No. 20-449

In the Supreme Court of the United States

UNITED STATES DEPARTMENT OF HOMELAND SECURITY, ET AL., PETITIONERS

v.

STATE OF NEW YORK, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

JEFFREY B. WALL
Acting Solicitor General
Counsel of Record
JEFFREY BOSSERT CLARK
Acting Assistant Attorney General
HASHIM M. MOOPPAN
Counselor to the Solicitor General
SOPAN JOSHI
Senior Counsel to the Assistant Attorney General
BENJAMIN W. SNYDER
Assistant to the Solicitor General
DANIEL TENNY
GERARD SINZDAK
JOSHUA DOS SANTOS
JACK STARCHER
Attorneys

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTIONS PRESENTED

Under the Immigration and Nationality Act, 8 U.S.C. 1101 *et seq.*, an alien is "inadmissible" if, "in the opinion of the [Secretary of Homeland Security] at the time of application for admission or adjustment of status, [the alien] is likely at any time to become a public charge." 8 U.S.C. 1182(a)(4)(A). Following notice-and-comment rulemaking, the United States Department of Homeland Security (DHS) promulgated a final rule interpreting the statutory term "public charge" and establishing a framework by which DHS personnel are to assess whether an alien is likely to become a public charge. The questions presented are:

1. Whether entities that are not subject to the public-charge ground of inadmissibility contained in 8 U.S.C. 1182(a)(4)(A), and which seek to expand benefits usage by aliens who are potentially subject to that provision, are proper parties to challenge the final rule.

2. Whether the final rule is likely contrary to law or arbitrary and capricious.

PARTIES TO THE PROCEEDING

Petitioners (defendants-appellants below) are the United States Department of Homeland Security; Chad F. Wolf, in his official capacity as Acting Secretary of Homeland Security; the United States Citizenship and Immigration Services, an agency within the United States Department of Homeland Security; and Kenneth T. Cuccinelli II, in his official capacity as Senior Official Performing the Duties of the Director of the United States Citizenship and Immigration Services.[*]

Respondents (plaintiffs-appellees below) are the State of New York; the City of New York; the State of Connecticut; the State of Vermont; Make the Road New York; African Services Committee; Asian American Federation; Catholic Charities Communities Services (Archdiocese of New York); and Catholic Legal Immigration Network, Inc.

---

[*] The complaints in both cases named Kevin K. McAleenan, then the Acting Secretary of Homeland Security, as a defendant in his official capacity. Chad F. Wolf has since assumed the role of Acting Secretary, and has thus been automatically substituted as a party in place of former Acting Secretary McAleenan. See Fed. R. App. P. 43(c)(2); Fed. R. Civ. P. 25(d). Similarly, the complaints named Kenneth T. Cuccinelli II in his role as Acting Director of the United States Citizenship and Immigration Services. Mr. Cuccinelli is now serving as Senior Official Performing the Duties of the Director.

RELATED PROCEEDINGS

United States District Court (S.D.N.Y.):

New York v. *United States Department of Homeland Security*, No. 19-cv-7777 (July 29, 2020) (related litigation)

New York v. *United States Department of Homeland Security*, No. 19-cv-7777 (Oct. 11, 2019) (granting preliminary injunction)

Make the Road New York v. *Cuccinelli*, No. 19-cv-7993 (Oct. 11, 2019) (granting preliminary injunction)

United States Court of Appeals (2d Cir.):

New York v. *United States Department of Homeland Security*, No. 20-2537 (Sept. 11, 2020) (related litigation)

New York v. *United States Department of Homeland Security*, No. 19-3591 (Aug. 4, 2020) (affirming preliminary injunction)

Make the Road New York v. *Cuccinelli*, No. 19-3595 (Aug. 4, 2020) (affirming preliminary injunction)

New York v. *United States Department of Homeland Security*, No. 19-3591 (Jan. 8, 2020) (denying stay pending appeal)

Make the Road New York v. *Cuccinelli*, No. 19-3595 (Jan. 8, 2020) (denying stay pending appeal)

Supreme Court of the United States:

Department of Homeland Security v. *New York*, No. 19A785 (Jan. 27, 2020) (granting stay pending appeal)

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Cases—Continued: Page

Constitution and statutes: Page

Statutes—Continued: Page

Miscellaneous:

In the Supreme Court of the United States

No. 20-449

UNITED STATES DEPARTMENT OF HOMELAND SECURITY, ET AL., PETITIONERS

v.

STATE OF NEW YORK, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

The Acting Solicitor General, on behalf of the U.S. Department of Homeland Security *et al.*, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-90a) is reported at 969 F.3d 42. The opinions of the district court (App., *infra*, 91a-120a, 125a-157a) are reported at 408 F. Supp. 3d 334 and 419 F. Supp. 3d 647.

JURISDICTION

The judgment of the court of appeals was entered on August 4, 2020. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

Pertinent statutory provisions are reprinted in the appendix to this petition. App., *infra*, 162a-175a.

STATEMENT

The U.S. Department of Homeland Security (DHS) issued a rule interpreting the provision of the Immigration and Nationality Act (INA), ch. 477, 66 Stat. 163 (8 U.S.C. 1101 *et seq.*), that makes an alien inadmissible if, "in the opinion of" the Secretary of Homeland Security, the alien is "likely at any time to become a public charge." 8 U.S.C. 1182(a)(4)(A). The district court here issued orders preliminarily enjoining implementation of the DHS rule nationwide, see App., *infra*, 121a-124a, 158a-161a, as did district courts in four other States (some nationwide and some on a more limited basis). Those preliminary injunctions were all stayed—several by the Fourth and Ninth Circuits, see Order, *CASA de Maryland, Inc.* v. *Trump*, No. 19-2222 (4th Cir. Dec. 9, 2019); *City & County of San Francisco* v. *United States Citizenship & Immigration Services*, 944 F.3d 773 (9th Cir. 2019), and the remainder by this Court, see 140 S. Ct. 599; *Wolf* v. *Cook County*, 140 S. Ct. 681 (2020). The Fourth Circuit subsequently reversed the preliminary injunction entered by a district court in Maryland, see *CASA de Maryland, Inc.* v. *Trump*, 971 F.3d 220 (2020), but a divided panel of the Seventh Circuit affirmed the statewide preliminary injunction entered by a district court in Illinois, see *Cook County* v. *Wolf*, 962 F.3d 208 (2020). In the decision here, the Second Circuit affirmed the preliminary injunctions entered by the district court, but limited their scope to New York, Connecticut, and Vermont. App., *infra*, 1a-90a.

A. The Public-Charge Inadmissibility Rule

1. The INA provides that "[a]ny alien who, * * * in the opinion of the [Secretary of Homeland Security] at the time of application for admission or adjustment of status, is likely at any time to become a public charge is inadmissible." 8 U.S.C. 1182(a)(4)(A).[1] That assessment "shall at a minimum consider the alien's (I) age; (II) health; (III) family status; (IV) assets, resources, and financial status; and (V) education and skills." 8 U.S.C. 1182(a)(4)(B). A separate INA provision provides that an alien is deportable if, within five years of entry, the alien "has become a public charge from causes not affirmatively shown to have arisen" since entry. 8 U.S.C. 1227(a)(5).

Three agencies make public-charge determinations under this provision: DHS, for aliens seeking admission at the border and aliens within the country applying to adjust their status to that of a lawful permanent resident; the Department of State, for aliens abroad applying for visas; and the Department of Justice, for aliens in removal proceedings. See 84 Fed. Reg. 41,292, 41,294 n.3 (Aug. 14, 2019). The rule at issue governs DHS's public-charge determinations. *Ibid.* The State Department has adopted a consistent rule (which has been preliminarily enjoined in separate litigation), and the Department of Justice expects to do likewise. *Ibid.*; 84 Fed. Reg. 54,996 (Oct. 11, 2019) (State Department interim final rule); *Make the Road New York* v. *Pompeo*, No. 19-cv-11633, 2020 WL 4350731 (S.D.N.Y. July 29,

[1] The statute refers to the Attorney General, but in 2002 Congress transferred the Attorney General's authority to make public-charge determinations in the relevant circumstances to the Secretary of Homeland Security. See 8 U.S.C. 1103; 6 U.S.C. 557; see also 6 U.S.C. 211(c)(8).

2020) (preliminarily enjoining enforcement of State Department rule).

2. The "public charge" ground of inadmissibility dates back to the first federal immigration statutes in the late nineteenth century. See, *e.g.*, Immigrant Fund Act, Act of Aug. 3, 1882, ch. 376, §§ 1-2, 22 Stat. 214. Through the nearly 140 years that the public-charge inadmissibility ground has been in effect, however, Congress has consistently chosen not to define the term "public charge" by statute. Indeed, in an extensive report that served as a foundation for the enactment of the INA in 1952, the Senate Judiciary Committee recognized that "[d]ecisions of the courts have given varied definitions of the phrase 'likely to become a public charge,'" and that "'different consuls, even in close proximity with one another, have enforced [public-charge] standards highly inconsistent with one another.'" S. Rep. No. 1515, 81st Cong., 2d Sess. 347, 349 (1950). Rather than recommend adoption of a specific standard, the Committee indicated that because "the elements constituting likelihood of becoming a public charge are varied, there should be no attempt to define the term in the law." *Id.* at 349; see INA § 212(a)(15), 66 Stat. 183 (using term without definition).

In 1999, the Immigration and Naturalization Service (INS), recognizing that the term was "ambiguous" and had "never been defined in statute or regulation," proposed a rule to "for the first time define 'public charge.'" 64 Fed. Reg. 28,676, 28,676-28,677 (May 26, 1999); 64 Fed. Reg. 28,689, 28,689 (May 26, 1999) (1999 Guidance). The proposed rule would have defined "public charge" to mean an alien "who is likely to become primarily dependent on the Government for subsistence as demonstrated by either: (i) [t]he receipt of public

cash assistance for income maintenance purposes, or (ii) [i]nstitutionalization for long-term care at Government expense." 64 Fed. Reg. at 28,681. When it announced the proposed rule, INS also issued "field guidance" adopting the proposed rule's definition of "public charge." 64 Fed. Reg. at 28,689. The proposed rule was never finalized, however, leaving only the 1999 Guidance in place. 84 Fed. Reg. at 41,348 n.295.

3. In October 2018, DHS announced a new approach to public-charge determinations. It did so by providing notice of a proposed rule and soliciting comments. 83 Fed. Reg. 51,114 (Oct. 10, 2018). After responding to comments timely submitted, DHS promulgated a final rule in August 2019. 84 Fed. Reg. at 41,501 (Rule).

The Rule defines "public charge" to mean "an alien who receives one or more public benefits [as defined in the Rule] * * * for more than 12 months in the aggregate within any 36-month period." 84 Fed. Reg. at 41,501. The designated public benefits include cash assistance for income maintenance and certain non-cash benefits, including most Medicaid benefits, Supplemental Nutrition Assistance Program benefits, and federal housing assistance. *Ibid.* As the agency explained, the Rule's definition of "public charge" differs from the 1999 Guidance in that (1) it incorporates certain non-cash benefits and (2) it replaces the "primarily dependent" standard with the 12-month/36-month measure of dependence. *Id.* at 41,294-41,295.

The Rule also sets forth a framework immigration officials will use to evaluate whether, considering the "totality of an alien's individual circumstances," the alien is "likely at any time in the future to become a public charge." 84 Fed. Reg. at 41,369; see *id.* at 41,501-41,504. Among other things, the framework identifies a number

of factors an adjudicator must consider in making a public-charge determination, such as the alien's age, financial resources, employment history, education, and health. *Ibid.* The Rule was set to take effect on October 15, 2019, and was originally set to apply prospectively to applications and petitions postmarked (or, if applicable, submitted electronically) on or after that date. *Id.* at 41,292.

B. Procedural History

1. In separate lawsuits filed (and since consolidated) in the United States District Court for the Southern District of New York, two sets of plaintiffs (all respondents here) challenged the Rule—the States of New York, Connecticut, and Vermont, along with the City of New York, in one case, and four nonprofit organizations in the other. Respondents contend that the statutory term "public charge" unambiguously includes only persons who are primarily dependent on the government for subsistence, and thus that the Rule's definition of "public charge" is not a permissible construction of the INA. See App., *infra*, 104a, 140a. Respondents further allege that the Rule is arbitrary and capricious, see 5 U.S.C. 706(2)(A), and violates Section 504 of the Rehabilitation Act of 1973 (Rehabilitation Act), 29 U.S.C. 794. See App., *infra*, 107a, 112a, 143a, 147a. The organizational plaintiffs additionally assert that the Rule violates the equal-protection component of the Fifth Amendment. See *id.* at 148a.

On October 11, 2019, in two materially similar opinions, the district court granted respondents' requests for nationwide preliminary injunctions barring DHS from implementing the Rule and for stays of the Rule's effective date under 5 U.S.C. 705. App., *infra*, 91a-120a, 125a-157a; see *id.* at 121a-124a, 158a-161a (orders

granting preliminary injunctions and stays). The court concluded that respondents had standing to challenge the Rule and fell within the zone of interests protected by the public-charge inadmissibility provision. *Id.* at 97a-100a, 102a-103a, 132a-136a, 138a-139a. On the merits, the court concluded that respondents were likely to prevail on their claim that the Rule's definition of "public charge" is not a reasonable interpretation of the term. Based on its review of "the plain language of the INA, the history and common-law meaning of 'public charge,' agency interpretation, and Congress's repeated reenactment of the INA's public charge provision without material change," the court found that "'public charge' has never been understood to mean receipt of 12 months of benefits within a 36-month period." *Id.* at 105a-106a, 141a (emphasis omitted).

The district court also concluded that respondents were likely to succeed in demonstrating that the Rule was arbitrary and capricious because DHS had "fail[ed] to provide any reasonable explanation for changing the definition of 'public charge' or the framework for evaluating whether a noncitizen is likely to become a public charge." App., *infra*, 108a, 144a. The court further concluded that DHS had failed to "demonstrate rational relationships between many of the additional factors enumerated in the Rule and a finding of benefits use." *Id.* at 110a, 146a. For the same reasons, the court concluded that the organizational plaintiffs had raised serious questions regarding whether the Rule violated equal-protection principles. *Id.* at 148a-150a. The court further concluded that respondents had raised a "colorable argument" that the Rule violates the Rehabilita-

tion Act because the Rule "considers disability as a negative factor in the public charge assessment." *Id.* at 112a-113a, 148a.

Regarding the other preliminary-injunction factors, the district court concluded that respondents' anticipated injuries—*i.e.*, harms to the States' and City's economic interests and to the organizational plaintiffs' ability to carry out their missions—were irreparable. App., *infra*, 113a-114a, 150a-151a. The court also found that the balance of equities and public interest weighed in favor of preliminary injunctive relief. *Id.* at 114a-116a, 151a-153a.

Finally, the court concluded that the preliminary injunctions should operate nationwide in order to promote "uniformity" in "national immigration policies." App., *infra*, 117a, 154a.

2. On January 27, 2020, after the district court and court of appeals denied the government's motions for stays pending appeal, this Court stayed the district court's nationwide injunctions in their entirety, "pending disposition of the Government's appeal in the United States Court of Appeals for the Second Circuit and disposition of the Government's petition for a writ of certiorari, if such writ is timely sought." 140 S. Ct. 599, 599. After this Court stayed a parallel injunction issued within the Seventh Circuit, see *Cook County*, 140 S. Ct. 681, DHS implemented the Rule nationwide on February 24, 2020.

3. The court of appeals affirmed the district court's entry of the preliminary injunctions, although it narrowed them so that they would apply only to aliens in the States of New York, Connecticut, and Vermont. App., *infra*, 1a-90a.

The court of appeals held that respondents had Article III standing. App., *infra*, 21a-27a. The court further held that respondents' interests in "the economic benefits that result from healthy, productive, and engaged immigrant communities" and "non-citizen well-being and status" came within the zone of interests "protected by the public charge ground." *Id.* at 29a; see *id.* at 27a-30a.

On the merits, the court of appeals held that the Rule is likely contrary to the INA. App., *infra*, 32a-66a. The court did not dispute that the term "public charge" is ambiguous on its face. *Id.* at 32a-33a. But applying the "ratification canon," it concluded that "the clear intent of Congress" could be discerned by examining judicial and administrative interpretations of the term in the nineteenth and twentieth centuries, which it concluded Congress had ratified either through the original adoption of the INA in 1952 or through enactment of the current public-charge inadmissibility provision as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, Div. C, Tit. V, § 531, 110 Stat. 3009-674. App., *infra*, 33a; see *id.* at 33a-54a. Specifically, the court stated that in light of those administrative and judicial decisions, the term "public charge" acquired a settled meaning referring to "a person who is unable to support herself, either through work, savings, or family ties." *Id.* at 47a. The court "recognize[d] that [its] conclusion that Congress ratified the settled meaning of 'public charge' in 1996 conflict[ed] with decisions from the only two circuits to have addressed this argument to date," but found those decisions unpersuasive. *Id.* at 51a-52a (citing *City & County of San Francisco*, 944 F.3d at 798; *Cook County*, 962 F.3d at 226). And because the Rule's definition of

"public charge" differed from what the court of appeals took to be the "settled meaning" of the term, the court held that respondents "have demonstrated a likelihood of success on the merits." *Id.* at 66a-67a.

The court of appeals also concluded that the Rule is likely arbitrary and capricious. App., *infra*, 67a-87a. The court noted that DHS had justified the Rule on the ground that it would better serve Congress's purpose of "ensuring that aliens . . . be self-sufficient and not reliant on public resources," *id.* at 69a (quoting 84 Fed. Reg. at 41,319), but the court found that explanation was inadequate "for the same reasons" that the court had rejected DHS's interpretation of the INA, *ibid.* Specifically, the court concluded that because "Congress's vision of self-sufficiency does *not* anticipate abstention from all benefits use," the Rule could not be explained as a superior means of advancing congressional policies. *Ibid.* The court also criticized DHS's justifications for considering non-cash benefits, noting that the "goals and eligibility criteria" for those programs indicate that they are not intended only to benefit individuals in poverty who are unable to support themselves, but also to supplement the income of low and middle income individuals. *Id.* at 73a; see *id.* at 72a-78a. The court did not reach respondents' Rehabilitation Act or equal-protection arguments. *Id.* at 32a n.20.

With respect to the other preliminary-injunction factors, the court of appeals concluded that respondents face irreparable injuries due to benefits disenrollment caused by the Rule, and that the balance of the equities favored preliminary injunctive relief. App., *infra*, 78a-81a. As for the injunctions' scope, the court noted that "where, as here, numerous challenges to the same

agency action are being litigated simultaneously in district and circuit courts across the country," a district court should not lightly enjoin that agency action nationwide. *Id.* at 83a. The court therefore narrowed the preliminary injunctions to apply only to aliens within the Second Circuit. *Id.* at 83a-84a.[2]

REASONS FOR GRANTING THE PETITION

Congress has declared it the official "immigration policy of the United States that * * * aliens within the Nation's borders not depend on public resources to meet their needs," and that "the availability of public benefits not constitute an incentive for immigration to the United States." 8 U.S.C. 1601(2). This case concerns the Executive Branch's efforts to further that policy through its longstanding authority to deny admission or lawful permanent resident status to aliens whom it determines are likely to become public charges. As multiple courts of appeals have recognized, the Rule

---

[2] On July 29, 2020, while the government's appeals of the original preliminary injunctions remained pending in the court of appeals, the district court entered another preliminary injunction barring DHS from enforcing the Rule during the pendency of the COVID-19-related public health emergency. See 19-cv-7777 D. Ct. Doc. 195. The district court concluded that, in light of the COVID-19 pandemic, the stay that this Court had entered with respect to the initial preliminary injunctions was no longer warranted. See *id.* at 21 ("[T]he irreparable harm and public interests that warrant an injunction have come into sharper focus in the intervening months since the Supreme Court issued its stay."). The government has appealed the July 29 preliminary injunction to the court of appeals, and that court has stayed the injunction on the ground that the district court likely lacked jurisdiction to enter a new preliminary injunction while the appeals of the original preliminary injunctions remained pending. See No. 20-2537, 2020 WL 5495530 (2d Cir. Sept. 11, 2020). The July 29 preliminary injunction is not at issue here.

represents a "plainly permissible" exercise of the Executive Branch's broad authority in this area. *CASA de Maryland, Inc.* v. *Trump*, 971 F.3d 220, 244 (4th Cir. 2020); see *City & County of San Francisco* v. *United States Citizenship & Immigration Services*, 944 F.3d 773, 799 (9th Cir. 2019) (granting a stay pending appeal after concluding that the Rule "easily" qualifies as "a permissible construction of the INA"). The Second Circuit erred in concluding otherwise, and its decision would irreparably harm the interests of the United States if allowed to take effect—as this Court's previous entry of a stay pending appeal recognized. Accordingly, the Court should grant the petition for a writ of certiorari and reverse the decision below.[3]

I. THE COURT OF APPEALS ERRED IN HOLDING THAT RESPONDENTS ARE LIKELY TO SUCCEED IN THEIR CHALLENGE TO THE RULE

Entry of a preliminary injunction was doubly inappropriate here. Respondents are not proper plaintiffs to challenge DHS's construction of the INA's public-charge inadmissibility provision, and their claims are unlikely to succeed on the merits regardless.

A. As a threshold matter, respondents cannot invoke the cause of action provided by the Administrative Procedure Act, 5 U.S.C. 702, because their asserted injuries are not even "arguably within the zone of interests to be

---

[3] The government is also filing a petition for a writ of certiorari from the Seventh Circuit's decision in *Cook County* v. *Wolf*, *supra*, which likewise erred in affirming a preliminary injunction against the Rule. See Pet., *Wolf* v. *Cook County*, No. 20-___. As the government explains in that petition, it would be appropriate for the Court to hold that petition pending its consideration of the petition here and any further proceedings in this case; there is no need for the Court to grant plenary review in both cases.

protected or regulated" by the INA's public-charge inadmissibility provision. *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians* v. *Patchak*, 567 U.S. 209, 224 (2012) (quoting *Association of Data Processing Service Organizations, Inc.* v. *Camp*, 397 U.S. 150, 153 (1970)). The zone-of-interests requirement is not satisfied where the interests a plaintiff seeks to vindicate are only "marginally related to" or "inconsistent" with the purposes of the statutory provision at issue. *Patchak*, 567 U.S. at 225 (quoting *Clarke* v. *Securities Industry Ass'n*, 479 U.S. 388, 399 (1987)). When a plaintiff is not subject to an agency rule and asserts interests inconsistent with or unrelated to the ones that Congress sought to further, "it cannot reasonably be assumed that Congress intended to permit the suit." *Clarke*, 479 U.S. at 399.

Such is the case here. The operative effect—and evident purpose—of the public-charge inadmissibility provision is to prevent the admission or adjustment of status of aliens who are likely to rely on taxpayer-funded public benefits. See 8 U.S.C. 1182(a)(4)(A); cf. 8 U.S.C. 1601(4) (discussing the government's interest in "assuring that individual aliens not burden the public benefits system"). Respondents are not themselves subject to that provision, and the interests they seek to further through their suit are inconsistent with its purpose: rather than seeking to *limit* benefits usage by aliens, respondents' object in bringing suit is to *facilitate* benefits usage by aliens. Given that inconsistency, it cannot reasonably be assumed that Congress would have intended to authorize such suits by state and local governments and non-governmental advocacy organizations. Indeed, even if DHS expanded the "public charge" definition beyond whatever limits are imposed

by that ambiguous phrase, any such limits plainly are intended to protect the aliens themselves—and are not even "arguably" intended to protect state and local governments or nongovernmental advocacy organizations from any indirect economic effects caused by aliens' avoidance of benefits that would trigger the Rule. Cf. *Thompson* v. *North American Stainless, LP*, 562 U.S. 170, 177 (2011) (rejecting an understanding of the zone of interests protected by Title VII of the Civil Rights Act of 1964 that would allow "a shareholder * * * to sue a company for firing a valuable employee for racially discriminatory reasons, so long as he could show that the value of his stock decreased as a consequence").

B. In any event, the Rule is lawful. Respondents' contrary claims all lack merit.

1. Although Congress has never defined the term "public charge," when it "enacted the INA in 1952 * * * [t]he ordinary meaning of 'public charge' * * * was 'one who produces a money charge upon, or an expense to, the public for support and care.'" *CASA de Maryland*, 971 F.3d at 242 (quoting *Black's Law Dictionary* 295 (4th ed. 1951)); see *Black's Law Dictionary* 311 (3d ed. 1933) (explaining that "[p]ublic [c]harge," "[a]s used in" the Immigration Act of 1917, ch. 29, 39 Stat. 874, means "one who produces a money charge on, or an expense to, the public for support and care") (emphasis omitted); Arthur E. Cook & John J. Hagerty, *Immigration Laws of the United States* § 285 (1929) (noting that "[p]ublic [c]harge" meant a person who required "any maintenance, or financial assistance, rendered from public funds, or funds secured by taxation"). That ordinary meaning easily encompasses the Rule's definition of the term to cover an individual who relies for a prolonged

or intense period on a narrow set of means-tested public benefits to meet his or her basic needs.

Related statutory provisions confirm that the Rule represents a lawful interpretation of the INA. See *CASA de Maryland*, 971 F.3d at 243-244. Those provisions show that receipt of public benefits, including non-cash benefits, can establish that an alien qualifies as likely to become a public charge, even if the alien is not primarily dependent on public support for sustenance.

One such set of provisions requires that many aliens seeking admission or adjustment of status must submit "affidavit[s] of support" executed by sponsors, such as a family member. See 8 U.S.C. 1182(a)(4)(C) and (D). Congress specified that the sponsor must agree "to maintain the sponsored alien at an annual income that is not less than 125 percent of the Federal poverty line," 8 U.S.C. 1183a(a)(1)(A), and Congress granted federal and state governments the right to seek reimbursement from the sponsor for "any means-tested public benefit" the government provides to the alien during the period the support obligation remains in effect, 8 U.S.C. 1183a(b)(1)(A), including non-cash benefits. Aliens who fail to obtain the required affidavit are treated by operation of law as inadmissible on the public-charge ground, regardless of individual circumstances. 8 U.S.C. 1182(a)(4). Those provisions show Congress's recognition that the mere possibility that an alien might obtain unreimbursed, means-tested public benefits in the future could be sufficient to render that alien likely to become a public charge, regardless of whether the alien was likely to be primarily dependent on those benefits. See *CASA de Maryland*, 971 F.3d at 243 ("This sponsor-and-affidavit scheme * * * underscores that the public charge provision is naturally read as extending beyond

only those who may become 'primarily dependent' on public support."); *Cook County* v. *Wolf*, 962 F.3d 208, 246 (7th Cir. 2020) (Barrett, J., dissenting) ("[T]he affidavit provision reflects Congress's view that the term 'public charge' encompasses supplemental as well as primary dependence on public assistance.").

Surrounding statutory provisions also show *why* Congress would have intended the Executive Branch to take such public benefits into account in making public-charge determinations. In legislation passed contemporaneously with the 1996 enactment of the current public-charge provision, Congress stressed the government's "compelling" interest in ensuring "that aliens be self-reliant in accordance with national immigration policy." 8 U.S.C. 1601(5). Congress observed that "[s]elf-sufficiency has been a basic principle of United States immigration law since this country's earliest immigration statutes," 8 U.S.C. 1601(1), and provided that it "continues to be the immigration policy of the United States that * * * (A) aliens within the Nation's borders not depend on public resources to meet their needs, * * * and (B) the availability of public benefits not constitute an incentive for immigration to the United States," 8 U.S.C. 1601(2). Congress equated a lack of "self-sufficiency" with the receipt of "public benefits" by aliens, 8 U.S.C. 1601(3), which it defined broadly to include any "welfare, health, disability, public or assisted housing * * * or any other similar benefit," 8 U.S.C. 1611(c)(1)(B). And Congress emphasized the government's strong interest in "assuring that individual aliens not burden the public benefits system." 8 U.S.C. 1601(4).

Given the broad, plain meaning of the statutory phrase "public charge" as one who imposes a charge

upon the public, and Congress's statutory policy of ensuring that aliens do "not burden the public benefits system" or find the nation's generous benefits programs to be "an incentive for immigration to the United States," 8 U.S.C. 1601(2)(B) and (4), the Rule "easily" qualifies as a "permissible construction of the INA." *City & County of San Francisco*, 944 F.3d at 799; see *CASA de Maryland*, 971 F.3d at 251 (holding that the Rule is "unquestionably lawful"). And that is especially true in light of the heightened deference traditionally afforded to Executive Branch determinations in the immigration context, "where Congress has expressly and specifically delegated power to the executive in an area that overlaps with the executive's traditional constitutional function." *CASA de Maryland*, 971 F.3d at 251 n.6; see *id.* at 251 ("When Congress chooses to delegate power to the executive in the domain of immigration, the second branch operates at the apex of its constitutional authority.") (citing *United States* v. *Curtiss-Wright Export Corp.*, 299 U.S. 304, 319-320 (1936)).

2. Accordingly, the court of appeals erred in holding that the Rule is likely contrary to law. Indeed, the court did not dispute that the statutory term "public charge" is broad enough "on its face" to support the Rule's interpretation. App., *infra*, 33a. Nevertheless, it concluded that "public charge" has acquired an unambiguously narrower meaning—namely, a person wholly "unable to support herself, either through work, savings, or family ties," *id.* at 47a—through "settled judicial and administrative interpretations" that it presumed Congress had intended to ratify by continuing to use the phrase. *Id.* at 33a. As the court of appeals recognized, other appellate courts have rejected that narrowing construction. See *id.* at 51a-52a (citing *City & County*

of San Francisco, 944 F.3d at 798; and *Cook County*, 962 F.3d at 226); see also *CASA de Maryland*, 971 F.3d at 245-250. And for good reason.

This is not a case where respondents' proffered construction was reflected in a "judicial consensus so broad and unquestioned that [the Court] must presume Congress knew of and endorsed it" when it re-enacted the "public charge" term in its current form in 1996. *Jama* v. *Immigration & Customs Enforcement*, 543 U.S. 335, 349 (2005); see *Federal Deposit Insurance Corp.* v. *Philadelphia Gear Corp.*, 476 U.S. 426, 438 (1986) (recognizing that it is appropriate to "give a great deal of deference" to a "longstanding and consistent" agency interpretation of a statutory phrase). The court of appeals ignored, for example, the broader definitions of "public charge" from legal dictionaries and an immigration treatise referenced above. See pp. 14-15, *supra*. It likewise ignored that in connection with its issuance of the 1999 Guidance—on which the court of appeals relied heavily in other respects—INS had stated that the term was "ambiguous," had "never been defined in statute or regulation," and required further administrative specification in light of "confusion over the meaning of 'public charge,'" 64 Fed. Reg. at 28,676, 28,677; *id.* at 28,689. And most fundamentally, it failed to acknowledge the broad range of meanings given to "public charge" in judicial and administrative decisions over the course of the nineteenth and twentieth centuries.

As the Fourth Circuit explained after an extensive review of those decisions, "executive and judicial practice from 1882 to the present rebuts any idea that 'public charge' has been uniformly understood * * * as pertaining only to those who are 'primarily dependent' on

public aid." *CASA de Maryland*, 971 F.3d at 246. Indeed, "[w]hen courts *did* endeavor to define the term 'public charge,' they often adopted its ordinary meaning." *Id.* at 248. Thus—as the Ninth Circuit put it—the "history of the use of 'public charge' in federal immigration law demonstrates that 'public charge' does not have a fixed, unambiguous meaning. Rather, the phrase is subject to multiple interpretations, it in fact has been interpreted differently, and the Executive Branch has been afforded the discretion to interpret it." *City & County of San Francisco*, 944 F.3d at 796-797; see *Cook County*, 962 F.3d at 226 ("[T]he meaning of 'public charge' has evolved over time," but "[w]hat has been consistent is the delegation from Congress to the Executive Branch of discretion, within bounds, to make public-charge determinations.").

The court of appeals' view that "public charge" is unambiguously limited to respondents' narrower meaning is also impossible to reconcile with the affidavit-of-support provision discussed above. As discussed, see pp. 15-16, *supra*, that provision reflects Congress's recognition that an alien who uses unreimbursed, means-tested public benefits may qualify as a public charge even if he is not primarily dependent on those benefits.

The court of appeals discounted the relevance of that provision because "not all immigrants have to provide affidavits of support," App., *infra*, 64a, but that response is wrong twice over. First, the affidavit-of-support provision is significant not because of its direct application, but rather because it shows Congress's understanding that the term "public charge" is not limited to those who are primarily dependent on government benefits. The fact that the affidavit provision itself does

not apply to all aliens is thus immaterial. Second, "[t]here is an obvious explanation for why Congress required supporting affidavits from family-based immigrants and not from" most other immigrants, and it has nothing to do with a narrower understanding of "public charge." *Cook County*, 962 F.3d at 245 (Barrett, J., dissenting). Rather, the family-based immigration context "is the only context in which it makes sense to demand this assurance" as a means of preventing unreimbursed usage of means-tested public benefits, because other aliens either are very unlikely to rely on means-tested benefits or lack any connections in the United States who might be willing to provide an affidavit. *Ibid.*; see *id.* at 245-246. The court of appeals was thus wrong to ignore the "compelling evidence" the affidavit-of-support provision offers about the "scope of the public charge inquiry." *Id.* at 246.

3. The court of appeals' view that the Rule is likely arbitrary and capricious is similarly flawed. Indeed, the court recognized that its conclusion on that question was closely tied to its narrow understanding of the statute. See App., *infra*, 69a. Applying a proper understanding, the arbitrary-and-capricious claim fails.

DHS explained that it adopted the Rule based on its judgment, as the agency charged with making admissibility decisions, that the new interpretation would better serve Congress's desire to ensure that aliens are "self-sufficien[t]," do "not burden the public benefits system," and do not view "the availability of public benefits" as "an incentive for immigration to the United States," 8 U.S.C. 1601(1), (2)(B), and (4). See 84 Fed. Reg. at 41,319. In DHS's view, the prior approach "assumed an overly permissible definition of dependence on public benefits." *Ibid.* The court of appeals rejected

that justification, however, because it concluded that Congress had fully served its desire to promote self-sufficiency by imposing statutory limits on aliens' eligibility for benefits, instead of denying them access to such benefits altogether. See App., *infra*, 69a-70a. Where Congress made aliens eligible for benefits, the court stated, it could not have wanted potential usage of those same benefits to be weighed against an alien's admissibility. *Ibid.*; see *id.* at 61a (rejecting any interpretation of "public charge" that might "penalize[] noncitizens for the possibility that they will access the very benefits [Congress] preserved for them").

That analysis is flawed in multiple respects. Most fundamentally, the court of appeals' "logic would read the public charge provision out of the statute"—if benefits for which aliens' eligibility has been preserved must be excluded from the public-charge analysis, then *all* benefits would be excluded. *Cook County*, 962 F.3d at 246 (Barrett, J., dissenting). Indeed, if the court's understanding were correct, "DHS could not exclude an applicant even if it predicted that the applicant would eventually become permanently reliant on government benefits, because the future use of those benefits would, after all, be authorized." *Id.* at 247.

Instead, Congress's decision to make aliens eligible for benefits in certain circumstances after they have been lawfully admitted simply shows that while Congress desired to prevent immigration by aliens whom immigration authorities can predict at the outset "are likely to need public benefits," it "also provided a backstop for those who face setbacks that were unforeseeable on the front end." *CASA de Maryland*, 971 F.3d at 253; cf. 8 U.S.C. 1227(a)(5) (making an alien removable if, within five years of entry, the alien "has become a

public charge from causes not affirmatively shown to have arisen" since entry). DHS's attempt to be more proactive about identifying likely public charges on the front end is consistent with Congress's decision to provide a backstop for when those predictive efforts fail.

The arbitrary-and-capricious test does not allow a court "to substitute its judgment for that of the agency." *FCC* v. *Fox Television Stations, Inc.*, 556 U.S. 502, 513 (2009) (citation omitted). Instead, the test is satisfied so long as the agency "remained 'within the bounds of reasoned decisionmaking,'" regardless of whether the reviewing court believes the agency's "decision was 'the best one possible' or even whether it was 'better than the alternatives.'" *Department of Commerce* v. *New York*, 139 S. Ct. 2551, 2570, 2571 (2019) (citations omitted). DHS's explanation here is clearly sufficient under that deferential standard. See *City & County of San Francisco*, 944 F.3d at 805 ("Because DHS has adequately explained the reasons for the Final Rule, it has demonstrated a strong likelihood of success on the merits.").[4]

---

[4] Having rejected what it viewed as DHS's primary justification for its changed interpretation, see App., *infra*, 67a-70a, the court of appeals proceeded to consider what it viewed as an "additional," "subsidiary" explanation for DHS's adoption of the Rule—namely that the 1999 Guidance had made an unwarranted distinction between cash and non-cash benefits, *id.* at 72a. But as Judge Barrett has observed, when assessing an alien's reliance on public benefits, it makes little difference "whether the government chose to give someone $500 for groceries or $500 worth of food." *Cook County*, 962 F.3d at 249 (dissenting opinion). And in any event, for the reasons discussed earlier, see pp. 14-20, *supra*, use of in-kind benefits can render an alien a "public charge" even if the alien relies on them for supplemental assistance rather than as her primary means of support.

4. The district court stated that preliminary injunctive relief was also warranted because respondents had offered "at least a colorable argument that the Rule as applied may violate the Rehabilitation Act," App., *infra*, 112a-113a, 148a, and because the organizational respondents had "sufficiently demonstrated a likelihood of success on the merits of their equal protection claim," *id.* at 149a. Those assertions, which the court of appeals did not endorse, see *id.* at 32a n.20, lack merit.

a. The Rehabilitation Act provides that "[n]o otherwise qualified individual * * * shall, solely by reason of her or his disability," be denied the benefits of certain federal programs. 29 U.S.C. 794(a). "[B]y its terms," the statute "does not compel [regulated entities] to disregard the disabilities of * * * individuals * * * . Instead, it requires only that 'an otherwise qualified * * * individual' not be excluded * * * 'solely by reason of [his or her disability].'" *Southeastern Community College* v. *Davis*, 442 U.S. 397, 405 (1979). The Rule complies with that requirement: it is not "solely" an alien's disability that results in her inadmissibility under the Rule, but rather the likelihood—because of the totality of her circumstances, including but not limited to her disability—that she will use the specified amount and type of public benefits after her admission.

Moreover, the INA itself explicitly directs that immigration officials "shall" consider an alien's "health" when assessing whether she is likely to become a public charge. 8 U.S.C. 1182(a)(4)(B)(i)(II). That statutory command, made in the specific context of the public-charge inadmissibility provision, provides the governing rule in this context. *Radzanower* v. *Touche Ross & Co.*, 426 U.S. 148, 153 (1976) ("[A] specific statute will

not be controlled or nullified by a general one.") (citation omitted).

b. The organizational respondents' equal-protection challenge is likewise meritless. The district court concluded that the Rule would likely fail rational-basis review because there was "no reasonable basis for [the government's] sharp departure from the current public charge determination framework." App., *infra*, 150a. As discussed earlier, pp. 14-22, *supra*, that is incorrect. While the district court evidently disagreed with the policy choice DHS made, DHS offered rational grounds for that choice. And the organizational plaintiffs' argument that the Rule should be subjected to strict scrutiny because it was advanced by administration officials whom they believe harbor racial animus, see 19-cv-7993 D. Ct. Doc. 1, at 79-94 (Aug. 27, 2019), is similarly unpersuasive, because then-Acting Secretary of Homeland Security Kevin McAleenan explained at length the congressionally sanctioned self-sufficiency principles that led him to adopt the Rule. See, *e.g.*, 84 Fed. Reg. at 41,319-41,320; see also *Department of Homeland Security* v. *Regents of the University of California*, 140 S. Ct. 1891, 1916 (2020) (plurality opinion) (rejecting a similar equal-protection challenge based on statements "remote in time and made in unrelated contexts").

II. THE DECISION BELOW WARRANTS THIS COURT'S REVIEW

The court of appeals' determination that respondents are likely to succeed in their challenge to the Rule warrants this Court's review.

A. The courts of appeals are divided over the lawfulness of the Rule. The Fourth Circuit reversed a preliminary injunction against enforcement of the Rule based on its conclusion that "[t]he DHS Rule * * * comports

with the best reading of the INA." *CASA de Maryland*, 971 F.3d at 250. Indeed, it concluded that "[t]o invalidate the Rule would * * * entail the disregard of the plain text of a duly enacted statute," and would "visit palpable harm upon the Constitution's structure and the circumscribed function of the federal courts that document prescribes." *Id.* at 229. Similarly, in entering a stay pending appeal of preliminary injunctions against the Rule, the Ninth Circuit issued a lengthy published opinion concluding that "[t]he Final Rule's definition of 'public charge' is consistent with the relevant statutes, and DHS's action was not arbitrary or capricious." *City & County of San Francisco*, 944 F.3d at 790.[5]

Two other courts of appeals have held that the Rule is likely unlawful, but have done so for different reasons. In the decision below, as discussed, the Second Circuit relied primarily on its erroneous view that "public charge" has acquired a narrow, settled meaning that excludes aliens who use means-tested public benefits as supplemental rather than primary support. See App., *infra*, 46a. A divided panel of the Seventh Circuit, meanwhile, rejected that conclusion—but found that the rule is likely unlawful for other reasons. See *Cook County*, 962 F.3d at 226-233. The panel majority erroneously faulted the Rule for treating an alien's disability as a negative factor (which it believed to be a violation of the Rehabilitation Act), *id.* at 227-228; for "penalizing people for accepting benefits Congress made

---

[5] A merits panel of the Ninth Circuit heard argument on the appeal in *City & County of San Francisco* on September 15, 2020. See Docket, *City & County of San Francisco*, *supra* (No. 19-17213). And the plaintiffs in *CASA de Maryland* have filed a petition for rehearing en banc, which remains pending as of this filing. See Pet. for Reh'g, *CASA de Maryland*, *supra* (No. 19-2222).

available to them," *id.* at 228; and for lacking what it viewed as a sufficiently reasoned explanation for the changed interpretation, *id.* at 229-233. But see *id.* at 234-254 (Barrett, J., dissenting); pp. 20-24, *supra*. That disagreement, regarding not only the Rule's ultimate legality but also the particular grounds on which it might be found unlawful (which would affect DHS's flexibility to adopt alternatives in the future), warrants this Court's review.

B. Even apart from the aforementioned conflict, the decision below warrants this Court's review because it concerns an issue of significant importance and, if allowed to stand, would result in irreparable harm to the United States and the public.

Decisions about whether to admit aliens into the country, or to allow aliens already admitted into the country to change their status to that of a lawful permanent resident, implicate a "fundamental sovereign attribute exercised by the Government's political departments." *Fiallo* v. *Bell*, 430 U.S. 787, 792 (1977) (citation omitted). With respect to the public-charge ground of inadmissibility in particular, Congress has explicitly entrusted the Executive Branch with the authority to deny admission or adjustment of status to aliens who, "in the opinion of the [Secretary of Homeland Security]," are "likely at any time to become a public charge." 8 U.S.C. 1182(a)(4)(A).

Absent this Court's review, however, the decision below would require the adjustment to lawful permanent resident status of aliens whom DHS has determined are likely to become public charges. And as the court of appeals acknowledged—and as this Court implicitly recognized in granting a stay pending appeal—those effects are irreparable: once the decisions have been

made, no practical means exist by which to reverse them. See App., *infra*, 80a ("Because there is no apparent means by which DHS could revisit adjustment determinations made while the Rule is enjoined, this harm is irreparable."). Given the substantial grounds for concluding that the court of appeals' decision was wrong, that irreparable harm concerning a fundamental attribute of sovereignty should not be permitted to occur without this Court's review.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

JEFFREY B. WALL
Acting Solicitor General
JEFFREY BOSSERT CLARK
Acting Assistant Attorney General
HASHIM M. MOOPPAN
Counselor to the Solicitor General
SOPAN JOSHI
Senior Counsel to the Assistant Attorney General
BENJAMIN W. SNYDER
Assistant to the Solicitor General
DANIEL TENNY
GERARD SINZDAK
JOSHUA DOS SANTOS
JACK STARCHER
Attorneys

OCTOBER 2020

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket Nos. 19-3591, 19-3595

STATE OF NEW YORK, CITY OF NEW YORK, STATE OF CONNECTICUT, STATE OF VERMONT, PLAINTIFFS-APPELLEES

v.

UNITED STATES DEPARTMENT OF HOMELAND SECURITY, SECRETARY CHAD F. WOLF, IN HIS OFFICIAL CAPACITY AS ACTING SECRETARY OF THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY, UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, DIRECTOR KENNETH T. CUCCINELLI II, IN HIS OFFICIAL CAPACITY AS ACTING DIRECTOR OF UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, UNITED STATES OF AMERICA, DEFENDANTS-APPELLANTS[*]

Argued: Mar. 2, 2020
Decided: Aug. 4, 2020

MAKE THE ROAD NEW YORK, AFRICAN SERVICES COMMITTEEE, ASIAN AMERICAN FEDERATION, CATHOLIC CHARITIES COMMUNITIES SERVICES, (ARCHDIOCESE OF NEW YORK), CATHOLIC LEGAL IMMIGRATION NETWORK, INC., PLAINTIFFS-APPELLEES

v.

---

[*] The Clerk of the Court is respectfully directed to amend the caption as set forth above.

KENNETH T. CUCCINELLI, IN HIS OFFICIAL CAPACITY AS ACTING DIRECTOR OF UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, CHAD F. WOLF, IN HIS OFFICIAL CAPACITY AS ACTING SECRETARY OF HOMELAND SECURITY, UNITED STATES DEPARTMENT OF HOMELAND SECURITY, DEFENDANTS-APPELLANTS

Before: LEVAL, HALL, and LYNCH, *Circuit Judges*.

The Department of Homeland Security appeals from two orders of the United States District Court for the Southern District of New York (Daniels, *J.*) granting motions for preliminary injunctions in these cases. Two sets of Plaintiffs-Appellees—one a group of state and local governments and the other a group of non-profit organizations—filed separate suits under the Administrative Procedure Act, both challenging the validity of a Department of Homeland Security rule interpreting 8 U.S.C. § 1182(a)(4). This statutory provision renders inadmissible to the United States any non-citizen deemed likely to become a public charge. The district court concluded that Plaintiffs-Appellees demonstrated a likelihood of success on the merits of their claims that the rule is contrary to the Immigration and Nationality Act and that it is arbitrary and capricious. After finding that the other preliminary injunction factors also weighed in favor of granting relief, the district court entered orders in both cases to enjoin implementation of the rule nationwide. We agree with the district court that a preliminary injunction is warranted, but modify the scope of the injunctions to cover only the states of New York, Connecticut, and Vermont. The orders of the district court are thus **AFFIRMED AS MODIFIED**.

GERARD E. LYNCH, *Circuit Judge*:

In August 2019, the Department of Homeland Security ("DHS") issued a final rule setting out a new agency interpretation of a longstanding provision of our immigration law that renders inadmissible to the United States any noncitizen who is likely to become a "public charge." *See* Inadmissibility on Public Charge Grounds, 84 Fed. Reg. 41,292 (Aug. 14, 2019) ("the Rule" or "the Final Rule"). The Rule expands the meaning of "public charge," with the likely result that significantly more people will be found inadmissible on that basis. Lawsuits challenging the lawfulness of the Rule were quickly filed around the country, including two cases in the Southern District of New York, which we now consider in tandem on appeal.

These two cases—one brought by New York State, New York City, Connecticut, and Vermont, and the other brought by five non-profit organizations that provide legal and social services to non-citizens—raise largely identical challenges to the Rule, centering on the Rule's validity under the Administrative Procedure Act. After hearing combined oral argument on the Plaintiffs' motions for preliminary injunctions filed in both cases, the district court (George B. Daniels, *J.*) concluded that the Plaintiffs had demonstrated a likelihood of success on the merits of their claims and that the other preliminary injunction factors also favored interim relief. The district court enjoined DHS from implementing the Rule throughout the United States in the pair of orders from which DHS now appeals.

We agree that a preliminary injunction is warranted in these cases, but modify the scope of the injunctions to cover only the states of New York, Connecticut, and

Vermont. The orders of the district court are thus AFFIRMED AS MODIFIED.

TABLE OF CONTENTS

BACKGROUND

The Immigration and Nationality Act ("INA") contains ten grounds of inadmissibility, each listing various bases on which a non-citizen can be denied admission to the United States. *See* 8 U.S.C. § 1182(a)(1)-(10). These appeals concern the public charge ground, a constant feature of our immigration law since 1882, which renders inadmissable any non-citizen who "is likely at any time to become a public charge." *Id.* § 1182(a)(4)(A). The statute itself does not define "public charge," and its precise meaning is the hotly contested question in this litigation. In general terms, however, "public charge" has historically been understood to refer to a person who is not self-sufficient and depends on the government for support. *See, e.g.*, 84 Fed. Reg. at 41,295.

The grounds of inadmissibility are assessed not only when a person is physically entering the country, but at multiple points in the immigration process. Consequently, the public charge ground of inadmissibility is

applied by three agencies that oversee different aspects of our immigration system. The Department of State considers whether non-citizens are inadmissible as likely public charges when adjudicating visa applications overseas. U.S. Customs and Border Protection ("CBP"), a unit of DHS, assesses the public charge ground when it inspects non-citizens arriving at airports or other ports of entry. And U.S. Citizenship and Immigration Services ("USCIS"), another component of DHS, applies the ground when adjudicating applications for adjustment of status, the process by which a non-citizen who is already present in the United States in a temporary immigration status can become a lawful permanent resident ("LPR"), authorized to live and work in the United States indefinitely.[1] *See id.* at 41,294 n.3.

The Department of Justice also has a role to play when it comes to public charge adjudications, albeit on a different statutory basis. In addition to the public charge ground of inadmissibility, the INA also contains a public charge ground of removal.[2] 8 U.S.C. § 1227(a)(5). That provision authorizes the government to remove non-citizens who have already been admitted to the country but who became public charges within five years of their date of entry. *Id.* The public charge ground of removal is primarily applied by the Executive Office for Immigration Review, a component

---

[1] LPRs are frequently referred to in popular discussion as "green card holders."

[2] "Removal" is the current legal term for the process popularly known as "deportation." *See Karageorgious v. Ashcroft*, 374 F.3d 152, 154 (2d Cir. 2004).

agency of the Department of Justice that houses the immigration courts.

While multiple agencies are tasked with interpreting and applying the public charge grounds of inadmissibility and removal, the Rule at issue in these cases is an interpretation by DHS of the ground of inadmissibility. Accordingly, the Rule governs only public charge determinations carried out by CBP and USCIS, as component agencies of DHS.[3] 84 Fed. Reg. at 41,294 n.3. As a practical matter, moreover, the Rule is likely to be applied primarily by USCIS as it adjudicates applications for adjustment of status, as the lengthy application process provides more opportunity for a full consideration of the Rule's provisions than a CBP screening at a port of entry. *See id.* at 41,478.

I. 1999 Public Charge Guidance

For twenty years preceding the publication of the Rule at issue in these cases, the governing agency inter-

---

[3] In October 2019, the State Department issued an interim final rule aligning its interpretation of "public charge" with the Rule. *See* Visas: Ineligibility Based on Public Charge Grounds, 84 Fed. Reg. 54,996 (Oct. 11, 2019). Litigation challenging the State Department interim final rule is underway in the Southern District of New York. *See Make the Road New York v. Pompeo*, No. 1:19-cv-11633 (S.D.N.Y.). The Department of Justice has drafted a proposed rule that likewise is intended to adopt a conforming interpretation of the public charge ground of removal, which has been sent to the Office of Management and Budget for review, but no actual text of such a rule has yet been published. *See* Inadmissibility and Deportability on Public Charge Grounds, RIN 1125-AA84, Office of Mgmt. & Budget, Spring 2020 Unified Agenda of Regulatory and Deregulatory Actions.

pretation of the public charge ground was guidance published in 1999 ("the 1999 Guidance") by the Immigration and Nationality Service ("INS"), the predecessor agency of DHS.[4] *See* Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, 64 Fed. Reg. 28,689 (May 26, 1999). The 1999 Guidance was issued in response to two pieces of legislation passed by Congress in 1996 that had significant impact on the public charge ground.

The first was the Personal Responsibility and Work Opportunity Reconciliation Act ("PRWORA"), a sweeping set of reforms to various public benefits programs. *See* Pub. L. No. 104-193, 110 Stat. 2105 (1996). Among other changes, PRWORA greatly restricted non-citizen access to public benefits in response to concerns that non-citizens were "applying for and receiving public benefits . . . at increasing rates." 8 U.S.C. § 1601(3). The resulting benefits eligibility scheme for non-citizens is complex, to say the least. It suffices for present purposes to say that non-citizens who are present in the United States illegally or who are admitted in a lawful non-immigrant (i.e., temporary) status are ineligible for almost all federal benefits, *see* 8 U.S.C. §§ 1611(a), 1641(b), while those who are in LPR status, which is permanent, are ineligible for means-tested federal benefits for their first five years as an LPR, *see* 8 U.S.C. §§ 1613(a), 1641(b). At the conclusion of this five-year

---

[4] INS was dissolved, and many of its responsibilities were transferred to DHS, by the Homeland Security Act of 2002. *See* Pub. L. No. 107-296, §§ 402(3), 471, 116 Stat. 2135, 2205, 2178.

waiting period, LPRs become eligible to receive benefits for which they otherwise qualify.[5]

A little over a month after enacting PRWORA, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"). *See* Pub. L. No. 104-208, div. C, 110 Stat. 3009-546 (1996). In IIRIRA, Congress revisited the public charge ground to add five factors that adjudicators must consider when determining whether a non-citizen is likely to become a public charge: the noncitizen's "[(1)] age; [(2)] health; [(3)] family status; [(4)] assets, resources, and financial status; and [(5)] education and skills." 8 U.S.C. § 1182(a)(4)(B)(i). IIRIRA also required non-citizens seeking to immigrate to the United States based on their family ties[6] to obtain affidavits of support, in which a sponsor agrees to maintain the non-citizen at an income of no less than 125% of the federal poverty guidelines ("FPG"), and instructed adjudicators to consider those affidavits as a discretionary sixth factor in their analysis. 8 U.S.C. §§ 1182(a)(4)(c), 1183a(a)(1).

---

[5] The majority of the public benefits to which the Rule applies are means-tested benefits, that is, there are income and asset limits for eligibility. However, the housing programs administered by the Department of Housing and Urban Development are not considered means-tested benefits and there is thus no five-year waiting period before LPRs can access these services. *See* Eligibility Restrictions on Noncitizens: Inapplicability of Welfare Reform Act Restrictions on Federal Means-Tested Public Benefits, 65 Fed. Reg. 49,994 (Aug. 16, 2000).

[6] Persons seeking to immigrate to the United States are eligible for admission as immigrants on various bases, including having certain familial relationships to United States citizens or LPRs.

After the passage of PRWORA and IIRIRA, INS observed widespread "confusion about the relationship between the receipt of federal, state, [and] local public benefits and the meaning of 'public charge' under the immigration laws." 64 Fed. Reg. at 28,689. Concerned that this confusion was "deterr[ing] eligible aliens and their families, including U.S. citizen children, from seeking important health and nutrition benefits that they [we]re legally entitled to receive," INS issued the 1999 Guidance, thus for the first time publishing its interpretation of "public charge" in the Federal Register.[7] *Id.* at 28,692.

The 1999 Guidance defined "public charge" to mean a person who is "primarily dependent on the government for subsistence, as demonstrated by either (i) the receipt of public cash assistance for income maintenance or (ii) institutionalization for long-term care at government expense." *Id.* at 28,689 (internal quotation marks omitted). The Guidance identified four public benefits that could be taken as evidence of primary dependence: Supplemental Security Income ("SSI"), which "guarantees a minimum level of income" for older adults and people who are blind or disabled; Temporary Assistance

---

[7] The 1999 Guidance was not a final rule, but was published in the Federal Register as an interim measure to establish the agency's "public charge" definition while INS went through the rulemaking process. 64 Fed. Reg. at 28,689. The Guidance was a reproduction of INS's field guidance, making public the internal directive of the agency to its officials tasked with applying the "public charge" standard. INS did publish a proposed rule alongside the 1999 Guidance, but it was never finalized. *See* Inadmissibility and Deportability on Public Charge Grounds, 64 Fed. Reg. 28,676 (May 26, 1999). The 1999 Guidance remained the operative agency interpretation until 2019.

for Needy Families ("TANF"), which provides cash assistance to families living in poverty;[8] state and local cash assistance programs, often called "General Assistance" programs; and any program (including Medicaid) supporting people institutionalized for long-term care. *Id*. at 28,692, 28,687; *see* 45 C.F.R. § 260.20.

INS explained that the nature of these benefits suggested that recipients may be dependent on the government for subsistence, explicitly distinguishing non-cash benefits that are "by their nature supplemental and do not, alone or in combination, provide sufficient resources to support an individual or family." 64 Fed. Reg. at 28,692.[9] The Guidance instructed that the ultimate determination as to whether a non-citizen was primarily dependent on the government was to be made by considering the totality of the circumstances: neither current nor past "receipt of cash income-maintenance benefits . . . automatically ma[de] an alien inadmissible as likely to become a public charge." *Id.* at 28,690.

II. 2019 Public Charge Rule

A. The Proposed Rule

Nearly two decades after INS issued its 1999 interpretation of "public charge," DHS published a notice of proposed rulemaking ("the Proposed Rule") announcing

---

[8] TANF also funds various forms of non-cash assistance, e.g., subsidized child care. These additional forms of support were excluded from consideration under the Guidance. *See* 64 Fed. Reg. at 28,692 n.17.

[9] The 1999 Guidance explicitly stated that adjudicators "should not place any weight on the receipt of non-cash public benefits (other than institutionalization) or the receipt of cash benefits for purposes other than for income maintenance." 64 Fed. Reg. at 28,689.

its intention to change the agency's interpretation of the public charge ground. *See* Inadmissibility on Public Charge Grounds, 83 Fed. Reg. 51,114 (Oct. 10, 2018). Among other provisions, the Proposed Rule suggested redefining "public charge" to mean "an alien who receives one or more public benefit" at certain defined usage thresholds, and listed a broader set of benefits as relevant to the public charge definition. *Id.* at 51,289-90.[10]

The Proposed Rule divided its list of relevant benefits into two groups—monetizable and non-monetizable—and set usage thresholds for each. The monetizable benefits (e.g., SSI) were to be considered in the public charge analysis if the cumulative value of the benefits received in one year exceeded 15% of FPG for a household of one. *Id.* The non-monetizable benefits (e.g., Medicaid) were counted if the non-citizen received the benefit "for more than 12 months in the aggregate within a 36 month period." *Id.* at 51,290. The Proposed Rule garnered 266,077 comments during the notice and comment period, "the vast majority of which opposed the rule."[11] 84 Fed. Reg. at 41,297.

---

[10] Technically, the Proposed Rule defined public charge to mean any non-citizen who received any "public benefit," but then further defined "public benefit" to mean one of the listed benefits if usage exceeded the prescribed threshold level, as described in the next paragraph.

[11] We note that these appeals have also generated significant public interest and acknowledge with appreciation the contributions of the amici curiae appearing before us. The twenty amicus briefs we received (nineteen of which support the Plaintiffs, and one of which supports the government) represent the views of a diverse collection of more than four hundred organizations, businesses, and scholars

B. Revised Definition and Relevant Public Benefits

In August 2019, DHS published its Final Rule, which made a number of changes from the Proposed Rule. Most relevant for our purposes, the Rule enacts a different definition of "public charge," interpreting the term as a person "who receives one or more public benefits, as defined in [a subsequent] section, for more than 12 months in the aggregate within any 36-month period (such that, for instance, receipt of two benefits in one month counts as two months)." *Id.* at 41,501. While the Final Rule incorporates the same expanded list of relevant public benefits as the Proposed Rule, it did away with the categorization of "monetizable" versus "non-monetizable" benefits, eliminated the 15% of FPG threshold requirement for monetizable benefits, and elevated the 12-month threshold requirement for non-monetizable benefits into the definition of public charge itself, thus making it the usage threshold for all of the listed benefits. *Id.* at 41,501-02.

With respect to the relevant benefits, the Final Rule retains those benefits INS made relevant to the public charge determination in 1999—SSI, TANF, and state or local cash assistance programs—and adds a number of other benefits: Medicaid;[12] the Supplemental Nutrition

---

and provided helpful nuance on many aspects of the complex questions before us.

[12] The 1999 Guidance identified Medicaid as a relevant public benefit only when it was used to fund long-term institutionalization, but the Rule broadens the consideration to include Medicaid used to fund most forms of routine healthcare. The Rule does not count Medicaid benefits only when they are used for emergency medical conditions, for services provided under the Individuals with Disabilities

Assistance Program ("SNAP"), commonly referred to as food stamps; the Section 8 Housing Choice Voucher Program; Section 8 Project-Based Rental Assistance; and public housing. *Id.* at 41,501. Thus, under the Final Rule, use of any quantity of one of these benefits in a given month counts as one month towards the 12-months-within-36 months limit beyond which one is considered a public charge. And because the definition aggregates benefits usage, use of two benefits in a single month counts as two months (and three benefits in a single month counts as three months, etc.), with the result that a person could reach the 12-month threshold in six months or fewer. The 12-month threshold is thus deceptive: an industrious, self-sufficient person who, by reason of a temporary injury or illness, used three benefits per month for four months would thereby be conclusively established as a public charge.

The Rule's public charge definition would be complex to apply even to assess past or current benefits usage. But lest we forget the context in which the Rule operates, we highlight that the vast majority of non-citizens will not have been eligible to receive any of the relevant public benefits (and therefore presumably will not have received such benefits) at the time the Rule is applied and their likelihood of becoming a public charge is assessed.[13] Recall that the Rule applies primarily to non-

---

Education Act, for school-based services, and by children or pregnant and newly postpartum women. 84 Fed. Reg. at 41,501.

[13] We note that PRWORA allows states flexibility to determine non-citizen eligibility for state-funded benefits programs and some states have chosen to fund benefits for those who do not yet have LPR status. *See* 83 Fed. Reg. at 51,131; *see also* 8 U.S.C. § 1621(d).

citizens seeking to adjust status to *become* LPRs but that, in general, non-citizens are not eligible to receive the relevant public benefits until five years *after* they obtain LPR status. Accordingly, very few non-citizens will have a history of public benefits usage at the time the forward-looking public charge ground is applied. Under the revised public charge definition, the Rule thus requires adjudicators to predict whether, five years or more into the future, the non-citizen is likely to use one of the enumerated benefits for more than twelve months, or to use two of the enumerated benefits for more than six months, and so on, within a thirty-six-month period. *Id.* at 41,502.

C. Adjudicative Framework

To support adjudicators in making what might seem an impracticable prediction about future benefits usage, the Rule lays out an adjudicative framework. This framework fleshes out the five factors adjudicators are statutorily required to consider—age, health, family status, finances, and education—and explains how each should be analyzed to decide whether a non-citizen is a likely future user of public benefits. The Rule further instructs adjudicators how to assess the sixth, discretionary factor—the affidavit of support—and adds a seventh factor for consideration, the immigration status sought. As laid out below, the framework identifies the particular characteristics adjudicators should look for

---

However, as counsel for the government acknowledged at oral argument, it would be the rare exception if a non-citizen received benefits prior to the public charge determination. Oral Argument at 32:00-33:30.

with each factor and, for some, lists the forms of evidence the non-citizen must submit.

Age. Adjudicators are to assess whether a non-citizen's age affects his ability to work. The Rule suggests that preference be given to non-citizens between eighteen and sixty-one years of age. Being under eighteen or over sixty-one is treated as making it more likely that the applicant will become a public charge. 84 Fed. Reg. at 41,502.

Health. Adjudicators are to be on the lookout for non-citizens with medical conditions that are "likely to require extensive medical treatment or institutionalization or that will interfere with the alien's ability to provide and care for himself or herself, to attend school, or to work." *Id.*

Family Status. Adjudicators are to assess whether a non-citizen's household size makes him more likely to utilize the listed benefits. Large families are thus more suspect. *Id.*

Assets, Resources, and Financial Status. Adjudicators are to consider whether the non-citizen's household has a gross income above 125% of FPG or has significant assets, whether the household assets and resources would cover any reasonably foreseeable medical costs, any outstanding financial liabilities, and whether the non-citizen has ever in the past applied for or received any of the enumerated public benefits. *Id.* at 41,502-03. Non-citizens are to evidence this factor by submitting, *inter alia*, their tax returns, bank statements, credit history and score, and proof of private health insurance. *Id.* at 41,503.

Education and Skills. Adjudicators are to consider whether the non-citizen has adequate education and skills to obtain lawful employment with an income sufficient to avoid becoming a public charge. *Id.* Non-citizens are directed to evidence this factor by submitting, *inter alia*, their employment history, tax returns, proof of degrees or licenses, and proof of proficiency in English or any other languages. *Id.* at 41,503-04.

Affidavit of Support. For those non-citizens who must obtain an affidavit of support, the Rule directs adjudicators to consider "the likelihood that the sponsor would actually provide the statutorily-required amount of financial support," which is to be evidenced by proof of the sponsor's income and assets, the relationship between the non-citizen and sponsor, and the number of other non-citizens for whom the sponsor has executed affidavits of support. *Id.* at 41,504.

Desired Immigration Status. The Rule newly requires adjudicators to consider the immigration status sought by the non-citizen, "as it relates to the alien's ability to financially support[ ] himself or herself during the duration of the alien's stay." *Id.* After the publication of the Rule, USCIS updated its policy manual to clarify that it would generally treat seeking LPR status as a negative factor, given that LPRs are eligible for public benefits after the five-year waiting period has elapsed. *See* USCIS, POLICY MANUAL vol. 8, pt. G, ch. 12 (2020). We note that the vast majority of non-citizens who are subject to the Rule are being assessed precisely *because* they are seeking LPR status; this provision therefore would appear to automatically assign a negative factor to any applicant for lawful immigration to the United States.

After addressing these factors, the Rule concludes by identifying a number of heavily weighted negative and positive circumstances that adjudicators should consider in deciding a case. While cautioning that no single factor is dispositive, the Rule directs adjudicators to give particular emphasis to four heavily weighted negative factors: (1) lacking a current or recent employment history, (2) receiving a relevant public benefit for more than twelve months in the preceding three years, (3) lacking health insurance while having a diagnosed medical condition likely to require extensive treatment or institutionalization, and (4) having been found inadmissible or removable on public charge grounds in the past. 84 Fed. Reg. at 41,504. In contrast, the Rule also identifies the following heavily weighted positive factors: (1) having a household income that exceeds 250% of FPG, (2) being employed with an income exceeding 250% of FPG, and (3) having private health insurance that was not purchased using Affordable Care Act premium tax credits. *Id.*

III. Procedural Posture

Shortly after DHS issued the Final Rule in August 2019, the two cases at issue in these appeals were filed in the Southern District of New York. New York, Vermont, Connecticut, and New York City (collectively "the States") filed suit first, followed a few days later by Make the Road New York, African Services Committee, Asian American Federation, Catholic Charities Community Services (Archdiocese of New York), and Catholic Legal Immigration Network, Inc. (collectively, "the Organizations"). The two groups of plaintiffs (collectively, "the Plaintiffs") raise largely similar challenges

to the Rule, arguing that it is invalid under the Administrative Procedure Act ("APA") as well as the Fifth Amendment's due process clause. The Organizations also challenge the Rule under the Fifth Amendment's guarantee of equal protection. Both the States and the Organizations moved for a preliminary injunction, and the district court heard combined oral argument.

On October 11, 2019, four days before the Rule was scheduled to take effect, the district court granted both motions for preliminary injunctions in largely identical decisions and orders. After concluding that both the States and the Organizations had standing to challenge the Rule, the district court found that they had demonstrated a likelihood of success on the merits of their claims that the Rule was contrary to law as well as arbitrary and capricious, and that the other preliminary injunction factors supported injunctive relief. The district court thus enjoined DHS from enforcing the Rule nationwide.[14]

DHS timely appealed the district court's grant of the preliminary injunctions and moved for a stay pending appeal. A motions panel of this Court denied DHS's motion to stay. DHS then filed an application for a stay with the Supreme Court, requesting that the preliminary injunctions be stayed through the resolution of the merits of this appeal and the disposition of any petition for a writ of certiorari. The Supreme Court granted the application in January 2020. *DHS v. New York*, 140 S. Ct. 599 (2020). With the district court's preliminary

---

[14] The district court also ordered that the effective date of the Rule be stayed pursuant to 5 U.S.C. § 705.

injunctions thus stayed, the Rule went into effect nationwide on February 24, 2020.[15]

DISCUSSION

We review a district court's decision to grant a preliminary injunction for abuse of discretion, examining the legal conclusions underpinning the decision de novo and the factual conclusions for clear error. *Cty. of Nassau v. Leavitt*, 524 F.3d 408, 414 (2d Cir. 2008). The scope of the injunctive relief ordered by the district court is evaluated for abuse of discretion. *Id.*

---

[15] Five similar cases challenging the Rule were brought in the District of Maryland, the Northern District of Illinois, the Northern District of California, and the Eastern District of Washington. *See CASA de Maryland, Inc. v. Trump*, No. 19-cv-2715 (D. Md.); *Cook Cty. v. Wolf*, No. 19-cv-6334 (N.D. Ill.); *City and Cty. of San Francisco v. USCIS*, No. 19-cv-4717 (N.D. Cal.); *California v. DHS*, No. 19-cv-4975 (N.D. Cal.); *Washington v. DHS*, No. 19-cv-5210 (E.D. Wash.). All five district courts granted plaintiffs' motions for preliminary injunctions. DHS appealed in all cases and, as here, requested that the Fourth, Seventh, and Ninth Circuits stay the district courts' preliminary injunctions pending appeal. The Fourth and a divided panel of the Ninth Circuit granted DHS's motions to stay, the Ninth Circuit doing so in a lengthy published opinion. *See City & Cty. of San Francisco v. USCIS*, 944 F.3d 773 (9th Cir. 2019). The Seventh Circuit denied DHS's motion to stay, but DHS successfully sought a stay from the Supreme Court for the preliminary injunction at issue in that case, which was limited in scope to the state of Illinois. *See Wolf v. Cook Cty.*, 140 S. Ct. 681 (2020). The Seventh Circuit has since decided the merits of the case before it, holding that plaintiffs were likely to succeed on the merits of their challenge to the Rule and affirming the preliminary injunction entered by the Northern District of Illinois. *See Cook Cty. v. Wolf*, 962 F.3d 208 (7th Cir. 2020).

These appeals fall under the preliminary injunction framework laid out in *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7 (2008). *Winter* instructs that "[a] plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Id.* at 20. Where, as here, the government is a party to the suit, the final two factors merge. *Cf. Nken v. Holder*, 556 U.S. 418, 435 (2009); *see California v. Azar*, 911 F.3d 558, 575 (9th Cir. 2018). Before we turn to the merits of these appeals, however, we address two threshold arguments raised by DHS.

I. Threshold Arguments

DHS first argues that neither the States nor the Organizations meet the "irreducible constitutional minimum of standing" and thus cannot be permitted to challenge the Rule. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). DHS further argues that the Plaintiffs may not bring suit because they do not fall within the zone of interests protected by the public charge statute. *See Lexmark Int'l Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 129 (2014). We disagree with DHS on both counts.

A. Standing

At the preliminary injunction stage, "a plaintiff's burden to demonstrate standing will normally be no less than that required on a motion for summary judgment. Accordingly, to establish standing for a preliminary injunction, a plaintiff cannot rest on . . . mere allega-

tions . . . but must set forth by affidavit or other evidence specific facts" that establish the "three familiar elements of standing: injury in fact, causation, and redressability." *Cacchillo v. Insmed, Inc.*, 638 F.3d 401, 404 (2d Cir. 2011) (internal quotation marks and citation omitted). Here, DHS argues that the States and Organizations have failed to establish injury in fact, which requires the Plaintiffs to show they have suffered "an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical." *Lujan*, 504 U.S. at 560 (internal quotation marks and citations omitted).

The States allege that they are injured because the Rule will cause many of their residents to forgo use of public benefits programs, thereby decreasing federal transfer payments to the states, reducing Medicaid revenue, increasing overall healthcare costs, and causing general economic harm. DHS argues that these projected harms do not suffice to show injury in fact because the facts asserted by the States at most establish a possible, rather than imminent, future injury, and because any economic losses will be offset by the money saved by not providing public benefits to those who disenroll. *See Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013).

We are satisfied that the States have sufficiently established actual imminent harms. DHS itself anticipates that a significant number of non-citizens will disenroll from public benefits as a result of the Rule's enactment, including many who are not in fact subject to the Rule but who would be fearful of its consequences nonetheless. *See* 84 Fed. Reg. at 41,300-01, 41,463. When an agency action has a "predictable effect . . . on the

decisions of third parties," the consequences of those third party decisions may suffice to establish standing, even when the decisions are illogical or unnecessary. *See Dep't of Commerce v. New York*, 139 S. Ct. 2551, 2566 (2019). Contrary to its disparagement before us of the likelihood of harm to the States from disenrollment, DHS acknowledged in its own explication of the costs and benefits considered in adopting the Rule that expected disenrollment will result in decreased federal funding to states, 84 Fed. Reg. at 41,485, decreased revenue for healthcare providers, *id.* at 41,486, and an increase in uncompensated care, *id.* at 41,384.

DHS's own predictions thus align with declarations submitted by the States documenting the Rule's chilling effect on non-citizen use of public benefits—which began even prior to the Rule taking effect—and its anticipated economic impacts.[16] Where the agency itself

---

[16] For example, the Commissioner of Health of the State of New York stated that "even before the Final Rule has gone into effect, consumers have been calling . . . [and] inquiring about canceling their Medicaid or other health insurance coverage because of the Final Rule." New York ("N.Y.") J. App. 512. The Commissioner further notes that "[i]ndividuals without coverage will still need and receive care" but without insurance "those costs will be borne by the healthcare delivery system." *Id.* The President and CEO of New York City Health and Hospitals Corporation provided specific examples of patients refusing care or requesting disenrollment because of the Rule, and estimated that in the best-case scenario, the Rule could result in a loss of $50 million in the first year for the municipal hospital system. *See* N.Y. J. App. 266-69; *see also* N.Y. J. App. 183 (Commissioner of the New York City Department of Social Services providing statistics evidencing a "striking and dramatic drop in non-citizen SNAP cases" since the public charge rule began to get media coverage); N.Y. J. App. 227, 233-34 (Commissioner-Designate of Connecticut Department of Social Services estimating economic

forecasts the injuries claimed by the States, we agree with the Ninth Circuit that it is "disingenuous" for DHS to claim that the injury is not sufficiently imminent. *San Francisco*, 944 F.3d at 787 (finding state and local governments had standing to challenge the Rule).

We are also unpersuaded by DHS's argument that the States cannot establish injury in fact because any losses in funding will be offset by the savings accrued as fewer people seek public assistance. "[T]he fact that an injury may be outweighed by other benefits . . . does not negate standing."[17] *Denney v. Deutsche Bank AG*, 443 F.3d 253, 265 (2d Cir. 2006). In any event, this simplistic argument fails to account for the fact that the States allege injuries that extend well beyond reduced Medicaid revenue and federal funding to the States, including an overall increase in healthcare costs that will be borne by public hospitals and general economic harms. *See, e.g.*, N.Y. J. App. 185 (explaining that "the SNAP program has a direct economic multiplier effect: for every one dollar in SNAP benefits received, there is an approximate $1.79 in increased economic activity");

---

harms and increased healthcare costs); N.Y. J. App. 385-86 (Acting Secretary of the Agency of Human Services in Vermont predicting increased use of state-funded services).

[17] For largely the same reason, we are not persuaded by DHS's argument that the States' losses will be offset by their continued receipt of Emergency Medicaid funds, a benefit not impacted by the Rule. We further note that Emergency Medicaid is limited to care provided after a "sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity" if immediate medical care is necessary to prevent serious health consequences. 42 C.F.R. § 440.255(b)(1), (c). That narrow definition is far from a blanket assurance that all or even most services rendered in an emergency-room setting will be covered.

N.Y. J. App. 512-13. Again, DHS itself identified these same broader harms as likely outcomes of the Rule. *See, e.g.*, REGULATORY IMPACT ANALYSIS, INADMISSIBILITY ON PUBLIC CHARGE GROUNDS, RIN 1615-AA22, at 105-06 (2019) (calculating that reduced use of SNAP caused by the Rule will result in an estimated annual decrease of approximately $550 million in economic activity). We are satisfied that the States' alleged economic harms are sufficiently concrete and imminent to constitute injury in fact.

The Organizations allege injury on the grounds that the Rule has necessitated significant and costly changes in their programmatic work and caused increased demand on their social service programs. DHS contends that the Organizations have only shown harm to their "abstract social interests" and that increased costs of representing clients after the Rule is not sufficient to confer standing. Appellants' Br. at 23 (quoting *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982)).

An organization need only show a "perceptible impairment" of its activities in order to establish injury in fact. *Ragin v. Harry Macklowe Real Estate Co.*, 6 F.3d 898, 905 (2d Cir. 1993). Contrary to DHS's assertion that the Organizations have merely altered the subject matter of their existing outreach work, the declarations submitted by the Organizations make clear that the Rule has required significant diversion of resources. For example, over the course of three months Make the Road New York conducted almost forty workshops for community members devoted exclusively to the Rule, necessitating the hiring of two part-time staff members. *See* Make the Road ("M.T.R.") J. App. 319-20, 323. The complexities of the Rule required Catholic Charities to

change its educational outreach from group sessions to time-intensive individual meetings and to institute a series of evening phone banks. *See* M.T.R. J. App. 344, 349-51. The African Services Committee is funding a campaign of radio-based public service announcements to disseminate information about the Rule and has documented an increased demand on its social service programs, as clients turn away from public benefits programs.[18] *See* M.T.R. J. App. 466-67, 470.

"[A] nonprofit organization establishes an injury-in-fact if, as here, it establishes that it spent money to combat activity that harms its . . . core activities." *Centro de la Comunidad Hispana de Locust Valley v. Town of Oyster Bay*, 868 F.3d 104, 111 (2d Cir. 2017) (internal quotation marks omitted). The Organizations are dedicated to providing an array of legal and social services to non-citizens and they have expended significant resources to mitigate the Rule's impact on those they serve. In so doing, they have diverted resources that would otherwise have been available for other programming, a "perceptible opportunity cost" that suffices to confer standing. *Nnebe v. Daus*, 644 F.3d 147, 157 (2d Cir. 2011).

The Rule will also impede the Organizations' abilities to carry out their responsibilities in a variety of ways.

---

[18] Similarly, the Asian American Federation has devoted resources to a press conference and media-based outreach campaign and plans to reallocate staff to implement new programmatic priorities in light of the Rule. *See* M.T.R. J. App. 487, 490-91. And the Catholic Legal Immigration Network has seen a three-fold increase in the volume of inquiries related to the public charge ground and anticipates redirecting staff currently assigned to other projects to respond to the Rule. *See* M.T.R. J. App. 502-04.

Oyster Bay, 868 F.3d at 110 (finding standing where an organization "face[d] increased difficulty in meeting with and organizing [day] laborers"). For example, the Asian American Federation, which "support[s] culturally appropriate health and human services for Asian American immigrants[,]" is preparing to establish a network of social service providers that will not ask for immigration status information in order to provide alternatives for non-citizens who will not access public benefits because of the Rule. M.T.R. J. App. 485-86, 490. And while Catholic Charities was previously able to assign adjustment of status cases to paralegals working under the supervision of accredited representatives or attorneys, it anticipates that most of the adjustment cases for its predominantly low-income clients will now need to be handled by an attorney and require in-person representation at adjustment interviews. M.T.R. J. App. 346-48.

These injuries constitute "far more than simply a setback to the [Organizations'] abstract social interests." *Havens Realty*, 455 U.S. at 379. Even before its entry into force, the Rule has caused a "perceptible impairment" of the Organizations' activities and further harms are imminent. *Oyster Bay*, 868 F.3d at 110 (internal quotation marks omitted). As with the States, we conclude that the injuries alleged by the Organizations suffice to confer Article III standing.

B. Zone of Interests

DHS also argues that neither group of Plaintiffs falls within the zone of interests of the public charge statute. The zone-of-interests test restricts the ability to bring suit to those plaintiffs whose interests are "arguably within the zone of interests to be protected or regulated

by the statute that [they] say[] was violated." *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, 567 U.S. 209, 224 (2012) (internal quotation marks omitted). Because Congress intended to make agency action presumptively reviewable under the APA, that test is not especially demanding in the context of APA claims and may be satisfied even if there is no "indication of congressional purpose to benefit the would-be plaintiff." *Clarke v. Sec. Indus. Ass'n*, 479 U.S. 388, 399-400 (1987). A plaintiff is precluded from bringing suit only where its "interests are so marginally related to or inconsistent with the purposes implicit in the statute that it cannot reasonably be assumed that Congress intended to permit the suit." *Id.* at 399. Here, DHS argues that the Plaintiffs' interests fall outside the zone of interests of the statute because the Plaintiffs seek to facilitate greater use of public benefits by non-citizens, which it views as inconsistent with the purpose of the public charge ground.

This argument mischaracterizes both the purpose of the public charge statute and the Plaintiffs' interests. DHS assumes the merits of its own argument when it identifies the purpose of the public charge ground as ensuring that non-citizens do not use public benefits. As we conclude *infra* in Section II.B.6, Congress enacted the public charge ground to refuse admission to non-citizens who will likely be unable to support themselves in the United States, which is not tantamount to ensuring that non-citizens do not access any public benefits.

Moreover, when we consider the role of the public charge ground within the broader context of the INA, a fuller picture of the interests implicated in the statute emerges. *See Air Courier Conference of Am. v. Am.*

Postal Workers Union, 498 U.S. 517, 529 (1991) (explaining the Supreme Court's reasoning in *Clarke* that, in the context of the National Bank Act "the zone-of-interests test was to be applied not merely in the light of § 36, which was the basis of the plaintiffs' claim on the merits, but also in the light of § 81, to which § 36 was an exception"). The public charge statute delineates a category of persons who are to be denied adjustment of status (or another form of admission) to which they would otherwise have a claim. *See, e.g.*, 8 U.S.C. § 1255 (detailing requirements for adjustment of status). The grounds of inadmissibility are the fulcrum on which Congress balances its interest in allowing admission where it advances goals of family unity and economic competitiveness against its interest in preventing certain categories of persons from entering the country. *See* 84 Fed. Reg. at 41,306. DHS suggests that only those parties advocating increasingly harsher interpretations of the grounds of inadmissibility could fall within the zone of interests protected by the statute. That is too narrow a read of both the zone-of-interests test itself and the interests protected by the public charge ground. Understood in context, its purpose is to exclude where appropriate and to not exclude where exclusion would be inappropriate. *See Patchak*, 567 U.S. at 225-26.

As with the interests protected by the statute, DHS mischaracterizes the Plaintiffs' interests when it claims they seek only increased non-citizen enrollment in public benefits. The States actually seek to protect the economic benefits that result from healthy, productive, and engaged immigrant communities. And the Organizations' interests stem from their assorted missions to increase non-citizen well-being and status, which they

express in their work to provide legal and social services to non-citizens. An overbroad interpretation of the public charge ground, tipping the balance too far in the direction of exclusion at the expense of admission in the interest of family unity and economic vitality, imperils both these interests. *See Clarke*, 479 U.S. at 399 n.14 (finding zone of interests could apply to "those whose interests are directly affected by a broad or narrow interpretation of the [statute]" (internal quotation marks omitted)).

The Plaintiffs are among "those who in practice can be expected to police the interests that the statute protects[,]" namely, the admission of non-citizens who will be self-sufficient and the exclusion of those who will not. *Fed. Defs. of N.Y., Inc. v. Fed. Bureau of Prisons*, 954 F.3d 118, 131 (2d Cir. 2020) (internal quotation marks omitted); *see Bank of Am. Corp. v. City of Miami*, 137 S. Ct. 1296, 1304 (2017). We conclude that the States and the Organizations have Article III standing to challenge the Rule and that they fall within the zone of interests of the public charge statute. We thus turn to the merits of these appeals.

II. Likelihood of Success on the Merits

We begin by considering whether the Plaintiffs are likely to succeed on the merits of their claims, the first preliminary injunction factor. *See Winter*, 555 U.S. at 20. The Plaintiffs challenge the Rule under the APA, which declares unlawful any agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law[.]" 5 U.S.C. § 706(2)(A). Though the Plaintiffs contend that the Rule violates the APA for several reasons, we focus on the arguments that

the Rule is unlawful because it is contrary to the INA and because it is arbitrary and capricious.

A. Legal Framework

"We evaluate challenges to an agency's interpretation of a statute that it administers within the two-step *Chevron* deference framework." *Catskill Mountains Chapter of Trout Unlimited, Inc. v. EPA*, 846 F.3d 492, 507 (2d Cir. 2017). At the first step of *Chevron*, we consider "whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress." *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 842-43 (1984). Accordingly, we start our analysis below by considering whether Congress has spoken to its intended meaning of the statutory term "public charge" and conclude that it has done so. Because the intent of Congress is clear, "*Chevron* leaves the stage" and we proceed to the central question of whether DHS's interpretation of "public charge" is consistent with this intent. *Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612, 1630 (2018) (internal quotation marks omitted). We conclude that the Rule is contrary to the INA and that the Plaintiffs have thus demonstrated a likelihood of success on the merits of this claim. *See* 5 U.S.C. § 706(2)(A).

We then move to the Plaintiffs' second argument, that the Rule is unlawful for the further reason that it is procedurally arbitrary and capricious. *See id.* We consider this argument under the familiar rubric laid out in *Motor Vehicle Manufacturers Ass'n of the United States, Inc. v. State Farm Mutual Automobile Insurance Co.*, 463 U.S. 29 (1983), which asks whether the

agency has "articulate[d] a satisfactory explanation for its action."[19] *Id.* at 43. We conclude that DHS failed to provide a reasoned explanation for its changed definition and the expanded list of relevant public benefits and that the Plaintiffs are thus also likely to succeed on the merits of their claim that the Rule is arbitrary and capricious under 5 U.S.C. § 706(2)(A).[20]

Accordingly, because the Plaintiffs have shown a likelihood of success on these two arguments, they have established the first preliminary injunction factor in their favor.

B. The Rule is Contrary to the INA.

"In a statutory construction case, the beginning point must be the language of the statute[.]" *Estate of Cowart v. Nicklos Drilling Co.*, 505 U.S. 469, 475 (1992). "If the statutory text is ambiguous, we also examine canons of statutory construction" to identify congressional intent. *Catskill Mountains*, 846 F.3d at 512; *see Chev-*

---

[19] As we noted in *Catskill Mountains*, there has been "[m]uch confusion" about the relationship between *Chevron* and the *State Farm* frameworks. 846 F.3d at 522. We distinguished the two, however, on the grounds that "*State Farm* is used to evaluate whether a rule is procedurally defective as a result of flaws in the agency's decisionmaking process" while *Chevron* "is generally used to evaluate whether the conclusion reached as a result of that process . . . is reasonable." *Id.* at 521. On appeal, the Plaintiffs primarily raise procedural challenges to the Rule. We thus consider these arguments under the *State Farm* framework. *See also Nat. Res. Def. Council, Inc. v. U.S. EPA*, 961 F.3d 160, 170-71 (2d Cir. 2020).

[20] Because we find the Plaintiffs are likely to succeed on the merits of their two primary arguments, we need not address their additional argument that the Rule is contrary to the Rehabilitation Act or the Organizations' argument that the Rule violates equal protection.

ron, 467 U.S. at 843 n.9. Here, the Plaintiffs do not argue that "public charge" is unambiguous on its face, relying instead on the ratification canon to ascertain the clear intent of Congress.

The ratification canon provides that "Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change." *Lorillard v. Pons*, 434 U.S. 575, 580 (1978). The Plaintiffs argue that Congress ratified the settled judicial and administrative interpretations of "public charge" as it repeatedly reenacted the public charge ground over the course of more than a century—most recently in 1996—such that the current public charge statute unambiguously forecloses the Rule's new interpretation of the term. In response, DHS argues that its interpretation is not precluded by the historical interpretations of "public charge" and that other provisions of the INA show that the Rule is consistent with Congress's intended meaning of "public charge." Proper application of the ratification canon requires a thorough understanding of the evolution of the public charge statute, from its inception in 1882 to its enactment in its current form in 1996, as well as the accompanying body of administrative and judicial decisions interpreting the term. Accordingly, we begin with a historical review.

1. Origins of the Public Charge Ground

The public charge ground has its roots in concerns that arose in the late nineteenth century that foreign nations were addressing poverty within their own borders by funding passage to the United States for their poorer citizens. *See* 13 CONG. REC. 5,109 (1882). As one of the

primary immigrant-receiving states, New York in particular was concerned that, upon arrival, these noncitizens "bec[a]me at once a public charge . . . get[ting] into our poor-houses and alms-houses." *Id.* In response to the costs of supporting new arrivals and other expenditures associated with its role overseeing the immigration process, New York attempted to impose various taxes and bonds on arriving immigrants, as well as the shipping companies providing their transport. *See id.* at 5,107. The Supreme Court, however, repeatedly struck down these state statutes as unconstitutional, on the grounds that the Constitution vested the power to "regulate commerce with foreign nations," U.S. CONST. art. I, § 8, cl. 3, in Congress. *See, e.g.*, *Henderson v. Mayor of New York*, 92 U.S. 259, 270 (1875).

New York thus turned to Congress for assistance, lobbying for the enactment of two provisions that ultimately became law with the Immigration Act of 1882: the public charge ground of exclusion and the immigrant fund. The inaugural public charge statute directs immigration inspectors to board arriving ships and refuse permission to land to any passenger who is "unable to take care of himself or herself without becoming a public charge[.]" Immigration Act of 1882, Pub. L. No. 47-376, § 2, 22 Stat. 214, 214. While denying entry to those who could not care for themselves, the Act simultaneously established an "immigrant fund," which was to be used, *inter alia*, "for the care of immigrants arriving in the United States, [and] for the relief of such as are in distress." *Id.* § 1. By these provisions, the Act established a scheme that distinguished between those arriving immigrants who were "unable to take care of [themselves]" and those who were merely "in distress." *Id.*

§§ 1, 2. The former were to be excluded; the latter provided with financial support. Representatives from New York spoke in favor of this two-part design, applauding the effort to exclude those who would depend on public assistance while offering words of praise for the immigrants who may arrive in need of some aid but ultimately go on to "learn our language, adapt themselves readily to our institutions, and become a valuable component part of the body-politic." 13 CONG. REC. 5,108 (statement of Rep. Van Voorhis).

Early interpretations of the term "public charge" from this era come principally from state courts and treat the term as somewhat interchangeable with "pauper," distinguishable from those who were simply poor by the permanence of the condition. For example, the Massachusetts Supreme Court explained that a bond could be required for arriving immigrants who had "been paupers in a foreign land; that is, for those who have been a public charge in another country; and not merely destitute persons, who, on their arrival here, have no visible means of support[.]" *City of Boston v. Capen*, 61 Mass. 116, 121 (Mass. 1851). The court affirmed that the bond was necessary only from "those who, by reason of some permanent disability, are unable to maintain themselves" and who "might become a heavy and long continued charge to the city, town, or state, in this country[.]" *Id.* at 122; *see also State v. The S.S. Constitution*, 42 Cal. 578, 582 (Cal. 1872); *City of Alton v. Cty. of Madison*, 21 Ill. 115, 116 (Ill. 1859).

Congress amended the immigration laws in 1891, making slight revisions to the public charge ground of exclusion while adding for the first time a public charge ground of deportation. *See* Immigration Act of 1891,

Pub. L. No. 51-551, §§ 1, 11, 26 Stat. 1084, 1084, 1086. Under the terms of the 1891 Act, "[a]ll idiots, insane persons, [and] paupers or persons likely to become a public charge" were to be excluded from admission, *id.* § 1, while a non-citizen who became "a public charge within one year after his arrival in the United States" could be deported, *id.* § 11.

In 1907, Congress again made modest revisions to the public charge ground, amending the law to exclude "paupers; persons likely to become a public charge; [and] professional beggars[.]" Immigration Act of 1907, Pub. L. No. 59-96, § 2, 34 Stat. 898, 899. A few years after the 1907 Act, the Supreme Court weighed in on the meaning of "public charge" in its first and (as of yet) only interpretation of the term. In *Gegiow v. Uhl*, 239 U.S. 3 (1915), the Court considered the case of two Russian immigrants who had been found likely to become public charges because they arrived with little money; were bound for Portland, Oregon, where work was scarce; and had no one legally obligated to support them. *Id.* at 8. In its analysis, the Court emphasized that "public charge" was listed alongside "paupers" and "professional beggars" in the statute, reasoning that the term should "be read as generically similar to the others mentioned before and after." *Id.* at 10. Accordingly, the Court concluded that a "public charge," like the other categories of persons mentioned, must be defined by some kind of "permanent personal objections." *Id.* Because the Russian immigrants had been deemed likely public charges based on the Portland labor market, rather than on any intrinsic and problematic characteristics of their own, the Court reversed the determination.

Citing *Gegiow*, we declared ourselves "convinced" in a subsequent decision that "Congress meant [public charge] to exclude persons who were likely to become occupants of almshouses for want of means with which to support themselves in the future." *Howe v. United States ex rel. Savitsky*, 247 F. 292, 294 (2d Cir. 1917). The Ninth Circuit adopted our interpretation in *Ng Fung Ho v. White*, 266 F. 765, 769 (9th Cir. 1920), *rev'd in part on other grounds*, 259 U.S. 276, 285 (1922). Other circuits adopted a somewhat broader interpretation of the term as encompassing "not only those persons who through misfortune cannot be self-supporting, but also those who will not undertake honest pursuits, and who are likely to become periodically the inmates of prisons[,]" *Lam Fung Yen v. Frick*, 233 F. 393, 396 (6th Cir. 1916) (internal quotation marks omitted); *see United States ex rel. Medich v. Burmaster*, 24 F.2d 57, 59 (8th Cir. 1928). But those interpretations as well emphasized the habitual and persistent nature of the dependency that would render one a public charge.

2. The Immigration Act of 1917

In the wake of *Gegiow*, Congress sought to "overcome" the line of cases that "limit[] the meaning of [public charge] because of its position between other descriptions conceived to be of the same general and generical nature." S. COMM. ON IMMIGRATION, 64TH CONG., REP. ON H.R. 10384, at 5 (1916). Thus, in the Immigration Act of 1917, Congress relocated the public charge ground within the list of excludable persons so that it no longer appeared between paupers and professional beggars, but rather between contract laborers and people who had been deported previously. *See* Pub. L. No. 64-301, § 3, 39 Stat. 874, 876.

Notwithstanding Congress's efforts, "[s]everal courts promptly questioned the efficacy of the [1917] amendment and affirmed the interpretation that a 'person who is likely to become a public charge' is one who for some cause is about to be supported at public expense[.]" *Matter of Harutunian*, 14 I. & N. Dec. 583, 587 (B.I.A. 1974). The Ninth Circuit was the first to hold that "this change of location of the words does not change the meaning that should be given them, and that it is still to be held that a person 'likely to become a public charge' is one who, by reason of poverty, insanity, or disease or disability, will probably become a charge on the public." *Ex parte Hosaye Sakaguchi*, 277 F. 913, 916 (9th Cir. 1922). A few years later, the Fifth Circuit affirmed that the public charge ground still "intended to refer to . . . a condition of dependence on the public for support." *Coykendall v. Skrmetta*, 22 F.2d 120, 121 (5th Cir. 1927). And in *United States ex rel. Iorio v. Day*, 34 F.2d 920 (2d Cir. 1929), we agreed that the change did not require overruling the interpretation we had previously adopted in *Howe*, noting that "[t]he language itself, 'public charge,' suggests . . . dependency." *Id.* at 922.

As the courts of appeals applied the public charge ground in this era, the inquiry usually turned on whether the non-citizen could earn a living, frequently out of a concern that a health condition might prevent the person from working.[21] Conversely, courts routinely found

---

[21] *See, e.g., Tod v. Waldman*, 266 U.S. 113, 120 (1924) (remanding based on "the absence from the record of any finding by the department on appeal as to the issue [of] whether the lameness of Zenia, one of the children, affected her ability to earn a living or made her likely to become a public charge"); *United States ex rel. Minuto v.*

a non-citizen's ability and willingness to work sufficient to defeat a public charge finding.[22] Administrative interpretations issued in the early days of the Board of

---

Reimer, 83 F.2d 166, 168 (2d Cir. 1936) (affirming public charge determination where non-citizen "was a woman seventy years old with an increasing chance of becoming dependent, disabled, and sick [and] [n]o one was under any obligation to support her"); *Tullman v. Tod*, 294 F. 87, 88 (2d Cir. 1923) (affirming public charge determination where the non-citizen "was found to be affected with deaf mutism, which, as was certified, might affect his ability to earn a living"); *Wallis v. United States ex rel. Mannara*, 273 F. 509, 511 (2d Cir. 1921) ("A person likely to become a public charge is one whom it may be necessary to support at public expense by reason of poverty, insanity and poverty, disease and poverty, idiocy and poverty. We think that the finding by the administrative authorities, showing a physical defect of a nature that may affect the ability of the relator and appellee to earn a living, is sufficient ground for exclusion [as a likely public charge]" (internal citation omitted)); *see also "Italia" Societa Anonima Di Navigazione v. Durning*, 115 F.2d 711, 713 (2d Cir. 1940).

[22] *See, e.g.*, *Ex parte Sturgess*, 13 F.2d 624, 625 (6th Cir. 1926) (reversing public charge determination where non-citizen was "39 years of age, in good health, a skilled carpenter, and had in his possession about $75 in money"); *Nocchi v. Johnson*, 6 F.2d 1, 1 (1st Cir. 1925) (reversing public charge determination where there was "no clear showing that the boy is so feeble-minded that he is not able to earn his own living" and his parents were wealthy); *United States ex rel. Mantler v. Comm'r of Immigration*, 3 F.2d 234, 236 (2d Cir. 1924) (reversing public charge determination where non-citizen "is 23 years of age, has been in the country now for 4 years, is in good physical condition, and by industry and frugality has saved a substantial portion of her earnings"); *Sakaguchi*, 277 F. at 916 (reversing public charge determination where there was no evidence "of mental or physical disability or any fact tending to show that the burden of supporting the appellant is likely to be cast upon the public" and the non-citizen was "an able-bodied woman of the age of 25 years, with a fair education . . . [and] a disposition to work and support herself"); *see also Thack v. Zurbrick*, 51 F.2d 634, 635 (6th

Immigration Appeals ("BIA") also focused on non-citizens' abilities to work and sustain themselves.[23]

In the context of the public charge ground of deportation, this era also saw growing consensus among the courts that non-citizens who had been institutionalized were deportable as public charges.[24] The BIA weighed in on the matter in one of its first published decisions to address either of the public charge grounds. In *Matter of B-*, 3 I. & N. Dec. 323 (B.I.A. 1948), the BIA considered the case of a non-citizen who was institutionalized in a psychiatric hospital run by the state of Illinois. The BIA held that a non-citizen who had become a public charge could not be deported on that basis unless the state had a law imposing a charge for the services rendered, a demand for repayment had been made, and the non-citizen had failed to reimburse the state. *Id.* at 326. These procedural safeguards persist to this day in the public charge ground of deportation, which considers benefits received, but are not applied in the

---

Cir. 1931); *United States ex rel. De Sousa v. Day*, 22 F.2d 472, 473-74 (2d Cir. 1927); *Lisotta v. United States*, 3 F.2d 108, 111 (5th Cir. 1924).

[23] *See, e.g.*, *Matter of C-*, 3 I. & N. Dec. 96, 97 (B.I.A. 1947) ("In this case there is no likelihood that the beneficiary will become a public charge. . . . [H]e is in good health and is able and willing to go to work."); *Matter of V-*, 2 I. & N. Dec. 78, 81 (B.I.A. 1944) (reversing public charge determination where the respondent was employed and "has always been self-supporting" other than during a period of hospitalization).

[24] *See, e.g., Canciamilla v. Haff*, 64 F.2d 875, 876 (9th Cir. 1933); *Fernandez v. Nagle*, 58 F.2d 950, 950 (9th Cir. 1932); *United States ex rel. Casimano v. Comm'r of Immigration*, 15 F.2d 555, 556 (2d Cir. 1926); *United States ex rel. La Reddola v. Tod*, 299 F. 592, 593 (2d Cir. 1924).

predictive public charge ground of inadmissibility. *See Harutunian*, 14 I. & N. Dec. at 589.

3. The Immigration and Nationality Act of 1952

Shortly after the *Matter of B-* decision, the Senate initiated "a full and complete investigation of [the] entire immigration system[,]" the results of which were released in a Senate Judiciary Committee Report published in 1950. SENATE JUDICIARY COMM., THE IMMIGRATION AND NATURALIZATION SYSTEMS OF THE UNITED STATES, S. REP. NO. 81-1515, at 1 (1950). The investigation and report resulted in a proposed omnibus bill to overhaul the "patchwork" of the then-existing immigration and naturalization systems. *Id.* at 4. Thus was enacted the Immigration and Nationality Act of 1952, the foundation of our current immigration system.

The Judiciary Committee report devotes several pages to a review of the public charge ground. The report notes that "courts have given varied definitions of the phrase 'likely to become a public charge,'" but summarizes the caselaw as focusing on four characteristics that indicate non-citizens are likely to become public charges: (1) impending or current imprisonment in a federal prison; (2) limited finances; (3) a weakened physical condition "as it relate[s] to his ability and capacity for employment[;]" and (4) traveling to the United States on a ticket paid for by someone else. *Id.* at 347-48. The Judiciary Committee recommended that the public charge ground be re-enacted in the forthcoming INA and further recommended that the term not be defined in the statute since "the elements constituting likelihood of becoming a public charge are varied." *Id.* at 349.

Congress took both recommendations, listing "[a]liens who, in the opinion of the consular officer at the time of application for a visa, or in the opinion of the Attorney General at the time of application for admission, are likely at any time to become public charges" as one of the INA's grounds of inadmissibility. *See* Pub. L. No. 82-414, § 212(a)(15), 66 Stat. 163, 183 (1952). The INA also retained the corresponding ground of deportation for any non-citizen who "in the opinion of the Attorney General, has within five years after entry become a public charge from causes not affirmatively shown to have arisen after entry." *Id.* § 241(a)(8).

Administrative interpretations of "public charge" after the enactment of the INA largely align with the pre-1952 interpretations. In 1964, the Attorney General noted that the term had been the subject of "extensive judicial interpretation" and that the "general tenor" of the caselaw understood "public charge" to require "[s]ome specific circumstance, such as mental or physical disability, advanced age, or other fact reasonably tending to show that the burden of supporting the alien is likely to be cast on the public[.]" *Matter of Martinez-Lopez*, 10 I. & N. Dec. 409, 421 (A.G. 1964).

The BIA subsequently affirmed that "while economic factors should be taken into account, the alien's physical and mental condition, as it affects ability to earn a living, is of major significance." *Harutunian*, 14 I. & N. Dec. at 588. The BIA concluded that "[e]verything in the statutes, the legislative comments and the decisions points to one conclusion[:]" that Congress intended to exclude as a likely public charge a non-citizen who was not self-supporting. *Id.* at 589; *see also Matter of Vindman*, 16 I. & N. Dec. 131, 132 (B.I.A. 1977).

As the BIA applied this interpretation in subsequent decisions, it focused on the non-citizen's capacity for work, reversing decisions that put too much weight on temporary setbacks and affirming those where a non-citizen had no prospects for employment by virtue of age or disability.[25] And in *Matter of Perez*, 15 I. & N. Dec. 136, 137 (B.I.A. 1974), the BIA explicitly held that "[t]he fact that an alien has been on welfare does not, by itself, establish that he or she is likely to become a public charge."

4. The Current Public Charge Ground

It was against this backdrop of judicial and administrative interpretations that Congress enacted PRWORA and IIRIRA in 1996, creating the public charge ground as it exists today. While leaving the principal statutory language intact—rendering inadmissible any non-citizen who is "likely at any time to become a public charge"—IIRIRA amended the ground to require consideration of the non-citizen's age, health, family status, financial status, and education. *See* IIRIRA § 531(a). IIRIRA also required certain non-citizens to obtain affidavits of support, *id.* § 551(a), building on PRWORA's

---

[25] *See, e.g.*, *Matter of A-*, 19 I. & N. Dec. 867, 870 (B.I.A. 1988) ("There may be circumstances beyond the control of the alien which temporarily prevent an alien from joining the work force. . . . [T]he director placed undue weight on [the family's financial circumstances], thereby overshadowing the more important factors; namely, that the applicant has now joined the work force, that she is young, and that she has no physical or mental defects which might affect her earning capacity."); *Vindman*, 16 I. & N. Dec. at 132 (affirming public charge finding where respondents were older adults and had no employment prospects); *cf. Matter of Kowalski*, 10 I. & N. Dec. 159, 160 (B.I.A. 1963).

requirement that such affidavits of support be legally enforceable against the sponsor, *see* PRWORA § 423.

Congress considered, and nearly enacted, a more sweeping set of changes to the public charge ground with IIRIRA. The conference report of the bill included a statutory definition of public charge, which would have defined the term to cover "any alien who receives [means-tested public benefits] for an aggregate period of at least 12 months[.]" CONFERENCE REPORT, H.R. REP. 104-828, at 138 (1996). While the House passed the conference report containing this language, it was ultimately dropped under threat of presidential veto. *See* 142 CONG. REC. S11,882 (daily ed. Sept. 30, 1996) (statement of Sen. Kyl); *cf.* Statement on Senate Action on the "Immigration Control and Financial Responsibility Act of 1996," 32 WEEKLY COMP. PRES. DOC. 783 (May 2, 1996) (President Clinton critiquing prior version of the bill for "go[ing] too far in denying legal immigrants access to vital safety net programs which could jeopardize public health and safety").

We end our historical review back where we started this opinion, with INS's release of the 1999 Guidance to counteract public confusion after IIRIRA and PRWORA. We have already explored in some detail INS's 1999 interpretation, which defines "public charge" as one who is "primarily dependent on the Government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance or institutionalization for long-term care at Government expense." 64 Fed. Reg. at 28,677. We simply note here that INS concluded that its interpretation was warranted by "the plain meaning of the word 'charge,' the historical con-

text of public dependency when the public charge immigration provisions were first enacted more than a century ago, . . . the expertise of the benefit-granting agencies that deal with subsistence issues[, and the] factual situations presented in the public charge case law." *Id.*

5. The Settled Meaning of "Public Charge"

With this understanding of the history of the public charge ground, we turn to the applicability of the ratification canon. We first examine whether Congress changed the statutory language as it amended the ground over the years, so as to render the canon inapposite. *See Holder v. Martinez Gutierrez*, 566 U.S. 583, 593 (2012). We then determine whether the caselaw interpretations of the term produced a sufficiently consistent and settled meaning of the term, such that we may presume Congress ratified that understanding when it created the current public charge statute in 1996. *See Commodity Futures Trading Comm'n v. Schor*, 478 U.S. 833, 846 (1986).

We quickly dispose of the first question. There can be no dispute that, since its origins in the Immigration Act of 1882, Congress reenacted the public charge ground without pertinent change in 1891, 1907, 1917, 1952, and 1996. We note that Congress made minor alterations to the ground over the course of its history. For example, the 1882 public charge ground excluded anyone who was "unable to take care of himself or herself without becoming a public charge" at their time of arrival in the United States while subsequent acts established the forward-looking likelihood standard. *Compare* Immigration Act of 1882 § 2 *with* Immigration Act of 1891 § 1. And with IIRIRA, Congress added the list of mandatory factors to consider when applying the ground. *See* IIRIRA § 531(a). But Congress has unwaveringly described the fundamental characteristic at issue as being a "public charge" since 1882. We easily conclude that Congress "adopt[ed] the language used in [its] earlier act[s]" in its most recent reenactment of the public

charge ground in 1996. *See Hecht v. Malley*, 265 U.S. 144, 153 (1924).

With respect to the second question, our review of the historical administrative and judicial interpretations of the ground over the years leaves us convinced that there was a settled meaning of "public charge" well before Congress enacted IIRIRA. The absolute bulk of the caselaw, from the Supreme Court, the circuit courts, and the BIA interprets "public charge" to mean a person who is unable to support herself, either through work, savings, or family ties. *See, e.g.*, *Day*, 34 F.2d at 922; *Harutunian*, 14 I. & N. Dec. at 588-89. Indeed, we think this interpretation was established early enough that it was ratified by Congress in the INA of 1952. But the subsequent and consistent administrative interpretations of the term from the 1960s and 1970s remove any doubt that it was adopted by Congress in IIRIRA. *See United Airlines, Inc. v. Brien*, 588 F.3d 158, 173 (2d Cir. 2009) (noting that "Congress's repeated amendment of the relevant provisions of the statute without expressing any disapproval" of the BIA's interpretation is "persuasive evidence that the [Agency's] interpretation is the one intended by Congress" (internal quotation marks omitted)).

We find particularly significant the Attorney General's decision from 1962, which summarizes the "extensive judicial interpretation" of the term as requiring a particular circumstance, like disability or age, that shows that "the burden of supporting the alien is likely to be cast on the public[.]" *Martinez-Lopez*, 10 I. & N. Dec. at 421. Accordingly, the Attorney General held that "[a] healthy person in the prime of life cannot ordinarily be considered likely to become a public charge[.]"

Id. The BIA came to a similar conclusion after its own review of the public charge caselaw and legislative history, holding that "any alien who is incapable of earning a livelihood, who does not have sufficient funds in the United States for his support, and [who] has no person in the United States willing and able to assure that he will not need public support is excludable as likely to become a public charge[.]" *Harutunian*, 14 I. & N. Dec. at 589-90. Subsequent administrative decisions affirmed that the public charge determination must be made based on the totality of the circumstances and rejected the notion that receipt of public benefits categorically renders one a public charge. *See Perez*, 15 I. & N. Dec. at 137; *Vindman*, 16 I. & N. Dec. at 132; *A-*, 19 I. & N. Dec. at 870.

The scope and consistency of these administrative decisions warrants the application of the ratification canon. These published decisions are nationally binding, issued under the agency's mandate to "provide clear and uniform guidance to [other components of the government] and the general public on the proper interpretation and administration of the [INA]." 8 C.F.R. § 1003.1(d)(1). The broad principles articulated in the decisions are grounded in comprehensive reviews of public charge history and offer a consistent understanding of the term as they carry that history forward. While we may not derive a settled rule from isolated or contradictory decisions, *see Jama v. Immigration and Customs Enf't*, 543 U.S. 335, 350-52 (2005), that is not the case here. For more than twenty years prior to IIRIRA, the agency interpreted "public charge" to mean a person not capable of supporting himself. In the face of this consistent

agency interpretation—which itself aligns with the earlier judicial interpretations—we conclude that when Congress reenacted the public charge ground in 1996 it ratified this settled construction of the term. *See FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 157 (2000) (concluding that Congress ratified agency interpretation that had been its "unwavering position since its inception" and that was consistent "with the position that its predecessor agency had first taken").

Our conclusion finds further support in the legislative history of IIRIRA. "Although we are generally reluctant to employ legislative history at step one of *Chevron*" it may be helpful "when the interpretive clues speak almost unanimously, making Congress's intent clear beyond reasonable doubt." *Catskill Mountains*, 846 F.3d at 515 (internal quotation marks and alterations omitted). We thus look to the legislative history only to confirm what we have already concluded.

As noted above, Congress very nearly included a statutory definition of "public charge" in IIRIRA that would have redefined the term to mean receipt of any form of means-tested public benefits for more than twelve months. *See* CONFERENCE REPORT, H.R. REP. NO. 104-828, at 138. That proposed definition was intended to overcome the BIA's *Matter of B-* decision, which interpreted the public charge ground of deportation, but it was deleted from the final enactment under threat of presidential veto.[26] *See* 142 CONG. REC.

[26] The definition was proposed as part of the public charge ground of deportation. CONFERENCE REPORT, H.R. REP. NO. 104-828, at 138. We nevertheless think it reasonable to look to this language as we interpret the public charge ground of inadmissibility on the principle that a term appearing in multiple places within a statute is

S4,408-09 (daily ed. April 30, 1996) (statement of Sen. Simpson); 142 CONG. REC. S11,882 (statement of Sen. Kyl). In effect, an effort was made to *change* the prior administrative and judicial consensus as to the meaning of public charge, but that effort failed.

While we agree with DHS that failed legislative proposals are, as a general matter, unreliable sources of legislative history because bills may fail for any number of reasons, here we know exactly why the definition was removed from IIRIRA and find it directly relevant to our analysis. *See Solid Waste Agency of N. Cook Cty. v. U.S. Army Corps of Eng'rs*, 531 U.S. 159, 169-70 (2001). We read this legislative history as further evidence that Congress was aware of prevailing administrative interpretations of "public charge" when it enacted IIRIRA. *See Lindahl v. Office of Pers. Mgmt.*, 470 U.S. 768, 782-83 (1985) (applying ratification canon where legislative history demonstrated Congress was aware of interpretation). Congress's abandonment of its efforts to change the meaning of the term further suggests that it ratified the existing interpretation of "public charge" in 1996. *See Bob Jones Univ. v. United States*, 461 U.S. 574, 600-01 (1983).

DHS urges us to conclude that Congress did not ratify any interpretation of "public charge" because the term has never had a fixed definition. To support its

---

"generally read the same way each time it appears." *Ratzlaf v. United States*, 510 U.S. 135, 143 (1994). And while the definition was proposed to overcome *Matter of B-*'s procedural safeguards for public charge deportation, the definition is confined to identifying the relevant benefits and time period of use that made one a "public charge" and could have easily been transposed to the inadmissibility context. *Cf. Harutunian*, 14 I. & N. Dec. at 589.

contention, DHS points to the 1950 Senate Judiciary Committee report, which observed that "the elements constituting likelihood of becoming a public charge are varied[.]" S. REP. NO. 81-1515, at 349. Consequently, the report recommends that the term not be defined in the statute and that the determination of whether a given non-citizen is likely to become a public charge should "rest[] within the discretion of the [agency]." *Id.*; *see id.* at 347 (noting the term has been given "varied definitions" by the courts).

Rather than suggesting that the core meaning of "public charge" is unclear, the language on which DHS relies refers to the fact there are a variety of personal circumstances that may be relied on to show the *likelihood* that a would-be immigrant would fall within that category. As described above, the report distills from the caselaw four circumstances that indicate a non-citizen is likely to become a public charge. *Id.* at 348. It thereby recognizes that there are many paths to dependency, and that administrative flexibility in determining whether a non-citizen is likely to be dependent is desirable. But the fact that many and varied circumstances may show that one is *likely* to become a public charge does not mean that the underlying term is undefined or lacks a core meaning. And while DHS makes much of the fact that it retains discretion to decide whether the ground applies in a given case, the allowance of discretion in individual cases does not mean that the term itself is standardless or without a core, established meaning.

We recognize that our conclusion that Congress ratified the settled meaning of "public charge" in 1996 conflicts with decisions from the only two circuits to have

addressed this argument to date. *See City and Cty. of San Francisco v. USCIS*, 944 F.3d 773, 798 (9th Cir. 2019); *Cook Cty. v. Wolf*, 962 F.3d 208, 226 (7th Cir. 2020). In the context of granting DHS's motion to stay the injunctions against the enforcement of the Rule entered by district courts in California and Washington, the Ninth Circuit decided that "public charge" had been subjected to "varying historical interpretations" by 1996, such that the ratification canon did not apply. *San Francisco*, 944 F.3d at 797. The Ninth Circuit reasoned that there was no consistent interpretation because

> [i]nitially, the likelihood of being housed in a government or charitable institution was most important. Then, the focus shifted in 1948 to whether public benefits received by an immigrant could be monetized, and the immigrant refused to pay for them. In 1974, it shifted again to whether the immigrant was employable and self-sufficient. That was subsequently narrowed in 1987 to whether the immigrant had received public cash assistance, which excluded in-kind benefits.[27]

Id. at 796. We think the Ninth Circuit goes astray in pinning the definition of "public charge" on the *form* of public care provided to the dependent non-citizen. That the face of our welfare system has changed over time does not mean that the fundamental inquiry of the public charge ground—whether the non-citizen is likely

---

[27] We explain below our further disagreement with these characterizations of the 1948 *Matter of B-* decision and the 1987 public charge provision established in the Immigration Reform and Control Act of 1986, which only applied to those non-citizens participating in an ad hoc legalization program.

to depend on that system—has also changed. The settled meaning of "public charge," as the plain meaning of the term already suggests, is dependency: being a persistent "charge" on the public purse. And as we explain further below, the mere receipt of benefits from the government does not constitute such dependency.

We are similarly unpersuaded by the Seventh Circuit's "admittedly incomplete" historical review and its conclusion that plaintiffs in that case had failed to establish that Congress ratified the settled meaning of the term. *See Cook Cty.*, 962 F.3d at 226. The Seventh Circuit focuses almost exclusively on the state of the law prior to 1927 and enactments post-dating Congress's 1996 amendment to the public charge ground, the point at which any existing interpretation would have been ratified. *Id.* at 222-26. Critically, this limited analysis omits the administrative interpretations of the 1960s and 1970s that established uniform and nationally binding interpretations of the public charge ground, a key component of our determination that Congress ratified the prevailing interpretation of the term in 1996. *See id.* at 225.

In light of the judicial, administrative, and legislative treatments of the public charge ground from 1882 to 1996, we hold that Congress ratified the settled meaning of "public charge" when it enacted IIRIRA. Congress intended the public charge ground of inadmissibility to apply to those non-citizens who were likely to be unable to support themselves in the future and to rely on the government for subsistence. "[D]eference is not due unless a court, employing traditional tools of statutory construction, is left with an unresolved ambiguity." *Epic Sys.*, 138 S. Ct. at 1630 (internal quotation marks

omitted). Here, because the ratification canon reveals the intent of Congress "on the precise question at issue, that intention is the law and must be given effect." *Chevron*, 467 U.S. at 843 n.9. We thus owe no deference to the Rule and consider only whether it comports with congressional intent.

6. The Rule's Inconsistency with the Settled Meaning

"No matter how it is framed, the question a court faces when confronted with an agency's interpretation of a statute it administers is always, simply, whether the agency has stayed within the bounds of its statutory authority." *City of Arlington v. FCC*, 569 U.S. 290, 297 (2013) (emphasis omitted). Having marked out the interpretive boundaries of "public charge," we now consider whether the Rule's interpretation falls within the ambit of congressional intent. DHS repeatedly claims that the Rule aligns with the intent of Congress because it excludes those non-citizens who lack "self-sufficiency and . . . need to rely on the government for support." 84 Fed. Reg. at 41,317; *see, e.g.*, *id.* at 41,295, 41,306, 41,318, 41,320, 41,348. As we have just concluded, Congress did indeed ratify a consistent and long-standing judicial and administrative understanding of "public charge" as focused on non-citizens' abilities to support themselves. But DHS's generalized assurance that it shares Congress's interest in self-sufficiency is belied by the Rule's actual definition of "public charge," which reveals that DHS and Congress have dramatically different notions of the term.

The prevailing administrative and judicial interpretation of "public charge" ratified by Congress understood the term to mean a non-citizen who cannot support

himself, in the sense that he "is incapable of earning a livelihood, . . . does not have sufficient funds in the United States for his support, and has no person in the United States willing and able to assure that he will not need public support[.]" *Harutunian*, 14 I. & N. Dec. at 589. Moreover, under that interpretation the "determination of whether an alien is likely to become a public charge . . . is a prediction based upon the totality of the alien's circumstances. . . . The fact that an alien has been on welfare does not, by itself, establish that he or she is likely to become a public charge." *Perez*, 15 I. & N. Dec. at 137. In contrast, the Rule categorically renders non-citizens public charges—i.e., not self-sufficient—if they are likely to access any quantity of the enumerated benefits for a limited number of months. *See* 84 Fed. Reg. at 41,349. We think it plain on the face of these different interpretations that the Rule falls outside the statutory bounds marked out by Congress. Our conclusion is bolstered by the fact that many of the benefits newly considered by the Rule have relatively generous eligibility criteria and are designed to provide supplemental assistance to those living well above the poverty level, as we discuss in greater detail below.[28] *See infra* Section II.C.2.

---

[28] DHS assumes that receipt of SNAP, Medicaid, or housing assistance shows that a non-citizen is per se unable to meet basic needs. *See, e.g.*, 84 Fed. Reg. at 41,349. Because DHS primarily invokes this assumption as a justification for its changed interpretation, we address (and reject) it in our analysis of the Plaintiffs' arbitrary and capricious challenge. We note it here because the fact that the Rule incorporates public benefits with broader programmatic aims than basic subsistence evidences the Rule's inconsistency with congressional intent.

To be sure, we do not find the intent of Congress evidenced by the ratification canon to be so precise as to support only one interpretation. On the contrary, the principles at issue are broad enough that they may support a variety of agency interpretations. But while an agency may "give authoritative meaning to the statute within the bounds of th[e] uncertainty" implicit in congressional intent, "the presence of some uncertainty" does not prevent us from "discern[ing] the outer limits of [a statutory] term[.]" *Cuomo v. Clearing House Ass'n, LLC*, 557 U.S. 519, 525 (2009). When the meaning of a statutory term is unclear, federal agencies specialized in the area receive deference from courts in assigning meaning to the uncertain language. But the deference is not unlimited. If Congress passed a statute leaving it unclear whether a term of the statute means A, B, or C, an appropriate federal agency will receive deference in concluding that the proper meaning is any one of A, B, or C. But it does not follow that, because the statutory term could mean either A, B, or C, the agency will receive deference in interpreting it to mean X or Y or Z, because such an interpretation would be inconsistent with the meaning of the statute.

Whatever gray area may exist at the margins, we need only decide today whether Congress "has unambiguously foreclosed the [specific] statutory interpretation" at issue. *Catawba Cty. v. EPA*, 571 F.3d 20, 35 (D.C. Cir. 2009). And we conclude that Congress's intended meaning of "public charge" unambiguously forecloses the Rule's expansive interpretation. We are not persuaded by DHS's efforts to argue otherwise.

DHS first attempts to argue that its definition of "public charge" is consistent with the historical caselaw

interpretations of the term. DHS points to two district court cases from the 1920s to claim that Congress ratified a definition of "public charge" that encompasses minimal and temporary public benefits usage. The first, *Guimond v. Howes*, 9 F.2d 412 (D. Me. 1925), held that members of an immigrant family were likely to become public charges when the husband was a bootlegger who had been incarcerated for two periods of sixty and ninety days, respectively. *Id.* at 413. Because the family had been "supported" by the town while he was imprisoned, and because the husband's occupation made it likely he would return to jail in the future, the district court found the family likely public charges. *Id.* at 413-14. The second case, *Ex parte Turner*, 10 F.2d 816, 817 (S.D. Cal. 1926), also found that members of a family were likely public charges because the husband was "predisposed to physical infirmity" and would "likely be incapacitated from performing any work or earning support for himself and [his] family" when his ailments flared up in the future. Because his wife and children had received charitable aid during his previous two-month hospitalization, the court anticipated they would do so again when he became sick in the future and found the family to be likely public charges. *Id.*

In both cases, the district court did look at previous, short-term receipt of public benefits in making the public charge determination. But neither case suggests that this receipt alone rendered the immigrant a public charge. Rather, the district courts found it significant that the families were likely to repeatedly become dependent on the public in the future, as the breadwinners of the families were unlikely to stop bootlegging or to overcome physical infirmity. *Guimond*, 9 F.2d at 414;

Turner, 10 F.2d at 817. These cases thus do not suggest that courts have historically considered the temporary receipt of benefits as sufficient to enter a public charge finding. To the contrary, both *Guimond* and *Turner* rest on the finding that the benefits usage was *not* merely temporary but was likely to regularly reoccur.[29]

The only other case on which DHS relies is *Matter of B-*, 3 I. & N. Dec. at 323. DHS argues that *Matter of B-* shows that a non-citizen is deportable as a public charge if she fails to reimburse the government for the benefits used, even if the non-citizen was not primarily dependent on the benefits. DHS reads far too much into the case. In *Matter of B-*, the non-citizen was institutionalized, the paradigmatic example of a public charge. *Id.* at 324. The only issue in the case was whether she could escape deportation by reimbursing the state for the services received. *Id.* at 326. The BIA held that a non-citizen is not deportable as a public charge unless the state has asked for reimbursement and the non-citizen or her relatives have failed to pay. *Id.* at 325. Rather than broadening the definition of the public charge ground of inadmissibility—or saying *anything* that casts doubt on other cases suggesting that a "public charge" must be persistently and primarily dependent on the government—*Matter of B-* held that even an immigrant who had been institutionalized at public expense because she *was* unable to care for

---

[29] In any event, even if these cases could be read to support DHS's proposition, they would not outweigh the prior or subsequent caselaw —particularly the agency decisions from the 1960s and 1970s setting out nationally binding public charge standards—endorsing a different interpretation of "public charge."

herself and *was* likely to require permanent hospitalization, *still* was not categorically a public charge if the state had not sought payment and been unable to collect.

Matter of B- thus offers a procedural escape hatch to those who need government services but have money to pay. While the decision alters the mechanics of deportation as a public charge, it hardly presents a new interpretation of the term "public charge" itself.[30] It seems particularly odd to cite this somewhat unusual case, with its generous treatment of a non-citizen who might well seem to fall within the established meaning of "public charge," in support of a sweeping *expansion* of that category.

DHS next argues that a series of policy statements enacted as part of PRWORA show that the Rule's interpretation is consistent with congressional intent regarding the meaning of "public charge." *See* 8 U.S.C. § 1601 (describing the "national policy with respect to welfare and immigration"). In the policy statements, which lay out the rationale for enacting restrictions on non-citizen eligibility for public benefits, Congress emphasized that "[s]elf-sufficiency has been a basic principle of United

---

[30] Moreover, in *Matter of Harutunian*, the BIA held that the *Matter of B-* test is limited to the public charge ground of deportation and should not be read into the public charge ground of inadmissibility. 14 I. & N. Dec. at 589-90. This distinction between the public charge grounds of inadmissibility and deportation was affirmed by INS in its 1999 Guidance, where it explained that while "the definition of public charge is the same for both admission/adjustment and deportation, the standards applied to public charge adjudications in each context are significantly different." 64 Fed. Reg. at 28,689.

States immigration law since this country's earliest immigration statutes" and affirmed that

> [i]t continues to be the immigration policy of the United States that (A) aliens within the Nation's borders not depend on public resources to meet their needs, but rather rely on their own capabilities and the resources of their families, their sponsors, and private organizations, and (B) the availability of public benefits not constitute an incentive for immigration to the United States.

Id. § 1601(1), (2). The policy statements further explain that PRWORA creates "new rules for eligibility and sponsorship agreements in order to assure that aliens be self-reliant in accordance with national immigration policy." *Id.* § 1601(5). The policy statements conclude by noting that any state adopting the federal benefits eligibility scheme laid out in PRWORA "shall be considered to have chosen the least restrictive means available for achieving the compelling governmental interest of assuring that aliens be self-reliant in accordance with national immigration policy." *Id.* § 1601(7).

DHS reads these policy statements to mean that "Congress expressly equated a lack of 'self-sufficiency' with the receipt of 'public benefits'" and that Congress intended "public charge" to mean "individuals who rely on taxpayer-funded benefits to meet their basic needs." Appellants' Br. at 30-31. We are thoroughly unpersuaded by this argument. PRWORA implemented Congress's goal of self-sufficiency by *restricting* non-citizen eligibility for benefits, including the establishment of the five-year waiting period for LPRs. PRWORA did not *eliminate* non-citizen eligibility for benefits nor does it suggest that such drastic action is

necessary. Still less does it indicate any congressional intention that non-citizens who receive the benefits for which Congress did *not* render them ineligible risk being considered "public charges." On the contrary, the policy statements specifically proclaim that the new eligibility restrictions sufficiently "*achiev[ed]* the compelling governmental interest of assuring that aliens be self-reliant in accordance with national immigration policy." *Id.* § 1601(7) (emphasis added). Clearly, Congress decided that the benefits it preserved for non-citizens after PRWORA did not interfere with its interest in assuring non-citizen self-sufficiency. Rather than supporting DHS's expanded interpretation, both the policy statements, taken as a whole, and the actual implementation of those policy goals in the substantive provisions of PRWORA, are in considerable tension with the Rule's new interpretation of "public charge," which penalizes non-citizens for the possibility that they will access the very benefits PRWORA preserved for them.[31]

DHS attempts to salvage this argument by pointing out that the 1999 Guidance made various cash benefits relevant to the public charge analysis, notwithstanding that PRWORA also preserved non-citizen eligibility for those benefits. DHS argues that this shows that Congress did not intend to preclude the agency from considering the receipt of PRWORA-approved benefits in the

---

[31] We note that in its decision on DHS's motion to stay the preliminary injunctions, the Ninth Circuit accepted DHS's argument on this point. *San Francisco*, 944 F.3d at 799. The Ninth Circuit based its analysis on the first two policy statements but did not consider the impact of the subsequent statements in which Congress explained that the PRWORA eligibility scheme satisfied its notions of self-sufficiency. *Id.*

public charge determination. DHS is correct that the 1999 Guidance makes "receipt of public cash assistance for income maintenance" one of two ways "primary dependence" on the government could be shown. 64 Fed. Reg. at 28,689. But the Guidance was also clear that receipt of such benefits alone was insufficient to establish dependency, and that any such receipt needed to be weighed in the context of the non-citizen's overall circumstances. The Guidance explicitly noted that "an alien receiving a small amount of cash for income maintenance purposes could be determined not likely to become a public charge due to other positive factors under the totality of the circumstances test." 64 Fed. Reg. at 28,690. While the 1999 Guidance permissibly looked at receipt of cash benefits as one *factor* indicating dependence on the government, the Rule elevates receipt of any quantity of a broad list of benefits to be the very *definition* of "public charge." *See* 84 Fed. Reg. at 41,295.

The question under consideration is whether the Rule's understanding of the term "public charge" goes beyond the bounds of the settled meaning of the term. The Plaintiffs do not argue, and we do not hold, that the receipt of various kinds of public benefits is irrelevant to the determination of whether a non-citizen is likely to become a public charge. But *defining* public charge to mean the receipt, even for a limited period, of any of a wide range of public benefits—particularly, as we discuss below, ones that are designed to supplement an individual's or family's efforts to support themselves, rather than to deal with their likely permanent inability to do so—is inconsistent with the traditional understanding of what it means to be a "public charge," which was well-established by 1996.

Finally, DHS points to three other statutory provisions to support its argument that the Rule is consistent with the intent of Congress. First, DHS points to 8 U.S.C. § 1182(s), which exempts from the public charge analysis "any benefits" received by a non-citizen who qualified for such benefits as a survivor of domestic violence. *See* 8 U.S.C. § 1641(c). DHS argues that because § 1182(s) excuses *any* benefits received, Congress understood that past receipt of even non-cash benefits would otherwise generally be relevant to a public charge determination. But 8 U.S.C. § 1182(s) was added in 2000, shortly after INS issued its 1999 Guidance in which it clarified that benefits like TANF and SSI would be relevant for the public charge determination. *See* Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, § 1505(f), 114 Stat. 1464, 1526. Without § 1182(s), survivors of domestic violence could thus have had their receipt of cash benefits used against them. By far the most natural reading of § 1182(s) is that Congress was preventing domestic violence victims from being penalized under the then-existing framework. In any event, the statute concerns what is *relevant* to the determination, and gives no indication that Congress somehow understood that the receipt of the benefits covered by the 1999 Guidance, let alone a broader set of benefits, could categorically render noncitizens who were not domestic violence survivors "public charges." Once again, what is impermissible in DHS's interpretation is not that it renders receipt of supplemental non-cash benefits relevant to a non-citizen's classification as a public charge, but rather that it makes the receipt of such benefits determinative.

Second, DHS argues that the provisions requiring affidavits of support for family-based immigrants and allowing the government to seek reimbursement from the sponsor for any means-tested public benefit used by the non-citizen support its interpretation. DHS contends that these provisions show that Congress considered any non-citizen who might receive an unreimbursed public benefit in the future a likely public charge. *See* 8 U.S.C. §§ 1182(a)(4)(c)(ii), 1183a(b)(1)(A). We are not convinced that the affidavit reimbursement mechanism shows congressional intent to broaden the meaning of "public charge." For one thing, not all immigrants have to provide affidavits of support; the requirement is limited to family-based immigrants and we see no reason it should be taken to alter the underlying terms that apply to all non-citizens.[32] We also note that the statute includes a corollary, allowing the non-citizen herself to take the sponsor to court if the sponsor fails to support the non-citizen as promised. *See id.* § 1183a(a)(1)(B). The reimbursement provision thus serves primarily as a mechanism to get sponsors to take their commitments seriously by making them legally enforceable, a long-standing point of concern. *See* S. REP. NO. 81-1515, at 347 (Senate Judiciary Committee Report from 1950 critiquing the affidavit of support as an unenforceable document that "at most, appears to be merely a moral obligation upon the affiant").

Third and last, DHS looks to the 1986 Immigration Reform and Control Act ("IRCA") to support its claim

---

[32] The affidavit of support requirement is also applied to a small subset of employment-based immigrants, where the non-citizen's prospective employer is a relative or an entity owned in large part by a relative. 8 U.S.C. § 1182(a)(4)(D).

that the Rule is consistent with congressional intent. IRCA established an ad hoc legalization program for undocumented immigrants. *See* 8 U.S.C. § 1255a. To qualify for legalization, applicants needed to prove that most of the grounds of inadmissibility did not apply to them, including the public charge ground. *See id.* § 1255a(a)(4), (d)(2). However, IRCA established a "special rule" with respect to the public charge inquiry, under which a non-citizen would not be deemed a likely public charge "if the alien demonstrates a history of employment in the United States evidencing self-support without receipt of public cash assistance." *Id.* § 1255a(d)(2)(B)(iii). DHS argues that because the IRCA special rule specifically incorporates only cash assistance, the generic ground in § 1182(a)(4) must necessarily have a broader reach.

The implementing regulations of IRCA, however, suggest that, rather than refining the benefits relevant to the public charge inquiry, the special rule allowed a non-citizen who may otherwise be deemed a likely public charge because of his limited financial resources an additional manner of showing self-sufficiency. The relevant regulations provide that a non-citizen "who has a consistent employment history which shows the ability to support himself or herself even though his or her income may be below the poverty level, may be admissible." 8 C.F.R. § 245a.2(k)(4). Accordingly, even if an applicant was "determined likely to become a public charge[,]" adjudicators were to find a noncitizen inadmissible on this ground only if he was "unable to overcome this determination after application of the special rule" and consideration of his employment history. *Id.* § 245a.2(d)(4). The BIA applied the IRCA special rule

in *Matter of A-*, reversing a public charge finding that put too much weight on the applicant's "financial circumstances" in the face of "the more important factors; namely, that the applicant has now joined the work force, . . . is young, and . . . has no physical or mental defects which might affect her earning capacity." 19 I. & N. Dec. at 870. In other words, the BIA read the IRCA special rule as fully consistent with the long-standing view that the ultimate issue in defining a "public charge" is the non-citizen's anticipated ability, over a protracted period, to be able to work to support himself or herself. IRCA and its implementing regulations thus show that Congress continued to emphasize capacity for work as a core element of the public charge ground.

All three of these statutory arguments share a common flaw. DHS attempts to justify a sweeping redefinition of "public charge" by pointing to tangential details within the extensive patchwork that makes up American immigration law—none of which express any intention by Congress to revise or depart from the settled meaning of the term "public charge." DHS's argument that these statutory provisions are "consistent" with its interpretation is of no relevance. The question is whether, by passing these statutes, Congress undertook to change the long-established meaning of public charge. While the statutes to which DHS points may be "consistent" with the meaning DHS has assigned to public charge, they are no less consistent with the long established meaning of public charge that DHS seeks to overturn. These enactments do nothing to demonstrate that Congress changed the meaning of public charge. The ar-

guments thus "run[ ] afoul of the usual rule that Congress does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not, one might say, hide elephants in mouseholes." *Epic Sys.*, 138 S. Ct. at 1626-27 (internal quotation marks omitted).

We conclude that the Plaintiffs have demonstrated a likelihood of success on the merits of their argument that the Rule is contrary to the INA. In reenacting the public charge ground in 1996, Congress endorsed the settled administrative and judicial interpretation of that ground as requiring a holistic examination of a noncitizen's self-sufficiency focused on ability to work and eschewing any idea that simply receiving welfare benefits made one a public charge. The Rule makes receipt of a broad range of public benefits on even a short-term basis the very definition of "public charge." That exceedingly broad definition is not in accordance with the law. *See* 5 U.S.C. § 706(2)(A).

C. The Rule is Arbitrary and Capricious.

We next consider whether the Plaintiffs are likely to succeed on the merits of their argument that the Rule is arbitrary and capricious. *See id.* "The scope of review under the 'arbitrary and capricious' standard is narrow and a court is not to substitute its judgment for that of the agency." *State Farm*, 463 U.S. at 43. But "[t]his is not to suggest that judicial review of agency action is merely perfunctory. To the contrary, within the prescribed narrow sphere, judicial inquiry must be searching and careful." *Islander E. Pipeline Co., LLC v. McCarthy*, 525 F.3d 141, 151 (2d Cir. 2008) (internal quotation marks omitted).

"When an administrative agency sets policy, it must provide a reasoned explanation for its action. This is not a high bar, but it is an unwavering one." *Judulang v. Holder*, 565 U.S. 42, 45 (2011). The Plaintiffs argue that the Rule is arbitrary and capricious because DHS has not provided a reasoned explanation for its changed definition of "public charge" or the Rule's expanded list of relevant benefits. DHS contends that it has adequately explained its action, stating that it adopted its new public charge definition to "improve upon" the 1999 Guidance by "aligning public charge policy with the self-sufficiency principles set forth in [PRWORA]." 83 Fed. Reg. at 51,123; *see also* 84 Fed. Reg. at 41,319-20. DHS further explains that it expanded the list of relevant benefits because the 1999 Guidance relied on an "artificial distinction between cash and non-cash benefits" that is not warranted under DHS's new definition. 83 Fed. Reg. at 51,123; *see* 64 Fed. Reg. at 28,689. For the reasons laid out below, we agree with the district court that the Plaintiffs are likely to succeed on the merits of their claim that the Rule is arbitrary and capricious because neither rationale is a "satisfactory explanation" for DHS's actions.[33] *State Farm*, 463 U.S. at 43.

1. Explanation for Changed Definition

DHS justifies its revised definition of "public charge" —one who uses a relevant public benefit for more than

---

[33] Because we find the Plaintiffs likely to succeed on this basis, we do not address the Plaintiffs' additional contentions that we could find the Rule arbitrary and capricious based on its aggregation principle, selection of factors indicative of future benefits use, or cost-benefit analysis.

twelve months in the aggregate—as a "superior interpretation of the statute to the 1999 Interim Field Guidance" because it "furthers congressional intent behind both the public charge inadmissibility statute and PRWORA in ensuring that aliens . . . be self-sufficient and not reliant on public resources." 84 Fed. Reg. at 41,319. "In fact, DHS believes it would be contrary to congressional intent to promulgate regulations that . . . ignore the[] receipt" of the benefits listed in the Rule "as this would be contrary to Congress's intent in ensuring that aliens within the United States are self-sufficient." *Id.* at 41,318 (citing the PRWORA policy statements at 8 U.S.C. § 1601(2)(A)); *see, e.g.*, *id.* at 41,295, 41,305, 41,308. In short, DHS justifies its changed interpretation as necessary to implement Congress's view that "the receipt of any public benefits, including noncash benefits, [is] indicative of a lack of self-sufficiency." Appellants' Br. at 43.

This explanation fails for the same reasons as DHS's related argument that the PRWORA policy statements show that the Rule is consistent with Congress's intended meaning of "public charge." *See supra* Section II.B.6. As we discussed above, the PRWORA policy statements do show a congressional interest in ensuring non-citizen self-sufficiency. *See* 8 U.S.C. § 1601(1), (2). But the statements also show that, contrary to DHS's belief, Congress's vision of self-sufficiency does *not* anticipate abstention from all benefits use. *See Cook Cty.*, 962 F.3d at 232 (rejecting DHS's "absolutist sense of self-sufficiency that no person in a modern society could satisfy"). Rather, Congress realized its notion of self-sufficiency with a new benefits eligibility scheme that greatly reduced—but did not eliminate—non-

citizen eligibility for public benefits. *See* 8 U.S.C. § 1601(7) (describing the PRWORA eligibility scheme as "achieving the compelling governmental interest of assuring that aliens be self-reliant in accordance with national immigration policy"). "The Supreme Court and [other] court[s] have consistently reminded agencies that they are bound, not only by the ultimate purposes Congress has selected, but by the means it has deemed appropriate, and prescribed, for the pursuit of those purposes." *Gresham v. Azar*, 950 F.3d 93, 101 (D.C. Cir. 2020) (internal quotation marks omitted).

Had Congress thought that any benefits use was incompatible with self-sufficiency, it could have said so, either by making non-citizens ineligible for all such benefits or by making those who did receive them inadmissible. But it did not. We are thus left with an agency justification that is unmoored from the nuanced views of Congress. *See Yale-New Haven Hosp. v. Leavitt*, 470 F.3d 71, 85-86 (2d Cir. 2006) (finding agency failed to provide reasoned explanation as to "how adoption of a *per se* coverage standard comports with congressional purposes in enacting the Medicare Act," which prioritized individualized care determinations). As the Supreme Court has explained,

> no legislation pursues its purposes at all costs. Deciding what competing values will or will not be sacrificed to the achievement of a particular objective is the very essence of legislative choice—and it frustrates rather than effectuates legislative intent simplistically to assume that whatever furthers the statute's primary objective must be the law.

Rodriguez v. United States, 480 U.S. 522, 525-26 (1987) (emphasis omitted).

DHS's misconception of the PRWORA policy statements and Congress's intended notion of self-sufficiency is its principal justification for its revised definition; it identifies no other "deficienc[y]" in the 1999 Guidance, apart from its limited list of relevant benefits, discussed below. *See* 84 Fed. Reg. at 41,319; *see also id.* at 41,349 (describing the Guidance's interpretation as "suboptimal when considered in relation to the goals of the INA and PRWORA").

To be sure, we do not suggest that DHS must, as a general matter, show that the Guidance was deficient or that the Rule is necessarily a better interpretation than the prior policy reflected in the Guidance to avoid being found arbitrary and capricious. *See FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) (clarifying that agencies are not required to show "that the reasons for the new policy are *better* than the reasons for the old one"). Nor do we suggest that, when an agency offers a statutory interpretation as part of its reason for adopting a policy, and a reviewing court later rejects the agency's statutory interpretation, that the policy is per se arbitrary and capricious. But where, as here, DHS anchors its decision to change its interpretation in the perceived shortcomings of the prior interpretation, and then fails to identify any actual defect, it has not provided a "reasoned explanation" for its actions—particularly when it bases its changed position on its reading of a statute, and it is the new Rule, rather than the old Guidance, that strays from congressional intent. *Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2125 (2016).

2. Explanation for Expanded List of Benefits

This brings us to DHS's rationale for expanding the list of benefits relevant to the public charge determination. DHS explains that it included a broader group of benefits in the Rule because the distinction made in the 1999 Guidance between cash and non-cash benefits was no longer appropriate in light of the more restrictive notions of self-sufficiency DHS enacted with the changed definition. *See* 84 Fed. Reg. at 41,356; *see also id.* at 41,349, 41,351, 41,375; 83 Fed. Reg. at 51,123. Though this explanation is in some ways subsidiary to DHS's explanation for the changed definition, DHS argues this as an additional justification and we thus address its additional shortcomings. *See* Appellants' Br. at 43.

In the 1999 Guidance, INS explained that "[a]fter extensive consultation with benefit-granting agencies" it "determined that the best evidence of whether an alien is primarily dependent on the government for subsistence is . . . the receipt of public cash assistance for income maintenance." 64 Fed. Reg. at 28,692; *see* 83 Fed. Reg. 51,133. The Guidance consequently excluded non-cash benefits (e.g., SNAP, housing assistance, and Medicaid) from consideration because those benefits were "increasingly being made available to families with incomes far above the poverty level, reflecting broad public policy decisions about improving general public health and nutrition." 64 Fed. Reg. at 28,692. In other words, "participation in [those] programs [was] not evidence of poverty or dependence" because they are "by their nature supplemental and do not, alone or in combination, provide sufficient resources to support an individual or family." *Id.*; *see id.* at 28,678.

In justifying its decision to include these non-cash benefits in the Rule, DHS explains that they are relevant to its revamped public charge definition because they "bear directly on self-sufficiency." 84 Fed. Reg. at 41,366. DHS reasons that because "[f]ood, shelter, and necessary medical treatment are basic necessities of life[, a] person who needs the public's assistance to provide for these basic necessities is not self-sufficient." 83 Fed. Reg. at 51,159. Thus, the Rule includes these benefits as relevant to the public charge determination to ensure that all benefits bearing on self-sufficiency are considered. *Id.*; *see* 84 Fed. Reg. at 41,356.

The fundamental flaw of this justification is that while DHS repeatedly contends that the non-citizens using these programs would be unable to provide for their basic necessities without governmental support, it does not provide *any* factual basis for this belief. *See, e.g.*, 83 Fed. Reg. at 51,159; 84 Fed. Reg. at 41,354, 41,366, 41,375, 41,381, 41,389. While the 1999 Guidance was developed in consultation with the benefits-granting agencies, DHS does not claim that their expertise again informed its decision that people who use non-cash benefits would be otherwise unable to meet their basic needs.[34] Of course, DHS is free to change its interpretation and we do not suggest it is under any obligation to consult with its sister agencies in so doing. But what DHS may not do is rest its changed interpretation on unsupported speculation, particularly when its categorical assumptions run counter to the realities of the non-cash benefits at issue. The goals and eligibility criteria

[34] In response to a comment directly asking whether any such consultation took place, DHS invoked the deliberative process privilege. 84 Fed. Reg. at 41,460.

of these benefits programs belie DHS's assumption and show that these programs are designed to provide supplemental support, rather than subsistence, to a broad swath of the population—as INS recognized in 1999.

Take, for example, SNAP—the *Supplemental* Nutrition Assistance Program—which was born of a desire to "raise levels of nutrition among low-income households." Food Stamp Act of 1964, Pub. L. No. 88-525, § 2, 78 Stat. 703, 703. SNAP benefits are intended for all those whose "financial resources . . . are determined to be a substantial limiting factor in permitting them to obtain a *more nutritious* diet." Food and Agriculture Act of 1977, Pub. L. No. 95-113, § 1301, 91 Stat. 913, 962 (emphasis added); *see* 7 C.F.R. § 273.9(a). Because SNAP is not intended only for those who might otherwise face starvation, the program is open to households with incomes exceeding the federal poverty guideline, 7 C.F.R. § 273.9(a)(1), and its supplemental nature is underscored by the fact that the average SNAP recipient receives only $127 a month in benefits, *see* House of Representatives Amicus Br. at 19 (citing 2018 statistics). Large numbers of SNAP recipients, far from being incapable of productive employment, work for some of America's largest corporations.[35]

---

[35] *See* Public Justice Center Amicus Br. at 12 (citing Senate report concluding that SNAP beneficiaries are "'far more' likely to be employed than to rely on cash assistance" (quoting S. Rep. No. 11-220, at 8 (2007)); *see also* Dennis Green, *Data From States Shows Thousands of Amazon Employees Are on Food Stamps*, BUSINESS INSIDER (Aug. 25, 2018) (discussing SNAP usage by Amazon, Walmart, and McDonald's employees).

The housing benefits included in the Rule have a similar aim, intended to ensure "a decent home and a suitable living environment for all persons, but principally those of low *and moderate* income." Housing and Community Development Act of 1974, Pub. L. No. 93-383, § 101(c)(3), 88 Stat. 633, 634 (emphasis added). Indeed, while the majority of those using housing programs are low-income families, benefits remain available to those earning up to 80% of the area median income —$85,350 for a family of four in New York City in 2019. M.T.R. J. App. 164; *see* 42 U.S.C. § 1437a(b)(2)(A). It makes little sense to treat the mere receipt of housing benefits as proof of inability to survive by one's own efforts when the program is intended for, among others, people who can and do earn moderate incomes. In contrast, TANF—one of the three benefits listed in the 1999 Guidance—is generally only available to families with incomes well below the federal poverty guideline.[36]

While the Rule declares non-citizens dependent for using Medicaid instead of private health insurance, it cannot be ignored that in this country, access to private healthcare depends for many people on whether an employer offers coverage. *See* National Housing Law Project Amicus Br. at 22 (noting that roughly 40% of

---

[36] The TANF earnings thresholds for new applicants vary by state and range from approximately 16% of FPG in Alabama to 91% of FPG in Nevada. *See* CONG. RESEARCH SERV., TANF: ELIGIBILITY AND BENEFIT AMOUNTS IN STATE TANF CASH ASSISTANCE PROGRAMS at 3 (2014). In the majority of states, however, TANF was only available to those earning less than 50% of FPG, which means an annual income of less than $13,100 for a family of four in 2020. *Id.*; *see* Annual Update of the HHS Poverty Guidelines, 85 Fed. Reg. 3,060, 30,060 (Jan. 17, 2020).

employed Medicaid beneficiaries work for small businesses, many of which are not legally required to provide health insurance). Considering that access to insurance is often determined by factors beyond an individual's control, we are dubious of DHS's unsupported claim that using public health insurance shows a lack of self-sufficiency.[37] To the contrary, studies show that more than 60% of Medicaid beneficiaries who are not children, older adults, or people with disabilities are *employed*. *See* Public Justice Center Amicus Br. at 20 (citing RACHEL GARFIELD ET AL., KAISER FAMILY FOUND., UNDERSTANDING THE INTERSECTION OF MEDICAID AND WORK: WHAT DOES THE DATA SAY? 2 (2019)). To be sure, it is easier for individuals to purchase private coverage in the wake of the Affordable Care Act ("ACA"), but the Rule implies that even using ACA tax credits to purchase health insurance evidences an inability to meet one's needs without government support. 84 Fed. Reg. at 41,299.

---

[37] DHS also suggests that Medicaid is included because "the total Federal expenditure for the Medicaid program overall is by far larger than any other program for low-income people," 84 Fed. Reg. at 41,379, which DHS takes as evidence that it is "a more significant form of public support" for individuals than other benefits, Appellants' Br. at 43; *see* 83 Fed. Reg. at 51,160. We are not persuaded that the difference in dollars expended is an appropriate indicator of a non-citizen's level of self-sufficiency; rather, it seems plain to us that the difference is due to the high cost of providing healthcare in the United States. *Cf. Public Citizen, Inc. v. Mineta*, 340 F.3d 39, 58 (2d Cir. 2003) ("The notion that 'cheapest is best' is contrary to *State Farm*."). The size of the government expenditure on Medicaid may be relevant to a policy debate about the costs and benefits of the program, but it has little bearing on whether Medicaid recipients should be considered "public charges."

Of course, SNAP and housing benefits may very well be all that stands between some non-citizens and hunger or homelessness. Some families *may* actually fail to meet these basic needs without government support. But these programs sweep more broadly than just families on the margin, encompassing those who would no doubt keep their families fed and housed without government support but are able to do so in a healthier and safer way because they receive supplemental assistance. *See Cook Cty.*, 962 F.3d at 232 (noting that the benefits covered by the Rule "are largely supplemental" and that "[m]any recipients could get by without them" (emphasis omitted)). Accepting help that is offered to elevate one to a higher standard of living, *help that was created by Congress for that precise purpose*, does not mean a person is not self-sufficient—particularly when such programs are available not just to persons living in abject poverty but to a broad swath of low- and moderate-income Americans, including those who are productively employed. DHS goes too far in assuming that all those who participate in non-cash benefits programs would be otherwise unable to meet their needs and that they can thus be categorically considered "public charges." Its unsupported and conclusory claim that receipt of such benefits indicates an inability to support oneself does not satisfy DHS's obligation to explain its actions. *See Gen. Chem. Corp. v. United States*, 817 F.2d 844, 855 (D.C. Cir. 1987) (rejecting agency's "conclusory" explanation and noting that "[s]uch intuitional forms of decisionmaking . . . fall somewhere on the distant side of arbitrary" (internal quotation marks omitted)); *see also State Farm*, 463 U.S. at 51.

"Agencies are free to change their existing policies as long as they provide a reasoned explanation for the change. When an agency changes its existing position, it need not always provide a more detailed justification than what would suffice for a new policy created on a blank slate. But the agency must at least . . . show that there are good reasons for the new policy." *Encino Motorcars,* 136 S. Ct. at 2125-26 (internal quotation marks and citations omitted). DHS has failed to do so here. Accordingly, the Plaintiffs have shown they are likely to succeed on the merits of their claim that DHS's failure to provide a reasoned explanation renders the Rule arbitrary and capricious.

III. Irreparable Harm to the Plaintiffs

The second preliminary injunction factor under *Winter* requires the Plaintiffs to show they are likely to suffer irreparable harm in the absence of injunctive relief. 555 U.S. at 20. "Irreparable harm is injury that is neither remote nor speculative, but actual and imminent and that cannot be remedied by an award of monetary damages." *New York ex rel. Schneiderman v. Actavis PLC*, 787 F.3d 638, 660 (2d Cir. 2015) (internal quotation marks omitted). We have already discussed the Plaintiffs' claimed injuries in evaluating their standing to challenge the Rule and both the States and Organizations point to largely similar harms to establish this injunctive factor. *See League of Women Voters of the United States v. Newby*, 838 F.3d 1, 9 (D.C. Cir. 2016) (looking to same injuries to establish standing and irreparable harm).

The States contend that the implementation of the Rule will result in reduced Medicaid revenue and federal funding and a greater number of uninsured patients

seeking care, putting public hospitals that are already insufficiently funded at risk of closure. *See, e.g.*, N.Y. J. App. 512-13. Additionally, as the administrators of the benefits programs at issue, the States allege that they will be required to undertake costly revisions to their eligibility systems to ensure that non-citizens are not automatically made eligible for or enrolled in benefits they may no longer wish to receive after the Rule's implementation. *See, e.g.*, N.Y. J. App. 236, 381-82. The Organizations point to the economic harms of expending funds to mitigate the impact of the Rule on the communities they serve. *See, e.g.*, M.T.R. J. App. 466-67. As noted, DHS predicted that the Rule would have economic harms, and the Rule has already had a chilling effect on non-citizen use of public benefits. See *supra* Section I.A. These injuries claimed by the States and the Organizations are actual and imminent. Moreover, because money damages are prohibited in APA actions, they are irreparable. *See* 5 U.S.C. § 702; *Ward v. Brown*, 22 F.3d 516, 520 (2d Cir. 1994). We thus conclude that the Plaintiffs have established the second factor of the preliminary injunction standard.[38]

---

[38] We note that our precedents suggest that the Plaintiffs may be able to show that a preliminary injunction is warranted on the strength of these first two factors alone. *See Trump v. Deutsche Bank AG*, 943 F.3d 627, 636, 640-41 (2d Cir. 2019), *rev'd on other grounds,* – U.S. – 2020 WL 3848061 (July 9, 2020). Notwithstanding this possibility, we consider the balance of equities and the public interest, as discussed in *Winter*.

IV. Balance of Equities and the Public Interest

The final inquiry in our preliminary injunction analysis requires us to consider whether the balance of equities tips in favor of granting the injunction and whether that injunction is in the public interest, the third and fourth *Winter* factors. *Winter*, 555 U.S. at 20; *Azar*, 911 F.3d at 575 (considering the final two factors together where the government is a party). DHS argues that it would be harmed by a preliminary injunction because an injunction would force the agency to retain its prior policy, which grants status to some noncitizens that DHS believes should be denied under a proper interpretation of the public charge ground. Because there is no apparent means by which DHS could revisit adjustment determinations made while the Rule is enjoined, this harm is irreparable.

While DHS has a valid interest in applying its preferred immigration policy, we think the balance of equities clearly tips in favor of the Plaintiffs. For one, DHS's claimed harm is, to some extent, inevitable in the preliminary injunction context. Any time the government is subject to a preliminary injunction, it necessarily suffers the injury of being prevented from enacting its preferred policy. Without additional considerations at play—for example, national security implications, *Winter*, 555 U.S. at 26, or the need to correct a previous policy that had been deemed unlawful—we do not think DHS's inability to implement a standard that is as strict as it would like outweighs the wide-ranging economic harms that await the States and Organizations upon the implementation of the Rule.

The public interest also favors a preliminary injunction. DHS itself acknowledges that the Rule will likely

result in "[w]orse health outcomes, including increased prevalence of obesity and malnutrition, . . . [i]ncreased prevalence of communicable diseases, . . . [i]ncreased rates of poverty and housing instability[,] and [r]educed productivity and educational attainment." 83 Fed. Reg. at 51,270. To say the least, the public interest does not favor the immediate implementation of the Rule.

Thus, the Plaintiffs have met their burden of showing that a preliminary injunction is warranted in these cases. Accordingly, we affirm the district court orders granting such relief in these cases.

V. Scope of Injunction

While we hold that the district court properly granted the Plaintiffs' preliminary injunction motions, there remains one final issue for our consideration: whether the district court abused its discretion by entering a nationwide injunction, rather than a geographically limited measure. DHS argues that a national injunction is insufficiently tailored to the Plaintiffs' particular injuries and allows the decision of a single district court to override contrary decisions of other courts, an outcome not warranted by the need for uniform application of immigration law. The Plaintiffs respond that the scope of relief is determined by the extent of the violation and that the APA authorizes the broad relief issued here.

The issuance of nationwide injunctions has been the subject of increasing scrutiny in recent years, a topic that has already touched these cases on their brief foray to the Supreme Court. *See New York*, 140 S. Ct. at 599-601 (Gorsuch, J., concurring in the grant of stay); *see also Trump v. Hawaii*, 138 S. Ct. 2392, 2424-29 (2018)

(Thomas, J., concurring). The difficult questions implicated in this debate are evidenced by the fact that both DHS and the Plaintiffs marshal persuasive points to support their arguments. As the Plaintiffs point out, courts have long held that when an agency action is found unlawful under the APA, "the ordinary result is that the rules are vacated—not that their application to the individual petitioners is proscribed." *Nat'l Mining Ass'n v. U.S. Army Corps of Eng'rs*, 145 F.3d 1399, 1409 (D.C. Cir. 1998) (internal quotation marks omitted). This aligns with the general principle that "the scope of injunctive relief is dictated by the extent of the violation established, not by the geographical extent of the plaintiff class." *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979). Moreover, courts have recognized that nationwide injunctions may be particularly appropriate in the immigration context, given the interest in a uniform immigration policy. *See Texas v. United States*, 809 F.3d 134, 187-88 (5th Cir. 2015); *see also Hawaii v. Trump*, 878 F.3d 662, 701 (9th Cir. 2017), *rev'd on other grounds,* 138 S. Ct. 2392 (2018).

On the other hand, we share DHS's concern that a district judge issuing a nationwide injunction may in effect override contrary decisions from co-equal and appellate courts, imposing its view of the law within the geographic jurisdiction of courts that have reached contrary conclusions. That result may well be more unseemly than the application of inconsistent interpretations of immigration law across the circuits—a situation that is hardly unusual, and may well persist without injustice or intolerable disruption. *See, e.g.*, *Orellana-*

Monson v. Holder, 685 F.3d 511, 520 (5th Cir. 2012) (discussing circuit variance in a substantive asylum standard).

We have no doubt that the law, as it stands today, permits district courts to enter nationwide injunctions, and agree that such injunctions may be an appropriate remedy in certain circumstances—for example, where only a single case challenges the action or where multiple courts have spoken unanimously on the issue. The issuance of unqualified nationwide injunctions is a less desirable practice where, as here, numerous challenges to the same agency action are being litigated simultaneously in district and circuit courts across the country. It is not clear to us that, where contrary views could be or have been taken by courts of parallel or superior authority, entitled to determine the law within their own geographical jurisdictions, the court that imposes the most sweeping injunction should control the nationwide legal landscape.

When confronted with such a volatile litigation landscape, we encourage district courts to consider crafting preliminary injunctions that anticipate the possibility of conflict with other courts and provide for such a contingency. Such approaches could take the form of limiting language providing that the injunction would not supersede contrary rulings of other courts, an invitation to the parties to return and request modification as the situation changes, or the limitation of the injunction to the situation of particular plaintiffs or to similarly situated persons within the geographic jurisdiction of the court.

We need not decide whether the able district judge in these cases abused his discretion in entering nationwide injunctions. Instead, we exercise our own discretion,

in light of the divergent decisions that have emerged in our sister circuits since the district court entered its orders, to modify the injunction, limiting it to the states of New York, Connecticut, and Vermont. *Cf. Smith v. Woosley*, 399 F.3d 428, 436 (2d Cir. 2005). As modified, the injunction covers the State plaintiffs and the vast majority of the Organizations' operations. We see no need for a broader injunction at this point, particularly in light of the somewhat unusual posture of this case, namely that the preliminary injunction has already been stayed by the Supreme Court, not only through our disposition of the case, but also through the disposition of DHS's petition for a writ of certiorari, should DHS seek review of this decision. *See New York*, 140 S. Ct. at 599.

CONCLUSION

For the reasons stated above, we agree with the district court that a preliminary injunction is warranted in these cases but modify the scope of the injunctions to cover only the states of New York, Connecticut, and Vermont. The orders of the district court are therefore **AFFIRMED AS MODIFIED**.

Appendix A

Amici Curiae in *New York v. DHS* and *Make the Road v. Cuccinelli*

Maureen P. Alger, Priyamvada Arora, Cooley LLP, Palo Alto, CA, *for Amici Curiae* American Academy of Pediatrics, American Medical Association, American College of Physicians, American College of Obstetricians and Gynecologists, New York State American Academy of Pediatrics, American Academy of Pediatrics —Vermont Chapter, and Medical Society of the State of New York, *in support of Plaintiffs-Appellees*.

Emily Tomoko Kuwahara, Crowell & Moring LLP, Los Angeles, CA, Austin Sutta, Crowell & Moring LLP, San Francisco, CA, *for Amici Curiae* Asian Americans Advancing Justice| AAJC, Asian American Legal Defense and Education Fund, National Women's Law Center, and 40 Other Organizations, *in support of Plaintiffs-Appellees.*

Hillary Schneller, Center for Reproductive Rights, New York, NY, *for Amicus Curiae* Center for Reproductive Rights, *in support of Plaintiffs-Appellees.*

Elizabeth B. Wydra, Brianne J. Gorod, Dayna J. Zolle, Constitutional Accountability Center, Washington, DC, *for Amici Curiae* Immigration History Scholars, *in support of Plaintiffs-Appellees*.

Johanna Dennehy, Steptoe & Johnson LLP, Washington, DC, *for Amici Curiae* Immigration Law Professors, *in support of Plaintiffs-Appellees*.

Richard L. Revesz, Jack Lienke, Max Sarinsky, Institute for Policy Integrity at New York University School of Law, New York, NY, *for Amicus Curiae* Institute for

Policy Integrity at New York University School of Law, *in support of Plaintiffs-Appellees*.

Russell L. Hirschhorn, Proskauer Rose LLP, New York, NY, *for Amici Curiae* Justice in Aging, American Society on Aging, Caring Across Generations, Jewish Family Service of Los Angeles, Jewish Federations of North America, National Asian Pacific Center on Aging, National Council on Aging, National Hispanic Council on Aging, MAZON, PHI, and Center for Medicare Advocacy, *in support of Plaintiffs-Appellees*.

Nilda Isidro, Goodwin Procter LLP, New York, NY, *for Amici Curiae* Members of Congressional Black Caucus, Congressional Hispanic Caucus, and Congressional Asian Pacific American Caucus, *in support of Plaintiffs-Appellees*.

Stuart Rossman, National Consumer Law Center, Boston, MA, *for Amici Curiae* National Consumer Law Center, Legal Aid Justice Center, Public Citizen, Inc., Consumer Action, Equal Justice Society, Impact Fund, Secure Justice, Media Alliance, Americans for Financial Reform Education Fund, and New Economy Project, *in support of Plaintiffs-Appellees*.

Paul J. Lawrence, Alanna E. Peterson, Pacifica Law Group LLP, Seattle, WA, *for Amici Curiae* Nonprofit Anti-Domestic Violence and Sexual Assault Organizations, *in support of Plaintiffs-Appellees*.

Debra Gardner, Public Justice Center, Baltimore, MD, *for Amicus Curiae* Public Justice Center, *in support of Plaintiffs-Appellees*.

Paul W. Hughes, Michael B. Kimberly, Matthew A. Waring, McDermott Will & Emery LLP, Washington,

DC, *for Amici Curiae* 105 Businesses and Organizations, *in support of Plaintiffs-Appellees.*

Amici Curiae in *New York v. DHS*

Sarah M. Ray, Kyle A. Virgien, Diana A. Aguilar, Charles F. Sprague, Latham & Watkins LLP, San Francisco, CA, Tyce R. Walters, Latham & Watkins LLP, Washington, DC, *for Amici Curiae* American Civil Liberties Union, Center for Public Representation, American Association of People with Disabilities, Association of University Centers on Disabilities, Autistic Self Advocacy Network, Civil Rights Education and Enforcement Center, Coelho Center for Disability Law, Policy, and Innovation, Disability Rights Advocates, Disability Rights Education and Defense Fund, Disability Rights New York, Judge David L. Bazelon Center for Mental Health Law, Little Lobbyists, Mental Health America, National Association of Councils on Developmental Disabilities, National Council on Independent Living, National Disability Rights Network, National Federation of the Blind, New York Civil Liberties Union, The Arc of the United States, and United Spinal Association, *in support of Plaintiffs-Appellees*.

Lisa C. Wood, Kristyn DeFilipp, Andrew London, Emily Nash, E. Jacqueline Chávez, Foley Hoag LLP, Boston, MA, Justin Lowe, Wendy Parmet, Health Law Advocates, Inc., Boston, MA, *for Amici Curiae* Health Law Advocates, Inc. and Other Organizations Interested in Public Health, *in support of Plaintiffs-Appellees*.

R. Adam Lauridsen, Chessie Thacher, Victor H. Yu, Nicholas R. Green, Keker, Van Nest & Peters LLP, San Francisco, CA, *for Amici Curiae* National Housing Law Project, Food Research & Action Center, Center for

Law & Social Policy, National Education Association, Service Employees International Union, California League of United Latin American Citizens, California Food Policy Advocates, Center for the Study of Social Policy, Children's HealthWatch, Comunidades Unidas/ Communities United, First Focus on Children, Los Angeles Regional Food Bank, Mississippi Center for Justice, National WIC Association, National Low Income Housing Coalition, Prevention Institute, Sant La Haitian Neighborhood Center, South Carolina Appleseed Legal Justice Center, Virginia Poverty Law Center, *in support of Plaintiffs-Appellees*.

Matthew S. Freedus, Edward T. Waters, Phillip A. Escoriaza, Amanda N. Pervine, Feldesman Tucker Leifer Fidell LLP, Washington, DC, *for Amici Curiae* Public Health, Health Policy, Medicine, and Nursing Deans, Chairs, and Scholars, American Public Health Association, American Academy of Nursing, and Public Health Solutions, *in support of Plaintiffs-Appellees*.

Danielle L. Goldstein, Michael Dundas, Office of the Los Angeles City Attorney, Barbara J. Parker, Erin Bernstein, Office of the Oakland City Attorney, Margaret L. Carter, Daniel R. Suvor, O'Melveny & Myers LLP, Los Angeles, CA, Vince Ryan, Robert Hazeltine-Shedd, Harris County, TX, Donna R. Ziegler, Alameda County, CA, Esteban A. Aguilar, Jr., City of Albuquerque, NM, Anne L. Morgan, City of Austin, TX, Andre M. Davis, City of Baltimore, MD, Mark A. Flessner, Benna Ruth Solomon, City of Chicago, IL, Christopher J. Caso, City of Dallas, TX, Kristin M. Bronson, City and County of Denver, CO, Lawrence Garcia, Eli Savit, City of Detroit, MI, Rodney Pol, Jr., City of Gary, IN, Crystal Barnes,

City of Holyoke, MA, Ronald C. Lewis, Judith L. Ramsey, Collyn Peddie, City of Houston, TX, Howard Phillip Schneiderman, King County, WA, Michael P. May, City of Madison, WI, Brian E. Washington, Marin County, CA, Erik Nilsson, City of Minneapolis, MN, Leslie J. Girard, William M. Litt, Anne K. Brereton, Marina S. Pantchenko, Monterey County, CA, Kathryn E. Doi, Rachael E. Blucher, Natalie M. Smith, Hanson Bridgett LLP, Sacramento, CA, Susana Alcala Wood, City of Sacramento, CA, John C. Beiers, David A. Silberman, Ilana Parmer Mandelbaum, San Mateo County, CA, Peter S. Holmes, City of Seattle, WA, Francis X. Wright, Jr., City of Somerville, MA, Michael Rankin, City of Tucson, AZ, Michael Jenkins, City of West Hollywood, CA, *for Amici Curiae* 26 Cities and Counties, *in support of Plaintiffs-Appellees*.

Amici Curiae in *Make the Road v. Cuccinelli*

Sadik Huseny, Brittany N. Lovejoy, Joseph C. Hansen, Tess L. Curet, Alexandra B. Plutshack, Latham & Watkins LLP, San Francisco, CA, *for Amici Curiae* Fiscal Policy Institute, Presidents' Alliance on Higher Education and Immigration, National Center for Law and Economic Justice, American Federation of State, County and Municipal Employees, California Immigrant Policy Center, Child Care Law Center, Colorado Fiscal Institute, Community Action Marin, Kids Forward, Michigan Immigrant Rights Center, Oasis Legal Services, Economic Progress Institute, United African Organization, and Virginia Interfaith Center for Public Policy, *in support of Plaintiffs-Appellees.*

Lawrence J. Joseph, Law Office of Lawrence J. Joseph, Washington, DC, *for Amicus Curiae* Immigration Reform Law Institute, *in support of Defendants-Appellants.*

APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

---

19 Civ. 7777 (GBD)

STATE OF NEW YORK, CITY OF NEW YORK, STATE OF CONNECTICUT, AND STATE OF VERMONT, PLAINTIFFS

v.

UNITED STATES DEPARTMENT OF HOMELAND SECURITY; SECRETARY KEVIN K. MCALEENAN, IN HIS OFFICIAL CAPACITY AS ACTING SECRETARY OF THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY, AGENT OF ACTING SECRETARY OF THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY; UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES; DIRECTOR KENNETH T. CUCCINELLI II, IN HIS OFFICIAL CAPACITY AS ACTING DIRECTOR OF UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICE; AND UNITED STATES OF AMERICA, DEFENDANTS

[Filed: Oct. 11, 2019]

MEMORANDUM DECISION AND ORDER

GEORGE B. DANIELS, United States District Judge:

Plaintiffs the State of New York, the City of New York, the State of Connecticut, and the State of Vermont bring this action against Defendants the United States Department of Homeland Security ("DHS"); the United States Citizenship and Immigration Services ("USCIS");

Secretary Kevin K. McAleenan, in his official capacity as Acting Secretary of DHS; Director Kenneth T. Cuccinelli II, in his official capacity as Acting Director of USCIS; and the United States of America. (Compl. for Declaratory and Injunctive Relief ("Compl."), ECF No. 17.) Plaintiffs challenge Defendants' promulgation, implementation, and enforcement of a rule, Inadmissibility on Public Charge Grounds, 84 Fed. Reg. 41,292 (Aug. 14, 2019) (to be codified at 8 C.F.R. pts. 103, 212, 213, 214, 245, 248) (the "Rule"), which redefines the term "public charge" and establishes new criteria for determining whether a noncitizen applying for admission into the United States or for adjustment of status is ineligible because he or she is likely to become a "public charge." (*See id.* ¶ 2.) Plaintiffs seek, *inter alia*, (1) a judgment declaring that the Rule exceeds Defendants' statutory authority, violates the law, and is arbitrary and capricious and an abuse of discretion; (2) a vacatur of the Rule; and (3) an injunction enjoining DHS from implementing the Rule. (*Id.* at 83-84.)

Plaintiffs now move pursuant to Federal Rule of Civil Procedure 65 for a preliminary injunction enjoining Defendants from implementing or enforcing the Rule, which is scheduled to take effect on October 15, 2019. (Pls' Notice of Mot., ECF No. 33.) They also move under the Administrative Procedure Act, 5 U.S.C. § 705, for a stay postponing the effective date of the Rule pending adjudication of this action on the merits. (*Id.*) Plaintiffs' motion for a preliminary injunction and stay of its effective date is GRANTED.[1]

---

[1] This Court also grants, under separate order, the same preliminary injunction and stay in a related action, *Make the Road New York v. Cuccinelli,* 19 Civ. 7993 (GBD).

I. FACTUAL BACKGROUND

A. Current Framework for Public Charge Determination.

The Immigration and Nationality Act (the "INA") provides that the federal government may deny admission or adjustment of status to any noncitizen who it determines is "likely at any time to become a public charge." 8 U.S.C. § 1182(a)(4)(A). In 1996, Congress enacted two pieces of legislation focusing on noncitizens' eligibility for public benefits and on public charge determinations. It first passed the Personal Responsibility and Work Opportunity Reconciliation Act, Pub. L. No. 104-193, § 403, 110 Stat. 2105, 2265-67 (1996) (the "Welfare Reform Act"), which established a detailed-and restrictive—scheme governing noncitizens' access to benefits. It also passed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, § 531, 110 Stat. 3009, 3674-75 (1996) ("IIRIRA"), which amended the INA by codifying five factors relevant to a public charge determination. Specifically, IIRIRA provides that in assessing whether an applicant is likely to fall within the definition of public charge, DHS should, "at a minimum," take into account the applicant's age; health; family status; assets, resources, and financial status; and education and skills. 8 U.S.C. § 1182(a)(4)(B)(i).

In 1999, DHS's predecessor, the Immigration and Naturalization Service ("INS"), issued its Field Guidance on Deportability and Inadmissibility on Public Charge Grounds 64 Fed. Reg. 28,689 (May 26, 1999) (the "Field Guidance"), as well as a parallel proposed rule, 64 Fed. Reg. 28,676, which "summarize[d] longstanding law with respect to public charge and provide[d] new

guidance on public charge determinations" in light of IIRIRA, the Welfare Reform Act, and other recent legislation. 64 Fed. Reg. at 28,689. Both the Field Guidance and proposed rule defined "public charge" as a noncitizen who has become or is likely to become "primarily dependent on the government for subsistence, as demonstrated by either (i) the receipt of public cash assistance for income maintenance or (ii) institutionalization for long-term care at government expense." *Id.* (internal quotation marks omitted). Consistent with the INA, INS regulations, and several INS, Board of Immigration Appeals, and Attorney General decisions, they instructed INS officials to evaluate a noncitizen's likelihood of becoming a public charge by examining the totality of the noncitizen's circumstances at the time of his or her application. *Id.* at 28,690. The Field Guidance noted that "[t]he existence or absence of a particular factor should never be the sole criterion for determining if an alien is likely to become a public charge." *Id.* (emphasis omitted). Although the parallel proposed rule was never finalized, the Field Guidance sets forth the current framework for public charge determinations.

B. The 2018 Proposed Rulemaking and Rule.

On October 10, 2018, DHS published a notice of proposed rulemaking, Inadmissibility on Public Charge Grounds, 83 Fed. Reg. 51,114 (Oct. 10, 2018), which withdrew the 1999 proposed rule that INS had issued with the Field Guidance. *Id.* at 51,114. This newly proposed rule sought, among other things, to redefine "public charge," and to amend the totality-of-the-circumstances standard that is currently used in public charge deter-

minations. *See id.* The notice provided a 60-day period for public comments on the proposed rule. *Id.* DHS collected 266,077 comments, "the vast majority of which opposed the rule." 84 Fed. Reg. at 41,297; *see also id.* at 41,304-484 (describing and responding to public comments).

Subsequently, on August 14, 2019, DHS issued the Rule. It was finalized, with several changes, as the proposed rule described in the October 2018 notice. *Id.* at 4,292; *see also id.* at 41,297-303 (summarizing changes in Rule).

Under the Rule, "public charge" is to be defined as any noncitizen "who receives one or more public benefits . . . for more than 12 months in the aggregate within any 36-month period." *Id.* at 41,501. The Rule defines "public benefit," in turn, as both cash benefits and noncash benefits such as Supplemental Nutrition Assistance Program, Medicaid, and public housing and Section 8 housing assistance. *Id.* Each benefit is to be counted separately in calculating the duration of use, such that, for example, receipt of two benefit in one month would count as two months. *Id.*

The Rule also provides a new framework for assessing whether a noncitizen is likely at any time to become a public charge. Specifically, the Rule enumerates an expanded non-exclusive list of factors relevant to analyzing whether a person is likely to receive 12 months of public benefits within 36 months. *See id.* at 41,502-04. It includes, for example, family size, English-language proficiency, credit score, and any application for the enumerated public benefits, regardless of the actual receipt or use of such benefits. *Id.* The Rule designates the factors as "positive," "negative," "heavily

weighted positive," or "heavily weighted negative," and instructs the DHS officer to "weigh" all such factors "individually and cumulatively." *Id.* at 41,397; *see also id.* at 41,502-04. Under this framework, if the negative factors outweigh the positive factors, the applicant would be found likely to receive 12 months of public benefits in the future. The applicant would then be found inadmissible as likely to become a public charge. Conversely, if the positive factors outweigh the negative factors, the applicant would not be found inadmissible as likely to receive 12 months of public benefits and thereby become a public charge. *Id.* at 41,397.

DHS published various corrections to the Rule as recently as October 2, 2019. Inadmissibility on Public Charge Grounds; Correction, 84 Fed. Reg. 52,357 (Oct. 2, 2019). None of these corrections materially alter the new public charge determination framework as outlined above. The Rule, as corrected, is set to go into effect on October 15, 2019.

II. LEGAL STANDARD

"[A] preliminary injunction is 'an extraordinary remedy never awarded as of right.'" *Benisek v. Lamone,* 138 S. Ct. 1942, 1943 (2018) (per curiam) (citation omitted). To obtain a preliminary injunction, the moving party must establish "that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.,* 555 U.S. 7, 20 (2008).

III. PLAINTIFFS HAVE DEMONSTRATED A LIKELIHOOD OF SUCCESS ON THE MERITS OF THEIR CLAIMS

The Administrative Procedure Act ("APA") authorizes judicial review of agency rules. Under the APA, a reviewing court must "hold unlawful and set aside agency action" that is "in excess of statutory jurisdiction, authority, or limitations"; is "not in accordance with law"; or is "arbitrary, capricious, [or] an abuse of discretion." 5 U.S.C § 706(2)(A), (C). Here, Plaintiffs are likely to succeed on the merits of their claim that the Rule conflicts with the APA in all of these respects.

A. Plaintiffs Satisfy the Threshold Justiciability Requirements.

As a preliminary matter, Defendants raise several arguments that Plaintiffs' claims are not justiciable. Specifically, they assert that Plaintiffs lack standing, the claims are not ripe for judicial review, and Plaintiffs fall outside the zone of interests regulated by the Rule.

1. Plaintiffs Have Standing.

Article III of the U.S. Constitution limits the judicial power of federal courts to "Cases" or "Controversies." U.S. Const. art. III, § 2, cl. 1. To invoke this power, a plaintiff must have standing to sue. *Clapper v. Amnesty Int'l USA,* 568 U.S. 398, 408 (2013) (citation omitted). The plaintiff bears the burden of establishing standing, *Rajamin v. Deutsche Ban Nat'l Tr. Co.,* 757 F.3d 79, 84 (2d Cir. 2014) (*citing Lujan v. Defs. of Wildlife,* 504 U.S. 555, 560-61 (1992); *Premium Mortg. Corp. v. Equifax, Inc.,* 583 F.3d 103, 108 (2d Cir. 2009)), and such burden applies to each claim and form of relief sought, *DaimlerChrysler Corp. v. Cuno,* 547 U.S. 332,

352 (2006). To demonstrate Article III standing, the plaintiff must show that (1) "it has suffered a concrete and particularized injury that is either actual or imminent," (2) "the injury is fairly traceable to the defendant," and (3) "it is likely that a favorable decision will redress that injury." *Massachusetts v. EPA*, 549 U.S. 497, 517 (2007) (citing *Lujan*, 504 U.S. at 560-61). "[T]he presence of one party with standing is sufficient to satisfy Article III's case-or-controversy requirement." *Rumsfeld v. Forum for Acad. & Institutional Rights, Inc.*, 547 U.S. 47, 52 n.2. (2006) (citation omitted).

Defendants, focusing on the first element, argue that Plaintiffs have not alleged any injury sufficient to confer standing. They principally argue that Plaintiffs' claims of irreparable injury "consist of potential future harms that, if they ever came to pass, would be spurred by decisions of third parties not before the Court," and that these injuries are therefore too attenuated and speculative. (Mem. of Law in Opp'n to Pls.' Mot. for a Prelim. Inj. ("Defs.' Opp'n"), ECF No. 99, at 7). In Defendants' view, the Rule governs only DHS personnel and certain noncitizens, but does not directly affect Plaintiffs, either by requiring or forbidding any action on Plaintiffs' part or by expressly interfering with any of Plaintiffs' programs. (*Id.*) Defendants argue that in the context of challenges to federal immigration policies, courts have found state standing only where "the States' claims arise out of their proprietary interests as employers or operators of state universities." (*Id.*) They further insist that certain of Plaintiffs' alleged injuries, such as the health effects arising from noncitizens forgoing health care, "would be borne by [the] affected individuals, not [Plaintiffs]." (*Id* at 9.) Finally, Defend-

ants dismiss the alleged programmatic and administrative harm as "[b]ureaucratic inconvenience" and "voluntary expenditures" that do not give rise to standing. (*Id.* at 10.)

Plaintiffs sufficiently allege "concrete and particularized" injuries. They adequately demonstrate, for example, that the Rule will have a chilling effect and decrease enrollment in benefits programs, which will harm Plaintiffs' proprietary interests as operators of hospitals and healthcare systems. (Pls.' Reply in Supp. of Their Mot. for Prelim. Inj. and Stay Pending Judicial Review ("Pls.' Reply"), ECF No. 102, at 1.) Namely, Plaintiffs allege that this drop in participation will reduce Plaintiffs' consumers and revenue, including through Medicaid participants, while simultaneously shifting costs of providing emergency healthcare and shelter benefits from the federal government to Plaintiffs, who offer subsidized healthcare services. (*Id.*) Other injuries include increased healthcare costs as noncitizen patients avoid preventative care; programmatic costs since Plaintiffs are the administrators of the public benefits implicated by the Rule;[2] and economic harm, including $3.6 billion in "economic ripple effects," 26,000 lost jobs, and $175 million in lost tax revenue. (Mem. of Law in Supp. of Pls.' Mot. for Prelim. Inj. and Stay Pending Judicial Review ("Pls.' Mem."), ECF No. 35, at 10-13.) Such actual and imminent injuries are "fairly traceable" to Defendants' promulgation of the Rule.

---

[2] Plaintiffs allege that such programmatic costs include those associated with updating Plaintiffs' "enrollment, processing, and record-keeping systems; retraining staff and preparing updated materials; and responding to public concerns." (*Id.* at 3.)

Accordingly, Plaintiffs have standing to assert their claims.

2. Plaintiffs' Claims Are Ripe for Judicial Review.

To be justiciable, Plaintiffs' claims must also be ripe —that is, they "must present 'a real, substantial controversy, not a mere hypothetical question.'" *Nat'l Org. for Marriage, Inc. v. Walsh*, 714 F.3d 682, 687 (2d Cir. 2013) (quoting *AMSAT Cable Ltd. v. Cablevision of Conn.*, 6 F.3d 867, 872 (2d Cir. 1993)). "Ripeness 'is peculiarly a question of timing,'" and "[a] claim is not ripe if it depends upon 'contingent future events that may not occur as anticipated, or indeed may not occur at all.'" *Id.* (quoting *Thomas v. Union Carbide Agric. Prods. Co.*, 473 U.S. 568, 580-81 (1985)).

"Ripeness encompasses two overlapping doctrines concerning the exercise of federal court jurisdiction." *Entergy Nuclear Vt. Yankee, LLC v. Shumlin*, 733 F.3d 393, 429 (2d Cir. 2013) (citing *Reno v. Catholic Soc. Servs., Inc.*, 509 U.S. 43, 57 n.18 (1993)) (internal quotation marks omitted). The first, constitutional ripeness, "overlaps with the standing doctrine, 'most notably in the shared requirement that the plaintiff's injury be imminent rather than conjectural or hypothetical.'" *In re Methyl Tertiary Butyl Ether (MTBE) Prods. Liab. Litig.*, 725 F.3d 65, 110 (2d Cir. 2013) (quoting *Ross v. Bank of Am., N.A.*, 524 F.3d 217, 226 (2nd Cir. 2008)). Prudential ripeness, meanwhile, is "'an important exception to the usual rule that where jurisdiction exists a federal court must exercise it,' and allows a court to determine 'that the case will be better decided later.'" *Id.* (quoting *Simmonds v. Immigration Naturaliza-*

zion Serv., 326 F.3d 351, 357 (2d Cir. 2003)). In determining whether a case is prudentially ripe, courts examine "(1) whether [the case] is fit for judicial decision and (2) whether and to what extent the parties will endure hardship if decision is withheld." *Simmonds*, 326 F.3d at 359 (citing *Abbott Labs. v. Gardner*, 387 U.S. 136, 148-49 (1967)).

One can conceive of no issue of greater ripeness than that presented here. The Rule is scheduled to go into effect in a matter of *days*, at which point hundreds of thousands of individuals who were previously eligible for admission and permanent residence in the United States will no longer be eligible because of this change of law. Adverse consequences and determinations will soon begin to have their effect. The Rule is intended to immediately cause the immigrant population to avoid public benefits. Plaintiffs must be prepared to immediately adjust to the results of this change in policy.

No further factual predicate is necessary for purposes of determining ripeness, where there is clearly a legal question about whether the Rule exceeds Defendants' delegated authority, violates the law, and is arbitrary and capricious. Moreover, for the same reasons that Plaintiffs sufficiently allege an injury under the standing inquiry, they have shown that they will endure significant hardship with any delay. Accordingly, Plaintiffs' claims are ripe for review, both constitutionally and prudentially.

3. Plaintiffs Are Within the Zone of Interests Regulated By the Rule.

The final threshold question raised by Defendants is whether Plaintiffs have concerns that "fall within the zone of interests protected by the law invoked." *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 129 (2014) (citation and internal quotation marks omitted). The zone-of-interests test is "not 'especially demanding,'" particularly with respect to the APA and its "generous review provisions." *Id.* at 130 (citation and internal quotation marks omitted). Indeed, in the APA context, the Supreme Court has "often 'conspicuously included the word "arguably" in the test to indicate that the benefit of any doubt goes to the plaintiff.'" *Id.* (citation omitted). "The test forecloses suit only when a plaintiff's 'interests are so marginally related to or inconsistent with the purposes implicit in the statute that it cannot reasonably be assumed that Congress intended to permit the suit.'" *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, 567 U.S. 209, 225 (2012) (citation omitted).

Plaintiffs plainly fall within the INA's zone of interests. The interests of immigrants and state and local governments are inextricably intertwined. Among a state government's many obligations are representing and protecting the rights and welfare of its residents. As administrators of the public benefits programs targeted by the Rule, (*see* Pls.' Mem. at 14-17; Pls.' Reply at 4 (noting INA's direct reference to states' roles as benefit administrators)), Plaintiffs' interests are all the more implicated. Furthermore, the zone-of-interests test "does not require the plaintiff to be an intended beneficiary of the law in question," but instead allows

parties simply "who are injured" to seek redress. *Citizens for Responsibility & Ethics in Wash. v. Trump*, No. 18-474, 2019 WL 4383205, at *16 (2d Cir. Sept. 13, 2019). The Supreme Court has consistently found that economic injuries like those alleged here satisfy the test. *See, e.g.*, *Bank of Am. Corp. v. City of Miami*, 137 S. Ct. 1296, 1304-05, (2017) (finding city's discriminatory lending claims within zone of interests of Fair Housing Act, despite economic nature of harms alleged and absence of any indication that Act was intended to protect municipal budgets).

B. Plaintiffs Sufficiently Allege That the Rule Exceeds Statutory Authority and Is Contrary to Law.

Turning to the merits of Plaintiffs' claims, Plaintiffs argue that the Rule violates the APA because it exceeds DHS's delegated authority under the INA and is contrary to law. *See* 5 U.S.C. § 706(2)(A), (C). In analyzing an agency's interpretation of a statute and whether the agency's action exceeds statutory authority, courts often apply the two-step framework articulated in *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). "[T]he question . . . is always whether the agency has gone beyond what Congress has permitted it to do[.]" *City of Arlington v. FCC*, 569 U.S. 290, 298 (2013). Under *Chevron*, courts first ask whether the statute is clear. *Chevron*, 467 U.S. at 842. If so, "that is the end of the matter[,] for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress." *Id.* at 842-43. Where there is ambiguity, however, courts then ask whether the agency's interpretation of the statute is reasonable. *Id.* at 843-44. Such deference "is

premised on the theory that a statute's ambiguity constitutes an implicit delegation from Congress to the agency to fill in the statutory gaps." *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 159 (2000). Notwithstanding this implicit delegation, "agencies must operate 'within the bounds of reasonable interpretation,'" and "reasonable statutory interpretation must account for both 'the specific context in which . . . language is used' and 'the broader context of the statute as a whole.'" *Util. Air Regulatory Grp. v. EPA*, 573 U.S. 302, 321 (2014) (citations omitted).

1. Long-Standing Definition of "Public Charge."

Plaintiffs argue that the new Rule's definition of "public charge" is a drastic deviation from the unambiguous and well-established meaning of the term that has existed for over 130 years. (Pls.' Mem. at 2, 19-24.) They assert that the term has consistently been interpreted narrowly to mean "an individual who is or is likely to become primarily and permanently dependent on the government for subsistence." (*Id.* at 3.) Going as far back as 1882, when Congress passed the first federal immigration statute, Plaintiffs note that the statute rendered excludable "convicts, lunatics, idiots, and any person unable to take care of himself without becoming a public charge," (*id.* at 20 (quoting Immigration Act of 1882, ch. 376, 22 Stat. 214, 47th Cong. (1882))), and that it sought to "prevent long-term residence in the United States of those 'who ultimately become *life-long dependents* on our public charities,'" (*id.* (quoting 13 Cong. Rec. 5108-10 (June 19, 1882) (statement of Rep. Van Voorhis)).) As Plaintiffs note, "[f]ar from excluding as public charges immigrants who received temporary assistance, the same law authorized immigration officials

to provide 'support and relief' to immigrants who may 'need public aid' after their arrival." (*Id.* (quoting Immigration Act of 1882 at §§ 1, 2).)

Plaintiffs point to court decisions in the years that followed, confirming this definition of "public charge," as well as the INA itself, which adopted this interpretation upon its passage in 1952. (*Id.* at 21-22.) According to Plaintiffs, federal agencies have also consistently viewed "public charge" to mean someone who is "primarily dependent on the government for cash assistance or on long-term institutionalization," as evidenced by (1) INS's 1999 Field Guidance, which formally codified this definition; (2) INS's "extensive[ ]" consultations with other agencies prior to issuing the guidance; and (3) the Department of Justice's use of the "primarily dependent" standard in the deportation context. (*Id.* at 22-23.)

In opposition, Defendants assert that the definition of "public charge" in the Rule "is consistent with the plain meaning of the statutory text, which 'is to be determined at the time that it became law.'" (Defs.' Opp'n at 13 (quoting *One West Bank v. Melina*, 827 F.3d 214, 220 (2d Cir. 2016)).) They direct this Court to dictionaries used in the 1880s, when the Immigration Act of 1882 was passed, which allegedly "make clear" that a noncitizen becomes a "public charge" "when his inability to achieve self-sufficiency imposes an 'obligation' or 'liability' on 'the body of the citizens' to provide for his basic necessities." (*Id.* at 13-14.)

Upon review of the plain language of the INA, the history and common-law meaning of "public charge," agency interpretation, and Congress's repeated reenactment of the INA's public charge provision without

material change, one thing is abundantly clear—"public charge" has *never* been understood to mean receipt of 12 months of benefits within a 36-month period. Defendants admit that this is a "new definition" under the Rule. (*Id.* at 5.) And at oral argument, they did not dispute that this definition has *never* been referenced in the history of U.S. immigration law or that there is *zero* precedent supporting this particular definition. (*See, e.g.*, Tr. of Oral Arg. dated Oct. 7, 2019 at 51:8-11, 52:1-3.) No ordinary or legal dictionary definition of "public charge" references Defendants' proposed meaning of that term. As such, Plaintiffs raise a compelling argument that Defendants lack the authority to redefine "public charge" as they have.

2. Congress's Intent.

Nor is there any evidence that Congress intended for a redefinition of "public charge," and certainly not in the manner set forth in the Rule. No legislative intent or historical precedent alludes to this new definition. Defendants have made no showing that Congress was anything but content with the current definition set forth in the Field Guidance, which defines public charge as someone who has become or is likely to become primarily dependent on the government for cash assistance. Indeed, Congress has repeatedly endorsed this definition and rejected efforts to expand it. For example, during the 1996 debate over IIRIRA, several members of Congress tried and failed to extend the meaning of public charge to include the use of non-cash benefits. *See* 142 Cong. Rec. S11612, at S11712 (daily ed. Sept. 16, 1996). Congress rejected similar efforts in 2013 because of its "strict benefit restrictions and requirements." S. Rep. 113-40, at 42 (2013).

In addition, if Congress wanted to deny immigrants any of the public benefits enumerated in the Rule, it could have done so, as it similarly has in the past. The Welfare Reform Act, for example, restricted certain noncitizens' eligibility for certain benefits. Specifically, it provided that only "qualified" noncitizens—which, in most cases, meant those who had remained in the United States for five years—could have access to most federal means-tested public benefits. 8 U.S.C. §§ 1612, 1613. Therefore, the absence of any Congressional intent to redefine public charge also counsels in favor of a preliminary injunction.

C. Plaintiffs Sufficiently Demonstrate That the Rule Is Arbitrary and Capricious.

Plaintiffs additionally argue that the Rule is arbitrary and capricious. *See* 5 U.S.C. § 706(2)(A). "The scope of review under the 'arbitrary and capricious' standard is narrow[.]" *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). Nevertheless, the APA requires an agency to "engage in 'reasoned decisionmaking,'" *Michigan v. EPA*, 135 S. Ct. 2699, 2706 (2015) (citation omitted), and to "articulate a satisfactory explanation for its action," *State Farm*, 463 U.S. at 43 (citation omitted). An agency rule is arbitrary and capricious if the agency:

> relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.

Id. Where an agency action changes prior policy, the agency need not demonstrate "that the reasons for the new policy are *better* than the reasons for the old one." *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2008). It must, however, "show that there are good reasons for the new policy." *Id.* This requirement is heightened where the "new policy rests upon factual findings that contradict those which underlay its prior policy," *id.* (citation omitted), as "a reasoned explanation is needed for disregarding facts and circumstances that underlay or were engendered by the prior policy," *id.* at 516.

1. Defendants' Justification of Rule.

Here, Defendants fail to provide any reasonable explanation for changing the definition of "public charge" or the framework for evaluating whether a noncitizen is likely to become a public charge. As noted above, "public charge" has never been interpreted as someone "who receives one or more public benefits . . . for more than 12 months in the aggregate within any 36-month period." 84 Fed. Reg. at 41,501. This new definition essentially changes the public charge assessment into a *benefits* issue, rather than an inquiry about *self-subsistence*, such that any individual who is deemed likely to accept a benefit is considered a public charge. Receipt of a benefit, however, does not necessarily indicate that the individual is unable to support herself. One could envision, for example, a scenario where an individual is fully capable of supporting herself without government assistance but elects to accept a benefit, such as public housing, simply because she is entitled to it. Under the Rule, although this individual is legally entitled to public housing, if she takes advantage of this

right, she may be penalized with denial of adjustment of status. There is no logic to this framework. Moreover, considering that the federal welfare program was not established in the United States until the 1930s, whereas the concept of public charge existed at least as early as 1882, there *must* be some definition of public charge separate and apart from mere receipt of benefits.

At oral argument, Defendants were afforded numerous opportunities to articulate a rational basis for equating public charge with receipt of benefits for 12 months within a 36-month period, particularly when this has never been the rule. Defendants failed each and every time. When asked, for example, why the standard was 12 months and 36 months as opposed to any other number of months, Defendants merely responded that they do not need to "show a case from 100 years ago that also adopted this precise 12[/]36 standard." (Tr. of Oral Arg. dated Oct. 7, 2019 at 53:14-20.) Defendants were asked to explain how the new framework would operate and to provide an example of the "typical person" that Defendants could predict is going to receive 12 months of benefits in a 36-month period. (*Id.* 68:11-80:123.) Defendants again stumbled along and were unable to adequately explain what the determinative factor is under the Rule, what individual would fall across the line and be considered a public charge, and what evaluation of the factors enumerated in the Rule would make the DHS officer confident that she could make an appropriate prediction. (*Id.*) And yet, according to Defendants, the Rule is intended to "provide[] a number of concrete guidelines to assist in making [the public charge] determination" and is "designed . . . to make it

more predictable for people on both sides of the adjudicatory process." (*Id.* at 80:20-23.) Quite the opposite appears to be the case.

Defendants suggest that the totality-of-circumstances test remains and that receipt of benefits for 12 months out of a 36-month period is only one of several factors to be considered. (*Id.* at 52:17-22.) This characterization of the Rule is plainly incorrect. Under the Rule, receipt of such benefits is not *one* of the factors considered; it is *the* factor. That is, if a DHS officer believes that an individual is likely to have benefits for 12 months out of a 36-month period, the inquiry ends there, and the individual is *automatically* considered a public charge. As such, Defendants are not simply expanding or elaborating on the list of factors to consider in the totality of the circumstances. Rather, they are entirely reworking the framework, and with no rational basis.

Defendants also fail to demonstrate rational relationships between many of the additional factors enumerated in the Rule and a finding of benefits use. One illustrative example is the addition of English-language proficiency as a factor. Defendants do not dispute that there has never been an English-language requirement in the public charge analysis. They argue, however, that it was "entirely reasonable" to add English proficiency as a factor, given the requirement in the INA to consider an applicant's "education and skills," and the "correlation between a lack of English language skills and public benefit usage, lower incomes, and lower rates of employment." (Defs.' Opp'n at 27.) Defendants' suggestion that an individual is likely to become a public charge simply by virtue of her limited English proficiency is baseless, as one can certainly be a productive

and self-sufficient citizen without knowing *any* English. The United States of America has no official language. Many, if not most, immigrants who arrived at these shores did not speak English. It is simply offensive to contend that English proficiency is a valid predictor of self-sufficiency.[3]

In short, Defendants do not articulate why they are changing the public charge definition, why this new definition is needed now, or why the definition set forth in the Rule—which has absolutely no support in the history of U.S. immigration law—is reasonable. The Rule is simply a new agency policy of exclusion in search of a justification. It is repugnant to the American Dream of the opportunity for prosperity and success through hard work and upward mobility. Immigrants have always come to this country seeking a better life for themselves and their posterity. With or without help, most succeed.

---

[3] Similarly, it is unclear how the credit score of a new immigrant—who, for example, may have only recently opened her first credit account and therefore has a short credit history, which would negatively impact her credit score—is indicative of her likelihood to receive 12 months of public benefits. Defendants blithely argue that a low credit score "is an indication that someone has made financial decisions that are not necessarily entirely responsible" and that "those irresponsible financial decisions may be the product of someone who doesn't have very much money to work with." (Tr. of Oral Arg. dated Oct. 7, 2019 at 86:16-20).

2. Rehabilitation Act.

Plaintiffs further argue that the Rule discriminates against individuals with disabilities, in contravention of Section 504 of the Rehabilitation Act, Pub. L. No. 93-112, 87 Stat. 394 (1973) (codified at 29 U.S.C. § 794). Section 504 provides that no individual with a disability "shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination . . . under any program or activity conducted by any Executive agency." 29 U.S.C. § 794(a). DHS, in particular, is prohibited from denying access to benefits and services on the basis of disability, 6 C.F.R. § 15.30(b)(1), and from using discriminatory criteria or methods of administration, *id.* § 15.30(b)(4). *See also id.* § 15.49. "Exclusion or discrimination [under Section 504] may take the form of disparate treatment, disparate impact, or failure to make reasonable accommodation." *B.C. v. Mount Vernon Sch. Dist.*, 837 F.3d 152, 158 (2d Cir. 2016).

The Rule clearly considers disability as a negative factor in the public charge assessment. Defendants acknowledge that disability is "one factor . . . that may be considered" and that it is "relevant . . . to the extent that an alien's particular disability tends to show that he is 'more likely than not to become a public charge' at any time." (Defs.' Opp'n at 30 (quoting 84 Fed. Reg. at 41,368).) Defendants do not explain how disability alone is itself a negative factor indicative of being more likely to become a public charge. In fact, it is inconsistent with the reality that many individuals with disabilities live independent and productive lives. As such, Plaintiffs have raised at least a colorable argu-

ment that the Rule as to be applied may violate the Rehabilitation Act, and further discovery and development of the record is warranted prior to its implementation.

IV. PLAINTIFFS HAVE DEMONSTRATED THAT THEY WILL SUFFER IRREPARABLE HARM ABSENT A PRELIMINARY INJUNCTION

"A showing of irreparable harm is 'the single most important prerequisite for the issuance of a preliminary injunction.'" *Faiveley Transp. Malmo AB v. Wabtec Corp.*, 559 F.3d 110, 118 (2d Cir. 2009) (citation omitted). "To satisfy the irreparable harm requirement, Plaintiffs must demonstrate that absent a preliminary injunction they will suffer 'an injury that is neither remote nor speculative, but actual and imminent,' and one that cannot be remedied 'if a court waits until the end of trial to resolve the harm.'" *Grand River Enter. Six Nations, Ltd. v. Pryor*, 481 F.3d 60, 66 (2d Cir. 2007) (citation omitted). However, Plaintiffs need only show "a *threat* of irreparable harm, not that irreparable harm already ha[s] occurred." *Mullins v. City of New York*, 626 F.3d 47, 55 (2d Cir. 2010).

The irreparable injury to Plaintiffs by shifting the burden of providing services to those who can no longer obtain federal benefits without jeopardizing their status in the United States, and the immediate response that is necessary by this shift of burden to Plaintiffs, is a direct and inevitable consequence of the impending implementation of the Rule. As discussed above, Plaintiffs allege that their injuries will include proprietary and economic harm, as well as increased healthcare and programmatic costs, and that they will suffer substantial hardship without a preliminary injunction. *See supra* Parts III.A.1-

2. Plaintiffs provide declarations extensively describing and calculating such injuries. (*See* Decl. of Elena Goldstein, ECF No. 34 (attaching additional declarations and comment letters on proposed rule).)

No less important is the immediate and significant impact that the implementation of the Rule will have on law-abiding residents who have come to this country to seek a better life. The consequences that Plaintiffs must address, and America must endure, will be personal and public disruption, much of which cannot be undone. Overnight, the Rule will expose individuals to economic insecurity, health instability, denial of their path to citizenship, and potential deportation—none of which is the result of any conduct by those such injuries will affect. It is a rule that will punish individuals for their receipt of benefits provided by our government, and discourages them from lawfully receiving available assistance intended to aid them in becoming contributing members of our society. It is impossible to argue that there is no irreparable harm for these individuals, Plaintiffs, and the public at large.

V. THE BALANCE OF HARDSHIPS AND PUBLIC INTEREST TIP IN PLAINTIFFS' FAVOR

Finally, Plaintiffs must demonstrate that "the balance of equities tips in [their] favor" and that "an injunction is in the public interest." *Winter*, 555 U.S. at 20. "These factors merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009). In assessing these factors, the court must "balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief," as well as "the public consequences in

employing the extraordinary remedy of injunction." *Winter*, 555 U.S. at 24 (citations omitted).

Here, preventing the alleged economic and public health harms provides a significant public benefit. As discussed above, these harms are not speculative or insufficiently immediate. In fact, the notice of proposed rulemaking itself acknowledged that the Rule could cause "[w]orse health outcomes"; "[i]ncreased use of emergency rooms and emergent care as a method of primary health care due to delayed treatment"; "[i]ncreased prevalence of communicable diseases, including among members of the U.S. citizen population who are not vaccinated"; "[i]ncreases in uncompensated care in which a treatment or service is not paid for by an insurer or patient"; "[i]ncreased rates of poverty and housing instability"; "[r]educed productivity and educational attainment"; and other "unanticipated consequences and indirect costs." 83 Fed. Reg. at 51,270.

Moreover, there is no public interest in allowing Defendants to proceed with an unlawful, arbitrary, and capricious rule that exceeds their statutory authority. *See Planned Parenthood of N.Y.C., Inc. v. U.S. Dep't of Health & Human Servs.*, 337 F. Supp. 3d 308, 343 (S.D.N.Y. 2018) ("It is evident that '[t]here is generally no public interest in the perpetuation of unlawful agency action.' . . . The inverse is also true: 'there is a substantial public interest in 'having governmental agencies abide by the federal laws that govern their existence and operations.'" (quoting *League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016)).)

To be sure, Defendants have a legitimate interest in administering the national immigration system. How-

ever, that interest is not paramount in this instance, particularly where Defendants fail to demonstrate why or how the current public charge framework is inadequate. Defendants have applied their current rules for decades, and the current concept of "public charge" has been accepted for over a century. Aside from conclusory allegations that they will "be harmed by an impediment" to administering the immigration system, (Defs.' Opp'n at 38), Defendants do not—and cannot—articulate what actual hardship they will suffer by maintaining the status quo.

Accordingly, because Plaintiffs are likely to succeed on the merits and to suffer irreparable harm absent preliminary relief, and the balance of hardships and public interest tip in their favor, Plaintiffs are entitled to a preliminary injunction.

VI. THE INJUNCTION SHOULD APPLY NATIONWIDE

As to the scope of the relief, a nationwide injunction is necessary. The scope of preliminary injunctive relief generally should be "no broader than necessary to cure the effects of the harm caused by the violation" and "not impose unnecessary burdens on lawful activity." *Church & Dwight Co. v. SPD Swiss Precision Diagnostics, GmBH*, 843 F.3d 48, 72 (2d Cir. 2016) (citations omitted). However, there is no requirement that an injunction affect only the parties in the suit. *See Califano v. Yamasaki*, 442 U.S. 682, 702 (1979) ("[T]he scope of injunctive relief is dictated by the extent of the violation established, not by the geographical extent of the plaintiff class.")

Here, a nationwide injunction is appropriate. First, national immigration policies, such as the Rule, require uniformity. *Hawaii v. Trump*, 878 F.3d 662, 701 (9th Cir. 2017), *rev'd on other grounds*, 138 S. Ct. 2392 (2018); *see also Batalla Vidal v. Nielsen*, 279 F. Supp. 3d 401, 438 (E.D.N.Y. 2018) (granting nationwide injunction preventing rescission of Deferred Action for Childhood Arrivals program in part because "there is a strong federal interest in the uniformity of federal immigration law"); U.S. Const. art. I, § 8, cl. 4 ("The Congress shall have Power . . . To establish a[ ] uniform Rule of Naturalization."). A geographically limited injunction that would result in inconsistent applications of the Rule, and different public charge determinations based upon similar factors, is inimical to this need for uniformity in immigration enforcement.

Indeed, at least nine lawsuits have already been filed challenging the Rule, including *State of California v. U.S. Department of Homeland Security*, 19 Civ. 4975 (PJH) (N.D. Cal.) and *State of Washington v. United States Department of Homeland Security*, 19 Civ. 5210 (RMP) (E.D. Wash.).[4] In just these two actions alone, Plaintiffs include the State of California, District of Columbia, State of Maine, Commonwealth of Pennsylvania, State of Oregon, State of Washington, Commonwealth

[4] In addition to the instant action and the related action both before this Court, these other actions include *Mayor and City Council of Baltimore v. United States Department of Homeland Security*, 19 Civ. 2851 (PJM) (D. Md.); *Casa De Maryland, Inc. v. Trump*, 19 Civ. 2715 (PWG) (D. Md.); *City and County of San Francisco v. U.S. Citizenship and Immigration Services*, 19 Civ. 4717 (PJH) (N.D. Cal.); *La Clinica De La Raza v. Trump*, 19 Civ. 4980 (PJH) (N.D. Cal.); and *Cook County, Illinois v. McAleenan*, 19 Civ. 6334 (GF) (N.D. Ill.).

of Virginia, State of Colorado, State of Delaware, State of Illinois, State of Maryland, Commonwealth of Massachusetts, Attorney General Dana Nessel on behalf of the People of Michigan, State of Minnesota, State of Nevada, State of New Jersey, State of New Mexico, and State of Rhode Island. Combined with the instant action, that means that nearly *two dozen jurisdictions* have already brought suit. It would clearly wreak havoc on the immigration system if limited injunctions were issued, resulting in different public charge frameworks spread across the country, based solely on geography. *Batalla*, 279 F. Supp. 3d at 438 (granting nationwide injunction where more limited injunction "would likely create administrative problems for the Defendants").

There is no reasonable basis to apply one public charge framework to one set of individuals and a different public charge framework to a second set of individuals merely because they live in different states. It would be illogical, for example, if a New York resident was eligible for adjustment of status but a resident of a sister state with the *same exact* background was not eligible, only because the second resident had the misfortune of living somewhere not covered by a limited injunction.

Relatedly, a nationwide injunction is necessary to accord Plaintiffs and other interested parties with complete redress. In particular, an individual should not have to fear that moving from one state to another could result in a denial of adjustment of status. For example, if the injunction were limited to New York, Connecticut, and Vermont, and a New York resident moved to New

Jersey where the injunction would not apply, this individual could there be considered a public charge and face serious repercussions simply for crossing state borders. "[F]reedom to travel throughout the United States has long been recognized as a basic right under the Constitution." *United States v. Guest*, 383 U.S. 745, 758, (1966) (citations omitted). It has been considered a "right so elementary [that it] was conceived from the beginning to be a necessary concomitant of the stronger Union the Constitution created." *Id.*; *see also Griffin v. Breckenridge*, 403 U.S. 88, 105 (1971) ("Our cases have firmly established that the right of interstate travel is constitutionally protected, does not necessarily rest on the Fourteenth Amendment, and is assertable against private as well as governmental interference.") The Supreme Court's recognition of the preeminence of this right lends further support for a nationwide injunction that would not interfere with individuals' ability to move from one place to another. *See, e.g.*, *Batalla*, 279 F. Supp. 3d at 438 (finding nationwide injunction appropriate "partly in light of the simple fact that people move from state to state and job to job").

Accordingly, this Court grants a nationwide injunction, as well as a stay postponing the effective date of the Rule pending a final ruling on the merits, or further order of the Court.[5]

---

[5] The standard for a stay under 5 U.S.C. § 705 is the same as the standard for a preliminary injunction. *Nat. Res. Def. Council v. U.S. Dep't of Energy*, 362 F. Supp. 3d 126, 149 (S.D.N.Y. 2019). Accordingly, this Court grants the stay for the same reasons it grants the injunction.

VII. CONCLUSION

Plaintiffs' motion for issuance of a preliminary injunction, (ECF No. 33), is GRANTED.

Dated: New York, New York
Oct. 11, 2019

SO ORDERED.

/s/ GEORGE B. DANIELS
GEORGE B. DANIELS
United States District Judge

APPENDIX C

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

---

19 Civ. 7777 (GBD)

STATE OF NEW YORK, CITY OF NEW YORK, STATE OF CONNECTICUT, AND STATE OF VERMONT, PLAINTIFFS

v.

UNITED STATES DEPARTMENT OF HOMELAND SECURITY; SECRETARY KEVIN K. MCALEENAN, IN HIS OFFICIAL CAPACITY AS ACTING SECRETARY OF THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY, AGENT OF ACTING SECRETARY OF THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY; UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES; DIRECTOR KENNETH T. CUCCINELLI II, IN HIS OFFICIAL CAPACITY AS ACTING DIRECTOR OF UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICE; AND UNITED STATES OF AMERICA, DEFENDANTS

[Filed: Oct. 11, 2019]

ORDER GRANTING PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

GEORGE B. DANIELS, United States District Judge:

WHEREAS on September 9, 2019, the State of New York, the City of New York, the State of Connecticut, and the State of Vermont (the "State Plaintiffs") filed a Motion for Preliminary Injunction in Case No. 19 Civ.

7777 (GBD) (S.D.N.Y.) (the "State Action") to enjoin defendants from implementing or enforcing the Final Rule of the Department of Homeland Security titled "Inadmissibility on Public Charge Grounds," 84 Fed. Reg. 41,292 (the "Rule") pursuant to Federal Rule of Civil Procedure 65, or to postpone the effective date of the Rule pursuant to 5 U.S.C. § 705;

WHEREAS also on September 9, 2019, Make the Road New York, African Services Committee, Asian American Federation, Catholic Charities Community Services, and Catholic Legal Immigration Network, Inc. (the "Organizational Plaintiffs," and, together with the State Plaintiffs, "Plaintiffs") similarly filed a Motion for Preliminary Injunction in Case No. 19 Civ. 7993 (GBD) (S.D.N.Y.) (the "Organizational Action," and, together with the State Action, the "Actions") to enjoin defendants from implementing or enforcing the Rule pursuant to Federal Rule of Civil Procedure 65, or to postpone the effective date of the Rule pursuant to 5 U.S.C. § 705 (together with the State Plaintiffs' motion, the "Motions");

WHEREAS on September 27, 2019, Kenneth T. Cuccinelli II, United State Citizenship & Immigration Services, Kevin K. McAleenan, Department of Homeland Security, and the United States of America (as to the State Action only) ("Defendants") submitted briefs in opposition to the Motions;

WHEREAS on October 4, 2019, Plaintiffs filed replies in further support of the Motions;

WHEREAS *amici* have filed briefs in support of or opposition to the Motions;

WHEREAS on October 7, 2019, this Court held a hearing on the Motions at which counsel for all parties presented oral argument;

WHEREAS this Court, having considered the Motion and the documents filed therewith, as well as all other papers filed in the Actions, and having heard oral arguments from the parties, finds good cause to grant the Motions because:

1. Plaintiffs are likely to succeed on the merits of their claims under the Administrative Procedure Act, and, with respect to the Organizational Plaintiffs, under the United States Constitution.

2. Plaintiffs will suffer irreparable harm in the Rule becomes effective; and

3. The balance of equities and the interests of justice favor issuance of a preliminary injunction;

It is hereby ORDERED that, pursuant to Federal Rule of Civil Procedure 65(a), Defendants are RESTRAINED AND ENJOINED from:

1. Enforcing, applying or treating as effective, or allowing persons under their control to enforce, apply, or treat as effective, the Rule; and

2. Implementing, considering in connection with any application or requiring the use of any new or updated forms whose submission would be required under the Rule, including the new Form I-944, titled "Declaration of Self Sufficiency," and the updated Form I-485, titled "Application to Register Permanent Residence of Adjust Status"; and,

It is hereby FURTHER ORDERED that, pursuant to 5 U.S.C. § 705, the effective date of the Rule is STAYED and POSTPONED *sine die* pending further Order of the Court such that, if this Order is later terminated and the Rule goes into effect, the Rule's stated effective date of October 15, 2019, as well as any references in the Rule to October 15, 2019, including but not limited those contained in proposed 8 CFR §§ 212.20, 212.22(b)(4)(i)(E), 212.22(b)(4)(ii)(E)(1), 212.22(b)(4)(ii)(E)(2), 212.22(b)(4)(ii)(F), 212.22(c)(1)(ii), 212.22(d), 214.1, 248.1(a), and 248.1(c)(4), shall be replaced with a date after this Order is terminated.

Dated: New York, New York
Oct. 11, 2019

SO ORDERED.

/s/ GEORGE B. DANIELS
GEORGE B. DANIELS
United States District Judge

APPENDIX D

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

---

19 Civ. 7993 (GBD)

MAKE THE ROAD NEW YORK, AFRICAN SERVICES COMMITTEEE, ASIAN AMERICAN FEDERATION, CATHOLIC CHARITIES COMMUNITIES SERVICES, (ARCHDIOCESE OF NEW YORK), AND CATHOLIC LEGAL IMMIGRATION NETWORK, INC., PLAINTIFFS

v.

KEN CUCCINELLI, IN HIS OFFICIAL CAPACITY AS ACTING DIRECTOR OF UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES; UNITED STATES CITIZENSHIP & IMMIGRATION SERVICES; KEVIN K. MCALEENAN, IN HIS OFFICIAL CAPACITY AS ACTING SECRETARY OF HOMELAND SECURITY; AND UNITED STATES DEPARTMENT OF HOMELAND SECURITY, DEFENDANTS

[Filed: Oct. 11, 2019]

MEMORANDUM DECISION AND ORDER

GEORGE B. DANIELS, United States District Judge:

Plaintiffs Make the Road New York, African Services Committee, Asian American Federation, Catholic Charities Community Services (Archdiocese of New York), and Catholic Legal Immigration Network, Inc. bring this action against Defendants Kenneth T. Cuccinelli II, in his official capacity as Acting Director of the United

States Citizenship and Immigration Services ("USCIS"); Kevin K. McAleenan, in his official capacity as Acting Secretary of the United States Department of Homeland Security ("DHS"); USCIS; and DHS. (Compl., ECF No. 1.) Plaintiffs challenge Defendants' promulgation, implementation, and enforcement of a rule, Inadmissibility on Public Charge Grounds, 84 Fed. Reg. 41,292 (Aug. 14, 2019) (to be codified at 8 C.F.R. pts. 103, 212, 213, 214, 245, 248) (the "Rule"), which redefines the term "public charge" and establishes new criteria for determining whether a noncitizen applying for admission into the United States or for adjustment of status is ineligible because he or she is likely to become a "public charge." (*See id.* ¶¶ 1-3.) Plaintiffs seek, *inter alia*, (1) a judgment declaring that the Rule is unauthorized and contrary to law, (2) a vacatur of the Rule, and (3) an injunction enjoining Defendants from implementing the Rule. (*Id.* at 115.)

Plaintiffs now move pursuant to Federal Rule of Civil Procedure 65 for a preliminary injunction enjoining Defendants from implementing or enforcing the Rule, which is scheduled to take effect on October 15, 2019. (*See* Notice of Mot., ECF No, 38.) Plaintiffs' motion for a preliminary injunction is GRANTED.[1]

---

[1] This Court also grants, under separate order, the same preliminary injunction and stay in a related action, *State of New York v. United States Department of Homeland Security*, 19 Civ. 7777 (GBD).

I. FACTUAL BACKGROUND

A. Current Framework for Public Charge Determination.

The Immigration and Nationality Act (the "INA") provides that the federal government may deny admission or adjustment of status to any noncitizen who it determines is "likely at any time to become a public charge." 8 U.S.C. § 1182(a)(4)(A). In 1996, Congress enacted two pieces of legislation focusing on noncitizens' eligibility for public benefits and on public charge determinations. It first passed the Personal Responsibility and Work Opportunity Reconciliation Act, Pub. L. No. 104-193, § 403, 110 Stat. 2105, 2265-67 (1996) (the "Welfare Reform Act"), which established a detailed—and restrictive—scheme governing noncitizens' access to benefits. It also passed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, § 531, 110 Stat. 3009, 3674-75 (1996) ("IIRIRA"), which amended the INA by codifying five factors relevant to a public charge determination. Specifically, IIRIRA provides that in assessing whether an applicant is likely to fall within the definition of public charge, DHS should, "at a minimum," take into account the applicant's age; health; family status; assets, resources, and financial status; and education and skills. 8 U.S.C. § 1182(a)(4)(B)(i).

In 1999, DHS's predecessor, the Immigration and Naturalization Service ("INS"), issued its Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, 64 Fed. Reg. 28,689 (May 26, 1999) (the "Field Guidance"), as well as a parallel proposed rule, 64 Fed. Reg. 28,676, which "summarize[d] long-

standing law with respect to public charge and provide[d] new guidance on public charge determinations" in light of IIRIRA, the Welfare Reform Act, and other recent legislation. 64 Fed. Reg. at 28,689. Both the Field Guidance and proposed rule defined "public charge" as a noncitizen who has become or is likely to become "primarily dependent on the government for subsistence, as demonstrated by either (i) the receipt of public cash assistance for income maintenance or (ii) institutionalization for long-term care at government expense." *Id.* (internal quotation marks omitted). Consistent with the INA, INS regulations, and several INS, Board of Immigration Appeals, and Attorney General decisions, they instructed INS officials to evaluate a noncitizen's likelihood of becoming a public charge by examining the totality of the noncitizen's circumstances at the time of his or her application. *Id.* at 28,690. The Field Guidance noted that "[t]he existence or absence of a particular factor should never be the sole criterion for determining if an alien is likely to become a public charge." *Id.* (emphasis omitted). Although the parallel proposed rule was never finalized, the Field Guidance sets forth the current framework for public charge determinations.

B. The 2018 Proposed Rulemaking and Rule.

On October 10, 2018, DHS published a notice of proposed rulemaking, Inadmissibility on Public Charge Grounds, 83 Fed. Reg. 51,114 (Oct. 10, 2018), which withdrew the 1999 proposed rule that INS had issued with the Field Guidance. *Id.* at 51,114. This newly proposed rule sought, among other things, to redefine "public charge," and to amend the totality-of-the-circumstances

standard that is currently used in public charge determinations. *See id.* The notice provided a 60-day period for public comments on the proposed rule. *Id.* DHS collected 266,077 comments, "the vast majority of which opposed the rule." 84 Fed. Reg. at 41,297; *see also id.* at 41,304-484 (describing and responding to public comments).

Subsequently, on August 14, 2019, DHS issued the Rule. It was finalized, with several changes, as the proposed rule described in the October 2018 notice. *Id.* at 41,292; *see also id.* at 41,297-303 (summarizing changes in Rule).

Under the Rule, "public charge" is to be defined as any noncitizen "who receives one or more public benefits . . . for more than 12 months in the aggregate within any 36-month period." *Id.* at 41,501, The Rule defines "public benefit," in turn, as both cash benefits and noncash benefits such as Supplemental Nutrition Assistance Program, Medicaid, and public housing and Section 8 housing assistance. *Id.* Each benefit is to be counted separately in calculating the duration of use, such that, for example, receipt of two benefits in one month would count as two months. *Id.*

The Rule also provides a new framework for assessing whether a noncitizen is likely at any time to become a public charge. Specifically, the Rule enumerates an expanded non-exclusive list of factors relevant to analyzing whether a person is likely to receive 12 months of public benefits within 36 months. *See id.* 41,502-04. It includes, for example, family size, English-language proficiency, credit score, and any application for the enumerated public benefits, regardless of the ac-

tual receipt or use of such benefits. *Id.* The Rule designates the factors as "positive," "negative," "heavily weighted positive," or "heavily weighted negative," and instructs the DHS officer to "weigh" all such factors "individually and cumulatively." *Id.*, at 41,397; *see also id.* 41,502-04. Under this framework, if the negative factors outweigh the positive factors, the applicant would be found likely to receive 12 months of public benefits in the future. The applicant would then be found inadmissible as likely to become a public charge. Conversely, if the positive factors outweigh the negative factors, the applicant would not be found inadmissible as likely to receive 12 months of public benefits and thereby become a public charge. *Id.* at 41,397.

DHS published various corrections to the Rule as recently as October 2, 2019. Inadmissibility on Public Charge Grounds; Correction, 84 Fed. Reg. 52,357 (Oct. 2, 2019). None of these corrections materially alter the new public charge determination framework as outlined above. The Rule, as corrected, is set to go into effect on October 15, 2019.

C. Plaintiffs' Services.

Plaintiffs are nonprofit organizations that work with and for immigrants. (Compl. ¶¶ 21-46.) They provide direct services, including legal, educational, and health-related. (*Id.* ¶¶ 21-22, 26, 31, 34-36, 40-42.) Make the Road New York, for instance, conducts educational workshops on issues affecting immigrants, represents immigrants in removal proceedings, and assists immigrants in applying for benefits and accessing health services. (*Id.* ¶ 22.) Similarly, African Services Committee provides legal representation in immigration proceedings, including those for adjustment of status;

health-related services; emergency financial support; and food pantry and nutrition services. (*Id.* ¶ 26.) Plaintiffs also administer community outreach programs that, for example, disseminate information on immigration policies, (*id.* ¶¶ 21, 26), make referrals to social service providers, (*id.* ¶ 36), and host in-person trainings on immigration-related matters, (*id.* ¶ 40).

II. LEGAL STANDARD

"[A] preliminary injunction is 'an extraordinary remedy never awarded as of right.'" *Benisek v. Lamone*, 138 S. Ct. 1942, 1943 (2018) (per curiam) (citation omitted). To obtain a preliminary injunction, the moving party must establish "that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

III. PLAINTIFFS HAVE DEMONSTRATED A LIKELIHOOD OF SUCCESS ON THE MERITS OF THEIR CLAIMS

The Administrative Procedure Act ("APA") authorizes judicial review of agency rules. Under the APA, a reviewing court must "hold unlawful and set aside agency action" that is "in excess of statutory jurisdiction, authority, or limitations"; is "not in accordance with law"; or is "arbitrary, capricious, [or] an abuse of discretion." 5 U.S.C. § 706(2)(A), (C). Here, Plaintiffs are likely to succeed on the merits of their claim that the Rule conflicts with the APA in all of these respects.

A. Plaintiffs Satisfy the Threshold Justiciability Requirements.

As a preliminary matter, Defendants raise several arguments that Plaintiffs' claims are not justiciable. Specifically, they assert that Plaintiffs lack standing, the claims are not ripe for judicial review, and Plaintiffs fall outside the zone of interests regulated by the Rule.

1. Plaintiffs Have Standing.

Article III of the U.S. Constitution limits the judicial power of federal courts to "Cases" or "Controversies." U.S. Const. art. III, § 2, cl. 1. To invoke this power, a plaintiff must have standing to sue. *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 408 (2013) (citation omitted). The plaintiff bears the burden of establishing standing, *Rajamin v. Deutsche Bank Nat'l Tr. Co.*, 757 F.3d 79, 84 (2d Cir. 2014) (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992); *Premium Mortg. Corp. v. Equifax, Inc.*, 583 F.3d 103, 108 (2d Cir. 2009)), and such burden applies to each claim and form of relief sought, *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 352 (2006). To demonstrate Article III standing, the plaintiff must show that (1) "it has suffered a concrete and particularized injury that is either actual or imminent," (2) "the injury is fairly traceable to the defendant," and (3) "it is likely that a favorable decision will redress that injury." *Massachusetts v. EPA*, 549 U.S. 497, 517 (2007) (citing *Lujan*, 504 U.S. at 560-61. "[T]he presence of one party with standing is sufficient to satisfy Article III's case-or-controversy requirement." *Rumsfeld v. Forum for Acad. & Institutional Rights, Inc.*, 547 U.S. 47, 52 n.2 (2006) (citation omitted).

Defendants argue, on several grounds, that Plaintiffs lack standing. First, they challenge Plaintiffs' reliance on an "organizational" standing theory. An organization "may have standing in its own right to seek judicial relief from injury to itself and to vindicate whatever rights and immunities the association itself may enjoy." *Warth v. Seldin*, 422 U.S. 490, 511 (1975). "Under this theory of "organizational" standing, the organization is just another person—albeit a legal person—seeking to vindicate a right." *N.Y. Civil Liberties Union v. N.Y.C. Transit Auth.*, 684 F.3d 286, 294 (2d Cir. 2012). Therefore, "[t]o qualify, the organization itself 'must 'meet[ ] the same standing test that applies to individuals.'" *Id.* (second alteration in original) (citations omitted).

The Second Circuit has found that an organization has standing where the defendant's conduct interferes with or burdens the organization's ability to carry out its usual activities, or where the organization is forced to expend resources to prevent some adverse consequence on a well-defined and particularized class of individuals. *See, e.g.*, *Centro de la Comunidad Hispana de Locust Valley v. Town of Oyster Bay*, 868 F.3d 104, 110 (2d Cir. 2017) (finding concrete and cognizable injury where local ordinance regulating ability of day laborers to solicit employment would "force" organization to expend greater resources since "if the laborers are dispersed, it will be more costly to reach them"); *N. Y. Civil Liberties Union*, 684 F.3d at 295 (finding standing where organization's ability to represent its clients in administrative hearings was "impeded" and "will continue to [be] impede[d]" by defendant's policy barring public access to such hearings). "Only a 'perceptible impairment' of an organization's activities is necessary for there to be an

'injury in fact.'" *Nnebe v. Daus*, 644 F.3d 147 (2d Cir. 2011) (quoting *Ragin v. Harry Macklowe Real Estate Co.*, 6 F.3d 898, 905 (2d Cir. 1993)). Moreover, "'somewhat relaxed standing' rules apply" where "a party seeks review of a prohibition prior to its being enforced." *Centro de la Comunidad Hispana de Locust Valley v. Town of Oyster Bay*, 868 F.3d 104, 110 (2d Cir. 2017).

Courts have distinguished between cases where a defendant's conduct forced a plaintiff to divert its resources and provide *new* services, therefore giving rise to organizational standing, and cases where a plaintiff was *already* providing the services at issue and therefore failed to allege any injury. *Compare Nat. Res. Def. Council, Inc. v. Wheeler*, 367 F. Supp. 3d 219, 230 (S.D.N.Y. 2019) (finding no injury where organization failed to allege that it "diverted any other resources from its activities (specific or otherwise)" because of directive at issue), *and Lowell v. Lyft, Inc.*, 352 F. Supp. 3d 248, 259 (S.D.N.Y. 2018) (finding no injury where no allegations that defendant's conduct caused organization "to expend any resources separate from this litigation or that it was otherwise impeded in its ability to pursue its mission"), *with Oyster Bay*, 868 F.3d at 110 (finding standing where ordinance would force organization to divert resources from its other activities in order to combat negative effects of ordinance), *and Olsen v. Stark Homes, Inc.*, 759 F.3d 140, 158 (2d Cir. 2014) (finding standing where organization devoted new resources to investigate its clients' housing discrimination claims and advocate on their behalf), *and Mental Disability Law Clinic, Touro Law Ctr. v. Hogan*, 519 F. App'x 714, 716-17 (2d Cir. 2013) (finding standing where organization expended resources to challenge state mental

health agency's policy of asserting counterclaims for outstanding treatment charges against patients who sued agency and thereby discouraged patients from bringing such suits), *and Nnebe*, 644 F.3d at 157-58 (finding standing where organization "allocated resources to assist drivers only when another party—the City—ha[d] initiated proceedings against one of its members").

This case falls squarely in the category of those where the plaintiff was forced to divert its resources from its usual mission-related activities because of the defendant's conduct. As Plaintiffs adequately demonstrate, the Rule forces them to devote substantial resources to mitigate its potentially harmful effects—resources that Plaintiffs could and would have used for other purposes. Plaintiffs allege, for example, that they will have to divert resources to educate their clients, members, and the public about the Rule. (Mem. of Law in Supp. of Pls.' Mot. for Prelim. Inj. ("Pls.' Mem."), ECF No. 39, at 36-37.) Those Plaintiffs that provide direct legal services will also have to expend additional resources helping clients prepare applications for adjustments, representing clients in removal proceedings, and conducting additional trainings. (*Id.* at 37.) In fact, Plaintiffs allege that they have *already* had to dedicate significant resources addressing the Rule since the announcement of the Rule last year. They have, for example, already conducted dozens of workshops. (Decl. of Theo Oshiro, ECF No. 43, ¶¶ 21, 25). They have also developed new materials for legal information sessions that previously could be held on a groupwide basis but now require individualized consultation due to the Rule's complexity. (Decl. of C. Mario Russell, ECF No. 44, ¶ 19). These are entirely new

services that, but for the Rule, Plaintiffs would not have had to provide.

Defendants additionally argue that Plaintiffs' claims of irreparable injury "consist of potential future harms that, if they ever came to pass, would be spurred by decisions of third parties not before the Court," and that these injuries are therefore too speculative. (Mem. of Law in Opp'n to Pls.' Mot. for a Prelim. Inj. ("Defs.' Opp'n"), ECF No. 129, at 9). In Defendants' view, the Rule governs only DHS personnel and certain noncitizens, but does not directly affect Plaintiffs, either by requiring or forbidding any action on Plaintiffs' part or by expressly interfering with any of Plaintiffs' programs. (*Id.*) This argument fails. As set forth above, Plaintiffs sufficiently allege "concrete and particularized" injuries that they themselves will suffer and, in fact, have *already* begun to suffer. Plaintiffs therefore have standing to bring this action on their own behalf.

2. Plaintiffs' Claims Are Ripe for Judicial Review.

To be justiciable, Plaintiffs' claims must also be ripe —that is, they "must present 'a real, substantial controversy, not a mere hypothetical question.'" *Nat'l Org. for Marriage, Inc. v. Walsh*, 714 F.3d 682, 687 (2d Cir. 2013) (quoting *AMSAT Cable Ltd. v. Cablevision of Conn.*, 6 F.3d 867, 872 (2d Cir. 1993)). "Ripeness 'is peculiarly a question of timing,'" and "[a] claim is not ripe if it depends upon 'contingent future events that may not occur as anticipated, or indeed may not occur at all.'" *Id.* (quoting *Thomas v. Union Carbide Agric. Prods. Co.*, 473 U.S. 568, 580-81 (1985)).

"Ripeness encompasses two overlapping doctrines concerning the exercise of federal court jurisdiction."

Entergy Nuclear Vt. Yankee, LLC v. Shumlin, 733 F.3d 393, 429 (2d Cir. 2013) (citing *Reno v. Catholic Soc. Servs., Inc.*, 509 U.S. 43, 57 n.18 (1993)) (internal quotation marks omitted). The first, constitutional ripeness, "overlaps with the standing doctrine, 'most notably in the shared requirement that the plaintiff's injury be imminent rather than conjectural or hypothetical.'" *In re Methyl Tertiary Butyl Ether (MTBE) Prods. Liab. Litig.*, 725 F.3d 65, 110 (2d Cir. 2013) (quoting *Ross v. Bank of Am., N.A.*, 524 F.3d 217, 226 (2d Cir. 2008)). Prudential ripeness, meanwhile, is "'an important exception to the usual rule that where jurisdiction exists a federal court must exercise it,' and allows a court to determine 'that the case will be better decided later.'" *Id.* (quoting *Simmonds v. Immigration Naturalization Serv.*, 326 F.3d 351, 357 (2d Cir. 2003)). In determining whether a case is prudentially ripe, courts examine "(1) whether [the case] is fit for judicial decision and (2) whether and to what extent the parties will endure hardship if decision is withheld." *Simmonds*, 326 F.3d at 359 (citing *Abbott Labs. v. Gardner*, 387 U.S. 136, 148-49 (1967)).

One can conceive of no issue of greater ripeness than that presented here. The Rule is scheduled to go into effect in a matter of *days*, at which point hundreds of thousands of individuals who were previously eligible for admission and permanent residence in the United States will no longer be eligible because of this change of law. Adverse consequences and determinations will soon begin to have their effect. The Rule is intended to immediately cause the immigrant population to avoid public benefits. Plaintiffs must be prepared to immediately adjust to the results of this change in policy.

No further factual predicate is necessary for purposes of determining ripeness, where there is clearly a legal question about whether the Rule exceeds Defendants' delegated authority, violates the law, and is arbitrary and capricious. Moreover, for the same reasons that Plaintiffs sufficiently allege an injury under the standing inquiry, they have shown that they will endure significant hardship with any delay. Accordingly, Plaintiffs' claims are ripe for review, both constitutionally and prudentially.

3. Plaintiffs Are Within the Zone of Interests Regulated By the Rule.

The final threshold question raised by Defendants is whether Plaintiffs have concerns that "fall within the zone of interests protected by the law invoked." *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 129 (2014) (citation and internal quotation marks omitted). The zone-of-interests test is "not 'especially demanding,'" particularly with respect to the APA and its "generous review provisions." *Id.* at 130, (citation and internal quotation marks omitted). Indeed, in the APA context, the Supreme Court has "often 'conspicuously included the word "arguably" in the test to indicate that the benefit of any doubt goes to the plaintiff.'" *Id.* (citation omitted). "The test forecloses suit only when a plaintiff's 'interests are so marginally related to or inconsistent with the purposes implicit in the statute that it cannot reasonably be assumed that Congress intended to permit the suit.'" *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, 567 U.S. 209, 225 (2012) (citation omitted).

Plaintiffs plainly fall within the INA's zone of interests. The interests of immigrants and immigrant advocacy organizations such as Plaintiffs are inextricably intertwined. In fact, the court in *Batalla Vidal v. Nielsen*, 291 F. Supp. 3d 260 (E.D.N.Y. 2018), found that Make the Road New York, one of the Plaintiffs in this very action, fall within the zone of interests of the INA. *Id.* at 269 n.3. Furthermore, the zone-of-interests test "does not require the plaintiff to be an intended beneficiary of the law in question," but instead allows parties simply "who are injured" to seek redress. *Citizens for Responsibility & Ethics in Wash. v. Trump*, No. 18-474, 2019 WL 4383205, at *16 (2d Cir. Sept. 13, 2019). The Supreme Court has consistently found that economic injuries like those alleged here satisfy the test. *See, e.g.*, *Bank of Am. Corp. v. City of Miami*, 137 S. Ct. 1296, 1304-05 (2017) (finding city's discriminatory lending claims within zone of interests of Fair Housing Act, despite economic nature of harms alleged and absence of any indication that Act was intended to protect municipal budgets).

B. Plaintiffs Sufficiently Allege That the Rule Exceeds Statutory Authority and Is Contrary to Law.

Turning to the merits of Plaintiffs' claims, Plaintiffs argue that the Rule violates the APA because it exceeds DHS's delegated authority under the INA and is contrary to law. *See* 5 U.S.C. § 706(2)(A), (C). In analyzing an agency's interpretation of a statute and whether the agency's action exceeds statutory authority, courts often apply the two-step framework articulated in *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), "[T]he question . . . is al-

ways whether the agency has gone beyond what Congress has permitted it to do[.]" *City of Arlington v. FCC*, 569 U.S. 290, 298 (2013). Under *Chevron*, courts first ask whether the statute is clear. *Chevron*, 467 U.S. at 842. If so, "that is the end of the matter[,] for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress." *Id.* at 842-43. Where there is ambiguity, however, courts then ask whether the agency's interpretation of the statute is reasonable. *Id.* at 843-44. Such deference "is premised on the theory that a statute's ambiguity constitutes an implicit delegation from Congress to the agency to fill in the statutory gaps." *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 159 (2000). Notwithstanding this implicit delegation, "agencies must operate 'within the bounds of reasonable interpretation,'" and "reasonable statutory interpretation must account for both 'the specific context in which . . . language is used' and 'the broader context of the statute as a whole.'" *Util. Air Regulatory Grp. v. EPA*, 573 U.S. 302, 321 (2014) (citations omitted).

1. Long-Standing Definition of "Public Charge."

Plaintiffs argue that the Rule's definition of "public charge" is a drastic deviation from the unambiguous and well-established meaning of the term that has existed for over 130 years. (Pls.' Mem. at 5, 18-19.) They assert that the term has been interpreted narrowly to refer to an individual who is "institutionalized or [is] otherwise primarily dependent on the government for subsistence." (*Id.* at 5.) Going as far back as 1882, when Congress passed the first federal immigration statute, Plaintiffs note that the statute rendered excludable "any person unable to take care of himself or herself without

becoming a public charge," (*id.* at 6 (quoting Immigration Act of 1882, ch. 376, 22 Stat. 214, 47th Cong. (1882))), and that its legislative history showed that Congress intended "public charge" to refer to "those likely to become long-term residents of 'poor-houses and alms-houses,'" (*id.* (quoting 13 Cong. Rec. 5109 (June 19, 1882) (statement of Rep. Davis)).) Plaintiffs point to court decisions in the years that followed, which confirmed this definition of "public charge." (*Id.* at 6-7.) According to Plaintiffs, federal agencies have also affirmed this narrow interpretation, as evidenced by INS's 1999 Field Guidance. (*Id.* at 12.)

In opposition, Defendants assert that the definition of "public charge" in the Rule "is consistent with the plain meaning of the statutory text, which 'is to be determined as of the time that it became law.'" (Defs.' Opp'n at 11-12 (quoting *One West Bank v. Melina*, 827 F.3d 214, 220 (2d Cir. 2016)).) They direct this Court to dictionaries used in the 1880s, when the Immigration Act of 1882 was passed, which allegedly "make clear" that a noncitizen becomes a "public charge" "when his inability to achieve self-sufficiency imposes an 'obligation' or 'liability' on 'the body of the citizens' to provide for his basic necessities." (*Id.* at 12-13.)

Upon review of the plain language of the INA, the history and common-law meaning of "public charge," agency interpretation, and Congress's repeated reenactment of the INA's public charge provision without material change, one thing is abundantly clear—"public charge" has *never* been understood to mean receipt of 12 months of benefits within a 36-month period. Defendants admit that this is a "new definition" under the

Rule, (*Id.* at 5.) And at oral argument, they did not dispute that this definition has *never* been referenced in the history of U.S. immigration law or that there is *zero* precedent supporting this particular definition. (*See, e.g.*, Tr. of Oral Arg. dated Oct. 7, 2019 at 51:8-11, 52:1-3.) No ordinary or legal dictionary definition of "public charge" references Defendants' proposed meaning of that term. As such, Plaintiffs raise a compelling argument that Defendants lack the authority to redefine "public charge" as they have.

2. Congress's Intent.

Nor is there any evidence that Congress intended for a redefinition of "public charge," and certainly not in the manner set forth in the Rule. No legislative intent or historical precedent alludes to this new definition. Defendants have made no showing that Congress was anything but content with the current definition set forth in the Field Guidance, which defines public charge as someone who has become or is likely to become primarily dependent on the government for cash assistance. Indeed, Congress has repeatedly endorsed this definition and rejected efforts to expand it. For example, during the 1996 debate over IIRIRA, several members of Congress tried and failed to extend the meaning of public charge to include the use of non-cash benefits. *See* 142 Cong. Rec. S11612, at S11712 (daily ed. Sept. 16, 1996). Congress rejected similar efforts in 2013 because of its "strict benefit restrictions and requirements." S. Rep. 113-40, at 42 (2013).

In addition, if Congress wanted to deny immigrants any of the public benefits enumerated in the Rule, it could have done so, as it similarly has in the past. The Welfare Reform Act, for example, restricted certain

noncitizens' eligibility for certain benefits. Specifically, it provided that only "qualified" noncitizens—which, in most cases, meant those who had remained in the United States for five years—could have access to most federal means-tested public benefits. 8 U.S.C. §§ 1612, 1613. Therefore, the absence of any Congressional intent to redefine public charge also counsels in favor of a preliminary injunction.

C. Plaintiffs Sufficiently Demonstrate That the Rule Is Arbitrary and Capricious.

Plaintiffs additionally argue that the Rule is arbitrary and capricious. *See* 5 U.S.C. § 706(2)(A). "The scope of review under the 'arbitrary and capricious' standard is narrow[.]" *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). Nevertheless, the APA requires an agency to "engage in 'reasoned decisionmaking,'" *Michigan v. EPA*, 135 S. Ct. 2699, 2706 (2015) (citation omitted), and to "articulate a satisfactory explanation for its action," *State Farm*, 463 U.S. at 43 (citation omitted). An agency rule is arbitrary and capricious if the agency:

> relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.

Id. Where an agency action changes prior policy, the agency need not demonstrate "that the reasons for the new policy are *better* than the reasons for the old one." *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515

(2008). It must, however, "show that there are good reasons for the new policy." *Id.* This requirement is heightened where the "new policy rests upon factual findings that contradict those which underlay its prior policy," *id.* (citation omitted), as "a reasoned explanation is needed for disregarding facts and circumstances that underlay or were engendered by the prior policy," *id.* at 516.

1. Defendants' Justification of Rule.

Here, Defendants fail to provide any reasonable explanation for changing the definition of "public charge" or the framework for evaluating whether a noncitizen is likely to become a public charge. As noted above, "public charge" has never been interpreted as someone "who receives one or more public benefits . . . for more than 12 months in the aggregate within any 36-month period." 84 Fed. Reg. at 41,501. This new definition essentially changes the public charge assessment into a *benefits* issue, rather than an inquiry about *self-subsistence*, such that any individual who is deemed likely to accept a benefit is considered a public charge. Receipt of a benefit, however, does not necessarily indicate that the individual is unable to support herself. One could envision, for example, a scenario where an individual is fully capable of supporting herself without government assistance but elects to accept a benefit, such as public housing, simply because she is entitled to it. Under the Rule, although this individual is legally entitled to public housing, if she takes advantage of this right, she may be penalized with denial of adjustment of status. There is no logic to this framework. Moreover, considering that the federal welfare program was not established in the United States until the 1930s,

whereas the concept of public charge existed at least as early as 1882, there *must* be some definition of public charge separate and apart from mere receipt of benefits.

At oral argument, Defendants were afforded numerous opportunities to articulate a rational basis for equating public charge with receipt of benefits for 12 months within a 36-month period, particularly when this has never been the rule. Defendants failed each and every time. When asked, for example, why the standard was 12 months and 36 months as opposed to any other number of months, Defendants merely responded that they do not need to "show a case from 100 years ago that also adopted this precise 12[/]36 standard." (Tr. of Oral Arg. dated Oct. 7, 2019 at 53:14-20.) Defendants were asked to explain how the new framework would operate and to provide an example of the "typical person" that Defendants could predict is going to receive 12 months of benefits in a 36-month period. (*Id.* 68:11-80:123.) Defendants again stumbled along and were unable to adequately explain what the determinative factor is under the Rule, what individual would fall across the line and be considered a public charge, and what evaluation of the factors enumerated in the Rule would make the DHS officer confident that she could make an appropriate prediction. (*Id.*) And yet, according to Defendants, the Rule is intended to "provide[] a number of concrete guidelines to assist in making [the public charge] determination" and is "designed . . . to make it more predictable for people on both sides of the adjudicatory process." (*Id.* at 80:20-23.) Quite the opposite appears to be the case.

Defendants suggest that the totality-of-circumstances test remains and that receipt of benefits for 12 months

out of a 36-month period is only one of several factors to be considered. (*Id.* at 52:17-22.) This characterization of the Rule is plainly incorrect. Under the Rule, receipt of such benefits is not *one* of the factors considered; it is *the* factor. That is, if a DHS officer believes that an individual is likely to have benefits for 12 months out of a 36-month period, the inquiry ends there, and the individual is *automatically* considered a public charge. As such, Defendants are not simply expanding or elaborating on the list of factors to consider in the totality of the circumstances. Rather, they are entirely reworking the framework, and with no rational basis.

Defendants also fail to demonstrate rational relationships between many of the additional factors enumerated in the Rule and a finding of benefits use. One illustrative example is the addition of English-language proficiency as a factor. Defendants do not dispute that there has never been an English-language requirement in the public charge analysis. They argue, however, that the Rule "properly" adds English proficiency as a factor, given the requirement in the INA to consider an applicant's "education and skills." (Defs.' Opp'n at 26.) Defendants' suggestion that an individual is likely to become a public charge simply by virtue of her limited English proficiency is baseless, as one can certainly be a productive and self-sufficient citizen without knowing *any* English. The United States of America has no official language. Many, if not most, immigrants who arrived at these shores did not speak English. It is

simply offensive to contend that English proficiency is a valid predictor of self-sufficiency.[2]

In short, Defendants do not articulate why they are changing the public charge definition, why this new definition is needed now, or why the definition set forth in the Rule—which has absolutely no support in the history of U.S. immigration law—is reasonable. The Rule is simply a new agency policy of exclusion in search of a justification. It is repugnant to the American Dream of the opportunity for prosperity and success through hard work and upward mobility. Immigrants have always come to this country seeking a better life for themselves and their posterity. With or without help, most succeed.

2. Rehabilitation Act.

Plaintiffs further argue that the Rule discriminates against individuals with disabilities, in contravention of Section 504 of the Rehabilitation Act, Pub. L. No. 93-112, 87 Stat. 394 (1973) (codified at 29 U.S.C. § 794). Section 504 provides that no individual with a disability "shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination . . . under any

---

[2] Similarly it is unclear how the credit score of a new immigrant—who, for example, may have only recently opened her first credit account and therefore has a short credit history, which would negatively impact her credit score—is indicative of her likelihood to receive 12 months of public benefits. Defendants blithely argue that a low credit score "is an indication that someone has made financial decisions that are not necessarily entirely responsible" and that "those irresponsible financial decisions may be the product of someone who doesn't have very much money to work with." (Tr. of Oral Arg. dated Oct. 7, 2019 at 86:16-20).

program or activity conducted by any Executive agency." 29 U.S.C. § 794(a). DHS, in particular, is prohibited from denying access to benefits and services on the basis of disability, 6 C.F.R. § 15.30(b)(1), and from using discriminatory criteria or methods of administration, *id.* § 15.30(b)(4). *See also id.* § 15.49. "Exclusion or discrimination [under Section 504] may take the form of disparate treatment, disparate impact, or failure to make reasonable accommodation." *B.C. v. Mount Vernon Sch. Dist.*, 837 F.3d 152, 158 (2d Cir. 2016).

The Rule clearly considers disability as a negative factor in the public charge assessment. Defendants acknowledge that disability is "one factor . . . that may be considered" and that it is "relevant . . . to the extent that an alien's particular disability tends to show that he is 'more likely than not to become a public charge' at any time." (Defs.' Opp'n at 22 (quoting 84 Fed. Reg. at 41,368).) Defendants do not explain how disability alone is itself a negative factor indicative of being more likely to become a public charge. In fact, it is inconsistent with the reality that many individuals with disabilities live independent and productive lives. As such, Plaintiffs have raised at least a colorable argument that the Rule as to be applied may violate the Rehabilitation Act, and further discovery and development of the record is warranted prior to its implementation.

3. Fifth Amendment Equal Protection Guarantee.

According to Plaintiffs, the Rule violates the equal protection guarantee of the Fifth Amendment to the U.S. Constitution because it disproportionately harms noncitizens of color. Plaintiffs and Defendants disagree about the appropriate level of scrutiny under which to assess the Rule's constitutionality. Plaintiffs argue

that the Rule was motivated by discriminatory animus towards noncitizens of color and is therefore subject to strict scrutiny under *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977). (Pls.' Mem. at 31-32.) Defendants, on the other hand, contend that because the government has "broad power over naturalization and immigration," (Defs.' Opp'n at 34 (quoting *Lewis v. Thompson*, 252 F.3d 567, 582 (2d Cir. 2001))), the Rule is subject only to rational basis review, (*id.* at 34-35).

Under either standard, the conclusion remains the same: Plaintiffs have sufficiently demonstrated a likelihood of success on the merits of their equal protection claim. Indeed, even under the highly deferential standard advanced by Defendants, Defendants have yet to articulate a "rational relationship between the disparity of treatment and some legitimate government purpose." *Lewis*, 252 F.3d at 582 (citations and internal quotation marks omitted). Defendants do not dispute that the Rule will disparately impact noncitizens of color. At oral argument, when asked whether the Rule "will have a greater impact on people of Hispanic and African descent," for example, Defendants' response was that they "don't know" and that "that's the same issue that would have applied under the [Field Guidance], which [Defendants] assume also would have had a disproportionate impact." (Tr. of Oral Arg. dated Oct. 7, 2019 at 81:10-16.) Defendants instead challenge Plaintiffs' equal protection claim by arguing that the Rule is "rationally related to the government's compelling, statutorily-codified interest in minimizing the incentive of aliens to immigrate to the United States due to the availability of public benefits and promoting the self-sufficiency of aliens within

the United States." (Defs.' Opp'n at 35.) But, as discussed above, this is no reasonable basis for Defendants' sharp departure from the current public charge determination framework. *See supra* Part III.C.1. As such, "Plaintiffs have, at the very least, raised serious questions going to the merits of their Equal Protection Claim." *Saget v. Trump*, 375 F. Supp. 3d 280, 374 (E.D.N.Y. 2019).

IV. PLAINTIFFS HAVE DEMONSTRATED THAT THEY WILL SUFFER IRREPARABLE HARM ABSENT A PRELIMINARY INJUNCTION

"A showing of irreparable harm is 'the single most important prerequisite for the issuance of a preliminary injunction.'" *Faiveley Transp. Malmo AB v. Wabtec Corp.*, 559 F.3d 110, 118 (2d Cir. 2009) (citation omitted). "To satisfy the irreparable harm requirement, Plaintiffs must demonstrate that absent a preliminary injunction they will suffer 'an injury that is neither remote nor speculative, but actual and imminent,' and one that cannot be remedied 'if a court waits until the end of trial to resolve the harm.'" *Grand River Enter. Six Nations, Ltd. v. Pryor*, 481 F.3d 60, 66 (2d Cir. 2007) (citation omitted). However, Plaintiffs need only show "a *threat* of irreparable harm, not that irreparable harm already ha[s] occurred." *Mullins v. City of New York*, 626 F.3d 47, 55 (2d Cir. 2010).

The irreparable injury to Plaintiffs by forcing them to divert resources and by shifting the burden of providing services to those who can no longer obtain federal benefits without jeopardizing their status in the United States, and the immediate response that is necessary by this shift of burden to Plaintiffs, is a direct and inevitable consequence of the impending implementation of the

Rule. As discussed above, Plaintiffs allege that the Rule will hinder their ability to carry out their missions and force them to expend substantial resources to mitigate the potentially adverse effects of the Rule. *See supra* Parts III.A.1-2. Plaintiffs provide declarations extensively describing and calculating such injuries. (*See, e.g.*, Decl. of Diane Schanzenbach, Ph.D., ECF No. 40; Decl. of Ryan Allen, Ph.D., ECF No. 41; Decl. of Leighton Ku, Ph.D., M.P.H., ECF No. 42.)

No less important is the immediate and significant impact that the implementation of the Rule will have on law-abiding residents who have come to this country to seek a better life. The consequences that Plaintiffs must address, and America must endure, will be personal and public disruption, much of which cannot be undone. Overnight, the Rule will expose individuals to economic insecurity, health instability, denial of their path to citizenship, and potential deportation—none of which is the result of any conduct by those such injuries will affect. It is a rule that will punish individuals for their receipt of benefits provided by our government, and discourages them from lawfully receiving available assistance intended to aid them in becoming contributing members of our society. It is impossible to argue that there is no irreparable harm for these individuals, Plaintiffs, and the public at large.

V. THE BALANCE OF HARDSHIPS AND PUBLIC INTEREST TIP IN PLAINTIFFS' FAVOR

Finally, Plaintiffs must demonstrate that "the balance of equities tips in [their] favor" and that "an injunction is in the public interest." *Winter*, 555 U.S. at 20. "These factors merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009).

In assessing these factors, the court must "balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief," as well as "the public consequences in employing the extraordinary remedy of injunction," *Winter*, 555 U.S. at 24 (citations omitted).

Here, preventing the alleged economic and public health harms provides a significant public benefit. As discussed above, these harms are not speculative or insufficiently immediate. In fact, the notice of proposed rulemaking itself acknowledged that the Rule could cause "[w]orse health outcomes"; "[i]ncreased use of emergency rooms and emergent care as a method of primary health care due to delayed treatment"; "[i]ncreased prevalence of communicable diseases, including among members of the U.S. citizen population who are not vaccinated"; "[i]ncreases in uncompensated care in which a treatment or service is not paid for by an insurer or patient"; "[i]ncreased rates of poverty and housing instability"; "[r]educed productivity and educational attainment"; and other "unanticipated consequences and indirect costs." 83 Fed. Reg. at 51,270.

Moreover, there is no public interest in allowing Defendants to proceed with an unlawful, arbitrary, and capricious rule that exceeds their statutory authority. *See Planned Parenthood of N.Y.C., Inc. v. U.S. Dep't of Health & Human Servs.*, 337 F. Supp. 3d 308, 343 (S.D.N.Y. 2018) ("It is evident that '[t]here is generally no public interest in the perpetuation of unlawful agency action.' . . . The inverse is also true: 'there is a substantial public interest in 'having governmental

agencies abide by the federal laws that govern their existence and operations.'" (quoting *League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016)).)

To be sure, Defendants have a legitimate interest in administering the national immigration system. However, that interest is not paramount in this instance, particularly where Defendants fail to demonstrate why or how the current public charge framework is inadequate. Defendants have applied their current rules for decades, and the current concept of "public charge" has been accepted for over a century. Aside from conclusory allegations that they will "be harmed by an impediment" to administering the immigration system, (Defs.' Opp'n at 38), Defendants do not—and cannot—articulate what actual hardship they will suffer by maintaining the status quo.

Accordingly, because Plaintiffs are likely to succeed on the merits and to suffer irreparable harm absent preliminary relief, and the balance of hardships and public interest tip in their favor, Plaintiffs are entitled to a preliminary injunction.

VI. THE INJUNCTION SHOULD APPLY NATIONWIDE

As to the scope of the relief, a nationwide injunction is necessary. The scope of preliminary injunctive relief generally should be "no broader than necessary to cure the effects of the harm caused by the violation" and "not impose unnecessary burdens on lawful activity." *Church & Dwight Co. v. SPD Swiss Precision Diagnostics, GmBH*, 843 F.3d 48, 72 (2d Cir. 2016) (citations omitted). However, there is no requirement that an injunction affect only the parties in the suit. *See Califano v.*

Yamasaki, 442 U.S. 682, 702 (1979) ("[T]he scope of injunctive relief is dictated by the extent of the violation established, not by the geographical extent of the plaintiff class.")

Here, a nationwide injunction is appropriate. First, national immigration policies, such as the Rule, require uniformity. *Hawaii v. Trump*, 878 F.3d 662, 701 (9th Cir. 2017), *rev'd on other grounds*, 138 S. Ct. 2392, (2018); *see also Batalla Vidal v. Nielsen*, 279 F. Supp. 3d 401, 438 (E.D.N.Y. 2018) (granting nationwide injunction preventing rescission of Deferred Action for Childhood Arrivals program in part because "there is a strong federal interest in the uniformity of federal immigration law"); U.S. Const. art. I, § 8, cl. 4 ("The Congress shall have Power . . . To establish a[ ] uniform Rule of Naturalization."). A geographically limited injunction that would result in inconsistent applications of the Rule, and different public charge determinations based upon similar factors, is inimical to this need for uniformity in immigration enforcement.

Indeed, at least nine lawsuits have already been filed challenging the Rule, including *State of California v. U.S. Department of Homeland Security*, 19 Civ. 4975 (PJH) (N.D. Cal.) and *State of Washington v. United States Department of Homeland Security*, 19 Civ. 5210 (RMP) (E.D. Wash.).[3] In just these two actions alone,

---

[3] In addition to the instant action and the related action both before this Court, these other actions include *Mayor and City Council of Baltimore v. United States Department of Homeland Security*, 19 Civ. 2851 (PJM) (D Md.); *Casa De Maryland, Inc. v. Trump*, 19 Civ. 2715 (PWG) (D. Md.); *City and County of San Francisco v. U.S. Citizenship and Immigration Services*, 19 Civ. 4717 (PJH) (N.D. Cal.); *La Clinica De La Raza v. Trump*, 19 Civ. 4980 (PJH)

Plaintiffs include the State of California, District of Columbia, State of Maine, Commonwealth of Pennsylvania, State of Oregon, State of Washington, Commonwealth of Virginia, State of Colorado, State of Delaware, State of Illinois, State of Maryland, Commonwealth of Massachusetts, Attorney General Dana Nessel on behalf of the People of Michigan, State of Minnesota, State of Nevada, State of New Jersey, State of New Mexico, and State of Rhode Island. Combined with the instant action, that means that nearly *two dozen jurisdictions* have already brought suit. It would clearly wreak havoc on the immigration system if limited injunctions were issued, resulting in different public charge frameworks spread across the country, based solely on geography. *Batalla*, 279 F. Supp. 3d at 438 (granting nationwide injunction where more limited injunction "would likely create administrative problems for the Defendants").

There is no reasonable basis to apply one public charge framework to one set of individuals and a different public charge framework to a second set of individuals merely because they live in different states. It would be illogical, for example, if a New York resident was eligible for adjustment of status but a resident of a sister state with the *same exact* background was not eligible, only because the second resident had the misfortune of living somewhere not covered by a limited injunction.

Relatedly, a nationwide injunction is necessary to accord Plaintiffs and other interested parties with complete redress. In particular, an individual should not

---

(N.D. Cal.); and *Cook County, Illinois v. McAleenan*, 19 Civ. 6334 (GF) (N.D. Ill.).

have to fear that moving from one state to another could result in a denial of adjustment of status. For example, if the injunction were limited to New York, Connecticut, and Vermont, and a New York resident moved to New Jersey where the injunction would not apply, this individual could there be considered a public charge and face serious repercussions simply for crossing state borders. "[F]reedom to travel throughout the United States has long been recognized as a basic right under the Constitution." *United States v. Guest*, 383 U.S. 745, 758 (1966) (citations omitted). It has been considered a "right so elementary [that it] was conceived from the beginning to be a necessary concomitant of the stronger Union the Constitution created." *Id.*; *see also Griffin v. Breckenridge*, 403 U.S. 88, 105 (1971) ("Our cases have firmly established that the right of interstate travel is constitutionally protected, does not necessarily rest on the Fourteenth Amendment, and is assertable against private as well as governmental interference.") The Supreme Court's recognition of the preeminence of this right lends further support for a nationwide injunction that would not interfere with individuals' ability to move from one place to another. *See, e.g.*, *Batalla*, 279 F. Supp. 3d at 438 (finding nationwide injunction appropriate "partly in light of the simple fact that people move from state to state and job to job").

Accordingly, this Court grants a nationwide injunction, as well as a stay postponing the effective date of the Rule pending a final ruling on the merits, or further order of the Court.[4]

---

[4] The standard for a stay under 5 U.S.C. § 705 is the same as the standard for a preliminary injunction. *Nat. Res. Def. Council v.*

VII. CONCLUSION

Plaintiffs' motion for issuance of a preliminary injunction, (ECF No. 33), is GRANTED.

Dated: New York, New York
Oct. 11, 2019

SO ORDERED.

/s/ GEORGE B. DANIELS
GEORGE B. DANIELS
United States District Judge

U.S. Dep't of Energy, 362 F. Supp. 3d 126, 149 (S.D.N.Y. 2019). Accordingly, this Court grants the stay for the same reasons it grants the injunction.

APPENDIX E

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

---

19 Civ. 7993 (GBD)

MAKE THE ROAD NEW YORK, AFRICAN SERVICES COMMITTEEE, ASIAN AMERICAN FEDERATION, CATHOLIC CHARITIES COMMUNITIES SERVICES, (ARCHDIOCESE OF NEW YORK), AND CATHOLIC LEGAL IMMIGRATION NETWORK, INC., PLAINTIFFS

v.

KEN CUCCINELLI, IN HIS OFFICIAL CAPACITY AS ACTING DIRECTOR OF UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES; UNITED STATES CITIZENSHIP & IMMIGRATION SERVICES; KEVIN K. MCALEENAN, IN HIS OFFICIAL CAPACITY AS ACTING SECRETARY OF HOMELAND SECURITY; AND UNITED STATES DEPARTMENT OF HOMELAND SECURITY, DEFENDANTS

[Filed: Oct. 11, 2019]

ORDER GRANTING PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

GEORGE B. DANIELS, United States District Judge:

WHEREAS on September 9, 2019, Make the Road New York, African Services Committee, Asian American Federation, Catholic Charities Community Services, and Catholic Legal Immigration Network, Inc.

(the "Organizational Plaintiffs") filed a Motion for Preliminary Injunction in Case No. 19 Civ. 7993 (GBD) (S.D.N.Y.) (the "Organizational Action") to enjoin defendants from implementing or enforcing the Final Rule of the Department of Homeland Security titled "Inadmissibility on Public Charge Grounds," 84 Fed. Reg. 41,292 (the "Rule") pursuant to Federal Rule of Civil Procedure 65, or to postpone the effective date of the Rule pursuant to 5 U.S.C. § 705;

WHEREAS also on September 9, 2019, the State of New York, the City of New York, the State of Connecticut, and the State of Vermont (the "State Plaintiffs," and, together with the Organizational Plaintiffs, "Plaintiffs") similarly filed a Motion for Preliminary Injunction in Case No. 19 Civ. 7777 (GBD) (S.D.N.Y.) (the "State Action," and, together with the Organizational Action, the "Actions") to enjoin defendants from implementing or enforcing the Rule pursuant to Federal Rule of Civil Procedure 65, or to postpone the effective date of the Rule pursuant to 5 U.S.C. § 705 (together with the Organizational Plaintiffs' motion, the "Motions");

WHEREAS on September 27, 2019, Kenneth T. Cuccinelli II, United States Citizenship & Immigration Services, Kevin K. McAleenan, Department of Homeland Security, and the United States of America (as to the State Action only) ("Defendants") submitted briefs in opposition to the Motions;

WHEREAS on October 4, 2019, Plaintiffs filed replies in further support of the Motions;

WHEREAS *amici* have filed briefs in support of or opposition to the Motions;

WHEREAS on October 7, 2019, this Court held a hearing on the Motions at which counsel for all parties presented oral argument;

WHEREAS this Court, having considered the Motion and the documents filed therewith, as well as all other papers filed in the Actions, and having heard oral arguments from the parties, finds good cause to grant the Motions because:

1. Plaintiffs are likely to succeed on the merits of their claims under the Administrative Procedure Act, and, with respect to the Organizational Plaintiffs, under the United States Constitution;

2. Plaintiffs will suffer irreparable harm if the Rule becomes effective; and

3. The balance of equities and the interests of justice favor issuance of a preliminary injunction;

It is hereby ORDERED that, pursuant to Federal Rule of Civil Procedure 65(a), Defendants are RESTRAINED AND ENJOINED from:

1. Enforcing, applying or treating as effective, or allowing persons under their control to enforce, apply, or treat as effective, the Rule; and

2. Implementing, considering in connection with any application, or requiring the use of any new or updated forms whose submission would be required under the Rule, including the new Form I-944, titled "Declaration of Self Sufficiency," and the updated Form I-485, titled "Application to Register Permanent Residence of Adjust Status"; and,

It is hereby FURTHER ORDERED that, pursuant to 5 U.S.C. § 705, the effective date of the Rule is STAYED and POSTPONED *sine die* pending further Order of the Court such that, if this Order is later terminated and the Rule goes into effect, the Rule's stated effective date of October 15, 2019, as well as any references in the Rule to October 15, 2019, including but not limited those contained in proposed 8 CFR §§ 212.20, 212.22(b)(4)(i)(E), 212.22(b)(4)(ii)(E)(1), 212.22(b)(4)(ii)(E)(2), 212.22(b)(4)(ii)(F), 212.22(c)(1)(ii), 212.22(d), 214.1, 248.1(a), and 248.1(c)(4), shall be replaced with a date after this Order is terminated.

Dated: New York, New York
Oct. 11, 2019

SO ORDERED.

/s/ GEORGE B. DANIELS
GEORGE B. DANIELS
United States District Judge

APPENDIX F

1. 8 U.S.C. 1182(a)(4) provides:

Inadmissible aliens

(a) Classes of aliens ineligible for visas or admission

Except as otherwise provided in this chapter, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

(4) Public charge

(A) In general

Any alien who, in the opinion of the consular officer at the time of application for a visa, or in the opinion of the Attorney General at the time of application for admission or adjustment of status, is likely at any time to become a public charge is inadmissible.

(B) Factors to be taken into account

(i) In determining whether an alien is inadmissible under this paragraph, the consular officer or the Attorney General shall at a minimum consider the alien's—

(I) age;

(II) health;

(III) family status;

(IV) assets, resources, and financial status; and

(V) education and skills.

(ii) In addition to the factors under clause (i), the consular officer or the Attorney General may also consider any affidavit of support under section 1183a of this title for purposes of exclusion under this paragraph.

(C) Family-sponsored immigrants

Any alien who seeks admission or adjustment of status under a visa number issued under section 1151(b)(2) or 1153(a) of this title is inadmissible under this paragraph unless—

(i) the alien has obtained—

(I) status as a spouse or a child of a United States citizen pursuant to clause (ii), (iii), or (iv) of section 1154(a)(1)(A) of this title;

(II) classification pursuant to clause (ii) or (iii) of section 1154(a)(1)(B) of this title; or

(III) classification or status as a VAWA self-petitioner; or

(ii) the person petitioning for the alien's admission (and any additional sponsor required under section 1183a(f) of this title or any alternative sponsor permitted under paragraph (5)(B) of such section) has executed an affidavit of support described in section 1183a of this title with respect to such alien.

(D) Certain employment-based immigrants

Any alien who seeks admission or adjustment of status under a visa number issued under section

1153(b) of this title by virtue of a classification petition filed by a relative of the alien (or by an entity in which such relative has a significant ownership interest) is inadmissible under this paragraph unless such relative has executed an affidavit of support described in section 1183a of this title with respect to such alien.

(E) Special rule for qualified alien victims

Subparagraphs (A), (B), and (C) shall not apply to an alien who—

(i) is a VAWA self-petitioner;

(ii) is an applicant for, or is granted, nonimmigrant status under section 1101(a)(15)(U) of this title; or

(iii) is a qualified alien described in section 1641(c) of this title.

2. 8 U.S.C. 1183a provides in pertinent part:

Requirements for sponsor's affidavit of support

(a) Enforceability

(1) Terms of affidavit

No affidavit of support may be accepted by the Attorney General or by any consular officer to establish that an alien is not excludable as a public charge under section 1182(a)(4) of this title unless such affidavit is executed by a sponsor of the alien as a contract—

(A) in which the sponsor agrees to provide support to maintain the sponsored alien at an annual income that is not less than 125 percent of the Federal poverty line during the period in which the affidavit is enforceable;

(B) that is legally enforceable against the sponsor by the sponsored alien, the Federal Government, any State (or any political subdivision of such State), or by any other entity that provides any means-tested public benefit (as defined in subsection (e)[1]), consistent with the provisions of this section; and

(C) in which the sponsor agrees to submit to the jurisdiction of any Federal or State court for the purpose of actions brought under subsection (b)(2).

(2) Period of enforceability

An affidavit of support shall be enforceable with respect to benefits provided for an alien before the date the alien is naturalized as a citizen of the United States, or, if earlier, the termination date provided under paragraph (3).

* * * * *

(b) Reimbursement of government expenses

(1) Request for reimbursement

(A) Requirement

---

[1] See Reference in Text note below.

Upon notification that a sponsored alien has received any means-tested public benefit, the appropriate nongovernmental entity which provided such benefit or the appropriate entity of the Federal Government, a State, or any political subdivision of a State shall request reimbursement by the sponsor in an amount which is equal to the unreimbursed costs of such benefit.

(B) Regulations

The Attorney General, in consultation with the heads of other appropriate Federal agencies, shall prescribe such regulations as may be necessary to carry out subparagraph (A).

(2) Actions to compel reimbursement

(A) In case of nonresponse

If within 45 days after a request for reimbursement under paragraph (1)(A), the appropriate entity has not received a response from the sponsor indicating a willingness to commence payment an action may be brought against the sponsor pursuant to the affidavit of support.

(B) In case of failure to pay

If the sponsor fails to abide by the repayment terms established by the appropriate entity, the entity may bring an action against the sponsor pursuant to the affidavit of support.

(C) Limitation on actions

No cause of action may be brought under this paragraph later than 10 years after the date on which the sponsored alien last received any means-

tested public benefit to which the affidavit of support applies.

* * * * *

3. 8 U.S.C. 1227(a)(5) provides:

Deportable aliens

(a) Classes of deportable aliens

Any alien (including an alien crewman) in and admitted to the United States shall, upon the order of the Attorney General, be removed if the alien is within one or more of the following classes of deportable aliens:

(5) Public charge

Any alien who, within five years after the date of entry, has become a public charge from causes not affirmatively shown to have arisen since entry is deportable.

4. 8 U.S.C. 1601 provides:

Statements of national policy concerning welfare and immigration

The Congress makes the following statements concerning national policy with respect to welfare and immigration:

(1) Self-sufficiency has been a basic principle of United States immigration law since this country's earliest immigration statutes.

(2) It continues to be the immigration policy of the United States that—

(A) aliens within the Nation's borders not depend on public resources to meet their needs, but rather rely on their own capabilities and the resources of their families, their sponsors, and private organizations, and

(B) the availability of public benefits not constitute an incentive for immigration to the United States.

(3) Despite the principle of self-sufficiency, aliens have been applying for and receiving public benefits from Federal, State, and local governments at increasing rates.

(4) Current eligibility rules for public assistance and unenforceable financial support agreements have proved wholly incapable of assuring that individual aliens not burden the public benefits system.

(5) It is a compelling government interest to enact new rules for eligibility and sponsorship agreements in order to assure that aliens be self-reliant in accordance with national immigration policy.

(6) It is a compelling government interest to remove the incentive for illegal immigration provided by the availability of public benefits.

(7) With respect to the State authority to make determinations concerning the eligibility of qualified aliens for public benefits in this chapter, a State that chooses to follow the Federal classification in determining the eligibility of such aliens for public assistance shall be considered to have chosen the least restrictive means available for achieving the compelling governmental interest of assuring that aliens be

self-reliant in accordance with national immigration policy.

5. 8 U.S.C. 1611 provides:

Aliens who are not qualified aliens ineligible for Federal public benefits

(a) In general

Notwithstanding any other provision of law and except as provided in subsection (b), an alien who is not a qualified alien (as defined in section 1641 of this title) is not eligible for any Federal public benefit (as defined in subsection (c)).

(b) Exceptions

(1) Subsection (a) shall not apply with respect to the following Federal public benefits:

(A) Medical assistance under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] (or any successor program to such title) for care and services that are necessary for the treatment of an emergency medical condition (as defined in section 1903(v)(3) of such Act [42 U.S.C. 1396b(v)(3)]) of the alien involved and are not related to an organ transplant procedure, if the alien involved otherwise meets the eligibility requirements for medical assistance under the State plan approved under such title (other than the requirement of the receipt of aid or assistance under title IV of such Act [42 U.S.C. 601 et seq.], supplemental security income benefits under title XVI of such Act [42 U.S.C. 1381 et seq.], or a State supplementary payment).

(B) Short-term, non-cash, in-kind emergency disaster relief.

(C) Public health assistance (not including any assistance under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.]) for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease.

(D) Programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter) specified by the Attorney General, in the Attorney General's sole and unreviewable discretion after consultation with appropriate Federal agencies and departments, which (i) deliver in-kind services at the community level, including through public or private nonprofit agencies; (ii) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and (iii) are necessary for the protection of life or safety.

(E) Programs for housing or community development assistance or financial assistance administered by the Secretary of Housing and Urban Development, any program under title V of the Housing Act of 1949 [42 U.S.C. 1471 et seq.], or any assistance under section 1926c of title 7, to the extent that the alien is receiving such a benefit on August 22, 1996.

(2) Subsection (a) shall not apply to any benefit payable under title II of the Social Security Act [42 U.S.C. 401 et seq.] to an alien who is lawfully present in the

United States as determined by the Attorney General, to any benefit if nonpayment of such benefit would contravene an international agreement described in section 233 of the Social Security Act [42 U.S.C. 433], to any benefit if nonpayment would be contrary to section 202(t) of the Social Security Act [42 U.S.C. 402(t)], or to any benefit payable under title II of the Social Security Act to which entitlement is based on an application filed in or before August 1996.

(3) Subsection (a) shall not apply to any benefit payable under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.] (relating to the medicare program) to an alien who is lawfully present in the United States as determined by the Attorney General and, with respect to benefits payable under part A of such title [42 U.S.C. 1395c et seq.], who was authorized to be employed with respect to any wages attributable to employment which are counted for purposes of eligibility for such benefits.

(4) Subsection (a) shall not apply to any benefit payable under the Railroad Retirement Act of 1974 [45 U.S.C. 231 et seq.] or the Railroad Unemployment Insurance Act [45 U.S.C. 351 et seq.] to an alien who is lawfully present in the United States as determined by the Attorney General or to an alien residing outside the United States.

(5) Subsection (a) shall not apply to eligibility for benefits for the program defined in section 1612(a)(3)(A) of this title (relating to the supplemental security income program), or to eligibility for benefits under any other program that is based on eligibility for benefits under the program so defined, for an alien who was receiving such benefits on August 22, 1996.

(c) "Federal public benefit" defined

(1) Except as provided in paragraph (2), for purposes of this chapter the term "Federal public benefit" means—

(A) any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States; and

(B) any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of the United States or by appropriated funds of the United States.

(2) Such term shall not apply—

(A) to any contract, professional license, or commercial license for a nonimmigrant whose visa for entry is related to such employment in the United States, or to a citizen of a freely associated state, if section 141 of the applicable compact of free association approved in Public Law 99-239 or 99-658 (or a successor provision) is in effect;

(B) with respect to benefits for an alien who as a work authorized nonimmigrant or as an alien lawfully admitted for permanent residence under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] qualified for such benefits and for whom the United States under reciprocal treaty agreements is required to pay benefits, as determined by the Attorney General, after consultation with the Secretary of State; or

(C) to the issuance of a professional license to, or the renewal of a professional license by, a foreign national not physically present in the United States.

6. 29 U.S.C. 794 provides:

Nondiscrimination under Federal grants and programs

(a) Promulgation of rules and regulations

No otherwise qualified individual with a disability in the United States, as defined in section 705(20) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.

(b) "Program or activity" defined

For the purposes of this section, the term "program or activity" means all of the operations of—

(1)(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(A) a college, university, or other postsecondary institution, or a public system of higher education; or

(B) a local educational agency (as defined in section 7801 of title 20), system of career and technical education, or other school system;

(3)(A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3);

any part of which is extended Federal financial assistance.

(c) Significant structural alterations by small providers

Small providers are not required by subsection (a) to make significant structural alterations to their existing facilities for the purpose of assuring program accessibility, if alternative means of providing the services are available. The terms used in this subsection shall be construed with reference to the regulations existing on March 22, 1988.

(d) Standards used in determining violation of section

The standards used to determine whether this section has been violated in a complaint alleging employment discrimination under this section shall be the standards applied under title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq.) and the provisions of sections 501 through 504, and 510,[1] of the Americans with Disabilities Act of 1990 (42 U.S.C. 12201-12204 and 12210), as such sections relate to employment.

---

[1] See References in Text note below.