No. 19-2222

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

CASA DE MARYLAND, INC., *et al.*

Plaintiffs-Appellees,

v.

DONALD J. TRUMP, in his official capacity as President of the United States, *et al.*,

Defendants-Appellants.

On Appeal from the United States District Court for the District of Maryland

APPELLEES' RESPONSE IN OPPOSITION TO APPELLANTS' MOTION FOR A STAY PENDING APPEAL

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INTRODUCTION

For over a century, Congress has denied admission to the United States to noncitizens deemed likely to become a "public charge." Courts and administrative agencies consistently have construed the phrase "public charge" narrowly, applying it only to noncitizens likely to become primarily dependent on the government for subsistence. The Department of Homeland Security (DHS) recently promulgated a rule that radically and unlawfully expands the Immigration and Nationality Act (INA)'s public-charge inadmissibility ground to deny admission (and thus lawful-permanent-resident (LPR) status) to any noncitizen deemed likely at any point over a lifetime to accept even a small amount of public benefits for a short period of time. *See* Inadmissibility on Public Charge Grounds, 84 Fed. Reg. 41,292 (Aug. 14, 2019) (to be codified at 8 C.F.R. pts. 103, 212–14, 245, 248) [hereinafter Public Charge Rule, Final Rule, or Rule].

In preliminarily enjoining the Public Charge Rule, the district court correctly concluded that the Rule is likely invalid because it is contrary to the INA's statutory text and to a binding, precedential decision issued by the U.S. Attorney General. Appellants' Motion for a Stay Pending Appeal (Mot.) therefore must be denied. Moreover, Appellants make almost no effort to establish harm from being unable to implement the Rule during the pendency of this appeal—arguing only that they might grant LPR status to some people who would be denied it under the

new Rule. That stands in stark contrast to the serious and irreparable harms that Appellee CASA de Maryland, Inc. (CASA), and its members would suffer if the injunction is stayed. Accordingly, the Court should deny Appellants' motion.

STATEMENT OF THE CASE

Under § 212(a)(4) of the INA, a noncitizen is inadmissible to the United States and ineligible to obtain LPR status if she is "in the opinion of the Attorney General . . . likely at any time to become a public charge." 8 U.S.C. § 1182(a)(4)(A). The public-charge inadmissibility ground has appeared in U.S. immigration statutes since 1882. Act of Aug. 3, 1882, ch. 376, § 2, 22 Stat. 214, 214 (denying admission to "any convict, lunatic, idiot, or any other person unable to take care of himself or herself without becoming a public charge"). Congress has never provided a statutory definition of the term "public charge."

Since 1999, immigration officials making public-charge determinations have operated under guidance issued by the Department of Justice (DOJ). Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, 64 Fed. Reg. 28,689 (May 26, 1999) [hereinafter Field Guidance]. DOJ issued that guidance in conjunction with a proposed rule that was never finalized. Inadmissibility and Deportability on Public Charge Grounds, 64 Fed. Reg. 28,676 (proposed May 26, 1999) (to be codified at 8 C.F.R. pts. 212, 237) [hereinafter 1999 Proposed Rule]. The Field Guidance and 1999 Proposed Rule define the

term "public charge" as a noncitizen "who is likely to become . . . primarily dependent on the government for subsistence, as demonstrated by either (i) the receipt of public cash assistance for income maintenance or (ii) institutionalization for long-term care at government expense." 64 Fed. Reg. at 28,689 (internal quotation marks omitted). The primarily dependent standard was not a new interpretation of the public-charge inadmissibility ground. DOJ distilled it from "the facts found in the deportation and admissibility cases" dating back more than a century. 1999 Proposed Rule, 64 Fed. Reg. at 28,677. Moreover, DOJ concluded that the primarily dependent standard was dictated by "the plain meaning of the word 'charge'" and "the historical context of public dependency when the public charge immigration provisions were first enacted more than a century ago." *Id.*

DHS's new Public Charge Rule breaks sharply with the longstanding interpretation of the public-charge inadmissibility ground formalized in the Field Guidance. The Rule defines "public charge" as "an alien who receives one or more" of an enumerated set of public benefits "for more than 12 months in the aggregate within a 36-month period," with multiple benefits received in a single month counting as multiple months of benefits. Final Rule, 84 Fed. Reg. at 41,501 (to be codified at 8 C.F.R. § 212.21(a)). In addition to the cash benefits relevant to public-charge determinations under the Field Guidance, the Public Charge Rule

also considers noncitizens' likelihood of receiving (1) Supplemental Nutrition Assistance Program (SNAP) benefits; (2) federal housing assistance; and (3) non-emergency Medicaid benefits (with certain exceptions). *Id.* (to be codified at 8 C.F.R. § 212.21(b)).

Because the public-charge provision is forward-looking, USCIS's task under the Final Rule would not be to determine whether an applicant for adjustment of status has in fact received one or more of those benefits for more than 12 months within a 36-month period, but to assess whether she is "more likely than not" to do so at any point over the rest of her life. *Id.* (to be codified at 8 C.F.R. § 212.21(c)). Thus, under the Rule, a noncitizen could be deemed "likely . . . to become a public charge," and therefore ineligible to become an LPR, based on a prediction that she is likely to experience a temporary, isolated need for only a small amount of public benefits in the near or distant future.

Appellee CASA is a nonprofit membership organization that seeks "to create a more just society by building power and improving the quality of life in low-income immigrant communities." Escobar Decl. ¶ 4, Dkt. No. 12-1 (Ex. A). It does so by providing a wide variety of social, health, job training, employment, and legal services to its members, who have varying immigration statuses. *Id.* ¶ 5. Even before the Public Charge Rule was finalized, its draft and proposed versions sparked widespread confusion and fear, leading many of CASA's members

unnecessarily to disenroll from or forgo federal, state, and local public benefits to which they or their family members, including U.S. citizen children, are entitled. *Id.* ¶¶ 10–12. Because these benefits provide recipients with critical food, health, and housing support, CASA has invested significant resources in public education and individual legal and health-counseling services in order to stem the harm caused by the Rule's chilling effect. *Id.* ¶¶ 16–20.

Because of the serious harm that the Rule has caused and would continue to cause if permitted to go into effect, CASA and two of its members filed suit in the U.S. District Court for the District of Maryland challenging the legality of DHS's Public Charge Rule. CASA and its members sought a preliminary injunction to prevent the Rule from going into effect as planned on October 15, 2019. The district court granted the motion, concluding that CASA has organizational standing to sue, Op. 14, Dkt. 65 (Ex. B); that its claims are justiciable, *id.* at 16, 18; and that it is likely to prevail on the merits of its claim that the Public Charge Rule violates the Administrative Procedure Act (APA) because the Rule is "not in accordance with law," *id.* at 32 (quoting 5 U.S.C. § 706(2)(A)).[1] After filing its appeal, Appellants unsuccessfully moved for a stay pending appeal in the district court. Dkt. 79 (Ex. C). Appellants then filed the motion opposed here.

[1] Appellees have raised several other standing and merits arguments that the district court's preliminary injunction decision did not address. Op. 14, 32–33.

STANDARD OF REVIEW

A stay pending appeal is "an exercise of judicial discretion," not a "matter of right." *Nken v. Holder*, 556 U.S. 418, 433 (2009) (quoting *Virginia Ry. Co. v. United States*, 272 U.S. 658, 672 (1926)). "The party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion." *Id.* at 433–34. In order to carry this burden, Appellants must (1) make "a strong showing" that they are likely to succeed on the merits and (2) demonstrate that they will be irreparably injured absent a stay. *See id.* at 434 (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)). Moreover, Appellants must show that (3) a stay will not "substantially injure other parties interested in the proceedings" and (4) the public interest favors a stay. *See id.* (quoting *Hilton*, 481 U.S. at 776). Of those four factors, the first two "are the most critical," and the final two factors merge when the government is a party. *Id.* at 434–35.

ARGUMENT

I. APPELLANTS ARE UNLIKELY TO SUCCEED ON APPEAL

A. CASA's Claims are Justiciable

1. CASA Has Article III Standing

In *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982), the Supreme Court held that an organization had Article III standing based on its counseling and referral services being "perceptibly impaired" by defendants' unlawful practices

and the "consequent drain on the organization's resources." The Public Charge Rule injures CASA precisely the same way. Because the Rule adopts a definition of "public charge" dramatically different from its plain meaning and interpretation for over 100 years, directly impacting the choices CASA's members must make about seeking important food, healthcare, and housing assistance, CASA has had to divert substantial resources to provide increased education, counseling, and legal services to those members. Escobar Decl. ¶¶ 16–23. CASA already has devoted 15 part-time health promoters and 15 to 20 community organizers to mitigating the Rule's chilling effects. *Id.* ¶ 18. The Rule's complexity also has required extensive training for CASA's staff and has reduced the number of individuals CASA is able to serve in its healthcare and legal clinics on a daily basis. *Id.* ¶¶ 17, 19. In addition to significantly impairing CASA's ability to provide these direct services to its members, the Rule also has frustrated CASA's efforts to engage in time-sensitive affirmative advocacy for local healthcare expansion. *Id.* ¶¶ 22–23.

Contrary to Appellants' claim, this diversion of resources is not the result of a mere "budgetary choice[]" on CASA's part. Mot. 6 (quoting *Lane v. Holder*, 703 F.3d 668, 675 (4th Cir. 2012)). Unlike in *Lane*, where the organizational plaintiff failed to establish how the challenged legislation "impede[d] its efforts to carry out its mission," 703 F.3d at 674, the Rule presents a "Sophie's choice" for CASA. Either the organization can maintain its preexisting priorities and fail to counteract

the significant negative impacts of the Public Charge Rule on its members' health and well-being, *see* Escobar Decl. ¶¶ 10–16, or it can mitigate the Rule's adverse effects through increased spending on education, outreach, legal advice, and other resources, but only at the expense of other direct services and affirmative advocacy efforts, *id.* ¶¶ 17–23. As in *Havens Realty*, CASA has organizational standing because its efforts to improve conditions for low-income immigrant communities are "perceptibly impaired" by the Public Charge Rule. 455 U.S. at 379.

2. CASA Is Within the Zone of Interests

Taking an exceptionally narrow view of the zone-of-interests test, Appellants argue that only a noncitizen contesting an unfavorable public-charge determination has a "judicially cognizable interest[]" in challenging the Public Charge Rule. Mot. 8. Appellants' position cannot be reconciled with how courts have construed the test. In the APA context, the zone-of-interests test "is not meant to be especially demanding," and courts need not find "any 'indication of congressional purpose to benefit the would-be plaintiff.'" *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, 567 U.S. 209, 225 (2012) (quoting *Clarke v. Sec. Indus. Ass'n*, 479 U.S. 388, 399–400 (1987)). "[T]he benefit of any doubt goes to the plaintiff." *Id.* A court applying the zone-of-interests tests should not "focus[] too narrowly" on the challenged provision; rather, it should "consider any provision that helps [it] to understand Congress' overall purposes" in enacting

its statutory scheme. *Clarke*, 479 U.S. at 401. The test encompasses all "those who in practice can be expected to police the interests that the statute protects." *Mova Pharm. Corp. v. Shalala*, 140 F.3d 1060, 1075 (D.C. Cir. 1998). Only plaintiffs whose "interests are so marginally related to or inconsistent with the purposes implicit in the statute" are barred by the zone-of-interests test from bringing suit under the APA. *Patchak*, 567 U.S. at 225 (quoting *Clarke*, 479 U.S. at 399).

The INA's adjustment-of-status provisions allow noncitizens who are present in the United States to obtain LPR status without leaving the country. 8 U.S.C. § 1255(i). A favorable public-charge determination is among the prerequisites for adjusting status. *See id.* § 1182(a)(4)(A). In furtherance of CASA's mission to "build[] power . . . in low-income immigrant communities," the organization "assists individuals in applying for a variety of immigration benefits." Escobar Decl. ¶¶ 4–5. It therefore has a vested interest in ensuring that the public-charge inadmissibility ground is not unlawfully broadened in a manner that would sharply reduce its members' ability to obtain LPR status. CASA is therefore the type of organization that can be expected to "police the interests" of the INA's adjustment-of-status provisions, including the public-charge inadmissibility ground. *See Mova Pharm. Corp.*, 140 F.3d at 1075.

The district court also correctly concluded that CASA's mission encompasses the public-charge provision's purpose of promoting the "health and economic status of immigrants who are granted admission to the United States." Op. 17. Accordingly, CASA is "within the zone of interests to be protected or regulated by" the challenged provision. *Patchak*, 567 U.S. at 224 (internal quotation marks omitted).

B. The Public Charge Rule is Contrary to Law

Appellants have not made a "strong showing," *Nken*, 556 U.S. at 434, that the district court (along with all four other district courts to consider the issue so far) erred in concluding that the Public Charge Rule likely is "not in accordance with law," Op. 22 (quoting 5 U.S.C. § 706(2)(A)).[2]

1. DHS's Definition of "Public Charge" Contravenes the Term's Ordinary Meaning

Appellants are unlikely to prevail because DHS's definition of "public charge" is contrary to the ordinary meaning of the term. At the time of the 1882 enactment of the public-charge inadmissibility ground, dictionaries defined the

[2] *See Cook Cty. v. McAleenan*, No. 19 C 6334, 2019 WL 5110267 (N.D. Ill. Oct. 14, 2019); *Washington v. U.S. Dep't of Homeland Sec.*, No. 4:19-CV-5210-RMP, 2019 WL 5100717 (E.D. Wash. Oct. 11, 2019); *New York v. U.S. Dep't of Homeland Sec.*, No. 19 Civ. 7777 (GBD), 2019 WL 5100372 (S.D.N.Y. Oct. 11, 2019); *Make the Road N.Y. v. Cuccinelli*, No. 19 Civ. 7993 (GBD), 2019 WL 5484638 (S.D.N.Y. Oct. 11, 2019); *City & Cty. of San Francisco v. U.S. Customs & Immigration Servs.*, Nos. 19-cv-04717-PJH, 19-cv-04975-PJH, 19-cv-04980-PJH, 2019 WL 5100718 (N.D. Cal. Oct. 11, 2019).

word "charge" as a "person or thing committed to another[']s custody, care or management; a trust." *Charge*, Webster's Dictionary (1828 online ed.), https://perma.cc/T3CB-5HUT; *see also Charge*, Webster's Dictionary (1886 ed.), https://perma.cc/WJ9Y-CHFG (similar). In ordinary usage, therefore, a "public charge" was a person entrusted to the public's care—one who was so incapable of providing for himself that he depended on the public for long-term subsistence. Appellants continue to invoke the *Dictionary of American and English Law* as a favorable source for DHS's "public charge" definition. Mot. 14. But, as the district court explained, that definition is at odds with the Public Charge Rule because it equates the term "charge" with "pauper," Op. 24, and even Appellants have acknowledged that "pauper" means "[a] very poor person; a person *entirely destitute*," not someone who accepts limited public assistance on a temporary basis. Dkt. 52, at 14 (quoting Century Dictionary & Cyclopedia (1911)).

The meaning of "public charge" also is informed by the related statutory terms that surrounded it at the time of enactment. The 1891 version of the public-charge exclusion denied admission to "[a]ll idiots, insane persons, paupers or persons likely to become a public charge." Act of Mar. 3, 1891, ch. 551, § 1, 26 Stat. 1084, 1084. As the Supreme Court has explained, the phrase "public charge" should "be read as generically similar to the others mentioned" in the same statutory exclusion. *Gegiow v. Uhl*, 239 U.S. 3, 10 (1915). Each of the

accompanying categories—e.g., "lunatic[s]," "idiots," and "paupers"—referred to a group of persons who possess "permanent personal objections," *Gegiow*, 239 U.S. at 10, and who, at that time, were commonly housed in public charitable institutions, such as almshouses, charitable hospitals, and asylums, *see* Historians' Comment on Proposed Rule 2–3 (Oct. 23, 2018), Dkt. 12-4. These categories did not include the many poor immigrants who came to the United States during that time period and who, at some point, might require some temporary aid.

Appellants argue that the Immigration Act of 1917 overturned *Gegiow*. Mot. 16. But the Second Circuit held in *United States ex rel. Iorio v. Day*, 34 F.2d 920 (2d Cir. 1929), that, despite the amendments to the public-charge provision, "however construed, [it] overlaps other [inadmissibility] provisions; e.g. paupers, vagrants, and the like." *Id.* at 922. *Gegiow* therefore remains instructive for how the public-charge provision should be interpreted in light of the other inadmissibility grounds that accompanied it in early immigration statutes.

That the public-charge inadmissibility ground was not intended to apply to those who might experience a short-term need for assistance also is clear from the statutory context of the 1882 Act. *See Util. Air Regulatory Grp. v. EPA*, 573 U.S. 302, 321 (2014) ("[R]easonable statutory interpretation must account for both 'the specific context in which . . . language is used' and 'the broader context of the statute as a whole.'" (quoting *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341

(1997))). In addition to establishing grounds for exclusion, the 1882 Act imposed on each noncitizen who entered the United States a 50-cent head tax for the purpose of creating an "immigrant fund." Act of Aug. 3, 1882, ch. 376, § 1, 22 Stat. at 214. Although Appellants characterize this fund as providing aid to "already-admitted immigrants," Mot. 15, the statute describes its purpose as financing "care of immigrants *arriving* in the United States," § 1, 22 Stat. at 214 (emphasis added). Because Congress provided temporary and limited public assistance for noncitizens upon arrival, it could not have intended that a noncitizen's perceived likelihood of receiving public assistance of that sort should render her inadmissible.

2. Courts and Congress Have Long Accepted the Plain Meaning of "Public Charge"

Judicial opinions reviewing public-charge determinations have long focused on a noncitizen's ability and willingness to work as it relates to that person's capacity to avoid becoming primarily dependent on the government for support. *See, e.g.*, *Howe v. United States ex rel. Savitsky*, 247 F. 292, 293–94 (2d Cir. 1917) ("physically []fit" noncitizen could not be denied admission on public-charge grounds because "Congress meant the act to exclude persons who were likely to become occupants of almshouses"); *United States v. Petkos*, 214 F. 978, 979 (1st Cir. 1914) (noncitizen who suffered from psoriasis could not be excluded on public-charge grounds where disease did not "necessarily affect[] his ability to earn

a living"); *United States ex rel. Barlin v. Rodgers*, 191 F. 970, 973–77 (3d Cir. 1911) (noncitizens were inadmissible on public-charge grounds due to physical limitations or agedness that, in the judgment of immigration officials, would have prevented them from earning a living).

The cases cited by Appellants are not to the contrary. *See Ex Parte Turner*, 10 F.2d 816, 816–17 (S.D. Cal. 1926) (man's "abscesses in his throat" and subsequent treatment as "charity patient" demonstrated that he "was at the time of his entry[] predisposed to physical infirmity, and that, when suffering from ailments, he will likely be incapacitated from performing any work or earning support for himself and family"); *Guimond v. Howes*, 9 F.2d 412, 413–14 (D. Me. 1925) (husband and wife were likely to become public charges based on husband's repeated arrests on bootlegging charges, lack of lawful employment, and family's reliance on "pauper aid" while he was imprisoned).

When Congress enacted the INA in 1952, it retained a public-charge inadmissibility ground. *See* Immigration and Nationality Act, Pub. L. No. 82-414, § 212(a)(15), 66 Stat. 163, 182–83 (1952) (rendering inadmissible noncitizens "who . . . in the opinion of the Attorney General at the time of application for admission, are likely at any time to become a public charge"). Congress did not define the term "public charge," so Congress must be understood to have incorporated the prior judicial interpretations that focused on whether noncitizens

would be primarily dependent on the government.[3] *See Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 239–40 (2009) ("Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change." (quoting *Lorillard v. Pons*, 434 U.S. 575, 580 (1978))).

Not only has Congress repeatedly reenacted the public-charge provision without displacing the longstanding understanding of the key term, but it also rejected in 1996 and 2013 attempts to adopt a definition of "public charge" similar to the one DHS now seeks to impose administratively. *See* H.R. Rep. No. 104-828, at 137–40 (1996) (Conf. Rep.); S. Rep. No. 113-40, at 63 (2013). Appellants argue that these failed attempts to legislatively enact analogues to the Public Charge Rule are not probative of Congress's intent. Mot. 18. But "Congress does not intend *sub silentio* to enact statutory language that it has earlier discarded in favor of other language." *INS v. Cardoza-Fonseca*, 480 U.S. 421, 442–43 (1987); *see also Cuomo v. Clearing House Ass'n*, 557 U.S. 519, 533 (2009) (rejecting regulatory "attempt[] to do what Congress declined to do").

[3] Defendants argue that Congress's failure to define "public charge" reflects its intention to leave "the term's definition and application to the discretion of the Executive Branch." Mot. 13–14, 18. But the Executive Branch's discretion in this area is constrained by the plain meaning of "public charge" as informed by "traditional tools of statutory construction." *Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 842–43 & n.9 (1984).

3. None of the INA Provisions Cited By Defendants Support DHS's Definition of "Public Charge"

Appellants cite several other INA provisions as evidence that DHS's definition of "public charge" is permissible. Mot. 9. None of them supports Appellants' argument. Under 8 U.S.C. § 1182(s), immigration officials are prohibited from considering in public-charge determinations past receipt of benefits by certain noncitizens who are victims of domestic violence. According to Appellants, "[t]he inclusion of that provision presupposes that DHS will ordinarily consider the past receipt of benefits in making 'public charge' determinations." Mot. 9. But the Public Charge Rule is contrary to law not because it considers noncitizens' past receipt of benefits but because it would deny admission or LPR status to noncitizens based on a prediction about whether they will accept merely a small amount of public benefits in the future.

Additionally, Appellants point to the INA's (1) requirement that certain applicants for adjustment of status obtain affidavits of support obligating sponsors to reimburse states and the federal government for the noncitizens' receipt of means-tested public benefits, *id.* 9–10 (citing 8 U.S.C. § 1183a(b)); (2) attribution of sponsors' income and resources to noncitizens for the purpose of determining their eligibility for means-tested public benefits, *id.* 10–11 (citing 8 U.S.C. § 1631(a)); and (3) prohibition against most noncitizens receiving most public benefits until they have had LPR status for at least five years, *id.* 11 (citing

8 U.S.C. §§ 1611–13, 1641). These other INA provisions—enacted the same year that Congress *rejected* proposed changes to the definition of "public charge"—demonstrate that Congress has decided that mechanisms other than the public-charge provision are appropriate for limiting noncitizens' reliance on public benefits. Indeed, the fact that Congress has made LPRs eligible at a later date for the very benefits the Rule would cover reinforces the conclusion that Congress did not intend the public-charge inadmissibility ground to deny LPR status to any noncitizen deemed likely to accept a small amount of public benefits at any point over a lifetime.

Finally, Appellants misconstrue the INA as authorizing deportation "whenever an alien or the alien's sponsor fails to honor a lawful demand for repayment of a public benefit." Mot. 10 (citing *Matter of B*, 3 I. & N. Dec. 323 (BIA and AG 1948). Under current law, a noncitizen can be deported on public-charge grounds only based on "receipt of cash benefits for income maintenance purposes." Field Guidance, 64 Fed. Reg. at 28,691. The Public Charge Rule did not change that. *See* Public Charge Rule, 84 Fed. Reg. at 41,295 (Rule does not apply to deportability). Thus, Appellants' interpretation of "public charge" in the deportation context provides no support for the Public Charge Rule.

4. BIA Precedent Forecloses the Public Charge Rule

The Public Charge Rule also cannot be reconciled with *Matter of Martinez-Lopez*, 10 I. & N. Dec. 409 (A.G. 1964), which is binding on DHS, *see* 8 C.F.R. § 1003.1(g)(1). Attorney General Robert F. Kennedy held in that case that a "healthy person in the prime of life cannot ordinarily be considered likely to become a public charge." *Martinez-Lopez*, 10 I. & N. Dec. at 421. As the district court recognized, the Public Charge Rule is "wholly inconsistent with this interpretation of the public charge admissibility standard" because it "defines public charge so expansively that it could cover as much as 50% of the U.S. Population." Op. 27–28 (citing Am. Compl. ¶ 68, Dkt. 27).

Appellants are correct that "DHS is not forever bound by *Matter of Martinez-Lopez*," Mot. 17, but the question is not whether DHS is bound forever—it is whether DHS is bound *today*. Although the Attorney General could one day overrule or modify *Martinez-Lopez*, he had not done so when DHS promulgated the Public Charge Rule, and indeed he has not to date. Accordingly, under 8 C.F.R. § 1003.1(g)(1), DHS was not at liberty to adopt an interpretation of "public charge" that would render inadmissible on public-charge grounds a substantial number of "healthy person[s] in the prime of life." *See Martinez-Lopez*, 10 I. &. N. Dec. at 421.

Appellants are strikingly unpersuasive in arguing that the Public Charge Rule is consistent with that standard. First, Appellants suggest that immigrants with the characteristics of the petitioner in *Martinez-Lopez* ordinarily would not be found likely to become a public charge under the Rule. Mot. 17. But Defendants expect this Court to take this on faith, offering no explanation about how the Rule's factors would be weighed in such cases. Moreover, even assuming (without basis) that Appellants' assessment is accurate, that says nothing about how the Rule would operate in the run of cases. Second, Appellants argue that the Public Charge Rule does not run afoul of *Martinez-Lopez* because "less than a quarter of all noncitizens receive cash or noncash public benefits." *Id.* (citing Inadmissibility on Public Charge Grounds, 83 Fed. Reg. 51,114, 51,193 (proposed Oct. 10, 2018)). But that figure reflects receipt of public benefits by noncitizens in only a single year. As in the case of U.S. citizens, an individual is far more likely to experience a temporary need for public benefits over the course of a lifetime (the relevant timeframe for the Public Charge Rule) than in any given year. *See* Dkt. 28, at 21 n.9. Because the Public Charge Rule cannot be reconciled with *Martinez-Lopez*, Appellants are unlikely to prevail on appeal.

II. TEMPORARY MAINTENANCE OF THE STATUS QUO WILL NOT IRREPARABLY HARM APPELLANTS

Appellants' motion devotes a mere four sentences to establishing the irreparable harm they claim that they will suffer if the district court's preliminary

injunction remains in place during the pendency of this appeal. Mot. 18. According to Appellants, the preliminary injunction will force DHS to grant LPR status to some noncitizens who would be deemed inadmissible on public-charge grounds if the Rule were in effect. *Id.* But the district court's preliminary injunction does nothing more than preserve the status quo that has governed public-charge determinations "for arguably more than a century and at least since 1999." Op. 34. Appellants cannot establish they are harmed by continuing, during the appeal's pendency, to conduct public-charge determinations as they have for decades, especially where, as here, the district court has correctly concluded that the standard that Appellants wish to adopt likely is legally infirm. *Id.* at 22.

III. A STAY IS NOT IN THE PUBLIC INTEREST

Appellants argue that they are irreparably harmed by the district court's preliminary injunction because "DHS currently has no practical means of revisiting public-charge admissibility determinations once made." Mot. 18. But this counsels against a stay, not in favor of one. Unfavorable public-charge determinations rendered during the pendency of the lawsuit will jeopardize and, in many instances, preclude noncitizens from remaining in the United States. *See* 8 U.S.C. § 1227(a)(1)(A) (classifying as deportable noncitizens who are inadmissible at the time of application for adjustment of status). A stay of the district court's preliminary injunction therefore would force out of the United

States some noncitizens who otherwise would be able to obtain LPR status, thereby irreparably harming the improperly denied noncitizens, splitting apart their families, and breaking up their communities.

Moreover, if the preliminary injunction is stayed, CASA and its members will be irreparably harmed. Allowing the Rule to go into effect would only increase confusion—deterring additional members from obtaining important public benefits for themselves and their families—and further forcing CASA to divert its resources to address the Rule's effects. And as its members disenroll from public benefits, CASA will be forced to redirect resources to ensure that its members who are chilled from participating in public benefits programs have access to the supportive services they need. Escobar Decl. ¶ 21.

Finally, as discussed above, maintaining the status quo does not harm Appellants during the pendency of the appeal of the preliminary injunction. Accordingly, a stay is not in the public interest.

IV. THERE IS NO BASIS FOR A PARTIAL STAY

The district court correctly held that a nationwide injunction is justified because CASA's members are not permanently rooted in their current geographical locations and therefore might be subject to the Public Charge Rule so long as it remains in effect in any part of the nation. Op. 35. Moreover, a partial injunction will only "create further confusion among CASA's membership" and therefore

would not cure the injury that the Rule imposes on CASA as an organization. *Id.*[4] Finally, binding Fourth Circuit precedent establishes that "nationwide injunctions are especially appropriate in the immigration context, as Congress has made clear that 'the immigration laws of the United States should be enforced vigorously and *uniformly*.'" *Int'l Refugee Assistance Project v. Trump*, 857 F.3d 554, 605 (4th Cir.), *as amended* (June 15, 2017), *vacated and remanded on other grounds*, 138 S. Ct. 353 (2017) (emphasis in original) (quoting *Texas v. United States*, 809 F.3d 134, 187–88 (5th Cir. 2015)).

[4] Defendants' reliance on *Virginia Society for Human Life v. FEC*, 263 F.3d 379 (4th Cir. 2001), is misplaced. All that the plaintiff in that case sought was the ability to distribute voter guides and place radio advertisements during an election. *Id.* at 381–82. An injunction specific to the nonprofit therefore could remedy its injury. *Id.* at 393. For the reasons discussed above, a geographically limited injunction would not remedy CASA's injury.

CONCLUSION

For the foregoing reasons, the Court should deny Appellants' motion for a stay pending appeal.

Dated: November 25, 2019

Respectfully submitted,

/s/ *Jonathan L. Backer*
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CERTIFICATE OF COMPLIANCE

This motion complies with the type-volume limit of Rule 27(d)(2)(A) of the Federal Rules of Appellate Procedure because it contains 5,199 words. In addition, this motion complies with the typeface and type-style requirements of Rule 32(a)(5)–(6) of the Federal Rules of Appellate Procedure because it was prepared using Microsoft Word 2016 in Times New Roman 14-point font, a proportionally spaced typeface.

/s/ *Jonathan L. Backer*
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CERTIFICATE OF SERVICE

I hereby certify that on November 25, 2019, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

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