



U.S. Department of Justice
Civil Division, Federal Programs Branch

Joshua Kolsky
Trial Attorney

Tel.: (202) 305-7664
E-mail: joshua.kolsky@usdoj.gov

May 13, 2020

Hon. George B. Daniels
United States District Court
Southern District of New York
500 Pearl Street, Room 1310
New York, NY 10007

Re: *State of New York, et al. v. United States Department of Homeland Security, et al.*,
No. 19-cv-7777; *Make the Road New York v. Cuccinelli*, No. 19-7993 (S.D.N.Y.)

Dear Judge Daniels,

I represent Defendants in the above-captioned matters. I write to clarify Defendants' position stated in Defendants' Reply to Plaintiffs' Consolidated Opposition to Defendants' Motion to Dismiss. *See New York*, ECF No. 159; *Make the Road New York*, ECF No. 196. Plaintiffs in *New York* have alleged that the public charge rule (the "Rule") violates, *inter alia*, 7 U.S.C. § 2017(b), which states in relevant part, "[t]he value of benefits that may be provided under [SNAP] shall not be considered income or resources for any purpose under any Federal, State, or local laws[.]" In the Reply, Defendants stated that "the Rule is carefully drafted to prohibit consideration of the actual amount of SNAP benefits received by any alien subject to a public charge determination." Reply at 20.

As previously explained, *see New York*, Mem. of Law in Supp. of Mot. to Dismiss ("Mot. to Dismiss"), ECF No. 141, at 4, the Rule defines "public charge" to mean an alien who receives one or more designated "public benefits" for more than 12 months in the aggregate within any 36-month period. 8 C.F.R. § 212.21(a). In other words, it is the alien's receipt of designated public benefits over a certain period of time—and not the dollar value of any benefits received—that bears on whether the Rule's definition is satisfied. And the Rule identifies SNAP benefits as a "public benefit," meaning that an alien who receives SNAP benefits for more than 12 months in the aggregate within any 36-month period satisfies the definition of "public charge." *Id.* § 212.21(b)(2).

However, in assessing whether a particular alien is *likely* at any time to become a public charge under the Rule, *see* 8 C.F.R. § 212.22, when considering the receipt of public benefits, USCIS may consider, *inter alia*, the amount of any public benefits, including SNAP benefits, the alien has received when determining the weight to give the receipt of those benefits in the totality

of the circumstances. *See id.* § 212.22(b)(4)(ii)(E)(i); USCIS Policy Manual, Vol. 8, Part F, Chapter 9 (discussing “Amount and Duration Considerations”).¹

Nevertheless, for the reasons Defendants have explained, the Rule does not violate the SNAP statute because it does not consider the value of SNAP benefits as “income or resources.” *See New York*, Mot. to Dismiss, at 30-31. Rather, the Rule appropriately considers the fact that an alien has received SNAP benefits along with factors such as the duration and amount of such benefits. *Id.* We regret any confusion caused by Defendants’ reply.

Respectfully submitted,

/s/

Joshua Kolsky

CC: All Counsel of record via ECF.

¹ Available at <https://www.uscis.gov/policy-manual/volume-8-part-g-chapter-9>.