as well as problems in school, including poor performance, interrupted education, truancy, suspension, and expulsions.¹⁹ Children lacking stable homes are also twice as likely to go hungry as children with stable homes and three times as likely to have emotional and behavioral

¹⁴ *The Gap: A Shortage of Affordable Homes*, Nat'l Low Income Housing Coal., 2 (Mar. 2019) https://reports.nlihc.org/sites/default/files/gap/Gap-Report_2019.pdf; see also *U.S. Federal Rental Assistance Fact Sheet*, *supra* note 5.

¹⁵ Jens Krogstad & Michael Keegan, *15 States with the Highest Share of Immigrants in Their Population*, Pew Research Center, (May 14, 2014), <https://www.pewresearch.org/fact-tank/2014/05/14/15-states-with-the-highest-share-of-immigrants-in-their-population/>; *Out of Reach 2018*, Nat'l Low Income Housing Coal., 14 (2018), https://nlihc.org/sites/default/files/oor/OOR_2018.pdf.

¹⁶ Metcalf et al., *California's Housing Future*, Cal. Dep't of Housing & Cmty. Dev., 25 (Feb. 2018) http://www.hcd.ca.gov/policy-research/plans-reports/docs/SHA_Final_Combined.pdf.

¹⁷ Woetzel et al., *A Toolkit to Close California's Housing Gap: 3.5 Million Homes by 2025*, McKinsey Global Institute, 1 (Oct. 2016), <https://www.mckinsey.com/~media/McKinsey/Featured%20Insights/Urbanization/Closing%20Californias%20housing%20gap/Closing-Californias-housing-gap-Full-report.ashx>.

¹⁸ See Will Fischer, *Research Shows Housing Vouchers Reduce Hardship and Provide Platform for Long Term Gains Among Children*, Ctr. on Budget & Policy Priorities, 1-6, (Oct. 7, 2015), <https://www.cbpp.org/sites/default/files/atoms/files/3-10-14hou.pdf>.

¹⁹ See *Adverse Childhood Experiences*, Ctrs. for Disease Control and Prevention, <http://www.cdc.gov/violenceprevention/acestudy/> (last visited Sept. 12, 2019).

problems like anxiety, depression, sleep problems, withdrawal, and aggression.²⁰ By contrast, children in households receiving rental assistance have greater health, higher adult earnings, and a lower chance of incarceration.²¹ As the government itself has recognized, “absent a safe, decent, affordable place to live, it is next to impossible to achieve good health, positive educational outcomes, or reach one’s economic potential.”²² The Public Charge Rule thus contradicts its purported intent and strains community resources due to housing instability’s far-reaching harms.

c. The Public Charge Rule will place affordable housing programs at risk.

The Rule’s impact will not be limited to immigrants. Public housing agencies and other affordable-housing providers will experience increased instability and turnover in housing units as the Rule takes effect. Administrators will have to respond to confusion across the housing landscape and invest considerable resources in documenting immigrants’ benefits-receipt history. In particular, the Rule directs individuals to provide official documentation specifying the exact amounts and dates of benefits received or to demonstrate that they have not received any public benefits within a certain timeframe.²³ This requirement will create administrative costs for

²⁰ McCoy-Roth et al., *When the Bough Breaks: The Effects of Homelessness on Young Children*, Child Trends: Early Childhood Highlights, 2 (2012), https://www.academia.edu/10438892/When_the_Bough_Breaks_The_Effects_of_Homelessness_on_Young_Children.

²¹ Fredrik Andersson et al., *Childhood Housing and Adult Earnings: A Between Siblings Analysis of Housing Vouchers and Public Housing*, Nat’l Bureau of Econ. Research Working Paper No. 22721, (2018), <https://www.nber.org/papers/w22721.pdf>; see also *Rx for Hunger: Affordable Housing*, Children’s HealthWatch (2009), http://www.vtaffordablehousing.org/documents/resources/435_RxforhungerNEW12_09.pdf.

²² *Opening Doors: Federal Strategic Plan to Prevent and End Homelessness*, U.S. Interagency Council on Homelessness, 7 (2015) https://www.usich.gov/resources/uploads/asset_library/USICH_OpeningDoors_Amendment2015_FINAL.pdf.

²³ 84 Fed. Reg. 41,463.

affordable housing providers, many of which are not equipped to deal with such a burden and may exit the programs.

In sum, housing benefits help recipients maintain stable housing, and housing stability is a foundational element to support working families. The Rule thus has a directly contrary impact to the one it claims: it penalizes immigrants for receiving vital assistance and places burdens on the municipalities, agencies, and persons participating in these critical programs.

2. Nutrition benefits are essential to maintaining healthy communities.

Congress has repeatedly committed to providing nutritional support for low-income households and workers, most recently in the form of the Supplemental Nutrition Assistance Program (“SNAP”). Although Congress made this commitment to citizens and certain non-citizens alike, the Rule will disrupt immigrants’ access to SNAP, causing communities to face worsened health and workplace outcomes, and local economies to be strained by disenrollment.

a. Congress designed SNAP as a vital program aimed at helping a broad range of families.

Enacted “to promote the general welfare” and “to safeguard the health and well-being of the Nation’s population by raising levels of nutrition among low-income households,” SNAP provides supplemental nutritional aid to a broad range of families.²⁴ As the modern extension of the long-running 1964 Food Stamp Act, SNAP provides aid to citizens and qualified nonimmigrants alike: roughly half of all nonimmigrant children will receive SNAP benefits during childhood, and half of all nonimmigrant adults will receive SNAP benefits between the

²⁴ 7 U.S.C. § 2011 *et seq.*

ages of 20 and 65.²⁵ In 2018 alone, SNAP provided at least 40 million individuals benefits for at least one month of the year in 2018.²⁶

b. The Public Charge Rule will make it more difficult for working families to fulfill basic nutritional needs.

The nutrition benefits that SNAP provides make families healthier and adults more able members of the workforce. Food insecurity is associated with a decline in physical wellbeing, including increased rates of diabetes, pregnancy complications, and depression.²⁷ SNAP thus plays a critical role in boosting economic and educational outcomes, improving health and chronic disease management, and reducing health care utilization and costs. Children especially benefit from SNAP participation. For example, children in families that lost SNAP benefits were more likely to be in poor health and at risk for developmental delays,²⁸ whereas children receiving SNAP benefits had an 18% increase in high-school graduation rates.²⁹

Because the Rule considers the receipt of SNAP benefits as a heavily-weighted negative factor,³⁰ it will likely force many immigrants to disenroll from SNAP. The government itself estimated that roughly 130,000 SNAP recipients intending to apply for an adjustment of status

²⁵ Mark R. Rank & Thomas A. Hirschl, *Estimating the Risk of Food Stamp Use and Impoverishment During Childhood*, 163 *Archives of Pediatrics and Adolescent Med.* 994, 994–999 (2009); Mark R. Rank & Thomas A. Hirschl, *Likelihood of Using Food Stamps During the Adulthood Years*, 37 *J. of Nutrition Educ. & Behavior* 137, 137–46 (2005).

²⁶ *Policy Basics: The Supplemental Nutrition Assistance Program (SNAP)*, Ctr. on Budget and Policy Priorities, 1 (June 25, 2019), <https://www.cbpp.org/sites/default/files/atoms/files/policybasics-foodstamps.pdf>.

²⁷ *The Role of the Supplemental Nutrition Assistance Program in Improving Health and Well-Being*, Food Research Action Center, 1-2 (Dec. 2017), <https://www.frac.org/wp-content/uploads/hunger-health-role-snap-improving-health-well-being.pdf>.

²⁸ Ettinger de Cuba et al., *Punishing Hard Work: The Unintended Consequences of Cutting SNAP Benefits*, *Children's HealthWatch* (Dec. 2013).

²⁹ *Long-Term Benefits of the Supplemental Nutrition Assistance Program*, Executive Office of the President of the United States, 3 (2015), https://obamawhitehouse.archives.gov/sites/whitehouse.gov/files/documents/SNAP_report_final_nonembargo.pdf,

³⁰ 84 Fed. Reg. at 41,295.

would either disenroll or forgo enrollment in SNAP as a result of the new Rule.³¹ While the true number of individuals who will disenroll from SNAP is likely in the millions, *see infra* Part B.1, even the mass disenrollment contemplated by the government will result in a severe decline in nutritional health and food security in many immigrant communities. Indeed, as the government acknowledged, the Rule will cause immigrant communities to face an “increased prevalence of obesity and malnutrition,” “increased rates of poverty,” and “reduced productivity and educational attainment.”³²

c. The Public Charge Rule likely will force state and local governments to adopt stop-gap nutritional programs.

Beyond the harm to immigrant communities, mass disenrollment from nutritional programs will also harm state and local governments. Not only will local municipalities be forced to revise their internal policies and be subject to a sharp influx of administrative queries, these governments will also bear the burden of having to adopt stop-gap nutritional programs.

In response to the new Rule, state and local governments are likely to respond as they did when Congress attempted to curtail benefit-eligibility among immigrant communities. In 1996, the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) severely limited SNAP eligibility for many legal immigrants.³³ During the four-year window in which PRWORA’s restrictive policies were in full effect, states enacted a number of patchwork measures to provide supplemental food assistance.³⁴ Not only were these measures limited, they

³¹ Notice of Proposed Rulemaking: Inadmissibility on Public Charge Grounds, 83 Fed. Reg. at 51,266–67 (Oct. 10, 2018).

³² 83 Fed. Reg. at 51,270.

³³ Personal Responsibility and Work Opportunity Reconciliations Act of 1996, Pub. L. No. 104-193, 110 Stat 2105.

³⁴ Wendy Zimmerman & Karen C. Tumlin, *Patchwork Policies: State Assistance for Immigrants under Welfare Reform*, Urban Inst., 25-26 (1999) <http://webarchive.urban.org/UploadedPDF/occ24.pdf>.

ultimately failed. As a result of budget shortfalls, Florida and Massachusetts terminated their programs in less than four years, and most states ended their programs shortly thereafter.³⁵

The Rule forgets the lesson that Congress learned when, because of PRWORA's disastrous effects, it reversed course and expanded eligibility for nutritional-assistance programs to immigrant children, seniors, and individuals with disabilities who had been qualified immigrants as of PRWORA's enactment.³⁶ Four years later, the Farm Bill expanded food stamp—now SNAP—eligibility to legal immigrant children, legal immigrants receiving disability benefits, and other qualified immigrant adults.³⁷ Now, the Rule contravenes Congress's explicit intent in this arena by once again attempting to thwart access to nutritional benefits.

3. Medicaid provides access to affordable health care.

Introduced in 1965 to alleviate the high costs of health coverage,³⁸ Medicaid is a long-running program that provides affordable health insurance to roughly one-fifth of the people in the United States.³⁹ But despite the fact that millions of middle-class citizens and adult workers participate in this program, the Rule includes the receipt of Medicaid (with limited exceptions) as a heavily-weighted negative factor.⁴⁰ Including this benefit in the public charge determination

³⁵ Katherine Gigliotti, *Food Stamp Access for Immigrants: How States Have Implemented the 2002 Farm Bill Restorations*, National Conference of State Legislatures, 6 (2004), <https://www.ncsl.org/print/immig/immigrantandfoodstamps1004.pdf>.

³⁶ Agricultural Res., Extension & Educ. Reform Act of 1998, Pub. L. No. 105-185, 112 Stat 523.

³⁷ Farm Security and Rural Investment Act of 2002, Pub. L. No. 107-171, § 4401.

³⁸ See Pub. L. No. 89-97, 79 Stat. 286 (codified as amended at 42 U.S.C. § 1315(a)(1)).

³⁹ Shelley Irving & Tracy Loveless, *Dynamics of Economic Well-Being: Participation in Government Programs, 2009-2012: Who Gets Assistance?*, U.S. Census Bureau, (May 2015), <https://www.census.gov/content/dam/Census/library/publications/2015/demo/p70-141.pdf>.

⁴⁰ See 84 Fed. Reg. at 41,295-296.

will cause a reduction in healthcare for immigrants and pose public health risks to the country.

a. Congress envisioned Medicaid as a key support for working families.

More than 60% of Medicaid enrollees are either children, adults with work-limiting disabilities, or are over the age of 65. For them, access to Medicaid can lead to better composite health scores, lower incidence of high blood pressure, lower rates of obesity, fewer emergency room visits, and reduced hospitalizations as adults.⁴¹ And for working adults, the affordable healthcare that Medicaid offers is also vital. For example, in states where Medicaid has been expanded to adult workers, a majority reported that these benefits made it easier to work or made their job searches easier.⁴² Nearly 80% of adult, non-elderly Medicaid beneficiaries are in families where at least one individual works full time.⁴³ Medicaid is available to “qualified non-citizens,” mainly lawful permanent residents or green card holders who have resided in the country after a five-year period.⁴⁴

b. The Public Charge Rule will restrict access to healthcare.

Currently, many healthcare providers rely on Medicaid funding, with local government-

⁴¹ Alisa Chester & Joan Alker, *Medicaid at 50: A Look at the Long-Term Benefits of Childhood Medicaid*, Georgetown Univ. Health Policy Institute Ctr. for Children & Families, (July 27, 2015), <https://ccf.georgetown.edu/2015/07/27/medicaid-50-look-long-term-benefits-childhood-medicaid/>; *see also Ohio Medicaid Group VIII Assessment: A Report to the Ohio General Assembly*, Ohio Dep’t of Medicaid, 3 (2017), <https://medicaid.ohio.gov/Portals/0/Resources/Reports/Annual/Group-VIII-Assessment.pdf>.

⁴² *2018 Ohio Medicaid Group VIII Assessment*, Ohio Dep’t of Medicaid, 1, 13 (2018), <https://medicaid.ohio.gov/Portals/0/Resources/Reports/Annual/Group-VIII-Final-Report.pdf>; Susan Dorr Goold & Jeffrey Kullgren, *Report on the 2016 Healthy Michigan Voices Enrollee Survey*, Univ. of Michigan Inst. for Healthcare Policy & Innovation, (Jan. 17, 2018), https://www.michigan.gov/documents/mdhhs/2016_Healthy_Michigan_Voices_Enrollee_Survey_-_Report_Appendices_1.17.18_final_618161_7.pdf.

⁴³ Rachel Garfield et al., *Understanding the Intersection of Medicaid and Work*, Kaiser Family Found., (Aug. 8, 2018), <https://www.kff.org/medicaid/issue-brief/understanding-the-intersection-of-medicaid-and-work-what-does-the-data-say>.

⁴⁴ *See* 42 CFR § 435.406 (a)(2)(i).

sponsored community health centers receiving as much as 44% of their total revenue from Medicaid.⁴⁵ But because the new Public Charge Rule is likely to lead to a mass withdrawal from Medicaid, much of this funding will be lost and many hospitals that rely on Medicaid to stay afloat will have to close.⁴⁶ For example, New York City's Health and Hospital system estimates that it will lose up to \$362 million if the Rule takes effect.⁴⁷

Hospital closures will, of course, reduce access to care for both citizens and noncitizens alike, and especially hurt children, who are particularly vulnerable when health services disappear. The Rule will also depress the employment opportunities available in communities with shuttered public health services. Additionally, state and local governments will be forced to support certain public health safety-net programs with their own resources. This burden will be particularly acute for municipalities with government-funded hospitals as they have a legal obligation to provide the treatment necessary to stabilize anyone experiencing an emergency condition, regardless of immigration status or insurance coverage.⁴⁸

c. The Public Charge Rule will worsen health outcomes overall.

The restriction of access to healthcare caused by the Rule will also lead to serious individual medical problems and costly public health issues. Among other benefits, affordable

⁴⁵ Sara Rosenbaum et al., *Community Health Center Financing: The Role of Medicaid and Section 330 Grant Funding Explained*, Kaiser Family Found., (Mar. 2, 2018), <https://www.kff.org/medicaid/issue-brief/community-health-center-financing-the-role-of-medicare-and-section-330-grant-funding-explained/>.

⁴⁶ Richard Lindrooth et al., *Understanding The Relationship Between Medicaid Expansions and Hospital Closures*, Health Affairs (2018), <https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2017.0976>.

⁴⁷ See Jennifer Henderson, *NYC Health & Hospitals Projects \$362M Loss From Trump-proposed Changes to Public Charge Rule*, Modern Healthcare, (Dec. 06, 2018), <https://www.modernhealthcare.com/article/20181206/NEWS/181209959/nyc-health-hospitals-projects-362m-loss-from-trump-proposed-changes-to-public-charge-rule>.

⁴⁸ See Emergency Medical Treatment and Labor Act, 42 U.S.C. § 1395dd.

health insurance increases the use of preventive care services. For example, uninsured adults are up to 20% more likely than insured adults to seek emergency-room care, typically because they lack affordable preventive care options.⁴⁹ And unsurprisingly, increased access to preventive care is a key driver in reducing other downstream medical costs. For some procedures, such as asthma, increased preventive care can save up to \$4,200 per visit in hospitalization costs.⁵⁰ Moreover, affordable preventative care reduces the instance of individuals with non-emergency conditions seeking emergency room services, a cost that adds up to \$4.4 billion dollars annually.⁵¹ Indeed, according to the government’s own admission, the Rule will likely result in “increased use of emergency rooms and emergent care as a method of primary health care due to delayed treatment; increased prevalence of communicable diseases, including among members of the U.S. citizen population who are not vaccinated; and increases in uncompensated care in which a treatment or service is not paid for by an insurer or patient.”⁵²

Finally, for many adult, non-citizen workers, the loss of Medicaid will likely make it difficult to find healthcare while employed. Roughly 40% of employed Medicaid beneficiaries work for businesses of fewer than 50 employees, and only half of those small businesses are required under law to offer insurance.⁵³ Thus, by curtailing public health access, the Rule will

⁴⁹ Renee M. Gindi, Ph.D. et al., *Emergency Room Use Among Adults Aged 18–64: Early Release of Estimates From the National Health Interview Survey, January–June 2011*, Ctrs. for Disease Control, (May 2012), https://www.cdc.gov/nchs/data/nhis/earlyrelease/emergency_room_use_january-june_2011.pdf.

⁵⁰ See Peter G. Szilagyi et al., *Improved Asthma Care After Enrollment in the State Children’s Health Insurance Program in New York*, 117 *Pediatrics* 486, 486 (2006), <http://pediatrics.aappublications.org/content/pediatrics/117/2/486.full.pdf>.

⁵¹ Robin M. Weinick et al., *Many Emergency Department Visits Could Be Managed at Urgent Care Centers and Retail Clinics*, 29 *Health Affairs* 1630 (2010), <https://www.healthaffairs.org/doi/pdf/10.1377/hlthaff.2009.0748>

⁵² 83 Fed. Reg. at 51,270.

⁵³ Garfield, *supra* note 43 at 5.

not only harm immigrant and nonimmigrant families, it will also hurt local economies.

B. The Public Charge Rule will exert a chilling effect that further threatens the wellbeing of immigrant families, their communities, and the economy at large.

The Rule will not only affect immigrants targeted by it, but also create a “chilling effect,” where individuals who face no direct risk to their immigration status—including citizens—will likely withdraw from, or refuse to apply for, public benefits. As set forth below, study after study has documented this chilling effect among individuals in immigrant communities, as well as in “mixed-status” families, *i.e.* families with a combination of citizens and noncitizens in a household.

Studies reflect, for example, that one in three adults who reported a chilling effect within his or her family disenrolled from or refused to apply for housing subsidies. Similarly, approximately 46% of adults in families reporting a chilling effect also stated that someone in their family disenrolled from or did not apply for SNAP benefits.⁵⁴ In fact, after the government publically revealed a preliminary version of the Rule in 2018, SNAP experienced a 10% decrease in enrollment among eligible immigrant families in five major American cities.⁵⁵

Estimates further reflect that SNAP could lose at least 35% of its current participants,⁵⁶ with as many as 7.2 million SNAP-eligible participants disenrolling from or refusing to apply for

⁵⁴ Hamutal Bernstein et al., *One in Seven Adults in Immigrant Families Reported Avoiding Public Benefit Programs in 2018*, Urban Inst. (2019), at 7–8 https://www.urban.org/sites/default/files/publication/100270/one_in_seven_adults_in_immigrant_families_reported_avoiding_public_benefit_programs_in_2018.pdf.

⁵⁵ Allison Bovell-Ammon et al., *Trends in Food Insecurity and SNAP Participation among Immigrant Families U.S.-Born Young Children*, Children (2019) <https://childrenshealthwatch.org/wp-content/uploads/children-06-00055.pdf>; NYC Dep’t of Social Services, *Fact Sheet: SNAP Enrollment Trends in New York City* (June 2019), <https://www1.nyc.gov/assets/immigrants/downloads/pdf/Fact-Sheet-June-2019.pdf>

⁵⁶ *Only Wealthy Immigrants Need Apply: How a Trump Rule’s Chilling Effect will Harm the U.S.* Fiscal Policy Institute, (Oct. 10, 2018), <http://fiscalspolicy.org/wp-content/uploads/2018/10/US-Impact-of-Public-Charge.pdf>.

SNAP benefits.⁵⁷ Conservatively assuming that 35% of noncitizens withdraw from SNAP due to the chilling effect, the nation’s child poverty rate would increase by approximately 1.7%, leading to roughly 200,000 children being pushed into poverty.⁵⁸ In California, one study estimated that the chilling effect could impact up to 2.2 million people in immigrant families in the state alone.⁵⁹

Additionally, the chilling effect leading to disenrollment from SNAP will fall particularly hard on women and children. Both SNAP and Medicaid serve as a portal to the Special Supplemental Nutrition Program for Women, Infants, and Children (“WIC”), which provides benefits to pregnant, postpartum, or breastfeeding women, as well as to children and infants, who are at or below 185% of the federal poverty guidelines.⁶⁰ In 2018, approximately 6.9 million pregnant women, infants, and children relied on WIC each month.⁶¹ And while the Rule does not directly penalize participation in WIC, individuals participating in SNAP automatically meet the income-eligibility threshold for WIC. Approximately 75% of WIC’s participants are enrolled in the program because of this “adjunctive eligibility.”⁶² Given this interplay, a chilling

⁵⁷ Jeanne Batalova et al., *Chilling Effects: The Expected Public Charge Rule and its Impact on Legal Immigrant Families’ Public Benefits Use*, Migration Policy Institute (2018), <https://www.migrationpolicy.org/research/chilling-effects-expected-public-charge-rule-impact-legal-immigrant-families>.

⁵⁸ Jennifer Laird et al., *Forgoing Food Assistance out of Fear: Simulating the Child Poverty Impact of a Making SNAP a Legal Liability for Immigrants*, 5 *Socius* 1 –7 (2019) <https://doi.org/10.1177/2378023119832691>.

⁵⁹ Ninez Ponce et al., *Proposed Changes to Immigration Rules Could Cost California Jobs, Harm Public Health*, (Dec. 2018), UCLA Center for Health Policy Research, <http://healthpolicy.ucla.edu/publications/Documents/PDF/2018/publiccharge-factsheet-dec2018.pdf>

⁶⁰ 42 U.S.C. § 1786; Food Research and Action Center, *WIC is a Critical Economic, Nutrition, and Health Support for Children and Families* (May 2019), https://frac.org/wp-content/uploads/frac_brief_wic_critical_economic_nutrition_health_support.pdf.

⁶¹ U.S. Dep’t of Agriculture, *Keydata Report October 2019: Preliminary Fiscal Year 2018 Data* (2019) <https://www.fns.usda.gov/data-and-statistics>.

⁶² *WIC and Adjunctive Eligibility*, Nat’l WIC Assoc., (March 2015), <https://www.aap.org/en-us/advocacy-and-policy/federal-advocacy/Documents/wicadjunctiveeligibilityNWAfactsheet.pdf>.

effect on WIC participation is all but certain. WIC agencies in at least 18 states have already reported a decline of up to 20% in enrollment from the program.⁶³

With respect to Medicaid benefits, roughly 42% of adults in families reporting a chilling effect stated that they had disenrolled from or withdrew from Medicaid benefits, and as many as 2.1 to 4.9 million current Medicaid enrollees could disenroll.⁶⁴ More than two-thirds of providers in 2018 noted an increase in parents' concerns about enrolling their children in Medi-Cal (California's Medicaid program), WIC, and CalFresh (California's SNAP program), and nearly half (42%) reported an increase in the skipping of scheduled health care appointments.⁶⁵ Further, in July 2019, researchers found that 8.3 million children enrolled in Medicaid or SNAP were at risk of losing benefits under the Rule, 5.5 million of whom had specific medical needs.⁶⁶ Between 800,000 and 1.9 million children with medical needs, including asthma, epilepsy, and cancer, could be disenrolled from these benefits.⁶⁷

The unintended consequences of previous restrictions in the 1990s are again instructive. Although the PRWORA excluded refugees and asylees from its benefit restrictions, a significant

⁶³ Helena Bottemiller, *Immigrants, fearing Trump crackdown, drop out of nutrition programs*, Politico (Sept. 3, 2018) <https://www.politico.com/story/2018/09/03/immigrants-nutrition-food-trump-crackdown-806292>.

⁶⁴ Samantha Artiga et al., *Estimated Impacts of the Proposed Public Charge Rule on Immigrants and Medicaid*, Kaiser Family Found., (Oct. 2018), <http://files.kff.org/attachment/Issue-Brief-Estimated-Impacts-of-the-Proposed-Public-Charge-Rule-on-Immigrants-and-Medicaid>.

⁶⁵ The Children's Partnership, *California Children in Immigrant Families: The Health Provider Perspective*, (2018) <https://www.childrenspartnership.org/wp-content/uploads/2018/03/Provider-Survey-Inforgraphic-.pdf>; see also Bovell-Ammon, *supra* note 55.

⁶⁶ Leah Zallman et al., *Implications of Changing Public Charge Immigrant Rules for Children Who Need Medical Care*, 173 JAMA Pediatrics 1, 1-6 (2019).

⁶⁷ *Id.*

number of refugees and asylees nonetheless declined to enroll in benefit programs.⁶⁸ The government has acknowledged PRWORA’s shadow here, noting that “when eligibility rules change for public benefits programs, there is evidence of a chilling effect that discourages immigrants from using public benefits programs for which they are still eligible.”⁶⁹

Because the Rule’s chilling effect will be tremendous, many of the same harms that *Amici* have described—including impaired childhood development and increased public health risks—will be spread over a wider population than the government acknowledges.⁷⁰

Additionally, by widening the number of individuals who are likely to withdraw from benefit programs, the Rule’s chilling effects will dramatically increase the harm to state and local economies as described above. In particular, once the Rule’s chilling effect is calculated, the mass disenrollment from Medicaid and SNAP caused by the rule could result in the loss of approximately 17.5 billion dollars in health care and food supports, and 230,000 in potential jobs.⁷¹ In California alone, the disenrollment in Medicaid and SNAP benefits would result in up to \$1.67 billion in lost federal benefits, eliminating 17,700 jobs and costing the state economy 2.8 billion dollars.⁷²

⁶⁸ Namratha Kandula et al., *The Unintended Impact of Welfare Reform on the Medicaid Enrollment of Eligible Immigrants*, Health Services Research (October 2004) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1361081/>; Edward Vargas, *Immigration enforcement and mixed-status families: The effects of risk of deportation on Medicaid use*, Children and Youth Services Review (2015), <https://www.sciencedirect.com/science/article/pii/S0190740915300177>.

⁶⁹ 83 Fed. Reg. at 51,266.

⁷⁰ Hamutal Bernstein et al., *Safety Net Access in the Context of the Public Charge Rule*, Urban Inst., (Aug. 2019) https://www.urban.org/sites/default/files/publication/100754/safety_net_access_in_the_context_of_the_public_charge_rule_1.pdf; Wendy Cervantes et al., *Our Children’s Fear: Immigration Policy’s Effects on Young Children*, CLASP, (March 2018), https://www.clasp.org/sites/default/files/publications/2018/03/2018_ourchildrensfears.pdf.

⁷¹ *Only Wealthy Immigrants Need Apply*, *supra* note 56.

⁷² Ponce *et al.*, *supra* note 59.

III. CONCLUSION

The Public Charge Rule punishes immigrants for utilizing benefits that help them to maintain stable housing, sufficient nutrition, and good health. Thus, the damage caused by the Rule will be felt not only by immigrants, but by the larger communities of which they are inextricable members. The Rule promises only to increase fear and confusion among immigrants and cause lasting harm to children, families, and, ultimately, the United States as a whole.

Respectfully submitted,

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