No. 19-3595

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

MAKE THE ROAD NEW YORK, AFRICAN SERVICES COMMITTEE, ASIAN AMERICAN FEDERATION, CATHOLIC CHARITIES COMMUNITY SERVICES, (ARCHDIOCESE OF NEW YORK), and CATHOLIC LEGAL IMMIGRATION NETWORK, INC.,
Plaintiffs – Appellees,

v.

KENNETH T. CUCCINELLI, in his official capacity as Acting Director of United States Citizenship and Immigration Services, UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, CHAD F. WOLF, in his official capacity as Acting Secretary of Homeland Security, and UNITED STATES DEPARTMENT OF HOMELAND SECURITY,
Defendants – Appellants.

On appeal from the United States District Court for the
Southern District of New York

BRIEF OF *AMICUS CURIAE* PUBLIC JUSTICE CENTER IN SUPPORT OF PLAINTIFFS-APPELLEES, URGING AFFIRMANCE

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STATEMENT OF INTEREST OF *AMICUS CURIAE*[1]

The Public Justice Center (PJC) is a non-profit civil rights and anti-poverty legal organization established in 1985. The PJC uses impact litigation, public education, and legislative advocacy to accomplish law reform for its clients. Its Appellate Advocacy Project expands and improves representation of indigent and disadvantaged persons and civil rights issues before the Maryland and federal trial and appellate courts. The PJC has participated in a number of cases involving fair access to public benefits. *See, e.g.*, *N.B. v. D.C.*, 682 F.3d 77 (D.C. Cir. 2012); *Dep't. of Health & Mental Hygiene v. Brown*, 959 A.2d. 807 (Md. Ct. App. 2007); *Thompson v. Dallas*, No. 24-C-09-2775 (Balt. City Cir. Ct. 2009). In addition, the PJC has participated in several cases involving the rights of immigrants, particularly immigrant workers. *See Nonceeya v. Lone Star Steakhouse*, 981 A.2d 1233 (Md. 2009); *Rios v. Montgomery Cty.*, 872 A.2d 1 (Md. 2005); *Design Kitchen & Baths, et al., v. Lagos*, 882 A.2d 817 (Md. 2005). The PJC has an interest in this case because of its commitment to the fair treatment of immigrants, which includes ensuring that immigrants can access public benefits without fear of deportation.

[1] No person or party other than *Amicus* contributed money for or participated in the preparation or submission of this brief. All parties have consented to *Amicus* filing this brief.

SUMMARY OF THE ARGUMENT

In November 2017, at a rally in Missouri, President Trump conjured a caricature of individuals and families who use public benefit programs, such as those now targeted by his Administration's revision to the "public charge" rule limiting legal immigration:

> I know people, they work three jobs and they live next to somebody who doesn't work at all [and relies on government benefits]. And the person who's not working at all and has no intention of working is making more money and doing better than the person that's working his and her ass off.

President Donald Trump, Remarks on Tax Reform (Nov. 29, 2017).[2] These remarks echo a myth that appears to motivate the recent changes to the rule – that federal means-tested programs, such as assisted housing, Medicaid, and the Supplemental Nutritional Assistance Program (SNAP), are primarily used by individuals who choose to be completely dependent on them. While the myth provides ample fodder for campaign speeches, it is wholly divorced from reality.

The programs targeted by the Administration's revised public charge rule do not only serve individuals who are unable to meet their basic needs without long-term government assistance. Rather, by design and in practice, these programs also supplement the resources of those with incomes from employment, promoting

[2] https://www.whitehouse.gov/briefings-statements/remarks-president-trump-tax-reform-2/.

access to better quality housing, healthier food, and cost-effective medical care while also serving as a safety net during short-term financial crises. Indeed, the provision of benefits that supplement earned income is essential to Congress's broader public policy goals of expanding the availability of safe and affordable housing, fostering access to employment opportunities, and promoting nutrition and public health. The underlying premise of the rule – that any immigrant who rents a home with the help of a federal subsidy, purchases groceries using SNAP, or pays for a doctor's visit with Medicaid will likely be a "public charge" – reflects a fundamental misunderstanding of the purposes of these programs and how they work in practice.

ARGUMENT

I. Programs Targeted by the Administration's Revised Public Charge Rule Were Designed to Improve Quality of Life and Advance Broad Public Policy Goals.

Federally-assisted housing (both public housing and the Housing Choice Voucher Program), Medicaid, and SNAP – three of the largest programs covered by the new public charge rule – are designed to enable working families to live healthier, more stable lives, and to improve public health, nutrition, and access to safe and affordable housing. Congress's intent in this regard is apparent in the legislative histories of each program.

A. *Federal Housing Assistance*

In 1937, Congress passed the United States Housing Act "to remedy the unsafe and unsanitary housing conditions and the acute shortage of decent, safe, and sanitary dwellings for families of low income in rural and urban communities." U.S. Housing Act of 1937, Pub. L. No. 75-412, § 1 (1937). Committee reports focused on the need for "the elimination of unsafe and insanitary housing" and the "eradication of slums." S. Rep. No. 75-933, at 1 (1937); H.R. Rep. No. 75-1545, at 1 (1937). Detailing the problem, Senate committee members explained that "over 10,000,000 families in America . . . were subjected to housing conditions that did not adequately protect their health and safety." S. Rep. No. 75-993, at 6. These families could afford basic shelter without government assistance, but it was often in poorly-maintained and overcrowded slums, where disease spread rapidly. *Id*. at 7. Thus, the Housing Act directed the investment of federal funds to support local housing authorities' creation and maintenance of low-rent housing projects. U.S. Housing Act of 1937, §§ 9-11.

Later amendments to federal housing assistance reflected a similar desire to serve low-income working families with a view towards improving their health, safety, and access to opportunities. A core purpose of the 1974 Housing and Community Development Act, which established the Section 8 rental assistance program, was to "provide a decent home and a suitable living environment for all

persons, but principally those of low and moderate income." Housing and Community Development Act of 1974, Pub. L. No. 93-383 § 101, 88 Stat. 634 (1974). The Act also sought to advance access to diverse neighborhoods, requiring state and local authorities seeking federal housing grants to "indicate[] the general locations of the proposed housing for lower-income persons, with the objective of . . . promoting greater choice of housing opportunities[.]" *Id*. § 104(a)(4)(C), 88 Stat. 638. In setting eligibility standards, the Act covered households whose incomes were at or below 80% of the area median – a threshold, still in effect today, that captured individuals and families who were generally ineligible for federal cash assistance and likely relied on earnings for income. *Id.* § 201(a) - Sec. 8(f), 88 Stat. 665. Indeed, the Act expressly referenced and supported wage-earning households, requiring the exclusion of a portion of a secondary earner's income from the calculation of financial eligibility for program participation. *Id*. § 201(a) - Sec. 3(1)(B), 88 Stat. 654.

Congress expanded Section 8 in 1983 with enactment of the Housing and Urban-Rural Recovery Act, adding a housing voucher demonstration project to provide federal subsidies to eligible families renting privately-managed residences – the predecessor of today's Housing Choice Voucher Program. Housing and Urban-Rural Recovery Act of 1983, Pub. L. No. 98-181, § 207, 97 Stat. 1181 (1983). With respect to this initiative, the Act re-emphasized the goal of ensuring

low-income households' access to "decent, safe, and sanitary housing," limiting the availability of federal assistance to private units that met high quality standards. *Id*. § 207(o)(6).

The 1983 Act, like its predecessors, sought to provide housing assistance to working families. For instance, it required public housing authorities to adjust families' income, and credit them with a corresponding reduction in rent, to account for childcare expenses they incurred to "enable another member of the family to be employed or to further his or her education." *Id*. § 206(5)(E). A House Committee cited this provision in discussing its aim to "encourage the working poor to continue to live in public housing" because the "continued occupancy of these families would promote the economic and social stability of the project." H.R. Rep. No. 88-123, at 28-29 (1983). The Committee opined that it is "critically important" that "moderate income families" – "principally the working poor" – receive housing assistance because "these families do not earn enough income to afford decent housing without some form of subsidy, especially during periods of high mortgage interest rates." *Id.* at 31.

Two modern era statutes impacting federal housing assistance expressly recognize not only that such assistance should be available to working people, but that it is an essential tool for helping such individuals obtain and maintain gainful employment and exercise choice in where to live. The 1990 Cranston-Gonzalez

National Affordable Housing Act (Cranston-Gonzalez) declared that to achieve "the national goal that every American family be able to afford a decent home in a suitable environment," it is necessary to "increase the Nation's supply of decent housing that is affordable to low-income and moderate-income families and accessible to job opportunities." Cranston-Gonzalez National Affordable Housing Act, Pub. L. No. 101-625, § 101, 104 Stat. 4085 (1990). Eight years later, the Quality Housing and Work Responsibility Act (QHWRA) affirmed that "tenant-based housing assistance is critical to successfully obtaining or retaining employment." Quality Housing and Work Responsibility Act Pub. L. No. 105-276, Title II, 112 Stat. 2470 (1998).

Cranston-Gonzalez made new federal investments in affordable housing creation, while also launching a Family Self-Sufficiency Program, which aimed to assist working families by permitting them to maintain the same rental burden in their subsidized units even as their earnings increased. Cranston-Gonzalez, § 554, 104 Stat. 4225. QHWRA expanded on the goals of the Family Self-Sufficiency Program, largely replacing the initiative with an array of additional mechanisms to promote and support employment: a more generous credit for childcare costs incurred to enable household members to work or attend school, an optional exclusion of earned income from eligibility and benefits calculation, a twelve-month prohibition on raising the rent charged to public housing residents who

experience an increase in their earned income with the option of setting a rent ceiling, and funding for "services designed to meet the unique employment-related needs of residents." QHWRA, §§ 508, 512, 519, 112 Stat. 2526, 2542, 2561. In addition, QHWRA contained provisions to increase the diversity of housing options – establishing, for example, payment standards up to 110% of fair market rent (or higher, upon approval) – so that voucher holders could access better quality neighborhoods and jobs. *Id.* § 545; *see also* S. Rep. No. 105-21, at 35 (1997) (noting that "it is important to allow some flexibility in setting the payment standard above the FMR so that voucher holders will have more housing choices"). Justifying this approach, a Senate Committee "recognize[d] that whether families receive housing assistance or not, they do not make choices based on cost alone [and consider] other factors such as distance to work and families, crime activity, and transportation." *Id*. at 39.

A final, long-standing indication of Congressional intent to use federally-subsidized housing as an employment support: since 1968, public housing authorities have been required to prioritize hiring residents to fill their openings within construction, development, and operations positions. *See* 12 U.S.C. § 1701u; Housing and Urban Development Act of 1968, Pub. L. No. 90-448, § 3, 82

Stat. 476 (1968); U.S. DEP'T OF HOUS. AND URBAN DEV., SECTION 3 BROCHURE.[3] ("Congress established the Section 3 policy to guarantee that . . . employment . . . created by Federal financial assistance for housing . . . should, if possible, be directed towards low- and very-low income persons, particularly those who are recipients of government assistance for housing."). Thus, not only is housing assistance designed to support working families, it seeks to create quality, geographically accessible jobs for those families as well.

In sum, a central goal of federal housing assistance is to supplement the resources of the working poor, aiming not just to provide basic shelter, but to access to "decent" housing in desirable neighborhoods.

B. Supplemental Nutrition Assistance Program (SNAP)

SNAP, previously known as the Food Stamp Program, began as an essential component of President Lyndon Johnson's War on Poverty, a wholesale effort to support work and self-sufficiency. President Lyndon B. Johnson, State of the Union Address (Jan. 8, 1964). The vision of a Great Society embodied in SNAP and related policies was of upwardly-mobile citizens, a vision that "through work and talent, [each American] could create a better life for himself and his family." President Lyndon B. Johnson, Remarks on Poverty and A Draft of a Bill to

[3] https://www.hud.gov/program_offices/fair_housing_equal_opp/section3/section3brochure (last visited Jan. 16, 2020)

Mobilize the Human and Financial Resources of the Nation to Combat Poverty in the United States, at 1 (March 16, 1964). SNAP formed part of Johnson's Economic Opportunity Act, which also expanded minimum wage coverage and increased unemployment benefits. *Id*. at 4-5.

Congress enacted SNAP to serve a wide spectrum of individuals and families who struggle to afford nutritious food, not only the narrower population on the "public assistance rolls." H.R. Rep. No. 88-1228, at 3 (1964). A House Committee estimated that, given prevailing economic conditions, "in some areas as many as 60 percent of the households participating are not receiving public assistance." *Id*. The final legislation also aimed not just to offer basic sustenance for low-income families and children, but to improve their diets. In its declaration of policy, for example, the 1964 Food Stamp Act announced a commitment "to safeguard the health and well-being of the Nation's population and raise levels of nutrition among low-income households." Food Stamp Act of 1964, Pub. L. No. 88-525, § 2, 78 Stat. 103 (1964). Thus, from its inception, SNAP was designed to support a broad swath of people – including those who work and do not receive cash assistance – with a focus on supplementing their incomes to enable them to live healthier lives.

Congress has since made changes to the program to further the objectives of supporting employment and promoting good nutrition. In analyzing the Food

Stamp Act of 1977, a House Committee issued a report that found that working families are among those who utilize Food Stamps and suggested a need to increase their benefit levels: "studies also show that most . . . households with income at the higher levels [of Food Stamps eligibility limits] are working families who have some of their gross incomes consumed by payroll taxes and work-related expenses." H.R. Rep. No. 95-464, at 8 (1977). The resulting legislation directly addressed that need, codifying an eligibility and benefits calculation formula that included a deduction for 20% of all earned income, as well as credits for dependent care and transportation costs incurred to facilitate employment. Food Stamp Act of 1977, Pub. L. No. 95-113, §§ 5(e), 5(g), 91 Stat. 963 (1977).

The 1977 Act also prioritized the improvement of the nutrition and health of low-income families. It stated:

> Congress hereby finds that there is increasing evidence of a relationship between diet and many of the leading causes of death in the United States: that improved nutrition is an integral component of preventative health care; that there is a serious need for research on the chronic effects of diet on degenerative diseases and related disorders[.]

Id. § 1421(a), 91 Stat. 999. Accordingly, the Act required the Department of Agriculture to research "the nutritional benefits provided to participants in the food programs" it administered, primarily SNAP, and to expand education "to enable low-income individuals and families to engage in nutritionally sound food purchasing and preparation practices." *Id*. §§ 1422(3), 1425(b). Building on this

initiative, the Food Agriculture Conservation and Trade Act of 1990 created competitive grants to "inform people eligible for food stamps about nutrition, resource management, and community nutrition education programs." Food Agriculture Conservation and Trade Act of 1990, Pub. L. No. 101-624, § 1761, 104 Stat. 3804 (1990).

Changes to welfare programs in the 1990s further strengthened SNAP's coverage of working families. Pursuant to the Personal Responsibility Work Opportunity Act (PRWOA), households with incomes up to 200% of the federal poverty level (FPL) could qualify for broad-based categorical eligibility, depending on their state's rules. CONG. RESEARCH SERV., THE SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP): CATEGORICAL ELIGIBILITY 3 (2019). This expansion, by design, extended the reach of the program to a greater portion of the American workforce.

In 2007, a Senate Committee found that the decades-long effort to craft SNAP as a supplemental resource for working families had borne fruit: SNAP beneficiaries were now "far more" likely to be employed than to rely on cash assistance. S. Rep. No. 11-220, at 8 (2007). The Committee found that public benefits offices had to extend their hours to "accommodate working families." *Id.* at 10. Further, the Committee concluded that "[f]ederal food assistance programs also have an important function in promoting healthy diets and sound nutrition,

especially among children." *Id*. at 13. Against the backdrop of these findings, Congress amended SNAP in 2008 to better assist working people to purchase nutritious food for their families – eliminating a previously enacted cap on dependent care allowances, excluding retirement and education savings from countable assets, excluding combat pay from countable income for military families, and expanding options for transitional benefits for families moving from from cash assistance to earned income. Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, §§ 4101, 4103, 4104, 4106, 122 Stat. 1860-62 (2008).

Most recently, Congress temporarily expanded SNAP to support those who had lost their jobs during the 2008 recession. In 2009, the American Recovery and Reinvestment Act suspended, for a one-year period, the three-month cap on receipt of SNAP benefits by non-disabled "jobless workers," recognizing that many such individuals would return to work but in the meantime needed support to bridge gaps in employment resulting from the national economic downturn. American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, § 101(e), 123 Stat. 121 (2009).

In sum, Congress has shaped SNAP as a valuable benefit not just for the poorest of the poor but to augment the resources of working people and advance the broader public policy of ensuring access to a healthy diet for all.

C. Medicaid

Medicaid, like SNAP, was essential to the Great Society mission not only to cure but "prevent" poverty. Johnson, State of the Union Address, *supra*. Although the Social Security Amendments of 1965 targeted the benefit towards children in households receiving cash benefits, states always had (and many used) the option to extend it to all individuals with disabilities and poor children up to age 21 – including those in households with an employed caregiver. *See* Julia Paradise et al., *Medicaid at 50*, KAISER COMM'N ON MEDICAID AND THE UNINSURED 3-4 (May 2015).[4]

As conceived, Medicaid sought to improve public health, with a focus on providing cost-effective pre-natal and pediatric care to detect and treat medical problems in infants and children so that they could grow into healthy, productive adults. For example, in 1967, Congress required state Medicaid programs to provide "early and periodic screening and diagnosis of individuals who are . . . under the age of 21 to ascertain their physical and mental defects, and such health care . . . to correct or ameliorate defects and chronic conditions discovered thereby." Social Security Amendments of 1967, Pub. L. No. 90-248, § 302, 81 Stat. 929 (1968). Lawmakers envisioned proactive, aggressive action to identify

[4] https://www.kff.org/medicaid/report/medicaid-at-50/

and treat children with conditions of concern: "organized and intensified case-finding procedures will be carried out in well-baby clinics, day care centers, nursery schools, [and] Headstart centers, . . . [through] periodic screening of children in schools, through follow-up visits by nurses to the homes of newborn infants, [and] by checking birth certificates[.]" H.R. Rep. No. 90-544, at 127 (1967).

Congress expanded Medicaid in the 1980s and 1990s to provide broader coverage to those with incomes from employment and to loosen ties between the program and cash assistance. In 1988, The Family Support Act required states to extend 12 months of transitional Medicaid benefits to families who left cash assistance programs for employment. Family Support Act of 1988, Pub. L. No. 100-485, § 1925, 102 Stat. 2385-86 (1988). A Senate Committee explained that "fear of the loss of medical care for their children is a clear disincentive for many mothers to seek and accept employment," a problem that the establishment of transitional benefits was designed to address. S. Rep. No. 100-377, at 10-11 (1988). Moreover, the creation of transitional benefits mitigated the risk that, when leaving cash assistance for work, large numbers of low-income women – along with their children – would join the "ranks of the uninsured" unable to access "needed physician and hospital care," a public health catastrophe that Congress

had previously recognized the Nation "cannot afford." H. R. Rep. No. 100-391, at 510 (1987).

In 1989, Congress went a step further, mandating coverage for pregnant women and children under age 6 with incomes up to 133% of the FPL, a threshold which includes those with gainful employment. Omnibus Budget Reconciliation Act of 1989, Pub. L. No. 101-239, § 6401, 103 Stat. 2258 (1989). The following year, Congress also required states to establish Medicaid outreach and enrollment sites at places other than welfare offices – such as in hospitals and health clinics – to better target low-income working women and families who were not receiving cash assistance but were eligible for coverage pursuant to prior amendments designed to support workers. Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101-508, § 4602, 104 Stat. 1388-167 (1990).

The welfare overhaul of the 1990s continued the trend toward extending public health insurance for families with income from work. With the passage of the PRWOA, Congress mandated that states maintain Medicaid coverage for families that moved from cash assistance to employment. "Families leaving welfare for work would . . . continue to receive the 1-year Medicaid transition benefit," Committee reports emphasized. H.R. Rep. No. 104-81, pt. 1, at 27 (1995); *see also* PRWOA, Pub. L. No. 104–193, § 1931(c)(2) (1996) (preserving transitional Medicaid benefits). PRWOA also excluded Earned Income Tax Credit

payments – which are available only to working adults with children – from income counted towards the determination of a household's Medicaid eligibility. H.R. Rep. No. 104-725, at 291 (1996) ("States have the authority to set their own definition of income except that income from the Earned Income Tax Credit must be disregarded"); *see also* Internal Revenue Serv., *Qualifying for the Earned Income Tax Credit* (Jan. 2018)("Refunds received from the EITC . . . are not used to determine eligibility for any . . . public benefit program such as Medicaid").[5] This earnings disregard is yet another example of Congress's intent to enable working families to access affordable health insurance.

Congress also intended Medicaid to be an important supplemental support for working individuals with disabilities. Among the core findings underpinning the 1999 Ticket to Work and Work Incentives Improvement Act was that

> Americans with significant disabilities often are unable to obtain health care insurance that provides coverage of the services and supports that enable them to live independently and enter or rejoin the workforce. Personal assistance services (such as attendant services, personal assistance with transportation to and from work, reader services, job coaches, and related assistance) remove many of the barriers between significant disability and work. Coverage for such services, as well as for prescription drugs, durable medical equipment, and basic health care are powerful and proven tools for individuals with significant disabilities to obtain and retain employment.

[5] https://www.irs.gov/newsroom/qualifying-for-the-earned-income-tax-credit

Pub. L. No. 106-170 § 2, 113 Stat. 1862 (1999). In other words, Congress found that, instead of encouraging long-term dependency, Medicaid could assist individuals with disabilities achieve self-sufficiency and contribute to the economy. Based on these findings, the Act expanded Medicaid significantly to permit such individuals with incomes above 250% of the FPL to obtain coverage. *Id.* § 201.

The most recent healthcare reform, the 2009 Patient Protection and Affordable Care Act (ACA), Pub. L. No. 111-148 (2009), extended access to Medicaid for higher income individuals and families who struggle to afford their medical bills. Quoting President Obama in its analysis of the legislation, a House Committee explained that the burden of rising medical costs fell not just on the destitute, but on the middle class:

> Everyone understands the extraordinary hardships that are placed on the uninsured, who live every day just one accident or illness away from bankruptcy. These are not primarily people on welfare. These are middle-class Americans.

H.R. Rep. No. 111-299, pt. 2, at 197 (2009). The ACA's solution was the "Medicaid expansion," which allowed states to cover virtually all their residents (not just pregnant women and children) with incomes up to 133% of the FPL. ACA § 2001. The ACA also reaffirmed Medicaid's investment in preventive care, increasing federal reimbursement levels to states for adult primary care services. *Id*. § 4106.

All told, the history of Medicaid is that while "at first" the program "gave medical insurance to people getting cash assistance . . . [t]oday, a much larger group is covered." Ctrs. for Medicare and Medicaid Srvs., *CMS Program History*.[6] And, throughout this history, prevention has been a central focus – early screening, diagnosis and treatment for children, and primary care for adults both with and without disabilities, so that beneficiaries can live healthy and economically productive lives.

II. In Practice, People Access the Programs Targeted by the Administration's Revised Public Charge Rule to Improve Their Quality of Life and Weather Financial Challenges.

A. Non-Cash Assistance Programs Supplement the Resources of Working Families and Improve Their Quality of Life

The three largest programs included in the new public charge rule – federally-assisted housing, SNAP, and Medicaid – are used in practice by independent, working people to access better food, better housing, and cost-effective health insurance. For example, as CMS recently touted in a web posting titled "Medicaid Provides Health Coverage to Millions of Working Men and Women":

> Most Medicaid beneficiaries are employed or are in households where someone is working. In 2013, 79% of children who were Medicaid beneficiaries lived with at least one worker; 65% lived with at least one full-time worker. That year, 65% of

[6] https://www.cms.gov/About-CMS/Agency-information/History/ (last visited Jan. 16, 2020)

> adults with Medicaid were in a family with a worker; half were in a family with at least one full-time worker. Adults who qualify for Medicaid may be working but earning low wages and may not be able to afford private coverage. With Medicaid, such workers have health coverage and are likely to have a usual source of care, which helps them stay healthy and remain productive on the job.

Ctrs. For Medicare and Medicaid Srvs., *Medicaid Provides Health Coverage to Millions of Working Men and Women* (2015).[7] This data is consistent with research showing that 63% of non-disabled adults with Medicaid under age 65 are employed, with 44% working full-time. Rachel Garfield et al., *Understanding the Intersection of Medicaid and Work: What Does the Data Say?* KAISER FAMILY FOUND. 2 (Aug. 2019).[8] In short, Medicaid coverage "is critical to millions of beneficiaries who are employed, but do not have health coverage through their jobs and do not earn enough to purchase coverage on their own." Ctrs. for Medicare and Medicaid Srvs, *Medicaid: Health Coverage for the Nation's Most Vulnerable People* (2015).[9]

Furthermore, research suggests that Medicaid facilitates independence, making it easier for adults with and without disabilities to obtain and retain

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[7] https://www.medicaid.gov/about-us/program-history/medicaid-50th-anniversary/?entry=47684

[8] https://www.kff.org/medicaid/issue-brief/understanding-the-intersection-of-medicaid-and-work-what-does-the-data-say/

[9] https://www.medicaid.gov/about-us/program-history/medicaid-50th-anniversary/?entry=47686

employment. Several state studies "have documented or predicted significant job growth resulting from [ACA's Medicaid] expansion," while Medicaid beneficiaries in Ohio "reported that Medicaid enrollment made it easier to seek employment" and for those already employed, "made it easier to continue working." Robin Rudowitz et al., *Implications of the ACA Medicaid Expansion: A Look at the Data and Evidence*, KAISER FAMILY FOUND. 6-7 (May 2018).[10] Moreover, "the employment rate for non-elderly people with disabilities was nearly 20 percent higher in expansion states compared with non-expansion states." Rebecca Vallas et al., *At Least 1.4 Million Nonelderly Adults with Disabilities Would Lose Medicaid Under Graham-Cassidy*, CTR. FOR AM. PROGRESS (Sept. 25, 2017).[11]

Medicaid also ensures that children receive the care they need for healthy development so they can successfully enter the workforce once they are of age. A "growing body of research indicates that Medicaid eligibility during childhood is associated with reduced teen mortality, improved long-run educational attainment, reduced disability, and lower rates of hospitalization and emergency department visits in later life." Robin Rudowitz et al., *10 things to Know About*

[10] https://www.kff.org/medicaid/issue-brief/implications-of-the-aca-medicaid-expansion-a-look-at-the-data-and-evidence/
[11] https://www.americanprogress.org/issues/poverty/news/2017/09/25/439524/least-1-4-million-nonelderly-adults-disabilities-lose-medicaid-graham-cassidy/

Medicaid: Setting the Facts Straight, KAISER FAMILY FOUND. 7 (Mar. 2019)/.[12] These findings suggest that state Medicaid programs are advancing Congress's broad public policy goals by "help[ing] individuals and families rise out of poverty and attain independence." Ctrs. for Medicare and Medicaid Srvs. Letter to State Medicaid Directors, *Opportunities to Promote Work and Community Engagement Among Medicaid Beneficiaries* 1 (Jan. 11, 2018).[13]

Likewise, federally-assisted housing programs help working families to live in or move to quality housing when they cannot afford full market rates. Roughly half of all renters assisted by the Department of Housing and Urban Development (HUD) have incomes from employment. *See* FREDERICK EGGERS, ECONOMETRICA, CHARACTERISTICS OF HUD-ASSISTED RENTERS AND THEIR UNITS IN 2013 21 (Jul. 2017) (Table 5-3).[14] That figure jumps to nearly 70 percent when focusing on households with non-disabled working-age adults using Housing Choice Vouchers. *United States Housing Choice Voucher Fact Sheet*, CENTER ON BUDGET AND POL'Y PRIORITIES (Aug. 9, 2017).[15] However, while these families' minimum-wage earnings may allow them to obtain sub-par housing in a high-poverty

[12] https://www.kff.org/medicaid/issue-brief/10-things-to-know-about-medicaid-setting-the-facts-straight
[13] https://www.medicaid.gov/federal-policy-guidance/downloads/smd18002.pdf
[14] https://www.huduser.gov/portal/sites/default/files/pdf/Characteristics-HUD-Assisted.pdf
[15] https://www.cbpp.org/sites/default/files/atoms/files/3-10-14hous-factsheets_us.pdf

neighborhood, they are inadequate to cover rent for an average-cost, average-quality unit. In most of the United States, "a family of four with poverty-level income . . . earns no more than $25,750 annually, sufficient to afford a monthly rent of no more than $644. . . . Meanwhile, the average monthly fair market rent for a two-bedroom or one-bedroom rental home is $1,194 or $970 respectively." Andrew Aurand et al., *Out of Reach*, NAT'L LOW INCOME HOUSING COAL. 1 (2019).[16]

Federal assistance helps fill this gap, enabling working families to access middle-class neighborhoods, enhance their health, access jobs, maintain residential stability, and support the educational success of their children. For example, nearly 400,000 families use Housing Choice Vouchers to live in neighborhoods where the poverty rate is below 20 percent. *Housing Choice Voucher Fact Sheet*. Adults using vouchers to move to low-poverty areas report significant improvements in their physical and mental health, with lower rates of extreme obesity and major depression. Barbara Sard & Nicholas Rice, *Realizing the Housing Voucher Program's Potential to Enable Families to Move to Better Neighborhoods*, CTR ON BUDGET AND POL'Y PRIORITIES 2 (Jan. 12, 2016).[17] They also have better access to jobs. According to one HUD study in Cleveland, voucher users "are employed

[16] https://reports.nlihc.org/sites/default/files/oor/OOR_2019.pdf
[17] https://www.cbpp.org/sites/default/files/atoms/files/11-9-15hous.pdf

closer to their homes, spend less time commuting to work, have superior public transit connections to their jobs, and generally have greater access to job openings" than those who do not receive housing assistance. Neil Bania et al., *Public Housing Assistance, Public Transportation, and the Welfare to Work Transition* 6 CITYSCAPE: A JOURNAL OF POLICY DEV. AND RESEARCH 7, 7-44 (2003).[18] Moreover, voucher-supported housing is more stable, reducing the number of times residents move by nearly 40 percent. Will Fischer, *Research Shows Housing Vouchers Reduce Hardship and Provide Platform for Long-Term Gains Among Children*, CTR ON BUDGET POL'Y AND PRIORITIES 1 (OCT. 2, 2015).[19] This has a direct, positive impact on children's education outcomes, given that frequent moves are associated with lower achievement and graduation rates. *Id.* Equally important, federal housing assistance allows families to invest in their children and improve educational outcomes. "[F]amilies who spend a lower share of their income on rent or other housing-related expenses can afford to invest more in their children, such as by purchasing books or other educational materials." Corianne Payton Scally et al., *The Case for More, Not Less*, URBAN INSTITUTE 3 (Jan. 2018).[20]

[18] https://www.huduser.gov/periodicals/cityscpe/vol6num2/1public_hous.pdf
[19] https://www.cbpp.org/sites/default/files/atoms/files/3-10-14hous.pdf
[20] https://www.urban.org/sites/default/files/publication/95616/case_for_more_not_less.pdf

SNAP is also a tool working families use to improve their well-being, in this case through better access to nutritious food. As with Medicaid and federal housing assistance beneficiaries, most SNAP recipients are employed, and over 80 percent are in households with other working members. Brynne Keith-Jennings & Raheem Chaudhry, *Issue Brief: Most Working Age SNAP Participants Work, but Often in Unstable Jobs*, CTR. ON BUDGET POL'Y AND PRIORITIES 1 (Mar. 23, 2018).[21] Further, SNAP participation *increases* women's economic self-sufficiency over the course of a lifetime. Ettinger de Cuba et al., *Loss of SNAP Is Associated With Food Insecurity And Poor Health In Working Families With Young Children*, 38 HEALTH AFFAIRS 765, 765-773 (May 2019).[22] SNAP participation also produces short- and long-term health benefits associated with alleviation of food insecurity and improvements in nutrition. *See The Positive Effect of SNAP Benefits on Participants and Communities*, FOOD RESEARCH & ACTION CENTER.[23] Children enrolled in SNAP are "significantly more likely to be classified as 'well'" than those who are eligible but not enrolled. Children's HealthWatch, *Boost to SNAP*

[21] https://www.cbpp.org/sites/default/files/atoms/files/3-23-18fa-policybrief.pdf
[22] https://www.healthaffairs.org/doi/pdf/10.1377/hlthaff.2018.05265
[23] https://frac.org/programs/supplemental-nutrition-assistance-program-snap/positive-effect-snap-benefits-participants-communities (last visited Jan. 17, 2020). *See also, SNAP is Linked with Improved Nutritional Outcomes and Lower Healthcare Costs*, CTR. ON BUDGET POL'Y AND PRIORITIES (Jan. 17, 2018), https://www.cbpp.org/sites/default/files/atoms/files/1-17-18fa.pdf.

Protected Young Children's Health (Oct. 2011).[24] This positive health impact lasts a lifetime: "SNAP participation in early childhood is associated with decreased risk of later metabolic syndrome" in adults." Ettinger de Cuba, *Loss of SNAP*, at 765.

B. People Access Non-Cash Assistance Programs as a Safety Net to Weather Financial Challenges

Many working individuals and families with incomes above the FPL live paycheck-to-paycheck, and are ill equipped to withstand unexpected financial challenges, whether it be a loss of a job, a reduction in work hours, or a medical emergency. The problem is endemic. A 2015 study by the Federal Reserve Board of the overall economic well-being of U.S. households found that "[w]hile slight[ly] more Americans have a safety net to withstand a small financial disruption than was the case in recent years, *nearly half* lack the resources to easily handle such an event." *Report on the Economic Well-Being of U.S. Households in 2015*, FED. RESERVE BD. OF GOVERNORS 21 (May 2016) (emphasis added).[25] And financial disruption can take many forms: "[a]mong those who experienced a hardship, 35 percent report that either they or their spouse or partner lost a job… [t]wenty-six percent say… either they or their spouse or partner had their work hours cut, 36 percent had a health emergency, and 4 percent received a foreclosure

[24] https://childrenshealthwatch.org/wp-content/uploads/SNAPincrease_brief_October2011.pdf
[25] https://www.federalreserve.gov/2015-report-economic-well-being-us-households-201605.pdf

or eviction notice." *Id.* The Federal Reserve Board economic survey also found that "consistent with the earlier findings that many adults are ill-prepared for modest financial shocks, 46 percent of those who report a major out-of-pocket medical expense in the prior year also indicate that they currently have debt or unpaid balances related to those medical expenses." *Id.* at 24.

When disaster strikes, federal benefits like SNAP, housing assistance, and Medicaid provide a safety net that enables families to weather the storm. For example: "SNAP [responds] quickly and effectively when need increases, such as during an economic downturn or after a natural disaster. SNAP enrollment rises when more people become eligible, such as during a weaker economy, and falls when the economy improves." Brynne Keith-Jennings et al., *Links of the Supplemental Nutrition Assistance Program with Food Insecurity, Poverty, and Health: Evidence and Potential*, 109 AM. J. OF PUB. HEALTH, 1636-40 (Dec. 2019).

Countless stories of everyday Americans demonstrate exactly how temporary reliance on public benefits can help working people get back on their feet after an emergency. Jennifer, for instance, had just returned to college at age 30 to complete her undergraduate degree, secure in the knowledge that her family could continue to access healthcare through her husband Lance's employer-based coverage. Tragedy hit: Lance, also in his 30s and seemingly healthy, died suddenly of an undiagnosed blood clot, leaving Jennifer and her two young daughters

grieving and uninsured. Jennifer used Medicaid to "fill [] the gap" until she was able to find a job that offered health insurance. Collected Stories on "Medicaid Makes it Possible," CATHOLIC HEALTH ASSN. OF THE UNITED STATES.[26] Kevin and Melanie Richards's story is similarly illustrative. Both were working full-time until Kevin was diagnosed with a degenerative disorder, and Melanie became pregnant. With Kevin unable to work, and Melanie needing to limit her hours, SNAP put food on the table until Melanie was able to return to work. Sarah Bowen, *How Real Families Use Food Stamps*, POLITICO (Apr. 24, 2019).[27]

Jennifer's, Kevin's, and Melanie's experiences are emblematic of how people access these programs to manage unanticipated, but ultimately temporary, financial crises. Federal studies demonstrate that individuals' use of these programs for a period does not indicate that they will use them for their entire lives. "Most poor people who avail themselves of a U.S. government safety net program are off benefits within three years, according to a government survey that tracked individual people over time." Arthur Delaney, *How Long Do People Stay on Public Benefits?*, HUFFINGTON POST, May 29, 2015.[28] In its 2015 report, the U.S. Census Bureau found that the majority of beneficiaries who accessed SNAP,

[26] https://www.chausa.org/medicaid/stories (last visited Jan. 17, 2020)
[27] https://www.politico.com/agenda/story/2019/04/25/food-assistance-programs-snap-funding-000894
[28] https://www.huffpost.com/entry/public-benefits-safety-net_n_7470060

Medicaid, and housing assistance between January 2009 and December of 2012 participated for 36 cumulative months or fewer over a four-year period. *See* Shelley K. Irving & Tracy A. Loveless, *Dynamics of Economic Well-Being: Participation in Government Programs, 2009-2019: Who Gets Assistance?*, U.S. CENSUS BUREAU 4 (May 2015) (Figure 3).[29] Specifically, 68% of Medicaid recipients, 62% of SNAP recipients, and just over 50% of housing assistance recipients participated in these benefits programs for 36 months or fewer. *Id.* The participation period was 12 months or fewer for 36% of Medicaid recipients, 30% of SNAP participants, and 25% of housing assistance recipients. *Id.*

This data is consistent with research suggesting that job loss or pay cuts trigger nearly half of all spells of poverty. *See* Signe-Mary McKernan, et al., *Transitioning In and Out of Poverty*, THE URBAN INSTITUTE (Sept. 2009) (citing research).[30] Further, it is consistent with the fact that most people move out of poverty relatively quickly, with nearly half of all poor people leaving within a year, and more than 75 percent impoverished for fewer than four years. *Id.*

[29] https://www.census.gov/content/dam/Census/library/publications/2015/demo/p70-141.pdf
[30] https://www.urban.org/sites/default/files/publication/30636/411956-transitioning-in-and-out-of-poverty.pdf

CONCLUSION

The Administration's revised public charge rule is grounded in a myth that federal safety-net programs are used only to sustain those who would not survive without indefinite government assistance. Public housing and housing vouchers, SNAP, and Medicaid undoubtedly play a crucial role in meeting the basic needs of those who cannot and will not be able to provide for themselves. But that is not all they do. Congress also intended these programs to provide supplemental support to working people, so they can live in better housing, buy more nutritious food, access regular healthcare, and weather short-term crises, such as a job loss or medical emergency. And that is exactly how they work in practice: most people enrolled in housing assistance, SNAP, and Medicaid work, and use these benefits to supplement their earned income so that they can access better resources and opportunities for themselves and their children. Access to these benefits, in fact, often makes it easier for enrollees to obtain and retain employment – for instance, by allowing them to move closer to job opportunities, and maintain quality health coverage that employers may not offer. In this manner, contrary to the Administration's position, the public benefits targeted by the new public charge rule can and do operate as tools for – rather than deterrents to – self-sufficiency.

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) because this brief contains 6,489 words, excluding parts of the brief exempted by Fed. R. App. P. 32(f).
2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Times New Roman in 14-point type.

Dated: January 31, 2020

/s/ Debra Gardner
Debra Gardner

CERTIFICATE OF SERVICE

I certify that on January 31, 2020, the foregoing document was served on all parties or their counsel of record through the CM/ECF system.

/s/ Debra Gardner
Debra Gardner