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 APPELLEES

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REQUEST FOR ORAL ARGUMENT

Oral argument is warranted here because it would assist this Court in resolving the important legal questions presented by this appeal, questions that bear on the ability of millions of noncitizens to enter and immigrate to the United States.

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INTRODUCTION

For over a century, Congress has denied noncitizens deemed likely to become a "public charge" admission to the United States. Courts and the Executive Branch consistently have construed the phrase "public charge" narrowly, applying it only to noncitizens likely to become primarily dependent on the government for subsistence. In August 2019, the Department of Homeland Security (DHS) promulgated a Rule that radically and unlawfully expands the Immigration and Nationality Act (INA)'s public-charge inadmissibility ground. *See* Inadmissibility on Public Charge Grounds, 84 Fed. Reg. 41,292 (Aug. 14, 2019) (to be codified at 8 C.F.R. pts. 103, 212–14, 245, 248) [hereinafter Public Charge Rule, Final Rule, or Rule]. Under the Rule, U.S. Customs and Immigration Services (USCIS) officers have nearly unfettered discretion to deny admission—and lawful-permanent-resident (LPR) status—to any noncitizen deemed likely at any point over a lifetime to accept even a small amount of public benefits for a short period of time.

Because of the chilling effect of the Rule's unprecedented and confusing test for determining who is likely to become a "public charge," noncitizens and their family members have begun disenrolling from or forgoing enrollment in public benefits to which they are entitled, including benefits for U.S. citizen children. CASA de Maryland, Inc. (CASA), and two of its noncitizen members filed suit

challenging the Rule shortly after its promulgation. On October 14, 2019, the district court issued a preliminary injunction barring the implementation of the Rule nationwide.

The district court correctly held that CASA has organizational standing to challenge the Rule and falls within the zone of interests implicated by the INA's adjustment-of-status provisions. In order to counteract the Rule's harmful effects on CASA's members and on CASA's mission of empowering and improving the quality of life in low-income immigrant communities, CASA has had to expend significant time and resources on providing individual legal and health-counseling services and broader member-education efforts. Further, CASA's interests in ensuring that its members are not unlawfully denied adjustment of status and in furthering the health and economic welfare of noncitizens fall within the interests protected by the INA.

The district court also correctly held that CASA is likely to succeed in demonstrating that DHS's Rule is contrary to the INA because it cannot be reconciled with the plain meaning of the term "public charge" or the manner in which Congress, courts, and the Board of Immigration Appeals (BIA) have interpreted the term for over 135 years. Additionally, as the district court properly recognized, the Rule is foreclosed by binding BIA precedent.

Moreover, the Rule irreparably harms CASA by forcing it to reprogram resources in ways that impair its mission and cannot be rectified later. The balance of equities and public interest favor an injunction because the Rule threatens significant public-health consequences and DHS is not harmed by a temporary delay in enacting a policy that is likely unlawful.

The district court also appropriately awarded CASA nationwide relief, as its organizational injury cannot be remedied so long as the Rule can affect its members. Accordingly, the district court's order should be affirmed.

STATEMENT OF THE CASE

A. Statutory Background

The public-charge inadmissibility ground first appeared in U.S. immigration statutes in 1882. Act of Aug. 3, 1882, ch. 376, § 2, 22 Stat. 214, 214 (denying admission to "any convict, lunatic, idiot, or any person unable to take care of himself or herself without becoming a public charge"). Although Congress has never statutorily defined the term "public charge," courts and administrative agencies consistently have understood it to encompass only individuals who are likely to become primarily dependent on the government for subsistence. *See infra* Part I.B.

In line with that understanding, since 1999, immigration officials making public-charge determinations have operated under Field Guidance issued by DHS's

regulatory predecessor, the Immigration and Naturalization Service (INS). Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, 64 Fed. Reg. 28,689 (Mar. 26, 1999) [hereinafter Field Guidance].[1] INS issued the Field Guidance in conjunction with a Notice of Proposed Rulemaking that was never finalized. Inadmissibility and Deportability on Public Charge Grounds, 64 Fed. Reg. 28,676 (proposed May 26, 1999) (to be codified at 8 C.F.R. pts. 212, 237) [hereinafter 1999 Proposed Rule].

The Field Guidance and 1999 Proposed Rule define the term "public charge" as a noncitizen "who is likely to become . . . primarily dependent on the government for subsistence, as demonstrated by either (i) the receipt of public cash assistance for income maintenance or (ii) institutionalization for long-term care at government expense." Field Guidance, 64 Fed. Reg. at 28,689 (internal quotation marks omitted); *see also* 1999 Proposed Rule, 64 Fed. Reg. at 28,681 (to be codified at 8 C.F.R. § 212.102). In so doing, DOJ did not purport to issue a new interpretation of the public-charge inadmissibility ground. Rather, it concluded that the primarily-dependent standard was dictated by "the plain meaning of the word 'charge,'" "the historical context of public dependency when the public charge immigration provisions were first enacted more than a century ago," and

[1] The *Federal Register* incorrectly states that the Field Guidance was published on March 26, 1999.

"the facts found in the deportation and admissibility cases" dating back more than a century. 1999 Proposed Rule, 64 Fed. Reg. at 28,677.

INS issued the Field Guidance and 1999 Proposed Rule in response to "confusion" generated by the passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (the "Welfare Reform Act"), Pub. L. No. 104-193, 110 Stat. 2105, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, 110 Stat. 3009. Field Guidance, 64 Fed. Reg. at 28,689. Although it made no changes to the public-charge inadmissibility ground, the Welfare Reform Act restricted noncitizen access to public benefits after their admission to the United States. *See* 8 U.S.C. §§ 1611–13, 1641 (precluding most noncitizens from receiving most public benefits at least until they have obtained LPR status and, in many circumstances, for several years thereafter); *id.* § 1631(a)(1) (attributing to a noncitizen the income and resources of her sponsor (if she has one) for the purpose of determining eligibility for public benefits).

IIRIRA made limited changes to the public-charge provision. First, it codified the factors that immigration officials already were using to make public-charge determinations: (1) age; (2) health; (3) family status; (4) assets, resources, and financial status; and (5) education and skills. *See* 8 U.S.C. § 1182(a)(4)(B)(i); *Matter of A-*, 19 I. & N. Dec. 867, 869 (BIA 1988). Second, it authorized

immigration officials to consider in public-charge determinations, where applicable, affidavits of support submitted on behalf of certain adjustment-of-status applicants.[2] 8 U.S.C. § 1182(a)(4)(B)(ii). The Field Guidance clarified that the Welfare Reform Act and IIRIRA did not alter the preexisting understanding of the meaning of "public charge."

DHS's new Public Charge Rule breaks sharply with the longstanding interpretation of the public-charge inadmissibility ground formalized in the Field Guidance. The Rule defines "public charge" as "an alien who receives one or more" of an enumerated set of public benefits "for more than 12 months in the aggregate within any 36-month period," with multiple benefits received in a single month counting as multiple months of benefits. Final Rule, 84 Fed. Reg. at 41,501 (to be codified at 8 C.F.R. § 212.21(a)). In addition to the cash benefits relevant to public-charge determinations under the Field Guidance, the new Rule also considers noncitizens' likelihood of receiving (1) Supplemental Nutrition Assistance Program (SNAP) benefits; (2) federal housing assistance; and (3) non-

[2] IIRIRA requires family-sponsored applicants and employment-based applicants who are sponsored by a relative or by an employer in which a relative has a significant ownership interest, irrespective of their likelihood of becoming a public charge, to obtain an affidavit of support in which the sponsor agrees to maintain the applicant at an annual income of 125 percent of the federal poverty line. 8 U.S.C. §§ 1182(a)(4)(C), (D), 1183a(a)(1)(A).

emergency Medicaid benefits (with certain exceptions). *Id.* (to be codified at 8 C.F.R. § 212.21(b)).

B. Procedural History

CASA is a nonprofit membership organization that seeks "to create a more just society by building power and improving the quality of life in low-income immigrant communities." JA29.[3] It does so by providing a wide variety of social, health, job-training, employment, and legal services to its members, who have varying immigration statuses. JA29–30. Even before the Rule was finalized, its draft and proposed versions sparked widespread confusion and fear, leading many of CASA's members to disenroll from or forgo federal, state, and local public benefits to which they or their family members, including U.S. citizen children, are entitled. JA31. Because these benefits provide recipients with critical food, health, and housing support, CASA has invested significant resources in public education and individual legal and health-counseling services in order to mitigate the harm caused by the Rule's chilling effect. JA32–33.

The serious harms wrought by the Public Charge Rule led CASA and two of its noncitizen members to challenge the Rule in the U.S. District Court for the District of Maryland. JA60–120. CASA and its members moved for a preliminary

[3] "JA" refers to the Joint Appendix. "Doc." Refers to documents filed in this Court. "Dkt." refers to the ECF docket numbers of district-court filings.

injunction to prevent the Rule from going into effect as planned on October 15, 2019. After a lengthy hearing, JA121–234, the district court entered a preliminary injunction in a carefully reasoned opinion issued the day before the Rule's effective date, JA235–74.[4] The district court concluded that CASA has organizational standing to sue, JA248; its claims are justiciable, JA250, 252; it is likely to prevail on the merits of its claim that the Rule violates the Administrative Procedure Act (APA) because it is "not in accordance with law," JA266 (quoting 5 U.S.C. § 706(2)(A));[5] and the irreparable harm that CASA would suffer from the Rule's implementation outweighs the negligible harm that Appellants might suffer by being delayed in breaking with how public-charge determinations have been made "for arguably more than a century and at least since 1999," JA267–68.

This appeal followed. Doc. 1. Thereafter, Appellants unsuccessfully moved the district court for a stay pending appeal, Dkt. 79, and sought identical relief from this Court, Doc. 15. In an order without a written opinion, this Court granted

[4] All four other district courts in which the Public Charge Rule was challenged likewise preliminarily enjoined the Rule's implementation before its effective date—two on a nationwide basis and two on a regional basis. *See* Appellants' Br. (Br.) 3 n.1 (citing cases).

[5] Appellees have raised several other standing and merits arguments that the district court's preliminary injunction decision did not address. JA248, 266–67. In addition, the Mayor and City Council of Baltimore has joined this lawsuit since the district court issued the preliminary injunction. Dkt. 93.

a stay of the preliminary injunction.[6] Doc. 21. Appellees have sought en banc review of that order. Doc. 27.

SUMMARY OF ARGUMENT

CASA's claims are justiciable. An organization establishes standing when a defendant's unlawful actions "perceptibly impair[]" the organization's programs, causing a "consequent drain on [its] resources." *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982). CASA's organizational mission is to empower and improve the quality of life in low-income immigrant communities. Thus, CASA provides legal, health, educational, job-training, and social-services counseling to its members. The Public Charge Rule has chilled many noncitizens and their families from participating in public-benefit programs. Because the Rule's changes have required CASA to expend substantial resources providing individual counseling to its members and expanding its public-education efforts, to the detriment of CASA's other programs, the Rule has "perceptibly impaired" CASA's

[6] The Ninth Circuit also granted a stay of preliminary injunctions issued by the U.S. District Courts for the Northern District of California and the Eastern District of Washington. *City & Cty. of San Francisco v. U.S. Citizenship & Immigration Servs.*, 944 F.3d 773 (9th Cir. 2019). Petitions for en banc review of that decision are pending. The Second and Seventh Circuits denied requests for stays of preliminary injunctions issued by the U.S. District Courts for the Northern District of Illinois and Southern District of New York. Order, *State of New York v. U.S. Dep't of Homeland Sec.*, Nos. 19-3591, 19-3595 (2d Cir. Jan. 8, 2020); Order, *Cook Cty. v. Wolf*, No. 19-3169 (7th Cir. Dec. 23, 2019).

efforts to achieve its mission and drained its resources. CASA therefore is suffering a concrete injury sufficient to satisfy Article III.

Moreover, CASA's interests in this litigation fall within the relevant zone of interests. The INA's admissibility provisions reflect an interest in immigrants' health and economic status and ensure that noncitizens who meet the statute's requirements can enter the United States and, if eligible, apply for LPR status. In bringing this case, CASA seeks to further those interests, as demonstrated by its efforts to provide a variety of services to noncitizens to foster their health and economic sustainability and increase their opportunities to adjust status.

The Public Charge Rule is contrary to the INA because the Rule's definition of "public charge" is far broader than the ordinary meaning of the term. Courts and the BIA, over 135 years, have construed "public charge" in accordance with its ordinary meaning to exclude only noncitizens who are likely to become primarily dependent on the government for subsistence. Congress has ratified that understanding by reenacting the public-charge inadmissibility ground on several occasions without redefining the key term and by rejecting proposed statutory definitions similar to the one included in DHS's Rule. Finally, the Rule cannot be reconciled with the standard for public-charge determinations set forth in *Matter of Martinez-Lopez*, 10 I. & N. Dec. 409, 421–22 (BIA 1962; AG 1964), which is binding on DHS, 8 C.F.R. § 1003.1(g)(1). Accordingly, the district court correctly

held that CASA is likely to succeed on the merits of its contrary-to-law claim.

The district court also correctly concluded that CASA has satisfied the remaining preliminary-injunction factors. First, CASA has demonstrated that it will suffer irreparable harm if the Public Charge Rule is permitted to go into effect. The damage to its members' quality of life from disenrolling from benefits cannot be undone, and CASA's efforts to address these harms have come at the expense of an affirmative campaign to expand access to health care, a time-sensitive effort that cannot be replicated after the fact. Second, the balance of equities and the public interest favor affirming the district court's injunction. Appellants' only claimed harm is that the injunction prevents their desired policy change from going into effect sooner rather than later. By contrast, the Rule, if not enjoined, will harm not only CASA and its members but also noncitizens and their families throughout the United States—all of whom are chilled from receiving public benefits that support their nutrition, overall health, and stability, and the communities in which they live.

The district court did not abuse its discretion in granting a nationwide preliminary injunction. Only a nationwide injunction could remedy the harm to CASA; this Court already has recognized that nationwide relief is particularly appropriate in the immigration context; and any adverse effects on the interests of the judicial system are mitigated in this case.

STANDARD OF REVIEW

This Court reviews a district court's grant of a preliminary injunction for abuse of discretion, reviewing factual findings for clear error and legal conclusions de novo. *Mountain Valley Pipeline, LLC v. 6.56 Acres of Land*, 915 F.3d 197, 213 (4th Cir. 2019). "[A]buse of discretion is a deferential standard, and so long as 'the district court's account of the evidence is plausible in light of the record viewed in its entirety,'" the Court "may not reverse," even if it is "convinced that . . . [it] would have weighed the evidence differently." *Id.* (quoting *Walton v. Johnson*, 440 F.3d 160, 173 (4th Cir. 2006) (en banc)).

ARGUMENT

I. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION BY PRELIMINARILY ENJOINING THE PUBLIC CHARGE RULE

To warrant a preliminary injunction, a plaintiff must establish: (1) that it is likely to succeed on the merits, (2) that it is likely to suffer irreparable harm in the absence of preliminary relief, (3) that the balance of equities tips in its favor, and (4) that an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Real Truth About Obama, Inc. v. FEC*, 575 F.3d 342, 346 (4th Cir. 2009), *vacated and remanded on other grounds*, 559 U.S. 1089 (2010). CASA has satisfied its burden as to each factor.

A. CASA's Claims Are Justiciable

1. CASA Has Article III Standing

When considering whether an organization has standing in its own right, courts "conduct the same inquiry as in the case of an individual: Has the plaintiff 'alleged such a personal stake in the outcome of the controversy as to warrant his invocation of federal-court jurisdiction'?" *Havens*, 455 U.S. at 378–79 (quoting *Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 261 (1977)). In *Havens*, the Court recognized that, where an organization alleges that a defendant's unlawful actions "perceptibly impair[]" the organization's programs, causing a "consequent drain on [its] resources," the organization has alleged a sufficient injury to satisfy Article III. *Id.* at 379; *see also Spann v. Colonial Vill., Inc.*, 899 F.2d 24, 27 (D.C. Cir. 1990) ("*Havens* makes clear . . . that an organization establishes Article III injury if it alleges that purportedly illegal action increases the resources the group must devote to programs independent of its suit challenging the action."). In *Havens*, the Court concluded that a fair-housing organization had been injured because it had been "frustrated by defendants' racial steering practices in its efforts to assist equal access to housing" and "had to devote significant resources to identify and counteract" defendants' actions. 455 U.S. at 379.

In disputing CASA's standing, Appellants largely ignore the Supreme Court's teaching in *Havens* and rely almost entirely on this Court's decision in *Lane v. Holder*, 703 F.3d 668 (4th Cir. 2012). Br. 13–14. But *Lane* is not analogous to this case, as CASA's injuries are wholly unlike the barebones allegations found insufficient there. In *Lane*, plaintiff Second Amendment Foundation, Inc. (SAF), alleged only that its "resources are taxed by inquiries into the operation and consequences of interstate handgun transfer prohibitions." 703 F.3d at 675. SAF did not assert any way in which the challenged laws had "frustrated" or "perceptibly impaired" its efforts to achieve its organizational mission. The Court therefore concluded that SAF's alleged injury effectively amounted to no more than "abstract concern[s] with a subject that could be affected by an adjudication." *Id.* (quoting *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 40 (1976) (alteration in original)).

In comparing this case to *Lane*, Appellants grossly misconstrue CASA's alleged harm. Unlike SAF, CASA's harm is not from a voluntary budgetary choice. Instead, CASA has demonstrated that the Public Charge Rule has "perceptibly impaired" its efforts to achieve its organizational mission, thereby requiring it to "devote significant resources to identify and counteract" the effects of the Rule on its members, as *Havens* requires. 455 U.S. at 379; *see also* JA245 (comparing CASA's injury with that in *Havens*).

CASA's mission of empowering and improving the quality of life for low-income immigrant communities is realized in part through programs designed to ensure that its members have access to the public benefits they need and to which they are entitled, and through the provision of legal counseling about immigration benefits. Since the Public Charge Rule was announced, CASA has had to increase its individual counseling and public-education efforts to advise its members about whether to continue to receive important food, health-care, housing, and other benefits and how those choices could affect their or their family members' immigration status. This "increased education and counseling" is necessary "to identify and inform" CASA's members about whether they may continue to obtain benefits, and to "rebut any public impression" engendered by confusion over the Rule's application, including whether applying for benefits for U.S. citizen children or purchasing health insurance under the Affordable Care Act will weigh against a noncitizen applying for adjustment of status. *Spann*, 899 F.2d at 28–29.

The Public Charge Rule not only has required CASA to devote additional resources to education and counseling but also has made more difficult and less effective CASA's efforts to improve the quality of life in immigrant communities: more CASA members require legal and health counseling regarding the impact of the Rule, and counseling each member is more complex, expensive, and time-consuming. *See* JA32–33; *see also Pac. Legal Found. v. Goyan*, 664 F.2d 1221,

1224 (4th Cir. 1981) (finding standing where federal agency's new program to reimburse certain participants in agency proceedings would require organization to devote "increased time and expense" to be as effective a participant in those proceedings as it had been before program).

Moreover, because of the dire threat that the Public Charge Rule's chilling effect poses for its members' health and wellbeing, CASA has had no option but to divert its limited resources from affirmative health-care advocacy and other programs to the counseling and education efforts the Rule has required. JA33–34. Appellants claim that this "diversion of resources" is merely a "voluntary" "budgetary choice," Br. 11, 14, but this reallocation was anything but voluntary. CASA's need to abandon planned advocacy efforts in order to avert serious harm to its members is another way in which CASA's ability to achieve its mission has been "perceptibly impaired" by the Rule.[7] *See* JA247.

Rather than mirroring *Lane*, CASA's harms closely resemble those of the organizational plaintiffs found to have standing in *Fair Employment Council of Greater Washington, Inc. v. BMC Marketing Corp.*, 28 F.3d 1268 (D.C. Cir. 1994), cited approvingly in *Lane*, 703 F.3d at 675. There, the D.C. Circuit concluded that the plaintiff organization had standing where the defendant's "alleged pattern of

[7] Thus, Appellants are simply incorrect that "CASA does not allege that the Rule in any way impedes its ability to provide services to immigrants." Br. 13.

discrimination" had "made the Council's overall task"—combatting racial discrimination in employment—"more difficult"; had "interfered with" the Council's public-education, counseling, and research "efforts and programs"; and had "required the Council to expend resources to counteract" the defendant's discriminatory practices. 28 F.3d at 1276. The same is true here: the Public Charge Rule has "increase[d] the number of people in need of counseling" regarding the Rule's application and "reduced the effectiveness of any given level of outreach efforts" designed to improve quality of life in low-income immigrant communities. *Id.* CASA's necessary responses to the harm caused by the Rule thus clearly demonstrate "concrete drains on [its] time and resources" sufficient to allege Article III injury. *Spann*, 899 F.2d at 29.

Finally, Appellants suggest that a finding that CASA has standing here would allow an organization to sue whenever it has serious enough policy interests to reallocate its resources. This argument is premised on two fundamental errors. First, as explained above, CASA does not claim that voluntary reallocation of resources is sufficient for standing. Second, Appellants' argument incorrectly implies that the Rule's impact on CASA's efforts to strengthen low-income immigrant communities is reflective of a policy dispute, not an organizational injury. But that is incorrect: noneconomic harm, where an actual programmatic

effort is damaged, is a sufficiently concrete injury and is "not mere abstract concern about a problem of general interest." *Arlington Heights*, 429 U.S. at 263.[8]

2. CASA Falls Within the Statutory Zone of Interests

CASA's interests in this litigation fall within the zone of interests under the APA and the public-charge statutory provision. The zone-of-interests test requires courts to "first discern the interests 'arguably . . . to be protected' by the statutory provision at issue" and "then inquire whether the plaintiff's interests affected by the agency action in question are among them." *Nat'l Credit Union Admin. (NCUA) v. First Nat'l Bank & Trust Co.*, 522 U.S. 479, 492 (1998); *see also Pye v. United States*, 269 F.3d 459, 470 (4th Cir. 2001). It is not relevant "whether, in enacting the statutory provision at issue, Congress specifically intended to benefit the plaintiff." *NCUA*, 522 U.S. at 492.

In the APA context, the zone-of-interests test "is not meant to be especially demanding," and courts should "apply the test in keeping with Congress's 'evident intent' when enacting the APA 'to make agency action presumptively reviewable.'" *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v.*

[8] In addition, this Court could conclude on the existing record that CASA has representational standing on behalf of its members and that the individual Plaintiffs have standing. *See Pashby v. Delia*, 709 F.3d 307, 322 (4th Cir. 2013) ("[I]t is well-settled that we 'review judgments, not opinions,' which allows us to 'affirm the district court on any ground that would support the judgment in favor of the party prevailing below.'" (quoting *Everett v. Pitt Cty. Bd. of Educ.*, 678 F.3d 281, 291 (4th Cir. 2012)); *see also* JA28–46 (Plaintiffs' declarations).

Patchak, 567 U.S. 209, 225 (2012) (quoting *Clarke v. Sec. Indus. Ass'n*, 479 U.S. 388, 399 (1987)). "[T]he benefit of any doubt goes to the plaintiff," and "[t]he test forecloses suit only when a plaintiff's 'interests are so marginally related to or inconsistent with the purposes implicit in the statute that it cannot reasonably be assumed that Congress intended to permit the suit.'" *Id.* (quoting *Clarke*, 479 U.S. at 399).

CASA falls within the zone of interests here. One of the interests that the INA's admissibility provisions serve is ensuring that noncitizens who meet the requirements can enter the United States and, if eligible, apply for LPR status. *See* 8 U.S.C. §§ 1182, 1255. CASA's mission to improve the lives of noncitizens includes assisting them in applying for immigration benefits, JA29-30, and providing educational, job-training, and other services that help to put them on a path toward obtaining LPR status. JA29–30, 32. CASA accordingly has a vested interest in ensuring that the public-charge inadmissibility ground is not unlawfully broadened in a manner that would sharply reduce its members' ability to adjust status. CASA is therefore a "reasonable—indeed, predictable—challenger[]" of the Public Charge Rule. *Patchak*, 567 U.S. at 227.

Moreover, as the district court correctly concluded, CASA's mission is consistent with the public-charge provision's interest in ensuring the "health and economic status of immigrants who are granted admission to the United States."

JA251. As the court noted, CASA provides "social, health, job training, employment, and legal services to immigrant communities." *Id.* These efforts place CASA "squarely within the bounds" of the health and economic interests of the public-charge provision. JA252. Indeed, the Rule itself acknowledges the role of organizations like CASA in providing services related to the public-charge provision. *See* 84 Fed. Reg. at 41,301.

Appellants argue that only the federal government and a noncitizen contesting an unfavorable public-charge determination fall within the applicable zone of interests. Br. 15–16. But this miserly view cannot be reconciled with the Supreme Court's precedents. In *Patchak*, for example, the relevant statute focused solely on the federal government's authority to acquire land for Indian tribes. *See* 25 U.S.C. § 5108 (then *id.* § 465). It made no mention of neighboring landowners, like Patchak, or the use of land so acquired. *See* 567 U.S. at 224. Under Appellants' preferred test, Patchak would have fallen outside of the zone of interests—contrary to the Supreme Court's far more generous analysis, which found Patchak within the relevant zone of interests.

The Court also has found plaintiffs to fall within a statute's zone of interests even when "Congress did not intend specifically to benefit" entities like the plaintiff and "may have been concerned only with" other issues than those motivating the plaintiffs' interest in the statute, so long as the plaintiffs' suit

addressed "one of the interests 'arguably . . . to be protected' by the statute[]." *NCUA*, 522 U.S. at 495. In *NCUA*, the Court held that commercial banks were within the zone of interests of a statute regulating membership in federal credit unions because of their interest "[a]s competitors of federal credit unions . . . in limiting the markets that federal credit unions can serve." *Id.* at 493. This was so in spite of "no evidence that Congress, when it enacted the [statute], was at all concerned with the competitive interests of commercial banks, or indeed at all concerned with competition." *Id.* at 495–96.

In short, Appellants are simply incorrect about both the scope of the interests "arguably . . . to be protected" by the public-charge provision and the nature of the interests that CASA seeks to protect. CASA's interests in immigrants' admissibility, health, and economic status place it within the zone of interests "arguably . . . to be protected" by the public-charge provision.

B. The Public Charge Rule Is Contrary to the INA

Since 1882, Congress has denied noncitizens likely to become a "public charge" admission to the United States. *See* Act of Aug. 3, 1882, ch. 376, § 2, 22 Stat. 214, 214. Today, the INA denies admission—and LPR status—to "[a]ny alien who, . . . 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."

8 U.S.C. § 1182(a)(4)(A). Congress has never explicitly defined the phrase "public charge" in the INA or any of its statutory predecessors. JA256.

Nevertheless, for over 135 years, Congress, courts, and administrative agencies have understood "public charge," as used in U.S. immigration statutes, to encompass only individuals who are primarily dependent on the government for subsistence. Since 1999, DHS and its regulatory predecessor, INS, have operated under Field Guidance that formalized that longstanding interpretation of "public charge," defining it as "an alien who has become . . . primarily dependent on the government for subsistence," as evidenced by the receipt of public cash assistance or long-term institutionalization at government expense. 1999 Field Guidance, 64 Fed. Reg. at 28,689. DHS's Public Charge Rule departs drastically from this entrenched understanding by redefining "public charge" to include noncitizens who receive *any* amount of cash or certain non-cash public benefits for even a brief period of time.

The Public Charge Rule's validity is governed by the two-step framework articulated in *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). At *Chevron* Step One, courts "employ[] traditional tools of statutory construction" to assess "whether Congress has directly spoken to the precise question at issue." *Id.* at 842 & 843 n.9. This inquiry entails consideration of the statute's text and structure, "principles of grammatical usage," and

legislative history. *Nat'l Elec. Mfrs. Ass'n (NEMA) v. U.S. Dep't of Energy*, 654 F.3d 496, 504–05 (4th Cir. 2011). A regulation fails *Chevron* Step One if "the statute, read in context, unambiguously forecloses" the agency's interpretation. *Esquivel-Quintana v. Sessions*, 137 S. Ct. 1562, 1572 (2017). If, after exhausting all tools of statutory construction, a court concludes that Congress's intent is ambiguous, the court must consider at *Chevron* Step Two "whether the agency's answer is based on a permissible construction of the statute," deferring to the agency's interpretation only if it is a reasonable one. *Chevron*, 467 U.S. at 843; *NEMA*, 654 F.3d at 505.

The district court correctly concluded that CASA is likely to succeed in demonstrating that the Public Charge Rule fails at either *Chevron* Steps One or Two. JA266. DHS's conclusion that the phrase "public charge" encompasses noncitizens likely to accept only a small amount of public benefits at some point in their lifetimes is both "unambiguously foreclosed" by the INA and an unreasonable reading of the statute. *Id.* (quoting *Esquivel-Quintana*, 137 S. Ct. at 1572).

1. The Public Charge Rule Dramatically Redefines the Key Term

DHS defines "public charge" as "an alien who receives one or more" of an enumerated set of public benefits (cash assistance, SNAP benefits, Medicaid, and federal housing assistance) "for more than 12 months in the aggregate within any 36-month period," with multiple benefits received in a single month counting as

multiple months of benefits. 84 Fed. Reg. at 41,501 (to be codified at 8 C.F.R. § 212.21(a), (b)). Under that de minimis threshold, a noncitizen could be considered a "public charge" if she accepts SNAP, Medicaid, and federal housing benefits for a period as short as four months (with each benefit counting as a separate month), or if she accepts little more than $1,500 worth of SNAP benefits in a three-year period.[9]

To appreciate the stunning breadth of this redefinition of "public charge," one must consider two things. First, public-charge inadmissibility determinations are predictive judgments without any time horizon, not backward-looking assessments. 8 U.S.C. § 1182(a)(4)(A) (denying admission to any noncitizen who is "*likely at any time to become* a public charge" (emphasis added)). The Public Charge Rule thus would deny admission (and therefore LPR status) to any noncitizen who exhibits attributes that, in DHS's judgment, make her likely to accept 12 months' worth of public benefits in any 36-month period over the rest of her lifetime.

Second, this far-ranging and speculative predictive judgment is further complicated because, as DHS has acknowledged, undocumented immigrants and non-LPRs (i.e., the types of noncitizens who might be subject to a public-charge

[9] In 2018, the average monthly SNAP benefit per recipient was $126.96. U.S. Dep't of Agric., *Supplemental Nutrition Assistance Program Participation and Costs* (Aug. 2, 2019), https://perma.cc/BA8N-4GZ3.

determination) "are generally barred from receiving federal public benefits other than emergency assistance." Final Rule, 84 Fed. Reg. at 41,313; *see also* 8 U.S.C. §§ 1611, 1621, 1641(b). Thus, USCIS officers, in the vast majority of instances, would have to make the assessment required by the Public Charge Rule without past practice as a predictive guide. Indeed, DHS admits that public-charge determinations under the Rule will be "inherently subjective," "will vary," and will "not [be] governed by clear data regarding whether any given alien subject to th[e] determination is more likely than not to receive public benefits" for 12 months or more. Final Rule, 84 Fed. Reg. at 41,315, 41,397.

Given this uncertain predictive exercise and the Rule's extremely low threshold, the universe of individuals who could be denied admission under the Public Charge Rule is vast. The Center on Budget and Policy Priorities estimates that "*more than half* of the U.S.-born population participate in SNAP, Medicaid, TANF, SSI, or housing assistance over their lifetimes." *See* Danilo Trisi, Ctr. on Budget & Policy Priorities, *Trump Administration's Overbroad Public Charge Definition Could Deny Those Without Substantial Means a Chance to Come to or Stay in the U.S.* 5 (2019) (emphasis in original), https://perma.cc/4J72-GF6P. Thus, under the Public Charge Rule, a noncitizen would be admissible (and therefore eligible to adjust to LPR status) only if a USCIS officer deemed her "more likely than not" to resemble, over her entire lifetime, the more affluent half

of the U.S.-born population. *See* Final Rule, 84 Fed. Reg. at 41,501 (to be codified at 8 C.F.R. § 212.21(c)). Such a capacious definition of "public charge" cannot be reconciled with the term's ordinary meaning or with how it has been understood by Congress, courts, and the Executive Branch for over a century.

2. DHS's Definition of "Public Charge" Contravenes the Term's Ordinary Meaning

"In the absence of" a statutory definition of a term, courts "construe a statutory term in accordance with its ordinary or natural meaning," including by looking to relevant dictionary definitions. *FDIC v. Meyer*, 510 U.S. 471, 476 (1994). When Congress first enacted the public-charge inadmissibility ground in 1882, dictionaries defined the word "charge" as a "person or thing committed to another[']s custody, care or management; a trust." *Charge*, Webster's Dictionary (1828 online ed.), https://perma.cc/T3CB-5HUT; *see also Charge*, Webster's Dictionary (1886 ed.) ("person or thing committed or intrusted to the care, custody, or management of another; a trust"). An individual who receives as little as $1,500 worth of SNAP benefits over the course of three years but otherwise relies on her own income or nongovernmental assistance to meet her basic needs simply cannot be considered "committed" or "intrusted" to the government's "care" or "management" or in its "custody." But DHS's Rule would classify such an individual as a "public charge."

Other dictionaries that Appellants selectively quote do not support DHS's definition of "public charge" either. Br. 26–27, 31. Although the 1933 and 1951 editions of Black's Law Dictionary state that "public charge," as used in the Immigration Act of 1917, means "one who produces a money charge upon or an expense to, the public for support and care," they go on to specify that, "[a]s so used," the term is coextensive with "paupers and those likely to become such" except to the extent that it encompasses "those who will not undertake honest pursuits, or who are likely to become periodically the inmates of prisons." *Public Charge*, Black's Law Dictionary (3d ed. 1933); *Public Charge*, Black's Law Dictionary (4th ed. 1951). Similarly, the *Dictionary of American and English Law* defines "charge" generally as "an obligation or liability," but the only relevant example that the dictionary provides is a "pauper." Stewart Rapalje et al., *Dictionary of American and English Law* (1888). Appellants contend that this definition implicitly encompasses individuals who are not totally destitute but who receive some form of supplemental government assistance. Br. 26. But if that were the intended definition, presumably it would have been made more explicit. Finally, as the district court recognized, the *Glossary of the Common Law* offers no helpful guidance because "it defines charge in the context of a financial burden to property" rather than "self sufficiency of an individual." JA258 (citing Frederic Jesup Stimson, *Glossary of the Common Law* (1881)).

Despite dictionaries using the term "pauper" interchangeably with the terms "charge" and "public charge," Appellants argue that those terms cannot be synonymous because the Immigration Act of 1891 and its successors provided separate public-charge and pauper inadmissibility grounds. Br. 27; *see also* Act of Mar. 3, 1891, ch. 551, § 1, 26 Stat. 1084, 1084. But Congress recognized this redundancy and eliminated it in 1990, when it amended the INA to "remove[] . . . antiquated and unused" inadmissibility grounds, including those applying to "paupers," "professional beggars," and "vagrants" covered by the public-charge inadmissibility ground. 136 Cong. Rec. 36,844 (1990) (statement of Rep. Hamilton Fish IV); *see also* Immigration Act of 1990, Pub. L. No. 101-649, § 601(a)(4), 104 Stat. 4978, 5072 (codified as amended at 8 U.S.C. § 1182). By treating as surplusage the pauper, professional-beggar, and vagrant inadmissibility grounds, Congress confirmed that the public-charge inadmissibility ground is functionally equivalent to these related exclusions eliminated by the Immigration Act of 1990. *See Nat'l Mining Ass'n v. Kempthorne*, 512 F.3d 702, 706 (D.C. Cir. 2008) ("[C]ourts will not give independent meaning to a word where it is apparent from the context of the act that the word is surplusage . . . ." (alteration in original) (quoting *Am. Radio Relay League, Inc. v. FCC*, 617 F.2d 875, 879 (D.C. Cir. 1980))).

That the public-charge inadmissibility ground was not intended to apply to those who might experience a short-term need for assistance is also clear from the statutory context of the 1882 Act in which it first appeared. *See Util. Air Regulatory Grp. v. EPA*, 573 U.S. 302, 321 (2014) ("[R]easonable statutory interpretation must account for both 'the specific context in which . . . language is used' and 'the broader context of the statute as a whole.'" (quoting *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997))). The 1882 Act assessed a head tax for the purpose of creating a "fund . . . for the care of immigrants arriving in the United States." Act of Aug. 3, 1882, ch. 376, § 1, 22 Stat. at 214. Because of this immigrant fund, the Ninth Circuit correctly concluded in a recent decision that "public charge," as used in the 1882 Act, meant "those who were unwilling or unable to care for themselves" to a degree necessitating "hous[ing] in a government or charitable institution, such as an almshouse, asylum, or penitentiary," and *did not* encompass noncitizens who "received merely some form of public assistance." *City & Cty. of San Francisco v. U.S. Citizenship & Immigration Servs.*, 944 F.3d 773, 793 (9th Cir. 2019).[10]

[10] Despite this recognition, the Ninth Circuit stayed the preliminary injunctions issued by the Northern District of California and Eastern District of Washington. *Id.* at 781. The linchpin of the Ninth Circuit's decision was its conclusion that *Matter of B-*, 3 I. & N. Dec. 323 (BIA & AG 1948), "articulated a new definition of 'public charge'" in the deportation context. 944 F.3d at 795. For reasons discussed below, *infra*, Part I.B.4, the Ninth Circuit is incorrect that *Matter of B-* changed the meaning of "public charge" in the admissibility context.

Appellants provide two arguments for why the 1882 Act's immigrant fund does not foreclose DHS's definition of "public charge," neither of which is availing. First, they characterize the fund as "assist[ing] aliens who have already been admitted." Br. 27. But the statute specifically states that the fund's purpose was to support "*arriving*" immigrants. § 1, 22 Stat. at 214 (emphasis added). Second, Appellants argue that Congress's disapproval of "alien use of publicly funded benefits" can be inferred from the fact that Congress raised the money for the immigrant fund through a head tax on shipowners for each noncitizen passenger. *See* Br. 28. But the salient point is that the 1882 Act simultaneously provided non-comprehensive public assistance to noncitizens while also admitting recipients of such assistance to the country. This historical precedent therefore precludes deeming an individual a public charge today based merely on receipt of SNAP, Medicaid, or federal housing benefits that fall significantly short of providing, on their own, for an individuals' basic needs.

The meaning of "public charge" also is informed by the related statutory terms that surrounded it in the early immigration statutes. As the Supreme Court explained in interpreting the Immigration Act of 1907, the phrase "public charge" should "be read as generically similar to the others mentioned" in the same statutory exclusion. *Gegiow v. Uhl*, 239 U.S. 3, 10 (1915); *see also Freeman v. Quicken Loans, Inc.*, 566 U.S. 624, 634–35 (2012) (explaining that "normal usage"

of relevant term was "confirmed by the commonsense canon of *noscitur a sociis*—which counsels that a word is given more precise content by the neighboring words with which it is associated" (internal quotation marks omitted)). Each of the accompanying categories—e.g., "insane persons," "idiots," and "paupers," Act of Feb. 20, 1907, ch. 1134, § 2, 34 Stat. 898, 898–99—referred to groups of persons, who, at that time, were commonly housed in public institutions such as almshouses, charitable hospitals, and asylums, *see* JA49–50. These categories did not include the many poor immigrants who came to the United States and who, at some point, might require some non-comprehensive form of public assistance.

Appellants argue that the Immigration Act of 1917 overturned *Gegiow*. Br. 29–30. That is partially true, but only, as the district court recognized, in the narrow sense that Congress intended to allow immigration authorities to consider local economic conditions in rendering public-charge determinations. JA260–61. Congress accomplished this by "associat[ing] [public charge] in the law with a provision the economic object of which is unmistakable, and disassociat[ing] it from the provisions the immediate objects of which are of a sanitary nature," meaning exclusions related to noncitizens' health. JA260 (quoting H.R. Doc. No. 64-886, at 4 (Mar. 11, 1916) (second alteration in original)). But the 1917 Act did not change that the public-charge inadmissibility ground, "however construed,

overlaps other provisions; e.g., paupers, vagrants, and the like." *United States ex rel. Iorio v. Day*, 34 F.2d 920, 922 (2d Cir. 1929).[11]

Gegiow is also instructive because it articulates a presumption against broad construction of inadmissibility grounds. The *Gegiow* Court refused to endorse an interpretation of "public charge" that "intrusted by implication . . . to every commissioner of immigration" the "amazing . . . power" to deny admission to noncitizens based on local economic conditions. *Gegiow*, 239 U.S. at 10. The Public Charge Rule runs contrary to *Gegiow* by entrusting USCIS officers with an even more awesome power to exclude all noncitizens deemed likely to resemble the majority of people born in the United States who accept one or more of the enumerated public benefits at some point in their lifetimes. DHS lacks the authority to so radically expand "by implication" the public-charge inadmissibility ground. *See id.* at 10.

Appellants suggest that none of the points detailed above matter because the INA commits to DHS's discretion the task of defining the term "public charge"—effectively exempting the provision from the inquiry required at *Chevron* Step

[11] Appellants argue that *Iorio* disavowed a "strict definition of 'public charge'" in order to cover "persons likely to be incarcerated." Br. 30. On the contrary, the Second Circuit, informed by *Gegiow*, narrowly construed the provision as covering only those likely to "become destitute" and therefore *rejected* its application to noncitizens deemed likely to be incarcerated because "[t]he language itself, 'public charge,' suggests rather dependency than imprisonment." *Iorio*, 34 F.2d at 922.

One—by specifying that public-charge determinations be made "in the opinion of the [Secretary of Homeland Security]." Br. 24–25 (quoting 8 U.S.C. § 1182 (a)(4)(A)). But that language delegates discretion to immigration authorities to apply the applicable statutory standard to the facts of a given case—i.e., to determine whether the totality of the circumstances in an individual case supports a conclusion that a noncitizen is likely to become a public charge. It does not confer upon DHS a heightened and unreviewable ability to "pour any meaning it desires into the statute." *See Farmers Union Cent. Exch., Inc. v. FERC*, 734 F.2d 1486, 1504 (D.C. Cir. 1984) (internal quotation marks omitted); *see also id.* (noting that such a broad "delegation would be impermissible").[12] Accordingly, "traditional tools of statutory construction" govern the meaning of "public charge" as used in the INA. *Chevron*, 467 U.S. at 843 n.9.

3. Congress, Courts, and the BIA Have Long Accepted the Plain Meaning of "Public Charge"

Since the enactment of the "public charge" inadmissibility ground in 1882, courts and the BIA consistently have understood the term, in accordance with its plain meaning, to apply only to noncitizens who are unable to provide for

[12] *Thor Power Tool Co. v. Comm'r of Internal Revenue*, 439 U.S. 522 (1979), does not establish that the INA's "in the opinion of" language supplants the typical *Chevron* framework. *See* Br. 25. In that case, the Supreme Court held only that similar language in a tax regulation conferred upon the IRS Commissioner discretion to select the most accurate method of ascertaining a taxpayer's income in individual cases. *Id.* at 540.

themselves and who therefore are primarily dependent on the government for subsistence. Congress, in turn, repeatedly has reenacted the public-charge exclusion without supplying an alternative definition, demonstrating its acceptance of the widely understood meaning of the term. Moreover, Congress has rejected attempts to redefine "public charge" in ways similar to the Public Charge Rule, indicating its conscious rejection of DHS's radical new definition.

Judicial opinions reviewing public-charge determinations have long focused on a noncitizen's ability and willingness to work as it relates to that person's capacity to avoid becoming primarily dependent on the government for support. *See, e.g.*, *Howe v. United States ex rel. Savitsky*, 247 F. 292, 293–94 (2d Cir. 1917) ("physically []fit" noncitizen could not be denied admission on public-charge grounds because "Congress meant the act to exclude persons who were likely to become occupants of almshouses"); *United States v. Petkos*, 214 F. 978, 979 (1st Cir. 1914) (noncitizen who suffered from psoriasis could not be excluded on public-charge grounds because there was no "lawful evidence[] that his disease necessarily affected his ability to earn a living"); *United States ex rel. Barlin v. Rodgers*, 191 F. 970, 973–77 (3d Cir. 1911) (noncitizens were inadmissible on public-charge grounds due to physical limitations or agedness that, in the judgment of immigration officials, would have prevented them from earning a living).

Cases cited by Appellants are not to the contrary. *See Ex parte Turner*, 10 F.2d 816, 816–17 (S.D. Cal. 1926) (man's "abscesses in his throat" and subsequent treatment as "charity patient" demonstrated that he "was at the time of his entry[] predisposed to physical infirmity, and that, when suffering from ailments, he will likely be incapacitated from performing any work or earning support for himself and family"); *Guimond v. Howes*, 9 F.2d 412, 413–14 (D. Me. 1925) (husband and wife were likely to become public charges based on husband's repeated arrests on bootlegging charges, lack of lawful employment, and family's reliance on "pauper aid" while he was imprisoned).

Likewise and in contrast to DHS's Rule, BIA decisions reflect an understanding that temporary setbacks do not render an individual likely to become a public charge. *See, e.g.*, *Matter of A-*, 19 I. & N. Dec. 867, 870 (BIA 1988) (33-year-old woman's "age and ability to earn a living" rendered her unlikely to become a public charge despite her having temporarily left the workforce to care for her children and struggling to find work thereafter); *Matter of Perez*, 15 I. & N. Dec. 136, 137–38 (BIA 1974) (although noncitizen had received welfare benefits, she was not likely to become a public charge because she was "28 years old, in good health, and capable of finding employment"). In cases in which the BIA found noncitizens inadmissible on public-charge grounds, it did so based on their inability to earn a living, not because of temporary receipt of supplemental

assistance like SNAP, Medicaid, or federal housing assistance. *See Matter of Vindman*, 16 I. & N. Dec. 131, 132 (BIA 1977) (finding inadmissible noncitizens who had been accepting SSI and General Assistance for three years and showed no prospect of future employment); *Matter of Harutunian*, 14 I. & N. Dec. 583, 584, 589–90 (BIA 1974) (elderly applicant for LPR status who had been granted "old age assistance" inadmissible on public-charge grounds because she was "incapable of earning a livelihood").

Despite courts and the BIA consistently interpreting the public-charge inadmissibility ground as excluding only noncitizens who have no ability to earn a living (and therefore are likely to become primarily dependent on the government), Congress repeatedly has reenacted the provision without providing an alternative definition. Congress therefore must be understood to have incorporated the prior judicial and BIA interpretations of the public-charge inadmissibility ground. *See Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 239–40 (2009) ("Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change." (quoting *Lorillard v. Pons*, 434 U.S. 575, 580 (1978))).

Congress also has rejected two attempts to adopt a definition similar to the one DHS now seeks to impose administratively—another strong indication that DHS's attempted redefinition by regulation runs afoul of the statute. In 1996,

Congress considered and *rejected* a draft version of IIRIRA that would have rendered deportable as a public charge any noncitizen who, within seven years of entry, had received any of a list of public benefits nearly identical to those enumerated in the Final Rule.[13] *See* H.R. Rep. 104-828, at 137–40 (1996) (Conf. Rep.); *see also* 142 Cong. Rec. 26,679 (1996) (statement of bill's floor manager, Sen. John Kyl, that "in order to ensure passage," certain provisions "have been deleted," including the one addressing "the definition of 'public charge'").

Appellants argue that this legislative history is irrelevant because Congress "did not 'discard[]' the proposed definition . . . 'in favor of other language.'" Br. 33 (alteration in original). But IIRIRA did make other, more limited changes to the public-charge inadmissibility ground, confirming that Congress did not intend to displace the longstanding interpretation of "public charge." *See supra* at 5–6. That the threat of presidential veto contributed to the rejection of the proposed definition, Br. 34, does not change the calculus; Congress lacked the votes in 1996 to change the settled meaning of "public charge." *Cf. Fogarty v. United States*, 340 U.S. 8, 13–14 (1950) (refusing to consider vetoed precursors to statute and

[13] A separate provision of the INA renders a noncitizen "who, within five years after the date of entry [to the United States], has become a public charge from causes not affirmatively shown to have arisen since entry." 8 U.S.C. § 1227(a)(5). DHS does not purport to interpret this provision in the Public Charge Rule. Final Rule, 84 Fed. Reg. at 41,295.

their legislative history as evidence of Congress's intent in enacting final version of statute).

Moreover, in 2013, Congress rejected a bill that would have "expanded the definition of 'public charge' such that people who received non-cash health benefits could not become" LPRs. S. Rep. No. 113-40, at 63 (2013). Congress's rejection of proposed expansions of the definition of "public charge" indicates that its understanding of the term precludes the definition in DHS's Rule. *See INS v. Cardoza-Fonseca*, 480 U.S. 421, 442–43 (1987) ("Congress does not intend *sub silentio* to enact statutory language that it has earlier discarded in favor of other language."); *Cuomo v. Clearing House Ass'n*, 557 U.S. 519, 533 (2009) (rejecting regulatory "attempt[] to do what Congress declined to do").

4. None of the Statutory Provisions Cited By Appellants Supports DHS's Definition of "Public Charge"

Appellants unpersuasively cite several other statutory provisions as evidence that the INA contemplates that a noncitizen's predicted receipt of non-cash benefits can support an unfavorable public-charge determination, Br. 18–23, but none supports such an expansive interpretation. First, Appellants rely on policy statements included in the Welfare Reform Act that identify "[s]elf sufficiency" as a "basic principle of United States immigration law." *Id.* 21–22 (quoting 8 U.S.C. § 1601(1) (alteration in original)). But the Welfare Reform Act changed not a jot of the public-charge provision, while furthering its "self-sufficiency" goals by

restricting noncitizen eligibility for most public benefits with which the Public Charge Rule is concerned, *see* 8 U.S.C. §§ 1611–13, 1641, and by attributing sponsors' income and resources to sponsored noncitizens for the purpose of determining eligibility for public benefits, *id.* § 1631.

Moreover, "[p]olicy statements are just that—statements of policy. They are not delegations of regulatory authority." *Comcast Corp. v. FCC*, 600 F.3d 642, 654 (D.C. Cir. 2010). Had Congress intended to alter the public-charge inadmissibility ground or to empower the Executive Branch to do so, Congress could have done so explicitly. *Cf. Liu v. Mund*, 686 F.3d 418, 422 (7th Cir. 2012) ("[S]elf-sufficiency, though mentioned briefly in the House Conference Report on [IIRIRA] as a goal, is not the goal stated in the statute; the stated statutory goal . . . is to prevent the admission to the United States of any alien who 'is likely at any time to become a public charge.'" (citation omitted)).

Second, Appellants point to several INA provisions that make it more difficult for noncitizens to obtain public benefits once they have been admitted to the United States as supportive of DHS's definition of "public charge." Br. 18–19, 22. These include the Welfare Reform Act provisions mentioned above and IIRIRA's requirement that certain applicants for adjustment of status obtain an affidavit of support obligating a sponsor to maintain them at an annual income of 125 percent of the federal poverty line. *See* 8 U.S.C. §§ 1182(a)(4)(C), (D),

1183a(a). Far from evincing an intent to exclude noncitizens who might someday accept supplemental forms of public assistance, these provisions demonstrate that Congress recognizes that noncitizens who would be likely to receive such benefits but for IIRIRA and the Welfare Reform Act's restrictions *are admissible*.

Moreover, because one of the two mechanisms IIRIRA provides for enforcing affidavits of support is a provision authorizing providers of means-tested public benefits to seek reimbursement from sponsors for the cost of providing such benefits to sponsored noncitizens, *id.* § 1183a(b), (e)(2),[14] Appellants incorrectly infer that Congress intends a noncitizen to be inadmissible based on "the mere *possibility*" that she might obtain unreimbursed, means-tested public benefits in the future," Br. 19. But noncitizens who are required to obtain an affidavit of support must do so no matter how *unlikely* they are to become a public charge. *Compare* 8 U.S.C. § 1182(a)(4)(B) (setting forth factors relevant to whether a noncitizen is likely to become a public charge), *with id.* § 1182(a)(4)(C), (D) (requiring certain applicants for adjustment of status to obtain affidavits of support irrespective of their likelihood of becoming a public charge). That enforcement mechanism therefore does not support Appellants' interpretation of the analytically distinct public-charge provision.

[14] *See also* 8 U.S.C. § 1183a(e)(1) (authorizing suits by noncitizens to obtain promised financial support from their sponsors).

To the extent that these provisions reveal anything about how Congress intends the public-charge inadmissibility ground to be enforced, it is notable that they apply only during noncitizens' first five to ten years in the United States. *Id.* §§ 1183a(a)(3)(A), 1612(b)(2)(B), 1613(a), 1631(b). By contrast, the Public Charge Rule would deny admission (and therefore LPR status) to noncitizens based on their perceived likelihood of accepting benefits at *any point* in the rest of their lifetimes. Final Rule, 84 Fed. Reg. at 41,501 (to be codified at 8 C.F.R. § 212.21(a), (c)). Thus, the Rule is manifestly incongruent with the timeline during which Congress found it appropriate to restrict noncitizens' receipt of public benefits.

Third, Appellants, citing the 1948 BIA and Attorney General decision *Matter of B-*, misconstrue the INA as authorizing deportation on public-charge grounds under 8 U.S.C. § 1227(a)(5) whenever a noncitizen or her sponsor fails to honor a government agency's request for reimbursement of the cost of providing a means-tested public benefit of any kind. Br. 19–20, 30–31. As an initial matter, the BIA has held that, although "exclusion and deportation statutes both refer to aliens who become a public charge, it does not follow necessarily that Congress intended that the same criteria be applied in both situations." *Harutunian*, 14 I. & N. Dec. at 585. Moreover, under current law, a noncitizen can be deported on public-charge grounds only based on "receipt of *cash benefits* for income

maintenance purposes." Field Guidance, 64 Fed. Reg. at 28,691 (emphasis added). The Public Charge Rule did not change that. *See* Public Charge Rule, 84 Fed. Reg. at 41,295 ("This rule does not interpret or change DHS's implementation of the public charge ground of deportability.").

Regardless, *Matter of B-* does not support Appellants' broad interpretation of the public-charge deportation ground because it involved a noncitizen who was a long-term resident of a state mental-health institution. 3 I. & N. Dec. at 324. The decision did not present the question of whether a noncitizen is deportable for failing to reimburse the government for temporary receipt of supplemental public assistance like SNAP, Medicaid, or federal housing assistance. Appellants' interpretation of "public charge" in the deportation context provides no support for the Public Charge Rule.

Finally, Appellants argue that the Public Charge Rule is supported by INA provisions that "presuppose[]" that immigration authorities "ordinarily" may consider noncitizens' past receipt of public benefits in rendering public-charge determinations. Br. 20. Appellants point in particular to 8 U.S.C. § 1182(s), which prohibits immigration officials from considering in public-charge determinations past receipt of benefits by certain victims of domestic violence, and 8 U.S.C. § 1255a(d), which created a "special rule" that immunized from unfavorable public-charge determinations noncitizens who were covered by a 1986 amnesty

program and who had not received cash assistance. Br. 20–21. But DHS's Rule is contrary to law not because it considers noncitizens' *past* receipt of benefits—which would be relevant only rarely, if ever, *see supra* Part I.B.1—but because it would deny admission and LPR status to noncitizens based on a prediction about whether they will, *in the future*, accept merely a small amount of public benefits.[15]

5. BIA Precedent Forecloses the Public Charge Rule

Even if the meaning of the term "public charge" were ambiguous, the Executive Branch already exercised its discretion to construe the term, and it did so in a manner that forecloses the definition in the Public Charge Rule. BIA decisions and Attorney General decisions that modify or overrule them are "binding on all officers and employees of DHS or immigration judges in the administration of the immigration laws of the United States." 8 C.F.R. § 1003.1(g)(1). As the district court recognized, *Matter of Martinez-Lopez*, 10 I. & N. Dec. 409 (BIA 1962; AG 1964), sets forth a standard for public-charge determinations that is "wholly inconsistent" with DHS's Rule. JA 261–62.

[15] Moreover, § 1255a(d) does not support Appellants' argument. That statute provided a safe harbor from unfavorable public-charge determinations to those who "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)(B)(iii). It says nothing about whether the ordinary public-charge inquiry requires consideration of non-cash benefits.

In *Martinez-Lopez*, Attorney General Robert F. Kennedy summarized the meaning of the public-charge inadmissibility ground as follows:

> The general tenor of [judicial interpretations of the public-charge provision] is that the statute requires *more than a showing of a possibility that the alien will require public support*. Some specific circumstance, such as mental or physical disability, advanced age, or other fact reasonably tending to show that the burden of supporting the alien is likely to be cast on the public, must be present. *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 (emphases added).

DHS's definition of "public charge" encompasses more than half of the U.S.-born population, *see* Trisi, *supra*, at 5, a universe of individuals that no doubt includes many "healthy" people "in the prime of life," *see Martinez-Lopez*, 10 I. & N. Dec. at 421. The Public Charge Rule therefore "ordinarily" would render inadmissible the very sorts of people that *Martinez-Lopez* precludes DHS from treating as likely to become a public charge.

Appellants contend that the Public Charge Rule complies with *Martinez-Lopez* because the Notice of Proposed Rulemaking (NPRM) preceding the Rule's enactment described a hypothetical noncitizen "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." Br. 33 (quoting Inadmissibility on Public Charge

Grounds, 83 Fed. Reg. 51,114, 51,216 (proposed Oct. 10, 2018) (to be codified at 8 C.F.R. pts. 103, 212–14, 245, 248)). The mere inclusion in the NPRM of an example that might be consistent with *Martinez-Lopez* cannot cure the Rule's facial exclusion of young and healthy noncitizens whose totality of the circumstances, in USCIS's estimation, makes them likely to accept a small amount of public benefits at some point in their lifetimes—in direct contravention of *Martinez-Lopez*. Moreover, the NPRM failed to explain what would distinguish individuals with circumstances similar to the hypothetical noncitizen from the majority of U.S-born people who will receive SNAP, Medicaid, TANF, SSI, or housing assistance at some point in their lifetimes. *See* Trisi, *supra*, at 5. Accordingly, the district court correctly concluded that the Public Charge Rule's irreconcilability with *Martinez-Lopez* is an independently sufficient basis to conclude that the Rule is contrary to law. JA262.

In sum, DHS's definition of "public charge" is contrary to the ordinary meaning of the term. That conclusion is reinforced by the consistent practice of courts and the BIA, over 135 years, to interpret the public-charge provision as excluding only noncitizens who are likely to become primarily dependent on the government for subsistence. Congress has ratified that understanding both by reenacting the public-charge inadmissibility ground on several occasions and by rejecting proposed statutory definitions similar to the one DHS attempts to enact

administratively. Finally, the Rule is patently inconsistent with *Martinez-Lopez*, which DHS's own regulations prohibit it from displacing. CASA is likely to succeed on the merits of its contrary-to-law claim.

C. CASA Will Suffer Irreparable Harm in the Absence of a Preliminary Injunction

"To establish irreparable harm, the movant must make a clear showing that it will suffer harm that is neither remote nor speculative, but actual and imminent." *Mountain Valley Pipeline, LLC v. 6.56 Acres of Land*, 915 F.3d 197, 216 (4th Cir. 2019) (internal quotation marks omitted). "Additionally, the harm must be irreparable, meaning that it cannot be fully rectified by the final judgment after trial." *Id.* (internal quotation marks omitted).

As explained above, *see supra* Part I.A.1, CASA already has suffered and is continuing to suffer harm to its organizational mission and programs. CASA has devoted significant resources to counteracting the Rule's chilling effects through counseling and education, and CASA has had to invest additional time in advising individual members about whether to enroll in public benefits because of the Rule. JA32–33. Moreover, as members disenroll from public benefits, CASA has worked to ensure that those who are chilled from participating in public benefits programs have access to the supportive services they need. JA33. And CASA has incurred significant costs advising its members on the immigration consequences that might flow from receiving public benefits for themselves or their family

members. These costs will only increase if the Public Charge Rule goes into effect, as warnings about potential future consequences under the Rule become immediate threats and members' fears are made more concrete.

The injury to CASA is also irreparable. Not only is the damage to its members' quality of life from disenrolling from benefits immediate and irremediable, but CASA's efforts to prevent these harms have come at the expense of its affirmative legislative campaign in support of local health-care expansion efforts, which is time-sensitive and cannot "be undertaken with equal efficacy at a different time." JA33–34, 267; *see also League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 9 (D.C. Cir. 2016) (finding irreparable harm where obstacles to voter registration "unquestionably ma[d]e it more difficult for the Leagues to accomplish their primary mission of registering voters" and impending election limited time for redress).

Appellants' arguments to the contrary are unpersuasive. Their repeated claim that CASA's injuries are not cognizable, Br. 36, is incorrect for the reasons already given in addressing CASA's standing. *See supra* Part I.A.1. Moreover, Appellants' argument that an injunction would not redress CASA's injuries because it would neither allow CASA to reallocate resources already expended nor completely abate confusion about the Rule, Br. 36, is based on a misunderstanding of the irreparable-harm inquiry. The question is not whether an

injunction will totally and completely remedy the harm a plaintiff already has suffered. *Cf. Larson v. Valente*, 456 U.S. 228, 243 n.15 (1982) (to satisfy redressability requirement for standing, plaintiff "need not show that a favorable decision will relieve his *every* injury"). Rather, the relevant inquiry is whether the plaintiff will suffer harm during the pendency of litigation that cannot later be remedied at all. *See Mountain Valley Pipeline*, 915 F.3d at 216 (irreparable harm is that which "cannot be fully rectified by the final judgment after trial"). Viewed correctly, CASA's inability to reallocate funds it is forced to expend counteracting the effects of the Public Charge Rule only serves to demonstrate the irreparable nature of the continued harm it will suffer if the Rule is allowed to go into effect. And the notion that *some* members of CASA will continue to be confused hardly disproves that the harms to CASA and its members will increase if the Rule is implemented. *See Newby*, 838 F.3d at 14 ("An agency should not be allowed to claim that the confusion resulting from its own improper action weighs against an injunction against that action."). Finally, so long as the Rule is enjoined, CASA faces a significantly diminished burden in advising its members applying for adjustment of status, as those members do not face uncertainty regarding how the new Rule's radical definition will apply to them.

D. The Balance of Equities and Public Interest Favor an Injunction

Where the government is a party, analysis of the final two preliminary-injunction factors—the balance of equities and the public interest—merges. *See Pursuing Am. Greatness v. FEC*, 831 F.3d 500, 511 (D.C. Cir. 2016); *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014). Here, as the district court correctly concluded, both the public interest and balance of equities weigh strongly in favor of maintaining the status quo during this litigation. The harms caused by the Rule would be severe, while the harms to Appellants are virtually nonexistent.

As explained above, allowing the Rule to go into effect would exacerbate the already existing fear and confusion among CASA's members and would lead to a greater chilling effect on benefits participation. This would hurt the immigrant communities that CASA serves—reducing access to healthy foods, stable housing, and health care—and force CASA to devote even more resources to counseling, educational campaigns, and other assistance. Moreover, the Rule's chilling effect likely would create dire health consequences for immigrant families and for the public more broadly. By discouraging immigrant families from obtaining health insurance, the Rule likely would increase the frequency and severity of outbreaks of communicable diseases, raising public-health risks for all. *See Pashby v. Delia*,

709 F.3d 307, 330–31 (4th Cir. 2013) (placing great weight on public-health consequences of new regulation in public-interest inquiry).

Affirming the district court's injunction would not meaningfully harm Appellants. The district court's preliminary injunction does nothing more than preserve the status quo that has governed public-charge determinations "for arguably more than a century and at least since 1999." JA268. Although Appellants claim that the preliminary injunction injures them by forcing DHS to "grant lawful-permanent-resident status to aliens whom DHS believes would be found inadmissible" under the Rule, Br. 2, this alleged harm amounts to nothing more than a complaint that the preliminary injunction delays implementation of DHS's preferred policy change. This complaint is insufficient to tip the balance of harms in Appellants' favor. Appellants cite no authority for the proposition that delay in the implementation of a preferred policy change qualifies as a significant or irreparable harm. This makes sense. Otherwise, it would be a rare case in which harm to an individual plaintiff could justify awarding a preliminary injunction against a new rule with the heft of the federal government behind it. Nor do Appellants claim that the primarily-dependent standard itself raises a risk of any serious harm. They do not, for example, argue that the standard has proven unworkable or that the rate of erroneous decision-making has been too high.

That a delay in the implementation of a preferred policy is insufficient in itself to establish irreparable harm remains true even if an agency renders one or more final decisions in the interim.[16] Br. 37. It is often the case that regulatory decisions cannot be reversed in a later adjudication under a new policy.

Moreover, without a preliminary injunction, unfavorable public-charge determinations rendered during the pendency of this lawsuit would jeopardize and, in many instances, preclude noncitizens from remaining in the United States. *See* 8 U.S.C. § 1227(a)(1)(A) (classifying as deportable noncitizens who are inadmissible at the time of application for adjustment of status). Allowing the unlawful Rule to go into effect would force out of the United States some noncitizens who otherwise should have been able to obtain LPR status, thereby harming the improperly denied noncitizens, splitting apart their families, and breaking up communities. The equities and public interest clearly favor affirming the district court's injunction in this case.

II. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION BY ISSUING A NATIONWIDE INJUNCTION

"It is well established . . . that a federal district court has wide discretion to fashion appropriate injunctive relief in a particular case." *Richmond Tenants Org.*

[16] Moreover, the granting of LPR status is not as irreversible for the government as Appellants claim, as LPRs may be deported if, within five years of entering the country, they have "become a public charge from causes not affirmatively shown to have arisen since entry." 8 U.S.C. § 1227(a)(5).

v. Kemp, 956 F.2d 1300, 1308 (4th Cir. 1992). Here, the district court did not abuse its discretion by granting a nationwide injunction.

As the district court found, the harm that the Public Charge Rule inflicts on CASA could not be remedied by a narrower injunction. *See id.* at 1309 (concluding that nationwide injunction "was appropriately tailored to prevent irreparable injury to plaintiffs"). CASA has over 100,000 members located across three states and the District of Columbia. JA29–30. As the district court noted, so long as the Rule remains in effect anywhere in the nation, CASA's members could be subject to the Rule if they left the country and reentered the United States through a port of entry located outside the boundaries of a limited injunction. JA269. Although Appellants claim that this harm is too speculative and is unrelated to CASA's organizational injury, Br. 40, it was not unreasonable for the district court to anticipate that the immigrant population CASA serves will travel abroad. And so long as CASA's members may be subject to the Public Charge Rule when they travel, CASA will be required to devote resources to addressing the Rule when advising its members—causing it continued organizational injury.

Moreover, a partial injunction would only "create further confusion among CASA's membership," thereby exacerbating the chilling effect that gives rise to CASA's injuries. JA269. In practical terms, and contrary to Appellants' claim, Br. 41, in order to give complete and accurate advice to its members, CASA must

advise them about the Rule as long as it is permitted to go into effect anywhere. The district court was correct to conclude that a more limited injunction would not cure the harm that the Rule imposes on CASA.

Appellants rely substantially on *Virginia Society for Human Life, Inc. (VSHL) v. Federal Election Commission*, 263 F.3d 379 (4th Cir. 2001), *overruled on other grounds by The Real Truth About Abortion, Inc. v. FEC*, 681 F.3d 544 (4th Cir. 2012), in contending that a more limited injunction is appropriate here. Br. 38–41. But that case is inapposite. In *VSHL*, the plaintiff sought to engage in discrete activity—distributing voter guides and placing radio advertisements—that was prohibited by an FEC regulation. 263 F.3d at 381–82. An injunction specific to the nonprofit therefore could remedy its injury. *Id.* at 393. Here, by contrast, the harm CASA is suffering depends on the effects of the Rule on its members, who are dispersed across multiple jurisdictions and can move freely beyond those boundaries. It is not possible to enjoin the application of the Rule to CASA in the same kind of clear and administrable way as in *VSHL*. CASA is instead more akin to the plaintiffs in *Richmond Tenants Organization* and *International Refugee Assistance Project (IRAP) v. Trump*, who were dispersed across multiple jurisdictions. *See Richmond Tenants Org.*, 956 F.2d at 1303 (noting that 20 cities were potentially affected by enjoined program); *IRAP v. Trump*, 883 F.3d 233, 273 (4th Cir. 2018), *judgment vacated on other grounds*, 138 S. Ct. 2710 (2018).

Appellants also look to *VSHL* for the proposition that "the language of the APA" does not "require[]" courts to issue nationwide relief in APA cases. Br. 41 (quoting *VSHL*, 263 F.3d at 394). But *VSHL* does not preclude nationwide relief in APA cases where otherwise warranted. *See* 263 F.3d at 393. This Court has held that "nationwide injunctions are especially appropriate in the immigration context, as Congress has made clear that 'the immigration laws of the United States should be enforced vigorously and *uniformly*.'" *IRAP v. Trump*, 857 F.3d 554, 605 (4th Cir. 2017), *as amended* (June 15, 2017), *vacated and remanded on other grounds*, 138 S. Ct. 353 (2017) (emphasis in original) (quoting *Texas v. United States*, 809 F.3d 134, 187–88 (5th Cir. 2015));[17] *see also Regents of the Univ. of Cal. v. U.S. Dep't of Homeland Sec.*, 908 F.3d 476, 512 (9th Cir. 2018), *cert. granted*, 139 S. Ct. 2779 (2019) (nationwide injunction was appropriate because "[s]uch relief is commonplace in APA cases, promotes uniformity in immigration enforcement, and is necessary to provide the plaintiffs here with complete redress").

Furthermore, as the district court recognized, the concerns that Appellants raise regarding the interests of the judicial system "are mitigated in this case." JA271; *see also* Br. 39–40. Five district courts already have considered the issues

[17] Appellants suggest that the Court should not rely on *IRAP* because the opinion was vacated on other grounds. Br. 41. But *VSHL* also was later recognized to have been overruled on the merits. *See The Real Truth*, 681 F.3d at 550 n.2. In neither case was the discussion of the appropriateness of nationwide relief specifically overruled.

now before this Court, and those decisions currently are on appeal before the Second, Seventh, and Ninth Circuits, in addition to this Court. *See* Br. 3 n.1 (citing cases). Therefore, unlike in some cases, "a nationwide injunction here will not thwart the development of this legal issue or deprive the Supreme Court of the benefit of decisions from several courts of appeals." JA271.

In addition to enjoining the Rule nationwide, the district court stayed the Rule's effective date pursuant to 5 U.S.C. § 705. Because the standard for staying a rule under the APA is the same as that for a preliminary injunction, the district court's stay of the Rule's effective date likewise should be affirmed.

CONCLUSION

For the foregoing reasons, the Court should affirm the district court's grant of a nationwide preliminary injunction.

Dated: January 13, 2020

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This motion complies with the type-volume limit of Rule 32(a)(7)(B)(of the Federal Rules of Appellate Procedure because it contains 12,985 words. In addition, this motion complies with the typeface and type-style requirements of Rule 32(a)(5)–(6) of the Federal Rules of Appellate Procedure because it was prepared using Microsoft Word 2016 in Times New Roman 14-point font, a proportionally spaced typeface.

/s/ Jonathan L. Backer
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CERTIFICATE OF SERVICE

I hereby certify that on January 13, 2020, I electronically filed the foregoing 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.

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