

No. 20-2537

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

MAKE THE ROAD NEW YORK, AFRICAN SERVICES COMMITTEE,
ASIAN AMERICAN FEDERATION, CATHOLIC CHARITIES COMMUNITY
SERVICES (ARCHDIOCESE OF NEW YORK), and CATHOLIC LEGAL
IMMIGRATION NETWORK, INC.,

Plaintiffs-Appellees,

v.

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

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

**PLAINTIFFS-APPELLEES' RESPONSE TO
MOTION FOR EMERGENCY STAY OF PRELIMINARY INJUNCTION
PENDING APPEAL AND REQUEST FOR IMMEDIATE
ADMINISTRATIVE STAY**

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PRELIMINARY STATEMENT

The Organizational Plaintiffs join the Government Plaintiffs' opposition to Defendants' emergency motion to stay the preliminary injunction issued by the United States District Court for the Southern District of New York (Daniels, J.) on July 29, 2020 and urge the Court to deny the Defendants' motion for a stay. *See* Opposition Brief of State of New York, *et al.* filed Aug. 17, 2020. (Dkt. 42).

The Organizational Plaintiffs submit this separate opposition brief to respond to the Defendants' alternative request that the Court limit the scope of the preliminary injunction to the States within this Circuit. Defendants' Emergency Motion for a Stay Pending Appeal and Request for Immediate Administrative Stay (hereinafter "Def. Mem.") at 4. Defendants' arguments for this alternative relief are inconsistent with this Court's recent holding in its decision affirming the first preliminary injunction granted in this case that the district courts have authority in appropriate circumstances to issue a nationwide injunction. *State of New York v. Dep't of Homeland Security*, 2020 WL 4457951 (2d Cir. Aug. 4, 2020) (hereinafter "Second Circuit Op."). Defendants' arguments also ignore the District Court's careful and unrebutted factual findings about the Public Charge Rule's COVID-19 specific harms supporting the present injunction.

The Organizational Plaintiffs respectfully urge the Court to deny Defendants' motion for a stay, reject the Defendants' request for alternative relief, and restore the full scope of the injunction pending appeal.

ARGUMENT

On the record presented to it, the District Court did not abuse its discretion in entering a nationwide injunction, and this Court should not exercise its discretion to narrow that injunction.

First, as the Court concluded in its prior ruling “[w]e have no doubt that the law, as it stands today, permits district courts to enter nationwide injunctions.”

Second Circuit Op. at *32. The Court reasoned:

As the Plaintiffs point out, courts have long held that when an agency action is found unlawful under the APA, “the ordinary result is that the rules are vacated – not that their application to the individual petitioners is proscribed.” *Nat’l Mining Ass’n v. U.S. Army Corps of Eng’rs*, 145 F.3d 1399, 1409 (D.C. Cir. 1998) (internal quotation marks omitted). This aligns with the general principle that “the scope of injunctive relief is dictated by the extent of the violation established, not by the geographical extent of the plaintiff class.” *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979). Moreover, courts have recognized that nationwide injunctions may be particularly appropriate in the immigration context, given the interest in a uniform immigration policy. *See Texas v. United States*, 809 F.3d 134, 187-88 (5th Cir. 2015); *see also Hawaii v. Trump*, 878 F.3d 662, 701 (9th Cir. 2017), *rev’d on other grounds*, 138 S. Ct. 2392 (2018).

Second Circuit Op. at *31.

Second, the record before the District Court amply demonstrated the nationwide impact of the pandemic and of the Public Charge Rule on efforts to

control the pandemic, and thus strongly supports the issuance of a nationwide injunction. *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979) (holding that the scope of relief “is dictated by the extent of the violation established, not by the geographical extent of the plaintiff . . .”) (quoted in Second Circuit Op. at *31). In contrast to circumstances where “the record is not sufficiently developed on the nationwide impact of the [agency action],” *City & Cty. of San Francisco v. Trump*, 897 F.3d 1225, 1244 (9th Cir. 2018), the evidentiary record here demonstrated irreparable harms that are nationwide in scope, in light of the national implementation of the Rule and the wide-spread nature of the pandemic, which is estimated to have now afflicted over 5.3 million people across all of the United States.¹ *See, e.g., State of New York v. United States Dep’t of Homeland Security*, No. 19-cv-7777 (S.D.N.Y.), Dkt. 170, Declaration of Elena Goldstein, Ex. 7 (Letter to DHS and USCIS from Attorneys General from Washington, California, Connecticut, Delaware, D.C., Hawaii, Iowa, Massachusetts, Michigan, Minnesota, Nevada, New Mexico, New Jersey, New York, Oregon, Pennsylvania, Vermont,

¹ The pandemic continues to be severe nation-wide with a high rate of infection and continuing mortality. *See* Centers for Disease Control and Prevention, *Coronavirus Disease 2019 (COVID-19): Cases, Data & Surveillance: Cases & Deaths in the US*, available at <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html> (last updated August 17, 2020) (indicating more than five million individuals have confirmed cases of COVID-19 in the United States, and at least 169,350 deaths from the disease). New York has been particularly hard hit. *See, e.g.,* New York Dep’t of Health, *NYSDOH COVID-19 Tracker*, available at <https://covid19tracker.health.ny.gov/views/NYS-COVID19-Tracker/NYSDOHCOVID-19Tracker-Map?%3Aembed=yes&%3Atoolbar=no&%3Atabs=n> (last updated August 17, 2020) (indicating 425,508 thousand New Yorkers have confirmed cases of COVID-19); New York Dep’t Health, *Fatalities by County* available at <https://covid19tracker.health.ny.gov/views/NYS-COVID19-Tracker/NYSDOHCOVID-19Tracker-Fatalities?%3Aembed=yes&%3Atoolbar=no&%3Atabs=n> (last updated August 17, 2020) (indicating 25,256 deaths in New York).

and Virginia); Ex. 8 (regarding impact in Connecticut); Ex. 10 (regarding impact in Illinois); Ex. 11 (regarding impact in Pacific Northwest); Ex. 13 (regarding impact in Dane County, Wisconsin); Ex. 14 (regarding impact in Colorado); Ex. 21 (regarding impact in Virginia); Ex. 16 (declaration from medical expert Leighton Ku regarding adverse impacts nationwide); Exs. 24, 25, 26 (declarations from Organizational Plaintiffs concerning impacts on immigrant communities).

Based on this record, the District Court found that the Rule's impact of "[d]iscouraging noncitizens nationwide from obtaining necessary treatment and care undermines . . ." efforts to combat COVID-19. *State of New York v. Dep't of Homeland Security*, 2020 WL 4347264, *13 (S.D.N.Y. July 29, 2020) (hereinafter "Dist. Ct. Op."). Accordingly, the District Court properly found that halting the Rule nationwide was "critical to curing Plaintiffs' harms associated with the pandemic, considering the 'interconnected nature of the risks between and within states, and the realities attendant to the spread of this disease.'" *Id.* (citing Pls' Emergency PI Mem. at 25.). In contrast, a geographically limited injunction "would not meaningfully abate the public health risk, especially when applied to a population that represents a significant portion of essential workers who continue to work outside of their homes and interact with the public at large." *Id.* See, e.g., Goldstein Decl. Ex. 16, ¶ 20 (findings by Leighton Ku that low- and moderate-income immigrants are a large share of the workforce essential during pandemics

and where they fear accessing health care because of the Public Charge Rule “they could inadvertently increase risks of contagion to their patients and customers, elevating the pandemic risk to others in their communities. That is, protecting immigrants is also in the best interests of non-immigrant members of our communities”); Ex. 24, ¶ 9 (finding by Organizational Plaintiff Make the Road New York deputy director Theo Oshiro that immigrant workers are reluctant to seek benefits despite job loss and need because of the Public Charge Rule).

COVID-19 spreads through the country via interstate travel,² and interstate travel will continue to be a primary means by which the virus crosses state lines, particularly as jurisdictions continue to lift stay-at-home restrictions.³

In addition to the epidemiological reasons that a regional injunction is not sufficiently protective of Plaintiffs, Organizational Plaintiffs are not geographically limited to New York, nor even to the Second Circuit. Plaintiff Catholic Legal Immigration Network, Inc. (CLINIC) operates in 49 states and the District of Columbia, Compl. ¶ 40, and all plaintiffs serve immigrants who may move in and out of the New York area, *id.* ¶¶ 21, 26, 31, 34. Thus, contrary to Defendants’

² See Benedict Carey and James Glanz, *Travel From New York City Seeded Wave of U.S. Outbreaks*, N.Y. Times (May 7, 2020), available at <https://www.nytimes.com/2020/05/07/us/new-york-city-coronavirus-outbreak.html>.

³ See Gabriel J.X. Dance and Lazaro Gamio, *As Coronavirus Restrictions Lift, Millions in U.S. Are Leaving Home Again*, N.Y. Times (May 12, 2020), available at <https://www.nytimes.com/interactive/2020/05/12/us/coronavirusreopening-shutdown.html>. Indeed, the more than 2.2 million travelers landing in the New York metropolitan area between the end of January and March 16, 2020, “combined with the density and crowding of [the tri-state area’s] population, caused New York to have the highest infection rate in the country.” New York Dep’t of Health, *Interim Guidance for Quarantine Restrictions on Travelers Arriving in New York State Following Out of State Travel* (June 24, 2020), available at https://coronavirus.health.ny.gov/system/files/documents/2020/06/interimguidance_traveladvisory.pdf.

assertions, Def. Mem. at 4, 19, nationwide relief is necessary to provide the Organizational Plaintiffs redress for the adverse impact of the Public Charge Rule on accessing health care and other benefits needed to survive the COVID-19 emergency.

Third, given the nationwide application of the Public Charge Rule and the nationwide impact of COVID-19, and the interconnectedness of every locality in the context of controlling its spread, maintaining national uniformity during the public health emergency on this issue of immigration law is particularly imperative. *See Texas v. United States*, 809 F.3d 134, 187-88 (5th Cir. 2015) (upholding a nationwide injunction of the Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) immigration relief program, in part, because the Constitution requires and Congress has called for uniform administration of immigration laws). As the District Court found, “[t]he effect of the Rule’s application should not depend on what side of the George Washington bridge between New York and New Jersey one fortuitously finds oneself.” Dist. Ct. Op. at *13.

Fourth, this Court’s rationale for limiting the scope of the prior injunction does not support limiting the scope of the separate injunction at issue on this appeal. Def. Mem. at 19-20. In its prior ruling, the Court cautioned that nationwide injunctive relief may be “less desirable” when courts in multiple

jurisdictions are considering the same issue. In view of the fact that multiple courts were considering the issue presented on that appeal, the Court exercised its discretion to limit the scope of the first injunction to the States within this Circuit. Second Circuit Op. at *32.

No such circumstances are presented here. There are no other pending cases or motions seeking to enjoin the Rule based on the impact of the pandemic, and no other court decisions rejecting such an injunction. To date, the District Court is the only court in the country to consider whether the interplay of the Public Charge Rule with the COVID-19 pandemic justifies temporary, new relief. The present injunction also does not thwart the continuation of public charge litigation in other areas of the country, including those where stays of decisions enjoining the Public Charge Rule were granted. The injunction merely pauses the implementation of the Rule during the extraordinary circumstances of the pandemic. When the national public health emergency is declared over, the injunction will by its own terms be lifted and (if the stay issued by the Supreme Court remains in place), the Rule will again be effective.

Finally, the Court's August 12, 2020 administrative order should be no bar to restoring the full scope of the District Court's injunction. That order merely narrowed the injunction pending a ruling on the Defendants' stay application by

the full motion panel, and did not suggest that it was intended to bind that panel.

See Order, No. 20-2537 (Dkt. 35).

CONCLUSION

For the foregoing reasons, and those stated in the brief of the Governmental Plaintiffs, Organizational Plaintiffs respectfully request that the Court affirm the District Court injunction in its entirety.

Dated: New York, New York
August 17, 2020

By: /s/ Elana R. Beale

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**CERTIFICATE OF COMPLIANCE
WITH TYPEFACE AND WORD-COUNT LIMITATIONS**

I, Elana R. Beale, counsel for Plaintiffs-Appellees Make the Road New York, African Services Committee, Asian American Federation, Catholic Charities Community Services (Archdiocese of New York), and Catholic Legal Immigration Network, Inc., and a member of the Bar of this Court, certify, pursuant to Federal Rule of Appellate Procedure 27(d), that Plaintiffs-Appellees' attached Response to Motion for Emergency Stay of Preliminary Injunction Pending Appeal and Request for Immediate Administrative Stay is proportionately spaced, has a typeface of 14 points or more, and contains 2,099 words.

/s/ Elana R. Beale

Elana R. Beale

August 17, 2020

CERTIFICATE OF SERVICE

I, Elana R. Beale, counsel for Plaintiffs-Appellees Make the Road New York, African Services Committee, Asian American Federation, Catholic Charities Community Services (Archdiocese of New York), and Catholic Legal Immigration Network, Inc. and a member of the Bar of this Court, certify that, on August 17, 2020, a copy of the attached Response to Motion for Emergency Stay of Preliminary Injunction Pending Appeal and Request for Immediate Administrative Stay was filed electronically through the appellate CM/ECF system with the Clerk of the Court. I further certify that all parties required to be served have been served.

/s/ Elana R. Beale

Elana R. Beale

August 17, 2020