

In the Supreme Court of the United States

City of Baltimore, Maryland, et al.,

Applicants,

v.

State of Texas, et al.,

Respondents.

**OPPOSITION TO APPLICATION TO STAY THE JUDGMENT
OF THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS**

KEN PAXTON
Attorney General of Texas

BRENT WEBSTER
*First Assistant Attorney
General*

WILLIAM R. PETERSON
Solicitor General

KYLE TEBO
Assistant Attorney General

Reed Rubinstein
Senior Vice President
James K. Rogers
Senior Counsel

America First Legal Foundation
611 Pennsylvania Ave., SE #231
Washington, D.C. 20003

Office of the Attorney General of
Texas
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
Tel.: (512) 463-2100

Attorneys for the State of Texas

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INTRODUCTION

Applicants ask this Court to suspend a district court judgment to which they are not parties. Both the district court and Fifth Circuit have refused emergency relief, and Applicants' appeal from the denial of intervention remains pending. The district court denied their motion to intervene, App. 88a–94a, and the Fifth Circuit denied both their motion to stay the Consent Judgment and their request for summary reversal of the intervention order, App. 98a–99a. The denial of intervention was based on Applicants' lack of standing, an issue on which there is no circuit split and which does not warrant review by this Court.

Nor is a stay “necessary or appropriate in aid of” this Court’s prospective jurisdiction under the All Writs Act, 28 U.S.C. § 1651(a). The Fifth Circuit can decide the pending intervention appeal without reinstating the 2024 Administrative Closure Rule. If Applicants eventually become parties, they may then seek whatever relief is lawfully available. Until then, suspending the judgment would not preserve jurisdiction; it would confer substantive relief that Applicants presently lack standing and party status to seek. The All Writs Act does not enlarge this Court’s jurisdiction or displace the requirements governing stays. *Clinton v. Goldsmith*, 526 U.S. 529, 534–35 (1999).

Applicants also fail each element of the demanding stay standard. Applicants cannot demonstrate a reasonable probability that this Court will grant certiorari. The Fifth Circuit has not decided the intervention appeal, much less addressed Applicants' attacks on the Consent Judgment. Applicants do not ask the Court to grant certiorari before judgment, and they make no showing that this case satisfies Rule 11's requirement of "imperative public importance" warranting departure from normal appellate practice.

The two cases on which Applicants principally rely do not establish otherwise. *Arizona v. City & County of San Francisco*, 596 U.S. 763 (2022), was dismissed as improvidently granted after the Chief Justice explained that the surrounding questions formed a "mare's nest" impeding review. *Id.* at 766 (Roberts, C.J., concurring).

In *Arizona v. Mayorkas*, 143 S. Ct. 478 (2022), this Court granted certiorari (which the applicants expressly requested) only to review the denial of intervention based on timeliness. *See* Emergency Application for Stay at 18–19, No. 22A544 ("This Court is also likely to reverse the D.C. Circuit's denial of the States' motion to intervene on timeliness grounds."). In that case, the applicants argued that certiorari was warranted because the D.C. Circuit's decision "flout[ed] this Court's decisions in *United Airlines* and *Cameron*, and also spli[t] with the decisions of its sister circuits." *Id.* at 19. Nothing similar is true about

the standing determination underlying the denial of intervention in this case, which does not warrant certiorari.

There is no fair prospect of reversal in any event. Because the actual parties waived appeal, Applicants must independently establish Article III standing to pursue the contemplated merits appeal. *Virginia House of Delegates v. Bethune-Hill*, 587 U.S. 658, 663–64 (2019); *Diamond v. Charles*, 476 U.S. 54, 68–71 (1986). The district court correctly held that none can. The Cities’ lost-tax theory requires Applicants to overcome a chain of contingencies like the one in *Clapper v. Amnesty Intern. USA*, 568 U.S. 398, 409 (2013): an administratively closed case must be re-calendared; the alien must lose on the merits; a final removal order must issue; the Department of Homeland Security must execute it; and the person otherwise must have remained employed and paying a municipal income tax. App. 90a–92a. No declaration identifies even one taxpayer for whom that chain is likely. The U-visa theory is more attenuated still: the Consent Judgment does not alter U-visa eligibility, municipal certification, or adjudication by U.S. Citizenship and Immigration Services (“USCIS”), and the Cities identify no victim who has stopped cooperating, no witness facing imminent removal, and no prosecution impaired by the judgment. App. 92a.

Centro Legal’s theory fails under this Court’s organizational-standing precedents. In *FDA v. Alliance for Hippocratic Medicine*, this Court rejected the

expansive proposition that an organization establishes standing whenever government action causes it to expend or reallocate resources. 602 U.S. 367, 394–95 (2024). The Court explained that its prior precedent, *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982), involved something materially different: the defendant’s conduct “directly affected and interfered with” the organization’s “core business activities.” *Alliance for Hippocratic Medicine*, 602 U.S. at 395. The defendant committed a tortious act directly against the plaintiff by “provid[ing] [its] black employees false information about apartment availability.” *Id.* at 395.

The Consent Judgment does not regulate Centro Legal, deny it access to clients, or obstruct its provision of legal services. Centro Legal instead alleges that, if independent adjudicators reactivate certain proceedings, Centro Legal will have to perform additional legal work for existing clients. Appl. 22–24. Characterizing that contingent workload as “unfunded” does not transform increased demand for the organization’s ordinary services into the direct operational interference recognized in *Havens*. Moreover, four months after judgment, Centro Legal still identifies no case re-calendared because of the Consent Judgment, no imminent hearing or deadline, and no expenditure actually incurred.

Applicants’ attacks on the Consent Judgment do not improve their position. The Rule remained binding when Texas sued; the Executive’s policy memorandum did not vacate it or redress Texas’s alleged injuries. A federal

defendant's agreement that a rule is unlawful does not erase a controversy where the rule remains operative and judicial relief changes the parties' legal relationship. Nor is judicial vacatur under 5 U.S.C. § 706 an agency repeal governed by § 553. Applicants' statutory arguments concern a materially broader 2024 Rule that no court of appeals has reviewed, and the authorities they invoke construed earlier regulations. Their remedial objections, even if ultimately substantial, cannot justify reinstating the entire Rule at the request of nonparties who identify no injury from its unrelated provisions.

Finally, Applicants show no likely irreparable harm. Their application recycles the same August declarations rejected below and supplies no evidence of any concrete harm during the intervening months. By contrast, a stay would revive a rule the district court declared unlawful, renew the fiscal and sovereign injuries Texas alleged, and unsettle a final judgment accepted by the actual parties. It would also restore a binding regulation that the Federal Government would have to administer unless and until lawfully displaced, even though responsible officials concluded that the Rule cannot be defended in good faith. The application should be denied.

STATEMENT

I. The Rule and the Consent Judgment

In May 2024, the Department of Justice promulgated *Efficient Case and Docket Management in Immigration Proceedings*, 89 Fed. Reg. 46,742 (May 29, 2024) (the “Rule” or “Administrative Closure Rule”). Among other changes, the Rule authorized immigration judges and the Board of Immigration Appeals to administratively close removal proceedings under a totality-of-the-circumstances standard, including when no collateral petition, application, or proceeding was pending. *Id.* at 46,792; App. 86a–87a. Texas contends that the Rule transformed administrative closure from a limited docket-management device into indefinite non-adjudication, even though the Immigration and Nationality Act directs that, “[a]t the conclusion of the proceeding,” the immigration judge “shall decide whether an alien is removable.” 8 U.S.C. § 1229a(c)(1)(A); App. 1a–43a.

In April 2025, Acting Director of the Executive Office for Immigration Review (“EOIR”) issued Policy Memorandum 25-29. The memorandum states that no statute authorizes administrative closure, criticized the Rule’s legal and factual premises, and announced that EOIR could not defend the Rule in good faith. App. 100a–108a. But the memorandum did not rescind, vacate, or

suspend the Rule. The Rule “remain[ed] in full legal force and continue[d] to bind EOIR adjudicators.” App. 87a (alteration in original).

Texas filed this action on June 22, 2026, alleging that the Rule exceeded EOIR’s statutory authority, violated the Administrative Procedure Act, and imposed continuing fiscal, public-safety, and sovereign harms on Texas. App. 1a–43a. Texas’s complaint challenged the Administrative Closure Rule and asked the district court to “vacate, set aside, and permanently enjoin Defendants from implementing it,” to declare that the Rule exceeded statutory authority, and to declare that no statute authorizes immigration judges to administratively close or suspend adjudication of a case. App. 42a.

Texas and the federal defendants jointly moved for entry of a consent judgment. App. 44a–48a. The parties agreed that the Rule authorized indefinite closure without legal justification or identifiable timetables and that the Rule was inadequately justified and arbitrary and capricious. App. 44a–46a. The district court entered an Order and Final Judgment (the “Consent Judgment”) after considering the complaint, the joint motion, and applicable law. App. 49a–50a. The judgment declares the Rule contrary to law and in excess of statutory authority; declares that no statute authorizes immigration judges to indefinitely administratively close or suspend adjudication of a case; permanently enjoins enforcement of the Rule; enjoins regulations permitting such closure without

reaching the merits absent an express statutory basis; vacates the Rule; and records the parties' waiver of appeal. *Id.*

II. Applicants' Unsuccessful Requests for Intervention and Emergency Relief

On August 7, 2026, the Cities of Baltimore, Columbus, and New Haven and Centro Legal de la Raza moved to intervene as defendants under Federal Rule of Civil Procedure 24(a)(2) for the purpose of appealing the Consent Judgment. App. 86a–87a. Because the existing parties would not appeal, Applicants had to demonstrate their own Article III standing to pursue that relief. *See Virginia House*, 587 U.S. at 663–64.

The district court denied intervention. App. 88a–94a. Applying Fifth Circuit precedent requiring a futility inquiry when proposed defense intervenors seek to assert defenses no existing party advances, the court held that none of the Applicants had Article III standing to prosecute the contemplated appeal. App. 88a–94a (citing *United States v. Texas*, 181 F.4th 548, 553–54 (5th Cir. 2026)).

The court rejected the Cities' predicted loss of municipal income-tax revenue because it depended on “recalendaring; an adverse merits decision; a final removal order; execution of that order; the individual's continued residence and taxable employment in the same city absent removal; and a resulting net

revenue loss.” App. 90a. The direct consequence of the Consent Judgment, at most, is that some cases may be recalendared; ultimate removal turns on separate adjudicatory and enforcement decisions. App. 91a. The court also held Baltimore’s voluntary expenditures on immigration legal services to be self-inflicted and rejected the Cities’ U-visa theory as dependent on speculative choices by unidentified victims, witnesses, adjudicators, prosecutors, and enforcement officials. App. 91a–92a.

The district court separately held that Centro Legal’s increased-workload theory was “explicitly foreclosed” by the en banc Fifth Circuit’s decision in *United States v. Texas*, 173 F.4th 659, 666 (5th Cir. 2026). App. 93a. Centro Legal’s prediction that it might perform more work for current clients, accept fewer new matters, or experience reputational effects was the same derivative organizational injury that binding precedent rejected. App. 93a–94a.

The district court did not address the other requirements for intervention under Rule 24(a)(2).

Applicants noticed an appeal and sought a stay in the district court. The court denied that motion, explaining that Applicants could not appeal or obtain a stay of the underlying judgment because they had been denied intervention and remained nonparties. App. 95a. It further held that they failed to satisfy the traditional stay factors. *Id.*

Applicants then asked the Fifth Circuit to stay the Consent Judgment and summarily reverse the intervention denial. The Fifth Circuit denied both requests. App. 98a–99a. Applicants’ appeal from the denial of intervention remains pending.

STANDARD

An applicant seeking a stay from this Court must establish “(1) a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari; (2) a fair prospect that a majority of the Court will vote to reverse the judgment below; and (3) a likelihood that irreparable harm will result from the denial of a stay.” *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam). The Court also considers the harms to the opposing parties and the public interest. *Ohio v. EPA*, 603 U.S. 279, 291 (2024). A stay “is not a matter of right,” and the applicant bears the burden of showing that the circumstances justify this Court’s intervention. *Nken v. Holder*, 556 U.S. 418, 433–34 (2009).

Applicants cannot satisfy that standard.

REASONS FOR DENYING THE APPLICATION

I. Applicants Have Not Demonstrated a Reasonable Probability That This Court Will Grant Certiorari.

Applicants must show a reasonable probability that this Court will grant certiorari, not merely that they disagree with the Consent Judgment. *Hollingsworth*, 558 U.S. at 190. They have not made that showing. The Fifth Circuit has yet to decide whether Applicants may intervene, much less addressed their challenges to the underlying judgment. Indeed, even if Applicants were to prevail before the Fifth Circuit, the most likely result would be a remand for the district court to consider the other intervention requirements under Rule 24(a)(2). Applicants identify no conflict on the standing questions this case presently raises, and the prior Arizona proceedings—which involved different issues—do not establish that review is warranted here. Whatever questions might eventually merit this Court’s consideration, the intervention appeal should first run its course. Applicants offer no sufficient reason to depart from that ordinary sequence or to expect this Court to do so.

A. There is no court of appeals judgment on the intervention appeal, much less on the merits.

The Fifth Circuit has not adjudicated Applicants’ appeal of the district court’s denial of the motion to intervene for lack of standing. Its two-page order denied interim relief and summary reversal without deciding the appeal. App. 98a–99a. It has never addressed Applicants’ challenges to the Consent

Judgment. Indeed, because Applicants remain nonparties, those merits issues are not presently within the permissible scope of their appeal. *See Nuclear Regulatory Commission v. Texas*, 605 U.S. 665, 679–80 (2025).

Applicants cannot, at this stage, identify any court of appeals decision that creates a conflict, resolves an important question incorrectly, or otherwise warrants certiorari.

Rule 11 reflects the Court’s settled reluctance to intervene before judgment. Certiorari before judgment is available only when a case is “of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in this Court.” Applicants neither invoke Rule 11 nor make that showing. Their intervention appeal can proceed in the ordinary course.

The absence of a reasoned appellate decision is especially consequential because the district court resolved only threshold standing; it did not decide the remaining Rule 24 requirements. App. 89a-94a. Even if the Fifth Circuit disagreed on standing, the ordinary remedy would be a remand for those unresolved issues regarding the remaining Rule 24 requirements. The Fifth Circuit would be highly unlikely to address those requirements in the first instance, much less review challenges to the underlying judgment that had not yet been presented to the district court.

Applicants’ assertion that administrative closure is important does not cure the vehicle problem. Importance alone does not transform a fact-bound standing, splitless dispute into a suitable case for certiorari before judgment. And the lack of any analysis by any court regarding Applicants’ challenges to the Rule’s statutory validity is a reason to wait for the lower courts, not a reason for this Court to decide the issue first. This Court is “a court of review, not of first view.” *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005).

A. The prior Arizona proceedings do not establish a probability of review here.

Applicants have failed to show a reasonable probability that this Court will grant certiorari. In making their argument, Applicants rely heavily on *Arizona v. City & County of San Francisco* and *Arizona v. Mayorkas*. Appl. 12–17. Neither supplies the missing probability of certiorari.

In *City & County of San Francisco*, the Court granted certiorari after the Ninth Circuit had ruled on intervention. 596 U.S. at 763. This Court then dismissed the writ as improvidently granted. *Id.* The four-Justice concurrence on which Applicants rely did not decide that intervention was required or that litigation acquiescence violated the APA. It catalogued numerous unresolved issues—standing, mootness, vacatur, the scope of relief, and the interaction between judicial judgments and rulemaking—and concluded that this “mare’s

nest” obstructed resolution of the intervention question. *Id.* at 766 (Roberts, C.J., concurring). This case adds still more threshold questions because the Fifth Circuit has not yet addressed intervention at all.

Mayorkas is likewise materially different. There, this Court treated the application as a petition for certiorari before judgment at the applicants’ express request, granted review only on intervention, and stated that it was not reviewing the merits that the court of appeals had not addressed. 143 S. Ct. at 478. In that case, the court of appeals denied intervention based on timeliness, which arguably “flout[ed] this Court’s decisions in *United Airlines* and *Cameron*, and also spli[t] with the decisions of [other] circuits.” Emergency Application for Stay at 19, No. 22A544. That this Court considered the question of timeliness for intervention—an issue on which there was an alleged circuit split—to warrant certiorari hardly establishes that this Court will grant certiorari to review a factbound, splitless question of standing. This case and *Mayorkas* both involve intervention, but they involve fundamentally different issues.

Nor does *Berger v. North Carolina State Conference of the NAACP*, 597 U.S. 179 (2022), dispense with the threshold defects. *Berger* concerned state officials whom state law expressly authorized to represent the State’s interests in ongoing litigation. *Id.* at 184–86. It addressed adequate representation under Rule 24, not whether a proposed intervenor lacking Article III injury may

prosecute an appeal from a final judgment. Whatever role adversarial presentation plays in evaluating intervention, it does not eliminate standing, *Hollingsworth*, 570 U.S. at 704–05, and certiorari in that case does not indicate that certiorari would be granted here.

B. No conflict presently exists on the questions Applicants seek to raise.

No conflict justifies certiorari. Applicants identify no conflict among the courts of appeals on whether these Cities or this legal-services organization have standing to appeal this judgment. Their arguments concern factbound applications of settled standing principles.

Even if it were before this Court, Applicants likewise identify no appellate conflict concerning the validity of the 2024 Rule.¹ As Applicants acknowledge, no court of appeals has reviewed that Rule. Appl. 17. The Third, Fourth, and Seventh Circuit decisions they cite construed prior EOIR regulations and the implied authority those regulations conferred. *See Arcos Sanchez v. Attorney General*, 997 F.3d 113, 121–23 (3d Cir. 2021); *Romero v. Barr*, 937 F.3d 282, 292 (4th Cir. 2019); *Meza Morales v. Barr*, 973 F.3d 656, 667 (7th Cir. 2020). The

¹ This Court limited the grant of certiorari in *Arizona v. Mayorkas* to the question of intervention: “The parties are directed to brief and argue the following question: Whether the State applicants may intervene to challenge the District Court’s summary judgment order.” 143 S. Ct. 478 (2022).

Sixth Circuit reached a materially different conclusion concerning those earlier regulations. *Hernandez-Serrano v. Barr*, 981 F.3d 459, 463–66 (6th Cir. 2020). None decided whether the materially broader 2024 Rule is consistent with the INA.

Applicants’ “collusive acquiescence” theory is equally unsuitable now. Appl. 12–15. This Court has issued no holding adopting that label as a doctrine invalidating judgments. The *City & County of San Francisco* concurrence that used that phrase expressly identified multiple unresolved antecedent issues and joined dismissal of the writ. 596 U.S. at 765–66. A concurrence recognizing difficult questions does not itself make every later consent judgment involving agency action worthy of certiorari.

And neither the district court nor the Fifth Circuit has adjudicated Applicants’ challenges to the judgment. If this Court were to grant certiorari at this stage to address the validity of the 2024 Rule, it would be the first court to consider and address these arguments.

II. Applicants Have No Fair Prospect of Reversing the Denial of Intervention.

Because the actual parties waived appeal, Applicants must independently satisfy Article III to continue litigation and seek relief the parties do not request. *Virginia House*, 587 U.S. at 663–64; *Diamond*, 476 U.S. at 68–71. That

requirement is not relaxed because Applicants seek intervention. A party invoking federal jurisdiction must establish an injury that is concrete and imminent, fairly traceable to the challenged judgment, and likely to be redressed by the requested relief. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992). When an asserted injury depends on the conduct of third parties not before the court, standing is “ordinarily substantially more difficult” to establish. *Id.* at 562 (quotation omitted).

The district court correctly applied those principles.

A. The Cities’ tax theory depends on a cascade of discretionary and unidentified events.

Baltimore and Columbus assert that some aliens pay municipal income taxes and that removing those taxpayers would reduce revenue. Appl. 19–20. But identifying a type of revenue does not establish that the Consent Judgment will cause its loss.

To establish Article III standing, an injury must be “actual or imminent.” *Clapper*, 568 U.S. at 409. “Although imminence is concededly a somewhat elastic concept, it cannot be stretched beyond its purpose, which is to ensure that the alleged injury is not too speculative for Article III purposes.” *Id.* Here, any injury relies on a speculative “chain of contingencies.” *Id.* at 410. Before either City loses a dollar, at least the following events must occur: (1) an

administratively closed proceeding involving a City resident must be recalculated; (2) the immigration judge must reject any defenses and applications for relief; (3) a final removal order must issue and survive review; (4) DHS must decide to execute that order; (5) the person must actually be removed; and (6) absent removal, that person must have remained an employed, resident in the City, and subject to its income tax. The Consent Judgment itself commands none of those events. It does not order wholesale recalendar, direct any merits decision, require execution of any removal order, or identify a single affected taxpayer. App. 49a–50a.

The Cities’ declarations do not fill those gaps. They say generally that U-visa applicants may work and pay taxes. App. 53a, 81a–82a. They do not identify a person whose case was closed under the 2024 Rule, who currently pays the relevant municipal tax, whose case has been or imminently will be recalculated because of the judgment, who is likely to receive a final removal order, and whom DHS is likely to remove. The district court therefore correctly held that the theory remains “too attenuated” and turns on independent adjudicatory and enforcement decisions. App. 90a.

Wyoming v. Oklahoma, 502 U.S. 437 (1992), is not comparable. There, an Oklahoma statute directly required utilities to substitute Oklahoma coal for Wyoming coal, producing a demonstrated reduction in Wyoming severance-tax

receipts. *Id.* at 445, 448. Here, no legal command diverts an identified tax stream. The Cities predict an indirect fiscal effect from future case-specific decisions by several independent actors.

Nor does *Diamond Alternative Energy, LLC v. EPA*, 606 U.S. 100 (2025), support Applicants. That case involved a familiar linked market: California standards legally forced automakers to manufacture more electric vehicles and fewer gasoline-powered vehicles, predictably reducing fuel sales. *Id.* at 114–17. The Court relied on “commonsense economic principles” governing connected producers, suppliers, and customers. *Id.* at 116. The Consent Judgment here does not force immigration judges to reopen a case, issue a removal order, or compel DHS to execute one. Those are sovereign adjudicatory and enforcement decisions, not automatic market responses to a binding production mandate.

Applicants’ repeated comparison to Texas’s standing does not satisfy their burden. Standing is party- and relief-specific. *Town of Chester v. Laroe Estates, Inc.*, 581 U.S. 433, 439 (2017). Texas challenged a binding rule that directly governed federal adjudicators and alleged that the availability and use of indefinite administrative closure itself prolonged the presence of removable aliens and imposed ongoing state expenditures. App. 19a–28a. The Cities claim a revenue loss only after particular individuals proceed through a chain of adjudication, enforcement, residence, employment, and taxation. The district court

did not apply different standards to identical injuries. It assessed different injuries, different causal mechanisms, and different evidence.

Applicants' logic would also prove too much. If any local government could establish standing whenever federal immigration policy might eventually change the number of resident taxpayers, nearly every immigration measure would be judicially challengeable by municipalities on both sides. Article III's traceability requirement prevents that transformation of generalized policy effects into standing.

B. The U-visa theory is speculative and does not identify an injury to a City.

The Consent Judgment leaves the Cities' U-visa certification authority intact, and the record shows no concrete harm to their investigations or prosecutions. The Cities contend that the unavailability of administrative closure will deter alien crime victims from cooperating or cause cooperating witnesses to be removed during prosecutions. Appl. 20–21. The record does not establish either outcome.

The Consent Judgment leaves the U-visa statute and regulations untouched. It does not alter the Cities' authority to certify victims, USCIS's authority to adjudicate petitions, work authorization, DHS's enforcement discretion, or the availability of case-specific continuances and other relief. App. 49a–50a,

92a. A U-visa certification does not give the applicant a statutory right to administrative closure.

No declaration identifies a victim who declined to report a crime because of the Consent Judgment, a witness who withdrew cooperation, a U-visa applicant whose case was recalendared, a witness facing imminent removal, a prosecution impaired by the judgment, or a concrete expenditure a City has incurred. Baltimore's declaration describes the importance of trust and the U-visa program in general. App. 81a–84a. Those policy observations do not demonstrate that eliminating one discretionary procedural mechanism has caused or certainly will cause a particular victim to act differently.

The theory thus depends on a “highly attenuated chain of possibilities,” *Clapper*, 568 U.S. at 410. Unidentified victims must learn about the judgment; understand its procedural implications; conclude that other statutory and discretionary protections are inadequate; alter their cooperation because of that conclusion; and thereby impair a particular investigation or prosecution. Immigration judges, USCIS, DHS, prosecutors, and witnesses must then make further independent decisions. Article III does not permit standing based on that accumulation of possibilities.

Applicants cite the U-visa program's purpose and the number of certifications Baltimore has processed. Appl. 20. Those facts show that the program

matters. They do not show that the Consent Judgment injures the City. The district court correctly distinguished the continuing availability of U-visa certification from Applicants' conjecture about how third parties may react to the loss of administrative closure. App. 92a.

C. Centro Legal's asserted workload theory is foreclosed by binding precedent and remains contingent.

A legal-services organization does not acquire Article III standing merely because a change in law makes representing its clients more costly or time-consuming. Centro Legal alleges that, if closed or terminated matters are reactivated, its attorneys will have to devote additional time to existing clients, potentially without additional grant funding. Appl. 22–24.

This Court's decision in *FDA v. Alliance for Hippocratic Medicine* forecloses this theory. An organization must satisfy the same injury-in-fact, causation, and redressability requirements as an individual, and *Havens* does not establish standing merely because government action increases demand for an organization's services or requires it to reallocate resources. 602 U.S. 367, 393–95 (2024). *Havens* instead involved conduct that itself “directly affected and interfered with” the organization's “core business activities.” *Id.* at 395.

The Consent Judgment does no such thing: it does not regulate Centro Legal, deny it access to clients or courts, interfere with its ability to provide

legal representation, or alter its grant agreements. At most, future decisions by immigration adjudicators may cause some existing representations to require additional work. That resembles the downstream-workload theory this Court rejected in *Alliance for Hippocratic Medicine*, where a change in government policy did not give doctors standing merely because it might cause more patients to seek treatment and thereby consume additional professional time and resources. *Id.* at 390–93.

Centro Legal’s preexisting retainers and funding arrangements do not eliminate the intervening adjudicatory decisions or transform increased demand for its ordinary legal services into direct interference with its operations. And although *United States v. Texas*, 173 F.4th 659 (5th Cir. 2026) (en banc), does not bind this Court, it remains directly relevant: it is a considered en banc application of *Alliance for Hippocratic Medicine* to a closely analogous legal-services theory, and it binds the Fifth Circuit in the still-pending appeal that Applicants ask this Court to stay. Its conclusion that “[a] legal-services organization cannot have Article III standing merely because a new law or regulation requires it . . . to increase the degree or scope of legal representation for its current or prospective clients who may be adversely affected,” *id.* at 666, persuasively explains why Applicants lack standing.

The factual contingencies independently defeat standing. The judgment does not order any case recalendared or recommenced. App. 49a–50a. Centro Legal’s declaration predicts how DHS and immigration adjudicators might respond, estimates that 130 to 150 matters might become active, and projects 40 to 200 additional hours per case. App. 62a–65a. But the declaration identifies no matter actually reactivated because of the judgment, no scheduled hearing, no imminent deadline, no new expert retained, and no unreimbursed expenditure made. Months have passed since judgment, yet the application supplies no updated evidence that any of its predictions have actually materialized.

Centro Legal’s asserted reliance on its challenge to the 2020 rule does not create standing either. The prior order was a preliminary injunction—a provisional remedy, not a vested entitlement—and Centro Legal voluntarily stipulated to dismissal after the 2024 Rule issued. The Consent Judgment adjudicates the 2024 Rule and does not by its terms reinstate or adjudicate the 2020 rule. App. 49a–50a. Any agency action concerning the prior rule remains separately reviewable. The loss of an expectation that a dismissed preliminary injunction would retain practical value is not a concrete injury caused by this judgment.

D. The remaining Rule 24 requirements do not independently entitle Applicants to relief.

Even if Applicants overcome the standing defect, they must still satisfy each remaining requirement of Rule 24(a)(2) before they are entitled to intervene. Applicants assert that the other requirements for intervention are “readily satisfied.” Appl. 25. The district court did not address these requirements because the threshold futility and standing questions resolved the matter. App. 94a..

Applicants must establish a timely motion, a direct and legally protectable interest in the transaction at issue, practical impairment of that interest, and inadequate representation. Fed. R. Civ. P. 24(a)(2). Failure on any one requirement defeats intervention. The application gives cursory treatment to those questions.

Applicants are not regulated by the Rule, and the Rule confers no statutory entitlement or property right on them. It governs EOIR adjudicators. The Cities’ policy interests in revenue and law-enforcement cooperation, and Centro Legal’s operational interest in managing its docket, are consequences of the regulatory regime—not a legally protected right to preservation of that regime. The judgment imposes no obligation on Applicants and does not bind them by claim or issue preclusion. *See Taylor v. Sturgell*, 553 U.S. 880, 892–93 (2008).

The Cities remain free to certify U-visa petitions and fund legal services; Centro Legal remains free to represent clients and challenge future agency action.

Texas does not dispute that the federal respondents no longer advocate preservation of the Rule, which bears on adequate representation. But inadequacy of representation cannot supply standing, create a protectable interest, or establish impairment. Nor does it resolve timeliness, a context-specific inquiry that remains disputed in this postjudgment posture. At minimum, those unresolved issues confirm that even a reversal on standing would not automatically resolve the question of intervention, much less place the Consent Judgment before the Fifth Circuit. At most, even if Applicants were to prevail in their pending appeal before the Fifth Circuit, the case would be remanded for the district court to consider the factors for intervention under Rule 24(a)(2).

III. Applicants' Challenges to the Consent Judgment Do Not Establish a Fair Prospect of Reversal and Are Not Properly Before the Court Unless Intervention Is Granted.

The district court properly exercised its authority under the APA to resolve Texas's challenge to a binding federal rule and set aside agency action that exceeded statutory limits. The federal defendants' agreement with Texas's legal position did not, by itself, deprive the district court of authority to resolve the controversy. Applicants devote much of their application to the validity and scope of the Consent Judgment. Appl. 26–33.

Those arguments are premature because Applicants cannot appeal that judgment unless they first become parties. *Virginia House*, 587 U.S. at 663–64. Even if these arguments were properly before this Court, they fail to establish a fair prospect of reversal.

A. The case presented a live controversy even though the defendants agreed with Texas’s legal position.

Texas’s challenge presented a live controversy because the Rule remained binding and continued to cause injuries that the federal defendants’ agreement with Texas did nothing to remedy. App. 19a–28a, 107a. Applicants characterize the action as a “friendly sui[t]” because Texas and the federal defendants agreed that the Rule was unlawful and jointly sought judgment. Appl. 6. Agreement over liability or remedy does not itself eliminate Article III jurisdiction where the challenged legal regime remains operative and judicial relief alters the parties’ legal relationship.

When Texas sued, the Rule remained binding on EOIR adjudicators. App. 87a, 100a–108a. EOIR’s Policy Memorandum 25-29, App100a-108a, criticized the Rule and announced a litigation position, but it did not vacate, repeal, suspend, or cease enforcement of the regulation. Texas plausibly alleged that the operative Rule caused continuing fiscal and sovereign injuries. App. 19a–28a.

Only a judicial judgment could provide the vacatur, declaration, and binding injunctive relief Texas sought. App. 42a, 49a–50a.

This Court has repeatedly recognized that the government’s agreement with a claimant’s legal position does not necessarily eliminate a case or controversy when the challenged law remains operative and the judgment has concrete legal consequences. *See INS v. Chadha*, 462 U.S. 919, 939–40 (1983); *United States v. Windsor*, 570 U.S. 744, 755–63 (2013). Consent judgments are a routine means of resolving genuine disputes, provided they “spring from and serve to resolve a dispute within the court’s subject-matter jurisdiction” and remain within the general scope of the pleadings. *Local No. 93, Int’l Ass’n of Firefighters v. City of Cleveland*, 478 U.S. 501, 525–26 (1986). The district court expressly found jurisdiction and entered relief addressing claims and a prayer for relief pleaded by Texas. App. 42a, 44a–50a.

Applicants’ historical authorities involved manufactured proceedings in which no genuine legal injury or adverse legal relationship existed. *See, e.g., United States v. Johnson*, 319 U.S. 302, 304–05 (1943). That is not this case. Texas is a separate sovereign alleging concrete injuries from a binding federal rule. The Federal Government’s decision to acknowledge legal error neither manufactured those injuries nor erased the Rule’s legal effect.

Applicants identify no false fact or sham plaintiff suggesting that Texas lacked the injuries it alleged. At most, they dispute whether the district court’s legal conclusions and remedy were correct—questions that could be raised through ordinary appellate review if they were permitted to intervene.

B. Section 553 governs agency rulemaking, not a court’s exercise of judicial review under Section 706.

A court may set aside an unlawful rule under § 706 without conducting the notice-and-comment proceedings that § 553 requires of agencies. Applicants’ APA argument conflates agency repeal with judicial relief. Section 553 prescribes procedures an agency generally must follow when it promulgates, amends, or repeals a legislative rule. *Perez v. Mortg. Bankers Ass’n*, 575 U.S. 92, 101 (2015). The federal defendants did not issue a repeal here. Texas invoked judicial review, and the district court entered a judgment declaring the Rule unlawful and setting it aside under 5 U.S.C. § 706(2). App. 44a–50a.

Nothing in § 553 makes notice and comment a prerequisite to a federal court’s exercise of judicial review. Sections 551(5) and 553 govern an agency’s formulation, amendment, or repeal of a rule. Section 706 assigns a different function to the reviewing court: it must “decide all relevant questions of law” and “hold unlawful and set aside” agency action that exceeds statutory authority or is otherwise not in accordance with law. 5 U.S.C. § 706; *see Loper Bright*

Enterprises v. Raimondo, 603 U.S. 369, 391–92 (2024) (explaining that § 706 requires courts to exercise independent judgment in determining whether an agency acted within its statutory authority); *FCC v. NextWave Pers. Commc’ns Inc.*, 537 U.S. 293, 300 (2003) (“The Administrative Procedure Act requires federal courts to set aside federal agency action that is ‘not in accordance with law.’” (quoting 5 U.S.C. § 706(2)(A))). A court performing that statutory duty exercises judicial-review authority; it does not itself formulate, amend, or repeal a rule under § 553. Whether the district court correctly determined that this Rule was unlawful and properly scoped the resulting relief presents separate merits and remedial questions, but neither question transforms the court’s judgment into agency rulemaking subject to notice and comment.

Consumer Energy Council of America v. FERC, 673 F.2d 425 (D.C. Cir. 1982), does not establish otherwise. There, the agency itself attempted to revoke a rule without notice and comment and argued that it was merely correcting a defect. *Id.* at 446–48. The case did not hold that a court may never set aside an unlawful rule when the agency confesses error. Likewise, *Conservation Northwest v. Sherman*, 715 F.3d 1181 (9th Cir. 2013), and *United States v. Carpenter*, 526 F.3d 1237 (9th Cir. 2008), concerned settlements that themselves imposed or amended substantive regulatory obligations contrary to governing law. The Consent Judgment here does not promulgate a replacement regulation.

It adjudicates the legality of existing agency action and grants the relief Texas pleaded.

Applicants rely on the four-Justice concurrence in *City & County of San Francisco*. But this Court dismissed that case as improvidently granted. 596 U.S. at 763, 765–66. The circumstances there were also distinct: after lower courts had adjudicated the public-charge rule and the government dismissed appeals, DHS relied on a judgment from separate litigation to then remove the rule from the Code of Federal Regulations without notice and comment. *Id.* at 764–65 (Roberts, C.J., concurring). Here, the challenged act is the judgment itself, entered in Texas’s direct APA action. Whether that judgment was correct is a judicial-review question—not an agency repeal subject to § 553.

The prospective injunction does not require the Federal Government to violate the APA. It prohibits substantially similar regulations authorizing broad administrative closure “absent an express statutory basis.” App. 50a. It neither requires promulgation of a new rule nor specifies the content of any replacement regulation. If later legal developments justify modification, the Federal Rules provide mechanisms to seek it. The injunction’s breadth may be litigated by a proper party, but it does not transform the judgment into an unlawful agency repeal.

C. Applicants have not shown that the 2024 Rule is clearly authorized by the INA.

The Attorney General’s authority to manage immigration dockets must operate within the framework Congress prescribed for deciding removability. Applicants’ statutory argument is, at minimum, substantially disputed. The Attorney General’s general authority to supervise EOIR and “establish such regulations” as necessary, 8 U.S.C. § 1103(g)(2), does not permit rules inconsistent with Congress’s specific removal-adjudication framework. Section 1229a provides that proceedings under that section are the “sole and exclusive procedure” for determining removability and directs that, “[a]t the conclusion of the proceeding,” the immigration judge “shall decide whether an alien is removable.” 8 U.S.C. § 1229a(a)(3), (c)(1)(A).

Texas alleges that the 2024 Rule did not merely permit short, case-specific pauses tied to a pending collateral matter but that it authorized administrative closure based on a broad totality-of-the-circumstances test even when no collateral petition, application, or action was pending, and it permitted closure without an identifiable timetable for resolution. 89 Fed. Reg. at 46,792; App. 1a–43a. According to the complaint and the joint motion, administrative closure had often lasted years or decades and left hundreds of thousands of proceedings without adjudication. App. 3a–4a, 45a–46a. A general procedural

delegation does not obviously authorize a mechanism that operates in practice as indefinite non-adjudication of matters Congress directed immigration judges to decide.

Administrative closure is not equivalent to an ordinary continuance. A continuance ordinarily keeps a matter on the active docket and postpones it to a future date or identifiable event. The Rule permitted removal from the active docket without a fixed return date or pending collateral matter. Applicants' observation that a party could later seek recalendaring does not answer whether the Attorney General may authorize indefinite suspension in the first place.

The appellate cases Applicants invoke do not establish the 2024 Rule's legality. *Romero*, *Meza Morales*, and *Arcos Sanchez* construed whether earlier regulations implicitly authorized administrative closure. They did not decide whether the 2024 Rule's express and expanded regime is consistent with the INA. The Sixth Circuit, considering the same earlier regulatory framework, concluded that administrative closure did not constitute a "disposition" and observed that permanent closure of hundreds of thousands of cases was largely contrary to law. *Hernandez-Serrano*, 981 F.3d at 463–66. *Hernandez-Serrano* does not resolve this case, but its reasoning supports Texas's position that general docket-management authority does not permit indefinite suspension of removal proceedings.

Applicants’ reliance on longstanding practice likewise does not supply statutory authority. Administrative agencies cannot acquire power through repetition. There is “no authority for the doctrine that the Executive can acquire authority forbidden by law through a process akin to adverse possession.” *Biden v. Texas*, 597 U.S. 785, 830 (2022) (Alito, J., dissenting). The Homeland Security Act preserved statutory “authorities and functions” exercised by EOIR, 8 U.S.C. § 1103(g)(1); it did not silently ratify every informal docket practice or eliminate limits imposed by the INA. And the existence of specific regulations or settlements authorizing closure in defined circumstances cuts against inferring unlimited general authority.

Applicants have not shown that the Attorney General’s general regulatory authority permits indefinite suspension of proceedings Congress directed immigration judges to decide. *See* 8 U.S.C. § 1229a(a)(3), (c)(1)(A). Their statutory arguments therefore fail to establish a fair prospect of reversal, even apart from their failure to establish standing or a right to intervene.

D. Applicants’ remedial objections cannot justify staying the entire judgment.

Any stay must be tailored to Applicants’ own likely injuries, and their objections to discrete portions of the Consent Judgment do not justify suspending it in full. Applicants argue that the judgment should have severed provisions

unrelated to administrative closure and should not have included prospective relief. Appl. 31–33. Those objections do not support the stay they request for four reasons.

First, Texas’s complaint challenged the Administrative Closure Rule and requested that it be vacated, set aside, and permanently enjoined. App. 42a. The joint motion likewise stated that Texas challenged the Rule’s regulatory changes, including the rescission of the 2020 rule, and requested vacatur of the Rule. App. 44a–46a. Applicants may dispute whether every provision was properly included, but the judgment did not grant relief wholly outside the pleadings.

Second, Applicants lack standing to challenge portions of the Rule unrelated to any asserted injury. Their claimed harms concern administrative closure, termination of certain cases, and downstream consequences for clients and municipalities. They identify no injury from briefing schedules, background checks, or sua sponte reopening rules. An alleged severability error affecting provisions that do not injure Applicants cannot support their intervention or this stay.

Third, even if a reviewing court ultimately narrowed the prospective injunction or restored a severable ancillary provision, that would not justify suspending the entire judgment and reinstating the administrative-closure regime

now. Equitable relief must be tailored to the applicant's likely injury. Applicants propose no narrower stay tied to a concrete harm. Their all-or-nothing request would restore every provision of the Rule nationwide despite their inability to challenge most of them.

Fourth, the injunction is narrower than Applicants portray it. It does not forever prohibit every form of administrative closure. It bars regulations permitting immigration judges to administratively close proceedings without reaching the merits "absent an express statutory basis to do so." App. 50a. Applicants identify no pending rulemaking or imminent agency proposal impaired by that provision. Any challenge to hypothetical future effects is not a basis for emergency reinstatement of the existing Rule.

IV. Applicants Have Not Demonstrated Likely Irreparable Harm.

The Consent Judgment should remain in effect because Applicants have not shown that it is likely to cause them irreparable harm during the appeal. *See Nken*, 556 U.S. at 434–35. Applicants' irreparable-harm claims largely repeat the injuries the district court held too speculative for standing. An injury that is conjectural and causally attenuated does not become likely and imminent merely because it is relabeled "irreparable." *See id.*

The Cities identify no taxpayer likely to be removed during the appeal, no amount of revenue likely to be lost, and no evidence that the judgment has

reduced municipal receipts. Their reliance on *Alabama Association of Realtors v. Department of Health and Human Services*, 594 U.S. 758, 765 (2021) (per curiam), is misplaced. The landlords there were subject to an operative moratorium that prevented collection of rent and produced actual, unrecoverable payment losses. *Id.* Here, no legal command deprives a City of revenue; any loss depends on the unresolved chain of adjudication, enforcement, employment, residence, and taxation described above.

The Cities likewise identify no victim who has declined to report a crime, no witness who has stopped cooperating, no U-visa applicant removed mid-prosecution, and no prosecution that has failed. *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers), involved a sovereign's concrete inability to enforce a duly enacted criminal law. It does not establish irreparable harm whenever a municipality predicts that third parties may react adversely to a change in federal procedure.

Centro Legal offers projections, not imminent facts. Its declaration estimates the hours that might be required if matters are reactivated. App. 63a–70a. It does not identify an order reopening a case, an upcoming hearing, a new expert expense, an employee hired, a grant breached, or a dollar spent because of the Consent Judgment. Applicants filed this application in October, months

after the June 22 judgment, yet provide no supplemental declaration showing that any predicted harm has occurred or is about to occur.

The timing is independently telling. Applicants waited more than six weeks after judgment to seek intervention and more than two months to seek a district-court stay. App. 49a, 87a, 95a. They acted within the time for appeal, but an applicant claiming an immediate operational crisis ordinarily can identify actual consequences after months of implementation. The continued absence of a concrete example undermines the asserted emergency.

The public-interest examples concerning special immigrant juveniles (“SIJ”) are equally contingent. Appl. 34. The judgment does not order any child removed, require recalendaring, eliminate SIJ status, or prevent case-specific relief. Applicants identify no particular child facing imminent, executable removal because of the judgment. Serious consequences may attend particular immigration cases, but generalized concern for unidentified persons cannot substitute for Applicants’ own likely injury.

V. The Equities and Public Interest Weigh Against a Stay.

The balance of harms and the public interest favor leaving the Consent Judgment in place to protect Texas from renewed injury while the intervention appeal proceeds in the ordinary course. A stay would not preserve a neutral status quo. It would revive a rule that has been vacated since June 22, restore

authority for new administrative closures, and suspend relief obtained by the actual parties. It would also restore a binding regulation that the Federal Government would have to administer unless and until lawfully displaced, even though responsible officials concluded that the Rule cannot be defended in good faith. The Fifth Circuit has already declined to impose that disruption while the intervention appeal proceeds. App. 98a–99a.

Texas alleged that the Rule prolongs the presence of removable aliens by indefinitely suspending adjudication and thereby increases state healthcare, education, law-enforcement, and other expenditures. App. 19a–28a. The Consent Judgment redressed those injuries by vacating the Rule and prohibiting substantially similar regulations lacking an express statutory basis. App. 49a–50a. A stay would renew the same alleged harms and deprive Texas of the benefit of its final judgment.

The harm would not necessarily end when the stay ends. Cases newly administratively closed during the appeal could remain dormant for years, reproducing the very indefinite delay Texas challenged. The parties to the judgment have accepted its finality and waived appeal. App. 50a. Nonparties should not unsettle that resolution without first establishing standing and a right to intervene.

The public interest favors lawful agency action, faithful execution of Congress’s statutory scheme, finality of judgments, and orderly appellate

procedure. Applicants repeatedly invoke the fact that the Rule was promulgated through notice and comment. Appl. 33–35. Notice and comment does not immunize an agency rule from judicial review or authorize it to exceed the statute. The district court entered judgment that the Rule was contrary to law. App. 49a–50a. Restoring that Rule before Applicants establish party status would invert the ordinary sequence of review.

Applicants’ reliance on emergency orders staying nationwide relief at the request of the Federal Government or directly regulated parties is inapposite. *See* Appl. 34–35. Those applicants possessed party status and asserted direct sovereign or regulatory injuries. Here, the Federal Government does not seek a stay, Applicants are not bound or regulated by the judgment, and their claimed harms depend on multiple third parties. The Court’s equitable power does not require treating those distinct postures as equivalent.

Nor does *Mayorkas* establish that the equities favor Applicants. The stay there expressly left the Federal Government free to take action concerning the policy, and the Court simultaneously granted certiorari before judgment on intervention. 143 S. Ct. at 478. Applicants request a stay that would reinstate a binding regulation while seeking no immediate merits review under Rule 11. That would impose substantial present consequences without resolving the threshold appeal.

Finally, any asserted concern about “collusive acquiescence,” Appl. 12-13, remains available for orderly adjudication if a litigant with standing becomes a party. Denying a stay does not endorse every feature of the Consent Judgment or insulate it from lawful review. It simply respects the elementary rule that a nonparty must first establish a right to intervene before obtaining substantive relief from a judgment. That procedural discipline serves, rather than undermines, the public interest.

CONCLUSION

The application for a stay should be denied.

Dated: October 22, 2026

Respectfully Submitted,

KEN PAXTON

Attorney General of Texas

BRENT WEBSTER

*First Assistant Attorney
General*

WILLIAM R. PETERSON

Solicitor General

KYLE TEBO

Assistant Attorney General

REED RUBINSTEIN

Senior Vice President

Counsel of Record

JAMES K. ROGERS

Senior Counsel

America First Legal Foundation

611 Pennsylvania Ave., SE #231

Washington, D.C. 20003

Office of the Attorney General of
Texas

P.O. Box 12548, Capitol Station

Austin, Texas 78711-2548

Tel.: (512) 463-2100