

Oct 11, 2019

SEAN F. McAVOY, CLERK

1  
2 UNITED STATES DISTRICT COURT  
3 EASTERN DISTRICT OF WASHINGTON

4 STATE OF WASHINGTON;  
5 COMMONWEALTH OF VIRGINIA;  
6 STATE OF COLORADO; STATE  
7 OF DELAWARE; STATE OF  
8 HAWAI'I; STATE OF ILLINOIS;  
9 STATE OF MARYLAND;  
10 COMMONWEALTH OF  
11 MASSACHUSETTS; DANA  
12 NESSEL, Attorney General on behalf  
13 of the people of Michigan; STATE OF  
14 MINNESOTA; STATE OF  
15 NEVADA; STATE OF NEW  
16 JERSEY; STATE OF NEW  
17 MEXICO; and STATE OF RHODE  
18 ISLAND,

19 Plaintiffs,

20 v.

21 UNITED STATES DEPARTMENT  
OF HOMELAND SECURITY, a  
federal agency; KEVIN K.  
MCALEENAN, in his official  
capacity as Acting Secretary of the  
United States Department of  
Homeland Security; UNITED  
STATES CITIZENSHIP AND  
IMMIGRATION SERVICES, a  
federal agency; and KENNETH T.  
CUCCINELLI, II, in his official  
capacity as Acting Director of United  
States Citizenship and Immigration  
Services,

Defendants.

NO: 4:19-CV-5210-RMP

ORDER GRANTING PLAINTIFF  
STATES' MOTION FOR SECTION  
705 STAY AND PRELIMINARY  
INJUNCTION

1 Fourteen states challenge the Department of Homeland Security’s expansive  
2 revision of the Public Charge Rule. Congress and the U.S. Constitution authorize  
3 this Court to provide judicial review of agency actions. The Plaintiff States ask the  
4 Court to serve as a check on the power asserted by the Department of Homeland  
5 Security to alter longstanding definitions of who is deemed a Public Charge. After  
6 reviewing extensive briefing and hearing argument, the Court finds that the Plaintiff  
7 States have shown that the status quo should be preserved pending resolution of this  
8 litigation.<sup>1</sup> Therefore, the Court **GRANTS** the motion to stay the effective date of  
9 the Public Charge Rule until the issues can be adjudicated on their merits.

10 The Motion for a Section 705 Stay and for Preliminary Injunction, ECF No.  
11 34, is brought by Plaintiffs State of Washington, Commonwealth of Virginia, State  
12 of Colorado, State of Delaware, State of Hawai’i, State of Illinois, State of  
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14 <sup>1</sup> The Court has reviewed the Motion for Preliminary Injunction, ECF No. 34, and  
15 supporting declarations and materials, ECF Nos. 35–87; the Plaintiff States’ First  
16 Amended Complaint, ECF No. 31; the Briefs of Amici Curiae submitted in support  
17 of the Plaintiff States’ Motion, ECF Nos. 111 (from nonprofit anti-domestic  
18 violence and anti-sexual assault organizations), 109 (from Health Law Advocates  
19 and other public health organizations), 110 (from nonprofit organizations support  
20 of the disability community), 149 (from hospitals and medical schools), 150 (from  
21 nonprofit organizations supporting seniors), 151 (from health care providers and  
health care advocates), 152 (from professional medical organizations), and 153  
(from the Fiscal Policy Institute, the Presidents’ Alliance on Higher Education and  
Immigration, and other organizations addressing economic impact); the Federal  
Defendants’ Opposition to Preliminary Relief, ECF No. 155; and the Plaintiff  
States’ Reply, ECF No. 158.

1 Maryland, Commonwealth of Massachusetts, Attorney General Dana Nessel on  
2 behalf of the People of Michigan, State of Minnesota, State of Nevada, State of New  
3 Jersey, State of New Mexico, and State of Rhode Island (collectively, “the Plaintiff  
4 States”).

5 Defendants are the United States Department of Homeland Security (“DHS”),  
6 Acting Secretary of DHS Kevin K. McAleenan, United States Citizenship and  
7 Immigration Services (“USCIS”), and Acting Director of USCIS Kenneth T.  
8 Cuccinelli II (collectively, “the Federal Defendants”). Pursuant to the  
9 Administrative Procedure Act and the guarantee of equal protection under the Due  
10 Process Clause of the U.S. Constitution, the Plaintiff States challenge the Federal  
11 Defendants’ redefinition of who may be denied immigration status as a “public  
12 charge” in federal immigration law among applicants for visas or legal permanent  
13 residency.

#### 14 **I. BACKGROUND**

15 On August 14, 2019, DHS published in the Federal Register a final rule,  
16 Inadmissibility on Public Charge Grounds, 84 Fed. Reg. 41,292 (Aug. 14, 2019) (to  
17 be codified at 8 C.F.R. pts. 103, 212, 213, 214, 245 and 248) (“Public Charge  
18 Rule”), that redefines whether a visa applicant seeking admission to the United  
19 States and any applicant for legal permanent residency is considered inadmissible  
20 because DHS finds him or her “likely at any time to become a public charge.” *See* 8  
21

1 U.S.C. § 1182(a)(4). The Public Charge Rule is scheduled to take effect on October  
2 15, 2019. 84 Fed. Reg. at 41,292.

3 **A. The Immigration and Nationality Act’s Public Charge Ground of**  
4 **Inadmissibility**

5 The Immigration and Nationality Act of 1952 (“INA”), 8 U.S.C. § 1101 *et*  
6 *seq.*, requires visa applicants and individuals applying to become permanent legal  
7 residents to demonstrate that they are not “inadmissible.” 8 U.S.C. §§ 1361,  
8 1225(a), and 1255(a).<sup>2</sup> The INA sets forth ten grounds of inadmissibility, all of  
9 which make a person “ineligible to receive visas and ineligible to be admitted to the  
10 United States.” 8 U.S.C. § 1182(a). This case concerns one of those grounds: a  
11 likelihood of becoming a public charge. *Id.* § 1182(a)(4)(A).

12 In its current form, the INA provides that “[a]ny alien who, in the opinion of  
13 the consular officer at the time of application for a visa, or in the opinion of the  
14 Attorney General at the time of application for admission or adjustment of status, is  
15 likely at any time to become a public charge is inadmissible.”<sup>3</sup> 8 U.S.C. §

16 \_\_\_\_\_  
17 <sup>2</sup> The INA “established a ‘comprehensive federal statutory scheme for regulation of  
18 immigration and naturalization’ and set ‘the terms and conditions of admission to  
19 the country and the subsequent treatment of aliens lawfully in the country.’”  
20 *Chamber of Commerce of the United States v. Whiting*, 563 U.S. 582, 587 (2011)  
21 (quoting *De Canas v. Bica*, 424 U.S. 351, 353 (1976)).

<sup>3</sup> When Congress transferred the adjudicatory functions of the former  
Commissioner of the Immigration and Naturalization Service (“INS”) to the  
Secretary of DHS, the Attorney General’s authority regarding the public charge  
provision was delegated to the Director of USCIS, a division of DHS. *See* 6 U.S.C.  
§ 271(b)(5).

1 1182(a)(4)(A). The same provision requires the officer determining whether an  
2 applicant is inadmissible as a public charge to consider “at a minimum” the  
3 applicant’s

- 4 (I) age;
- 5 (II) health;
- 6 (III) family status;
- 7 (IV) assets, resources, and financial status; and
- 8 (V) education and skills.

9 8 U.S.C. § 1182(a)(4)(B)(i).

10 The officer “may also consider any affidavit of support under section 213A [8  
11 U.S.C. § 1183a] for purposes of exclusion” on the public charge ground. *Id.* §  
12 1182(a)(4)(B)(ii).

### 13 **B. Public Charge Rulemaking Process and Content of the Public** 14 **Charge Rule**

15 The Public Charge Rule followed issuance of a proposed rule on October 10,  
16 2018. Inadmissibility on Public Charge Grounds, 83 Fed. Reg. 51,114 (proposed  
17 Oct. 10, 2018) (to be codified at 8 C.F.R. pts. 103, 212, 213, 214, 245 and 248).  
18 According to the Public Charge Rule, DHS received “266,077 comments” on the  
19 proposed rule, “the vast majority of which opposed the rule.” 84 Fed. Reg. at  
20 41,297.

1 The final rule made several changes to the proposed rule. *See* 84 Fed. Reg. at  
2 41,297–41,300. For instance:

3 Under the proposed rule, DHS would not have considered the receipt  
4 of benefits below the applicable threshold in the totality of the  
5 circumstances. As a consequence, USCIS would have been unable to  
6 consider an alien’s past receipt of public benefits below the threshold  
7 at all, even if such receipt was indicative, to some degree, of the alien’s  
likelihood of becoming a public charge at any time in the future. Under  
this final rule, adjudicators will consider and give appropriate weight to  
past receipt of public benefits below the single durational threshold  
described above in the totality of the circumstances.

8 84 Fed. Reg. at 41,297.

9 In addition, while the proposed rule provided for consideration of the receipt  
10 of Medicaid benefits by applicants under age 21, the Public Charge Rule does not  
11 negatively assess applicants for being enrolled in Medicaid while under the age 21,  
12 while pregnant, or “during the 60-day period after pregnancy.” 84 Fed. Reg. at  
13 41,297.

#### 14 **1. Redefinition of “Public Charge”**

15 The Public Charge Rule, in its final format, defines “public charge” to denote  
16 “an alien who receives one or more public benefits, as defined in paragraph (b) of  
17 this section, for more than 12 months in the aggregate within any 36-month period  
18 (such that, for instance, receipt of two benefits in one month counts as two months).”

1 84 Fed. Reg. at 41,501 (to be codified at 8 C.F.R. § 212.21(a))<sup>4</sup>. The Public Charge  
2 Rule redefines “public benefit” to include: “(1) [a]ny Federal, State, local, or tribal  
3 cash assistance for income maintenance (other than tax credits),” including  
4 Supplemental Security Income (“SSI”), Temporary Assistance for Needy Families  
5 (“TANF”) or state “General Assistance”; (2) Supplemental Nutrition Assistance  
6 Program (“SNAP,” colloquially known as “food stamps”); (3) housing assistance  
7 vouchers under Section 8 of the U.S. Housing Act of 1937; (4) Section 8 “Project-  
8 Based” rental assistance, including “Moderate Rehabilitation”; (5) Medicaid, with  
9 exceptions for benefits for an emergency medical condition, services or benefits  
10 under the Individuals with Disabilities Education Act (“IDEA”), school-based  
11 services or benefits, and benefits for immigrants under age 21 or to a woman during  
12 pregnancy or within 60 days after pregnancy; and (6) public housing under Section 9  
13 of the U.S. Housing Act of 1937. 8 C.F.R. § 212.21(b).

## 14 **2. Weighted Factors for Totality of the Circumstances**

### 15 **Determination**

16 The Public Charge Rule instructs officers to evaluate whether an applicant is  
17 “likely to become a public charge” using a “totality of the circumstances” test that  
18 “at least entail[s] consideration of the alien’s age; health; family status; education  
19

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20 <sup>4</sup> The Court’s subsequent references to the provisions of the Public Charge Rule  
21 will use the C.F.R. citations scheduled to take effect on October 15, 2019.

1 and skills; and assets, resources, and financial status” as described in the Rule. 8  
2 C.F.R. § 212.22(a), (b). The Public Charge Rule then prescribes a variety of factors  
3 to weigh “positively,” in favor of a determination that an applicant is not a public  
4 charge, and factors to weigh “negatively,” in favor of finding the applicant  
5 inadmissible as a public charge. 8 C.F.R. § 212.22(a), (b), and (c); *see also, e.g.*, 84  
6 Fed. Reg. 41,295 (“Specifically, the rule contains a list of negative and positive  
7 factors that DHS will consider as part of this determination, and directs officers to  
8 consider these factors in the totality of the alien’s circumstances. . . . The rule also  
9 contains lists of heavily weighted negative factors and heavily weighted positive  
10 factors.”). The Public Charge Rule attributes heavy negative weight to the following  
11 circumstances:

12 (1) “not a full-time student and is authorized to work, but is  
13 unable to demonstrate current employment, recent employment history,  
14 or a reasonable prospect of future employment”;

15 (2) “certified or approved to receive one or more public benefits  
16 . . . for more than 12 months in the aggregate within any 36-month  
17 period, beginning no earlier than 36 months prior to the alien’s  
18 application for admission or adjustment of status”;

19 (3) “diagnosed with a medical condition that is likely to require  
20 extensive medical treatment or institutionalization or that will interfere  
21 with the alien’s ability to provide for himself or herself, attend school,  
or work; and . . . 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”; and

(4) “previously found inadmissible or deportable on public  
charge grounds[.]”



1 8 C.F.R. § 212.22(c)(1)(i)–(iv).

2 Conversely, the Public Charge Rule attributes heavy positive weight to three  
3 factors:

4 (1) an annual household income, assets, or resources above 250  
5 percent of the Federal Poverty Guidelines (“FPG”) for the household  
size;

6 (2) an annual individual income of at least 250 percent of the  
FPG for the household size; and

7 (3) private health insurance that is not subsidized under the  
Affordable Care Act.

8  
9 *See* 8 C.F.R. § 212.22(c)(2)(i)–(iii).

10 The Public Charge Rule also directs officers to consider whether the applicant  
11 (1) is under the age of 18 or over the minimum early retirement age for social  
12 security; (2) has a medical condition that will require extensive treatment or interfere  
13 with the ability to attend school or work; (3) has an annual household gross income  
14 under 125 percent of the FPG; (4) has a household size that makes the immigrant  
15 likely to become a public charge at any time in the future; (5) lacks significant  
16 assets, like savings accounts, stocks, bonds, or real estate; (6) lacks significant assets  
17 and resources to cover reasonably foreseeable medical costs; (7) has any financial  
18 liabilities; (8) has applied for, been certified to receive, or received public benefits  
19 after October 15, 2019; (9) has applied for or has received a USCIS fee waiver for an  
20 immigration benefit request; (10) has a poor credit history and credit score; (11)  
21 lacks private health insurance or other resources to cover reasonably foreseeable

1 medical costs; (12) lacks a high school diploma (or equivalent) or a higher education  
2 degree; (13) lacks occupational skills, certifications, or licenses; or (14) is not  
3 proficient in English. *See* 8 C.F.R. § 212.22(b).

4 The officer administering the public charge admissibility test has the  
5 discretion to determine what factors are relevant and may consider factors beyond  
6 those enumerated in the rule. *See* 8 C.F.R. § 212.22(a)

### 7 **C. Applicability of the Rule**

8 The Public Charge Rule applies to any non-citizen subject to section 212(a)(4)  
9 of the INA, 8 U.S.C. § 1182(a)(4), who applies to DHS anytime on or after October  
10 15, 2019, for admission to the United States or for adjustment of status to that of  
11 lawful permanent resident. 8 C.F.R. § 212.20.

### 12 **D. Summary of the Counts of the First Amended Complaint**

13 On the same day that the Public Charge Rule was published in the federal  
14 register, the fourteen Plaintiff States filed a lawsuit seeking to enjoin the Federal  
15 Defendants from enacting the rule. The Plaintiff States subsequently filed a First  
16 Amended Complaint, ECF No. 31, stating four causes of action: (1) a violation of  
17 the APA, 5 U.S.C. § 706(2)(C), for agency action “not in accordance with law”; (2)  
18 a violation of the APA, 5 U.S.C. § 706(2)(C), for agency action “in excess of  
19 statutory jurisdiction [or] authority” or “*ultra vires*”; (3) a violation of the APA, 5  
20 U.S.C. § 706(2)(C), for agency action that is “arbitrary, capricious, [or] an abuse of  
21 discretion”; and (4) a violation of the guarantee of equal protection under the U.S.

1 Constitution’s Fifth Amendment Due Process Clause on the basis that the Public  
2 Charge Rule allegedly was motivated by an intent to discriminate based on race,  
3 ethnicity, or national origin. ECF No. 31 at 161–70.

4 The Federal Defendants have not yet filed an answer, but they have responded  
5 to the pending motion. ECF No. 155. In their response, the Federal Defendants  
6 challenge the Plaintiff States’ standing to bring this action. *Id.* at 18.

## 7 **II. JURISDICTION**

8 The Court has subject-matter jurisdiction over this action pursuant to 28  
9 U.S.C. § 1331.

## 10 **III. STANDING AND RIPENESS**

### 11 **A. Standing Requirement**

12 Article III, section 2 of the Constitution extends the power of the federal  
13 courts to only “Cases” and “Controversies.” U.S. Const., Art. III, sect. 2. “Those  
14 two words confine ‘the business of federal courts to questions presented in an  
15 adversary context and in a form historically viewed as capable of resolution through  
16 the judicial process.’” *Massachusetts v. EPA*, 549 U.S. 497, 516 (2007) (quoting  
17 *Flast v. Cohen*, 392 U.S. 83, 95 (1968)).

18 To establish standing to sue under Article III, “a plaintiff must demonstrate  
19 ‘that it has suffered a concrete and particularized injury that is either actual or  
20 imminent, that the injury is fairly traceable to the defendant, and that it is likely that  
21 a favorable decision will redress that injury.’” *Washington v. Trump*, 847 F.3d 1151,

1 1159 (9th Cir. 2017) (quoting *Massachusetts*, 549 U.S. at 517)). While an injury  
2 sufficient for constitutional standing must be concrete and particularized rather than  
3 conjectural or hypothetical, “an allegation of future injury may suffice if the  
4 threatened injury is certainly impending, or there is a substantial risk that the harm  
5 will occur.” *Susan B. Anthony List v. Driehaus*, 134 S. Ct. 2334, 2341 (2014)  
6 (internal quotations omitted).

7 The Federal Defendants assert that the Plaintiff States lack standing because  
8 their injuries are speculative and do not qualify as injuries-in-fact. ECF No. 155 at  
9 18–21. The Federal Defendants further maintain that the Plaintiff States’ described  
10 injuries would be the result of third parties’ independent decisions to “unnecessarily  
11 . . . forgo all federal benefits,” which the Federal Defendants argue is too weak a  
12 basis to support that the injury is fairly traceable to the Public Charge Rule. ECF  
13 No. 155 at 19–21.

14 At this early stage in the litigation, the Plaintiff States may satisfy their burden  
15 with allegations in their Amended Complaint and other evidence submitted in  
16 support of their Motion for a Section 705 Stay and Preliminary Injunction. *See*  
17 *Washington*, 847 F.3d at 1159. *Amici* briefs also may support the Plaintiff States’  
18 showing of the elements of standing. *See SEC v. Private Equity Mgmt. Grp., Inc.*,  
19 No. CV 09-2901 PSG (Ex), 2009 U.S. Dist. LEXIS 75158, at \*18 n.5, 2009 WL  
20 2488044 (C.D. Cal. Aug. 10, 2009) (exercising the court’s discretion to consider  
21

1 evidence submitted by *amicus curiae* where it was “in a sense, the same evidence  
2 produced by a party”).

3 **B. Alleged Harms**

4 **1. Missions of State Benefits Programs**

5 The Plaintiff States allege that they “combine billions of dollars of federal  
6 funds from Medicaid with billions of dollars of state funds to administer health care  
7 programs for millions” of the Plaintiff States’ residents. ECF No. 34 at 26; *see* ECF  
8 Nos. 37 at 4; 38 at 4; 40 at 4. The Plaintiff States argue that the health programs  
9 administered by them enable beneficiaries in varying degrees to access preventative  
10 care, chronic disease management, prescription drug treatment, mental health  
11 treatment, and immunizations. *See, e.g.*, ECF No. 40 at 5–7. The Plaintiff States  
12 contend that they administer their programs “to ensure the health, well-being, and  
13 economic self-sufficiency” of all of their residents and to provide “comprehensive  
14 and affordable health insurance coverage” to State residents. ECF Nos. 41 at 7; 45  
15 at 5.

16 Multiple submissions from the Plaintiff States and the *amici* briefs endorse an  
17 estimate that “the Public Charge Rule could lead to Medicaid disenrollment rates  
18 ranging from 15 percent to 35 percent” among Medicaid and Children’s Health  
19 Insurance Program enrollees who live in mixed-status households, which “equates  
20 to between 2.1 and 4.9 million beneficiaries disenrolling from the programs.” ECF  
21 No. 151 at 20–21; *see also* ECF Nos. 111-1 at 69; 149 at 15–16. The Plaintiff States

1 argue that residents’ disenrollment or foregoing enrollment “unwinds all the  
2 progress that has been achieved” and results “in a sicker risk pool and increase[d]  
3 premium costs for all remaining residents enrolled in commercial coverage” through  
4 the state plans. ECF Nos. 37 at 14; 43 at 7.

5 As stated in the comments submitted to DHS by the Dana-Farber Cancer  
6 Institute, “regulations that will make immigrant families fearful of seeking health  
7 care services like primary care and routine health screenings will increase the burden  
8 of both disease and healthcare costs across the country.” ECF No. 35-2 at 3.

9 In addition to making receipt of Medicaid health insurance and other public  
10 benefit programs a negative factor, the Plaintiff States proffer that the Public Charge  
11 Rule disincentivizes individuals from seeking medical diagnoses and treatment  
12 because a diagnosis of a medical condition requiring extensive medical treatment or  
13 institutionalization will be weighed as a heavy negative factor when combined with  
14 a lack of health insurance or independent resources to cover the associated costs; or  
15 weighed as a negative factor even with health insurance or independent resources to  
16 cover the associated costs. *See* ECF Nos. 35-2 at 3; 35-1 at 158, 165, and 168.

17 Health care professionals noted that the weighting of these factors “creates a  
18 strong incentive for immigrants to avoid medical examinations and tests to prevent  
19 identification of any serious health problem.” ECF No. 35-2 at 3; *see also* ECF No.  
20 65 at 14 (“Fear of the rule change and its effects on utilizing cancer-screening  
21 services for people of a variety of citizenship status can lead to grave consequences

1 both in lives lost from treatable cancers and intensive financial costs of late stage  
2 treatment and related care.”). Delaying diagnosis and treatment until a condition  
3 results in a medical emergency compromises the health and wellbeing of individuals  
4 and families and increases the cost of health care for the hospitals, the Plaintiff  
5 States, and the Plaintiff States’ residents as a whole. *See* ECF Nos. 35-2 at 3; 109 at  
6 18, 47.

7 Health care providers within the Plaintiff States’ health systems likely will  
8 incur harms as well. A larger uninsured population is likely to “generate significant  
9 uncompensated care costs,” which, in turn, are likely to “fall disproportionately on  
10 providers in low-income communities who rely on Medicaid for financial support.”  
11 ECF No. 109 at 48. Service cuts to make up for the uncompensated care costs  
12 would then result in fewer patients being able to access primary care services. *Id.*

13 Another filing supports that the Public Charge Rule likely will burden the  
14 doctor-patient relationship. *See* ECF No. 151. First, *amici* health care providers  
15 highlight the “well-established state interest in protecting doctor-patient  
16 consultations from state intrusion so that patients and doctors may work together to  
17 determine the best course of medical care.” *Id.* at 19. By “entwining medical  
18 decision-making” with immigration considerations, the health care providers  
19 maintain that the Public Charge Rule will constrain “clinicians’ abilities to  
20 recommend public benefit programs as well as their access to reliable forthright  
21 disclosures from their patients.” *Id.*; *see also* ECF No. 60 at 9 (“Families have asked

1 our providers about applying for Medicaid or SNAP in the past, but our providers  
2 note that they rescinded these requests” after hearing about the proposed public  
3 charge rule.). Furthermore, health care providers anticipate that “forcing non-  
4 citizens to choose between medical treatment or potential deportation or family  
5 separation” will induce “patients to miss follow-up appointments or forego  
6 treatment” that a clinician has prescribed. *Id.* at 20.

7 The Plaintiff States submitted declarations and copies of the comments  
8 submitted to DHS during the rulemaking process supporting the conclusion that  
9 disenrollment from publicly-funded health insurance programs and related benefits  
10 already has begun to occur in anticipation of the effective date of the Public Charge  
11 Rule. *See* ECF Nos. 35-2 at 3; 35-3 at 11; *see also* ECF Nos. 152 at 8; 153 at 17.

## 12 **2. Health and Well-Being of Plaintiff State Residents**

13 The Plaintiff States’ evidence supports that decreased utilization of  
14 immunizations against communicable diseases “could lead to higher rates of  
15 contagion and worse community health,” both in the immigrant population and the  
16 U.S. citizen population because of the nature of epidemics. ECF No. 65 at 14  
17 (further recounting that “[d]isease prevention is dependent upon access to vaccines  
18 and high vaccination rates”); *see also, e.g.*, ECF No. 44 at 9.

19 State health officials anticipate that the Public Charge Rule and its potential to  
20 incentivize disenrollment from “critical services” “will unduly increase the number  
21



1 of people living in poverty and thus destabilize the economic health” of communities  
2 in the Plaintiff States. ECF No. 37 at 14.

3 The *amici* briefs submitted for the Court’s consideration, in addition to the  
4 Plaintiff States’ submissions, detail harm specific to particular vulnerable groups in  
5 the Plaintiff States and throughout the country.

6 **a. Children and Pregnant Women**

7 Perhaps best documented in the extensive submissions in support of the  
8 instant motion are the anticipated harms to children from disenrollment as a result of  
9 the Public Charge Rule. DHS acknowledges in the Public Charge Rule notice that  
10 the Public Charge Rule may “increase the poverty of certain families and children,  
11 including U.S. citizen children.” 84 Fed. Reg. at 41,482. The Plaintiff States focus  
12 on harm to children stemming from lack of access to health care, sufficient and  
13 nutritious food, and adequate housing.

14 A chilling effect from the Public Charge Rule will deter eligible people,  
15 including U.S. Citizen children of immigrant parents, from accessing non-cash  
16 public benefits, which will result in further injury to the Plaintiff States. For  
17 instance, disenrolling from SNAP benefits and other supplemental nutrition services  
18 is likely to lead to food insecurity with resultant injuries. *See, e.g.*, ECF No. 35-2 at  
19 7. Forgoing medical care for children or adult family members because of fear of  
20 using non-cash public benefits will lead to less preventative care and result in  
21 increased hospital admissions and medical costs, and poor health and developmental

1 delays in young children. ECF No. 35-2 at 278–79. Food insecurity and poor health  
2 care ultimately result in long-term health issues and lower math and reading  
3 achievement test scores among school children. *Id.*

4 With respect to housing, fair market rent without non-cash public benefits  
5 may be unaffordable in higher-cost areas of the Plaintiff States even for a family  
6 with two household members who each work full-time minimum wage jobs. *See*  
7 ECF No. 77 at 17 (providing detail regarding the Massachusetts housing market).  
8 Therefore, “[f]or immigrants who work low-wage jobs and their families, many of  
9 which include U.S. citizen children, dropping housing benefits to avoid adverse  
10 immigration consequences . . . can be reasonably expected to upend their financial  
11 stability and substantially increase homelessness.” *Id.* The Plaintiff States  
12 submitted evidence that homelessness and housing instability during childhood “can  
13 have lifelong effects on children’s physical and mental health.” ECF No. 35-2 at 39.  
14 When families lose their residences because they no longer receive financial  
15 assistance with rent, children in those households “are more likely to develop  
16 respiratory infections and asthma,” among other harms. ECF No. 37 at 14.

17 **b. Disabled Individuals**

18 *Amici* provide a compelling analysis of how the factors introduced by the  
19 Public Charge Rule disproportionately penalize disabled applicants by “triple-  
20 counting” the effects of being disabled. ECF No. 110 at 23. The medical condition  
21 and use of Medicaid or other services used to facilitate independence for disabled

1 individuals each may be assessed negatively against an applicant. *See* 8 C.F.R. §  
2 212.22(b); *see also* ECF No. 110 at 23. An individual who is disabled with a  
3 medical condition likely to require extensive medical treatment would be  
4 disqualified from the positive “health” factor, even if he or she is in good health  
5 apart from the disability. *See id.* Therefore, there is a significant possibility that  
6 disabled applicants who currently reside in the Plaintiff States, or legal permanent  
7 residents who return to the U.S. after a 180-day period outside of the U.S., would be  
8 deemed inadmissible primarily on the basis of their disability.

9 In addition, the chilling effect arising out of predictable confusion from the  
10 changes in the Public Charge Rule may cause immigrant parents to refuse benefits  
11 for their disabled U.S. citizen children or legal permanent resident children. ECF  
12 No. 110 at 26. Notably, disenrollment of disabled individuals from services in  
13 childhood is the type of harm that may result in extra costs to Plaintiff States far into  
14 the future because of the citizen and legal permanent resident children reaching  
15 adulthood with untreated disabilities.

16 **c. Elderly**

17 *Amici* have argued convincingly that the Public Charge Rule will have a  
18 substantial negative impact on the elderly. Many of the Public Charge Rule’s  
19 negative factors inherently apply to the elderly. For instance, being over the age of  
20 sixty-two may be weighed negatively against an applicant. ECF No. 150 at 16; *see*  
21 8 C.F.R. § 212.22(b)(1)(i). Additionally, many elderly people rely on their

1 families for support. *See id.* at 19–20. Although immigration law in the United  
2 States has traditionally favored family unification, the Public Charge Rule may  
3 penalize people for living with their families, counting their family reliance against  
4 them. *See* ECF No. 150 at 19 (citing the “preference allocation for family-  
5 sponsored immigrants” in 8 U.S.C. § 1153(a)). Furthermore, the new rule  
6 penalizes people with a medical diagnosis that will require extensive treatment,  
7 and most adults over fifty years old have at least one chronic health condition. *Id.*  
8 at 18 (citing AARP Public Policy Institute, *Chronic Care: A Call to Action for*  
9 *Health Reform*, 11–12, 16 (2009); University of New Hampshire Institute on  
10 Disability/ UCED, 2017 *Disability Statistics Annual Report* (2018)); *see* 8 C.F.R. §  
11 212.22(b)(2)(ii)(B). Many elderly people rely on non-cash forms of public  
12 assistance like Medicaid, SNAP, and public housing and rental assistance. ECF  
13 No. 150 at 15. That assistance will be counted against them by the Public Charge  
14 Rule, predictably leading to disenrollment from such programs. *See id.* at 27; 8  
15 C.F.R. § 212.22(d). *Amici* persuasively argue that without assistance from  
16 important programs like Medicaid elderly people will experience additional and  
17 exacerbated medical problems, “creating a new and uncompensated care burden on  
18 society.” ECF No. 150 at 27.

19       Moreover, many elderly people do not satisfy the Public Charge Rule’s  
20 positive factors. For instance, one of the Rule’s positive factors is having an  
21 income that exceeds 250 percent of the federal poverty level. *Id.* at 16; 8 C.F.R. §

1 212.22(c)(2)(ii). *Amici* state that most people over the age of sixty-two live in  
2 moderate to low-income households, making them ineligible for this positive  
3 factor. *See* ECF No. 150 at 16 (citing *Public Charge Proposed Rule: Potentially*  
4 *Chilled Population Data Dashboard*, Mannat (Oct. 11, 2018)). Many people also  
5 will have their income level counted negatively against them because having an  
6 income of less than 125 percent of the federal poverty level is a negative  
7 factor. *Id.*; *see* 8 C.F.R. § 212.22(b)(4)(i).

8 **d. Domestic Violence Victims**

9 *Amici* organizations who support victims of domestic violence identify an  
10 overlap between the assistance a woman may seek or receive as she leaves an  
11 abusive relationship and establishes independence and the new definition of “public  
12 benefit” in the Public Charge Rule. *See* ECF No. 111 at 20–32. In addition, the  
13 Public Charge Rule does not except health issues resulting from abuse from the  
14 negative medical condition factors. *See id.*; 8 C.F.R. § 212.22(b). The *amici*  
15 represent that the chilling effect is occurring in anticipation of the Public Charge  
16 Rule, with “victims . . . already foregoing critical housing, food, and healthcare  
17 assistance out of fear that it will jeopardize their immigration status.” ECF No. 111  
18 at 22. Foregoing non-cash public benefits by domestic violence victims risks  
19 “broader impacts” to the health and wellbeing of residents throughout the Plaintiff  
20 States “as a result of unmitigated trauma to victims and their families.” *Id.* at 24.

### 3. Financial Harm to Plaintiff States

The Plaintiff States and the *amici* briefs make a cohesive showing of ongoing financial harm to the States as disenrollment from “safety net” benefits programs predictably occurs among vulnerable populations. As noted above, both immigrant and U.S. citizen children of immigrants are more likely to experience poorer long-term outcomes, including impaired growth, compromised cognitive development, and obesity without access to non-cash public benefits. ECF No. 149 at 21. Further, exposure to housing insecurity and homelessness often is associated with increased vulnerability to a range of adult diseases such as heart attacks, strokes, and smoking-related cancers. *Id.* at 22. Even if the immigrant children no longer reside in the Plaintiff States, the affected U.S. citizen children will remain entitled to live in the Plaintiff States, or in other states not plaintiffs before this Court, once they are adults. Therefore, the Plaintiff States face increased costs to address the predictable effects of the adverse childhood experiences over the course of these U.S. citizen children’s lifetimes, potentially fifty years or more down the road.

The Plaintiff States further face likely pecuniary harm from contagion due to unvaccinated residents, resulting in outbreaks of influenza, measles, and a higher incidence of preventable disease among immigrants as well as U.S. citizens. ECF No. 38 at 7–8. It is reasonably certain that any outbreaks would result in “reduced days at work, reduced days at school, lower productivity, and long-term negative

1 economic consequences,” as well as the cost of responding to an epidemic for state  
2 and local health departments. *Id.*

3 The Plaintiff States also allege that they will incur additional administrative  
4 costs as a result of the Public Charge Rule, including “training staff, responding to  
5 client inquiries related to the Final Rule, and modifying existing communications  
6 and forms.” ECF No. 40 at 7–8 (declaration from the Deputy Commissioner of the  
7 New Jersey Department of Human Services, adding “Because the rules for  
8 determining whether someone is a public charge are technical and confusing, it will  
9 be extremely difficult to train frontline staff to have the requisite understanding  
10 necessary to help potential applicants determine whether they would be deemed a  
11 public charge under the proposed Final Rule.”). The Plaintiff States also may incur  
12 the expense of developing alternative programming and enacting new eligibility  
13 rules across multiple systems of benefits to “mirror” the effect of Medicaid and other  
14 federal programs and to mitigate the negative effects from the Public Charge Rule  
15 on individual and community health. *See* ECF No. 37 at 15.

### 16 **C. Application of Harms to Standing Requirements**

17 The Plaintiff States argue that they have made a clear showing of each  
18 element of standing by showing that “the Rule will lead to a cascade of costs to  
19 states as immigrants disenroll from federal and state benefits programs, . . . thereby  
20 frustrating the States’ mission in creating such programs and harming state  
21 residents.” ECF No. 158 at 11 (citing cases supporting state standing based on a

1 proprietary interest and a quasi-sovereign interest in the health and wellbeing of the  
2 state’s residents). The Plaintiff States further allege future economic harm. *Id.* at  
3 35 (citing a declaration at ECF No. 66 at 19 estimating an annual reduction in total  
4 economic output of \$41.8 to \$97.5 million and other damage to the Washington  
5 State economy alone).

6 The Federal Defendants argue that the Plaintiff States’ alleged harm is not  
7 fairly traceable to the Public Charge Rule but would be the result of third-party  
8 decisions, such as “unnecessarily choosing to forgo all federal benefits.” *See* ECF  
9 No. 155 at 19–21. The Supreme Court recently addressed the Federal Defendants’  
10 traceability argument in *Dep’t of Commerce v. New York*, 139 S. Ct. 2551 (2019), in  
11 which a group of states and other plaintiffs challenged the Secretary of Commerce’s  
12 decision to inquire about citizenship status on the census questionnaire. *Id.* at 2557.  
13 There, the Government argued “that any harm to respondents is not fairly traceable  
14 to the Secretary’s decision, because such harm depends on the independent action of  
15 third parties choosing to violate their legal duty to respond to the census.” 139 S. Ct.  
16 at 2565. The Supreme Court rejected the Government’s argument, concluding:

17 But we are satisfied that, in these circumstances, respondents have met  
18 their burden of showing that third parties will likely react in predictable  
19 ways to the citizenship question, even if they do so unlawfully and  
20 despite the requirement that the Government keep individual answers  
21 confidential. . . . Respondents’ theory of standing . . . does not rest on  
mere speculation about the decisions of third parties; it relies instead on  
the predictable effect of Government action on the decisions of third  
parties.



1 139 S. Ct. at 2566.

2 The Plaintiff States have made a strong showing of the predictable effect of  
3 the Government action on individual residents who are not parties in this action, and  
4 in turn, the predictable effect on the Plaintiff States. The complexities of the multi-  
5 factor totality of the circumstances test and the new definition of “public charge”  
6 that USCIS officers must administer are not fully captured in this Order.

7 Nevertheless, from the components of the rule that the Court already has closely  
8 examined, it is predictable that applying the multi-factor Public Charge Rule would  
9 result in disparate results depending on each USCIS officer. Moreover, the general  
10 message conveyed to USCIS officers, immigrants, legal permanent residents, and  
11 the general public alike is unmistakable: the Public Charge Rule creates a wider  
12 barrier to exclude individuals seeking to alter their immigration status.

13 Therefore, it is further predictable that individuals who perceive that they or  
14 their children may fall within the broadened scope of the public charge  
15 inadmissibility ground will seek to reduce that risk by disenrolling from non-cash  
16 public benefits. Otherwise stated, the chilling effect of the Public Charge Rule  
17 likely will lead individuals to disenroll from benefits, because receipt of those  
18 benefits likely would subject them to a public charge determination, and, equally  
19 foreseeably, because the Public Charge Rule will create fear and confusion regarding  
20 public charge inadmissibility.

1 Also predictable is that the chilling effect will negatively impact the Plaintiff  
2 States' missions, the health and wellbeing of their residents, citizens and non-  
3 citizens alike, and the Plaintiff States' budgets and economies. "A causal chain does  
4 not fail simply because it has several 'links,' provided those links are not  
5 hypothetical or tenuous." *California v. Azar*, 911 F.3d 558, 571–72 (9th Cir. 2018)  
6 (quoting *Maya v. Centex Corp.*, 658 F.3d 1060, 1070 (9th Cir. 2011) (internal  
7 quotation omitted)). While the magnitude of the injuries may remain in dispute, the  
8 Plaintiff States have shown that their likely injuries are a predictable result of the  
9 Public Charge Rule. *See California*, 911 F.3d at 572 (citing *United States v.*  
10 *Students Challenging Regulatory Agency Procedures*, 412 U.S. 669, 689 n. 14  
11 (1973), for the proposition that injuries of only a few dollars can establish standing).

#### 12 **D. Ripeness**

13 A case is ripe for adjudication only if it presents "issues that are 'definite and  
14 concrete, not hypothetical or abstract.'" *Clark v. City of Seattle*, 899 F.3d 802, 809  
15 (9th Cir. 2018) (quoting *Bishop Paiute Tribe v. Inyo Cty.*, 863 F.3d 1144, 1153 (9th  
16 Cir. 2017)). Just as the Federal Defendants argue that the Plaintiff States' alleged  
17 harms are not concrete or imminent, they make the same arguments for purposes of  
18 ripeness. The Court applies the same analysis as discussed for standing and  
19 concludes that the alleged harms are sufficiently concrete and imminent to support  
20 ripeness.

1 The Federal Defendants also argue that the Court should decline to hear the  
2 case on the basis of prudential ripeness. *See* ECF No. 155 at 25. Courts resolve  
3 questions of prudential ripeness “in a twofold aspect,” evaluating “both the fitness of  
4 the issues for judicial decision and the hardship to the parties of withholding court  
5 consideration.” *Abbott Labs. v. Gardner*, 387 U.S. 136, 148 (1967). Where review  
6 of an administrative action is at issue, “[f]itness for resolution depends on the nature  
7 of the issue and the finality of the administrative agency’s action.” *Hotel Emples. &*  
8 *Rest. Emples. Int’l Union v. Nev. Gaming Comm’n*, 984 F.2d 1507, 1513 (9th Cir.  
9 1993). Once a court has found that constitutional ripeness is satisfied, the prudential  
10 ripeness bar is minimal, as “a federal court’s obligation to hear and decide’ cases  
11 within its jurisdiction is ‘virtually unflagging.’” *Susan B. Anthony List*, 572 U.S. at  
12 167 (quoting *Lexmark Int’l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118,  
13 125–26 (2014) (internal quotation omitted)).

14 The Federal Defendants misconstrue the issues raised by the Amended  
15 Complaint and the record on the instant motion. Challenges to the validity of a rule  
16 under the judicial review provisions of the APA present issues fit for adjudication by  
17 a court. *See Abbott Laboratories*, 387 U.S. at 149–52 (review of a rule before it has  
18 been applied and enforced is available where “the regulations are clear-cut,” present  
19 a legal issue, and constitute the agency’s formal and definitive statement of policy).  
20 Moreover, the Plaintiff States’ harm would only be exacerbated by delaying review.  
21 For example, delaying review increases the potential for spread of infectious

1 diseases among the populations of the Plaintiff States, as well as to nearby states, as  
2 a result of reduced access to health care and vaccinations. Therefore, the Court finds  
3 this matter is ripe for review.

4 **E. Zone of Interests**

5 The Federal Defendants argue that the Plaintiff States do not fall within the  
6 “zone of interests” of the INA because: “It is aliens improperly determined  
7 inadmissible, not States, who ‘fall within the zone of interests protected’ by any  
8 limitations implicit in § 1182(a)(4)(A) and § 1183 because they are the  
9 ‘reasonable—indeed, predictable—challengers’ to DHS’s inadmissibility decisions.”  
10 ECF No. 155 at 28 (citing *Match-E-Be-Nash-She-Wish Band of Pottawatomis Indians*  
11 *v. Patchak*, 567 U.S. 209, 227 (2012); 8 U.S.C. § 1252 (providing for appeal by an  
12 individual of a final order of removal based on a public charge determination)).

13 However, the zone of interests test is “not ‘especially demanding.’” *Lexmark*  
14 *Int’l*, 572 U.S. at 130 (quoting *Match-E-Be-Nash-She-Wish*, 567 U.S. at 225).  
15 Particularly where a plaintiff pursues relief through the APA, the Supreme Court has  
16 directed that the test shall be applied “in keeping with Congress’s ‘evident intent’  
17 when enacting the APA ‘to make agency action presumptively reviewable.’”  
18 *Match-E-Be-Nash-She-Wish*, 567 U.S. at 225 (quoting *Clarke v. Sec. Indus. Ass’n*,  
19 479 U.S. 388, 399 (1987)). There is no requirement that a plaintiff show “any  
20 ‘indication of congressional purpose to benefit the would-be plaintiff.’” *Id.* (quoting  
21 *Clarke*, 479 U.S. at 399–400). Moreover, the “benefit of any doubt goes to the

1 plaintiff.” *Id.* “The test forecloses suit only when a plaintiff’s ‘interests are so  
2 marginally related to or inconsistent with the purposes implicit in the statute that it  
3 cannot reasonably be assumed that Congress intended to permit the suit.’” *Id.*  
4 (quoting *Clarke*, 479 U.S. at 399).

5 The Plaintiff States meet this lenient standard by tracing the origins of the  
6 public charge exclusion enacted by Congress in 1882 “to protect state fiscs.” ECF  
7 No. 158 at 14. The concept of a “public charge” exclusion originally was  
8 incorporated into U.S. law by Congress in 1882 to protect states from having to  
9 spend state money to provide for immigrants who could not provide for themselves.  
10 ECF No. 158 at 14–15 n. 3. The Plaintiff States reasonably extrapolate: “By  
11 imposing significant uncompensated costs on the Plaintiff States and undermining  
12 their comprehensive public assistance programs, the Rule undermines the very  
13 interests advanced by the statutes on which DHS relies.” ECF No. 158 at 14–15  
14 (citing *Texas v. United States*, 809 F.3d 124, 163 (5th Cir. 2015), *aff’d*, 136 S. Ct.  
15 2271 (2016) for the proposition that it “recogniz[es] states’ economic interests in  
16 immigration policy”). Thus, states were at the center of the zone of interest for use  
17 of the term “public charge” from the beginning of the relevant statutory scheme, and  
18 the Plaintiff States continue to have interests that are sufficiently consistent with the  
19 purposes implicit in the public charge inadmissibility policy to challenge its  
20 application now.

1 The Court finds that the Plaintiff States have standing to pursue this action,  
2 that the issues are ripe for adjudication, and that the Plaintiff States are within the  
3 zone of interests of the Public Charge Rule.

4 **IV. LEGAL STANDARDS FOR STAYS AND PRELIMINARY**  
5 **INJUNCTIONS IN CASES CHALLENGING AGENCY ACTION**

6 The Administrative Procedure Act’s stay provision states, in relevant part:

7 On such conditions as may be required and to the extent necessary to  
8 prevent irreparable injury, the reviewing court . . . may issue all  
9 necessary and appropriate process to postpone the effective date of an  
10 agency action or to preserve status or rights pending conclusion of the  
11 review proceedings.

12 5 U.S.C. § 705.<sup>5</sup>

13 The Court applies a closely similar standard in deciding whether to stay the  
14 effect of a rule under section 705 as it does in deciding whether to issue a  
15 preliminary injunction under Fed. R. Civ. P. Rule 65(a). *Nken v. Holder*, 556 U.S.  
16 418, 425–26 (2009); *see also Hill Dermaceuticals, Inc. v. United States FDA*, 524 F.  
17 Supp.2d 5, 8 (D.D.C. 2007). For a preliminary injunction, the moving party must  
18 demonstrate: (1) likelihood of success on the merits; (2) likelihood of irreparable  
19 harm in the absence of preliminary relief; (3) that the balance of equities tips in the  
20 moving party’s favor; and (4) that an injunction is in the public interest. *Winter v.*

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21 <sup>5</sup> Alternatively, Section 705 authorizes an agency itself to temporarily stay the  
effective date of its rule pending judicial review, when it “finds that justice so  
requires.” 5 U.S.C. § 705.

1 *Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). For a stay, the traditional  
2 test articulates the third factor in slightly different terms: “whether issuance of the  
3 stay will substantially injure the other parties.” *Nken*, 556 U.S. at 419 (quoting  
4 *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)).

5        Provided the Court considers all four parts of the *Winter* test, the Court may  
6 supplement its preliminary injunction inquiry by considering whether “the likelihood  
7 of success is such that ‘serious questions going to the merits were raised and the  
8 balance of hardships tips sharply in [the requesting party’s] favor.’” *Alliance for the*  
9 *Wild Rockies v. Cottrell*, 632 F.3d 1127, 1132 (9th Cir. 2011) (quoting *Clear*  
10 *Channel Outdoor, Inc. v. City of L.A.*, 340 F.3d 810, 813 (9th Cir. 2003)). The Ninth  
11 Circuit’s “sliding scale” approach survives *Winter*, “so long as the [movant] also  
12 shows that there is a likelihood of irreparable injury and that the injunction is in the  
13 public interest.” *Alliance for the Wild Rockies*, 632 F.3d at 1135.

14        Both a stay under section 705 and a preliminary injunction serve the purpose  
15 of preserving the status quo until a trial on the merits can be held. *Univ. of Texas v.*  
16 *Camenisch*, 451 U.S. 390, 395 (1981); *Boardman v. Pac. Seafood Grp.*, 822 F.3d  
17 1011, 1024 (9th Cir. 2016); *Sierra Club v. Jackson*, 833 F.Supp.2d 11, 28 (D.D.C.  
18 2012) (“Such a stay is not designed to do anything other than preserve the status  
19 quo.”) (citing 5 U.S.C. § 705).

20        Section 705 and preliminary injunctions under Rule 65, although determined  
21 by application of similar standards, offer different forms of relief. *Nken*, 556 U.S. at

1 428. An injunction “is directed at someone, and governs that party’s conduct.” *Id.*  
2 “By contrast, instead of directing the conduct of a particular actor, a stay operates  
3 upon the judicial proceeding itself. It does so either by halting or postponing some  
4 portion of the proceeding, or by temporarily divesting an order of enforceability.”  
5 *Id.* “If nothing else, the terms are by no means synonymous.” *Id.*

6 One difference is that Fed. R. Civ. P. 65(c) requires the court to determine the  
7 amount that the movant must give in security for “the costs and damages sustained  
8 by any party found to have been wrongfully enjoined or restrained.” Section 705  
9 contains no such requirement.

10 In granting preliminary injunctive relief pursuant to Fed. R. Civ. P. 65, a  
11 court must consider whether the defendant shall be enjoined from enforcing the  
12 disputed rule against all persons nationwide, or solely against plaintiffs. “Crafting a  
13 preliminary injunction is an exercise of discretion and judgment, often dependent as  
14 much on the equities of a given case as the substance of the legal issues it presents.”  
15 *Trump v. Intern. Refugee Assistance Project*, 137 S. Ct. 2080, 2087 (2017).

16 There is “no bar against . . . nationwide relief in federal district or circuit court  
17 when it is appropriate.” *Bresgal v. Brock*, 843 F.2d 1163, 1170 (9th Cir. 1987); *see*  
18 *also Steele v. Bulova Watch Co.*, 344 U.S. 280, 289 (1952) (“[T]he District Court in  
19 exercising its equity powers may command persons properly before it to cease or  
20 perform acts outside its territorial jurisdiction.”); *Monsanto Co. v. Geertson Seed*  
21 *Farms*, 561 U.S. 139, 181 n. 12 (2010) (J. Stevens, dissenting) (“Although we have



1 not squarely addressed the issue, in my view there is no requirement that an  
2 injunction affect only the parties in the suit. To limit an injunction against a federal  
3 agency to the named plaintiffs would only encourage numerous other regulated  
4 entities to file additional lawsuits in this and other federal jurisdictions.”) (internal  
5 quotations omitted). The primary consideration is whether the injunctive relief is  
6 sufficiently narrow in scope to ““be no more burdensome to the defendant than  
7 necessary to provide complete relief to the plaintiffs’ before the court.” *L.A. Haven*  
8 *Hospice, Inc. v. Sebelius*, 638 F.3d 644, 664 (9th Cir. 2011) (quoting *Califano v.*  
9 *Yamasaki*, 442 U.S. 682, 702 (1979)).

10 The Ninth Circuit has “upheld nationwide injunctions when ‘necessary to give  
11 Plaintiff a full expression of their rights.’” *City & Cty. of San Francisco v. Trump*,  
12 897 F.3d 1225, 1244 (9th Cir. 2018) (quoting *Hawaii v. Trump*, 878 F.3d 662, 701  
13 (9th Cir. 2017), *rev’d on other grounds Trump v. Hawaii*, 138 S. Ct. 2392 (2018),  
14 and citing *Washington v. Trump*, 847 F.3d 1151, 1166–67 (9th Cir. 2017) (per  
15 curium)). By contrast, the Ninth Circuit has vacated a nationwide injunction on a  
16 finding that the plaintiffs did not make “a sufficient showing of ‘nationwide impact’  
17 demonstrating that a nationwide injunction is necessary to completely accord relief  
18 to them.”” *Id.*

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1 **V. ANALYSIS**

2 **A. Likelihood of Success on the Merits**

3 For purposes of the Motion for a Stay and Preliminary Injunction, the Plaintiff  
4 States highlight the likelihood of success on the merits of their first and third causes  
5 of action, both of which are pursuant to the APA. ECF No. 34 at 21–51.

6 Under the APA, “[a] person suffering legal wrong because of agency action. .  
7 . is entitled to judicial review thereof.” 5 U.S.C. § 702. The APA further directs  
8 courts to “hold unlawful and set aside agency action, findings, and conclusions  
9 found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in  
10 accordance with law.” 5 U.S.C. § 706(2)(A).

11 **1. First Cause of Action: Violation of the Administrative**  
12 **Procedure Act—Action Not in Accordance with Law**

13 An administrative agency “may not exercise its authority ‘in a manner that is  
14 inconsistent with the administrative structure that Congress enacted into law.’” *FDA*  
15 *v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 125 (2000), *superseded by*  
16 *statute on other grounds*, 21 U.S.C. § 387a. When an administrative agency’s action  
17 involves the construction of a statute that the agency administers, a court’s analysis  
18 is governed by the two-step framework set forth in *Chevron U.S.A., Inc. v. Natural*  
19 *Resources Defense Council, Inc.*, 467 U.S. 837 (1984). *Id.* at 125–26.

20 A reviewing court’s first inquiry under *Chevron* is whether Congress has  
21 expressed its intent clearly and unambiguously in the statutory language at issue.

1 *Brown & Williamson*, 529 U.S. at 132. If Congress has spoken directly to the issue  
2 before the reviewing court, the court’s inquiry need not proceed further, and the  
3 court “must give effect to the unambiguously expressed intent of Congress.”

4 *Chevron*, 467 U.S. at 843. If Congress has not addressed the specific question raised  
5 by the administrative agency’s construction of a statute, “a reviewing court must  
6 respect the agency’s construction of the statute so long as it is permissible.” *Brown*  
7 & *Williamson*, 529 U.S. at 132 (citing *INS v. Aguirre-Aguirre*, 526 U.S. 415, 424  
8 (1999); *Auer v. Robbins*, 519 U.S. 452, 457 (1997)).

9 In analyzing the first step of *Chevron*, “whether Congress has specifically  
10 addressed the question at issue, a reviewing court should not confine itself to  
11 examining a particular statutory provision in isolation.” *Brown & Williamson*, 529  
12 U.S. at 133. The reviewing court must read the words of a statute ““in their context  
13 and with a view to their place in the overall statutory scheme.”” *Id.* (quoting *Davis*  
14 *v. Michigan Dept. of Treasury*, 489 U.S. 803, 809 (1989)). A court must interpret a  
15 particular statutory provision both in the context of other parts of the same  
16 regulatory scheme and with respect to other statutes that may affect the meaning of  
17 the statutory provision at issue. *Id.*

18 In this case, the issue is whether Congress has expressed its intent regarding  
19 barring individuals from obtaining visas or changing their status to legal permanent  
20 residents based on a specific definition of public charge. Congress has expressed its  
21 intent regarding the public charge statute in a variety of forms. In 1986, Congress

1 included a special rule in a section of the INA addressing waivers of the public  
2 charge inadmissibility ground for applicants seeking legal permanent residency  
3 status. 8 U.S.C. § 1255a(d)(2)(B)(iii). The “special rule for determination of public  
4 charge,” excepts an immigrant seeking relief under that section from inadmissibility  
5 as a public charge if he or she demonstrates “a history of employment in the United  
6 States evidencing self-support without receipt of public cash assistance.” *Id.*

7 Later, as part of the Personal Responsibility and Work Opportunity  
8 Reconciliation Act of 1996 (“Welfare Reform Act”), Congress enacted a statutory  
9 provision articulating the following “Statements of national policy concerning  
10 welfare and immigration”:

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

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

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

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

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

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

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

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

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

2 (7) With respect to the State authority to make determinations  
3 concerning the eligibility of qualified aliens for public benefits in this  
4 title, a State that chooses to follow the Federal classification in  
5 determining the eligibility of such aliens for public assistance shall be  
considered to have chosen the least restrictive means available for  
achieving the compelling governmental interest of assuring that aliens  
be self-reliant in accordance with national immigration policy.

6 8 U.S.C. § 1601.

7 The Welfare Reform Act further limited eligibility for many “federal means-  
8 tested public benefits,” such as Medicaid and SNAP, to “qualified” immigrants, and  
9 Congress defined “qualified” to include lawful permanent residents and certain other  
10 legal statuses. *See* 8 U.S.C. § 1641(b). Most immigrants become “qualified” for  
11 benefits eligibility five years after their date of entry. 8 U.S.C. §§ 1612, 1613.  
12 States retain a significant degree of authority to determine eligibility for state  
13 benefits. *See* 8 U.S.C. §§ 1621–22, 1641.

14 Thus, in the course of significantly restricting access to public benefits by  
15 non-citizens, Congress expressly states that part of its national immigration policy is  
16 allowing public benefits to qualified aliens in “the least restrictive means available”  
17 in order to achieve the goal that the aliens “be self-reliant.” 8 U.S.C. § 1601(7).  
18 Congress did not state that there should be no public benefits provided to qualified  
19 aliens, but rather that public benefits be provided in “the least restrictive means  
20 available.” *See id.* The Public Charge Rule at issue here likely would chill qualified  
21

1 aliens from accessing all public benefits by weighing negatively the use of non-cash  
2 public benefits for inadmissibility purposes.

3 One month after enactment of the Welfare Reform Act, the Illegal  
4 Immigration Reform and Immigrant Responsibility Act of 1996 (“Immigration  
5 Reform Act”) reenacted the existing public charge provision and codified the five  
6 minimum factors approach to public charge determinations that remains in effect  
7 today and will continue to be in effect if the Public Charge Rule is not implemented  
8 on October 15, 2019. *See* 8 U.S.C. § 1182(a)(4).

9 In the course of enacting the Immigration Reform Act, members of Congress  
10 debated whether to expand the public charge definition to include use of non-cash  
11 public benefits. *See* Immigration Control & Financial Responsibility Act of 1996,  
12 H.R. 2202, 104th Cong. § 202 (1996) (early House bill that would have defined  
13 public charge for purposes of removal to include receipt by a non-citizen of  
14 Medicaid, supplemental food assistance, SSI, and other means-tested public  
15 benefits). However, in the Senate, at least one senator criticized the effort to include  
16 previously unconsidered, non-cash public benefits in the public charge test and to  
17 create a bright-line framework of considering whether the immigrant has received  
18 public benefits for an aggregate of twelve months as “too quick to label people as  
19 public charges for utilizing the same public assistance that many Americans need to  
20 get on their feet.” S. Rep. No. 104-249, at \*63–64 (1996) (Senator Leahy’s  
21 remarks).

1 Congress's intent is reflected by the fact that the Immigration Reform Act that  
2 was enacted into law did not contain the provisions that would have incorporated  
3 into the public charge determination non-cash public benefits. *See* 8 U.S.C. §  
4 1182(a)(4).

5 After the Welfare Reform Act and the Immigration Reform Act took effect,  
6 Congress further demonstrated its intent regarding non-cash public benefits for  
7 immigrants by expanding access to SNAP benefits for certain immigrants who  
8 resided in the United States at the time that the Welfare Reform Act was enacted and  
9 to children and certain immigrants with disabilities regardless of how long they had  
10 been in the country. *See* Agricultural Research, Extension, and Education Reform  
11 Act of 1998, Pub. L. No. 105-185, 112 Stat. 523; Farm Security and Rural  
12 Investment Act of 2002, Pub. L. No. 107-171, 116 Stat. 134.

13 In 1999, to "help alleviate public confusion over the meaning of the term  
14 'public charge' in immigration law and its relationship to the receipt of Federal,  
15 State, and local public benefits," the INS issued "field guidance" ("the 1999 field  
16 guidance") and a proposed rule to guide public charge determinations by INS  
17 officers. INS, Field Guidance on Deportability and Inadmissibility on Public Charge  
18 Grounds, 64 Fed. Reg. 28,689 (Mar. 26, 1999). The 1999 field guidance provided  
19 that a person may be deemed a public charge under the inadmissibility provision at 8  
20 U.S.C. § 1182(a)(4) if the person is "primarily dependent on the government for  
21 subsistence, as demonstrated by either (i) the receipt of public cash assistance for

1 income maintenance or (ii) institutionalization for long-term care at government  
2 expense.” *Id.* at 28,692.

3 In issuing the field guidance and proposed rule, the INS reasoned as follows:

4 The Service is proposing this definition by regulation and adopting it  
5 on an interim basis for several reasons. First, confusion about the  
6 relationship between the receipt of public benefits and the concept of  
7 “public charge” has deterred eligible aliens and their families,  
8 including U.S. citizen children, from seeking important health and  
9 nutrition benefits that they are legally entitled to receive. This  
10 reluctance to access benefits has an adverse impact not just on the  
11 potential recipients, but on public health and the general welfare.  
12 Second, non-cash benefits (other than institutionalization for long-term  
13 care) are by their nature supplemental and do not, alone or in  
14 combination, provide sufficient resources to support an individual or  
15 family. In addition to receiving non-cash benefits, an alien would have  
16 to have either additional income—such as wages, savings, or earned  
17 retirement benefits—or public cash assistance. Thus, by focusing on  
18 cash assistance for income maintenance, the Service can identify those  
19 who are primarily dependent on the government for subsistence without  
20 inhibiting access to non-cash benefits that serve important public  
21 interests. Finally, certain federal, state, and local benefits are  
increasingly being made available to families with incomes far above  
the poverty level, reflecting broad public policy decisions about  
improving general public health and nutrition, promoting education,  
and assisting working-poor families in the process of becoming self-  
sufficient. Thus, participation in such noncash programs is not  
evidence of poverty or dependence.

64 Fed. Reg. at 28,692.

In addition, the INS noted: “In adopting this new definition, the Service does  
not expect to substantially change the number of aliens who will be found deportable  
or inadmissible as public charges.” *Id.*



1 The proposed rule was never finalized, but the 1999 field guidance has  
2 applied to public charge determinations since it was issued twenty years ago. *See*  
3 ECF No. 35-1 at 109. During the past twenty-year period, Congress has not  
4 expressly altered the working definition of public charge or the field guidance as to  
5 how the public charge inadmissibility ground should be applied to applicants for  
6 visas or permanent legal residency.

7 In 2013, Congress again considered and rejected a proposal to broaden the  
8 public charge inadmissibility ground to require applicants to show that “they were  
9 not likely to qualify even for non-cash employment supports such as Medicaid, the  
10 SNAP program, or the Children’s Health Insurance Program (CHIP).” S. Rep. No.  
11 113-40 (Jun. 7, 2013).

12 The Plaintiff States also maintain that the Public Charge Rule “departs from  
13 the unambiguously expressed intent of Congress” in statutes other than the Welfare  
14 Reform Act and the INA, namely section 504 of the Rehabilitation Act and a statute  
15 governing SNAP benefits. ECF No. 31 at 169–71.

16 With respect to the Rehabilitation Act of 1973, the Plaintiff States assert that  
17 the Public Charge Rule is not in accordance with section 504, which provides that  
18 “[n]o otherwise qualified individual with a disability in the United States . . . shall,  
19 solely by reason of her or his disability, be excluded from the participation in, be  
20 denied the benefits of, or be subjected to discrimination . . . under any program or  
21 activity conducted by an Executive agency.” 29 U.S.C. § 794(a). The SNAP statute

1 provides that “the value of benefits that may be provided under this chapter shall not  
2 be considered income or resources for any purpose under any Federal, State, or local  
3 laws.” 7 U.S.C. § 2017(b).

4 The Federal Defendants broadly assert: “From the beginning, immigration  
5 authorities have recognized that the plain meaning of the public charge ground of  
6 inadmissibility encompasses all of those likely to become a financial burden on the  
7 public, and that the purpose of the provision is to exclude those who are not self-  
8 sufficient.” ECF No. 155 at 35–36. The Federal Defendants rely on the statements  
9 of the Secretary of Labor to the House Committee on Immigration and  
10 Naturalization in 1916 to support that the goal behind the public charge  
11 inadmissibility ground is to support self-sufficiency:

12 [(1)] a person is ‘likely to become a public charge’ when ‘such  
13 applicant may be a charge (an economic burden) upon the community  
14 to which he is going.’[; and]

15 [(2)] the public charge clause ‘for so many years has been the chief  
16 measure of protection in the law . . . intended to reach economic rather  
17 than sanitary objections to the admission of certain classes of aliens.’

18 *Id.* (citing H.R. Doc. No. 64-886, at 3–4 (1916)); *see also* ECF No. 155 at 37 (“As  
19 explained above, Congress and the Executive Branch have long recognized the  
20 ‘public charge’ ground as a ‘chief measure’ for ensuring the economic self-  
21 sufficiency of aliens.”).

The Federal Defendants’ arguments to this Court replicate DHS’s assertion in  
the rulemaking record that “self-sufficiency is the rule’s ultimate aim.” 84 Fed. Reg.

1 at 41,313. DHS attempts to reconcile the absence of the Welfare Reform Act’s  
2 “self-sufficiency” language in the public charge inadmissibility provision at 8 U.S.C.  
3 § 1182(a)(4) by noting the temporal proximity between the Welfare Reform Act and  
4 the Immigration Reform Act:

5 Although the INA does not mention self-sufficiency in the context of .  
6 . . . 8 U.S.C. § 1182(a)(4), DHS believes that there is a strong connection  
7 between the self-sufficiency policy statements [in the Welfare Reform  
8 Act] (even if not codified in the INA itself) at 8 U.S.C. 1601 and the  
9 public charge inadmissibility language in . . . 8 U.S.C. 1182(a)(4),  
10 which were enacted within a month of each other.

84 Fed. Reg. at 41,355–56.

9 Notably, DHS cites no basis for interpreting the policy statements at 8 U.S.C.  
10 § 1601 beyond a belief in “a strong connection” between those policy statements and  
11 the public charge rule inadmissibility ground.

12 Essentially, at this early stage in the litigation, the Federal Defendants urge the  
13 Court to take two unsupported leaps of statutory construction. First, they seek a  
14 legal conclusion that the purpose of the public charge inadmissibility provision is to  
15 “ensur[e] the economic self-sufficiency of aliens.” ECF No. 155 at 37. Second, the  
16 Federal Defendants argue that Congress has delegated to DHS the role of  
17 determining what benefits programs, income levels, and household sizes or  
18 compositions, promote or undermine self-sufficiency. However, the Federal  
19 Defendants have not cited any statute, legislative history, or other resource that  
20 supports the interpretation that Congress has delegated to DHS the authority to  
21

1 expand the definition of who is inadmissible as a public charge or to define what  
2 benefits undermine, rather than promote, the stated goal of achieving self-  
3 sufficiency.

4 By contrast, the Plaintiff States offer extensive support for the conclusion that  
5 Congress unambiguously rejected key components of the Public Charge Rule,  
6 including the consideration of non-cash public benefits and a rigid twelve-month  
7 aggregate approach in determining whether someone would be deemed a public  
8 charge. In the pivotal legislative period of 1996, and again in 2013, Congress  
9 rejected the provisions that the Public Charge Rule now incorporates. In 2013, as  
10 the Plaintiff States underscore, Congress rejected expansion of the benefits  
11 considered for public charge exclusion with full awareness of the 1999 field  
12 guidance in effect. *See* ECF No. 158 at 18 (citing *Lorillard v. Pons*, 434 U.S. 575,  
13 580 (1978) (“Congress is presumed to be aware of an administrative or judicial  
14 interpretation of a statute and to adopt that interpretation when it re-enacts a statute  
15 without change.”)).

16 Furthermore, the Plaintiff States make a strong showing in the record that  
17 DHS has overstepped its authority. The Federal Defendants assert, without any  
18 citation to authority, that “an individual who relies on Medicaid benefits for an  
19 extended period of time in order ‘to get up, get dressed, and go to work,’ is not self-  
20 sufficient.” ECF No. 155 at 54 (quoting from Plaintiff’s motion at ECF No. 34).  
21 Yet, again, the Federal Defendants offer no authority to support that DHS’s role, by

1 Congressional authorization, is to define self-sufficiency. *See Comcast Corp. v.*  
2 *FCC*, 600 F.3d 642, 655 (D.C. Cir. 2010) (rejecting the FCC’s interpretation of its  
3 authority because “if accepted it would virtually free the Commission from its  
4 congressional tether.”). The Federal Defendants also have not explained how DHS  
5 as an agency has the expertise necessary to make a determination of what promotes  
6 self-sufficiency and what amounts to self-sufficiency.

7 As further illustration of DHS’s unmooring from its Congressionally  
8 delegated authority, DHS justifies including receipt of Medicaid in the public charge  
9 consideration by reciting that “the total Federal expenditure for the Medicaid  
10 program overall is by far larger than any other program for low-income people.”  
11 ECF No. 109 at 41 (brief from Health Law Advocates and other public health  
12 organizations, quoting 84 Fed. Reg. at 41,379). However, “[t]he cost of Medicaid is  
13 not DHS’s concern[, as] Congress delegated the implementation and administration  
14 of Medicaid, including the cost of the program, to HHS and the states.” *Id.* (citing  
15 42 U.S.C. §§ 1396, 1396-1, 1315(a)). Congress cannot delegate authority that the  
16 Constitution does not allocate to the federal government in the first place, and the  
17 states exercise a central role in formulation and administration of health care policy.  
18 *See Nat’l Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 636 (“[T]he facets of  
19 governing that touch on citizens’ daily lives are normally administered by smaller  
20 governments closer to the governed.”); *see also Medtronic, Inc. v. Lohr*, 518 U.S.  
21 470, 484 (1996) (noting the “historic primacy of state regulation of matters of health

1 and safety”). Therefore, the Court finds a likelihood that the Plaintiff States will be  
2 successful in proving that DHS acted beyond its Congressionally delegated authority  
3 when it promulgated the Public Charge Rule.

4 Moreover, the Rehabilitation Act prohibits denying a person benefits,  
5 excluding a person from participating, or discriminating against a person “solely by  
6 reason of her or his disability[.]” 29 U.S.C. § 794(a). Although DHS acknowledges  
7 in the Public Charge Rule notice that the Public Charge Rule will have a “potentially  
8 outsized impact” on individuals with disabilities, DHS rationalizes that “Congress  
9 did not specifically provide for a public charge exemption for individuals with  
10 disabilities and in fact included health as a mandatory factor in the public charge  
11 inadmissibility consideration.” 84 Fed. Reg. at 41,368. The Federal Defendants  
12 argue that the Public Charge Rule is consistent with the Rehabilitation Act because  
13 disability is “one factor (among many) that may be considered.” ECF No. 155 at 61.

14 At this early stage in the litigation, the plain language of the Public Charge  
15 Rule casts doubt that DHS ultimately will be able to show that the Public Charge  
16 Rule is not contrary to the Rehabilitation Act. First, contrary to the Federal  
17 Defendants’ assertion, the Public Charge Rule does not state that disability is a  
18 factor that “may” be considered. Rather, if the “disability” is a “medical condition  
19 that is likely to require extensive medical treatment,” it is one of the minimum  
20 factors that the officer must consider. *See* 8 C.F.R. § 212.22(b). Second, as the  
21 *amici* highlighted, an individual with a disability is likely to have the disability

1 counted at least twice as a negative factor in the public charge determination because  
2 receipt of Medicaid is “essential” for millions of people in the United States with  
3 disabilities, and “a third of Medicaid’s adult recipients under the age of 65 are  
4 people with disabilities.” ECF No. 110 at 19 (emphasis in original removed).

5 *Amici* maintain that contrary to being an indicator of becoming a public  
6 charge, Medicaid is “positively associated with employment and the integration of  
7 individuals with disabilities, in part because Medicaid covers employment supports  
8 that enable people with disabilities to work.” ECF No. 110 at 19–20; *see also* 42  
9 U.S.C. § 1396-1 (providing that grants to states for medical assistance programs for  
10 families with dependent children and aged, blind, or disabled individuals are for the  
11 purpose of “help[ing] such families and individuals attain or retain capability for  
12 independence or self-care[.]”). Therefore, accessing Medicaid logically would assist  
13 immigrants, not hinder them, in becoming self-sufficient, which is DHS’s stated goal  
14 of the Public Charge Rule.

15 Given the history of the public charge provision at 8 U.S.C. § 1182(a)(4)(B),  
16 particularly the two recent rejections by Congress of arguments in favor of  
17 expanding the rule to include consideration of non-cash benefits for exclusion as the  
18 Public Charge Rule now does, the Court finds a significant likelihood that the  
19 language of the final rule expands beyond the statutory framework of what a USCIS  
20 officer previously was to consider in applying the public charge test. *See INS v.*  
21 *Cardoza-Fonseca*, 480 U.S. 421, 442–43 (1987) (“Few principles of statutory

1 construction are more compelling than the proposition that Congress does not intend  
2 *sub silentio* to enact statutory language that it has earlier discarded in favor of other  
3 language.”) (quoting *Nachman Corp. v. Pension Benefit Guaranty Corp.*, 446 U.S.  
4 359 392–93 (1980) (Stewart, J. dissenting)).

5 The U.S. Constitution vests Congress with plenary power to create  
6 immigration law, subject only to constitutional limitations. *See* U.S. Const. Art. I,  
7 sect. 8, cl. 4; *Zadvydas v. Davis*, 533 U.S. 678, 695 (2001). An administrative  
8 agency may not make through rulemaking immigration law that Congress declined  
9 to enact. *See Cuomo v. Clearing House Ass’n, LLC*, 557 U.S. 519, 533 (2009)  
10 (rejecting a federal agency’s interpretation of a statute and finding that the agency  
11 had “attempted to do what Congress declined to do”).

12 Therefore, the Court finds that the Plaintiff States have demonstrated a strong  
13 likelihood of success on the merits of their first cause of action.

14 **2. Count 3: Violation of the Administrative Procedure Act—**  
15 **Arbitrary and Capricious Agency Action**

16 Review of a rulemaking procedure under section 706(2)’s arbitrary and  
17 capricious standard is “narrow and a court is not to substitute its judgment for that of  
18 the agency.” *Motor Vehicle Mfrs. Ass’n of the U.S., Inc. v. State Farm Mut. Auto.*  
19 *Ins. Co.*, 463 U.S. 29, 43 (1983). Nevertheless, an agency has a duty to examine  
20 “the relevant data” and to articulate “a satisfactory explanation for its action,  
21 ‘including a rational connection between the facts found and the choice made.’”



1 *Dep't of Commerce*, 139 S. Ct. at 2569 (quoting *State Farm*, 463 U.S. at 43  
2 (internal quotation omitted)). An agency rule is arbitrary and capricious “if the  
3 agency has ruled on factors which Congress has not intended it to consider, entirely  
4 failed to consider an important aspect of the problem, offered an explanation for its  
5 decision that runs counter to the evidence before the agency, or is so implausible that  
6 it could not be ascribed to a difference in view or the product of agency expertise.”  
7 *State Farm*, 463 U.S. at 43.

8 Further, when an agency’s prior policy has engendered “serious reliance  
9 interests,” an agency would be “arbitrary and capricious to ignore such matters,” and  
10 the agency must “provide a more detailed justification than what would suffice for a  
11 new policy created on a blank slate.” *FCC v. Fox TV Stations, Inc.*, 556 U.S. 502,  
12 515–16 (2009). For instance, in *INS v. Yueh-Shaio Yang*, 519 U.S. 26, 29–30  
13 (1996), the Supreme Court examined statutory text elsewhere in the INA  
14 establishing minimum requirements to be eligible for a waiver of deportation.  
15 Although the Court found that the relevant provision of the INA “imposes no  
16 limitations on the factors that the Attorney General (or her delegate, the INS) may  
17 consider,” the Court determined that the practices of the INS in exercising its  
18 discretion nonetheless were germane to whether the agency violated the APA. *Id.* at  
19 31–32 (internal citation omitted). “Though the agency’s discretion is unfettered at  
20 the outset, if it announces and follows—by rule or by settled course of  
21 adjudication—a general policy by which its exercise of discretion will be governed,

1 an irrational departure from that policy (as opposed to an avowed alteration of it)  
2 could constitute action that must be overturned as ‘arbitrary, capricious, [or] an  
3 abuse of discretion’ within the meaning of the Administrative Procedure Act, 5  
4 U.S.C. § 706(2)(A).” *Id.* at 32.

5 The record on the instant motion raises concerns that the process that DHS  
6 followed in formulating the Public Charge Rule did not adhere to the requirements  
7 of the APA. First, based on the statutory and agency history of the public charge  
8 inadmissibility ground discussed above, it is likely that the status quo has  
9 engendered “serious reliance interests” and DHS will be held to the higher standard  
10 of providing “a more detailed justification.” *FCC*, 556 U.S. at 515–16. Although  
11 DHS received over 266,000 comments, the agency’s responses to those comments  
12 appear conclusory. Moreover, the repeated justification of the changes as promoting  
13 self-sufficiency of immigrants in the United States appears inconsistent with the new  
14 components of the Public Charge Rule, such as the negative weight attributed to  
15 disabled people who use Medicaid to become or remain self-sufficient. *See* ECF  
16 No. 110; 42 U.S.C. § 1396-1.

17 Therefore, the Court finds that there are serious questions going to the merits  
18 regarding whether DHS has acted in an arbitrary and capricious manner in  
19 formulating the Public Charge Rule. Moreover, the Plaintiff States have  
20 demonstrated a substantial likelihood of success on the merits of at least two of their  
21 causes of action in this matter.

1           **B.     Likelihood of Irreparable Harm**

2           The Plaintiff States are likely to incur multiple forms of irreparable harm if  
3 the Public Charge Rule takes effect as scheduled on October 15, 2019, before this  
4 case can be resolved on the merits.

5           First, the Plaintiff States provide a strong basis for finding that disenrollment  
6 from non-cash benefits programs is predictable, not speculative. *See, e.g.*, ECF No.  
7 35-1 at 98–140 (detailing the chilling effects of the Public Charge Rule on the use of  
8 benefits by legal immigrant families including those with U.S. citizen children); *see*  
9 *also Rodde v. Bonta*, 357 F.3d 988, 999 (9th Cir. 2004) (finding irreparable harm  
10 caused by denial of Medicaid and resulting lack of necessary treatment, increased  
11 pain, and medical complications). Not only that, DHS’s predecessor agency noted  
12 the harms resulting from a chilling effect twenty years before publication of the  
13 Public Charge Rule. 64 Fed. Reg. at 28,692 (“ . . . reluctance to access benefits has  
14 an adverse impact not just on the potential recipients, but on public health and the  
15 general welfare.”).

16           As discussed in terms of standing, the Public Charge Rule threatens a wide  
17 variety of predictable harms to the Plaintiff States’ interests in promoting the  
18 missions of their health care systems, the health and wellbeing of their residents, and  
19 the Plaintiff States’ financial security. The harms to children, including U.S. citizen  
20 children, from reduced access to medical care, food assistance, and housing support  
21 particularly threaten the Plaintiff States with a need to re-allocate resources that will

1 only compound over time. Chronic hunger and housing insecurity in childhood is  
2 associated with disorders and other negative effects later in life that are likely to  
3 impose significant expenses on state funds. *See* ECF No. 149 at 21–22. As a  
4 natural consequence, the Plaintiff States are likely to lose tax revenue from affected  
5 children growing into adults with a compromised ability to contribute to their  
6 families and communities. *See* ECF No. 35-1 at 171, 618.

7         Second, the Public Charge Rule notice itself acknowledges many of the harms  
8 alleged by the Plaintiff States. DHS recognizes that disenrollment or foregone  
9 enrollment will occur. 84 Fed. Reg. at 41,463. DHS also acknowledges that more  
10 individuals will visit emergency rooms for emergent and primary care, resulting in  
11 “a potential for increases in uncompensated care” and that communities will  
12 experience increases in communicable diseases. *Id.* at 41,384.

13         In the Public Charge Rule notice, DHS attempts to justify the likely harms by  
14 invoking the goal of promoting “the self-sufficiency of aliens within the United  
15 States.” *See, e.g.*, 84 Fed. Reg. 41,309 (as underscored by the Plaintiff States at oral  
16 argument, the Public Charge Rule notice uses the word “self-sufficiency” 165 times  
17 and the word “self-sufficient” 135 times). Whether DHS can use the stated goal of  
18 promoting self-sufficiency to justify this rulemaking remains an open question for a  
19 later determination, although, as the Court found above, the Plaintiff States have  
20 made a strong showing that DHS overstepped their Congressionally authorized role  
21 in interpreting and enforcing the policy statements in 8 U.S.C. § 1601.

1 The operative question for this prong of both a section 705 stay and  
2 preliminary injunction analysis is whether there is a likelihood of irreparable injury.  
3 The Court finds this prong satisfied and notes that DHS itself recognizes that  
4 irreparable injury will occur. The Federal Defendants contest only the magnitude of  
5 the harms claimed by the Plaintiff States and the *amici*. However, the Federal  
6 Defendants do not contest the existence of irreparable harm and DHS acknowledged  
7 many of the harms in its own rulemaking notice. *See Simula, Inc. v. Autoliv, Inc.*,  
8 175 F.3d 716 (9th Cir. 1999) (requiring a party moving for a preliminary injunction  
9 to demonstrate “a significant threat of irreparable injury, irrespective of the  
10 magnitude of the injury”).

11 Therefore, the Court finds that immediate and ongoing harm to the Plaintiff  
12 States and their residents, both immigrant and non-immigrant, is predictable, and  
13 there is a significant likelihood of irreparable injury if the rule were to take effect as  
14 scheduled on October 15, 2019.

15 **C. Balance of the Equities, Substantial Injury to the Opposing Party,**  
16 **and the Public Interest<sup>6</sup>**

17 The third and fourth factors of both a section 705 stay and preliminary  
18 injunction analysis also tip in favor of preserving the status quo until this litigation is  
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20 <sup>6</sup> When the federal government is a party, the balance of the equities and public  
21 interest factors merge. *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073 (9th Cir.  
2014) (citing *Nken*, 556 U.S. at 435).

1 resolved. The Federal Defendants assert that they have “a substantial interest in  
2 administering the national immigration system, a *solely federal* prerogative,” and  
3 that they “have made the assessment in their expertise that the ‘status quo’ referred  
4 to by Plaintiffs is insufficient or inappropriate to serve the purposes of proper  
5 immigration enforcement.” ECF No. 155 at 67–68 (emphasis in original).

6       However, the Federal Defendants have made no showing of hardship, injury  
7 to themselves, or damage to the public interest from continuing to enforce the status  
8 quo with respect to the public charge ground of inadmissibility until these issues can  
9 be resolved on the merits. *See Sierra Forest Legacy v. Sherman*, 646 F.3d 1161,  
10 1186 (9th Cir. 2011) (reasoning that automatically deferring to federal agencies’  
11 expert assessment of the equities of an injunction would result in “nearly  
12 unattainable” relief from the federal government’s policies, “as government experts  
13 will likely attest that the public interest favors the federal government’s preferred  
14 policy, regardless of procedural failures.”).

15       In contrast, the Plaintiff States have shown a significant threat of irreparable  
16 injury as a result of the impending enactment of the Public Charge Rule by  
17 numerous individuals disenrolling from benefits for which they or their relatives  
18 were qualified, out of fear or confusion, that accepting those non-cash public  
19 benefits will deprive them of an opportunity for legal permanent residency. The  
20 Plaintiff States have further demonstrated how that chilling effect predictably would  
21 cause irreparable injury by creating long-term costs to the Plaintiff States from

1 providing ongoing triage for residents who have missed opportunities for timely  
2 diagnoses, vaccinations, or building a strong foundation in childhood that will allow  
3 U.S. citizen children and future U.S. citizens to flourish and contribute to their  
4 communities as taxpaying adults.

5 Further, the Court finds a significant threat of immediate and ongoing harm to  
6 all states because of the likelihood of residents of the Plaintiff States travelling  
7 through or relocating to other states. Consequently, the balance of equities tips  
8 sharply in favor of the Plaintiff States, and the third factor for purposes of a stay,  
9 threat of substantial injury to the opposing party, favors the Plaintiff States, as well.

10 The Court finds that the Plaintiff States and the dozens of *amici* who  
11 submitted briefs in support of the stay and injunctive relief have established that “an  
12 injunction is in the public interest” because of the numerous detrimental effects that  
13 the Public Charge Rule may cause. *See Winter*, 555 U.S. at 20; *see also League of*  
14 *Women Voters of U.S. v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016) (“[T]here is a  
15 substantial public interest in having governmental agencies abide by the federal laws  
16 that govern their existence and operations.”).

## 17 **VI. FORM AND SCOPE OF RELIEF**

18 The Plaintiff States have shown under the four requisite considerations of the  
19 *Winter* test that they are entitled to both a stay under 5 U.S.C. § 705 and a  
20 preliminary injunction under Fed. R. Civ. P. 65.

1 In section 705, Congress expressly created a mechanism for a reviewing court  
2 to intervene to suspend an administrative action until a challenge to the legality of  
3 that action can be judicially reviewed. 5 U.S.C. § 705.<sup>7</sup> Here, postponing the  
4 effective date of the Public Charge Rule, in its entirety, provides the Plaintiff States’  
5 the necessary relief to “prevent irreparable injury,” as section 705 instructs. *See*  
6 *Nken*, 556 U.S. at 421 (“A stay does not make time stand still, but does hold a ruling  
7 in abeyance to allow an appellate court the time necessary to review it.”).

8 Alternatively, if a reviewing court determines that a section 705 stay is not  
9 appropriate or timely, the Court also finds that the Plaintiff States offer substantial  
10 evidence to support a preliminary injunction from enforcement of the Public Charge  
11 Rule, without geographic limitation.

12 Just as the remedy under section 705 for administrative actions is to preserve  
13 the status quo while the merits of a challenge to administrative action is resolved, an  
14 injunction must apply universally to workably maintain the status quo and  
15 adequately protect the Plaintiff States from irreparable harm. Limiting the scope of  
16 the injunction to the fourteen Plaintiff States would not prevent those harms to the  
17 Plaintiff States, for several reasons. First, any immigrant residing in one of the

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19 <sup>7</sup> See Frank Chang, *The Administrative Procedure Act’s Stay Provision: Bypassing*  
20 *Scylla and Charybdis of Preliminary Injunctions*, 85 Geo. Wash. L. Rev. 1529,  
21 1552 (2017) (“The nationwide stay is an acceptable and rational policy choice that  
Congress made: while it delegates certain rulemaking authority to the agencies, it  
does so on the premise that the judiciary will curb their excesses.”).



1 Plaintiff States may in the future need to move to a non-plaintiff state but would be  
2 deterred from accessing public benefits if relief were limited in geographic scope.  
3 Second, a geographically limited injunction could spur immigrants now living in  
4 non-plaintiff states to move to one of the Plaintiff States, compounding the Plaintiff  
5 States' economic injuries to accommodate a surge in social services enrollees.  
6 Third, if the injunction applied only in the fourteen Plaintiff States, a lawful  
7 permanent resident returning to the United States from a trip abroad of more than  
8 180 days may be subject to the Public Charge Rule at a point of entry. Therefore,  
9 the scope of the injunction must be universal to afford the Plaintiff States the relief  
10 to which they are entitled. *See, e.g., California*, 911 F.3d at 582 (“Although there is  
11 no bar against nationwide relief in federal district court . . . such broad relief must be  
12 necessary to give prevailing parties the relief to which they are entitled.”) (internal  
13 quotation marks and citation omitted).

14 Finally, the Court declines to limit the injunction to apply only in those states  
15 within the U.S. Court of Appeals for the Ninth Circuit. In addition to the reasons  
16 discussed above, a Ninth Circuit-only injunction would deprive eleven of the  
17 fourteen Plaintiff States any relief at all. Colorado, Delaware, Illinois, Maryland,  
18 Massachusetts, Michigan, Minnesota, New Jersey, New Mexico, Rhode Island, and  
19 Virginia are located in seven other judicial circuits (the First, Third, Fourth, Sixth,  
20 Seventh, Eighth, and Tenth Circuits) and would derive no protection from  
21 irreparable injury from relief limited to jurisdictions within the Ninth Circuit.

1 Accordingly, **IT IS HEREBY ORDERED:**

2 1. The Plaintiff States' Motion for a Section 705 Stay Pending Judicial  
3 Review and for Preliminary Injunction, **ECF No. 34**, is **GRANTED**.

4 2. The Court finds that the Plaintiff States have established a likelihood of  
5 success on the merits of their claims under the Administrative Procedure Act, that  
6 they would suffer irreparable harm absent a stay of the effective date of the Public  
7 Charge Rule or preliminary injunctive relief, that the lack of substantial injury to the  
8 opposing party and the public interest favor a stay, and that the balance of equities  
9 and the public interest favor an injunction.

10 3. The Court therefore, pursuant to 5 U.S.C. § 705, **STAYS** the  
11 implementation of the U.S. Department of Homeland Security's (DHS) Rule entitled  
12 Inadmissibility on Public Charge Grounds, 84 Fed. Reg. 41,292 (Aug. 14, 2019) (to  
13 be codified at 8 C.F.R. pts. 103, 212, 213, 214, 245 and 248), **in its entirety**,  
14 pending entry of a final judgment on the Plaintiff States' APA claims. The effective  
15 date of the Final Rule is **POSTPONED** pending conclusion of these review  
16 proceedings.

17 4. In the alternative, pursuant to Rule 65(a) of the Federal Rules of Civil  
18 Procedure, the Court **PRELIMINARILY ENJOINS** the Federal Defendants and  
19 their officers, agents, servants, employees, and attorneys, and any person in active  
20 concert or participation with them, from implementing or enforcing the Rule entitled  
21 Inadmissibility on Public Charge Grounds, 84 Fed. Reg. 41,292 (Aug. 14, 2019), in

1 any manner or in any respect, and shall preserve the status quo pursuant to the  
2 regulations promulgated under 8 C.F.R. Parts 103, 212, 213, 214, 245, and 248, in  
3 effect as of the date of this Order, until further order of the Court.

4 5. No bond shall be required pursuant to Federal Rule of Civil  
5 Procedure 65(c).

6 **IT IS SO ORDERED.** The District Court Clerk is directed to enter this  
7 Order and provide copies to counsel.

8 **DATED** October 11, 2019.

9 *s/ Rosanna Malouf Peterson*  
10 ROSANNA MALOUF PETERSON  
11 United States District Judge  
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