

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

STATE OF NEW YORK, et al.,

Plaintiff,

-against-

UNITED STATES DEPARTMENT  
OF HOMELAND SECURITY, et al.,

Defendants.

Civil Action No.: 1:19-cv-07777-GBD

**MEMORANDUM OF LAW OF AMICI CURIAE ASIAN AMERICANS ADVANCING  
JUSTICE | AAJC, ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND,  
NATIONAL WOMEN'S LAW CENTER AND 57 OTHER AMICI IN SUPPORT OF  
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

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**INTEREST OF AMICI CURIAE**

**Asian Americans Advancing Justice | AAJC** (“**Advancing Justice - AAJC**”) is a nonprofit, nonpartisan organization that seeks to promote a fair and equitable society for all by working for civil and human rights and empowering Asian American, Native Hawaiian, and Pacific Islander (AANHPI) communities. Advancing Justice - AAJC advances its mission through advocacy, public policy, public education, and litigation. Advancing Justice - AAJC is one of the nation’s leading experts on issues of importance to the Asian American community, including immigration and immigrants’ rights. Advancing Justice - AAJC is part of a national affiliation, Asian Americans Advancing Justice, made up of five separate and independent organizations, including affiliates in Atlanta, Chicago, Los Angeles, and San Francisco.

The **Asian American Legal Defense and Education Fund (AALDEF)**, founded in 1974, is a national organization that protects and promotes the civil rights of Asian Americans. By combining litigation, advocacy, education, and organizing, AALDEF works with Asian American communities across the country to secure human rights for all. AALDEF advocates for fair immigration policies that recognize the human rights of undocumented immigrants in the United States, promote family reunification, enforce worker protections for all, eliminate racial and ethnic profiling, and end other discriminatory practices that violate due process. AALDEF also provides legal assistance to undocumented immigrants who are eligible for the Deferred Action for Childhood Arrivals (DACA) program and to individuals who are seeking to adjust their status to lawful permanent residence.

The **National Women’s Law Center (NWLC)** is a nonprofit legal advocacy organization dedicated to the advancement and protection of the legal rights of women and girls and the rights of all people to be free from sex discrimination. Since its founding in 1972, NWLC has focused on issues of key importance to women and girls, including economic



security, employment, education, and health, with special attention to areas impacting low-income women and those who face multiple and intersecting forms of discrimination. NWLC has fought for gender equity in the courts, within public policy and in our larger society.

57 other organizations have signed on as *amici curiae*. See App. A for statements of interest.

## I. INTRODUCTION

The most recent attempt by the Trump Administration to exclude immigrants of color, this time by modifying the current standards for a “public charge,” viewed in light of the Administration’s anti-immigrant statements and combined with the disproportionate impact of this new regulation on immigrants of color, establishes a discriminatory intent violative of the Equal Protection Clause.

The new Department of Homeland Security (“DHS”) Regulation (the “Regulation”) upends how public charge determinations have been implemented, adding a host of non-cash-based programs as well as other factors that may be considered. Throughout the history of the “public charge” rule, one thing has remained constant—“public charge” has always meant primary dependency on the government. Currently, the rule is implemented via explicit standards narrowly focused on people primarily dependent on the government through cash assistance or institutionalization for long-term care. The punitive and subjective nature of the new Regulation is emblematic of the Trump Administration’s well-documented animus toward immigrant communities of color, which has been recognized by courts around the country and by the media. As the architect of this Administration’s immigration policy Stephen Miller acknowledges, the new public charge rule is “transformative.” And the “transformation” will disproportionately fall on the shoulders of immigrant communities of color, which comprise approximately 90 percent

of the 25.9 million people who would be impacted by the Regulation. Ted Hesson, *Emails show Stephen Miller pressed hard to limit green cards*, POLITICO (Aug. 2, 2019).<sup>1</sup> The Regulation's changes also create particular harms for immigrant women of color, including those who are elderly, pregnant, survivors of intimate partner violence, have disabilities and/or are lesbian, gay, bisexual, transgender, and queer ("LGBTQ") individuals. *Amici curiae* respectfully submit that the Regulation is unconstitutional because its promulgation was motivated, at least in part, by racial animus.

## II. ARGUMENT

### A. **Evaluation of Discriminatory Intent Includes Historical Background, Prior Events, and Discriminatory Impact**

"Proof of racially discriminatory intent or purpose is required to show a violation of the Equal Protection Clause." *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265 (1977) ("*Arlington Heights*"). Determining whether racial discrimination is a motivating factor "demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available." *Id.* at 266. The Supreme Court noted in *Arlington Heights* that determining discriminatory intent may be "relatively easy" when "[t]he impact of the official action whether it 'bears more heavily on one race than another'" is clear or when a "clear pattern, unexplainable on grounds other than race" is apparent. *Id.* In less clear-cut cases, a racially discriminatory intent may still be found through the historical background of the law, the "specific sequence of events leading up to the challenged decision," "departures from the normal procedural sequence," or "the legislative or administrative history." *Id.*

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<sup>1</sup> <https://www.politico.com/story/2019/08/02/stephen-miller-green-card-immigration-1630406>.

**B. A Public Charge Has Been Defined as Dependency on the Government**

The concept of a “public charge” can be traced back to colonial “poor laws,” which required towns to provide aid, often in the form of shelter in almshouses, for its permanent residents who could not provide for themselves. *See* Medha D. Makhoulf, *Symposium: The Public Charge Rule as Public Health Policy*, 16 IND. HEALTH L. REV. 177, 179-80 (2019). The localities could also expel non-residents who became dependent on the town. *Id.* In 1882, Congress passed the first federal law prohibiting the landing of “any convict, lunatic, idiot, or any person unable to take care of himself or herself without becoming a public charge.” Immigration Act of 1882, 22 Stat. 214 (1882); *see also* Torrie Hester et al., *Historians’ Comment on Proposed Rule on Inadmissibility on Public Charge Grounds* (Oct. 5, 2018) at 2.<sup>2</sup> In 1891, this provision was changed to include those who were “likely to become a public charge.” Makhoulf, 16 IND. HEALTH L. REV. at 181-82. In 1999, the INS reaffirmed that a “public charge” refers to an immigrant considered primarily dependent on the government for subsistence, as demonstrated by either receipt of public cash assistance for income maintenance or institutionalization for long-term care at government expense. *See, e.g.*, Public Charge Grounds, 64 Fed. Reg. at 28,677.

The new Regulation, however, dramatically expands the applicability of the public charge test beyond cash assistance and institutionalization, marking a stark departure from the past. When the expanded list of criteria is examined in light of the current Administration’s statements and positions on immigration, it becomes clear that this change in the public charge rule is being used to target certain populations of immigrants and is motivated by racial animus.

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<sup>2</sup> <https://www.ilcm.org/wp-content/uploads/2018/10/Historians-comment-FR-2018-21106.pdf>.

**C. The Trump Administration’s Discriminatory Statements Establish an Inference that the Regulation is Motivated by Racial Animus**

The Trump Administration’s racist, anti-immigrant statements, combined with the disproportionate impact of the new regulation on immigrants of color, establish discriminatory intent in violation of the Equal Protection Clause. *See Arlington Heights*, 429 U.S. at 265-66; *Centro Presente v. DHS*, 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 [is] sufficient to allege plausibly that a discriminatory purpose was a motivating factor in a decision.”). In case after case alleging, *inter alia*, violations of the Equal Protection Clause, courts have examined the “disheartening number” of discriminatory statements made by President Trump and denied the government’s motions to dismiss, repeatedly finding that such statements are “more than sufficient to support a plausible inference of the President’s animus based on race and/or national origin/ethnicity against non-white immigrants.” *Saget v. Trump*, 345 F. Supp. 3d 287, 303 (E.D.N.Y.2018). The revision to the public charge rule appears to be another vehicle through which this Administration endeavors to effectuate its “‘wider strategic goal’ on immigration,” proffering a pretextual justification in order to veil its discriminatory intent. *Ramos v. Nielsen*, 321 F. Supp. 3d 1083, 1100 (N.D. Cal. 2018).

**1. President Trump’s Statements Establish an Inference of Animus**

Federal courts have consistently found President Trump’s statements sufficient to establish an inference that a challenged policy was motivated by racial animus. In *Batalla Vidal v. Nielsen*, the court denied the government’s motion to dismiss Plaintiffs’ equal protection claim, finding it was plausible that President Trump’s decision to end the Deferred Action for Childhood Arrival (“DACA”) program “was substantially motivated by discriminatory animus”

toward Latinos and Mexicans in particular. 291 F. Supp. 3d 260, 277 (E.D.N.Y. 2018). The court considered statements made by the President, including: “(1) then-candidate Trump’s assertions that Mexican immigrants are not Mexico’s ‘best,’ but are ‘people that have lots of problems,’ ‘the bad ones,’ ‘criminals, drug dealers, [and] rapists’; (2) Trump’s characterization of individuals who protested outside a campaign rally as ‘thugs who were flying the Mexican flag’; (3) Trump’s statements that a U.S.-born federal judge of Mexican descent could not fairly preside over a lawsuit against Trump[] . . . because the judge was ‘Mexican’ and Trump intended to build a wall along the Mexican border; and (4) . . . characterizations of Latino/a immigrants as criminals, ‘animals,’ and ‘bad hombres.’” *Id.* at 276–77 (citations omitted). The Court noted that these “racial slurs” constituted “overt expressions of prejudice,” and concluded “[a]t the very least, one might reasonably infer that a candidate who makes overtly bigoted statements on the campaign trail might be more likely to engage in similarly bigoted action once in office.” *Id.* at 278.

In *Regents of University of California v. United States Department of Homeland Security*, another case challenging the Administration’s DACA rescission, the Court examined statements of animus made by Candidate and President Trump, including (1) his tweet that “[d]ruggies, drug dealers, rapists and killers are coming across the southern border,” and corresponding question, “When will the U.S. get smart and stop this travesty?”; (2) his claim that the Mexican government “send[s] the bad ones over because they don’t want to pay for them”; and (3) his reference to undocumented immigrants as “animals” who are responsible for “the drugs, the gangs, the cartels, the crisis of smuggling and trafficking, MS 13.” 298 F. Supp. 3d 1304, 1314 (N.D. Cal. 2018). In denying the government’s motion to dismiss plaintiff’s equal protection claim, the Court determined that President Trump’s “clear cut indications of racial prejudice on

the campaign trail” constituted “circumstantial evidence of intent” admissible to show a discriminatory purpose, reasoning, “[t]hese statements were not about the rescission [of DACA] . . . but they still have relevance to show racial animus against people south of our border,” and found that such allegations “raise a plausible inference that racial animus towards Mexicans and Latinos was a motivating factor in the decision to end DACA.” *Id.* at 1314-15 (citations omitted).

Similarly, in *Saget*, the court found Plaintiffs had plausibly alleged that President Trump’s decision to end Temporary Protected Status (“TPS”) for Haitians was predicated upon an animus “based on race . . . against non-white immigrants in general and Haitians in particular,” thereby violating the Equal Protection Clause. 345 F. Supp. 3d at 303. The court relied upon statements made by President Trump, including: his remark that 15,000 Haitians who had received visas in 2017 “all have AIDS”; his statement that once Nigerian immigrants had seen the United States, they would never go back to their “huts” in Africa; his question posed in a meeting about a draft immigration plan regarding Haiti, among other countries in Latin America and Africa, wherein he asked, “Why are we having all these people from shithole countries come here,” coupled with his question, “Why do we need more Haitians,” prior to insisting that they be removed from an immigration deal; and his expressed preference for more immigrants from countries like Norway, which is predominantly white. *Id.* (citations omitted). Denying defendants’ motion to dismiss, the court held, “[t]hese allegations are more than sufficient to support a plausible inference of the President’s animus based on race and/or national origin/ethnicity against non-white immigrants in general and Haitians in particular.” *Id.*

In *CASA de Maryland, Inc. v. Trump*, a similar equal protection challenge was brought to the decision to terminate TPS status for El Salvador. 355 F. Supp. 3d 307 (D. Md. 2018). Denying the government’s motion to dismiss, the court considered “a lengthy list of disparaging

statements and actions made by President Donald Trump regarding Latino immigrants,” including President Trump’s “refus[al] to condemn two of his supporters who ‘urinated on a sleeping Latino man and beat him with a metal pole,’ instead saying only that they were ‘passionate,’” and a speech he gave in Poland wherein he “expressed the need to protect ‘the West’ and ‘civilization’ from forces from ‘the South or the East.’” *Id.* at 315. The court noted that Defendants could not argue that President Trump’s statements were not evidence of discriminatory motive, stating, “[o]ne could hardly find more direct evidence of discriminatory intent towards Latino immigrants. He has broadly painted Latino immigrants as drug-users, criminals, and rapists.” *Id.* at 325. The court observed, “Racially charged code words may provide evidence of discriminatory intent by sending a clear message and carrying the distinct tone of racial motivations and implications.” *Id.* at 326 (citations omitted).

In *Ramos v. Nielsen*, another equal protection challenge to the termination of TPS designations for Haiti, Sudan, El Salvador, and Nicaragua, the Court determined that plaintiffs had provided sufficient evidence that “President Trump harbors an animus against non-white, non-European aliens which influenced his (and thereby the Secretary’s) decision to end the TPS designation,” and granted plaintiffs’ motion for a preliminary injunction. 336 F. Supp. 3d 1075, 1100 (N.D. Cal. 2018). The Court considered the following statements made by President Trump: his call for “‘a total and complete shutdown of Muslims entering the United States’”; a speech wherein “he used MS-13 – a gang . . . having ties to Mexico and Central America – to disparage immigrants, indicating that they are criminals and comparing them to snakes”; and a statement wherein he told “European leaders that they ‘better watch themselves’ because a wave of immigration of (*sic*) ‘changing the culture of their countries,’ which he characterized as being ‘a very negative thing for Europe.’” *Id.* at 1100-01.

Finally, in *New York v. United States Department of Commerce*, this Court denied the government’s motion to dismiss plaintiffs’ equal protection claim challenging the addition of a citizenship question on the 2020 census questionnaire, and catalogued President Trump’s statements referring to immigrants of color, including: “(1) his assertion . . . that certain immigrants ‘turn out to be horrendous . . . . They’re not giving us their best people, folks,’; and (2) his comment . . . that ‘[w]e have people coming into the country, or trying to come in. . . . You wouldn’t believe how bad these people are. These aren’t people, these are animals . . . .’” 315 F. Supp. 3d 766, 810 (S.D.N.Y. 2018).

## **2. Statements by Trump Administration Officials Also Establish an Inference of Racial Animus**

Trump Administration officials involved in the public charge decision-making process have also made statements demonstrating racial animus. For example, when asked whether the Regulation aligns with the ethos inscribed on The New Colossus, the sonnet at the base of the Statue of Liberty reading, “[G]ive me your tired, your poor, your huddled masses yearning to be free,” Kenneth T. Cuccinelli II, acting director of USCIS, claimed the poem was, in fact, referring to “people coming from Europe,” and added his own caveat: “Give me your tired and your poor who can stand on their own two feet, and who will not become a public charge.” Jacey Fortin, *‘Huddled Masses’ in Statue of Liberty Poem are European, Trump Official Says*, N.Y. TIMES (Aug. 14, 2019).<sup>3</sup> This statement is consistent with Cuccinelli’s historical rhetoric and policy positions regarding immigrants of color. In 2008 as a Virginia state senator, Cuccinelli introduced legislation that would have allowed employers to fire those who didn’t speak English in the workplace, who would then be ineligible for unemployment benefits. Elaina Plott, *The*

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<sup>3</sup> <https://www.nytimes.com/2019/08/14/us/cuccinelli-statue-liberty-poem.html>.



*New Stephen Miller*, THE ATLANTIC (Aug. 14, 2019).<sup>4</sup> On a talk radio show in 2012, Cuccinelli compared immigrants to rats, opining that a D.C. law that prevented animal workers from killing rats “is worse than our immigration policy. You can’t break up rat families.” Marc Fisher, *Cuccinelli, a Righteous, Faith-Driven Warrior Who Delights in Provocation, Will Join Trump Administration*, THE WASH. POST (May 22, 2019).<sup>5</sup> Further, Cuccinelli was a founding member of State Legislators for Legal Immigration (“SLLI”), a group that described undocumented immigrants as “foreign invaders” responsible for “serious infectious diseases, drug running, gang violence, human trafficking, terrorism.”<sup>6</sup> Andrew Kaczynski, *Trump Official Has Talked About Undocumented Immigrants as ‘Invaders’ Since at Least 2007*, CNN POLITICS (Aug. 17, 2019).<sup>7</sup> Speaking with Breitbart radio in October 2018 about Central American migrants reportedly planning to seek asylum in the U.S., Cuccinelli argued states could use “war powers” to block their entry, stating “We’ve been being invaded for a long time, and so the border states clearly qualify here to utilize this power themselves . . . and because they’re acting under war powers, there’s no due process . . . Literally, you don’t have to keep them, no catch and release, no nothing. You just point them back across the river and let them swim for it.” *Id.*

Stephen Miller, President Trump’s senior policy advisor, also has a history of anti-immigrant sentiment. Miller has his own interpretation of The New Colossus, telling a reporter, “[t]he poem that you’re referring to was added later. It’s not actually part of the original Statue of Liberty.” Peter Baker, *Trump Supports Plan to Cut Legal Immigration by Half*, THE N.Y. TIMES,

<sup>4</sup> <https://www.theatlantic.com/politics/archive/2019/08/who-is-ken-cuccinelli/596083/>.

<sup>5</sup> [https://www.washingtonpost.com/politics/cuccinelli-a-righteous-faith-driven-warrior-who-delights-in-provocation-will-join-trump-administration/2019/05/21/ffb2f1d4-7bde-11e9-a5b3-34f3edf1351e\\_story.html?noredirect=on](https://www.washingtonpost.com/politics/cuccinelli-a-righteous-faith-driven-warrior-who-delights-in-provocation-will-join-trump-administration/2019/05/21/ffb2f1d4-7bde-11e9-a5b3-34f3edf1351e_story.html?noredirect=on).

<sup>6</sup> SLLI has highlighted its “working partnership” with the Federation for American Immigration Reform, which has been listed as a hate group by the Southern Poverty Law Center since 2007 for its white nationalist agenda. Heidi Beirich, *Attacking the Constitution: State Legislators for Legal Immigration & the Anti-Immigrant Movement*, SOUTHERN POVERTY L. CTR. (Mar. 1, 2011), <https://www.splcenter.org/20110228/attacking-constitution-state-legislators-legal-immigration-anti-immigrant-movement>.

<sup>7</sup> <https://www.cnn.com/2019/08/17/politics/kfile-ken-cuccinelli-immigration-invasion-rhetoric/index.html>.

(Aug. 2, 2017).<sup>8</sup> While discussing the methodology utilized by the Administration to determine how to institute travel restrictions, Miller allegedly argued that additional African and Asian nations should face restrictions as well, stating, “[t]hese are shitty countries with a lot of criminals. Why aren’t they under restrictions?” Jason Zengerle, *How America Got to ‘Zero Tolerance’ on Immigration: the Inside Story*, THE N.Y. TIMES MAG. (July 16, 2019)<sup>9</sup>. In an attempt to demonize immigrants, Miller reportedly pressured U.S. Immigration and Customs Enforcement officials to include more details, such as pending criminal charges, in press releases about immigrants they had apprehended, detained or planned to report, possibly in violation of their privacy rights. Gabby Orr & Andrew Restuccia, *How Stephen Miller Made Immigration Personal*, POLITICO (Apr. 22, 2019).<sup>10</sup> A subsequent policy crafted by Miller required that federal agencies write new rules that exclude non-citizens from protections under federal privacy law. *Id.*

Finally, DOJ and DHS have gone so far as to issue erroneous reports about crimes committed by immigrants to bolster claims that immigrants are criminals, and to allegedly substantiate President Trump’s assertion that family-based immigration – so-called “chain migration” – is a threat. Ellen Nakashima, *Justice Dept. admits error but won’t correct report linking terrorism to immigration*, THE WASH. POST (Jan. 3, 2019).<sup>11</sup> Following a lawsuit, DOJ acknowledged their statistics contained “editorial errors” and “could cause some readers of the report to question its objectivity,” and that in future reports, the DOJ could “strive to minimize the potential for misinterpretation.” *Id.* But, DOJ refused to retract or correct the document. *Id.*

<sup>8</sup> <https://www.nytimes.com/2017/08/02/us/politics/trump-immigration.html>.

<sup>9</sup> <https://www.nytimes.com/2019/07/16/magazine/immigration-department-of-homeland-security.html>.

<sup>10</sup> <https://www.politico.com/story/2019/04/22/stephen-miller-immigration-trump-1284287>.

<sup>11</sup> [https://www.washingtonpost.com/world/national-security/justice-dept-admits-error-but-wont-correct-report-linking-terrorism-to-immigration/2019/01/03/cd29997a-0f69-11e9-831f-3aa2c2be4cbd\\_story.html?noredirect=on&utm\\_term=.c7ef942c5829](https://www.washingtonpost.com/world/national-security/justice-dept-admits-error-but-wont-correct-report-linking-terrorism-to-immigration/2019/01/03/cd29997a-0f69-11e9-831f-3aa2c2be4cbd_story.html?noredirect=on&utm_term=.c7ef942c5829).

### 3. Other Immigration-Related Policies Demonstrate Racial Bias

These racist and anti-immigrant statements have manifested via the current Administration's immigration policies. The Administration has attempted to: (1) end DACA and TPS designations; (2) ban entry of nationals from eight Muslim-majority countries<sup>12</sup>; (3) slash refugee admissions<sup>13</sup>; (4) impose new restrictions on asylum seekers<sup>14</sup>; (5) make changes to the processing of immigration applications<sup>15</sup>; (6) end parole for Filipino WWII veterans<sup>16</sup>; (7) end the *Flores* settlement, which limits prolonged detention of children<sup>17</sup>; and (8) deny deportation deferral requested for medical reasons.<sup>18</sup> The Regulation's drastic changes to the public charge rule provide yet another example of this Administration's anti-immigrant and racist policies.

#### D. The Regulation Will Disproportionately Impact Immigrants of Color

The new Regulation significantly expands the applicability of the public charge test. The Regulation requires the agency to consider whether the individual's annual household gross income is at least 125% of the federal poverty level ("FPL"), and it includes as a "heavily weighted positive factor" an income of at least 250% of the FPL. Regulation, to be codified as 8

<sup>12</sup> Executive Order 13769 of January 27, 2017, <https://www.govinfo.gov/content/pkg/FR-2017-02-01/pdf/2017-02281.pdf>.

<sup>13</sup> *An Overview of U.S. Refugee Law and Policy*, AMERICAN IMMIGRATION COUNCIL (June 18, 2019), <https://www.americanimmigrationcouncil.org/research/overview-us-refugee-law-and-policy>.

<sup>14</sup> Jasmine Aguilera, *Trump's New Restrictions on Asylum Seekers Violate U.S. and International Law*, *Experts Say*, TIME (July 24, 2019), <https://time.com/5626498/trump-asylum-rule-international-law/>.

<sup>15</sup> Stuart Anderson, *USCIS Immigration Delays Grow Longer and Longer*, FORBES (Jan. 31, 2019), <https://www.forbes.com/sites/stuartanderson/2019/01/31/uscis-immigration-delays-grow-longer-and-longer/#24a22b3c2254>.

<sup>16</sup> *USCIS to End Certain Categorical Parole Programs*, U.S. CITIZENSHIP AND IMMIGRATION SERVS. (Aug. 2, 2019), [https://www.uscis.gov/news/news-releases/uscis-end-certain-categorical-parole-programs?utm\\_source=NCAPA+Mailing+List&utm\\_campaign=7d6254c499-EMAIL\\_CAMPAIGN\\_2019\\_08\\_02\\_09\\_52\\_COPY\\_01&utm\\_medium=email&utm\\_term=0\\_57801d6f38-7d6254c499-228973925&mc\\_cid=7d6254c499&mc\\_eid=511cfa134e](https://www.uscis.gov/news/news-releases/uscis-end-certain-categorical-parole-programs?utm_source=NCAPA+Mailing+List&utm_campaign=7d6254c499-EMAIL_CAMPAIGN_2019_08_02_09_52_COPY_01&utm_medium=email&utm_term=0_57801d6f38-7d6254c499-228973925&mc_cid=7d6254c499&mc_eid=511cfa134e).

<sup>17</sup> Geneva Sands, *Trump administration to allow longer detention of migrant families*, CNN POLITICS (Aug. 22, 2019), <https://www.cnn.com/2019/08/21/politics/immigration-family-detention-flores/index.html>.

<sup>18</sup> Shannon Dooling, *Trump Administration ends protection for migrants' medical care*, NPR (Aug. 27, 2019), <https://www.npr.org/2019/08/27/754634022/trump-administration-ends-protection-for-migrants-medical-care>.

CFR §§ 212.22(c)(2)(i), 212.22(b)(4)(i). The Regulation also sets thresholds relating to the receipt of public benefits, instructing that the totality of circumstances<sup>19</sup> determination looks to “all factors that are relevant to whether the alien is more likely than not” to receive one or more of the newly expanded categories of public benefits for an aggregate of 12 months over a 36-month period. 84 Fed. Reg. at 41,502 (to be codified as 8 CFR § 212.22(a)). The newly expanded list of public benefits now includes healthcare coverage through Medicaid, Supplemental Nutrition Assistance Program (SNAP), and Section 8 rental assistance.

These drastic revisions to the public charge determination will disproportionately impact immigrant communities of color, who comprise 90% of the 25.9 million people who would be impacted by the Regulation. *See* Custom Tabulation by Manatt Phelps & Philips LLP, *Public Charge Proposed Rule: Potentially Chilled Population Data Dashboard* (Oct. 11, 2018).<sup>20</sup> Among those potentially affected by the Regulation, an estimated 70% are Latinx, 12% are Asian American and Pacific Islander, and 7% are Black. *Id.* Moreover, the Regulation will likely create a higher risk of denial for immigrants from Mexico and Central America (with 60% of recent immigrants having two or more negative factors), the Caribbean (48%), Asia (41%), South America (40%), and Africa (34%), compared to the risk for immigrants from Europe, Canada, Australia, and New Zealand, only 27% of whom could be expected to have two or more

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<sup>19</sup> The Regulation’s changes to the totality of the circumstances test further enable a discriminatory application. Previously, affidavits of support were regularly used to override public charge determinations. The new Regulation, however, instructs officials not only to consider whether the applicant has a legally sufficient affidavit of support, but also to independently weigh the *sponsor’s* income and resources, relationship to the applicant and likelihood of supporting the applicant, or “any other related considerations.” 84 Fed. Reg. 41,397 (Aug. 14, 2019). The Regulation does not identify the standards for evaluating these factors. *Id.* The Regulation thus invites officials to make decisions based on their personal assumptions, signaling a dangerous departure from the standards-driven practice of the public charge rule of the past several decades.

<sup>20</sup> <https://www.manatt.com/Insights/Articles/2018/Public-Charge-Rule-Potentially-Chilled-Population>, using 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).

negative factors. Randy Capps et al., *Gauging the Impact of DHS' Public-Charge Rule on U.S. Immigration*, MIGRATION POL'Y INST. (Nov. 2018).<sup>21</sup> Further, Mexican and Central American immigrants, the express targets of President Trump's statements of racial animus, will be most significantly affected by the Regulation. Twenty-six percent of immigrants in the U.S. come from Mexico, making it the top country of origin. Phillip Connor & Gustavo López, *5 facts about the U.S. rank in worldwide migration*, PEW RES. CTR. (May 18, 2016).<sup>22</sup> Denials of admission under the Regulation will be drawn along color lines.

### 1. The English Proficiency Requirement is a Proxy for Race

Under the Regulation, immigration officers are permitted to consider English proficiency or limited English proficiency ("LEP") as a positive or negative factor. English-language proficiency thus serves as a proxy to restrict non-white immigration.<sup>23</sup> Of the total foreign-born LEP population residing in the U.S., 39% were born in Mexico, comprising the largest group by far, followed by Chinese LEP immigrants at 6%. Jeanne Batalova & Jie Zong, *The limited English proficient population in the United States*, MIGRATION POL'Y INST. (July 8, 2015).<sup>24</sup> Further, 64% of the total U.S. LEP population speaks Spanish. *Id.* Fifty-two percent of Asian American immigrants and approximately 45% of foreign-born Pacific Islanders are LEP. *Inside the Numbers: How Immigration Shapes Asian American and Pacific Islander Communities* at 14.

<sup>21</sup> <https://www.migrationpolicy.org/research/impact-dhs-public-charge-rule-immigration>.

<sup>22</sup> <https://www.pewresearch.org/fact-tank/2016/05/18/5-facts-about-the-u-s-rank-in-worldwide-migration/>; Jynnah Radford, *Key findings about U.S. immigrants*, PEW RES. CTR. (June 17, 2019), <https://www.pewresearch.org/fact-tank/2019/06/17/key-findings-about-u-s-immigrants/>.

<sup>23</sup> DHS justified adding English proficiency as a factor in the public charge determination based on a general correlation between English proficiency and employment and/or income. But those factors are already considered, making the addition of this factor of English proficiency superfluous, except as a way to further weed out generally non-white immigrants.

<sup>24</sup> <https://www.migrationpolicy.org/article/limited-english-proficient-population-united-states#Age,%20Race,%20and%20Ethnicity>.

ASIAN AMERICANS ADVANCING JUSTICE (June 12, 2019).<sup>25</sup> Hmong, Cambodian, Vietnamese, Laotian, Nepalese, Korean, and Chinese American immigrant seniors range from between 95%-84% LEP. *Id.* In 2017, approximately 46% of South American immigrants over age 5 reported LEP. Jie Zong & Jeanne Batalova, *South American Immigrants in the United States*, MIGRATION POL'Y INST. (Nov. 7, 2018).<sup>26</sup> Half or more of Venezuelans, Peruvians, Colombians, and Ecuadorans reported limited English proficiency. *Id.*

## 2. Chilling Effects Were Evident Before the Regulation Was Finalized

A 2019 study conducted by the Urban Institute found extensive evidence of chilling effects in immigrant communities of color even before the Regulation was finalized. Hamutal Bernstein, et al., *One in Seven Adults in Immigrant Families Reported Avoiding Public Benefit Programs in 2018*, URBAN INST. (May 2019).<sup>27</sup> For example, Latinx adults in immigrant families were more than twice as likely as non-Hispanic white and non-Hispanic non-white adults in immigrant families to report chilling effects in their families. *Id.* at 2. In other words, immigrant communities of color are increasingly avoiding health, nutrition, or social services out of fear.<sup>28</sup> This study also found that chilling effects extended to families where all non-citizen members had green cards (14.7%) or where all foreign-born members were naturalized citizens (9.3%). *Id.*

## 3. Visa Denials Show the Regulation is Excluding Immigrants of Color

In January 2018, the Trump Administration announced revisions to the Foreign Affairs Manual (“FAM”), which provides instructions to officials in U.S. embassies and consulates

<sup>25</sup> [https://www.advancingjustice-aajc.org/sites/default/files/2019-07/1153\\_AAJC\\_Immigration\\_Final\\_0.pdf](https://www.advancingjustice-aajc.org/sites/default/files/2019-07/1153_AAJC_Immigration_Final_0.pdf).

<sup>26</sup> <https://www.migrationpolicy.org/article/south-american-immigrants-united-states#EnglishProficiency>.

<sup>27</sup> [https://www.urban.org/sites/default/files/publication/100270/one\\_in\\_seven\\_adults\\_in\\_immigrant\\_families\\_reported\\_avoiding\\_public\\_benefit\\_programs\\_in\\_2018.pdf](https://www.urban.org/sites/default/files/publication/100270/one_in_seven_adults_in_immigrant_families_reported_avoiding_public_benefit_programs_in_2018.pdf) (“Urban Institute Study”).

<sup>28</sup> The failure of the Administration to address the disparate impact of the Regulation further evidences a discriminatory intent sufficient to sustain an arbitrary and capricious claim made pursuant to the Administrative Procedure Act, given the manner in which Defendants ignore the number of studies and comments documenting the disparate impact on immigrants of color.

abroad. *Changes to the ‘Public Charge’ Instructions in the U.S. State Department’s Manual*, NAT’L IMMIGR. L. CTR.(Feb. 8, 2018).<sup>29</sup> The 2018 FAM guidance included changes to the treatment of a sponsor’s affidavit of support and the use of non-cash benefits. In the months after the FAM revisions had taken effect, preliminary data showed 12,179 immigrant visa rejections between October 1, 2018 and July 29, 2019. Ted Hesson, *Exclusive: Visa Denials to Poor Mexicans Skyrocket Under Trump’s State Department*, POLITICO (Aug. 6, 2019).<sup>30</sup> The State Department had denied 5,343 immigrant visa applications for Mexican nationals on public charge grounds, up over 750-fold from fiscal year 2016. *Id.* Visa applicants from countries including India, Pakistan, Bangladesh, Haiti, and the Dominican Republic also saw significant increases in denials predicated on the risk of becoming a public charge. *Id.* This spike in visa denials shows the Trump Administration is using the public charge rule to exclude immigrants of color.

#### **E. Immigrant Women Are Particularly and Severely Harmed by the Regulation**

The Regulation is particularly harmful to the most vulnerable groups of immigrant women who can least afford to lose access to programs that support their safety, independence, and economic security for fear of harming their immigration status. In general, immigrant women of color are at higher risk of economic insecurity than men, and are overrepresented in low-wage jobs. *The Impact of Immigrant Women on America’s Labor Force*, AM. IMMIGR. COUNCIL (Mar. 8, 2017).<sup>31</sup> Further, immigrant women of color face a substantial wage gap as compared to native-born men: Black, Latinx, and Asian immigrant women make 58, 48, and 83

<sup>29</sup> <https://www.nilc.org/wp-content/uploads/2018/02/NILC-FAM-Summary-2018.pdf>.

<sup>30</sup> <https://www.politico.com/story/2019/08/06/visa-denials-poor-mexicans-trump-1637094>.

<sup>31</sup> <https://www.americanimmigrationcouncil.org/research/impact-immigrant-women-americas-labor-force>.

cents respectively for every dollar made by a white, non-Hispanic native-born man.<sup>32</sup> And more than half of all immigrant women live in a household with children, compared to 43 percent of immigrant men and 28 percent of native-born women, putting additional strain on already limited resources. Ariel G. Ruiz, Jie Zong, & Jeanne Batalova, *Immigrant Women in the United States*, MIGRATION POL'Y INST. (Mar. 20, 2015).<sup>33</sup>

The Regulation will cause concrete harm to immigrant women's health by discouraging their use of food, housing assistance, and health coverage. In 2016, women constituted almost 47% of non-citizen Medicaid recipients, compared to men at 39% and children at 14%.<sup>34</sup> And, though pregnant women's use of Medicaid is exempted under the Final Rule, the Regulation will likely discourage women from obtaining prenatal care, exacerbating already elevated maternal and infant mortality rates among Black and Latinx women. *Infant Mortality*, CTRS. FOR DISEASE CONTROL AND PREVENTION (Mar. 27, 2019);<sup>35</sup> *Pregnancy Mortality Surveillance System*, CTRS. FOR DISEASE CONTROL AND PREVENTION (June 4, 2019).<sup>36</sup> Likewise, women with disabilities rely upon benefits like SNAP and Medicaid. The Regulation further targets women with chronic health conditions and disabilities by allowing DHS to consider health conditions as part of the totality of circumstances test.

Additionally, the Regulation has a detrimental impact on immigrant women who are survivors of domestic violence and sexual assault. Some groups of women of color face higher

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<sup>32</sup> Nat'l Women's Law Ctr. Calculations based on U.S. Census Bureau, 2017 Current Population Survey, using Sarah Flood, Miriam King, Renae Rodgers, Steven Ruggles, and J. Robert Warren. Integrated Public Use Microdata Series, Current Population Survey: Version 6.0 [dataset]. Minneapolis, MN: IPUMS, 2018. <https://doi.org/10.18128/D030.V6.0>.

<sup>33</sup> <https://www.migrationpolicy.org/article/immigrant-women-united-states>.

<sup>34</sup> Nat'l Women's Law Ctr. calculations based on U.S. Census Bureau, 2017 Current Population Survey, using Sarah Flood, Miriam King, Renae Rodgers, Steven Ruggles, and J. Robert Warren. Integrated Public Use Microdata Series, Current Population Survey: Version 6.0 [dataset]. Minneapolis, MN: IPUMS, 2018. <https://doi.org/10.18128/D030.V6.0>.

<sup>35</sup> <https://www.cdc.gov/reproductivehealth/maternalinfanthealth/infantmortality.htm>.

<sup>36</sup> <https://www.cdc.gov/reproductivehealth/maternalinfanthealth/pregnancy-mortality-surveillance-system.htm>.



rates of intimate partner violence. *National Intimate Partner & Sexual Violence Survey: 2010 Summary Report* at 39-40 & tbl. 4.3, CTRS. FOR DISEASE CONTROL AND PREVENTION (Nov. 2010).<sup>37</sup> The Regulation incentivizes survivors to remain in the households of their sponsors, regardless of safety concerns, to the extent they are dependent on their sponsors' household income to satisfy the Regulation's requirements. Without access to resources from public benefits and work authorization, immigrant survivors may stay longer in abusive relationships and sustain more severe physical and emotional consequences as a result than non-immigrant survivors. Giselle Aguilar Hass, Psy.D., et al., *Battered Immigrants and U.S. Citizen Spouses, Legal Momentum* (Apr. 24, 2016) at 2.<sup>38</sup> The Regulation thus puts immigrant survivors of domestic violence at risk by disincentivizing the use of essential economic supports.

Finally, the Regulation has significant harmful effects on LGBTQ immigrants of color and their families. Of the 637,000 documented LGBT foreign-born adults in the U.S., approximately 77% are non-white. Gary J. Gates, *LGBT Adult Immigrants in the United States*, THE WILLIAMS INST. (Mar. 2013).<sup>39</sup> Because of continuing discrimination, LGBTQ immigrants face additional challenges in accessing and maintaining education, employment, housing, and health care, and may be more likely to need assistance with basic family supports. *Serving LGBTQ Immigrants and Building Welcoming Communities*, CTR. FOR AM. PROGRESS (Jan. 24, 2018).<sup>40</sup> Further, available statistics show that LGB immigrants of color are more likely than white LGB immigrants to experience discrimination while receiving health care services and to

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<sup>37</sup> [https://www.cdc.gov/violenceprevention/pdf/nisvs\\_report2010-a.pdf](https://www.cdc.gov/violenceprevention/pdf/nisvs_report2010-a.pdf).

<sup>38</sup> [http://niwaplibrary.wcl.american.edu/wp-content/uploads/2015/BB\\_RSRCH\\_ImmVictims\\_Battered\\_Imm.pdf](http://niwaplibrary.wcl.american.edu/wp-content/uploads/2015/BB_RSRCH_ImmVictims_Battered_Imm.pdf).

<sup>39</sup> <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBTImmigrants-Gates-Mar-2013.pdf>.

<sup>40</sup> <https://www.americanprogress.org/issues/lgbt/reports/2018/01/24/445308/serving-lgbtq-immigrants-building-welcoming-communities/>.

receive substandard care. *When health care isn't caring: LGBT immigrants and immigrants living with HIV*, Lambda Legal.<sup>41</sup>

This Regulation puts immigrant women in the untenable position of living in fear that the use of Medicaid, nutrition or housing assistance could negatively impact their immigration status. The health, well-being, and safety of the most vulnerable immigrant women are at stake.

### III. CONCLUSION

For the foregoing reasons, *amici curiae* respectfully urges the Court to conclude that the Regulation is unlawful and unconstitutional.

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September 10, 2019

Respectfully Submitted,

**CROWELL & MORING LLP**

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<sup>41</sup> [https://www.lambdalegal.org/sites/default/files/publications/downloads/whcic-insert\\_lgbt-immigrants-and-immigrants-living-with-hiv.pdf](https://www.lambdalegal.org/sites/default/files/publications/downloads/whcic-insert_lgbt-immigrants-and-immigrants-living-with-hiv.pdf). There were not enough transgender or gender non-conforming respondents to the survey born outside the United States to analyze these groups separately.

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**9to5, National Association of Working Women** believes that immigrants have long played an essential role in building America, uniting our country with the promise of opportunity and equality. We all share the America dream of working hard and in exchange being treated fairly and with dignity. As an organization we work to end all forms of discrimination, in the workplace and beyond. We are deeply concerned the ‘public charge’ regulation change will harm immigrant women, including the elderly, pregnant, lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) individuals, survivors of intimate partner violence, and/or women with disabilities.

**Anti-Defamation League (“ADL”)**, founded in 1913, is an anti-hate organization that seeks to stop the defamation of the Jewish people, and secure justice and fair treatment to all. Its 25 regional offices further this mission with programmatic support to promote civil rights and combat all forms of bigotry. ADL is rooted in a community that has experienced the plight of living as refugees throughout its history. ADL has advocated for fair and humane immigration policy since its founding and has been a leader in exposing anti-immigrant and anti-refugee fervor that has poisoned our nation’s debate. Consistent with its principles and values, ADL joins this brief.

**Apna Ghar, Inc. (Our Home)** is a nonprofit, nonpartisan organization that seeks to promote just and equitable communities by working for the human rights of survivors of gender-based violence. Apna Ghar advances its mission through holistic services, outreach and advocacy.

**Asian Americans Advancing Justice - Asian Law Caucus (ALC)** was founded in 1972 with a mission to promote, advance, and represent the legal and civil rights of Asian and Pacific Islanders, with a particular focus on low-income members of those communities. Advancing

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Justice - ALC is part of a national affiliation of Asian American civil rights groups, with offices in Los Angeles, Chicago, Atlanta and Washington DC. ALC has a long history of protecting and advocating on behalf of low-income immigrants through direct legal services, impact litigation, community education, and policy work.

**Asian Americans Advancing Justice-Atlanta** is the first and only nonprofit legal advocacy organization dedicated to the civil and human rights of Asian Americans, Native Hawaiians, and Pacific Islanders (AANHPI) in Georgia and the Southeast. Advancing Justice-Atlanta works in four major program areas: civic engagement and organizing, direct legal services, impact litigation, and policy advocacy. Advancing Justice-Atlanta's vision is a social movement in which communities of color are fully empowered, active in civic life, and working together to promote equity, fair treatment, and self-determination for all. Advancing Justice-Atlanta is one of five independent organizations that make up the national Asian Americans Advancing Justice.

**The Asian & Latino Solidarity Alliance of Central Virginia (ALSACV)** is dedicated to advancing common objectives impacting the Asian and Latino communities in Central Virginia. We work to ensure that Asian and Latinos in Central Virginia have equitable representation, visibility, and access to economic and social programs that enrich their lives.

**The Asian Law Alliance (ALA)**, founded in 1977, is a non-profit public interest legal organization with the mission of providing equal access to the justice system to the Asian and Pacific Islander communities in Santa Clara County, California. ALA has provided immigration legal services and legal representation to low income residents who will be impacted by the change to the public charge rules.

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**The Asian Pacific American Legal Resource Center (APALRC)** is a nonprofit organization that provides linguistically accessible and culturally appropriate civil legal services to the low-income, limited English proficient Asian American Pacific Islander community residing in metropolitan-DC. The APALRC's mission is to protect the civil and legal rights of this community to access government benefits and the legal system.

**Asian Pacific Community in Action (APCA)** is a nonprofit organization working to provide services, advocacy and education to build healthier and more empowered Asian American & Pacific Islander communities.

**Asian Pacific Development Center** is a provider of, and advocate for, the whole-person and whole community health of Asian American, Native Hawaiian, Pacific Islander, immigrant, and refugee communities. We predominantly serve members of these communities across through our main office in Aurora and satellite offices through the Metro-Denver area to ensure access to services.

**The Association of Asian Pacific Community Health Organizations (AAPCHO)** is a national not-for-profit association of 33 community-based health care organizations, 28 of which are Federally Qualified Health Centers, dedicated to improving the health status and access of Asian Americans, Native Hawaiians, and Pacific Islanders (AANHPIs) in the United States, the U.S. territories, and the Freely Associated States. Our members provide linguistically accessible, culturally appropriate, and financially affordable health care services to communities with high concentrations of medically underserved AANHPIs. AAPCHO members serve over 700,000 patients annually: 72 percent of these patients are members of racial and ethnic minority groups; 46 percent are best served in a language other than English; 90 percent have incomes at or below 200 percent of the federal poverty level; and 56 percent receive health coverage through

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Medicaid or the Children’s Health Insurance Program. This rule has already had detrimental impacts on the patients our members serve and will continue to do so if it is fully implemented.

**The California Asian Pacific Islander Legislative Caucus** is part of the California State Legislature and represents and advocates for the interests of the diverse API communities throughout California. It seeks to increase Asian Pacific Islander participation and representation in all levels of government. Amongst its goals, the Caucus seeks to preserve safety net health, mental health, and social service programs that serve the API community.

**The Center on Reproductive Rights and Justice at UC Berkeley School of Law (CRRJ)** propels law and policy solutions by connecting people and ideas across the academic-advocate divide. We seek to realize reproductive rights and advance reproductive justice by influencing legal and social science discourse, furthering research and scholarship, and bolstering law and policy advocacy efforts

**The Chicago Alliance Against Sexual Exploitation (CAASE)** is an Illinois-based not-for-profit that opposes sexual harm by directly addressing the culture, institutions and individuals that perpetrate, profit from, or support such harms. CAASE engages in direct legal services, prevention education, community engagement, and policy reform. CAASE’s legal department provides direct legal services to survivors of sexual exploitation, including sexual assault and prostitution. On behalf of its individual clients and in support of its overall mission, CAASE is interested in seeing that federal and state laws and precedent impacting survivors of sexual assault and prostitution are appropriately interpreted and applied so as to further—and not undermine—efforts to hold perpetrators of sexual assault and trafficking appropriately accountable for their actions and expand safe options for survivors.

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**Chinese-American Planning Council** is the nation's largest nonprofit social services agency for Asian American, immigrant and low-income New Yorkers. Our mission is to build social and economic empowerment for the communities we serve. We aim to connect our social services to social change by advocating for transformative public policies that empower our communities.

**The Coalition on Human Needs (CHN)** is an alliance of 100 national organizations representing human service providers, people of faith, policy experts, civil rights and labor group members, and other advocates, who come together to defend and improve federal programs that assist low-income and vulnerable people. Because communities of color and immigrants are disproportionately poor, CHN and its member groups have been especially concerned with their needs. In addition, CHN has focused over the years on the special needs of low-income women and children, including the struggles of women to escape from domestic violence. CHN's work has focused on the anti-poverty effectiveness of programs such as Medicaid, SNAP, and subsidized housing, and our members are extremely concerned that more households will fall into poverty because the racially-motivated public charge proposals will discourage them from utilizing benefits for which they are eligible.

**The Colorado Organization for Latina Opportunity and Reproductive Rights** is a community-rooted organization that works to enable Latinx individuals and their families to lead safe, healthy and self-determined lives. We value justice and equity for all people, creating and awareness of intersectionality and the ways it is used to either support or marginalize Latinx communities.

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**The Connecticut Women's Education and Legal Fund (CWEALF)** is a nonprofit organization that advocates for and empowers women and girls in Connecticut, especially those who are underserved or marginalized. CWEALF works to create an equitable society where women and girls thrive and advances its mission through three main programs: legal education, public policy, and women's advancement and leadership. CWEALF is a leading voice for women's rights and economic security in Connecticut, especially through its Legal Education program which works to guarantee equal access to legal, educational and social service systems.

**EMBARC** is Iowa's first refugee-led nonprofit service provider, founded by and for refugees to empower refugees in expanding their success through advocacy, education, and community development. EMBARC believes that true and lasting change originates from within a community empowered to help themselves.

**End Rape on Campus (EROC)** is a national 501(c)(3) nonprofit organization that works to end campus sexual violence through direct support for survivors and their communities; prevention through education; and policy reform at the campus, local, state, and federal levels. This addresses many barriers that survivors face when coming forward in hopes of accessing justice and healing. We seek to change culture in order to create a world free from sexual violence, and work to end gender-based discrimination and all forms of violence in educational settings, for students, faculty, and all members of a school community.

**Equal Rights Advocates (ERA)** is a national non-profit civil rights organization dedicated to protecting and expanding economic and educational access and opportunities for women and girls. Since 1974, ERA has helped to secure workplace protections and advance gender justice for low-wage and immigrant workers through litigation, direct legal services, community outreach, public education, and policy advocacy efforts. ERA has participated as



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amicus curiae in scores of cases involving the interpretation and application of laws affecting workers and the economic security of working families. The proposed public charge rule will have a devastating impact on millions of workers and families, including those who ERA represents and with whom we collaborate. These changes will particularly harm low-paid immigrant women workers, many of whom are survivors of sexual and/or domestic violence, and will make them even more vulnerable to workplace abuse, exploitation, and discrimination.

**The Fred T. Korematsu Center for Law and Equality (“Korematsu Center”)** is a non-profit organization based at the Seattle University School of Law. The Korematsu Center works to advance justice through research, advocacy, and education. Inspired by the legacy of Fred Korematsu, who defied military orders during World War II that ultimately led to the unlawful incarceration of 110,000 Japanese Americans, the Korematsu Center works to advance social justice for all. The Korematsu Center has a special interest in addressing government action targeted at classes of persons based on race, nationality, or religion. The Korematsu Center does not, in this brief or otherwise, represent the official views of Seattle University.

**Girls Inc.** is a nonprofit organization that inspires girls to be strong, smart, and bold, through direct service and advocacy. Over 80 local Girls Inc. affiliates provide primarily after-school and summer programming to approximately 140,000 girls ages 5-18 in the U.S. and Canada. Our comprehensive approach to whole girl development equips girls to navigate gender, economic, and social barriers and grow up healthy, educated, and independent. Informed by girls and their families, we also advocate for policies and practices to advance the rights and opportunities of girls and young women, including those from immigrant families. Ensuring that all girls have access to the supports they need to learn and thrive is a top priority for Girls Inc.

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Through strategic litigation, public policy advocacy, and education, **GLBTQ Legal Advocates & Defenders (GLAD)** works in New England and nationally to create a just society free of discrimination based on gender identity and expression, HIV status, and sexual orientation. Since 1978, GLAD has litigated widely in both state and federal courts in all areas of the law in order to protect and advance the rights of lesbians, gay men, bisexuals, transgender individuals and people living with HIV and AIDS. GLAD has an enduring interest in ensuring that all individuals receive equal justice under law.

**If/When/How: Lawyering for Reproductive Justice** is a legal organization that, for more than a decade, has built a powerful network of thousands of lawyers, law students, and former reproductive justice fellows who work for a future when all people can self-determine their reproductive lives free from discrimination, coercion, or violence. With our network, we work to transform the law and policy landscape through advocacy, support, and organizing so all people have the power to determine if, when, and how to define, create, and sustain families with dignity and to actualize sexual and reproductive wellbeing on their own terms. Every person in the U.S. should be able to access the support they need to thrive and to protect their health, without fear of immigration consequences. Restricting the ability of people to immigrate to the U.S. based on the use of such supports is simply a new version of historic immigration restrictions based on race and gender discrimination.

**In Our Own Voice: National Black Women's Reproductive Justice Agenda** is a national-state partnership with eight Black women's Reproductive Justice organizations: The Afiya Center, Black Women for Wellness, Black Women's Health Imperative, New Voices for Reproductive Justice, SisterLove, Inc., SisterReach, SPARK Reproductive Justice NOW, and Women with a Vision. In Our Own Voice is a national Reproductive Justice organization

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focused on lifting up the voices of Black women leaders on national, regional, and state policies that impact the lives of Black women and girls. Reproductive Justice is a framework rooted in the human right to control our bodies, our sexuality, our gender, and our reproduction.

Reproductive Justice will be achieved when all people, of all immigration statuses, have the economic, social, and political power and resources to define and make decisions about our bodies, health, sexuality, families, and communities in all areas of our lives with dignity and self-determination.

**In the Public Interest** is a nonprofit, nonpartisan comprehensive research and policy center committed to promoting the values, vision, and agenda for the common good and democratic control of public goods and services.

**The Japanese American Citizens League (JACL)** is a national organization whose ongoing mission is to secure and maintain the civil rights of Japanese Americans and all others who are victimized by injustice and bigotry. The leaders and members of the JACL also work to promote cultural, educational and social values and preserve the heritage and legacy of the Japanese American community. Aware of our responsibilities as the oldest and largest Asian Pacific American civil rights organization, JACL strives to promote a world that honors diversity by respecting values of fairness, equality and social justice.

**KWH Law Center for Social Justice and Change** is a nonprofit legal advocacy organization dedicated to the advancement and protection of legal rights for women, and women with children to be free from sex discrimination. KWH has participated as an amicus curiae in a range of cases before the United States Supreme Court and continues to advocate for equal treatment of women and women with children to challenge all forms of discrimination. KWH

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advocates to ensure that all individuals enjoy the full protections against sex discrimination promised by federal law.

**LatinoJustice PRLDEF**, is a national non-profit civil rights legal defense fund that has advocated for and defended the constitutional rights of all Latinos to ensure their equal protection under the law since 1972. LatinoJustice has engaged in and supported law reform litigation across the country challenging discriminatory policies and practices in areas such as immigrants' rights, criminal justice, education, employment, fair housing, language rights, redistricting, telecommunications, and voting rights.

**The MinKwon Center for Community Action** is a nonprofit organization whose mission is to empower the Korean American community, and work with the wider Asian American and immigrant communities, to achieve economic and social justice for all. We primarily serve low-income limited English proficient immigrants in the Asian American community, and our Social Services program includes enrolling people in benefits and providing immigration legal services.

**National Advocates for Pregnant Women (NAPW)** is a nonprofit legal advocacy organization working to ensure the human and civil rights, health and welfare of all people, with particular attention to pregnant and parenting women. NAPW protects the rights, health, and dignity of pregnant and parenting people by working closely with those women and their communities, along with medical, legal, public health, and mental health experts from across the country. NAPW is particularly concerned about the generational impacts the revised public charge rules would have on pregnant women, their babies, and the rest of their families.

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**The National Korean American Service & Education Consortium (NAKASEC)** is a grassroots organization founded in 1994 by local community centers to project a progressive voice and promote the full participation of Korean and Asian Americans within the larger society. Our mission is to organize Korean and Asian Americans to achieve social, economic, and racial justice. NAKASEC has affiliates in Los Angeles and Orange County (Korean Resource Center) and Chicago (Hana Center) and maintains offices in Los Angeles, Chicago and Annandale, Virginia.

**The National Asian Pacific American Women’s Forum (NAPAWF)** is the leading, national, multi-issue community organizing and policy advocacy organization for Asian American and Pacific Islander (AAPI) women and girls in the U.S. NAPAWF’s mission is to build collective power of all AAPI women and girls to gain full agency over our lives, our families, and our communities. NAPAWF advocates and organizes with a reproductive justice framework that acknowledges the diversity within our community and ensures that different aspects of our identity – such as ethnicity, immigration status, education, sexual orientation, gender identity, and access to health – are considered in tandem when addressing our social, economic, and health needs. Our work includes advocating for immigrant rights and making visible the experiences of AAPI women and girls within the fight for immigrant rights.

**The National Coalition for Asian Pacific Americans Community Development (National CAPACD)** is a progressive coalition of nearly 100 community-based organizations spanning 21 states and the Pacific Islands. Our members advocate for and organize in low-income Asian American and Pacific Islander (AAPI) communities to improve housing security and preserve our neighborhoods. We disseminate national resources locally, share best practices and advocate for community needs at the national level. Our work improves the lives of the over

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two million AAPIs living in poverty nationwide. We strengthen and mobilize our members to build power nationally and further our vision of economic and social justice for all.

**National Crittenton** founded in 1883 as a national advocacy organization is dedicated to advancing and protecting the rights of girls, young women and women who face chronic adversity, violence and injustice. This includes girls, young women and women and their families who come to this country seeking safety, opportunity and justice. This rule will have a injurious impact on immigrant communities and in particular on girls and women. Immigrant women, including survivors, LGBTQ women, seniors and women with disabilities, would be harmed by the proposed changes. As such, the issues addressed in this amicus brief are critical to ensuring are consistence with our mission and with the achievement and maintenance of justice.

**The National Immigrant Justice Center (“NIJC”)** is a program of the Heartland Alliance for Human Needs and Human Rights, a non-profit corporation headquartered in Chicago, Illinois. In part due to partnering with more than 1,000 pro bono attorneys from major law firms, NIJC is able to provide direct legal services to approximately 10,000 individuals annually. NIJC’s legal services are available to low-income immigrants and their families, who earn less than 200% of the federal poverty level. NIJC frequently represents families and couples seeking visas through U.S. consulates. Many NIJC clients will be subject to potential inadmissibility under the public charge ground, as redefined by the agency.

**The National Immigrant Women’s Advocacy Project (“NIWAP Inc.”)** is a non-profit, public-policy advocacy organization that develops, reforms, and promotes the creation, implementation and use of laws and policies that improve legal rights, services, and assistance to immigrant women and children who are victims of domestic violence, sexual assault, child abuse, stalking, human trafficking, and other crimes. NIWAP is a national resource center

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offering technical assistance and training at the federal, state, and local levels to assist a wide range of professionals who work with immigrant crime victims and/or whose work affects these victims including judges, police, prosecutors, attorneys, victim advocates and federal and state agencies on the legal rights of domestic violence, sexual assault and child abuse victims to access immigration relief, the public benefits safety-net and family court protections. This work has included publishing legal and social-science research articles on family violence experienced by immigrant women and children.

Additionally, NIWAP's Director Leslye E. Orloff was closely involved with the enactment of the 1994 Violence Against Women Acts ("VAWA") —landmark legislation aimed at improving community-based responses to domestic violence, dating violence, sexual assault, and stalking. Among other things, NIWAP's Director played a part in VAWA's 1994 self-petition; its 2000 T- and U-visas; creating access to public benefits for immigrant victims in 1996 and 2013 and VAWA's 1996, 2000, 2005, and 2013 immigration and confidentiality protections. NIWAP's Director has also published legal and social science research articles about the domestic violence experienced by immigrant women and children. NIWAP has a strong interest in ensuring that changes in public charge rules will not lock battered immigrants into abusive homes and will not cut off or deter battered immigrants and abused children from accessing the life-saving help they need to escape violent homes and rebuild safe lives for themselves and their children.

**The National Partnership for Women & Families (National Partnership)**, formerly the Women's Legal Defense Fund, is a national advocacy organization that develops and promotes policies that help achieve fairness in the workplace, reproductive health and rights, access to quality health care, and policies that help women achieve equality and economic

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security for themselves and their families. Since its founding in 1971, the National Partnership has worked to advance equal opportunities and fairness through several means, including by challenging discriminatory practices and policies in the courts.

**Oasis Legal Services** is a 501(c)(3) nonprofit that provides quality legal immigration services to under-represented low-income groups with a focus on LGBTQIA+ communities. Based in Berkeley, California, Oasis provides representation to immigrants living within the jurisdiction of the San Francisco Asylum Office, which extends from Alaska in the north to Bakersfield, California in the south. Oasis' services include: screening for immigration relief, affirmative asylum, residency, citizenship, and family petitions. Oasis also provides ongoing case management to low-income LGBTQIA+ clients who need assistance with social services, employment, housing, education, and discrimination.

**OCA – Asian Pacific American Advocates** is a national non-profit, membership-driven organization based in Washington, D.C. with over 50 chapters and affiliates around the country. Touching hundreds of thousands of lives each year, OCA is dedicated to advancing the social, political, and economic well-being of Asian Americans and Pacific Islanders (AAPIs). Since 1973, OCA has fought in Congress and society for the civil rights and dignity of immigrants and their families.

**The Oklahoma Coalition for Reproductive Justice**, founded as a 501©4 in 2010, is a statewide grassroots coalition of organizations and individuals focusing on the advancement of reproductive health, rights and justice in Oklahoma. OCRJ peruses its mission through legislative advocacy, community outreach and education, and litigation. We believe that reproductive justice includes the right to have or not to have a child and respect for families in all their forms. It supports access to sexual education, contraception, abortion care and pregnancy care as well as



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to the resources needed to raise children in safe and healthy circumstances, with good schools and healthcare and other elements necessary for bright futures regardless of immigration status. It encompasses respect for all individuals, their partners and families, and for sexuality and for gender differences.

**OneAmerica** is a statewide civic engagement, organizing and advocacy organization grounded in immigrant communities in Washington State. Our members, primarily lower income immigrants and refugees, are directly impacted by the "public charge" final rule, seeking information, fearful of enrolling in benefits for which they are eligible, and feeling targeted by the actions of the federal administration. OneAmerica also manages a legal services program in partnership with the State of Washington and the American Immigration Lawyers Association that focuses primarily on citizenship, but fields questions from individuals interested in becoming citizens or otherwise applying for immigration benefits. The current confusion and fear created by the final rule has increased demands on staff time, as we attempt to address questions, fears and concerns from immigrant and refugee communities across Washington state.

**Planned Parenthood Federation of America (PPFA)** is the oldest and largest provider of reproductive health care in the United States, delivering medical services through more than 600 health centers operated by its affiliates. Its mission is to provide comprehensive reproductive health care services and education, to provide educational programs relating to reproductive and sexual health, and to advocate for public policies to ensure access to health services. PPFA affiliates provide care to approximately 2.4 million individuals each year. In particular, PPFA is at the forefront of providing high-quality reproductive health care to individuals and communities facing serious barriers to obtaining such care—especially individuals with low

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income, individuals in rural and other medically underserved areas, immigrant populations, communities of color, and LGBTQ individuals.

**Population Connection** is a national non-profit, grassroots organization that works to ensure that all people have access to the reproductive health care, family planning and contraceptives they need without coercion or fear.

**The Reproductive Health Access Project** is a national nonprofit organization dedicated to training and supporting clinicians to make reproductive health care accessible to everyone, everywhere in the United States. Our work focuses on integrating full-spectrum reproductive health care in primary care settings and we are guided by the belief that everyone should be able to access basic health care from their primary care clinician.

**Services, Immigrant Rights, and Education Network (SIREN)** is the leading grassroots organization serving the immigrant and refugee communities in Northern California and the Central Valley. For 32 years, SIREN has provided immigration legal services, engaged in community organizing and civic engagement, and conducted policy advocacy on issues affecting these communities. The organization works directly with low-income immigrants, the majority of whom rely upon public benefits for their basic needs such as food, shelter, and their health. The changes resulting from the new public charge rule will prevent many of our clients and community members from being able to avail themselves of these programs.

**Sexuality Information and Education Council of the United States (SIECUS)** has served as the national voice for sex education, sexual health, and sexual rights for over 50 years. SIECUS asserts that sexuality is a fundamental part of being human, one worthy of dignity and respect. We advocate for the rights of all people to accurate information, comprehensive sexuality education, and the full spectrum of sexual and reproductive health services. SIECUS

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works to create a world that ensures social justice inclusive of sexual and reproductive rights. We view sex ed as a vehicle for social progress and change. For SIECUS, and for the youth we serve, sex education is inextricable from the other rights of young people – including immigration rights, the right to access necessary government services, and more. Our expertise is not just in sex education, but in how sexual and reproductive health and rights intersect with racial justice and equitable access to healthcare.

**Sikh American Legal Defense and Education Fund (SALDEF)** is a national Sikh American media, policy, and education organization. Our mission is to empower Sikh Americans by building dialogue, deepening understanding, promoting civic and political participation, and upholding social justice and religious freedom for all Americans.

**South Asian Americans Leading Together (SAALT)** is a national, nonpartisan, non-profit organization that fights for racial justice and advocates for the civil rights of all South Asians in the United States. Our ultimate vision is dignity and full inclusion for all. SAALT's strategies include conducting public policy analysis and advocacy; building partnerships with South Asian organizations and allies; mobilizing communities to take action; and developing leadership for social change.

**Southeast Asia Resource Action Center (SEARAC)** is a national civil rights organization that empowers Cambodian, Laotian, and Vietnamese American communities to create a socially just and equitable society. As representatives of the largest refugee community ever resettled in the United States, SEARAC stands together with other refugee communities, communities of color, and social justice movements in pursuit of social equity. For SEAs, this final public charge regulation will most likely harm low-income immigrants who arrived to the United States through the family visa program. In 2016, 87% of immigrants from Cambodia,

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96% from Laos, and 97% from Vietnam who received a green card were able to do so due to a family-based visa petition. This inhumane proposal by the Trump Administration is an attack to America's historical legacy and commitment to welcoming immigrants of all backgrounds.

**Transgender Law Center ("TLC")** is the largest national trans-led organization advocating self-determination for all people. Grounded in legal expertise and committed to racial justice, TLC employs a variety of community-driven strategies to keep transgender and gender nonconforming ("TGNC") people alive, thriving, and fighting for liberation. TLC believes that TGNC people hold the resilience, brilliance, and power to transform society at its root, and that the people most impacted by the systems TLC fights must lead this work. TLC builds power within TGNC communities, particularly communities of color and those most marginalized, and it lays the groundwork for a society in which all people can live safely, freely, and authentically regardless of gender identity or expression. TLC works to achieve this goal through leadership development and by connecting TGNC people to legal resources. It also pursues impact litigation and policy advocacy to defend and advance the rights of TGNC people, transform the legal system, minimize immediate threats and harms, and educate the public about issues impacting our communities.

**The Union for Reform Judaism**, whose 900 congregations across North America include 1.5 million Reform Jews; the **Central Conference of American Rabbis**, whose membership includes more than 2,000 Reform rabbis; **Women of Reform Judaism**, which represents more than 65,000 women in nearly 500 women's groups in North America and around the world; and **Men of Reform Judaism** come to this issue out of our longstanding commitment to the just and compassionate treatment of the most vulnerable, including immigrants. In at least 36 ways, the Torah demands of us concern for the stranger in our midst. Our own people's

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historical experience as Jews who dwelled in others' land sensitizes us to the many struggles faced by immigrants today. We are inspired by our sacred texts to help create a society in which members of vulnerable populations among us are treated fairly.

**The Washington Lawyers' Committee for Civil Rights and Urban Affairs** fights discrimination and endeavors to create legal, economic, and social equity on a broad range of issues. An area of priority for the Committee is to protect the rights of immigrant communities. The Committee is engaged in class action litigation that addresses, among other issues, the conditions of confinement for unaccompanied immigrant children, the preservation of the Deferred Action for Childhood Arrival program, and Temporary Protected Status for Salvadorian refugees.

**The Women's Bar Association of the State of New York ("WBASNY")** is the second largest statewide bar association in New York State and one of the largest women's bar associations in the United States. Its earliest chapter was founded in 1918, a year before women's right to vote was ratified in the United States. WBASNY's more than 4,200 members in its twenty chapters across New York State [see text below] include esteemed jurists, academics, and attorneys who practice in every area of the law, including appellate, litigation, education, commercial, labor and employment, ERISA, matrimonial, access to justice, ethics, health, reproductive rights, constitutional, criminal, international law, immigration, and civil rights. WBASNY is dedicated to the fair and equal administration of justice.

As regards its expertise and substantive knowledge for this case, WBASNY is a registered non-governmental organization ("NGO") holding special consultative status with the United Nation's Economic and Social Council and collaborates with the United Nations Commission on the Status of Women. WBASNY has also spearheaded numerous programs

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pertaining to immigration and international human rights, including providing platforms for its members to provided pro bono services and advocacy for immigrants; spearheading educational programs with other bar associations, NGOs, government representatives, and UN Specialized Agencies pertaining to the empowerment of immigrants; and submitting position papers and proposals for legislation and policies concerning those seeking asylum and other forms of immigrant relief in the United States.

WBASNY has participated as an amicus curiae in state and federal cases at every level, including those involving civil rights such as those at stake in this case. It stands as a vanguard for the equal rights of women, minorities, immigrants, LGBT individuals, and all persons.

WBASNY is incorporated in New York. Its affiliated organizations consist of twenty regional chapters, some of which are separately incorporated, plus nine IRC 501(c)(3) charitable corporations that are foundations and/or legal clinics. Neither WBASNY nor any of its affiliates issue stock to the public. WBASNY's current affiliates are: Chapters – Adirondack Women's Bar Association; The Bronx Women's Bar Association, Inc.; Brooklyn Women's Bar Association, Inc.; Capital District Women's Bar Association; Central New York Women's Bar Association; Del-Chen-O Women's Bar Association, Finger Lakes Women's Bar Association; Greater Rochester Association for Women Attorneys; Mid-Hudson Women's Bar Association; Mid- York Women's Bar Association; Nassau County Women's Bar Association; New York Women's Bar Association; Queens County Women's Bar Association; Rockland County Women's Bar Association; Staten Island Women's Bar Association; The Suffolk County Women's Bar Association; Thousand Islands Women's Bar Association; Westchester Women's Bar Association; Western New York Women's Bar Association; and Women's Bar Association of Orange and Sullivan Counties. Charitable Foundations & Legal Clinic – Women's Bar

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Association of the State of New York Foundation, Inc.; Brooklyn Women’s Bar Foundation, Inc.; Capital District Women’s Bar Association Legal Project Inc.; Nassau County Women’s Bar Association Foundation, Inc.; New York Women’s Bar Association Foundation, Inc.; Queens County Women’s Bar Foundation; Westchester Women’s Bar Association Foundation, Inc.; and The Women’s Bar Association of Orange and Sullivan Counties Foundation, Inc. (Note: No members of WBASNY or its affiliates who are judges or court personnel participated in WBASNY’s vote to participate as amicus in this matter.)

**The Women’s Law Center of Maryland, Inc.** is a nonprofit, public interest, membership organization of attorneys and community members with a mission of improving and protecting the legal rights of women. Established in 1971, the Women’s Law Center achieves its mission through direct legal representation, research, policy analysis, legislative initiatives, education and implementation of innovative legal-services programs to pave the way for systematic change. Our direct legal services aim to increase access to justice to survivors of intimate partner relationships through representation in protective order hearings, family law cases, and immigration matters, recognizing that survivors, especially those who are foreign-born, have unique needs and challenges within the legal system.

**Women Lawyers On Guard Inc. (WLG)** is a national non-partisan, non-profit organization harnessing the power of lawyers and the law in coordination with other non-profit organizations to preserve, protect, and defend the democratic values of equality, justice, and opportunity for all. WLG has participated as amicus curiae in a range of cases before the United States Supreme Court and other federal courts to secure the equal treatment of women under the law and to challenge sex discrimination.