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17 **UNITED STATES DISTRICT COURT**  
18 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
19 **OAKLAND DIVISION**

19 CITY AND COUNTY OF SAN  
20 FRANCISCO and COUNTY OF SANTA  
21 CLARA,  
22  
23 Plaintiffs,  
24  
25 v.  
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Case No. 4:19-cv-4717-PJH

**BRIEF OF AMICI CURIAE JUSTICE**  
**IN AGING, AMERICAN SOCIETY ON**  
**AGING, CARING ACROSS**  
**GENERATIONS, JEWISH FAMILY**  
**SERVICE OF LOS ANGELES, THE**  
**NATIONAL ASIAN PACIFIC CENTER**  
**ON AGING, NATIONAL COUNCIL ON**  
**AGING, NATIONAL HISPANIC**  
**COUNCIL ON AGING, MAZON, AND**  
**PHI**

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U.S. CITIZENSHIP AND IMMIGRATION SERVICES; DEPARTMENT OF HOMELAND SECURITY; KEVIN McALEENEN, Acting Secretary of Homeland Security; and KENNETH T. CUCCINELLI, in his official capacity as Acting Director of U.S. Citizenship and Immigration Services,  
  
Defendants.

**INTEREST OF AMICI CURIAE**

1  
2 Justice in Aging is a non-profit organization with the mission of improving the lives of  
3 low-income older adults living in the United States. For 47 years, Justice in Aging has used the  
4 power of law to fight senior poverty by securing access to affordable health care, economic  
5 security, and the courts for older adults with limited resources. Justice in Aging works to secure  
6 the opportunity for older adults to live with dignity, regardless of financial circumstances—free  
7 from the worry, harm, and injustice caused by lack of health care, food, or a safe place to sleep.  
8 Using its deep expertise in Social Security, Supplemental Security Income, Medicare, and  
9 Medicaid, Justice in Aging works to strengthen the social safety net and remove the barriers that  
10 low-income seniors face in trying to access the services they need. Justice in Aging also provides  
11 technical expertise to thousands of advocates across the country on how to help low-income older  
12 adults access the programs and services they need to meet their basic needs. Justice in Aging’s  
13 advocacy centers on policies and practices that have failed older adults who are people of color,  
14 people with limited English proficiency, women, and/or LGBTQ individuals.

15 Founded in 1954 as the Western Gerontological Society, the American Society on Aging  
16 (“ASA”) is an association of diverse individuals bound by a common goal: to support the  
17 commitment and enhance the knowledge and skills of those who seek to improve the quality of  
18 life of older adults and their families. The membership of ASA is multidisciplinary and inclusive  
19 of professionals who are concerned with the physical, emotional, social, economic and spiritual  
20 aspects of aging. No other organization in the field of aging represents the diversity of settings  
21 and professional disciplines reached by ASA. ASA’s 5,000 members are practitioners,  
22 educators, administrators, policymakers, caregivers, business people, researchers, and students.  
23 ASA is the go-to source to cultivate leadership, advance knowledge and strengthen the skills of  
24 our members and others who work with and on behalf of older adults.

25 Caring Across Generations is a national movement of families, caregivers, people with  
26 disabilities and aging Americans working to transform the way we care in this country. Caring  
27 Across Generations works with state and national organizations to elevate and center the voices,  
28 strengths, and needs of people who need care and the paid and unpaid caregivers who provide

1 that care to demand and win change. By harnessing the power of online and grassroots  
2 organizing and culture change work, Caring Across Generations is shifting how our nation values  
3 caregiving and calling for policy solutions that enable all of us to live well and age with dignity.

4 Jewish Family Service of Los Angeles (“JFS”) has 165 years of experience meeting the  
5 evolving needs of our diverse and changing community. Each year, JFS’s comprehensive family  
6 of services improves the quality of life for tens of thousands of people throughout Los Angeles,  
7 regardless of age, economic status, religion, ethnicity, nationality, sexual orientation, or gender  
8 identity. JFS staff and volunteers feed families, provide Los Angeles’s aging population with  
9 life-changing care, empower and shelter victims of domestic violence and their children, treat  
10 mental illness, and offer counseling to at-risk children and their families. JFS is a leading  
11 provider of services for older adults, including Survivors of the Holocaust, providing a  
12 comprehensive array of programs including care management, family consultation, counseling,  
13 support groups, advocacy, and other culturally appropriate, multilingual services.

14 The National Asian Pacific Center on Aging (“NAPCA”) is a nonprofit organization with  
15 the mission to preserve and promote the dignity, well-being, and quality of life of Asian  
16 Americans and Pacific Islanders (“AAPI”) as they age. AAPI aging adults are a diverse group  
17 who represent over 50 ethnicities and a linguistic heritage of over 100 languages. AAPI aging  
18 adults (as a whole) enjoy higher levels of educational attainment than the general population but  
19 also experience higher levels of health disparities, economic, housing, and transportation  
20 insecurity, and lower rates of civic participation as a result of prejudice and invisibility, limited  
21 English proficiency, cultural differences, and a lack of culturally competent and linguistically  
22 appropriate services and programs. In 40 years, NAPCA has served tens of thousands of AAPI  
23 seniors and indirectly aided approximately 100,000 more to overcome their barriers toward  
24 economic security and healthy living. Each year, NAPCA continues to serve over 1,000 low-  
25 income diverse aging adults, and partners with over 400 local nonprofits throughout the country,  
26 with community service contributing more than \$1.1M of in-kind support back into their local  
27 communities.

28 For almost 70 years, the National Council on Aging (“NCOA”) has been a respected

1 national leader and trusted partner to help people aged 60+ meet the challenges of aging.  
2 NCOA's mission is to improve the lives of millions of older adults, especially those who are  
3 struggling. Through innovative community programs and services, online help, and advocacy,  
4 NCOA is partnering with nonprofit organizations, government, and business to improve the  
5 health and economic security of 10 million older adults by 2020. NCOA's Center for Benefits  
6 Access helps community-based organizations find and enroll seniors and younger adults with  
7 disabilities with limited means into benefits programs for which they are eligible, so they can  
8 remain healthy, secure, and independent. The center develops and shares tools, resources, best  
9 practices, and strategies for benefits outreach and enrollment.

10 The National Hispanic Council on Aging is a non-profit, non-partisan organization  
11 devoted to improving the lives of Hispanic older adults, their families and their caregivers. For  
12 50 years, the National Hispanic Council on Aging has been a strong voice dedicated to  
13 promoting, educating, and advocating for research, policy, and practice in the priority areas of  
14 economic security, health, housing and leadership development. To achieve its mission, the  
15 National Hispanic Council on Aging has developed a Hispanic Aging Network of community-  
16 based organizations across the continental U.S., the District of Columbia, and Puerto Rico that  
17 reaches millions of Latinos each year. The National Hispanic Council on Aging also works to  
18 ensure the Hispanic community is better understood and fairly represented in U.S. policies.

19 MAZON: A Jewish Response to Hunger is a national nonprofit organization working to  
20 end hunger among people of all faiths and backgrounds in the U.S. For over 35 years, MAZON  
21 has been a national leader in identifying and assisting underserved and vulnerable populations  
22 who struggle with food insecurity. Since 2012, MAZON's policy and legislative priorities have  
23 included a specific focus on the escalating number of seniors struggling to meet their basic food  
24 and nutritional needs. MAZON works to ensure that there is a robust government nutrition safety  
25 net that is well-funded and easily accessed by those millions of seniors who must rely on it.  
26 MAZON works nationwide with hundreds of anti-hunger organizations to provide them with  
27 strategies to address the rising number of senior clients turning to those programs, and to ensure  
28 that federal programs and policies are responsive to the nutrition needs of these seniors.

1 MAZON’s work includes a particular focus on LGBT seniors in partnership with leading  
2 advocacy groups like SAGE (Services & Advocacy for GLBT Elders) and the Williams Institute  
3 at UCLA School of Law to explore the unique barriers to food security faced by seniors who are  
4 LGBT and to craft viable actions to remove barriers they face to nutrition safety net programs.

5 PHI is a national non-profit based in the Bronx, New York, that works to transform  
6 eldercare and disability services by promoting quality direct care jobs as the foundation for  
7 quality care. For more than 25 years, PHI has established itself as the nation’s leading expert on  
8 the direct care workforce, drawing our knowledge from research, policy analysis, and hands-on  
9 work with long-term care providers, direct care workers, and their clients in cities, suburbs, and  
10 small towns across America. PHI has a long and distinguished track record of bipartisan policy  
11 action. PHI believes that the new public charge rule will hurt many skilled and compassionate  
12 immigrant direct care workers across the country, as well as the millions of people who depend  
13 on these workers to support themselves and their families. Across the country, 4.5 million home  
14 care workers and nursing assistants provide daily support to older people and people with  
15 disabilities. As the U.S. population quickly ages, direct care workers will be in greater demand—  
16 and immigrants will play a significant part in meeting this need.

17 Amici Justice in Aging, American Society on Aging, Caring Across Generations, Jewish  
18 Family Service of Los Angeles, The National Asian Pacific Center on Aging, National Council  
19 on Aging, National Hispanic Council on Aging, MAZON, and PHI (collectively, “Amici”)  
20 submit this brief to focus primarily on the harms the Inadmissibility on Public Charge Grounds  
21 final rule will have by specifically targeting older adults and their families.<sup>1</sup>

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<sup>1</sup> No party to the above-captioned action or any of their counsel authored this brief in whole or in part or contributed money that was intended to fund preparing or submitting this brief.

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**TABLE OF AUTHORITIES**

**Page(s)**

**CASES**

*Lau v. Nichols*,  
414 U.S. 563 (1974).....7

**STATUTES**

8 U.S.C. § 1152(a)(1)(A) .....7  
 8 U.S.C. § 1153(a) .....6  
 29 U.S.C. § 794.....6  
 42 U.S.C. § 2000d.....7  
 42 U.S.C. § 2000e .....7

**OTHER AUTHORITIES**

6 C.F.R. § 15.30 .....6  
*2013-2017 American Community Survey 5-Year Public Use  
 Microdata Sample (PUMS)*, United States Census Bureau  
[https://factfinder.census.gov/faces/nav/jsf/pages/searchresults.  
 xhtml?refresh=t#](https://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t#) .....8  
 AARP Public Policy Institute, *Chronic Care: A Call to Action  
 for Health Reform* (Mar. 2009), [www.aarp.org/health/medicare-  
 insurance/info-03-2009/beyond\\_50\\_hcr.html](http://www.aarp.org/health/medicare-insurance/info-03-2009/beyond_50_hcr.html).....5  
 Allison B. Orris et al., *DHS Public Charge Regulation Could  
 Drive Medicaid Coverage Losses*, Manatt (Aug. 29, 2019),  
[https://www.manatt.com/Insights/Newsletters/Manatt-on-  
 Health-Medicaid-Edition/DHS-Public-Charge-Regulation-  
 Could-Drive-Medicaid](https://www.manatt.com/Insights/Newsletters/Manatt-on-Health-Medicaid-Edition/DHS-Public-Charge-Regulation-Could-Drive-Medicaid).....10  
 Centers for Medicare & Medicaid Services, *People Dually  
 Eligible for Medicare and Medicaid Fact Sheet* (Mar. 2019),  
[www.cms.gov/Medicare-Medicaid-Coordination/Medicare-  
 and-Medicaid-Coordination/Medicare-Medicaid-Coordination-  
 Office/Downloads/MMCO\\_Factsheet.pdf](http://www.cms.gov/Medicare-Medicaid-Coordination/Medicare-and-Medicaid-Coordination/Medicare-Medicaid-Coordination-Office/Downloads/MMCO_Factsheet.pdf).....6



1 DHS, Office of Immigration Statistics, *2017 Yearbook of*  
 2 *Immigration Statistics*, Table 7. Persons Obtaining Lawful  
 3 Permanent Resident Status by Type and Detailed Class of  
 4 Admission: Fiscal Year 2017 (Oct. 2, 2018),  
[https://www.dhs.gov/immigration-statistics/yearbook/](https://www.dhs.gov/immigration-statistics/yearbook/2017/table7)  
 2017/table7.....6

5 Field Guidance on Deportability and Inadmissibility on Public  
 6 Charge Grounds, 64 Fed. Reg. 28,689 (May 26, 1999).....1

7 Immigration & Naturalization Service, Office of Policy &  
 8 Planning, *Legal Immigration, Fiscal Year 1997*, Table 1,  
[www.dhs.gov/sites/default/files/publications/INS](http://www.dhs.gov/sites/default/files/publications/INS_AnnualReport_LegalImmigration_1997_1.pdf)  
 \_AnnualReport\_LegalImmigration\_1997\_1.pdf ..... 6

9 Inadmissibility on Public Charge Grounds,  
 10 84 Fed. Reg. 41,292 (Aug. 14, 2019)..... 3, 4, 5, 7

11 Jeanne Batalova et al., *Chilling Effects: The Expected Public*  
 12 *Charge Rule and Its Impact on Legal Immigrant Families’*  
 13 *Public Benefits Use*, Migration Policy Institute (June 2018),  
[www.migrationpolicy.org/research/chilling-effects-expected-](http://www.migrationpolicy.org/research/chilling-effects-expected-public-charge-rule-impact-legal-immigrant-families)  
 14 [public-charge-rule-impact-legal-immigrant-families](http://www.migrationpolicy.org/research/chilling-effects-expected-public-charge-rule-impact-legal-immigrant-families) ..... 8

15 Jeanne Batalova, *Senior Immigrants in the United States*,  
 16 Migration Policy Institute (May 30, 2012),  
[https://www.migrationpolicy.org/article/senior-immigrants-](https://www.migrationpolicy.org/article/senior-immigrants-united-states)  
 17 [united-states](https://www.migrationpolicy.org/article/senior-immigrants-united-states) ..... 4, 7, 8

18 Karthick Ramakrishnan & Farah Ahmad, *Language Diversity*  
 19 *and English Proficiency*, Center for American Progress  
 (May 27, 2014) [https://cdn.americanprogress.org/wp-content/](https://cdn.americanprogress.org/wp-content/uploads/2014/04/A-API-LanguageAccess1.pdf)  
 20 [uploads/2014/04/A-API-LanguageAccess1.pdf](https://cdn.americanprogress.org/wp-content/uploads/2014/04/A-API-LanguageAccess1.pdf)..... 8

21 *Public Charge Proposed Rule: Potentially Chilled Population*  
 22 *Data Dashboard*, Manatt (Oct. 11, 2018),  
[https://www.manatt.com/Insights/Articles/2018/Public-Charge-](https://www.manatt.com/Insights/Articles/2018/Public-Charge-Rule-Potentially-Chilled-Population#DataDashboard)  
 23 [Rule-Potentially-Chilled-Population#DataDashboard](https://www.manatt.com/Insights/Articles/2018/Public-Charge-Rule-Potentially-Chilled-Population#DataDashboard)..... 4, 7, 8

24 Robert Espinoza, *Immigrants and the Direct Care Workforce*,  
 PHI (June 20, 2017), [https://phinational.org/resource/](https://phinational.org/resource/immigrants-and-the-direct-care-workforce/)  
 25 [immigrants-and-the-direct-care-workforce/](https://phinational.org/resource/immigrants-and-the-direct-care-workforce/) ..... 9

26 University of New Hampshire Institute on Disability/UCED,  
 27 *2017 Disability Statistics Annual Report* (2018),  
[https://disabilitycompendium.org/sites/default/files/user-](https://disabilitycompendium.org/sites/default/files/user-uploads/2017_AnnualReport_2017_FINAL.pdf)  
 28 [uploads/2017\\_AnnualReport\\_2017\\_FINAL.pdf](https://disabilitycompendium.org/sites/default/files/user-uploads/2017_AnnualReport_2017_FINAL.pdf) ..... 5

**PRELIMINARY STATEMENT**

1  
2 For well over a century, the public charge test has been a part of federal immigration law  
3 in determining inadmissibility into the United States. Under this test, immigration officers have  
4 been authorized to identify immigrants who are “likely to become primarily dependent” on the  
5 government for subsistence by receiving public cash assistance—*e.g.*, Supplemental Security  
6 Income (“SSI”), Temporary Assistance for Needy Families (“TANF”) and comparable state and  
7 local cash assistance programs, and government-funded institutional long-term care (including  
8 through Medicaid)—and deny them entry into the United States. But immigration officers have  
9 never been authorized to consider noncash benefits—*e.g.*, publicly-funded health care, nutrition  
10 assistance, public housing programs—an arbitrary income threshold, or heavily weigh certain  
11 factors greater than others, as part of the test.

12 In fact, longstanding field guidance issued by the Immigration and Naturalization  
13 Services made it clear that a public charge is an individual who is likely to become “primarily  
14 dependent on the government for subsistence, as demonstrated by either (i) the receipt of *public*  
15 *cash assistance* for income maintenance or (ii) institutionalization for long-term care at  
16 government expense.” Field Guidance on Deportability and Inadmissibility on Public Charge  
17 Grounds, 64 Fed. Reg. 28,689, 28,689 (May 26, 1999) (emphasis added). It did not, however,  
18 permit immigration officers to consider publicly-funded health care, such as Medicaid (except for  
19 long-term institutional care), nutrition assistance, such as Supplemental Nutrition Assistance  
20 Program (“SNAP”), or public housing programs because “participation in such non-cash  
21 programs is not evidence of poverty or dependence.” *Id.* at 28,692–93.

22 Shoving aside existing law, the U.S. Department of Homeland Security (the “DHS”)  
23 published the Inadmissibility on Public Charge Grounds final rule (the “Final Rule”), which  
24 erects new—and in numerous cases insurmountable—barriers to entry into the United States for  
25 older immigrants. The Final Rule makes sweeping changes: it abolishes the “primarily  
26 dependent” test and provides that a public charge is an immigrant who receives one or more  
27 public benefits for more than 12 months in the aggregate within any 36-month period (such that,  
28 for instance, receipt of two benefits in one month counts as two months), establishes an arbitrary

1 minimum income threshold of 125% of the federal poverty level so as not to be considered a  
2 public charge, and introduces a weighting system that weighs factors in ways that directly  
3 disadvantage older immigrants. It also adds a multitude of public benefits that have never before  
4 been considered in determining whether an immigrant is likely to be a public charge—many of  
5 which are critical to the livelihood of older adults—and abandons settled law that only cash  
6 assistance for income maintenance and government-funded long-term institutional care be  
7 considered (and even then only when it represents the majority of an immigrant’s support).

8 These radical alterations unlawfully target older immigrants and their families and will  
9 cause serious and irreparable harm to them as well as their communities and health care systems.  
10 In fact, as discussed below, the Final Rule will make it nearly impossible for older immigrants to  
11 pass the public charge test. Accordingly, for the reasons stated herein, as well as those advanced  
12 by merits counsel, Amici respectfully encourage the Court to grant Plaintiffs’ motion for a  
13 preliminary injunction.

14 **THE FINAL RULE WILL MAKE IT IMPOSSIBLE FOR OLDER**  
15 **IMMIGRANTS TO PASS THE PUBLIC CHARGE TEST AND WILL**  
16 **IRREPARABLY HARM OLDER ADULTS AND THEIR FAMILIES.**

17 As discussed below, the Final Rule creates a multitude of ways for individuals, and  
18 particularly low-income older adults, to fail the public charge test, and very few ways to  
19 overcome it. In particular—(1) the Final Rule will make it impossible for older immigrants to  
20 pass the public charge test by expanding the public benefits to be considered, adding biased and  
21 heavily weighted factors, and adding an arbitrary income test; (2) the Final Rule targets older  
22 immigrants and, in particular, those with disabilities or chronic health conditions; (3) the Final  
23 Rule will prevent United States citizens from welcoming their noncitizen parents and harms older  
24 adults who rely on their families for support; (4) the Final Rule disfavors immigrants who are not  
25 proficient in English notwithstanding the unlawfulness of such a rule and that a majority of older  
26 immigrants have limited English proficiency; (5) the Final Rule will disproportionately harm  
27 older immigrants of color; (6) the Final Rule threatens the wellbeing of caregivers, leaving many  
28 older adults and people with disabilities who are United States citizens without access to the

1 caregiving they need; and (7) the Final Rule will harm older immigrants and their families by  
2 discouraging enrollment in programs that improve health, food security, nutrition, and economic  
3 security.

4 **1. The Final Rule will make it impossible for older immigrants to pass the public**  
5 **charge test by expanding the public benefits to be considered, and adding biased heavily**  
6 **weighted factors and an arbitrary income test.** The Final Rule dramatically expands the  
7 public benefits to be considered in making a public charge determination by adding many forms  
8 of noncash public assistance, *e.g.*, Medicaid (with certain exceptions), SNAP, and public housing  
9 and rental assistance. *See* Final Rule, 84 Fed. Reg. 41,292 (Aug. 14, 2019). This expansion of  
10 the public benefits to be considered, particularly the inclusion of Medicaid, perversely targets  
11 older adults: the use of public benefits is heavily weighted negatively and, when considered with  
12 the other factors, renders it virtually impossible for older immigrants to pass the public charge  
13 test. Medicaid is a lifeline for many older adults to fill in the significant gaps in Medicare  
14 coverage, including access to oral health, transportation, and home and community-based  
15 services (“HCBS”). Medicaid HCBS, like personal care services and adult day health (both of  
16 which are not covered under Medicare) are critical in allowing older adults to stay healthy and  
17 maintain vibrant lives with their families and in the community, often delaying and sometimes  
18 preventing admission to nursing facilities. Similarly, older adults, particularly those with limited  
19 means, rely on Medicaid-funded Medicare Savings Programs (“MSPs”) to afford their Medicare  
20 premiums and cost-sharing, and some MSPs even protect individuals from improper billing by  
21 their Medicare providers. MSPs are only available to people who qualify for Medicare, which  
22 means that they or their spouses have the requisite work history to access this benefit. It defies  
23 logic and reason to penalize individuals who, by definition, have contributed to society for using  
24 these benefits to which they are legally entitled.

25 The Final Rule also introduces a weighting system under which some factors receive  
26 greater significance than others in the public charge determination. *See* Final Rule, 84 Fed. Reg.  
27 at 41,504. Being over 62 is a negative factor, and older immigrants are not likely to benefit from  
28 the heavily weighted *positive* factors, which include having household income, assets, or

1 resources, and support of at least 250% of the federal poverty level, being currently employed in  
2 an industry with an annual income of at least 250% of the federal poverty level for the  
3 immigrant’s household size, or has private health insurance. It also weighs having an income of  
4 less than 125% of the federal poverty level as a negative factor, in essence applying an arbitrary  
5 and unprecedented income test in the evaluation of whether an immigrant will be a public charge.  
6 Over half of noncitizens age 62 and older live in low or moderate income households. *See Public*  
7 *Charge Proposed Rule: Potentially Chilled Population Data Dashboard*, Manatt (Oct. 11, 2018),  
8 [https://www.manatt.com/Insights/Articles/2018/Public-Charge-Rule-Potentially-Chilled-](https://www.manatt.com/Insights/Articles/2018/Public-Charge-Rule-Potentially-Chilled-Population#DataDashboard)  
9 [Population#DataDashboard](https://www.manatt.com/Insights/Articles/2018/Public-Charge-Rule-Potentially-Chilled-Population#DataDashboard). In fact, nearly 600,000 immigrants over age 61 have household  
10 incomes below 125% of the federal poverty level, and over 1.1 million have household incomes  
11 below 250% of the federal poverty level. *See id.* Under the Final Rule, these immigrants will  
12 have no “heavily weighed” positive factor to offset the fact that their age and income are  
13 considered negative factors.

14 The Final Rule’s arbitrary income test discredits even full-time work at low wages—work  
15 performed by many immigrant older adults. *See* Final Rule, 84 Fed. Reg. at 41,502-04. Five  
16 million immigrants ages 65 and older, *see* Jeanne Batalova, *Senior Immigrants in the United*  
17 *States*, Migration Policy Institute (May 30, 2012),  
18 <https://www.migrationpolicy.org/article/senior-immigrants-united-states>, are likely to have  
19 supported their families, have contributed to our nation’s economy by, for example, paying taxes  
20 and contributing to Social Security, and have been integrated into the fabric of our country. Yet,  
21 under the Final Rule, they will be viewed as having failed to contribute to society.

22 The Final Rule also considers whether someone is a “primary caregiver”—meaning the  
23 person “has significant responsibility for actively caring for and managing the well-being of a  
24 child or an elderly, ill, or disabled person in [their] household.” *See* Final Rule, 84 Fed. Reg. at  
25 41,502, 41,504. But the DHS’s recognition of caregiving as a valuable, creditable contribution is  
26 meaningless for older immigrants who face so many other factors expressly weighed against  
27 them by virtue of who they are.

28 In short, the Final Rule significantly expands the definition of public benefits, creates an

1 arbitrary income test that most low-wage workers cannot meet, and assigns negative weight to  
2 other factors that are associated with having low-income, including, for example, if the  
3 immigrant: (i) is over the minimum early retirement age for Social Security (currently age 62);  
4 (ii) has a household size that makes the immigrant more likely than not to become a public  
5 charge; or (iii) lacks sufficient household assets to cover reasonably foreseeable medical costs  
6 related to a medical condition. *See* 84 Fed. Reg. at 41,502–04. The Final Rule will thus inhibit  
7 immigrants who are not wealthy from being self-sufficient and make it nearly impossible for  
8 older immigrants to pass the public charge test. In fact, under the Final Rule, possessing any one  
9 negative factor and, in particular, one heavily weighted negative factor, will likely be dispositive  
10 in denying an immigrant admission to the United States.

11 **2. The Final Rule specifically targets older immigrants, particularly those with**  
12 **disabilities and chronic health conditions.** Under the Final Rule’s weighting system, being age  
13 62 or older or having a treatable medical condition will be held against immigrants seeking  
14 permanent legal status or lawful entry into the United States. *See* 84 Fed. Reg. at 41,504. An  
15 older immigrant, in fact, is more likely to be detrimentally impacted by the heavily weighted  
16 *negative* factors—such as having been diagnosed with a medical condition that is likely to  
17 require extensive medical treatment or that will interfere with the immigrant’s ability to provide  
18 for him- or herself. The negative factors disproportionately target older immigrants because the  
19 vast majority of adults over age 50 have at least one chronic health condition and over a third of  
20 adults age 65 and older have a disability. *See* AARP Public Policy Institute, *Chronic Care: A*  
21 *Call to Action for Health Reform*, 11–12, 16 (Mar. 2009), [www.aarp.org/health/medicare-](http://www.aarp.org/health/medicare-insurance/info-03-2009/beyond_50_hcr.html)  
22 [insurance/info-03-2009/beyond\\_50\\_hcr.html](http://www.aarp.org/health/medicare-insurance/info-03-2009/beyond_50_hcr.html); University of New Hampshire Institute on  
23 Disability/UCED, *2017 Disability Statistics Annual Report* (2018),  
24 [https://disabilitycompendium.org/sites/default/files/user-](https://disabilitycompendium.org/sites/default/files/user-uploads/2017_AnnualReport_2017_FINAL.pdf)  
25 [uploads/2017\\_AnnualReport\\_2017\\_FINAL.pdf](https://disabilitycompendium.org/sites/default/files/user-uploads/2017_AnnualReport_2017_FINAL.pdf). The Final Rule is so broad that virtually every  
26 older immigrant with any type of significant disability or health condition, as well as many  
27 immigrants with less significant disabilities, will have their disability or other chronic health  
28 conditions count against them in the public charge test.

1 Furthermore, the Final Rule’s discrimination based on one’s disability violates federal  
2 antidiscrimination laws, including the Rehabilitation Act of 1973, which prohibits any program  
3 or activity receiving federal financial assistance, including those conducted by the DHS, from  
4 excluding, denying benefits to, or discriminating against persons with disabilities. 29 U.S.C.  
5 § 794; 6 C.F.R. § 15.30. It also unfairly tips the balance of factors against older adults dually  
6 eligible for Medicare and Medicaid, who already have the receipt of Medicaid benefits held  
7 against them. 41% of dually eligible individuals have at least one mental health diagnosis, 49%  
8 receive long-term care services and supports, and 60% have multiple chronic conditions. *See*  
9 Centers for Medicare & Medicaid Services, *People Dually Eligible for Medicare and Medicaid*  
10 *Fact Sheet* (Mar. 2019), [www.cms.gov/Medicare-Medicaid-Coordination/Medicare-and-](http://www.cms.gov/Medicare-Medicaid-Coordination/Medicare-and-Medicaid-Coordination/Medicare-Medicaid-Coordination-Office/Downloads/MMCO_Factsheet.pdf)  
11 [Medicaid-Coordination/Medicare-Medicaid-Coordination-](http://www.cms.gov/Medicare-Medicaid-Coordination/Medicare-Medicaid-Coordination-Office/Downloads/MMCO_Factsheet.pdf)  
12 [Office/Downloads/MMCO\\_Factsheet.pdf](http://www.cms.gov/Medicare-Medicaid-Coordination/Medicare-Medicaid-Coordination-Office/Downloads/MMCO_Factsheet.pdf).

13 **3. The Final Rule will prevent United States citizens from welcoming their**  
14 **noncitizen parents and will harm older adults who rely on their families for support.**

15 United States citizens have long been able to welcome their parents because immigration law  
16 historically has favored family unification. *See, e.g.*, 8 U.S.C. § 1153(a) (“Preference allocation  
17 for family-sponsored immigrants.”). The number of noncitizen parents of United States citizens  
18 who have been admitted as lawful permanent residents nearly tripled between 1994 and 2017 and  
19 now accounts for almost 15% of all admissions and almost 30% of family-based admissions.

20 *Compare* DHS, Office of Immigration Statistics, *2017 Yearbook of Immigration Statistics*, Table  
21 7. Persons Obtaining Lawful Permanent Resident Status by Type and Detailed Class of  
22 Admission: Fiscal Year 2017 (Oct. 2, 2018), [https://www.dhs.gov/immigration-](https://www.dhs.gov/immigration-statistics/yearbook/2017/table7)  
23 [statistics/yearbook/2017/table7](https://www.dhs.gov/immigration-statistics/yearbook/2017/table7), *with* Immigration & Naturalization Service, Office of Policy &  
24 Planning, *Legal Immigration, Fiscal Year 1997*, Table 1,  
25 [www.dhs.gov/sites/default/files/publications/INS\\_AnnualReport\\_LegalImmigration\\_1997\\_1.pdf](http://www.dhs.gov/sites/default/files/publications/INS_AnnualReport_LegalImmigration_1997_1.pdf).

26 Yet, the Final Rule penalizes families for living together and disincentivizes children from  
27 supporting their noncitizen parents or grandparents because adding a household member  
28 necessitates an increase in the household income required to avoid being deemed a public charge.

1 *See* 84 Fed. Reg. at 41,501-04; *see also* *Public Charge Proposed Rule: Potentially Chilled*  
2 *Population Data Dashboard*, Manatt (Oct. 11, 2018),  
3 [https://www.manatt.com/Insights/Articles/2018/Public-Charge-Rule-Potentially-Chilled-](https://www.manatt.com/Insights/Articles/2018/Public-Charge-Rule-Potentially-Chilled-Population#DataDashboard)  
4 [Population#DataDashboard](https://www.manatt.com/Insights/Articles/2018/Public-Charge-Rule-Potentially-Chilled-Population#DataDashboard) (explaining that over 750,000 immigrants over 61 and their families  
5 have household incomes below 125% of the federal poverty level, and over 1.6 million have  
6 household incomes below 250% of the federal poverty level). The Final Rule will prevent many  
7 United States citizens from welcoming noncitizen parents into the country even after they signed  
8 a commitment to support them.

9 **4. The Final Rule targets immigrants who do not speak English well or at all,**  
10 **which is particularly harmful to older adults because a majority of older immigrants have**  
11 **limited English proficiency.** The United States does not have a national language. As such,  
12 United States immigration law does not include English proficiency as a factor and, in fact,  
13 affirmatively prohibits discrimination based on nationality. *See* 8 U.S.C. § 1152(a)(1)(A) (“no  
14 person shall receive any preference or priority or be discriminated against in the issuance of an  
15 immigrant visa because of the person’s race, sex, nationality, place of birth, or place of  
16 residence”). Furthermore, federal civil rights laws protect limited English proficient persons  
17 from discrimination on the basis of English proficiency. *See, e.g.*, 42 U.S.C. § 2000d  
18 (prohibiting discrimination on the basis of race, color, and national origin in programs and  
19 activities receiving federal financial assistance, including the DHS); 42 U.S.C. § 2000e  
20 (prohibiting discrimination in employment on the basis of race, color, national origin, sex, or  
21 religion); *see also* *Lau v. Nichols*, 414 U.S. 563 (1974) (holding lack of supplemental language  
22 instruction for students with limited English proficiency violated the Civil Rights Act of 1964).

23 Nevertheless, the Final Rule arbitrarily forces English proficiency under the heading of  
24 “education and skills” and considers it as part of the public charge test. *See* 84 Fed. Reg. at  
25 41,503-04. The impact on older immigrants is readily apparent, since noncitizen parents of  
26 United States citizens are often not proficient in English. *See* Jeanne Batalova, *Senior*  
27 *Immigrants in the United States*, Migration Policy Institute (May 30, 2012),  
28 [www.migrationpolicy.org/article/senior-immigrants-united-states#5](http://www.migrationpolicy.org/article/senior-immigrants-united-states#5). For instance, approximately



1 56%, or about 2.8 million, of the 5 million older immigrants in 2010 reported speaking English  
 2 less than “very well.” *See id.* The percentage is even higher among Asian American older  
 3 adults, 80% of whom are immigrants and nearly 60% of whom have limited English proficiency.  
 4 *See The Emerging Needs of Asian American and Pacific Islander Older Adults*, National Asian  
 5 Pacific Center on Aging (Feb. 2017), [napca.org/wp-content/uploads/2017/10/NAPCA-The-](https://napca.org/wp-content/uploads/2017/10/NAPCA-The-Emerging-Needs-of-AAPI-Older-Adults_Final-Report_Feb2017.pdf)  
 6 [Emerging-Needs-of-AAPI-Older-Adults\\_Final-Report\\_Feb2017.pdf](https://napca.org/wp-content/uploads/2017/10/NAPCA-The-Emerging-Needs-of-AAPI-Older-Adults_Final-Report_Feb2017.pdf); *see also* Karthick  
 7 Ramakrishnan & Farah Ahmad, *Language Diversity and English Proficiency*, Center for  
 8 American Progress (May 27, 2014) [https://cdn.americanprogress.org/wp-](https://cdn.americanprogress.org/wp-content/uploads/2014/04/AAPI-LanguageAccess1.pdf)  
 9 [content/uploads/2014/04/AAPI-LanguageAccess1.pdf](https://cdn.americanprogress.org/wp-content/uploads/2014/04/AAPI-LanguageAccess1.pdf) (explaining that over 75% of the “Asian  
 10 alone” population speaks a language other than English at home). By giving de-facto preference  
 11 to individuals from English-speaking nations, the Final Rule undermines the careful balancing  
 12 Congress created to move the country away from the racist quota system.<sup>2</sup>

13 **5. The Final Rule will disproportionately harm older immigrants of color.** While  
 14 people of color account for approximately 36% of the United States population, they represent  
 15 90% of the 26 million people who are targeted by the Final Rule. *See 2013-2017 American*  
 16 *Community Survey 5-Year Public Use Microdata Sample (PUMS)*, United States Census Bureau  
 17 <https://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t#>; *see also Public*  
 18 *Charge Proposed Rule: Potentially Chilled Population Data Dashboard*, Manatt (Oct. 11, 2018),  
 19 [https://www.manatt.com/Insights/Articles/2018/Public-Charge-Rule-Potentially-Chilled-](https://www.manatt.com/Insights/Articles/2018/Public-Charge-Rule-Potentially-Chilled-Population#DataDashboard)  
 20 [Population#DataDashboard](https://www.manatt.com/Insights/Articles/2018/Public-Charge-Rule-Potentially-Chilled-Population#DataDashboard); Jeanne Batalova et al., *Chilling Effects: The Expected Public*  
 21 *Charge Rule and Its Impact on Legal Immigrant Families’ Public Benefits Use*, Migration Policy  
 22 Institute (June 2018), [www.migrationpolicy.org/research/chilling-effects-expected-public-](http://www.migrationpolicy.org/research/chilling-effects-expected-public-charge-rule-impact-legal-immigrant-families)  
 23 [charge-rule-impact-legal-immigrant-families](http://www.migrationpolicy.org/research/chilling-effects-expected-public-charge-rule-impact-legal-immigrant-families). These statistics strongly suggest that fewer

24 \_\_\_\_\_  
 25 <sup>2</sup> The Immigration Act of 1965 abolished quotas based on national origin and immigrants were selected based on  
 26 individual merit rather than race or national origin. *See* President Lyndon B. Johnson, Remarks at the Signing of  
 27 the Immigration Bill Liberty Island, New York (Oct. 3, 1965) (“This bill says simply that from this day forth  
 28 those wishing to immigrate to America shall be admitted on the basis of their skills and their close  
 relationship to those already here. . . . The fairness of this standard is so self-evident that we may well  
 wonder that it has not always been applied. Yet the fact is that for over four decades the immigration policy  
 of the United States has been twisted and has been distorted by the harsh injustice of the national origins  
 quota system . . . . Today, with my signature, this system is abolished.”).

1 immigrants of color, including older adults, will be deemed admissible to the United States or  
2 eligible for green cards under the Final Rule. The Final Rule's disproportionate impact on  
3 communities of color provides additional evidence of the radical effect it will have in reshaping  
4 the country's population going forward. It will reduce the diversity of immigration to the United  
5 States and increase separation among immigrant families of color, many of whom include older  
6 adults. Health and economic disparities will also increase among older immigrants of color due  
7 to the Final Rule's targeting of benefits that these communities disproportionately rely on.

8 **6. The Final Rule threatens the wellbeing of hundreds of thousands older**  
9 **immigrant caregivers.** An estimated one million immigrants work providing direct care  
10 services to older adults and people with disabilities, supplying critical assistance to millions of  
11 people who need help with dressing, bathing, eating, and other daily tasks. *See* Robert Espinoza,  
12 *Immigrants and the Direct Care Workforce*, PHI (June 20, 2017),  
13 <https://phinational.org/resource/immigrants-and-the-direct-care-workforce/>. Nearly 33% of  
14 immigrant caregivers are themselves over 55 years of age. *See id.* at 4. Because caregiving jobs  
15 tend to be part-time and low-wage, many direct care workers cannot meet the Final Rule's  
16 income threshold and also utilize public benefits programs to support themselves and their  
17 families. In fact, PHI's research shows that nearly 50% of immigrant direct care workers live at  
18 or below 200% of the federal poverty level, and 45% rely on programs such as SNAP and  
19 Medicaid. The vast majority of noncitizen direct care workers who access public benefits are  
20 women (88%), 46% are Latino, and 64% have a high school education or less. Not only will the  
21 Final Rule prevent many direct care workers from immigrating or accessing a path to citizenship,  
22 but by adding SNAP and Medicaid to the public charge determination, the Final Rule will chill  
23 participation in these programs and harm not just the direct care workers themselves, but also the  
24 older adults for whom they care.

25 **7. The Final Rule will harm older immigrants and their families by discouraging**  
26 **enrollment in programs that improve health, food security, nutrition, and economic**  
27 **security.** The Final Rule will impact older adults living in immigrant families in the United  
28 States who may stop accessing services they need, and that their own tax dollars support, out of

1 fear of being penalized, and that will in turn increase poverty, hunger, ill health, and housing  
2 insecurity. Similarly, if immigrant families are afraid of being penalized for accessing nutrition  
3 assistance programs, older adults will be food insecure and at risk of malnutrition, which can  
4 cause or exacerbate other health conditions and unnecessarily burden the healthcare system.  
5 And, if immigrant families forgo benefits for fear of being penalized for seeking housing  
6 assistance, older adults with limited, fixed incomes will have fewer resources to spend on other  
7 basic needs, including food, medicine, transportation, and clothing.

8         These chilling effects have already been documented in immigrant communities as a  
9 result of the proposed rule published in October 2018. In fact, a survey of approximately 2,000  
10 adults in immigrant families, found that “about 13.7% of respondents reported that they or a  
11 family member did not participate in a noncash government program such as Medicaid/CHIP,  
12 SNAP, or housing subsidies in 2018 for fear of risking the ability to obtain a green card.” *See*  
13 Allison B. Orris et al., *DHS Public Charge Regulation Could Drive Medicaid Coverage Losses*,  
14 Manatt (Aug. 29, 2019), [https://www.manatt.com/Insights/Newsletters/Manatt-on-Health-](https://www.manatt.com/Insights/Newsletters/Manatt-on-Health-Medicaid-Edition/DHS-Public-Charge-Regulation-Could-Drive-Medicaid)  
15 [Medicaid-Edition/DHS-Public-Charge-Regulation-Could-Drive-Medicaid](https://www.manatt.com/Insights/Newsletters/Manatt-on-Health-Medicaid-Edition/DHS-Public-Charge-Regulation-Could-Drive-Medicaid). This trend was higher  
16 (20.7%) for adults in low-income families. *See id.* Amici have heard from service providers who  
17 serve older adults that older immigrants have stopped accessing these benefits as well due to fear  
18 of negative consequences for themselves or their families. For instance, NCOA surveyed  
19 agencies nationwide such as senior centers, State Health Insurance Assistance Programs, Benefits  
20 Enrollment Centers, and SNAP grantees. Forty-seven percent of responding organizations  
21 indicated they had noticed a chilling effect, and 45% had clients ask about dis-enrolling from  
22 benefits or refusing services after the rule change was proposed.

23         Looking ahead, the impact of the Final Rule will be significant for the estimated 23  
24 million noncitizens and citizens in immigrant families who use public benefits today. Without  
25 ongoing coverage and assistance from important programs like Medicaid, these older adults will  
26 likely exacerbate existing health conditions and develop additional serious health care conditions,  
27 driving up the cost of care and creating a new uncompensated care burden on society. The well-  
28 justified fear created by the Final Rule will extend far beyond any individual, and the widespread

1 chilling effect that causes families to withdraw from benefits due to that fear is already evident as  
2 a result of publicity surrounding the proposed rule and now the Final Rule.

3 **CONCLUSION**

4 In short, the Final Rule will have significant negative consequences for older immigrants  
5 and their families and will cause them irreparable harm by erecting barriers to entry into the  
6 United States in ways that have never before been permitted and specifically target older  
7 immigrants. For all of the reasons stated herein and those set for in Plaintiffs' submissions and  
8 the submissions of other *amici*, Amici encourage the Court to grant the requested preliminary  
9 injunction.

10 Dated: September 9, 2019

11 Respectfully submitted,

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**FILER’S ATTESTATION**

Pursuant to Civil L.R. 5-1(i)(3), regarding signatures, I, Christina Maria Assi, attest that concurrence in the filing of this document has been obtained.

/s/ Christina Maria Assi  
Christina Maria Assi