No. 20-450

IN THE

Supreme Court of the United States

CHAD F. WOLF, ACTING SECRETARY OF HOMELAND SECURITY, ET AL.,
Petitioners,

v.

COOK COUNTY, ILLINOIS, ET AL.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the entry of final judgment moots this interlocutory appeal from a preliminary injunction.

2. Whether the district court abused its discretion in preliminarily enjoining enforcement of the Rule in Illinois, where the Rule is inconsistent with the Immigration and Nationality Act (INA) and arbitrary and capricious in violation of the Administrative Procedure Act (APA), where Plaintiffs submitted extensive evidence of irreparable harm caused by the Rule, and where Defendants submitted no countervailing evidence of harm if the Rule were to remain in effect.

3. Whether the court of appeals was correct in holding that at least one of the Plaintiffs, both of which devote their resources to ensuring that immigrants subject to the Rule have access to necessary benefits, has interests at least marginally related to the INA's purpose and thus falls within the statute's zone of interests and can bring this suit.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioners are Chad F. Wolf, in his official capacity as Acting Secretary of Homeland Security; the United States Department 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 and Senior Official Performing the Duties of the Deputy Secretary for the Department of Homeland Security. Respondents are Cook County, Illinois and the Illinois Coalition for Immigrant and Refugee Rights, Inc. No party is a corporation.

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STATUTES AND REGULATION

Respondents respectfully submit this brief in opposition to the petition for a writ of certiorari. The petition—which seeks review of a preliminary injunction—has been mooted by the entry of final judgment in favor of respondents. As this Court and the lower courts of appeals have uniformly held, a preliminary injunction ceases to have effect once final judgment is entered, and an appeal seeking review of the preliminary injunction is therefore moot. For this and the additional reasons discussed below, the petition must be denied.

COUNTERSTATEMENT OF THE CASE

A. The Facts

This case concerns a provision of the Immigration and Nationality Act (INA) that renders inadmissible any noncitizen who "is likely at any time to become a public charge." 8 U.S.C. § 1182(a)(4)(A). In August 2019, DHS promulgated a regulation purporting to interpret the public charge statutory provision. 84 Fed. Reg. 41,292 (Aug. 14, 2019) (the "Rule"). The Rule "redefines the term '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)." *Id.* at 41,295. It also expands the definition of "public benefit" to include non-cash benefits such as SNAP (formerly food stamps), most forms of Medicaid, and various forms of housing assistance. *Id.* An immigrant who is considered likely in the future to receive any such benefits for the requisite amount of time is rendered a "public charge" and is disqualified from adjusting status or gaining admission to the United States.

Plaintiffs Cook County, Illinois ("Cook County") and the Illinois Coalition for Immigrant and Refugee Rights, Inc. ("ICIRR") challenged the Rule in the United States District Court for the Northern District of Illinois shortly before the Rule went into effect. Both Plaintiffs advanced claims that the Rule violates the Administrative Procedure Act ("APA"), 5 U.S.C. § 706, and Plaintiff ICIRR further asserted that the Rule violates the Equal Protection Clause.

B. District Court Proceedings

Plaintiffs moved for a preliminary injunction against enforcement of the Rule on the ground that it violates the APA. Plaintiffs asserted that the Rule exceeds DHS's statutory authority, is not in accordance with law, and is arbitrary and capricious.

On October 14, 2019, the district court granted Plaintiffs' request for a preliminary injunction barring DHS from implementing the Rule in Illinois. Pet. App. 86a–87a, 123a. The court held that the Rule was inconsistent with the statutory text because, for more than a century and as defined in Supreme Court precedent, the term "public charge" has consistently referred to those who are "substantially, if not entirely, dependent on government assistance on a long-term basis." *Id.* at 103a–118a. The district court further held that the Plaintiffs had shown they would be irreparably harmed if the Rule were implemented, whereas DHS had failed to establish any harm from delaying the Rule's enforcement. *Id.* at 119a–122a.

As to standing, the district court held that both Cook County and ICIRR had Article III standing and were within the INA's zone of interests. The court determined that the "changes in behavior caused by" the Rule—namely, disenrollment from Medicaid and a corresponding increase in uncompensated medical

care provided by Cook County's hospital system, as DHS predicted at 84 Fed. Reg. at 41,384, 41,389—would impose a financial burden on Cook County. Pet. App. 91a–95a. As for ICIRR, the court held that it had standing because it "already has expended resources to prevent frustration of its programs' missions, to educate immigrants and staff about the Rule's effects, and to encourage immigrants not covered by but nonetheless deterred by the Rule to continue enrolling in benefit programs." *Id.* at 97a. The district court also determined that the financial harms to Cook County and "ICIRR's interests in ensuring that health and social services remain available to immigrants and in helping them navigate the immigration process" placed both Plaintiffs within the INA's zone of interests. *Id.* at 101a–103a.

The district court's injunction was stayed by this Court on February 21, 2020. *Wolf* v. *Cook County*, 140 S. Ct. 681 (2020) (mem.).

C. Seventh Circuit Proceedings

On June 10, 2020, the Seventh Circuit affirmed the preliminary injunction. First, the Seventh Circuit concluded that both Cook County and ICIRR had Article III standing to bring the case. Pet. App. 9a–11a. As for zone of interests, the court determined that Plaintiff Cook County—which demonstrated that implementation of the Rule would force it to bear increased burdens as a local governmental provider of healthcare services—was within the zone of interests. *Id.* at 12a–14a. Because at least one Plaintiff had satisfied the zone of interests requirement, the Seventh Circuit declined to reach whether ICIRR was also within the INA's zone of interests. *Id.* at 14a–15a; see *Watt* v. *Energy Action Educ. Found.*, 454 U.S. 151, 160 (1981) ("Because we find California has standing, we do not consider the standing of the other plain-

tiffs."). Second, the Seventh Circuit held that the Rule violated the APA because it fell outside the bounds of the statute and was arbitrary and capricious, and found that the Rule was likely to cause irreparable harm and that the public interest favored a preliminary injunction. Pet. App. 27a–43a.

D. Subsequent District Court Proceedings

On August 31, 2020, Plaintiffs moved for summary judgment on their APA claims. On November 2, 2020, the district court granted Plaintiffs' motion for summary judgment, entered final judgment on the APA claims under Federal Rule of Civil Procedure 54(b), and vacated the Rule. Dist. Ct. ECF Nos. 222–23.[1] DHS appealed the final judgment, and the Seventh Circuit stayed the district court's final judgment and suspended briefing on the appeal pending resolution of this petition. 7th Cir. ECF No. 21.[2]

REASONS FOR DENYING THE PETITION

The petition must be denied because any appellate review of the no-longer-in-effect preliminary injunction is moot. The petition seeks review of a decision affirming a preliminary injunction that has since been extinguished by the district court's entry of final judgment. DHS's appeal therefore is moot, and this Court lacks jurisdiction to hear it. The petition must be denied for that reason alone.

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[1] All citations to "Dist. Ct. ECF No." refer to documents filed in *Cook County* v. *Wolf*, No. 1:19-cv-06334 (N.D. Ill. docketed Sept. 23, 2019).

[2] All citations to "7th Cir. ECF No." refer to documents filed in *Cook County* v. *Wolf*, No. 20-3150 (7th Cir. docketed Nov. 3, 2020).

In addition to review being foreclosed by mootness, the questions presented do not warrant this Court's attention for several independent reasons. First, there is no circuit split. Petitioners point to a Ninth Circuit stay order and a Fourth Circuit panel decision in support of their claimed split. But the Ninth Circuit has since affirmed preliminary injunctions of the Rule, and the Fourth Circuit has granted en banc rehearing and vacated the panel opinion on which DHS relies. At present, therefore, the lower courts are in agreement that the Rule is invalid.

What is more, regardless of the outcome of litigation challenging the Rule, anticipated Executive Branch changes will bring this controversial Rule's "brief and furious history" to its end. *Dep't of Homeland Sec.* v. *New York*, 140 S. Ct. 599, 600 (2020) (mem.) (Gorsuch, J., concurring in the grant of stay). The incoming presidential administration has stated unequivocally that it will "[r]everse [the] public charge rule" at issue in this litigation within its first 100 days. See *The Biden Plan for Securing Our Values as a Nation of Immigrants*, Biden for President, https://joebiden.com/immigration/ (last visited Dec. 8, 2020) [hereinafter *Biden Plan*]. DHS alleges—and the Seventh Circuit agreed—that the discretion to define "public charge" within statutory bounds rests with the Executive Branch. Pet. App. 26a; see also Pet. 8, 11, 17, 25. Once the administration exercises its discretion under the provision, the issues presented in this petition—whether the existing Rule's definition of "public charge" is a permissible interpretation of the INA under *Chevron* and whether its promulgation was arbitrary and capricious—will have no ongoing significance or prospective impact. Moreover, regardless of any future administrative action, this Court would have ample opportunity to address the

Rule's validity upon review of the final judgment with the benefit of more fulsome analysis and percolation in the lower courts.

Nor does DHS's claim that Cook County and ICIRR are outside the INA's zone of interests merit this Court's review. Every court of appeals that has addressed this issue has agreed that governmental plaintiffs like Cook County are within the INA's zone of interests and therefore may challenge the Rule. It is equally clear that ICIRR is within the zone of interests—but regardless, where one Plaintiff (Cook County) is in the zone of interests, the status of other Plaintiffs is irrelevant. That is why the Seventh Circuit did not decide the question, and this Court should not do so either.

Finally, the Court should reject DHS's request that the petition be held if the Court grants DHS's petition in *United States Department of Homeland Security* v. *New York*, No. 20-449 (U.S. filed Oct. 7, 2020). The mootness of DHS's petition here is a jurisdictional bar to review. There is no sense in holding a petition for which review is flatly unavailable. The petition must be denied.

I. THE PETITION FOR A WRIT OF CERTIORARI MUST BE DENIED AS MOOT.

DHS's petition seeks review of the Seventh Circuit's decision affirming the district court's order granting a preliminary injunction. After DHS filed the petition, the district court granted Plaintiffs' motion for summary judgment on the APA claims and entered final judgment on those claims under Federal Rule of Civil Procedure 54(b), vacating the Rule under 5 U.S.C. § 706(2)(A). Dist. Ct. ECF Nos. 222–23. As a result, DHS's appeal of the preliminary injunction is now moot.

Once a court enters a final judgment on the merits, the preliminary injunction ceases to have any effect and "ordinarily merges into the final" judgment. *Grupo Mexicano de Desarrollo, S.A.* v. *All. Bond Fund, Inc.*, 527 U.S. 308, 317 (1999). A preliminary injunction exists to "preserve the status quo pending final determination" of a case on its merits. *Id.* at 325 (quoting *Deckert* v. *Indep. Shares Corp.*, 311 U.S. 282, 290 (1940)); see also *Univ. of Tex.* v. *Camenisch*, 451 U.S. 390, 395 (1981) ("The purpose of a preliminary injunction is merely to preserve the relative positions of the parties until a trial on the merits can be held."). When that final determination is made, and the final judgment "establishes that the defendant *should not have been engaging in the conduct that was enjoined*" through the preliminary injunction, the preliminary injunction ceases to have any effect. *Grupo Mexicano*, 527 U.S. at 314–15. There is no further appellate jurisdiction for review of the preliminary injunction; it does not matter if the preliminary injunction was wrongly issued in the first place because its issuance, now superseded, was "harmless." *Id.*

Thus, once a final judgment is entered on the merits, "an appeal from the grant of a preliminary injunction becomes moot." *Id.* at 314. This Court has therefore "dismissed appeals in such circumstances."[3] *Id.*

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[3] The lower courts of appeals uniformly agree. See *Adams* v. *Baker*, 951 F.3d 428, 429 (6th Cir. 2020) (per curiam) ("A final decision on the merits … 'extinguishes a preliminary injunction.' Because no 'status quo' remains for us to 'maintain,' there is nothing left for us to do." (citation omitted)); *Carrizosa* v. *Chiquita Brands Int'l, Inc. (In re Chiquita Brands Int'l, Inc. Alien Tort Statute & S'holder Derivative Litig.)*, 965 F.3d 1238, 1244–45 (11th Cir. 2020) (per curiam) ("[I]n the preliminary injunction context, … '[o]nce a final judgment is rendered, the appeal is properly taken from the final judgment.'" (second altera-

(citing *Smith* v. *Ill. Bell Tel. Co.*, 270 U.S. 587, 588–89 (1926)); see also, *e.g.*, *Harper ex rel. Harper* v. *Poway Unified Sch. Dist.*, 549 U.S. 1262 (2007) (mem.) (remanding to the lower court with instructions to dismiss appeal of preliminary injunction order as moot because the district court had entered final judgment); *Honig* v. *Students of Cal. Sch. for the Blind*, 471 U.S. 148, 149 (1985) (per curiam) ("[T]he only question of law actually ruled on by the Court of Appeals was whether the District Court abused its discretion in applying the complicated calculus for determining whether the preliminary injunction should have issued, an issue now moot. No order of this Court could affect the parties' rights with respect to the injunction we are called upon to review."); *Camenisch*, 451 U.S. at 394 (holding that where, as here, a preliminary injunction no longer had any effect, "the only issue presently before us—the correctness of the decision to grant a preliminary injunction—is moot").

This case fits squarely within these precedents. The district court's preliminary injunction "enjoin[ed], pending the outcome of the litigation, action that [re-

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tion in original)); *Smith* v. *Frank*, 99 F. App'x 742, 743 (7th Cir. 2004) (district court's final judgment entered during pendency of interlocutory appeal of preliminary injunction "renders th[e] appeal moot"); *Hankins* v. *Temple Univ. (Health Scis. Ctr.)*, 829 F.2d 437, 438 n.1 (3d Cir. 1987) ("[Plaintiff's] interlocutory appeal from the denial of her motion for a preliminary injunction was rendered moot by the issuance of the district court's final order on the merits."); see also *U.S. Philips Corp.* v. *KBC Bank N.V.*, 590 F.3d 1091, 1093–94 (9th Cir. 2010); *Fundicao Tupy S.A.* v. *United States*, 841 F.2d 1101, 1103–04 (Fed. Cir. 1988); *United States ex rel. Bergen* v. *Lawrence*, 848 F.2d 1502, 1512 (10th Cir.), *cert. denied*, 488 U.S. 980 (1988); *Am. Postal Workers Union* v. *U.S. Postal Serv.*, 764 F.2d 858, 860 n.3 (D.C. Cir. 1985), *cert. denied*, 474 U.S. 1055 (1986); *Madison Square Garden Boxing, Inc.* v. *Shavers*, 562 F.2d 141, 144 (2d Cir. 1977).

spondents] claim[ed] is unlawful"—the Rule. *Grupo Mexicano*, 527 U.S. at 314. With its final judgment, the district court determined that the Rule was unlawful and vacated it, thus barring its enforcement. Plaintiffs' lawsuit did, therefore, "turn[] out to be meritorious." *Id.* That means that "even if the preliminary injunction was wrongly issued (because at that stage of the litigation the plaintiff's prospects of winning were not sufficiently clear, or the plaintiff was not suffering irreparable injury) its issuance would in any event be harmless error." *Id.* at 314–15.

Nothing about either the preliminary injunction or final judgment entered in this case saves the petition from mootness. In rare circumstances not present here, an appeal of a preliminary injunction may not be rendered moot by a final judgment if "the substantive validity of the final [judgment] does *not* establish the substantive validity of the preliminary [injunction]." *Id.* at 315. For example, in *Grupo Mexicano*, the Court retained jurisdiction of an appeal from a preliminary injunction even after a permanent injunction issued because the preliminary injunction was not related to the merits of the case. There, the preliminary injunction directed the defendant not to use the asset at issue in the lawsuit to satisfy its other debts, so as to avoid insolvency that would cause any ultimate judgment on the merits to be frustrated. *Id.* at 312–13. The preliminary injunction therefore was "issued not to enjoin *unlawful* conduct, but rather to *render* unlawful conduct that would otherwise be permissible, in order to protect the anticipated judgment of the court." *Id.* at 315. Put differently, the "petitioners' basis for arguing that the preliminary injunction was wrongfully issued" was "*independent* of respondents' claim on the merits." *Id.* at 317 (emphasis added).

But this is a typical case: the preliminary injunction barred implementation of a Rule because it was unlawful, and the final judgment resolved that the Rule was indeed unlawful. DHS does not (and cannot) suggest that the preliminary injunction served any function other than to enjoin conduct that the court found likely to be unlawful pending a final determination of the merits. Whether the lower courts were correct in *predicting* at the preliminary injunction stage that Plaintiffs ultimately would win final judgment is now moot, because Plaintiffs now have won a final judgment. And this is true *regardless* of whether the district court was correct in granting the preliminary injunction.

Nor does the fact that the preliminary injunction and the final judgment present overlapping merits issues save this appeal from mootness. This Court already considered and rejected this idea in *Camenisch*. 451 U.S. at 394. There, the Court noted that, because "likelihood of success on the merits was one of the factors the District Court and the Court of Appeals considered in granting [plaintiff] a preliminary injunction, it might be suggested that their decisions were tantamount to decisions on the underlying merits and thus that the preliminary-injunction issue is not truly moot." *Id.* But the Court concluded that "[t]his reasoning fails … because it improperly equates 'likelihood of success' with 'success'" and "ignores the significant procedural differences between preliminary and permanent injunctions." *Id.*

Finally, even though the final judgment here ordered vacatur rather than a permanent injunction, the analysis is the same. The district court entered a preliminary injunction early in the case and an order of vacatur at final judgment because those are the appropriate forms of preliminary and final relief for

an APA violation. The relief entered at the preliminary injunction stage reflected the district court's authority under Rule 65 to preliminarily enjoin enforcement of the Rule pending a final determination on the merits, and once Plaintiffs won summary judgment, the APA required the district court to issue a final judgment vacating the Rule. Dist. Ct. ECF No. 222, at 4–8; see 5 U.S.C. § 706(2)(A) ("[T]he reviewing court *shall* … hold unlawful *and set aside* agency action, findings, and conclusions found to be … arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." (emphases added)); *Murphy* v. *Smith*, 138 S. Ct. 784, 787 (2018) ("[T]he word 'shall' usually creates a mandate, not a liberty, so the verb phrase 'shall be applied' tells us that the district court has some nondiscretionary duty to perform." (quoting 42 U.S.C. § 1997e(d)(2))). Both forms of relief were directed at remedying an APA violation, and the difference between the preliminary injunction and the vacatur simply reflects the procedural posture when they were entered, not a difference in the unlawfulness of the Rule. The preliminary injunction therefore merges into the final order of vacatur, and review of the now-extinguished preliminary injunction is moot. The petition must be denied.

II. THE QUESTIONS PRESENTED DO NOT WARRANT THIS COURT'S REVIEW.

The petition should be denied for the separate reason that the questions presented do not warrant this Court's review. There is no remaining circuit split with respect to the existing Rule. And in any event, that Rule has a limited shelf life, as the incoming Biden administration has indicated that it will "reverse" the Rule within its first 100 days.

A. The Circuit Split On Which DHS Relies Has Evaporated.

DHS argues that immediate review is warranted to address disparate outcomes between, on the one hand, the decisions of the Second and Seventh Circuits affirming preliminary injunctions of the Rule, and, on the other hand, the Ninth Circuit's decision staying a preliminary injunction and the Fourth Circuit's opinion reversing a preliminary injunction. Pet. 23–25. But the split has evaporated since the petition was filed.

First, on December 2, 2020, the Ninth Circuit affirmed the Northern District of California preliminary injunction and vacated only the portion of the Eastern District of Washington injunction making it applicable nationwide, otherwise affirming the injunction. *City & County of San Francisco* v. *U.S. Citizenship & Immigration Servs.*, No. 19-17213, 2020 WL 7052286 (9th Cir. Dec. 2, 2020). The Ninth Circuit thus joined the Second and Seventh Circuits in affirming preliminary injunctions of the Rule. Second, on December 3, 2020, the Fourth Circuit granted rehearing en banc as to the Maryland District Court's preliminary injunction order. *Casa de Md., Inc.* v. *Trump*, No. 19-2222, 2020 WL 7090722 (4th Cir. Dec. 3, 2020). As a result, the Fourth Circuit opinion on which DHS rests its argument as to a circuit split has been vacated. See 4th Cir. R. 35(c). There is therefore no current circuit split.

In these circumstances—with the existing lower court opinions in agreement—the Court should deny the current petition and defer review. If the Rule remains in place—which it almost certainly will not, see *infra* pp. 13–15—this Court can address the Rule's validity in any appeal from the final judgment of vacatur, to the extent that circumstances warrant

review at that time. Deferring review until any appeal from final judgment will not only avoid the jurisdictional defect stemming from the mootness of the current petition, but will also allow this Court the benefit of both the views of the en banc Fourth Circuit and a complete lower court record here. That way, rather than "rush from one preliminary injunction hearing to another," the parties can engage in the "methodical[] develop[ment] [of] arguments and evidence" that best facilitates review before this Court. *Dep't of Homeland Sec.* v. *New York*, 140 S. Ct. at 600 (Gorsuch, J., concurring in the grant of stay); see also, *e.g.*, *Wrotten* v. *New York*, 560 U.S. 959, 960 (2010) (Sotomayor, J., respecting the denial of the petition for writ of certiorari) (explaining that if the Court reviewed the case in an interlocutory posture, the Court "would not have the benefit of the state courts' full consideration"). This Court should therefore follow its "general[]" practice of "await[ing] final judgment in the lower courts before exercising [its] certiorari jurisdiction." *Va. Military Inst.* v. *United States*, 508 U.S. 946, 946 (1993) (mem.) (Scalia, J., respecting the denial of the petition for writ of certiorari).

B. The Rule Will Be Revoked And Have No Ongoing Significance To The Parties Or The Public.

The incoming presidential administration's promise to end the Rule also counsels strongly against granting the petition. The incoming administration has publicly stated that it disagrees with the Rule and will "[r]everse" it within its first 100 days. *Biden Plan*, *supra*. Once this occurs, the Rule will no longer present a live question.

The petition makes clear that DHS seeks this Court's review only as to issues specific to this itera-

tion of the Rule—not any broader question concerning, for example, administrative law or executive power. DHS's petition seeks review of two discrete issues: (1) whether the Rule presents a proper interpretation of the statutory term "public charge" under *Chevron*; and (2) whether DHS promulgated the Rule in an arbitrary and capricious manner. Pet. 14–23. The petition is therefore limited to the existing Rule, and presents no questions that will remain of significance following the Rule's reversal. See *Diffenderfer* v. *Cent. Baptist Church of Miami, Fla., Inc.*, 404 U.S. 412, 414 (1972) (per curiam) (intervening legislation rendered lawsuit seeking injunctive relief moot because availability of such relief turns on the "law as it now stands, not as it stood when the judgment below was entered"); *Honig* v. *Doe*, 484 U.S. 305, 341 (1988) (Scalia J., dissenting) (explaining that a case becomes moot "where the law has been changed so that the basis of the dispute no longer exists"). In other words, any petition granted to review the current Rule may well be mooted before any decision is entered. See, *e.g.*, *N.Y. State Rifle & Pistol Ass'n, Inc.* v. *City of New York*, 140 S. Ct. 1525, 1526 (2020) (per curiam) (petitioners' claim moot where statute at issue was amended after the Court had granted certiorari); *United States* v. *Microsoft Corp.*, 138 S. Ct. 1186, 1188 (2018) (per curiam) (where legislation enacted after oral argument amended the statute at issue, "[n]o live dispute remain[ed] between the parties over the issue with respect to which certiorari was granted").

DHS counters that future rulemaking is too speculative to require dismissal of this petition. See Response to Motion from Petitioner at 2, *U.S. Dep't of Homeland Sec.* v. *New York*, No. 20-449 (U.S. Nov. 20, 2020). The incoming administration's explicit statement counsels otherwise. See *Biden Plan*, *supra.*

And the incoming administration has several legal avenues to achieve that goal; for example, the APA explicitly permits the immediate promulgation of an interim final rule without prior notice and comment, where good cause supports expedited action. See 5 U.S.C. § 553(b)(3)(B); Maeve P. Carey, Cong. Research Serv., R43056, *Counting Regulations: An Overview of Rulemaking, Types of Federal Regulations, and Pages in the* Federal Register 15–16 (Sept. 3, 2019). Regardless, this Court will have ample opportunity to review the existing Rule upon appeal from final judgment. See, *e.g.*, *Va. Military Inst.*, 508 U.S. at 946 (Scalia, J., respecting the denial of the petition for writ of certiorari) ("[Denying certiorari] does not, of course, preclude [petitioner] from raising the same issues in a later petition, after final judgment has been rendered.").

Finally, the Court need not concern itself that denying the petition will—by terminating the stay entered by this Court—bar DHS from enforcing the existing Rule. The district court's entry of final judgment extinguished the preliminary injunction, and this Court's stay of the preliminary injunction therefore ceased to have effect. Additionally, the Seventh Circuit has stayed the district court's final judgment while the appeal of that judgment in the Seventh Circuit is pending, and its stay of the judgment pending appeal will not automatically lapse upon denial of this petition. 7th Cir. ECF No. 21. Accordingly, denying the petition will not lead to any immediate impact on DHS's ability to enforce the existing Rule.

C. The Zone-of-Interests Issue Does Not Warrant This Court's Review.

DHS's other question presented—which looks to whether Plaintiffs fall within the INA's zone of interests—does not warrant this Court's review. Only one Plaintiff must satisfy the zone of interests require-

ment, and the Seventh Circuit determined that Cook County easily does so because its interest in providing access to health care, nutrition, and supplemental housing benefits is consistent with the statute's purported goal of self-sufficiency. Pet. App. 12a–14a. Then-Judge Barrett's dissent did not question that holding. See Pet. App. 44a–85a. And the Second and Ninth Circuits reached precisely the same conclusion with respect to the interests of plaintiff states and local governments. *City & County of San Francisco*, 2020 WL 7052286, at *8; *New York*, 969 F.3d at 62–63.[4] There is therefore no disagreement among lower courts that state and local government plaintiffs, such as Cook County, constitute proper parties to challenge the Rule.

Moreover, the district court determined that ICIRR, too, falls within the zone of interests of the INA because ICIRR is "precisely the type of organization that would reasonably be expected to 'police the interests that the statute protects,'" and the INA "gives organizations like ICIRR a role in helping immigrants navigate immigration procedures generally." Pet. App. 101a–102a (quoting *Amgen, Inc.* v. *Smith*, 357 F.3d 103, 109 (D.C. Cir. 2004)). The district court's ruling was fully supported by this Court's precedent. See *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians* v. *Patchak*, 567 U.S. 209, 224–25 (2012). More importantly for present purposes, however, Cook County is indisputably a proper party to challenge the Rule—which means the district court's ruling with respect to ICIRR's prudential standing was unnecessary to grant the preliminary

[4] The plaintiffs in *Casa de Maryland* do not include state or local government entities. See *CASA de Md., Inc.* v. *Trump*, 971 F.3d 220, 236 (4th Cir. 2020), *reh'g en banc granted*, No. 19-2222, 2020 WL 7090722 (4th Cir. Dec. 3, 2020).

injunction. See *Watt*, 454 U.S. at 160. The Seventh Circuit accordingly chose not to reach the question in affirming. Pet. App. 14a–15a. In short, even if the district court erred as to ICIRR's prudential standing (it did not), that error would have no impact whatsoever on the validity of the preliminary injunction (which has in any event already been extinguished).

III. IF THE COURT GRANTS REVIEW IN THE PARALLEL NEW YORK CASE, IT SHOULD NOT HOLD THIS PETITION.

Finally, the Court should deny—and not hold—this petition. Petitioners contend that the contemporaneously filed petition for a writ of certiorari in *United States Department of Homeland Security* v. *New York*, No. 20-449, is a superior vehicle and that the Court should therefore hold this petition pending a decision on DHS's petition in that case. Pet. 27. But in the event that this Court grants review in the parallel New York challenge, no reason exists to hold this petition as the New York petition proceeds.

The final judgment issued in this case renders this petition moot. Mootness requires dismissal. See, *e.g.*, *Grupo Mexicano*, 527 U.S. at 314 (citing *Smith*, 270 U.S. at 588–89); *Bd. of License Comm'rs* v. *Pastore*, 469 U.S. 238, 240 (1985) (per curiam); *Harper*, 549 U.S. 1262; *Honig*, 471 U.S. at 149; *Camenisch*, 451 U.S. at 394.

And to the extent this Court reviews the preliminary injunctions at issue in *New York*, its ruling can have no impact on the preliminary injunction at issue in this petition, as it already has been extinguished. See *supra* pp. 7–11. For this same reason, this Court's earlier order staying the preliminary injunction, 140 S. Ct. 681, no longer has any effect. Accordingly, DHS cannot demonstrate any need to hold this petition so as to preserve the stay order.

CONCLUSION

For the foregoing reasons, the Court should deny the Petition for a writ of certiorari.

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