

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

R.V., a minor by and through his next friend and
mother, N.R., et al.,

Plaintiffs,

v.

STEVEN T. MNUCHIN, et al.,

Defendants.

Civil Action No. 8:20-cv-01148-PWG

**MOTION FOR LEAVE TO FILE PROPOSED BRIEF OF *AMICI CURIAE* 39 LOCAL
GOVERNMENTS, THE INTERNATIONAL CITY/COUNTY MANAGEMENT
ASSOCIATION, THE METROPOLITAN AREA PLANNING COUNCIL, AND THE
NATIONAL LEAGUE OF CITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT**

Pursuant to Standing Order 2018-07, *Amici Curiae* 39 Local Governments, the International City/County Management Association, the Metropolitan Area Planning Council, and the National League Of Cities respectfully request leave to file the attached Proposed Brief Of *Amici Curiae* 39 Local Governments, The International City/County Management Association, The Metropolitan Area Planning Council, And The National League Of Cities In Support Of Plaintiffs' Motion For Summary Judgment.

I. IDENTITY AND INTEREST OF *AMICI CURIAE*

Amici include local governments from across the country that come from a wide range of economic, political, and social diversity, as well as the International City/County Management Association, the Metropolitan Area Planning Council¹, and the National League of Cities. *Amici* are:

¹ The Metropolitan Area Planning Council is the public Regional Planning Agency serving the people who live and work in the 101 cities and towns of Metropolitan Boston. *See* Massachusetts General Laws Ch. 40B Section 24. The agency provides extensive technical assistance to cities and towns in the Greater Boston region, and supports the ability of cities and towns to adopt and

the City of Alameda, California; the County of Alameda, California; the City of Albuquerque, New Mexico; the City of Boston, Massachusetts; the City of Cambridge, Massachusetts; the City of Chelsea, Massachusetts; the City of Chicago, Illinois; Contra Costa County, California; Cook County, Illinois; the City and County of Denver, Colorado; the City of Gary Indiana; the City of Holyoke, Massachusetts; the City of Houston, Texas; Howard County, Maryland; the City of Lawrence, Massachusetts; the City of Long Beach, California; the City of Los Angeles, California; the County of Los Angeles, California; the City of Madison, Wisconsin; the City of Minneapolis, Minnesota; Montgomery County, Maryland; the City of New York, New York; the City of Oakland, California; the City of Philadelphia, Pennsylvania; Prince George's County, Maryland; the City of Sacramento, California; the City of Saint Paul, Minnesota; the City of San Diego, California; the City and County of San Francisco, California; the County of Santa Clara, California; the City of Santa Monica, California; the City of Seattle, Washington; Shelby County, Tennessee; the City of Somerville, Massachusetts; the County of Sonoma, California; the City of Tacoma, Washington; the City of Tempe, Arizona; Travis County, Texas; the City of West Hollywood, California; the International City/County Management Association; the Metropolitan Area Planning Council; and the National League of Cities.

Though important differences exist between them, *Amici* share a common interest in providing for the health and welfare of all residents, regardless of immigration status. *Amici* are home to hundreds of thousands of U.S. citizen children living in mixed-status families. Children in mixed-status families are critical to the long-term success of *Amici's* economies and communities. *Amici*, therefore, are deeply committed to ensuring they and their families are afforded much needed relief from the economic impact of the COVID-19 pandemic.

implement best practices for maintaining a productive relationship with all residents of their communities, regardless of their immigration status.

Amici have a significant interest in this proceeding because Defendants' exclusion of U.S. citizen children from the Coronavirus Aid, Relief, and Economic Security (CARES) Act's economic impact payments puts those children at an increased risk for hunger, educational setbacks, and homelessness. Defendants' actions not only harm these children and their families, but also have a negative impact on the long-term success of *Amici*'s economies and communities, which can harm all of *Amici*'s residents.

II. ARGUMENT

This Court has broad discretion to grant leave to file amicus briefs. *See Am. Humanist Ass'n v. Md. Nat'l Capital Park & Planning Comm'n*, 303 F.R.D. 266, 269 (D. Md. 2014). To determine whether to grant leave, this Court considers, in part, whether the amici "provide helpful analysis of the law" or "have a special interest in the subject matter of the suit." *Id.*

The proposed brief would be helpful to this Court and, as noted above, *Amici* have a special interest in the subject matter of this suit. *Amici* offer the unique perspective of local governments, which will assist the Court in evaluating the issues and the impact of this Court's ruling on local governments across the nation. The proposed brief also describes the benefits of extending economic impact payments to U.S. citizen children in mixed-status families and the harms that excluding mixed-status families from such relief will cause to *Amici*'s communities.

The proposed brief was authored in full by *Amici* and their counsel, no party or counsel for a party authored or contributed monetarily to the proposed brief in any respect, and no other person or entity—other than *Amici* and their counsel—contributed monetarily to the proposed brief's preparation or submission. Plaintiffs consent to the filing of this brief. Defendants consent to the filing of this brief "[o]n the assumption that the United States may respond to any argument raised in any such amicus brief either through additional pages in its currently contemplated briefs or through an additional brief specifically addressing those arguments."

For the foregoing reasons, *Amici* request leave to file the attached brief.

Dated: December 23, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that service of the foregoing document was automatically accomplished on all known filing users through the Court's CM/ECF system and/or in accordance with the Federal Rules of Civil Procedure on this 23rd day of December, 2020.

/s/ Shannon Barrett

Shannon Barrett

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**Proposed Brief of *Amici Curiae* 39 Local Governments, the International City/County
Management Association, the Metropolitan Area Planning Council, and the National
League of Cities in Support of Plaintiffs' Motion for Summary Judgment**

CORPORATE DISCLOSURE STATEMENT

Amici the International City/County Management Association, the Metropolitan Area Planning Council, and the National League of Cities have no parent corporation or other corporate affiliates, and issue no stock. Therefore, no publicly held corporation owns more than 10% or more of their stock. All other *Amici* are local governments.

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INTEREST OF AMICI CURIAE

The United States is ground zero for the COVID-19 pandemic. In less than a year, the novel coronavirus has infected over 18 million people in the United States and killed over 300,000.¹ This devastation has been compounded by an economic downturn not seen since the Great Depression: Over 10 million people are unemployed,² and 25% of adults are struggling to pay for basic necessities.³ Although scientific breakthroughs give cause for hope, the light at the end of this tunnel is far for the families struggling to pay for health care, food, rent, educational supplies for their children, and other necessities.

“Mixed-status families”—those in which some members are U.S. citizens or lawful permanent residents and some members are undocumented immigrants—are among the most vulnerable. Nationwide, approximately 16.2 million people belong to mixed-status families,⁴ including over 6 million U.S. citizen children.⁵ These families have been disproportionately impacted by the COVID-19 pandemic and economic fallout. Many of the parents face unemployment: In California, one third of the undocumented labor force works in the sectors most impacted by the pandemic, including food service, child care, and building services industries.⁶ This economic insecurity harms the whole family, including U.S. citizen children.

¹ Ctrs. for Disease Control & Prevention, *United States COVID-19 Cases and Deaths by State*, https://covid.cdc.gov/covid-data-tracker/#cases_casesper100klast7days (last visited Dec. 23, 2020).

² News Release, *The Employment Situation – November 2020*, Bureau of Labor Statistics, Dept. of Labor (Dec. 4, 2020), <https://www.bls.gov/news.release/pdf/empisit.pdf>.

³ Kim Parker et al., *Economic Fallout from COVID-19 Continues to Hit Lower-Income Americans the Hardest*, Pew Research Ctr. (Sept. 24, 2020), <https://www.pewsocialtrends.org/2020/09/24/economic-fallout-from-covid-19-continues-to-hit-lower-income-americans-the-hardest/>.

⁴ *Fact Sheet: Mixed Status Families and COVID-19 Economic Relief*, Nat’l Immigration Forum (Aug. 12, 2020), <https://immigrationforum.org/article/mixed-status-families-and-covid-19-economic-relief/>.

⁵ *Id.*

⁶ Sara Kimberlin & Aurea Mesquita, *No Safety Net or Federal COVID-19 Relief: California’s Undocumented Workers and Mixed Status Families are Locked Out of Support 3* (Apr. 2020), https://calbudgetcenter.org/wp-content/uploads/2020/04/CA_Budget_Center_COVID_Undocumented_Workers_04152020.pdf.

Despite the vulnerability of mixed-status families and their U.S. citizen children, Congress chose to exclude these families entirely from CARES Act emergency aid. Although U.S. citizens or legal permanent residents were generally eligible for \$1,200 stimulus payments and U.S. citizen children for a \$500 per child rebate to parents, Congress carved out households where any member was undocumented.⁷ Nationwide, this excluded an estimated 4.25 million U.S. citizen children who otherwise would qualify their mixed-status families for a \$500 rebate.⁸ This denial of emergency relief exacerbates mixed-status families' exclusion from other federal public benefits: undocumented workers are ineligible for standard unemployment insurance and federal EITC, and mixed-status families receive reduced support from federal programs like the Supplemental Nutrition Assistance Program (SNAP) and housing assistance administered by the Department of Housing and Urban Development (HUD).⁹ Thus, already vulnerable mixed-status families must face this dire public health and economic crisis without the safety nets provided by Congress to other families.

Amici are home to hundreds of thousands of U.S. citizen children living in mixed-status families. In *Amicus* Los Angeles County alone, 500,000 minor children (most of whom are citizens) live with an undocumented parent.¹⁰ In *Amicus* New York City about 223,000 U.S. citizen children reside in mixed-status households. Children in mixed-status families are critical to the long-term

⁷ 26 U.S.C. § 6428. *Amici* understand that a new COVID-19 relief package could provide direct payments to certain members of mixed-status families retroactive to the CARES Act, which demonstrates that Congress has recognized that it was an error to exclude them, including for the reasons set forth in this brief. Until Defendants file a report with the Court verifying that the harms to the proposed class will be fully remedied by the new stimulus package, *Amici* express no opinion on whether the proposal moots Plaintiffs' claims in this case.

⁸ Chuck Marr, et al., *Future Stimulus Should Include Immigrants and Dependents Previously Left Out, Mandate Automatic Payments*, Ctr. on Budget & Pol'y Priorities (May 6, 2020), <https://www.cbpp.org/research/economy/future-stimulus-should-include-immigrants-and-dependents-previously-left-out>.

⁹ Kimberlin & Mesquita, *supra* note 6, at 4.

¹⁰ Comm. for a Greater LA, *No Going Back* 157 (2020); *State of Immigrants in LA County*, USC Dornsife Ctr. for Study of Immigrant Integration 22, 57 (Jan. 2020), https://dornsife.usc.edu/assets/sites/731/docs/SOILA_full_report_v19.pdf.

success of *Amici*'s economies and communities. *Amici*, therefore, are deeply committed to ensuring they are afforded much needed relief from the economic impact of the COVID-19 pandemic. *Amici* have tried to compensate for the federal government's abandonment of mixed-status families and their U.S. citizen children—diverting scarce local resources to provide emergency aid—but *Amici* do not have the resources to meet the overwhelming need. The exclusion of mixed-status families from CARES Act relief strains *Amici*'s already-scarce funds and hinders *Amici*'s goals of providing for the health and welfare of all residents. For these reasons, *Amici* respectfully request that this Court grant Plaintiffs' motion for summary judgment.

ARGUMENT

I. THE DENIAL OF CARES ACT AID TO U.S. CITIZEN CHILDREN WILL CAUSE LONG-TERM HARM TO *AMICPS* RESIDENTS AND COMMUNITIES.

A. U.S. Citizen Children in Mixed-Status Families Face a Higher Risk of Food Insecurity Without Emergency Aid from the CARES Act, Which Threatens the Future Success of *Amici*'s Economies.

The COVID-19 pandemic has dramatically worsened food insecurity for mixed-status families and their U.S. citizen children, threatening the future prosperity of *Amici*'s communities. When children are malnourished, they suffer educational setbacks that restrict their future success and develop health conditions that can plague them through adulthood. *Amici*, in turn, suffer from their lost economic potential and must expend greater resources to address the public health consequences that flow from childhood food insecurity. These long-term consequences are avoidable with a small infusion of relief at this critical time. Providing the \$500 CARES Act stipend to children in all families is therefore critical to protect both U.S. citizen children in mixed-status families and *Amici* from the negative long-term consequences of food insecurity.

Food insecurity presents a growing threat. The level of hunger in U.S. households has

tripled since the onset of the pandemic,¹¹ with over one quarter of households with children experiencing food insecurity.¹² In Los Angeles County, 26.4% of all households with children experienced food insecurity between April and July 2020, and a staggering 41.6% of low-income households with children experienced food insecurity between April and July 2020.¹³ Mixed-status households are worse off,¹⁴ including because undocumented family members are not included when determining how much SNAP assistance the family is eligible to receive.¹⁵

The growing food insecurity among mixed-status families could have lifelong health and educational impacts on their U.S. citizen children. Food insecurity in early childhood can have long-term negative impacts on development and educational attainment.¹⁶ Children experiencing food insecurity show slower rates of cognitive development that translate into lower reading and mathematics scores,¹⁷ and they exhibit higher rates of behavioral problems, including aggression and anxiety.¹⁸ These setbacks limit educational attainment and thus potential future earning capacity.¹⁹ Food insecurity in childhood also translates to health problems in adulthood, including higher risks

¹¹ Jon Schwarz, *Hunger in America, Especially for Children, Has 'Skyrocketed' During COVID-19, Data Shows*, The Intercept (Sept. 23, 2020), <https://theintercept.com/2020/09/23/hunger-food-insecurity-coronavirus-children-census/>.

¹² Christianna Silva, *Food Insecurity in the U.S. by the Numbers*, NPR (Sept. 27, 2020), <https://www.npr.org/2020/09/27/912486921/food-insecurity-in-the-u-s-by-the-numbers>.

¹³ *The Impact of COVID-19 on Food Insecurity in Los Angeles County: April to July 2020*, Public Exchange & USC Dornsife (Sept. 23, 2020), <https://drive.google.com/file/d/17DHvE2xJQJb5VHF-B3i111czGOI09PuC/view>.

¹⁴ David Velasquez et al., *Maximizing Food Security for Unauthorized Immigrants During COVID-19*, Health Affairs Blog (July 28, 2020), <https://www.healthaffairs.org/doi/10.1377/hblog20200724.40740/full/>.

¹⁵ Kimberlin & Mesquita, *supra* note 6, at 4.

¹⁶ John Cook & Karen Jeng, *Child Food Insecurity: The Economic Impact on our Nation at 22*, Feeding America, <https://www.nokidhungry.org/sites/default/files/child-economy-study.pdf> (last visited Dec. 22, 2020).

¹⁷ *Id.*

¹⁸ *Id.* at 23.

¹⁹ *Id.* at 23.

of anemia, asthma, and depression, higher rates of hospitalization, and poorer general health.²⁰

Rising food insecurity among mixed-status families threatens the future of *Amici's* economies and public health initiatives. Communities lose human capital formation when children face food insecurity, suffer poorer health and education outcomes, and thus have less ability to contribute to the local economy.²¹ Childhood food insecurity can translate into losses of over \$500,000 over a lifetime,²² earnings that would have fueled local economies through taxes, spending, and investment. Local communities will need to expend greater resources to address the health problems caused by food insecurity. *Amicus* Los Angeles County alone spends between \$1–3 billion dollars per year on healthcare costs associated with food insecurity.²³ These long-term losses to *Amici's* economies and greater future health expenditures cannot be avoided without aid now.

The CARES Act could make the difference between being fed or going hungry and hindering the future potential or maintaining the prosperity of *Amici's* communities. CARES Act stipends have been critical to providing families food security: 80% of recipients have used their stipends to pay for food.²⁴ The \$500 per child stipend could allow parents in mixed-status families to protect their U.S. citizen children from food insecurity, preventing harm to them and to *Amici*.

²⁰ Craig Gundersen & James P. Ziliak, *Food Insecurity and Health Outcomes*, 34 *Health Affairs* 1830, 1832 (2015), <https://www.healthaffairs.org/doi/pdf/10.1377/hlthaff.2015.0645>.

²¹ John Cook & Karen Jeng, *Child Food Insecurity: The Economic Impact on our Nation* at 11-12, Feeding America (2009), <https://www.nokidhungry.org/sites/default/files/child-economy-study.pdf>.

²² *Id.* at 23.

²³ Seth A. Berkowitz, et al., *State-Level and County-Level Estimates of Health Care Costs Associated with Food Insecurity*, 16 *Preventing Chronic Disease* at App'x (2019), https://www.cdc.gov/pcd/issues/2019/18_0549.htm.

²⁴ Daniel Perez-Lopez & Charles Adam Bee, *Majority Who Received Stimulus Payments Spending Most of It on Household Expenses*, *Census* (June 24, 2020), <https://www.census.gov/library/stories/2020/06/how-are-americans-using-their-stimulus-payments.html#:~:text=In%20households%20that%20spent%20their,%2C%20electricity%2C%20cable%2C%20internet%20and>.

B. Without Resources from the CARES Act, U.S. Citizen Children in Mixed-Status Families Are Suffering Irreversible Educational Setbacks That Will Result in Long-Term Harm to *Amici*'s Economies.

U.S. citizen children in mixed-status families are falling behind their peers as the digital divide fuels educational disparities during the pandemic. The setbacks these children face will harm not only their futures, but also the future of *Amici*'s economies and communities. Providing these children aid to bridge the digital divide is therefore critical to *Amici*.

The abrupt transition to virtual learning during the COVID-19 pandemic threatens to set students back an average of almost one third of a year in final educational attainment.²⁵ Particularly where school closures are prompted by disasters like this pandemic, students may suffer from mental health issues in addition to educational interruptions: One study in the aftermath of Hurricane Katrina showed that student's educational attainment was affected not only by displacement, but also by the experience of stress, anxiety, and uncertainty about their future.²⁶ Student absenteeism is also one of the strongest factors correlated with lower student achievement and a lower likelihood of high school graduation.²⁷

With the transition to virtual learning, access to internet has become determinative of whether students are forced into chronic absenteeism. Students without consistent access to the internet and computers cannot successfully transition to virtual learning.²⁸ In Los Angeles County, 31% of students in K-12 schools lack both a computer and high-speed internet connection at

²⁵ Dimitri A. Cristakis, et al., *Estimation of US Children's Educational Attainment and Years of Life Lost Associated with Primary School Closures During the Coronavirus Disease 2019 Pandemic*, 3 GAMA Network Open 1 (2020), <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2772834>.

²⁶ J. Steven Picou & Brent K. Marshal, *Social Impacts of Hurricane Katrina on Displaced K-12 Students and Educational Institutions in Coastal Alabama Counties: Some Preliminary Observations*, 27 Mid-South Sociological Ass'n 767 (2007).

²⁷ Comm. for a Greater LA, *supra* note 10, at 104.

²⁸ Emma Garcia & Elaine Weiss, *COVID-19 and Student Performance, Equity, and U.S. Education Policy*, Econ. Pol'y Inst. (Sept. 10, 2020), <https://www.epi.org/publication/the-consequences-of-the-covid-19-pandemic-for-education-performance-and-equity-in-the-united-states-what-can-we-learn-from-pre-pandemic-research-to-inform-relief-recovery-and-rebuilding/>.

home.²⁹ For these students, the pandemic has deepened educational disparities: A Los Angeles Times survey of forty-five Southern California school districts found “profound differences” in distance learning between children in low-income communities with less access to internet and children in affluent communities.³⁰ Many schools in low-income districts took weeks to launch online learning programs, while districts in affluent communities could launch online classes almost immediately.³¹ When schools in Los Angeles County launched online courses, students from lower income households had lower rates of participation.³²

U.S. citizen children in mixed-status families are particularly vulnerable because their families have been disproportionately impacted by the pandemic and have fewer resources to maintain consistent, reliable access to the tools necessary to succeed in an online learning environment. Immigrant households³³ and low-income households³⁴ commonly cite affordability as a key obstacle to obtaining a broadband subscription. If mixed-status families cannot maintain an internet connection for distance learning, this not only will harm their U.S. citizen children’s educational attainment, but also will have broader ripple effects throughout *Amici*’s economies and communities.

More college graduates in a community correlates with faster GDP growth, a higher median

²⁹ Comm. for a Greater L.A., *supra* note 10, at 96.

³⁰ Paloma Esquivel, et al., *A Generation Left Behind? Online Learning Cheats Poor Students*, *Times Survey Finds*, L.A. Times (Aug. 13, 2020), <https://www.latimes.com/california/story/2020-08-13/online-learning-fails-low-income-students-covid-19-left-behind-project>.

³¹ *Id.*

³² Megan Besecker, et al., *Student Engagement Online During School Facilities Closures: An Analysis of L.A. Unified Secondary Students’ Schoology Activity from March 16 to May 22, 2020* at 17 (July 2020), <http://laschoolboard.org/sites/default/files/IAU%20Report%202020%200707%20-%20Student%20Engagement%20Online%20During%20Closures.pdf>.

³³ Alexis Cherewka, *The Digital Divide Hits U.S. Immigrant Households Disproportionately During the COVID-19 Pandemic*, Migration Pol’y Inst. (Sept. 3, 2020), <https://www.migrationpolicy.org/article/digital-divide-hits-us-immigrant-households-during-covid-19>.

³⁴ *Id.* at 99.

household income, and a deficit decrease over the long term.³⁵ College-graduate community members allocate nearly *half* of their total spend on *local* goods and services.³⁶ College graduates also improve other community members' lives. Just a 1% increase in college graduates in the workforce correlates to wage increases for everyone in that workforce, including workers who disenrolled from high school, workers with only a high school degree, and workers with only some college education.³⁷ College graduates are also more likely to volunteer: 40.3% of bachelor's degree holders volunteer compared to just 17.4% of high school graduates.³⁸ For these reasons, *Amici* are invested in preventing educational disruptions and keeping all children on a path to college.

The \$500 per child CARES Act stipend could make the difference between maintaining access to online education and missing school. It is therefore critical to *Amici's* future success that all families are eligible for these relief payments. Many families have used their stipends to pay for internet and technological devices.³⁹ Mixed-status families could likewise use their stipend to maintain their children's access to school, for their sakes' and *Amici's*.

C. U.S. Citizen Children in Mixed-Status Families Are On the Brink of a Housing Crisis, and Without CARES Act Relief, the Future Success of *Amici's* Communities Is in Jeopardy.

Mixed-status families are struggling to maintain housing for their U.S. citizen children,

³⁵ Sophia Koropecyk, et al., Am. Acad. of Arts & Sciences, The Economic Impact of Increasing College Completion 21 (2017), https://www.amacad.org/sites/default/files/publication/downloads/CFUE_Economic-Impact.pdf.

³⁶ Jonathan Rothwell, The Brookings Institute, What Colleges Do for Local Economies: A Direct Measure Based on Consumption (2015), <https://www.brookings.edu/research/what-colleges-do-for-local-economies-a-direct-measure-based-on-consumption/>.

³⁷ Enrico Moretti, U.C. Berkeley Dep't of Econs., Social Returns to Education and Human Capital Externalities: Evidence from Cities 1 (1998), [http://darp.lse.ac.uk/PapersDB/Moretti_\(98\).pdf](http://darp.lse.ac.uk/PapersDB/Moretti_(98).pdf).

³⁸ Philip Trostel, Lumina Found., It's Not Just The Money: The Benefits of College Education to Individuals and to Society 53 (2015), at 53 fig. 36, <https://www.luminafoundation.org/files/resources/its-not-just-the-money.pdf>.

³⁹ Perez-Lopez & Bee, *supra* note 24.

threatening severe harm to their children and *Amici*. Children who are thrust into homelessness suffer traumatic health and educational setbacks that limit their development and potential. These setbacks affect *Amici*'s economies and demand greater public health expenditures. Such dire consequences can be avoided through equal access to CARES Act aid.

The economic fallout from the COVID-19 pandemic has driven many families to the brink of homelessness, especially mixed-status families. In Los Angeles County, for example, 15–30% of households cannot pay rent right now.⁴⁰ Although an eviction moratorium is currently protecting families from homelessness, when the moratorium is lifted, an estimated 365,000 households could be at risk.⁴¹ Mixed-status families face a particularly daunting risk of housing insecurity or homelessness because they have been disproportionately affected by the economic downturn and are eligible for only prorated federal housing assistance.⁴²

The negative consequences associated with housing insecurity and homelessness threaten not only mixed-status families and their U.S. citizen children, but also *Amici*. Homeless children are more likely to experience worse health outcomes than their peers,⁴³ and homelessness has been shown to negatively impact children's cognitive, emotional, and behavioral development.⁴⁴ Children

⁴⁰ Comm. for a Greater L.A., *supra* note 10, at 58.

⁴¹ *Id.* at 56.

⁴² See Audrey Garces, *State, Local Lawmakers Oppose HUD Proposal That Would Affect Thousands of Immigrant Families*, KQED (July 3, 2019), <https://www.kqed.org/news/11758708/state-and-local-lawmakers-oppose-a-hud-proposal-that-would-affect-thousands-of-immigrant-families>.

⁴³ July 9, 2019 LACDA Public Comment on Proposed Rule: Housing and Community Development Act of 1980: Verification of Eligible Status, 84 Fed. Reg. 20589 (May 10, 2019), Docket No. FR-6124-P-01 (LACDA Public Comment) at 8 n.14 (citing Richards, R. & Smith, C., *Environmental, Parental, and Personal Influences on Food Choice, Access, and Overweight Status among Homeless Children*, SOCIAL SCIENCE & MEDICINE 65(8) (2007); Roy Grant, et al., *The Health of Homeless Children Revisited*, ADVANCES IN PEDIATRICS 51 (2007)); see also *Homeless Experiences of Parents Have a Lasting Impact on Children*, U.S. Dept. Health & Human Servs. (updated Dec. 3, 2020), <https://www.samhsa.gov/homelessness-programs-resources/hpr-resources/homeless-experiences-parents-have-lasting-impact>.

⁴⁴ LACDA Public Comment at 8 n.15 (citing Ziol Guest, K. M. & McKenna, C.C., *Early childhood housing instability and school readiness*, CHILD DEVELOPMENT 85(1) (2014)).

suddenly thrust into homelessness also suffer decreased educational attainment.⁴⁵ These consequences affect *Amici*, whose future depends on their health and economic contributions. For every child who suffers decreased educational attainment due to housing insecurity, *Amici* stands to lose hundreds of thousands of dollars in decreased GDP contributions⁴⁶ as well as investment and community involvement.⁴⁷ In the short-term, those experiencing homelessness also may be at greater risk of contracting COVID-19, due to decreased access to sanitary facilities and reduced ability to social distance.⁴⁸ *Amici* like Los Angeles County already are expending hundreds of millions of dollars to house those experiencing homelessness during this pandemic and cannot afford for this crisis to grow.⁴⁹

The \$500 stipend for U.S. citizen children could help save mixed-status families from homelessness. Over 75% of families receiving CARES Act stipends have spent it on rent, mortgage, or utilities.⁵⁰ Without this crucial safety net, U.S. citizen children in mixed-status families face the grave risk of homelessness, and *Amici's* communities will suffer the irreversible consequences.

II. CONGRESS'S EXCLUSION OF MIXED-STATUS FAMILIES FORCES *AMICI* TO EXPEND SCARCE FUNDS TO TRY TO PREVENT HARM TO ALL RESIDENTS.

Failure to include these families in CARES Act assistance burdens state and local efforts to try to mitigate the community harm. States and local governments, like *Amici*, are responsible for and have an interest in providing for the health and welfare of *all* their residents. *See Medtronic, Inc. v.*

⁴⁵ *Homeless Experiences of Parents Have a Lasting Impact on Children*, *supra* note 43.

⁴⁶ Cook & Jeng, *supra* note 21, at 23.

⁴⁷ Rothwell, *supra* note 36; Trostel, *supra* note 38.

⁴⁸ Libby Perl, *Homelessness and COVID-19*, Congressional Research Service, (Nov. 4, 2020), <https://crsreports.congress.gov/product/pdf/R/R46596>.

⁴⁹ Doug Smith & Benjamin Oreskes, *Program to House Homeless People in Hotels is Ending after Falling Short of Goal*, LA Times (Sept. 22, 2020), <https://www.latimes.com/california/story/2020-09-22/homeless-people-hotels-project-roomkey-phasing-out#:~:text=A%20third%20is%20winding%20down,safe%20havens%20for%20homeless%20people>.

⁵⁰ Perez-Lopez & Bee, *supra* note 24.

Lohr, 518 U.S. 470, 475 (1996). When members of *Amici*'s communities are ineligible for critical federal benefits, *Amici* must marshal their own resources to cover the costs. In Los Angeles County, an undocumented single mother of a 16-year-old U.S. citizen daughter with a heart condition has been striving to provide for her daughter and position her to go to college. In the economic fallout from the pandemic, this mother lost her job as a domestic worker. Had the County not provided food voucher assistance, she and her daughter would have gone hungry.

Amici provide this assistance to protect vulnerable residents from homelessness, educational setbacks, and hunger, and also because they understand that depriving some residents of critical relief can harm the wellbeing of their entire communities. *See supra* Sec. I. *Amici* also recognize that providing financial support to residents in need benefits their economies, while excluding those residents from aid has the opposite effect. But many *Amici* are facing severe budget shortfalls wrought by the pandemic and cannot provide all of the funds necessary to prevent these harms. Congress's exclusion of U.S. citizen children from CARES Act relief only exacerbates the budget shortfalls and limits *Amici*'s ability to mitigate COVID-19's impact on their communities.

Local governments nationwide already have spent significant resources to fill the gaps created by the CARES Act to protect the long-term health of the public and their economy. For example, Seattle used an allocation from its general fund and created an almost \$8 million fund to support immigrant residents and households excluded from the CARES Act.⁵¹ The Seattle Council President explained the importance of the funding, stating that: "While the COVID-19 pandemic

⁵¹ *Seattle COVID-19 Disaster Relief Fund for Immigrants*, Seattle.gov, <http://www.seattle.gov/iandaffairs/programs-and-services/covid-19-disaster-relief-fund-for-immigrants> (last visited Dec. 22, 2020); Anthony Derrick, *Mayor Durkan, Council President González, Councilmember Mosqueda, and Councilmember Morales Announce Joint COVID-19 Relief Package that Ensures Emergency Funds Remain Available for 2020 and 2021* (Aug. 21, 2020), <https://durkan.seattle.gov/2020/08/mayor-durkan-council-president-gonzalez-councilmember-mosqueda-and-councilmember-morales-announce-joint-covid-19-relief-package-that-ensures-emergency-funds-remain-available-for-2020-and-2021/>.

won't last forever, its impact on Seattleites health and financial well-being is potentially life-altering. . . . If we invest today in immigrant and refugee communities, we can keep families safe and financially secure through this challenging period.”⁵² Montgomery County, Maryland is offering up to \$1950 per household to residents who were excluded from federal relief.⁵³ The County explained that “COVID-19 continues to take a toll on our economy and this program is one way to help stabilize families that are fighting to survive. . . . Collectively, we can reduce the impact on people's lives and improve our recovery efforts.”⁵⁴

Some jurisdictions have assigned federal funding received through the CARES Act to support residents excluded from the CARES Act's individual payments. The County of Los Angeles and the City of Los Angeles both used CARES Act funds to create programs that provide temporary rent subsidies for tenants, regardless of immigration status, who are unable to pay for housing due to circumstances related to COVID-19.⁵⁵ Similarly, the City of Albuquerque allocated \$2.5 million in CARES Act funds to aid over 1,200 households in Albuquerque ineligible for CARES Act stimulus checks.⁵⁶

Local governments also have coordinated with the private sector to direct private financial

⁵² Derrick, *supra* note 51.

⁵³ *COVID-19: Emergency Assistance Relief Payment (EARP)*, Montgomery County Dept. of Health & Human Servs., https://www.montgomerycountymd.gov/HHS/RightNav/Coronavirus_EARP.html (last visited Dec. 22, 2020).

⁵⁴ Montgomery County to Provide One-Time Emergency Assistance Relief Payment Checks to Low-Income Residents Not Receiving Federal Benefits (Apr. 27, 2020), https://www2.montgomerycountymd.gov/mcgportalapps/Press_Detail.aspx?Item_ID=25235.

⁵⁵ *City of Los Angeles Emergency Renters Assistance Program*, City of Los Angeles, <https://hcidla.lacity.org/> (last visited Dec. 22, 2020); LA County COVID-19 Rent Relief, <https://www.lacda.org/programs/rent-relief> (last visited Dec. 22, 2020); *L.A., through Friday, is taking applications for its \$103-million rent relief program*, L.A. Times (July 12, 2020), <https://www.latimes.com/california/story/2020-07-12/renters-relief-program-to-start-taking-applications>.

⁵⁶ City of Albuquerque Community Impact Fund, <http://www.cabq.gov/economicdevelopment/city-of-albuquerque-community-impact-fund> (last visited Dec. 22, 2020).

support to residents excluded from CARES Act relief. The City of Los Angeles introduced the Angeleno Card, a private-public partnership that provided over \$36 million in direct financial assistance to residents who lost work because of the pandemic, regardless of immigration status.⁵⁷ The Oakland Fund for Public Innovation, a public-private partnership between the City of Oakland and philanthropic funders, provided 865 undocumented Oaklanders with \$500 each because they were ineligible for federal assistance.⁵⁸ New York City, in partnership with the Open Society Foundation, helped distribute a \$20 million donation for undocumented workers impacted by COVID-19.⁵⁹ The program has helped over 75,000 people.

Research supports *Amici's* decision to fill the gaps left by the CARES Act and demonstrates that excluding mixed-status families from emergency aid negatively affects *Amici*. A recent study from the University of California, Los Angeles found that including mixed-status families in individual CARES Act payments would have added \$10 billion to the U.S. economy and created 82,000 jobs.⁶⁰ Similarly, assuming a distribution of just 20,000 recipients, the City of Los Angeles Angeleno Card was expected to cost \$15 million dollars, but was expected to increase total value added by \$21 million and increase total tax revenue by \$7 million.⁶¹

⁵⁷ Mayor's Fund for Los Angeles, <https://mayorsfundla.org/covid19-response/> (last visited Dec. 22, 2020); Marissa Wenzke & Wendy Burch, *Application period for 'Angeleno Card,' which helps those struggling due to virus, closes*, KTLA, (Apr. 16, 2020), <https://ktla.com/news/local-news/1-a-residents-have-just-hours-left-to-apply-for-angeleno-card-which-helps-those-struggling-due-to-virus/>.

⁵⁸ *COVID-19 Relief Fund Report*, Oakland Fund For Public Innovation 6 (July 2020), <https://www.oaklandfund.org/wp-content/uploads/2020/08/OFPI-COVID-19-Relief-Fund-Report-v1.pdf>.

⁵⁹ *Mayor de Blasio Announces New York City COVID-19 Immigrant Emergency Relief Program with Open Society Foundations*, NYC.gov (Apr. 16, 2020), <https://www1.nyc.gov/office-of-the-mayor/news/262-20/mayor-de-blasio-new-york-city-covid-19-immigrant-emergency-relief-program-open>.

⁶⁰ Raul Hinojosa-Ojeda et al., *Undocumented During COVID-19: Essential for the Economy but Excluded from Relief*, UCLA N. Am. Integration & Development Ctr. 5, <https://latino.ucla.edu/wp-content/uploads/2020/08/LPPI-Undocumented-During-COVID-19-Brief.pdf>.

⁶¹ Raul Hinojosa-Ojeda et al., *Essential but Disposable: Undocumented Workers and their Mixed-Status Families, Modeling COVID-19 Economic Impacts and Government Relief Policies by Race and Immigration Status*

But demand for these local funds often far outpaces supply,⁶² and *Amici's* strained budgets cannot continue to replenish relief funds and mitigate harms to their communities. Across the country, local governments are facing serious budget crises due to the pandemic, which are only expected to get worse. Just this year, there are roughly 1.2 million fewer state and local government jobs, and state and local governments experienced an approximately \$70 billion dollar shortfall.⁶³ If there is no further federal help, that shortfall may more than triple to \$268 billion in 2021 and grow even larger in 2022.⁶⁴ The federal government's exclusion of undocumented immigrants and their families from emergency relief exacerbates this strain and thwarts *Amici's* ability to provide for the health and welfare of all their residents.

III. SECTION 6428 OF THE CARES ACT VIOLATES THE FIFTH AMENDMENT.

Congress's decision to exclude mixed-status families is not only unwise, but unlawful. Defendants' exclusion of U.S. citizen children from CARES Act relief violates the Fifth Amendment because it discriminates against U.S. citizen children based solely on their parents' immigration status. As Plaintiffs persuasively demonstrate, classifications that discriminate against children based on the characteristics of their parents must be struck down unless they survive heightened scrutiny. *Pls' Mot. Sum. J.*, Dkt. 59 at 19–12; *Clark v. Jeter*, 486 U.S. 456, 461 (1988). To survive heightened scrutiny, § 6428 of the CARES Act must be substantially related to advancing an important government interest. *Clark*, 486 U.S. at 461; *Lewis v. Thompson*, 252 F.3d 567, 591 (2d Cir. 2001). “The purpose of requiring that [substantial] relationship is to assure that the validity of a

in Los Angeles County, California, and the United States, UCLA N. Am. Integration & Development Ctr. & Mexican Instituto Nacional de Estadística y Geografía 39 (Aug. 10, 2020), <https://irle.ucla.edu/wp-content/uploads/2020/08/Essential-Undocumented-Workers-Final-w-Cover.pdf>.

⁶² *City of Los Angeles Emergency Renters Assistance Program*, *supra* note 55.

⁶³ David Harrison, *State, Local Governments Slashed Spending After Covid. Next Year Could Be Worse*, Wall Street Journal (Nov. 29, 2020), <https://www.wsj.com/articles/state-local-governments-slashed-spending-after-covid-next-year-could-be-worse-11606669200?mod=djemalertNEWS>.

⁶⁴ *Id.*

classification is determined through *reasoned analysis* rather than through the mechanical application of traditional, often inaccurate, assumptions” *Mississippi Univ. for Women v. Hogan*, 458 U.S. 718, 725-726 (1982)(emphasis added). *Amici* join in Plaintiffs’ arguments that Defendants cannot make such a showing here, and note that there is no evidence of any “reasoned analysis” that demonstrates a substantial relationship between excluding U.S. citizen children in mixed-status families from CARES Act relief and any of DOJ’s purported interests in doing so.

Amici add that, indeed, there is an important government interest in *including* U.S. citizen children in CARES Act relief: protecting the health and wellbeing of all residents, including children. *See, e.g., Tepeyac v. Montgomery Cnty.*, 5 F. Supp. 3d 745, 763 (D. Md. 2014) (“[P]rotecting the health of [] citizens is, at least in some instances, a compelling interest.”); *Lawrence v. Polis*, 2020 WL 7348210, at *5 (D. Colo. Dec. 4, 2020) (“[R]esponding to a public-health threat is undeniably a compelling government interest.”). This important interest is harmed by excluding U.S. citizen children from CARES Act relief because it strains *Amici*’s ability to provide for its residents’ welfare and puts *Amici*’s residents at risk for food insecurity, educational setbacks, and housing insecurity. *See supra* Secs. I & II. Defendants failed to consider this important interest when enacting § 6248.

CONCLUSION

For these reasons, *Amici* respectfully request the Court grant Plaintiffs’ motion for summary judgment.

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Respectfully submitted,

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