UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION

STATE OF TEXAS, ***Plaintiff*,** **v.** **ALEJANDRO MAYORKAS, *et al.*,** ***Defendants*.**	**Case No. 6:23-cv-00001** **Hon. Drew B. Tipton**

UNOPPOSED MOTION OF THE IMMIGRATION REFORM LAW INSTITUTE TO FILE BRIEF OF AMICUS CURIAE IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Pursuant to Fed. R. Civ. P. 7, the Immigration Reform Law Institute ("IRLI") respectfully requests this Court's leave to file the accompanying brief as *amicus curiae* in support of Plaintiff's motion for summary judgment, Doc. 40. Pursuant to Local Rules 7.1 and 7.2 IRLI's counsel has conferred with counsel for Plaintiff and Defendants and neither party objects to the filing of the attached *amicus* brief. Therefore, the motion is unopposed.

IRLI is a nonprofit 501(c)(3) public interest law firm dedicated both to litigating immigration-related cases in the interests of United States citizens and to assisting courts in understanding federal immigration law. IRLI has litigated or filed amicus curiae briefs in a wide variety of immigration-related cases. For more than twenty years the Board of Immigration Appeals has solicited supplementary briefing, drafted by IRLI staff, from the Federation of American Immigration Reform, of which IRLI is a supporting organization.

"'The extent, if any, to which an *amicus curiae* should be permitted to participate in a pending action is solely within the broad discretion of the district court.'" *Sierra Club v. Fed. Emergency Mgmt. Agency*, 2007 U.S. Dist, LEXIS 84230, at *2 (S.D. Tex. Nov. 14, 2007 (quoting *Waste Mgmt. of Pa., Inc. v. City of York*, 162 F.R.D. 34, 36 (M.D. Pa. 1995)). Unlike the corresponding appellate rules, the federal and local rules applicable here do not specifically address amicus briefs. Nonetheless, the appellate rules' criteria for granting leave to file amicus briefs may be looked to for guidance. The Advisory Committee Note to the applicable appellate rule explains that "the relevance of the matters asserted to the disposition of the case" is "ordinarily the most compelling reason for granting leave to file." Fed. R. App. P. 29, Advisory Committee Notes, 1998 Amendment.

IRLI submits that its proffered brief will bring the following relevant matters to the Court's attention:

- Showing that Texas's injuries are redressable even if this Court does not invalidate the rescission of the 2019 Rule because this Court may direct Defendants not to follow the prior, unlawful Field Guidance, but instead to conform to the statutory public charge definition.
- Describing the longstanding history of the public charge rule to elucidate the statute's meaning, and showing that the 2022 Rule is in excess of legitimately-delegated authority because, in disregarding large parts of the statute's sweep, the 2022 Rule fails to conform to the governing principle established by Congress in the statute, and conforms to no other congressional principle.

Because these issues are relevant to this Court's decision, IRLI's brief may aid the Court.

For the foregoing reasons, IRLI respectfully requests that the Court grant its motion for leave to file the accompanying brief as *amicus curiae*.

Dated: September 29, 2023

Respectfully submitted,

/s/ Gina M. D'Andrea

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CERTIFICATE OF CONFERENCE

I hereby certify that on September 18, 2023, I conferred with counsel for both Plaintiff and Defendants regarding this motion. Both parties informed me that they do not oppose the filing of the attached amicus brief in support of Plaintiff's motion for summary judgment.

/s/ Gina M. D'Andrea

CERTIFICATE OF SERVICE

I hereby certify that on September 29, 2023, a true and accurate copy of the foregoing document was filed electronically via CM/ECF and served on all counsel of record.

/s/ Gina M. D'Andrea

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STATE OF TEXAS, ***Plaintiff*,** **v.** **ALEJANDRO MAYORKAS, *et al.*,** ***Defendants*.**	**Case No. 6:23-cv-00001** **Hon. Drew B. Tipton**

IMMIGRATION REFORM LAW INSTITUTE'S BRIEF OF AMICUS CURIAE IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

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BACKGROUND

It has been the longstanding and continuous policy of the United States, dating back to the colonial period, to exclude aliens deemed likely to become public charges. *See* 5 Gordon *et al*., *Immigration Law and Procedure*, § 63.05[2] (Rel. 164 2018) ("Strong sentiments opposing the immigration of paupers developed in this country long before the advent of federal immigration controls."); JAMES R. EDWARDS, JR., PUBLIC CHARGE DOCTRINE: A FUNDAMENTAL PRINCIPLE OF AMERICAN IMMIGRATION POLICY 2 (Center for Immigration Studies 2001) (citing E.P. HUTCHINSON, LEGISLATIVE HISTORY OF AMERICAN IMMIGRATION POLICY, 1798-1965 (Univ. of Penn. Press, 1981)), *available at* https://cis.org/sites/cis.org/files/articles/2001/back701.pdf ("American colonists were especially reluctant to extend a welcome to impoverished foreigners[.] Many colonies protected themselves against public charges through such measures as mandatory reporting of ship passengers, immigrant screening and exclusion upon arrival of designated 'undesirables,' and requiring bonds for potential public charges."). This colonial policy was continued with the first federal immigration statute, which included a public charge ground of exclusion. Act of March 3, 1875, 18 Stat. 477 (excluding convicts and sex workers thought likely to become dependent on the public coffers for support). Indeed, Congress continued to apply and expand the grounds for public charge exclusions for the next two centuries.[1]

In 1996 Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), Pub. L. 104-108 (Sept. 30, 1996) and the Personal Responsibility and Work

[1] Immigration Act of 1882, 22 Stat. 214 (Aug. 3, 1882) (prohibiting the admission of "any person unable to take care of himself or herself without becoming a public charge."); Act of Mar. 3, 1891, 26 Stat. 1084 (excluding "paupers"); 1903 Amendments, 32 Stat. 1213 (excluding "professional beggars"); Act of Feb. 5, 1917, 39 Stat. 874 (excluding "vagrants"); Former INA §§ 212(a)(7), (8), and (15) (excluding aliens who were "likely to become a public charge"; were "paupers, professional beggars, [or] vagrants"; or suffered from a disease or condition that impacted their ability to earn a living).

Opportunity Act of 1996 ("PRWORA"), Pub. L. 104-193. These laws, which reflected Congress's response to the growing concerns of American citizens over aliens' access to public benefits, worked together to ensure the long-held policy of public charge inadmissibility continued. H.R. Rep. No. 104-828 (1996) (stating that authority delegated to States in this context "is to encourage States to implement the national immigration policy of assuring that aliens be self-reliant and not become public charges[, which has been] a fundamental part of U.S. immigration policy since 1882.").

IIRIRA limited public charge admissions by explicitly providing that "*[a]ny* alien who . . . is likely *at any time* to become a public charge is inadmissible." 8 U.S.C. § 1182(a)(4)(A) (emphasis added). To assist in enforcement of this policy, Congress listed the minimum factors to be considered. 8 U.S.C. § 1182(a)(4)(B). Congress explicitly recognized it was implementing this principle in PRWORA, stating that under the "national policy with respect to welfare and immigration[,] [s]elf-sufficiency has been a basic principle of United States immigration law since this country's earliest immigration statutes." 8 U.S.C. § 1601(1). The statute contains Congress's further acknowledgment that "[i]t continues to be the immigration policy of the United States that [1] aliens . . . not depend on public resources to meet their needs . . . and [2] the availability of public benefits not constitute an incentive for immigration to the United States." 8 U.S.C. § 1601(2). Importantly, Congress repeatedly noted that the availability of public benefits incentivizes illegal immigration and it was its express and manifest intent to lessen that incentive. 8 U.S.C. § 1601.

In 1999, the Immigration and Naturalization Service ("INS") issued notice of a proposed rule that would relax the agency's interpretation of "public charge" under the INA. (the "1999 NPRM"). Inadmissibility and Deportability on Public Charge Grounds, 64 Fed. Reg. 28, 676 (May

26, 1999). In conjunction with the 1999 NPRM, INS issued an intra-agency guidance memo on the new definition of public charge (the "Field Guidance"). Field Guidance on Inadmissibility and Deportability on Public Charge Grounds, 64 Fed. Reg. 28, 689 (May 26, 1999). Although the 1999 NPRM was never finalized, the Field Guidance was relied upon by INS (and later the Department of Homeland Security ("DHS")) when assessing whether an alien was inadmissible on public charge grounds until a new rule was issued in 2019.

The rule issued in 2019 superseded the Field Guidance and directly implemented the explicit intent of Congress regarding the public charge ground of inadmissibility. Inadmissibility on Public Charge Grounds, 84 Fed. Reg. 41,292 (Aug. 14, 2019) (the "2019 Rule"). This applied the plain language of the statute because benefits such as food stamps, Medicaid, and housing assistance were considered non-cash public benefits consistent with the INA. 8 U.S.C. §§ 1611(c)(1)(B), 1621(c)(1)(B). Several lawsuits were brought challenging the 2019 Rule, including one before an Illinois district court that vacated the rule, and one that was granted review after a petition for writ of certiorari before the Supreme Court.

In 2021, the Biden administration stopped defending the 2019 Rule from legal challenges and resumed applying the Field Guidance. Complaint, Doc. No. 1 ¶ 36. The 2019 Rule was repealed with a mere notice implementing the vacatur of the Northern District of Illinois without following the required notice and comment procedures of the Administrative Procedure Act ("APA"). Inadmissibility on Public Charge Grounds; Implementation of Vacatur, 86 Fed. Reg. 14,221 (Mar. 15, 2021) ("2019 Rule Repeal").

The Biden administration subsequently published a new public charge rule (the "2022 Rule"). The 2022 Rule, which implements a more limited interpretation of what is considered a public benefit and eases the level of review for affidavits of support, conflicts with the plain

statutory language of the public benefits statutes, the long-standing history of excluding public charge aliens, and incentivizes illegal immigration in direct contravention of Congress's objectives.

Texas filed the instant action in January 2023 challenging both the repeal of the 2019 Rule and the issuance of the 2022 Rule. Texas has standing because the inevitable result of these actions is to increase the amount of aliens receiving taxpayer support and to incentivize aliens to travel to the United States, causing Texas to incur increased costs to provide expanded public benefits to aliens who are not self-sufficient as required by Congress. The repeal of the 2019 Rule violated the Administrative Procedure Act ("APA") and the 2022 Rule conflicts with federal immigration law. Accordingly, Plaintiff's motion for summary judgment should be granted.

ARGUMENT

The history, legislative purpose, and plain language of the public benefit statutes all show that the definition of what constitutes public assistance should be construed broadly. The 2019 Rule faithfully implemented Congress's long-established policy behind public charge inadmissibility, while the 2022 Rule fails to implement the statute by disregarding large portions of its sweep. The repeal and issuance, respectively, of these rules caused harm to Texas that can be rectified by this Court. Accordingly, Plaintiff's motion for summary judgment should be granted.

I. TEXAS HAS STANDING.

It is well-established that "the irreducible constitutional minimum of standing contains three elements." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). "First, [plaintiff] must demonstrate injury in fact . . . . Second, [plaintiff] must establish causation . . . . And third, [plaintiff] must demonstrate redressability." *Vt. Agency of Nat. Res. v. United States ex rel. Stevens*,

529 U.S. 765, 771 (2000) (internal quotation marks and citations omitted). As Plaintiff has explained to the Court, "Texas has alleged monetary injuries, and Defendants admit those injuries." Doc. 35 at 4. These injuries were caused by Defendants' illegal repeal of the 2019 Rule and illegal issuance of the 2022 Rule. An order from this Court enjoining enforcement of the 2022 Rule and vacating the repeal of the 2019 Rule would redress these injuries.

A. States receive special solicitude for standing.

The Fifth Circuit has repeatedly recognized that "'[s]tates are not normal litigants for purposes of invoking federal jurisdiction' and may be 'entitled to special solicitude.'" *Texas v. United States*, 50 F.4th 498, 514 (5th Cir. 2022) (quoting *Massachusetts v. EPA*, 549 U.S. 497, 518, 520 (2007)). *See also State v. Biden*, 10 F.4th 538, 549 (5th Cir. 2021) (noting that "[t]he States are entitled to special solicitude in the standing analysis."). Accordingly, where "(1) the State . . . ha[s] a procedural right to challenge the action in question, and (2) the challenged action . . . affect[s] one of the State's quasi-sovereign interests[,]" *Texas v. United States*, 50 F.4th 498, 514 (5th Cir. 2022), "the standards for redressability and imminence are relaxed." *Texas v. United States HHS*, No. 4:23-CV-66-Y, 2023 U.S. Dist. LEXIS 145085, at *8-9 (N.D. Tex. Aug. 18, 2023).

The first prong for special solicitude is satisfied because the APA provides Texas a procedural right to bring the present challenge before this Court. *Texas v. United States*, 809 F.3d 134, 152 (5th Cir. 2015) ("In enacting the APA, Congress intended for those suffering legal wrong because of agency action to have judicial recourse and the states fall well within that definition.") Here, Texas challenges Defendants' repeal of the 2019 Rule and adoption of the 2022 Rule, and thus "asserts a procedural right under the APA to challenge agency action." *Id.*; Compl. Doc. No. 1 at 21-23.

Texas also satisfies the second prong for special solicitude. As the Supreme Court has explained, quasi-sovereign interests "are not sovereign interests, proprietary interests, or private interests pursued by the State as a nominal party. They consist of a set of interests that the State has in the well-being of its populace." *Alfred L. Snapp & Son v. Puerto Rico*, 458 U.S. 592, 602 (1982). Quasi-sovereign interests arise because the states, upon entering the Union, ceded certain sovereign interests to the federal government. Accordingly, agency action infringes on such interest where it "damage[s] certain sovereign prerogatives [that] are now lodged in the Federal Government." *Texas v. United States*, 50 F.4th 498, 515 (5th Cir. 2022).

Both the Fifth Circuit and the Supreme Court have recognized that immigration is one such sovereign prerogative given up by the states. *See Texas v. United States*, 809 F.3d 134, 153 (5th Cir. 2015) ("When the states joined the union, they surrendered some of their sovereign prerogatives over immigration."); *Texas v. United States*, 50 F.4th 498, 516 (5th Cir. 2022) ("The importance of immigration policy and its consequences to Texas, coupled with the restraints on Texas' power to make it, create a quasi-sovereign interest."); *Arizona v. United States*, 567 U.S. 387, 401-02 (2012) ("Federal law makes a single sovereign responsible for maintaining a comprehensive and unified system to keep track of aliens within the Nation's borders."). For example, immigration related agency actions have been deemed to "affect [states'] quasi-sovereign interests based on [their] impact on [state] healthcare systems and [state] interest[s] in the health and welfare of their citizens." *Louisiana v. Ctrs. for Disease Control & Prevention*, 603 F. Supp. 3d 406, 428 (W.D. La. 2022). Therefore, because "the States rely on the federal government to protect their interests, and Congress has provided them a procedural vehicle—the APA—to do so . . . . Texas is entitled to special solicitude in this Court's standing analysis." *Texas v. United States*, 328 F. Supp. 3d 662, 694 (S.D. Tex. 2018).

Finally, as this Court has explained, Texas is not required to show "that it is being pressured to change state law[,]" because "the pressure exerted on Texas to reconfigure its budget" to increase government support for aliens who would otherwise be inadmissible public charges has a "potential for suffering . . . harm [that] is direct and substantial." *Texas v. United States*, 524 F. Supp. 3d 598, 629-30 (S.D. Tex. 2021). The sheer number of aliens entering the country on a daily basis, many of whom are incentivized to come here by relaxed public charge rules, ensures that Texas will incur an increased financial burden to provide services to aliens who should be inadmissible public charges under the INA.

B. Texas suffers a concrete injury that is traceable to the challenged actions of Defendants.

Texas is required to "establish by a preponderance of the evidence" that Defendants' actions caused it to suffer "an injury that is concrete, particularized, and actual or imminent[.]" *Texas v. United States*, 40 F.4th 205, 215-16 (5th Cir. 2022) (quotation marks and citation omitted). Texas can satisfy this requirement by pleading "that fiscal, procedural, and sovereignty-related harms might arise from the regulation[]" at issue. *Louisiana v. Biden*, 64 F.4th 674, 681 (5th Cir. 2023). As discussed regarding special solicitude above, there are sovereignty-related harms at play here because Texas has ceded its authority to control immigration within its borders to the federal government.

Defendants have acknowledged that Texas suffers a fiscal injury as a result of the repeal of the 2019 Rule and issuance of the 2022 Rule. For example, when DHS published the 2022 Rule, it noted that the 2019 Rule had a "chilling effect on the use of public benefits by [aliens]." Public Charge Ground of Inadmissibility, 87 Fed. Reg. 55,472, 55,505 (Sep. 9, 2022). In addition, the 2022 Rule's expansion of the benefits available to aliens will lead to fewer inadmissibility determinations, and eventually more enrollments that will further increase Texas's costs. The Fifth

Circuit has repeatedly "recognized that Texas suffers constitutional injury where an increase in the number of aliens would cause the state to incur significant costs." *Texas v. United States*, 40 F.4th 205, 217 (5th Cir. 2022).

The special solicitude afforded Texas under *Massachusetts v. EPA* eases Texas's "burden to demonstrate the traceability and redressability elements of the traditional standing inquiry[.]" *Texas v. United States*, 524 F. Supp. 3d 598, 618 (S.D. Tex. 2021). Indeed, as this Court explained in Texas' challenge to the Biden administration's 100-day pause on removals, "[i]f Massachusetts, armed with special solicitude, can establish causation between the EPA's decision to not regulate greenhouse gas emissions from new motor vehicles and its interest in protecting its physical territory, so too can Texas establish causation between the 100-day pause and the costs it incurs from detaining and educating undocumented aliens." *Id*. at 630.

Despite the INA's clear definition of public benefits to include non-cash benefits, the 2022 Rule only considers two situations in which an alien can be deemed a public charge: the receipt of cash benefits for income-maintenance or long-term institutionalization at the governments' expense. Compl., Doc. No. 1 at 14. *See also* 8 U.S.C. §§ 1611(c)(1)(B), 1621(c)(1)(B) (defining public benefits as "any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided[.]"). Because the 2022 Rule applies a more narrow interpretation, more aliens will be eligible for public benefits than previously were and more aliens may be incentivized to travel to the U.S. to reap these benefits.

Accordingly, Texas has shown that it suffers a cognizable injury as a result of the 2022 Rule's relaxed public charge standards and the costs it will incur providing social welfare benefits such as Medicaid. As Texas explained in its complaint, "[r]eductions in [public benefit] payments

resulting from the enforcement of the INA as it is written would reduce spending on both these benefits and their administration." Compl., Doc. No. 1 at 20. The 2022 Rule has the opposite effect, ensuring that more benefits will be available to more aliens who would otherwise have been inadmissible, forcing Texas to expend more on providing and administering such benefits.

C. Texas' claims are redressable by this Court.

Texas' claims would be redressed by this Court ruling in its favor. Redressability does not require a perfect solution to a plaintiff's injury. Instead, plaintiffs must "show that their requested relief would *likely* (or substantially likely) redress their injuries." *Hancock Cty. Bd. of Supervisors v. Ruhr*, 487 F. App'x 189, 197 (5th Cir. 2012) (alteration original). In other words, a plaintiff must show "that the practical consequence of a declaration 'would amount to a significant increase in the likelihood that the plaintiff would obtain relief that directly redresses the injury suffered.'" *Ctr. for Inquiry, Inc. v. Warren*, 845 F. App'x 325, 328 (5th Cir. 2021) (quoting *Utah v. Evans*, 536 U.S. 452, 464 (2002)). Texas satisfies this standard.

As discussed, because Texas is entitled to special solicitude in the standing analysis, "redressability is easier to establish for certain state litigants than for other litigants—and this should remove any lingering doubts as to that prong." *State v. Biden*, 10 F.4th 538, 549 (5th Cir. 2021). *See also Massachusetts*, 549 U.S. at 517-18 (explaining that a state "can assert [its] right[s] without meeting all the normal standards for redressability and immediacy.") (alteration original). Texas asks this Court to vacate both the repeal of the 2019 Rule and the publication of the 2022 Rule. Compl. Doc. 1 at 23. Vacatur of these actions would redress Texas' injury because it would require Defendants to apply the broader and legislatively intended interpretation of public charge inadmissibility found in PRWORA and IIRIRA and reflected in the 2019 Rule. As Texas noted, it

would save hundreds of millions of dollars annually on Medicaid costs alone if Defendants were to apply the 2019 Rule. Pl. Mot. for Summary Judgment, Doc. 40 at 20.

Even a decision from this court invalidating the 2022 Rule but finding the repeal of the 2019 Rule valid would redress Texas' injuries. Such a holding would benefit Texas because it would force Defendants to apply the statutory requirements of PRWORA and IIRIRA when conducting public charge inadmissibility analysis. This is because the Field Guidance, despite being the controlling interpretation prior to the 2019 Rule, violates both the APA and the INA and cannot be followed. Instead, this Court should direct Defendants to apply the statutory requirements of PRWORA and IIRIRA when conducting a public charge inadmissibility analysis.

II. THE 2022 RULE IS CONTRARY TO THE IMMIGRATION AND NATIONALITY ACT BECAUSE THE TERM "PUBLIC CHARGE" IS INTENDED TO LIMIT ALIEN ACCESS TO PUBLIC BENEFITS.

Courts are required to apply the plain meaning of undefined statutory terms where possible. *United States v. Ron Pair Enters.*, 489 U.S. 235, 242 (1989) (internal quotation marks omitted) ("The plain meaning of legislation should be conclusive, except in the rare cases [in which] the literal application of a statute will produce a result demonstrably at odds with the intentions of its drafters."); *Smith v. United States*, 508 U.S. 223, 228 (1993) ("When a word is not defined by statute, we normally construe it in accord with its ordinary or natural meaning."). Thus, [p]lain meaning is always the start. When interpreting statutory language, words are given their ordinary, plain meanings, and language must be enforced unless ambiguous." *United States v. Moore*, 71 F.4th 392, 395 (5th Cir. 2023). Accordingly, the plain meaning of "public charge" must be the basis for and controls DHS's interpretation of the term.

Additionally, where a term is not expressly defined in a federal statute but has acquired an accepted meaning elsewhere in the law, the accepted meaning must be applied to such term. *See*

Sullivan v. Stroop, 496 U.S. 478, 483 (1990) ("But where a phrase in a statute appears to have become a term of art . . . any attempt to break down the term into its constituent words is not apt to illuminate its meaning."). This is particularly true where, as was the case with the 1999 NPRM, an ordinary or natural meaning exists independent of a statutory definition. *See FDIC v. Meyer*, 510 U.S. 471, 476 (1994) ("In the absence of such definition, we construe statutory term in accordance with its ordinary or natural meaning.").

The ordinary and plain meaning of "public charge" is "one who produces a money charge upon, or an expense to, the public for support and care." *Public Charge*, Black's Law Dictionary (4th Ed. 1951). This simple definition is not "demonstrably at odds with the intentions" of Congress. *Ron Pair Enters.*, 489 U.S. at 242. In fact, this broad interpretation comports with the long history of public charge exclusions and the language and legislative intent of Congress.

As Congress explained when it enacted PRWORA, there is "a compelling government interest to enact new rules . . . to assure that aliens be self-reliant." 8 U.S.C. § 1601(5). Like the term "public charge," the term "self-reliant" also has a plain and ordinary meaning that should be applied. An alien who uses need-based public assistance, regardless of the form of such assistance, is neither self-reliant nor self-sufficient because he is, by definition, relying on resources other than himself and his family to support him.

Indeed, Congress did not distinguish between cash and non-cash benefits or between subsistence and supplemental benefits when declaring that aliens should be self-sufficient. The "federal benefits" denied to non-qualified aliens under PRWORA included both non-cash and earned benefits such as health, disability, public housing, food assistance, unemployment benefits, and "any other similar benefit for which payments or assistance are provided . . . by an agency of the United States." 8 U.S.C. § 1621(c)(1). IIRIRA, moreover, provides that the income and

resources of aliens who require an affidavit of support as a condition of admissibility are deemed to include the income and resources of the sponsor whenever the alien applies or reapplies for any means-tested public benefits program, without regard to whether the benefit is provided in cash, kind, or services, 8 U.S.C. §§ 1631(a), (c), although certain exceptions are applicable for battered spouses and children, 8 U.S.C. § 1631(f).

PRWORA and IIRIRA reflect the clear and unambiguous intent of Congress to reduce and restrict the consumption of public benefits by aliens. As stated above, alien self-sufficiency dates back to this country's first immigration statutes and has been a consistent and essential aspect of federal immigration policy. *See also City & Cty. of S.F. v. United States Citizenship & Immigration Servs.*, 408 F. Supp. 3d 1057, 1073 (N.D. Cal. 2019) ("Although various iterations of similar laws have come and gone . . . since the very first immigration law in 1882, this country has consistently excluded those who are likely to become a public charge."). Congress explicitly stated in PRWORA that "[d]espite the principle of self-sufficiency, aliens have been applying for and receiving public benefits from Federal, State, and local governments at increasing rates." 8 U.S.C. § 1601(3).

Furthermore, while certain aliens are eligible to access some public benefits such as emergency benefits and the Supplemental Nutrition Assistance Program, Congress did *not* exempt receipt of such benefits from consideration for public charge purposes. Report of Comm. on Economic and Educational Opportunities, H.R. Rep. No. 104-75 at 46 (1995) (Conf. Rep.) (discussing changes related to affidavits of support and explaining that such changes were "intended to insure that the affidavits of support are legally binding and sponsors—rather than taxpayers—are responsible for providing emergency financial assistance during the entire period between an alien's entry into the United States and the date upon which the alien becomes a U.S.

citizen."). Accordingly, because "Congress has directly spoken to the precise question at issue . . . . the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress." *Chevron, U.S.A., Inc. v. NRDC*, 467 U.S. 837, 842-43 (1984).

The 2022 Rule disregards these clear commands. Under the 2022 Rule, a public charge is defined as an alien who is "likely at any time to become *primarily dependent* on the government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance or long-term institutionalization at government expense." 87 Fed. Reg. 55, 472, 55,636 (Sep. 9, 2022) (emphasis added). "Public cash for income maintenance" includes social security benefits, Temporary Assistance for Needy Families (TANF), and state or local cash benefits. *Id*. Defendants' interpretation disregards, and thus fails to implement, the plain language and legislative intent of PRWORA and IIRIRA. Congress's express policy that aliens be self-sufficient cannot be read to limit consideration of public assistance in the manner contemplated by Defendants.

Although DHS has stated that it "believes the primarily dependent standard is a better interpretation of the statute," 87 Fed. Reg. 10, 570, 10,606 (Feb. 24, 2022), it does not have the authority to implement only a small portion of the statute's sweep. Rather, it exceeds its legitimately-delegated authority if it fails to conform to any principle of action Congress has established in the statute. *See Mistretta v. United States*, 488 U.S. 361, 372 (1989) (holding that a delegation of power is forbidden unless "Congress 'shall lay down by legislative act an intelligible principle to which the person or body authorized to exercise the delegated authority is directed to conform.'") (emphasis added) (quoting *J. W. Hampton, Jr., & Co. v. United States*, 276 U.S. 394, 406 (1928)). DHS conformed to its own principle, not that of Congress, in disregarding large parts of the statute's application. Simply put, Congress has decided what constitutes a public charge,

and DHS lacks the authority to substitute its own, shrunken definition based on its own policy preferences.

Defendants' justification that the 2022 Rule will make it easier for aliens to access and receive public benefits, 87 Fed. Reg. at 55,473, only further supports ruling in favor of Texas, because it directly contradicts the clear statutory command of Congress that aliens should excluded from eligibility for means-tested benefits, regardless of whether such benefits are "subsistence" or "supplementary" in nature. 8 U.S.C. § 1601 *et seq.* As explained, the express purpose of the public charge exclusion policy is to *prevent* aliens from accessing such benefits. 8 U.S.C. § 1601(2) ("Aliens generally should not depend on public resources to meet their needs."). It is well outside the bounds of Defendants' authority to ignore and contradict the express commands of Congress in this manner. Accordingly, because this justification "is not one that Congress would have sanctioned," *United States v. Shimer*, 367 U.S. 374, 382 (1961), and is in fact at odds with the manifest intent of Congress, it cannot sustain the 2022 Rule.

CONCLUSION

For the foregoing reasons, Plaintiff's motion for summary judgment should be GRANTED.

Dated: September 29, 2023

Respectfully submitted,

/s/ Gina M. D'Andrea

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CERTIFICATE OF SERVICE

I hereby certify that on September 29, 2023, a true and accurate copy of the foregoing document was filed electronically via CM/ECF and served on all counsel of record.

/s/ Gina M. D'Andrea