

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

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COOK COUNTY, ILLINOIS, et al.,  
Plaintiffs,

v.

ALEJANDRO MAYORKAS, et al.,  
Defendants.

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Case No.: 1:19-cv-06334  
Hon. Gary Feinerman

**MOTION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE 20 CITIES AND  
COUNTIES AND THE U.S. CONFERENCE OF MAYORS IN SUPPORT OF  
PLAINTIFFS' AND DEFENDANTS' OPPOSITIONS TO PROPOSED INTERVENORS'  
MOTION FOR INTERVENTION AND MOTION FOR RELIEF FROM JUDGMENT**

Amici hereby request leave to file the attached Brief of Amici Curiae 20 Cities and Counties and the U.S. Conference of Mayors in Support of Plaintiffs' and Defendants' Oppositions to Proposed Intervenors' Motion for Intervention and Motion for Relief from Judgment. A copy of the proposed brief is attached to this motion as Attachment 1. The proposed brief contains a full list of amici. The parties and Proposed Intervenors have consented to the filing of the attached brief.

“An amicus brief should normally be allowed . . . when the amicus has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide.” *Ryan v. Commodity Futures Trading Comm'n*, 125 F.3d 1062, 1063 (7th Cir. 1997). The Court should exercise its discretion to allow amici to file the attached brief because, as home to millions of immigrants affected by the Rule, amici provide a unique

perspective that can help the Court. Amici are 20 cities and counties and the U.S. Conference of Mayors, representing every corner of the country, including millions of residents who are immigrants or children of immigrants. Amici recognize that it is critical to the well-being of the entire community to protect immigrants and their families from the harms the Rule is designed to inflict. Immigrants and their families have forgone critical healthcare, housing, and food assistance out of fear of the Rule's negative immigration consequences. And confusion about the Rule, including whether or not it is in effect, what individuals it covers, and what public benefits are included, extends its harmful impact far beyond its stated scope.

Amici have a strong interest in the outcome of Proposed Intervenors' motions. Contrary to Proposed Intervenors' arguments, the Rule does not decrease costs to states and local governments. Rather, it shifts much of the cost for providing critical assistance to immigrant families from the federal government to state and local governments, like amici.

For the foregoing reasons, amici respectfully request the Court's permission to file the attached brief.

Dated: June 15, 2021

THE CITY OF CHICAGO

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CONFERENCE OF MAYORS IN SUPPORT OF PLAINTIFFS' AND DEFENDANTS'  
OPPOSITIONS TO PROPOSED INTERVENORS' MOTION FOR INTERVENTION  
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## **INTEREST OF AMICI CURIAE AND SUMMARY OF ARGUMENT<sup>1</sup>**

Amici curiae are 20 cities and counties and the U.S. Conference of Mayors, representing every corner of the country, including millions of immigrants or children of immigrants.<sup>2</sup> Amici have primary responsibility for—and a strong interest in—promoting and protecting the health and welfare of their communities. *See Hillsborough Cnty., Fla. v. Automated Med. Labs, Inc.*, 471 U.S. 707, 719 (1985). Amici operate safety net healthcare facilities and emergency medical services, promote public health, and provide critical housing and food support.

In August 2019, the Department of Homeland Security (DHS) promulgated a final rule that significantly expanded the circumstances under which an individual may be found inadmissible because they are likely to become a “public charge.” *See Inadmissibility on Public Charge Grounds*, 84 Fed. Reg. 41,292 (Aug. 14, 2019) (the Rule). Despite the Court’s vacatur of the Rule, DHS began enforcing it in early 2020. A little more than a year later, DHS abandoned its defense of the Rule, the Court’s vacatur went into effect, and the judgment became final.

Localities relied on the finality of the Court’s judgment. When the judgment became final, amici informed residents about the effect of the Rule’s vacatur, and some immigrants relied on those messages in seeking federal benefits. Amici also planned and implemented community programs based on the final judgment—if it is reopened and the Rule goes into effect, amici will have to change plans, conduct massive outreach campaigns to notify immigrants of the change in policy, and use limited resources to fill the gaps created by the Rule.

Immigrant residents, their families, and amici also will be harmed by reopening the Court’s judgment. If the Court grants Proposed Intervenors’ motions, the Rule will continue to

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<sup>1</sup> No part of this brief was authored by either party’s counsel, and no person—other than amici and their counsel—contributed money that was intended to fund the preparation or submission of this brief.

<sup>2</sup> A complete list of amici is set out in Appendix A.

deter immigrant families from receiving critical healthcare, housing, and food assistance that they are otherwise entitled to receive, out of fear of the potential immigration consequences. By discouraging immigrants from accessing such benefits, the Rule puts everyone's health, well-being, and safety at risk. If immigrants, for example, forgo enrollment in Medicaid, or avoid getting vaccinated, the health and safety of communities are put at risk and local hospitals will be forced to address rising uncompensated care rates. Further, widespread confusion over whom the Rule affects and what benefits it covers has affected more than just its targets; many immigrants have declined assistance even when they are not subject to the Rule, or declined benefits that are explicitly exempted or not covered by the Rule. Finality is critical for localities to implement effective communication strategies to begin to undo this chilling effect.

Contrary to Proposed Intervenors' arguments, the Rule does not decrease costs to states and local governments. The opposite is true; by deterring immigrants from accepting federal noncash benefits they are otherwise eligible to receive, the Rule forces local governments to step in and fill this gap, redirecting their own resources to support this population. These benefits are critical for promoting and sustaining self-sufficiency for low-income families. When immigrants forgo this assistance, it will lead to more uninsured visits to healthcare facilities, greater jeopardy to public health, and increased homelessness and food insecurity. The Court should deny Proposed Intervenors' motions for intervention and relief from judgment.

## **ARGUMENT**

### **I. AMICI RELY ON FINALITY OF JUDGMENTS TO IMPLEMENT POLICIES AND ALLOCATE RESOURCES.**

Amici have heightened reliance interests on the final judgment in this case. Finality matters to all litigants; indeed, relief under Rule 60(b)(6) is warranted only in extraordinary circumstances because of the "strong policy favoring the finality of judgments." *Margoles v.*

*Johns*, 798 F.2d 1069, 1072 (7th Cir. 1986). Finality promotes judicial, societal, and private interests: a final judgment “fix[es] the rights of parties and entitle[s] them to go about their lives,” *id.*, and effectuates the central purpose of courts: “the conclusive resolution of disputes,” *Montana v. United States*, 440 U.S. 147, 153 (1979). But for amici, finality is especially important because it affects their ability to provide basic, crucial services to their residents.

Amici immediately began to rely on the Seventh Circuit’s March 9, 2021 dismissal of this case. On March 10, Chicago’s Office of New Americans posted the news on social media<sup>3</sup> and began working with its community partners and grantees, such as the National Immigrant Justice Center and The Resurrection Project (TRP), to broadly disseminate the ruling and educate Chicago’s immigrant community on how the ruling impacted their rights. In March 2021 alone, TRP conducted 61 immigrant education presentations at centers throughout Chicago—reaching thousands of immigrants—including presentations about the Rule’s vacatur.<sup>4</sup> Similarly, the City of New York and the County of Los Angeles used resources to educate the public about how the Rule’s vacatur impacted immigrants’ rights.<sup>5</sup> These efforts likely caused some immigrants to enroll in federal benefits that they otherwise would not have sought for fear of adverse impact on their immigration status. If the judgment is reopened, amici will have to invest in an entirely new and opposite messaging campaign—warning immigrants and their families that the Rule could now be enforceable—after only a few short months.

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<sup>3</sup> @ChiNewAmericans, Twitter (Mar. 10, 2021, 2:57 PM), <https://twitter.com/ChiNewAmericans/status/1369784436787646470>.

<sup>4</sup> *Community Navigator Program Report 2021*, The Resurrection Project, City of Chicago Legal Protection Fund Master Report (March 2021) (available in PDF format upon request).

<sup>5</sup> *Public Charge Rule*, NYC Mayor’s Off. of Immigrant Affairs, <https://perma.cc/BZ3D-H7PR>; *Concerned About Public Benefits & Immigration?*, NYC Mayor’s Off. of Immigrant Affairs, <https://perma.cc/T8TT-8KKS>; *Public Charge Rule*, L.A. Cty. Off. of Immigrant Affairs, <https://oia.lacounty.gov/publiccharge/>.

More broadly, amici’s ability to effectively plan and implement community programs depends on a final resolution in this case. Amici need certainty to make funding decisions that best meet the needs of their residents, especially with already overstretched budgets. The final judgment here allows amici to project the number of uninsured individuals who will seek local healthcare services, and to determine the scope of those in need of local housing and food assistance. This knowledge allows amici to better estimate costs and to allocate funds accordingly. Departments within the City of Chicago, like Public Health, Family and Support Services, and Housing, begin submitting budget requests based on projected need in July.<sup>6</sup> After budget decisions are finalized, it is administratively costly—if not impossible—to reallocate funding from one program to another, and can lead to severe underfunding of certain vital services, like emergency rental assistance, when more funds could have been available. Projecting their residents’ need for services, and making budget decisions based on that need, is fundamental to amici’s ability to serve their residents. Amici must be able to rely on the certainty of a final judgment here.

## **II. THE RULE HAS CAUSED IMMIGRANTS TO CHOOSE IMMIGRATION STATUS OVER CRITICAL SERVICES.**

The Rule forces immigrants to choose between receiving government assistance that combats homelessness, hunger, and child poverty, or foregoing that assistance to adjust their immigration status. While immigrants generally increase national economic output more than native-born Americans, in the short term some immigrants and their children benefit from receiving support on the way to self-sufficiency.<sup>7</sup> Accordingly, under longstanding federal

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<sup>6</sup> *Budget Process*, City of Chicago 2021 Budget Overview, 15, [https://www.chicago.gov/content/dam/city/depts/obm/supp\\_info/2021Budget/2021OVERVIEWFINAL.pdf](https://www.chicago.gov/content/dam/city/depts/obm/supp_info/2021Budget/2021OVERVIEWFINAL.pdf).

<sup>7</sup> Ryan Nunn et al., *A Dozen Facts about Immigration*, Brookings Inst., Hamilton Project, 13 (Oct. 2018), <https://perma.cc/DK6F-TTQL>.

policy, noncash benefits have not affected the public charge determination because they largely promote and sustain self-sufficiency. Since the Rule was finalized, however, many immigrants and their families have abandoned critical support designed to promote self-sufficiency, despite their critical needs. As a result, amici must redirect their resources to remedy the harmful effects created by large-scale withdrawal of immigrant families from federal assistance programs.

**A. The Rule Has Caused Immigrant Families to Abandon Critical Government Assistance.**

There is abundant evidence that the Rule has caused immigrants to forgo safety net services that are designed to prevent hunger, poverty, and homelessness. In the time period after the Rule was announced but before it went into effect, approximately one-third of adults in immigrant families with nonpermanent residents avoided noncash benefits because of immigration concerns.<sup>8</sup> When the Rule went into effect in early 2020, it caused even further reduction in benefit use: Last year, almost 44% of adults in low-income immigrant families with nonpermanent residents avoided noncash benefits because of immigration concerns.<sup>9</sup>

This impact was not limited to just one category of assistance. Instead, families broadly abandoned benefits they needed related to housing, healthcare, and food security. Specifically, during 2020, 22% of adults in families with nonpermanent residents avoided a nutrition program, 18.2% avoided a health program, and 17% avoided a housing assistance program.<sup>10</sup>

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<sup>8</sup> Hamutal Bernstein et al., *Amid Confusion Over the Public Charge Rule, Immigrant Families Continued Avoiding Public Benefits in 2019*, Urban Inst., 5-6 (May 2020), [https://www.urban.org/sites/default/files/publication/102221/amid-confusion-over-the-public-charge-rule-immigrant-families-continued-avoiding-public-benefits-in-2019\\_3.pdf](https://www.urban.org/sites/default/files/publication/102221/amid-confusion-over-the-public-charge-rule-immigrant-families-continued-avoiding-public-benefits-in-2019_3.pdf); Jennifer M. Haley et al., *One in Five Adults in Immigrant Families with Children Reported Chilling Effects on Public Benefit Receipt in 2019*, Urban Inst. (June 2020), [https://www.urban.org/sites/default/files/publication/102406/one-in-five-adults-in-immigrant-families-with-children-reported-chilling-effects-on-public-benefit-receipt-in-2019\\_0.pdf](https://www.urban.org/sites/default/files/publication/102406/one-in-five-adults-in-immigrant-families-with-children-reported-chilling-effects-on-public-benefit-receipt-in-2019_0.pdf).

<sup>9</sup> Hamutal Bernstein et al., *Adults in Low-Income Immigrant Families Were Deeply Affected by the COVID-19 Crisis Yet Avoided Safety Net Programs in 2020*, Urban Inst., 8-9 (May 2021), <https://www.urban.org/sites/default/files/publication/104280/adults-in-low-income-immigrant-families-deeply-affected-by-pandemic-yet-avoided-safety-net.pdf>.

<sup>10</sup> *Id.* at 11.

The Rule’s impact also is devastating when viewed at an individual level, through the experience of specific families that have made the difficult choice to give up noncash supplemental benefits. In just one example, Raquel Lopez (a former factory worker who lives in Chicago) starkly described the harsh choices presented by the Rule. When she and her husband lost their jobs due to the pandemic, they struggled to put food on the table. Nevertheless, despite their struggles, Lopez made the difficult choice not to get Supplemental Nutrition Assistance Program (SNAP) benefits (formerly known as food stamps) for her 14-year-old daughter, citing the Rule as her reason: “I want to fix my status someday. I didn’t want to hurt my chances.”<sup>11</sup>

**B. Confusion About the Rule Expands Its Harmful Impact to Immigrants and Benefits Exempted or Not Covered by the Rule.**

The Rule’s impact extends beyond those people and services that it was intended to cover. Confusion about the Rule—whether it is in effect, what benefits it targets, and to whom it applies—has rendered its impact far broader than its actual terms.

The Rule itself recognizes that certain benefits are so critical to families and the community that they should be expressly exempted from the definition of public benefits. For example, the Children’s Health Insurance Program (CHIP) provides low-cost health coverage to children in families who are low-income, but earn too much to qualify for Medicaid.<sup>12</sup> In excluding CHIP from the Rule, DHS noted the “strong legal and policy reasons” for treating children differently, including that CHIP is an important way to ensure children are vaccinated.<sup>13</sup>

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<sup>11</sup> María Inés Zamudio, *Immigration Advocates From Illinois Celebrate the End of the Expanded Public Charge Rule*, WBEZ (Mar. 2021), <https://www.wbez.org/stories/immigration-advocates-from-illinois-celebrate-the-end-of-the-expanded-public-charge-rule/569abd8b-bfee-4b40-8141-835d9d59eb8d>.

<sup>12</sup> Children’s Health Insurance Program (CHIP), HealthCare.gov, <https://www.healthcare.gov/glossary/childrens-health-insurance-program-chip/>.

<sup>13</sup> 84 Fed. Reg. at 41380.

But even before the Rule went into effect, immigrants were confused about the Rule’s reach and elected to give up critical benefits carved out of the Rule’s scope. For example, approximately 25% of immigrant families who reported avoiding government assistance because of the Rule mistakenly avoided benefits that were not in fact covered by the Rule.<sup>14</sup> Immigrants also were confused about to whom the Rule applies; in one study, only 19% knew that children’s enrollment in Medicaid would not be considered in their parents’ public charge determinations.<sup>15</sup>

Confusion persisted after the Rule went into effect. A May 2021 study found that low-income immigrant families with nonpermanent residents refused assistance explicitly exempted by the Rule, including unemployment insurance (16.1%); free or low-cost medical care for the uninsured (12.1%); emergency rental assistance (12.4%); emergency cash assistance (13%); food assistance from a local government or community organization (9%); nutrition programs, such as WIC (8%), Pandemic EBT (8.8%), free or reduced-price school lunches (6.8%), and replacements for school meals (6%); or Medicaid or CHIP for a child (3.9%).<sup>16</sup> Confusion about whom the Rule covers also persisted: 27% of lawful permanent residents avoided public programs, even though the Rule does not apply to their applications for citizenship.<sup>17</sup>

Amici have seen this confusion and the harm it brings firsthand. In Los Angeles, for example, health clinics have reported that families have refused to seek COVID-19 testing or

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<sup>14</sup> Bernstein, *supra* n.8 at 6.

<sup>15</sup> *Id.*

<sup>16</sup> Bernstein, *supra* n.9.

<sup>17</sup> Susan H. Babey et al., *One in 4 Low-Income Immigrant Adults in California Avoided Public Programs, Likely Worsening Food Insecurity and Access to Health Care*, UCLA Ctr. for Health Pol’y Rsch., 1 (Mar. 2021), <https://healthpolicy.ucla.edu/publications/Documents/PDF/2021/publiccharge-policybrief-mar2021.pdf>.

treatment for critically-ill family members, out of fear of the immigration consequences, even though COVID-19 treatment is not included in a public charge determination.<sup>18</sup>

### **III. THE RULE CAUSES SIGNIFICANT, IRREPARABLE HARM TO LOCAL COMMUNITIES BY REDUCING VITAL HEALTH CARE, HOUSING, AND NUTRITION SUPPORTS.**

Although Proposed Intervenors claim an interest in reducing costs to states, Mtn. for Intervention at 6-7, what they seek will do the opposite. By forcing immigrants to forgo federal benefits they are otherwise entitled to receive, the Rule shifts costs for health coverage, public health, housing assistance, and food security away from the federal government to state and local governments. This shift imposes immense harm on local governments.

#### **A. The Rule Profoundly Diminishes Public Health, Causing Great Harm and Significant Costs to Local Communities.**

Medicaid provides healthcare to over 72 million low-income people<sup>19</sup> and is a critical health benefit for low-income immigrant families. Healthcare costs pose a significant burden on low-income immigrant families; in 2020, approximately 26% of low-income immigrant families faced problems paying medical bills, and 52.1% worried about being able to pay for medical costs the following month.<sup>20</sup> This has required many families to make difficult choices: approximately 25% of low-income immigrant families reported need for medical care that was going unaddressed because of cost.<sup>21</sup> Despite the critical need for healthcare assistance,

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<sup>18</sup> Usha Lee McFarling, *Fearing deportation, many immigrants at higher risk of Covid-19 are afraid to seek testing or care*, STAT News (Apr. 15, 2020), <https://www.statnews.com/2020/04/15/fearing-deportation-many-immigrants-at-higher-risk-of-covid-19-are-afraid-to-seek-testing-or-care/>.

<sup>19</sup> November 2020 Medicaid & CHIP Enrollment Data Highlights, Medicaid.gov, <https://www.medicaid.gov/medicaid/program-information/medicaid-and-chip-enrollment-data/report-highlights/index.html>.

<sup>20</sup> Bernstein, *supra* n.9 at 2.

<sup>21</sup> *Id.*

Proposed Intervenors want to reinstate the Rule. This will cause immigrants to avoid enrolling in Medicaid or health insurance altogether,<sup>22</sup> leading to higher rates of uninsurance.<sup>23</sup>

When immigrants give up healthcare coverage, the burden of providing medical care shifts from the federal government to local communities. The uninsured are less likely to seek preventive care,<sup>24</sup> and chronic diseases like diabetes and hypertension, which require regular care to be effectively managed, go untreated and become more debilitating and, ultimately, more costly.<sup>25</sup> And when the uninsured face serious medical problems, they rely on emergency care provided through amici's safety net hospitals or emergency medical services.<sup>26</sup> The cost of this uncompensated care falls heavily on state and local governments—one 2013 study found that state and local programs paid for almost \$20 billion in uncompensated care.<sup>27</sup>

The Rule also causes profound harm to children's health. One study found that approximately 260,000 children did not receive Medicaid coverage because of the Rule.<sup>28</sup> From 2018 to 2019, there was an 11% drop in enrollment in CHIP by U.S.-citizen children with a family member subject to the Rule.<sup>29</sup> For these U.S.-citizen children, the consequences are dire; children who cannot access preventive healthcare are more likely to develop health conditions

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<sup>22</sup> *Id.*

<sup>23</sup> Babey, *supra* n.17.

<sup>24</sup> Jennifer Tolbert et al., *Key Facts About the Uninsured Population*, KFF (Nov. 6, 2020), <https://www.kff.org/uninsured/issue-brief/key-facts-about-the-uninsured-population/#:~:text=Studies%20repeatedly%20demonstrate%20that%20the,health%20conditions%20and%20chronic%20diseases.&text=More%20than%20two%20in%20five,in%20the%20past%2012%20months>.

<sup>25</sup> Michael Hiltzik, *A punitive Trump proposal stokes panic among immigrants—even before it's official*, L.A. Times (Aug. 24, 2018), <http://www.latimes.com/business/hiltzik/la-fi-hiltzik-public-charge-20180824-story.html>.

<sup>26</sup> Teresa A. Coughlin et al., *Uncompensated Care for the Uninsured in 2013: A Detailed Examination*, KFF (May 30, 2014), <https://www.kff.org/uninsured/report/uncompensated-care-for-the-uninsured-in-2013-a-detailed-examination/>.

<sup>27</sup> *Id.*

<sup>28</sup> Jeremy Barofsky et al., *Spreading Fear: The Announcement of the Public Charge Rule Reduced Enrollment in Child Safety-Net Programs*, 39 Health Affairs 10 (Oct. 2020), <https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2020.00763>.

<sup>29</sup> Randy Capps et al., *Anticipated “Chilling Effects” of the Public-Charge Rule Are Real: Census Data Reflects Steep Decline in Benefits Use by Immigrant Families*, Migration Pol'y Inst. (Dec. 2020), <https://www.migrationpolicy.org/news/anticipated-chilling-effects-public-charge-rule-are-real> (Excel spreadsheet).

and face difficulties in school, creating real barriers to their educational and professional futures and directly undermining their ability to become financially independent.<sup>30</sup> For example, in one school in Phoenix, several families have given up healthcare coverage for children in need. The parents of a kindergartner who was born tongue-tied (a condition easily fixed with surgery) are afraid to enroll her in Medicaid because of the Rule, and they cannot afford the procedure on their own. And a third-grader who was recently diagnosed with autism, and struggles with speaking, is falling behind his classmates and will not receive occupational therapy because his parents are afraid to enroll him in public benefits.<sup>31</sup>

Individuals who are afraid to access healthcare also increase the risk of disease outbreaks in their communities, which local public health departments must then address. Where the Rule causes otherwise eligible families to avoid vaccinations and other preventive treatments, the health of the entire community is threatened.<sup>32</sup> This is not a speculative harm. In the 1990s, the then-largest rubella outbreak in the nation was associated with a substantial increase in public charge determinations based on Medicaid use.<sup>33</sup> The disease spread as immigrant communities withdrew from public health services for fear of immigration consequences.<sup>34</sup> History is now repeating itself—one study found that about one-third of unvaccinated Hispanic adults are concerned that getting the COVID-19 vaccine may negatively affect their own or a family

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<sup>30</sup> See Health and Academic Achievement, Ctrs. for Disease Control & Prevention, 2-3 (May 2014), <https://perma.cc/3VXF-Y9LC>.

<sup>31</sup> Anthony Wallace et al., *Afraid of Assistance: Trump's Public Charge Rule Sends Chill Through Immigrant Community*, <https://cronkitezine.asu.edu/bootcamp19/public-charge/index.php/public-charge-story/>.

<sup>32</sup> Helen Branswell, *Federal Rules Threaten to Discourage Undocumented Immigrants from Vaccinating Children*, STAT News (Aug. 26, 2019), <https://perma.cc/KW5N-W5E8>.

<sup>33</sup> Claudia Schlosberg & Dinah Wiley, *The Impact of INS Public Charge Determinations on Immigrant Access to Health Care*, Montana Pro Bono.net (May 22, 1998), <https://perma.cc/WX9P-PNDB>.

<sup>34</sup> *Id.*

member's immigration status.<sup>35</sup> Because of this confusion, many amici—including the County of Los Angeles and the City of Seattle—have had to devote resources to assuring residents that receiving a COVID-19 vaccination will not affect a public charge determination.<sup>36</sup>

Historically, local public health departments have been able to effectively control outbreaks of disease by cooperating with community stakeholders and earning the trust of the community to interact with healthcare professionals and participate in preventive health programs.<sup>37</sup> Those efforts are directly undermined by the Rule and the atmosphere of fear and distrust of government assistance that it fosters.

**B. The Rule Forces Immigrant Families to Give Up Housing Assistance at a Time When Many Communities Are Facing a Housing Crisis.**

The Rule also prompts families to forgo important housing assistance they are entitled to receive, which leads to increases in homelessness and corresponding costs to amici. Section 8 housing assistance is crucial to keeping families out of homelessness. Approximately 5.2 million households use federal rental assistance, with over 1.2 million receiving Section 8 assistance.<sup>38</sup> For low-income families with children, this assistance is particularly helpful—*vouchers reduce the share of families living in shelters or on the streets by approximately 75%.*<sup>39</sup>

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<sup>35</sup> Liz Hamel et al., *KFF COVID-19 Vaccine Monitor: COVID-19 Vaccine Access, Information, and Experiences Among Hispanic Adults in the U.S.*, KFF (May 13, 2021), <https://www.kff.org/coronavirus-covid-19/poll-finding/kff-covid-19-vaccine-monitor-access-information-experiences-hispanic-adults/>.

<sup>36</sup> LA County Coronavirus (COVID-19) Updates, <https://oia.lacounty.gov/coronavirus-updates/#:~:text=with%20immigration%20officials.-,Will%20receiving%20free%20vaccination%20or%20treatment%20for%20COVID%2D19%20make,a%20public%20charge%20inadmissibility%20determination>; The COVID-19 Vaccine in Seattle, <https://www.seattle.gov/mayor/covid-19/vaccinations#:~:text=a%20U.S.%20citizen%3F-No.,Trump%2Dera%20public%20charge%20rule>.

<sup>37</sup> See, e.g., Decl. of Barbara Ferrer at 5-6, ¶¶ 14-17, *California v. U.S. Dep't of Homeland Sec.*, No. 4:19-CV-04975-PJH (N.D. Cal. 2019), Doc. No. 18-3.

<sup>38</sup> *Federal Rental Assistance Fact Sheets*, Ctr. on Budget & Pol'y Priorities (June 1, 2021), <https://www.cbpp.org/research/housing/federal-rental-assistance-fact-sheets#US>.

<sup>39</sup> Will Fischer, *Chart Book: Rental Assistance Reduces Hardship, Promotes Children's Long-Term Success*, Ctr. on Budget & Pol'y Priorities (July 5, 2016), <https://perma.cc/S2GA-G5HC>.

This assistance is needed by immigrant families now more than ever. Approximately 11 million households are significantly overdue on their housing payments, risking eviction or foreclosure.<sup>40</sup> Households with incomes below \$75,000 are more than twice as likely to be behind on payments than those with higher incomes.<sup>41</sup> During 2020, approximately 22% of low-income immigrant families had difficulty paying their rent or mortgage, and approximately 51% worried about being able to pay the following month.<sup>42</sup> As just one example of this, Jessica Arias, a resident of Oakland, had her hours reduced because of the pandemic and brings home just \$300 every two weeks to support herself, her partner, and her two-year-old daughter.<sup>43</sup> She is six months behind on rent because she has used her earnings to pay for other basic needs. At a time when families are struggling, the Rule forces families to avoid assistance they are eligible to receive, and that could help them become self-sufficient and avoid homelessness.<sup>44</sup>

The costs of housing insecurity and increased homelessness also fall on local governments, which must provide housing for homeless residents—a responsibility that has increased dramatically during the pandemic. Amici have provided rent subsidies in an effort to fill the gap created by the Rule, sometimes even stating on their websites that the Rule will not apply to such subsidies,<sup>45</sup> but amici cannot fill the gap alone. For example, in 2020, the City of

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<sup>40</sup> *Housing Insecurity and the COVID-19 Pandemic*, Consumer Fin. Prot. Bd. (Mar. 2021), [https://files.consumerfinance.gov/f/documents/cfpb\\_Housing\\_insecurity\\_and\\_the\\_COVID-19\\_pandemic.pdf](https://files.consumerfinance.gov/f/documents/cfpb_Housing_insecurity_and_the_COVID-19_pandemic.pdf).

<sup>41</sup> *Id.*

<sup>42</sup> Bernstein, *supra* n.9 at 6-9.

<sup>43</sup> Hector Alejandro Arzate, *Oakland's Undocumented Community Struggles to Keep Up with Rent and Bills*, The Oaklandside (Feb. 5, 2021), <https://oaklandsid.org/2021/02/05/oaklands-undocumented-community-struggles-to-keep-up-with-rent-and-bills/>.

<sup>44</sup> Bernstein, *supra* n.9 at 12.

<sup>45</sup> City of Los Angeles Emergency Renters Assistance Program, <https://hcidla.lacity.org/>; *see also* LA County COVID-19 Rent Relief, Los Angeles County Development Authority, <https://www.lacda.org/programs/rent-relief>; *L.A., through Friday, is taking applications for its \$103-million rent relief program*, L.A. Times (July 12, 2020), <https://www.latimes.com/california/story/2020-07-12/renters-relief-program-to-start-taking-applications>; Keep Oakland Housed COVID-19 Relief Financial Assistance, City of Oakland (Sept. 2, 2020), <https://www.oaklandca.gov/resources/keep-oakland-housed-covid-19-relief-financial-assistance#:~:text=Program%20Overview,->

Chicago provided over \$33 million in emergency rental assistance to almost 10,000 households, with another \$78.9 million earmarked for 2021 through March 2022.<sup>46</sup> Homelessness also imposes other significant costs on amici, including public health concerns such as increased outbreaks of Typhus and Hepatitis A, which local governments then must battle.<sup>47</sup>

**C. By Punishing Individuals Who Receive Food Assistance, the Rule Multiplies the Harm to Local Governments.**

The Rule also prompted immigrants and their families to decline critical food assistance, even when that assistance was not explicitly penalized by the Rule. Food insecurity has dramatically impacted amici's communities and residents, particularly during the pandemic. Approximately 45 million people (1 in 7 Americans), including approximately 15 million children (1 in 5), may have experienced food insecurity in 2020.<sup>48</sup> This trend is even more pronounced in low-income immigrant communities, approximately 41% of whom were food insecure in 2020 and 43.2% of whom worried about having enough to eat the following month.<sup>49</sup>

The Rule, however, penalizes critical federal food assistance programs like SNAP that—particularly during the pandemic—are critical to preserve individuals' self-sufficiency and to the health and welfare of amici's communities. SNAP is considered "the nation's most important anti-hunger program."<sup>50</sup> As of 2019, SNAP provided assistance to approximately 38 million

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The%20City%20of&text=%245%20million%20of%20those%20funds,homeowners%20impacted%20by%20COVI  
D%2D19.

<sup>46</sup> *Mayor Lightfoot and Chicago Department of Housing Announce \$79.8 Million In Housing Rental Assistance*, City of Chicago Press Release (May 24, 2021), [https://www.chicago.gov/city/en/depts/mayor/press\\_room/press\\_releases/2021/may/HousingRentalAssistance.html](https://www.chicago.gov/city/en/depts/mayor/press_room/press_releases/2021/may/HousingRentalAssistance.html).

<sup>47</sup> Anna Gorman, *Medieval Diseases Are Infecting California's Homeless*, The Atlantic (Mar. 8, 2019), <https://perma.cc/BFT9-YVNW>.

<sup>48</sup> *The Impact of the Coronavirus on Food Insecurity in 2020 & 2021*, Feeding America (Mar. 2021), [https://www.feedingamerica.org/sites/default/files/2021-03/National%20Projections%20Brief\\_3.9.2021\\_0.pdf](https://www.feedingamerica.org/sites/default/files/2021-03/National%20Projections%20Brief_3.9.2021_0.pdf).

<sup>49</sup> Bernstein, *supra* n.9 at 6-7.

<sup>50</sup> *Policy Basics: The Supplemental Nutrition Assistance Program (SNAP)*, Ctr. on Budget & Pol'y Priorities (June 25, 2019), <https://perma.cc/RY3N-GUJY>.

people (1 in 9 Americans), approximately 66% of whom are families with children.<sup>51</sup> Federal free and reduced-price school lunch programs also are affected by the Rule, even though the Rule does not explicitly penalize immigrant families for having their children participate in them, because children miss the automatic enrollment in the school program that is provided to families receiving SNAP benefits.<sup>52</sup> Because the Rule penalizes SNAP enrollment, free and reduced school lunch enrollment also declined after the Rule was enacted.<sup>53</sup>

The Rule thus exacerbates the harms of food insecurity by causing immigrants to avoid support that would keep their families from hunger.<sup>54</sup> Indeed, one study found that, of those immigrants who avoided a program because of the Rule, approximately 54% were food insecure, where just over one third of families who did not avoid food assistance faced insecurity.<sup>55</sup>

As with other supplemental supports penalized by the Rule, it harms amici's communities when families avoid food assistance programs. SNAP improves children's health outcomes.<sup>56</sup> The developmental and educational benefits of good childhood nutrition also benefit the entire community because they help children become productive, self-sufficient adults. Children who receive SNAP are likely to experience a reduction in the incidence of "metabolic syndrome" (i.e., obesity, high blood pressure, heart disease, and diabetes) throughout their lives.<sup>57</sup> Those

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<sup>51</sup> Lauren Hall, *A Closer Look at Who Benefits from SNAP: State-by-State Fact Sheets*, Ctr. on Budget & Pol'y Priorities (Jan. 12, 2021), <https://www.cbpp.org/research/food-assistance/a-closer-look-at-who-benefits-from-snap-state-by-state-fact-sheets#California>.

<sup>52</sup> Valerie Strauss, *Six Ways Trump's New 'Public Benefits' Immigration Policies Could Hurt Children and Schools*, Wash. Post (Aug. 23, 2019), <https://perma.cc/URJ9-S6TC?type=image>.

<sup>53</sup> *National School Lunch Program: Participation and Lunches Served*, USDA, <https://fns-prod.azureedge.net/sites/default/files/resource-files/slsummari-4.pdf>.

<sup>54</sup> Bernstein, *supra* n.9 at 12.

<sup>55</sup> Babey, *supra* n.17.

<sup>56</sup> Diane Whitmore Schanzenbach & Lauren Bauer, *Food Insecurity Among Children in 2015*, Brookings Inst. (June 19, 2017), <https://www.brookings.edu/blog/up-front/2017/06/19/food-insecurity-among-children-in-2015>.

<sup>57</sup> *Id.*; *Long-Term Benefits of The Supplemental Nutrition Assistance Program*, Exec. Off. of the Pres. of the United States, at 3, 21, 24-30 (Dec. 2015), [https://obamawhitehouse.archives.gov/sites/whitehouse.gov/files/documents/SNAP\\_report\\_final\\_nonembargo.pdf](https://obamawhitehouse.archives.gov/sites/whitehouse.gov/files/documents/SNAP_report_final_nonembargo.pdf); Hilary W. Hoynes et al., *Long Run Impacts of Childhood Access to the Safety Net*, Nat'l Bureau of Econ. Res., at 6-10 (Nov. 2012), <https://www.nber.org/papers/w18535.pdf>.

children also show increases in economic self-sufficiency (measured by increases in educational attainment, earnings, and income, and decreases in welfare participation) compared to those who did not receive such benefits.<sup>58</sup>

Amici also feel the effects of reduced food benefit enrollment by other residents. For example, food insecure women are more likely to experience birth complications than food secure women,<sup>59</sup> straining amici's safety net hospitals. Food insecurity also translates to lower workplace productivity,<sup>60</sup> which leads to a decline in amici's economic well-being.

To avoid these harms, amici must incur more cost, not less. For Los Angeles County alone, that means trying to increase the over \$10 million per year already spent on healthcare costs associated with food insecurity.<sup>61</sup>

## **CONCLUSION**

For the foregoing reasons, the Court should reject Proposed Intervenors' arguments and deny the motion for intervention and motion for relief from judgment.

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<sup>58</sup> Whitmore Schanzenbach & Bauer, *supra* n.56; *Long-Term Benefits of The Supplemental Nutrition Assistance Program*, *supra* n.57; Hoynes, *supra* n.57.

<sup>59</sup> New York City, Chicago, the U.S. Conference of Mayors, & Signatories, Comment Letter on Proposed Rule Inadmissibility on Public Charge Grounds at 16 (Dec. 10, 2018), Docket No. USCIS-2010-0012-62861.

<sup>60</sup> *Id.*

<sup>61</sup> Seth A. Berkowitz et al., State-Level and County-Level Estimates of Health Care Costs Associated with Food Insecurity, CDC (July 11, 2019), [https://www.cdc.gov/pcd/issues/2019/18\\_0549.htm](https://www.cdc.gov/pcd/issues/2019/18_0549.htm).

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