No. 19A-_____

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IN THE SUPREME COURT OF THE UNITED STATES

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UNITED STATES DEPARTMENT OF HOMELAND SECURITY, ET AL.,
APPLICANTS

v.

STATE OF NEW YORK, ET AL.

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UNITED STATES DEPARTMENT OF HOMELAND SECURITY, ET AL.,
APPLICANTS

v.

MAKE THE ROAD NEW YORK, ET AL.

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APPLICATION FOR A STAY OF THE INJUNCTIONS ISSUED BY
THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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## PARTIES TO THE PROCEEDING

Applicants (defendants-appellants below) are the United States Department of Homeland Security; Chad F. Wolf, in his official capacity as Acting Secretary of Homeland Security; the United States Citizenship and Immigration Services, an agency within the United States Department of Homeland Security; and Kenneth T. Cuccinelli II, in his official capacity as Senior Official Performing the Duties of the Director of the United States Citizenship and Immigration Services.*

Respondents (plaintiffs-appellees below) are the State of New York; the City of New York; the State of Connecticut; the State of Vermont; Make the Road New York; African Services Committee; Asian American Federation; Catholic Charities Community Services (Archdiocese of New York); and Catholic Legal Immigration Network, Inc.

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* The complaints in both cases named Kevin K. McAleenan, then the Acting Secretary of Homeland Security, as a defendant in his official capacity. Chad F. Wolf has since assumed the role of Acting Secretary, and has thus been automatically substituted as a party in place of former Acting Secretary McAleenan. See Fed. R. App. P. 43(c)(2); Fed. R. Civ. P. 25(d). Similarly, the complaints named Kenneth T. Cuccinelli II in his role as Acting Director of the United States Citizenship and Immigration Services. Mr. Cuccinelli is now serving as Senior Official Performing the Duties of the Director, and seeks relief in that capacity.

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Pursuant to Rule 23 of the Rules of this Court and the All Writs Act, 28 U.S.C. 1651, the Solicitor General, on behalf of applicants the United States Department of Homeland Security et al., respectfully applies for a stay of a pair of substantively identical preliminary injunctions issued on October 11, 2019, by the United States District Court for the Southern District of New York (App., infra, 66a-68a, 69a-71a), pending the consideration and disposition of the government's appeals from those injunctions to the United States Court of Appeals for the Second Circuit and, if the court of appeals affirms the injunctions, pending the filing

and disposition of a petition for a writ of certiorari and any further proceedings in this Court.

This application concerns a Department of Homeland Security (DHS) rule, promulgated through notice-and-comment rulemaking, interpreting a statutory provision stating that an alien is inadmissible if, "in the opinion of" the Secretary, the alien is "likely at any time to become a public charge." 8 U.S.C. 1182(a)(4)(A); see 84 Fed. Reg. 41,292 (Aug. 14, 2019) (Rule). Whereas a 1999 guidance document had interpreted "public charge" to mean an alien who was at a minimum "primarily dependent" on a limited set of cash benefits from the government, the Rule extends the set of covered benefits to include certain designated non-cash benefits providing for basic needs such as housing and food and asks whether the alien is likely to receive such benefits for more than 12 months in aggregate within any 36-month period.

The Ninth Circuit, in the only reasoned appellate decision to address the Rule to date, held that the Rule "easily" qualified as a permissible interpretation of the Immigration and Nationality Act (INA), 8 U.S.C. 1101 et seq. City & County of San Francisco v. USCIS, 944 F.3d 773, 799 (2019). It accordingly stayed a preliminary injunction entered by a district court in Washington that had prevented implementation of the Rule nationwide. See id. at 780-781. The Fourth Circuit, too, concluded that DHS is likely to prevail, and thus stayed a second nationwide preliminary

injunction entered by a district court in Maryland. See Order, Casa de Maryland, Inc. v. Trump, No. 19-2222 (Dec. 9, 2019).

Notwithstanding those two appellate decisions, the government remains unable to implement the Rule -- even in the Fourth and Ninth Circuits -- because of a pair of nationwide injunctions issued by a district judge in New York. See App., infra, 66a-68a; id. at 69a-71a. In a one-paragraph order, the Second Circuit declined to stay those nationwide injunctions pending appeal, thereby allowing the district court's judgment here to override the views of the Executive Branch and two other courts of appeals with respect to important national immigration policies.

In deciding whether to grant a stay in this posture, the Court considers whether an eventual petition for certiorari in the case would likely be granted, whether there is a fair prospect that the Court would rule for the moving party, and whether irreparable harm is likely to occur if a stay is not granted. Those criteria are readily met here.

First, the Court's review would plainly be warranted. Two courts of appeals have already concluded that the Rule is likely to be upheld; a decision by the Second Circuit affirming the preliminary injunctions here would necessarily reach the opposite conclusion, presenting a circuit conflict over important questions of federal immigration law. Moreover, the nationwide scope of the injunctions independently warrants review. The circumstances here

-- in which the considered decisions of two federal courts of appeals have been rendered effectively academic by a single district judge's nationwide injunctions -- starkly illustrate the problems with allowing district courts to award relief untethered to the actual cases or controversies before them.

Second, there also is a fair prospect that this Court would vacate, or at least narrow, the injunctions. As the Ninth Circuit held, the Rule "easily" qualifies as an appropriate exercise of the discretion that Congress has vested in the agency to determine which aliens are likely, in its "'opinion,'" to become public charges. City & County of San Francisco, 944 F.3d at 799 (quoting 8 U.S.C. 1182(a)(4)(A)). And even setting aside the merits, the scope of the injunctions extends well beyond the district court's limited Article III authority to resolve only the cases before it -- not hypothetical cases that it envisioned other plaintiffs in other parts of the country might bring.

Third and finally, allowing the district court's erroneous and overbroad injunctions to remain in effect until this Court has been able to undertake plenary review would result in effectively irreparable harm to the government. As a result of the injunctions, the government is precluded from implementing its chosen policy and, indeed, will grant lawful permanent resident status to aliens who are statutorily "inadmissible" because, "in the opinion of" the Executive Branch, each is "likely * * * to

become a public charge." 8 U.S.C. 1182(a)(4)(A). No practical means exist to reverse those determinations once made.

For those reasons, the Court should stay the district court's nationwide injunctions in their entirety, or at least limit them to the actual parties before the district court.

## STATEMENT

### A. The Public-Charge Inadmissibility Rule

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

Three agencies make public-charge inadmissibility determinations under Section 1182(a)(4): DHS for aliens seeking

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

admission at the border and aliens within the country who apply to adjust their status to that of a lawful permanent resident; the Department of State when evaluating visa applications filed by aliens abroad; and the Department of Justice when the question arises during removal proceedings. See 84 Fed. Reg. 41,292, 41,294 n.3 (Aug. 14, 2019). The Rule at issue governs DHS's public-charge inadmissibility determinations. Ibid. DHS indicated in adopting the Rule that the State Department and Department of Justice were planning to adopt consistent guidance. Ibid.

2. Although the public-charge ground of inadmissibility dates back to the first immigration statutes, Congress has never defined the term "public charge," instead leaving the term's definition and application to the Executive Branch's discretion. In 1999, the Immigration and Naturalization Service (INS) proposed a rule to "for the first time define 'public charge,'" 64 Fed. Reg. 28,676, 28,689 (May 26, 1999), a term that the INS noted was "ambiguous" and had "never been defined in statute or regulation," id. at 28,676-28,677. The proposed rule would have provided that in determining whether an alien was "'likely at any time to become a public charge'" "'in the opinion of' the consular officer or Service officer making the decision," "public charge" would mean an alien "who is likely to become primarily dependent on the Government for subsistence as demonstrated by either: (i) [t]he receipt of public cash assistance for income maintenance purposes,

or (ii) [i]nstitutionalization for long-term care at Government expense." Id. at 28,681 (quoting 8 U.S.C. 1182(a)(4)(A)). When it announced the proposed rule, INS also issued "field guidance" adopting the proposed rule's definition of "public charge." Id. at 28,689. The proposed rule was never finalized, leaving only the 1999 field guidance in place. 84 Fed. Reg. at 41,348 n.295.

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

The Rule defines "public charge" to mean "an alien who receives one or more [designated] public benefits * * * for more than 12 months in the aggregate within any 36-month period (such that, for instance, receipt of two benefits in one month counts as two months)." 84 Fed. Reg. at 41,501. The designated public benefits include cash assistance for income maintenance and certain non-cash benefits, including most Medicaid benefits, Supplemental Nutrition Assistance Program benefits, and federal housing assistance. Ibid. As the agency explained, the Rule's

definition of "public charge" differs from the 1999 field guidance in that (1) it incorporates certain non-cash benefits; and (2) it replaces the "primarily dependent" standard with the 12-month/36-month measure of dependence. Id. at 41,294-41,295.

The Rule also sets forth a framework the agency will use to evaluate whether, considering the "totality of an alien's individual circumstances," the alien is "likely at any time in the future to become a public charge." 84 Fed. Reg. at 41,369; see id. at 41,501-41,504. Among other things, the framework identifies a number of factors an adjudicator must consider in making a public-charge inadmissibility determination, such as the alien's age, financial resources, employment history, education, and health. Ibid. The Rule was set to take effect on October 15, 2019. Id. at 41,292.

B. Procedural History

1. Respondents are four governmental entities (three States and the City of New York) and five non-governmental organizations that provide services to immigrants. In August 2019, they filed two suits -- one by the governmental entities, the other by the non-governmental organizations -- challenging the Rule in the United States District Court for the Southern District of New York. See App., infra, 1a-2a; id. at 25a-26a. They argued that the Rule's definition of "public charge" is not a permissible construction of the INA, that the Rule is arbitrary and capricious,

that the Rule violates the Rehabilitation Act, and that -- according to the non-governmental organizations -- the Rule violates constitutional equal-protection principles. See id. at 11a-18a; id. at 36a-45a.

2. On October 11, 2019, the district court granted respondents' requests for nationwide preliminary injunctions and stays under 5 U.S.C. 705 barring DHS from implementing the Rule. App., infra, 66a-68a; id. at 69a-71a.

In a pair of largely overlapping opinions, the district court first concluded that plaintiffs had standing and that they had asserted injuries within the zone of interests protected by the public-charge provision. App., infra, 7a-10a (opinion in suit by governmental plaintiffs); id. at 31a-36a (opinion in suit by non-governmental plaintiffs). Turning to the merits, the court concluded that plaintiffs were likely to prevail on their claim that the Rule's definition of "public charge" is not a reasonable interpretation of the statute. Id. at 11a-14a; id. at 36a-39a. After reciting the statute's text and some of its history, the court stated that "one thing is abundantly clear -- 'public charge' has never been understood to mean receipt of 12 months of benefits within a 36-month period." Id. at 13a; id. at 38a (same). In the court's view, Congress was "content with the current definition set forth in the Field Guidance, which defines public charge as someone who has become or is likely to become primarily dependent

on the government for cash assistance." Ibid. In support of that view, the court cited a pair of legislative proposals in 1996 and 2013 that would have "extend[ed] the meaning of public charge to include the use of non-cash benefits" but that were not ultimately enachted. Ibid.

The district court also concluded that respondents were likely to succeed in demonstrating that the Rule is arbitrary and capricious, because DHS allegedly failed to provide reasoned explanations for departing from the 1999 field guidance's definition of "public charge" and adopting its chosen framework. App., infra, 14a-17a; id. at 39a-43a. The court stated that respondents had raised a "colorable argument" that the Rule violates the Rehabilitation Act because it "considers disability as a negative factor in the public charge assessment." Id. at 18a; id. at 43a-44a (same). And the court stated that the non-governmental respondents had "a likelihood of success on the merits of their equal protection claim," because the court could find "no reasonable basis for Defendants' sharp departure from the current public charge determination framework." Id. at 44a-45a.

Regarding the other preliminary-injunction factors, the district court concluded that the injuries respondents anticipated as a result of the Rule -- the "burden of providing services to those who can no longer obtain federal benefits without jeopardizing their [immigration] status" -- were irreparable.

App., infra, 19a; id. at 45a-46a (similar). The court also found that the balance of equities and public interest weighed in favor of preliminary injunctions. Id. at 20a-21; id. at 46a-48a.

Finally, the district court concluded that nationwide injunctions were appropriate, rejecting the government's argument that any relief should be narrower. App., infra, 21a-24a; id. at 48a-50a. The court concluded that "[i]t would clearly wreak havoc on the immigration system if limited injunctions were issued, resulting in different public charge frameworks spread across the country" that it believed "'would likely create administrative problems for the Defendants.'" Id. at 23a (citation omitted); id. at 49a (same). Moreover, in the court's view, nationwide injunctions were "necessary to accord [respondents] and other interested parties with complete redress," because "an individual should not have to fear that moving from one state to another could result in a denial of adjustment of status." Id. at 23a; id. at 50a (same). In a footnote, the court observed that "[t]he standard for a stay under 5 U.S.C. 705 is the same as the standard for a preliminary injunction," and "[a]ccordingly * * * grant[ed] the stay[s] for the same reasons it grant[ed] the injunction[s]." Id. at 24a n.5; id. at 50a n.4 (same).

3. The government filed motions to stay the preliminary injunctions pending appeal, which the district court denied on December 2, 2019. App., infra, 52a-57a; id. at 58a-63a.

4. While these cases were pending, the government also was litigating challenges to the Rule filed in four other district courts. Two of those district courts issued nationwide injunctions against implementation of the Rule. See Casa de Maryland, Inc. v. Trump, 19-cv-2715 (D. Md.); Washington v. DHS, No. 19-cv-5210 (E.D. Wash.). The remaining two courts issued more limited injunctions in the three cases before them. See Cook County v. Wolf, 19-cv-6334 (N.D. Ill.) (Illinois); City & County of San Francisco v. USCIS, No. 19-cv-4717 (N.D. Cal.) (plaintiff counties); California v. DHS, No. 19-cv-4975 (N.D. Cal.) (plaintiff States and D.C.).

On December 5, 2019, the Ninth Circuit granted the government's motions for stays pending appeal in the three cases filed in that circuit, including one case in which the district court had entered a nationwide injunction. City & County of San Francisco v. USCIS, 944 F.3d 773. In a lengthy opinion that canvassed the history of the public-charge provision and related immigration laws, the Ninth Circuit held that "DHS has shown a strong likelihood of success on the merits, that it will suffer irreparable harm, and that the balance of the equities and public interest favor a stay." Id. at 781. In particular, it held that the statutory term "public charge" was "ambiguous" and "capable of a range of meanings," id. at 792, that Congress had historically granted the Executive Branch broad discretion to define the term, and that the Executive Branch had, in fact, interpreted the term

differently over the previous 150 years, id. at 792-797. The court then held that the Rule was "easily" a reasonable interpretation of the statute, particularly in light of Congress's express intent that its 1996 welfare-reform and immigration-reform legislation would help ensure that "aliens within the Nation's borders not depend on public resources to meet their needs." Id. at 799 (quoting 8 U.S.C. 1601(2)).

On December 9, 2019, the Fourth Circuit likewise granted the government's motion for a stay pending appeal of the nationwide injunction entered by a district court in Maryland. Order, Casa de Maryland, supra, No. 19-2222.

On December 23, 2019, the Seventh Circuit denied, without opinion, the government's motion for a stay pending appeal of the injunction, applicable only in Illinois, entered by a district court in Chicago. Order, Cook County v. Wolf, No. 19-3169.[2]

5. Notwithstanding the decisions by the Fourth and Ninth Circuits, the nationwide injunctions entered by the district court here continued to prevent the government from implementing the Rule anywhere in the country. On January 8, 2020, the court of appeals issued a one-paragraph order denying the government's motions to stay these remaining nationwide injunctions. App.,

[2] If this Court grants the present stay application, the government intends to ask the Seventh Circuit to reconsider its denial of a stay pending appeal.

infra, 65a. The court noted that it had "set an expedited briefing schedule on the merits of the government's appeals, with the last brief due on February 14," and oral argument to "be scheduled promptly thereafter." Ibid.

ARGUMENT

The government respectfully requests that this Court grant a stay of the district court's preliminary injunctions pending completion of further proceedings in the court of appeals and, if necessary, this Court. A stay pending the disposition of a petition for a writ of certiorari is appropriate if there is (1) "a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari"; (2) "a fair prospect that a majority of the Court will conclude that the decision below was erroneous"; and (3) "a likelihood that irreparable harm will result from the denial of a stay." Conkright v. Frommert, 556 U.S. 1401, 1402 (2009) (Ginsburg, J., in chambers) (brackets, citation, and internal quotation marks omitted).[3] All of those requirements are met here.

[3] Under this Court's Rule 23 and the All Writs Act, 28 U.S.C. 1651, a single Justice or the Court has authority to enter a stay pending proceedings in a court of appeals. See, e.g., Trump v. International Refugee Assistance Project, 138 S. Ct. 542 (2017).

## I. THERE IS A REASONABLE PROBABILITY THAT THIS COURT WOULD GRANT CERTIORARI IF THE COURT OF APPEALS UPHOLDS THE DISTRICT COURT'S NATIONWIDE INJUNCTIONS

If the court of appeals ultimately upholds the district court's nationwide preliminary injunctions in this case, there is a "reasonable probability" that the Court will grant certiorari. Conkright, 556 U.S. at 1402 (citation omitted). That is true for at least two reasons.

First, such a decision would implicate a "conflict" among the courts of appeals "on the same important matter." Sup. Ct. R. 10(a). As explained more fully below, the Ninth Circuit concluded that "Congress left DHS and other agencies enforcing our immigration laws the flexibility to adapt the definition of 'public charge' as necessary," and held that the definition DHS has adopted "easily" fits within the range of permissible definitions. City & County of San Francisco, 944 F.3d at 797, 799. The Fourth Circuit likewise held that DHS is likely to prevail. See Nken v. Holder, 556 U.S. 418, 426 (2009) (stay pending appeal requires the applicant to make "a strong showing that he is likely to succeed on the merits"). To uphold the district court's preliminary injunctions here, however, the Second Circuit would need to find precisely the opposite -- namely, that respondents are likely to succeed in showing that the Rule is unlawful. See Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 20 (2008). It is at least reasonably probable that this Court would grant a writ of certiorari to review such a conflict, especially given that it

concerns an important Rule implicating the Executive Branch's discretion in making inadmissibility determinations.

Second, a decision by the court of appeals upholding the injunctions here would also squarely present the question of whether nationwide injunctions are consistent with the federal courts' targeted authority to redress the concrete injuries shown by the parties before them in specific cases and controversies. See Marbury v. Madison, 5 U.S. (1 Cranch) 137, 170 (1803) ("The province of the court is, solely, to decide on the rights of individuals, not to enquire how the executive, or executive officers, perform duties in which they have a discretion."). In the past three years, federal courts have issued dozens of nationwide or even global injunctions, blocking a wide range of significant policies involving immigration, national security, and domestic issues.

The circumstances here, in which decisions by multiple courts of appeals have been rendered effectively meaningless within their own territorial jurisdictions because of a single district court's nationwide injunctions, starkly illustrate the problems that such injunctions pose. If the Second Circuit were to uphold the nationwide scope of those injunctions, that result would present an additional "important federal question" warranting a writ of certiorari, and indeed would call out for "an exercise of this Court's supervisory power," Sup. Ct. R. 10(a) and 10(c). See Trump

v. Hawaii, 138 S. Ct. 2392, 2429 (2018) (Thomas, J., concurring) ("If federal courts continue to issue [universal injunctions], this Court is duty-bound to adjudicate their authority to do so.").

## II. THERE IS AT LEAST A FAIR PROSPECT THAT THE COURT WOULD VACATE THE INJUNCTIONS IN WHOLE OR IN PART

There is also at least a "fair prospect" that if this Court granted a writ of certiorari, it would vacate the injunctions in whole or in part. Conkright, 556 U.S. at 1402. That is true both because respondents' claims are unlikely to succeed, and because the nationwide scope of the preliminary injunctions is not an appropriate means of redressing respondents' alleged injuries.

A. As a threshold matter, respondents are unlikely to succeed because they have not adequately alleged a cognizable injury within the relevant zone of interests.

The district court concluded otherwise with respect to the governmental respondents because the Rule will "decrease enrollment in benefits programs," which it thought might reduce revenue at their hospitals, increase consumption of emergency and other services for which they sometimes pay, and cause adverse "ripple effects" in their economies. App., infra, 7a-8a (citation omitted). But the Rule exempts Medicaid coverage for emergency services, and other reductions in benefit-program enrollment are likely to save money for the governmental respondents, who fund such programs. See 84 Fed. Reg. at 41,363, 41,300-41,301. Their claims of harm thus depend on an "attenuated chain of

possibilities," not the "certainly impending" injury Article III requires. Clapper v. Amnesty Int'l USA, 568 U.S. 398, 410 (2013).

The district court was likewise incorrect in concluding that the non-governmental respondents have organizational standing because, if the Rule goes into effect, they will "devote substantial resources to mitigate its potentially harmful effects." App., infra, 33a. This Court has held that merely showing that governmental action would be a "setback to [an] organization's abstract social interests" is insufficient to establish standing, Havens Realty Corp. v. Coleman, 455 U.S. 363, 379 (1982); that insufficiency is not cured by an organization's insistence that it would seek to "mitigate" the "effects" of that setback, App., infra, 33a. Cf. Clapper, 568 U.S. at 418 (finding "self-inflicted injuries" insufficient to establish standing).

In any event, even if respondents' claims of harm were sufficient to satisfy Article III, their asserted interest in maintaining enrollment in public-benefits programs is "inconsistent" with the purpose of the public-charge inadmissibility ground -- namely, to reduce the use of public benefits -- and thus outside the relevant zone of interests. Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak, 567 U.S. 209, 225 (2012).

B. As the Ninth Circuit recognized, challenges to the Rule are also unlikely to succeed because they lack merit. The INA's

text and structure make clear that receipt of public benefits, including non-cash benefits that are not intended to serve as a primary means of support, is an important consideration in determining whether an alien is inadmissible on public-charge grounds. The Rule thus gives the statute its most natural meaning by specifying that an alien who depends on public assistance for necessities such as food and shelter for extended periods may qualify as a "public charge" even if that assistance is not provided through cash benefits or does not provide the alien's sole or primary means of support. That interpretation also follows Congress's direction -- in legislation adopted contemporaneously with the current public-charge provision -- that it should be the official "immigration policy of the United States" to ensure that "availability of public benefits not constitute an incentive for immigration to the United States." 8 U.S.C. 1601(2). At the very least, the Rule represents a reasonable and lawful exercise of the substantial discretion Congress has long vested in the Executive Branch to make public-charge inadmissibility determinations.

1. The INA renders inadmissible "[a]ny alien who * * * in the opinion of the [Secretary] * * * is likely at any time to become a public charge," based "at a minimum" on an assessment of specified factors such as "health," "financial status," and "education and skills." 8 U.S.C. 1182(a)(4)(A) and (B). As the Ninth Circuit explained, that statutory text provides four

important indicators that Congress intended to give DHS substantial discretion over public-charge inadmissibility determinations.

First, Congress's reference to the "opinion" of the relevant Executive Branch official "is the language of discretion," under which "the officials are given broad leeway." City & County of San Francisco, 944 F.3d at 791; see Thor Power Tool Co. v. Commissioner, 439 U.S. 522, 540 (1979) (recognizing that where a statute specifies that a determination be made "in the opinion of" an agency official, it confers "broad discretion" on the official to make that determination). Second, "the critical term 'public charge' is not a term of art. It is not self-defining. * * * In a word, the phrase is 'ambiguous' under Chevron; it is capable of a range of meanings." City & County of San Francisco, 944 F.3d at 792. Third, although the statute provides a non-exhaustive list of factors that the Executive Branch official must take into account "'at a minimum,'" it "expressly did not limit the discretion of officials to those factors." Ibid. Fourth, Congress expressly "granted DHS the power to adopt regulations to enforce the provisions of the INA," indicating that "Congress intended that DHS would resolve any ambiguities in the INA." Ibid. (citing Encino Motorcars, LLC v. Navarro, 136 S. Ct. 2117, 2125 (2016)).

Related statutory provisions show that Congress also recognized that receipt of public benefits, including non-cash

benefits, could often be relevant to determining whether an alien is likely to become a public charge. One such set of provisions requires that many aliens seeking admission or adjustment of status must submit "affidavit[s] of support" executed by sponsors -- such as a family member or employer -- to avoid a public-charge inadmissibility determination. See 8 U.S.C. 1182(a)(4)(C) and (D). Aliens who fail to obtain the required affidavit are treated by operation of law as inadmissible on public-charge grounds, regardless of their individual circumstances. 8 U.S.C. 1182(a)(4). Moreover, Congress specified that the sponsor must agree "to maintain the sponsored alien at an annual income that is not less than 125 percent of the Federal poverty line," 8 U.S.C. 1183a(a)(1)(A), and Congress granted federal and state governments the right to seek reimbursement from the sponsor for "any means-tested public benefit" the government provides to the alien, 8 U.S.C. 1183a(b)(1)(A), including non-cash benefits. Taken together, those provisions mean that to avoid being found inadmissible on public-charge grounds, a covered alien must have a sponsor who is willing to reimburse the government for any means-tested public benefits the alien receives while the sponsorship obligation is in effect (even if those benefits are only minimal). Congress itself thus provided that the mere possibility that an alien might obtain unreimbursed, means-tested public benefits in the future would in some circumstances be sufficient to render

that alien likely to become a public charge, regardless of the alien's other circumstances.

Likewise supporting the Rule's consideration of non-cash benefits are INA provisions stating that when making public-charge inadmissibility determinations for certain aliens who have "been battered or subjected to extreme cruelty in the United States," 8 U.S.C. 1641(c)(1)(A), DHS "shall not consider any benefits the alien may have received," including various non-cash benefits, 8 U.S.C. 1182(s); see 8 U.S.C. 1611-1613 (specifying the public benefits for which battered aliens and other qualified aliens are eligible, such as "public or assisted housing," "food assistance," and "disability" benefits). The inclusion of that express prohibition for a narrow class of aliens presupposes that DHS generally can consider the past receipt of non-cash benefits such as public housing and food assistance in making public-charge inadmissibility determinations for other aliens. Cf. Husted v. A. Philip Randolph Inst., 138 S. Ct. 1833, 1844 (2018) ("There is no reason to create an exception to a prohibition unless the prohibition would otherwise forbid what the exception allows.").

Surrounding statutory provisions also leave no doubt about why Congress would have intended the Executive Branch to take such public benefits into account in making public-charge inadmissibility determinations. In legislation passed contemporaneously with the 1996 enactment of the current public-

charge provision, Congress stressed the government's "compelling" interest in ensuring "that aliens be self-reliant in accordance with national immigration policy." 8 U.S.C. 1601(5). Congress emphasized that "[s]elf-sufficiency has been a basic principle of United States immigration law since this country's earliest immigration statutes," 8 U.S.C. 1601(1), and it "continues to be the immigration policy of the United States that * * * (A) aliens within the Nation's borders not depend on public resources to meet their needs, * * * and (B) the availability of public benefits not constitute an incentive for immigration to the United States," 8 U.S.C. 1601(2). Congress equated a lack of "self-sufficiency" with the receipt of "public benefits" by aliens, 8 U.S.C. 1601(3), which it defined broadly to include any "welfare, health, disability, public or assisted housing * * * or any other similar benefit," 8 U.S.C. 1611(c)(1)(B).

2. Respondents have no persuasive answer to the INA's text and structure, which make the receipt of public benefits, including non-cash benefits, an important aspect of "public charge" determinations. Respondents argue instead that the Rule's interpretation is inconsistent with historical usage of the phrase "public charge," which they contend refers exclusively and unambiguously to aliens who are "'likely to become primarily and permanently dependent on the government for subsistence.'" App., infra, 12a (citation omitted); see id. at 37a.

As the Ninth Circuit explained, historical evidence does not support that contention. City & County of San Francisco, 944 F.3d at 792-798. Instead, the common thread through Congress's enactment of various public-charge provisions has been an intent to preserve Executive Branch flexibility to "adapt" public-charge provisions to "change[s] over time" in "the way in which federal, state, and local governments have cared for our most vulnerable populations." Id. at 792. In the late nineteenth and early twentieth century, for example, those who were not self-sufficient were often "housed in a government or charitable institution, such as an almshouse, asylum, or penitentiary." Id. at 793. In that context, therefore, it made sense that "the likelihood of being housed in a state institution" would be "considered * * * to be the primary factor in the public-charge analysis." Id. at 794. As the "movement towards social welfare" broadened the availability of other types of more limited public benefits over the twentieth century, however, the open-ended phrase allowed the Executive Branch to take into account those changes. Id. at 795. For example, both the 1933 and 1951 editions of Black's Law Dictionary indicated that the term "public charge," "[a]s used in" the 1917 Immigration Act, meant simply "one who produces a money charge upon, or an expense to, the public for support and care" -- without reference to the type of expense. Black's Law Dictionary (3d ed. 1933); Black's Law Dictionary (4th ed. 1951).

A 1929 treatise did the same. See Arthur Cook et al., Immigration Laws of the United States § 285 (1929) (noting that "public charge" meant a person who required "any maintenance, or financial assistance, rendered from public funds, or funds secured by taxation"). And as early as 1948, the Board of Immigration Appeals (Board) held that an alien may qualify as a "public charge" for deportability purposes if the alien (or a sponsor or relative) fails to repay a public benefit upon demand by a government agency entitled to repayment, even where the benefits in question are "clothing, transportation, and other incidental expenses." In re B-, 3 I. & N. Dec. 323, 326-327 (B.I.A. 1948); see City & County of San Francisco, 944 F.3d at 795 (discussing In re B-).[4]

Congress's intent to preserve the Executive Branch's flexibility has not just been implicit. In an extensive report that served as a foundation for the original enactment of the INA, the Senate Judiciary Committee recognized that "[d]ecisions of the courts have given varied definitions of the phrase 'likely to

[4] The Board concluded that the alien in In re B- was not deportable as a public charge based on the care she received at a state mental hospital because Illinois law did not allow the State to demand repayment for those expenses. 3 I. & N. Dec. at 327. But the Board indicated that she would have been deportable as a public charge if her relatives had failed to pay the cost of her "clothing, transportation, and other incidental expenses," because Illinois law made her "legally liable" for repayment of those non-cash benefits. Ibid.

become a public charge,'" and that "'different consuls, even in close proximity with one another, have enforced [public-charge] standards highly inconsistent with one another.'" S. Rep. No. 1515, 81st Cong., 2d Sess., 347, 349 (1950). Rather than adopt one of those specific standards, the Committee indicated that because "the elements constituting likelihood of becoming a public charge are varied, there should be no attempt to define the term in the law." Id. at 349.

Consistent with that recommended approach, neither the INA nor any subsequent congressional enactment has provided a more specific definition of "public charge." Instead, Congress has "described various factors to be considered 'at a minimum,' without even defining those factors," making it "apparent that Congress left DHS and other agencies enforcing our immigration laws the flexibility to adapt the definition of 'public charge' as necessary." City & County of San Francisco, 944 F.3d at 797.

The district court drew a different conclusion from a pair of never-enacted legislative proposals in 1996 and 2013. See App., infra, 13a-14a. Those proposals would have resulted in statutory definitions of "public charge" that, like the Rule, contained specific public-benefit thresholds -- though they would have covered a significantly larger number of aliens.[5] The court

[5] The 1996 proposal would have included aliens who received benefits during twelve months over a seven-year, rather than three-year, period. See H.R. Rep. No. 828, 104th Cong., 2d

concluded from those respective non-enactments that Congress must have wanted to "endorse[]" a narrower understanding of "public charge." Id. at 13a. But the far better inference in light of the history is that Congress simply wanted to preserve Executive Branch discretion by leaving the statutory term undefined -- not that it wanted to constrain Executive Branch discretion by silently "endors[ing]," App., infra, 13a, a narrower definition that would then be fixed for all time. Indeed, the legislative history of the 1996 proposal indicates that it was dropped at the last minute in part because the President objected to the proposal's rigid definition of "public charge" and threatened to veto the bill. See H.R. Rep. No. 828, 104th Cong., 2d Sess, 241 (1996); 142 Cong. Rec. 26,666, 26,679-26,680 (Sept. 30, 1996).

* * * * *

Given Congress's direction that "the availability of public benefits" should not be "an incentive for immigration to the United States," 8 U.S.C. 1601(2), and its longstanding history of preserving flexibility in the meaning of "public charge," the Rule "easily" qualifies as a reasonable interpretation of the statute, City & County of San Francisco, 944 F.3d at 799. Nothing in the statute precludes the agency from considering non-cash benefits or

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Sess., 138, 240-241. The 2013 proposal would have included aliens who received any covered public benefits. S. Rep. No. 40, 113th Cong., 1st Sess., 42, 63.

public benefits that do not provide an alien's sole or primary means of support, and the Rule's use of the 12-months in 36-months standard establishes a sensible and administrable framework for making individualized public-charge determinations. Respondents are unlikely to succeed in arguing otherwise.

3. Respondents' arguments that the Rule is arbitrary and capricious are similarly unlikely to succeed. For many of the same reasons discussed above, the Rule -- including its definition of "public charge" and its framework for evaluating which aliens are, in the opinion of the Executive Branch, likely to become public charges -- is well "within the bounds of reasoned decisionmaking." Baltimore Gas & Elec. Co. v. Natural Res. Def. Council, Inc., 462 U.S. 87, 105 (1983).

As discussed, the Rule differs from the agency's previous interpretation of "public charge" in that it requires adjudicators to consider specified non-cash benefits (not only cash benefits) in determining whether an alien is likely to become a public charge, and defines the term "public charge" to include those who receive such benefits for more than 12 months in the aggregate within any 36-month period.

The agency "forthrightly acknowledged" its change in approach in the rulemaking, and provided "good reasons for the new policy." FCC v. Fox Television Stations, Inc., 556 U.S. 502, 515, 517 (2009). It explained that the Rule is designed "to better ensure

that applicants for admission to the United States and applicants for adjustment of status to lawful permanent resident who are subject to the public charge ground of inadmissibility are self-sufficient -- i.e., do not depend on public resources to meet their needs, but rather rely on their own capabilities and the resources of their family, sponsor, and private organizations." 83 Fed. Reg. at 51,122; 84 Fed. Reg. at 41,317-41,319. Because Congress itself viewed the receipt of any public benefits, including non-cash benefits, as indicative of a lack of self-sufficiency, the agency reasoned that the Rule, which it promulgated through notice-and-comment rulemaking, is more consistent with congressional intent than the 1999 agency field guidance and abandoned attempt at rulemaking. 83 Fed. Reg. at 51,123.

The agency also explained, at length, its reasons for including in the Rule the various factors it identified as weighing on the question whether an alien is likely to become a public charge. See 83 Fed. Reg. 51,178-51,207. The factors implemented Congress's mandate that the agency consider, at a minimum, each alien's "age"; "health"; "family status"; "assets, resources, and financial status"; and "education and skills" in making a "public charge" determination. See id. at 51,178; 8 U.S.C. 1182(a)(4)(B). The agency described in detail how each of the various factors bore positively or negatively on the determination whether an alien is likely to receive public benefits over the designated threshold

in the future, while retaining the "totality of the circumstances" approach that allows each adjudicating officer to make a decision appropriate to each alien's individual circumstances.

As the Ninth Circuit recognized, those explanations were clearly sufficient to satisfy the deferential arbitrary-and-capricious standard. See City & County of San Francisco, 944 F.3d at 800-805. For purposes of applying that standard, it is immaterial whether DHS demonstrated to the district court's "'satisfaction that the reasons for the new policy are better than the reasons for the old one; it suffices that the new policy is permissible under the statute, that there are good reasons for it, and that the agency believes it to be better.'" Id. at 801 (quoting Fox Television, 556 U.S. at 515). DHS made all of those showings here. Id. at 805. Respondents' arbitrary-and-capricious claim is therefore unlikely to succeed.

4. Respondents are also unlikely to succeed on their Rehabilitation Act and equal-protection claims.

The Rehabilitation Act provides that "[n]o otherwise qualified individual * * * shall, solely by reason of her or his disability," be denied the benefits of a federal program. 29 U.S.C. 794(a). "[B]y its terms," the statute "does not compel [governmental] institutions to disregard the disabilities of" individuals; instead, it merely requires them not to exclude a person who is "'otherwise qualified'" "'solely by reason of his

[disability].'" Southeastern Cmty. Coll. v. Davis, 442 U.S. 397, 405 (1979). The Rule complies with that requirement, taking relevant medical conditions into account as one factor among many in a totality-of-the-circumstances analysis of whether the alien is likely to become a public charge. Moreover, the Rule is required to account for those conditions under the INA, which directs that public-charge determinations "shall * * * consider" the alien's "health" as a factor, 8 U.S.C. 1182(a)(4)(B)(i). See Radzanower v. Touche Ross & Co., 426 U.S. 148, 153 (1976) (A "specific statute will not be controlled or nullified by a general one.") (citation omitted). Accordingly, even the district court in California -- which enjoined the Rule on other grounds -- recognized there is no "serious question[]" the Rule complies with the Rehabilitation Act. City & County of San Francisco v. USCIS, No. 19-cv-4717, 2019 WL 5100718, at *30 (N.D. Cal. Oct. 11, 2019).

The equal-protection claims are similarly meritless. The district court suggested that "'minimizing the incentive of aliens to immigrate to the United States due to the availability of public benefits'" does not provide a "reasonable basis" for adopting the Rule, such that the Rule might not survive rational-basis review. App., infra, 45a (citation omitted). But as explained, see supra, pp. 22-23, that objective is set out by statute as the official policy of the United States. See 8 U.S.C. 1601. Attempting to pursue it more effectively cannot possibly be irrational.

C. Finally, there is also a "fair prospect," Conkright, 556 U.S. at 1402, that any decision of the court of appeals upholding the district court's nationwide injunctions would be reversed on the additional ground that those injunctions are overly broad. Nationwide injunctions like the ones here transgress both Article III and longstanding equitable principles by affording relief that is not necessary to redress any cognizable, irreparable injury to the parties in the case. They also frustrate the development of the law, while obviating the requirements for and protections of class-action litigation. This case exemplifies those harms: the nationwide injunctions here have in effect permitted a single district judge to veto the contrary decisions of two different courts of appeals, even within their respective jurisdictions.

1. a. To the extent that respondents have Article III standing at all, but see pp. 17-18, supra, that standing cannot support injunctive relief any further than what is needed to redress an actual or imminent injury-in-fact to respondents themselves. "[S]tanding is not dispensed in gross," and "a plaintiff must demonstrate standing * * * for each form of relief that is sought." Town of Chester v. Laroe Estates, Inc., 137 S. Ct. 1645, 1650 (2017) (citations omitted). The remedy sought thus "must of course be limited to the inadequacy that produced the injury in fact that the plaintiff has established." Gill v. Whitford, 138 S. Ct. 1916, 1931 (2018) (quoting Lewis v.

Casey, 518 U.S. 343, 357 (1996)). "The actual-injury requirement would hardly serve [its] purpose . . . of preventing courts from undertaking tasks assigned to the political branches, if once a plaintiff demonstrated harm from one particular inadequacy in government administration, the court were authorized to remedy all inadequacies in that administration." DaimlerChrysler Corp. v. Cuno, 547 U.S. 332, 353 (2006) (brackets and citation omitted).

Applying that principle, this Court has invalidated injunctions that afforded relief that was not shown to be necessary to prevent cognizable injury to the plaintiff himself. For example, in Lewis, the Court held that an injunction directed at certain prison practices was overbroad, in violation of Article III, because it enjoined practices that had not been shown to injure any plaintiff. 518 U.S. at 358. The injunction "mandated sweeping changes" in various aspects of prison administration designed to improve prisoners' access to legal services, including library hours, lockdown procedures, access to research facilities and training, and "'direct assistance'" from lawyers and legal support staff for "illiterate and non-English-speaking inmates." Id. at 347-348 (citation omitted). This Court held that the plaintiffs lacked standing to seek, and the district court thus lacked authority to grant, such broad relief. Id. at 358-360. The district court had "found actual injury on the part of only one named plaintiff," who claimed that a legal action he had filed

was dismissed with prejudice as a result of his illiteracy and who sought assistance in filing legal claims. Id. at 358. This Court therefore held that "[it] c[ould] eliminate from the proper scope of th[e] injunction provisions directed at" the other claimed inadequacies that allegedly harmed "the inmate population at large." Ibid. "If inadequacies of th[at] character exist[ed]," the Court explained, "they ha[d] not been found to have harmed any plaintiff in this lawsuit, and hence were not the proper object of this District Court's remediation." Ibid.

b. This Court also has recognized and applied the corollary principle that, where a plaintiff faces actual or imminent injury at the outset of a suit but that injury is subsequently redressed or otherwise becomes moot, the plaintiff no longer can seek injunctive relief to redress alleged harms to anyone else. For example, in Summers v. Earth Island Institute, 555 U.S. 488 (2009), the Court held that a plaintiff lacked standing to seek to enjoin certain Forest Service regulations after the parties had resolved the controversy regarding the application of those regulations to the specific project that had caused the plaintiff's own claimed injury, id. at 494-497. The plaintiff's "injury in fact with regard to that project," the Court held, "ha[d] been remedied," and so he lacked standing to maintain his challenge to the regulations. Id. at 494. The Court expressly rejected a contrary rule that, "when a plaintiff has sued to challenge the lawfulness

of certain action or threatened action but has settled that suit, he retains standing to challenge the basis for that action" -- in Earth Island, "the regulation in the abstract" -- "apart from any concrete application that threatens imminent harm to his interests." Ibid. Such a rule would "fly in the face of Article III's injury-in-fact requirement." Ibid.; see Alvarez v. Smith, 558 U.S. 87, 92-93 (2009) (holding that plaintiffs could no longer seek declaratory or injunctive relief against a state policy once their "dispute [wa]s no longer embedded in any actual controversy about the plaintiffs' particular legal rights").

c. Those principles have clear application here. As in Lewis, applications of the Rule to an alien seeking admission at the southern border in San Diego, or to an alien seeking adjustment of status in South Carolina, would not "harm[] any plaintiff in this lawsuit, and hence were not the proper object of this District Court's remediation." 518 U.S. at 358. And as in Earth Island and Alvarez, entry of an injunction protecting respondents from concrete injury while the case proceeds would eliminate any "threat[]" of "imminent harm to [their] interests," Earth Island, 555 U.S. at 494, such that broader relief would not be "embedded in any actual controversy about the plaintiffs' particular legal rights," Alvarez, 558 U.S. 93. Accordingly, if any relief were appropriate at all, it would be properly limited to only those applications of the Rule that harm respondents in concrete and

particularized ways. At most, that would encompass applications to aliens whom respondents identify as receiving services in the jurisdictions in which they operate.

Neither of the grounds offered by the district court to justify the unlimited scope of its injunctions requires a different result. First, the district court thought that "an individual should not have to fear that moving from one state to another could result in a denial of adjustment of status." App., infra, 23a. But there are no "individual" plaintiffs in this case, let alone a certified class of such individuals. The district court's focus here on how the Rule would affect such non-party aliens was no different from the reliance on the interests of non-party prisoners that this Court rejected in Lewis. See 518 U.S. at 358.

Second, the district court believed that applying "different public charge frameworks * * * across the country * * * 'would likely create administrative problems for the Defendants.'" App., infra, 23a (citation omitted). But the appropriate parties to make that determination are the defendants, not the plaintiffs or the court. Any "administrative problems for the Defendants" are not Article III injuries of the plaintiffs. And in supplanting the Executive Branch's determinations about whether it would be preferable to suspend the Rule's effect in just three States or all fifty, the court "undert[ook] tasks assigned to the political

branches" in just the way that Article III is intended to prevent. DaimlerChrysler Corp., 547 U.S. at 353 (citation omitted).

2. Independent of Article III, the nationwide preliminary injunctions here violate fundamental rules of equity by granting relief broader than necessary to prevent irreparable harm to respondents. This Court has long recognized that injunctive relief must "be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs." Madsen v. Women's Health Ctr., Inc., 512 U.S. 753, 765 (1994) (citation omitted). Section 705 of the Administrative Procedure Act (APA), 5 U.S.C. 701 et seq., on which the district court also relied, likewise limits relief to that which is "necessary to prevent irreparable injury," 5 U.S.C. 705. See App., infra, 24a n.5 (noting that "[t]he standard for a stay under 5 U.S.C. § 705 is the same as the standard for a preliminary injunction" and "grant[ing] the stay for the same reasons it grants the injunction"); see also 5 U.S.C. 703 (providing that absent a "special statutory review proceeding," "[t]he form of proceeding for judicial review" under the APA is "any applicable form of legal action, including actions for * * * writs of prohibitory or mandatory injunction").

When, as here, no class has been certified, a plaintiff must show that the requested relief is necessary to redress the plaintiff's own irreparable harm; the plaintiff cannot seek injunctive relief in order to prevent harm to others. See Monsanto

Co. v. Geertson Seed Farms, 561 U.S. 139, 163 (2010) (plaintiffs "d[id] not represent a class, so they could not seek to enjoin [an agency order] on the ground that it might cause harm to other parties"). Even where a class has been certified, relief is limited to what is necessary to redress irreparable injury to members of that class. See Lewis, 518 U.S. at 359-360, 360 n.7.

History confirms that the injunctions in this case violate "traditional principles of equity jurisdiction." Grupo Mexicano de Desarrollo, S.A. v. Alliance Bond Fund, Inc., 527 U.S. 308, 319 (1999) (citation omitted). Absent-party injunctions were not "traditionally accorded by courts of equity." Ibid.; Samuel L. Bray, Multiple Chancellors: Reforming the National Injunction, 131 Harv. L. Rev. 417, 424-445 (2017) (detailing historical practice). Thus, in the late 19th century, this Court rejected injunctive relief that barred enforcement of a law to nonparties. Bray 429 (discussing Scott v. Donald, 165 U.S. 58 (1897)). As a consequence, for example, in the 1930s courts issued more than 1600 injunctions against enforcement of a single federal statute. Bray 434. The nationwide injunctions in this case are thus inconsistent with "longstanding limits on equitable relief." Hawaii, 138 S. Ct. at 2425 (Thomas, J., concurring).

3. Nationwide injunctions like this one also disserve this Court's interest in allowing an issue to percolate in the lower courts. See United States v. Mendoza, 464 U.S. 154, 160 (1984).

While other suits may proceed even after a nationwide injunction is issued, once that injunction is affirmed on appeal, other plaintiffs may strategically drop their suits and rely on the first nationwide injunction -- forcing this Court to either accept plenary review of the first case to tee up the issue, or risk never having the issue come before it again. Permitting nationwide injunctions also undercuts the primary mechanism Congress has authorized to permit broader relief: class actions. It enables all potential claimants to benefit from nationwide injunctive relief by prevailing in a single district court, without satisfying the prerequisites of Federal Rule of Civil Procedure 23, while denying the government the corresponding benefit of a definitive resolution as to all potential claimants if it prevails instead.

In other words, if multiple plaintiffs file multiple suits against a governmental policy, they potentially need to win only a single suit for all of them to prevail, while the government must run the table to enforce its policy anywhere. That point is vividly on display here, where the government has successfully defended the Rule before two courts of appeals and yet remains unable to put it into effect anywhere in the country because of a single district judge's nationwide injunctions.

## III. THERE IS A LIKELIHOOD THAT IRREPARABLE HARM WILL RESULT FROM THE DENIAL OF A STAY

Finally, "irreparable harm will result from the denial of a stay." Conkright, 556 U.S. at 1402 (brackets and citation

omitted). As the Ninth Circuit recognized, "the preliminary injunctions will," unless stayed, "force DHS to grant status to those not legally entitled to it." City & County of San Francisco, 944 F.3d at 806. DHS "currently has no practical means of revisiting public-charge determinations once made," making that harm effectively irreparable. Id. at 805. And given the "compelling" interest that Congress has attached to ensuring self-sufficiency among aliens admitted to the United States, 8 U.S.C. 1601(5), that harm substantially outweighs whatever limited and speculative fiscal injuries respondents claim they will suffer during the pendency of this litigation.

## CONCLUSION

For the foregoing reasons, this Court should stay the district court's injunctions in their entirety pending the completion of further proceedings in the court of appeals and, if necessary, this Court. At the least, the Court should stay the nationwide effect of the injunctions such that they apply only to aliens whom the governmental and non-governmental respondents identify as receiving services in the jurisdictions in which they operate.

Respectfully submitted.

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