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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

STATE OF CALIFORNIA, DISTRICT OF COLUMBIA, STATE OF MAINE, COMMONWEALTH OF PENNSYLVANIA, and **STATE OF OREGON,**

Plaintiffs,

v.

U.S. DEPARTMENT OF HOMELAND SECURITY; KEVIN K. MCALEENAN, in his Official Capacity as Acting Secretary of the Department of Homeland Security, **U.S. CITIZENSHIP AND IMMIGRATION SERVICES**; and **KENNETH T. CUCCINELLI**, in his Official Capacity as Acting Director of U.S. Citizenship and Immigration Services,

Defendants.

Civil Case No. 4:19-cv-4975-PJH

MOTION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE MEMBERS OF CONGRESS JUDY CHU, CHAIR OF THE CAPAC, ADRIANO ESPAILLAT, CHC WHIP, YVETTE D. CLARKE, CHAIR OF THE CBC IMMIGRATION TASK FORCE, JOAQUIN CASTRO, CHAIR OF THE CHC, KAREN BASS, CHAIR OF THE CBC, PRAMILA JAYAPAL, CHAIR OF THE CAPAC IMMIGRATION TASK FORCE, BARBARA LEE, CO-CHAIR OF THE CAPAC HEALTHCARE TASK FORCE, ET AL., IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

Amicus Curiae are elected members of the United States Congress and members of the Congressional Black Caucus ("CBC"), the Congressional Hispanic Caucus ("CHC"), or the Congressional Asian Pacific American Caucus ("CAPAC") (together, the "Congressional Tri-Caucus"). The Congressional Tri-Caucus respectfully moves this Court for leave to file the accompanying amicus curiae brief (the "Amicus Brief") in support of Plaintiffs' Motion for a Preliminary Injunction (the "Motion"). Dkt. No. 17. Both Plaintiffs and Defendants have consented to the filing of the Amicus Brief.

District courts possess "broad discretion" to determine when granting leave is appropriate. *Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982), *abrogated on other grounds by Sandin v. Conner*, 515 U.S. 472 (1995). "District courts frequently welcome amicus briefs from non-parties . . . if the amicus has 'unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide.'" *NGV Gaming, Ltd. v. Upstream Point Molate, LLC*, 355 F. Supp. 2d 1061, 1067 (N.D. Cal. 2005) (citation omitted). The Amicus Brief will assist the Court in addressing the public interest factor, focusing on the impact of the Department of Homeland Security's Final Rule, Inadmissibility on Public Charge Grounds, 84 Fed. Reg. 41,292 (Aug. 14, 2019) (the "Rule"). *See Ramos v. Nielsen*, 336 F. Supp. 3d 1075, 1085–86 (N.D. Cal. 2018) ("[t]he amicus briefs underscore that the harms to [Plaintiffs] will also harm the public interest.").

Each of the three caucuses was established to provide representation and constituency services for communities that have experienced racial discrimination firsthand. The CBC was formed more than forty years ago to promote racial equality in the design and content of domestic and international policies, programs, and services. The CBC has been at the forefront of issues affecting African Americans and has garnered international acclaim for advancing agendas aimed at protecting human rights and civil rights for all people. The CHC was formed in 1976 with the

mission of advancing, through the legislative process, issues affecting Hispanic Americans in the United States and the insular areas. The CHC actively addresses national issues that impact the Hispanic community. The CAPAC was founded in 1994 to enhance the ability of members of Congress and their allies to represent the Asian American and Pacific Islander community's concerns effectively in policy debates.

The Rule disproportionally and significantly harms communities that the Congressional Tri-Caucus represents and serves. The Congressional Tri-Caucus respectfully submits that consideration of amicus briefing, including the Amicus Brief, in connection with the Motion will assist the Court in analyzing the Rule and its impact.

For the foregoing reasons, the Congressional Tri-Caucus respectfully requests that this Court grant it leave to file the Amicus Brief.

Dated: September 10, 2019

Respectfully submitted,

By: /s/ Nicholas A. Reider

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the Northern District of California by using the CM/ECF system on September 10, 2019. I further certify that counsel of record for all parties in this case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I certify under penalty of perjury that the foregoing is true and correct. Executed this 10th day of September 2019.

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Civil Case No. 4:19-cv-4975-PJH

[PROPOSED] ORDER GRANTING MOTION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE MEMBERS OF CONGRESS JUDY CHU, CHAIR OF THE CAPAC, ADRIANO ESPAILLAT, CHC WHIP, YVETTE D. CLARKE, CHAIR OF THE CBC IMMIGRATION TASK FORCE, JOAQUIN CASTRO, CHAIR OF THE CHC, KAREN BASS, CHAIR OF THE CBC, PRAMILA JAYAPAL, CHAIR OF THE CAPAC IMMIGRATION TASK FORCE, BARBARA LEE, CO-CHAIR OF THE CAPAC HEALTHCARE TASK FORCE, ET AL., IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

[PROPOSED ORDER]

Upon consideration of the motion of Members of Congress Judy Chu, Chair of the CAPAC, Adriano Espaillat, CHC Whip, Yvette D. Clarke, Chair of the CBC Immigration Task Force, Joaquin Castro, Chair of the CHC, Karen Bass, Chair of the CBC, Pramila Jayapal, Chair of the CAPAC Immigration Task Force, Barbara Lee, Co-Chair of the CAPAC Healthcare Task Force, et al., for leave to file a brief as amicus curiae in support of Plaintiffs' motion for a preliminary injunction, it is hereby ORDERED that the motion is GRANTED. The Clerk is directed to file the amicus curiae brief on the docket in these matters.

DATED: _____, 2019

_____
THE HONORABLE PHYLLIS J. HAMILTON
UNITED STATES DISTRICT COURT JUDGE
NORTHERN DISTRICT OF CALIFORNIA

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the Northern District of California by using the CM/ECF system on September 10, 2019. I further certify that counsel of record for all parties in this case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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Cases

Arab Am. Civil Rights League v. Trump,
No. 17-10310, 2019 WL 3003455 (E.D. Mich. July 10, 2019) 5

Batalla Vidal v. Nielsen,
291 F. Supp. 3d 260 (E.D.N.Y. 2018) 5

CASA de Md. v. Trump,
355 F. Supp. 3d 307 (D. Md. 2018) 5

Centro Presente v. U.S Dep't of Homeland Sec.,
332 F. Supp. 3d 393 (D. Mass. 2018) 13

Fred Meyer Stores, Inc. v. NLRB,
865 F.3d 630 (D.C. Cir. 2017) 14

Hawai'i v. Trump,
241 F. Supp. 3d 1119 (D. Haw. 2017) 5

La Union del Pueblo Entero v. Ross,
353 F. Supp. 3d 381 (D. Md. 2018) 5

Regents of the Univ. of Cal. v. U.S. Dep't of Homeland Sec.,
298 F. Supp. 3d 1304 (N.D. Cal. 2018), *aff'd,* 908 F.3d 476 (9th Cir. 2019),
cert. granted, 139 S. Ct. 2779 (2019) 5

Regents of the Univ. of Cal. v. U.S. Dep't of Homeland Sec.,
908 F.3d 476 (9th Cir. 2018), *cert. granted*, No. 18-587, 2019 WL 2649834
(U.S. June 28, 2019)..... 13

Saget v. Trump,
345 F. Supp. 3d 287 (E.D.N.Y. 2018) 5

Village of Arlington Heights v. Metro. Hous. Dev. Corp.,
429 U.S. 252 (1977)..... 13

Federal Statutes

8 U.S.C. § 1182 2

Act to Regulate Immigration,
Pub. L. No. 47-***, Chapter 376, 22 Stat. 214 (1882) 8

Immigration and Nationality Act,
8 U.S.C. § 1101 *et seq.* 2, 11

Federal Regulations and Regulatory Materials

8 C.F.R. § 212.21 ..... 2, 8

8 C.F.R. § 212.22 8

Final Rule, Inadmissibility on Public Charge Grounds,
84 Fed. Reg. 41,292 (Aug. 14, 2019) ..... 1, passim

Notice of Proposed Rulemaking, Inadmissibility on Public Charge Grounds,
83 Fed. Reg. 51,114 (Oct. 10, 2018) 6

Other References

Adam Gabbat, *Golden escalator ride: the surreal day Trump kicked off his bid for president*, THE GUARDIAN (June 14, 2019), GUARDIAN (June 14, 2019), https://www.theguardian.com/us-news/2019/jun/13/donald-trump-presidential-campaign-speech-eyewitness-memories 3

Brennan Weiss, *The Trump Administration has ended protections for immigrants from 4 countries –here's when they will have to leave the US*, BUSINESS INSIDER (Jan. 11, 2018), BUSINESS INSIDER (Jan. 11, 2018), https://www.businessinsider.com/trump-has-ended-temporary-protection-status-for-4-countries-2018-1#el-salvador-september-9-2019-4 4

Brian Clark, *Less than 1 percent win the US green-card lottery – here's how it works*, CNBC (Mar. 5, 2018), https://www.cnbc.com/2018/03/05/less-than-1-percent-win-us-green-card-lottery--heres-how-it-works.html 4

Donald J. Trump (@realDonaldTrump)."So-Called Birthright Citizenship, which costs our Country billions of dollars and is very unfair to our citizens, will be ended one way or the other." TWITTER (Oct. 3, 2018, 6:25 AM), https://twitter.com/realdonaldtrump/status/1057624553478897665 4

Glenn Kessler, *Donald Trump's consistent misrepresentation of how the diversity visa lottery works* (Feb. 26, 2018), https://www.washingtonpost.com/news/fact-checker/wp/2018/02/26/president-trumps-consistent-misrepresentation-of-how-the-diversity-visa-lottery-works/?utm_term=.1439944ddfdd 4

Isabel Dobrin, *Looking at the Diversity Visa Program that Brought Him Here – And its Fate*, NPR (Feb. 3, 2018), https://www.npr.org/2018/02/03/582759246/looking-at-the-diversity-visa-program-that-brought-him-here-and-its-fate 4

Jason Silverstein, *Trump's top immigration official reworks the words on the Statue of Liberty*, CBS NEWS (Aug. 14, 2019), https://cbsnews.com/news/statue-of-liberty-poem-emma-lazarus-quote-changed-trump-immigration-official-ken-cuccinelli-after-public-charge-law/ 7

Julia Gelatt, *The RAISE Act: Dramatic Change to Family Immigration, Less So for the Employment-Based System*, MIGRATION POLICY INSTITUTE (Aug. 2017), https://www.migrationpolicy.org/news/raise-act-dramatic-change-family-immigration-less-so-employment-based-system 3

Julie Hirschfeld Davis, Sheryl Gay Stolberg, & Thoman Kaplan, *Trump Alarms Lawmakers With Disparaging Words for Haiti and Africa*, N.Y. TIMES (Jan. 11, 2018), https://www.nytimes.com/2018/01/11/us/politics/trump-shithole-countries.html 4

Letter from CLASP re: DHS Docket No. USCIS-2010-0012, Comments in Response to Proposed Rulemaking: Inadmissibility on Public Charge Grounds, RIN 1615–AA22 (Oct. 10, 2018), Dec. 7, 2018 ..... 12, 13

Letter from Congressional Asian Pacific American Caucus re: DHS Docket No. USCIS-2010-0012, Comments in Response to Proposed Rulemaking: Inadmissibility on Public Charge Grounds, RIN 1615–AA22 (Oct. 10, 2018), Dec. 10, 2018 ..... 6, 10, 11, 12

Letter from Members of the Congressional Hispanic Caucus re: DHS Docket No. USCIS-2010-0012, Comments in Response to Proposed Rulemaking: Inadmissibility on Public Charge Grounds, RIN 1615–AA22 (Oct. 10, 2018), Dec. 10, 2018 ..... 6, 9, 10

Letter from Cedric L. Richmond & Yvette D. Clarke, CBC Chairs, to Kirstjen M. Nielsen, DHS Secretary (Sept. 25, 2018) 7

Michael D. Shear & Julie Hirschfeld Davis, *Stoking Fears, Trump Defied Bureaucracy to Advance Immigration Agenda*, N.Y. TIMES (Dec. 23, 2017), https://www.nytimes.com/2017/12/23/us/politics/trump-immigration.html?_r=0 3

Missouri Census Data Center (MCDC) MABLE PUMA-County Crosswalk, Custom Tabulation by Manatt health, 9/30/2018, https://www.manatt.com/Insights/Articles/2018/Public-Charge-Rule-Potentially-Chilled-Population 9, 12

President Donald J. Trump Backs RAISE Act, WHITEHOUSE.GOV (Aug. 2, 2017), https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-backs-raise-act/ 3

Richard Fry & Jeffrey S. Passel, *Latino Children: A Majority Are U.S.-Born Offspring Immigrants*, PEW RESEARCH CENTER (May 28, 2009), https://www.pewresearch.org/hispanic/2009/05/28/latino-children-a-majority-are-us-born-offspring-of-immigrants/ 9

Randy Capps, Mark Greenberg, Michael Fix, & Jie Zong, *Gauging the Impact of DHS' Proposed Public-Charge Rule on U.S. Immigration*, MIGRATION POLICY INSTITUTE (Nov. 2018), https://www.migrationpolicy.org/research/impact-dhs-public-charge-rule-immigration 10, 11, 13

Remarks by President Trump at the National Federation of Independent Businesses 75th Anniversary Celebration, WHITEHOUSE.GOV (June 19, 2018), https://www.whitehouse.gov/briefings-statements/remarks-president-trump-national-federation-independent-businesses-75th-anniversary-celebration/ 3

STATEMENT OF INTEREST

Amici curiae are elected members of the United States Congress and members of the Congressional Black Caucus ("CBC"), the Congressional Hispanic Caucus ("CHC"), or the Congressional Asian Pacific American Caucus ("CAPAC") (together, the "Congressional Tri-Caucus").[1] Amici collectively serve millions of Americans from communities that will be disproportionately and significantly harmed by the Department of Homeland Security's (the "Department" or "DHS") Final Rule, Inadmissibility on Public Charge Grounds, 84 Fed. Reg. 41,292[2] (August 14, 2019) (the "Rule").

Each of the three caucuses was established to provide representation and constituency services for communities that have experienced racial discrimination firsthand. The CBC was formed more than forty years ago to promote racial equality in the design and content of domestic and international policies, programs, and services. The CBC has been at the forefront of issues affecting African Americans and has garnered international acclaim for advancing agendas aimed at protecting human rights and civil rights for all people. The CHC was formed in 1976 with the mission of advancing, through the legislative process, issues affecting Hispanic Americans in the United States and the insular areas. The CHC actively addresses national issues that impact the Hispanic community. The CAPAC was founded in 1994 to enhance the ability of members of Congress and their allies to represent the Asian American and Pacific Islander ("AAPI") community's concerns effectively in policy debates.

Amici write to offer their perspective on the harm that the Rule will cause Black, Hispanic, and AAPI immigrant communities. Extensive evidence demonstrates that the Rule was motivated by President Trump's blatant animus towards non-white, non-European immigrants,

[1] A complete list of amici is attached as an addendum to this brief.

[2] Final Rule, Inadmissibility on Public Charge Grounds, 84 Fed. Reg. 41,292 (Aug. 14, 2019) (to be codified at 8 C.F.R. § 212.20).

and that it was designed to disproportionately impact those individuals. Amici respectfully urge this court to grant Plaintiffs' Motion for a Preliminary Injunction.

ARGUMENT

The Immigration and Nationality Act ("INA") allows the federal government to deny admission or adjustment of status to noncitizens who are "likely at any time to become a public charge."[3] Historically, the "public charge" designation has been interpreted to apply to individuals ***primarily*** dependent on the government for subsistence, "demonstrated by either the receipt of public cash assistance for income maintenance or institutionalization for long-term care at government expense."[4] The Rule departs from that interpretation entirely, redefining "public benefit" to encompass the receipt of non-cash benefits such as healthcare, nutrition, or housing assistance[5]—benefits upon which millions of Americans rely at some point in their lives to ensure their health, safety, and security—and redefining and substantially expanding a "public charge" to encompass individuals who use such public benefits for short periods of time or to supplement their income, and not as a primary means of subsistence.[6]

As set forth below, the Rule is motivated by the Trump administration's open animus towards non-white, non-European immigrants—animus which has been repeatedly recognized in lawsuits challenging the Administration's other discriminatory actions in various federal courts. Indeed, the Rule likewise will indisputably disproportionately harm non-white, non-European immigrants.

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[3] Immigration and Nationality Act, 8 C.F.R. § 212(a)(4), 8 U.S.C. § 1182(a)(4)(A).

[4] U.S. Citizenship and Immigration Services, *Public Charge*, USCIS, https://www.uscis.gov/greencard/public-charge.

[5] Inadmissibility on Public Charge Grounds, 84 Fed. Reg. 41,292, 41,501 (Aug. 14, 2019) (to be codified at 8 C.F.R. § 212.21(a)-(b)).

[6] *Id.*

I. THE RULE IS MOTIVATED BY DEMONSTRATED ANIMUS TOWARDS NON-WHITE, NON-EUROPEAN IMMIGRANTS

A. The Administration's Statements and Actions Demonstrate a Pattern of Hostility

Repeated and consistent statements made by President Trump and high-ranking officials in the Trump administration, along with the administration's relentless efforts to enact policies that will curtail immigration by people of color, demonstrate a pattern of bias. President Trump's hostility towards immigrants of color was apparent from the moment he began his campaign in June 2015, with a speech characterizing immigrants from Mexico as "rapists" with "lots of problems."[7] In June 2018, President Trump said that he stood by those remarks, and that he "was 100 percent right."[8] In June 2017, President Trump said that 15,000 people from Haiti whom had been granted visas to enter the United States "all ha[d] AIDS" and 40,000 people from Nigeria whom had been granted visas would never "go back to their huts" once they had seen the United States.[9]

In August 2017, President Trump endorsed the RAISE Act, legislation that would have reduced family-based visas,[10] with the brunt of the impact falling on prospective immigrants from Mexico, the Dominican Republic, the Philippines, China, India, and Vietnam, as U.S. residents from those countries are the most frequent sponsors of family-based green cards.[11] The RAISE

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[7] Adam Gabbat, *Golden escalator ride: the surreal day Trump kicked off his bid for president*, THE GUARDIAN (June 14, 2019), https://www.theguardian.com/us-news/2019/jun/13/donald-trump-presidential-campaign-speech-eyewitness-memories.

[8] *Remarks by President Trump at the National Federation of Independent Businesses 75th Anniversary Celebration*, WHITEHOUSE.GOV (June 19, 2018), https://www.whitehouse.gov/briefings-statements/remarks-president-trump-national-federation-independent-businesses-75th-anniversary-celebration/.

[9] Michael D. Shear & Julie Hirschfeld Davis, *Stoking Fears, Trump Defied Bureaucracy to Advance Immigration Agenda*, N.Y. TIMES (Dec. 23, 2017), https://www.nytimes.com/2017/12/23/us/politics/trump-immigration.html?_r=0.

[10] *President Donald J. Trump Backs RAISE Act*, WHITEHOUSE.GOV (Aug. 2, 2017), https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-backs-raise-act/.

[11] Julia Gelatt, *The RAISE Act: Dramatic Change to Family Immigration, Less So for the Employment-Based System*, MIGRATION POLICY INSTITUTE (Aug. 2017), https://www.migrationpolicy.org/news/raise-act-dramatic-change-family-immigration-less-so-employment-based-system.

Act also called for eliminating the Diversity Visa Lottery Program, which allows for 50,000 immigrant visas annually,[12] of which 20,000 go to people from African countries.[13] In February 2018, President Trump said of the program: "So we pick out people, then they turn out to be horrendous and we don't understand why."[14] In a January 2018 meeting with United States senators, President Trump criticized a draft immigration plan that included protections for people from Haiti and some African countries, asking "why he would want 'all these people from shithole countries,' adding that the United States should admit more people from places like Norway."[15] In October 2018, President Trump stated that it was his intention to end "[s]o-called Birthright Citizenship . . . one way or the other."[16]

As numerous courts have previously recognized, these statements and actions evidence the Trump administration's blatant animus towards non-white, non-European immigrants. Following President Trump's termination of Temporary Protected Status ("TPS") for immigrants from Sudan, Nicaragua, Nepal, Haiti, El Salvador, and Honduras,[17] the Eastern District of New York found that the Haitian plaintiffs had sufficiently alleged an equal protection claim, noting "several instances of anti-Haitian and anti-immigrant comments made by President Trump."

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[12] Brian Clark, *Less than 1 percent win the US green-card lottery – here's how it works*, CNBC (Mar. 5, 2018), https://www.cnbc.com/2018/03/05/less-than-1-percent-win-us-green-card-lottery--heres-how-it-works.html.

[13] Isabel Dobrin, *Looking at the Diversity Visa Program that Brought Him Here – And its Fate*, NPR (Feb. 3, 2018), https://www.npr.org/2018/02/03/582759246/looking-at-the-diversity-visa-program-that-brought-him-here-and-its-fate.

[14] Glenn Kessler, *Donald Trump's consistent misrepresentation of how the diversity visa lottery works* (Feb. 26, 2018), https://www.washingtonpost.com/news/fact-checker/wp/2018/02/26/president-trumps-consistent-misrepresentation-of-how-the-diversity-visa-lottery-works/?utm_term=.1439944ddfdd.

[15] Julie Hirschfeld Davis, Sheryl Gay Stolberg, & Thoman Kaplan, *Trump Alarms Lawmakers With Disparaging Words for Haiti and Africa*, N.Y. TIMES (Jan. 11, 2018), https://www.nytimes.com/2018/01/11/us/politics/trump-shithole-countries.html.

[16] *See* Donald J. Trump (@realDonaldTrump)."So-Called Birthright Citizenship, which costs our Country billions of dollars and is very unfair to our citizens, will be ended one way or the other." TWITTER (Oct. 3, 2018, 6:25 AM), https://twitter.com/realdonaldtrump/status/1057624553478897665.

[17] Brennan Weiss, *The Trump Administration has ended protections for immigrants from 4 countries –here's when they will have to leave the US*, BUSINESS INSIDER (Jan. 11, 2018), https://www.businessinsider.com/trump-has-ended-temporary-protection-status-for-4-countries-2018-1#el-salvador-september-9-2019-4.

Saget v. Trump, 345 F. Supp. 3d 287, 303 (E.D.N.Y. 2018). The Northern District of California similarly found in *Ramos v. Nielsen* that the plaintiffs had plausibly alleged that President Trump's racial and national-origin animus was a motivating factor in the decision to terminate TPS. 321 F. Supp. 3d 1083, 1123–24 (N.D. Cal. 2018); *see also CASA de Md. v. Trump*, 355 F. Supp. 3d 307, 325–26 (D. Md. 2018) (noting in reference to President Trump's statements that "[o]ne could hardly find more direct evidence of discriminatory intent towards Latino immigrants."). In a lawsuit challenging President Trump's ban on immigrants from Muslim-majority countries from entering the United States, the District of Hawaii likewise found "significant and unrebutted evidence" of animus towards Muslim people, citing, among other evidence, a White House press release that "call[ed] for a total and complete shutdown of Muslims entering the United States." *Hawai'i v. Trump*, 241 F. Supp. 3d 1119, 1136–37 (D. Haw. 2017); *see also Arab Am. Civil Rights League v. Trump*, No. 17-10310, 2019 WL 3003455, at *10 (E.D. Mich. July 10, 2019) (denying post-*Trump v. Hawaii* motion to dismiss challenge to the Muslim ban based, in part, on President Trump's anti-Muslim rhetoric).

Courts have also found that President Trump's decision to rescind the Deferred Action for Childhood Arrivals ("DACA") program was motivated by discriminatory intent based in part on President Trump's statements. *See Batalla Vidal v. Nielsen*, 291 F. Supp. 3d 260, 269 (E.D.N.Y. 2018); *see also Regents of the Univ. of Cal. v. U.S. Dep't of Homeland Sec.*, 298 F. Supp. 3d 1304, 1314–15 (N.D. Cal. 2018), *aff'd,* 908 F.3d 476, 519–20 (9th Cir. 2019), *cert. granted*, 139 S. Ct. 2779 (2019) (denying motion to dismiss Equal Protection challenge to ending DACA); *La Union del Pueblo Entero v. Ross*, 353 F. Supp. 3d 381, 393–95 (D. Md. 2018) (denying motion to dismiss Equal Protection claims regarding immigrants of color in challenge to adding citizenship question to 2020 Census).

B. The Rule is Motivated by Hostility Towards Non-White, Non-European Immigrants

Consistent with the prior statements detailed above by the Trump administration, President Trump and high-ranking officials in his administration have made similarly hostile statements about or related to the Rule. Combined with the Trump administration's established pattern of open hostility towards non-white, non-European immigrants, such statements about the Rule demonstrate that it, too, is motivated by animus towards non-white, non-European immigrants.

On October 10, 2018, DHS published a notice of proposed rulemaking and proposed rule entitled Inadmissibility on Public Charge Grounds (the "Proposed Rule").[18] During the 60-day comment period, DHS received over 266,077 comments on the Proposed Rule, the vast majority of which opposed it.[19] Comments from amici, including Congressional Tri-Caucus members, and many others, alerted DHS to the harm that the Proposed Rule would cause communities of color. Specifically, amici from the CAPAC submitted a comment letter, providing data demonstrating the negative impact that the Proposed Rule would have on racial and ethnic minorities, including AAPIs,[20] and amici from the CHC submitted a comment letter voicing their significant concerns about the effect that the Proposed Rule would have on Latino communities and all communities of color.[21] Prior to the publication of the Proposed Rule, members of the CBC wrote to then-DHS

[18] Notice of Proposed Rulemaking, Inadmissibility on Public Charge Grounds, 83 Fed. Reg. 51,114-01, 51,198, (proposed Oct. 10, 2018) (to be codified at 8 C.F.R. pts. 103, 212, 213, 214, 245, and 248).

[19] 84 Fed. Reg. 41,297.

[20] Letter from Congressional Asian Pacific American Caucus re: DHS Docket No. USCIS-2010-0012, Comments in Response to Proposed Rulemaking: Inadmissibility on Public Charge Grounds, RIN 1615–AA22 (Oct. 10, 2018), Dec. 10, 2018 ("CAPAC Comment").

[21] Letter from Members of the Congressional Hispanic Caucus re: DHS Docket No. USCIS-2010-0012, Comments in Response to Proposed Rulemaking: Inadmissibility on Public Charge Grounds, RIN 1615–AA22 (Oct. 10, 2018), Dec. 10, 2018 ("CHC Comment").

Secretary Kirstjen Nielsen, urging her not to move forward with the Rule and alerting her to the fact that expanding the definition of "public charge" would make America less diverse.[22]

There is no doubt that DHS and the Trump administration were aware of the concerns raised by amici and others, but they nevertheless moved forward with publication. Indeed, the Department openly acknowledged that the Rule "may impact in greater numbers communities of color, including Latinos and AAPI . . . and therefore may impact the overall composition of immigration with respect to these groups,"[23] but apparently saw no need to rectify or address this. Instead, the Department merely insisted that "it did not codify this final rule to discriminate against aliens based on . . . race" but rather "to better ensure that aliens subject to this rule are self-sufficient."[24]

On August 13, 2019, just one day after announcing the Rule, acting head of U.S. Citizenship and Immigration Services ("USCIS") Ken Cuccinelli attempted to address concerns about the Rule by unapologetically stating that the Emma Lazarus poem inscribed on the Statue of Liberty was about "people coming from Europe . . . ."[25] This and other unabashed statements not only demonstrate that the Trump administration is aware of the disproportionate impact the Rule will have on non-white, non-European immigrants, but also confirm that the Rule was premised on animus by the administration.

C. The Rule is Counter to Existing Policy and Congressional Intent and Reflects the Intent to Exclude Racial Minorities from the United States

The "public charge" provision was never intended, and has never been understood, to prevent lawful immigrants from accepting supplemental, non-cash benefits. From its inception,

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[22] Letter from Cedric L. Richmond & Yvette D. Clarke, CBC Chairs, to Kirstjen M. Nielsen, DHS Secretary (Sept. 25, 2018) ("CBC Letter").

[23] 84 Fed. Reg. 41,369.

[24] 84 Fed. Reg. 41,309.

[25] Jason Silverstein, *Trump's top immigration official reworks the words on the Statue of Liberty*, CBS NEWS (Aug. 14, 2019), https://cbsnews.com/news/statue-of-liberty-poem-emma-lazarus-quote-changed-trump-immigration-official-ken-cuccinelli-after-public-charge-law/.

first codified into federal immigration law with the Immigrant Act of 1882,[26] Congress intended "public charge" to refer to an individual who is ***primarily*** dependent on the government as their main source of support, and not to anyone who needs to ***supplement*** a low income by utilizing basic need programs for healthcare, nutrition, or housing.

The Rule redefines and expands "public benefit" to encompass the receipt of *any* non-cash benefits, such as healthcare, nutrition, or housing assistance,[27] and redefines a "public charge" to encompass individuals who use such public benefits for short periods of time or to supplement their income, and not as a primary means of subsistence.[28] Further, the Rule requires a weighing of "positive" and "negative" factors, some of which must be "heavily weighted." Under the Rule, a household income of less than 125 percent of the federal poverty level ("FPL") is a negative factor, while a household income of more than 250 percent of the FPL is a heavily weighted positive factor.[29] Other negative factors include: having a poor credit score; having used public benefits in the past; having foreseeable medical costs that cannot be covered without Medicaid; lacking proficiency in English; lacking a high school diploma; and having a large family or family members that are financially independent.[30] The "heavily weighted" negative factors include an applicant's receipt or authorization to receive benefits for 12 months within 36 months of filing an application.[31] Across the board, these factors heavily favor white immigrants from wealthy countries.

[26] Act to Regulate Immigration, Pub. L. No. 47-***, Chapter 376, 22 Stat. 214 (1882).
[27] 84 Fed. Reg. 41,292, 41,501 (Aug. 14, 2019) (to be codified at 8 C.F.R. § 212.21(a)-(b)).
[28] *Id.*
[29] 84 Fed. Reg. at 41,503–504 (to be codified at 8 C.F.R. § 212.22(c)).
[30] 84 Fed. Reg. at 41,502–504 (to be codified at 8 C.F.R. § 212.22(b)(1)-(5)).
[31] 84 Fed. Reg. at 41,504 (to be codified at 8 C.F.R. § 212.22(c)(1)).

II. THE RULE WILL HAVE A DISPROPORTIONATELY HARMFUL IMPACT ON NON-WHITE, NON-EUROPEAN IMMIGRANTS

As the Department has openly acknowledged (*see supra* at I.B.), the Rule will have a chilling effect, causing immigrants and their families to refuse public benefits to which they are entitled.[32] Moreover, according to data from Manatt Health, of the 25.9 million people that will potentially be chilled from seeking services by the Rule, approximately *90 percent*—23.2 million people—are people of color. Within that group, 70 percent are Latino (18.3 million), 12 percent are AAPI (3.2 million), and 7 percent are Black (1.8 million). In comparison, people of color account for approximately 36 percent of the United States population.[33]

A. Impact on Latino Immigrants

Latino people make up approximately 70 percent of people who will potentially be impacted by the Rule, which is approximately 33 percent of all Latinos in the United States.[34] Among Latino children, who account for a quarter of all U.S. children, the majority (52 percent) have at least one immigrant parent.[35] Latinos have made great economic gains in recent years, becoming entrepreneurs at a faster rate than all other racial and ethnic groups combined.[36] Supplemental public benefits like healthcare have been instrumental in helping working Latino

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[32] 84 Fed. Reg. 41,463.

[33] 2012–2016 5-Year American Community Survey Public Use Microdata Sample (ACS/PUMS); 2012–2016 5-Year American Community Survey (ACS) estimates accessed via American FactFinder; Missouri Census Data Center (MCDC) MABLE PUMA-County Crosswalk. Custom Tabulation by Manatt health, 9/30/2018. Found online at https://www.manatt.com/Insights/Articles/2018/Public-Charge-Rule-Potentially-Chilled-Population.

[34] CHC Comment at 1 (citing 2012–2016 5-Year American Community Survey Public Use Microdata Sample (ACS/PUMS); 20122016 5-Year American Community Survey (ACS) estimates accessed via American FactFinder; Missouri Census Data Center (MCDC) MABLE PUMA-County Crosswalk. Custom Tabulation by Manatt health, 9/30/2018. Found online at https://www.manatt.com/Insights/Articles/2018/Public-Charge-Rule-Potentially-Chilled-Population).

[35] CHC Comment at 1 (citing Richard Fry & Jeffrey S. Passel, *Latino Children: A Majority Are U.S.-Born Offspring of Immigrants* PEW RESEARCH CENTER (May 28, 2009), https://www.pewresearch.org/hispanic/2009/05/28/latino-children-a-majority-are-us-born-offspring-of-immigrants/.

[36] CHC Comment at 1 (citing Democratic Staff of the Joint Economic Committee, U.S. Congress, *The Economic State of the Latino Community in America*, updated July 2016, available at https://www.jec.senate.gov/public/index.cfm/democrats/2016/7/the-economic-state-of-the-latino-community-in-america).

families, like other American families, to advance self-sufficiency and create economic opportunity.

By broadening the definition of "public benefit" to encompass the receipt of even non-cash benefits such as healthcare, nutrition, or housing assistance, the Rule will harm the 21 percent of Latino households that received Supplemental Nutrition Assistance Program ("SNAP") benefits in the last year,[37] the approximately 32 percent of Latinos that are covered by Medicaid,[38] and the approximately 740,000 Latino households that received federal rental assistance in 2015.[39] The Rule will deter Latino immigrants from accessing services that allow them to make ends meet and ensure the health and security of their families. According to data from the Migration Policy Institute, at least 81 percent of immigrants from Mexico and Central America will have at least one negative factor.[40]

B. Impact on AAPI Immigrants

According to the U.S. Census Bureau, Asian Americans and Pacific Islanders are the fastest growing racial population in the United States.[41] Due in part to changes in immigration law, including the passage of the Immigration and Nationality Act of 1965, that reversed decades of restrictive immigration policies targeting Asian migrants, nearly 60 percent of Asian

[37] CHC Comment at 1–2 (citing United States Bureau of the Census, and United States Bureau of Labor Statistics Current Population Survey: Annual Social and Economic (ASEC) Supplement Survey, United States, 2017. Ann Arbor, MI: Inter-university Consortium for Political and Social Research [distributor], 2018-05-31. https://doi.org/10.3886/ICPSR37075.v1).

[38] *Id.*

[39] CHC Comment at 1–2 (citing CBPP tabulation of Department of Housing and Urban Development (HUD) 2016 administrative data, produced by arrangement with HUD).

[40] Randy Capps, Mark Greenberg, Michael Fix, & Jie Zong, *Gauging the Impact of DHS' Proposed Public-Charge Rule on U.S. Immigration*, MIGRATION POLICY INSTITUTE (Nov. 2018), https://www.migrationpolicy.org/research/impact-dhs-public-charge-rule-immigration).

[41] CAPAC Comment at 1.

Americans are immigrants,[42] and three out of every ten individuals obtaining permanent residence status are from Asian and Pacific Island nations.[43]

By broadening the definition of "public benefit" to encompass the receipt of even non-cash benefits such as healthcare, nutrition, or housing assistance, the Rule will harm the 1.4 million AAPIs who are not U.S. citizens whose families rely on Medicaid and CHIP, a group that includes 182,000 children, and the 523,000 AAPIs who are not yet citizens whose families rely on SNAP.[44] In addition, a number of negative factors used in the "totality of the circumstances" test established by the new Rule will disproportionately impact AAPI immigrants. For example, 41 percent of recent lawful permanent residents ("LPRs") from Asia have two or more "negative" factors under the Rule that put them at a high risk of denial.[45] The Migration Policy Institute estimates that among recent LPRs from Asia, 33 percent had household incomes below 125 percent of the FPL overall, and that 30 percent of those from Asia had household incomes below 125 percent of the FPL.[46] In addition, 30 percent did not speak English well or at all, 20 percent did not have a high school diploma, and 9 percent were under 18 or over 61.[47] Negatively weighing against persons with houseful incomes under 125 percent of the FPL will impact the 1.6 million Asian Americans in immigrant and mixed-status households that earn less than that

[42] CAPAC Comment at 1–2 (citing Gustavo Lopez, Niel G. Ruiz, and Eileen Patten, "Key facts about Asian Americans, a diverse and growing population." (September 2017). Available at https://www.pewresearch.org/fact-tank/2017/09/08/key-facts-about-asian-americans/).

[43] CAPAC Comment at 2 (citing Department of Homeland Security, Yearbook of Immigration Statistics 2017, https://www.dhs.gov/immigration-statistics/yearbook/2017).

[44] CAPAC Comment at 2 (citing Randy Capps, Mark Greenberg, Michael Fix, and Jie Zong, *Gauging the Impact of DHS' Proposed Public-Charge Rule on U.S. Immigration*, MIGRATION POLICY INSTITUTE (Nov. 2018), https://www.migrationpolicy.org/research/impact-dhs-public-charge-rule-immigration).

[45] CAPAC Comment at 3 (citing U.S. Census Bureau, 2011–2015 American Community Survey 5-Year Estimates).

[46] CAPAC Comment at 3 (citing Randy Capps, Mark Greenberg, Michael Fix, and Jie Zong, *Gauging the Impact of DHS' Proposed Public-Charge Rule on U.S. Immigration*, MIGRATION POLICY INSTITUTE (Nov. 2018), https://www.migrationpolicy.org/research/impact-dhs-public-charge-rule-immigration).

[47] *Id*.

threshold, or $31,375 for a family of four,[48] while 3.2 million AAPI non-citizens and their families make a household income below 250 percent of the FPL, the threshold for the heavily weighted positive factor.[49]

C. Impact on Black Immigrants

Black immigrants make up 7 percent of the potentially impacted population (1.8 million), which is one in twenty Black people in the United States.[50] Although there are fewer total Black immigrants than Latinos or AAPIs, Black immigrants made up nearly one-quarter of people who became lawful permanent residents in one year.[51] Cuts to public benefits following the 1996 Welfare Reform Acts had a profound impact on Black people living in America, including Black immigrants.[52] In the next decade, the number of households living in extreme poverty doubled to 1.5 million.[53] The Rule will be similarly devastating for Black immigrants and their families, who, like Black people born in America, face employment discrimination, and earn far less than

[48] CAPAC Comment at 3 (citing *Public Charge Proposed Rule: Potentially Chilled Population Data Dashboard*, Manatt, October 11, 2018, https://www.manatt.com/Insights/Articles/2018/Public-Charge-Rule-Potentially-Chilled-Population).

[49] *Id.*

[50] 2012–2016 5-Year American Community Survey Public Use Microdata Sample (ACS/PUMS); 20122016 5-Year American Community Survey (ACS) estimates accessed via American FactFinder; Missouri Census Data Center (MCDC) MABLE PUMA-County Crosswalk. Custom Tabulation by Manatt health, 9/30/2018. Found online at https://www.manatt.com/Insights/Articles/2018/Public-Charge-Rule-Potentially-Chilled-Population.

[51] Letter from CLASP re: DHS Docket No. USCIS-2010-0012, Comments in Response to Proposed Rulemaking: Inadmissibility on Public Charge Grounds, RIN 1615–AA22 (Oct. 10, 2018), Dec. 7, 2018 ("CLASP Comment") at 27 (citing D'Vera Cohn & Neil G. Ruiz, *More than half of new green cards go to people already living in the U.S.*, PEW RESEARCH CENTER, July 6, 2017, https://www.pewresearch.org/fact-tank/2017/07/06/more-than-half-of-new-green-cards-go-to-people-already-living-in-the-u-s/)).

[52] CLASP Comment at 27–28 (citing Velta Clarke, *Impact of the 1996 Welfare Reform and Illegal Immigration Reform and Immigrant Responsibility Acts on Caribbean Immigrants*, 2 JOURNAL OF IMMIGRANT & REFUGEE SERVICES, 147 (2004) https://www.tandfonline.com/doi/abs/10.1300/J191v02n03_10).

[53] CLASP Comment at 28 (citing H. Luke Shaefer & Kathryn Edin, *Rising Extreme Poverty in the United States and the Response of Federal Means-Tested Transfer Programs*, 13 (Nat'l Poverty Ctr., Working Paper Series No. 06, May 2013), http://npc.umich.edu/publications/u/2013-06-npc-working-paper.pdf).

U.S.-born, non-Hispanic white people,[54] and therefore stand to benefit from access to public services.

III. THE DISPARATE IMPACT EVIDENCES A DISCRIMINATORY INTENT SUFFICIENT TO SUSTAIN AN EQUAL PROTECTION CLAIM AND A CLAIM UNDER THE ADMINISTRATIVE PROCEDURE ACT

The Trump administration's animus towards minorities, evidenced by the statements and actions discussed in detail above, in combination with the disparate impact that the Rule change will have on communities of color demonstrates discriminatory intent sufficient to support an equal protection claim. *See Regents of the Univ. of Cal. v. U.S. Dep't of Homeland Sec.*, 908 F.3d 476, 518–19 (9th Cir. 2018), *cert. granted*, No. 18-587, 2019 WL 2649834 (U.S. June 28, 2019) (plaintiffs stated an equal protection claim where they alleged that the "the rescission of DACA disproportionately impacts Latinos and individuals of Mexican heritage," and also alleged "a history of animus toward persons of Hispanic descent evidenced by both pre-presidential and post-presidential statements by President Trump.[]" (footnotes omitted)); *Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265–66 (1977) (even facially neutral laws may violate the Equal Protection Clause if they are motivated by animus and have a discriminatory effect); *Centro Presente v. U.S Dep't of Homeland Sec.*, 332 F. Supp. 3d 393, 415 (D. Mass. 2018) ("[T]he combination of a disparate impact on particular racial groups, statements of animus by people plausibly alleged to be involved in the decision-making process, and an allegedly unreasoned shift in policy" are "sufficient to allege plausibly that a discriminatory purpose was a motivating factor in a decision.").

In addition, the evidence demonstrating that the Trump administration ignored the multitude of studies and comments documenting the disparate impact of the Rule is sufficient to

[54] CLASP Comment at 28 (citing Randy Capps, Kristen McCabe, and Michael Fix, *Diverse Streams: African Migration to the United States*, MIGRATION POLICY INSTITUTE (April 2012), https://www.migrationpolicy.org/research/CBI-african-migration-united-states?pdf=AfricanMigrationUS.pdf).

sustain a claim that the Rule is arbitrary and capricious and should therefore be set aside under the Administrative Procedure Act. *See Fred Meyer Stores, Inc. v. NLRB*, 865 F.3d 630, 638 (D.C. Cir. 2017) (defendants were required to "reflect upon the information contained in the record and grapple with contrary evidence.").

CONCLUSION

For the foregoing reasons, the members of the CBC, CHC, and CAPAC that join this brief respectfully urge that this Court grant Plaintiffs' Motion for a Preliminary Injunction.

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Respectfully submitted,

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