No. 19-3595

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

MAKE THE ROAD NEW YORK, AFRICAN SERVICES COMMITTEE, ASIAN AMERICAN FOUNDATION, CATHOLIC CHARITIES COMMUNITY SERVICES, and CATHOLIC LEGAL IMMIGRATION NETWORK, INC.,

Plaintiffs-Appellees,

v.

KENNETH T. CUCCINELLI, in his official capacity as Acting Director of USCIS, UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, CHAD F. WOLF, in his official capacity as Acting Secretary of Homeland Security, and UNITED STATES DEPARTMENT OF HOMELAND SECURITY,

Defendants-Appellants.

On Appeal from the United States District Court
for the Southern District of New York

APPELLANTS' REPLY IN SUPPORT OF MOTION FOR A STAY PENDING APPEAL

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This Court should stay the district court's injunction pending appeal. Plaintiffs assert a theory of standing that would render organizational standing limitless, and attempt to rely on interests that Congress did not intend to protect. On the merits, plaintiffs fail to meaningfully address the numerous provisions that support the Rule's interpretation of the statute, and seek to dismiss Congress's longstanding decision to leave the definition of "public charge" to the discretion of the Executive Branch. Given the likelihood that the government will prevail on appeal, it should not have to bear the undisputed harm the injunction imposes: the likely irreversible grant of lawful-permanent-resident status to aliens DHS believes should be inadmissible.

A. Standing

Plaintiffs assert that they have standing because they "need to divert resources to existing services" in light of the Rule's changes to the regulatory context in which they perform their usual activities. Response 10. That theory of standing is limitless; it would allow an accountant to challenge an unfavorable change in tax laws, or a public-interest lawyer to challenge a change in criminal procedure—a prospect this Court should reject. *Cf. Kowalski v. Tesmer*, 543 U.S. 125, 134 & n.5 (2004). And it goes far beyond the precedents on which plaintiffs rely.

In *Centro de la Comunidad Hispana de Locust Valley v. Oyster Bay*, 868 F.3d 104 (2d Cir. 2017), an organization that sought to organize day laborers challenged an ordinance that would make that task more difficult by causing day laborers to spread out. *Id.* at 110. And in *Nnebe v. Daus*, 644 F.3d 147 (2d Cir. 2011), an organization

expended resources to assist taxi drivers whose licenses were suspended, and brought "suit so that when it expends resources to assist drivers who face suspension, it can expend those resources on hearings that represent bona fide process." *Id.* at 158. Neither case remotely suggests that an organization can premise standing on a reshuffling of resources from some existing services to others.

As for the statute's zone of interests, plaintiffs rely exclusively on INA provisions that reference legal-services organizations that represent aliens in immigration proceedings. Response 11. Even if the plaintiffs have some relevant interests in public-charge determinations in the abstract, the "injury . . . complain[ed] of" here—the diversion of funds from some usual pursuits to others—does not "fall[] within the 'zone of interests' sought to be protected by the statutory provision." *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 883 (1990).

B. Merits

1. Plaintiffs' responses to the government's statutory analysis are unpersuasive.

Plaintiffs cannot avoid the clear implication of the affidavit-of-support provision. As the government explained, Mot. 9-10, that provision demonstrates the connection between the public-charge provision and the receipt of public benefits, and highlights the error of plaintiffs' assertion that the statute unambiguously forecloses consideration of such benefits.

Plaintiffs also fail to explain why Congress would instruct DHS not to consider a battered alien's receipt of "any benefits," 8 U.S.C. § 1182(s), if DHS was already

prohibited from doing so. Plaintiffs' contention that, in so instructing, Congress was referring only to *cash* benefits, Response 15-16, contradicts the provision's plain text, which states that DHS "shall not consider *any* benefits . . . that were authorized under section 1641(c) of this title," 8 U.S.C. § 1182(s) (emphasis added)—a category that includes noncash benefits, *see id.* § 1622(a) (allowing states to deem battered aliens eligible for noncash benefits).

Plaintiff fares no better in noting that Congress has provided support for aliens in limited circumstances. Response 14-15. Congress's decision to exclude aliens who might rely on public assistance is not inconsistent with its decision to assist certain aliens who have already been admitted—especially since immigration officials cannot with perfect accuracy predict which aliens will become public charges.

Lacking any textual support for its position, plaintiffs rely on failed legislative proposals, Response 2, 14—a dubious method of statutory interpretation. Congress did not "discard[]" the Rule's definition "in favor of" another eventually enacted. *INS v. Cardoza-Fonseca*, 480 U.S. 421, 443 (1987). Instead, Congress left the term undefined, allowing the Executive Branch to continue to exercise its discretion. And both the 1996 and 2013 proposed definitions were significantly broader than the Rule: the 1996 proposal covered a similar amount of benefits usage within a period of seven years rather than three, *see* H.R. Rep. 104-828, at 138, 240-41, and the 2013 proposal included receipt of *any* amount of public benefits, S. Rep. No. 113-40, at 42, 63.

Plaintiffs are likewise mistaken that "public charge" has a longstanding meaning with which the Rule is inconsistent. Response 11-15. Congress has never defined the term. Rather, the defining feature of Congress's approach to the "public charge" inadmissibility provision over the last 135 years has been its repeated and intentional decision to leave the term's definition to the Executive Branch's discretion. *See* Mot. 12-14. As plaintiffs concede, Congress has granted DHS discretion to interpret the public-charge inadmissibility statute in individual cases Response 15. And, contrary to plaintiffs' assertion, that same discretion must extend to promulgation of a Rule to make DHS's determinations uniform.

Plaintiffs' historical analysis is flawed even on its own terms. Plaintiffs assert that the 1882 public-charge provision "was intended to bar immigrants likely to become long-term residents of poor-houses and alms-houses." Response 12 (quotation marks omitted). But legislative history focused on the welfare programs prevalent at the time says nothing about what kind of benefits usage constitutes a "charge" on the "public" today. Similarly inapposite is the 1882 Act's provision for "temporary assistance" to aliens. *Id.* Congress raised the funds used for that assistance through a head tax on "each and every" alien who arrived in U.S. ports of entry, Immigration Act of 1882, ch. 376, §§ 1-2, 22 Stat. 214 (Aug. 3, 1882)—hardly an indication that Congress approved of alien use of public benefits. And, as explained, a decision to provide assistance to aliens already admitted is not inconsistent with excluding aliens who are likely to require such assistance.

In any event, other relevant sources contradict plaintiffs' position. For example, both the 1933 and 1951 editions of Black's Law Dictionary defined "public charge," "[a]s used in" the 1917 version of the public-charge provision, to mean simply "one who produces a money charge upon, or an expense to, the public for support and care." Public Charge, Black's Law Dictionary (3d ed. 1933); Black's Law Dictionary (4th ed. 1951). And a 1929 treatise did the same. *See* Arthur Cook et al., *Immigration Laws of the United States* § 285 (1929) (noting that "public charge" meant a person who required "any maintenance, or financial assistance, rendered from public funds, or funds secured by taxation").

Plaintiffs cite *Gegiow v. Uhl*, 239 U.S. 3 (1915), as evidence that the term "public charge" had a settled historical meaning with which the Rule allegedly conflicts. Response 12. But *Gegiow* stands merely for the proposition that an alien cannot be deemed likely to become a public charge based solely on labor-market conditions in his destination city. *See Gegiow*, 239 U.S. at 9-10. Instead, the determination must be based on an alien's personal characteristics, *id.*, which is precisely the approach of the Rule's the totality-of-the-circumstances test, *see* 84 Fed. Reg. at 41,501. In any event, Congress later revised the immigration laws to "overcome" the holding of *Gegiow*. *See* S. Rep. 64-352, at 5 (1916); H.R. Rep. 64-886, at 3-4 (1916).

Plaintiffs' reliance on administrative practice is similarly misplaced. Response 12-14. The 1999 proposed rule, on which plaintiffs heavily rely, stated that the term

"public charge" was "ambiguous" and had "never been defined in statute or regulation." 64 Fed. Reg. at 28,676-77.

And the Rule accords with prior administrative practice. Nothing in the Rule suggests that an alien should be deemed inadmissible solely because the alien has at some time accepted public benefits, *see Matter of B*, 3 I. & N. Dec. 323, 324 (BIA 1948; AG 1948), or when the alien is a young, "healthy person in the prime of life . . . [with] friends or relatives in the United States who have indicated their ability or willingness to come to his assistance," *Matter of Martinez-Lopez*, 10 I. & N. Dec. 409, 421 (BIA 1962; AG 1964). Rather, the balance of the many factors in the Rule must show that an alien will likely use designated benefits for more than 12 months in the aggregate within a three-year period. And DHS cited a hypothetical alien who is "young, healthy, employed, attending college, and not responsible for providing financial support for any household members" as an example of an individual who "would not be found inadmissible" under the Rule. 83 Fed. Reg. at 51,216.

It is instead plaintiffs' definition that is inconsistent with prior practice. Under *Matter of B*, an alien is deportable as a public charge from causes not affirmatively shown to have arisen since entry if (1) the government provides a "service[]" for which it has a right to repayment; (2) it "make[s] demand for payment"; and (3) there is "a failure to pay." *Matter of B*, 3 I. & N. Dec. at 326. That determination has nothing to do with the type or size of the public benefit an alien receives. Indeed, *Matter of B* suggested that the alien involved would have been deportable as a public

charge if her relatives had failed to repay the State's costs in providing the alien with "clothing, transportation, and other incidental expenses," because Illinois law permitted the State to recover those incidentals, even though the law did not permit the State to recover the core costs of institutionalization. *Id.*

2. Plaintiffs' arbitrary-and-capricious challenge is likewise without merit.

Plaintiffs assert that the Rule is irrational because, at the margins, an alien might meet the Rule's definition of public charge by obtaining an amount of benefits that, in plaintiffs' view, is "de minimis." Response 6, 17-18. But DHS could reasonably conclude that receipt of over 12 months of public benefits within a three-year period is more than de minimis.

Plaintiffs also fault the Rule for "ignor[ing] undisputed evidence" that "supplemental benefits promote rather than impede self-sufficiency." Response 17. Yet it was Congress that concluded otherwise. *See* 8 U.S.C. § 1601. Similarly, plaintiffs fault the Rule for suggesting that children are, all else equal, more likely to become public charges than working-age adults, and for considering the possibility that an alien might become a public charge "years after obtaining citizenship." Response 5, 6. Yet again, it was Congress that instructed DHS to consider "age," and whether an alien is likely to become a public charge "at any time." 8 U.S.C. § 1182(a)(4)(A), (B)(i)(I).

3. Similarly flawed is plaintiffs' argument that the Rule violates the Rehabilitation Act. As the government explained, Mot. 19-20, plaintiffs have not

shown that the Rule makes persons ineligible for lawful-permanent-resident status "solely by reason" of disability, as "the Rehabilitation Act requires." *Harris v. Mills*, 572 F.3d 66, 75 (2d Cir. 2009). And *Henrietta D. v. Bloomberg*, 331 F.3d 261 (2d Cir. 2003), which involved "a 'reasonable accommodation' claim" related to provision of government services, *id.* at 273, does not remotely suggest that it is illegal to consider disability as part of the totality of the circumstances in a public-charge admissibility determination.

Moreover, plaintiffs incorrectly state that the Rehabilitation Act prohibits DHS from considering disability in public-charge inadmissibility determinations because the Act's reference to "disability" is more specific than the public-charge provision's reference to "health." Response 18-19. The question is not which statute references disability most explicitly, but which statute more specifically addresses the factors that DHS may take into account in public-charge determinations. Plainly that is the public-charge statute, under which DHS must consider the possibility that an alien's lack of "health" might cause the alien to become a public charge. 8 U.S.C. § 1182(a)(4)(B)(i)(II). That the Rehabilitation Act's definition of disability was later broadened, Response 19, has nothing to do with the breadth of DHS's inquiry under the public-charge statute.

4. Neither does plaintiffs' equal-protection argument have merit. Plaintiffs argue that the Rule will disparately impact "noncitizens of color," Response 19, but disparate impact does not give rise to heightened scrutiny as a general matter, *see*

Personnel Adm'r of Massachusetts v. Feeney, 442 U.S. 256, 278-79 (1979), much less here, given that the admission of aliens is a "fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control." *Fiallo v. Bell*, 430 U.S. 787, 792 (1977). In this context, a court must apply "narrow" rational-basis review, *Trump v. Hawaii*, 138 S. Ct. 2392, 2419 (2018), which the Rule easily satisfies. And there is no merit to plaintiffs' suggestion that this Court should premise its analysis on a finding of "discriminatory animus" that the district court never made, Response 19, based on vague, unsubstantiated allegations of bias.

C. Remaining Stay Factors

Plaintiffs do not dispute that, unless the Rule is allowed to take effect, DHS will be forced to continue an immigration policy that will result in the likely irreversible grant of lawful-permanent-resident status to some aliens who are "likely to become . . . public charge[s]," as the Secretary would define that term, and who are likely to receive public benefits. 8 U.S.C. 1182(a)(4)(A). That undisputed harm is not outweighed by plaintiffs' only allegation of harm to themselves as organizations: the purported "need to divert resources to existing services." Response 10. Nor is the public interest served by setting aside the Executive Branch's effort to better align the Nation's immigration policy with the governing statutes. And plaintiffs are mistaken to suggest that the government was forced to wait for the district court to rule on its stay motion before seeking relief from this Court. Response 8-9; *see* Fed. R. App. P. 8(a)(2)(A) (authorizing motion in court of appeals when district court either "denied

the motion or failed to afford the relief requested"). In any event, the district court has now denied the motion. *See* Attachment.

D. Nationwide Injunction

In support of their apparent view that every successful challenge to a rule should result in a nationwide preliminary injunction, plaintiffs rely on statements in the D.C. Circuit's decision in *National Mining Ass'n v. U.S. Army Corps of Engineers*, 145 F.3d 1399, 1409-10 (D.C. Cir. 1998). But those statements are based in part on the unique circumstance that, because venue rules permit parties to challenge agency action in the District of Columbia, D.C. Circuit rulings often curtail the agency's flexibility nationwide. *See id.*; 28 U.S.C. § 1391(e). And even the D.C. Circuit has not suggested that the Administrative Procedure Act requires nationwide permanent injunctions in all cases. Much less has it suggested that the APA requires nationwide *preliminary* injunctions, as preliminary injunctions are designed merely to "preserve the relative positions *of the parties* until a trial on the merits can be held." *University of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981) (emphasis added). And other courts have narrowed injunctions under the Administrative Procedure Act to apply only as necessary to provide complete relief to the parties before the Court. *See Virginia Soc'y for Human Life v. FEC*, 263 F.3d 379, 393-94 (4th Cir. 2001); *Los Angeles Haven Hospice, Inc. v. Sebelius*, 638 F.3d 644, 664 (9th Cir. 2011). Plaintiffs' only case-specific assertions—that their clients "may" move out of the New York area, Response 21-22, and that one plaintiff will be burdened in "supporting its 370 affiliate immigration

programs," Wheeler Decl. ¶ 2—fall far short of demonstrating cognizable injury that could support a nationwide injunction.

CONCLUSION

The preliminary injunction and stay under 5 U.S.C. § 705 should be stayed pending the federal government's appeal.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This reply complies with the type-volume limit of Federal Rule of Appellate Procedure 32(a)(7)(B) because it contains 2598 words. This reply also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)-(6) because it was prepared using Microsoft Word 2016 in Garamond 14-point font, a proportionally spaced typeface.

s/ Joshua Dos Santos
Joshua Dos Santos

CERTIFICATE OF SERVICE

I hereby certify that on December 2, 2019, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the Second Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

s/ Joshua Dos Santos
Joshua Dos Santos

ATTACHMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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.,

Plaintiffs,

-against-

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.

MEMORANDUM DECISION AND ORDER

19 Civ. 7993 (GBD)

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. commenced this action against Defendants Kenneth T. Cuccinelli II, Kevin K. McAleenan, the United States Citizenship and Immigration Services, and the United States Department of Homeland Security ("DHS"), challenging Defendants' promulgation, implementation, and enforcement of a rule titled 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"). (Compl., ECF No. 1.) Shortly after bringing this action, Plaintiffs moved for a preliminary injunction enjoining Defendants from implementing or enforcing the Rule, which

was scheduled to go into effect on October 15, 2019. (Notice of Mot., ECF No. 38.) This Court granted Plaintiffs' motion on October 11, 2019.[1] (Mem. Decision and Order, ECF No. 147; *see also* Order Granting Pls.' Mot. for a Prelim. Inj., ECF No. 146.) Specifically, this Court issued a nationwide injunction, as well as a stay postponing the effective date of the Rule pending adjudication on the merits or further order of the Court. (Mem. Decision and Order at 26.) Defendants now move to stay this Court's preliminary injunction pending resolution of Defendants' appeal of this Court's October 11, 2019 order. (Mot. for Stay of Inj. Pending Appeal, ECF No. 149.)

In assessing whether to grant a stay pending appeal, a court considers four factors: (1) whether the moving party has made a strong showing of its likelihood of success on the merits, (2) whether the moving party will suffer irreparable harm absent a stay, (3) whether the issuance of a stay will substantially injure the other parties interested in the proceeding, and (4) where the public interest lies. *Nken v. Holder*, 556 U.S. 418, 434 (2009). "There is substantial overlap between these and the factors governing preliminary injunctions[.]" *Id.* (citing *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008)). "A stay is not a matter of right, even if irreparable injury might otherwise result," and "is instead 'an exercise of judicial discretion.'" *Id.* at 433 (citations omitted). The party seeking a stay bears the "difficult burden" of demonstrating that a stay is necessary. *Floyd v. City of New York*, 959 F. Supp. 2d 691, 693 (S.D.N.Y. 2013) (quoting *United States v. Private Sanitation Indus. Ass'n of Nassau/Suffolk, Inc.*, 44 F.3d 1082, 1084 (2d Cir. 1995)).

[1] Also on that day, this Court granted the same preliminary injunction and stay in a related action, *New York v. United States Department of Homeland Security*, No. 19 Civ. 7777 (GBD), 2019 WL 5100372 (S.D.N.Y. Oct. 11, 2019).

Defendants argue that they are likely to succeed on the merits of their appeal. They reallege, as an initial matter, that Plaintiffs lack organizational standing, their claims are not ripe for review, and Plaintiffs fall outside of the zone of interests regulated by the Rule. (Mem. of Law in Supp. of Defs.' Motion for Stay of Inj. Pending Appeal ("Defs.' Mem."), ECF No. 150, at 2–3.) As to the merits, Defendants insist that the new definition of "public charge" set forth in the Rule simply implements the U.S. immigration law principle of self-sufficiency, and therefore falls within Defendants' delegated interpretive authority. (*Id.* at 3–4.) They further argue that this Court "erred in holding that the Rule is arbitrary and capricious based on the Court's view that there was no rational relationship between self-sufficiency and receipt of public benefits." (*Id.* at 5.) In particular, Defendants contend that the Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, 64 Fed. Reg. 28,689 (May 26, 1999) (the "Field Guidance")—which establishes the current framework for determining whether a noncitizen is likely to become a public charge—already "tie[s] the definition of public charge to the receipt of public benefits." (*Id.*)

Defendants assert that the remaining factors justifying a stay are also satisfied. Specifically, Defendants contend that the government and public will suffer irreparable harm absent a stay because DHS will be required to grant lawful permanent residence to noncitizens who are not public charges under the Field Guidance but who would be considered public charges under the new Rule. (*Id.* at 6–7.) According to Defendants, DHS "currently has no practical means of revisiting these determinations" if this Court's injunction is later vacated. (*Id.* at 7.) Moreover, because these noncitizens are "likely" to receive public benefits, the injunction will "inevitably" result in additional government expenditures. (*Id.*) Defendants further argue that the Rule's "future effectiveness is reduced" because "any public benefits received by aliens submitting status adjustment applications before the Rule takes effect will be counted only if they would have been

covered by the . . . Field Guidance." (*Id.*) Defendants' other alleged injuries include "significant administrative burdens," such as those associated with delaying training on how to implement the Rule. (*Id.*) Meanwhile, Defendants assert that Plaintiffs will suffer no irreparable harm if a stay is issued during the pendency of an appeal. (*Id.*) Defendants argue that this Court should, at minimum, issue a stay limiting the scope of its injunction to Plaintiff states. (*Id.* at 8.)

These arguments are without merit. Indeed, Defendants' instant motion largely reiterates the same arguments made in their opposition to Plaintiff's motion for a preliminary injunction and stay—all of which this Court rejected.[2] Critically, Defendants have yet to provide a reasonable explanation for redefining "public charge" 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. As previously noted by this Court, "public charge" has *never* been interpreted as someone who receives 12 months of benefits within a 36-month period; there is *zero* precedent supporting this definition; and there is no indication that Congress expressed any desire to redefine the term, let alone in this manner. Additionally, Defendants' attempt to analogize the Rule to the Field Guidance ignores the key distinction that the Field Guidance drew between cash assistance and long-term institutionalization on the one hand, and supplemental, non-cash benefits on the other. The Field Guidance expressly states that "participation in . . . noncash programs is not evidence of

[2] In fact, *every* single court that has considered the Rule has rejected Defendants' argument that they are likely to succeed on the merits and has accordingly issued an injunction. *See Casa de Md., Inc. v. Trump*, No. 19 Civ. 2715 (PWG), 2019 WL 5190689, at *18–19 (D. Md. Oct. 14, 2019) (granting nationwide injunction and stay of effective date of Rule); *Cook Cty. v. McAleenan*, 19 Civ. 6334 (GF), 2019 WL 5110267, at *13–14 (N.D. Ill. Oct. 14, 2019) (granting injunction in Illinois); *City & Cty. of San Francisco v. U.S. Citizenship & Immigration Servs.*, Nos. 19 Civ. 4717 (PJH), 19 Civ. 4975 (PJH), 19 Civ. 4980 (PJH), 2019 WL 5100718, at *53 (N.D. Cal. Oct. 11, 2019) (granting injunction in San Francisco City and County, Santa Clara County, California, Oregon, the District of Columbia, Maine, and Pennsylvania); *Washington v. U.S. Dep't of Homeland Sec.*, No. 19 Civ. 5210 (RMP), 2019 WL 5100717, at *23 (E.D. Wash. Oct. 11, 2019) (granting nationwide injunction and stay of effective date of Rule).

poverty or dependence." 64 Fed. Reg. at 28,692. It further notes that "by focusing on cash assistance for income maintenance, the [government] can identify those who are primarily dependent on the government for subsistence without inhibiting access to non-cash benefits that serve important public interests" and that eligible noncitizens are "legally entitled to receive." *Id.*

Defendants also fail to adequately demonstrate what irreparable injuries the federal government agencies will suffer in the absence of a stay, or how any such alleged injuries outweigh those that Plaintiffs and the public have demonstrated that they will suffer in the absence of an injunction. First, the injunction merely maintains the status quo and the public charge framework that has been in place, with Congress's endorsement, for decades. Defendants seek to upend the status quo without identifying any rational justification or urgent need for doing so. Nor do Defendants provide any plausible basis for their claims that the Rule's "future effectiveness is reduced" with every day that the injunction stays in place, or that they will endure "significant administrative burdens." (*See* Defs.' Mem. at 7.) In contrast, Plaintiffs have demonstrated that they will suffer immediate and irreparable injuries if the injunction is stayed because the Rule will hinder their ability to carry out their missions and force them to divert significant resources to mitigate the potentially harmful effects of the Rule. (Mem. of Law in Opp'n to Defs.' Motion for a Stay of the Prelim. Inj. Pending Appeal, ECF No. 156, at 16–17.) Moreover, because the Rule would deter law-abiding immigrants from receiving available benefits to which they are legally entitled, it would undoubtedly make both these immigrants and the public at large more vulnerable to health and economic instability. (*See id.* at 17–18.) In addition, denial of permanent resident status and deportation are the expected results of the immediate implementation of the new Rule.

In short, to stay the injunction would be inconsistent with this Court's underlying findings of Plaintiffs' likelihood of success on the merits, and of the irreparable injury that Plaintiffs,

noncitizens, and the general public would suffer in the absence of an effective injunction.[3] Accordingly, Defendants' motion for a stay of the preliminary injunction pending appeal, (ECF No. 149), is DENIED.

Dated: New York, New York
December 2, 2019

SO ORDERED.

George B. Daniels

GEORGE B. DANIELS
United States District Judge

[3] Defendants' cursory argument that this Court should, at minimum, limit the scope of its nationwide injunction is unavailing. They claim that the nationwide scope renders other decisions about the Rule "academic," pointing to two decisions in which two other district courts limited the scope of their injunctions to particular jurisdictions. (Defs.' Mem. at 8.) However, Defendants conveniently ignore that the remaining two district courts to consider the Rule issued a nationwide injunction, similarly to this Court. *See Casa de Md., Inc. v. Trump*, No. 19 Civ. 2715 (PWG), 2019 WL 5190689, at *18–19 (D. Md. Oct. 14, 2019) (granting nationwide injunction); *Washington v. U.S. Dep't of Homeland Sec.*, No. 19 Civ. 5210 (RMP), 2019 WL 5100717, at *23 (E.D. Wash. Oct. 11, 2019) (same). Continued consistent application of the existing immigration laws is the least injurious to those who would be most adversely affected by the Rule's hasty and piecemeal application.