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17 *Attorneys for Plaintiffs*

UNITED STATES DISTRICT COURT
18
NORTHERN DISTRICT OF CALIFORNIA
19

20 LA CLINICA DE LA RAZA; CALIFORNIA
PRIMARY CARE ASSOCIATION;
21 MATERNAL AND CHILD HEALTH
ACCESS; FARMWORKER JUSTICE;
22 COUNCIL ON AMERICAN ISLAMIC
RELATIONS-CALIFORNIA; AFRICAN
23 COMMUNITIES TOGETHER; LEGAL AID
SOCIETY OF SAN MATEO COUNTY;
24 CENTRAL AMERICAN RESOURCE
CENTER, and KOREAN RESOURCE
25 CENTER

Plaintiffs,
26 v.

Case No. 3:19-cv-4980

**COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF**

1 DONALD J. TRUMP, in his Official Capacity as
2 President of the United States; UNITED STATES
3 DEPARTMENT OF HOMELAND SECURITY;
4 UNITED STATES CITIZENSHIP AND
5 IMMIGRATION SERVICES; KENNETH T.
6 CUCCINELLI, in his Official Capacity as Acting
7 Director of U.S. Citizenship and Immigration Services;
8 and KEVIN K. MCALEENAN, in his Official
9 Capacity as Acting Secretary of the Department of
10 Homeland Security,

11 Defendants.

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1 **INTRODUCTION**

2 1. President Donald J. Trump is determined to prevent immigrants of color from
3 coming to and remaining in the United States. As part of this broad effort, the administration has
4 promulgated a “public charge” regulation, which erects hurdles to family-based immigration that
5 Congress has not authorized. This unlawful regulation harms and specifically targets immigrants
6 of color.

7 2. Defendants’ “public charge” regulation (“Regulation”) violates the Administrative
8 Procedure Act (“APA”) and the equal protection guarantee of the Fifth Amendment to the U.S.
9 Constitution. The Regulation is squarely at odds with the language of the statute, its century-long
10 interpretation, and Congress’s purpose in enacting the statute. It is arbitrary and capricious and
11 motivated by animus toward non-white immigrants.

12 3. The Immigration and Nationality Act (“INA”) bars an individual from obtaining a
13 green card or from obtaining certain visas if the person is “likely at any time to become a public
14 charge.” Since Congress first introduced the term in the immigration context in 1882, “public
15 charge” has been understood to mean only someone who is *primarily dependent* on the
16 government to avoid destitution (*i.e.*, someone who is effectively a “charge” or ward of the state).
17 From its first use in the immigration laws, “public charge” was included alongside other grounds
18 of inadmissibility that necessitate reliance on the government to avoid destitution, such as
19 “paupers,” “professional beggars,” and “insane persons.” Congress has never altered the long-
20 standing meaning of “public charge” as articulated by the courts and administrative agencies.
21 “Public charge” has never been understood to reach immigrants who, like the majority of citizens
22 in the United States, may at some point in their lives receive supplemental health care, nutrition, or
23 housing assistance to improve their lives and those of their families.

24 4. Acting unilaterally and without congressional approval, Defendants now deviate
25 from the established meaning of the term public charge, dramatically expanding it to effect a sea-
26 change in immigration law. The Regulation treats as a public charge any immigrant found to be
27 more likely than not, at any time over his or her lifetime, to receive any amount of benefits from a
28 wide range of supplemental public benefits programs.

1 5. The targeted benefits include health care coverage (non-emergency Medicaid for
2 non-pregnant adults), housing assistance (Section 8 and public housing), and food assistance
3 (Supplemental Nutrition Assistance Program or “SNAP”). Indeed, one in four U.S. citizens (over
4 70 million individuals) participate in one or more of these programs in any given year. Moreover,
5 about one half of U.S. citizens can be expected to use one of the programs at some point in their
6 lifetime. Those who rely on these programs include low- and moderate-income working families
7 who depend primarily on income from employment, but who receive supplemental benefits that
8 improve their quality of life and their communities. These non-cash programs help millions of
9 citizens and immigrants alike, enabling them to remain healthy and productive in communities
10 where rents and other costs of living are high.

11 6. In addition, the Regulation fundamentally distorts the totality-of-the-circumstances
12 test that the public-charge statute prescribes. The Regulation sets forth a series of arbitrary factors
13 that are not reasonably related to whether a person is likely to become a public charge—including
14 English proficiency and credit scores. Most of the factors enumerated in the Regulation are
15 negatively weighted, significantly and arbitrarily tipping the scale in favor of finding an applicant
16 to be a public charge.

17 7. The Regulation also introduces a public charge determination against an entirely
18 new group—nonimmigrants seeking a change of status or an extension of their stay—making
19 those nonimmigrants who have received certain designated benefits generally ineligible for a
20 change of status or extension, despite the agency’s acknowledgement that the public charge statute
21 does not apply to this group.

22 8. This Regulation fits squarely within a consistent pattern of racial discrimination in
23 this Administration’s immigration policies—including separating thousands of Central American
24 children from their mothers and fathers; refusing refuge to non-white immigrants seeking asylum;
25 attempting to end the Deferred Action for Childhood Arrivals program; terminating Temporary
26 Protected Status and Deferred Enforced Departure for nationals of several predominantly non-
27 white countries; excluding individuals from majority Muslim countries; proposing a rule that
28 would bar families from housing programs if any family member is without eligible immigration

1 status; and proposing a Regulation that would apply the same overbroad definition to the “public-
2 charge” deportability ground.

3 9. Defendants fail to provide adequate reasons for their dramatic changes to the
4 public-charge policy, and they fail to explain how those changes are consistent with the statutory
5 language and the well-settled interpretation of that language. Defendants have acted in total
6 disregard of the Regulation’s effects on families, communities, and the nation. And the agency
7 has failed to respond adequately to the myriad concerns expressed in the over 260,000 comments
8 submitted.

9 10. Plaintiffs bring this lawsuit to enjoin the implementation of Defendants’ new public
10 charge Regulation in order to prevent irreparable harm to themselves and their communities.
11 Plaintiffs represent health care providers and other nonprofit organizations that seek to protect
12 access to health care, nutrition, housing, and other public benefits for immigrants, including
13 immigrants of color, regardless of their immigration status or financial means. The Regulation has
14 and will continue to divert Plaintiffs’ resources, both to address the harmful effects of the
15 Regulation and to educate immigrant families about those effects, preventing Plaintiffs from
16 carrying out other aspects of their missions and ensuring that their patients, members, and clients
17 do not forgo critical services to lead healthy, productive, and successful lives.

18 11. The Regulation is also impermissibly vague and complex, inviting arbitrary and
19 discriminatory enforcement by immigration officials. As a result, the regulation will cause
20 immigrant families, including those with U.S. citizen members, to disenroll from programs or to
21 forgo benefits for which they are eligible. Many of these immigrant families will not in fact be
22 subject to the public charge inquiry but will nonetheless disenroll due to fear or lack of
23 understanding as to how the Regulation operates. The impacts of this chilling effect are far-
24 reaching. The Regulation not only will jeopardize the health of the affected immigrants, their
25 children, and other family members, but will also endanger public health by, among other things,
26 increasing the likelihood of untreated communicable disease, depriving essential community
27 health providers of Medicaid revenue, and creating food and housing instability. The Regulation
28 will produce negative health and economic outcomes nationwide over generations.

1 16. Plaintiff CALIFORNIA PRIMARY CARE ASSOCIATION (“CPCA”) brings this
2 action on behalf of its members. Formed in 1994, CPCA has become the statewide leader and a
3 recognized voice in representing the interests of California community health centers and their
4 patients. CPCA represents Regional Clinic Associations and 1,330 nonprofit community health
5 centers (“CHCs”) that provide comprehensive primary and preventive health services to low-
6 income and uninsured patients in California. CPCA’s members include community and free
7 health centers, some federally funded and federally designated health centers, rural and urban
8 clinics, large and small clinic corporations, and clinics dedicated to special needs and special
9 populations.

10 17. CPCA’s members serve diverse populations and ensure that everyone has access to
11 health care regardless of their ability to pay, their immigration status, or their individual
12 circumstances. The CHCs serve 6.9 million California residents every year. Approximately 72%
13 of the CHCs’ patients are Latino, Asian Pacific Islander, or Black. CHCs serve patients of various
14 immigrant statuses, including immigrants who will be subject to the public charge admission test
15 when they seek to extend or change their nonimmigrant visas or apply for lawful permanent
16 residence

17 18. Sixty percent of the patients served by CPCA’s members are enrolled in Medi-Cal,
18 the Medicaid program in California. This means that CHCs serve more than 4 million Medi-Cal
19 enrollees.

20 19. CPCA’s members will face significant financial harm as a result of the Rule.
21 CPCA expects CHCs’ patients will disenroll from public benefits, including Medi-Cal, because of
22 the changes to the public charge test. Specifically, CPCA predicts that hundreds of thousands of
23 its members’ patients will disenroll from Medi-Cal as a result of the Rule, causing the CHCs to
24 lose millions of dollars annually in Medi-Cal reimbursements. This will lead to an increase in
25 uninsured patients. CPCA anticipates that a number of these patients will continue seeking
26 services at CHCs, forcing the CHCs to incur increased costs serving uninsured patients while
27 experiencing a dramatic drop in revenue.

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1 20. One of CPCA’s members, Asian Health Services (“AHS”), is a nonprofit
2 community health center headquartered in Oakland, California. AHS provides health services at
3 more than a dozen locations in Oakland and San Leandro, California and has 28,000 active
4 patients of all ages. AHS is a member in good standing of CPCA and has been a member since
5 1994, when CPCA was formed.

6 21. Founded in 1974, AHS’s mission is to serve and advocate for the medically
7 underserved, including the immigrant and refugee Asian community, and to ensure equal access to
8 health care for all, regardless of income, insurance status, immigration status, language, or culture.
9 As a federally qualified health center, AHS offers services to uninsured patients on a sliding fee
10 scale. Individuals with incomes below 100% of the federal poverty level receive most services at
11 no cost. Approximately 93% of AHS patients are Asian; 2% are Latino; and 2% are Black. In
12 addition, approximately 58 % of AHS patients are not yet United States citizens. For 73% of
13 patients, English is not their primary language. Roughly two-thirds of AHS patients are enrolled
14 in Medi-Cal, which is the Medicaid program in California.

15 22. The Regulation will cause irreparable harm to many AHS patients and to AHS.
16 The Regulation will have a substantial chilling effect on AHS patients’ access to health care
17 and/or use of their health coverage. Some patients will stop receiving services altogether based on
18 fears about the effect on their or their children’s immigration status. Other AHS patients will
19 continue to receive services from AHS, but will decline to enroll in or will disenroll from Medi-
20 Cal due to the Rule.

21 23. As a result of the Regulation, AHS will incur significant financial loss. Medi-Cal
22 reimbursements account for 52% of AHS’s annual budget. AHS estimates that as its patients
23 disenroll from or decline to enroll in Medi-Cal, it will lose as much as \$5.2 million in Medi-Cal
24 reimbursements every year. AHS will have no way to recoup the cost of the services provided to
25 those patients who disenroll but continue to receive services. In addition to losing Medi-Cal
26 funding, AHS will have to divert considerable resources to responding to the Regulation. For
27 example, AHS expects staff to spend time responding to individual patients’ questions and
28 concerns about enrolling in or remaining enrolled in Medi-Cal and/or CalFresh given the

1 Regulation. These efforts will leave staff members with less time to help patients enroll in health
2 coverage and SNAP, schedule appointments, and provide case management, referrals and care
3 coordination.

4 24. Plaintiff Maternal and Child Health Access (“MCHA”) works to ensure access to
5 quality and comprehensive health care for all, with a focus on perinatal care and child health.
6 MCHA works with low-income immigrant families who access services through California’s
7 SNAP program, California’s Medicaid program, and Section 8 housing. Since the 1990s,
8 MCHA’s purpose has been to support women and their families so they can be healthy and
9 financially independent. MCHA offers enrollment assistance programs to help people of all
10 genders and ages secure and navigate SNAP and health-care coverage, training and education for
11 organizations and individuals about eligibility for benefit programs for low-income and immigrant
12 families, plus home visits, weekly classes, and mental health supports to help families succeed.

13 25. The Regulation will frustrate MCHA’s mission by reducing access to nutrition,
14 medical care, and adequate housing. Immigrant families who MCHA serves are already
15 disenrolling from public benefit programs, such as SNAP and Medicaid, based on fears that using
16 those programs will affect their future immigration relief options. Women have refrained and will
17 continue to refrain from seeking health services, food, and other programs for themselves and their
18 children, based on fears that using those benefits will prevent them from adjusting status. If the
19 Regulation is implemented, MCHA expects even more women to refrain from seeking Medicaid
20 and other necessary health services, food, and other programs for themselves and their children,
21 based on fears that using those benefits will prevent them from adjusting status. To support their
22 babies, pregnant women need, on average, an additional 300 calories per day. Yet MCHA already
23 sees women pulling themselves out of nutrition support programs based on fear of public charge,
24 and anticipates even more SNAP disenrollments if the rule is implemented. Losing access to
25 critical health and nutrition services during pregnancy and early childhood could negatively affect
26 MCHA’s clients for years.

27 26. Their clients’ disenrollment from health, housing, and nutrition programs will make
28 it difficult for MCHA to continue its operations. MCHA will be forced to shift its capacity and

1 divert its resources to respond to the Regulation, whose complexity makes simple reassuring
2 messages impossible. MCHA will need to identify alternative forms of assistance for those who
3 disenroll from benefit programs, develop and implement additional measures so that mothers and
4 families feel comfortable continuing to use MCHA's home-visitation program, and engage in
5 substantial community education to try to combat the Regulation's chilling effect. If the
6 Regulation goes into effect, MCHA will be forced to address client situations that have worsened
7 over time, such as prolonged malnutrition and delayed access to medical care. These heightened
8 client problems will require additional staff time. To respond to the Regulation, MCHA will also
9 need to allocate staff members who can follow up with individuals who raise concerns about the
10 Regulation.

11 27. Plaintiff Farmworker Justice ("FJ") is a national non-profit organization
12 representing farmworkers who perform agricultural work in the United States and their families.
13 FJ's mission is to empower migrant and seasonal farmworkers to improve their living and working
14 conditions, health, occupational safety, and access to justice. It also provides policy analysis and
15 advocacy, legal advocacy, training, and technical assistance to farmworkers, attorneys, migrant
16 health centers, and immigrant advocacy groups. FJ represents approximately 2 million
17 farmworkers who work in the United States, as well as their spouses and children who, combined,
18 represent approximately 4.5 million individuals in the United States. A large and growing number
19 of farmworkers have H-2A non-immigrant visas, which are for temporary agricultural workers.

20 28. The Regulation will disadvantage many farmworkers who seek to adjust to lawful
21 permanent resident (LPR) status or to obtain or extend their non-immigrant H-2A status. For
22 example, the Regulation penalizes individuals with low incomes, and farm laborers' wages are
23 among the lowest in the nation. FJ also represents immigrant farmworker families who receive
24 Medicaid and SNAP, and who will feel compelled by the Regulation to forgo those benefits in
25 order to remain eligible to adjust their status. Farmworkers are disenrolling eligible U.S. citizen
26 children from Medicaid due to fears that their children's health care coverage will affect their
27 ability to seek immigration relief. They also fear that this may lead eventually to the forced
28

1 separation of their family and are not seeking health coverage or services at health centers for the
2 same reasons.

3 29. The Regulation has forced FJ to divert substantial resources in order to develop and
4 disseminate information about the Regulation that addresses the farmworker communities' needs,
5 thus reducing the organization's ability to engage extensively in other issues that affect
6 farmworker families and advance FJ's mission.

7 30. Plaintiff COUNCIL ON AMERICAN-ISLAMIC RELATIONS-CALIFORNIA
8 ("CAIR-CA") is dedicated to enhancing the understanding of Islam, protecting civil rights,
9 promoting justice, and empowering American Muslims. CAIR-CA was established in 1994 and
10 has four offices throughout the state. CAIR-CA serves Arab, Middle Eastern, Muslim, and South
11 Asian ("AMEMSA") communities. Among other activities, CAIR-CA provides direct
12 immigration assistance, including by helping AMEMSA communities with adjustment of status
13 applications.

14 31. CAIR-CA has clients who are seeking or will seek to adjust their status in the
15 future. CAIR-CA also has clients who use public benefits, including Medicaid, public housing,
16 and SNAP. CAIR-CA's clients have incomes at or below 250% of the Federal Poverty Level
17 ("FPL"). The Regulation will frustrate CAIR-CA's mission to protect civil rights, promote
18 justice, and empower American Muslims. CAIR-CA will need to divert its resources in an attempt
19 to reduce the harm stemming from Defendants' Regulation, forcing CAIR-CA staff members to
20 reduce their capacity in other areas that further CAIR-CA's mission. Moreover, the Regulation is
21 causing many of the immigrant families that CAIR-CA serves to refrain from seeking
22 supplemental benefits or to disenroll from those programs, cutting off important services and
23 destabilizing their families and their communities.

24 32. Plaintiff AFRICAN COMMUNITIES TOGETHER ("ACT") is a membership
25 organization of African immigrant members fighting for civil rights, opportunity, and a better life
26 for African immigrant families residing in the United States. ACT serves African immigrants
27 seeking legal assistance with immigration relief, including by providing assistance with
28 adjustment of status applications. ACT has approximately 3,000 members, offices in New York

1 and the District of Columbia, and organizes a national network of African immigrant- serving
2 organizations. ACT serves immigrant families who are originally from Nigeria, Ghana, Liberia,
3 Ethiopia, and other African nations.

4 33. Defendants' Regulation will frustrate ACT's mission by directly restricting the
5 number of African immigrants who will be able to adjust to LPR status or maintain or change their
6 non-immigrant immigration status due to the public charge test, thus eliminating essential
7 pathways for this population to obtain LPR status. This is because ACT's clients who will seek to
8 adjust status include individuals who are low-income and who possess other characteristics
9 considered to be negative factors under the Regulation. ACT also has clients who receive
10 Medicaid, SNAP, and other public benefits. Moreover, ACT will be forced to divert its resources
11 to combat the chilling effects and discriminatory message of the Regulation, forcing the
12 organization to spend less time on its other areas of work and to reduce the overall number of
13 cases the organization can take on. The Regulation is discouraging ACT's clients from accessing
14 social services for fear that receipt of any public benefit will affect any future attempt to adjust,
15 maintain or change their immigration status, causing harm to individuals and families who are
16 eligible for those benefits.

17 34. Plaintiff LEGAL AID SOCIETY OF SAN MATEO COUNTY ("LEGAL AID")
18 has been the primary legal service provider for low-income and vulnerable residents in San Mateo
19 County for over sixty years. LEGAL AID engages in community education, legal representation,
20 systemic advocacy, and collaboration with community partners to help vulnerable community
21 members secure safe, affordable housing, access health care, achieve economic security, and
22 obtain immigration benefits for which they are eligible. Legal Aid has devoted significant
23 resources to educating San Mateo County's immigrant residents about the various public programs
24 for which they are eligible, including Medicaid and SNAP, as well as about the public charge
25 inadmissibility test.

26 35. Some of LEGAL AID's clients will be subject to the Regulation when they seek to
27 adjust their status or extend or change their non-immigrant visas. Many of Legal Aid's clients are
28 likely to disenroll from, or fear enrolling in, these important programs. Some clients may be

1 deemed public charges under the Regulation because they either use or will become eligible for
2 public benefits, including Medicaid, SNAP, and housing benefits and have other characteristics
3 that will weigh against them, including low household incomes, limited-English proficiency, and
4 large household sizes. Access to these programs enables LEGAL AID clients to thrive.

5 36. The Regulation frustrates LEGAL AID's mission to fight social injustice by
6 helping San Mateo County residents obtain services through legal advocacy, and to help low-
7 income individuals achieve self-sufficiency. LEGAL AID will need to divert its resources to help
8 San Mateo County's immigrant residents and their families who are either directly subject to the
9 Regulation or harmed because of the Regulation's chilling effect. These diversions will reduce
10 Legal Aid's capacity to take additional cases.

11 37. Plaintiff CENTRAL AMERICAN RESOURCE CENTER of Los Angeles
12 ("CARECEN") is a civil rights, social services and community empowerment organization.
13 Founded by Salvadoran refugees in 1983, it is now the largest Central American immigrant-rights
14 organization in the country. CARECEN's mission is to empower Central Americans and all
15 immigrants by defending human and civil rights, working for social and economic justice, and
16 promoting cultural diversity, including by providing pro bono and low-cost immigration legal
17 services to low-income immigrants. Most of CARECEN's legal work consists of legal counseling
18 and representation to low-income individuals seeking admission and LPR status. CARECEN also
19 engages in community outreach and education, including about the process for obtaining lawful
20 permanent residence.

21 38. The Regulation will frustrate the core component of CARECEN's mission to
22 provide legal representation to individuals seeking admission and adjustment to lawful permanent
23 residence. More than half of CARECEN's clients receive, have received, or have household
24 members who receive or have received one or more forms of public assistance, including
25 Medicaid and SNAP. About half of CARECEN's clients' household incomes fall below the
26 federal poverty line, and nearly all of its clients' household incomes fall below 250% of the FPL.
27 CARECEN's legal staff will have to expend significant additional time interviewing clients about
28 their public-benefits history and assessing whether they are harmed by the Regulation, as well as

1 advising clients about the potential impact of the Regulation if they receive certain benefits in the
2 future. CARECEN will also expend considerable time educating the community about the
3 Regulation as well as training its own staff so they can properly counsel clients who may be
4 adversely affected by the Regulation. This will divert significant resources away from other
5 aspects of CARECEN's mission.

6 39. Plaintiff KOREAN RESOURCE CENTER ("KRC") is a non-profit community and
7 membership organization empowering low-income, immigrants, Asian American and Pacific
8 Islander, and people of color communities in Southern California. KRC's mission is to empower
9 members and clients, using a holistic approach, by integrating services, education, culture,
10 organizing, and coalition building, all of which seek to help individuals thrive. KRC has offices in
11 Los Angeles and Orange County.

12 40. KRC engages in community education and organizing, systemic advocacy, and
13 legal representation. KRC's legal representation in immigration matters includes family-based
14 adjustment of status applications, naturalization, Deferred Action for Childhood Arrival (DACA)
15 renewals, and deportation defense. KRC also assists members, particularly seniors, with public
16 benefits, such as Medicaid, SNAP and subsidized housing. The Regulation will cause KRC
17 members and their families to disenroll from, or to fear enrolling in these important programs.

18 41. The Regulation will frustrate KRC's mission by directly reducing the number of
19 clients and members who will be able to adjust to LPR status or maintain or change their non-
20 immigrant immigration status due to the public charge test. KRC's members and clients include
21 individuals who are low-income and receive Medicaid, SNAP, subsidized housing and other
22 public benefits, and who possess other characteristics considered to be negative factors under the
23 Regulation, including being elderly, having low incomes, and having limited-English proficiency.
24 KRC believes its individual members will be unable to adjust status as a result of the Regulation.

25 42. In addition, the Regulation will force KRC to spend more resources on immigration
26 consultations and public benefits assistance.

27 43. KRC will be forced to divert its resources to combat the chilling effects of the
28 Regulation, forcing the organization to spend less time on its other areas of work, such as services

1 for survivors of domestic violence. KRC has already had to expend considerable resources on
2 community education on public charge, including training Korean ethnic media to correct
3 misinformation about the public charge rule. KRC expects to conduct additional trainings to the
4 media and members on public charge because of the Regulation’s upcoming implementation.

5 **II. Defendants**

6 44. Defendant Donald J. Trump is the President of the United States. He is sued in his
7 official capacity.

8 45. Defendant United States Department of Homeland Security (“DHS”) is a federal
9 agency headquartered in Washington, D.C.

10 46. Defendant United States Citizenship and Immigration Services (“USCIS”) is a
11 component agency of DHS, which is responsible for the adjudication of applications for
12 adjustment of status and for extensions or modifications of stay by non-immigrant visa holders.
13 USCIS is the component of DHS that promulgated the public charge Regulation.

14 47. Defendant Kenneth T. Cuccinelli is the Acting Director of USCIS. He is sued in
15 his official capacity.

16 48. Defendant Kevin K. McAleenan is Acting Secretary of DHS. He is sued in his
17 official capacity.

18 **JURISDICTION AND VENUE**

19 49. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331, as this case
20 arises under the U.S. Constitution and the Administrative Procedure Act, 5 U.S.C. §§ 701 et seq.

21 50. Venue properly lies in this district because Plaintiffs LA CLÍNICA, CPCA,
22 LEGAL AID, CAIR-CA, and FJ work and provide services in this district. 28 U.S.C.
23 § 1391(e)(1). Venue also properly lies in this district because a substantial part of the events or
24 omissions giving rise to this action occurred in the district. 28 U.S.C. § 1391(b).

25 **BACKGROUND**

26 **I. Current Statutory Framework**

27 51. The INA is the primary statute governing immigration to the United States. Under
28 the INA, if a current resident of the United States seeks LPR status through a family-based or

1 employment-based petition, the first step is to file the petition and, if it is approved, wait until a
2 visa becomes available. If the resident has been admitted or paroled into the United States and
3 meets certain other conditions, the individual may file an application for adjustment of status with
4 USCIS, in most cases only once a visa becomes available. In determining whether a noncitizen is
5 eligible for adjustment of status, or whether an LPR who has been outside the United States for
6 more than 180 days can reenter the country, DHS officers assess whether the applicant is
7 inadmissible under section 212 of the INA (8 U.S.C. § 1182).

8 52. Individuals seeking admission as nonimmigrants, such as temporary agricultural or
9 health care workers, foreign students, and cultural exchange visitors, are also assessed for
10 inadmissibility before receiving a visa. Most nonimmigrant visa holders may apply to extend or
11 change their visa provided certain conditions are satisfied, such as compliance with the terms of
12 their current visa.

13 53. Section 212(a)(4) of the INA provides that “[a]ny alien who, in the opinion of the
14 consular officer at the time of application for a visa, or in the opinion of the Attorney General at
15 the time of application for admission or adjustment of status, is likely at any time to become a
16 public charge is inadmissible.” 8 U.S.C. § 1182(a)(4)(A). This is commonly known as the
17 “public charge” ground of inadmissibility.

18 54. The statute further directs that an adjudicator making a determination on the public
19 charge ground “shall at a minimum consider the alien’s (I) age; (II) health; (III) family status; (IV)
20 assets, resources, and financial status; and (V) education and skills.” 8 U.S.C. § 1182(a)(4)(B)(i).
21 Together these five factors are referred to as the “totality of circumstances” test.

22 55. The adjudicator “may also consider any affidavit of support.” 8 U.S.C.
23 § 1182(a)(4)(B)(ii). The U.S. citizen or LPR sponsor who signs the affidavit of support pledges to
24 accept financial responsibility for the immigrant who is seeking admission or adjustment of status
25 and specifically pledges to maintain the sponsored immigrant “at an annual income that is not less
26 than 125 percent of the Federal poverty line during the period in which the affidavit is
27 enforceable.” 8 U.S.C. § 1183a(a)(1)(A). The affidavit is a legally enforceable contract between
28 the sponsor and the U.S. government.

1 **II. The Public Charge Statute and its Long-Standing Meaning.**

2 56. For over a century, the term “public charge” has referred to persons who cannot
3 care for themselves and are thus *primarily dependent* on the government to avoid destitution.

4 57. The term first appeared in an 1882 act barring the admission of “any convict,
5 lunatic, idiot, or any person unable to take care of himself or herself without becoming a public
6 charge.” An Act to Regulate Immigration, ch. 376, § 2, 22 Stat. 214 (1882).

7 58. The Immigration Act of 1907 included those “likely to become a public charge”
8 among the categories of individuals barred entry, which also included “idiots,” “imbeciles,”
9 “insane persons,” “paupers,” “professional beggars,” and “persons . . . with a loathsome or
10 dangerous contagious disease.” An Act to regulate the immigration of aliens into the United
11 States, Pub. L. No. 96, § 2, 34 Stat. 898, 898–99 (1907).

12 59. As the Second Circuit recognized, “The excluded classes with which this provision
13 is associated are significant. It appears between ‘paupers’ and ‘professional beggars.’” *Howe v.*
14 *United States*, 247 F. 292, 294 (2d Cir. 1917). The court concluded, “We are convinced that
15 Congress meant the act to exclude persons who were likely to become occupants of almshouses
16 for want of means with which to support themselves in the future.” *Id.*; *see also Gegiow v.*
17 *Uhl*, 239 U.S. 3, 10 (1915) (reasoning that “public charge” had “to be read as generically similar
18 to the others mentioned before and after” and rejecting an attempt to exclude individuals on public
19 charge grounds).

20 60. In 1952 Congress enacted § 212 of the INA, which excluded from admissibility
21 individuals “who, in the opinion of the consular officer at the time of application for a visa, or in
22 the opinion of the Attorney General at the time of application for admission, are likely at any time
23 to become public charges.” Pub. L. 414, ch. 2, § 212(a)(15), 66 Stat. 163, 183 (1952).

24 61. The Department of Justice has recognized courts’ longstanding interpretation of the
25 term “public charge” to mean a person who is “destitute.” For instance, the Department has
26 explained that “[t]he words ‘public charge’ had their ordinary meaning: that is to say, a money
27 charge upon or an expense to the public for support and care, the alien being destitute.” *Matter of*
28

1 *Harutunian*, 14 I. & N. Dec. 583, 586 (BIA 1974). Congress has not altered this meaning of
2 “public charge,” though it has revisited the topic on many occasions.

3 62. In the INA of 1965, for instance, Congress deliberately overturned decades-old
4 laws that restricted immigration from certain global regions and opened the U.S. to immigrants
5 from all over the world. But Congress made no change to the public charge test.

6 63. In 1986, Congress enacted the Immigration Reform and Control Act (“IRCA”).
7 Congress again did not modify the “public charge” test. But Congress did provide additional
8 grounds for waivers allowing individuals deemed a public charge to overcome that determination.

9 64. Consistent with prior agency interpretations, the Immigration and Naturalization
10 Service (“INS”)—the previous federal agency tasked with administering immigration
11 applications—explained in 1987 that applicants would not be subject to exclusion on public-
12 charge grounds if “the applicant demonstrates a history of employment in the United States
13 evidencing self-support without the receipt of *public cash assistance*.” Adjustment of Status for
14 Certain Aliens, 52 Fed. Reg. 16,205, 16,211 (May 1, 1987) (emphasis added). The agency defined
15 “public cash assistance” as “income or needs-based monetary assistance . . . designed to meet
16 *subsistence levels*.” *Id.* at 16,209 (emphasis added). The agency specifically excluded “assistance
17 in kind, such as food stamps, public housing, or other non-cash benefits” from those benefits that
18 would render an individual a public charge. *Id.*

19 65. Congress again declined to alter the “public charge” test in the Immigration Act of
20 1990, despite making a number of other changes to immigration-related statutes.

21 66. In 1991, the State Department—an agency that also has primary responsibility for
22 implementing the INA’s public charge provisions—recognized in its Foreign Affairs Manual that
23 the essential issue in determining if an individual is a public charge within the meaning of INA
24 212(a)(4) is “whether the purpose of the public program in which the individual is participating is
25 specifically designed to support individuals unable to provide for themselves.” It recognized that
26 the purpose of the food stamp program is “to strengthen the agricultural economy and help achieve
27 a fuller use of food abundances through improving levels of nutrition among low-income
28 households. It has thus a number of objectives of a general nature and is not simply a matter of

1 welfare or relief as such . . . [A] program that is essentially *supplementary* in nature, in the sense
2 of providing training, services, food, etc. to augment the standard of living, rather than to
3 undertake directly the support of the recipients does not fall within the scope of INA 212(a)(4).”
4 (emphasis added).

5 67. In 1996, Congress enacted the Personal Responsibility and Work Opportunity
6 Reconciliation Act of 1996 (“PRWORA”), which imposed restrictions on immigrant eligibility for
7 certain public benefits. But Congress did not alter the “public charge” test.

8 68. Congress again declined to change the meaning of “public charge” one month later
9 when it enacted the Illegal Immigration Reform and Immigrant Responsibility Act of 1996
10 (“IIRIRA”). Congress considered but rejected, an expanded definition of “public charge” that
11 would have included food, health care, and housing assistance.

12 69. Instead, IIRIRA codified the totality-of-the-circumstances test, which had been
13 developed in case law and administrative policies. 8 U.S.C. § 1182(a)(4)(B)(i).

14 70. IIRIRA also introduced the affidavit of support that could be used to help an
15 immigrant overcome the public-charge barrier, so long as the sponsor pledged to maintain the
16 sponsored immigrant’s at or above 125% of the FPL. 8 U.S.C. §§ 1182(a)(4)(B)(ii);
17 1183a(a)(1)(A).

18 71. Following IIRIRA, the INS issued guidance explaining that the statute “has not
19 altered the standards used to determine the likelihood of an alien to become a public charge nor
20 has it significantly changed the criteria to be considered in determining such a likelihood.”
21 Immigration and Naturalization Serv., Dep’t of Justice, Public Charge: INA Sections 212(A)(4)
22 and 237(A)(5)—Duration of Departure for LPRs and Repayment of Public Benefits (Dec. 16,
23 1997).

24 72. Similarly, in 1998, the State Department stated that IIRIRA did “not change[] the
25 long-standing legal presumption that an able-bodied, employable individual will be able to work
26 upon arrival in the United States” and thus not become a public charge. Dep’t of State, I-864
27 Affidavit of Support: Update No. 14—Commitment to Provide Assistance, Unclas State 102426
28 (Cable dated June 8, 1998). The INS further stated “[t]he presumption that the applicant will find

1 work coupled with the fact that the [affidavit of support] is a legally enforceable contract will
2 provide in most cases a sufficient basis to accept a sponsor's . . . technically sufficient [affidavit]
3 as overcoming the public charge ground." *Id.*

4 73. Although the INS and State Department recognized that IIRIRA made no changes
5 to the longstanding meaning or interpretation of the term "public charge," the INS was concerned
6 that, because Congress passed both IIRIRA and PRWORA close in time, "confusion about the
7 relationship between the receipt of public benefits and the concept of 'public charge' ha[d]
8 deterred eligible [non-citizens] and their families, including U.S. citizen children, from seeking
9 important health and nutrition benefits that they are legally entitled to receive." Field Guidance on
10 Deportability and Inadmissibility on Public Charge Grounds, 64 Fed. Reg. 28,689, 28,692 (May
11 26, 1999) ("1999 Field Guidance").

12 74. The INS recognized that "[t]his reluctance to access benefits has an adverse impact
13 not just on the potential recipients, but on public health and the general welfare." *Id.*, 64 Fed. Reg.
14 at 28,692. The uncertainty following IIRIRA and PRWORA was "undermining the Government
15 policies of increasing access to health care and helping people to become self-sufficient."
16 Inadmissibility and Deportability on Public Charge Grounds, 64 Fed. Reg. 28,676, 28,677
17 (proposed May 26, 1999) ("Public Charge Grounds").

18 75. To alleviate that confusion and its deleterious effects, the INS published two
19 documents in the 1999 Federal Register to confirm that the longstanding historic understanding of
20 the term "public charge" remained operative.

21 76. The first was a Notice of Proposed Rulemaking ("NPRM") in which the INS
22 confirmed that the term "public charge" meant an individual "who is likely to become . . .
23 primarily dependent on the Government for subsistence, as demonstrated by either the receipt of
24 public cash assistance for income maintenance or institutionalization for long-term care at
25 Government expense." Public Charge Grounds, 64 Fed. Reg. at 28,677. The agency never issued
26 a final rule.

27 77. The second was the INS Field Guide that aimed to "help alleviate public confusion
28 over the meaning of the term 'public charge' in immigration law and its relationship to the receipt

1 of Federal, State, and local public benefits” and to “provide aliens with better guidance as to the
2 types of public benefits that will and will not be considered in public charge determinations.”
3 1999 Field Guidance, 64 Fed. Reg. 28,689.

4 78. These documents dictated that agencies consider only receipt of cash assistance for
5 income maintenance (such as Temporary Assistance for Needy Families, Supplemental Security
6 Income, and state equivalents) and publicly funded long-term institutionalization in making the
7 public-charge determination.

8 79. In explaining its interpretation of “public charge,” the INS recognized that “federal,
9 state, and local benefits are increasingly being made available to families with incomes far above
10 the poverty level, reflecting broad public policy decisions about improving general public health
11 and nutrition, promoting education, and assisting working-poor families in the process of
12 becoming self-sufficient.” *Id.*, 64 Fed. Reg. at 28,692. This meant that “participation in such non-
13 cash programs is not evidence of poverty or dependence.” *Id.*

14 80. The INS further observed that non-cash benefits “are by their nature supplemental
15 and do not, alone or in combination, provide sufficient resources to support an individual or
16 family.” *Id.* By focusing only on cash assistance for income maintenance and long-term
17 institutionalization, the INS could thus “identify those who are primarily dependent on the
18 government for subsistence without inhibiting access to non-cash benefits that serve important
19 public interests.” *Id.*

20 81. The INS also explained that the focus on cash benefits for making the public-
21 charge determination was consistent with the advice provided by federal benefits agencies,
22 including the Department of Health and Human Services, the Department of Agriculture, and the
23 Social Security Administration. Each department had concurred that “receipt of cash assistance
24 for income maintenance is the best evidence of primary dependence on the Government” because
25 “non-cash benefits generally provide supplementary support . . . to low-income working families
26 to sustain and improve their ability to remain self-sufficient.” Public Charge Grounds, 64 Fed.
27 Reg. at 28,677–78.

28

1 82. The INS reasoned further, based on input from the Department of Health and
2 Human Services, that while as a general matter, it could not “conceive of a situation where an
3 individual ... could support himself or his family solely on non-cash benefits so as to be primarily
4 dependent on the [G]overnment,” it made one exception for long-term institutionalization at
5 government expense, which should be considered in the public charge determination. *Id.*, 64 Fed.
6 Reg. at 28,678.

7 83. In addition, under the 1999 Field Guidance, forms of cash not intended for income
8 maintenance and cash benefits that have been earned, such as government pension benefits or
9 veteran’s benefits, were not considered cash benefits for purposes of the public-charge
10 determination and should not be taken into account. Further, “[p]ast receipt of non-cash benefits
11 [such as Medicaid, CHIP, nutrition programs, housing benefits, child care services, energy
12 assistance, emergency disaster relief, foster care and adoption assistance, educational assistance,
13 job training programs, and in-kind, community-based programs, as well as similar state and local
14 programs] should be excluded from consideration for public charge purposes.” 64 Fed. Reg. at
15 28,693.

16 84. The INS noted that the “*primary dependence* model of public assistance was the
17 backdrop against which the ‘public charge’ concept in immigration law developed in the 1800s.”
18 Since then, legislators, judges, and executive officials have consistently understood the term to
19 refer to those who are *primarily* dependent on the government to avoid destitution. This is of
20 particular importance given the many times that Congress has sought to re-employ the term over
21 the years including in 1891, 1903, 1907, 1917, 1952, 1990, and 1996. At no time has Congress
22 widened the concept of “public charge” to include nutrition, health care (other than
23 institutionalization), housing, or other non-cash programs, even as public assistance programs
24 expanded and changed over the years.

25 85. Although the 1999 NPRM never became a final rule, these regulations and the
26 Field Guidance governed Defendants’ public charge policy until the new Regulation, at issue in
27 this litigation, was finalized.

28

1 86. Indeed, the Congressional Research Service explained that, until the new
2 Regulation, Defendants’ position had been consistent and clear: “USCIS, in making public charge
3 determination for aliens applying for adjustment to LPR status, only considers cash income-
4 maintenance benefits and government-funded institutionalization for long-term care. Cash
5 assistance for income maintenance . . . ‘includes Supplemental Security Income (SSI), cash
6 assistance from the Temporary Assistance for Needy Families (TANF) program and state or local
7 cash assistance programs for income maintenance, often called “general assistance” programs’
8 [A]n alien’s past or current receipt of these benefits or of government funded long-term care
9 does not automatically lead to a determination of inadmissibility, but instead only factors into the
10 prospective analysis under the totality of the circumstances test.” Congressional Research Service,
11 Immigration: Frequently Asked Questions about “Public Charge” at 7 (Sept. 19, 2018),
12 <https://fas.org/sgp/crs/homsec/R45313.pdf>.

13 87. In fact, Congress has expanded immigrants’ access to some of the benefits that had
14 been explicitly excluded from the public charge determination. In the 2002 Farm Bill, for
15 example, Congress restored eligibility for food stamps (now known as “SNAP”) to immigrant
16 children, immigrants receiving disability benefits, and adults who had lived in the United States in
17 a “qualified” immigrant status for five years. Farm Security and Rural Investment Act of 2002:
18 Pub L. No. 107-171 (May 13, 2002).

19 88. Although Congress and administrative agencies have interpreted “public charge”
20 consistently over time, altering the definition of “public charge” has been a clear priority from the
21 early days of the Trump administration. During the President’s first month in office, members of
22 the administration drafted an executive order to reinterpret the term. That executive order was
23 leaked to the public. The administration never issued the executive order.

24 89. Instead, in 2017, the Trump Administration endorsed the Reforming American
25 Immigration for Strong Employment (“RAISE”) Act. That bill that would have eliminated some
26 of the family-based admission preferences created by the 1965 Act and established a point-based
27 system for evaluating potential immigrants. The system would have awarded points based on
28 factors including age, formal education, English language proficiency, and highly-compensated

1 employment. The RAISE Act would have disadvantaged many groups of potential immigrants,
2 including applicants who had family ties to U.S. citizens but who had limited formal education or
3 employment history and middle-aged and older adults.

4 90. In 2017, Congress once again rejected changes to the existing immigration system
5 and declined to pass the RAISE Act.

6 91. Subsequently, on October 10, 2018, the Department of Homeland Security
7 published its Notice of Proposed Rulemaking for the Regulation.

8 **III. Defendants' New Public Charge Regulation**

9 92. On August 13, 2019, the Department of Homeland Security published the
10 Regulation.

11 93. The Regulation drastically redefines the term “public charge.” Under the
12 Regulation, “public charge” means a noncitizen “who receives one or more public benefits, as
13 defined in paragraph (b) of this section, for more than 12 months in the aggregate within any 36-
14 month period.” Inadmissibility of Public Charge Grounds, 84 Fed. Reg. 41,292, 41,501 (Aug. 14,
15 2019) (to be codified as 8 CFR § 212.21(a)). Paragraph (b) defines “public benefit” to mean *any*
16 receipt of federal, state, local, or tribal cash assistance for income maintenance and includes
17 receipt of health assistance through Medicaid (with some exceptions); SNAP benefits; and
18 housing assistance through Section 8 housing choice vouchers, project-based Section 8 rental
19 assistance, or public housing. Several of these non-cash benefits were not included in prior
20 agency definitions of “public charge,” and were, in fact, specifically excluded under agency
21 guidance. The Regulation counts all benefits equally, regardless of the value of the benefit
22 received.

23 94. The Regulation next defines the term “likely at any time to become a public
24 charge.” *Id.* (to be codified as 8 CFR § 212.21(c)); *see* 8 U.S.C. § 1182(a)(4)(A). Under the
25 Regulation, “[l]ikely at any time to become a public charge means more likely than not at any time
26 in the future to become a public charge, as defined [above], based on the totality of the alien’s
27 circumstances.”

28

1 95. Under the Regulation, the totality of the circumstances determination is prospective
2 and looks to “all factors that are relevant to whether the alien is more likely than not at any time in
3 the future [to receive one or more public benefit for 12 months over a 36-month period].” 84 Fed.
4 Reg. at 41,502 (to be codified as 8 CFR § 212.22(a)). As prescribed by Section 1182(a)(4)(B), the
5 determination must consider, at minimum, the individual’s “age; health, family status, education
6 and skills, and assets, resources, and financial status.” 84 Fed. Reg. at 41,502 (to be codified as 8
7 CFR § 212.22(b)).

8 96. As to age, the agency must consider whether the noncitizen is between 18 and the
9 minimum retirement age for Social Security. *Id.* (to be codified as 8 CFR § 212.22(b)(1)).

10 97. With regard to health, the agency must consider whether the individual’s health,
11 including any diagnosed medical conditions, makes the individual more or less likely to be a
12 public charge. *Id.* (to be codified as 8 CFR § 212.22(b)(2)).

13 98. The Regulation next requires that the agency consider whether the individual’s
14 household size makes the individual more or less likely to become a public charge. *Id.* (to be
15 codified as 8 CFR § 212.22(b)(3)).

16 99. As to assets, resources, and financial status, the Regulation requires the agency to
17 consider, *inter alia*, whether the individual’s household’s annual gross income is at least 125% of
18 the FPL (100% for active duty military personnel). If it is under that amount, the agency must
19 consider whether the individual has “significant assets.” *Id.* (to be codified as 8 CFR §
20 212.22(b)(4)(i)). The Regulation also requires the agency to examine whether the individual has
21 sufficient assets and resources to cover “any reasonably foreseeable medical costs;” has any
22 financial liabilities; and has applied for, been certified to receive, or received public benefits. *Id.*

23 100. As evidence, the agency must look to the noncitizen’s sources of income, other
24 assets and resources, credit score, whether the noncitizen has private health insurance, and whether
25 the noncitizen has applied for, been certified or approved for, disenrolled or requested to be
26 disenrolled from, or received public benefits. *Id.* at 41,503 (to be codified as 8 CFR §
27 212.22(b)(4)(ii)).

28

1 101. Finally, as to education and skills, the agency is to look to whether the noncitizen
2 “has adequate education and skills to either obtain or maintain lawful employment with an income
3 sufficient to avoid being more likely than not to become a public charge,” including evidence of
4 past work history, education level, and English language proficiency. *Id.* (to be codified as 8 CFR
5 § 212.22(b)(5)).

6 102. The Regulation selects a subset of factors to be “heavily weighted” in the
7 determination. *Id.* at 41,504 (to be codified as 8 CFR § 212.22(c)(1)). The Regulation adopts the
8 following “heavily weighted negative factors,” under 8 CFR § 212.22(c)(1):

- 9 (A) The noncitizen is not a full-time student and is authorized to work, but is
10 unable to demonstrate current employment, recent employment history, or a
11 reasonable prospect of future employment;
- 12 (B) The noncitizen has received, or been certified or approved to receive, public
13 benefits for more than 12 months within any 36-month period;
- 14 (C) The noncitizen has been diagnosed with a medical condition that will
15 interfere with the alien’s ability to support him or herself;
- 16 (D) The noncitizen is uninsured and has neither the prospect of receiving private
17 insurance nor the financial resources to pay for reasonably foreseeable
18 expenses due to a medical condition; and
- 19 (E) The noncitizen has previously been found inadmissible or deportable on
20 public charge grounds.

21 103. The Regulation includes as “heavily weighted positive factors”:

- 22 (A) The noncitizen’s “household has financial assets, resources, and support,”
23 excluding illegal activities or public-benefit income, of at least 250% of
24 FPL. *Id.* (to be codified as 8 CFR § 212.22(c)(2)(i)). That income threshold
25 equates to over \$64,000 a year for a family of four, more than the median
26 household income for households of any size in the United States.
- 27 (B) The noncitizen is authorized to work and has a legal annual income of at
28 least 250 percent of the FPL for her household size; and

1 (C) The noncitizen has private health insurance, excluding health insurance
2 subsidized by premium tax credits established by the Patient Protection and
3 Affordable Care Act.

4 104. The Regulation adds new, nonstatutory factors for USCIS to consider in evaluating
5 the affidavit of support. USCIS must now also evaluate the sponsor's annual income, the
6 sponsor's relationship to the applicant, the likelihood that the sponsor will actually provide the
7 required financial support, "and any other related considerations." *Id.* (to be codified as 8 CFR §
8 212.22(b)(7)).

9 105. The Regulation also requires applicants to compile extensive documentation of
10 their finances and to fill out a newly developed 15-page form that the agency estimates will
11 require 4.5 hours to complete.

12 106. The Regulation also applies a public charge test to an entirely new group of people:
13 nonimmigrant visa holders seeking to extend or change their visas. USCIS must evaluate whether
14 the person has received the designated benefits for more than 12 months in the aggregate within a
15 36-month period since obtaining their status.

16 107. During the notice and comment period, hundreds of thousands of comments were
17 submitted, "the vast majority" opposing the proposed rule, as acknowledged by the agency. 84
18 Fed. Reg. 41304. Commenters explained that the factors were not rationally related to predicting
19 the likelihood of a noncitizen becoming a public charge, were arbitrary and vague, and would
20 cause substantial negative effects.

21 108. For example, commenters criticized the proposed Regulation's threshold of 15% of
22 the Federal Poverty Guidelines as the value of monetizable benefits a noncitizen could receive
23 over a 12-month period without being a public charge. According to several sets of commenters,
24 the threshold was far too low to show dependency on benefits and did not account for the taxes
25 that immigrants pay and the fact that they pay more into the healthcare system than they take out.
26 Rather than engage with these criticisms, the Regulation instead moved the threshold from 15% to
27 0%, such that receipt of benefits of any value over the applicable time period qualifies a noncitizen
28 as a public charge. *See* 84 Fed. Reg. 41,357–358.

1 109. In addition, Defendants failed to adequately respond to comments related to the
2 potential retroactive application of the Regulation. Although Defendants repeatedly assert that the
3 Regulation will have no retroactive effect and implicates no reliance interests, Defendants failed to
4 adequately respond to concerns that the new Form I-944 asks applicants to list all benefits that the
5 applicant ever used and to list the dates of the use of those benefits even if they were used before
6 the effective date of the Regulation. If DHS does not intend to take past use of benefits into
7 account, there is no reason to ask for this information, yet DHS also claims that Form I-944
8 requests information “about all the relevant factors” for the public charge determination.
9 Inadmissibility of Public Charge Grounds, 84 Fed. Reg. at 41,483. Questions on the Form I-944
10 about past use of public benefits, which DHS simultaneously claims are relevant and not relevant
11 to the public charge determination, creates internal inconsistency and ambiguity about the
12 retroactive effect of the Regulation.

13 **A. Impact of the New Regulation on Immigrants and Non-White Communities**

14 110. Defendants’ Regulation will label as a “public charge” a very large percentage of
15 immigrants, including low-and moderate-income working families. In fiscal year 2017, 83% of all
16 immigrants who received green cards were subject to the public-charge test.¹ The remainder were
17 exempt under the statute.

18 111. While only roughly 2–4% of the noncitizen population would have qualified as a
19 public charge under the prior definition, the Regulation will result in the exclusion of vast
20 numbers of individuals who, like millions upon millions of working Americans, will receive one
21 or more of the supplemental benefits listed in the Regulation over the course of a lifetime. Under
22 a similar definition of public charge, which applies to individuals seeking to enter the United
23 States from abroad, exclusions on the basis of public charge increased from 1,076 in 2016 to
24 13,450 in 2018, a 1,250% increase. The increases have disproportionately impacted immigrants
25 from predominantly non-white countries. For instance, denials on public charge grounds of
26 _____

27 ¹ See Randy Capps, et al., *Gauging the Impact of DHS’s Proposed Public –Charge Rule on U.S.*
28 *Immigration* (Nov. 2018), <https://www.migrationpolicy.org/research/impact-dhs-public-charge-rule-immigration>.

1 immigrants from Mexico increased from 7 to 5,343 in just a few years. Similarly, the State
2 Department denied 1,254 immigrant visas for Indian nationals in 2018, after denying none at all in
3 2016. And the State Department denied 1,109 immigrant visas to Haitian nationals in 2018, after
4 denying none in 2016. Meanwhile, only three Canadian nationals had immigrant visas denied in
5 2018.²

6 112. In fact, the Regulation’s definition is so expansive that, if applied to U.S. citizens,
7 roughly half of the population would be characterized as “public charges,” simply because they
8 will receive one of the newly listed supplemental benefits at some point in their lifetimes.

9 113. The Regulation will also affect an estimated 2.3 million nonimmigrants with
10 temporary visas, including students and agricultural workers, who attempt to extend their visas or
11 change their non-immigrant status over a five-year period. The Regulation introduces an
12 unprecedented public charge inquiry and potential barrier for these groups. *See* DHS, RIN: 1615-
13 AA22, Inadmissibility on Public Charge Grounds 28–32 (Aug. 2019).

14 114. The increase in denials for green cards will not be based solely on current or recent
15 benefit use but will also be based on immigration officers’ determinations that individuals are
16 likely to use benefits in the future considering the factors listed in the Regulation’s totality-of-the-
17 circumstances test.

18 115. Overall, the Regulation’s modification of the totality-of-the-circumstances test will
19 disproportionately exclude women, children, and older adults and will serve to facilitate or
20 prolong the separation of immigrant families, striking at the heart of the pro-family immigration
21 policy conceived in 1965. Under the Regulation, many citizens, both U.S. and foreign born, will
22 encounter new barriers to uniting with their families.

23 116. The majority of green card applications, especially in communities of color, are
24 family-based petitions that allow U.S. citizens and LPRs to reunite with their immediate family
25
26

27 ² *See* Ted Hesson, *Visa denials to poor Mexicans skyrocket under Trump’s State Department*
28 (Aug. 6, 2019), <https://www.politico.com/story/2019/08/06/visa-denials-poor-mexicans-trump-1637094>.

1 members in the United States. The Regulation’s negatively weighted factors disproportionately
2 and detrimentally affect communities of color.

3 117. According to a recent study of recently admitted lawful permanent residents that
4 was submitted in comments, 60% of those from Mexico and Central America had at least two
5 negative factors, compared with only 27% of those from Europe, Canada, and Oceania. Forty-
6 eight percent of recent LPRs from the Caribbean, 41% from Asia, 40% from South America, and
7 34% from Africa had at least two negative factors and thus would be excluded at a
8 disproportionately higher rate than those from Europe, Canada, and Oceania.

9 118. Defendants do not dispute the disparate impact. In fact, acting director of USCIS
10 Kenneth Cuccinelli has tacitly admitted its presence, stating during a press briefing on the
11 Regulation that “if we had been having this conversation 100 years ago, [the Regulation] would
12 have applied more to Italians” than to other groups.³ And a day later in an interview about the
13 Regulation, Mr. Cuccinelli argued that “The New Colossus,” the 136-year-old sonnet inscribed at
14 the base of the Statue of Liberty that welcomes “poor” immigrants, referred to “people coming
15 from Europe.”⁴

16 **B. The Discriminatory Impact is the Intended Purpose of the New Regulation.**

17 119. The Trump Administration has made numerous efforts to suppress immigration
18 from non-white countries, including advocating to end family-based immigration. Curtailing
19 immigration by people of color has been a thread uniting each of the Trump Administration’s
20 numerous attempts to change existing immigration law and regulations.

21 120. The Administration has promulgated numerous immigration-related executive
22 actions since January 2017, most either exclusively or disproportionately harming immigrants
23 from non-white-majority nations, including:

24
25
26 _____
27 ³ Chris Rodrigo, *White House: New immigration policy meant to promote ‘self-sufficiency and
personal responsibility’* (Aug. 12 2019), [https://thehill.com/homenews/administration/457093-
white-house-defends-new-immigration-policy](https://thehill.com/homenews/administration/457093-white-house-defends-new-immigration-policy).

28 ⁴ Jacey Fortin, *‘Huddled Masses’ in Statue of Liberty Poem Are European, Trump Official Says*
(Aug. 14, 2019), <https://www.nytimes.com/2019/08/14/us/cuccinelli-statue-liberty-poem.html>.

- 1 (A) Separating thousands of young children from their parents as a proclaimed
- 2 deterrent to immigration at the southern border;
- 3 (B) Refusing refuge to immigrants seeking asylum, and criminally prosecuting
- 4 asylum seekers for crossing the border between checkpoints;
- 5 (C) Initially suspending the refugee admission program and then slashing the
- 6 number of refugees who may be admitted from 110,000 to 30,000 in 2019,
- 7 and proposing cutting the number to 0 in 2020;
- 8 (D) Ending the Deferred Action for Childhood Arrivals program;
- 9 (E) Terminating Temporary Protected Status for nationals of El Salvador,
- 10 Honduras, Haiti, Nepal, Sudan, and Nicaragua;
- 11 (F) Winding down Deferred Enforced Departure for Liberian nationals; and
- 12 (G) Excluding nationals from several majority-Muslim countries.

13 121. These attempted changes have occurred alongside a string of racist statements by
14 the President predating his seeking office and continuing through to the final days before the
15 Regulation's promulgation, including:

- 16 (A) Rising to political prominence based upon the racist false claim that
- 17 President Obama was not born in the United States and/or had allegiance to
- 18 Kenya;⁵
- 19 (B) Running a campaign replete with racist aspersions about people of Mexican
- 20 descent and of the Muslim faith;⁶ and
- 21 (C) Wrongly slurring countries of the African diaspora by declaring while in
- 22 office that Haitians "all have AIDS"; that once Nigerians had seen the

23 _____
24 ⁵ Alexander Burns, *Trump: Obama born in Kenya* (May 25, 2012),
25 <https://www.politico.com/blogs/burns-haberman/2012/05/trump-obama-born-in-kenya-124569>.

26 ⁶ Matt Ford, *Trump Attacks a 'Mexican' U.S. Federal Judge* (May 28, 2016),
27 <https://www.theatlantic.com/politics/archive/2016/05/trump-judge-gonzalo-curriel/484790/>;
28 Maggie Haberman and Richard Opiel Jr., *Donald Trump Criticizes Muslim Family of Slain U.S. Soldier, Drawing Ire* (June 30, 2016), <https://www.nytimes.com/2016/07/31/us/politics/donald-trump-khizr-khan-wife-ghazala.html>.

1 United States, they would never go “back to their huts;” and that America
2 should not be a haven for “people from shithole countries.”⁷

3 122. Courts considering challenges to the Administration’s immigration policies have
4 routinely considered the President’s statements as evidence of discriminatory animus toward
5 immigrants of color.⁸

6 123. More recently, while the Regulation was in final review at the Office of
7 Management and Budget, President Trump made statements linking his view of immigration and
8 racial exclusion.

9 124. Specifically, on July 14, 2019, the President claimed that four women of color
10 serving in the United States Congress “originally came from countries whose governments are a
11

12 _____
13 ⁷ Michael Shear and Julie Hirschfeld Davis, *Stoking Fears, Trump Defied Bureaucracy to Advance*
14 *Immigration Agenda* (Dec. 23, 2017), [https://www.nytimes.com/2017/12/23/us/politics/trump-immigration.html?smid=tw-share&mtref=thehill.com&gwh=786472CC33DA9619FF8E4ABABEBAAA04&gwt=pay;](https://www.nytimes.com/2017/12/23/us/politics/trump-immigration.html?smid=tw-share&mtref=thehill.com&gwh=786472CC33DA9619FF8E4ABABEBAAA04&gwt=pay;https://www.nbcnews.com/politics/white-house/trump-referred-haiti-african-countries-shithole-nations-n836946)
15 <https://www.nbcnews.com/politics/white-house/trump-referred-haiti-african-countries-shithole-nations-n836946>.

16 ⁸ See, e.g., *CASA de Md. v. Trump*, 355 F. Supp. 3d 307, 325–26 (D. Md. 2018) (“Defendants do
17 not suggest that President Trump’s alleged statements are not evidence of discriminatory motive
18 on his part, nor could they. One could hardly find more direct evidence of discriminatory intent
19 towards Latino immigrants.”); see also *Arab Am. Civil Rights League v. Trump*, No. 17-10310,
20 2019 WL 3003455, at *10 (E.D. Mich. July 10, 2019) (denying post-*Trump v. Hawaii* motion to
21 dismiss challenge to Muslim ban based, in part, on President Trump’s anti-Muslim rhetoric); *Int’l*
22 *Refugee Assistance Project v. Trump*, 373 F. Supp. 3d 650, 678 (D. Md. 2019) (same); *NAACP v.*
23 *DHS*, 364 F. Supp. 3d 568, 578 (D. Md. 2019) (denying motion to dismiss Equal Protection
24 Clause challenge to ending Temporary Protected Status (“TPS”) for Haitian nationals); *Saget v.*
25 *Trump*, 375 F. Supp. 3d 280, 371–74 (E.D.N.Y. 2019) (same); *La Union del Pueblo Entero v.*
26 *Ross*, 353 F. Supp. 3d 381, 295 (D. Md. 2018) (denying motion to dismiss, *inter alia*, Equal
27 Protection claims regarding immigrants of color in challenge to adding citizenship question to
28 2020 Census); *Ramos v. Nielsen*, 336 F. Supp. 3d 1075, 1108 (N.D. Cal. 2018), *appeal filed*, No.
18-16981 (9th Cir. 2018) (granting preliminary injunction in challenge to decision to end TPS for
El Salvador, Haiti, Honduras, and Nicaragua); *Centro Presente v. DHS*, 332 F. Supp. 3d 393, 415
(D. Mass. 2018) (denying motion to dismiss as to Equal Protection claim in challenge to ending
TPS for El Salvador, Haiti, and Honduras); *State of New York v. U.S. Dep’t of Commerce*, 315 F.
Supp. 3d 766, 810–11 (S.D.N.Y. 2018) (denying motion to dismiss in challenge to adding Census
citizenship question); *Regents of the Univ. of Cal. v. DHS*, 298 F. Supp. 3d 1304, 1314–15 (N.D.
Cal. 2018), *aff’d* 908 F.3d 476, 519–20 (9th Cir. 2019) (denying motion to dismiss as pertained to
Equal Protection challenge to ending Deferred Action for Childhood Arrivals); *Batalla Vidal v.*
Nielsen, 291 F. Supp. 3d 260, 277 (E.D.N.Y. 2018) (same); *Hawaii v. Trump*, 241 F. Supp. 3d
1119, 1140 (D. Hawaii 2017) (granting temporary restraining order, in part on Equal Protection
grounds, for second iteration of travel ban targeting Muslim-majority nations).

1 complete and total catastrophe, the worst, most corrupt and inept anywhere in the world (if they
2 even have a functioning government at all)” and asking “Why don’t they go back and help fix the
3 totally broken and crime infested places from which they came”

4 125. The President and the White House have been actively involved in pressing for the
5 Regulation. In March 2019 Senior Adviser to the President Stephen Miller told staff that “You
6 ought to be working on this regulation all day every day,” and that “[i]t should be the first thought
7 you have when you wake up. And it should be the last thought you have before you go to bed.
8 And sometimes you shouldn’t go to bed.”⁹ In mid-2019, President Trump removed the leadership
9 of several immigration-related agencies based, in part, on a desire to speed up the Regulation’s
10 release.

11 126. L. Francis Cissna was directed to step down as director of USCIS, in part because
12 Stephen Miller had been “agitating for Mr. Cissna’s removal for months” due to Mr. Miller’s
13 stance that Mr. Cissna was “moving too slowly in implementing” the Regulation.¹⁰ Prior to Mr.
14 Cissna’s removal from office, Mr. Miller told Mr. Cissna in a June 8, 2018 email exchange that
15 “the timing on public charge is unacceptable . . . I don’t care what you need to do to finish it on
16 time.”¹¹

17 127. After Mr. Cissna resigned at the President’s request effective June 1, 2019,
18 President Trump nominated Kenneth Cuccinelli to be the new Secretary of Homeland Security.
19 Mr. Cuccinelli has a long history of advocating for anti-immigrant policies. While he was a
20 Virginia State Senator, he proposed bills to end birthright citizenship and to allow firing of
21
22

23 _____
24 ⁹ Eileen Sullivan & Michael D. Shear, *Trump Sees an Obstacle to Getting His Way on*
25 *Immigration: His Own Officials* (Apr. 14, 2019), [https://](https://www.nytimes.com/2019/04/14/us/politics/trump-immigration-stephen-miller.html)
www.nytimes.com/2019/04/14/us/politics/trump-immigration-stephen-miller.html.

26 ¹⁰ Nick Miroff, et al., *Trump to place Ken Cuccinelli at the head of the country’s legal*
27 *immigration system* (May 24, 2019), [https://www.washingtonpost.com/immigration/trump-to-](https://www.washingtonpost.com/immigration/trump-to-place-ken-cuccinelli-at-the-head-of-the-countrys-legal-immigration-system/2019/05/24/143fdec8-7e64-11e9-a5b3-34f3edf1351e_story.html?utm_term=.5ddcfc7451bc)
[place-ken-cuccinelli-at-the-head-of-the-countrys-legal-immigration-system/2019/05/24/143fdec8-](https://www.washingtonpost.com/immigration/trump-to-place-ken-cuccinelli-at-the-head-of-the-countrys-legal-immigration-system/2019/05/24/143fdec8-7e64-11e9-a5b3-34f3edf1351e_story.html?utm_term=.5ddcfc7451bc)
[7e64-11e9-a5b3-34f3edf1351e_story.html?utm_term=.5ddcfc7451bc](https://www.washingtonpost.com/immigration/trump-to-place-ken-cuccinelli-at-the-head-of-the-countrys-legal-immigration-system/2019/05/24/143fdec8-7e64-11e9-a5b3-34f3edf1351e_story.html?utm_term=.5ddcfc7451bc).

28 ¹¹ *Id.*, <https://www.politico.com/f/?id=0000016c-5349-de87-affd-7bc9eff20001>.

1 employees and denying unemployment benefits to anyone speaking a language other than English
2 at work.

3 **C. Defendants' Unlawful Appointment of Acting Head of USCIS**

4 128. Under the Federal Vacancies Reform Act ("FVRA"), vacancies in an office
5 requiring Presidential nomination and Senate confirmation can only be filled on an acting basis by
6 certain individuals. Specifically, such a vacancy can be filled by "the first assistant to the office of
7 such officer," by a person who has already been confirmed by the Senate for a different office, or
8 by a person who, during the year prior to the vacancy, served as an officer or employee in the
9 same agency for at least 90 days. 5 U.S.C. § 3345(a).

10 129. On the date of Mr. Cissna's resignation, Mr. Cuccinelli did not meet any of these
11 criteria. The position of first assistant was then, and is now, held by Mark Koumans. On or about
12 June 10, 2019, after Mr. Cissna resigned effective June 1, 2019, USCIS created the entirely new
13 office of Principal Deputy Director, vaulting that office above the Deputy Director and
14 purportedly creating a new First Assistant. DHS Acting Secretary McAleenan named Mr.
15 Cuccinelli Principal Deputy Director and Acting Director of USCIS.

16 130. While in the position of Acting Director of USCIS, Mr. Cuccinelli issued the
17 Regulation challenged in this litigation. He described the Regulation as the President "delivering
18 on his promise to the American people."¹²

19 **D. Additional Harms Resulting from the Regulation**

20 131. While the Regulation targets immigrants of color, it will have significantly broader
21 consequences for the country's public health and the economy as a whole.

22 132. Defendants admit that the proposed Regulation will create the following harms
23 because individuals will be deterred from using important supplemental benefits:

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¹² Ken Cuccinelli (@USCISCuccinelli), Twitter (Jul. 15, 2019, 9:21 AM)
<https://twitter.com/usciscuccinelli/status/1150802490843176960?lang=en>

- 1 (A) Worse health outcomes, including increased prevalence of obesity and
2 malnutrition, especially for pregnant or breastfeeding women, infants, or
3 children, and reduced prescription adherence;
- 4 (B) Increased use of emergency rooms and emergent care as a method of
5 primary health care due to delayed treatment;
- 6 (C) Increased prevalence of communicable diseases, including among members
7 of the U.S. citizen population who are not vaccinated;
- 8 (D) Increases in uncompensated care in which a treatment or service is not paid
9 for by an insurer or patient;
- 10 (E) Increased rates of poverty and housing instability; and
- 11 (F) Reduced productivity and educational attainment. Inadmissibility of Public
12 Charge Grounds, 83 Fed. Reg. 51,114, 51,270 (Oct. 10, 2018) (NPRM);
13 Inadmissibility of Public Charge Grounds, 84 Fed. Reg. at 41,364–66
14 (responding to comments regarding detriments of disenrollment by noting,
15 *inter alia*, “rigorous application of the public charge ground of
16 inadmissibility will inevitably have negative consequences for some
17 individuals.”).

18 133. The proposed Regulation recognized that “reductions in federal and state transfers
19 under federal benefit programs may have downstream and upstream impacts on state and local
20 economies, large and small businesses, and individuals.” Inadmissibility of Public Charge
21 Grounds (NPRM), 83 Fed. Reg. at 51,118. The final Regulation acknowledged that reduced
22 program participation could result in higher poverty levels, reduced access to health care, and an
23 increase in severe and chronic health issues. *See generally* Inadmissibility of Public Charge
24 Grounds, 84 Fed. Reg. at 41,310–12 (detailing comments on effects of Regulation). In other
25 words, families will increasingly be poorer and less healthy.

26 134. Rather than contest commenters’ assertions, Defendants simply stated that it would
27 be “difficult to predict how this rule will affect aliens subject to the public charge ground of
28 admissibility.” *Id.*, 84 Fed. Reg. at 41,313. DHS did not directly refute the numerous comments

1 estimating such impacts, did not address the chilling effect which necessarily does not require
2 estimating eligibility numbers, and conceded that it is not sure of the breadth of impact of the
3 Regulation.

4 135. The Regulation will create confusion and fear in immigrant communities and will
5 have a dramatic effect, potentially causing an estimated tens of millions of people to avoid seeking
6 services or to disenroll from core public-health and general-welfare programs. This includes both
7 individuals subject to the public charge inquiry and individuals who are not subject to the
8 Regulation but who will nonetheless be dissuaded from applying for benefits for themselves and
9 their families. These harms defeat Defendants' stated purpose of the Regulation because they
10 make it harder to achieve self-sufficiency for immigrants and their families, including their U.S.
11 citizen children. As immigration policy experts note, "public assistance can make someone less
12 likely to rely on government in the future" because "temporary use of public benefits can stabilize
13 immigrants and families, putting them on a track to long-term financial stability and health."¹³
14 While Defendants assert that altering the longstanding definition of "public charge" will save
15 costs, the long-term effect will be the exact opposite.

16 136. Deterring people from enrolling or remaining in vital programs that support their
17 health, food security, and ability to maintain housing will cause severe harm to the health and
18 welfare of communities across the country.

19 137. Reducing access to preventive care and vital health services will lead to a range of
20 negative health outcomes, including increased costs and rates of preventable disease, late
21 diagnoses, unmanaged chronic conditions, premature births, and early deaths. These effects will
22 reach far beyond the individuals who are subject to public charge determinations and will harm
23 significant numbers of U.S. residents regardless of their national origin or immigration status.

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27 ¹³ Matthew La Corte, *The New 'Public Charge' Rule Will Harm the Rule of Law, Economic*
28 *Growth, and Public Health* (Aug. 28, 2018), <https://niskanencenter.org/blog/the-new-public-charge-rule-will-harm-the-rule-of-law-economic-growth-and-public-health/>.

1 138. Deterring families from remaining in affordable housing will increase
2 homelessness and housing instability, leading to negative health outcomes and higher health care
3 costs. Lack of access to affordable housing will also lead to job instability and loss.

4 139. Reduction in use of SNAP benefits will increase food insecurity, which will lead to
5 negative health outcomes and correspondingly higher health-care costs.

6 140. U.S. citizen children living in mixed-status families are at particular risk. Evidence
7 shows that when parents lose access to health coverage, children are more likely to be uninsured.
8 The Regulation, therefore, is likely to increase the rates of uninsured children throughout the
9 country.

10 141. Reducing access to housing benefits will also result in severe and irreparable harm
11 to children, including impairment of cognitive development. SNAP benefits are particularly
12 important to mitigate the effects of poverty on children, and reducing access to these benefits will
13 have a negative impact on school attendance and performance, emotional and physical
14 development, and long-term health and achievement.

15 142. In addition to the direct impact on immigrants, their families, and their
16 communities, the new Regulation will have severely negative impacts on several sectors of the
17 economy.

18 143. For example, SNAP benefits have a high multiplier effect as they circulate through
19 the economy. Every dollar of SNAP translates to \$1.79 in local economic activity.

20 144. Businesses that accept SNAP will be disproportionately harmed and may need to
21 close or cut back on carrying healthy, perishable foods that can be purchased with SNAP, which
22 will reduce the healthy food options available in these communities.

23 145. The direct health impacts of the new rule will create additional negative economic
24 consequences because people who are uninsured miss more work, tend to be less productive when
25 they are working, and are more likely to retire at younger ages because of health issues and
26 disability. Among working-age adults, there is a significant correlation between food insecurity
27 and chronic disease, including conditions that can limit an individual's ability to work.

28

1 146. Moreover, Medicaid supports hospitals, health centers, and other community
2 providers that are critical sources of care for low-income people and the broader community. By
3 reducing Medicaid enrollment, these providers will lose a primary source of funding, significantly
4 increasing the risk that hospitals and other providers will close or offer fewer services. When
5 health centers and other community providers close or reduce services, individuals have to rely on
6 more costly emergency care to address acute medical conditions.

7 147. The impacts of hospital closures and reductions are far-reaching. They push
8 providers to leave in their wake, and will affect access to care for all residents of their service
9 areas, particularly for rural communities, which generally have difficulty attracting health care
10 providers.

11 148. Hospital closures and cutbacks also harm local economies, as hospitals are major
12 employers and purchasers of goods and services. Moreover, communities without hospitals find it
13 more difficult to attract new industries, companies, and job seekers and thus grow their economies.

14 149. The Regulation will also have destabilizing effects on several other critical sectors
15 of the economy. For example, the public charge rule will disadvantage farmworkers who are
16 either adjusting to lawful permanent residence or who seek to apply for or extend their non-
17 immigrant H-2A visas, as these low-wage workers will find it difficult to satisfy the new public
18 charge test. Farmworker families will disproportionately have a number of factors negatively
19 weighed against them, including their income, lack of credit history and health insurance,
20 household-size, lack of education and skills, and lack of English proficiency.

21 150. The public charge rule will also destabilize the health care workforce—a sector
22 with a sizable immigrant population that relies on access to public programs. For example,
23 approximately 24% of direct care workers—comprising home health aides, personal care aides,
24 and nursing assistants—are foreign-born, and approximately 40% of foreign-born direct care
25 workers receive public benefits.¹⁴ The Regulation will force some workers to choose between
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27 ¹⁴ Robert Espinoza, *Immigrants and the Direct Care Force*, Paraprofessional Healthcare Institute
28 at 4–5 (June 2017), https://phinational.org/wp-content/uploads/2017/06/immigrants_and_the_direct_care_workforce_-_phi_-_june_2017.pdf.

1 securing benefits and potentially undermining their opportunity to extend or change their
2 nonimmigrant visas or adjust their status. Others who would not be subject to the Regulation will
3 nonetheless refrain from seeking benefits to which they are entitled for fear of potential
4 consequences. If these individuals forgo access to benefits, and in particular health care benefits,
5 they will miss more work days and burden the vulnerable population whom they serve—a
6 population that consists overwhelmingly of older adults and U.S. citizens.

7 151. The administrative and adjudicative burdens imposed by the new Regulation and
8 the accompanying paperwork will cause significant delays in access to immigration benefits and
9 work authorization for all applicants. These delays will prevent affected individuals from being
10 able to support themselves and their families.

11 **FIRST CLAIM FOR RELIEF**

12 **ADMINISTRATIVE PROCEDURE ACT**

13 **THE CHALLENGED REGULATION IS CONTRARY TO THE STATUTORY SCHEME**

14 **ESTABLISHED BY CONGRESS**

15 **5 U.S.C. § 706**

16 152. Plaintiffs repeat and incorporate by reference each allegation contained in the
17 preceding paragraphs as if fully set forth herein.

18 153. The Regulation is a final agency action and subject to judicial review.

19 154. The APA prohibits agency action that is “not in accordance with law” or is “in
20 excess of statutory jurisdiction, authority, or limitations, or short of statutory right.”

21 155. The Regulation’s definition of “public charge” is contrary to the plain and well-
22 established meaning of that phrase, and to how it has been interpreted and applied since 1882.
23 With knowledge of those interpretations and applications, Congress has repeatedly declined to
24 change the longstanding definition of “public charge.”

25 156. The new public charge definition is an unreasonable interpretation of and contrary
26 to the meaning of “public charge” in Section 1182. The Regulation uses the public charge ground
27 of inadmissibility to penalize the receipt of or likely use of certain public benefits even though
28 Congress has repeatedly rejected efforts to do precisely that.

1 166. The Agency failed to adequately consider the racially disparate impact of the
2 policy.

3 167. In addition, although the Regulation provides several purported rationales for the
4 changes it makes to the public charge inquiry, those purported rationales are arbitrary, irrational,
5 not supported by the evidence in the record, and a pretext that conceal the true motivation, which
6 is to dismantle the family-based immigration system and make it more difficult for non-white
7 immigrants to remain in the United States. Even on their own terms, the explanations for the
8 Regulation are arbitrary and capricious.

9 168. Defendants have also failed to adequately address the public comments that were
10 submitted in response to the proposed Regulation.

11 169. USCIS and DHS were improperly influenced in their rulemaking process by the
12 political motivations of individuals within the Trump Administration.

13 170. USCIS issued the Regulation under the signature of and with the approval of Mr.
14 Cuccinelli, who is not lawfully in charge of the promulgating agency. As a result, the Regulation
15 is contrary to law and without observance of procedure required by law under 5 U.S.C. § 706.

16 **THIRD CLAIM FOR RELIEF**

17 **FIFTH AMENDMENT (EQUAL PROTECTION)**

18 **THE REGULATION DISCRIMINATES AGAINST NON-WHITE IMMIGRANTS**

19 171. Plaintiffs repeat and incorporate by reference each allegation contained in the
20 preceding paragraphs as if fully set forth herein.

21 172. The Fifth Amendment contains an implicit guarantee of equal protection that
22 invalidates any official action that reflects a racially discriminatory intent or purpose.
23 Classifications based on race, ethnicity, or national origin are subject to strict scrutiny, and even
24 facially neutral policies and practices will be held unconstitutional when they reflect a pattern
25 unexplainable on grounds other than racial discrimination. *Bolling v. Sharpe*, 347 U.S. 497, 499
26 (1954); *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265–66 (1977).

27 173. Defendants acted with improper discriminatory intent and bias against non-white
28 immigrants in promulgating the Regulation.

1 174. Multiple tweets, statements, speeches and other actions by President Trump and his
2 administration demonstrate racial animus toward non-white immigrants that underlie the
3 Regulation.

4 175. The Regulation is unconstitutional because its promulgation was motivated, at least
5 in part, because of, and not merely in spite of, its adverse effects on non-white immigrants. *Pers.*
6 *Adm’r of Mass. v. Feeney*, 442 U.S. 256, 279 (1979).

7 176. Defendants promulgated the Regulation with full knowledge that it would have a
8 disproportionate impact on non-white immigrants’ ability to obtain green cards and extend non-
9 immigrant visas.

10 177. The history and sequence of events leading up to the promulgation of the
11 Regulation were irregular, indicate a predetermined outcome not based on an objective
12 assessment, and reveal that the Trump Administration’s animus for non-white immigrants drove
13 the decision to adopt the Regulation.

14 178. Plaintiffs will suffer irreparable injury resulting from the implementation of the
15 unconstitutional Regulation.

16 **FOURTH CLAIM FOR RELIEF**

17 **DECLARATORY JUDGMENT ACT**

18 **THE REGULATION IS INVALID BECAUSE IT WAS ISSUED BY AN UNLAWFULLY**
19 **APPOINTED AGENCY DIRECTOR**

20 179. Plaintiffs will suffer irreparable injury resulting from the implementation of the
21 unconstitutional Regulation.

22 180. Plaintiffs repeat and incorporate by reference each allegation contained in the
23 preceding paragraphs as if fully set forth herein.

24 181. The Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.* provides that “in a case of
25 actual controversy within its jurisdiction . . . , any court of the United States, upon the filing of an
26 appropriate pleading, may declare the rights and other legal relations of any interested party
27 seeking such declaration, whether or not such further relief is or could be sought.” *Id.* § 2201(a).
28 The Court has equitable jurisdiction to enjoin “violations of federal law by federal officials,”

1 *Armstrong v. Exceptional Child Ctr., Inc.*, 135 S. Ct. 1378, 1384 (2015); *Free Enter. Fund v. Pub.*
2 *Co. Accounting Oversight Bd.*, 561 U.S. 477, 491 n.2 (2010) (there is an “implied private right of
3 action directly under the Constitution to challenge governmental action under the Appointments
4 Clause”).

5 182. Defendant Cuccinelli was appointed in violation of the Appointments Clause and
6 the Federal Vacancies Reform Act. Plaintiffs are entitled to a declaration that the Regulation is
7 invalid as signed by Defendant Cuccinelli and that Defendant Cuccinelli’s designation as acting
8 head of USCIS violated the Constitution and federal law.

9 183. The Regulation, which could not have been promulgated without the approval of
10 Cuccinelli as head of the issuing agency, harms Plaintiffs for the reasons stated above.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiffs pray that this Court:

13 1. Declare the Regulation arbitrary, capricious, an abuse of discretion, otherwise not
14 in accordance with law, and without observance of procedure as required by law, in violation of
15 the Administrative Procedure Act and the United States Constitution;

16 2. Declare the Regulation unconstitutional as violating the equal protection guarantee
17 of the Fifth Amendment of the U.S. Constitution;

18 3. Declare that the Regulation has no force or effect under the Federal Vacancies
19 Reform Act.

20 4. Vacate the Regulation;

21 5. Enjoin the Department and all its officers, employees and agents from
22 implementing, applying, or enforcing the Regulation;

23 6. Declare the appointment of Kenneth Cuccinelli as Acting Director of USCIS
24 invalid under the Appointments Clause and the Federal Vacancies Reform Act.

25 7. Award Plaintiffs their costs and reasonable attorney’s fees as appropriate; and

26 8. Grant such further and other relief as this Court deems just and proper.
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Respectfully submitted,

Dated: August 16, 2019 By:

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CALIFORNIA PRIMARY CARE ASSOCIATION;
MATERNAL AND CHILD HEALTH ACCESS;
FARMWORKER JUSTICE; COUNCIL ON
AMERICAN ISLAMIC RELATIONS-CALIFORNIA;
AFRICAN COMMUNITIES TOGETHER; LEGAL
AID SOCIETY OF SAN MATEO COUNTY;
CENTRAL AMERICAN RESOURCE CENTER, and
KOREAN RESOURCE CENTER