CITY ATTORNEY'S OFFICE
CITY AND COUNTY OF SAN FRANCISCO
DENNIS J. HERRERA, State Bar #139669
City Attorney
JESSE C. SMITH, State Bar #122517
Chief Assistant City Attorney
RONALD P. FLYNN, State Bar #184186
Chief Deputy City Attorney
YVONNE R. MERÉ, State Bar #173594
Chief of Complex and Affirmative Litigation
SARA J. EISENBERG, State Bar #269303
Chief of Strategic Advocacy
MATTHEW D. GOLDBERG, State Bar #240776
Deputy City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4602
Telephone: (415) 554-4748
Facsimile: (415) 554-4715
E-Mail: matthew.goldberg@sfcityatty.org

Attorneys for Plaintiff
CITY AND COUNTY OF SAN FRANCISCO

OFFICE OF THE COUNTY COUNSEL
COUNTY OF SANTA CLARA
JAMES R. WILLIAMS, State Bar #271253
County Counsel
GRETA S. HANSEN, State Bar #251471
Chief Assistant County Counsel
LAURA TRICE, State Bar #284837
Lead Deputy County Counsel
RAPHAEL N. RAJENDRA, State Bar #255096
Deputy County Counsel
JULIA B. SPIEGEL, State Bar #292469
Deputy County Counsel
H. LUKE EDWARDS, State Bar #313756
Deputy County Counsel
70 West Hedding Street
East Wing, Ninth Floor
San Jose, California 95110-1770
Telephone: (408) 299-5900
Facsimile: (408) 292-7240
E-Mail: luke.edwards@cco.sccgov.org

Attorneys for Plaintiff
COUNTY OF SANTA CLARA

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

CITY AND COUNTY OF SAN FRANCISCO and COUNTY OF SANTA CLARA,

Plaintiffs,

vs.

U.S. CITIZENSHIP AND IMMIGRATION SERVICES; DEPARTMENT OF HOMELAND SECURITY; KEVIN McALEENEN, Acting Secretary of Homeland Security; and KENNETH T. CUCCINELLI, in his official capacity as Acting Director of U.S. Citizenship and Immigration Services,

Defendants.

Case No. 4:19-cv-04717-PJH

CITY AND COUNTY OF SAN FRANCISCO AND COUNTY OF SANTA CLARA'S OPPOSITION TO DEFENDANTS' MOTION FOR STAY OF INJUNCTION PENDING APPEAL

Hearing Date: December 4, 2019
Time: 9:00 am
Judge: Hon. Phyllis J. Hamilton
Place: Oakland Courthouse
Courtroom 3 - 3rd Floor

Trial Date: Not set

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INTRODUCTION

Less than a month ago, this Court granted preliminary relief to the City and County of San Francisco and County of Santa Clara (together, the "Counties"), enjoining the Department of Homeland Security ("DHS"), U.S. Citizenship and Immigration Service ("USCIS"), and their acting directors from applying in any manner the final rule entitled *Inadmissibility on Public Charge Grounds*, 84 Fed. Reg. 41,292 (Aug. 14, 2019) (the "Final Rule") within specified jurisdictions. The Court concluded that (1) the Counties are likely to succeed on the merits of their claims that the Final Rule is contrary to the underlying statute and arbitrary and capricious; (2) absent an injunction the Counties would likely suffer irreparable harm; (3) the balance of the equities tips sharply in the Counties' favor; and (4) the public interest cuts sharply in favor of an injunction. Preliminary Injunction, ECF No. 115 ("PI Order"), — F.Supp.3d —, 2019 WL 5100718 (Oct. 11, 2019). All four other district courts to consider the matter have likewise enjoined the Final Rule.[1]

Nonetheless, Defendants have asked to stay this Court's injunction pending appeal. Their motion largely rehashes arguments this Court has already rejected and ignores this Court's well-supported reasoning. Defendants also summarily assert that they are irreparably harmed by the injunction—even though it simply leaves in force guidance that has governed immigration officers' public charge inadmissibility determinations since at least 1999. By contrast, for the reasons the Court has already identified, a stay would cause irreparable harm to the Counties *and* the public. Defendants' motion should be denied.

ARGUMENT

A "stay is an 'intrusion into the ordinary processes of administration and judicial review,' and accordingly 'is not a matter of right.'" *Nken v. Holder*, 556 U.S. 418, 427 (2009) (internal citations and quotation marks omitted). Rather, Defendants bear a heavy burden of "showing that the circumstances justify an exercise of [the Court's] discretion." *Id*. at 433-434. To meet that burden, Defendants must demonstrate that consideration of the following four factors justifies a stay of the

[1] *See Cook Cty., Illinois v. McAleenan*, No. 19-C-6334, 2019 WL 5110267 (N.D. Ill. Oct. 14, 2019); *CASA de Maryland, Inc. v. Trump*, No. PWG-19-2715, 2019 WL 5190689 (D. Md. Oct. 14, 2019); *Washington v. DHS*, No. 4:19-CV-5210-RMP, 2019 WL 5100717 (E.D. Wash. Oct. 11, 2019); *New York v. DHS*, No. 19-CIV-7777 (GBD), 2019 WL 5100372 (S.D.N.Y. Oct. 11, 2019).

injunction: "(1) whether the stay applicant has made a strong showing that [it] is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Id.* at 434 (internal citations and quotation marks omitted). Here, *not one* factor favors a stay.

I. Defendants Do Not Make a Strong Showing They Are Likely to Succeed on the Merits.

Defendants have the "burden to make a strong showing that [they are] likely to prevail" on appeal against the Counties' Administrative Procedure Act (APA) claims. *Washington v. Trump*, 847 F.3d 1151, 1165 (9th Cir. 2017) (internal alterations and quotation marks omitted). A "mere possibility of relief" is insufficient; instead, "'at a minimum,' a petitioner must show that there is a 'substantial case for relief on the merits.'" *Lair v. Bullock*, 697 F.3d 1200, 1204 (9th Cir. 2012) (quoting *Leiva-Perez v. Holder*, 640 F.3d 962, 966 (9th Cir. 2011)). In their stay motion, Defendants offer only the same arguments that this court and four other district courts have already unanimously rejected. Defendants are not likely to prevail on those arguments on appeal.

A. The Counties Have Standing.

Defendants assert that mere speculation about third parties' behavior does not support standing. Mot at 3. But Defendants' incantation of this uncontroversial proposition is beside the point, because the casual chain here is not speculative. To the contrary, DHS acknowledges, in the text of the rule itself, that the Final Rule will cause harm to the Counties. DHS itself projects that its Final Rule will cause individuals to disenroll from the newly enumerated benefit programs *and* that the result will be $2.5 billion in reduced transfer payments to local governments, including $1.5 billion in federal funds. 84 Fed. Reg. at 41,487. And the Counties have established that this lost funding will reduce Medicaid reimbursements for the Counties' hospital systems, leading to greater costs the Counties themselves must bear. Wagner Decl., ECF No. 29, ¶ 5; Shing Decl., ECF No. 42, ¶ 32. As this Court noted, the Supreme Court has recently said this type of "predictable result from a broad policy" is sufficient to demonstrate harm. PI Order at 79 (citing *Dep't of Commerce v. New York*, 139 S. Ct. 2551, 2565 (2019)); *accord Cal. v. Azar*, 911 F.3d 558, 571 (9th Cir. 2018) (states had standing to challenge rules that would cause uninsured women to seek reproductive care through state-funded programs).

Defendants appear to suggest that costs imposed on the Counties by the Final Rule *might* be outweighed by costs the Counties may avoid if fewer noncitizens are permitted to enter and remain in the United States. *See* Mot. at 3. Defendants cannot defeat standing by speculating about benefits that might accrue to the Counties under the Final Rule. Indeed, the Ninth Circuit has recently rejected just such an argument. In *City of Oakland v. Lynch*, 798 F.3d 1159 (9th Cir. 2015), Oakland sought an injunction preventing the federal government from seeking civil forfeiture of a marijuana dispensary, claiming that it had standing because forfeiture would reduce its tax revenue. The federal government argued that the tax-generating marijuana sales might be diverted to other dispensaries or that a new retail tenant might provide the city with more tax revenue than the dispensary. *Id.* at 1164. But the Ninth Circuit "g[a]ve no weight" to such "unsupported claims," instead holding that it was "the Government's assertions that are speculative; what is certain is that closing Harborside will lead to a real and immediate erosion in Oakland's tax revenues," and that alone sufficed for standing. *Id.* Just as the federal government could not defeat Oakland's standing by speculating about potential future financial benefits to the city, Defendants' conjecture that the Counties might avoid future costs under the Final Rule cannot defeat the Counties' standing in the face of the "real and immediate" costs the Counties will incur because of the Final Rule. *See id.*; *see also* PI Order at 80 ("To the extent defendants argue that the mechanics will work out as a budgetary boon to plaintiffs, the argument is not plausible in the context of this preliminary injunction motion. Although it could potentially work out as a total budgetary savings for the plaintiff entities if they reconfigured their operations, reduced staff, reduced provision of services, and undertook other cost-savings measures, such savings could not plausibly be realized prior to the determination of this action's merits.") (citing Lorenz Decl., ECF 40, ¶¶ 19–22).

Contrary to Defendants' contention, Mot. at 3, the Counties and the Court have explained why the administrative costs the Counties now face due to the upheaval caused by the Final Rule are a proper basis for standing. In *California v. Trump*—cited in both the Court's decision, PI Order at 81, and the Counties briefing on the preliminary injunction, Reply ISO Mot. for PI, ECF No. 103, at 2—the court specifically held that "administrative costs . . . are enough to satisfy the standing requirement." 267 F. Supp. 3d 1119, 1126 (N.D. Cal. 2017) (collecting cases). Defendants' reliance

on the out-of-circuit case *Crane v. Johnson*, 783 F.3d 244 (5th Cir. 2015), *see* Mot. at 3, is unavailing. As the Court has already explained, *Crane* is inapposite because it dealt with *individual employees*' claims that they might have to change their work practices, not evidence from an entity that was expending significant resources to deal with administrative disruptions. *See* PI Order at 81 n.21.

Defendants offer no reason to doubt this Court's conclusion that the Counties have standing.[2]

B. The Counties Are Within the Relevant Zone of Interests.

In light of the APA's "generous review provisions," a plaintiff falls within the zone of interests of a statute at issue in its APA claim unless its "interests are so marginally related to or inconsistent with the purposes implicit in the statute that it cannot reasonably be assumed that Congress authorized that plaintiff to sue." *Lexmark Int'l, Inc. v. Static Control Comp., Inc.*, 572 U.S. 118, 130 (2014) (internal quotation marks and citations omitted). Defendants continue to advance the rejected theory that *only* individuals wrongfully denied entry as public charges fall within the zone of interests of Section 212(a)(4) of the Immigration and Nationality Act ("INA"). Mot. at 3-4. Defendants downplay the concerns that animate Section 212(a)(4) and integrally related provisions, such as those setting up the affidavit of support system, *see* 8 U.S.C. § 1183a. The INA permits the Counties to sue to enforce these affidavits of support to recover costs associated with noncitizens' benefit usage, *see* 8 U.S.C. § 1183a(a), (b), (e)(2), reflecting congressional recognition that local governments frequently provide and administer public benefits and therefore have an interest in policies governing their use by non-citizens. PI Order at 70. Defendants also offer no reason to doubt the Court's conclusion that "it is also more than arguable that Congress intended to protect states and their political subdivisions' coffers" in enacting the public charge inadmissibility ground, making the Counties' "financial interests . . . at least arguably protected by the statute." *Id.* Other district courts have reached similar conclusions. *Cook Cty.*, 2019 WL 5110267, at *7; *Washington*, 2019 WL 5100717, at *11; *New York*, 2019 WL 5100372, at *5.

[2] Defendants' ripeness argument is entirely derivative of their standing argument, *see* Mot. at 3 (contending that ripeness and standing are lacking "[f]or similar reasons") and is similarly unavailing.

C. The Final Rule is Contrary to Law.

Defendants do not seriously dispute the Court's conclusion that the term "public charge" has had both a "long-standing focus on the individual's ability and willingness to work or otherwise support himself" and a "longstanding allowance for short-term aid." PI Order at 46. "These are precisely the sorts of constructions Congress is presumed knowledgeable of when reenacting statutory language." *Id.* at 27 (citing *Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 239-40 (2009)). Thus, they are the foundation for the Court's determination that the Final Rule's definition of the term "is not a permissible or reasonable construction of the statute," *id.* at 46, and that there are "at least serious questions with respect to whether 'the statute, read in context, unambiguously forecloses'" that definition, *id.* at 48. Rather than meaningfully address the Court's recognition of the term's longstanding meaning, however, Defendants simply repeat arguments the Court has already rejected.

Echoing their preliminary injunction briefing, Defendants contend that the precise words "primary dependence" were first used in 1999 to describe the meaning of "public charge," so that phrase cannot capture the statute's longstanding meaning. Mot. at 4. But the Court did not rely on the "primary dependence" language, and in any event those words are simply a modern formulation that captures the concept that "public charge" itself has embodied since 1882. Rather, the Court's discussion reflects that *reliance* on the public, and not simply *receipt* of government assistance, is an essential component of the concept. As the Court recognized, dictionaries from the time defined the term "charge" to mean a "'person or thing *committed or intrusted* [sic] to the care, custody, or management of another; a trust.'" PI Order at 18 (quoting Webster's Dictionary (1886 Edition); emphasis added). And contemporaneous court cases likewise held that the phrase describes people dependent on the government—not simply those who receive aid. *See City of Boston v. Capen*, 61 Mass. 116, 121-22 (1851) (public charges are persons "incompetent to maintain themselves," who "might become a heavy and long continued charge to the city, town or state"); *Howe v. United States ex rel. Savitsky*, 247 F. 292, 294 (2d Cir. 1917) (public charge inadmissibility ground "exclude[s] persons who were likely to become occupants of almshouses for want of means with which to support themselves in the future"); *accord Cook Cty.*, 2019 WL 5110267, at *9-10.

Defendants next argue that the "Executive Branch" is due deference in its interpretation of the term "public charge." Mot. at 4-5. But Section 212(a)(4) offers the Executive Branch deference to individual immigration officers' factual conclusions made in public charge assessments, not its legal interpretation of the phrase "public charge." *See* Reply ISO Mot. for PI, ECF No. 103, at 8. In any event, Defendants' contention is beside the point, because, while the Counties dispute that *DHS* is owed any deference, the Court applied the *Chevron* framework to its statutory analysis. PI Order at 13-15. Even under *Chevron*, the Court concluded, DHS's chosen definition of public charge was contrary to the statute. *Id.* at 43-49.

Defendants' effort to avoid *Gegiow v. Uhl*, 239 U.S. 3 (1915), *see* Mot. at 5-6, is similarly unavailing. Defendants again contend that the 1917 act abrogated *Gegiow*. Mot. at 6. But the Final Rule implements the 1996 immigration act, not the 1917 act; in this regard, and as the Court itself recognized, the primary relevance of *Gegiow* (as well as the dictionary definitions and judicial constructions from the late 19th and early 20th Centuries) is that it reflected the widespread understanding of the term "public charge" that Congress was presumptively aware of and adopted when it reenacted the same phrase in 1952 and again several times thereafter, including in 1996. The term's meaning in the current INA is cabined by the reality that, during and after the lead-up to the 1952 and 1996 acts, courts continued to construe "public charge" to connote a degree of reliance on the government, and *not* to capture mere receipt of temporary or minor aid. *E.g.*, PI Order at 15, 16; *id.* at 27 (citing *Forest Grove*, 557 U.S. at 239-40); *accord Cook Cty.*, 2019 WL 5110267 at *12.

Defendants make the uncontroversial point that congressional rejection of proposals may not always carry much interpretive weight. Mot. at 6. But they do not actually apply that proposition to the circumstances at hand, where, at the very time that Congress enacted the statutory provision at issue here, it responded to a presidential veto threat by stripping the bill of a provision that would have defined the phrase "public charge" in terms strikingly similar to the Final Rule's definition. *See generally* PI Order at 39-40, 46; Reply ISO Mot. for PI, ECF No. 103 at 10.[3] Unlike in the cases

[3] The rejected proposal would have defined "public charge" to mean a noncitizen "who receives [means-tested public benefits] for an aggregate period of at least 12 months" (or 36 months for battered spouses and children), and "means-tested public benefits" to mean "any public benefit (including cash, medical, housing, food, and social services) provided in whole or in part" by the

Defendants cite, and as the Court explained, the rejected proposal at issue here "is particularly instructive not because of the president's words but because of Congress's response to those words—it intentionally considered and rejected a definition similar to what the Rule now proposes." PI Order at 46.

Moreover, the Court's conclusion was not premised on any one method of statutory interpretation. Its decision reflects that *no* tool of statutory interpretation—neither plain text, nor statutory context, nor statutory structure, nor legislative history, nor prior judicial interpretations—supports the Final Rule's proffered definition. Indeed, all four other courts to consider this question agreed with this Court that DHS's interpretation was invalid. *Cook Cty.*, 2019 WL 5110267, at *12; *CASA de Maryland*, 2019 WL 5190689, at *15; *Washington*, 2019 WL 5100717, at *17-18; *New York*, 2019 WL 5100372, at *6-7. Defendants have not made a strong showing they are likely to succeed in convincing the appellate court that DHS's definition is contrary to law.[4] On this basis alone their motion should be denied.

D. The Final Rule is Arbitrary and Capricious.

As part of a reasoned rulemaking process an agency must articulate 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); *accord Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2125-26 (2016). And a rule is arbitrary and capricious if the agency has "entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *State Farm*, 463 U.S. at 43. As this Court's decision made clear, DHS acted arbitrarily and capriciously in at least two key ways: (1) DHS did not adequately

federal or any state or local government in which eligibility or benefit amount is "determined on the basis of income, resources, or financial need." 142 Cong. Rec. 24425-26 (1996), https://perma.cc/BD5X-4A7W (*reprinting* H.R. Rep. No. 104-828 §§ 532, 551 (rejected proposals that would have defined "public charge" at INA § 241(a)(5)(C)(ii) and "means-tested public benefit" at INA § 213A(e)(1))).

[4] Additionally, assuming the Court agrees Defendants have raised no serious questions about the Counties standing, it is not enough for Defendants to show that they are likely to convince an appellate court that the Final Rule is not contrary to law, Defendants must also make a strong showing that they are likely to succeed in defeating *all* of the Counties' arbitrary and capricious arguments.

consider the costs or explain the benefits of the Final Rule, and (2) DHS failed to consider public health harms, and failed to adequately acknowledge and explain why it was rejecting the prior understanding of the Immigration and Naturalization Service ("INS") that encouraging immigrants to access health and nutritional benefits was a public health boon. PI Order at 53-63.

1. Failure to Adequately Consider Costs and Benefits. Defendants again point to DHS's recitation of comments that raised the harms to local and state governments and the public health as evidence that DHS adequately considered those comments. Mot. at 7. But while DHS *described* those comments, it failed to "grapple" with them, as required by the APA. *See Fred Meyer Stores, Inc. v. NLRB*, 865 F.3d 630, 638 (D.C. Cir. 2017). Instead, DHS improperly cited uncertainty as a basis for its action, *see Greater Yellowstone Coal., Inc. v. Servheen*, 665 F.3d 1015, 1028 (9th Cir. 2011), justifying disregarding harms to states and localities on the basis that disenrollment and its ensuing harms were hard to quantify, *see* 84 Fed. Reg. at 41,312. Defendants further flatly and improperly refused to consider the harms arising from persons not subject to the Final Rule disenrolling because such disenrollments where "unwarranted." *Id.* at 41,313. This too was error. *See Michigan v. EPA*, 135 S. Ct. 2699, 2707 (2015) (agency must "pay[] attention to the advantages *and* the disadvantages of [its] decisions."); *see also* PI Order at 58 (holding that the Final Rule "fails to show that DHS 'examine[d] the relevant data and articulate[d] a satisfactory explanation for its action including a rational connection between the facts found and the choice made.'" (quoting *Encino Motorcars*, 136 S. Ct. at 2125.)). DHS failed to adequately consider the harms or explain the purported benefits of the Final Rule, and the Defendants have not made a strong showing that their efforts to gloss over these deficiencies are likely to succeed on appeal.

2. Failure to Consider Public Health Impacts and Explain Departure. While DHS admitted that the Rule would lead to a drop-off in vaccine rates, 84 Fed. Reg. at 41,384-85, it did not engage with the consequences of this drop-off, and made no attempt to estimate the magnitude of this harm, *see* PI Order at 62. Instead, DHS asserted, without any analysis, that the rule would "ultimately strengthen public [] health." 84 Fed. Reg. at 41,314; *see* PI Order at 58 ("DHS's bare assertion [that the Final Rule would support public health] simply is not enough to satisfy its obligations"); *see also State Farm*, 463 U.S. at 43. Tellingly, Defendants in their stay motion make no attempt to rebut the Court's

conclusion that DHS failed to explain why the Final Rule would be a net public health benefit. Defendants will similarly be unable to explain away this failure on appeal.

Furthermore, when departing from a prior regulatory scheme an agency must "'display awareness that it is changing position' and 'show that there are good reasons for the new policy'" *Encino*, 136 S. Ct. at 2126 (quoting *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009)). "[A]n unexplained inconsistency in agency policy is a reason for holding an interpretation to be an arbitrary and capricious change from agency practice." *Encino*, 136 S. Ct. at 2126 (quotation marks and citation omitted). While DHS did explain it was departing from INS's prior interpretation, nowhere did DHS acknowledge that INS had adopted that prior interpretation, *Field Guidance on Deportability and Inadmissibility on Public Charge Grounds*, 64 Fed. Reg. 28,689 (May 26, 1999) (1999 Field Guidance), after concluding that deterring noncitizens from accessing nutrition and health benefits *harmed public health*. PI Order at 62 ("DHS simply declined to engage with certain, identified public-health consequences of the Rule."); *see also Encino*, 136 S. Ct. at 2126 ("a reasoned explanation is needed for disregarding facts and circumstances that underlay or were engendered by the prior policy"). Thus, DHS's response to public health concerns is not only "devoid of rationale, but additionally it fails entirely to provide a reasoned explanation for disregarding the facts and circumstances underlying the prior policy." PI Order at 62-63. This failure independently renders the Final Rule arbitrary and capricious. Although this Court specifically identified DHS's failure to grapple with its about-face on public health consequences as improper, Defendants fail to address the issue at all in their stay motion. *See* Mot. at 8. Defendants have not demonstrated a strong likelihood of success in rebutting this conclusion on appeal.

II. Defendants Have Not Demonstrated Irreparable Harm Absent a Stay

Defendants have not demonstrated that they will suffer irreparable injury in the absence of a stay. The preliminary injunction merely preserves the status quo by continuing in force the 1999 INS Field Guidance that has governed immigration officers' public charge assessments since before DHS's inception. The federal government generally does not suffer irreparable harm from an injunction that keeps long standing procedures in place pending judicial review. *See Feldman v. Ariz. Sec'y of State's Office*, 843 F.3d 366, 369 (9th Cir. 2016) (en banc).

Although Defendants contend a stay is necessary to enable them to effectuate the INA, Mot. at 8, Defendants have never argued that the 1999 Field Guidance is itself contrary to the INA or otherwise unlawful. Nor does the Court's order enjoin Defendants from implementing the INA. It simply requires them to continue—for another few months—to implement the statute as it has for decades. And while Defendants may prefer DHS's newly proffered interpretation as a *policy* matter, there is no harm to Defendants or to the public in continuing to implement the existing understanding of the INA during the pendency of this litigation.[5] *See Washington*, 847 F.3d at 1168 ("[T]he Government submitted no evidence to rebut the States' argument that the district court's order merely returned the nation temporarily to the position it has occupied for many previous years."). Indeed, Defendants have already conceded that they would not face any hardship if the rule was enjoined. *See* PI Order at 86.

Defendants' citation to *Maryland v. King*, 133 S. Ct. 1 (2012), is inapposite. In that case, Maryland had been enjoined entirely from enforcing a statute with important public safety implications. *Id.* at 3. Here, DHS will continue to conduct public charge assessments under INA § 212(a)(4) even with the injunction in place—and to do so in the same manner it has ever since its creation.

III. A Stay Will Harm the Counties and Is Contrary to the Public Interest.

The final two stay factors—harm to the Counties, and the public interest, *see Nken*, 556 U.S. at 434—also weigh against issuing a stay here.

As this Court already concluded in granting the preliminary injunction, the Counties and the public at large will suffer irreparable injury if the Court's preliminary injunction is stayed pending appeal. The Counties, and other entities that either administer benefits or provide emergency healthcare services, face increased loss of federal funds and increased operational costs. PI Order 78-83. Contrary to Defendants arguments, these costs are immediate, and indeed have already begun. *See, e.g.*, Cody Decl., ECF 43, ¶ 8; Newstrom Decl., ECF 39, ¶ 43; Weisberg Decl., ECF 27, ¶¶ 12-14;

[5] Further, Defendants argument that they are harmed because they cannot effectuate the statute assumes the Final Rule is a lawful interpretation of the INA. It is not. And Congress's purposes are far better served by the existing scheme than by the Final Rule's unlawful distortion of Section 212(a)(4).

Shing Decl., ECF 42, ¶¶ 23-24; 28-30. Further, noncitizens will face wrongful denial of admission or adjustment of status should DHS's unlawful rule go into effect, and deterrents to accessing public benefits. *See* PI Order at 86-87.

Beyond those harms, under the Final Rule the Counties face increased costs to operate their healthcare operations, increased costs as a result of decline in public health, and reduced economic activity due to a reduction the federal funds flowing to their communities. *See* Ehrlich Decl., ECF 33, ¶¶ 5-7 (operating costs); Lorenz Decl., ECF 40, ¶¶ 14-16 (same); Aragon Decl., ECF 30, ¶ 7 (public health); Cody Decl., ECF 43, ¶¶ 6-8(same); Weisberg Decl., ECF 27, ¶ 10 (economic harm); *see also* RJN Exh. J, ECF 44-10, (explaining positive economic ripple effects of public benefit dollars). Likewise, the public at large faces a decline in public health, increased transmission of communicable disease, and depression in economic activity if the injunction is suspended. *See* PI Order at 87; Aragon Decl., ECF 30, ¶ 7 (public health); Cody Decl., ECF 43, ¶¶ 6-8 (same); Weisberg Decl., ECF 27, ¶ 10 (economic harm); *see also* RJN Exh. J, ECF 44-10 (explaining positive economic ripple effects of public benefit dollars). These harms all weigh strongly against a stay.

CONCLUSION

The same concerns that animated this Court's decision to grant a preliminary injunction weigh strongly against granting a stay of that injunction now. Defendants have failed to make a strong showing of likelihood of success on the merits and have not engaged meaningfully with the conclusions this Court reached when granting preliminary relief. Defendants do not identify any cognizable harm they may suffer if the preliminary injunction remains in place, while a stay would impose on the Counties and the public grave economic harm and degradation of public health. Accordingly, the Court should deny Defendants' motion to stay the preliminary injunction pending appeal.

Dated: November 8, 2019

Respectfully submitted,

JAMES R. WILLIAMS
County Counsel
GRETA S. HANSEN
LAURA TRICE
RAPHAEL N. RAJENDRA
JULIA B. SPIEGEL
H. LUKE EDWARDS

By: */s/ H. Luke Edwards*
H. LUKE EDWARDS
Deputy County Counsel

Attorneys for Plaintiff
County of Santa Clara

DENNIS J. HERRERA
City Attorney
JESSE C. SMITH
RONALD P. FLYNN
YVONNE R. MERÉ
SARA J. EISENBERG
MATTHEW D. GOLDBERG

By: */s/ Sara J. Eisenberg*
SARA J. EISENBERG
Deputy City Attorney

Attorneys for Plaintiff
City and County of San Francisco