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No. 19-3169

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

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COOK COUNTY, ILLINOIS, et al.,

Plaintiffs-Appellees,

v.

CHAD F. WOLF, et al.,

Defendants-Appellants.

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Appeal from the United States District Court  
for the Northern District of Illinois, Eastern Division  
No. 19 cv 6334  
The Honorable Gary Feinerman, Judge Presiding

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**BRIEF OF AMICI CURIAE THE CITY OF CHICAGO,  
ILLINOIS, THE CITY OF LOS ANGELES, CALIFORNIA,  
THE CITY OF OAKLAND, CALIFORNIA, THE COUNTY OF HARRIS,  
TEXAS, AND 25 ADDITIONAL CITIES AND COUNTIES IN  
SUPPORT OF PLAINTIFFS-APPELLEES**

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## STATEMENT OF INTEREST OF *AMICI CURIAE*<sup>1</sup>

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The City of Chicago, together with the Cities of Los Angeles and Oakland, Harris County, Texas, and 25 other cities and counties from nearly every region of the nation (“Amici”), submit this brief in support of Plaintiffs-Appellees Cook County, Illinois (“Cook County”) and Illinois Coalition for Immigrant and Refugee Rights, Inc. (collectively, “Plaintiffs”).<sup>2</sup> Collectively, Amici represent over 22 million people, including millions of residents who are immigrants or the children of immigrants. If it is allowed to take effect, the Final Rule on the public charge ground of inadmissibility<sup>3</sup> (the “Rule”) challenged in this action will work profound and irreparable harm on Amici’s communities, and unique harms on Amici themselves.

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<sup>1</sup> The parties have consented to the filing of this brief. Pursuant to Fed. R. App. P. 29(a)(4)(E), Amici state that no counsel for any party authored this brief, in whole or in part, and no person other than Amici contributed monetarily to its preparation or submission

<sup>2</sup> Amici are: the City of Chicago, Illinois; the City of Los Angeles, California; the City of Oakland, California; the County of Harris County, Texas; and the Cities of Albuquerque, New Mexico; Austin, Texas; Baltimore, Maryland; Dallas, Texas; Detroit, Michigan; Gary, Indiana; Holyoke, Massachusetts; Houston, Texas; Madison, Wisconsin; Minneapolis, Minnesota; Sacramento, California; Seattle, Washington; Skokie, Illinois; Somerville, Massachusetts; Tucson, Arizona; and West Hollywood, California; the City and County of Denver, Colorado; the Counties of Alameda, Los Angeles, Marin, Monterey, San Mateo, and Santa Cruz, California; King County, Washington, and Public Health – Seattle & King County; and the County of Montgomery, Maryland.

<sup>3</sup> 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).

Amici, like their counterparts across the country, are primarily responsible for promoting and protecting the health and welfare of their communities. *See, e.g., Hillsborough County, Florida v. Automated Med. Labs., Inc.*, 471 U.S. 707, 719 (1985) (residents’ health and safety are “primarily, and historically, matters of local concern”). From housing to hospitals, Amici operate and fund many of the basic governmental functions and services that sustain the health and welfare of American neighborhoods, including managing regional safety-net hospitals and clinics, immunization and infectious disease prevention programs, and emergency services. Amici also provide housing support to blunt the impact of the nation’s accelerating housing crisis, food assistance to provide a boost to needy families, and family support and foster care services to promote family cohesion and protect children. As a result, Amici are the primary backstop against the interconnected needs of communities in the United States.

Many of Amici’s residents are immigrants and the children of immigrants. Chicago alone has more than 500,000 foreign-born residents, a population Chicago embraces through its Welcoming City Ordinance, Municipal Code of Chicago, Ill. § 2-173-005 *et seq.*, and its Office of New Americans, which is dedicated to improving services to and engaging Chicago’s diverse immigrant and refugee communities.<sup>4</sup> These residents are integral threads in the social and economic fabric of Amici’s

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<sup>4</sup> Chicago, IL Mayor Rahm Emanuel, Comment Letter on Proposed Rule *Inadmissibility on Public Charge Grounds* at 2 (Dec. 10, 2018) (“Chicago Comment”), Docket No. USCIS-2010-0012-50648.

jurisdictions. The well-being of Amici's immigrant residents is critical both on its own terms and to the health of cities and counties as a whole—when they suffer, Amici suffer. Accordingly, many of Amici's services are designed to support residents regardless of immigration status. But while the Department of Homeland Security ("DHS") concedes that the Rule will cause significant harm to these individuals and their communities,<sup>5</sup> it has failed to meaningfully consider or address the unique harm that local governments will incur when residents forgo crucial health, nutrition, and housing services.

The Rule targets services that are provided precisely because they are the bedrock of a healthy community and assist vulnerable individuals in attaining and maintaining self-sufficiency. The Rule will cause—and is already causing—residents to forgo these services. With these withdrawals, Amici will suffer many of the same direct harms that Plaintiffs describe in their brief before this court. Needs once served by federally funded programs will fall to Amici, at high cost to other important services Amici provide. And apart from the direct burden of filling these gaps, the Rule will make communities as a whole sicker, poorer, and less prosperous, compounding the burden to Amici.

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<sup>5</sup> Inadmissibility on Public Charge Grounds, 84 Fed. Reg. at 41,312-14.

## ARGUMENT

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### I. THE RULE WILL CAUSE FAMILIES TO FORGO CRUCIAL BENEFITS.

The Rule forces immigrants to choose between accessing basic governmental support and the ability to attain legal status.<sup>6</sup> Access to health care, housing support, or food assistance can mean a better life for an immigrant's family, including for U.S. citizen children. In general, immigrants increase economic output and have a more positive fiscal impact on the nation than native-born Americans.<sup>7</sup> For example, in 2016, immigrants represented 36.4 percent of entrepreneurs in Chicago, well over their population percentage of 20.7 percent, and 39,130 immigrant entrepreneurs generated \$659.2 million in business income in the City.<sup>8</sup> When they do use public benefits, such use decreases over time.<sup>9</sup> But in the short term, as they become settled in the United States, some immigrants and their children benefit from receiving incremental support on the way to self-sufficiency.<sup>10</sup> Under the Rule, accepting support can mean loss or denial of legal status, which

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<sup>6</sup> *See, e.g., id.* at 41,312-13 (“DHS acknowledges that individuals subject to this rule may decline to enroll in, or may choose to disenroll from, public benefits for which they may be eligible . . . to avoid negative consequences as a result of this final rule.”).

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

<sup>8</sup> New American Economy, *New Americans in Chicago*, 5, 8 (Dec. 2, 2018), <https://perma.cc/MQZ4-HTFW>.

<sup>9</sup> Cristobal Ramón & Tim O’Shea, Bipartisan Pol’y Ctr., *Immigrants and Public Benefits: What Does the Research Say?* 7 (Nov. 2018), <https://perma.cc/8BC8-6PEG>.

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

robs Amici's jurisdictions of immigrants' contributions—and can result in family members being separated from one another.

Unsurprisingly, since the Administration announced this policy change, Amici's immigrant communities are already making alarming trade-offs to ensure that they remain together. The comments and data submitted to DHS and Amici's own experience show some of the “chilling effects” of the Rule that occurred in Amici's jurisdictions even before the Rule became final and was enjoined—including effects extending to programs and individuals not strictly covered by the Rule in its final form.<sup>11</sup> Without the injunction, this harm will continue and become more severe and lasting.

For example, in the first few months after the public charge rule was proposed in 2018, Chicago's Department of Public Health (“CDPH”) reported a 6 percent decrease of patients with Medicaid at its immunization clinics, corresponding to an increase in uninsured patients.<sup>12</sup> The number of uninsured patients has continued to grow exponentially: In 2017, 29 percent of CDPH patients were uninsured, whereas through October 2019, 45.5 percent were uninsured, translating to an almost 57 percent increase in patients without

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<sup>11</sup> While the comments and studies have necessarily been submitted and conducted, respectively, before the Rule becomes effective, they highlight the predictable effects of the formal policy change. If anything, the significant chilling effects from mere rumors and proposed changes will only be more severe in response to the Rule going into effect.

<sup>12</sup> Chicago Comment at 10.

Medicaid coverage.<sup>13</sup> CDPH nurses report that they recently encountered immigrant families, including some who have resided in Chicago for years, with uninsured children who lack a primary care physician or a well-child health-care plan, due to concerns over the Proposed Rule.<sup>14</sup> One family described a child being hospitalized for an asthma attack because they stopped using their benefits and could not afford the asthma medication without insurance coverage.<sup>15</sup> And from the Los Angeles Care Health Plan (“LA Care”), the nation’s largest public health plan, to Harris County’s public hospital system, Amici’s partners report calls from members requesting information on how to disenroll from health-care programs as well as actual disenrollement.<sup>16</sup> LA Care anticipates that as many as 2.4 million individuals in Los Angeles County alone may withdraw from public health care.<sup>17</sup> Nationwide, approximately 13.5 million enrollees in Medicaid and CHIP, including

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<sup>13</sup> Marielle Fricchione, MD, CDPH Immunization Clinic Encounters 2017-2019 (January 2020), at 1.

<sup>14</sup> Chicago Comment at 11.

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

<sup>16</sup> John Baackes, L.A. Care Health Plan, Comment Letter on Proposed Rule *Inadmissibility on Public Charge Grounds* at 2 (Dec. 10, 2018), Docket No. USCIS-2010-0012-36667; George V. Masi, Harris Health System, Comment Letter on Proposed Rule *Inadmissibility on Public Charge Grounds* at 2 (Dec. 3, 2018), Docket No. USCIS-2010-0012-33297.

<sup>17</sup> Baackes, *supra* note 16, at 2.



7.6 million children, live with a noncitizen or are noncitizens themselves—all of whom may forgo access to life-saving health care as a result of the Rule.<sup>18</sup>

In addition to health care, many immigrants and their families are likely to disenroll—or have already disenrolled—from food assistance programs like the Supplemental Nutrition Assistance Program (“SNAP”). A recent study suggests that up to 2.7 million U.S. citizen children could lose SNAP access as a result of the policy change.<sup>19</sup> This research mirrors a recent study featuring interviews with 25 immigrant families who reported that they or a family member avoided participating in noncash benefits in 2018 for fear of risking future green card status—SNAP and Medicaid were most commonly avoided.<sup>20</sup> Community partners in Oakland have unsurprisingly noticed that immigrant parents are afraid to access benefits like CalFresh for their U.S. citizen children.<sup>21</sup>

What is more, the Rule’s impact will extend far beyond the people and services that it targets.<sup>22</sup> A recent study reported that 14.7 percent of adults with

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<sup>18</sup> Kaiser Family Found., *Changes to “Public Charge” Inadmissibility Rule: Implications for Health and Health Coverage* (Aug. 12, 2019), <https://perma.cc/A2LD-23SG>.

<sup>19</sup> Jennifer Laird et al., *Forgoing Food Assistance out of Fear: Simulating the Child Poverty of a Making SNAP a Legal Liability for Immigrants*, 5 *Socius* 1, 5 (2019), <https://perma.cc/QT7U-6VV3>.

<sup>20</sup> See Hamutal Bernstein et al., Urban Inst., *Safety Net Access in the Context of the Public Charge Rule 1-2* (Aug. 2019), <https://perma.cc/PY62-4PLG>.

<sup>21</sup> East Bay Community Law Center, Comment Letter on Proposed Rule *Inadmissibility on Public Charge Grounds* at 8-9 (Dec. 10, 2018), Docket No. USCIS-2010-0012-52784.

<sup>22</sup> See, e.g., *Inadmissibility on Public Charge Grounds*, 84 Fed. Reg. at 41,313 (“DHS appreciates the potential effects of confusion regarding the rule’s scope and effect,

green cards, and 9.3 percent of adults who were naturalized citizens, had withdrawn from benefit participation despite not being subject to the Rule.<sup>23</sup> Since the Rule was published, immigrant service providers have found it “a monumental task” to “convinc[e] parents they don’t have to opt out of benefits for their children.”<sup>24</sup> Amici have seen many reports of residents forgoing important services not covered by the Rule, including prenatal services and benefits for young children. Chicago’s Department of Family & Support Services reports that immigrant parents are afraid to access benefits for their U.S. citizen children, like early Head Start, which provides free learning and development services, including nutritional aid, to children from low-income families from birth to five years old.<sup>25</sup> The Los Angeles Best Babies Network, which provides health care and social support to pregnant women and families with newborns, reports that the proposed rule caused pregnant women to refuse to enroll in their programs for fear of jeopardizing their legal residency.<sup>26</sup>

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as well as the potential nexus between public benefit enrollment reduction and food insecurity, housing scarcity, public health and vaccinations, education health-based services, reimbursement to health providers, and increased costs to states and localities.”).

<sup>23</sup> See Hamutal Bernstein et al., Urban Inst., *Five Ways the “Public Charge” Rule is Affecting Immigrants in America*, 3 (Aug. 19, 2019), <https://perma.cc/R7NN-FCJW>.

<sup>24</sup> Leila Miller, *Trump Administration’s ‘Public Charge’ Rule Has Chilling Effect on Benefits of Immigrants’ Children*, L.A. Times (Sept. 3, 2019), <https://perma.cc/FC5C-YCG4>.

<sup>25</sup> Chicago Comment at 6.

<sup>26</sup> Steven Nish, Los Angeles Best Babies Network, Comment Letter on Proposed Rule *Inadmissibility on Public Charge Grounds* (Dec. 9, 2018), Docket No. USCIS-2010-0012-42481.

The Rule will also reduce enrollment in programs such as school meal programs, in part because of administrative realities. Current policy automatically enrolls students whose families receive SNAP benefits in the federal free and reduced-price school meal program.<sup>27</sup> Thus, even though school breakfast and lunch programs are not covered by the Rule, children in immigrant families who avoid SNAP are less likely to receive school meal programs as well.<sup>28</sup>

In its response to these concerns, which were expressed in the Notice of Proposed Rulemaking, DHS turns its back on reality, dismissing individuals' decisions to forgo benefits as "unwarranted," and declining to "alter [the] rule to account for such unwarranted choices."<sup>29</sup> In other words, DHS dismisses the severe harm to communities based on the notion that a layperson—who may be an English-language learner—can understand the myriad complexities of a rule that, by DHS's own estimate, takes 16-20 hours to read and has changed significantly from the initial, widely-reported proposal.<sup>30</sup> Against the backdrop of anti-immigrant

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<sup>27</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>28</sup> *Id.*

<sup>29</sup> Inadmissibility on Public Charge Grounds, 84 Fed. Reg. at 41,313.

<sup>30</sup> *Id.* at 41,301. For instance, while the Proposed Rule included receipt of Medicaid by children under age 21 and pregnant women as part of the public charge determination, they have been exempted under the Rule. *Id.* at 41,297. Pregnant women's exemption—while positive—exemplifies the confusing particularity of the Rule. A woman seeking legal permanent resident status and receiving Medicaid would jeopardize her application. If she were to become pregnant, she could enroll without inviting a public charge determination (if she were not too afraid of future changes to policy), but have to withdraw no later than 60 days after her pregnancy

rhetoric and policies, some of which retroactively threaten immigrants who have taken advantage of government benefits,<sup>31</sup> DHS's approach flatly ignores the real-world consequences of its rulemaking.<sup>32</sup>

## **II. THE RULE WILL IRREPARABLY HARM LOCAL GOVERNMENTS BY REDUCING VITAL HOUSING, HEALTH CARE, AND NUTRITION SUPPORTS.**

Contrary to DHS's claims, the public benefits at issue in this Rule empower individuals and strengthen communities. They enable low-income individuals to attain and maintain self-sufficiency,<sup>33</sup> provide a strong multiplier for economic growth,<sup>34</sup> and increase access to health care.<sup>35</sup> Low-wage workers often need a small boost to achieve self-sufficiency—in many communities where even full-time minimum wage jobs cannot support a family's basic needs, public benefits are the lifeline to stable housing and economic resiliency.

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ended. This is complex to describe, let alone for a pregnant woman or new mother who may be an English-language learner to navigate.

<sup>31</sup> See, e.g., Sharon Parrott, Ctr. on Budget & Pol'y Priorities, Comment Letter on Proposed Rule *Inadmissibility on Public Charge Grounds* at 94-96 (Dec. 7, 2018), Docket No. USCIS-2010-0012-37272.

<sup>32</sup> See Ramón & O'Shea, *supra* note 8, at 10 (collecting research showing that rule complexity and lack of language ability lead to reduction in use of public services).

<sup>33</sup> See, e.g., Cal. Pol'y Lab, *Strengthening the Social Safety Net and Health Equity*, <https://perma.cc/HSF3-TSNT>.

<sup>34</sup> For instance, one set of studies found “every \$1 invested in public health in California resulted in \$67 to \$88 of benefits to society.” J. Mac McCullough, Academy Health, *The Return on Investment of Public Health System Spending* (2018), <https://perma.cc/AD7H-9L4V>.

<sup>35</sup> Bernstein et al., *supra* note 19, at 17.

Conversely, reductions in public benefit availability inflict harms not only on the individuals who rely on them, but on the communities that benefit from their contributions and the local governments charged with their care. Many individuals will avoid benefits because they do not want to jeopardize their immigration status, but their needs will remain the same. The Rule effectively forces local governments to step in and redirect their own resources to support this population in a less efficient and robust manner. If the Rule goes into effect, Amici will bear the burden of filling the gaps and remedying the cumulative effects created by immigrant public benefit withdrawal, including in the housing, medical, and nutrition realms.

**A. The Rule Will Profoundly Diminish Public Health—and Local Governments Will Be Forced To Compensate.**

If the Rule takes effect, local governments across the nation will pay a heavy price to avoid significant degradation in public health. In all of Amici's communities, the Rule will deter immigrants from accessing medical care to which they are entitled and that keeps them and their communities healthy and vibrant. The effect on the health of the entire community, and the costs associated with addressing these effects, will be high—and will come at the cost of other local priorities.

Federally funded health insurance programs, and other public health services, support immigrants' health and enable them to be more self-sufficient. For many low-income immigrants, public benefits like health care simply help them remain at their jobs. Benefits are even more important for children. Children who cannot access preventative health care, proper nutrition, or stable housing are more

likely to develop health conditions and face difficulties in school, curtailing lifetime earning potential along with basic quality of life.<sup>36</sup>

The effects of the Rule will reverberate throughout our communities by increasing health care costs and reducing public health overall. Local governments are primarily charged with providing basic services for our most vulnerable residents, and will bear the brunt of addressing these effects. Amici have already seen a decrease in access to preventative care. For example, at Chicago's immunization clinics, while the rate of uninsured patients has increased, the total number of patients has decreased significantly from 2017, with an almost 48 percent drop in patient encounters through October 2019.<sup>37</sup> When individuals avoid preventative care, they are generally less healthy,<sup>38</sup> and rely more upon emergency care provided through Amici's safety-net hospitals<sup>39</sup> or emergency medical services, which can drive up costs for all residents.<sup>40</sup> Individuals who are

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<sup>36</sup> See Ctrs. for Disease Control & Prevention, *Health and Academic Achievement 2-3* (May 2014), <https://perma.cc/3VXF-Y9LC>; Will Fischer, *Research Shows Housing Vouchers Reduce Hardship and Provide Platform for Long-Term Gains Among Children*, Ctr. on Budget & Pol'y Priorities (Oct. 7, 2015), <https://perma.cc/8BVZ-JC3D>.

<sup>37</sup> Fricchione, CDPH Immunization Clinic Encounters, *supra* note 12, at 1.

<sup>38</sup> See, e.g., Paul Fleming & William Lopez, *Researchers: We're Already Seeing the Effects of Trump's Green Card Rule*, Detroit Free Press (Aug. 24, 2019), <https://perma.cc/UD7E-2CK4>.

<sup>39</sup> In California, for example, state law requires counties to serve as the healthcare provider of last resort for their residents. Cal. Welf. & Inst. Code § 17000.

<sup>40</sup> See, e.g., Am. C. of Emergency Physicians, *The Uninsured: Access to Medical Care Fact Sheet* (2016), <https://perma.cc/FKV6-44YW> ("Emergency care is the safety net of the nation's healthcare system, caring for everyone, regardless of ability to

afraid to access healthcare services also open themselves and their communities up to increased numbers and severity of disease outbreaks, which must be addressed by local public health departments.<sup>41</sup>

For example, when individuals forgo vaccination, “herd immunity” is threatened.<sup>42</sup> This is not speculative; 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. The disease spread as fear grew and immigrant communities withdrew from public health services for fear of immigration consequences.<sup>43</sup> Community organizations have raised an even more alarming possibility in connection with HIV. Disruptions in HIV treatment can lead to drug-resistant strains of the disease. The Rule is likely to produce just these sorts of disruptions as immigrants living with HIV withdraw from medical support.<sup>44</sup> These effects could come at exactly the time the Rule has rendered Amici

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pay . . . . Emergency physicians provide the most uncompensated care for uninsured and underinsured patients of all physicians.”).

<sup>41</sup> For example, California obligates cities to “take measures necessary to preserve and protect the public health.” Cal. Health & Saf. Code § 101450; *see also* Cal. Health & Saf. Code §§ 101460, 101470.

<sup>42</sup> Helen Branswell, *Federal Rules Threaten to Discourage Undocumented Immigrants from Vaccinating Children*, STAT News (Aug. 26, 2019), <https://perma.cc/KW5N-W5E8>.

<sup>43</sup> Claudia Schlosberg & Dinah Wiley, *The Impact of INS Public Charge Determinations on Immigrant Access to Health Care*, Mont. Pro Bono (May 22, 1998), <https://perma.cc/WX9P-PNDB>.

<sup>44</sup> Diego Cartagena, Bet Tzedek Legal Services, Comment Letter on Proposed Rule *Inadmissibility on Public Charge Grounds* at 12 (Dec. 9, 2018), Docket No. USCIS-2010-0012-52651.

least able to respond: As the Harris County public health system pointed out in its comment on the Rule, its implementation will cause severely overburdened public hospitals and overcrowding at private and public hospital emergency rooms.<sup>45</sup>

When individuals lose access to health insurance and preventive care, localities' emergency medical and public health services must shoulder the increased burden. Thus, the Rule will impose direct and indirect costs on Amici as they seek to care for their frightened and increasingly unhealthy populations.

**B. The Rule Will Increase Homelessness and Exacerbate Existing Housing Crises.**

The Rule will significantly contribute to the housing and homelessness crisis afflicting Amici's communities. Housing and homelessness are already the leading issues for many Amici, in part because the burden of the housing crisis already falls uniquely and disproportionately to local governments.<sup>46</sup> This burden will surge if the Rule becomes effective—devastating local governments that already devote a large share of local resources to addressing housing and homelessness. In 2018 alone, the City of Los Angeles passed a \$1.2 billion bond to build housing for the homeless and spent at least \$619 million addressing homelessness.<sup>47</sup> Chicago spent

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<sup>45</sup> Masi, *supra* note 16, at 2; *see also* Charles N. Kahn III, Federation of American Hospitals, Comment Letter on Proposed Rule *Inadmissibility on Public Charge Grounds* at attachment 4-5 (Dec. 10, 2018), Docket No. USCIS-2010-0012-44367.

<sup>46</sup> Joint Ctr. for Hous. Studies of Harvard Univ., *The State of the Nation's Housing 2017* 35; Joint Ctr. for Hous. Studies of Harvard Univ., *The State of the Nation's Housing 2019* 35-36 [hereinafter *The State of the Nation's Housing 2019*].

<sup>47</sup> Gale Holland, *L.A. Spent \$619 Million on Homelessness Last Year. Has it Made a Difference?*, L.A. Times (May 11, 2019), <https://perma.cc/2DMB-W6BJ>.



\$110 million in 2018 working with community partners to prevent homelessness.<sup>48</sup> Other jurisdictions have been forced to take similar measures.

First, by threatening the medical, nutrition, and other public benefits that enable working families to achieve self-sufficiency, the Rule threatens low-income residents' tenuous grasp on housing. In the current labor market, many workers must combine their earnings with some form of government assistance, however minor, to make ends meet.<sup>49</sup> Nationwide, more than 80 percent of low-income households spend more than 30 percent of their income on housing.<sup>50</sup> In Chicago, 50 percent of renter households are low-income, and more than two-thirds of those are very low-income.<sup>51</sup> In Los Angeles County, one-third of households spend more than 50 percent of their income on rent.<sup>52</sup> In Maryland, minimum wage workers must work 91 hours each week to afford a one-bedroom rental home.<sup>53</sup> As a result, although many working families rely on public benefits to ease painful trade-offs

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<sup>48</sup> See City of Chicago 2019 Budget Overview, at 138, <https://perma.cc/77FZ-LNZS>.

<sup>49</sup> See Danilo Trisi, *Trump Administration's Overbroad Public Charge Definition Could Deny Those Without Substantial Means a Chance to Come to or Stay in the U.S.*, Ctr. on Budget & Pol'y Priorities (May 30, 2019), <https://perma.cc/Q2LB-95NV>.

<sup>50</sup> *The State of the Nation's Housing 2019*, supra note 44, at 4.

<sup>51</sup> DePaul Univ., Inst. Housing Studies, *State of Rental Housing in Cook County* (2019), <https://perma.cc/R6QV-ZHT5>.

<sup>52</sup> Los Angeles Homeless Servs. Auth., *2019 Greater Los Angeles Homeless Count Presentation* 8 (Aug. 5, 2019).

<sup>53</sup> Nat'l Low Income Hous. Coal., *Out of Reach 2019: Maryland* (2019), <https://perma.cc/7WX8-DQTV>.

between housing, food, and medical care, they live on the edge of homelessness.<sup>54</sup> By pushing families to forgo supports on which they rely, the Rule threatens to push them into homelessness and further from self-sufficiency.

Second, the dramatic expansion of “public charge” to include Section 8 Housing Choice Vouchers, Section 8 Project-Based Rental Assistance, and Public Housing programs will compound this effect. Millions of working low-income households currently receive federal rental assistance.<sup>55</sup> For low-income families with children, this assistance is particularly beneficial—one study found that vouchers reduce the share of families that lived in shelters or on the streets by three-fourths.<sup>56</sup> With DHS’s expansion of public charge’s scope, immigrants who are eligible for and need housing subsidies will be forced to choose between securing housing or seeking legal status. Ultimately, many of the direct and indirect effects of homelessness will be borne by local governments. Apart from the significant burden of housing newly homeless residents, unstable housing situations can lead to a wide range of health-related problems, including increased hospital visits, loss of employment, and mental health problems.<sup>57</sup> Homelessness is also associated with extraordinary public health issues; some jurisdictions have seen outbreaks of

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<sup>54</sup> *The State of the Nation’s Housing 2019*, *supra* note 45, at 32-33.

<sup>55</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>.

<sup>56</sup> *Id.*

<sup>57</sup> *See* Fischer, *supra* note 35.

diseases like Typhus and Hepatitis A associated with increases in homelessness.<sup>58</sup> Local governments are charged with addressing all of these issues, and will be forced to do so using ever-more-stretched local resources.

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

Local governments have a direct interest in their residents' continued utilization of food assistance to promote healthy communities. As with housing and medical care, when residents lose these supports, local governments are charged with filling the gaps.

For example, SNAP, which is expressly targeted by the Rule, "is one of the largest federal safety net programs in the country"<sup>59</sup> and "the nation's most important anti-hunger program."<sup>60</sup> SNAP provides important nutritional assistance for participants, most of whom are families with children, households with seniors, or people with disabilities.<sup>61</sup> In June 2018, a typical month, 39.7 million individuals participated in SNAP.<sup>62</sup> One in five of the nearly 20 million children who receive

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<sup>58</sup> Anna Gorman, *Medieval Diseases Are Infecting California's Homeless*, Atlantic (Mar. 8, 2019), <https://perma.cc/BFT9-YVNW>.

<sup>59</sup> Laird, *supra* note 19, at 2.

<sup>60</sup> Ctr. on Budget & Pol'y Priorities, *Policy Basics: The Supplemental Nutrition Assistance Program (SNAP)*, (June 25, 2019), <https://perma.cc/R3N-GUJY>.

<sup>61</sup> *Id.*

<sup>62</sup> See U.S. Dep't of Agriculture, *SNAP Data Tables* (last updated Aug. 2, 2019), <https://perma.cc/9WRC-GSE5>.

SNAP are living with a noncitizen adult.<sup>63</sup>

“[A] mass exodus of mixed-status households from the SNAP program” could lead to a considerable increase in the child poverty rate.<sup>64</sup> SNAP is often used to fill gaps for people with lower incomes, not as a stand-alone replacement for work.<sup>65</sup> Studies confirm that SNAP benefits reduce the likelihood of being food insecure by approximately 30 percent and the likelihood of being very food insecure by 20 percent.<sup>66</sup> In the absence of monthly benefits to help families get by, immigrant households will change—or have already changed—food-purchasing behaviors to less nutritious or fresh options. In the worst-case scenarios, children and their families will make the difficult decision to either go hungry or miss monthly payments like rent.

Local governments will feel the effects of reduced food benefit enrollment most acutely. The consequences of food insecurity are well documented. Food-insecure women are more likely to experience birth complications than food-secure women; food-insecure children are more likely to suffer from poor physical and

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<sup>63</sup> Laird, *supra* note 19, at 2 (citing Sara Lauffer, U.S. Dep’t of Agric., *Characteristics of Supplemental Nutrition Assistance Program Households: Fiscal Year 2016* (2017)).

<sup>64</sup> *Id.* at 6.

<sup>65</sup> See Bernstein et al., *supra* note 20, at 18-19.

<sup>66</sup> Caroline Ratcliffe & Signe-Mary McKernan, Urban Inst., *How Much Does SNAP Reduce Food Insecurity?* (Apr. 2010), <https://perma.cc/PWB9-V5ZZ>.

mental health, including anemia, asthma, and depression.<sup>67</sup> Food insecurity can also result in lowered workplace productivity and physical and mental health problems for adults and seniors.<sup>68</sup> Such impacts will lead to increased costs at safety-net hospitals, programmatic increases, and a decline in the economic well-being of Amici's communities. For example, in 2017, Chicago awarded the Greater Chicago Food Depository ("GCFD") a more than \$1 million contract to its Emergency Food Assistance Program, which provides emergency food to at-risk populations.<sup>69</sup> And in June 2018, the City and the GCFD partnered to launch a new program to increase access to nutritious foods for those in need, with a goal of creating twenty new food access sites by 2020.<sup>70</sup> If food-insecure individuals are not able to use SNAP, there is likely to be increased demand for meals at GCFD, and other community food banks throughout Chicago, requiring redirection of City funding.

#### **D. The Rule Will Undercut Family Cohesion and Amici's Foster Care Systems.**

The Rule also cannot be reconciled with the interests of the abused and neglected children in the care of local governments. In the context of such children,

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<sup>67</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>68</sup> *See id.*

<sup>69</sup> *See* City of Chicago Delegate Agency Grant Agreement with GCFD, Contract No.43936, <https://perma.cc/BL7V-H33U>.

<sup>70</sup> *See* Greater Chicago Food Depository, *Forward Together: A Roadmap to Reduce Food Insecurity* (June 2018), <https://perma.cc/TQ3P-36Z2>.

there is broad agreement that Amici's goal should be keeping families together if at all possible.<sup>71</sup> This includes placing children with other family members when continued placement with parents is untenable.<sup>72</sup> In some cases, willingness to seek out all available resources for support of children is a key criterion in placement decisions—and a failure to obtain these resources can threaten parental rights. *See, e.g.,* Tex. Fam. Code § 263.307. These sources of support include the benefits targeted by the Rule. If made effective, the Rule will force parents to decline services offered by the State and risk termination of their parental rights. Moreover, in those cases where parental placement is impossible, immigrant family members will be reluctant to step forward and assume care for a child. Taking in a child is a significant resource commitment, and many will feel that accepting support may threaten their immigration status.<sup>73</sup> In other words, the means through which Amici seek to preserve and reunify families will now lead to family destabilization and separation, and an increased burden on the foster-care system.

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<sup>71</sup> U.S. Dep't of Health & Human Servs., Children's Bureau, *Determining the Best Interests of the Child* 2 (2016), <https://perma.cc/Y2NE-B5QC> (as of 2016, 28 states mandate consideration of family integrity as a guiding principle in determining the best interests of the child); *see also* Tex. Fam. Code § 264.151; Cal. Welf. & Inst. Code § 16000.

<sup>72</sup> *See, e.g., id.*

<sup>73</sup> *See, e.g.,* Maria D. Badillo, Children's Rights Project at Public Counsel, Comment Letter on Proposed Rule *Inadmissibility on Public Charge Grounds* at 2 (Dec. 10, 2018), Docket No. USCIS-2010-0012-55481.

## CONCLUSION

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For all of these reasons, the district court's judgment should be affirmed.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on January 24, 2020 I electronically filed the foregoing Brief with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

/s/Benna Ruth Solomon

**CERTIFICATE OF COMPLIANCE**

In accordance with Fed. R. App. P. 32(a)(7)(C), I certify that the foregoing brief complies with the type-volume limitation provided by Fed. R. App. P. 32(a)(7)(B)(i) and Circuit Rule 32(c). This brief contains 5,104 words, beginning with the words “Jurisdictional Statement” and ending with the words “Respectfully submitted” in the Conclusion section, as recorded by the word count of the Microsoft Word word processing system used to prepare the brief.

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