No. 19-2222

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

CASA DE MARYLAND, INC., *et al.*,

Plaintiffs-Appellees,

v.

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

Defendants-Appellants.

On Appeal from the United States District Court for the District of Maryland

BRIEF FOR APPELLANTS

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INTRODUCTION

The Immigration and Nationality Act (INA) provides that an alien is inadmissible if the alien is, in the Executive Branch's opinion, "likely at any time to become a public charge." 8 U.S.C. § 1182(a)(4)(A). On August 14, 2019, the Department of Homeland Security (DHS) published a final rule implementing this public-charge inadmissibility provision. The Rule defines "public charge" to mean an alien who receives one or more public benefits, as defined in the Rule, including certain noncash benefits, for more than 12 months in the aggregate within any 36-month period. The Rule also sets forth the framework DHS will use to determine whether an alien is likely at any time to become a public charge. On October 14, 2019, the district court entered a preliminary injunction barring DHS from enforcing the Rule nationwide. On December 9, 2019, this Court stayed the injunction pending appeal.

The district court's injunction should be set aside, as none of the traditional factors supports the entry of an injunction here. As a threshold matter, CASA de Maryland (CASA) has not established standing to sue under Article III and zone-of-interest principles. CASA alleges that the Rule has caused it to devote resources to educating immigrants about the Rule. But that budgetary choice is not a cognizable injury, nor is it even marginally related to the interests Congress sought to further through the public-charge inadmissibility statute.

CASA also is unlikely to succeed on the merits of its claim that the Rule's definition of "public charge" is inconsistent with the INA. Numerous statutory provisions demonstrate that Congress intended to require aliens to rely on their own resources, rather than taxpayer-supported benefits, to meet their basic needs. For example, Congress required many aliens to obtain sponsors who must agree to reimburse the government for any means-tested public benefits the alien receives, and declared any alien who fails to obtain a required sponsor automatically inadmissible under the public-charge ground. Congress also restricted the eligibility of most aliens for public benefits after they enter the country, underscoring its stated goal of "assur[ing] that aliens [are] self-reliant in accordance with [national] immigration policy," 8 U.S.C. § 1601(5).

The Rule—which renders inadmissible aliens who are likely to rely on government support for a significant period to meet basic needs—fully accords with Congress's intent. Congress has not required DHS to adopt a narrow definition of "public charge," but rather has repeatedly and intentionally left the definition and application of the term to the discretion of the Executive Branch.

The remaining preliminary-injunction factors likewise weigh against a preliminary injunction. So long as the Rule cannot take effect, the government will grant lawful-permanent-resident status to aliens whom DHS believes would be found inadmissible as likely to become public charges under the Rule. Any harm plaintiffs might experience does not constitute irreparable injury, let alone irreparable injury

sufficient to outweigh that harm to the federal government and taxpayers. At an absolute minimum, the district court abused its discretion in issuing a nationwide injunction.[1]

STATEMENT OF JURISDICTION

Plaintiffs invoked the jurisdiction of the district court pursuant to 28 U.S.C. § 1331, raising claims under the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Joint Appendix (JA) 65. Plaintiffs' standing is contested. *See infra* Part I. The district court entered a preliminary injunction and stay of the Rule's effective date under 5 U.S.C. § 705 on October 14, 2019. JA274. The government filed a timely notice of appeal on October 30, 2019. JA280; *see* Fed. R. App. P. 4(a)(1)(B). This Court has jurisdiction under 28 U.S.C. § 1292(a)(1).

STATEMENT OF THE ISSUES

1. Whether plaintiffs are appropriate parties to challenge the Rule.

2. Whether the Rule's definition of "public charge" is based on a permissible construction of the INA.

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[1] Four other district courts have issued preliminary injunctions, all of which the government has appealed. *See City & Cty. Of San Francisco v. USCIS*, No. 19-cv-4717 (N.D. Cal.) (Plaintiff Counties); *California v. USDHS*, No. 19-cv-4975 (N.D. Cal.) (Plaintiff States and the District of Columbia); *Washington v. DHS*, No. 19-cv-5210 (E.D. Wash.) (nationwide); *New York v. DHS*, 19-cv-7777 (S.D.N.Y), and *Make the Road New York v. Cuccinelli*, 19-cv-7993 (S.D.N.Y.) (nationwide); *Cook Cty. v. McAleenan*, 19-cv-6334 (N.D. Ill.) (Illinois). The Ninth Circuit has granted the government's motions to stay the district courts' injunctions in three cases pending appeal. *See* Order, *City & Cty. of San Francisco v. U.S. Dep't of Homeland Sec.*, Nos. 19-17213, 19-17214, 19-35914 (9th Cir. Dec. 5, 2019).

3. Whether the district court erred in extending its injunction nationwide.

PERTINENT STATUTES AND REGULATIONS

Pertinent statutes and regulations are reproduced in the addendum to this brief.

STATEMENT OF THE CASE

A. Statutory Background

1. The INA provides that "[a]ny alien who, . . . in the opinion of the [Secretary of Homeland Security] at the time of application for admission or adjustment of status, is likely at any time to become a public charge is inadmissible." 8 U.S.C. § 1182(a)(4)(A).[2] That assessment "shall at a minimum consider the alien's (I) age; (II) health; (III) family status; (IV) assets, resources, and financial status; and (V) education and skills." *Id.* § 1182(a)(4)(B). A separate INA provision provides that an alien is deportable if, within five years of entry, the alien "has become a public charge from causes not affirmatively shown to have arisen" since entry. *Id.* § 1227(a)(5).

Three agencies make public-charge inadmissibility determinations under § 1182(a)(4). DHS makes such determinations with respect to both aliens seeking admission at a port of entry and aliens within the country who apply to adjust their status to that of a lawful permanent resident. *See* 84 Fed. Reg. 41,292, 41,294 n.3

[2] The statute refers to the Attorney General, but in 2002, Congress transferred the Attorney General's authority to make inadmissibility determinations in the relevant circumstances to the Secretary of Homeland Security. *See* 8 U.S.C. § 1103; 6 U.S.C. § 557; *see also* 6 U.S.C. § 211(c)(8).

(Aug. 14, 2019). The Department of State's consular offices apply the public-charge ground of inadmissibility when evaluating visa applications filed by aliens abroad. *See id.* The Department of Justice enforces the statute when the question whether an alien is inadmissible on public-charge grounds arises during removal proceedings. *See id.* The Rule at issue governs DHS's public-charge inadmissibility determinations. *See id.* The Rule's preamble indicated that the State Department and Department of Justice were expected to promulgate rules and guidance that are consistent with the Rule. *See id.*

2. Although the public-charge ground of inadmissibility dates back to the first immigration statutes, Congress has never defined the term "public charge," instead leaving the term's definition and application to the Executive Branch's discretion. In 1999, the Immigration and Naturalization Service (INS), a DHS predecessor, proposed a rule to "for the first time define 'public charge,'" 64 Fed. Reg. 28,676, 28,689 (May 26, 1999) (1999 Guidance), a term that the INS noted was "ambiguous" and had "never been defined in statute or regulation," *id.* at 28,676-77. The proposed rule would have defined "public charge" for purposes of admission or adjustment of status to mean an alien "who is likely to become primarily dependent on the Government for subsistence as demonstrated by either: (i) [t]he receipt of public cash assistance for income maintenance purposes, or (ii) [i]nstitutionalization for long-term care at Government expense." *Id.* at 28,681. When it announced the proposed rule, INS also issued "field guidance" adopting the proposed rule's definition of "public

charge." *Id.* at 28,689. The proposed rule was never finalized, leaving the 1999 Guidance as the default definition of "public charge" since its issuance. 84 Fed. Reg. at 41,348 n.295.

In October 2018, DHS proposed a new approach to public-charge inadmissibility determinations. It did so through a proposed rule subject to notice and comment. 83 Fed. Reg. 51,114 (Oct. 10, 2018) (NPRM). After responding to the numerous comments it received during the comment period, DHS promulgated the final Rule at issue here in August 2019. *See* 84 Fed. Reg. at 41,501. The Rule is the first time the Executive Branch has issued a final rule following notice and comment that defines the term "public charge" and establishes a framework for evaluating whether an alien is likely to become a public charge.

The Rule defines "public charge" to mean "an alien who receives one or more public benefits as defined in [the Rule] . . . for more than 12 months in the aggregate within any 36-month period (such that, for instance, receipt of two benefits in one month counts as two months)." 84 Fed. Reg. at 41,501. The Rule's definition of public benefits includes cash assistance for income maintenance and certain noncash benefits, including most Medicaid benefits, Supplemental Nutrition Assistance Program benefits, and federal housing assistance. *Id.* As the agency explained, the Rule's definition of "public charge" differs from the 1999 Guidance in that: (1) it incorporates certain noncash benefits; and (2) it replaces the "primarily dependent" standard with the 12-month/36-month measure of dependence. *Id.* at 41,294-95.

The Rule was set to take effect on October 15, 2019, and would have applied prospectively to applications and petitions postmarked (or, if applicable, submitted electronically) on or after that date. 84 Fed. Reg. at 41,292.

B. Prior Proceedings

In September 2019, CASA and two individual aliens challenged the Rule. CASA is a nonprofit organization that provides social, health, job training, employment, and legal services to immigrant communities in Maryland and a few other states. JA65. As relevant here, plaintiffs alleged that the Rule's definition of "public charge" is not a permissible construction of the INA. JA93-95.

On October 14, 2019, the district court granted plaintiffs' request for a preliminary injunction barring DHS from implementing the Rule, and a stay of the Rule under 5 U.S.C. § 705. JA274. The court did not decide whether the individual plaintiffs had standing, but concluded that CASA's decision to provide education about the Rule was a sufficient injury in fact. JA244-48. The court also concluded that CASA is within the zone of interests protected by the public-charge provision, reasoning that the "plain language of this provision indicates that the interests to be regulated are the health and economic status of immigrants." JA251.

On the merits, the court concluded that plaintiffs were likely to prevail on their claim that the Rule's definition of "public charge" is "precluded by the meaning of [the] term." JA265-66. The court reasoned that, in defining "public charge" to include individuals who receive noncash benefits for more than twelve months in

aggregate within a thirty-six month period, the Rule was at odds with the "history and context of the Immigration Act of 1882," a 1915 Supreme Court decision, and a prior opinion by the Attorney General. JA265. In the district court's view, those authorities suggested that the term "public charge" covers only aliens who are "primar[ily] dependent" on the government because they are "destitute and unable to work." JA257, 261, 265 (quotation marks omitted). The court also found it significant that Congress, in 1996 and 2013, did not adopt legislative proposals that would have defined "public charge" to include consideration of an alien's receipt of noncash benefits. JA263-65.

Regarding the other preliminary-injunction factors, the court concluded that CASA suffered irreparable harm by focusing its advocacy efforts on the Rule's effects, rather than on other time-sensitive opportunities for advocacy on CASA's agenda. JA267. The district court further concluded that those harms outweighed the harms that an injunction would cause for the government and the public. JA268. Although the court seemed to acknowledge that the injunction would affect the government's "interest in administering the national immigration system," it thought that the harm was minimal because "preserving the status quo would not create a significant break in the enforcement of the immigration laws." JA268.

Finally, the court concluded that a nationwide injunction was necessary to afford CASA relief. JA271. Although CASA's members are located in only three states and the District of Columbia, the court asserted that some of CASA's members

might be confused by a limited injunction, and that some might be subject to the Rule if they travel abroad and return through a port of entry outside those four jurisdictions. JA269. The court determined that those risks meant that "the alleged harms to CASA as an organization [would] continue" without a nationwide injunction. JA269 (emphasis omitted). In addition, the court relied on its view that "the ordinary remedy in APA challenges to a rulemaking is to set aside the entire rule," and on this Court's observation in a vacated decision that "nationwide injunctions are especially appropriate in the immigration context." JA269-70.

On November 15, 2019, the government asked this Court to stay the district court's order. This Court granted the motion on December 9, 2019. *See* Order, Dec. 9, 2019 (Stay Order).

SUMMARY OF ARGUMENT

The district court erred in entering a preliminary injunction barring enforcement of the Rule.

I. As a threshold matter, CASA has neither established standing to sue under Article III nor asserted injuries that fall within the public-charge provision's zone of interests. CASA alleges that the Rule has caused it to divert resources from some of its activities toward programs to counter the Rule's effects. But this Court has already held that an organization cannot manufacture standing by voluntarily re-allocating its resources. CASA's theory to the contrary flouts not only that precedent, but also the

Supreme Court's repeated admonition that harms to an organization's policy interests cannot be the basis for organizational standing.

CASA's alleged injury is also outside the zone of interests that the public-charge statute protects. Congress designed the statute to protect federal and state governments from having to expend taxpayer resources to support aliens admitted to the country as immigrants or allowed to adjust to lawful-permanent-resident status. The purported diversion of a health-policy organization's resources lacks any connection to that purpose.

II. Even if plaintiffs had standing, they are not likely to prevail on the merits of their claims. Numerous statutory provisions demonstrate that Congress intended to require aliens to rely on their own resources, rather than taxpayer-supported benefits, to meet their basic needs. For example, Congress required many aliens seeking lawful-permanent-resident status to obtain sponsors who must agree to reimburse the government for any means-tested public benefits the alien receives, and declared any alien who fails to obtain a required sponsor automatically inadmissible on the public-charge ground, no matter the alien's individual circumstances. Congress also restricted the ability of certain aliens within the United States to obtain public benefits, and allowed aliens who receive such benefits and fail to reimburse the government to be subject to removal from the country.

The Rule—which renders inadmissible aliens who are likely to rely on public benefits for a significant period to meet basic needs—fully accords with Congress's

intent and adopts a permissible construction of the public-charge inadmissibility provision. The district court determined that the Rule is inconsistent with the historical meaning of the term "public charge," based on its interpretation of a 1915 Supreme Court case, an Attorney General decision, and several other authorities. The court misunderstood those authorities. But whatever their meaning, the court was mistaken to conclude that Congress adopted the fixed, narrow definition of "public charge" that the court identified. Far from doing so, Congress has repeatedly and intentionally left the definition and application of the term to the discretion of the Executive Branch. In any event, the restricted definition of "public charge" offered by plaintiffs and accepted by the court cannot be squared with Congress's 1996 immigration and welfare-reform legislation, which made clear that Congress did not adopt plaintiffs' cramped view of the term "public charge."

III. The remaining preliminary-injunction factors also weigh against the issuance of an injunction. CASA's voluntary diversion of resources is not a legally cognizable injury, much less an irreparable one. And preliminary relief seems unlikely to redress the CASA's putative need to educate aliens about the Rule, which presumably would continue as long as the Rule's enforcement remains a possibility. At a minimum, any injury to CASA is outweighed by the harm to the government and the public caused by the Rule's being enjoined. So long as the Rule cannot take effect, the government will grant lawful-permanent-resident status to aliens who DHS would

consider likely to become public charges under the Rule. The government currently has no viable means of revisiting these grants of adjustment of status once made.

IV. At a minimum, the district court abused its discretion in entering a nationwide injunction. The district court asserted that a universal injunction was necessary to redress CASA's diversion of resources, even though CASA's members reside in only three states and the District of Columbia. The court's purported reasons why such a broad injunction is necessary are speculative and inadequately supported by the record. For the same reason, the court erroneously granted a stay of the Rule's effective date nationwide, in contravention of 5 U.S.C. § 705's mandate that such stays be granted only "to the extent necessary to prevent irreparable injury."

STANDARD OF REVIEW

This Court evaluates a district court's grant of a preliminary injunction under an abuse-of-discretion standard, reviewing factual findings for clear error and legal questions de novo. *Pashby v. Delia*, 709 F.3d 307, 319 (4th Cir. 2013).

ARGUMENT

The district court erred by entering a preliminary injunction barring enforcement of the Rule. "A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). None of these factors is satisfied here.

I. Plaintiffs Lack A Cognizable Injury Sufficient To Support This Suit

As a threshold matter, CASA lacks standing to pursue injunctive relief because it has not adequately alleged a cognizable injury within the zone of interests protected by the public-charge inadmissibility statute.

For an organization like CASA to establish Article III standing to sue on its own behalf, it must show that its "ability to" carry out its mission has been "perceptibly impaired." *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982). A mere "setback to the organization's abstract social interests" is insufficient. *Id.* Thus, an organization cannot establish standing simply by "decid[ing] to spend its money" counteracting the effects of a law with which it disagrees. *Lane v. Holder*, 703 F.3d 668, 675 (4th Cir. 2012).

Here, CASA does not allege that the Rule in any way impedes its ability to provide services to immigrants. Instead, CASA alleges that it has "devoted significant resources to educating its members about the Rule," which has reduced CASA's other "advocacy for health-care expansion." JA244 (quoting Dkt. No. 27 ¶¶ 15, 123). That allegation does not establish an Article III injury. As this Court held in *Lane*, a "diversion of resources" is not a cognizable injury, even when it "reduc[es] the funds available for other purposes." 703 F.3d at 675.

Lane is analogous to this case in all relevant respects. There, a gun-rights organization alleged standing to challenge an unfavorable change to interstate gun-

transfer laws because it had been forced to educate its members on "the operation and consequences of interstate handgun transfer provisions." 703 F.3d at 675 (quotation marks omitted). This Court rejected that theory because any harm arising from such a "diversion of resources . . . results not from any actions taken by the defendant, but rather from the organization's own budgetary choices." *Id.* (quotation marks and brackets omitted). "To determine that an organization that decides to spend its money on educating members . . . suffers a cognizable injury," the Court explained, "would be to imply standing for organizations with merely 'abstract concern[s] with a subject that could be affected by an adjudication.'" *Id.* (quoting *Simon v. Eastern Ky. Welfare Rights Org.*, 426 U.S. 26, 40 (1976)).

That decision controls here. The district court suggested that CASA's "reallocation of its resources" was sufficient for standing because it was caused by a "definition of the public charge rule that is dramatically more threatening to its members." JA247. But the suggestion that CASA has strong policy interests in the Rule does not distinguish this case. This Court's decision in *Lane* did not turn on the strength of the organization's interest, but rather on the determination that, as here, the diversion of resources resulted from the organization's own budgetary choice.

The breadth of CASA's theory of standing is enough to reject it. CASA effectively argues that an organization has standing when a governmental action has aggrieved its policy interests enough to cause the organization to voluntarily re-shuffle its resources to combat the action. If that were so, organizational standing would be

limitless. The Supreme Court has made clear that advocacy organizations cannot have standing "simply on the basis of" their policy "goal[s]." *Simon*, 426 U.S. at 40 ("Insofar as these organizations seek standing based on their special interest in the health problems of the poor their complaint must fail.").

CASA's putative injury also falls outside the statute's zone of interests. To bring suit under the Administrative Procedure Act (APA), a plaintiff "must satisfy not only Article III's standing requirements, but an additional test: The interest he asserts must be arguably within the zone of interests to be protected or regulated by the statute that he says was violated." *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, 567 U.S. 209, 224 (2012) (quotation marks omitted). A plaintiff fails that test where its asserted interests are only "marginally related to" or "inconsistent" with the purposes of the relevant statute. *Id.* at 225. The reason is straightforward: the zone-of-interests test focuses on "whether a legislatively conferred cause of action encompasses a particular plaintiff's claim," and when a plaintiff's injury contradicts or has only a tenuous connection to the statute's purpose, "it cannot reasonably be assumed that Congress authorized that plaintiff to sue." *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 127, 130 (2014) (quotation marks omitted).

Here, the public-charge inadmissibility provision is designed to ensure that aliens who are admitted to the country or become lawful permanent residents do not rely on public benefits. *See infra* Part II. The provision does not create judicially cognizable interests for anyone outside the federal government, except for an alien in

the United States who otherwise has a right to challenge a determination of inadmissibility, for Congress has not given any third party a judicially enforceable interest in the admission or removal of an alien.

The "injury" that CASA "complains of"—*i.e.*, a diversion of resources away from its "lobbying efforts" for "health-care expansion," JA244, 248—has no connection to those purposes. *See Lujan v. National Wildlife Fed'n*, 497 U.S. 871, 883 (1990); *Pye v. United States*, 269 F.3d 459, 467 (4th Cir. 2001) (a plaintiff "must show that the injury in fact is within the zone of interests protected by the statute"). Rather, it is a mere incidental consequence of a change in federal law that is not even "marginally related" to the statute's purpose. *See Patchak*, 567 U.S. at 225. And to the extent that CASA seeks to further an alleged interest in *greater* use of public benefits by aliens and those residing in households containing foreign-born individuals, that interest contradicts the statute's purpose, as it is "the very . . . interest" that "Congress sought to restrain." *National Fed'n of Fed. Emps. v. Cheney*, 883 F.2d 1038, 1051 (D.C. Cir. 1989).

In ruling otherwise, the district court effectively broadened the "zone of interests" to include all those entities for whom the statute is relevant. The district court relied on DHS's statement in the Rule that "non-profit organizations . . . may need or want to become familiar with the provisions of this final rule." JA252 (quoting 84 Fed. Reg. 41,292, 41,301 (Aug. 14, 2019)). But that the Rule is relevant to these organizations' work does not mean the organizations' interests are among those

protected by the statute. And contrary to the district court's conclusion, the "plain language" of the provision does not "regulate[]" the "health and economic status of immigrants"; nor can CASA tether to the public-charge inadmissibility provision's purpose the organization's mission to "create a more just society by building power and improving the quality of life in low-income immigrant communities." JA251. These general interests only underscore the breadth of the district court's holding.

II. Plaintiffs Are Not Likely To Succeed On The Merits

Even assuming plaintiffs could pursue their claims, the district court erred in concluding that they are likely to succeed on the merits. The Rule is well within the discretion that Congress has granted DHS to construe the undefined term "public charge." The district court's conclusion to the contrary is based on a misunderstanding of the public-charge provision's history.

A. The INA provision at issue renders inadmissible "[a]ny alien who, . . . in the opinion of the [Secretary of Homeland Security] at the time of application for admission or adjustment of status, is likely at any time to become a public charge." 8 U.S.C. § 1182(a)(4)(A). In determining whether an alien is likely at any time to become a public charge, DHS must review the alien's individual circumstances, which must "at a minimum" include consideration of the alien's "age"; "health"; "family status"; "assets, resources, and financial status"; and "education and skills." *Id.* § 1182(a)(4)(B)(i).

The statute itself shows that DHS may properly consider an alien likely to become a public charge based on the alien's likely use of noncash public benefits. In the public-charge statute, Congress *required* DHS to classify some aliens as inadmissible under the public-charge ground, solely because those aliens failed to obtain a sponsor who (for a period of time) would promise to reimburse any government benefits agency if the alien used "*any* means-tested public benefit." *See* 8 U.S.C. § 1183a(a)(1)(B) (emphasis added). Specifically, 8 U.S.C. § 1182(a)(4)(C)—which appears just below the text at issue here—states that (subject to some exceptions) "[f]amily-sponsored immigrants" are "inadmissible under this paragraph unless" the "person petitioning for the alien's admission . . . has executed an affidavit of support described in section 1183a of this title with respect to such alien." *Id.* And the following subsection requires the same from "[c]ertain employment-based immigrants." *Id.* § 1182(a)(4)(D).

The affidavit-of-support provision referenced in those subsections—8 U.S.C. § 1183a—in turn requires that an alien's sponsor promise "to maintain the sponsored alien at an annual income that is not less than 125 percent of the Federal poverty line during the period in which the affidavit is enforceable." *Id.* § 1183a(a)(1)(A). And it renders the sponsor's affidavit "legally enforceable against the sponsor" by any "entity that provides *any means-tested public benefit*." *Id.* § 1183a(a)(1)(B)-(C) (emphasis added). Congress further required benefits agencies to request that the sponsor reimburse them for "any means-tested public benefit" the alien may have received. *Id.*

§ 1183a(b)(1)(A). And it enhanced the penalties imposed in certain circumstances on sponsors who fail to provide notice of their change of address, if "such failure occurs with knowledge that the sponsored alien has received any means-tested public benefits." *Id.* § 1183a(d)(2).

The import of the public-charge statute's affidavit-of-support requirements is clear: To avoid being found inadmissible on public-charge grounds, an alien governed by those subsections must find a sponsor who has agreed to reimburse the government for *any* means-tested public benefits the alien receives while the sponsorship obligation is in effect (even if the alien receives those benefits only briefly and only in minimal amounts). Congress thus provided that the mere *possibility* that an alien might obtain unreimbursed, means-tested public benefits in the future was sufficient to render that alien inadmissible on public-charge grounds, regardless of the alien's other circumstances.

Congress also enacted the affidavit-of-support provision in 1996—the same year that it enacted the current version of the public-charge inadmissibility provision—against the backdrop of a longstanding interpretation of the term "public charge" for purposes of deportability under 8 U.S.C. § 1227(a)(5). Under that longstanding interpretation, an alien may be subject to deportation if he receives a public benefit that the alien or designated friends and relatives are legally obligated to repay, the relevant government agency demands repayment, and "[t]he alien and other persons legally responsible for the debt fail to repay after a demand has been made."

64 Fed. Reg. at 28,691 (citing *Matter of B-*, 3 I. & N. Dec. 323 (BIA and AG 1948)); *Concurrent Resolution on the Budget for Fiscal Year 1997: Hearings Before the Committee on the Budget*, 104th Cong. 81 (1996) (noting that interpretation). Thus, when Congress made sponsors legally responsible for repayment of any means-tested public benefits received by an alien and provided government agencies with a legally enforceable right to demand repayment, it understood that a failure to repay the benefit by the alien or sponsor could render the alien deportable as a "public charge" under 8 U.S.C. § 1227(a)(5). In other words, Congress implemented a system in 1996 under which an alien's receipt of an unreimbursed, means-tested public benefit could render the alien a "public charge" subject to deportation (provided a demand for repayment was made).

Related provisions of the INA further show that the receipt of public benefits, including noncash benefits, is relevant to the determination whether an alien is likely at any time to become a public charge. Congress expressly instructed that, when making a public-charge inadmissibility determination, DHS "shall not consider any benefits the alien may have received," 8 U.S.C. § 1182(s), including various noncash benefits, if the alien "has been battered or subjected to extreme cruelty in the United States by [specified persons]," *id.* § 1641(c); *see also id.* §§ 1611-1613 (specifying the public benefits for which battered aliens and other qualified aliens are eligible). The inclusion of that provision prohibiting the consideration of a battered alien's receipt of public benefits presupposes that DHS will ordinarily consider the past receipt of

benefits in making public-charge inadmissibility determinations. *Cf. Husted v. A. Philip Randolph Inst.*, 138 S. Ct. 1833, 1844 (2018) ("There is no reason to create an exception to a prohibition unless the prohibition would otherwise forbid what the exception allows.").

Similarly, in a 1986 amnesty program, Congress created a "[s]pecial rule for determination of public charge" under which an alien meeting the program's qualifications would not be deemed a public charge if he or she "demonstrate[d] a history of employment in the United States evidencing self-support without receipt of public cash assistance." 8 U.S.C. § 1255a(d). The fact that, as part of its amnesty program, Congress crafted a "special rule" to narrow the Executive's application of the public-charge ground to only those who receive cash assistance indicates that Congress understood the ordinary definition of public charge to be broader.

These conclusions are unsurprising given Congress's statements "concerning national policy with respect to welfare and immigration," 8 U.S.C. § 1601, which it made in related legislation the same year it enacted the current version of the public-charge inadmissibility provision. There, Congress declared that "[s]elf-sufficiency has been a basic principle of United States immigration law since this country's earliest immigration statutes"—presumably a reference to the first public-charge statutes. *Id.* § 1601(1). For that reason, "the immigration policy of the United States" is that "aliens within the Nation's borders not depend on public resources to meet their needs, but rather rely on their own capabilities and the resources of their families,

their sponsors, and private organizations," and that "the availability of public benefits not constitute an incentive for immigration to the United States." *Id.* § 1601(2).

There is no doubt that the "public benefits" to which Congress referred included noncash benefits. Congress defined "[f]ederal public benefit" broadly to include any "welfare, health, disability, public or assisted housing . . . or any other similar benefit." 8 U.S.C. § 1611(c). It also stressed the government's "compelling" interest in enacting "new rules for eligibility [for public benefits] and sponsorship agreements [for individuals subject to the public-charge provision] in order to assure that aliens be self-reliant in accordance with national immigration policy." *Id.* § 1601(5).

Indeed, in that same legislation, Congress barred most aliens from obtaining many noncash public benefits, either at all or until they have been in the country for at least five years. *See* 8 U.S.C. §§ 1611-1613, 1641; 83 Fed. Reg. at 51,126-33. And to further restrict eligibility, Congress provided that an alien's income is generally "deemed to include" the "income and resources" of the sponsor. 8 U.S.C. § 1631(a). *See also* H.R. Rep. No. 104-828, at 242 (Sept. 24, 1996) (Conf. Rep.) (explaining that the deeming provision was designed to further "the national immigration policy that aliens be self-reliant").

Consistent with that statutory text, context, and history, the Rule defines a "public charge" as an "alien who receives one or more [enumerated] public benefits" over a specified period of time. 84 Fed. Reg. at 41,501. That definition respects

Congress's understanding that the term "public charge" would encompass individuals who rely on taxpayer-funded benefits to meet their basic needs. At a minimum, therefore, the Rule is "a permissible construction of the statute." *Chevron U.S.A., Inc. v. NRDC*, 467 U.S. 837, 843 (1984).

B.1. The district court recognized that "Congress has not explicitly defined the meaning of 'public charge,'" and that it was undisputed "that DHS has some authority to interpret the meaning of 'public charge.'" JA256. The court nevertheless concluded that the Rule's definition of "public charge" is unambiguously "precluded by the meaning of [the] term," based on the court's understanding of the term's "history." JA265. In so doing, the district court appeared to accept plaintiffs' theory that, since 1882, "public charge" meant an alien who was "primar[ily] dependent" on the government because he was "destitute and unable to work." JA257, JA261 (quotation marks omitted). The court's conclusions are flawed.

Far from suggesting that Congress enacted a restrictive definition of the term, the statute's history demonstrates that Congress has repeatedly and intentionally left the term's definition and application to the discretion of the Executive Branch. Even though provisions barring entry to those likely to become a "public charge" have appeared in immigration statutes dating back to the late 19th century, Congress has never defined the term. 84 Fed. Reg. at 41,308. That is not because Congress assumed the term had a settled meaning, but because Congress delegated interpretation of the term to the Executive.

That much is clear from Congress's enactment of the INA. In an extensive report that served as a foundation for the enactment of the INA, the Senate Judiciary Committee emphasized that because "the elements constituting likelihood of becoming a public charge are varied, there should be no attempt to define the term in the law." S. Rep. No. 81-1515, at 349 (1950); *see also id.* at 803 (reproducing Senate resolution directing Committee to make "full and complete investigation of our entire immigration system" and provide recommendations). The report also recognized that "[d]ecisions of the courts have given varied definitions of the phrase 'likely to become a public charge,'" *id.* at 347, and that "different consuls, even in close proximity with one another, have enforced [public-charge] standards highly inconsistent with one another," *id.* at 349. Rather than mandating plaintiffs' definition of public charge, the report concluded that the public-charge inadmissibility determination properly "rests within the discretion of" Executive Branch officials. *Id.*; *cf. Barnhart v. Walton*, 535 U.S. 212, 225 (2002) (Where Congress enacts a "complex[]" statute implicating a "vast number of claims" with a "consequent need for agency expertise and administrative experience," it is appropriate to "read the statute as delegating to the Agency considerable authority to fill in, through interpretation, matters of detail related to its administration.").

When it enacted the INA a few years later, Congress followed that Report's recommendation, providing that public-charge inadmissibility determinations are made "in the opinion of" the Executive. Pub. L. No. 82-414, tit. 2, ch. 2, § 212, 66

Stat. 163, 183 (1952). And Congress used the same language granting a broad delegation of authority in the 1996 provision at issue here. *See* 8 U.S.C. § 1182(a)(4) (public-charge inadmissibility determinations are made "in the opinion of the [Secretary of Homeland Security]"); *supra* p.4 n.2. *See Thor Power Tool Co. v. Commissioner*, 439 U.S. 522, 540 (1979) (Where a statute specifies that a determination is to be made "in the opinion of" an agency decisionmaker, the statute confers "broad discretion" on the decisionmaker to make that determination.).

That delegation of discretion makes sense. By leaving the definition of "public charge" to the discretion of the Executive Branch, Congress recognized not only the need for flexibility in the Executive Branch's application of the public-charge provision to varied individual circumstances, but also the need for the term "public charge" to evolve over time to reflect changes in the scope and nature of public benefits. Indeed, in enacting immigration and welfare-reform legislation in 1996, Congress expressly recognized the need for public-charge laws to evolve to reflect current conditions. As one Senate report explained:

> It is even more important in this era that there be such a [public-charge] law, since the welfare state has changed the pattern of immigration and emigration that existed earlier in our history. Before the welfare state, if an immigrant could not succeed in the U.S., he or she often returned to "the old country." This happens less often today, because of the welfare "safety net." . . . It should be made clear to immigrants that the taxpayers of this country expect them to be able to make it in this country on their own and with the help of their sponsors.

S. Rep. No. 104-249, at 5-9 (1996).

Consistent with this history, the 1999 Guidance represents a recent exercise of the Executive Branch's longstanding discretion to define the term "public charge." By defining, for the first time, the term "public charge" by reference to cash assistance, the Guidance provides an example of the term's flexibility to reflect the modern welfare state.

In short, as the Ninth Circuit concluded, "the history of the use of 'public charge' in federal immigration law demonstrates that 'public charge' does not have a fixed, unambiguous meaning. Rather, the phrase is subject to multiple interpretations, it in fact has been interpreted differently, and the Executive Branch has been afforded the discretion to interpret it." Order, *City & Cty. Of San Francisco v. U.S. Dep't of Homeland Security*, Nos. 19-17213, 19-17214, 19-35914 (9th Cir. Dec. 5, 2019), at 46.

2. The district court's conclusions were for those reasons erroneous. But its historical analysis was also mistaken on its own terms.

To begin, the dictionary definitions on which the court relied do not support plaintiffs' position. The court noted nineteenth-century dictionaries that defined a "charge" (not "public charge") as a "person or thing committed or intrusted to the care, custody, or management of another." JA257 (quoting Webster's Dictionary (1886 ed.)). Yet, as the court acknowledged, contemporaneous dictionaries also defined "charge" as "an obligation or liability" or a "burden"—and indeed a sample sentence for one such definition was "a pauper being chargeable to the parish or town." JA258 (quoting Stewart Rapalje et al., *Dict. Of Am. And English Law* (1888) and

Frederic Jesup Stimson, *Glossary of the Common Law* (1881)). That sample sentence shows that the word "charge" was used in connection with persons simply imposing an expense on a town.

The court thought that the sample sentence's use of the word "chargeable" to describe the burden which a "pauper" placed on a town's resources showed that "public charge" was likely a synonym for "pauper." JA258. That is mistaken. That a pauper could impose a charge on a town does not mean that *only* paupers could impose a charge on a town. Indeed, we know that "public charge" meant something other than "pauper" because Congress included both terms as separate items on a list of aliens to be excluded from the United States. Immigration Act of Mar. 8, 1891, ch. 551, § 1, 26 Stat. 1084, 1084. The sentence instead shows that the definition of "charge" as an "obligation" or "a burden" was often used to refer to an expense on a town by persons who relied on the town's resources to meet their needs.

The court's other inference about the meaning of "public charge" in the 1882 Immigration Act was likewise erroneous. The court found that the Act's creation of an "immigrant fund that provided for the care of immigrants arriving in the United States" supported plaintiffs' argument that the 1882 Congress was not against aliens' use of public resources in general. JA258 (quotation marks omitted). Congress's decision to exclude aliens who might rely on public assistance is not inconsistent with its decision to assist aliens who have already been admitted—especially since immigration officials cannot with perfect accuracy predict which aliens would become

public charges. And Congress raised money for that fund through a head tax on "each and every" alien who arrived in U.S. ports, Immigration Act of 1882, ch. 376, §§ 1-2, 22 Stat. 214—hardly an indication that Congress approved of alien use of publicly funded benefits.

The district court also claimed that the Supreme Court's decision in *Gegiow v. Uhl*, 239 U.S. 3 (1915), supports plaintiffs' narrow definition of public charge as an alien who is primarily dependent on the government. JA259. Yet *Gegiow* says nothing about the level of dependence necessary for an alien to be found a public charge—nor, indeed, about the plain meaning of the phrase "public charge" at all. Rather, the "single question" presented in *Gegiow* was whether, under "the act of February 20, 1907," "an alien can be declared likely to become a public charge on the ground that the labor market in the city of his immediate destination is overstocked." 239 U.S. at 9-10. The Court held that such a finding was improper for two reasons not relevant here. One was that Congress had granted the power to curtail immigration based on "labor conditions" only to the President, not to "every commissioner of immigration." *Id.* at 10. The other reason was that, in the 1907 Immigration Act, the phrase "public charge" appeared within a list of persons "to be excluded on the ground of permanent personal objections" (an attribute that later public-charge provisions did not share), and thus the Court thought that the term "public charge" was "[p]resumably" limited in the same way. *Id.*

That decision does not mean that "public charge" includes only aliens who were primarily dependent on the government. When the Court opined that the determination whether an alien was likely to become a public charge depended on the alien's "permanent personal" characteristics, it did so simply to make clear that the determination must be based on something particular to the alien and not on the general state of "local conditions" in his destination city. *Gegiow*, 239 U.S. at 10. The Rule comports with that holding, as it mandates that individual public-charge inadmissibility determinations must be "based on the totality of the alien's [particular] circumstances." 84 Fed. Reg. at 41,501.

In addition, whatever *Gegiow*'s meaning, the district court was mistaken to conclude that Congress necessarily agreed with it. Indeed, a few years afterward, Congress amended the public-charge provision in the Immigration Act of 1917 to "overcome" the decision. *See* S. Rep. No. 64-352, at 5 (1916) ("The purpose of this change is to overcome recent decisions of the courts limiting the meaning of the description of the excluded class . . . . (See especially Gegiow v. Uhl, 239 U. S., 3.)."); Immigration Act of 1917, 64th Cong. ch. 29, § 3, 39 Stat. 874, 875-76; *see also* H.R. Doc. No. 64-886, at 3-4 (1916). In light of that history, there is no basis for presuming that *Gegiow* sets out a definition of "public charge" that should be attributed to subsequent Congresses, much less that subsequent Congresses adopted the meaning of "public charge" that the district court attributed to *Gegiow*.

The district court relied on *United States ex rel. Iorio v. Day*, 34 F.2d 920, 922 (2d Cir. 1929), for the conclusion that, even after that amendment, "public charge" meant an alien who was "destitute and unable to work." JA260-61 (quotation marks omitted). But the case was not providing a strict definition of "public charge," for the next sentence said that "public charge" also included persons likely to be incarcerated. *Day*, 34 F.2d at 922. And that case also recognized that the revised statute was "certainly now intended to cover cases like *Gegiow v. Uhl*." *Id.*

Administrative interpretations of the term also undermine the court's conclusion that "public charge" has been uniformly understood to apply only to aliens who are primarily dependent on public support for more than "temporary" aid. JA257. Since at least 1948, the Executive Branch has taken the authoritative position that an alien may be deported as a "public charge" if the alien or the alien's sponsor or relative fails to repay a public benefit upon a demand for repayment by a government agency entitled to repayment. *See Matter of B-*, 3 I. & N. Dec. at 326. Under that rubric, a failure to repay upon demand could render an alien subject to deportation on public-charge grounds, regardless of whether the alien was "primarily dependent" on the benefits at issue. *See id.* Indeed, although the Board of Immigration Appeals, with the approval of the Attorney General, concluded that the alien in *Matter of B-* was not deportable as a public charge because Illinois law did not allow the State to demand repayment for the care she received during her stay in a state mental hospital, the opinion suggests that the alien would have been deportable as a public charge if her

relatives had failed to pay the cost of the alien's "clothing, transportation, and other incidental expenses," because Illinois law made the alien "legally liable" for those incidental expenses. *Id.* at 327. That was so even though Illinois was not entitled to recover the sums expended for plaintiffs' lodging, healthcare, and food. *See id.*

Courts have also historically held—contrary to the district court's suggested definition—that an alien's reliance on taxpayer support for basic necessities on a temporary or intermittent basis was sufficient to render the alien a "public charge." *See, e.g.*, *Ex parte Turner*, 10 F.2d 816, 816 (S.D. Cal. 1926) (family was deportable as persons likely to become public charges where evidence indicated that the family had received "charitable relief" for two months and "public charities were still furnishing some necessaries to [the] family" one month later); *Guimond v. Howes*, 9 F.2d 412, 413-14 (D. Me. 1925) (alien was "likely to become a public charge" in light of evidence that she and her family had been supported by the town twice—once for 60 days and once for 90 days—over the previous two years).

Other historical sources also provide a definition contrary to the one the district court identified—and consistent with the one the Rule adopted. Both the 1933 and 1951 editions of Black's Law Dictionary defined the term "public charge," "[a]s used in" the 1917 Immigration Act, to mean simply "one who produces a money charge upon, or an expense to, the public for support and care"—without reference to amount. *Public Charge*, Black's Law Dictionary (3d ed. 1933); Black's Law Dictionary (4th ed. 1951). And a 1929 treatise did the same. *See* Arthur Cook et al.,

Immigration Laws of the United States § 285 (1929) (noting that "public charge" meant a person who required "any maintenance, or financial assistance, rendered from public funds, or funds secured by taxation"); *see also Ex parte Kichmiriantz*, 283 F. 697, 698 (N.D. Cal. 1922) ("[T]he words 'public charge,' as used in the Immigration Act, mean just what they mean ordinarily; . . . a money charge upon, or an expense to, the public for support and care." (citation omitted)).

The district court similarly erred in concluding that the Rule is invalid because it is allegedly inconsistent with the Attorney General's statement in *Matter of Martinez-Lopez*, 10 I. & N. Dec. 409, 421-22 (BIA 1962; AG 1964), that "the statute requires more than a showing of a possibility that the alien will require public support." JA261-62 (quotation marks and emphasis omitted). The Rule does not permit a public-charge finding based on a mere "possibility;" it still requires that the alien be likely to become a public charge. Nor does the Rule conflict with the Attorney General's statement that "[a] healthy person in the prime of life cannot ordinarily be considered likely to become a public charge, especially where he has friends or relatives in the United States who have indicated their ability and willingness to come to his assistance in case of emergency," 10 I. & N. Dec. at 421-22. The alien in *Matter of Martinez-Lopez* was "an able-bodied man in his early twenties," had no dependents, had previously worked in the United States, and "was sponsored by a brother who had lived in the United States for several years and was earning approximately $85.00 a week in permanent employment." *Id.* at 422-23. Nothing in the Rule suggests that

DHS will ordinarily find an alien similarly situated to the alien in *Matter of Martinez-Lopez*—*i.e.*, a young, able-bodied alien with a U.S. work history and a financially secure sponsor—to be likely to receive public benefits over the specified period. To the contrary, DHS cited a hypothetical alien who is "young, healthy, employed, attending college, and not responsible for providing financial support for any household members" as an example of an individual who "would not be found inadmissible" under the Rule. 83 Fed. Reg. at 51,216.

The district court also erroneously found it significant that, in 1996 and 2013, Congress declined to adopt legislation that would have expressly defined the term "public charge" to include receipt of certain noncash benefits. JA263-65. "Failed legislative proposals are a particularly dangerous ground on which to rest an interpretation of a prior statute," because "[a] bill can be proposed for any number of reasons, and it can be rejected for just as many others." *Solid Waste Agency of N. Cook Cty. v. U.S. Army Corps of Eng'rs*, 531 U.S. 159, 169-70 (2001). As a result, "several equally tenable inferences may be drawn from such inaction." *Pension Benefit Guar. Corp. v. LTV Corp.*, 496 U.S. 633, 650 (1990).

The district court's reliance on the failed 1996 and 2013 proposals to define the term "public charge" is particularly flawed here. There is no indication that Congress believed the proposed definitions were fundamentally inconsistent with the statutory term "public charge." Congress did not "discard[]" the proposed definitions of public charge "in favor of other language" eventually enacted. *INS v. Cardoza-Fonseca*, 480

U.S. 421, 443 (1987). It did not adopt an alternate definition in the 1996 legislation, which left the term undefined, and it enacted no legislation on the subject in 2013. In addition, the legislative history of the 1996 proposal indicates that the proposal was dropped at the last minute because the President objected to the proposal's rigid definition of "public charge," as well as other provisions, and threatened to veto the bill unless changes were made. *See* H.R. Rep. No. 104-828, at 241; 142 Cong. Rec. S11872, S11881-82 (daily ed. Sept. 30, 1996). Far from suggesting that Congress attributed an unambiguous meaning to the still-undefined term "public charge," these circumstances suggest that Congress acceded to the President's demands that the Executive Branch retain the discretion to define the term.

The circumstances surrounding the 2013 proposal's failure similarly fail to support the inference that Congress would have viewed the Rule as an impermissible construction of the public-charge inadmissibility provision. The 2013 proposal was rejected by a Senate committee. S. Rep. No. 113-40, at 42 (2013). But Congress then failed to enact the bill the committee agreed on. *Id.* The question of what significance to assign to a rejected committee proposal that formed a part of a bill subsequently rejected by the full Congress underscores the problems inherent in relying on unenacted legislation.

In addition, both the 1996 and 2013 proposals were significantly broader than the Rule: the 1996 proposal covered a similar amount of benefits usage within a period of seven years rather than three, *see* H.R. Rep. No. 104-828, at 138, 240-41, and

the 2013 proposal included receipt of *any* amount of public benefits, S. Rep. No. 113-40, at 42, 63. Even if Congress's failure to codify those stricter standards were evidence of its understanding of the term "public charge" (which they are not), they would not support the conclusion that Congress rejected the Rule's narrower definition.

Finally, the district court erred in concluding that the 1999 proposed rule and Field Guidance are evidence that "public charge" has an established definition that is narrower than the Rule's. JA265. That proposed rule specifically noted that the term was "ambiguous," that the term had "never been defined in statute or regulation," and that the proposed rule's definition was only a "reasonable" interpretation. 64 Fed. Reg. 28,676, 28,676-77 (May 26, 1999). And the accompanying Field Guidance likewise noted that the proposed rule would "for the first time define 'public charge.'" 64 Fed. Reg. 28,689 (May 26, 1999) (1999 Guidance). The 1999 Guidance thus did not purport to bind the agency for all time, and it is a bedrock principle of administrative law that an agency may alter its interpretation of a statute it is charged with enforcing. *See FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009).

Contrary to the district court's conclusions, the Rule is thus a permissible construction of the statute, and consistent with the public-charge provision's history.

III. The Remaining Factors Weigh Against A Preliminary Injunction

The remaining preliminary injunction factors also weigh against an injunction. "A preliminary injunction is an extraordinary remedy never awarded as of right."

Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 24 (2008). To obtain an injunction, a plaintiff must "demonstrate that irreparable injury is *likely* in the absence of an injunction," *id.* at 22 (emphasis in original), and that such injury is "imminent," *Scotts Co. v. United Indus. Corp.*, 315 F.3d 264, 283 (4th Cir. 2002).

Plaintiffs have not established that they will be irreparably harmed absent an injunction. As discussed above, CASA's alleged diversion of resources is not a cognizable injury. *See supra* Part I. But even if it were, any voluntary changes to the plaintiff organizations' education and advocacy efforts during the pendency of this litigation fall far short of irreparable injury. The district court posited that "[a]t least some of" CASA's "harms are irreparable" because CASA alleges that its educational efforts in regard to the Rule will cause it to decline to engage in "time sensitive advocacy" for unrelated health-care expansion efforts at the state and local levels. JA267. But even if a voluntary diversion of resources could constitute irreparable harm, CASA has failed adequately to explain how a preliminary injunction would allow it to re-allocate resources back to its health-care expansion efforts. There is little reason to think that any confusion about the Rule among CASA's members would be abated by a preliminary injunction; to the contrary, one would think those members would have questions so long as the Rule's implementation remains a possibility, and that preliminary relief would only spark more questions. CASA thus has not shown "a likelihood that the requested relief will redress the alleged injury." *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 103 (1998).

The balance of equities and the public interest likewise do not support the entry of a preliminary injunction here. Both the federal government and the public will be irreparably harmed if the Rule cannot go into effect. As the district court appeared to acknowledge, an injunction against the Rule harms the government's "interest in administering the national immigration system." JA268. So long as the Rule is enjoined, DHS will be forced to retain an immigration policy in which it grants lawful-permanent-resident status to aliens who "in the opinion of the [Secretary]" are likely to become public charges as the Secretary would define that term. 8 U.S.C. § 1182(a)(4)(A). The district court properly did not suggest that adjustment-of-status determinations made during the pendency of litigation would be reversed if the government ultimately prevailed. *See* Order, *City & Cty. of San Francisco v. U.S. Dep't of Homeland Sec.*, Nos. 19-17213, 19-17214, 19-35914, at 68-70 (9th Cir. Dec. 5, 2019); JA277-78. Instead, the district court minimized the harm to the government and the public because enjoining the Rule preserves the status quo. JA268. But that observation is beside the point, as the status quo forces the Secretary to make likely permanent determinations in a manner inconsistent with his lawful exercise of delegated discretion.

IV. The District Court Abused Its Discretion In Granting A Nationwide Injunction

Even if the district court did not err in granting a preliminary injunction, the court abused its discretion by issuing a nationwide injunction.

A. Under this Court's precedent, courts may issue nationwide injunctions only when "necessary to afford relief to the prevailing party." *Virginia Soc'y for Human Life, Inc. v. Federal Election Comm'n*, 263 F.3d 379, 393 (4th Cir. 2001). That is because, as this Court and the Supreme Court have recognized, an injunction "should be tailored to restrain no more than what is reasonably required to accomplish its ends." *Consolidation Coal Co. v. Disabled Miners of S. W. Va.*, 442 F.2d 1261, 1267 (4th Cir. 1971); *see Califano v. Yamasaki*, 442 U.S. 682, 702 (1979) ("injunctive relief should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs").

That principle has deep roots. It is well established that the scope of a court's statutory authority to enter injunctive relief is circumscribed by the type of relief that was "traditionally accorded by courts of equity." *Grupo Mexicano de Desarrollo S.A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308, 318-19 (1999). And the tradition of equity inherited from English law was premised on "providing equitable relief only to parties" because the fundamental role of a court was to "adjudicate the rights of 'individual[s].'" *Trump v. Hawaii*, 138 S. Ct. 2392, 2427-28 (2018) (Thomas, J., concurring) (quoting *The Federalist No. 78*, at 466 (Alexander Hamilton) (Clinton Rossiter ed., 1961)). As a result, "a plaintiff could not sue to vindicate the private rights of someone else." *Id.* at 2428.

Long-settled principles of Article III standing reflect that history. Indeed, it is an "elementary principle" that in the absence of class certification, plaintiffs are "not

entitled to relief for people whom they do not represent." *Zepeda v. U.S. Immigration & Naturalization Serv.*, 753 F.2d 719, 730 n.1 (9th Cir. 1983). For that reason, the Supreme Court has repeatedly "caution[ed]" that "'standing is not dispensed in gross': A plaintiff's remedy must be tailored to redress the plaintiff's particular injury." *Gill v. Whitford*, 138 S. Ct. 1916, 1934 (2018) (quoting *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 353 (2006)); *see also Warth v. Seldin*, 422 U.S. 490, 499 (1975) ("The Art. III judicial power exists only to redress or otherwise to protect against injury to the complaining party, even though the court's judgment may benefit others collaterally.").

Unless a party can demonstrate that nationwide relief is necessary to redress its own injury, a nationwide injunction conflicts with those principles. Such an injunction provides relief on the basis of rights which the plaintiffs lack standing to assert. It also "deprive[s]" nonparties of "the right to litigate in other forums." *California v. Azar*, 911 F.3d 558, 583 (9th Cir. 2018). And absent "exceptional" circumstances, it imposes burdens on a defendant without a sufficient "connection to a plaintiff's particular harm." *East Bay Sanctuary Covenant v. Barr*, 934 F.3d 1026, 1029 (9th Cir. 2019).

The harm of a nationwide injunction also extends to the judicial system as a whole. For it necessarily "conflicts with the principle that a federal court of appeals's decision is only binding within its circuit." *Virginia Soc'y for Human Life Inc.*, 263 F.3d at 393. And, as this Court has noted, it "substantially thwart[s] the development of important questions of law by freezing the first final decision rendered on a particular

legal issue." *Id.* (quoting *United States v. Mendoza*, 464 U.S. 154, 160 (1984)). By its sweeping nature, a nationwide injunction "stymie[s] . . . robust debate arising in different judicial districts," *East Bay Sanctuary Covenant*, 934 F.3d at 1029 (quotation marks omitted), and thus "deprive[s] the Supreme Court of the benefit of decisions from several courts of appeals," *Virginia Soc'y for Human Life Inc.*, 263 F.3d at 393.

B. The district court's injunction cannot be reconciled with these principles. The district court enjoined enforcement of the Rule "against any party anywhere in the United States," *Virginia Soc'y for Human Life Inc.*, 263 F.3d at 393, based on a speculative possibility that a narrower injunction would be insufficient to redress CASA's diversion of resources. That decision was an abuse of discretion.

It is undisputed that CASA's members reside only in Maryland, Virginia, the District of Columbia, and Pennsylvania. Yet the court asserted that a universal injunction was necessary because "if CASA's members are traveling and enter through a port of entry outside of this geographic area, they could be subject to a Public Charge determination." JA269. To begin, that speculative possibility does not show why CASA would suffer irreparable injury in the absence of a nationwide injunction. The district court did not determine that CASA had standing to represent its members; it concluded only that CASA had standing to represent itself. JA248. Thus, any possible harm to CASA's members is relevant only if it has a causal connection to CASA's alleged diversion of resources. Such a connection is not adequately supported "in the record," *California*, 911 F.3d at 584, and in any event is too

insubstantial to justify a remedy that will burden the government on a national scale. Moreover, the district court's reasoning, even if credited, could not justify an injunction extending to nonmembers that reside in other parts of the country.

The district court's other assertion is just as speculative. The court said that "if the Rule is only enjoined as to part of the country, that may create further confusion among CASA's membership." JA269. Again, that claim is not adequately supported. There appears little reason to think that CASA's diversion of resources would be materially more affected by a universal preliminary injunction than by a targeted one. And even if it is possible that a universal injunction would lessen CASA's injury to a greater degree, "plaintiffs must demonstrate a *likelihood* of irreparable injury—not just a *possibility*—in order to obtain preliminary relief" of any kind, *Winter v. Natural Resources Defense Council*, 555 U.S. 7, 21 (2008) (emphasis added)—much less nationwide relief.

The rest of the district court's reasoning is undermined by this Court's precedents. The court stated that "the ordinary remedy in APA challenges to a rulemaking is to set aside the entire rule." JA269. But this Court has expressly rejected that argument. *See Virginia Soc'y for Human Life Inc.*, 263 F.3d at 394 ("Nothing in the language of the APA, however, requires us to exercise such far-reaching power."). Similarly, the district court relied on this Court's statement in a vacated decision that "nationwide injunctions are especially appropriate in the immigration context." JA270 (quotation marks omitted) (quoting *International Refugee*

Assistance Project v. Trump, 857 F.3d 554, 605 (4th Cir. 2017), *vacated and remanded sub nom. Trump v. International Refugee Assistance*, 138 S. Ct. 353 (2017)). That case is inapposite even on its own terms: there, the plaintiffs were "dispersed throughout the United States," and this Court held that a partial injunction would not have cured the putative violation of the Establishment Clause, the harms of which were based on the "message that Plaintiffs [were] outsiders." *Id.* at 605 (quotation marks omitted). Here, CASA's alleged harm is concentrated in only a few States, and a universal injunction is not necessary to cure CASA's alleged injury. The district court's decision to issue a nationwide injunction regardless was an abuse of discretion.

As for the district court's grant of a stay of the Rule's effective date, the court was correct that the "standard for a preliminary injunction and a stay pursuant to 5 U.S.C. § 705 are the same." *See* 5 U.S.C. § 705 (permitting courts to "issue all necessary and appropriate process to postpone the effective date of an agency action . . . *to the extent necessary* to prevent irreparable injury") (emphasis added). Because the district court erred in entering an injunction, it likewise erred in entering the stay.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be reversed and the court's preliminary injunction and stay under 5 U.S.C. § 705 vacated.

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limit of Federal Rule of Appellate Procedure 32(a)(7)(B) because it contains 10,808 words. This brief also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)-(6) because it was prepared using Microsoft Word 2016 in Garamond 14-point font, a proportionally spaced typeface.

s/ Joshua Dos Santos
Joshua Dos Santos

CERTIFICATE OF SERVICE

I hereby certify that on December 16, 2019, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

s/ Joshua Dos Santos
Joshua Dos Santos

STATUTORY ADDENDUM

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8 U.S.C. § 1182

§ 1182. Inadmissible aliens

(a) Classes of aliens ineligible for visas or admission

Except as otherwise provided in this chapter, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

* * *

(4) Public charge

(A) In general

Any alien who, in the opinion of the consular officer at the time of application for a visa, or in the opinion of the Attorney General at the time of application for admission or adjustment of status, is likely at any time to become a public charge is inadmissible.

(B) Factors to be taken into account

(i) In determining whether an alien is inadmissible under this paragraph, the consular officer or the Attorney General shall at a minimum consider the alien's--

(I) age;

(II) health;

(III) family status;

(IV) assets, resources, and financial status; and

(V) education and skills.

(ii) In addition to the factors under clause (i), the consular officer or the Attorney General may also consider any affidavit of support under section 1183a of this title for purposes of exclusion under this paragraph.

(C) Family-sponsored immigrants

Any alien who seeks admission or adjustment of status under a visa number issued under section 1151(b)(2) or 1153(a) of this title is inadmissible under this paragraph unless--

(i) the alien has obtained--

(I) status as a spouse or a child of a United States citizen pursuant to clause (ii), (iii), or (iv) of section 1154(a)(1)(A) of this title;

(II) classification pursuant to clause (ii) or (iii) of section 1154(a)(1)(B) of this title; or

(III) classification or status as a VAWA self-petitioner; or

(ii) the person petitioning for the alien's admission (and any additional sponsor required under section 1183a(f) of this title or any alternative sponsor permitted under paragraph (5)(B) of such section) has executed an affidavit of support described in section 1183a of this title with respect to such alien.

(D) Certain employment-based immigrants

Any alien who seeks admission or adjustment of status under a visa number issued under section 1153(b) of this title by virtue of a classification petition filed by a relative of the alien (or by an entity in which such relative has a significant ownership interest) is inadmissible under this paragraph unless such relative has executed an affidavit of support described in section 1183a of this title with respect to such alien.

(E) Special rule for qualified alien victims

Subparagraphs (A), (B), and (C) shall not apply to an alien who--

(i) is a VAWA self-petitioner;

(ii) is an applicant for, or is granted, nonimmigrant status under section 1101(a)(15)(U) of this title; or

(iii) is a qualified alien described in section 1641(c) of this title.

* * *

(s) Consideration of benefits received as battered alien in determination of inadmissibility as likely to become public charge

In determining whether an alien described in subsection (a)(4)(C)(i) is inadmissible under subsection (a)(4) or ineligible to receive an immigrant visa or otherwise to adjust to the status of permanent resident by reason of subsection (a)(4), the consular officer or the Attorney General shall not consider any benefits the alien may have received that were authorized under section 1641(c) of this title.

8 U.S.C. § 1183a

§ 1183a. Requirements for sponsor's affidavit of support

(a) Enforceability

(1) Terms of affidavit

No affidavit of support may be accepted by the Attorney General or by any consular officer to establish that an alien is not excludable as a public charge under section 1182(a)(4) of this title unless such affidavit is executed by a sponsor of the alien as a contract--

(A) in which the sponsor agrees to provide support to maintain the sponsored alien at an annual income that is not less than 125 percent of the Federal poverty line during the period in which the affidavit is enforceable;

(B) that is legally enforceable against the sponsor by the sponsored alien, the Federal Government, any State (or any political subdivision of such State), or by any other entity that provides any means-tested public benefit (as defined in subsection (e)1), consistent with the provisions of this section; and

(C) in which the sponsor agrees to submit to the jurisdiction of any Federal or State court for the purpose of actions brought under subsection (b)(2).

(2) Period of enforceability

An affidavit of support shall be enforceable with respect to benefits provided for an alien before the date the alien is naturalized as a citizen of the United States, or, if earlier, the termination date provided under paragraph (3).

(3) Termination of period of enforceability upon completion of required period of employment, etc.

(A) In general

An affidavit of support is not enforceable after such time as the alien (i) has worked 40 qualifying quarters of coverage as defined under title II of the Social Security Act [42 U.S.C.A § 401 et seq.] or can be credited with such qualifying quarters as provided under subparagraph (B), and (ii) in the case of any such qualifying quarter creditable for any period beginning after December 31, 1996, did not receive any Federal means-tested public benefit (as provided under section 1613 of this title) during any such period.

(B) Qualifying quarters

For purposes of this section, in determining the number of qualifying quarters of coverage under title II of the Social Security Act [42 U.S.C.A. § 401 et seq.] an alien shall be credited with--

(i) all of the qualifying quarters of coverage as defined under title II of the Social Security Act worked by a parent of such alien while the alien was under age 18, and

(ii) all of the qualifying quarters worked by a spouse of such alien during their marriage and the alien remains married to such spouse or such spouse is deceased.

No such qualifying quarter of coverage that is creditable under title II of the Social Security Act for any period beginning after December 31, 1996, may be credited to an alien under clause (i) or (ii) if the parent or spouse (as the case may be) of such alien received any Federal means-tested public benefit (as provided under section 1613 of this title) during the period for which such qualifying quarter of coverage is so credited.

(C) Provision of information to save system

The Attorney General shall ensure that appropriate information regarding the application of this paragraph is provided to the system for alien verification of eligibility (SAVE) described in section 1137(d)(3) of the Social Security Act [42 U.S.C.A. § 1320b-7(d)(3)].

(b) Reimbursement of government expenses

(1) Request for reimbursement

(A) Requirement

Upon notification that a sponsored alien has received any means-tested public benefit, the appropriate nongovernmental entity which provided such benefit or the appropriate entity of the Federal Government, a State, or any political subdivision of a State shall request reimbursement by the sponsor in an amount which is equal to the unreimbursed costs of such benefit.

(B) Regulations

The Attorney General, in consultation with the heads of other appropriate Federal agencies, shall prescribe such regulations as may be necessary to carry out subparagraph (A).

(2) Actions to compel reimbursement

(A) In case of nonresponse

If within 45 days after a request for reimbursement under paragraph (1)(A), the appropriate entity has not received a response from the sponsor indicating a willingness to commence payment an action may be brought against the sponsor pursuant to the affidavit of support.

(B) In case of failure to pay

If the sponsor fails to abide by the repayment terms established by the appropriate entity, the entity may bring an action against the sponsor pursuant to the affidavit of support.

(C) Limitation on actions

No cause of action may be brought under this paragraph later than 10 years after the date on which the sponsored alien last received any means-tested public benefit to which the affidavit of support applies.

(3) Use of collection agencies

If the appropriate entity under paragraph (1)(A) requests reimbursement from the sponsor or brings an action against the sponsor pursuant to the affidavit of support, the appropriate entity may appoint or hire an individual or other person to act on behalf of such entity acting under the authority of law for purposes of collecting any amounts owed.

(c) Remedies

Remedies available to enforce an affidavit of support under this section include any or all of the remedies described in section 3201, 3203, 3204, or 3205 of Title 28, as well as an order for specific performance and payment of legal fees and other costs of collection, and include corresponding remedies available under State law. A Federal agency may seek to collect amounts owed under this section in accordance with the provisions of subchapter II of chapter 37 of Title 31.

(d) Notification of change of address

(1) General requirement

The sponsor shall notify the Attorney General and the State in which the sponsored alien is currently a resident within 30 days of any change of address of the sponsor during the period in which an affidavit of support is enforceable.

(2) Penalty

Any person subject to the requirement of paragraph (1) who fails to satisfy such requirement shall, after notice and opportunity to be heard, be subject to a civil penalty of--

(A) not less than $250 or more than $2,000, or

(B) if such failure occurs with knowledge that the sponsored alien has received any means-tested public benefits (other than benefits described in section 1611(b), 1613(c)(2), or 1621(b) of this title) not less than $2,000 or more than $5,000.

The Attorney General shall enforce this paragraph under appropriate regulations.

(e) Jurisdiction

An action to enforce an affidavit of support executed under subsection (a) may be brought against the sponsor in any appropriate court--

(1) by a sponsored alien, with respect to financial support; or

(2) by the appropriate entity of the Federal Government, a State or any political subdivision of a State, or by any other nongovernmental entity under subsection (b)(2), with respect to reimbursement.

(f) "Sponsor" defined

(1) In general

For purposes of this section the term "sponsor" in relation to a sponsored alien means an individual who executes an affidavit of support with respect to the sponsored alien and who--

(A) is a citizen or national of the United States or an alien who is lawfully admitted to the United States for permanent residence;

(B) is at least 18 years of age;

(C) is domiciled in any of the several States of the United States, the District of Columbia, or any territory or possession of the United States;

(D) is petitioning for the admission of the alien under section 1154 of this title; and

(E) demonstrates (as provided in paragraph (6)) the means to maintain an annual income equal to at least 125 percent of the Federal poverty line.

(2) Income requirement case

Such term also includes an individual who does not meet the requirement of paragraph (1)(E) but accepts joint and several liability together with an individual under paragraph (5)(A).

(3) Active duty armed services case

Such term also includes an individual who does not meet the requirement of paragraph (1)(E) but is on active duty (other than active duty for training) in the Armed Forces of the United States, is petitioning for the admission of the alien under section 1154 of this title as the spouse or child of the individual, and demonstrates (as provided in paragraph (6)) the means to maintain an annual income equal to at least 100 percent of the Federal poverty line.

(4) Certain employment-based immigrants case

Such term also includes an individual--

(A) who does not meet the requirement of paragraph (1)(D), but is the relative of the sponsored alien who filed a classification petition for the sponsored alien as an employment-based immigrant under section 1153(b) of this title or who has a significant ownership interest in the entity that filed such a petition; and

(B)(i) who demonstrates (as provided under paragraph (6)) the means to maintain an annual income equal to at least 125 percent of the Federal poverty line, or

(ii) does not meet the requirement of paragraph (1)(E) but accepts joint and several liability together with an individual under paragraph (5)(A).

(5) Non-petitioning cases

Such term also includes an individual who does not meet the requirement of paragraph (1)(D) but who--

(A) accepts joint and several liability with a petitioning sponsor under paragraph (2) or relative of an employment-based immigrant under paragraph (4) and who demonstrates (as provided under paragraph (6)) the means to maintain an annual income equal to at least 125 percent of the Federal poverty line; or

(B) is a spouse, parent, mother-in-law, father-in-law, sibling, child (if at least 18 years of age), son, daughter, son-in-law, daughter-in-law, sister-in-law, brother-in-law, grandparent, or grandchild of a sponsored alien or a legal guardian of a sponsored alien, meets the requirements of paragraph (1) (other than subparagraph (D)), and executes an affidavit of support with respect to such alien in a case in which--

(i) the individual petitioning under section 1154 of this title for the classification of such alien died after the approval of such petition, and the Secretary of Homeland Security has determined for humanitarian reasons that revocation of such petition under section 1155 of this title would be inappropriate; or

(ii) the alien's petition is being adjudicated pursuant to section 1154(l) of this title (surviving relative consideration).

(6) Demonstration of means to maintain income

(A) In general

(i) Method of demonstration

For purposes of this section, a demonstration of the means to maintain income shall include provision of a certified copy of the individual's Federal income tax return for the individual's 3 most recent taxable years and a written statement, executed under oath or as permitted under penalty of perjury under section 1746 of Title 28, that the copies are certified copies of such returns.

(ii) Flexibility

For purposes of this section, aliens may demonstrate the means to maintain income through demonstration of significant assets of the sponsored alien or of the sponsor, if such assets are available for the support of the sponsored alien.

(iii) Percent of poverty

For purposes of this section, a reference to an annual income equal to at least a particular percentage of the Federal poverty line means an annual income equal to at least such percentage of the Federal poverty line for a family unit of a size equal to the number of members of the sponsor's household (including family and non-family dependents) plus the total number of other dependents and aliens sponsored by that sponsor.

(B) Limitation

The Secretary of State, or the Attorney General in the case of adjustment of status, may provide that the demonstration under subparagraph (A) applies only to the most recent taxable year.

(h) "Federal poverty line" defined

For purposes of this section, the term "Federal poverty line" means the level of income equal to the official poverty line (as defined by the Director of the Office of Management and Budget, as revised annually by the Secretary of Health and Human Services, in accordance with section 9902(2) of Title 42) that is applicable to a family of the size involved.

(i) Sponsor's social security account number required to be provided

(1) An affidavit of support shall include the social security account number of each sponsor.

(2) The Attorney General shall develop an automated system to maintain the social security account number data provided under paragraph (1).

(3) The Attorney General shall submit an annual report to the Committees on the Judiciary of the House of Representatives and the Senate setting forth--

(A) for the most recent fiscal year for which data are available the number of sponsors under this section and the number of sponsors in compliance with the financial obligations of this section; and

(B) a comparison of such numbers with the numbers of such sponsors for the preceding fiscal year.

8 U.S.C. § 1227

§ 1227. Deportable aliens

(a) Classes of deportable aliens.

Any alien (including an alien crewman) in and admitted to the United States shall, upon the order of the Attorney General, be removed if the alien is within one or more of the following classes of deportable aliens:

* * *

(5) Public charge

Any alien who, within five years after the date of entry, has become a public charge from causes not affirmatively shown to have arisen since entry is deportable.

8 U.S.C. § 1601

§ 1601. Statements of national policy concerning welfare and immigration

The Congress makes the following statements concerning national policy with respect to welfare and immigration:

(1) Self-sufficiency has been a basic principle of United States immigration law since this country's earliest immigration statutes.

(2) It continues to be the immigration policy of the United States that--

(A) aliens within the Nation's borders not depend on public resources to meet their needs, but rather rely on their own capabilities and the resources of their families, their sponsors, and private organizations, and

(B) the availability of public benefits not constitute an incentive for immigration to the United States.

(3) Despite the principle of self-sufficiency, aliens have been applying for and receiving public benefits from Federal, State, and local governments at increasing rates.

(4) Current eligibility rules for public assistance and unenforceable financial support agreements have proved wholly incapable of assuring that individual aliens not burden the public benefits system.

(5) It is a compelling government interest to enact new rules for eligibility and sponsorship agreements in order to assure that aliens be self-reliant in accordance with national immigration policy.

(6) It is a compelling government interest to remove the incentive for illegal immigration provided by the availability of public benefits.

(7) With respect to the State authority to make determinations concerning the eligibility of qualified aliens for public benefits in this chapter, a State that chooses to follow the Federal classification in determining the eligibility of such aliens for public assistance shall be considered to have chosen the least restrictive means available for achieving the compelling governmental interest of assuring that aliens be self-reliant in accordance with national immigration policy.