IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

COOK COUNTY, ILLINOIS, an Illinois governmental entity; and **ILLINOIS COALITION FOR IMMIGRANT AND REFUGEE RIGHTS, INC.**,

Plaintiffs,

vs.

KEVIN K. McALEENAN, in his official capacity as Acting Secretary of U.S. Department of Homeland Security; **U.S. DEPARTMENT OF HOMELAND SECURITY,** a federal agency; **KENNETH T. CUCCINELLI II,** in his official capacity as Acting Director of U.S. Citizenship and Immigration Services; and **U.S. CITIZENSHIP AND IMMIGRATION SERVICES,** a federal agency,

Defendants.

Civ. Action No. 19-cv-06334

PLAINTIFFS' REPLY BRIEF IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION OR STAY PURSUANT TO 5 U.S.C. § 705

TABLE OF CONTENTS

ARGUMENT 2

I. Plaintiffs Have Article III And Prudential Standing To Challenge The Implementation Of The Final Rule 2

A. Plaintiffs Have Article III Standing. 2

B. Plaintiffs' Claims Are Ripe. 6

C. Plaintiffs Are Within The Zone of Interests Regulated By The Final Rule 7

II. Plaintiffs Are Likely To Succeed On The Merits Of Their APA Claims. 9

A. DHS's New Definition Of "Public Charge" Deviates From The Plain Meaning Of The Statutory Language And Congress's Clear Intent. 9

1. The Statutory Language Does Not Grant DHS Discretion To Exclude Any Immigrant Who Receives Public Benefits Regardless Of Duration Or Scope. 10

2. Statutes Authorizing Immigrants To Receive Public Benefits Confirm That Congress Did Not Intent For Any Receipt of Public Benefits To Render The Recipient A "Public Charge." 16

3. Congress Has Ratified Consistent Judicial Interpretations Of "Public Charge" To Mean Long-Term Dependency. 19

B. The Final Rule Is Arbitrary And Capricious 23

1. The Final Rule Lacks The "Detailed Justification" That Is Required When An Agency's Policy Change Contradicts Prior Findings And Disrupts Settled Reliance Interests. 24

2. The Final Rule Impermissibly Fails To Consider Admitted Harms. 25

3. The Final Rule Is Contrary To The Requirements Of The Rehabilitation Act. 27

4. The Final Rule's Changes To The Totality of the Circumstances Test Are Arbitrary and Capricious. 28

III. Plaintiffs Will Suffer Irreparable Harm Absent Injunctive Relief 29

IV. The Balance Of Equities Favors The Issuance Of A Preliminary Injunction Or Stay. 30

A. Defendants' Interest In Administering Immigration Policy Is Not Sufficient. 30

B. The County And State Suits Do Not Constitute Duplicative Actions Such That The Equitable Factors Counsel Against Entry Of Injunctive Relief In This Case. 31

1. The State of Illinois' Participation In a Related Case Does Not Impact Cook County's Ability To Protect Its Proprietary Interests In This Jurisdiction. 31

2. The State and County Suits Are Not Duplicative..... 33

3. The County's Suit Presents A "Superior Vehicle" For Litigating The Final Rule. 35

C. Plaintiffs Filed Suit In An Expeditious Manner 36

D. The Court Should Reject Defendants "Established Injuries" Argument In Issuing A Statewide Stay And/Or Preliminary Injunction..... 37

TABLE OF AUTHORITIES

Page(s)

Cases

Matter of A-,
19 I. & N. Dec. 867 (B.I.A. 1988) 20

Abbott Laboratories v. Gardner,
387 U.S. 136 (1967).....6

Alexander v. Choate,
469 U.S. 287 (1985).....28

Alfred L. Snapp & Son v. Puerto Rico,
458 U.S. 592 32

Am. Fed'n of Gov't Employees, Local 2119 v. Cohen,
171 F.3d 460 (7th Cir. 1999) 7, 8

American Medical Assoc. v. Weinberger,
522 F.2d 921 (7th Cir. 1975) 31

Bank of Am. Corp. v. City of Miami,
137 S. Ct. 1296 (2017).....8

Bennett v. Spear,
520 U.S. 154 (1997).....7

Blair v. Equifax Check Services, Inc.,
181 F.3d 832 (7th Cir. 1999) 36

Boucher v. U.S. Dep't. of Agriculture,
934 F.3d 530 (7th Cir. 2019) 26

Brotherhood of Maintenance of Way Employees v. CSX Transp., Inc.,
478 F.3d 814 (7th Cir. 2007) 19

Cal. v. Trump,
267 F. Supp. 3d 1119 (N.D. Cal. 2017) 4

California v. Ross,
362 F. Supp. 3d 727 (N.D. Cal. 2018) 33

Carey v. Quern,
588 F.2d 230 (7th Cir. 1978) 29

CFTC v. Worth Bullion Grp.,
717 F.3d 545 (7th Cir. 2013) 12

Chamber of Commerce v. U.S. Dep't of Labor,
885 F.3d 360 (5th Cir. 2018) 29

City and County of San Francisco, et al. v. USCIS, et al.,
No. 4:19-cv-04717-PJH (N.D. Cal. filed Sept. 20, 2019).....32

Common Cause Ind. v. Lawson,
2019 WL 4022177 (7th Cir. Aug. 27, 2019).....5, 6

County of Cook v. Wells Fargo & Co.
314 F. Supp. 3d 975, 978-79 (N.D. Ill. Mar. 26, 2018) 34

Coykendall v. Skrmetta,
22 F.2d 120 (5th Cir. 1927) 20

Crawford v. Marion Cty. Election Bd.,
472 F.3d 949 (7th Cir. 2007) 5

Cuomo v. Clearing House Ass'n,
557 U.S. 519 (2009).....24

Custis v. United States,
511 U.S. 485 (1994).....19

Dep't of Commerce v. New York,
139 S. Ct. 2551 (2019)..... *passim*

Dep't of Transp. v. Pub. Citizen,
541 U.S. 752 (2004).....22

Matter of Dingledine,
916 F.2d 408 (7th Cir. 1990) 13

Doage v. Board of Regents,
950 F. Supp. 258 (N.D. Ill. 1997) 36

Doe v. Bellin Memorial Hospital
479 F.2d 756 (7th Cir. 1973) 30

People ex rel. Durfee v. Commissioners of Emigration,
1858 WL 7084 (N.Y. Gen. Term. 1858).....22

E. Bay Sanctuary Covenant v. *Trump*,
932 F.3d 742 (9th Cir. 2018) 8

Encino Motorcars, LLC v. Navarro,
136 S. Ct. 2117 (2016).....26

FCC v. Fox Television Stations, Inc.,
556 U.S. 502 (2009).....23, 25

In re Feinknopf
47 F. 447, 447 (E.D.N.Y. 1891(.....21

Firstar Bank, N.A. v. Faul,
253 F.3d 982 (7th Cir. 2001) 16, 18

Food & Drug Admin. v. Brown & Williamson Tobacco Corp.,
529 U.S. 120 (2000).....19, 23

Food & Water Watch, Inc. ("FWW") v. Vilsack
808 F.3d 905, 920 (D.C. Cir. 2015).....6

Franco-Gonzalez v. Holder,
No. 10-CV-02211, 2013 WL 3674492 (C.D. Cal. Apr. 23, 2013) 27

Gegiow v. Uhl,
239 U.S. 3 (1915)..... *passim*

Gonzales v. Oregon,
546 U.S. 243 (2006).....25

Havens Realty Corp. v. Coleman,
455 U.S. 363 (1982).....4, 5, 6

Herman & MacLean v. Huddleston,
459 U.S. 375 (1983).....19

Ex parte Horn,
292 F. 455 (W.D. Wash. 1923).....14

Ex parte Hosaye Sakaguchi,
277 F. 913 (9th Cir. 1922) 20

Howe v. United States,
247 F. 292 (2d Cir. 1917).....15

Hunt v. Wash. State Apple Advert. Comm'n,
432 U.S. 333 (1977).....4

I.N.S. v. Cardoza-Fonseca,
480 U.S. 421 (1987).....24

Illinois Hospital Assoc. v. Illinois Dep't of Public Aid,
576 F. Supp. 360 (N.D. Ill. 1983) 30

Cal. ex rel. Imperial County Air Pollution Control Dist. V. United States DOI,
Case No. 09cv2233 AJB, 2012 WL 1155831 (S.D. Cal. Apr. 6, 2012) 4, 32

INS v. *Legalization Assistance Project*,
510 U.S. 1301 (1993) (O'Connor, J., in chambers) 8

U.S. ex rel. Iorio v. Day,
34 F.2d 920 (2d Cir. 1929) (Hand, J.) 15

Jensen v. State Bd. of Tax Comm'rs,
763 F.2d 272 (7th Cir. 1985) 33

Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA,
559 U.S. 573 (2010) 19

Keep Chicago Livable v. City of Chi.,
913 F.3d 618 (7th Cir. 2019) 4

Lake Michigan Federation v. United States Army Corps of Engineers,
742 F. Supp. 441 (N.D. Ill. 1990) 36

Lesley v. Chie,
250 F.3d 47 (1st Cir. 2001) 27

Lovell v. Chandler,
303 F.3d 1039 (9th Cir. 2002) 27

Lujan v. Nat'l Wildlife Fed.,
497 U.S. 871 (1990) 7

Make the Road New York v. McAleenan,
No. 19-CV-2369, 2019 WL 4738070 (D.D.C. Sept. 27, 2019) 5, 26, 37

Matter of Martinez-Lopez,
10 I. & N. Dec. 409 (BIA 1962) 20

Mayor & City Council of Baltimore v. Trump,
No. ELH-18-3636, 2019 WL 4598011 (D. Md. Sept. 20, 2019) 2

Mayor and City Council of Baltimore, et al. v. U.S. DHS, et al.,
No. 8:19-cv-02851 (E.D. Md. filed Sept. 27, 2019) 33

Metro. Milwaukee Ass'n of Commerce v. Milwaukee Cty.,
325 F.3d 879 (7th Cir. 2003) 6

Ex parte Mitchell,
256 F. 229 (N.D.N.Y. 1919) 20

Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.,
463 U.S. 29 (1983) 23, 27

Nat'l Fed'n of Indep. Bus. v. Sebelius,
567 U.S. 519 (2012) 28

In re O'Sullivan,
31 F. 447 (S.D.N.Y. 1887) 16

Orchard Hill Bldg. Co. v. U.S. Army Corps of Eng'rs,
893 F.3d 1017 (7th Cir. 2018) 26

Owner-Operator Indep. Drivers Ass'n, Inc. v. Fed. Motor Carrier Safety Admin.,
656 F.3d 580 (7th Cir. 2011) 7

Matter of Perez,
15 I. & N. Dec. 137 (B.I.A. 1974) 20

Regents of the Univ. of Cal. v. United States, Dept. of Homeland Sec.,
279 F. Supp. 3d 1011 (N.D. Cal. 2018) 33

Rotenberry v. Comm'r Internal Rev.,
847 F.2d 229 (5th Cir. 1988) 18

Saltzman v. Farm Credit Servs. of Mid-Am., ACA,
950 F.2d 466 (7th Cir. 1991) 23

School Board of Nassau County v. Arline,
480 U.S. 273 (1987) 28

Serlin v. Arthur Andersen & Co.,
3 F.3d 221 (7th Cir. 1993) 33

St. James Hosp. v. Heckler,
760 F.2d 1460 (7th Cir. 1985) 26

State of California, et al. v. U.S. DHS, et al.,
No. 3:19-cv-04975 (N.D. Cal. filed Aug. 16, 2019) 32

State of Washington, et al. v. U.S. DHS, et al.,
No. 4:19-cv-5210-RMP (E.D. Wash. filed Aug. 14, 2019) 31, 32, 35

Susan B. Anthony List v. Driehaus,
573 U.S. 149 (2014) 6

Texas Indep. Producers & Royalty Owners Ass'n v. E.P.A.,
435 F.3d 758 (7th Cir. 2006) 6

Town of Hartford v. Town of Hartland,
19 Vt. 392 (Vt. 1847) 21

Toyota Motor Mfg., Ky., Inc. v. Williams,
534 U.S. 184 (2002) 22

Trippe Mfg. Co. v. American Power Conversion Corp.,
46 F.3d 624 (7th Cir. 1995) 35

Ex parte Tsunetaro Machida,
277 F. 239 (W.D. Wash. 1921) 20

United States v. Ledee,
772 F.3d 21 (1st Cir. 2014) 35

United States v. Lipkis,
56 F. 427 (S.D.N.Y. 1893) 20, 21

United States v. Sanders,
708 F.3d 976 (7th Cir. 2013) 16

Vidal v. Duke,
295 F. Supp. 3d 127 (E.D.N.Y. 2017) 32

Watkins v. United States,
854 F.3d 947 (7th Cir. 2017) 35

Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. Of Educ.,
858 F.3d 1034 (7th Cir. 2017) 30

Statutes

55 ILCS 5/3-9005 (a)(1)–(4) 34

7 U.S.C. § 2017(b) 18

7 U.S.C. § 7901 et seq. 17

8 U.S.C. § 1182(a) 15

8 U.S.C. § 1182(a)(4) 22

8 U.S.C. § 1182(a)(4)(B)(i)(III) 29

8 U.S.C. § 1183 8

8 U.S.C. § 1443(h) 8

8 U.S.C. § 1601(2)(A) 24

8 U.S.C. §§ 1611–13 17

8 U.S.C. § 1641(b) 17

8 U.S.C. §§ 1621(a)-(b) 17

42 U.S.C. §§ 1396–97 et seq 17

Children's Health Insurance Program Reauthorization Act 17

Fair Housing Act 34

Farm Security and Rural Investment Act 17

Immigration Reform and Control Act 22

Rehabilitation Act 27, 28

22 Stat. 214, § 2 Ch. 376 (August 3, 1882) 12, 16

26 Stat. 1084 § 1 Ch. 551 (March 3, 1891) 12

39 Stat. 874, § 3 Ch. 29 (February 5, 1917) 14

Other Authorities

8 C.F.R. §§ 212.22(b)(2), (b)(4)(i)(E), (5)(b), (5)(c)(1)(iii)(A) 28

28 C.F.R. § 41.51(b)(3) 28

64 Fed. Reg. at 28,678 25

83 Fed. Reg. at 51,206, 51,196, 51,186 29

84 Fed. Reg. 41, 292, 41,301 5

84 Fed. Reg. 41, 292, 41,463 3

84 Fed. Reg. 41,292, 41,463 (Aug. 14, 2019) 2

84 Fed. Reg. at 41,301 8

84 Fed. Reg. at 41,309 29

84 Fed. Reg. at 41,389, 41,469 ..... 4, 7

84 Fed. Reg. at 41,422 29

84 Fed. Reg. at 41,463 30

84 Fed. Reg. at 41,503 29

CENTURY DICTIONARY OF THE ENGLISH LANGUAGE (William Dwight Whitney, ed., 1889) 10, 13

Century Dictionary Online 10

H.R. Doc. No. 64-886 (Mar. 11, 1916).....15

Ill. Const. Art. VII, § 1.....33

Ill. Const. Art. VII, §§ 6–7.....33

Illinois Constitution 33

Joan C. Beal, *English in Modern Times*.....10

Webster's Condensed Dictionary of the English Language at 84 (Dorsey Gardner, ed., 1884) 10

Why *The Century Dictionary*.....10

The Final Rule exceeds DHS's authority under the INA and should be enjoined or stayed. As Defendants acknowledge, "it is apparent on the face of the statute that 'public charge' is intended to describe a discrete class of persons who will be inadmissible and not every applicant." Opp'n at 15 n.7. Consistent with this plain meaning, the term "public charge" for decades has been construed to apply to such a discrete class: individuals primarily and permanently dependent on the state for survival. Yet Defendants now advance a reading of the statute that would grant DHS limitless authority to deem any recipient of even *de minimis* and temporary public benefits a "public charge." This is inconsistent not only with the INA, but also with other federal statutes in which Congress has expressly legislated that some of the same public benefits at issue in the Final Rule *must be made available to immigrants.* DHS may not bar immigrants from adjusting to permanent status solely because they make use of the very public benefits to which Congress granted them access. The Final Rule is equally invalid because it is arbitrary and capricious: the Rule imposes acknowledged harms for a purported benefit—"self-sufficiency"—that is supported neither by evidence nor by immigration policy as dictated by Congress.

Defendants' remaining arguments likewise fail. Plaintiffs have established standing to challenge the Final Rule because—as DHS has conceded—the Rule has caused and will continue to cause massive disenrollment from public benefits that Congress has expressly authorized immigrants to receive, and ICIRR and the County are in turn suffering injuries that directly flow from that disenrollment. The harm to DHS of returning to a policy that has been in place for decades is virtually zero—while the Final Rule's harms to immigrants, and the institutions like Plaintiffs that serve them, mount with each passing day.

ARGUMENT

I. Plaintiffs Have Article III And Prudential Standing To Challenge The Implementation Of The Final Rule.

A. Plaintiffs Have Article III Standing.

Defendants contend that Plaintiffs lack Article III standing because they rely on speculative injuries resulting from the independent acts of third parties. Opp'n at 7-8. In so arguing, Defendants ignore their own disenrollment projections, which demonstrate that Plaintiffs' injuries are *the predictable result* of the Final Rule. *See* 84 Fed. Reg. 41,292, 41,463 (Aug. 14, 2019) (disenrollment will occur as a result of Final Rule). Indeed, the Supreme Court recently rejected the exact argument Defendants raise here in *Dep't of Commerce v. New York*, 139 S. Ct. 2551, 2565 (2019) (the "Census Case"), which involved the Department of Commerce's plan to ask about citizenship on the 2020 United States Census. The Department argued that the alleged harm—that the citizenship question would cause immigrants not to complete the Census—was not traceable to the Department's actions, but rather to "unfounded fears" and the "independent action of third parties." *Id.* at 2565-66. The Supreme Court rejected the Government's argument, concluding that plaintiffs' theory of standing "d[id] not rest on mere speculation about the decisions of third parties" but "instead on the predictable effect of Government action on the decisions of third parties." *Id*. at 2566. Indeed, the District of Maryland relied on the Census Case to reject precisely this argument in holding that local-government plaintiffs had standing to challenge the Final Rule on "public charge." *Mayor & City Council of Baltimore v. Trump*, No. ELH-18-3636, 2019 WL 4598011, at *17–18 (D. Md. Sept. 20, 2019).

Here, too, people "will likely react in predictable ways" to the Final Rule—*i.e.*, by disenrolling from benefits. *Dep't of Commerce*, 139 S. Ct. at 2566. As Defendants readily admit, the causal chain consists of just one link: when the Rule is implemented, individuals will disenroll

from benefits. *See* 84 Fed. Reg. 41, 292, 41,463 (projecting that 2.5% of "individuals who are members of households with foreign-born noncitizens" will disenroll from programs expressly covered by the Final Rule, including Medicaid). Indeed, the case for standing is stronger here than in the Census Case because Defendants *concede* the Final Rule will cause harm.

The County also has demonstrated that it will suffer economic harm from such disenrollment. Chan Decl. at ¶¶ 40-43, 46, 50; Hou Decl. at ¶¶ 19, 24. The Final Rule's economic harms become even worse in light of the more realistic disenrollment projections submitted by the County, Morrison Decl., Ex's. B, C, D, K, and evidence establishing that residents of the County have already started to do so. Chan. Decl. at ¶¶ 30, 31; Peller Decl. at ¶¶ 34-38. Similarly, ICIRR has been harmed because of the demonstrated disenrollment that already has begun due to this rulemaking. Benito Decl. at ¶¶ 11-16, 38-42. ICIRR and its members have been forced to divert resources to encourage immigrants not to disenroll from public benefits programs. *Id.* at ¶¶ 21-37.

Defendants respond with an array of arguments that misstate Plaintiffs' position and ignore established precedent. First, Defendants mischaracterize the County's allegations of harm as "inconsistent." Opp'n at 8. To the contrary, the County's allegations that its health care system will suffer injury are perfectly consistent with its allegations that under the Final Rule immigrants will "avoid seeking treatment for cases *other than emergencies*," Compl. ¶ 109 (emphasis added), and any emergency treatments they do seek will "rely[] more on uncompensated healthcare from CCH, and depriv[e] CCH of Medicaid funds." Opp'n at 8.

Defendants follow with an unsupported contention that the Rule may result in "net savings" for the County, and that the County's alleged harms are "speculative" because they assume that a "material" number of aliens will just forgo benefits and rely on uncompensated care. Opp'n at 8. Defendants' quibbling does not rebut the evidence of harm submitted by the County. Indeed, far

from rebutting that evidence, DHS itself "agrees" that the Final Rule will cause "[s]tate and local governments … [to] incur costs," including increased administrative burdens. 84 Fed. Reg. at 41,389, 41,469. And governmental administrative costs caused by changes in federal policy are cognizable Article III injuries. *Cal. v. Trump*, 267 F. Supp. 3d 1119, 1126 (N.D. Cal. 2017) (states' "administrative costs" caused by a disruption to healthcare exchanges they administer were sufficient to demonstrate standing).[1]

Defendants fare no better in challenging ICIRR's Article III standing. ICIRR has organizational standing because both the Proposed and Final Rule frustrate its mission, divert its resources, and reduce its funding.[2] *See* Mot. at 26-28; *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 378-79 & n. 19 (1982). ICIRR has demonstrated that, even now, before the Final Rule has gone into effect, it and its members have been forced to divert resources from previously planned projects to efforts geared to encouraging immigrants not to disenroll from public benefits programs. Benito Decl. at ¶¶ 13-15, 23-24, 32-37; *see also* Mot. at 14-16. 26-27. What is more, as a result of reduced enrollment, ICIRR and its members have lost and will continue to lose revenue they previously received in connection with their work in assisting immigrants to enroll for public benefits. Benito Decl. ¶¶ 29-30. This can hardly surprise DHS, whose own statements in the Final

[1] Defendants devote a page of their brief to a straw man—arguing against the County's supposed "organizational standing theory." Opp'n at 8–9. The County, however, never "allude[d] to an organizational standing theory," and does not rely on any such theory to establish its standing. Instead, the County explained in detail how the Final Rule harms its own concrete, proprietary interests. *See Cal. ex rel. Imperial County Air Pollution Control Dist. V. United States DOI*, Case No. 09cv2233 AJB, 2012 WL 1155831, at *21 (S.D. Cal. Apr. 6, 2012) (local governments have standing to protect proprietary interests such as land ownership or participation in a business venture) (citing *Snapp*, 458 U.S. 592, 601–602 (1982)); *see also* Mot. at 24 (summarizing harms).

[2] Contrary to Defendants' assertions, ICIRR also has associational plaintiff standing, where it is suing on behalf of its members. *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333 (1977); *Keep Chicago Livable v. City of Chi.*, 913 F.3d 618, 625 (7th Cir. 2019). ICIRR members have standing in their own right, because they have suffered immediate and threatened injury as a result of Defendants' actions, frustrated their members' missions and caused them to divert resources from other activities in order to combat Defendants' conduct. *Id.*; Benito Decl. at ¶¶ 29-37; *Havens Realty Corp.*, 455 U.S. at 379.

Rule recognized not only that widespread disenrollment would occur, but also that organizations like ICIRR, which support immigrants' access to public benefits, would incur increased costs as a result of the Final Rule. 84 Fed. Reg. 41, 292, 41,301. It lies poorly in DHS's mouth to challenge ICIRR's right to bring suit in light of the agency's own prior statements. *Make the Road New York v. McAleenan,* No. 19-CV-2369, 2019 WL 4738070, at *67-68 (D.D.C. Sept. 27, 2019) ("DHS cannot expect to have its cake (by purposefully threatening to subject settled, undocumented non-citizens to expedited removal in a manner that elicits widespread fear) without eating it, when representatives of the targeted individuals seek access to the courts on the grounds that their members are afraid.").

Nevertheless, Defendants assert that ICIRR cannot establish standing because educating about the Final Rule is supposedly "business as usual" for ICIRR and merely ICIRR's "choice" of how to use its resources. Opp'n at 9-10. First, this argument ignores the other harms ICIRR has alleged, including its loss of revenue derived from helping immigrants to enroll for public benefits. It is also wrong. The Seventh Circuit recently rejected the same argument, finding that "[a]ny work to undo a frustrated mission is, by definition, something in furtherance of that mission." *Common Cause Ind. v. Lawson,* 2019 WL 4022177, at *25-26 (7th Cir. Aug. 27, 2019). As the Seventh Circuit explained, when an organizational plaintiff must "reduce or eliminate [its] work in certain areas" and use its "limited resources" to combat a law or policy change that frustrates its mission, "those are concrete injuries under *Havens*." *Id.* at *7, *24-25. ICIRR fits squarely within the framework of *Common Cause*. When ICIRR's mission was frustrated by the Defendants' efforts to deny immigrants the chance to fully and equally participate in society, it had no choice – it had to respond. Mot. at 26-28; *see Crawford v. Marion Cty. Election Bd.*, 472 F.3d 949, 951 (7th Cir. 2007) (the new law injures "by *compelling* the party to devote resources to…those who would

otherwise be discouraged by the new law from bothering to vote") (emphasis added). Therefore, under *Havens* and *Common Cause*, ICIRR has established that it suffered concrete injuries, with a consequent drain of ICIRR's resources. Mot. at 27-28, 39; Benito Decl. at ¶ 15.[3]

B. Plaintiffs' Claims Are Ripe.

Contrary to Defendants' assertions, Plaintiffs' claims are ripe under Article III for the same reasons they have standing. *See Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 167-168 (2014); *Texas Indep. Producers & Royalty Owners Ass'n v. E.P.A.*, 435 F.3d 758, 766 (7th Cir. 2006). In determining ripeness, the Seventh Circuit considers whether: (1) delayed review of an agency decision could cause hardship to the petitioner; (2) judicial intervention would inappropriately interfere with further administrative action; and (3) the court would benefit from further factual development of the issues presented. *Metro. Milwaukee Ass'n of Commerce v. Milwaukee Cty.*, 325 F.3d 879, 882 (7th Cir. 2003); *see also Abbott Laboratories v. Gardner*, 387 U.S. 136, 149 (1967) (pre-enforcement challenges to final agency rules are permissible so long as the claim is fit for judicial decision and delay will cause some hardship to the parties).

First, delayed review of the Final Rule will cause ICIRR and its members hardship because they *already* face frustration of their missions, diversion of resources, and reductions in funding. Mot. at 14-16; 26-27. And postponing review will only exacerbate the County's loss of funding and increased administrative costs. Second, the Final Rule is the agency's final action and thus judicial intervention would not interfere with further administrative action. Pre-enforcement

[3] Defendants rely on an out-of-circuit case that is premised on markedly different facts. Opp'n at 10. In *Food & Water Watch, Inc. ("FWW") v. Vilsack*, the court found the organization did not have standing because the only injuries alleged were fighting the rule and having to change their education curriculum in the future to account for the rule change. 808 F.3d 905, 920 (D.C. Cir. 2015). Here, however, ICIRR is already spending countless hours educating its member organizations and immigrants on public benefit eligibility under the Proposed and Final Rule and directly enrolling immigrants in safety net programs such as SNAP and Medicaid. Benito Decl. at ¶¶ 11, 29-31.

review of final rules has become the norm, and where a petition involves purely legal claims in the context of a facial challenge to a final rule, a petition is "presumptively reviewable." *Owner-Operator Indep. Drivers Ass'n, Inc. v. Fed. Motor Carrier Safety Admin.*, 656 F.3d 580, 586 (7th Cir. 2011) (citation omitted). Third, Defendants do not identify any factual development necessary for the Court to review the legal issues. *Lujan v. Nat'l Wildlife Fed.*, 497 U.S. 871, 891 (1990) ("[A] substantive rule which as a practical matter requires the plaintiff to adjust his conduct immediately . . . is 'ripe' for review at once . . . ."); *Bennett v. Spear*, 520 U.S. 154, 177–78 (1997) (final agency action "mark[s] the 'consummation' of the agency's decisionmaking process"). This is not surprising given that the County and ICIRR's claims are purely legal in nature, and Defendants themselves have projected the Final Rule's disenrollment impact.

C. Plaintiffs Are Within The Zone of Interests Regulated By The Final Rule.

Defendants contend that Plaintiffs fall outside the "zone of interests" regulated by the INA, but Defendants apply the zone of interest test too narrowly. The Seventh Circuit has explained that a plaintiff falls outside the zone of interests only if "the plaintiff's interests are *so marginally related to or inconsistent with the purposes implicit in the statute that it cannot reasonably be assumed that Congress intended to permit the suit*. The test is *not meant to be particularly demanding*." *Am. Fed'n of Gov't Employees, Local 2119 v. Cohen*, 171 F.3d 460, 469 (7th Cir. 1999) (emphases added) (finding that plaintiffs had an "unmistakable link" to the statute's purpose and thus fell "within the zone protected by the statute").

Here, the County falls squarely within the zone of interests regulated by the Final Rule and the INA. DHS explicitly acknowledges that the County will be forced to "incur costs" as a result of the Final Rule, 84 Fed. Reg. at 41,389, 41,469, which dispels any argument that the County's interests are not even "marginally related to or inconsistent with the purposes implicit in the statute" that it seeks to interpret. *Am. Fed'n*, 171 F.3d at 469. Moreover, the public charge

provision and the INA unequivocally account for the impact public charge determinations may have on local governments. Specifically, Section 1183 entitles "the proper law officers" of "any State, territory, district, county, town, or municipality in which [an] alien becomes a public charge" to bring a lawsuit against the individual who sponsored the alien's visa to enforce the Affidavit of Support. 8 U.S.C. § 1183. Thus, the County's claims are "arguably within the zone of interests" protected by the public charge provision and the INA. *Am. Fed'n*, 171 F.3d at 469.

ICIRR, too, has established that it has "prudential standing" under the APA. Within the INA, Congress gave institutions like ICIRR a role in helping immigrants navigate the immigration process. *See e.g.*, 8 U.S.C. § 1443(h) (requiring the Attorney General to work with "relevant organizations" to "broadly distribute information concerning" the immigration process). As a result, courts have found that immigrant advocacy organizations such as ICIRR have standing to challenge immigration regulations. *See, e.g., E. Bay Sanctuary Covenant* v. *Trump*, 932 F.3d 742, 763 (9th Cir. 2018) (holding that immigrant rights organizations met the zone of interest test for their APA challenge to rulemaking on grants of asylum). Moreover, just as DHS itself predicted, 84 Fed. Reg. at 41,301, ICIRR has suffered financial costs as a result of the Final Rule that satisfy the prudential standing requirement and are, at the least, "*arguably* within the zone of interests." *Bank of Am. Corp. v. City of Miami*, 137 S. Ct. 1296 (2017) (quoting *Ass'n of Data Processing Serv. Orgs., Inc. v. Camp*, 397 U.S. 150, 153 (1970)).[4]

[4] Defendants rely on *INS* v. *Legalization Assistance Project*, 510 U.S. 1301 (1993) (O'Connor, J., in chambers), but that decision—which was issued by a single Justice—is inconsistent with the modern zone of interests doctrine set forth in *City of Miami*.

II. Plaintiffs Are Likely To Succeed On The Merits Of Their APA Claims.

A. DHS's New Definition Of "Public Charge" Deviates From The Plain Meaning Of The Statutory Language And Congress's Clear Intent.

As demonstrated in the Opening Brief, the term "public charge" has a specific meaning dating back to its first use almost 150 years ago: it refers to an individual primarily and permanently committed to the care of the state.

In opposition, Defendants take the untenable position that DHS may legislate a new meaning of "public charge," so long as it includes some reference to an iota of assistance from the state. Under the statute, Defendants say, DHS may choose to exclude only those immigrants who require long-term, cash-based public assistance, as it has done for decades—*or* it may choose instead to exclude any immigrant who, without limitation, "imposes an 'obligation' or 'liability' on 'the body of the citizens.'" Opp'n at 14; *see also id.* (quoting a 1929 source for the proposition that "'[p]ublic charge means *any* maintenance, or financial assistance, rendered from public funds") (emphasis added). In other words, Defendants assert that the statute authorizes DHS to choose, as a matter of agency discretion, to exclude any immigrant who has relied on public assistance of any kind, regardless of duration or scope.

Congress did not confer on DHS such limitless authority. First, the statutory language cabins the agency's authority—establishing that Congress authorized the agency to exclude only those immigrants who require long-term, cash-based assistance to survive. Second, Congress subsequently confirmed the constraints on its delegation of authority through specific actions, by consistently establishing that immigrants are *statutorily entitled* to obtain non-cash public benefits. These legislative mandates would be nothing short of Kafkaesque if DHS is, as Defendants claim, authorized to exclude any immigrant who accepts the benefits that Congress explicitly granted to her. Finally, Congress repeatedly has re-enacted the "public charge" language—and declined to

change the definition of "public charge"—against a consistent backdrop of judicial decisions interpreting the statute to authorize exclusion solely of immigrants who need long-term, cash-based assistance or institutionalization in order to survive.

1. The Statutory Language Does Not Grant DHS Discretion To Exclude Any Immigrant Who Receives Public Benefits Regardless Of Duration Or Scope.

The crux of Defendants' argument is that nineteenth-century dictionaries—contemporary to the first enactment of the term "public charge"—supposedly define "charge" to mean any form of "'obligation or liability,'" such that an immigrant could be deemed a "public charge" any time he or she received any "'assistance, rendered from public funds.'" *See* Opp'n at 14 (quoting Stewart Rapalje *et al.*, Dict. of Am. And English Law (1888); Arthur Cook *et al.*, Immigration Laws of the U.S. § 285 (1929)). DHS's analysis is doubly flawed.

First, Defendants ignore contemporaneous definitions of the term "charge" as it was applied to describe *human beings*—and instead addresses definitions of monetary "charges" that relate to property. *See, e.g., id.* (defining "charge" as "'[a] burden, incumbrance, or lien; as when land is charged with a debt'") (quoting Frederic Jessup Stimson, Glossary of the Common Law (1881)). Defendants ignore, for example, the Century Dictionary—the most comprehensive American dictionary at the time[5]—which defined the term "charge" as one who is "*committed to* another's custody, care, concern or management." THE CENTURY DICTIONARY OF THE ENGLISH LANGUAGE at 929 (William Dwight Whitney, ed., 1889) (emphasis added); *see also* Webster's Condensed Dictionary of the English Language at 84 (Dorsey Gardner, ed., 1884) (defining

[5] *See* Joan C. Beal, *English in Modern Times*, Routledge (2014) at 54–57 (describing The Century Dictionary as "'the Titanic of dictionaries, fabled in its day as the largest, most comprehensive dictionary yet completed,'" and explaining that it "stands as a monument to American scholarship at the end of the nineteenth century") (quoting Jeffery A. Triggs, "Why *The Century Dictionary*? A Preface to *The Century Dictionary Online*" (available online at http://triggs.djvu.org/century-dictionary.com/why.php).

"charge" as a "person or thing *committed to* the care or management of another") (emphasis added). These definitions mirror the modern definition of the term. *See* Mot. at 32. Now, as then, a person who is a "charge" of the public is one who is so dependent on the state as to be "committed to" its custody or care.[6]

Second, the breadth of the statutory term as interpreted by DHS further demonstrates the agency's error. If "public charge" means any person who contributes to any "charge" or "liability" on the public fisc, then every person in America who benefits from public funds could be deemed a "public charge"—and the statute would impose virtually no limit on DHS's discretion to deport any immigrant. Even Defendants recognize that such a reading would sweep too far. Defendants concede that "it is apparent on the face of the statute that 'public charge' is intended to describe a discrete class of persons who will be inadmissible and not every applicant," and the statute cannot be read to "encompass public benefits afforded to *every* individual." Opp'n at 15 n.7 (emphasis in original). On this point, the parties agree. But if "public charge" means any obligation or liability on the public, as Defendants elsewhere argue, then the limit that Defendants recognize must exist is nowhere to be found in the statutory text. By contrast, if "public charge" means one committed to the care or custody of the state, then the term applies narrowly to "a discrete class of persons"—just as Defendants recognize the statute requires.

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[6] Defendants also cite a 1929 immigration treatise for the proposition that "'Public Charge means any maintenance, or financial assistance, rendered from public funds.'" Opp'n at 14 (quoting Arthur Cook *et al.*, Immigration Laws of the U.S. § 285 (1929)). The context clarifies that the treatise is addressing not the *degree* of support that an immigrant receives, as Defendants suggest, but the *source* of whatever support an immigrant receives. The treatise distinguishes between "maintenance … rendered from public funds, or funds secured by taxation," on the one hand, and "charitable help" or "maintenance in any institution supported by donations and not receiving a part or all of its support from public (tax) funds," on the other. *Id.* § 285. The treatise clarifies that the latter does not render an immigrant a "public charge," regardless of the degree of the immigrant's dependence on such maintenance. Indeed, in the very next section, Cook states that even immigrants who are "maintained in hospitals supported by public funds" are *not* subject to deportation as "public charges" if the hospital does not issue a bill for the care provided—squarely foreclosing Defendants' reading of the treatise to mean that *any* form of public assistance is sufficient to cause an immigrant to be a "public charge." *Id.* § 286.

Moreover, that "public charge" actually means one primarily and permanently dependent on government support is further confirmed by the statutory language that surrounds the term. When Congress first used the term "public charge" in 1882, it allowed authorities to refuse entry to "any person *unable to take care of himself or herself* without becoming a public charge." An act to regulate Immigration, 47 Cong. Ch. 376, 22 Stat. 214, § 2 (August 3, 1882) (emphasis added)). This preceding language suggests that Congress used the phrase to refer to those who—by its own qualification—were dependent on the state for care, not merely temporary public benefits.

Similarly, the other classes of immigrants subject to exclusion in the 1891 Act uniformly comprise individuals who either pose an immediate threat or who require long-term state care or institutionalization:

> the following classes of aliens shall be excluded from admission into the United States … : All idiots, insane persons, paupers or persons likely to become a public charge, persons suffering from a loathsome or a dangerous contagious disease, persons who have been convicted of a felony or other infamous crime or misdemeanor involving moral turpitude, [etc.].

An act in amendment to the various acts relative to the immigration and the importation of aliens under contract or agreement to perform labor, 51 Cong. Ch. 551, 26 Stat. 1084 § 1 (March 3, 1891). As the Supreme Court recognized in an opinion by Justice Holmes, "persons likely to become a public charge" must be interpreted in context of the terms surrounding it, each of which refers to people "to be excluded on the ground of *permanent* personal objections accompanying them." *Gegiow v. Uhl*, 239 U.S. 3, 10 (1915) (emphasis added); *see also CFTC v. Worth Bullion Grp.*, 717 F.3d 545, 550 (7th Cir. 2013) (the "commonsense canon of *noscitur a sociis* ... counsels that a word is given more precise content by the neighboring words with which it is associated") (quoting *United States v. Williams*, 553 U.S. 285, 294 (2008)). Based on this application of basic principles of statutory interpretation to the text, the *Gegiow* Court held that the agency lacked

authority to exclude immigrants on the ground that economic conditions in their chosen destination within the United States (Portland, Oregon) might not suffice to support them. *Gegiow*, 239 U.S. at 10.

Defendants attempt various moves to get around this plain-text reading of the statute, none of which is successful. First, Defendants argue that a "pauper" is one who was "so impoverished they would be expected to be permanently dependent on public support," and because Congress used both the term "pauper" and the term "public charge" in the 1891 statute, the two terms must mean something different. Opp'n at 16. But this argument does not help Defendants. For one thing, it ignores how the text is structured. Some of these terms—for example, "idiots" and "insane persons"—are separated by a comma, which "indicat[es] that they are separate and distinct categories." *Matter of Dingledine*, 916 F.2d 408, 411 (7th Cir. 1990). By contrast, "pauper" and "persons likely to become a public charge" are *not* so separated, indicating that Congress treated them as interrelated. *See id.* And more fundamentally, both terms must be read in the context of the surrounding language to refer to a person who suffers from a long-term condition that leaves them committed to the care of the state. In other words, a person can become a "public charge" on account of different things—including pauperhood, chronic mental illness, or status as a minor.[7] Indeed, that is exactly what the Supreme Court concluded in *Gegiow*. 239 U.S. at 10 ("'Persons likely to become a public charge' are mentioned between paupers and professional beggars, and along with idiots, persons dangerously diseased, … and so forth. … Presumably ['public charge'] is to be read as generically similar to the others mentioned before and after.").

[7] Contemporary dictionary definitions confirm this understanding. *See* THE CENTURY DICTIONARY OF THE ENGLISH LANGUAGE at 4334 (defining "pauper" as "a very poor person; a person entirely destitute of property or means of support; *particularly, one who, on account of poverty, becomes chargeable to the public*.") (emphasis added).

Second, effectively conceding that its position is dead in the water as a result of *Gegiow*, Defendants argue that Congress changed the statute following the Supreme Court's ruling in *Gegiow* so as to "negate[] the Court's interpretation" of the statute. Opp'n at 17. This argument relies on a misreading of the 1917 statute. The 1917 amendment did not expand the definition of "public charge" so as to authorize the agency to exclude an immigrant on the ground that he or she had received any manner of temporary public benefits. Instead, the revised statute incorporated *additional* distinct classes of excludable immigrants (such as "anarchists, or persons who believe in or advocate the overthrow by force or violence of the Government of the United States"), and continued to exclude (among others) "paupers," "professional beggars," "vagrants," and "persons likely to become a public charge." *See* An Act To regulate the immigration of aliens to, and the residence of aliens in, the United States, 64 Cong. Ch. 29, 39 Stat. 874, § 3 (February 5, 1917).

Nor did the court in *Ex Parte Horn* "negate[]" the holding in *Gegiow*. *See* Opp'n at 17. Instead, the *Horn* Court defined the term "public charge" as used in the 1917 Act to mean "a person committed to the custody of a department of the government by due course of law." *Ex parte Horn*, 292 F. 455, 457 (W.D. Wash. 1923) (petitioner likely to become a "public charge" because he admitted to committing a felony and therefore would likely be convicted and imprisoned). Rather than support the agency's broad definition, *Horn* confirms that a "public charge" also may include a prisoner as a type of person committed into the care or custody of the state. It is "differentiated" from *Gegiow* only inasmuch as the reason for the commitment was crime rather than poverty and the place of commitment was to be a prison rather than an almshouse. *Id.* at 457-58.

The 1917 Act did move the reference to "public charge" to follow numerous examples of those likely to require governmental care—for reasons of ill health or a history of inability to care for oneself—thus suggesting that the preceding list provides examples for the larger umbrella term

of "persons likely to become a public charge." *See Howe v. United States*, 247 F. 292, 294 (2d Cir. 1917) (stating that numerous categories listed in the prior version of the statute—including "[i]diots, imbeciles, feeble-minded persons, insane persons, [and] persons affected with tuberculosis and prostitutes, might *all* be regarded as likely to become a public charge") (emphasis added); *see also, U.S. ex rel. Iorio v. Day*, 34 F.2d 920, 922 (2d Cir. 1929) (Hand, J.) (noting that "the [public charge] clause, however construed, overlaps other provisions; e.g. paupers, vagrants and the like"). Thus, the 1917 Act does not "negate" any meaning; if anything, the 1917 Act *confirmed* that "public charge" is a category within which the preceding designations lie—and not a novel and unfettered delegation to the Executive Branch of authority to exclude anyone who obtains any assistance from the government.[8]

Although the antiquated terms have been removed, the current statute similarly renders ineligible for admission only groups who raise serious concerns or pose a severe threat to the United States. For example, the statute authorizes exclusion of immigrants who "have a communicable disease of public health significance"; immigrants who have been convicted of "a crime involving moral turpitude" or multiple crimes resulting in more than five years' imprisonment; immigrants who are "[s]ignificant traffickers in persons"; immigrants who have "engaged in a terrorist activity" or who have "participated in genocide." 8 U.S.C. § 1182(a). And alongside these categories, the statute authorizes exclusion of those who are "likely at any time to become a public charge." *Id.* As these surrounding terms make clear, the statute cannot be read to

[8] Defendants cite a letter authored by the Secretary of Labor in support of its assertion that the 1917 Act was enacted so as to "supersede the Supreme Court's ruling" in *Gegiow*. Opp'n at 17. The letter does not support their claim. Instead, the letter indicates the Secretary's view that the statute should be revised to provide that an individual may be deemed "likely to become a public charge" due to adverse economic conditions in the United States, even if the individual had no permanent characteristic that prevented him or her from attaining self-sufficiency. *See* Letter from Sec. of Labor to House Comm. On Immig. And Naturalization, H.R. Doc. No. 64-886, at 3-4 (Mar. 11, 1916). But neither of the Secretary's proposed revisions to the statute actually was adopted in the 1917 Act.

grant DHS uncabined discretion to exclude all immigrants who avail themselves of temporary, non-cash benefits to which they are statutorily entitled.

2. Statutes Authorizing Immigrants To Receive Public Benefits Confirm That Congress Did Not Intent For Any Receipt of Public Benefits To Render The Recipient A "Public Charge."

Further clarifying that the statute does not grant DHS the authority it now claims, Congress repeatedly has provided through other legislation that immigrants are *entitled* to receive temporary public benefits. "[D]ifferent acts which address the same subject matter, which is to say are *in pari materia*, should be read together such that the ambiguities in one may be resolved by reference to the other." *Firstar Bank, N.A. v. Faul*, 253 F.3d 982, 990 (7th Cir. 2001); *see also United States v. Sanders*, 708 F.3d 976, 993 (7th Cir. 2013) (noting that "another 'longstanding' canon of statutory interpretation is 'construing statutes *in pari materia*' ") (quoting *Crawford Fitting Co. v. J.T. Gibbons, Inc.*, 482 U.S. 437, 445 (1987)). Here, Congress's legislation to confer such benefits on immigrants leaves no doubt that Congress did not simultaneously authorize DHS to deport immigrants on the ground that they have accepted benefits that Congress made available.

As far back as 1882, Congress authorized the Secretary of Treasury to enter into contracts with state agencies "to provide for the support and relief of such immigrants *therein landing* as may fall into distress or need public aid." Act of August 3, 1882, 22 Stat. 214, § 2 (emphasis added)). In the terminology of the time, an immigrant who "landed" was one who was permitted entry—and if a person was deemed a "public charge" they were "not … permitted to land." *Id.* Thus, Congress directed that even immigrants who were permitted to "land"—*i.e.*, who were not excluded as "public charges"—could be granted "support and relief" from government agencies.[9]

[9] Case law from the time period when the statute was originally enacted also refutes the government's contention that an individual was a "public charge" if they received any publicly-funded assistance. *See, e.g.*, *In re O'Sullivan*, 31 F. 447, 448–49 (S.D.N.Y. 1887) (holding that, although arriving immigrants had received government aid (the British government paid for their passage to the United States), "that fact

In the current era as well, Congress has done the same thing, affirmatively acting to ensure that immigrants are entitled to certain public benefits—including some of the very benefits that are targeted in the Final Rule. For example, in 1996, Congress passed PRWORA, Pub. L. No. 104-193, 110 Stat. 2105 (1996) (codified as amended at 8 U.S.C. §§ 1611–13). Although that Act excluded certain non-citizens from eligibility for some public benefits programs, it also expressly allowed "qualified" immigrants to obtain to obtain medical assistance, public health insurance, public housing, and other benefits after a five-year waiting period after a five-year waiting period. 8 U.S.C. §§ 1611(a), (b), 1613(a), 1641(b). And even non-"qualified" immigrants are eligible for numerous non-cash benefits, including emergency medical assistance, disaster relief, immunization services, amd public housing and the Section 8 program. 8 U.S.C. §§ 1611(a), (b), 1621(a), (b).

In 2002, Congress rolled back some of the restrictions in PRWORA to allow immigrants in certain categories to qualify for supplemental nutrition benefits and to authorize Medicaid and children's health insurance for non-citizen children and pregnant women. *See* Farm Security and Rural Investment Act, Pub. L. 107-171, § 4401, 116 Stat. 134 (2002) (codified as amended at 7 U.S.C. § 7901 et seq.) (partially restoring food stamp benefits to immigrants). And in 2009, Congress extended public health benefits, including Medicaid and the Children's Health Insurance Program ("CHIP"), to certain categories of immigrants regardless of the five-year waiting period. Children's Health Insurance Program Reauthorization Act of 2009, Pub. L. 111-3, 123 Stat. 8, § 214 (2009) (codified as amended at 42 U.S.C. §§ 1396–97 et seq.) (setting forth public benefits for immigrant children and pregnant women). And finally, to eliminate any doubt, Congress also

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alone does not constitute inability to take care of themselves" and therefore the authorities did not have sufficient evidence to conclude that they were "public charges").

expressly legislated that supplemental nutrition benefits are not to be considered as government-provided income or resources "for *any purpose* under any Federal … laws," including the INA. 7 U.S.C. § 2017(b) (emphasis added).

Defendants cannot reconcile these congressional *grants* of benefits with a reading of "public charge" that authorizes deportation or other penalties based on immigrants' *acceptance* of the benefits Congress intended them to use. As for the benefits authorized by PRWORA, Defendants assert their reading of "public charge" is consistent with PRWORA because "the Rule does not *prohibit* or 'disqualif[y]' anyone from receiving benefits to which they are entitled, but rather appropriately takes such receipt into consideration … in assessing an individual's likelihood of becoming a public charge." Opp'n at 34 (emphasis in original). This response is inadequate: the statute cannot be read to authorize the agency to "set a trap for the unwary" as the Final Rule plainly does. *Rotenberry v. Comm'r Internal Rev.*, 847 F.2d 229, 233 (5th Cir. 1988). Defendants also contend that the Rule is consistent with Congress's explicit instruction that SNAP benefits not be considered in connection with other federal statutes because "[t]he Rule does not consider the 'value' of SNAP benefits as 'income or resources,' only the *fact of receipt*." Opp'n at 35 (emphasis in original). But the Final Rule treats immigrants who receive SNAP benefits as public charges because they have benefited from government-provided *resources*—which is precisely what the statute forbids. 7 U.S.C. § 2017(b).

In short, all of these statutory provisions share the same subject matter and purpose as the INA public charge provision: to address the degree to which the United States will allow immigrants to rely on public benefits. *See Faul*, 253 F.3d at 990. Because these statutes carve out specific public benefits that immigrants *are entitled by federal law to receive*, they leave no doubt that receipt of such benefits is not a deportable offense—and thus cannot cause an immigrant to

be deemed a "public charge." *See Food & Drug Admin. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 143 (2000) ("At the time a statute is enacted, it may have a range of plausible meanings. Over time, however, subsequent acts can shape or focus those meanings."); *Brotherhood of Maintenance of Way Employees v. CSX Transp., Inc.*, 478 F.3d 814, 817 (7th Cir. 2007) ("A specific statute takes precedence over a more general statute, and a later enacted statute may limit the scope of an earlier statute.").

3. Congress Has Ratified Consistent Judicial Interpretations Of "Public Charge" To Mean Long-Term Dependency.

Finally, yet further confirmation that Congress did not authorize DHS to exclude immigrants who receive temporary public assistance is that Congress has re-adopted the term "public charge" against a backdrop of judicial decisions consistently interpreting it to refer to long-term and significant dependency. *See Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA*, 559 U.S. 573, 589-90 (2010) ("We have often observed that when judicial interpretations have settled the meaning of an existing statutory provision, repetition of the same language in a new statute indicates, as a general matter, the intent to incorporate its judicial interpretations as well.") (citations, internal quotation marks, and ellipsis omitted); *Custis v. United States*, 511 U.S. 485, 500-01 (1994); *Herman & MacLean v. Huddleston*, 459 U.S. 375, 385-86 (1983).

As described above, *Gegiow* marked an early interpretation of the 1891 statute, which confirmed—as the text makes clear—that the statute does not grant the agency latitude to exclude immigrants who lack a "permanent" condition precluding self-sufficiency. *See supra*, Part II.A.1. Although Congress has adopted a number of statutes since *Gegiow*, each one uses the same term—"public charge"—surrounded by other categories of immigrants with similarly serious and longstanding conditions that warrant exclusion. And Congress has never redefined the term.

Indeed, contrary to Defendants' argument as to the 1917 amendment, courts interpreting that Act continued to interpret the term "public charge" to limit the agency's authority. *See, e.g.*, *Ex parte Hosaye Sakaguchi*, 277 F. 913, 916 (9th Cir. 1922) ("[T]his change of location of the words does not change the meaning that should be given them, and [] it is still to be held that a person 'likely to become a public charge' is one who, by reason of poverty, insanity, or disease or disability, will probably become a charge on the public."); *Coykendall v. Skrmetta*, 22 F.2d 120, 121 (5th Cir. 1927) (holding that the term "public charge" must still "have the same meaning, when used more than once" in the same section of the statute, and as used in the clause prohibiting entry of unaccompanied minors, "it cannot well be supposed that the words in question were intended to refer to anything other than a condition of dependence on the public for support"). And subsequent years saw a long line of judicial and agency decisions similarly interpreting "public charge" in a way that is antithetical to the Final Rule.[10]

DHS asserts that "the exclusion of public charges extended to those who, although earning a modest living, might need assistance with 'the ordinary liabilities to sickness, or … any other additional charges … beyond the barest needs of existence.'" Opp'n at 19 (quoting *United States v. Lipkis*, 56 F. 427, 428 (S.D.N.Y. 1893)). But the cited authorities do not support DHS's interpretation of the statute. For example, the immigrant mother in *Lipkis* was a public charge

[10] *See, e.g.*, *Ex parte Mitchell*, 256 F. 229, 234 (N.D.N.Y. 1919) (defining "public charge" as "a pauper, or poor person who will be, or might properly be, sent to an almshouse and supported at the public expense"); *Ex parte Tsunetaro Machida*, 277 F. 239, 241 (W.D. Wash. 1921) (defining "public charge" as "a person committed to the custody of a department of the government"); *Matter of Martinez-Lopez*, 10 I. & N. Dec. 409, 421 (BIA 1962) (noting that the "public charge" provision "has been the subject of extensive judicial interpretation" and that "[t]he general tenor of the holdings is that the statute requires more than a showing of possibility that the alien will require public support"); *Matter of Perez*, 15 I. & N. Dec. 137 (B.I.A. 1974) (petitioner was not likely to become a public charge despite past receipt of welfare because having been "on welfare does not, by itself, establish that he or she is likely to become a public charge"); *Matter of A-*, 19 I. & N. Dec. 867 (B.I.A. 1988) (neither petitioner nor spouse had worked during the past four years and family received cash assistance, but she was not likely to become a public charge because she was "young," employed, and able to earn a living).

because she was committed to a public insane asylum "for a considerable period at the expense of the municipality." 56 F. at 428. Contrary to DHS's telling, the court concluded that the immigrant had been "likely to become a public charge" at the time of her entry because her husband, who was already resident in the U.S., suffered from "extreme poverty" and "inefficiency" that prevented him from obtaining greater means with which to support his ill wife. The court did *not* suggest that an individual is likely to become a public charge due to "ordinary liabilities to sickness"—and instead emphasized that "[w]hen an able-bodied workman comes to the country, … it is not the practice to [deem him likely to become a public charge] merely because he may have but little ready money, and upon the mere possibility that he may meet with some accident that may make him a cripple." *Id.*

Similarly, in *In re Feinknopf*, the court overturned the exclusion of an immigrant who could "find employment in his trade, and [was] willing to exercise the same." 47 F. 447, 447 (E.D.N.Y. 1891). The court did not suggest that the possibility that the immigrant might someday receive temporary public benefits supported his exclusion—and instead reversed the immigration commissioner based on an absence of any evidence of likelihood to become a public charge. *Id.*

Finally, contrary to DHS's assertion, the court in *Town of Hartford v. Town of Hartland*, 19 Vt. 392 (Vt. 1847), did not hold that the widow and children were chargeable solely because they received five dollars' worth of aid. Instead, the court explained that the public charge determination "depend[ed] upon the degree of her destitution and poverty," and accordingly considered all of the following factors: that the widow "was herself sickly and subject to fits, and [] her children were of tender age," and "[l]ittle reliance for support could therefore be placed upon the personal efforts or labor of the family"; that although she had inherited some money, it had already been expended or was owed to others; and that "[s]he had no legal claim to the cow, or the

rent due [on it]," which otherwise would have provided future financial support. *Id.* at 397–98. Rather than support the Final Rule, this decision more closely resembles the multi-factor totality-of-the-circumstances test employed by courts and the agency throughout the last century. *See id.* at 398–99 (concluding that widow was a public charge because "[o]n the whole" she did not have "the means of supporting herself and her children without public aid").[11]

In sum, the cases cited above, as well as those cited in DHS's brief, form a consistent body of authority holding that a "public charge" is an individual with permanent or long-term dependence on the government for care. And Congress repeatedly has ratified this longstanding interpretation. In 1952, Congress passed the INA, retaining the "public charge" language and thereby codifying its well-established common law definition. 8 U.S.C. § 1182(a)(4). Again, in 1986, Congress retained that language without change. Immigration Reform and Control Act, Pub. L. No. 99–603, 100 Stat. 3359 (1986). "The doctrine of ratification states that 'Congress is presumed to be aware of [a] ... judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change.'" *Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752, 770, n. 4 (2004) (quoting *Lorillard v. Pons*, 434 U.S. 575, 580 (1978)); *see also, Toyota Motor Mfg., Ky., Inc. v. Williams*, 534 U.S. 184, 193–94 (2002) ("Congress' repetition of a well-established

[11] DHS's reliance on *People ex rel. Durfee v. Commissioners of Emigration*, 1858 WL 7084 (N.Y. Gen. Term. 1858), is also misplaced. Because the federal government had not yet assumed control of federal immigration policy at that time, the court interpreted an 1847 New York state statute. *See id.* at 568–69 (citing N.Y. Laws of 1847, ch. 195). The issue was whether the New York State Commissioners of Emigration—the state officials who were responsible for immigration at that time—were required to reimburse a local municipality for "temporary relief" afforded to immigrants, as opposed to just permanent relief. *See id.* Critically, though, the court was not even interpreting the term "public charge," but rather § 4 of that statute, which required the commissioners to reimburse municipalities "*for any expense or charge* which may be incurred for the maintenance and support of [immigrants]." N.Y. Laws of 1847, ch. 195, § 4 (emphasis added). Based on the expansive language of that provision, the court held that the defendants had to reimburse the municipality for temporary relief expenses. *See id.* Tellingly, § 3 of that same statute required officials to execute a bond from arriving passengers who were "likely to become *permanently* a public charge," which cuts directly against DHS's interpretation. N.Y. Laws of 1847, ch. 195, § 3.

term generally implies that Congress intended the term to be construed in accordance with pre-existing regulatory interpretations.") (citations omitted); *Saltzman v. Farm Credit Servs. of Mid-Am., ACA*, 950 F.2d 466, 468 (7th Cir. 1991) (holding that Congressional action, "taken against the backdrop of numerous court decisions," suggests that "Congress chose to ratify this judicial determination"). Congress' repeated ratification of existing judicial interpretations, and its express rejection of the very definition now advanced by the agency, *see* Mot. at 34-35, is strong evidence of Congress' clear intent on this issue. *See, e.g.*, *Food & Drug Admin. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 144 (2000) (holding that Congressional action demonstrated a clear intent to preclude the FDA from regulating tobacco products, in part because "on several occasions … Congress considered and rejected bills that would have granted the FDA such jurisdiction").

B. The Final Rule Is Arbitrary And Capricious.

Plaintiffs are likely to succeed for the independent reason that the Final Rule is arbitrary and capricious. The agency attempts to defend the Final Rule's radical change of longstanding policy—on which both immigrants and the organizations that provide services to immigrants have long relied—through conclusory assertions that the Final Rule promotes "self-sufficiency" and that any harms are speculative or hard to quantify and can thus be disregarded. Opp'n at 27–28. These unfounded assertions lack support, disregard Plaintiffs' and others' serious reliance interests, and contradict the data in the Proposed/Final Rule. Accordingly, they do not even approach the "more detailed justification" required for major policy changes that disrupt reliance interests under *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009), nor even the lower hurdle of rational rulemaking set forth in *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43-44 (1983) (rule is arbitrary and capricious if "the agency relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence

before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise").

1. The Final Rule Lacks The "Detailed Justification" That Is Required When An Agency's Policy Change Contradicts Prior Findings And Disrupts Settled Reliance Interests.

Defendants assert that the Final Rule will result in the "primary benefit" of "better ensur[ing] that certain aliens 'will be self-sufficient …'" Opp'n. at 29. This assertion is not only unsupported by evidence in the administrative record, but also contradicted by the policy judgments of Congress as set forth in PRWORA, as well as the agency's own prior findings.

As an initial matter, the Final Rule identifies no evidence that after admission and after immigrants successfully provide for themselves for five years (during PRWORA's five-year bar on receipt of benefits by qualified immigrants), immigrants use benefits at a level that demonstrates a lack of "self-sufficiency." Indeed, in PRWORA, Congress rejected the form of "self-sufficiency" that Defendants now claim the Final Rule supports. PRWORA seeks to deter noncitizens from "*depend[ing]* on public resources," but expressly authorizes immigrants to *use* benefits in precisely the manner that DHS would penalize. 8 U.S.C. § 1601(2)(A) (emphasis added). And even more clearly, PRWORA says a State that provides benefits consistent with PRWORA "shall be considered to have chosen the least restrictive means available for achieving the compelling governmental interest of assuring that aliens be *self-reliant in accordance with national immigration policy*." *Id.* § 1601(7) (emphasis added). Where Congress has defined what constitutes adequate self-sufficiency, a DHS policy that purports to achieve a materially inconsistent form of "self-sufficiency" is arbitrary and capricious. *See Cuomo v. Clearing House Ass'n*, 557 U.S. 519, 533 (2009) (an agency may not do through administrative action "what Congress declined to do"); *I.N.S. v. Cardoza-Fonseca*, 480 U.S. 421, 442-443 (1987) (rejecting agency interpretation of immigration laws that correspond to rejected legislation because "[f]ew

principles of statutory construction are more compelling") (quoting *Nachman Corp. v. Pension Benefit Guaranty Corporation*, 446 U.S. 359, 392–393 (1980) (Stewart, J., dissenting)).

In the Field Guidance, the agency made express factual findings to the effect that approving use of non-cash benefits would not diminish immigrants' self-sufficiency. The agency rejected the notion that an immigrant who used non-cash benefits would not be capable of supporting him or herself: "it is extremely unlikely that an individual or family could subsist on a combination of non-cash support benefits or services alone … HHS is unable to conceive of a situation where an individual, other than someone who permanently resides in a long-term care institution, could support himself or his family solely on non-cash benefits so as to be primarily dependent on the [G]overnment." 64 Fed. Reg. at 28,678. Defendants' Final Rule contradicts these prior factual findings, but does not provide the "detailed justification" necessary to support the agency's 180-degree turn in policy. The Final Rule thus epitomizes arbitrariness and caprice under *Fox*. *See also Gonzales v. Oregon*, 546 U.S. 243, 258-59, 264-65 (2006) (judiciary should not defer to administrative interpretations when agency is given enforcement authority but not authority to carry out overall statutory scheme).

2. The Final Rule Impermissibly Fails To Consider Admitted Harms.

The Final Rule is likewise arbitrary and capricious because Defendants failed to give adequate consideration to the harms that they concede will flow from it. Defendants contend they were permitted to disregard harms that they acknowledged would occur, but that they declared difficult to quantify. *See* Opp'n at 27-28. But the law does not permit Defendants to state that harms are "hard to quantify" or "speculative" if the harms are "predictable" and "fairly traceable" to the agency's actions. *Dep't of Commerce v. New York*, 139 S. Ct. 2551, 2565 (2019). Moreover, Defendants simply ignored numerous rigorous studies supplied in the comments and attached to Plaintiffs' briefs using statistical analysis to estimate the effect of the Final Rule based on data

from past changes to public benefits rules. Defendants' Opposition Brief does not address these harms either. A rule is arbitrary if "an agency refuses to acknowledge (or fails to obtain) the facts and figures that matter prior to exercising its discretion to promulgate a rule." *Make the Road New York v. McAleenan*, No. 19-CV-2369, 2019 WL 4738070, at *39 (D.D.C. Sept. 27, 2019). The Court in *Dep't of Commerce* also held that an agency *must* weigh even the illegal reactions of third parties responding to agency action if their reactions are predictable. *Dep't of Commerce*, 139 S. Ct. at 2566. Defendants' failure to "grappl[e]" with evidence contrary to their determination violates the APA. *Boucher v. U.S. Dep't. of Agriculture*, 934 F.3d 530, 545 (7th Cir. 2019).

Defendants assert that nothing more was required from them because the APA "does not require a detailed cost-benefit analysis." Opp'n at 27. But there can be no dispute that the "APA requires *meaningful* review." *Orchard Hill Bldg. Co. v. U.S. Army Corps of Eng'rs*, 893 F.3d 1017, 1026 (7th Cir. 2018) (emphasis added) (quoting *Dickinson v. Zurko*, 527 U.S. 150, 162 (1999)). "The opportunity under the APA to comment on proposed rules is 'meaningless unless the agency responds to significant points raised by the public.'" *St. James Hosp. v. Heckler*, 760 F.2d 1460, 1470 (7th Cir. 1985) (quoting *Home Box Office, Inc. v. FCC*, 567 F.2d 9, 35-36 (D.C. Cir. 1977)).

Here, the agency's "summary discussion" of the Final Rule's harms was particularly improper because the Final Rule causes harms resulting from Plaintiffs' reliance on the prior policy. *Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2126-27 (2016). Plaintiff Cook County operates one of the largest healthcare systems in America. Chan Decl. at ¶ 5. Its budget, developed in reliance on Medicaid enrollment rates that existed under the Field Guidance, will be "devastated" if the Final Rule goes into effect because rates of Medicaid reimbursement and unreimbursed care will dramatically change. *Id*. at ¶ 7. Where immigrants, their families, and the institutions that serve them have made plans in reliance on DHS's prior policy, the radical shift

embodied by the Final Rule requires a far deeper analysis and more complete explanation than what DHS has provided.[12]

3. The Final Rule Is Contrary To The Requirements Of The Rehabilitation Act.

As Plaintiffs showed, the Final Rule is likewise invalid because it violates Section 504 of the Rehabilitation Act ("Section 504") by discriminating against individuals with disabilities. *See* Mot. at 44-45.

Defendants first argue that Section 504 does not apply here because the INA, which authorizes consideration of "health" in making a public charge determination, was enacted after Section 504. Opp'n at 33-34. But an earlier version of the "public charge" statute was in place when Section 504 was enacted, and Defendants do not suggest that the meaning of the statute has changed in the intervening years. *See* Opp'n at 14-16. If Section 504 was consistent with the prior version of "public charge," it is equally consistent with the current version. Section 504's mandate not to discriminate against persons with disabilities and to provide them with an equal opportunity thus applies just as forcefully here. *See Franco-Gonzalez v. Holder*, No. 10-CV-02211, 2013 WL 3674492, at *4 (C.D. Cal. Apr. 23, 2013) (prima facie violation of Section 504 for denial of appointment of representatives for disabled immigrants in detention or removal proceedings who were "unable to meaningfully access the benefit offered…because of their disability"); *see also Lovell v. Chandler*, 303 F.3d 1039, 1053 (9th Cir. 2002) (Section 504 violation where "but for their disability," plaintiffs would have received Medicaid); *Lesley v. Chie*, 250 F.3d 47, 55 (1st

[12] Defendants assert that DHS adequately addressed harms because it changed the Final Rule to exclude consideration of Medicaid enrollment of children, pregnant women, and use of emergency Medicaid in assessing whether an immigrant was a "public charge." Opp'n at 28-29. Not only is this change limited in scope, but it ignores the chilling effect that applies to even those who are exempt from public charge determinations, which will in turn lead to drops in vaccination rates that could cause outbreaks of infectious diseases. Narrow exemptions that may apply only to some people in mixed-status households do not meaningfully address the harms of the Final Rule. *State Farm*, 463 U.S. at 31.

Cir. 2001) (adverse decision based on multiple factors may violate Rehabilitation Act if "it rested on stereotypes of the disabled").

Defendants concede that the Final Rule penalizes a disabled individual if his or her "particular medical condition tends to show that he is" likely to use public benefits. Opp'n at 34. Defendants contend that this is nonetheless consistent with Section 504 because it supposedly focuses on the individual's "medical condition" rather than the individual's "disability." *Id.* This argument is specious. Section 504 was expressly intended to be a remedial statute, passed by Congress "to rectify the harms resulting from action that discriminated [against individuals with disabilities]." *Alexander v. Choate*, 469 U.S. 287, 295 (1985); *see also* 28 C.F.R. § 41.51(b)(3). Under Section 504, the existence of a disability cannot be separated from its effects. *School Board of Nassau County v. Arline*, 480 U.S. 273, 282 (1987). By considering health, disability, the receipt of Medicaid, and the lack of private health insurance as negative factors *per se*, *and*, considering as one of the few positive factors the lack of a medical condition, the Final Rule violates Section 504 because "but for their disability," persons with disabilities would have an equal opportunity not to be deemed a public charge as individuals without disabilities. *See* 8 C.F.R. §§ 212.22(b)(2), (b)(4)(i)(E), (5)(b), (5)(c)(1)(iii)(A).[13]

4. The Final Rule's Changes To The Totality of the Circumstances Test Are Arbitrary and Capricious.

The Final Rule's weighting scheme is arbitrary and capricious in that it is not a scheme that is reasonably calculated to implement the INA's "totality of the circumstances" test. The Final Rule assigns automatic and blanket negative or positive weights to factors that do not reasonably

[13] As set forth above, the Final Rule is also contrary to the provisions and intent of PRWORA and SNAP. *See* Mot. at 44-46. Moreover, under the Affordable Care Act ("ACA"), Medicaid "is no longer a program to care for the neediest among us, but rather an element of a comprehensive national plan to provide universal health insurance coverage." *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 583 (2012).

reflect whether most individuals are likely to be primarily dependent on the government for subsistence—or even self-sufficient. *See Carey v. Quern*, 588 F.2d 230, 232 (7th Cir. 1978) (invalidating Illinois Department of Public Aid action and holding that "[i]n the context of eligibility for welfare assistance, due process requires at least that the assistance program be administered in such a way as to insure fairness and to avoid the risk of arbitrary decision making.").

For instance, the statute directs the consideration of "family status" among the totality of circumstances. 8 U.S.C. § 1182(a)(4)(B)(i)(III). But the Final Rule instead assesses "family size," and rather than considering family size as one piece of a larger totality, the rule deems a larger family size *per se* negative. 84 Fed. Reg. at 41,309; Opp'n at 32. But, while Defendants assert that larger family size correlates with higher use of benefits, the data that DHS cites show the opposite: the vast majority of people with larger families are not enrolled in any benefits programs. 83 Fed. Reg. at 51,206, 51,196, 51,186.

In another example, DHS acknowledges that an application for benefits is "not the same as receipt." Opp'n at 32; 84 Fed. Reg. at 41,422; *see also id*. at 41,502 (§ 212.20(e)). But the Final Rule irrationally assigns the exact same negative weight to an application for benefits as to receipt of the same without explanation. 84 Fed. Reg. at 41,503 (§212.22(b)(4)(E)). "Illogic and internal inconsistency are characteristic of arbitrary and unreasonable agency action." *Chamber of Commerce v. U.S. Dep't of Labor*, 885 F.3d 360, 382 (5th Cir. 2018).

III. Plaintiffs Will Suffer Irreparable Harm Absent Injunctive Relief

Contrary to Defendants' arguments, Plaintiffs have established the magnitude, immediacy, and certainty of the harms through their own declarations and the declarations of other organizations, all of which have worked closely with those directly and indirectly affected by the Final Rule. Plaintiffs have demonstrated that irreparable harms have not only already begun

because of the rule, *see* Chan Decl. at ¶ 31(b), (c); Benito Decl. at ¶¶ 30, 33-37; Peller Decl. at ¶¶ 34-36, 38, but that the increase of these harms is inevitable. Chan Decl. at ¶¶ 21, 25, 30-32, 37, 38, 40-46, 49, 52; Peller Decl. at ¶¶ 27-29, 31-32, 34-38; Benito Decl. at ¶¶ 3-18, 23, 28-30, 33-42. In fact, DHS itself admitted the magnitude, certainty, and immediacy of the harms. DHS concedes disenrollment will occur, 84 Fed. Reg. at 41,463, medical care will shift to the emergency room, *id.* at 41,384, and the prevalence of disease will increase, *id*. at 41,384 and 51,270. Despite the unquestioned magnitude and certainty of harm to Plaintiffs, such showings are unnecessary in order to find irreparable harm. *See Doe v. Bellin Memorial Hospital* 479 F.2d 756, 759 (7th Cir. 1973) (holding that "[t]he quality, rather than the magnitude," of the potential injury is relevant to a finding of irreparable harm); *see also Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. Of Educ.*, 858 F.3d 1034, 1044-45 (7th Cir. 2017) (holding that the threat of irreparable harm is enough, and the plaintiff is not required to show certainty).

Plaintiffs' economic harms are also immediate, as they accrue immediately as participants leave benefits programs. For example, withdrawals from public benefits have already begun and the number of those withdrawals will mount as the Final Rule becomes effective and more immigrants and their families learn of it. *See, e.g.*, *Dep't of Commerce*, 139 S. Ct. at 2565 (loss of federal funds "is a sufficiently concrete and imminent injury"); *see also Illinois Hospital Assoc. v. Illinois Dep't of Public Aid*, 576 F. Supp. 360, 371 (N.D. Ill. 1983) ("Preliminary injunctive relief is necessary to avoid the daily losses caused by inadequate Medicaid reimbursement.").

IV. The Balance Of Equities Favors The Issuance Of A Preliminary Injunction Or Stay.

A. Defendants' Interest In Administering Immigration Policy Is Not Sufficient.

Plaintiffs have shown that the balance of equities tips in their favor by alleging the wide range of imminent harms flowing from the Rule change. The government's purported harm—a bare interest in administering policy—pales in comparison and cannot be sufficient. If it were, the

equities and public interest *always* would weigh against enjoining a change of governmental regulations, and render the process of seeking a preliminary injunction meaningless. *See American Medical Assoc. v. Weinberger*, 522 F.2d 921, 926 (7th Cir. 1975) (preserving status quo of longstanding regulations is not irreparable harm). Authority to administer immigration policy neither allows the government to violate the law nor can it outweigh the significant public interest and equities that favor maintaining the status quo while the Court reviews legality. The government will not be harmed by following a policy that has been in place for over 100 years while this case is litigated. Plaintiffs and the public, however, will be significantly harmed if that policy is changed, even temporarily.

B. The County And State Suits Do Not Constitute Duplicative Actions Such That The Equitable Factors Counsel Against Entry Of Injunctive Relief In This Case.

Defendants argue that the County's involvement in this suit represents "a duplicative effort by the State and one of its administrative subdivisions to obtain identical relief," and thus counsels against this Court issuing the relief that the County seeks here. Opp'n at 39. Not so.

1. The State of Illinois' Participation In a Related Case Does Not Impact Cook County's Ability To Protect Its Proprietary Interests In This Jurisdiction.

At the parties' presentment hearing, the Court asked whether the suit by the State of Illinois ("State")[14] precludes the County's present action under the doctrine of *parens patriae*. Because states cannot invoke *parens patriae* in suits against the federal government, the doctrine cannot bar Cook County's suit based upon its independent, proprietary interests.[15]

[14] On August 14, 2019, the State joined twelve other states in suing Defendants to challenge the Final Rule in the Eastern District of Washington. Complaint For Declaratory And Injunctive Relief, *State of Washington, et al. v. U.S. DHS, et al.*, No. 4:19-cv-5210-RMP (E.D. Wash. filed Aug. 14, 2019).

[15] In their response, Defendants argue that the County lacks standing to sue as *parens patriae*. Opp'n at 36 n.21. This argument is irrelevant to the County's standing; as discussed *supra*, the County is suing based upon concrete harms to its own proprietary interests, not in a *parens patriae* capacity. Compl. ¶¶ 83–109.

It remains well-settled that states do "not have standing as *parens patriae* to bring an action against the Federal Government." *Alfred L. Snapp & Son v. Puerto Rico*, 458 U.S. 592, 610 n.16 (citing *Massachusetts v. Mellon*, 262 U.S. 447, 485–86 (1923)), *rev'd in part on other grounds*, 767 F.3d 781 (9th Cir. 2014). Rather, "in lawsuits against the federal government…the United States, and not the state, is presumed to represent the interests of the citizens as parens patriae." *Cal. ex rel. Imperial County Air Pollution Control Dist. V. United States DOI*, Case No. 09cv2233 AJB, 2012 WL 1155831, at *5 (S.D. Cal. Apr. 6, 2012), aff'd in part and reversed in part, 767 F.3d 781 (9th Cir. 2014). Accordingly, to establish standing, states and localities suing the federal government must assert "concrete or proprietary interests" separate and apart from any "quasi-sovereign *parens patriae* interests." *Id.* at *5; *see also Vidal v. Duke*, 295 F. Supp. 3d 127, 162 (E.D.N.Y. 2017) (plaintiff states lacked standing to challenge certain changes to DHS's DACA program due to the "settled rule" that a state "may not sue *parens patriae* to 'protect her citizens from the operation of federal statutes'") (quoting *Mass. v. EPA*, 549 U.S. 497, 520 n.17 (2007)).

Here, the State sued the federal government to block the Final Rule's implementation. Thus, the State cannot establish standing in that suit based upon the *parens patriae* doctrine, nor can the State's suit subsume the County's suit under that same doctrine. In fact, the other ongoing public charge cases across the country buttress this conclusion: the City and County of San Francisco, Santa Clara County, Baltimore City, and Gaithersburg, Maryland each sued the federal government to challenge the irreparable harms the Final Rule will inflict on their respective government entities, notwithstanding California and Maryland's independent public charge-related suits. *State of Washington, et al. v. U.S. DHS, et al.*, No. 4:19-cv-5210-RMP (E.D. Wash. filed Aug. 14, 2019); *State of California, et al. v. U.S. DHS, et al.*, No. 3:19-cv-04975 (N.D. Cal. filed Aug. 16, 2019); *City and County of San Francisco, et al. v. USCIS, et al.*, No. 4:19-cv-04717-

PJH (N.D. Cal. filed Sept. 20, 2019); *Mayor and City Council of Baltimore, et al. v. U.S. DHS, et al.*, No. 8:19-cv-02851 (E.D. Md. filed Sept. 27, 2019).[16]

2. The State and County Suits Are Not Duplicative.

The law affords district courts "a great deal of latitude and discretion in determining whether one action is duplicative of another." *Serlin v. Arthur Andersen & Co.*, 3 F.3d 221, 223 (7th Cir. 1993). Generally, a suit is duplicative if the parties, claims, and available relief "do not significantly differ between the two actions." *Id*. Here, they do.

First, Defendants concede that the County and State are not "identical units of government," but argue that they nevertheless constitute "overlapping" parties. Opp'n at 40. In so doing, Defendants cite a case involving sister retail stores. *Id.* (quoting *Ridge Gold Std. Liquors, Inc. v. Seagram & Sons*, 572 F. Supp. 1210, 1214 (N.D. Ill. 1983)). This case is wholly inapposite. The Illinois Constitution defines "counties" as their own "units of local government." Ill. Const. Art. VII, § 1. Moreover, Cook County, as a county with more than 25,000 residents, constitutes a "home rule" unit capable of exercising "any power" and performing "any function" pertaining to its government and affairs, except as expressly limited by statute. *Id*. at § 6. The County thus maintains "the authority to exercise a vast variety of traditionally sovereign functions such as to sue and be sued, to borrow money generally, to issue bonds for the purpose of paying judgments against it, and to compromise claims asserted against it." *Jensen v. State Bd. of Tax Comm'rs*, 763 F.2d 272, 279 (7th Cir. 1985); *see also* Ill. Const. Art. VII, §§ 6–7 (explaining powers of Illinois

[16] The various public charge cases across the country present just one of many instances in which counties and cities have filed complaints against the federal government separately from their respective states to vindicate distinct harms. *See, e.g.*, *Regents of the Univ. of Cal. v. United States, Dept. of Homeland Sec.*, 279 F. Supp. 3d 1011, 1026–27 (N.D. Cal. 2018) (plaintiffs County of Santa Clara, the City of San Jose, and the State of California each filed separate DACA lawsuits in the district alleging distinct harms; the court deemed them related); *California v. Ross*, 362 F. Supp. 3d 727, 731 (N.D. Cal. 2018) (plaintiffs the State of California and various cities filed a 2020 census complaint separate from that of the City of San Jose; the court deemed them related).

home rule and non-home rule units); 55 ILCS 5/3-9005 (a)(1)–(4) (explaining duty of county State's attorney to "commence and prosecute all actions . . . in which the people of the State or county may be concerned" and "defend all actions and proceedings brought against h[er] county"); Opp'n at 40 (lacking citation to any authority stating otherwise).

This Court has recognized that the State cannot "fully and effectively" represent Cook County's proprietary interests simply by bringing similar claims against the same party. In *County of Cook v. Wells Fargo & Co.*, Cook County alleged Defendant Wells Fargo violated the Fair Housing Act by issuing predatory subprime mortgage loans to County residents. 314 F. Supp. 3d 975, 978–79 (N.D. Ill. Mar. 26, 2018) (Feinerman, J.). In moving to dismiss the complaint, Wells Fargo argued that because the Illinois Attorney General had already sued Wells Fargo on behalf of "The People of the State of Illinois" based upon these same practices, the earlier lawsuit "*effectively* sought relief both on behalf of Illinois borrowers and the State and its political subdivisions, including Cook County" and thus precluded the County's suit. *Id*. at 997. But the Court rejected this argument, explaining that while "the State of Illinois and Cook County are both governmental entities, with the latter being a subdivision of the former," that fact alone "does not mean that the Attorney General was in privity with Cook County in prosecuting the state lawsuit." *Id*. at 998. Rather, because the Attorney General and County brought their suits separately, and because there was "no evidence of any collaboration between the Attorney General and Cook County officials in prosecuting the Attorney General's suit," the "Attorney General was not representing Cook County's unique legal interests in seeking damages for the costs Wells Fargo's alleged practices imposed on the County." [17] *Id*. (citing *Rhoads v. Bd. of Trs. of the City of Calumet*

[17] While the County cannot yet specify damages—as opposed to irreparable harm—with detail in this case, its inability to do so turns solely on timing; if the Final Rule is allowed to go into effect in a matter of days, the County asserts that it will lose at least $30 million annually in Medicaid reimbursement alone. Complaint ¶ 97. Thus, the County would be in a position to assert new claims and potential damages.

City Policemen's Pension Fund, 689 N.E.2d 266, 270 (Ill. App. 1997)); *see also United States v. Ledee*, 772 F.3d 21, 30 (1st Cir. 2014) ("[C]ourts have recognized in the preclusion context the folly of treating the government as a single entity in which representation by one government agent is necessarily representation for all segments of the government.").

Here, as in *Wells Fargo*, the County is not acting in privity with the State, nor has it collaborated in bringing the present suit to block implementation of the Final Rule, sought redress for the same harms, or sought the same scope of relief. Rather, the County alleges distinct, irreparable harms that will result in substantial monetary damages if the Final Rule is allowed to go into effect, and has sought an injunction or stay that is state-wide rather than nationwide. Compl. ¶¶ 83–109. Indeed, the State's lawsuit contains *no mention* of Cook County nor its interests. *See generally* Complaint For Declaratory And Injunctive Relief, *State of Washington, et al. v. U.S. DHS, et al.*, No. 4:19-cv-5210-RMP (E.D. Wash. Filed Aug. 14, 2019).[18]

Finally, Defendants fail to explain how the State could "fully and effectively" represent the County's interests when it also argues that Illinois does not have standing—specifically based upon its status as a state—to sue in the Washington case. *See* Defendants' Opposition To Motion For § 705 Stay Pending Judicial Review Or For Preliminary Injunction at 8–27, 53–55, *State of Washington, et al. v. U.S. DHS, et al.*, No. 4:19-cv-5210-RMP (E.D. Wash. Filed Sept. 20, 2019). Defendants cannot have it both ways.

3. The County's Suit Presents A "Superior Vehicle" For Litigating The Final Rule.

In their analysis of the equitable factors, Defendants also fail to mention that the Seventh Circuit "does not rigidly adhere to a 'first-to-file' rule." *Trippe Mfg. Co. v. American Power*

[18] This Court is entitled to take judicial notice of the State's complaint and its contents. *Watkins v. United States*, 854 F.3d 947, 950 (7th Cir. 2017).

Conversion Corp., 46 F.3d 624, 629 (7th Cir. 1995). Instead, "[n]o mechanical rule governs the handling of overlapping [federal] cases," and thus "the judge hearing the second-filed case may conclude that it is a superior vehicle and may press forward." *Blair v. Equifax Check Services, Inc.*, 181 F.3d 832, 838 (7th Cir. 1999).

Here, Plaintiffs' suit, filed in the Northern District of Illinois, remains the superior vehicle for resolving the Final Rule due to the well-established principle that "[r]esolving litigated controversies in their locale is a desirable goal of the federal courts." *Doage v. Board of Regents*, 950 F. Supp. 258 (N.D. Ill. 1997). Staying this case would force Plaintiffs to have their claims decided by a court entirely unfamiliar with Cook County and its local, proprietary interests. Accordingly, the County asks this Court to deem this case the "superior vehicle" for litigating the Final Rule's effects in Illinois, and thus "press forward" in adjudicating the present suit. *Blair*, 181 F.3d at 838.

C. Plaintiffs Filed Suit In An Expeditious Manner

Defendants also maintain that the equitable factors tip in their favor because Plaintiffs "tarr[ied] in filing their request for emergency relief." Opp'n at 40. Plaintiffs did no such thing.[19] Plaintiffs worked expeditiously to investigate and allege in good faith the myriad ways in which the Final Rule will irreparably harm the County and ICIRR. *See Lake Michigan Federation v. United States Army Corps of Engineers*, 742 F. Supp. 441, 447 (N.D. Ill. 1990) (while it was "conceivable that an action may have been filed more quickly," the Plaintiff's delay was not unreasonable "given the complexity of the issues and the need to obtain requisite factual information before filing the action").

[19] The cases cited by Defendants concern movants who allowed the action they opposed either go into effect or continue, sometimes waiting up to five years before challenging non-movants' actions. Not so here.

D. The Court Should Reject Defendants "Established Injuries" Argument In Issuing A Statewide Stay And/Or Preliminary Injunction.

Defendants argue that if this Court were to order emergency relief or a stay of the Final Rule's effective date, "it should be limited to redressing only any *established* injuries" to Plaintiffs. [73] at 42. While it is difficult to discern the geographical scope of this proposal, it was squarely rejected by the D.C. Circuit just last month. *Make the Road New York v. McAleenan*, No. 19-cv-2369 (KBJ), No. No. 19-CV-2369, 2019 WL 4738070, at *3, *44 (D.C. Cir. Sept. 27, 2019) (finding that limiting preliminary relief only as it applies to particular plaintiffs was: (1) "flatly inconsistent with the plain language of the APA"; (2) "entirely impractical when invoked in the realm of judicial review of administrative action"; and (3) sought in "contempt for the authority that the Constitution's Framers have vested in the judicial branch"). Indeed, the court found that the government's argument to the contrary "reek[ed] of bad faith." *Id.* at *44.

Here, Plaintiffs reasonably request statewide relief to prevent the irreparable harm the County, ICIRR, and ICIRR's members will suffer under the Finale Rule. Accordingly, Plaintiffs ask this Court to reject Defendants' ambiguous and impractical proposal as to scope.

CONCLUSION

For the foregoing reasons, the Court should stay or enjoin the Final Rule's implementation in the State of Illinois, without bond.

Dated: October 10, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that on October 10, 2019, she caused the attached **PLAINTIFFS' REPLY BRIEF IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION OR STAY PURSUANT TO 5 U.S.C. § 705** to be served via the Court's ECF system and by email upon:

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