

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA  
WESTERN DIVISION

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The State of KANSAS, *et al.*,

Plaintiffs,

v.

UNITED STATES of AMERICA and the  
CENTERS FOR MEDICARE & MEDICAID  
SERVICES,

Defendants.

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Civil Action No. 1:24-cv-00150-DMT-CRH

**PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION TO DISMISS**

In their latest motion to dismiss Plaintiffs' claims, Defendants repeat the arguments they have already submitted to the Court in their opposition to Plaintiffs' motion for a stay and preliminary injunction (ECF 61), motion for reconsideration of the Court's request for supplemental information (ECF 90 & 96), and opposition to Plaintiffs' motion for a temporary restraining order (ECF 107). They move to dismiss the case under Federal Rule 12(b)(1) as they claim Plaintiffs lack standing, as well as under Rule 12(b)(3), for improper venue, and under Rule 12(b)(6), for failure to state a claim. In the alternative, if the Court finds some Plaintiffs have standing, but not North Dakota, Defendants request a transfer to another district.

Defendants' motion should be denied. All Plaintiffs, including North Dakota, have standing, and venue is therefore proper in this district.

**ARGUMENT**

**I. All Plaintiffs have standing**

As the party invoking jurisdiction, Plaintiffs have the burden to prove standing by a preponderance of evidence. *See Moss v. United States*, 895 F.2d 1091, 1097 (8th Cir. 2018). Plaintiffs

fully explained in their motion for a stay and preliminary injunction (ECF 35), reply (ECF 81), and in oral argument (ECF 84) that each Plaintiff State has standing in this case and that venue is therefore proper in this district. And at the Court's request, Plaintiff North Dakota submitted supplemental information further detailing the harms it would suffer as a result of Defendants' Final Rule. ECF 103 & III. And Plaintiffs further elaborated on standing in their motion for a temporary restraining order. ECF 105. These filings are incorporated by reference, to avoid repetitive briefing.

Plaintiffs established that all Plaintiff States have standing in this case. Kentucky, Idaho, and Virginia operate their own Affordable Care Act exchanges and will incur expenses processing applications, updating eligibility systems, and providing customer service for newly eligible DACA recipients. *See* ECF 35 at 15-16; ECF 81 at 1-4. A declaration by Adam Meier provided additional evidence of these costs, beyond what appears in the administrative record. *See* Meier Decl. ECF 35-2. And the Final Rule itself acknowledges these costs. *See* 89 Fed. Reg. at 39,424.

The remaining Plaintiff States have standing due to the costs they will incur to provide social services, including drivers' licenses and public education, to DACA recipients and their dependents who choose to continue to reside in the States, rather than emigrating, because they receive valuable benefits under the Final Rule. *See* ECF 35 at 16-18; ECF 81 at 5-8. Evidence of these costs to the States was also provided in a declaration by immigration expert Steven Camarota. *See* ECF 35-1. And once Defendants identified the DACA recipients residing in North Dakota, Plaintiffs submitted detailed information about the costs to North Dakota of providing drivers' licenses and public education to DACA recipients and their dependents. *See* ECF 103 & III.

Plaintiffs have established standing for each State in this case. Defendants' motion to dismiss under Rule 12(b)(1) should therefore be denied.

## II. Venue is proper in this district

When a federal agency is a defendant, venue is proper in any district in which a Plaintiff resides. 28 U.S.C. § 1391 (e)(1). As discussed above, including in ECF 35 and ECF 81, incorporated by reference, Plaintiff North Dakota has standing and resides in this district. Additionally, when one plaintiff has standing, that is sufficient to establish the Court's jurisdiction. *See Nebraska v. Biden*, 143 S.Ct. 2355, 2365 (2023). Therefore, venue is proper in the District of North Dakota.

Defendants' motion to dismiss under Rule 12(b)(3), or alternatively to transfer the case to another district, should be denied.

## III. Defendants do not meet the standard for 12(b)(6) dismissal

Fed. R. Civ. P. 12(b)(6) requires dismissal when a party has failed to state a claim upon which relief can be granted. To survive a motion to dismiss, the complaint must contain "sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 555 U.S. 662, 678 (2009) (internal quotations omitted). A motion to dismiss should not be granted "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Ulrich v. Pope County*, 715 F. 3d 1054, 1058 (11th Cir. 2013).

In their complaint, Plaintiffs assert legally cognizable claims on which relief can be granted. Further, Plaintiffs have argued, in their motion for a stay and preliminary injunction (ECF 35), and their reply (ECF 81), that they are likely to succeed on the merits of their claim that the Final Rule violates the APA because it is not in accordance with law and is arbitrary and capricious. The reasoning in those filings, incorporated by reference, which supports

Plaintiffs' claim that they are likely to succeed on the merits also supports a finding that Plaintiffs have stated claims on which relief can be granted. Dismissal under Rule 12(b)(6) is therefore not appropriate.

Defendants have not actually made any argument in favor of a dismissal under Fed. R. Civ. P. 12(b)(6). They point to ECF 61 at 21-27—their opposition to Plaintiffs' motion for a stay and preliminary injunction—as support for their argument that Plaintiffs have failed to state a claim, but their opposition did not refer to the standards for 12(b)(6) dismissal and fails to set out any justification for dismissal under the appropriate standard. Instead, Defendants argued only that Plaintiffs were not likely to succeed on the merits for purposes of a stay and preliminary injunction. Even if the Court accepted that argument, it does not follow that Plaintiffs have failed to state a claim under any set of facts, as required for dismissal under Rule 12(b)(6). Their motion to dismiss should be denied accordingly.

#### CONCLUSION

For the foregoing reasons, Plaintiffs ask this Court to deny Defendants' motion to dismiss on all grounds, and deny Defendants' motion to transfer.

Respectfully submitted,

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