No. 18A-_____

IN THE SUPREME COURT OF THE UNITED STATES

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL.,
APPLICANTS

v.

EAST BAY SANCTUARY COVENANT, ET AL.

APPLICATION FOR A STAY PENDING APPEAL
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT AND PENDING
FURTHER PROCEEDINGS IN THIS COURT

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PARTIES TO THE PROCEEDING

The applicants (defendants-appellants below) are Donald J. Trump, in his official capacity as President of the United States; Matthew G. Whitaker, in his official capacity as Acting Attorney General; Kirstjen M. Nielsen, in her official capacity as Secretary of the U.S. Department of Homeland Security; James McHenry, in his official capacity as Director of the Executive Office for Immigration Review; Lee Francis Cissna, in his official capacity as Director of U.S. Citizenship and Immigration Services; Kevin K. McAleenan, in his official capacity as Commissioner of U.S. Customs and Border Protection; Ronald D. Vitiello, in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement; U.S. Department of Justice; U.S. Department of Homeland Security; the Executive Office for Immigration Review; U.S. Citizenship and Immigration Services; U.S. Customs and Border Protection; and U.S. Immigration and Customs Enforcement.

The respondents (plaintiffs-appellees below) are East Bay Sanctuary Covenant; Al Otro Lado; Innovation Law Lab; and Central American Resource Center.

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Pursuant to this Court's Rule 23 and the All Writs Act, 28 U.S.C. 1651, the Solicitor General, on behalf of applicants President Donald J. Trump et al., respectfully applies for a stay of the injunction issued by the United States District Court for the Northern District of California, pending the consideration and disposition of the government's appeal from that injunction to the United States Court of Appeals for the Ninth Circuit and, if necessary, pending the filing and disposition of a petition for a writ of certiorari and any further proceedings in this Court.

The United States has experienced a surge in the number of aliens who enter the country unlawfully from Mexico and, if apprehended, claim asylum and remain in the country while the claim

is adjudicated, with little prospect of actually being granted that discretionary relief. The President, finding that this development encourages dangerous and illegal border crossings and undermines the integrity of the Nation's borders, determined that a temporary suspension of entry by aliens who fail to present themselves for inspection at a port of entry along the southern border is in the Nation's interest. See 8 U.S.C. 1182(f) and 1185(a)(1). Before the President took that action, the Attorney General and the Secretary of the Department of Homeland Security (Secretary), exercising their express discretionary authority to establish "additional limitations and conditions, consistent with this section, under which an alien shall be ineligible for asylum," 8 U.S.C. 1158(b)(2)(C), and to provide for other conditions and limitations on asylum applications, 8 U.S.C. 1158(d)(5)(B), issued an interim final rule rendering ineligible for asylum any alien who enters the country in contravention of a proclamation limiting or suspending entry at the southern border. 83 Fed. Reg. 55,934 (Nov. 9, 2018) (App., infra, 117a-136a).

Taken together, these measures are designed to channel asylum seekers to ports of entry, where their claims can be processed in an orderly manner; deter unlawful and dangerous border crossings; and reduce the backlog of meritless asylum claims. The measures will also assist the President in sensitive and ongoing diplomatic

negotiations with Mexico and the Northern Triangle countries of El Salvador, Guatemala, and Honduras.

Respondents -- four organizations that provide legal and social services to aliens -- sued to enjoin the rule the day it was issued. No respondent is actually subject to the rule. Yet the district court granted their request and issued a nationwide injunction barring enforcement of the rule as to any persons anywhere. App., infra, 80a-116a. Applicants appealed to the Ninth Circuit and sought a stay of the injunction pending appeal. The district court (id. at 71a-79a) and a divided panel of the court of appeals (id. at 1a-70a) denied a stay.

The nationwide injunction is deeply flawed and should be stayed pending appeal and, if necessary, further proceedings in this Court. All of the relevant factors support a stay here.

First, if the Ninth Circuit upholds the injunction, there is a reasonable probability that this Court will grant certiorari. The nationwide injunction prohibits the Executive Branch from implementing an interim final rule adopted to address an ongoing crisis at the southern border, with significant implications for ongoing diplomatic negotiations and foreign relations.

Second, there is more than a fair prospect that the Court will vacate the injunction, both because respondents lack standing and because their claims under the Administrative Procedure Act (APA), 5 U.S.C. 551 et seq., are meritless. Respondents lack

Article III standing because they are not aliens seeking to challenge the rule directly, but advocacy groups -- essentially, lawyers represented by other lawyers -- that claim injury based on their purported need to devote resources to adapt to the new policy and speculation about how the rule will affect their funding. In any event, review of respondents' claims is precluded by the Immigration and Nationality Act (INA), 8 U.S.C. 1101 et seq., and respondents' asserted interests fall outside the zone of interests protected by the asylum statute.

Even if respondents could overcome those hurdles, their APA claims would fail. The gravamen of respondents' complaint is that the rule makes aliens ineligible to be granted asylum if they enter unlawfully between ports of entry, which respondents contend is inconsistent with a provision in the asylum statute stating that an alien "who arrives in the United States []whether or not at a designated port of arrival * * * may apply for asylum." 8 U.S.C. 1158(a)(1) (emphases added). But that provision speaks only to whether an alien "may apply for asylum." The statutory text and structure make clear that some aliens who are eligible to apply for asylum are nonetheless categorically ineligible to be granted it, and the statute authorizes the Attorney General and the Secretary to adopt further eligibility bars. Nothing in the statute prevents them from exercising their discretion to deny asylum to an alien who has entered the country unlawfully or to

adopt rules to do so on a categorical basis. A fortiori, they may adopt such a bar based on an alien's entering the United States in contravention of a Presidential proclamation aimed at addressing an ongoing crisis. The rule was also properly issued as an interim final rule under the good-cause and foreign-affairs exceptions to the APA's notice-and-comment provisions.

Third, the balance of equities favors a stay. Enjoining the rule will continue to cause irreparable harm to the government and the public. Respondents, by contrast, have not demonstrated any irreparable harm to themselves or to any actual clients. At a minimum, the nationwide injunction should be stayed to the extent that it goes beyond remedying the alleged injury to any specific aliens respondents identify as actual clients in the United States.

STATEMENT

1. a. Asylum is a discretionary benefit to which no alien is ever entitled. See INS v. Cardoza-Fonseca, 480 U.S. 421, 444 (1987). By contrast, withholding of removal, 8 U.S.C. 1231(b)(3), and protection under the regulations implementing U.S. obligations under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 8 C.F.R. 1208.16-1208.18, are forms of mandatory protection that ensure that aliens will not be removed to a country where they are likely to be persecuted or tortured. See Moncrieffe v. Holder, 569 U.S. 184, 187 n.1 (2013).

Since the Refugee Act of 1980 (Refugee Act), Pub. L. No. 96-212, 94 Stat. 102, 8 U.S.C. 1158 has governed asylum. As originally enacted, Section 1158(a) directed the Attorney General to establish "a procedure for an alien physically present in the United States or at a land border or port of entry, irrespective of such alien's status, to apply for asylum, and the alien may be granted asylum in the discretion of the Attorney General if the Attorney General determines that such alien is a refugee." Refugee Act § 201(b), 94 Stat. 105; see 8 U.S.C. 1101(a)(42) (defining a "refugee").

In the exercise of that express grant of discretion, the Attorney General established several categorical bars to granting asylum to aliens who applied for it -- prohibiting, for example, any alien who "constitutes a danger to the United States" from being granted asylum even if the alien qualifies as a refugee. 45 Fed. Reg. 37,392, 37,392 (June 2, 1980); see 55 Fed. Reg. 30,674, 30,683 (July 27, 1990) ("[m]andatory denials") (emphasis omitted). In 1990, Congress amended the statute to add a similar mandatory bar forbidding any alien convicted of an aggravated felony to "apply for or be granted asylum." Immigration Act of 1990, Pub. L. No. 101-649, § 515(a)(1), 104 Stat. 5053.

b. In the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, § 604, 110 Stat. 3009-690, Congress rewrote the asylum statute while

preserving the Attorney General's discretion in granting asylum and his authority to establish eligibility bars. As amended, Section 1158(a), entitled "Authority to apply for asylum," provides that "[a]ny alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival * * *), irrespective of such alien's status, may apply for asylum in accordance with this section or, where applicable, [8 U.S.C. 1225(b)]." 8 U.S.C. 1158(a)(1). The statute then sets forth several categories of aliens who generally may not apply for asylum, such as aliens who fail to apply within one year of arriving in the United States. 8 U.S.C. 1158(a)(2)(B).

Section 1158(b), entitled "Conditions for granting asylum," provides that "[t]he Secretary of Homeland Security or the Attorney General may grant asylum to an alien" who is a refugee, 8 U.S.C. 1158(b)(1)(A) (emphasis added), thus confirming the discretionary nature of asylum. Section 1158(b) then contains several categorical bars to granting asylum -- prohibitions that are distinct from the limitations on who may apply for asylum -- that largely reflect the bars the Attorney General had established under the Refugee Act. For example, "[p]aragraph (1)" of Section 1158(b), which confers the discretion to grant asylum, "shall not apply to an alien if the Attorney General determines" that the alien "participated in the persecution of any person on account of race, religion, nationality, membership in a particular social

group, or political opinion." 8 U.S.C. 1158(b)(2)(A)(i). The statute establishes six eligibility bars in total, 8 U.S.C. 1158(b)(2)(A), and authorizes the Attorney General to adopt more: "The Attorney General may by regulation establish additional limitations and conditions, consistent with this section, under which an alien shall be ineligible for asylum under paragraph (1)." 8 U.S.C. 1158(b)(2)(C). The statute also authorizes the Attorney General to "provide by regulation for any other conditions or limitations on the consideration of an application for asylum not inconsistent with this chapter." 8 U.S.C. 1158(d)(5)(B).[1]

c. IIRIRA also established streamlined procedures for removing certain inadmissible aliens. IIRIRA § 302, 110 Stat. 3009-579. As relevant here, those expedited removal procedures apply to aliens who are apprehended within 100 miles of the border and within 14 days of entering the United States without valid entry documents (or with fraudulent documents) and without having been admitted or paroled. 8 U.S.C. 1225(b)(1)(A)(i) and (iii); see 8 U.S.C. 1182(a)(6)(C) and (7); 69 Fed. Reg. 48,877, 48,880 (Aug. 11, 2004); Jennings v. Rodriguez, 138 S. Ct. 830, 837 (2018). An alien in expedited removal proceedings shall be "removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum under [8 U.S.C. 1158] or a fear of persecution." 8 U.S.C. 1225(b)(1)(A)(i).

[1] The Attorney General now shares rulemaking authority with the Secretary. See 6 U.S.C. 552(d); 8 U.S.C. 1103(a)(1).

If an alien in expedited removal proceedings wishes to seek asylum, the alien's claim is screened by an asylum officer. The officer interviews the alien to determine whether the alien has a "credible fear of persecution," which is defined to mean "a significant possibility * * * that the alien could establish eligibility for asylum." 8 U.S.C. 1225(b)(1)(B)(v). An adverse finding is subject to review by an immigration judge (IJ). 8 U.S.C. 1225(b)(1)(B)(iii)(III). If the alien fails to meet that standard, the alien is ordered removed from the United States without further review. 8 U.S.C. 1225(b)(1)(B)(iii)(I) and (C); see 8 U.S.C. 1252(a)(2)(A)(iii) and (e)(2). If the alien establishes a credible fear, the alien is placed in regular removal proceedings under 8 U.S.C. 1229a, where the alien may apply for asylum. 8 C.F.R. 208.30(f), 1003.42(f).

d. A different, higher screening standard applies in other circumstances. For example, aliens who unlawfully reenter the United States following removal under a final order of removal are subject to reinstatement of the prior removal order under 8 U.S.C. 1231(a)(5). Such aliens may not apply for and are ineligible to receive various forms of discretionary relief, including asylum. See 83 Fed. Reg. at 55,938-55,939. They nevertheless may apply for mandatory withholding of removal or CAT protection, but only if they first establish a "reasonable fear" of persecution or torture. 8 C.F.R. 208.31(b). To establish a "reasonable fear,"

the alien must show "a reasonable possibility" of persecution or torture in the country of removal. 8 C.F.R. 208.31(c).[2]

2. This case arises from concerted actions taken by the President, the Attorney General, and the Secretary to address an ongoing crisis at the southern border: a rulemaking and a related Presidential proclamation.

The Attorney General and the Secretary explained in the rule's preamble that there is an "urgent situation at the southern border," where there "has been a significant increase in the number and percentage of aliens who seek admission or unlawfully enter * * * and then assert an intent to apply for asylum." 83 Fed. Reg. at 55,944. Asylum claims in expedited removal proceedings have increased by a staggering 2000% since 2008, id. at 55,945, causing a cascading series of backlogs and delays. For a variety of reasons, aliens who assert a credible fear and who are placed into ordinary removal proceedings are often released into the United States, where a significant portion fail to appear for their removal proceedings or do not file an asylum application. Id. at

[2] The higher "reasonable fear" screening standard reflects the higher statutory standard an alien must meet to qualify for these protections. See 83 Fed. Reg. at 55,942. The United States makes those protections available to comply with its international obligations. See id. at 55,939; see also Cardoza-Fonseca, 480 U.S. at 440-441; R-S-C v. Sessions, 869 F.3d 1176, 1188 n.11 (10th Cir. 2017), cert. denied, 138 S. Ct. 2602 (2018); Cazun v. Attorney Gen., 856 F.3d 249, 257 & n.16 (3d Cir. 2017), cert. denied, 138 S. Ct. 2648 (2018). Asylum, by contrast, is a discretionary benefit that is not required by any treaty.

55,945-55,946. The large majority of claims that began with a credible-fear referral ultimately lack merit. See id. at 55,946 (of the 34,158 cases completed in 2018, 71% resulted in a removal order, and asylum was granted in only 17%). Those problems are acute for the recent surge in aliens from the Northern Triangle countries of El Salvador, Guatemala, and Honduras. See id. at 55,945-55,946 (of cases completed in 2018 involving aliens from Northern Triangle countries who passed the credible-fear screening process, the alien applied for asylum in only 54% of cases, the alien did not appear in 38% of cases, and only 9% received asylum).

To address those problems, the Attorney General and the Secretary issued a joint interim final rule on November 9, 2018, rendering ineligible for asylum any alien who enters the United States in contravention of a Presidential proclamation that, pursuant to 8 U.S.C. 1182(f) and 1185(a), limits or suspends the entry of aliens into the United States through the southern border (unless the proclamation expressly does not affect eligibility for asylum). 83 Fed. Reg. at 55,952. Later that same day, the President issued a proclamation suspending "[t]he entry of any alien into the United States across the international boundary between the United States and Mexico," except at a port of entry. Proclamation No. 9822, 83 Fed. Reg. 57,661, 57,663 (Nov. 9, 2018) (Proclamation) (§§ 1, 2(a)); see App., infra, 137a-140a. The Proclamation will last for 90 days or until an agreement with

Mexico takes effect permitting the removal of non-Mexican foreign nationals to Mexico under 8 U.S.C. 1158(a)(2)(A), whichever is earlier. Proclamation § 1.

The President determined that "[t]he continuing and threatened mass migration of aliens with no basis for admission into the United States through our southern border * * * undermines the integrity of our borders." Proclamation pmbl. In particular, unlawful entry between ports of entry "puts lives of both law enforcement and aliens at risk" and drains "tremendous resources." Ibid. And the "massive increase" in asylum claims by aliens who enter illegally and are subject to expedited removal has overwhelmed the asylum system, encouraging baseless claims and fueling the illegal-entry problem. Ibid. The President also explained that the temporary suspension of entry would channel legitimate asylum seekers to ports of entry for orderly processing and would "facilitate ongoing negotiations with Mexico and other countries" regarding "unlawful mass migration." Ibid.

Taken together, the rule and the Proclamation provide that aliens who enter the country illegally between southern ports of entry during the 90 days covered by the Proclamation are categorically ineligible for asylum. Instead, those individuals must properly present themselves at ports of entry, in accordance with U.S. law, if they wish to be eligible to be granted asylum. The rule also amends existing expedited removal procedures to

require asylum officers to determine whether an alien is subject to the proclamation-based eligibility bar and, if so, to "enter a negative credible fear determination" (since the alien cannot demonstrate a significant possibility of being eligible for asylum, see 8 U.S.C. 1225(b)(1)(B)(v)). 83 Fed. Reg. at 55,952. The rule provides, however, that if the alien "establishes a reasonable fear of persecution or torture" -- the screening standard used in other contexts where an alien is ineligible for asylum but can seek withholding of removal or CAT protection, see pp. 9-10, supra -- the alien will be screened into ordinary removal proceedings under 8 U.S.C. 1229a for "full consideration" of an application for withholding of removal or CAT protection. 83 Fed. Reg. at 55,952. The Proclamation likewise confirms that the suspension of entry between ports of entry does not bar any alien in the United States from being considered for withholding of removal or CAT protection. Proclamation § 2(c).

To issue the rule, the Attorney General and Secretary invoked their authority to establish "additional limitations * * * under which an alien shall be ineligible for asylum," 8 U.S.C. 1158(b)(2)(C), and to impose "conditions or limitations" on asylum applications, 8 U.S.C. 1158(d)(5)(B). 83 Fed. Reg. at 55,940. The new eligibility bar covers only aliens who enter in contravention of a Presidential proclamation suspending entry at the southern border -- who, by definition, "have engaged in actions

that undermine a particularized determination in a proclamation that the President judged as being required by the national interest." Ibid. By rendering those aliens ineligible for asylum, the rule, with the Proclamation, channels asylum seekers to ports of entry, discourages illegal border crossings, facilitates ongoing diplomatic negotiations with Mexico and other countries, and reduces the backlog of meritless claims so that asylum can be expeditiously conferred on those who deserve it. See id. at 55,935-55,936.

The Attorney General and the Secretary issued the rule as an interim final rule, effective immediately under the APA's good-cause and foreign-affairs exceptions, 5 U.S.C. 553(a)(1), (b)(B) and (d)(3). 83 Fed. Reg. at 55,950-55,951. As with similar prior rulemakings, the officials determined that a pre-promulgation notice period or a delay in the effective date "could lead to an increase in migration to the southern border" as aliens attempted to enter before the rule takes effect. Id. at 55,950.

3. On November 9, 2018 -- the day the Proclamation and rule were issued -- respondents filed this suit in the District Court for the Northern District of California. Respondents are four organizations that provide legal and social services to immigrants and refugees. See Compl. ¶¶ 7-14. Respondents are not themselves subject to the rule, but they allege that the rule and Proclamation will "frustrate [their] mission," Compl. ¶ 83, and adversely affect

their funding by limiting their opportunities to file asylum claims for clients, see Compl. ¶¶ 82, 84-85, 87, 89-91, 97-99.

On November 19, 2018, the district court granted a nationwide injunction against enforcement of the rule. App., infra, 115a. In relevant part, the court determined that respondents had Article III standing, in their own right and on behalf of third-party potential asylum seekers, and that they alleged claims within the zone of interests protected by the INA. Id. at 90a-95a.

The district court also determined that respondents were likely to succeed on their claim that the rule is "not in accordance with law," 5 U.S.C. 706(2)(A). App., infra, 102a. The court recognized that the Attorney General "may deny eligibility to aliens authorized to apply under [Section] 1158(a)(1), whether through categorical limitations adopted pursuant to [Section] 1158(b)(2)(C) or by the exercise of discretion in individual cases." Id. at 100a. The court concluded, however, that the rule is inconsistent with what the court perceived to be Congress's judgment that an alien's "manner of entry should not be the basis for a categorical bar." Ibid. The court also expressed "serious questions" about whether the APA's foreign-affairs and good-cause exceptions applied to the rule. Id. at 104a-108a.

The district court styled the injunction as a "temporary restraining order," notwithstanding that there had been adversarial briefing and argument and that the injunction would

remain in effect until a hearing on December 19, 2018, or until "further order of th[e] Court." App, infra, 115a.

On November 27, 2018, applicants filed a notice of appeal and requested that the district court stay its injunction pending appeal. The district court declined. App., infra, 22a, 71a-79a.

4. On December 1, 2018, applicants filed an emergency motion in the Ninth Circuit for a stay of the injunction pending appeal and for an administrative stay. See App., infra, 22a. The court of appeals denied an administrative stay that day and, on December 7, 2018, denied a stay pending appeal. Id. at 1a-65a. The panel unanimously concluded that the injunction was immediately appealable, see id. at 23a-24a; id. at 66a (Leavy, J., dissenting in part), but divided on the merits of the stay request.

a. The court of appeals rejected the district court's theory that respondents had third-party standing to challenge the rule on behalf of their clients in Mexico, noting that those aliens had no right to enter the United States illegally and that any putative difficulty they faced in asserting their own interests was not traceable to the rule. App., infra, 27a-28a. The court of appeals nonetheless found that respondents had "organizational standing." Id. at 28a. The court based that conclusion on respondents' allegations that the rule "has frustrated their mission of providing legal aid 'to affirmative asylum applicants'" and "has required * * * a diversion of [their] resources." Id.

at 31a-32a.[3] The court also relied on respondents' allegation that the rule "will cause them to lose a substantial amount of funding." Id. at 33a-34a. The court further determined that respondents' claims fell within the "zone of interests" protected by the statute, primarily because it provides for aliens to receive notice of the availability of pro bono legal services. Id. at 36a-38a.

On the merits, the panel majority determined that the government had not shown that it was likely to succeed on appeal. App., infra, 41a. The majority viewed the rule as inconsistent with 8 U.S.C. 1158(a)(1) because it operates to make an alien's manner of entry the basis for asylum ineligibility. App., infra, 44a-45a. The majority also described the rule as "likely arbitrary and capricious" because an alien's manner of entry "has nothing to do with whether the alien is a refugee." Id. at 46a-47a.

As to respondents' procedural claims, the majority viewed the "connection between negotiations with Mexico and the immediate implementation of the [r]ule" as not sufficiently "apparent on this record" to meet the foreign-affairs exception to the APA's notice-and-comment provision. App., infra, 57a. It also found the good-cause exception inapplicable because, in its view, any incentive for aliens to surge across the border before the rule takes effect would be created by the rule only "combined with a

[3] An "affirmative" asylum application is one submitted by an alien outside of removal proceedings (as distinct from a "defensive" application, made within removal proceedings).

presidential proclamation." Id. at 59a. Finally, the majority declined to narrow the injunction. Id. at 63a-65a.

b. Judge Leavy would have granted a stay. App., infra, 66a-70a (Leavy, J., dissenting in part). He faulted the majority for "conflating" an eligibility bar with a "bar to application for asylum." Id. at 66a. Instead, he "would stick to the words of the statute," id. at 67a, which already contains categorical bars for some aliens entitled to apply for asylum and which thus demonstrates "that there is nothing inconsistent in allowing an application for asylum and categorically denying any possibility of being granted asylum on that application," id. at 68a. For example, he noted, "Congress has instructed that felons and terrorists have a right to apply for asylum, notwithstanding a categorical denial of eligibility." Ibid. He concluded that "[n]othing in the structure or plain words of the statute * * * precludes a regulation categorically denying eligibility for asylum on the basis of manner of entry." Ibid.

ARGUMENT

Under this Court's Rule 23 and the All Writs Act, 28 U.S.C. 1651, a single Justice or the Court may stay a district-court order pending appeal to a court of appeals. See, e.g., Trump v. International Refugee Assistance Project, 137 S. Ct. 2080 (2017) (IRAP) (per curiam); West Virginia v. EPA, 136 S. Ct. 1000 (2016). "In considering stay applications on matters pending before the

Court of Appeals, a Circuit Justice" considers three questions: first, the Justice must "try to predict whether four Justices would vote to grant certiorari" if the court below ultimately rules against the applicant; second, the Justice must "try to predict whether the Court would then set the order aside"; and third, the Justice must "balance the so-called 'stay equities,'" San Diegans for the Mt. Soledad Nat'l War Mem'l v. Paulson, 548 U.S. 1301, 1302 (2006) (Kennedy, J., in chambers) (citation omitted), by determining "whether the injury asserted by the applicant outweighs the harm to other parties or to the public," Lucas v. Townsend, 486 U.S. 1301, 1304 (1988) (Kennedy, J., in chambers); see Hilton v. Braunskill, 481 U.S. 770, 776 (1987) (stay factors).

Here, all of those factors counsel strongly in favor of a stay. At a minimum, the nationwide injunction is vastly overbroad and should be stayed to the extent it goes beyond remedying the alleged injuries of specific aliens respondents identify as actual clients in the United States.

1. If the Ninth Circuit affirms the injunction, this Court is likely to grant review. The injunction prevents the implementation of an important national policy designed, "[i]n combination with a presidential proclamation directed at the crisis on the southern border," to re-establish sovereign control over the borders of the United States and to "ameliorate the pressures on the present system" for screening asylum claims.

83 Fed. Reg. at 55,947. Whether the rule is lawful is a question of substantial importance, especially in light of the recent surge in illegal entries. See id. at 55,935 (explaining that U.S. officials encounter "approximately 2,000 inadmissible aliens at the southern border" every day); id. at 55,945 (noting that 41% of aliens in expedited removal, including 61% of aliens from Northern Triangle countries, are referred for credible-fear screening).

Moreover, the rule is designed, in conjunction with a Presidential proclamation, to channel asylum seekers to ports of entry and thus reduce dangerous and illegal border crossings between ports of entry -- crossings that result in hundreds of deaths each year and that consume substantial federal resources. See 83 Fed. Reg. at 55,950; U.S. Border Patrol, Southwest Border Deaths by Fiscal Year (2017).[4] The lawfulness of the rule thus has significant implications for the health and safety of both aliens and law enforcement officers at the southern border.

Finally, the rule is part of a coordinated and ongoing diplomatic effort regarding the recent surge in migration from the Northern Triangle countries. The rule, with the Proclamation, creates a greater incentive for asylum seekers to present themselves at ports of entry along the southern border for orderly processing. The United States is engaged in sensitive negotiations

[4] Available at https://www.cbp.gov/sites/default/files/assets/documents/2017-Dec/BP%20Southwest%20Border%20Sector%20Deaths%20FY1998%20-%20FY2017.pdf (last visited Dec. 11, 2018).

about those matters, as the Proclamation and rule make clear. Proclamation pmbl. (noting the "ongoing negotiations" to "prevent unlawful mass migration"); 83 Fed. Reg. at 55,951 (similar).

Under these circumstances, this Court's review of a court of appeals decision affirming the injunction would plainly be warranted. Indeed, this Court often grants certiorari to address interference with Executive Branch conduct that is of "importance * * * to national security concerns," Department of the Navy v. Egan, 484 U.S. 518, 520 (1988), or with "federal power" over "the law of immigration and alien status," Arizona v. United States, 567 U.S. 387, 394 (2012). The district court's sweeping national injunction causes both types of interference.

2. A stay is also warranted because, if the Ninth Circuit affirms and this Court grants review, there is at least a "fair prospect" that this Court will vacate the injunction in whole or in part -- on standing or other threshold grounds or on the merits. Lucas, 486 U.S. at 1304 (Kennedy, J., in chambers). Moreover, as explained at pp. 38-40, infra, this Court at the very least would likely narrow the injunction because respondents have no basis to obtain global relief against the rule.

a. The court of appeals concluded that respondents have "organizational standing" under Article III (App., infra, 28a) and a right of action under the APA (id. at 38a-39a). This Court is likely to reject both conclusions.

i. To satisfy the "'irreducible constitutional minimum' of standing" under Article III, the party invoking federal jurisdiction must demonstrate that it has "(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." Spokeo, Inc. v. Robins, 136 S. Ct. 1540, 1547 (2016) (quoting Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992)). "Foremost among these requirements is injury in fact -- a plaintiff's pleading and proof that he has suffered the 'invasion of a legally protected interest' that is 'concrete and particularized[.]'" Gill v. Whitford, 138 S. Ct. 1916, 1929 (2018) (quoting Lujan, 504 U.S. at 560). "[S]peculation does not suffice." Summers v. Earth Island Inst., 555 U.S. 488, 499 (2009). Where, as here, an organization sues on its own behalf, it must establish standing in the same manner as an individual. See Warth v. Seldin, 422 U.S. 490, 511 (1975).

Respondents cannot meet those standards; they do not have any "legally protected interest," Gill, 138 S. Ct. at 1929 (citation omitted), in whether non-parties who enter the country unlawfully may be granted the discretionary benefit of asylum. Respondents allege that they will be injured by the rule because "it impairs their funding, frustrates their missions, and forces them to divert resources to address the [r]ule's impacts." App., infra, 87a. Respondents' allegations, however, are wholly speculative.

Respondents allege that they will lose funding because they will handle fewer asylum claims or will be required to pursue supposedly more expensive forms of relief. Compl. ¶¶ 81-82, 91, 98; see App., infra, 34a. But the organizations remain free to represent the thousands of aliens who properly present themselves at ports of entry along the southern border to seek asylum. Respondents also remain free to represent any aliens who enter illegally.[5] The rule does not preclude those aliens from applying for withholding of removal or CAT protection or, indeed, from applying for asylum, nor does it prevent respondents from representing aliens in proceedings for withholding of removal or CAT protection. In any event, respondents have no legally protected interest in preventing the federal government from taking actions that might affect their funding from other sources.

Respondents cannot manufacture Article III standing by redirecting their efforts or spending additional resources in response to the rule. Respondents have no legally protected interest in not redirecting their efforts or devoting their own resources to advocating for their clients. See, e.g., National Taxpayers Union, Inc. v. United States, 68 F.3d 1428, 1434 (D.C.

[5] For example, East Bay Sanctuary has only "around 35 clients who have entered without inspection and [who] expect to file for affirmative asylum in the upcoming months." D. Ct. Doc. 8-7, at 2-3 (Nov. 9, 2018). By comparison, the "current backlog of asylum cases exceeds 200,000" (App., infra, 2a), and more than 200,000 inadmissible aliens present themselves for inspection at ports of entry annually (even without the additional incentive to do so that the rule will create). 83 Fed. Reg. at 55,944.

Cir. 1995) ("The mere fact that an organization redirects some of its resources to litigation and legal counseling in response to actions or inactions of another party is insufficient to impart standing upon the organization.") (quoting Association for Retarded Citizens of Dallas v. Dallas Cnty. Mental Health & Mental Retardation Ctr. Bd. of Trs., 19 F.3d 241, 244 (5th Cir. 1994)). And any such injury would not be caused by the rule but rather by respondents' own choices in response to the rule. Such "self-inflicted injuries" would not be fairly traceable to the rule. Clapper v. Amnesty Int'l USA, 568 U.S. 398, 418 (2013).

The court of appeals' contrary view (App., infra, 31a-33a) rested on a misapplication of this Court's decision in Havens Realty Corp. v. Coleman, 455 U.S. 363 (1982). Havens held that an organization whose mission was to promote equal-opportunity housing had standing to seek damages caused by an apartment complex's racially discriminatory "steering" practices. Id. at 379. The court of appeals understood Havens to permit standing whenever a challenged policy "frustrates [an] organization's goals and requires the organization to expend resources" in ways it otherwise would not have. App., infra, 30a (citation and internal quotation marks omitted). But the organization in Havens alleged far more than just harm to its mission and a diversion of its resources. It asserted that the defendant's violations of a statutory requirement to provide truthful information to

prospective tenants, 455 U.S. at 373, impaired the specific counseling and referral services the organization provided to home-seekers, id. at 379. That "concrete and demonstrable injury to the organization's activities," with a "consequent drain on [its] resources," supported standing. Ibid.; cf. PETA v. United States Dep't of Agric., 797 F.3d 1087, 1100-1101 (D.C. Cir. 2015) (Millett, J., dubitante) (criticizing expansive readings of Havens and noting that the case involved "direct, concrete, and immediate injury" to the organization's services).

Respondents allege nothing comparable here. The core service they provide is legal representation, and the rule does not interfere with that service. The supposed harm to their mission of assisting asylum applicants may be "a setback to [their] abstract social interests," Havens, 455 U.S. at 379, but it is not a cognizable injury for Article III standing. A contrary rule would afford a legal services organization standing to sue whenever it diverts its own resources in response to a policy or rulemaking it views as inconsistent with its mission. Its logic would even allow a criminal defense firm or organization to challenge any change in the law that might affect the organization's clients, as long as the organization diverts resources to respond to it. That is not the proper understanding of Havens.

ii. The court of appeals also erred in concluding (App., infra, 36a) that respondents' claims are cognizable under the APA.

The INA itself specifies the manner and scope of judicial review in connection with expedited and regular removal proceedings, see 8 U.S.C. 1252, and such review may be sought only by the affected alien. That specification precludes review at the behest of third parties, including the respondent organizations. Block v. Community Nutrition Inst., 467 U.S. 340, 344-345, 349-351 (1984); see 5 U.S.C. 701(a)(1).

Furthermore, nothing in the asylum statute even arguably suggests that "nonprofit organizations that provide assistance to asylum seekers," Compl. ¶ 78, have any cognizable interests of their own in connection with an individual alien's eligibility for asylum. Section 1158 neither regulates respondents' conduct nor creates any benefits for which they are eligible. Thus, when confronted with a similar challenge brought by "organizations that provide legal help to immigrants," Justice O'Connor concluded that the relevant INA provisions were "clearly meant to protect the interests of undocumented aliens, not the interests of [such] organizations," and the fact that a "regulation may affect the way an organization allocates its resources * * * does not give standing to an entity which is not within the zone of interests the statute meant to protect." INS v. Legalization Assistance Project, 510 U.S. 1301, 1302, 1305 (1993) (O'Connor, J., in chambers); see Immigrant Assistance Project v. INS, 306 F.3d 842, 867 (9th Cir. 2002); Federation for Am. Immigration Reform, Inc.

v. Reno, 93 F.3d 897, 900-904 (D.C. Cir. 1996), cert. denied, 521 U.S. 1119 (1997).

That reasoning fully applies here. Respondents are not applying for asylum; they seek to help others do so. For these purposes, respondents are bystanders to the statutory scheme. The only reference to organizations in the asylum statute, 8 U.S.C. 1158(d)(4)(A), merely requires notice to the alien "of the privilege of being represented by counsel." The court of appeals mistakenly viewed that provision as arguably protecting the interests of legal services providers (App., infra, 38a), when it plainly protects only the interests of aliens themselves. Moreover, a nearby provision (which the court of appeals did not address) makes plain that this requirement creates no "substantive or procedural right." 8 U.S.C. 1158(d)(7). That "other provisions in the INA give institutions like [respondents] a role in helping immigrants navigate the immigration process" (App., infra, 38a) does not suggest that such organizations are proper plaintiffs to challenge asylum limitations or changes to the expedited-removal process -- the subjects of the challenged rule.

b. Even if respondents had standing and raised claims cognizable under the APA and INA, there is a significant likelihood that this Court would vacate the preliminary injunction on the merits.

i. The rule is a lawful exercise of the broad discretion conferred on the Attorney General and the Secretary over granting asylum, including their express authority under 8 U.S.C. 1158(b)(2)(C) and (d)(5)(B), to adopt categorical limitations and conditions on asylum eligibility and on the consideration of asylum applications. See 83 Fed. Reg. at 55,940. In the rule, the Attorney General and the Secretary reasonably determined, in the exercise of their discretion, that aliens who enter the country in contravention of a Presidential proclamation suspending entry between ports of entry at the southern border should not be granted the discretionary benefit of asylum.

The panel majority accepted respondents' contention that the rule is not consistent with Section 1158(a)(1), which states that any alien who arrives in the United States, "whether or not at a designated port of arrival," "may apply for asylum." 8 U.S.C. 1158(a)(1); see App., infra, 44a-45a. The majority recognized that the rule "technically applies to the decision of whether or not to grant asylum," but viewed the rule as the "equivalent of a bar to applying for asylum," in "contravention of a statute that forbids the Attorney General from laying such a bar on these grounds." App., infra, 45a. The majority erred in declining to grant a stay on that basis.

Even setting aside for the moment that the rule establishes an eligibility bar based on contravening a Presidential

proclamation, not merely manner of entry, respondents' theory is inconsistent with the text and structure of the statute -- as Judge Leavy recognized in dissent. App., infra, 67a-68a. Section 1158(a)(1) by its plain terms requires only that an alien be permitted to "apply" for asylum, regardless of the alien's manner of entry. It does not require that an alien be eligible to be granted asylum, regardless of the alien's manner of entry. Indeed, the Board of Immigration Appeals has long taken account of an alien's manner of entry in determining whether to grant asylum. See In re Pula, 19 I. & N. Dec. 467, 473 (B.I.A. 1987) (holding that "manner of entry * * * is a proper and relevant discretionary factor to consider in adjudicating asylum applications").

The panel majority viewed the difference between applying for and being eligible to receive asylum as "of no consequence" (App., infra, 45a), but the statute draws a clear distinction between the two. While the Refugee Act dealt with the two in a single subsection, IIRIRA broke the two into separate subsections. See p. 6, supra. Section 1158(a) governs who may apply for asylum and includes several categorical bars (e.g., an alien present in the country for more than one year may not apply). 8 U.S.C. 1158(a)(1) and (2)(B); see 8 U.S.C. 1231(a)(5), discussed at p. 9, supra. Section 1158(b), in turn, governs who is eligible to be granted asylum. Specifically, section 1158(b)(1)(A) provides that the Attorney General or the Secretary "may grant asylum to an alien

who has applied." Section 1158(b)(2) then specifies six categories of aliens to whom "[p]aragraph (1)" (i.e., the discretionary authority to grant asylum to an applicant) "shall not apply." Any alien falling within one of those categories may apply for asylum under Section 1158(a)(1) but is categorically ineligible to receive it under Section 1158(b). The text and structure of the statute thus show that "Congress has decided that the right to apply for asylum does not assure any alien that something other than a categorical denial of asylum is inevitable. * * * [T]here is nothing inconsistent in allowing an application for asylum and categorically denying any possibility of being granted asylum on that application." App., infra, 67a-68a (Leavy, J., dissenting in part). The rule merely adds an additional bar that operates the same way, as Congress expressly authorized.

Respondents' interpretation of the statute is also inconsistent with the very nature of asylum. No alien ever has a right to be granted asylum. The ultimate "decision whether asylum should be granted to an eligible alien is committed to the Attorney General's [and the Secretary's] discretion." INS v. Aguirre-Aguirre, 526 U.S. 415, 420 (1999). Respondents do not dispute that an alien's manner of entry is a permissible consideration in determining whether to exercise that discretion to grant asylum in individual cases. See Pula, supra. And if the Attorney General and the Secretary may take account of that factor in individual

cases, settled principles of administrative law dictate they may do so categorically as well. See Lopez v. Davis, 531 U.S. 230, 243-244 (2001) (rejecting the argument that the Bureau of Prisons was required to make "case-by-case assessments" of eligibility for sentence reductions and explaining that an agency "is not required continually to revisit 'issues that may be established fairly and efficiently in a single rulemaking'") (quoting Heckler v. Campbell, 461 U.S. 458, 467 (1983)); Fook Hong Mak v. INS, 435 F.2d 728, 730 (2d Cir. 1970) (Friendly, J.) (upholding the INS's authority to "determine[] certain conduct to be so inimical to the statutory scheme that all persons who have engaged in it shall be ineligible for favorable consideration"). Congress, in 8 U.S.C. 1158(b)(2)(C), clearly contemplated that the Attorney General would adopt categorical limitations on asylum eligibility, by authorizing such restrictions "by regulation."

The panel majority recognized that, under Pula, an alien's manner of entry is a "relevant discretionary factor" the agencies may consider, but it suggested that "as a matter of law" the manner of entry may not be the sole basis for denying asylum. App., infra, 47a-48a (citations omitted). Nothing in the statute requires that distinction. In deciding whether to grant a discretionary benefit allowing an alien to remain in this country legally, it is both rational and eminently sensible to give decisive weight to whether the alien has failed to respect this

Nation's laws. That policy judgment may not be compelled by the statute, but it is also not foreclosed by it. And if an alien's manner of entry is a permissible consideration, then the weight to give it is a discretionary policy judgment entrusted to the Attorney General and the Secretary, not the courts.[6]

ii. In any event, as already noted, the rule does not bar an alien from eligibility for asylum based on the manner of the alien's entry per se, but rather on whether the alien has contravened a Presidential proclamation limiting or suspending entry at the southern border. 83 Fed. Reg. 55,952; see pp. 12-13, supra. Neither respondents nor the district court identified any provision in Section 1158 or elsewhere suggesting that Congress precluded the Attorney General and the Secretary from establishing such an eligibility bar, resting on the President's determination to suspend entry during a particular time and at a particular place, to address an ongoing crisis amidst sensitive diplomatic negotiations aimed at addressing it. By contravening the Proclamation and then claiming asylum when apprehended, aliens contribute directly to the harms from illegal crossing the President sought to address, undermine his effort to channel aliens

[6] In Pula, the Board addressed the weight to be given to manner of entry on a case-by-case basis, in the absence of a regulation governing the subject.

to ports of entry for orderly processing, and hamper ongoing diplomatic efforts.[7]

iii. The panel majority further suggested that the rule violates U.S. treaty commitments. App., infra, 10a, 49a. That is incorrect. The United States has implemented its "non-refoulment" obligations under the relevant treaties by providing for withholding of removal, 8 U.S.C. 1231(b)(3)(A), and CAT protection, 8 C.F.R. 1208.16-1208.18. See INS v. Cardoza-Fonseca, 480 U.S. 421, 429 (1987); p. 10 n.2, supra. Asylum is a discretionary benefit that is not required by any treaty commitment. The majority also misread Article 31(1) of the United Nations Convention Relating to the Status of Refugees, done July 28, 1951, 19 U.S.T. 6275, 189 U.N.T.S. 174. That provision pertains only to "penalties" imposed on refugees "coming directly from a territory where" they face persecution (ibid.) -- and not, for example, aliens from the Northern Triangle countries entering the United States directly from Mexico. Moreover, a bar to being granted asylum is not a "penalty" under Article 31(1), see 83 Fed. Reg. at 55,939; Mejia v. Sessions, 866 F.3d 573, 588 (4th Cir. 2017), especially where the alien remains eligible for withholding of removal -- the mandatory relief the Convention requires.

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[7] The panel majority dismissed the Proclamation as "precatory" because it suspends entry that is already illegal. App., infra, 51a. But this Court has previously upheld a similar proclamation. See Sale v. Haitian Ctrs. Council, Inc., 509 U.S. 155, 187-188 (1993) (suspension of illegal high-seas migration).

iv. The panel majority stated that the rule "is likely arbitrary and capricious for a second reason" that respondents themselves did not raise and the district court did not address: it conditions an alien's eligibility for asylum on a criterion that, in most cases, "has nothing to do with whether the alien is a refugee from his homeland." App., infra, 47a. That reasoning is flatly contrary to the statute, which contains several ineligibility bars that likewise have "nothing to do" with whether the alien is a refugee because he faces the requisite well-founded fear of persecution to satisfy the refugee standard. See, e.g., 8 U.S.C. 1158(b)(2)(A)(ii) (rendering ineligible any alien who is "convicted by a final judgment of a particularly serious crime" and therefore "constitutes a danger to the community of the United States"). In any event, the rule, like the other categorical bars, is related to asylum: It governs which categories of aliens are eligible for a discretionary benefit and makes clear that individuals who violate certain proclamations are not eligible for such discretionary relief.

v. This Court is also likely to reject respondents' procedural arguments.

Good cause. The rule was properly issued as an interim final rule, without prior notice and opportunity to comment and effective immediately, under the good-cause exception. 5 U.S.C. 553(b)(B) and (d)(3); see 83 Fed. Reg. at 55,950. That exception applies

when "the very announcement of a proposed rule itself can be expected to precipitate activity by affected parties that would harm the public welfare." Mobil Oil Corp. v. Department of Energy, 728 F.2d 1477, 1492 (Temp. Emer. Ct. App. 1983), cert. denied, 467 U.S. 1255 (1984). It also applies when a delay "could result in serious harm" to the public. Jifry v. FAA, 370 F.3d 1174, 1179 (D.C. Cir. 2004) (citing Hawaii Helicopter Operators Ass'n v. FAA, 51 F.3d 212, 214 (9th Cir. 1995)), cert. denied, 543 U.S. 1146 (2005). Both rationales apply here. The rule's preamble explains that "immediate implementation of this rule is essential to avoid creating an incentive for aliens to seek to cross the border" before the rule takes effect. 83 Fed. Reg. at 55,950. The preamble also explains that the unlawful border crossings that the rule aims to deter are dangerous for both aliens and law enforcement officers, and that a delay would exacerbate those concerns. Ibid.

The panel majority concluded that the good-cause exception likely did not apply because the potential "surge" in dangerous border crossings would be triggered only by the rule "combined with a presidential proclamation." App., infra, 59a. But the rule was published on the same day as, and in anticipation of, the Proclamation, in close concert with action by the President -- as the panel majority otherwise recognized in evaluating their combined effect. See id. at 42a. And the Attorney General and the Secretary could have reasonably anticipated a surge in illegal

crossings even absent an impending proclamation, as aliens would have had the same incentive to rush to enter before the rule could take effect and be triggered at any time by a proclamation.

For its part, the district court questioned whether potential asylum seekers would be aware of a proposed rule change or would change their behavior in response to it. App., infra, 108a. But the Attorney General and the Secretary are in the best position to make such predictive judgments, and their judgments here were eminently reasonable (and consistent with past practice). Cf. Holder v. Humanitarian Law Project, 561 U.S. 1, 35 (2010) ("The Government, when seeking to prevent imminent harms in the context of international affairs and national security, is not required to conclusively link all the pieces in the puzzle before we grant weight to its empirical conclusion.").

Foreign affairs. The Attorney General and the Secretary were also independently justified in issuing the rule as an interim final rule because it involved a "foreign affairs function of the United States." 5 U.S.C. 553(a)(1); see 83 Fed. Reg. at 55,950. That exception covers agency actions "linked intimately with the Government's overall political agenda concerning relations with another country." American Ass'n of Exps. & Imps. v. United States, 751 F.2d 1239, 1249 (Fed. Cir. 1985). Here, as the preamble notes, the rule was issued as part of a broader diplomatic program involving "sensitive and ongoing negotiations with Mexico"

and other countries to stem the tide of unlawful mass migration at the southern border. 83 Fed. Reg. at 55,950-55,951.

The panel majority recognized "some merit" to that "theory," but asserted that the "connection between negotiations with Mexico and the immediate implementation" of the rule was not sufficiently apparent from the record. App., infra, 56a-57a. But the majority was in no position to second-guess the Executive Branch's determination that the rule would facilitate negotiations and support the President's foreign policy. The implications for potential negotiations are obvious and, in any event, the government cannot reasonably be expected to telegraph its negotiating strategy in a public document. Cf. Reno v. American-Arab Anti-Discrimination Comm., 525 U.S. 471, 490-491 (1999) (declining to require "the disclosure of foreign-policy objectives" for particular removal decisions).

3. The balance of harms also favors a stay. The nationwide injunction causes direct, irreparable injury to the interests of the government and the public -- which "merge" here, Nken v. Holder, 556 U.S. 418, 435 (2009). The injunction frustrates a coordinated effort by the President, the Attorney General, and the Secretary to re-establish sovereign control over the southern border, reduce illegal and dangerous border crossings, and conduct sensitive and ongoing diplomatic negotiations. The injunction thus inflicts "ongoing and concrete harm" to the federal

government's "law enforcement and public safety interests," Maryland v. King, 561 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers), and undermines foreign-policy judgments committed to the Executive Branch. See p. 12, supra. And the public always has a "wide * * * interest in effective measures to prevent the entry of illegal aliens" at the Nation's borders. United States v. Cortez, 449 U.S. 411, 421 n.4 (1981).

The panel majority discounted those harms in part because it concluded that the rule would not deter illegal entry any more than existing criminal penalties. App., infra, 61a-62a. But those penalties cut the other way: Any putative harm to aliens crossing between ports of entry should carry little weight in balancing the equities because their conduct is already unlawful. Moreover, if the injunction is vacated, aliens will continue to be eligible to apply for asylum at ports of entry and to seek withholding of removal or CAT protection even if subject to a proclamation-based asylum bar. No alien who has a reasonable fear of persecution or torture will be barred by the rule from seeking those protections. Conversely, respondents have failed to show that they themselves are "likely" to suffer irreparable harm. Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 22 (2008).

4. At a minimum, a stay should be granted because the injunction entered at the behest of respondents is unwarranted and vastly overbroad. See IRAP, 137 S. Ct. at 2088; United States

Dep't of Def. v. Meinhold, 510 U.S. 939, 939 (1993). Article III demands that the remedy sought "be limited to the inadequacy that produced the injury in fact that the plaintiff has established." Gill, 138 S. Ct. at 1931 (citation omitted). Bedrock rules of equity support the same requirement that injunctions be no broader than "necessary to provide complete relief to the plaintiff[]." Madsen v. Women's Health Ctr., Inc., 512 U.S. 753, 765 (1994) (citation omitted). This principle applies with even greater force to a preliminary injunction, which is an equitable tool designed merely to preserve the status quo during litigation. University of Tex. v. Camenisch, 451 U.S. 390, 395 (1981).

Here, at the behest of the respondent organizations, which are not even subject to the rule, the district court enjoined enforcement of the rule nationwide. That sweeping order violates the requirement that injunctive relief must be limited to redressing a plaintiff's own injuries. The district court had accepted the theory that respondents had third-party standing to challenge the rule on behalf of their clients, potential asylum seekers. App., infra, 94a-95a. The court of appeals correctly rejected that theory. Id. at 27a-28a. Yet it declined to stay any portion of the injunction -- even while acknowledging "growing uncertainty about the propriety of universal injunctions." Id. at 64a. The panel majority found this injunction no different than other global injunctions the Ninth Circuit has recently upheld.

But that is precisely the problem. The injunction is part of a troubling pattern of single judges dictating national policy -- a trend that is taking a growing "toll on the federal court system," Trump v. Hawaii, 138 S. Ct. 2392, 2425 (2018) (Thomas, J., concurring), and that, as a practical matter, now requires the government to prevail in every district-court challenge to a policy change before implementing it (whereas the challengers need only persuade one court to issue a nationwide injunction).

The nationwide injunction in this case is particularly unwarranted because it virtually guarantees that the harms the rule addresses will continue to occur during litigation. At a minimum, this Court should narrow the injunction to cover only specific aliens respondents identify as actual clients in the United States who would otherwise be subject to the rule.

CONCLUSION

The injunction should be stayed pending appeal and, if the Ninth Circuit affirms the injunction, pending the filing and disposition of a petition for a writ of certiorari and any further proceedings in this Court. At a minimum, the injunction should be stayed as to all persons other than specific aliens respondents identify as actual clients in the United States.

Respectfully submitted.

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