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8 **UNITED STATES DISTRICT COURT**  
9 **EASTERN DISTRICT OF WASHINGTON**  
10 **AT SPOKANE**

11 STATE OF WASHINGTON, et al.,

12 Plaintiffs,

13 v.

14 UNITED STATES DEPARTMENT  
15 OF HOMELAND SECURITY, a  
16 federal agency, et al.,

17 Defendants.

NO. 4:19-cv-05210-RMP

SUPPLEMENTAL JOINT STATUS  
REPORT

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1 The parties respectfully submit this Supplemental Joint Status Report pursuant  
2 to the Court's February 22, 2021 Order.

3 ***Plaintiffs' statement:***

4 Plaintiffs' counsel have consulted with their respective Attorneys General and  
5 have advised Defendants they would agree to a 60-day stay of this litigation only if  
6 Defendants agreed to stay enforcement of the public charge rule during this period.

7 Absent Defendants' agreement to stay or suspend the public charge rule,  
8 Plaintiffs desire to continue to prosecute their claims in this case. This Court entered  
9 its preliminary injunction on October 11, 2019. On December 2, 2020, the Ninth  
10 Circuit affirmed that injunction, limited to the fourteen Plaintiff States. However,  
11 Defendants moved to stay the Ninth Circuit's mandate in light of a planned petition  
12 for writ of certiorari. On January 20, 2021, the Ninth Circuit stayed its mandate, and  
13 on January 21, 2021, Defendants filed a petition for writ of certiorari. Consequently,  
14 despite this Court's now-affirmed October 2019 findings of irreparable harm to the  
15 Plaintiff States and their lawful immigrant residents caused by the public charge rule,  
16 the rule remains in effect in the fourteen Plaintiff States.

17 Recent Supreme Court action has further complicated when Defendants may  
18 suspend or repeal the public charge rule. In Defendants' petition for a writ of  
19 certiorari, they noted they also had sought Supreme Court review of the Second  
20 Circuit's parallel affirmance of a district court injunction of the public charge rule in  
21 *Department of Homeland Security v. New York*, No. 20-449 (Oct. 7, 2020). They  
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1 requested that the Supreme Court hold their petition in abeyance pending disposition  
2 of the petition in *New York* and dispose of it consistent with *New York*. Between  
3 inauguration and February 19, 2021, when the Supreme Court considered the  
4 certiorari petition in *New York* in conference, the new Administration could have  
5 withdrawn the *New York* petition, but it did not do so. On February 22, 2021, the  
6 Supreme Court granted certiorari in *New York*. Order List (02/22/2021)  
7 (supremecourt.gov) at 4.

8 Defendants provide Plaintiffs no assurance as to when they might seek to  
9 make any changes to the public charge rule as it currently applies today.

10 In short, Plaintiffs have no reason to believe that this case will be mooted in  
11 the near future. There are, consequently, at least two reasons Plaintiffs desire to  
12 continue to move this case toward its conclusion. The first is that they have a claim  
13 independent of the claims before the Supreme Court—regarding alleged violations  
14 of Equal Protection—that could provide an independent basis for vacatur of the rule.  
15 Plaintiffs intend to continue to vigorously prosecute this claim so long as the rule  
16 remains in effect. Second, Defendants’ petition for certiorari addresses this Court’s  
17 and the Ninth Circuit’s preliminary conclusions concerning the merits of Plaintiffs’  
18 APA claims under Rule 65 standards. Plaintiffs are prepared to brief summary  
19 judgment on their APA claims and believe, based on the Ninth Circuit’s December 2,  
20 2020 opinion, summary judgment could be adjudicated efficiently by this Court.  
21 This would moot the pending petition for certiorari or, at very least, provide a firmer  
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1 basis for Supreme Court review than review under a preliminary injunction standard.

2 For the foregoing reasons, Plaintiffs are prepared to proceed to a trial  
3 scheduling conference.

4 ***Defendants' statement:***

5 As explained in Defendants' February 3, 2021 Notice, President Biden issued  
6 an Executive Order calling on DHS to "review [its] agency actions related to  
7 implementation of the public charge ground of inadmissibility" (*i.e.*, the public  
8 charge rule at issue here) and to "identif[y] . . . any steps" it "intend[s] to take or  
9 ha[s] taken" regarding the Rule by April 3, 2021. Accordingly, DHS is currently  
10 reviewing the Rule, and the DOJ is likewise assessing how to proceed with its  
11 appeals in relevant litigations in light of the aforementioned Executive Order. Thus,  
12 a time-limited stay is appropriate, and may spare the parties and the Court from the  
13 burdens associated with briefing and resolving the merits of the equal protection  
14 claim (and related discovery disputes), all of which may ultimately prove  
15 unnecessary.

16 Although, as Plaintiffs note, the Rule currently remains in effect while DHS  
17 and DOJ undertake the review required by President Biden's Executive Order, this  
18 would only be a meaningful argument against a time-limited stay if Plaintiffs could  
19 demonstrate that the parties could brief, and the Court could resolve, a dispositive  
20 motion on the equal protection claim on a far more accelerated timeline. But  
21 Plaintiffs make no such showing; indeed, they fail to suggest that they plan on  
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1 promptly moving for summary judgment on the equal protection claim. Indeed, the  
2 discovery period in this case – which Plaintiffs requested – extends until October 1,  
3 2021. *See* Scheduling Order, ECF No. 212. And even if the parties promptly  
4 commenced summary judgment briefing, it is highly unlikely the Court would render  
5 a decision on or before April 3—when DHS must “identif[y] . . . any steps” it  
6 “intend[s] to take or ha[s] taken” regarding the Rule.

7 Thus, the Court should enter a time-limited stay. Although Defendants believe  
8 a 60-day stay is appropriate, even a much shorter stay of two weeks could be helpful  
9 as it would allow DHS to focus its resources on the review required by the Executive  
10 Order and potentially expedite that process, instead of spending resources on time-  
11 consuming discovery and other aspects of this litigation. This shorter stay would  
12 provide DHS and DOJ with additional time to assess how they wish to proceed, and  
13 further developments during that time period may either impact Plaintiffs’ equal  
14 protection claim or ultimately lead Plaintiffs to agree that a more lengthy stay is  
15 appropriate.

16 Defendants do not request a trial scheduling conference at this time but are  
17 prepared to participate in any such conference the Court may schedule.

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RESPECTFULLY SUBMITTED this 24th day of February 2021.

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**DECLARATION OF SERVICE**

I hereby declare that on this day I caused the foregoing document to be electronically filed with the Clerk of the Court using the Court’s CM/ECF System which will serve a copy of this document upon all counsel of record.

DATED this 24th day of February 2021, at Seattle, Washington.

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