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10 **UNITED STATES DISTRICT COURT**  
 11 **NORTHERN DISTRICT OF CALIFORNIA**  
 12 **SAN FRANCISCO DIVISION**

13 PANGEA LEGAL SERVICES; )  
 DOLORES STREET COMMUNITY SERVICES, )  
 14 INC.; CATHOLIC LEGAL IMMIGRATION )  
 NETWORK, INC.; AND CAPITAL AREA )  
 15 IMMIGRANTS' RIGHTS COALITION, )

16 Plaintiffs, )

17 v. )

18 U.S. DEPARTMENT OF HOMELAND )  
 SECURITY; CHAD F. WOLF, *under the title of* )  
 19 *Acting Secretary of Homeland Security;* )  
 KENNETH T. CUCCINELLI, *under the title of* )  
 20 *Senior Official Performing the Duties of the* )  
*Deputy Secretary for the Department of* )  
 21 *Homeland Security;* U.S. CITIZENSHIP & )  
 IMMIGRATION SERVICES; U.S. IMMIGRATION )  
 22 AND CUSTOMS ENFORCEMENT; TONY H. )  
 PHAM, *under the title of Senior Official* )  
 23 *Performing the Duties of the Director of* )  
*U.S. Immigration and Customs* )  
 24 *Enforcement;* U.S. CUSTOMS AND BORDER )  
 PROTECTION; MARK A. MORGAN, *under the* )  
 25 *title of Senior Official Performing the Duties* )  
*of the Commissioner of U.S. Customs and* )  
 26 *Border Protection;* U.S. DEPARTMENT OF )  
 JUSTICE; WILLIAM P. BARR, *under the title* )  
 27 *of U.S. Attorney General;* EXECUTIVE )  
 OFFICE FOR IMMIGRATION REVIEW; and )  
 28 JAMES MCHENRY, *under the title of Director* )

Case No. 3:20-cv-09253-JD

**[PROPOSED] BRIEF FOR SEVENTEEN  
 LOCAL GOVERNMENTS AS AMICI  
 CURIAE IN SUPPORT OF PLAINTIFFS'  
 PRELIMINARY INJUNCTION MOTION**

Assigned to Hon. James Donato

Date: January 7, 2021  
 Time: 10:00 a.m.

1 *of the Executive Office for Immigration* )  
*Review,* )  
2 Defendants. )  
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**STATEMENT OF INTEREST  
AND SUMMARY OF ARGUMENT**

1  
2 In the waning days of the Trump Administration, the Department of Justice and the  
3 Department of Homeland Security have fast-tracked a complete re-write of the regulations  
4 governing applications for asylum in the United States through a new rule scheduled to take  
5 effect on January 11, 2021: Procedures for Asylum and Withholding of Removal; Credible  
6 Fear and Reasonable Fear Review, 85 Fed. Reg. 80,274 (Dec. 11, 2020). If allowed to go into  
7 effect, the challenged rule would fundamentally reshape the asylum process by redefining key  
8 aspects of the substantive requirements for asylum, restricting applicants' procedural rights,  
9 and penalizing applicants for good faith mistakes. The end result would be to drastically reduce  
10 the number of people who are entitled to shelter in this country from persecution and violence.  
11 It is yet another example of this Administration's sustained effort to make the United States a  
12 hostile place for immigrants to the detriment of everyone in our communities.

13 Amici curiae are seventeen cities and counties, many with large immigrant populations.  
14 Amici agree with the arguments made in plaintiffs' complaint and motion for a preliminary  
15 injunction, temporary restraining order, and order to show cause, that the challenged rule is  
16 contrary to law because it so narrows the availability of asylum and related forms of relief that  
17 the United States will cease to provide humanitarian protections required under the Refugee  
18 Act of 1980 and the United Nations Convention Against Torture. Rendering the right to asylum  
19 illusory, it establishes new de facto bars to asylum eligibility and redefines many aspects of  
20 asylum law in a way that violates the United States Constitution, the Immigration and  
21 Nationality Act, federal case law, and international treaty obligations. The rule is also  
22 procedurally invalid because the government offered only a truncated and perfunctory notice  
23 and comment period, and because the rule relies on the purported authority of an official whose  
24 appointment violated the Federal Vacancies Reform Act and the Appointments Clause.

25 However, this amicus brief focuses not on the clear unlawfulness of the rule, but rather  
26 its practical effects. All of the undersigned cities and counties have a powerful interest in  
27 ensuring that immigrants who arrive in their locality after fleeing violence and persecution  
28

1 abroad have a fair chance to obtain the substantial protections that asylum status offers. At its  
2 core, asylum reflects a common international obligation to protect the global community’s  
3 most vulnerable populations from government-countenanced persecution and violence. Amici  
4 are committed to upholding that moral obligation. But asylum does more than that: it also  
5 provides economic and social stability and a path towards full citizenship. A wealth of  
6 research—governmental and academic—has consistently shown that ensuring stable  
7 immigration status leads to better long-term socioeconomic outcomes. Immigrants who are  
8 able to naturalize have higher earnings, higher employment rates, and higher homeownership  
9 rates. They also develop higher levels of civic engagement, stronger ties with their community,  
10 and a deeper sense of belonging.

11 It goes without saying that the amici cities and counties directly benefit from those  
12 gains through increased tax revenue, decreased public benefits expenditures, and more stable  
13 and engaged communities. But the challenged rule abruptly shuts the door to asylum  
14 protections for thousands of vulnerable immigrants, making it much more difficult for those  
15 immigrants to obtain stable immigration status. The amici cities and counties will be harmed  
16 by that outcome—from both an economic and social perspective. Immigrants who lack legal  
17 status will find it harder to pursue the kinds of education and well-paying jobs that generate  
18 increased tax revenue. It will be more difficult for them to integrate into their local  
19 communities and participate in civic life. And they will have to rely more heavily on public  
20 benefits and services provided by cities and counties—stretching local governments thin in the  
21 midst of unprecedented budgetary crises.

22 If this rule takes effect, thousands of immigrants will lose access not just to protection  
23 from persecution and violence, but also an essential path to economic security and mobility.  
24 Because the challenged rule is unlawful and fails to account for the ways in which it will harm  
25 America’s cities and counties, this Court should grant plaintiffs’ motion for a preliminary  
26 injunction, temporary restraining order, and order to show cause.



**ARGUMENT**

**I. The Trump Administration’s punitive new asylum rule threatens to deny access to stable immigration status—and a path towards citizenship—for tens of thousands of immigrants living in American cities and counties.**

Every year tens of thousands of immigrants flee persecution and violence in their home countries and apply for asylum in the United States. In fiscal year 2019, close to 50,000 people were granted asylum protection, either affirmatively by U.S. Citizenship and Immigration Services (“USCIS”) asylum officers or defensively in deportation proceedings in immigration court.<sup>1</sup> Like all immigrants, people who may be eligible for asylum are heavily concentrated in America’s largest metropolitan areas.<sup>2</sup> For example, the immigration courts in New York City, Los Angeles, San Francisco, and Miami alone account for almost 40% of the asylum decisions rendered by immigration courts in fiscal year 2019.<sup>3</sup> New York City’s immigration court was the busiest by far, with nearly 10,000 asylum cases and over 5,000 asylum grants.<sup>4</sup> And those statistics don’t include the thousands of additional affirmative asylum applications that are resolved by USCIS asylum officers.

The challenged rule is the culmination of this Administration’s repeated attacks on the asylum system over the past three years. It is designed to achieve one goal—the near-total elimination of asylum protections for thousands of eligible immigrants. The rule touches on almost all aspects of asylum law, both substantive and procedural. It seeks to redefine key elements of asylum eligibility, including the concept of persecution itself and the protected grounds for demonstrating persecution, resulting in the near total denial of asylum to LGBTQ+

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<sup>1</sup> Department of Homeland Security, *Annual Flow Report*, 1 (Sept. 2020), <https://perma.cc/9FJP-MCJB>.

<sup>2</sup> See Abby Budiman, *Key Findings About U.S. Immigrants*, PEW RESEARCH CENTER (Aug. 20, 2020), <https://perma.cc/AS9B-AVLB> (noting that 64% of the nation’s foreign born population live in just 20 major metropolitan areas, including most of the nation’s undocumented immigrant population).

<sup>3</sup> The Transactional Records Access Clearinghouse (“TRAC”) Immigration Project, *Asylum Decisions by Custody, Representation, Nationality, Location, Month and Year, Outcome and more* (2020), <https://perma.cc/S372-Q3GF>.

<sup>4</sup> *Id.*

1 individuals and survivors of gender-based violence. Further, it robs asylum seekers of due  
2 process by giving executive officers unilateral power to deny hearings, creating a slew of  
3 discretionary factors designed to deny the vast majority of applications, and making it much  
4 more difficult to apply for other forms of relief.

5 To take just one example, the rule makes it much easier for adjudicators to deem  
6 applications “frivolous,” a finding which carries the enormous penalty of barring any other  
7 future immigration relief. The rule revises the definition of a “frivolous” asylum application to  
8 include any application that “is filed without regard to the merits of the claim” or “foreclosed  
9 by applicable law.”<sup>5</sup> But given the complex and ever-evolving nature of asylum law—and the  
10 fact that many asylum seekers file their initial application *pro se*—it is unreasonable to expect  
11 uncounseled and non-English-speaking applicants to perfectly demonstrate the merits of their  
12 legal claim on the first try.<sup>6</sup> The new definition of “frivolous” applications also cannot easily  
13 be squared with existing regulations that explicitly condone the filing of applications, motions,  
14 and other documents that make “a good faith argument for the extension, modification, or  
15 reversal of existing law or the establishment of new law.”<sup>7</sup> The chilling effect of these  
16 provisions will deter applicants from bringing good faith and potentially meritorious claims  
17 that seek to overturn or limit unfavorable precedent.

18 In short, the challenged rule will severely hamstring asylum applicants’ ability to  
19 effectively present their cases in fair proceedings. And the end result is clear: thousands of our  
20 most vulnerable residents will be denied access to the relief that they are entitled to. Without  
21 the ability to obtain asylum relief—and be placed on a path towards naturalization—these  
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23 <sup>5</sup> James R. McHenry III, EOIR Director, *Guidance Regarding New Regulations Governing*  
24 *Procedures for Asylum and Withholding of Removal and Credible Fear and Reasonable Fear*  
25 *Reviews*, 3 (Dec. 11, 2020), <https://perma.cc/25KX-SWNT>.

26 <sup>6</sup> City of New York, Comment Letter on Proposed Rule entitled “Procedures for Asylum and  
27 *Withholding of Removal; Credible Fear and Reasonable Fear Review*,” 4 (July 15, 2020),  
28 *available at* <https://perma.cc/U9GU-QRZV> (hereinafter “NYC Comment”).

<sup>7</sup> 8 C.F.R. § 1003.102(j)(1).

1 immigrants will face the risk of deportation and the threat of resumed persecution, violence,  
 2 and even death in their home countries. They will also suffer economically and socially, and  
 3 the amici cities and counties will suffer with them.

4  
 5 **II. Lack of stable immigration status will lead to negative economic and social  
 outcomes for thousands of immigrants living in the amici cities and counties.**

6 One of asylum's many benefits is that it provides a pathway to legal status and  
 7 citizenship. Asylum applicants can obtain work authorization status while their applications are  
 8 pending.<sup>8</sup> And a year after asylum is granted, asylees and their qualifying family members can  
 9 apply for lawful permanent resident status.<sup>9</sup> Four years after that, asylees can apply for  
 10 naturalization.<sup>10</sup> Thus, a successful asylum application can be truly life-changing. In addition to  
 11 providing immediate security from the risk of deportation and persecution, it can also provide  
 12 asylees with the long-term benefits of successful integration into American society.

13 Obtaining stable immigration status and a path towards citizenship provide myriad  
 14 benefits for immigrants and lead to better socioeconomic outcomes across many indices. Data  
 15 show that attaining legal status—especially lawful permanent resident or naturalized citizen  
 16 status—is correlated with lower rates of poverty, higher health insurance coverage, greater  
 17 educational attainment, more stable housing, and increased earnings.

18 First, take education. Naturalized citizens have higher levels of education and better  
 19 language skills than noncitizens.<sup>11</sup> Nationwide, they are more than twice as likely to have  
 20 earned a bachelor's degree as noncitizen immigrants.<sup>12</sup> In New York City, rates of college

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 22 <sup>8</sup> 8 C.F.R. § 208.7(a)(1)(i).

23 <sup>9</sup> U.S. Citizenship and Immigration Services, *USCIS Welcomes Refugees and Asylees*, 4-5  
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24 <sup>10</sup> *Id.* at 7.

25 <sup>11</sup> Madeleine Sumption & Sarah Flamm, *The Economic Value of Citizenship for Immigrants in  
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26 <sup>12</sup> Manuel Pastor & Justin Scoggins, *Citizen Gain: The Economic Benefits of Naturalization for  
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 UNIVERSITY OF SOUTHERN CALIFORNIA, 7 (Dec. 2012), <https://perma.cc/PB5N-EEZ9>.

1 attendance are likewise much higher for immigrants who have naturalized.<sup>13</sup> And New Yorkers  
2 with green cards are more likely to complete high school than undocumented immigrants.<sup>14</sup>

3 The same is true for health insurance. Noncitizens—both undocumented immigrants  
4 and those with some form of legal status—are significantly more likely to be uninsured than  
5 citizens.<sup>15</sup> And within that noncitizen population, the difference between having legal status  
6 and being undocumented is substantial: nearly half of all undocumented immigrants are  
7 uninsured, compared to under a quarter of immigrants with legal status.<sup>16</sup> In New York City,  
8 for example, only 55% of undocumented immigrants have health insurance.”<sup>17</sup> Other cities see  
9 similar disparities in health insurance coverage.<sup>18</sup>

10 Aside from a lack of health insurance, undocumented immigrants are also less likely to  
11 use health services due to fear of deportation.<sup>19</sup> That is particularly concerning in the middle of  
12 a global pandemic. The federal government has itself recognized elsewhere that undocumented  
13 immigrants are less likely to seek out the “necessary medical treatment or preventive services”  
14 to protect themselves and slow the spread of COVID-19.<sup>20</sup> Despite this, the federal government  
15 made no attempt during the abbreviated rulemaking process here to grapple with the long-term  
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17 <sup>13</sup> New York City Mayor’s Office of Immigrant Affairs, *State*  
18 *of Our Immigrant City*, 31 (2019), 21 <https://perma.cc/5BVX-T7X6> (hereinafter “MOIA  
19 Annual Report”).

20 <sup>14</sup> *Id.*

21 <sup>15</sup> Kaiser Family Foundation, *Health Coverage of Immigrants* (Mar. 18, 2020),  
22 <https://perma.cc/S2FE-ZY56>.

23 <sup>16</sup> *Id.*

24 <sup>17</sup> MOIA Annual Report at 22.

25 <sup>18</sup> *See generally* Cities Index, *New American Economy* (2020), <https://perma.cc/H4VV-ZM9J>.

26 <sup>19</sup> Tom K. Wong et al., *The Impact of Interior Immigration Enforcement on the Day-to-Day*  
27 *Behaviors of Undocumented Immigrants*, U.S. IMMIGRATION POLICY CENTER, UC SAN DIEGO,  
28 7-8 (Apr. 3, 2019), <https://perma.cc/HD4Z-QZHF>; Claudia Boyd-Barrett, *Fear Pushes More*  
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<sup>20</sup> U.S. Citizenship and Immigration Services, *Public Charge*, (Sept. 2020),  
<https://perma.cc/UGF2-Y96J>.

1 public health impacts that are sure to follow from swelling the ranks of the undocumented by  
2 permanently narrowing the scope of asylum. The unavoidable—and here unexamined—fact is  
3 that fostering stable immigration status leads to better health outcomes across the board.

4         Similar trends exist with respect to housing and home ownership. In crowded cities like  
5 New York, undocumented immigrants are, compared to naturalized citizens, far more likely to  
6 experience overcrowding and qualify as rent-burdened—spending more than 30% of  
7 household income on rent.<sup>21</sup> The picture is much the same in other cities, like Los Angeles,  
8 where undocumented immigrant families “are more likely to report difficulties in paying for  
9 their housing than families headed by naturalized citizens and other legal immigrants.”<sup>22</sup> But  
10 when immigrants are able to naturalize, the picture changes. Naturalized citizens see a more  
11 than 6% rise in their homeownership rate as compared with similarly situated noncitizens who  
12 are eligible to naturalize.<sup>23</sup> In cities, the jump can be even more dramatic: in Boston, those who  
13 naturalize are 33% more likely to own homes than comparable noncitizens, while in Seattle,  
14 rates for naturalized citizens are almost 20% higher than for noncitizens.<sup>24</sup>

15         Obtaining stable immigration status also leads to greater income and employment  
16 prospects. The Census Bureau’s American Community Survey, for example, has found that  
17 citizens have average incomes that are 40% higher than those of noncitizen immigrants.<sup>25</sup> A  
18 recent study showed that naturalized citizens earn almost 10% more annually than if they  
19 remained noncitizens.<sup>26</sup> Incomes increase within just two years of obtaining citizenship, with

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21 <sup>21</sup> MOIA Annual Report at 24-25.

22 <sup>22</sup> Eileen D. McConnell, *Who Has Housing Affordability Problems? Disparities in Housing*  
23 *Cost burden by Race, Nativity and Legal Status in Los Angeles*, 5(3) RACE SOC PROBL. 173  
(Sept. 2013), <https://perma.cc/89FC-DLAH>.

24 <sup>23</sup> Maria E. Enchautegui & Linda Giannarelli, *The Economic Impact of Naturalization on*  
25 *Immigrants and Cities*, THE URBAN INSTITUTE, 2 (Dec. 2015), <https://perma.cc/UCH2-H8HZ>.

26 <sup>24</sup> *Id.* at 20.

27 <sup>25</sup> Robert Lynch & Patrick Oakford, *The Economic Effects of Granting Legal Status and*  
28 *Citizenship to Undocumented Immigrants*, CENTER FOR AMERICAN PROGRESS (Mar. 20,  
2013), <https://perma.cc/PAT2-H44G>.

<sup>26</sup> Enchautegui & Giannarelli, *supra* note 23, at 15.

1 accelerated earnings growth accruing in later years.<sup>27</sup> A number of other studies have reached  
2 similar conclusions.<sup>28</sup> In short, “[p]roviding a road map to citizenship to undocumented  
3 immigrants gives them legal protections that raise their wages. It also promotes investment in  
4 the education and training of immigrants that eventually pays off in the form of higher wages  
5 and output; grants access to a broader range of higher-paying jobs; encourages labor mobility  
6 which increases the returns on the labor skills of immigrants by improving the efficiency of the  
7 labor market such that the skillsets of immigrants more closely match the jobs that they  
8 perform; and makes it more possible for immigrants to start businesses and create jobs.”<sup>29</sup>

9       Enhanced employment prospects and earnings naturally lead to less poverty.  
10 Naturalized citizens are half as likely to live below the poverty line as noncitizens.<sup>30</sup> In New  
11 York City, immigrants have higher rates of poverty than U.S.-born New Yorkers, “despite  
12 working more hours and participating in the labor force at the same or greater rates than U.S.-  
13 born New Yorkers.”<sup>31</sup> But those New Yorkers who have obtained lawful permanent resident  
14 status have substantially lower poverty rates than undocumented immigrants.<sup>32</sup> Naturalized  
15 citizens are also generally better equipped to weather economic downturns than are  
16 noncitizens. Between 2006 and 2010, for instance, noncitizen incomes fell by nearly four times  
17 the drop for naturalized citizens.<sup>33</sup> The greater resiliency provided by stable immigration status  
18 is especially significant now, as local economies recover from the unprecedented and sudden  
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22 <sup>27</sup> Sumption & Flamm, *supra* note 11, at 12.

23 <sup>28</sup> Pastor & Scoggins, *supra* note 12 at 9; Lynch & Oakford, *supra* note 25.

24 <sup>29</sup> Lynch & Oakford, *supra* note 25.

25 <sup>30</sup> Sumption & Flamm, *supra* note 11, at 11.

26 <sup>31</sup> MOIA Annual Report at 30.

27 <sup>32</sup> *Id.*

28 <sup>33</sup> Sumption & Flamm, *supra* note 11, at 11.

1 recession brought on by the COVID-19 pandemic. With the unemployment rates in several  
2 major cities still over 10%, increased economic resiliency would be a lifeline for many.<sup>34</sup>

3       Aside from its financial impact, the challenged rule will also lead to worse social  
4 outcomes. Undocumented immigrants are subject to numerous traumas and stressors that can  
5 negatively impact mental health. Limited resources, stress from adjusting to a new  
6 environment, fear of deportation, and social stigma all combine to increase the risk of mental  
7 health disorders in the undocumented immigrant community.<sup>35</sup> The fear of deportation in  
8 particular “limits their use of health care and social services and prevents social integration.”<sup>36</sup>  
9 These risks are especially pronounced for asylum seekers who are fleeing persecution. For  
10 example, many female asylum seekers—especially those coming from Central America—  
11 “experience trauma, abuse and violence before they cross the U.S. border seeking asylum.”<sup>37</sup>

12       The consequences cascade over to civic life. Traumas and stressors that asylum seekers  
13 and other undocumented immigrants experience also lead to decreased participation in civic  
14 life and a reticence to use the legal system—even when they are victims.<sup>38</sup> But when  
15 immigrants are not curtailed in their ability to obtain stable immigration status, they have the  
16 opportunity to create stronger ties with their community through increased civic participation,  
17 more family unity, and a deeper sense of belonging. As incomes and homeownership increase,  
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21 <sup>34</sup> See, e.g., New York State Department of Labor, *NYS Economy Added 36,300 Private Sector*  
22 *Jobs in November 2020, Marking 7th Straight Month of Gains* (Dec. 17, 2020),  
<https://perma.cc/KHJ4-J9SA> (noting 12% unemployment rate in New York City).

23 <sup>35</sup> *Stress & Trauma Toolkit for Treating Undocumented Immigrants in a Changing Political*  
24 *and Social Environment*, AMERICAN PSYCHIATRIC ASSOCIATION, [https://perma.cc/E29Y-](https://perma.cc/E29Y-YEVS)  
25 [YEVS](https://perma.cc/E29Y-YEVS).

26 <sup>36</sup> *Id.*

27 <sup>37</sup> Laurie C. Heffron, *Central American Women Fleeing Violence Experience More Trauma*  
28 *After Seeking Asylum*, THE CONVERSATION (Apr. 25, 2019) <https://perma.cc/7VLE-68XH>.

<sup>38</sup> AMERICAN PSYCHIATRIC ASSOCIATION, *supra* note 35.



1 immigrants will participate more in civic organizations and volunteer activities.<sup>39</sup> The amici  
2 cities and counties would all benefit from those strengthened community ties.

3 Even before the introduction of this rule, asylum was difficult to secure.<sup>40</sup> By making it  
4 that much harder to obtain asylum, the challenged rule will rob many asylum seekers of a fair  
5 chance to put their traumas behind them and fully integrate into their local communities.  
6 Instead, they will be subject to less stable living conditions and a greater risk of deportation,  
7 which will only serve to magnify the negative economic and social outcomes outlined above.

8 **III. Worse socioeconomic outcomes for immigrants will cause long-term harm to the**  
9 **amici cities and counties.**

10 The negative socioeconomic outcomes that immigrants will face as a result of this new  
11 rule will impose serious financial burdens on America’s cities and counties. Amici all benefit  
12 from the businesses that immigrants open and the taxes that they pay. Immigrants are proven  
13 job creators. They are twice as likely as native-born citizens to start businesses<sup>41</sup>—both small  
14 and large—and almost 8 million Americans are employed at those businesses.<sup>42</sup> Immigrants’  
15 “participation in the economy creates a demand for goods and services, thereby boosting job  
16 growth,”<sup>43</sup> and studies have consistently shown that “legal status and a road map to citizenship  
17 ... bring about significant economic gains in terms of growth, earnings, tax revenues, and

18 <sup>39</sup> Oren M. Levin-Waldman, *Income Inequality and Disparities in Civic Participation in the*  
19 *New York City Metro Area*, 15 REG’L LABOR REV. 2, 28-29 (2012), [https://perma.cc/9LVP-](https://perma.cc/9LVP-ZTP2)  
20 *ZTP2*; Brian J. McCabe, *Are Homeowners Better Citizens? Homeownership and Community*  
21 *Participation in the United States*, 91 SOCIAL FORCES 929, 941 (2013), [https://perma.cc/X22S-](https://perma.cc/X22S-BUFD)  
22 *BUFD*.

23 <sup>40</sup> HUMAN RIGHTS FIRST, *Grant Rates Plummet as Trump Administration Dismantles U.S.*  
24 *Asylum System, Blocks and Deports Refugees*, 1 (June 2020), <https://perma.cc/V2UG-4KVE>.

25 <sup>41</sup> Peter Vandor & Nikolaus Franke, *Why are Immigrants More Entrepreneurial?*, HARVARD  
26 *BUSINESS REVIEW* (Oct. 27, 2016), <https://perma.cc/N6LF-7JR8>.

27 <sup>42</sup> NEW AMERICAN ECONOMY RESEARCH FUND, *New Data Shows Immigrant-Owned*  
28 *Businesses Employed 8 Million Americans; Immigrants Wield \$1.1 Trillion in Spending Power*,  
(Mar. 12, 2019), <https://perma.cc/9GPK-GXPJ>.

<sup>43</sup> Dan Kosten, *Immigrants as Economic Contributors: Immigrant Tax Contributions and*  
*Spending Power*, NATIONAL IMMIGRATION FORUM (Sept. 6, 2018), [https://perma.cc/LJ43-](https://perma.cc/LJ43-TX7N)  
*TX7N*.



1 jobs.”<sup>44</sup> The reason is clear: “legal status and citizenship enable undocumented immigrants to  
 2 produce and earn significantly more than they do when they are on the economic sidelines. The  
 3 resulting productivity and wage gains ripple through the economy because immigrants are not  
 4 just workers—they are also consumers and taxpayers.”<sup>45</sup>

5 Municipalities have a particular interest in the economic mobility and personal growth  
 6 of their foreign-born residents, not only because cities are home to a disproportionate number  
 7 of immigrants, but also because the aggregate economic benefits of stable legal status and  
 8 naturalization translate into significant increased revenue streams through income taxes and  
 9 decreased dependency on public benefits. For example, thousands of New York immigrants are  
 10 restricted from qualifying for state or federally supported health insurance programs—such as  
 11 Medicaid—due to their immigration status.<sup>46</sup> As a result, New York City spends a  
 12 disproportionate amount of money delivering health care to uninsured immigrants—through  
 13 the City’s public hospital system and programs like NYC Care. Increased access to legal status  
 14 and naturalization leads to better public health outcomes, more widespread insurance coverage,  
 15 and a corresponding reduction in the financial burden on localities. But the Administration’s  
 16 new rule will have the opposite effect by making it even harder for already vulnerable asylum  
 17 seekers to take the first step towards naturalization.

18 The public benefits burden that this rule forces cities and counties to shoulder is made  
 19 even more onerous by the pandemic-induced recession. State and local governments across the  
 20 country face unprecedented fiscal crises and are making deep cuts to public services, from  
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22 <sup>44</sup> Lynch & Oakford, *supra* note 25; *see also* Madeline Buiano & Susan Ferriss, *Data Defies*  
 23 *Trump’s Claims that Refugees and Asylees Burden Taxpayers*, THE CENTER FOR PUBLIC  
 24 INTEGRITY (May 8, 2019), <https://perma.cc/96GR-H8JG> (“Researchers found that between  
 25 2005 and 2014, refugees and asylees here from 1980 on contributed \$63 billion more to  
 government revenues than they used in public services.”); Pastor & Scoggins, *supra* note 16 at  
 19-20.

26 <sup>45</sup> Lynch & Oakford, *supra* note 25.

27 <sup>46</sup> NYC Health & Hospitals Corporation, *Commission on Health Care for Our Neighborhoods*  
 28 *Issue Brief: Sustaining the Safety Net*, 8 (Mar. 2017), <https://perma.cc/J7E5-NNKX>.

1 education to healthcare.<sup>47</sup> Chicago is facing a \$1.2 billion budget gap—the largest in the city’s  
 2 history.<sup>48</sup> And Los Angeles’s budget shortfall could reach \$600 million by the end of the fiscal  
 3 year.<sup>49</sup> New York City has been hit particularly hard. The pandemic has devastated the City’s  
 4 economy and tax revenues, requiring a 10% budget cut that approaches \$10 billion—more than  
 5 five times the cut that followed the 2008 financial crisis.<sup>50</sup> The challenged rule only  
 6 exacerbates this unprecedented crisis by depriving cities and counties of the opportunity to  
 7 increase the economic mobility and earning power of their immigrant population.

8         Aside from public benefits spending, the challenged rule also undermines investments  
 9 that local governments have made in legal services organizations. For example, Seattle funds  
 10 and supports the “Expanded Legal Defense Network,” which provides removal defense to low-  
 11 income residents of Seattle and King County, Washington.<sup>51</sup> The city contracts with  
 12 community nonprofit partners to fund and support legal services for low-income immigrants  
 13 and refugees who are in detention, or are facing removal, or are at risk of harm due to their  
 14 immigration status.<sup>52</sup> Through that program, Seattle has provided removal defense, asylum  
 15 representation, and related legal services to thousands of people.<sup>53</sup> Similarly, New York City  
 16 has increased and enhanced access to legal assistance for immigrants—especially for  
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18 <sup>47</sup> Mary Williams Walsh, *With Washington Deadlocked on Aid, States Face Dire Fiscal Crises*,  
 19 N.Y. TIMES (Sept. 7, 2020), <https://perma.cc/83JF-SZQQ>.

20 <sup>48</sup> Grace Del Vecchio et al., *Chicago’s Budge Crisis, Explained*, CITY BUREAU (Oct. 16, 2020),  
<https://perma.cc/DR65-6J57>.

21 <sup>49</sup> David Zahniser, *L.A.’s Budge Crisis Worsens as Deficit Projections Climb to \$600 Million*,  
 22 L.A. TIMES (Oct. 23, 2020), <https://www.latimes.com/california/story/2020-10-23/la-budget-crisis-600-million-deficit>.

23 <sup>50</sup> Office of the New York City Comptroller, *Comments on New York City’s Fiscal Year 2021*  
 24 *Adopted Budget*, 23 (Aug. 3, 2020), <https://perma.cc/ZH6L-NQZL>.

25 <sup>51</sup> Seattle Office of Immigrant and Refugee Affairs, Comment Letter on Proposed Rule entitled  
 26 “Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear  
 Review,” 1-2 (July 15, 2020), *available at* <https://perma.cc/SPA4-FSVW>.

27 <sup>52</sup> *Id.* at 2.

28 <sup>53</sup> *Id.*

1 vulnerable asylum seekers—by investing over \$50 million in a continuum of free legal service  
2 programs.<sup>54</sup>

3 The amici cities and counties make these investments because they recognize that  
4 policies and programs that assist, welcome, and integrate immigrants lead to stronger and more  
5 prosperous communities for all of our residents. But the effectiveness of such investments is  
6 diminished by the sudden dismantling of the asylum system. The challenged rule would require  
7 legal service providers to upend their case management systems and expend extensive time and  
8 resources to retrain attorneys on the arbitrary changes to asylum law.<sup>55</sup>

9 \* \* \*

10 All those facing the risk of persecution and violence—including those persecuted on  
11 account of their gender, gender identity, and sexual orientation—deserve a chance to seek  
12 protection through the asylum process. Amici are deeply concerned that this new asylum rule  
13 casts aside that principle. The result is not just inhumane and immoral—it also imposes  
14 substantial long term economic and social harms on thousands of immigrants and the cities and  
15 counties they live in. The challenged rule is illegal, harmful, and contrary to the values that  
16 amici have long championed. Amici urge this Court to grant plaintiffs’ motion for a  
17 preliminary injunction, temporary restraining order, and order to show cause.

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26 <sup>54</sup> NYC Comment at 6; New York City Office of Civil Justice, *2019 Annual Report*, 13  
<https://perma.cc/2ZTS-7YVC>.

27 <sup>55</sup> NYC Comment at 6.

**CONCLUSION**

Plaintiffs’ motion for a preliminary injunction, temporary restraining order, and order to show cause should be granted.

Dated: December 31, 2020  
Los Angeles, California

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on the date given below, I electronically filed the foregoing brief with the Clerk of the Court using the CM/ECF system which will send electronic notification of such filing to the persons registered as CM/ECF recipients for this case.

Date: December 31, 2020

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