

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

MAYOR AND CITY COUNCIL OF
BALTIMORE,

Plaintiff,

v.

DONALD J. TRUMP, in his official
capacity as President of the United States of
America, *et al.*

Defendants.

Civil Action No. 1:18-cv-03636-ELH

**BRIEF OF 17 CITIES AND COUNTIES AS *AMICI CURIAE* IN SUPPORT OF
PLAINTIFF'S MEMORANDUM IN OPPOSITION TO
DEFENDANTS' MOTION TO DISMISS**

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TABLE OF CONTENTS

STATEMENT OF INTERESTS OF *AMICI CURIAE*..... 1

INTRODUCTION..... 1

 I. The FAM manual change has increased the number of visa denials on public charge grounds. 3

 II. By reducing the number of visas granted, the FAM change undercuts localities’ interest in attracting immigrants and in economic growth and budgets. 4

 III. The real-world harms Amici are suffering are also within the INA’s zone of interests 8

CONCLUSION..... 12

STATEMENT OF INTERESTS OF *AMICI CURIAE*

Amici are local government entities from across the United States that have a sizeable number of immigrant residents, from whose significant contributions they benefit. Amici—alongside numerous other local governments—have been and will be harmed by the federal government’s biased efforts to reduce immigration by unlawfully adjusting the State Department’s Foreign Affairs Manual (FAM) criteria for who should be denied entry as likely to become a “public charge.”

Together, Amici represent approximately 12 million people. Amici cities and counties are home to hundreds of thousands of immigrants, and share a tradition of embracing and valuing their diversity, and, in turn, supporting the fair and equitable treatment of immigrants. Immigrants and their families are inextricable parts of the social and economic fabric of Amici’s cities and counties. Additionally, Amici rely on sales, income, and property tax revenues to fund their activities. Accordingly, Amici oppose the federal government’s attempt to deter immigration from immigrants who are less economically advantaged, and respectfully request this Court find in favor of the Plaintiff that the case should not be dismissed at this stage.

INTRODUCTION

The federal government’s recent animus toward certain categories of immigrants, and attendant adjustment of the public charge criteria in the FAM, betrays this country’s ideals and impedes local governments’ abilities to foster welcoming and thriving communities for all of their residents. Under the new instructions, consular officers charged with determining whether an applicant is likely to become a public charge—and therefore ineligible for admission to the United States—may now consider an expanded range of public benefit receipt, by both immigrant applicants and their families, to determine whether an individual is likely to become a public

charge.¹ The adjustment of “public charge” criteria in the FAM deters immigration, and asks immigrants and their loved ones who are already in the United States to make an impossible choice between risking their or their family members’ visa status and accessing public services.² This significant change hurts Amici—local governments who wish to welcome immigrants of all socioeconomic statuses and rely upon immigrants’ contributions to their communities.

The negative consequences Baltimore is experiencing due to this change³ also affect Amici and local governments across the country. The federal government’s anti-immigration change to the FAM is frightening immigrants and deterring immigration.⁴ Visa denials have ballooned under the new rule,⁵ and the restriction on immigration will negatively affect Amici, who have an interest in attracting immigrants to their jurisdictions, and rely on immigrants’ positive economic and other contributions to their communities. Such harms are also within the relevant portions of the Immigration and Nationality Act’s (INA’s) zone of interests. Amici urge this Court to deny Defendants’ Motion to Dismiss accordingly.

¹ 9 FAM §§ 302.8-2(B)(1)(f)(1)(b)(i), 302.8-2(B)(2)(1)(f)(2)(b)(ii).

² The FAM change affects individuals applying for both immigrant and non-immigrant visas at overseas U.S. Consulates. National Immigration Legal Center, *Changes to “Public Charge” Instructions in the U.S. State Department’s Manual 2* (Aug. 27, 2018), <https://www.nilc.org/wp-content/uploads/2018/02/PIF-FAM-Summary-2018.pdf>. This includes individuals residing both outside and inside the United States, as some applicants who were already residing in the United States before the application process must return to their home country to apply for visas or green cards. *Id.*

³ The FAM change “obstructs Baltimore’s attempts to provide benefits and social services to its immigrant residents; it forces Baltimore to devote time and money to adapting its programs and reaching out to immigrant communities; and it imposes significant downstream costs on Baltimore’s budget and on the city as a whole.” *Baltimore v. Trump*, No. 1:18-cv-03636-ELH, Compl. ¶ 136 (Nov. 28, 2018).

⁴ This change could also cause current and potential sponsors of immigrants, who are otherwise eligible for public benefits, to refrain from applying for or renewing those benefits.

⁵ See *infra* note 12.

I. The FAM manual change has increased the number of visa denials on public charge grounds.

The federal government changed the criteria consular offices must use to make public charge determinations effective January 3, 2018.⁶ While the FAM still indicates that an individual is likely to become a public charge only if he or she is likely to receive public cash assistance or be institutionalized “for long-term care at U.S. Government expense,”⁷ receipt of other public benefits, including the Supplemental Nutrition Assistance Program (SNAP); the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC); the Children’s Health Insurance Program (CHIP); and Medicaid, by immigrants or their families may now be considered as part of the totality of circumstances determination that consular officers conduct in determining who may become a public charge.⁸ Further, an affidavit of support from an individual promising to support the applicant in the event that the applicant cannot do so, which had been generally sufficient to overcome any determination that the applicant might become a public charge, is now simply another factor to be considered in the totality of circumstances.⁹

In the wake of these changes, visa denials based on public charge determinations are spiking.¹⁰ In fact, in fiscal year (FY) 2018 over 13,000 visa applications were initially refused on

⁶ 9 FAM § 302.8-2(B) (Jan. 3, 2018); *see also* Charles Wheeler, *State Department Redefines Public Charge Standard*, Catholic Legal Immigration Network, Inc., <https://cliniclegal.org/resources/state-department-redefines-public-charge-standard> (last visited Feb. 22, 2019).

⁷ 9 FAM § 302.8-2(B)(1) (Jan. 3, 2018).

⁸ 9 FAM § 302.8-2(B)(2) (Jan. 3, 2018); *see also* Immigrant Legal Resource Ctr., *Consular Processing Practice Alert on Public Charge and Affidavit of Support Issues 2* (July 2018), https://www.ilrc.org/sites/default/files/resources/consul_process_pract_alert_pub_charge_affid-20180702.pdf.

⁹ *See* Immigrant Legal Resource Ctr., *supra* note 8, at 2.

¹⁰ *See id.* at 1.

public charge grounds.¹¹ This is four times the number of applications initially refused on such grounds in FY2017, and fifteen times as many as in FY2015.¹² This is a significant immigration policy change that is wreaking increasing harm upon immigrants and localities across the country.

II. By reducing the number of visas granted, the FAM change undercuts localities' interest in attracting immigrants and in economic growth and budgets.

The change to the criteria for a public charge determination in the FAM will undermine localities' economic growth and shrink their budgets. In general, immigration has a positive impact on economic growth, benefiting non-immigrant U.S. citizens as well as the economy as a whole. "Economists estimate that immigrant workers add billions of dollars per year to the real income of natives in the United States by supplying their labor to our labor market," and immigration increases U.S. tax revenues.¹³ Immigrants tend to have high economic mobility and improve surpluses for U.S. businesses—"improving job creation and workers' earnings, including native-

¹¹ U.S. Dep't of State, *Table XX Immigrant and Nonimmigrant Visa Ineligibilities (by Grounds for Refusal Under the Immigration and Nationality Act) Fiscal Year 2018*, <https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2018AnnualReport/FY18AnnualReport%20-%20-%20TableXX.pdf>. The number of applications initially refused does not necessarily correlate to the number of applicants refused, nor the number of applicants ultimately denied admission. Some number of these applicants may have overcome their initial denial and received a granted visa. However, the number of ineligibilities overcome for 2018 could include individuals who were deemed ineligible in 2017, so it would be inaccurate to simply subtract the number of individuals whose ineligibility was overcome in 2018 from the number who were initially deemed ineligible. *See id.*

¹² U.S. Dep't of State, *Table XX Immigrant and Nonimmigrant Visa Ineligibilities (by Grounds for Refusal Under the Immigration and Nationality Act) Fiscal Year 2017*, <https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2017AnnualReport/FY17AnnualReport-TableXX.pdf>; U.S. Dep't of State, *Table XX Immigrant and Nonimmigrant Visa Ineligibilities (by Grounds for Refusal Under the Immigration and Nationality Act) Fiscal Year 2015*, <https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2015AnnualReport/FY15AnnualReport-TableXX.pdf>.

¹³ Howard F. Chang, *The Economics of Immigration Reform*, 52 U.C. Davis L. Rev. 111, 143-44 (2018).

born workers.”¹⁴ Because the FAM change both deters and prevents immigration, and causes immigrants to avoid using supplemental benefits for fear of being denied a renewal for themselves or loved ones, it impedes localities’ economic growth.

The reduction in immigration due to the FAM change will cause local businesses to lose employees, customers, and revenue, which will in turn erode state and local tax bases.¹⁵ The experience of California is instructive. Noncitizens play a vital role in California’s economy. The state currently has 6.6 million immigrant workers who account for over \$200 billion in spending power on which communities depend.¹⁶ A large portion of that spending supports California businesses that generate tax revenue. Californian immigrant-led households also paid \$26.4 billion in state and local taxes in 2014.¹⁷ By making it more difficult for noncitizens to come to or remain in California, the FAM changes will reduce California localities’ revenues.

¹⁴ Leighton Ku & Drishti Pillai, *The Economic Mobility of Immigrants: Public Charge Rules Could Foreclose Future Opportunities* 2-3 (Nov. 15, 2018), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3285546.

¹⁵ Public benefits increase the long-term earning potential of both children and adults, increasing individuals’ economic security and stability. *See, e.g.*, Kyle J. Caswell & Timothy A. Waidmann, *The Affordable Care Act Medicaid Expansions and Personal Finance*, Medical Care Research and Rev. (Sept. 16, 2017), <https://journals.sagepub.com/doi/full/10.1177/1077558717725164> (finding that access to Medicaid increased families’ economic security). The effect is particularly pronounced for children. Children who cannot access preventative health care (through Medicaid), proper nutrition (through SNAP), or stable housing (through Housing and Urban Development funding) are more likely to develop health conditions and do poorly in or drop out of school, curtailing their lifetime earning potential along with their quality of life. *Health and Academic Achievement*, CDC Nat’l Ctr. for Chronic Disease Prevention and Health Promotion (May 2014), https://www.cdc.gov/healthyyouth/health_and_academics/pdf/health-academic-achievement.pdf.

¹⁶ In 2014, California residents in immigrant-led households had \$238.7 billion in after-tax income. Am. Immigr. Council, *Immigrants in California* 2, 4 (Oct. 4, 2017), https://www.americanimmigrationcouncil.org/sites/default/files/research/immigrants_in_california.pdf.

¹⁷ *Id.* at 4.

These negative effects will be mirrored across the country. In Maryland, nearly one fifth of all business owners in the state, and over half of business owners in the Washington, D.C. metropolitan area (which includes Montgomery County, Maryland) are immigrants.¹⁸ Nationwide, immigrants pay state and local taxes, and work for and own businesses that generate even more in tax revenue. Their contributions are vital to localities' budgets. By forcing immigrants to make an impossible choice between their own and their families' immediate needs and their ability to obtain visas, the FAM change deprives localities of the full measure of these immigrants' contribution to their societies.

Localities' ability to provide vital public services depend on robust local economies. Cities and counties rely on a wide range of sources for their financial stability, including the tax contributions of their residents. Because of immigrants' enormous contributions to local economies, decreasing the number of visas granted impedes cities' and counties' ability to provide vital public services. Nationally, approximately a dozen states delegate administration of federal social service programs to counties. The County of Alameda, in California, administers the federal Temporary Assistance for Needy Families (TANF), SNAP, child welfare services, the Workforce Development Board through the Workforce Innovation and Opportunity Act (WIOA), and determines eligibility for Medicaid. Localities not only administer state and federal benefit programs, they run many of their own. For example, Oakland funds several senior centers that offer free and low-cost meals.¹⁹ In addition to the primary public benefit programs administered by the County of Alameda, supplemental supportive services assist individuals and families in

¹⁸ Am. Immigr. Council, *Immigrants in Maryland* 4 (2017), https://www.americanimmigrationcouncil.org/sites/default/files/research/immigrants_in_maryland.pdf.

¹⁹ City of Oakland, *Fiscal Year 2017-19 Adopted Policy Budget D-7* (Oct. 2017), <http://www2.oaklandnet.com/oakca1/groups/cityadministrator/documents/policy/oak067556.pdf>.

finding and maintaining stable housing, employment, nutritional support, and health care. Alameda works in partnership with numerous community based organizations to deliver these services. Any decrease in revenues threatens the ability of this multi-sector safety net to provide for the community as a whole.

These local programs allow localities to fill in the gaps of state and federal safety nets, ensuring that their residents are fed, healthy, housed, and provided with economic opportunities. They foster thriving communities and assist Amici's residents in attaining and maintaining self-sufficiency.²⁰ Although they are necessary to build thriving communities, and pay more dividends than they cost to provide,²¹ these programs do require public funding to maintain. In 2015, fourteen percent of all local direct spending went to public welfare or health initiatives.²² The taxes that immigrants pay and the revenue that they generate contribute to covering these costs. By lowering the number of visas granted, and thus lowering the number of immigrants who can contribute to their municipalities, the FAM change will impede cities' and counties' ability to provide for the welfare of their residents.

²⁰ *See supra*, note 15.

²¹ Supplemental public benefit use supports and facilitates self-sufficiency among low-income populations. Public benefits are essential to enabling noncitizens in low-wage jobs to continue working and improving their economic conditions, but incentivizing noncitizens to withdraw from such programs will undermine their long-term economic self-sufficiency and negatively affect their health. *See, e.g.*, Ctr. for Disease Control & Prevention, *Health and Academic Achievement* (May 2014), https://www.cdc.gov/healthyyouth/health_and_academics/pdf/health-academic-achievement.pdf (finding that access to healthy food increases academic achievement); Cal. Pol'y Lab, Strengthening the Social Safety Net and Health Equity <https://www.capolicylab.org/research-area/strengthening-the-social-safety-net/> (last visited Mar. 20, 2019) (acknowledging increasing evidence of the social safety net's "high returns for society").

²² Urban Institute, *State and Local Expenditures*, <https://www.urban.org/policy-centers/cross-center-initiatives/state-local-finance-initiative/projects/state-and-local-backgrounders/state-and-local-expenditures>.

III. The real-world harms Amici are suffering are also within the INA's zone of interest.

The harms Amici and Baltimore have suffered and will suffer also fall within the relevant portions of the INA's zone of interests, sufficient to give Baltimore standing. In addition to Article III standing, the Supreme Court requires plaintiffs to "satisfy 'prudential' or 'statutory' standing requirements."²³ This analysis asks courts to determine whether a particular statute grants the cause of action at issue to the plaintiff. To answer this question, courts "presume that a statute ordinarily provides a cause of action 'only to plaintiffs whose interests fall within the zone of interests protected by the law invoked.'"²⁴ In the Administrative Procedure Act (APA) arena,

[T]he test is not "especially demanding." In that context we have often "conspicuously included the word 'arguably' in the test to indicate that the benefit of any doubt goes to the plaintiff," and have said that the test "forecloses suit only when a plaintiff's 'interests are so marginally related to or inconsistent with the purposes implicit in the statute that it cannot reasonably be assumed that'" Congress authorized that plaintiff to sue.²⁵

Also, in the APA context, "the relevant zone of interests is not that of the APA itself, but rather the zone of interests to be protected or regulated by the statute that [the plaintiff] says was violated."²⁶ The changes to the FAM were made in contravention of the APA, and Amici have suffered and will suffer as a result of the FAM change's impact on visa approvals and applications. This harm is directly related to the INA's zone of interests in regulating the admission of noncitizens to the United States.

²³ *Bank of America Corp. v. City of Miami, Fla.*, 137 S.Ct. 1296, 1302 (2017) (quoting *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 128 n. 4 (2014)).

²⁴ *Id.* (quoting *Lexmark*, 572 U.S. at 129).

²⁵ *Lexmark*, 572 U.S. at 130 (quoting *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, 567 U.S. 209, 224 (2012)).

²⁶ *East Bay Sanctuary Covenant v. Trump*, 909 F.3d 1219, 1244 (9th Cir. 2018) (quoting *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians*, 567 U.S. at 224) (internal quotation marks omitted).

Amici’s interest in welcoming immigrants to their localities is within the relevant INA zone of interest. The INA is a sprawling statute with a vast and complex intent, but the relevant sections for this action revolve around the criteria that govern whom may be granted a visa for admission to the United States.²⁷ Localities’ interest in welcoming immigrants and therefore in the grant of visas is consistent with this purpose of the INA. By enumerating grounds for denial of visas, such as the public charge ground,²⁸ the INA also enumerates the cases in which visas should be granted, making its purpose to establish the procedure for granting visas. The legislative history of the INA further demonstrates this purpose. The INA eliminated a strict nationality-based quota system for visas with one that emphasized family reunification and allowed visas to be issued to citizens’ immediate relatives without a cap.²⁹ The INA thus exists not only to regulate visas but also specifically to enable them to be granted.

The Supreme Court has emphasized that the zone-of-interests test is a lenient one, including when government entities bring claims, and more than one circuit court has found that the INA’s zone of interests is broad. The Supreme Court has “always conspicuously included the word ‘arguably’ in the test to indicate that the benefit of any doubt goes to the plaintiff.”³⁰ The Ninth Circuit has found nonprofit organizations dedicated to serving asylum seekers to have prudential standing under the INA,³¹ and that a public university does as well on the basis of its

²⁷ See, e.g., 8 U.S.C. §§ 1153, 1182, 1183a, 1184 (2018).

²⁸ 8 U.S.C. § 1182(a)(4) (2018).

²⁹ William A. Kandel, Cong. Research Serv., R43145, *U.S. Family-Based Immigration Policy 2* (2018), <https://fas.org/sgp/crs/homsec/R43145.pdf>.

³⁰ *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians*, 567 U.S. at 225.

³¹ *East Bay Sanctuary Covenant*, 909 F.3d at 1244. The Ninth Circuit found that the INA’s purpose includes establishing statutory procedures for granting asylum to refugees, and that Congress took steps to promote pro bono legal services available to asylum seekers—the type of services the organizations who were Plaintiffs in *East Bay Sanctuary Covenant* provided—therefore the organizations had prudential standing because the limitation of their ability to provide their services was a harm within the zone of interests of the INA. *Id.* at 1244-45.

interests in “student- and employment-based visa petitions for its students and faculty.”³² The Fifth Circuit found that Texas had prudential standing under the INA based on its desire not to provide state-subsidized driver’s licenses and other public benefits to “illegal aliens.”³³ Although the federal government points to *Texas v. U.S.* to support its proposition that only states are within the relevant zone of interests,³⁴ the INA also contemplates a role for localities in the regulation of noncitizens admitted to the country. Like states, localities have the ability to enforce affidavits of support if immigrants violate them by utilizing public benefits.³⁵ Further, modern localities frequently take on roles that courts and scholars associate with states, and perform a similar function as guardians of their residents’ needs.³⁶ If it is a harm to be forced to expend funds to

Because the zone of interests test is so lenient, “it is sufficient that the Organizations’ asserted interests are consistent with and more than marginally related to the purposes of the INA.” *Id.* at 1244.

³² *Hawai ‘i v. Trump*, 878 F.3d 662, 682 (9th Cir. 2017), *rev’d and remanded on other grounds*, 138 S.Ct. 2392 (2018).

³³ *Texas v. U.S.*, 809 F.3d 134, 149, 163 (5th Cir. 2015).

³⁴ *Baltimore v. Trump*, No. 1:18-cv-03636-ELH, Mot. to Dismiss 25, ECF No. 17 (Feb. 25, 2019).

³⁵ 8 U.S.C. § 1183a (e)(2) (2018).

³⁶ See Kaitlin Ainsworth Caruso, *Associational Standing for Cities*, 47 Conn. L. Rev. 59, 87 (2014) (“[M]any of the functions that courts and scholars associate with states are quintessentially local. This boots-on-the-ground role gives cities a unique perspective and useful expertise on how certain conduct impacts individuals and the community as a whole.” Because localities are the “closest representatives of their constituencies, [they] are also often in the best position to understand the needs of their communities.” Jill E. Habig & Joanna Pearl, *Cities as Engines of Justice*, 45 Fordham Urb. L.J. 1159, 1190 (2018). “[T]he city is the scale where questions of justice are felt concretely as part of everyday life,’ and as nimble and often progressive public actors, cities are well-positioned to bring claims to redress injuries.” Sarah L. Swan, *Plaintiff Cities*, 71 Vand. L. Rev. 1227, 1290 (2018) (citing James Connolly & Justin Steil, *Introduction to Searching for the Just City: Debates in Urban Theory and Practice* 1, 6 (Peter Marcuse et al. eds., 2009)). In this context, Amici localities are feeling the harms of loss of immigrants, and are also uniquely positioned to register harms to their constituents—including immigrants who are targeted by the federal government’s policies.

provide benefits to immigrants, it is a harm to be forced to forego funds immigrants would otherwise provide.³⁷

The change to the FAM—made without proper procedure—is having a substantial effect on visa application numbers, and harming Amici by preventing immigrants from joining their communities and contributing to their economies. Localities’ interest in welcoming immigrants is more than “marginally related” to the INA’s purpose.³⁸ The INA’s recognition of localities’ capacity to make immigration decisions demonstrates that “the plaintiff[s] [are] peculiarly suitable challenger[s] of administrative neglect . . . support[ing] an inference that Congress would have intended eligibility,”³⁹ particularly in light of the Supreme Court’s generous standard for determining if a plaintiff is in the zone of interest when the plaintiff is bringing an APA challenge.⁴⁰

The INA’s zone of interests in regulating admission to the United States encompasses the harms Amici are suffering due to the reduction in visa approvals and loss of immigrant contributions to their communities. Amici are dedicated to fostering thriving, diverse localities in which everyone is welcome, and in which everyone is able to prosper. The federal government’s misguided efforts to reduce immigration through the FAM change are counterproductive and damaging to Amici as well as Baltimore. These harms fall within the INA’s zone of interests, and are sufficient for Baltimore to have standing under this test.

³⁷ See *Bank of America Corp. v. City of Miami, Fla.*, 137 S.Ct. 1296, 1303 (2017) (“[W]e conclude that the City’s claims of financial injury in their amended complaints—specifically, lost tax revenue and extra municipal expenses—satisfy the ‘cause-of-action’ (or ‘prudential standing’) requirement.”).

³⁸ *Lexmark Int’l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 130 (2014) (quoting *Match–E–Be–Nash–She–Wish Band of Pottawatomi Indians*, 567 U.S. 567 U.S. 209, 225 (2012)).

³⁹ *East Bay Sanctuary Covenant v. Trump*, 909 F.3d 1219, 1245 (9th Cir. 2018) (quoting *Hazardous Waste Treatment Council v. EPA*, 861 F.2d 277, 283 (D.C. Cir. 1988)).

⁴⁰ *Match–E–Be–Nash–She–Wish Band of Pottawatomi Indians*, 567 U.S. at 130.

CONCLUSION

As Amici have seen, visas denials are rising due to the changes to the public charge admission criteria in the FAM, which hurts local economies and populations. For all of these reasons, Amici urge this Court to deny Defendants' Motion to Dismiss.

Dated: March 22, 2019

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