

1 LATHAM & WATKINS LLP
 Sarah M. Ray (*pro hac vice* pending)
 2 sarah.ray@lw.com
 Kyle A. Virgien (*pro hac vice* pending)
 3 kyle.virgien@lw.com
 Diana A. Aguilar (*pro hac vice* pending)
 4 diana.aguilar@lw.com
 Charles F. Sprague (*pro hac vice* pending)
 5 charles.sprague@lw.com
 505 Montgomery Street, Suite 2000
 6 San Francisco, California 94111-6538
 Telephone: +1.415.391.0600
 7 Facsimile: +1.415.395.8095

8 Emily Chiang, WBSA No. 50517
 American Civil Liberties Union of
 9 Washington Foundation
 901 Fifth Avenue, Suite 630
 10 Seattle, WA 98164
 Telephone: 206-624-2184
 11 echiang@aclu-wa.org

12 Attorneys for Proposed *Amici Curiae*
 American Civil Liberties Union, Center for
 13 Public Representation, *et al.*

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 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
 OF HOMELAND SECURITY, et al.,
 23 Defendants.

CASE NO. 4:19-cv-05210-RMP
 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
 Date: 10/9/2019
 Time: 6:30 p.m.
 Without Oral Argument

1 The American Civil Liberties Union, Center for Public Representation, *et al.*¹
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.” *Cnty.*
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 ¹ 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. 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,

By /s/Emily Chiang
Emily Chiang, WBSA No. 50517
American Civil Liberties Union
of Washington Foundation
901 Fifth Avenue, Suite 630
Seattle, WA 98164
Telephone: +1.206.624.2184
echiang@aclu-wa.org

-and-

Sarah M. Ray (*pro hac vice* pending)
sarah.ray@lw.com
Kyle A. Virgien (*pro hac vice*
pending)
kyle.virgien@lw.com
Diana A. Aguilar (*pro hac vice*
pending)
diana.aguilar@lw.com
Charles F. Sprague (*pro hac vice*
pending)
charles.sprague@lw.com

Latham & Watkins LLP
505 Montgomery Street, Suite 2000
San Francisco, California 94111-
6538
Telephone: +1.415.391.0600
Facsimile: +1.415.395.8095

*Attorneys for Proposed Amici Curiae
American Civil Liberties Union,
Center for Public Representation, et
al.*