UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

STATE OF WASHINGTON; COMMONWEALTH OF VIRGINIA; STATE OF COLORADO; STATE OF DELAWARE; STATE OF HAWAI'I; STATE OF ILLINOIS; STATE OF MARYLAND; COMMONWEALTH OF MASSACHUSETTS; DANA NESSEL, Attorney General on behalf of the people of Michigan; STATE OF MINNESOTA; STATE OF NEVADA; STATE OF NEW JERSEY; STATE OF NEW MEXICO; and STATE OF RHODE ISLAND,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF HOMELAND SECURITY, a federal agency; KEVIN K. MCALEENAN, in his official capacity as Acting Secretary of the United States Department of Homeland Security; UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, a federal agency; KENNETH T. CUCCINELLI, II, in his official capacity as Acting Director of United States Citizenship and Immigration Services,

Defendants.

NO: 4:19-CV-5210-RMP

ORDER DENYING DEFENDANTS' MOTION FOR STAY OF INJUNCTION PENDING APPEAL

In this suit under the Administrative Procedure Act ("APA"), fourteen states[1] challenge the legality of a final rule published by the Department of Homeland Security ("DHS") on August 14, 2019, that would expand the criteria for who would be inadmissible as a public charge when applying for a visa or legal permanent residency (a "green card"), or when returning to the United States as a legal permanent resident after more than 180 days abroad. *See* Inadmissibility on Public Charge Grounds, 84 Fed. Reg. 41,292 (Aug. 14, 2019) (to be codified at 8 C.F.R. pts. 103, 212-14, 245, 248) ("Public Charge Rule"). On October 11, 2019, this Court issued a stay pursuant to 5 U.S.C. § 705 of the APA ("section 705 stay") and a preliminary injunction (the "October 11 Order"), halting the implementation and enforcement of the Public Charge Rule during the course of this litigation. Defendants the United States Department of Homeland Security ("DHS"), Acting Secretary of DHS Kevin K. McAleenan, United States Citizenship and Immigration Services ("USCIS"), and Acting Director of USCIS Kenneth T. Cuccinelli II (collectively, "the Federal Defendants") now seek to stay the effect of that section 705 stay and preliminary injunction pending their interlocutory appeal of the October 11 Order. ECF Nos. 169 (Motion for Stay, filed Oct. 25, 2019); 175

[1] The Plaintiffs in this lawsuit are State of Washington, Commonwealth of Virginia, State of Colorado, State of Delaware, State of Hawai'i, State of Illinois, State of Maryland, Commonwealth of Massachusetts, Attorney General Dana Nessel on behalf of the People of Michigan, State of Minnesota, State of Nevada, State of New Jersey, State of New Mexico, and State of Rhode Island (collectively, "the Plaintiff States").

(Notice of Interlocutory Appeal, filed Oct. 30, 2019). The Court has reviewed the Federal Defendants' Motion for Stay and supporting declaration and the Plaintiff States' response in opposition to the Motion for Stay. ECF Nos. 169, 169-1, and 190. The Federal Defendants did not file any reply.

I. JURISDICTION

During the pendency of the Federal Defendants' appeal of the October 11 Order, the Court retains jurisdiction to "suspend, modify, restore, or grant an injunction . . . ." Fed. R. Civ. P. 62(d). A district court may issue rulings under Rule 62(d) that "preserve the status quo," but "may not materially alter the status of the case on appeal." *Nat'l Res. Def. Council v. Sw. Marine, Inc.*, 242 F.3d 1163, 1166−67 (9th Cir. 2001). In addition, Federal Rule of Appellate Procedure 8(a) provides that a party "must ordinarily move first in the district court" for "a stay of the . . . order of a district court pending appeal." Fed. R. App. P. 8(a)(1).

II. LEGAL STANDARD

To resolve the Federal Defendants' Motion for Stay, the Court must consider four of the same factors it considered in issuing the stay and preliminary injunction in the October 11 Order, this time considering whether the Federal Defendants have made a strong enough showing to warrant relief. The four factors include: "'(1) whether the stay applicant has made a strong showing that he 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.'" *Lair v. Bullock*, 697 F.3d 1200, 1203 (9th Cir. 2012) (quoting *Nken v. Holder*, 556 U.S. 418, 433 (2009)).

"'A stay is not a matter of right, even if irreparable injury might otherwise result.'" *Nken*, 556 U.S. at 433 (quoting *Virginian R. Co. v. United States*, 272 U.S. 658, 672 (1926)). Rather, a stay is "'an exercise of judicial discretion,'" and "'the propriety of its issue is dependent upon the circumstances of the particular case.'" *Id.* (quoting *Virginian R. Co.*, 272 U.S. at 272−73) (alterations omitted). The Supreme Court has further observed that a stay pending appeal "is an intrusion into the ordinary processes of administration and judicial review." *Nken*, 556 U.S. at 427. The party requesting the stay bears the burden of demonstrating that the case-specific circumstances justify a favorable exercise of the court's discretion. *Nken*, 556 U.S. at 433−34.

III. DISCUSSION

The Federal Defendants' instant arguments for a stay directly intersect with, and already were addressed by, the Court's October 11 Order with respect to three factors: likelihood of success on the merits, substantial injury to the other party, and the public interest. Irreparable injury to the Federal Defendants is the only issue that was not already before the Court in deciding the Plaintiff States' Motion for a Section 705 Stay and Preliminary Injunction. The Court addresses each factor in light of the Federal Defendants' burden on the instant Motion for Stay. *See Nken*, 556 U.S. at 433−34.

A. Likelihood of Success on the Merits

In the October 11 Order, the Court found that the Plaintiff States had demonstrated a substantial likelihood of success on the merits on their first and third causes of action. ECF No. 162 at 50. Therefore, the Federal Defendants' arguments that they are likely to succeed on the merits are mutually exclusive of the Court's conclusion with respect to the same prong of the section 705 stay and preliminary injunction analysis. The Federal Defendants have not supplemented the record. Moreover, regarding both standing and the merits of the Plaintiff States' claims that the Public Charge Rule is not in accordance with law and arbitrary and capricious under the APA, the Federal Defendants repeat the same arguments that they raised in the extensive briefing and argument of the Motion for Stay and Preliminary Injunction, which the Court rejected in its October 11 Order. Consequently, nothing in the Federal Defendants' Motion for Stay justifies reevaluation of the Court's preliminary assessment of the relative merits of the Plaintiff States' first and third causes of action. *See School Dist. No. 1J v. ACandS, Inc.,* 5 F.3d 1255, 1263 (9th Cir. 1993) (a party seeking reconsideration must support the request with newly discovered evidence, must show that the initial decision amounted to clear error or was manifestly unjust, or must refer the court to an intervening change in controlling law).

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B. Substantial Injury to the Other Parties

After reviewing extensive submissions from the Plaintiff States and amici curiae, the Court found in the October 11 Order that the Plaintiff States showed a substantial risk of widespread detrimental effects and irreparable injury to the Plaintiff States and their residents. *See* ECF No. 162 at 25−26, 51−53. Therefore, the Court already found that substantial injury to the Plaintiff States was likely to result if a section 705 stay and preliminary injunction were not imposed to inhibit the Public Charge Rule from taking effect before this litigation resolves.

C. Irreparable Harm and the Public Interest

The Federal Defendants argue that both they and the public will be irreparably harmed if the preliminary injunction in this matter is not stayed. ECF No. 169 at 13. First, the Federal Defendants assert that the government "sustains irreparable injury whenever it 'is enjoined by a court from effectuating statutes enacted by representatives of its people.'" *Id.* (quoting *Maryland v. King*, 567 U.S. 1301 (2012)). The Plaintiff States respond that the Public Charge Rule is not a statute enacted by the representatives of the people, but is instead "a new agency action subject to judicial review pursuant to the APA . . . ." ECF No. 190 at 9.

As the Plaintiff States' response illustrates, whether the Public Charge rule is a legitimate construction of a statute that DHS administers is a central, disputed issue in this suit. *See* ECF No. 162 at 34−48. The public has a substantial interest in federal agencies abiding by the laws that "govern their existence and operations."

League of Women Voters of U.S. v. Newby, 838 F.3d 1, 12 (D.C. Cir. 2016); *see also* ECF No. 162 at 53−55; *see also* ECF No. 162 at 53−55 (section of October 11 Order determining that a section 705 stay and preliminary injunction serve the public interest). The Federal Defendants do not provide authority to support that they are irreparably harmed merely as a consequence of this Court's staying the effective date of the Public Charge Rule, or in other words, that they are irreparably harmed by the status quo. *See* ECF No. 169 at 5. There is no authority requiring this Court to defer to the Federal Defendants' unsupported assertion of an irreparable injury from enjoining a rule change. *See Sierra Forest Legacy v. Sherman*, 646 F.3d 1161, 1186 (9th Cir. 2011) (finding that a district court does not owe deference to agency views regarding the equities of an injunction).

Second, the Federal Defendants assert irreparable injury in the form of lost administrative costs and an alleged harm of admitting certain applicants under the present public charge inadmissibility framework who would become inadmissible under the Public Charge Rule. The Federal Defendants offer the declaration of a USCIS official who recites that the agency estimates that 382,264 people annually will be subject to a public charge inadmissibility determination. ECF No. 170 at 1. The declarant continues that, as a consequence of the injunctions, USCIS will grant adjustment of status for "some number" of those estimated 382,264 people, "who should be denied under the now enjoined rule." *Id.* at 2.

The Federal Defendants claim that the injury of continuing to administer the current public charge framework is twofold: (1) USCIS purportedly could not revisit favorable determinations made during the pendency of the preliminary injunction and reverse them if the Public Charge Rule ultimately is allowed to take effect; and (2) the subset of people who are admitted under the present public charge framework but would not be admitted under the Public Charge Rule are "by definition . . .likely to receive government benefits in the future" and their admission "will inevitably result in the additional expenditure of government resources . . . ." ECF No. 169 at 14.

The Federal Defendants further claim irreparable harm in the form of "administrative burdens" and "needless uncertainty on the aliens Plaintiffs claim to support." *Id.* Again, the USCIS official claims that USCIS will need to restart much of the process of implementing the rule through training of the appropriate officers and revision of the agency's social media informational resources. ECF No. 170 at 2–3. The official recounts that the agency had "entered into contracts to hire additional staff to enter the significant amount of data" gathered through the new form required from applicants regarding the Public Charge Rule's criteria. *Id.* at 3. USCIS halted the hiring process for those data-entry contract employees, and the official proffers that "USCIS will face uncertainty the longer the injunction stays in place as contract employees slated to begin work will likely find other employment." *Id.* at 3.

Assuming, without deciding, that the injuries that the Federal Defendants raise are irreparable, the Court finds that the types of injuries asserted by the Federal Defendants are outweighed by the likely, unrecoverable injuries that were well substantiated by the Plaintiff States at the preliminary injunction stage of this case. *See Harris v. Bd. of Supervisors, L.A. Cnty.*, 366 F.3d 754, 766 (9th Cir. 2004) (in the context of preliminary injunctions, the interest of protecting "preventable human suffering" outweighs a government entity's monetary costs). The Federal Defendants ask the Court to stay the section 705 stay and the preliminary injunction, pending the outcome of their appeal, so that they may implement a rule change. Their asserted pecuniary harms are exclusively the result of an indefinite pause of their preparation for that rule change. Furthermore, at this stage in the litigation, the Federal Defendants have not substantiated the harm that they assert will result from admitting an unspecified subset of applicants who may have become inadmissible had the Public Charge Rule taken effect as scheduled on October 15, 2019.

In short, the Federal Defendants have not made a compelling showing of any urgent need for the Public Charge Rule to take effect. By contrast, the Plaintiff States have provided extensive evidence that they, their residents, and the general populace predictably would experience a range of irreparable injuries if the Public Charge Rule were to take effect even temporarily pending appeal. *See* ECF No. 162 at 13−30, 51−57.

The appropriate purpose of any preliminary injunction is to preserve the relative positions of the parties until a trial on the merits can be held. *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1991); *see also Los Angeles Mem'l Coliseum Comm'n v. Nat'l Football League*, 634 F.2d 1197, 1200 (9th Cir. 1980) ("A fundamental principle . . . is that the basic function of a preliminary injunction is to preserve the status quo ante litem pending a determination of the action on the merits."). Preserving the status quo ante litem refers specifically to maintaining "'the last uncontested status which preceded the pending controversy.'" *GoTo.com, Inc. v. Walt Disney Co.*, 2020 F.3d 1199, 1210 (9th Cir. 2000) (quoting *Tanner Motor Livery, Ltd. v. Avis, Inc.*, 316 F.2d 804, 809 (9th Cir. 1963) (internal quotation omitted)).

The Court finds that the Federal Defendants have not made an adequate showing that the October 11 Order imposes an unreasonable or unnecessary burden on the Federal Defendants. The Court further finds that any alleged irreparable injury that they may experience is insufficient to warrant a stay pending appeal. *See L.A. Haven Hospice, Inc. v. Sebelius*, 638 F.3d 644, 664 (9th Cir. 2011) (injunctive relief must not be "'more burdensome to the defendant than necessary to provide complete relief to the plaintiffs' before the court") (quoting *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979)).

Therefore, the Motion for Stay shall be denied.

D. Scope of the Preliminary Injunction

The Federal Defendants allege that the Court should "stay its injunction insofar as it sweeps more broadly than necessary to redress" the injuries alleged by the Plaintiff States. ECF No. 169 at 15. However, the Court already analyzed the appropriateness of nationwide injunctive relief in the October 11 Order, and the Federal Defendants offer nothing beyond mere disagreement regarding this issue in their Motion for Stay. *See* ECF Nos. 162 at 56−57; 169 at 15−16. Therefore, the Court finds no basis to revisit the question of geographic scope.

The Federal Defendants further maintain that the "status quo provision" of the preliminary injunction is overbroad because the Plaintiff States have not alleged claims relating to any change to the public charge inadmissibility framework other than issuance of the Public Charge Rule. ECF No. 169 at 15−16. The Plaintiff States did not respond to this argument in their response brief regarding the Motion for Stay. *See* ECF No. 190.

The preliminary injunction issued by the October 11 Order enjoined the Federal Defendants from implementing or enforcing the Public Charge Rule and required the Federal Defendants to "preserve the status quo" regarding the regulatory provisions in which the Public Charge Rule was to be codified. ECF No. 162 at 58−59. The Federal Defendants have not provided support for how they would be at risk of violating the preliminary injunction with respect to 8 C.F.R. parts 103,

212–214, 245, and 248 through any action other than by implementing and enforcing the Public Charge Rule.

Fundamentally, and appropriately, the purpose of the preliminary injunction is to preserve the status quo pending a determination on the merits. *See Camenisch*, 451 U.S. at 395; *Los Angeles Mem'l Coliseum Comm'n*, 634 F.2d at 1200. Without any expression by the Federal Defendants of concrete concerns regarding a risk of violating the preliminary injunction by agency action outside the context of this litigation, and without any specific proposal for how the language of the preliminary injunction should be amended, the Court finds amendment unwarranted at this juncture.

Accordingly, **IT IS HEREBY ORDERED** that the Federal Defendants' Motion for Stay of Injunction, **ECF No. 169**, is **DENIED**.

IT IS SO ORDERED.

The District Court Clerk is directed to enter this Order and provide copies to counsel.

DATED December 3, 2019.

s/ Rosanna Malouf Peterson
ROSANNA MALOUF PETERSON
United States District Judge