UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

COOK COUNTY, ILLINOIS,

et al.,

Plaintiffs,

vs.

CHAD F. WOLF, in his official capacity as Acting Secretary of U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY,

et al.,

Defendants.

Case No. 19-cv-6334

Judge Gary Feinerman

AMENDED BRIEF IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

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Plaintiffs Cook County and the Illinois Coalition for Immigrant and Refugee Rights ("ICIRR") filed suit challenging the efforts of Defendant agencies Department of Homeland Security ("DHS") and United States Citizenship and Immigration Services ("USCIS") to circumvent the legislative branch through administrative rulemaking. Plaintiffs maintain standing to sue, fall within the zone of interests protected by the Immigration and Nationality Act ("INA"), and present ripe, plausible, and well-pleaded claims under the Administrative Procedure Act ("APA") and, as to ICIRR, the United States Constitution. Defendants' motion to dismiss should be denied.

INTRODUCTION

Defendants seek a third review of issues this Court already has decided. The INA provides the means for lawful immigration to the United States, and in doing so excludes limited categories of "inadmissible" individuals—terrorists, human traffickers, serious criminals, and individuals who threaten foreign policy interests. 8 U.S.C. § 1182. This same provision also excludes individuals "likely at any time to become a public charge." *Id.* at § 1182(a)(4)(A). For more than a century, courts and agency officials have defined individuals as "public charges" *only* when an applicant was deemed likely to become primarily dependent on the government for long-term support and subsistence.

In the Final Rule, DHS departs from the text of the INA and this settled meaning of public charge in an attempt, beyond its authority, to make new law. *See Inadmissibility on Public Charge Grounds*, 84 Fed. Reg. 41,292 (Aug. 14, 2019) (the "Final Rule" or "Rule"). The Final Rule discards the primarily dependent definition of public charge, turning it instead into a wealth test that penalizes the use, or even projected use, of temporary, *de minimis*, supplemental non-cash

benefits. Likewise, the Final Rule introduces benefits and wealth-focused weighted factors to the totality-of-the-circumstances test. *Id*. at 41,294–95; Compl. ¶ 54.

Through these changes, DHS has stripped the term "public charge" of its settled definition and shoehorned into the INA a new category of people it wishes now to bar: immigrants DHS deems not "self-sufficient" for lawfully having availed themselves of, or for being projected to be likely in the future to avail themselves of, temporary public benefits. Compl. ¶ 55; 84 Fed. Reg. at 41,369. As discussed below, the Final Rule is inconsistent with the plain meaning of the statutory text, and DHS does not, and cannot, offer justification for this transformation of well-settled law.

This departure will impose significant costs. DHS admits, for example, that the Final Rule will lead to adverse health outcomes and increased prevalence of communicable disease. *Notice of Proposed Rulemaking, Inadmissibility on Public Charge Grounds*, 83 Fed. Reg. 51,114, 51,270 (Oct. 10, 2018). By DHS's own estimates, the Rule will cause immigrants to disenroll from public benefits, or not to seek benefits in the first place, out of fear of being deemed a public charge—even if they are not subject to the Rule. *See id.* at 51,269 & Table 53. As this Court already found, both evidence and common sense indicate that such disenrollment will harm Cook County through its County Health and Hospitals System ("CCH"), as well as force ICIRR to divert resources to prevent frustration of its programs' missions and decrease the amount of reimbursement money ICIRR receives for benefits enrollment. Compl. ¶¶ 89, 94–99, 112, 115–131; *see* Dkt. 106 ("Mem. Op.") at 10.

This Court already has recognized that Congress did not create a boundless definition of "public charge." Mem. Op. at 16, 27–28. The Final Rule usurps Congress's legislative function, and Defendants' motion to dismiss must be denied.

LEGAL STANDARD

Defendants move to dismiss Plaintiffs' Complaint for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6). Mot. at 5. To survive a motion to dismiss, "a complaint must contain sufficient factual matter, accepted as true, 'to state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Courts must construe a complaint in the light most favorable to plaintiffs, accept as true all well-pleaded facts, and draw all reasonable inferences in their favor. *Yeftich v. Navistar, Inc.*, 722 F.3d 911, 915 (7th Cir. 2013); *Bonte v. U.S. Bank, N.A.*, 624 F.3d 461, 463 (7th Cir. 2010).

In addition, Defendants move to dismiss Plaintiffs' claims for lack of Article III standing and ripeness, Mot. at 5–11, challenges arising under Rule 12(b)(1), rather than 12(b)(6). *See Apex Digital, Inc. v. Sears, Roebuck & Co.*, 572 F.3d 440, 443 (7th Cir. 2009) (standing); *Flying J Inc. v. City of New Haven*, 549 F.3d 538, 544 (7th Cir. 2008) (ripeness). Where, as here, a defendant argues that a complaint has not sufficiently alleged a basis for subject matter jurisdiction, *see, e.g.*, Mot. at 6, "[c]ourts must accept all well-pleaded factual allegations as true and draw all reasonable inferences in favor of the plaintiff." *Silha v. ACT, Inc.*, 807 F.3d 169, 173 (7th Cir. 2015).

For a claim to demonstrate facial plausibility under both Rules 12(b)(1) and 12(b)(6), Plaintiffs must plead "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678; *Silha*, 807 F.3d at 174 ("[T]he *Twombly-Iqbal* facial plausibility requirement for pleading a claim is incorporated into the standard for pleading subject matter jurisdiction"). "The purpose of a 12(b)(6) motion to dismiss is to test the sufficiency of the complaint, not to resolve the case on the merits." *Stevens v. Interactive Fin. Advisors, Inc.*, No. 11 C 2223, 2012 WL 689265, at *2 (N.D. Ill. Mar. 2, 2012).

ARGUMENT

This Court already has decided most of the key issues presented by Defendants' motion, including standing, ripeness, and the meaning of the statutory term "public charge." In granting Plaintiffs' motion for preliminary injunction, this Court engaged in a detailed analysis, ultimately finding Plaintiffs "likely to prevail on the merits of their challenge to the Final Rule." Mem. Op. at 28. Where Plaintiffs already have prevailed at the more rigorous preliminary injunction stage, so too should they prevail on a motion to dismiss. *See, e.g.*, *Eli Lilly & Co. v. Arla Foods Inc.*, No. 17-C-703, 2017 WL 2976697, at *2-3 (E.D. Wis. July 11, 2017) (denying defendant's motion to dismiss because the court already "concluded at the preliminary injunction stage that [plaintiff] has Article III standing and has successfully stated claims"); *see also Johnson v. Wickersham*, No. 13-13672, 2014 WL 4897387, at *3 (E.D. Mich. Sept. 11, 2014) ("[T]he evidentiary threshold for obtaining preliminary injunctive relief is much higher than that required to survive summary judgment, and certainly higher than the *Iqbal* standard of merely showing a 'plausible claim.'"); *Leary v. Daeschner*, 228 F.3d 729, 739 (6th Cir. 2000) ("We note that the proof required for the plaintiff to obtain a preliminary injunction is much more stringent than the proof required to survive a summary judgment motion") (collecting cases). And although the Court has not yet had the opportunity to weigh in on the balance of Plaintiffs' claims, they are equally well-pleaded. As demonstrated below, Plaintiffs have sufficiently stated claims for relief under both Rules 12(b)(1) and 12(b)(6).

I. Plaintiffs Have Established Standing and Ripeness.

A. Plaintiffs Maintain Article III Standing.

This Court twice has determined that Plaintiffs have demonstrated Article III standing. Mem. Op. at 5–11; Dkt. 109 at 26–27.[1] Defendants now seek another bite at the apple, yet fail to offer any new legal argument as to why Plaintiffs lack Article III standing.

With respect to the County, for example, this Court already found that the Complaint contains "more than enough" allegations to establish Article III standing under well-settled Seventh Circuit and Supreme Court precedent. Mem. Op. at 5–8 (citing *Department of Commerce v. New York*, 139 S. Ct. 2551 (2019), *Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91 (1979), and *City of Chicago v. Matchmaker Real Estate Sales Ctr., Inc.*, 982 F.2d 1086 (7th Cir. 1992)). Defendants, however, argue that the Court erred in its conclusion, as the plaintiffs to which it analogized alleged "predictable" injuries not "based on a long chain of uncertain, intervening events." Mot. at 7. But Plaintiffs' causal chain consists of just one foreseeable link: when DHS implements the Rule, individuals will disenroll from, or decline to enroll in, benefits. Compl. ¶¶ 69–76; 84 Fed. Reg. at 41,292, 41,463. This chilling effect will result in: (1) a decline in preventative routine treatment that will create costly, uncompensated emergency care, Compl. ¶¶ 69–76; (2) a decline in individuals receiving immunizations or seeking diagnostic testing that will increase the risk of communicable diseases, *id.* at ¶ 79; and (3) a loss in Medicaid reimbursement revenues and an increase in uncompensated care costs, *id.* at ¶ 92. All of these predictable consequences will, in turn, create increased costs that CCH, as a major charity care provider, will have to bear. *Id.* at ¶¶ 93–94, 99.

[1] Indeed, none of the courts across the country evaluating claims brought by similar governmental or associational entities have accepted Defendants' argument challenging those plaintiffs' Article III standing. *See, e.g.*, *City & County of San Francisco v. U.S. Citizenship & Immig. Serv's.*, 944 F.3d 773, 786–88 (9th Cir. 2019).

Defendants cannot, and do not, argue that these allegations lack facial plausibility. *Silha*, 807 F.3d at 174. Rather, they proceed down the same path of speculation that this Court rejected at the preliminary injunction stage. *Compare* Mot. at 6–8 *with* Dkt. 73 at 7–9. For example, Defendants again maintain that CCH cannot yet determine whether a "material number of aliens" will rely upon it for uncompensated emergency care. Mot. at 6. But Defendants' quibbling, particularly at the motion to dismiss stage, cannot refute Plaintiffs' allegations, much less the actual *evidence* of harm already submitted by the County and recognized by this Court. *See, e.g.*, Mem. Op. at 7–8. Indeed, the Final Rule's stated purpose is to reduce enrollment in benefits, and DHS *concedes* in that Rule that this reduction will cause local entities like the County to incur additional costs as a result. *See, e.g.*, 84 Fed. Reg. at 41,469–70 (The Final Rule will cause "hospital systems, state agencies, and other organizations that provide public assistance to aliens and their households" to suffer financial harm); *id*. at 41,389 (predicting state and local governments will incur costs). Thus, the link between the Final Rule and the County's harm is not only foreseeable, but fully anticipated by Defendants.[2]

Defendants' renewed challenge to ICIRR's standing fares no better. Again, Defendants fail even to *address* the facial plausibility of ICIRR's standing allegations. *See* Mot. at 8–9. Rather, they dispute—for the third time—this Court's interpretation of *Common Cause Indiana v. Lawson*, 937 F.3d 944 (7th Cir. 2019). *Id.* at 9. Fully consistent with *Common Cause*, this Court determined

[2] Here, as with Plaintiffs' motion for preliminary injunction, Defendants argue that the County's allegations concerning its diverted resources cannot satisfy an organizational standing theory. Mot. at 8. Again, the County notes that it has never "allude[d] to an organizational standing theory," and instead relies upon the Final Rule's harm to its concrete, proprietary interests. *See, e.g.*, *Cal. ex rel. Imperial County Air Pollution Control Dist. v. United States DOI*, No. 09-cv-2233 AJB, 2012 WL 1155831, at *5 (S.D. Cal. Apr. 6, 2012) (local governments have standing to protect proprietary interests such as land ownership or participation in a business venture) (citing *Alfred L. Snapp & Son v. Puerto Rico*, 458 U.S. 592, 601–02 (1982)). Defendants' argument is, in any event, incorrect. *See Matchmaker*, 982 F.2d at 1095 (City of Chicago had Article III standing because its fair housing agency had to divert "scarce resources" to combat those engaged in racial steering).

that the Final Rule will frustrate and divert resources away from ICIRR's day-to-day operations: the Final Rule will decrease immigrants' access to health services, food, and other programs, thus directly interfering with ICIRR's mission to increase access to care, improve health literacy, and reduce reliance on emergency room care. Mem. Op. at 10; *see also* Compl. ¶¶ 111, 115–16, 118–20; *see also id*. at ¶ 122 (explaining that because ICIRR obtains revenue by helping immigrants enroll for public benefits, declining benefit enrollment will directly reduce ICIRR's funding). Moreover, ICIRR's efforts to educate the immigrant population about the Final Rule's effects and encourage immigrants to continue enrolling in public benefits, Compl. ¶ 115, align directly with the Seventh Circuit's determination in *Common Cause* that "[a]ny work to undo a frustrated mission is, by definition, something in furtherance of that mission." 937 F.3d at 954. Since DHS has failed to articulate anything this Court has not already considered, "ICIRR's standing is [still] secure." Mem. Op. at 10.

B. Plaintiffs' Claims Remain Ripe for Review.

Defendants rehash their argument that this suit will not be ripe until the Final Rule is applied to actual admissibility or adjustment determinations. Mot. at 9–10; Dkt. 73 at 23–24. But as this Court already has explained, "[a]t most, DHS's argument pertains to any individual non-citizen's challenge to the Rule." Mem. Op. at 11. Here, Plaintiffs direct their suit at agency action—specifically, the Final Rule's promulgation. Because the issues involved thus constitute purely legal challenges to DHS's implementation of the Final Rule, and because Plaintiffs allege that the Final Rule threatens direct and immediate harm to their interests, the suit is ripe for review. *See Owner-Operator Indep. Drivers Ass'n, Inc.v. Fed. Motor Carrier Safety Admin.*, 656 F.3d 580, 586 (7th Cir. 2011) (where a petition involves purely legal claims in the context of a facial challenge to a final rule, a petition is "presumptively reviewable").

And with respect to prudential ripeness, the record is replete with the hardships Plaintiffs have faced, and will continue to face, absent judicial intervention. Indeed, the Court found that the Rule *already* has caused ICIRR to expend resources to avoid frustration of its mission. Mem. Op. at 10; *see also* Compl. ¶¶ 110–131. And delaying review will only exacerbate the County's funding impact and increased administrative costs. Compl. ¶¶ 89–109. This Court found this case sufficiently ripe for review in issuing a preliminary injunction. Defendants request that this Court reverse course, yet offer no basis to justify doing so.

C. Plaintiffs Fall Within the INA's "Zone of Interests."

Similarly, this Court twice has concluded that both Cook County and ICIRR satisfy the APA's "zone-of-interests" test. Mem. Op. at 12–15; Dkt. 109 at 27. Now, Defendants recycle their unsuccessful argument that only immigrants deemed inadmissible under a public charge determination can challenge the Rule. Mot. at 11–13. Absent any new legal argument, and at the *less rigorous* motion to dismiss stage, this theory again must fail.

As to the County, Defendants continue to insist that this Court has misread *Bank of America Corporation v. City of Miami*, 137 S. Ct. 1296 (2017). Mot. at 13. In particular, they contend that the INA must include specific language "suggesting that Congress intended for a [ ] broad class of plaintiffs to enforce the public charge provision." Mot. at 13. But the APA contains no such "language" requirement. Rather, Defendants continue to ignore the relevant zone-of-interests standard: "The interest . . . assert[ed] must be 'arguably within the zone of interests to be protected or regulated by the statute'" that the agency action allegedly violated. *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, 567 U.S. 209, 224 (2012) ("Match-E-Be") (quoting *Ass'n of Data Processing Serv. Orgs. v. Camp*, 397 U.S. 150, 153 (1970)). Here, the County's financial harm is inextricably related to the statute, which aims to prevent immigrants from imposing a

severe burden on governmental entities through primary dependence on government benefits. In fact, Section 1183 of the INA specifically entitles "the proper law officers" of "any State, territory, district, county, town, or municipality in which [an] alien becomes a public charge" to bring a lawsuit against any individual who sponsored an immigrant's visa to enforce the Affidavit of Support. 8 U.S.C. § 1183. CCH challenges the Final Rule precisely because it will increase immigrants' reliance on charity care benefits that CCH provides and, in turn, increase costs to CHH, rather than allowing CCH to recoup from the sponsor the cost of an immigrant's use of benefits. Compl. ¶¶ 93–94, 99; *see also* 84 Fed. Reg. at 41,389, 41,469 (acknowledging that the County will be forced to "incur costs" as a result of the Rule). This harm places the County squarely within the INA's zone of interests. *Am. Fed'n of Gov't Employees, Local 2119 v. Cohen*, 171 F.3d 460, 469 (7th Cir. 1999).

With respect to ICIRR, Defendants note that this Court found that ICIRR "fell within the zone-of-interests of the public charge provision because ICIRR's interest in providing health, social, and legal services to immigrants is 'consistent with the statutory purpose' of 'ensur[ing] that only certain aliens could be determined inadmissible on the public charge ground.'" Mot. at 12 (quoting Mem. Op. at 13). According to Defendants, having an interest that is merely "consistent" with a statutory purpose cannot suffice under the zone-of-interests test. *Id*. But this Court found that ICIRR's interests are not only "consistent" with the INA, but also that the organization provided "ample evidence" that it is "precisely the type of organization that would reasonably be expected to 'police the interests that the statute protects.'" Mem. Op. at 14 (quoting *Amgen, Inc. v. Smith*, 357 F.3d 103, 109 (D.C. Cir. 2004)). Again, Defendants overlook that the zone-of-interests test encompasses not just the public charge provision, but immigration laws as a whole. *Clarke v. Sec. Indus. Ass'n*, 479 U.S. 388, 401 (1987). Accordingly, this Court identified

five separate INA provisions in which Congress gave organizations such as ICIRR a role in helping immigrants navigate immigration procedures. Mem. Op. at 14. Given the APA's "generous review" standard, *Clarke*, 479 U.S. at 395, these provisions place ICIRR "at least arguably" within the zone of interests protected by the INA. *Match-E-Be*, 567 U.S. at 224. Here, as at the preliminary injunction stage, Defendants' zone-of-interests challenge fails.

II. Count I States a Valid Claim for Relief.

In granting the preliminary injunction, this Court already has held that Plaintiffs are likely to prevail as to Count I because the settled meaning of the statutory term "public charge" is "contrary to DHS's position in the Final Rule." Mem. Op. at 27. Plaintiffs thus already have cleared a far higher bar than the *Twombly*/*Iqbal* "plausibility" standard for a motion to dismiss. *See supra* at 4–5. DHS's motion as to Count I is dead on arrival.

A. The Final Rule Exceeds DHS's Statutory Authority Because It Is Contrary to the Plain Meaning of the Text.

1. This Court Has Already Rejected DHS's Reading of the Statute.

Based on its in-depth analysis of the statutory text and authorities interpreting that text, this Court already has determined that "public charge" has meant primary, long-term reliance on government support for subsistence ever since the term entered the statutory lexicon in 1882. Mem. Op. at 18, 24. As this Court explained, "the Supreme Court told us just over a century ago what 'public charge' meant in the relevant era, and thus what it means today." *Id.* (citing *Gegiow v. Uhl*, 239 U.S. 3 (1915)). In particular, the Court emphasized:

> *Gegiow* teaches that 'public charge' does not, as DHS maintains, encompass persons who receive benefits, whether modest or substantial, due to being temporarily unable to support themselves entirely on their own. Rather, as Cook County and ICIRR maintain, *Gegiow* holds that 'public charge' encompasses only persons who—like 'idiots' or persons with 'a mental or physical defect of a nature to affect their ability to make a living'—would be substantially, if not entirely, dependent on government assistance on a long-term basis.

Id. at 18–19. Each time Congress reenacted the "public charge" provision—retaining the statutory term without change—Congress reincorporated this same meaning. *Id.* at 27–28.

DHS attempts to undercut this Court's statutory analysis based on arguments and authorities that this Court already has rejected. For example, still working to evade the inevitable effect of *Gegiow*, DHS argues that the case should be limited to its facts—*i.e.*, as disallowing "an approach centered on general labor conditions" rather than "on the alien's own circumstances." Mot. at 21. But this Court already considered and rejected the same argument. *See* Hr'g Tr., Dkt. No. 109 at 29 ("DHS appears to be trying to limit *Gegiow* to its facts as a case dealing only with . . . the labor market[.]"). As the Court explained, *Gegiow*'s holding is broader than DHS asserts: "in deciding whether Mr. Gegiow and his co-plaintiffs were public charges, the Court articulated and applied a more generally applicable principle, which is that . . . what public charge means are those who have a more permanent personal condition that precludes them from supporting themselves." *Id.*

DHS also rehashes its argument that this Court "erred in concluding that Congress approved" the *Gegiow* Court's definition of the term "public charge," citing the 1917 amendment to the INA. Mot. at 21. This, too, the Court declined to accept, explaining that while "there was some change in 1917," it nevertheless "wasn't a change that affects the particular issue that's before us today," and thus was "not a change that helps, that advances the ball for DHS." *See* Hr'g Tr., Dkt. No. 109 at 28; *see also* Mem. Op. at 20–23. And DHS's own authorities make clear that there is no reason to disturb the Court's conclusion.

DHS points once again to a letter from the Secretary of Labor that supported the 1917 amendment. Mot. 21–22 (citing H.R. Doc. No. 64-886 (1916)). But that Letter simply clarifies that "public charge" was intended not just to cover those with a "diseased or disabled condition," but

also to take account of non-health-related circumstances that rendered an individual substantially reliant on long-term governmental support. H.R. Doc. No. 64-886 at 3–4 (1916). This understanding is consistent with judicial interpretations of "public charge" after the 1917 amendment. *See* Mem. Op. at 21–22; Hr'g Tr., Dkt. No. 109 at 30–31. When courts in the years after the amendment explained, for example, that the term "public charge" is "differentiated from the application in *Gegiow*," they described an expansion in the *types* of conditions that could render an applicant a public charge—from primarily "sanitary" conditions to economic ones as well. *Ex Parte Horn*, 292 F. 455, 457 (W.D. Wash. 1923); *see also United States ex rel. Iorio v. Day*, 34 F.2d 920, 922 (2d Cir. 1929) (explaining that the Act "is certainly now intended to cover cases like *Gegiow*," which deal with economic circumstances). But in all of these cases, as in *Gegiow*, individuals deemed "public charges" were "largely, if not entirely, dependent on government assistance for their sustenance"; these authorities thus do not "help DHS in this case because in order for DHS to win this case, 'public charge' has to ... include people who are temporarily dependent on even a modest amount of public benefits." Hr'g Tr., Dkt No. 109 at 31. DHS does not identify any new authority that would support a different conclusion. Instead, it repeats its prior authorities without identifying a single error in the Court's earlier reasoning. *See* Mot. at 18 (citing the 1929 Cook treatise that this Court previously explained was "wrong," Mem. Op. at 24); Mot. at 18 (citing the remarks of Representative Warner in an 1894 House speech on an unrelated bill, which this Court said "have no value," Mem. Op. at 27).

Finally, DHS suggests that "public charge" cannot mean "a person so impoverished they would be expected to be permanently dependent on public support," because that type of individual was covered by use of the term "pauper" in the original public charge statute. Mot. at 18–19. Thus, DHS says, if "public charge" is to be distinguished from "pauper," it must "encompass individuals

partially or temporarily dependent on public support." *Id.* at 18. True, the term "public charge," "however construed, overlaps other provisions; e.g. paupers, vagrants, and the like." *Day*, 34 F.2d at 922 (2d Cir. 1929). But this overlap does not support DHS's interpretation. To the contrary, the common thread that links these terms remains that "[t]he persons enumerated in short are to be excluded on the ground of *permanent personal objections accompanying them*." *Gegiow*, 239 U.S. at 10 (emphasis added). DHS's interpretation of the term would make "public charge" alone apply to individuals with fleeting or minimal needs. As Justice Holmes wrote in *Gegiow*, traditional canons of statutory interpretation do not allow a conclusion that "the one phrase before us is directed to different considerations than any other of those with which it is associated." *Id.* This Court's prior interpretation stands.

2. DHS's New Arguments Do Not Support Any Departure from the Court's Prior Ruling.

DHS offers two new theories for departing from the settled statutory definition this Court already identified. Neither is persuasive.

a. The Final Rule's Redefinition of "Public Charge" Is Not "Permissible."

First, relying heavily on a Ninth Circuit order staying two preliminary injunctions of DHS's Final Rule—one of which enjoined the Rule nationwide, *City and County of San Francisco v. United States Citizenship and Immigration Services*, 944 F.3d 773 (9th Cir. 2019)—DHS argues that the Final Rule's construction of "public charge" is at least "permissible" because the term is "capable of a range of meanings." Mot. at 15. The Ninth Circuit's stay order does not support a change of course here, where Plaintiffs' APA violations remain adequately pleaded.[3]

[3] Notably, on December 23, 2019, the Seventh Circuit declined to stay this Court's preliminary injunction *after* the Ninth Circuit issued its stay order, and after DHS brought the Ninth Circuit order to the Seventh Circuit's attention. *See* Appellants' Reply in Support of Motion for a Stay Pending Appeal, Docket No. 29, Case No. 19-3169 (7th Cir. filed Dec. 10, 2019) (attaching the Ninth Circuit Stay Order as an exhibit). DHS

In significant ways, the Ninth Circuit's interpretation of "public charge" is consonant with this Court's interpretation. The Ninth Circuit recognized, for example, that as of 1882, Congress "did not consider an alien a 'public charge' if the alien received merely *some* form of public assistance," 944 F.3d at 793 (emphasis added)—*i.e.*, the definition that DHS now advances. The Ninth Circuit also acknowledged that in *Gegiow*, the Supreme Court interpreted the statute to require substantial and lasting dependence on government support, as was true of the other categories designated for exclusion in the statute. *Id.* at 794. But rather than adhere to the Supreme Court's interpretation of the unambiguous statute, the Ninth Circuit pointed to historical changes in how the government supports the needy and a perceived evolution in agency interpretations of "public charge" to conclude: "we are unable to discern one fixed understanding of 'public charge' that has endured since 1882." *Id.* at 796. This conclusion, however, paid insufficient heed to *Gegiow*, which interpreted the statutory language to provide *unambiguously* that "'public charge' encompasses only persons who . . . would be substantially, if not entirely, dependent on government assistance on a long-term basis." Mem. Op. at 19; *see Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 982 (2005) ("A court's prior judicial construction of a statute trumps an agency construction … if the prior court decision holds that its construction follows from the unambiguous terms of the statute."). The *Gegiow* Court rejected the interpretation proposed by DHS—calling it "an amazing claim of power" for the agency—precisely because that interpretation was insufficiently solicitous of the statutory text. 239 U.S. at 10. Although societal approaches to alleviating poverty may have shifted, the fundamental meaning of the term "public charge" as requiring long-term and primary dependence on government aid has not. *See Wis. Cent.*

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did not seek a stay of this Court's preliminary injunction in the Supreme Court at that time. On January 28, 2020, DHS filed a Renewed Motion for Stay, which the Seventh Circuit denied on February 10. On February 13, DHS applied to the Supreme Court for a stay of this Court's preliminary injunction, which was granted on February 21.

Ltd. V. United States, 138 S. Ct. 2067, 2074 (2018) (explaining that "every statute's *meaning* is fixed at the time of enactment," and although "new *applications* may arise in light of changes in the world," such changes do not give an agency license to rewrite the text because "Congress alone has the institutional competence, democratic legitimacy, and (most importantly) constitutional authority to revise statutes in light of new social problems and preferences").

DHS attempts to bolster the Ninth Circuit's reasoning by arguing that the word "opinion" in the statute gives the agency "considerable discretion" to define the term "public charge," and that "Congress implicitly delegates interpretive authority to the Executive Branch when it omits definitions of key statutory terms." Mot. at 15, 26. But DHS's argument and the Ninth Circuit's order conflate discretion to *apply* the term "public charge" with discretion to *define* the term in a way that conflicts with the term's settled meaning. In particular, the fact that the statute does not expressly define "public charge" does not imply that Congress "delegate[d] interpretive authority to the Executive Branch[.]" Mot. at 26. Rather, when Congress wants to give an agency discretion to define a term, it says so explicitly. *See, e.g.*, *Rush Univ. Med. Ctr. v. Burwell*, 763 F.3d 754, 760 (7th Cir. 2014) (holding that Congress expressly delegated to the agency the power to define the key term at issue where it included the word "define[]" in the statutory text) (quoting 42 U.S.C. § 1395ww(d)(5)(B)(x)(II)); *see also Emergency Servs. Billing Corp. v. Allstate Ins. Co.*, 668 F.3d 459, 466 (7th Cir. 2012) (explaining that even though "Congress was silent as to the meaning" of a statutory term, that did not imply that the court "must turn to the [Agency's] definition" because "the lack of a statutory definition [ ] does not render a term ambiguous"). Far from authorizing DHS to define the term as it pleases, Congress consistently reinstated a statutory term that has a longstanding, settled meaning; one which has been subjected to myriad judicial interpretations, including by the Supreme Court. The "public charge" statute thus is patently unlike the statute at

issue in *INS v. Jong Ha Wang*, on which DHS relies. Mot. at 26. There, Congress authorized the agency to define the statutory term "in the first instance." *INS v. Jong Ha Wang*, 450 U.S. 139, 144 (1981). Although DHS undoubtedly has discretion to determine whether an individual applicant's circumstances indicate likelihood to become a public charge, that discretion is not unbounded. Rather, it is cabined by the settled meaning of the term that Congress has entrusted DHS to apply.

Indeed, if DHS's interpretation of "public charge" were correct, then the statute would raise serious non-delegation concerns. On DHS's reading, "public charge" includes any person who contributes to any "charge" or "liability" on the public fisc—meaning that every person in America who draws on public funds in any way could be deemed a "public charge." So read, the statute would impose virtually no limit on DHS's power to pick and choose among the myriad forms of government goods and services (e.g., public benefits or tax breaks) conferred or allegedly likely to be conferred, for any duration, and in any amount, and would provide no intelligible principle to cabin the agency's discretion. *See Gundy v. United States*, 139 S. Ct. 2116, 2123–24 (2019). As *Gegiow* makes clear, the statutory text cannot sustain such an "amazing claim of power." *Gegiow*, 239 U.S. at 10.

b. Broad Policy Considerations Cannot Redefine the Term "Public Charge."

Second, DHS again argues that the Final Rule's definition of "public charge" is valid because it is broadly consistent with U.S. immigration policy as established in the 1996 amendments to the INA. But as this Court explained, general observations about broad statutory objectives do not speak to the precise definition at issue in this case. *See* Mem. Op. at 16–17 (rejecting arguments based on the goal of "self-sufficiency" because "those provisions express only general policy goals without specifying what it means for non-citizens to be '[s]elf-sufficient'

or to 'not depend on public resources to meet their needs'"). Moreover, DHS already has conceded on the record that the 1996 statute "didn't mark a significant departure in terms of what 'public charge' has meant." Hr'g Tr., Dkt. No. 109 at 18–19; *see also, id.* at 20–21 (conceding that the 1996 Act did not "change[] fundamentally the underlying term or the meaning of 'public charge'"). And this concession was correct: nothing in the 1996 statute supports DHS's reading of "public charge."

In its Motion to Dismiss, DHS points to two new unrelated statutory provisions as supposedly shedding light on the meaning of "public charge," but neither helps DHS. First, DHS cites 8 U.S.C § 1182(s), which instructs consular officers not to consider the past receipt benefits on the part of certain abuse victims. Mot. at 15. According to DHS, this provision demonstrates that consideration of receipt of *any* benefits is generally permissible as part of the public charge determination. *Id.* But it does not follow that DHS can consider immigrants' *past* and *future* use of all forms of cash *and* non-cash public benefits simply because Congress chose to protect abuse victims from public charge determinations based upon their *past* use of benefits. In other words, the exception here cannot establish the rule—Congress does not "alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not, one might say, hide elephants in mouseholes." *Whitman v. American Trucking Ass'n*, 531 U.S. 457, 468 (2001). Second, as noted in the Final Rule, abuse victims are exempted from the public charge determination altogether. 84 Fed. Reg. at 41,335. DHS's argument has no limit; under Defendants' theory, they could argue that because DHS does not count public benefits use against U.S. citizens (another group exempt from the public charge, *id.* at 41,309), *all* public benefits can be counted against those who are subject to the determination.

Next, DHS points to the statutory requirement that some categories of aliens obtain affidavits of support, again attempting to stretch a specific statutory provision to a general lesson about the meaning of "public charge." DHS argues that this provision indicates that "the mere *possibility* that an alien might obtain unreimbursed, means-tested public benefits in the future [i]s sufficient to render that alien inadmissible on public charge ground[s]." Mot. at 17. But as the Final Rule acknowledges, the affidavit-of-support provision applies only in certain circumstances. *See* 84 Fed. Reg. at 41,448 ("Not all aliens are required to submit the affidavit of support."). As the Final Rule explains, the affidavit-of-support provision is limited primarily to one type of applicant: a person who has a family sponsor. *See id.* ("Congress mandated the presence of an affidavit of support in certain cases as a separate requirement, but did not establish submission of the affidavit of support as a mandatory factor in all public charge inadmissibility determinations."); *see also*, 8 U.S.C. § 1182(a)(4)(B)(ii) (providing that the agency "shall" consider five factors, and that it "*may* also consider any affidavit of support") (emphasis added). If anything, the affidavit-of-support provision suggests Congress knew how to impose this heightened requirement on all immigrants if it wanted to, yet intentionally omitted such a requirement from the general "public charge" provision. *See Moral-Salazar v. Holder*, 708 F.3d 957, 961 (7th Cir. 2013) ("Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.") (internal quotation marks omitted) (quoting *Kucana v. Holder*, 558 U.S. 233, 248–49 (2010)).

The Final Rule also runs directly counter to other aspects of the affidavit-of-support provision, further illustrating that the Rule is contrary to the INA itself, including the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). In general, the affidavit-of-

support provision represents Congress's desire to balance the goal of family re-unification against concern for the public fisc. Congress anticipated immigrants' future benefit use in certain cases and addressed its concerns by tightening who can serve as a sponsor and making a sponsor's contractual obligation enforceable only after an immigrant has been admitted. 8 U.S.C. §§ 1182(a)(4)(C), 1182(a)(4)(D), 1183a(a)(2)-(3). But now, DHS has dismantled that Congressional solution by instituting a bar against immigrants *at admission* who are considered likely at any time in the future to receive even modest benefits. The Final Rule's test ignores Congress's balanced approach in favor of broad inadmissibility. Indeed, the Final Rule's new definition of "public charge" would apply to *any* applicant, would be applied *before* their admission, and would consider any benefits they *might* receive during their life, including time periods well beyond the period when Congress decided affidavits of support should be enforceable. 84 Fed. Reg. at 41,397. The Final Rule's test thus directly contravenes the affidavit's purpose of allowing admissibility on the promise of repayment. And, more specifically, Congress excluded HUD-administered housing benefits from the repayment obligation in the affidavit-of-support, but the Final Rule includes them. *See* 8 C.F.R. § 213a.1; 84 Fed. Reg. at 41,501. Defendants' arguments about the affidavit of support demonstrate how the Final Rule has undone Congress's careful balancing in the INA and IIRIRA.

B. The Final Rule Also Fails Under *Chevron* Step Two.

Even if the Court were now to reverse course and hold that the statute is ambiguous, the Final Rule still would not be entitled to deference because it is an unreasonable interpretation of the statute. Under *Chevron*'s step two, courts must determine whether "the agency's answer is based on a permissible construction of the statute." *Chevron*, 467 U.S. at 843. Put another way, the court "asks whether [the agency's] interpretation of the statute is reasonable." *Our Country*

Home Enters., Inc. v. Comm'r of Internal Revenue, 855 F.3d 773, 787 (7th Cir. 2017). To do so, the court "determines whether the regulation harmonizes with the language, origins, and purpose of the statute," and unlike step one, it may consider, among other things, legislative history. *Bankers Life & Cas. Co. v. United States*, 142 F.3d 973, 983 (7th Cir. 1998).

For many of the same reasons highlighted in the *Chevron* step one analysis, the agency's interpretation cannot be considered a permissible construction of the statute. *Cf. Whitman*, 531 U.S. at 481 (holding a policy unlawful even though the statute was ambiguous because "the agency's interpretation goes beyond the limits of what is ambiguous and contradicts what in our view is quite clear"). Moreover, independent reasons exist to find that DHS's construction of "public charge" is unreasonable. Most notably, while the statute mandates that DHS "shall" consider "at a minimum" five characteristics—age, health, family status, assets, and education/skills—to determine whether an individual is likely to become a public charge, 8 U.S.C. § 1182(a)(4)(A), (B), the Rule does not call for a totality-of-the-circumstances test (despite its insistence otherwise). Instead, the Rule creates a strict test: use of public benefits. In DHS's words, the Rule "redefines the term '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 (such that, for instance, receipt of two benefits in one month counts as two months)." 84 Fed. Reg. at 41,295; *see* Mot. at 4 (calling this "requirement" the "12/36 standard"). Put differently, "if a DHS officer believes that an individual is likely to have benefits for 12 months out of a 36-month period, the inquiry ends there, and the individual is *automatically* considered a public charge." *New York v.*

U.S. Dep't of Homeland Sec., No. 19 Civ. 777 (GBD), 2019 WL 5100372, at *8 (S.D.N.Y. Oct. 11, 2019) ("[R]eceipt of such benefits is not *one* of the factors considered; it is *the* factor.").[4]

III. Count II States a Valid Claim for Relief.

Plaintiffs plausibly allege in Count II that the Final Rule must be stricken under the APA as not in accordance with law. 5 U.S.C. § 706(2)(A). Compl. ¶¶ 148-155. "[W]here an agency's decision does not comport with governing statutes or regulations, that decision is 'not in accordance with law' and must be set aside." *J.E.C.M. ex rel. Saravia v. Lloyd*, 352 F. Supp. 3d 559, 583 (E.D. Va. 2018). The Final Rule is contrary to the INA, Rehabilitation Act of 1973, Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), IIRIRA, and the Supplemental Nutrition Aid Program (SNAP) statute. The conflicts with the INA and IIRIRA are addressed *supra*, the remaining conflicts are addressed below.

A. The Final Rule Violates Section 504 of the Rehabilitation Act.

Plaintiffs have plausibly alleged that the Final Rule violates Section 504 of the Rehabilitation Act, as the Final Rule has the "purpose or effect" of excluding immigrants, or preventing them from adjusting status, based upon their disability. 29 U.S.C. § 794(a); *see also* 28 C.F.R. § 41.51(b)(3). Specifically, the Rule considers health, disability, lack of private health insurance, and the receipt of Medicaid as negative factors *per se*. 84 Fed. Reg. at 41,368, 41,406, 41,379. Further, it considers the lack of a medical condition as one of just a few positive factors.

[4] Additionally, to the extent it should be considered at all, legislative history makes clear Congress has repeatedly rejected DHS's reading of "public charge." *See* Immigration Control and Financial Responsibility Act ("ICFRA"), H.R. Rep. 104-469, pt. 1, at 266–67 (1996) (rejecting definition of "public charge" that would have encompassed those who received almost any public benefits for more than one year, including non-cash benefits); 142 Cong. Rec. S11872 (daily ed. Sept. 30, 1996) (statement of Sen. Kyl) (considering and rejecting a proposed definition of "public charge" that would have covered those who received "Federal public benefits for an aggregate of 12 months over a period of 7 years"); S. Rep. No. 113-40, at 42 (2013) (rejecting attempt to broaden the definition of "public charge" to exclude immigrants who were likely to qualify "even for non-cash employment supports").

Id. at 41,428. In other words, "but for their disability," many persons with disabilities could satisfy the public charge test. *Id*. at 41,502–04; *see also, e.g., H.P. ex rel. W.P. v. Naperville Cmty. Unit Sch. Dist. #203*, 910 F.3d 957, 960–61 (7th Cir. 2018) (explaining that the Rehabilitation Act requires proof of causation, *i.e.* that "but for" a disability, a plaintiff "would have been able to access the services or benefits desired").

DHS attempts to minimize this violation of law by asserting that the INA authorizes DHS to ask about health. As such, DHS characterizes the Rule's health inquiry as just one factor in an unpredictable kaleidoscope of considerations that could lead to a range of outcomes for people with disabilities. Mot. at 30. But under its newly defined health inquiry, the Final Rule violates Section 504 by expressly weighting a person's disability as a negative factor. *See* 84 Fed. Reg. at 41500, 41502–04 (inquiring if a person has a medical condition that "will interfere with the alien's ability to provide and care for himself or herself, to attend school, or to work upon admission or adjustment of status"). In doing so, the Final Rule turns the health factor into an explicit disability inquiry; the presence or absence of a disability is the dispositive test for the "health" factor. *Compare* 84 Fed. Reg. at 41504, quoted *supra*, *with* 42 U.S.C. § 12102(1)(A) (defining a disability under the ADA as "a physical or mental impairment that substantially limits one or more major life activities of such individual"). Moreover, the Final Rule considers a lack of private health insurance and use of Medicaid—which people with disabilities rely upon when private health insurance fails to meet their needs—as additional, heavily weighted negative factors. *See* 84 Fed. Reg. at 41,504. Thus, far outside the confines of INA's health consideration, the Final Rule renders a person's disability the but-for cause of an inadmissibility determination in direct contravention of Section 504 of the Rehabilitation Act. *See Franco-Gonzalez v. Holder*, No. 10-CV-02211, 2013 WL 3674492, at *4 (C.D. Cal. Apr. 23, 2013) (finding a prima facie violation of Section 504 for

denial of appointment of representatives for disabled immigrants in detention or removal proceedings who were "unable to meaningfully access the benefit offered…because of their disability"); *see also Lovell v. Chandler*, 303 F.3d 1039, 1053 (9th Cir. 2002) (finding a section 504 violation where "but for their disability," plaintiffs would have received Medicaid).

DHS also argues that the INA's requirement that "health" be considered for public charge purposes nullifies Section 504's anti-discrimination mandate. Mot. at 30. But the INA does not define the health factor in a way that expressly implicates disability. When Section 504 was first enacted in 1973 the INA's public charge provision did not yet include a health factor. *See* Immigration and Nationality Act of 1952, 87 Cong. Ch. 477, section 212(a)(15), 66 Stat. 163, 183 (1952). And even when the health factor was added to the public charge provision in 1996, no conflict existed between Section 504 and the public charge provision. *Franco-Gonzalez*, 2013 WL 3674492, at *4. Rather, DHS is responsible for creating this conflict by promulgating a Final Rule that equates "health" with "disability." When a federal regulation like the Final Rule sits in conflict with an act of Congress, including an unrelated federal statute such as Section 504, the regulation is invalid. *See Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 736 (2014) (invalidating Patient Protection and Affordable Care Act regulations that conflicted with the Religious Freedom Restoration Act). Here, the Final Rule requires officials to target and exclude individuals based upon their disability. It thus runs afoul of the Rehabilitation Act and is contrary to law.

B. The Final Rule Contravenes PRWORA.

"It is hornbook law that an agency cannot grant itself power via regulation that conflicts with plain statutory text." *Doe, 1 v. Fed. Election Comm'n*, 920 F.3d 866, 874 (D.C. Cir. 2019) (Henderson, J. concurring in part, dissenting in part). Here, the Final Rule does exactly that. In promulgating the Final Rule, DHS relies heavily on the self-sufficiency principle articulated in

PRWORA. *See e.g.*, Mot. at 3; 17–18; 84 Fed. Reg. at 41,307, 41,312. But the Final Rule contradicts the statute's substantive provisions. Indeed, under the Final Rule, DHS creates a paradox: it grants itself the power to exclude immigrants as not "self-sufficient" when they receive benefits that Congress, by statute, permitted immigrants to lawfully receive, allegedly in furtherance of that very "self-sufficiency" policy. 8 U.S.C. § 1612(b)(1); Compl. ¶ 151.

This paradox is not in accordance with the law. In enacting PRWORA, Congress set out a detailed scheme governing immigrants' self-sufficiency. In doing so, Congress amended public benefits rules to allow some immigrants to use public benefits at any time, and restrict others from using benefits until they have spent five years as lawful permanent residents. 8 U.S.C. §§ 1601(3)-(5), 1611(b), 1613, 1621(b). In fact, Congress stated explicitly that these eligibility standards are "the least restrictive means available for achieving the compelling governmental interest of assuring that aliens be self-reliant in accordance with national immigration policy." 8 U.S.C. § 1601(7). The Final Rule thus "threatens to undo rather than honor legislative intentions" by authorizing DHS to bar applicants who receive (or even who are likely to receive) the very benefits that Congress found consistent with self-sufficiency. *Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612, 1629 (2018).

Defendants counter that use of public benefits is merely one circumstance to be considered "as part of the totality-of-the-circumstances analysis required by 8 U.S.C. § 1182(a)(4)(B)." Mot. at 31. But Defendants ignore that: (1) the Final Rule *redefines* public charge explicitly in terms of public benefits use (a public charge is "an alien who receives one or more public benefits . . . for more than 12 months in the aggregate within any 36-month period"); and (2) the "totality of the circumstances" factors are now calibrated to determine current or likely future benefits use. 84 Fed. Reg. at 41,501–04. Absent any statutory provision authorizing DHS to penalize benefits use

approved under PRWORA, the Final Rule contradicts PRWORA's self-sufficiency provision and remains not in accordance with the law.

Second, DHS disavows any conflict with PRWORA because the Final Rule does not alter the statute's eligibility provisions. Instead, according to DHS, an immigrant "may choose, for a variety of reasons related or unrelated to the Rule" to forgo the benefits they are entitled to receive. Mot. at 31. But whether immigrants actually make this Solomon's choice and "choose" to use their lawful benefits does not end the inquiry; *just being eligible under PRWORA* puts them at risk of DHS determining they are "more likely than not" to receive public benefits for 12 of 36 months "at any time in the future," and thus being judged inadmissible as a public charge. Mot. at 31; 84 Fed. Reg. at 41,502–04. Given this plain contradiction between PRWORA and the Final Rule, Plaintiffs have adequately pleaded that the Rule is not in accordance with the law and must be vacated. Compl. ¶¶ 61–65, 151; *see also Am. Airlines, Inc. v. Transp. Sec. Admin.*, 665 F.3d 170, 176 (D.C. Cir. 2011) (explaining that "a regulation contrary to a statute is void") (internal quotation marks omitted) (citing *Orion Reserves Ltd. P'ship v. Salazar*, 553 F.3d 697, 703 (D.C. Cir. 2009)).

C. The Final Rule Violates the SNAP Statute.

The SNAP statute prohibits DHS from considering SNAP benefits as income or resources for "*any purpose* under any Federal . . . laws . . ." 7 U.S.C. § 2017(b) (emphasis added). Because the Final Rule negatively considers use of SNAP benefits, it violates this statutory provision.

DHS asserts that it may designate the receipt of SNAP benefits as a heavily weighted negative factor under § 2017(b) because the Rule does not consider the "value" of SNAP benefits as "income or resources," only the fact of receipt of such benefits. Mot. at 32–33. But DHS cannot untether the monetary value of SNAP from the fact of receipt. First, SNAP has a readily definable minimum monetary value due to the fixed minimum allotment for recipients. 7 C.F.R.

§ 273.10(e)(2)(ii)(C). Second, Defendants' value versus receipt hairsplitting is also contradicted by DHS's stated motivation for the Final Rule: to "[revise] its interpretation of 'public charge' to incorporate consideration of such [non-cash] benefits (like SNAP and Medicaid)" because "these [SNAP] benefits account for significant Federal expenditure on low-income individuals." 84 Fed. Reg. at 41,295, 41,375. And in any event, the Final Rule explicitly considers the value of SNAP benefits by deeming the receipt of SNAP for more than 12 months in the aggregate within any 36-month period a heavily weighted negative factor "sufficient to render a person a public charge." *See* 84 Fed. Reg. at 41,349, 41,504.

Courts have rejected similar efforts. In *Gooderham v. Adult & Family Services Div.*, 667 P.2d 551 (Ore. App. 1983), the State of Oregon proposed rules eliminating the special diet allowance program except for diets deemed more costly but medically necessary. *Id.* at 551–53. To determine which diets required increased costs, the state developed a formula that considered the average food stamp allotment of both recipients and applicants. *Id.* at 551–53, 557. In striking down the rule for violating § 2017(b), the court relied in part on a 1977 House committee report from when § 2017(b) was enacted, which stated: "The bill makes crystal clear current law preventing state or local governments from reducing benefits provided [to] food stamp recipients under other laws (Federal, state, or local, but especially general assistance) because of their *receipt* of food stamps." *Id*. at 557 (quoting H.R. Rep. No. 95-464, at 247 (1977) (emphasis added) (citation omitted). *Gooderham* therefore demonstrates that polices such as the Final Rule that consider the value, receipt, and even future eligibility for SNAP benefits violate Section 2017(b).

DHS also claims that its treatment of SNAP benefits aligns with the statute because the *fact of receipt* of SNAP benefits is considered in other federal programs. Mot. at 32–33; *see also* 47 C.F.R. § 54.409 (using receipt of SNAP benefits as a proxy for qualification as a "low-income"

household). However, in those contexts, SNAP receipt is used to expedite eligibility for other programs that support SNAP recipients consistent with the goals of SNAP—to promote general welfare, safeguard public health, and increase the purchasing power of low-income families—not to support a characterization of the recipient that has significant negative legal consequences. 7 U.S.C. § 2011; *see also, e.g.*, 7 C.F.R. § 245.6(b)(1) (children who are members of a household receiving SNAP are automatically eligible for free and reduced priced school lunches).

Thus, Plaintiffs have more than adequately alleged that the Final Rule is not in accordance with the law and contrary to Section 504, the SNAP Statute, PWRORA, INA, and IIRIRA.

IV. Count III States a Valid Claim for Relief.

A. The Final Rule is Arbitrary and Capricious.

Separate and apart from Plaintiffs' *Chevron* claim, Plaintiffs have sufficiently alleged in Count III that the Rule is arbitrary and capricious in violation of 5 U.S.C. § 706(2)(A). *See* Compl. ¶¶ 156–169. According to DHS, Plaintiffs fail to state a plausible claim because the Rule simply carries out Congress's alleged interest in ensuring that immigrants "not depend on public resources to meet their needs" and instead "rely on their own capabilities." Mot. at 34–35. But Defendants underestimate the APA's scope of review. While an arbitrary and capricious analysis provides for a "narrow review," it nonetheless requires an agency to "engage in reasoned decisionmaking" and "articulate a satisfactory explanation for its action." *Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43, 53 (1983). An agency action qualifies as arbitrary and capricious if:

> the agency has relied on factors which Congress has not intended it to consider, 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.

Id. at 43. With this framework in mind, Plaintiffs' position is simple and adequately pleaded: in promulgating the Rule, Defendants failed to address, justify, or meaningfully evaluate the significant harms identified by commenters, as well as harms identified in the text of the Final Rule itself. Compl. ¶¶ 159–161. Specifically, DHS concedes that the Rule will cause members of mixed-status households, including U.S. citizens, to disenroll from or otherwise decline to enroll in public benefits. 84 Fed. Reg. at 41,300, 41,485. Nevertheless, DHS declined to address the harms that it acknowledges will result from this chilling effect, stating:

> DHS believes that it would be unwarranted for U.S. citizens and aliens exempt from public charge inadmissibility to disenroll from a public benefit program or forgo enrollment in response to this rule when such individuals are not subject to this rule. DHS will not alter this rule to account for such unwarranted choices.

Id. at 41,313. In other words, instead of meaningfully grappling with the harms that it predicts will occur, DHS maintains that it "found that other policy interests outweighed the interests in avoiding potential disenrollment impacts of the Rule." Mot. at 36.

But "[s]tating that a factor was considered . . . is not a substitute for considering it." *Getty v. Fed. Sav. & Loans Ins. Corp.*, 805 F.2d 1050, 1055 (D.C. Cir. 1986). Indeed, the law *requires* agencies to "adequately analyze … the consequences" of its actions, *Am. Wild Horse Pres. Campaign v. Perdue*, 873 F.3d 914, 932 (D.C. Cir. 2017), and provide more than "conclusory statements" to prove it "consider[ed] [the relevant] priorities." *Getty*, 805 F.2d at 1057; *Orchard Hill Bldg. Co. v. U.S. Army Corps of Eng'rs*, 893 F.3d 1017, 1024 (7th Cir. 2018) (emphasizing that the "APA requires meaningful review") (citing *Dickinson v. Zurko*, 527 U.S. 150, 162 (1999)).

Here, DHS points to no such analysis or real "weighing of the costs and benefits." Mot. at 36. Instead, DHS indicates that any costs resulting from disenrollment remain "unclear" or "unquantifiable." *See, e.g.*, *id*. (citing 84 Fed. Reg. at 41,463–41,477) (explaining, for example, that while "DHS has provided an estimate of the number of individuals that may choose to

disenroll . . . it is unclear how long such individuals would remain disenrolled"). But the harms of widespread disenrollment are not "unclear"; Cook County identified a $30 million cost stemming from Medicaid disenrollment. Compl. ¶ 97. The Rule itself delineates the exact harm that will occur. *See, e.g.*, 84 Fed. Reg. at 41,469–70 (noting that "hospital systems, state agencies, and other organizations that provide public assistance to aliens and their households' will suffer financial harm from the Rule's implementation); *id*. at 41,469 (recognizing that the Rule will cause "[s]tate and local governments to … incur costs" stemming from "changes in behavior caused by" the Rule); *id*. at 41,300–01 ("DHS estimates that the total reduction in transfer payments from Federal and State governments will be approximately $2.47 billion annually due to disenrollment or foregone enrollment in public benefits programs by foreign-born non-citizens who may be receiving public benefits."); *see also id*. at 41,313 (recognizing the "potential nexus between public benefit enrollment reduction and food insecurity, housing scarcity, public health and vaccinations, education health-based services, reimbursement to health providers, and increased costs to states and localities"). DHS failed to adequately consider these significant costs in pursuing its agenda. *See Michigan v. EPA*, 135 S. Ct. 2699, 2707 (an agency must "pay[] attention to the advantages and disadvantages of [its] decisions").

In short, Defendants cannot obtain dismissal of Plaintiffs' claim based upon feigned ignorance of harms they concede will occur. Rather, the law requires that DHS consider, and grapple with, these repercussions. *See, e.g.*, *Fred Meyer Stores, Inc. v. Nat'l Labor Relations Bd.*, 865 F.3d 630, 638 (D.C. Cir. 2017) (finding agency determination was deficient due to a "complete failure to reasonably reflect upon the information contained in the record and grapple with contrary evidence—disregarding entirely the need for reasoned decisionmaking"); *Michigan,* 135 S. Ct. at 2707 ("Consideration of cost reflects the understanding that reasonable regulation ordinarily

requires paying attention to the advantages *and* disadvantages of agency decisions.") (emphasis in original); *see also St. James Hosp. v. Heckler*, 760 F.2d 1460, 1470 (7th Cir. 1985) ("The opportunity under the APA to comment on proposed rules is 'meaningless unless the agency responds to significant points raised by the public.'") (quoting *Home Box Office, Inc. v. FCC*, 567 F.2d 9, 35–36 (D.C. Cir. 1977)).

In this same fashion, DHS failed to provide the requisite "detailed justification" for its decision to redefine the term public charge. *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009); 84 Fed. Reg. at 41,295 ("This rule redefines the term 'public charge'"). While an agency need not demonstrate "that the reasons for the new policy are *better* than the reasons for the old one" when it changes course, it nonetheless must "show that there are good reasons for the new policy." *Fox*, 556 U.S. at 503. Indeed, this requirement is heightened where a "new policy rests upon factual findings that contradict those which underlay its prior policy," as "a reasoned explanation is needed for disregarding facts and circumstances that underlay or were engendered by the prior policy." *Id*. at 515–16.

Here, DHS's prior policy—interpreting the term "public charge" to refer only to those primarily and permanently dependent upon the government for long-term support—rested upon factual findings that contradict the purpose of the new policy. In its 1999 field guidance, DHS explicitly rejected the notion that an immigrant who used non-cash benefits would not be capable of supporting him or herself:

> [I]t is extremely unlikely that an individual or family could subsist on a *combination* of non-cash support benefits or services alone. . . . HHS is unable to conceive of a situation where an individual, other than someone who permanently resides in a long-term care institution, could support himself or his family solely on non-cash benefits so as to be primarily dependent on the government.

64 Fed. Reg. 28,676, 28,678 (May 26, 1999). Yet as discussed above, DHS fails to provide the requisite "detailed justification" for departing from these previous findings. *Fox*, 556 U.S. at 515. Rather, the Rule is replete with examples of arbitrary cut-offs that directly oppose the Rule's purported purpose of self-sufficiency. The Rule's 12/36-month threshold, for example, instructs that a person who receives about 50 cents per day in food assistance—a standard SNAP benefit amount for recipients at the higher end of income eligibility—qualifies as a public charge. Indeed, a person receiving that level of benefit could receive less than 1 percent of their annual income from the federal government, yet still be deemed a public charge under the Final Rule.[5] *See also* 84 Fed. Reg. at 41,360–61 ("In other cases, DHS may find an alien inadmissible under the standard, even though the alien who exceeds the duration threshold may receive only hundreds of dollars, or less, in public benefits annually."). Absent any sort of justification for this contradictory approach, much less a detailed one, DHS's motion to dismiss Count III must fail.

B. The I-944 Form, Instructions, and Manual Further Demonstrate that the Final Rule is Arbitrary and Capricious.

After promulgating the Final Rule, the agency issued various documents related to its implementation: the I-944 Form (the "Form"),[6] Instructions for the I-944 Form (the

[5] The minimum SNAP monthly allotment for a household of 1–2 people is $16/month for fiscal year 2020, or approximately 52-53 cents per day. USDA, SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP) FISCAL YEAR (FY) 2020 MINIMUM ALLOTMENTS (Oct. 1, 2019), https://fns-prod.azureedge.net/sites/default/files/media/file/FY20-Minimum-Allotments.pdf. In Illinois, a household on the high end of the income eligibility scale—for example, a senior or a person with a disability making $2,082 per month or $24,984 annually—would receive just $16 per month (or $192 annually) in SNAP benefits. ILL. DEPT. OF HUMAN SERV., SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM – SNAP (Oct. 1, 2019), https://www.dhs.state.il.us/page.aspx?item=30357. This equates to about .7% of their annual income.

[6] I-944 Form, Declaration of Self-Sufficiency, available by navigating to https://www.uscis.gov/i-944, and clicking "Form I-944 (PDF, 793 KB)" (attached as Exhibit A).

"Instructions"),[7] and Policy Manual (the "Manual").[8] These documents further confirm that the Rule, as implemented by DHS, will chill benefit use—including benefit use that is *not subject to the Rule*—and creates new burdens on applicants that are unsupported in the Final Rule, further demonstrating that the Final Rule is arbitrary and capricious.[9]

First, Defendants argue that the Final Rule is not arbitrary and capricious because, to "mitigate some of the concerns raised regarding disenrollment impacts," they "exclude[ed] certain benefits from the scope of the Rule," therefore purportedly demonstrating their "full consideration" of that problem and "adoption of changes in response." Mot. at 37. The Form and Instructions, however, demonstrate that these exclusions will not address the Final Rule's deterrence and disenrollment effects. Under the Instructions, *every* applicant completing the Form must provide information about receipt of listed benefits, without regard to whether the applicants themselves are exempt from the public charge test (*e.g.*, battered immigrants). *See* Instructions, Ex. B at 9 ("You must respond even if you fall within one of the categories of individuals for whom receipt of public benefits will not be considered.").

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[7] Instructions for Form I-944, available by navigating to https://www.uscis.gov/i-944, and clicking "Instructions for Form I-944 (PDF, 336 KB)" (attached as Exhibit B).

[8] USCIS Policy Manual, Volume 8 (Admissibility), Part G - Public Charge Ground of Inadmissibility, https://www.uscis.gov/policy-manual/volume-8-part-g (relevant portions attached as Exhibit C). This Court may take judicial notice of the Form, Instructions, and Manual as they are publicly available on Defendant USCIS's official government website. Fed. R. Evid. 201(b)(2) ("The court may judicially notice a fact that is not subject to reasonable dispute because it: . . . can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned."); *Denius v. Dunlap*, 330 F.3d 919, 926 (7th Cir. 2003) (concluding that a district court may take judicial notice of information on an official government website); *see also* Fed. R. Evid. 902(5) (listing "publication[s] purporting to be issued by a public authority" as self-authenticating evidence).

[9] As demonstrated here, the Form, Instructions, and Manual further buttress Plaintiffs' claim that the Rule—as implemented through those documents—is arbitrary and capricious, such that Count III of Plaintiffs' Complaint should not be dismissed. Even if the Rule were to survive APA review, however, the Form, Instructions, and Manual independently violate the APA because they are inconsistent with the statute and the purported justifications for the Rule. Plaintiffs reserve their right to amend their complaint to separately allege that these implementing documents independently violate the APA.

Moreover, the Form undercuts the supposed mitigation of the Final Rule's chilling effect that DHS asserts will follow from the Rule's exclusion of certain benefits from consideration. With respect to receipt of past benefits, the Form requires applicants to pick one of two options: (1) "[n]o, I have not received *any* public benefits," Form, Ex. A at 8 (Item No. 16) (emphasis added), without limitation to those public benefits covered by the Final Rule; or (2) "[y]es, I have received . . . the following benefits." *Id.* at 9–10 (Item Nos. 16 & 20). This is followed by a request to identify and "[s]ubmit evidence" of the listed benefits, *id.*, *including* exempted benefits such as Emergency Medicaid, or Medicaid payments for services provided to children at school under the Individuals with Disabilities Education Act. *See* Instructions, Ex. B at 9. The question's phrasing, as well as the level of specificity required, thus obscures that certain benefits are, in fact, excluded under the Final Rule. This will exacerbate the confusion and fear that leads to the chilling effect, providing further evidence that the Final Rule is arbitrary and capricious.[10] In other words, by requiring immigrants to report and document "any" past benefit ever received, the agency reinvigorated the chilling effect that it argues its revisions to the Rule tamped down. With its implementation of the Rule, DHS has made clear that it "entirely failed to consider an important aspect" of the Final Rule's predicted deterrence and disenrollment harms. *State Farm*, 463 U.S. at 43.

[10] The documentation also contains other confusing and misleading instructions that will exacerbate the chilling effect of the Rule. The Instructions require applicants to provide information regarding benefits received as far back as October 15, 2019—the original effective date of the Final Rule. But the October 15 date was rendered invalid once this Court and others enjoined the Rule. *See e.g.*, Instructions, Ex. B at 9 ("For benefits received before October 15, 2019 . . . ."). Instead, the Rule's effective date is February 24, 2020. Accordingly, DHS cannot retroactively consider usage of the Final Rule's newly listed benefits before that date. DHS's decision to maintain references to the invalid October 15, 2019 date while applying the Rule is capricious; it will sow confusion among applicants and their advocates and invite the USCIS officers to unlawfully consider benefits used before the actual effective date. This is a far cry from the "clear guidance" DHS promised to provide, 84 Fed. Reg. at 41321, and the resulting confusion is likely to further chill applications and benefits use due to fear of DHS's possible consideration of benefits outside of the appropriate timeframe.

Furthermore, state agencies will have to provide documents regarding even exempt benefits usage. *See* Instructions, Ex. B at 10. Applicants will not be able to provide the information required without this agency documentation. Likewise, the Form requires that the applicant monetize benefits, including in-kind benefits[11] such as healthcare provided by Medicaid, that cannot be monetized without significant effort by the agency. To produce these documents, state agencies and CCH will be required to track and extract the required information for each individual, which could require system re-programing. DHS simply dismissed commenters' objections to the Final Rule on this basis. *See* 84 Fed. Reg. at 41,484 (this documentation "would require states and counties to develop new work processes, require system updates," and "potentially major automation costs"). Applicants have been asked to provide documents that may not currently exist.

Second, the Manual adds at least two new negative factors not supported by the evidence that the agency cited as alleged justification for the Rule: (1) applying for legal permanent resident ("LPR") status; and (2) using a sponsor who has received any public benefits in the past. First, the Manual assigns negative weight to the fact that an individual is applying for LPR status on the basis that applicants seeking to adjust to LPR status are more likely to receive public benefits than non-immigrants.[12] The agency's own data, however, "suggest[s] comparable levels of program participation by native-born individuals, foreign-born individuals, and noncitizens." 83 Fed. Reg.

[11] By requiring the monetization of in-kind benefits, the Form also clearly contradicts Defendants' assertion that DHS will not consider the value of SNAP benefits in the public charge determination. Part 3, Item Number 18 of the Form requires applicants to provide the monetary value of each listed public benefit—including SNAP—that they have ever received or are currently certified to receive in the future. The Form's plain language thus establishes that under the Final Rule as implemented, DHS will consider the exact value of SNAP benefits, rather than mere receipt, in direct violation of § 2017(b).

[12] Manual, Ex. C-1 ("In general, aliens seeking admission as LPRs are more likely to receive public benefits than nonimmigrants because they intend to reside permanently in the United States and LPRs are eligible for more public benefits than nonimmigrants.").

at 51,161. Second, the Manual adds a sponsor's receipt of public benefits as a new negative factor in the totality of circumstances inquiry.[13] But the agency provides no support for how a *sponsor's* receipt of any public benefit, at any point in time and for any duration, could be a valid negative factor weighed against an individual *applicant*. Indeed, this addition makes little sense given that DHS collects evidence of sponsors' current ability to support the applicant at 125% of the Federal Poverty Level.[14] In short, DHS provides no analysis or support for its conclusion that a sponsor's previous receipt of *any* public benefit somehow bears upon an individual applicant's self-sufficiency. Accordingly, these two new factors further demonstrate that the Rule as implemented by DHS is arbitrary and capricious. *Tripoli Rocketry Ass'n v. Bureau of Alcohol, Tobacco, & Firearms*, 437 F.3d 75, 81 (D.C. Cir. 2006) ("To survive review under the arbitrary and capricious standard, an agency must examine the relevant data and articulate a satisfactory explanation for its action . . . .") (internal citations and quotations omitted).

Plaintiffs have more than sufficiently alleged that the Final Rule is arbitrary and capricious. While Defendants disagree with that conclusion, that disagreement is not a basis for dismissal. Rather, that disagreement will be resolved at summary judgment or trial.

V. ICIRR Has Stated a Valid Claim for Violation of the Equal Protection Clause.

ICIRR has properly stated a claim for violation of the equal protection clause, sufficiently alleging that that the defendants "were motivated by a discriminatory purpose" in promulgating the Final Rule that DHS knew would have "a discriminatory effect." *Chavez v. Ill. State Police*,

[13] Manual, Ex. C-2 at 7–8 ("The following provide for less positive weight . . . Sponsor's receipt of public benefits in the United States.").

[14] The sponsor must already meet stringent income requirements under IIRIRA by providing their most recent federal income tax returns and a written statement. 8 U.S.C. §§ 1183a(a)(1)(A), (f)(1)(E), (f)(6)(A). IIRIRA does not consider a sponsor's previous receipt of any public benefits as a factor in determining their eligibility, running into direct conflict with what Defendants demand here. This is further evidence that the Final Rule is contrary to law, discussed *supra*.

251 F.3d 612, 635–36 (7th Cir. 2001). To show a discriminatory purpose, a plaintiff must allege that a defendant possessed "more than simple knowledge that a particular outcome is the likely consequence of an action" and "at least in part" selected a "particular course of action because of … its adverse effects upon an identifiable group." *Alston v. City of Madison*, 853 F.3d 901, 907 (7th Cir. 2017) (internal citations and quotation marks omitted). Although courts generally invalidate agency or legislative action only if it is "arbitrar[y] or irrational[]"—*i.e.*, rational basis review—once a plaintiff shows that "a discriminatory purpose has been a motivating factor in the decision, this judicial deference is no longer justified." *Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 263–66 (explaining that courts generally give legislators and administrators wide latitude to "balanc[e] numerous competing considerations," but "racial discrimination is not just another competing consideration").

ICIRR easily meets this showing. It alleges that the Final Rule was motivated by a discriminatory purpose: to disparately harm, deny a change in status to, and exclude immigrants of color and Latinos. Compl. ¶¶ 171–187. ICIRR has alleged that Defendants and the Administration sought inaccurately to paint immigrants of color as a population disproportionately reliant on public benefits, and not included within the class of white European immigrants welcomed in the United States. *Id*. ¶¶ 173–180. Further, ICIRR has alleged that the Defendants knew that the Final Rule would overwhelmingly harm non-white immigrants. *Id*. ¶¶ 173, 182, 184. ICIRR also has alleged that the Final Rule was among a long list of policies by the Administration and Defendants also aimed at discriminating against and excluding from this country immigrants of color and Latino immigrants. *Id*. ¶ 181. Finally, ICIRR has plausibly pleaded that the promulgation of the Rule *already* has had the discriminatory effect sought by the Defendants and that harm will only continue. *Id.* ¶¶ 133–36. These allegations more than adequately support

ICIRR's claim that Defendants acted with discriminatory purpose in advancing the Final Rule, as "the dots [are] connected" between the protected classes harmed and Defendants' motivation to deem them public charges. *Swanson v. Citibank, N.A.*, 614 F.3d 400, 405 (7th Cir. 2010). Further, ICIRR need not prove that every action or motive by the Defendants was discriminatory. Government action that is motivated, *even in part*, by the type of discriminatory intent that ICIRR has alleged violates the Equal Protection Clause. *Arlington Heights*, 429 U.S. at 265.

In a failed attempt to secure rational basis review by claiming that ICIRR alleges only disparate impact, Defendants assert that ICIRR's recognition that the Final Rule is facially neutral means that ICIRR has failed to make a showing of discriminatory intent. Mot. at 40. Not so. ICIRR alleged that Defendants presented a facially neutral Rule, but that the Defendants' true agenda is to exclude immigrants of color from the United States. Compl. ¶¶ 182, 183. That is sufficient to state a claim, regardless of the facial neutrality of the Rule. Indeed, "[t]ime and again" this Court has held that a facially neutral law "may run afoul of the Equal Protection Clause if [it is] enacted or enforced with a discriminatory intent." *Hernandez v. Woodard*, 714 F. Supp. 963, 970 (N.D. Ill. 1989). Because ICIRR has pleaded facts alleging that DHS acted with discriminatory purpose in promulgating this rule, heightened scrutiny applies. *Miller v. Johnson*, 515 U.S. 900, 913 (1995) (holding that a statute is "subject to strict scrutiny under the Equal Protection Clause not just when [it] contain[s] express racial classification, but also when, though race neutral on [its face, it was] motivated by a racial purpose or object"); *Arlington Heights*, 429 U.S. at 265–66 (explaining that a "sensitive inquiry" into potential animus is required even when a statute is neutral on its face).

Trump v. Hawaii, 138 S. Ct. 2392 (2018), does not help Defendants here. Mot. at 41. The Court applied a deferential standard of review in that case because the Executive Order's stated purpose was to address national security concerns, and it involved the entry of noncitizens from

outside the United States, an area in which courts have granted deference to the Executive Branch. *Id*. at 2419–20; *but see Zivotofsky v. Kerry*, 135 S. Ct. 2076, 2090 (2015) (explaining that "it is Congress that makes laws" and "[t]he Executive is not free from the ordinary controls and checks of Congress merely because foreign affairs are at issue"). Here, DHS's Final Rule solely impacts immigrants who have already entered the United States, and DHS's stated purpose for the rule is not national security, but to promote self-sufficiency and conserve the public fisc. Mot. at 36. Indeed, DHS has never invoked a national security rationale for the Final Rule—either in the text of the Final Rule itself or in this litigation. Nor (even rationally) could it, given that every individual who is subject to DHS's public charge rule has already entered the United States.

To the extent DHS suggests that *all* equal protection challenges to agency or legislative action relating to immigration are subject to rational basis review, that is simply not correct. *See, e.g.*, *Sessions v. Morales-Santana*, 137 S. Ct. 1678, 1689–90 (2017) (applying *Arlington Heights* heightened scrutiny to gender-based discrimination in the immigration context); *New York v. U.S. Dep't. of Commerce,* 351 F. Supp. 3d 502, 666–67 (S.D.N.Y. 2019) (applying heightened scrutiny to the Department of Commerce's decision to add a citizenship question to the Census); *Ramos v. Nielsen*, 321 F. Supp. 3d 1083, 1125 (N.D. Cal. 2018) (applying heightened scrutiny to DHS's decision to end Temporary Protected Status for El Salvador, Nicaragua, Haiti, and Sudan, where the nine plaintiffs from those countries lived and worked in the United States); *Saget v. Trump*, 375 F. Supp. 3d 280, 374 (E.D.N.Y. 2019) (applying heightened scrutiny to DHS's decision to end Temporary Protected Status for Haiti, where plaintiffs were 11 individuals from Haiti living in the United States and one organization that provided wrap-around social services for Haitian families).

DHS also acknowledges that contemporary statements are relevant to a determination of discriminatory intent, Mot. at 42, but nonetheless claims that the cited discriminatory statements

do not relate to the Final Rule and are not for the most part from DHS officials. *Id.* at 42–43. But ICIRR in fact alleges discriminatory statements about the Final Rule from DHS officials and others involved in advancing it. For example, in the roll-out of the Final Rule *itself*, Defendant and USCIS Secretary Cuccinelli said that the Emma Lazarus quote on the Statue of Liberty, welcoming immigrants to the United States, was only meant to refer to "people coming from Europe." Compl. ¶ 174. Moreover, shortly after the complaint was filed, the Southern Poverty Law Center published a summary of some 900 messages from White House Senior Advisor and reported architect of the Final Rule, Stephen Miller. Mr. Miller's messages repeatedly cited to materials from websites espousing white nationalist and anti-immigrant viewpoints, including the portrayal of non-white immigrants as violent or threatening.[15] In addition to reflecting or promoting white nationalist sentiments, other emails produced in response to a Freedom of Information Act request by Politico show Mr. Miller pressuring former USCIS director Francis Cissna to issue the public charge rule as soon as possible, demonstrating that Mr. Miller himself was driving the Final Rule.[16] This evidence further cements ICIRR's allegations that the Final Rule was designed with a discriminatory purpose. In any event, even statements that are not "directly connected" to a specific policy in question can be evidence that official action was motivated by unlawful discriminatory purposes. *Batalla Vidal v. Nielsen*, 291 F. Supp. 3d 260, 277 (E.D.N.Y. 2018).

In addition, under *Arlington Heights*, a plaintiff can allege animus not only through the "contemporary statements by members of the decisionmaking body," but also more broadly by

[15] Michael Edison Hayden, *Emails Confirm Miller's Twin Obsessions: Immigrants and Crime*, Southern Poverty Law Center (Nov. 25, 2019), https://www.splcenter.org/hatewatch/2019/11/25/emails-confirm-millers-twin-obsessions-immigrants-and-crime.; *see also* Katie Rogers & Jason DeParle, *The White Nationalist Websites Cited by Stephen Miller*, N.Y. Times (Nov. 18, 2019), https://www.nytimes.com/2019/11/18/us/politics/stephen-miller-white-nationalism.html.

[16] Ted Hesson, *Emails Show Stephen Miller Pressed Hard to Limit Green Cards*, Politico (August 2, 2019, 4:19 PM), https://www.politico.com/story/2019/08/02/stephen-miller-green-card-immigration-1630406.

"the historical background of the decision" and "the specific sequence of events leading up to the challenged decision." *Arlington Heights*, 429 U.S. at 267–68. ICIRR also has met that burden by plausibly alleging that the discriminatory statements by President Trump, then-Acting Immigration and Customs Enforcement Director Mark Morgan, and White House senior advisor Stephen Miller were part of a broad anti-immigrant agenda that led to the creation of the Rule and directly influenced the Defendants. Compl. ¶¶ 173, 175–81. *See Batalla Vidal*, 291 F. Supp. 3d at 277 (holding that "racially charged" statements by President Trump, where he was alleged to have exerted influence over the agency decision at issue, were sufficient to show discriminatory intent to survive a motion to dismiss); *cf. Innovative Health Sys., Inc. v. City of White Plains*, 117 F.3d 37, 49 (2d Cir. 1997) ("[A] decision made in the context of strong, discriminatory opposition becomes tainted with discriminatory intent even if the decisionmakers personally have no strong views on the matter."). Essentially, the discriminatory motives of senior officials who influenced the creation of the Final Rule "cannot be laundered" through DHS officials and their process. *CASA de Maryland, Inc. v. Trump*, 355 F. Supp. 3d 307, 326 (D. Md. 2018). So long as ICIRR alleges, as it has done here, that racial animus is part of the causal chain in Defendants' decision, Defendants may not "cure[]" that action of "discriminatory taint" by presenting an "unprejudiced decision-maker" when the decisionmaker has been "manipulated or controlled by another who is motivated by discriminatory intent." *Id.* at 325 (citing *Staub v. Proctor Hospital*, 562 U.S. 411, 413, (2011)).[17]

DHS's reliance on *Contreras v. City of Chicago* is misplaced. 119 F.3d 1286 (7th Cir. 1997). In *Contreras*, the evidence was unclear as to whether the city was even aware of the discriminatory animus of two community members against a restaurant's Mexican employees

[17] ICIRR does not concede, however, that the decisionmakers here lacked racial animus.

when it took its own action against the restaurant's white owner, so it could not have been vulnerable to their influence. *Id.* at 1293. To the contrary here, Defendants' actions represent a broad and very public agenda to reduce the number of immigrants of color in the United States Compl. ¶ 173.

Finally, DHS's stated rationale for the rule, promoting self-sufficiency, is an effort to cloak discriminatory animus against non-white immigrants. Compl. ¶ 183. But even if self-sufficiency were part of the reason for the Rule, the Rule *still* would be unlawful because a discriminatory purpose is in the mix. A plaintiff need not show that the discriminatory purpose is the "sole[]" or even a "primary" motive for the action, just that it was "a motivating factor." *Arlington Heights*, 429 U.S. at 265–66. An agency may consider a broad array of competing considerations when reaching a decision—but "racial discrimination is not just another competing consideration." *Id.* at 265.

CONCLUSION

DHS has exploited the term "public charge" to issue the Final Rule to bar a new category of immigrants. Compl. ¶ 56. The Final Rule's new definition of public charge converts a narrow statutory bar to admission into a broad tool to exclude and deter thousands of immigrants from entry and/or obtaining permanent status, and from applying for the benefits Congress authorized them to receive. Defendants' actions harm the Plaintiffs and violate the APA and the Constitution.

For all these reasons, the motion to dismiss should be denied. The case should proceed to litigation on the merits of the Plaintiffs' claims.

Dated: March 13, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that on March 13, 2020, she caused the attached **Brief in Opposition to Defendants' Motion to Dismiss** to be served via the Court's ECF system and by email upon:

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EXHIBIT A

Declaration of Self-Sufficiency

Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS
Form I-944
OMB No. 1615-0142
Expires 10/31/2021

To be completed by an attorney or accredited representative (if any).			
☐ **Select this box if Form G-28 is attached.**	**Volag Number** (if any)	**Attorney State Bar Number** (if applicable)	**Attorney or Accredited Representative USCIS Online Account Number** (if any)

► **START HERE - Type or print in black ink.**

Part 1. Information About You

1. Your Current Legal Name (do not provide a nickname)

Family Name (Last Name) | Given Name (First Name) | Middle Name

2. U.S. Mailing Address

In Care Of Name (if any)

Street Number and Name | Apt. ☐ Ste. ☐ Flr. ☐ | Number

City or Town | State | ZIP Code

(USPS ZIP Code Lookup)

3. Alien Registration Number (A-Number) (if any)

► **A-**

4. USCIS Online Account Number (if any)

►

5. Date of Birth (mm/dd/yyyy)

6. Place of Birth

City or Town of Birth | Country of Birth

7. Country of Citizenship or Nationality

Part 2. Family Status (Your Household)

In this Part, you will be providing information about the individuals in your household. If you need additional space to complete any Item Number in this Part, use the space provided in **Part 9. Additional Information**. Please see the Instructions for who is included in your household. If not already provided with your Form I-485, provide evidence of your relationship to each individual (such as a birth certificate or marriage certificate). If you do not have evidence of a relationship to one or more members of the household, please submit a signed statement from such household member(s) or his or her legal guardian, if applicable.

1. Below, list yourself and all the individuals who are part of your household.

A. Family Name (Last Name) | Given Name (First Name) | Middle Name

Date of Birth (mm/dd/yyyy) | Relationship to you | Alien Registration Number (A-Number) (if any) ► **A-**

Does this individual live with you? ☐ Yes ☐ No

Is this individual filing an application for an immigration benefit with you or has this individual already filed an application? ☐ Yes ☐ No

---

B. Family Name (Last Name) | Given Name (First Name) | Middle Name

Date of Birth (mm/dd/yyyy) | Relationship to you | Alien Registration Number (A-Number) (if any) ► **A-**

Does this individual live with you? ☐ Yes ☐ No

Is this individual filing an application for an immigration benefit with you or has this individual already filed an application? ☐ Yes ☐ No

---

C. Family Name (Last Name) | Given Name (First Name) | Middle Name

Date of Birth (mm/dd/yyyy) | Relationship to you | Alien Registration Number (A-Number) (if any) ► **A-**

Does this individual live with you? ☐ Yes ☐ No

Is this individual filing an application for an immigration benefit with you or has this individual already filed an application? ☐ Yes ☐ No

---

D. Family Name (Last Name) | Given Name (First Name) | Middle Name

Date of Birth (mm/dd/yyyy) | Relationship to you | Alien Registration Number (A-Number) (if any) ► **A-**

Does this individual live with you? ☐ Yes ☐ No

Is this individual filing an application for an immigration benefit with you or has this individual already filed an application? ☐ Yes ☐ No

E. Total number of household members (including yourself):

Part 3. Your and Your Household Members' Assets, Resources, and Financial Status

In this Part, you will be providing information about your assets, resources, and financial status, as well as the assets, resources, and financial status of all other household members. If you need additional space to complete any Item Number in this Part, use the space provided in **Part 9. Additional Information**.

Household Income

1. List your and your household members', listed in **Part 2.**, total income from the most recent federal income tax returns, if any. See the Instructions for additional information.

A. Name (self or household member)

Family Name (Last Name) | Given Name (First Name) | Middle Name

Did you or your household member(s), whose income is being included, file a federal tax return? ☐ Yes ☐ No

If you and your household members did not file, select the reason for not filing, and provide an explanation.

☐ Plan to file the tax return before the due date for this year.

☐ Not required to file a tax return. (Provide an explanation.)

☐ Filed for an extension.

☐ Not going to file. (Provide an explanation.)

☐ Other

Federal Tax Year ☐ Total income from tax return or Item 1 on W-2 "Wages, tips, other compensation" (U.S. dollars) (if applicable) $

Explanation for Not Filing:

B. Name (self or household member)

Family Name (Last Name) | Given Name (First Name) | Middle Name

Did you or your household member, whose income is being included, file a Federal Tax Return? ☐ Yes ☐ No

If you and your household members did not file, select the reason for not filing, and provide an explanation.

☐ Plan to file the tax return before the due date for this year.

☐ Not required to file a tax return. (Provide an explanation.)

☐ Filed for an extension.

☐ Not going to file. (Provide an explanation.)

☐ Other

Federal Tax Year ☐ Total income from tax return or Item 1 on W-2 "Wages, tips, other compensation" (U.S. dollars) (if applicable) $

Explanation for Not Filing:

Part 3. Your and Your Household Member(s)'s Assets, Resources, and Financial Status (continued)

C. Name (self or household member)

Family Name (Last Name) | Given Name (First Name) | Middle Name

Did you or your household member, whose income is being included, file a Federal Tax Return? ☐ Yes ☐ No

If you and your household members did not file, select the reason for not filing, and provide an explanation.

☐ Plan to file the tax return before the due date for this year.

☐ Not required to file a tax return. (Provide an explanation.)

☐ Filed for an extension.

☐ Not going to file. (Provide an explanation.)

☐ Other

Federal Tax Year

Total income from tax return or Item 1 on W-2 "Wages, tips, other compensation" (U.S. dollars) (if applicable) $

Explanation for Not Filing:

2. Does any of the income from your or your household members' federal tax return(s) come from an illegal activity or source (such as proceeds from illegal gambling or illegal drug sales)? ☐ Yes ☐ No

3. If you answered "Yes" to **Item Number 2.**, what amount of income from your or your household members' federal tax returns is from an illegal activity? $

4. Does any of the income from your or your household members' federal tax return(s) come from public benefits as listed in the Instructions? ☐ Yes ☐ No

5. If you answered "Yes" to **Item Number 4.**, what amount of income from your or your household members' federal tax returns is from public benefits as listed in the Instructions? $

6. If you or your household members received additional income on a continuing weekly, monthly, or annual basis during the most recent tax year, and the income is **NOT** listed on the tax return, provide the amount of additional income (for example, child support). Attach evidence of the additional income. In addition, if you are a child, list any additional income or support available from your parent(s), legal guardian, or other individual providing at least 50 percent of your financial support that is not listed in their tax return.

A. Name of recipient (You or your household member's name):

Family Name (Last Name) | Given Name (First Name) | Middle Name

Type of Additional Income | Annual Amount Received $

Will you or your household member continue to receive this income in the future? ☐ Yes ☐ No

When do you anticipate you or your household member will stop receiving this additional income? (mm/dd/yyyy)

Total annual amount of additional income received (at the time of filing) $

Part 3. Your and Your Household Member(s)'s Assets, Resources, and Financial Status (continued)

B. Name of recipient (You or your household member's name)

Family Name (Last Name) | Given Name (First Name) | Middle Name

Type of Additional Income | Annual Amount Received $

Will you or your household member continue to receive this income in the future? ☐ Yes ☐ No

If you answered "No," when will you or your household member stop receiving this additional income? (mm/dd/yyyy)

Total annual amount of additional income received (at the time of filing) $

C. Name of recipient (You or your household member's name):

Family Name (Last Name) | Given Name (First Name) | Middle Name

Type of Additional Income | Annual Amount Received $

Will you or your household member continue to receive this income in the future? ☐ Yes ☐ No

If you answered "No," when will you or your household member stop receiving this additional income? (mm/dd/yyyy)

Total annual amount of additional income received (at the time of filing) $

D. Name of recipient (You or your household member's name):

Family Name (Last Name) | Given Name (First Name) | Middle Name

Type of Additional Income | Annual Amount Received $

Will you or your household member continue to receive this income in the future? ☐ Yes ☐ No

If you answered "No," when will you or your household member stop receiving this additional income? (mm/dd/yyyy)

Total annual amount of additional income received (at the time of filing) $

7. Is any of the additional income listed above from an illegal activity or source? (such as proceeds from illegal gambling or illegal drug sales) ☐ Yes ☐ No

8. If you answered "Yes" to **Item Number 7.**, what amount of additional annual income listed above is from an illegal activity? $

Part 3. Your and Your Household Member(s)'s Assets, Resources, and Financial Status (continued)

Your Household's Assets and Resources

For more information on what are considered assets and how you can demonstrate their value, please see the Form I-944 Instructions.

9. Provide the amount of assets and resources available to you and your household members in the table below. Attach evidence as provided in the Instructions.

If you are a child, provide any assets available from your parent(s), legal guardian, or other individual providing at least 50 percent of your financial support.

Name of Asset Holder (you or your household member)	**Type of Asset** (cash value)	**Amount** (U.S. dollars)
	Current Cash Value (U.S. dollars) $	
	TOTAL (U.S. dollars) $	

Liabilities/Debts

10. Provide a list of your liabilities and/or debts in the table below. Attach evidence showing these liabilities or debts.

Type of Liability or Debt	**Amount** (U.S. dollars)
Mortgages $	
Car Loans $	
Credit Card Debt $	
Education Related Loans $	
Tax Debts $	
Liens $	
Personal Loans $	
Other $	
TOTAL (U.S. dollars) $	

Credit Report and Score

Provide the information about your credit history. Provide documentation as provided in the Instructions.

11. Do you have a U.S. credit report?

☐ Yes. Provide a U.S. credit report generated within the last 12 months prior to the date of filing.

☐ No. Provide a credit agency report that demonstrates that you do not have a credit record or score.

Part 3. Your and Your Household Member(s)'s Assets, Resources, and Financial Status (continued)

12. Do you have a U.S. credit score? ☐ Yes ☐ No

If you answered "Yes," enter a credit score within the last 12 months and attach the credit score document.

13. If you have negative credit history or a low credit score in the United States reflected on your credit report, provide an explanation. For guidance on what constitutes negative credit history, please see the Instructions.

14. Have you **EVER** filed for bankruptcy, either in the United States or in a foreign country? ☐ Yes ☐ No

If you answered "Yes" to **Item Number 14.**, provide the information about each bankruptcy filing in **Item A.** - **C.** and provide evidence of the resolution of each bankruptcy.

A. Place of Filing

City | State or Country

Date (mm/dd/yyyy) | Type of Bankruptcy

☐ Chapter 7 ☐ Chapter 11 ☐ Chapter 13

B. Place of Filing

City | State or Country

Date (mm/dd/yyyy) | Type of Bankruptcy

☐ Chapter 7 ☐ Chapter 11 ☐ Chapter 13

C. Place of Filing

City | State or Country

Date (mm/dd/yyyy) | Type of Bankruptcy

☐ Chapter 7 ☐ Chapter 11 ☐ Chapter 13

Health Insurance

15. Do you currently have health insurance? ☐ Yes ☐ No

If you answered "Yes" to **Item Number 15.**, attach evidence of health insurance.

If you answered "No" to **Item Number 15.**, proceed to **Item D.**

A. If you answered "Yes" to **Item Number 15.**, did you receive a Premium Tax Credit or Advanced Premium Tax Credit under the Affordable Care Act, for the health insurance? ☐ Yes ☐ No

B. If you answered "Yes" to **Item Number 15.**, what is your total annual deductible or annual premium?

$

C. If you answered "Yes" to **Item Number 15.**, when does your health insurance terminate or date that it must be renewed?

(mm/dd/yyyy)

Part 3. Your and Your Household Member(s)'s Assets, Resources, and Financial Status (continued)

D. Have you enrolled or will soon enroll in health insurance but your health coverage has not started yet?

☐ Yes, I am enrolled ☐ I will soon enroll ☐ No

If you answered "Yes," attach a letter or other evidence from the insurance company showing that you have enrolled in or have a future enrollment date for health insurance and when your coverage begins.

If you receive federally-funded Medicaid, please list those benefits in **Items Numbers 15.** and **16.**

If you answered "No" to **Item Number 15.**, you may provide information on how you plan to pay for reasonably anticipated medical costs. If you need extra space to complete this section, use the space provided in **Part 9. Additional Information**.

Public Benefits

Provide the requested information and submit documentation, as outlined in the Instructions. If you need additional space to complete any **Item Number** in this Part, use the space provided in **Part 9. Additional Information**.

16. Have you **EVER** received, or are currently certified to receive in the future any of the following public benefits? (select **all** that apply).

☐ Yes, I have received, or I am currently certified to receive in the future the following benefits:

- ☐ Any Federal, State, local or tribal cash assistance for income maintenance
- ☐ Supplemental Security Income (SSI)
- ☐ Temporary Assistance for Needy Families (TANF)
- ☐ General Assistance (GA)
- ☐ Supplemental Nutrition Assistance Program (SNAP, formerly called "Food Stamps")
- ☐ Section 8 Housing Assistance under the Housing Choice Voucher Program
- ☐ Section 8 Project-Based Rental Assistance (including Moderate Rehabilitation)
- ☐ Public Housing under the Housing Act of 1937, 42 U.S.C. 1437 et seq.
- ☐ Federal-funded Medicaid

☐ No, I have not received any public benefits.

☐ No, I am not certified to receive in the future any of the above public benefits.

17. Have you disenrolled, withdrawn from, or requested to be disenrolled from the public benefit(s)? ☐ Yes ☐ No

Expected date of disenrollment (mm/dd/yyyy) _____

Part 3. Your and Your Household Member(s)'s Assets, Resources, and Financial Status (continued)

18. If you selected one or more public benefits in **Item Number 16.**, provide information about the public benefits in the space below. If you need additional space to complete any Item Number in this Part, use the space provided in **Part 9. Additional Information**. If a question does not apply, please enter N/A.

A. Type of Public Benefit

Agency that Granted the Public Benefit

Date You Started Receiving the Benefit or if Certified, Date You Will Start Receiving the Benefit or Date Your Coverage Starts (mm/dd/yyyy)

Date Benefit or Coverage Ended or Expires or is Expected to Expire (mm/dd/yyyy)

Amount Received $

B. Type of Public Benefit

Agency that Granted the Public Benefit

Date You Started Receiving the Benefit or if Certified, Date You Will Start Receiving the Benefit or Date Your Coverage Starts (mm/dd/yyyy)

Date Benefit or Coverage Ended or Expires or is Expected to Expire (mm/dd/yyyy)

Amount Received $

C. Type of Public Benefit

Agency that Granted the Public Benefit

Date You Started Receiving the Benefit or if Certified, Date You Will Start Receiving the Benefit or Date Your Coverage Starts (mm/dd/yyyy)

Date Benefit or Coverage Ended or Expires or is Expected to Expire (mm/dd/yyyy)

Amount Received $

19. If you answered "Yes" to **Item Number 16.**, do any of the following apply to you? (select all that apply) Provide the evidence listed in the Instructions if any of the following apply to you.

- ☐ I am enlisted in the U.S. Armed Forces, or am serving in active duty or in the Ready Reserve Component of the U.S. Armed Forces.
- ☐ I am the spouse or the child of an individual who is enlisted in the U.S. Armed Forces, or is serving in active duty or in the Ready Reserve Component of the U.S. Armed Forces.
- ☐ At the time I received the public benefits, I (or my spouse or parent) was enlisted in the U.S. Armed Forces, or was serving in active duty or in the Ready Reserve Component of the U.S. Armed Forces.
- ☐ At the time I received the public benefits, I was present in the United States in a status exempt from the public charge ground of inadmissibility and I received the public benefits during that time.
- ☐ At the time I received public benefits, I was present in the United States after being granted a waiver from the public charge ground of inadmissibility.
- ☐ I am the child of U.S. citizens whose lawful admission for permanent residence and subsequent residence in the legal and physical custody of my U.S. citizen parent will result in me automatically acquiring U.S. citizenship upon meeting the eligibility under INA 320.

Part 3. Your and Your Household Member(s)'s Assets, Resources, and Financial Status (continued)

☐ I am the child of U.S. citizens whose lawful admission for permanent residence will result automatically in my acquisition of citizenship upon finalization of adoption (and I satisfied the requirements applicable to adopted children under INA 101(b)(1)), in the United States by the U.S. citizen parent(s), upon meeting the eligibility criteria under INA 320.

☐ None of the above statements apply to me.

20. Have you received, applied for, or have been certified to receive federally-funded Medicaid in connection with any of following? (select all that apply)

Submit evidence as outlined in the Instructions.

☐ An emergency medical condition

☐ For a service under the Individuals with Disabilities Education Act (IDEA)

☐ Other school-based benefits or services available up to the oldest age eligible for secondary education under State law

☐ While you were under the age of 21

☐ While you were pregnant or during the 60-day period following the last day of pregnancy

☐ None of the above apply to me

21. Provide the applicable dates (mm/dd/yyyy) _____ to (mm/dd/yyyy) _____

22. Have you ever applied for any of the following public benefits and the application is currently pending or was denied?

☐ Yes ☐ No

23. If you answered "Yes" to **Item Number 22.**, provide the following information (select all that apply).

☐ I have a pending application for the following public benefits (select all that apply):

- ☐ Any Federal, State, local or tribal cash assistance for income maintenance
- ☐ Supplemental Security Income (SSI)
- ☐ Temporary Assistance for Needy Families (TANF)
- ☐ General Assistance (GA)
- ☐ Supplemental Nutrition Assistance Program (SNAP, formerly called "Food Stamps")
- ☐ Section 8 Housing Assistance under the Housing Choice Voucher Program
- ☐ Section 8 Project-Based Rental Assistance (including Moderate Rehabilitation)
- ☐ Public Housing under the Housing Act of 1937, 42 U.S.C. 1437 et seq.
- ☐ Federally-funded Medicaid

☐ I applied for and the application was denied (select all that apply):

- ☐ Any Federal, State, local or tribal cash assistance for income maintenance
- ☐ Supplemental Security Income (SSI)
- ☐ Temporary Assistance for Needy Families (TANF)
- ☐ General Assistance (GA)
- ☐ Supplemental Nutrition Assistance Program (SNAP, formerly called "Food Stamps")
- ☐ Section 8 Housing Assistance under the Housing Choice Voucher Program
- ☐ Section 8 Project-Based Rental Assistance (including Moderate Rehabilitation)
- ☐ Public Housing under the Housing Act of 1937, 42 U.S.C. 1437 et seq.
- ☐ Federally-funded Medicaid

Part 3. Your and Your Household Member(s)'s Assets, Resources, and Financial Status (continued)

24. Date you applied for any of the above listed public benefits (mm/dd/yyyy)

25. Did you withdraw your application(s) before being certified to receive the public benefit(s)? ☐ Yes ☐ No

26. Have you applied for or received a fee waiver when applying for an immigration benefit from USCIS? ☐ Yes ☐ No

If you answered "Yes" to **Item Number 26.**, provide the information below. Explain the circumstances that caused you to apply for a fee waiver and if those circumstances have changed in **Part 9. Additional Information**.

A. Date Fee Waiver Received (If you did not receive the fee waiver, write N/A) (mm/dd/yyyy)

Type of Immigrant Benefit (Form Number)

Receipt Number ►

B. Date Fee Waiver Received (If you did not receive the fee waiver, write N/A) (mm/dd/yyyy)

Type of Immigrant Benefit (Form Number)

Receipt Number ►

C. Date Fee Waiver Received (If you did not receive the fee waiver, write N/A) (mm/dd/yyyy)

Type of Immigrant Benefit (Form Number)

Receipt Number ►

Part 4. Your Education and Skills

1. Do you have an approved Form I-140 as an alien worker? ☐ Yes ☐ No

If you answered "Yes" to **Item Number 1.**, provide the receipt number and skip to **Part 5.**

Receipt Number ►

If you answered "No," proceed to **Item Number 2.**

Provide information about your education, occupational skills, and other related information. If you need additional space to complete any Item Number in this Part, use the space provided in **Part 9. Additional Information**.

2. Have you graduated high school or earned a high school equivalent diploma? ☐ Yes ☐ No

3. List your educational history below. Include all degrees attained (high school diploma, college degrees or equivalent, etc.). If you answered "No" to **Item Number 2.**, then list the highest grade completed. Provide documentation as provided in the Instructions.

A. Program/School Name

Degree/Certificate

Field of Study (if applicable)

Date Started (mm/dd/yyyy)

Date Ended (mm/dd/yyyy)

Credit Hours/Hours of Study Completed (if no degree or certificate completed)

Part 4. Your Education and Skills (continued)

B. Program/School Name | Degree/Certificate

Field of Study (if applicable) | Date Started (mm/dd/yyyy) | Date Ended (mm/dd/yyyy)

Credit Hours/Hours of Study Completed (if no degree or certificate completed)

C. Program/School Name | Degree/Certificate

Field of Study (if applicable) | Date Started (mm/dd/yyyy) | Date Ended (mm/dd/yyyy)

Credit Hours/Hours of Study Completed (if no degree or certificate completed)

D. Program/School Name | Degree/Certificate

Field of Study (if applicable) | Date Started (mm/dd/yyyy) | Date Ended (mm/dd/yyyy)

Credit Hours/Hours of Study Completed (if no degree or certificate completed)

4. Do you have any occupational skills? ☐ Yes ☐ No

If you answered "Yes" to **Item Number 4.**, provide the information below. If you answered "No," skip to **Item Number 5.** Provide documentation as provided in the Instructions.

A. Certification/License Type/Occupational Skill | Date Obtained (mm/dd/yyyy)

Who Issued Your License or Certification? (if any) | License Number (if any)

Expiration/Renewal Date (mm/dd/yyyy) (if any)

B. Certification/License Type/Occupational Skill | Date Obtained (mm/dd/yyyy)

Who Issued Your License or Certification? (if any) | License Number (if any)

Expiration/Renewal Date (mm/dd/yyyy) (if any)

C. Certification/License Type/Occupational Skill | Date Obtained (mm/dd/yyyy)

Who Issued Your License or Certification? (if any) | License Number (if any)

Expiration/Renewal Date (mm/dd/yyyy) (if any)

Part 4. Your Education and Skills (continued)

5. Provide the following information about your skill with English and any other language in **Item A. - C.** below.

Provide documentation as provided in the Instructions.

A. Language

Certification/Courses Attended or Currently Attending (if any)

Date Certificate Obtained or Date Course Completed (mm/dd/yyyy)

Who Issued the Certification? (if any)

B. Language

Certification/Courses Attended or Currently Attending (if any)

Date Certificate Obtained or Date Course Completed (mm/dd/yyyy)

Who Issued the Certification? (if any)

C. Language

Certification/Courses Attended or Currently Attending (if any)

Date Certificate Obtained or Date Course Completed (mm/dd/yyyy)

Who Issued the Certification? (if any)

6. Retirement

A. Are you currently retired? ☐ Yes ☐ No

B. If you are retired, since when have you been retired? (mm/dd/yyyy)

7. Are you the primary caregiver, who is over the age of 18, for a child, or an elderly, ill or disabled individual in your household? ☐ Yes ☐ No

Part 5. Declarant's Statement, Contact Information, Certification, and Signature

NOTE: Read the **Penalties** section of the Form I-944 Instructions before completing this section. You must file Form I-944 while in the United States.

Declarant's Statement

NOTE: Select the box for either **Item A.** or **B.** in **Item Number 1.** If applicable, select the box for **Item Number 2.**

1. Declarant's Statement Regarding the Interpreter

A. ☐ I can read and understand English, and I have read and understand every question and instruction on this declaration and my answer to every question.

B. ☐ The interpreter named in **Part 6.** read to me every question and instruction on this declaration and my answer to every question in , a language in which I am fluent, and I understood everything.

2. Declarant's Statement Regarding the Preparer

☐ At my request, the preparer named in **Part 7.**, , prepared this declaration for me based only upon information I provided or authorized.

Part 5. Declarant's Statement, Contact Information, Certification, and Signature (continued)

Declarant's Contact Information

3. Declarant's Daytime Telephone Number

4. Declarant's Mobile Telephone Number (if any)

5. Declarant's Email Address (if any)

Federal Agency Disclosure and Authorizations

I authorize, as applicable, the Social Security Administration (SSA) to verify my Social Security number (to match my name, Social Security number, and date of birth with information in SSA records and provide the results of the match) to USCIS. I authorize SSA to provide explanatory information to USCIS as necessary.

I authorize, as applicable, the SSA, U.S. Department of Agriculture (USDA), U.S. Department of Health and Human Services (HHS), U.S. Department of Housing and Urban Development (HUD), and any other government agency that has received and/or adjudicated a request for a public benefit, as defined in 8 C.F.R. 212.21(b), submitted by me or on my behalf, and/or granted one or more public benefits to me, to disclose to USCIS that I have applied for, received, or have been certified to receive, a public benefit from such agency, including the type and amount of benefit(s), date(s) of receipt and any other relevant information provided to the agency for the purpose of obtaining such public benefit, to the extent permitted by law. I also authorize SSA, USDA, HHS, HUD, and any other U.S. Government agency to provide any additional data and information to USCIS, to the extent permitted by law.

I authorize, as applicable, custodians of records and other sources of information pertaining to my request for or receipt of public benefits to release information regarding my request for and/or receipt of public benefits, upon the request of the investigator, special agent, or other duly accredited representative of any federal agency authorized above, regardless of any previous agreement to the contrary.

I understand that the information released by records custodians and sources of information is for official use by the federal government, that the U.S. Government will use it only to review if I have received public benefits in regards to my eligibility for immigration benefits and to enforce immigration laws, and that the U.S. Government may disclose the information only as authorized by law.

Credit Reports and Scores Disclosure and Authorization

USCIS may require information from one or more consumer reporting agencies in order to obtain information, including credit reports and scores, in connection with a background investigation regarding your eligibility for immigration benefits.

I authorize USCIS to request, and any consumer reporting agency to provide, such reports.

NOTE: If you have a security freeze on your consumer or credit report file, we may not be able to access the information necessary to complete your investigation. To avoid any delays, you should expeditiously respond to any requests made to release the credit freeze.

Declarant's Certification

Copies of any documents I have submitted are exact photocopies of unaltered, original documents, and I understand that USCIS may require that I submit original documents to USCIS at a later date. Furthermore, I authorize the release of any information from any and all of my records that USCIS may need to determine my eligibility for the immigration benefit that I seek.

I furthermore authorize release of information contained in this declaration, in supporting documents, and in my USCIS records, to other entities and individual where necessary for the administration and enforcement of U.S. immigration law.

I understand that USCIS may require me to appear for an appointment to take my biometrics (fingerprints, photograph, and/or signature) and, at that time, if I am required to provide biometrics, I will be required to sign an oath reaffirming that:

1) I reviewed and understood all of the information contained in, and submitted with, my declaration; and

2) All of this information was complete, true, and correct at the time of filing.

Part 5. Declarant's Statement, Contact Information, Certification, and Signature (continued)

I certify, under penalty of perjury, that all of the information in my declaration and any document submitted with it were provided or authorized by me, that I reviewed and understand all of the information contained in, and submitted with, my declaration and that all of this information is complete, true, and correct.

Declarant's Signature

6. Declarant's Signature

Date of Signature (mm/dd/yyyy)

NOTE TO ALL DECLARANTS: If you do not completely fill out this declaration or fail to submit required documents listed in the Instructions, USCIS may deny your declaration.

Part 6. Interpreter's Contact Information, Certification, and Signature

Provide the following information about the interpreter.

Interpreter's Full Name

1. Interpreter's Family Name (Last Name)

Interpreter's Given Name (First Name)

2. Interpreter's Business or Organization Name (if any)

Interpreter's Mailing Address

3. Street Number and Name

Apt. Ste. Flr. Number

City or Town

State

ZIP Code

Province

Postal Code

Country

Interpreter's Contact Information

4. Interpreter's Daytime Telephone Number

5. Interpreter's Mobile Telephone Number (if any)

6. Interpreter's Email Address (if any)

Interpreter's Certification

I certify, under penalty of perjury, that:

I am fluent in English and _____ which is the same language specified in **Part 5.**, **Item B.** in **Item Number 1.**, and I have read to this declarant in the identified language every question and instruction on this declaration and his or her answer to every question. The declarant informed me that he or she understands every instruction, question, and answer on the declaration, including the **Declarant's Certification**, and has verified the accuracy of every answer.

Part 6. Interpreter's Contact Information, Certification, and Signature (continued)

Interpreter's Signature

7. Interpreter's Signature

Date of Signature (mm/dd/yyyy)

Part 7. Contact Information, Declaration, and Signature of the Individual Preparing this Declaration, if Other Than the Declarant

Provide the following information about the preparer.

Preparer's Full Name

1. Preparer's Family Name (Last Name)

Preparer's Given Name (First Name)

2. Preparer's Business or Organization Name (if any)

Preparer's Mailing Address

3. Street Number and Name

Apt. Ste. Flr. Number

City or Town

State

ZIP Code

Province

Postal Code

Country

Preparer's Contact Information

4. Preparer's Daytime Telephone Number

5. Preparer's Mobile Telephone Number (if any)

6. Preparer's Email Address (if any)

Preparer's Statement

7. **A.** ☐ I am not an attorney or accredited representative but have prepared this declaration on behalf of the declarant and with the declarant's consent.

B. ☐ I am an attorney or accredited representative and my representation of the declarant in this case

☐ extends ☐ does not extend beyond the preparation of this declaration.

NOTE: If you are an attorney or accredited representative, you may need to submit a completed Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, with this declaration.

Part 7. Contact Information, Declaration, and Signature of the Individual Preparing this Declaration, if Other Than the Declarant (continued)

Preparer's Certification

By my signature, I certify, under penalty of perjury, that I prepared this declaration at the request of the declarant. The declarant then reviewed this completed declaration and informed me that he or she understands all of the information contained in, and submitted with, his or her declaration, including the **Declarant's Declaration and Certification**, and that all of this information is complete, true, and correct. I completed this declaration based only on information that the declarant provided to me or authorized me to obtain or use.

Preparer's Signature

8. Preparer's Signature | Date of Signature (mm/dd/yyyy)

Part 8. Signature at Interview

NOTE: Do not complete Part 8. until the USCIS Officer instructs you to do so at the interview.

I swear (affirm) and certify under penalty of perjury under the laws of the United States of America that I know that the contents of this Form I-944, Declaration of Self-Sufficiency, subscribed by me, including the corrections made to this declaration, **numbered** _____ **through** _____, are complete, true, and correct. All additional pages submitted by me with this Form I-944, **on numbered pages** _____ **through** _____ are complete, true, and correct. All documents submitted at this interview were provided by me and are complete, true, and correct.

Subscribed to and sworn to (affirmed) before me

USCIS Officer's Printed Name or Stamp | Date of Signature (mm/dd/yyyy)

Declarant's Signature (sign in ink) | USCIS Officer's Signature (sign in ink)

Part 9. Additional Information

If you need extra space to provide any additional information within this declaration, use the space below. If you need more space than what is provided, you may make copies of this page to complete and file with this declaration or attach a separate sheet of paper. Type or print your name and A-Number (if any) at the top of each sheet; indicate the **Page Number, Part Number,** and **Item Number** to which your answer refers; and sign and date each sheet.

1. Family Name (Last Name) | Given Name (First Name) | Middle Name

2. A-Number (if any) ► **A-**

3. **A.** Page Number **B.** Part Number **C.** Item Number

D.

4. **A.** Page Number **B.** Part Number **C.** Item Number

D.

5. **A.** Page Number **B.** Part Number **C.** Item Number

D.

6. **A.** Page Number **B.** Part Number **C.** Item Number

D.

EXHIBIT B

Instructions for Declaration of Self-Sufficiency

Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS
Form I-944
OMB No. 1615-0142
Expires 10/31/2021

What Is the Purpose of Form I-944?

Form I-944, Declaration of Self-Sufficiency, is used by an individual to demonstrate that he or she is not inadmissible based on the public charge ground (Immigration and Nationality Act (INA) section 212(a)(4)). An alien is inadmissible under INA section 212(a)(4) if he or she is more likely than not at any time in the future to receive one or more public benefits, as defined in 8 CFR 212.21(b), for more than 12 months in the aggregate within any 36-month period (such that, for instance, receipt of two benefits in one month counts as two months).

Who Must File Form I-944?

You must file this form if you are filing Form I-485, Application to Register Permanent Residence or Adjust Status, and you are subject to the public charge ground of inadmissibility.

In general, each applicant who submits Form I-485 must submit his or her own Form I-944 if the applicant is subject to the public charge ground of inadmissibility.

How Is Form I-944 Used?

Form I-944 is used to determine whether you are inadmissible to the United States under INA section 212(a)(4) because there is a likelihood that you will become a public charge at any time in the future. We evaluate whether you are inadmissible by weighing all the positive and negative factors related to your age, health, family status, assets, resources and financial status, education and skills, prospective immigration status and period of stay. We also consider a Form I-864, Affidavit of Support Under Section 213A of the Act, if you are required to submit Form I-864 as part of your adjustment of status application. For more information on Form I-864, see **www.uscis.gov/i-864**.

Who Is Exempt from Filing Form I-944?

If you are exempt from the public charge ground of inadmissibility, you do not need to file Form I-944.

If you are applying for adjustment of status to that of a lawful permanent resident, you are exempt from the public charge ground of inadmissibility if you are adjusting:

1. As a VAWA self-petitioner;
2. As a Special Immigrant Juvenile;
3. As a Certain Afghan or Iraqi national;
4. As an Asylee;
5. As a Refugee;
6. As a victim of qualifying criminal activity (U Nonimmigrant) under INA section 245(m);
7. Under any category other than INA section 245(m) but you are in valid U nonimmigrant status at the time you file your application for adjustment of status. (This exemption only applies if, at the time of the adjudication of the Form I-485, you are still in valid U nonimmigrant status. If, at the time of adjudication of the Form I-485, you are no longer in valid U nonimmigrant status, you may be required to submit a Form I-944 and a Form I-864).

8. As a victim of human trafficking (T nonimmigrant) under section 245(l) of the INA;

9. Under any category other than INA section 245(l), but you either have a pending application for T nonimmigrant status (Form I-914) that sets forth a prima facie case for eligibility, or are in valid T nonimmigrant status at the time you file your application for adjustment of status. (This exemption only applies if your Form I-914 is still pending and deemed to be prima facie eligible, or you are in valid T nonimmigrant status when we adjudicate your adjustment of status application);

10. Under the Cuban Adjustment Act;

11. Under the Cuban Adjustment Act for battered spouses and children;

12. Based on dependent status under the Haitian Refugee Immigrant Fairness Act;

13. Based on dependent status under the Haitian Refugee Immigrant Fairness Act for battered spouses and children;

14. As a Lautenberg Parolee;

15. Under the Indochinese Parole Adjustment Act of 2000;

16. Based on continuous residence in the United States since before January 1, 1972 ("Registry");

17. Under the Amerasian Homecoming Act;

18. As a Polish or Hungarian Parolee;

19. As Nicaraguans and other Central Americans under section 203 of the Nicaraguan Adjustment and Central American Relief Act (NACARA);

20. As an American Indian Born in Canada (INA section 289) or the Texas Band of Kickapoo Indians of the Kickapoo Tribe of Oklahoma, Pub. L. 97-429 (Jan. 8, 1983); or

21. As a spouse, child, or parent of a deceased soldier under the National Defense Authorization Act (NDAA).

General Instructions

USCIS provides forms free of charge through the USCIS website. In order to view, print, or fill out our forms, you should use the latest version of Adobe Reader, which you can download for free at **http://get.adobe.com/reader/**.

Signature. Each declaration must be properly signed and filed. For all signatures on this declaration, USCIS will not accept a stamped or typewritten name in place of a signature. If you are under 14 years of age, your parent or legal guardian may sign the declaration on your behalf. A legal guardian may also sign for a mentally incompetent individual.

Validity of Signatures. USCIS will consider a photocopied, faxed, or scanned copy of the original, handwritten signature valid for filing purposes. The photocopy, fax, or scan must be of the original document containing the handwritten, ink signature.

Evidence. At the time of filing, you must submit all evidence and supporting documentation listed in the **What Evidence Must You Submit** and **Specific Instructions** sections of these Instructions. If you will be submitting the same documentation (such as tax return transcripts or birth certifications) for the I-485 or the I-864, you do not need to submit the documentation multiple times.

Copies. You should submit legible photocopies of documents requested, unless the Instructions specifically state that you must submit an original document. USCIS may request an original document at the time of filing or at any time during processing of an application, petition, or declaration. If USCIS requests an original document from you, it will be returned to you after USCIS determines it no longer needs your original.

NOTE: If you submit original documents when not required or requested by USCIS or the Immigration Court, **your original documents may be immediately destroyed after we receive them.**

Translations. If you submit a document with information in a foreign language, you must also submit a full English translation. The translator must sign a certification that the English language translation is complete and accurate, and that he or she is competent to translate from the foreign language into English. The certification must include the translator's signature. DHS recommends the certification contain the translator's printed name, the signature date, and the translator's contact information.

How To Fill Out Form I-944

1. Type or print legibly in black ink.
2. If you need extra space to complete any item within this declaration, use the space provided in **Part 9. Additional Information** or attach a separate sheet of paper. Type or print your name and Alien Registration Number (A-Number) (if any) at the top of each sheet; indicate the **Page Number**, **Part Number**, and **Item Number** to which your answer refers; and sign and date each sheet.
3. Answer all questions fully and accurately. If a question does not apply to you (for example, if you have never been married and the question asks, "Provide the name of your current spouse"), type or print "N/A" unless otherwise directed. If your answer to a question which requires a numeric response is zero or none (for example, "How many children do you have" or "How many times have you departed the United States"), type or print "None" unless otherwise directed.

Specific Instructions

Part 1. Information About You

Item Number 1. Your Current Legal Name. Provide your legal name, as shown on your birth certificate or legal name change document. If you have two last names, include both and use a hyphen (-) between the names, if appropriate. Type or print your last, first, and middle names in each appropriate field.

Item Number 2. U.S. Mailing Address. Provide a valid U.S. mailing address.

Item Number 3. Alien Registration Number (A-Number) (if any)**.** An Alien Registration Number, otherwise known as an "A-Number," is typically issued to people who apply for, or are granted, certain immigration benefits. In addition to USCIS, Immigration and Customs Enforcement (ICE), U.S. Customs and Border Protection (CBP), Executive Office of Immigration Review (EOIR), and the Department of State (DOS) may also issue an A-Number to certain foreign nationals. If you were issued an A-Number, type or print it in the spaces provided. If you have more than one A-Number, use the space provided in **Part 9. Additional Information** to provide the information. If you do not have an A-Number or if you cannot remember it, leave this space blank.

Item Number 4. USCIS Online Account Number (if any)**.** If you have previously filed an application or petition using the USCIS online filing system (previously called USCIS Electronic Immigration System (USCIS ELIS)), provide the USCIS Online Account Number you were issued by the system. You can find your USCIS Online Account Number by logging in to your account and going to the profile page. If you previously filed certain applications or petitions on a paper form through a USCIS Lockbox facility, you may have received a USCIS Online Account Access Notice issuing you a USCIS Online Account Number. You may find your USCIS Online Account Number at the top of the notice. If you were issued a USCIS Online Account Number, enter it in the space provided. The USCIS Online Account Number is not the same as an A-Number.

Item Number 5. Date of Birth. Enter your date of birth in mm/dd/yyyy format in the space provided. For example, type or print October 5, 1967 as 10/05/1967.

Item Number 6. Place of Birth. Enter the name of the city or town, and country where you were born. Type or print the name of the country as it was named when you were born, even if the country's name has changed or the country no longer exists.

Item Number 7. Country of Citizenship or Nationality. Enter the name of the country where you are a citizen. This is not necessarily the country where you were born. If you are stateless, type or print the name of the country where you were last a citizen or national. If you are a citizen or national of more than one country, type or print the name of the foreign country that issued your last passport.

Part 2. Family Status (Your Household)

USCIS will review your family status as a factor in the public charge inadmissibility determination, which includes an assessment of your household, as defined in 8 CFR 212.21(d). The term child includes stepchildren and adopted children, as provided in INA section 101(b)(1).

Item Number 1. Household. The following individuals are part of your household:

1. If you are 21 years of age or older, or under the age of 21 and married, list the following household members in **Part 2.**, as applicable:

- **A.** You;
- **B.** Your spouse, if physically residing with you;
- **C.** Your children (under the age of 21 and unmarried) physically residing with you;
- **D.** Your other children (under the age of 21 and unmarried) not physically residing with you for whom you provide or are required to provide at least 50 percent of financial support, as evidenced by a child support order or agreement, a custody order or agreement, or any other order or agreement specifying the amount of financial support to be provided by you;
- **E.** Any other individuals (including a spouse not physically residing with you) to whom you provide, or are required to provide, at least 50 percent of the individual's financial support, or who are listed as a dependent on your federal income tax return; and
- **F.** Any individual who provides to you at least 50 percent of your financial support, or who lists you as a dependent on his or her federal income tax return.

2. If you are a child (under the age of 21 and unmarried) list the following household members on the table in **Part 2.**, as applicable:

- **A.** You;
- **B.** Your children (under the age of 21 and unmarried) physically residing with you;
- **C.** Your other children (under the age of 21 and unmarried), not physically residing with you for whom you provide or are required to provide at least 50 percent of financial support, as evidenced by a child support order or agreement, a custody order or agreement, or any other order or agreement specifying the amount of financial support to be provided by you;
- **D.** Your parents, legal guardians, or any other individual providing or required to provide at least 50 percent of financial support to you as evidenced by a child support order or agreement, a custody order or agreement, or any other order or agreement specifying the amount of financial support to be provided by you;
- **E.** Your parents' or legal guardians' other children (under the age of 21 and unmarried) physically residing with you;
- **F.** Your parents' or legal guardians' other children (under the age of 21 and unmarried) not physically residing with you for whom the parent or legal guardian provides or is required to provide at least 50 percent of financial support, as evidenced by a child support order or agreement, a custody order or agreement, or any other order or agreement specifying the amount of financial support to be provided by the parents or legal guardians; and

G. Any other individual to whom your parents or legal guardians provide or other individuals provide, or are required to provide, at least 50 percent of financial support or who are listed as a dependent on your parents' or legal guardians' federal income tax return.

In addition to listing each household member's name (including yourself), also provide each individual's date of birth, relationship to you (for yourself, you must list "self"), A-Number (if any), and whether the individual is filing an immigration benefit application with you. If the individual is not filing an immigration benefit application with you, select "No" when asked "Is this individual filing an application for an immigration benefit with you or has this individual already filed an application?"

You will have at least one individual listed because you must include yourself.

Part 3. Your and Your Household Members' Assets, Resources, and Financial Status

Your assets, resources, and financial status are factors USCIS considers when deciding whether you are inadmissible based on the public charge ground.

Household Income

Item Number 1. Household Income. List your and your household members' annual gross (total) income from the most recent federal income tax returns, if any.

We will consider your household annual gross income, which includes your annual gross income, and any additional annual gross income from your household members listed in **Part 2.**

Your household's annual gross income should be at least 125 percent (100 percent if you are on active duty, other than in training, in the U.S. Armed Forces) of the Federal Poverty Guidelines for the most recent year as set by the U.S. Department of Health and Human Services (HHS) for the household size you listed in **Part 2.** See **https://aspe.hhs.gov/poverty-guidelines**.

If your household annual gross income is less than 125 percent of the Federal Poverty Guidelines based on your household size listed in **Part 2.**, you may demonstrate that the total value of your household's assets and resources is five times the difference between your household's annual gross income and 125 percent (100 percent if you are on active duty, other than in training, in the U.S. Armed Forces) of the Federal Poverty Guideline for your household size. However, if you are:

1. The spouse or child (who has reached the age of 18) of a U.S. citizen: You have to show that the value of your assets is at least three times the difference between your household's annual gross income and 125 percent (100 percent if you are on active duty, other than in training, in the U.S. Armed Forces) of the Federal Poverty Guidelines for your household size.
2. An orphan who will be adopted in the United States after you acquire permanent residence (or your parents will seek a formal recognition of the adoption abroad) and you will acquire citizenship under INA 320: You have to show that the value of your assets exceeds the difference between your household's annual gross income and 125 percent (100 percent if you are on active duty, other than in training, in the U.S. Armed Forces) of the Federal Poverty Guideline for your household size.

Provide the information regarding assets and resources in **Item Number 9.**

You must provide an IRS transcript(s) of your Federal income tax returns for the most recent tax year and the IRS transcript(s) of the household members whose income you are including. For information on obtaining federal income tax transcripts without a fee, see **https://www.irs.gov/individuals/get-transcript**. You may also use IRS Form 4506-T to request tax transcripts from the IRS. You are not required to have the IRS certify the transcript or photocopy unless we specifically instruct you to do so; a plain transcript is acceptable.

If you are filing Form I-944 between January 1 and April 15 of any year, and you and/or your household members have not yet filed the current year's federal income tax return, submit IRS transcripts for the most recent tax year. At the time of interview on your application, an officer may request the tax return transcripts for the current tax year. Submit any tax transcripts for any income taxes that you or your household members filed with any foreign government if you or your household members were residing outside of the United States during any time within the most recent tax year and you were not required to file a federal individual income tax return with the United States government.

If you are a child (under the age of 21 and unmarried) and are listed as a dependent on your parents' income tax return, or if you are listed as a dependent on anyone else's income tax return, list the total income from that individual's tax returns and submit that individual's IRS tax transcripts for the most recent federal tax year in accordance with the instructions above.

If you were not required to file a federal income tax return in any of the prior three tax years, you may provide Form W-2 or a Social Security Statement providing a history of total annual income (gross income). If you provide a W-2 or Social Security Statement provide the listed wages, tips, or other compensation.

If you need extra space to complete this section, use the space provided in **Part 9. Additional Information**.

Item Number 6. Additional Income. If you or your household members received additional income on a continuing weekly, monthly or annual basis for the most recent tax year (for example, child support, unemployment benefits) and the income was **NOT** included in your or your household member's tax return transcript, provide the amount of additional income and all information requested. For information on non-taxable income see **https://www.irs.gov/pub/irs-pdf/p525.pdf**. Also, provide evidence of the additional income from any source in the United States or outside the United States in U.S. dollars.

Do not list income from any public benefits, as defined in 8 CFR 212.21(b) that you or your household members received as it is not counted towards income. Do not list any income listed in **Item Number 1.**, **Household Income**.

Item Numbers 7. and **8.** Identify whether any of the additional income comes from an illegal activity or source such as proceeds from illegal gambling or illegal drug sales or other activities and identify the amount.

Your Household's Assets and Resources

Item Number 9. Assets. List only the assets that can be converted into cash within 12 months. Provide the value of any asset held in the United States or outside the United States, in U.S. dollars.

If you or a household member owns a home, you may include the net value of your or the household member's home as an asset. The net value of the home is the appraised value of the home, minus the sum of all loans secured by a mortgage, trust deed, or other lien on the home. If you wish to include the net value of your or your household member's home, then you must include documentation demonstrating that you or the household member owns it, a recent appraisal by a licensed appraiser, and evidence of the amount of all loans secured by a mortgage, trust deed, or other lien on the home.

You may not include the net value of an automobile unless you or your household member shows that you or your household member have/has more than one automobile, and at least one automobile is not included as an asset.

If you list assets or resources, submit evidence of the value of your or your household member(s)'s assets. You must include the name of the asset holder, a description of the asset, proof of ownership, and the basis for the owner's claim of its net cash value. Evidence of assets and resources include:

1. Checking and savings account statements;
2. Annuities;
3. Stocks and bonds (cash value)/certificates of deposit;
4. Retirement accounts and educational accounts;
5. Net cash value of real estate holdings; and
6. Any other evidence of substantial assets that can be easily converted into cash.

If you need extra space to complete this section, use the space provided in **Part 9. Additional Information**.

For checking and savings accounts, you must provide account statements from the bank(s) covering at least 12 months prior to filing the application. You can also provide any documentation from the household members' assets. For additional information, see **www.uscis.gov/greencard/public-charge**.

Liabilities/Debts

Item Number 10. Liabilities/Debts. Provide a list of all your liabilities or debts. Examples of liabilities and debts include mortgages, car loans, unpaid child or spousal support, unpaid taxes, and credit card debt. Provide documentation for each liability or debt. If you need extra space to complete this section, use the space provided in **Part 9. Additional Information**.

Credit Report and Score

Item Numbers 11. - 12. Credit Card Score and Report. USCIS will review your U.S. credit report and the credit score submitted with your declaration, if available, to review your financial status. If it is available, identify the latest credit score number.

You can obtain a free credit report once a year under the Fair Credit Reporting Act from each one of the three credit reporting agencies. You are only required to provide one credit report from any of the three nationwide credit reporting agencies, Equifax, Experian, and TransUnion. See **https://www.usa.gov/credit-reports** for more information. If there are any errors in the credit report, you should provide evidence from the credit reporting agency that demonstrates that you reported the error and that the error is under investigation or has been resolved.

If you have any negative history in your credit report, you may provide an explanation in the designated area of this form. Negative credit history may include delinquent accounts, debt collections, charge-offs (delinquent accounts deemed unlikely to be collected), repossession, foreclosure, judgments, tax liens, or bankruptcy on your credit report.

If you do not have a credit report or credit score, provide documentation that demonstrates that you do not have a credit report or score with a credit bureau. You may provide evidence of continued payment of bills if there is no credit report or credit score.

Item Number 14. Bankruptcy. Indicate whether or not you have ever filed for bankruptcy. If you answered "Yes," list all the times you filed for bankruptcy, including the type (if filed in the United States), place of filing and the date of the bankruptcy. Provide evidence of the resolution of each bankruptcy, if available.

Health Insurance

Item Number 15. Health Insurance. If you currently have health insurance, provide the following:

1. For each policy, a copy of each policy page showing the terms and type of coverage and individuals covered; or
2. Letter on the company letter head or other evidence from your health insurance company stating you are currently enrolled in health insurance and providing the terms and type of coverage; or
3. The latest Form 1095-B, Health Coverage; Form 1095-C, Employer-Provided Health Insurance Offer and Coverage (if available) with evidence of renewal of coverage for the current year.

A health insurance card is insufficient without effective and expiration dates. If you answered "No," to **Item Number 15.** proceed to **Item D.**

Item A. Indicate whether or not you have received a Premium Tax Credit or Advanced Premium Tax Credit Tax Credit for your health insurance. Provide a transcript copy of the IRS Form 8963 Report of Health Insurance Provider Information, Form 8962 Premium Tax Credit (PTC), and a copy of Form 1095A, Health Insurance Marketplace Statement.

Item B. Provide the annual amount of deductible or annual premium of your health insurance. Provide documentation of the amount of deductible or premium.

Item C. Indicate the date when your insurance terminates or when it must be renewed and provide documentation.

Item D. Indicate whether you have enrolled or soon will enroll in health insurance but your insurance coverage has not started yet. If you answer "Yes," provide a letter or other evidence from the insurance company showing that you have enrolled in or have a future enrollment date for a health insurance plan. The letter or other evidence must include the terms, the type of coverage, that you are the individual covered, and the date when the coverage begins.

If you answered "No," you may provide information on how you plan to pay for reasonably anticipated medical costs.

If you have federally funded Medicaid for health insurance, please include the benefit in **Item Numbers 15.** and **16.**

USCIS reviews Form I-693, Report of Medical Examination and Vaccination Record, or Form DS-2053, Medical Examination for Immigrant or Refugee Applicant, to determine whether you have a medical condition that will affect your ability to work, attend school, or care for yourself.

You may provide any documentation that may outweigh any negative factors related to a medical condition, including but not limited to, information provided by a civil surgeon or a panel physician on a medical examination. You may also provide an attestation from your treating physician regarding the prognosis of any medical condition and whether this medical condition impacts your ability to work or go to school. You may also provide evidence of sufficient assets and resources to pay the costs of any reasonably anticipated medical treatment.

Public Benefits

Item Number 16. Application, Receipt or Certification of Public Benefits.

Please provide the information requested about your (the alien's) application or certification for, or receipt of, public benefits. Please provide all requested information about each public benefit regardless of amount or duration, as USCIS will calculate the duration of the public benefit. If you received public benefits intermittently throughout the year, provide each instance separately. For example, if you received SNAP from January to February and June to December, provide the information as two separate instances. If you require additional space, please use the space provided in **Part 9. Additional Information**.

Receipt means when a benefit-granting agency provides or has provided a public benefit to you whether in the form of cash, voucher, services, or insurance coverage. USCIS will only consider the amount received by or attributable to the alien.

In the space provided, indicate whether you have ever received, currently receive, or are currently certified to receive any of the following public benefits. (You must respond even if you fall within one of categories of individuals for whom receipt of public benefits will not be considered – see the table below for evidence that must be provided to document that you qualify for the exclusion). Please select all that apply.

1. Any Federal, State, local, or tribal cash assistance for income maintenance;

2. Supplemental Security Income (SSI);

3. Temporary Assistance for Needy Families (TANF);

4. Federal, State or local cash benefit programs for income maintenance (often called "General Assistance" in the State context, but which may exist under other names);

5. Supplemental Nutrition Assistance Program (SNAP, or formerly called "Food Stamps");

6. Section 8 Housing Assistance under the Housing Choice Voucher Program;

7. Section 8 Project-Based Rental Assistance (including Moderate Rehabilitation);

8. Public Housing under the Housing Act of 1937, 42 U.S.C. 1437 et seq.; and

9. Federally funded Medicaid.

NOTE: For benefits received before October 15, 2019, you only need to report receipt of SSI, cash, TANF, General Assistance, and benefits received for long-term institutionalization. You do not need to report receipt of SNAP, Medicaid (other than Medicaid benefits used to fund long-term institutionalization), Section 8 Housing Assistance under the Housing Choice Voucher Program, Section 8 Project-Based Rental Assistance (including Moderate Rehabilitation), and Public Housing under the Housing Act of 1937, 42 U.S.C. 1437 et seq. if received before October 15, 2019. These benefits were excluded from consideration for public charge inadmissibility purposes under the guidance in place before October 15, 2019, and therefore will not be considered if received only before October 15, 2019.

If you have not received any public benefits, please select that option.

If you are not currently certified to receive any public benefits, please select that option.

In the space provided, indicate whether you have ever applied for a public benefit listed above but your application was denied or rejected; provide documentation of the denial or rejection.

As part of the public charge inadmissibility determination under INA section 212(a)(4), we will generally consider any past, current receipt, or certification of future receipt of public benefits.

NOTE: To the extent that States give the same name to their Federal Medicaid program and the state-only funded health insurance program, aliens will not be required to report the receipt of the state-only funded health insurance.

The following is a list of exclusions from the public benefit receipt consideration listed above. If you belong to one of the following categories, submit the evidence listed for the applicable categories.

Exclusion	Description	Evidence you must submit to qualify for exclusion (as applicable)
U.S. Armed Forces Service Members	At the time the public benefit was received at the time you file your Form I-485, or at time of adjudication of your Form I-485, you are: • An alien enlisted in the U.S. Armed Forces, or serving in active duty or in the Ready Reserve component of the U.S. Armed Forces; or • The spouse or child of an individual enlisted in the U.S. Armed Forces, or serving in active duty or in the Ready Reserve component of the U.S. Armed Forces.	• Service Members: Certified evidence of alien's enlistment/service issued by the authorizing official of the executive department in which service member is serving. • Spouses and Children of Service Members: Form DD-1173, United States Uniformed Services Identification and Privilege Card (Dependent).
Federally-funded Medicaid	• Receipt by an alien under 21 years of age; • The recipient of Medicaid payment(s) for an "emergency medical condition"; • The receipt of Medicaid for services provided under the Individuals with Disabilities Education Act (IDEA); • The receipt of Medicaid for school-based non-emergency benefits for children who are of an age eligible for secondary education as determined under state law; or • Receipt during pregnancy and during the 60-day period after the last day of the pregnancy.	• A statement with information regarding the "emergency medical condition" determination (if applicable); • Documentation of these payments under the IDEA or school-based service; or • Pregnancy verification letter from medical professional including estimated duration of pregnancy.

Exclusion	Description	Evidence you must submit to qualify for exclusion (as applicable)
Children Acquiring U.S. Citizenship	• Child of U.S. citizens whose lawful admission for permanent residence and subsequent residence in the legal and physical custody of their U.S. citizen parent will result in the child's automatically acquiring U.S. citizenship upon meeting the eligibility under INA 320; or • Child of U.S. citizens whose lawful admission for permanent residence will result automatically in the child's acquisition of citizenship upon finalization of adoption (if the child satisfies the requirements applicable to adopted children under INA 101(b)(1)), in the United States by the U.S. citizen parent(s), upon meeting the eligibility criteria under INA 320.	• Evidence that you are the child of a United States citizen, who will be eligible for acquisition of citizenship under INA 320 and the evidentiary requirements to meet the qualifications to demonstrate citizenship. For more information, see Form N-600, Application for Certificate of Citizenship.

Public Benefits While in an Immigration Category Exempt from Public Charge	• Received public benefits while in a category that is exempt from public charge inadmissibility; or
	• Received public benefits while in a category for which you received a waiver for public charge inadmissibility.
		• Information that evidences your status or that you received a waiver for the public charge ground of inadmissibility, such as:
		  • Approval notice (such as Form I-797, Notice of Action); or
		  • Form I-94, Arrival/Departure Record.

Documentation

If you have applied for, are currently receiving, previously received, or are certified to receive in the future any of the public benefits listed above, provide evidence in the form of a letter, notice, certification, or other agency document that contains the following:

1. Your name;

2. Name and contact information for the public benefit-granting agency;

3. Type of public benefit;

4. Date you were authorized to start receiving the benefit or date your coverage starts; and

5. Date benefit or coverage ended or expires (mm/dd/yyyy) (if applicable).

If you have applied for, are currently receiving, previously received or are certified to receive public benefits but an exclusion applies, please indicate whether an exclusion applies to you in **Item Number 19.** and provide the evidence listed in the chart above to demonstrate why the benefit should not be considered.

Item Number 17. Disenrollment from Public Benefits. If you answer "Yes" to **Item Number 17.**, please provide evidence of your disenrollment or your request to disenroll if the public benefit granting agency has not processed your request.

Item Number 25. Withdrawing a Public Benefit Application. If you had applied for a public benefit but withdrew your application, provide evidence demonstrating that the public benefit granting agency received your request to withdraw the application.

You may also submit evidence from a federal, state, local, or tribal agency administering a public benefit that shows that you do not qualify or would not qualify for such public benefit by virtue of, for instance, your annual gross household income or your prospective immigration status.

Item Number 26. Applications for or Receipt of Immigration Fee Waivers. Indicate whether or not you have ever applied for or received a fee waiver when applying for an immigration benefit. If you answered "Yes," list when you received the fee waiver, the type of immigration benefit for which you applied, and the receipt number for the application or petition for which the fee was waived.

If you need extra space to complete this section, use the space provided in **Part 9. Additional Information**. You may also use this section to explain the circumstances that caused you to apply for a fee waiver and if those circumstances have changed. If those circumstances have changed, please provide any documents you may have to support your explanations.

Part 4. Your Education and Skills

USCIS will review employment and unemployment information you provide on your Form I-485. Please see the Form I-485 and Instructions for additional information. If you are currently unemployed because you are the primary caretaker of a child or elderly or disabled individual, which has limited your ability to work, provide a statement in **Part 9. Additional Information**. In addition, provide any documentation establishing you are the primary caretaker (for example legal guardianship court order), that an individual resides in your household, and the individual's age and/or the individual's medical condition (if applicable).

Item Number 1. Form I-140 Approval. Indicate whether you have an approved Form I-140. If you answered "Yes," skip this Part and proceed to **Part 5.** If you answered "No," proceed to **Item Number 2.**

Item Numbers 2. and 3. Indicate whether or not you have graduated high school or earned an equivalent of a high school diploma or whether you have a higher degree. If you did not graduate high school, list the highest grade completed. Also, list all educational programs you attended in the space provided, such as high school, college, or other higher education. Provide the name of the program or school, the degree or certificate received, if any, the field of study, and the start and end dates. Enter your degree program start date and end date in mm/dd/yyyy format. If your degree program does not start and end on a specific day (i.e. "dd"), provide your best estimate of the day. If it is available, you must provide evidence of any degrees or certifications received, such as transcripts, diplomas, degrees, and trade profession certificates or equivalent (if this evidence is unavailable, you should provide an explanation and, if possible, evidence of unavailability such as a letter from the issuing institution). Foreign education should include an evaluation of equivalency to education or degrees acquired at accredited colleges, universities, or educational institutions in the United States. For a list of organizations that provide equivalency evaluation, see the National Association of Credential Evaluation Services (NACES), at **http://www.naces.org/members.htm**.

Item Number 4. Occupational Skills. List any relevant occupational skills, including any certifications and licenses, when these were obtained, who issued the certification or license, license numbers, and expiration/renewal date. This includes but is not limited to workforce skills, training, licenses for specific occupations or professions, and certificates documenting mastery or apprenticeships in skilled trades or professions. If it is available, you must provide evidence of any training, licenses for specific occupations or professions, and certificates documenting mastery or apprenticeships in skilled trades or professions (if this evidence is unavailable, you should provide an explanation and, if possible, evidence of unavailability such as a letter from the issuing institution).

Item Number 5. English and Other Language Skills. Provide information on certifications or courses in English and other languages in addition to English. Provide any evidence of language certifications, including any language or literacy classes you took or are currently taking, or other evidence of proficiency. Native English speakers, or other language if applicable, must provide documentation of language proficiency including language certifications. Evidence of language certification may include high school diplomas and college degrees showing that the native language was studied for credit.

Item Number 6. Retirement. Indicate whether or not you are retired and provide the date of retirement, if applicable. If you have not already provided the information in **Part 3. Item Number 9.**, provide evidence of income from pensions, social security or other retirement benefits.

Part 5. Declarant's Statement, Contact Information, Certification, and Signature

Item Numbers 1. - 6. Select the appropriate box to indicate whether you read this declaration yourself or whether you had an interpreter assist you. If someone assisted you in completing the declaration, select the box indicating that you used a preparer. Further, you must sign and date your declaration and provide your daytime telephone number, mobile telephone number (if any), and email address (if any). Every declaration **MUST** contain the signature of the declarant (or parent or legal guardian, if applicable). A stamped or typewritten name in place of a signature is not acceptable.

Part 6. Interpreter's Contact Information, Certification, and Signature

Item Numbers 1. - 7. If you used anyone as an interpreter to read the Instructions and questions on this declaration to you in a language in which you are fluent, the interpreter must fill out this section; provide his or her name, the name and address of his or her business or organization (if any), his or her daytime telephone number, his or her mobile telephone number (if any), and his or her email address (if any). The interpreter must sign and date the declaration.

Part 7. Contact Information, Declaration, and Signature of the Individual Preparing this Declaration, if Other Than the Declarant

Item Numbers 1. - 8. This section must contain the signature of the individual who completed your declaration, if other than you, the declarant. If the same individual acted as your interpreter **and** your preparer, that person should complete both **Part 6.** and **Part 7.** If the individual who completed this declaration is associated with a business or organization, that person should complete the business or organization name and address information. Anyone who helped you complete this declaration **MUST** sign and date the declaration. A stamped or typewritten name in place of a signature is not acceptable. If the individual who helped you prepare your declaration is an attorney or accredited representative, he or she may also need to submit a completed Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, along with your declaration.

Part 8. Signature at Interview

Do not complete this part. The USCIS Officer will ask you to complete this part at your interview.

Part 9. Additional Information

Item Numbers 1. - 6. If you need extra space to provide any additional information within this declaration, use the space provided in **Part 9. Additional Information**. If you need more space than what is provided in **Part 9.**, you may make copies of **Part 9.** to complete and file with your declaration or attach a separate sheet of paper. Type or print your name and A-Number (if any) at the top of each sheet; indicate the **Page Number**, **Part Number**, and **Item Number** to which your answer refers; and sign and date each sheet.

We recommend that you print or save a copy of your completed declaration to review in the future and for your records.

What Evidence Must You Submit?

You must submit all initial evidence requested in these Instructions with your Form I-944. If you fail to submit required evidence, your application may be rejected or denied in accordance with 8 CFR 103.2(a) and (b)(1) and these Instructions.

What Is the Filing Fee?

There is currently no filing fee for Form I-944.

Filing Form I-944 With Form I-485

Submit Form I-944 at the same time you submit Form I-485.

Where To File?

Please see our website at **www.uscis.gov/I-944** or visit the USCIS Contact Center at **www.uscis.gov/contactcenter** to connect with a USCIS representative for the most current information about where to file this declaration.

If you are in proceedings in Immigration Court (that is, if you have been served with Form I-221, Order to Show Cause and Notice of Hearing; Form I-122, Notice to Applicant for Admission Detained for Hearing Before an Immigration Judge; Form I-862, Notice to Appear; or Form I-863, Notice of Referral to Immigration Judge, that DHS filed with the Immigration Court), you should file this declaration with the appropriate Immigration Court.

The DHS attorney will provide you with Pre-Order Filing Instructions regarding background and security investigations. You must also submit a copy to USCIS. Please see our website at **www.uscis.gov/laws/immigration-benefits-eoir-removal-proceedings** or call our National Contact Center for the most current information about where to file the copy of the application that you file with the Immigration Court.

Address Change

A declarant who is not a U.S. citizen must notify USCIS of his or her new address within 10 days of moving from his or her previous residence. For information on filing a change of address, go to the USCIS website at **www.uscis.gov/addresschange**.

If you are already in proceedings in Immigration Court, you must also notify the Immigration Court on EOIR Form 33/IC, Alien's Change of Address Form/Immigration Court, of any changes of address within five days of the change in address. The EOIR Form 33/IC is available on the EOIR website at **http://www.justice.gov/eoir/formslist.htm**.

NOTE: Do not submit a change of address request to the USCIS Lockbox facilities because the Lockbox does not process change of address requests.

Processing Information

You must be physically present in the United States and provide a United States address to file this declaration. Your declaration will be rejected if it is not signed. You may fix the problem and resubmit Form I-944. Form I-944 is not considered properly filed until it is accepted.

Initial Processing. Once your declaration is accepted, it will be checked for completeness. If you do not completely fill out this declaration, you will not establish a basis for your eligibility and your declaration may be rejected or denied.

Requests for More Information. USCIS may request that you provide more information or evidence to support your declaration. We may also request that you provide the originals of any copies you submit. If we request an original document from you, it will be returned to you after USCIS determines it no longer needs your original.

Requests for Interview. We may request that you appear at a USCIS office for an interview based on your declaration. At the time of any interview or other appearance at a USCIS office, we may require that you provide your biometrics to verify your identity and/or update background and security checks.

For hearings before the Immigration Court: Interpreters are provided, at the government's expense, to individuals whose comprehension of the English language is inadequate to fully understand and participate in removal proceedings. In general, the Immigration Court endeavors to accommodate the language needs of all respondents and witnesses. The Immigration Court will arrange for an interpreter both during the individual calendar hearing and, if necessary, the master calendar hearing. The Immigration Court is also committed to addressing the needs of individuals with disabilities and/or impairments. If your case is pending before the Immigration Court, you should notify the court of any such need before your first hearing with an immigration judge. The Immigration Court considers all requests to address such needs on a case-by-case basis.

USCIS Forms and Information

To ensure you are using the latest version of this declaration, visit the USCIS website at **www.uscis.gov** where you can obtain the latest USCIS forms and immigration-related information.

Instead of waiting in line for assistance at your local USCIS office, you can schedule an appointment online at **www.uscis.gov**. Select "Make an Appointment" and follow the screen prompts to set up your appointment. Once you finish scheduling an appointment, the system will generate an appointment notice for you.

Penalties

If you knowingly and willfully falsify or conceal a material fact or submit a false document with your Form I-944, we will deny your Form I-944 and may deny any other immigration benefit. In addition, you will face severe penalties provided by law and may be subject to criminal prosecution.

USCIS Compliance Review and Monitoring

By signing this declaration, you have stated under penalty of perjury (28 USC section 1746) that all information and documentation submitted with this declaration are complete, true, and correct. You also authorize the release of any information from your records that USCIS may need to determine your eligibility for the immigration benefit you are seeking and consent to USCIS verifying such information.

DHS has the authority to verify any information you submit to establish eligibility for the immigration benefit you are seeking at any time. USCIS' legal authority to verify this information is in 8 U.S.C. sections 1103, 1155, and 1184, and 8 CFR Parts 103, 204, 205, and 214. To ensure compliance with applicable laws and authorities, USCIS may verify information before or after your case is decided.

Agency verification methods may include, but are not limited to: review of public records and information; contact through written correspondence, the Internet, facsimile, other electronic transmission, or telephone; unannounced physical site inspections of residences and locations of employment; and interviews. USCIS will use information obtained through verification to assess your compliance with the laws and to determine your eligibility for an immigration benefit.

Subject to the restrictions under 8 CFR 103.2(b)(16), USCIS will provide you with an opportunity to address any adverse or derogatory information that may result from a USCIS compliance review, verification, or site visit after a formal decision is made on your case or after the agency has initiated an adverse action which may result in revocation or termination of an approval.

DHS Privacy Notice

AUTHORITIES: The information requested on this declaration, and the associated evidence, is collected under the Immigration and Nationality Act (INA) section INA 212(a)(4).

PURPOSE: The primary purpose for providing the requested information on this form is to provide documentation to demonstrate that you are not likely to become a public charge. DHS uses the information you provide to grant or deny the immigration benefit you are seeking.

DISCLOSURE: The information you provide is voluntary. However, failure to provide the requested information, including your Social Security number (if applicable), and any requested evidence, may delay a final decision or result in denial of your form.

ROUTINE USES: DHS may share the information you provide on this declaration and any additional requested evidence with other Federal, state, local, and foreign government agencies and authorized organizations. DHS follows approved routine uses described in the associated published system of records notices [DHS/USCIS-001 - Alien File, Index, and National File Tracking System and DHS/USCIS-007 - Benefits Information System] and the published privacy impact assessments [DHS/USCIS/PIA-016a Computer Linked Application Information Management System and Associated Systems,] which you can find at **www.dhs.gov/privacy**. DHS may also share this information, as appropriate, for law enforcement purposes or in the interest of national security.

Paperwork Reduction Act

An agency may not conduct or sponsor an information collection, and an individual is not required to respond to a collection of information, unless it displays a currently valid Office of Management and Budget (OMB) control number. The public reporting burden for this collection of information is estimated at 4.5 hours per response, including the time for reviewing instructions, gathering the required documentation and information, completing the declaration, preparing statements, attaching necessary documentation, and submitting the declaration. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: U.S. Citizenship and Immigration Services, Regulatory Coordination Division, Office of Policy and Strategy, 20 Massachusetts Ave NW, Washington, DC 20529-2140; OMB No. 1615-0142. **Do not mail your completed Form I-944 to this address.**

GROUP EXHIBIT C

C-1

U.S. Citizenship and Immigration Services

USCIS Policy Manual

Current as of March 11, 2020

Volume 8 - Admissibility

Part G - Public Charge Ground of Inadmissibility

Chapter 12 - Prospective Immigration Status and Expected Period of Admission

ALERT: This policy guidance applies to all applicants and petitioners as of February 24, 2020. (The Supreme Court of the United States stayed the last nationwide injunction of the Inadmissibility on Public Charge Grounds Final Rule on January 27, 2020 and stayed the statewide injunction in Illinois on February 21, 2020.) Certain classes of aliens are exempt from the public charge ground of inadmissibility (such as refugees, asylees, certain VAWA self-petitioners, U petitioners, and T applicants) and therefore, are not subject to the final rule. For more information about the classes of aliens who are exempt from the Final Rule, click here.

Officers consider the applicant's immigration status and duration of admission sought by the alien, and the classification the alien is seeking, as part of the public charge inadmissibility determination.

A. Standard

USCIS considers the immigration status that the alien seeks and the expected period of admission as it relates to the alien's ability to financially support him or herself during the duration of the alien's stay.[1] An adjustment of status applicant's prospective immigration status is that of a lawful permanent resident (LPR). The expected period of stay is permanent and is generally considered to be a negative factor. In general, aliens seeking admission as LPRs are more likely to receive public benefits than nonimmigrants because they intend to reside permanently in the United States and LPRs are eligible for more public benefits than nonimmigrants. An applicant may otherwise establish that he or she is not eligible for public benefits because of his or her immigration status or income.[2]

B. Summary of Immigration Status and Expected Period of Stay

The following table provides a list of positive and negative factors related to the prospective immigration status and expected period of stay.

Applicant's Immigration Status and Expected Period of Admission

Positive Factor	Negative Factor

Positive Factor	Negative Factor
• The applicant provides evidence of ineligibility for public benefits based on immigration status or expected period of stay	• Evidence that the alien will be in the United States for a long or indefinite period (such as when seeking LPR status) that in conjunction with the alien's insufficient income, assets, and resources may make the alien more likely than not to become a public charge and more likely than not to be eligible for public benefits at any time in the future

C. Evidence

Generally, the alien's prospective immigration status is established through his or her immigration benefit request or application for admission. As a result, there is no additional evidence relating to this factor that an alien must provide.

Footnotes

1. [^] See 8 CFR 212.22(b)(6).

2. [^] See 8 CFR 212.22(b)(4)(ii)(E)(3).

Legal Authorities

10 U.S.C. 504(b) - Citizenship or residency

15 U.S.C. 1681 - Congressional findings and statement of purpose

21 U.S.C. 802 - Definitions

21 U.S.C. 841 - Prohibited acts A

22 CFR 40.51 - Labor certification

29 CFR 570 - Child labor regulations, orders and statements of interpretation

29 U.S.C. 213(c) - Child labor requirements

31 U.S.C. 9304-9308 - Sureties and surety bonds

31 U.S.C. 9305 - Authority and revocation of authority of surety corporations

38 U.S.C 1965 - Definitions

42 CFR 34.4 - Medical notifications

42 U.S.C. 1382c - Definitions

42 U.S.C. 413 - Quarter and quarter of coverage

42 U.S.C. 416(l) - Retirement age

7 CFR 273 - Certification of eligible households

8 CFR 1.2 - Definitions

8 CFR 1.3 - Lawfully present aliens for purposes of applying for Social Security benefits

8 CFR 1003.14 - Jurisdiction and commencement of proceedings

8 CFR 1003.1 - Organization, jurisdiction, and powers of the Board of Immigration Appeals

8 CFR 103.6 - Surety bonds

8 CFR 204.5 - Petitions for employment-based immigrants

8 CFR 212.20-212.23 - Applicability of public charge inadmissibility; Definitions; Public charge determination; Exemptions and waivers for the public charge ground of inadmissibility

8 CFR 212.21(b) - Public Benefits

8 CFR 212.4 - Applications for the exercise of discretion under section 212(d)(1) and 212(d)(3)

8 CFR 213.1 - Admission under bond or cash deposit

8 CFR 213a - Affidavits of support on behalf of immigrants

8 CFR 214.2 - Special requirements for admission, extension, and maintenance of status

8 CFR 214.2 - Special requirements for admission, extension, and maintenance of status

8 CFR 235 - Inspection of persons applying for admission

8 CFR 245.11 - Adjustment of aliens in S nonimmigrant classification

8 CFR 292 - Representation and appearances

8 CFR 293.1 - Computation of interest

8 U.S.C. 1363 - Deposit of and interest on cash received to secure immigration bonds

8 U.S.C. 1601-1646 - Restricting welfare and public benefits for aliens

8 U.S.C. 1611 - Aliens who are not qualified aliens ineligible for Federal public benefits

8 U.S.C. 1612 - Limited eligibility of qualified aliens for certain Federal programs

8 U.S.C. 1613 - Five-year limited eligibility of qualified aliens for Federal means-tested public benefit

8 U.S.C. 1641 - Definitions

Final Specification of Community Programs Necessary For Protection Of Life Or Safety Under Welfare Reform Legislation, 66 FR 3613 (Jan. 16, 2001) (Final rule)

INA 101 - Definitions

INA 101(a)(15) - Nonimmigrant classifications

INA 201 - Worldwide level of immigration

INA 203 - Allocation of immigrant visas

INA 208 - Asylum

INA 212(a)(4) - Public charge

INA 212(d) - Temporary admission of nonimmigrants

INA 213 - Admission of certain aliens on giving bond or undertaking; return upon permanent departure

INA 235 - Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing

INA 237(a)(5) - Public charge (deportable aliens)

INA 239, 8 CFR 239 - Initiation of removal proceedings

INA 245(j) - Adjustment to permanent resident status

INA 248, 8 CFR 248 - Change of nonimmigrant classification

INA 289 - Application to American Indians born in Canada

Inadmissibility on Public Charge Grounds, 84 FR 41292 (Aug. 14, 2019) (Final rule)

Pub. L. 104-193 - Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996

Pub. L. 104-208 - Illegal Immigration Reform and Immigrant Responsibility Act of 1996

Pub. L. 106-395 - Child Citizenship Act of 2000

Pub. L. 111-293 - Help Haitian Adoptees Immediately to Integrate Act of 2010

Pub. L. 111-8 - Section 602(b), Title VI of the Afghan Allies Protection Act of 2009

Pub. L. 113-4 - 127 Stat 54 of the Violence Against Women Reauthorization Act of 2013

Pub. L. 89-732 - Cuban Refugees Adjustment of Status

Section 11, 26 Stat 1084 of the Immigration Act of 1891

Section 212(a)(15), 66 Stat 163, 183 of the Immigration and Nationality Act of 1952

Sections 1-2, 22 Stat 214 of the Immigration Act of 1882

Forms

G-28, Notice of Entry of Appearance as Attorney or Accredited Representative

I-129CW, Petition for a CNMI-Only Nonimmigrant Transitional Worker

I-130, Petition for Alien Relative

I-134, Affidavit of Support

I-356, Request for Cancelation of the Public Charge Bond

I-539A, Supplemental Information for Application to Extend/Change Nonimmigrant Status

I-864, Affidavit of Support Under Section 213A of the INA

I-864A, Contract Between Sponsor and Household Member

I-864EZ, Affidavit of Support Under Section 213A of the INA

I-864W, Intending Immigrant's Affidavit of Support Exemption

I-944, Declaration of Self-Sufficiency

I-945, Public Charge Bond

Appendices

Applicability of INA 212(a)(4) to Employment-Based Adjustment of Status Applications

Appendix: Applicability of INA 212(a)(4) to Employment-Based Adjustment of Status Applications

Appendix: Applicability of INA 212(a)(4) to Employment-Based Adjustment of Status Applications

Applicability of INA 212(a)(4) to Family-Based Adjustment of Status Applications

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Appendix: Applicability of INA 212(a)(4) to Family-Based Adjustment of Status Applications

Applicability of INA 212(a)(4) to Other Applicants

Appendix: Applicability of INA 212(a)(4) to Other Applicants

Appendix: Applicability of INA 212(a)(4) to Other Applicants

Applicability of INA 212(a)(4) to Refugee, Asylee, and Parolee Adjustment of Status Applications

Appendix: Applicability of INA 212(a)(4) to Refugee, Asylee, and Parolee Adjustment of Status Applications

Appendix: Applicability of INA 212(a)(4) to Refugee, Asylee, and Parolee Adjustment of Status Applications

Applicability of INA 212(a)(4) to Special Immigrant Adjustment of Status Applications

Appendix: Applicability of INA 212(a)(4) to Special Immigrant Adjustment of Status Applications

Appendix: Applicability of INA 212(a)(4) to Special Immigrant Adjustment of Status Applications

Eligibility for Public Benefits

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Appendix: Eligibility for Public Benefits

Totality of the Circumstances Framework

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Appendix: Totality of the Circumstances Framework

POLICY ALERT - Implementation of Guidance on Inadmissibility on Public Charge Grounds

February 24, 2020

This update incorporates into Volumes 2, 8, and 12 policy guidance that U.S. Citizenship and Immigration Services (USCIS) announced February 5, 2020, implementing the Inadmissibility of Public Charge Grounds Final Rule. This guidance is in effect as of February 24, 2020 and applies to all applications and petitions postmarked on or after that date, including in Illinois. (On February 21, 2020, the Supreme Court of the United States stayed the last remaining injunction in the State of Illinois, allowing DHS to implement the final rule nationwide.) Certain classes of aliens are exempt from the public charge ground of inadmissibility (such as refugees, asylees, certain VAWA self-petitioners, U petitioners, and T applicants) and therefore, are not subject to the Final Rule. For more information about the classes of aliens who are exempt from the Final Rule, click here.

Read More

AFFECTED SECTIONS

2 USCIS-PM A.4 - Chapter 4 - Extension of Stay and Change of Status

8 USCIS-PM G - Part G - Public Charge Ground of Inadmissibility

12 USCIS-PM D.2 - Chapter 2 - Lawful Permanent Resident (LPR) Admission for Naturalization

POLICY ALERT - Public Charge Ground of Inadmissibility

February 05, 2020

U.S. Citizenship and Immigration Services (USCIS) is issuing guidance in the USCIS Policy Manual to address the final rule on the public charge ground of inadmissibility. This policy guidance is effective on February 24, 2020, and will apply to all applicants and petitioners filing applications and petitions for adjustment of status, extension of stay, and change of status, except for applicants and petitioners in the State of Illinois, whose cases will be adjudicated under prior policy, including the 1999 Interim Field Guidance and AFM Ch. 61.1. For additional information, see Public Charge Inadmissibility Determinations in Illinois. Certain classes of aliens are exempt from the public charge ground of inadmissibility (such as refugees, asylees, certain VAWA self-petitioners, U petitioners, and T applicants) and therefore, are not subject to the Inadmissibility on Public Charge Grounds final rule. For more information about the classes of aliens who are exempt from the final rule, click here.

Read More

AFFECTED SECTIONS

2 USCIS-PM A.4 - Chapter 4 - Extension of Stay and Change of Status

8 USCIS-PM G - Part G - Public Charge Ground of Inadmissibility

12 USCIS-PM D.2 - Chapter 2 - Lawful Permanent Resident (LPR) Admission for Naturalization

Technical Update - Replacing the Term “Foreign National”

October 08, 2019

This technical update replaces all instances of the term “foreign national” with “alien” throughout the Policy Manual as used to refer to a person who meets the definition provided in INA 101(a)(3) [“any person not a citizen or national of the United States”].

Read More

AFFECTED SECTIONS

1 USCIS-PM - Volume 1 - General Policies and Procedures

2 USCIS-PM - Volume 2 - Nonimmigrants

6 USCIS-PM - Volume 6 - Immigrants

7 USCIS-PM - Volume 7 - Adjustment of Status

8 USCIS-PM - Volume 8 - Admissibility

9 USCIS-PM - Volume 9 - Waivers

10 USCIS-PM - Volume 10 - Employment Authorization

11 USCIS-PM - Volume 11 - Travel and Identity Documents

12 USCIS-PM - Volume 12 - Citizenship and Naturalization

Current as of March 11, 2020

C-2

Appendix: Totality of the Circumstances Framework

Totality of the Circumstances Framework

Step-by-Step Approach
Important Note: If the applicant is required to submit an Affidavit of Support Under Section 213A of the INA and fails to submit such an Affidavit of Support or if that Affidavit of Support does not meet the requirements of section 213A of the Act and 8 CFR 213a, the applicant is inadmissible as likely to become a public charge. In this instance, the officer must not conduct a totality of circumstances assessment and deny the adjustment of status application.
Step 1. Evaluate all of the facts, circumstances, and evidence in the record to determine whether factors in the analysis are positive or negative. Some factors may be interrelated. • Any factor that decreases the applicant's future likelihood of receiving one or more public benefits above the threshold (more than 12 months in the aggregate in a 36-month period (such that, for instance, receipt of two benefits in 1 month counts as 2 months) is positive. • Any factor that increases the applicant's future likelihood of receiving one or more public benefits above threshold is negative.
Step 2. Weigh all factors individually and cumulatively. Assess the weighted degree to which each factor that is negative or positive.[1] • Certain enumerated factors will weigh heavily in favor of finding that an alien is not likely to become a public charge or finding that an alien is likely to become a public charge. • The weight given to an individual factor not designated a heavily weighted factor depends on the particular facts and circumstances of the case and the relationship of the individual factor to other factors in the analysis. • Multiple factors operating together will carry more weight to the extent those factors in tandem show that the alien is more or less likely than not to become a public charge in the future.

[1] The extent to which the factor alone and in relation to other factors affects the likelihood that the alien will or will not receive one or more public benefits, as defined in 8 CFR 212.21(b), at any time in the future for more than 12 months in the aggregate within any 36-month period (such that, for instance, receipt of two benefits in 1 month counts as 2 months).

Appendix: Totality of the Circumstances Framework

Totality of the Circumstances Framework

Step-by-Step Approach
Step 3. Determine whether the applicant is likely or not likely to become a public charge at any time in the future. • *Not inadmissible based on public charge* – The applicant's positive factors outweigh the applicant's negative factors, such that the alien is not likely to receive one or more public benefits above the designated threshold at any time in the future. • *Inadmissible based on public charge* – The applicant's negative factors outweigh the alien's positive factors, such that the alien is more likely than not to receive one or more public benefits above the designated threshold at any time in the future.

Totality of the Circumstances Framework

Factor	Positive	Negative	Heavily Weighted Positive	Heavily Weighted Negative
Applicant's Age	• Age between 18 and 61	• Age 17 and younger • Age 62 and older	None	None
Applicant's Health	• No diagnosed medical issues	• Form I-693 (DOS medical examination report or any other medical documentation) lists a Class A	None	None

Appendix: Totality of the Circumstances Framework

Totality of the Circumstances Framework

Factor	Positive	Negative	Heavily Weighted Positive	Heavily Weighted Negative
		medical condition[2] or a Class B medical condition[3] that the civil surgeon, panel physician, or other medical professional indicates is significant enough to interfere with the applicant's ability to provide and care for him or herself, to attend school, or to work, or that is likely to require extensive medical treatment or institutionalization in the future.		

[3] See 42 CFR 34.2(e).

Appendix: Totality of the Circumstances Framework

Totality of the Circumstances Framework

Factor	Positive	Negative	Heavily Weighted Positive	Heavily Weighted Negative
Family Status	• The alien is able to support him or herself and his or her household members at or above 125 percent of the Federal Poverty Guidelines (FPG) (100 percent for active duty military, other than active duty for training, in the U.S. armed forces) for the alien's household size.	• The alien is not able to support him or herself and his or her household members at or above 125 percent of the FPG (100 percent for active duty military, other than active duty for training, in the U.S. armed forces) for the alien's household size.	None	None
Applicant's Assets, Resources, and Financial Status	• Current employment • Total household gross income at or above 125 percent of the FPG (100 percent for those on active duty, other than active duty for	• No or low income or the applicable equivalent assets • Request, certification of, or receipt of public benefits in the United States as defined	• The alien's household has income, assets, or resources, and support of at least 250 percent of the FPG • Private health insurance appropriate for the	• Receipt, certification of, or approval to receive public benefits for more than 12 months in any 36-month period starting before the application for adjustment of status, (calculate no

Appendix: Totality of the Circumstances Framework

Totality of the Circumstances Framework

Factor	Positive	Negative	Heavily Weighted Positive	Heavily Weighted Negative
	training, in the U.S. armed forces) • Financial resources that would make the applicant ineligible to obtain public benefits • Total household assets and resources in the applicable equivalent amount • Good, very good or exceptional credit score • Health insurance, not otherwise considered a public benefit, or sufficient income, assets or resources to pay for reasonably foreseeable medical costs	• Any bankruptcy filings within the last 2 years • Request or receipt of a fee waiver for immigration benefits • Poor credit score • No private health insurance or sufficient income, assets or resources to pay for reasonably foreseeable medical costs	expected period of admission, (not including health insurance for which the alien receives subsidies in the form of premium tax credits under the Patient Protection and Affordable Care Act, as amended)	earlier than February 24, 2020) • Medical condition and is uninsured and either lacks the prospect of obtaining private health insurance or lacks the financial resources to pay for reasonably foreseeable medical costs related to such medical condition

Appendix: Totality of the Circumstances Framework

Totality of the Circumstances Framework

Factor	Positive	Negative	Heavily Weighted Positive	Heavily Weighted Negative
Applicant's Education and Skills	• Attendance in elementary, middle, or high school • High school diploma or GED or equivalent • Higher education such as Bachelor's Degree, Master's Degree, or Doctoral Degree • Skills and certifications relevant to education • Basic English proficiency • Primary Caregiver • Other language skills in addition to English	• No high school diploma or GED or equivalent • No work experience • No occupational skills • Limited to no English language proficiency	• The alien is authorized to work and is currently employed in a legal industry with an annual income, excluding any income from illegal activities, of at least 250 percent of the FPG for the alien's household size	• The alien is not a full-time student and is authorized to work, but is unable to demonstrate current employment, recent employment history, or a reasonable prospect of future employment
Applicant's Immigration Status and Expected Period of Admission	• The applicant provides evidence of ineligibility for	• Evidence that the alien will be in the United States for a	None	None

Appendix: Totality of the Circumstances Framework

Totality of the Circumstances Framework

Factor	Positive	Negative	Heavily Weighted Positive	Heavily Weighted Negative
	public benefits based on immigration status or expected period of stay	long or indefinite period (such as when seeking LPR status) that in conjunction with the alien's insufficient income, assets, and resources may make the alien more likely than not to become a public charge and more likely than not to be eligible for public benefits at any time in the future		
Sponsor's Ability to Support	The following provide for more positive weight: • Sponsor's income and assets at or above 125 percent of the FPG (100 percent for active duty military, other than active duty for	The following provide for less positive weight: • Sponsor's receipt of public benefits in the United States • Sponsor has a bankruptcy filings • Sponsor received a fee waiver for	None	None

Appendix: Totality of the Circumstances Framework

Totality of the Circumstances Framework

Factor	Positive	Negative	Heavily Weighted Positive	Heavily Weighted Negative
	training, in the U.S. armed forces) • The applicant has a familial relationship with the sponsor	immigration benefits • Sponsor is sponsoring multiple applicants		
Previous Public Charge Inadmissibility	None	None	None	Having previously been found inadmissible or deportable on the public charge ground by an immigration judge or by the Board of Immigration Appeals