



July 9, 2019

Submitted Via www.regulations.gov

Office of General Counsel, Rules Docket Clerk
Department of Housing and Urban Development
451 7th Street SW, Room 10276
Washington, DC 20410-0500

Re: HUD Docket No. FR-6124-P-01 RIN 2501-AD89, Comments in Response to
Proposed Rulemaking: Housing and Community Development Act of 1980:
Verification of Eligible Status

To Whom it May Concern:

We write on behalf of the American Civil Liberties Union of California (“ACLU of California”) in response to the Department of Housing and Urban Development’s (“HUD”) Proposed Rulemaking: Housing and Community Development Act of 1980: Verification of Eligible Status (hereinafter “Proposed Rule”), which was published in the Federal Register on May 10, 2019 (RIN 2501-AD89; HUD Docket No. FR-6124-P-01). The Proposed Rule will harm immigrant families and expose 55,000 children to eviction and homelessness. We urge HUD to withdraw the Proposed Rule in its entirety, and to leave intact its long-standing regulations that allow housing access for mixed-status families on a prorated basis.

For nearly 100 years, the American Civil Liberties Union (“ACLU”) has been our nation’s guardian of liberty, working in courts, legislatures and communities to defend and preserve the individual rights and liberties that the Constitution and the law of the United States guarantee to everyone in the country. With more than three million members, activists, and supporters, the ACLU is a nationwide organization that fights tirelessly in all 50 states, Puerto Rico, and Washington, DC, 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 advances equality through litigation and policy advocacy. The ACLU’s priorities include defending the rights of immigrants, advocating for economic justice, and defending the housing rights of vulnerable populations.

For more than 25 years, the ACLU has been at the forefront of almost every major legal struggle on behalf of immigrants’ rights, focusing on challenging laws that deny immigrants access to the courts, impose indefinite and mandatory detention, and discriminate based on nationality. In addition, we have challenged constitutional abuses that arise from immigration enforcement at the federal, state, and local levels, including anti-immigrant “show me your papers” laws at the state level and unconstitutional enforcement tactics by the federal government and local agencies. Our work is animated by the principle that the fundamental constitutional protections

of due process and equal protection embodied in our Constitution and Bill of Rights apply to every person, regardless of immigration status.

The ACLU of California is a partnership between the ACLU of Northern California, the ACLU of San Diego and Imperial Counties (“ACLU-SDIC”), and the ACLU of Southern California. The ACLU of California is a leading force in the movement for civil rights, and fights for economic justice—a safe place to live, quality healthcare, access to food and water, reproductive justice, and a fair wage—for all Californians. We work to end poverty and maximize economic security by increasing access to housing and healthcare; protecting the civil rights of tenants and people experiencing homelessness; securing additional state and local revenues to fund basic human needs services so everyone regardless of their financial status can thrive; and ending the criminalization of people experiencing poverty. Key to our advocacy is a focus on ending homelessness through the “Housing First” model, which gets people off the streets and into their own affordable, permanent housing as quickly as possible.

The ACLU of California has engaged in strategic litigation to challenge local practices that make it harder for people experiencing homelessness to escape the revolving door between jail and the streets and to end discrimination in housing. For example, in *Jones v. City of Los Angeles*, the ACLU of Southern California won important rulings that prevent the LAPD from ticketing and arresting homeless persons who sit, sleep or lie on public sidewalks. In *Glover et. al, v. City of Laguna Beach*, we advocated for disabled people experiencing homelessness who could not access the city’s emergency shelter because it was non-compliant with the Americans with Disabilities Act. And in *Victor Valley Family Resource Center v. City of Hesperia*, we challenged ordinances discriminating against transitional housing providers based on city lawmakers’ animus against the homeless people they serve.

Similarly, the ACLU-SDIC filed a class action lawsuit, *Isaiah Project v. City of San Diego*, challenging the City of San Diego’s policy of conducting raids in which city workers, escorted by police, seized and summarily destroyed the possessions of homeless men and women. The settlement in the case required the City to provide funding to create a downtown facility where homeless people can safely store their personal belongings, such as important personal documents, medicines, and family photographs. The settlement also includes protections to help ensure police and City workers do not search, seize, or destroy homeless people’s property without due process.

ACLU-SDIC also submitted an amicus brief with a local homeless rights advocacy organization called Think Dignity in *Tony Diaz vs. City of San Diego*, supporting Mr. Diaz’s appeal of his conviction for violating San Diego’s vehicle habitation ordinance. The brief argued that the ordinance is unconstitutionally vague because it provides inadequate notice of the prohibited conduct and invites arbitrary enforcement, giving officers virtually unfettered discretion to use their own prejudices or those of city officials in determining whether and when to enforce it. The ordinance is enforced almost exclusively against unhoused individuals as part of a larger pattern of neglect and criminalization of homelessness. Enforcement of the same ordinance was later enjoined on vagueness grounds in federal court, in *Bloom et al. v. City of San Diego*.

The ACLU of Northern California's priorities include defending the rights of immigrants, advocating for economic justice, and defending the housing rights of vulnerable populations. The ACLU of Northern California has supported affordable housing measures and has filed litigation to protect low-income individuals from unlawful practices that threaten their stability and well-being. *See, e.g., Kincaid v. City of Fresno*, No. 06-cv-1445 (E.D. Cal. 2006); *Sanchez v. California Dep't of Transportation*, No. RG16842117 (Alameda Cty. Sup. Ct. 2016). The ACLU of Northern California has been alarmed by an increase in housing discrimination directed at immigrants in California and hostile anti-immigrant rhetoric from landlords and property managers and has worked to enforce state and federal laws that prohibit such conduct.

The ACLU of California opposes the Proposed Rule because it is part of a coordinated attack on immigrant families, and it does nothing to achieve its stated purpose of increasing access to HUD-supported housing.¹ The Proposed Rule would force mixed-status families (families comprising U.S. citizens or immigrants with eligible immigration status and one or more family members who lack eligible immigration status) to make an impossible choice: keep their families together (and therefore face eviction), or separate so that those with eligible status can keep much-needed subsidized housing.² The Proposed Rule furthermore imposes new and burdensome requirements to prove citizenship or eligible immigration status, which will be daunting for many citizens and Legal Permanent Residents (LPRs). The mass evictions and onerous documentation requirements required by the Proposed Rule will have a disparate impact on Latinx³ and Black families, elders, and people with disabilities.⁴ In California, the impact of the proposed rule on families will be devastating: over 9,000 families will face eviction and homelessness if mixed-status families can no longer reside in federally funded subsidized

¹ *See, e.g., Understanding Trump's Muslim Bans*, National Immigration Law Center (updated Mar. 8, 2019), <https://www.nilc.org/issues/immigration-enforcement/understanding-the-muslim-bans/>; Michael D. Shear & Emily Baumgartner, "Trump Administration Aims to Sharply Restrict New Green Cards for Those on Public Aid," *New York Times* (Sept. 22, 2018), <https://www.nytimes.com/2018/09/22/us/politics/immigrants-green-card-public-aid.html>; Dan Lamothe, "Pentagon Will Shift an Additional \$1.5 Billion to Help Fund Trump's Border Wall," *The Washington Post* (May 10, 2019), https://www.washingtonpost.com/national-security/2019/05/10/pentagon-will-shift-an-additional-billion-help-fund-trumps-border-wall/?utm_term=.37360e7cda10; Yaganeh Torbati, "Exclusive: Trump Administration Proposal Would Make It Easier to Deport Immigrants Who Use Public Benefits," *Reuters* (May 3, 2019), <https://news.yahoo.com/exclusive-trump-administration-proposal-easier-deport-immigrants-public-043648221.html/>. These articles and the other sources cited in this Comment are attached hereto as part of the administrative record.

² HUD's own regulatory analysis acknowledges that the Proposed Rule forces a "ruthless" choice for mixed-status families between compliance with the rule and keeping their families together. HUD, Regulatory Impact Analysis, *Amendments to Further Implement Provisions of the Housing and Community Development Act of 1980*, Docket No. FR-6124-P-01, 16 (Apr. 15, 2019) (hereinafter "HUD Regulatory Impact Analysis").

³ We use "Latinx" as a gender-neutral alternative to Latina(s) and Latino(s).

⁴ Alicia Mazzara, *Demographic Data Highlight Potential Harm of New Trump Proposal to Restrict Housing Assistance*, Center on Budget and Policy Priorities (July 1, 2019), <https://www.cbpp.org/research/housing/demographic-data-highlight-potential-harm-of-new-trump-proposal-to-restrict-housing>.

housing. Given the national shortage of affordable housing options,⁵ many families displaced by this Proposed Rule will face severe housing precarity or homelessness.

HUD's own analysis confirms that the Proposed Rule will hurt mixed-status families, and that its implementation will cost so much that fewer families overall will receive housing assistance as a result.⁶ Blaming struggling immigrant families for the nation's ongoing nationwide housing affordability crisis is unfair and counterproductive. It will only exacerbate housing instability and reduce the amount and availability of federally assisted housing. HUD should instead focus on securing funding to ensure that every family has access to one of the most basic of human rights—a safe, affordable place to call home.

I. The Proposed Rule Will Deny Housing to U.S. Citizens and Immigrants Who Are Statutorily Eligible for Federally Assisted Housing Programs

a. Targeting Families with Children

The Proposed Rule is primarily an attack on children. By eliminating the ability of mixed-status families to receive prorated assistance on a permanent basis, the Proposed Rule robs eligible children of housing subsidies solely because their parents lack eligible noncitizen status. Section 214 of the Housing and Community Development Act of 1980 (“Section 214”) limits access to federally subsidized housing programs to U.S. citizens and a specific list of noncitizen categories.⁷ Nearly all children in mixed-status families who receive HUD assistance covered by Section 214 are U.S. citizens or LPRs and live with parents or other adults who do not have eligible immigration status.

If the Proposed Rule were allowed to go into effect, it would harm more people than it would supposedly help. Any U.S. citizen or eligible immigrant who lives as part of a mixed-status

⁵ There is no state, metropolitan area, or county in the United States where a worker earning the federal minimum wage or prevailing state minimum wage can afford a two-bedroom rental at fair market rent by working a standard 40-hour work week. *See Out of Reach 2018, The High Cost of Housing*, National Low Income Housing Coalition at 1 (2018), https://nlihc.org/sites/default/files/oor/OOR_2018.pdf. Despite the affordability crisis, three out of four low-income households in need of housing assistance in the United States are denied federal help due to chronic underfunding. Will Fischer & Barbara Sard, “Federal Housing Spending is Poorly Matched to Need, Tilt Toward Well-Off Homeowners Leaves Struggling Low-Income Renters Without Help,” Center on Budget and Policy Priorities (last updated March 8, 2017), <https://www.cbpp.org/sites/default/files/atoms/files/12-18-13hous.pdf>.

⁶ HUD, Regulatory Impact Analysis, *supra* note 2, at 3.

⁷ 42 U.S.C. § 1436a(a)(1)-(6) (Noncitizens eligible for Section 214 housing programs: Lawful Permanent Residents, VAWA Self-Petitioners, Asylees and Refugees, Parolees, Persons Granted Withholding of Removal/Deportation, Qualified Victims of Trafficking, Persons granted admission for emergent or public interest reasons, Persons granted lawful temporary residence amnesty under the Immigration Reform and Control Act of 1986, Immigrants eligible for registry who entered the U.S. before June 30, 1948, Lawful U.S. residents and individuals who entered the U.S. under the Compacts of Free Association with the Marshall Islands, Micronesia, Palau and Guam Immigrants admitted for lawful temporary residence prior to January 1, 1982).

family will be directly affected and harmed by the Proposed Rule’s prohibition against providing prorated assistance. HUD’s statistics show that 70% of mixed-status families that currently live in subsidized housing or receive other federal support through Section 214 are composed of eligible children and ineligible parents, and that over 55,000 of eligible individuals who will be directly harmed by the Proposed Rule are children.⁸ Since these children lack the legal capacity to sign leases themselves, the adult heads of household, including those who do not receive assistance, must sign these contracts on behalf of their family. By prohibiting the ineligible adults from living in subsidized units with prorated assistance, the Proposed Rule forecloses U.S. citizen and LPR children from receiving any housing assistance under the covered housing programs, unlawfully discriminating against them based on their parentage.

An even greater number of mixed-status families that under the current laws could apply for Section 214-assisted housing in the future would be barred—a number that the Center for Migration Studies estimates to be 11.5 million people.⁹ 7.4 million of these individuals belong to mixed-status families that are “very low income.”¹⁰ In California alone, as many as 937,000 people could lose their housing assistance under the Proposed Rule. Over 90% of Californians directly affected by the Proposed Rule are U.S. citizens.¹¹

In addition, nine million U.S. citizens as well as 120,000 elderly immigrants who currently receive HUD assistance are at risk of losing their housing assistance if they cannot meet the new Proposed Rule’s requirements to provide proof of citizenship or eligible immigration status.¹²

b. Burdens on Eligible U.S. Citizens to Prove Citizenship

In addition to attacking mixed-status families, the Proposed Rule creates red tape that threatens housing security for 9.5 million U.S. citizens currently receiving HUD assistance and all future U.S. citizens seeking these benefits. The Proposed Rule would require that all who declare they are U.S. citizens under penalty of perjury provide *additional* evidence of their citizenship, a practice that has proven to be burdensome, costly, and unnecessary to protect program integrity in other regulatory contexts.¹³

⁸ See HUD, Regulatory Impact Analysis, *supra* note 2, at 6-8.

⁹ Mike Nicholson, “Proposed HUD Rule Would Bar Vulnerable Children from Subsidized Housing,” Center for Migration Studies, <https://cmsny.org/nicholson-62619/>.

¹⁰ *Id.*

¹¹ Table from Center on Budget and Policy Priorities Analysis of 2017 HUD Administrative Data, https://docs.wixstatic.com/ugd/d97bc4_c0832bfe7d804ec499a2fdcc8fb9de3a.pdf.

¹² Douglas Rice, “Trump Proposal Would Jeopardize Rental Aid for Many U.S. Citizens,” Center for Budget and Policy Priorities (June 18, 2019), <https://www.cbpp.org/blog/trump-proposal-would-jeopardize-rental-aid-for-many-us-citizens>.

¹³ Proposed Rule; Donna Cohen Ross, *New Medicaid Citizenship Documentation Requirement Is Taking a Toll: States Report Enrollment Is Down and Administrative Costs Are Up*, Center on Budget and Policy Priorities (Mar. 13, 2007), <https://www.cbpp.org/research/new-medicaid-citizenship-documentation-requirement-is-taking-a-toll-states-report>.

Currently, to establish eligibility for Section 214 housing assistance, U.S. citizens must provide a declaration signed under penalty of perjury attesting to their citizenship or nationality status. The Proposed Rule would require that all U.S. citizens —regardless of their age—provide additional documentary proof of citizenship or nationality, such as a birth certificate or a naturalization certificate, which can be extremely difficult for certain segments of the population, and that individuals aged 62 and younger further submit to the Systematic Alien Verification for Entitlements (“SAVE”) program.

One survey from 2006 showed that as many as 7% of citizens did not have citizen documentation readily available.¹⁴ Obtaining such documentation can be particularly difficult for U.S. citizens over the age of 50, citizens of color, citizens with disabilities, and citizens with low incomes.

Older individuals face many challenges in getting this kind of documentation, including difficulties traveling to government offices to replace lost records and paying to replace these records; some may have never been issued a birth certificate in the first place.¹⁵

The same 2006 survey found that:

- At least 12% of citizens earning less than \$25,000 a year did not have proof of citizenship;
- Many people who did have documentation had birth certificates or IDs that did not reflect their current name or address, such as people who changed their name;
- 18% of citizens over the age 65 did not have a photo ID; and
- 25% of Black citizens lacked a photo ID, compared to 8% of white citizens.¹⁶

These figures suggest that hundreds of thousands of U.S. citizens may be unable to produce the required documents within the required time period under the proposed HUD rule and will lose their housing assistance as a result. Many will be evicted, and a significant share could become homeless.

The proposed documentation requirements will be particularly burdensome for recipients of rental assistance who were formerly homeless, as well as for people experiencing homelessness who could be assisted by Section 214 programs in the future. People experiencing homelessness often lose important documents such as photo identification, birth certificates, and social security

¹⁴ *Citizens Without Proof: A Survey of Americans’ Possession of Documentary Proof of Citizenship and Photo Identification*, Brennan Center for Justice (Nov. 2006), http://www.brennancenter.org/sites/default/files/legacy/d/download_file_39242.pdf.

¹⁵ Ina Jafe, “For Older Voters, Getting the Right ID Can Be Especially Tough,” NPR: All Things Considered (Sept. 7, 2018), <https://www.npr.org/2018/09/07/644648955/for-older-voters-getting-the-right-id-can-be-especially-tough>.

¹⁶ *Citizens Without Proof*, *supra* note 1415; Sue Owen, “Eric Holder Says Recent Studies Show 25 Percent of African Americans, 8 Percent of Whites Lack Government-Issued Photo IDs,” PolitiFact (July 11, 2012), <https://www.politifact.com/texas/statements/2012/jul/11/eric-holder/eric-holder-says-recent-studies-show-25-percent-af/>.

cards because they have no safe places to store them.¹⁷ Adding more documentation requirements creates additional barriers to housing for those who need it most. Many people who have gained stability through rental assistance could return to homelessness if they cannot satisfy the Proposed Rule's new requirements. HUD has failed to take into account the added costs and burdens of these new documentation requirements. An adequate analysis would show that imposing these enormous costs and burdens on vulnerable, eligible populations far outweighs any benefit the agency purports to be pursuing through this discriminatory and heartless action.

c. Harm to Aging Populations

Federal housing assistance programs provide vital support to 1.9 million older adults who would otherwise be unable to afford the cost of housing.¹⁸ Seniors with fixed incomes are especially at risk of serious harm if they live in mixed-status families and lose rental assistance due to the Proposed Rule, because they have such limited resources to spend on other basic needs, including food, medicine, transportation, and clothing.¹⁹ The Proposed Rule would also make it impossible for many intergenerational families to live together and share resources that enable them to succeed. It ignores the critical roles many grandparents play in caring for their grandchildren and other family members, as well as the role adult children play in caring for their aging parents and relatives.

The Proposed Rule would adversely impact older adults in at least two specific ways. First, HUD's own analysis shows that more than 1,500 older adults living in mixed-status families who are U.S. citizens or who are otherwise eligible to receive housing benefits could face eviction under the Proposed Rule because it denies prorated assistance to such families.²⁰

Second, the Proposed Rule will impose burdensome documentation requirements on eligible immigrants who are 62 years old and older. Presently, these eligible noncitizen seniors are required to submit a signed declaration of their eligible immigration status and proof of age to qualify for housing. The Proposed Rule, however, will require these older adults to provide an approved document to prove their immigration status such as a Form I-551 Permanent Resident Card, a Form I-94 Arrival/Departure Record, a foreign passport with I-551 stamp, or a notice of approval of status from the Department of Homeland Security. The new documentation requirements will be burdensome to older adults, who face many challenges in obtaining such documentation, including difficulties getting to government offices to replace lost records and paying to replace these records. Others may have never been issued these documents in the first

¹⁷ *Photo Identification Barriers Faced by Homeless Persons: The Impact of September 11*, National Center on Homelessness & Poverty (Apr. 2004), https://nlchp.org/wp-content/uploads/2018/10/ID_Barriers.pdf.

¹⁸ *United States Federal Rental Assistance Fact Sheet*, Center on Budget and Policy Priorities (Apr. 3, 2019), <https://apps.cbpp.org/4-3-19hours/PDF/4-3-19hours-factsheet-us.pdf>.

¹⁹ *Supporting Older Americans' Basic Needs: Health Care, Income, Housing and Food*, Justice in Aging (Apr. 2018), <https://www.justiceinaging.org/supporting-older-americans-basic-needs-health-care-income-housing-food/>.

²⁰ HUD, Regulatory Impact Analysis, *supra* note 2, at 6, 13.

place.²¹ If such documents cannot be produced in the timeframe allowed, these older adults will lose their housing assistance. There are about 120,000 older adult immigrants in the Section 8 Project-Based Rental Assistance, public housing, and Housing Choice Voucher programs that would be impacted by this part of the Proposed Rule.²² HUD has not accounted for these concerns in the Proposed Rule. A proper analysis would show that these harms are not justified by any benefits the agency purports to pursue through this action.

d. Disproportionate Harm to Protected Groups

By denying housing access to mixed-status families, the Proposed Rule poses significant legal concerns under the Fair Housing Act. Since its passage in 1968, the Fair Housing Act has played a vital role in combatting discrimination on the basis of race, color, religion, sex, disability, familial status, or national origin—either through intentional discrimination or discriminatory impact. HUD’s enactment of the Proposed Rule targets immigrant recipients of federally assisted housing. Among the 109,500 people in households that would be directly affected by the Proposed Rule, 95% are people of color, 85% are Latinx, 56% are female, and 53% are children.²³ The Proposed Rule would therefore have an unjustified disproportionate impact based on race, national origin, sex, and familial status (being a family with one or more children under the age of 18)—all protected classifications under the Fair Housing Act.

Additionally, the harmful effects of the Proposed Rule’s new documentation requirements would disproportionately harm Black individuals and families. Research has shown that Black residents are more likely to face difficulty in producing or obtaining required documentation.²⁴ Almost 50% of elderly individuals subject to these documentation requirements are Black.²⁵ Not only do the documentation requirements have a disproportionate effect, but they fail to promote the safety or effective administration of HUD’s housing programs. The Proposed Rule’s documentation requirements cannot be justified in light of this harmful disproportionate impact on Black tenants.

e. Chilling Effect on Immigrant and Citizen Communities

The Proposed Rule appears designed to instill fear in immigrant families, consistent with the current administration’s harsh and cruel policies to attack and punish immigrant families and individuals in the United States. The Proposed Rule will also have a significant chilling effect on otherwise eligible individuals’ willingness to access important housing benefits to which they are

²¹ Jafe, *supra* note 15.

²² Linda Couch, “Proposed HUD Rule Could Force Older Adults out of Affordable Housing,” *LeadingAge* (May 16, 2019), <https://www.leadingage.org/regulation/proposed-hud-rule-could-force-older-adults-out-affordable-housing>.

²³ Mazzara, *supra* note 4.

²⁴ *Id.*; see also Spencer Overton, *Voter Identification*, 105 Mich. L. Rev. 631 (Feb. 2007).

²⁵ Jack Mullian & Daryl Hornick-Becker, “How HUD Could Force Immigrants Families Out of Their Homes,” (June 28, 2019), <https://www.ccnyc.org/blog/how-hud-is-forcing-immigrant-families-out-of-their-homes/>.

entitled. Indeed, in its own analysis, HUD recognized that the fear of family separation will “lead to prompt evacuation by most mixed households.”²⁶ While a temporary deferral has been included in the Proposed Rule, this only provides, at most, 18 months of relief before families would be forced to move out or separate.

Millions of immigrant families will be harmed by the fear and confusion created by the Proposed Rule. Even for those families that will remain eligible for housing assistance, there is a strong likelihood that they will forgo their assistance or will forgo reapplying due to the purposeful confusion created by HUD’s Proposed Rule.²⁷ In response to a notice of proposed rulemaking from the Department of Homeland Security (“DHS”) that would attach adverse immigration consequences to the receipt of some forms of housing assistance from HUD, one-third of adults surveyed who reported chilling within their families said that they had not applied for or stopped participation in housing subsidy programs as a result of the proposed DHS rule.²⁸

In the analogous context of immigration enforcement raids, interviews with parents and teachers show that communities are left in chaos and families are fragmented, leading to economic hardship. Quite often the most greatly affected are children who are left “afraid, confused, and in informal caregiving arrangements because arrested parents often had little access to telephones or signed voluntary departure papers without contacting family or legal counsel.”²⁹ These situations cause many families to become “afraid to seek assistance from public agencies out of fear that additional exposure would increase the risk of deportation.”³⁰ By treating communities in this manner, the “government provides a strong, not so subtle message that immigrants are not welcomed to participate in society like others in their community . . . punishments are visibly and directly traceable to government action . . . (and) there is a real incentive to avoid public institutions that could potentially share information with ICE.”³¹ After the nationwide ICE raids that occurred in 2018, a Utah community was left ravaged and “the operation has had a chilling effect on the southeastern Utah town, which hosts a vibrant economy employing a large population of immigrants, documented and undocumented . . . the operation had scared some

²⁶ HUD, Regulatory Impact Analysis, *supra* note 2, at 7.

²⁷ . Additionally, the Proposed Rule is so overbroad that it will cause mostly eligible immigrants and U.S. citizens—the overwhelming majority of people in mixed-status families who currently receive prorated federal housing assistance—to lose their homes. Rice, *supra* note 12.

²⁸ Hamutal Bernstein et al., *One in Seven Adults in Immigrant Families Reported Avoiding Public Benefit Programs in 2018*, Urban Institute (May 2019), https://www.urban.org/sites/default/files/publication/100270/one_in_seven_adults_in_immigrant_families_reported_avoiding_public_benefit_programs_in_2018.pdf.

²⁹ R. Zuniga, *The Chilling Effect of ICE: The Effects of a Large Worksite Enforcement Operation on Academic Performance for Young Children in a Targeted Community* at 7, Blacksburg, VA: Center for Public Administration and Policy, Virginia Polytechnic Institute and State University (2018), https://aefpweb.org/sites/default/files/webform/ICE_DRAFT_RZ.pdf.

³⁰ *Id.*

³¹ *Id.*

residents into not showing up for work, . . . many of those people aren't undocumented — just afraid.”³²

Evidence shows that “the geographic proximity of punishments . . . works to facilitate the spread of information through networks about the risks of public exposure.”³³ Immigrants become less trustful of government agencies after enforcement actions. Stoking fear in immigrant communities pushes people towards self-deportation by making it harder and harder—economically and emotionally—to stay in the United States.

There is little doubt that HUD intends to stoke fear in immigrant communities. As the agency expressly acknowledges, “HUD expects that fear of the family being separated would lead to prompt evacuation by most mixed households, whether that fear is justified.”³⁴ Secretary Carson has made clear that his agency is not really concerned about the 100,000 people waiting to get housing subsidies—rather, it has treaded into the realm of immigration enforcement, a sphere in which HUD has no statutory authority whatsoever. According to Secretary Carson, the intent of the Proposed Rule is to force Congress “to engage in comprehensive immigration reform.”³⁵

The Proposed Rule, and HUD’s *ultra vires* immigration enforcement agenda, fail to grasp the vital contributions immigrants make to their communities and how critical they are to the daily life of all people in this nation. The Proposed Rule is about scaring communities, scapegoating immigrants, discouraging people from accessing government subsidized they are entitled to, and encouraging self-deportation.

II. The Proposed Rule Will Cause Long-Lasting and Unnecessary Harms to Tens of Thousands of Immigrant Families by Exposing them to Housing Instability and Homelessness

By threatening access to stable, affordable housing, the Proposed Rule will undermine the well-being of low-income U.S. citizens, eligible immigrants, and their families. The Proposed Rule would force mixed-status families to make an impossible decision—either break up to allow eligible family members to continue receiving assistance or forgo the subsidies so that the families can stay together.

³² Paighen Harkins, “ICE Raid Has Chilling Effect on Moab Workers, Police Chief Says,” The Salt Lake Tribune (Aug. 26, 2018), <https://www.sltrib.com/news/2018/08/26/ice-raid-has-chilling/>.

³³ W. Kandel & J. Cromartie, *New Patterns of Hispanic Settlement in Rural America*. Washington, DC: US Department Agriculture, Economic Research Service (2004), <https://www.ers.usda.gov/publications/pub-details/?pubid=47091>.

³⁴ HUD, Regulatory Impact Analysis, *supra* note 2, at 7.

³⁵ Tracy Jan, “HUD Secretary Ben Carson Defends Plan to Evict Undocumented Immigrants: ‘It’s Not That We’re Cruel, Mean-Hearted. It’s That We Are Logical,’” The Washington Post (May 21, 2019), https://www.washingtonpost.com/business/2019/05/21/house-democrats-grill-hud-secretary-ben-carson-plan-evict-undocumented-immigrants/?utm_term=.ca2734edc108.

Family separations undermine family stability, and lead to toxic stress, trauma, and attachment issues in children. Even a temporary separation has an enormous negative impact on the health and educational attainment of these children later in life, and many parents struggle to restore the parent-child bond once it has been disrupted by a separation.³⁶

Because 70% of mixed-status families currently receiving HUD assistance are composed of eligible children and at least one ineligible parent, it is likely that most mixed-status families will forgo the subsidies to avoid separation and, therefore, face the risk of homelessness. HUD predicts this outcome in its Regulatory Impact Analysis, as noted above. The Proposed Rule would effectively evict as many as 108,000 individuals in mixed-status families (almost 75% of whom *are* eligible for assistance) from public housing, Section 8, and the remaining programs covered by the Proposed Rule.³⁷ This involuntary displacement will increase rates of homelessness and housing instability among an already vulnerable population that is *overwhelmingly statutorily eligible* for the assistance the Proposed Rule would deny them.³⁸

Involuntary displacement carries significant short-term and long-term consequences for families' economic well-being.³⁹ Research has consistently shown that involuntary displacement—including through eviction—often leads to and/or exacerbates existing economic instability. The turmoil caused by forced eviction may lead to termination of employment, either due to effects on work performance or absenteeism.⁴⁰ One study, for example, found that “the likelihood of being laid off to be 11 to 15 percentage points higher for workers who experienced an eviction or other involuntary move, compared to matched workers who did not.”⁴¹ Involuntary displacement may also lead to other types of material hardship, such as the loss of valuables and possessions, or burdensome costs and expenses related to moving homes.⁴²

By contrast, residence in subsidized housing during childhood “correlates with increased employment and earnings and reduced welfare use during adulthood,” and families that receive housing vouchers are 74% less likely than eligible non-recipients to sleep in shelters or on the street.⁴³

³⁶ Laura C. N. Wood, *Impact of Punitive Immigration Policies, Parent-Child Separation and Child Detention on the Mental Health and Development of Children*, 2 *BMJ Pediatrics Open* (2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6173255/>.

³⁷ HUD, Regulatory Impact Analysis, *supra* note 2, at 8.

³⁸ *Confronting the Housing Squeeze: Challenges Facing Immigrant Tenants, and What New York Can Do*, Pratt Center for Community Development (2018), https://prattcenter.net/sites/default/files/confronting_the_housing_squeeze.pdf.

³⁹ Matt Desmond & Rachel Tolbert Kimbro, *Eviction's Fallout: Housing, Hardship, and Health*, *Social Forces* 94(1) 295–324 (Sept. 2015), <https://scholar.harvard.edu/files/mdesmond/files/desmondkimbro.socialforces.2015.pdf> (“[E]viction can prolong families’ residential instability, which begets economic instability.”).

⁴⁰ *Id.* at 299.

⁴¹ *Id.*

⁴² *Id.* at 300.

⁴³ Nicholson, *supra* note 9.

HUD’s own analysis of the Proposed Rule indicates that that “[d]isplaced households who would have to search for a new apartment, make a deposit on a new apartment, and then move to the new apartment would be estimated to bear upfront moving costs between \$9.5 million to \$13 million.”⁴⁴ Such costs are often debilitating for low-income households—those most at risk of harm under the Proposed Rule.

In addition to the short-term harm caused by involuntary displacement, the Proposed Rule may lead to longer-lasting effects on the economic stability of affected families. Studies have found that “evicted households have significantly higher rates of material hardship years after they were forced to move,” suggesting that forced displacement “may itself be a cause, not simply a condition, of poverty.”⁴⁵ Involuntary displacement is also associated with prolonged periods of homelessness,⁴⁶ as well as “relocation to a disadvantaged neighborhood and/or substandard housing.”⁴⁷ HUD’s analysis also indicates that HUD may, in some cases, be forced to pursue enforcement of the Proposed Rule through formal eviction, which would further exacerbate the economic burdens on affected families. The mark of an eviction record, in particular, remains on an individual’s record for years and functions as a barrier to housing access due to strict tenant screening policies.⁴⁸ Because the Proposed Rule will cause involuntary displacement of families, it will result in and/or contribute to increased rates of poverty and economic hardship.

These outcomes may also lead to reduced opportunities and increased health problems for these families in the long term.⁴⁹ Having safe and stable housing is crucial to a person’s good health, sustaining employment, and overall self-sufficiency. Unstable housing situations can cause increased hospital visits and loss of employment; are associated with increased likelihood of mental health problems in children;⁵⁰ and can dramatically increase the risk of an acute episode

⁴⁴ HUD, Regulatory Impact Analysis, *supra* note 2, at 4.

⁴⁵ Desmond & Kimbro, *supra* note 39, at 317.

⁴⁶ Matthew Desmond, *Eviction and the Reproduction of Urban Poverty*, 118 Am. J. Sociology 88, 91 (July 2012).

⁴⁷ *Id.* at 119.

⁴⁸ Desmond & Kimbro, *supra* note 39, at 300; *see also* Desmond, *supra* note 46, at 105; Esme Caramello & Nora Mahlberg, *Combating Tenant Blacklisting Based on Housing Court Records*, Clearinghouse Article (August 2017). f

⁴⁹ Megan Sandel et al., *Unstable Housing and Caregiver and Child Health in Renter Families*, 141 Pediatrics 1 (2018), <http://pediatrics.aappublications.org/content/141/2/e20172199>.

⁵⁰ *See* Will Fischer, *Research Shows Housing Vouchers Reduce Hardship and Provide Platform for Long-Term Gains Among Children*, Center on Budget and Policy Priorities (Oct. 7, 2015), <https://www.cbpp.org/research/housing/research-shows-housing-vouchers-reduce-hardship-and-provide-platform-for-long-term>; Linda Giannarelli et al., *Reducing Child Poverty in the US: Costs and Impacts of Policies Proposed by the Children’s Defense Fund*, Children’s Defense Fund (Jan. 2015), <https://www.urban.org/sites/default/files/publication/39141/2000086-Reducing-Child-Poverty-in-the-US.pdf>.

of a behavioral health condition, including relapse of addiction in adults.⁵¹ These effects will be particularly prominent in the children of the families that will be harmed by the Proposed Rule. Economic and housing instability impedes children’s cognitive development, leading to poorer life outcomes as adults.⁵² Housing instability is directly correlated to decreases in student retention rates and contributes to homeless students’ high suspension rates, school turnover, truancy, and expulsions, limiting students’ opportunity to obtain the education they need to succeed later in life.⁵³ Those facing homelessness also face a heightened risk of criminalization and other unjust laws that make it harder for individuals and families to secure and maintain necessary housing, vote, obtain employment, and access other benefits.

Again, the agency has failed to conduct an adequate analysis of these costs of the Proposed Rule. An appropriate analysis would lead to the conclusion that the Proposed Rule will cause substantially greater and longer-lasting harms than any benefit the agency purports to achieve.

III. The Proposed Rule Contravenes Policy Priorities by Exacerbating Housing Unaffordability and Homelessness

a. The Proposed Rule Will Undermine Efforts to Address the Housing Affordability Crisis in California and the Nation

The National Affordable Housing Act pronounces a legislative goal to (1) ensure that “every American family be able to afford a decent home in a suitable environment” and that all U.S. residents have “access to decent shelter or assistance in avoiding homelessness;” (2) “improve housing opportunities for all residents of the United States, particularly members of disadvantaged minorities, on a nondiscriminatory basis;” and (3) to retain dwelling units produced for such purpose with Federal assistance as affordable to low-income families. 42 U.S.C. §§ 12701 – 12703.

Contrary to these statutory goals, in California, with the nation’s largest immigrant population and a statewide affordable housing crisis, the Proposed Rule could exacerbate housing instability by restricting access to affordable housing. Unaffordable housing costs threaten millions of California families with housing instability. More than half of households living at or below 200% of the federal poverty line spend more than half their income on housing, leaving little left for other basic necessities. These very high housing cost burdens, and the deficient supply of

⁵¹ *Substance Use and Housing National Leadership Forum* at 8-9, National Council for Behavioral Health (Oct. 2014), https://www.thenationalcouncil.org/wp-content/uploads/2015/09/SUHLLF-Convening-Report_FINAL.pdf.

⁵² Heather Sandstrom & Sandra Huerta, *The Negative Effects of Instability on Child Development: A Research Synthesis* (2013), <https://www.urban.org/sites/default/files/publication/32706/412899-The-Negative-Effects-of-Instability-on-Child-Development-A-Research-Synthesis.PDF>.

⁵³ See Mai Abdul Rahman, *The Demographic Profile of Black Homeless High School Students Residing in the District of Columbia Shelters and the Factors that Influence their Education* 55 (Mar. 2014) (Ph.D. dissertation, Howard University (attached hereto)).

affordable housing, place millions of Californians one emergency away from homelessness.⁵⁴ Families with unaffordable housing costs are disproportionately families of color.⁵⁵

A person working full-time at a minimum wage of \$11 an hour (the current California statewide minimum wage) would be able to afford \$574 per month in housing costs, and if they were to pay more they would be considered cost-burdened. The average rent for a one-bedroom apartment is so high that a Californian earning the minimum wage would have to work 92 hours per week to afford it.⁵⁶ Of California's almost 6 million renter households, approximately half pay more than 30% of their income toward rent and are cost-burdened; nearly 30% of renters — more than 1.7 million households — pay more than 50% of their income toward rent and are severely cost-burdened.⁵⁷

Lower-income immigrants in California face greater housing instability,⁵⁸ to the detriment of their families and their communities. Yet their contributions to the State's economy are enormous. The fact that an immigrant family needs some form of housing assistance from the federal government does not undermine the incredible economic benefits they yield to the State and the nation as a whole. In California, immigrant workers are critical to some of the State's most vital industries, including agriculture, construction, and healthcare.⁵⁹ The value of undocumented immigrants' labor alone is worth more than \$180 billion per year in California.⁶⁰ Without undocumented immigrants' contributions to critical industries in California, the nation's food supply would be diminished, the State would struggle to build enough homes to begin addressing California's critical housing shortfall, and Californians' health care access would be diminished. In spite of these tremendous contributions, immigrants—both documented and

⁵⁴ *Opening Doors: Federal Strategic Plan to Prevent and End Homelessness* at 14, U.S. Interagency Council on Homelessness (2015), https://www.usich.gov/resources/uploads/asset_library/USICH_OpeningDoors_Amendment2015_FINAL.pdf.

⁵⁵ *Californians in All Parts of the State Pay More Than They Can Afford for Housing*, California Budget and Policy Center (Sept. 2017), <https://calbudgetcenter.org/resources/californians-parts-tate-pay-can-afford-housing/>.

⁵⁶ *Out of Reach 2017: California*, National Low Income Housing Coalition (2017), https://nilhc.org/sites/default/files/or/OOR_2017_CA.pdf.

⁵⁷ *California's Housing Future: Challenges and Opportunities Final Statewide Housing Assessment 2025* at 25-27, Cal. Dep't of Hous. & Cmty. Dev. (Feb. 2018), http://www.hcd.ca.gov/policy-research/plans-reports/docs/SHA_Final_Combined.pdf.

⁵⁸ *Stemming the Rise of Latino Homelessness: Lessons from Los Angeles County* at 9, Latino Policy & Politics Initiative (Feb. 8, 2019), https://latino.ucla.edu/wp-content/uploads/2019/02/FINAL-DRAFT-02_08_19-Stemming-the-Rise-of-Homelessness.pdf.

⁵⁹ Paulette Cha, "Immigrants Are Key to California's Health Workforce," PPIC (May 1, 2019), <https://www.ppic.org/blog/immigrants-are-key-to-californias-health-workforce/>.

⁶⁰ Valerie Hamilton, "California's Undocumented Workers Help the Economy Grow—But May Pay the Cost," PRI's *The World*, (Mar. 6, 2017), <https://www.pri.org/stories/2017-03-06/californias-undocumented-workers-help-grow-economy-theres-cost>.

undocumented—are disproportionately likely to be moderately or extremely rent-burdened,⁶¹ more likely to live doubled up,⁶² and more vulnerable to eviction⁶³ than other groups. Two million of the estimated 7.4 million very-low income members of mixed-status families that would be rendered ineligible by the Proposed Rule, and those made most vulnerable by the housing affordability crisis, are in California.⁶⁴

The Proposed Rule will increase housing instability for immigrant families who rely on stable housing to maintain their employment, contribute to local economies, and help their communities thrive. The Proposed Rule does not adequately consider these issues, and HUD should study the extended impact the Proposed Rule will have on housing affordability in California and nationwide before publishing its final rule.

b. The Proposed Rule Will Exacerbate the Homelessness Crisis in California and the Nation

The Proposed Rule is in direct conflict with the federal policy priority to end homelessness. For example, the U.S. Interagency Council on Homelessness (“USICH”) has prioritized ending and preventing homelessness among families with children and youth homelessness, regardless of immigration status. USICH’s mission is to affirmatively remove barriers to housing access, while acknowledging that “communities that are diverse—in their demographics, in their needs, in their geographic characteristics, in their progress to date, in their resources, in their infrastructure, in their housing markets, and in many other ways.”⁶⁵

The Proposed Rule directly contradicts the legislative goals to prevent homelessness and ensure access to affordable housing for low-income families and marginalized groups. It imposes requirements that HUD expressly recognizes will lead to the evictions of tens of thousands of mixed-status families who cannot afford housing in the communities where they live without some form of assistance. In the high housing-cost markets where many of these immigrant families live, the risk of falling into homelessness is significant.

Immigrants and their families are vital to parts of the country’s social and economic fabric, and we should be building a housing system that creates the conditions for all of us to flourish. Instead, this Proposed Rule change would harm immigrant families and our communities as a whole, threatening people with evictions and homelessness and breaking families apart.

⁶¹ *Renter Cost Burdens by Race and Ethnicity*, Joint Center for Housing Studies of Harvard University (2017) https://www.jchs.harvard.edu/ARH_2017_cost_burdens_by_race.

⁶² *Stemming the Rise of Latino Homelessness*, *supra* note 58, at 11.

⁶³ Deena Greenberg, Carl Gershenson, and Matthew Desmond, *Discrimination in Evictions*, 51 *Harvard Civil Rights-Civil Liberties L. Rev.* 115, 121 (2016) https://scholar.harvard.edu/files/mdesmond/files/greenberg_et_al._.pdf.

⁶⁴ Nicholson, *supra* note 9.

⁶⁵ *Home, Together: The Federal Strategic Plan to Prevent and End Homelessness*, U.S. Interagency Council on Homelessness (Oct. 2018), https://www.usich.gov/resources/uploads/asset_library/Home-Together-fact-sheet-Oct-2018.pdf.

In California, homelessness has reached humanitarian crisis proportions. Despite having the fifth largest economy in the world, California has the highest rate of homelessness in the nation. California has 12% of the nation's population, but 25% of the nation's homeless population, including 42% of the nation's chronically homeless.⁶⁶ Many working families, including families with children, are on the brink of homelessness. The State's homeless population has been dramatically increasing—almost 14% from 2016 to 2017.⁶⁷ With 68.9% of people who are homeless living in vehicles, abandoned buildings, parks or on streets, California has the highest rate of unsheltered homelessness of any state.⁶⁸ While the overwhelming majority of people experiencing homelessness in California are individuals, over 20,000 people without homes are families with children,⁶⁹ and over 12,000 children were homeless in California in 2018.⁷⁰ Almost 30% of families experiencing homelessness in California were Latinx, the same protected classification that will be overwhelmingly disproportionately harmed by the Proposed Rule.⁷¹

The most significant causes of homelessness in California, and across the nation, are lack of affordable housing and stagnant wages.⁷² The Proposed Rule will reduce the number of affordable units available to low-income families who desperately need access to affordable housing opportunities that the federal government currently helps to provide. The results will be devastating for Californians.

Indeed, HUD acknowledges the effects of exacerbating homelessness in its Regulatory Impact Analysis, noting that temporary and long-term homelessness is a likely outcome for many families (including U.S. citizen family members) but decided to publish the Proposed Rule notwithstanding this acknowledgement, a dereliction of its duties. The Proposed Rule cannot stand.

⁶⁶ *The 2017 Annual Homeless Assessment Report (AHAR) to Congress* at 12, 64, U.S. Dep't of Hous. & Urban Dev., (Dec. 2017), <https://www.hudexchange.info/resources/documents/2017-AHAR-Part-1.pdf>.

⁶⁷ Alcynna Lloyd, "California's Homeless Population Jumps 13.7% in One Year," *Housingwire* (Sept. 10, 2018), <https://www.housingwire.com/articles/46791-californias-homeless-population-jumps-137-in-one-year>.

⁶⁸ *Homelessness in California*, Cal. State Auditor (Apr. 2018), <https://www.auditor.ca.gov/pdfs/reports/2017-112.pdf>.

⁶⁹ *2017 AHAR*, *supra* note 66, at 81.

⁷⁰ *Continuum of Care Homeless Assistance Programs Homeless Populations and Subpopulations*, U.S. Dep't of Hous. & Urban Dev. (2018), https://files.hudexchange.info/reports/published/CoC_PopSub_State_CA_2018.pdf; *see supra* note 23 and accompanying text.

⁷¹ *2017 AHAR*, *supra* note 66, at 34.

⁷² Mark Tinoco, "Frustrated by Government's Slow Response, Californians Are Serving Homeless Neighbors Themselves," *CALmatters* (Feb. 13, 2019), <https://calmatters.org/articles/category/projects/california-dream/the-high-cost-of-housing/>.

IV. The Proposed Rule Fails to Consider that Cities and States with the Highest Housing Costs Have Some of the Largest Immigrant Populations

According to HUD, for housing to be considered affordable, total housing costs should not exceed 30% of household income; households paying more than 30% of income towards housing are considered “cost-burdened,” and those paying more than 50% of income towards housing are considered “severely cost-burdened.” Because housing-cost burdened households spend more of their limited income on rent, they have less for necessities of life such as food, clothing, medical care, transportation, and savings.

Compared to U.S.-born families, immigrant families are more likely to have higher housing costs, are more likely to face housing cost burdens, and are more likely to report difficulty paying for housing. Data from 2017, for example, show that for 41% of children in immigrant families, the household is housing-cost burdened, compared to 28% of children in U.S.-born families.⁷³ Across the country, the most severely housing cost-burdened cities are cities with significant immigrant populations, including Miami, Orlando, Tampa, San Diego, Los Angeles, San Francisco, Riverside, New York, Chicago, Atlanta, Las Vegas, and Austin.⁷⁴ Thirty-seven percent of families that will be affected by the Proposed Rule live in California, and 12% live in New York, both states with relatively high average rents.⁷⁵

The impact of the Proposed Rule on immigrant and mixed-status families in California will be devastating, exacerbating housing instability and homelessness in economically vulnerable communities. California—the state with the largest immigrant population—has nine of the ten highest rental cost metropolitan counties in the country.⁷⁶

The Proposed Rule will introduce additional burdens to immigrant families who already face significant hurdles in securing affordable housing based on where they live, placing thousands of families at risk of housing instability and homelessness. The Proposed Rule does not take into account these unique hardships and costs faced by immigrants in the U.S. housing market. For these reasons, landlords and local officials have recognized that the Proposed Rule would

⁷³ *Children Living in Households with a High Housing Cost Burden by Family Nativity in the United States*, National KIDS COUNT, <https://datacenter.kidscount.org/data/tables/124-children-living-in-households-with-a-high-housing-cost-burden-by-family%20nativity#detailed/1/any/false/871,870,573,869,36,868>.

⁷⁴ SmartAsset, *The 10 Most Severely Housing Cost-Burdened-Cities*, <https://smartasset.com/checking-account/most-and-least-severely-housing-cost-burdened-cities-2019>; Caroline Basile, “Freddie Mac: These Are the Most Rent-Burdened Housing Markets,” *Housing Wire* (Apr. 3, 2019), <https://www.housingwire.com/articles/48710-freddie-mac-these-are-the-most-rent-burdened-housing-markets>.

⁷⁵ Nicholson, *supra* note 9.

⁷⁶ Madeline Wells, “Report: The Most Expensive Counties to Rent in the US Are All in the Bay Area,” SFGATE (June 19, 2019), <https://www.sfgate.com/expensive-san-francisco/article/most-expensive-renters-apartments-homes-bay-area-14019249.php>; *Out of Reach 2019* at 15 (2019), National Low Income Housing Coalition, https://reports.nlihc.org/sites/default/files/oor/OOR_2019.pdf.

displace reliable tenants and further strain a “cash-strapped system.”⁷⁷ A proper analysis of these factors would require a conclusion that the Proposed Rule be withdrawn.

V. The Proposed Rule Will Reduce Access to and the Quality of Federally Assisted Housing

HUD’s purported justification that the Proposed Rule will address the nationwide waitlist crisis for subsidized housing contradicts its own Regulatory Impact Analysis, which concludes that the Proposed Rule will likely *decrease* the total number of assisted families.⁷⁸ The agency’s analysis finds that replacing the approximately 25,000 mixed-status families currently receiving HUD assistance with households comprising members who are all eligible (no proration) would cost HUD between \$372 million to \$437 million annually.⁷⁹ Given threats to HUD funding levels,⁸⁰ HUD admits that the likeliest scenario under the Proposed Rule would be that HUD would have to reduce the quantity and quality of assisted housing in response to higher costs.⁸¹

Currently, three out of four low-income households in need of housing assistance in the United States are denied federal help due to chronic underfunding.⁸² There are currently 3 million individuals on voucher waitlists around the country, with an additional 6 million who would like to be on these waitlists if they weren’t closed.⁸³ California has a deficit of more than 1.5 million affordable apartments—the largest gap between extremely low-income tenants’ need and the subsidized housing supply in the county.⁸⁴ California’s affordable housing crisis illustrates the enormous need for more federally subsidized housing, and also how precious affordable housing is to those who need it.

Implementing the Proposed Rule despite the significant reduction in the number of families whom the agency would be able to assist would be a dereliction of HUD’s statutory obligations

⁷⁷ Lola Fadulu & Zolan Kanno-Youngs, “Landlords Oppose Trump Plan to Evict Undocumented Immigrants,” *New York Times* (June 17, 2019), <https://www.nytimes.com/2019/06/17/us/politics/public-housing-immigrants.html>.

⁷⁸ HUD, Regulatory Impact Analysis, *supra* note 2, at 3; *see also* Tracy Jan, “Trump Proposal Would Evict Undocumented Immigrants From Public Housing,” *The Washington Post* (Apr. 18, 2019), https://www.washingtonpost.com/business/2019/04/18/trump-proposal-would-evict-undocumented-immigrants-public-housing/?utm_term=.f68fec836d53.

⁷⁹ HUD, Regulatory Impact Analysis, *supra* note 2, at 11.

⁸⁰ Brakkton Booker, “White House Budget Calls for Deep Cuts to HUD,” *NPR* (Feb. 13, 2018), <https://www.npr.org/2018/02/13/585255697/white-house-budget-calls-for-deep-cuts-to-hud>.

⁸¹ HUD, Regulatory Impact Analysis, *supra* note 2, at 3.

⁸² Fischer & Sard, *supra* note 5.

⁸³ *See* Alicia Mazzara, *Housing Vouchers Work: Huge Demand, Insufficient Funding for Housing Vouchers Means Long Waits*, Center on Budget and Policy Priorities (Apr. 19, 2017), <https://www.cbpp.org/blog/housing-vouchers-work-huge-demand-insufficient-funding-for-housing-vouchers-means-long-waits>.

⁸⁴ *The Gap, A Shortage of Affordable Homes* at 16, The National Low Income Housing Coalition (2017), https://nlihc.org/sites/default/files/Gap-Report_2017.pdf.

and its stated mission to “create strong, sustainable, inclusive communities and quality affordable homes for all.”

Moreover, the Proposed Rule would almost certainly exacerbate the deplorable public housing conditions in many parts of this country that have resulted from decades of underfunding.⁸⁵ Experts estimate a \$50 billion backlog of desperately needed repairs nationwide, and, making matters worse, the administration has proposed to eliminate the (already insufficient) federal fund used to make repairs.⁸⁶

In California, where five out of ten low-income people “are homeless or pay over half their income for rent,” and where 229,990 children live in unstable housing, the public housing crisis is especially pronounced.⁸⁷ The state has a “shortage of 1.5 million homes for extremely low-income and very low-income renters.”⁸⁸ That number is likely to increase, as California has lost over 15,000 affordable rental homes in recent years, and an additional 34,554 affordable rental homes are at risk.⁸⁹ In this context, the 27,300 public housing units in the State barely begin to fill a crucial housing gap.⁹⁰

These units are desperately needed, but they also must be adequately maintained. Public housing residents have often been forced to file complaints or bring suit because of uninhabitable conditions. For example, one public housing tenant in Richmond, California, died after complications from a severe asthma attack. If her building’s elevator had been working, she would not have had to walk up the stairs to her fifth-floor unit, and paramedics could have reached her and delivered her to the ambulance much more quickly.⁹¹ Residents had been complaining about similar problems for nearly a decade.⁹² In the five years prior to the tenant’s

⁸⁵ Luis Ferre-Sadurni, “New York City’s Public Housing Is in Crisis. Will Washington Take Control?,” *New York Times* (Dec. 25, 2018), <https://www.nytimes.com/2018/12/25/nyregion/nycha-hud-deblasio-carson.html>; Jill Ripenhoff & Lee Zurik, “Failure to Fix: Mold. Mice. Messes.”, *Investigate TV* (2018), <http://www.investigatetv.com/failure-to-fix-mold-mice-messes/>; Holbrook Mohr & Jeff Donn, “Health and Safety Conditions Worsen in U.S. Subsidized Housing,” *Seattle Times* (Apr. 9, 2019), <https://www.seattletimes.com/business/inspections-show-deterioration-of-us-funded-housing-for-poor/>.

⁸⁶ Pam Fessler, “Trump Administration Wants to Cut Funding for Public Housing Repairs,” *NPR* (May 16, 2019), <https://www.npr.org/2019/05/16/723231160/trump-administration-wants-to-cut-funding-for-public-housing-repairs>.

⁸⁷ *California Federal Rental Assistance Fact Sheet*, Center on Budget and Policy Priorities, (last updated May 14, 2019), <https://www.cbpp.org/research/housing/federal-rental-assistance-fact-sheets#CA>.

⁸⁸ *California’s Affordable Rental Homes At-Risk*, California Housing Partnership (Feb. 2019), <https://sachousingalliance.org/affordable-homes-at-risk/>.

⁸⁹ *Id.*

⁹⁰ *California Federal Rental Assistance Fact Sheet*, *supra* note 87.

⁹¹ Betty Marques Rosales & Ravleen Kaur, “Rodents, Roaches and Broken Elevators: Why it Took Nearly a Decade for Richmond to Fix Public Housing,” *Richmond Confidential* (Nov. 3, 2018), <https://richmondconfidential.org/2018/11/03/rodents-roaches-and-broken-elevators-why-it-took-nearly-a-decade-for-richmond-to-fix-public-housing/>.

⁹² *Id.*

death, residents had “alerted management to problems ranging from mold, leaking pipes and faulty appliances to roaches, rodents, and bed bugs infestations,” but a third of their work order requests had not been completed.⁹³

Given the crisis in subsidized housing maintenance, HUD should focus its limited funds to increase supply and address the unsafe and unsanitary conditions that so many of its residents are currently living with. Instead, HUD is poised to create about \$200 million in new costs and hurt public housing by reducing the “maintenance of the units and possibly [leading to] deterioration of the units that could lead to vacancy.”⁹⁴ The negative consequences of the Proposed Rule on access to and quality of federally assisted housing underscore that the Proposed Rule has not been properly analyzed by the agency and serves no legitimate, non-discriminatory purpose.

VI. The Proposed Rule Conflicts with the Statute, Congressional Intent, and HUD’s Prior Rulemaking

The Proposed Rule claims that it brings HUD regulations “into greater alignment with the wording and purpose of Section 214” by barring mixed-status families from receiving assistance. This rationale is flatly contradicted by the statutory language, congressional intent, and HUD’s prior rulemaking.

Critically, the plain language of Section 214 establishes that housing assistance must be made available to mixed-status families on a prorated basis as long as one member of the family is eligible:

If the eligibility for financial assistance of at least one member of a family has been affirmatively established under the program of financial assistance and under this section, and the ineligibility of one or more family members has not been affirmatively established under this section, any financial assistance made available to that family by the applicable Secretary shall be prorated, based on the number of individuals in the family for whom eligibility has been affirmatively established under the program of financial assistance and under this section, as compared with the total number of individuals who are members of the family.

42 U.S.C. § 1436a(b)(2) (emphasis added). This subsection was added to Section 214 by Section 572 of the Use of Assisted Housing by Aliens Act of 1996, which was entitled “Sec. 572 Prorating of Financial Assistance,” and directly authorizes prorated financial assistance to mixed-status families. *See* Pub. L. 104-208, Div. C, Title V, § 572, Sept. 30, 1996. The subsection permits any “one member of a family” to possess eligible status and does not require that eligible family member to be the head of the household.

That Section 214 clearly authorizes proration of financial assistance to mixed-status families is also supported by its provisions protecting such families from penalties: the presence of ineligible individuals within a public or assisted housing unit will not disqualify the eligible

⁹³ *Id.*

⁹⁴ HUD, Regulatory Impact Analysis, *supra* note 2, at 3.

individuals and members of the household “if the ineligible individual at issue was considered in calculating any proration of assistance provided for the family.” 42 U.S.C. § 1436a(d)(6).

Congress enacted the express proration provision in 42 U.S.C. § 1436a(b)(2) in 1996 specifically to ratify HUD’s existing policy – reflected in the agency’s regulations pre-dating the 1996 amendment – to allow financial assistance for eligible members of mixed-status families. HUD promulgated those regulations in 1994 after Congress enacted certain amendments to Section 214 concerning financial assistance to mixed-status families in the Housing and Community Development Act of 1987 (“HCDA”). *See* Pub. L. No. 100-242, Feb. 5, 1988, 101 Stat. 1815. Section 214(b) of the HCDA, entitled “Preservation of Families,” permitted “continued” financial assistance to mixed-status families in which the head of household or spouse was a U.S. citizen or national or possessed eligible immigration status. *Id.* § 214(b) (adding 42 U.S.C. § 1436a(c)). Congress provided for “continued” financial-assistance to mixed-status families to protect “the sanctity of the family.” 59 Fed. Reg. 43901 (citing remarks of Sen. William Armstrong, 133 Cong. Rec. S18815, Dec. 21, 1987).

HUD proposed rules in 1994 to implement those amendments made by the HCDA. *See* 59 Fed. Reg. 43900 (Aug. 25, 1994). In the 1994 Proposed Rule, HUD emphasized that “the statutory language does not prohibit proration of assistance,” and thus proposed regulations providing financial assistance for both “*applicant* and *tenant* families containing family members with eligible and ineligible immigration status (‘mixed families’).” 59 Fed. Reg. 43,904 (emphasis added).⁹⁵ Under the rule, a mixed-status family that was receiving financial assistance at the time the final rule was issued would be eligible for: (1) continued (full) financial assistance if the head of household possessed eligible immigration status; or (2) prorated financial assistance if the family member possessing eligible immigration status was *not* the head of household. *Id.* at 43,922-23 (proposed 24 C.F.R. §§ 200.187(b), 200.188(a)). The rule provided that a mixed-status family applying for financial assistance, in which certain family members “elect not to contend that they have eligible immigration status” and “other members of the family establish their citizenship or eligible immigration status,” would be eligible for **prorated** financial assistance. *Id.* at 43,919 and 43923 (proposed 24 C.F.R. §§ 200.183(e), 200.187(a)(2), 200.188(a)).

In the final rules, published in 1995, HUD clarified that proration of assistance is “not discretionary” and “*must* be provided to eligible mixed families.” 60 Fed. Reg. 14,817 and 14,829 (Mar. 20, 1995) (final 24 C.F.R. § 200.187(a)(1)(iii)) (emphasis added). HUD also reiterated that a “mixed family with eligible children and two ineligible adults” is eligible for prorated assistance, and that only the provision of continued (full) financial assistance required the “head of household” to possess eligible immigration status.⁹⁶

⁹⁵ *See* 59 Fed. Reg. at 43,918 (proposed 24 C.F.R. § 200.180(c)(1) confirmed that the “provisions of this subpart apply to both applicants for assistance and persons already receiving assistance covered under this subpart”).

⁹⁶ HUD issued a final rule in 1996 that eliminated the redundancy of duplicative regulations by consolidating noncitizens requirements and relocating them to a single location in 24 C.F.R. part 5. *See* 61 Fed. Reg. 13,614 (Mar. 27, 1996). The consolidated regulations did not alter the substance of the prior regulations issued on March 20, 1995.

Congress' 1996 amendment to Section 214 incorporated and made express HUD's preexisting policy of assisting mixed-status families, without time restrictions and without restrictions on which family member possesses eligible immigration status, and it exempted such families from penalties. *See* Personal Responsibility and Work Opportunity Reconciliation Act, Pub. L. 104-193, Aug. 22, 1996, 110 Stat. 2105; Use of Assisted Housing by Alien Act, Pub. L. 104-208, Div. C, Title V, § 571 *et seq.*, Sept. 30, 1996, 110 Stat. 3009; *id.* §§ 572, 574 (adding 42 U.S.C. §§ 1436a(b)(2), (d)(6)). The express language of the 1996 amendments to 42 U.S.C. § 1436a(b)(2) thus ratified HUD's rules permitting proration and "do not contend" procedures.

The Proposed Rule cherry-picks language to present an incomplete and misleading version of the statute. The Proposed Rule should be withdrawn given its conflict with Section 214, HUD's own longstanding policy, and the relevant legislative and regulatory history.

VII. The Proposed Rule Would Violate HUD's Obligation to Affirmatively Further Fair Housing

Adoption of the Proposed Rule would violate HUD's statutory obligation to affirmatively further fair housing. 42 U.S.C. § 3608(e)(5) requires that the HUD Secretary "administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of" the Fair Housing Act. In a 2015 regulation, HUD defined "Affirmatively further fair housing" to mean "taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics." The affirmatively furthering fair housing obligation also includes "fostering and maintaining compliance with civil rights and fair housing laws." The rule was adopted to make rights to integrated housing laid out in the Fair Housing Act even more enforceable by requiring cities, counties, and other formations that receive HUD funding to commit themselves to data-driven planning, in consultation with impacted communities, to undo the harms of and eradicate segregation.

HUD's backpedaling on enforcing its affirmatively furthering fair housing mandate impedes equal housing opportunity. The Proposed Rule only makes this worse. The Proposed Rule does nothing to advance fair housing aims or compliance with other civil rights laws. Instead, it seeks to do the exact opposite by denying housing opportunities to tens of thousands of people who are disproportionately people of color, Latinx, and women, and imposes documentation requirements that will disproportionately hurt Black people and older adults.

California has passed its own affirmatively furthering fair housing law, but in other parts of the country, the Proposed Rule coupled with HUD's dereliction of its affirmatively furthering mandate will increase displacement and re-segregation of our communities as immigrant families will be forced to seek out less expensive, lower quality housing in areas that are highly segregated, blighted, and/or far removed from the communities they currently call home.

Furthermore, as noted above and according to HUD's own analysis, 70% of the households likely to be evicted or subjected to family separation because of the Proposed Rule *are families with eligible children*. Since minor children comprise the vast majority of eligible occupants of mixed-status households, the Proposed Rule would have a disproportionate and devastating

impact on families with children, a protected classification under the Fair Housing Act. This discriminatory policy is wholly inconsistent with HUD's obligation to affirmatively further fair housing.

CONCLUSION

Immigrants have been the backbone of this nation for centuries and continue to provide for the benefit of all Americans in so many ways. The repeated attacks from this administration, including HUD's Proposed Rule, are unwarranted, hateful, and unjustified. The Proposed Rule seeks to push both immigrants and U.S. citizens in mixed-status families to the fringes of society or worse, to self-deport. The Proposed Rule will hurt mixed-status families (including many U.S. citizens and eligible immigrants); is in direct conflict with Section 214; fails to address the housing affordability and subsidized housing waitlist crises; will exacerbate housing instability and homelessness in contravention of U.S. policy priorities on preventing and responding to homelessness and poverty; and violates the Agency's statutory duty to affirmatively further fair housing. We urge HUD immediately to withdraw the Proposed Rule and instead to advance housing policies that strengthen—not undermine—the ability of families to remain together in stable, affordable housing.

Please do not hesitate to contact us to provide further information regarding the ACLU of California's unequivocal opposition to the Proposed Rule.

Sincerely,



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A handwritten signature in cursive script, reading "Jonathan Markovitz", enclosed in a thin rectangular border.

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