

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

_____)	
MAKE THE ROAD NEW YORK, ET AL.,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 1:19cv-07993GBD
)	
KEN CUCCINELLI, ET AL,)	
)	
Defendants.)	
_____)	

BRIEF OF AMICI CURIAE PUBLIC HEALTH , HEALTH POLICY , MEDICINE, AND
NURSING DEANS, CHAIRS AND SCHOLARS; THE AMERICAN PUBLIC HEALTH
ASSOCIATION; AND THE AMERICAN ACADEMY OF NURSING
IN SUPPORT OF PLAINTIFFS

Edward T. Waters (DC Bar No. 422461)
Phillip A. Escoriza (DC Bar No. 1614157)
Christopher J. Frisina (DC Bar No. 1033185)
FELDESMAN TUCKER LEIFER FIDELL, LLP
1129 20th Street NW, 4th Floor
Washington, DC 20036
Telephone: (202) 468960
Facsimile: (202) 293-103
ewaters@ftlf.com
pescoriza@ftlf.com
cfrisina@ftlf.com

Attorneys for Amici Curiae
*Admission Pro Hac Vice Pending

Date: September 10, 2019
Washington, D.C.

CORPORATE DISCLOSURE STATEMENT

Amici deans, chairs and scholars are individuals, as such do not have a parent company and no publicly held company has a 10% or greater ownership interest in any amici.

Institutional amici do not have a parent company and no publicly held company has 10% or greater ownership interest in them.

TABLE OF CONTENTS

Interest of Amici Curiae.....	vi.....
Introduction.....	1.....
Argument.....	11.....

Federal Regulations

Krista M. Perreira, et al., A New Threat to Immigrants' Health: The Public Charge Rule, *The New England Journal of Medicine* (Sept. 6, 2018), <https://www.nejm.org/doi/10.1056/NEJMp1808020>.....5.....

La Clinica de la Raza, et al. v. Trump, et al., 1:19-cv-4980-PJH, Declaration of Leighton Ku, PhD, MPH in support of Plaintiffs' Motion for A Preliminary Injunction (Dkt. No. 37, Sept. 1, 2019).....8.....

Larisa Antonisse, et al., The Effects of Medicaid Expansion under the ACA: Updated Findings from a Literature Review, Kaiser Family Foundation (Mar. 2018), <http://files.kff.org/attachment/Issue-Brief-The-Effects-of-Medicaid-Expansion-Under-the-ACA-Updated-Findings-from-a>

INTEREST OF AMICI CURIAE

Amici have sought leave to file the instant brief. Amici include (i) deans of schools of public health, public policy, medicine, and nursing, as well as academic chairs and faculty researchers

Professor of Health Management and Policy, School of Public Health, University of Michigan

16. Sandro Galea, MD, DrPH, Dean, Robert A. Knutson A40 (r)-27 ()20. m2a (K)-18 (no)-40 Kt
16.o1 38 Tw ()Tj -18.8/CS566.88S16.16.

11. Dora L. Hughes, MD, MPH, Associate Research Professor, Department of Health Policy and Management, Milken Institute School of Public Health, The George Washington University
12. Harold Pollack, PhD, Helen Ross Professor of Social Services Administration, University of Chicago School of Social Service Administration
13. Janet Heinrich, DrPH, RN, FAAN, Research Professor, Department of Health Policy and Management, Milken Institute School of Public Health, The George Washington University
14. Jeffrey Levi, PhD, Professor of Health Policy and Management, Milken Institute School of Public Health, The George Washington University
15. Jillian Catalanotti, MD, MPH, FACP, Associate Professor of Medicine, Associate Professor of Health Policy and Management, Director, Internal Medicine Residency Programs, The George Washington University
16. Joan Alker, M.Phil, Research Professor, McCourt School of Public Policy, Georgetown University
17. Jonathan Oberlander, PhD, Professor and Chair, Department of Social Medicine, Professor, Department of Health Policy & Management, University of North Carolina at Chapel Hill
18. Julia Zoe Beckerman, JD, MPH, Teaching Associate Professor, Department of Health Policy and Management, Milken Institute School of Public Health, The George Washington University
19. Katherine Horton, RN, MPH, JD, Research Professor in the Department of Health Policy and Management, Milken Institute School of Public Health, The George Washington University
20. Katherine Swartz, PhD, Professor of Health Economics and Policy, Harvard T.H. Chan School of Public Health
21. Krista M. Pereira, PhD, Department of Social Medicine, UNC School of Medicine
22. Lynn A. Blewett, PhD, MA, Professor of Health Policy, University of Minnesota School of Public Health
23. Mark A. Peterson, PhD, Professor of Public Policy, Political Science, and Law, Department of Public Policy, UCLA Meyer and Renee Luskin School of Public Affairs
24. Maureen Byrnes, MPA, Lead Research Scientist/Lecturer, Department of Health Policy and Management, Milken Institute School of Public Health, The George Washington University
25. Melissa M Goldstein, JD, Associate Professor, Department of Health Policy and Management, Milken Institute School of Public Health, The George Washington University
26. Michael K. Gusmano, PhD, Associate Professor, School of Public Health, Rutgers, The State University of New Jersey
27. Naomi Seiler, JD, Associate Research Professor, Department of Health Policy and Management, Milken Institute School of Public Health, The George Washington University
28. Neal Halfon, MD, MPH, Professor of Pediatrics, Public Health and Population Science, Director, UCLA Center for Healthier Children, Families & Communities, UCLA

INTRODUCTION

This Court has been asked to evaluate whether defendants United States Citizenship and Immigration Services (“USCIS”), the USCIS Acting Director, the U.S. Department of Homeland Security (“DHS”) and the Acting Secretary of DHS (collectively “the Defendants”) acted arbitrarily, capriciously and contrary to law when they promulgated a new rule that bars admission and lawful permanent residence to people determined “likely to become a public charge.” See

Rule's low income, age, and medical condition tests mean that children who ~~could~~ receive treatment for asthma (a chronic condition that must be managed) run a "public charge" risk, as do pregnant women experiencing complications of pregnancy such as diabetes. No use of Medicaid is safe, even when Defendants ostensibly ~~per~~ permit. Not surprisingly, given the terms of the Rule and the policy aura coming from the administration that surrounds it, the Urban Institute reported that "about one in seven adults in immigrant families (13.7 percent) reported 'chilling effects,' in which the respondent or a family member did not participate in a noncash government benefit program in 2018 for fear of risking future green card status. This figure was even higher, 20.7 percent, among adults in ~~low~~ low income immigrant families." Hamut Bernstein, et al, One in Seven Adults in Immigrant Families Reported Avoiding Public Benefit Programs in 2018, Urban Institute (May 2019). Relatedly, the Migration Policy Institute ("MPI") estimated the chilling effect could claim 47 percent of the ~~un~~ unscitizen population. Notably, these individuals live in families with 12 million U.S. citizen family members, two thirds of which are children. See Jeane Batalova, et al., Millions Will Feel Chilling Effect of U.S. Public Charge Rule That is Also Likely to Reshape Legal Immigration, Migration Policy Institute (Aug. 2019).

The two

deported, the impacts of the rule on their health and wellbeing could be deep and lasting.¹⁸ Id.; see also Hamutal Bernstein, et al, One in Seven Adults in Immigrant Families Reported Avoiding Public Benefit Programs in 2018, Urban Institute (May 2019) (observing “chilling effects in families with various mixes of immigration and citizenship statuses, including 14.7 percent of adults in families where all noncitizen members had green cards and 9.3 percent of those in families where all foreign born members were naturalized citizens”).

The Rule’s chilling effects even extend to everyday matters. Researchers at the Urban Institute found that many immigrant families are increasingly avoiding routine activities, such as interacting with teachers or school officials, health care providers, and the police, which poses risks for their well

of public benefits program Rule-driven reductions range from approximately \$12.2 billion to \$31.4 billion annually. See

they do continue to use care, they may forgo Medicaid enrollment, depriving health centers of their largest funding source. This in turn will lead to major financial strain.

Researchers from the George Washington University Milken Institute School of Public Health estimate conservatively that, under the Rule, health centers nationally could lose between 165,000 and 495,000 Medicaid patients annually. As Medicaid revenue falls, health centers will lose overall patient care capacity, with the total number of patients served declining between 136,000 and 400,000 nationally; California alone could lose service capacity for as many as 142,000 patients and New York health centers could see total patient care capacity drop by over 77,000. Other states in which health centers show high losses in overall patient capacity include Arizona, Colorado, Florida, Illinois, Massachusetts, New Jersey, Texas and Washington. The estimated Medicaid revenue losses driving this decline in care capacity are enormous, ranging from \$164 million to \$493 million nationally. **Pstein, et al., E36 ()-20 t32 (o)-w (o)-**

further strain emergency departments with nonurgent patients. Greater numbers of uninsured patients will further shift costs of care to safety health systems, for which financial viability is already in peril.”)

Moreover, the Rule’s impact on the Medicaid program can be expected to lead to higher mortality rates. Research shows expanding Medicaid eligibility relates with significantly lower mortality, particularly disease-related deaths (e.g., as opposed to accidents) with effect increasing over time. See Sarah Miller, et al., Medicaid and Mortality: New Evidence from Linked Survey and Administrative Data, National Bureau of Economic Research Working Paper No. 26081, July 2019) Rule-driven coverage reductions will change this. In fact, public health expert Dr. Leighton Ku estimates that between 1 million and 3.1 million members of immigrant families will forgo Medicaid or disenroll following the Rule’s implementation. This includes between 600,000 and 1.8 million adults 21 or older who will be affected.

h ceaus[(t)-26 (h)16 ce r e pers of e1-24m(l)-6m(l)-6 (1)34 (u)-4 (r)-11 (a)-20 (n)16ectfell1

see 84 Fed. Reg. at 41,306-16, Defendants essentially shrug them off with what boils down to a “not our problem” stance: “[we] acknowledge[] that individuals subject to this rule may decline to enroll in, or may choose to disenroll from, public benefits for which they may be eligible

CERTIFICATE OF SERVICE

I hereby certify that on September 10, 2019, I caused the foregoing document to be served on the parties' counsel of record electronically by means of the Court's CM/ECF system.

/s/ Edward T. Waters
Edward T. Waters (DC Bar No. 422461)