UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MAKE THE ROAD NEW YORK, AFRICAN SERVICES COMMITTEE, ASIAN AMERICAN FEDERATION, CATHOLIC CHARITIES COMMUNITY SERVICES, and CATHOLIC LEGAL IMMIGRATION NETWORK, INC., *Plaintiffs,* v. KEN CUCCINELLI, in his official capacity as Acting Director of United States Citizenship and Immigration Services; UNITED STATES CITIZENSHIP & IMMIGRATION SERVICES; KEVIN K. McALEENAN, in his official capacity as Acting Secretary of Homeland Security; and UNITED STATES DEPARTMENT OF HOMELAND SECURITY, *Defendants.*	1:19-07993 (GBD)

[PROPOSED] BRIEF FOR *AMICI CURIAE* OF THE FISCAL POLICY INSTITUTE, ET AL. IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

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I. INTEREST OF AMICI CURIAE

Amicus curiae Fiscal Policy Institute ("FPI") is an independent, nonpartisan, nonprofit research institute that regularly analyzes New York State budget and economic issues, and studies immigration nationwide. FPI regularly publishes economic analyses, like the one described herein, on state and national fiscal policies, based on quantitative models developed by FPI's researchers and informed by contemporary economic theory. FPI's immigration-based research is informed by an expert advisory panel that includes Ray Marshall, former U.S. Secretary of Labor, Jared Bernstein, former chief economist to Vice President Joe Biden, and Gregory DeFrietas, Professor of Economics and Director of the Labor Studies Program at Hofstra University.[1]

Amicus curiae Presidents' Alliance on Higher Education and Immigration ("Presidents' Alliance") is a nonpartisan, nonprofit organization comprised of over 430 presidents and chancellors of public and private colleges and universities, serving over five million students in 41 states, the District of Columbia, and Puerto Rico. Presidents' Alliance is dedicated to analyzing and understanding how immigration policies and practices impact students, campuses and communities. Presidents' Alliance encourages information-sharing among its members to identify best practices to support higher-education for immigrant and international students.[2]

On August 14, 2019, the Trump administration changed the longstanding immigration "public charge" rule in two significant respects. *See Inadmissibility on Public Charge Grounds*, 84 Fed. Reg. 41,292 (Aug. 14, 2019) (the "New Rule"). The New Rule now, for the first time,

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[1] *See* FPI's Immigrant Research Advisory Panel, FISCAL POL'Y INST., (Aug. 2015), http://fiscalpolicy.org/wp-content/uploads/2018/05/Updated-Expert-Advisory-Panel-list.pdf. Additional information on FPI can be found at their website: http://fiscalpolicy.org/about-fpi.
[2] Additional information on Presidents' Alliance can be found at their website: https://www.presidentsimmigrationalliance.org/.

greatly broadens the number of government programs that may be considered, and the use of those program, when determining whether an immigrant will become a "public charge" and thus ineligible for entry into the United State or for an adjustment of their status to Permanent Resident. Immigration officers will now consider use of such non-cash aid benefit programs as Medicaid for non-pregnant adults, the Supplemental Nutrition Assistance Program ("SNAP"), and housing programs when determining whether an applicant will become a "public charge." The New Rule also, for the first time, penalizes individuals simply for being not being affluent, in that having an income less than 125 percent of the Federal Poverty Level Guidelines (currently $15,613 for an individual or $32,188 for a family of four) is weighed negatively, and could itself lead to a denial of entry or adjustment of status.

Based on our expertise and longstanding work in the field of immigration, and the analyses presented here, we believe the New Rule will have serious negative economic consequences in all 50 states and the District of Columbia, and submit these views for the Court's consideration in assessing Plaintiffs' Motion for Preliminary Injunction. *Amici*[3] respectfully request that the Court grant the Motion for Preliminary Injunction, so that these and other issues can be appropriately developed and presented to the Court in full through this litigation, prior to any change in the status quo that *Amici* believe will lead to profound and negative consequences.

II. INTRODUCTION

In *Amici*'s view, the New Rule is bad policy and fundamentally flawed, from an overarching economic perspective, in at least the following three major respects.

[3] The analyses that form the basis of this submission were developed by FPI and Presidents Alliance. They are joined in this submission by the following organizations: Economic Progress Institute, Oasis Legal Services, Community Action Marin, Child Care Law Center, Boundless Immigration, National Center for Law and Economic Justice, Virginia Interfaith Center for Public Policy, Kids Forward, and California Immigrant Policy Center.

First, the New Rule's expanded definition of "public charge" and introduction of income criteria in the "totality of the circumstances" test amounts in practice to a new "low income" rejection. These changes are based on false assumptions about the contributions of immigrants to the U.S. workforce, and will exclude or penalize many individuals who are likely to ultimately have a net *positive*, rather than negative, impact on the American economy. U.S.-born citizens and immigrant non-citizens use public assistance, including non-cash aid support, at nearly an identical rate, meaning immigrants are not a unique or undue draw on the country's public benefits programs. Moreover, immigrants tend to experience upward economic mobility as their time in the U.S. increases, as demonstrated by rising median family income and entrepreneur statistics over time. A "public charge" test that penalizes immigrants who have not *already* achieved economic success ignores these realities and denies the country the benefit of individuals who are likely to become productive members of the workforce and strong contributors to the U.S. economy.

Second, the New Rule's punitive mechanisms will cause individuals, even those not directly impacted by the New Rule, to become fearful of participating in public benefits programs out of concern that they might jeopardize their or their family members' immigration status—an impact referred to throughout this submission as the New Rule's "Chilling Effect." FPI designed an economic model to quantify the impact of this Chilling Effect, and found that the New Rule can be expected to result in substantial disenrollment and ultimate drop-off from federal programs, which in turn would cause a **$24 billion aggregated loss to the local economies of the 50 states plus the District of Columbia**, and a **$3.6 billion loss to the New York economy**. FPI further estimates that the New Rule will result in **164,000 lost jobs nationwide** and **25,000 jobs in New York**.

Third, due to confusion, fear, and economic hardship, the New Rule is also expected to discourage immigrants and their families from participating in postsecondary educational benefit programs and postsecondary education more broadly. Based on its unique, campus-level view and understanding of the nation's colleges and universities, Presidents' Alliance believes that as a result of the New Rule's Chilling Effect, many immigrant students on the hundreds of college and university campuses of the Alliance's members and other campuses across the country are likely to disenroll from a variety of public benefits and programs that support their access to and retention in post-secondary education. In turn, diminished enrollment in higher-education will result in adverse economic impact on both higher education institutions and to the U.S. economy as a whole from a less-skilled American labor force.

We discuss each of these issues in detail below.

III. DISCUSSION

A. The New Rule's Expanded Definition Of "Public Charge" Fails To Account For Immigrants' Contributions To The U.S. Economy And The Upward Economic Mobility Of Immigrants

The changes instituted by the New Rule—namely, giving vastly expanded importance to public assistance use and implementing new income criteria—are likely to exclude large numbers of immigrants[4] who would ultimately have a positive impact on the American economy. Moreover, the longer immigrants are in the U.S. the greater their economic outcome and contributions to the U.S. economy. A public charge rule that denies immigrants entry to the United States or Permanent Resident status based on their current income levels is likely to have the unintended consequence of hampering the country's economic growth.

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[4] Throughout this brief, we use the term "immigrants" to refer to both immigrants who are applying for Adjustment of Status, Nonimmigrant Visas, and Change of Status—and who are thus subject to the New Rule, and foreign-born individuals more broadly.

Under the pre-existing public charge rule immigration officers evaluated the overall circumstances to determine whether immigrants could support themselves rather than becoming "primarily" dependent upon the government.[5] Under long-standing policy, this meant finding that the applicant would not rely primarily on the government for support, as demonstrated by participation in cash-aid programs such as Temporary Assistance for Needy Families ("TANF"), Supplemental Security Income ("SSI"), or General Assistance, or by being primarily dependent on long-term institutional care at the government's expense.[6] Under the New Rule, however, immigration officers must consider *any* use of cash benefits, not only a primary dependency on them, and must also consider use of certain non-cash aid benefits programs like Medicaid, SNAP, and several housing assistance programs in assessing whether an individual might become a public charge. The New Rule also for the first time establishes specific income criteria, such that having an income less than 125 percent of the Federal Poverty Level Guidelines[7] (currently $15,613 for an individual or $32,188 for a family of four)[8] would be weighed negatively, and could lead to a denial. The New Rule is therefore structured to make judgments regarding an individual's future likelihood of becoming a public charge based on current or past use of benefits and current income, even though statistics confirm that the majority of immigrants experience upward economic mobility the longer they are in the United States, making it impossible to judge future success benefits usage or current income.

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[5] Immigration and Nationality Act, 8 U.S.C. § 1182 (2019); *Public Charge*, U.S. CITIZENSHIP & IMMIGRATION SERVS., https://www.uscis.gov/greencard/public-charge (last updated Aug. 12, 2019).

[6] *Field Guidance on Deportability and Inadmissibility on Public Charge Grounds*, 64 Fed. Reg. 28689 (Mar. 26, 1999).

[7] *Inadmissibility on Public Charge Grounds*, 84 Fed. Reg. at 41,502-04 (Aug. 14, 2019) (to be codified at 8. C.F.R. § 212.22(b)(4)).

[8] *Poverty Guidelines, All States (except Alaska and Hawaii)*, U.S. DEPT. OF HEALTH & HUMAN SERVS. (2019).

If the changes instituted by the New Rule are premised on the concern that non-citizen immigrants are more likely than U.S.-born citizens to make use of government support programs, it has no basis in fact: non-citizens participate in the public benefits programs named in the Rule at nearly the same rate as U.S.-born citizens.[9] Moreover, a non-citizen immigrant's current income is a poor predictor of that individual's potential for future success. Immigrants do significantly better the longer they are in the U.S., thus the unsupported assumption that the country will benefit from the exclusion of immigrants who currently participate in benefits programs or whose current financial circumstances do not meet certain thresholds is fundamentally flawed. The fact that an immigrant's family income is low today is not reliable evidence from which one can conclude that it will be low in another five or 10 years. Immigrants who have been in the United States for less than five years have a median family income of $52,200, those who have been here five to 10 years have an income of $57,000, and those here more than 10 years have an income of $63,600 (which is nearly as high as the $66,300 family income of U.S.-born families).[10] These medians hover just below and above the income criteria that the New Rule sets as a positive weight in the totality of circumstances ruling (250 percent of the poverty level, or $64,376 for a family of four in 2019)— indicating that many

[9] Relying on the U.S. Census Bureau's Current Population Survey ("CPS") as adjusted by the TRIM model, which accounts for underreporting of use of public benefits, FPI estimated the number of non-citizen immigrants and U.S.-born citizens who personally received one or more of the benefits named in the New Rule for which CPS data are available: SNAP, housing benefits, TANF, SSI, and General Assistance. FPI found that 28 percent non-citizens and 29 percent of U.S.-born individuals utilize healthcare, food, housing or cash supports.

[10] FPI analyzed microdata from the U.S. Census Bureau's American Community Survey from 2017 on family income. A family is defined by the U.S. Census Bureau as two or more people (one of whom is the householder) related by birth, marriage, or adoption residing in the same housing unit. FPI defined an immigrant family as one with at least one foreign-born adult in the family, and a U.S.-born family as one in which all adults were born in the United States. Medians provided are for people living in such families.

immigrants who might be rejected at the five-year mark could in fact be fully integrated and doing almost as well as people in U.S-born families after 10 years. This is the picture for immigrants in general; it is also clear that some immigrants who arrive with little money or education wind up contributing hugely to American economic competitiveness and growth, for example by starting successful large businesses.[11]

Ultimately, immigrants have a clearly *positive* impact on the American economy. Immigrants make up 13 percent of the population in the United States, yet account for 17 percent of the labor force and 19 percent of business owners—and immigrant labor is responsible for 16 percent of the country's GDP.[12] Moreover, immigrant entrepreneurship similarly grows over time. The per capita rate of business ownership per 1,000 people in the labor force is 19 for immigrants in the U.S. less than five years, 26 for those who have been here five to ten years, and 44 for those who have been here more than 10 years (11 people per 1,000 *higher* than the U.S.-born population).[13] The results are even larger when one considers second-generation immigrants, who are among the strongest economic and fiscal contributors in the U.S. population, contributing more in taxes on average, on an individual level, than either their parents or U.S.-born citizens as a result of their higher educational attainment and wages.[14]

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[11] See, for example, Ian Hathaway, *Almost Half of Fortune 500 Companies Were Founded By American Immigrants or their Children*, BROOKINGS INSTITUTION (Dec. 4, 2017), https://www.brookings.edu/blog/the-avenue/2017/12/04/almost-half-of-fortune-500-companies-were-founded-by-american-immigrants-or-their-children/.

[12] FPI utilized the U.S. Census Bureau's American Community Survey microdata for 2015 to calculate the number of business owners, defined here to mean those who own their own incorporated business, and whose main job is to run that business. FPI relied on the same data to determine immigrant share of GDP, which is determined by adding immigrant share of wages and salary earnings with immigrant share of proprietors' income.

[13] FPI relied on the same analysis described in note 10, *supra*, to calculate this figure.

[14] *Immigration's Long-Term Impacts on Overall Wages and Employment of Native-Born U.S. Workers Very Small, Although Low-Skilled Workers May Be Affected, New Report Finds; Impacts on Economic Growth Positive, While Effects on Government Budgets Mixed*, NAT'L ACADS. OF SCIS., ENG'G, AND MED. (Sept. 21, 2016), http://www8.nationalacademies.org/onpinews/newsitem.aspx?RecordID=23550.

Immigrants make significant contributions to the economy, despite the fact that many of them, like many U.S.-born citizens, have accessed certain government benefits. Moreover, whether their income currently falls below a certain threshold is likely a poor predictor of whether that individual or their children will ultimately become productive members of the American workforce. The New Rule thus presents a significant risk that immigrants who are likely to make significant contributions to the American economy will be denied status.

B. The New Rule Will Deter Immigrants And Their Family Members From Accessing Public Benefits And This Chilling Effect Will Cause Substantial Harm, In Lost Dollars And Jobs, To The U.S. Economy

Evidence shows that the New Rule is likely to have a Chilling Effect that that will make people fearful of accessing public benefits. This Effect will be felt not only by immigrants directly impacted by the New Rule because they are facing a public charge determination, but also by anyone in a family with an immigrant who is not already a naturalized citizen, who may falsely believe that they are also subject to the New Rule, or may be concerned about how their use of public benefits programs might impact their loved ones' immigration status.

FPI developed an economic model to quantify: (1) the likely percentage drop in enrollment for people in families with at least one non-citizen from two of the country's largest benefit programs, SNAP and Medicaid, as a result of the New Rule's Chilling Effect; and (2) the economic and fiscal impacts that this drop in enrollment will have on state economies around the country. FPI's model ultimately predicts that the New Rule will create a decline in federal spending in the states that will result in an aggregated loss in Gross Domestic Product ("GDP") of $24 billion and a cost of 164,000 jobs across the United States.

1. The New Rule Will Have A Chilling Effect On Immigrants And Their Family Members That Will Cause Individuals To Drop From Benefits Programs

The New Rule is widely predicted to have a Chilling Effect that will cause a drop in

SNAP and Medicaid participation, among other programs, for people living in families with a non-citizen. This prediction is based both on past experience and on current surveys.

The broad chilling effects of the New Rule have to some extent already been felt across the United States. As early as September 2018 there were reports from agencies in 18 states noting drops of up to 20 percent in enrollment in The Special Supplemental Nutrition Program for Women, Infants, and Children, despite the fact that the program was not included in the proposed text of the New Rule and, at the time, the Rule had not yet been implemented.[15] And, as discussed further below, a December 2018 survey by the Urban Institute, conducted nearly eight months before the New Rule became final, found that 14 percent of adults in immigrant families reported avoiding public benefit programs for reasons that can be attributed to the announcement of the Rule, and 21 percent of adults in low-income immigrant families—the families most likely to qualify for benefits—reported that they had avoided public benefits.[16] Importantly, the more survey respondents knew about the Rule, the higher its deterrent effect. Among immigrant families who said they had heard "a lot" about the Rule, which more closely approximates the landscape as the Rule is implemented, 31 percent of all adults in immigrant families reported that they or a family member avoided benefits, irrespective of income level.[17]

These studies indicate that many applicants will avoid, or are already avoiding, seeking critical services they need and for which they qualify, based on the fear that their long-term

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[15] Helena Bottemiller Evich, *Immigrants, Fearing Trump Crackdown, Drop Out of Nutrition Programs*, POLITICO (Sept. 3, 2018, 8:17 AM, last updated Sept. 4, 2018, 1:29 PM), https://www.politico.com/story/2018/09/03/immigrants-nutrition-food-trump-crackdown-806292.
[16] Hamutal Bernstein, et al., *One in Seven Adults in Immigrant Families Reported Avoiding Public Benefit Programs in 2018*, URBAN INSTITUTE 2 (May 2019), https://www.urban.org/sites/default/files/publication/100270/one_in_seven_adults_in_immigrant_families_reported_avoiding_publi_7.pdf.
[17] *Id.*

residency prospects in the U.S. or that of a family member would be jeopardized. And as discussed further below, this Chilling Effect is also likely to be felt by individuals not directly subject to the New Rule. Individuals may become afraid or confused about the potential consequences of applying for food, health, housing supports, or other public benefits, even if they are not currently facing a public charge determination or may never be expected to face such a determination. This group may, for example, include people who already have a Green Card, refugees, and asylees, even though such individuals are exempted from the New Rule.[18] Past experience and current polling show that they are likely not to be aware of or trust that the New Rule would not be applied to them, and may withdraw from or not enroll in benefits programs out of fear that their participation in such programs might ultimately impact their legal status. Family members of non-citizens may similarly chose to disengage from public benefits programs due to concerns that that their use of public benefits might adversely impact the immigration status of a non-citizen family member, or the ability of family members not in this country to immigrate.[19]

2. FPI Estimates That 25 Percent Of People Currently Enrolled In SNAP And Medicaid That Experience The New Rule's Chilling Effect Will Drop From Those Programs

Some percentage of people who experience the New Rule's Chilling Effect can be expected to go so far as to avoid applying for or even disenroll from programs for which they are eligible. In order to quantify the effect that this might have on the U.S. economy, FPI began by estimating the percentage of people currently enrolled in SNAP and Medicaid/CHIP—two of the

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[18] Samantha Artiga, Rachel Garfield, & Anthony Damico, *Estimated Impacts of the Proposed Public Charge Rule on Immigrants and Medicaid*, KAISER FAMILY FOUND. 5 (Oct. 2018), http://files.kff.org/attachment/Issue-Brief-Estimated-Impacts-of-the-Proposed-Public-Charge-Rule-on-Immigrants-and-Medicaid.
[19] *Id*. at 5.

largest public assistance programs covered by the New Rule for which enrollment data is readily accessible—who are likely to drop from these programs as a result of the New Rule's Chilling Effect.[20] After analyzing the Chilling Effect of changes affecting immigrants in the 1996 Welfare Reform Act and reviewing more recent studies on the New Rule's likely effect and a December 2018 survey of immigrants that sheds light on the rule's impact, FPI estimates there is likely to be a 25 percent decline in enrollment in SNAP and Medicaid among people who have at least one non-citizen family member.

In 1996, the Personal Responsibility and Work Opportunity Reconciliation Act, known as the Welfare Reform Act, changed legal immigrants' access to public health insurance for qualified immigrants (those who were lawful permanent residents and certain other legal statuses) in two ways: (1) directly, by denying Medicaid benefits to immigrants who arrived in the U.S. after August 1996, and (2) indirectly, by denying or limiting immigrant participation in TANF, which provides families with cash aid they may use for health services. Far beyond the direct impact of law, however, these changes created a created a chilling effect for many immigrants who were not actually subject to the new law—an effect that was acknowledged by the federal government.[21] Indeed, although the law's five-year bar that prohibited many

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[20] FPI's model combines CHIP and Medicaid because most participants can be expected to have a very hard time distinguishing between a program funded by Medicaid and one funded by CHIP. Individuals applying for government-funded insurance for their children are frequently not aware whether it is through CHIP or Medicaid. As just one example of the lack of clarity surrounding the relationship between the two programs, in New York, the program is not called CHIP, but is instead called Child Health Plus. As a guide for applicants points out, "New York offers Medicaid for children and the CHIP program. These two programs are similar, but they are not the same. This often cause potential applicants to ask, 'What is CHIP Medicaid?' when they are initially looking into the CHIP program." *CHIP in New York*, MEDICAID GUIDE, https://medicaid-guide.org/chip/new-york/ (last visited Sept. 13, 2019).

[21] *See Field Guidance on Deportability and Inadmissibility on Public Charge Grounds*, 64 Fed. Reg. 28,689 (Mar. 26, 1999).

immigrants from qualifying for Medicaid, SNAP, or SSI was explicitly written so that it did not apply to refugees, or to immigrants who had been in the country for more than five years,[22] immigrant participation in such programs fell sharply.[23] An Urban Institute paper by two leading immigration researchers, Michael E. Fix and Jeffrey S. Passel, measured the chilling effect of the 1996 changes.[24] Over the first years in which the Welfare Reform Act took effect, there was an overall decrease in the use of the measured public benefits, as reported in the Census Bureau's Current Population Survey.[25] However, that drop was *26 percentage points greater* for non-citizen households than it was for citizen households (35 percent compared to 14 percent),[26] a differential that can be attributed to the chilling effect of the Welfare Reform Act. More striking, perhaps, is that the same report observes a 33 percent decline in welfare program enrollment among refugees, noting that few refugees lost their eligibility over that period.[27] A similar study

[22] Michael E. Fix and Jeffrey S. Passel, *Trends in Noncitizens' and Citizens' Use of Public Benefits Following Welfare Reform 1994-97*, URBAN INSTITUTE 2 (Mar. 1, 1999), https://www.urban.org/research/publication/trends-noncitizens-and-citizens-use-public-benefits-following-welfare-reform/view/full_report.

[23] *See generally* Neeraj Kaushal and Robert Kaestner, *Welfare Reform and Health Insurance of Immigrants*, HEALTH SERVICES RESEARCH 40(3) (June 2005), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1361164/.

[24] *See generally* Fix & Passel, *supra* at note 22.

[25] *Id.* at 1.

[26] In 1999, the Immigration and Naturalization Service ("INS") acknowledged the changes to immigrant eligibility for benefits in the wake of the 1996 Welfare Reform Act had a chilling effect even among those immigrants whose eligibility for these public programs was not impacted by the Act's changes. INS published guidance in the Federal Record "in order to reduce the negative public health consequences generated by the existing confusion and to provide aliens with better guidance as to the types of public benefits that will and will not be considered in public charge determinations." The guidance noted that "[r]ecent immigration and welfare reform laws have generated considerable public confusion about the relationship between the receipt of Federal, State, and local public benefits and the meaning of 'public charge' in immigration statutes governing deportation, admissibility, and adjustment of status." *Field Guidance on Deportability and Inadmissibility on Public Charge Grounds*, 64 Fed. Reg. 28,689 (Mar. 26, 1999).

[27] Fix & Passel, *supra* at note 22.

of the 1996 changes showed that after the law took effect the proportion of qualified immigrants enrolled in Medicaid fell by 25 percent,[28] reinforcing the appropriateness of a 25 percent estimate for decline in benefit use.

Based on this well-accepted research from past changes to public assistance programs, FPI estimated a 25 percent disenrollment rate can be expected from SNAP and Medicaid as a result of the New Rule's Chilling Effect in its published findings from October 2018.[29] The appropriateness of this estimate has since been further reinforced by a more recent study that directly measured the impact of public awareness of the New Rule even before it had been finalized or taken effect. A December 2018 survey from the Urban Institute found that even the *proposed* version of the New Rule caused some immigrants and their families to avoid public benefits programs.[30] Fourteen percent of adults in immigrant families reported that they or a family member had avoided SNAP, Medicaid/Children's Health Insurance Program ("CHIP"), and/ or housing subsidies, "for fear of risking future green card status." Twenty-one percent of adults in low-income families—the ones who would likely meet income eligibility requirements for most public benefit programs—reported that someone in their family avoided benefits. And, again, the more survey respondents knew about the New Rule, the higher the deterrent effect.

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[28] Namratha R. Kandula, et. al, *The Unintended Impact of Welfare Reform on the Medicaid Enrollment of Eligible Immigrants*, HEALTH SERVS. RESEARCH 39(5) (Oct. 2004), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1361081/.

[29] FPI's October 2018 estimate was also based, in part, on an analysis published in a Kaiser Family Foundation report on the proposed changes to the public charge rule to formulate its estimate that 25 parent of individuals likely to experience the New Rule's chilling effect will disenroll from SNAP and Medicaid. *Proposed Changes to "Public Charge" Policies for Immigrants: Implications for Health Coverage*, KAISER FAMILY FOUND. 4 (Sept. 24, 2018), http://files.kff.org/attachment/Issue-Brief-Proposed-Changes-to-Public-Charge-Policies-for-Immigrants-Implications-for-Health-Coverage. This report presented disenrollment range of 15 to 35 percent. *Id.*

[30] Bernstein, *supra* note 16.

Among immigrant families who said they had heard "a lot" about the New Rule, which more closely approximates the landscape as implementation moves forward, 31 percent of all adults in immigrant families reported that they or a family member avoided benefits, irrespective of income level. This significant differential in deterrence, based on knowledge about the New Rule, indicates that we can expect a significant additional impact with the final rule put in place compared to when it was still just a proposal.

3. The Drop In Enrollment In Public Benefits Programs As A Result Of The New Rule Will Have A Significant Adverse Impact On The American Economy In Total Lost Dollars and Jobs

The Chilling Effect described above will have an adverse impact on the local economies of all 50 states and the District of Columbia.[31] Removing millions of dollars in fiscal spending on food and healthcare will damage not only these industries but the country's economic health more broadly, as immigrants are forced to redirect other spending to make up for the lost assistance of SNAP and Medicaid. This is particularly significant because of the magnifying effects on the overall economy of such benefit amounts: because it is broadly recognized that government benefits from these programs stimulate further growth in the economy, *see infra* Section III.B.3.b., disenrollment from SNAP and Medicaid is likely to have substantial negative ripple effects throughout the economy, as follows.

a. *The Dollar Value Of Lost Benefits As A Result Of The New Rule's Chilling Effect*

To calculate the impact of the New Rule on the nation-wide economy as well as specific state economies, FPI worked with the Center on Budget and Policy Priorities to develop two

[31] This estimate is, in many ways, conservative. It does not, for example, assess the impact of the fact that some potential immigrants may also decline to immigrate entirely, eliminating from the country individuals who are proven to contribute significantly to the economy by working and opening businesses in the United States.

analyses—one for SNAP and another for Medicaid/CHIP—to determine the dollar value of lost federal benefits as a result of the New Rule's Chilling Effect.

With respect to SNAP, FPI and the Center on Budget and Policy Priorities first quantified the dollar value of the reduction in SNAP benefits by state and then aggregated those figures to estimate the total national dollar value of the reduction. Specifically, they began by determining the share of SNAP recipients that are in non-citizen households using data from the United States Department of Agriculture's ("USDA") "Characteristics of Supplemental Nutrition Assistance Households" for Fiscal Year 2016. Next they calculated a total annual expenditure for SNAP using data from the USDA's Food and Nutrition Service.[32] FPI and the Center on Budget and Policy Priorities then multiplied the total SNAP expenditure in each state by the share of SNAP recipients in each state who are in non-citizen households to obtain the total amount of spending on SNAP for non-citizen households. Fourth, FPI multiplied this total by the predicted 25 percent decline in benefits as a result of the New Rule's Chilling Effect, which we described above. *See supra* at Section III.B.2. The result of that calculation revealed the total benefit dollars lost in each state as a result of the predicted disenrollment in SNAP caused by the New Rule's Chilling Effect. To estimate the national losses, FPI added together the value losses for all fifty states and the District of Columbia.

To determine losses predicted by the drop in Medicaid/CHIP enrollment, FPI similarly started by working with the Center on Budget and Policy Priorities to develop state-by-state calculations and then, by aggregating those figures, estimated the total national losses by the decrease in federal spending associated with the New Rule. First, this analysis separated

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[32] National Level Annual Summary, U.S. DEPARTMENT OF AGRICULTURE, FOOD AND NUTRITION SERVICE, https://www.fns.usda.gov/pd/supplemental-nutrition-assistance-program-snap. Household rather than family were the unit of analysis for SNAP due to data availability.

Medicaid participants into several categories based on the different average cost of health care coverage and different rates of federal reimbursement to the state associated with each group. These included: children under 19 years old who receive support from CHIP, children under 19 years old who receive Medicaid, adults 19–64 with no disability receiving Medicaid, and adults 19–64 with a disability receiving Medicaid. Within each category, FPI determined the share of people living in non-citizen families who receive health benefits using data from the Census Bureau's American Community Survey.[33] The analysis then matched each category with state-by-state data compiled by the Kaiser Family Foundation that shows Medicaid spending for each category.[34] The analysis next multiplied the share of people in non-citizen families in each of the categories by the total spending in each category, and added those figures together to get the total state-by-state spending on Medicaid and CHIP for people in families with at least one non-citizen.[35] Having calculated national and by-state Medicaid spending, FPI applied the 25 percent drop described above, *see supra* at Section III.B.2., to each to determine the dollars lost as a result.

[33] FPI utilized the U.S. Census Bureau's American Community Survey's 2016 3-year data to obtain a sufficient sample to examine state-level data.

[34] *Medicaid Spending by Enrollment Group*, KAISER FAMILY FOUND. (2014), https://www.kff.org/medicaid/state-indicator/medicaid-spending-by-enrollment-group/?CurrentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D.

[35] Note that FPI separated state and federal spending for Medicaid (to only take into account federal reimbursement to states, not state spending) using information from the Kaiser Family Foundation. *See Federal Medical Assistance Percentage (FMAP) for Medicaid and Multiplier*, KAISER FAMILY FOUND. (last accessed Sept. 13, 2019), https://www.kff.org/medicaid/state-indicator/federal-matching-rate-andmultiplier/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D (select for FY19 in "TIMEFRAME"); Robin Rudowitz, *Understanding How States Access the ACA Enhanced Medicaid Match Rates*, KAISER FAMILY FOUND. (Sept. 29, 2014), https://www.kff.org/medicaid/issue-brief/understanding-how-states-access-the-aca-enhanced-medicaid-match-rates/.

Adding together the calculated SNAP impact and Medicaid impact, FPI estimated that the New Rule's Chilling Effect will result in a direct loss of **$12.5 billion** in healthcare and food spending in all states, with no assurances or guarantees that even the tiniest fraction of such amounts would inure to the benefit of the economy as a whole or to individual states as a result of any federal government savings from a reduction of benefits to individuals. In New York alone, the Chilling Effect is expected to result in a loss of **$1.8 billion** in spending on healthcare and food support.

To ensure the robustness of this estimate and the resulting detrimental economic effects discussed below, FPI made an additional estimate that did two things. First, rather than assuming a 25 percent drop in enrollment, FPI assumed a more conservative 15 percent drop in enrollment. Second, although the New Rule does not make CHIP and Medicaid use by children under 21 years of age a factor for consideration in a public charge determination, it is expected that some percentage of parents will nonetheless disenroll their children from the program as a result of the New Rule. However, to provide a more conservative estimate of possible chilling effects, FPI made the assumption that there would be no drop at all in the number of child healthcare recipients.[36]

Using these more conservative assumptions—a drop-off rate of 15 instead of 25 percent among the population experiencing a Chilling Effect, *and* excluding CHIP altogether, *and* assuming a *zero percent* drop-off rate in Medicaid for children—the economic losses are still considerable. In New York alone, the Chilling Effect under these considerably more conservative

[36] By utilizing the analysis in Section III.B.1.c. that follows, FPI completed these robustness checks with the figures for children under 19 using Medicaid instead of children under 21 using Medicaid. Given the similar Medicaid spending on adults in this age range the 2-year difference would not impact the substance of the results.

assumptions would still be expected to result in a loss of $976 million in federal spending on healthcare and food support.

A complete table of the projected reduction in federal funding and resulting economic consequences under both the standard and the more conservative assumption for all 50 states can be found in **Appendix A.**

b. *Lost GDP As A Result Of The New Rule's Chilling Effect*

If money on this scale is withdrawn from the economy, there will be a predictable adverse impact on businesses, workers, and investors. Here, because individuals who drop from these programs will not be able to use their public benefits to make purchases in grocery stores and supermarkets, these businesses will experience a substantial drop in revenue. When families lose health insurance, hospitals will not receive as much revenue and doctors and nurses will lose out on income.[37] The economic impact will also be spread more broadly. To the extent that people may, for example, continue to spend the same amount on food after losing SNAP, they will have to decrease their spending in other areas, such as heating, or transportation, thereby causing a decline in those industries. The size of the aggregate effect on each state's economy differs depending on the form of government spending. Here, FPI predicts the different impacts on economic output based on a drop in enrollment in SNAP and Medicaid/CHIP.[38]

A well-established way to estimate these overall economic impacts is to use economic

[37] This analysis only accounts for economic loss resulting from reductions in government spending on Medicaid. This model does not account for the indirect costs to hospitals and the healthcare industry as a result of uninsured immigrants being forced to rely upon emergency medical care, rather than early intervention or preventative care.
[38] The economic impact of these policies would also vary depending on where the country is in the business cycle. Because these programs serve as an important economic stabilizer, they create a bigger stimulus during an economic downturn and less in a period of high growth. Therefore, the economic and job losses will be greater in times of high unemployment, and lower in times of full employment. As a result, the effect could be expected to vary.

output multipliers specific to each program. Economic output multipliers are a way to estimate how much "bang for the buck" is produced by spending in different categories: how much, that is, the spending in nutrition or health care support not only pays doctors and grocery store owners, or in our example workers and owners in the heating and transportation sectors, but also spurs them in turn to spend money or invest in ways that benefit the economy. To establish the best multipliers to use for SNAP and Medicaid, FPI worked with the Economic Policy Institute to closely review multipliers used by the federal government itself, as well as other organizations like Moody's Analytics and the Council of Economic Advisers, and adopted a multiplier of 1.6 for SNAP,[39] and a multiplier of 2.0 for Medicaid.[40] The lost SNAP funding in each state times the SNAP multiplier of 1.6 times yields the state's economic output loss related to SNAP, and the Medicaid/CHIP multiplier of 2.0 times the amount of anticipated lost federal Medicaid funding yields the state's estimated economic output loss related to Medicaid/CHIP. Adding the two together, FPI calculated an overall economic loss of **$24 billion** aggregated nationally and a **$3.6 billion** loss to New York. A complete table of projected economic losses under both standard and conservative assumptions for all 50 states can be found in **Appendix A.**

c. *Job Loss As A Result Of The New Rule's Chilling Effect*

The economic damage resulting from the New Rule will also have a detrimental effect on

[39] Josh Bivens, *Method Memo on Estimating the Jobs Impact of Various Policy Changes*, ECONOMIC POLICY INSTITUTE (Nov. 8, 2011), https://www.epi.org/publication/methodology-estimating-jobs-impact/. The United States Department of Agriculture has used a slightly higher multiplier of 1.79. *See The Food Assistance National Input-Output Multiplier (FANIOM) Model and Stimulus Effects of SNAP*, USDA 25 (Oct. 2010), https://www.ers.usda.gov/publications/pub-details/?pubid=44749. The Bivens paper takes the midpoint between multipliers for SNAP used by the Congressional Budget Office (1.5) and Mark Zandi of Moody's Analytics (1.7), with a slightly more conservative result.

[40] EXECUTIVE OFF. OF THE PRESIDENT, COUNCIL OF ECON. ADVISORS, THE ECONOMIC IMPACT OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009, 7TH Q. REP. 12 (July 1, 2011), https://obamawhitehouse.archives.gov/sites/default/files/cea_7th_arra_report.pdf.

employment rates—because when economic activity declines and businesses have less revenue, they lay off workers. FPI worked with the Economic Policy Institute to estimate the job loss likely to result from the New Rule's Chilling Effect by looking at the overall number of jobs in the economy and the overall GDP. This ratio, jobs/GDP, is obtained by dividing the GDP by the number of "full-time equivalent" ("FTE") jobs for a given year.[41] This ratio is then multiplied by the loss of GDP as a result of the above-calculated drop in enrollment due to the Chilling Effect.[42]

Applying this ratio to the total reduction of output, FPI concluded that the New Rule is likely to result in **164,000 lost jobs** aggregated nationally and **25,000 lost jobs** in New York alone. A complete table of projected job losses for all 50 states can be found in **Appendix A.**

d. *Loss Of State Tax Revenue As A Result Of The New Rule's Chilling Effect*

Finally, the economic damage resulting from the New Rule will also have a detrimental impact on the amount of revenue individual states derive from state-imposed taxes. To estimate this loss, FPI multiplied the lost GDP calculated above by the ratio of revenue from state taxes/state GDP. This approach is based on the concept that when, as described above, GDP declines as grocery store owners and doctors and workers in other industries see reductions that affect their economic situation, they will in tum buy less, invest less, and in general reduce their economic activity in ways that will affect all taxes levied by New York. As a result, the

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[41] Data for GDP and FTEs are drawn from the National Income and Product Accounts of the Bureau of Economic Analysis. To calculate the most current estimate possible, FPI used the 2016 GDP/FTE ratio of $139,254 and the 2017 ratio of $143,014, and projected a 2018 ratio of $146,876. The inverse of this ratio, $6.8*10^{-6}$, is the ratio of FTE/GDP.

[42] Although it is possible to consider the specific sectors most impacted and analyze the jobs/GDP ratio in different sectors, this estimate provides a good sense of the magnitude of jobs lost as a result of the New Rule.

total projected loss in state tax revenue to New York is **$158 million**.[43]

C. The New Rule's Changes Will Discourage Immigrants And Their Families From Pursuing Postsecondary Education

The model described above captures the direct economic effects of disenrollment in SNAP and Medicaid, but the New Rule's changes will likely have an additional, significant negative effect on the U.S. economy: immigrants forced to disenroll from public benefits programs as a result of the New Rule may no longer be able to afford to attend postsecondary education, and confusion over the New Rule's application to education benefits may discourage immigrants from applying for public funding. This will in turn will lead to a less-educated and skilled American workforce, and long-term damage to the U.S. economy.

Colleges and universities help to fuel economic growth and prosperity in their communities, and immigrants are a vital part of the higher education system in this country. Over thirty percent of undergraduates nationally in postsecondary education are first or second generation immigrants,[44] and recently arrived immigrants are more likely than U.S.-born adults to be college graduates.[45] According to a National Academies of Science study, "a typical recent immigrant with a bachelor's degree contributes almost $500,000 more in taxes than he or she uses in public benefits over a lifespan."[46] Immigrant professionals often end-up enrolling in

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[43] This estimated loss of state tax revenue does not account for additional costs the state may incur, such as the cost of increased costs for emergency medical care.

[44] U.S. Department of Education, National Center for Education Statistics, 2015-16 National Postsecondary Student Aid Study (NPSAS:16). According to the 2015-16 survey results, first and second generation immigrant undergraduates constitute 29.9% of the total undergraduate population in the U.S. The NPSAS survey does not include undocumented immigrant students, who constitute approximately 2 percent of the undergraduate population.

[45] Jeanne Batalova and Michael Fix, *Tapping the Talents of Highly Skilled Immigrants in the United States. Takeaways from Experts Summit*, MIGRATION POL'Y INST. 1 (Aug. 2018), https://www.migrationpolicy.org/research/tapping-talents-highly-skilled-immigrants-united-states-takeaways-experts-summit.

[46] *Id.* at 1.

community colleges and universities as "they seek to improve their language skills, fill content gaps, or attain industry-recognized credentials through apprenticeships."[47] Access to secondary education is therefore fundamental to the economic success and upward mobility of immigrant families, and more broadly the American economy's growth as a whole. Indeed, the college and career success of immigrant students is critical to address skills shortages in the U.S. labor market. Economists have predicted a shortage of 5 million workers with postsecondary education and training by 2020.[48] According to the Migration Policy Institute, tapping into the skills of recently arrived and increasingly educated immigrant populations "represents an important potential source of skilled labor."[49] In order to meet the demand for skilled labor, more than 40 states, including New York, have established goals for postsecondary credential attainment, such as having 60 percent of state residents earn a college degree or other postsecondary credential by 2025.[50] Many states won't be able to reach their ambitious goals without including their immigrant residents.[51]

The New Rule is expected to deter immigrant enrollment in postsecondary education, and is likely to do so in two ways.

First, the New Rule will increase prospective and current students' financial instability, likely forcing many of them to alter or forgo their higher-education plans. Many immigrant students are part of larger households—either as adult children or as spouses and parents

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[47] *Id.* at 15-16.
[48] *Id.* at 12.
[49] *Id.* at 6-7.
[50] *See* Jimmy Clarke, *Attainment Goals Are Critical*, STRATEGY LABS 2 (Apr. 19, 2017), https://www.wsac.wa.gov/sites/default/files/2017.04.19.04.Attainment%20Goals%20are%20Critical.pdf.
[51] *See, e.g.*, *Middle-Skill Credentials and Immigrant Workers: Texas' Untapped Assets*, NAT'L SKILLS COALITION 1-2 (2017), https://m.nationalskillscoalition.org/resources/publications/file/Middle-Skill-Credentials-and-Immigrant-Workers-Texas-Untapped-Assets.pdf.

themselves—and may depend on public benefits to care for their families.[52] As immigrants drop from benefits programs directly or indirectly implicated by the New Rule, they will have less available to pay the cost of higher education, and they may not be able to afford to take time off from working in order to study. Without these benefits, many students will not be able to afford postsecondary education altogether. Studies have shown that the vast majority of community college students—71 percent—lack financial resources to cover the full cost of attendance.[53] Nutritional benefits are particularly critical to student well-being, with a 2018 U.S. Government Accountability Office ("GAO") report on college student food insecurity found that 39 percent of all undergraduates—almost 7.3 million—had a household income at or below 130 percent of the federal poverty line and were thus at high risk of food insecurity.[54] If students and their

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[52] *See, e.g.*, Lindsey Reichlin Cruse et al., *Parents in College by the Numbers*, INST. FOR WOMEN'S POL'Y RESEARCH 1 (Apr. 11, 2019), https://iwpr.org/publications/parents-college-numbers/ (finding that 22 percent of undergraduate students are parents); Michael A. Trujillo et al., *Personality Traits in College Students and Caregiving for a Relative with a Chronic Health Condition*, J. OF AGING RESEARCH 1 (2016), http://downloads.hindawi.com/journals/jar/2016/3650927.pdf (studying college students who are primary caregivers and noting that 12–18 percent of adult caregivers are between 18 and 25); Eleanor Eckerson et al., *Child Care for Parents in College: A State-by-State Assessment*, INST. FOR WOMEN'S POL'Y RESEARCH (Sept. 2016), https://www.chronicle.com/blogs/ticker/files/2016/09/Child-Care.pdf (studying the cost of child care needs for student parents).

[53] *See* Amy Ellen Duke-Benfield & Brian Sponsler, *Leveraging Public Benefits to Improve States' Postsecondary Access and Completion*, CTR. FOR LAW & SOC. POL'Y 2 (July 2019) https://www.clasp.org/sites/default/files/publications/2019/07/2019_leveragingpublicbenefits.pdf ; Lauren Walizer, *Barriers to Success: High Unmet Financial Need Continues to Endanger Higher Education Opportunities for With low incomes Students*, CTR. FOR LAW & SOC. POL'Y (June 2015), https://www.clasp.org/publications/report/brief/barriers-success-high-unmet-financial-need-continues-endanger-higher; Amy Ellen Duke-Benfield and Katherine Saunders, *Benefits Access for College Completion: Lessons Learned from a Community College Initiative to Help Low-Income Students*, CTR. FOR LAW & SOC. POL'Y (July 2016), https://www.clasp.org/publications/report/brief/benefits-access-college-completion-lessons-learned-community-college.

[54] Duke-Benfield & Sponsler at 4; *Food Insecurity: Better Information Could Help Eligible College Students Access Federal Food Assistance Benefits*, GAO 15 (Dec. 2018) https://www.gao.gov/assets/700/696254.pdf. Food insecurity has also been tied to lower

families are unable to meet core living and housing needs, the students are less likely to pursue educational and career pathways, are more likely to cut back on their educational course load, and are at risk of dropping out altogether. This phenomenon was seen following the enactment of the Welfare Reform Act in 1996. These welfare reforms led to a nearly 50 percent drop in postsecondary enrollment among welfare recipients.[55] A similar effect can be expected to occur among immigrants affected by the New Rule. John King, President and CEO of The Education Trust, remarked that "[f]or schools and communities, this rule would undoubtedly translate into more students struggling with hunger, homelessness, and illness."[56]

Second, many post-secondary institutions are concerned that current recipients of education benefits may experience a similar chilling effect as described above. Immigration officers are not directed to consider public education benefits under the New Rule. Still, as with other exempt benefits,[57] administrators have reported apprehension that the fear and confusion generated by the New Rule is likely to deter immigrants who are eligible for federal and state-funded aid programs from applying, many of whom will be unable to afford college without it.[58]

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academic performance. *See* Alisha Coleman-Jensen, William McFall, & Mark Nord, *Food Insecurity in Households with Children: Prevalence, Severity, and Household Characteristics, 2010–11*, USDA ECON. RESEARCH SERV. (May 2013), https://www.ers.usda.gov/publications/pub-details/?pubid=43765.

[55] Charles Price, *Reforming Welfare Reform Postsecondary Education Policy: Two State Case Studies in Political Culture, Organizing, and Advocacy*, 32 J. SOC. & SOC. WELFARE 81, 82 (2005).

[56] *Statement from John B. King Jr. on the Trump Administration's Proposed Public Charge Rule*, THE EDUC. TR. (Oct. 10, 2018), https://edtrust.org/press-release/statement-from-john-b-king-jr-on-the-trump-administrations-proposed-public-charge-rule/.

[57] *See* Evich, *supra* note 15 (describing chilling effect of New Rule on WIC enrollment, despite being exempt from the rule).

[58] *See* Greta Anderson, *Fear and Confusion Among Immigrant Students*, INSIDE HIGHER ED (Sept. 6, 2019), https://www.insidehighered.com/news/2019/09/06/changes-public-charge-rule-are-confusing-immigrant-students; Amanda Bergson-Shilcock, *Newly Proposed Immigration 'Public Charge' Rule Would Harm Immigrant Workers and US Businesses*, NAT'L SKILLS

As Bernie Rhinerson, Executive Vice President of the Board of Trustees of San Diego Community College District noted in his comment on the proposed rule: "[H]igher education associations have already received reports of students turning down Pell and financial aid awards in fear of repercussions from the changes to public charge definition."[59] Whether as a result of financial hardship or the New Rule's Chilling Effect, the New Rule will discourage immigrants from pursuing a postsecondary education and gaining skills that would contribute to our communities and economy.

This projected reduction in immigrant students is likely to place a burden on universities and colleges in terms of loss of overall revenue from decreased tuition. Moreover, universities and colleges will have to spend funds to train their staff on the New Rule and to educate students around the programs actually covered by the New Rule in order to combat fear and confusion.[60] Funds spent trying to minimize the harmful effects of the New Rule are dollars that could otherwise be used to provide education and skills training to students.

IV. CONCLUSION

We believe that the New Rule will cause significant damage to the economies of all 50 states and the District of Columbia, for at least the reasons set forth above. Accordingly, the New Rule should not be implemented at this time, and we respectfully request that the Court grant Plaintiffs' motion for a preliminary injunction.

COALITION (Oct. 12, 2018), https://www.nationalskillscoalition.org/news/blog/newly-proposed-immigration-public-charge-rule-would-harm-immigrant-workers-and-us-businesses.

[59] San Diego Community College District, Comment in Response to Proposed Rulemaking: Inadmissibility on Public Charge Grounds (Nov. 19, 2018).

[60] *See* Bergson-Shilcock, *supra* note 58 ("[The New Rule would] remove a clear, bright-line standard for when an immigrant may be considered a public charge, and replace it with a highly complex, multi-faceted and subjective test. This increased complexity will make it difficult for education and workforce providers to provide straightforward guidance to frontline staff about how to advise participants on whether using a public benefit might jeopardize their immigration status.").

Dated: September 13, 2019

By: /s/ Sadik Huseny

Sadik Huseny (admitted *pro hac vice*)
LATHAM & WATKINS LLP
505 Montgomery Street, Suite 2000
San Francisco, CA 94111-6538
Telephone: (415) 391-0600
Facsimile: (415) 395-8095

Attorneys for Proposed Amici Curiae Fiscal Policy Institute, et al.