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Hon. Rosanna Malouf Peterson

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
AT RICHLAND

STATE OF WASHINGTON;
COMMONWEALTH OF VIRGINIA;
STATE OF COLORADO; STATE OF
DELAWARE; STATE OF ILLINOIS;
STATE OF MARYLAND;
COMMONWEALTH OF
MASSACHUSETTS; ATTORNEY
GENERAL DANA NESSEL ON
BEHALF OF THE PEOPLE OF
MICHIGAN; STATE OF MINNESOTA;
STATE OF NEVADA; STATE OF
NEW JERSEY; STATE OF NEW
MEXICO; and STATE OF RHODE
ISLAND,

Plaintiffs,

v.

UNITED STATES DEPARTMENT
OF HOMELAND SECURITY, a
federal agency; KEVIN K.

No. 4:19-cv-05210

BRIEF OF AMICI CURIAE
NONPROFIT ANTI-
DOMESTIC VIOLENCE AND
SEXUAL ASSAULT
ORGANIZATIONS IN
SUPPORT OF PLAINTIFFS'
MOTION FOR
PRELIMINARY INJUNCTION

1 McALEENAN, in his official capacity
2 as Acting Secretary of the United States
3 Department of Homeland Security;
4 UNITED STATES CITIZENSHIP
5 AND
6 IMMIGRATION SERVICES, a federal
7 agency; KENNETH T. CUCCINELLI
8 II,
9 in his official capacity as Acting
10 Director
11 of United States Citizenship and
12 Immigration Services,
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Defendant.

I. INTRODUCTION

The Department of Homeland Security’s (the “Department”) dangerous and unprecedented expansion of the infrequently invoked “public charge” grounds for immigration inadmissibility (the “Rule”)¹ endangers victims of domestic violence, sexual assault, and human trafficking and penalizes them for the abuse they have endured. Isolation and financial dependence are hallmarks of gender-based violence and are exacerbated by the unique and varied obstacles that immigrants face. By precluding these victims from accessing public benefits, including Medicaid, food assistance, and housing support, to which they are entitled under federal law, the Rule makes it all but impossible for them to escape

¹ *Inadmissibility on Public Charge Grounds*, 84 Fed. Reg. 41292 (August 14, 2019).

1 and overcome abuse. The Rule thus forces victims to choose between continued
2 abuse or a semblance of freedom in which they are hungry, homeless, and without
3 access to medical care. The threat of this impossible choice already impacts the
4 way immigrant victims live and parent, and exposes them and their children to
5 harm. To add insult to injury, the Rule also penalizes victims by directing U.S.
6 Citizenship and Immigration Services (“USCIS”) to weigh negatively the direct
7 consequences of abuse, such as financial instability, inconsistent work history,
8 and use of public benefits when making a “public charge” admissibility
9 determination. The Rule also disregards the costs it will impose on our
10 communities, including local governments and nonprofit organizations, like
11 Amici. Amici thus respectfully request that the Court grant Plaintiffs’ motion for
12 a preliminary injunction and enjoin enforcement of the Rule.

13 **II. IDENTITY AND INTEREST OF AMICI**

14 Amici [list] are state and national nonprofit organizations that advocate for
15 and provide services to victims of domestic violence, sexual assault, and
16 trafficking. The identity and interest of amici are described in the concurrently
17 filed Motion for Leave to File Brief of Amici Curiae. Several amici submitted
18 comments to the proposed Rule during the public comment period. A
19 representative sample of those comments are attached to this brief as Appendix
20 A.

1 **III. ARGUMENT AND AUTHORITY**

2 **A. The Rule applies to many victims of gender-based violence.**

3 Gender-based violence is an epidemic that “cuts across all racial, class, and
4 cultural lines.”² The “biggest risk factor . . . is being a woman.”³ About one in
5 four women in the United States will experience domestic violence during their
6 lives.⁴ And one in three women will experience sexual violence involving
7 physical violence.⁵ Global estimates of domestic violence are the same or higher.⁶
8 Worldwide, one in three women has experienced either physical and/or sexual
9 intimate partner violence or non-partner sexual violence in their lifetime.”⁷ And

10
11 ² Elizabeth Marsh Das et. al., Family Violence Prevention Fund for Robert Wood
12 Johnson Foundation, *Understanding Children, Immigration, and Family*
13 *Violence: A National Examination of the Issues* 3 (2005); Michael Runner et al.,
14 Family Violence Prevention Fund for the Robert Wood Johnson Foundation,
15 *Intimate Partner Violence in Immigrant and Refugee Communities: Challenges,*
16 *Promising Practices, and Recommendations* 10 (2009).

17 ³ Das, *supra*, at 3.

18 ⁴ Sharon Smith et al., National Center for Injury Prevention and Control, Centers
19 for Disease Control and Prevention (“CDC”), *National Intimate Partner and*
20 *Sexual Violence Survey: 2015 Data Brief – Updated Release* 7 (2018); CDC,
National Intimate Partner and Sexual Violence Survey (2017),
https://www.cdc.gov/violenceprevention/datasources/nisvs/index.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fviolenceprevention%2Fnisvs%2Findex.html.

⁵ CDC, CDC Features, Preventing Sexual Violence (2019),
<https://www.cdc.gov/features/sexualviolence/index.html>.

⁶ World Health Org. et al., *Global and regional estimates of violence against women: Prevalence and health effects of intimate partner violence and non-partner sexual violence* 2 (2013).

⁷ *Id.*

1 “globally, as many as 38% of all murders of women are committed by intimate
2 partners.”⁸ Although there are no statistics correlating the prevalence of gender-
3 based violence to specific immigration statuses, studies do demonstrate that
4 immigration itself may exacerbate abuse. For example, one study reported that
5 48% of Latina immigrants reported an increase in their partner’s violence against
6 them since they immigrated to the United States.⁹ A significant number of
7 immigrants impacted by the Rule are thus likely to be victims of gender-based
8 violence.

9 The Rule’s limited exceptions for certain victim-specific immigration
10 categories do little to ameliorate that impact.¹⁰ To start, many victims do not meet
11 the onerous eligibility requirements for the excepted programs. For example, a
12 victim is ineligible for relief under the Violence Against Women Act (“VAWA”)
13 if she is not married to her abusive partner or if her abuser is not a citizen or a
14 Permanent Resident, regardless of the extent of abuse she has endured.¹¹ U-visas
15 are available only to victims who have obtained a signed certification from law
16 enforcement demonstrating that the victim has aided in the investigation or

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18 ⁸ *Id.*

19 ⁹ *See Das, supra*, at 3.

20 ¹⁰ *See* 84 Fed. Reg. at 41297 (excepting immigrants seeking status under VAWA or the U- or T-visa programs from the Rule).

¹¹ *See* 8 U.S.C. § 1154 (a)(1)(A), (B).

1 prosecution of a crime that was committed against them.¹² If the victim does not
2 or cannot report the abuse, law enforcement declines to certify its investigation or
3 prosecution of the abuse, or the abuse does not constitute a qualifying crime under
4 the U-visa statute, the victim is not eligible for the U-visa program. Similarly, if
5 a woman is fleeing from a domestic violence or sexual assault crime that occurred
6 in her home country, she would not qualify for a U-visa. T-visas are available
7 only to victims of an “extreme form of trafficking” who arrived in the United
8 States as a result, have complied with law enforcement, and can demonstrate that
9 they would “suffer extreme hardship involving unusual and severe harm” if
10 deported.¹³ Reporting abuse is an insurmountable barrier for many immigrant
11 victims, particularly where abusers “use immigration status to threaten
12 deportation and also to warn that the abuser could be deported if the violence were
13 disclosed.”¹⁴

14 Even if eligible for relief under the VAWA, U-visa, or T-visa programs,
15 many victims choose to pursue other immigration statuses (such as sponsorship
16 by an employer or a family member) because the process of applying for those
17 programs can be tedious, expensive, and time-consuming, or they fear their
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19 ¹² See 8 U.S.C. § 1184(p).

20 ¹³ See 8 C.F.R. §214.11(i)(2).

¹⁴ See Runner, *supra*, at 12.

1 applications will be denied. For example, Amici API Chaya estimates that
2 approximately 20% of the domestic violence, sexual assault, and trafficking
3 victims it serves who might be eligible, choose not to apply for the VAWA, U-
4 visa, or T-visa programs for those reasons. In short, these limited exceptions to
5 the Rule do not apply to victims who are either ineligible to, or for whom it would
6 be impracticable to, apply for those programs, for reasons entirely unrelated to the
7 nature or severity of the abuse they have endured.

8 **B. The Rule precludes victimized women from obtaining the public**
9 **benefits they need to escape and overcome abuse.**

10 As advocates for and direct service providers to victims of gender-based
11 violence, Amici are gravely concerned by the devastating impact the Rule will
12 have on the victims they serve. Under the Rule, receipt of many critical public
13 benefits weighs against admissibility and will preclude an immigrant from
14 receiving an extension of stay or adjustment of status once in the United States.¹⁵
15 The Department expressly acknowledged the Rule will cause harm to immigrant
16 victims, including that it may dissuade victims from accessing benefits to which
17 they are entitled under federal law, yet declined to change course in the final Rule
18 to avoid or mitigate that harm.¹⁶

19 ¹⁵ 84 Fed. Reg. at 41296, 41297-99, 41302.

20 ¹⁶ *See id.* at 41363 (“DHS understands that certain applicants may be hesitant to
receive certain benefits in light of the public charge assessment.”), 41366 (DHS

1 Without access to public benefits, escaping abuse can be all but impossible.
2 Abusers commonly manipulate and trap their victims through isolation and
3 financial dependence. Indeed, 99% of all domestic violence includes economic
4 abuse.¹⁷ Abusers commonly sabotage their victims' efforts to go to school, apply
5 for work authorization, or obtain or maintain employment.¹⁸ For example, in one
6 study of women in Wisconsin who had experienced abuse, 57.8% said their
7 abuser's threats had made them afraid to go to work or school, 29.8% reported
8 that they had been fired because of domestic violence, and 33.9% had been beaten
9 so severely they could not work.¹⁹ Abusers also isolate their victims from sources
10 of support, including by preventing the victim from learning English or
11 communicating with friends, family, or others from their home country.²⁰ A path
12 to financial security—including the ability to obtain food, healthcare, and safe and
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14 is aware that individuals may reconsider their receipt of public benefits in light of
15 future immigration consequences.”).

16 ¹⁷ See, e.g., Adrienne Adams, Center for Financial Security, University of
17 Wisconsin-Madison, *Measuring the Effects of Domestic Violence on Women's*
18 *Financial Well-Being*, CFS Research Brief 2011-5.6 (2011).

19 ¹⁸ Eleanor Lyon, National Resource Center on Domestic Violence, Publication
20 *10, Welfare, Poverty, and Abused Women: New Research and its Implications* 3-
4, (2000).

¹⁹ *Id.* at 4 (internal citation omitted).

²⁰ See Runner, *supra*, at 12 (“IPV perpetrators frequently rely on foreign-born women’s limited English proficiency skills to control their behavior. For example, perpetrators who possess greater English language skills might silence their victims by serving as the family’s sole communicator in English.”).

1 stable housing—is thus a critical prerequisite to escaping and overcoming abuse.²¹

2 By precluding access to public benefits such as housing supports, Medicaid,
3 and food assistance, the Rule will trap victims in abusive situations and perpetuate
4 the harm they are already experiencing. For example, one of the greatest needs
5 identified by victims is access to safe and affordable housing. In a single day,
6 domestic violence programs across the United States received but were unable to
7 meet nearly 7,500 requests for housing services.²² Between 22 and 57% of all
8 homeless women report that domestic violence was the immediate cause of their
9 homelessness.²³ Supplemental Nutrition Assistance Program (“SNAP”) benefits,
10 or food assistance, are also vital resources to ensure survivors can escape and
11 overcome abuse.²⁴ Service providers report that approximately 80% of domestic

12
13 ²¹ CDC, *Preventing Intimate Partner Violence Across the Lifespan: A Technical*
14 *Package of Programs, Policies, and Practices* (2017),
15 <https://www.cdc.gov/violenceprevention/pdf/ipv-technicalpackages.pdf>
(concluding that improving financial security for individuals and families can help
reduce and prevent domestic violence).

16 ²² National Network to End Domestic Violence, *Domestic Violence Counts: 12th*
17 *Annual Census Report* (2018), [https://nnedv.org/content/domestic-violence-](https://nnedv.org/content/domestic-violence-counts-12th-annual-census-report/)
18 [counts-12th-annual-census-report/](https://nnedv.org/content/domestic-violence-counts-12th-annual-census-report/).

19 ²³ See R. Levin et al., Center for Impact Research, *Pathways to and from*
20 *Homelessness: Women and Children in Chicago Shelters* (2004); National Center
on Family Homelessness, Health Care for the Homeless Clinicians’ Network,
Social Supports for Homeless Mothers, 14, 26 (2003).

²⁴ The inclusion of SNAP benefits in the Rule also contradicts the SNAP statute,
which provides that “the value of benefits that may be provided under this chapter
shall not be considered income or resources for any purpose under any Federal,
State, or local laws.” See 7 U.S.C. § 2017(b).

1 violence victims and 55% of sexual assault victims use the SNAP program.²⁵
2 Precluding access to housing and food assistance will prevent many victims from
3 escaping, and leave some with no choice but to return to, abuse. Homelessness
4 and hunger are no antidote to an abusive relationship.

5 The Rule will also preclude victims from obtaining the healthcare they need
6 to heal from abuse.²⁶ Many suffer serious health issues as a result of abuse,
7 including acute injuries, chronic pain, and traumatic brain injuries, and are at an
8 increased risk for suicide, depression, anxiety, posttraumatic stress disorder, and
9 substance abuse.²⁷ Approximately 41% of female victims of domestic violence
10 experience some form of physical injury as a result.²⁸ The average lifetime cost
11 for female victims of domestic violence is \$103,767, with 59% of that total going
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14 ²⁵ S. Goodman, National Resource Center on Domestic Violence, *The Difference*
15 *Between Surviving and Not Surviving: Public Benefits Programs and*
16 *Domestic and Sexual Violence Victims' Economic Security* (2018),
[https://vawnet.org/material/difference-between-surviving-and-not-surviving-](https://vawnet.org/material/difference-between-surviving-and-not-surviving-public-benefits-programs-and-domestic-and)
[public-benefits-programs-and-domestic-and](https://vawnet.org/material/difference-between-surviving-and-not-surviving-public-benefits-programs-and-domestic-and).

17 ²⁶ The Rule excepts only Medicaid benefits received by individuals under the age
18 of 21, pregnant women, and women up to 60 days postpartum. *See* 84 Fed. Reg.
19 at 41313.

20 ²⁷ *See* M.J. Breiding et. al., *Chronic Disease and Health Risk Behaviors*
Associated with Intimate Partner Violence-18 U.S. States/Territories, 18 *Annals*
of Epidemiology 538-44 (2005).

²⁸ CDC, Violence Prevention Fast Facts, *What is Intimate Partner Violence?*
(2019),
<https://www.cdc.gov/violenceprevention/intimatepartnerviolence/fastfact.html>.

1 to medical costs.²⁹ Health care access is also important because, in addition to
2 treating the health consequences of abuse, the health care setting is often the first
3 place that victims are asked about abuse and connected with community-based
4 domestic violence and sexual assault services.

5 The Rule also applies to short-term financial assistance through the
6 Temporary Assistance for Needy Families (“TANF”) and state cash assistance
7 programs (also known as welfare). “Abused women’s access to independent
8 economic resources, including welfare, is central to their decision-making and
9 safety planning.”³⁰ In a 2017 study of service providers, approximately 85%
10 responded that TANF is a critical resource for a significant number of the victims
11 they serve.³¹ The TANF program helps victims overcome the financial insecurity
12 that abuse causes and is often an important factor in a victims’ decision-making
13 regarding when, how, and if they can escape abuse. The inclusion of the TANF
14 program in the Rule is particularly unreasonable, as the Department expressly
15 acknowledges that the TANF program “is intended to foster self-sufficiency,” on
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19 ²⁹ C. Peterson et al., *Lifetime Economic Burden of Intimate Partner Violence*
Among U.S. Adults, 55 *American Journal of Preventative Medicine* 4, 433-444
(2018).

20 ³⁰ Lyon, *supra*, at 1.

³¹ Ask client for cite.

1 the one hand, yet concludes that “considering TANF in the rule . . . is important
2 in ensuring that aliens are self-sufficient”³²

3 The impossible choice the Rule presents to victims is compounded by the
4 fact that inadmissibility will also prevent them from sponsoring supportive family
5 members, who can serve as critical sources of emotional and financial support for
6 victims. A strong support system is vital to help a victim disclose, escape, and
7 heal from abuse.³³

8 The Rule will also penalize victims for other direct consequences of the
9 abuse they have endured. The Rule outlines a list of factors that USCIS must
10 weigh negatively in determining whether an immigrant is likely to become a
11 public charge, including, inconsistent work history, lack of English language
12 skills, and lack of education.³⁴ As described above, economic abuse, including
13 sabotaging a victim’s education and employment, is emblematic of domestic
14 violence. Although the Department acknowledged that these negative factors
15 could penalize victims for the abuse they have endured, it took no action to
16 mitigate or address those impacts and instead stated vaguely that “USCIS will
17 consider the totality of the alien’s circumstances, including any and all factors and
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19 ³² See 84 Fed. Reg. at 41373.

20 ³³ See K. M. Anderson et al., *Recovery: Resilience and Growth in the Aftermath of Domestic Violence*, 18 *Violence Against Women* 11, 1279-1299 (2012).

³⁴ 84 Fed. Reg. at 41299.

1 considerations set forth by the alien” in making an inadmissibility
2 determination.³⁵ But the Rule includes no assurances that USCIS will treat
3 differently (much less an explicit exception for) negative factors that are caused
4 by or related to abuse.

5 **C. The Rule is already harming victims and their families.**

6 Although the Rule is not final, the chilling effect of the Rule is so powerful
7 that it is already impacting the victims that Amici serve. As just one example,
8 one organization reported that every caller within the month the proposed Rule
9 was published expressed concern about renewing public benefits. Even
10 immigrant victims not subject to the Rule expressed this fear, due in large part to
11 the fact that abusers often lie to victims about, restrict access to information and
12 relevant documents regarding, and threaten to sabotage the victim’s immigration
13 status.³⁶ The fears expressed by victims foreshadow the grave harm the Rule will
14 cause to them and their families.

15 Victims are already foregoing critical housing, food, and healthcare
16 assistance out of fear that it will jeopardize their immigration status. For example,
17 amicus Tahirih Justice Center reports that one of the women it serves fled with
18 her children to a shelter and declined to obtain public housing (which was
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20 ³⁵ *Id.* at 41437.

³⁶ *See Runner, supra*, at 4, 12.

1 available via her U.S. citizen children) because she did not want to jeopardize her
2 immigration status. She is now homeless and searching for affordable housing
3 closer to her job, and her children are now living with her abusive partner because
4 she could not provide a stable home.

5 Fear of the Rule is so great that it is also impacting victims to whom it does
6 not apply. Another amici, Iowa Coalition Against Domestic Violence, reports
7 that a victim recently chose to stay in an abusive relationship because she was
8 afraid using a Section 8 housing voucher would jeopardize her pending U-visa
9 application and she had no other avenue for obtaining safe, affordable housing.
10 Similarly, a victim of sex trafficking by her husband, a U.S. citizen, was finally
11 able to escape to a shelter with her two young children but, when offered housing
12 assistance, declined out of fear that accepting that assistance would jeopardize her
13 VAWA and T-visa applications. The client was willing to become homeless with
14 her two children, and potentially return to sex slavery to avoid risking deportation.
15 Her attorney and caseworker were ultimately able to convince her that she was
16 exempt from the Rule and that accepting housing assistance would not impact her
17 immigration case.

18 **D. The Rule disregards the costs it imposes on our communities.**

19 Finally, the Rule fails to weigh the costs to our communities, including
20 local governments and private organizations like Amici, as the Administrative

1 Procedure Act (“APA”) requires. The Rule describes the money saved by
2 reducing public benefits available to immigrants and the direct cost of compliance
3 with the Rule, but ignores the broader impacts to our communities as a result of
4 unmitigated trauma to victims and their families.³⁷ In weighing the costs and
5 benefits, and thus the reasonableness, of a regulation, the APA directs that “‘cost’
6 includes more than the expense of complying with regulations”³⁸ The Rule
7 gives short shrift to that directive.

8 The absence of a meaningful cost analysis is particularly conspicuous since
9 the Department elsewhere acknowledges the “potential nexus” between the Rule
10 and “food insecurity, housing scarcity, public health and vaccinations, education
11 health-based services, reimbursement to health providers, and increased costs to
12 states and localities”³⁹ As Amici explained in their comments on the
13 proposed Rule, these impacts would be widespread and significant. Because the
14 Rule precludes victims from getting the support they need to escape and overcome
15 abuse, they will likely be subjected to further trauma and injury, which will result
16 in both short- and long-term physical, mental, and financial consequences. This
17 would result in heightened demand for social services, such as emergency food

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³⁷ See 84 Fed. Reg. at 4130-02.

³⁸ *Michigan v. E.P.A.*, 135 S. Ct. 2699, 2707, 192 L. Ed. 2d 674 (2015).

³⁹ 84 Fed. Reg. at 41313.

1 banks and domestic violence and homeless shelters, and increased uncompensated
2 health care costs from overutilization of emergency rooms for medical care.
3 Private nonprofit organizations will be forced to absorb the costs associated with
4 increased and prolonged utilization of victim support programs, such as
5 emergency shelter and housing programs, for which only limited funding is
6 available. These costs far outweigh any perceived benefit of the Rule, and should
7 be meaningfully weighed, measured, and mitigated in the development of any
8 regulation impacting victims of gender-based violence. That the costs outweigh
9 the perceived savings demonstrates that the purpose of the rule is not to minimize
10 the economic impact of immigration, but instead to dissuade victims and their
11 families from trying to immigrate or lawfully remain in the United States.

12 **IV. CONCLUSION**

13 The Rule will have, and indeed is already having, a devastating impact on
14 victims of gender-based violence and their families. The Department ignored, if
15 not knowingly disregarded, those impacts and the costs they would impose on our
16 communities in developing the Rule. Amici respectfully request that the Court
17 enjoin enforcement of the Rule.

18 DATED this 6th day of April, 2020.

19 **PACIFICA LAW GROUP LLP**
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By _____
Attorneys for Amici Curiae

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CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of April, 2020, I electronically filed the foregoing document with the United States District Court ECF system, which will send notification of such filing all parties of record.

Dated this _____ day of April, 2020.
