

Exhibit A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

PROJECT CITIZENSHIP INC.,

Plaintiff,

v.

DEPARTMENT OF HOMELAND
SECURITY, et al.,

Defendants.

Civil Action No.: 1:20-cv-11545-NMG

**[PROPOSED] BRIEF OF THE CITY OF BOSTON, 34 ADDITIONAL CITIES,
COUNTIES AND MUNICIPAL AGENCIES, AND THE U.S. CONFERENCE OF
MAYORS AS *AMICI CURIAE* IN SUPPORT OF PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION**

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STATEMENT OF INTEREST

Amici curiae are 35 cities, counties, and municipal agencies¹, and the United States Conference of Mayors², representing both large metropolitan cities and smaller towns across America. *Amici* represent a broad cross-section of America, all with their own unique economic, political, and cultural perspectives. Although the *amici* are diverse from each other, all have in common thriving immigrant populations comprised of people who come from all corners of the world seeking to build a better life in the United States. Nationwide, nine million people—nearly a fifth of all immigrants—presently meet the criteria for obtaining citizenship. *Amici* alone are home to more than an estimated 2,082,600 immigrants eligible for citizenship.

The ability of people from disparate corners of the world to come to this country, integrate into and become productive members of society is uniquely American. The 35th President of the United States, John F. Kennedy, recognized the vital importance of immigration to the history and development of the United States: “[i]mmigration is by definition a gesture of faith in social mobility. It is the expression in action of a positive belief in the possibility of a better life. It has thus contributed greatly to developing the spirit of personal betterment in American society and to strengthening the national confidence in change and the future.”³ Consistent with this observation, in the hope of immigration leading to the “possibility of a better

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

² The United States Conference of Mayors is the official non-partisan organization of cities with populations of 30,000 or more. There are over 1,400 cities in the country today. Each city is represented in the Conference by its chief elected official, the mayor.

³ 111 Cong. Rec. S24,492 (daily ed. Sept. 20, 1965).

life,” “Congress determin[ed] to make it relatively easy for immigrants to become naturalized citizens.” *Foley v. Connelie*, 435 U.S. 291, 294 n.2 (1978).

Amici care deeply about their foreign-born populations and have a powerful and significant interest in ensuring that those eligible to become United States’ citizens have fair and reasonable access to the naturalization process. The challenged rule of the Department of Homeland Security (“DHS”) will radically increase fees for naturalization applications, while at the same time making it all but impossible for low-income applicants to seek waiver or reduction of fees. In essence, the challenged DHS rule seeks to impose a *de facto* wealth test for naturalization. The rule and its wealth test for naturalization will have a direct and deep impact on *amici* and their communities. It will also erode our Nation’s belief that this country is one in which all people regardless of place of birth or economic station can attempt to better their life.

Naturalization, however, does not just fuel hope for the possibility of a better life, but also provides tangible and concrete economic benefits for immigrants and for their communities. Immigrants who naturalize have higher incomes and higher employment rates. They also have higher rates of home ownership than non-citizens do. Municipalities also receive significant benefits from naturalization. They receive increased tax income from naturalized immigrants, and decreased public benefit expenditures. Moreover, the immigrants who naturalize become more engaged and active in their communities. For these reasons, municipalities devote significant resources to assisting their immigrant constituents with naturalization.

Despite the fact that millions of immigrants are residents in cities, counties, and towns across the country, at no point during the administrative process for promulgating the challenged rule did DHS or USCIS meaningfully address the deleterious effects the challenged rule would have on immigrant populations and the municipalities where they live. The challenged rule has

significant flaws, both procedural and substantive, and the resulting wealth test for citizenship would have a deleterious effect on immigrant communities and their municipalities. For these reasons, and those stated further below and in Project Citizenship’s brief, this Court should enjoin the implementation of the challenged rule, which would create a wealth test for citizenship.

ARGUMENT

I. THE CHALLENGED RULE WILL CREATE A WEALTH TEST FOR CITIZENSHIP THAT WILL SIGNIFICANTLY REDUCE THE NUMBER OF ELIGIBLE IMMIGRANTS WHO ARE ABLE TO APPLY FOR CITIZENSHIP

Before the implementation of the challenged rule, cost was already a significant barrier for citizenship for many immigrants. According to a recent study, nearly one-fifth of eligible immigrants who do not naturalize cite cost as the principal reason.⁴ To put this in perspective, of the almost nine million immigrants in the United States that meet the criteria for obtaining citizenship, only about 700,000 naturalize each year.⁵

When the challenged rule takes effect, the application fee for the citizenship application will almost double from \$640 to \$1170. The effect this massive increase will have is plain—the number of eligible individuals who are unable to naturalize because of the cost will go up significantly. Compounding the effect of the fee increase, the challenged rule also eliminates fee waivers and fee reductions for many eligible applicants. Currently, immigrants who have an

⁴ Ana Gonzalez-Barrera, *Mexican Lawful Immigrants Among the Least Likely to Become U.S. Citizens*, Pew Res. Ctr. (June 29, 2017), <https://www.pewresearch.org/hispanic/2017/06/29/mexican-lawful-immigrants-among-least-likely-to-become-u-s-citizens/>.

⁵ Maria E. Enchautegui & Linda Giannarelli, *The Economic Impact of Naturalization on Immigration and Cities* 1 (Dec. 2015), <https://www.urban.org/sites/default/files/publication/76241/2000549-The-Economic-Impact-of-Naturalization-on-Immigrants-and-Cities.pdf>.

income that is less than 150% of the federal poverty level guideline qualify for a full fee waiver, and those individuals with an income between 150 and 200% of the federal guideline qualify for a partial fee reduction. *See* 8 C.F.R. § 103.7(b)(1)(BBB)(1), (c)(3)(xiii). These fee waivers and reductions in many cases have allowed low-income applicants who otherwise would not have been able to apply for citizenship because of cost to naturalize. In 2017, nationwide 40% of naturalization applicants requested a fee waiver.⁶ The challenged rule will significantly deter naturalization by significantly increasing the cost of applying for citizenship while at the same time eliminating the ability for those with limited incomes to seek and obtain a fee waiver. By doing so, the challenged rule will in effect create a wealth test for citizenship. This will have a chilling effect on naturalization rates in the *amici* communities as well as across the country.⁷

⁶ Dep't of Homeland Sec., Off. of Citizenship & Immigr. Servs. Ombudsman, Annual Report 2018 27 (June 28, 2018), https://www.dhs.gov/sites/default/files/publications/cisomb/cisomb_2018-annual-report-to-congress.pdf.

⁷ *Amici* estimate that at least 2,082,600 immigrants are eligible to naturalize in their respective geographic areas, of which 940,300 are eligible for fee waivers. This includes approximately 16,687 immigrants that are eligible to naturalize in Albuquerque NM, 11,679 of which are eligible for fee waivers; 38,314 immigrants are eligible to naturalize in Austin TX, 26,911 of which are eligible for fee waivers; 3,635 immigrants are eligible to naturalize in Boise ID, 997 of which are eligible for fee waivers; 33,054 immigrants are eligible to naturalize in Boston MA, 12,302 of which are eligible for fee waivers; 25,646 immigrants are eligible to naturalize in Brownsville TX, 21,114 of which are eligible for fee waivers; 4,920 immigrants are eligible to naturalize in Cambridge MA, of which 453 are eligible for fee waivers; 7,456 immigrants are eligible to naturalize in Carson CA, 2,363 of which are eligible for fee waivers; 7,679 immigrants are eligible to naturalize in Chelsea and Revere MA, 4,902 of which are eligible for fee waivers; 214,892 immigrants are eligible to naturalize in Cook County IL, 99,219 of which are eligible for fee waivers; 895 immigrants are eligible to naturalize in Dayton OH, 867 of which are eligible for fee waivers; 9,546 immigrants are eligible to naturalize in Davis CA and the surrounding area, of which 3,867 of which are eligible for fee waivers; 25,077 immigrants are eligible to naturalize in Denver CO, 11,404 of which are eligible for fee waivers; 9,325 immigrants are eligible to naturalize in Lawrence MA and the surrounding area, 1,854 of which are eligible for fee waivers; 28,171 immigrants are eligible to naturalize in Long Beach CA, 15,994 of which are eligible for fee waivers; 771,127 immigrants are eligible to naturalize to in Los Angeles County CA, 407,611 of which are eligible for fee waivers; 6,919 immigrants are eligible to naturalize in Lynn MA and the surrounding area, 2,580 of which are eligible for fee

Ultimately, by imposing what amounts to be a *de facto* wealth test for citizenship, far more immigrant families eligible for citizenship will forgo their right to seek naturalization solely because of cost under the challenged DHS rule.

II. THE WEALTH TEST CREATED BY THE CHALLENGED RULE WILL DEPRIVE ELIGIBLE APPLICANTS OF THE BENEFITS CONFERRED BY CITIZENSHIP

Naturalization confers upon immigrants the opportunity to have stronger ties with their communities through the right to vote, the ability to serve on a jury, and a greater sense of belonging and a deeper connection to one's community. From an empirical standpoint, citizenship also confers significant economic benefits on immigrants such as increased income, increased rates of employment, and increased home ownership. These benefits of citizenship are

waivers; 7,110 immigrants are eligible to naturalize in Malden MA, 1,300 of which are eligible for fee waivers; 11,313 immigrants are eligible to naturalize in McAllen TX, 9,862 of which are eligible for fee waivers; 3,453 immigrants are eligible to naturalize in Melrose MA and the surrounding area, 230 of which are eligible for fee waivers; 7,812 immigrants are eligible to naturalize in Minneapolis MN, 4,683 of which are eligible for fee waivers; 55,576 immigrants are eligible to naturalize in Montgomery County MD, 11,924 of which are eligible for fee waivers; 5,080 immigrants are eligible to naturalize in Newton MA and the surrounding area, 277 of which are eligible for fee waivers; 645,482 immigrants are eligible to naturalize in NYC NY, 234,486 of which are eligible for fee waivers; 34,118 immigrants are eligible to naturalize in Oakland CA, 10,328 of which are eligible for fee waivers; 7,795 immigrants are eligible to naturalize in Palm Springs CA, 4,979 of which are eligible for fee waivers; 37,591 immigrants are eligible to naturalize in Philadelphia PA, 17,704 of which are eligible for fee waivers; 3,700 immigrants are eligible to naturalize in Pittsburgh PA, 491 of which are eligible for fee waivers; 8,244 immigrants are eligible to naturalize in Saint Paul MN, 3,688 of which are eligible for fee waivers; 19,399 immigrants are eligible to naturalize in Seattle WA, 4,353 of which are eligible for fee waivers; 7,843 immigrants are eligible to naturalize in Somerville and Everett MA, 2,020 of which are eligible for fee waivers; 13,838 immigrants are eligible to naturalize in Stamford CT, 4,024 of which are eligible for fee waivers; and 11,001 immigrants are eligible to naturalize in Tacoma WA, 5,834 of which are eligible for fee waivers. The number of immigrants eligible to naturalize was obtained from the Research Equity Institute. To estimate the number of immigrants who are eligible to naturalize and are eligible for fee waivers, data was obtained from the U.S. Census Data 2018 American Community Survey to calculate the number of immigrants who were in the United States for at least ten years and who are below the 150% poverty line. This may undercount the number of eligible immigrants since an application for naturalization can be filed after five years of residence in the United States. *See* 8 U.S. Code § 1427(a).

at grave risk for millions of eligible immigrants across this country and hundreds of thousands of eligible residents in the *amici* if the challenged rule is allowed to go into effect on October 5, 2020.

As mentioned previously, immigrants who naturalize earn more than those who do not naturalize. A naturalized immigrant's earnings are 8.9% higher than an immigrant who has not naturalized.⁸ Between 1993 and 2010, naturalized citizens earned 50 to 70% more than long-term noncitizen residents who have been in the United States for 10 years or more.⁹

Naturalization is also associated with an immediate boost in earnings within two years of becoming a citizen.¹⁰ Naturalized men received median earnings of \$52,300 and women received median earnings of \$42,500, whereas non-citizen men earned \$35,000 and non-citizen women earned \$28,500.¹¹ Moreover, the average earnings of naturalized citizens were \$43,579, whereas the average earnings for non-citizens were \$28,797.¹² Lastly, in 2011, citizenship was associated with wage boosts, an average of 16%, 17.1% for women and 14.5% for men.¹³

⁸ Enchautegui & Giannarelli, *supra* note 5, at 2.

⁹ See Madeleine Sumpton & Sarah Flamm, *The Economic Value of Citizenship for Immigrants in the United States*, Migration Pol'y Inst. 1, 11 (Sept. 2012), <https://www.migrationpolicy.org/research/economic-value-citizenship>.

¹⁰ *Id.* at 12.

¹¹ Brittany Blizzard & Jeanee Batalova, *Naturalization Trends in the United States*, Migration Pol'y Inst. (July 11, 2019), <https://www.migrationpolicy.org/article/naturalization-trends-united-states-2017>.

¹² Manuel Pastor & Justin Scoggins, *The Economic Benefits of Naturalization for Immigrants and the Economy*, Ctr. for the Study of Immigrant Integration 1, 7 (Dec. 2012), https://dornsife.usc.edu/assets/sites/731/docs/citizen_gain_web.pdf.

¹³ See Robert Lynch & Patrick Oakford, *The Economic Effects of Granting Legal Citizenship to Undocumented Immigrants*, Ctr. for Am. Progress (Mar. 20, 2013), <https://www.americanprogress.org/issues/immigration/reports/2013/03/20/57351/the-economic-effects-of-granting-legal-status-and-citizenship-to-undocumented-immigrants/>.

Immigrants who naturalize not only earn more income than those who do not naturalize, but they also have higher employment rates. Historically, the unemployment rate for noncitizens exceeds 10%; the unemployment rate for naturalized citizens is well below 10%.¹⁴ Additionally, naturalized citizens see a 2+% increase in employment rate after their access to employers broadens due to their change in status.¹⁵

In addition, immigrants who naturalize have higher rates of home ownership than non-citizens do. Naturalized immigrants have a far higher likelihood of owning their own home than immigrants who have not naturalized. Seventy-two percent of immigrants who naturalized became homeowners, whereas just 45% of non-citizens have their own home.¹⁶ In the City of Boston, home ownership rates for those eligible for naturalization was only 21% and that shot up to 28% following naturalization.¹⁷

III. THE CHALLENGED RULE WILL HARM MUNICIPALITIES BY RESTRICTING ACCESS TO CITIZENSHIP TO ONLY THOSE WHO ARE ABLE TO PAY

By foisting a wealth test for citizenship on the *amici* and the rest of the country, the challenged rule will not only harm eligible immigrants by putting citizenship out of reach for many, but it will also significantly and negatively affect the cities and municipalities that those immigrants call home. Municipalities are home to a disproportionate number of immigrants and therefore they have a *particularly* acute interest in ensuring that these immigrants who are eligible have the ability to naturalize. In the 21 largest cities in the nation 29% of their

¹⁴ See Sumpton & Flamm, *supra* note 9, at 12.

¹⁵ Enchautegui & Giannarelli, *supra* note 5, at 2.

¹⁶ Pastor & Scoggins, *supra* note 12, at 7.

¹⁷ Enchautegui & Giannarelli, *supra* note 5, at 20.

populations are immigrants or foreign-born compared to 13% for the nation's population as a whole.¹⁸

The economic benefits of citizenship not only benefit immigrants who naturalize, but also the municipalities and communities in which they reside. Naturalized citizens have higher employment rates and higher income levels on average than non-citizens; therefore, in the aggregate they also contribute more in tax income and are less dependent on public benefits. A 2015 study into the economic benefits of naturalization concluded that for the 21 cities studied—many of the largest cities in the country—if all the people who are eligible to naturalize did so, those cities' tax income and saved revenues would increase by \$5.7 billion.¹⁹ It also found that tax earnings alone would increase by \$2.03 billion if 100% of those eligible naturalized.²⁰ Finally, it found that in Boston alone tax revenues would increase by \$41 million if 100% of immigrants eligible for naturalization naturalized, \$24.6 million if 60% of immigrants eligible for naturalization naturalized, and \$10.2 million if only 25% of immigrants eligible for naturalization naturalized.²¹

In addition to increased tax revenue, cities, counties, and towns also spend less to provide public benefits to naturalized immigrants given the increased earnings and lower unemployment rate conferred by naturalization. To put this in perspective, 16% of all non-citizens are below the poverty line, and only 6% of naturalized citizens are below the poverty line.²² Additionally, only

¹⁸ *Id.* at 10.

¹⁹ *Id.* at 19.

²⁰ *Id.* at 21.

²¹ *Id.* at 22.

²² Pastor & Scoggins, *supra* note 12, at 7.

49% of all non-citizens have health insurance while 82% of naturalized citizens have health insurance.²³

The benefits of citizenship go beyond increasing individual earnings and associated tax revenue—an immigrant who becomes a citizen is more likely to integrate and engage with the community. This increased civic participation strengthens communities. Municipalities also benefit from the naturalized citizens who are more able and willing to spend and invest money in their communities by, for example, starting small businesses which are the lynchpin of many communities across this nation. An impact report for 2017-2018 by Cities for Citizenship found that “[a]lthough immigrants who are Lawful Permanent Residents can start businesses—and already do so at high rates—naturalizing can facilitate the business start-up process.”²⁴ The same report also found that “[i]mmigrant-owned businesses are particularly important for bolstering downtowns and commercial corridors.... In fact, while immigrants are 18% of all business owners, immigrants account for 28% of Main street business owners nationally.”²⁵

IV. THE CHALLENGED RULE WILL FRUSTRATE THE SIGNIFICANT INVESTMENTS AND EFFORTS MUNICIPALITIES HAVE MADE TO PROMOTE AND ASSIST THEIR IMMIGRANT COMMUNITIES WITH NATURALIZATION AND TO FOSTER A WELCOMING ENVIRONMENT

Cities and municipalities recognize the enormous benefits conferred by citizenship to their immigrant residents and, as a result, have invested significant money and resources to assist those residents, particularly those of low income, with the naturalization process. For example:

²³ *Id.*

²⁴ Cities for Citizenship, *America is Home: How Individuals, Families, Cities & Counties Benefit by Investing in Citizenship*, 2017-2018 Impact Report at 14, <https://static1.squarespace.com/static/5b3ce8865417fc2819a24bc2/t/5b9826d1cd8366126f70b0c2/1536698073553/C4C+Report+2018+FINAL.pdf>.

²⁵ *Id.*

- Since 2014, Boston has hosted an annual “Citizenship Day” workshop in September during which volunteers assist eligible immigrants to prepare citizenship applications. Since 2014, more than 1,800 applicants have been able to apply for citizenship because of the assistance they received at these “Citizenship Day” workshops. More than 58% of these applicants were low-income applicants that sought a fee waiver. The City also provides immigrant information corners at the 24 locations of the Boston Public Library and twice-monthly immigration legal consultation clinics at City Hall with volunteer lawyers.
- New York City has funded programs like NYCitizenship and ActionNYC, which coordinate outreach activities and guide applicants throughout the naturalization process. Since 2016, ActionNYC has assisted with filing nearly 3,000 naturalization applications--three quarters of which were accompanied by a request for either a fee waiver or reduction. NYCitizenship provides free legal help with citizenship application, and financial counseling, at select public library branches. New York City’s efforts are part of a larger initiative to combat poverty, recognizing that naturalization is a key tool in achieving greater economic, social, and political stability.
- Located in every branch of the Los Angeles public library are New Americans Welcome Stations which offer U.S. Citizenship and Immigration (USCIS) Information and materials in English and Spanish. In addition select Los Angeles public libraries offer free on-site immigration and naturalization services including citizenship classes, interview tutoring sessions, application assistance, fee waiver assistance and other services.
- The City of Seattle created the Office of Immigrant and Refugee Affairs (OIRA) in 2012 to improve the lives of Seattle’s immigrant and refugee families; OIRA, funds and coordinates two naturalization programs called the New Citizen Campaign (NCC) and the New Citizen Program (NCP) to help an estimated 75,000 Seattle-area legal permanent residents (“LPR”) become U.S. citizens.²⁶
- Since 2017, Philadelphia has supported six local organizations and legal service providers in the New Americans Campaign (NAC). The City of Philadelphia Office of Immigrant Affairs coordinated with the six organizations during their application to the NAC. The Office of Immigrant Affairs also provided financial support for interpretation during the screenings and clinics. These staff and financial investments expanded the capacity of the local NAC partners. At the

²⁶ City of Seattle Comment Letter on U.S. Citizenship and Immigration Services Fee Schedule, DHS Docket No. USCIS-2019-0010; RIN 1615-AC18. <https://durkan.seattle.gov/wp-content/uploads/sites/9/2019/12/12.23.19-Mayor-Durkan-Public-Comment-U.S.-Citizenship-and-Immigration-Services-Fee-Schedule.pdf>.

start of 2020, the Philadelphia groups participating in the NAC offered a total of 17 citizenship screenings and naturalization clinics around the city.

- The City of Cambridge, through its Community Learning Center (CLC), has offered Citizenship Preparation classes for adult immigrant Cambridge residents for the past 20 years.

These are just some of hundreds if not thousands of civic engagement programs and efforts sponsored and funded by cities and municipalities across the country that will be frustrated if the challenged rule takes effect.

Moreover, each of the municipalities who are *amici* to this brief and countless others across the country strive to foster a welcoming environment for all their residents. For immigrants, this includes making immigration legal processes for citizenship more accessible. By almost doubling the fees for citizenship applications while at the same time eliminating fee waivers, the challenged rule not only frustrates the *amici's* efforts to make citizenship more accessible, it also stymies *amici's* attempts to foster a welcome environment for their immigrant residents. Indeed, such a drastic rule change sends the message to low-income (and indeed all) permanent residents that citizenship and full civic participation is only reserved for those who can afford it.

This message is contrary to the long tradition and history in this country for welcoming all immigrants regardless of economic station and integrating them into the social fabric of America. Inscribed on the Statue of Liberty is the line from Emma Lazarus' *New Colossus*: "Give me your tired, your poor, your huddled masses yearning to breathe free, the wretched refuse of your teeming shore. Send these, the homeless, tempest-tossed to me, I lift my lamp beside the golden door!" By creating what in effect is a wealth test for citizenship, the challenged rule disregards the tradition in this country of welcoming immigrants from all corners of the world without regard to economic station. Instead, the challenged rule conveys the

message that the United States only accepts immigrants who are wealthy enough to afford the significant application fee.

V. BY FAILING TO CONSIDER THE DETRIMENTAL EFFECTS OF INCREASING NATURALIZATION FEES ON MUNICIPALITIES AND THEIR IMMIGRANT POPULATIONS, THE DHS FAILED TO ENGAGE IN A ‘REASONED DECISION MAKING’ PROCESS WHEN PROMULGATING THE CHALLENGED RULE

“Federal administrative agencies are required to engage in ‘reasoned decision making.’” *Michigan v. E.P.A.*, 576 U.S. 743, 750 (2015) (citation omitted); *see also Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891, 1905 (2020). “In explaining its changed position, an agency must also be cognizant that longstanding policies may have ‘engendered serious reliance interests that must be taken into account.’” *Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2126 (2016); *see also Regents*, 140 S. Ct. at 1913. The DHS’ explanation for the challenged rule fails these standards.

In particular, DHS failed to account for the deterrent effect of increasing naturalization fees and the negative impact this would have on immigrants’ communities and the municipalities where these communities are located. As illustrated above, immigrants who naturalize in the aggregate have higher incomes, are more likely to be employed, are more likely to own a home, and are more likely to have health insurance. And, the communities in which they reside benefit from greater revenues, more engaged immigrant communities, and residents who require fewer public benefits. By failing to consider the negative effects of this challenged rule, the DHS failed to engage in a “reasoned decision making” process and the rule should be enjoined as a result. An agency “must examine the relevant data and articulate a satisfactory explanation for its action including a ‘rational connection between the facts found and the choice made.’” *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

This is not the first time that DHS has failed to engage in reasoned decision-making and failed to “assess whether there were reliance interests, determine whether they were significant, and weigh any such interest against competing policy concerns.” *See Regents*, 140 S. Ct. at 1915. Just this past June, the Supreme Court found that DHS did not address the reliance interests when it decided to rescind DACA, writing, “[w]hen an agency changes course, as DHS did here, it must ‘be cognizant that longstanding policies may have ‘engendered serious reliance interests that must be taken into account.’” *Id.* at 1913 (citation omitted).

Nor can DHS claim it was unaware of the detrimental effects the challenged rule would have on municipalities and their immigrant populations during the rulemaking process. Indeed, one submission received by the DHS during the comment period to the rule specifically pointed out the effect the loss of the fee waiver would have on state and local economies and provided specific information for geographical areas.²⁷ The response from DHS was glaringly deficient failing to address the specific harms identified and instead merely stating that “DHS disagrees that the fee waiver regulations in this final rule would prohibit immigrants from participating in local and state economies or affect safety net programs” and that “[t]his final rule does not prevent any person from submitting a benefit request to USCIS or prohibit immigrants from

²⁷ “Some commenters provided information specific to a geographic area or political subdivision. One commenter added that reductions in fee waivers would in turn cause sweeping consequences to applicants, safety net programs, and state and county economies.... The commenter cited data showing that New York immigrants account for \$51.6 billion of the State’s tax revenue and stated that New York would lose much needed support if fewer immigrants are unable to legally work and live in the United States.” U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigrant Benefit Request Requirements, 85 Fed. Reg. 46,788, 46,806 (Aug. 3, 2020) (to be codified at 8 C.F.R. pts. 103, 106, 204, 211-12, 214, 216-17, 223, 235-36, 240, 244-45, 245a, 248, 264, 274a, 286, 301, 319-20, 322, 324, 334, 341, 343a, 343b, 392) (“U.S. Citizenship and Immigration Services Fee Schedule”).

obtaining services or benefits from state or local programs.” U.S. Citizenship and Immigration Services Fee Schedule, 85 Fed. Reg. at 46,806. This is not an isolated occurrence. For example:

- In response to a comment “that USCIS has neither explained its significant departure from its prior reasoning and practice nor satisfactorily justified limiting fee waivers for naturalization,” the DHS merely asserted that it “understands that the NPRM [Notice of Proposed Rulemaking] and this final rule represent a change from previous guidance on fee waivers [but d]ue to the cost of fee waivers and inconsistency of current regulations with the beneficiary-pays principle emphasized in the NPRM and this final rule, DHS is limiting fee waivers to immigrant benefit requests for which USCIS is required by law to consider a request or where the USCIS Director exercises favorable discretion, as provided in the regulation, as well as a few other instances.” *Id.* at 46,806.
- In response to a comment, “the excessive fee increase and limiting fee waivers would indirectly make wealth a dispositive requirement for immigration benefits, effectively adopting a ‘wealth test’ for citizenship” DHS stated, “DHS adjusts the fees for immigration benefit requests in this final rule to recover the estimated full adjudication and naturalization services, as provided by law. In adjusting the fees, DHS is not imposing a ‘wealth test’, or otherwise attempting to erect barriers to immigration.” *Id.* at 46,802-03.

This is not reasoned decision making. The *amici*, their residents, and the rest of the country are entitled to an open and reasoned decision making process where the DHS “examine[s] the relevant data and articulates a satisfactory explanation for its action including a ‘rational connection between the facts found and the choice made.’” *Motor Vehicle Mfrs. Ass’n*, 463 U.S. at 43.

CONCLUSION

Amici respectfully request that this Court grant Plaintiff’s motion for preliminary injunction.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document, which was filed with the Court through the CM/ECF system, will be sent electronically to all registered participants as identified on the Notice of Electronic Filing (“NEF”), and paper copies will be sent on September 17, 2020 to those identified as non-registered participants.

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