20-1775 ARIZONA V. SAN FRANCISCO, CA

DECISION BELOW: 992 F.3d 742

LOWER COURT CASE NUMBER: 19-17213, 19-17214, 19-35914

QUESTION PRESENTED:

Under the Immigration and Nationality Act, 8 U.S.C. §§1101 *et seq*., an alien is "inadmissible" if, "in the opinion of the [Secretary of Homeland Security] at the time of application for admission or adjustment of status, [the alien] is likely at any time to become a public charge." 8 U.S.C. §1182(a)(4)(A). Following notice-and-comment rulemaking, the United States Department of Homeland Security (DHS) promulgated a final rule (the "Rule") interpreting the statutory term "public charge" and establishing a framework for applying it.

Litigation about the Rule ensued, and the Second, Seventh, and Ninth Circuits affirmed preliminary injunctions, while the Fourth Circuit initially reversed. The United States sought review in multiple cases, and this Court granted review of the Second Circuit's opinion. *DHS v. New York*, No. 20- 449 (U.S. Feb. 22, 2021). But the United States suddenly announced it would no longer pursue its appeals. The result was to leave in place a partial grant of summary judgment and vacatur of the Rule in one district court, applying nationwide-evading this Court's review and the procedures of the APA. The Petitioning States quickly moved to intervene in the Ninth Circuit to protect their interests previously represented by the United States. The Ninth Circuit, however, denied the Petitioning States' motion.

The questions presented are:

1. Whether States with interests should be permitted to intervene to defend a rule when the United States ceases to defend.

2. Whether the Rule is contrary to law or arbitrary and capricious.

3. Alternatively, whether the decision below as to the Rule should be vacated as moot under *Munsingwear.*

Limited to Question 1 presented by the petition

CERT. GRANTED 10/29/2021