

In the Supreme Court of the United States

CITY OF BALTIMORE, MARYLAND, ET AL., APPLICANTS

v.

TEXAS, ET AL.

**FEDERAL RESPONDENTS' RESPONSE IN OPPOSITION
TO THE APPLICATION FOR A STAY OF THE JUDGMENT
OF THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS**

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No. 26A500

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The Solicitor General—on behalf of the United States Department of Justice; Todd Blanche, in his official capacity as United States Attorney General; Sirce E. Owen, in her official capacity as Acting Director of the Executive Office for Immigration Review (EOIR); and EOIR (collectively, federal respondents)—respectfully submits this response in opposition to the emergency application for a stay of the judgment issued by the United States District Court for the Northern District of Texas.

The Court should deny this application, which attempts to improperly leverage a clear-cut dispute over intervention into a far-reaching attack on the merits of a consent judgment. This Court should not allow applicants to put the cart before the horse. Because applicants lack standing to intervene, they cannot challenge the consent judgment. For that same reason—and because they have failed to establish any irreparable harm pending the appeal of the denial of their motion to intervene—a stay pending appeal is plainly unwarranted. Objections about the merits of a consent judgment are no substitute for the threshold prerequisites of Article III standing.

This case arose from a suit that Texas filed four months ago against the federal respondents, which challenged the lawfulness of a 2024 rule authorizing immigration judges to indefinitely administratively close removal cases—often for decades—without resolving them on the merits. Appl. App. 1a-43a. The federal respondents agreed the rule was unlawful. The district court then declared the rule unlawful and entered a consent judgment universally vacating the rule, consistent with Fifth Circuit precedent authorizing universal vacatur. *Id.* at 49a-50a.

Approximately six weeks after that judgment was entered, applicants—three cities and Centro Legal, a legal-services organization—filed a motion to intervene in order to appeal the lawfulness of the consent judgment and defend the validity of the rule. The district court correctly denied that motion. When no party to the proceedings has appealed, an intervenor seeking to appeal a judgment must have Article III standing in its own right. See *Virginia House of Delegates v. Bethune-Hill*, 587 U.S. 658, 663 (2019). As the district court held, Appl. App. 86a-94a, applicants lack such Article III standing. Applicants are cities and a legal-services organization; they are not regulated by the vacated rule or the regulations that apply in its absence, both of which apply only to aliens in removal proceedings. Instead, applicants press highly attenuated theories of injury that this Court’s precedents foreclose.

The cities assert that the consent judgment will prompt immigration judges to take removal cases out of administrative closure and return them to active status; that, once those now-active cases are adjudicated, more removal orders will issue; that those removal orders will eventually be effectuated; and that because some unspecified number of additional aliens will be removed at some unspecified juncture, the applicant cities will lose tax revenues from those aliens; and that without the possibility of administrative closures, any crime victims among those aliens will no

longer cooperate with law-enforcement prosecution efforts. Not only is that multi-step chain convoluted, but the cities do not even allege that they in fact have aliens within their jurisdictions whose cases have been administratively closed, or whose cases would be administratively closed but for the consent judgment. This Court has repeatedly rejected exactly that sort of attenuated chain of causation, including in cases involving state sovereigns—and cities cannot claim any special solicitude for standing purposes. See *FDA v. Alliance for Hippocratic Medicine*, 602 U.S. 367, 390–393 (2024); *United States v. Texas*, 599 U.S. 670, 680 n.3 (2023); *Clapper v. Amnesty International USA*, 568 U.S. 398, 410 (2013).

The legal-services organization applicant rests on a similarly speculative and precedentially foreclosed chain of causation, alleging that moving more cases to active status will translate into an increased workload for the organization. But this Court has squarely rejected a theory of standing premised on “an organization[’s] diver[sion of] its resources in response to a defendant’s actions.” *Alliance for Hippocratic Medicine*, 602 U.S. at 395. Further, applicants fundamentally misapprehend the consent judgment, which does not require the recalendaring of cases that are currently administratively closed. Rather, the consent judgment applies prospectively to prevent immigration judges from administratively closing *new* cases. That important distinction makes applicants’ alleged harms even more speculative, and refutes any possible need for a stay pending appeal.

Applicants attempt to distract from the fatal defects in their alleged injuries by contending that if they lack standing, Texas does, too. See Appl. 19–21, 24. But there is no it-takes-one-to-know-one exception to Article III. The threshold question for intervention—the only question properly before this Court—is whether *applicants* have standing. This Court’s precedents leave no doubt: They do not. Applicants

cannot compensate for that insurmountable problem by collaterally attacking Texas’s standing to have brought suit in the first place. Besides, Texas’s standing—as a State, and as a party alleging harms from a complete lack of immigration enforcement via administrative closure—implicates theories that are distinguishable from applicants’ theories here. Contrary to applicants’ suggestions, the fact that no one with standing intervened to challenge the consent judgment does not mean it is forever insulated from judicial review. Going forward, aliens who would have been eligible for administrative closure under the vacated rule may be able to collaterally challenge the consent judgment to the extent that the consent judgment prompts immigration judges or the Board of Immigration Appeals to deny those aliens administrative closure in future proceedings. But *these* applicants do not have standing to challenge the consent judgment, and they cannot repackage an “if not us, who?” argument as a basis for standing.” *Alliance for Hippocratic Medicine*, 602 U.S. at 396. That alone dooms this application.

This application independently should be denied because applicants have failed to demonstrate irreparable harm. That is unsurprising because speculative injuries layered with multiple contingencies do not make for irreparable harms. In the four months since the consent judgment was entered, applicants have not pointed to any case that has been recalendared or any removal order that has issued in a case that was previously administratively closed. Applicants provide no basis to believe that cases will be recalendared and removals will be ordered and effectuated in the time it will take for their appeal to be resolved. Applicants could further reduce the chance of any such harms by moving to expedite their appeal—but they have yet to take that step. This Court should deny the application and allow the appeal to proceed in the ordinary course.

STATEMENT

A. Administrative Closure Of Removal Proceedings

Under 8 U.S.C. 1229a, immigration judges (IJs) are charged with “conduct[ing] proceedings for deciding the inadmissibility or deportability of an alien.” 8 U.S.C. 1229a(a)(1). The statute further provides that “[a]t the conclusion of the proceeding, the immigration judge shall decide whether an alien is removable from the United States.” 8 U.S.C. 1229a(c)(1)(A).

In conducting those proceedings, IJs and the Board of Immigration Appeals (Board) have at times purported to administratively close removal proceedings. Administrative closure has been described as “a docket management tool that is used to temporarily pause removal proceedings,” *In re W-Y-U-*, 27 I. & N. 17, 18 (B.I.A. 2017), and “remove a case from an Immigration Judge’s active calendar or from the Board’s docket,” *In re Avetisyan*, 25 I. & N. Dec. 688, 692 (B.I.A. 2012). But “between January 2013 and January 2017, the number of administratively closed cases increased from nearly 172,000 to over 268,000.” Appl. App. 104a. While nominally temporary, administrative closures became effectively indefinite. Administrative closure in cases before an IJ lasts an average of 15 years, and approximately 29 years in cases before the Board. *Ibid.* “[T]he reality is that, in hundreds of thousands of cases, administrative closure has amounted to a decision not to apply the Nation’s immigration laws at all.” *Hernandez-Serrano v. Barr*, 981 F.3d 459, 463 (6th Cir. 2020).

In 2018, Attorney General Barr issued a decision holding that IJs and the Board lack general authority to indefinitely suspend immigration proceedings through administrative closure. *In re Castro-Tum*, 27 I. & N. Dec. 271. The Attorney General explained that “administrative closure is effectively permanent in most instances.” *Id.* at 272; see *id.* at 272-273. He further explained that the “sharp in-

crease” in administrative closure had resulted from a 2012 decision by the Board that began authorizing administrative closure “even over a party’s objection.” *Id.* at 273. After the 2012 decision, the Board had stated that the “deciding factor” in whether to grant administrative closure is “whether the party opposing administrative closure has provided a persuasive reason for the case to proceed and be resolved on the merits.” *Ibid.* (quoting *In re W-Y-U-*, 27 I. & N. Dec. at 30). Attorney General Barr examined the regulatory authority provided to IJs and the Board to take measures “appropriate and necessary for the disposition of [removal] cases” and concluded that such authority does not “include the authority to suspend such cases indefinitely,” as such indefinite suspension “in fact is the antithesis of a final disposition.” *Id.* at 285 (quoting 8 C.F.R. 1003.10(b)).

Consistent with that decision, in 2020, the Department of Justice promulgated a rule clarifying that nothing in the relevant regulations “shall be construed as authorizing an immigration judge to administratively close or otherwise defer adjudication of a case unless a regulation promulgated by the Department of Justice or a previous judicially approved settlement expressly authorizes such an action.” 85 Fed. Reg. 81,588, 81,655 (Dec. 16, 2020) (2020 Rule).

Shortly after a change in Administration, a district court in California preliminarily enjoined the 2020 Rule. *Centro Legal de la Raza v. Executive Office for Immigration Review*, 524 F. Supp. 3d 919 (N.D. Cal. 2021). The court concluded, *inter alia*, that the changes implemented by the rule were likely arbitrary and capricious. See *id.* at 962-976. The parties agreed to a stay of proceedings while the new Administration considered rescinding the 2020 Rule. See 21-cv-463 D. Ct. Doc. 64 (Mar. 24, 2021). Attorney General Garland then issued a decision overruling Attorney General Barr’s decision in *In re Castro-Tum*. See *In re Cruz-Valdez*, 28 I. & N. Dec. 326, 329

(2021). Then, in 2024, the Department of Justice promulgated a final rule rescinding the 2020 Rule and authorizing IJs and the Board to “administratively close a case upon the motion of a party,” after considering various factors. 89 Fed. Reg. 46,742, 46,789, 46,792 (May 29, 2024) (2024 Rule). See 8 C.F.R. 1003.1(*l*), 1003.18(c).

After another change in Administration, the Acting Director of EOIR issued a memorandum stating EOIR’s view that administrative closure as codified by the 2024 Rule is unlawful. Appl. App. 100a-108a. Accordingly, the memorandum stated that EOIR “could not—and will not—defend the [2024] Rule in good faith against legal challenge.” *Id.* at 107a. Nevertheless, the memorandum provided that the 2024 Rule “remain[s] binding on EOIR adjudicators” and those adjudicators “should continue to adhere to it unless they have a legal basis for not doing so.” *Ibid.*

B. Procedural Background

1. Following the issuance of the memorandum, respondent Texas filed suit against the federal respondents in the United States District Court for the Northern District of Texas, challenging the lawfulness of the 2024 Rule. Appl. App. 1a-43a. Texas contended that the 2024 Rule is in excess of statutory authority, is arbitrary and capricious, failed to comply with notice-and-comment requirements, violates the Take Care Clause of the Constitution, and is ultra vires. *Id.* at 30a-42a. Texas sought an order setting aside the 2024 Rule. *Ibid.*

The parties then filed a joint motion for entry of a consent judgment, requesting that the district court enter final judgment declaring that the challenged regulations are unlawful, issue a permanent injunction prohibiting the federal respondents from enforcing the challenged regulations or promulgating substantially similar regulations “absent an express statutory basis to do so,” and vacate the 2024 Rule under 5 U.S.C. 706. Appl. App. 46a; see *id.* at 44a-47a. The joint motion noted that the

Department of Justice maintains its position that 5 U.S.C. 706 does not authorize universal vacatur, but given binding Fifth Circuit precedent rejecting that position, the Department agreed not to pursue that position in this case. Appl. App. 45a n.1; see *Data Marketing Partnership, LP v. United States Department of Labor*, 45 F.4th 846, 859-860 (5th Cir. 2022).

The district court granted the motion and issued an order and final judgment. Appl. App. 49a-50a. Consistent with the joint motion, the court declared that “no statute authorizes immigration judges to indefinitely administratively close or suspend adjudication of a case before them,” permanently enjoined the federal respondents from enforcing the 2024 Rule or promulgating regulations that permit administrative closure absent an express statutory basis to do so, and vacated the 2024 Rule. *Id.* at 49a; see *id.* at 49a-50a.

2. Approximately six weeks after the district court entered the consent judgment, applicants filed an emergency motion to intervene for purposes of appealing the judgment. D. Ct. Doc. 6 (Aug. 7, 2026). Applicants alleged that they are concretely injured by the vacatur of the 2024 Rule. The cities contended that the termination of administrative closures will increase removals that will deprive the cities of tax revenue and may impede their law-enforcement efforts by discouraging unlawful aliens to assist those efforts. D. Ct. Doc. 6-1 at 5-9. Centro Legal, in turn, alleged it will face resource constraints because its clients in administratively closed proceedings will be subject to active removal proceedings once more, requiring additional staff time. *Id.* at 6, 9-10. Applicants asserted that, if permitted to intervene, they would raise “substantial defenses” to Texas’s challenge to the 2024 Rule, including that there is no Article III case or controversy, that the 2024 Rule is lawful, that the consent judgment improperly evades notice-and-comment requirements for rule-

making, and that the consent judgment is overbroad. *Id.* at 15. See *id.* at 15-25.

The district court denied the motion to intervene. Appl. App. 86a-96a. The court explained that where an intervenor alone seeks appellate relief, that intervenor “must independently demonstrate a concrete and particularized injury that is fairly traceable to the judgment and likely to be redressed by reversal.” *Id.* at 88a-89a (citing *Virginia House of Delegates v. Bethune-Hill*, 587 U.S. 658, 663-664 (2019)). The court then held that the applicants here had failed to establish a cognizable injury. *Id.* at 90a-93a.

With respect to the cities, the district court determined that the loss of tax revenues is not cognizable because “[w]hether an individual, tax-paying alien is ultimately deported requires another branch of government to adjudicate removal and exercise discretion to enforce any resulting removal order.” Appl. App. 91a. That “causal chain,” the court reasoned, is “too ‘attenuated to support standing’ because it hinges on the independent acts of third parties and it is uncertain whether those actions will result in a loss of tax revenue.” *Ibid.* (citation omitted). The court also rejected the cities’ assertion that their law-enforcement operations would be hindered by discouraging crime victims from cooperating with police. *Id.* at 92a. The court noted that such cooperating victims are eligible for U visas and that the consent judgment does not affect that process. *Ibid.* And the court considered applicants’ “suggestion that unlawful immigrants with pending removal cases will not submit U visa applications” because of the lack of administrative closures to be “pure speculation.” *Ibid.*

Turning to Centro Legal, the district court concluded that its asserted injuries likewise failed. Appl. App. 93a. The court explained that the additional legal work that may stem from the consent judgment cannot suffice for standing under binding

Fifth Circuit precedent holding that “[a] legal-services organization cannot have Article III standing merely because a new law or regulation requires it to understand the legal change, to adjust resources in response, or to increase the degree or scope of legal representation for its current or prospective clients who may be adversely affected.” *Ibid.* (quoting *United States v. Texas*, 173 F.4th 659, 666 (5th Cir. 2026)). Lacking any proposed intervenor with Article III standing to appeal, the court denied the motion to intervene as futile. *Id.* at 94a.

3. Applicants filed a motion to stay the district court’s judgment pending appeal, which the court denied. Appl. App. 95a-96a. The court explained that because applicants “are not parties to the action,” they “may not obtain a stay of the judgment.” *Id.* at 95a. And the court further stated that applicants had “failed to carry their burden of establishing that a stay pending appeal is warranted” under the factors set out in *Nken v. Holder*, 556 U.S. 418, 426 (2009). Appl. App. 95a.

4. The court of appeals denied applicants’ motion to stay the consent judgment pending appeal and to summarily reverse the denial of intervention. Appl. App. 99a.

ARGUMENT

Under Rule 23 of the Rules of this Court and the All Writs Act, 28 U.S.C. 1651, an applicant for a stay of a lower court’s judgment must show a reasonable probability that this Court would grant certiorari, a likelihood of success on the merits, and a likelihood of irreparable harm. See *NRCC v. Brown*, No. 26A274 (Sept. 4, 2026), slip op. 2 (per curiam). In “close cases,” the Court balances the equities and weighs the relative harms. *Ibid.* Applicants come nowhere close to making those showings here. This is a run-of-the-mill intervention dispute in which applicants both lack standing to intervene under a straightforward application of this Court’s precedents and have

failed to establish irreparable harm.

A. Applicants Lack Standing To Challenge The Consent Judgment

This Court has “repeatedly recognized” that “to appeal a decision that the primary party does not challenge, an intervenor must independently demonstrate standing.” *Virginia House of Delegates v. Bethune-Hill*, 587 U.S. 658, 663 (2019). To do so, a litigant must show that he has suffered “a concrete and particularized injury that is fairly traceable to the challenged conduct, and is likely to be redressed by a favorable judicial decision.” *Hollingsworth v. Perry*, 570 U.S. 693, 704 (2013); see *FDA v. Alliance for Hippocratic Medicine*, 602 U.S. 367, 380 (2024). Applying that test, the district court correctly held that applicants lack Article III standing; their intervention for purposes of appeal would therefore be futile. Appl. App. 88a-92a.

1. Applicants seek to intervene to challenge the lawfulness of the consent judgment and defend the lawfulness of the 2024 Rule. But neither the consent judgment nor the 2024 Rule regulates applicants. When a party “challenges the government’s ‘unlawful regulation (or lack of regulation) of *someone else*,’ ‘standing is not precluded, but it is ordinarily substantially more difficult to establish.’” *FDA v. Alliance for Hippocratic Medicine*, 602 U.S. 367, 382 (2024) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 562 (1992)). Applicants rely on three categories of asserted injuries in an attempt to overcome that barrier: alleged harm to the cities’ revenue streams, alleged impediments to the cities’ law-enforcement efforts, and alleged interference with Centro Legal’s business activities. All of those theories fail.

a. Applicants first assert (Appl. 19-20) that the consent judgment will diminish the cities’ tax revenues. They posit that, after the consent judgment, (1) alien residents whose removal cases have been administratively closed will now face recalendared proceedings; (2) those proceedings will eventually result in removal orders;

(3) those removal orders will be executed; and (4) the cities will lose out on the taxes those residents once paid.

That “highly attenuated chain of possibilities” fails Article III’s requirements. *Clapper v. Amnesty International USA*, 568 U.S. 398, 410 (2013). To start, the cities do not identify any taxpaying aliens whose removal proceedings have been administratively closed. Their declarations feature only general statements that the cities impose taxes on residents as well as nonresidents; that certain aliens can be granted a work permit; and that if those aliens are removed, the cities “would lose out on the tax revenue that each person would pay.” Appl. App. 53a (Decl. of Jacquelin R. Lewis); see *id.* at 81a-82a (Decl. of Catalina Rodriguez Lima) (noting that “many U Visa applicants work legally while their applications are pending,” and their removal “would mean that the City would lose out on the tax revenue that each worker would pay”). Without averring that a single taxpaying alien has a removal case that is administratively closed, the cities cannot even begin to show that their tax base would suffer as a result of the consent judgment. Cf. *Summers v. Earth Island Institute*, 555 U.S. 488, 498-499 (2009).

Applicants’ “speculative chain of possibilities” also falters at each ensuing link. *Clapper*, 568 U.S. at 414. The consent judgment vacates the 2024 Rule and prevents its enforcement, but it does not require recalendaring of cases that are currently administratively closed. See Appl. App. 50a; cf. 85 Fed. Reg. at 81,645 (noting that the 2020 Rule applied, “in general, only prospectively, so it does not disturb cases that have already been administratively closed”). Even if certain cases are recalendared, the consent judgment does not prohibit the use of other procedural mechanisms for deferring adjudication of removal cases. For example, aliens may seek continuances or work with the Department of Homeland Security (DHS) to file a motion to dismiss

the case while the alien pursues relief or actions outside of EOIR. See 8 C.F.R. 1003.29, 1239.2(c); see also 8 C.F.R. 1003.0(b)(1)(ii) (providing that the Director of EOIR may “direct that the adjudication of certain cases be deferred”). Even if the removal cases proceed, removal is not a guaranteed result—let alone an imminent one. See Appl. App. 91a (noting that removal proceedings must be adjudicated and the government must then “exercise discretion to enforce any resulting removal order”); see also 8 C.F.R. 1003.3(a) (providing for administrative appeals of removal orders); 8 U.S.C. 1252(a)(1) (providing for judicial review of removal orders).

Any down-the-road effects on the cities’ tax revenues are too “indirect” and “attenuated” to support standing. *United States v. Texas*, 599 U.S. 670, 680 n.3 (2023). A contrary holding would mean that the cities could challenge any immigration enforcement policy that resulted in removal of potential taxpayers—a result that would thwart the Executive Branch’s “authority to decide ‘how to prioritize and how aggressively to pursue legal actions against defendants who violate the law.’” *Id.* at 678 (citation omitted). This Court “has consistently rejected as flatly inconsistent with Article III” that type of “unprecedented and limitless” approach to standing, which would allow challenges to “almost any [government] policy affecting” a particular subject matter. *Alliance for Hippocratic Medicine*, 602 U.S. 367 at 391-392.

This Court’s tax-specific cases confirm that applicants lack standing. In *Florida v. Mellon*, 273 U.S. 12 (1927), for example, the Court held that Florida lacked standing to challenge the constitutionality of a federal inheritance tax. Florida argued that the tax would cause the State financial harm by prompting the “withdrawal of property” and diminishing its tax base. *Id.* at 16. The Court rejected that theory, explaining that Florida was required to show a “*direct* injury” and that any harm caused by the tax was, “at most, only remote and indirect.” *Id.* at 18. As in *Florida*,

the consent judgment here does not result in any “*direct injury*” to applicants. *Ibid.* The consent judgment does not require the cities to act or to refrain from acting, determine how much federal funding they receive, or deprive them of any legal right.

Wyoming v. Oklahoma, 502 U.S. 437 (1992), is not to the contrary. Contra Appl. 19. There, Oklahoma enacted a law requiring Oklahoma utility companies to use Oklahoma coal rather than Wyoming coal. *Wyoming*, 502 U.S. at 443. Wyoming sued, alleging injuries to the State through loss of the taxes on the coal extracted from land within its boundaries. *Id.* at 444. Wyoming presented evidence showing that “[t]he effect of the Oklahoma statute has been to deprive Wyoming of severance tax revenues,” as “utilities began purchasing Oklahoma-mined coal.” *Id.* at 447 (citation omitted). Under those circumstances, the Court concluded, Wyoming had shown that its “loss of severance tax revenues ‘fairly can be traced’” to the challenged law. *Ibid.* (citation omitted). But the Court was careful to distinguish Wyoming’s injury from cases in which “Courts of Appeals have denied standing to States where the claim was that actions taken by United States Government agencies had injured a State’s economy and thereby caused a decline in general tax revenues.” *Id.* at 448. Standing was not established in those cases, the Court explained, “because none of them involved a direct injury in the form of a loss of specific tax revenues.” *Ibid.* Applicants’ injury falls into the latter category. Rather than involving a direct regulation precluding purchase of a taxed product, the consent judgment’s prospective prohibition on future administrative closures is at most indirectly and speculatively connected to the removals and attendant tax consequences applicants assert.

Indeed, applicants are on weaker footing than both Florida and Wyoming because they cannot claim any of the “special solicitude” this Court has sometimes accorded to sovereign States. *Massachusetts v. EPA*, 549 U.S. 497, 520 (2007); but see

Texas, 599 U.S. at 688-689 (Gorsuch, J., concurring in the judgment) (noting that “special solicitude” has not “played a meaningful role in this Court’s decisions in the years since” *Massachusetts*). Applicants must rely on the same general standing principles that apply to everyone else—and those principles foreclose their standing here.

b. Applicants next contend (Appl. 20-21) that the consent judgment imposes costs on the cities’ law-enforcement operations based on the judgment’s purported effect on U visa petitioners. That multi-step theory fails for similar reasons.

A U visa is available to an alien when the Secretary of Homeland Security determines that the alien has “suffered substantial physical or mental abuse as a result of having been a victim” of certain criminal activity; the alien “possesses information concerning” that criminal activity; the alien has been, is being, or is likely to be helpful to law-enforcement officials investigating or prosecuting that criminal activity; and the criminal activity “violated the laws of the United States or occurred in the United States.” 8 U.S.C. 1101(a)(15)(U)(i) and (ii). Applicants contend (Appl. 21) that, before the consent judgment, removal proceedings for U visa petitioners could be administratively closed while their applications were pending. Without that possibility, applicants assert (*ibid.*), “victims will stop coming forward or will be removed mid-prosecution,” thus interfering with the cities’ law-enforcement operations.

But, like the alleged tax-based injuries, the cities never allege that any aliens actually reside in their cities who are currently applying for U visas and are subject to administratively closed removal proceedings. See Appl. App. 53a (Decl. of Jacquelin R. Lewis) (“I understand that many U Visa applicants work legally while their applications are pending.”); *id.* at 74a (Decl. of Melanie Tobias-Hunter) (“In the past, I have signed off on U Visa applications for individuals who were victims of domestic violence and other crimes.”). The closest they come is asserting that there

have been “at least 600 pending or approved U Visa applications submitted by partner legal service providers to Baltimore residents” during an unknown time period, and that the Baltimore Police Department “has processed more than 440 U Visa certifications since the beginning of 2025.” *Id.* at 81a (Decl. of Catalina Rodriguez Lima). But it is unclear whether any of those applications or certifications involves an alien in removal proceedings, let alone whether those removal proceedings have been administratively closed.

Regardless, applicants cannot show that the consent judgment would result in recalendaring of any administratively closed proceedings. And their invocation of law-enforcement interests again ignores other mechanisms for deferring resolution of removal proceedings in appropriate circumstances. Besides the mechanisms discussed above, see pp. 12-13, *supra*, the U.S. Citizenship and Immigration Services (USCIS) has implemented a process whereby it reviews pending U visa petitions to determine whether they are bona fide; if so, and if the petitioner does not pose a risk to national security or public safety and otherwise merits a favorable exercise of discretion, USCIS grants the petitioner a Bona Fide Determination Employment Authorization Document and “exercises its discretion to grant that alien deferred action,” which is a temporary forbearance from removal for a certain period of time. 3 USCIS, *Policy Manual* Pt. C, Ch.5 (Oct. 2, 2026), <https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5>. Applicants never explain why those existing mechanisms inadequately protect U visa petitioners or would prompt them to halt law-enforcement cooperation.

Those existing mechanisms for U visa petitioners also underscore another basic flaw in applicants’ theory: It rests on “speculation about the unfettered choices made by independent actors not before the courts.” *Alliance for Hippocratic Medicine*,

602 U.S. at 383 (quoting *Clapper*, 568 U.S. at 415 n.5). Because applicants’ theory of injury depends upon the hypothetical conduct of aliens eligible for U visas, applicants must show that those “third parties will likely react in predictable ways” and that the reaction is not “so far removed from its distant (even if predictable) ripple effects that the [applicants] cannot establish Article III standing.” *Ibid.* (citation omitted). But given the existing mechanisms for certain aliens applying for U visas to be considered for deferred action, applicants here cannot show that those aliens’ cooperation with law enforcement hinges on the availability of administrative closure. Cf. *id.* at 390 (holding that where “broad and comprehensive conscience protections” protected doctors from being required to provide abortions, plaintiffs could not show that FDA’s relaxed regulation of mifepristone would cause them conscience injuries).

Further, even if applicants could show that the availability of administrative closure is essential to ensure aliens’ cooperation with law-enforcement efforts, they could not show that the denial of administrative closure in a case involving a pending U visa petition would be traceable to the consent judgment and likely to be redressed by invalidation of that judgment. See *Murthy v. Missouri*, 603 U.S. 43, 69 (2024). Months before the consent judgment was entered, the Board issued a decision holding that when “a U nonimmigrant visa is not immediately available to a[n alien] and the record does not establish that one is likely to be available in the reasonably near future, administrative closure over DHS’ objection is inappropriate.” *In re Ibarra-Vega*, 29 I. & N. Dec. 476, 481 (B.I.A. 2026). If applicants succeeded in challenging the consent judgment, that Board decision would remain binding precedent, limiting the availability of administrative closure and any purported incentives that closure may provide to crime victims.

c. Applicants next turn to Centro Legal’s alleged injuries (Appl. 22-24),

which stem from their assertion that the consent judgment harms the organization because aliens whose cases have been administratively closed may now be returned to active proceedings, requiring Centro Legal to expend more resources and preventing it from taking on new matters. Once again, this asserted injury overstates the effects of the consent judgment. That judgment operates prospectively and does not require the recalendaring of any matters that are currently administratively closed. Consistent with that understanding, applicants have not pointed to a single one of the 80 to 100 administratively closed cases in which they are involved that has been returned to active status in the four months since the consent judgment was entered.

More fundamentally, this Court's precedent also rejects that theory of standing. Even crediting applicants' unfounded speculation that the consent judgment may lead to the recalendaring of some of Centro Legal's matters, this Court has rejected the proposition that "standing exists when an organization diverts its resources in response to a defendant's actions." *Alliance for Hippocratic Medicine*, 602 U.S. at 395. *Alliance for Hippocratic Medicine* held that an organization that was not the object of an FDA regulation could not establish a cognizable injury just by pointing to the indirect costs it would incur by serving clients who were the object of the regulation. *Id.* at 394. So too here, Centro Legal is not directly regulated by the consent judgment or the administrative closure regulations; the fact that those actions may lead Centro Legal to "divert[] its resources" to clients whose cases were once administratively closed cannot establish a cognizable injury. *Id.* at 395.

Applicants attempt to distinguish *Alliance for Hippocratic Medicine* by asserting that the injury is to its "core business activities" rather than advocacy against the judgment. Appl. 23 (citation omitted). But this Court has never accepted that a legal-services organization can self-inflict an Article III injury just by expending resources

to provide ordinary legal representation. Cf. *Diamond v. Charles*, 476 U.S. 54, 69-71 (1986) (rejecting intervenor’s standing to appeal based on liability for legal fees incurred as a consequence of the decision to intervene). Otherwise, every legal-services organization could assert standing to sue whenever any action might affect their litigation on behalf of potential clients. Any change in immigration law, criminal procedures, or housing law could prompt challenges from legal-services organizations contending that the changes will increase or decrease their workload, take time away from their ability to represent additional clients, or deprive them of potential clients. But such organizations lack any legally protected interest in maintaining any particular workload, serving any particular number of clients, or expending any particular resources on those services. “The fact that the [immigration] regulation may affect the way an organization allocates its resources—or for that matter, the way an employer who currently employs illegal aliens or a landlord who currently rents to illegal aliens allocates its resources—does not give standing to an entity which is not within the zone of interests the [immigration] statute meant to protect.” *INS v. Legalization Assistance Project of Los Angeles County Federation of Labor*, 510 U.S. 1301, 1305 (1993) (O’Connor, J., in chambers).

Havens Realty Corp. v. Coleman, 455 U.S. 363 (1982), does not suggest otherwise. As this Court has explained, *Havens* involved the defendant’s provision of “false information about apartment availability” to the plaintiff—conduct that “directly affected and interfered with” the defendant’s ability to “provide counseling and referral services for low- and moderate-income homeseekers.” *Alliance for Hippocratic Medicine*, 602 U.S. at 395 (quoting *Havens*, 455 U.S. at 379). That type of direct effect was “not dissimilar to a retailer who sues a manufacturer for selling defective goods to the retailer.” *Ibid.* *Havens* thus involved a direct interaction between the plaintiff

and defendant that directly impaired the plaintiff’s ability to engage in its business. No such direct interaction or interference exists here. Accepting applicants’ theory of standing thus would obliterate the “care[]” this Court has taken “not to extend the *Havens* holding beyond its context.” *Id.* at 396.

Finally, applicants contend (Appl. 24) that the consent judgment “strips Centro Legal of the benefit” of the preliminary injunction against the 2020 Rule “without the notice-and comment rulemaking the APA would require for a rescission.” That type of “procedural injury” is unavailing. *Summers*, 555 U.S. at 496. As this Court has explained, “deprivation of a procedural right without some concrete interest that is affected by the deprivation—a procedural right *in vacuo*—is insufficient to create Article III standing.” *Ibid.* That applicants “have been denied the ability to file comments” on a proposed rescission of the 2024 Rule thus does not provide a basis for standing. *Ibid.* Applicants appear to recognize as much, as they assert (Appl. 25) that the alleged procedural harms are “certainly cognizable” when “they are paired with concrete financial harms.” But the financial harms they allege are not cognizable either. See pp. 17-19, *supra*.

2. Applicants repeatedly assert (Appl. 19-21, 24) that rejecting their injuries would indicate that Texas lacked standing to challenge the 2024 Rule in the first instance. But parties without standing to intervene do not obtain Article III standing by pointing to someone else who allegedly lacks standing as a way of impugning a judgment. The question before the Court at this juncture is whether *applicants* have standing to intervene. They do not. Nor can they cure that fatal defect by suggesting (Appl. 16, 18) that if they cannot intervene, then no one may be able to challenge the consent judgment. “[T]his Court has long rejected that kind of ‘if not us, who?’ argument as a basis for standing.” *Alliance for Hippocratic Medicine*, 602 U.S. at 396.

Applicants’ no-one-but-us theory further fails because aliens who would have been eligible for administrative closure but for the consent judgment would have a more direct interest in the case. Even if those aliens could not intervene, see 8 U.S.C. 1252, this Court has recognized that a consent judgment may be challenged collaterally in certain circumstances. See, *e.g.*, *Martin v. Wilks*, 490 U.S. 755, 768-769 (1989). This Court need not distort standing doctrine in order to ensure that some party somewhere has an opportunity to raise issues related to the underlying consent judgment that might ultimately give rise to a different case before this Court. See Appl. 26-33.

Regardless, applicants’ asserted injuries are not on all fours with Texas’s theory of standing. Applicants have no legally protected interest in allowing unlawful immigrants with valid removal orders to remain in the country. But Texas’s asserted injury stems from allowing unlawfully present aliens to unlawfully remain, and this Court has recognized that there may be instances in which federal courts may consider challenges to the Executive Branch’s failure to enforce immigration laws. See *Texas*, 599 U.S. at 681-683. The Court in *Texas* suggested that “a plaintiff arguably could obtain review of agency non-enforcement if an agency ‘has consciously and expressly adopted a general policy that is so extreme as to amount to an abdication of its statutory responsibilities,’” and a plaintiff may also be able to challenge a “policy that involves both the Executive Branch’s arrest or prosecution priorities *and* the Executive Branch’s provision of legal benefits” such as “work authorization and Medicare eligibility.” *Id.* at 682-683 (citation omitted). See Appl. App. 4a (complaint alleging that “administrative closure has amounted to a decision not to apply the Nation’s immigration laws at all”) (citation omitted); *id.* at 106a (Acting Director Memorandum noting that administrative closure has “allow[ed] otherwise illegal aliens to remain in the United States indefinitely—and typically with the benefit of work au-

thorization—without the threat of removal”).

B. The Other Factors Weigh Against Staying The District Court’s Judgment

The remaining factors—*i.e.*, whether the underlying issues warrant review, whether the applicants likely face irreparable harm, and, in close cases, the balance of equities, see *NRCC*, slip op. 2—all cut heavily against granting a stay.

1. ***Certworthiness.*** Applicants cannot show that this Court would likely grant certiorari to review a decision by the court of appeals affirming the denial of applicants’ motion to intervene. Applicants identify no decision from this Court or another court of appeals permitting intervention—or holding that a would-be intervenor had shown Article III standing—under similar circumstances. Nor do applicants contend that the district court applied incorrect principles in determining that they lack standing. Applicants’ arguments boil down to disputes regarding whether the lower courts correctly or consistently applied the standing principles here. This Court ordinarily does not review such factbound contentions. See Sup. Ct. R. 10 (“A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.”).

Instead of contending that the question of their own standing is certworthy, applicants assert that this Court has previously granted certiorari to consider whether certain parties should be permitted to intervene to defend a government action that the federal government has ceased to defend. Appl. 12-15 (discussing *Arizona v. City & County of San Francisco*, 596 U.S. 763 (2021); *Arizona v. Mayorkas*, 143 S. Ct. 478 (2022)). In those cases, however, the denials of intervention did not rest on a lack of Article III standing. Rather, the petitioners sought this Court’s review of whether they should have been permitted to intervene as of right or permis-

sively under Federal Rule of Civil Procedure 24 and related principles. See Pet. Br. at 18-29, *Arizona v. San Francisco*, *supra* (No. 20-1775) (Dec. 13, 2021); Pet. Br. at 17-50, *Arizona v. Mayorkas*, *supra* (No. 22-592) (Jan. 18, 2023).^{*} Here, the lower courts had no need to address Rule 24 because, as this Court has held, Article III standing is a threshold requirement for intervention when the would-be intervenor seeks to appeal a decision that neither party to the case has challenged. *Bethune-Hill*, 587 U.S. at 663.

Not only are applicants’ concerns about consent judgments procedurally unfit to raise here, any concerns (Appl. 13-15) regarding consent judgments that universally vacate regulations without rescissions preceded by notice and comment would be best addressed by “mak[ing] clear in an appropriate case” that it is “not within the authority of district courts to enter” that type of relief under the Administrative Procedure Act. Tr. of Oral Arg. at 49, *Arizona v. San Francisco*, *supra* (No. 20-1775); see *id.* at 49-50, 70-71; see also *Arizona v. San Francisco*, 596 U.S. at 766 (Roberts, C.J., concurring) (whether universal vacatur without notice and comment “comport[s] with principles of administrative law” is “bound up” with the question whether the APA authorizes universal vacatur in the first place). The government has filed a petition presenting that question. See Pet. at I, *Department of Health and Human Services v. Texas Medical Ass’n*, No. 26-491 (Oct. 14, 2026). If the Court were to grant that petition and hold that universal vacatur is impermissible, parties might collaterally challenge the consent judgment at issue here on that basis in future proceedings. See p. 21, *supra*. But unless and until the Court reverses lower-court judgments holding

^{*} While the federal government in *Arizona v. Mayorkas* contested whether the petitioners had Article III standing to seek a stay of the district court’s order pending appeal, the federal government itself had already appealed and did not contend that intervention to participate in that appeal required Article III standing. See Gov’t Br. at 43-47, *Arizona v. Mayorkas*, *supra*, (No. 22-592) (Feb. 7, 2023).

otherwise, universal vacatur is the default remedy under binding circuit precedent in the Fifth Circuit and many other circuits, and district courts within those circuits accordingly consider universal vacatur an appropriate remedy in consent judgments. For that reason, the federal government was careful to preserve its legal position on universal vacatur in the consent judgment, but agreed to the entry of that remedy based on the reality that the Fifth Circuit has repeatedly rejected that position. See Appl. App. 45a n.1, 50a n.2; see also Tr. of Oral Arg. at 33, *Trump v. CASA, Inc.*, 606 U.S. 831 (No. 24A884) (Solicitor General: “Generally, our practice is to respect circuit precedent within the circuit.”).

Applicants separately contend (Appl. 17-18) that this Court is likely to grant certiorari on the substantive question of whether the 2024 Rule is contrary to law. But this Court is unlikely to grant review on that question in *this* case because applicants lack standing to raise that challenge. And without a showing that this Court is likely to grant certiorari both on applicants’ standing and on the lawfulness of the underlying consent judgment, applicants are not entitled to a stay of the underlying judgment pending their appeal of the denial of their intervention.

2. ***Irreparable Harm.*** Applicants must “demonstrate[] that they will likely suffer irreparable harm absent a stay,” *NRCC*, slip. op. 3, but they cannot make that showing here. The harms they assert (Appl. 33) are the same ones that are too speculative to even establish an Article III injury; *a fortiori*, they also cannot establish irreparable harm. See *Graddick v. Newman*, 453 U.S. 928, 933 (1981) (opinion of Powell, J.) (explaining that the “showing of a threat of irreparable injury” “to interests that [the stay applicant] properly represents” is “embraced by the concept of ‘standing’”); see also *City of Los Angeles v. Lyons*, 461 U.S. 95, 111 (1983) (holding that the “speculative nature” of a claimed injury defeats both standing and a “showing of ir-

reparable injury”).

Moreover, even if applicants were correct in speculating that removal cases that are currently administratively closed will begin to be recalendered, they would still not show irreparable harm during the pendency of their appeal—the time period that matters for stay purposes. Applicants’ asserted harms largely rest on anticipated removals that may occur at the end of recalendered removal cases. But that lengthy process is unlikely to conclude in the time it would take for applicants’ appeal to be resolved. Applicants could further mitigate the risk of any such harm by moving to expedite their appeal—a motion the federal respondents would not oppose. Given that lack of imminence, this Court need not intervene now. The appeals process should proceed in the ordinary course, whether expedited or otherwise.

3. ***Balance of the Equities.*** This is not a “close case[]” that requires balancing the equities. *NRCC*, slip op. 2. But even if this Court were to consider them, applicants’ invocation of the public interest does not outweigh the interests of the parties in the final judgment the district court entered. That judgment prevents removal proceedings from being drawn out for decades without final resolution. Just as “[t]here is always a public interest in prompt execution of removal orders,” *Nken v. Holder*, 556 U.S. 418, 436 (2009), so too is there an interest in prompt resolution of removal proceedings, see 8 C.F.R. 1003.10(b) (“In all cases, immigration judges shall seek to resolve the questions before them in a timely and impartial manner.”).

On the other side of the ledger, applicants again assert (Appl. 34) that permitting the consent judgment to remain in effect will lead to removals, but they cannot show either that such removals are imminent or that there is a public interest in declining to adjudicate removals or permitting aliens with a valid removal order to remain in the country. Nor can they tilt the balance in their favor by contending that

staying the district court’s judgment will “restore the status quo.” Appl. 33. As multiple Justices have recognized, “difficulties emerge when trying to define the status quo” and “there is no sound or principled reason to pick one [conception] over another as a rule to apply in all cases” involving interim relief. *Labrador v. Poe*, 144 S. Ct. 921, 930 (2024) (Kavanaugh, J., joined by Barrett, J., concurring in the grant of stay). Accordingly, this Court has repeatedly permitted government action to go into effect pending litigation. See, e.g., *FCC v. Brown*, No. 26A477 (Oct. 14, 2026), slip op. 1-4 (per curiam); *Department of Homeland Security v. D.V.D.*, No. 26A406 (Sept. 29, 2026); *Department of Homeland Security v. League of Women Voters*, No. 26A308 (Sept. 25, 2026), slip op. 1-6 (per curiam). The consent judgment here should likewise remain effective pending applicants’ appeal.

CONCLUSION

The application should be denied.

Respectfully submitted.

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