

No. 22-3272

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

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

v.

JOSEPH R. BIDEN, et al.,
Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
THE HONORABLE JUDGE MICHAEL J. NEWMAN
CASE NO. 3:21-CV-00314

**BRIEF OF AMICI CURIAE 18 CITIES AND COUNTIES IN SUPPORT OF
DEFENDANTS-APPELLANTS AND FOR REVERSAL**

DANIEL R. SUVOR
JAMES A. BOWMAN
O'MELVENY & MYERS LLP
400 SOUTH HOPE STREET, 18TH FLOOR
LOS ANGELES, CALIFORNIA 90071
TELEPHONE: +1 213 430 6000
FACSIMILE: +1 213 430 6407

*Attorneys for Amicus Curiae County of
Los Angeles*

TABLE OF CONTENTS

	Page
INTEREST OF AMICI CURIAE.....	1
ARGUMENT	4
I. POORLY PRIORITIZED AND AGGRESSIVE REMOVAL POLICY HARMS THE SAFETY OF AMICI’S COMMUNITIES BY ERODING TRUST IN LOCAL GOVERNMENT.....	6
A. Immigrants make amici’s communities safer.	6
B. Fear of removal decreases immigrants’ cooperation with police.	7
II. INCREASED, UNPRIORITIZED REMOVALS WILL CAUSE IMMIGRANTS TO FORGO CRUCIAL HEALTHCARE SERVICES AND HARM AMICI’S PUBLIC HEALTH.....	12
A. Fear of deportation causes immigrants to forgo medical services.	12
B. When immigrants avoid medical services, it hampers amici’s long-term success and harms amici’s public health.....	15
III. AMICI BEAR THE COST OF POORLY PRIORITIZED REMOVALS WHEN IMMIGRANT FAMILIES ARE TORN APART.	17
IV. THE DISTRICT COURT ERRED IN GRANTING A PRELIMINARY INJUNCTION BECAUSE THE GUIDELINES ARE NOT SUBJECT TO JUDICIAL REVIEW	21
CONCLUSION.....	25
LIST OF AMICI CURIAE	27
ADDITIONAL COUNSEL FOR AMICI CURIAE.....	28
CERTIFICATE OF COMPLIANCE.....	31

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Bennett v. Spear</i> , 520 U.S. 154 (1997).....	21, 22, 23
<i>Berry v. U.S. Dep’t of Lab.</i> , 832 F.3d 627 (6th Cir. 2016)	23, 24
<i>Franklin v. Massachusetts</i> , 505 U.S. 788 (1992).....	25
<i>Hillsborough Cnty. v. Automated Med. Labs., Inc.</i> , 471 U.S. 707 (1985).....	2
<i>Parsons v. U.S. Dep’t of Just.</i> , 878 F.3d 162 (6th Cir. 2017)	23
<i>Reno v. Am.-Arab Anti-Discrimination Comm.</i> , 525 U.S. 471 (1999).....	1
<i>Rochester Tel. Corp. v. United States</i> , 307 U.S. 125 (1939).....	24
<i>U.S. Army Corps of Engineers v. Hawkes Co.</i> , 578 U.S. 590 (2016).....	22
Statutes	
5 U.S.C. § 704.....	21
Other Authorities	
Alex Nowrasteh, <i>Criminal Immigrants in Texas: Illegal Immigrant Conviction and Arrest Rates for Homicide, Sex Crimes, Larceny, and Other Crimes</i> , CATO Inst. (Feb. 26, 2018), https://www.cato.org/publications/immigration-research-policy-brief/criminal-immigrants-texas-illegal-immigrant#arrests	7

TABLE OF AUTHORITIES

(continued)

Page(s)

Am. Immigration Council, U.S. Citizen Children Impacted by Immigration Enforcement (Nov. 22, 2019), https://www.americanimmigrationcouncil.org/sites/default/files/research/us_citizen_children_impacted_by_immigration_enforcement_0.pdf19

Anita Khashu, Police Found., *The Role of Local Police: Striking a Balance Between Immigration Enforcement and Civil Liberties* (Apr. 2009), <https://www.policinginstitute.org/wp-content/uploads/2015/06/The-Role-of-Local-Police-Narrative.pdf>10

Annie Laurie Hines & Giovanni Peri, Inst. of Labor Econ., *Immigrants’ Deportations, Local Crime and Police Effectiveness* (June 2019), <https://ftp.iza.org/dp12413.pdf>7

Anthony Wallace et al., *Afraid of Assistance: Trump’s Public Charge Rule Sends Chill Through Immigrant Community*, ASU Walter Cronkite Sch. Of Journalism & Mass Commc’n, <https://cronkitezine.asu.edu/bootcamp19/public-charge/index.php/public-charge-story/>14

Brianna Ehley et al., *Fearing Deportation, Immigrants Forgo Medical Care*, Politico (July 17, 2017), <https://www.politico.com/story/2017/07/17/deportation-fears-under-trump-have-immigrants-forgoing-medical-care-240635>13

Daniela Alulema & Jacquelyn Pavidon, Ctr. for Migration Studies, *Immigrants’ Use of New York City Programs, Services, and Benefits: Examining the Impact of Fear and Other Barriers to Access* (Jan. 2022), <https://cmsny.org/wp-content/uploads/2022/02/Immigrants-Use-of-New-York-City-Programs-Services-and-Benefits-CMS-Report-013122-FINAL.pdf> 8, 9, 14, 17

David Becerra, *Anti-immigration Policies and Fear of Deportation: A Human Rights Issue*, 1 J. Hum. Rts. & Soc. Work 109 (Aug. 17, 2016) 9, 13

TABLE OF AUTHORITIES

(continued)

Page(s)

Elisa Jácome, *The Effect of Immigration Enforcement on Crime Reporting: Evidence from the Priority Enforcement Program* (Princeton Univ. Indus. Relations Section, Working Paper No. 624, 2018), <https://dataspace.princeton.edu/bitstream/88435/dsp018p58pg70r/3/624.pdf>.....11

Enrico Moretti, U.C. Berkeley Dep’t of Econs., *Social Returns to Education and Human Capital Externalities: Evidence from Cities* (Dec. 1998), [http://darp.lse.ac.uk/PapersDB/Moretti_\(98\).pdf](http://darp.lse.ac.uk/PapersDB/Moretti_(98).pdf).....21

George Foulsham, *Deportation, loss of health care raise concerns in L.A. County, according to UCLA Survey*, UCLA Newsroom (Apr. 4, 2017), <http://newsroom.ucla.edu/releases/deportation-loss-of-health-care-raise-concerns-in-l-a-county-according-to-ucla-survey>12

Hamutal Bernstein et al., *Adults in Low-Income Immigrant Families Were Deeply Affected by the COVID-19 Crisis Yet Avoided Safety Net Programs in 2020*, Urban Inst. (May 2021), <https://www.urban.org/sites/default/files/publication/104280/adults-in-low-income-immigrant-families-deeply-affected-by-pandemic-yet-avoided-safety-net.pdf>.....15

Health and Academic Achievement, Ctrs. For Disease Control & Prevention (May 2014), <https://perma.cc/3VXF-Y9LC>.....16

Helen B. Marrow, *The power of local autonomy: expanding health care to unauthorized immigrants in San Francisco*, 35 *Ethnic & Racial Stud.* 72 (2012)17

Jan Hoffman, *Sick and Afraid, Some Immigrants Forgo Medical Care*, N.Y. Times (June 26, 2017), <https://www.nytimes.com/2017/06/26/health/undocumented-immigrants-health-care.html>..... 13, 17

Jeffrey Thomas DeSocio, *US Border Patrol Dispatches boats, 450 rescues reported*, Fox 26 Houston (Aug. 31, 2017), <http://www.fox26houston.com/news/us-border-patrol-dispatches-boats-450-rescues-reported>.....14

TABLE OF AUTHORITIES

(continued)

	Page(s)
Jill Theresa Messing et al., <i>Latinas’ Perceptions of Law Enforcement: Fear of Deportation, Crime Reporting, and Trust in the System</i> , 30 <i>Affilia J. Women & Soc. Work</i> 328 (Mar. 20, 2015).....	9
Jonathan Rothwell, <i>What Colleges Do for Local Economies: A Direct Measure Based on Consumption</i> , The Brookings Inst., (Nov. 17, 2015), https://www.brookings.edu/research/what-colleges-do-for-local-economies-a-direct-measure-based-on-consumption/	21
Kaiser Family Found., <i>Health Coverage of Immigrants</i> (Apr. 6, 2022), https://www.kff.org/disparities-policy/fact-sheet/health-coverage-of-immigrants/	17
Karen Hacker et al., <i>The impact of Immigration and Customs Enforcement on immigrant health: Perceptions of immigrants in Everett, Massachusetts, USA</i> , 73 <i>Soc. Sci. & Med.</i> 586 (Aug. 2011), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3159749/pdf/nihms308839.pdf	15
Kathleen M. Roche et al., <i>Impacts of Immigration Actions and News and the Psychological Distress of U.S. Latino Parents Raising Adolescents</i> , 62 <i>J. Adolescent Health</i> 525 (Mar. 1, 2018)	11, 13
L.A. Cnty. Dep’t of Children & Fam Servs., <i>Parent Resources</i> , https://dcfs.lacounty.gov/parents/parent-resources/	20
<i>L.A. County Sheriff Jim McDonnell’s statement about Senate Bill 54 regarding immigration</i> , <i>The Signal</i> (Sept. 16, 2017), https://perma.cc/XF4Y-DJXT	8
Los Angeles, Ctr. for the Study of Immigrant Integration, USC Dornsife Coll. of Letters, Arts & Scis., https://dornsife.usc.edu/assets/sites/731/docs/LOSANGELES_web.pdf	18
Luis H. Zayas & Laurie Cook Hefron, PhD, <i>Disrupting Young Lives: How Detention and Deportation Affect US-Born Children of Immigrants</i> , <i>Am. Psychological Ass’n</i> (Nov. 2016), https://www.apa.org/pi/families/resources/newsletter/2016/11/detention-deportation	19

TABLE OF AUTHORITIES**(continued)****Page(s)**

Margaret Edmunds & Molly Joel Coye, <i>America’s Children: Health Insurance and Access to Care</i> (1998), https://www.ncbi.nlm.nih.gov/books/NBK230381/pdf/Bookshelf_NBK230381.pdf	16
Michael Hiltzik, <i>Column: A punitive Trump proposal stokes panic among immigrants—even before it’s official</i> , L.A. Times (Aug. 24, 2018), https://www.latimes.com/business/hiltzik/la-fi-hiltzik-public-charge-20180824-story.html	15
Michael T. Light & Ty Miller, <i>Does Undocumented Immigration Increase Violent Crime?</i> , 56 <i>Criminology</i> 370 (2018).....	7
Migration Policy Inst., <i>Profile of the Unauthorized Population: Los Angeles County, CA</i> , https://www.migrationpolicy.org/data/unauthorized-immigrant-population/county/6037	18
Migration Policy Inst., <i>Profile of the Unauthorized Population: San Francisco County, CA</i> , https://www.migrationpolicy.org/data/unauthorized-immigrant-population/county/6075	18
New York City Office of Civil Justice, Annual Report (2019), https://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ_Annual_Report_2019.pdf	19
Nik Theodore, Dep’t of Urban Planning & Policy, Univ. of Ill. at Chi., <i>Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement</i> (May 2013), https://perma.cc/4B5R-7JL4	9
Rafael Bernal, <i>Analysis: More than 10 million US citizens live with an undocumented immigrant</i> , The Hill (Sept. 10, 2021), https://thehill.com/latino/571649-analysis-more-than-10-million-in-us-live-with-an-undocumented-immigrant	18

TABLE OF AUTHORITIES
(continued)

	Page(s)
Rafaela Rodrigues et al., Nat’l Immigrant Women’s Advocacy Project, Promoting Access to Justice for Immigrant and Limited English Proficient Crime Victims in an Age of Increased Immigration Enforcement: Initial Report from a 2017 National Survey (2018), https://niwaplibrary.wcl.american.edu/wp-content/uploads/Immigrant-Access-to-Justice-National-Report.pdf	10, 11
Randy Capps et al., Migration Policy Inst., Delegation and Divergence: A Study of 287(g) State and Local Immigration Enforcement (2011), https://perma.cc/T3PR-X4LG	10
San Francisco, Ctr. for the Study of Immigrant Integration, USC Dornsife Coll. of Letters, Arts & Scis., https://dornsife.usc.edu/assets/sites/731/docs/SANFRANCISCO_web.pdf	19
Sophia Koropecyk et al., The Economic Impact of Increasing College Completion (2017), https://www.amacad.org/sites/default/files/publication/downloads/CFUE_Economic-Impact.pdf	20, 21
Sophie Collyer et al., Poverty Tracker, Vulnerabilities and Service Needs of Single-Parent Households in New York City, https://www.robinhood.org/wp-content/themes/robinhood/images/poverty-tracker/pdfs/POVERTY_TRACKER_REPORT9.pdf	20
Steven Asch et al., <i>Does Fear of Immigration Authorities Deter Tuberculosis Patients from Seeking Care?</i> , 161 W. J. Med. 373 (Oct. 1994), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1022616/pdf/westjmed00062-0027.pdf	17
Tara Watson, Inside the Refrigerator: Immigration Enforcement and Chilling Effects in Medicaid Participation, 6 Am. Econ. J.: Econ. Pol’y 313 (2014)	14
Teresa A. Coughlin et al., <i>Uncompensated Care for the Uninsured in 2013: A Detailed Examination</i> , KFF (May 30, 2014), https://www.kff.org/uninsured/report/uncompensated-care-for-the-uninsured-in-2013-a-detailed-examination/	16

TABLE OF AUTHORITIES

(continued)

Page(s)

Teresa Wiltz, *If Parents Get Deported, Who Gets Their Children?* The PEW Charitable Trs. (Oct. 25, 2018), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2018/10/25/if-parents-get-deported-who-gets-their-children>20

Timothy Callaghan et al., BMC Health Servs. Research, *Immigrant Health Access in Texas: policy, rhetoric, and fear in the Trump era* (June 5, 2019), <https://bmchealthservres.biomedcentral.com/track/pdf/10.1186/s12913-019-4167-1.pdf>..... 13, 14

U.S. Dep’t of Justice, Office of Cmty. Oriented Policing Servs., *Final Report of the President’s Task Force on 21st Century Policing* (2015), https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.....8

Rules

Fed. R. App. P. 29(a)(4)(E).....1

INTEREST OF AMICI CURIAE¹

The County of Los Angeles, California, together with 17 other cities and counties from across the nation, submit this amicus brief in support of Defendants-Appellants (the Federal Government) and for reversal. Under longstanding precedent, the Federal Government has broad discretion to prioritize removal decisions. *See Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483-84 (1999) (explaining that at “each stage” of the removal process, including “executing removal orders,” the Federal Government “has discretion to abandon the endeavor”). This discretion is a deep-rooted tradition to account for immigrants’ individual circumstances and is necessary in view of the Federal Government’s limited resources for immigration enforcement.

Plaintiffs-Appellees (the States) seek to uproot that tradition. If the States have their say, longstanding historical removal discretion will be wrested from the Federal Government, which will be forced to take a more aggressive approach resulting in arbitrary removals. This change in policy and practice will cause more immigrants to fear removal and effect devastating safety and public health consequences in the communities in which those immigrants live.

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)*.

Collectively, amici represent nearly 30 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 Cnty. v. Automated Med. Labs., Inc.*, 471 U.S. 707, 719 (1985) (residents’ health and safety are “primarily, and historically, a matter of local concern”). From schools to public utilities, from libraries and parks to social services, amici operate many of the basic governmental programs that sustain American communities. Amici provide local law enforcement. Amici operate healthcare services, like safety-net hospitals and emergency services, and are responsible for the public health. And amici provide resources to care for struggling families and children in the foster care system. In short, amici are the primary backstop for many of the interconnected, everyday needs of residents in communities across the United States.

Many of amici’s residents are immigrants and the children of immigrants. These residents are integral threads in the social and economic fabric of amici’s communities. Because the well-being of amici’s immigrant residents is critical to the health and safety of cities and counties as a whole, amici understand the importance of protecting immigrant communities.

Amici therefore have a strong interest in the Federal Government retaining its historical discretion to prioritize removals, and in ensuring that law-abiding,

productive immigrants in amici's communities are protected from an arbitrary, discretion-less removal policy that fails to account for individual circumstances. Without such discretion, the health and safety of amici's communities will suffer. All immigrants will have an increased fear of deportation, which will lead immigrants to cooperate less with local law enforcement and to seek health care less frequently, causing harm to all of amici's residents. More immigrant families will also suffer the trauma of family separation, and the negative effects of family separation will be felt acutely by the children left behind (including many U.S.-citizen children living in mixed-status families) and by amici, who will bear the costs of dealing with these consequences.

The District Court's preliminary injunction order disregards these harms to amici. Further, that order rests on a fundamental legal error: The District Court's erroneous conclusion that the Department of Homeland Security's (DHS) September 30, 2021 Guidelines for the Enforcement of Civil Immigration Law (the guidance) is reviewable under the Administrative Procedure Act (APA). Under black letter administrative law—and as a panel of this Court recognized in staying the injunction pending appeal—the guidance is not final agency action and therefore is not reviewable under the APA.

For these reasons, amici respectfully request that the Court reverse.

ARGUMENT

The guidance is an outgrowth of the undeniable reality that the Federal Government has only finite resources to devote to immigration enforcement. In prioritizing for removal certain noncitizens who pose a threat to national security, public safety, or border security, the guidance reflects the Federal Government’s sensible determination that its limited resources are best devoted to apprehending and removing noncitizens who threaten the safety of their communities and those around them. The guidance is intended to assist immigration officers in making individualized removal determinations; it expressly avoids “bright lines or categories” and instead instructs officers to consider the “individual and the totality of the facts and circumstances” when determining whether a particular noncitizen poses a threat. Guidance 3-4, R.1-1, Page ID #26-27. The District Court’s nationwide injunction improperly forces the Federal Government to abandon commonsense priorities and robs immigration officers of their historical discretion to decide who to remove—making a working mother with no criminal history just as much a removal priority as a threat to national security or a violent felon.

That unprincipled approach to removals will harm the public health and safety of amici’s communities. When deportation policies are aggressive, fear of deportation within immigrant communities increases; this causes immigrant communities to interact less with law enforcement and decreases public safety.

Fear of removal also leads fewer immigrants to seek medical care; this, in turn, negatively affects the future prosperity and public health of amici's communities. And a removal policy that treats law-abiding individuals who work to support their families and contribute to their communities the same as persons suspected of terrorism or espionage risks needlessly separating productive families in amici's communities, including many mixed-status families with U.S.-citizen children. The negative effects of family separation are widespread and far-reaching: Children suffer emotional and physical consequences, and amici lose out on the prosperity that those children could have brought to their communities.

The District Court's injunction order not only disregards these harms to amici and threatens the future well-being of amici's communities, it also rested on a plain legal error. In finding the States were likely to succeed on the merits, the District Court incorrectly determined that the guidance is reviewable under the APA. But that conclusion cannot be squared with binding administrative caselaw. Indeed, as a panel of this Court recognized in granting a stay pending appeal, the States' lawsuit fails at the outset because the guidance is not reviewable final agency action. Stay Op. at 9-12. The guidance is not binding on immigration officers or anyone else; it merely sets forth factors to guide immigration officers' exercise of discretion in individual cases. The District Court's injunction order therefore should be reversed.

I. POORLY PRIORITIZED AND AGGRESSIVE REMOVAL POLICY HARMS THE SAFETY OF AMICI'S COMMUNITIES BY ERODING TRUST IN LOCAL GOVERNMENT.

The Federal Government has wisely determined that certain noncitizens should be prioritized for removal, primarily those who are a threat to national security, public safety, or border security. The States seek to eradicate the Federal Government's longstanding removal discretion and propose a senseless alternate reality in which DHS operates without any priorities or principles to guide removal decisions. Setting aside the fact that the Federal Government simply lacks the resources to remove every noncitizen technically subject to removal, eradicating the Federal Government's removal discretion to account for individual circumstances would be poor policy and have far-reaching consequences. An unprincipled, aggressive approach to removals would breed confusion and increase fear of deportation among law-abiding immigrants. This, in turn, would decrease immigrants' cooperation and engagement with police and harm amici's communities.

A. Immigrants make amici's communities safer.

Numerous studies have shown that undocumented immigrants help keep amici's communities safer. Undocumented immigrants, in general, have lower

conviction and arrest rates than U.S. citizens.² And there is no evidence that undocumented immigrants increase violent crime; rather, the relationship between undocumented immigration and violent crime is generally negative.³ One study found that even a substantial increase in deportations was not associated with a lessening of violent crime in communities.⁴

In contrast, focusing on removing all immigrants from communities, regardless of the threat posed by a particular individual, puts a strain on police resources. One study found that when deportations increase, local law enforcement agencies must devote a larger fraction of their total resources to deportation enforcement.⁵ This, in turn, diverts local resources that otherwise would have been used for public safety.⁶

B. Fear of removal decreases immigrants' cooperation with police.

Successful law enforcement requires a cooperative, trusting relationship between the police and the communities they serve. A core tenet of law

² Alex Nowrasteh, *Criminal Immigrants in Texas: Illegal Immigrant Conviction and Arrest Rates for Homicide, Sex Crimes, Larceny, and Other Crimes*, CATO Inst. (Feb. 26, 2018), <https://www.cato.org/publications/immigration-research-policy-brief/criminal-immigrants-texas-illegal-immigrant#arrests>.

³ Michael T. Light & Ty Miller, *Does Undocumented Immigration Increase Violent Crime?*, 56 *Criminology* 370, 370 (2018).

⁴ Annie Laurie Hines & Giovanni Peri, Inst. of Labor Econ., *Immigrants' Deportations, Local Crime and Police Effectiveness* 14 (June 2019), <https://ftp.iza.org/dp12413.pdf>.

⁵ *Id.* at 17.

⁶ *Id.*

enforcement is community policing, which strives for cooperation between police and neighborhood residents to reduce crime and promote public safety.⁷

Researchers and law enforcement officials agree: When immigrants fear deportation for themselves or those close to them, they are less likely to cooperate with police or report crime.⁸

Eliminating the Federal Government’s discretion to prioritize removals of immigrants who pose a threat to national security, public safety, or border security will increase fear of deportation and erode immigrant communities’ trust in local law enforcement. When fear of deportation increases, crime reporting decreases. One study found that, due to fears that law enforcement officers will ask about immigration status, 67% of undocumented individuals are less likely to offer information to law enforcement as a witness and 70% are less likely to contact law

⁷ See U.S. Dep’t of Justice, Office of Cmty. Oriented Policing Servs., Final Report of the President’s Task Force on 21st Century Policing 3 (2015), https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

⁸ Daniela Alulema & Jacquelyn Pavilon, Ctr. for Migration Studies, Immigrants’ Use of New York City Programs, Services, and Benefits: Examining the Impact of Fear and Other Barriers to Access 38-39 (Jan. 2022), <https://cmsny.org/wp-content/uploads/2022/02/Immigrants-Use-of-New-York-City-Programs-Services-and-Benefits-CMS-Report-013122-FINAL.pdf>. As Los Angeles County’s then-Sheriff put it: “Public safety is our mission. This requires that people come forward if they are a crime victim or be willing to come forth as a witness to a crime without fear of being deported. When I say that public trust is our currency, I mean it.” *L.A. County Sheriff Jim McDonnell’s statement about Senate Bill 54 regarding immigration*, The Signal (Sept. 16, 2017), <https://perma.cc/XF4Y-DJXT>.

enforcement even if they were victims of a crime.⁹ A recent survey of immigrants in New York City similarly found that many immigrants, documented and undocumented alike, avoid calling the police for fear of deportation.¹⁰

Similarly, a 2014 survey of Latino immigrants living in Arizona found that those with a greater fear of deportation for themselves, a family member, or a close friend had significantly less confidence that police officers and courts in their community would treat Latino immigrants fairly.¹¹ The danger for Latina women facing domestic abuse is particularly acute: An analysis of a 2008 nationwide survey of Latinas found that, regardless of immigration status, respondents who reported a greater fear of deportation for themselves, a family member, or a close friend were less likely to report being a victim of violent crime to the police.¹²

The consequences of this fear permeate beyond unreported and unaddressed crimes. One study found that, in multiple counties, an increase in local-federal law enforcement cooperation resulted in immigrants venturing into public places less

⁹ Nik Theodore, Dep't of Urban Planning & Policy, Univ. of Ill. at Chi., *Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement* 5-6 (May 2013), <https://perma.cc/4B5R-7JL4>.

¹⁰ Alulema & Pavilon, *supra* note 8 at 36-37.

¹¹ David Becerra, *Anti-immigration Policies and Fear of Deportation: A Human Rights Issue*, 1 J. Hum. Rts. & Soc. Work 109, 109, 112 (Aug. 17, 2016).

¹² Jill Theresa Messing et al., *Latinas' Perceptions of Law Enforcement: Fear of Deportation, Crime Reporting, and Trust in the System*, 30 *Affilia J. Women & Soc. Work* 328, 334 (Mar. 20, 2015).

frequently, interacting less with schools and other institutions, patronizing businesses less often, and changing their driving patterns.¹³

The on-the-ground experience of law enforcement officials is consistent with these findings. In 2017, law enforcement officials surveyed across 24 states reported that increased fear of immigration enforcement and immigration status concerns led to a decline in immigrant victims' willingness to cooperate in criminal prosecutions, as well as an increase in difficulty of investigating criminal cases because of immigrants' reluctance to cooperate.¹⁴ In a survey conducted by the national Police Foundation, a majority of law enforcement personnel and public officials reported that aggressive immigration enforcement would decrease community trust of police (74% of those surveyed), decrease trust between community residents (70%), decrease reporting of crime victimization (85%), and decrease reporting of criminal activity (83%).¹⁵

¹³ Randy Capps et al., Migration Policy Inst., *Delegation and Divergence: A Study of 287(g) State and Local Immigration Enforcement* 43 (2011), <https://perma.cc/T3PR-X4LG>.

¹⁴ See Rafaela Rodrigues et al., Nat'l Immigrant Women's Advocacy Project, *Promoting Access to Justice for Immigrant and Limited English Proficient Crime Victims in an Age of Increased Immigration Enforcement: Initial Report from a 2017 National Survey 2*, 50-51, 100 (2018), <https://niwaplibrary.wcl.american.edu/wp-content/uploads/Immigrant-Access-to-Justice-National-Report.pdf>.

¹⁵ Anita Khashu, Police Found., *The Role of Local Police: Striking a Balance Between Immigration Enforcement and Civil Liberties* 24 (Apr. 2009), <https://www.policinginstitute.org/wp-content/uploads/2015/06/The-Role-of-Local-Police-Narrative.pdf>.

The less immigrants cooperate and engage with police due to fear of deportation, the more crimes go unresolved, as immigrants are less likely to report crimes to which they are the victim or that they witness. For example, a 2017 survey of Latino immigrants in the mid-Atlantic found that, due to the immigration climate at the time, almost 40% of participants “very often” or “always” avoided contact with police and 47.6% warned their children to stay away from authorities.¹⁶ This type of environment harms public safety at large and affects all residents in the community. Indeed, one study found that when immigrant victims do not cooperate with law enforcement, it undercuts officer safety, community safety, victim safety, and the ability to hold perpetrators accountable.¹⁷

The inverse also has been shown to be true: Reducing fear of removal results in more cooperation with police. A study by Princeton University analyzed crime reporting rates in Dallas, Texas between 2013 and 2016 and found that crime reporting by Hispanic individuals increased by 10% after DHS limited its immigration enforcement priorities.¹⁸

¹⁶ Kathleen M. Roche et al., Impacts of Immigration Actions and News and the Psychological Distress of U.S. Latino Parents Raising Adolescents, 62 J. Adolescent Health 525 (Mar. 1, 2018).

¹⁷ See Rodrigues, *supra* note 14 at 102-03.

¹⁸ Elisa Jácome, *The Effect of Immigration Enforcement on Crime Reporting: Evidence from the Priority Enforcement Program* 1, 10, 13 (Princeton Univ. Indus. Relations Section, Working Paper No. 624, 2018), <https://dataspace.princeton.edu/bitstream/88435/dsp018p58pg70r/3/624.pdf>.

II. INCREASED, UNPRIORITIZED REMOVALS WILL CAUSE IMMIGRANTS TO FORGO CRUCIAL HEALTHCARE SERVICES AND HARM AMICI'S PUBLIC HEALTH.

Aggressive and arbitrary removal policies also worsen the public health of amici's communities. Fear of deportation causes immigrants to forgo crucial medical services, for both themselves and their U.S.-citizen family members and dependents. This outcome undermines amici's public health policies, which rely on all residents, regardless of immigration status, receiving and benefiting from preventative health care. Especially in communities where immigrants make up so many of amici's residents, like in Los Angeles County, public health depends on immigrants trusting the healthcare system and their healthcare providers.

A. Fear of deportation causes immigrants to forgo medical services.

Immigrants and their U.S.-citizen family members and children forgo crucial medical services when they fear deportation. One study found that 80% of those who feared deportation for themselves, a friend, or a family member believed that the risk of deportation increased with enrollment in any kind of governmental health program.¹⁹ Similarly, a 2017 survey of Latino immigrant populations found immigration-related concerns caused 39.4% of those surveyed to avoid medical

¹⁹ George Foulsham, *Deportation, loss of health care raise concerns in L.A. County, according to UCLA Survey*, UCLA Newsroom (Apr. 4, 2017), <http://newsroom.ucla.edu/releases/deportation-loss-of-health-care-raise-concerns-in-l-a-county-according-to-ucla-survey>.

care, police, and other services.²⁰ Fear of deportation thus makes it more likely that individuals will miss doctor's visits and avoid filling their prescriptions.²¹ Compounding that problem, fear of deportation also has been associated with negative social, emotional, and mental health outcomes, such as social isolation, stress, anxiety, and depression.²²

Amici are well aware of the ways that immigration-related fears negatively impact immigrants' healthcare access. For example, during former President Trump's presidency, a survey of 66 community health workers in Texas reported as one of the most consistent findings "the pervasive way that fear is limiting access to needed health care and social services for mixed status families."²³ And in Houston, Texas, during the severe flooding that followed Hurricane Harvey in 2017, some immigrants avoided rescue services because Customs and Border

²⁰ Roche, *supra* note 16.

²¹ See Jan Hoffman, *Sick and Afraid, Some Immigrants Forgo Medical Care*, N.Y. Times (June 26, 2017), <https://www.nytimes.com/2017/06/26/health/undocumented-immigrants-health-care.html>; Brianna Ehley et al., *Fearing Deportation, Immigrants Forgo Medical Care*, Politico (July 17, 2017), <https://www.politico.com/story/2017/07/17/deportation-fears-under-trump-have-immigrants-forgoing-medical-care-240635>.

²² Becerra, *supra* note 11.

²³ Timothy Callaghan et al., BMC Health Servs. Research, *Immigrant Health Access in Texas: policy, rhetoric, and fear in the Trump era 3* (June 5, 2019), <https://bmchealthservres.biomedcentral.com/track/pdf/10.1186/s12913-019-4167-1.pdf>.

Patrol boats were used in relief efforts.²⁴ More recently, a New York City survey spanning the change in presidential administration found that many immigrants avoided seeking hospital care or stopped treatment early for fear of deportation.²⁵

Immigrants who fear deportation also avoid medical services for their vulnerable family members and dependents—even those who are U.S. citizens.²⁶ For example, when the Public Charge Rule was in effect, in one school in Phoenix, Arizona, several families refused to get health care for their U.S.-citizen children due to fear of immigration consequences. The parents of a kindergartner who was born tongue-tied, a condition easily fixed with surgery, could not afford the corrective procedure on their own but were afraid to enroll their child in Medicaid. And a third-grader who was diagnosed with autism and struggles with speaking fell behind his classmates and did not receive occupational therapy because his parents were afraid to enroll him in public benefits.²⁷

²⁴ *Id.*; see also Jeffrey Thomas DeSocio, *US Border Patrol Dispatches boats, 450 rescues reported*, Fox 26 Houston (Aug. 31, 2017), <http://www.fox26houston.com/news/us-border-patrol-dispatches-boats-450-rescues-reported>.

²⁵ Alulema & Paviion, *supra* note 8 at 29-30.

²⁶ See Tara Watson, *Inside the Refrigerator: Immigration Enforcement and Chilling Effects in Medicaid Participation*, 6 *Am. Econ. J.: Econ. Pol'y* 313, 316 (2014) (“Enforcement could impact the willingness of undocumented parents to interact with public agencies even though their children are eligible for benefits.”).

²⁷ Anthony Wallace et al., *Afraid of Assistance: Trump’s Public Charge Rule Sends Chill Through Immigrant Community*, ASU Walter Cronkite Sch. Of Journalism & Mass Commc’n, <https://cronkitezine.asu.edu/bootcamp19/public-charge/index.php/public-charge-story/>.

B. When immigrants avoid medical services, it hampers amici’s long-term success and harms amici’s public health.

The future success of amici’s communities depends on the health and well-being of amici’s residents. When immigrants avoid medical care due to fear of immigration consequences, they struggle longer with virulent illnesses than those who seek health care.²⁸ Left untreated, they also experience more debilitating—and ultimately more costly—symptoms, especially among immigrants who suffer chronic diseases like diabetes and hypertension, which require regular care to be effectively managed.²⁹

Aggressive immigration policies have historically caused immigrants to avoid enrolling in health insurance.³⁰ When immigrants give up healthcare coverage, the burden of providing medical care falls to local communities. Uninsured individuals who face serious medical problems rely on emergency care

²⁸ See Karen Hacker et al., *The impact of Immigration and Customs Enforcement on immigrant health: Perceptions of immigrants in Everett, Massachusetts, USA*, 73 Soc. Sci. & Med. 586, 592 (Aug. 2011),

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3159749/pdf/nihms308839.pdf>.

²⁹ Michael Hiltzik, *Column: A punitive Trump proposal stokes panic among immigrants—even before it’s official*, L.A. Times (Aug. 24, 2018),

<https://www.latimes.com/business/hiltzik/la-fi-hiltzik-public-charge-20180824-story.html>.

³⁰ Hamutal Bernstein et al., *Adults in Low-Income Immigrant Families Were Deeply Affected by the COVID-19 Crisis Yet Avoided Safety Net Programs in 2020*, Urban Inst., 8-9 (May 2021),

<https://www.urban.org/sites/default/files/publication/104280/adults-in-low-income-immigrant-families-deeply-affected-by-pandemic-yet-avoided-safety-net.pdf>.

provided through amici's safety net hospitals or emergency medical services.³¹

The cost of this uncompensated care falls heavily on state and local governments—one 2013 study found that state and local programs paid for almost \$20 billion in uncompensated care.³²

For the children of immigrant families, many of whom are U.S. citizens, the consequences of avoiding health care are dire. Children who cannot access preventive health care are more likely to develop health conditions and face difficulties in school, creating real barriers to their educational and professional futures and directly undermining their ability to become financially independent.³³ Something as simple as an ear infection, left untreated, can lead to hearing loss or deafness and impair a child's performance in school and ability to interact.³⁴ This, in turn, harms amici, who lose out on the contributions these children otherwise would bring to their communities.

³¹ Teresa A. Coughlin et al., *Uncompensated Care for the Uninsured in 2013: A Detailed Examination*, KFF (May 30, 2014), <https://www.kff.org/uninsured/report/uncompensated-care-for-the-uninsured-in-2013-a-detailed-examination/>.

³² *Id.*

³³ Health and Academic Achievement, Ctrs. For Disease Control & Prevention, 2-3 (May 2014), <https://perma.cc/3VXF-Y9LC>.

³⁴ Margaret Edmunds & Molly Joel Coye, *America's Children: Health Insurance and Access to Care* (1998), https://www.ncbi.nlm.nih.gov/books/NBK230381/pdf/Bookshelf_NBK230381.pdf.

Amici's efforts to maintain the public health also are undermined when immigrants avoid health care for communicable diseases.³⁵ In a study of New York City immigrants following the COVID-19 pandemic, several immigrants said they might avoid giving the names of undocumented persons to contact tracers.³⁶ As another example, when studying why tuberculosis patients delay getting treatment, researchers found that fear of immigration authorities was a closely-associated factor, which in turn complicates public efforts to eradicate disease.³⁷ Logically, communicable diseases are more likely to spread throughout the community when immigrants who contract the disease fear seeking health care.³⁸

III. AMICI BEAR THE COST OF POORLY PRIORITIZED REMOVALS WHEN IMMIGRANT FAMILIES ARE TORN APART.

The guidance wisely gives immigration officers discretion to consider the impact of removal on family members in the United States, such as the loss of a provider or caregiver, in deciding whether to remove certain prioritized

³⁵ See Helen B. Marrow, The power of local autonomy: expanding health care to unauthorized immigrants in San Francisco, 35 *Ethnic & Racial Stud.* 72, 72 (2012); Kaiser Family Found., Health Coverage of Immigrants (Apr. 6, 2022), <https://www.kff.org/disparities-policy/fact-sheet/health-coverage-of-immigrants/>.

³⁶ Alulema & Paviol, *supra* note 8 at 31.

³⁷ Steven Asch et al., *Does Fear of Immigration Authorities Deter Tuberculosis Patients from Seeking Care?*, 161 *W. J. Med.* 373, 376 (Oct. 1994), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1022616/pdf/westjmed00062-0027.pdf>.

³⁸ See Jan Hoffman, *Sick and Afraid, Some Immigrants Forgo Medical Care*, N.Y. Times (June 26, 2017), www.nytimes.com/2017/06/26/health/undocumented-immigrants-health-care.html.

noncitizens. Guidance 4, R.1-1, Page ID #27. This discretion reflects the Federal Government's understanding of the real consequences that removal may have on close family members, particularly children, including U.S.-citizen children of undocumented immigrants. Nationwide, 22 million people live in mixed-status households.³⁹ More than 10 million U.S. citizens share a home with an undocumented immigrant, and 4.9 million U.S. citizens are children who have at least one undocumented parent.⁴⁰ In Los Angeles County alone, 70% of the County's approximately 880,000 undocumented residents live with a U.S. citizen, and 34%—almost 300,000 people—live with a U.S.-citizen child.⁴¹ In the City and County of San Francisco, there are approximately 46,000 undocumented people.⁴² Sixty percent of those who are undocumented live with a U.S. citizen,

³⁹ Rafael Bernal, *Analysis: More than 10 million US citizens live with an undocumented immigrant*, The Hill (Sept. 10, 2021), <https://thehill.com/latino/571649-analysis-more-than-10-million-in-us-live-with-an-undocumented-immigrant>.

⁴⁰ *Id.*

⁴¹ Migration Policy Inst., *Profile of the Unauthorized Population: Los Angeles County, CA*, <https://www.migrationpolicy.org/data/unauthorized-immigrant-population/county/6037>; Los Angeles, Ctr. for the Study of Immigrant Integration, USC Dornsife Coll. of Letters, Arts & Scis., https://dornsife.usc.edu/assets/sites/731/docs/LOSANGELES_web.pdf.

⁴² Migration Policy Inst., *Profile of the Unauthorized Population: San Francisco County, CA*, <https://www.migrationpolicy.org/data/unauthorized-immigrant-population/county/6075>.

and 15%—nearly 7,000 people—live with a U.S.-citizen child.⁴³ And in New York City, about 1,000,000 people live in a mixed-status home.⁴⁴

Children in mixed-status families accumulate a psychological toll, living under the ever-present threat that a parent could be removed.⁴⁵ If parents in fact are removed from their families, children are even more likely to experience toxic stress; this negatively impacts brain development and can lead to the development of mental health conditions (such as depression and post-traumatic stress disorder) and physical ailments (like cancer, stroke, diabetes, and heart disease).⁴⁶

When families are separated by removal of a parent, amici suffer because they must divert more resources to assist the children and family members left behind. Single-parent households are more likely to need help with affordable

⁴³ San Francisco, Ctr. for the Study of Immigrant Integration, USC Dornsife Coll. of Letters, Arts & Scis., https://dornsife.usc.edu/assets/sites/731/docs/SANFRANCISCO_web.pdf.

⁴⁴ New York City Office of Civil Justice, Annual Report 13 (2019), https://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ_Annual_Report_2019.pdf.

⁴⁵ Luis H. Zayas & Laurie Cook Heffron, PhD, *Disrupting Young Lives: How Detention and Deportation Affect US-Born Children of Immigrants*, Am. Psychological Ass'n (Nov. 2016), <https://www.apa.org/pi/families/resources/newsletter/2016/11/detention-deportation>.

⁴⁶ Am. Immigration Council, U.S. Citizen Children Impacted by Immigration Enforcement (Nov. 22, 2019), https://www.americanimmigrationcouncil.org/sites/default/files/research/us_citizen_children_impacted_by_immigration_enforcement_0.pdf.

housing and paying for food.⁴⁷ They also are more likely to seek out public benefits.⁴⁸ The Department of Children and Family Services in Los Angeles County, for example, provides resources to help families and single parents with necessities, such as childcare and parenting resources.⁴⁹ Worse still, if both of a child's parents are removed, amici become responsible for the care of the child, who is forced to enter the foster care system.⁵⁰

These are all immediate costs that fall disproportionately on local government. But family separation has long-term consequences for amici's prosperity, too. When children suffer the emotional and physical consequences of family separation, amici miss out on the prosperity that those children might otherwise bring. Studies show that poorer health and educational outcomes for children lead to reduced potential for future success.⁵¹ By contrast, when children

⁴⁷ Sophie Collyer et al., *Poverty Tracker, Vulnerabilities and Service Needs of Single-Parent Households in New York City 9*, https://www.robinhood.org/wp-content/themes/robinhood/images/poverty-tracker/pdfs/POVERTY_TRACKER_REPORT9.pdf.

⁴⁸ *Id.*

⁴⁹ L.A. Cnty. Dep't of Children & Fam Servs., *Parent Resources*, <https://dcfs.lacounty.gov/parents/parent-resources/>.

⁵⁰ Teresa Wiltz, *If Parents Get Deported, Who Gets Their Children?* The PEW Charitable Trs. (Oct. 25, 2018), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2018/10/25/if-parents-get-deported-who-gets-their-children>.

⁵¹ Sophia Koropecyk et al., *The Economic Impact of Increasing College Completion 21* (2017), https://www.amacad.org/sites/default/files/publication/downloads/CFUE_Economi

achieve greater educational outcomes, particularly college graduation, it translates to wage increases for the whole work force, faster GDP growth, and greater investment in local goods and services.⁵²

Eliminating the Federal Government’s discretion to consider the families of noncitizens prioritized for removal will undoubtedly result in families within amici’s communities being torn apart. This harms not only the children and family members left behind, but also the future prosperity of amici’s communities.

IV. THE DISTRICT COURT ERRED IN GRANTING A PRELIMINARY INJUNCTION BECAUSE THE GUIDELINES ARE NOT SUBJECT TO JUDICIAL REVIEW.

The APA provides for judicial review of agency action that is “final.” 5 U.S.C. § 704. To qualify as “final,” agency action must (1) “mark the consummation of the agency’s decisionmaking process—it must not be of a merely tentative or interlocutory nature,” and (2) constitute action “by which rights or obligations have been determined, or from which legal consequences will flow.” *Bennett v. Spear*, 520 U.S. 154, 178 (1997) (citation and quotation

c-Impact.pdf (demonstrating a correlation between higher rates of college graduation and GDP growth).

⁵² *Id.*; Enrico Moretti, U.C. Berkeley Dep’t of Econs., Social Returns to Education and Human Capital Externalities: Evidence from Cities 1 (Dec. 1998), [http://darp.lse.ac.uk/PapersDB/Moretti_\(98\).pdf](http://darp.lse.ac.uk/PapersDB/Moretti_(98).pdf); Jonathan Rothwell, *What Colleges Do for Local Economies: A Direct Measure Based on Consumption*, The Brookings Inst., (Nov. 17, 2015), <https://www.brookings.edu/research/what-colleges-do-for-local-economies-a-direct-measure-based-on-consumption/>.

omitted). Here, even assuming the guidance satisfies the first prong of this test, it plainly does not satisfy the second. An agency action “determine[s]” a party’s “rights or obligations,” and is action “from which legal consequences will flow,” *id.* (quotation omitted), only if that action binds the government or regulated parties. The guidance does neither.

To start, the guidance could not be clearer about the fact that it does not bind the discretion of any individual immigration officer. Unlike agency action that “binds the . . . agencies authorized to bring civil enforcement proceedings under” the relevant statutory scheme, *U.S. Army Corps of Engineers v. Hawkes Co.*, 578 U.S. 590, 598-99 (2016), the guidance expressly reserves authority for individual immigration officer decisionmakers to reach their own conclusions. The guidance explains, no less than three times, that whether enforcement is appropriate in a particular case is an individualized determination that “is not to be determined according to bright lines or categories,” but “instead requires an assessment of the individual and the totality of the facts and circumstances.” Guidance 3, R.1-1, Page ID #26; *accord id.* Page ID #27 (“Again, our personnel must evaluate the individual and the totality of the facts and circumstances and exercise their judgment accordingly.”); *id.* (“In each case, there could be mitigating or extenuating facts and circumstances that militate in favor of declining enforcement

action. Our personnel should evaluate the totality of the facts and circumstances and exercise their judgment accordingly.”).

As the motions panel recognized, the guidance “has the telltale signs of a non-binding policy statement, not of reviewable agency action.” Stay Op. at 10. At bottom, “[t]he civil immigration enforcement guidance does not compel an action to be taken or not taken. Instead, the guidance leaves the exercise of prosecutorial discretion to the judgment of our personnel.” Guidance 5, R.1-1, Page ID #28. Where, as here, the agency’s action “does not result in legal consequences because it does not impose liability, determine legal rights or obligations, or mandate, bind, or limit other government actors,” *Parsons v. U.S. Dep’t of Just.*, 878 F.3d 162, 169 (6th Cir. 2017), it does not satisfy the second *Bennett* prong.

Indeed, the guidance does not determine any party’s rights or obligations. To determine whether agency action imposes obligations on a third party—such as the States—courts ask whether the agency action has “a sufficiently direct and immediate impact on the aggrieved party and a direct effect on its day-to-day business.” *Berry v. U.S. Dep’t of Lab.*, 832 F.3d 627, 633 (6th Cir. 2016) (quotation omitted). As the motions panel acknowledged, the guidance does not require the States to do anything—it does not regulate the States and it does not purport to preempt any state or local law. Stay Op. at 5. Given that the guidance

requires nothing from the States and its effect on the States is unclear, the guidance certainly does not have a “direct effect” on the “day-to-day business” of the States. *Berry*, 832 F.3d at 633.

The States complain that the guidance will mean that less noncitizens are ultimately removed. But the guidance neither prohibits immigration officials from removing people nor puts a cap on the number of noncitizens that can be removed. Accordingly, the guidance does not perpetuate the purported harm that the States seek to avoid. It therefore “does not of itself adversely affect [the States] but only affects [their] rights adversely on the contingency of future administrative action.” *Rochester Tel. Corp. v. United States*, 307 U.S. 125, 130 (1939).

It is equally difficult to imagine how the guidance could be said to provide any cognizable right to noncitizens. It simply prioritizes for removal noncitizens who are public safety, national security, or border security threats. The guidance certainly does not provide any noncitizen blanket protection against removal, as it decidedly does *not* say that certain noncitizens cannot be removed. Therefore, every noncitizen—regardless of whether they qualify as a public safety, national security, or border security threat prioritized for removal—is still at risk of arrest and removal under the guidance. Indeed, the guidance expressly states that it is “not intended to, does not, and may not be relied upon to create any right or

benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.” Guidance 7, R.1-1, Page ID #30.

Ultimately, the guidance does not and cannot directly affect either the States or noncitizens: No rights are stripped from the States, and no rights are granted to noncitizens. The guidance therefore is not a final agency action, and judicial review is not permissible. *See Franklin v. Massachusetts*, 505 U.S. 788, 797 (1992) (“The core question is whether the agency has completed its decisionmaking process, and whether the result of that process is one that will directly affect the parties.”).

CONCLUSION

For the reasons stated above, the District Court’s order granting the States’ motion for preliminary injunction should be reversed.

Respectfully submitted,

Dated: May 10, 2022

O'MELVENY & MYERS

By: /s/ Daniel R. Suvor

Daniel R. Suvor

James A. Bowman

O'MELVENY & MYERS LLP

400 S. Hope Street, 18th Floor

Los Angeles, CA 90071

Telephone: +1 213 430 6000

Facsimile: +1 213 430 6407

*Attorneys for Amicus Curiae County of
Los Angeles*

LIST OF AMICI CURIAE

County of Los Angeles, California
City of Albuquerque, New Mexico
City of Boston, Massachusetts
City of Chicago, Illinois
County of Contra Costa, California
City and County of Denver, Colorado
City of Los Angeles, California
City of Madison, Wisconsin
County of Milwaukee, Wisconsin
City of Minneapolis, Minnesota
County of Monterey, California
City of New York, New York
City of Oakland, California
City of Pittsburgh, Pennsylvania
City of Portland, Oregon
City of Sacramento, California
City and County of San Francisco, California
County of San Mateo, California

ADDITIONAL COUNSEL FOR AMICI CURIAE

Daniel R. Suvor
James A. Bowman
O'MELVENY & MYERS LLP
400 South Hope Street, 18th Floor
Los Angeles, CA 90071

*Attorney for the County of Los Angeles,
California*

Lauren Keefe
Acting City Attorney
One Civic Plaza N.W. 4th Floor,
Room 4072
Albuquerque, NM 87102

*Attorney for the City of Albuquerque,
New Mexico*

Adam Cederbaum
Corporation Counsel
City Hall, Room 615
Boston, MA 02201

*Attorney for the City of Boston,
Massachusetts*

Celia Meza
Corporation Counsel
2 N. LaSalle Street, Suite 580
Chicago, IL 60602

Attorney for the City of Chicago, Illinois

James R. Rowader, Jr.
City Attorney
City Hall, Room 210
350 South Fifth Street
Minneapolis, MN 55415

*Attorney for the City of Minneapolis,
Minnesota*

Leslie J. Girard
County Counsel
168 West Alisal Street, 3rd Floor
Salinas, CA 93901

*Attorney for the County of Monterey,
California*

Hon. Sylvia O. Hinds-Radix
Corporation Counsel
100 Church Street
New York, NY 10007

*Attorney for the City of New York,
New York*

Barbara J. Parker
City Attorney
One Frank H. Ogawa Plaza,
Sixth Floor
Oakland, CA 94612

*Attorney for the City of Oakland,
California*

ADDITIONAL COUNSEL FOR AMICI CURIAE
(continued)

Mary Ann McNett Mason
County Counsel
1025 Escobar St., 3rd Fl.
Martinez, CA 94553

*Attorney for the County of Contra Costa,
California*

Kristin M. Bronson
City Attorney
1437 Bannock Street, Room 353
Denver, CO 80202

*Attorney for the City and County of
Denver, Colorado*

Michael Feuer
City Attorney
200 North Main Street
City Hall East Suite 800
Los Angeles, CA 90012

*Attorney for the City of Los Angeles,
California*

Michael R. Haas
City Attorney
210 Martin Luther King Jr. Blvd.,
Room 401
Madison, WI 53703

*Attorney for the City of Madison,
Wisconsin*

Kryisia M. Kubiak
Solicitor
414 Grant Street
Pittsburgh, PA 15219

*Attorney for the City of Pittsburgh,
Pennsylvania*

Robert L. Taylor
City Attorney
1221 SW Fourth Avenue, Suite 430
Portland, OR 97240

*Attorney for the City of Portland,
Oregon*

Susana Alcala Wood
City Attorney
915 I Street, Fourth Floor
Sacramento, CA 95814

*Attorney for the City of Sacramento,
California*

David Chiu
City Attorney
City Hall Room 234
One Dr. Carlton B. Goodlett Pl.
San Francisco, CA 94102

*Attorney for the City and County of
San Francisco, California*

ADDITIONAL COUNSEL FOR AMICI CURIAE
(continued)

Margaret C. Daun
Corporation Counsel
901 N. 9th Street, Room 303
Milwaukee, WI 53233

John D. Nibbelin
County Counsel
400 County Center, 6th Floor
Redwood City, CA 94063

*Attorney for the County of Milwaukee,
Wisconsin*

*Attorney for the County of San Mateo,
California*

CERTIFICATE OF COMPLIANCE

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Dated: May 10, 2022

By: /s/ Daniel R. Suvor

Daniel R. Suvor
James A. Bowman
O'MELVENY & MYERS LLP
400 S. Hope Street, 18th Floor
Los Angeles, CA 90071
Telephone: +1 213 430 6000
Facsimile: +1 213 430 6407

*Attorneys for Amicus Curiae County of
Los Angeles*

CERTIFICATE OF SERVICE

I hereby certify that on May 10, 2022, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit by using the appellate CM/ECF system. Service will be accomplished by the appellate CM/ECF system.

Dated: May 10, 2022

By: /s/ Daniel R. Suvor

Daniel R. Suvor
James A. Bowman
O'MELVENY & MYERS LLP
400 S. Hope Street, 18th Floor
Los Angeles, CA 90071
Telephone: +1 213 430 6000
Facsimile: +1 213 430 6407

*Attorneys for Amicus Curiae County of
Los Angeles*