

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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| DISTRICT OF COLUMBIA, <i>et al.</i> , |) |
| |) |
| <i>Plaintiffs,</i> |) |
| |) |
| v. |) |
| |) |
| U.S. DEPARTMENT OF AGRICULTURE, <i>et</i> |) |
| <i>al.</i> , |) |
| |) |
| <i>Defendants.</i> |) |
| |) |
| BREAD FOR THE CITY, <i>et al.</i> , |) |
| |) |
| <i>Plaintiffs,</i> |) |
| |) |
| v. |) |
| |) |
| U.S. DEPARTMENT OF AGRICULTURE, <i>et</i> |) |
| <i>al.</i> , |) |
| |) |
| <i>Defendants.</i> |) |
| |) |
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Civ. Action No. 1:20-cv-00119-BAH

**BRIEF OF AMICI CURIAE GREATER HARTFORD LEGAL AID, NATIONAL
CENTER FOR LAW AND ECONOMIC JUSTICE, EMPIRE JUSTICE CENTER,
LEGAL AID SOCIETY OF NEW YORK, MASSACHUSETTS LAW REFORM
INSTITUTE, CONNECTICUT LEGAL SERVICES, AND NEW HAVEN LEGAL
ASSISTANCE ASSOCIATION IN SUPPORT OF PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT**

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I. Interests of Amici Curiae

Amici file this brief pursuant to Local Civil Rule 7(o) and affirm that no one, other than *Amici* by and through their counsel or their members, have authored this brief in its entirety. No party to this action, nor outside agency or individual, made any monetary contribution intended to fund the preparation or submission of this brief. All parties have consented to the filing of this brief.

II. Corporate Disclosure Statement

Amici are non-profit organizations with no parent corporation and no stock.

III. Introduction

Amici Curiae are non-profit civil rights and legal services organizations based in New York, Connecticut and Massachusetts that provide legal assistance to low-income individuals, many of whom rely on public benefits such as SNAP. *Amici* file the instant brief in support of Plaintiffs' Motion for Summary Judgment in *District of Columbia, et al. v. U.S. Dep't of Agriculture*, No. 20-cv-00119-BAH (D.D.C.), which seeks to permanently enjoin implementation of the *Supplemental Nutrition Assistance Program: Requirements for Able-Bodied Adults Without Dependents*, 84 Fed. Reg. 66,782 (Dec. 5, 2019) ("Final Rule").

Amici have extensive experience advocating for SNAP recipients, assisting them with complex eligibility requirements, and witnessing the harsh impact of the ABAWD time limit at issue in this litigation. *Amici* have witnessed how rigid application of the ABAWD time limit ignores the complex realities of the lives of low-income people. As a group, ABAWDs face considerable employment challenges, including a lack of reliable transportation, unstable

housing arrangements, engagement with the criminal justice system, unstable work histories, poor educational achievement and/or undiagnosed physical or mental limitations.¹

The Final Rule arbitrarily changes long-standing regulations that govern how states may mitigate the impact of a harsh time limit that prevents childless adults who are deemed able-bodied from receiving SNAP benefits for more than three months in a 36-month period unless they can demonstrate that they are exempt from or satisfy a stringent work requirement. In promulgating the Final Rule, Defendants seek to implement radical changes designed to drastically reduce access to SNAP's vital nutrition assistance. *Amici* urge the Court to grant Plaintiffs' request for a permanent injunction because implementation of the Final Rule will cause widespread harm and leave hundreds of thousands of individuals in New York, Connecticut and Massachusetts without access to critical food supports, while robbing State and local governments of the flexibility needed to mitigate the harshest consequences of the already punitive SNAP time limit in areas with immense economic uncertainty in the shadow of the COVID-19 pandemic. Further, the Final Rule will disproportionately impact protected classes, including people of color and people with disabilities. It will not increase employment; rather, it will increase economic insecurity and leave communities devastated.

¹ Elaine Waxman and Nathan Joo, Reinstating SNAP Work-Related Time Limits: A Case Study of Able-Bodied Adults without Dependents in Kentucky, Urban Institute (March 2019) at 6, available online at https://www.urban.org/sites/default/files/publication/100027/reinstating_snap_time_limits_0.pdf; Steven Carlson, et al., Who are the Low-Income Childless Adults Facing the Loss of SNAP in 2016, Center on Budget and Policy Priorities (Feb 2016), available online at <https://www.cbpp.org/research/food-assistance/who-are-the-low-income-childless-adults-facing-the-loss-of-snap-in-2016>.

IV. Argument

A. State Flexibility in Requesting Waivers Is Integral to Maintaining Food Security.

The needs of the fifty states and District of Columbia are varied and distinct in their operation of SNAP and in responding to local food insecurity. In New York, SNAP helps nearly three million residents obtain nutritional assistance each month, including not only those who are unemployed, seniors and people with disabilities, but also low-income workers. As of March 2020, there were 1,483,230 SNAP recipients in New York City, representing 873,989 families, and 602,095 households made up of 1,077,957 SNAP recipients in the rest of the state.²

In Connecticut, SNAP benefits help meet the nutritional needs of 360,031 individuals in 212,069 households.³ Over 108,000 of the SNAP-participating households, more than 50% of the total caseload, in Connecticut received emergency benefits in June 2020 because of the critical and unprecedented circumstances in our Country resulting from novel coronavirus public health emergency.⁴

In Massachusetts, even before the pandemic, SNAP was crucial to protecting more than three-quarters of a million low-income people from the worst ravages of hunger. Because of the

² Supplemental Nutrition Assistance Program Monthly Caseload Report, Table 16, of the New York State Office of Temporary and Disability Assistance available online at <https://otda.ny.gov/resources/caseload/2020/2020-03-stats.pdf>.

³ Food and Nutrition Service data for February 2020, Supplemental Nutrition Assistance Program: Number of Persons Participating, available online at <https://fns-prod.azureedge.net/sites/default/files/resource-files/29SNAPcurrPP-5.pdf>; Food and Nutrition Service data for February 2020, Supplemental Nutrition Assistance Program: Number of Households Participating, available online at <https://fns-prod.azureedge.net/sites/default/files/resource-files/30SNAPcurrHH-5.pdf>.

⁴ Data available online at <https://portal.ct.gov/DSS/SNAP/Supplemental-Nutrition-Assistance-Program---SNAP>.

pandemic, between February and April 2020, Massachusetts experienced an unprecedented 16.5 percent increase in SNAP recipients - rising to 881,787 people.⁵

In light of the harsh penalty associated with the ABAWD time limit and the risk that individuals would be unable to meet the work requirements, Congress established two mechanisms by which states retain significant discretion to exempt SNAP participants from the ABAWD time limit: (1) requesting waiver of the ABAWD time limit for “any group” for whom the Secretary of USDA “makes a determination that the area in which the individuals reside . . . has an unemployment rate of over 10 percent [or] does not have a sufficient number of jobs to provide employment” for the SNAP participants in the targeted area (a “Geographic Waiver”); and (2) a discretionary exemption for a portion of the state’s SNAP caseload, currently set by statute at 12 percent (a “Discretionary Exemption”). *See* 7 U.S.C. §§ 2015(o)(4), (6). These exemptions provide states the flexibility to identify geographic areas or a subset of individuals to whom the ABAWD time limit should not apply, given significant variations in the needs of the population and the availability of jobs across a given state.

Accordingly, for more than two decades, a majority of states participating in SNAP have applied for and received various geographic waivers pursuant to these statutory mechanisms—in most instances, due to extended periods of unemployment and underemployment in certain geographic areas, natural disasters affecting employment opportunities, or layoffs or closures of major local employers. If upheld, the Final Rule will strip states of this critical flexibility by: restricting states from using state or local data, rather than Bureau of Labor Statistics data, to

⁵ Massachusetts Department of Transitional Assistance Performance Scorecard, available online at <https://www.mass.gov/doc/performance-scorecard-june-2020/download>.

demonstrate the extent of unemployment in a geographic area; creating a new unemployment “rate floor” for states seeking a waiver of the ABAWD time limit under 7 C.F.R. § 273.24(f)(2)-(3) (*see* 84 Fed. Reg. 66811); restricting the definition of a Labor Market Area for purposes of waiver applications (84 Fed. Reg. 66811, revising 7 C.F.R. § 273.24(f)(4)); limiting the duration of available waivers to one year or less (84 Fed. Reg. 66811, revising 7 C.F.R. § 273.24(f)(5)); and restricting carryover of unused exemptions from year to year (84 Fed. Reg. 66811-12, revising 7 C.F.R. § 273.24(h)(2)).

i. COVID-19 Underscores the Need for Continued Program Flexibility.

In issuing a preliminary injunction to delay implementing revised methodology for determining geographic waivers under the Final Rule, this Court rightly noted that it is essential for federal and state officials to have the flexibility needed to ensure public well-being and meet urgent needs for food with the coronavirus pandemic looming large. *District of Columbia v. U.S. Dep’t of Agriculture*, 2020 WL 1236657, at *1 n. 26. On March 18, 2020, Congress enacted the Families First Coronavirus Response Act, Pub. L. No. 116-127, 134 Stat. 178. Among other provisions, the law suspends the ABAWD time limit for the duration of the COVID-19 public health emergency. Pub. L. No. 116-127, § 2301, 134 Stat. 187-88. The inclusion of this provision in federal relief legislation for this pandemic highlights the critical nature of state discretion in the implementation of the complex ABAWD rule. However, because the suspension of the ABAWD time limit extends only until one month after the Federal declaration of public health emergency has ended, many states facing a long and slow recovery will be robbed of the ability to adjust ABAWD requirements based on the localized impacts of the pandemic if the Final Rule takes effect.

Although, Defendant United States Department of Agriculture (“USDA”) and all fifty states have made unprecedented changes to SNAP operations to respond to exploding food insecurity nationwide, states are still struggling to meet the urgent and growing need. For example, Defendant issued blanket extensions of SNAP recipient certification periods and adjusted SNAP interview requirements so that those already in receipt of benefits could continue receiving them in a less onerous and burdensome manner.⁶ The Pew Research Center reported that approximately half of lower-income households in the United States reported job or wage loss due to the novel coronavirus.⁷ In New York, seasonally adjusted unemployment rose to an unprecedented 14.5% in April 2020, consistent with the national average.⁸ The rate in Massachusetts jumped from 2.8 % in March 2020 to 16.3% in May.⁹ Further, data from the Department of Labor revealed that, while the unemployment rate for whites reached 14.2% in

⁶ See Extending Certification Periods and Adjusting Periodic Reports Due to Novel Coronavirus (COVID-19)-Blanket Approval at <https://www.fns.usda.gov/snap/extending-certification-periods-adjusting-periodic-reports-through-june-2020>; Adjusting Interview Requirements Due to Novel Coronavirus (COVID-19)—Blanket Approval at <https://www.fns.usda.gov/snap/adjusting-interview-requirements-covid-19-blanket-waiver>.

⁷ Kim Parker et al., *About Half of Lower-Income Americans Report Job or Wage Loss Due to COVID-19*, Pew Research Ctr. (Apr. 21, 2020), <https://www.pewsocialtrends.org/2020/04/21/about-half-of-lower-income-americans-report-household-job-or-wage-loss-due-to-covid-19/>.

⁸ New York State Department of Labor, “State Labor Department Releases Preliminary April 2020 Unemployment Rates,” (May 27, 2020), available online at <https://www.labor.ny.gov/stats/pressreleases/prlaus.shtm>; “MA Unemployment Jumps to 12.3% in April—Now, 15.1% Jobless,” (May 22, 2020), available online at <http://www.golocalworchester.com/business/MA-Unemployment-Jumps-12.3-in-April-Now-15.1-Jobless>.

⁹ Department of Labor, Labor Market Information, Laborforce and Unemployment Data (May 2020), available online at <https://lmi.dua.eol.mass.gov/LMI/LaborForceAndUnemployment/LURResults?A=01&GA=000025&TF=2&Y=&Sopt=Y&Dopt=TEXT>.

April, a historic high, the unemployment rate soared to 16.7% for African Americans and 18.9% for Latinos, the highest on record for this population.¹⁰ Because communities of color often live in specific neighborhoods and geographic areas, the impact of these job losses will not be evenly distributed or felt, particularly when employment outcomes and opportunities were not equally available before the pandemic. *See* Section B, *infra*.

With millions of residents out of work, states and communities are challenged to respond to unprecedented food insecurity. Food insecurity in Massachusetts has more than doubled since February 2020, as 20% of Massachusetts residents are estimated to have been food insecure in April and May 2020.¹¹ In April 2020, 68,551 households in Massachusetts applied for SNAP, compared with 18,198 in February 2020, an increase of nearly 400 percent.¹² Similarly, SNAP application volume in New York has increased between 200% and 300% in different regions of the state.¹³ New York City has experienced a three-fold increase in SNAP applications since the

¹⁰ U.S. Bureau of Labor Statistics, “Unemployment Rates Rises to Record High 14.7 Percent in April 2020”, available online at <https://www.bls.gov/opub/ted/2020/unemployment-rate-rises-to-record-high-14-point-7-percent-in-april-2020.htm>; Charisse Jones, “Historic Layoffs Take Biggest Toll on Black, Latinos, Women and the Young,” USA Today (May 8, 2020) available online at <https://www.usatoday.com/story/money/2020/05/08/covid-19-layoffs-take-toll-women-people-color-and-young/3094964001/>.

¹¹ Diane Schanzenbach and Abigail Pitts, “How Much Has Food Insecurity Risen? Evidence from the Census Household Pulse Survey,” Northwestern Institute for Policy Research (June 10, 2020), available online at <https://www.ipr.northwestern.edu/documents/reports/ipr-rapid-research-reports-pulse-hh-data-10-june-2020.pdf>.

¹² Massachusetts Department of Transitional Assistance Performance Scorecard, May 2020, available at <https://www.mass.gov/lists/departement-of-transitional-assistance-performance-scorecards#2020-performance-scorecards-by-month->.

¹³ *See*, Jerry Zremski, “Increasing Demand Leads to Calls for Expanding Food Stamp Program,” The Buffalo News (May 20, 2020), available online at <https://buffalonews.com/2020/05/20/increasing-demand-leads-to-calls-for-expanding-food-stamp-program/> (demand for SNAP in Erie County more than doubled in March 2020 and increased by 95% in April 2020); Stephanie Asymkos, “Never Applied Before: Americans Are

Governor issued a “stay-at-home” order in the third week of March.¹⁴ It is estimated that one in four City residents is food insecure as a result of the pandemic.¹⁵ The pandemic crisis is affecting food systems directly “and indirectly—but just as importantly—through decreases in purchasing power[and] the capacity to produce and distribute food...all of which will have differentiated impacts and will more strongly affect the poor and vulnerable.”¹⁶

Implementation of the Final Rule will result in tens of thousands of individuals losing access to food in New York, Connecticut, Massachusetts and countless other localities across the country, with FNS estimating that nearly 700,000 SNAP participants nationwide will no longer be able to continue receiving SNAP following implementation of the Final Rule. (84 Fed. Reg. 66807). This FNS estimate was generated before the COVID-19 pandemic. With soaring unemployment and increased SNAP caseloads, it is predictable that many more SNAP recipients will lose benefits if the Final Rule is implemented. Loss of critical SNAP benefits without improvement in local conditions will only leave people hungry. Food banks and other charities

Signing Up for Food Stamps in Drovers,” (April 17, 2020), available online at <https://money.yahoo.com/americans-are-signing-up-for-food-stamps-in-droves-173356965.html?guccounter=1> (referencing a 200% increase in demand in New York).

¹⁴ See Testimony of Steven Banks, Commissioner, New York City Dept. of Social Services, Before the New York City Council General Welfare Committee, (May 18, 2020) at 3, available online at <https://legistar.council.nyc.gov/View.ashx?M=AO&ID=88356&GUID=9f2636af-a802-46ba-8a4b-a74fb89abc6d&N=SGVhcmluZyBUZXN0aW1vbnkgLSBTdGV2ZW4gQmFua3MsiENvbW1pc3Npb25lcm9%3d%3d>.

¹⁵ Brian Mann, “In New York City, 2 Million Residents Face Food Insecurity, Officials Say,” National Public Radio (May 21, 2020), available online at <https://www.npr.org/sections/coronavirus-live-updates/2020/05/21/860312565/in-new-york-city-2-million-residents-face-food-insecurity-officials-say>.

¹⁶ “Covid-19 and Food Security: What You Need to Know,” Center for Strategic and International Studies (April 24, 2020), available online at <https://www.csis.org/programs/global-food-security-program/covid-19-and-food-security>.

that were already unable to meet existing demand, even before the COVID crisis, now face unprecedented demand.¹⁷ The Final Rule will erase part of the exceptional responsiveness of SNAP to counter hunger in emergent circumstances and will subsequently push hundreds of thousands, if not millions, of individuals nationwide into further food insecurity.

ii. Expanded Labor Market Areas in Connecticut Under the Final Rule Bear No Relation to Job Availability.

The Final Rule's focus on evaluating unemployment levels for entire Labor Market Areas (LMAs), rather than specific towns or cities, is unrelated to the realities of the job markets in Connecticut's urban centers. Specifically, in Connecticut, the LMAs contain some of the nation's wealthiest suburbs alongside urban areas with a high concentration of poverty, without any real acknowledgment of the lack of public transportation infrastructure and the realities of commuting for low-wage workers.

The LMA containing the City of Hartford includes 54 towns.¹⁸ Connecticut has historically used towns and cities for determining waiver eligibility for ABAWD requirements as Connecticut has no county government. This allowed the SNAP program in Connecticut to respond to the needs of individual cities, particularly in old industrial cities like Hartford and

¹⁷ Monica Manney, "SNAP Changes Will Impact Local Recipients and Food Banks," Spectrum Local News for Central New York (December 8, 2019), available online at <https://spectrumlocalnews.com/nys/central-ny/news/2019/12/08/snap-changed-impact-locally-food-banks>; Alana Melanson, "Food Banks, Pantries Brace for Impact of Impending SNAP Cuts," Sentinel and Enterprise (January 8, 2020), available online at <https://www.sentinelandenterprise.com/2020/01/08/food-banks-pantries-brace-for-impact-of-impending-snap-cuts/>.

¹⁸ Connecticut Department of Labor, State of Connecticut Towns Listed by Labor Market Area, last updated March 16, 2015 available at <https://www1.ctdol.state.ct.us/lmi/misc/lmatowns.asp>

New Britain where recovery from the Great Recession of 2008 lagged.¹⁹ Unemployment is experienced unevenly throughout the LMA. While the overall unemployment rate in 2017 in greater Hartford was only seven percent (comparable to Connecticut and the United States as a whole), the unemployment rate in the City of Hartford was sixteen percent that year.²⁰ Although the Hartford LMA would not have qualified for a waiver had the Final Rule been in effect in 2016, 2017, or 2018, the city of Hartford on its own would have qualified for each of those years.²¹ Likewise, low-income residents of New Haven and Bridgeport experienced unemployment rates of fourteen and fifteen percent respectively in 2017, twice that of the state's unemployment rate of seven percent that year.²²

Some locations in the Hartford LMA are simply inaccessible by public transportation.²³ The vast majority of greater Hartford residents rely on private transportation to reach their jobs, as well as necessary services such as shopping and health care.²⁴ Greater Hartford Legal Aid

¹⁹ Danielle Kwon, et al., "Using Labor Market Areas to Determine ABAWD Eligibility Limits SNAP's Local Flexibility," Urban Institute Research Report (2020), 5-6, available at <https://www.urban.org/research/publication/using-labor-market-areas-determine-abawd-waiver-eligibility-limits-snaps-local-flexibility>

²⁰ M. Abraham, et al., Greater Hartford Community Wellbeing Index 2019: DataHaven at 20 (2019), available at <https://ctdatahaven.org/reports/greater-hartford-community-wellbeing-index>.

²¹ Kwon et al, 6.

²² M. Abraham, et al., Greater New Haven Community Index 2019: DataHaven (2019), available at <https://ctdatahaven.org/reports/greater-new-haven-community-index> , 20; M. Abraham, et al., Fairfield County Community Wellbeing Index 2019: DataHaven (2019) available at <https://ctdatahaven.org/reports/fairfield-county-community-wellbeing-index> , 20.

²³ A Google map search for a public transit route from Greater Hartford Legal Aid's office, which is on several bus routes and within walking distance to the railroad station, to 14 cities in the Hartford LMA returned "No Route Found." Even where there is public transit, commutes are long. For example, using public transit to go to Glastonbury during regular commuting hours requires two buses and a 4.6 mile walk, taking at least 2 hours and 15 minutes to cover 11 miles.

²⁴ Greater Hartford Index, 51.

(GHLA) clients, who frequently live in the cities of Hartford, East Hartford, and New Britain, are more than four times as likely as residents of wealthier towns in the LMA to be “transportation insecure,” i.e. not able to access a car when needed.²⁵ Transportation insecurity hits low-income residents particularly hard. According to a survey of greater Hartford residents, forty-three percent of adults earning \$15,000 or less and twenty-two percent of adults earning between \$15,000 and \$30,000 report not having access to a car when needed.²⁶ Transportation insecurity is similar in New Haven among low-income workers; forty-six percent of workers earning less than \$15,000 and twenty-six percent earning between \$15,000 and \$30,000 report not having access to a car when needed.²⁷

A lack of access to transportation radically reduces the geographic area of available employment for ABAWDs. Prior to the COVID-19 pandemic, the Connecticut economy had largely rebounded from the Great Recession of 2008, but most of the new jobs are lower paying service economy jobs.²⁸ Those jobs are not evenly distributed. While the City of Hartford has the largest net inflow of high-wage workers commuting from other towns in the state, only 6 percent of the higher-wage jobs (those paying \$40,000 or more annually) in the city are held by residents of Hartford.²⁹ For low-wage work, residents of the city must commute outward to suburbs such as Farmington, where there is a shopping mall and housing costs are more than 2

²⁵ Greater Hartford Index, 44.

²⁶ Greater Hartford Index, 52.

²⁷ Greater New Haven Index, 51.

²⁸ Stephen Singer, “Report: High-Wage Jobs Continue to Leave Connecticut,” Hartford Courant (Dec. 5, 2019) available at <http://www.courant.com/business/hc-biz-connecticut-workforce-20191205-ifhvd6ffjvdndltx5jml3ewuqu-story.html>

²⁹ Greater Hartford Index, 51.

times those of Hartford.³⁰ In New Britain, there is also a large net outflow of low-wage workers.³¹ In New Haven, where 20 percent of higher-wage jobs are held by city residents, there is less of a spatial mismatch, but still two-thirds of the lower-income city residents commute to the outer suburbs for work.³² Bridgeport has the largest outflow of low-income workers in the state with 16,000 more low-income workers traveling to rather than traveling from the surrounding towns for work.

Income inequality in the state, which is among the highest in the nation,³³ is typified by radically different property values, average incomes, and availability of affordable housing by town. The extreme disparity of wealth within an LMA makes it infeasible for ABAWDs looking for work to move to those towns where low-wage work is available. For example, Bridgeport is included in the Bridgeport-Stamford LMA, which includes some of the most affluent (and expensive) towns in the nation.³⁴ It is not an option for a low-wage worker living in Bridgeport to move closer to work in the surrounding towns because the average property value in the

³⁰ Greater Hartford Index, 30, 51.

³¹ Greater Hartford Index, 52.

³² Greater New Haven Index, 51

³³ See Keith Phaneuf, “Already deep in debt, Connecticut struggles with extremes of wealth and income,” *Connecticut Mirror* (May 29, 2018), available at <https://ctmirror.org/2018/05/29/already-deep-debt-connecticut-struggles-extremes-wealth-income/> (“In Connecticut, the top 1 percent out-earned the rest by 42.6 to 1 — one of just six states with a gap greater than 30-to-1. Only in neighboring New York was the ratio higher at 45.4 to 1.”)

³⁴ Greenwich, CT, is ranked 7th on Housing Wire’s 2018 list of most expensive towns in the U.S. See <https://www.housingwire.com/articles/46093-the-most-expensive-towns-in-the-us-and-what-it-costs-to-live-there/>. Stamford was ranked 15th on Quicken Loan’s 2019 list of most expensive towns in the U.S. See <https://www.quickenloans.com/blog/15-most-expensive-cities-in-the-us>.

towns surrounding Bridgeport can be as much as 823% higher than in the City of Bridgeport.³⁵ Renters also face challenges moving to neighboring towns where the rental market is tight, and the rental price for an apartment in the surrounding towns is likely to be at least twice the average cost of an apartment in the City of Bridgeport.³⁶ Neighboring towns of Fairfield and Trumbull have more low-wage workers coming in than going out, but housing costs in Trumbull are more than twice those in Bridgeport, and in Fairfield they are more than three and a half times more expensive.³⁷ In these towns, the stock of affordable housing³⁸ is extraordinarily low. While 19.82 percent of Bridgeport's housing stock is identified as affordable, the surrounding towns have much lower stock of affordable housing. In Fairfield, only 2.22 percent of housing units are identified as affordable, and in Trumbull, only 4.55 percent³⁹ of housing units are affordable. Westport, just one town over from Fairfield, has a surplus of low-wage jobs, but there, the average home costs \$1.2 million, seven times more than the average price of a Bridgeport home of \$170,000, and only 3.12 percent of the housing units are identified as affordable.⁴⁰ There is a dearth of affordable housing in the state as a whole,⁴¹ but what housing is

³⁵ Fairfield County Index, 30, 33, 51.

³⁶ Jordan Grice, "Property Rounds: Apartment stock outpaced by growing demand," Connecticut Post (April 18, 2018), available at <https://www.ctpost.com/business/article/Property-Rounds-Apartment-stock-outpaced-by-12845018.php> Fairfield County Index, 30, 33, 51.

³⁷ Fairfield County Index, 33, 30.

³⁸ Affordable housing is defined as a unit that costs no more than 30% of the income earned by someone earning the area median income or less. Conn. Gen. Stat. § 8-39a.

³⁹ "Affordable Housing by Town 2011 to Present", Connecticut Data, updated Nov. 6, 2017, available at <https://data.ct.gov/Housing-and-Development/Affordable-Housing-by-Town-2011-Present/3udy-56vi>

⁴⁰ *Id.*

⁴¹ Emily Munson, et al., "Connecticut's Affordable housing shortage hits hard", Associated Press (Dec. 26, 2018), available at <https://apnews.com/b5f3b99cdef84211a8043add0a6e984b>

available is primarily located in the state's most impoverished areas, including the cities of Hartford, New Haven, and Bridgeport.⁴² The LMAs included in the state of Connecticut simply do not reflect the reality of the labor market for the clients served by Connecticut *amici*.

iii. Geographic Waivers in New York Protect Depressed Urban Centers.

In New York State, 2.5 million people are already food insecure, more than a million of whom reside in New York City.⁴³ Like neighboring Connecticut, New York has requested and used a series of waivers to cover extremely precise geographic areas comprised of lower income communities and those with inadequate employment opportunities. In New York City, waivers have been determined, not at the county level, but at the level of community districts.⁴⁴ In a number of urban upstate New York cities, where employment has been exceptionally scarce, depressed cities with concentrations of poverty and communities of color have been waived, while more prosperous suburban areas have been subject to the ABAWD time limit since it came into broad effect in 2016 following the Great Recession. The Cities of Utica, Syracuse, Rochester, Buffalo and Binghamton, New York have all been the subject of urban area waivers in recent years while the remaining counties surrounding these cities respectively have

⁴² Jacqueline Rabe Thomas, "Separated by Design: Why affordable housing is built in areas with high crime, few jobs, and struggling schools," Connecticut Mirror (Nov. 25, 2019), available at <https://ctmirror.org/2019/11/25/separated-by-design-why-affordable-housing-is-built-in-areas-with-high-crime-few-jobs-and-struggling-schools/>

⁴³ Food Bank For New York City, "Reflections of Hunger From the Front Lines," November 2018, https://1giqgs400j4830k22r3m4wqg-wpengine.netdna-ssl.com/wp-content/uploads/Legislative-Breakfast_Key_Findings_final.pdf

⁴⁴ New York City's 59 Community Districts were established by municipal law in 1975 and allow for more localized municipal decision making to accommodate the diverse needs of the City. Districts vary in geographic area and each may encompass as few as 900 residents, or as many as 200,000. See <https://www1.nyc.gov/site/planning/community/community-portal.page>.

implemented the ABAWD time limit.⁴⁵ This process allowed the 58 distinct social services districts in the State of New York, including New York City, to look carefully at their own transportation resources, job opportunities and SNAP recipient populations to evaluate and coordinate waiver applications to USDA with the state agency. For 2020, many communities with split geographic waivers in the preceding years, became fully waived because of limited job availability in New York, even prior to the COVID crisis.⁴⁶ For example, Oneida, Onondaga, Monroe, Erie and Broome Counties, the respective locations of the cities of Utica, Syracuse, Rochester, Buffalo and Binghamton, received full county waivers in 2020,⁴⁷ and will continue under waiver so long as the Final Rule is not implemented, or until labor conditions improve.

Approximately 70,000 ABAWDs reside in New York City alone, the vast majority of whom currently reside in geographically waived areas. *See* Decl. of Steven Banks, *District of Columbia, et al. v. U.S. Dept. of Agriculture*, (ECF No. 3-1), ¶¶ 7, 16. If the Final Rule is implemented, however, all these waivers will be nullified,⁴⁸ potentially triggering loss of SNAP to another 50,000 ABAWDs in New York City. Decl. of Steven Banks, *District of Columbia, et al. v. U.S. Dept. of Agriculture*, (ECF No. 3-1), ¶ 26. The loss of geographic waivers in New

⁴⁵ Exhibit 2 to the Decl. of Saima Akhtar in Support of Plaintiffs' Motions for Preliminary Injunction and Class Certification, *Brooks v. Roberts*, 16-cv-1025 (N.D.N.Y.), (ECF 9-3).

⁴⁶ Information on currently approved geographic waivers available online at <https://otda.ny.gov/programs/snap/qanda.asp#why-abawd> (information accessed on June 7, 2020, and may be subject to change).

⁴⁷ *Id.*

⁴⁸ *See* New York State Office of Temporary and Disability Assistance (Jan. 21, 2020) <http://otda.ny.gov/policy/gis/2020/20DC003.pdf> (informing local social service districts that only Hamilton County may qualify for a waiver of ABAWD requirements beginning April 1, 2020.).

York will be particularly troubling for the City as it slowly recovers from the exceptional loss of life, employment and all measures of normalcy during the COVID-19 pandemic.

B. The Final Rule Will Adversely Impact Protected Classes.

FNS notes its obligation to identify and address any major civil rights impacts the final rule might have on minorities, women and persons with disabilities and concedes that the Final Rule *will* “have the potential for impacting certain protected groups due to factors affecting rates of employment of these groups.” 84 Fed. Reg. 66808. FNS then asserts that, despite these civil rights impacts, “implementation of mitigation strategies and monitoring by the Civil Rights Division of FNS will lessen these impacts.” *Id.* The agency’s failure to provide any detail regarding these unnamed mitigation strategies and monitoring makes clear that the Final Rule *will* have a disparate impact on protected classes. The Final Rule places limitations on usable data for seeking ABAWD time limit waivers. By its very nature, using aggregate data as USDA proposes, which pools both advantaged and disadvantaged populations together, fails to account for the realities faced by some of the most vulnerable sub-groups served by the SNAP program. Excluding multiple sources of more specific and sensitive data will intentionally erase the needs of smaller populations.

Due to persisting racial economic disparities and discrimination in hiring practices, average hourly wages for Black and Hispanic workers are substantially lower than their white counterparts.⁴⁹ Studies show that racial discrimination remains a key force in the labor market.⁵⁰

⁴⁹ Eileen Patten, “Racial, Gender Wage Gaps Persist in U.S. Despite Some Progress,” Pew Research Center (July 2016), available at: <http://www.pewresearch.org/fact-tank/2016/07/01/racial-gender-wage-gaps-persist-in-u-s-despite-some-progress/>.

⁵⁰ *See, e.g.*, Robert Manduca, “Income Inequality and the Persistence of Racial Economic Disparities,” *Sociological Science* (Mar. 2018), available at:

In the third quarter of 2018, before the mass unemployment of the current COVID crisis, Black unemployment in New York State was almost double the rate of White unemployment (7% and 3.7% respectively); in Connecticut and Massachusetts for the same quarter, Hispanic unemployment was also noticeably higher than White unemployment rates (5.7% and 3.3% respectively in Connecticut, 5.6% and 3.6% respectively in Massachusetts).⁵¹ “[T]he fact that the unemployment gap persists speaks to structural barriers in the labor market that prevent African Americans from gaining employment at a rate similar to whites. Hiring discrimination is one of the primary structural barriers, as many employers exhibit and act upon biases against African Americans or other demographic groups.”⁵²

In addition to the disproportionate harm a change to the ABAWD waiver provisions will place on communities of color, SNAP is especially important for sustaining individuals with disabilities. While persons with permanent disabilities are exempted from SNAP work requirements and employment and training rules, including the ABAWD rule, those individuals who are waiting to be recognized by the Social Security Administration (SSA) as having a

https://www.sociologicalscience.com/download/vol-5/march/SocSci_v5_182to205.pdf; Lincoln Quillian, Devah Pager, et al., “Meta-Analysis of Field Experiments Shows No Change in Racial Discrimination in Hiring over Time,” (Sept. 2017), available at: <https://doi.org/10.1073/pnas.1706255114>; Brett Arends, “In Hiring, Racial Bias is Still a Problem. But Not Always for Reasons You Think,” *Fortune* (Nov. 2014), available at: <http://fortune.com/2014/11/04/hiring-racial-bias/>.

⁵¹ Janelle Jones, Black Unemployment Is At Least Twice As High As White Unemployment at the National Level and in 12 States and D.C., The Economic Policy Institute (October 30, 2018), available online at

https://www.epi.org/publication/2018q3_unemployment_state_race_ethnicity/.

⁵² Olugbenga Ajilore, On the Persistence of the Black-White Unemployment Gap, The Center for American Progress (February 24, 2020), available online at <https://www.americanprogress.org/issues/economy/reports/2020/02/24/480743/persistence-black-white-unemployment-gap/>.

disability of the severity necessary to qualify for Supplemental Security Income (SSI) or Social Security Disability (SSD) are not automatically exempt; these individuals are only exempt if they seek and are approved for an individual exemption. 7 C.F.R. § 273.24(c)(2). Research indicates that one-third of households with a working-age adult who is out of the labor force due to a disability are food insecure. Medical and specialized diet costs can quickly add up for people with disabilities and medical needs, making SNAP a critical tool in fighting food insecurity.⁵³ Currently clients of *amici* who are seeking to obtain SSI/SSD benefits on the basis of disability in New York and Massachusetts have to wait well over a year, and in some cases, almost two years, before they have a hearing and ultimately receive a decision.⁵⁴ During the period while they are waiting for a disability determination, SNAP is essential to help ensure these individuals avoid hunger. Studies have repeatedly shown that a chronic medical issue or work-limiting disability is a leading cause of non-participation in the employment market.⁵⁵

⁵³ Food Research & Action Center, U.S. Hunger Solutions: Best Practices for Improving access to SNAP for People with Disabilities (2017), available online at <https://frac.org/wp-content/uploads/best-practice-improving-snap-access-people-with-disabilities.pdf>.

⁵⁴ See Social Security Administration, “Hearing Office Average Processing Time Ranking Report FY 2020 (For Reporting Purposes: 09/28/2019 through 05/29/2020) available at: https://www.ssa.gov/appeals/DataSets/05_Average_Processing_Time_Report.html (Average number of days until final disposition of a hearing: Albany, NY, 409 days; Boston, MA, 360 days; Bronx, NY, 412 days; Buffalo, NY, 500 days; Lawrence, MA, 545 days; New Haven, CT, 368 days; New York, NY, 419 days; New York-Varick, 415 days).

⁵⁵ Brynne Keith-Jennings and Raheem Chaudhry, Most Working-Age SNAP Participants Work, But Often in Unstable Jobs, Center on Budget and Policy Priorities (March 15, 2018) at 9, available online at <https://www.cbpp.org/sites/default/files/atoms/files/3-15-18fa.pdf>; James Mabli and Irina Cheban, Supplemental Nutrition Assistance Program Participants’ Employment Characteristics and Barriers to Work, Mathematica Policy Research, (July 19, 2017) at 18, available online at <https://www.mathematica.org/our-publications-and-findings/publications/supplemental-nutrition-assistance-program-participants-employment-characteristics-and-barriers>.

Defendants’ vague assertion that it will deploy unspecified “mitigation” efforts to address the Rule’s potentially devastating impact on affected communities is thus deeply troubling and grossly inadequate. Moreover, any strategies employed to monitor and mitigate the disparate impact occur *post hoc* – *after* individuals have lost SNAP benefits. SNAP recipients cannot eat retroactively. There is no mechanism by which theoretical corrective strategies, subsequently undertaken by USDA, will make whole SNAP recipients who have already gone hungry. For indigent people, such as the ABAWDs who lose SNAP benefits when forced to meet an unrealistic work requirement in a jobless market, the risk of severe harm is profound—every day that an individual persists without the ability to buy food is a day of “brutal need” that may inflict physical and emotional damage for which later payments cannot make them whole. *Goldberg v. Kelly*, 397 U.S. 254, 260–65 (1970). Because USDA failed to adequately consider the severity and disproportionality of its rule’s impacts, the Final Rule should be enjoined.

C. Restricting the Use of Discretionary Exemptions Will Not Improve Employment Outcomes And Will Have Devastating Consequences for the Food Security of Tens of Thousands of Vulnerable People.

In addition to upending decades of policy and administrative certainty by arbitrarily changing the criteria for States seeking Geographic Waivers, discussed *supra*, the Final Rule also limits States’ longstanding discretion in carrying forward unused discretionary exemptions into the following calendar year. Historically, the carry-over of unused exemptions has afforded state and local governments the flexibility to exempt needy adults who cannot find a qualifying work or work-related activity and prevents them from experiencing hunger. By significantly curtailing

the use of exemptions at the state and local level,⁵⁶ the Final Rule will increase food insecurity and jeopardize the health of SNAP recipients with extremely limited resources.

The Final Rule will affect numerous populations, including persons with disabilities, military veterans, and formerly incarcerated individuals. Decl. of Brittany Mangini in Support of Plaintiffs' Motion for Preliminary Injunction, *District of Columbia, et al. v. U.S. Dept. of Agriculture*, (ECF 3-14), ¶ 8. For these vulnerable individuals, discretionary exemptions can be particularly important. Many ABAWDs face barriers to work associated with physical or mental health conditions, discussed *supra* at Section B. While the law allows for an exemption for people with "medically certified" conditions, 7 C.F.R. § 273.24(c)(2), this exemption fails to protect individuals who have significant difficulty accessing mental or physical healthcare that would verify their need for and corresponding entitlement to an exemption from ABAWD work requirements. For individuals not otherwise granted an exemption, a mental illness, intellectual disability or physical limitation can clearly prevent them from being able to work 20 hours per week, which would result in the loss of SNAP benefits when the ABAWD time limit is in effect. In New York and Massachusetts, the burden is on individuals to demonstrate that they are exempt from the ABAWD time limit when the individual is mentally or physically unfit to work.⁵⁷ This poses a significant burden because individuals are often denied access to their

⁵⁶ Note: New York and 9 other states operate SNAP through joint administration between a single state agency and independent county offices that elect options within the program. In New York, the state agency allocates all of the discretionary exemptions among the counties and allows each county to prioritize for itself how exemptions can most effectively be used.

⁵⁷ See New York State Office of Temporary and Disability Assistance, Revisions to the LDSS-4826B Interview/Verification Guide for the IDSS-4826 Supplemental Nutrition Assistance Program (SNAP) Application/Recertification, 18-INF-16 (November 23, 2018) at 5, available online at <https://otda.ny.gov/policy/directives/2018/INF/18-INF-16.pdf>; Massachusetts Department of Transitional Assistance, SNAP Work Requirement Medical Report Form,

medical records⁵⁸ and routinely face significant delays in getting forms from health care providers who often insist on in-person appointments for a physical to secure even a simple disability form. Indeed, the New York State Department of Health advises that Medicaid Managed Care patients may have to wait up to twelve weeks to get an appointment for a routine physical and up to four weeks for a routine preventive appointment.⁵⁹

Amicus MLRI represented a client who was in treatment for physical disabilities and alcoholism but lost his SNAP for a number of months because he was confused and did not know how to get the required paperwork from his medical professionals. He could not get sufficient quantities of healthy food and had to rely on canned goods obtained from friends and food pantries. Unfortunately, a SNAP recipient stands to lose their food benefits when subjected to an inflexible rule without discretionary exemptions when the recipient has difficulty obtaining healthcare or necessary medical records, even if the recipient is ultimately exempted from the ABAWD time limit.

Military veterans will also be seriously impacted. SNAP plays a critical role for many military veterans, providing basic food while they look for employment. Young, recently discharged male veterans have higher unemployment rates and lower labor force participation

available on line at
https://eohhs.ehs.state.ma.us/DTA/PolicyOnline/%21SSL%21/WebHelp/SNAP/Work_Requirements/Employment__Training_E_T/ABAWD_Work_Program_Requirement/ABAWD_Work_Program_Requirement_Medical_Report_Form.htm.

⁵⁸ See <https://www.recordonline.com/news/20181218/data-denied-despite-laws-patients-unable-to-obtain-medical-records>.

⁵⁹ See New York State Department of Health Medicaid Managed Care model contract (contracts between individual plans and the state) appointment standards, section 15-1, available at https://www.health.ny.gov/health_care/managed_care/docs/medicaid_managed_care_fhp_hiv-snp_model_contract.pdf.

rates than otherwise-similar civilians.⁶⁰ A study conducted in Minnesota found that about 1 in 4 recent veterans surveyed who sought health care through the Minnesota health care system reported food insecurity, or inadequate access to sufficient food.⁶¹ The ABAWD time limit can be particularly harmful for veterans returning from active duty, as they may have little work experience beyond military service, and their skills do not always translate to civilian environments. Finding a new job can be especially difficult while they are still actively serving in the military. Further, veterans proportionately experience higher unemployment rates due to physical and mental health challenges resulting from their service.⁶² The use of discretionary exemptions to accommodate the unique needs of veterans would be profoundly curtailed if the Final Rule is implemented. The Final Rule will leave more veterans food insecure and jeopardize their access to SNAP.

The Final Rule will also be exceptionally harmful for formerly incarcerated individuals and others with criminal histories. Individuals with prior involvement in the criminal justice system typically face complex and multi-faceted challenges upon re-entry that make finding and maintaining employment a substantial endeavor, with 50% remaining unemployed a year after

⁶⁰ Brynne Keith-Jennings and Lexin Cai, SNAP Helps 1.3 Million Low-Income Veterans, Including Thousands in Every State, Center on Budget and Policy Priorities (January 8, 2020) at 1, available online at <https://www.cbpp.org/sites/default/files/atoms/files/11-9-17fa.pdf>.

⁶¹ *Id.* at 2.

⁶² David S. Loughran, “Why Is Veteran Unemployment So High?” Rand Corporation (2014) at 17-19, available online at https://www.rand.org/content/dam/rand/pubs/research_reports/RR200/RR284/RAND_RR284.pdf.

their release.⁶³ Individuals leaving prison are three to six times as likely as a member of the general population to suffer from a serious mental illness, and face a significant likelihood of homelessness upon reentry.⁶⁴ The nature of the criminal conviction may limit work opportunities because of restrictions on employment or occupational licensing.⁶⁵ Further, many individuals who have involvement in the criminal justice system may have probation or parole requirements, such as meetings with parole officers, curfews and required substance use disorder programs that compete with and can hinder opportunities to meet the 20-hour work requirement the ABAWD rule imposes. There is no legitimate reason for the Final Rule to substantially remove the ability of states and localities to tailor a response to some of the highest need SNAP recipients through use of discretionary exemptions from the ABAWD time limit when there is compelling data and qualitative information that previously incarcerated persons, an identifiable group of SNAP recipients, cannot realistically meet the demands of the ABAWD time limit.

⁶³ Elizabeth Wolkomir, How SNAP Can Better Serve the Formerly Incarcerated, Center on Budget and Policy Priorities (March 16, 2018) at 2, 3, available online at <https://www.cbpp.org/sites/default/files/atoms/files/3-6-18fa.pdf>.

⁶⁴ Steadman, Henry J. *et.al.*, “Prevalence of Serious Mental Illness Among Jail Inmates,” *Psychiatric Services*, June 2009, available online at <https://ps.psychiatryonline.org/doi/abs/10.1176/ps.2009.60.6.761?code=ps-site>; Jocelyn Fontaine, “Examining Housing as a Pathway to Successful Reentry: A Demonstration Design Process,” Urban Institute, November 2013, available online at <https://www.urban.org/sites/default/files/publication/24206/412957-Examining-Housing-as-a-Pathway-to-Successful-Reentry-A-Demonstration-Design-Process.PDF>.

⁶⁵ Wilkomir at 4.

V. Conclusion

For the foregoing reasons, the Court should grant Plaintiffs' Motion for Summary Judgment and issue a permanent injunction.

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Respectfully Submitted,

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