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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

STATE OF CALIFORNIA, DISTRICT OF COLUMBIA, STATE OF MAINE, COMMONWEALTH OF PENNSYLVANIA and **STATE OF OREGON,** Plaintiffs, **v.** **U.S. DEPARTMENT OF HOMELAND SECURITY; KEVIN MCALEENAN,** in his official capacity as Acting Secretary of Homeland Security; **U.S. CITIZENSHIP AND IMMIGRATION SERVICES;** and **KENNETH T. CUCCINELLI**, in his official capacity as Acting Director of U.S. Citizenship and Immigration Services**,** Defendants.	Case No. 3:19-cv-04975-JSC **NOTICE OF MOTION AND MOTION FOR PRELIMINARY INJUNCTION; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT** Date: October 3, 2019 Time: 9:00 a.m. Dept: Courtroom F, 15th Floor Judge: Hon. Jacqueline Scott Corley Trial Date: Not set Action Filed: August 16, 2019

TO THE DEFENDANTS AND THEIR COUNSELS OF RECORD:

PLEASE TAKE NOTICE that on October 3, 2019, at 9:00 a.m., in Courtroom F of the above-entitled court, at 450 Golden Gate Avenue, San Francisco, California, Plaintiffs the State of California, the District of Columbia, the State of Maine, the Commonwealth of Pennsylvania, and the State of Oregon will move under Local Rule 7-2 for a preliminary injunction enjoining implementation of the Rule, "Inadmissibility on Public Charge Grounds," 84 Fed. Reg. 41,292 (Aug. 14, 2019) (to be codified at 8 C.F.R. Parts 103, 212-14, 245, 248) (Public Charge Rule).

Because the Public Charge Rule violates the Administrative Procedure Act (APA) and will cause irreparable harm, and because the equities and public interest weigh in Plaintiffs' favor, Plaintiffs seek a preliminary injunction enjoining enforcement and implementation of the Rule by Defendants the U.S. Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS), Acting Secretary of DHS Kevin McAleenan, and Acting Director of USCIS Kenneth Cuccinelli (collectively, Defendants), or an order postponing the effective date of the Rule pending judicial review, pursuant to 5 U.S.C. § 705.

This motion is based on this notice, the Memorandum of Points and Authorities, the Declarations of Patrick Allen, David H. Aizuss, Cathy Buhrig, Melisa Byrd, Mari Cantwell, Wilma Chan, Colleen Chawla, Lisa Cisneros, Carmela Coyle, Charity Dean, Pia Escudero, Susan Fanelli, Alexis Carmen Fernández, Barbara Ferrer, Colt Gill, Gary Gray, Jennifer Hernandez, Jodi Hicks, Antonia Jiménez, Sasha R. Kergan, Kevin Kish, Mila Kofman, Laurel Lucia, Doug McKeever, Lori Medina, Sarah Neville-Morgan, Fairborz Pakseresht, Lindsey Palmer, Anthony Pelotte, Ninez Ponce, Michelle Probert, M. Marcela Ruiz, Margaret Salazar, John Stobo, Debbi Thomson, Jennifer Van Hook, Tom Wong, this Court's file, and any matters properly before the Court.

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INTRODUCTION

Plaintiffs the State of California, the District of Columbia, the State of Maine, the Commonwealth of Pennsylvania, and the State of Oregon (collectively, the States) move for a preliminary injunction of the unlawful "public charge" rule issued by Defendants the U.S. Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS), Acting Secretary of DHS Kevin McAleenan, and Acting Director of USCIS Kenneth Cuccinelli. "Inadmissibility on Public Charge Grounds," RIN 1615-AA22, 84 Fed. Reg. 41,292 (Aug. 14, 2019) ("Public Charge Rule" or "Rule"), or an order pursuant to 5 U.S.C. § 705 postponing the effective date of the Rule pending judicial review.

Defendants' new Rule will increase denials of admission to the United States on public charge grounds, depriving low-income immigrants currently present in the U.S. of the ability to adjust to lawful permanent residents (i.e., become "LPRs" or "green card" holders), to change their visas, or to extend their immigration status. The Rule abandons the clear meaning of "public charge" as set forth in the Immigration and Nationality Act (INA) and long-standing judicial and agency interpretations, which have limited the term to individuals who are primarily dependent on the government for subsistence. Now, contrary to the public charge framework designed by Congress, the Rule makes any low-wage worker vulnerable to a finding of inadmissibility on public charge grounds by attaching a negative weight to individuals' incomes of less than 125% of the federal poverty level ($32,188 annually for a family of four). The Rule also impermissibly targets individuals who use public benefit programs to which they are legally entitled, including healthcare, nutrition, and housing services, and that are supplemental in nature and widely used by working individuals and families across the United States.

Defendants' Rule violates the Administrative Procedure Act's prohibitions on agency actions that are arbitrary, capricious, or not in accordance with law. The explanation supporting the Rule is inadequate and runs counter to the evidence before the agency. For example, the Rule ostensibly promotes self-sufficiency, but penalizes use of programs that support achieving that goal. Moreover, the Rule undermines federal authority that Congress has given the States to

design their healthcare and nutrition programs to include noncitizens. And it places new hurdles along the path to citizenship for marginalized populations, including people with disabilities (in violation of the Rehabilitation Act), children, students, older adults, and any low-wage working individual or family.

Furthermore, Defendants issued the Rule despite significant evidence of collateral harm. As Defendants themselves acknowledge, the Rule will cause a chilling effect that will prompt hundreds of thousands of immigrants and their U.S. citizen family members to refuse to enroll, or to disenroll, from services for which they are eligible, whether to avoid the possibility of being denied permanent legal residence in the United States, or out of fear and confusion surrounding the effect of applying for or receiving benefits on their immigration status, or that of their family members. The result will be irreparable harm, including worse health outcomes for residents, increased use of emergency rooms for healthcare due to lack of preventive care, increased prevalence of communicable diseases, increased rates of poverty and housing instability, and reduced productivity and educational attainment, among others. As administrators of public benefit systems, the States will bear the burdens associated with reduced access to healthcare, housing, and nutrition, and will suffer irreparable harm to their sovereignty and public health. For these reasons, the States ask the Court to preliminarily enjoin the Rule, or in the alternative, to postpone its implementation.

LEGAL AND FACTUAL BACKGROUND

I. PUBLIC CHARGE LAW AND REGULATION

A. Summary of Current Law

The INA requires that all noncitizens seeking to be lawfully admitted into the United States or to become LPRs prove they are not inadmissible. 8 U.S.C. § 1361; 8 U.S.C. § 1225(a). A noncitizen may be deemed inadmissible on any number of grounds, including that they are "likely to become a public charge." *Id.* § 1182(a)(4)(A).

Immigration officers must make a public charge determination based on the totality of the circumstances, weighing five statutorily defined factors: (1) age; (2) health; (3) family status; (4) assets, resources, and financial status; (5) education and skills. 8 U.S.C. § 1182(a)(4)(B). An

officer also may consider an affidavit of support, which is a legally enforceable contract between the U.S. citizen or LPR sponsor of the applicant and the Federal Government. 8 U.S.C. § 1182(a)(4)(B)(ii); 8 U.S.C. § 1183a(a)(1)(A). The sponsor pledges to accept financial responsibility for the applicant and to maintain the applicant at an income of "not less than 125 percent of the Federal poverty line during the period in which the affidavit is enforceable." 8 U.S.C. § 1183a(a)(1)(A). If a noncitizen is found to be inadmissible as a public charge, immigration officers may still admit them if they pay a "suitable and proper bond," an amount set (prior to the Rule) at $1,000. 8 U.S.C. § 1183; 8 C.F.R. § 213.1 (2019).

Most commonly, the public charge ground arises when resident noncitizens seek to "adjust status" to legal permanent residency (i.e., get their green card) or when noncitizens apply for visas.[1] 8 U.S.C. § 1182(a); 8 U.S.C. § 1255(a). People typically seek adjustments of status to reflect life changes, such as when they marry a U.S. citizen. *See, e.g*, 8 U.S.C. § 1101(a)(15)(K); 8 U.S.C. § 1255(a). In other cases, noncitizens living in the United State may seek to "adjust" to LPR status after lengthy waits based on a family- or employment-based immigrant visas.[2] *See* 8 U.S.C. § 1255(a), (i). Getting a green card or visa is not the only time the public charge test applies, however: visa holders go through an inadmissibility determination by DHS at ports of entry every time they enter and re-enter the United States, potentially subjecting them to a public charge determination repeatedly. 8 U.S.C. § 1185(d). Certain groups of noncitizens, such as asylum seekers and refugees, are exempt from the public charge ground. *See* 8 U.S.C. § 1157(c)(3); 8 U.S.C. § 1158(b)(2); 8 U.S.C. § 1159(c).

While the public charge ground of inadmissibility primarily affects noncitizens seeking initial admission or adjustment, immigrants with permanent resident status may be subject to it, as well. An LPR is considered to be "seeking admission" when returning to the United States after a

[1] The Department of State (DOS) issues nonimmigrant visas to applicants abroad, and thus conducts its own public charge inadmissibility determination when an individual applies. DOS, 9 Foreign Affairs Manual (FAM) § 302.8(U) (April 22, 2019). DHS "expects that DOS will make any necessary amendments to the FAM in order to harmonize its approach to public charge inadmissibility." 84 Fed. Reg. at 41,461.

[2] DOS, *Visa Bulletin for August 2019*, https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2019/visa-bulletin-for-august-2019.html (last visited Aug. 25, 2019).

trip of more than six months, among other circumstances. 8 U.S.C. § 1101(a)(13)(c). LPRs can be denied citizenship and/or placed in removal proceedings[3] if DHS determines retrospectively that they were inadmissible as a public charge under the law at the time of their adjustment. 8 U.S.C. § 1227(a)(1)(A); 8 U.S.C. § 1429; 84 Fed. Reg. at 41,328 (discussing the possible impact on naturalizations), 41,327 n.163 (discussing the possible impact on deportability).

B. History of Public Charge

Congress first used the term "public charge" in immigration law when it excluded "any person unable to take care of himself or herself without becoming a public charge" alongside "convict[s], lunatic[s], and idiot[s]." Immigration Act of 1882, 47 Cong. Ch. 376, 22 Stat. 214. The second federal immigration statute, passed in 1907 and amended in 1910, included "public charge" with other grounds of inadmissibility that necessitate reliance on the government to avoid destitution, such as "paupers," "professional beggars," and "insane persons." Immigration Act of 1907, 59 Cong. Ch. 1134, § 2, 34 Stat. 898-899, *amended by* Act of Mar. 26, 1910, 61 Cong. Ch. 128, § 1, 36 Stat. 263. Black's Law Dictionary first defined "public charge" in 1933 as "[a] person whom it is *necessary* to support at public expense by reason of poverty, insanity and poverty, disease and poverty, or idiocy and poverty," and as used in the Immigration Act of 1917, to include "paupers or those liable to become such, . . . those who will not undertake honest pursuits, or who are likely to become periodically the inmates of prisons." Black's Law Dictionary 311 (3d Ed. 1933) (emphasis added). Since its origins, the term public charge has always meant primary dependency on the government.

Judicial and administrative decisions applying the term "public charge" confirmed this meaning of primary dependency. In *Gegiow v. Uhl*, 239 U.S. 3 (1915), the U.S. Supreme Court reversed a decision of the Acting Commissioner of Immigration at the Port of New York to deny entry to poor, unemployed, illiterate Russian laborers on public charge grounds. In holding for the prospective immigrants, the Supreme Court noted that the public charge exclusion pertained

[3] Once an individual is placed in removal proceedings, DHS must establish by clear and convincing evidence that they are removable as charged, which is determined by an Immigration Judge. 8 U.S.C. § 1229a(c)(3). The Department of Justice (DOJ) is currently amending its regulation to adopt an inadmissibility and deportation standard consistent with DHS's regulation. 84 Fed. Reg. 41,315.

to "permanent personal objections accompanying [the applicants] irrespective of local conditions," not whether they were likely to find local work, and that Congress did not intend immigration officials to consider temporary poverty or other non-permanent factors "in the guise of a decision that the aliens were likely to become a public charge." 239 U.S. at 10. Likewise, an early Second Circuit case held that the public charge category only "exclude[s] persons who were likely to become occupants of almshouses." *Howe v. United States ex rel. Savitsky*, 247 F. 292, 294 (2d Cir. 1917).[4] The understanding of public charge as requiring primary dependency on the government or public is underscored by agency decisions holding that institutionalized noncitizens were not a public charge if they reimbursed the government for their care or were not obligated to do so.[5]

The term "public charge" also appears in statutes regarding deportation, where the DOJ has explained that "[t]he words 'public charge' had their ordinary meaning: that is to say, a money charge upon or an expense to the public for support and care, the alien being destitute." *Matter of Harutunian*, 14 I. & N. Dec. 583, 586 (BIA 1974). The INS explained in 1987 that applicants would not be subject to exclusion on public charge grounds if "the applicant demonstrates a history of employment in the United States evidencing self-support without receipt of *public cash assistance*." Adjustment of Status for Certain Aliens, 52 Fed. Reg. 16,205-01; 16,211 (May 1, 1987) (codified as amended at 8 C.F.R. § 245a.2(d)(4) (1992)) (emphasis added). The INS defined "public cash assistance" as "income or needs-based monetary assistance . . . designed to meet *subsistence levels*," and specifically excluded "assistance in kind, such as food stamps, public housing, or other non-cash benefits." *Id.* at 16,209 (emphasis added).

[4] *See also Ex parte Hosaye Sakaguchi*, 277 F. 913, 913 (9th Cir. 1922) (reversing a public charge determination given the appellant's evidence that she was skilled as a seamstress, spoke some English, and had family who were domiciled in the United States and willing to assist her); *Matter of Martinez-Lopez*, 10 I. & N. Dec. 409, 421 (BIA 1962) ("The general tenor of the … [public charge] statute requires more than a showing of a possibility that the alien will require public support.")

[5] *See Matter of Kowalski*, 10 I. & N. Dec. 159, 163-64 (BIA 1963) (noncitizen was not deportable as a public charge as she was not institutionalized at public expense where maintenance charges had been paid in the sum demanded); *Matter of V--*, 2 I. & N. Dec. 78, 80 (BIA 1944) (finding noncitizen not deportable as a public charge where parents offered reimbursement, but no charge for maintenance and treatment of the institutionalized noncitizen was required under state law).

Congress codified the five statutory factors considered as part of the public charge totality of the circumstances test in the 1996 Illegal Immigration Reform and Immigration Responsibility Act (IIRIRA). Act of Sept. 30, 1996, Pub. L. No. 104–208, § 531, 110 Stat. 3009–546, 3009–674 (amending 8 U.S.C. § 1182(a)(4)). INS guidance issued in 1999 explained, however, that "public charge" meant only those "likely to become […] *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." Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, 64 Fed. Reg. 28,689; 28,692 (May 26, 1999) (emphasis added).[6] This guidance explicitly excluded from the public charge determination noncash benefits such as Medicaid (for those not institutionalized), nutrition programs like Supplemental Nutrition Assistance Program (SNAP, a.k.a. food stamps), and housing benefits. As the former INS explained, "federal, state, and local benefits are increasingly being made available to families" and "participation in such non-cash programs is not evidence of poverty or dependence." 64 Fed. Reg. at 28,692.

II. DEFENDANTS' NEW RULE RADICALLY EXPANDS THE DEFINITION OF PUBLIC CHARGE

Defendants' Public Charge Rule represents a radical change in federal immigration policy that upends the long-standing "primarily dependent" test for inadmissibility on public charge grounds. It transforms the public charge ground into a major barrier blocking the path to lawful permanent residency, and ultimately citizenship, for low-income immigrants whom the United States has historically welcomed. Key portions of the Rule are summarized below.

New weighted factors. The Public Charge Rule creates a weighted evaluation system with a number of new positive and negative factors, much of which is a significant departure from the federal government's long-standing public charge test. For example, for the first time in the history of the public charge doctrine, the Rule makes low wages alone a potential basis for a public charge determination. Having a family income below $15,613 for an individual or

[6] This guidance was also set forth in a proposed rule issued at the same time, but never finalized. Inadmissibility and Deportability on Public Charge Grounds, 64 Fed. Reg. 28,676 (proposed May 26, 1999). The agencies responsible for assessing inadmissibility on public charge grounds, including Defendants, used this guidance for more than 20 years.

$32,188 for a family of four—an income *above the official poverty level*—is now a negative factor in the public charge determination. 8 C.F.R. § 212.22(b)(4) (all undated C.F.R. references are to the Rule to be codified). This new income threshold is entirely independent from the individual's past use of—or even application for—public benefits, which is itself a separate heavily weighted negative factor, described in the paragraph below. Other negative factors include being neither employed nor enrolled in school, not speaking English well or at all, not having a high school diploma, being under age 18 or over age 61, and having financial liabilities or a poor credit score. *Id.* When evaluating an immigrant's health, DHS will now consider whether the individual "has any physical or mental condition that […] is significant enough to interfere with the person's ability to care for himself or herself or to attend school or work, or that is likely to require extensive medical treatment." 84 Fed. Reg. at 41,407. The Rule additionally includes a "heavily weighted negative factor" that gives significant consideration in a public charge determination to whether the immigrant is "uninsured and has neither the prospect of obtaining private health insurance, nor the financial resources to pay for reasonably foreseeable medical costs related to such medical condition." 8 C.F.R. § 212.22(c)(1)(iii)(B).

Inclusion of public benefits. The Rule also imposes two major changes regarding the treatment of public benefits. First, it expands the list of public benefits programs considered in the public charge determination. 8 C.F.R. § 212.21. Previous DHS policy considered only cash assistance for income maintenance and institutionalization at public expense to be negative factors. The Rule dramatically expands the types of public benefits considered in the public charge determination to include almost all federally funded Medicaid healthcare coverage, food assistance through SNAP, and three types of federal housing assistance. Second, immigration officials must now consider any current or likely future use of these benefits as a "heavily weighted" negative factor, even if the value of the benefit reflects only a small share of the immigrant's total income, if the applicant received any of the enumerated benefits for more than 12 months in the aggregate within a 36-month period. Receipt of two benefits in one month counts as two months. 8 C.F.R. § 212.21(a).

Household size. For the first time, the Rule mandates use of household size as a factor in the calculation of household income. The significance the Rule gives household size disfavors families that live together and share resources, compared to single individuals. 84 Fed. Reg. at 41,501-02; 8 C.F.R. § 212.21(d).

New bond requirements. The Rule substantially increases the minimum surety bond that an immigrant seeking a green card who is found to be inadmissible on public charge grounds (but is not otherwise inadmissible) may be permitted to submit. The Rule multiplies the previous public charge bond of $1,000 by a factor of eight, to a *minimum* of $8,100. 8 C.F.R. § 213.1(c)(2). This significant upfront cost imposes a much greater burden than the contractual obligations that immigrants, their families, and sponsors have traditionally agreed to when signing affidavits of support on behalf of intending immigrants. The Rule also severely limits the use of bonds, stating that they "generally will not" be allowed if an immigrant "has one or more heavily weighted negative factors" under the Rule, as presumably an immigrant already found to have been inadmissible on public charge grounds will have. 84 Fed. Reg. at 41,451.

Public charge as new condition of visa extensions or changes. In a final major break, the Rule calls for a new "condition" on the approval of applications to change or extend visas by requiring applicants to establish that they did not receive public benefits for more than 12 months in the aggregate within any 36-month period from the time they received their visas. This creates new circumstances for visa holders to be found a public charge, affecting those seeking extensions or changes of status, such as graduating students and temporary workers changing jobs, and making the process more onerous. 8 C.F.R. § 214.1(a)(3)(iv).

III. IMPACTED INDIVIDUALS AND PROGRAMS

A. Direct Effects on Impacted Individuals

Nationwide, millions of noncitizens have an immigration status that could subject them to a public charge determination. In 2017 alone, approximately 380,000 individuals adjusted to LPR status through a pathway that likely would have subjected them to a public charge determination under the new Rule. Cisneros Decl. Ex. Y at 12.

The new, bright-line thresholds for income alone will result in DHS finding many more working immigrants likely to become a public charge. The Rule will dramatically change the racial and national origin makeup of those deemed inadmissible on public charge grounds, disproportionately impacting non-White, non-European applicants, particularly Latinos. Van Hook Decl. ¶ 48-49, 55, 58-61, 65-66. The incomes of fifty-six percent of recently admitted immigrants would fall below the new 250 percent income threshold, one of the Rule's "heavily weighed positive" factors. Cisneros Decl. Ex. H at 7; 8 C.F.R. § 212.21(c)(2)(i),(ii). Many immigrant workers have incomes under the 125 percent threshold, and Defendants recognized that more working people with incomes below the 125 percent income threshold will now receive a public charge finding. 84 Fed. Reg. at 41,417. For example, California childcare and early education providers' average annual income is only $30,000, which for a family of four equates almost exactly to the Rule's 125 percent income cutoff. Cisneros Decl. Ex. H at 7.

B. Chilling Effects

The prospect of a public charge determination under the Rule will cause widespread confusion and fear, discouraging individuals from participating in public benefit programs for which they are eligible and authorized to participate. Defendants concede that the Rule will have a chilling effect on immigrants' willingness to avail themselves of public benefits for which they are eligible.[7] 84 Fed. Reg. at 41,312. According to their estimate, the Rule's chilling effect will result in a 2.5 percent disenrollment rate from programs that are expressly included in the new public charge test (including federally funded Medicaid, SNAP, and housing assistance). 84 Fed. Reg. at 41,463. Further, Defendants estimated that over 324,438 individuals who are members of households with foreign-born noncitizens will choose to disenroll from or forgo enrollment in benefits for which they are eligible. *Id.*; 83 Fed. Reg. 51,266-69. According to Defendants' economic analysis, this chilling effect will result in the reduction of more than $1.5 billion in

[7] Federal law limits noncitizens' eligibility for public benefits programs. 8 U.S.C. §§ 1611(a), 1621. Only "qualified aliens," including but not limited to LPRs, refugees, recipients of temporary parole for humanitarian reasons, and residents whose deportation is being withheld, may enroll in means-tested federal benefit programs, 8 U.S.C. § 1611, and of "qualified aliens," most are only eligible for benefits after five years from their date of entry, i.e. the five-year bar. *Id*. § 1613.

aggregate annual federal payments. 83 Fed. Reg. at 51,266-69. However, Defendants' economic estimates grossly undercount the number of people potentially subject to a chilling effect because they arbitrarily assume that it will only affect immigrants in the year that they adjust status. Nor do Defendants' estimates include chilling effects associated with disenrollment or forgoing enrollment in state and other federal public benefits that the Rule formally exempts from consideration. *See* Ponce Decl. ¶ 25 (noting that beneficiaries cannot distinguish between state and federally funded programs). The actual number of noncitizens who are potentially subject to chilling effects because they currently use state or federal public benefits is much higher. In the States, more than 2.8 million current benefits recipients are noncitizens. Cantwell Decl. ¶ 14; Allen Decl. ¶ 18.; Buhrig Decl. II (Medicaid) ¶ 27; Buhrig Decl. I (SNAP) ¶ 20; Probert Decl. ¶ 8; Pelotte Decl. ¶ 6; Byrd Decl. ¶ 14 (Ex. A at 2); Palmer Decl. ¶ 7.

History demonstrates that negative changes to rules regarding immigrant access to benefits lead to drop-offs in enrollment greater than 2.5 percent. The 1996 enactment of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), which established many of the current rules limiting noncitizen eligibility for benefits, caused a significant number of noncitizens to disenroll; based on this evidence, the chilling effect of the Rule will likely range between 15 and 35 percent among noncitizens. Ponce Decl. ¶¶ 10-11, Ex. B, C. Chilling effects for refugees have historically been even higher—with up to 60 percent disenrollment found in some cases—even though refugees were generally exempted from restrictions on access to benefits. *Id*. at ¶ 4. Families with mixed immigration-status are particularly at risk. When parents perceive enrollment in public programs to place their own immigration status at risk, they are less likely to enroll their children in those programs as well, even if their children are eligible U.S. citizens not subject to a public charge determination. Ponce Decl. ¶ 7; Wong Decl. ¶¶ 35-38. Despite Defendants' exclusion of the Children's Health Insurance Program (CHIP) and Medicaid services for children under age 21, the predictable effect of the Rule will be under enrollment of children in healthcare and nutrition programs. Ponce Decl. ¶¶ 4-11; Cisneros Decl. Ex X at 2.

Survey research also shows that significant percentages of immigrants are likely to forgo benefits as a result of the Rule, including an anticipated 15 percent reduction in emergency health

services, 18 percent reduction in preventive health services, and 9 percent reduction in immunizations. Wong. Decl. ¶¶ 27-30. Seven percent are less likely to get free or reduced price school meals. *Id*. ¶ 34. In some places, fear and confusion about the Rule have already caused chilling effects on immigrant participation in public programs. *See, e.g*., Buhrig Decl. I (SNAP) ¶¶ 26, 30; Chawla Decl. ¶ 13; Fanelli Decl. ¶ 38; Neville-Morgan Decl. ¶ 16; Ruiz Decl. ¶¶ 10, 12; Kofman Decl. ¶ 6; Medina Decl. ¶¶ 18-22.

C. Impacted State Programs

The States all operate public benefit programs that, in accordance with federal law, enroll a significant number of noncitizens who are either at risk of being directly impacted by the new formula for public charge determinations, or chilled from participation because of their or a family member's immigration status. Cantwell Decl. ¶ 14; Buhrig I (SNAP) ¶ 20.

The States serve their residents by operating a number of valuable programs now included as "heavily weighted" negative factors under the Rule. Federally funded Medicaid gives eligible beneficiaries access to primary and preventive care, oral healthcare, hospitalization, prescription drugs, and behavioral healthcare. Cantwell Decl. ¶ 6. Federal SNAP benefits provide supplemental assistance for the purchase of nutritious food. *See* Fernández Decl. ¶ 9 (noting that children represent nearly half of all participants in California's program). The Section 8 Housing Choice Voucher Program, Section 8 Project-Based Rental Assistance, and Section 9 Public Housing all assist eligible lower-income individuals to secure stable, affordable housing. Cisneros Decl Ex. K at 47.

In addition, the States administer programs not included in the Rule's list of public benefits that nevertheless will be subject to chilling effects caused by the Rule. For example, the States have established versions of Medicaid and, in some instances, SNAP, that are paid for with state funds and available to a broader range of eligible individuals, such as those subject to the five-year waiting period for receipt of federally funded benefits. Fernández Decl. ¶ 8. Other state healthcare programs may offer a more limited scope of services—such as reproductive healthcare services—to a broad range of eligible residents. The States also administer a number of other federal programs exempted by the Rule, such as vaccinations, school lunch programs, the

Women, Infants and Children (WIC) supplemental nutrition program, and CHIP, a federally funded program for children in working families whose parents or guardians exceed the income eligibility threshold for Medicaid but lack access to affordable private coverage. In practice, however, participants do not distinguish between federally and state-funded health and social services. Fernández Decl. ¶ 8; Allen Decl. ¶ 76. Fear that participation will jeopardize immigration status will affect utilization of all services, even those services exempt from the Rule. Hernandez Decl. ¶¶ 26, 28; Kish Decl. ¶¶ 11-13, 19; Allen Decl. ¶¶ 20, 75; Kofman Decl. ¶¶ 10-12. For example, the Rule's chilling effects will reach school districts that provide Medicaid-funded medical services to students, even though the Rule excludes those services from the public charge determination, because some parents will refuse to consent to their child's screening and enrollment in Medicaid. Escudero Decl. ¶¶ 13-14.

LEGAL STANDARD

To obtain a preliminary injunction, the plaintiff must demonstrate that (1) it "is likely to succeed on the merits," (2) it "is likely to suffer irreparable harm in the absence of preliminary relief," (3) "the balance of equities tips in [its] favor," and (4) "an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Courts evaluate these factors on a sliding scale, such that serious questions on the merits and a balance of hardships that tip sharply towards the plaintiff can support a preliminary injunction. *Arc of California v. Douglas*, 757 F.3d 975, 983 (9th Cir. 2014). In the alternative, the plaintiff may establish that "there are serious questions going to the merits" and "the balance of hardships tips sharply in the plaintiff's favor." *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011).

In addition, the APA permits this Court to "postpone the effective date of an agency action" where "necessary to prevent irreparable injury . . . pending conclusion of the review proceedings." 5 U.S.C. § 705. Courts have concluded that the factors weighed in the standard for such a stay substantially overlap with *Winter* factors, which comprise the standard for a preliminary injunction. *See, e.g.*, *Bauer v. DeVos*, 325 F. Supp. 3d 74, 104-07 (D.D.C. 2018) (citing cases).

ARGUMENT

IV. THE STATES ARE LIKELY TO SUCCEED ON THE MERITS

A. The Public Charge Rule Violates the APA Because it is Contrary to Law.

The Public Charge Rule must be held "unlawful and set aside" under the APA because it is "in excess of statutory jurisdiction" and "not in accordance with the law." 5 U.S.C. §§ 706(2)(A), 706(2)(C). Federal agencies "literally [have] no power to act . . . unless and until Congress confers power upon it." *La. Pub. Serv. Comm'n v. F.C.C.*, 476 U.S. 355, 374 (1986); 5 U.S.C. § 706(2)(C). In determining whether Defendants exceeded their statutory authority, the court must first ascertain whether the statute "has directly spoken to the precise question at issue;" and if the statute is unambiguously 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. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 842-843 (1984). Second, if the statute admits of some ambiguity, then courts must determine whether the agency's interpretation is "reasonable" by applying normal canons of statutory construction, looking not only to the law's text, but also to its structure, purpose, and legislative history. *Id.* at 844.

1. The Rule is contrary to the plain meaning of public charge.

As explained in Section I(B) above, the term "public charge" has been recognized for generations to exclude only individuals who are primarily dependent on the government for subsistence, such as by receiving public cash assistance for income maintenance or institutionalization at government expense. That understanding was not a product of administrative discretion but, as the former-INS previously explained, based on "the plain meaning of the word 'charge'" as well as "the historical context of public dependency when the public charge immigration provisions were first adopted more than a century ago." *Inadmissibility and Deportability on Public Charge Grounds*, 64 Fed. Reg. 28,676; 28,677 (proposed May 26, 1999) (quoting *Webster's Third New Int'l Dictionary* 337 (1986) (defining public charge as "a person or thing committed or entrusted to the care, custody, management, or support of another"). *See BP Am. Prod. Co. v. Burton*, 549 U.S. 84, 91 (2006) (statutory

interpretation "start[s], of course, with the statutory text," and "statutory terms are generally interpreted in accordance with their ordinary meaning").

Congress has not altered the historic meaning of "public charge," despite revisiting the topic on numerous occasions. Congress is presumed to legislate with knowledge of existing case law and common understandings are presumed to remain in force and work in conjunction with the new statute absent a clear indication otherwise. *Grove School Dist. V. T.A.*, 557 U.S. 230, 239-40 (2009); *and see Midlantic Nat'l Bank v. New Jersey Dep't of Envt'l Protection*, 474 U.S. 494, 501 (1986). For example, in 1996, Congress considered and rejected the Immigration Control and Financial Responsibility Act (ICFRA), which—much like the Public Charge Rule—would have altered the meaning of "public charge" to include noncitizens who used almost any public benefit program for more than one year, with limited exceptions. H.R. Rep. No. 104-469, at 266-67 (1996); H.R. 2202, 104th Cong. §§ 201-02 (1995); *see also* S. Rep. No. 104-249, at 64 (1996), 1996 WL 180026 (statement of Sen. Leahy objecting that in proposed bill "the definition of public charge goes too far in including a vast array of programs none of us think of as welfare. . . . The bill would affect the working poor who are striving against difficult odds to become self-sufficient."). As recently as 2013, Congress rejected yet another attempt to broaden the definition of public charge in a proposed amendment to the Border Security, Economic Opportunity, and Immigration Modernization Act of 2013, S. 744, 113th Cong. (2013), which would have expanded the meaning of public charge to include those likely "to qualify even for non-cash employment supports" such as Medicaid and SNAP. S. Rep. No. 113-40, at 42 (2013) (noting that senators opposing the amendment "cited the strict benefit restrictions and requirements").

IIRIRA's codification of the totality of the circumstances test as a means for determining whether a person is inadmissible on public charge grounds did not change the underlying meaning of public charge. Courts continued to require that public charge determinations be consistent with the standard of primary dependence. *See, e.g., Martinez-Farias v. Holder*, 338 F. App'x 729, 730-731 (9th Cir. 2009) (finding a public charge determination that fails to fully consider all factors, including affidavit of support and coverage under Social Security Act, is unsubstantiated, and "indicating that Medi-Cal benefits are *not* to be considered in making public

charge determinations"). In fact, in the legislative process leading to the passage of IIRIRA, Congress considered and rejected the very change that DHS seeks to accomplish in this rulemaking. H.R. 2202 of the 104th Congress, the House bill that would eventually become IIRIRA, passed the House on March 21, 1996 with language substantially similar to the Rule. H.R. 2202, 104th Cong. § 622(a) (1996). Section 622(a) of that bill expanded the basis for deporting a person as a public charge and included a provision generally defining public charge to include a noncitizen who "receives benefits…under one or more of the public assistance programs…for an aggregate period…of at least 12 months within 7 years after the date of entry." *Id.* The bill expressly included Medicaid, food stamps, and housing assistance programs. *Id.*; *see also* H.R. Rep. No. 104-828, at 138, 144 (1996) (Conf. Rep.). Congress rejected those provisions in conference and they were not included in the enacted version of IIRIRA. *Compare* H.R. 2202, 104th Cong. § 622(a) *with* Pub. L. 104-208, § 531, 110 Stat. 3009, 3009-674 (1996). Few principles of statutory construction are more compelling than the proposition that Congress does not intend *sub silentio* to enact statutory language that it has earlier discarded in favor of other language. *United States v. Novak*, 476 F.3d 1041, 1071 (9th Cir. 2007) (citation omitted). Here, Congress has repeatedly, and explicitly, refused to expand the definition of public charge beyond primary dependence on cash-assistance and long-term care as Defendants now have done.

Defendants reach further afield in attempting to use PRWORA, the 1996 welfare reform law, to justify the Rule. 84 Fed. Reg. at 41,294. This law put new, strict limits on immigrant eligibility for certain public benefits, but nothing in PRWORA altered the public charge law or the totality of the circumstances test. Moreover, PRWORA contains multiple provisions that show Congress intended for federal benefits to be used by qualified immigrants. Significantly, states were given an option to provide or deny Medicaid to most qualified immigrants who were in the U.S. before August 22, 1996, and to those who enter the U.S. on or after that date, once they have completed the federal five-year bar. 8 U.S.C. § 1612(b). Congress has also authorized states to provide nutrition assistance to some or all immigrants who were rendered ineligible for SNAP under PRWORA, and to pregnant women and children. 8 U.S.C. § 1612, as amended by Farm Security and Rural Investment Act of 2002; Pub. L. No. 107-171, 116 Stat. 134, 4401;

Children's Health Insurance Program Reauthorization Act of 2009, Pub. L. No. 111-3, 123 Stat. 8, 214. PRWORA has authorized discretion for states to provide nonqualified noncitizens with state and local benefits not otherwise restricted by federal law. 8 U.S.C. § 1621(d); *see Korab v. Fink*, 797 F.3d 572, 573-74, n.3 (9th Cir. 2014). The Rule circumvents this Congressional intent by drastically altering the consequences of immigrants' application for and use of non-cash benefits, for which they will remain legally eligible.

The common understanding of what it means to be a "public charge" sharply contrasts with inclusion of immigrants who may at some point in their lives receive supplemental healthcare, nutrition, or housing assistance to improve their lives and those of their families. Indeed, the widespread use of public benefits by U.S. citizens underscores the error in Defendants' new construction of the term "public charge." According to an analysis of data from a long-running longitudinal survey, between 1998 and 2014, 40 percent of U.S.-born individuals participated in one of the benefits enumerated in the new Rule. Cisneros Decl. Ex. K at 10. Each year, 28 percent—nearly 3 in 10—of U.S.-born citizens receive one of the main benefits included in the Rule. *Id*. at 7; Cisneros Decl. Ex. L at 13. Individuals receiving government supplemental support (including money grants, tax breaks, scholarships, and other favorable treatment) are not ordinarily viewed as being a government charge. Being a public charge connotes a far higher level of dependency on government resources. The Rule's application of the term to individuals who are capable of providing for themselves, even if they could benefit from supplemental assistance, is incompatible with its plain meaning.

2. Bright-line aspects of the Rule violate the totality of the circumstances test and the need for individualized determinations enacted by Congress.

In addition to being contrary to the clear meaning of public charge, Defendants' Rule is contrary to law and in excess of statutory authority because it adopts a number of improper bright-line thresholds for assessing the noncitizen's likelihood of becoming a public charge.

First, under the Rule's new income thresholds, poverty alone effectively becomes sufficient to determine that a noncitizen is likely at any time in the future to receive one or more public benefit. Such an interpretation is contrary to the IIRIRA's totality of the circumstances test.

8 U.S.C. § 1182(a)(4)(B)(i). The Rule adopts income thresholds for households seeking to overcome a "public charge" determination—by giving negative weight to immigrants who earn less than 125 percent of the federal poverty line (FPL) ($32,188 annually for a family of four) and by weighing as "heavily positive" a household income higher than 250 percent of the FPL ($64,375 annually for a family of four). 84 Fed. Reg. at 41,502-04; 8 C.F.R. § 212.22. The rigid income threshold of 125 percent of FPL ignores both the previous standard of primary dependence on the government and the Rule's new standard of likely future use of "any public benefit," and would render any indigent person "likely to become a public charge" in spite of having used no benefits at all. Penalizing poor noncitizens who ostensibly manage to survive without use of public benefits is contrary to the totality of the circumstances test that requires an individualized determination. *See Martinez-Farias v. Holder*, 338 F. App'x 729, 730-731 (9th Cir. 2009) (finding that the "existence or absence of a particular factor should never be the sole criteria" for determining if an alien is likely to become a public charge) (citing 8 C.F.R. § 245a.3(g)(4)(i)). Although Congress did institute a bright-line income threshold in the requirements for a sponsor's affidavit of support, it deliberately chose not to do the same with the totality of the circumstances test's five factors, including a noncitizen's financial status, and judicial decisions regarding the enforceability of affidavits of support have refused to read into the INA additional bright-line obligations absent any congressional indication or previous regulatory contemplation by the agency. *See Wenfang Liu v. Mund*, 686 F.3d 418, 421-422 (7th Cir. 2012) (finding that "self-sufficiency . . . is not the goal stated in the statute," and brief mention of that goal in the congressional record is inadequate to impose on noncitizen a duty to mitigate damages).

The minimum bond requirement also deprives immigrants of the individualized analysis required by law. *See* 8 U.S.C. § 1183 (bonds must be "suitable and proper"). The median American household's savings balance, regardless of citizenship status, is just $11,700, Cisneros Decl. Ex. G at 9; this an $8,100 bond requirement would all but wipe out a typical family's cash reserves. This is not suitable and proper for all individuals.

3. The Rule violates Section 504 of the Rehabilitation Act and undermines state healthcare discretion.

The Rule also is contrary to the Rehabilitation Act, which prohibits "any program or activity receiving federal financial assistance" or "any program or activity conducted by any Executive agency," from excluding, denying benefits to, or discriminating against persons with disabilities. 29 U.S.C. § 794(a). The Rehabilitation Act requires DHS to ensure access to immigration proceedings and refrain from utilizing discriminatory criteria or methods of administration in its programs and activities. 6 C.F.R. §§ 15.30(b), 15.49. Defendants concede that the Rule's new criteria will have a "potentially outsized impact […] on individuals with disabilities," but claim that "disability itself would not be the sole basis for an inadmissibility finding," 84 Fed. Reg. at 41,368, 41,410.

The Rule will exclude some individuals based on disability because it requires officials to consider an applicant's disability diagnosis, in combination with other negative factors that may also be directly related to a disability, such as receipt of Medicaid home and community-based services. *See* 8 C.F.R. § 212.22(c)(1)(iii)(A); 84 Fed. at Reg. 41,407; 41,408 (officials will consider "an applicant's disability diagnosis"). Moreover, receiving Medicaid services will disqualify many disabled applicants from two independent *positive* public charge factors: private health insurance and sufficient household assets to cover reasonably foreseeable medical costs. *See* 8 C.F.R. § 212.22(c)(2)(iii); Fed. Reg. at 41,299 (explaining the first "heavily weighted positive factor" is "in addition to the [second] positive factor"). The Rule's overlapping criteria skew the public charge analysis toward inadmissibility in a manner that will deny applicants with disabilities meaningful access to admission or adjustment of status in violation of Section 504. *See, e.g., Franco-Gonzalez v. Holder*, No. 10-CV-02211, 2013 WL 3674492, at *4 (C.D. Cal. Apr. 23, 2013) (denial of access was by reason of disability because immigrant detainees were "unable to meaningfully access the benefit offered—in this case, full participation in their removal and detention proceedings—because of their disability") (citing *Alexander v. Choate*, 469 U.S. 287, 299 (1985)); *Lovell v. Chandler*, 303 F.3d 1039, 1053 (9th Cir. 2002) (finding violation of the Rehabilitation Act where plaintiffs were excluded from programs on the basis of

financial criteria and their disabilities).

Moreover, the Rule cannot be reconciled with Congress' intent, expressed in both the Rehabilitation Act and the Americans with Disabilities Act, to integrate persons with disabilities into society and eliminate discriminatory barriers to self-sufficiency. *See* 29 U.S.C. § 794(a); 28 C.F.R. § 41.51(d); 42 U.S.C. § 12132, *et seq*. Persons with disabilities are no longer assumed to be a burden on society, and their receipt of Medicaid home and community-based services is not a mark of dependency or stigma, but an appropriate means of support for independent living. *See Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581, 592, 601 (1999) (recognizing purpose of the ADA's integration mandate, which built on Section 504's "integration regulation," to allow disabled persons "economic independence"); 42 U.S.C. § 1396-1 (noting that the purpose of Medicaid services is in part to help persons with disabilities "attain or retain capability for independence or self-care"). The Rule violates the Rehabilitation Act by adopting criteria that presume persons with disabilities are unable to work or otherwise support themselves, and is therefore invalid. *See Lesley v. Chie*, 250 F.3d 47, 55 (1st Cir. 2001) (recognizing that adverse decision based on multiple factors may violate Rehabilitation Act if "it rested on stereotypes of the disabled"); *see also Nw. Envtl. Def. Ctr. v. Bonneville Power Admin.*, 477 F.3d 668, 681-86 (9th Cir. 2007) (setting aside agency action where action is contrary to governing law).

B. The Public Charge Rule is Arbitrary and Capricious.

Even if the Rule were consistent with the common meaning of public charge and other aspects of the INA (it is not), the States are also likely to succeed because the Rule is arbitrary and capricious. A rule is arbitrary and capricious if the agency has "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." *Motor Vehicle Mfrs. Ass'n of the U.S. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). Where, as here, an agency departs from a prior policy, a more "detailed justification" is necessary where there are "serious reliance interests" at stake. *F.C.C. v. Fox Television Stations*, 556 U.S. 502, 515 (2009); *see also State Farm*, 463 U.S.

at 47-51. A change in administration does not authorize an unreasoned reversal of course. *See Regents of the Univ. of Cal. v. U.S. State Dept.*, 908 F.3d 476, 510 (9th Cir. 2018); *California v. U.S. Bureau of Land Mgmt*., 277 F. Supp. 3d. 1106, 1123 (N.D. Cal. 2017).

1. The Rule's explanation is inadequate because the evidence undermines the agency's stated purposes.

Defendants' stated purpose for revising the public charge rule includes "minimiz[ing] the incentive of aliens to immigrate to the United States because of the availability of public benefits and . . . promot[ing] self-sufficiency of aliens within the United States." 84 Fed. Reg. at 41,309. However, the Rule fails to provide a "satisfactory explanation" and "rational connection between the facts found and the choices made," *State Farm*, 463 U.S. at 43, and is "internally inconsistent." *Air Transport Ass'n of Am. v. Dep't of Transp*., 119 F.3d 38, 43 (D.C. Cir. 1997).

The purposes of reducing incentives to immigrate and promoting self-sufficiency do not provide a sufficiently reasoned justification for the new Rule because those directly subject to the public charge determination—including immigrants adjusting to LPR status and those seeking to extend or change visa categories—are largely ineligible for the newly included federal benefits. Defendants acknowledge that "[noncitizens] who are unlawfully present and nonimmigrants [visa holders] physically present in the United States also are generally barred from receiving federal public benefits other than emergency assistance," and in fact, remain barred once admitted into lawful status for an additional five-year waiting period. 84 Fed. Reg. at 41,313. Furthermore, the Rule will primarily impact individuals adjusting status or changing their visa conditions who are generally not seeking to immigrate—they are already living in the United States, and thus the purpose to "minimize the incentive of aliens to immigrate" is inapposite.

The Rule's direct application to a limited subset of individuals already present in the U.S. and already receiving the newly enumerated benefits contrasts sharply with the Rule's much broader chilling effect, which as Defendants have acknowledged will impact numerous children, including U.S. citizens in mixed-status households. 84 Fed. Reg. at 41,300; 41,463; 83 Fed. Reg. at 51,270 (proposed Oct. 10, 2018). Penalizing the use of authorized public benefits for individuals in a manner that creates such broad chilling effects for persons *already* residing in the

United States is not a reasonable or proportional method for reducing incentives for immigration *to* the United States.

Defendants claim to be concerned about self-sufficiency, yet the Rule penalizes participation in health, nutrition and housing support programs that boost their ability to work, and will discourage participation in other programs, such as jobs training, that increase productivity. Cisneros Decl. Ex. K at 39-52; Ex. E at 2, 4-5, Ex. S at 3, 5-6. The record before the agency makes clear that public benefits such as SNAP, for example, at most supplement a person's ability to purchase a minimally nutritious diet. Cisneros Decl. Ex K at 44 (SNAP benefits average only about $126 per month). Indeed, most SNAP recipients are required to work and participate in federally approved state employment and training programs designed to build upon recipients' ability to obtain regular employment. 7 U.S.C. § 2015(d)(1), (4). Yet if working class immigrants instead forgo SNAP or other authorized public benefits, they will lose access to employment and training programs for which they are eligible aimed at helping them gain the skills needed to secure living wage jobs that fortify self-sufficiency. Cisneros Decl. Ex S at 1.

Medicaid is also a powerful tool that supports productivity for working families. *See* Cisneros Decl. Ex. K at 39-40, Ex. M at 1 (workers whose employers provided health insurance missed fewer days of work). Nearly four in five Medicaid recipients, not including the elderly and people with disabilities, are in working families. Cisneros Decl. Ex. K at 39. Still others temporarily receive Medicaid during a period of joblessness and no longer need coverage after returning to the workforce. *Id.* 44. Medicaid coverage makes it easier to individuals to work or search for a job because they have access to timely medical diagnoses and treatment. *Id*. at 40. By contrast, the Rule undermines its stated goal of self-sufficiency by discouraging families from better health, greater productivity, and economic advancement.

For all of these reasons, the Rule is internally inconsistent, fails to address important issues before the agency, and runs counter to evidence submitted.

2. The Rule is illogical and distorts the factors enumerated in the public charge statute.

a. The evaluation system is unreasonably skewed.

The Rule identifies three heavily weighted negative factors, one of which consists of the mere receipt of support from any one of five widely used, non-cash federal benefit programs. 8 C.F.R. §§ 212.21(b), 212.22(c)(1)(ii). Defendants repeatedly claim that no single heavily weighted negative factor can lead to a determination that an individual is inadmissible on public charge grounds. 84 Fed. Reg. at 41,397; 41,419; 41,426; 41,435; 41,504; 8 C.F.R. § 212.22(c). However, the heavily weighted factors are not independent variables, but significantly overlap with negative non-weighted factors. As commentators explained, "in practice it would be nearly impossible for immigrants to overcome certain negative factors." Cisneros Decl. Ex. L at 19. Any of the heavily weighted negative factors is likely to be determinative in practice, and the Rule disallows public charge bonds in instances where an individual has just one heavily weighted negative factor, 8 C.F.R. § 213.1(b). *Compare* § 212.22(c)(1)(ii) with §§ 212.22(b)(4) (125 percent FPL income threshold), (b)(1) (age), (b)(2)(ii) (medical condition that will interfere with one's ability to work). In contrast, an individual who qualifies for the heavily weighted "positive factor" due to an individual or household income over 250 percent of the FPL, § 212.22(c)(2)(i), (ii), is likely to have a high enough income that they are able to purchase private health insurance and thus qualify for a second heavily weighted positive factor, § 212.22(c)(2)(iii). Defendants offer no explanation for why a private health insurance policy should play such an outsized role in a multi-factor test, given that the policies in general are only for one-year, and are not directly indicative of personal health.

Overall, the Rule funnels officials' decision-making towards a determination that low-income individuals, individuals who have received a public benefit, the elderly, and those with disabilities are inadmissible, while strongly favoring high-income individuals. Defendants' claim that the Rule will be a true multi-factor test that eschews bright line standards, as the INA requires, is not plausible. *Cf. Sea Robin Pipeline Co. v. F.E.R.C.*, 127 F.3d 365, 369-71 (5th Cir. 1997) (agency overreliance on three non-physical factors "missed the basic thrust" toward

physical and operational factors and "revert[ed] to its single factor, bright-line" test in violation of the APA).

b. Defendants fail to adequately explain changes that affect affidavits of support and bonds.

The Rule compounds the effect of this skewed system with changes to treatment of affidavits of support and a new, highly restrictive public charge bond system.

The Rule no longer treats sponsors' properly-completed, non-fraudulent affidavits of support (Form I-864) as sufficient assurance that immigrant applicants will not become overly dependent on public benefits. Pursuant to IIRIRA, USCIS has for decades accepted affidavits of support that show an ability to support the immigrant at an annual income of at least 125 percent FPL. *See* 8 U.S.C. § 1182(a)(4)(C)-(D). The purpose of the affidavit-of-support requirement is to "ensur[e] that the immigrant's income is sufficient to prevent her from becoming a public charge." *Erler v. Erler*, 824 F.3d 1173, 1177 (9th Cir. 2016); *accord Shumye v. Felleke*, 555 F. Supp. 2d 1020, 1024 (N.D. Cal. 2008); *Dorsaneo v. Dorsaneo*, 261 F. Supp. 3d 1052, 1055 (N.D. Cal. 2017) (citations omitted). Although Defendants explain why they rejected the alternative of increased enforcement of affidavits, 84 Fed. Reg. at 41,320, Defendants offer no explanation for not continuing to treat affidavits as sufficient assurance, stating conclusorily that "the affidavit of support is not a substitute for the assessment of the mandatory factors." *Id*. at 41,320.

The Rule's 125 percent income threshold negative factor further undermines the functionality of the affidavit of support. Noncitizens are penalized for reaching only 125 percent FPL, even though a sponsor who can promise to maintain a noncitizen at 125 percent FPL is satisfactory to demonstrate self-sufficiency. This change is both internally inconsistent and undermines the law allowing affidavits. *See Nat'l Cable & Telecomm. Ass'n v. Brand X Internet Servs*., 545 U.S. 967, 981 (2005) (stating that unexplained inconsistency can be a reason for holding an interpretation to be an arbitrary and capricious change from agency practice).

The Rule also disallows public charge bonds in instances where an individual has one heavily weighted negative factor, § 213.1(b). 8 C.F.R. § 213.1(b). In other words, anyone who has received a federal public benefit enumerated in the Rule cannot overcome a public charge

determination by securing a bond. Commentators explained that that the new bond proposals were "unworkable," and would "severely restrict individuals' ability to enter or remain in the United States, particularly those of modest means and those from poorer nations." Cisneros Decl. Ex. K at 30. Apart from slightly reducing the total amount of the bond (from $10,000 to $8,100, still an arbitrarily high amount), Defendants entirely failed to consider that the Rule will undermine the statutorily authorized bond mechanism.

c. Defendants offer no justification for the Rule's treatment of children, students, and citizen service members.

Defendants failed to offer a plausible explanation for the Rule's inconsistent treatment of children, students, service members, and certain low-wage workers.

First, Defendants included an exemption for individuals under the age of 21 who receive Medicaid benefits, but did not include a similar exemption for individuals under the age of 21 who receive SNAP benefits. 84 Fed. Reg. 41,501; 8 C.F.R. §212.21(b)(5)(iv). The evidence before the agency demonstrates the importance of nutrition and nutritional services supports, such as SNAP, to the healthy development of children, and their long-term success. Cisneros Decl. Ex. E at 1-3; Ex. O at 4-5; Ex. Q at 4; Ex. K at 45-47. The Rule exempts WIC as a public benefit for purposes of the public charge test, but WIC is generally only available to pregnant women and children under the age of five. Yet the Rule will also discourage parents from enrolling even their LPR children from SNAP; the Rule offers no explanation for imposing the public charge test on legal permanent resident children for SNAP, 8 U.S.C. § 1101(a)(13)(C), but not Medicaid. These children do not make decisions regarding whether to immigrate or use public benefits, so Defendants' stated rationales for the Rule do not apply to them.

Second, the multi-factor test requires consideration of "education and skills," 8 U.S.C. § 1182(a)(4), but the Rule only specifies consideration of whether an individual has a high school diploma (or its equivalent) or has a higher education degree. § 212.22(b)(5). While the Rule calls upon officials to consider granular details about an individual's health insurance, benefits receipt, and financial status of household members, *see* Form I-944, it unreasonably and

inexplicably fails to take into account admission or attendance in a college or trade school, factors clearly bear favorably on a person's future likelihood of become a public charge. *Id*.

Third, the Rule inexplicably treats the spouses and children of U.S. citizen service members more harshly than the spouses and children of noncitizen service members. The preamble to the Rule indicates that it excludes the consideration of the receipt of public benefits by the spouses and children of all military service members. 84 Fed. Reg. at 41,371. But the operative regulatory language in 8 C.F.R. § 221.21(b)(7) only exempts the benefits received by the spouses and children of noncitizen service members. 84 Fed. Reg. at 41,501, leaving the spouses and children of U.S. citizen service members exempt only if the service member died as a result of combat. 84 Fed. Reg. 41505. Defendants offer no explanation for this unwarranted discrepancy.

Fourth, the Rule's consideration of past immigration-related fee waivers is unreasonable. Fee waivers are commonly issued for employment authorization document (EAD) applications (a fee of $380) submitted before a noncitizen is legally eligible to work. 84 Fed. Reg. 41,424; USCIS, Form I-765, *Application for Employment Authorization* (March 6, 2019), https://www.uscis.gov/i-765. Punishing an individual's application to work legally so that they can become self-sufficient contradicts Defendants' purported interest in this Rule. It also undermines Defendants' claim that an individual's lack of employment before an EAD will not be considered, by considering an individual's ability to afford the EAD filing fee when they cannot legally work. 84 Fed. Reg. 41,437. Defendants all but ignored concerns about this provision and its applicability to EAD fee waivers, stating that the past use of fee waivers is "but one factor" it will consider. 84 Fed. Reg. 41,424. But, it is still is a factor, and Defendants must offer an explanation of why it is a reasonable one.

Finally, Defendants modified the application of parts of the Rule to minimize the likelihood that a spouse or child of an immigrant service member could be found inadmissible. 8 C.F.R. § 212.21(b)(7). Their explanation for this decision was that many service members receive low pay, and subjecting service members and their families to the full force of the Rule would undermine efforts to keep the military ranks well-staffed. 84 Fed. Reg. at 41,372. Yet this same reasoning was not applied to other sectors, despite evidence in the record that agriculture and

homecare providers face similarly low wages and labor shortages, and also provide labor that is critical for the country's overall well-being. 84 Fed. Reg. at 41,415, 41,417, 41,447; Cisneros Decl. Ex. J at 20-21, 26-27. Defendants fail to offer an explanation of this internally inconsistent approach.

For all of these issues, Defendants have failed to articulate the necessary "rational connection" between the facts and the choices made in the Rule. *State Farm*, 463 U.S. at 43.

3. Defendants did not adequately consider the harms and burdens the Rule would cause.

a. Chilling effect and its impacts on U.S. residents.

As described in Section III(B) above, Defendants' estimates grossly understate the likely magnitude of chilling effects. Defendants abandon any attempt to quantify or weigh the chilling effects that will also impact immigrants who are not subject to the Rule, U.S. citizens in mixed-status families, and participation in public benefit programs, both state and federal, that are ostensibly exempted from consideration under the Rule. This is despite the fact that the administrative record demonstrates the predictable likelihood of such chilling effects, and serious health consequences due to the denial of health, nutritional, and housing supports. Cisneros Decl. Ex. K at 59-73, Ex. E at 1-2. Defendants also ignore critical evidence, such as the 2017 National Academy of Science Report, of the consequences of the Rule's particular chilling effects on LPRs who are subject to a more stringent Rule when seeking admission. *Compare* Cisneros Decl. Ex. A at 15-16 *with* Cisneros Decl. Ex K at 75-80, Ex. S at 79-80, Ex. G at 54-55.

Similarly, although Defendants acknowledged when proposing the Rule that it may have the impact of "decreas[ing] disposable income and increas[ing] the poverty of certain families and children, including U.S. citizen children," 83 Fed. Reg. at 51,277, they failed to conduct any meaningful assessment of evidence in the record regarding the impacts that the chilling effect has on families' well-being or its effect on the State and local entities. 84 Fed. Reg. at 41,312-13, Cisneros Decl. Ex A at 16.

b. Failure to adequately consider harm to state programs and hospitals.

Defendants failed to adequately respond to comments from hospitals, state agencies and similar governmental entities that the Rule will cause considerable harm to their administration of public benefit programs and the States' ability to achieve legitimate public policy objectives. While an agency need not respond to every individual comment, it must "respond in a reasoned manner to explain how the agency resolved any significant problems raised by the comments, and to show how that resolution led the agency to the ultimate rule." *Intl. Ladies' Garment Workers' Union v. Donovan*, 722 F.2d 795, 818 (D.C. Cir. 1983) (internal quotes and citations omitted).

The Rule adds new layers of administrative complexity for state administration of enumerated benefits that are done in partnership with three federal agencies and numerous local governments. Cisneros Decl. Ex I at 8; *see also* Jiménez Decl. at 17; Byrd Decl. ¶ 14; Palmer Decl. ¶ 11. The evidentiary demands for documenting self-sufficiency will potentially require systems updates and increased automation costs. Cisneros Decl. Ex. AA at 4; Jiménez Decl. at ¶ 17. The Rule undermines systems and processes using presumptive eligibility to determine whether applicants qualify for programs such as Medicaid and SNAP, through which enrollment in programs such as WIC (not included as a public benefit in the Rule) is streamlined. *Id.* The Rule will also exacerbate "churn" among the population of eligibility beneficiaries for programs like SNAP. Individuals and families that cycle on-and-off of programs, enrolling at times of great need and disenrolling to avoid risks or due to confusion, will increase the States' administrative costs. *Id.*; Cisneros Decl. Ex K at 57. Defendants acknowledge but do not evaluate or weigh the impact on hospitals and public health efforts. *Compare* 84 Fed. Reg. at 41,312-13, 41,384-85 *with* Cisneros Decl. Ex. R at 4-5, Ex L at 1; Ex B at 2.

c. Flawed calculation of administrative burden.

Defendants' estimate of the time and cost burden that the new Form I-944, Declaration of Self Sufficiency (Form I-944) will have on applicants, is implausible. The Rule and its Regulatory Impact Analysis estimated that the Form would require 4.5 hours, apparently based on its estimate that the Form I-485 takes 6.5 hours to complete. 84 Fed. Reg. 41,183-41,184; Cisneros Decl. Ex. A at 38, 62. Defendants provided no explanation of the methodology used to derive this estimate, and ignored criticism that their estimate failed to account for the time needed

to collect required documentary evidence, and the complexity of the Form's questions, compared to the yes-or-no questions that are the focus of the former Form I-485. Cisneros Decl. Ex G at 25-26, 79; Ex. C at 9-10. Experts in the field made clear that the asset valuation requirement alone would "consume significant amounts of time beyond the DHS estimate," and DHS disregarded attorney fees and costly appraisals. Cisneros Decl. Ex C at 9, Ex. G at 28-29. This is implausible in light of many of Rule's most onerous requirements. 8 C.F.R § 103.2(a)(1).[8] Defendants' estimate also fails to account for the impacts of the expansion of the public charge test on applicants seeking to extend or change their visa status. Cisneros Decl. Ex C at 10. Defendants' findings "raise questions as to whether the agency is fulfilling its statutory mandates impartially and competently."[9] *Humane Soc. of U.S. v. Locke*, 626 F.3d 1040, 1049 (9th Cir. 2010).

Defendants' analysis of the paperwork burdens is additionally unsatisfactory because it ignores the Form's exacerbation of existing backlogs in the processing of applications, which in turn make it harder for individuals to obtain work authorization and provide for themselves and

[8] These include: confusing, ambiguous questions to be answered under penalty of perjury regarding receipt of public benefits (applicants must choose between "No, I have not any public benefits" with no qualifying language concerning the type of benefit, or "no" they are not certified to receive "any of the above [listed] public benefits"); information related to a noncitizen's health insurance policy that is not pertinent to the public charge determination, e.g. health insurance deductible, monthly premium, and termination date; a list of all sources of income and all cash and non-cash assets that can be converted into cash within 12 months for every household member, including for every assert "the name of the asset holder, a description of the asset, proof of ownership, and the basis for the owner's claim of its net cash value"; the last three years of their tax transcripts (as opposed to simply tax returns); a credit report and credit score with the Form, which entail additional fees; additional documentation and narrative explanations regarding their credit under certain unclear circumstances; an explanation if there is "any" negative credit history, such as a delinquent account, regardless of how long ago the incident occurred (despite an assurance in the Rule's preamble that past poor credit will not be considered, 84 Fed. Reg. 41,426); and, for applicants without credit scores, they must provide a credit agency report showing that there are no results for them.

[9] Defendants' assessment of the burden of this Form becomes even more implausible in light of Defendants' recent policy of denying applications outright that contain mistakes or do not have sufficient evidence, without giving applicants an opportunity to rectify the errors or supplement the record. USCIS, *Issuance of Certain RFEs and NOIDs*, PM-602-0163 (July 13, 2018). USCIS has also recently decided to start placing applicants for lawful status into removal proceedings if they are no longer lawfully present. USCIS, *Updated Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens*, PM-602-0050.1 (June 28, 2019). In other words, applicants who make understandable mistakes or do not follow the extensive evidentiary requirements of this complicated Form could find themselves placed in removal proceedings.

their families. The complexity of the Rule's evaluation system and its broad evidentiary requirements will greatly increase administrative burdens on the agency. Cisneros Decl. Ex. C at 12-13. Defendants' estimate fails to account for these impacts of expansion of the public charge test on applicants seeking to extend or change their visa status. Defendants already have persistent backlogs, even for processing simple requests for new and renewed Employment Authorization Documents (EADs). Cisneros Decl. Ex. C at 6, Ex. W at 10-11. The Rule will make backlogs even worse. Cisneros Decl. Ex. C at 6. Defendants assert that increased processing times are excusable aspects of the burden of enforcing the law, 84 Fed. Reg. 41,315, but the existing system of laws is not processing applications with merit in a timely manner. Cisneros Decl. Ex. W at 11, Ex. BB at 2. The Rule ignores evidence that the Rule will further interfere with legal immigration processes.

V. ABSENT AN INJUNCTION, THE STATES WILL SUFFER IRREPARABLE HARM

By discouraging a significant portion of the States' population from obtaining adequate healthcare, nutrition and housing, the Rule will inflict immediate, irreparable harm on the States flowing from (A) loss of federal funds to support important state programs, disruption to the administration of those programs, and other administrative costs and burdens; (B) harm to the health and well-being of the States' residents, including lasting harm to the States' children who will suffer from inadequate nutrition and healthcare; and (C) economic harms to the State, including to healthcare providers and insurers, and the need to address residents' physical and educational hardships.

A. Loss of Federal Funds to and Interference with State Programs

The mission and operation of the States' agencies will be irreparably harmed by the Rule should it take effect on October 15, 2019. Defendants estimated that the proposed Rule will cause a reduction in payments from the federal government due to disenrollment or foregone enrollment by eligible individuals to be over $1.5 billion. 83 Fed. Reg. 51,2669. Loss of those federal dollars (plus those caused by the higher actual chilling effect) will have a devastating impact on state and local agencies which depend on federal funding in order to deliver needed

services. This "budget uncertainty," and the steps required to mitigate it, constitute irreparable harm. *Cty. of Santa Clara v. Trump*, 250 F. Supp. 3d 497, 537 (N.D. Cal. 2017).

Implementation of the Rule will also harm investments that the States have made into the design of, and enrollment in, public benefit programs. For example, the States have committed significant resources into the establishment of single, accessible, statewide applications and "no-wrong door" enrollment procedures that will be undermined by the Rule. McKeever Decl. ¶¶ 11-14; Buhrig I (SNAP) Decl. ¶¶ 17-19; Kofman Decl. ¶ 9. The Rule will also increase "churn"—the phenomenon of otherwise eligible immigrants dropping in and out of Medicaid enrollment based on their perceived or actual medical needs, in order to reduce risks to their immigration status—further undermining some of the States' policy decisions to elect the option federal law provides for twelve-month continuous certification periods for Medicaid as well as necessitating agencies to engage in duplicative work. Buhrig II (Medicaid) Decl. ¶¶ 40-41; Allen Decl. ¶ 21; Probert Decl. ¶ 17. If individuals disenroll from or forgo enrollment in Medicaid programs, medical costs may be borne by the state due to a loss of federal contributions. Probert Decl. ¶¶ 14-15; Byrd ¶ 20. These type of harms to the States' mission of facilitating broad-based access to healthcare and other services constitute serious, irreparable harm. *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013) (finding irreparable harm where "organizational plaintiffs have shown ongoing harms to their organizational missions as a result of the statute"); *League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 9 (D.C. Cir. 2016) (holding that obstacles that "make it more difficult for the [organizations] to accomplish their primary mission ... provide injury for purposes both of standing and irreparable harm").

The Rule's complicated provisions regarding receipt of benefits will also immediately impose additional administrative burdens and implementation costs on the States and their localities, as they divert time and financial resources to help noncitizens navigate the risks and benefits of receiving health or nutrition benefits. Pakseresht Decl. ¶ 29-32; Fanelli Decl. ¶ 40; Neville-Morgan Decl. ¶¶ 19-20; ; Chan Decl. ¶¶ 11-15; Cantwell Decl. ¶ 41; Fernández Decl. ¶¶ 32-36; Jiménez Decl. ¶ 17; Allen Decl. ¶¶ 55, 86-88; ; Probert Decl. ¶ 16; Kofman Decl. ¶¶ 13, 16-18; Byrd Decl. ¶¶ 22-23; Palmer Decl. ¶ 13, 15. Worryingly, the Rule attaches heavily

negative weight to circumstances in which an applicant has been "approved" for benefits in addition to actually receiving them. 8 C.F.R. § 212.22(E)(2). State agencies have invested time and effort into policies and procedures that made approval for healthcare and nutrition benefits as seamless as possible; the Rule will require state agencies to reconsider those well-established systems. McKeever Decl. ¶¶ 11-14; Fernández Decl. ¶¶ 14, 30.

B. Harms to Health and Well-Being

The States' public health and well-being will also be irreparably harmed by the Rule. *See State v. Bureau of Land Mgmt*., 286 F.Supp.3d 1054, 1074 (N.D. Cal. 2018) (finding irreparable harm from agency rule that "will have irreparable consequences for public health").

Healthcare coverage generally, including Medicaid, improves health outcomes; improves access to prescriptions; reduces financial hardship; helps women plan their pregnancies; and reduces preventable mortality. Buhrig II (Medicaid) Decl. ¶¶ 47-54; Aizuss Decl. ¶ 16; Jiménez Decl. ¶¶ 10-11; Hicks Decl. ¶¶ 26, 28; Allen Decl. ¶¶ 30-32, 44. Conversely, reductions in utilization of publicly-funded healthcare services due to immigrants' decisions to avoid or minimize potential risks to their immigration status will have a direct, long-term negative effect on Plaintiffs' ability to protect the public health. Cantwell Decl. ¶¶ 36, 39; Coyle Decl. ¶¶ 6, 9; Buhrig II (Medicaid) Decl. ¶¶ 48-56; Hicks Decl. ¶¶ 27-28; Allen Decl. ¶¶ 47-51; Stobo Decl. ¶¶ 26, 29; Ferrer Decl. ¶¶ 10, 14, 22; Thomson Decl. ¶ 13-14. Some immigrants and mixed-immigration status families will likely disenroll or avoid seeking preventive care, screening and treatment for serious, but preventable, communicable diseases. Probert Decl. ¶¶ 11-13. Decreased participation in prenatal healthcare and early child nutrition programs that are linked to federal public benefit programs will place mothers, infants, and children at greater risk of illness and poor health outcomes including pregnancy complications and potential setbacks in early child development. *See* Fanelli Decl. ¶ 14 (explaining that WIC helps reduce fetal and infant deaths, premature births and incidence of low birth weight).

In addition to their obvious benefits to beneficiaries, healthcare services are essential tools for the States to prevent, prepare for, and respond to public health threats and emergencies; and achieve numerous other public health goals. Dean Decl. ¶¶ 26-33. The Rule's chilling effects on

noncitizens and families with mixed status will reduce State and federal public health departments' effectiveness at providing vaccinations against diseases such as measles, polio, and other deadly diseases and preventing sexually transmitted diseases. Chawla Decl. ¶¶ 15-16.

Defendants have acknowledged that the Rule will increase the prevalence of disease "among members of the U.S. citizen population who are not vaccinated," and that the Rule does not assure access to vaccinations to an extent that mirrors the PRWORA-defined exceptions for immunizations and testing and treatment of communicable diseases. 83 Fed. Reg. 51270; 84 Fed. Reg. 41,384 ("[T]his final rule does not consider receipt of Medicaid by a child under age 21, or during a person's pregnancy . . . This should address a substantial portion, though not all of the vaccination issue."). Yet it is the Rule's chilling effects on excluded programs that will contribute to the prevalence of disease and put at risk the health of vulnerable populations, even those not directly subject to the Rule, despite Defendants' conclusory opinion that such chilling effects would be the result of "unwarranted choices." 84 Fed. Reg. 41,313. Community immunity is achieved only when a sufficient proportion of a population is immune to an infectious disease, making the disease's spread from person to person unlikely and protecting those vulnerable populations who are unable to be vaccinated. Dean Decl. ¶¶ 6-7; Allen Decl. ¶¶ 60-62. For example, in controlling the highly contagious and potentially fatal disease of tuberculosis (TB), the CDC recommends that Oregon increase efforts to identify and treat latent tuberculosis infections among high-risk populations, but the Rule may make these efforts less successful. Allen Decl. ¶¶ 85-86. Public health services have a positive impact on overall community health, and the Rule will reduce that. Dean Decl. ¶¶ 6-8; Ferrer Decl. ¶ 14.

Finally, the States use Medicaid and SNAP enrollment as efficient, effective means to automatically certify a large number of children into school lunch programs. Neville-Morgan Decl. ¶ 22; Buhrigh I (SNAP) Decl. ¶ 36; Pakseresht Decl. ¶ 14; Palmer Decl. ¶ 16. The community eligibility provision of the school meals program allows all students in eligible school or district communities to obtain free school meals without a showing of individual eligibility. If the percentage of directly certified children dips below the applicable threshold, however, the entire community suffers. Neville-Morgan Decl. ¶¶ 24-25; Buhrigh Decl. I (SNAP) ¶ 37; Palmer

Decl. ¶ 18. This includes students in lower-income areas who are not themselves eligible for nutritional assistance based on higher household income, but who may nevertheless be struggling with hunger. Gill Decl. ¶¶ 10-11. As with healthcare, the interests of the States are ultimately harmed by poorer nutrition.

C. Economic Harms to States

The Rule will result in direct economic harm to the States, as the result of both diminished participation in public benefit programs and reductions in noncitizens' ability to change their visas or obtain green cards.

The consequences of foregone healthcare are both immediate and far-reaching. For example, women who avoid reproductive care, including family planning, as a result of the Rule's chilling effects are unable to time and space their pregnancies and will be more likely to have an unintended pregnancy, which is associated with poor child and maternal health outcomes including adverse birth outcomes, including preterm birth, low birth weight, still birth. Hicks Decl. ¶¶ 28-29. These outcomes cost the States in the short and long term, and in tangible and intangible ways. Most concretely, the States fund a significant portion of the costs of medical procedures associated birth, as well as increased costs of treating health conditions ranging from cervical cancer to sexually transmitted diseases that worsen due to delays in diagnosis and treatment. Cantwell Decl. ¶¶ 34,36; Hicks Decl. ¶¶ 27, 30. Even a slight uptick in such costs will cause irreparable harm to the State. *See Simula, Inc. v. Autoliv, Inc.*, 175 F.3d 716, 724 (9th Cir. 1999) ("magnitude of the injury" is not determinative); *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1068 (9th Cir. 2014) (court erred by evaluating severity, not irreparability, of harm).

Chilling effects in healthcare enrollment will harm the States' hospital and emergent care systems. Defendants admit that the Rule may lead to "increased use of emergency rooms and emergent care as a method of primary healthcare due to delayed treatment" and "increases in uncompensated care in which a treatment or service is not paid for by an insurer or patient." 84 Fed. Reg. 41,384. All of these harms have multiplier effects on the States as well. Hospitals that that already serve a disproportionate share of low-income individuals will face greater uncompensated care costs. *See* Coyle Decl. ¶ 9; Gray Decl. ¶¶ 4-5, 8. If participation in publicly

funded programs, such as Medicaid, drops, then uncompensated care will rise, hospitals will be less able to serve all patients, and the State will have to pick up uncompensated care costs. *See, e.g.*, Stobo Decl. ¶ 27. Conversely, when immigrants (who on average use fewer healthcare services than similarly situated native-born U.S. residents) participate, their participation in healthcare systems lowers costs for all participants in the insurance pool. Lucia Decl. ¶ 28.

Reduced participation in public benefit programs like SNAP will cause additional harm. SNAP benefits generate secondary economic effects that increase overall spending and production; the United States Department of Agriculture estimates that in a slowing economy, every $1 in SNAP benefits generates between $1.54 and $1.80 in economic activity. Buhrig Decl. I (SNAP) ¶ 35; Fernández Decl. ¶ 37; Pakseresht Decl. ¶ 33; Pelotte Decl. ¶ 11. Decisions by immigrant families to forgo nutritional benefits will result in loss of this economic activity. Lucia Decl. ¶ 20. And reluctance to participate in publicly funded housing programs, such as state policies that support housing for farmworkers, will also harm the States. *See, e.g.*, Kergan (Wisotsky) Decl. ¶¶ 5, 12, 36. In California alone, disenrollments due to the chilling effect could lead to $1.2 billion in reduced economic output, and loss of 7,600 jobs. Lucia Decl. ¶ 21-22.

VI. THE BALANCE OF EQUITIES AND THE PUBLIC INTEREST FAVOR ISSUING AN INJUNCTION TO PRESERVE THE STATUS QUO.

The public interest and the balance of the equities favor preliminary injunctive relief. *California v. Azar*, 911 F.3d 558, 575 (9th Cir. 2018). Indeed, as discussed in Section II above, the balance of hardships sharply favors the States—which means that injunctive relief would be appropriate even if the States had merely raised "serious questions going to the merits" of this litigation, *Arc of California*, 757 F.3d at 983—though they have done more than that. In upholding a recent preliminary injunction prohibiting federal regulations that would have reduced access to reproductive healthcare, the Ninth Circuit found an injunction was appropriate given the "potentially dire public health and fiscal consequences" and highlighted the public interest in access to contraceptive care. *California v. Azar*, 911 F.3d at 582 (quotation omitted). Here, a preliminary injunction merited for the same reasons.

VII. THE COURT SHOULD POSTPONE THE EFFECTIVE DATE OF THE REGULATION PENDING JUDICIAL REVIEW OR ISSUE A NATIONWIDE INJUNCTION.

Given the equities at issue, the Court should stay the effective date of the Rule until a determination on the merits, pursuant to 5 U.S.C. § 705, or issue a preliminary injunction enjoining the Rule from taking effect. The States have show harm (Section V) nationwide.

The States also seek a nationwide injunction, or stay of the implementation date, because an injunction limited to the borders of the five states would not fully ameliorate the harms cause by the Rule's chilling effects. *See Pennsylvania v. President United States*, 930 F.3d 543, 576 (3d Cir. 2019). Nationwide relief is "particularly appropriate in the immigration context because 'immigration laws of the United States should be enforced vigorously and uniformly.'" *Hawaii v. Trump*, 859 F.3d 741, 787 (9th Cir. 2017) *rev'd and remanded on other grounds* 138 S. Ct. 2392 (2018) (quoting *Texas v. United States*, 809 F.3d 134, 187–88 (5th Cir. 2015)), vacated for mootness, 138 S. Ct. 377 (2017). The alternative—relief limited to the States—"may result in 'fragmented immigration policy [that] would run afoul of the constitutional and statutory requirement for uniform immigration law and policy.'" *Washington v. Trump*, 847 F.3d 1151, 1166–67 (9th Cir. 2017) (citing to *Texas*, 809 F.3d at 187–88).

An injunction limited to the five Plaintiff States would leave the chilling effect in full force throughout the remainder of the United States. A five-state injunction would compound confusion (and concomitant harms) for any immigrant who moves back and forth between Plaintiff States and other jurisdictions during the Rule's 36-month window of public benefit use, muddying any attempt to calculate the impact of receipt of public benefits on a future public charge determination. The Rule also creates a number of factors tied to household, and defines that term to include various relatives who physically reside elsewhere (*see* § 212.21(d)(1)(iv-vi), (2)(iii-iv, vi-vii)), and a partial injunction or stay would place households that span state lines in an especially confusing situation. Without knowing where immigrants may move in the future, DHS will be unable to determine prospective likelihood of becoming a public charge. The States cannot obtain satisfactory preliminary relief without a nationwide junction or stay.

CONCLUSION

Plaintiffs respectfully request that the Court preliminarily enjoin the Rule, and/or postpone the effective date of the Rule until judicial review of its validity has concluded.

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