APPEAL NOS. 19-17213 & 19-17214

Order Issued: December 5, 2019
Before: Jay S. Bybee, Sandra S. Ikuta, and John B. Owens, Circuit Judges

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CITY AND COUNTY OF SAN FRANCISCO, et al.,
Plaintiffs-Appellees,

v.

U.S. DEPARTMENT OF HOMELAND SECURITY, et al.,
Defendants-Appellants.

STATE OF CALIFORNIA, et al.,
Plaintiffs-Appellees,

v.

U.S. DEPARTMENT OF HOMELAND SECURITY, et al.,
Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
THE HONORABLE PHYLLIS J. HAMILTON, CHIEF JUDGE
CASE NOS. 4:19-CV-04717-PJH & 4:19-CV-04975-PJH

UNOPPOSED CONSENT MOTION OF 20 COUNTIES, CITIES, AND MUNICIPALITIES TO PARTICIPATE AS AMICI CURIAE IN SUPPORT OF PLAINTIFFS-APPELLEES' MOTION FOR RECONSIDERATION EN BANC

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INTEREST OF AMICI CURIAE AND BASIS FOR MOTION

The Cities of Los Angeles and Oakland, California, together with the Counties of Harris, Texas and Los Angeles, California, and 16 additional cities, counties, and municipalities from nearly every region of the nation ("Amici"), respectfully move this Court for leave to file an unopposed amicus curiae brief in support of Plaintiffs-Appellees' motion for reconsideration of the Motions Panel's December 5, 2019 Order staying the District Court's preliminary injunction.[1] *See* Case No. 19-17213, ECF No. 27 (9th Cir.) ("Order").

All parties have consented to the filing of this brief. No party's counsel authored this brief in whole or in part, and no person or entity other than Amici or their counsel made a monetary contribution intended to fund the preparation or submission of this brief. *See* Fed. R. App. P. 29(a)(4)(E).

Amici have a strong interest in the outcome of this case and substantial expertise in its subject matter. Collectively, Amici represent nearly 27 million people, including millions of residents who are immigrants or the children of immigrants. Amici have primary responsibility for promoting and protecting the health and welfare of their communities. *See, e.g.*, *Hillsborough Cty., Fla. v. Automated Med. Labs., Inc.*, 471 U.S. 707, 719 (1985) (residents' health and safety are "primarily, and historically, matters of local concern"). From hospitals to

[1] A complete list of Amici is set out in Appendix A.

housing, Amici operate many of the basic governmental programs that sustain the health and welfare of American communities. Amici run safety-net hospitals, clinics, 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 foster care services to protect children. As a result, Amici are the primary backstop against the interconnected needs of U.S. communities.

The Final Rule on the public charge ground of inadmissibility[2] (the "Rule") challenged in this action would have significant implications for many of Amici's critical services and communities. If the Rule takes effect, Plaintiffs and Amici will suffer immediate harm to the health and welfare of their communities and millions of residents. Amici are uniquely well-positioned to inform the Court of the cascade of likely effects if the Rule becomes effective. Amici respectfully submit this brief supporting Plaintiff-Appellees' motion for reconsideration to detail in more depth the harms Amici—as well as Plaintiffs-Appellees—will suffer should the Motions Panel's Order be allowed to go into effect.

[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).

CONCLUSION

For the foregoing reasons, Amici's motion for leave to file the attached amicus brief should be granted.

Respectfully submitted,

Dated: December 30, 2019

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The City of Holyoke, Massachusetts
The County of King, Washington
The City of Los Angeles, California
The County of Los Angeles, California
The County of Marin, California
The City of Monterey, California
The County of Montgomery, Maryland
The City of Oakland, California
The City of Philadelphia, Pennsylvania
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The County of San Mateo, California
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CERTIFICATE OF SERVICE

I, Danielle L. Goldstein, hereby certify that I electronically filed this Unopposed Consent Motion of 20 Counties, Cities, and Municipalities to Participate as Amici Curiae in Support of Plaintiffs-Appellees' Motion for Reconsideration En Banc with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on December 30, 2019. I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Executed December 30, 2019, at Los Angeles, California.

/s/ Danielle L. Goldstein
Danielle L. Goldstein

APPEAL NOS. 19-17213 & 19-17214

Order Issued: December 5, 2019
Before: Jay S. Bybee, Sandra S. Ikuta, and John B. Owens, Circuit Judges

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THE HONORABLE PHYLLIS J. HAMILTON, CHIEF JUDGE
CASE NOS. 4:19-CV-04717-PJH & 4:19-CV-04975-PJH

BRIEF OF AMICI CURIAE 20 COUNTIES, CITIES, AND MUNICIPALITIES IN SUPPORT OF PLAINTIFFS-APPELLEES' MOTION FOR RECONSIDERATION EN BANC

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RULE 26.1 CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, *amici curiae* are governmental entities for whom no corporate disclosure is required.

Dated: December 30, 2019

By: */s/ Danielle L. Goldstein*
Danielle L. Goldstein

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INTEREST OF AMICI CURIAE AND SUMMARY OF ARGUMENT[1]

The Cities of Los Angeles and Oakland, California, together with the Counties of Harris, Texas and Los Angeles, California, and 16 cities and counties from nearly every region of the nation ("Amici"), submit this brief in support of Plaintiffs-Appellees' motion for reconsideration of the Motions Panel's December 5, 2019 Order staying the District Court's preliminary injunction.[2] *See* Case No. 19-17213, ECF No. 27 (9th Cir.) ("Order").

Collectively, Amici represent nearly 27 million people, including millions of residents who are immigrants or the children of immigrants. Amici have primary responsibility for promoting and protecting the health and welfare of their communities. *See, e.g.*, *Hillsborough Cty., Fla. v. Automated Med. Labs., Inc.*, 471 U.S. 707, 719 (1985) (residents' health and safety are "primarily, and historically, matters of local concern"). From hospitals to housing, Amici operate many of the basic governmental programs that sustain the health and welfare of American communities. Amici run safety-net hospitals, clinics, 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 foster care

[1] All parties have consented to the filing of this brief. No party's counsel authored this brief in whole or in part, and no person or entity other than Amici or their counsel made a monetary contribution intended to fund the preparation or submission of this brief. *See* Fed. R. App. P. 29(a)(4)(E).
[2] A complete list of Amici is set out in Appendix A.

services to protect children. As a result, Amici are the primary backstop against the interconnected needs of U.S. communities.

This is a matter of exceptional importance. The Final Rule on the public charge ground of inadmissibility[3] (the "Rule") challenged in this action would upend many of Amici's critical services and harm entire communities. The Order, decided by a divided panel on the accelerated schedule of a motion for stay of a preliminary injunction without the benefit of a full airing of the issues—including participation by amici who will suffer its direct results—threatens grave harm to Amici and their communities.[4]

The majority not only made its decision without properly considering the imminent harms to Amici, it also failed to properly consider the harms before it. Though Defendants' only claim to harm is maintenance of the status quo, the panel majority improperly gave significant weight to their unsubstantiated claim. It compounded this error by improperly dismissing—and in some instances,

[3] 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).

[4] Currently, the Rule is enjoined pursuant to the Southern District of New York's nationwide injunction order in *New York v. DHS*, No. 19-CV-7777 (GBD), 2019 WL 5100372 (S.D.N.Y. Oct. 11, 2019). That injunction could, of course, be stayed, lifted, or modified by the Second Circuit. Indeed, Defendants have urged the Second Circuit to do so *because of* the panel majority's Order in this case. *See* Ltr. on behalf of Defendants-Appellees, *New York v. DHS*, No. 19-3591, ECF No. 114 (2d Cir. Dec. 6, 2019).

misunderstanding—the evidence of serious and immediate harms to State and local governments and to the public.

Amici have a strong interest in Plaintiffs' Motion for Reconsideration of the unjustified stay of the District Court's preliminary injunction. If the Rule takes effect, Plaintiffs and Amici will suffer immediate harm to the health and welfare of their communities and millions of residents. Reconsideration should be granted so that an *en banc* court can properly scrutinize the harms at issue with the benefit of an accurate understanding of the harms.

ARGUMENT

Reconsideration of a stay order is warranted when the court has overlooked or misunderstood points of law or fact. *See* 9th Cir. R. 27-10(a)(3). Plaintiffs carefully set forth the legal and factual errors made by the Motions Panel's majority ("Majority") that warrant reconsideration by the full court. *See* Case No. 19-17213, ECF No. 30 (9th Cir. Dec. 19, 2019); Case No. 19-17214, ECF No. 40 (9th Cir. Dec. 19, 2019). Amici separately submit this brief because the errors made by the Majority stem from a fundamental misunderstanding of the harm that the Rule will cause counties, cities, and municipalities. A fully developed appellate proceeding will provide a basis for the Court to adequately consider those harms. Amici are in a unique position to speak to them.

The Majority discounted and misunderstood Plaintiffs' harms as "indirect"

or "to a degree, speculative," *see* Order 62, 72, and gave improper weight to Defendants' claim of "harm" that is merely the maintenance of the status quo. In doing so, the majority misapplied the standard of *Nken v. Holder*, 556 U.S. 418, 427 (2009). The empirical evidence demonstrates the wide range of harms that the Rule will produce if a stay is maintained. Defendants produced no such evidence of harms justifying fundamental disruption to the status quo, although it was their burden to do so. By crediting Defendants' claim of harm from a short stay without any evidence, the panel disregarded precedent that declined to stay preliminary injunctions that "merely returned the nation temporarily to the position it has occupied for many previous years." *Washington v. Trump*, 847 F.3d 1151, 1168 (9th Cir. 2017); *see also Sierra Club v. Trump*, 929 F.3d 670, 705-07 (9th Cir. 2019) (rejecting stay request because proffered evidence of harm did not show that injury would actually result absent a stay). The majority's misunderstandings of fact and law warrant reconsideration by an *en banc* court.

I. THE PANEL ERRONEOUSLY CONCLUDED THAT DHS MET ITS BURDEN TO JUSTIFY A STAY.

In urging a stay, DHS bore the burden of demonstrating extraordinary circumstances that would warrant a change to the status quo allowing the Rule to take effect even as its lawfulness is being decided on appeal. "A stay is 'an intrusion into the ordinary processes of administrative and judicial review.'" *See Nken*, 556 U.S. at 427. It is "not a matter of right," but must be justified by the

circumstances of the particular case. *See id.*; *Sierra Club*, 929 F.3d at 718. As the stay applicant, DHS was required to show a stay was justified, but failed to carry its burden as to any of the stay factors—(i) that DHS is likely to succeed on the merits; (ii) that DHS would be irreparably injured absent a stay; (iii) that issuance of a stay would not harm other parties; and (iv) that the public interest supports a stay, *see Nken*, 556 U.S. at 434. The majority of the panel therefore erred in granting DHS's motion to stay.

In the end, the majority's analysis of the stay factors was simply "that DHS has mustered a strong showing of likelihood of success on the merits and some irreparable harm." Order 73. This approach cannot be squared with the standard. First, the majority seems to have impermissibly disregarded the third and fourth stay factors. *See id.* (concluding that stay warranted based on first two factors and not discussing remaining stay factors). But its analysis of the second factor was equally flawed. A stay applicant must substantiate a claim of irreparable injury with evidence showing more than simply the "possibility of irreparable injury." *See Nken*, 556 U.S. at 434–435 (internal citations omitted). Rather, evidence must show that the denial of a stay would have a "significant impact" on the applicant. *See Sierra Club*, 929 F.3d at 705. DHS, however, merely alluded to an

unquantified possibility of injury[5]—not enough to meet its burden on the motion. *See Nken*, 556 U.S. at 434–35. In the absence of evidence, there was no basis to stay an order that "merely returned the nation temporarily to the position it has occupied for many previous years." *Washington*, 847 F.3d at 1168.

II. THE PANEL FAILED TO RECOGNIZE THE SIGNFICANT HARM TO LOCAL JURISDICTIONS.

In contrast to Defendants, Plaintiffs and Amici have presented extensive and significant evidence of concrete, imminent harm to local jurisdictions and communities if the Rule is allowed to take effect. The majority failed to properly consider this evidence, characterizing Plaintiffs' harms as "largely financial," "short-term" and "indirect." Order 71, 72. But the evidence is clear that none of these characterizations is accurate. The Rule will directly cause a fundamental disruption to the health and prosperity of Amici's communities that will

[5] The panel majority was under the impression that the "States' own evidence is double-edged," because "millions of persons will disenroll [from public services] to avoid potential immigration consequences," and "[t]his seems to prove DHS' point" that many immigrants would receive immigration status adjustments to which they would not be entitled under the Rule. Order 69. This reflects a misunderstanding of Plaintiffs' harms. Many of the benefits from which individuals will disenroll are not covered by the Rule and would have no impact on their immigration status under it. *See, e.g.*, Section II.A, *infra* page 9. These disenrollments are unrelated to the number of immigrants who might obtain an adjustment of status not permitted under the Rule. And even if that were not true, there is no evidence that status-adjustment decisions move at such a rapid rate that most, or even many, of these individuals might receive an inappropriate adjustment.

reverberate long after the conclusion of this appeal.

A. The Rule Will Cause—And Is Already Causing—Immigrants to Choose Immigration Status Over Critical Services.

The Rule is designed to force immigrants to choose between accessing basic governmental support and the ability to attain legal status. While immigrants generally increase economic output and have a more positive fiscal impact on the nation than native-born Americans, in the short term, some immigrants and their children benefit from receiving incremental support on the way to self-sufficiency.[6] Under the Rule, accepting support can mean loss or denial of legal status, which robs Amici's jurisdictions of immigrants' contributions. DHS itself recognizes that immigrants will choose legal status over these critical supports.[7]

This is not a speculative harm, nor are its effects primarily financial. Since the Administration announced the Rule, members of Amici's immigrant communities are already making alarming trade-offs. The comments and data submitted to DHS and Amici's own experience suggest that the "chilling effect" of the Rule in Amici's jurisdictions is already beginning, will be severe, and will

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

[7] *See, e.g.*, Inadmissibility on Public Charge Grounds, 84 Fed. Reg. 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 . . . in order to avoid negative consequences as a result of this final rule.")

extend to programs and individuals that are not covered by the Rule.[8]

For example, from the Los Angeles Care Health Plan (LA Care), the nation's largest public health plan, to the Harris County 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.[9] LA Care anticipates that as many as 2.4 million individuals in Los Angeles County alone may withdraw from public health care.[10] Nationwide, approximately 13.5 million enrollees in Medicaid and the Child Health Insurance Program, including 7.6 million children, live with a noncitizen or are noncitizens themselves. They may forgo access to life-saving health care as a result of the Rule.[11]

In addition to health care, many immigrants and their families are likely to disenroll from food assistance programs like the Supplemental Nutrition

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[8] While comments and studies were submitted and conducted, respectively, before the Rule was promulgated, they highlight the predictable effects of the Rule change.

[9] 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.

[10] *Baackes, supra note 9*, at 2.

[11] Kaiser Family Found., *Changes to "Public Charge" Inadmissibility Rule: Implications for Health and Health Coverage* (Aug. 12, 2019), https://perma.cc/A2LD-23SG.

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.[12] Community partners in Oakland have noticed that immigrant parents are afraid to access benefits like CalFresh for their U.S. citizen children.[13]

Moreover, the Rule's impact will extend far beyond those individuals and services who are targeted.[14] Since the Rule was published, immigrant service providers have reported that it has "felt like a monumental task" to "convinc[e] parents they don't have to opt out of benefits for their children."[15] Amici have also seen reports of residents declining to access other important services that are not covered under the Rule, including preventative and prenatal care.[16] Likewise,

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

[13] 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.

[14] *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.").

[15] 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.

[16] Helen Branswell, *Federal Rules Threaten to Discourage Undocumented Immigrants from Vaccinating Children*, STAT News (Aug. 26, 2019), https://perma.cc/KW5N-W5E8; Steven Nish, Los Angeles Best Babies Network, Comment Letter on Proposed Rule *Inadmissibility on Public Charge Grounds*

community partners have reported declines in housing-related services paid for entirely by the County of Los Angeles.[17]

The Rule will also reduce enrollment in school meal and other programs. Current policy automatically enrolls students whose families receive SNAP benefits in the federal free and reduced-price school meal program.[18] Thus, even though school meal programs are not covered by the Rule, children in immigrant families who avoid SNAP are less likely to receive school meal programs as well.[19]

B. The Rule Will Profoundly Diminish Public Health—And Local Governments Will Be Forced to Compensate.

As detailed in the Plaintiffs' submissions to the District Court and the Motions Panel, if the Rule takes effect, local governments across the country will pay a heavy price to avoid significant degradation in public health. The Rule will deter immigrants from accessing medical care to which they are entitled and that keeps them and their communities healthy.

(Dec. 9, 2018), Docket No. USCIS-2010-0012-42481; Minneapolis, MN Mayor Jacob Frey, Comment Letter on Proposed Rule *Inadmissibility on Public Charge Grounds* at 3 (Dec. 7, 2018), Docket No. USCIS-2010-0012-29261.

[17] Diego Cartagena, Bet Tzedek Legal Services, Comment Letter on Proposed Rule *Inadmissibility on Public Charge Grounds* at 3-4 (Dec. 9, 2018), Docket No. USCIS-2010-0012-52651.

[18] 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.

[19] *Id.*

Local governments, who have primary responsibility for providing basic services for our most vulnerable residents, will bear the brunt of addressing the degradation in public health. When individuals avoid preventative care, they are generally less healthy,[20] and rely more upon emergency care provided through Amici's safety-net hospitals[21] or emergency medical services, which drives up costs.[22] 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.[23] Individuals who are afraid to access healthcare also open themselves and their communities up to increased numbers and severity of disease outbreaks, which must be addressed by local

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[20] *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.

[21] 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.

[22] *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 pay. . . .").

[23] *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.

public health departments.[24]

To offer just one example, when individuals forgo vaccination, "herd immunity" is threatened.[25] 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. The disease spread as fear grew and immigrant communities withdrew from public health services for fear of immigration consequences.[26]

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

C. The Rule Will Increase Homelessness and Exacerbate Existing Housing Crises.

The Rule will significantly contribute to the existing housing and homelessness crisis afflicting Amici's communities, the burden of which already

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[24] For example, California law obligates cities to "take measures necessary to preserve and protect the public health." Cal. Health & Saf. Code § 101450; *see also id.* at §§ 101460, 101470.

[25] Branswell, *supra* note 16.

[26] 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.

falls disproportionately to local governments.[27] This burden will surge if the Rule becomes effective.

First, by threatening the medical, nutrition, and other public benefits that provide the incremental boost working families need to achieve self-sufficiency, the Rule threatens low-income residents' tenuous grasp on housing. In the current U.S. labor market, many workers have no choice but to combine their earnings with some form of government assistance—however minor—to make ends meet.[28] Nationwide, more than 80 percent of low-income households spend more than 30 percent of their income on housing.[29] In Los Angeles County, one-third of households spend more than 50 percent of their household income on rent.[30] In Maryland, residents working at minimum wage must work 91 hours each week to afford a one-bedroom rental home.[31] As a result, although many working families

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[27] 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*].

[28] *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.

[29] *The State of the Nation's Housing 2019*, supra note 27, at 4.

[30] Los Angeles Homeless Servs. Auth., *2019 Greater Los Angeles Homeless Count Presentation* 8 (Aug. 5, 2019).

[31] Nat'l Low Income Hous. Coal., *Out of Reach 2019: Maryland* (2019), https://perma.cc/7WX8-DQTV.

rely on public benefits to ease painful trade-offs between housing, food, and medical care, they live on the edge of homelessness.[32] 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.[33] For low-income families with children, this assistance is particularly beneficial—one study found that vouchers reduce the share of families living in shelters or on the streets by three-fourths.[34] 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 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

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[32] *The State of the Nation's Housing 2019*, supra note 27, at 32-33.

[33] 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.

[34] *Id.*

including increased hospital visits, loss of employment, and mental health problems.[35] Homelessness is also associated with extraordinary public health issues; some jurisdictions have seen outbreaks of diseases like Typhus and Hepatitis A associated with increases in homelessness.[36] Local governments are charged with addressing all of these issues, and will be forced to do so using ever-more-stretched local resources.

D. 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 use 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 "the nation's most important anti-hunger program."[37] SNAP provides important nutritional assistance for participants, most of whom are families with children, households with seniors, or people with disabilities.[38] One in five of the nearly 20 million

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[35] *See* Fischer, *supra* note 23.

[36] Anna Gorman, *Medieval Diseases Are Infecting California's Homeless*, Atlantic (Mar. 8, 2019), https://perma.cc/BFT9-YVNW.

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

[38] *Id.*

children who receive SNAP are living with a noncitizen adult.[39]

"[A] mass exodus of mixed-status households from the SNAP program" could lead to a considerable increase in the child poverty rate.[40] SNAP is often used to fill gaps for working individuals with lower incomes, not as a replacement for work.[41] 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, or be forced to make the difficult decision to go hungry or miss monthly payments like rent.

Local governments will feel the effects of reduced food benefit enrollment. 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 mental health.[42] Food insecurity can also result in lowered workplace productivity, and physical and mental health problems for adults and seniors.[43]

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[39] Laird, *supra* note 12, at 2 (citing Sara Lauffer, U.S. Dep't of Agric., *Characteristics of Supplemental Nutrition Assistance Program Households: Fiscal Year 2016* (2017)).

[40] *Id.* at 6.

[41] *See* Hamutal Bernstein et al., Urban Inst., *Safety Net Access in the Context of the Public Charge Rule* 18-19 (Aug. 2019), https://perma.cc/PY62-4PLG.

[42] 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.

[43] *See id.*

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.

E. The Rule Will Undermine 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 caring for these children, there is broad agreement that families should remain together if at all possible,[44] including placing children with other family members when continued placement with parents is untenable. *See, e.g.*, Tex. Fam. Code § 264.151(b)(12); Cal. Welf. & Inst. Code § 16000(a). The Rule will cause immigrant family members to be reluctant to step forward and assume care for a child. Taking in a child is a significant resource commitment, and they are likely to feel that accepting benefits to do so will threaten their immigration status.[45] In some cases, willingness to obtain public benefits for support of children, including those targeted by the Rule, is a key criterion in placement decisions. Failure to obtain these resources can threaten parental rights. *See, e.g.*, Tex. Fam. Code § 263.307. If made effective,

[44] 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; *see also* Tex. Fam. Code § 264.151; Cal. Welf. & Inst. Code § 16000.

[45] *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.

the Rule will force parents to decline the services offered by the State and risk the termination of their parental rights. In other words, the Rule is likely to lead to family destabilization and separation and an increased burden on the foster-care system.

CONCLUSION

Because the Motions Panel's Order will cause dramatic and immediate harm throughout Amici's communities, which the Majority failed to properly consider, Plaintiffs' motion for reconsideration *en banc* should be granted.

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Dated: December 30, 2019

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The City of Holyoke, Massachusetts
The County of King, Washington
The City of Los Angeles, California
The County of Los Angeles, California
The County of Marin, California
The City of Monterey, California
The County of Montgomery, Maryland
The City of Oakland, California
The City of Philadelphia, Pennsylvania
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CERTIFICATE OF COMPLIANCE

I certify that this document complies with the type-volume limitation set forth in Federal Rule of Appellate Procedure 29(b)(4) and Circuit Rule 29-2(c)(2) because it contains 4,167 words, exclusive of the portions of the brief that are exempted by Federal Rule of Appellate Procedure 32(f). I certify that this document complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6).

Dated: December 30, 2019 By: */s/ Danielle L. Goldstein*
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CERTIFICATE OF SERVICE

I, Danielle L. Goldstein, hereby certify that I electronically filed this Brief of Amici Curiae 20 Counties, Cities, and Municipalities in Support of Plaintiffs-Appellees' Motion for Reconsideration En Banc with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on December 30, 2019. I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Executed December 30, 2019, at Los Angeles, California.

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