

No. 20-2537

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

STATE OF NEW YORK, CITY OF NEW YORK, STATE OF CONNECTICUT,
STATE OF VERMONT,
Plaintiffs-Appellees,

v.

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

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
THE HONORABLE GEORGE B. DANIELS, U.S. DISTRICT JUDGE
CASE NO. 19-cv-7777

**BRIEF OF AMICI CURIAE 14 CITIES AND COUNTIES AND THE
CALIFORNIA STATE ASSOCIATION OF COUNTIES
IN SUPPORT OF PLAINTIFFS-APPELLEES AND AFFIRMANCE**

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RULE 26.1 CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, amicus curiae the California State Association of Counties represents that it is a non-profit mutual benefit corporation, which does not offer stock, and which is not a subsidiary or affiliate of any publicly owned corporation. Remaining amici curiae are governmental entities for whom no corporate disclosure is required.

Dated: January 4, 2021

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INTEREST OF AMICI CURIAE AND SUMMARY OF ARGUMENT¹

Amici curiae are 14 local governments and the California State Association of Counties, representing every corner of the country.² They represent more than 22 million people, including millions of residents who are immigrants or children of immigrants. Amici have primary responsibility for—and a strong interest in—promoting and protecting the health and welfare of their communities. *See Hillsborough Cnty., Fla. v. Automated Med. Labs., Inc.*, 471 U.S. 707, 719 (1985). Amici operate safety-net healthcare facilities and emergency medical services, promote public health, and provide food and housing support. They have been the first line of defense against COVID-19, working tirelessly to safeguard the public health and respond to the collateral effects of the pandemic, such as economic instability and food and housing insecurity. As a result, Amici’s interests in protecting their communities and public health and welfare initiatives are particularly significant now.

In August 2019, the Department of Homeland Security (DHS) promulgated a final rule that significantly expanded the circumstances under which an

¹ All parties have consented to the filing of this brief. No party’s counsel authored this brief in whole or in part, and no person or entity other than Amici or their counsel made a monetary contribution intended to fund the preparation or submission of this brief. *See* Fed. R. App. P. 29(a)(4)(E).

² A complete list of Amici is set out in Appendix A.

individual may be found inadmissible because they are likely to become a “public charge.” *See* Inadmissibility on Public Charge Grounds, 84 Fed. Reg. 41,292 (Aug. 14, 2019) (the Rule). After the Rule was enjoined by the District Court and several other courts,³ DHS successfully sought to stay the injunctions to begin enforcing the Rule. *See Dep’t of Homeland Sec. v. New York*, 140 S.Ct. 599 (2020). DHS began to enforce it even as federal national emergency declarations acknowledged significant struggles with the unprecedented COVID-19 global pandemic.⁴ The District Court enjoined DHS from enforcing the Rule during the national emergency, recognizing that the Rule’s chilling effects uniquely undermine state and local governments’ efforts to protect the health and wellbeing of their residents. *See* JA 532-62 (the COVID-19 Injunction Order).

Amici previously briefed this Court on their opposition to the Rule and how the Rule’s chilling effects have harmed Amici’s residents and health care, housing,

³ This Court and nearly all of its sister circuits to consider the matter have since affirmed the preliminary injunctions of the Rule. *See New York v. U.S. Dep’t of Homeland Sec.*, 969 F.3d 42 (2d Cir. 2020); *City & Cnty. of S.F. v. U.S. Citizenship & Immigration Servs.*, 981 F.3d 742 (9th Cir. 2020); *Cook Cnty., Ill. v. Wolf*, 962 F.3d 208 (7th Cir. 2020). The only court to have reached a contrary conclusion ordered that the case be reheard *en banc*. *See CASA de Maryland, Inc. v. Trump*, 971 F.3d 220, 234 (4th Cir.), *reh’g en banc granted*, 981 F.3d 311 (4th Cir. 2020).

⁴ U.S. Dep’t of Health & Human Servs., Determination that a Public Health Emergency Exists, (Jan. 31, 2020), <https://www.phe.gov/emergency/news/healthactions/phe/Pages/2019-nCoV.aspx>; Proclamation No. 9994, 85 Fed. Reg. 15,337 (Mar. 13, 2020).

and nutrition support systems.⁵ Those harms have been magnified by the pandemic. Amici write now to describe how the Rule has intensified the virus's direct and indirect effects.

The Rule is directly undermining Amici's efforts to stem the spread of the virus and keep our communities healthy. Immigrants most likely to disenroll from public health benefits are also disproportionately at risk both of contracting COVID-19 and experiencing its most severe effects. The Rule also harms the communities where these individuals live because Amici's public health initiatives depend on widespread community participation.

The Rule aggravates the unemployment, food, and looming housing crises that the pandemic has caused. The disproportionate impact of these crises on our immigrant communities make residents' withdrawal from basic public services because of the Rule even more disastrous. The Rule undermines Amici's efforts to alleviate these harms, at just the time that Amici have the fewest resources to fund pandemic control and relief.

Residents *should* be relying on government resources during the pandemic to combat the spread of COVID-19, alleviate the virus's damage to our public health institutions, and remedy indirect effects, like homelessness and food

⁵ See Brief for 26 Cities and Counties as Amici Curiae Supporting Plaintiffs, *New York v. U.S. Dep't of Homeland Sec.*, 969 F.3d 42 (2d Cir. 2020) (No. 366).

insecurity, but the Rule exacerbates the pandemic’s harms by penalizing use of many government supports. The temporary COVID-19 Injunction Order recognizes that local governments like Amici owe a special duty to support and protect their tens of millions of residents during extraordinary times like these and appropriately safeguards those efforts by preventing the Rule’s chilling effects on important government services and relief. The Court should affirm the COVID-19 Injunction Order.

ARGUMENT

COVID-19 has posed an unprecedented public health crisis that has affected everyone. In the last year, more than 20 million individuals in the United States have been infected with the virus, and over 350,000 have died.⁶ Even more have felt the economic devastation of the pandemic. Millions of Amici’s residents, especially immigrants and members of communities of color, have lost their jobs and face housing and food insecurity—because of the pandemic, not any inherent lack of self-sufficiency.⁷ Recognizing that “[m]uch has significantly changed” since it first enjoined enforcement of the Rule and the Supreme Court stayed that injunction, the District Court issued a new preliminary injunction preventing DHS

⁶ United States COVID-19 Cases and Deaths by State, CDC COVID Data Tracker, https://covid.cdc.gov/covid-data-tracker/#cases_casesper100klast7days.

⁷ *Id.*

from enforcing the Rule during the extant national public health emergency. JA 535-37.

As this Court ruled when it affirmed the District Court’s first injunction, there is substantial evidence that the Rule would lead many immigrants to disenroll from public benefits and cause negative health consequences and economic harm to Plaintiffs and communities nationwide. *See New York*, 969 F.3d at 59-60, 72. The consequences from this chilling effect are even worse during the COVID-19 pandemic, which has disproportionately affected immigrant communities and stretched local governments’ resources thin. This in turn further harms Amici because the Rule has undermined public health strategies to stop the virus’s spread and Amici’s efforts to mitigate the widespread economic impact of the pandemic.⁸

I. Immigrant Communities and Local Governments Have Borne the Brunt of the Pandemic.

The COVID-19 pandemic has been called “the great equalizer,” because it infects individuals of all incomes and statuses, but the pandemic’s effects are not

⁸ DHS cannot credibly dispute Plaintiffs’ evidence and the District Court’s findings of the substantial harm likely to be caused by the Rule during the pandemic, and so argues instead that the District Court lacked jurisdiction to issue the COVID-19 Injunction Order or, alternatively, abused its discretion in issuing the injunction. *See* Brief for Appellants at 19, 24. DHS is wrong on both counts for the reasons stated by Appellees, which Amici join in but do not restate here.

equally distributed.⁹ Immigrants have been particularly harmed.¹⁰ So have local governments like Amici, which have become a bulwark against COVID-19's harshest effects, providing health services, housing assistance, and nutrition support for all residents. But local efforts are stretched, particularly as the pandemic wreaks severe local budget shortfalls.¹¹

A. Immigrant Communities Have Disproportionately Suffered the Pandemic's Most Severe Consequences.

The pandemic has ravaged immigrant communities. Immigrant communities have disproportionately been infected by—and have died from—COVID-19 for a variety of reasons.¹²

⁹ See Stephen Mein, *COVID-19 and Health Disparities: the Reality of 'the Great Equalizer'*, J. Gen. Intern. Med. (May 14, 2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7224347/>.

¹⁰ COVID-19 Case Investigation and Contact Tracing among Refugee, Immigrant, and Migrant (RIM) Populations: Important Considerations for Health Departments, CDC, (Dec. 4, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/php/rim-considerations.html> [hereinafter “COVID-19 in RIM Populations”].

¹¹ See Louise Sheiner & Sophia Campbell, The Brookings Institute, *How much is COVID-19 hurting state and local revenues?* (Sept. 24, 2020), <https://www.brookings.edu/blog/up-front/2020/09/24/how-much-is-covid-19-hurting-state-and-local-revenues/> (projecting “state and local government revenues will decline \$155 billion in 2020, \$167 billion in 2021, and \$145 billion in 2022,” with an additional hundred billion in losses for hospitals and higher education).

¹² COVID-19 in RIM Populations, *supra* note 10.

Immigrants are more likely to be employed as essential workers, both integral to the nation's fight against COVID-19 and more vulnerable to the virus.¹³ Nationally, about 78% of non-citizen workers are classified by DHS as essential workers.¹⁴ In California, the percentage is even higher.¹⁵ These jobs are in fields like “[h]ealthcare, eldercare, food services, daycare, delivery services, and agriculture.”¹⁶ Although immigrants were just 17% of the U.S. workforce in 2018, 29% of physicians and 38% of home health aides are immigrants, while half of all farm laborers are likely undocumented immigrants.¹⁷ These jobs often involve

¹³ Jose F. Figueroa et al., *Community-Level Factors Associated With Racial And Ethnic Disparities In COVID-19 Rates In Massachusetts*, Health Affairs (Aug. 27, 2020), https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2020.01040?utm_campaign=CovidFasttrack&utm_medium=press&utm_content=FIgueroa&utm_source=media advisory; Raul Hinojosa-Ojeda & Sherman Robinson, UCLA N. Am. Integration & Dev. (NAID) Ctr. & Mexican Instituto Nacional de Estadística y Geografía (INEGI), *Essential but Disposable: Undocumented Workers and Their Mixed-Status Families 9-10* (Aug. 10, 2020), <https://irle.ucla.edu/wp-content/uploads/2020/08/Essential-Undocumented-Workers-Final-w-Cover.pdf>.

¹⁴ Hinojosa-Ojeda & Robinson, *supra* note 13, at 10; *see also* Elizabeth Cooney, *Immigration status, housing, and food-service work explain Covid-19's burden on Latinos*, STAT (Aug. 27, 2020), <https://www.statnews.com/2020/08/27/three-factors-explain-covid19-burden-on-latinos/>

¹⁵ Hinojosa-Ojeda & Robinson, *supra* note 13, at 10.

¹⁶ Irene Bloemraad and Jasmijn Sloopjes, *COVID-19 is blind to legal status, but can disproportionately hurt immigrants*, Berkeley Matrix Research (Apr. 21, 2020), <https://matrix.berkeley.edu/research/covid-19-blind-legal-status-can-disproportionately-hurt-immigrants>.

¹⁷ *Id.*

work environments in which social distancing and other effective mitigation measures are more challenging.¹⁸

Although they work in essential fields with greater risk of exposure to COVID-19, immigrants are among the lowest paid. A report by UCLA that tracked the impact of the pandemic on immigrant workers found that over 56% of undocumented workers and over 40% of other non-citizen workers nationwide were employed in jobs in the bottom wage quintile.¹⁹ Immigrants are also less likely to work in jobs that provide sick leave.²⁰ These factors often leave immigrants without the resources or option to avoid their workplace even if it poses a high risk of infection.²¹

Many immigrants also experience other circumstances that increase their COVID-19 risk. Immigrants are more likely to “live in close quarters with multiple generations sharing bedrooms and bathrooms,” which in turn multiplies

¹⁸ COVID-19 in RIM Populations, *supra* note 10; Hinojosa-Ojeda & Robinson, *supra* note 13; Eva Clark et al., *Disproportionate Impact of the COVID-19 Pandemic on Immigrant Communities in the United States* (July 13, 2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7357736/>.

¹⁹ Hinojosa-Ojeda & Robinson, *supra* note 13, at 14-15.

²⁰ Catherine Kim, Low-income immigrants are afraid to seek health care amid the Covid-19 pandemic, *Vox* (Mar. 13, 2020), <https://www.vox.com/identities/2020/3/13/21173897/coronavirus-low-income-immigrants>.

²¹ *Id.*

the risk of coronavirus exposure.²² They are also less likely to have health insurance than their U.S.-born neighbors: although over 93% of U.S.-born citizens have health insurance, fewer than 74% of non-citizens do.²³ A recent report by the Kaiser Family Foundation found that non-citizen immigrants are more likely than citizens to: (i) live in large households (31% of non-citizen immigrants compared to 21% of citizens); (ii) rely on public transportation to commute to work (24% compared to 12%); (iii) qualify as low-income (36% compared to 18%); and (iv) lack health insurance (33% compared to 9%).²⁴ The disproportionate incidence of these factors within the immigrant community has meant that Amici's immigrant residents have been infected with COVID-19 at higher rates than the general public,²⁵ and have been more likely to die from the virus once infected.²⁶

²² Jonathan Ross et al., *The Disproportionate Burden of COVID-19 for Immigrants in the Bronx, New York*, JAMA Network (May 8, 2020), <https://jamanetwork.com/journals/jamainternalmedicine/fullarticle/2765826>.

²³ Edward R. Berchick et al., *Health Insurance Coverage in the United States: 2018* 14 (Nov. 2019), <https://www.census.gov/content/dam/Census/library/publications/2019/demo/p60-267.pdf>.

²⁴ Samantha Artiga & Matthew Rae, *Health and Financial Risk for Noncitizen Immigrants due to the COVID-19 Pandemic*, Kaiser Family Found. (Aug. 18, 2020), <https://www.kff.org/racial-equity-and-health-policy/issue-brief/health-financial-risks-noncitizen-immigrants-covid-19-pandemic/>; *see also* Clark, *supra* note 18; COVID-19 in RIM Populations, *supra* note 10.

²⁵ Figueroa, *supra* note 13; *see also* Cooney, *supra* note 14 (“the biggest predictor of infection was being a recent immigrant to the U.S.”).

²⁶ *See* Clark, *supra* note 18.

Immigrants have also been hit the hardest by the pandemic-induced economic crisis. Immigrant workers have faced the highest job and income losses of any group; throughout the pandemic, they have remained unemployed at “substantially higher” rates than native-born citizens.²⁷ In California, one third of the undocumented labor force works in sectors most impacted by the pandemic, including food service, child-care, and building services industries.²⁸

This in turn compounds the virus’s threat to immigrants’ health and safety. Immigrant communities are struggling with high risks of food and housing insecurity.²⁹ One study found that more than 30% of children born to Mexican and Central American immigrants are food insecure.³⁰ Another study found that 59% of immigrant households do not have enough to eat during the pandemic; for mixed-status families, food insecurity prevalence jumps to 78%.³¹

²⁷ Steven A. Camarota et al., *The Employment Situation of Immigrants and Natives in July 2020*, Ctr. for Immigration Studies (Aug. 2020), <https://cis.org/Report/Employment-Situation-Immigrants-and-Natives-July-2020>.

²⁸ Sara Kimberlin & Aurea Mesquita, No Safety Net or Federal COVID-19 Relief: California’s Undocumented Workers and Mixed Status Families are Locked Out of Support 3 (Apr. 2020), https://calbudgetcenter.org/wp-content/uploads/2020/04/CA_Budget_Center_COVID_Undocumented_Workers_04152020.pdf.

²⁹ Clark, *supra* note 18.

³⁰ *Id.*

³¹ Shannon Dooling, *New Survey Shows the Pandemic’s Toll on Immigrant Households Throughout Mass.*, WBUR News (July 31, 2020), <https://www.wbur.org/news/2020/07/31/immigrant-household-pandemic-food-insecurity>.

The economic crisis has also strained immigrants' ability to stay housed. Thus far, a national eviction moratorium has staved off the worst effects of the looming pandemic-related housing crisis.³² If the eviction moratorium is lifted, an estimated 365,000 additional households could be at risk.³³ But for immigrants—and undocumented immigrants in particular—the eviction crisis “has already begun.”³⁴ The mere threat of eviction has caused undocumented immigrants and their mixed-status families to leave their homes because of a lack of information about their legal rights and fear of retaliation.³⁵ These individuals then either live unhoused or move in with family and friends—either of which dramatically increases the risks of COVID-19 exposure and community spread.³⁶

Despite their vulnerability in the current crisis, many immigrants have been shut out from federal COVID-19 assistance that other residents are using during

³² National Federal Eviction Moratorium, Nat'l Low Income Housing Coalition <https://nlihc.org/coronavirus-and-housing-homelessness/national-eviction-moratorium>.

³³ USC Dornsife Ctr. for the Study of Immigrant Integration, *State of Immigrants in LA County 22*, 56 (Jan. 2020), https://dornsife.usc.edu/assets/sites/731/docs/SOILA_full_report_v19.pdf.

³⁴ Jasmine Garsd, *For Many Immigrants, the Eviction Crisis Has Already Begun*, Marketplace (Sept. 1, 2020), <https://www.marketplace.org/2020/09/01/covid-19-evictions-landlords-tenants-california-moratorium-undocumented-immigrants/>.

³⁵ See Meena Venkataramanan & Juan Pablo Garnham, *Undocumented Immigrants Behind on Their Rent Are Self-Evicting Across Texas*, Texas Tribune (July 22, 2020), <https://www.texastribune.org/2020/07/22/evictions-texas-undocumented-immigrants/>.

³⁶ *Id.*

the pandemic to maintain their health, safety, and other basic needs. Many did not qualify for the CARES Act one-time cash payments.³⁷ Many are also excluded from other federal public benefits, such as standard unemployment insurance and federal EITC.³⁸ This means that immigrants are even more likely to need (and Amici even more urgently need them to take advantage of) the non-cash assistance programs that they are avoiding because of the Rule.³⁹

B. The Pandemic Has Forced Local Governments To Do More with Less To Protect Community Health and Welfare.

During this crisis, the public health and welfare initiatives of local governments have never been more important—or more imperiled by decreased local revenue and resources. Accordingly, when the Rule’s chilling effects undermine local initiatives, the consequences are more severe.

Local governments are closest to the basic needs of Americans and are responsible for protecting the health and welfare of their communities. Many Amici operate safety-net hospitals⁴⁰ and Emergency Medical Services,⁴¹ and

³⁷ Indiana Univ. Pub. Policy Inst., *Immigration Policy and Covid-19: Implications of the Public Charge Rule* (June 2020), <https://policyinstitute.iu.edu/doc/covid-19-public-charge-immigration-brief.pdf>.

³⁸ Kimberlin & Mesquita, *supra* note 28.

³⁹ Indiana Univ. Pub. Policy Inst., *supra* note 37.

⁴⁰ *E.g.*, Emergency Services, Los Angeles County Health Services, <https://dhs.lacounty.gov/our-services/emergency-services/>.

⁴¹ *E.g.*, About EMS Bureau, Los Angeles County Fire Department, <https://www.lafd.org/about-ems-bureau>.

provide and operate food-support resources.⁴² And even before the pandemic, many Amici operated entire agencies devoted to addressing the homelessness crisis.⁴³ For example, the Los Angeles Homeless Services Authority coordinates and manages over \$400 million annually in federal, state, county, and city funds for programs that provide shelter, housing, and services to people experiencing homelessness in Los Angeles County.⁴⁴

Responding to the COVID-19 crisis has demanded even more from Amici. Local governments have provided expanded programs offering health care, food assistance, support for utilities, housing, job-seeking help, and general financial assistance to immigrants and those hardest hit by the pandemic.⁴⁵ For example, the County of Los Angeles has directed its Community Health Worker Outreach Initiative to coordinate and mobilize health workers in highly impacted

⁴² *E.g.*, Food Assistance Programs & Food Resources, County of Los Angeles Public Health, http://publichealth.lacounty.gov/nut/food_assistance_programs.htm#:~:text=The%20Supplemental%20Nutrition%20Assistance%20Program,works%20like%20a%20debit%20card.

⁴³ *E.g.*, Los Angeles Homeless Services Authority, <https://www.lahsa.org/>.

⁴⁴ *Id.*

⁴⁵ *E.g.*, Resources for Immigrant Communities During COVID-19 Pandemic, NYC Mayor's Office of Immigrant Affairs (Dec. 14, 2020), <https://www1.nyc.gov/site/immigrants/help/city-services/resources-for-immigrant-communities-during-covid-19-pandemic.page>; Rachel Schnalzer, *Newsletter: How immigrants without legal status can get help in the pandemic*, L.A. Times (Aug. 18, 2020), <https://www.latimes.com/business/newsletter/2020-08-18/how-immigrants-without-legal-status-can-get-help-in-the-pandemic-business>.

communities to conduct grassroots community outreach aimed at providing accurate and updated information about COVID-19 and to connect residents to services.⁴⁶ The City of Los Angeles has launched an Emergency Rental Assistance Subsidy Program, providing a temporary rent subsidy for residents, regardless of immigration status, who are unable to pay rent due to the pandemic.⁴⁷ Oakland operates a similar program.⁴⁸

But at the time of greatest need, local government resources are stretched too thin. The pandemic, shelter-in-place orders, and consequent economic crisis have dramatically shrunk local revenue. Due to sharp contractions in consumption, including plummeting revenue from “taxes and fees on hotels, tolls, airports, and motor fuel,” state and local government tax revenues are projected to decline nearly a half trillion dollars over the next three years.⁴⁹ Although state and local

⁴⁶ News Release: L.A. County Community Health Worker Initiative Targets Communities Hardest Hit by COVID-19 Public Health Reports 5 New Deaths and 1,431 New Confirmed Cases of COVID-19 in Los Angeles County, County of Los Angeles Public Health (Nov. 9, 2020), <http://www.publichealth.lacounty.gov/phcommon/public/media/mediapubhpdetail.cfm?prid=2800>.

⁴⁷ City of Los Angeles Emergency Renters Assistance Program, <https://hcidla.lacity.org/>.

⁴⁸ Keep Oakland Housed COVID-19 Relief Financial Assistance, City of Oakland (Sept. 2, 2020), <https://www.oaklandca.gov/resources/keep-oakland-housed-covid-19-relief-financial-assistance#:~:text=Program%20Overview,-The%20City%20of&text=%245%20million%20of%20those%20funds,homeowner%20impacted%20by%20COVID%2D19>.

⁴⁹ Sheiner & Campbell, *supra* note 11.

income tax revenues are projected to be less affected in the short run, the decline will *increase* in the coming years: a 4.7% decline in 2020, 7.5% decline in 2021, and 7.7% decline in 2022.⁵⁰ With an 8.5% decline in 2020, California is projected to have the second largest income tax revenue loss of any state.⁵¹

These resource constraints jeopardize the viability and effectiveness of local efforts to fight the pandemic. In the City of Los Angeles alone, a projected \$400 to \$600 million budget shortfall could produce “catastrophic service cuts.”⁵² These constraints will only exacerbate the crisis. One study found that failing “to empower immigrant economic potential through financial support and continued engagement in the labor force” would have serious consequences for the Los Angeles County economy—to the tune of \$6 billion per month of lost wages, consumption, and tax revenue for California.⁵³ The exclusion of immigrants and their mixed-status families from the labor force could reduce Los Angeles County’s GDP by more than \$141 billion.⁵⁴ This will in turn further deprive local

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² David Zahniser, *L.A.’s budget crisis worsens as deficit projections climb to \$600 million*, L.A. Times (Oct. 23, 2020), <https://www.latimes.com/california/story/2020-10-23/la-budget-crisis-600-million-deficit>.

⁵³ Hinojosa-Ojeda & Robinson, *supra* note 13, at 39-40.

⁵⁴ *Id.* at 4.

governments of the resources necessary to protect the wellbeing of Amici's communities, deepening the pandemic's vicious cycle.

In this environment, when Amici face a historic public health and economic catastrophe, and their resources are critically constrained, it is even more important to enjoin the Rule.

II. The Rule Has Undermined Amici's Ability To Protect and Promote Public Health During the Pandemic.

The Rule is severely hampering Amici's efforts to stem the spread of the virus and keep our communities healthy. The Rule deters immigrants from taking advantage of public health resources aimed at stopping the spread of the virus, even though they are more likely to suffer worse harm from the pandemic. This chilling effect not only harms immigrants individually, it also undercuts broader efforts to contain and treat the pandemic, hurting health outcomes across Amici's communities.

The Rule's chilling effect on individuals is well documented, and worse during the pandemic. Public health experts agree that we are in the midst of the worst public health crisis in 100 years.⁵⁵ To date, over 350,000 people have died

⁵⁵ Marie Rosenthal, *Fauci: COVID-19 Worst Pandemic in 100 Years*, IDSE (Oct. 21, 2020), <https://www.idse.net/Covid-19/Article/10-20/Fauci--COVID-19-Worst-Pandemic-in-100-Years/60937>.

due to COVID-19 in the United States alone.⁵⁶ Dr. Anthony Fauci has said:

“Unfortunately for the United States, we have been hit harder than virtually any other country on the planet.”⁵⁷ Now is the time for residents to *seek out* programs that will help protect public health, not to avoid them.

But the Rule has driven members of Amici’s immigrant communities to forgo accessing supplemental supports aimed at promoting public health.⁵⁸ For example, one study found that, just ahead of the pandemic in December 2019, 45% of immigrant families avoided enrollment in Medicaid or Children’s Health Insurance Program (CHIP) because of concerns that it would prevent them from adjusting status.⁵⁹ During the pandemic, Los Angeles health clinics have reported that families have refused to be tested or receive treatment, even when a family member was critically ill, out of fear of negative immigration consequences.⁶⁰ In Coachella Valley, California, one woman, Mariana, explained that her parents have

⁵⁶ United States COVID-19 Cases and Deaths by State, *supra* note 6.

⁵⁷ Rosenthal, *supra* note 55.

⁵⁸ See Brief for 26 Cities and Counties, *supra* note 5, at 12-14.

⁵⁹ Hamutal Bernstein et al., Urban Inst., Amid Confusion Over the Public Charge Rule, Immigrant Families Continued Avoiding Public Benefits in 2019 6-7 (May 2020), https://www.urban.org/sites/default/files/publication/102221/amid-confusion-over-the-public-charge-rule-immigrant-families-continued-avoiding-public-benefits-in-2019_3.pdf.

⁶⁰ Usha Lee McFarling, *Fearing deportation, many immigrants at higher risk of Covid-19 are afraid to seek testing or care*, STAT (Apr. 15, 2020), <https://www.statnews.com/2020/04/15/fearing-deportation-many-immigrants-at-higher-risk-of-covid-19-are-afraid-to-seek-testing-or-care/>.

worked as undocumented field workers for more than 25 years, and that they recently became eligible to apply for a green card because a U.S.-citizen child had turned 21.⁶¹ Mariana said that her mom is panicked about getting COVID-19 because she thinks that if she seeks medical care, it will make her a public charge.⁶²

These reactions are not surprising; as this Court observed when it affirmed the prior injunction, these are the consequences that DHS itself anticipated when it enacted the Rule. *See New York*, 969 F.3d at 59. When immigrants avoid Amici’s public health programs, they are “responding rationally” to the Rule, to DHS’s lack of transparency, and to indications by Defendants that they may “alter[] the Rule in the future.” *Cook Cnty.*, 962 F.3d at 230-31. The problem is that this makes it less likely that they will receive an early diagnosis and treatment, which is critical to

⁶¹ Miriam Jordan, *‘We’re Petrified’: Immigrants Afraid to Seek Medical Care for Coronavirus*, N.Y. Times (May 12, 2020), <https://www.nytimes.com/2020/03/18/us/coronavirus-immigrants.html>.

⁶² *Id.*

reducing the spread of COVID-19.⁶³ This, in turn, will result in worse health outcomes, including increased risk of hospitalization and death.⁶⁴

These increased harms during the pandemic impact Amici's communities at large. Amici rely on the participation of all residents in public health initiatives and policies to keep their communities healthy. Amici know this from experience: In the past, Amici's public health departments, including the Los Angeles County Department of Public Health, have been able to effectively control outbreaks of diseases like Hepatitis A, measles, and tuberculosis by cooperating with community stakeholders in the regions affected and earning the trust of the community at large to interact with health care professionals and participate in preventive health programs.⁶⁵

But the Rule is undermining Amici's public health efforts now when the public interest in promoting community health "is particularly salient," *City & Cnty. of S.F.*, 981 F.3d at 762. When immigrants forgo preventive medical care and treatment for COVID-19, their neighbors face an increased risk of infection

⁶³ Mark É. Czeisler et al., CDC, Delay or Avoidance of Medical Care Because of COVID-19—Related Concerns—United States, June 2020 (Sept. 11, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6936a4.htm> (noting that certain groups of people, including Hispanic adults, have avoided medical care during the pandemic, which increases morbidity and mortality); Clark, *supra* note 18.

⁶⁴ See Clark, *supra* note 18.

⁶⁵ E.g., Decl. of Barbara Ferrer at 5-6, ¶¶ 14-17, *California et al. v. U.S. Dep't of Homeland Sec. et al.*, No. 4:19-CV-04975-PJH (N.D. Cal. 2019), Doc. No. 18-3.

and their communities are more likely to see an outbreak of disease and increases in COVID-related hospitalizations and deaths. This is not a speculative harm. In the 1990s, the then-largest rubella outbreak in the nation was associated with a substantial increase in public charge determinations based on Medicaid use.⁶⁶ The disease spread as fear grew and immigrant communities withdrew from public health services for fear of immigration consequences.⁶⁷ We are in the same type of situation now. As the Seventh Circuit observed, “to recognize the truth in th[e] prediction” that the Rule’s chilling effect may “result[] in an increased risk of an outbreak of infectious disease[,] ... one need only consider the current outbreak of COVID-19—a pandemic that does not respect the differences between citizens and noncitizens.” *Cook Cnty.*, 962 F.3d at 231.

The COVID-19 outbreaks that we are now experiencing have a direct effect on each new patient infected with the virus, each front-line healthcare worker treating the patients, their families, and countless others. They also stretch local governments’ valuable health and financial resources, which have already been and

⁶⁶ Claudia Schlosberg & Dinah Wiley, *The Impact of INS Public Charge Determinations on Immigrant Access to Health Care* (May 22, 1998), <https://perma.cc/WX9P-PNDB>.

⁶⁷ *Id.*

continue to be repeatedly pushed to their limits as COVID-19 infections, hospitalization rates, and deaths all surge.⁶⁸

The Rule also threatens to weaken local governments' vaccination efforts. The efficacy of any comprehensive vaccination plan depends on the widespread distribution of vaccines throughout the community.⁶⁹ Recent studies, however, suggest that the Rule's chilling effect will impact vaccination efforts. In one study by the University of California, Berkeley, 31% of undocumented field workers in California said that they were unlikely to get, or unsure about getting, a COVID-19 vaccine; 14% of those cited distrust of the Government or medical personnel as the basis for refusal.⁷⁰ If individuals are deterred from receiving a vaccine by the Rule,

⁶⁸ National Association of Counties, *Running on Fumes: Impact of COVID-19 on County Finances 13-15* (Apr. 2020), <https://www.naco.org/sites/default/files/documents/Impact%20on%20County%20Finances-FINAL-v2.pdf>; Jaclyn Cosgrove & Soumya Karlamangla, *Staffing shortages feared at some California hospitals as COVID-19 fills up beds*, L.A. Times (Dec. 4, 2020), <https://www.latimes.com/california/story/2020-12-04/california-covid-19-hospital-icu-beds-staffing-shortages>.

⁶⁹ E.g., Gypsyamber D'Souza & David Dowdy, *What is Herd Immunity and How Can We Achieve It With COVID-19?*, Johns Hopkins Bloomberg Sch. of Pub. Health (Apr. 10, 2020), <https://www.jhsph.edu/covid-19/articles/achieving-herd-immunity-with-covid19.html>; Michael L. Mallory et al., *Vaccination-Induced Herd Immunity: Successes and Challenges* (July 2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6433118/>.

⁷⁰ U.C. Berkeley Sch. of Pub. Health & Clinica de Salud Del Valle De Salinas, *Prevalence and Predictors of SARS-COV-2 Infection Among Farmworkers in Monterey County, CA 20* (July-Nov. 2020), https://cerch.berkeley.edu/sites/default/files/ucb_csvs_white_paper_12_01_20_final_compressed.pdf; see also Marco della Cava et al., *As COVID-19 vaccine rolls*

then public health will remain at risk.⁷¹ And now, as state and local governments are undertaking expansive public education efforts to promote treatment and vaccinations,⁷² the Rule's known chilling effect on immigrants means that their participation in COVID-19 treatment and vaccination "remains in doubt."⁷³

III. The Rule Compounds the Damage to the Wellbeing and Economic Vitality of Entire Communities.

The Rule also amplifies the pandemic's devastating effects on our residents' ability to meet their basic needs. Here too, it is well-established that the Rule drives immigrants and their families away from safety-net services designed to keep them out of poverty, homelessness, and hospitals. For example, a recent study estimated that, among adults in low-income immigrant families, an enormous 31.5% avoided the Supplemental Nutrition Assistance Program (SNAP,

out, undocumented immigrants fear deportation after seeking dose, USA Today (Dec. 20, 2020), <https://www.usatoday.com/story/news/nation/2020/12/19/covid-19-vaccine-undocumented-immigrants-fear-getting-dose/3941484001/>.

⁷¹ Helen Branswell, *Federal Rules Threaten to Discourage Undocumented Immigrants from Vaccinating Children*, STAT (Aug. 26, 2019), <https://perma.cc/KW5N-W5E8>.

⁷² *E.g.*, COVID-19 Vaccine, County of Los Angeles Public Health, <http://www.publichealth.lacounty.gov/media/Coronavirus/vaccine/index.htm>; COVID-19 Vaccine, Marin Health & Human Services, <https://coronavirus.marinhhs.org/vaccine>; 2019 Novel Coronavirus 2019 (COVID-19 Vaccines), County of Monterey Health Department, <https://www.co.monterey.ca.us/government/departments-a-h/health/diseases/2019-novel-coronavirus-covid-19/2019-novel-coronavirus-covid-19-vaccines>; Vaccines, California All, <https://covid19.ca.gov/vaccines/>.

⁷³ Della Cava, *supra* note 70.

formerly known as “food stamps”), CHIP, Medicaid, or housing subsidies because of the Rule.⁷⁴ Indeed, when this Court affirmed the District Court’s first injunction, it predicted such disenrollments and the resulting diminished health outcomes and housing and food instability. *See New York*, 969 F.3d at 59-60, 87.

The Rule’s chilling effect on these supports exacerbates the dire need for help during the pandemic, strains Amici’s resources, and further undermines communities’ future self-sufficiency—just when immigrants and Amici need participation in those services the most. Immigrant community members who cannot access basic nutrition and housing are driven to more costly and less-efficient supports like emergency shelters and food programs, which Amici are often left to fund. As our residents become sicker, poorer, and worse-off, they require more of Amici’s resources and support—all when local governments face unprecedented resource constraints.

A. Avoidance of Housing Subsidy Programs Threatens Residents’ Housing Security and Amici’s Communities.

Eligible immigrant families who withdraw from housing subsidy programs or decline other supplemental assistance because of the Rule are more likely to become homeless, adding to an already-dire housing crisis. The Rule’s chilling

⁷⁴ Jennifer M. Haley et al., *One in Five Adults in Immigrant Families with Children Reported Chilling Effects on Public Benefit Receipt in 2019*, Urban Institute (June 2020).

effect on housing support will be particularly devastating during the current pandemic, as immigrant communities suffer disproportionate harm from COVID-19's economic fallout. The Rule therefore places these families at greater risk of infection, which harms the entire community, undermines local government health and welfare initiatives, and further strains local resources.

If they are chilled from participating in federal housing subsidies programs, many of these families would be left without the vital support that so many working families need right now to remain housed.⁷⁵ Millions of working, low-income households currently receive federal rental assistance.⁷⁶ Without this rental assistance, the implications are serious—rental assistance reduces homelessness by three-quarters.⁷⁷ The stakes are especially high for low-income families with children—one study found that vouchers reduce the share of families living in shelters or on the streets by 75%.⁷⁸

The Rule also chills the use of other supplemental benefits, which allow people facing poverty to avoid homelessness. Many workers have no choice but to combine their earnings with some form of government assistance to make ends

⁷⁵ Will Fischer, *Chart Book: Rental Assistance Reduces Hardship, Promotes Children's Long-Term Success*, Ctr. on Budget & Policy Priorities (July 5, 2016), <https://perma.cc/S2GA-G5HC>.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

meet,⁷⁹ and low-income working families have long relied on a variety of government supplemental supports to stay housed, even before the pandemic. Nationwide, more than 80% of low-income households spend more than 30% of their income on housing.⁸⁰ For example, in Los Angeles County, one-third of households spend more than 50% of their household income on rent.⁸¹ As a result, many working families live on the edge of homelessness, and they rely on supplemental public benefits to ease painful trade-offs between housing, food, and medical care and to stay housed.⁸² The Rule's chilling effect on these basic supplemental supports therefore threatens to push many low-income immigrant families into homelessness and further away from self-sufficiency. Indeed, even before the pandemic, DHS contemplated that disenrollment from supplemental benefits, including housing subsidies, could result in "increased rates of poverty and housing instability." *New York*, 969 F.3d at 87.

⁷⁹ See Danilo Trisi, *Trump Administration's Overbroad Public Charge Definition Could Deny Those Without Substantial Means a Chance to Come to or Stay in the U.S.*, Ctr. on Budget & Policy Priorities (May 30, 2019), <https://perma.cc/Q2LB-95NV>.

⁸⁰ Joint Ctr. for Hous. Studies of Harvard Univ., *The State of the Nation's Housing 2019* 35-36 (2019), https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_State_of_the_Nations_Housing_2019%20%281%29.pdf.

⁸¹ 2019 Greater Los Angeles Homeless Count Presentation, Los Angeles Homeless Services Authority (June 17, 2020), <https://www.lahsa.org/documents?id=3437-2019-greater-los-angeles-homeless-count-presentation.pdf>.

⁸² Joint Ctr. for Hous. Studies of Harvard Univ, *supra* note 80, at 32-33.

The pandemic worsens the Rule's consequences. In Los Angeles County, for example, 15-30% of households cannot pay rent right now,⁸³ and nationwide, an eviction crisis is looming, especially for more-deeply impacted immigrant families.⁸⁴ But despite our current dire circumstances, the Rule continues to chill participation in housing voucher programs or other supplemental programs that would stem housing insecurity: one expert predicted that *three out of four* immigrant families will withdraw from federally subsidized housing or choose to separate family members because of the Rule.⁸⁵

The Rule's chilling effect on housing supports also exacerbates harm to communities and local governments like Amici. Local governments are the first responders for unhoused residents, a responsibility that has been amplified dramatically by the current crisis.⁸⁶ During the pandemic alone, Amici have provided temporary rent subsidies in an effort to fill the gap created by the Rule's

⁸³ Comm. for a Greater LA, *No Going Back* 157 (2020); USC Dornsife Ctr. for the Study of Immigrant Integration, *supra* note 33.

⁸⁴ *See supra* Section I.A.

⁸⁵ Natalie Hernandez, PIF Campaign, Summary of Research at the Intersection of Public Charge and Health 16 (June 2020), <https://protectingimmigrantfamilies.org/wp-content/uploads/2020/06/Public-Charge-and-Health-Literature-Review-2020-06-16.pdf>.

⁸⁶ *See supra* Section I.A.

chilling effect, sometimes even directly mentioning on their website that the Rule will not apply to such subsidies.⁸⁷

Local governments make these investments because they understand the harmful indirect effects of homelessness and housing insecurity on the wider community. Unstable housing situations can lead to a wide range of health-related problems including increased hospital visits, loss of employment, and mental health problems.⁸⁸ Children suddenly thrust into homelessness also suffer decreased educational attainment.⁸⁹ These consequences affect Amici, whose future depends on its residents' health and economic contributions. For every child who suffers decreased educational attainment due to housing insecurity, Amici

⁸⁷ City of Los Angeles Emergency Renters Assistance Program, *supra* note 47; *see also* LA County COVID-19 Rent Relief, Los Angeles County Development Authority, <https://www.lacda.org/programs/rent-relief>; *L.A., through Friday, is taking applications for its \$103-million rent relief program*, L.A. Times (July 12, 2020), <https://www.latimes.com/california/story/2020-07-12/renters-relief-program-to-start-taking-applications>; Keep Oakland Housed COVID-19 Relief Financial Assistance, *supra* note 48.

⁸⁸ Fischer, *supra* note 75.

⁸⁹ Homeless Experiences of Parents Have a Lasting Impact on Children, U.S. Dep't Health & Human Servs. (Dec. 3, 2020), <https://www.samhsa.gov/homelessness-programs-resources/hpr-resources/homeless-experiences-parents-have-lasting-impact>.

stand to lose hundreds of thousands of dollars in decreased GDP contributions,⁹⁰ as well as investment and community involvement.⁹¹

These community harms are also worse during the pandemic. Those experiencing homelessness also may be at greater risk of contracting COVID-19, due to decreased access to sanitary facilities and reduced ability to social distance.⁹² Amici like Los Angeles County are already expending hundreds of millions of dollars to house those experiencing homelessness during this

⁹⁰ John Cook & Karen Jeng, Feeding America, Child Food Insecurity: The Economic Impact on our Nation 23 (2009), <https://www.nokidhungry.org/sites/default/files/child-economy-study.pdf>.

⁹¹ Jonathan Rothwell, The Brookings Institute, What Colleges Do for Local Economies: A Direct Measure Based on Consumption (2015), <https://www.brookings.edu/research/what-colleges-do-for-local-economies-a-direct-measure-based-on-consumption/>; Philip Trostel, Lumina Found., It's Not Just The Money: The Benefits of College Education to Individuals and to Society 53 fig. 36 (2015), <https://www.luminafoundation.org/files/resources/its-not-just-the-money.pdf>

⁹² Libby Perl, Homelessness and COVID-19, Congressional Research Service, (Nov. 4, 2020), <https://crsreports.congress.gov/product/pdf/R/R46596>. Homelessness is also associated with other extraordinary public health issues; some jurisdictions have seen outbreaks of diseases like Typhus and Hepatitis A associated with increases in homelessness. *See* Anna Gorman, *Medieval Diseases Are Infecting California's Homeless*, The Atlantic (Mar. 8, 2019), <https://perma.cc/BFT9-YVNW>.

pandemic.⁹³ Amici cannot afford for this crisis to grow because of the Rule's chilling effect on federal supplemental supports that prevent housing insecurity.⁹⁴

B. Avoidance of Nutrition Programs and Subsequent Hunger Will Also Cause Significant Harms and Costs.

The Rule's chilling effect also threatens Amici's effort to prevent the growing threat of food insecurity during the pandemic. The Rule has already driven immigrant families away from nutrition resources, leading to increased food insecurity and dependence on local governments for support.⁹⁵ Here too, the pandemic makes the consequences of this chilling effect worse.

The level of hunger in U.S. households has tripled since the onset of the pandemic,⁹⁶ with over one quarter of *all* households with children experiencing

⁹³ Doug Smith & Benjamin Oreskes, *Program to House Homeless People in Hotels is Ending after Falling Short of Goal*, L.A. Times (Sept. 22, 2020), <https://www.latimes.com/california/story/2020-09-22/homeless-people-hotels-project-roomkey-phasing-out#:~:text=A%20third%20is%20winding%20down,safe%20havens%20for%20homeless%20people>.

⁹⁴ *E.g.*, Hernandez, *supra* note 85 (noting harm to public health caused by the Rule and how that harm is exacerbated by the pandemic).

⁹⁵ Brief for 26 Cities and Counties, *supra* note 5.

⁹⁶ Jon Schwarz, *Hunger in America, Especially for Children, Has 'Skyrocketed' During COVID-19, Data Shows*, The Intercept (Sept. 23, 2020), <https://theintercept.com/2020/09/23/hunger-food-insecurity-coronavirus-children-census/>.

food insecurity.⁹⁷ In Los Angeles County, 26.4% of all households with children experienced food insecurity between April and July 2020, and a staggering 41.6% of low-income households with children experienced food insecurity between April and July 2020.⁹⁸ Mixed-status households are worse off,⁹⁹ including because undocumented family members are not included when determining how much SNAP assistance the family is eligible to receive.¹⁰⁰

As communities face the greatest need for supplemental nutrition supports, DHS has enforced the Rule and driven immigrants away from resources that could help feed them and their families during this crisis. SNAP provides important nutritional assistance for participants, most of whom are families with children, households with seniors, or people with disabilities.¹⁰¹ SNAP benefits are valuable in combatting food insecurity—indeed, it has been called “the nation’s most

⁹⁷ Christianna Silva, *Food Insecurity in the U.S. by the Numbers*, NPR (Sept. 27, 2020), <https://www.npr.org/2020/09/27/912486921/food-insecurity-in-the-u-s-by-the-numbers>.

⁹⁸ Kayla de la Haye et al., USC Dornsife Public Exchange, *The Impact of COVID-19 on Food Insecurity in Los Angeles County: April to July 2020* (Sept. 23, 2020), <https://drive.google.com/file/d/17DHvE2xJQJb5VHF-B3i111czGOI09PuC/view>.

⁹⁹ David Velasquez et al., *Maximizing Food Security for Unauthorized Immigrants During COVID-19*, Health Affairs Blog (July 28, 2020), <https://www.healthaffairs.org/doi/10.1377/hblog20200724.40740/full/>.

¹⁰⁰ Kimberlin & Mesquita, *supra* note 28, at 4.

¹⁰¹ Policy Basics: The Supplemental Nutrition Assistance Program (SNAP), Ctr. on Budget & Policy Priorities (June 25, 2019), <https://perma.cc/R3N-GUJY>.

important anti-hunger program”¹⁰²—and would be particularly effective here, as over four million children who receive SNAP are living with a non-citizen adult.¹⁰³ But the Rule has driven immigrants to disenroll from SNAP in droves—indeed, one study found that SNAP has been the program most affected by the Rule’s chilling effects.¹⁰⁴ WIC is another key program that immigrant families have disenrolled from because of the Rule,¹⁰⁵ which could help prevent food insecurity during the pandemic for mothers, infants, and young children. According to the federal government, “[r]esearch has shown that the WIC Program has been playing an important role in improving birth outcomes and containing health care costs.”¹⁰⁶ Prenatal WIC participation leads to fewer infant deaths and premature births.¹⁰⁷ And every dollar spent on prenatal WIC participation resulted in a “savings in health care costs from \$1.77 to \$3.13 within the first 60 days after birth.”¹⁰⁸

¹⁰² *Id.*

¹⁰³ Jennifer Laird et al., Forgoing Food Assistance Out of Fear: Simulating the Child Poverty Impact of a Making SNAP a Legal Liability for Immigrants 2 (Feb. 22, 2019), <https://perma.cc/QT7U-6VV3>.

¹⁰⁴ Bernstein, *supra* note 59, at 6 (nearly half of immigrant respondents reported someone in their family had disenrolled or declined participation in SNAP).

¹⁰⁵ *Id.*

¹⁰⁶ About WIC-How WIC Helps, U.S. Dep’t of Agriculture (Oct. 10, 2013), <https://www.fns.usda.gov/wic/about-wic-how-wic-helps>.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

When they are chilled from these and other supplemental nutrition supports, immigrant households change food-purchasing behaviors to less nutritious or fresh options. They also rely on strained local food pantries and charity organizations or make the difficult decision to go hungry or miss important monthly payments like rent, which further threatens their health, well-being, and long-term self-sufficiency. In Texas, organizations serving mostly immigrant families reported that, in one case, a 37% decline in SNAP enrollment happened at the same time they observed a 327% increase in demand for food pantry items.¹⁰⁹ But food pantries are more expensive than providing assistance like SNAP—for the cost of every meal from a food pantry, SNAP provides nine.¹¹⁰

Because of the Rule's chilling effect on residents' participation in more efficient federal supplemental nutrition programs, local communities will need to expend greater resources to address the health problems caused by food insecurity, when local resources are already stretched thin. For Los Angeles County alone, that means somehow trying to increase the \$1-3 billion per year already spent on

¹⁰⁹ Cheasty Anderson, *Public Charge and Private Dilemmas: Key Challenges and Best Practices for Fighting the Chilling Effect in Texas, 2017-2019* 4 (Nov. 2020), https://cdftexas.org/wp-content/uploads/sites/8/2020/11/Public-Charge-and-Private-Dilemmas-TX_FINAL-020.pdf.

¹¹⁰ Sharon Cohen, *Millions of hungry Americans turn to food banks for 1st time*, Associated Press (Dec. 7, 2020), <https://apnews.com/article/race-and-ethnicity-hunger-coronavirus-pandemic-4c7f1705c6d8ef5bac241e6cc8e331bb>.

healthcare costs associated with food insecurity.¹¹¹ Increased food insecurity will lead to additional costs at safety-net hospitals already burdened by the pandemic, the need for programmatic increases at a time when Amici's revenues are falling and expenditures are rising, and a decline in the economic wellbeing of Amici's communities. These long-term losses to Amici's economies and greater future health expenditures cannot be avoided without enjoining the Rule.

CONCLUSION

As this Court observed when it considered the District Court's first injunction, the Rule has and will continue to cause wide-ranging harms to public health and the economy in communities throughout the country. *See New York*, 969 F.3d at 59-60, 72. The Rule's harmful effects have only grown more severe as COVID-19 has gripped the nation. The Rule undermines the vital efforts of states and local governments like Amici to stem the spread of the virus and mitigate its economic harms, as immigrants and their families avoid critical health care and public benefits out of fear. The District Court's temporary injunction appropriately recognizes localities' interests in "guard[ing] and protect[ing]" the safety and health of *all* residents in these uncertain times. *Jacobson v. Massachusetts*, 197 U.S. 11, 38 (1905). The Court should affirm the COVID-19 Injunction Order.

¹¹¹ Seth A. Berkowitz et al., CDC, State-Level and County-Level Estimates of Health Care Costs Associated with Food Insecurity (July 11, 2019), https://www.cdc.gov/pcd/issues/2019/18_0549.htm.

Respectfully submitted,

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The County of Harris, Texas
The City of Houston, Texas
The City of Los Angeles, California
The County of Los Angeles, California
The County of Marin, California
The County of Monterey, California
The City of Oakland, California
The City of Sacramento, California
The City of Seattle, Washington
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CERTIFICATE OF COMPLIANCE

I certify that this document complies with the type-volume limitation set forth in Federal Rule of Appellate Procedure 29(a) and Circuit Rule 29-1(c) because it contains 6,975 words, exclusive of the portions of the brief that are exempted by Federal Rule of Appellate Procedure 32(f). I certify that this document complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6).

Dated: January 4, 2021

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CERTIFICATE OF SERVICE

I, Danielle L. Goldstein, hereby certify that I electronically filed this Brief of Amici Curiae 14 Cities and Counties and the California State Association of Counties in Support of Plaintiffs-Appellees and Affirmance 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 4, 2021. I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Executed January 4, 2021, at Los Angeles, California.

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