

No. 19-17213

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CITY AND COUNTY OF SAN FRANCISCO and
COUNTY OF SANTA CLARA,

Plaintiffs-Appellees,

v.

UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, a federal
agency; U.S. DEPARTMENT OF HOMELAND SECURITY, a federal agency;
CHAD F. WOLF, in his official capacity as Acting Secretary of the United States
Department of Homeland Security; KENNETH T. CUCCINELLI, in his official
capacity as Acting Director of United States Citizenship and Immigration
Services,

Defendants-Appellants.

On Appeal from the United States District Court, Northern District of California
Case No. 4:19-cv-04717-PJH (Hon. Phyllis J. Hamilton)

**BRIEF OF AMICI CURIAE NATIONAL HOUSING LAW PROJECT,
FOOD RESEARCH & ACTION CENTER, CENTER FOR LAW &
SOCIAL POLICY, NATIONAL EDUCATION ASSOCIATION, SERVICE
EMPLOYEES INTERNATIONAL UNION, ET AL., IN SUPPORT OF
PLAINTIFFS-APPELLEES AND URGING AFFIRMANCE**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1, Amici state that they are nonprofit organizations with no corporate parents.

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I. STATEMENT OF IDENTITY AND INTEREST

The principal Amici are three non-profit organizations and two labor organizations.

The National Housing Law Project (“NHLP”) is a national nonprofit that works to advance housing justice for poor people and communities, including for immigrants and their families. Founded in 1968, NHLP accomplishes its mission by advocating for equitable housing policies, providing technical assistance to underserved communities, and participating in high-impact litigation to fight unlawful housing discrimination. For almost four decades, NHLP has also published an annual treatise—considered to be the seminal authority—on tenants’ rights and the housing programs administered by the U.S. Department of Housing and Urban Development.

Food Research & Action Center (“FRAC”) is the leading national nonprofit working to eradicate poverty-related hunger and undernutrition in the United States. Founded in 1970, FRAC researches and documents the extent of hunger and its impact, while advocating for effective solutions and stronger policies to reduce hunger, undernutrition, and obesity in vulnerable communities. FRAC has particularly deep expertise with the nutrition safety net programs administered by the federal government.

The Center for Law and Social Policy (“CLASP”) is a national, non-partisan nonprofit that advances policy solutions to promote the economic security of people with low-incomes and to create opportunities for all. Advocating for social change since 1969, CLASP focuses on anti-poverty policies including in the areas of income and work supports, health and nutrition policy, and childcare and early education. CLASP’s work focuses on the critical importance of federal and state programs that support the health and economic well-being of families with low incomes, including families within the immigrant community.

The National Education Association (“NEA”) is the nation’s oldest and largest education union, committed to advancing the cause of public education. Originally founded in 1857, NEA’s three million members work in our nation’s public schools, higher education institutions, and other public entities. NEA’s mission is “to advocate for our members and to unite our members and the nation to fulfill the promise of public education to prepare every student to succeed in a diverse and interdependent world.” To that end, NEA advocates for adequate food and housing security for children to ensure their wellbeing and ability to learn.

The Service Employees International Union (“SEIU”) is a 2-million-member labor organization dedicated to improving the lives of workers and their families and creating a more just and humane society. First organized in 1921, SEIU unites healthcare workers, property services workers, and public sector employees, some

of whom are foreign-born United States citizens, lawful permanent residents, and immigrants with work-authorized status in the United States. Many of SEIU's members have mixed-status families. The chilling effects of the Rule described in this brief will particularly affect SEIU's members, their families and the communities that SEIU's members serve.¹

Amici's brief describes the operation of the housing, nutrition, and healthcare public benefit programs encompassed by the recently revised Public Charge Rule, the programs' fundamental importance, and the Rule's negative impacts. By discouraging enrollment in these critical assistance programs, the regulation will not just harm individual immigrants, but also communities, economies, public schools, and local and state governments across the United States, like the Appellees here.

Moreover, if the Rule takes effect, its impacts will be magnified through its "chilling effect" on people not directly impacted by the Rule but who decline the benefits to which they are entitled due to fear and confusion. The ramifications of the Rule thus extend far beyond the individual parties in this litigation. Amici, as subject-matter experts on public benefits and their recipients, are uniquely

¹ Amici also include the additional non-profit organizations listed in the attached appendix.

positioned to aid the Court in assessing the balance of equities in this interlocutory appeal of the district court's preliminary injunction.

All parties consent to the filing of this brief.

II. RULE 29(A)(4)(E) STATEMENT

No party's counsel authored this brief in whole or in part. No party or party's counsel contributed money that was intended to fund preparing or submitting this brief. No other person contributed money that was intended to fund preparing or submitting this brief. Fed. R. App. P. 29(a)(4)(E).

III. SUMMARY OF THE ARGUMENT

The government’s radical expansion of the Public Charge Rule (“the Rule”) damages the wellbeing and economic stability of immigrants and communities across the United States. It inflicts these serious 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. The public benefit programs targeted by the Rule promote health, self-sufficiency, economic advancement, and upward mobility. The programs at issue are used in large part by working families to stabilize their lives when faced with 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 associated with the Rule's documentary requirements for benefits recipients, 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 impact programs and services upon which all Americans rely.

The district court's preliminary injunction does no more than preserve the status quo until the lawfulness of the government's rulemaking is finally determined. With vital assistance to millions at stake, this Court should leave the district court's order in place while the case proceeds below and reserve its decision for a complete record and final judgment.

IV. ARGUMENT

A. The principal public benefits at issue are critical to promoting self-sufficiency and their loss would cause irreparable harm to the educational attainment and employment prospects of those affected.

1. Housing Programs

Congress, recognizing the importance of stable housing to a good economy and individual success, 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 that support affordable housing options for families with moderate and low incomes.³ In total, HUD’s federal housing assistance programs serve approximately 4.5 million households, at least 281,300 of which include a non-citizen.⁴ 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

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 See Alicia Mazzara, *Demographic Data Highlight Potential Harm of New Trump Proposal to Restrict Housing Assistance*, Ctr. on Budget & Policy Priorities, 9-10 (July 1, 2019), <https://www.cbpp.org/sites/default/files/atoms/files/7-1-19hous.pdf>.

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.⁵

Roughly two-thirds of the working age, non-disabled persons in the households receiving HUD federal rental 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.⁶ 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 areas with an expensive housing market—is absurd and contrary to Congressional intent.

HUD administers three primary housing programs that are affected by the Rule.

1. 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 families with

⁵ 24 C.F.R. §§ 5.500-5.528.

⁶ 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/2-5-18hous-chartbook.pdf>; *U.S. Federal Rental Assistance Fact Sheet*, Ctr. on Budget & Policy Priorities, 1-2 (May 14, 2019), <https://apps.cbpp.org/4-3-19hous/PDF/4-3-19hous-factsheet-us.pdf>.

low incomes, the elderly, and people with disabilities.⁷ Today, there are approximately one million units of public housing serving 2.1 million individuals.⁸ Thirty-three percent of these residents are seniors, 30% experience a disability, and 38% are families with children.⁹

2. *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 2019.¹⁰ The program helps make housing more obtainable for families by awarding vouchers so that recipients can pay rent at 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.¹¹

⁷ See 42 U.S.C. § 1437.

⁸ 2019 Advocates' Guide, *supra* note 3, at § 4-25.

⁹ See HUD's Public Housing Program, https://www.hud.gov/topics/rental_assistance/phprog (last visited Sept. 12, 2019); see also 2019 Advocates' Guide, *supra* note 3, at § 4-26.

¹⁰ 2019 Advocates' Guide at § 4-1, *supra* note 3; 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>.

¹¹ 42 U.S.C. § 1437f(o).

3. 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.¹² 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.¹³

The financial strain of securing housing is not limited to immigrant families or families with low incomes. 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.¹⁴ Nationwide, 71% of low-income renters spend more than 50% of their income on rent and utilities.¹⁵ California—the state with the largest immigrant population—has eight of the ten highest rental

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

¹³ 2019 Advocates' Guide, *supra* note 3, at § 4-47.

¹⁴ *Out of Reach 2019*, Nat'l Low Income Housing Coal., 1 (2019) https://reports.nlihc.org/sites/default/files/oor/OOR_2019.pdf.

¹⁵ *The Gap: A Shortage of Affordable Homes*, Nat'l Low Income Housing Coal., 1 (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 6.

cost metropolitan counties in the country,¹⁶ and no county in the State recorded a median rent below \$1,095 per month.¹⁷ 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.¹⁸ As a result, a significant portion of the population faces housing costs that exceed 30% of their incomes, making them eligible for HUD assistance. Because the Rule designates receipt of HUD's three primary housing support programs as a heavily weighted negative factor, it has effectively expanded the notion of what it means to be a "public charge" to encompass a wide swath of middle- and low-income working Americans.

Not having stable and affordable housing can cause individuals to experience increased hospital visits, loss of employment, and mental health

¹⁶ 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.

¹⁷ 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.

¹⁸ 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>.

problems.¹⁹ 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.²⁰ Indeed, the government's own Department of Education explains that "[r]esearch shows that [homeless] students experience significant academic, social, and socio-emotional challenges, and that being homeless is associated with lower school achievement and increased risk of dropping out of school."²¹ Likewise, high levels of residential instability are demonstrably linked to decreases in childhood academic success marked by increases in problem behaviors, grade retention, and drop-out rates.²²

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

¹⁹ 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>.

²⁰ See *Adverse Childhood Experiences*, Ctrs. for Disease Control and Prevention, <http://www.cdc.gov/violenceprevention/acestudy/> (last visited Sept. 12, 2019).

²¹ *Education Department Releases Guidance on Homeless Children and Youth*, U.S. Dept. of Educ., (July 27, 2016), <https://www.ed.gov/news/press-releases/education-department-releases-guidance-homeless-children-and-youth>.

²² See Heather Sandstrom & Sandra Huerta, *The Negative Effects of Instability on Child Development: A Research Synthesis*, Urban Institute, 28-32 (Sep. 2013), <https://www.urban.org/sites/default/files/publication/32706/412899-The-Negative-Effects-of-Instability-on-Child-Development-A-Research-Synthesis.PDF>.

behavioral problems like anxiety, depression, sleep problems, withdrawal, and aggression.²³ By contrast, children in households receiving rental assistance have greater health, higher adult earnings, and a lower chance of incarceration.²⁴ 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.”²⁵ By increasing housing instability and its far-reaching harms, the Rule will strain—not conserve—community resources.

The Rule’s impact will not be limited to individual immigrants and their families. 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

²³ 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.

²⁴ 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, 3, (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.

²⁵ *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.

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.²⁶ This requirement will create administrative costs for 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 and their school-aged children. The Rule penalizes certain immigrants for receiving vital assistance and places significant burdens on the municipalities, agencies, schools, and persons participating in these critical programs.

2. Nutrition Programs

Congress has repeatedly committed to providing nutritional support for households and workers with low incomes, 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,

²⁶ Inadmissibility on Public Charge Grounds, 84 Fed. Reg. 41,292, 41,463 (Aug. 14, 2019).

education and workplace outcomes, and local economies to be strained by disenrollment.

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.²⁷ As the modern extension of the long-running 1964 Food Stamp Act, SNAP provides aid to citizens and qualified non-citizens alike: roughly half of all citizen children will receive SNAP benefits at some point(s) during childhood, and half of all citizen adults will receive SNAP benefits at some points(s) between the ages of 20 and 65.²⁸ In fiscal year 2017, an estimated 1.5 million non-citizens participated in SNAP on average, as well as an estimated 3.1 million citizen children living with non-citizen adults on average.²⁹ In total, SNAP provided approximately 35 million individuals with benefits in an average month during the 2019 fiscal year.³⁰

²⁷ 7 U.S.C. § 2011 *et seq.*

²⁸ 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).

²⁹ *Trends in Supplemental Nutrition Assistance Program Participation Rates: Fiscal Year 2010 to Fiscal Year 2017*, 20 (Sep. 2019), <https://fns-prod.azureedge.net/sites/default/files/resource-files/Trends2010-2017.pdf>.

³⁰ *Supplemental Nutrition Assistance Program Participation and Costs*, U.S.D.A

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.³¹ SNAP thus plays a critical role in boosting economic and educational outcomes, improving health and chronic disease management, and reducing healthcare 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,³² whereas children receiving SNAP benefits had an 18% increase in high-school graduation rates.³³ In other words, benefits that provide nutritional support

(Dec. 6, 2019), <https://fns-prod.azureedge.net/sites/default/files/resource-files/SNAPsummary-12.19.pdf>.

³¹ *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>.

³² Ettinger de Cuba et al., *Punishing Hard Work: The Unintended Consequences of Cutting SNAP Benefits*, Children's HealthWatch (Dec. 2013), https://childrenshealthwatch.org/wp-content/uploads/cliffeffect_report_dec2013.pdf.

³³ *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.

and food security help working families achieve greater success and promote stronger communities.

Because the Rule considers the receipt of SNAP benefits as a heavily-weighted negative factor,³⁴ it will likely lead to many immigrants and their citizen children disenrolling from SNAP or foregoing benefits. The government itself estimated that roughly 130,000 SNAP recipients intending to apply for an adjustment of status would either disenroll or forgo enrollment in SNAP as a result of the new Rule.³⁵ While the true number of individuals who will disenroll from SNAP is likely much higher,³⁶ even the mass disenrollment contemplated by the government will result in a severe decline in nutritional health and food security in many immigrant communities. The effects on children will be particularly serious. Food insecurity and insufficiency are closely linked to decreased mathematics scores, grade repetition, absenteeism, tardiness, visits to a psychologist, anxiety, aggression, psychological dysfunction, and difficulty getting along with other children.³⁷ Research demonstrates that young U.S. citizen children of immigrant

³⁴ 84 Fed. Reg. at 41,295.

³⁵ Inadmissibility on Public Charge, 83 Fed. Reg. 51,114, 51,266–67 (Oct. 10, 2018).

³⁶ Hamutal Bernstein et al., *One in Seven Adults in Immigrant Families Reported Avoiding Public Benefit Programs in 2018*, Urban Inst., 7-8 (2019), https://www.urban.org/sites/default/files/publication/100270/one_in_seven_adults_in_immigrant_families_reported_avoiding_publi_7.pdf.

³⁷ See Diana F. Jyoti, et al., *Food Insecurity Affects School Children's Academic*

mothers are already at elevated risk of food insecurity as compared with children of U.S. citizen mothers,³⁸ and the revised Rule will drive even more mothers away from SNAP benefits. As the government acknowledged in its notice of proposed rulemaking, the Rule may cause immigrant communities to face an “increased prevalence of obesity and malnutrition,” “increased rates of poverty,” and “reduced productivity and educational attainment.”³⁹

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. Economies may also suffer: according to recent studies, it is estimated that \$1 of SNAP benefits leads to between \$1.50 and \$1.80 in total economic activity during a recession.⁴⁰

Performance, Weight Gain, and Social Skills, 135 *The J. of Nutrition* 2831, 2831 (Dec. 1, 2005), <https://academic.oup.com/jn/article/135/12/2831/4669915>.

³⁸ See Mariana Chilton, et al., *Food Insecurity and Risk of Poor Health Among U.S.-Born Children of Immigrants*, 99 *Am. J. of Pub. Health* 556, 561-62 (March 2009), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2661461/>.

³⁹ 83 Fed. Reg. at 51,270.

⁴⁰ Patrick Canning & Brian Stacy, *The Supplemental Nutrition Assistance Program (SNAP) and the Economy: New Estimates of the SNAP Multiplier*, 6-8 & T1 (July 2019), U.S.D.A Econ. Research Serv., <https://www.ers.usda.gov/webdocs/publications/93529/err-265.pdf?v=8010.7>.

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.⁴¹ 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.⁴² These measures were limited. 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.⁴³

After observing PRWORA's disastrous effects, Congress 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.⁴⁴ Four years later, the Farm Bill expanded food stamp—

⁴¹ Personal Responsibility and Work Opportunity Reconciliations Act of 1996, Pub. L. No. 104-193, 110 Stat 2105.

⁴² 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>.

⁴³ 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>.

⁴⁴ Agricultural Res., Extension & Educ. Reform Act of 1998, Pub. L. No. 105-185,

now SNAP—eligibility to immigrants (children, disabled adults, and other qualified adults present in the country for five years) holding lawful status.⁴⁵ Now, the Rule contravenes Congress’s explicit intent in this area by once again attempting to thwart access to nutritional benefits.

3. Healthcare Programs

Introduced in 1965 to alleviate the high costs of health coverage,⁴⁶ Medicaid is a long-running program that provides affordable health insurance to roughly one-fifth of the people in the United States.⁴⁷ 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.⁴⁸ Here again, the Rule seeks to define what it means to be a “public charge” in a way that sweeps in significant portions of everyday Americans. Including this benefit in the public charge determination will cause a

112 Stat 523.

⁴⁵ Farm Security and Rural Investment Act of 2002, Pub. L. No. 107-171, § 4401.

⁴⁶ See Pub. L. No. 89-97, 79 Stat. 286 (codified as amended at 42 U.S.C. § 1315(a)(1)).

⁴⁷ 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>.

⁴⁸ See 84 Fed. Reg. at 41,295-296.

reduction in healthcare for immigrants and pose public health risks to the country as a whole.

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.⁴⁹ 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.⁵⁰ Nearly 80% of adult, non-elderly Medicaid beneficiaries are in families where at least one individual works full time.⁵¹

⁴⁹ 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 (2016), <https://medicaid.ohio.gov/Portals/0/Resources/Reports/Annual/Group-VIII-Assessment.pdf>.

⁵⁰ *2018 Ohio Medicaid Group VIII Assessment*, Ohio Dep't of Medicaid, 1, 4 (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, 5, (Jan. 17, 2018), https://www.michigan.gov/documents/mdhhs/2016_Healthy_Michigan_Voices_Enrollee_Survey_-_Report__Appendices_1.17.18_final_618161_7.pdf.

⁵¹ Rachel Garfield et al., *Understanding the Intersection of Medicaid and Work*, Kaiser Family Found., (Aug. 8, 2018), <https://www.kff.org/medicaid/issue->

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.⁵² For many non-citizen workers, the loss of Medicaid will 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 In short, Medicaid helps its recipients maintain employment and self-sufficiency.

By deterring permissible use of Medicaid, the Rule will reduce access to healthcare for entire communities. Many healthcare providers rely on Medicaid funding, with local government-sponsored community health centers receiving as much as 44% of their total revenue from Medicaid.⁵⁴ But because the 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.⁵⁵

brief/understanding-the-intersection-of-medicaid-and-work-what-does-the-data-say.

⁵² See 42 CFR § 435.406 (a)(2)(i).

⁵³ Garfield, *supra* note 51 at 5.

⁵⁴ Sara Rosenbaum et al., *Community Health Center Financing: The Role of Medicaid and Section 330 Grant Funding Explained*, Kaiser Family Found., (Mar. 2018), <https://www.kff.org/medicaid/issue-brief/community-health-center-financing-the-role-of-medicaid-and-section-330-grant-funding-explained/>.

⁵⁵ 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>.

For example, New York City’s Health and Hospital system estimates that it will lose up to \$187 million if the Rule takes effect.⁵⁶ 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.⁵⁷

Ultimately, the Rule will lead to greater healthcare costs by discouraging more cost-efficient care. 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.⁵⁸ 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

⁵⁶ See Memorandum of Law in Support of Plaintiffs’ Motion for Preliminary Injunction & Stay Pending Judicial Review at 11, *State of New York, et al. v. U.S. D.H.S., et al.*, No. 19-cv-07777 (GBD).

⁵⁷ See Examination and Treatment for Emergency Medical Conditions and Women in Labor, 42 U.S.C. § 1395dd.

⁵⁸ 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.

per visit in hospitalization costs.⁵⁹ 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 annually.⁶⁰ Indeed, according to the government’s own admission, the Rule will likely result in “[i]ncreased use of emergency rooms and emergent care as a method of primary health care due to delayed treatment; [i]ncreased prevalence of communicable diseases, including among members of the U.S. citizen population who are not vaccinated; [and] [i]ncreases in uncompensated care in which a treatment or service is not paid for by an insurer or patient.”⁶¹

In short, the Rule will make communities less healthy and 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

⁵⁹ 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>.

⁶⁰ 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>.

⁶¹ 83 Fed. Reg. at 51,270.

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 at least one non-citizen in the 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.⁶² 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.⁶³ In fact, after the government publicly revealed a preliminary version of the Rule in 2018, SNAP experienced a 10% decrease in enrollment among eligible recently arrived immigrant families in five major American cities.⁶⁴

Approximately 7 million people receive SNAP who live in households with at least one non-citizen or naturalized citizen member.⁶⁵ Researchers estimate that

⁶² Bernstein et al., *supra* note 36, at 7–8.

⁶³ *Id.*

⁶⁴ 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/0001.pdf>; NYC Dep’t of Soc. Servs., *Fact Sheet: SNAP Enrollment Trends in New York City* (June 2019), <https://www1.nyc.gov/assets/immigrants/downloads/pdf/Fact-Sheet-June-2019.pdf>.

⁶⁵ *Characteristics of Supplemental Assistance Program Households: Fiscal Year 2017*, U.S. Dept. of Agriculture, (Feb. 2019), <https://fns-prod.azureedge.net/sites/default/files/resource-files/Characteristics2017.pdf>.

as many as 35% of SNAP recipients with these characteristics could disenroll or refuse to apply for SNAP benefits.⁶⁶ This could result in as many as 7.2 million SNAP-eligible participants disenrolling from or refusing to apply for SNAP benefits.⁶⁷ If 35% of non-citizens 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.⁶⁸ In California, one study evaluating the government's proposed Rule estimated that the chilling effect could impact up to 2.2 million people in immigrant families in the State alone.⁶⁹

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

⁶⁶ *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>.

⁶⁷ 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>.

⁶⁸ 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>.

⁶⁹ Ninez Ponce et al., *Proposed Changes to Immigration Rules Could Cost California Jobs, Harm PublicHealth*, UCLA Center for Health Policy Research, (Dec. 2018), <http://healthpolicy.ucla.edu/publications/Documents/PDF/2018/publiccharge-factsheet-dec2018.pdf>.

(“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.⁷⁰ In 2018, approximately 6.9 million pregnant women, infants, and children relied on WIC each month.⁷¹ 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.”⁷² Given this interplay, a chilling 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.⁷³ Preliminary numbers show a nearly 500,000 person decrease in WIC participation for 2019 over 2018 data.⁷⁴ The disturbing

⁷⁰ 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.

⁷¹ U.S.D.A., *Keydata Report October 2019: Preliminary Fiscal Year 2018 Data* (2019) <https://fns-prod.azureedge.net/sites/default/files/data-files/Keydata-October-2019.pdf>.

⁷² *WIC and Adjunctive Eligibility*, Nat’l WIC Assoc., (March 2015), <https://s3.amazonaws.com/aws.upl/nwica.org/wic-adjunctive-eligibilitya.pdf>.

⁷³ Helena Bottemiller Evich, *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>.

⁷⁴ *See Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Monthly Data – National Level*, U.S.D.A., (Dec. 6, 2019), <https://fns->

data play out in real human stories; when the proposed changes to the Rule were announced, numerous WIC providers reported mothers rejecting federal assistance for formula and baby food, instead requesting that their previous WIC records be expunged.⁷⁵

As many as 2.1 to 4.9 million current Medicaid enrollees could disenroll as a result of the Rule's chilling effects.⁷⁶ 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 healthcare appointments.⁷⁷

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

prod.azureedge.net/sites/default/files/resource-files/37WIC_Monthly-12.19.pdf.

⁷⁵ See Evich, *supra* note 73.

⁷⁶ 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>.

⁷⁷ 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 64.

enroll in benefit programs.⁷⁸ 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.”⁷⁹

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.⁸⁰ 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. For example, one estimate concludes that using WIC’s automatic income

⁷⁸ 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>.

⁷⁹ 83 Fed. Reg. at 51,266.

⁸⁰ 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.

qualification provisions to determine eligibility saved the state approximately \$8.75 per WIC participant.⁸¹ Since the Rule’s chilling effects on SNAP participation are likely to severely limit adjunctive qualification for WIC, those savings will be lost, increasing program costs and straining state budgets. Likewise, 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 in healthcare and food supports, and 230,000 in potential jobs.⁸² In California alone, the disenrollment in Medicaid and SNAP benefits could result in up to \$1.67 billion in lost federal benefits, eliminating 17,700 jobs and costing the state economy \$2.8 billion.⁸³

V. CONCLUSION

The government’s changes to the Rule will harm immigrants and the broader communities of which they are crucial parts by discouraging their participation in housing, nutrition, and healthcare programs. As the government recognized in its Final Rule, the very programs the Rule characterizes as heavily weighted negative factors “serve the public interest, and help people to become productive members

⁸¹ See *WIC State Directors Value Medicaid Adjunctive Eligibility*, National WIC Ass’n, (2015), <https://s3.amazonaws.com/aws.upl/nwica.org/medicaid-ae-study.pdf>.

⁸² *Only Wealthy Immigrants Need Apply*, *supra* note 66.

⁸³ *Ponce et al.*, *supra* note 69.

of society.”⁸⁴ The changes also result in a demonstrable chilling effect on populations that are not subject to the Rule’s sanctions. State and local governments feel the impacts too, as participation in federal aid programs drops.

These federal programs are designed to facilitate recipients’ productive contributions to civil society, but the changes to the Rule dramatically undermine that clear Congressional intent. The Rule—contrary to its purported goals—will undermine individual self-sufficiency and cost communities more. For these reasons, this Court should maintain the status quo, decline to disturb the district court’s preliminary injunction, and allow this case to proceed to a final judgment in the normal course.

Dated: January 23, 2020

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⁸⁴ 84 Fed. Reg. 41314.

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APPENDIX OF ADDITIONAL AMICI

California League of United Latin American Citizens

California Food Policy Advocates

Center for the Study of Social Policy

Children's HealthWatch

Comunidades Unidas/Communities United

First Focus on Children

Los Angeles Regional Food Bank

Mississippi Center for Justice

National WIC Association

National Low Income Housing Coalition

Prevention Institute

Sant La Haitian Neighborhood Center

South Carolina Appleseed Legal Justice Center

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UNITED STATES COURT OF APPEALS
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