No. 20-1775

In the
Supreme Court of the United States

THE STATE OF ARIZONA, ET AL.,
Petitioners,

v.

CITY AND COUNTY OF SAN FRANCISCO, ET AL.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

JOINT APPENDIX

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DECEMBER 13, 2021

PETITION FOR WRIT OF CERTIORARI FILED JUNE 18, 2021
PETITION FOR WRIT OF CERTIORARI GRANTED OCTOBER 29, 2021

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JOINT APPENDIX

TABLE OF CONTENTS

The following opinions, decisions, judgments, and orders have been omitted in printing this joint appendix because they appear on the following page in the appendix to the Petition for Certiorari:

***City and County of San Francisco, et al. v. DHS, et al.*, No. 19-cv-04975 (N.D. Cal.).**

1	08/13/2019	COMPLAINT against Kenneth T. Cuccinelli, Department of Homeland Security, Kevin McAleenen, U.S. Citizenship and Immigration Services (Filing fee $ 400, receipt number 0971-13605223.). Filed by City and County of San Francisco, County of Santa Clara. (Attachments: # 1 Civil Cover Sheet)(Herrera, Dennis) (Filed on 8/13/2019) Modified on 8/14/2019 (slhS, COURT STAFF). (Entered: 08/13/2019)
* * *		
20	08/27/2019	ORDER RELATING CASE. Case C-17-4717-PJH is related to C-19- Signed by Judge Phyllis J. Hamilton on 8/27/19. (kcS, COURT STAFF) (Filed on 8/27/2019) (Entered: 08/27/2019)
* * *		
22	08/28/2019	MOTION for Preliminary Injunction and Memorandum of Points and Authorities filed by City and County of San Francisco. Motion Hearing set for 10/2/2019 09:00 AM in Oakland,

		Courtroom 3, 3rd Floor before Judge Phyllis J. Hamilton. Responses due by 9/11/2019. Replies due by 9/18/2019. (Eisenberg, Sara) (Filed on 8/28/2019) Modified on 8/29/2019 (ajsS, COURT STAFF). (Entered: 08/28/2019)
* * *		
98	09/13/2019	OPPOSITION/RESPONSE (re 22 MOTION for Preliminary Injunction) filed by Kenneth T. Cuccinelli, Department of Homeland Security, Kevin McAleenen, U.S. Citizenship and Immigration Services. (Kolsky, Joshua) (Filed on 9/13/2019) (Entered: 09/13/2019)
* * *		
103	09/20/2019	City and County of San Francisco and County of Santa Clara's Reply in Support of Motion for Preliminary Injunction filed by County of Santa Clara. (Rajendra, Raphael) (Filed on 9/20/2019) Modified on 9/23/2019 (cjlS, COURT STAFF). (Entered: 09/20/2019)
* * *		

107	10/02/2019	Minute Entry for proceedings held before Judge Phyllis J. Hamilton: Preliminary Injunction Hearing held on 10/2/2019. Court Reporter: Pamela Batalo Hebel. (kcS, COURT STAFF) (Date Filed: 10/2/2019) (Entered: 10/02/2019)
* * *		
115	10/11/2019	PRELIMINARY INJUNCTION Associated Cases: 4:19-cv-04717-PJH, 4:19-cv-04975-PJH, 4:19-cv-04980-PJH(pjhlc1S, COURT STAFF)(Filed on 10/11/2019) (Entered: 10/11/2019)
* * *		
120	10/25/2019	MOTION to Stay Preliminary Injunction filed by Kenneth T. Cuccinelli, Kevin McAleenen, U.S. Citizenship and Immigration Services. Motion Hearing set for 12/4/2019 09:00 AM in Oakland, Courtroom 3, 3rd Floor before Judge Phyllis J. Hamilton. Responses due by 11/8/2019. Replies due by 11/15/2019. (Kolsky, Joshua) (Filed on 10/25/2019) (Entered: 10/25/2019)
* * *		

124	10/30/2019	NOTICE OF APPEAL to the 9th Circuit Court of Appeals filed by Kenneth T. Cuccinelli, Department of Homeland Security, Kevin McAleenen, U.S. Citizenship and Immigration Services. Appeal of Order on Motion for Preliminary Injunction 115 (Appeal fee FEE WAIVED.) (Kolsky, Joshua) (Filed on 10/30/2019) (Entered: 10/30/2019)
125	10/31/2019	USCA Case Number 19-17213 Ninth Circuit Court of Appeals for 124 Notice of Appeal, filed by Department of Homeland Security, Kenneth Cuccinelli, U.S. Citizenship and Immigration Services, Kevin McAleenen. (cjlS, COURT STAFF) (Filed on 10/31/2019) (Entered: 10/31/2019)
* * *		
128	11/08/2019	OPPOSITION/RESPONSE (re 120 MOTION to Stay of Injunction Pending Appeal filed by County of Santa Clara. (Edwards, Hannah) (Filed on 11/8/2019) Modified on 11/12/2019 (ajsS, COURT STAFF). (Entered: 11/08/2019)
* * *		

135	12/06/2019	Order by Judge Phyllis J. Hamilton terminating (120) Motion to Stay in case 19-cv-04717-PJH and (125) Motion to Stay in case 19-cv-04975-PJH Associated Cases: 4:19-cv-04717-PJH, 4:19-cv-04975-PJH(pjhlc1S, COURT STAFF) (Filed on 12/6/2019) (Entered: 12/06/2019)
* * *		
140	01/08/2020	Stipulation and [Proposed] Order to Stay Proceedings Pending Appeal filed by City and County of San Francisco, County of Santa Clara, U.S. Citizenship and Immigration Services, Department of Homeland Security and Kevin McAleen, and Kenneth T. Cuccinelli (Eisenberg, Sara) (Filed on 1/8/2020) Modified on 1/9/2020 (ajsS, COURT STAFF). (Entered: 01/08/2020)
141	01/10/2020	STIPULATION AND ORDER TO STAY PROCEEDINGS PENDING APPEAL by Judge Phyllis J. Hamilton granting 140 Stipulation. (kcS, COURT STAFF) (Filed on 1/10/2020) (Entered: 01/10/2020)
* * *		

150	12/17/2020	ORDER that this matter shall remain stayed pending issuance of the mandate by the Court of Appeals. The parties shall file a joint status report within 7 days following issuance of the mandate re 149 Status Report filed by Department of Homeland Security, Kenneth T. Cuccinelli, U.S. Citizenship and Immigration Services, Kevin McAleenen. Signed by Judge Phyllis J. Hamilton on 12/17/2020. (kcS, COURT STAFF) (Filed on 12/17/2020) (Entered: 12/17/2020)

***State of Washington, et al. v. DHS, et al.*, No. 19-cv-05210 (E.D. Wash.).**

1	08/14/2019	COMPLAINT against All Defendants (Filing fee $ 400; Receipt # 0980-3237736) Filed by All Plaintiffs. (Attachments: # 1 Exhibit Exhibit A, # 2 Summons, # 3 Summons, # 4 Summons, # 5 Summons, # 6 Civil Cover Sheet)(Tomisser, Rene) (Entered: 08/14/2019)
* * *		
31	09/05/2019	AMENDED COMPLAINT against All Defendants. Filed by All Plaintiffs. (Attachments: # 1 Exhibit Exhibit A)(Tomisser, Rene) (Entered: 09/05/2019)
* * *		
34	09/06/2019	MOTION for Preliminary Injunction by All Plaintiffs. Motion Hearing set for 10/3/2019 at 10:00 AM in Richland Courtroom 189 before Judge Rosanna Malouf Peterson. (Attachments: # 1 Proposed Order)(Sprung, Jeffrey) (Entered: 09/06/2019)
* * *		

155	09/20/2019	MEMORANDUM in Opposition re 34 MOTION for Preliminary Injunction filed by Kenneth T Cuccinelli, II, Kevin K McAleenan, United States Citizenship and Immigration Services, United States Department of Homeland Security. (Kolsky, Joshua) (Entered: 09/20/2019)
		* * *
158	09/27/2019	REPLY MEMORANDUM re 34 MOTION for Preliminary Injunction filed by All Plaintiffs. (Sprung, Jeffrey) (Entered: 09/27/2019)
		* * *
161	10/03/2019	Minute Entry for proceedings held before Judge Rosanna Malouf Peterson: Motion Hearing held on 10/3/2019 re 34 MOTION for Preliminary Injunction filed by State of Delaware, State of Rhode Island, Commonwealth of Massachusetts, State of Minnesota, Dana Nessel, State of Hawai'i, State of Nevada, State of New Jersey, State of Maryland, State of New Mexico, State of Illinois, Commonwealth of Virginia, State of Washington, State of Colorado. (Reported/Recorded by: Allison

		Anderson) (MF, Courtroom Deputy) (Entered: 10/03/2019)
162	10/11/2019	ORDER granting 34 Motion for Preliminary Injunction. Signed by Judge Rosanna Malouf Peterson. (MF, Courtroom Deputy) (Entered: 10/11/2019)
		* * *
169	10/25/2019	MOTION to Stay Preliminary Injunction by Kenneth T Cuccinelli, II, Kevin K McAleenan, United States Citizenship and Immigration Services, United States Department of Homeland Security. Motion Hearing set for 11/25/2019 Without Oral Argument before Judge Rosanna Malouf Peterson. (Attachments: # 1 Text of Proposed Order)(Kolsky, Joshua) (Entered: 10/25/2019)
		* * *
175	10/30/2019	NOTICE OF INTERLOCUTORY APPEAL as to 162 Order on Motion for Preliminary Injunction by All Defendants. cc: Court Reporter: Allison Anderson. (SG, Case Administrator) Modified on 10/31/2019 9CCA Case No. 19-35914 (LR, Case Administrator). (Entered: 10/30/2019)

* * *		
190	11/15/2019	RESPONSE to Motion re 169 MOTION to Stay Preliminary Injunction filed by All Plaintiffs. (Bays, Nathan) (Entered: 11/15/2019)
191	12/03/2019	ORDER DENYING 169 DEFENDANTS' MOTION FOR STAY OF INJUNCTION PENDING APPEAL. Signed by Judge Rosanna Malouf Peterson. (AN, Courtroom Deputy) (Entered: 12/03/2019)
* * *		
269	11/27/2020	ANSWER to Complaint by All Defendants.(Saslaw, Alexandra) (Entered: 11/27/2020)
* * *		
305	10/28/2021	TEXT-ONLY ORDER (no PDF shall issue). Having reviewed the Joint Status Report at ECF No. 304, the Court grants the parties' joint request to extend the stay in this matter. See ECF No. 304 at 3. Accordingly, this matter shall remain stayed until: (1) the disposition by the United States Supreme Court of the pending petition for certiorari, see Arizona City and County of San Francisco,

		No. 20-1775, from the United States Court of Appeals for the Ninth Circuit's denial of intervention, see ECF No. 301 at 2-3; and (2) the expiration of the time for appeal to the Supreme Court any opinion by the United States Court of Appeals for the Seventh Circuit regarding the United States District Court for the Northern District of Illinois's denial of the motion to intervene and reopen final judgment by the State of Texas, et al., see ECF Nos. 301 at 2; 304 at 2. Within 21 days of the last occurrence of either of these two events, the parties shall file a joint status report and shall indicate in that report whether they are ready to proceed to a trial scheduling conference. This text-only order constitutes the Court's ruling in this matter. Signed by Senior Judge Rosanna Malouf Peterson. (MS, Judicial Assistant) (Entered: 10/28/2021)

***State of California, et al. v. DHS, et al.*, No. 19-cv-04975 (N.D. Cal.).**

1	08/16/2019	COMPLAINT For Declaratory and Injunctive Relief against All Defendants (Filing fee $ 400, receipt number 0971-13617881.). Filed by State of California. (Rich, Anna) (Filed on 8/16/2019) (Entered: 08/16/2019)
* * *		
17	08/26/2019	MOTION for Preliminary Injunction filed by State of California. Motion Hearing set for 10/3/2019 09:00 AM in San Francisco, Courtroom F, 15th Floor before Magistrate Judge Jacqueline Scott Corley. Responses due by 9/9/2019. Replies due by 9/16/2019. (Attachments: # 1 Proposed Order)(Rich, Anna) (Filed on 8/26/2019) (Entered: 08/26/2019)
* * *		
24	08/27/2019	ORDER RELATING CASE. Case C-19-4975 is related to case C-19-4717-PJH. Case reassigned to Judge Phyllis J. Hamilton for all further proceedings. Magistrate Judge Jacqueline Scott Corley no longer assigned to the case. Signed by Judge Phyllis J. Hamilton on 8/27/19. (kcS,

		COURT STAFF) (Filed on 8/27/2019) (Entered: 08/27/2019)
* * *		
97	09/13/2019	OPPOSITION/RESPONSE (re 17 MOTION for Preliminary Injunction) filed by Kenneth T. Cuccinelli, Kevin McAleenan, U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security. (Kolsky, Joshua) (Filed on 9/13/2019) (Entered: 09/13/2019)
* * *		
104	09/20/2019	REPLY (re 17 MOTION for Preliminary Injunction) CORRECTION OF DOCKET # 103 filed by State of California. (Rich, Anna) (Filed on 9/20/2019) (Entered: 09/20/2019)
* * *		
109	10/02/2019	Minute Entry for proceedings held before Judge Phyllis J. Hamilton: Preliminary Injunction Hearing held on 10/2/2019. Court Reporter: Pamela Batalo Hebel. (kcS, COURT STAFF) (Date Filed: 10/2/2019) (Entered: 10/02/2019)
* * *		

120	10/11/2019	PRELIMINARY INJUNCTION Associated Cases: 4:19-cv-04717-PJH, 4:19-cv-04975-PJH, 4:19-cv-04980-PJH(pjhlc1S, COURT STAFF) (Filed on 10/11/2019) (Entered: 10/11/2019)
* * *		
125	10/25/2019	MOTION to Stay Preliminary Injunction filed by Kenneth T. Cuccinelli, Kevin McAleenan, U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security. Motion Hearing set for 12/4/2019 09:00 AM in Oakland, Courtroom 3, 3rd Floor before Judge Phyllis J. Hamilton. Responses due by 11/8/2019. Replies due by 11/15/2019. (Kolsky, Joshua) (Filed on 10/25/2019) (Entered: 10/25/2019)
* * *		
129	10/30/2019	NOTICE OF APPEAL to the 9th Circuit Court of Appeals filed by Kenneth T. Cuccinelli, Kevin McAleenan, U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security. Appeal of Order on Motion for Preliminary Injunction 120 (Appeal fee FEE WAIVED.) (Kolsky,

		Joshua) (Filed on 10/30/2019) (Entered: 10/30/2019)
* * *		
133	11/08/2019	OPPOSITION/RESPONSE (re 125 MOTION to Stay Preliminary Injunction) filed by State of California. (Rich, Anna) (Filed on 11/8/2019) (Entered: 11/08/2019)
* * *		
140	12/05/2019	Order by Judge Phyllis J. Hamilton terminating (120) Motion to Stay in case 19-cv-04717-PJH and (125) Motion to Stay in case 19-cv-04975-PJH Associated Cases: 4:19-cv-04717-PJH, 4:19-cv-04975-PJH(pjhlc1S, COURT STAFF) (Filed on 12/6/2019) (Entered: 12/06/2019)
* * *		
194	05/26/2021	ORDER staying cases. Signed by Judge Hamilton on 5/26/2021. (pjhlc3S, COURT STAFF) (Filed on 5/26/2021) (Entered: 05/26/2021)

***City and County of San Francisco, et al. v. DHS, et al.*, No. 19-17213 (9th Cir.).**

1	10/31/2019	Docketed Cause and Entered Appearances of Counsel. Send Mq: Yes. The Schedule Is Set as Follows:. To Be Set. Preliminary Injunction Appeal. C.r. 3-3. . [11485286] (Rt) [Entered: 10/31/2019 03:31 pm]
* * *		
13	11/15/2019	Filed (ECF) Appellants Kenneth T. Cuccinelli, Kevin McAleenan, USCIS and USDHS Emergency Motion for Injunction Pending Appeal. Date of Service: 11/15/2019. [11501266] [19-17213] (Sinzdak, Gerard) [Entered: 11/15/2019 05:28 pm]
* * *		
16	11/22/2019	Filed (ECF) Appellee City and County of San Francisco Response Opposing Motion ([13] Motion (ECF Filing), [13] Motion (ECF Filing) Motion for Injunction Pending Appeal). Date of Service: 11/22/2019. [11509588] [19-17213] (Eisenberg, Sara) [Entered: 11/22/2019 04:03 pm]
* * *		

20	11/26/2019	Filed (ECF) Appellants Kenneth T. Cuccinelli, Kevin McAleenan, USCIS and USDHS Reply to Response ( ). Date of Service: 11/26/2019. [11513647] [19-17213] (Dos Santos, Joshua) [Entered: 11/26/2019 03:08 pm]
23	12/04/2019	Submitted (ECF) Opening Brief for Review. Submitted by Appellants Kevin K. McAleenan, Kenneth T. Cuccinelli, USCIS and USDHS. Date of Service: 12/04/2019. [11520982] [19-17213] (Sinzdak, Gerard) [Entered: 12/04/2019 01:15 pm]
* * *		
27	12/05/2019	Filed Order for Publication (Jay S. Bybee, Sandra S. Ikuta and John B. Owens) (Judge Bybee Authoring & Concurring) (Judge Owens Concurring in Part and Dissenting in Part) the Motion for a Stay of the Preliminary Injunction in Nos. 19-17213 and 19-17214 Is Granted. The Motion for Stay of the Preliminary Injunction in No. 19-35914 Is Granted. The Cases May Proceed Consistent with this Opinion. [11523019] [19- 17213, 19-17214, 19-35914] --[Edited: Replaced Pdf with Reformatted

		Version; Non-substantive Corrections Made. 12/12/2019 by tyl] (akm) [Entered: 12/05/2019 04:17 pm]
* * *		
30	12/19/2019	Filed (ECF) Appellee City and County of San Francisco Motion for Reconsideration of Non-Dispositive Judge Order of 12/05/2019. Date of Service: 12/19/2019. [11538619] [19-17213] (Eisenberg, Sara) [Entered: 12/19/2019 12:59 pm]
* * *		
42	01/10/2020	Filed (ECF) Appellants Kenneth T. Cuccinelli, Kevin McAleenan, USCIS and USDHS Response to Motion for Reconsideration (ECF Filing), Order, Order. Date of Service: 01/10/2019. [11557932]. [19-17213] (Sinzdak, Gerard) [Entered: 01/10/2020 12:54 pm]
* * *		
45	01/16/2020	Submitted (ECF) Answering Brief for Review. Submitted by Appellees City and County of San Francisco and County of Santa Clara. Date of Service: 01/16/2020. [11565313] [19-17213] (Eisenberg, Sara)

		[Entered: 01/16/2020 03:27 pm]
* * *		
110	02/06/2020	Submitted (ECF) Reply Brief for Review. Submitted by Appellants USDHS, USCIS, Kevin K. McAleenan and Kenneth T. Cuccinelli. Date of Service: 02/06/2020. [11588117] [19-17213] (Sinzdak, Gerard) [Entered: 02/06/2020 01:26 pm]
* * *		
114	02/18/2020	Filed Order (Jay S. Bybee, Sandra S. Ikuta and John B. Owens): the Panel Judges Have Voted to Deny the Appellees Motions for Reconsideration. Judge Bybee Would Recommend Denial of the Motions for Reconsideration En Banc. Judge Ikuta Would Vote to Deny the Motions. Judge Owens Would Vote to Grant the Motions. The Full Court Has Been Advised of the Motions for Rehearing En Banc and No Judge Has Requested a Vote on Whether to Rehear the Matter En Banc. Fed. R. App. P. 35. Appellees Motions for Rehearing and Petition for Rehearing En Banc, Filed December 19. 2019, Are Denied. [11600102] [19-17213, 19-17214,

		19-35914] (af) [Entered: 02/18/2020 01:33 pm]
* * *		
117	05/20/2020	Filed Clerk Order (Deputy Clerk: Pk): No Judge Has Requested a Vote to Hear These Cases Initially En Banc Within the Time Allowed by Go 5.2(a). Accordingly, the Petitions for Initial Hearing En Banc (Appeal No. 19-17213, Docket Entry No. [47]; Appeal No. 19-17214, Docket Entry No. [11565606-2]; Appeal No. 19-35914, Docket Entry No. [11565096-2]) Are Denied. [11696884] [19-17213, 19-17214, 19-35914] (af) [Entered: 05/20/2020 01:24 pm]
* * *		
134	09/15/2020	Argued and Submitted to Mary M. Schroeder, William A. Fletcher and Lawrence Vandyke. [11828025] [19-17213, 19-17214, 19-35914] (bjk) [Entered: 09/17/2020 03:07 pm]
* * *		

137	12/02/2020	Filed Opinion (Mary M. Schroeder, William A. Fletcher and Lawrence Vandyke) the Order of the District Court for the Northern District of California Is Affirmed. The Order of the District Court for the Eastern District of Washington Is Affirmed in Part and Vacated in Part. Costs Are Awarded to the Plaintiffs. Judge: Mms Authoring, Judge: Lvd Dissenting. Filed and Entered Judgment. [11911977] [19-17213, 19-17214, 19-35914] (akm) [Entered: 12/02/2020 09:00 am]
138	12/30/2020	Filed (ECF) Appellants Kenneth T. Cuccinelli, USCIS, USDHS and Chad F. Wolf Motion to Stay the Mandate. Date of Service: 12/30/2020. [11948708] [19- 17213] (Sinzdak, Gerard) [Entered: 12/30/2020 12:36 pm]
139	01/20/2021	Filed Order (Mary M. Schroeder, William A. Fletcher and Lawrence Vandyke): Defendants- Appellants Have Moved to Stay the Issuance of this Courts Mandate Pending Resolution of a Petition for a Writ of Certiorari in this Case, Which Defendants-Appellants Intend to File If the Supreme Court Grants Certiorari in Either or Both of the

		Two Parallel Cases Named Below. The Motion Is Granted as Follows: the Mandate Is Stayed Pending the Supreme Courts Final Disposition of Wolf V. Cook County, Illinois, Petition for Cert. Pending, No. 20-450 (Filed Oct. 7, And Department of Homeland Security V. New York, Petition for Cert. Pending, No. 20-449 (Filed Oct. 7, 2020). Fed. R. App. P. 41. [11970120] [19-17213, 19-17214, 19- 35914] (af) [Entered: 01/20/2021 04:26 pm]
140	01/22/2021	Supreme Court Case Info Case Number: 20-962 Filed On: 01/21/2021 Cert Petition Action 1: Pending [11978122] [19-17213, 19-17214, 19-35914] (rr) [Entered: 01/22/2021 01:22 pm]
* * *		
142	03/10/2021	Filed (ECF) Appellants Kenneth T. Cuccinelli, USCIS, USDHS and Chad F. Wolf Correspondence: Letter. Date of Service: 03/10/2021. [12031222] [19-17213] --[Court Update: Updated Docket Text to Reflect Correct ECF Filing Type. 3/10/2021 by tyl] (Tenny, Daniel) [Entered: 03/10/2021 03:07 pm]

143	03/10/2021	Filed (ECF) States of Arizona, Alabama, Arkansas, Indiana, Kansas, Louisiana, Mississippi, Montana, Oklahoma, Texas, and West Virginia Motion to Intervene. Date of Service: 03/10/2021. [12031584] [19- 17213] (Ensign, Drew) [Entered: 03/10/2021 09:08 pm]
* * *		
145	03/11/2021	Filed (ECF) State of South Carolina Motion to Intervene. Date of Service: 03/11/2021. [12032591] [19- 17213] (Roysden, Brunn) [Entered: 03/11/2021 02:07 pm]
146	03/11/2021	Entered Appearance of Intervenor - Pending State of Arizona. [12032640] (djv) [Entered: 03/11/2021 02:20 pm]
147	03/11/2021	Entered Appearance of Intervenor - Pending State of South Carolina. [12032702] (djv) [Entered: 03/11/2021 02:32 pm]
* * *		
149	03/22/2021	Filed (ECF) Appellants Kenneth T. Cuccinelli, USCIS, USDHS and Chad F. Wolf Response Opposing Motion ([145] Motion (ECF Filing), [145] Motion (ECF Filing), [143]

		Motion (ECF Filing), [143] Motion (ECF Filing)). Date of Service: 03/22/2021. [12049876] [19-17213] (Dos Santos, Joshua) [Entered: 03/22/2021 04:57 pm]
150	03/22/2021	Filed (ECF) Appellee County of Santa Clara Response Opposing Motion ([143] Motion (ECF Filing), [143] Motion (ECF Filing) Motion to Intervene, [145] Motion (ECF Filing), [145] Motion (ECF Filing) Motion to Intervene). Date of Service: 03/22/2021. [12049877] [19- 17213] (Edwards, Hannah) [Entered: 03/22/2021 04:57 pm]
151	03/24/2021	Supreme Court Case Info Case Number: 20-962 Filed On: 01/21/2021 Cert Petition Action 1: Dismissed, 03/09/2021 Judgment Date: 03/09/2021 [12051739] [19-17213, 19-17214, 19-35914] (rr) [Entered: 03/24/2021 10:06 am]
152	03/29/2021	Filed (ECF) State of Missouri Motion to Intervene. Date of Service: 03/29/2021. [12056186] [19-17213] (Talent, Michael) [Entered: 03/29/2021 10:29 am]
153	03/29/2021	Entered Appearance of Intervenor - Pending State of Missouri. [12056274] (djv) [Entered: 03/29/2021 10:57 am]

* * *		
156	03/29/2021	Filed (ECF) Intervenors - Pending State of Arizona, State of Missouri and State of South Carolina Reply to Response (Motion to Intervene, Motion to Intervene, Motion to Intervene). Date of Service: 03/29/2021. [12057409] [19-17213] (Ensign, Drew) [Entered: 03/29/2021 06:51 pm]
157	04/08/2021	Filed Order for Publication (Mary M. Schroeder, William A. Fletcher and Lawrence Vandyke) (Dissent by Judge Vandyke) the Motion of State of South Carolina to Join Motion to Intervene by the States of Arizona, et Al., Is Granted. The Motion of State of Missouri to Join Motion to Intervene by the States of Arizona, et Al., Is Granted. The Motion to Intervene by the States of Arizona, et Al., Is Denied. [12068559] [19-17213, 19-17214, 19-35914]--[Edited (Attached Corrected Pdf - Typos Corrected) 04/09/2021 by akm]--[Edited (Corrections to Caption Made & Attached Reformatted Slip Op) 04/14/2021 by akm] (akm) [Entered: 04/08/2021 04:02 pm]
* * *		

159	04/14/2021	Terminated Intervenors - Pending State of Arizona, State of Missouri and State of South Carolina in 19-17213 per Order [157]. [12073875] (slm) [Entered: 04/14/2021 11:21 am]
160	05/03/2021	Mandate Issued.(mms, waf and lvd) [12099255] (djv) [Entered: 05/03/2021 08:59 am]
* * *		
163	06/02/2021	Received Letter from the Supreme Court Dated Regarding the Movants in this Matter Have Sought Leave to Intervene in this Court. They Have Also Indicated Their Intention to File a Petition for a Writ of Certiorari Respecting the Denial of Their Motion for Leave to Intervene in the United States Court of Appeal. The Motion for Leave to Intervene in this Court Is Hereby Held in Abeyance Pending the Timely Filing and Disposition of the Petition for a Writ of Certiorari Respecting the Denial of Intervention Below. [12131354] (jff) [Entered: 06/02/2021 01:46 pm]

164	06/24/2021	Supreme Court Case Info Case Number: 20-1775 Filed On: 06/18/2021 Cert Petition Action 1: Pending [12153370] [19-17213, 19-17214, 19-35914] (rr) [Entered: 06/24/2021 11:59 am]
* * *		
167	11/04/2021	Received Copy of Superem Court Order Filed on 10/29/2021 (# 20m81). The Court Today Entered the Following Order in the Above-entitled Case: the Motion of Arizona, et Al. For Leave to Intervene Is Denied. [12278322] (rr) [Entered: 11/04/2021 12:05 pm]
168	11/04/2021	Supreme Court Case Info Case Number: 20-1775 Filed On: 06/18/2021 Cert Petition Action 1: Granted, 10/29/2021 [12278337] [19-17213, 19-17214, 19-35914] (rr) [Entered: 11/04/2021 12:15 pm]

***State of California, et al. v. DHS, et al.*, No. 19-17214 (9th Cir.).**

1	10/31/2019	Docketed Cause and Entered Appearances of Counsel. Send Mq: Yes. The Schedule Is Set as Follows:. To Be Set. Preliminary Injunction Appeal. C.r. 3-3. [11485393] (rt) [Entered: 10/31/2019 04:08 pm]
* * *		
20	11/15/2019	Filed (ECF) Appellants Kenneth T. Cuccinelli, Kevin McAleenan, USCIS and USDHS Emergency Motion to Stay Lower Court Action. Date of Service: 11/15/2019. [11501270] [19-17214] (Sinzdak, Gerard) [Entered: 11/15/2019 05:34 pm]
* * *		
26	11/22/2019	Filed (ECF) Appellee State of California Response to Motion ([20] Motion (ECF Filing), [20] Motion (ECF Filing) Motion to Stay Lower Court Action). Date of Service: 11/22/2019. [11509901] [19-17214] --[Court Update: Attached Corrected Response (Corrected Cover Page Date). 11/25/2019 by tyl] (Rich, Anna) [Entered: 11/22/2019 06:17 pm]

30	11/26/2019	Filed (ECF) Appellants Kenneth T. Cuccinelli, Kevin McAleenan, USCIS and USDHS Reply to Response ( ). Date of Service: 11/26/2019. [11513666] [19-17214] (Dos Santos, Joshua) [Entered: 11/26/2019 03:11 pm]
* * *		
35	12/04/2019	Submitted (ECF) Opening Brief for Review. Submitted By Appellants Kenneth T. Cuccinelli, Kevin K. McAleenan, USCIS and USDHS. Date of Service: 12/04/2019. [11521003] [19-17214] (Sinzdak, Gerard) [Entered: 12/04/2019 01:21 pm]
* * *		
39	12/05/2019	Filed Order for Publication (Jay S. Bybee, Sandra S. Ikuta and John B. Owens) (Judge Bybee Authoring & Concurring) (Judge Owens Concurring in Part and Dissenting in Part) the Motion for a Stay of the Preliminary Injunction in Nos. 19-17213 and 19-17214 Is Granted. The Motion for Stay of the Preliminary Injunction in No. 19-35914 Is Granted. The Cases May Proceed Consistent with this Opinion. [11523019] [19- 17213, 19-17214, 19-35914] --[Edited:

		Replaced pdf with Reformatted Version; Non-substantive Corrections Made. 12/12/2019 by tyl] (akm) [Entered: 12/05/2019 04:17 pm]
* * *		
42	12/19/2019	Filed (ECF) Appellee State of California Motion for Reconsideration of Non-dispositive Judge Order of 12/05/2019. Date of Service: 12/19/2019. [11543731] --[Court Entered Filing to Correct Entry [40] .] (tyl) [Entered: 12/24/2019 02:59 pm]
* * *		
52	01/10/2020	Filed (ECF) Appellants Kenneth T. Cuccinelli, Kevin McAleenan, USCIS and USDHS Response to Motion For Reconsideration (ECF Filing), Order, Order. Date Of Service: 01/10/2019. [11557940]. [19-17214] (Sinzdak, Gerard) [Entered: 01/10/2020 12:56 pm]
53	01/16/2020	Submitted (ECF) Answering Brief for Review. Submitted by Appellees Commonwealth of Pennsylvania, District of Columbia, State of California, State of Maine and State of Oregon. Date of Service: 01/16/2020. [11565600]

		[19-17214]--[Court Update: Updated Docket Text to Include All Filers. 01/21/2020 by kt] (Rich, Anna) [Entered: 01/16/2020 06:23 pm]
* * *		
132	02/06/2020	Submitted (ECF) Reply Brief for Review. Submitted By Appellants USDHS, Kenneth T. Cuccinelli, Kevin K. McAleenan and USCIS. Date of Service: 02/06/2020. [11588124] [19-17214] (Sinzdak, Gerard) [Entered: 02/06/2020 01:29 pm]
* * *		
136	02/18/2020	Filed Order (Jay S. Bybee, Sandra S. Ikuta and John B. Owens): the Panel Judges Have Voted to Deny the Appellees Motions for Reconsideration. Judge Bybee Would Recommend Denial of the Motions for Reconsideration En Banc. Judge Ikuta Would Vote To Deny the Motions. Judge Owens Would Vote to Grant the Motions. The Full Court Has Been Advised of the Motions for Rehearing En Banc and No Judge Has Requested a Vote on Whether to Rehear the Matter En Banc. Fed. R. App. P. 35. Appellees Motions for

		Rehearing and Petition for Rehearing En Banc, Filed December 19. 2019, Are Denied. [11600102] [19-17213, 19-17214, 19-35914] (af) [Entered: 02/18/2020 01:33 pm]
* * *		
138	05/20/2020	Filed Clerk Order (Deputy Clerk: Pk): No Judge Has Requested a Vote to Hear These Cases Initially En Banc Within the Time Allowed by Go 5.2(a). Accordingly, the Petitions for Initial Hearing En Banc (Appeal No. 19-17213, Docket Entry No. [11565401-2]; Appeal No. 19-17214, Docket Entry No. [55]; Appeal No. 19-35914, Docket Entry No. [11565096-2]) Are Denied. [11696884] [19-17213, 19-17214, 19-35914] (af) [Entered: 05/20/2020 01:24 pm]
* * *		
158	12/02/2020	Filed Opinion (Mary M. Schroeder, William A. Fletcher and Lawrence Vandyke) the Order of the District Court for the Northern District of California Is Affirmed. The Order of the District Court for the Eastern District of Washington Is Affirmed in Part and Vacated in Part. Costs Are Awarded to the

		Plaintiffs. Judge: mms Authoring, Judge: lvd Dissenting. Filed and Entered Judgment. [11911977] [19-17213, 19-17214, 19-35914] (Akm) [Entered: 12/02/2020 09:00 am]
* * *		
161	12/30/2020	Filed (ECF) Appellants Kenneth T. Cuccinelli, USCIS, USDHS and Chad F. Wolf Motion to Stay the Mandate. Date of Service: 12/30/2020. [11948714] [19- 17214] (Sinzdak, Gerard) [Entered: 12/30/2020 12:38 pm]
162	01/20/2021	Filed Order (Mary M. Schroeder, William A. Fletcher and Lawrence Vandyke): Defendants- Appellants Have Moved to Stay the Issuance of This Courts Mandate Pending Resolution of a Petition for a Writ of Certiorari in this Case, Which Defendants-appellants Intend to File If the Supreme Court Grants Certiorari in Either or Both Of the Two Parallel Cases Named Below. The Motion Is Granted as Follows: the Mandate Is Stayed Pending the Supreme Courts Final Disposition of Wolf V. Cook County, Illinois, Petition for Cert. Pending, No. 20-450 (Filed Oct. 7, and

		Department of Homeland Security v. New York, Petition for Cert. Pending, No. 20-449 (Filed Oct. 7, 2020). Fed. R. App. P. 41. [11970120] [19-17213, 19-17214, 19- 35914] (af) [Entered: 01/20/2021 04:26 pm]
163	01/22/2021	Supreme Court Case Info Case Number: 20-962 Filed On: 01/21/2021 Cert Petition Action 1: Pending [11978122] [19-17213, 19-17214, 19-35914] (rr) [Entered: 01/22/2021 01:22 pm]
* * *		
165	03/10/2021	Filed (ECF) Appellants Kenneth T. Cuccinelli, USCIS, USDHS and Chad F. Wolf Correspondence: Update on Petition for Writ of Certiorari.. Date of Service: 03/10/2021. [12031227] [19-17214]--[Court Update: Updated Docket Text to Reflect Correct ECF Filing Type. 03/10/2021 by slm] (Tenny, Daniel) [Entered: 03/10/2021 03:08 pm]

166	03/10/2021	Filed (ECF) States of Arizona, Alabama, Arkansas, Indiana, Kansas, Louisiana, Mississippi, Montana, Oklahoma, Texas, and West Virginia Motion to Intervene. Date of Service: 03/10/2021. [12031585] [19- 17214] (Ensign, Drew) [Entered: 03/10/2021 09:11 pm]
167	03/11/2021	Entered Appearance of Intervenor - Pending State Of Arizona. [12032207] (rr) [Entered: 03/11/2021 11:31 am]
168	03/11/2021	Entered Appearance of Intervenor - Pending State Of Alabama. [12032216] (rr) [Entered: 03/11/2021 11:35 am]
169	03/11/2021	Filed (ECF) Motion to Intervene. Date of Service: 03/11/2021. [12032597] [19-17214] (Roysden, Brunn) [Entered: 03/11/2021 02:09 pm]
170	03/11/2021	Entered Appearance of Intervenor - Pending State Of South Carolina. [12032722] (djv) [Entered: 03/11/2021 02:36 pm]

171	03/22/2021	Filed (ECF) Appellee State of California Response Opposing Motion ([169] Motion (ECF Filing), [169] Motion (ECF Filing) Motion to Intervene). Date of Service: 03/22/2021. [12049871] [19-17214] (Rich, Anna) [Entered: 03/22/2021 04:55 pm]
172	03/22/2021	Filed (ECF) Appellants Kenneth T. Cuccinelli, USCIS, USDHS and Chad F. Wolf Response Opposing Motion ([169] Motion (ECF Filing), [169] Motion (ECF Filing) Motion to Intervene, [166] Motion (ECF Filing), [166] Motion (ECF Filing) Motion to Intervene). Date of Service: 03/22/2021. [12049957] [19-17214] (Dos Santos, Joshua) [Entered: 03/22/2021 07:25 pm]
173	03/24/2021	Supreme Court Case Info Case Number: 20-962 Filed On: 01/21/2021 Cert Petition Action 1: Dismissed, 03/09/2021 Judgment Date: 03/09/2021 [12051739] [19-17213, 19-17214, 19-35914] (rr) [Entered: 03/24/2021 10:06 am]
174	03/29/2021	Filed (ECF) State of Missouri Motion to Intervene. Date of Service: 03/29/2021. [12056228] [19-17214] (Talent, Michael) [Entered: 03/29/2021 10:41 am]

175	03/29/2021	Entered Appearance of Intervenor State of Missouri. [12056295] (djv) [Entered: 03/29/2021 11:02 am]
176	03/29/2021	Filed (ECF) Intervenors - Pending State of Arizona, State of South Carolina and Intervenor State of Missouri Reply to Response (). Date of Service: 03/29/2021. [12057413] [19-17214] (Ensign, Drew) [Entered: 03/29/2021 06:53 pm]
177	04/08/2021	Filed Order for Publication (Mary M. Schroeder, William A. Fletcher and Lawrence Vandyke) (Dissent by Judge Vandyke) the Motion of State of South Carolina to Join Motion to Intervene by the States of Arizona, et Al., Is Granted. The Motion of State of Missouri to Join Motion to Intervene by The States of Arizona, et Al., Is Granted. The Motion To Intervene by the States of Arizona, et Al., Is Denied. [12068559] [19-17213, 19-17214, 19-35914]--[Edited (Attached Corrected pdf - Typos Corrected) 04/09/2021 by akm]--[Edited (Corrections to Caption Made & Attached Reformatted Slip Op) 04/14/2021 by akm] (akm) [Entered: 04/08/2021 04:02 pm]

* * *		
179	04/14/2021	Terminated Intervenor State of Missouri, Intervenors - Pending State of Alabama, State of Arizona and State of South Carolina in 19-17214 per Order [177]. [12073880] (slm) [Entered: 04/14/2021 11:22 am]
180	05/03/2021	Mandate Issued.(mms, waf and lvd) [12099261] (djv) [Entered: 05/03/2021 09:02 am]
* * *		
183	06/24/2021	Supreme Court Case Info Case Number: 20-1775 Filed On: 06/18/2021 Cert Petition Action 1: Pending [12153370] [19-17213, 19-17214, 19-35914] (rr) [Entered: 06/24/2021 11:59 am]

***State of Washington, et al. v. DHS, et al.*,**
No. 19-35914 (9th Cir.).

1	10/31/2019	Docketed Cause and Entered Appearances of Counsel. Send Mq: Yes. The Schedule Is Set as Follows:. To Be Set. Preliminary Injunction Appeal. C.R. 3-3. [11485078] (rt) [Entered: 10/31/2019 02:20 pm]
* * *		
16	11/15/2019	Filed (ECF) Appellants Kenneth T. Cuccinelli, Kevin McAleenan, USCIS and USDHS Emergency Motion To Stay Lower Court Action. Date of Service: 11/15/2019. [11501302] [19-35914] (Sinzdak, Gerard) [Entered: 11/15/2019 06:15 pm]
* * *		
22	11/22/2019	Filed (ECF) Appellees State of Washington, Commonwealth of Massachusetts, Commonwealth Of Virginia, Dana Nessel, State of Colorado, State Of Delaware, State of Hawai'i, State of Illinois, State of Maryland, State of Minnesota, State of Nevada, State of New Jersey, State of New Mexico And State of Rhode Island Response Opposing Motion ([16] Motion

		(ECF Filing), [16] Motion (ECF Filing)). Date of Service: 11/22/2019. [11509697] [19-35914] (Sprung, Jeffrey) [Entered: 11/22/2019 04:30 pm]
23	11/26/2019	Filed (ECF) Appellants Kenneth T. Cuccinelli, Kevin McAleenan, USCIS and USDHS Reply to Response ( ). Date of Service: 11/26/2019. [11513680] [19-35914] (Dos Santos, Joshua) [Entered: 11/26/2019 03:15 pm]
* * *		
25	12/05/2019	Filed Order for Publication (Jay S. Bybee, Sandra S. Ikuta and John B. Owens) (Judge Bybee Authoring & Concurring) (Judge Owens Concurring in Part and Dissenting in Part) the Motion for a Stay of the Preliminary Injunction in Nos. 19-17213 and 19-17214 Is Granted. The Motion for Stay of the Preliminary Injunction in No. 19-35914 Is Granted. The Cases May Proceed Consistent with this Opinion. [11523019] [19- 17213, 19-17214, 19-35914] --[Edited: Replaced Pdf with Reformatted Version; Non-substantive Corrections Made. 12/12/2019 by tyl] (akm) [Entered: 12/05/2019 04:17 pm]

26	12/06/2019	Submitted (ECF) Opening Brief for Review. Submitted By Appellants Kenneth T. Cuccinelli, Kevin K. McAleenan, USCIS and USDHS. Date of Service: 12/06/2019. [11524613] [19-35914] (Sinzdak, Gerard) [Entered: 12/06/2019 07:06 pm]
* * *		
34	12/19/2019	Filed (ECF) Appellee State of Washington Motion For Reconsideration of Non-dispositive Judge Order Of 12/05/2019. Date of Service: 12/19/2019. [11543734] -- [Court Entered Filing to Correct Entry [32] .] (tyl) [Entered: 12/24/2019 03:01 pm]
* * *		
38	01/10/2020	Filed (ECF) Appellants Kenneth T. Cuccinelli, Kevin McAleenan, USCIS and USDHS Response to Motion For Reconsideration (ECF Filing), Order, Order. Date Of Service: 01/10/2019. [11557941]. [19-35914] (Sinzdak, Gerard) [Entered: 01/10/2020 12:58 pm]
* * *		

40	01/17/2020	Submitted (ECF) Answering Brief for Review. Submitted by Appellees Commonwealth of Massachusetts, Commonwealth of Virginia, Dana Nessel, State of Colorado, State of Delaware, State of Hawaii, State of Illinois, State of Maryland, State of Minnesota, State of Nevada, State of New Jersey, State of New Mexico, State of Rhode Island and State of Washington. Date of Service: 01/17/2020. [11566903] [19-35914] (Sprung, Jeffrey) [Entered: 01/17/2020 05:12 pm]
* * *		
108	02/07/2020	Submitted (ECF) Reply Brief for Review. Submitted By Appellants Kenneth T. Cuccinelli, Kevin K. McAleenan, USCIS and USDHS. Date of Service: 02/07/2020. [11589743] [19-35914] (Dos Santos, Joshua) [Entered: 02/07/2020 01:11 pm]
* * *		
110	02/18/2020	Filed Order (Jay S. Bybee, Sandra S. Ikuta and John B. Owens): the Panel Judges Have Voted to Deny the Appellees Motions for Reconsideration. Judge Bybee Would Recommend Denial of the Motions for Reconsideration En

		Banc. Judge Ikuta Would Vote To Deny the Motions. Judge Owens Would Vote to Grant the Motions. The Full Court Has Been Advised of the Motions for Rehearing En Banc and No Judge Has Requested a Vote on Whether to Rehear the Matter En Banc. Fed. R. App. P. 35. Appellees Motions for Rehearing and Petition for Rehearing En Banc, Filed December 19. 2019, Are Denied. [11600102] [19-17213, 19-17214, 19-35914] (af) [Entered: 02/18/2020 01:33 pm]
* * *		
115	05/20/2020	Filed Clerk Order (Deputy Clerk: Pk): No Judge Has Requested a Vote to Hear These Cases Initially En Banc Within the Time Allowed by Go 5.2(a). Accordingly, the Petitions for Initial Hearing En Banc (Appeal No. 19-17213, Docket Entry No. [11565401-2]; Appeal No. 19-17214, Docket Entry No. [11565606-2]; Appeal No. 19-35914, Docket Entry No. [39]) Are Denied. [11696884] [19-17213, 19-17214, 19-35914] (af) [Entered: 05/20/2020 01:24 pm]
* * *		

131	09/15/2020	Argued and Submitted to Mary M. Schroeder, William A. Fletcher and Lawrence Vandyke. [11828025] [19-17213, 19-17214, 19-35914] (bjk) [Entered: 09/17/2020 03:07 pm]
* * *		
135	12/02/2020	Filed Opinion (Mary M. Schroeder, William A. Fletcher and Lawrence Vandyke) the Order of the District Court for the Northern District of California Is Affirmed. The Order of the District Court for the Eastern District of Washington Is Affirmed in Part and Vacated in Part. Costs Are Awarded to the Plaintiffs. Judge: mms Authoring, Judge: lvd Dissenting. Filed and Entered Judgment. [11911977] [19-17213, 19-17214, 19-35914] (akm) [Entered: 12/02/2020 09:00 am]
136	12/30/2020	Filed (ECF) Appellants Kenneth T. Cuccinelli, Kevin McAleenan, USCIS and USDHS Motion to Stay the Mandate. Date of Service: 12/30/2020. [11948719] [19- 35914] (Sinzdak, Gerard) [Entered: 12/30/2020 12:40 pm]

137	01/20/2021	Filed Order (Mary M. Schroeder, William A. Fletcher and Lawrence Vandyke): Defendants- Appellants Have Moved to Stay the Issuance of This Courts Mandate Pending Resolution of a Petition for a Writ of Certiorari in this Case, Which Defendants-appellants Intend to File If the Supreme Court Grants Certiorari in Either or Both Of the Two Parallel Cases Named Below. The Motion Is Granted as Follows: the Mandate Is Stayed Pending the Supreme Courts Final Disposition of Wolf V. Cook County, Illinois, Petition for Cert. Pending, No. 20-450 (Filed Oct. 7, and Department of Homeland Security V. New York, Petition for Cert. Pending, No. 20-449 (Filed Oct. 7, 2020). Fed. R. App. P. 41. [11970120] [19-17213, 19-17214, 19- 35914] (af) [Entered: 01/20/2021 04:26 pm]
138	01/22/2021	Supreme Court Case Info Case Number: 20-962 Filed On: 01/21/2021 Cert Petition Action 1: Pending [11978122] [19-17213, 19-17214, 19-35914] (rr) [Entered: 01/22/2021 01:22 pm]
* * *		

140	03/10/2021	Filed (ECF) Appellants Kenneth T. Cuccinelli, Kevin McAleenan, USCIS and USDHS Correspondence: Letter. Date of Service: 03/10/2021. [12031232] [19-35914] -- [Court Update: Updated Docket Text to Reflect Correct ECF Filing Type. 3/10/2021 by tyl] (Tenny, Daniel) [Entered: 03/10/2021 03:09 pm]
141	03/10/2021	Filed (ECF) States of Arizona, Alabama, Arkansas, Indiana, Kansas, Louisiana, Mississippi, Montana, Oklahoma, Texas, and West Virginia Motion to Intervene. Date of Service: 03/10/2021. [12031586] [19- 35914] (Ensign, Drew) [Entered: 03/10/2021 09:12 pm]
142	03/11/2021	Entered Appearance of Intervenor - Pending State Of Arizona. [12032150] (rr) [Entered: 03/11/2021 11:12 am]
143	03/11/2021	Entered Appearance of Intervenor - Pending State Of Alabama. [12032179] (rr) [Entered: 03/11/2021 11:21 am]

144	03/11/2021	Filed (ECF) Motion to Intervene. Date of Service: 03/11/2021. [12032601] [19-35914] (Roysden, Brunn) [Entered: 03/11/2021 02:10 pm]
145	03/11/2021	Entered Appearance of Intervenor - Pending State Of South Carolina. [12032735] (djv) [Entered: 03/11/2021 02:40 pm]
146	03/22/2021	Filed (ECF) Appellees Commonwealth of Massachusetts, Commonwealth of Virginia, Dana Nessel, State of Colorado, State of Delaware, State of Hawaii, State of Illinois, State of Maryland, State of Minnesota, State of Nevada, State of New Jersey, State of New Mexico, State of Rhode Island and State of Washington Response Opposing Motion ([141] Motion (ECF Filing), [141] Motion (ECF Filing) Motion to Intervene). Date of Service: 03/22/2021. [12049914] [19-35914] (Sprung, Jeffrey) [Entered: 03/22/2021 05:20 pm]
147	03/22/2021	Filed (ECF) Appellants Kenneth T. Cuccinelli, Kevin McAleenan, USCIS and USDHS Response Opposing Motion ([141] Motion (ECF Filing), [141] Motion (ECF Filing) Motion to Intervene, [144]

		Motion (ECF Filing), [144] Motion (ECF Filing) Motion to Intervene). Date of Service: 03/22/2021. [12049956] [19-35914] (Dos Santos, Joshua) [Entered: 03/22/2021 07:22 pm]
148	03/24/2021	Supreme Court Case Info Case Number: 20-962 Filed On: 01/21/2021 Cert Petition Action 1: Dismissed, 03/09/2021 Judgment Date: 03/09/2021 [12051739] [19-17213, 19-17214, 19-35914] (rr) [Entered: 03/24/2021 10:06 am]
149	03/29/2021	Filed (ECF) State of Missouri Motion to Intervene. Date of Service: 03/29/2021. [12056237] [19-35914] (Talent, Michael) [Entered: 03/29/2021 10:43 am]
150	03/29/2021	Entered Appearance of Intervenor State of Missouri. [12056316] (djv) [Entered: 03/29/2021 11:08 am]
151	03/29/2021	Filed (ECF) Intervenors - Pending State of Arizona, State of Alabama, State of South Carolina and Intervenor State of Missouri Reply to Response ( ). Date of Service: 03/29/2021. [12057416] [19-35914] (Ensign, Drew) [Entered: 03/29/2021 06:55 pm]

152	04/08/2021	Filed Order for Publication (Mary M. Schroeder, William A. Fletcher and Lawrence Vandyke) (Dissent by Judge Vandyke) the Motion of State of South Carolina to Join Motion to Intervene by the States of Arizona, et Al., Is Granted. The Motion of State of Missouri to Join Motion to Intervene by The States of Arizona, et Al., Is Granted. The Motion To Intervene by the States of Arizona, et Al., Is Denied. [12068559] [19-17213, 19-17214, 19-35914]--[Edited (Attached Corrected pdf - Typos Corrected) 04/09/2021 by akm]--[Edited (Corrections to Caption Made & Attached Reformatted Slip Op) 04/14/2021 by akm] (akm) [Entered: 04/08/2021 04:02 pm]
* * *		
154	04/14/2021	Terminated Intervenor State of Missouri, Intervenors - Pending State of Alabama, State of Arizona and State of South Carolina in 19-35914 per Order [152]. [12073889] (slm) [Entered: 04/14/2021 11:23 am]
155	05/03/2021	Mandate Issued.(mms, waf and lvd) [12099271] (djv) [Entered: 05/03/2021 09:04 am]

156	06/24/2021	Supreme Court Case Info Case Number: 20-1775 Filed On: 06/18/2021 Cert Petition Action 1: Pending [12153370] [19-17213, 19-17214, 19-35914] (rr) [Entered: 06/24/2021 11:59 am]
157	11/04/2021	Supreme Court Case Info Case Number: 20-1775 Filed On: 06/18/2021 Cert Petition Action 1: Granted, 10/29/2021 [12278337] [19-17213, 19-17214, 19-35914] (rr) [Entered: 11/04/2021 12:15 pm]

(CORRECTED ORDER LIST: 595 U.S.)

FRIDAY, OCTOBER 29, 2021

ORDER IN PENDING CASE

20M81 ARIZONA, ET AL. V. SAN FRANCISCO, CA, ET AL.

The motion of Arizona, et al. for leave to intervene is denied.

CERTIORARI GRANTED

* * *

20-1775 ARIZONA, ET AL. V. SAN FRANCISCO, CA, ET AL.

The petition for a writ of certiorari is granted limited to Question 1 presented by the petition.

Dkt. 142

[Seal] **U.S. Department of Justice**
Civil Division, Appellate Staff
950 Pennsylvania Ave. NW, Rm. 7215 Washington, DC 20530

Tel: (202) 514-1838

March 10, 2021

VIA CM/ECF

Molly Dwyer
Clerk of the Court
U.S. Court of Appeals for the Ninth Circuit
95 Seventh Street
San Francisco, CA 94103

RE: *City & County of San Francisco v. USCIS*, No. 19-17213 (9th Cir.)
California v. U.S. DHS, No. 19-17214 (9th Cir.)
Washington v. U.S. DHS, No. 19-35914 (9th Cir.)

Dear Ms. Dwyer:

In the above-captioned cases, this Court stayed its mandate pending the Supreme Court's disposition of two petitions for writs of certiorari that were then pending in the Supreme Court: *Wolf v. Cook County, Illinois*, No. 20-450 (S. Ct.); and *Department of Homeland Security v. New York*, No. 20-449 (S. Ct.). We are writing to inform the Court that on March 9, 2021, the Supreme Court dismissed both of those cases on the voluntary agreement of the parties. In addition, the Court dismissed the petition for a writ of certiorari filed in these consolidated cases. *See USCIS v. City &*

County of San Francisco, California, No. 20-962 (S. Ct.).

Sincerely,

s/ *Daniel Tenny*
Daniel Tenny
Attorney for the United States

cc (via CM/ECF): Counsel of Record

JA 54

Dkt. 143

No. 19-17213, 19-17214, 19-35914

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CITY AND COUNTY OF SAN FRANCISCO;
COUNTY OF SANTA CLARA,
Plaintiffs-Appellees,
v.
UNITED STATES CITIZENSHIP AND
IMMIGRATION SERVICES, *et al.*,
Defendants-Appellants,
and
STATE OF ARIZONA,
Proposed Intervenor-Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE NORTHERN
DISTRICT OF CALIFORNIA
Case No. 4:19-cv-04975-PJH

MOTION TO INTERVENE BY THE STATES OF ARIZONA, ALABAMA, ARKANSAS, INDIANA, KANSAS, LOUISIANA, MISSISSIPPI, MONTANA, OKLAHOMA, TEXAS, AND WEST VIRGINIA.

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*[*** Tables omitted ***]*

INTRODUCTION

The States of Arizona, Alabama, Arkansas, Indiana, Kansas, Louisiana, Mississippi, Montana, Oklahoma, Texas, and West Virginia (the "States") respectfully move to intervene in this action, both as of right and permissively. The States seek intervention so that they can file a petition for certiorari seeking review of this Court's December 2, 2020 decision, which considered the validity of a 2019 Rule, Inadmissibility on Public Charge Grounds, 84 Fed. Reg. 41,292 (Aug. 14, 2019) ("Public Charge Rule"). *See generally City & Cty. of San Francisco v. U.S. Citizenship & Immigration Servs. ("San Francisco")*, 981 F.3d 742 (9th Cir. 2020). Because invalidation of the Public Charge Rule will

impose injury on the States— estimated at $1.01 billion in foregone savings in transfer payments for all states annually—and all of the requirements for intervention are met, this Court should grant this motion.[1]

The "cert. worthiness" of the States' potential petition is already apparent: the Supreme Court *already granted review* in a case involving identical issues. *See Dep't of Homeland Sec. v. New York,* No. 20-449, __ S. Ct. __, 2021 WL 666376, at *1 (Feb. 22, 2021). And this Court specifically stayed the mandate in this action "pending the Supreme Court's final disposition" of that petition and a petition in "*Wolf v. Cook County*, Illinois, petition for cert. pending, No. 20-450 (filed Oct. 7, 2020)." Doc. 139 at 3 (No. 19-17213).

But despite successfully convincing the Supreme Court to grant certiorari on February 22, Defendants suddenly shifted course and filed a joint stipulation of voluntary dismissal of their petitions on March 9, which was granted the same day by the Clerk of the Supreme Court. In essence, Federal Defendants have now effectively abandoned defense of the Public Charge Rule.

Because invalidation of the Public Charge Rule will directly harm the States, they now seek to intervene to offer a defense of the rule so that its validity can be resolved on the merits, rather than through strategic surrender. This motion is plainly timely, filed a *single day* after the Federal Defendants' *volte-face*, which

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[1] The Plaintiffs in the three cases and the Federal Defendants oppose this motion.

made plain that the States' interests were no longer being adequately represented.

BACKGROUND

These appeals involve challenges to the 2019 final rule that defined "public charge" for purposes of federal immigration law, specifically 8 U.S.C. § 1182(a)(4)(A). Given this Court's familiarity with the background of this case, as evident from its 47-page slip opinion, the States will not belabor it here.

A few important facts are particularly salient for the instant motion, however. As this Court noted, "The Rule itself predicts a 2.5 percent decrease in enrollment in public benefit programs[.]" *San Francisco*, 981 F.3d at 754 (citing Public Charge Rule, 84 Fed. Reg. at 41,302, 41,463). In addition, the federal government only pays a portion of the costs involved in the public benefit programs at issue:

> For example, the Federal Government funds all SNAP food expenses, but *only 50 percent of allowable administrative costs* for regular operating expenses. Similarly, Federal Medical Assistance Percentages (FMAP) in some U.S. Department of Health and Human Services (HHS) programs, like Medicaid, *can vary from between 50 percent to an enhanced rate of 100 percent in some cases*. Since the state share of federal financial participation (FFP) varies from state to state, DHS uses the average FMAP across all states and U.S. territories of *59 percent to estimate the amount of state transfer payments*.

Public Charge Rule, 84 Fed. Reg. at 41,301 (emphases added). DHS thus estimated that the Public Charge Rule would save all of the states "about *$1.01 billion annually*" in direct payments. *Id.* (emphasis added).

More generally, the Public Charge Rule will reduce demand on States' already over-stretched assistance programs. For example:

- In FY 2019, Arizona spent $3,059,000,000 on Medicaid benefits and $104,000,000 on administrative costs for Medicaid (as well as the Children's Health Insurance Program).[2] Increasing the number of Medicaid participants would increase the State's spending on Medicaid (the costs of which typically exceed State general fund growth) and would require the State to make budget adjustments elsewhere.[3]
- In 2019, Arizona paid $85 million in maintenance-of-effort costs for the Temporary Assistance for Needy Families program ("TANF").[4] Because TANF resources are

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[2] Medicaid and CHIP Payment and Access Commission, *MACStats: Medicaid and CHIP Data Book* 45 (2020), https://www.macpac.gov/wp-content/uploads/2020/12/MACStats-Medicaid-and-CHIP-Data-Book-December-2020.pdf

[3] Robin Rudowitz et al., *Medicaid Enrollment & Spending Growth: FY 2018 & 2019* 5 (2018), http://files.kff.org/attachment/Issue-Brief-Medicaid-Enrollment-and-Spending-Growth-FY-2018-2019

[4] Center on Budget and Policy Priorities, *Arizona TANF Spending*, (2019), https://www.cbpp.org/sites/default/files/atoms/files/tanf_sp

limited—in 2016, less than a quarter of impoverished families received this assistance[5]—admitting aliens into the United States who are not likely to utilize this resource will make this program more accessible to others who are in need.

- States incur administrative costs for each SNAP recipient.[6] For FY 2016, Arizona paid $77,730,088 in administrative costs for administering this program.[7] By admitting aliens who are unlikely to depend on this resource, the State will save money that would have otherwise gone to fund administrative costs for aliens who would depend on the program.

LEGAL STANDARD

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[5] Center on Budget and Policy Priorities, *Policy Basics: An Introduction to TANF* (2018), https://www.cbpp.org/sites/default/files/atoms/files/7-22-10tanf2.pdf

[6] Daniel Geller et al., AG-3198-D-17-0106, *Exploring the Causes of State Variation in SNAP Administrative Costs* 18–19 (2019), https://fns-prod.azureedge.net/sites/default/files/media/file/SNAP--State-Variation-Admin-Costs-FullReport.pdf

[7] Food and Nutrition Service, *Supplemental Nutrition Assistance Program State Activity Report Fiscal Year 2016* 12 (2017), https://fns-prod.azureedge.net/sites/default/files/snap/FY16-State-Activity-Report.pdf

This Court's consideration of a motion to intervene is governed by Federal Rule of Civil Procedure 24. *See Int'l Union, United Auto., Aerospace & Agric. Implement Workers of America, AFL-CIO, Local 283 v. Scofield*, 382 U.S. 205, 217 n.10 (1965); *Day v. Apoliona*, 505 F.3d 963, 965 (9th Cir. 2007); *see also Sierra Club, Inc. v. EPA*, 358 F.3d 516, 517-18 (7th Cir. 2004) ("[A]ppellate courts have turned to ... Fed. R. Civ. P. 24."); *Mass. Sch. of Law at Andover, Inc. v. United States*, 118 F.3d 776, 779 (D.C. Cir. 1997) (same).

Rule 24(a) authorizes anyone to intervene in an action as of right when the applicant demonstrates that

> (1) the intervention application is timely; (2) the applicant has a "significant protectable interest relating to the property or transaction that is the subject of the action"; (3) "the disposition of the action may, as a practical matter, impair or impede the applicant's ability to protect its interest"; and (4) "the existing parties may not adequately represent the applicant's interest."

Prete v. Bradbury, 438 F.3d 949, 954 (9th Cir. 2006); *see also* Fed. R. Civ. P. 24(a)(2). Rule 24(a) is to construed "'broadly in favor of proposed intervenors.'" *Wilderness Soc'y v. U.S. Forest Serv.*, 630 F.3d 1173, 1179 (9th Cir. 2011).

This Court's intervention analysis is "'guided primarily by practical considerations,' not technical distinctions." *Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 818 (9th Cir. 2001); *see also Wilderness Soc'y*, 630 F.3d at 1179 (reiterating importance of "'practical and equitable considerations'" as part of

judicial policy favoring intervention). Courts are "required to accept as true the non-conclusory allegations made in support of an intervention motion." *Berg*, 268 F.3d at 819.

ARGUMENT

I. THIS COURT SHOULD GRANT THE STATES INTERVENTION AS OF RIGHT

A. The States' Motion To Intervene Is Timely

This Court has repeatedly explained that "the 'general rule is that a post-judgment motion to intervene is timely if filed within the time allowed for the filing of an appeal.'" *U.S. ex rel McGough v. Covington Technologies Co.*, 967 F.2d 1391, 1394 (9th Cir. 1992) (quoting *Yniguez v. Arizona*, 939 F.2d 727, 734 (9th Cir. 1991) (alteration omitted)). The Supreme Court has similarly held that where a party "filed [its] motion within the time period in which the named plaintiffs could have taken an appeal … the [party's] motion to intervene was timely filed[.]" *United Airlines, Inc. v. McDonald*, 432 U.S. 385, 396 (1977).

Under 28 U.S.C. § 2101(c), parties generally have 90 days to file a petition for certiorari. That period has now been extended to 150 days as a matter of course during the coronavirus pandemic.[8] The deadline to file a petition for seek Supreme Court review here is thus May 1, 2021 (150 days after this Court's December 2,

[8] March 19, 2020 Order, *available at* https://www.supremecourt.gov/orders/courtorders/031920zr_d1o3.pdf.

2020 Opinion). This motion is filed *more than a month* before that deadline, and is therefore timely.

More generally, this motion presents no prejudice to the other parties. *See Sierra Club v. Espy*, 18 F.3d 1202, 1205 (5th Cir. 1994) (holding that the "requirement of timeliness is ... a guard against prejudicing the original parties"). Intervention here only ensures that these cases and others will be resolved on *the merits*, rather than through abdication. Denying the parties a potential opportunity to obtain their desired ends through the contrivance of surrender inflicts no cognizable prejudice. Instead, the parties' positions will be "essentially the same as it would have been" had the State intervened earlier in the proceedings. *McGough*, 967 F.2d at 1395.

B. The State Has A Significant Protectable Interest In The Subject Matter Of This Action, Which Would Be Affected By Any Adverse Ruling That Stands.

As set forth above, the States' have a protectable interest in the continuing validity of the Public Charge Rule. It is estimated that the rule will save all of the states cumulatively $1.01 billion annually, and the moving States here would save a share of that amount. *Supra* at 2-5. And invalidating the Public Charge Rule[9]

[9] Although the preliminary injunctions at issue no longer directly apply in the States following this Court's vacatur of the nationwide injunction, *San Francisco*, 981 F.3d at 763, this Court outright held that the Public Charge Rule violates the Administrative Procedure Act. *San Francisco*, 981 F.3d at 762. As such, absent Supreme Court review, the district courts on remand will be

will deprive the States of those savings, thereby injuring them. More generally, the Public Charge Rule would reduce demands on States' already overstretched assistance programs and invalidating it will harm them accordingly.

In addition, the States have "quasi-sovereign interest[s] in the health and well-being—both physical and economic—of [their] residents in general." *Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592, 607 (1982). The Public Charge Rule serves that interest by promoting self-reliance of their residents and encouraging immigration of non-citizens (including into the States) who are not dependent upon public resources. 84 Fed. Reg. 41,305. But invalidating the rule will injure the States by depriving them of these beneficial impacts.

C. Intervention By The State Now Will Ensure That The State's Interests Will Be Adequately Represented.

This Court has held that the "burden of showing inadequacy of representation is 'minimal' and satisfied if the applicant can demonstrate that representation of its interests 'may be' inadequate." *Citizens for Balanced Use v. Mont. Wilderness Ass'n*, 647 F.3d 893, 898 (9th Cir. 2011) (quoting *Arakaki v. Cayetano*, 324 F.3d 1078, 1086 (9th Cir. 2003)). The Court considers several factors, including

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required to enter judgment in favor of Plaintiffs on the merits, and vacatur of the Public Charge Rule is at least likely.

> (1) whether the interest of a present party is such that it will undoubtedly make all of a proposed intervenor's arguments; (2) whether the present party is capable and willing to make such arguments; and (3) whether a proposed intervenor would offer any necessary elements to the proceeding that other parties would neglect.

Perry v. Proposition 8 Official Proponents, 587 F.3d 947, 952 (9th Cir. 2009).

Here, Federal Defendants have essentially abandoned their defense of the Public Charge Rule, and it is doubtful that they will make *any* further arguments in support of it, let alone willing to make "all of a proposed intervenor's arguments." *Id.* The States' protectable interests in the continued validity of the Public Charge Rule are thus not adequately represented by the Federal Defendants.

II. PERMISSIVE INTERVENTION IS WARRANTED HERE

Even if the Court declines to grant the States' timely motion to intervene as of right, this is precisely the type of case where permissive intervention is warranted. Federal courts may permit intervention by litigants who have "a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1)(B). Where a litigant "timely presents such an interest in intervention," the Court should consider:

> [T]he nature and extent of the intervenors' interest, their standing to raise relevant legal

> issues, the legal position they seek to advance, and its probable relation to the merits of the case[,] whether changes have occurred in the litigation so that intervention that was once denied should be reexamined, whether the intervenors' interests are adequately represented by other parties, whether intervention will prolong or unduly delay the litigation, and whether parties seeking intervention will significantly contribute to full development of the underlying factual issues in the suit and to the just and equitable adjudication of the legal questions presented.

Perry v. Schwarzenegger, 630 F.3d 898, 905 (9th Cir. 2011).

As set forth above, this motion is timely and the States have a compelling stake in the outcome of these actions.

Moreover, the issues presented here are exceptionally important and hotly debated—as evidenced by the splits among four circuit courts and the Supreme Court granting certiorari. Those important issues should be decided on the merits, rather than through surrender. The State's participation will "significantly contribute to ... the just and equitable adjudication of the legal questions presented." *Schwarzenegger*, 630 F.3d at 905. Moreover, a central issue in these cases was the costs imposed on the states. *City & Cty. of San Francisco v. U.S. Citizenship & Immigration Servs.*, 944 F.3d 773, 801-04 (9th Cir. Dec. 2019); *San Francisco*, 981 F.3d at 759-60. The presence of the moving States here will

ensure that the broad perspective of the several states is represented.

A favorable exercise of discretion is therefore warranted.

CONCLUSION

For the foregoing reasons, the States' motion to intervene should be granted.

Respectfully submitted this March 10, 2020.

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s/ *Drew C. Ensign*
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IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

CITY AND COUNTY OF SAN FRANCISCO, and COUNTY OF SANTA CLARA, Plaintiffs-Appellees, v. UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, et al., Defendants-Appellants.	No. 19-17213
STATE OF CALIFORNIA, et al., Plaintiffs-Appellees, v. UNITED STATES DEPARTMENT OF HOMELAND SECURITY, et al., Defendants-Appellants.	No. 19-17214
STATE OF WASHINGTON, et al., Plaintiffs-Appellees, v. UNITED STATES DEPARTMENT OF HOMELAND SECURITY, et al., Defendants-Appellants.	No. 19-35914

RESPONSE IN OPPOSITION TO MOTION TO INTERVENE

Arizona and eleven other States (collectively, Movants) seek to intervene in these appeals of two preliminary injunctions barring the Department of Homeland Security (DHS) from implementing its August 2019 public-charge rule (the Rule). *See City & County of San Francisco v. USCIS*, 981 F.3d 742, 753 (9th Cir. 2020). The motion to intervene should be denied.

These appeals no longer present a live controversy. On November 2, 2020, the District Court for the Northern District of Illinois entered a final judgment vacating the Rule nationwide. The government initially appealed, but recently voluntarily dismissed its appeal, such that the Illinois court's judgment is final; the Rule has been vacated nationwide; and DHS has accordingly removed the Rule from the *Code of Federal Regulations*. As a result, the Rule is no longer in effect, and the preliminary injunctions at issue in these appeals have no effect.

Even if the motion to intervene were not moot, intervention would not be proper. "In determining whether intervention is appropriate," this Court is "guided primarily by practical and equitable considerations." *Donnelly v. Glickman*, 159 F.3d 405, 409 (9th Cir. 1998). Such considerations do not support intervention here. The preliminary injunctions at issue in this case do not apply in Movants' jurisdictions. *See City & County of San Francisco*, 981 F.3d at 763 ("vacat[ing] that portion of the Eastern District's injunction making it applicable nationwide").

Moreover, Movants have had ample opportunity to seek intervention to protect their interests in this litigation and in the numerous other suits involving the Rule while those suits were pending, but did not do so. Indeed, before Movants' late-breaking motions to intervene, they had never participated in any capacity in the public-charge cases, even as amicus curiae. And if Movants favor a different public-charge policy, they can use well-established procedures to request one. Neither practical nor equitable considerations support permitting the States to belatedly intervene to defend the now-defunct Rule.

STATEMENT

1. On August 14, 2019, DHS published a final rule implementing the Immigration and Nationality Act's public-charge inadmissibility provision, 8 U.S.C. § 1182(a)(4)(A). Plaintiffs filed suits in this Circuit, and other plaintiffs filed suits in other Circuits challenging the Rule and seeking preliminary injunctive relief. District courts in California, Washington, Illinois, New York, and Maryland entered preliminary injunctions barring the Rule's enforcement. *See City & County of San Francisco v. USCIS*, 981 F.3d 742, 749-50 (9th Cir. 2020).

A motions panel of this Court granted the government's request for a stay pending appeal of the California and Washington preliminary injunctions, *see City & County of San Francisco v. USCIS*, 944 F.3d 773 (9th Cir. 2019), but in December 2020, after full briefing and argument, this Court affirmed the California and Washington preliminary injunctions against the Rule, while limiting their geographic scope

to the plaintiffs' jurisdictions, *City & County of San Francisco*, 981 F.3d at 756-63. The merits panel concluded that plaintiffs were likely to prevail in establishing that the Rule was contrary to the INA and was arbitrary and capricious. *Id.*

One month later, in January 2021, the government filed a petition for a writ of certiorari from this Court's decision. *See USCIS v. City & County of San Francisco*, No. 20-962 (S. Ct.). In the petition, the government asked the Supreme Court to hold the case pending the resolution of petitions for writs of certiorari filed in other cases, described below.

2. The public-charge cases have proceeded on different paths in the other circuits. Like this Court, the Fourth Circuit issued a stay pending the government's appeal of the preliminary injunction entered by the district court in Maryland. A panel of the Fourth Circuit subsequently issued a decision reversing the Maryland preliminary injunction on the merits, *see CASA de Maryland, Inc. v. Trump*, 971 F.3d 220, 237 (4th Cir. 2020), but the full Court vacated that decision and granted rehearing in December 2020, *see* 981 F.3d 311 (mem.).

The Second and Seventh Circuits declined to issue stays pending the government's appeals of preliminary injunctions entered by district courts in Illinois and New York. *See City & County of San Francisco*, 981 F.3d at 750. The Supreme Court granted the government's request for stays of the injunctions pending disposition of any petitions for writ of certiorari in the Second and Seventh Circuit cases.

DHS v. New York, 140 S. Ct. 599 (2020); *Wolf v. Cook Cty.*, 140 S. Ct. 681 (2020).

The Second and Seventh Circuits subsequently entered decisions affirming the preliminary injunctions on the merits (though, in the case of the Second Circuit, limiting its geographic scope). *See New York v. U.S. Dep't of Homeland Security*, 969 F.3d 42 (2d Cir. 2020); *Cook County v. Wolf*, 962 F.3d 208 (7th Cir. 2020). On October 7, 2020, the government filed petitions for writs of certiorari in both cases. *See Department of Homeland Security v. New York*, No. 20-449 (S. Ct.); *Wolf v. Cook County*, No. 20-450.

Meanwhile, on November 2, 2020, the District Court for the Northern District of Illinois granted the plaintiffs' request for partial summary judgment and entered a Rule 54(b) judgment vacating the Rule on a nationwide basis. *Cook County v. Wolf*, 2020 WL 6393005 (N.D. Ill. Nov. 2, 2020). The government appealed the Rule 54(b) judgment and the Seventh Circuit stayed that judgment pending the Supreme Court's resolution of the pending certiorari petitions. *See Cook County v. Mayorkas*, No. 20-3150 (7th Cir).

3. On February 22, 2021, the Supreme Court granted certiorari in the Second Circuit case. *See Department of Homeland Security v. New York*, No. 20-449 (S. Ct.).

Two weeks later, on March 9, 2021, the parties to all three cases then pending in the Supreme Court—from this Court, the Second Circuit, and the Seventh Circuit case—filed joint stipulations in the

Supreme Court to dismiss the cases. The Supreme Court entered orders dismissing all three cases.

In the Fourth Circuit, the government filed an unopposed motion to dismiss its appeal of the Maryland court's preliminary injunction, and the Fourth Circuit dismissed the case and issued its mandate. *See* Order, *CASA de Maryland, Inc. v. Biden*, No. 19-2222 (4th Cir. Mar. 11, 2021). Prospective intervenors in this Court filed motions to recall the mandate and intervene in the Fourth Circuit case, but on March 18, 2021, the Fourth Circuit denied those motions without awaiting a response. *See* Order, *CASA de Maryland, Inc. v. Biden*, No. 19-2222 (4th Cir.).

The government also filed an unopposed motion to voluntarily dismiss its appeal of the Illinois district court's Rule 54(b) judgment. The Seventh Circuit granted the government's motion, dismissed the appeal, and issued its mandate. *See* Order, *Cook County v. Mayorkas*, No. 20-3150 (7th Cir. Mar. 9, 2021). Prospective intervenors in this Court filed motions in the Seventh Circuit asking the court to recall its mandate in the Rule 54(b) appeal, to grant them leave to intervene in that case, and to reconsider its order dismissing the appeal. The Seventh Circuit denied those requests on March 15, 2021, without awaiting a response. *See* Order, *Cook County v. Mayorkas*, No. 20-3150 (7th Cir. Mar. 15, 2021). On March 19, 2021, prospective intervenors applied to the Supreme Court for leave to intervene and for a stay of the Illinois district court's judgment pending a petition for certiorari from the Seventh Circuit's grant of voluntary dismissal. *See Texas v. Cook County*, No.

20A-___ (S. Ct.). In the alternative, prospective intervenors requested summary reversal of the Seventh Circuit's denial of their various motions to recall the mandate, allow intervention, and reconsider dismissal. *Id.*

DHS has published a rule in the *Federal Register* to "implement[] the district court's vacatur of the August 2019 rule, as a consequence of which the August 2019 rule no longer has any legal effect." Department of Homeland Security, *Inadmissibility on Public Charge Grounds; Implementation of Vacatur*, 86 Fed. Reg. 14,221, 14,221 (Mar. 15, 2021).

ARGUMENT

Prospective intervenors' motion to intervene should be denied. These appeals and the intervention motion do not present a live controversy. These appeals concern preliminary injunctions entered against the Rule. But another court has permanently vacated the Rule in a final judgment. Thus, a decision by this Court or the Supreme Court reversing the preliminary injunctions at issue here would not provide any party, including prospective intervenors, any relief. In addition, the preliminary injunctions at issue here no longer apply within Movants' jurisdictions because this Court narrowed them to apply only within plaintiffs' jurisdictions. Movants' belated request to insert themselves into this litigation is, in any event, improper on its own terms.

I. This Appeal Does Not Present A Live Controversy

"An appeal is moot"—and a motion to intervene properly denied—"if there exists no 'present controversy as to which effective relief can be granted.'" *West Coast Seafood Processors Ass'n v. Nat. Res. Def. Council, Inc.*, 643 F.3d 701, 704 (9th Cir. 2011) (quoting *Outdoor Media Group, Inc. v. City of Beaumont*, 506 F.3d 895, 900 (9th Cir. 2007)). This Court's decision in *West Coast Seafood* is illustrative. In that case, the plaintiffs challenged a regulatory action taken by the National Marine Fisheries Service. 643 F.3d at 703-04. The West Coast Seafood Processors Association moved to intervene to defend one element of the Service's action. *Id.* The district court denied the intervention motion, and the Processors Association appealed. *Id.* While the appeal was pending, the district court entered final judgment against the Service and the Service did not appeal. *Id.* at 704. Because the underlying litigation was over, this Court concluded that there was no "effective relief" it could grant the Processors Association by allowing it to intervene. *Id.* It therefore dismissed the Processors' appeal as moot. *Id.* at 705.

As in *West Coast Seafood*, there is no "effective relief" this Court could grant Movants by allowing them to intervene now. These appeals concern two preliminary injunctions temporarily barring the Department of Homeland Security from implementing the Rule. *See City & County of San Francisco v. USCIS*, 981 F.3d 742, 753-54 (9th Cir. 2020). But those injunctions are not the reason that the Rule no longer

applies in the States that now seek to intervene. The United States District Court for the Northern District of Illinois has issued a final judgment vacating the Rule nationwide, *Cook County v. Wolf*, 2020 WL 6393005 (N.D. Ill. Nov. 2, 2020), and the government's appeal from that ruling has been dismissed. It is that ruling, and not the injunctions at issue here, that has caused the government to stop enforcing the Rule in Movants' jurisdictions.

Movants have now asked the Supreme Court to stay the effect of the final judgment of vacatur, which would require the Supreme Court to conclude (among other things) that the Seventh Circuit had abused its discretion in refusing to recall the mandate, that Supreme Court review of that supposed error was warranted, and that a stay of the underlying judgment is appropriate even though the government, whose interests the prior stays in these cases were designed to protect, no longer seeks a stay. Even if Movants were successful in those respects, moreover, they could still not establish that this appeal presents a live controversy, because this Court narrowed the scope of the preliminary injunctions at issue here to the plaintiffs' jurisdictions, such that the injunctions do not apply in Movants' jurisdictions at all. *City & County of San Francisco*, 981 F.3d at 763. Movants' speculation (Mot. 8 n.9) that one of the district courts may issue a judgment on remand that does apply within their jurisdictions is no substitute for a concrete interest in the preliminary injunctions that are at issue in these appeals.

Accordingly, even if this Court permitted Movants to intervene in this appeal, an order setting aside the preliminary injunctions at issue would provide them with no relief. The motion to intervene should therefore be denied.

II. The Motion To Intervene Should Be Denied In Any Event

Even if these appeals presented a live controversy, intervention would nonetheless be improper. Movants ask this Court to allow them to intervene either as of right or with the Court's permission. *See* Mot. 5-10; *see also* Fed. R. Civ. P. 24. A party seeking to intervene "in a pending federal action as a matter of right must satisfy four requirements, namely that: (1) it has a significant protectable interest relating to the property or transaction that is the subject of the action; (2) the disposition of the action may, as a practical matter, impair or impede the applicant's ability to protect its interest; (3) the application is timely; and (4) the existing parties may not adequately represent the applicant's interest." *S. California Edison Co. v. Lynch*, 307 F.3d 794, 802 (9th Cir. 2002). "[A] court may grant permissive intervention where the applicant for intervention shows (1) independent grounds for jurisdiction; (2) the motion is timely; and (3) the applicant's claim or defense, and the main action, have a question of law or a question of fact in common." *Id.* at 803. "In determining whether intervention is appropriate," this Court is "guided primarily by practical and equitable considerations." *Donnelly v. Glickman*, 159 F.3d 405, 409 (9th Cir. 1998).

Neither practical nor equitable concerns justify intervention at this late stage in the litigation. Movants seek to intervene in these appeals so that they can petition the Supreme Court to review the preliminary injunctions at issue and opine upon the validity of the Rule. Mot. 5-6. For the reasons noted above, the Supreme Court's review of the preliminary injunctions at issue here would serve no practical purpose—in particular because the preliminary injunctions at issue do not apply in Movants' jurisdictions, and because the only mechanism by which the injunctions at issue here would be relevant to anyone would be if Movants could persuade the Supreme Court to hear their claims in a different case.

Moreover, the motion comes very late in this litigation. The government filed petitions for certiorari asking the Supreme Court to review parallel injunctions against the Rule in October 2020. Those petitions were pending for several months when, on February 22, 2021, the Supreme Court granted certiorari to review the New York injunctions. Another two weeks passed before the federal government moved to voluntarily dismiss the case and the other pending certiorari petitions concerning the Rule. At no point in that time period did Movants ask the Supreme Court (or this Court or the district court) to allow them to intervene to defend their interests. Movants have also not previously participated in the cases, or any of the other related litigation, even in an amicus capacity. And their lack of involvement or expressed interest persisted even after President Biden, on February 2021, directed the Secretary of Homeland Security and other Executive Branch officials to give fresh

consideration to the government's approach to public-charge determinations. *See* Executive Order 14012, 86 F3d. Reg. 8277 (Feb. 5, 2021). Having chosen not to participate in this (or related) litigation while it continued to present a live controversy, Movants cannot invoke equitable considerations in support of their attempt to intervene in the litigation now. *See Esta Later Charters, Inc. v. Ignacio*, 875 F.2d 234, 239 n.11 (9th Cir. 1989) ("[E]quity aids the vigilant, not those who slumber on their rights.").

Intervention is also inappropriate here because the prospective intervenors have other avenues available to protect their interests. *See, e.g,*, *United States v. Alisal Water Corp.,* 370 F.3d 915, 921 (9th Cir. 2004) (affirming denial of motion to intervene because proposed intervenor had "other means by which [it] may protect its interests"). As noted, DHS has begun a review of its public-charge policies and must complete that review by early April 2021. 86 Fed. Reg. at 8278. Movants can provide their views to the agency during that review or any time thereafter. They may also petition the agency for a new rule. *See* 5 U.S.C. § 553(e).

CONCLUSION

For the reasons discussed above, the motion to intervene should be denied.

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JA 81

Dkt. 150

Nos. 19-1721, 19-17214, 19-35914

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

CITY AND COUNTY OF SAN FRANCISCO AND COUNTY OF SANTA CLARA, *Plaintiffs-Appellees*,
v.
U.S. CITIZENSHIP AND IMMIGRATION SERVICES, et al., *Defendants-Appellees*,

STATE OF CALIFORNIA, et al., *Plaintiffs-Appellees*,
v.
U.S. DEPARTMENT OF HOMELAND SECURITY, et al., *Defendants-Appellees*,

STATE OF WASHINGTON, et al., *Plaintiffs-Appellees*,
v.
U.S. DEPARTMENT OF HOMELAND SECURITY, et al., *Defendants-Appellees*,

On Appeal from the United States District Courts for the Northern District of California and the Eastern District of Washington

PLAINTIFFS' JOINT OPPOSITION TO MOTION TO INTERVENE

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INTRODUCTION

When Plaintiffs in these related appeals filed suit in August 2 019, the prior federal administration had just issued a new regulation that drastically expanded the interpretation and implementation of the "public charge" ground for inadmissibility under 8 U.S.C. § 1182(a)(4)(A). *See* 4 Fed. Reg. 41, (Aug. 14, ("the Rule").[1] In ensuing litigation, the district courts granted motions to preliminarily enjoin the Rule. This

[1] The Plaintiffs in all three appeals (the City and County of San Francisco and the County of Santa Clara; California, Maine, Oregon, Pennsylvania, and the District of Columbia; Colorado, Connecticut, Delaware, Hawaii, Illinois, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, Rhode Island, Virginia, and Washington) join in opposing the motion to intervene and in this brief.

Court affirmed on the basis that the Rule is likely contrary to law and arbitrary and capricious under the Administrative Procedure Act, and that the harms to the plaintiffs, the balance of equities, and the public interest supported the issuance of preliminary injunctions. *City & Cnty. of San Francisco v. U.S. Citizenship & Immigration Servs.*, 81 F.3d 42, 1-2 (9th Cir. 2020.

Since then, intervening events have mooted these appeals. A district court in the Northern District of Illinois entered final judgment vacating the Rule nationwide. *Cook Cnty, Ill. v. Wolf*, No. 19-cv-0633, 020 WL 393005 (N.D. Ill. Nov. 2, 020). Although the defendants initially filed a notice of appeal of that decision, the Seventh Circuit Court of Appeals dismissed the appeal on March 9, 2021, allowing the district court's final judgment to take effect. And on March 1, 2021, the federal government issued a notice in the Federal Register to implement the district courts ruling.

As a result of the vacatur of the Rule, this appeal concerning the propriety of preliminary injunctions is now moot. Despite this, Arizona and other States seek to intervene for the purpose of filing a new petition for a writ of certiorari challenging this Court's decision affirming the district courts rulings preliminarily enjoining the Rule. *See* Mot. to Intervene at 2. That is improper. They seek to maintain an appeal on an issue that is moot and through which they cannot secure any meaningful remedy. The motion to intervene should be denied.

BACKGROUND

This Court is well aware of the statutory and equitable issues concerning the Rule, which are set out in the district courts orders granting a preliminary injunction and in this Court's decision affirming those injunctions. Plaintiffs will not repeat that important background information here, but note that none of the Proposed Intervenors have participated in any of these proceedings until the resent motion.

Since this Court issued its decision, significant developments have eliminated any basis for the intervention request. Initially, defendants filed a petition for a writ of certiorari in January 201 in this matter, asking the Supreme Court to hold the petition pending the decision in a related appeal arising out of the Second Circuit. *See U.S. Citizenship & Immigration Servs. v. City & Cnty of San Francisco, et al.*, No. 20-62 (Jan. 1, 2021). On February 22, 2021, the Supreme Court granted the petition for certiorari in that Second Circuit matter, agreeing to consider whether the district court abused its discretion by granting a preliminary injunction on the basis that the Rule is likely contrary to law and arbitrary and capricious. *See Dep't of Homeland Sec. v. New York*, No. 20-449, 2021 WL 66376, at *1 (Feb. 22, 2021).

President Biden was sworn in on January 20, 2021, and on February 2, he issued an Executive Order directing federal agencies to "eliminate[] sources of fear and other barriers that prevent immigrants from

accessing government services available to them."[2] Among other things, the Order directed federal agencies to evaluate its "public charge policies," identify "appropriate agency actions . . . to address concerns about the current public charge policies[ ]," and to submit a report to the President on those matters within 60 days.[3]

As part of that review, defendants concluded that "continuing to defend the final rule . . . is neither in the public interest nor an efficient use of limited government resources, and elected not to "pursue" any further "appellate review of judicial decisions invalidating or enjoining enforcement of the Rule.[4] The parties therefore stipulated to dismissal of the pending petitions for a writ of certiorari in this and related matters arising from the Second and Seventh Circuits.

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[2] Executive Order 14,012, 6 Fed. Reg. 77 82 (Feb. 2, 021), "Exe cutive Order on Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans, *available at* https://www.whitehouse.gov/briefing-room/residential-actions/2021/02/02/executive-order-restoring-faith-in-our-legal-immigration systems-and-strengthening-integration-and-inclusion-efforts-for-new-americans/.

[3] *Id.* at 278.

[4] U.S. Dep't of Homeland Sec., *DHS Statement on Litigation Related to the Public Charge Ground of Inadmissibility* (Mar. , 2021), htts://www.dhs.gov/news/2021/0/09/dhs-statement-litigation-related-public-charge-ground-inadmissibility.

On March 9, 2021, the Supreme Court dismissed all three petitions, including in this case.[5]

The same day, the Seventh Circuit Court of Appeals also dismiss ed the federal government's appeal of an order granting summary judgment and vacating the Rule on a nationwide basis. *See Cook Cnty, Ill. v. Wolf*, No. 19-cv-06334, 2020 WL 6393005, at *7 (N.D. Ill. Nov. 2, 2020) (district court's order vacating the Rule) *Cook Cnty, Ill. v. Wolf*, C.A. No. 20-1350, Dkt. 24-1 (7th Cir. Mar. 9, 2021) (appeal dismissal and mandate. The dismissal of the appeal allowed the Illinois courts final judgment vacating the Rule nationwide on a permanent basis to take effect. On March 11, many of the States seeking to intervene in this matter also sought to intervene in the Seventh Circuit Court of Appeals. Last week, that court summarily denied their motion to recall the mandate to permit intervention.

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[5] *U.S. Citizenship & Immigration Servs., et al., v. City & Cnty. of San Francisco*, No. 20-9 (Mar. , 201) (9th Cir. petition); *Dep't of Homeland Sec. v. New York*, No. 20-4 (Mar. , 201) (2d Cir. edition); *Sec'y of Homeland Sec. v. Cook Cnty., Ill.*, No. 0-450 (Mar. , 2021) (7th Cir. petition).

The en banc Fourth Circuit Court of Appeals was scheduled on March 8, 201 to hear the appeal of a preliminary injunction issued by the District Court of Maryland. The court took that hearing off calendar after defendants alerted the court to the Presidents Executive Order and pending agency review, *CASA de Maryland, Inc., v. Joseph Biden, Jr.*, C.A. No. 19-222, Dkt. 208 (4th Cir. Feb. 24, 2021) and the case has since been dismissed, Dkt. 212 (Mar. 11, 2021). The Proposed Intervenors then filed a similar motion to recall the mandate to permit intervention, which the Fourth Circuit summarily denied, Dkt. 1 (Mar. 18, 2021).

Cook Cnty, Ill., v. Wolf, C.A. No. 20-3150, Dkt. 26 (7th Cir. Mar. 15, 2021).[6]

At the time of filing the motion to intervene, the Rule had been vacated and no longer governs public charge inadmissibility determinations. The federal government has issued a final rule implementing the district court's order requiring vacatur of the Rule. And public charge assessments are now controlled by previous guidance adopted and issued in 1999.[7] *See* Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, 64 Fed. Reg. 28,689 28,689 (Mar. 26, 1999) ("1999 Guidance.")

ARGUMENT

I. THE APPEALS OF THE PRELIMINARY INJUNCTIONS ARE MOOT

Now that the Rule has been vacated, and the federal government has implemented that vacatur and reinstated the 1999 Guidance, litigation concerning the preliminary injunctions is moot, and there is no longer a live case or controversy with respect to whether the Rule should be preliminarily enjoined. *See People for*

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[6] Texas and other Proposed Intervenors have alied for leave to intervene and for a stay of judgment with the Supreme Court. *Texas v. Cook Cnty, Ill.*, No. 0A ___ (Mar. 19, 2021).

[7] U.S. Dep't of Homeland Security, *DHS Secretary Statement on the 2019 Public Charge Rule* (Mar. 9, 2021), https://www.dhs.gov/news/021/03/09/dhs-secretarystatement-019-public-charge-rule ; *see also* Inadmissibility on Public Charge Grounds Implementation of Vacatur, 6 Fed. Reg. 11 (Mar. 1 , 2021) (implementing vacatur of the Rule).

the Ethical Treatment of Animals, Inc. v. Gittens, 396 F.3d 416, 421 (D.C. Cir. 2005) ("An appeal from an order granting a preliminary injunction becomes moot when, because of the defendant's compliance or some other change in circumstances, nothing remains to be enjoined through a permanent injunction.") (citation omitted); *cf. Rocky Mountain Farmers Union v. Corey*, 913 F.3d 940, 949 (9th Cir. 2019) ("Where there is nothing left of a challenged law to enjoin or declare illegal, further judicial action would necessarily be advisory and in violation of the limitations of Article III").

The Court need not, and should not, allow the Proposed Intervenors to continue to test the validity of a Rule that has been vacated. They contend that intervention is warranted "so that they can file a petition for certiorari seeking review of this Courts December 2, 2020" decision (Mot. at 1), but there is no basis for further review of an order preliminarily enjoining a rule that has been vacated. *See* Stephen M. Shapiro, et al., *Supreme Court Practice* § 19.3(a) (11th ed. 2019) ("A controversy may end . . . if the challenged conduct is modified."). Any further litigation over whether it was proper for the district courts to preliminarily enjoin the now-vacated Rule would "only constitute a textbook example of advising what the law would be upon a hypothetical state of facts rather than upon an actual case or controversy as required by Article III. *Wyoming v. U.S. Dep't of Interior*, 7 58 F.3d 1245, 1253 (10th Cir. 009) (Gorsuch, J.) (quotation marks omitted) (citation omitted).

No exception to mootness applies. A district court has vacated the Rule on a nationwide basis that decision is now final. The federal government's effort to implement the order mandating vacatur thus does not fall under the "voluntary cessation" exception to mootness.[8] *See, e.g., Bd. of Trustees of Glazing Health & Welfare Tr. v. Chambers,* 1 F.3d 1195, 1198 (9th Cir. 201 (en banc) (holding appeal moot where legislature relaced statute based on district court invalidation) (citing *City of Mesquite v. Aladdin's Castle, Inc.*, 55 U.S. 83, n.11 (1982))

II. INTERVENTION AS OF RIGHT IS IMPROPER

Proposed Intervenors cannot satisfy the requirements to intervene as of right, in any event. Intervention is governed by Federal Rule of Civil Procedure 24(a)(2), which requires an intervenor to satisfy a four-part test: "(1) the application for intervention must be timely (2) the applicant must have a 'significantly protectable' interest relating to the property or transaction that is the subject of the action (3) the applicant must be so situated that the disposition of the action may, as a practical matter,

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[8] Moreover, even if the circumstances could be considered voluntary efforts on the art of the federal government to abandon the Rule, there is no reasonable likelihood that the federal government will resurrect it. Indeed, it has committed to policies that depart from those that formed the core of the Rule in a "clear statement, broad in scope, and unequivocal in tone." *Rosebrock v. Mathis*, 745 F.3d 963, 973 (9th Cir. 2014); *see also The Wilderness Soc'y v. Kane Cnty., Utah*, 263 F.3d 1162, 1174-76 (10th Cir. 011) (Gorsuch, J., concurring) (challenges to provisions of repealed county or ordinance were moot where county expressed no interest in reenacting them.

impair or impede the applicant's ability to protect that interest and (4) the applicant's interest must not be adequately represented by the existing parties in the lawsuit." *Sw. Ctr. for Biological Diversity v. Berg*, 826 F.3d 810, 817 (9th Cir. 2001). All "requirements must be satisfied to support a right to intervene." *Arakaki v. Cayetano*, 324 F.3d 1078, 1083 (9th Cir. 003).

Proposed Intervenors request is not timely. This Court has already published its decision affirming the preliminary injunctions; this stage in the proceedings weighs against intervention. *See, e.g., Amalgamated Transit Union v. Donovan*, 771 F.2d 1551, 1553 (D.C. Cir. 1985) (denying motion to intervene for purposes of filing a petition for certiorari and noting that intervention after an appellate decision has issued is "even more disfavored" than other appellate intervention). Proposed Intervenors insist that they are timely, in part because the deadline to file a petition for certiorari has not yet passed. *See* Mot. at 7. But filing an intervention motion before a statutory deadline is the jurisdictional minimum and none of the Proposed Intervenors previously sought to participate in the public charge cases in any way, or even submitted comments on the now-vacated Rule to demonstrate a continuing interest in the issues. *Cf. Day v. Apoliona*, 505 F.3d 963, 966 (9th Cir. 2007) (granting Hawaii late intervention where the state had previously participated as amicus and thus had not "ignored the litigation or held back from participation to gain tactical advantage".

Nor can the Proposed Intervenors demonstrate a significant protectable interest in pursuing this appeal

or that the litigation will "impair or impede" their ability to protect their interests. *Sw. Ctr. for Biological Diversity*, 268 F.3d at 817. As explained above, circumstances have mooted litigation regarding the preliminary injunctions, and Proposed Intervenors thus fail to establish a protectable interest in this appeal. They contend (Mot. at 8-9) that "invalidating" the rule will injure them by depriving them of the financial benefits they stand to gain when non-citizens (and their family members) within Proposed Intervenors' jurisdictions are chilled from accessing supplemental federal benefits for which they are eligible.[9] But the litigation here did not "invalidat[e]" the Rule (a separate final judgment did); and further appeal of the principles governing the issuance of a preliminary injunction in this context will do nothing to redress their supposed injuries. Importantly, no one has ever argued that the Rule is the *only* proper way to implement the public charge statute. Even the prior administration conceded that the 1999 Guidance was a permissible interpretation of the public charge statute, *see* Br. for Appellants at 26, *California v. Dep't of Homeland Security*, C.A. No. 1721, Dkt. 35 (Dec. 4, 2019), and Arizona did not intervene then to assert a contrary position. Thus, while Proposed Intervenors assert an interest "in the continued validity of the

[9] Many individuals likely to forego benefits as a result of the Rule do so out of "fear and confusion." 84 Fed. Reg. at 41,463. Proposed Intervenors' apparent interest in encouraging mistaken enrollments is far from the type of "quasi-sovereign interest[s] in the health and well-being—both physical and economic—of [their] residents" described in cases like *Alfred L. Snapp & Son, Inc., v. Puerto Rico ex rel. Barez*, 458 U.S. 592, 607 (1982).

Public Charge Rule" (Mot. at 9), further review of this interlocutory appeal will not *compel* the federal government to adopt anything like the vacated Rule.

Furthermore, as the Proposed Intervenors acknowledge, the preliminary injunctions at issue in these consolidated appeals do not "directly apply to them. Mot. at 8 n.9. This Court limited the preliminary injunctions in geographic scope the injunctions do not apply within the Proposed Intervenors jurisdictions. And while Proposed Intervenors contend that "the district courts on remand will be required to enter judgment in favor of Plaintiffs on the merits, they offer no basis to intervene in this interlocutory appeal now, under the circumstances presented in this case here. *Id.*[10]

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[10] Proposed Intervenors fail to adequately support their claimed interests in the Rule, in any event. In contrast to Plaintiffs' extensive evidence substantiating their injuries, Proposed Intervenors have offered no evidence declarations, exhibits, or testimony about injuries that would result from the Rule's vacatur. And while they never submitted comments in support of the Rule, several stake holders from within the Proposed Intervenors' jurisdictions submitted public comments opposing the Rule because of harms suffered by residents of those States. *See, e.g.*, Comments by Mayor of Tucson, https://www.regulations.gov/comment/USCIS-2010-0012-11836; Mayor of Austin, https://www.regulations.gov/comment/USCIS-2010-0012-62861 Mayor of Dallas, https://www.regulations.gov/comment/USCIS-2010-0012-36323 Mayor of Houston, https://www.regulations.gov/comment/USCIS-2010-0012-2788; Texas Hospital Association, https://www.regulations.gov /comment/USCIS-010-001-; 95 Health System Alliance of Arizona, https://www.regulations.gov /comment/USCIS-2010-0012-44892 Maricopa Integrated Health System, https://www.regulations.gov/comment/USCIS-2010-0012-36932 Association of Arizona Food Banks, https://www.regulations

III. PERMISSIVE INTERVENTION IS IMPROPER

Proposed Intervenors cannot intervene under Rule 24(b)(1)(B), either. The Court may permit anyone to intervene who "has a claim or defense that shares with the main action a common question of law or fact. In making this discretionary determination, "the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b)(3).

The Court should deny permissive intervention for the same reasons that it should deny intervention as a matter of right: Proposed Intervenors lack a protectable interest that is redressable in this litigation. Proposed Intervenors also assert that intervention is warranted to address "splits among four circuit courts," Mot. at 10, but they are wrong about any conflict. Each of the courts of appeals addressing the likely legality of the Rule have agreed that the Rule was likely unlawful. 981 F.3d at 75-58 *New York v. U.S. Dep't of Homeland Security*, 969 F.3d 42, 64-80 (2nd Cir. 020); *Cook Cty, Ill., v. Wolf*, 962 F.3d 208, 222-29 (7th Cir. 2020). While a panel of the Fourth Circuit originally upheld the Rule, that ruling was vacated by the full court's decision to rehear the case en banc. *See supra*, at 4.

Proposed Intervenors assert that the Supreme Court's prior grant of certiorari justifies intervention to file a new petition here, but intervening circumstances make this case an improper candidate for further

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.gov/comment/USCIS-2010-0012- Texas Association of Local WIC Directors, https://www.regulations.gov/comment/USCIS-2010-0012-33703.

review. The Supreme Court will not grant certiorari "to decide hypothetical issues or to give advisory opinions about issues that cease to have any practical effects on the parties. *Princeton Univ. v. Schmid*, 455 U.S. 100, 102 (1982) (per curiam). This is so no matter how much the Proposed Intervenors may desire a ruling to "satisfy their demand for vindication or curiosity. *Wyoming*, 758 F.3d at 1250.

CONCLUSION

The motion to intervene should be denied.

Dated: March 22, 2021 Respectfully submitted,

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Statement of Related Cases

This brief is filed in the following related cases that are pen ding before this Court: *City & Cnty. of San Francisco, et al., v. U.S. Citizenship and Immigration Servs., et al.*, No. 19-1721 and *California, et al., v. U.S. Dep't of Homeland Sec., et al.*, No. 19-191 (appeals from the same order of the Northern District of California) and *State of Washington, et al., v. U.S. Department of Homeland Security, et al.*, No. 19-3591 (appeal from order of the Eastern District of Washington).

Plaintiffs are not aware of any other related cases, as defined by Ninth Circuit Rule 28-2., that are currently pending in this Court.

[******Certificate of Compliance omitted******]

JA 104

Dkt. 156

No. 19-17213, 19-17214, 19-35914

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CITY AND COUNTY OF SAN FRANCISCO;
COUNTY OF SANTA CLARA,
Plaintiffs-Appellees,
v.
UNITED STATES CITIZENSHIP AND
IMMIGRATION SERVICES, *et al.*,
Defendants-Appellants,
and
STATE OF ARIZONA et al.,
Proposed Intervenor-Defendant-Appellants.

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE NORTHERN
DISTRICT OF CALIFORNIA
Case No. 4:19-cv-04975-PJH

REPLY TO RESPONSE IN SUPPORT OF THE MOTION TO INTERVENE BY THE STATES OF ARIZONA, ALABAMA, ARKANSAS, INDIANA, KANSAS, LOUISIANA, MISSISSIPPI, MISSOURI, MONTANA, OKLAHOMA, SOUTH CAROLINA, TEXAS, AND WEST VIRGINIA.

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Dated: March 29, 2021

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[*** *Tables omitted* ***]

INTRODUCTION

The Plaintiffs and Federal Defendants here ("Existing Parties") tried to pull a collusive fast one. Without any notice or warning, and *after* the Supreme Court had granted Federal Defendants' petition for certiorari raising *identical* issues, they sprung an unprecedented, coordinated, and multi-court gambit. Through it, they attempted to execute simultaneous, strategic surrenders in all pending cases involving the Public Charge Rule, including this one, pursuant to a settlement. Their obvious hope was to act so quickly that dismissals would obtain before anyone else could intervene.

But Existing Parties' attempted fast one was not quite fast enough, and the twelve moving states ("States") were able to file this motion to intervene before this Court's mandate could issue. Moreover, a similar group of states has moved to intervene in the Fourth and Seventh Circuits and subsequently sought a stay from the Supreme Court. *See Texas v. Cook County*, 22A150 (filed U.S. March 19, 2021).

Doubling down on their frantic attempt to avoid final resolution of these disputes *on the merits*, Existing Parties now advance dubious contentions in opposition to intervention and in service of effectuating their collusive, multi-front abdication. But those arguments violate controlling case law, which they overwhelmingly ignore.

Existing Parties' principal argument appears to be that the States' motions to intervene should be denied as moot because the underlying appeals are. But this Court has made clear that a motion to intervene is *not* moot where "a potential petition for rehearing or certiorari" could be filed. *Allied Concrete & Supply Co. v. Baker*, 904 F.3d 1053, 1066 (9th Cir. 2018). That is true both in this case and in the *Cook County* case, where a group of States is currently seeking Supreme Court review. *Supra* at 1.

Moreover, Existing Parties remarkably ignore the *necessary result* if their mootness arguments were correct: this Court's opinion and the decisions below would both need to be vacated as moot. But Existing Parties remarkably ignore this inexorable result, seeking to apply mootness selectively only to the States' motion. If they truly believed these appeals

were moot, they should be requesting vacatur of the panel and district court decisions under *United States v. Munsingwear, Inc.*, 340 U.S. 36, 39 (1950). They tellingly aren't.

The States have also satisfied all requirements for intervention as of right. Although the States' motions were filed *the very next day* after Federal Defendants abandoned defense of the Rule, Existing Parties contend it is untimely. That violates both controlling precedent and common sense. In particular, the States' motions are plainly timely under *United Airlines, Inc. v. McDonald*, 432 U.S. 385 (1977)—which is controlling Supreme Court authority that both the Plaintiffs and Federal Defendants ignore.[1] If they had any way of answering or distinguishing *United Airlines*, they would have provided it. They don't, and instead silently ask this Court to violate it. In addition, because this suit previously involved a nationwide injunction and, although the injunction has been narrowed, it could still easily result in a nationwide vacatur were this Court to issue its mandate now. Because this result is possible, if not likely, under the panel opinion, the States readily satisfy the protectable interest/impairment requirements.

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[1] Indeed, *today* the U.S. Supreme Court granted review in a case where the Sixth Circuit denied post-panel-opinion intervention by the Kentucky Attorney General. The petition and twenty-state amicus brief noted the circuit split between the Sixth Circuit and this Court on the intervention issue. *See* Petition for Certiorari at p. 21-30, *Cameron v. EMW Women's Surgical Center, P.S.C.*, No. 19-5516 (U.S. Oct. 30, 2020); Brief of Amici Curiae Arizona et al. at p. 11-12, *Cameron*, No. 19-5516 (U.S. Dec. 7, 2020).

In any event, this Court should grant permissive intervention. The States' motion is timely and all relevant requirements are met. And a favorable exercise of discretion is particularly warranted here given the unprecedented machinations that led to the circumstances here.

ARGUMENT

I. THE STATES' MOTIONS ARE NOT MOOT

A. Because Judicial Review Of The Public Charge Rule Is Ongoing, The States' Motions Are Not Moot

The principal argument of both Plaintiffs and Federal Defendants appears to be that the States' motions are moot. But this Court has made clear that where the potential for future review exists, a motion to intervene is *not* moot. In *Baker*, for example, this Court held that the motion to intervene by a party whose side *just prevailed on the merits* was not moot because a "potential petition for rehearing or certiorari" could still be filed—even though the moving party could not obtain anything further beyond the complete relief that their side just won. 904 F.3d at 1066-67. This Court similarly recognized as much in *Canatella v. California*, 404 F.3d 1106, 1109 n.1 (9th Cir. 2005).[2]

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[2] Although Federal Defendants rely extensively (at 7-9) upon *West Coast Seafood Processors Ass'n v. NRDC*, 643 F.3d 701 (9th Cir. 2011), *Baker* specifically distinguishes *West Coast Seafood* on the basis that "the underlying litigation had concluded," 904 F.3d at 1066—unlike here where Supreme Court review is *currently* being sought in *Cook County*.

Further review here is possible: it is undisputed that the time to file petitions for certiorari in these cases is still open. And to the extent that Existing Parties are relying on the Northern District of Illinois's vacatur, that too is currently being challenged in the Supreme Court. Thus, under *Baker* the motions to intervene (and these appeals themselves given the potential for further post-intervention review) are not moot.[3]

Moreover, a finding of mootness would be particularly unwarranted here because "postcertiorari maneuvers designed to insulate a decision from review … must be viewed with a critical eye." *Knox v. SEIU, Loc. 1000*, 567 U.S. 298, 307 (2012). Here DOJ did not surrender until *after* its cert. petition was granted—and victory likely at hand. It hardly takes a particularly "critical eye" to observe that the unprecedented post-certiorari maneuvers here are nakedly collusive, and particularly unworthy of judicial blessing.

Moreover, a "case becomes moot only when it is impossible for a court to grant any effectual relief whatever to the prevailing party." *Id.* (citation omitted). But here effective relief can be had if the Supreme Court grants review in the *Cook County* case—which is hardly "impossible" given that the Court has already granted review on *identical issues* already.

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[3] Federal Defendants also argue (at 9) that the now-narrowed scope of the injunctions precludes intervention. Those arguments fail. *Infra* at 8-9.

B. If The States' Motion Is Actually Moot, Then Vacatur Of The Panel's Opinion And Decision Below Is Required

Even if Existing Parties were correct that "intervening events have mooted these appeals" (Cal. Opp. at 1) and "[t]hese appeals no longer present a live controversy" (U.S. Opp. at 2), they gloss over the necessary result of that conclusion: this Court would be compelled to vacate its opinion and direct the district court to do the same on remand. *See Munsingwear*, 340 U.S. at 39. That result is inescapable under *Munsingwear*, but ignored by Existing Parties—who undoubtedly would prefer that Plaintiffs' victory remains on the books.

Existing Parties thus attempt to have it both ways: these appeals are too moot to justify intervention but not so moot as vacate their victory/now-welcomed-loss. But if these appeals are indeed moot such that intervention is not justified, then vacatur of *all* decisions is required under *Munsingwear*.

II. THE STATES ARE ENTITLED TO INTERVENE AS OF RIGHT

The Settling Parties concede, as they must, that the Federal Defendants do not adequately represent the States' interests. And how could they not? And the remaining requirements for intervention are also satisfied here.

A. The State's Motions Are Timely Under Controlling Supreme Court Precedent That Existing Parties Refuse To Address

As the States explained, under *United Airlines—i.e.*, controlling authority—their motion is timely because it is filed within the time to file a cert. petition. Mot. at 6-7. In response, Existing Parties say … *nothing at all*. They neither acknowledge *United Airlines* nor the certiorari petition deadline because it is clear little could be said. *United Airlines* controls here and if any basis existed for distinguishing it, they would have provided it.

United Airlines further makes clear that timeliness is evaluated by when it "became clear to the [movants] that the[ir] interests … would no longer be protected by the [existing parties]." 432 U.S. at 394. The States moved to intervene *the very next day* after Federal Defendants' surrender, which is plainly timely under *United Airlines*. Moreover, this Court's precedents make clear that the Motions here are timely. *See Peruta v. City of San Diego*, 824 F.3d 919, 940-41 (9th Cir. 2016) (en banc); *Day v. Apoliona*, 505 F.3d 963, 964-66 (9th Cir. 2007); *DNC v. Hobbs*, No. 18-15845, Dkt. 137 (9th Cir. Apr. 9, 2020) (en banc court granting Arizona's post-decision motion to intervene by 10-1 vote), *cert granted* 141 S. Ct. 222 (2020); *supra* note 1.

Moreover, Existing Parties' timeliness arguments are particularly strange as Federal Defendants *declined* to dismiss their petition for certiorari after President Biden was sworn in. Federal Defendants' reliance (at 11) on President Biden's February 5 order is thus misplaced since they *continued to seek certiorari*

after it. Indeed, if the States had tried to intervene then, Plaintiffs undoubtedly would have argued that the Federal Defendants adequately represented their interests given the then-pending petition. Nor do Existing Parties even bother to argue otherwise or deny the Catch-22 inherent in their arguments.

Existing Parties also do not deny the States' contention (at 7-8) that intervention will cause them no prejudice—which is the central concern of the timeliness inquiry. Without even any *asserted* prejudice, a finding of untimeliness would be untenable under *United Airlines*. *See also Day*, 505 F.3d at 965 (recognizing lack of prejudice from intervention after panel opinion was issued and stating "the practical result of [the State's] intervention—the filing of a petition for rehearing—would have occurred whenever the state joined the proceedings").

B. The States Have Protectable Interests That Could Be Impaired

The Federal Defendants do not dispute that the elimination of the Public Charge Rule will inflict financial harm on the States.[4] Nor do they genuinely dispute that this Court's opinion, if left intact, would be likely to result in a nationwide vacatur on remand if

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[4] Plaintiffs do dispute the States' potential financial injuries in a footnote (at 9 n.10). But the Public Charge Rule itself affirms this injury, Mot. at 2-5—which Plaintiffs ignore. In any event, courts are "required to accept as true the non-conclusory allegations made in support of an intervention motion." *Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 819 (9th Cir. 2001). The States' specific allegations—specifically backed up by the Rule and its underlying analysis—are plainly more than "conclusory."

the *Cook County* vacatur is reversed. But they nonetheless contend that the scope of the injunction—which this Court modified to only include Plaintiff States—means that the States' can no longer satisfy the impairment prong.

Baker dispenses with this argument too. The *Baker* prospective intervenors—whose side in that case had lost below but then prevailed on appeal—obviously did not then stand to be *impaired* by the decision giving them complete victory. 904 F.3d at 1066-68. But the prospect of further judicial action that *could* impair their interests sufficed for intervention as of right. *Id.* So too here: the prospect of a future nationwide injunction or vacatur on remand easily satisfies the impairment prong.[5]

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[5] Federal Defendants also contend (at 11-12) that there is no impairment because the States will have an "opportunity to comment" on future rulemaking (and implicitly that they somehow have a fair chance of persuading the Biden Administration to retain the Public Charge Rule through such comments). That suggestion is entirely self-serving and lacks any credible factual or legal foundation: the opportunity to comment on some speculative future rulemaking has *never*, to the States' knowledge, been held to be an adequate alternative to defending on the merits in court a rule that *has already been promulgated.* And the sole case cited, *Alisal Water Corp.*, certainly did not hold as much. If that contention were correct, intervention to defend a rule when the federal government will not should essentially *never* be granted. But that is manifestly not the law—and indeed Plaintiffs include several states who repeatedly and successfully intervened to defend Obama Administration rules.

III. PERMISSIVE INTERVENTION IS WARRANTED HERE

Alternatively, the States should be granted permissive intervention. Aside from their timeliness arguments (which fail as set forth above), Existing Parties do not dispute that all requirements for permissive intervention are met. Plaintiffs recycle their protective interest argument (at 9-10). But a protectable interest is *not* a requirement for permissive intervention, and that argument fails in any event. *Supra* at 8-9.

Plaintiffs also appear to quibble with certiorari worthiness by disputing the existence of a circuit split and pointing (at 10) to the "Fourth Circuit … [granting] rehear[ing] the case en banc." But the Fourth Circuit did so two *months before* the Court granted certiorari on February 22. The Supreme Court has thus *already* determined that the case *still* warrants review notwithstanding the Fourth Circuit's rehearing.

Existing Parties do not address the States' argument (at 10-11) that permissive intervention is warranted so that the "important issues [can] be decided on the merits, rather than through surrender." Indeed, their overall response is telling: They don't deny that their conduct is blatantly collusive, but their astonishing defense instead is that they have already conclusively gotten away with it. But they're wrong about that: the States acted quickly to intervene pre-mandate and further are seeking relief from the Supreme Court in *Cook County*. More broadly, their brazen gamesmanship is hardly a reason to reward them with a favorable exercise of discretion.

CONCLUSION

The States' motions to intervene should be granted.

Respectfully submitted this March 29, 2020.

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s/ *Drew C. Ensign*
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[*** *Certificate of Service omitted* ***]

Dkt. 160

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

[Filed May 03, 2021]

CITY AND COUNTY OF SAN FRANCISCO, and COUNTY OF SANTA CLARA, Plaintiffs-Appellees, v. UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, a federal agency; et al., Defendants-Appellants.	No. 19-17213 D.C. No. 4:19-cv-04717-PJH U.S. District Court for Northern California, Oakland **MANDATE**

The judgment of this Court, entered December 02, 2020, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: David J. Vignol
Deputy Clerk
Ninth Circuit Rule 27-7

41292 Federal Register /Vol. 84, No. 157/Wednesday, August 14, 2019/Rules and Regulations

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 103, 212, 213, 214, 245 and 248

[CIS No. 2637–19; DHS Docket No. USCIS–2010–0012]

RIN 1615–AA22

Inadmissibility on Public Charge Grounds

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Final rule.

* * *

[41300-41301]

* * *

E. Summary of Costs and Benefits

This rule will impose new costs on the population applying to adjust status using Form I–485 that are subject to the public charge ground of inadmissibility. DHS will now require any adjustment applicants subject to the public charge ground of inadmissibility and who are applying for adjustment of status on or after the effective date of this final rule to submit a Form I–944 with their Form I–485 to demonstrate they are not likely to become a public charge. Failure to submit the form, where required, may result in a

rejection or a denial of the Form I–485 without a prior issuance of a Request for Evidence or Notice of Intent to Deny.[22] Additionally, the associated time burden estimate for completing Form I–485 will increase.

The rule will also impose additional costs for those seeking extension of stay or change of status by filing a Petition for a Nonimmigrant Worker (Form I–129); Petition for a CNMI-Only Nonimmigrant Transitional Worker (Form I–129CW); or Form I–539 and Form I–539A, as applicable. The associated time burden estimate for completing these forms will increase because these applicants will be required to demonstrate that they have not received, since obtaining the nonimmigrant status that they seek to extend or from which they seek to change, and through the adjudication, public benefits as described in final 8 CFR 212.21(b) 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). Moreover, the rule will impose new costs associated with the new public charge bond process, including new costs for completing and filing a Public Charge Bond (Form I–945), and Request for Cancellation of Public Charge Bond (Form I–356).

DHS estimates that the additional total cost of the rule will be approximately $35,202,698 annually. This cost includes the population applying to adjust status who are also required to file Form I–944, the opportunity costs of time associated with such filings, as well the increased time burden estimates for

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[22] *See* 8 CFR 103.2(a)(7), (b)(8)(ii).

completing Forms I–485, I–129, I–129CW, and I–539, and for requesting or cancelling a public charge bond using Form I–945 and Form I–356, respectively.

Over the first 10 years of implementation, DHS estimates the total quantified new direct costs of the final rule will be about $352,026,980 (undiscounted). In addition, DHS estimates that the 10-year discounted total direct costs of this final rule will be about $300,286,154 at a 3 percent discount rate and about $247,249,020 at a 7 percent discount rate.

Simultaneously, DHS is eliminating the use and consideration of the Request for Exemption for Intending Immigrant's Affidavit of Support (Form I–864W), currently applicable to certain classes of aliens. In lieu of Form I–864W, the alien will indicate eligibility for the exemption of the affidavit of support requirement on Form I–485.

The final rule will also potentially impose new costs on obligors (individuals or companies) if an alien has been determined to be likely at any time in the future to become a public charge and will be permitted to submit a public charge bond, for which USCIS will use the new Form I–945. DHS estimates the total cost to file Form I– 945 will be, at minimum, about $34,166 annually.[23]

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[23] Calculation: $35.59 (cost per obligor to file Form I–945) * 960 (estimated annual population who would file Form I–945) = $34,166.40 = $34,166 (rounded) annual total cost to file Form I–945.

Moreover, the final rule will potentially impose new costs on aliens or obligors who submit Form I–356 as part of a request to cancel the public charge bond. DHS estimates the total cost to file Form I–356 would be approximately $824 annually.[24]

The final rule will also result in a reduction in transfer payments from the Federal Government to individuals who may choose to disenroll from or forego enrollment in a public benefits program. Individuals who might choose to disenroll from or forego future enrollment in a public benefits program include foreign-born non-citizens, as well as U.S. citizens who are members of mixed-status households,[25] who may otherwise be eligible for public benefits. DHS estimates that the total reduction in transfer payments from the Federal and State governments will be approximately $2.47 billion annually due to disenrollment or foregone enrollment in public benefits programs by foreign-born non-citizens who may be receiving public benefits. DHS estimates that the 10-year discounted federal and state transfer payments reduction of this final rule will be approximately $21.0 billion at a 3 percent discount rate and about $17.3 billion at a 7 percent discount rate. However, DHS notes there may be additional

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[24] Calculation: $33.00 (cost per obligor to file Form I–356) * 25 (estimated annual population who would file Form I–356) = $825.00 annual total cost to file Form I–356.

[25] DHS uses the term "foreign-born non-citizen" since it is the term the Census Bureau uses. DHS generally interprets this term to mean alien in this analysis. In addition, DHS notes that the Census Bureau publishes much of the data used in this analysis.

reductions in transfer payments that we are unable to quantify.

There also may be additional reductions in transfer payments from states to individuals who may choose to disenroll from or forego enrollment in public benefits program. For example, the Federal Government funds all SNAP food expenses, but only 50 percent of allowable administrative costs for regular operating expenses.[26] Similarly, Federal Medical Assistance Percentages (FMAP) in some U.S. Department of Health and Human Services (HHS) programs, like Medicaid, can vary from between 50 percent to an enhanced rate of 100 percent in some cases.[27] Since the state share of federal financial participation (FFP) varies from state to state, DHS uses the average FMAP across all states and U.S. territories of 59 percent to estimate the amount of state transfer payments. Therefore, the 10- year undiscounted amount of state transfer payments of the provisions of this final rule is about $1.01 billion annually. The 10-year discounted amount of state transfer payments of the provisions of

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[26] Per section 16(a) of the Food and Nutrition Act of 2008, Public Law 110–234, tit. IV, 122 Stat. 923, 1092 (May 22, 2008) (codified as amended at 7 U.S.C. 2025). *See also* USDA, *FNS Handbook 901,* at p. 41 (2017). Available at: *https://fns-prod.azureedge.net/sites/default/files/apd/FNS_HB901_v2.2_internet_Ready_Format.pdf*, (last visited July 26, 2019).

[27] *See* Dep't of Health and Human Servs. Notice, Federal Financial Participation in State Assistance Expenditures; Federal Matching Shares for Medicaid, the Children's Health Insurance Program, and Aid to Needy Aged, Blind, or Disabled Persons for October 1, 2016 through September 30, 2017, 80 FR 73779 (Nov. 25, 2015).

this final rule would be approximately $8.63 billion at a 3 percent discount rate, and about $7.12 billion at a 7 percent discount rate. Finally, DHS recognizes that reductions in federal and state transfers under federal benefit programs may have impacts on state and local economies, large and small businesses, and individuals. For example, the rule might result in reduced revenues for healthcare providers participating in Medicaid, companies that manufacture medical supplies or pharmaceuticals, grocery retailers participating in SNAP, agricultural producers who grow foods that are eligible for purchase using SNAP benefits, or landlords participating in federally funded housing programs.

Additionally, the final rule will have new direct and indirect impacts on various entities and individuals associated with regulatory familiarization with the provisions of the rule. Familiarization costs involve the time spent reading the details of a rule to understand its changes. A foreign-born non-citizen (such as those contemplating disenrollment or foregoing enrollment in a public benefits program) might review the rule to determine whether he or she is subject to the provisions of the final rule and may incur familiarization costs. To the extent that an individual or entity directly regulated by the rule incurs familiarization costs, those familiarization costs are a direct cost of the rule. In addition to those individuals or entities the rule directly regulates, a wide variety of other entities would likely choose to read and understand the rule and, therefore, would incur familiarization costs. For example, immigration lawyers, immigration advocacy groups, health care providers of all types, non-profit organizations,

non-governmental organizations, and religious organizations, among others, may need or want to become familiar with the provisions of this final rule. DHS believes such non-profit organizations and other advocacy groups might choose to read the rule to provide information to those foreign- born non-citizens that might be affected by a reduction in federal and state transfer payments. Familiarization costs incurred by those not directly regulated are indirect costs.

DHS estimates the time that would be necessary to read this final rule would be approximately 16 to 20 hours per person depending on an individual's average reading speed and level of review, resulting in opportunity costs of time. An entity, such as a non-profit or advocacy group, may have more than one person that reads the rule. Using the average total rate of compensation as $36.47 per hour for all occupations, DHS estimates that the opportunity cost of time will range from about $583.52 to $729.40 per individual who must read and review the final rule.

The final rule will produce some quantified benefits due to the regulatory changes DHS is making. The final rule will produce some benefits for T nonimmigrants applying for adjustment of status based on their T nonimmigrant status, as this population will no longer need to submit Application for Waiver of Grounds of Inadmissibility (Form I– 601) seeking a waiver of the public charge ground of inadmissibility.

DHS estimates the total benefit for this population is $15,176 annually.[28]

The primary benefit of the final rule would be to better ensure that aliens who are admitted to the United States, seek extension of stay or change of status, or apply for adjustment of status will be self-sufficient, *i.e.,* will rely on their own financial resources, as well as the financial resources of the family, sponsors, and private organizations.[29] DHS also anticipates that the final rule will produce some benefits from the elimination of Form I–864W. The elimination of this form will potentially reduce the number of forms USCIS would have to process. DHS estimates the amount of cost savings that will accrue from eliminating Form I–864W would be about $36.47 per petitioner.[30] However, DHS is unable to determine the annual number of filings of Form I–864W and, therefore, currently is unable to estimate the total annual cost savings of this change. Additionally, a public charge bond process will also provide benefits to

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[28] Calculation: $14,880 (Filing fees for Form I–601) + $296.48 (Opportunity cost of time for Form I–601) = $15,176.48 = $15,176 (rounded) total current estimated annual cost for filing T nonimmigrants filing Form I–601 seeking a waiver of grounds of inadmissibility. Therefore, the estimated total benefits of the final rule for T nonimmigrants applying for adjustment of status using Form I–601 seeking a waiver on grounds of inadmissibility will equal the current cost to file Form I–601 for this population.

[29] *See* 8 U.S.C. 1601(1), (2)(A).

[30] Calculation of savings from opportunity cost of time for no longer having to complete and submit Form I–864W: ($36.47 per hour * 1.0 hours) = $36.47.

applicants as they potentially will be given the opportunity for adjustment if otherwise admissible, at the discretion of DHS, after a determination that he or she is likely to become a public charge.

Table 1 provides a more detailed summary of the final provisions and their impacts.

See Fold-Out Exhibit next 2 pages*

TABLE 1—SUMMARY OF MAJOR PROVISIONS AND ECONOMIC IMPACTS OF THE FINAL RULE

Provision	Purpose	Expected impact of final rule
Revising 8 CFR 212.18. Application for Waivers of Inadmissibility in connection with an application for adjustment of status by T nonimmigrant status holders. Revising 8 CFR 245.23. Adjustment of aliens in T nonimmigrant classification.	To clarify that T nonimmigrants seeking adjustment of status are not subject to public charge ground of inadmissibility.	**Quantitative:** *Benefits:* • Benefits of $15,176 annually to T nonimmigrants applying for adjustment of status who will no longer need to submit Form I–601 seeking a waiver on public charge grounds of inadmissibility. *Costs:* • None.
Adding 8 CFR 212.20. Purpose and applicability of public charge inadmissibility. Adding 8 CFR 212.21. Definitions ..... Adding 8 CFR 212.22. Public charge determination.	To define the categories of aliens that are subject to the public charge determination. To establish key definitions, including ''public charge,'' ''public benefit,'' ''likely to become a public charge,'' ''household,'' and ''receipt of public benefits.'' Clarifies that evaluating public charge is a prospective determination based on the totality of the circumstances. Outlines minimum and additional factors considered when evaluating whether an alien immigrant is inadmissible based on the public charge ground. Positive and negative factors are weighed to determine an individual's likelihood of becoming a public charge at any time in the future.	**Quantitative:** *Benefits:* • Benefits of $36.47 per applicant from no longer having to complete and file Form I–864W. *Costs:* • DHS anticipates a likely increase in the number of denials for adjustment of status applicants based on public charge inadmissibility determinations due to formalizing and standardizing the criteria and process for inadmissibility determinations. **Quantitative:** *Benefits:* • Better ensure that aliens who are seeking admission to the United States or apply for adjustment of status are self-sufficient through an improved review process of the mandatory statutory factors.
Adding 8 CFR 212.23. Exemptions and waivers for public charge ground of inadmissibility.	Outlines exemptions and waivers for inadmissibility based on the public charge ground.	
Adding 8 CFR 214.1(a)(3)(iv) and amending 8 CFR 214.1(c)(4)(iv). Nonimmigrant general requirements. Amending 8 CFR 248.1(a) and adding 8 CFR 248.1(c)(4). Change of nonimmigrant classification eligibility.	To provide, with limited exceptions, that an application for extension of stay or change of nonimmigrant status will be denied unless the applicant demonstrates that he or she has not received public benefits since obtaining the nonimmigrant status that he or she is seeking to extend or change, as defined in final 8 CFR 212.21(b), for 12 months, in the aggregate, within a 36 month period.	**Quantitative:** *Costs:* • $6.1 million annually for an increased time burden for completing and filing Form I–129; • $0.12 million annually for an increased time burden for completing and filing Form I–129CW; • $2.4 million annually for an increased time burden for completing and filing Form I–539. **Quantitative:** *Benefits:* • Better ensures that aliens who are seeking to extend or change to a status that is not exempt from the section 212(a)(4) inadmissibility ground who apply for extension of stay or change of status continue to be self-sufficient during the duration of their nonimmigrant stay.

Amending 8 CFR 245. Adjustment of status to that of person admitted for lawful permanent residence.	To outline requirements that aliens submit a declaration of self-sufficiency on the form designated by DHS and any other evidence requested by DHS in the public charge inadmissibility determination.	**Quantitative:**
		Direct Costs:
		• Total annual direct costs of the final rule will range from about $45.5 to $131.2 million, including:
		  • $25.8 million to applicants who must file Form I–944;
		  • $0.69 million to applicants applying to adjust status using Form I–485 with an increased time burden;
		  • $0.34 million to public charge bond obligors for filing Form I–945; and
		  • $823.50 to filers for filing Form I–356.
		• Total costs over a 10-year period will range from:
		  • $352.0 million for undiscounted costs;
		  • $300.1 million at a 3 percent discount rate; and
		  • $247.2 million at a 7 percent discount rate.
		Transfer Payments
		• Total annual transfer payments of the final rule would be about $2.47 billion from foreign-born non-citizens and their households who disenroll from or forego enrollment in public benefits programs. The federal-level share of annual transfer payments will be about $1.46 billion and the state-level share of annual transfer payments will be about $1.01 billion.

TABLE 1—SUMMARY OF MAJOR PROVISIONS AND ECONOMIC IMPACTS OF THE FINAL RULE—Continued

Provision	Purpose	Expected impact of final rule
		• Total transfer payments over a 10-year period, including the combined federal- and state-level shares, will be: • $24.7 billion for undiscounted costs; • $21.0 billion at a 3 percent discount rate; and • $17.3 billion at a 7 percent discount rate. **Quantitative:** *Benefits:* • Potential to make USCIS' in the review of public charge inadmissibility more effective. *Costs:* • DHS anticipates a likely increase in the number of denials for adjustment of status applicants based on public charge inadmissibility determinations due to formalizing and standardizing the criteria and process for public charge determination. • Costs to various entities and individuals associated with regulatory familiarization with the provisions of the final rule. Costs will include the opportunity cost of time to read the final rule and subsequently determine applicability of the final rule's provisions. DHS estimates that the time to read this final rule in its entirety would be 16 to 20 hours per individual. DHS estimates that the opportunity cost of time will range from about $583.52 to $729.40 per individual who must read and review the final rule. However, DHS cannot determine the number of individuals who will read the final rule.
Public Charge Bond Provisions		
Amending 8 CFR 103.6. Public charge bonds.	To set forth the Secretary's discretion to approve bonds, cancellation, bond schedules, and breach of bond, and to move principles governing public charge bonds to final 8 CFR 213.1.	**Quantitative:** *Costs:* • $34,166 annually to obligors for submitting Public Charge Bond (Form I–945); and • $823.50 annually to filers for submitting Request for Cancellation of Public Charge Bond (Form I–356).
Amending 8 CFR 103.7. Fees	To add fees for new Form I–945, Public Charge Bond, and Form I–356, Request for Cancellation of Public Charge Bond.	• Fees paid to bond companies to secure public charge bonds. Fees could range from 1–15 percent of the public charge bond amount based on an individual's credit score.
Amending 8 CFR 213.1. Admission or adjustment of status of aliens on giving of a public charge bond.	In 8 CFR 213.1, to add specifics to the public charge bond provision for aliens who are seeking adjustment of status, including the discretionary availability and the minimum amount required for a public charge bond.	**Quantitative:** *Benefits:* • Potentially enable an alien who was found inadmissible only on the public charge ground to adjust his or her status by posting a public charge bond with DHS.

Source: USCIS analysis.

DHS has prepared a full analysis of this rule according to Executive Orders (E.O.) 12866 and 13563. This analysis can be found in the docket for this rulemaking or by searching for RIN 1615–AA22 on *www.regulations.gov.*

II. Background

A. Public Charge Inadmissibility and Public Charge Bonds

Under section 212(a)(4) of the Act, 8 U.S.C. 1182(a)(4), an alien who is an applicant for a visa, admission, or adjustment of status is inadmissible if he or she is likely at any time to become a public charge. The public charge ground of inadmissibility, therefore, applies to any alien applying for a visa to come to the United States temporarily or permanently, for admission, or for adjustment of status to that of a lawful permanent resident.[31] Section 212(a)(4) of the Act, 8 U.S.C. 1182(a)(4) does not directly apply to nonimmigrants seeking extension of stay or change of status,[32] because extension of stay and change of status applications are not applications for a visa, admission, or adjustment of status.

The INA does not define ''public charge.'' It does specify that when determining if an alien is likely at any time to become a public charge, consular officers and immigration officers must consider the alien's age; health; family status; assets, resources, and financial status; and education and skills, at a minimum.[33] Some immigrant and nonimmigrant categories are exempt from the public charge inadmissibility ground and other applicants may apply for a waiver of the public charge inadmissibility ground.[34]

Additionally, section 212(a)(4) of the Act, 8 U.S.C. 1182(a)(4), permits the consular officer, immigration officer, or an immigration judge to consider any affidavit of support submitted under section 213A of the Act, 8 U.S.C. 1183a, on the applicant's behalf when determining whether the applicant may become a public charge.[35] In fact, with

[31] *See* INA section 212(a)(4), 8 U.S.C. 1182(a)(4).

[32] *See* INA section 214 and 248, 8 U.S.C. 1184 and 1258.

[33] *See* INA section 212(a)(4)(B)(i), 8 U.S.C. 1182(a)(4)(B)(i).

[34] *See* proposed 8 CFR 212.23.

[35] *See* INA section 212(a)(4)(B)(ii), 8 U.S.C. 1182(a)(4)(B)(ii). When required, the applicant must

Continued

[41310-41314]

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5. Potential Disenrollment Impacts

Numerous commenters raised concerns about the rule's asserted "chilling effect." Commenters indicated that the rule would cause aliens and citizens to either disenroll from public benefit programs or forego enrollment in public benefit programs, which would negatively impact the nation, states, local communities, families, vulnerable populations, and health care providers. Because most of these comments reflect the same theme, the discussion below provides a detailed breakdown of public comments separated by topic, followed by a consolidated DHS response.

Choice Between Public Benefits and Immigration Status

Commenters stated that the rule puts the country at risk by forcing choices no family should have to make. Commenters noted that alien parents will limit or forego their U.S. citizen children's receipt of public benefits to avoid adverse immigration consequences. Commenters stated that the rule would force eligible immigrants to withdraw their families from assistance programs for fear of adverse immigration consequences, which would undermine access to essential health, nutrition, and other critical benefits and services. Several commenters, expressing the view that no person in the United States should be denied federal assistance programs or public benefits, said that immigrants should not have to make impossible choices between their health or providing for their

family's immediate needs and risking their immigration status or keeping their family together. Some commenters said that the proposed rule would cause patients diagnosed with cancer or HIV to choose between accessing needed health services or suffering adverse consequences with respect to their immigration status. A commenter stated that their state had the highest rate of insurance coverage in the nation, and that it is vital that patients and families continue to access care without fear of adverse immigration consequences. A number of commenters expressed concerns that families must choose between public housing or citizenship as a result of this rule.

Many commenters provided studies or data related to the current or potential number of individuals who will forego and/or disenroll from public benefit programs, including specific groups of individuals, such as children. Commenters involved in social services reported that they were already seeing immigrants refraining from accessing services in clinics, food banks, childcare centers, emergency shelters, and local school districts, including immigrants who are exempt from public charge inadmissibility. Several commenters said that the chilling effect would not be limited to immigrants subject to the proposed rule and would discourage many legal residents from utilizing services to which they are legally entitled, leading to negative health and economic outcomes. For example, a commenter said that refugees, who are automatically enrolled in Medicaid upon arrival in its state, may believe they will be deported if they re-enroll in Medicaid after their initial resettlement period. Some commenters said the rule may provide an incentive for

U.S. citizens and lawful permanent residents to terminate their subsidized health care in order to remain eligible to petition for their family members living abroad.

General Assertions as to Effects

Commenters said that the rule's disenrollment effect would have lasting impacts on the health and safety of our communities and that immigrant families are experiencing significant levels of fear and uncertainty that has a direct impact on the health and well- being of children. Citing studies and research, many commenters asserted that the chilling effect will increase hunger, food insecurity, homelessness and poverty. They added that the chilling effect will also decrease educational attainment and undermine workers' ability to acquire new skills for in-demand occupations. Many commenters stated that negative public health, social, and economic outcomes (*e.g.,* hunger, food insecurity, decreased nutrition, unmet physical and mental health needs, unimmunized individuals, disease, decreased school attendance and performance, lack of education, poverty, homelessness) collectively damage the prosperity and health of our communities, schools, and country. Several commenters said that the rule would drive up uncompensated care costs, increase use of medical emergency departments, increase healthcare costs, endanger maternal and infant health and heighten the risk of infectious disease epidemics. One commenter indicated that the rule would make child poverty worse and harm communities as well as infrastructure that serves all of us.

Housing Benefit-Related Effects

Many commenters said some individuals will leave public housing as a result of this rule and become homeless or face housing instability. Commenter stated that the rule will cause disenrollment from subsidized housing programs, which will create additional costs for local governments. Commenters stated that the chilling effect on using HCVs will cause the loss of ''wraparound services'' for residents, including case management, mental healthcare, peer support, and child care. Commenters raised concerns about the effects of housing insecurity in specific cities, including health problems and downstream economic impacts. One commenter stated that while the proposed public charge rule does not directly count benefits received by the U.S. citizen children of immigrant parents, it would still interfere with the ability of U.S. citizens to receive housing assistance, because many citizens live in mixed-status households with individuals who are subject to the public charge ground of inadmissibility.

Food and Nutrition Benefit-Related Effects

Commenters noted that disenrollment from programs like SNAP would worsen food insecurity in the United States. Some commenters provided estimates of the number of children in certain states or cities currently accessing SNAP benefits who could be affected by the rule. Several commenters stated that the proposed rule would force millions of children and families to disenroll from the SNAP program. For example, one commenter cited a study that found that 2.9 million U.S. citizen children would forego SNAP benefits as a result of the proposed public charge rule.

Another commenter stated that research shows that immigrants' loss of eligibility reduced participation in the "Food Stamp Program" among U.S.-born children of immigrants by 50 percent and reduced the average benefits they received by 36 percent. Some commenters stated that including SNAP in the public charge determination would worsen food insecurity primarily among families with older adults, children, and people with disabilities. Many commenters opined that the inability of individuals in need to access food assistance programs like SNAP would impact health outcomes and those health outcomes would impact healthcare utilization rates and costs. A few commenters emphasized that disenrollment from programs such as SNAP and Special Supplemental Nutrition Program for Women, Infants, and Children, (WIC) would specifically put children at risk for learning difficulties, increased emergency room visits, chronic asthma, and other diseases and would cause a steep decline in the health and well-being of pregnant women and infants.

Several commenters noted that the rule would increase the number of individuals seeking help from state and local non-profit feeding programs, which would burden local government facilities, volunteer-lead organizations and food pantries and compromise the amount and quality of nutritious food provided. Some commenters added that restricting access to nutrition benefits could make things harder in communities with high volumes of homeless residents.

Some commenters said decreased participation in SNAP or Medicaid will likely have a profound impact

on WIC's ability to serve all eligible participants by introducing new barriers to access and heaping additional costs on WIC agencies. A few commenters stated that disenrollment from WIC could be as high as 20 percent. A commenter stated that enrollment in WIC dropped from 7.4 million to 6.8 million from January to May 2018, and the commenter stated that families feel forced to decide between their safety as immigrants and the food and services that their children need.

Health Benefit-Related Effects

A commenter opposed the rule, stating that DHS failed to present anything in the proposed rule that would discredit, or justify ignoring, the evidence in the 1999 Interim Field Guidance that aliens' reluctance to receive benefits for which they are eligible will have a negative impact on public health and general welfare. Commenters expressed concern that the rule would undo historic gains in health coverage and associated positive health outcomes over the past few years. Some commenters stated that the proposed rule would result in immigrants staying away from social service agencies and will negatively impact health in many ways. Another commenter noted that the rule will cause people to get sick or go hungry and indicated that "penalizing" immigrants who utilize benefits to support their family only worsens racial, gender, and economic inequality.

A number of commenters cited the Kaiser Family Foundation study, which provided estimates on Medicaid/ Children's Health Insurance Program (CHIP) disenrollment. The Kaiser Family Foundation

estimated that if the proposed rule leads to Medicaid disenrollment rates ranging from 15 percent to 35 percent, then between 2.1 million and 4.9 million Medicaid/CHIP enrollees living in a family with at least one noncitizen would disenroll. Many commenters said that DHS vastly underestimates the numbers of people who will disenroll from Medicaid and warned that DHS was underestimating the "negative consequences" in the proposed rule. Collectively, these commenters described the positive health and economic benefits associated with health coverage through programs like Medicaid. They also highlighted research findings about the dangers associated with being uninsured. They warned that decreased participation in Medicaid would lead to decreased utilization of preventative services, worse health outcomes and financial standing for families and children, increased health spending on preventable conditions, and heightened strain on the healthcare system.

Other commenters said the inclusion of Medicare Part D in the rule will cause affected individuals to disenroll or otherwise be restricted from Medicare access, resulting in negative health outcomes for individuals and communities (*e.g.,* increased uninsured rated, decreased access to prescriptions). Another commenter said that seniors who use Medicare Part D will be deterred from filling prescriptions, which could increase acute care and overall healthcare costs. Several commenters stated that the sanctions associated with the use of Medicaid and Medicare Part D benefits would result in reduced access to medical care and medications for vulnerable populations, including pregnant women, children, people with

disabilities, and the elderly. A couple of commenters said the inclusion of Medicare Part D would punish immigrants for accessing healthcare services. Another commenter said the proposed rule would dissuade thousands of low-income residents in its state from seeking health coverage.

Effects on Vulnerable Populations

Many commenters said that reduced enrollment in federal assistance programs would most negatively affect vulnerable populations, including people with disabilities, the elderly, children, survivors of sexual and domestic abuse, and pregnant women. Some of these commenters suggested that the chilling effect associated with the proposed rule would cause vulnerable individuals and families to avoid accessing services, even if they are legally residing in the United States and not subject to the proposed rule. Several commenters said the proposed rule would adversely affect immigrant women, because they will be more likely to forego healthcare and suffer worsening health outcomes. A comment described the detrimental impact of reduced Medicaid enrollment on maternal and infant health. Multiple commenters said the proposed rule would lead to negative health outcomes in general, but especially for pregnant and breastfeeding women, infants, and children. Another commenter indicated that refugees and victims of trafficking, who are exempt from public charge, would also disenroll because of fear and gave the example that in 1996 the use of TANF fell 78 percent among the refugee population despite the fact that refugees were not subject to the public charge test.

Several commenters said the health of children is inextricably linked to the health of their parents, asserting that parents who are enrolled in health insurance are more likely to have children who are insured. Some of these commenters went on to say that disenrollment from health insurance by parents will result in a loss of coverage and access to preventive healthcare for their children. A couple of commenters said that they were already seeing these consequences due to confusion over the proposed rule, including parents choosing to avoid needed health services for their children. A couple of commenters said every child in America should have access to quality, affordable healthcare.

Many commenters, citing studies and research, stressed the chilling effect of this rule will negatively affect the health and well-being of children. Other commenters cited a study that predicted the numbers of children who would disenroll from Medicaid and included figures on the numbers of children with various medical conditions in need of medical attention. Healthcare providers said uninsured children would be less likely to receive preventative care and necessary treatment, and generally would be less healthy compared to children with health insurance. Several commenters said that fewer children with disabilities would receive home and community based services, because Medicaid covers these services. Another commenter said that many children receive critical dental services through Medicaid and that a lack of access to these services can cause oral diseases that impact diet, emotional well-being, sleep, and the ability to work and study.

Several commenters voiced concern about the adverse impact on Medicaid- funded health services in schools. A few commenters provided data on the funding school districts receive from Medicaid for school-based health services and the numbers of students who benefit from these programs. The commenters pointed out that this funding is tied to the number of Medicaid-eligible students enrolled. Many commenters said the proposed rule's exemption of school-based health services was insufficient given the larger repercussions of the chilling effect and the likelihood that many children would be disenrolled. Commenters said that schools would need to provide healthcare and special education to children regardless of whether the school could request payment from Medicaid for such services. These commenters further stated that the school would need to use local funds to cover the cost of services that Medicaid would ordinary cover because parents would be unwilling to give consent to the school to enroll the children in Medicaid. Some commenters said special education administrators routinely engaged with families around issues related to health, wellness and school attendance, and said the proposed rule would diminish many students' chances for academic success. A commenter said that it was important for schools to create safe, supportive and inclusive communities, and that the proposed rule could undermine efforts to accomplish this goal. One commenter said Medicaid covers behavioral treatments for children and that providers often partner with schools who are not equipped to provide these targeted services. Two commenters said that the language of the proposed rule was concerning for children who receive services

through the Early and Periodic Screening, Diagnostic and Treatment (EPSDT) program, which is a federally mandated benefit that provides children with the routine and preventive care services they need to grow into healthy adults.

Effects on U.S. Citizens

Several commenters said that rule would cause the greatest harm to U.S. citizen children of immigrant parents. Many commenters said that U.S. citizen children need SNAP, CHIP, Medicaid, food stamps, and other public benefits to survive if their immigrant parents cannot afford such services, and U.S. citizen children have a right to these benefits. A commenter said research demonstrates that barriers to participation in public programs like Medicaid that affect immigrants also have harmful spillover effects on U.S. citizens, because many U.S. citizens live in mixed-status households. The commenter stated that in these cases, research shows that U.S. citizens in the household are less likely to obtain needed services such as health insurance through Medicaid due to concerns about the immigration status of other family members. A number of commenters said the rule would discourage U.S. citizens who live in mixed-status households from accessing assistance programs for which they are eligible, including Medicaid and CHIP, or deprive them of the benefits of those programs entirely.

Increased Costs to Health Care Providers, States, and Localities

Many commenters particularly emphasized that disenrollment or foregoing enrollment would be detrimental to the financial stability and economy of communities, States, local organizations, hospitals, safety net providers, foundations, and healthcare centers. Commenters offering estimates on the number of people who would disenroll from Medicaid under the proposed rule warned that the costs associated with the resultant rise in uncompensated care would be borne by health systems, hospitals, and insured patients. A commenter said that this situation presents an ethical dilemma for physicians counseling patients on treatment options, who are "already beginning to field questions from patients and are having to explain the immigration risks of using healthcare services." A commenter citing research that found a high percentage of emergency room visits could be managed in physicians' offices warned that the proposed rule would increase costly emergency room usage.

A couple of commenters said that Medicaid was the largest source of funding for community health centers and provided estimates of financial losses due to reduced Medicaid reimbursement. A commenter said that Medicaid and CHIP were the underpinning for reimbursement for pediatric subspecialists. Commenters stated that the proposed rule would impact their reimbursements and would force them to cut patient services. One of these commenters cited a study on the anticipated reductions in services, which included an estimated $17 billion reduction in hospital

payments. Other commenters said that Medicaid enables many individuals to access needed behavioral health services and that a rise in uncompensated care will diminish providers' ability to render these services. A commenter said reductions in federal funding for Medicaid and Medicare resulting from decreased enrollment would force States to increase funding levels, a challenge that could potentially lead to increased wait list times, rolling enrollment freezes, and other program cuts that would impact the broader health system.

Response: With respect to the rule's potential "chilling effects" or disenrollment impacts, DHS notes that (1) the rule's overriding consideration, *i.e.,* the Government's interest as set forth in PRWORA, is a sufficient basis to move forward; (2) it is difficult to predict the rule's disenrollment impacts with respect to the regulated population, although DHS has attempted to do so in the accompanying Final Regulatory Impact Analysis; and (3) it is also difficult to predict the rule's disenrollment impacts with respect to people who are not regulated by this rule, although, again, DHS has attempted to do so in the accompanying Final Regulatory Impact Analysis.

First, as discussed above, this rule is rationally related to the Government's interest, as set forth in PRWORA, to: (1) Minimize the incentive of aliens who attempt to immigrate to, or adjust status in the United States due to the availability of public benefits; and (2) Promote the self-sufficiency of aliens within the

United States.[77] DHS has defined public benefits by focusing on cash assistance programs for income maintenance, and an exhaustive list of non-cash food, housing, and healthcare, designed to meet basic living needs. This definition does not include benefits related exclusively to emergency response, immunization, education, or social services, nor does it include exclusively state and local non- cash aid programs. DHS acknowledges that individuals subject to this rule may decline to enroll in, or may choose to disenroll from, public benefits for which they may be eligible under PRWORA, in order to avoid negative consequences as a result of this final rule. However, DHS has authority to take past, current, and likely future receipt of public benefits into account, even where it may ultimately result in discouraging aliens from receiving public benefits.

Although individuals may reconsider their receipt of public benefits as defined by this rule in light of future immigration consequences, this rule does not prohibit an alien from obtaining a public benefit for which he or she is eligible. DHS expects that aliens seeking lawful permanent resident status or nonimmigrant status in the United States will make purposeful and well-informed decisions commensurate with the immigration status they are seeking. But regardless, DHS declines to limit the effect of the rulemaking to avoid the possibility that individuals subject to this rule may disenroll or choose not to enroll, as self- sufficiency is the rule's ultimate aim.

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[77] *See* 8 U.S.C. 1601.

Second, DHS finds it difficult to predict how this rule will affect aliens subject to the public charge ground of inadmissibility, because data limitations provide neither a precise count nor reasonable estimate of the number of aliens who are both subject to the public charge ground of inadmissibility and are eligible for public benefits in the United States. This difficulty is compounded by the fact that most applicants subject to the public charge ground of inadmissibility and therefore this rule are generally unlikely to suffer negative consequences resulting from past receipt of public benefits because they will have been residing outside of the United States and therefore, ineligible to have ever received public benefits. For example, most nonimmigrants and most immediate relative, family-sponsored, and diversity visa immigrants seek admission to the United States after issuance of a nonimmigrant or immigrant visa, as appropriate.[78] The

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[78] The United States admitted over 541 million nonimmigrants between Fiscal Years 2015 and 2017. See DHS, Yearbook of Immigration Statistics 2017, Table 25. Nonimmigrant Admissions by Class of Admission: Fiscal Years 2015 to 2017, available at *https://www.dhs.gov/immigration-statistics/yearbook/2017/table25*. Among immediate relative, family sponsored, and diversity visa immigrants who acquired lawful permanent resident status between Fiscal Years 2015 and 2017, sixty-seven percent were admitted to the United States and thirty-three percent adjusted their status in the United States. See DHS, Yearbook of Immigration Statistics 2017, Table 6, Persons Obtaining Lawful Permanent Resident Status by Type and Major Class of Admission: Fiscal Years 2015 to 2017, available at *https://www.dhs.gov/immigration-statistics/yearbook/2017/table6*. The 2017 Yearbook of Immigration Statistics is a compendium of tables that provide data on foreign nationals who are granted lawful permanent residence (*i.e.,* immigrants who receive a "green card"), admitted as temporary nonimmigrants, granted asylum or refugee status, or are naturalized.

majority of these individuals are likely to have been ineligible for public assistance in the United States, because they generally have resided abroad and are not physically present in the United States.

Aliens who are unlawfully present and nonimmigrants physically present in the United States also are generally barred from receiving federal public benefits other than emergency assistance.[79] For example, applicants for admission and adjustment of status—are generally ineligible for SNAP benefits and therefore, would not need to disenroll from SNAP to avoid negative consequences.[80] Once admitted, lawful permanent residents are generally prohibited from receiving SNAP benefits for a period of five years.[81] Notwithstanding the inclusion of SNAP as a designated public benefit, DHS will not consider for purposes of a public charge inadmissibility determination whether applicants for admission or adjustment of status are receiving food assistance through other programs, such as exclusively state-funded programs, food banks, and emergency services, nor will DHS discourage individuals from seeking such assistance.

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[79] DHS understands that certain aliens may be eligible for state-funded cash benefits. As there are multiple state, local, and tribal programs that may provide cash benefits, DHS does not have a specific list of programs or data on the number of aliens that may be affected by the rule by virtue of their enrollment in such programs.

[80] *See* 8 U.S.C. 1611(a); 8 U.S.C 1612(a)(2)(D)(ii).

[81] *See* 8 U.S.C. 1613(a).

DHS recognizes a plausible connection between the NPRM and reduction in alien enrollment in WIC to the extent that aliens who are subject to public charge inadmissibility are also eligible to receive WIC benefits. While DHS did not list WIC as a designated public benefit under proposed 8 CFR 212.21(b), DHS also did not expressly exclude WIC from consideration as a public benefit. Indeed, DHS sought public comments on whether an alien's receipt of benefits other than those proposed to be included in this rule as public benefits should nonetheless be considered in the totality of circumstances, which understandably could have given the impression that DHS was contemplating the inclusion of WIC among other public benefits. This final rule makes clear that WIC will not be an enumerated public benefit under 8 CFR 212.21(b).

DHS also acknowledges that under the NPRM, certain lawfully present children and pregnant women[82] in certain states and the District of Columbia might have chosen to disenroll from or forego enrollment in Medicaid if they are otherwise eligible to maintain or pursue an immigration benefit and are subject to public charge inadmissibility. As noted above, however, this final rule exempts receipt of Medicaid by such persons.

Third, DHS finds it difficult to predict the rule's disenrollment impacts with respect to people who are

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[82] U.S. Department of Health and Human Services, Centers for Medicaid and Medicare Services, Medicaid and CHIP Coverage of "Lawfully Residing" Children and Pregnant Women (July 1, 2010), *https://www.medicaid.gov/Federal-Policy-Guidance/downloads/SHO10006.pdf* (last visited May 7, 2019).

not regulated by this rule, such as people who erroneously believe themselves to be affected. This rule does not apply to U.S. citizens and aliens exempt from public charge inadmissibility. In the proposed rule, DHS provided an exhaustive list of immigration classifications that are exempt from the public charge ground of inadmissibility, and this final rule retains those exemptions. DHS is including in the Applicability section of this final rule Tables 3 and 4 that are similar to those included in the NPRM, which also reflect additional clarifications made in this final rule with respect to T, U, and VAWA aliens. This rule does not prohibit or otherwise discourage individuals who are not subject to the public charge inadmissibility from receiving any public benefits for which they are eligible.

Because DHS will not consider the receipt of public benefits by U.S. citizens and aliens not subject to public charge inadmissibility, the receipt of public benefits by these individuals will not be counted against or made attributable to immigrant family members who are subject to this rule. Accordingly, DHS believes that it would be unwarranted for U.S. citizens and aliens exempt from public charge inadmissibility to disenroll from a public benefit program or forego enrollment in response to this rule when such individuals are not subject to this rule. DHS will not alter this rule to account for such unwarranted choices.

DHS appreciates the potential effects of confusion regarding the rule's scope and effect, as well as the potential nexus between public benefit enrollment reduction and food insecurity, housing scarcity, public

health and vaccinations, education health-based services, reimbursement to health providers, and increased costs to states and localities. In response to comments, DHS will also issue clear guidance that identifies the groups of individuals who are not subject to this rule, including, but not limited to, U.S. citizens, lawful permanent residents returning from a trip abroad who are not considered applicants for admission, and refugees.

In addition, as explained in greater detail elsewhere in this rule, DHS has made a number of changes in the final rule that may mitigate some of the concerns raised by the public regarding disenrollment impacts. For example, DHS has excluded the Medicare Part D LIS from the definition of public benefit because DHS has determined that Medicare Part D benefits, including LIS, are earned by working or being credited with 40 qualifying quarters of work and establishing eligibility for Medicare. While children are not exempt from public charge inadmissibility, DHS has decided against the inclusion of CHIP in the definition of public benefit. DHS has excluded from the public benefits definition, public benefits received by children eligible for acquisition of citizenship, and Medicaid benefits received by aliens under the age of 21 and pregnant women during pregnancy and 60 days following the last day of pregnancy.

In sum, DHS does not believe that it is sound policy to ignore the longstanding self-sufficiency goals set forth by Congress or to admit or grant adjustment of status applications of aliens who are likely to receive public benefits designated in this rule to meet their

basic living needs in an the hope that doing so might alleviate food and housing insecurity, improve public health, decrease costs to states and localities, or better guarantee health care provider reimbursements. DHS does not believe that Congress intended for DHS to administer section 212(a)(4) of the Act, 8 U.S.C. 1182(a)(4), in a manner that fails to account for aliens' receipt of food, medical, and housing benefits so as to help aliens *become* self-sufficient. DHS believes that it will ultimately strengthen public safety, health, and nutrition through this rule by denying admission or adjustment of status to aliens who are not likely to be self-sufficient.

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