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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

THE CITY OF SEATTLE, IMMIGRANT LEGAL RESOURCE CENTER, CATHOLIC LEGAL IMMIGRATION NETWORK, INC., SELF HELP FOR THE ELDERLY, ONEAMERICA, AND CENTRAL AMERICAN RESOURCE CENTER OF CALIFORNIA,

Plaintiffs,

vs.

DEPARTMENT OF HOMELAND SECURITY, KEVIN MCALEENAN, KENNETH T. CUCCINELLI, AND UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES,

Defendants.

Case No. 3:19-cv-07151-MMC

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION AND MEMORANDUM OF POINTS AND AUTHORITIES

Hearing Date: December 13, 2019

Hearing Time: 9:00 A.M.

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NOTICE OF MOTION AND MOTION FOR PRELIMINARY INJUNCTION

PLEASE TAKE NOTICE that on December 13, 2019 at 9:00 A.M. or as soon thereafter as they may be heard before Judge Maxine Chesney, plaintiffs the City of Seattle, OneAmerica, the Immigrant Legal Resource Center ("ILRC"), Catholic Legal Immigration Network, Inc. ("CLINIC"), Self-Help for the Elderly ("Self-Help"), and Central American Resource Center of California ("CARECEN") (collectively, the "Plaintiffs"; without the City of Seattle, the "Organizational Plaintiffs") will hereby move pursuant to Rule 65 of the Federal Rules of Civil Procedure and Civil Local Rules 7-2 and 65-2 for a preliminary injunction prohibiting defendants the Department of Homeland Security ("DHS"), Kevin McAleenan, Kenneth T. Cuccinelli, and the United States Citizenship and Immigration Services ("USCIS") (collectively, the "Defendants") from enforcing certain rule changes to the fee waiver application process for naturalization applications. Without an order from this Court, the rule changes will be in effect as of December 2, 2019, and will cause Plaintiffs to suffer immediate and irreparable harm. This motion is based on this Notice; the Memorandum of Points and Authorities; accompanying declarations of Andy Wong ("Wong Decl."), Rich Stolz ("Stolz Decl."), Melissa Rodgers ("Rodgers Decl."), Jeff Chenoweth ("Chenoweth Decl."), Kenny Chu ("Chu Decl."), Miriam Núñez ("Núñez Decl."), Meghan Kelly-Stallings ("Kelly-Stallings Decl."), and Jamila G. Benkato ("Benkato Decl."); the Amended Complaint; this Court's file; and any matters properly before the Court.

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

This case is of immense practical importance to all lawful permanent residents[1] ("LPRs") of the United States who are eligible to naturalize and the countless organizations that serve them. Absent injunctive relief, Defendants will unlawfully prevent a significant number of these individuals from applying for citizenship and, in doing so, will cause irreparable harm to Plaintiffs.

Together, Plaintiffs share a mission to help qualified immigrants naturalize. To achieve this mission, Plaintiffs have implemented naturalization application assistance programs, among other things, that are premised on an applicants' ability to obtain a fee waiver in a straightforward and

[1] Also known as "green card" holders.

efficient manner. They also provide access to counsel for LPRs who might not otherwise be able to afford quality legal advice when applying for naturalization. As discussed more fully below, absent preliminary injunctive relief, a recent regulatory change enacted by Defendants will frustrate Plaintiffs' missions and cause them to abandon or entirely restructure these carefully designed programs.

The current fee for a naturalization application is $725. Because many low-income residents cannot pay that amount, USCIS permits applicants to obtain a fee waiver if they demonstrate an "inability to pay." Since 2010, USCIS has permitted LPRs to make this showing in several alternative ways, including by demonstrating that they receive a "means-tested benefit," such as Medicaid. Individuals made this showing either by filling out a form or by submitting their own separate request for a waiver. This fee waiver process allowed low-income immigrants to establish their inability to pay in a straightforward and common-sense manner: by providing proof that they were in receipt of a benefit that had been granted to them by the federal or a state government as a result of their limited income and assets.

Through a new fee waiver request form (the "Revised Form I-912") and changes to the fee waiver process (the "2019 Rule"), Defendants have upended this previously straightforward system. The 2019 Rule places significant restrictions on the prior fee waiver scheme: (1) it eliminates an applicant's ability to obtain a fee waiver based upon receipt of a means-tested benefit; (2) it imposes new evidentiary requirements, including a requirement that all applicants obtain a tax transcript from the Internal Revenue Service to prove their income; and (3) it mandates the use of a fee waiver form, departing from years of prior USCIS practice that allowed applicants to submit their own "applicant-generated" fee waiver requests. The elimination of means-tested benefits as grounds for obtaining a fee waiver will reduce the number of fee waiver-eligible applicants, and the 2019 Rule's heightened evidentiary requirements will make it difficult or impossible for other low-income LPRs to become American citizens.

Defendants' abrupt change-of-course is unlawful—and Plaintiffs are thus likely to succeed on the merits—for four principal reasons. *First*, USCIS concedes that it did not comply with the notice-and-comment procedures required by the Administrative Procedure Act ("APA") when it

promulgated the 2019 Rule, which radically and substantively changed the process for obtaining a fee waiver. *Second*, the rule changes themselves are arbitrary and capricious. Defendants have provided no analysis or data to support the purported justification for eliminating means-tested benefit-based applications. And they have not provided any justification whatsoever for the other changes to the application process. *Third*, the 2019 Rule directly conflicts with USCIS's own fee waiver regulation, 8 C.F.R. § 103.7(c), which does not require use of a fee waiver form. *Finally*, the appointment of Defendant Cuccinelli as acting head of USCIS violates the Federal Vacancies Reform Act ("FVRA"), rendering the 2019 rule unlawful, invalid, and unenforceable.

Plaintiffs will suffer irreparable harm absent preliminary injunctive relief. If the rule is permitted to go into effect on December 2, it will immediately frustrate Plaintiffs' missions, jeopardize their funding, and potentially threaten the very existence of at least one Plaintiff's naturalization program. Further, Plaintiffs will be forced to immediately divert and expend resources to redesign their programs and develop new materials to train staff and volunteers on the 2019 Rule. Currently planned activities for December 2019 and the first months of 2020 will be cancelled or significantly scaled back.

The 2019 Rule is a paradigmatic example of procedurally invalid, arbitrary, and capricious agency action that directly conflicts with existing regulation. Plaintiffs will suffer immediate, irreparable, and nationwide harm if it goes into effect. At the same time, the government will not be harmed if the Court delays the 2019 Rule's effective date. This Court should enjoin the 2019 Rule.

STATEMENT OF FACTS

A. Naturalization Application Fees and Fee Waivers before October 25, 2019

Defendants charge a $725 fee to naturalization applicants. 8 C.F.R. § 103.7(b)(1)(C), (BB). However, the statute governing the naturalization program, 8 U.S.C. § 1356(m), contemplates a fee waiver for immigration services. Pursuant to that statute, DHS, the cabinet department within which USCIS sits, has promulgated regulations that permit USCIS to waive the $725 naturalization application fee if an applicant can demonstrate an "inability to pay." 8 C.F.R. § 103.7(c).

In 2010 and 2011, USCIS adopted a rule and accompanying policy memorandum (the "2011

Policy Memorandum") that governed fee waivers for USCIS services.[2] The agency's fee waiver request form, Form I-912, permitted naturalization applicants to request a fee waiver based on proof that they: (1) received a "means-tested benefit," such as Medicaid, Supplemental Security Income, Supplemental Nutrition Assistance Program, or Temporary Assistance for Needy Families; (2) had household income at or below 150 percent of the Federal Poverty Guidelines ("FPG"); or (3) were suffering an acute financial hardship. Am. Compl., Ex. B. Most fee waiver requests are based upon the applicant's receipt of a means-tested benefit. *See* Rodgers Decl. ¶ 21; Kelly-Stallings Decl. ¶ 8; Núñez Decl. ¶ 13; Chenoweth Decl. ¶¶ 15, 21; Stolz Decl. ¶ 15; Chu Decl. ¶ 14. USCIS acknowledged that the *use* of Form I-912 was "not mandated by regulation," Am. Compl., Ex. C at 2, and that it would also accept "applicant-generated" fee waiver requests stating "the person's belief that he or she is entitled to or deserving of the benefit requested, the reasons for his or her inability to pay, and evidence to support the reasons indicated." 8 C.F.R. § 103.7(c).

B. Defendant Cuccinelli Installed as Acting Director of USCIS.

L. Francis Cissna served as Director of USCIS from October 8, 2017 until June 1, 2019, when his resignation became effective. Benkato Decl., Ex. C, at 2. On June 2, 2019, the Deputy Director of USCIS, Mark Koumans, became the acting director of the agency because, pursuant to the USCIS order of succession, he was the designated first assistant to the director. *Id.* However, on June 10, 2019, Defendant McAleenan appointed Defendant Cuccinelli to the newly created position of "Principal Deputy Director" of USCIS, an appointment which would automatically terminate when the President appointed a new Director of USCIS. Benkato Decl., Ex. A. That same day, Defendant McAleenan revised the USCIS order of succession and designated the new Principal Deputy Director of USCIS as the first assistant to the Director of USCIS, thereby purporting to make Defendant Cuccinelli Acting Director of USCIS. Benkato Decl., Ex. B. Thus, when the 2019 Rule was issued, Defendant Cuccinelli was performing the functions and duties of the Director of USCIS. To date, the President has not nominated a new Director of USCIS.

[2] *See* U.S. Citizenship and Immigration Services, Executive Summary, USCIS Stakeholder Engagement: Fee Waiver Form and Final Fee 2019 Rule (Jan. 5, 2011) ("2011 Policy Memorandum"), *available at* https://bit.ly/2y6HRrO.

C. The 2019 Rule

On October 25, 2019, Defendants published Revised Form I-912 and the 2019 Rule, which effect three major changes to the waiver eligibility scheme. First, they eliminate fee waiver eligibility based on means-tested benefits. This leaves only two ways for applicants to demonstrate eligibility: by collecting numerous documents to prove household income below 150 percent of the Federal Poverty Guidelines, or by showing an acute financial hardship such as job loss or unexpected medical bills. Am. Compl., Ex. E. Second, they require applicants to submit tax transcripts, rather than tax returns, to prove income. *Id.* And third, they eliminate applicant-generated fee waiver requests, instead mandating use of Revised Form I-912. *Id.*

Defendants promulgated the 2019 Rule through a series of notices published to the Federal Register on September 28, 2018 (the "First Notice"), April 5, 2019 (the "Second Notice"), and June 6, 2019 (the "Third Notice") (collectively, the "Notices"). *See* 83 Fed. Reg. 49120; 84 Fed. Reg. 13687; 84 Fed. Reg. 26137. These Notices announced that USCIS planned to eliminate means-tested benefit-based applications, but did not disclose the other changes to the fee waiver process. *See id.* The Notices asserted a rationale for the proposed change—"the various income levels used in states to grant a means-tested benefit result in inconsistent income levels being used to determine eligibility for a fee waiver"—but provided no data or analysis to support it.[3] *Id.* Nor did the Notices explain why means-tested benefits are insufficient to demonstrate an applicant's "inability to pay." The Third Notice acknowledged that "as a result of [the 2019 Rule] there are some applicants who would be able to receive free adjudication now who will not be able to [do so] after this policy change," but asserted that that "an applicant is unlikely to have incurred costs or been harmed based on relying on USCIS continuing [the prior] policy." 84 Fed. Reg. 26137, 26139. The Third Notice also offered, for the first time, the justification that USCIS needed to "curtail[]" the growing use of fee waivers in order "to reduce annual forgone revenue from fee waivers." *Id.*

[3] And in fact, "[b]y solely relying on the FPG to determine an individual's inability to pay, the 2019 Rule would magnify, or at the very least maintain, inconsistencies in the *real* income levels being used to determine eligibility for a fee waiver—the very problem that the 2019 Rule purports to solve." Wong Decl. ¶ 13.

For each of the notice periods, USCIS solicited comments.[4] The First Notice generated 1,198 comments from individuals, immigrant rights groups, and legal services organizations—including Plaintiffs—that explained what a devastating effect the 2019 Rule would have on applicants and the organizations that serve them. *See* Rodgers Decl., Ex. A; Kelly-Stallings Decl., Ex. A; Núñez Decl., Ex. A; Chenoweth Decl., Ex. A; Stolz Decl., Ex. A. The comments also raised concerns about the absence of (1) analysis to support the changes and/or (2) evidence of the alleged inconsistencies that the 2019 Rule purports to cure. *See, e.g*; Chenoweth Decl., Ex. A at 4–5. Defendants failed to address these comments; in its responses,[5] USCIS simply stated that because it is primarily funded by application fees, and because "other applicants must cover the costs of fee- waived [sic] applications," the proposed rule would increase "consistency in the shifting of the cost of fee waivers to those who pay fees." Am. Compl., Ex. G at 3–4. USCIS acknowledged that the proposed rule would "increase" the burden on applicants, but dismissed the consequences as not "excessive." *Id* at 1. In response to service providers' detailed comments regarding the impact on their programs, USCIS asserted that it did not believe the impact would be "extraordinar[y]" and that service providers could adapt. Am. Compl., Ex. H at rows 6–8; Am. Compl., Ex. I at rows 6–7. Ultimately, Defendants did not make any substantive adjustments to these aspects of the proposed rule change before finalizing the 2019 Rule, which will go into effect on December 2, 2019. Am. Compl., Ex. E.

D. How the 2019 Rule will Harm Plaintiffs

Plaintiffs all provide and/or sponsor programs that assist thousands of LPRs in applying for naturalization each year, including completing fee waiver paperwork.[6] The rule changes will substantially reduce the number of applicants eligible for fee waivers and will significantly heighten the evidentiary requirements for those who remain eligible. These effects will have devastating consequences for Plaintiffs' funding, programs, and missions, and it will curtail applicants' access

[4] For the First Notice, USCIS solicited public comments. For the Second and Third Notices, it solicited comments privately by email.

[5] *See* Am. Compl., Exs. G–I.

[6] *See* Rodgers Decl. ¶¶ 3, 13; Kelly-Stallings Decl. ¶¶ 3, 5; Núñez Decl. ¶¶ 3–4; Chenoweth Decl. ¶¶ 4–5; Stolz Decl. ¶¶ 3–5; Chu Decl. ¶¶ 3–6.

to counsel for those Plaintiff organizations that are unable to accommodate income-based or economic hardship-based waivers due to lack of capacity or funding for such services.

1. The 2019 Rule will reduce the number of eligible fee waiver applicants.

LPRs who have incomes over 150 percent of the Federal Poverty Guidelines, but who receive a means-tested benefit, are currently eligible for a fee waiver but will no longer be eligible under the 2019 Rule. As a practical matter, these individuals will no longer be able to use Plaintiffs' programs to apply for citizenship.[7] That is because the application fee of $725 is often cost-prohibitive, even to LPRs with incomes above 150 percent of the FPG. Wong Decl. ¶ 24.[8]

The additional paperwork burden will further reduce the number of fee waiver applicants. All applicants will have to prove their household incomes to USCIS's satisfaction, rather than relying on determinations provided by other government agencies who have better institutional expertise in assessing an individual's household income. Compounding these burdens, the 2019 Rule further eliminates applicants' ability to prove household income with tax returns, specifying instead that they provide tax *transcripts*, which are merely stripped-down summaries of tax returns that—unlike tax returns (which any taxpayer would have a copy of by virtue of paying taxes)—are available only upon request from the IRS. For most low-income applicants, these transcripts will require a separate paperwork process that can take up to eight weeks to complete because most low-income applicants do not have the requisite documentation to request a transcript online. Wong Decl. ¶¶ 21–22; *see also, e.g.*, Stolz Decl. ¶¶ 27–28. In addition to tax transcripts, in order to apply for a fee waiver based upon financial hardship, an applicant must provide additional evidence of "special circumstances," such as "medical expenses of family members, employment, eviction, [and] victimization." Am. Compl., Ex. D at 5. The increased paperwork burden will lead

[7] Jens Hainmueller, *et al.*, *A Randomized Controlled Design Reveals Barriers to Citizenship for Low-Income Immigrants*, 115 Proceedings of the National Academy of Sciences 939 (2018).

[8] Out of all households that receive Federal means-tested benefits, 31 percent have incomes that exceed 150 percent of the FPG. Wong Decl. ¶ 18. In 2012, approximately 22 percent of naturalization-eligible LPRs had incomes between 150 percent and 250 percent of the FPG. This means that if these individuals were to try and naturalize once the 2019 Rule goes into effect, they would no longer be eligible for a fee waiver. *See* Pastor, M., Oakford, P., & Sanchez, J., Profiling the Eligible to Naturalize, Center for the Study of Immigrant Integration and Center for American Progress (2014).

directly to fewer applications being submitted; when an application takes longer than a day to complete, prospective applicants are less likely to finish the application process, resulting in fewer completed fee waiver applications. *E.g.*, Rodgers Decl. ¶¶ 27–28, 42; Chenoweth Decl. ¶¶ 26–28; Chu Decl. ¶ 24.

The reduction in the number of fee waiver applications, and the unnecessary evidentiary burdens that the 2019 Rule Change puts in place, will harm Plaintiffs in several distinct ways.

2. The 2019 Rule will cause the Organizational Plaintiffs to lose funding.

The 2019 Rule will jeopardize Organizational Plaintiffs' public and private funding, much of which is contingent on the completion of a certain number of naturalization applications each year.[9] Currently, the vast majority of fee waiver applications submitted by Plaintiffs' clients are based on receipt of a means-tested benefit. For example, in a recent survey of ILRC partner organizations, 80 percent reported that at least half of fee waiver applications were based on receipt of means-tested benefits; 55 percent of organizations reported the same for 75 percent of their fee waiver applications; and 24 percent of organizations reported the same for *90 percent* of their fee waiver applications. Rodgers Decl. ¶ 23.[10]

As the number of fee waiver-eligible applicants decreases, and the burden and costs of preparing fee waiver applications increase, the Organizational Plaintiffs will lose funding and suffer financial harm. For example, CARECEN and OneAmerica expect that the number of clients served in their naturalization programs will drop by as much as a third under the 2019 Rule. Núñez Decl. ¶ 43; Stolz Decl. ¶¶ 44, 46. This reduction in applicants will prevent OneAmerica from fulfilling contractual provisions that require it to, among other things, complete more than 1,000 naturalization applications per year in order to receive more than $900,000 in funding from the

[9] *See* Rodgers Decl. ¶¶ 42–45; Núñez Decl. ¶¶ 40–43; Chenoweth Decl. ¶¶ 41–44; Stolz Decl. ¶¶ 44–49; Chu Decl. ¶¶ 40–41.

[10] *See also* Chenoweth Decl. ¶ 15 ("Fee waivers based on receipt of means-tested benefit are *the* tipping point factor that allow CLINIC affiliates that serve low-income clients by providing efficient, streamlined service through the workshop model"); Stolz Decl. ¶ 15 (more than half of OneAmerica's clients who request a fee waiver prove their eligibility by showing that they receive a means-tested benefit); Chu Decl. ¶ 16 ("Over a six year period that ended June 30, 2019, Self-Help has helped file 8,944 naturalization applications, of which almost 62 percent (or 5,537) were filed with a fee waiver.").

Washington Department of Commerce. *See* Stolz Decl. ¶¶ 6–7, 44. Other Organizational Plaintiffs are similarly situated with respect to their funding.[11]

3. The 2019 Rule will force Plaintiff Self-Help to cease naturalization services.

Plaintiff Self-Help's naturalization program is entirely funded by the City of San Francisco. Chu Decl. ¶ 7. This funding is conditioned on Self-Help's annual completion of 1,400 naturalization applications—500 of which must be submitted with fee waivers—and five naturalization workshops (discussed below). *Id.* ¶ 8. Self-Help expects to be able to assist between *70 and 80 percent fewer* clients under the 2019 Rule. *Id.* ¶ 40. It will therefore fail to meet its contractual obligations to San Francisco and its grant will not be renewed. *Id* ¶¶ 40, 42. Because 100 percent of Self-Help's funding for naturalization application services derives from the City of San Francisco, this loss of funding will likely eliminate Self-Help's ability to provide these services at all. *Id.*

4. The 2019 Rule renders Plaintiffs' primary service-delivery model untenable, and imposes significant costs on Plaintiffs.

The additional burdens imposed by the 2019 Rule Change pose a specific threat to Plaintiffs' primary service-delivery model: one-day events where eligible residents complete and often submit naturalization applications with the assistance of lawyers and trained volunteers. The Organizational Plaintiffs all either sponsor or provide workshops to serve thousands of naturalization-eligible residents.[12] Seattle's Office of Immigrant and Refugee Affairs ("OIRA") does the same. Kelly-Stallings Decl. ¶¶ 5, 19.[13] Indeed, *most* of the naturalization applications for which the Organizational Plaintiffs are responsible are generated through these workshops. For example, in the past few years, 60 percent of the naturalization applications for which ILRC was responsible were completed through a workshop. Rodgers Decl. ¶ 13; *see also* Chenoweth Decl.

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[11] *See* Rodgers Decl. ¶¶ 42–45; Núñez Decl. ¶¶ 40–43; Chenoweth Decl. ¶¶ 41–44; Chu Decl. ¶¶ 40–41.

[12] See Rodgers Decl. ¶ 13; Núñez Decl. ¶ 7; Chenoweth Decl. ¶¶ 9, 15; Stolz Decl. ¶ 11; Chu Decl. ¶ 10.

[13] Seattle's OIRA program funds and coordinates two naturalization programs to help Seattle's approximately 75,000 permanent residents become American citizens. Kelly-Stallings Decl. ¶¶ 2–3, 5. The two programs have helped over 13,000 permanent residents in applying for citizenship, and in 2018, 92 percent of the programs' fee waiver requests were submitted using means-tested benefits. *Id.* at ¶¶ 6, 14.

¶¶ 4, 15 (50 percent of CLINIC's approximately 370 affiliated immigration service programs across the country utilize workshop models). Most of the applicants at these workshops demonstrate their eligibility for a fee waiver by proving receipt of a means-tested benefit.

The onerous income- and hardship-based fee waiver applications—the *only* fee waiver applications that are available under the 2019 Rule—generally cannot be completed during Plaintiffs' one-day workshops. Because income- and hardship-based applications require extensive documentation and follow-up,[14] applicants must work closely with an advocate to ensure that the documentation has been collected and properly compiled. *See, e.g.*, Stolz Decl. ¶ 25. Most Plaintiffs do not offer assistance with these types of applications because of the time and resources required and the relatively low rate at which they are granted by USCIS. *See, e.g.*, Rodgers Decl. ¶ 16; Stolz Decl. ¶ 19; Chu Decl. ¶ 27. And the 2019 Rule's new requirement to obtain tax transcripts instead of tax returns substantially exacerbates the problem. There is simply no effective way to navigate the tax transcript-request process in the one-day workshops hosted and/or sponsored by Plaintiffs. *See, e.g.*, Rodgers Decl. ¶ 27. Although tax transcripts can be requested online, the low-income immigrants that Plaintiffs serve often do not have the identifying information needed to obtain tax transcripts in this way—for example, a credit card, mortgage, home equity loan, home equity line of credit, or car loan in the requester's name. And tax transcript requests submitted by mail can take weeks to process, making them infeasible for one-day workshops. Moreover, tax transcripts are generally unavailable between April 15 and June 15, while the IRS is processing the prior year's tax returns. *See* Stolz Dec. ¶ 31.

Replacing the one-day workshop model will require a significant investment of resources for all Plaintiffs. Plaintiffs ILRC and CLINIC, which train and fund organizations across the country to provide naturalization services through a workshop model, will have to design a new way of providing naturalization services at scale and retrain their partner organizations and volunteers to do so. Rodgers Decl. ¶¶ 29–41; Chenoweth Decl. ¶¶ 30–40. The other Plaintiffs will have to redesign their own programs, including potentially canceling or restructuring workshops scheduled for the months immediately after the rule goes into effect or adding additional workshops

[14] *See supra* pp. 6–7.

on how to collect information, a new service requiring additional funding. Kelly-Stallings Decl. ¶¶ 27–36; Núñez Decl. ¶¶ 25–31; Stolz Decl. ¶¶ 25–35; Chu Decl. ¶¶ 22–33. Plaintiffs will have to spend valuable staff time and organizational resources creating, editing, and updating materials; re-training hundreds of service providers and thousands of volunteers; consulting with tax experts about income verification and tax transcripts; and responding to an anticipated significant increase in requests for legal advice and assistance.[15] OneAmerica estimates that some of these tasks will require an additional 120 hours of staff time, costing the organization approximately $4,200. Stolz Decl. ¶ 36; *see also* Kelly-Stallings Decl. ¶ 38 (redesigning practice materials will cost Seattle $35,000 or more).

5. The 2019 Rule will impair the Plaintiffs' ability to achieve their missions.

Plaintiffs' organizational missions center on providing assistance to immigrants applying for naturalization. Rodgers Decl. ¶¶ 3–4; Kelly-Stallings Decl. ¶¶ 3, 54; Núñez Decl. ¶¶ 3–4; Chenoweth Decl. ¶ 4; Stolz Decl. ¶¶ 4–5; Chu Decl. ¶¶ 3–4. Plaintiffs' ability to achieve their missions will be frustrated as the number of fee waiver applicants drop, and as they struggle to adapt their programming models to a new regulatory scheme that it makes it more difficult to demonstrate an applicant's eligibility for a fee waiver. And the resources that Plaintiffs will have to devote to compliance with the 2019 Rule will be diverted from direct client services, programming, teaching, training and technical assistance, and research. *See* Rodgers Decl. ¶¶ 29–41; Kelly-Stallings Decl. ¶¶ 37–40; Núñez Decl. ¶¶ 32–39; Chenoweth Decl. ¶¶ 30–40; Stolz Decl. ¶¶ 36–43; Chu Decl. ¶¶ 34–39.

ARGUMENT

To obtain a preliminary injunction, a plaintiff "must establish that [1] he is likely to succeed on the merits, [2] he is likely to suffer irreparable harm in the absence of preliminary relief, [3] the balance of equities tips in his favor, and [4] an injunction is in the public interest." *Regents of the Univ. of Calif. v. U.S. Dep't of Homeland Sec.*, 908 F.3d 476, 505 n.20 (9th Cir. 2018) (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)). In this circuit, compliance with these

[15] *See, e.g.*, Rodgers Decl. at ¶ 39; Chenoweth Decl. at ¶¶ 31, 36; Kelly-Stallings Decl. at ¶ 38.

four factors is judged with a "sliding scale" approach. *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011). "[T]he elements of the preliminary injunction test are balanced, so that a stronger showing of one element may offset a weaker showing of another." *Id.* These four factors are addressed in turn.

I. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS

A. Defendants' 2019 Rule is Procedurally Invalid.

1. Defendants failed to follow required notice-and-comment procedures.

To issue a new or revised rule, a federal agency generally must comply with the APA's notice-and-comment procedures, including the issuance of a proposed rule; an initial regulatory flexibility analysis that sets out the impact of the change; a comment period; consideration of the public's comments; and the issuance of a final rule. *See* 5 U.S.C. §§ 553, 603(a), 703. Only "[1] interpretative rules, [2] general statements of policy, [and] [3] rules of agency organization, procedure, or practice" are exempted from APA rulemaking. 5 U.S.C. § 553 (b)(A); *see also Perez v. Mortg. Bankers Ass'n*, 135 S. Ct. 1199, 1203–04 (2015). These exceptions apply only to rules that are not "substantive" and do not affect "individual rights and obligations." *Chrysler Corp. v. Brown*, 441 U.S. 281, 302 (1979). That is, they do not apply to rules that are "binding on the individuals to whom they apply in the same way statutes are," or that "are prescriptive, forward-looking, and of general applicability." *Save Our Valley v. Sound Transit*, 335 F.3d 932, 954–55 (9th Cir. 2003). Defendants' 2019 Rule is a substantive rule that cannot be validly promulgated without the appropriate notice-and-comment procedures; accordingly, Defendants were obliged to comply with the APA. *See Lincoln v. Vigil*, 508 U.S. 182, 196 (1993).

The 2019 Rule is substantive. It is generally applicable, forward looking, and prescriptive; it binds all future permanent residents who will request a fee waiver with their naturalization application, proscribing them from using receipt of a means-tested benefit as part of their request. And even if it were procedural, the APA would still apply, because USCIS cannot satisfy any of the three limited exceptions. The 2019 Rule is not interpretative; such "hortatory" rules go "to what the administrative officer thinks the statute or regulation means," whereas the 2019 Rule *changes* and *restricts* what the regulation means. *Alcaraz v. Block*, 746 F.2d 593, 613 (9th Cir.

1984); *see* Am. Compl., Exs. H–I (repeatedly characterizing the 2019 Rule as a "policy change"). Nor is the 2019 Rule a general statement of policy, which leaves "the agency, or its implementing official, free to exercise discretion to follow, or not to follow, the [announced] policy in an individual case"; to the contrary, the 2019 Rule entirely prohibits applicants from submitting, and officials from considering, information related to means-tested benefits. *Mada-Luna v. Fitzpatrick*, 813 F.2d 1006, 1013 (9th Cir. 1987) (alteration in original). And the 2019 Rule is not a rule of agency organization, procedure, or practice—those are "rules of *internal* agency procedure," *United States v. Saunders*, 951 F.2d 1065, 1068 (9th Cir. 1991) (emphasis added), that deal with "housekeeping" matters, *Chrysler Corp.*, 441 U.S. at 283. The 2019 Rule governs what information *individuals* are permitted to use. USCIS was therefore required to comply with the APA's notice-and-comment procedures.

2. Defendants did not comply with the APA's notice-and-comment procedures.

It is undisputed that USCIS did not comply with APA notice-and-comment procedures when issuing the 2019 Rule; the agency has conceded as much. Am. Compl., Ex. G at 3 ("PRA notices do not rise to the level of notice and comment rulemaking"). Accordingly, the 2019 Rule must be "set aside" and the agency's "previous practice" must be "reinstated." *Jerri's Ceramic Arts, Inc. v. Consumer Prod. Safety Comm'n*, 874 F.2d 205, 208 (4th Cir. 1989); *Croplife Am. v. EPA*, 329 F.3d 876, 884–85 (D.C. Cir. 2003).

USCIS promulgated the 2019 Rule under the less rigorous procedures of the Paperwork Reduction Act ("PRA"). *See e.g.*, 84 Fed. Reg. 26138. The agency undertook no initial regulatory flexibility analysis of the expected impact of the 2019 Rule. *See* 5 U.S.C. § 603(a). And the notices it published in the Federal Register were seriously deficient: they addressed only the elimination of means-tested benefit-based applications and failed to mention the other rule changes, including the requirement to use tax transcripts and the requirement to use Revised Form I-912. As such, the public was not given an adequate opportunity to comment on these other changes. *See Rodway v. U.S. Dept. of Agric.*, 514 F.2d 809, 815 (D.C. Cir. 1975) ("[T]he public should be held accountable only for notice plainly set forth in the Federal Register.").

Beyond that, USCIS did not "consider and respond to significant comments received during

the period for public comment." *Perez*, 135 S. Ct. at 1203. In fact, USCIS made no substantial changes to the onerous requirements of the proposed rule, despite the 1,198 comments from Plaintiffs and other individuals and organizations expressing serious concern with the impact of the 2019 Rule. *See* Am. Compl. Exs. G–I. Instead, it merely acknowledged that some "applicants . . . will no longer be eligible for a fee waiver under this changed policy," Am. Compl., Ex. G at 5, but provided no explanation for why this outcome was justified.

B. Defendants' 2019 Rule is Arbitrary and Capricious.

The 2019 Rule is also unlawful because—in eliminating means-tested benefits as a basis for showing inability to pay; in pinning one's ability to pay to a decontextualized income threshold; and in requiring difficult new documentation without any reason—it is arbitrary and capricious, in violation of the APA. 5 U.S.C. § 706(2)(A). An agency action is arbitrary and capricious if the agency fails to "give adequate reasons for its decisions," *Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2125 (2016), "explain the evidence which is available," "examine the relevant data," or "offer a rational connection between the facts found and the choice made." *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins.*, 463 U.S. 29, 52 (1983) (quotation mark omitted). The 2019 Rule is arbitrary and capricious for at least four reasons.

First, in eliminating receipt of a means-tested benefit from consideration, Defendants have failed to "cogently explain why [they have] exercised [their] discretion in a given manner." *State Farm*, 463 U.S. 29 at 48. Defendants' only stated rationale for this change was that permitting fee waivers based on the receipt of a means-tested benefit leads to inconsistent results because of "the various income levels used in states to grant a means-tested benefit." Am. Compl., Ex. G at 3. But USCIS provided no documentation, data, or analysis to support this purported rationale. And although USCIS purported to request comments on "the validity of the methodology and assumptions used" in coming to its conclusions, it never *published* either its methodology or its assumptions, rendering comment upon them impossible and leaving its decision-making process conspicuously undescribed. *See, e.g.*, 83 Fed. Reg. 49121.

Second, USCIS did not explain why the revised standard—requiring identical income levels for fee-waiver eligibility—is a fair measure of an applicant's "inability to pay" the naturalization

application fee, as the regulation requires. USCIS merely asserted that the proposed changes will ease the burden on paying applicants, who are responsible for the cost of fee-waived applications, and claimed that the use of consistent standards to determine fee waiver eligibility will increase "the consistency in the shifting of the cost of fee waivers to those who pay fees." Am. Compl., Ex. G at 3. USCIS once again provided no data or evidence to support this assertion, nor did it take into consideration the increased burden that will be placed on other applicants, legal-service providers, and even the agency.

Third, USCIS failed to take into account factors such as cost of living, which undermine the claim that exclusive use of the FPG rather than means-tested benefits will result in greater consistency; in fact, the opposite is true. The FPG are uniform for the 48 contiguous states, despite drastic differences in the cost of living in different places. Wong Decl. ¶¶ 8–10. The FPG for a family of four is $25,750, for instance, and 150 percent of that amount is $38,625; yet this amount is insufficient to maintain a family of four in high cost-of-living cities such as San Francisco, Seattle, or New York.[16] In fact, while the poverty rate in the United States was only 12.3 percent in 2017, 41 percent of respondents surveyed that year by the Federal Reserve could not pay an unexpected expense of $400.[17] The percentage of respondents who could not pay an unexpected $400 is almost identical to the 40 percent of naturalization applicants who request a fee waiver, suggesting that the need for this relief is correlated not with the federal poverty threshold—under which far fewer people fall—but with other metrics such as cost of living. *See* Wong Decl. ¶ 6. Because the FPG does not account for differences in the cost of living, it does not effectively measure an individual applicant's ability to pay the naturalization fee. *See* Wong Decl. ¶ 13. Preventing USCIS adjudicators from considering means-tested benefits, and requiring them to look only at the FPG or evidence of special hardship, blinds the agency to important differences in cost

[16] *See* Wong Decl. ¶ 10; Annual Update of the HHS Poverty Guidelines, 84 Fed. Reg. 1167 (Feb. 1, 2019).

[17] *See* Wong Decl. ¶ 26; Kayla Fontenot, et al., *Income and Poverty in the United States: 2017* (2018), https://www.census.gov/content/dam/Census/library/publications/2018/demo/p60-263.pdf; Bd. of Governors of the Fed. Reserve Sys., *Report on the Economic Well-Being of U.S. Households in 2017* (2018), https://www.federalreserve.gov/publications/files/2017-report-economic-well-being-us-households-201805.pdf. For another example of the inadequacy of the FPG in measuring poverty, *see* Kelly-Stallings Decl. ¶¶ 16–17.

of living that the federal government considers and accommodates in countless other settings. Wong Decl. ¶¶ 11–13.

Finally, the 2019 Rule requires an applicant to procure new documents, including a federal tax transcript, to prove income. As described *supra* at pp. 6–7, these transcripts are extremely difficult to obtain for many low-income individuals. Yet USCIS has failed to provide a reasonable basis for its decision to reject tax returns as proof of income.

For these reasons, Plaintiffs are likely to succeed on the merits of their claim that the 2019 Rule is arbitrary and capricious.

C. Defendants' 2019 Rule Conflicts with 8 C.F.R. § 103.7(c).

Agency actions must be struck down when they are "not in accordance with law." 5 U.S.C. § 706(2)(A). "[T]he duty of an administrative agency is to follow [the statute's] commands as written, not to supplant those commands with others it may prefer." *SAS Inst., Inc. v. Iancu*, 138 S. Ct. 1348, 1355 (2018). The revisions embodied in the 2019 Rule are directly contrary to the text of 8 C.F.R. § 103.7(c)(2), which allows an applicant broad discretion in how to demonstrate their inability to pay: the regulation allows applicants to submit "a written request for permission to have their request processed without payment of a fee," so long as the applicant's inability to pay is supported by "evidence." Indeed, in its 2011 Policy Memorandum, USCIS expressly acknowledged that since "use of a USCIS-published fee-waiver request form is not mandated by regulation, USCIS will continue to consider applicant-generated fee-waiver requests (i.e., those not submitted on Form I-912) that comply with 8 CFR 103.7(c)." Am. Compl., Ex. C at 2. The 2019 Rule eliminates this flexibility, contrary to the underlying regulation. Accordingly, Plaintiffs are likely to succeed on their claim that the 2019 Rule is "not in accordance with law," and is invalid under 5 U.S.C. § 706(2)(A).

D. Defendant Cuccinelli is Not Lawfully Serving as the Acting Director of USCIS, and the 2019 Rule Therefore Has No Force or Effect.

The 2019 Rule is "not in accordance with law," 5 U.S.C. § 706(2)(A), for an additional reason: it is an agency action taken by USCIS while Defendant Cuccinelli purported to act as its head. However, Defendant Cuccinelli was performing the functions and duties of the Director of

USCIS in violation of the Federal Vacancies Reform Act ("FVRA"), 5 U.S.C. §§ 3345(a), 3347(a), and the 2019 Rule therefore "shall have no force or effect." § 3348(d).

The FVRA dictates who may temporarily fill a federal office when that office is one for which the Appointments Clause, U.S. Const. art II, § 2, cl. 2, requires Senate confirmation of the President's nominee. Because the Director of USCIS exercises significant authority pursuant to the laws of the United States, *see Freytag v. C.I.R.*, 501 U.S. 868, 881–82 (1991); *Buckley v. Valeo*, 424 U.S. 1, 126 (1976), the Appointments Clause requires the advice and consent of the Senate. A federal statute also provides explicitly that the Director of USCIS is subject to Senate confirmation. 6 U.S.C. § 113(a)(1)(E).

Under the FVRA, when an office subject to Senate confirmation becomes vacant, the default rule is that the "first assistant to the office of such officer shall perform the functions and duties of the office temporarily in an acting capacity," subject to certain time limits. 5 U.S.C. § 3345(a). No presidential action is required for this succession to occur. There are, however, two exceptions to this default rule. The President may direct an individual to "perform the functions and duties of the vacant office temporarily in an acting capacity" if that individual (1) has already been confirmed by the Senate to serve in any position in the federal government, *id.* at § 3345(a)(2), or (2) is a managerial-level employee at the relevant agency who worked in that capacity for at least 90 days in the year preceding the vacancy, *id.* at § 3345(a)(3). The collective effect of these three provisions is to ensure that the acting official has significant relevant experience in the federal government.

Defendant Cuccinelli has no such experience. He purportedly serves as Acting Director of USCIS by operation of the default rule; he does not meet the requirements for an acting official pursuant to either § 3345(a)(2) or (a)(3). However, when the office of Director of USCIS became vacant on June 1, the first assistant to that office was the Deputy Director of USCIS, Mark Koumans. Koumans served as Acting Director of USCIS for one week. On June 10, Defendant McAleenan placed Defendant Cuccinelli, who had not previously worked for the federal government, into a newly invented role—that of "Principal Deputy Director" of USCIS. Defendant McAleenan then designated this role as the first assistant, thereby purporting to install Defendant

Cuccinelli as Acting Director.

This maneuver must fail. The text of § 3345(a)(1) must be read to apply only to the individual serving in the first assistant role at the time the vacancy arises. *See* S. Rep. 105-250, 1 (under FVRA, "*upon* the death, resignation, or inability to serve of an officer of an executive agency . . . the first assistant to the officer becomes the acting officer" (emphasis added)). Were it interpreted to allow other individuals, regardless of government experience, to be subsequently designated as first assistant, then the FVRA would have placed no limit at all on who could serve as an acting officer. Such a reading also renders § 3345(a)(2) and (a)(3) to be nullities. If the President has the ability to remove the existing first assistant and replace that person with anyone the President chooses, then the President is not limited to selecting among individuals with either Senate confirmation in another role or managerial experience at the relevant agency. In short, if Defendant Cuccinelli's appointment is legal, the FVRA has not placed any limits on the President's choice of acting officials—which is precisely its purpose. *See* S. Rep. 105-250, 5 (FVRA "limits presidential authority to make acting appointments").

Because Defendant Cuccinelli's installation as Acting Director violates the FVRA, it also violates the Appointments Clause, which requires that any individual who exercises "significant authority pursuant to the laws of the United States," *Buckley v. Valeo*, 424 U.S. 1, 126 (1976), be confirmed by the Senate before taking office, unless federal law provides otherwise. Defendant Cuccinelli is not in compliance with the FVRA, and that exception to the Senate confirmation requirement therefore does not apply. For these reasons, the Plaintiffs are likely to succeed on the merits of their claim that the 2019 Rule is not in accordance with the law.

II. PLAINTIFFS ARE LIKELY TO SUFFER IRREPARABLE HARM ABSENT AN INJUNCTION

To determine whether organizational plaintiffs are "likely to suffer irreparable harm in the absence of preliminary relief," *Winter*, 555 U.S. at 20, courts consider whether the plaintiffs have established "'ongoing harms to their organizational missions,' including diversion of resources and the non-speculative loss of substantial funding from other sources." *E. Bay Sanctuary Covenant v. Trump*, 354 F. Supp. 3d 1094, 1116 (N.D. Cal. 2018) (quoting *Valle del Sol Inc. v. Whiting*, 732

F.3d 1006, 1029 (9th Cir. 2013)); *see also S.A. v. Trump*, 2019 WL 990680, at *9 (N.D. Cal. Mar. 1, 2019) ("Courts within this circuit have granted preliminary injunctions to organizations on the basis of harm to the organizations' missions, reputations, goodwill, and funding."). Each of the Plaintiffs here easily meets that test. The 2019 Rule will immediately and substantially reduce the number of clients who can make use of Plaintiffs' naturalization services. *See supra* at pp. 6–7. Plaintiffs' ability to serve clients will also be hampered by the increased evidentiary requirements for income- and hardship-based applications. *See supra* at pp. 9–10. These harms will result in fewer clients seeking to naturalize, and thus fewer clients utilizing Plaintiffs' services. *See supra* at pp. 6–8. At the same time, each application will take substantially longer, reducing the number of clients each Plaintiff can serve. *See, e.g.*, Rodger Decl. ¶ 27; Núñez Decl. ¶ 20; Am. Compl. ¶ 220. These effects will cause long-lasting and irreparable harm by (1) jeopardizing the funding streams of the Organizational Plaintiffs; (2) causing Self-Help to cease its naturalization services; (3) requiring Plaintiffs to divert substantial resources and incur costs; and (4) frustrating Plaintiffs' missions.

Loss of Funding. Without a preliminary injunction, the Organizational Plaintiffs are likely to suffer irreparable harm through the "loss of substantial funding."[18] *E. Bay Sanctuary Covenant*, 354 F. Supp. 3d at 1116; *see also S.A. v. Trump*, 2019 WL 990680, at *9. As discussed *supra* p. 8, the Organizational Plaintiffs rely to varying degrees on funding that is tied to specific numerical targets for applications completed. Even a short-term decline in applicants served, during the pendency of this litigation, will impact the Organizational Plaintiffs' long-term metrics, threatening their ability to meet their targets, and in turn to receive future funding. For example, OneAmerica stands to lose up to 90 percent of its funding due to contractual requirements that depend, in part, on the completion of 1,180 naturalization applications and at least 10 workshops per year. Stolz Decl. ¶ 7. Only an injunction can prevent the Organizational Plaintiffs from losing the steady stream of funding that they rely on.

Impairment and Elimination of Naturalization Services. A loss of funding will

[18] *See* Rodgers Decl. ¶¶ 42–45; Núñez Decl. ¶¶ 40–43; Chenoweth Decl. ¶ 41–44; Stolz Decl. ¶¶ 44–49; Chu Decl. ¶¶ 40–41.

substantially impair the Organizational Plaintiffs' ability to provide or sponsor naturalization services to LPRs; it may ultimately require them to cease providing these services altogether.[19] If the 2019 Rule goes into effect, Self-Help will lose 100 percent of its funding for its naturalization program (*see* Chu Decl. ¶ 40) and will have to cease "provid[ing] the services [it was] formed to provide." *E. Bay Sanctuary Covenant v. Trump*, 909 F.3d 1219, 1241 (9th Cir. 2018); *see also Doe v. Trump*, 288 F. Supp. 3d 1045, 1082 (W.D. Wash. 2017) (finding plaintiffs would suffer irreparable harm because challenged policy would cause organizational plaintiffs to, among other things, "reduce services" and "cancel established programs"); *Open Communities All. v. Carson*, 286 F. Supp. 3d 148, 177 (D.D.C. 2017) ("An organization, to show irreparable harm, must show [] that 'the actions taken by the defendant have perceptibly impaired the organization's programs. . . . [and] 'directly conflict with the organization's mission.'" (quoting *League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 8 (D.C. Cir. 2016)).

Diversion of Resources and Additional Costs. Plaintiffs will immediately be forced to reallocate resources as a result of the 2019 Rule.[20] In fact, OneAmerica has already diverted resources, including 120 hours of staff time and over $3,000, to try adapt to the 2019 Rule. Stolz Decl. ¶¶ 36–37. Plaintiffs will no longer be able to serve fee waiver-eligible clients through a one-day workshop model, because those clients will require time-consuming and complex help with income- or hardship-based fee waiver applications. For example, Self-Help's one-day workshop model will become completely infeasible: the Revised Form I-912 will require up to two additional one-on-one appointments with Self-Help staff, assuming that there are no difficulties in obtaining the required documents, including the tax transcript. Chu Decl. ¶ 31. ILRC estimates that acquiring the documentation necessary to request a tax transcript (which now must be submitted with *all* fee waiver applications) "will require ten times more work" per application. Rodgers Decl. ¶ 27. Thus, Plaintiffs will have to "diver[t] resources" and incur additional costs, including staff time and money, to retool their business models to accommodate more burdensome

[19] *See* Rodgers Decl. ¶¶ 25–28; Kelly-Stalling Decl. ¶¶ 27–36; Núñez Decl. ¶¶ 25–31; Chenoweth Decl. ¶¶ 23–29; Stolz Decl. ¶¶ 25–35; Chu Decl. ¶¶ 22–33.

[20] *See* Rodgers Decl. ¶¶ 29–41; Kelly-Stalling Decl. ¶¶ 37–40; Núñez Decl. ¶¶ 32–39; Chenoweth Decl. ¶¶ 30–40; Stolz Decl. ¶¶ 36–43; Chu Decl. ¶¶ 34–39.

fee waiver applications. *E. Bay Sanctuary Covenant*, 354 F. Supp. 3d at 1116; *see also State v. Azar*, 385 F. Supp. 3d 960 (N.D. Cal. 2019) (organizational plaintiffs established irreparable harm because they would "not be able to recover for the substantial costs they would need to expend to come into compliance with the new [regulation]"); *S.A. v. Trump*, 2019 WL 990680, at *9 (organizational plaintiff established irreparable harm, in part, because it was "forced to redirect resources, including altering staff and volunteer work plans and reassigning employee").

And in order to continue providing services and avoid further cuts to funding, Plaintiffs will have to "expend additional resources," on, among other things: revising, retranslating, and reprinting training materials for clients, staff, and volunteers; hiring and training new and existing staff members; providing additional hotline assistance; and re-designing outreach materials to reach their client base. *E. Bay Sanctuary Covenant*, 909 F.3d at 1241. CLINIC, for example, will need to create a practice advisory from scratch to circulate to its affiliates, alongside accompanying webinars. Chenoweth Decl. ¶ 32. It will also need to completely revamp at least four of its existing trainings, and will have to immediately rewrite chapters and advisories in its Citizenship Toolkit and Naturalization Group Application Workshop Toolkit, which each comprised over 100 documents. *Id.* ¶ 35.. These adjustments are substantial: for example, ILRC estimates (conservatively) that it will incur an additional expenditure of 50 hours of staff time and $10,000 to bring its programs into compliance with the 2019 Rule. Rodgers Decl. ¶ 29.

Frustration of Missions. The reduction in naturalization applications that will follow from the 2019 Rule will impair Plaintiffs' ability to achieve their foundational missions.[21] *See, e.g.*, *Innovation Law Lab v. Nielsen*, 366 F. Supp. 3d 1110, 1121, 1129 (N.D. Cal. 2019) (plaintiffs established irreparable harm on "showing that the challenged policy directly impedes their mission, in that it is manifestly more difficult to represent clients"). At their core, Plaintiffs' missions are to provide naturalization services to low-income immigrants in order to improve their quality of life and help them become productive members of society. For example, Self-Help's mission is to "improve the quality of life for low-income immigrant and minority communities by promoting

[21] *See* Rodgers Decl. ¶ 46; Kelly-Stalling Decl. ¶¶ 50–54; Núñez Decl. ¶ 44; Chenoweth Decl. ¶ 45; Stolz Decl. ¶ 50; Chu Decl. ¶ 42.

their independence, dignity, and self-worth." Chu Decl. ¶ 41. Plaintiffs further their missions with each naturalization application that they help to submit. Any reduction in applicants would frustrate Plaintiffs' efforts to improve the lives of immigrants and permanent residents, and help them achieve the final step towards integration into American life and society. It would also impair Plaintiffs' efforts to provide access to counsel to those individuals who are likely to need it but are unlikely to seek it out or able to afford it.

III. THE BALANCE OF HARMS STRONGLY FAVORS PLAINTIFFS AND THE PUBLIC INTEREST IS SERVED BY AN INJUNCTION.

The final two *Winter* factors—"the balance of equities" and "the public interest"—both weigh in favor of Plaintiffs. 555 U.S. at 20. In the naturalization context, courts have previously found government practices that "have frustrated the attempts of naturalization applicants and [service providers] to comply with these regulations" to "weigh in favor of preliminary injunctive relief" due to public policy concerns; likewise, by "merely . . . preserving the *status quo*," the government "will suffer little or no harm." *Campos v. INS*, 70 F. Supp. 2d 1296, 1310 (S.D. Fla. 1998).

USCIS will suffer no harm from a preliminary injunction. The status quo, in which proof of a means-tested benefit has been permissible, has been in place for almost a decade, and USCIS has acknowledged that fee-paying applicants cover the costs of waived applications, not USCIS. *See* Am. Compl., Ex. G at 3. By contrast, without a preliminary injunction Plaintiffs will have to immediately divert a significant amount of resources to restructure their programs, and the Organizational Plaintiffs' application-dependent funding will be thrown into peril. Defendants can wait a few months for the adjudication of this case; Plaintiffs cannot.

IV. THE COURT SHOULD ENTER A NATIONWIDE INJUNCTION.

Nationwide relief is necessary to forestall the significant harms threatened here. The Court's authority to issue a nationwide injunction is well-established. *See, e.g., Hawaii v. Trump*, 859 F.3d 741, 787 (9th Cir. 2017) ("[I]t is appropriate for courts to issue nationwide injunctions.") Whether nationwide injunctive relief is warranted depends on "the extent of the violation established, not . . . the geographical extent of the plaintiff." *E. Bay Sanctuary Covenant*, 909 F.3d

at 1255 (quoting *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979)).

First, Plaintiffs will be deprived of complete relief if the injunction is geographically limited. *California v. Azar*, 911 F.3d 558, 584 (9th Cir. 2018), *cert. denied sub nom. Little Sisters of the Poor Jeanne Jugan Residence v. California*, 139 S. Ct. 2716 (2019). Plaintiffs are located throughout the United States and include two nationwide providers of naturalization programs. Am. Compl. ¶¶ 24, 26; Rodgers Decl. ¶¶ 3–5; Chenoweth Decl. ¶ 4–9. If Plaintiffs do not have to comply with the 2019 Rule, but all other naturalization service providers are required to do so, Plaintiffs will become the only choice of naturalization aid for many applicants. An influx of new clients will significantly burden Plaintiffs operations, hampering not only their "ability to provide services to their *current* clients," but also "to pursue their programs writ large." *E. Bay Sanctuary Covenant*, 354 F. Supp. 3d at 1121; *see also E. Bay Sanctuary Covenant v. Barr*, 391 F.Supp.3d 974, 982–83 (9th Cir. 2019) (holding that evidence of organizational and diversion of resources harms rendered a nationwide injunction "necessary to give prevailing parties the relief to which they are entitled." (quoting *City & Cty. of San Francisco v. Trump*, 897 F.3d 1225, 1244)) (internal quotation marks omitted).

Second, Plaintiffs have established that the 2019 Rule violates the APA, and "[w]hen a reviewing court determines that agency regulations are unlawful, the ordinary result is that the rules are vacated," and *not* applied individually to limit injunctive relief. *Regents of the Univ. of Calif.*, 908 F.3d at 511 (alteration in original) (quotation omitted).

Finally, absent a nationwide injunction, the implementation of the 2019 Rule will spur mass confusion across the country, leading to disparate treatment under federal immigration policy. This is particularly salient in the immigration context where there is a "need for uniformity" – indeed, the Constitution requires immigration policies to be implemented and enforced uniformly. *Id*.

CONCLUSION

For the foregoing reasons, the Court should preliminarily enjoin the operation of Defendants' 2019 Rule.

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