

No: 19-3591

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

STATE OF NEW YORK, CITY OF NEW YORK,
STATE OF CONNECTICUT, and STATE OF VERMONT,

Plaintiffs-Appellees,

v.

UNITED STATES DEPARTMENT OF HOMELAND SECURITY, KEVIN K.
MCALEENAN, in his official capacity as Acting Secretary of Homeland Security,
UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES,
KENNETH T. CUCCINELLI, in his official capacity as Acting Director of
USCIS, and UNITED STATES OF AMERICA,

Defendants-Appellants.

On Appeal From The United States District Court
for the Southern District of New York

**BRIEF OF *AMICI CURIAE* NATIONAL HOUSING LAW PROJECT,
FOOD RESEARCH & ACTION CENTER, CENTER FOR LAW &
SOCIAL POLICY, AND OTHER HOUSING, NUTRITION, AND
HEALTH-FOCUSED GROUPS IN SUPPORT OF PLAINTIFFS-
APPELLEES AND IN OPPOSITION TO A STAY PENDING APPEAL**

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TABLE OF CONTENTS

	Page
STATEMENT OF INTEREST.....	1
SUMMARY OF THE ARGUMENT	2
ARGUMENT	2
I. Harms associated with the loss of affordable housing.	2
II. Harms related to the loss of nutrition benefits.	5
III. Healthcare-related harms.	7
IV. The Public Charge Rule will exert a chilling effect.	9
CONCLUSION	11

TABLE OF AUTHORITIES

	Page(s)
Federal Statutes	
7 U.S.C. § 2011 <i>et seq.</i>	5
42 U.S.C. § 1437 <i>et seq.</i>	2
Personal Responsibility and Work Opportunity Reconciliations Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (1996)	6, 10
Rules	
Fed. R. App. P. 29(a)(4)(E).....	1, 14
Fed. R. App. P. 32.....	14
Local Rule 29.1(b)	1
Regulations	
24 C.F.R. pt. 5.....	2
Inadmissibility on Public Charge Grounds, 84 Fed. Reg. 41,292 (Aug. 14, 2019)	2, 4, 5
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STATEMENT OF INTEREST

The principal Amici are three leading non-profit organizations: National Housing Law Project (“NHLP”), Food Research & Action Center (“FRAC”), and the Center for Law and Social Policy (“CLASP”). Amici also include the additional non-profit organizations listed in the attached appendix.¹

Amici’s proposed brief describes how the housing, nutrition, and healthcare public benefit programs encompassed by the recently revised Public Charge Rule operate, why these programs are so important, 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, 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. The ramifications of the government’s requested stay thus extend far beyond the individual parties in this litigation.

Amici, as subject-matter experts on public benefits, are uniquely positioned to aid the Court in assessing the balance of equities.

¹ No party or party’s counsel authored any portion of this brief, and no party, party’s counsel, or other person contributed money that was intended to fund its preparation or submission. *See* Fed. R. App. P. 29(a)(4)(E) and L.R. 29.1(b).
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SUMMARY OF THE ARGUMENT

The Trump Administration’s radical expansion of the Public Charge Rule² inflicts harms against both immigrants *and* their communities, including state and local governments like Appellees. The Rule’s impacts are further magnified by a “chilling effect,” whereby persons not directly impacted by the Rule also decline the benefits to which they are entitled. The cascading damage will be felt by all Americans, and the equities strongly favor denying the government’s request for a stay of the district court’s injunction.

ARGUMENT

I. Harms associated with the loss of affordable housing.

Established by the United States Housing Act in 1937,³ the Department of Housing and Urban Development (“HUD”) oversees numerous critical programs, including Public Housing, Section 8 Housing Assistance under the Housing Choice Voucher Program, and Section 8 Project-Based Rental Assistance.⁴ These programs serve approximately 4.5 million households, at least 281,300 of which include a non-citizen.

² Inadmissibility on Public Charge Grounds, 84 Fed. Reg. 41,292 (Aug. 14, 2019) (to be codified at 8 C.F.R. pts. 103, 212–14, 245, 248).

³ See 42 U.S.C. § 1437 *et seq.*; 24 C.F.R. pt. 5.

⁴ 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.

The Rule expands the definition of public charge to encompass families receiving this assistance—including some families who 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.

The typical working household receiving this assistance is a family with two school-age children and a parent who works at a job that does not pay enough to cover the market rent for a modest apartment.⁵ In 90% of U.S. counties, a person working full time 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.⁶ Nationwide, 71% of low-income renters spend more than 50% of their income on rent and utilities.⁷

Absent stable and affordable housing, individuals can experience increased hospital visits, loss of employment, and mental health problems.⁸ Children lacking stable homes are twice as likely to go hungry as children with stable homes and

⁵ See Alicia Mazzara & Barbara Sard, *Chart Book: Employment and Earnings for Households Receiving Federal Rental Assistance*, Ctr. on Budget & Policy Priorities, 1 (Feb. 5, 2018), <https://www.cbpp.org/sites/default/files/atoms/files/2-5-18hous-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>.

⁶ *Out of Reach 2019*, Nat'l Low Income Housing Coal., 1 (2019) https://reports.nlihc.org/sites/default/files/oor/OOR_2019.pdf.

⁷ *The Gap: A Shortage of Affordable Homes*, Nat'l Low Income Housing Coal., 2-3 (Mar. 2019) https://reports.nlihc.org/sites/default/files/gap/Gap-Report_2019.pdf; see also *U.S. Federal Rental Assistance Fact Sheet*, *supra* note 5.

⁸ 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/3-10-14hous.pdf>.

three times as likely to have emotional and behavioral problems like anxiety, depression, sleep problems, withdrawal, and aggression.⁹ 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.”¹⁰

But the Rule’s detrimental impact will not be limited to immigrants and their communities. Public housing agencies and other affordable-housing providers will experience increased instability and turnover in housing units as the Rule takes effect. Administrators will have to respond to confusion across the housing landscape and invest considerable resources in documenting immigrants’ benefits-receipt history. In particular, the Rule directs individuals to provide official documentation specifying the exact amounts and dates of benefits received or to demonstrate that they have not received any public benefits within a certain timeframe.¹¹ This creates administrative costs for affordable housing providers,

⁹ 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.

¹⁰ *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.

¹¹ 84 Fed. Reg. 41,463.

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

II. Harms related to the loss of nutrition benefits.

The Supplemental Nutrition Assistance Program (“SNAP”) provides nutritional aid to a broad range of families.¹² Roughly half of all children will receive SNAP benefits at some point(s) during childhood, and half of all adults will receive SNAP benefits at some point(s) between the ages of 20 and 65.¹³ In 2018, SNAP provided at least 40 million individuals benefits for at least one month of the year.¹⁴

Because the Rule considers the receipt of SNAP benefits as a heavily weighed negative factor,¹⁵ it will likely force many immigrants and citizen children to disenroll or forego 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 as a result of the new Rule.¹⁶ While the true

¹² 7 U.S.C. § 2011 *et seq.*

¹³ 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).

¹⁴ *Policy Basics: The Supplemental Nutrition Assistance Program (SNAP)*, Ctr. on Budget and Policy Priorities, 1 (June 25, 2019), <https://www.cbpp.org/sites/default/files/atoms/files/policybasics-foodstamps.pdf>.

¹⁵ 84 Fed. Reg. at 41,295.

¹⁶ Notice of Proposed Rulemaking: Inadmissibility on Public Charge Grounds, 83 Fed. Reg. at 51,266–67 (Oct. 10, 2018).

number of individuals who will disenroll from SNAP is likely much higher,¹⁷ even the mass disenrollment contemplated by the government will result in a severe decline in nutritional health and food security in many immigrant communities.

Mass disenrollment from nutritional programs will 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.

State and local governments are likely to respond to the Rule 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.¹⁸ During the four-year window in which PRWORA’s policies were in full effect, states enacted a number of patchwork measures to provide supplemental food assistance.¹⁹ These measures were limited. As a result of budget shortfalls,

¹⁷ Hamutal Bernstein et al., *One in Seven Adults in Immigrant Families Reported Avoiding Public Benefit Programs in 2018*, Urban Inst. (2019), at 7–8 (https://www.urban.org/sites/default/files/publication/100270/one_in_seven_adults_in_immigrant_families_reported_avoiding_publi_7.pdf).

¹⁸ Personal Responsibility and Work Opportunity Reconciliations Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (1996).

¹⁹ 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>).

Florida and Massachusetts terminated their programs in less than four years, and most states ended their programs shortly thereafter.²⁰

III. Healthcare-related harms.

More than 60% of Medicaid enrollees are children, adults with work-limiting disabilities, or 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.²¹ For working adults, the affordable healthcare that Medicaid offers is vital because it allows them to stay healthy and employed. Nearly 80% of adult, non-elderly Medicaid beneficiaries are in families where at least one individual works full time.²²

Many providers rely on Medicaid funding, with local government-sponsored community health centers receiving as much as 44% of their total revenue from Medicaid.²³ But because the new Public Charge Rule is likely to lead to a mass

²⁰ 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>.

²¹ Alisa Chester & Joan Alker, *Medicaid at 50: A Look at the Long-Term Benefits of Childhood Medicaid*, Georgetown Univ. Health Policy Institute Ctr. for Children & Families, (July 27, 2015), <https://ccf.georgetown.edu/2015/07/27/medicaid-50-look-long-term-benefits-childhood-medicaid/>; see also *Ohio Medicaid Group VIII Assessment: A Report to the Ohio General Assembly*, Ohio Dep't of Medicaid, 3 (2017), <https://medicaid.ohio.gov/Portals/0/Resources/Reports/Annual/Group-VIII-Assessment.pdf>.

²² Rachel Garfield et al., *Understanding the Intersection of Medicaid and Work*, Kaiser Family Found., (Aug. 8, 2018), <https://www.kff.org/medicaid/issue-brief/understanding-the-intersection-of-medicaid-and-work-what-does-the-data-say>.

²³ Sara Rosenbaum et al., *Community Health Center Financing: The Role of Medicaid and Section 330 Grant Funding Explained*, Kaiser Family Found., (Mar. 2, 2018), <https://www.kff.org/medicaid/issue-brief/community-health-center-financing-the-role-of-medicaid-and-section-330-grant-funding-explained/>.

withdrawal from Medicaid, much of this funding will be lost and many hospitals that rely on Medicaid to stay afloat will have to close.²⁴ For example, New York City's Health and Hospital system estimates that it will lose up to \$362 million if the Rule takes effect.²⁵ Hospital closures will reduce access to care for both citizens and noncitizens alike, and especially hurt children. State and local governments will be forced to support certain public health safety-net programs with their own resources.

The restriction of access to healthcare caused by the Rule will also lead to costly public health issues. 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.²⁶ Affordable preventative care reduces the instance of individuals with non-emergency conditions seeking emergency room services, a cost that adds up to \$4.4 billion dollars annually.²⁷ The government admits that the Rule will likely result in "increased use of emergency rooms and emergent care as a method of primary health care due to delayed treatment;

²⁴ 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>.

²⁵ See Jennifer Henderson, *NYC Health & Hospitals Projects \$362M Loss From Trump-proposed Changes to Public Charge Rule*, Modern Healthcare, (Dec. 06, 2018), <https://www.modernhealthcare.com/article/20181206/NEWS/181209959/nyc-health-hospitals-projects-362m-loss-from-trump-proposed-changes-to-public-charge-rule>.

²⁶ 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.

²⁷ 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>.

increased prevalence of communicable diseases, including among members of the U.S. citizen population who are not vaccinated; and increases in uncompensated care in which a treatment or service is not paid for by an insurer or patient.”²⁸

IV. The Public Charge Rule will exert a chilling effect.

The Rule will also create a “chilling effect,” where individuals who face no direct risk to their immigration status—including U.S. citizens—will likely withdraw from, or refuse to apply for, public benefits. For example, one in three adults who reported a chilling effect within his or her family disenrolled from or refused to apply for housing subsidies.²⁹ 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.³⁰ 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.³¹ Approximately 7 million people receive SNAP who live in households with at least one non-citizen or

²⁸ 83 Fed. Reg. at 51,270.

²⁹ Hamutal Bernstein et al., *supra* note 17, at 7–8.

³⁰ *Id.*

³¹ 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/trends-in-food-insecurity-and-snap-participation-among-immigrant-families-u-s-born-young-children/>; NYC Dep’t of Social Services, *Fact Sheet: SNAP Enrollment Trends in New York City* (June 2019), <https://www1.nyc.gov/assets/immigrants/downloads/pdf/Fact-Sheet-June-2019.pdf>.

naturalized citizen member.³² Researchers estimate that as many as 35% of SNAP recipients with these characteristics could disenroll or refuse to apply for SNAP benefits.³³

Roughly 42% of adults in families reporting a chilling effect stated that they had disenrolled from or withdrew from Medicaid benefits, and as many as 2.1 to 4.9 million current Medicaid enrollees could disenroll.³⁴ In July 2019, researchers found that 8.3 million children enrolled in Medicaid or SNAP were at risk of losing benefits under the Rule, 5.5 million of whom had specific medical needs.³⁵ Between 800,000 and 1.9 million children with medical needs, including asthma, epilepsy, and cancer, could be disenrolled from these benefits.³⁶

The unintended consequences of previous restrictions in the 1990s are again instructive. Although the PRWORA excluded refugees and asylees from its benefit restrictions, a significant number of refugees and asylees nonetheless declined to enroll in benefit programs.³⁷ The government has acknowledged

³² *Characteristics of Supplemental Assistance Program Households: Fiscal Year 2017*, U.S. Dept. of Agriculture, 92-93 (Feb. 2019), <https://fns-prod.azureedge.net/sites/default/files/resource-files/Characteristics2017.pdf>.

³³ *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>.

³⁴ 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>.

³⁵ Leah Zallman et al., *Implications of Changing Public Charge Immigrant Rules for Children Who Need Medical Care*, 173 *JAMA Pediatrics* 1, 1-6 (2019).

³⁶ *Id.*

³⁷ 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*

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."³⁸

By widening the number of individuals who are likely to withdraw from benefit programs, the Rule's chilling effects will dramatically increase the harm to state and local economies as described above. In particular, once the Rule's chilling effect is calculated, the mass disenrollment from Medicaid and SNAP caused by the rule could result in the loss of approximately 17.5 billion dollars in healthcare and food supports, and 230,000 in potential jobs.³⁹

CONCLUSION

The damage caused by the revised Public Charge Rule will be felt both by immigrants and the larger communities of which they are inextricable members. Amici urge the Court to deny the government's request.

use, Children and Youth Services Review (2015),
<https://www.sciencedirect.com/science/article/pii/S0190740915300177>.

³⁸ 83 Fed. Reg. at 51,266.

³⁹ *Only Wealthy Immigrants Need Apply*, *supra* note 33.

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& Action Center, Center for Law &
Social Policy, and other Housing,
Nutrition, and Health focused groups.⁴⁰

⁴⁰ For a full list of the other Housing, Nutrition, and Health-Focused Amici, please see the attached Appendix

APPENDIX OF ADDITIONAL AMICI

California Food Policy Advocates

California League of United Latin American Citizens

Children's HealthWatch

Citizens' Committee for Children of New York

Los Angeles Regional Food Bank

National WIC Association

National Low Income Housing Coalition

First Focus on Children

Prevention Institute

Sant La Haitian Neighborhood Cente

South Carolina Appleseed legal Justice Center

CERTIFICATION PURSUANT TO FED. R. APP. P. 32

The undersigned hereby certifies that the foregoing brief complies with the type-volume limitation of Federal Rules of Appellate Procedure 32 and 29 because the brief contains 2591 words of text.

The brief complies with the typeface and type style requirements of Federal Rule of Appellate Procedure 32 because this brief was prepared in a proportionally spaced typeface using Microsoft Word 2016, Times New Roman, Size 14.

San Francisco, California

November 25, 2019

By: /s/ Nicholas R. Green

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CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of November, 2019, National Housing Law Project, Food Research & Action Center, and the Center for Law & Social Policy, by and through its attorneys, Kecker, Van Nest & Peters LLP, served a copy of their amicus brief by ELECTRONICALLY POSTING to the ECF website of the United States Court of Appeals for the Second Circuit. The Court performed service electronically on all ECF-registered entities in this matter.

San Francisco, California

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