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14 UNITED STATES DISTRICT COURT  
 15 NORTHERN DISTRICT OF CALIFORNIA

16 THE CITY OF SEATTLE, IMMIGRANT  
 17 LEGAL RESOURCE CENTER, CATHOLIC  
 18 LEGAL IMMIGRATION NETWORK, INC.,  
 19 SELF HELP FOR THE ELDERLY,  
 20 ONEAMERICA, AND CENTRAL  
 21 AMERICAN RESOURCE CENTER OF  
 22 CALIFORNIA,

23 *Plaintiffs,*

24 vs.

25 DEPARTMENT OF HOMELAND  
 26 SECURITY, KEVIN MCALEENAN,  
 27 KENNETH T. CUCCINELLI, AND UNITED  
 28 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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1                   **NOTICE OF MOTION AND MOTION FOR PRELIMINARY INJUNCTION**

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

19                   **MEMORANDUM OF POINTS AND AUTHORITIES**

20                   **INTRODUCTION**

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

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

28                   

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<sup>1</sup> Also known as “green card” holders.

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

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

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

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

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

9 Plaintiffs will suffer irreparable harm absent preliminary injunctive relief. If the rule is  
10 permitted to go into effect on December 2, it will immediately frustrate Plaintiffs' missions,  
11 jeopardize their funding, and potentially threaten the very existence of at least one Plaintiff's  
12 naturalization program. Further, Plaintiffs will be forced to immediately divert and expend  
13 resources to redesign their programs and develop new materials to train staff and volunteers on the  
14 2019 Rule. Currently planned activities for December 2019 and the first months of 2020 will be  
15 cancelled or significantly scaled back.

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

## 21 STATEMENT OF FACTS

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

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

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



1 Policy Memorandum”) that governed fee waivers for USCIS services.<sup>2</sup> The agency’s fee waiver  
 2 request form, Form I-912, permitted naturalization applicants to request a fee waiver based on proof  
 3 that they: (1) received a “means-tested benefit,” such as Medicaid, Supplemental Security Income,  
 4 Supplemental Nutrition Assistance Program, or Temporary Assistance for Needy Families; (2) had  
 5 household income at or below 150 percent of the Federal Poverty Guidelines (“FPG”); or (3) were  
 6 suffering an acute financial hardship. Am. Compl., Ex. B. Most fee waiver requests are based  
 7 upon the applicant’s receipt of a means-tested benefit. *See* Rodgers Decl. ¶ 21; Kelly-Stallings  
 8 Decl. ¶ 8; Núñez Decl. ¶ 13; Chenoweth Decl. ¶¶ 15, 21; Stolz Decl. ¶ 15; Chu Decl. ¶ 14. USCIS  
 9 acknowledged that the *use* of Form I-912 was “not mandated by regulation,” Am. Compl., Ex. C at  
 10 2, and that it would also accept “applicant-generated” fee waiver requests stating “the person’s  
 11 belief that he or she is entitled to or deserving of the benefit requested, the reasons for his or her  
 12 inability to pay, and evidence to support the reasons indicated.” 8 C.F.R. § 103.7(c).

13 **B. Defendant Cuccinelli Installed as Acting Director of USCIS.**

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

26  
 27 <sup>2</sup> *See* U.S. Citizenship and Immigration Services, Executive Summary, USCIS Stakeholder  
 28 Engagement: Fee Waiver Form and Final Fee 2019 Rule (Jan. 5, 2011) (“2011 Policy  
 Memorandum”), available at <https://bit.ly/2y6HRrO>.

1           **C.     The 2019 Rule**

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

10           Defendants promulgated the 2019 Rule through a series of notices published to the Federal  
11 Register on September 28, 2018 (the “First Notice”), April 5, 2019 (the “Second Notice”), and June  
12 6, 2019 (the “Third Notice”) (collectively, the “Notices”). *See* 83 Fed. Reg. 49120; 84 Fed. Reg.  
13 13687; 84 Fed. Reg. 26137. These Notices announced that USCIS planned to eliminate  
14 means-tested benefit-based applications, but did not disclose the other changes to the fee waiver  
15 process. *See id.* The Notices asserted a rationale for the proposed change—“the various income  
16 levels used in states to grant a means-tested benefit result in inconsistent income levels being used  
17 to determine eligibility for a fee waiver”—but provided no data or analysis to support it.<sup>3</sup> *Id.* Nor  
18 did the Notices explain why means-tested benefits are insufficient to demonstrate an applicant’s  
19 “inability to pay.” The Third Notice acknowledged that “as a result of [the 2019 Rule] there are  
20 some applicants who would be able to receive free adjudication now who will not be able to [do  
21 so] after this policy change,” but asserted that that “an applicant is unlikely to have incurred costs  
22 or been harmed based on relying on USCIS continuing [the prior] policy.” 84 Fed. Reg. 26137,  
23 26139. The Third Notice also offered, for the first time, the justification that USCIS needed to  
24 “curtail[]” the growing use of fee waivers in order “to reduce annual forgone revenue from fee  
25 waivers.” *Id.*

26 \_\_\_\_\_  
27 <sup>3</sup> And in fact, “[b]y solely relying on the FPG to determine an individual’s inability to pay,  
28 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.

1 For each of the notice periods, USCIS solicited comments.<sup>4</sup> The First Notice generated  
2 1,198 comments from individuals, immigrant rights groups, and legal services organizations—  
3 including Plaintiffs—that explained what a devastating effect the 2019 Rule would have on  
4 applicants and the organizations that serve them. *See* Rodgers Decl., Ex. A; Kelly-Stallings Decl.,  
5 Ex. A; Núñez Decl., Ex. A; Chenoweth Decl., Ex. A; Stolz Decl., Ex. A. The comments also raised  
6 concerns about the absence of (1) analysis to support the changes and/or (2) evidence of the alleged  
7 inconsistencies that the 2019 Rule purports to cure. *See, e.g.*; Chenoweth Decl., Ex. A at 4–5.  
8 Defendants failed to address these comments; in its responses,<sup>5</sup> USCIS simply stated that because  
9 it is primarily funded by application fees, and because “other applicants must cover the costs of  
10 fee- waived [sic] applications,” the proposed rule would increase “consistency in the shifting of the  
11 cost of fee waivers to those who pay fees.” Am. Compl., Ex. G at 3–4. USCIS acknowledged that  
12 the proposed rule would “increase” the burden on applicants, but dismissed the consequences as  
13 not “excessive.” *Id* at 1. In response to service providers’ detailed comments regarding the impact  
14 on their programs, USCIS asserted that it did not believe the impact would be “extraordinar[y]”  
15 and that service providers could adapt. Am. Compl., Ex. H at rows 6–8; Am. Compl., Ex. I at rows  
16 6–7. Ultimately, Defendants did not make any substantive adjustments to these aspects of the  
17 proposed rule change before finalizing the 2019 Rule, which will go into effect on December 2,  
18 2019. Am. Compl., Ex. E.

19 **D. How the 2019 Rule will Harm Plaintiffs**

20 Plaintiffs all provide and/or sponsor programs that assist thousands of LPRs in applying for  
21 naturalization each year, including completing fee waiver paperwork.<sup>6</sup> The rule changes will  
22 substantially reduce the number of applicants eligible for fee waivers and will significantly heighten  
23 the evidentiary requirements for those who remain eligible. These effects will have devastating  
24 consequences for Plaintiffs’ funding, programs, and missions, and it will curtail applicants’ access  
25

26 <sup>4</sup> For the First Notice, USCIS solicited public comments. For the Second and Third Notices,  
it solicited comments privately by email.

27 <sup>5</sup> *See* Am. Compl., Exs. G–I.

28 <sup>6</sup> *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.

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

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

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

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

23 \_\_\_\_\_  
24 <sup>7</sup> 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).

25 <sup>8</sup> Out of all households that receive Federal means-tested benefits, 31 percent have incomes  
26 that exceed 150 percent of the FPG. Wong Decl. ¶ 18. In 2012, approximately 22 percent of  
27 naturalization-eligible LPRs had incomes between 150 percent and 250 percent of the FPG. This  
28 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).

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

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

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

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

16 As the number of fee waiver-eligible applicants decreases, and the burden and costs of  
 17 preparing fee waiver applications increase, the Organizational Plaintiffs will lose funding and suffer  
 18 financial harm. For example, CARECEN and OneAmerica expect that the number of clients served  
 19 in their naturalization programs will drop by as much as a third under the 2019 Rule. Núñez Decl.  
 20 ¶ 43; Stolz Decl. ¶¶ 44, 46. This reduction in applicants will prevent OneAmerica from fulfilling  
 21 contractual provisions that require it to, among other things, complete more than 1,000  
 22 naturalization applications per year in order to receive more than \$900,000 in funding from the

23 \_\_\_\_\_  
 24 <sup>9</sup> See Rodgers Decl. ¶¶ 42–45; Núñez Decl. ¶¶ 40–43; Chenoweth Decl. ¶¶ 41–44; Stolz  
 Decl. ¶¶ 44–49; Chu Decl. ¶¶ 40–41.

25 <sup>10</sup> See also Chenoweth Decl. ¶ 15 (“Fee waivers based on receipt of means-tested benefit are  
 26 *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  
 27 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  
 28 has helped file 8,944 naturalization applications, of which almost 62 percent (or 5,537)  
 were filed with a fee waiver.”).

1 Washington Department of Commerce. *See* Stolz Decl. ¶¶ 6–7, 44. Other Organizational Plaintiffs  
2 are similarly situated with respect to their funding.<sup>11</sup>

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

4 Plaintiff Self-Help’s naturalization program is entirely funded by the City of San Francisco.  
5 Chu Decl. ¶ 7. This funding is conditioned on Self-Help’s annual completion of 1,400  
6 naturalization applications—500 of which must be submitted with fee waivers—and five  
7 naturalization workshops (discussed below). *Id.* ¶ 8. Self-Help expects to be able to assist between  
8 *70 and 80 percent fewer* clients under the 2019 Rule. *Id.* ¶ 40. It will therefore fail to meet its  
9 contractual obligations to San Francisco and its grant will not be renewed. *Id.* ¶¶ 40, 42. Because  
10 100 percent of Self-Help’s funding for naturalization application services derives from the City of  
11 San Francisco, this loss of funding will likely eliminate Self-Help’s ability to provide these services  
12 at all. *Id.*

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

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

24 <sup>11</sup> *See* Rodgers Decl. ¶¶ 42–45; Núñez Decl. ¶¶ 40–43; Chenoweth Decl. ¶¶ 41–44; Chu Decl.  
25 ¶¶ 40–41.

26 <sup>12</sup> *See* Rodgers Decl. ¶ 13; Núñez Decl. ¶ 7; Chenoweth Decl. ¶¶ 9, 15; Stolz Decl. ¶ 11; Chu  
27 Decl. ¶ 10.

28 <sup>13</sup> 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.



1 ¶¶ 4, 15 (50 percent of CLINIC’s approximately 370 affiliated immigration service programs across  
2 the country utilize workshop models). Most of the applicants at these workshops demonstrate their  
3 eligibility for a fee waiver by proving receipt of a means-tested benefit.

4 The onerous income- and hardship-based fee waiver applications—the *only* fee waiver  
5 applications that are available under the 2019 Rule—generally cannot be completed during  
6 Plaintiffs’ one-day workshops. Because income- and hardship-based applications require extensive  
7 documentation and follow-up,<sup>14</sup> applicants must work closely with an advocate to ensure that the  
8 documentation has been collected and properly compiled. *See, e.g.,* Stolz Decl. ¶ 25. Most  
9 Plaintiffs do not offer assistance with these types of applications because of the time and resources  
10 required and the relatively low rate at which they are granted by USCIS. *See, e.g.,* Rodgers Decl.  
11 ¶ 16; Stolz Decl. ¶ 19; Chu Decl. ¶ 27. And the 2019 Rule’s new requirement to obtain tax  
12 transcripts instead of tax returns substantially exacerbates the problem. There is simply no effective  
13 way to navigate the tax transcript-request process in the one-day workshops hosted and/or  
14 sponsored by Plaintiffs. *See, e.g.,* Rodgers Decl. ¶ 27. Although tax transcripts can be requested  
15 online, the low-income immigrants that Plaintiffs serve often do not have the identifying  
16 information needed to obtain tax transcripts in this way—for example, a credit card, mortgage,  
17 home equity loan, home equity line of credit, or car loan in the requester’s name. And tax transcript  
18 requests submitted by mail can take weeks to process, making them infeasible for one-day  
19 workshops. Moreover, tax transcripts are generally unavailable between April 15 and June 15,  
20 while the IRS is processing the prior year’s tax returns. *See* Stolz Dec. ¶ 31.

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

28 <sup>14</sup> *See supra* pp. 6–7.

1 on how to collect information, a new service requiring additional funding. Kelly-Stallings Decl. ¶¶  
 2 27–36; Núñez Decl. ¶¶ 25–31; Stolz Decl. ¶¶ 25–35; Chu Decl. ¶¶ 22–33. Plaintiffs will have to  
 3 spend valuable staff time and organizational resources creating, editing, and updating materials; re-  
 4 training hundreds of service providers and thousands of volunteers; consulting with tax experts  
 5 about income verification and tax transcripts; and responding to an anticipated significant increase  
 6 in requests for legal advice and assistance.<sup>15</sup> OneAmerica estimates that some of these tasks will  
 7 require an additional 120 hours of staff time, costing the organization approximately \$4,200. Stolz  
 8 Decl. ¶ 36; *see also* Kelly-Stallings Decl. ¶ 38 (redesigning practice materials will cost Seattle  
 9 \$35,000 or more).

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

11 Plaintiffs’ organizational missions center on providing assistance to immigrants applying  
 12 for naturalization. Rodgers Decl. ¶¶ 3–4; Kelly-Stallings Decl. ¶¶ 3, 54; Núñez Decl. ¶¶ 3–4;  
 13 Chenoweth Decl. ¶ 4; Stolz Decl. ¶¶ 4–5; Chu Decl. ¶¶ 3–4. Plaintiffs’ ability to achieve their  
 14 missions will be frustrated as the number of fee waiver applicants drop, and as they struggle to  
 15 adapt their programming models to a new regulatory scheme that it makes it more difficult to  
 16 demonstrate an applicant’s eligibility for a fee waiver. And the resources that Plaintiffs will have  
 17 to devote to compliance with the 2019 Rule will be diverted from direct client services,  
 18 programming, teaching, training and technical assistance, and research. *See* Rodgers Decl. ¶¶ 29–  
 19 41; Kelly-Stallings Decl. ¶¶ 37–40; Núñez Decl. ¶¶ 32–39; Chenoweth Decl. ¶¶ 30–40; Stolz Decl.  
 20 ¶¶ 36–43; Chu Decl. ¶¶ 34–39.

21 **ARGUMENT**

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

27 \_\_\_\_\_  
 28 <sup>15</sup> *See, e.g.*, Rodgers Decl. at ¶ 39; Chenoweth Decl. at ¶¶ 31, 36; Kelly-Stallings Decl. at ¶  
 38.



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

## 5 **I. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS**

### 6 **A. Defendants’ 2019 Rule is Procedurally Invalid.**

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

8 To issue a new or revised rule, a federal agency generally must comply with the APA’s  
9 notice-and-comment procedures, including the issuance of a proposed rule; an initial regulatory  
10 flexibility analysis that sets out the impact of the change; a comment period; consideration of the  
11 public’s comments; and the issuance of a final rule. *See* 5 U.S.C. §§ 553, 603(a), 703. Only “[1]  
12 interpretative rules, [2] general statements of policy, [and] [3] rules of agency organization,  
13 procedure, or practice” are exempted from APA rulemaking. 5 U.S.C. § 553 (b)(A); *see also Perez*  
14 *v. Mortg. Bankers Ass’n*, 135 S. Ct. 1199, 1203–04 (2015). These exceptions apply only to rules  
15 that are not “substantive” and do not affect “individual rights and obligations.” *Chrysler Corp. v.*  
16 *Brown*, 441 U.S. 281, 302 (1979). That is, they do not apply to rules that are “binding on the  
17 individuals to whom they apply in the same way statutes are,” or that “are prescriptive,  
18 forward-looking, and of general applicability.” *Save Our Valley v. Sound Transit*, 335 F.3d 932,  
19 954–55 (9th Cir. 2003). Defendants’ 2019 Rule is a substantive rule that cannot be validly  
20 promulgated without the appropriate notice-and-comment procedures; accordingly, Defendants  
21 were obliged to comply with the APA. *See Lincoln v. Vigil*, 508 U.S. 182, 196 (1993).

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

1 1984); *see* Am. Compl., Exs. H–I (repeatedly characterizing the 2019 Rule as a “policy change”).  
2 Nor is the 2019 Rule a general statement of policy, which leaves “the agency, or its implementing  
3 official, free to exercise discretion to follow, or not to follow, the [announced] policy in an  
4 individual case”; to the contrary, the 2019 Rule entirely prohibits applicants from submitting, and  
5 officials from considering, information related to means-tested benefits. *Mada-Luna v. Fitzpatrick*,  
6 813 F.2d 1006, 1013 (9th Cir. 1987) (alteration in original). And the 2019 Rule is not a rule of  
7 agency organization, procedure, or practice—those are “rules of *internal* agency procedure,”  
8 *United States v. Saunders*, 951 F.2d 1065, 1068 (9th Cir. 1991) (emphasis added), that deal with  
9 “housekeeping” matters, *Chrysler Corp.*, 441 U.S. at 283. The 2019 Rule governs what information  
10 *individuals* are permitted to use. USCIS was therefore required to comply with the APA’s  
11 notice-and-comment procedures.

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

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

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

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

1 the period for public comment.” *Perez*, 135 S. Ct. at 1203. In fact, USCIS made no substantial  
2 changes to the onerous requirements of the proposed rule, despite the 1,198 comments from  
3 Plaintiffs and other individuals and organizations expressing serious concern with the impact of the  
4 2019 Rule. *See* Am. Compl. Exs. G–I. Instead, it merely acknowledged that some “applicants . . .  
5 will no longer be eligible for a fee waiver under this changed policy,” Am. Compl., Ex. G at 5, but  
6 provided no explanation for why this outcome was justified.

7 **B. Defendants’ 2019 Rule is Arbitrary and Capricious.**

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

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

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

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

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

24 <sup>16</sup> *See* Wong Decl. ¶ 10; Annual Update of the HHS Poverty Guidelines, 84 Fed. Reg. 1167  
25 (Feb. 1, 2019).

26 <sup>17</sup> *See* Wong Decl. ¶ 26; Kayla Fontenot, et al., *Income and Poverty in the United States: 2017*  
27 (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.

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

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

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

9 **C. Defendants’ 2019 Rule Conflicts with 8 C.F.R. § 103.7(c).**

10 Agency actions must be struck down when they are “not in accordance with law.” 5 U.S.C.  
11 § 706(2)(A). “[T]he duty of an administrative agency is to follow [the statute’s] commands as  
12 written, not to supplant those commands with others it may prefer.” *SAS Inst., Inc. v. Iancu*, 138  
13 S. Ct. 1348, 1355 (2018). The revisions embodied in the 2019 Rule are directly contrary to the text  
14 of 8 C.F.R. § 103.7(c)(2), which allows an applicant broad discretion in how to demonstrate their  
15 inability to pay: the regulation allows applicants to submit “a written request for permission to have  
16 their request processed without payment of a fee,” so long as the applicant’s inability to pay is  
17 supported by “evidence.” Indeed, in its 2011 Policy Memorandum, USCIS expressly  
18 acknowledged that since “use of a USCIS-published fee-waiver request form is not mandated by  
19 regulation, USCIS will continue to consider applicant-generated fee-waiver requests (i.e., those not  
20 submitted on Form I-912) that comply with 8 CFR 103.7(c).” Am. Compl., Ex. C at 2. The 2019  
21 Rule eliminates this flexibility, contrary to the underlying regulation. Accordingly, Plaintiffs are  
22 likely to succeed on their claim that the 2019 Rule is “not in accordance with law,” and is invalid  
23 under 5 U.S.C. § 706(2)(A).

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

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

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

3 The FVRA dictates who may temporarily fill a federal office when that office is one for  
4 which the Appointments Clause, U.S. Const. art II, § 2, cl. 2, requires Senate confirmation of the  
5 President’s nominee. Because the Director of USCIS exercises significant authority pursuant to  
6 the laws of the United States, *see Freytag v. C.I.R.*, 501 U.S. 868, 881–82 (1991); *Buckley v. Valeo*,  
7 424 U.S. 1, 126 (1976), the Appointments Clause requires the advice and consent of the Senate. A  
8 federal statute also provides explicitly that the Director of USCIS is subject to Senate confirmation.  
9 6 U.S.C. § 113(a)(1)(E).

10 Under the FVRA, when an office subject to Senate confirmation becomes vacant, the  
11 default rule is that the “first assistant to the office of such officer shall perform the functions and  
12 duties of the office temporarily in an acting capacity,” subject to certain time limits. 5 U.S.C. §  
13 3345(a). No presidential action is required for this succession to occur. There are, however, two  
14 exceptions to this default rule. The President may direct an individual to “perform the functions  
15 and duties of the vacant office temporarily in an acting capacity” if that individual (1) has already  
16 been confirmed by the Senate to serve in any position in the federal government, *id.* at § 3345(a)(2),  
17 or (2) is a managerial-level employee at the relevant agency who worked in that capacity for at least  
18 90 days in the year preceding the vacancy, *id.* at § 3345(a)(3). The collective effect of these three  
19 provisions is to ensure that the acting official has significant relevant experience in the federal  
20 government.

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



1 Cuccinelli as Acting Director.

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

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

## 22 **II. PLAINTIFFS ARE LIKELY TO SUFFER IRREPARABLE HARM ABSENT AN** 23 **INJUNCTION**

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

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

15 **Loss of Funding.** Without a preliminary injunction, the Organizational Plaintiffs are likely  
 16 to suffer irreparable harm through the “loss of substantial funding.”<sup>18</sup> *E. Bay Sanctuary Covenant*,  
 17 354 F. Supp. 3d at 1116; *see also S.A. v. Trump*, 2019 WL 990680, at \*9. As discussed *supra* p. 8,  
 18 the Organizational Plaintiffs rely to varying degrees on funding that is tied to specific numerical  
 19 targets for applications completed. Even a short-term decline in applicants served, during the  
 20 pendency of this litigation, will impact the Organizational Plaintiffs’ long-term metrics, threatening  
 21 their ability to meet their targets, and in turn to receive future funding. For example, OneAmerica  
 22 stands to lose up to 90 percent of its funding due to contractual requirements that depend, in part,  
 23 on the completion of 1,180 naturalization applications and at least 10 workshops per year. Stolz  
 24 Decl. ¶ 7. Only an injunction can prevent the Organizational Plaintiffs from losing the steady  
 25 stream of funding that they rely on.

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

27 \_\_\_\_\_  
 28 <sup>18</sup> *See* Rodgers Decl. ¶¶ 42–45; Núñez Decl. ¶¶ 40–43; Chenoweth Decl. ¶ 41–44; Stolz Decl.  
 ¶¶ 44–49; Chu Decl. ¶¶ 40–41.



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

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

26  
27 <sup>19</sup> *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.

28 <sup>20</sup> *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.

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

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

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

27 \_\_\_\_\_  
 28 <sup>21</sup> *See* Rodgers Decl. ¶ 46; Kelly-Stalling Decl. ¶¶ 50–54; Núñez Decl. ¶ 44; Chenoweth Decl.  
 ¶ 45; Stolz Decl. ¶ 50; Chu Decl. ¶ 42.

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

### 7 **III. THE BALANCE OF HARMS STRONGLY FAVORS PLAINTIFFS AND THE** 8 **PUBLIC INTEREST IS SERVED BY AN INJUNCTION.**

9 The final two *Winter* factors—“the balance of equities” and “the public interest”—both  
10 weigh in favor of Plaintiffs. 555 U.S. at 20. In the naturalization context, courts have previously  
11 found government practices that “have frustrated the attempts of naturalization applicants and  
12 [service providers] to comply with these regulations” to “weigh in favor of preliminary injunctive  
13 relief” due to public policy concerns; likewise, by “merely . . . preserving the *status quo*,” the  
14 government “will suffer little or no harm.” *Campos v. INS*, 70 F. Supp. 2d 1296, 1310 (S.D. Fla.  
15 1998).

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

### 23 **IV. THE COURT SHOULD ENTER A NATIONWIDE INJUNCTION.**

24 Nationwide relief is necessary to forestall the significant harms threatened here. The  
25 Court’s authority to issue a nationwide injunction is well-established. *See, e.g., Hawaii v. Trump*,  
26 859 F.3d 741, 787 (9th Cir. 2017) (“[I]t is appropriate for courts to issue nationwide injunctions.”)  
27 Whether nationwide injunctive relief is warranted depends on “the extent of the violation  
28 established, not . . . the geographical extent of the plaintiff.” *E. Bay Sanctuary Covenant*, 909 F.3d

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

2 *First*, Plaintiffs will be deprived of complete relief if the injunction is geographically  
3 limited. *California v. Azar*, 911 F.3d 558, 584 (9th Cir. 2018), *cert. denied sub nom. Little Sisters*  
4 *of the Poor Jeanne Jugan Residence v. California*, 139 S. Ct. 2716 (2019). Plaintiffs are located  
5 throughout the United States and include two nationwide providers of naturalization programs.  
6 Am. Compl. ¶¶ 24, 26; Rodgers Decl. ¶¶ 3–5; Chenoweth Decl. ¶ 4–9. If Plaintiffs do not have to  
7 comply with the 2019 Rule, but all other naturalization service providers are required to do so,  
8 Plaintiffs will become the only choice of naturalization aid for many applicants. An influx of new  
9 clients will significantly burden Plaintiffs operations, hampering not only their “ability to provide  
10 services to their *current* clients,” but also “to pursue their programs writ large.” *E. Bay Sanctuary*  
11 *Covenant*, 354 F. Supp. 3d at 1121; *see also E. Bay Sanctuary Covenant v. Barr*, 391 F.Supp.3d  
12 974, 982–83 (9th Cir. 2019) (holding that evidence of organizational and diversion of resources  
13 harms rendered a nationwide injunction “necessary to give prevailing parties the relief to which  
14 they are entitled.” (quoting *City & Cty. of San Francisco v. Trump*, 897 F.3d 1225, 1244)) (internal  
15 quotation marks omitted).

16 *Second*, Plaintiffs have established that the 2019 Rule violates the APA, and “[w]hen a  
17 reviewing court determines that agency regulations are unlawful, the ordinary result is that the rules  
18 are vacated,” and *not* applied individually to limit injunctive relief. *Regents of the Univ. of Calif.*,  
19 908 F.3d at 511 (alteration in original) (quotation omitted).

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

## 24 CONCLUSION

25 For the foregoing reasons, the Court should preliminarily enjoin the operation of  
26 Defendants’ 2019 Rule.

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