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14  
15 **UNITED STATES DISTRICT COURT**  
16 **EASTERN DISTRICT OF WASHINGTON**  
17 **AT RICHLAND**

18 STATE OF WASHINGTON, et. al.,  
19

20 Plaintiffs,

21 v.

22 UNITED STATES DEPARTMENT  
23 OF HOMELAND SECURITY, et al.,

24 Defendants.

25 CASE NO. 4:19-cv-05210-RMP

26 MOTION OF THE AMERICAN CIVIL  
LIBERTIES UNION, CENTER FOR  
PUBLIC REPRESENTATION, ET AL.,  
FOR LEAVE TO FILE AS *AMICI  
CURIAE* IN SUPPORT OF PLAINTIFFS'  
MOTION FOR PRELIMINARY  
INJUNCTION

27 Date: 10/9/2019  
28 Time: 6:30 p.m.  
Without Oral Argument

1           The American Civil Liberties Union, Center for Public Representation, *et al.*<sup>1</sup>  
 2 (“*amici curiae*”) hereby move the Court for leave to file the accompanying *amici*  
 3 *curiae* brief in the above-captioned case in support of Plaintiffs’ Motion for  
 4 Preliminary Injunction, calendared for hearing before this Court on October 3, 2019,  
 5 at 10:00 AM.

6           **I.     LEGAL STANDARD**

7           The Court has discretion to grant *amici curiae* permission to file a brief.  
 8 *Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982), *abrogated on other grounds*  
 9 by *Sandin v. Conner*, 515 U.S. 472 (1995). “An amicus brief should normally be  
 10 allowed . . . when the amicus has unique information or perspective that can help the  
 11 court beyond the help that the lawyers for the parties are able to provide.” *Cmtv.*  
 12 *Ass’n for Restoration of the Env’t (CARE) v. DeRuyter Bros. Dairy*, 54 F. Supp. 2d  
 13 974, 975 (E.D. Wash. 1999). To “fulfill [its] role” *amici curiae* should submit  
 14 “briefing designed to supplement and assist in cases of general public interest,  
 15 supplement the efforts of counsel, and draw the court’s attention to law that might  
 16 otherwise escape consideration.” *Id.* at 975 (citing *Miller-Wohl Co. v.*  
 17 *Commissioner of Labor & Indus.*, 694 F.2d 203, 204 (9th Cir. 1982)). For the  
 18 reasons explained below, *amici curiae*’s motion satisfies these criteria.

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20           <sup>1</sup> American Civil Liberties Union, Center for Public Representation, American  
 21 Association of People with Disabilities, Association of University Centers on  
 22 Disabilities, Autistic Self Advocacy Network, Coelho Center for Disability Law,  
 23 Policy and Innovation, Disability Rights Advocates, Disability Rights Washington,  
 24 Disability Rights Education and Defense Fund, Judge David L. Bazelon Center for  
 25 Mental Health Law, Little Lobbyists, Mental Health America, National  
 26 Association of Councils on Developmental Disabilities, National Council on  
 27 Independent Living, National Disability Rights Network, National Federation of  
 28 the Blind, The Arc of United States, United Spinal Association.

## II. THE INTEREST OF *AMICI CURIAE*

*Amici curiae* have a strong interest in this case. *Amici curiae* are eighteen nonprofit organizations that represent, advocate for, and support the disability community. Collectively, *amici* operate in all fifty States and six Territories and represent tens of thousands of people with disabilities and their family members across the country. Among other services, the *amici* provide public education, litigate, and conduct research for people with disabilities and their families. All *amici* are dedicated to the liberty, equality, and integration of individuals with disabilities.

In furtherance of their mission to support the integration of individuals with disabilities, the *amici curiae* have filed *amicus curiae* briefs addressing discrimination against individuals with disabilities in many recent cases. *See, e.g.* Br. of Am. Civil Liberties Union Found. Disability Rights Program & the Nat'l Ass'n of the Deaf in Supp. of Pet'r, *Douglas v. Arnold*, No. 2:17-cv-1592 KJNP (E.D. Cal. Aug. 24, 2017), ECF No. 13 (arguing that a deaf criminal defendant has a constitutional and statutory right to communication aids during trial and pre-trial proceedings); Amicus Curiae Br. of Am. Civil Liberties Union, Judge David L. Bazelon Ctr. for Mental Health Law, et al. in Supp. of Pl.'s Pet. for Reh'g, *Hwang v. Kansas State Univ.*, No. 13-3070 (10th Cir. July 3, 2014), ECF No. 01019274034 (arguing that a panel opinion created conflict with appellate precedents construing the ADA and the Rehabilitation Act); Amici Curiae Br. of Am. Civil Liberties Union, Nat'l Disability Rights Network, et al. in Supp. of Pls & Appellants, *Reyazuddin v. Montgomery Cty.*, No. 14-1299 (4th Cir. Aug. 25, 2014), ECF No. 23 (arguing that the county excluded applicants and employees in violation of the ADA and the Rehabilitation Act).

*Amici curiae* seek to provide the Court with information about the legal standards for disability discrimination law and the practical effect the Final Rule is having and will have on individuals with disabilities. *Amici curiae*'s interest in this

1 case is to ensure DHS complies with its disability nondiscrimination obligations in  
 2 interpreting and enforcing immigration law.

3 **III. *AMICI CURIAE'S PERSPECTIVE WILL BENEFIT THE***  
 4 **COURT**

5 *Amici curiae* have experience with the Final Rule at issue in this case, having  
 6 submitted comments on the proposed version of the Final Rule, provided public  
 7 education about the rule, and advised thousands of their members about the Final  
 8 Rule. *Amici curiae* have made use of that experience, as well as their expertise in  
 9 disability law, to explain why DHS's Final Rule violates the Rehabilitation Act.  
 10 While Plaintiffs have made a variety of arguments regarding the unlawfulness of the  
 11 Final Rule, *amici curiae*'s brief is uniquely focused on the Rehabilitation Act and  
 12 the impact of the Final Rule on individuals with disabilities. The brief can serve as  
 13 a resource for the Court as it analyzes Plaintiffs' claim that the Final Rule violates  
 14 Federal law. In particular, *amici curiae*'s analysis of how the Final Rule's criteria  
 15 in effect create a *per se* rule that anyone with a significant disability is a public  
 16 charge can help the Court as it engages with the question of whether Plaintiffs are  
 17 likely to succeed on the merits of their claim.

18 **IV. MEET AND CONFER AND TIMELINESS**

19 *Amici curiae* have conferred with the Plaintiff concerning the filing of this  
 20 motion. Plaintiffs have consented to this motion. *Amici curiae* were unable to confer  
 21 with Defendants before the filing of this motion because they have not yet made an  
 22 appearance in this matter. The filing of this proposed *amici curiae* brief is timely as  
 23 it has been filed within seven days of the filing date of the motion. *See* ECF No. 23.

24 **CONCLUSION**

25 For the forgoing reasons, *amici curiae* respectfully requests that the Court  
 26 grant this motion and accept for filing the accompanying brief.  
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Dated: September 9, 2019

Respectfully submitted,

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