

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
Baltimore Division**

MAYOR AND CITY COUNCIL OF BALTIMORE,

Plaintiffs,

v.

**DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY AS
PRESIDENT OF THE UNITED STATES OF AMERICA;
MICHAEL R. POMPEO, IN HIS OFFICIAL CAPACITY
AS U.S. SECRETARY OF STATE; U.S. DEPARTMENT
OF STATE,**

Defendants.

Case 1:18-cv-03636-ELH

**BRIEF OF THE STATE OF CALIFORNIA, THE DISTRICT OF COLUMBIA, AND
THE STATES OF COLORADO, CONNECTICUT, DELAWARE, ILLINOIS,
IOWA, MARYLAND, MASSACHUSETTS, MICHIGAN, MINNESOTA, NEVADA,
NEW JERSEY, NEW MEXICO, NEW YORK, OREGON, VERMONT, VIRGINIA,
AND WASHINGTON AS *AMICI CURIAE* IN SUPPORT OF PLAINTIFFS'
OPPOSITION TO DEFENDANTS' MOTION TO DISMISS**

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INTEREST OF AMICI CURIAE

The State of California, the District of Columbia and the States of Colorado, Connecticut, Delaware, Illinois, Iowa, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, Oregon, Vermont, Virginia and Washington (Amici States)¹ are home to over 26 million immigrants from around the world. Many are long-term residents, with U.S. citizen relatives. Immigrants are vital members of our communities, our workforce, and our families. Amici States have a compelling interest in protecting the health, well-being, and economic security of their residents. To further these interests, Amici have established robust public policies and programs to improve the general public health and prosperity of their residents, promote education, and assist low-wage, hard-working families reach self-sufficiency, irrespective of immigration status. This brief addresses several issues to which Amici are uniquely equipped to provide assistance to the Court.

The State Department's abrupt changes to longstanding standards for evaluating public charge in the Foreign Affairs Manual (FAM) guidance (FAM guidance) radically redefined the criteria for admissibility to the United States and adjustment to lawful permanent resident status. These changes threaten Amici's policies, interests, and residents by weaponizing the use of public assistance programs to reduce legal, family-based immigration. The new guidance impedes our administration of public benefits programs and places severe obstacles in front of families who seek to reunify, thus, harming our residents' ability to be self-sufficient.

The FAM now permits consular officials, when adjudicating admission, to consider receipt of a wide range of commonly used public benefits by the applicant's entire household and the weight traditionally given to a financial sponsor's affidavit of support is reduced. This new

¹ The District of Columbia is included as an "Amici State" for the purposes of this brief.

guidance has led to confusion for our residents and caused many individuals and families to forgo use of and enrollment in public benefit programs. This has harmed and will continue to harm our residents' health, reduce our programs' effectiveness, and impose substantial direct and indirect costs on the States. The Amici States have a strong interest in ensuring that federal agencies refrain from undermining Amici States' public health policies, harming our residents, violating the law, and causing chaos in an already complex legal immigration system.

THE EXPANSION OF THE PUBLIC CHARGE CRITERIA IS INFLICTING—AND WILL CONTINUE TO INFLICT—HARM ON AMICI STATES AND THE COMMUNITIES THEY REPRESENT

Defendants contend that Plaintiffs lack standing because the changes to the FAM guidance neither directly regulate nor affect the Plaintiffs, and thus do not interfere with Plaintiffs' ability to deliver benefits to residents under federal, state, or local public service programs. To the contrary, Amici's experience elucidates how these changes have caused significant harm by conflicting with state and local policies and programs and interfering with the administration of public benefit services. Defendants also argue that Plaintiffs fail to demonstrate any personal injury that is traceable to the challenged FAM guidance and redressable by this Court. Yet the Court need only look at the numerous studies and documented instances of immigrants chilled from using public benefit programs because of public charge considerations, risking their children's well-being or their own. These drastic changes to the FAM guidance cause instability and inject further complexity in an already complicated legal immigration system. Many of our immigrant residents will be forced to remain in limbo for years, impeding family reunification and undercutting their ability to provide for their families and contribute fully to their communities and our States, both socially and economically.

I. Changes to the FAM Interfere with Plaintiffs' and Amici States' Laws and Policy Choices to Promote Broad-Based Access to Public Benefit Programs

Amici States, in partnership with local governments, are responsible for the design, management, and coordination of public benefit programs, and have made considerable investments of public funds to carry out these responsibilities. These investments have been made in reliance on longstanding immigration guidance on public charge. As the front-line providers of these public services, Amici are directly harmed by drastic changes in the public charge determination that affect our ability to keep our communities healthy and support workers to continue and grow their contributions to our economy.

A. Changes to the FAM Guidance Undermine Amici States' Programs

Amici States routinely employ their traditional police and regulatory powers to protect and promote the public health. To this end, Amici have created robust systems of health and social services programs to provide a variety of benefits to all eligible residents, including qualified low-income individuals, families, seniors, children, and persons with disabilities. Investment in non-cash benefits such as nutrition, healthcare, and housing have a net positive impact on society. Increasing access to these benefits saves emergency and other healthcare costs incurred when treating people with inadequate access to nutrition and preventative care and creates optimal conditions for the growth and development of children. Our public benefit programs also improve our economies by creating jobs, increasing tax revenue, and ensuring a healthier, more stable workforce. Amici, like Plaintiffs, have chosen to implement laws and policies that welcome immigrants to our communities, and encourage all residents to utilize the benefits for which they are eligible. To that end, Amici States have established broad-based access mechanisms that allow for the effective dissemination of services.

Importantly, while participation in certain benefit programs require residents to meet eligibility thresholds such as income, participation in non-cash programs is not necessarily evidence of poverty, dependence, or unemployment status. Nor is it a proxy for whether an applicant is likely to become a public charge. Today, public benefits and services support the budgets of working families, U.S.-born and immigrants alike. They comprise the safety-net that helps families meet their basic medical needs; care for children, elders, and people with disabilities; and allow working families to live fully in society. As Plaintiffs point out, and as the Immigration and Nationality Service previously identified, that “federal, state, and local benefits are increasingly being made available to families with incomes far above the poverty level, reflect[s] broad public policy decisions about improving general public health and nutrition, promoting education, and assisting working-poor families in the process of becoming self-sufficient.” Comp. ¶ 64; Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, 64 Fed. Reg. 28,689, (May 26, 1999).

In fact, large percentages of working people use public benefit programs. Overall, almost 60% of households with workers in the lowest income decile, and over half of those in the next highest decile, receive some public benefit.² Such benefits are essential for these workers to remain employed, employable, and productive. For example, access to affordable health insurance helps workers to enter and remain in the workforce.³ Once employed, workers with

² David Cooper, *Balancing Paychecks and Public Assistance: How higher wages would strengthen what government can do* (Feb. 3, 2016) <https://tinyurl.com/wages-and-public-assistance>.

³ Larisa Antonisse and Rachel Garfield, *The Relationship Between Work and Health: Findings from a Literature Review*, Kaiser Fam. Found. (Aug. 7, 2018), <https://tinyurl.com/KKF-Relationship-work-health>.

health insurance miss almost 77% fewer work days than uninsured workers.⁴ And insured employees are more productive when they are at work.⁵

Eliminating barriers to access is a critical factor in the effectiveness of public benefit programs that have enabled Amici to reap the public health benefits intended. Amici States have leveraged state-only funds to provide services for all residents, regardless of immigration status, embracing the growing immigrant population and the large number of mixed immigration-status families in their States. As such, Amici States have commissioned systems designed to meet the needs of their residents, in many instances eliminating barriers for those who are undocumented.

Public benefit programs often involve numerous funding streams, and are administered by multiple federal, state, and local agencies that use complex outreach, intake, and eligibility processes. To ease the complexity of these programs, many states choose “no-wrong door,” single-entry systems to help provide diverse communities with access to, and increase the use of, critical benefits that support all of society when appropriately utilized. To implement that choice, Amici States have invested in a number of state-funded programs that support working families, including mixed immigration-status families.

- In California, the school meals program has built-in automatic enrollment processes that link to participation in SNAP and Medicaid. Moreover, because the school meals program allows all students in a particular school to receive a free school lunch without an individualized showing of eligibility as long as at least 40% of students in that school are directly certified to obtain free schools meals through SNAP or Medicaid.

⁴ Allan Dizioli and Roberto Pinheiro, *Health Insurance as a Productive Factor*, 40 *Labour Econ.* 1-24, (June 2016), <https://www.sciencedirect.com/science/article/abs/pii/S0927537116300021>.

⁵ Sang V. Nguyen and Alice Zawacki, *Health Insurance and Productivity: Evidence from the Manufacturing Sector*, Ctr. for Econ. Studies, U.S. Census Bureau, Working Papers (Jan. 2009), <https://tinyurl.com/Health-Insur-Productivity>.

- In Colorado, the state utilizes means-tested forms, such as the Free and Reduced-Price School Meals, to help determine a family's eligibility in certain programs. The Child and Adult Care Food Program (CACFP) also uses these applications to determine the amount of financial support received by center-based child care providers, and in many cases, the eligibility of the center to participate in CACFP.
- In Virginia, the Child Care Subsidy Program helps families pay the cost of childcare so that parents can work or attend school, allowing families to reach self-sufficiency.⁶
- In New Mexico, the Child Care Assistance Program subsidizes the cost of daycare for 19,660 children of working parents in an effort to address the fact that 36% of the state's children live in families without secure parental employment (a rate shared with West Virginia and tied for highest in the country).⁷ The FAM guidance changes chill parents' use of the program, placing their employment security at risk.
- In New Jersey, the state Department of Human Services' Child Care Subsidy Program provides low-income parents access to childcare to enable them to pursue work, education, or training.
- In New York, the Office of Temporary and Disability Assistance offers state-funded services to victims of human trafficking and non-citizen youth. These assistance programs are aimed at helping vulnerable New Yorkers meet their essential needs and advance economically by providing opportunities for stable employment, housing, and nutrition.

⁶ *Paying for Child Care*, Va. Dept. of Social Servs. (Sept. 30, 2018), <http://www.dss.virginia.gov/cc/parents/index.html?pageID=4>.

⁷ Annie E. Casey Found., *2018 Kids Count Data Book* 27 (2018), <http://tinyurl.com/y9zbrjz5>.

- In Illinois, the Department of Human Services administers the Child Care Assistance Program (CCAP), which provides low-income families with access to affordable, high-quality child care in center-based or home settings.
- In Washington, general state funds assist individuals and families who are otherwise ineligible for federal programs. Washington's programs include State Family Assistance; Food Assistance Program for Legal Immigrants; Aged, Blind, or Disabled cash assistance; Pregnant Women Assistance; Consolidated Emergency Assistance Program; Refugee Cash Assistance; Housing and Essential Needs Referral; Diversion Cash Assistance; and State Supplemental Payment.

The new FAM guidance threatens the admissibility of immigrants and their family members if they or members of their households receive any non-cash benefit, including the programs listed above, which are either wholly or partially state-funded. With such severe potential consequences, it is no surprise that immigrants have been chilled from accessing any public benefit. After the leak of a draft of a proposed public charge rule by the Department of Homeland Security (DHS), a federal nutrition program aimed at helping pregnant women and children saw a significant drop in immigrant enrollment.⁸ In July 2018, 40% of polled Californian healthcare service providers reported immigrant families canceling appointments or scheduling fewer visits.⁹ In Colorado, 75% of polled Colorado healthcare service providers

⁸ Helena B. Evich, *Immigrants, Fearing Trump Crackdown, Drop Out of Nutrition Programs*, Politico (Sept. 3, 2018), <http://tinyurl.com/y8z8ruxg>. Moreover, the drop in immigrant enrollment following prior revisions to the public charge rule in the late 1990s also suggests a likely drop in Medicaid enrollment should the Proposed Rule take effect. See Dara Lind, *Trump is Proposing a Regulation that Could Change the Face of Legal Immigration—by Restricting Low-Income Immigrants*, Vox (Sept. 24, 2018), <http://tinyurl.com/y9rnafjk>.

⁹ Drew Gibson, *For Immigrants Living With HIV, an Impossible Choice Between Viral Suppression and Deportation*, The Body (July 3, 2018), <http://tinyurl.com/y4x4dfdx>.

reported increases in appointment no-shows and cancellations by immigrant clients.¹⁰ Roughly two-thirds of healthcare providers polled in a national survey by the Migrant Clinicians Network reported that their clients' attitudes and feelings around healthcare had changed primarily due to the shift in immigration policies and fear resulting from those policies.¹¹

Participation in healthcare programs is of particular interest to Amici States. People who lack health insurance often either forgo needed medical care, incur unaffordable medical costs, or shift costs to the States and private hospitals by relying on emergency care and on state-funded public health clinics and school-based health services. Delayed healthcare can lead to worsening medical conditions and complications that ultimately require more expensive care.

If Defendants' actions are permitted to stand, Amici States and Plaintiffs will be forced to make extensive changes to their social safety-net administration, depriving Amici of the benefits of their significant investments in their current infrastructure. Many state agency programs and administrators will be required to disentangle longstanding wraparound services, translate informational material to provide necessary disclosures, and review applications and enrollment processes. At the same time, administrators will need to conduct aggressive and costly consumer educational outreach in hopes of preventing eligible recipients from disenrolling.

B. Decreasing Use of Public Benefits Harms Our Economy

State and local governments benefit from significant tax revenues from immigrant populations.¹² Between 2011 and 2013, tax revenues were \$130 billion higher than public

¹⁰ *Id.*

¹¹ *Id.*

¹² Nat'l Academies. Sci., Engineering, Med., *The Economic and Fiscal Consequences of Immigration*, 518–19 (2017), <https://doi.org/10.17226/23550>.

money spent on that same population.¹³ Nationwide, immigrant populations pay \$900 more per individual on average in tax revenue than they collect in public expenditures.¹⁴ These revenues are likely to decrease significantly because eligible immigrants who disenroll from or do not enroll in public benefits programs that they are eligible for will be pushed out of the workforce and will not fully participate in the economy. Estimates have shown that Amici States stand to lose significant revenue if immigrant participation in public benefit programs decline:

- In California, reductions in Medi-Cal and SNAP enrollments is projected to cost \$1.2 to \$2.8 billion in lost economic output and \$65 to \$151 million in lost state and local tax revenue.¹⁵
- In Colorado, SNAP generated more than \$728 million in federal dollars in 2016, which resulted in more than \$1.2 billion in economic impact. Reducing participation in this critical support program will hurt local economies.
- The Colorado Fiscal Institute estimates that if 15% of immigrant families disenroll from public benefit programs, Colorado's economy stands to lose nearly \$179 million and up to 1,217 jobs. If disenrollment rate reaches 35%, those costs would rise to \$417 million and 2,839 jobs.

Finally, increasing access to healthcare helps the economy because it allows more people to work and decreases the transmission of diseases that inhibit work and increases uncompensated hospital costs.

¹³ *Id.* at 522.

¹⁴ *Id.* at 524.

¹⁵ Ninez Ponce et al., *How Proposed Changes to the "Public Charge" Rule Will Affect Health, Hunger and the Economy in California*, UCLA Center for Health Policy Research, (Nov. 7, 2018), <http://tinyurl.com/yxb4qjto>.

II. FAM Changes Have Harmed, and Will Continue to Harm, Our Residents

The new FAM guidance directly impacts the well-being and integrity of families. First, it applies to current United States residents who must undergo consular processing abroad in order to obtain visas and lawful permanent residence. This process can take weeks or months—or even continue indefinitely. During this time, applicants must be separated from their families, communities, and employment, all the while unsure when—if ever—they will be reunited. The uncertainty surrounding the application of the FAM guidance thus causes further instability to an already complicated legal immigration system. By creating new barriers to admission and consular processing, the FAM guidance limits immigrants' ability to provide for their families and contribute fully to their communities and our States' economies. The guidance also reduces family reunification in a number of ways. It directly undercuts self-sufficiency by denying supporting family members' admission, imposing higher scrutiny for admission of a child or an elderly adult whose employability is in question, reducing the weight traditionally given to a financial sponsor's affidavit of support—instead inducing families to avoid supporting each other for fear that such assistance will count against their immigration status.

Indeed, the harms inflicted by the FAM changes are not only significant, but some are irreversible. The forgone treatment of a U.S. citizen child suffering from a disability due to their parent's fear of future immigration consequences certainly has the potential for lifelong effects. Pregnant women, infants, and children who lack adequate healthcare face a substantially elevated risk for developing serious medical conditions. Untreated, such medical conditions can cause lifelong or even life-threatening harms. And such harms are not limited to the person who directly experiences them. By keeping a parent out of work to care for a family member or diverting income away from basic needs towards healthcare, an untreated medical condition or loss of primary income can become economically devastating for an entire family.

The changes to the FAM guidance have been implemented since January 3, 2018 and have already harmed Amici States' administration of programs. The FAM changes have led to a massive increase in the number of denials of visas on public charge grounds. The State Department's annual report from the Visa Office for Fiscal Year (FY) 2018 shows that visa denials on public charge grounds increased almost fourfold over FY 2017, before the FAM changes went into effect. Perhaps more significantly, though, since the FAM changes went into effect, fewer immigrants have been able to overcome the initial finding of inadmissibility on public charge grounds. Historically, a very high percentage of individuals who were initially found to be inadmissible on public charge grounds were able to overcome a visa refusal with evidence that the ineligibility does not apply, by approval of a waiver, or by other relief as provided by law. But the FAM changes have reduced the ability of immigrants to do so. Behind this increase in visa refusals on public charge grounds are individuals and family members who reside or resided in the United States and used the public assistance for which they were legally eligible. As a former State Department official noted in a recent interview, "These denials are for immigrant visa applicants and primarily impacted family immigration cases, leading to separations of family members (mainly spouses, parents and children of U.S. citizens and lawful permanent residents)."¹⁶

A. FAM Guidance Changes Have Chilled Residents in Amici States from Using Public Benefits

Many families have chosen to forgo needed benefits and services to avoid negative consequences, including the drastic possibility of family separation and deportation. For

¹⁶ Stuart Anderson, *New Data Reveal State Department Visa Denials Surged In 2018*, Forbes (Mar. 1, 2019), <http://tinyurl.com/y4fnxp4q>.

example, in Texas, in light of public charge concerns, an immigrant parent reported the difficult choice of forgoing critical therapy treatments for her citizen child, who was recently diagnosed with autism and is eligible for Medicaid.¹⁷ California has also felt this “troubling pattern” at health clinics, where patients who have “caught wind” of the public charge consequences ask healthcare workers “if they should drop their Medicaid coverage, or not apply, for fear that receiving the benefit could imperil their chances at permanent residency.”¹⁸

Adding to the confusion and chilling effect of the FAM guidance is the existence of proposed changes to the DHS regulations regarding the public charge criteria applied to those seeking admission, adjustment of status, and change or extension of nonimmigrant visa status.¹⁹ DHS’s proposed regulation is not yet final, and Plaintiffs do not assert any claims in this action directed at DHS or its rulemaking process. However, the current changes to the FAM guidance and the similar changes of DHS’s proposed regulation highlight the federal government’s own understanding of the severe impacts that changes to public charge criteria provoke. Pls.’ Opp’n 8, ECF No. 25; *see* 83 Fed. Reg. at 51,260.

B. The Chilling Effect Will Significantly Impact Health Programs Such as Medicaid Enrollment and Expansion

Amici States are concerned that the chilling effect will be especially far-reaching for Medicaid because the program has grown considerably under the Affordable Care Act. In 2019, more than 30 States will offer Medicaid to even greater numbers of residents than in previous years. Enrollment of citizens and non-citizens in Medicaid is roughly proportional to their

¹⁷ Ashley Lopez, *Fear Of Deportation Or Green Card Denial Deters Some Parents From Getting Kids Care*, National Public Radio (January 26, 2019), <https://n.pr/2VXjNlS>.

¹⁸ Catherine Ho, *California Immigrants worried about health care under Trump green card plan*, San Francisco Chronicle (Oct. 28, 2018), <https://tinyurl.com/SF-Chron-Immigr-worried-Trump>.

¹⁹ 9 FAM 302.8-2(B)(4) (U) (applying INA 212(a)(4) in non-immigrant visa cases).

respective population numbers; therefore, if inclusion of Medicaid in the public charge analysis dissuades Medicaid participation for non-citizens, it will likely have a significant impact on states with large non-citizen populations.²⁰

To break that down, in Virginia, the number of individuals receiving Medicaid benefits in 2018 was 983,000²¹ and may rise to 1,406,000 in 2019.²² In New Mexico, 853,016 individuals have received Medicaid as of August 2018.²³ And more than 50,000 U.S. citizens in New Mexico live with at least one family member who is undocumented and are subject to be chilled from use of benefits.²⁴ In California, Medicaid helps insure millions of low-income Californians every day, including more than two million non-citizens through the state-only funds. In New Jersey, the Medicaid program serves approximately 1.8 million low- and moderate-income residents, nearly 20% of the population of the state. In Illinois, approximately 3,162,796 residents received Medicaid benefits in 2017, almost 25% of the State's population.²⁵ In Massachusetts, as of September 2018, the State has enrolled up to 1,599,120 people in Medicaid

²⁰ U.S. Dep't Homeland Security, Inadmissibility on Public Charge Grounds Notice of Proposed Rulemaking, 102–03 (Sept. 22, 2018), <http://tinyurl.com/y94hsfld> (using data from USCIS analysis of Wave 1 of the 2014 Survey of Income and Program Participation).

²¹ Matthew Buettgens, Urban Inst., *The Implications of Medicaid Expansion in the Remaining States: 2018 Update* (May 2018), <http://tinyurl.com/y87ev89u>.

²² *Id.*

²³ *New Mexico Human Services Dep't*, Monthly Reports (August, 2018), <http://www.hsd.state.nm.us/monthly-statistical-reports.aspx>.

²⁴ *Id.*

²⁵ State of Illinois Comptroller, *Illinois Public Accountability Report Fiscal Year 2017*, 7 (2018), <http://tinyurl.com/y6cx2hhr>; U.S. Census Bur., *Quick Facts: Illinois*, <https://www.census.gov/quickfacts/il>.

and CHIP—a net increase of 23.35% since October 2013.²⁶ In New York, as of August 2018, approximately 6,491,631 residents were enrolled in CHIP and Medicaid.²⁷

C. Amici States' Large Immigrant Population is Most At-Risk

The chilling effect will be felt across Amici States and is likely to impact millions of immigrants and their families. The Amici States are home to over 26 million immigrants.²⁸ Nearly 10 million residents live in mixed-immigration status households, with at least one undocumented family member.²⁹ Nationwide, in 2016, approximately 5 million U.S.-born children younger than 18 were living with undocumented immigrant parents.³⁰

Amici States have an interest in protecting immigrants from harm to their well-being and the inevitable negative outcomes that result from these policies. Immigrant residents have deep ties to this country and to the Amici States, and they contribute to our communities and economies in countless ways. Immigrants have built their lives, families, and careers here. Amici, Plaintiffs, and residents in their respective jurisdictions are subject to significant harm, one that can be redressed by judicial ruling holding the FAM guidance unlawful.

²⁶ Ctrs. for Medicare & Medicaid Servs., Medicaid & CHIP in Massachusetts, <https://www.medicaid.gov/state-overviews/stateprofile.html?state=massachusetts>.

²⁷ Ctrs. for Medicare & Medicaid Servs., Medicaid & CHIP in New York, <https://www.medicaid.gov/state-overviews/stateprofile.html?state=new-york>

²⁸ Total number of immigrants in California: 10,518,000; Colorado: 534,00; Connecticut: 512,000; Delaware: 86,000; District of Columbia: 94,000; Illinois: 1,801,000; Iowa: 156,000; Maryland: 895,000; Massachusetts: 1,097,000; Michigan: 653,000; Minnesota: 448,000; Nevada: 562,000; New Jersey: 1,979,000; New Mexico: 201,000; New York: 4,491,000; Oregon: 398,000; Vermont: 28,000; Virginia: 1,015,000; Washington: 987,000. *U.S. Immigrant Population by State and County*, Migration Pol’y Inst. (2017), <http://tinyurl.com/ydypto29> (data from the U.S. Census Bureau’s pooled 2013-2017 American Community Survey).

²⁹ Silva Mathema, *State-by-State Estimates of the Family Members of Unauthorized Immigrants*, Ctr. Am. Progress (March 16, 2017), <http://tinyurl.com/yxfopt8c>.

³⁰ Jeffrey Passel and D’Vera Cohn, Pew Research Center Hispanic Trends, *U.S. Unauthorized Immigrant Total Dips to Lowest Level in a Decade* (November 27, 2018), <http://tinyurl.com/y49hpx5l>.

CONCLUSION

The new FAM guidance disrupts Amici States' benefit administration, undermines public health, and will have negative consequences to our residents and our states' economies.

Defendants' motion to dismiss fails to meaningfully consider these real harms and should be denied. Lastly, in a bid to avoid judicial review, Defendants argue that the Court should dismiss Plaintiffs' claims against the President because "separation of powers bars injunctive relief against the President." Doc.17-1 at 40. The Court should reject this attempted misdirection.³¹

³¹ The remedies Plaintiffs seek to redress their injuries caused by the challenged FAM guidance is authorized by the Administrative Procedure Act, 5 U.S.C. § 706, and is within this Court's inherent equitable authority, *see, e.g., Porter v. Warner Holding Co.*, 328 U.S. 395, 398 (1946). The relief sought is sufficient to redress the injuries alleged. Further, injunctive relief against the President—which the Plaintiffs do not request here—is not a *per se* violation of constitutional separation of powers and is available in appropriate circumstances. The Supreme Court has "long held" that federal courts "ha[ve] the authority to determine whether [the President] has acted within the law." *Clinton v. Jones*, 520 U.S. 681, 703 (1997). As part of this authority, courts have the power to restrain unconstitutional presidential action, including through injunctive relief. *See, e.g., Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 584 (1952); *Mackie v. Bush*, 809 F. Supp. 144, 148 (D.D.C.), *vacated as moot sub nom. Mackie v. Clinton*, 10 F.3d 13 (D.C. Cir. 1993); *Berry v. Reagan*, No. 83-3182, 1983 WL 538 (D.D.C. Nov. 14, 1983). However, for purposes of assessing standing, specifically redressability, the Court need not decide whether injunctive relief against the President is appropriate here. *Franklin v. Massachusetts*, 505 U.S. 788, 803 (1992). It has not been requested.

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