UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
BALTIMORE DIVISION

MAYOR AND CITY COUNCIL OF BALTIMORE,

Plaintiff,

v.

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

Defendants.

Case No. 1:18-cv-3636-ELH

CORRECTED BRIEF OF UNITED STATES HOUSE OF REPRESENTATIVES AS *AMICUS CURIAE* IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

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INTEREST OF *AMICUS CURIAE*[1]

Amicus curiae, the United States House of Representatives,[2] respectfully submits this brief because of its interest in ensuring that immigrants to our Nation are accorded the rights to which the immigration laws entitle them. The Constitution empowers the Legislative Branch to "establish a uniform Rule of Naturalization." Art. I, § 8. The formulation of "[p]olicies pertaining to the entry of [noncitizens] and their right to remain here … is entrusted exclusively to Congress." *Galvan v. Press*, 347 U.S. 522, 531 (1954) (citation omitted).

For more than 100 years, courts and the Executive Branch have understood the "public charge" provision of our Nation's immigration laws to apply to individuals who are likely to become primarily dependent upon public assistance for a significant period. Congress preserved that long-established meaning when it reenacted the public-charge provision without material change in 1996. Congress has an important interest in preserving its ability to reenact a statutory term, against the backdrop of that term's settled meaning, without the risk that an administration dissatisfied with Congress's policy judgment will later seek to give the term a meaning that Congress has already rejected.

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[1] The House certifies that no counsel for a party authored the brief in whole or in part, and no person or entity other than the House and its counsel made a monetary contribution intended to fund the preparation or submission of the brief. All parties consented to the filing of this brief.

[2] The Bipartisan Legal Advisory Group (BLAG) of the United States House of Representatives has authorized the filing of an *amicus* brief in this matter. The BLAG comprises the Honorable Nancy Pelosi, Speaker of the House, the Honorable Steny H. Hoyer, Majority Leader, the Honorable James E. Clyburn, Majority Whip, the Honorable Kevin McCarthy, Republican Leader, and the Honorable Steve Scalise, Republican Whip, and "speaks for, and articulates the institutional position of, the House in all litigation matters." Rules of the U.S. House of Representatives (116th Cong.), Rule II.8(b), https://perma.cc/M25F-496H. The Republican Leader and Republican Whip dissented.

INTRODUCTION AND SUMMARY

Since 1882, Congress has directed that non-U.S. citizens likely to become "public charges" may not settle in the United States. During that time, the courts and the Executive Branch have consistently construed this provision as limited to persons likely to become primarily dependent on the government for a significant period. Congress affirmed this long-established understanding of the term when it reenacted the public-charge provision without material change in 1996. The current version of the provision once more denies admission and adjustment of status to permanent residency to persons "likely at any time to become a public charge." 8 U.S.C. § 1182(a)(4)(A). At the same time, in a closely related provision, Congress considered and rejected an effort to broaden the definition of "public charge" to include noncitizens who receive small amounts of widely available government benefits.

The Trump Administration now seeks to broaden—dramatically—the scope of the "public charge" provision. The Department of State has issued an interim final rule redefining "public charge" to refer to persons likely at any time to receive certain government benefits—including benefits like food stamps, Medicaid, and federal housing assistance—for more than 12 months in the aggregate within any three-year period. *See* 84 Fed. Reg. 54,996, 54,998 (Oct. 11, 2019) (Public Charge Rule). The class of noncitizens who may obtain these benefits is vast. Together with a similar rule issued by the Department of Homeland Security (DHS), the rule would overhaul the Nation's immigration system, seizing on a previously narrow exclusion to substantially limit the class of individuals who may settle here.

The Trump Administration may not substitute its own policy judgment for Congress's in this way. When Congress reenacted the public-charge provision without material change in 1996, it legislated against the settled understanding of "public charge" as limited to noncitizens

who primarily depend on the government over the long term. Courts must presume that Congress intended to ratify that established meaning when it reenacted the provision without change. *See Helsinn Healthcare S.A. v. Teva Pharm. USA, Inc.*, 139 S. Ct. 628, 633-34 (2019).

The State Department's rule deviates from the long-settled understanding of "public charge" in crucial respects. For the first time ever, the State Department would consider in its public-charge determination not just a noncitizen's receipt of cash benefits for income maintenance, but also the receipt of benefits like food stamps, Medicaid, and affordable housing, even though acceptance of such benefits does not make a noncitizen primarily dependent upon the government. And for the first time ever, a noncitizen deemed likely at any point in the future to collect small amounts of public benefits would be considered a "public charge."

These changes cannot be reconciled with Congress's intent when it reenacted the provision in 1996—particularly given that Congress in 1996 *rejected* efforts to broaden a related provision to encompass noncitizens likely to obtain these government benefits. After Congress has repeatedly reenacted a term in reliance on its settled meaning, and after Congress has rejected efforts to expand that term by statute, the Executive Branch should not be permitted to outmaneuver Congress by expanding the term to give it the meaning Congress rejected.

In addition, the State Department's new rule would be impossible to apply rationally or fairly. The interim final rule would require immigration officials to make predictive judgments about whether noncitizens are likely far in the future to collect *de minimis* public benefits for even short periods. There is simply no way for a government official to predict with any degree of accuracy whether an individual may at some point many years later in life qualify for—and, if so, choose to accept—minimal assistance from the government. Congress did not intend to force State Department consular officers to make such impossible predictions.

ARGUMENT

I. THE STATE DEPARTMENT'S NEW UNDERSTANDING OF "PUBLIC CHARGE" DEPARTS FROM THAT TERM'S LONGSTANDING AND SETTLED MEANING.

A. The Term "Public Charge" Has Always Referred To A Person Primarily Dependent On The Government For A Significant Period.

The term "public charge" has always referred to persons likely to become primarily dependent on the government over the long term. In the more than 100 years since Congress enacted the public-charge provision, both the courts and the Executive Branch have understood the term consistent with that long-established meaning.

1. Congress first used the phrase "public charge" in the Immigration Act of 1882, the Nation's original immigration law. The 1882 Act provided that "any convict, lunatic, idiot, or any person unable to take care of himself or herself without becoming a public charge … shall not be permitted to land [in the United States]." Immigration Act of 1882, ch. 376, 22 Stat. 214.

The text of the 1882 statute establishes that "public charge" referred to persons primarily dependent on the government. When the statute was enacted, Webster's Dictionary defined a "charge" as a "person or thing committed to another's custody, care or management." *Webster's American Dictionary of the English Language* (1st ed. 1828). A "*public* charge," therefore was understood to refer to someone committed to the custody or care of the government—*i.e.*, someone primarily dependent on the government.

Other features of the 1882 Act confirm that "public charge" requires a showing of primary and long-term dependency. A different provision of the 1882 Act created an "immigrant fund" to be used "for the care of immigrants arriving in the United States, for the relief of such as are in distress," and to "provide for the support and relief of such immigrants therein landing as may fall into distress or need public aid." 22 Stat. at 214. Because the statute contemplated the

admission of immigrants needing public aid, the public-charge provision could not have excluded immigrants on the ground that they might collect some public aid. This conclusion is reinforced by the fact that Congress modeled the original public-charge restriction on state laws directed at "exceptionally impoverished and destitute persons," which excluded persons who needed modest and temporary assistance. Hidetaka Hirota, *Expelling the Poor* 33, 68 (2016).

Thus, in *Gegiow v. Uhl*, 239 U.S. 3 (1915), the Supreme Court held as a matter of law that the public-charge provision did not apply in a case involving immigrants who had little money, did not speak English, and would be unable to find employment in their chosen destination city. *Id.* at 8-10. To be a "public charge," the Court concluded, a person must be "excluded on the ground of permanent personal objections." *Id.* at 10. That the immigrants would not find a job in their destination did not make them "public charges." *Id.*

2. In 1917, Congress amended the public-charge provision, moving its location within the statute, but courts and the Executive Branch continued to recognize that the amended provision applied only to persons likely to become primarily dependent on the government for significant periods. *See* Immigration Act of February 5, 1917, ch. 29, 39 Stat. 874, 876. As the Ninth Circuit explained, the 1917 Amendment "does not change the meaning that should be given" to public charge. *Ex parte Hosaye Sakaguchi*, 277 F. 913, 916 (9th Cir. 1922). Other courts also continued to read "public charge" to mean "a condition of dependence on the public for support." *Coykendall v. Skrmetta*, 22 F.2d 120, 121 (5th Cir. 1927). The Executive Branch applied the provision similarly. *See Matter of T-*, 3 I. & N. Dec. 641, 644 (BIA 1949).

3. In 1952, Congress enacted the Immigration and Nationality Act (INA), which retained the "public charge" provision. Pub. L. No. 82-414, ch. 2, § 212, 66 Stat. 163, 183. The INA continued to make inadmissible noncitizens who are "likely to become public charge[s]." *Id.* As

before, the provision was understood to apply only to noncitizens considered likely to become primarily dependent on the government over the long term.

In 1964, the Attorney General issued a precedential decision holding that the public-charge provision "requires more than a showing of a possibility that the [noncitizen] will require public support." *Matter of Martinez-Lopez*, 10 I. & N. Dec. 409, 421 (A.G. 1964). The Attorney General explained that "[s]ome specific circumstance, such as mental or physical disability, advanced age, or other fact reasonably tending to show that the burden of supporting the alien is likely to be cast on the public, must be present." *Id.* And the Attorney General concluded that "[a] healthy person in the prime of life cannot ordinarily be considered likely to become a public charge"—"especially where he has friends or relatives in the United States who have indicated their ability and willingness to come to his assistance in case of emergency." *Id.* at 421-22.

Later opinions by the Board of Immigration Appeals (BIA) reaffirmed this settled understanding of "public charge." Hence, a noncitizen could not be excluded as a public charge—even though "her family received public cash assistance for approximately 4 years"—given that she "has now joined the work force, that she is young, and that she has no physical or mental defects which might affect her earning capacity." *Matter of A-*, 19 I. & N. Dec. 867, 870 (BIA 1988); *see also Matter of Perez*, 15 I. & N. Dec. 136, 137 (BIA 1974) (noncitizen not a public charge even though "she was, and had been for some time, the recipient of welfare"). By contrast, a noncitizen "who is incapable of earning a livelihood, who does not have sufficient funds in the United States for his support, and has no person in the United States willing and able to assure that he will not need public support" would be "excludable as likely to become a public charge." *Matter of Harutunian*, 14 I. & N. Dec. 583, 589-90 (BIA 1974).

Summarizing the state of the law in 1999, the Immigration and Naturalization Service (INS) understood "public charge" to refer to a noncitizen who has become "primarily dependent on the Government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance or institutionalization for long-term care at Government expense." 64 Fed. Reg. 28,676, 28,677 (proposed May 26, 1999) (INS Field Guidance). "[C]onsistent with" a century of "public charge" precedents, INS explained that the plain meaning of the term "public charge" "suggests a complete, or nearly complete, dependence on the Government rather than the mere receipt of some lesser level of financial support." *Id.*

B. Congress Legislated Against The Backdrop Of The Long-Settled Meaning Of "Public Charge" When It Reenacted The Provision.

When Congress reenacted the public-charge provision without material change in 1996, it intended to retain the established judicial and administrative understanding of that statutory term.

1. Congress enacted the latest public-charge provision as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). *See* Pub. L. No. 104-208, 110 Stat. 3009. IIRIRA made substantial reforms to the Nation's immigration scheme, but it retained the public-charge provision materially unchanged. The Act provides that a noncitizen is inadmissible if, "in the opinion of" the relevant immigration official, the noncitizen "is likely at any time to become a public charge." 8 U.S.C. § 1182(a)(4)(A).

Congress in considering IIRIRA rejected a proposal to amend the public-charge provision addressing deportation to include noncitizens who temporarily receive supplemental public benefits. A prior version of the bill would have defined "public charge" to permit deportation if a noncitizen "received Federal public benefits for an aggregate of 12 months over a period of 7 years." 142 Cong. Rec. S11872, S11882 (daily ed. Sept. 30, 1996) (statement of Sen. Kyl). But this provision was removed under threat of veto. *Id.* at S11881-82.

In 2013, Congress again rejected an attempt to expand the public-charge provision beyond its long-established meaning to encompass receipt of supplemental public benefits. Then-Senator Jeff Sessions introduced an amendment that would have "expand[ed] the criteria for 'public charge,'" requiring noncitizens "to show they were not likely to qualify even for non-cash employment supports," including Medicaid and food stamps. S. Rep. No. 113-40, at 42 (2013). This proposal would have "denied entry" to noncitizens who were "likely to receive these types of benefits in the future." *Id.* at 63. The amendment was rejected by voice vote. *Id.*

2. Where, as here, "a word or phrase has been … given a uniform interpretation by inferior courts or the responsible agency, a later version of that act perpetuating the wording is presumed to carry forward that interpretation." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 322 (2012). Congress must be able to rely on the settled meaning of a statutory term without the risk that an Executive Branch dissatisfied with Congress's policy choices will later attempt to redefine the term to mean something different.

The Supreme Court has repeatedly held that when Congress reenacts a statutory phrase that has received a settled judicial interpretation, Congress is presumed to have ratified that interpretation. Faced with settled precedent regarding the meaning of a statutory phrase, the Court recently emphasized that it "presume[s] that when Congress reenacted the same language in the [new statute], it adopted the earlier judicial construction of that phrase." *Helsinn,* 139 S. Ct. at 633-34. Congress's decision to amend a statute "while still adhering to the operative language" in a provision "is convincing support for the conclusion that Congress accepted and ratified the unanimous holdings of the Courts of Appeals" interpreting that provision. *Tex. Dep't of Hous. & Cmty. Affairs v. Inclusive Cmtys. Project, Inc.*, 135 S. Ct. 2507, 2520 (2015). A similar presumption applies when Congress reenacts a statutory phrase that has been interpreted

authoritatively by the relevant agency. *See Helvering v. Winmill*, 305 U.S. 79, 83 (1938) (agency "interpretations long continued without substantial change, applying to unamended or substantially reenacted statutes, are deemed to have received congressional approval").

These presumptions apply with particular force where Congress has rejected efforts to modify the term at issue. "Few principles of statutory construction are more compelling than the proposition that 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) (citation omitted); *see also Gulf Oil Corp. v. Copp Paving Co.*, 419 U.S. 186, 200 (1974).

These principles leave no doubt that Congress preserved the long-established meaning of "public charge" when it reenacted that term without change in IIRIRA. In enacting IIRIRA, Congress legislated against the backdrop of a uniform body of law holding that "[a] healthy person in the prime of life cannot ordinarily be considered likely to become a public charge." *Matter of Martinez-Lopez*, 10 I. & N. Dec. at 421. And Congress considered and rejected a proposal to expand the public-charge provision governing deportation to cover a noncitizen's temporary receipt of benefits—compelling evidence that it did not intend to achieve that result.

"Congress legislates with knowledge of [the Supreme Court's] basic rules of statutory construction." *McNary v. Haitian Refugee Center, Inc.*, 498 U.S. 479, 496 (1991). Thus, when Congress chooses to retain a statutory term with a settled meaning, and when it chooses to reject a proposed expansion of the term, Congress trusts that the other branches will respect its decision to adopt the term's settled meaning. The other branches cannot play a shell game with Congress by ignoring these basic rules of statutory construction after Congress has relied on them.

3. Congress's decision to retain the longstanding meaning of "public charge" is confirmed by several other amendments Congress made to the public benefits laws and to the

INA in 1996. One month before it passed IIRIRA, Congress enacted the Personal Responsibility and Work Opportunity Reconciliation Act, Pub. L. No. 104-193, 110 Stat. 2105 (1996) (PRWORA), which overhauled key aspects of the Nation's federal benefits programs. PRWORA provided that lawful permanent residents could collect public benefits like food stamps and Medicaid after they had lived in the United States for five years. *Id.*, 110 Stat. at 2265. In addition, the Act made affidavits of support submitted by an immigration sponsor, in support of a noncitizen's application for lawful permanent residency, legally enforceable. *Id.*, 110 Stat. at 2271. Then, in IIRIRA, Congress amended the INA to require most immigrants to obtain affidavits of support from sponsors. Pub. L. No. 104-208, 110 Stat. at 3009-674.

These amendments underscore Congress's codification of the long-settled meaning of "public charge." In 1996, Congress expressly authorized immigrants to collect federal benefits and required sponsors to reimburse the government for receipt of these benefits in some circumstances. Congress therefore necessarily contemplated that immigrants, at least after the initial five-year period, would collect federal benefits. It addressed its concerns about immigrant self-sufficiency not by excluding all immigrants who might collect benefits, but instead by enacting a detailed scheme that limited their eligibility for a defined period and required reimbursement upon the government's request.

C. The State Department's New Rule Impermissibly Departs From The Long-Settled Understanding Of "Public Charge."

1. The new rule transforms the public-charge provision. It defines "public charge" to mean a person who, according to the predictive judgment of the relevant immigration official, is likely to collect more than 12 months of certain public benefits in the aggregate during a 36-month period. Public Charge Rule at 54,998. Under the new rule, qualifying benefits for the first time include in-kind assistance like food stamps (now known as the Supplemental Nutrition

Assistance Program, or SNAP), Medicaid, and federal housing assistance. *Id.* Multiple benefits received in a single month count as multiple months of benefits. *Id.*

It is difficult to overstate the significance of this transformation. Less than two percent of noncitizens receive cash benefits that could trigger a public-charge determination under the meaning of that term that has governed for a century. 83 Fed. Reg. 51,114, 51,193 (proposed Oct. 10, 2018). But the new rule requires consular officers to predict whether at any time in the future a noncitizen is likely to collect *de minimis* public benefits that are widely used by the population at large, increasing the number of noncitizens who may be deemed inadmissible on public-charge grounds by orders of magnitude. "[*A*]*bout half of all U.S.-born citizens*" at some point participate in the benefits programs considered in the new rule.[3] Thus, under the rule, consular officers would exclude a noncitizen deemed likely to resemble financially any person in the less affluent half of the U.S.-born population.

Together with DHS's materially identical rule, the State Department's rule would overhaul the Nation's immigration system, seizing on a previously narrow exclusion to impose a new and dramatic limit on the class of individuals seeking to enter the United States or become lawful permanent residents. That is not a decision Congress authorized the State Department to make. "Congress alone has the institutional competence, democratic legitimacy, and (most importantly) constitutional authority to revise statutes in light of new social problems and preferences." *Wis. Cent. Ltd. v. United States*, 138 S. Ct. 2067, 2074 (2018). "Until it exercises that power, the people may rely on the original meaning of the written law." *Id.*

[3] Danilo Trisi, Ctr. on Budget & Pol'y Priorities, *Administration's Public Charge Rules Would Close the Door to U.S. to Immigrants Without Substantial Means* (Nov. 11, 2019), https://tinyurl.com/ur8d7xy.

2. The State Department's rule departs from the long-established understanding of the term "public charge" in at least three respects.

In-Kind Benefits. A public-charge determination historically could be triggered only by a likelihood of receiving benefits associated with primary dependence on the government. But the new rule makes noncitizens inadmissible even if they are likely to receive minimal in-kind benefits like SNAP, Medicaid, and housing assistance.

Individuals who receive such benefits often do not depend on them for subsistence, as the Executive Branch has recognized. *See* INS Field Guidance at 28,686 (noting that these benefits "typically provide only supplemental and marginal assistance"). These benefits instead reflect Congress's policy judgment that individuals should have access to nutritious food, medical care, and affordable housing. *See* 7 U.S.C. § 2011; 42 U.S.C. § 1396-1; 42 U.S.C. § 1437(a)(1). The programs are not exclusively available to the poor. SNAP benefits are generally available to individuals with incomes up to 130% of the federal poverty line. *See* 7 C.F.R. § 273.9(a)(1). Many states have expanded Medicaid to persons with incomes up to 138% of the poverty line. *See* 42 U.S.C. § 1396a(a)(10)(i), (*l*). And affordable housing assistance is in many geographic areas available to persons who earn incomes that place them substantially above the poverty line. *See* 42 U.S.C. § 1437f(o)(4); *id.* § 1437a(b)(2)(B) (families eligible if they earn 50% of area median income or less). Individuals who receive these benefits may not be destitute, but may accept the benefits because Congress has made a policy choice to provide them free of cost.

Primary Dependence. The term "public charge" had historically been understood to "suggest[] a complete, or nearly complete, dependence on the Government rather than the mere receipt of some lesser level of financial support." INS Field Guidance at 28,677. But the new

rule treats as "public charges" individuals likely to receive any amount of benefits, no matter how small, including individuals who are fully employed and living above the poverty line.

Individuals who obtain small amounts of in-kind benefits often will not primarily depend on those benefits. Consider a recipient of SNAP benefits. As its name suggests, SNAP *supplements* an individual's ability to obtain nutritious food. *See* 7 U.S.C. § 2011. Some individuals at the higher end of income eligibility for SNAP receive as little as 62 cents per day—or $15 per month.[4] Most SNAP recipients who can work do so, and many are subject to work requirements as a condition of receiving benefits. *See* 7 U.S.C. § 2015(d). Such an individual is not a "public charge" under any reasonable understanding of the term.

Long-Term Dependence. Prior to the recent changes, the term "public charge" required a showing that the noncitizen would depend on the government for a significant period. The BIA recognized that there "may be circumstances beyond the control of the [noncitizen] which temporarily prevent [a noncitizen] from joining the work force"—such as if the noncitizen is "unable to find a job"—and that this temporary inability to find work would not make the noncitizen a "public charge." *Matter of A-*, 19 I. & N. Dec. 870. But the new rule would deem noncitizens "public charges" if they receive benefits for only a few months.

The State Department's rule covers any noncitizen likely to receive more than 12 months of benefits in any three-year period, and it counts a noncitizen's receipt of multiple benefits in one month as multiple months of benefits. Thus, an individual would be excluded under the public-charge provision if she were deemed likely to receive SNAP, Medicaid, and housing assistance for more than four months spread over any three-year period during her lifetime.

[4] Cong. Research Serv., R42054, *The Supplemental Nutrition Assistance Program (SNAP): Categorical Eligibility* 2 (Oct. 25, 2019), https://tinyurl.com/yah2r2qc.

Construing such a short-term receipt of benefits to trigger a public-charge finding departs from the long-settled meaning of "public charge" that Congress intended to reenact.

3. In justifying its transformation of the "public charge" provision, the State Department invokes the discretion given to immigration and consular officers to apply the term. Public Charge Rule at 55,006. While individual consular officers may have some discretion to apply the "public charge" provision, this does not give the State Department discretion to rewrite the statute contrary to its long-established meaning. Even where there may be "some uncertainty" about a provision's meaning, the Executive Branch cannot "expand *Chevron* deference to cover virtually any interpretation." *Cuomo v. Clearing House Ass'n, LLC*, 557 U.S. 519, 525 (2009). The language adopted by Congress sets the "outer limits" on a provision's meaning, *id.*, and courts police those limits using the traditional tools of statutory interpretation.

II. THE STATE DEPARTMENT'S NEW "PUBLIC CHARGE" RULE IS IRRATIONAL.

The State Department's new rule would be impossible to apply in practice and would lead to a host of practical problems that Congress did not intend.

The public-charge provision does not ask whether the noncitizen is *currently* a "public charge." Instead, it asks whether a person is "likely at any time to become a public charge." 8 U.S.C. § 1182(a)(4)(A). The interim final rule, in turn, requires consular officers to make a prediction about whether a noncitizen "is more likely than not" at any time in the future to receive "one or more designated public benefits for more than 12 months in the aggregate within any 36-month period." Public Charge Rule at 55,000-01.

This prediction requires consular officers to look far into the future with no crystal ball to aid them. With minor exceptions, Medicaid, SNAP, and federal affordable housing assistance are unavailable to noncitizens until they have lived here for five years. *See* 8 U.S.C. § 1613.

Most persons subject to the "public charge" restriction are thus ineligible for these benefits when they apply for visas, and many will remain ineligible for another five years thereafter. As a result, the State Department rule requires consular officers to predict not whether an immigrant has already collected or is likely imminently to collect benefits, but whether she is likely to collect them at any point from five years on into the future.

As to the overwhelming percentage of immigrant visa applicants, no consular officer could make such a prediction accurately. Many noncitizens subject to the new understanding of "public charge" will be employed full-time and situated above the poverty line when the consular officer is called upon to make the prediction. Others will ordinarily be employed, except that they may have suffered a medical emergency or job loss that requires them to collect benefits temporarily. Some might at some point collect merely *de minimis* benefits even though they are fully employed. And some will qualify for benefits, but nevertheless will not collect them for various reasons, ranging from personal preference to familial support.

A consular officer could not hope to make an accurate prediction regarding which of these noncitizens would accept minimal benefits and which would not. *See Judulang v. Holder*, 565 U.S. 42, 56 (2011) (invalidating an agency interpretation as likely to yield an outcome as irrational "as a coin flip"). It would be impossible for a consular officer to make a reasoned decision about whether an applicant, far in the future, is likely to encounter an unpredictable yet temporary hardship, or is likely to choose at some point to accept small amounts of benefits to supplement her steady income. Congress cannot possibly have intended consular officers to make the arbitrary and irrational prediction the State Department's rule requires.

CONCLUSION

For the foregoing reasons, Plaintiff's Motion for Summary Judgment should be granted.

Respectfully submitted,

May 22, 2020

/s/ Douglas N. Letter

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[5] "The General Counsel of the House of Representatives and any other counsel in the Office of the General Counsel of the House of Representatives, including any counsel specially retained by the Office of General Counsel, shall be entitled, for the purpose of performing the counsel's functions, to enter an appearance in any proceeding before any court of the United States or of any State or political subdivision thereof without compliance with any requirements for admission to practice before such court ...." 2 U.S.C. § 5571(a).

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system on May 22, 2020, which will send notification of such filing to all counsel of record.

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