

IN THE
Supreme Court of the United States

CITY OF BALTIMORE, MARYLAND, *et al.*,

Applicants,

v.

STATE OF TEXAS, *et al.*,

Respondents.

REPLY IN SUPPORT OF APPLICATION TO STAY THE JUDGMENT
OF THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

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STATEMENT PURSUANT TO RULE 29.6

Applicant Centro Legal de la Raza is a California nonprofit corporation with its principal place of business in Oakland, California. It has no parent corporation and has no publicly held stock.

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INTRODUCTION

Remarkably, the Solicitor General asks this Court to deny an application for a stay of a judgment granting universal vacatur of a consequential federal regulation. If that inverted state of affairs were not strange enough, it is all the more extraordinary because the Federal Respondents all but concede that the judgment is invalid because the district court lacked jurisdiction. In the face of Applicants' arguments that the Consent Judgment was the product of egregious collusion to circumvent the Administrative Procedure Act (APA) and issued in the absence of a justiciable case-or-controversy, Federal Respondents offer no response or denial. Federal Respondents also do not meaningfully dispute that the attacks they now level on Applicants' standing could have been (but were not) raised against Plaintiff-Respondent Texas and that the logical implication of their position is that the district court should have rejected the Consent Judgment on standing grounds. *See* U.S. Opp. 3, 20–22. Indeed, the clearest statement Federal Respondents offer regarding the validity of the Consent Judgment is the vague assurance that non-parties other than Applicants may be able to successfully collaterally attack it in the future. U.S. Opp. 4, 21, 23. Yet, Federal Respondents affirmatively oppose any action that would allow *Efficient Case and Docket Management in Immigration Proceedings*, 89 Fed. Reg. 46742 (May 29, 2024) (the Rule)—their own duly promulgated regulation—to remain in force for even a few additional months pending judicial review.

This unlikely scenario is the consequence of the continued proliferation of rulemaking by collusive acquiescence. The Executive Office for Immigration Review

(EOIR) could have followed the APA in seeking to withdraw the Rule. Indeed, during the first Trump administration, EOIR followed notice-and-comment procedures in issuing a rule that reflected its views regarding administrative closure. *See Appellate Procedures and Decisional Finality in Immigration Proceedings; Administrative Closure*, 85 Fed. Reg. 81588 (Dec. 16, 2020). Yet here, EOIR instead colluded with Texas to secure the Rule's invalidation. Unless and until this Court firmly indicates that federal jurisdiction is not to be misused in this manner, and that *Perez v. Mortgage Bankers Ass'n*, 575 U.S. 92 (2015), retains vitality, new and increasingly audacious collusive settlements will only continue to proliferate.

Respondents insist that the dubious judgment invalidating the Rule should nonetheless remain in force because Applicants lack standing to challenge it. But Applicants ask nothing more than that the allegations in Texas's own successful complaint be taken as true. The district court's judgment necessarily reflects a judicial finding that increased removals are a predictable consequence of elimination of the Rule and that these removals will affect jurisdictions with large immigrant populations (like both Texas and the Cities) at sufficient scale that there is no need to identify specific immigrants who will be removed. Federal Respondents' belated interest in challenging the underpinnings of that determination should not deprive Applicants of the ability to rely upon it. It would be profoundly perverse if the federal government's selective assertion of jurisdictional defenses, and the district court's application of a blatant double standard, were sufficient to insulate a collusive judgment from review. In any case, Applicants are not merely uninterested

bystanders, but rather, face direct and meaningful injuries as a result of a judgment that upends many thousands of immigration cases and predictably leads to the removal of the Cities' residents.

Texas also offers assorted other arguments, but none casts doubt on either the certworthiness of the issues or the prospect of ultimate reversal. The district court's judgment, which invalidated a duly promulgated regulation in a single day and without adversarial process, should be stayed.

ARGUMENT

I. THIS COURT IS LIKELY TO GRANT CERTIORARI

Respondents never meaningfully engage with the stakes of this case or the “host of important questions” regarding rulemaking-by-collusive-acquiescence that it implicates. *Arizona v. City & County of San Francisco*, 596 U.S. 763, 766 (2022) (Roberts, C.J., concurring, joined by Thomas, Alito, & Gorsuch, JJ.). Respondents likewise do not and cannot deny that this case would be a particularly compelling vehicle for addressing these important issues because it involves a novel and particularly egregious innovation in this area: DOJ announced in advance that it would not defend the Rule and then colluded with the plaintiff from the moment suit was filed. Nor do Respondents identify any respect in which the template established here does not allow for rank circumvention of the APA's rulemaking requirements in any case involving a disfavored regulation. And Federal Respondents do not even deny that the underlying merits question of whether EOIR's longstanding practice of administrative closure is statutorily authorized is itself worthy of this Court's review.

In the face of these weighty and certworthy questions, Respondents insist that a petition for certiorari in this case would be unlikely to succeed because it would involve only a factbound question of intervention law that this Court would be unlikely to hear. U.S. Opp. 22; Tex. Opp. 15. But as Applicants explained (at 15–17), cases involving the collusive settlement of APA claims are unavoidably bound up in questions of whether putative intervenors should be allowed to intervene. Thus, the Court is unlikely to view the threshold question of whether Applicants have satisfied the standards for intervention in a vacuum, divorced from the context in which the question arises. Here, given the blatant misuse of federal courts to evade democratic processes and the APA, there is at least a reasonable prospect that this Court would grant certiorari to correct this abuse.

Arizona v. Mayorkas is instructive. In opposing the application for stay pending certiorari there, the federal government argued that this Court would be unlikely to grant certiorari to consider a “factbound decision” denying intervention that “does not conflict with any decision of another court of appeals or otherwise warrant further review.” Opp. 18, *Arizona v. Mayorkas*, No. 22A544 (U.S. Dec. 20, 2022). The federal government further argued that “derivative effects of a federal policy on the States’ own governmental activities do not satisfy Article III or the standards governing intervention.” *Id.* at 5. Yet, this Court was undeterred and construed the application as a petition for certiorari, which it promptly granted. *See* 143 S. Ct. 478 (2022). Federal Respondents insist (at 23 & n.*) that the Article III objection there was limited to the question of whether the *Mayorkas* petitioners had

Article III standing to seek a stay pending appeal, but regardless, issues related to a putative intervenor’s specific interests could nonetheless have complicated the Court’s resolution of the case. The clear lesson of *Mayorkas* is that in the context of interventions that are sought to prevent rulemaking by collusive acquiescence, this Court takes account of the broader context in evaluating certworthiness.

Texas notes that the *San Francisco* concurrence did not decide whether “litigation acquiescence violate[s] the APA,” Tex. Opp. 13, but Texas itself recently told the Court that it does, see Appl. 14. Texas also insists that the lesson of *City & County of San Francisco* is that there are too many threshold issues implicated by such cases for the Court to grant certiorari to address this collusive practice. Tex. Opp. 13–14, 16. But the concurrence in that case did not suggest that the host of important questions identified there should remain forever unresolved. And this case provides a cleaner vehicle than *San Francisco* because there are no concerns regarding mootness or *Munsingwear* vacatur. See 596 U.S. at 766.

Federal Respondents also argue (at 23–24) that the problem of rulemaking by collusive acquiescence is best addressed by cabining the authority of courts to grant universal vacatur of federal regulations, a measure the Solicitor General recently urged this Court to take. See Pet. for Cert., *Department of Health and Human Services v. Texas Medical Ass’n*, No. 26-491 (U.S. Oct. 14, 2026) (*TMA*). There is a certain irony to the Solicitor General pointing to the *TMA* cert petition—which argues that the APA does not authorize universal vacatur, the very remedy the district court entered (along with an injunction) against the Rule at issue here—as a reason to

allow the Consent Judgment to remain in force. *TMA* (which arises from the Fifth Circuit) is also an apt reminder that the federal government is perfectly willing to press its remedial arguments in the face of adverse Fifth Circuit precedent when the government is not actively seeking judicial invalidation of its own regulations.

Furthermore, it is speculative at this point whether certiorari will be granted in *TMA*, let alone whether this Court would ultimately adopt the Solicitor General's position on the merits. But even beyond those issues, the Federal Respondents overstate the extent to which narrowing the scope of district courts' remedial authority would defuse the issue of collusive rulemaking. Even party-specific relief can substantially upend the status quo, especially when, as here, the plaintiff is a large State (or a coalition of ideologically aligned States). The important questions posed by the federal government's willingness to collude to invalidate and enjoin its own regulations will persist and merit this Court's attention regardless.

II. APPLICANTS HAVE ARTICLE III STANDING

A. The Cities have standing

Respondents' central objection is that the Cities have not *proved* their injuries. But the district court assessed futility under the Rule 12(b)(6) standard: "factual allegations are assumed true, the pleading is construed liberally." App. 88a (citing *United States v. Texas*, 181 F.4th 548, 553–54 (5th Cir. 2026)). Texas defended the district court's reliance on that futility framework below, Tex. C.A. Opp. 7, and neither respondent disputes it here. Under that standard, courts "must accept as true all material allegations . . . and must construe the complaint in favor of the [claimant]." *Warth v. Seldin*, 422 U.S. 490, 501 (1975). "[G]eneral factual allegations

of injury resulting from the defendant’s conduct may suffice,” because courts “presum[e] that general allegations embrace those specific facts that are necessary to support the claim.” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992). Yet Respondents insist that the Cities identify a specific taxpayer, crime victim, or recalendared case. U.S. Opp. 3, 12, 15–16; Tex. Opp. 18, 21. That is a demand for proof the standard does not require.

The Cities need nothing more than the premise Texas itself pleaded and the district court accepted. Texas alleged that vacatur “will necessarily reduce the number of cases administratively closed and, therefore, reduce the number of illegal aliens permitted to remain.” App. 27a. Respondents call the Cities’ injuries speculative because they depend on removals. U.S. Opp. 11–13; Tex. Opp. 17–18. But more removals are “the whole point” of the judgment Texas and Federal Respondents jointly sought. *Cf. Diamond Alt. Energy, LLC v. EPA*, 606 U.S. 100, 118 (2025) (“[I]f invalidating the regulations would change nothing in the market, why are EPA and California enforcing and defending the regulations?”). Those removals will cost the Cities income-tax revenue from work-authorized residents, App. 53a ¶¶ 12–16; App. 81a–82a ¶ 9, and the cooperation of crime victims who, without closure, face removal while prosecutors still need them, App. 82a ¶ 10; App. 74a ¶ 17; App. 83a ¶ 18. *See* Appl. 19–21. If Texas’s premise was enough to support a judgment entered the day its complaint was filed, it is enough to support the Cities’ standing to appeal that judgment.

Nor is Texas differently situated. Every argument Federal Respondents make against the Cities’ standing applies equally to Texas. Federal Respondents say the Rule does not regulate the Cities. U.S. Opp. 11. It does not regulate Texas either. The Cities’ injury depends on a “multi-step chain” of decisions by immigration judges and DHS. *Id.* at 2–3. So does Texas’s. The Cities do not identify an individual noncitizen who will be removed. *Id.* at 12. Neither did Texas. Federal Respondents’ principal attempt to distinguish Texas—that administrative closure supplies “legal benefits” such as “work authorization,” *id.* at 21—describes the very source of the Cities’ tax revenue (and resulting injury). App. 53a ¶¶ 12–14; App. 81a–82a ¶ 9. Nor do the Cities seek to keep noncitizens “with valid removal orders” in the country, U.S. Opp. 21; an administratively closed case has no final removal order to execute. And *United States v. Texas*, on which Federal Respondents rely (at 3, 13), held that States lacked standing to challenge federal immigration-enforcement policy notwithstanding the costs they alleged. 599 U.S. 670, 680 & n.3 (2023).

Respondents’ objection that the judgment does not require any closed case to be recalendared, U.S. Opp. 3, 12, 18; Tex. Opp. 18, 24, fails twice over. *First*, recalendaring is the predictable and intended consequence of the Consent Judgment. The parties sought the judgment precisely because it would “reduce the number of cases administratively closed.” App. 27a. Nor do Federal Respondents deny that the Consent Judgment spurred recalendaring motions. Indeed, that appears to be happening across the country. *See, e.g.*, Catholic Legal Imm. Network, Inc., Updates on Administrative Closure and Termination: The State of Play 3 (Sept. 2026)

(“[P]ractitioners have reported another wave of motions to recalendar being filed by [federal government attorneys] after the [district court’s] decision.”), <https://perma.cc/74X6-7V4V>.

Second, and more fundamentally, the Cities’ injuries do not depend on recalendaring. Even if no closed case reopens, the prospective effects are significant. Active cases that would have qualified for closure or termination under the Rule will instead continue. Those cases belong not only to U visa petitioners but also to asylum and TPS applicants, among others, who may work while their cases are pending. *See* 8 C.F.R. § 274a.12(c)(8), (19). Indeed, Texas’s suit depends on the proposition that cases that would otherwise be administratively closed or terminated will now be “adjudicated to completion, and [the noncitizens] removed.” App. 25a. Take that premise as true, and vacatur will produce more removals nationwide. That will cost the Cities tax revenue as their taxpayers are removed, App. 53a ¶¶ 12–16; App. 81a–82a ¶ 9, and will impair public safety as their crime victims decline to cooperate with law enforcement, App. 74a ¶ 17; App. 83a ¶ 18. Texas cannot claim that vacatur will remove noncitizens across the country while insisting that none of them will be the Cities’ taxpayers or crime victims.

The Cities’ tax injury is precisely the kind that *Wyoming v. Oklahoma*, 502 U.S. 437 (1992), recognizes, and Respondents’ efforts to distinguish it as insufficiently “direct” fail. U.S. Opp. 13–14; Tex. Opp. 18–19. In *Wyoming*, the statute regulated Oklahoma utilities, not Wyoming. The State’s injury was “direct” even though it arose from those purchasers’ decisions, which reduced the coal sales Wyoming taxed. 502

U.S. at 447–48. In *Diamond*, the fuel producers’ standing likewise depended on how automakers and consumers would respond if California’s standards were invalidated, and the Court drew “commonsense inferences” about that response. 606 U.S. at 116; *see id.* at 117–20. That principle is not confined to markets: “[a]cross contexts,” courts may draw such inferences about “third party behavior.” *First Choice Women’s Res. Ctrs., Inc. v. Davenport*, 608 U.S. 174, 189–90 (2026). The chain from vacatur to removals to lost tax revenue is no less predictable. Appl. 19–20. *Florida v. Mellon*, on which Federal Respondents rely, is different. There, the loss depended on speculation that taxpayers would choose to “withdraw property from the state.” 273 U.S. 12, 17–18 (1927). Here, the Cities’ taxpayers will be removed through the very process Texas sued to set in motion. App. 27a.

Nor is the Cities’ loss the “decline in general tax revenues” that *Wyoming* distinguished. U.S. Opp. 14 (quoting 502 U.S. at 448). The Cities allege “a loss of specific tax revenues,” 502 U.S. at 448, in the form of municipal income taxes paid by work-authorized residents who now face removal. App. 53a ¶¶ 12–16; App. 81a–82a ¶ 9.

The Cities’ law-enforcement injury is just as concrete. Federal Respondents say the Cities never allege a resident with a pending U visa petition in closed proceedings. U.S. Opp. 15. They do. App. 84a ¶¶ 20–21. Federal Respondents call the Cities’ theory “speculation about the unfettered choices made by independent actors.” U.S. Opp. 16–17. But as Texas explained, closure is a “well-understood incentive” to which third parties will predictably respond. App. 25a. And Federal Respondents’

“other mechanisms” are no substitute. U.S. Opp. 16. Administrative closure took a case off the “active calendar.” *Id.* at 5 (quoting *Matter of Avetisyan*, 25 I&N Dec. 688, 692 (BIA 2012)). A continuance does not. The case stays “on the active docket,” Tex. Opp. 33, and U visa petitioners no longer enjoy a “presumption in favor of a continuance,” *Matter of L. Ramirez*, 30 I&N Dec. 157, 160 (BIA 2026). Deferred action, too, leaves the case on the active docket. It does not foreclose removal but makes a noncitizen “a lower priority for removal,” 3 USCIS Policy Manual pt. C, ch. 5, § C.7, <https://perma.cc/L5VT-S4XL> (captured Oct. 23, 2026), and it comes, at the earliest, after a bona fide determination that now takes a median of 15.2 months and that USCIS issues 80 percent less often than it did on average in fiscal year 2025. USCIS, Number of Form I-918, *Petitions for U Nonimmigrant Status, by Fiscal Year, Quarter, and Case Status: Fiscal Year 2026, Quarter 3 (2026)*, <https://perma.cc/2BHA-53WB> (captured Oct. 23, 2026); USCIS, *Number of Service-wide Forms by Quarter, Form Status, and Processing Time: Fiscal Year 2026, Quarter 3 (2026)*, <https://perma.cc/GDQ6-BT8P> (captured Oct. 23, 2026). Without administrative closure, victims who come forward face active removal proceedings while their petitions wait. That is what keeps them from coming forward. App. 83a ¶ 18.

B. Centro Legal has standing

As Applicants explained (at 22–25), Centro Legal also suffers an Article III injury traceable to the Consent Judgment. By vacating the Rule, the Consent Judgment directly impairs the availability of administrative closure—a procedural mechanism on which Centro Legal relies in its work—and will trigger contractual obligations to represent existing clients in renewed proceedings, at considerable cost

to Centro Legal. App. 63a–64a ¶¶ 21–24, 69a ¶ 36. Those “[m]onetary costs are of course an injury.” *Diamond*, 606 U.S. at 111; *see also, e.g., Dep’t of Com. v. New York*, 588 U.S. 752, 767 (2019) (holding that States had standing based, in part, on anticipated losses of federal funding).

Respondents’ contrary arguments rest almost entirely on this Court’s decision in *Alliance for Hippocratic Medicine*. That decision does not support their position. The Court explained that the plaintiffs—doctors who objected to the FDA’s rules regarding mifepristone—lacked “standing to sue simply because *others* are allowed to engage in certain activities.” 602 U.S. at 393. The doctors attempted to rely on a “speculative” chain of reasoning that “lack[ed] record support” to demonstrate downstream financial injuries from the availability of a drug they neither prescribed nor used. *Id.* at 390. In that context, this Court declined to create a unique “doctrine of ‘doctor standing’” that would allow physicians to challenge “general public safety requirements” merely because those regulations may result in some downstream injuries that they could treat. *Id.* at 391.

Those facts bear little resemblance to the injuries Centro Legal asserts here. To start, Centro Legal is not challenging the under-regulation of some third party. Rather, it contests the Consent Judgment’s effect on its “core business activities.” *Alliance*, 602 U.S. at 395. As the record demonstrates, Centro Legal uses administrative closure in its core business of representing clients, including in its business decisions about how many clients to take. *See* App. 54a–61a ¶¶ 3–14. Respondents do not, and could not, contest that such representation is Centro Legal’s

core business. *See, e.g.*, App. 54a–56a ¶¶ 3–10. As a result, a change to the governing legal regime that makes that business more costly and less effective directly harms Centro Legal. That is why Centro Legal previously sought and obtained a preliminary injunction regarding the 2020 rule restricting administrative closure, *see Centro Legal de la Raza v. EOIR*, 524 F. Supp. 3d 919 (N.D. Cal. 2021), and dismissed its case only after the Rule rescinded the 2020 regulations.

The happenstance that Centro Legal’s business activities are pro bono legal representation, rather than some for-profit enterprise, makes no difference to the standing analysis. For-profit businesses unquestionably have Article III standing to contest a regulatory change that would “deprive them of potential clients”—the very injury Federal Respondents dismiss, U.S. Opp. 19. In *Pierce v. Society of Sisters*, 268 U.S. 510 (1925), for example, private schools had standing to challenge a state law that restricted their client base, “even though parents were the directly regulated parties.” *Diamond*, 606 U.S. at 115. The outcome would have been no different if the schools were nonprofit organizations. The fact that the challenged regulation makes the organization’s business activities more difficult, and restricts its ability to serve clients, constitutes an Article III injury. And to the extent that the Federal Respondents suggest (at 18) these injuries are “self-inflict[ed]” because Centro Legal has chosen to engage in pro bono immigration representation, that merely reprises the argument this Court rejected in *FEC v. Cruz*, 596 U.S. 289, 296–97 (2022).

Respondents mistakenly suggest (U.S. Opp. 19–20; Tex. Opp. 23) that Centro Legal’s injuries are too attenuated to support standing. To the contrary, those injuries

are the direct, predictable, and intended consequences of the Consent Judgment. As explained above, the parties sought the Consent Judgment precisely because it would reduce the availability of administrative closure, and recalendaring is its predictable result. *Supra* pp. 8-9. Recognizing that result requires no speculative chain of causation about distant third-party decisions akin to the one rejected in *Alliance*, but instead turns on the same “commonsense inferences” that support the Cities’ standing, *supra* p. 10; see *Diamond*, 606 U.S. at 116; *First Choice*, 608 U.S. at 190, and that Texas itself insisted upon in demonstrating its own standing. Centro Legal’s 80 to 100 administratively closed cases are among those that stand to return to active dockets. App. 61a–63a. It is therefore entirely predictable that Centro Legal will suffer the attendant financial and workload harms.

At bottom, Respondents ask the Court to endorse a rule of standing that imposes uniquely difficult barriers for legal-services providers to demonstrate a cognizable injury. But this Court has “repeatedly rejected requests to create special standing rules for particular litigants.” *Bost v. Ill. State Bd. of Elections*, 607 U.S. 71, 86 (2026) (Barrett, J., concurring in judgment); see also, e.g., *Alliance*, 602 U.S. at 392 (rejecting a standing theory that would create different standing rules for different professions). For good reason: Article III does not create disfavored classes of litigants. Standing is an “unchanging part of the case-or-controversy requirement,” *Lujan*, 504 U.S. at 560, and there is no basis for requiring legal-services providers to make a heightened showing of their organizational standing. Far from opening the

floodgates to litigation, recognizing Centro Legal’s standing would represent an evenhanded application of the neutral rules this Court’s precedents establish.¹

III. THE OTHER FACTORS FAVOR A STAY

A. Applicants have a fair prospect of reversal on the merits

For the reasons set forth in our application (at 26–33), there is a fair prospect this Court will reverse on the merits. The judgment was entered without jurisdiction, enables evasion of the APA’s rulemaking procedures, and does not faithfully apply the underlying statutory law. In addition, the Consent Judgment far exceeds the scope of any permissible relief.

Federal Respondents do not meaningfully contest any of these fundamental flaws with the judgment. Instead, they repeatedly suggest (at 4, 21, 23) that the Consent Judgment may be collaterally attacked. That all but concedes that Applicants have raised important, meritorious issues that create a fair prospect of reversal.

For its part, Texas attempts to defend the Consent Judgment, but each of its arguments falls far short.

¹ The Federal Respondents’ citation (at 19) to *INS v. Legalization Assistance Project of the Los Angeles County Federation of Labor*, 510 U.S. 1301 (1993) (O’Connor, J., in chambers), is particularly misplaced because that decision concerned the “zone of interests” test that governs whether a given plaintiff can assert a cause of action under the APA. *Id.* at 1305. It is not an Article III case and has little bearing on whether Applicants have a constitutionally sufficient stake in this case to intervene as defendants.

1. Texas does not deny that the parties coordinated this suit to obtain a preordained outcome. Nor does it deny that from the moment the complaint was filed, “both litigants desire[d] precisely the same result.” *Moore v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 47, 48 (1971) (per curiam). As a result, it fails to identify any adverse interests the parties possessed at any point in this litigation. Instead, Texas offers cursory citations to *INS v. Chadha*, 462 U.S. 919 (1983), and *United States v. Windsor*, 570 U.S. 744 (2013), for the proposition that the district court possessed jurisdiction. Tex. Opp. 28. Neither case involved the kind of rank collusion evident here, and each involved adversarial presentation.

2. Texas next suggests that the APA’s notice-and-comment procedures for repealing a rule, 5 U.S.C. § 553(b), are inapplicable because the parties proceeded via Consent Judgment. Tex. Opp. 29–31. Texas makes no effort to reconcile this argument with its prior positions before this Court. *See, e.g.*, Br. for Pet’rs at 3, *Arizona v. City & County of San Francisco*, No. 20-1775 (U.S. Dec. 13, 2021) (*S.F. Br.*).

In any event, Texas misconstrues Applicants’ argument. The question is not whether Section 553 binds a court. *Contra* Tex. Opp. 29–31. Rather, the question is whether Federal Respondents evaded their own legal obligations by engaging in “rulemaking-by-collusive-acquiescence.” *City & County of San Francisco*, 596 U.S. at 766 (Roberts, C.J., concurring). Neither respondent disputes that, if DOJ wished to repeal a duly promulgated regulation, it would need to follow notice-and-comment procedures. And Texas does not dispute that an agency could not revoke a rule

without following notice and comment merely by confessing some newfound defect. Tex. Opp. 30. In light of that, it is hard to see why agencies should be able to leverage consent judgments in friendly litigation to evade those strictures. After all, this Court frequently has observed that “a government official cannot do indirectly what she is barred from doing directly.” *Nat’l Rifle Ass’n of Am. v. Vullo*, 602 U.S. 175, 190 (2024). That is precisely what DOJ has accomplished here by substituting manufactured litigation for proper rulemaking procedures.

3. Texas’s explanation (at 32–34) of why the Consent Judgment correctly construes the INA largely elides the operative statutory text. It offers no meaningful account of DOJ’s authority to adopt rules governing its own agency proceedings, 8 U.S.C. § 1103(g)(2), nor of the Homeland Security Act of 2002’s carry-forward of preexisting authorities and functions, Pub. L. No. 107-296, § 1102, 116 Stat. 2135, 2274. *See* Appl. 28–30. And Texas now retreats from the sole authority cited to and relied upon by the district court, *Hernandez-Serrano v. Barr*, 981 F.3d 459 (6th Cir. 2020); *see* App. 45a–46a, 49a. Texas belatedly acknowledges (at 33) that “*Hernandez-Serrano* does not resolve this case,” because there, the Sixth Circuit held only that an earlier regulation, which let immigration judges take actions necessary for the “disposition” of a case, did not itself authorize administrative closure. 981 F.3d at 463–64. It did not decide whether the INA permits the Attorney General to authorize administrative closure by regulation, as the Rule does. *But see* App. 49a (district court’s final judgment citing only to *Hernandez-Serrano* for the proposition that “no

statute authorizes immigration judges to indefinitely administratively close or suspend adjudication of a case before them”).

To the extent Texas engages with the Rule’s legality, its argument is largely *ipse dixit*. That, again, illustrates the fundamental problem with this suit: the district court never received adversarial briefing on the key merits questions before entering judgment, so it had no opportunity to weigh these unsupported assertions against countervailing views. This Court is likely to conclude, as several circuits previously recognized, that “[a]dministrative closure is a procedural device that temporarily takes a removal case off of an immigration judge’s calendar.” *Meza Morales v. Barr*, 973 F.3d 656, 664 (7th Cir. 2020). As a result, the Rule is a proper exercise of the Attorney General’s authority to establish procedures governing immigration courts.

4. Finally, Texas makes essentially no effort to defend the injunction’s patent overbreadth. Its opposition does not dispute (at 34–36) that the regulation is severable, and it cannot explain why it suffers any injury either from unchallenged portions of the Rule or from hypothetical future rulemakings regarding administrative closure. Instead, Texas half-heartedly suggests (at 35) that Applicants have no interest in the Rule’s other provisions. Centro Legal clearly identified its interest in termination as well as administrative closure, App. 63a, and it certainly has a more concrete interest in immigration-court procedures than Texas does. In any event, severability is a remedial inquiry that does not turn on “the interests of the parties.” *Levin v. Com. Energy, Inc.*, 560 U.S. 413, 427 (2010) (quoting *Califano v. Westcott*, 443 U.S. 76, 96 n.2 (1979) (Powell, J., concurring in part and dissenting in

part)). At an absolute minimum, Applicants are likely to demonstrate that the Consent Judgment's overbroad relief must be narrowed. *Cf. Trump v. CASA, Inc.*, 606 U.S. 831, 841 (2025).

B. The equities favor a stay

Respondents' irreparable-harm arguments largely repackage their standing arguments. U.S. Opp. 24–25; Tex. Opp. 36–38. There is no suggestion that Applicants' harms, though cognizable, can be redressed at the conclusion of the litigation. The same harms that establish standing also establish irreparable injury.

The remaining factors are not close. The Rule was adopted through notice and comment and can be repealed only the same way. *Mortg. Bankers Ass'n*, 575 U.S. at 101. EOIR did not do so. Instead, it obtained vacatur, and a permanent injunction binding future administrations, through a Consent Judgment entered within hours of the complaint. App. 1a, 44a–50a. Texas argues that a stay is unwarranted because DOJ has not sought one. Tex. Opp. 40. That is the problem, not the answer. The desire of federal officials to circumvent the APA's rulemaking provisions does not detract from the public's interest in seeing validly enacted regulations continue in force until they are validly repealed. Texas once agreed: it told this Court that the federal government must “respect [a] duly enacted Rule until it repeals it through notice-and-comment rulemaking.” Appl. 28 (quoting *S.F.* Br. 3).

Texas, meanwhile, will suffer little from a stay. It lived with the Rule for two years and sued only after EOIR announced it would no longer defend it. App. 1a, 107a. Nor would Federal Respondents be harmed by adhering to the Rule until it is

validly rescinded. EOIR itself has instructed its adjudicators that the Rule remains binding until then. App. 107a.

CONCLUSION

The Court should stay the Consent Judgment pending the Fifth Circuit's disposition of Applicants' appeal and, if necessary, the disposition of a timely petition for a writ of certiorari.

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OCTOBER 2026