No. 19-3591

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

STATE OF NEW YORK, CITY OF NEW YORK,
STATE OF CONNECTICUT, and STATE OF VERMONT,

Plaintiffs-Appellees,

v.

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

Defendants-Appellants.

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

BRIEF FOR APPELLANTS

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INTRODUCTION

The Immigration and Nationality Act (INA) provides that an alien is inadmissible if the alien is, in the Executive Branch's opinion, "likely at any time to become a public charge." 8 U.S.C. § 1182(a)(4)(A). On August 14, 2019, the Department of Homeland Security (DHS) published a final rule implementing this public-charge inadmissibility provision. The Rule defines "public charge" to mean an alien who receives one or more specified public benefits, including certain noncash benefits, for more than twelve months in the aggregate within any thirty-six month period. The Rule also sets forth the framework DHS will use to determine whether an alien is likely at any time to become a public charge. On October 11, 2019, in two related cases—in which we are filing identical briefs in the interest of judicial economy—the district court entered nationwide preliminary injunctions and stays under 5 U.S.C. § 705 barring DHS from enforcing the Rule.

The district court's order should be set aside, as none of the traditional factors supports the entry of an injunction here. As a threshold matter, plaintiffs—three States and the City of New York in one case, and four nonprofit organizations in the other—have not established standing to sue under Article III and zone-of-interest principles. The States and the City allege that the Rule will burden their budgets because some of their residents will respond to the Rule by disenrolling from public-benefit programs, but do not account for factors that affect their budget in the opposite direction. And the organizations simply allege that they will have to adjust

the subject matter of their advocacy services, which does not give rise to cognizable injury. Article III aside, those alleged injuries are unrelated or opposed to the interests Congress sought to further through the public-charge statute.

As the Ninth Circuit recognized in staying injunctions against the Rule, plaintiffs are not likely to succeed on the merits of their claim that the Rule's definition of "public charge" is inconsistent with the INA. Numerous statutory provisions demonstrate that Congress intended to require aliens to rely on their own resources, rather than taxpayer-supported benefits, to meet their basic needs. For example, Congress required many aliens to obtain sponsors who must promise to reimburse the government for public benefits the alien receives, and rendered any alien who fails to obtain a required sponsor automatically inadmissible on the public-charge ground. Congress also made it difficult for most aliens to obtain most public benefits after they enter the country, underscoring its stated goal of "assur[ing] that aliens [are] self-reliant in accordance with [national] immigration policy," 8 U.S.C. § 1601(5).

The Rule—which renders inadmissible aliens who are likely to rely on government support for a significant period to meet basic needs—fully accords with Congress's intent. Congress has not required DHS to adopt a narrow definition of "public charge," but rather has repeatedly and intentionally left the definition and application of the term to the discretion of the Executive Branch.

Plaintiffs are also unlikely to succeed in showing that the Rule is arbitrary and capricious or fails rational-basis review under equal-protection principles. The agency more than adequately explained its reasons for adopting the Rule, analyzed the costs and benefits associated with the Rule, and reasonably concluded that the Rule's benefits justified its costs. Nor are plaintiffs likely to succeed in establishing that the Rule violates the Rehabilitation Act. Congress required DHS to take an alien's health into account in evaluating whether the alien is likely at any time to become a public charge, and an alien's health (including any relevant disability) is but one factor among many that DHS considers in making such a determination.

The remaining preliminary-injunction factors likewise weigh against an injunction. So long as the Rule is prevented from taking effect, the government will grant lawful-permanent-resident status to aliens DHS believes would be found inadmissible as likely to become public charges under the Rule. Any harm plaintiffs might experience does not constitute irreparable injury, let alone irreparable injury sufficient to outweigh that harm to the federal government and taxpayers. At a minimum, the district court's injunctions should be limited to the plaintiff States, as a broader injunction is not necessary to redress plaintiffs' alleged injuries and effectively

overrules decisions by the Ninth and Fourth Circuits allowing the Rule to go into effect.[1]

STATEMENT OF JURISDICTION

Plaintiffs invoked the jurisdiction of the district court pursuant to 28 U.S.C. § 1331, raising claims under the Administrative Procedure Act (APA), 5 U.S.C. §§ 701-706, and the Constitution. Joint Appendix (JA) 34 (No. 19-3591); JA 49 (No. 19-3595). Plaintiffs' standing is contested. *See infra* Part I. The district court entered preliminary injunctions on October 11, 2019. Special Appendix (SA) 25-27, 55-57. The government filed timely notices of appeal on October 30, 2019. JA 746 (No. 19-3591), JA 1747 (No. 19-3595). This Court has jurisdiction under 28 U.S.C. § 1292(a)(1).

STATEMENT OF THE ISSUES

1. Whether plaintiffs—three States, the City of New York, and four nonprofit organizations—are appropriate parties to challenge the Rule.

2. Whether the Rule's definition of "public charge" is based on a permissible construction of the INA.

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[1] Four other district courts have issued preliminary injunctions, all of which the government has appealed. *See CASA de Maryland, Inc. v. Trump*, 19-cv-2715 (D. Md.) (nationwide) (stayed by Fourth Circuit); *Cook Cty. v. McAleenan*, 19-cv-6334 (N.D. Ill.) (Illinois) (stay motion pending); *City and Cty. of San Francisco v. USCIS*, No. 19-cv-4717 (N.D. Cal.) (plaintiff counties) (stayed by Ninth Circuit); *California v. USDHS*, No. 19-cv-4975 (N.D. Cal.) (plaintiff States and the District of Columbia) (stayed by Ninth Circuit); *Washington v. USDHS*, No. 19-cv-5210 (E.D. Wash.) (nationwide) (stayed by Ninth Circuit).

3. Whether the Rule is arbitrary and capricious.

4. Whether the Rule violates equal protection.

5. Whether the Rule violates the Rehabilitation Act.

6. Whether the district court erred in failing to limit the geographic scope of its injunction.

PERTINENT STATUTES AND REGULATIONS

Pertinent statutes are reproduced in the Special Appendix.

STATEMENT OF THE CASE

This appeal arises out of a challenge to the Department of Homeland Security's promulgation of a final rule implementing the INA's public-charge inadmissibility provision, 8 U.S.C. § 1182(a)(4). Plaintiffs sought a preliminary injunction and stay under 5 U.S.C. § 705 that would bar DHS from implementing the Rule. On October 11, 2019, the district court (Daniels, J.) entered nationwide preliminary injunctions (and associated stays under 5 U.S.C. § 705) enjoining DHS from enforcing the Rule. SA 1-57. The government appeals under 28 U.S.C. § 1292(a)(1).

A. Statutory and Regulatory Background

1. The INA provides that "[a]ny alien who, . . . in the opinion of the [Secretary of Homeland Security] at the time of application for admission or adjustment of status, is likely at any time to become a public charge is inadmissible." 8 U.S.C.

§ 1182(a)(4)(A).[2] That assessment "shall at a minimum consider the alien's (I) age; (II) health; (III) family status; (IV) assets, resources, and financial status; and (V) education and skills." *Id.* § 1182(a)(4)(B). A separate INA provision provides that an alien is deportable if, within five years of entry, the alien "has become a public charge from causes not affirmatively shown to have arisen" since entry. *Id.* § 1227(a)(5).

Three agencies make public-charge inadmissibility determinations under § 1182(a)(4). DHS makes such determinations with respect to both aliens seeking admission at the border and aliens within the country who apply to adjust their status to that of a lawful permanent resident. *See* 84 Fed. Reg. 41,292, 41,294 n.3 (Aug. 14, 2019). The Department of State's consular offices apply the public-charge ground of inadmissibility when evaluating visa applications filed by aliens abroad. *See id.* The Department of Justice enforces the statute when the question whether an alien is inadmissible on public-charge grounds arises during removal proceedings. *See id.* The Rule at issue governs DHS's public-charge inadmissibility determinations. *See id.* The Rule's preamble indicates that the State Department and Department of Justice are expected to promulgate rules and guidance consistent with the Rule. *See id.*

[2] The statute refers to the Attorney General, but in 2002, Congress transferred the Attorney General's authority to make inadmissibility determinations in the relevant circumstances to the Secretary of Homeland Security. *See* 8 U.S.C. § 1103; 6 U.S.C. § 557; *see also* 6 U.S.C. § 211(c)(8).

2. Although the public-charge ground of inadmissibility dates back to the first immigration statutes, Congress has never defined the term "public charge," instead leaving the term's definition and application to the Executive Branch's discretion. In 1999, the Immigration and Naturalization Service (INS), a DHS predecessor, proposed a rule to "for the first time define 'public charge,'" 64 Fed. Reg. 28,689 (May 26, 1999) (1999 Guidance), a term that the INS noted was "ambiguous" and had "never been defined in statute or regulation," 64 Fed. Reg. 28,676, 28,676-77 (May 26, 1999) (proposed rule). The proposed rule would have defined "public charge" to mean an alien "who is likely to become primarily dependent on the Government for subsistence as demonstrated by either: (i) [t]he receipt of public cash assistance for income maintenance purposes, or (ii) [i]nstitutionalization for long-term care at Government expense." *Id.* at 28,681. When it announced the proposed rule, INS also issued "field guidance" adopting the proposed rule's definition of "public charge." 64 Fed. Reg. at 28,689. The proposed rule was never finalized, leaving the 1999 Guidance as the default definition of "public charge" since its issuance. 84 Fed. Reg. at 41,348 n.295.

In October 2018, DHS announced a new approach to public-charge inadmissibility determinations. It did so through a proposed rule subject to notice and comment. *See* 83 Fed. Reg. 51,114 (Oct. 10, 2018) (NPRM). After responding to the numerous comments it received during the notice-and-comment period, DHS promulgated the final Rule at issue here in August 2019. *See* 84 Fed. Reg. at 41,501.

The Rule is the first time the Executive Branch has issued a final rule following notice and comment that defines the term "public charge" and establishes a framework for evaluating whether an alien is likely to become a public charge.

The Rule defines "public charge" to mean "an alien who receives one or more [specified] public benefits . . . for more than 12 months in the aggregate within any 36-month period (such that, for instance, receipt of two benefits in one month counts as two months)." 84 Fed. Reg. at 41,501. The specified public benefits include cash assistance for income maintenance and certain noncash benefits, including most Medicaid benefits, Supplemental Nutrition Assistance Program benefits, and federal housing assistance. *Id.* As the agency explained, the Rule's definition of "public charge" differs from the 1999 Guidance in that: (1) it incorporates certain noncash benefits; and (2) it replaces the "primarily dependent" standard with the 12-month/36-month measure of dependence. *Id.* at 41,294-95.

The Rule also sets forth a framework the agency will use to evaluate whether, considering the "totality of an alien's individual circumstances," the alien is "likely at any time in the future to become a public charge." 84 Fed. Reg. at 41,369, 41,501-04. Among other things, the framework identifies the factors an adjudicator must consider in making a public-charge inadmissibility determination, such as the alien's age, financial resources, employment history, education, and health. *Id.* at 41,501-04. The Rule was set to take effect on October 15, 2019, and would have applied

prospectively to applications and petitions postmarked (or, if applicable, submitted electronically) on or after that date. *Id.* at 41,292.

B. Prior Proceedings

In separate lawsuits, two sets of plaintiffs—the States of New York, Connecticut, and Vermont, and the City of New York in one case, and four nonprofit organizations in the other—challenged the Rule. With the exceptions noted below, the district court issued identical decisions in the two cases. *See* SA 1-24, 28-54. This Court has ordered that the cases be heard "in tandem." *See* Order 2, Nos. 19-3591, 19-3595 (Nov. 27, 2019) (directing that appeals 19-3591 and 19-3595 be heard in tandem). In the interest of judicial economy, we are submitting identical briefs in both cases.

Plaintiffs allege that the Rule's definition of "public charge" is not a permissible construction of the INA. Plaintiffs urge that the term unambiguously includes only persons "primarily and permanently dependent on the government for subsistence." SA 12, 40. Plaintiffs further allege that the Rule is arbitrary and capricious, and violates the Rehabilitation Act. The organizational plaintiffs additionally assert that the Rule violates equal protection. SA 47-48.

On October 11, 2019, the district court granted plaintiffs' requests for a nationwide preliminary injunction and stay under 5 U.S.C. § 705 barring DHS from implementing the Rule. SA 24, 53-54. The court concluded that the States and City of New York had standing because they anticipate experiencing economic,

administrative, and public-health costs when aliens and other residents disenroll from public benefits in response to the Rule. SA 6-8. The court also concluded that the States and City were within the zone of interests protected by the public-charge provision, reasoning that the "interests of immigrants and state and local governments are inextricably intertwined." SA 10. The court further explained that "representing and protecting the rights and welfare of its residents" was "[a]mong a state [and local] government's many obligations." *Id.*

The court concluded that the nonprofit organizations had standing because the Rule will purportedly "force[]" plaintiffs "to divert [their] resources and provide *new* services." SA 35. Specifically, the court stated that the organizations "will have to divert resources to educate their clients, members, and the public about the Rule" and will have to update their legal materials. SA 36. The court also concluded that the organizational plaintiffs were within the zone of interests protected by the public-charge provision, again reasoning that the "interests of immigrants and immigrant advocacy organizations such as Plaintiffs are inextricably intertwined." SA 39.

On the merits, the court concluded that plaintiffs were likely to prevail on their claim that the Rule's definition of "public charge" is not a reasonable interpretation of the public-charge inadmissibility provision. SA 11-14, 40-42. Based on its review of "the plain language of the INA, the history and common-law meaning of 'public charge,' agency interpretation, and Congress's repeated reenactment of the INA's public charge provision without material change," the court found that "'public

charge' has *never* been understood to mean receipt of 12 months of benefits within a 36-month period." SA 13, 41. The court further concluded that DHS had "made no showing that Congress was anything but content with the current definition set forth in the Field Guidance, which defines public charge as someone who has become or is likely to become primarily dependent on the government for cash assistance." *Id.*

The court also concluded that plaintiffs were likely to succeed in demonstrating that the Rule was arbitrary and capricious. SA 14-17, 42-46. The court determined that DHS had "fail[ed] to provide any reasonable explanation for changing the definition of 'public charge' or the framework for evaluating whether a noncitizen is likely to become a public charge." SA 15, 43. The court opined that the "new definition" unreasonably "changes the public charge assessment into a *benefits* issue, rather than an inquiry about *self-subsistence*." *Id.* The court further concluded that DHS had failed to "demonstrate rational relationships between many of the additional factors enumerated in the Rule and a finding of benefits use." SA 17, 45. The court singled out, in particular, DHS's consideration "of English-language proficiency as a factor" in the totality-of-circumstances test DHS will use when making individual public-charge inadmissibility determinations. *Id.* In the court's view, it was "simply offensive to contend that English proficiency is a valid predictor of self-sufficiency." *Id.*

For the same reasons, the court concluded that the organizational plaintiffs had raised serious questions regarding whether the Rule violated equal-protection

principles. SA 47. Because, in the court's view, DHS provided "no reasonable basis" for departing from the 1999 Guidance, the court concluded that the Rule lacked a rational basis. SA 47-48.

The court further concluded that plaintiffs had raised a "colorable argument" that the Rule violates the Rehabilitation Act because the Rule "considers disability as a negative factor in the public charge assessment." SA 18, 46-47.

Regarding the other preliminary-injunction factors, the court concluded that the injuries plaintiffs anticipated experiencing as a result of the Rule—*i.e.*, harms to the States' and City's economic interests and to the organizational plaintiffs' "ability to carry out their missions"—were irreparable. SA 19-20, 49. The court also determined that the Rule would cause irreparable injury among "law-abiding [aliens] who have come to this country to seek a better life," because it will "discourage[]" them from obtaining public benefits. *Id.* The court also found that the balance of equities and public interest weighed in favor of a preliminary injunction. SA 20-21, 49-51. In the court's view, whereas plaintiffs and the public would experience irreparable "economic and public health" harms if the Rule were to go into effect, barring DHS from implementing the Rule would cause the government no "actual hardship." SA 20-21, 50-51.

Finally, the court concluded that a nationwide injunction was appropriate, rejecting the government's argument that limiting the injunction's reach to the State plaintiffs' jurisdictions was all that was necessary to remedy plaintiffs' injuries. SA 22-

23, 52-53. The court concluded that a nationwide injunction was necessary to promote "uniformity" in "national immigration policies." SA 22, 51. According to the court, "[t]here is no reasonable basis to apply one public charge framework to one set of individuals and a different public charge framework to a second set of individuals merely because they live in different states." SA 23, 52. The court also concluded that nationwide relief was appropriate because a limited injunction might discourage residents of plaintiff States from moving out of state. *Id.*

The government sought a stay of the injunctions from this Court on November 15, 2019. The government's motion remains pending.

Meanwhile, two other courts of appeals have granted stays of district court injunctions barring implementation of the Rule. On December 5, 2019, in a published opinion, the Ninth Circuit granted the federal government's motion for a stay pending appeal of two preliminary injunctions. *See* Order, at 46, *City & Cty. of San Francisco v. U.S. DHS*, Nos. 19-17213, 19-17214, 19-35914 (9th Cir. Dec. 5, 2019) (order granting motion to stay injunctions pending appeal) (Ninth Circuit Stay Order). The court of appeals concluded that the government had demonstrated a "strong" likelihood of success on the merits, *id.* at 29-67, that the government will suffer irreparable harm if the Rule is enjoined, *id.* at 68-70, and that the balance of equities favors the government, *id.* at 70-73. On December 9, 2019, the Fourth Circuit likewise stayed a district court's injunction barring implementation of the Rule

pending the government's appeal. *See* Order, *CASA de Maryland, Inc. v. Trump*, No. 19-2222 (4th Cir. Dec. 9, 2019).

SUMMARY OF ARGUMENT

The district court erred in entering a preliminary injunction and § 705 stay barring enforcement of the Rule.

I. As a threshold matter, plaintiffs have neither established standing to sue under Article III nor asserted injuries that fall within the public-charge provision's zone of interests. The government plaintiffs allege that the Rule will burden their budgets because some of their residents will respond to the Rule by disenrolling from public-benefit programs, which will, in turn, purportedly deprive plaintiffs of federal funds and increase administrative and other costs. But these allegations fail to account for factors that would mitigate costs or generate savings, such as the Medicaid savings for States and the budgetary savings on services plaintiffs will no longer have to provide to those who are rendered inadmissible under the Rule or who consume fewer publicly funded services because of the Rule. Plaintiffs' claim that the Rule will be a net drain on their fiscal resources is thus speculative and insufficient to support their standing.

The organizational plaintiffs likewise fail to allege a cognizable injury. The organizations claim that they will have to alter their educational and advocacy services in response to the Rule. But an organization cannot assert standing based on its

policy disagreement with the Rule and its consequent decision to focus its existing programs on the Rule's effects.

Plaintiffs also have not identified any injury that falls within the public-charge provision's zone of interests because their purported interest in this litigation is fundamentally at odds with the goal of that statute. The clear purpose of the public-charge provision is to protect federal and state governments from having to expend taxpayer resources to support aliens admitted to the country or allowed to adjust to lawful-permanent-resident status. The interest plaintiffs seek to further through this lawsuit—more widespread use of taxpayer-funded benefits by aliens—is thus diametrically opposed to the interests Congress sought to further through the public-charge inadmissibility statute.

II.A. Even if plaintiffs had standing, they are not likely to prevail on the merits of their claims. Numerous statutory provisions demonstrate that Congress intended to require aliens to rely on their own resources, rather than taxpayer-supported benefits, to meet their basic needs. For example, Congress required many aliens to obtain sponsors who must agree to reimburse the government for any means-tested public benefits the alien receives, and declared any alien who fails to obtain a required sponsor automatically inadmissible on the public-charge ground, no matter the alien's individual circumstances. Congress also restricted the ability of many aliens within the United States to obtain public benefits, and allowed certain aliens who receive such

benefits and fail to reimburse the government to be subject to removal from the country.

The Rule—which renders inadmissible aliens who are likely to rely on public benefits for a significant period to meet basic needs—fully accords with Congress's intent and adopts a permissible construction of the public-charge inadmissibility provision. In concluding otherwise, the district court determined that the term "public charge" has a longstanding meaning, implicitly adopted by Congress, with which the Rule is inconsistent. But far from adopting the fixed, narrow definition of "public charge" that the court identified, Congress has repeatedly and intentionally left the definition and application of the term to the discretion of the Executive Branch. And in any event, the restricted definition of "public charge" offered by plaintiffs and accepted by the court cannot be squared with Congress's 1996 immigration and welfare-reform legislation, which made clear that Congress did not adopt plaintiffs' cramped view of the term "public charge."

B. The district court likewise erred in concluding that plaintiffs were likely to succeed in showing that the Rule is arbitrary and capricious. In adopting the Rule, DHS acknowledged that it was departing from previous guidance and explained its reasons for doing so. The agency also analyzed the benefits and costs of the Rule and responded at length to the extensive comments it received before rationally concluding that the Rule's benefits from promoting self-sufficiency among aliens outweighed its possible costs. In light of Congress's clear emphasis on ensuring that

aliens admitted to the country rely on private resources and not public benefits, the agency's decision to prioritize self-reliance among aliens was plainly reasonable.

The agency also explained at length its reasons for selecting each of the various factors that adjudicators will consider in making public-charge inadmissibility determinations based on the totality of an alien's individual circumstances. For instance, the agency explained that it identified English-language proficiency and low credit scores as relevant considerations in light of extensive evidence demonstrating that aliens with low English proficiency were more likely to be unemployed or underemployed and to receive public benefits than their English-proficient counterparts, and that aliens with low credit scores were less likely to be self-sufficient. The district court's conclusion that there was no "rational relationship" between the factors enumerated in the Rule and a finding that an alien is likely at any time in the future to receive public benefits was plainly wrong.

For similar reasons, the district court erred in concluding that the organizational plaintiffs had raised serious questions as to whether the Rule violates equal protection because it lacks a rational basis. The agency explained that, in its view, the Rule is more consistent with congressional intent than the agency's past approach and will better ensure that aliens being admitted to the country or adjusting status are self-sufficient. Those justifications are more than sufficient to survive rational-basis review.

C. The Rule is also consistent with the Rehabilitation Act, which bars the federal government from denying an individual a government benefit "solely by reason of her or his disability." 29 U.S.C. § 794(a). The Rule merely requires adjudicators to consider as one factor among many any medical condition, including disability, that an alien might have. It does not permit an adjudicator to find an otherwise-qualified alien to be a public charge based solely on that person's disability. Moreover, Congress itself required DHS to consider an alien's "health" in deciding whether a particular alien is inadmissible on the public-charge ground, and thus mandated consideration of any relevant disabilities.

III. The remaining preliminary-injunction factors also weigh against the issuance of an injunction. Plaintiffs' predictions about the possible future harms to their interests that the Rule will allegedly cause do not establish the type of immediate, irreparable harm that justifies preliminary injunctive relief. And even if plaintiffs could establish the necessary injury, that injury would be outweighed by the harm to the government and the public that the Rule's injunction creates. So long as the Rule cannot take effect, the government will grant lawful-permanent-resident status to aliens whom DHS would consider likely to become public charges under the Rule. The government has no viable means of revisiting these adjustments of status decisions once made.

IV. At a minimum, the district court abused its discretion in entering nationwide injunctions. The court justified its injunctions' scope on the need for

uniformity in immigration enforcement. But that asserted need cannot overcome the fundamental principle that an injunction must be narrowly tailored to remedy the specific harm shown. Plaintiffs here allege harms stemming from application of the Rule to their residents and the individuals they serve. An injunction barring enforcement of the Rule within the relevant states would remedy those harms. And for the same reason, the court erroneously granted a stay of the Rule's effective date nationwide, in contravention of 5 U.S.C. § 705's mandate that such stays be granted only "to the extent necessary to prevent irreparable injury."

The impropriety of the district court's nationwide injunctions and stays is further evidenced by the fact that two courts of appeals have concluded that the Rule should be permitted to go into effect. DHS cannot implement the Rule in those courts' jurisdictions because of the district court's order in this case.

STANDARD OF REVIEW

When reviewing a district court's decision on a preliminary injunction, this Court reviews the district court's legal conclusions de novo. *Malkentzos v. DeBuono*, 102 F.3d 50, 54 (2d Cir. 1996). Otherwise, the district court's entry of a preliminary injunction is reviewed for abuse of discretion. *Id.*

ARGUMENT

"A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction

is in the public interest." *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). None of these factors is satisfied here.

I. Plaintiffs Lack A Cognizable Injury Sufficient To Support This Suit

As a threshold matter, plaintiffs lack standing to pursue injunctive relief because they have not adequately alleged a cognizable injury within the zone of interests protected by the public-charge inadmissibility statute.

To establish Article III standing, plaintiffs must demonstrate an injury that is "concrete, particularized, and actual or imminent." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013). "[A]llegations of *possible* future injury are not sufficient." *Id.* Where, as here, "the plaintiff is not himself the object of the government action or inaction he challenges, standing . . . is ordinarily 'substantially more difficult' to establish." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 562 (1992) (quoting *Allen v. Wright*, 468 U.S. 737, 758 (1984)).

To bring suit under the Administrative Procedure Act (APA), a plaintiff "must satisfy not only Article III's standing requirements, but an additional test: The interest he asserts must be arguably within the zone of interests to be protected or regulated by the statute that he says was violated." *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, 567 U.S. 209, 224 (2012). A plaintiff fails that test where its asserted interests are only "marginally related to" or "inconsistent" with the purposes of the relevant statute. *Id.* at 225.

A. Plaintiffs' alleged injuries do not meet these requirements. The district court found that the States and City would suffer imminent injury because the Rule will "decrease enrollment in benefits programs," which the States and City allege will reduce the revenue received by their hospitals, increase consumption of emergency and other services for which the plaintiffs might have to pay, and cause adverse "ripple effects" on their economies. SA 7-8. But these allegations at best establish a "*possible* future injury," not one that is "certainly impending." *Clapper*, 568 U.S. at 409. Plaintiffs' alleged injuries assume, for example, that those who disenroll from public-benefit programs will forgo medical care, thus reducing the government plaintiffs' receipt of federal Medicaid funds and leading to poorer long-term health outcomes. But any funds plaintiffs lose will be offset by a reduction in the costs they would have incurred to provide public benefits, medical care, and other services to aliens who will be rendered inadmissible under the Rule or who decline to take advantage of benefits funded by plaintiffs in whole or in part. Indeed, although DHS predicted that state and local governments would incur *some* costs, it also estimated that the Rule would *decrease* public-benefit outlays by several billion dollars. 83 Fed. Reg. at 51,228. Moreover, under the Rule, an alien may at any time use state and federal public benefits to cover emergency services, and DHS will not hold receipt of benefits for emergency care against the alien in a public-charge inadmissibility determination. *See* 84 Fed. Reg. 41,384; 83 Fed. Reg. 51,131, 51,169-70. The Rule thus should not affect plaintiffs' receipt of Medicaid funds for the provision of emergency care. For these

reasons, whether the Rule will have an adverse impact on plaintiffs' budgets is far from "certain[]," *Clapper*, 568 U.S. at 409. Plaintiffs' alleged harms thus fail to establish their standing.

The district court also concluded that the States and City will be harmed by the Rule because they will have to spend time and resources on "programmatic costs," such as "updating [their] enrollment, processing, and recordkeeping systems; retraining staff and preparing updated materials; and responding to public concerns." SA 8 n.2. But if such administrative costs were sufficient to establish a state government's standing to challenge a federal regulation, States could challenge *any* change in federal policy having any effect on their residents, as all such changes are likely to require States to answer questions about the new policy, to analyze the policy's impact on its residents, and to educate the public and staff about the policy. Under plaintiffs' theory, there would be no limits on a State's ability to challenge any federal policy. No court has recognized such sweeping state or local government authority to bring suit against the federal government. *Cf. Virginia ex rel. Cuccinelli v. Sebelius*, 656 F.3d 253, 272 (4th Cir. 2011) (rejecting standing theory that would have permitted "each state [to] become a roving constitutional watchdog" of the federal government).

The district court similarly erred in concluding that the organizational plaintiffs had alleged injuries sufficient to demonstrate standing. SA 33-37. Plaintiffs cannot show, as they must to establish standing on their own behalf, that the Rule will

impede their "ability to carry out" their "core activities," such as providing education and advocacy services to immigrant communities. *Centro de la Comunidad Hispana de Locust Valley v. Town of Oyster Bay*, 868 F.3d 104, 109-11 (2d Cir. 2017). Instead, plaintiffs merely assert that the Rule altered the subject matter of their educational and advocacy efforts. If that change were sufficient to show organizational standing, *any* regulatory change adverse to an organization's clients would give rise to organizational standing. Such a holding would render meaningless the Supreme Court's admonition that a "setback to the organization's abstract social interests" is insufficient for organizational standing. *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982).

Similarly, legal-services organizations do not have standing merely because they "will also have to expend additional resources helping clients prepare applications for adjustments, [and] representing clients in removal proceedings." SA 36. A public-interest law firm does not have standing to challenge any regulation that is unfavorable to its clients, *cf. Kowalski v. Tesmer*, 543 U.S. 125, 134 & n.5 (2004), which might make the law firm's work more difficult. A contrary holding would again mean that any regulatory change contrary to the interests of the individuals a legal-services organization serves would provide a basis for standing.

The district court purported to recognize that organizational plaintiffs cannot establish standing merely by demonstrating that they had to adjust services they are "*already* providing." SA 35. But the court then found that plaintiffs had standing

based on the costs of making alterations to services—educational "workshops," outreach, and "direct [legal] services"—that plaintiffs previously provided. *See* SA 42 (noting that plaintiff Make the Road New York "conducts educational workshops" and "represents immigrants in removal proceedings").

B. In any event, plaintiffs' putative injuries are outside the zone of interests the public-charge inadmissibility ground is designed to protect. The public-charge inadmissibility provision is designed to ensure that aliens who are admitted to the country or become lawful permanent residents do not rely on public benefits. *See infra* Part II. The provision does not create judicially cognizable interests for anyone outside the federal government, except for an alien in the United States who otherwise has a right to challenge a determination of inadmissibility, for Congress has not given any third party a judicially enforceable interest in the admission or removal of an alien. *Cf. Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973) ("[A] private citizen lacks a judicially cognizable interest in the prosecution or nonprosecution of another.").

In direct contravention to the statute's clear purpose, plaintiffs here seek to further an alleged interest in *greater* use of public benefits by aliens and those residing in households containing foreign-born individuals. *See, e.g.*, JA 32 (No. 19-3591) (States and City will be irreparably harmed when residents "withdraw from [public benefit] programs"); JA 32 (No. 19-3595). Plaintiffs cannot bring a lawsuit to promote "the very . . . interest" that "Congress sought to restrain." *National Fed'n of*

Fed. Emps. v. Cheney, 883 F.2d 1038, 1051 (D.C. Cir. 1989); *see also Patchak*, 567 U.S. at 225 (litigant's interests must not be "inconsistent with the purposes implicit in the statute"). To the extent plaintiffs assert an interest in avoiding the administrative costs they may incur to update their own internal procedures, that alleged injury is a mere incidental consequence of a change in federal law that does not furnish a basis to challenge the substance of the Rule itself. *See Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 883 (1990). It is not even "marginally related" to the interests protected by the statute. *See Patchak*, 567 U.S. at 225.

The district court asserted that the "zone-of-interests test" allows "parties simply 'who are injured' to seek redress." SA 10. That is wrong. Even if plaintiffs have shown "injury in fact," that "does not necessarily mean [they are] within the zone of interests to be protected by a given statute." *Air Courier Conference of Am. v. American Postal Workers Union AFL-CIO*, 498 U.S. 517, 524 (1991).

The district court's reliance (SA 10-11) on *Bank of America Corp. v. City of Miami*, 137 S. Ct. 1296 (2017), was likewise misplaced. There, predatory and racially discriminatory lending practices hindered a "City's efforts to create integrated, stable neighborhoods," a harm at the heart of the Fair Housing Act's zone of interests. *Id.* at 1304. Here, in contrast, plaintiffs' interest in increasing alien enrollment in public benefits is directly at odds with the statute's core purpose.

II. Plaintiffs Are Not Likely To Succeed On The Merits

Even assuming plaintiffs could pursue their claims, the district court erred in concluding that plaintiffs are likely to succeed on the merits. The Rule is a reasonable construction of the undefined term "public charge," and the agency both acknowledged that it was changing its approach and adequately explained its reasons for doing so. The Rule, which considers any disability an alien may have as one factor among many in making a public-charge inadmissibility determination, also fully accords with the Rehabilitation Act. The district court's conclusions to the contrary lack merit.

A. The Rule Adopts A Permissible Construction of "Public Charge"

1. The INA renders inadmissible "[a]ny alien who . . . in the opinion of the [Secretary] . . . is likely at any time to become a public charge." 8 U.S.C. § 1182(a)(4)(A). In determining whether an alien is likely at any time to become a public charge, DHS must review the alien's individual circumstances, which must include consideration of the alien's "age"; "health"; "family status"; "assets, resources, and financial status"; and "education and skills." *Id.* § 1182(a)(4)(B)(i).

Related provisions of the INA illustrate that the receipt of public benefits, including noncash benefits, is relevant to the determination whether an alien is likely to become a public charge. Congress expressly instructed that, when making a public-charge inadmissibility determination, DHS "shall not consider any benefits the alien may have received," 8 U.S.C. § 1182(s), including various noncash benefits, if the alien

"has been battered or subjected to extreme cruelty in the United States by [specified persons]," *id.* § 1641(c); *see also id.* §§ 1611-1613 (specifying the public benefits for which battered aliens and other qualified aliens are eligible). The inclusion of that provision prohibiting the consideration of a battered alien's receipt of public benefits presupposes that DHS will ordinarily consider the past receipt of benefits in making public-charge inadmissibility determinations. *Cf. Husted v. A. Philip Randolph Inst.*, 138 S. Ct. 1833, 1844 (2018) ("There is no reason to create an exception to a prohibition unless the prohibition would otherwise forbid what the exception allows.").

Similarly, in a 1986 amnesty program, Congress created a "[s]pecial rule for determination of public charge" under which an alien meeting the program's qualifications would not be deemed a public charge if he or she "demonstrate[d] a history of employment in the United States evidencing self-support without receipt of public cash assistance." 8 U.S.C. § 1255a(d)(iii). The fact that, as part of its amnesty program, Congress crafted a "special rule" to narrow the Executive's application of the public-charge ground to only those who receive cash assistance indicates that Congress understood the ordinary definition of public charge to be broader.

In addition, Congress mandated that many aliens seeking admission or adjustment of status submit affidavits of support from a sponsor to avoid a public-charge inadmissibility determination. *See* 8 U.S.C. § 1182(a)(4)(C) (requiring most family-sponsored immigrants to submit enforceable affidavits of support); *id.* § 1182(a)(4)(D) (same for certain employment-based immigrants); *id.* § 1183a

(affidavit-of-support requirements). Aliens who fail to obtain a required affidavit of support are inadmissible on public-charge grounds by operation of law, regardless of their individual circumstances. *Id.* § 1182(a)(4); §1183a(a)(1). Congress further specified that the sponsor must agree "to maintain the sponsored alien at an annual income that is not less than 125 percent of the Federal poverty line," *id.* § 1183a(a)(1)(A), and it granted federal and state governments the right to seek reimbursement from the sponsor for "any means-tested public benefit" that the government provides to the alien, *id.* § 1183a(b)(1)(A); *see also id.* § 1183a(a) (affidavits of support are legally binding and enforceable contracts "against the sponsor by the sponsored alien, the Federal Government, any State (or any political subdivision of such State), or by any other entity that provides any means-tested public benefit").

The import of the affidavit-of-support provision is clear: To avoid being found inadmissible on public-charge grounds, an alien governed by the provision must find a sponsor who is willing to reimburse the government for *any* means-tested public benefits the alien receives while the sponsorship obligation is in effect (even if the alien receives those benefits only briefly and only in minimal amounts). Congress thus provided that the mere *possibility* that an alien might obtain unreimbursed, means-tested public benefits in the future was sufficient to render that alien inadmissible on public-charge grounds, regardless of the alien's other circumstances.

Moreover, Congress enacted the affidavit-of-support provision in 1996—the same year that it enacted the current version of the public-charge inadmissibility

provision—against the backdrop of a longstanding interpretation of the term "public charge" for purposes of deportability under 8 U.S.C. § 1227(a)(5). Under that longstanding interpretation, as set forth in *Matter of B-*, 3 I. & N. Dec. 323 (BIA and AG 1948), an alien may be deported if he receives a public benefit that the alien or designated friends and relatives are legally obligated to repay, the relevant government agency demands repayment, and "[t]he alien and other persons legally responsible for the debt fail to repay after a demand has been made." 64 Fed. Reg. 28,676, 28,691 (May 26, 1999) (citing *Matter of B-*, 3 I. & N. Dec. at 323); *Concurrent Resolution on the Budget for Fiscal Year 1997: Hearings Before the Committee on the Budget*, 104th Cong. 81 (1996) (noting that interpretation). Thus, when it made sponsors legally responsible for repayment of any means-tested public benefits received by an alien and provided government agencies with a legally enforceable right to demand repayment, Congress understood that a failure to repay the benefit by the alien or sponsor could render the alien deportable as a "public charge" under 8 U.S.C. § 1227(a)(5). In other words, Congress implemented a system in 1996 under which an alien's receipt of an unreimbursed, means-tested public benefit could render the alien a "public charge" subject to deportation (provided a demand for repayment was made).

Congress also took steps to limit aliens' ability to obtain public benefits. Congress provided that, for purposes of eligibility for means-tested public benefits, an alien's income is generally "deemed to include" the "income and resources" of the sponsor. 8 U.S.C. § 1631(a). This deeming provision reduces the likelihood that

aliens subject to § 1182's public-charge provision will qualify for means-tested public benefits, providing further evidence of Congress's intent that such aliens not receive taxpayer-funded benefits once they are admitted to the United States. *See also* H.R. Rep. No. 104-828, at 242 (Sept. 24, 1996) (Conf. Rep.) (explaining that the deeming provision was designed to further "the national immigration policy that aliens be self-reliant"). Congress's apparent concern about the receipt of public benefits, including noncash benefits, by aliens is further underscored by provisions barring most aliens from obtaining many federal public benefits, either at all or until they have been in the country for at least five years. *See* 8 U.S.C. §§ 1611-1613, 1641; 83 Fed. Reg. at 51,126-33.

As Congress explained, these and other provisions were driven by its concern about the "increasing" use by aliens of "public benefits [provided by] Federal, State, and local governments." 8 U.S.C. § 1601(3). Congress emphasized that "[s]elf-sufficiency has been a basic principle of United States immigration law since this country's earliest immigration statutes," *id.* § 1601(1), and that it "continues to be the immigration policy of the United States that . . . (A) aliens within the Nation's borders not depend on public resources to meet their needs, but rather rely on their own capabilities and the resources of their families, their sponsors, and private organizations, and (B) the availability of public benefits not constitute an incentive for immigration to the United States," *id.* § 1601(2). Congress expressly equated a lack of "self-sufficiency" with the receipt of "public benefits" by aliens, *id.* § 1601(3), which it

defined broadly to include any "welfare, health, disability, public or assisted housing . . . or any other similar benefit," *id.* § 1611(c) (defining "federal public benefit"). And it stressed the government's "compelling" interest in enacting "new rules for eligibility [for public benefits] and sponsorship agreements [for individuals subject to the public-charge provision] in order to assure that aliens be self-reliant in accordance with national immigration policy." *Id.* § 1601(5). *See* Ninth Circuit Stay Order 53-54 (noting that statements of purpose "lend[] support to DHS's interpretation of the INA").

Consistent with that statutory text, context, and history, the Rule defines a "public charge" as an "alien who receives one or more [enumerated] public benefits" over a specified period of time. 84 Fed. Reg. at 41,501. That definition respects Congress's understanding that the term "public charge" would encompass individuals who rely on taxpayer-funded benefits to meet their basic needs. At a minimum, the Rule is "a permissible construction of the statute." *Chevron U.S.A., Inc. v. NRDC*, 467 U.S. 837, 843 (1984).

2.a. The district court nevertheless concluded that plaintiffs were likely to succeed in showing that the Rule's definition of "public charge" is not a permissible construction of the INA. SA 11-14, 39-42. In arriving at this conclusion, the district court appeared to accept plaintiffs' argument that the term "public charge" has, since 1882, "consistently been interpreted narrowly to mean 'an individual who is or is likely to become primarily and permanently dependent on the government for

subsistence,'" and that Congress adopted that allegedly longstanding meaning in 1996. SA 12; *see also* SA 40. The court's conclusions are flawed.

As discussed, Congress's 1996 INA amendments and its contemporaneous welfare-reform legislation demonstrate that Congress did not understand "public charge" to have the narrow meaning plaintiffs assert. For example, a large number of aliens will automatically be deemed inadmissible on public-charge grounds if they fail to obtain affidavits of support. *See supra* pp. 27-28. That is so even if the aliens are healthy adults who are willing and able to work, and there is no specific evidence indicating that they are likely to become "primarily" or "permanently" dependent on the government for subsistence. Similarly, in requiring sponsors to repay *any* means-tested benefit an alien receives (regardless of the amount or length of time the alien receives the benefit) and granting government agencies the right to seek repayment, Congress understood that a sponsor's failure to repay upon demand would render the alien subject to deportation as a "public charge," without regard to whether the alien had been primarily or permanently dependent on the benefits. That result is likewise inconsistent with plaintiffs' assertion that Congress viewed the term "public charge" as encompassing only those aliens who are primarily reliant on taxpayer-funded resources.

Moreover, there would have been no basis for Congress to presume that "public charge" had the fixed, narrow meaning that plaintiffs and the district court assumed. To the contrary, Congress has repeatedly and intentionally left the term's

definition and application to the discretion of the Executive Branch. Although provisions barring entry to those likely to become a "public charge" have appeared in immigration statutes dating back to the late 19th century, Congress has never defined the term. 84 Fed. Reg. at 41,308.

That is not because Congress assumed the term had a settled meaning. *See* Ninth Circuit Stay Order 34 ("In a word, the phrase [public charge] is 'ambiguous' under *Chevron*; it is capable of a range of meanings."). Rather, in an extensive report that served as a foundation for the enactment of the INA, the Senate Judiciary Committee emphasized that, because "the elements constituting likelihood of becoming a public charge are varied, there should be no attempt to define the term in the law." S. Rep. No. 81-1515, at 349 (1950); *see also id.* at 803 (reproducing Senate resolution directing Committee to make "full and complete investigation of our entire immigration system" and provide recommendations). The report also recognized that "[d]ecisions of the courts have given varied definitions of the phrase 'likely to become a public charge,'" *id.* at 347, and that "different consuls, even in close proximity with one another, have enforced [public-charge] standards highly inconsistent with one another," *id.* at 349. Far from mandating plaintiffs' definition of public charge, the report concluded that the public-charge inadmissibility determination properly "rests within the discretion of" Executive Branch officials. *Id.*; *cf. Barnhart v. Walton*, 535 U.S. 212, 225 (2002) (Where Congress enacts a "complex[]" statute implicating a "vast number of claims" with a "consequent need for agency expertise and administrative

experience," it is appropriate to "read the statute as delegating to the Agency considerable authority to fill in, through interpretation, matters of detail related to its administration.").

Indeed, the statute itself reflects Congress's broad delegation of authority to the Executive Branch, as it expressly provides that public-charge inadmissibility determinations are made "in the opinion of the [Secretary of Homeland Security]." 8 U.S.C. § 1182(a)(4); *supra* p. 6 n.2. As this Court has recognized with respect to another INA provision, Congress's directive that a particular determination be made "'in the opinion of the Attorney General'" confers "broad discretionary power" on the Attorney General in making that decision. *Blanco v. INS*, 68 F.3d 642, 645 (2d Cir. 1995) (quoting 8 U.S.C. § 1254(a)(1) (repealed 1996)); *see also Thor Power Tool Co. v. Commissioner*, 439 U.S. 522, 540 (1979) (Where a statute specifies that a determination is to be made "in the opinion of" an agency decisionmaker, the statute confers "broad discretion" on the decisionmaker to make that determination.); 8 U.S.C. § 1103(a)(3) (granting the Secretary of Homeland Security the authority to "establish such regulations . . . as he deems necessary for carrying out his authority" to enforce the INA).

By leaving the definition of "public charge" to the discretion of the Executive Branch, Congress recognized not only the need for flexibility in the Executive Branch's application of the public-charge inadmissibility provision to varied individual circumstances, but also the need for the term "public charge" to evolve over time to

reflect changes in the scope and nature of public benefits. In enacting immigration and welfare-reform legislation in 1996, Congress expressly recognized the need for public-charge laws to evolve to reflect current conditions. As one Senate report explained:

> It is even more important in this era that there be such a [public-charge] law, since the welfare state has changed the pattern of immigration and emigration that existed earlier in our history. Before the welfare state, if an immigrant could not succeed in the U.S., he or she often returned to "the old country." This happens less often today, because of the welfare "safety net." . . . It should be made clear to immigrants that the taxpayers of this country expect them to be able to make it in this country on their own and with the help of their sponsors.

S. Rep. No. 104-249, at 5-9 (1996). The 1999 Guidance—which, for the first time, defined the term "public charge" by reference to cash assistance—represents an exercise of the Executive Branch's longstanding discretion to define the term "public charge" and provides an example of the term's flexibility to reflect the modern welfare state.

Judicial and administrative interpretations of the term likewise undermine plaintiffs' assertion that "public charge" has been uniformly understood to apply only to aliens who are primarily dependent on public support. Since at least 1948, the Executive Branch has taken the authoritative position that an alien may be deported as a "public charge" if the alien or the alien's sponsor or relative fails to repay a public benefit upon a demand for repayment by a government agency entitled to repayment. *See Matter of B-*, 3 I. & N. Dec. at 326. Under that rubric, a failure to repay a qualifying

benefit upon demand would render an alien a "public charge" for deportability purposes regardless of whether the alien was "primarily dependent" on the benefits at issue. *See id.* Indeed, although the Board of Immigration Appeals concluded that the alien in *Matter of B-* was not deportable as a public charge because Illinois law did not allow the State to demand repayment for the care she received during her stay in a state mental hospital, the opinion suggests that the alien would have been deportable as a public charge if her relatives had failed to pay the cost of the alien's "clothing, transportation, and other incidental expenses," because Illinois law made the alien "legally liable" for those incidental expenses. *Id.* at 327. That was so even though Illinois was not entitled to recover the sums expended for plaintiff's lodging, healthcare, and food. *See id.*

Courts have also historically held that an alien's reliance on taxpayer support for basic necessities on a temporary or intermittent basis was sufficient to render the alien a "public charge." *See, e.g.*, *Ex parte Turner*, 10 F.2d 816, 816 (S.D. Cal. 1926) (aliens were deportable as persons likely to become public charges where evidence indicated that the aliens had received "charitable relief" for two months and "public charities were still furnishing some necessaries to [the] family" one month later); *Guimond v. Howes*, 9 F.2d 412, 413-14 (D. Me. 1925) (alien was "likely to become a public charge" in light of evidence that she and her family had been supported by the town twice—once for 60 days and once for 90 days—over the previous two years).

Other historical sources likewise belie the district court's suggestion that the term "public charge" had a fixed and narrow meaning. For example, both the 1933 and 1951 editions of Black's Law Dictionary defined the term "public charge," "[a]s used in" the 1917 Immigration Act, to mean simply "one who produces a money charge upon, or an expense to, the public for support and care"—without reference to amount. Public Charge, *Black's Law Dictionary* (3d ed. 1933); *Black's Law Dictionary* (4th ed. 1951). And a 1929 treatise did the same. *See* Arthur Cook et al., *Immigration Laws of the United States* § 285 (1929) (noting that "public charge" meant a person who required "any maintenance, or financial assistance, rendered from public funds, or funds secured by taxation").

In short, as the Ninth Circuit explained, "the history of the use of 'public charge' in federal immigration law demonstrates that 'public charge' does not have a fixed, unambiguous meaning. Rather, the phrase is subject to multiple interpretations, it in fact has been interpreted differently, and the Executive Branch has been afforded the discretion to interpret it." Ninth Circuit Stay Order 46.

b. None of the district court's other reasons for rejecting the Rule's definition of public charge withstands scrutiny. The court erroneously found it significant that, in 1996 and 2013, Congress declined to adopt legislation that would have expressly defined the term "public charge" to include receipt of certain noncash benefits. SA 13-14, 42. "Failed legislative proposals are a particularly dangerous ground on which to rest an interpretation of a prior statute," because "[a] bill can be proposed for any

number of reasons, and it can be rejected for just as many others." *Solid Waste Agency of N. Cook Cty. v. U.S. Army Corps of Eng'rs*, 531 U.S. 159, 169-70 (2001). As a result, "several equally tenable inferences may be drawn from such inaction." *Pension Benefit Guar. Corp. v. LTV Corp.*, 496 U.S. 633, 650 (1990).

The district court's reliance on the failed 1996 and 2013 proposals to define the term "public charge" is particularly flawed here. There is no indication that Congress believed the proposed definitions were fundamentally inconsistent with the statutory term "public charge." Congress did not "discard[]" the proposed definitions of public charge "in favor of other language" eventually enacted. *INS v. Cardoza-Fonseca*, 480 U.S. 421, 443 (1987). It did not adopt an alternate definition in the 1996 legislation, which left the term undefined, and it enacted no legislation on the subject in 2013. *See* Ninth Circuit Stay Order 49 ("[T]he failure of Congress to *compel* DHS to adopt a particular rule is not the logical equivalent of *forbidding* DHS from adopting that rule."). In addition, the legislative history of the 1996 proposal indicates that the proposal was dropped at the last minute because the President objected to the proposal's rigid definition of "public charge," as well as other provisions, and threatened to veto the bill unless changes were made. *See* H.R. Rep. No. 104-828, at 241; 142 Cong. Rec. S11872, S11881-82 (Sept. 30, 1996). Far from suggesting that Congress attributed an unambiguous meaning to the still-undefined term "public charge," these circumstances suggest that Congress acceded to the President's demands that the Executive Branch retain the discretion to define the term. *See* Ninth

Circuit Stay Order 49 n.15 ("If anything, this legislative history proves only that Congress decided not to constrain the discretion of agencies in determining who is a public charge.").

The circumstances surrounding the 2013 proposal's failure similarly fail to support the inference that Congress would have viewed the Rule as an impermissible construction of the public-charge inadmissibility provision. The 2013 proposal was rejected by a Senate committee. S. Rep. No. 113-40, at 42 (2013). But Congress then failed to enact the bill the committee agreed on. The question of what significance to assign to a rejected committee proposal that formed a part of a bill subsequently rejected by the full Congress underscores the problems inherent in relying on unenacted legislation.

In addition, both the 1996 and 2013 proposals were significantly broader than the Rule: the 1996 proposal covered a similar amount of benefits usage within a period of seven years rather than three, *see* H.R. Rep. No. 104-828, at 138, 240-41, and the 2013 proposal included receipt of *any* amount of public benefits, S. Rep. No. 113-40, at 42, 63. Even if Congress's failure to codify those stricter standards were evidence of its understanding of the term "public charge" (which it is not), they would not support the conclusion that Congress rejected the Rule's narrower definition.

The district court also emphasized that the Executive Branch had "*never*" previously adopted the Rule's particular definition of public charge. SA 13, 41. But it is a bedrock principle of administrative law that an agency may alter its interpretation

of a statute it is charged with enforcing. *See FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009). Provided that a new rule is "permissible under the statute" and the agency "display[s] awareness that it is changing position" and explains the "reasons for the new policy"—as DHS did here—there is nothing improper about an agency's adopting a new approach. *Id.* Particularly where the prior governing interpretation was adopted only as field guidance, there should be no serious dispute that the agency charged with administering a statute has authority to alter its interpretation after notice-and-comment rulemaking.

The district court likewise erred in relying on the fact that Congress authorized some "qualified aliens" to receive public benefits and did not bar all aliens from receiving the benefits specified in the Rule. SA 14, 42. Congress's expressed intent to exclude aliens who appear from the outset to be likely to rely on public assistance is not inconsistent with its decision to assist certain aliens who end up needing assistance after being admitted—especially since immigration officials cannot with perfect accuracy predict which aliens will become public charges. Thus, that Congress made benefits available to certain aliens in some circumstances does not indicate that Congress sought to promote the admission or adjustment of aliens who were expected to receive such benefits. To the contrary, Congress made clear that it expected aliens admitted to the country to rely on their own resources and not those of the public. *See supra* pp. 30-31.

The district court's reliance on the availability of some benefits as evidence that Congress did not authorize DHS to consider such benefits in the public-charge calculus is flawed for an additional reason. In addition to making certain noncash benefits available to aliens in limited circumstances, Congress has also authorized qualified aliens to receive certain cash-based benefits, such as Temporary Assistance for Needy Families benefits. *See* 8 U.S.C. § 1612(b). Yet, since 1999, DHS has considered an alien's likely receipt of such benefits in determining whether the alien is inadmissible on the public-charge ground. *See* 64 Fed. Reg. at 28,692. The district court properly did not suggest that the 1999 Guidance exceeded the agency's authority in this respect.

B. The Rule Is Not Arbitrary Or Capricious And It Passes Rational-Basis Review

1.a. The district court likewise erred in concluding that the Rule is arbitrary and capricious. 5 U.S.C. § 706(2)(A). "Under the arbitrary-and-capricious standard, judicial review of agency action is necessarily narrow." *Islander E. Pipeline Co. v. McCarthy*, 525 F.3d 141, 150 (2d Cir. 2008). Agency action will be upheld if the agency examined "the relevant data" and articulated "a satisfactory explanation" for its decision, "including a rational connection between the facts found and the choice made." *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). "A reviewing court may not itself weigh the evidence or substitute its judgment for that of the agency." *McCarthy*, 525 F.3d at 150. Final agency action

satisfies the arbitrary-and-capricious standard provided that it "is within the bounds of reasoned decisionmaking." *Baltimore Gas & Elec. Co. v. NRDC*, 462 U.S. 87, 105 (1983).

The Rule—including its new definition of "public charge" and its framework for evaluating which aliens are, in the opinion of the Executive Branch, likely to become public charges—is well within the bounds of reasoned decisionmaking. As discussed, the Rule differs from the agency's previous interpretation of "public charge" (the validity of which neither plaintiffs nor the district court dispute) in that it requires adjudicators to consider an alien's past and expected future receipt of specified noncash benefits (not just cash benefits) in determining whether that alien is likely to become a public charge, and in that it defines the term "public charge" to include those who receive such benefits for more than twelve months in the aggregate within any thirty-six month period.

Consistent with the dictates of reasoned decisionmaking, the agency "forthrightly acknowledged" its change in approach and provided "good reasons for the new policy." *Fox Television Stations*, 556 U.S. at 515, 517. The agency explained that the Rule is designed "to better ensure that applicants for admission to the United States and applicants for adjustment of status to lawful permanent resident who are subject to the public charge ground of inadmissibility are self-sufficient—*i.e.*, do not depend on public resources to meet their needs, but rather rely on their own capabilities and the resources of their family, sponsor, and private organizations." 83

Fed. Reg. at 51,122; 84 Fed. Reg. at 41,317-19. Because Congress itself viewed the receipt of any public benefits, including noncash benefits, as indicative of a lack of self-sufficiency, the agency reasoned that the Rule is more consistent with congressional intent than the agency's 1999 approach. 83 Fed. Reg. at 51,123; *see also* 84 Fed. Reg. at 41,319 (explaining that the Rule is designed to address "deficiencies" in the standard adopted by the 1999 Guidance, including "that the guidance assumed an overly permissi[ve] definition of dependence on public benefits by only including consideration of certain cash benefits, rather than a broader set of benefits, whether cash or noncash, that similarly denote reliance on the government").

The agency also stressed that the 1999 Guidance had relied on an "artificial distinction between cash and noncash benefits." 83 Fed. Reg. at 51,123. As the agency explained, "[f]ood, shelter, and necessary medical treatment are basic necessities of life." 83 Fed. Reg. at 51,159. Thus, a "person who needs the public's assistance to provide for these basic necessities is not self-sufficient," even if the person does not receive cash assistance from the government. *Id.*

The agency also emphasized that the cost to the federal government of providing noncash benefits to a recipient often exceeds the cost of cash-based assistance, demonstrating that noncash benefits are in many individual cases a more significant form of public support than is cash-based assistance. *See* 83 Fed. Reg. at 51,160. For example, the agency estimated that the average recipient of Temporary Assistance for Needy Families receives about $1,272.56 in cash assistance per year. *Id.*

By contrast, the agency estimated that the average Medicaid recipient receives $7,426.59 in annual benefits and the average household is provided $8,121.16 per year in federal rental assistance. *Id.* The agency thus reasonably concluded that the receipt of noncash benefits was relevant to whether an alien was self-supporting or instead required public support to meet basic needs.

The agency also explained, at length, its reasons for including in the Rule the various factors it identified as weighing on the question whether an alien is likely to become a public charge. *See* 83 Fed. Reg. 51,178-207. The factors implemented Congress's mandate that the agency consider, at a minimum, each alien's "age"; "health"; "family status"; "assets, resources, and financial status"; and "education and skills" in making a "public charge" determination. *See id.* at 51,178; 8 U.S.C. § 1182(a)(4)(B). The agency described in detail how each of the various factors bore positively or negatively on the determination whether an alien is likely to depend on public benefits in the future, while retaining the "totality of the circumstances" approach that allows each adjudicating officer to make a decision appropriate to each alien's particular circumstances.

For example, in concluding that English proficiency was a relevant factor in the public-charge inadmissibility calculus, DHS cited Census Bureau data and other studies indicating that non-English speakers earned considerably less money and were more likely to be unemployed than English speakers, thus supporting the conclusion that non-English speakers were more likely to become public charges than their

English-proficient counterparts. 83 Fed. Reg. at 51,195-96. The agency also cited evidence indicating that noncitizens who reside in households where English is spoken "[n]ot well" or "[n]ot at all" received public benefits at much higher rates than noncitizens residing in households where English was spoken "[w]ell" or "[v]ery well," lending further support to the conclusion that English proficiency was relevant to the determination whether an alien is likely to receive public benefits in the future. 83 Fed. Reg. at 51,196. And because the agency retained the "totality of the circumstances" approach, if English proficiency were not probative in an individual case, the adjudicator would have the flexibility to analyze the particular circumstances of the applicant.

The agency also rationally weighed the benefits and costs of the Rule. It explained that, by excluding from the country those aliens likely to rely on public benefits and by encouraging those within the country to become self-sufficient, the Rule is likely to save federal and state governments billions of dollars annually in benefit payments and associated costs. *See* 83 Fed. Reg. at 51,228. At the same time, the agency recognized that the disenrollment of aliens from public-benefit programs could have certain adverse effects. The agency noted, for example, that a reduction in public-benefit enrollment and payments could negatively affect third parties who receive such payments as revenue, including, for example, health-care providers who participate in Medicaid and local businesses who accept Supplemental Nutrition Assistance Program benefits. 83 Fed. Reg. at 51,118; 84 Fed. Reg. at 41,313. The

agency also recognized that disenrollment in public-benefit programs by aliens subject to the Rule or those who incorrectly believe they are subject to the Rule could have adverse consequences on the health and welfare of those populations, while also potentially imposing some "costs [on] states and localities." 84 Fed. Reg. at 41,313.

Although it recognized these potential costs, the agency explained that there were reasons to believe that the costs would not be as great as some feared. 84 Fed. Reg. at 41,313. Among other things, in response to commentator concerns, the agency took steps to "mitigate . . . disenrollment impacts." *Id.* Those steps included excluding receipt of benefits under the Children's Health Insurance Program from the list of public benefits covered by the Rule, and exempting Medicaid benefits received by aliens under the age of twenty-one and pregnant women from the Rule's definition of public charge. *Id.* at 41,313-14. The agency also noted that the majority of aliens subject to the Rule do not currently receive public benefits, either because they reside outside the United States or because, following the 1996 welfare-reform legislation, they are generally precluded from receiving such benefits. *Id.* at 41,212-13.

The agency also explained that those classes of aliens who are eligible for the noncash benefits covered by the Rule, such as lawful permanent residents and refugees, are, except in rare circumstances, not subject to a public-charge inadmissibility determination and are thus not affected by the Rule. 84 Fed. Reg. at 41,313. An agency, of course, is not obliged to abandon an otherwise lawful policy simply because third parties not affected by the policy might wrongly assume that they

are. But in any event, the agency considered and made plans to address disenrollment by those not covered by the Rule. To the extent such individuals disenroll from public benefits out of confusion over the Rule's coverage, the agency reasoned that the effect might be short-lived, as such individuals might re-enroll after realizing their error. 84 Fed. Reg. at 41,463. And, to clear up any confusion as quickly as possible—thus minimizing disenrollment among populations not subject to the Rule—the agency further stated that it planned to "issue clear guidance that identifies the groups of individuals who are not subject to this rule, including, but not limited to, U.S. citizens, [certain] lawful permanent residents, . . . and refugees." *Id.* at 41,313.

Ultimately, the agency rationally concluded that the benefits obtained from promoting self-sufficiency outweighed the Rule's potential costs. *See* 84 Fed. Reg. at 41,314. As the agency explained, the precise costs of the Rule were uncertain, given the impossibility of estimating precisely the number of individuals who would disenroll from public-benefit programs as a result of the Rule, how long they would remain disenrolled, and to what extent such disenrollment would ultimately affect state and local communities and governments. *See, e.g.*, 84 Fed. Reg. at 41,313. At the same time, the Rule provided clear but similarly difficult-to-measure benefits, such as helping to ensure that aliens entering the country or adjusting status are self-reliant and reducing the incentive to immigrate that the availability of public benefits might otherwise provide to aliens abroad. The agency's ultimate decision about whether to move forward with the Rule thus "called for value-laden decisionmaking and the

weighing of incommensurables under conditions of uncertainty." *Department of Commerce v. New York*, 139 S. Ct. 2551, 2571 (2019). Given Congress's clear focus on ensuring that aliens admitted to the country rely on private resources and not public benefits, the agency's decision to prioritize self-reliance among aliens is plainly reasonable. *See* Ninth Circuit Stay Order 65 ("[I]t was sufficient—and not arbitrary and capricious—for DHS to consider whether, in the long term, the overall benefits of its policy change will outweigh the costs of retaining the current policy.").

b. The district court nevertheless concluded that the Rule was arbitrary because it "change[d] the public charge assessment into a *benefits* issue, rather than an inquiry about *self-subsistence*." SA 15, 43. But self-subsistence is merely the converse of reliance on public benefits, as Congress itself averred. It was thus hardly irrational for DHS to conclude that aliens who rely on the public benefits enumerated in the Rule for months at a time are aliens who "depend on public resources to meet their needs," 8 U.S.C. § 1601(2)(A), and are not "self-sufficien[t]," *id.* § 1601(1). Even the 1999 Guidance—which the district court cited with approval, SA 13, 42—tied the definition of public charge to the receipt of public benefits. *See* supra p. 7. The Rule simply redefines what benefits received over what time period qualify an alien as a public charge. As the Ninth Circuit explained, "it is a short leap in logic for DHS to go from considering in-cash public assistance to considering both in-cash and in-kind public assistance." Ninth Circuit Stay Order 55.

The district court expressed concern that the Rule could sweep in an alien who is "fully capable of supporting herself without government assistance" but nonetheless "elects to accept a benefit, such as public housing, simply because she is entitled to it." SA 15, 43-44. But even assuming an alien living in public housing for a significant period is "fully capable of supporting herself," the clear import of Congress's 1996 legislation was to compel aliens to rely "on their own capabilities and the resources of their families, their sponsors, and private organizations" to "meet their needs," rather than relying on "public resources." 8 U.S.C. § 1601(2).

The district court also erred in finding anything irrational in the agency's relying on a twelve-months-out-of-a-thirty-six-month-period standard. SA 16, 43. The 12/36 standard reflects the agency's reasonable conclusion that the "short-term and intermittent" use of public benefits is not inconsistent with self-sufficiency. 84 Fed. Reg. at 41,361. Moreover, while admitting that the specific duration standard it chose was "imperfect," DHS reasonably based the standard on studies analyzing "the length of time that recipients of public benefits tend to remain on those benefits," with the goal of distinguishing between those aliens who are self-sufficient from those who are not. *Id.* at 41,360-61. And agencies who apply and enforce undefined statutory terms may reasonably adopt such numerical standards through rulemaking to provide clarity to the public. *See id.* at 41,360.

The district court further concluded that there was no "rational relationship[] between many of the [] factors enumerated in the Rule and a finding of benefits use."

SA 17, 45. But the agency was merely identifying factors to be considered in the totality of the circumstances, and the relevance of the selected factors should not be subject to dispute as a general matter.

As examples of the purportedly irrational factors the Rule permits agency adjudicators to consider, the court cited the Rule's allowing adjudicators to consider English-language proficiency and an alien's credit score. SA 17, 45. But, as explained above, the agency rationally concluded that English proficiency is relevant to the question whether an individual is likely to rely on public benefits in the future. *See supra* pp. 44-45. The Rule's suggested reliance on an alien's credit score was likewise not irrational. Credit scores provide an indication of the relative strength or weakness of an individual's financial status, and thus provide insight into whether the alien will be able to support himself or herself financially in the future. *See* 83 Fed. Reg. at 51,189; 84 Fed. Reg. at 41,425.

2. The district court likewise erred in concluding that plaintiffs raised serious questions regarding whether the Rule lacks a rational basis under equal-protection principles. As explained above, the agency rationally concluded that the new Rule was more consistent with congressional intent and would better ensure that aliens subject to the public-charge inadmissibility provision were self-sufficient. At the very least, there is a "conceivable [rational] basis which might support" the Rule. *Sensational Smiles, LLC v. Mullen*, 793 F.3d 281, 284 (2d Cir. 2015).

C. The Rule Does Not Violate The Rehabilitation Act

Plaintiffs have not raised even a "colorable argument" that the Rule violates the Rehabilitation Act, let alone demonstrated a likelihood of success. *See* SA 17, 46-47; Ninth Circuit Stay Order 54. The Act provides that "[n]o otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability," be denied the benefits of a federal program. 29 U.S.C. § 794(a). "[B]y its terms," the statute "does not compel [government] institutions to disregard the disabilities of" individuals; instead, it merely requires them not to exclude a person who is "otherwise qualified" solely because of his or her disability. *Southeastern Cmty. Coll. v. Davis,* 442 U.S. 397, 405 (1979).

Consistent with the Rehabilitation Act, the Rule does not deny any alien admission into the United States, or adjustment of status, "solely by reason of" disability. An alien's medical condition is one factor, not the sole factor, that an adjudicator will consider in evaluating the totality of an alien's circumstances. Nor is there any aspect of the Rule that suggests that an adjudicator may conclude that an "otherwise qualified" alien (*i.e.*, an alien who is not likely to become a public charge) is inadmissible solely because the individual is disabled. Moreover, in 1996, Congress explicitly added "health" as a factor DHS "shall . . . consider" in evaluating whether the alien is likely to become a public charge, 8 U.S.C. § 1182(a)(4)(B)(i), thus requiring DHS to take an alien's medical condition, including a disability, into account. *See*

Radzanower v. Touche Ross & Co., 426 U.S. 148, 153 (1976) (A "specific statute will not be controlled or nullified by a general one.").

III. The Remaining Factors Weigh Against A Preliminary Injunction

The remaining preliminary injunction factors also weigh against an injunction. "A preliminary injunction is an extraordinary remedy never awarded as of right." *Winter*, 555 U.S. at 24. To obtain an injunction, a plaintiff must "demonstrate that irreparable injury is likely in the absence of an injunction," *id.* at 22, and that such injury is "imminent," *Rodriguez ex rel. Rodriguez v. DeBuono*, 175 F.3d 227, 234-35 (2d Cir. 1999).

As discussed above, plaintiffs' alleged harms are inadequate to provide a basis for standing. *See supra* Part I. But even if they were, they would not demonstrate the immediate, irreparable harm necessary for the award of preliminary injunctive relief. And to the extent the district court relied on alleged irreparable harms to the government plaintiffs' "law abiding residents," SA 19, it is black-letter law that States do not have the "duty or power" to assert the interests of their residents against the federal government. *See, e.g.*, *Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592, 610 n.16 (1982). In addition, any required changes to the plaintiff organizations' education and advocacy efforts during the pendency of this litigation fall far short of irreparable injury.

The balance of equities and the public interest likewise do not support the entry of a preliminary injunction here. Both the federal government and the public

will be irreparably harmed if the Rule cannot go into effect. So long as the Rule is enjoined, DHS will be forced to retain an immigration policy in which it grants lawful-permanent-resident status to aliens who "in the opinion of the [Secretary]" are likely to become public charges as the Secretary would define that term. 8 U.S.C. § 1182(a)(4)(A). The district court properly did not suggest that DHS has a viable means of revisiting adjustment-of-status determinations once made, so those aliens will likely receive lawful-permanent-resident status permanently (assuming they are not ineligible for other reasons), such that the harm is irreparable. *See* Ninth Circuit Stay Order 68-70.

And as noted, plaintiffs' asserted injuries are at odds with the purposes underlying the public-charge inadmissibility provision. Plaintiffs do not serve the public interest by promoting increased use of public benefits by aliens, contrary to Congress's clear intent. At a minimum, the harms to the federal government and the public preclude enjoining the Rule pending the resolution of this case on the merits.

IV. The District Court Abused Its Discretion In Granting A Nationwide Injunction

Even if the district court did not err in granting a preliminary injunction, the court abused its discretion by issuing a nationwide injunction. A geographically limited injunction would fully redress plaintiffs' alleged harms.

1. Article III requires that injunctive relief "must be tailored to redress the plaintiff's particular injury." *Gill v. Whitford*, 138 S. Ct. 1916, 1934 (2018). Equitable

principles likewise require that "injunctive relief should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs." *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979). Nationwide injunctions flout these principles unless plaintiffs can demonstrate that a narrower injunction would not redress their injuries. By protecting non-parties, such injunctions provide relief on the basis of rights which the plaintiffs lack standing to assert, and they inequitably impose burdens on a defendant without a sufficient "connection to a plaintiff's particular harm." *East Bay Sanctuary Covenant v. Barr*, 934 F.3d 1026, 1029 (9th Cir. 2019). That nationwide injunctions are a recent invention, "not emerg[ing] until a century and a half after the founding," underscores their inconsistency with "longstanding limits on equitable relief and the power of Article III courts." *Trump v. Hawaii*, 138 S. Ct. 2392, 2425 (2018) (Thomas, J., concurring).

Universal injunctions also "conflict[] with the principle that a federal court of appeals's decision is only binding within its circuit." *Virginia Soc'y for Human Life, Inc. v. Federal Election Comm'n*, 263 F.3d 379, 393 (4th Cir. 2001). Indeed, the impropriety of nationwide injunctions issued by a single district court are readily apparent in this case. Both the Fourth and Ninth Circuits have granted stays of preliminary injunctions entered by district courts in their Circuits, and have thus concluded that the Rule should go into effect. Yet, the Rule cannot be implemented in either Circuit because the district court in this case entered an injunction that applies in those courts' jurisdictions.

2. The district court justified its injunctions on the supposed need for "uniformity" in "national immigration policies." SA 22, 51. But the district court nowhere explained why the imposition of a uniform rule regarding public-charge inadmissibility determinations is necessary to remedy the specific harm shown to the plaintiffs here. *See East Bay Sanctuary Covenant*, 934 F.3d at 1028. And, in fact, Congress long ago recognized—and was not concerned by—variations in the standards used by different Executive Branch officers applying the public-charge inadmissibility provision in separate locales. *See supra* pp. 33-34.

The district court also suggested that a nationwide injunction was appropriate because an injunction limited to plaintiff States (where the organizational plaintiffs also operate) might dissuade an alien from moving from one of plaintiffs' States to a jurisdiction not covered by the injunction. SA 26, 53. In the court's view, such a result would impermissibly intrude on an alien's constitutional right to travel. *See id.* The notion that a limited injunction would intrude on an alien's constitutional right to travel is dubious at best. Moreover, as noted above, plaintiffs have no standing to assert the constitutional rights of aliens against the United States.

In any event, the district court's hypothesis about the potential impact of a nationwide injunction during the limited time it will take to resolve this appeal is far too speculative to support a nationwide injunction. Nothing in the record shows that aliens are likely to forgo benefits based on the mere chance that they will move in the next few months. Nor is there evidence that the plaintiff States are likely to suffer the

long-term harms they allege even if a small pool of aliens does temporarily forgo benefits because they will soon move elsewhere. Indeed, aliens who leave the plaintiff States are particularly unlikely to cause the future harms that plaintiffs predict.[3]

CONCLUSION

For the foregoing reasons, the judgment of the district court should be reversed and the court's preliminary injunction and stay under 5 U.S.C. § 705 vacated.

Respectfully submitted,

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December 2019

[3] The district court correctly recognized that the "standard for a stay under 5 U.S.C. § 705 is the same as the standard for a preliminary injunction," and therefore granted a § 705 stay "for the same reasons it grant[ed] the injunction." SA 24 n.5, 53 n.4. Because the district court erred in entering an injunction, it likewise erred in entering the stay.

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limit of Federal Rule of Appellate Procedure 32(a)(7)(B) and Circuit Rule 32.1 because it contains 13,962 words. This brief also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)-(6) because it was prepared using Microsoft Word 2016 in Garamond 14-point font, a proportionally spaced typeface.

s/ Gerard Sinzdak
Gerard Sinzdak

CERTIFICATE OF SERVICE

I hereby certify that on December 13, 2019, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Second Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

s/ Gerard Sinzdak
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