No. 19-35914

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

STATE OF WASHINGTON, et al.,

Plaintiffs-Appellees,

v.

U.S. DEPARTMENT OF HOMELAND SECURITY, et al.,

Defendants-Appellants.

On Appeal from the United States District Court
for the Eastern District of Washington
No. 4:19-cv-05210-RMP
Hon. Rosanna Malouf Peterson

BRIEF OF *AMICI CURIAE* THE AMERICAN CIVIL LIBERTIES UNION, CENTER FOR PUBLIC REPRESENTATION, ET AL. IN SUPPORT OF APPELLEES AND AFFIRMANCE OF THE DISTRICT COURT

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rules of Appellate Procedure 26.1 and 29(a)(4)(A), the *amici curiae* state that they do not have parent corporations, and no publicly held corporation owns 10% or more of any of their stocks.

Dated: January 24, 2020

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INTEREST OF AMICI CURIAE[1]

Amici curiae are nineteen nonprofit organizations that represent, advocate for, and support the disability community. Collectively, *amici* operate in all fifty States and six Territories and represent tens of thousands of people with disabilities and their family members across the country. Among other services, the *amici* provide public education, litigate, and conduct research for people with disabilities and their families. All *amici* are dedicated to the liberty, equality, and integration of individuals with disabilities. Individual statements of interest from each *amicus* organization appear in the addendum to this brief.

[1] Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), *amici curiae* state that all parties consented to the filing of this *amici curiae* brief. No party's counsel authored this brief in whole or in part, and no party, party's counsel, or person other than *amici curiae* or their members or counsel contributed money intended to finance the preparation or submission of this brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

The United States is a nation shaped by immigration and founded on ideals of equality—however imperfectly realized. Contrary to these values, for more than a century, immigrants with disabilities were legally excluded from this country based on the flawed notion that individuals with disabilities were "undesirables." Indeed, in the early twentieth century, the "principal object" of immigration law was "the exclusion from this country of the morally, mentally and physically deficient[.]" Douglas C. Baynton, Defectives in the Land: Disability and American Immigration Policy, 1882-1924, 24 J. AM. ETHNIC HIST. 31, 34 (2005).

Over time, spurred by the disability rights movement, public attitudes regarding disabilities evolved. Congress responded by changing the law. In 1973, a bipartisan Congress passed the Rehabilitation Act, which prohibits disability discrimination by recipients of federal funding and all executive agencies within the Federal government. Section 504 of the Rehabilitation Act ("Section 504") was modeled after Title VI of the Civil Rights Act of 1964 and declared: "No otherwise qualified handicapped individual in the United States . . . shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." Rehabilitation Act of 1973, Pub. L. No. 93-112, § 504, 87 Stat. 355,

394 (1973)[2]; *see also* Civil Rights Act of 1964, Pub. L. No. 88-352, tit. VI, 78 Stat. 241, 252-53 (1964).

In 1990, a bipartisan Congress enacted the Americans with Disabilities Act ("ADA"), which proclaimed that "the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals."[3] 42 U.S.C. § 12101(a)(7). That same year, Congress amended the Immigration Code to end the discriminatory exclusion of people with certain mental disabilities. *See* Immigration Act of 1990, Pub. L. No. 101-649 § 603(a)(15), 104 Stat. 4978, 5083-84 (1990) (the "Immigration Act") (deleting language excluding, *inter alia*, "[a]liens who are mentally retarded" or who are "afflicted with . . . a mental defect").[4]

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[2] The Rehabilitation Act Amendments of 1992 updated the term "handicap" to individual with a "disability." *See* Pub. L. No. 102–569 (HR 5482), 106 Stat 4344 (Oct. 29, 1992).

[3] Congress passed the ADA "to remedy society's history of discriminating against the disabled[.]" *M.R. v. Dreyfus*, 697 F.3d 706, 733 (9th Cir. 2012). The ADA is intended "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." *Olmstead v. v. L.C. ex rel. Zimring*, 527 U.S. 581, 589 (1999) (quoting 42 § 12101(b)(1)).

[4] The terms "mental retardation" and "mentally retarded" were once commonly used but are now considered outdated and offensive. In 2010, Congress passed Rosa's Law to change such terminology in federal law to "intellectual disability." Pub. L. No. 111–256, 124 Stat 2643 (Oct. 5, 2010). Most advocates, government agencies, and disability organizations use the term "intellectual disability."

The Department of Homeland Security's Final Rule on Public Charge Ground of Inadmissibility (the "Final Rule") effectively reinstates those exclusionary provisions in violation of the Rehabilitation Act. The Final Rule's "health" and "resources" criteria,[5] in combination, make the vast majority of people with significant disabilities virtually certain to be deemed public charges. Although the government asserts that the Final Rule calls for a disability-neutral evaluation of whether an individual is likely to be a public charge based on the totality of the circumstances, the specific criteria that the Rule imposes put a heavy thumb on one side of the scale to mandate the exclusion of people with disabilities.

Indeed, the Rule combines these criteria to triply punish individuals with disabilities. First, having a medical condition that "will interfere with the alien's ability to provide and care for himself or herself, to attend school, or to work upon admission or adjustment of status" expressly counts as a negative factor[6]—a factor

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[5] The public charge provision of the INA states that an immigrant's "age," "health," "family status," "asserts, resources, and financial status," and "education and skills" must be considered. 8 U.S.C. § 1182(a)(4)(B)(i).

[6] 84 Fed. Reg. 41500, 41502 (8 C.F.R. § 212.22(b)(2) ("DHS will consider whether the alien's health makes the alien more likely than not to become a public charge at any time in the future, including whether the alien has been diagnosed with a medical condition that is likely to require extensive medical treatment or institutionalization or that will interfere with the alien's ability to provide and care for himself or herself, to attend school, or to work upon admission or adjustment of status.")).

that is limited to those who meet the Rehabilitation Act's definition of disability.[7] Having a disability counts as a heavily weighted negative factor if the immigrant lacks private insurance.[8] Second, the rule treats the *lack* of a disability as a positive factor, ensuring that a disabled immigrant in good health cannot possibly receive a positive factor for her health.[9] And third, an individual's use of Medicaid counts as a heavily weighted negative factor[10]—a factor that targets individuals with

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[7] DHS concedes, "The Rule requires adjudicators to consider an alien's disability[.]" Op. Br. at 14.

[8] 84 Fed. Reg. 41500, 41504 (8 C.F.R. § 212.22(c)(1) ("*Heavily weighted negative factors*. The following factors will weigh heavily in favor of a finding that an alien is likely at any time in the future to become a public charge: . . . (iii) (A) The alien has been diagnosed with a medical condition that is likely to require extensive medical treatment or institutionalization or that will interfere with the alien's ability to provide for himself or herself, attend school, or work; and (B) The alien is uninsured and has neither the prospect of obtaining private health insurance, nor the financial resources to pay for reasonably foreseeable medical costs related to such medical condition …")

[9] 84 Fed. Reg. 41500, 41502 (8 C.F.R. § 212.22(b)(2), quoted in footnote 5, is the entire standard for the "health" factor. It defines health as the presence or absence of a disability without listing any other metric.

[10] 84 Fed. Reg. 41500, 41501 (8 C.F.R. §§ 212.21(b)(5) ("Public benefit means: … (5) Medicaid under 42 U.S.C. 1396 et seq., [with some exceptions])"), 41504 (8 C.F.R. § 212.22(c)(1) ("*Heavily weighted negative factors*. The following factors will weigh heavily in favor of a finding that an alien is likely at any time in the future to become a public charge: … (ii) The alien has received or has been certified or approved to receive one or more public benefits, as defined in § 212.21(b), for more than 12 months in the aggregate within any 36-month period, beginning no earlier than 36 months prior to the alien's application for admission or adjustment of status on or after October 15, 2019").

disabilities, because Medicaid is the only source of services essential to enabling many people with disabilities to work and participate in their communities.

As a result of this triple-counting, many individuals with disabilities will, solely because of their disability, be inadmissible or ineligible for an adjustment of status under the Final Rule. The Final Rule itself would have devastating effects on disabled immigrants and their families, and confusion surrounding the Final Rule would cause yet further harm. The *amici curiae*—major organizations from all corners of the disability community—join together to voice the disability community's alarm over the Final Rule and to lend their expertise on issues relating to Section 504 of the Rehabilitation Act. The *amici curiae* respectfully urge the court to affirm the district court's preliminary injunction order.

ARGUMENT

I. Plaintiffs Are Likely to Succeed on the Merits Because the Final Rule Violates Section 504 of the Rehabilitation Act

The Final Rule violates the Rehabilitation Act because it facially discriminates on the basis of disability. The Rule expressly treats as a negative factor having "a medical condition that is likely to require extensive medical treatment or institutionalization or that will *interfere with the alien's ability to provide and care for himself or herself, to attend school, or to work*." 84 Fed. Reg. 41502, 41504 (8 C.F.R. §§ 212.22(b)(2) (emphasis added), (c)(iii)(A)). This language in the Final Rule essentially applies to all immigrants with disabilities because it closely tracks

the definition of disability in the Rehabilitation Act: "a physical or mental impairment that substantially limits one or more major life activities[11]. . . ." 42 U.S.C. § 12102(1)(A) (defining disability for purposes of the ADA); 29 U.S.C. § 705(9)(B) (defining "disability," for purposes of Section 504 of the Rehabilitation Act, as having "the meaning given" the term in the ADA). The Final Rule thus discriminates against individuals "solely by reason of" their disability even though DHS could have interpreted the relevant term "health" in the INA in a manner consistent with the Rehabilitation Act.

Furthermore, Section 504 of the Rehabilitation Act forbids federal executive agencies from acting in a manner that, either through "purpose or effect," discriminates against or denies meaningful access to individuals with disabilities.[12] In *Alexander v. Choate*, the Supreme Court made clear that Congress intended Section 504 to forbid all forms of disability discrimination, including invidious

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[11] The term "major life activities" includes, but is not limited to, "caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working." 42 U.S.C. § 12102(2)(A).

[12] *See* 29 U.S.C. § 794; 6 C.F.R. § 15.1; 28 C.F.R. § 41.51(b)(3); DHS Directive No. 065-01 (Aug. 25, 2013); DHS Instruction No: 065-01-001 (Mar. 7, 2015); DHS Guide 065-01-001-01 ("Guide"), at 23-24 (Jun. 6, 2016); Mem. for Maurice C. Inman, Jr., General Counsel, Immigration and Naturalization Service, from Robert B. Shanks, Deputy Assistant Attorney General, Office of Legal Counsel, Re: Section 504 of the Rehabilitation Act of 1973 (Feb. 2, 1983).

animus and benign neglect. *See* 469 U.S. 287, 294–97 (1985) ("Discrimination against the handicapped was perceived by Congress to be most often the product, not of invidious animus, but rather of thoughtlessness and indifference—of benign neglect. . . . [M]uch of the conduct that Congress sought to alter in passing the Rehabilitation Act would be difficult if not impossible to reach were the Act construed to proscribe only conduct fueled by a discriminatory intent."). As this Court has stated, "We have repeatedly recognized that facially neutral policies may violate the ADA[13] when such policies unduly burden disabled persons, even when such policies are consistently enforced." *McGary v. City of Portland*, 386 F.3d 1259, 1265 (9th Cir. 2004).

The Final Rule triple-counts the same factual circumstance of an individual's disability as a negative factor, as a separate strongly negative factor, and as denying the possibility of a positive factor. As a result, the purpose and effect is to selectively exclude disabled people from eligibility for admission or adjustment of status. The regulation therefore violates Section 504 for the additional reason that it unduly burdens the ability of people with disabilities to access immigration relief.

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[13] "[T]here is no significant difference in the analysis of rights and obligations created by the [ADA and Section 504]." *Vinson v. Thomas*, 288 F.3d 1145, 1152 n.7 (9th Cir. 2002).

The Final Rule contravenes Section 504 of the Rehabilitation Act and is an unlawful regulation under the APA. As such, this Court should affirm the district court's preliminary injunction order based on both the Plaintiffs' Rehabilitation Act and APA claims.

A. Under the Final Rule's "Health" Criterion, Individuals with Disabilities Are Automatically Penalized

DHS's interpretation of the statutory term "health" is discriminatory and inconsistent with congressional intent and action. The INA lists "health" as a factor that an immigration officer "shall" consider in making a public charge determination. 8 U.S.C. § 1182(a)(4)(B)(i). DHS chose to equate this "health" factor with "disability" and directed that an immigrant's "medical condition" (described above) should count as a negative factor or heavily weighted negative factor. But there is nothing in the legislative history or elsewhere indicating that Congress, in stating broadly that an immigrant's overall "health" should be considered, meant that DHS should negatively weigh an immigrant's disability.

Indeed, DHS's unsupported interpretation is almost certainly contrary to congressional intent. The current public charge statute comes from Congress's 1990 amendments to the INA. Those amendments repealed provisions that had expressly barred persons with intellectual, mental, and physical disabilities and various other conditions from immigration. *See* Immigration Act of 1990, Pub. L. No. 101-649, section 601. Repeal of those exclusions would be meaningless if the term "health"

was just a backdoor to incorporate those same considerations into the public charge rule. Moreover, Congress passed the INA amendments mere months after it enacted the ADA. The government offers no reason to believe that the 1990 Congress, which had demonstrated its desire to eliminate discrimination against people with disabilities, would have meant silently to reintroduce disability-based exclusions like those it had just repealed.

The motions panel majority wrongly concluded, and DHS argues in its Opening Brief, that it was permissible for DHS to interpret "health" as it did because the INA's "health" provision is a more specific provision that takes precedence over the Rehabilitation Act's antidiscrimination command. *See* Dkt. 25 at 54-55; Op. Br. at 3, 47. But rather than interpreting the INA to override the Rehabilitation Act, this Court has a "duty" to read the two statutes in harmony. *See Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612, 1632 (2018) ("Because we can easily read Congress's statutes to work in harmony, that is where our duty lies."). The statutory requirement to consider "health" can easily accommodate an interpretation that does not conflict with the Rehabilitation Act. For example, DHS could have interpreted health to refer to the presence or absence of dangerous communicable diseases, a paramount consideration during the 19th century when Congress first legislated the public

charge rule.[14] Communicable diseases continue to be a focus of public health and immigration law. *See e.g.* USCIS, POLICY MANUAL: PART B, CHAPTER 6 – COMMUNICABLE DISEASES OF PUBLIC HEALTH SIGNIFICANCE (2020), https://www.uscis.gov/policy-manual/volume-8-part-b-chapter-6. And Congress in fact has kept in the INA an express bar for persons with some communicable diseases.[15] 8 U.S.C. 1182(a)(1)(A). Or DHS could have interpreted "health" to mean whether someone has a medical condition that will require long-term institutionalization at government expense.[16] This definition would have been consistent with longstanding guidance, court interpretations, and Congress's 1996 welfare reform legislation. *See* Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, 64 Fed. Reg. 28,689 (May 26, 1999) ("Field Guidance").

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[14] The Immigration Act of 1891 specifically excluded "Persons suffering from a loathsome or a dangerous contagious disease" and mandated a medical inspection for all aliens arriving at ports of entry. Act of March 3, 1891; 26 Stat. 1084.

[15] In 2008, however, Congress reacted to the unjustified stigma people with HIV or AIDS often face and specified that HIV and AIDS are not grounds for exclusion. *See* Tom Lantos and Henry J. Hyde U.S. Global Leadership Against HIV/AIDS, Tuberculosis, and Malaria Reauthorization Act of 2008, Pub. L. No. 110-293, 122 Stat. 2918 (2008); 42 C.F.R. § 34.2(b) (2008).

[16] Under the ADA and Section 504, public entities must provide people with disabilities healthcare services in the "most integrated setting" appropriate to their needs. 28 C.F.R. §§ 35.130(d) (ADA), 39.130(d) (Section 504). The Supreme Court has held that the unjustified institutionalization of people with disabilities is disability discrimination. *Olmstead*, 527 U.S. at 600-01.

At bottom, the Rehabilitation Act forbids precisely what DHS decided to do: penalize individuals solely on the basis of their disability. *Cf. Lovell v. Chandler*, 303 F.3d 1039, 1053 (9th Cir. 2002). DHS's interpretation of the statutory term "health" creates a significant penalty for people with disabilities because, at minimum, the Final Rule treats one's disability as a "negative factor." And for individuals who lack private insurance, the Final Rule treats being disabled as a "heavily weighted negative factor."

B. The Final Rule Prohibits People with Disabilities From Receiving a "Health" Positive Factor No Matter How Healthy They Are

Under the Final Rule, the *lack* of a disability is the only way to have one's health count as a positive factor. Specifically, the Final Rule lists seven factors that must be considered. 84 Fed. Reg. 41500, 41502 (8 C.F.R. § 212.22(b)). For "the alien's health" factor, health is defined as "whether the alien has been diagnosed with a medical condition that is likely to require extensive medical treatment or institutionalization or that will interfere with the alien's ability to provide and care for himself or herself, to attend school, or to work upon admission or adjustment of status." 84 Fed. Reg. 41500, 41502 (8 C.F.R. § 212.22(b)(2)). Therefore, a disabled immigrant in good health cannot possibly receive a positive factor for her good health. This policy is both arbitrary in terms of accurately assessing who is likely to become a public charge and discriminatory because it wrongly disregards the fact

that people with disabilities are capable of being healthy and leading full, productive lives.[17]

C. The Final Rule Also Penalizes Individuals with Disabilities for Using Medicaid—the Only Provider of Certain Necessary Services that Promote Self-Sufficiency.

The Final Rule states that an applicant's use of, or even approval for, Medicaid for more than 12 months in any 36-month period counts as a heavily weighted negative factor.[18] *See* 84 Fed. Reg. 41500, 41501, 41504 (8 C.F.R. §§ 212.21(b)(5), 212.22(c)(1)(ii)). Counting Medicaid use as a heavily weighted negative factor discriminates against individuals with disabilities because Medicaid services are *essential* for millions of people with disabilities and are frequently necessary to allow self-sufficiency.[19] DHS stated that the goal of the Final Rule is to promote self-sufficiency among immigrants, *see, e.g.* 84 Fed. Reg. 41,292, 41,309, but the

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[17] *C.f.* Elizabeth F. Emens, *Framing Disability*, 2012 U. ILL. L. REV. 1383, 1390 (2012) ("[P]eople with a range of disabilities frequently report similar levels of happiness to people without the disabilities".).

[18] This subrule appears to be part of DHS's interpretation of the "resources" factor listed in the INA. *See* 8 U.S.C. § 1182(a)(4)(B)(i)(IV).

[19] For this reason, a third of Medicaid's adult recipients under the age of 65 are people with disabilities. *See Medicaid Works for People with Disabilities*, C. ON BUDGET AND POL'Y PRIORITIES, https://www.cbpp.org/research/health/medicaid-works-for-people-with-disabilities (last visited Jan. 1, 2020).

Final Rule punishes disabled immigrants who use Medicaid services to obtain self-sufficiency.[20]

Individuals with disabilities frequently must rely on Medicaid because private insurance simply does not cover certain services that people with disabilities typically need.[21] Medicaid is the *only* insurer that generally covers many home- and community-based services, including personal care services, specialized therapies and treatment, habilitative and rehabilitative services, and durable medical equipment.[22] Because of this, many highly educated professionals, business owners, and other fully employed individuals with disabilities who use private insurance *also*

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[20] The district court noted the disconnect between DHS's stated goal and punishing using Medicaid services when, referencing immigrants with disabilities, the court explained that "accessing Medicaid logically would assist immigrants, not hinder them, in becoming self-sufficient, which is DHS's stated goal of the Public Charge Rule." ER 47

[21] Samuel R. Bagenstos, *The Future of Disability Law*, 114 Yale L.J. 1, 27 (2004) ("The problem is that private insurance—on which most nondisabled people rely for their health needs—fails to cover the services people with disabilities most need for independence and health.").

[22] *See* Mary Beth Musumeci, *et al.*, Kaiser Family Foundation, *Medicaid Home and Community –Based Services Enrollment and Spending* (Apr. 04, 2019). https://www.kff.org/medicaid/issue-brief/medicaid-home-and-community-based-services-enrollment-and-spending/ ("Medicaid fills a gap by covering HCBS that are often otherwise unavailable and/or unaffordable through other payers or out-of-pocket[.]"). Home and community based services are services that help people with disabilities live, work and participate in their communities. *See Home & Community-Based Services*, MEDICAID.GOV, https://www.medicaid.gov/medicaid/hcbs/authorities/1915-c/index.html (last visited Jan. 1, 2020).

retain Medicaid coverage through the Medicaid Buy-In program[23] because no other insurer provides the services that they need.[24]

Medicaid use promotes employment and the integration of individuals with disabilities.[25] Crucially, Medicaid covers employment supports that enable people

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[23] In recognition of the coverage limitations in private insurance for individuals with disabilities, Congress authorized the Medicaid Buy-In program. This program allows people to use Medicaid even when their incomes are above the standard limits for regular Medicaid eligibility by paying a premium—which thereby permits them *to remain in the workforce*. *See e.g.*, *Medicaid "Buy In" Q&A*, HHS ADMIN. FOR COMMUNITY LIVING & DOL OFFICE OF DISABILITY AND EMPLOYMENT POLICY, https://www.dol.gov/odep/topics/MedicaidBuyInQAF.pdf (last updated July 2019) (emphasis added).

[24] *See, e.g.*, Andraéa LaVant, *Congress: Medicaid Allows Me to Have a Job and Live Independently*, AMERICAN CIVIL LIBERTIES UNION (Mar. 22, 2017, 1:45 PM), https://www.aclu.org/blog/disability-rights/congress-medicaid-allows-me-have-job-and-live-independently ("Almost immediately after starting at my new job, I learned that commercial/private insurance does not cover the services I need to live independently. I would still need to rely on the services supplied through Medicaid just to ensure that I could go to work and maintain the independence that I had worked so hard to attain."); Asim Dietrich, *Medicaid Cuts are a Matter of Life or Death for People with Disabilities*, ARIZ. CAP. TIMES (Jul. 13, 2017), https://azcapitoltimes.com/news/2017/07/13/medicaid-cuts-are-a-matter-of-life-or-death-for-people-with-disabilities/ ("Even with such a severe disability, I live a full life. I am an attorney who works on behalf of others with disabilities, I am a board member at a local disability advocacy organization called Ability 360, and I have an active social life. The only reason I am able to have such a full life is Medicaid."); Alice Wong, *My Medicaid, My Life*, NEW YORK TIMES (May 3, 2017), https://www.nytimes.com/2017/05/03/opinion/my-medicaid-my-life.html ("I am unapologetically disabled and a fully engaged member of society. None of that would be possible without Medicaid.").

[25] *See e.g.* Jean P. Hall, *et al.*, *Effect of Medicaid Expansion on Workforce Participation for People With Disabilities*, 107 AM. J. OF PUB. HEALTH 262 (Feb. 2017), https://ajph.aphapublications.org/doi/10.2105/AJPH.2016.303543; Larisa

with disabilities to work.[26] Congress in fact specified that Medicaid services are meant to help individuals with disabilities "attain or retain [the] capability for independence or self-care." 42 U.S.C. § 1396-1; *see also* ER 47 (describing how Medicaid helps individuals with disabilities achieve independence).

Medicaid services assist immigrants with disabilities in becoming self-sufficient—DHS's stated goal for the Final Rule—but the regulation nevertheless penalizes use of these services as a heavily weighted negative factor. Congress specifically passed the ADA "to assure equality of opportunity, *full participation, independent living, and economic self-sufficiency*" for people with disabilities. *Smith v. Midland Brake, Inc., a Div. of Echlin*, Inc., 180 F.3d 1154, 1168 (10th Cir. 1999) (quoting 42 U.S.C. § 12101(a)(8)). And so, for good reason, DHS's

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Antonisse, *et al.*, Kaiser Family Foundation, *The Effects of Medicaid Expansion under the ACA: Updated Findings from a Literature Review* 11 (Sept. 2017), http://files.kff.org/attachment/Issue-Brief-The-Effects-of-Medicaid-Expansion-Under-the-ACA-Updated-Findings-from-a-Literature-Review (collecting 202 studies of Medicaid expansion under the ACA, and concluding that many studies show a significant positive correlation between Medicaid expansion and employment rates and none show a negative correlation).

[26] Supported employment is a Medicaid-funded service to assist people with disabilities in obtaining and maintaining employment in the general workforce, including job placement, job training, job coaching, transportation, and personal care services at work. *See Employment & HCBS*, MEDICAID.GOV, https://www.medicaid.gov/medicaid/long-term-services-supports/employment-initiatives/employment-hcbs/index.html (last visited Jan. 1, 2020) ("Habilitation services are flexible in nature, and can be specifically designed to fund services and supports that assist an individual to obtain or maintain employment.").

longstanding assessment as expressed in the Field Guidance was that immigrants who received Medicaid home-and-community based services were not considered a public charge. *See Inadmissibility on Public Charge Grounds*, 83 Fed. Reg. 51,114, 51,163-64 (Oct. 10, 2018). This prior assessment also reflected Congress's intent as expressed in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. There, Congress specially provided that *all* immigrants, regardless of legal status, should have access to certain Medicaid services and that certain "qualified aliens" should have access to all Medicaid services. *See* 83 Fed. Reg. 51,126-31.

D. The Final Rule Facially Discriminates Against People with Disabilities and Its "Purpose or Effect" Is to Selectively Exclude Them from Immigration Relief.

DHS argues, "An alien's medical condition is one factor, not the sole factor, that an adjudicator will consider in evaluating the totality of an alien's circumstances." Op. Br. at 46. The motions panel majority uncritically accepted this argument. The majority reasoned that, because the Final Rule's test considers multiple factors, an immigrant will not be denied admission or adjustment of status "solely" by reason of her disability. Dkt. 25 at 55.

Disability rights law is not so toothless. First, the Final Rule violates Section 504 of the Rehabilitation Act because it *expressly punishes the status of being disabled* and therefore penalizes individuals *solely because* they are disabled. Even though other factors are considered, the Final Rule nonetheless discriminates against

people with disabilities by singling them out for negative treatment. Second, the Final Rule also violates Section 504 because the "purpose or effect" of the Final Rule is to selectively exclude immigrants with disabilities by triple-punishing being disabled. But for their disability, many of these immigrants would not be deemed a public charge under the Final Rule. As this Court previously explained when interpreting Section 504, "Congress intended to prohibit outright discrimination, as well as those forms of discrimination which deny disabled persons public services disproportionately due to their disability."[27] *Crowder v. Kitagawa*, 81 F.3d 1480, 1483 (9th Cir. 1996).

First, DHS's proposed regulation is *not* facially neutral. If negative factors outweigh positive factors, the immigrant will be deemed a public charge. 84 Fed. Reg. 41,397, 41,502-04. And the Final Rule, by its own terms, puts people with disabilities at an explicit disadvantage that will frequently be dispositive of the entire analysis. As we have shown, the Rule assesses a negative (or heavily weighted negative) health factor, and denies the possibility of a positive health factor, simply because of an individual's disability. And it assesses a heavily weighted negative resource factor for individuals who have no choice but to use Medicaid because of

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[27] Unlike the cost-saving measure upheld in *Choate*, 469 U.S. at 298-99, the plain and direct effects of the Final Rule are not "brought about wholly inadvertently," nor are they "effects that agencies had acted to avoid." *See Mark H. v. Lemahieu*, 513 F.3d 922, 936 (9th Cir. 2008) (quoting *Choate*, 469 U.S. at 292, 297).

their disabilities. Disability will thus be the decisive factor in denying admissibility or adjustment of status to many individuals. If those individuals did not have disabilities, they would not be deemed public charges.

Disparate treatment of individuals who are similarly situated "but for their disability" is discrimination under Section 504. *See Lovell*, 303 F.3d at 1053; *see also Doe v. Pfrommer*, 148 F.3d 73, 83 (2d Cir. 1998) ("[T]he central purpose of . . . [Section 504] is to assure that disabled individuals receive 'evenhanded treatment' in relation to the able-bodied."). Antidiscrimination law regularly applies this "but-for" standard to evaluate claims of illegal treatment, including for ADA Title I (employment) discrimination claims, *Murray v. Mayo Clinic*, 934 F.3d 1101, 1107 (9th Cir. 2019), for age discrimination claims under the ADEA, *see Gross v. FBL Fin. Servs., Inc.*, 557 U.S. 167, 178-79 (2009), and for Title VII retaliation claims, *see Univ. of Texas Sw. Med. Ctr. v. Nassar*, 570 U.S. 338, 360 (2013).

In *Lovell*, the State of Hawaii launched a new health insurance program called QUEST in which individuals were eligible for benefits if their "income was no more than 300% of the poverty level, unless they were aged, blind, or disabled." 303 F.3d at 1045. This Court held that "[w]hen viewed in relation to similarly situated nondisabled individuals, those disabled persons were denied QUEST coverage by

the State solely because of their disabilities; that is, had they been nondisabled, they would have received QUEST coverage."[28] *Id.*

Like the policy at issue in *Lovell*, the Final Rule singles out people with disabilities for negative treatment. Under it, disabled immigrants will be deemed a public charge while nondisabled immigrants with equal financial and other resources will not—that is, disabled individuals will be denied admission who, "had they been nondisabled," would have been admitted. *See id*. Like Hawaii's rule, DHS's Final Rule violates the Rehabilitation Act *even though* there are other factors that affect how a person is treated by the government action. Even if *some* individuals with a disability can avoid being categorized as public charges under the Rule, those who do receive a public charge label will experience that harm solely because of their disabilities. *See Lovell*, 300 F.3d at 1054 ("The State's appropriate treatment of some disabled persons does not permit it to discriminate against other disabled people.").

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[28] Other courts have similarly held that "but-for" causation is the proper standard for Rehabilitation Act claims. *See e.g. Henrietta D. v. Bloomberg*, 331 F.3d 261, 291 (2d Cir. 2003) (holding that a public entity violates the Rehabilitation Act when it excludes people with disabilities or denies them a benefit "'by reason of such disability' even if there are other contributory causes for the exclusion or denial, as long as [the disabled persons] can show that the disability was a substantial cause of the exclusion or denial.")

Second, in addition to facial discrimination, the Final Rule also violates Section 504 of the Rehabilitation Act because the "purpose or effect" of the rule is to selectively exclude immigrants with disabilities from admission or adjustment of status. The Final Rule's "health" and "resources" criteria, in combination, make anyone with a significant disability virtually certain to be deemed a public charge. As noted above, the Final Rule combines these criteria to *triply* punish individuals with disabilities: first for having the "medical condition" that impedes their ability to work, second by disqualifying them from a potential positive factor, and third for using Medicaid services that they need to work and be productive members of their communities.[29] Immigrants with disabilities are uniquely and unduly burdened by how the Final Rule treats the circumstances of their disability.

Consider a single, thirty-year-old immigrant with an associate's degree who makes $30,000 a year. She has been in the United States long enough to be eligible for the Medicaid Buy-In program and uses Medicaid personal care services because she has a disability and needs personal care services to be able to work. This individual will have a medical condition that interferes with her ability to work, and,

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[29] The district court held that "the plain language of the Public Charge Rule casts doubt that DHS ultimately will be able to show that the Public Charge Rule is not contrary to the Rehabilitation Act." ER 46. The district court reasoned, correctly, that the Final Rule violates Section 504 because it requires immigration officers to penalize having a disability and because an immigrant's disability will be counted multiple times in the public charge determination. ER 46-47.

lacking private insurance, it will count as a heavily weighted negative factor. Her use of (or approval for) Medicaid services for more than 12 months in the past 36 months would then constitute *another* heavily weighted negative factor. And regardless of how healthy she is otherwise, she cannot qualify for the "health" positive factor. Her age and family status would be considered positive factors, and she would likely have a neutral "education and skills" factor. However, the Final Rule would invariably deem this individual a public charge (because she has two heavily weighted negative factors against two merely positive factors[30]) by triple-counting her disability. In sum, the Final Rule's methodology stacks the deck against disabled people.[31]

In *Crowder*, this Court held that the State of Hawaii discriminated against visually impaired people by refusing to modify a facially neutral policy requiring all

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[30] Her income is not large enough to qualify her for a "heavily weighted positive factor." *See* 84 Fed. Reg. 41504 (8 C.F.R. § 212.22(c)(2)(ii)). Even if her income were large enough to qualify for a "heavily weighted positive factor," she still would be considered a public charge under the rule's balancing test.

[31] DHS's own regulations interpreting Section 504 state that DHS cannot use discriminatory "criteria or methods" in making public charge determinations. *See* 6 C.F.R. §§ 15.30(b), 15.49. According to DHS, the "criteria or methods" are discriminatory if they "[s]ubject qualified individuals with a disability to discrimination on the basis of disability" or "[d]efeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with a disability." 6 C.F.R. § 15.30(b)(4). DHS has not and cannot explain why the Final Rule's treatment of people with disabilities complies with this standard.

animals entering the state, including guide dogs, to be quarantined for 120 days. *See* 81 F.3d at 1484. Even though the policy was facially neutral and universally enforced, the court held that it "burden[ed] visually-impaired persons in a manner different and greater than it burden[ed] others." *Id.* at 1484.

Unlike the policy in *Crowder*, the Final Rule is *not* facially neutral: it expressly punishes having a disability. But even aside from that facial discrimination, the Final Rule violates Section 504 under *Crowder* because it imposes far greater burdens on disabled immigrants than non-disabled immigrants due to factual circumstances inextricably intertwined with their disabilities.[32]

II. The Remaining Factors Weigh in Favor of a Preliminary Injunction in Part Because the Final Rule Will Cause Irreparable Harm to Both Citizens and Non-Citizens with Disabilities

DHS admitted during rulemaking that the Final Rule's designation of Medicaid as a public benefit will have a "potentially outsized impact . . . on individuals with disabilities." 84 Fed. Reg. 41,292, 41,368. DHS now ignores this impact in the portion of its Opening Brief discussing the remaining factors and merely states, "Plaintiffs do not serve the public interest by promoting increased use

[32] As the district court explained, "the Rehabilitation Act prohibits denying a person benefits, excluding a person from participating, or discriminating against a person 'solely by reason of her or his disability[.]'" ER 46 (quoting 29 U.S.C. § 794(a)). The Final Rule violates the Section 504 for all three reasons: it denies immigration benefits to people with disabilities, excludes them from admission or adjustment of status, and facially discriminates in the rule itself.

of public benefits by aliens." Op. Br. at 48. DHS had it right initially: the Final Rule would particularly harm individuals with disabilities.

The Final Rule would have dire consequences for immigrants with disabilities because they would invariably either be denied admission or an adjustment of status.[33] Conversely, some immigrants with disabilities might attempt to avoid a public charge determination by foregoing necessary medical services to which they are entitled.[34] The Final Rule presents immigrants with disabilities with the

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[33] Mandatory exclusion from the United States can be a death sentence for some immigrants with disabilities. For example, Maria Isabel Bueso, an immigrant diagnosed with a rare life-threatening condition was initially denied extension of Deferred Action Status. Isabel has lived in the United States for 16 years as a legal resident. The United States Citizenship and Immigration Services (USCIS) ordered her removal to Guatemala, where the lifesaving medical treatment she receives is not available. After an outcry from the public and members of Congress, USCIS reversed its position on December 6, 2019 and informed Ms. Bueso that her request for deferred action had been granted and is effective until August 31, 2021. Alan Montecillio, Farida Jhabvala Romero, *Concord Woman with Rare Disease Granted Reprieve From Deportation*, KQED (Dec. 10, 2019) https://www.kqed.org/news/11790433/concord-woman-with-rare-disease-granted-reprieve-from-deportation.

[34] *Cf.* Avital Fischer, Sumeet Banker, and Claire Abraham, *Pediatricians Speak Out: A 'Public Charge Rule' is Dangerous for Children*, THE HILL (Sept. 1, 2019, 5:00 PM), https://thehill.com/opinion/healthcare/459565-pediatricians-speak-out-a-public-charge-rule-is-dangerous-for-children ("[O]ne in seven immigrant adults reported that they or a family member did not participate in benefit programs to which they were entitled, for fear of jeopardizing their ability to secure legal permanent residence status.").

Hobson's choice of losing vital services or facing serious immigration consequences.

In addition, the Final Rule would create significant public confusion and cause immigrants to forego public benefits to which they are entitled out of fear that accessing those benefits would adversely impact their immigration status. The Final Rule would also harm citizens: many immigrant parents would likely refuse government benefits for their citizen children with disabilities because they are unaware that the usage of those benefits would not be counted against them. DHS admitted during rulemaking that the programs named in the Final Rule will experience disenrollment and that hundreds of thousands of people eligible for benefits will unenroll because other members of their households are foreign-born noncitizens. 84 Fed. Reg. 41,463, 66-69. Already, disability organizations have fielded countless calls, emails, and letters from people who are confused and concerned as to whether they should disenroll from benefits.[35] A researcher has warned: "We're already seeing chilling effects . . . . There are families that are

[35] For example, Disability Rights California "has received calls from families who are afraid to apply for IHSS [In-Home Supportive Services] for their children, even though their children are eligible and receipt of IHSS could prevent their costly out-of-home placement." *Disability Rights California Comments in Response to Proposed Rulemaking on Inadmissibility on Public Charge Grounds* (Dec. 10, 2018), https://www.disabilityrightsca.org/post/proposed-changes-to-federal-rules-for-public-charge-an-immigration-policy-that-hurts-people.

stopping benefits for their U.S. citizen children. There are green card holders and naturalized citizens that stopped benefits even though they won't be affected."[36] And a study in the Journal of the American Medical Association Pediatrics found that between "0.8 and 1.9 million children with medical needs could be disenrolled" from health and nutrition benefits as a result of the version of the rule proposed by DHS in October, 2018.[37] Immigrants and citizens losing access to necessary medical treatment constitutes irreparable harm and is not in the public interest. *See Rodde v. Bonta*, 357 F.3d 988, 999 (9th Cir. 2004) (finding irreparable harm caused by closure of hospital that would have denied patients necessary treatment through Medicaid and caused them increased pain and medical complications).

The district court correctly noted that implementing the Final Rule would cause "immediate and ongoing harm to the Plaintiff States and their residents, both immigrant and non-immigrant[.]" ER 53. Overnight, the Rule will expose individuals to economic insecurity, health instability, denial of their path to citizenship, and potential deportation—none of which is the result of any conduct by

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[36] Leila Miller, *Trump administration's 'public charge' rule has chilling effect on benefits for immigrants' children*, LOS ANGELES TIMES (Sept. 3, 2019), https://www.latimes.com/california/story/2019-09-02/trump-children-benefits-public-charge-rule.

[37] Leah Zallman, Karen Finnegan, David Himmelstein, *et al.*, *Implications of Changing Public Charge Immigration Rules for Children Who Need Medical Care*, J. AMER. MED. ASSOC. PEDIATRICS (Sept. 1, 2019).

those such injuries will affect. The Final Rule will punish individuals for receiving the benefits that enable them to go to school, work, and contribute to our society.

CONCLUSION

In passing the Rehabilitation Act, Congress acknowledged that individuals with disabilities often are subjected to discriminatory rules, noting in the statute that such individuals "continually encounter . . . exclusionary qualification standards and criteria." 42 U.S.C. § 12101. The Final Rule seeks to turn back the clock to a shameful era of eugenic immigration policies by establishing a set of criteria that ensures that immigrants with disabilities will be considered inadmissible "public charges." This rule will severely and immediately harm individuals with disabilities both by denying disabled immigrants admission or adjustment of status and by discouraging citizens and noncitizens from accessing the benefits that allow them to study, work, and participate fully in society. The *amici curiae* therefore respectfully urge the Court to affirm the district court's preliminary injunction order.

Dated: January 24, 2020 Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(a)(7)(C), I certify that:

This brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) because this brief contains 6,713 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word, Times New Roman 14-point font.

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ADDENDUM: STATEMENTS OF *AMICI CURIAE* GROUPS

The **American Civil Liberties Union** ("ACLU") is a nationwide, nonprofit nonpartisan organization dedicated to the principles of liberty and equality embodied in the Constitution and our nation's civil rights laws. With more than three million members, activists, and supporters, the ACLU fights tirelessly in all 50 states, Puerto Rico, and Washington, D.C. for the principle that every individual's rights must be protected equally under the law, regardless of race, religion, gender, sexual orientation, gender identity or expression, disability, national origin, or record of arrest or conviction. The ACLU's Disability Rights Program envisions a society in which discrimination against people with disabilities no longer exists, and in which people understand that disability is a normal part of life. This means a country in which people with disabilities are valued, integrated members of the community, and where people with disabilities have jobs, homes, education, healthcare, and families.

The **Center for Public Representation** ("CPR") is a national, nonprofit legal advocacy organization that has been assisting people with disabilities for more forty years. CPR uses legal strategies, systemic reform initiatives, and policy advocacy to enforce civil rights, expand opportunities for inclusion and full community participation, and empower people with disabilities to exercise choice in all aspects of their lives. CPR has litigated systemic cases on behalf of people with disabilities

in more than twenty states and has authored amici briefs to the United States Supreme Court and many courts of appeals. CPR is both a national and statewide legal backup center that provides assistance and support to the federally-funded protection and advocacy agencies in each state and to attorneys who represent people with disabilities in Massachusetts. CPR has helped lead the effort to educate and engage the disability community about the "public charge" rule at issue in this case.

The **American Association of People with Disabilities** ("AAPD") works to increase the political and economic power of people with disabilities. A national cross-disability organization, AAPD advocates for full recognition of the rights of over 61 million Americans with disabilities.

The **Association of University Centers on Disabilities** ("AUCD") is a nonprofit membership association of 130 university centers and programs in each of the fifty States and six Territories. AUCD members conduct research, create innovative programs, prepare individuals to serve and support people with disabilities and their families, and disseminate information about best practices in disability programming.

The **Autistic Self Advocacy Network** ("ASAN") is a national, private, nonprofit organization, run by and for autistic individuals. ASAN provides public education and promotes public policies that benefit autistic individuals and others with developmental or other disabilities. ASAN's advocacy activities include

combating stigma, discrimination, and violence against autistic people and others with disabilities; promoting access to health care and long-term supports in integrated community settings; and educating the public about the access needs of autistic people. ASAN takes a strong interest in cases that affect the rights of autistic individuals and others with disabilities to participate fully in community life and enjoy the same rights as others without disabilities.

The **Civil Rights Education and Enforcement Center** ("CREEC") is a national nonprofit membership organization whose mission is to defend human and civil rights secured by law. CREEC's members include both people with disabilities and people who want to immigrate or have immigrated to this country. CREEC's efforts to defend human and civil include ensuring that such individuals do not encounter discrimination based on disability.

The **Coelho Center for Disability Law, Policy and Innovation** ("The Coelho Center") was founded in 2018 by the Honorable Tony Coelho, primary author of the Americans with Disabilities Act. Housed at Loyola Law School in Los Angeles, The Coelho Center collaborates with the disability community to cultivate leadership and advocate innovative approaches to advance the lives of people with disabilities. The Coelho Center brings together thought leaders, advocates, and policy makers to craft agendas that center disabled voices.

Disability Rights Advocates ("DRA") is a non-profit, public interest law firm that specializes in high impact civil rights litigation and other advocacy on behalf of persons with disabilities throughout the United States. DRA works to end discrimination in areas such as access to public accommodations, public services, employment, transportation, education, and housing. DRA's clients, staff and board of directors include people with various types of disabilities. With offices in New York City and Berkeley, California, DRA strives to protect the civil rights of people with all types of disabilities nationwide.

Disability Rights Education and Defense Fund ("DREDF") is a national cross-disability law and policy center that protects and advances the civil and human rights of people with disabilities through legal advocacy, training, education, and development of legislation and public policy. We are committed to increasing accessible and equally effective healthcare for people with disabilities and eliminating persistent health disparities that affect the length and quality of their lives. DREDF's work is based on the knowledge that people with disabilities of varying racial and ethnic backgrounds, ages, genders, and sexual orientations are fully capable of achieving self-sufficiency and contributing to their communities with access to needed services and supports and the reasonable accommodations and modifications enshrined in U.S. law.

Disability Rights Washington is a non-profit agency whose mission is to advance the civil and human rights of people with disabilities. It is the organization designated by federal law and the Governor of Washington to provide protection and advocacy services to people in Washington with disabilities, including mental, developmental, physical, and sensory disabilities. As such, Disability Rights Washington has a federal mandate to provide and full range of advocate on behalf of people with disabilities. Disability Rights Washington responds to thousands of calls and letters annually from individuals with legal problems related to their disabilities, monitors settings serving people with disabilities including treatment facilities, correctional facilities, and community setting including individual's own homes, investigates abuse and neglect of people with disabilities, educates policy makers on disability issues, and engages in systemic impact litigation on behalf of people with disabilities on numerous issues including the delivery of public benefits and disability related services, civil rights protections, and constitutional rights.

The **Judge David L. Bazelon Center for Mental Health Law** is a national nonprofit advocacy organization that provides legal assistance to individuals with mental disabilities. The Center was founded in 1972 as the Mental Health Law Project. Through litigation, policy advocacy, and public education, the Center advances the rights of individuals with mental disabilities to participate equally in all aspects of society, including health care, housing, employment, education,

community living, parental and family rights, and other areas. The Center worked with others to develop comments of the Consortium for Citizens with Disabilities concerning the "public charge" rule at issue in this case, and has litigated cases, filed amicus briefs, and engaged in other advocacy on a number of issues concerning the rights of immigrants with disabilities.

Little Lobbyists is a family-led organization that seeks to protect and expand the rights of children with complex medical needs and disabilities through advocacy, education, and outreach. We advocate for our children to have access to the health care, education, and community inclusion they need to survive and thrive.

Mental Health America ("MHA"), formerly the National Mental Health Association, is a national membership organization composed of individuals with lived experience of mental illnesses and their family members and advocates. The nation's oldest and leading community-based nonprofit mental health organization, MHA has more than 200 affiliates dedicated to improving the mental health of all Americans, especially the 54 million people who have severe mental disorders. Through advocacy, education, research, and service, MHA helps to ensure that people with mental illnesses are accorded respect, dignity, and the opportunity to achieve their full potential. MHA is against policies that discriminate against people with mental health conditions.

The **National Association of Councils on Developmental Disabilities** ("NACDD") is the national nonprofit membership association for the Councils on Developmental Disabilities located in every State and Territory. The Councils are authorized under federal law to engage in advocacy, capacity-building, and systems-change activities that ensure that individuals with developmental disabilities and their families have access to needed community services, individualized supports, and other assistance that promotes self-determination, independence, productivity, and integration and inclusion in community life.

The **National Council on Independent Living** ("NCIL") is the oldest cross-disability, national grassroots organization run by and for people with disabilities. NCIL's membership is comprised of centers for independent living, state independent living councils, people with disabilities and other disability rights organizations. NCIL advances independent living and the rights of people with disabilities. NCIL envisions a world in which people with disabilities are valued equally and participate fully.

The **National Disability Rights Network** ("NDRN") is the non-profit membership organization for the federally mandated Protection and Advocacy (P&A) and Client Assistance Program (CAP) agencies for individuals with disabilities. The P&A and CAP agencies were established by the United States Congress to protect the rights of people with disabilities and their families through

legal support, advocacy, referral, and education. There are P&As and CAPs in all 50 states, the District of Columbia, Puerto Rico, and the U.S. Territories (American Samoa, Guam, Northern Mariana Islands, and the US Virgin Islands), and there is a P&A and CAP affiliated with the Native American Consortium which includes the Hopi, Navajo and San Juan Southern Piute Nations in the Four Corners region of the Southwest. Collectively, the P&A and CAP agencies are the largest provider of legally based advocacy services to people with disabilities in the United States.

The **National Federation of the Blind** ("NFB") is the nation's oldest and largest organization of blind persons. The NFB has affiliates in all fifty states, Washington, DC, and Puerto Rico. The NFB and its affiliates are widely recognized by the public, Congress, executive agencies of state and federal governments, and the courts as a collective and representative voice on behalf of blind Americans and their families. The organization promotes the general welfare of the blind by assisting the blind in their efforts to integrate themselves into society on terms of equality and by removing barriers that result in the denial of opportunity to blind persons in virtually every sphere of life, including education, employment, family and community life, transportation, and recreation.

The Arc of the United States ("The Arc"), founded in 1950, is the nation's largest community-based organization of and for people with intellectual and developmental disabilities ("I/DD"). The Arc promotes and protects the human and

civil rights of people with I/DD and actively supports their full inclusion and participation in the community throughout their lifetimes. The Arc has a vital interest in ensuring that all individuals with I/DD receive the appropriate protections and supports to which they are entitled by law.

Founded in 1946 by paralyzed veterans, **United Spinal Association** is a national membership organization of 56,000 persons with spinal cord injuries or disorders, the vast majority of whom use wheelchairs. United Spinal Association has represented the interests of the wheelchair-using community in litigation for decades. United Spinal Association was a key negotiator with members of Congress regarding the provisions of the Americans with Disabilities Act and the Fair Housing Amendments Act. Addressing the needs and rights of people with disabilities, especially those with mobility impairments, has always been part of United Spinal Association's mission.