

Shvartsman v. Callahan

United States District Court for the Northern District of Illinois, Eastern Division

August 28, 1997, Decided ; September 11, 1997, Docketed

No. 97 C 5229

Reporter: 1997 U.S. Dist. LEXIS 13954; 1997 WL 573404
SARRA SHVARTSMAN, et al., Plaintiffs, v. JOHN J. CALLAHAN, Acting Commissioner of the Social Security Administration; and DANIEL R. GLICKMAN, Secretary of the Department of Agriculture, Defendants.

Disposition: [*1] Plaintiffs' motion for class certification granted in part and denied in part. Plaintiffs' motion for preliminary injunctive relief denied. Judgment entered for defendants John J. Callahan and Daniel R. Glickman and against the plaintiff class.

Counsel: For SARRA SHVARTSMAN, LEONID TEPER, INNA FRIDMAN, CARATINA MARQUEZ, LEONIDAS PEREZ, ROSA A BARRERA DE PEREZ, GENYA SHMELEVICH, IAKOV SCHMELEVICH, NHOL LIM, LOEUK ROEUN, GRAZYNA KLINCEWICZ, YER YANG, GER THAO, PROCORO SIFUENTES, FAI DANG YANG, plaintiffs: John Mark Bouman, Daniel J. Lesser, Poverty Law Project, Thomas D. Yates, SSI Coalition for a Responsible Safety Net, Sue Augustus, SSI Coalition, Chicago, IL.

For SARRA SHVARTSMAN, LEONID TEPER, INNA FRIDMAN, CARATINA MARQUEZ, LEONIDAS PEREZ, ROSA A BARRERA DE PEREZ, GENYA SHMELEVICH, IAKOV SCHMELEVICH, NHOL LIM, LOEUK ROEUN, GRAZYNA KLINCEWICZ, YER YANG, GER THAO, PROCORO SIFUENTES, FAI DANG YANG, plaintiffs: Gerald A. McIntyre, Herbert Semmel, National Senior Citizens Law Center, Linton Joaquin, National Immigration Law Center, Los Angeles, CA.

For JAMES J CALLAHAN, DANIEL R GLICKMAN, defendants: Carole Judith Ryczek, AUSA, United States Attorney's Office, Chicago, IL.

Judges: Suzanne [*2] B. Conlon, United States District Judge.

Opinion by: Suzanne B. Conlon

Opinion

MEMORANDUM OPINION AND ORDER

Plaintiffs seek to represent a class of legal permanent resident aliens who, prior to the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("Welfare Reform Act"), Pub. L. No. 104-193, 110 Stat. 2105, *codified at* 8 U.S.C. §§ 1601 et seq., on August 22, 1996, were eligible to receive cash and food stamp benefits under one or both of two federal welfare programs: the Supplemental Social Security Income program ("SSI"), 42 U.S.C. §§ 1381 et seq., and the Food Stamp Program, 7 U.S.C. §§ 2011 et seq.¹ Section 402 of the Welfare Reform Act terminated the eligibility of lawful resident aliens to receive SSI and food stamps, subject to certain limited exceptions. Plaintiffs contend the statutory transition process for application of the new citizenship requirement violates their rights to Due Process under the *Fifth Amendment of the Constitution*. Plaintiffs sue John J. Callahan, Acting Commissioner of the Social Security Administration, and Daniel R. Glickman, Secretary of the Department of Agriculture (collectively "defendants") for injunctive [*3] relief. In addition, plaintiffs move for class certification pursuant to *Rule 23(b)(2) of the Federal Rules of Civil Procedure*.

BACKGROUND

I. Legal Standard

There are no disputed factual issues in this case. The legal challenge is limited solely to the constitutionality under the *Fifth Amendment's Due Process Clause* of the transition process governing the implementation of the recent changes in food stamp eligibility brought about by the Welfare Reform Act. The case presents [*4] a threshold determination of constitutional law. The outcome obviates the need for further litigation. Accordingly, the parties have agreed the disposition of this motion for a preliminary injunction should be treated as a final judgment on the merits.

II. Legislative and Administrative Background

A. The Food Stamp Program

¹ Plaintiffs duly note that the claims of the proposed SSI class (Class Compl. P 13(a)) are mooted by the recent passage of the Balanced Budget Act of 1997 (BBA), enacted on August 5, 1997. Pl. Class Cert. Mem. at 1 n.1. The BBA contains a grandfather clause indefinitely extending SSI benefits to legal non-citizens who were receiving SSI benefits on August 22, 1996, when the Welfare Reform Act was enacted. Therefore, the court does not address any of plaintiffs' claims pertaining to the SSI portions of the Welfare Reform Act.

The Food Stamp Act of 1964, as amended, 7 U.S.C. § 2011 et seq. ("The Food Stamp Act of 1977") established a federally funded, state administered program designed to "promote the general welfare, to safeguard the health and wellbeing of the Nation's population by raising levels of nutrition among low-income households." 7 U.S.C. § 2011. "Because 'the limited food purchasing power of low-income households contributes to hunger and malnutrition,' [...] Congress initiated the food stamp program to 'permit low-income households to obtain a more nutritious diet through normal channels of trade by increasing food purchasing power for all eligible households.'" Bliek v. Palmer, 916 F. Supp. 1475, 1483 (N.D. Iowa 1996) (citing 7 U.S.C. § 2011; Atkins v. Parker, 472 U.S. 115, 117, 86 L. Ed. 2d 81, 105 S. Ct. 2520 (1985)). To effect these humanitarian [*5] goals, the program provides for issuance of coupons or stamps to be used by eligible individuals to purchase food at approved retail food stores. 7 U.S.C. § 2013.

The Food Stamp Act divides responsibility between the Secretary of Agriculture and state administrative agencies. The Secretary of Agriculture is to formulate and administer the food stamp program and to promulgate regulations deemed necessary and appropriate. 7 U.S.C. § 2013. "State agencies bear the responsibility of determining which households are eligible to receive food stamps, calculating the eligible households' allotments, and issuing the food stamp coupons." Blieck, 916 F. Supp. at 1483 (citing 7 U.S.C. § 2020; Atkins, 472 U.S. at 117). Financial eligibility for food stamps is limited to households whose net income does not exceed the federal poverty line and whose available resources do not exceed \$ 2000 or, if a household member is age 60 or older, \$ 3000. 7 U.S.C. § 2014 (c) and (g). Eligible households are authorized to received food stamps only during a "certification period [...] not [to] exceed 12 months, except that the certification period may be up to 24 months if all adult household members [*6] are elderly or disabled." 7 U.S.C. 2012 (c). Unless the household seeks to have eligibility renewed at the end of a given "certification period," the benefits terminate. 7 C.F.R. § 273.10(f).

Benefits are continued by means of a recertification process. 7 C.F.R. § 273.14. Prior to the start of the last month of a certification period, the state agency must issue

notice of the expiration of benefits and inform the household that an application is required in order to be eligible for a new certification period. 7 U.S.C. § 2020 (e)(4); 7 C.F.R. § 273.14(1). Further, the regulations require the state agency "to provide each household with an application form to obtain all information needed to determine eligibility and benefits for a new certification period." 7 C.F.R. § 273.14(2)(i). Another component of the recertification process conducted by state agencies is a face-to-face interview with a member of each household. 7 C.F.R. § 273.14(3)(i). Finally, households must be given at least ten days to submit the required verification information. 7 C.F.R. § 273.14(4).

B. The Welfare Reform Act

The Welfare Reform Act is a comprehensive legislative package designed to revamp [*7] federally funded welfare benefit programs. Pub. L. No. 104-193, 110 Stat. 2105, *codified at* 8 U.S.C. § 1601 et seq. The Act's provisions pertaining to legal immigrants were drafted to eliminate the incentive of public benefits as a motive for immigration to the United States and in light of "increasing numbers of immigrants on the welfare rolls at even more sharply increasing costs." 110 Stat. 2260, § 400, 8 U.S.C. § 1601; Abreu v. Callahan, et al., N. 97 Civ. 2126, 1997 WL 414113, *1 (S.D.N.Y. July 24, 1997). Section 402(a) of the Welfare Reform Act disqualifies permanent resident aliens, with certain exceptions, from receiving SSI and food stamps benefits. ² With respect to food stamps alone, the Congressional Budget Office estimates approximately 1,000,000 permanent resident aliens receiving food stamps would lose their eligibility. Def. Supp. Opp'n Mem. at 8.

[*8] As enacted, the Welfare Reform Act directed state agencies to recertify eligibility of those individuals "receiving benefits as of [August 22, 1996] and whose eligibility for such benefits may terminate by reason of the provisions of this subsection" during the period beginning on August 22, 1996 and ending August 22, 1997. Welfare Reform Act § 402(a)(2)(D)(ii)(I). According to the grandfather provision, new eligibility criteria, including the citizenship requirement, "shall apply only with respect to the eligibility of an alien for a program for months beginning on or after the date of recertification." Welfare Reform Act § 402(a)(2)(D)(ii)(III). Pursuant to these

² The Welfare Reform Act lists the following exceptions:

(a) refugees, asylees and persons granted withholding of deportation for the first five years after being granted that status; (b) lawful permanent residents who have "worked 40 qualifying hours coverage as defined under Title II of the Social Security Act" or can be credited with such coverage as provided by section 1645 of the Welfare Reform Act; and (c) veterans and active duty members of the Armed Forces, their spouses and unmarried dependent children. Welfare Reform Act § 402(a)(2)(A),(B), and (C), 8 U.S.C. § 1612(a)(2)(A),(B), and (C).

timeliness "many immigrants could have lost their benefits by the early part of 1997." ³ The immigrants were granted a measure of reprieve by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. L. No. 104-208, div. C, tit. V, subtit. A, 110 Stat. 3009. IIRIRA amended the Welfare Reform Act by delaying implementation of the new eligibility criteria until April 1, 1997. Pub. L. No. 104-208, § 510, 110 Stat. 3009-673. Thus, under the revised timeliness state agencies are to conduct [*9] recertifications during the period beginning April 1, 1997 and ending August 22, 1997. 8 U.S.C. § 1612(D)(ii)(I). Legal immigrants who do not qualify for any of the statutory exceptions to the new citizenship requirement will be ineligible to receive food stamps until they are granted citizenship status by the Immigration and Naturalization Service (INS).

C. Class Composition

The fifteen named plaintiffs are legal immigrants residing in either Chicago, Illinois or Madison, Wisconsin. Class Compl. P 12. The individual plaintiffs range from thirty-seven to eighty-six years of age. Id. They are immigrants from the Ukraine, Lithuania, Mexico, Cambodia, and Laos. Id. Plaintiffs are recipients of SSI benefits or food stamps, or both in several cases. Id. All of the plaintiffs depend almost entirely on these welfare benefit [*10] programs for their subsistence. Id. The named plaintiffs seek to represent an alleged "Food Stamp Class" that consists of legal permanent residents of the United States who: (1) were recipients of food stamps as of the date of enactment of the Welfare Reform Act, August 22, 1996; (2) have been or will be disqualified to receive food stamps upon recertification of their eligibility under the new citizenship provisions of the Welfare Reform Act; (3) have pending applications for naturalization with INS, filed prior to the dates of their recertifications; and (4) as of the date of recertification, have not received a final INS disposition of their applications. Id. P 13(b). ⁴

Only [*11] eight of the fifteen named plaintiffs are recipients of food stamps. Class Compl. P 12. The named plaintiffs receive differing monthly allotments depending on their household eligibility determination. For instance, plaintiffs Sarra Shvartsman and her husband Leonid Teper receive monthly coupons redeemable for \$ 10. On the

other hand, the Perez family receives a monthly allotment of food stamps valued at \$ 277. Id. P 72. Procoro Sifuentes receives no monthly SSI benefits and receives \$ 120 worth of food stamps per month. Id. P 125.

D. Naturalization Process

All of the plaintiffs will have filed naturalization applications with INS by the time the state agency makes a recertification decision applying the citizenship requirement. Pl. Mot. Prelim. Inj. at 1. The naturalization process consists of three major parts: (1) the submission of an application; (2) the INS interview; and (3) the swearing-in ceremony. Pl. Ex. A P 5. ⁵ The process is fraught with various administrative delays at each of these steps. Pl. Prelim. Inj. Mem. at 6. Generally, applicants become eligible to submit an application after five years of lawful permanent residence. Id. P 7. The time lag [*12] between filing an application and the interview varies widely, depending on the INS district office handling the application. Class Compl. P 32(a) (citing the Report Card on INS Adjudications, American Immigration Lawyers Association, April 1997)). For instance, in Chicago the delay between filing and the interview is between 240-270 days; whereas in Charlotte the delay is 450-600 days. Id. Part of the reason for this delay is the requirement of a fingerprint clearance by the Federal Bureau of Investigation (FBI). Pl. Ex. A PP 21-25. Due to several recent regulatory changes by the INS, the standard four month delay in fingerprint processing has resulted in even more lengthy administrative delays. Id.

The second step is a face-to-face interview, used to determine the applicant's eligibility for naturalization. [*13] Id. P 13. Typically, the interview tests all substantive requirements for citizenship, including a basic knowledge of English and civics. Id. In Chicago, however, the English and civics test is conducted as a separate written examination. Id. The test is graded immediately and for applicants who pass the test an interview is conducted the same day. Id. PP 14, 18. Those applicants who fail the test are automatically scheduled for a second test and interview two months later. Id. P 14. If the applicant meets all requirements for citizenship, the examiner verbally informs the successful applicant to wait for a mailed notice of the date of the naturalization ceremony. Id. P 20.

³ Note. *Preserving Procedural Due Process for Immigrants Receiving Food Stamps in Light of The Personal Responsibility Act of 1996*, 65 Fordham L. Rev. 2065, 2102 n. 96 (1997).

⁴ As noted. *supra* note 1. the claims of the "SSI Class" were mooted by the recent passage of the BBA. which continued SSI benefits to those who were qualified recipients on August 22, 1996. Class Compl. P 13(a). Therefore, the claims of those named plaintiffs who allege only the receipt of SSI benefits are not addressed.

⁵ Exhibit A to the memorandum in support of plaintiffs' motion for a preliminary injunction is the affidavit of Marketa Lindt, an immigration law specialist. The exhibit is referred to as "Pl. Ex. A."

The third and final part of the naturalization process is the official ceremony when the applicant takes the oath of allegiance and receives a certificate of naturalization. Id. P 26. The ceremony is conducted either by a federal judge or the local INS office, depending on the INS district where performed. Id. P 28. In Chicago, the ceremony is conducted by a federal judge. Id. P 29. Long delays between the interview and the ceremony can be accounted for by large increases in [*14] the number of applicants over the past three years. Id. P 27. There are approximately 8,000 applicants in the Chicago INS office awaiting a date for a naturalization ceremony; many have been waiting since last summer. Id.

The entire naturalization process ordinarily takes at least six months, although the process takes closer to a year in major metropolitan areas. Class Compl. P 31(a) and (b). In the Chicago office, most citizenship applications require one to two years for complete processing. Pls. Ex. A P 33. In some individual cases, administrative problems may result in a three and one-half year period from application filing to complete processing. Id. P 34(a). Despite significant delays, recent INS statistics demonstrate approximately 82% of naturalization applications are approved by the INS. Class Compl. P 29, Ex. A (Report, INS Statistics Division, January 15, 1997).

DISCUSSION

I. Procedural Due Process

The crux of plaintiffs' argument is that the transition procedures violate their due process rights by depriving them of a full and fair opportunity to recertify for eligibility before INS rules on their citizenship applications. Pl. Reply Mem. [*15] at 5. According to plaintiffs, the transition procedures accomplish this by establishing a stringent deadline for the termination of benefits. Thus, plaintiffs contend due process requires they be exempted from the new citizenship eligibility requirements pending INS disposition of the applications.

Defendants response is two-pronged. Defendants argue due process does not require the continuation of food stamp benefits past the certification period because of the time limited status of food stamps as a property right. Further, they insist in cases of mass substantive changes in entitlements, as distinguished from those challenging individual eligibility determinations, the legislative process is the only process plaintiffs are due.

The Due Process jurisprudence of the Supreme Court requires the court to answer two important questions: (1) whether plaintiffs were deprived of a protected property interest; and if so, (2) what process was due them in connection with that deprivation. Logan v. Zimmerman

Brush Co., 455 U.S. 422, 428, 71 L. Ed. 2d 265, 102 S. Ct. 1148 (1982).

A. Constitutional Framework

Plaintiffs contend the property interest at stake is the statutory right [*16] to recertify. Contrary to plaintiffs assertion, the right to recertify for benefits is not closely akin to the right to use state adjudicatory procedures to redress discrimination deemed a property interest in Logan, 455 U.S. 422, 431, 71 L. Ed. 2d 265, 102 S. Ct. 1148 (1982). Recertification is a statutory procedure to ensure smooth confirmation of eligibility from one period to the next; not a procedure whereby individuals gain access to an adjudicatory process protecting fundamental substantive rights. Thus, plaintiffs confuse the question of the property interest at stake -- their alleged right to receive an uninterrupted flow of food stamps - - with the process which they are due. If their right to receive food stamps is a protectable property interest, the question then arises whether the statutory right to recertification sufficiently protects them from deprivation of food stamps without due process.

The starting point for an assessment of this procedural due process claim is provided by Atkins v. Parker, 472 U.S. 115, 86 L. Ed. 2d 81, 105 S. Ct. 2520 (1984). In Atkins the Supreme Court settled the questions whether food stamps are a protectable property interest [*17] under the due process clause and what process is due food stamp recipients pursuant to an across-the-board legislative change in statutory entitlements. Atkins involved a due process challenge to notices issued by the Massachusetts Department of Public Welfare (MDPW) describing a legislative amendment to the Food Stamp Act. Id. at 117. The amendment at issue, a reduction in the percentage of earned income deducted in computing eligibility, had no effect on the level of benefits received by some households, but caused either a reduction in the level of benefits or a termination of the benefits of others. Id. at 118. After the district court found the first notice inadequate, the MDPW issued a second notice to the recipients. Id. at 119-120. The notice explained, in general terms, the nature of the legislative changes and informed recipients of their statutory right to request a fair hearing. Id. The district court and the court of appeals each held the notice violated the Due Process Clause of the Fourteenth Amendment. Id. at 122-123. The Supreme Court reversed. Id. at 131.

In Atkins, the Court considered whether recipients had a "constitutional right [*18] to advance notice of the amendment's specific impact on their entitlement to food stamps before the statutory change could be implemented by reducing or terminating benefits." Id. at 127. First, the Court determined that food stamps are "appropriately

treated as a form of 'property' protected by the Due Process Clause; accordingly, the procedures that are employed in determining whether an individual may continue to participate in the statutory program must comply with the commands of the Constitution." Id. at 128. Second, the Court distinguished the case from one where "the procedural fairness of individual eligibility determinations" are at issue. Id. at 129. Rather, the case was characterized as one that "involves a legislatively mandated substantive change in the scope of the entire program." Id. Absent any indication that the legislative change ran astray of the "substantive limitations on the power of Congress [...]" it must be assumed that Congress had plenary power to define the scope and duration of the entitlement to food-stamp benefits, and to increase, to decrease, or to terminate those benefits based on its appraisal of the relative importance of the [*19] recipients' needs and the resources available to fund the program." Id.

According to the Court, the "congressional decision to lower the earned income deduction from 20 percent to 18 percent" was just such a substantive legislative change in entitlements. Id. at 129. This classification of the case determined the type of procedural due process owed to the welfare recipients: "[A] welfare recipient is not deprived of due process when the legislature adjusts benefit levels... The legislative determination provides all the process that is due." Id. at 130 (citations omitted). As there was "no claim that there was any defect in the legislative process" and the "substantive reduction in the level of petitioner's benefits was the direct consequence of the statutory amendment," the Court concluded that plaintiffs had "no basis for challenging the procedure that caused them to receive a different, less valuable property interest after the amendment became effective." Id. Thus, the Court held, "there can be no doubt concerning the sufficiency of the notice describing the effect of the amendment in general terms." Id. at 131.

This case is governed by the Supreme Court's [*20] holding in Atkins. The Welfare Reform Act embodies Congress' use of its plenary power to make substantive adjustments to the eligibility requirements for major welfare programs, such as the Food Stamp Program. Congress narrowed eligibility for federal programs on the basis of citizenship status. 8 U.S.C. § 1612. The role of this court is not to substitute its own policy judgments for those of Congress. Rather, it is the court's responsibility to insure that the legislative process comports with "substantive limitations on the power of Congress." Id. at 129. As Atkins dictates, in these cases the legislative process provides all the process to which plaintiffs are entitled.

There is no ground upon which this court might find a violation of due process based on a defect in the legislative

process itself. Indeed, plaintiffs' interests were amply represented in the legislative process and were vindicated in a number of instances. This much is attested to by the obvious shift in the political currents that led to restoration of SSI benefits in the BBA and the lengthy extension of the food stamp recertification date brought about by the IIRIRA. In addition, Congressional committees [*21] have received testimony detailing plaintiffs' plight. Defendant Glickman, himself, spoke in favor of the administration's proposal to extend the deadline for recertifications pursuant to the citizenship requirement. Glickman stated, "the proposal ... would delay implementation of the ban on aid to legal immigrants for up to 5 months while these individuals seek naturalization." *Agriculture Appropriation: Hearings Before the Subcomm. on Agriculture, Rural Development, and Related Agencies of the Senate Comm. on Appropriation*, 1997 WL 87451, (February 27, 1997) (Statement of Dan Glickman, Secretary of Agriculture). Similarly, other committees have heard vital testimony proposing statutory amendments aimed at restoring food stamp benefits. The statement of Susan Golonka, Senior Policy Analyst for the National Governors' Association, and others before the House Subcommittee on Ways and Means is illustrative. The following testimony was received:

This afternoon, we are jointly proposing several technical changes to the immigrant provisions. First, states have noted that despite the best efforts of the Immigration and Naturalization Service (INS), there is a significant time [*22] lag between when individuals submit their applications for naturalization and when the process is complete. During this six to nine month period, immigrants may lose their food stamps, SSI and Medicaid benefits and then have to go through the eligibility process again, after becoming citizens, to have their benefits reinstated. This creates an unfortunate disruption in critical services and administrative inefficiencies. We ask Congress to consider an amendment to allow those individuals in the process of naturalizing to continue to receive federal benefits and to allow states the option of continuing their Medicaid benefits. *Technical Corrections to the Welfare Overhaul Law: Hearings Before the Subcomm. on Human Resources of the House Comm. on Ways and Means*, 1997 WL 97530, (February 26, 1997) (Statement of Susan Golonka, policy analyst).

Finally, members of Congress have urged legislation that would grant plaintiffs relief from the termination of food

stamp benefits. Senator Moynihan, for instance, delivered the following message to members of the Senate: "I am pleased to join with colleagues of both parties in introducing legislation to continue SSI and food stamp benefits [*23] to those legal immigrants already receiving them and to permanently exempt refugees and asylees from the eligibility restrictions." 143 Cong. Rec. S 3417-02 (April 22, 1997) (Statement of Sen. Moynihan). The fact these legislative proposals have not resulted in passage of an amendment restoring food stamp benefits does not lend any weight to the merits of plaintiffs' due process claims. To the contrary, the failed attempts only bolster the notion that legislative process is due process.

As in Atkins, the legislative process here affords plaintiffs all the process to which they are entitled prior to the statutory deadline for termination of their benefits. It is not the court's role to supplant Congress' deliberate reassessment of the nation's welfare system with its own notions of public policy and procedural fairness, or to second-guess the statutory mechanism whereby Congress effected the reallocation of public assistance funds. Accordingly, there is no sound basis in constitutional law for plaintiffs' claim that the Due Process Clause requires abeyance of the Welfare Reform Act and the continued eligibility for food stamps pending INS adjudication of their applications for [*24] naturalization.

B. Food Stamps: A Limited Statutory Entitlement

Federal appellate courts addressing the procedural due process rights afforded food stamp recipients have consistently distinguished them from welfare benefits the Supreme Court defined as property in Goldberg v. Kelly, 397 U.S. 254, 25 L. Ed. 2d 287, 90 S. Ct. 1011 (1970). See, e.g., Banks v. Block, 700 F.2d 292 (6th Cir. 1983); Holman v. Block, 823 F.2d 56 (4th Cir. 1987); Jackson v. Jackson, 857 F.2d 951 (4th Cir. 1988). Unlike those benefits, food stamps are not received on a continuing basis. Rather, a recipient's statutory entitlement to food stamps expires periodically and must be renewed via the recertification process. See Banks, 700 F.2d at 297. Thus, any claim of procedural due process violation arising from their deprivation must be analyzed with reference to their limited time status as a property interest. See id. (holding legislative history of Food Stamp Act makes clear "a household has no protectable property interest in the continuous entitlement to food stamps beyond the expiration of its certification period."). Or, in other words, the statutorily limited nature of [*25] the entitlement to food stamps dictates that the procedural due process rights arising from the entitlement should be similarly restricted. See, e.g., Holman, 823 F.2d at 59 (three week interruption in benefits between certification periods following their automatic expiration requires no process); Banks, 700 F.2d at 297 (no right to continuation of benefits pending an

administrative fair hearing beyond the certification period); Jackson, 857 F.2d at 957 (same with respect to appeal of eligibility termination decision).

Plaintiffs cite no authority for a more expansive interpretation of the procedural due process rights owing to recipients of food stamps. Instead, plaintiffs argue the above cases are distinguishable because in each case, plaintiffs sought to evade the recertification requirement, while in this case plaintiffs seek to embrace the recertification requirement. Pl. Reply Mem. at 4. Plaintiffs' argument makes little sense. Although plaintiffs offer to comply with the old certification process, what plaintiffs are really seeking is to avoid the recertification process as it was amended by Congress. Id. at 6. Plaintiffs claim an exemption to the citizenship [*26] eligibility requirement based on their entitlement to due process. The process for implementing the eligibility factor does not deny plaintiffs a full and fair opportunity to certify because they will be unable in many cases to meet the eligibility requirement. To the contrary, plaintiffs receiving benefits will be afforded the same statutory right to recertification they have always been afforded in the past. 8 U.S.C. § 1612 (a)(D)(ii).

C. Plaintiffs' Due Process Rights

Plaintiffs' attempt to evade Atkins, the controlling precedent, is based almost exclusively on the Seventh Circuit's holding in Youakim v. Miller, 71 F.3d 1274 (7th Cir. 1995). Youakim held an Illinois statute conditioning the receipt of foster care benefits on the attainment of licensing status violated the Due Process Clause because it failed to afford prior recipients of those benefits a fair opportunity to meet new eligibility requirements. Id. at 1292. Plaintiffs argue Youakim is the controlling precedent and is virtually indistinguishable from this case. At the abstract level urged by plaintiffs, superficial similarities exist between Youakim and the facts of this case. Both [*27] classes of plaintiffs assert a procedural due process challenge to a statutory transition process designed to implement a mass legislative change in eligibility for the receipt of public benefits. Each plaintiff class premises the challenge to statutory transition procedures on facts indicating the statutory deadlines for application of new eligibility criteria do not afford current recipients of the benefits ample time to qualify for uninterrupted receipt of the benefits. Both cases involve new eligibility criteria that presumably could be met if the transition process afforded more time. Further, in both cases the injunctive relief sought is designed to enjoin enforcement of the termination of benefits until a pending application can be processed by an administrative agency. The similarities end there.

An in-depth discussion of the facts and procedural background of Youakim demonstrates the case is

fundamentally distinguishable. Youakim addressed recent reforms to a statutory licensing scheme for providing foster care benefits, the multiple legal defects that dated back to the issuance of a district court-ordered injunction in 1976. 71 F.3d at 1279. The detailed opinion [*28] evinces a comprehensive effort by the Seventh Circuit to unravel this intricate procedural history. The opinion describes three phases of the complex procedural history: the pre-1976 litigation phase, post-1976 judgment phase, and the post-legislative reform phase.

In the first phase, the court described the first round of Youakim litigation and the pre-existing state of the law. The earlier Youakim litigation stemmed from a regulatory inequality in the distribution of foster care benefits. See id. Under the Illinois scheme predating the litigation, foster care benefits were paid only to those homes licensed under state law. Id. Children cared for by relatives were ineligible for foster care benefits because state law prohibited licensing relative homes. Id. In response to a class action brought by children residing in relatives' homes and their foster parents, the district court issued an injunction forbidding state officials from denying foster care benefits to children in relative homes in violation of the Social Security Act. Id. The district court's determination that the unequal licensing scheme violated the Social Security Act was subsequently affirmed [*29] by the Seventh Circuit and a unanimous Supreme Court. Id. at 1284.

The second phase described the aftermath of the 1976 litigation and the state of the law prior to Illinois' legislative amendments in 1995. In response to the district court injunction and the Supreme Court decision, Illinois paid foster care benefits to children living in homes in three distinct regulatory categories -- preapproved, approved and licensed. Id. at 1279. However, the prior disparity in licensing requirements persisted. Illinois law still required only the licensing of non-relative care givers. Id. As a result, there was no incentive, financial or otherwise, for non-licensed homes to attain licensed status. Id. Predictably, the preapproved and approved categories consisted entirely of relative homes. Id.

The third phase explained the impact of reform legislation. Against this backdrop the Illinois legislature instituted the Home of Relative Reform Plan ("HMR Reform"). The HMR Reform ended pre-existing disparity in licensing requirements by mandating the licensing of both non-relative and relative homes. Id. at 1281. Taking note of substantial inequities engendered by the legislation, [*30] the court of appeals described the impact of the reforms on existing relative homes as "significant and potentially devastating." Id. The reform resulted in a complete cut-off of benefits to children in pre-approved

homes regardless of whether they had applied to the Department of Children and Family Services (DCFS) for a license on or before the termination date. Id. As regards children in the approved category of homes, the HMR reform provided a transition process allowing those homes to retain benefits until DCFS renders a decision on the license application or until a statutory deadline (three months later). Id. The district court found DCFS would be unable to process the applications before the deadline. Id. Moreover, while a licensed non-relative home was not required to meet the new licensing standards until the existing license expired, the approved and preapproved relative homes were required to immediately meet the new licensing standards. Id. at 1282.

The disparate impact of the reform legislation on the preapproved and approved categories of homes served to highlight the inconsistent prior policies and practices of state regulators. The facts demonstrate [*31] the state was uniquely responsible for the uneven regulation and distorted incentives that cemented the relative positions of the parties prior to the legislative reform, and which only exacerbated the severe effects of benefit terminations. For instance, DCFS maintained a policy prior to the reform requiring preapproved caregivers to apply to be approved or licensed in order to retain custody. Id. Statistics indicated, however, the policy was rarely enforced. Id. To the extent DCFS and private agencies encouraged any positive steps towards licensing, they encouraged the approval process because it was "less onerous for both the placing agency and the caregiving family." Id. at 1280. Another set of inequities were occasioned by the fact that nine of the sixty-seven private welfare agencies participating in foster care placement had no authority to license or to participate in the licensing of a foster family home. Id. Thus, children placed in those homes through no fault of their own, were all but deprived of the opportunity to reside in a licensed home. Id.

Before reaching the constitutional portion of its holding, the Seventh Circuit first discussed the issue [*32] of whether the transition procedures adopted by the legislature violated the 1976 judgment and the Social Security Act. In addressing the district court's holding that the transition procedures violated the express terms of the 1976 judgment order and the applicable provisions of the Social Security Act, the appellate court placed great emphasis on the past history of disparate treatment based on relative status. Thus, according to the court "the [district] court's finding was based on the undisputed fact that Illinois had previously channeled relative homes toward the approved or preapproved categories without providing those homes an equal opportunity to become licensed." Id. at 1283. This undisputed fact drove the court's own holding on the statutory issue as to children in

approved homes: "We think it also violates the Act today for Illinois to deny benefits to children in relative homes it previously approved as meeting licensing standards on the ground that the approved category has now been eliminated and the home is currently unlicensed, particularly where the State has provided approved homes with little if any opportunity to become licensed." Id. at 1286. For similar [*33] reasons, the transition process violated the 1976 judgment which prohibited discrimination against those children "otherwise eligible" for benefits under the Social Security Act." Id. at 1287.

Youakim did not reach the same result as to children residing in pre-approved homes because the 1976 judgment and the Social Security Act were not violated by denying benefits to children in relative homes that were neither licensed nor approved under state law. Id. Underlying the court's decision was the fact that plaintiffs in the preapproved category had a "fair opportunity to become approved." Id. Thus, the "plaintiffs in the preapproved category were entitled to no relief in the district court under the terms of either the 1976 judgment or the Social Security Act." Id. at 1288.

This particularized analysis of the inequalities engendered by the transition process, and vivid description of the state's complicity in the lack of equal opportunity, set the stage for the court's Due Process holding. First, the court made the uncontroversial determination that foster care benefits are a "species of property protected by the Constitution." Id. at 1288. The court rejected [*34] the Director of DCFS' argument that "plaintiffs lack a protectable property interest because the State of Illinois eliminated any entitlement they may have had when it reformed its foster care system." Id. at 1288-89. Labeling this argument a tautology, the court stated: "once a property interest has been created by a state, that interest may subsequently be eliminated, but only pursuant to constitutionally adequate procedures." Id. at 1289 (citations omitted). Finding plaintiffs to "have a legitimate claim of entitlement to the foster care benefits they were receiving prior to the implementation of HMR Reform," the court proceeded to "determine whether the procedures employed to deprive them of that interest were constitutionally adequate." Id.

The Director relied on Atkins: the legislative process provided all the process that was due. Id. at 1289. Plaintiffs contended, and the district court agreed, that Atkins did not control plaintiffs' claims because they involved a challenge to the procedural fairness of individual eligibility determinations. The Seventh Circuit agreed with this distinction of Atkins. Relying exclusively on Green v. Babbitt, [*35] 64 F.3d 1266 (9th Cir. 1995), the court stated "the Due Process Clause does not permit the State to withhold benefits without determining whether

current recipients can meet the new requirement." Id. at 1291. The court further stated "due process requires that the governmental agency provide current recipients the opportunity to establish eligibility under the new standards before their benefits may be terminated." Id. at 1291. Noting equitable considerations underpinning its opinion, the court found the above requirement "particularly true in this case, where the district court found as a factual matter that DCFS is primarily responsible for the fact that plaintiffs currently reside in unlicensed relative homes." Id. at 1291. In light of these Due Process standards, the court held pre-approved, as well as approved homes, must "be provided the opportunity to have a license application considered and determined on the merits [by DCFS] before the benefits of resident children may be terminated." Id. at 1292.

Contrary to plaintiffs' vigorous contentions, Youakim is not controlling here. Youakim is distinguishable with regard to both fundamental precepts of procedural [*36] due process and the unique facts driving the Seventh Circuit's efforts to distinguish Atkins. First, defendants are correct to point out Youakim is fundamentally distinguishable because the statutory entitlements at issue, foster care benefits, are a property interest more similar to welfare benefits than to food stamps. As the Supreme Court noted in Board of Regents v. Roth, 408 U.S. 564, 33 L. Ed. 2d 548, 92 S. Ct. 2701 (1972), "property interests are not created by the Constitution. Rather, they are created and their dimensions defined by existing rules or understandings that stem from an independent source such as state law -- rules or understandings that secure certain benefits and that support claims of entitlement to those benefits." 408 U.S. at 577. In Youakim, due to the existing requirements of state law, recipients of foster care benefits expected a stream of benefits to continue uninterrupted. By providing foster care benefits to relatives' homes, regardless of their licensing status, Illinois entrenched expectations of a continued statutory entitlement to the benefits. The actions of the state effectively lulled foster care benefit recipients into the expectation [*37] that the receipt of benefits would not be conditioned on licensing status. In consequence, the Seventh Circuit was sensitive to unfairness arising from sudden withdrawal of these benefits prior to the individual determination required by the new licensing requirements. For example, in discussing the legislature's elimination of the approved category of homes, the court noted that the state previously approved the homes and made the approval effective for four years. Id. at 1285. As a result, the state's attempt "to remove the 'approved' designation prior to the expiration of the four-year period without providing the affected homes an adequate opportunity to obtain a license before losing their benefits" was a violation of the Social Security Act and the Due Process Clause. Id.

Plaintiffs can claim no similar expectation of an uninterrupted stream of benefits. This is because the Food Stamp Act limits eligibility for benefits to a distinct time frame -- the certification period. See Banks, 700 F.2d at 297. The statutory scheme requires periodic filing of recertification applications for the very reason of avoiding the creation of a statutory entitlement to a continual [*38] stream of benefits. See id. (discussing the legislative history of the 1977 certification amendments). Neither Congress nor any administrative agency, federal or state, has abrogated the limited statutory entitlements that gave rise to this property interest. This case would be more analogous to the facts of Youakim if, for instance, Congress had decided to terminate benefits in the middle of the statutory certification periods and afforded no opportunity to recertify under the new eligibility criteria. Here, Congress has left the ordinary recertification mechanism in place. 8 U.S.C. § 1612(D)(ii).

Apart from this fundamental distinction in the scope of the property right at stake, Youakim is distinguishable based on its unique facts. The Seventh Circuit was confronted with a lengthy history of disparate treatment of individuals based solely on relative status, as well as a statutory reform that independently violated the terms of a 1976 judgment order and a federal statute. Given this posture, Youakim's due process holding is unremarkable. Indeed, the Seventh Circuit repeatedly referred to facts indicating the direct complicity of DCFS in an unfair licensing system.

[*39] In contrast, equitable considerations based on historical discriminatory regulation are not before the court here. The background facts are not remotely similar to Youakim. The state and federal regulatory agencies involved in the dissemination of food stamps have done nothing prior to enactment of the Welfare Reform Act to diminish the incentives of immigrants to naturalize. Indeed, there are independent incentives, both intangible and material, to become a naturalized citizen. Moreover, the Welfare Reform Act provides plaintiffs with all the procedural protections they are due under Youakim. The Seventh Circuit pointed out that even in Atkins the "food stamp recipients affected by the change could request a hearing and have their benefit levels frozen in the interim." Id. at 1290. By contrast, no similar procedural protections existed in the Illinois legislative scheme: "HMR Reform merely adds an additional eligibility requirement (licensure) that most if not all approved and preapproved homes could meet if given the opportunity." Id. Unlike the HMR Reform, the Welfare Reform Act does not deny legal immigrants a fair opportunity to meet the additional eligibility [*40] requirements.

First, the Act, as subsequently amended by the IIRIRA, provides at least seven months between enactment and

application of the new requirements so that many of those legal immigrants who had pending citizenship applications with INS on the date of enactment will have received a full adjudication by the time of recertification. Second, even those who have not received a decision from INS are not denied the statutory right to recertify. Consistent with the usual statutory procedures provided by the Food Stamp Act and its accompanying regulations, individuals will have the opportunity to recertify under the new eligibility requirements. Plaintiffs are entitled to written notice of expiration of benefits, to submit an application for recertification, to a face-to-face interview, and time to provide information verifying their eligibility for benefits. 7 U.S.C. § 2020(e)(4), 7 C.F.R. § 273.14. In the context of the new requirements, they may attempt to submit information verifying their entitlement to benefits based on their citizenship status or any of the statutory exemptions, such as working forty-qualifying quarters. 8 U.S.C. § 1612 (a)(2) (A), (B), and (C). If they [*41] disagree with the individual eligibility determinations, they are entitled to a fair hearing and, in some instances, to reinstatement of benefits. 7 C.F.R. § 273.15(k)(1) ("When benefits are reduced or terminated due to a mass change, participation on the prior basis shall be reinstated only if the issue being contested is that food stamp eligibility or benefits were improperly computed or that Federal law or regulation is being misapplied or misinterpreted by the State agency.").

Plaintiffs benefit from these substantial statutory rights. These rights collectively entitle food stamp recipients to individual eligibility determinations prior to official termination of benefits and provide mechanisms for review of administrative error. Bluntly put, the Due Process Clause affords no further protections. The Due Process Clause provides no guarantee of success in qualifying for government benefits under new eligibility requirements; nor does it require legislatures to enact procedures to maximize an applicant's chances of meeting the requirements. However, this is exactly what plaintiffs are claiming the Due Process Clause entitles them to when they contend the Welfare Reform Act's transition [*42] process denies them a full and fair opportunity to recertify.

The foregoing description of procedural protections serves also to distinguish Greene v. Babbitt, 64 F.3d 1266 (9th Cir.1995). In Greene, Congress conditioned eligibility for federal health and welfare benefits earmarked for Indian tribes on the groups' tribal recognition status. Id. at 1209. The Samish tribe challenged the procedures used by the Department of the Interior to process their petition for tribal recognition. Id. The Ninth Circuit agreed with the district court " that once Congress has narrowed eligibility for fundamental health and welfare benefits by conditioning eligibility on tribal recognition, the due

process clause requires a meaningful hearing to determine whether those previously eligible meet the new and narrowed requirements." *Id.* at 1273. The procedures used by the Department fell far below the requisite constitutional standards. See *id.* at 1275 ("Informal decision-making, behind closed doors and with an undisclosed record, is not an appropriate process for the determination of matters of such gravity."). Plaintiffs were entitled to a meaningful hearing on the merits of their [*43] application. In contrast, the record here discloses no comparable denial of procedural rights in the context of individual eligibility determinations. The array of statutory protections conferred by the Food Stamp Act deter erroneous deprivation of benefits. Though artfully conceived and well-argued, plaintiffs' reliance on *Youakim* and *Greene* is ultimately unfounded.

II. Class Certification Pursuant to *Fed. R. Civ. P. 23(b)(2)*

Plaintiffs seek class certification of a nationwide class comprised of all legal permanent residents of the United States who: (1) were recipients of food stamps as of the date of enactment of the Welfare Reform Act, August 22, 1996; (2) have been or will be disqualified to receive food stamps upon recertification of their eligibility under the new citizenship provisions of the Welfare Reform Act; (3) have pending applications for naturalization with INS, filed prior to the dates of their recertifications; and (4) as of the date of recertification, have not received a final INS disposition on their applications.

In order to maintain a class action, plaintiffs must satisfy the requirements of *Federal Rule of Civil Procedure 23(a)* and *(b)*. [*44] *Retired Chicago Police Ass'n v. City of Chicago*, 7 F.3d 584, 596 (7th Cir.1993). *Rule 23(a)* requires that (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class. *Fed.R.Civ.P. 23(a)*. If these prerequisites are satisfied, the court must determine whether one of the standards of *Rule 23(b)* is met. *Patrykus v. Gomilla*, 121 F.R.D. 357, 360 (N.D.Ill.1988). The certification decision is committed to the sound discretion of the court. *First Interstate Bank, N.A. v. Chapman & Cutler*, 837 F.2d 775, 781 (7th Cir.1988). In assessing the certification petition, the court does not examine the merits of the case, *Allen v. Isaac*, 99 F.R.D. 45, 49 (N.D.Ill.1983), although "the boundary between a class determination and the merits may not always be easily discernible." *Eggleston v. Chicago Journeymen Plumbers' Local Union*, 657 F.2d 890, 895 (7th Cir.1981); accord *General Tel. Co. of Southwest v. Falcon*, [*45] 457 U.S. 147, 160, 72 L. Ed. 2d 740, 102 S. Ct. 2364 (1982). Failure to meet any one of the requirements of *Rule 23* precludes certification of the class. *Patterson v.*

General Motors Corp., 631 F.2d 476, 480 (7th Cir.1980). Plaintiffs bear the burden of showing that certification is proper. *Trotter v. Klinciar*, 748 F.2d 1177, 1184 (7th Cir.1984).

A. Numerosity

Under *Rule 23(a)(1)*, plaintiffs must show the class is so numerous that joinder of all members is impracticable. The exact number of class members or their identities need not be pleaded or proved. See *Gomez v. Comerford*, 833 F. Supp. 702, 706 (N.D.Ill.1993). Moreover, plaintiffs are entitled to rely on common sense assumptions to support a finding of numerosity. *Gomez*, 833 F. Supp. at 706. Nevertheless, the impracticability of joinder must be positively shown and not merely speculative. *Kahn v. Mucia*, 776 F. Supp. 348, 352 (N.D.Ill.1991). Plaintiffs may not rely on conclusory allegations in order to prove numerosity. See *Marcial v. Coronet Ins. Co.*, 880 F.2d 954, 957 (7th Cir.1989). Factors relevant to determining whether joinder is impracticable include geographical dispersion of the class, judicial [*46] economy, and the ability of class members to institute individual suits. *Jones v. Bowen*, 121 F.R.D. 344, 348 (N.D.Ill.1988), *vac'd on other grounds*, *Jones v. Sullivan*, 938 F.2d 801 (7th Cir.1991); *Allen*, 99 F.R.D. at 53. F.R.D. at 53. In making a numerosity determination, the court may be aided by common sense and reasonable inferences. See, e.g., *Gomez*, 833 F. Supp. at 706-07.

Defendants originally raised objections to the class on numerosity grounds. However, they have retracted those objections in light of subsequent facts offered by plaintiffs. Def. Supp'l Mem. at 11 n.7. Using statistical estimates compiled by their expert, plaintiffs approximate the number of legal immigrants affected by the Welfare Reform Act's food stamp provisions, who have pending applications with INS, to be 41,000. Pl. Class Cert. Mem. at 4, Ex. A. In light of plaintiffs' uncontested estimates, the numerosity factor is satisfied.

B. Additional Requirements

Apart from an argument that the geographic scope of the class should be restricted to the Seventh Circuit, defendants raise no other objections to certification of the proposed class. The court agrees that the geographic [*47] scope of the class should be limited to the Seventh Circuit. All named plaintiffs reside in the Seventh Circuit. Plaintiffs rely almost exclusively on *Youakim*, a Seventh Circuit decision. Therefore, the class is properly limited to the Seventh Circuit. See *Abreu*, 1997 WL 414113, *22.

Plaintiffs satisfy the other requisites of class certification under 23(a) and (b)(2). The claims of the named plaintiffs

are typical of the class. The factual and legal contentions are common to the class. The attorneys representing plaintiffs adequately represent the interests of class members. Finally, the federal government has acted on grounds generally applicable to the members of class, thereby making injunctive relief the appropriate remedy.

Accordingly, the court grants plaintiffs' motion to certify a class comprised of all persons in the Seventh Circuit who: (1) were recipients of benefits under the Food Stamp Program, 7 U.S.C. § 2011 et seq., as of August 22, 1996; (2) are legal permanent residents of the United States; (3) have had, are having, or will have recertifications of their eligibility for Food Stamp benefits conducted pursuant to Section 402(a)(2)(D)(ii)(I) of the Personal [*48] Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193; (4) have filed and have pending, before the dates of their recertifications, applications for naturalization with the Immigration and Naturalization Service; and (5) as of the date of the recertification, have not received an INS adjudication on their for naturalization applications and/or have not been sworn in as citizens.

CONCLUSION

The Welfare Reform Act's limitations on the eligibility of lawful resident aliens to receive food stamp benefits do not violate plaintiffs' due process rights. It is within the province and power of Congress--not the courts--to formulate public policy concerning the nation's welfare system and to allocate public funds. The challenged transition procedures implementing citizenship requirements for food stamp benefits meet constitutional standards.

Plaintiffs' motion for class certification is granted in part and denied in part. Plaintiffs' motion for preliminary injunctive relief is denied. There are no disputed issues of material fact; defendants are entitled to judgment as a matter of law. Accordingly, judgment is entered for defendants John J. Callahan [*49] and Daniel R. Glickman and against the plaintiff class.

ENTER:

Suzanne B. Conlon

United States District Judge

August 28, 1997