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Exhibit 1

Proposed

**BRIEF OF AMICI CURIAE NONPROFIT IMMIGRATION ADVOCATES AND LEGAL
AND SOCIAL SERVICE PROVIDERS IN SUPPORT OF PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 OAKLAND DIVISION

15 IMMIGRANT LEGAL RESOURCE
CENTER, *et al.*,

16 Plaintiffs,

17 vs.

18 CHAD F. WOLF, *under the title of Acting*
19 *Secretary of Homeland Security, et al.*,

20 Defendants.

Case No. 4:20-cv-05883-JSW

**BRIEF OF AMICI CURIAE NONPROFIT
IMMIGRATION ADVOCATES AND
LEGAL AND SOCIAL SERVICE
PROVIDERS IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

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1 **INTEREST OF AMICI CURIAE**

2 Amici curiae are national nonprofit immigration advocates and legal and social service
3 providers that work closely with individuals who come to the United States fleeing persecution and
4 violence, seeking humanitarian protection. Amici provide critical legal and other services to
5 thousands of vulnerable, indigent immigrants each year, including unaccompanied children,
6 survivors of domestic violence, and LGBTQ people. The fee schedule, if allowed to take effect,
7 will substantially inhibit their clients’ ability to apply for and obtain protection for which they would
8 otherwise qualify, and shift additional demand for assistance onto Amici’s respective programs and
9 budgets. Indeed, the fee schedule has already impaired Amici’s ability to guide their clients. A
10 listing of Amici and description of each organization is included in the Appendix.

11 **INTRODUCTION**

12 For decades, the United States led the world in offering humanitarian protection to persons
13 fleeing persecution, torture, and violence. Nowhere was this commitment to humanitarian ideals
14 more evident than in the laws Congress passed to implement the postwar treaties enshrining
15 protections in the form of asylum, withholding of removal, and protection under the Convention
16 Against Torture (“CAT”); protections under the Violence Against Women Act (“VAWA”) and the
17 Trafficking Victims Protection Act (“TVPA”), and special immigrant juvenile (“SIJ”) status for
18 abused, neglected, or abandoned youth.

19 The current administration has already acted to undercut longstanding commitments to
20 protect individuals seeking status, including those fleeing persecution,¹ with many of its regulatory
21 and policy changes having been found unlawful.² Now, the Department of Homeland Security
22 (“DHS”) seeks to erect additional deterrents and barriers to obtaining protection and permanent
23 status by imposing a slate of staggering application fees for asylum, employment authorization, and
24

25 _____
26 ¹ See, e.g., Nat’l Imm. Justice Ctr., *A Timeline of the Trump Administration’s Efforts To End*
Asylum, <https://bit.ly/35hPc9K> (last visited September 8, 2020).

27 ² See, e.g., *Capital Area Imm. Rights Coalition v. Trump*, No. 19-cv-2117, 2020 WL 3542481
28 (D.D.C. June 30, 2020) (invalidating third country transit bar to asylum); *E. Bay Sanctuary*
Covenant v. Barr, 950 F.3d 1242 (9th Cir. 2020) (affirming preliminary injunction against asylum
bar applicable between designated points of entry); *J.L. v. Cissna*, 341 F. Supp. 3d 1048 (N.D.
Cal. 2018) (temporary restraining order against unlawful restrictions on eligibility for SIJ status).

1 adjustment of status—all while severely curtailing the availability of fee waivers. *U.S. Citizenship*
2 *and Immigration Services Fee Schedule and Changes to Certain Other Immigrant Benefit Request*
3 *Requirements*, 85 Fed. Reg. 46,788 (Aug. 3, 2020) (the “Fee Rule”). For the first time in this
4 country’s history, asylum applicants will be required to pay a fee to have their applications
5 considered. Children approved for SIJ status and seeking lawful permanent residence (green cards)
6 will be forced to pay what is, for a vulnerable child, a fortune—as much as \$1,680 for applications
7 to adjust status and receive employment authorization. As Plaintiffs explain, the Fee Rule was
8 issued unlawfully, and many of its provisions are unfair and harmful to applicants for protection and
9 associated benefits. Amici, who provide critical legal and social services and support to children
10 and adults fleeing persecution and most of whom filed comments on the Fee Rule when it was
11 proposed, thus focus here on ways that the new and increased fees function as impermissible barriers
12 for vulnerable persons seeking relief through Congress’ humanitarian immigration programs.

13 ARGUMENT

14 **I. SURVIVORS OF PERSECUTION AND VIOLENCE FACE UNIQUE FINANCIAL** 15 **CONSTRAINTS PARTICULAR TO THEIR CIRCUMSTANCES**

16 DHS’s analysis of the Fee Rule evinces no understanding that survivors of persecution,
17 whose challenges may follow them into unstable living situations in the United States, face
18 particular and significant obstacles to paying application fees.

19 **Asylum seekers.** Victims of persecution often arrive having spent all they had in fleeing to
20 safety. They apply to U.S. Citizenship and Immigration Services (“USCIS”) for asylum, or apply
21 in immigration court proceedings for asylum and related relief.³ The Fee Rule introduces for the
22 first time a \$50 fee for seeking asylum, which cannot be waived. The fee for a first-time application
23 for a work permit (“EAD”) by an asylum seeker (now available only after an entire year of waiting,
24 *see Asylum Application, Interview, and Employment Authorization for Applicants*, 85 Fed. Reg.
25 38,532 (June 26, 2020)), will be \$550. Fee Rule, 85 Fed. Reg. at 46,791 tbl. 1. Under prior rules,
26

27 ³ Asylum and related protections may be raised as a defense to removal in proceedings; the
28 immigration court administrator has indicated that it will follow the USCIS fee schedule for
asylum applications. *Executive Office for Immigration Review; Fee Review*, 85 Fed. Reg. 11,866,
11,867–68 (Feb. 28, 2020).

1 asylum seekers file both these applications without a fee. *See* Instructions for Application for
2 Employment Authorization, 27 (Aug. 25, 2020), <https://bit.ly/3mfPbJE>. For a family of four seeking
3 asylum and EADs while the application is pending, new, non-waivable costs can be as much as
4 \$2,400. Fee Rule, 85 Fed. Reg. at 46,791 tbl. 1 (\$50 I-589 fee, \$550 I-765 fee for each applicant).
5 The government’s claim that the \$50 asylum fee is “not so high as to be unaffordable to even an
6 indigent” person cannot be credited. *U.S. Citizenship and Immigration Services Fee Schedule and*
7 *Changes to Certain Other Immigration Benefit Request Requirements*, 84 Fed. Reg. 62,280, 62,320
8 (Nov. 14, 2019) (“Proposed Fee Rule”). As an Amicus’s social worker explained in a comment on
9 the Proposed Fee Rule:

10 Most of our clients have . . . no money. Our social workers brainstorm ways for
11 clients to pay for \$3 prescription co-pays. They help clients figure out how to access
12 food shelves and get donated winter clothing. \$50 is an enormous amount of money
13 for someone who has none. \$490 [as was initially proposed for the I-765 employment
14 authorization application; in the final rule, \$550] is impossible for most.⁴

15 Shifting more costs of administering USCIS programs to those least able to pay, and setting
16 fees to *deter* filings, defies both common sense and the will of Congress, which has clearly opted to
17 both provide substantive avenues to relief and expect USCIS to manage the costs of the programs
18 in a way that will not chill access to them.

19 **Child applicants.** Some of the most vulnerable migrants are children, many of whom seek
20 safety in the United States each year unaccompanied by a parent or guardian. Under the Trafficking
21 Victims Protection Reauthorization Act (“TVPRA”), Pub. L. No. 110-457, 122 Stat. 5044 (Dec. 23,
22 2008), unaccompanied alien children (“UAC”) apprehended by DHS must be transferred promptly
23 to the Office of Refugee Resettlement, which has statutory responsibility for custody of these
24 children and for identifying an adult family member or other “sponsor” in the United States who
25 may assume custody of a child. 8 U.S.C. § 1232(b)(1), (3).

26 DHS acknowledges that unaccompanied children’s sponsors may bear primary
27 responsibility for paying application fees, *see* Fee Rule, 85 Fed. Reg. at 46,853, but fails to draw the
28 obvious conclusion that children’s lack of financial and decision-making independence may

28 ⁴ Letter from Andrea Carcamo, Center for Victims of Torture, 6 (Dec. 30, 2019),
<https://bit.ly/2Fgculp>.

1 foreclose them from applying for protection or benefits. The head of a child’s household may
2 prioritize other expenses, including food, housing, and immigration applications for other family
3 members (*see* Part II.A *infra*), leaving a child vulnerable to the consequences of not filing a request,
4 including removal and separation from his or her family.

5 Children, particularly those placed in removal proceedings as unaccompanied children, are
6 entitled to retain counsel. Professional standards call for attorneys for children to respect a child’s
7 expressed wishes in the management of their cases.⁵ Imposition of substantial application fees could
8 endanger that independent representation, and otherwise prevent unaccompanied children from
9 pursuing relief to which they may be entitled, independent of their family members.

10 **Survivors of abuse.** There is no sign in the Fee Rule that DHS considered the ways its
11 higher fees and stricter fee waiver standards would provide abusers with added leverage over
12 victims, a consideration Congress took into account when it created statutory “blanket” fee waivers
13 for VAWA self-petitions, T visa applications, and U visa applications.⁶ *See* 8 U.S.C. § 1255(l) (7).
14 It is well understood that domestic abusers may use various means of controlling victims, such as
15 withholding immigration or identity documents, threatening reports to immigration authorities,⁷ and
16 withholding economic resources needed to file applications if fees are nonwaivable.⁸ By restricting
17 fee waivers for applications ancillary to VAWA self-petitions, T visas, and U visas, *see* Part II.B
18 *infra*, the Fee Rule threatens to empower abusers at their victims’ expense.

19 **II. THE FEE RULE WILL IRREPARABLY HARM THOSE SEEKING**
20 **HUMANITARIAN PROTECTION BY DELAYING OR DETERRING ESSENTIAL**
21 **APPLICATIONS**

22 Because immigrants seeking humanitarian protection rarely arrive in the United States with
23 significant means, the Fee Rule will delay, if not outright deter, countless individuals, including

24 ⁵ American Bar Ass’n, *Standards for the Custody, Placement and Care; Legal Representation;*
25 *and Adjudication of Unaccompanied Alien Children in the United States*, 10-13 (2018),
<https://bit.ly/339Mrog>.

26 ⁶ The “blanket fee exemption” is “consistent with the legislative intent to assist persons in these
27 circumstances.” USCIS, *Adjustment of the Immigration and Naturalization Benefit Application*
and Petition Fee Schedule, 72 Fed. Reg. 29,851, 29,865 (May 30, 2007)

28 ⁷ *See* Stacey Ivie et al., *Overcoming Fear and Building Trust with Immigrant Communities and*
Crime Victims, Police Chief Magazine (2018), <https://bit.ly/3ihBOPG>.

⁸ *See* Sara J. Shoener and Erika A. Sussman, *Economic Ripple Effect of IPV: Building*
Partnerships for Systemic Change, Domestic Violence Report (2013), <https://bit.ly/2Re54lf>.

1 vulnerable children, from applying for and receiving humanitarian protection and related status and
2 benefits.

3 **A. Nonwaivable Fees Will Deter Applications for Asylum and Work**
4 **Authorization**

5 As noted, the Fee Rule introduces a new \$50 asylum fee and \$550 EAD fee, both largely
6 nonwaivable. Commenters on the proposed rule explained many ways that these fees will cause
7 hardship—for example, that asylum seekers’ limited resources are needed for survival (85 Fed. Reg.
8 at 46,844); that detained asylum seekers and minor asylum seekers lack the earning power to pay
9 fees (*id.* at 46,845); that some prospective asylum seekers are financially dependent on abusers (*id.*
10 at 46,847); and that survivors of violence who lack support systems in the United States are at risk
11 of homelessness and hardship (*id.*). In the final rule, these concrete concerns were met with repeated
12 generalities about what DHS “believes”: e.g., that a \$50 fee will not “unduly burden[] or harm[]
13 any applicants” (*id.* at 46,846), will not prevent applications (*id.* at 46,845 & 46,849), and is “not . . .
14 unaffordable to an indigent applicant” (*id.* at 46,844). But these conclusory statements miss the
15 point that a fee is not objectively reasonable or harmless when it competes with unmet basic needs.

16 As just one example of how the new fee schedule may affect asylum seekers, Dora⁹ is a 47-
17 year-old single mother and human rights attorney from Venezuela. She came to the United States
18 in November 2018 with her daughter to participate in a training program at the InterAmerican
19 Commission on Human Rights. During the program, colleagues in Venezuela called to inform Dora
20 that the severed head of a dog was delivered to her law office, with a letter stating that she would
21 be “next.” Marooned in the United States, Dora is unable to access her financial assets or sell
22 property in Venezuela. Under then-applicable rules, no fee was required for Dora’s asylum
23 application, and she was able to apply for work authorization—yet her financial situation remains
24 dire. She recently lost her job as a dishwasher in a restaurant due to the pandemic. Imposing
25 nonwaivable fees on her applications would have further delayed her ability to achieve self-
26 sufficiency for herself and her daughter. Indeed, had the Fee Rule been in effect when she applied
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⁹ All client names in this brief are pseudonyms; details of each case are on file with amici.

1 for asylum, Dora likely would not have been able to apply at all. Inability to pay the new fees could
2 become the sole reason that meritorious claims are delayed or never filed in cases like hers.

3 This problem is particularly acute for families comprising multiple asylum seekers. Children
4 and adults alike “may pursue an asylum application as a principal applicant and as a dependent on
5 a parent or spouse’s asylum claim.”¹⁰ A child’s claim may be independent of, or stronger than, the
6 claim of an adult applicant who names the child as a derivative. For example, if one of the statutory
7 bars to asylum applies to a parent principal applicant, USCIS will deny relief to the parent as well
8 as any derivative children; yet a similar principal claim by a child who has not triggered any of the
9 bars could be approved. Alternatively, a child can succeed as a principal applicant on the basis of
10 facts or legal theories inapplicable to the parent’s claim. But since most children lack independent
11 means to pay fees, if financial constraints limit the household to a single application, the child may
12 be precluded from bringing a meritorious claim.

13 As one example, Cristina and her three daughters fled domestic violence and gang violence
14 in Honduras. When the family first arrived in the United States, they lived in a dangerous and
15 exploitative housing situation with a man who repeatedly threatened Cristina based on her
16 immigration status and tried to evict the family despite a ban on evictions during the COVID-19
17 pandemic. Cristina and her three daughters have all applied for asylum, but if Cristina were required
18 to pay \$200 to file separate applications for herself and her daughters, she would likely have been
19 unable to do so. Under the Fee Rule, Cristina could limit her cost to \$50 by listing the children as
20 derivative applicants on her own application, but this would deprive them of their respective
21 opportunities to seek independent relief.

22 Even if Cristina were able to pay the \$200 fee, many others would be unable to do so because
23 they are either homeless, living in shelters, or lacking in a support network. Mary represents one-
24 such individual. She is an asylum seeker from the Democratic Republic of Congo who lost her legs
25 after being hit by a military vehicle when she was young. Mary fled gender-based violence by
26 government officials in the DRC, but when she came to the United States, she had no support or
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¹⁰ *Affirmative Asylum Procedures Manual*, 49 (2016), <https://bit.ly/35dV4AW>.

1 place to live and ended up in a shelter in Chicago. Mary has depended on her case manager at the
2 shelter for assistance in meeting with and providing documents to her attorney. When Mary’s one-
3 year deadline for asylum was approaching, Mary was initially unable to pay for passport-style
4 photographs for her asylum applications, a service that costs about \$15. She eventually scraped
5 together the money for the photos, but given Mary’s disability and homelessness, it is unlikely that
6 she could have timely filed for asylum if she needed to pay a nonwaivable \$50 filing fee.

7 In addition, because asylum applicants may no longer request fee waivers when applying for
8 work authorization, the \$550 fee will keep lawful employment, as well as tuition assistance and
9 other benefits dependent on the Social Security number that an EAD makes available, out of reach
10 for prolonged periods for applicants who need to work or otherwise need a government-issued ID.
11 DHS observes that “[a]sylum applicants will pay no more and no less than any other EAD
12 applicant,” Fee Rule, 85 Fed. Reg. at 46,887. But asylum seekers served by Amici face materially
13 different circumstances than “any other EAD applicant.” They have generally fled under emergency
14 conditions without adequate preparation, exhausted any available resources in their journey to reach
15 safety, and been deprived of access to resources, including work, both abroad and within the United
16 States. Combined with a newly imposed year-long waiting period to apply for a work permit, the
17 amount of the EAD application fee will increase the existing hardships that asylum seekers face.

18 1. The Fee for Asylum May Divert Meritorious Applications Toward Lesser
19 Protections

20 DHS notes that no fee is payable when filing an asylum application form solely to seek
21 related but lesser protections in the form of withholding of removal or protection under CAT. *Id.* at
22 46,973 n.17. But neither withholding nor CAT protection can serve as a predicate for eventually
23 pursuing lawful permanent residency or naturalization. Furthermore, both withholding and CAT
24 protection come with substantial restrictions: recipients may not petition for family members and
25 are permanently barred from foreign travel. *See, e.g., Garcia v. Sessions*, 856 F.3d 27, 32 (1st Cir.
26 2017) (describing differences between asylum and withholding of removal). Accordingly, to the
27 extent this provision serves as a safety valve for those who seek protection but cannot afford to pay
28 \$50, it raises the specter of what the Supreme Court has described as “a permanent caste” of persons

1 entitled to a measure of protection yet “nevertheless denied the benefits that our society makes
2 available to citizens and lawful residents.” *Plyler v. Doe*, 457 U.S. 202, 218–19 (1982). And those
3 granted asylum could be delayed or deterred in seeking adjustment of status because fee waivers are
4 no longer available, except under an extremely narrow emergency exception. *See* Fee Rule, 85 Fed.
5 Reg. at 46,920.

6 2. A Fee Exemption for Unaccompanied Children Is Insufficient

7 An exemption from the \$50 fee for Form I-589 in the final Fee Rule is limited to
8 “unaccompanied alien children who are in removal proceedings.” *See* Fee Rule, 85 Fed. Reg. at
9 46,829 tbl. 4. This exemption is necessary because, as DHS acknowledges, UAC are a “particularly
10 vulnerable population” (*id.* at 46,845)—but it is far too narrow. DHS and DOJ have repeatedly
11 attempted to interpret UAC asylum seekers to include only those UAC who are not living with a
12 parent or legal guardian and who remain under 18 when filing their asylum applications. A May
13 2019 USCIS memorandum designed to limit USCIS’s jurisdiction over UAC asylum applications
14 was halted only by litigation. *See J.O.P v. U.S. Dep’t of Homeland Sec.*, 409 F. Supp. 3d 367, 380
15 (D. Md. 2019) (enjoining USCIS policy limiting adjudication for applicants previously determined
16 to be unaccompanied). Likewise, litigation blocked implementation of 2019 regulations that would
17 have, among other things, curtailed all UAC protections once a child no longer meets the statutory
18 UAC definition. *Flores v. Barr*, 407 F. Supp. 3d 909, 914 (C.D. Cal. 2019) (permanently enjoining
19 regulations at 84 Fed. Reg. 44,392). Even earlier, the Executive Office for Immigration Review
20 issued more restrictive policies toward children who arrived in the United States as UAC but later
21 reach 18 or join a parent.¹¹ If this restrictive reading is what DHS intends in describing its exemption
22 as “narrow,” Fee Rule, 85 Fed. Reg. at 46,887, then the exemption will reach only a small fraction
23 of children who flee to the United States unaccompanied and who cannot afford any fee.

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27 ¹¹ EOIR, *Guidelines for Immigration Court Cases Involving Juveniles, Including Unaccompanied*
28 *Alien Children*, 8 (Dec. 20, 2017), <https://bit.ly/3k03sbc>; *Matter of M-A-C-O-*, 27 I. & N. Dec. 477
(BIA 2018) (holding that an immigration judge may adjudicate an application that was filed with
USCIS after the UAC applicant reached age 18).

1 **B. Higher Fees and Limited Fee Waivers Harm Applicants for Other Protections**
2 **Intended for Survivors of Violence**

3 VAWA self-petitions and applications for U and T visas do not require a fee. 8 U.S.C.
4 § 1255 (I)(7). But applicants must often file ancillary forms that do have significant fees, which
5 will rise under the Fee Rule. For example, the rule increases the fee for the I-192 Application for
6 Advance Permission to Enter as a Nonimmigrant from \$930 to \$1,415, an increase of 52%. *See Fee*
7 *Rule*, 85 Fed. Reg. at 46,791 tbl.1. This application is ubiquitous in U and T visa filings because all
8 grounds of inadmissibility, including unauthorized entry into the United States and minor criminal
9 offenses, must be waived to receive relief, and form I-192 is the vehicle to seek such a waiver.

10 These applicants may request fee waivers. *See id.* at 46,920. But the criteria for granting a
11 waiver have become so narrow—limited to applicants under 125% of the federal poverty guideline,
12 *see id.*—that as Plaintiffs explain, Compl. at 15-17, 38-39 (ECF No. 1), few applicants will satisfy
13 them, even those with extremely limited means. If not waived, the fee would render many
14 noncitizens unable to seek protection, and likely prolong the need for them to remain in dangerous
15 living or working conditions. For example, Veronica is a gender-nonconforming woman who fled
16 physical and sexual violence in Mexico. When she arrived in the United States, she needed to work
17 to support herself and her young child. She accepted a job doing cleaning and maintenance for a
18 property manager. Soon after, however, the manager coerced her into having sex with him multiple
19 times a week, and when she tried to refuse, he would threaten to terminate her. Veronica felt trapped,
20 forced to have sex to keep her job and thus, provide for herself and her daughter. Veronica qualified
21 for both asylum and a U visa, and ultimately received protection afforded by the latter. But if
22 Veronica had been required to pay over \$1,400 to seek protection, she likely would have been unable
23 to do so. Depriving individuals like Veronica of access to lawful work *and* the ability to seek
24 humanitarian protection will lead to countless examples of exploitation.

25 Contrary to Defendants’ position, it is no answer that individuals like Veronica can still seek
26 a waiver of the fees associated with her application. In recent years, Amici have received numerous
27 denials of fee waivers for individuals who clearly qualify. One Amicus organization sought a fee
28 waiver for an individual who spent three years in immigration detention before he was granted

1 protection under CAT. USCIS denied his fee waiver on the ground that his distant relatives should
2 be required to pay his fees. In other cases, Amici have received fee-waiver denials based on the
3 inability to produce documentation of indigence—e.g. proof of residence in a shelter, pay stubs
4 demonstrating poverty, or participation in food benefits—even though it is well known that the most
5 vulnerable noncitizens will not have access to these services or the accompanying documentation.

6 **C. Children Will Be Deterred from or Delayed in Seeking Protection and Benefits**

7 Although DHS exempted unaccompanied children from the new asylum fee, all children
8 will nonetheless be subject to the nonwaivable \$550 EAD fee and a more restrictive fee waiver
9 policy upon applying for adjustment of status and naturalization. DHS reasoned that children
10 “should not need an EAD for an identity document” (but if they do a sponsor should pay), and that
11 “[a]fter turning 18, the same policy considerations for charging them . . . apply as for charging all
12 adults.” Fee Rule, 85 Fed. Reg. at 46,853. Yet an unaccompanied child reaching age 18 may be
13 particularly in need of an EAD and least able to pay. For example, a child in California turning 18
14 and graduating high school requires an EAD to continue eligibility for the state’s Extended Foster
15 Care program, as she must be in vocational education or working (which require an EAD) or post-
16 secondary education (for which financial assistance almost invariably requires a Social Security
17 number, which becomes available after getting an EAD).¹² The Fee Rule would place such children
18 at risk of losing foster support by requiring them to pay filing fees in advance of having permission
19 to work. DHS’s suggestion that children could put the fees on credit cards is similarly disconnected
20 from reality, as few migrant children have access to such credit. Fee Rule at 46,906; 46,896; 46,807
21 (“[A] person can generally use a debit or credit card to pay their benefit request fee and does not
22 have to delay their filing until they have saved the entire fee”).

23 Fees are barriers to regularizing immigration status, which in turn inhibit a child’s ability to
24 recover from past trauma and develop self-sufficiency. Some children will be unable to apply, while
25 others will have no choice but to leave school and work without authorization to pay fees, a situation
26 plainly incompatible with the purposes of humanitarian protection. Amicus client Alex’s story is
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28 ¹² Cal. Dept. of Social Servs., All County Letter No. 11-61 (Nov. 4, 2011), <https://bit.ly/3fgjZF8>.

1 illustrative. He came to the United States from El Salvador at age 13, fleeing death threats after his
2 uncle, who raised him from infancy, was abducted by gang members. When the gang took the
3 family's entire savings, Alex fled to the United States, where he initially struggled to focus on school
4 because he could not see a future. But once he received legal assistance, applied for immigration
5 status, and obtained employment authorization, his dedication to education was transformed: Alex
6 entered a youth internship program that placed him in college-level classes and an internship with a
7 major national bank. He now has a career in investment operations. Had he been forced to leave
8 school early to work to raise fees for his immigration case, Alex's financial security and contribution
9 to the United States economy over the course of his life would have been sharply diminished.

10 **D. Without the Possibility of a Fee Waiver, Many SIJ Recipients Will Be Unable**
11 **To Apply for Permanent Residency**

12 SIJ classification is available to children under the age of twenty-one who cannot reunify
13 with one or both of their parents due to abuse, abandonment, neglect, or a similar basis and whose
14 best interests would not be served by return to their country of nationality. 8 U.S.C.
15 § 1101(a)(27)(J). Congress "created SIJ status in 1990 to provide [recipients] a path to lawful
16 permanent residency," precisely *because* it was concerned for their current and future well-being.
17 *C.J.L.G. v. Barr*, 923 F.3d 622, 626 (9th Cir. 2019) (en banc).

18 The Fee Rule precludes fee waiver requests for all but a narrow category of SIJ recipients
19 applying to become permanent residents. *See* 85 Fed. Reg. at 46,920. These new restrictions
20 threaten to put lawful permanent residency and work authorization out of reach of some of the most
21 vulnerable recipients of humanitarian relief, in direct contravention of congressional intent.

22 There is little principled reason why, under the Fee Rule, T and U visa holders should be
23 able to seek fee waivers for Form I-485 but many SIJS recipients are not. Although the TVPRA
24 expressly mandates DHS to make fee waivers available to T and U visa holders applying for
25 adjustment of status, *see* 8 U.S.C. § 1255(l)(7), many of the factors undergirding that mandate are
26 present for SIJ recipients as well. While T and U visa holders are victims of human trafficking or
27 other serious crimes that have caused them to suffer mental or physical abuse, SIJ recipients have
28 been subject to parental abuse, abandonment, neglect, or similar circumstances and are just as likely

1 to lack adequate resources to pay the substantial fees. Indeed, because eligibility for SIJ requires a
2 showing that reunification is not viable with one or both of a child’s parents and because SIJ
3 recipients are, by definition, young, *see* 8 U.S.C. § 1101(a)(27)(J), they often start from a place of
4 unique financial vulnerability, and therefore should also be eligible for fee waivers.

5 The Fee Rule acknowledges that SIJ recipients are “vulnerable,” yet makes fee waivers
6 available only to those SIJ recipients “who are wards of the state” and have been “placed in out-of-
7 home care under the supervision of a juvenile state court or a state child welfare agency.” Fee Rule,
8 85 Fed. Reg. at 46,815. This distinction makes little sense and does not clearly align with the 50
9 states’ approaches to child welfare and custody. SIJ recipients living with a court-appointed
10 guardian may, in fact, be *less* able to afford the high adjustment fees compared to their counterparts
11 placed in state care. This is because children placed in state custody may benefit from the more
12 structured intervention that state supervision brings, while their application fees may be paid for by
13 the state child welfare agency; in contrast, minors placed with private individuals are financially
14 reliant on their caregivers, who are often themselves stretched thin on resources and who have
15 complete discretion over whether they wish to pay.

16 Soraya, a 16-year-old from Guatemala represented by one Amicus, illustrates this problem.
17 When she was an infant, her father passed away from AIDS. Shortly after his death, Soraya’s mother
18 discovered that she was living with HIV. Soraya’s mother ultimately migrated to the United States
19 for safety reasons and left Soraya in the hands of extended family members, who abused her. Soraya
20 eventually sought refuge in the United States. She recently had her SIJ petition approved and is
21 now awaiting her opportunity to apply for adjustment of status. In the meantime, Soraya reunited
22 with her mother, her mother’s partner, and two younger half-siblings. Soraya’s mother is unable to
23 work due to HIV and other chronic health conditions; the entire family relies entirely on her mother’s
24 partner’s modest income. During the COVID-19 pandemic, he was furloughed, and the family fell
25 behind on rent. They now struggle to secure enough food to eat. Under the Fee Rule, which
26 precludes fee waivers for SIJS recipients like Soraya, her family will likely have to choose between
27 paying for her adjustment application and feeding the family.

1 Although an Amicus organization advocated aggressively on Afua’s behalf and eventually placed
2 him with a shelter, many asylees who cannot afford to apply for an EAD will remain housing
3 insecure.

4 **III. THE NEW FEE SCHEDULE WOULD IRREPARABLY HARM HUMANITARIAN**
5 **ORGANIZATIONS LIKE AMICI**

6 Amici and Plaintiff organizations alike face irreparable harm as a result of the Fee Rule. The
7 Rule will force many Amici to divert substantial resources to covering fees directly; to serve far
8 fewer clients due to the insurmountable barrier of fees; or both. Amici organizations are not
9 budgeted to pay client fees, and any such reallocation of resources would by definition require Amici
10 to forego using those funds for client services. The Rule will thus cause “ongoing harm to [the]
11 organizational missions” of refugee-serving organizations. *Valle del Sol Inc. v. Whiting*, 732 F.3d
12 1006, 1029 (9th Cir. 2013).

13 In addition to this budgetary impact, the Fee Rule is already causing irreparable harm
14 because Amici are forced to rush to file applications before these fees take effect, knowing that the
15 fees will be prohibitive for many clients. For example, one Amicus organization represents Lucia,
16 a woman from Mexico who fled to the United State with her daughter after both suffered years of
17 physical and sexual abuse by Lucia’s husband. Lucia and her daughter have until November 2020
18 to meet the one-year filing deadline for asylum, but knowing that the application could be subject
19 to a fee by then, Lucia’s counsel helped her file the application early to avoid the fee. Amici are
20 being forced to make such decisions across the board, and this process of scrambling to file
21 applications to spare clients unaffordable fees is already placing an onerous burden on Amici
22 organizations.

23 **CONCLUSION**

24 For the foregoing reasons, Amici respectfully request that the Court grant Plaintiffs’ motion
25 for a preliminary injunction.
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1 **APPENDIX: LIST OF AMICI**

2 Amici are:

- 3 • ASISTA Immigration Assistance, a national nonprofit organization that trains and provides
4 technical support to local law enforcement officials, civil and criminal court judges,
5 domestic violence and sexual assault advocates, and legal services, non-profit, pro bono, and
6 private attorneys working with immigrant crime survivors.
- 7 • AsylumWorks, a nonprofit organization that provides holistic services and support to asylum
8 seekers and their families living in the Washington, D.C. metro region.
- 9 • The Center for Gender and Refugee Studies, an internationally respected resource for gender
10 asylum and advocate for refugee women, children, LGBTQ individuals, and others.
- 11 • The Center for Victims of Torture (CVT) is an independent nongovernmental organization
12 that provides interdisciplinary rehabilitative services to, and advocates on behalf of,
13 survivors of torture in the United States and abroad.
- 14 • Immigration Equality, a national organization that provides legal services and advocacy for
15 LGBTQ and HIV-positive immigrants.
- 16 • Kids in Need of Defense (KIND), a national nonprofit organization dedicated to providing
17 free legal representation and protection to unaccompanied immigrant and refugee children
18 in removal proceedings.
- 19 • National Immigrant Justice Center, (NIJC), a program of the nonprofit organization
20 Heartland Alliance, provides direct legal services to, and advocates on behalf of, immigrants,
21 refugees, and asylum seekers including more than 800 asylum seekers each year.
- 22 • Public Counsel, a pro bono law firm that provides representation to immigrants seeking
23 asylum, Special Immigrant Juvenile Status, and other forms of humanitarian protection.
- 24 • Tahirih Justice Center, a national, nonpartisan and direct services organization that assists
25 immigrant survivors of gender-based violence.
- 26 • World Relief, a global Christian nonprofit organization dedicated to resettling refugees and
27 providing immigration legal services.
- 28