# 19-3595

IN THE

# United States Court of Appeals

## FOR THE SECOND CIRCUIT

MAKE THE ROAD NEW YORK, AFRICAN SERVICES COMMITTEE, ASIAN AMERICAN FEDERATION, CATHOLIC CHARITIES COMMUNITY SERVICES, (ARCHDIOCESE OF NEW YORK), CATHOLIC LEGAL IMMIGRATION NETWORK, INC.,

*Plaintiffs-Appellees,*

—against—

KENNETH T. CUCCINELLI, in his official capacity as Acting Director of United States Citizenship and Immigration Services, UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, CHAD F. WOLF, in his official capacity as Acting Secretary of Homeland Security, UNITED STATES DEPARTMENT OF HOMELAND SECURITY,

*Defendants-Appellants.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK CITY

**BRIEF OF *AMICI CURIAE* FISCAL POLICY INSTITUTE & PRESIDENTS' ALLIANCE ON HIGHER EDUCATION AND IMMIGRATION, *ET AL.* IN SUPPORT OF PLAINTIFFS-APPELLEES**

SADIK HUSENY
BRITTANY N. LOVEJOY
JOSEPH C. HANSEN
TESS L. CURET
ALEXANDRA B. PLUTSHACK
LATHAM & WATKINS LLP
505 Montgomery Street, Suite 2000
San Francisco, California 94111
(415) 391-0600

*Counsel for Amici Curiae Fiscal Policy Institute & Presidents' Alliance on Higher Education and Immigration, et al.*

## CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rules of Appellate Procedure 26.1 and 29(a)(4)(A), the undersigned counsel certifies that the proposed *amici curiae* are not corporations.

Dated: January 31, 2020

s/ *Sadik Huseny*
Sadik Huseny

# TABLE OF CONTENTS

**Page**

# TABLE OF AUTHORITIES

**Page(s)**

## CASES



## STATUTES



## REGULATIONS

## OTHER AUTHORITIES

## INTEREST OF *AMICI CURIAE*[1]

*Amicus curiae* Fiscal Policy Institute ("FPI") is an independent, nonpartisan, nonprofit research institute that regularly analyzes budget and economic issues, and studies immigration nationwide. FPI regularly publishes economic analyses on state and national fiscal policies, based on quantitative models developed by FPI's researchers and informed by contemporary economic theory.

*Amicus curiae* Presidents' Alliance on Higher Education and Immigration ("Presidents' Alliance") is a nonpartisan, nonprofit organization comprising 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 analyzes how immigration policies and practices impact students, campuses, and communities.

Additional *amici* who join this submission are identified in **Appendix A**. They are 12 organizations from around the country with vast collective experience in the areas of immigration, economics, labor, religion, and the social welfare of the residents of this country.

On August 14, 2019, the Department of Homeland Security ("DHS") changed the longstanding immigration "public charge" rule in several significant respects,

[1] This brief was prepared in whole by undersigned counsel in consultation with *amici curiae*. No party, party's counsel or other person other than undersigned counsel and *amici* authored this brief in whole or in part, and no one has contributed money intended to fund this brief. Counsel for both appellants and appellees have consented to the filing of this brief.

creating a new public charge rule (the "New Rule").[2] Drawing on *amici*'s expertise and longstanding work in the field of immigration and economics, *amici* have conducted an economic analysis of the New Rule. That analysis shows that implementation of the New Rule will have serious and irreparable negative economic consequences nationwide. *Amici* submit this analysis for the Court's consideration in assessing the harm that implementation of the New Rule will cause. *Amici*'s analysis, and the various points presented herein, address issues squarely within *amici*'s area of expertise.

[2] *See* Inadmissibility on Public Charge Grounds, 84 Fed. Reg. 41,292 (Aug. 14, 2019).

## SUMMARY OF ARGUMENT

When changing the "public charge" rule, DHS ignored evidence and concerns from across the political spectrum about the extensive and irreparable economic harm the rule would cause. The District Court, however, closely considered the relevant evidence and issues and correctly recognized that the "New Rule" threatened extensive irreparable harm, necessitating a preliminary injunction in order to preserve the status quo pending a determination on the merits of this lawsuit:

> Overnight, the Rule will expose individuals to economic insecurity, health instability, denial of their path to citizenship, and potential deportation—none of which is the result of any conduct by those such injuries will affect. It is a rule that will punish individuals for their receipt of benefits provided by our government, and discourages them from lawfully receiving available assistance intended to aid them in becoming contributing members of our society. It is impossible to argue that there is no irreparable harm for these individuals, Plaintiffs, and the public at large.

*Make the Road New York v. Cuccinelli*, 1:19-cv-07993, 2019 WL 5484638, at *11 (S.D.N.Y. Oct. 11, 2019). Every other district court to consider this issue has reached the same result, identifying senseless and irreparable harms.[3]

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[3] *See City and County of San Francisco v. U.S. Citizenship and Immigration Servs.*, 408 F. Supp. 3d 1057, 1129 (N.D. Cal. 2019) ("Here, the Counties and the States have demonstrated a likelihood of irreparable harm based on their loss of Medicaid funding from the federal government and increased operational costs they are likely to carry. Those harms stem directly from disenrollment of individuals seeking medical care in their jurisdictions, residing in their jurisdictions, and enrolling in certain other public benefits in their jurisdictions (for example, school lunch programs)."); *Cook Cnty., Ill. v. McAleenan*, No. C 06334, 2019 WL 5110267, at *12 (N.D. Ill. Oct. 14, 2019) ("Cook County has shown that the Rule will cause

As *amici* detail in this brief, the New Rule will have devastating economic impacts in at least two major respects:

First, *amicus* Fiscal Policy Institute ("FPI") designed a detailed economic model to quantify the economic impact of the confusion and fear caused by the New Rule—an impact referred to as the "chilling effect." Applying that model, FPI determined that the New Rule can be expected to result in substantial disenrollment and ultimate drop-off from federal programs, with the following effects:

- A ***$24 billion economic loss*** nationwide, including a ***$3.6 billion economic loss*** in the state of New York alone; and
- ***164,000 lost jobs*** nationwide, including ***25,000 lost jobs*** in New York.

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immigrants to disenroll from, or refrain from enrolling in, medical benefits, in turn leading them to forgo routine treatment and rely on more costly, uncompensated emergency care from CCH. In addition, because uninsured persons who forgo public medical benefits are less likely to receive immunizations or to seek diagnostic testing, the Rule increases the entire County's risk of vaccine-preventable and other communicable diseases.") (citations omitted); *Washington v. U.S. Dept. of Homeland Sec.*, 408 F. Supp. 3d 1191 (E.D. Wash. 2019) ("Plaintiff States have shown a significant threat of irreparable injury as a result of the impending enactment of the Public Charge Rule by numerous individuals disenrolling from benefits for which they or their relatives were qualified, out of fear or confusion, that accepting those non-cash public benefits will deprive them of an opportunity for legal permanent residency … [and] have further demonstrated how that chilling effect predictably would cause irreparable injury by creating long-term costs to the Plaintiff States from providing ongoing triage for residents who have missed opportunities for timely diagnoses, vaccinations, or building a strong foundation in childhood ….."); *CASA de Md. v. Trump*, No. PWG-19-2715, 2019 WL 5190689, at *16 (D. Md. Oct. 14, 2019) (finding the New Rule would cause "time sensitive" "irreparable harm") (citation and quotations omitted).

Second, due to confusion, fear, and economic hardship, the New Rule will discourage immigrants and their families from pursuing postsecondary education. This will cause many immigrant students across the nation to disenroll from a variety of public benefits and programs that support their access to, and enrollment in, post-secondary education. In turn, diminished enrollment in higher-education will result in an adverse economic impact on higher education institutions—and to the U.S. economy as a whole from a less-skilled American labor force.

The district court correctly enjoined the operation of the New Rule before it wreaked further havoc on the economies around the country and the lives of millions of people. *Amici* understand that this action will of course proceed to the merits, where these and other issues will be fully vetted and explored, with an ultimate determination as to the fate of the New Rule. But until that happens, maintaining the public charge rule as it has existed for many years is critical to preserving the status quo and preventing additional substantial, irreparable injury during the pendency of the litigation. *Amici* respectfully ask this Court to affirm.

# ARGUMENT

## I. THE NEW RULE WILL CAUSE SUBSTANTIAL AND IRREPARABLE HARM TO MILLIONS OF INDIVIDUALS AND THE ECONOMIES OF STATES THROUGHOUT THE COUNTRY

As estimated by FPI using Census data and evidence-based research,[4] the New Rule will affect millions of individuals, which will in turn result in rippling negative impacts on the economies of states across the country. FPI developed a model to quantify: (1) the likely percentage drop in enrollment, as a result of the New Rule, for people in families with at least one non-citizen, from two of the country's largest benefit programs (Supplemental Nutrition Assistance Program, "SNAP" and Medicaid); and (2) the economic and fiscal impact that this drop in enrollment will have on state economies and tax revenues around the country. This model predicts that the New Rule will cause a $24 billion reduction in Gross Domestic Product ("GDP") and a loss of 164,000 jobs across the United States.

### A. The New Rule Will Cause An Estimated 25 Percent Decline in SNAP And Medicaid Enrollment For Affected Families

To quantify the economic effect of the New Rule, FPI analyzed the anticipated effects on enrollment in SNAP and Medicaid/Children's Health Insurance Program ("CHIP")—two of the largest public assistance programs covered by the New Rule.[5]

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[4] FISCAL POLICY INST., Methodology for Public Charge Estimates, 1-2 (2019), http://fiscalpolicy.org/wp-content/uploads/2019/11/FPI-Public-Charge-Methodology.pdf.

[5] 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. As just one example of the lack of clarity

Based on its analysis of (1) historical studies related to the 1996 Personal Responsibility and Work Opportunity Reconciliation Act ("Welfare Reform Act"), and (2) current studies on the New Rule's likely effect, FPI estimates there will likely be a 25 percent decline in enrollment in SNAP and Medicaid among people who have at least one non-citizen family member.

The Welfare Reform Act changed access to public health insurance for qualified immigrants (those who were lawful permanent residents and certain other legal statuses) in two ways: (1) by denying certain immigrants federal public benefits during their first five years in the United States; and (2) by denying or limiting immigrant participation in Temporary Assistance for Needy Families ("TANF"), which provides families with cash aid they may use for health services.[6]

In addition to the impact of denying eligibility for certain immigrants, the Welfare Reform Act also created a widespread and documented chilling effect that resulted in many immigrants who were not even subject to the new law disenrolling from benefits—an effect later acknowledged by the federal government.[7] An Urban

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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 [sic] 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).

[6] The Personal Responsibility and Work Opportunity Reconciliation Act, Pub. L. 104-193, 110 Stat. 2105, 2133-34, 2178, 2261-62 (1996).

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

Institute paper by two leading immigration researchers documented an overall decrease in the use of the public benefits, as reported in the Census Bureau's Current Population Survey.[8] That drop was 26 percentage points greater for non-citizen households than it was for citizen households (35 percent compared to 14 percent), a differential attributed to the chilling effect of the Welfare Reform Act.[9] Significantly, there was a 33 percent decline in welfare program enrollment among refugees, despite the fact that in almost all cases refugees were still clearly eligible for the benefits.[10] Another study of the 1996 changes came to a similar conclusion. It found that after the law took effect, among people below 200 percent of the federal poverty level, the proportion of qualified immigrants enrolled in Medicaid fell by 25 percent, compared to a drop of just 9 percent for the U.S.-born.[11]

There is clear evidence that the impact of the New Rule is of a similar magnitude. Analysis by the Urban Institute of a survey conducted in December 2018 found that, in response to only the *proposed* version of the New Rule, 14 percent of

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

[9] *Id*. In 1999, the Immigration and Naturalization Service ("INS") acknowledged "the negative public health consequences generated by the existing confusion" resulting from the Welfare Reform Act, and sought to promulgate "better guidance." Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, 64 Fed. Reg. at 28,689.

[10] Fix & Passel, *supra* note 8.

[11] Namratha R. Kandula, et al., *The Unintended Impact of Welfare Reform on the Medicaid Enrollment of Eligible Immigrants*, 39 HSR: HEALTH SERVS. RES. 1509, 1517 (2004), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1361081/.

adults in immigrant families—and 21 percent of adults in low-income immigrant families (the families most likely to qualify for benefits)—reported that they or a family member had avoided using public benefit programs "for fear of risking future green card status."[12] In addition, the more respondents knew about the proposed rule, the higher the deterrent effect, indicating that while the rule is already having an chilling effect, that impact would be even larger if the preliminary injunction is lifted. The study found that 31 percent of all adults in immigrant families who had heard "a lot" about the New Rule reported that they or a family member avoided benefits.[13] These findings are in line with other analyses that show there is a significant chilling effect from the New Rule.[14] And they are widely accepted—

[12] HAMUTAL BERNSTEIN, ET AL., URBAN INST., ONE IN SEVEN ADULTS IN IMMIGRANT FAMILIES REPORTED AVOIDING PUBLIC BENEFIT PROGRAMS IN 2018, at 2 (2019), https://www.urban.org/sites/default/files/publication/100270/one_in_seven_adults_in_immigrant_families_reported_avoiding_publi_7.pdf.

[13] *Id.*

[14] *See, e.g.*, David M. Greenberg, et al., *Supporting the Resilience of America's Immigrant Communities: How Community Organizations are Responding to Federal Policy Changes*, LOCAL INITIATIVES SUPPORT ORGANIZATION 4-5 (Jan. 2019), https://www.lisc.org/media/filer_public/3c/d6/3cd6c801-6931-4e1b-93a7-7a0e825719b4/011419_research_whitepaper_immigration.pdf (describing research showing that "fewer members of immigrant communities were accessing public benefits to which they are legally entitled"); Samantha Artiga, Rachel Garfield, & Anthony Damico, *Estimated Impacts of the Proposed Public Charge Rule on Immigrants and Medicaid*, KAISER FAMILY FOUND., at 5 (Oct. 2018), http://files.kff.org/attachment/Issue-Brief-Estimated-Impacts-of-the-Proposed-Public-Charge-Rule-on-Immigrants-and-Medicaid.

including by DHS.[15]

Based on this established research, and taking into account contemporary studies of disenrollment, FPI estimated in published findings that the New Rule will lead to a 25 percent disenrollment rate from SNAP and Medicaid.[16] The bottom line is that many applicants will avoid, are already avoiding, and will continue to avoid seeking critical services they need and for which they qualify, based on the fear that long-term residency prospects for themselves or a family member will be jeopardized.

### B. The New Rule Will Have Significant Adverse Impacts In Lost Dollars and Jobs For All States in the Country

The chilling effect of the New Rule will have an adverse and irreparable impact on the local economies of all 50 states and the District of Columbia. Removing millions of dollars in federal spending on food and healthcare will damage those industries, as well as damaging 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 adverse effect is particularly significant because of the magnifying effects on the overall economy: benefits from these

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[15] In its October 2018 notice of proposed rulemaking, DHS acknowledged that "previous studies examining the effect of PRWORA in 1996 showed the reduction in enrollment from 21 to 54 percent[.]" 83 Fed. Reg. 51,114 (Oct. 10, 2018).

[16] FISCAL POLICY INST., Methodology for Public Charge Estimates, 2-3 (2019), http://fiscalpolicy.org/wp-content/uploads/2019/11/FPI-Public-Charge-Methodology.pdf; FISCAL POLICY INST., Only Wealthy Immigrants Need Apply: The Chilling Effects of "Public Charge" (2019), http://fiscalpolicy.org/wp-content/uploads/2019/11/FINAL-FPI-Public-Charge-2019-MasterCopy.pdf.

programs stimulate further growth in the local economy, such that the predicted disenrollment from SNAP and Medicaid would have substantial negative ripple effects throughout the economy. As explained below, FPI has calculated that these effects include estimated losses of: $12.5 billion annually in lost federal funds, a corresponding $24 billion reduction in GDP, 164,000 fewer jobs in the country, and a $1.2 billion combined reduction in state tax revenue in the United States.

### 1. The New Rule Will Cause An Estimated $12.5 Billion Loss In Federal Funds

To calculate the impact of the New Rule on state economies and the national economy, FPI worked with the Center on Budget and Policy Priorities ("CBPP") to develop two 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 CBPP 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.[17] FPI and CBPP then multiplied the total SNAP expenditure

[17] *SNAP Data Tables*, U.S. DEP'T OF AGRIC., FOOD AND NUTRITION SERV. (Dec. 13, 2019), https://www.fns.usda.gov/pd/supplemental-nutrition-assistance-program-

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. FPI then 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* Section I.A. That calculation reveals the total estimated 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 total national loss, FPI combined the estimated losses for all fifty states and the District of Columbia.

To determine losses predicted by the drop in Medicaid/CHIP enrollment, FPI also worked with CBPP to develop state-by-state and nationwide calculations associated with the estimated decrease in federal spending as a result of the New Rule. This analysis first separated 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.[18] Within each category, FPI and CBPP determined the share of people living in non-citizen families who receive health benefits using data from the Census Bureau's American Community Survey.[19] FPI then matched each category with state-by-state data

snap. Household rather than family were the unit of analysis for SNAP due to data availability.

[18] These categories included children under 19 years old who receive support from CHIP, children under 19 years old who receive Medicaid, adults aged 19–64 with no disability receiving Medicaid, and adults aged 19–64 with a disability receiving Medicaid.

[19] 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.

compiled by the Kaiser Family Foundation that shows Medicaid spending for each category.[20] FPI 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.[21] Having calculated national and by-state Medicaid spending, FPI applied the estimated 25 percent drop described above to each to determine the federal dollars lost as a result.

Adding together the calculated SNAP impact and Medicaid impact, FPI estimated that the New Rule's chilling effect will result in a direct loss each year of **$12.5 billion** in federal healthcare and food spending in all states. In New York alone, the adverse effect is expected to result in a loss of **$1.8 billion** in federal spending on healthcare and food support.

To ensure the robustness of its conclusion, FPI conducted additional

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[20] *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.

[21] 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., https://www.kff.org/medicaid/state-indicator/federal-matching-rate-and-multiplier/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D (last accessed Sept. 13, 2019) (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/.

calculations with more conservative assumptions. First, rather than assuming a 25 percent drop in enrollment, FPI assumed a more conservative 15 percent drop in enrollment. Second, FPI assumed consistency in the number of child healthcare recipients. 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 widely expected, based on the research cited above, that many parents will nonetheless disenroll their children 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.

Even using these more conservative assumptions—a drop-off rate of 15 instead of 25 percent, assuming a zero percent drop-off rate in Medicaid for children, and excluding CHIP altogether—the economic losses are still large: In New York alone, the New Rule would cause an estimated 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 B.**

### 2. The New Rule Will Cause An Estimated $24 Billion Loss In GDP

If money on this scale is withdrawn from the economy, there will be a predictable adverse impact on businesses, workers, and investors. For example, 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 corresponding drop in revenue. And when families lose health insurance, hospitals will not receive as much revenue and doctors and nurses will lose out on income.[22] The economic impact will also be felt 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. FPI has calculated different impacts on economic output based on a drop in enrollment in SNAP and Medicaid/CHIP.[23]

A well-established way to estimate these overall economic impacts is to use "economic output multipliers" specific to each program. Economic output multipliers are a way to estimate the ripple effect of spending in different categories: for example, how spending in nutrition or health care support not only pays doctors and grocery store owners, but also spurs them in turn to spend money or invest in ways that benefit the economy. To establish accurate multipliers for SNAP and Medicaid, FPI worked with the Economic Policy Institute to closely review

[22] 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.

[23] 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.

multipliers used by the federal government, as well as other organizations like Moody's Analytics and the Council of Economic Advisers. Based on this analysis, FPI adopted a multiplier of 1.6 for SNAP,[24] and a multiplier of 2.0 for Medicaid.[25] The lost SNAP funding in each state multiplied by the SNAP multiplier of 1.6 times yields the state's estimated economic output loss related to SNAP, and the Medicaid/CHIP multiplier of 2.0 multiplied by 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** nationally and a **$3.6 billion** loss to New York alone. A complete table of projected economic losses under both standard and conservative assumptions for all 50 states can be found in **Appendix B.**

[24] *See* Josh Bivens, *Method Memo on Estimating the Jobs Impact of Various Policy Changes*, ECON. POL'Y INST. (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 (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.

[25] *See* EXEC. OFFICE 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.

### 3. The New Rule Will Cause An Estimated Loss of 164,000 Jobs

The economic damage resulting from the New Rule will also have a detrimental effect on employment. When economic activity declines, businesses have less revenue and they lay off workers. FPI worked with the Economic Policy Institute to estimate the job loss likely to result from the New Rule by analyzing the overall number of jobs in the economy and the overall GDP. FPI obtained this ratio of jobs to GDP by dividing the GDP by the number of "full-time equivalent" ("FTE") jobs for a given year.[26] FPI then multiplied this ratio by the loss of GDP as a result of the above-calculated drop in enrollment due to the chilling effect.[27]

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 B.**

### 4. The New Rule Will Cause An Estimated $1.2 Billion Loss In State Tax Revenue

Finally, the economic damage resulting from the New Rule will have an irreparable and adverse impact on the amount of revenue individual states derive

[26] 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.

[27] 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.

from state-imposed taxes. To estimate this loss, FPI multiplied the lost GDP calculated above by the ratio of revenue from state taxes divided by state GDP. This approach is based on the fundamental economic concept that when GDP declines, grocery store owners and doctors and workers in other industries see reductions that affect their economic situation, and they will in turn buy less, invest less, and in general reduce their economic activity in ways that will affect all taxes levied by New York.[28] As a result, the total projected **$1.2 billion** loss in state tax revenue nationally and **$158 million** loss in state tax revenue to New York alone. A complete table of loss in state tax revenue for all 50 states can be found in **Appendix B.**

## II. THE NEW RULE WILL IMPEDE MILLIONS FROM PURSUING HIGHER EDUCATION AND IRREPARABLY HARM THE U.S. LABOR FORCE AND INSTITUTIONS OF HIGHER LEARNING

"[E]ducation is perhaps the most important function of state and local governments … [and] it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education." *Brown v. Bd. of Ed. of Topeka*, 347 U.S. 483, 493 (1954). Contrary to this Supreme Court mandate, the New Rule will impede individuals' ability to attend post-secondary education—with significant negative and irreparable ripple effects. For example, 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

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

for public funding or participating in other programs not related to the public charge rule. For example, students may avoid enrolling in English as a second language ("ESL") courses out of fear that they may be considered in any determination of public benefits usage.[29] This will in turn lead to a less-educated and less-skilled workforce with long term damage to the U.S. economy.

Colleges and universities fuel economic growth and prosperity in their communities, and immigrants are a vital part of our nation's higher education system. Over thirty percent of undergraduates in postsecondary education are first or second generation immigrants,[30] and recently-arrived immigrants are more likely than U.S.-born adults to be college graduates.[31] According to a National Academies of Science study, "a typical recent immigrant with a bachelor's degree contributes

[29] *See* Clarena Larrotta, *Immigrants Learning English in a Time of Anti-Immigrant Sentiment*, ADULT LITERACY EDUCATION, 65-66 (2019), https://files.eric.ed.gov/fulltext/ED594573.pdf.

[30] DAVID RADWIN ET AL., U.S. DEP'T OF EDUC., NATIONAL CENTER FOR EDUCATION STATISTICS, 2015-16 NATIONAL POSTSECONDARY STUDENT AID STUDY (NPSAS:16), https://nces.ed.gov/pubs2018/2018466.pdf. 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. *See* Thomas R. Ruge and Angela D. Iza, *Higher Education for Undocumented Students: The Case for Open Admission and In-State Tuition Rates for Students Without Lawful Immigration Status*, 15 IND. INT'L & COMP. L. REV. 257, 259 (2005).

[31] JEANNE BATALOVA & MICHAEL FIX, MIGRATION POL'Y INST., TAPPING THE TALENTS OF HIGHLY SKILLED IMMIGRANTS IN THE UNITED STATES: TAKEAWAYS FROM EXPERTS SUMMIT, 1 (2018), https://www.migrationpolicy.org/research/tapping-talents-highly-skilled-immigrants-united-states-takeaways-experts-summit.

almost $500,000 more in taxes than he or she uses in public benefits over a lifespan."[32] Immigrant professionals often end-up enrolling in community colleges and universities as "they seek to improve their language skills, fill content gaps, or attain industry-recognized credentials through apprenticeships."[33]

Access to secondary education is therefore fundamental to the success and upward mobility of immigrant families—and American economic growth as a whole. Indeed, post-secondary education for 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 as of 2020.[34] 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."[35] In order to meet the demand for skilled labor, more than 40 states have established goals for postsecondary credential attainment that they will not be able to achieve without including their immigrant residents.[36]

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[32] *Id.*

[33] *Id.* at 15-16.

[34] *Id.* at 12.

[35] *Id.* at 6-7.

[36] *See* Paul Fain, *Look at States' Progress on Degree-Attainment Goals*, INSIDE HIGHER ED (June 13, 2019), https://www.insidehighered.com/quicktakes/2019/06/13/look-states-progress-degree-attainment-goals; JEANNE BATALOVA & MICHAEL FIX, MIGRATION POL'Y INST., CREDENTIALS FOR THE FUTURE: MAPPING THE POTENTIAL FOR IMMIGRANT-ORIGIN ADULTS IN THE UNITED STATES (2019); see*, e.g.*, *Middle-Skill Credentials and Immigrant Workers: Texas' Untapped Assets*, NAT'L SKILLS COALITION 1-2

The New Rule will deter immigrant enrollment in postsecondary education in at least two ways:

*First*, the New Rule will increase prospective and current students' financial instability, 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 themselves—and may depend on public benefits to care for their families.[37] As immigrants drop from benefits programs directly or indirectly implicated by the New Rule, they will have less money 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.[38] Nutritional benefits are particularly critical to

(2017), https://m.nationalskillscoalition.org/resources/publications/file/ Middle-Skill-Credentials-and-Immigrant-Workers-Texas-Untapped-Assets.pdf.

[37] *See, e.g.*, ELEANOR ECKERSON ET AL., INST. FOR WOMEN'S POL'Y RES., CHILD CARE FOR PARENTS IN COLLEGE: A STATE-BY-STATE ASSESSMENT (2016), https://www.chronicle.com/blogs/ticker/files/2016/09/Child-Care.pdf (studying the cost of child care needs for student parents); LINDSEY REICHLIN CRUSE ET AL., INST. FOR WOMEN'S POL'Y RESEARCH, PARENTS IN COLLEGE BY THE NUMBERS 1 (2019), https://iwpr.org/publications/parents-college-numbers/ (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 RES. July 2016, at 1, http://downloads.hindawi.com/journals/jar/2016/3650927.pdf (12–18 percent of adult caregivers are between 18 and 25).

[38] AMY ELLEN DUKE-BENFIELD & KATHERINE SAUNDERS, CTR. FOR POSTSECONDARY ECON. SUCCESS, ACCESS FOR COLLEGE COMPLETION: LESSONS LEARNED FROM A COMMUNITY COLLEGE INITIATIVE TO HELP LOW-INCOME

student well-being, with a 2018 U.S. Government Accountability Office ("GAO") report on college student food insecurity finding that 39 percent of all undergraduates—over 7 *million* students—had a household income at or below 130 percent of the federal poverty line and were thus at high risk of food insecurity.[39] SNAP, and other nutritional benefits, are fundamental to addressing food insecurity among immigrant students and their families. If students and their 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 course load, and are at risk of dropping out altogether.

Similar consequences followed the enactment of the Welfare Reform Act, which led to a nearly 50 percent documented drop in postsecondary enrollment

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STUDENTS 3 (2016), https://www.clasp.org/publications/report/brief/benefits-access-college-completion-lessons-learned-community-college; AMY ELLEN DUKE-BENFIELD & BRIAN SPONSLER, CTR. FOR LAW & SOC. POL'Y, LEVERAGING PUBLIC BENEFITS TO IMPROVE STATES' POSTSECONDARY ACCESS AND COMPLETION 2 (July 2019) https://www.clasp.org/sites/default/files/publications/2019/07/2019_leveragingpublicbenefits.pdf; LAUREN WALIZER, CTR. FOR POSTSECONDARY ECON. SUCCESS, BARRIERS TO SUCCESS: HIGH UNMET FINANCIAL NEED CONTINUES TO ENDANGER HIGHER EDUCATION OPPORTUNITIES FOR WITH LOW INCOMES STUDENTS 1-3 (2015), https://www.clasp.org/publications/report/brief/barriers-success-high-unmet-financial-need-continues-endanger-higher.

[39] Duke-Benfield & Sponsler, *supra* note 38, at 4; U.S. GOV'T ACCOUNTABILITY OFF., FOOD INSECURITY: BETTER INFORMATION COULD HELP ELIGIBLE COLLEGE STUDENTS ACCESS FEDERAL FOOD ASSISTANCE BENEFITS, at 15 (2018) https://www.gao.gov/assets/700/696254.pdf. Food insecurity has also been tied to lower academic performance. *See* ALISHA COLEMAN-JENSEN, ET AL., USDA ECON. RESEARCH SERV., FOOD INSECURITY IN HOUSEHOLDS WITH CHILDREN: PREVALENCE, SEVERITY, AND HOUSEHOLD CHARACTERISTICS, 2010–11, at 11-12 (2013), https://www.ers.usda.gov/publications/pub-details/?pubid=43765.

among welfare recipients.[40] Education experts are no more optimistic about the New Rule: "For schools and communities, this rule would undoubtedly translate into more students struggling with hunger, homelessness, and illness."[41]

*Second*, many post-secondary institutions are concerned that current recipients of education benefits may experience a similar chilling effect, which has been recorded among even exempt benefits. As early as September 2018, agencies in 18 different states began reporting declines of up to 20 percent in enrollment in The Special Supplemental Nutrition Program for Women, Infants, and Children ("WIC"), even though that program had not been included in the proposed text of the New Rule and the New Rule had not yet been implemented.[42] Administrators are apprehensive that fear and confusion generated by the New Rule will 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), regardless of whether immigration officers may consider public education benefits under the New Rule.[43]

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[40] Charles Price, *Reforming Welfare Reform Postsecondary Education Policy: Two State Case Studies in Political Culture, Organizing, and Advocacy*, J. SOC. & SOC. WELFARE, Sept. 2005 at 82.

[41] *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/.

[42] Helena Bottemiller Evich, *Immigrants, Fearing Trump Crackdown, Drop Out of Nutrition Programs*, POLITICO (Sept. 3, 2018, 8:17 AM), https://www.politico.com/story/2018/09/03/immigrants-nutrition-food-trump-crackdown-806292 (last updated Sept. 4, 2018, 1:29 PM).

[43] *See* Greta Anderson, *Fear and Confusion Among Immigrant Students*, INSIDE HIGHER ED (Sept. 6, 2019),

As one executive educator commented 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."[44]

In short, the New Rule will discourage immigrants from pursuing a postsecondary education and gaining skills that would contribute to our communities and economy. And it already is.

## CONCLUSION

For the foregoing reasons, *amici curiae* respectfully request that this Court affirm the decision of the district court and uphold the preliminary injunction.

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

[44] San Diego Community College District, Comment in Response to Proposed Rulemaking: Inadmissibility on Public Charge Grounds (Nov. 19, 2018), https://www.regulations.gov/document?D=USCIS-2010-0012-13888.

January 31, 2020

Respectfully submitted,

s/ *Sadik Huseny*

Sadik Huseny
*sadik.huseny@lw.com*
Brittany N. Lovejoy
Joseph C. Hansen
Tess L. Curet
Alexandra Plutshack
LATHAM & WATKINS LLP
505 Montgomery Street, Suite 2000
San Francisco, CA 94111
(415) 391-0600

*Counsel for Amici Curiae Fiscal Policy Institute & Presidents' Alliance on Higher Education and Immigration, et al.*

**CERTIFICATE OF COMPLIANCE**

Pursuant to Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. of App. P. 32(a)(6), I certify that the attached brief is proportionately spaced, has a typeface of 14 points, and complies with the word count limitations set forth in Fed. R. App. P. 32(a)(7)(B). This Brief contains 6,136 words, excluding the portions exempted by Fed. R. App. P. 32(f), according to the word count feature of Microsoft Word used to generate this Brief.

Dated: January 31, 2020

/s/ *Sadik Huseny*
Sadik Huseny

**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Second Circuit by using the appellate CM/ECF system on January 31, 2020. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: January 31, 2020

s/ *Sadik Huseny*
Sadik Huseny

# APPENDIX A

**Identities of Additional Signatories**

The following organizations join Fiscal Policy Institute and Presidents' Alliance on Higher Education and Immigration in this submission:

- National Center for Law and Economic Justice
- American Federation of State, County and Municipal Employees, AFL-CIO
- California Immigrant Policy Center
- Child Care Law Center
- Colorado Fiscal Institute
- Community Action Marin
- Kids Forward
- Michigan Immigrant Rights Center
- Oasis Legal Services
- The Economic Progress Institute
- United African Organization
- Virginia Interfaith Center for Public Policy

# APPENDIX B

# FPI's Calculated Impact of Public Charge Rule on State Economies

| | Reduction in Federal Funds for SNAP and Medicaid/CHIP | | Lost State Economic Output (GDP) | | Lost Jobs in State | | Lost State Tax Revenue | |
|---|---|---|---|---|---|---|---|---|
| State | 25 Percent Chilling Effect | 15 Percent Chilling Effect, No Impact on Kids Getting Medicaid or CHIP | 25 Percent Chilling Effect | 15 Percent Chilling Effect, No Impact on Kids Getting Medicaid or CHIP | 25 Percent Chilling Effect | 15 Percent Chilling Effect, No Impact on Kids Getting Medicaid or CHIP | 25 Percent Chilling Effect | 15 Percent Chilling Effect, No Impact on Kids Getting Medicaid or CHIP |
| Alabama | $41 Million | $14 Million | $77 Million | $23 Million | 500 | 200 | $4 Million | $1.1 Million |
| Alaska | $18 Million | $8 Million | $36 Million | $15 Million | 200 | 100 | $0.8 Million | $0.3 Million |
| Arizona | $405 Million | $168 Million | $785 Million | $312 Million | 5,000 | 2,000 | $37 Million | $15 Million |
| Arkansas | $46 Million | $11 Million | $90 Million | $19 Million | 600 | 100 | $7 Million | $2 Million |
| California | $3.6 Billion | $1.7 Billion | $7 Billion | $3.2 Billion | 48,000 | 22,000 | $383 Million | $175 Million |
| Colorado | $155 Million | $72 Million | $298 Million | $131 Million | 2,000 | 900 | $12 Million | $5 Million |
| Connecticut | $131 Million | $64 Million | $256 Million | $122 Million | 1,700 | 800 | $18 Million | $9 Million |
| Delaware | $28 Million | $12 Million | $54 Million | $22 Million | 400 | 200 | $3 Million | $1.1 Million |
| District of Columbia | $43 Million | $18 Million | $84 Million | $35 Million | 600 | 240 | $4 Million | $2 Million |
| Florida | $665 Million | $355 Million | $1.2 Billion | $618 Million | 8,000 | 4,000 | $50 Million | $25 Million |
| Georgia | $231 Million | $80 Million | $437 Million | $136 Million | 3,000 | 900 | $17 Million | $5 Million |
| Hawaii | $66 Million | $36 Million | $127 Million | $65 Million | 900 | 400 | $10 Million | $5 Million |
| Idaho | $28 Million | $9 Million | $54 Million | $17 Million | 400 | 100 | $3 Million | $1 Million |
| Illinois | $416 Million | $197 Million | $797 Million | $359 Million | 5,000 | 2,000 | $38 Million | $17 Million |
| Indiana | $82 Million | $33 Million | $157 Million | $60 Million | 1,100 | 400 | $8 Million | $3 Million |
| Iowa | $44 Million | $21 Million | $83 Million | $38 Million | 600 | 300 | $4 Million | $2 Million |
| Kansas | $40 Million | $12 Million | $78 Million | $21 Million | 500 | 100 | $4 Million | $1.1 Million |
| Kentucky | $58 Million | $24 Million | $112 Million | $44 Million | 800 | 300 | $7 Million | $3 Million |
| Louisiana | $34 Million | $13 Million | $65 Million | $23 Million | 400 | 200 | $3 Million | $0.9 Million |
| Maine | $13 Million | $6 Million | $25 Million | $11 Million | 200 | 70 | $2 Million | $0.7 Million |
| Maryland | $203 Million | $86 Million | $397 Million | $162 Million | 3,000 | 1,100 | $22 Million | $9 Million |
| Massachusetts | $395 Million | $192 Million | $776 Million | $369 Million | 5,000 | 3,000 | $41 Million | $19 Million |
| Michigan | $153 Million | $76 Million | $292 Million | $137 Million | 2,000 | 900 | $16 Million | $8 Million |
| Minnesota | $165 Million | $79 Million | $321 Million | $151 Million | 2,000 | 1,000 | $24 Million | $11 Million |
| Mississippi | $14 Million | $4 Million | $28 Million | $7 Million | 200 | 50 | $2 Million | $0.5 Million |
| Missouri | $44 Million | $18 Million | $84 Million | $31 Million | 600 | 200 | $3 Million | $1.3 Million |
| Montana | $3 Million | $.8 Million | $6 Million | $1.5 Million | 40 | 10 | $0.3 Million | $0.1 Million |
| Nebraska | $31 Million | $13 Million | $60 Million | $23 Million | 400 | 200 | $3 Million | $1 Million |
| Nevada | $101 Million | $56 Million | $189 Million | $97 Million | 1,300 | 700 | $10 Million | $5 Million |
| New Hampshire | $12 Million | $6 Million | $22 Million | $11 Million | 200 | 70 | $0.8 Million | $0.4 Million |
| New Jersey | $367 Million | $174 Million | $709 Million | $322 Million | 5,000 | 2,000 | $38 Million | $17 Million |
| New Mexico | $146 Million | $52 Million | $285 Million | $96 Million | 1,900 | 700 | $17 Million | $6 Million |
| New York | $1.8 Billion | $976 Million | $3.6 Billion | $1.9 Billion | 25,000 | 13,000 | $158 Million | $82 Million |
| North Carolina | $214 Million | $69 Million | $409 Million | $120 Million | 3,000 | 800 | $21 Million | $6 Million |
| North Dakota | $9 Million | $5 Million | $17 Million | $9 Million | 100 | 60 | $1.2 Million | $0.7 Million |
| Ohio | $107 Million | $51 Million | $208 Million | $96 Million | 1,400 | 700 | $10 Million | $4 Million |
| Oklahoma | $74 Million | $22 Million | $141 Million | $39 Million | 1,000 | 300 | $7 Million | $2 Million |
| Oregon | $200 Million | $90 Million | $393 Million | $172 Million | 3,000 | 1,200 | $23 Million | $10 Million |
| Pennsylvania | $162 Million | $72 Million | $314 Million | $135 Million | 2,000 | 900 | $12 Million | $5 Million |
| Rhode Island | $64 Million | $31 Million | $125 Million | $59 Million | 900 | 400 | $7 Million | $3 Million |
| South Carolina | $55 Million | $22 Million | $104 Million | $37 Million | 700 | 300 | $5 Million | $2 Million |
| South Dakota | $6 Million | $3 Million | $11 Million | $5 Million | 100 | 30 | $0.4 Million | $0.2 Million |
| Tennessee | $103 Million | $31 Million | $199 Million | $55 Million | 1,400 | 400 | $8 Million | $2 Million |
| Texas | $1.3 Billion | $503 Million | $2.5 Billion | $876 Million | 17,000 | 6,000 | $84 Million | $29 Million |
| Utah | $54 Million | $16 Million | $104 Million | $29 Million | 700 | 200 | $5 Million | $1.3 Million |
| Vermont | $8 Million | $4 Million | $16 Million | $8 Million | 100 | 60 | $2 Million | $0.8 Million |
| Virginia | $96 Million | $35 Million | $183 Million | $61 Million | 1,200 | 400 | $8 Million | $3 Million |
| Washington | $326 Million | $172 Million | $631 Million | $323 Million | 4,000 | 2,000 | $27 Million | $14 Million |
| West Virginia | $5 Million | $3 Million | $10 Million | $5 Million | 70 | 30 | $0.7 Million | $0.4 Million |
| Wisconsin | $70 Million | $35 Million | $133 Million | $62 Million | 900 | 400 | $8 Million | $3 Million |
| Wyoming | $2 Million | $.9 Million | $4 Million | $1.5 Million | 30 | 10 | $0.2 Million | $0.1 Million |
| United States: Sum of 50 States and D.C. | $12.5 Billion | $5.8 Billion | $24.1 Billion | $10.6 Billion | 164,000 | 72,000 | $1.2 Billion | $522 Million |

Methodology described in text. Figures are independently rounded.