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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
AT RICHLAND

STATE OF WASHINGTON; COMMONWEALTH OF VIRGINIA; STATE OF COLORADO; STATE OF DELAWARE; STATE OF ILLINOIS; STATE OF MARYLAND; COMMONWEALTH OF MASSACHUSETTS; ATTORNEY GENERAL DANA NESSEL ON BEHALF OF THE PEOPLE OF MICHIGAN; STATE OF MINNESOTA; STATE OF NEVADA; STATE OF NEW JERSEY; STATE OF NEW MEXICO; and STATE OF RHODE ISLAND, *et al*.,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF HOMELAND SECURITY, *et al*.,

Defendant.

No.: 4:19-CV-05210 RMP

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BRIEF OF MASSACHUSETTS GENERAL HOSPITAL CHELSEA HEALTHCARE CENTER, INTERNATIONAL COMMUNITY HEALTH SERVICES, COMMUNITY HEALTH NETWORK OF WASHINGTON, HOUSING WORKS, LATINO COMMISSION ON AIDS, BIENESTAR HUMAN SERVICES, GAY MEN'S HEALTH CRISIS, MAZZONI CENTER, AND MASSACHUSETTS PUBLIC HEALTH ASSOCIATION AS AMICUS CURIAE IN SUPPORT OF PLAINTIFFS' MOTION FOR § 705 STAY PENDING JUDICIAL REVIEW OR FOR PRELIMINARY INJUNCTION

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INTEREST OF *AMICI*

Amici submit this brief in support of Plaintiffs' Motion for § 705 Stay Pending Judicial Review or for Preliminary Injunction (ECF No. 34) to enjoin enforcement of the United States Department of Homeland Security' ("DHS" or the "Department") Public Charge Rule, Inadmissibility on Public Charge Grounds, 8 Fed. Reg. 212.21(a) (August 14, 2019) ("Public Charge Rule").

Amici are organizations committed to providing healthcare to low-income, immigrant communities, as well as promoting access to resources bearing on the social determinants of health, with an overarching goal of improving individual and community-wide healthcare outcomes. Unless enjoined, the implementation of the Public Charge Rule will radically alter the calculus used to determine whether an individual can apply for admission to the United States, for adjustment of status to lawful permanent residency, or, for nonimmigrant statuses, for an extension of stay or change of status. This impact directly undermines Amici's core healthcare missions and threatens the security and well-being of their client communities.

The scope and catastrophic outcomes of this unprecedented rule change cannot be underestimated, and the diversity of healthcare and health-related organizations urgently ringing the alarm bell is both disquieting and compelling. The Public Charge Rule will require an evaluation of whether an individual is receiving or has recently received numerous enumerated "non-cash" benefits including non-emergency Medicaid services, Supplemental Nutritional Assistance Program (SNAP) benefits, and public housing benefits. This evaluation is intended to negatively impact family-based permanent residency applications and to impermissibly limit legal non-citizen access to assistance

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programs to address healthcare needs and resources that directly affect social determinants of health.

Amici submit this brief to assist the Court's understanding of how the Public Charge Rule dramatically raises the barriers legal non-citizens face when accessing healthcare, resulting in grave harm to both individual and public health. The Rule accomplishes these pernicious goals by undermining the legally protected doctor-patient relationship and drastically inhibiting the ability of healthcare providers to attend to the social determinants of health. The respective missions of the Amici organizations illustrate the scope and impact of the Public Charge Rule changes:

- **MGH Chelsea HealthCare Center**, part of Massachusetts General Hospital, provides high quality adult and pediatric primary care to patients who live in Chelsea and its neighboring communities. Chelsea is a diverse, densely populated, working-class community with a high concentration of immigrants; the majority of the population identifies as Hispanic or Latinx. Accordingly, MGH Chelsea strives to promote access to health care for all by minimizing barriers, such as language, ethnicity or ability to pay. MGH Chelsea is actively involved in community-based programs to help enhance the public health of residents in the Chelsea area. The health center provides healthcare as a team, with a focus on the individual patient through a model called the "patient-centered medical home." As a primary healthcare provider for immigrant families, many of whom have been chilled from seeking medical care by the Public Charge Rule, MGH Chelsea will be irreparably harmed if the Rule is permitted to take effect.

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1 MGH Chelsea submitted comments to DHS requesting that it
2 abandon its overhaul of the public charge regulation on public
3 health and anti-discrimination grounds.
4
5 - Founded in 1973 to serve low-income Asian immigrants in
6 Seattle's Chinatown/International District, **International**
7 **Community Health Services (ICHS)** is a federally qualified
8 health center that provides culturally and linguistically appropriate
9 health and wellness services and promotes health equity for all.
10 ICHS offers a complete healthcare home with primary medical,
11 dental, vision and behavioral health services. ICHS covers patients
12 at every stage of life, from infant and well child checkups to
13 immunizations, nutrition services, obstetric and geriatric care.
14 ICHS also provides a variety of community health services,
15 including health education classes and programs at clinics, partner
16 sites and throughout the community, as well as help enrolling in
17 insurance, a sliding scale discount, and interpretation services in
18 more than 50 languages. The Public Charge Rule has chilled and
19 will continue to chill immigrants from participating in ICHS'
20 programming, including the Women, Infants, and Children (WIC)
21 program, suboxone treatment, nutrition services and counseling,
22 and insurance enrollment, thereby irreparably harming ICHS' core
23 mission to provide high quality healthcare to its patients and
24 address the social determinants of health.
25 - **Community Health Network of Washington** (CHNW) was
26 formed in 1992 by Washington's Federally Qualified Health

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1 Centers (FQHCs) to leverage their resources and expertise to
2 provide better care to their patients and benefit their communities
3 by working together to ensure all Washingtonians have access to
4 medical care and health insurance coverage. CHNW's mission is
5 to improve the health status of our communities through the
6 provision of high-quality, affordable, community-based healthcare
7 to underserved individuals and families and to sustain the network
8 of community health centers and affiliated businesses. Community
9 Health Plan of Washington is a non-profit subsidiary organization
10 of CHNW that contracts with the state of Washington to provide
11 integrated physical and behavioral healthcare services to
12 individuals in Washington's Apple Health programs, including
13 Medicaid. CHPW's mission is to deliver accessible managed care
14 services which meet the needs and improve the health of our
15 communities and to make managed care participation beneficial for
16 community-responsive providers. Today, CHNW and CHPW
17 work together to enhance access to patient-centered care and
18 amplify the community health center mission. By penalizing
19 immigrants who rely on Medicaid for healthcare coverage, as well
20 as those who access Supplemental Nutrition Assistance Program or
21 Section 8 housing benefits, the Public Charge Rule jeopardizes
22 CHNW and CHPW's ability to provide whole-person care and
23 address social determinants of health and thereby threatens their
24 efforts to improve the health status of Washingtonians.
25 • **Housing Works** is a healing community of people living with and
26 affected by HIV/AIDS. Housing Works' mission is to end the dual

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1 crises of homelessness and AIDS through relentless advocacy, the
2 provision of lifesaving services, and entrepreneurial businesses that
3 sustain our efforts. Since 1990, Housing Works has provided a
4 comprehensive array of services to more than 30,000 homeless and
5 low-income New Yorkers living with and affected by HIV/AIDS.
6 Housing Works believes that providing stable housing is healthcare
7 and is the first step toward living a long and healthy life.
8 Supportive services addressing the social determinants of health
9 include but are not limited to housing, healthcare, meals and
10 nutritional counseling, mental health and substance use treatment,
11 job training, and legal assistance. The Public Charge Rule
12 represents a significant threat to Housing Works' mission to
13 provide comprehensive care for immigrant clients, many of whom
14 have been chilled from accessing Housing Works' services for fear
15 of jeopardizing their immigration status.

16 • In response to the critical, unmet need for HIV prevention and care
17 for Latinos, a coalition of Latino leaders founded the **Latino**
18 **Commission on AIDS** in 1990. The Commission realizes its
19 mission by spearheading health advocacy for Latinos, promoting
20 HIV education, developing model prevention programs for high-
21 risk communities, and by building capacity in community
22 organizations. Through its extensive network of partner
23 organizations and community leaders, the Commission works to
24 mobilize an effective community response to meet the health
25 challenges and address the impact of HIV/AIDS, Hepatitis & STIs
26 in communities nationwide. The Latino Commission on AIDS has

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1 proudly served the Latinx LGBTQ population and is committed in
2 creating and promoting a safe space. The Commission is the
3 founder of the Hispanic Health Network, dedicated to eradicate
4 health disparities in our communities. The Commission is gravely
5 concerned that the Public Charge Rule's heavily negative
6 consideration of medical conditions that are likely to require
7 extensive medical treatment will force its constituents to choose
8 between applying for immigration relief, or disenrolling from
9 lifesaving health benefits.

10 • **Bienestar Human Services** was founded in 1989, primarily as a
11 direct response to the lack of resources for the Latinx LGBTQ
12 community in Southern California at the height of the HIV/AIDS
13 crisis. Bienestar is a community-based healthcare and social
14 services organization in the Greater Los Angeles area. Its expertise
15 is in identifying and addressing emerging health issues faced by
16 the Latino and LGBTQ populations. Bienestar reaches these
17 populations through innovative and compassionate peer-to-peer
18 modeling that is culturally relevant to the communities it serves.
19 Bienestar's programs include full service medical care, HIV/AIDS
20 treatment and prevention, sexual health, mental health services,
21 substance use counseling and medication assisted treatment.
22 Currently Bienestar operates a medical clinic and provides
23 HIV/AIDS healthcare at our site in East Los Angeles, and operates
24 community centers in East Los Angeles, El Monte, Hollywood,
25 Long Beach, Pomona, San Fernando Valley, and South Los
26 Angeles. Bienestar's commitment to addressing the social

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1 determinants of health - for example, by providing case managers
2 who assist clients in applying for food, medical care, and housing
3 benefits and services - has been and will continue to be harmed by
4 the Public Charge Rule, which disparately impacts immigrants of
5 color, including Latinx immigrants.

6 • **Gay Men's Health Crisis** (GMHC) is the world's first and leading
7 provider of HIV/AIDS prevention, care and advocacy. Building on
8 decades of dedication and expertise, GMHC understands the
9 reality of HIV/AIDS and empowers a healthy life for all. The
10 organization offers a broad array of services in New York City; for
11 example, GMHC's Transitional Care Coordination program
12 connects clients and their families to vital community resources
13 and supports them in negotiating and coordinating their care.
14 GMHC will assist clients with finding housing, medical care,
15 health insurance, entitlements, food, substance use services, dental
16 services, mental health providers, job training services, civil and
17 immigration legal services, support groups, and treatment
18 education. Nearly 70% of GMHC's clientele are people of color
19 and over 30% are Hispanic or Latinx. The Public Charge Rule's
20 disparate impact on immigrants of color jeopardizes GMHC's
21 mission to help clients become stable and self-sufficient by
22 accessing healthcare, housing, and nutritional resources.

23 • Founded in 1979, **Mazzoni Center** is a multi-service, community-
24 based, health and social service provider aiming to advance the
25 health and well-being of lesbian, gay, bisexual, transgender and
26 queer (LGBTQ) communities. With the onset of AIDS, in 1981,

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1 the agency responded by incorporating HIV care and prevention
2 services and has remained at the forefront of designing and
3 implementing numerous programs and services to combat
4 HIV/AIDS. In 2003, the organization opened its primary care
5 medical practice, which has since become a cornerstone of the
6 organization's services. Through steady and continued growth,
7 Mazzoni Center has expanded to offer a full continuum of services
8 to Philadelphia's LGBTQ communities, including primary medical
9 care, mental health counseling and substance abuse treatment
10 services, legal services, HIV prevention and care, youth support in
11 schools, and professional development and LGBTQ competency
12 training. The Public Charge Rule threatens Mazzoni Center's
13 ability to provide quality comprehensive health and wellness
14 services, as LGBTQ immigrants have been and will continue to be
15 chilled from accessing Medicaid and other healthcare benefits,
16 thereby increasing the number of uninsured patients seeking care.

17 - The **Massachusetts Public Health Association** (MPHA) is a
18 private, non-profit statewide membership organization that
19 promotes a healthy Massachusetts through advocacy, education,
20 community organizing, and coalition building. Founded in 1879,
21 MHA is a leading affiliate of the American Public Health
22 Association and a champion for public health in the Commonwealth.
23 MPHA's focus is on programs that prevent illness, disease, and
24 injury, especially among individuals and communities facing
25 inequities. By targeting SNAP, public housing, and Medicaid, the
26 Public Charge Rule directly threatens MPHA's policy priorities,

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including healthy affordable food, community health integration, public health infrastructure, and quality affordable housing, which reflect the organization's commitment to policies that combat structural racism, integrate health into all policies, and reduce poverty.

INTRODUCTION

On August 14, 2019, Defendants (collectively, "DHS") issued its Public Charge Rule, upending decades long practices related to the "public charge exclusion." Historically, Congress deemed inadmissible those who were *primarily* dependent on the government for subsistence and unable to care for themselves. However, in contravention of express Congressional intent, DHS has now transformed the public charge exclusion to sweep in non-citizens who may receive modest temporary assistance in just one aspect of their lives. More often than not, these individuals are working, paying taxes and contributing to the social and economic fabric of a community.

The new Rule defines "public charge" to mean "an alien who receives one or more public benefits . . . for more than 12 months in the aggregate within any 36-month period." 8 C.F.R. § 212.21(a). Using Orwellian math, an individual who receives six separate benefits for two months will be deemed to have received 12 months of benefits. The Public Charge Rule also dramatically expands the concept of "public benefit" to include non-cash benefits like Medicaid services and public housing benefits.

The Public Charge Rule utterly fails in its alleged goal to ensure that only those "self-sufficient" immigrants are permitted entry to the United States. Instead, it penalizes legally present non-citizens for making legitimate use of programs designed to enhance their quality of life—indeed, to assist them in

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becoming self-sufficient. The Rule punishes working families, including low-wage workers, agricultural employees, healthcare and support aides, and others with modest incomes, who receive assistance with the cost of health, nutrition or housing. It is difficult to see how the Administration does not intend the natural result of this Rule: the disenrollment of hundreds of thousands of families in the Plaintiff States, and millions of eligible children and adults nationwide, from federal and state benefit programs.

Amici respectfully request that the Court preliminary enjoin DHS from enforcing or implementing the Public Charge Rule for two primary reasons. First, the Rule is arbitrary and capricious under the Administrative Procedure Act (APA) because DHS has failed to justify or meaningfully address the Rule's impermissible interference with the doctor-patient relationship, such that the Plaintiff States are likely to succeed on the merits of their claim. Second, the Rule irreparably harms Amici and similarly-situated healthcare providers' longstanding work to address the social determinants of health, including food and housing insecurity, for their patients and communities at large.

I. DHS IMPROPERLY FAILED TO CONSIDER THE IMPACT OF THE PUBLIC CHARGE RULE ON THE DOCTOR-PATIENT RELATIONSHIP.

The Plaintiff States' Complaint and Motion for Stay or For Preliminary Injunction, including the accompanying declarations, document many of the devastating harms utterly overlooked by DHS, including evidence that the Rule will cause public health crises and have harmful and discriminatory effects on the elderly and individuals with disabilities. Amici submit that the Rule also works an even more profound and insidious harm to our healthcare system: namely, the undermining of the doctor-patient relationship. Because DHS "entirely failed to consider" this relationship, which Amicus Community Health Plan of

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Washington has called the "bedrock of effective health care,"[1] the Rule is arbitrary and capricious in violation of the APA. *Motor Vehicle Mfrs. Ass'n. v. State Farm Mut. Auto. Ins. Co*., 463 U.S. 29, 43 (1983).

A. As Courts, Congress, and Centuries of Medical Practice Have Recognized, the Doctor-Patient Relationship is Fundamental to Quality Medical Care.

In recognition of the simple fact that the doctor-patient relationship is critical to quality healthcare, multiple federal statutes expressly decline to condition federal healthcare funding for vulnerable populations on immigrant status. *See e.g.*, The Hill–Burton Act, 42 U.S.C. § 291c(e); 42 C.F.R. § 124.603(a)(1) (requiring Hill–Burton funding recipient facilities to make services "available to all persons residing in the territorial area" of the facilities regardless of immigration status); The Public Health Service Act ("PHSA"), 42 U.S.C. § 254c; 42 C.F.R. § 51c.303(v) (requiring federal grant recipient public and nonprofit private "community health centers" serving "medically underserved populations" to provide health care regardless of immigration status); The Emergency Medical Treatment and Active Labor Act ("EMTALA"), 42 U.S.C. § 1395dd (requiring hospitals that receive Medicare reimbursements to screen and stabilize emergency patient regardless of patient's immigration status). Over and over, Congress has refused to limit federal health care funds for vulnerable populations based on immigration status.

States have similarly passed legislation affirming that the provision of healthcare services cannot be conditioned on immigration status. *See, e.g.,* Minn. Stat. Ann. § 256B.06 (making medical assistance available to citizens of the United States, qualified noncitizens …, and other persons residing lawfully

[1] https://chnw.chpw.org/about-us/community-health-centers/community-health-center-model

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in the United States); Cal. Welf. & Inst. Code § 14007.8 (making Medi-Cal benefits available to both legal and undocumented residents who are 19 to 25 years of age); 215 ILCS 106/20) (Illinois making expanding medical assistants benefits to all qualifying children regardless of immigration status). Fifteen states provide prenatal care to pregnant women regardless of status and twenty-eight states cover immigrant children and women without a waiting period.[2]

These and many other similar laws are based on a fundamental tenet of healthcare: that the doctor-patient relationship is the foundation of effective healthcare. Decades of medical research have confirmed "[e]ffective doctor-patient communication is a central clinical function in building a therapeutic doctor-patient relationship, which is the heart and art of medicine. This is important in the delivery of high-quality health care."[3] Like conversations with a priest or an attorney, physician-patient communications are based on trust and openness. "The doctor-patient relationship involves vulnerability and trust. It is one of the most moving and meaningful experiences shared by human beings."[4]

The critical nature of the doctor-patient relationships has also been consistently recognized by federal courts. For example, the Supreme Court has emphasized the "imperative need for confidence and trust" in the doctor-patient relationship, as a physician "must know all that a patient can articulate in order

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[2] Tricia Brooks, Joe Touschner, Samantha Artiga, Jessica Stephens, and Alexandra Gates, "Modern Era Medicaid: Findings From A 50-State Survey Of Eligibility, Enrollment, Renewal, And Cost-Sharing Policies In Medicaid And CHIP as of January 2015," Kaiser Family Foundation, January 20, 2015, available at: http://kff.org/healthreform/report/modern-era-medicaid-findings-from-a-50-state-survey-of-eligibility-enrollment-renewal-and-costsharing-policies-in-medicaid-and-chip-as-of-january-2015.

[3] Jennifer Fong Ha, Dip Surg Anat, and Nancy Longnecker, Doctor-Patient Communication: A Review, Ochsner J (2010)

[4] Fallon E. Chipidza, Rachel S. Wallwork, and Theodore A. Stern, Impact of the Doctor-Patient Relationship, Prim Care Companion CNS Disord. (2015)

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1 to identify and to treat disease." *Trammel v. U.S.*, 445 U.S. 40, 51 (1980). There
2 is a well-recognized state interest in "maintaining the integrity and ethics of the
3 medical profession," which includes "promoting a healthy doctor-patient
4 relationship" and "respecting physicians' professional judgment." *Stuart v.*
5 *Camnitz*, 774 F.3d 238, 251 (4th Cir. 2014) (*quoting Washington v. Glucksberg*,
6 521 U.S. 702, 731 (1997)).

7 **B. DHS Has Failed to Address How the Forcible Insertion of**
8 **Immigration Considerations into Healthcare Will Grievously Undermine The Doctor-Patient Relationship.**

9 In responding to the overwhelmingly negative comments on the Public
10 Charge Rule, DHS made no attempt to acknowledge or engage with the inevitable
11 result of entwining medical decision-making with immigration status: the burden
12 upon the doctor-patient relationship.

13 The Rule profoundly undermines this relationship in several ways. First,
14 with respect to clinicians, the Public Charge Rule will curtail a physician's ability
15 to speak freely and privately to their patients, free from state dictates or intrusion.
16 *See Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 884 (1992) (noting
17 that a physician's speech is "part of the practice of medicine."); *Doe* v. *Bolton*,
18 410 U.S. 179, 195–200, (1973) (noting a patient's right to seek and follow the
19 advice of her physician without state-mandated intrusion or interference). These
20 cases demonstrate the well-established state interest in protecting doctor-patient
21 consultations from state intrusion so that patients and doctors may work together
22 to determine the best course of medical care. This interest is severely impaired
23 by the Public Charge Rule, which constrains clinicians' abilities to recommend
24 public benefit programs as well as their access to reliable, forthright disclosures
25 from their patients. *See* Batayola Decl., ECF No. 60, at 9 ("Families have asked
26 our providers about applying for Medicaid or SNAP in the past, but our providers

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note that they rescinded these requests after hearing about public charge."). By injecting immigration consequences into medical consultations, the Rule represents an unacceptable intrusion into the doctor-patient relationship.

Second, by forcing non-citizens to choose between medical treatment or potential deportation or family separation, the Rule induces patients to miss follow-up appointments or forego treatment, contrary to the recommendations of healthcare providers. For example, under the Public Charge Rule, a lack of health insurance coupled with a disability or complex medical condition is a heavily weighted negative factor in the public charge determination. As a result, non-citizens may avoid care for fear that a serious medical condition will be diagnosed or discovered, which would in turn impact their public charge determination. Although in December 2017 immigrant parents reported that they "generally view hospitals and doctors' offices as safe spaces"—in contrast to the vast majority of public spaces, where they feared encountering racism or discrimination, or an encounter with law enforcement—the Public Charge Rule removes that sense of security, inducing families to substantially reduce their use of the healthcare system for fear of immigration reprisals.[5]

Third, by encouraging over-reliance on emergency services, the Public Charge Rule will disrupt continuity of care, a critical component of a successful doctor-patient relationship. According to estimates by the Kaiser Family Foundation, the Public Charge Rule could lead to Medicaid disenrollment rates ranging from 15 percent to 35 percent among Medicaid and CHIP enrollees living

[5] Living in A Legal non-citizen Family in America: How Fear and Toxic Stress are Affecting Daily Life, Well-Being, & Health, December 2017, https://www.kff.org/disparities-policy/issue-brief/living-in-an-immigrant-family-in-america-how-fear-and-toxic-stress-are-affecting-daily-life-well-being-health/.

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in mixed-status households.[6] This equates to between 2.1 and 4.9 million beneficiaries disenrolling from the programs. Pursuant to federal law, hospitals are prohibited from refusing to treat a patient for lack of insurance or based on their immigration status. As a result, if vulnerable populations disenroll from Medicaid for fear of being deemed a public charge, they will inevitably turn to emergency rooms as their sole healthcare option. Those utilizing emergency rooms will be deprived of the benefits of continuity of care with their primary care physician. Primary care clinicians possess knowledge of a patient's extended and familial medical histories, medications, allergies, and holistic needs—such knowledge is simply unavailable to their colleagues in emergency medicine.

The Public Charge Rule imposes an unjustifiable burden on the doctor-patient relationship by impermissibly forcing clinicians to consider immigration status as a component of care, erecting barriers to forthright patient-physician communication, and disrupting continuity of care. As DHS completely failed to analyze the harms posed by such a burden, Amici request this Court enjoin the Public Charge Rule pending the Plaintiff States' legal challenge.

II. THE PUBLIC CHARGE RULE WILL IRREPARABLY HARM AMICI'S WORK TO ADDRESS THE SOCIAL DETERMINANTS OF HEALTH FOR IMMIGRANT PATIENTS AND COMMUNITIES.

Healthcare providers like Amici have long recognized that an individual's healthcare extends far beyond the discrete medical or behavioral treatment received in a clinician's office. Health is impacted by a wide range of factors, including socioeconomic status, education, housing, transportation, employment, and family and peer support. The Rule thoroughly undermines the ability of

[6] Artiga S, Garfield R, Damico A. Issue Brief: Estimated Impacts of the Proposed Public Charge Rule on Legal non-citizens and Medicaid. The Henry J. Kaiser Family Foundation. October 2018. Available at: http://files.kff.org/attachment/Issue-Brief-Estimated-Impacts-of-the-Proposed-Public-Charge-Rule-on-Legal non-citizens-and-Medicaid

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healthcare providers to attend to these complex factors, each of which bears on individual and community health. By penalizing immigrants for utilizing benefit programs, the Rule increases the likelihood that these individuals and families will disregard clinical interventions aimed at improving the social determinants of health. In compelling immigrants to forego assistance programs that address healthcare and social needs, the Rule threatens irreparable harm to Amici's mission of improving healthcare outcomes for immigrants and citizens alike.

A. The Rule Undermines Federal and State Investments in Addressing the Social Determinants of Health.

In partnership with state and federal governments, healthcare providers such as Amici have dedicated considerable time and resources to study the social determinants of health and provide comprehensive, holistic services that aim to treat "the whole person," thereby improving individual and community health. The Public Charge Rule, which disincentivizes low-income immigrants from utilizing these services, undermines these efforts and will halt or dissipate advances that have been made in redressing social health needs.

Over the past several decades, government investment in community-based health has grown significantly.[7] Of particular note, multiple Amici, including International Community Health Services and Community Health Network of Washington, are affiliated with federally qualified health centers, which are governed by Section 330 of the Public Health Service Act. Pursuant to Section 330, health centers are required to provide "required primary health services," which include services "designed to assist health center patients in establishing eligibility for and gaining access to Federal, State, and local programs that provide or financially support the provision of medical, social, housing,

[7] *The Patient Protection and Affordable Care Act of 2010.* Public Law 111-148, 111th Congress, 124 Stat 119, HR 3590, enacted 2010 Mar 23

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1 educational, or other related services." 42 U.S.C.A. § 254b(b)(1)(A)(iii). Too,
2 nonprofit hospitals are required to conduct community health needs assessments
3 every three years, which focus directly on the social determinants of heath by
4 engaging hospitals, public health departments, and community-based
5 organizations to address community needs beyond disease management.[8]

6 In addition, several states require or encourage medical providers to engage
7 in community benefit planning. Vermont hospitals must identify a "process for
8 achieving openness, inclusiveness, and meaningful public participation," an
9 acknowledgment of the centrality of patient autonomy and culturally competent
10 care to fully redressing healthcare needs.[9] In Texas and California, hospitals must
11 include community groups and government officials in prioritizing social needs
12 and identifying goals to be achieved over a specific timeline.[10] Finally, in
13 Washington, the Department of Health developed the "Washington State Plan for
14 Healthy Communities," which seeks to "address the physical, environmental,
15 social, and emotional factors that contribute to chronic disease" through, for
16 example, partnering with health care organizations to implement policies that
17 deliver "high-impact clinical preventative services" and "enhance linkages to
18 community prevention services and programs."[11]

19 Amici have made significant investments in programs, services, and outreach

20 [8] Kaiser Family Foundation, Estimated Impacts of the Proposed Public Charge
21 Rule on Legal Non-cCtizens and Medicaid
(2018), available at https://www.kff.org/report-section/estimated-impacts-of-
22 the-proposed-public-charge-ruleon-legal non-citizens-and-medicaide-key-
findings/.
23 [9] *See 18* V.S.A. § 9405b (b)(1), Vt Stat Ann tit 18, §9405a(a)
[10] *See* Tex Health & Safety Code Ann §311.044(c)(1) (West 2017), Tex Health
24 & Safety Code Ann §§311.044(d)(1)-(9)(West 2017), Tex Health & Safety
Code Ann §311.044(e) (West 2017), Cal Health & Safety Code §127350(b)
25 (West 2018), Cal Health & Safety Code §§127355(a)-(b) (West 2018), Tex
Health & Safety Code Ann §311.044(c)(2) (West 2017)
26 [11] https://www.doh.wa.gov/Portals/1/Documents/Pubs/140-073-
WAStatePlanForHealthyCommunities.pdf

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1 that aim to improve individual health by addressing its social determinants. For
2 example, International Community Health Services offers nutrition services,
3 including nutrition counseling, Women, Infants, and Children Nutrition Program
4 (WIC) and maternity support services. MGH Chelsea's commitment to providing
5 services and resources to the local community, many of whom are Spanish-
6 speaking immigrants, includes operating a program for survivors of domestic
7 violence and intimate partner abuse, nutrition assessment, counseling, and
8 education through WIC, and specialized services for those affected by or infected
9 with HIV/AIDS. Bienestar Human Services connects patients with case
10 managers, who assists patients in applying for food, medical care, housing,
11 transportation, and other benefits, and with peer navigators, who work with
12 patients on food security, mental health therapy, and housing and transportation
13 assistance. These programs further a long-held tenet of public health: that food,
14 housing, and transportation security are deeply intertwined with healthcare
15 outcomes. By addressing these basic needs, Amici can ensure that, for example,
16 premature infants have access to high calorie nutrition, that diabetics who take
17 insulin have access to reliable refrigeration, or that patients needing continuous,
18 life-saving medical care, such as chemotherapy or dialysis, do not experience
19 disruptions in their insurance coverage.

20 Amici have made considerable investments in addressing the social
21 determinants of health because these services have been enormously successful
22 in improving patient satisfaction, reducing health disparities, empowering low-
23 income communities, and reducing costs across healthcare systems by reducing
24 or eliminating the need for specialty or emergency care. This progress will be
25 irreparably harmed if the Public Charge Rule is permitted to take effect. *See, e.g.,*
26 Batayola Decl., ECF No. 60, at 5 (noting that Amicus ICHS' Mission and Vision

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1 Statements recognize "that social determinants of health and community
2 empowerment play significant roles in patient outcomes" and that "[ICHS']
3 Mission to address social determinants of health is further compromised if
4 individuals do not feel they can safely access nutrition or housing benefits
5 without incurring actual or perceived negative immigration consequences."). If
6 immigrant families face housing, medical, or food instability because of mass
7 disenrollment, the work of Amici and their partners in community health to
8 provide holistic, comprehensive, preventative care will be wholly undermined.

9 **B. By Targeting Benefits that Address the Social Determinants of Health,**
10 **the Public Charge Rule Will Irreparably Harm Children.**

11 Amici are particularly concerned that in undermining the ability of healthcare
12 providers to attend to the social determinants of health, the Public Charge Rule
13 will irreparably harm the lives of thousands of children, by increasing the
14 likelihood they will suffer hunger, chronic illness, or homelessness. As DHS is
15 well aware, hundreds of comments on the proposed Public Charge Rule discussed
16 the harm the Rule posed to the well-being of children. Indeed, DHS
17 acknowledged that the Rule "may increase the poverty of certain families and
18 children, including U.S. citizen children"[12] Amici believe that the Rule
19 constitutes an irreparable harm to the safety and well-being of children and so
20 must be enjoined pending the final disposition of this case.

21 For example, SNAP provides nutrition benefits to supplement the food
22 budget of families in need so they can purchase healthy food and move towards
23 self-sufficiency. Almost 48% of noncitizen SNAP recipients in 2017 were
24 women (typically mothers), and an additional 12% were children.[13] DHS itself

25 [12] *Inadmissibility on Public Charge Grounds*, 84 Fed. Reg. 41, 292 (Aug. 14, 2019).
26 [13] National Women's Law Center calculations based on U.S. Census Bureau, 2017 Current Population Survey, using Sarah Flood, Miriam King, Renae

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1 has acknowledged that benefits like SNAP are designed to help children's future
2 health and wellbeing. *See* 84 Fed. Reg. at 41,370–71 (acknowledging "many of
3 the public benefits programs [at issue] aim to better future economic and health
4 outcomes for minor recipients"). If individuals elect to disenroll from SNAP, out
5 of the reasonable fear that they will be unable to secure immigration relief,
6 children will be deprived of a program that alleviates poverty and food insecurity,
7 improves dietary intake and weight outcomes, and supports economic stability
8 and academic outcomes, which in turn reduces healthcare, educational, and
9 employment costs for their community and country.[14] *See also* Batayola Decl.
10 ECF No. 60 at 6 (observing ICHS is "concerned about significant negative
11 impacts to children and infants due to losses in health and nutrition benefits.").
12 Notably, many of the children who would be impacted by the Public
13 Charge Rule are U.S. citizens living in mixed-status households. According to
14 the Kaiser Family Foundation, in 2016, nearly 20 million or one in four children
15 had at least one legal non-citizen parent, and 90% (17.7 million) of these children
16 were citizens.[15] Over 8 million citizen children with a legal non-citizen parent
17 receive medical coverage through Medicaid or CHIP, programs that provide
18 access to preventive, primary, and chronic care. The impact of this coverage on
19 individual and community outcomes cannot be overstated. Without Medicaid or

20 Rodgers, Steven Ruggles, and J. Robert Warren. Integrated Public Use
21 Microdata Series, Current Population Survey: Version 6.0 [dataset].
Minneapolis, MN: IPUMS, 2018. Available at
22 https://doi.org/10.18128/D030.V6.0./
[14] Food Research & Action Center, *Hunger & Health: The Role of the*
23 *Supplemental Nutrition Assistance Program in Improving Health and Well-Being*, at 5 (Dec. 2017).
24 [15] Kaiser Family Foundation, Nearly One in 20 Million Children Live in Legal
non-citizen Families that Could be
25 Effected by Evolving Legal non-citizen Policies, April 2018,
https://www.kff.org/disparities-policy/issuebrief/nearly-20-million-children-
26 live-in-legal non-citizen-families-that-could-be-affected-by-evolving-
immigration-policies/.

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CHIP, non-citizens will be more likely to die prematurely and experience poorer medical outcomes, while their children, citizen or otherwise, will be less likely to be immunized and have access to regular, high-quality care.[16] *See also* Batayola Dec. at 6 "[W]hen parents are too fearful or are outright prevented from accessing Medicaid for their children, then those children experience far worse health outcomes over the course of their lifetimes.").

Amici reject any assertion by DHS that the agency has mitigated the harm to children, or that such harm is negligible because, for example, the Rule was amended to eliminate consideration of the receipt of Medicaid by those under 21, does not consider use of CHIP, or has no application to U.S. citizens. Even before the Rule was set to take effect, Amici began to observe an increase in patients foregoing services recommended by providers to which they were legally entitled. *See, e.g.,* Berge Decl., ECF No. 57 (reporting that, at community health centers in Washington State, "patients are canceling their appointments or refusing to make back to school and immunization appointments for their children. Because of the Public Charge Rule, parents are afraid that taking their children to the doctor or getting their immunizations will jeopardize their child's ability to stay in the United States, even if the child was born here and is a U.S. citizen."); Batayola Decl. ECF No. 60 at 9-12 (noting that ICHS has had "patients and clients requesting to disenroll from programs and services out of fear" and providing examples of a mother who is afraid her U.S. citizen son's use of Medicaid will impact her citizenship application and a WIC-enrolled family who asked to be removed from the program). Similar fears have been reported by clinicians across the country. In a 2018 survey of California healthcare providers,

[16] National Immigration Law Center, *Issue Brief: The Consequences of Being Uninsured*, at 2-4 (Aug. 2014).

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more than two-thirds observed an increase in parents' concerns about enrolling their children in California's Medicaid and SNAP programs as well as in WIC, even though the Rule had not yet taken effect and even though WIC is not part of the public charge determination.[17]

That fear and confusion prompted such widespread evasion of health programs, even for children, can hardly have been a surprise to DHS. Declines in benefit enrollment and use of services also occurred during welfare reform in the 1990s, following the passage of The Personal Responsibility and Work Opportunity Reconciliation Act of 1996. Researchers have argued that this drop-off owes "more to [a] 'chilling effect'" than to actual changes in eligibility and that changes in one program "may chill noncitizens' use of other programs."[18] As a result, even if a governmental body does not intend to target a particular individual or benefit—and indeed, explicitly excludes them from consideration—the chilling effect will likely prompt disenrollment. Thus, following welfare reform in the 1990s, there were "sharp declines" in the use of health, food, and cash assistances "within populations that are thought to be more vulnerable and were not a focus of welfare reform," including the citizen children of noncitizens.[19]

By targeting benefits that provide medical, food, and housing security to thousands of families, the Public Charge Rule jeopardizes the ability of healthcare providers like Amici to address the social determinants of children's

[17] The Children's Partnership. California Children in Immigrant Families: The Health Provider Perspective (2018). Available at: https://www.childrenspartnership.org/wp-content/uploads/2018/03/Provider-Survey-Infographic-.pdf.

[18] Fix, M.E. & Passel, J.S., *Trends in Noncitizens' and Citizens' Use of Public Benefits Following Welfare Reform, 1994-97*, Urban Institute, at 4 (Mar. 1, 1999).

[19] *Id.*

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health and provide the kind of comprehensive support, services, and programs that help children thrive and prosper. The entirely foreseeable effect of the Rule—the chilling of noncitizen parents from seeking medical care or benefits for their non-citizen *or* U.S. citizen children—irreparably harms both Amici's mission and the client communities they serve. As such, Amici respectfully request that this Court enjoin the rule pending the resolution of this case.

CONCLUSION

The Public Charge Rule represents a fundamental attack on Amici's mission of providing high-quality healthcare to underserved, low-income immigrant communities. In contravention of the APA, the Rule is arbitrary and capricious—DHS utterly fails to consider the impact of the Rule on the doctor-patient relationship, the bedrock of effective healthcare. In addition, the Rule irreparably harms the investments that healthcare providers such as Amici have made to address the social determinants of health and their efforts to promote better individual and community healthcare outcomes. Amici therefore urge this Court to grant the preliminary injunctive relief to stay implementation of the Rule and to allow a full presentation of factual information that will illustrate that the Rule is an impermissible departure from legal precedent.

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