

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

CASA de MARYLAND Inc.; ANGELA
AGUILUZ and
MONICA CAMACHO PEREZ,

Civil Action No. 8:19-cv-2715

Plaintiffs,

v.

DONALD TRUMP, in his official capacity as
the President of the United States; KEVIN K.
McALEENAN, in his official capacity as
Acting Secretary of the United States
Department of Homeland Security; UNITED
STATES DEPARTMENT OF HOMELAND
SECURITY, a federal agency; KENNETH T.
CUCCINELLI II, in his official capacity as
Acting Director, U.S. Citizenship and
Immigration Services

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

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I. INTRODUCTION

The Department of Homeland Security’s (“DHS”) dangerous and unprecedented expansion of the infrequently invoked “public charge” grounds for inadmissibility (the “Rule”)¹ endangers victims of domestic and sexual violence and human trafficking and penalizes them for the abuse they have endured. Isolation and financial dependence are hallmarks of gender-based violence and are exacerbated by the unique and varied obstacles that immigrants face. By preventing victims from securing lawful status if they access public benefits, the Rule makes it all but impossible for them to escape and overcome abuse. The Rule thus forces victims to choose between continued abuse or a semblance of freedom in which they are hungry, homeless, and without access to medical care. The threat of this impossible choice is already impacting how immigrant victims live and parent, exposing them and their children to harm. To add insult to injury, the Rule also penalizes victims by directing U.S. Citizenship and Immigration Services (“USCIS”) to weigh negatively the direct consequences of abuse, such as financial instability, inconsistent work history, and use of public benefits, when making a “public charge” determination. The Rule also disregards the costs it will impose on our communities, including local governments and nonprofit organizations, like Amici. Amici thus respectfully request that the Court grant Plaintiffs’ motion for a preliminary injunction and enjoin enforcement of the Rule.

II. IDENTITY AND INTEREST OF AMICI

Amici Asian Pacific Institute on Gender-Based Violence, ASISTA Immigration Assistance, Battered Women’s Justice Project, Casa de Esperanza: National Latin@ Network for Healthy Families and Communities, Futures Without Violence, Legal Momentum: The Women’s Legal Defense and Education Fund, National Alliance to End Sexual Violence, National Coalition

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

Against Domestic Violence, National Council of Jewish Women, National Domestic Violence Hotline, National Network to End Domestic Violence, National Resource Center on Domestic Violence, Tahirih Justice Center, Arizona Coalition to End Sexual and Domestic Violence, California Coalition Against Sexual Assault, California Partnership to End Domestic Violence, Violence Free Colorado, Delaware Coalition Against Domestic Violence, Idaho Coalition Against Sexual & Domestic Violence, Illinois Coalition Against Domestic Violence, Illinois Accountability Initiative, Iowa Coalition Against Domestic Violence, Kansas Coalition Against Sexual and Domestic Violence, Kentucky Coalition Against Domestic Violence, Legal Voice, Maine Coalition to End Domestic Violence, Jane Doe Inc., Massachusetts Coalition Against Sexual Assault and Domestic Violence, Montana Coalition Against Domestic and Sexual Violence, Nebraska Coalition to End Sexual and Domestic Violence, Nevada Coalition to End Domestic and Sexual Violence, New Jersey Coalition to End Domestic Violence, North Carolina Coalition Against Domestic Violence, Ohio Domestic Violence Network, Rhode Island Coalition Against Domestic Violence, South Carolina Coalition Against Domestic Violence and Sexual Assault, Texas Council on Family Violence, Vermont Network Against Domestic and Sexual Violence, Washington Coalition of Sexual Assault Programs, Washington State Coalition Against Domestic Violence, End Domestic Abuse Wisconsin: The Wisconsin Coalition Against Domestic Violence, API Chaya, and Sexual Violence Law Center (collectively, “Amici”) are state and national nonprofit organizations that advocate for victims of domestic violence, sexual assault, and trafficking. The identity and interest of amici are described in the concurrently filed Motion for Leave to File Brief of Amici Curiae. Several amici submitted comments to the proposed Rule during the public comment period. A representative sample of those comments is attached to this brief as Appendix A.

III. ARGUMENT AND AUTHORITY

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

Gender-based violence is an epidemic that “cuts across all racial, class, and cultural lines.”² About one in four women in the United States will experience domestic violence during their lives.³ And one in three women will experience sexual violence.⁴ Global estimates of the prevalence of domestic violence and sexual violence are even higher.⁵ Worldwide, one in three women will experience domestic or sexual violence in her lifetime.⁶ The risk is further heightened for individuals who identify as lesbian, gay, or bisexual or who are transgender.⁷ A significant number of immigrants impacted by the Rule are thus likely to be victims of gender-based violence.

The Rule’s limited exceptions for certain victim-specific immigration categories do little to ameliorate that impact.⁸ To start, many victims are ineligible for relief under the Violence Against Women Act (“VAWA”), T-visa, and U-visa programs, which are excepted from the Rule. For example, a victim is ineligible for relief under VAWA if she is not married to her abusive partner or if her abuser is not a citizen or a Permanent Resident, regardless of the extent of abuse

² Michael Runner et al., Family Violence Prevention Fund for the Robert Wood Johnson Foundation, *Intimate Partner Violence in Immigrant and Refugee Communities: Challenges, Promising Practices, and Recommendations* 10 (2009).

³ Sharon Smith et al., National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (“CDC”), *National Intimate Partner and Sexual Violence Survey: 2015 Data Brief – Updated Release* 7 (2018).

⁴ CDC, CDC Features, Preventing Sexual Violence (2019), <https://www.cdc.gov/features/sexualviolence/index.html>.

⁵ See World Health Org. et al., *Global and regional estimates of violence against women: Prevalence and health effects of intimate partner violence and non-partner sexual violence* 2 (2013).

⁶ *Id.*

⁷ See CDC, *National Intimate Partner and Sexual Violence Survey: An Overview of 2010 Findings on Victimization by Sexual Orientation* (2010); S.E. James et. al., National Center for Transgender Equality, *The Report of the 2015 U.S. Transgender Survey* (2016).

⁸ See 84 Fed. Reg. at 41297 (excepting immigrants seeking status under VAWA or the U- or T-visa programs from the Rule).

she has endured.⁹ U-visas are available only to victims who have obtained a signed certification from law enforcement demonstrating that the victim has aided in the investigation or prosecution of a crime that was committed against them.¹⁰ If the victim does not or cannot report the abuse, law enforcement declines to certify its investigation or prosecution of the abuse, or the abuse does not constitute a qualifying crime under the U-visa statute, the victim is ineligible for a U-visa. T-visas are available only to those who arrive in the as a result of being victims of an “extreme form of trafficking,” comply with law enforcement, and can demonstrate that they would “suffer extreme hardship involving unusual and severe harm” if deported.¹¹ Reporting abuse, which is generally a prerequisite to seeking relief under most of the victim-specific immigration categories excepted from the Rule, is an insurmountable barrier for many victims, particularly where abusers “use immigration status to threaten deportation” if a victim asks for help.¹²

Even if eligible for the VAWA, U-visa, or T-visa programs, many victims choose to pursue other immigration statuses (such as sponsorship by an employer or a family member) because the process of applying for those programs can be expensive and time-consuming, or they fear their applications will be denied.¹³ For example, Amicus API Chaya estimates that approximately 20% of the potentially eligible victims it serves choose not to apply for the VAWA, U-visa, or T-visa programs for those reasons. In short, these limited exceptions to the Rule do not apply to victims who are either ineligible, or for whom it would be impracticable, to apply for those programs, for reasons entirely unrelated to the nature or severity of the abuse they have endured.

⁹ See 8 U.S.C. § 1154 (a)(1)(A), (B).

¹⁰ See 8 U.S.C. § 1184(p).

¹¹ See 8 C.F.R. §214.11(i)(2).

¹² See Runner, *supra*, at 12.

¹³ For example, USCIS estimates that it currently takes over four years to process U-visa applications. U.S. Citizenship and Immigration Services, Check Case Processing Times, egov.uscis.gov/processing-times/ (last visited Sept. 5, 2019).

B. The Rule prevents victims from obtaining the public benefits they need to escape and overcome abuse.

As advocates for and direct service providers to victims of gender-based violence, Amici are gravely concerned about the devastating impact the Rule will have, and indeed is already having, on the victims they serve. Under the Rule, receipt of many public benefits weighs against admissibility and will preclude an immigrant from receiving an extension of stay or adjustment of status once in the United States.¹⁴ DHS expressly acknowledged that the Rule will cause harm to immigrants, including that it may dissuade them from accessing benefits to which they or their children are entitled under the law, yet declined to change course to avoid or mitigate that harm.¹⁵

Without access to public benefits, escaping abuse can be all but impossible. Abusers notoriously manipulate and trap their victims through isolation and financial dependence. Indeed, 99% of all domestic violence includes economic abuse.¹⁶ Abusers commonly sabotage their victims' efforts to go to school, apply for work authorization, or obtain or maintain employment.¹⁷ For example, in one study of women in Wisconsin who had experienced abuse, 57.8% said their abuser's threats had made them afraid to go to work or school, 29.8% reported that they had been fired because of domestic violence, and 33.9% had been beaten so severely they could not work.¹⁸ Abusers also isolate their victims from sources of support, including by preventing them from

¹⁴ 84 Fed. Reg. at 41296, 41297-99, 41302.

¹⁵ See *id.* at 41363 (“DHS understands that certain applicants may be hesitant to receive certain benefits in light of the public charge assessment.”), 41366 (“DHS is aware that individuals may reconsider their receipt of public benefits in light of future immigration consequences.”).

¹⁶ See, e.g., Adrienne Adams, Center for Financial Security, University of Wisconsin-Madison, *Measuring the Effects of Domestic Violence on Women's Financial Well-Being*, CFS Research Brief 2011-5.6 (2011); J.L. Postmus et. al., *Understanding Economic Abuse in the Lives of Survivors*, *Journal of Interpersonal Violence*, 27(3), 411–430 (2012).

¹⁷ See, e.g., Cynthia Hess et. al., *Dreams Deferred: A Survey on the Impact of Intimate Partner Violence on Survivors' Education, Careers, and Economic Security*, IWPR Brief #C4752 (2018).

¹⁸ Eleanor Lyon, National Resource Center on Domestic Violence, Pub. 10, *Welfare, Poverty, and Abused Women: New Research and its Implications* 4, (2000) (internal citation omitted).

learning English or communicating with friends and family.¹⁹ A path to financial security is thus a critical prerequisite to escaping and overcoming abuse.²⁰

By deterring access to public benefits, the Rule will trap victims and their children in abusive situations and perpetuate the harm they are already experiencing. For example, one of the greatest needs identified by victims is access to safe and affordable housing. In a single day, domestic violence programs across the United States received but were unable to meet nearly 7,500 requests for housing services.²¹ Between 22 and 57% of all homeless women report that domestic violence was the immediate cause of their homelessness.²² Supplemental Nutrition Assistance Program (“SNAP”) food benefits are also vital resources to ensure survivors can escape and overcome abuse.²³ Service providers report that approximately 80% of domestic violence victims and 55% of sexual assault victims use the SNAP program.²⁴ Preventing access to housing and food assistance will prevent many victims from escaping, and leave some with no choice but to return to, abuse. Homelessness and hunger are no antidote to an abusive relationship.

¹⁹ See Runner, *supra*, at 12 (Abusers “frequently rely on foreign-born women’s limited English proficiency skills to control their behavior. For example, perpetrators who possess greater English language skills might silence their victims by serving as the family’s sole communicator in English.”).

²⁰ See CDC, Preventing Intimate Partner Violence Across the Lifespan: A Technical Package of Programs, Policies, and Practices (2017).

²¹ National Network to End Domestic Violence, *Domestic Violence Counts: 12th Annual Census Report* (2018), <https://nnedv.org/content/domestic-violence-counts-12th-annual-census-report/>.

²² See R. Levin et al., Center for Impact Research, *Pathways to and from Homelessness: Women and Children in Chicago Shelters* (2004).

²³ The inclusion of SNAP benefits in the Rule also contradicts the SNAP statute, which provides that “the value of benefits that may be provided . . . shall not be considered income or resources for any purpose under any Federal, State, or local laws.” See 7 U.S.C. § 2017(b).

²⁴ S. Goodman, National Resource Center on Domestic Violence, *The Difference Between Surviving and Not Surviving: Public Benefits Programs and Domestic and Sexual Violence Victims’ Economic Security* (2018), https://vawnet.org/sites/default/files/assets/files/2018-01/TheDifferenceBetweenSurvivingandNotSurviving_Jan2018.pdf.

The Rule also deters victims from obtaining the healthcare they need to heal from abuse.²⁵ Many suffer serious health issues as a result of abuse, including acute injuries, chronic pain, and traumatic brain injuries, and are at an increased risk for suicide, depression, anxiety, posttraumatic stress disorder, and substance abuse.²⁶ Approximately 41% of female domestic violence victims experience physical injury.²⁷ The average lifetime cost of services for female victims of domestic violence is \$103,767, with 59% of that total going to medical costs.²⁸ Health care access is also important because the health care setting is often the first place that victims are asked about abuse and connected with community-based domestic violence and sexual assault services.

The Rule also penalizes victims for receiving short-term financial assistance through the Temporary Assistance for Needy Families (“TANF”) and state cash assistance programs (also known as welfare).²⁹ “Abused women’s access to independent economic resources, including welfare, is central to their decision-making and safety planning.”³⁰ In a 2017 study of service providers, approximately 85% responded that TANF is a critical resource for a significant number of the victims they serve.³¹ The TANF program helps victims overcome the financial insecurity that abuse causes and is often an important factor in a victims’ decision-making regarding when,

²⁵ The Rule excepts only non-emergency Medicaid benefits received by individuals under the age of 21, pregnant women, and women up to 60 days postpartum. *See* 84 Fed. Reg. at 41313.

²⁶ *See* M.J. Breiding et. al., Chronic Disease and Health Risk Behaviors Associated with Intimate Partner Violence-18 U.S. States/Territories, 18 Ann. Epidemiol., 538-44 (2005).

²⁷ CDC, Violence Prevention Fast Facts, *What is Intimate Partner Violence?* (2019), <https://www.cdc.gov/violenceprevention/intimatepartnerviolence/fastfact.html>.

²⁸ C. Peterson et al., *Lifetime Economic Burden of Intimate Partner Violence Among U.S. Adults*, 55 Am. J. of Prev. Med. 4, 433-444 (2018).

²⁹ Although cash assistance was previously considered under the “public charge” rule, under the new Rule receipt of such assistance (along with receipt of other public benefits) will now “weigh heavily in favor of a finding that an alien is likely at any time in the future to become a public charge.” 84 Fed. Reg. at 41503

³⁰ Lyon, *supra*, at 1.

³¹ Goodman, *supra*, at 13-14.

how, and if they can escape abuse. The inclusion of the TANF program in the Rule is particularly unreasonable, as DHS expressly acknowledges that TANF “is intended to foster self-sufficiency,” on the one hand, yet concludes that “considering TANF in the rule . . . is important in ensuring that aliens are self-sufficient,” on the other.³²

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

The Rule will also penalize victims for other direct consequences of the abuse they have endured. The Rule outlines a list of factors that USCIS must weigh negatively in determining whether an immigrant is likely to become a public charge, including inconsistent work history, lack of English language skills, and lack of education.³⁴ As described above, economic abuse, including sabotaging a victim’s education and employment, is emblematic of domestic violence. Although DHS acknowledged that these negative factors could penalize victims for the abuse they have endured, it took no action to mitigate or address those impacts and instead responded vaguely that “USCIS will consider the totality of the alien’s circumstances, including any and all factors and considerations set forth by the alien” in making an inadmissibility determination.³⁵ But the Rule includes no assurances that USCIS will treat differently (much less explicitly except consideration of) negative factors that are caused by or related to abuse.

³² See 84 Fed. Reg. at 41373.

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

³⁴ 84 Fed. Reg. at 41299.

³⁵ *Id.* at 41437.

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

Although the Rule is not yet in effect, the chilling effect of the Rule is so powerful that it is already impacting the victims that Amici serve. As just one example, an attorney with amicus Tahirih Justice Center reported that every caller she spoke with during the month the proposed Rule was published expressed concern about renewing public benefits. Even immigrant victims not subject to the Rule expressed this fear, due in large part to the fact that abusers often lie to victims about, restrict access to information and relevant documents regarding, and threaten to sabotage victims' immigration status.³⁶ The fears expressed by victims foreshadow the grave harm the Rule will cause to them and their families.

Victims are already foregoing critical housing, food, and healthcare assistance out of fear that it will jeopardize their immigration status. For example, amicus Tahirih Justice Center reports that one client fled with her children to a shelter and declined to obtain public housing (which was available via her U.S. citizen children) because she did not want to jeopardize her immigration status. She is now homeless, and her children are now living with her abusive partner. Amicus Sexual Violence Law Center reports that a client who had been raped refused a Sexual Assault Nurse Examiner ("SANE") exam, through which rape survivors receive emergency medical treatment and trained providers collect and preserve forensic evidence, because she feared that doing so would jeopardize her immigration status. As a result, the client's injuries, including severe internal genital trauma and pelvic fractures, remain untreated.

Fear of the Rule is so great that it is also impacting victims to whom it does not apply. Another amicus, Iowa Coalition Against Domestic Violence, reports that a victim recently chose to stay in an abusive relationship because she was afraid using a Section 8 housing voucher would

³⁶ See *Runner*, *supra*, at 4, 12.

jeopardize her pending U-visa petition and she had no other options for safe, affordable housing. Similarly, a victim of sex trafficking by her husband was finally able to escape to a shelter with her children but, when offered housing assistance, declined out of fear that accepting that assistance would jeopardize her VAWA and T-visa petitions. The client was willing to become homeless with her two children, and potentially return to sex slavery, to avoid risking deportation. Her advocates were ultimately able to convince her that she was exempt from the Rule and that accepting housing assistance would not impact her immigration case.

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

Finally, the Rule fails to weigh the costs to our communities, including local governments and private organizations like Amici, as the Administrative Procedure Act (“APA”) requires. The Rule describes the money saved by reducing public benefits available to immigrants and the direct cost of compliance with the Rule, but ignores the broader impacts to our communities as a result of unmitigated trauma to victims and their families.³⁷ In weighing the costs and benefits, and thus the reasonableness, of a regulation, the APA directs that “‘cost’ includes more than the expense of complying with regulations”³⁸ The Rule gives short shrift to that directive.

The absence of a meaningful cost analysis is particularly conspicuous since DHS elsewhere acknowledges the “potential nexus” between the Rule and “food insecurity, housing scarcity, public health . . . and increased costs to states and localities”³⁹ As Amici explained in their comments on the proposed Rule, these impacts would be widespread and significant. Because the Rule prevents victims from getting the support they need to escape and overcome abuse, they will likely be subjected to further trauma and injury, resulting in physical, mental, and financial

³⁷ See 84 Fed. Reg. at 4130-32.

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

³⁹ 84 Fed. Reg. at 41313.

consequences. This will result in heightened demand for social services, such as emergency food banks and domestic violence shelters, and increased uncompensated health care costs from overutilization of emergency rooms for medical care. Private nonprofit organizations will be forced to absorb the costs associated with increased and prolonged utilization of victim support programs, such as emergency shelter programs, for which only limited funding is available. These costs far outweigh any perceived benefit of the Rule, and should be meaningfully weighed, measured, and mitigated in the development of any regulation impacting victims of gender-based violence. That the Rule's costs outweigh its perceived savings demonstrates that the Rule's purpose is not to minimize the economic impact of immigration, but instead to dissuade immigrants and their families, including victims, from trying to immigrate or lawfully remain in the United States.

IV. CONCLUSION

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

DATED this 26th day of September, 2019.

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