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11 IN THE UNITED STATES DISTRICT COURT
 12 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 13

14 **IMMIGRANT LEGAL RESOURCE CENTER; EAST
 15 BAY SANCTUARY COVENANT; COALITION FOR
 16 HUMANE IMMIGRANT RIGHTS; CATHOLIC
 LEGAL IMMIGRATION NETWORK, INC.;
 17 INTERNATIONAL RESCUE COMMITTEE;
 ONEAMERICA; ASIAN COUNSELING AND
 18 REFERRAL SERVICE; ILLINOIS COALITION FOR
 IMMIGRANT AND REFUGEE RIGHTS,**

19 Plaintiffs,

20 v.

21
 22 **CHAD F. WOLF, under the title of Acting
 Secretary of Homeland Security; U.S.
 23 DEPARTMENT OF HOMELAND SECURITY;
 24 KENNETH T. CUCCINELLI, under the title of
 Senior Official Performing the Duties of the
 25 Deputy Secretary of Homeland Security; U.S.
 CITIZENSHIP & IMMIGRATION SERVICES,**

26 Defendants.
 27
 28

Case No. 4:20-cv-05883-JSW

**AMICUS CURIAE BRIEF OF THE
 STATES OF CALIFORNIA,
 CONNECTICUT, DISTRICT OF
 COLUMBIA, DELAWARE, HAWAII,
 ILLINOIS, MARYLAND,
 MASSACHUSETTS, MICHIGAN,
 MINNESOTA, NEVADA, NEW JERSEY,
 NEW MEXICO, NEW YORK, OREGON,
 PENNSYLVANIA, RHODE ISLAND,
 VERMONT, AND WASHINGTON IN
 SUPPORT OF PLAINTIFFS' MOTION
 FOR PRELIMINARY INJUNCTION**

Date: September 25, 2020
 Time: 9:00 a.m.
 Ctrm: 5
 Judge: Hon. Jeffrey S. White
 Trial Date: None Set
 Action Filed: August 20, 2020

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INTRODUCTION AND INTERESTS OF AMICI

The Amici States¹ submit this brief in support of Plaintiffs' motion for a preliminary injunction to enjoin the rule published by the Department of Homeland Security (DHS) entitled U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, 85 Fed. Reg. 46788 (Aug. 3, 2020) (Rule). The Rule's fee increases, elimination of fee waivers, and related provisions curtail the ability of immigrants to adjust their status, obtain safety from persecution, and become U.S. citizens. As a result, the Rule undermines Congress's objectives of uniting families, keeping naturalization affordable, and upholding the United States' international treaty obligations. Absent an injunction, the Rule will harm Amici States' economies and public health, frustrate state and local programs designed to help immigrants attain legal status and self-sufficiency, and undermine state and local efforts to further public safety and deter unfair practices. For these reasons, the public interest favors granting plaintiffs' motion.

ARGUMENT

I. IMMIGRANT INTEGRATION AND EMPLOYMENT CONFER SIGNIFICANT ECONOMIC AND SOCIETAL BENEFITS TO THE AMICI STATES

Advancement toward citizenship, whether through asylum, protection-based visas, lawful permanent residence (LPR) or naturalization, confers significant benefits upon individuals which are shared with their communities. These benefits, including economic advancement, integration, and cultural enrichment, are important to the economic, social, and public health of Amici States. The Rule's provisions strike at the heart of this symbiosis by making the applications for immigration benefits unaffordable for low income, but otherwise eligible, immigrants.

To begin, employment authorization, gained through lawful status or through interim work authorization, provides access to higher paying jobs, labor rights and other legal protections—including health and safety protections that are vital in the ongoing COVID-19 pandemic—

¹ California, Connecticut, District of Columbia, Delaware, Hawaii, Illinois, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Vermont, and Washington.

1 without fear of deportation.² Legal status also connects immigrants with the licenses, permits,
 2 insurance, and credit necessary to start businesses.³ Research has shown that immigrants who can
 3 transition from lacking lawful status to LPR status improve their earnings by 25.1% over ten
 4 years.⁴

5 Asylum seekers, in particular, benefit greatly from obtaining status in the United States.
 6 Individuals asserting valid claims for asylum are among the most vulnerable and economically
 7 disadvantaged populations to apply for status. 8 U.S.C. § 1158 (requiring individuals show that
 8 they have suffered persecution or have a well-founded fear of persecution based on race, religion,
 9 nationality, membership in a particular social group, or political opinion, to remain in the United
 10 States). Yet once granted protection, asylees can pursue lawful permanent residence within one
 11 year, obtain derivative status for spouses and children without demonstrating individual
 12 persecution claims, and are eligible to apply for naturalization four years after obtaining LPR
 13 status. 8 C.F.R. § 209.2(a)(2).⁵ In fact, asylees “have some of the highest naturalization rates of
 14 all immigrants.”⁶

15 The economic and societal benefits of citizenship are even more pronounced. Naturalized
 16 citizens earn between 50% and 70% more than noncitizens, have higher employment rates, and
 17 are half as likely to live below the poverty line as non-citizens.⁷ A study of 21 U.S. cities showed
 18 that when eligible residents naturalize, (1) individual earnings increase by an average of 8.9% or
 19 \$3,200; (2) employment increases by 2.2%; and (3) homeownership increases by 6.3%.⁸ That

20 _____
 21 ² Robert Lynch, et al., *The Economic Effects of Granting Legal Status and Citizenship to*
Undocumented Immigrants, Ctr. for Am. Progress, 4-6 (Mar. 20, 2013),
 22 <https://tinyurl.com/y3cqyxbx>.

23 ³ *Id.*

24 ⁴ *Id.* at 2.

25 ⁵ Nadwa Mossad, *Refugees and Asylees: 2018*, DHS Office of Immigration Statistics, 5-6, n.16, 8
 (Oct. 2019), <https://tinyurl.com/ybg9w54j>.

26 ⁶ *Id.* (“Of the adults granted asylum . . . who gained LPR status between 2000 and 2010, 58
 percent naturalized within six years and 73 percent within ten years.”)

27 ⁷ Madeleine Sumption, et al., *The Economic Value of Citizenship for Immigrants in the United*
States, Migration Policy Institute, 11 (Sept. 2012), <https://tinyurl.com/y6xu453x>.

28 ⁸ Maria E. Enchautegui, et al., *The Economic Impact of Naturalization on Immigrants and Cities*,

1 study also projected that naturalizing all eligible residents in 21 U.S. cities would increase
2 aggregate earnings by \$5.7 billion, and tax revenues in these cities by \$2.03 billion.⁹
3 Naturalization also benefits civil society by encouraging long-term social integration and
4 empowering new Americans to participate in our democratic processes by voting, serving on
5 juries, and running for elected office.

6 Immigrants also help power the nation's economy, generating wealth and revenue for
7 businesses, workers, and state and local governments. As of 2017, at least 43% of Fortune 500
8 companies were founded by first or second-generation immigrants.¹⁰ Immigrant-owned
9 companies in the United States employ over 7.9 million workers across a variety of sectors.¹¹ In
10 California, one of every six business owners is an immigrant and California's 937,000 immigrant
11 business owners have generated \$24.5 billion in revenue to the state's economy.¹² In New York,
12 immigrants own more than 30% of all small businesses, and nearly half of all small businesses in
13 New York City.¹³ As of 2014, immigrant-owned businesses employed approximately 500,000
14 New Yorkers, and as of 2018, those businesses generated nearly \$8 billion in income.¹⁴ In
15 Massachusetts, over 70,000 immigrant entrepreneurs provide nearly 169,000 jobs, generating
16 over \$27 billion in sales.¹⁵ In New Jersey, nearly 390,000 people are employed by over 128,000

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Urban Institute, vi (Dec. 9, 2015), <https://tinyurl.com/yxbumdoc>.

19 ⁹ *Id.* at 11.

20 ¹⁰ See Ctr. for Am. Entrepreneurship, *Immigrant Founders of the 2017 Fortune 500* (Dec. 2017),
<https://tinyurl.com/y2bslwms>. Eleven California-based Fortune 500 firms—including EBay,
21 Google, and Qualcomm—were founded or co-founded by immigrants. New Am. Econ., *The
Contributions of New Americans in California*, 3 (Aug. 2016), <https://tinyurl.com/yyyadso3>.

22 ¹¹ New Am. Econ., *Immigrants and the Economy in United States of America* (2020),
<https://tinyurl.com/yxu2fefd>.

23 ¹² Am. Immigration Council (AIC), *Immigrants in California* (2020),
24 <https://tinyurl.com/ybe2bdpf>.

25 ¹³ AIC, *Immigrants in New York*, 4 (2020), <https://tinyurl.com/y4z7qg4e>; Lena Afridi, et al., *The
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26 Hous. & Dev. (Mar. 6, 2019), <https://tinyurl.com/y23s7c5n>.

27 ¹⁴ N.Y. Immigration Coal., *Blueprint for an Immigrant New York*, 3 (Jan. 2019); *Immigrants in
New York*, *supra* n.13 at 4.

28 ¹⁵ New Am. Econ., *Immigrants and the Economy in Massachusetts* (2020),

1 immigrant business owners.¹⁶ In Maryland, immigrant entrepreneurs represent almost 20% of the
 2 State’s business owners and have generated \$1.7 billion in combined annual revenue.¹⁷ By
 3 obstructing the pathways to legal status and citizenship, the Rule will diminish the socioeconomic
 4 dividends that legal status delivers for immigrants and Amici States alike.

5 **II. THE RULE WILL PREVENT ELIGIBLE IMMIGRANTS FROM OBTAINING PROTECTION,**
 6 **ADVANCING THE IMMIGRATION PROCESS, AND SECURING WORK AUTHORIZATION**

7 The Rule increases fees and eliminates fee waivers for critical immigration benefit
 8 applications and will prevent many low wage earners and asylum seekers from obtaining or
 9 adjusting their status. The Rule’s elimination of fee waivers for employment authorization
 10 applications has a negative impact that cuts across several humanitarian and family-based benefit
 11 categories, putting some applicants in the untenable position of having to work without
 12 authorization so that they can afford to apply for authorization to work.

13 **A. The Rule Erects Barriers to Naturalization**

14 Despite Congress’s consistent instructions that DHS maintain an affordable pathway to
 15 citizenship, the Rule nearly doubles the application fee for naturalization from \$640 to \$1,170 and
 16 eliminates the option of obtaining a full or partial fee waiver based on inability to pay.¹⁸ *See* 85
 17 Fed. Reg. 46792. Multiple studies have found that past price increases to the naturalization
 18 application fee, and the current \$640 fee, have deterred eligible, low-income immigrants from
 19 pursuing citizenship.¹⁹ Indeed, naturalization is one of the applications most frequently associated

20 <https://tinyurl.com/sgbmwpg>.

21 ¹⁶ New Am. Econ., *Immigrants and the Economy in New Jersey* (2020),
 22 <https://tinyurl.com/y5n669em>.

23 ¹⁷ AIC, *Immigrants in Maryland* (2020), <https://tinyurl.com/yywapl6h>.

24 ¹⁸ H. Rep. No. 115-948, at 61-62 (2018), accompanying H.R. 6776, the Department of Homeland
 25 Security Appropriations Act (stating that U.S. Citizenship and Immigration Service (USCIS) “is
 26 expected to continue the use of fee waivers for applicants who can demonstrate an inability to pay
 27 the naturalization fee” and “encourage[ing] USCIS to maintain naturalization fees at an
 28 affordable level.”).

29 ¹⁹ Jens Hainmueller, et al., *A Randomized Controlled Design Reveals Barriers to Citizenship for*
 30 *Low-income Immigrants*, 115 Proceedings for the Nat’l Acad. Sciences, 939, 941, 943 (Jan. 16,
 31 2018), <https://www.pnas.org/content/115/5/939> (“financial barrier is a real and binding constraint
 32 for low-income LPRs . . .”); Manuel Pastor, et al., *Nurturing Naturalization, Could Lowering the*
 33 *Fee Help?*, CSII, 2, 17 (Feb. 2013), <https://tinyurl.com/y5xqnh72> (price increases in 2004 and

1 with fee waiver requests.²⁰ The Rule’s fee increases and elimination of waivers will make
2 applying for naturalization unaffordable for many low-income and working class individuals.
3 And because the Rule reduces the price of renewing LPR status, “poor applicants will rationally
4 choose to remain non-citizens,” impeding their integration into civic and economic life in the
5 United States, including the right to fully participate in our democratic process by voting, serving
6 on juries, and running for elected office. Compl., ¶268; 85 Fed. Reg. 46791.

7 **B. The Rule Impedes Access to Lawful Permanent Resident Status**

8 Under the Rule, applicants seeking to adjust to LPR status, who could previously apply to
9 adjust their status and seek work and travel authorization under a bundled application fee of
10 \$1,140, must now pay three separate fees for these three benefits, for a total fee of \$2,195. 85
11 Fed. Reg. 46791-92, 46841. As a practical matter, backlogs in the adjudication of adjustment of
12 status applications are so long that applicants need to secure interim work and travel authorization
13 while they wait for their green cards to be approved.²¹ Under these conditions, a worker making
14 the federal minimum wage would need to work over 145 hours—nearly a full month’s wages if
15 working 40 hours per week—to pay for the increased combined fee. In addition, LPR applicants
16 who once paid a \$750 fee to gain derivative LPR status for their minor children must now pay the
17 full \$1,130 application fee under the Rule. 85 Fed. Reg. 46841.

18 As a result of the Rule, hard-working, eligible immigrants will be priced out of seeking
19 residency, or at least delayed in pursuing an adjustment of status. They will also necessarily be
20 denied critically important benefits of lawful permanent residence—the ability to petition for
21 relatives abroad to join them in the United States through immigrant visas and to ultimately
22 become naturalized citizens. As discussed below, these individual harms will have a ripple effect
23 on the economic and societal health of Amici States.

24
25
26 2007 were a significant barrier for less educated and lower income immigrants).

27 ²⁰ See USCIS Fee Waiver Policies and Data, Fiscal Year (FY) 2017 Report to Congress, USCIS
(Sept. 17, 2017), <https://tinyurl.com/yyggvgxw>.

28 ²¹ See Letter from Northwest Immigrant Rights Project, <https://tinyurl.com/yxzjpey3>.

1 **C. The Rule Will Discourage and Prevent Victims of Crime, Trafficking, and**
2 **Domestic Violence from Obtaining Relief**

3 Our nation’s immigration laws grant protection in response to certain experiences of
4 victimization or harm, including visas intended to encourage victims of crime, trafficking, and
5 domestic violence to cooperate with law enforcement. So strong is the public policy to encourage
6 use of such immigration benefits that Congress requires DHS to provide fee waivers for such
7 visas. 8 U.S.C. § 1255(l)(7), citing 8 U.S.C. §§ 1101(a)(15)(T) [visa for trafficking victim];
8 1101(a)(15)(U) [victim of crime visa]; 1105a [employment authorization for domestic violence
9 victims]; 1229b(b)(2) [cancellation of removal for battered spouse or alien parent of battered
10 child]; and 1254a(a)(3) [Temporary Protected Status].

11 Under DHS’s previous policy, an applicant could establish inability to pay—and thereby
12 obtain a fee waiver—based on his or her “overall financial picture and household situation,”
13 including whether the applicant was receiving a means-tested public benefit, had an income at or
14 below 150% of the Federal Poverty Guideline (FPG), or was “under financial hardship due to
15 extraordinary expenses or other circumstances.”²² However, the Rule significantly narrows
16 eligibility for statutorily required fee waivers to applicants who are able to establish an income of
17 less than 125% of the FPG. This standard does not account for circumstances—such as high
18 housing costs or moving or medical expenses related to domestic violence—that may make an
19 applicant unable to pay despite having an income at or above 125% the FPG.

20 In addition, the Rule subjects applicants to exorbitant fees that are a practical bar to relief.
21 For example, the Rule raises the application fee for qualifying family members of a victim of
22 crime that receives a U-visa from \$230 to \$1485—a **546% increase**. 85 Fed. Reg. 46791 (fee
23 change for I-929).²³ Similarly, applicants entitled to statutorily required fee waivers are subject to

24
25 ²² *Fee Waiver Guidelines as Established by the Final Rule of the USCIS Fee Schedule; Revisions*
26 to Adjudicator’s Field Manual (AFM) Chapter 10.9, AFM Update AD11–26 (Mar. 13, 2011),
referenced at 85 Fed. Reg. 46819. Available at <https://tinyurl.com/y48dshfr>.

27 ²³ However, U-visa applicants who are eligible for a fee waiver will also be eligible for a waiver
28 of the I-929 fee. 85 Fed. Reg. 46855.

1 increased and newly non-waivable fees for common ancillary applications such as Employment
2 Authorization (\$550) and Advance Permission to Enter as a Nonimmigrant (\$1400).²⁴

3 **D. The Rule Will Prevent Asylum-Eligible Immigrants from Securing**
4 **Protection from Persecution**

5 Congress passed the Refugee Act of 1980, including provisions governing asylum
6 applications, “with the intent of bringing United States statutory provisions concerning refugees
7 into conformity with the provisions of the United Nations Convention Relating to the Status of
8 Refugees.” *Damaize-Job v. I.N.S.*, 787 F.2d 1332, 1336, n.5 (9th Cir. 1986). The Rule imposes an
9 application fee for asylum for the first time in U.S. history, making the United States one of only
10 four countries that charge a fee for immigrants seeking protection from persecution and the only
11 country to offer *no* waivers or exemptions for this fee.²⁵ The Rule also eliminates employment
12 authorization fee waivers for asylum applicants, resulting in a \$630 cost for asylum seekers who
13 wish to work legally while they await adjudication of their applications.

14 Under U.S. law, any person “physically present in the United States or who arrives in the
15 United States . . . irrespective of such [person’s] status, may apply for asylum.” 8 U.S.C.
16 § 1158(a)(1). But given the realities involved in fleeing persecution, even a \$50 fee can render the
17 right to apply for asylum illusory.²⁶ This is obviously true for asylum seekers who are detained
18 without the possibility of release on bond immediately upon arrival, as is common under the
19 current administration’s approach. *See* January 25, 2017 Executive Order, “Border Security and
20 Immigration Enforcement Improvements,” §§ 6 (ordering detention of all noncitizens
21 apprehended violating immigration law) and 11 (ordering end to “abuse” of parole for asylum
22 seekers); *Damus v. Nielsen*, 313 F. Supp. 3d 317, 339 (D.D.C. 2018) (issuing preliminary

23 _____
24 ²⁴ DHS increased the application fee for Advance Permission to Enter as a Non-Immigrant—
which must frequently be filed by victims of crime seeking nonimmigrant status through a U-visa
application—from \$930 to \$1400, a 51% increase.

25 ²⁵ *See* Library of Congress, *Fees Charged for Asylum Applications by States Parties to the 1951*
26 *Refugee Convention*, <https://tinyurl.com/y4paldng> (only Iran, Fiji, and Australia charge fees to
apply for asylum; Iran and Fiji offer exemptions, Australia charges no fee to detained applicants).

27 ²⁶ Lindsay M. Harris, et al., Op-Ed., *Asylum Seekers Leave Everything Behind. There’s No Way*
28 *They Can Pay Trump’s Fee*, WASH. POST, May 1, 2019, <https://tinyurl.com/y2tqeykk>.

1 injunction based on data showing 92-100% parole denial rates at five field offices compared to
 2 parole grant rates of about 90% in previous years).²⁷ Whether or not an applicant is detained,
 3 delays caused by inability to pay the application fee can have life-altering consequences, as the
 4 right to apply for asylum expires one year after entry. 8 U.S.C. § 1158(a)(2)(B).

5 **III. THE RULE WILL HARM AMICI STATES AND THEIR RESIDENTS**

6 **A. By Impeding Immigrant Integration, the Rule Will Harm Amici States’ 7 Economies and Public Health**

8 The Rule’s interference with immigrants’ access to immigration benefits will harm Amici
 9 States by inhibiting economic growth and depriving them of substantial tax revenue. Amici States
 10 are home to millions of immigrants and together host the most refugees in the nation. California
 11 alone is home to 10.6 million immigrants, who comprise 27% of its population. More than half of
 12 these immigrants (5.6 million) had become naturalized citizens as of 2018, and 2.2 million of
 13 these immigrants were eligible to become naturalized U.S. citizens in 2017.²⁸ In 2017, California
 14 was home to nearly 33% of those granted affirmative asylum, amounting to 8,348 asylees, and
 15 there were close to 10,000 asylum applications filed in immigration courts in California in 2018.²⁹
 16 In 2015, more than 4.5 million immigrants comprised 22.9% of New York’s population.³⁰

17 In 2014, immigrants in the United States exercised a staggering \$927 billion in spending
 18 power, generating demand for goods and services and in turn creating more jobs.³¹ In 2018,
 19 immigrant-led households paid \$150 million in state and local taxes—payments that support
 20

21 ²⁷See also Cal. Dep’t of Justice, *Immigration Detention in California*, 24 (Feb. 2019),
 22 <https://tinyurl.com/w7m4rb7> (according to facility staff, about 80% of detainees at Imperial
 23 Regional Detention Center were asylum seekers). Even under previous administrations, lengthy
 24 detention of asylum seekers is common. See *Jennings v. Rodriguez*, 138 S. Ct. 830, 860 (2018)
 25 (Breyer, J., dissenting) (in 2015 over 7,500 asylum seekers taken into custody upon arrival were
 26 detained more than six months).

27 ²⁸ *Immigrants in California*, *supra* n.12 at 1.

28 ²⁹ Mossad, *supra* n.5 at 10; U.S. Dep’t of Justice, Executive Office for Immigration Review,
 29 *Statistics Yearbook 2018*, 25.

30 U.S. Census Bureau, 2015 American Community Survey 1-Year Estimates.

31 Dan Kosten, *Immigrants as Economic Contributors: Immigrant Tax Contributions and
 Spending Power*, Nat’l Immigration Forum (Sept. 6, 2018), <https://tinyurl.com/ycohpuvs>.

1 important public services such as public schools and public safety—and exercised \$1.2 trillion in
 2 spending power nationwide.³² California’s immigrant-led households paid over \$38 billion in
 3 state and local taxes and exercised almost \$291 billion in spending power in 2018.³³ Refugees in
 4 California alone paid over \$1.9 billion in state and local taxes and exercised \$17.2 billion in
 5 spending power in 2015.³⁴ In 2018, New York’s immigrant-led households paid \$21.8 billion in
 6 state and local taxes and exercised \$120.5 billion in spending power, and their 314,439 immigrant
 7 entrepreneurs generated \$135.1 billion in sales and employed over 825,000.³⁵ In New Jersey,
 8 immigrants paid \$9.5 billion in state and local taxes and exercised nearly \$66 billion in spending
 9 power.³⁶ Immigrants in Virginia contributed \$3.8 billion in state and local taxes and exercised
 10 \$31.2 billion in spending power;³⁷ with refugees paying \$260 million in state and local taxes and
 11 exercising \$2.6 billion in spending power.³⁸

12 By reducing access to asylum and increasing other benefit fees, the Rule will diminish these
 13 essential contributions immigrants make to state and local economies as consumers, tax-payers
 14 and job creators. And the Rule’s obstacles to employment authorization will force some into the
 15 underground economy, limiting their income and tax contributions, making them vulnerable to
 16 unscrupulous employers, and decreasing opportunities to take jobs that match their skills,
 17 resulting in significant productivity loss.³⁹

18
 19 ³² New Am. Econ., *Immigrants and the Economy: Map the Impact*, <https://tinyurl.com/yy7ywkkv>.

20 ³³ See *Immigrants in California*, *supra* n.12 at 4-5.

21 ³⁴ New Am. Econ., *From Struggle to Resilience: The Economic Impact of Refugees in America*,
 15-16 (June 19, 2017), <https://tinyurl.com/y2rrcolg>.

22 ³⁵ *Immigrants in New York*, *supra* n. 13 at 4.

23 ³⁶ *Immigrants and the Economy in New Jersey*, *supra* n.16.

24 ³⁷ AIC, *Immigrants in Virginia*, 4 (2020), <https://tinyurl.com/y3ntr5k5>.

25 ³⁸ *From Struggle to Resilience*, *supra* n.34 at 15-16.

26 ³⁹ See Cal. Emp’t Dev. Dep’t, <https://tinyurl.com/yy2pz2s4> (defining “underground economy”);
 Franesc Ortega, et al., *Occupational Barriers and the Labor Market Penalty from Lack of Legal
 Status*, IZA Inst. of Labor Econ. (July 2018), <http://ftp.iza.org/dp11680.pdf>; see also Lisa
 Christensen Gee, et al., *Undocumented Immigrants’ State & Local Tax Contributions*, Inst. on
 Taxation & Econ. Policy 3 (Mar. 2017), <https://tinyurl.com/utzgeel> (estimating that
 27 undocumented immigrants would pay approximately \$2.2 billion more in state and local taxes
 28 annually if given legal status and employment authorization).

1 The financial inability of eligible immigrants to advance their immigration status also
2 impacts state resources related to public health. Under 8 U.S.C. § 1613, lawful permanent
3 residents are not eligible for federally-funded public benefits—including supplemental nutrition
4 assistance and Medicaid—for the first five years of their status as LPRs. Thus, delays in access to
5 LPR status also postpone would-be applicants from obtaining federally funded benefits.
6 Individuals granted asylum become eligible for federally-funded Medicaid, *see* 8 U.S.C. § 1613,
7 saving States the cost of coverage. But under the Rule, many eligible would-be asylum applicants
8 will be unable to apply. Many of the Amici States fill these gaps with state-funded benefits, and
9 even those States that do not offer replacement benefits are generally responsible for the safety
10 and health of their residents. *See, e.g.*, Cal. Welf. & Inst. Code § 17851 (authorizing cities,
11 counties, and hospital districts to provide benefits to provide aid to persons who would otherwise
12 be ineligible under 8 U.S.C. § 1621); 215 Ill. Comp. Stat. 170/1, *et seq.* (permitting
13 undocumented children in Illinois to obtain healthcare coverage) Cal. Educ. Code §§ 66021.7,
14 66021.6, 66016.3 (allowing California public colleges to provide aid to individuals despite the
15 limitations of 8 U.S.C. § 1621); 110 Ill. Comp. Stat. 985/15 (permitting noncitizen students
16 without LPR status to obtain state financial aid in Illinois). The Rule’s pressures on healthcare
17 coverage will harm States and localities in a variety of ways, particularly within the COVID-19
18 pandemic.

19 Without healthcare coverage, individuals are far more likely to skip the preventative care
20 that keeps them healthy.⁴⁰ This includes the testing and treatment that prevent the spread of
21 infectious diseases throughout the community—an imperative given the impending convergence
22 of COVID-19 and flu season. According to one study, while 44% of insured adults received a flu
23 vaccination, only 14% of uninsured adults did.⁴¹ The U.S. District Court for the Southern District

24 _____
25 ⁴⁰ Stacey McMorrow, et al., *Determinants of Receipt of Recommended Preventive Services: Implications for the Affordable Care Act*, 104 Am. J. Pub. Health 2392 (Dec. 2014),
26 <https://tinyurl.com/y4rk686e>; Jennifer E. DeVoe, et al., *Receipt of Preventive Care Among Adults: Insurance Status and Usual Source of Care*, 93 Am. J. Pub. Health 786 (May 2003),
27 <https://tinyurl.com/y249vluf>.

28 ⁴¹ Peng-jun Lu, et al., *Impact of Health Insurance Status on Vaccination Coverage Among Adult Populations*, 48 Am. J. Prev. Med. 647 (Apr. 15, 2015), <https://tinyurl.com/y5es4yt4>.

1 of New York recently found that another DHS rule that would deter immigrants from pursuing
2 COVID-19 testing and treatment impeded public efforts to stem the spread of the virus, thus
3 demonstrating irreparable harm weighing in favor of a preliminary injunction. *See New York v.*
4 *DHS*, ---- F. Supp. 3d ----, No. 19 Civ. 7777 (GBD), 2020 WL 4347264, at *10-11 (S.D.N.Y. July
5 29, 2020). Without preventative care, community members are also more likely to develop
6 expensive medical conditions that may need to be treated in emergency care settings. The costs of
7 such treatment, in turn, are borne by States and localities, because public hospitals often bear the
8 cost of care for uninsured patients.⁴² Some of the Amici States—such as New York, California,
9 Massachusetts, Oregon, Washington, and the District of Columbia—also fund health benefits for
10 immigrant children who do not have insurance through their parents’ employment.⁴³

11 State and locally funded mental health services are likely to face increased demand under
12 the Rule’s employment authorization fee increase, since fewer asylum seekers will have health
13 insurance to cover mental healthcare that is crucial for traumatized asylees. Many states and
14 localities fund mental health providers that assist asylum seekers who are not otherwise insured.
15 For example, New York provides inpatient psychiatric services to youth and offers undocumented
16 state residents access to its Community or Crisis Residences regardless of their ability to pay.⁴⁴
17 Also, a clinic operated by Alameda County, California conducts health assessments of asylum
18 seekers, many of whom need mental health referrals due to abuse and trauma.⁴⁵ Increased demand
19 for such services under the new rules will impose yet more costs on states and localities.

20 **B. The Rule Will Frustrate State and Local Immigrant Integration Programs**

21 The Amici States commit substantial resources and programming to ensure that their
22 immigrant residents are treated fairly and successfully integrate into their communities. Under the

23 ⁴² Cal. Ass’n of Pub. Hosps. & Health Sys., *About California’s Public Health Care Systems*,
24 <https://tinyurl.com/yyc3farc> (public hospitals in California account for 40% of hospital care to the
uninsured in communities they serve).

25 ⁴³ Nat’l Conference of State Legislatures, *Immigrant Eligibility for Health Care Programs in the*
26 *United States* (Oct. 19, 2017), <https://tinyurl.com/y27wh886>.

27 ⁴⁴ *See generally* Decl. of Donna M. Bradbury at 362-368 (Exhibit 60), *Washington v. United*
28 *States*, No. 18-cv-00939 (W.D. Wash. July 17, 2018), ECF No. 31.

⁴⁵ *See Highland Hospital Human Rights Clinic*, HealTorture.org, <https://tinyurl.com/y5bzdf7b>.

1 Refugee Act, Amici States use federal grants to fund counties and private agencies, supporting
2 refugee resettlement through a variety of services including cash aid, nutrition assistance, and
3 employment and language training. *See* 8 U.S.C. § 1522.⁴⁶ Despite decreases in the number of
4 refugees, and therefore refugee-related appropriations, Congress appropriated \$207,201,000 in
5 FY 2019 to be administered by the Office of Refugee Resettlement (ORR) for refugee services.⁴⁷
6 Barriers to lawful permanent residency and naturalization imposed by the Rule cut directly
7 against the goal of ORR’s programs, to “provide people in need with critical resources to assist
8 them in becoming integrated members of American society.”⁴⁸

9 Several Amici States have also enacted state laws funding programs to assist noncitizens in
10 advancing the immigration and naturalization process through legal assistance, legal training and
11 technical assistance, and outreach and education. *See e.g.* Cal. Welf. & Inst. Code § 13303; N.Y.
12 Exec. Law § 94-B. Recently, California awarded 103 organizations over \$42 million to provide
13 immigration-oriented legal services, including legal services to assist immigrants in applying for
14 naturalization, asylum; VAWA, U, and T visas available to victims of crime; providing removal
15 defense, and delivering legal training, education and outreach.⁴⁹ The State of Washington’s Office
16 of Refugee and Immigrant Assistance’s Naturalization Services Program allocates most of its
17 \$1,657,000 budget toward assisting individuals with N-400 preparation and citizenship training,
18 and the state’s Department of Commerce administers a New Americans program—which offers
19 N-400 guidance and technical legal assistance—in partnership with the statewide non-profit
20 organization OneAmerica.⁵⁰ In FY 2019 the Massachusetts Office for Refugees and Immigrants

21 ⁴⁶ Cal. State Plan for Refugee Assistance & Servs. (Federal FY 2019) (Aug. 13, 2018),
22 <https://tinyurl.com/yxfug4uh>.

23 ⁴⁷ Cal. Dep’t. of Health & Human Servs., Fiscal Year 2020 Administration for Children and
24 Families Justification of Estimates for Appropriations Committees, 31,
25 <https://tinyurl.com/y23g6k5s>.

26 ⁴⁸ Office of Refugee Resettlement, <https://www.acf.hhs.gov/orr/about/what-we-do>.

27 ⁴⁹ *See* Cal. Dep’t. of Soc. Servs. (CDSS), Immigration Servs., <https://tinyurl.com/y4zaxm4m>;
28 CDSS, Immigration Servs. Funding Award Announcement, FY2019-20 (Feb. 14, 2020),
<https://tinyurl.com/y3f6j2ob>.

⁵⁰ *See* Wash. State Dep’t. Soc. & Health Servs., <https://tinyurl.com/y538vc8d>; *see also*
OneAmerica, <https://weareoneamerica.org/who-we-are/about-oneamerica/>.

1 supported 1,239 lawful permanent residents to apply for citizenship and its contracted agencies
 2 supported an additional 1,630 lawful permanent residents. Of these applications, 58% were
 3 submitted with a fee waiver.⁵¹ Since 2012, New York’s Office for New Americans has facilitated
 4 the economic, social, and cultural integration of its immigrant residents by providing a network of
 5 programming, including immigration legal assistance, English language training, naturalization
 6 process preparation, and professional development.⁵² The Rule’s cost-prohibitive fees and repeal
 7 of fee waivers will frustrate the Amici States’ programs for facilitating low-income residents’
 8 access to immigration benefits, given that the Rule’s deterrent effect through increased fees will
 9 result in underutilization of these state services. For those states like Washington that offer
 10 application fee assistance, demand for fees required by the Rule will outpace critical services.

11 **C. The Rule Will Undermine State and Federal Programs Intended to**
 12 **Further Public Safety and Fair Business Practices**

13 The Rule will compound victimization and interfere with public safety and the rule of law
 14 in several ways. First, many applicants for asylum and other immigration benefits who cannot
 15 afford increased—and in most cases, unwaivable—application fees will be compelled to turn to
 16 predatory lenders or unqualified immigration consultants for assistance. Second, the Rule
 17 undermines the purpose of immigration benefits like the U and T visa that are intended to
 18 encourage victims’ cooperation with law enforcement. Third, barriers to employment
 19 authorization will drive workers into the underground economy, making it more difficult for
 20 Amici States to enforce their labor and civil rights laws.

21 Public comments submitted to DHS in opposition to the proposed Rule noted that increased
 22 fees and elimination of fee waivers are likely to limit the ability of applicants to work with
 23 qualified legal services organizations, leading to poorly executed applications—and attendant
 24 inefficiencies for USCIS—as well as increased opportunities for bad actors to take advantage of
 25 vulnerable immigrant community members. *See* 85 Fed. Reg. 46800. Predatory lending and

26 ⁵¹ *See* Public Comment from Mass. Office for Refugees & Immigrants, 5,
 27 <https://tinyurl.com/yyoy8zcg>.

28 ⁵² *See* 2019 Annual Report: New York State Officer for New Americans (Jun. 23, 2020),
<https://tinyurl.com/y2mhrs6a>.

1 immigration consultant fraud are serious problems in immigrant communities, and can be difficult
2 for state and local law enforcement and oversight agencies to address due to low reporting rates.
3 *See Viridiana v. Holder*, 646 F.3d 1230, 1237-39 (9th Cir. 2011) (describing immigration
4 consultant fraud sufficient to excuse late filing of asylum claim).⁵³ Aware of abusive business
5 practices that prey on low income immigrant communities, Amici States have enacted laws to
6 protect against such practices and enforced them in state courts. *See, e.g.*, Cal. Bus. & Prof. Code
7 § 22440 (Immigration Consultants Act (ICA)); *People v. Salcido*, 34 Cal. App. 5th 1092 (2019),
8 *as modified* (May 13, 2019) (showing enforcement action under ICA). The Rule will place
9 additional pressure on Amici States to guard against such practices, even as it undercuts the
10 immigration integration services Amici States have invested in providing.

11 The Rule's heightened fee waiver requirements for U and T visa and VAWA applicants
12 also stand to frustrate state and local criminal law enforcement objectives. State and local law
13 enforcement rely on immigrant victims of crime to investigate and prosecute violent crime.
14 Amici States, recognizing the opportunities that such immigration benefits offer for strengthening
15 community relations critical to public safety, encourage—or even require—local law enforcement
16 agencies to provide support for immigration petitions based on victims' cooperation with law
17 enforcement. *See* Cal. Penal Code § 679.10 (requiring law enforcement agencies to certify
18 cooperation of crime victims applying for U-visa); 5 Ill. Comp. Stat. 825/10 (same). The Rule's
19 heightened fee waiver requirements and fee increases for derivative visas will frustrate these law
20 enforcement objectives by making the immigration benefits offered under these law enforcement
21 oriented visa programs too expensive for crime victims to obtain. As a result, crime victims will
22 be put in the untenable position of having to decide which family members they can afford to
23 include in U-visa applications, leaving some family members vulnerable to further victimization.

24 Enforcement of the Amici States' labor and civil rights laws also depends on the ability of
25 workers to safely report violations and abuses without the threat of reprisal or immigration
26

27 ⁵³ Lorelei Laird, *Underreporting Makes Notario Fraud Difficult to Fight*, ABA Journal (May 1,
28 2018), http://www.abajournal.com/magazine/article/underreporting_notario_fraud; *Predators at the Door*, Editorial, N.Y. TIMES (Sept. 25, 2002), <https://tinyurl.com/y4nsqwfq>.

1 consequences. While many labor protections apply to all workers, irrespective of immigration
 2 status, backpay and reinstatement remedies are unavailable for unauthorized workers. *See e.g.*
 3 *Hoffman Plastic Compounds, Inc. v. Nat'l Labor Relations Bd.*, 535 U.S. 137, 151 (2002)
 4 (backpay remedy unavailable to remedy National Labor Relations Act violation against
 5 unauthorized worker). In a 2008 survey of low-wage workers, unauthorized workers reported
 6 overtime and minimum wage violations at higher rates than other workers.⁵⁴ Moreover, fear of
 7 reprisal and deportation often inhibits unauthorized workers from reporting abuses such as wage
 8 theft, exploitation, hazardous conditions, discrimination, sexual harassment and assault, and
 9 retaliation. One study found that asylum seekers, in particular, tend not to report labor
 10 violations—including working weeks without pay and with physical abuse—because they fear
 11 immigration consequences.⁵⁵ The Rule's financial barriers to work authorization for eligible
 12 applicants will undermine state and federal labor law enforcement, as employers face fewer
 13 consequences for violating the rights of unauthorized workers and workers decline to face
 14 immigration consequences that may result from efforts to enforce their rights. In this way, the
 15 Rule undermines Amici States' ability to enforce labor and civil rights for *all* workers.

16 CONCLUSION

17 For the foregoing reasons, Plaintiffs' motion for a preliminary injunction should be granted.

18 Dated: September 9, 2020

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26 ⁵⁴ Annette Bernhardt, et al., *Broken Laws, Unprotected Workers*, Ctr. for Urban Econ. Dev., 42-
 27 44, <https://tinyurl.com/ycka3y76>.

28 ⁵⁵ Human Rights Watch, *At Least Let Them Work: The Denial of Work Authorization and
 Assistance for Asylum Seekers in the United States* (Nov. 12, 2013), <https://tinyurl.com/yykzeyce>.

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