

No. _____

IN THE
Supreme Court of the United States

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

Applicants,

v.

STATE OF TEXAS, *et al.*,

Respondents.

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

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PARTIES TO THE PROCEEDING

Applicants (movants-appellants below) are the City of Baltimore, Maryland; the City of Columbus, Ohio; the City of New Haven, Connecticut; and Centro Legal de la Raza.

Respondent (plaintiff-appellee below) is the State of Texas.

Respondents (defendants-appellees below) are the United States Department of Justice; Todd Blanche, in his official capacity as United States Attorney General; Sirce E. Owen, in her official capacity as Acting Director of the Executive Office for Immigration Review; and the Executive Office for Immigration Review.*

RELATED PROCEEDINGS

U.S. District Court (N.D. Tex.):

State of Texas v. U.S. Department of Justice, No. 7:26-cv-00070 (June 22, 2026)
(order and final judgment)

State of Texas v. U.S. Department of Justice, No. 7:26-cv-00070 (August 21, 2026) (order denying motion to intervene)

State of Texas v. U.S. Department of Justice, No. 7:26-cv-00070 (September 2, 2026) (order denying motion for a stay pending appeal)

U.S. Court of Appeals (5th Cir.):

State of Texas v. United States of America, No. 26-10794 (September 29, 2026)
(order denying motion for a stay pending appeal and for summary reversal of the denial of intervention)

* Official capacity defendants are automatically substituted pursuant to Federal Rule of Civil Procedure 25(d), Federal Rule of Appellate Procedure 43(c), and this Court's Rule 35.3.

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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**TO THE HONORABLE SAMUEL A. ALITO, JR., ASSOCIATE JUSTICE OF
THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE
FOR THE FIFTH CIRCUIT:**

Pursuant to Rule 23 of the Rules of this Court and the All Writs Act, 28 U.S.C. § 1651, applicants the City of Baltimore, et al., respectfully apply for a stay of the judgment entered on June 22, 2026, by the United States District Court for the Northern District of Texas (App. 49a-50a), pending the consideration and disposition of their appeal to the United States Court of Appeals for the Fifth Circuit and, if the court of appeals affirms, pending the timely filing and disposition of a petition for a writ of certiorari and any further proceedings in this Court.

Four members of this Court recently noted that a “host of important questions” arise when the federal government seeks to evade the strictures of the Administrative Procedure Act (APA) through “rulemaking-by-collusive acquiescence.” *Arizona v. City & County of San Francisco*, 596 U.S. 763, 766 (2022) (Roberts, C.J., concurring, joined by Thomas, Alito, & Gorsuch, JJ.) (quoting *City & County of San Francisco v. U.S. Citizenship and Immigr. Servs.*, 992 F.3d 742, 744 (9th Cir. 2021) (VanDyke, J., dissenting)). A new administration hostile to a regulation promulgated by its predecessor can leverage litigation brought by an ideologically aligned party “to circumvent the usual and important requirement, under the Administrative Procedure Act, that a regulation originally promulgated using notice and comment . . . may only be repealed through notice and comment.” *Id.*; see also *Danco Labs., LLC v. All. for Hippocratic Med.*, 143 S. Ct. 1075 (2023) (Alito, J., dissenting) (highlighting that it “has become the practice” for agencies to “leverag[e]” district

court injunctions to “implement[] a desired policy while evading both necessary agency procedures and judicial review”).

This case involves an egregious new extension of this phenomenon. The government did not merely leverage a convenient loss to undo agency action, but rather, announced in advance that it would not defend a disfavored regulation and then colluded with the challenger from the moment that suit was filed. The result is that a significant regulation that established certain important procedures in immigration courts was erased over the course of a single day, without meaningful judicial review, public participation, or adherence to the APA’s rulemaking requirements.

The regulation in question, *Efficient Case and Docket Management in Immigration Proceedings*, 89 Fed. Reg. 46742 (May 29, 2024) (the Rule), was issued by the Executive Office for Immigration Review (EOIR) after a full notice-and-comment process enabled the public to participate in the rulemaking. Among other things, the Rule codified a preexisting practice under which immigration judges had discretion to administratively close immigration proceedings when doing so would promote efficiency or protect due process rights. Thus, for example, a crime victim or neglected juvenile with a credible pending application for affirmative relief before U.S. Citizenship and Immigration Services (USCIS) could be spared having to defend themselves in a removal proceeding while simultaneously undergoing the often lengthy USCIS adjudication process.

Administrative closure has existed in some form for decades. *See, e.g., Garcia-DeLeon v. Garland*, 999 F.3d 986, 989 (6th Cir. 2021). But the practice has become controversial, with critics describing it as facilitating a form of de facto amnesty. After the change in administration, EOIR’s new Acting Director issued a policy memorandum endorsing these criticisms and stating that EOIR would not defend the Final Rule against legal challenge. App. 107a. But EOIR did not then undertake the process contemplated by 5 U.S.C. § 553 for repealing an agency regulation.

Instead, Texas challenged the Rule in the Wichita Falls Division of the Northern District of Texas, and the U.S. Department of Justice (DOJ) immediately joined in a motion to have final judgment entered in Texas’s favor. In so doing, DOJ chose to forgo available jurisdictional and remedial arguments that the government routinely raises when confronted with similar challenges to even those federal regulations it declines to defend on the merits. The joint motion even expressly acknowledged that DOJ was asking for a form of relief—universal vacatur—that it regularly argues is legally unavailable, but which DOJ said it would accept here. And in a sharp departure from longstanding DOJ practice, DOJ also asked that the rule not only be vacated, but that a permanent injunction be entered that would bar the agency from ever adopting any similar regulation in the future. *Cf. Horne v. Flores*, 557 U.S. 433, 449 (2009) (“consent decrees present a risk of collusion between advocacy groups and executive officials who want to bind the hands of future policymakers”). The district court entered the consent judgment, including the requested permanent injunction, on the same day suit was filed. The court also

vacated the Rule nationwide and in its entirety, even though Texas had only challenged the legality of the Rule’s administrative closure provisions and the Rule contains both provisions addressing separate issues and an express severability clause.

Applicants are three municipalities with large immigrant populations (Baltimore, Maryland; Columbus, Ohio; and New Haven, Connecticut) (“the Cities”) and one legal services provider (Centro Legal de la Raza) that promptly sought to intervene to provide the defense of the Rule that the nominal defendants failed to offer. The Cities based their standing allegations on precisely the same logic that Texas invoked when asserting its own standing. Texas had alleged that administrative closure prevents the removal of noncitizens, whose continued presence inflicts financial costs on the state. The Cities explained that the same removals Texas alleged would necessarily follow from the judgment will encompass some of the Cities’ taxpayers. The Cities further explained that vacatur of the Rule undermines the protections conferred by U visa certifications, which the Cities’ law enforcement arms use to secure cooperation from immigrant crime victims. Centro Legal, in turn, explained that the consent judgment will necessitate its performance of unfunded legal work and erases a litigation victory that Centro Legal had obtained in a challenge to an earlier EOIR regulation that had been rescinded by the Rule.

The district court nonetheless denied intervention solely on the theory that each intervenor lacks Article III standing. The district court concluded the Cities’ allegations of harm were speculative, even though the Cities had merely asked the

court to credit the very allegations Texas itself had made in support of its own standing. The district court never attempted to reconcile its conclusion that the Cities did not have standing with the court's implicit conclusion that Texas *did* have standing on the very same logic—a conclusion necessary to the district court's decision to enter judgment on the merits in the case.

Applicants appealed from both the denial of their intervention motion and the underlying consent judgment, and that appeal remains pending. They promptly sought a stay of the consent judgment pending appeal, but that motion was denied by the Fifth Circuit without written opinion.

This Court has previously stayed a district court order vacating an agency policy when putative intervenors (including Texas) were seeking to establish their right to defend that policy in the federal government's stead. *See Arizona v. Mayorkas*, 143 S. Ct. 478 (2022) (per curiam). The same relief is warranted here, especially given the dramatic consequences that the district court's judgment invalidating the Rule will have on practice in the immigration courts with implications for “hundreds of thousands” of cases. App. 4a. This Court often grants a stay when a single district court vacates a significant federal policy nationwide. The situation here is more extreme because it is unclear whether even one judge has found the Rule unlawful after an independent merits analysis. *See Mi Familia Vota v. Fuentes*, 152 F.4th 1153, 1156 (9th Cir. 2025) (R. Nelson, J., dissenting) (explaining that “a court may enter a consent decree against a government defendant without finding that a statutory or constitutional violation has occurred”) (citation and

quotation marks omitted). At a minimum, the vacatur here was issued by a district court that did not have the benefit of adversarial presentation before entering a consent judgment on the same day suit was filed.

The need for interim relief is underscored by the collusion that infected this suit from its inception. This Court has long recognized the dangers of “friendly suit[s]” between nominal adversaries pursuing a shared goal, which both offend Article III and expose courts to being “misled into doing grievous harm to the public” by striking down legislative acts “upon agreed and general statements.” *Chicago & G.T. Ry. Co. v. Wellman*, 143 U.S. 339, 346 (1892). If a judgment procured through such open collusion is allowed to remain in effect, any agency can avoid the strictures of the APA by advertising its unwillingness to defend a disfavored regulation and by immediately acquiescing to nationwide relief. As long as this judgment serves as a viable template, this Court’s holding that agencies must “use the same procedures when they amend or repeal a rule as they used to issue the rule in the first instance” will be effectively a dead letter. *See Perez v. Mortg. Bankers Ass’n*, 575 U.S. 92, 101 (2015). And given agency incentives, such collusive suits will surely proliferate further.

STATEMENT OF THE CASE

A. The Administrative Closure Rule

Like federal courts, immigration courts have tools to manage their crowded dockets efficiently. One tool, known as administrative closure, operates to suspend removal proceedings in certain circumstances. *See, e.g.*, 8 C.F.R. § 1003.18(c)

(defining administrative closure as the “temporary suspension of a case”). This practice is longstanding. *See, e.g., Garcia-DeLeon*, 999 F.3d at 989 (“For at least three decades, immigration judges and the [Board of Immigration Appeals (BIA)] regularly administratively closed cases.”). In the Rule, EOIR used notice-and-comment procedures to adopt a regulatory framework governing administrative closure. DOJ invoked its rulemaking authority under the Immigration and Nationality Act (INA), 8 U.S.C. § 1103(g)(2).

The Rule authorizes administrative closure under certain conditions. *See* 8 C.F.R. § 1003.18(c)(3); *id.* § 1003.1(l). One such circumstance is when a noncitizen has a pending application for relief before USCIS, a separate agency. In circumstances where such relief would “provide the noncitizen with legal status or some other basis that would prevent enforcing an order of removal, thus eliminating the need for further removal proceedings,” administrative closure can promote efficiency by “reducing the immediate need to conclude removal proceedings.” 89 Fed. Reg. at 46745. But even if a case is administratively closed, the adjudicator can recalendar the case (i.e., resume proceedings) upon a party’s motion. 8 C.F.R. § 1003.18(c); *id.* § 1003.1(l)(2).

The Rule also adopted distinct changes to immigration court and BIA procedures. One procedure, known as termination, allows for disposition of a case in certain circumstances, including where the noncitizen has obtained lawful status

through a U visa.¹ *See* 8 C.F.R. § 1003.18(d); *id.* § 1003.1(m). Other provisions addressed the background check process for noncitizens, briefing schedules before the BIA, and the BIA’s authority to reopen cases sua sponte. 89 Fed. Reg. at 46743, 46766-67. Each of these other changes functioned independently from the administrative closure provisions, as the Rule’s express severability clause makes clear. *Id.* at 46786.

The Rule also largely rescinded an earlier EOIR regulation, Appellate Procedures and Decisional Finality in Immigration Proceedings; Administrative Closure, 85 Fed. Reg. 81588 (Dec. 16, 2020) (“the 2020 Rule”), which would have restricted administrative closure. The 2020 Rule was also adopted after notice-and-comment rulemaking. *See* Appellate Procedures and Decisional Finality in Immigration Proceedings; Administrative Closure, 85 Fed. Reg. 52491 (Aug. 26, 2020) (proposed rule). As discussed below, the 2020 Rule was preliminarily enjoined shortly after its issuance in a suit brought by Centro Legal. *See* 89 Fed. Reg. at 46742.

After the change in administration, EOIR’s Acting Director issued a policy memorandum stating that EOIR “could not—and will not—defend the [Rule] in good faith against legal challenge.” App. 107a. EOIR did not initiate the rulemaking that 5 U.S.C. § 553 requires to rescind a regulation.

¹ U nonimmigrant status, commonly known as a U visa, is available to certain crime victims who aid law enforcement in investigating or prosecuting crimes. *See generally* 8 U.S.C. §§ 1101(a)(15)(U), 1184(p); 8 C.F.R. § 214.14.

B. Procedural History

1. The complaint and same-day consent judgment. Nearly two years after the Rule's adoption, Texas filed suit, alleging that the Rule exceeds the agency's statutory authority. App. 1a-43a. Texas claimed standing on the theory that the Rule's administrative closure provisions permit undocumented individuals "to remain indefinitely in the United States by administrative closure rather than having their cases adjudicated to completion, and removed." App. 25a. Texas averred that vacatur of the Rule would "necessarily reduce the number of cases administratively closed and, therefore, reduce the number of illegal aliens permitted to remain indefinitely in the United States." App. 27a.

Within hours, and before any summons issued or DOJ had even noticed an appearance, the parties jointly moved for entry of a consent judgment. The joint motion asked the court to declare the Rule unlawful and vacate it, and to permanently enjoin DOJ from enforcing the Rule or promulgating similar regulations in the future. App. 44a-47a. The motion did not engage with the Rule's legal justifications; it simply recited that "[t]he Parties agree" that the Rule authorizes "indefinite administrative closure without legal justification" and "further agree" that the Rule "was inadequately justified under the circumstances and was arbitrary and capricious." App. 45a-46a. While DOJ joined the motion in full, it included a footnote stating its position that the APA does not authorize a court to vacate an agency rule, but that DOJ nonetheless "agrees not to pursue this position in this case." App. 45a.

That same day, the district court entered the consent judgment. It vacated the “Administrative Closure Rule”—defined as the entire Rule, including those portions distinct from administrative closure—nationwide. App. 49a-50a. It declared that “no statute authorizes immigration judges to indefinitely administratively close or suspend adjudication of a case before them.” App. 49a. It permanently enjoined Defendants from enforcing the Rule and from promulgating any regulation permitting immigration judges to administratively close proceedings “without reaching the merits of a case absent an express statutory basis to do so.” App. 50a. And it recorded the parties’ waiver of “any right to appeal.” *Id.*

2. The motion to intervene. Within the period for noticing a timely appeal, Applicants moved to intervene for the purpose of appealing the consent judgment. App. 87a.

The Cities: Baltimore, Columbus, and New Haven are local governments with substantial immigrant populations. App. 73a, 76a, 81a. They explained that if, as Texas avers, the judgment will result in more deportations of noncitizens across the United States, it will predictably impair the Cities’ municipal income-tax revenue because their taxpayers will be deported. App. 53a, 81a-82a. Moreover, the judgment undermines public safety by stripping certified U visa applicants of protection against removal, predictably making noncitizens less willing to cooperate with law enforcement. App. 82a-83a.

Centro Legal: Centro Legal represents noncitizens facing removal proceedings, including between 80 and 100 noncitizens with cases that have been

administratively closed. App. 63a. Recalendaring those cases would impose substantial uncompensated legal work on Centro Legal. App. 63a-70a. Also, Centro Legal was a lead plaintiff in a challenge to the 2020 Rule that would have similarly restricted administrative closure, and it obtained a preliminary injunction against that rule's enforcement. *See Centro Legal de la Raza v. EOIR*, 524 F. Supp. 3d 919 (N.D. Cal. 2021). The parties to that case stipulated to dismissal once the Rule rescinded the 2020 Rule, on the understanding that the 2020 Rule would not take effect and administrative closure would remain available. *See Centro Legal de la Raza v. EOIR*, No. 3:21-cv-00463 (N.D. Cal. Jan. 10, 2025), Dkt. No. 109.

3. The decisions below. The district court denied intervention solely on the theory that no Applicant has Article III standing, rendering intervention “futile.” App. 88a-94a. It did not address any of the requirements of Federal Rule of Civil Procedure 24. *See* App. 94a. As principally relevant here, the district court concluded the Cities' harms from the consent judgment were too attenuated to support standing because the judgment at most would lead to recalendaring of administratively closed cases, but that the federal government would continue to “exercise discretion to enforce any resulting removal order,” such that the Rule would not necessarily lead to the removal of any of the Cities' taxpayers or of crime victims cooperating with the Cities' law enforcement agencies. App. 91a. The district court offered no explanation why that same logic would not undermine Texas's assertion of standing, given that redress of its alleged injuries depends on the actual removal of noncitizens. The court also decided that, under Fifth Circuit precedent, Centro Legal lacked standing as a

nonprofit legal-services provider whose business activities would be affected by the judgment. App. 93a.

Applicants timely appealed both the denial of intervention and the underlying consent judgment. *See, e.g., Mausolf v. Babbitt*, 125 F.3d 661, 666 (8th Cir. 1997) (explaining that party denied intervention can file a protective notice of appeal from the judgment in the underlying suit). Both the district court (App. 95a) and the court of appeals (App. 99a) denied stays of the consent judgment pending appeal.

STANDARD OF REVIEW

A stay is warranted when there are: (1) “a reasonable probability” that this Court would eventually grant certiorari on the question presented in the stay application, (2) a fair prospect that the Court will reverse the decision 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). The Court also considers whether a stay would substantially injure the other parties interested in the proceedings and whether it would serve the public interest. *Ohio v. EPA*, 603 U.S. 279, 291 (2024).

REASONS FOR GRANTING THE STAY

I. THERE IS A REASONABLE PROBABILITY THAT THIS COURT WILL EVENTUALLY GRANT CERTIORARI

A. This Court Has Previously Granted Certiorari to Address the Important Questions Posed by Rulemaking Through Collusive Acquiescence and Is Reasonably Likely to Do So Again Here

1. This Court has repeatedly recognized in recent years the important and certiorari-worthy questions that arise when the federal government ceases defending its own regulatory action and other affected parties seek to intervene post-judgment

to provide that defense. *See Arizona v. City & County of San Francisco*, 142 S. Ct. 417 (2021); *Arizona v. Mayorkas*, 143 S. Ct. 478 (2022). Yet, this Court has been frustrated from providing needed clarification on this issue, which is squarely presented here. There is thus at least a reasonable probability that this Court will grant certiorari.

In *City & County of San Francisco*, this Court granted certiorari to answer the question: “Whether States with interests should be permitted to intervene to defend a rule when the United States ceases to defend.” Pet. for Cert., No. 20-1775 (June 23, 2021) (*S.F. Pet.*); *see also Arizona v. City & County of San Francisco*, 142 S. Ct. 417 (2021) (granting certiorari limited to the first question raised in the petition). Further developments in the case ultimately prevented the Court from reaching the issue. *See Arizona v. City & County of San Francisco*, 596 U.S. 763 (2022) (per curiam). But four members of this Court emphasized that a “host of important questions” remain unresolved regarding the appropriate treatment of cases involving rulemaking by collusive acquiescence. *Id.* at 766 (Roberts, C.J., concurring, joined by Thomas, Alito, & Gorsuch, JJ.). Likewise, in *Mayorkas*, this Court stayed a district court’s vacatur and granted certiorari to decide whether intervention should be allowed post-judgment to defend a policy the federal government sought to terminate, but again, subsequent developments led to the case being dismissed before the merits could be decided. *Arizona v. Mayorkas*, 143 S. Ct. 1312 (2023).

There is a substantial continuing need for this Court to address whether litigation tactics can be substituted for the APA’s requirement that a federal regulation adopted through notice-and-comment rulemaking may be rescinded only

through notice-and-comment rulemaking. *Mortg. Bankers Ass’n*, 575 U.S. at 101. Courts have long held that an agency may not “circumvent” its notice-and-comment obligations “merely by confessing that the regulations were defective in some respect.” *Consumer Energy Council of Am. v. FERC*, 673 F.2d 425, 447 n.79 (D.C. Cir. 1982), *aff’d*, 463 U.S. 1216 (1983). Texas, for its part, has told this Court that the question is certiorari-worthy and that the federal government cannot end-run the APA by “drop[ping] its litigation defenses and acquiesc[ing] to a final substantive judgment against it, especially one vacating its rule.” Br. for Pet. at 12, *Arizona v. City & County of San Francisco*, No. 20-1775 (U.S. Dec. 13, 2021) (citation omitted) (*S.F. Br.*); *see also* Application for Stay at 2, *Arizona v. Mayorkas*, No. 22A544 (Dec. 19, 2022).

Yet, the practice of regulatory repeal by acquiescence has become increasingly common and effective. *See Danco Labs.*, 143 S. Ct. at 1076 (Alito, J., dissenting). The transition between the Biden and Trump administrations has not brought any slowdown in the practice. *See, e.g.*, John Lewis & Aaron Baum, *Trump’s Use of Consent Decrees to Dismantle Policy*, Just Security (Sept. 23, 2025), <https://www.justsecurity.org/121057/trump-consent-decrees-dismantle-policy/> (collecting examples). Indeed, this case illustrates that the practice of regulatory repeal by consent decree is not merely continuing apace but taking new and even more troubling forms. In both *City & County of San Francisco* and *Mayorkas*, the government’s acquiescence came only after a rule had been litigated and judgments

entered against it. Here, the federal government never even attempted to defend the Rule.

The egregious collusion in this case makes it a particularly compelling candidate for certiorari, should the court of appeals affirm the district court. Texas sued more than two years after the Rule was issued and only after the federal government announced that it “could not—and will not—defend” the Rule “against legal challenge.” App. 107a. On the day Texas sued in the Wichita Falls Division of the Northern District of Texas, the parties jointly asked the sole district judge assigned to that division for identical relief. App. 44a-47a; *see* Special Order No. 3-343 (N.D. Tex. Sept. 14, 2022). DOJ reaffirmed its belief that the APA does not authorize universal vacatur, yet it told the district court that it “agrees not to pursue this position in this case,” while reserving “the right to continue to advance this position in other cases.” App. 45a n.1. Nor did it challenge Texas’s standing, though Texas’s theory of injury closely resembles the one this Court rejected in *United States v. Texas*, 599 U.S. 670 (2023). And DOJ sought and obtained a permanent injunction that would prevent a future administration from seeking to reinstitute administrative closure—despite DOJ’s long recognition of the grave problems that arise from entering into court orders that indefinitely bind future administrations. *Cf.* Memorandum from Edwin Meese III, Att’y Gen., to All Assistant Att’y Gen. & All U.S. Att’y’s 3 (Mar. 13, 1986).

2. In opposing the stay motion in the court of appeals, the parties took the position that the denial of intervention created a threshold issue that would insulate

the consent judgment from substantive review. But cases involving the collusive settlement of APA claims are unavoidably bound up in questions of whether putative intervenors should be allowed to intervene. If intervention is never sought (or, as here, not permitted), the collusive settlement or acquiescence will remain unchallenged. And if intervention is successful, the most troubling aspects of the collusion are mitigated because the intervenor will offer the defense and adversity that the federal government has not provided. It should therefore be unsurprising that both *City & County of San Francisco* and *Mayorkas* reached this Court after denials of intervention.

This case would provide the Court with a suitable vehicle to reiterate that intervention supplies a critical safeguard against collusive “hobbled litigation rather than a full and fair adversarial testing” of a case and, thus, should generally be allowed to the maximum extent consistent with Article III when there is risk of collusion. *Berger v. N.C. State Conf. of the NAACP*, 597 U.S. 179, 191-92 (2022). All reasonable factual inferences should be drawn in favor of intervention. As Texas itself recently explained, “[t]he only way to check norm-breaking actions” from regulatory repeal through acquiescence “is by allowing parties who would be injured by a judicial invalidation to intervene once the Government stops defending the rule.” *S.F.* Br. 39.

The facts supporting intervention here are particularly compelling because the Cities’ injuries closely mirror Texas’s, meaning any determination that the Cities lack standing only casts doubt on the validity of the underlying judgment. Texas’s suit hinged on its assertion that vacatur “will necessarily . . . reduce the number of illegal

aliens permitted to remain indefinitely in the United States.” App. 27a. As Applicants explained, if widespread removals will “necessarily” follow from the consent judgment, their residents (including taxpaying immigrants with work authorizations) predictably will be affected. If Texas’s stake in the Rule’s vacatur was concrete enough to support a judgment, Applicants’ stake in its survival is concrete enough to support intervention.

B. The Question of Whether Administrative Closure Is Statutorily Authorized Is Independently Worthy of Certiorari

This Court is also likely to grant certiorari on the substantive question resolved in the consent judgment: whether the Rule is contrary to law. Whether the Attorney General may provide for administrative closure is an “important question of federal law that has not been, but should be, settled by this Court.” Sup. Ct. R. 10(c). By the parties’ own account, the practice has reached hundreds of thousands of cases. *See* App. 46a (quoting *Hernandez-Serrano v. Barr*, 981 F.3d 459, 465 (6th Cir. 2020)). And the consent judgment’s premise departs from the conclusions of every court of appeals to consider the validity of administrative closure. Before the Rule, three circuits held that the Attorney General’s general procedural regulations already authorized administrative closure. *Meza Morales v. Barr*, 973 F.3d 656, 667 (7th Cir. 2020) (Barrett, J.); *Arcos Sanchez v. Att’y Gen.*, 997 F.3d 113, 121-22 (3d Cir. 2021); *Romero v. Barr*, 937 F.3d 282, 292 (4th Cir. 2019). And while the Sixth Circuit read those prior regulations more narrowly, *Hernandez-Serrano*, 981 F.3d at 464, it did not suggest that the Attorney General lacked statutory power to authorize closure

expressly, as the Rule did. *See infra* Part II.B.3. No court of appeals has held what the consent judgment declares.

This Court’s review is needed now because the consent judgment permanently bars the government from authorizing administrative closure by regulation “absent an express statutory basis to do so.” App. 50a. The parties have waived appeal. *Id.* Under the consent judgment, no new rule can issue for another court to review, and no party to the judgment can appeal the district court’s decision. If this Court does not decide the question, the longstanding practice of administrative closure will be effectively precluded without full review.

II. APPLICANTS ARE LIKELY TO SUCCEED ON THE MERITS

There is more than a fair prospect that this Court would reverse the denial of intervention and vacate the consent judgment. The denial of intervention cannot be reconciled with the consent judgment, and the consent judgment was entered without a genuine case or controversy, in circumvention of the APA, on an erroneous view of the law, and with overbroad relief.

A. The Denial of Intervention Is Likely to Be Reversed

The district court denied intervention solely on the ground that it would be futile because Applicants lack Article III standing. App. 88a-92a. Under Article III, a party must demonstrate (1) injury in fact, (2) causation, and (3) redressability. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561-62 (1992). Each element must be supported “with the manner and degree of evidence required at the successive stages of the litigation.” *Id.* at 561. Here, the district court assessed futility under a standard that

assumes the truth of Applicants’ allegations. App. 88a-89a. Those allegations establish standing on precisely the logic Texas invoked, and the district court accepted, to establish Texas’s own injury and redressability.

1. The Cities’ standing follows from Texas’s own theory of standing

a. The consent judgment extinguishes the Cities’ identifiable revenue streams, thereby inflicting a monetary harm. Both Columbus and Baltimore have local income taxes. App. 53a, 81a-82a. The consent judgment will diminish those revenues as residents whose immigration cases were paused—many of whom work legally while their applications are pending—now face reopened removal cases. *Id.* Each worker who is ultimately removed is a specific taxpayer whose payments the Cities lose. *Id.* That is a loss of “specific tax revenues,” *Wyoming v. Oklahoma*, 502 U.S. 437, 448 (1992), and monetary losses “are of course an injury,” *Diamond Alt. Energy, LLC v. EPA*, 606 U.S. 100, 114 (2025) (citation omitted).

The district court held otherwise only by applying one standard to Texas and another to the Cities. It entered judgment on Texas’s allegation that vacatur “will necessarily reduce the number of illegal aliens permitted to remain indefinitely in the United States,” App. 27a, sparing Texas the cost of services those individuals would otherwise require, App. 25a-26a. The court nonetheless deemed the Cities’ tax losses untraceable to the judgment because “[w]hether an individual, tax-paying alien is ultimately deported requires another branch of government to adjudicate removal and exercise discretion to enforce any resulting removal order.” App. 91a. But removals are the predictable effect of the consent judgment, and standing may rely

on the predictable effects of the action on the decisions of third parties. *See Dep't of Com. v. New York*, 588 U.S. 752, 768 (2019); *Diamond Alt. Energy*, 606 U.S. at 116 (when “third party behavior is predictable, commonsense inferences may be drawn”). If those consequences are too attenuated to injure the Cities, they were too attenuated to injure Texas, *see United States v. Texas*, 599 U.S. at 680 n.3, and the district court lacked jurisdiction to enter judgment at all.

b. The consent judgment imposes concrete costs on the Cities’ law-enforcement operations. Congress created the U visa to “strengthen the ability of law enforcement agencies to detect, investigate, and prosecute” certain crimes committed against undocumented individuals, who are reluctant to report those crimes and identify themselves to law enforcement. Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, § 1513(a)(2)(A), 114 Stat. 1464, 1533-34; *see* 8 U.S.C. § 1101(a)(15)(U). The Cities’ law enforcement operations rely on the U visa program to investigate and prosecute crime, and they regularly certify qualifying victims as eligible for U visas.² In turn, those victims must cooperate with the certifying law enforcement agency throughout USCIS adjudications, which can take years. App. 74a, 81a. Baltimore alone has identified at least 600 pending or approved U visa applications, and its police department has processed more than 440 U visa certifications since the beginning of 2025. App. 81a.

² *See* 8 U.S.C. § 1184(p)(1); *see generally* U.S. Dep’t of Homeland Sec., *U Visa Law Enforcement Resource Guide* (2022), <https://perma.cc/QG56-XXH8>.

Administrative closure made the U visa program especially attractive because it relieved applicants from having to actively resist deportation efforts during potentially lengthy proceedings before USCIS. App. 81a-82a. But the consent judgment deprives victims and witnesses of that protection, as they may be deported while they could continue to be of critical assistance to law enforcement. When victims decline to come forward, withdraw from cooperation with law enforcement, or are removed mid-prosecution, cases fail and the perpetrator goes unprosecuted—making citizens and noncitizens alike less safe. App. 74a.

In denying intervention, the district court misapprehended this injury. The question is not whether U visa certification “remains available” as a matter of statute. App. 92a. The Cities’ injury is that victims will stop coming forward or will be removed mid-prosecution. That consequence is not speculative but rather rests on “predictable” and “likely” responses to the consent judgment. *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 383 (2024) (citation omitted); *Dep’t of Com.*, 588 U.S. at 768. Because a U visa confers immigration status only upon USCIS approval, a pending petition does not itself protect against removal absent administrative closure. *See* 89 Fed. Reg. at 46744. Texas itself premised its standing on “predictable” effects on immigrant behavior, arguing that the Rule incentivizes unlawful immigration by making removals more difficult. App. 25a. The district court entered judgment on that premise, and there is no basis for applying a different attenuation standard to the Cities.

2. Centro Legal suffers direct financial harm and interference with its core business activities

Centro Legal suffers its own pocketbook injury from the judgment. Between 80 and 100 of its clients' cases, mostly involving unaccompanied children or survivors of violent crime, are administratively closed under the authority the judgment vacated. App. 61a-62a. The judgment declares that no statute authorizes immigration judges to close cases indefinitely. App. 49a. And Texas itself pleaded that vacatur "will necessarily reduce the number of cases administratively closed." App. 27a. At least 50 more clients whose cases were terminated under the same authority are likely to face recommenced removal proceedings. App. 63a. Each reactivated proceeding will require roughly 40 to 200 additional hours of staff time. *Id.* For 90 to 100 clients, that work is not optional. Under a long-running grant program for representing unaccompanied children, Centro Legal "would be contractually obligated to represent them through a Circuit Court appeal" if their cases return to active proceedings, though the grants' funding is depleted. App. 64a. Centro Legal's largest grants pay for no more than 182 active matters, so every reactivated case above that ceiling is work "that [its] funding contracts neither anticipate nor pay for." App. 64a-65a. And reactivation "would destroy the value of completed work [Centro Legal's] funders already paid for—the closures themselves." App. 65a. Centro Legal also faces out-of-pocket costs, including expert witnesses at \$700 to \$2,000 per case. App. 69a. Monetary costs like these "are of course an injury." *Diamond Alt. Energy*, 606 U.S. at 114.

The district court read Centro Legal to assert a generalized claim that it must reallocate resources, which it held foreclosed by Fifth Circuit precedent. App. 93a. That misreads both the claim and this Court’s precedent. Organizations have standing “to sue on their own behalf for injuries they have sustained,” provided they satisfy the usual requirements of injury, causation, and redressability. *All. for Hippocratic Med.*, 602 U.S. at 393-94 (quoting *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 n.19 (1982)). An organization cannot “spend its way into standing simply by expending money to gather information and advocate against the defendant’s action.” *Id.* at 394. But it is injured when the defendant’s conduct “directly affect[s] and interfere[s] with” its “core business activities.” *Id.* at 395. Centro Legal’s injury falls within that category. Its costs come not from advocacy against the judgment, but from serving the clients it already represents. It does not claim that it must adjust to a new legal regime. It claims that the judgment triggers obligations it already owes and erases work already paid for.

The consent judgment inflicts precisely that injury, impairing both the quantity and the quality of Centro Legal’s services. Centro Legal expects it will be unable to accept new referrals. App. 67a. It now accepts 50 to 100 referrals each year from partner organizations, at the very moment those partners will be referring more clients than before. App. 67a-68a. It would be forced to “substantially reduce” its representation of monolingual speakers of Indigenous languages, “one of the most vulnerable immigrant groups.” App. 69a-70a. It would have to curtail its practice of full-scope representation and offer new clients only “limited-scope services.”

App. 70a. And because it took on hundreds of clients it otherwise could not have represented, on retainers limited to proceedings before USCIS and a motion to close or terminate, App. 61a, 68a, reactivation leaves its staff “a Hobson’s choice of either terminating legal representation of clients,” who are “extremely unlikely to secure high-quality legal representation” elsewhere, “or carrying a larger caseload than they can sustain.” App. 67a. A prolonged refusal of referrals also threatens the partner relationships and “reputation for reliability” that its funders weigh. App. 68a.

None of these injuries depends on whether any client is ever removed. Each begins when a closed case returns to the docket—the result Texas pleaded vacatur would “necessarily” produce. App. 27a. A stay would keep the Rule, and the closures resting on it, in place.

Centro Legal suffers a further, distinct injury. It won a preliminary injunction against the 2020 Rule, then stipulated to dismissal in reliance on the Rule’s rescission of it. App. 70a-71a. The judgment revives the 2020 Rule and strips Centro Legal of the benefit of that litigation, without the notice-and-comment rulemaking the APA would require for a rescission. *Cf. Clarke v. CFTC*, 74 F.4th 627, 634-37 (5th Cir. 2023). As Texas told this Court in *San Francisco*, there is “an important procedural right to comment on any new rulemaking under the APA,” *S.F.* Pet. 20, and “a core purpose of intervention is to permit unnamed parties that would be injured by existing parties’ litigation conduct to join the suit and thereby attempt to prevent the deprivation of their rights—including their APA notice-and-comment rights.” *S.F.* Br.

28. Those rights are certainly cognizable when, as here, they are paired with concrete financial harms.

3. The remaining requirements for intervention are readily satisfied

Because the district court denied intervention solely on standing grounds, it did not reach the remaining requirements of Civil Rule 24(a). App. 94a. Those requirements are easily met. The motion was timely: Applicants moved to intervene about six weeks after judgment, for the purpose of appealing, well within the time to appeal. App. 49a, 87a; *see, e.g., Ross v. Marshall*, 426 F.3d 745, 755 (5th Cir. 2005) (“A common example of post-judgment intervention that satisfies [the timeliness] criteria is intervention for the purpose of appealing a decision that the existing parties to a suit have decided not to pursue.”). *Cf. Cameron v. EMW Women’s Surgical Ctr., P.S.C.*, 595 U.S. 267, 280 (2022) (deeming intervention motion timely when filed within the period to seek rehearing en banc). Applicants’ interests are the same concrete interests that establish their standing, and the judgment plainly impairs those interests. And no existing party represents those interests at all: the federal defendants announced that they would not defend the Rule, App. 107a, joined the plaintiff in seeking judgment against themselves, App. 44a-47a, opposed intervention, App. 88a, and waived any appeal, App. 50a. As Texas put it in *San Francisco*, where “no remaining party defends the Rule,” “[n]o party now adequately represents” the would-be intervenors’ interests. *S.F.* Br. 26.

B. The Consent Judgment is Likely to Be Vacated

The consent judgment is indefensible. Texas sued, the government agreed, and the court entered judgment, all on the same day. App. 1a, 44a, 49a. That judgment was entered without a case or controversy and in circumvention of the APA, declares unauthorized a practice the INA authorizes, and grants relief that sweeps far beyond the harm Texas claimed.

1. The consent judgment was entered without a case or controversy

An Article III case or controversy requires parties with adverse legal interests who pursue “an honest and actual antagonistic assertion of rights.” *Muskrat v. United States*, 219 U.S. 346, 359 (1911) (quoting *Chicago & G.T. Ry. Co. v. Wellman*, 143 U.S. 339, 345 (1892)). When “both litigants desire precisely the same result,” a federal court must dismiss the case. *Moore v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 47, 48 (1971) (per curiam); *see also United States v. Johnson*, 319 U.S. 302, 305 (1943) (“Such a suit is collusive because it is not in any real sense adversary.”).

The adversity requirement is not a formality. Without it, a case becomes “a hobbled litigation rather than a full and fair adversarial testing” of the interests at stake. *Berger*, 597 U.S. at 192. That risk is most evident where, as here, the defendant does not merely concede but joins the plaintiff’s motion for judgment on the day suit is filed.

DOJ’s abandonment of the defenses it ordinarily presses confirms the absence of a genuine controversy. The government holds, and litigates, the position that the APA does not authorize universal vacatur—yet it told the district court it “agree[d]

not to pursue this position in this case,” while “reserv[ing] the right to continue to advance” it in others. App. 45a n.1. It likewise did not contend that Texas’s standing was insufficient, despite Texas’s theory of injury resembling the one rejected in *United States v. Texas*, 599 U.S. 670. DOJ abandoned those obvious defenses here because it had already announced it would not defend the Rule at all. App. 107a.

Because no case or controversy ever existed, the consent judgment is likely to be vacated for lack of Article III jurisdiction. *See Local No. 93, Int’l Ass’n of Firefighters v. City of Cleveland*, 478 U.S. 501, 525 (1986) (“[A] consent decree must spring from and serve to resolve a dispute within the court’s subject-matter jurisdiction.”).

2. The consent judgment circumvents the APA’s rulemaking requirements

The consent judgment also flouts the APA. A federal regulation adopted through notice-and-comment rulemaking can be rescinded only through notice-and-comment rulemaking. *Mortg. Bankers Ass’n*, 575 U.S. at 101. That process affords affected parties the right to comment, 5 U.S.C. § 553(c), and to seek judicial review of any resulting rescission, *see Dep’t of Com.*, 588 U.S. at 773-76. An agency cannot “circumvent” its notice-and-comment obligations “merely by confessing that the regulations were defective in some respect.” *Consumer Energy Council*, 673 F.2d at 447 n.79. DOJ appeared to concede as much below, U.S. 5th Cir. Opp. to Mot. to Stay 15, consistent with its Office of Legal Counsel’s longstanding view that agencies “are not free in the course of litigation to . . . adopt a regulatory interpretation” that the APA requires be adopted “only through notice and comment rulemaking,” Authority

of the United States to Enter Settlements Limiting the Future Exercise of Executive Branch Discretion, 23 Op. O.L.C. 126, 129, 137 n.8 (1999). And Texas pressed the same argument in *San Francisco*, see *S.F.* Br. 3 (the government must “respect [a] duly enacted Rule until it repeals it through notice-and-comment rulemaking”).

Yet here, DOJ substituted “rulemaking-by-collusive-acquiescence.” *City & County of San Francisco*, 596 U.S. at 766 (Roberts, C.J., concurring) (citation and quotation marks omitted). Recognizing as much and invalidating the consent judgment on that basis would not compel the conclusion that the government can never concede in appropriate circumstances that a regulation is unlawful. But the government surely cannot use manufactured litigation to circumvent the APA and to bind, in perpetuity, future administrations that do not share its policy preferences. *Cf. Horne*, 557 U.S. at 449 (recognizing that “overbroad” consent decrees constrain public officers’ “ability to fulfill their duties as democratically-elected officials”). The sequence of events here demonstrates that this case falls into the latter category.

3. The INA authorizes administrative closure

The consent judgment’s central legal premise is that “no statute authorizes” administrative closure. App. 49a. The premise is wrong. The INA authorizes the Attorney General to adopt procedural rules like this one, and Congress preserved the closure authority EOIR was already exercising when it restructured the immigration agencies in 2002.

Congress charged the Attorney General with supervising the immigration adjudication system, see 8 U.S.C. § 1103(g)(1), and broadly authorized him to

“establish such regulations[] . . . as the Attorney General determines to be necessary for carrying out” his responsibilities under the Act, *id.* § 1103(g)(2). That authority comfortably encompasses procedural rules conducive to the fair and efficient functioning of the adjudication system—especially as to the many procedural matters the INA does not itself address. This Court has long held that “administrative agencies . . . will be in a better position than federal courts or Congress itself to design procedural rules adapted to the peculiarities of the industry and the tasks of the agency involved.” *Vt. Yankee Nuclear Power Corp. v. Nat. Res. Def. Council, Inc.*, 435 U.S. 519, 525 (1978) (quoting *FCC v. Schreiber*, 381 U.S. 279, 290 (1965)). That principle applies with full force to the agencies charged with conducting immigration proceedings. *See, e.g., Mejia-Alvarenga v. Garland*, 95 F.4th 319, 326 (5th Cir. 2024) (“[B]ecause Congress has given the BIA the responsibility to conduct its own proceedings, the agency should be free to fashion its own rules of procedure[.]” (cleaned up)).

The Rule exercises that authority to provide procedural rules governing administrative closure. Even the 2020 Rule, which the consent judgment revives, rests on that understanding. It bars administrative closure “unless a regulation promulgated by the Department of Justice or a previous judicially approved settlement expressly authorizes such an action.” 85 Fed. Reg. 81588, 81651, 81655 (Dec. 16, 2020).

Congress also expressly preserved the administrative closure authority that EOIR was exercising. The Homeland Security Act of 2002 (HSA) carried forward for

the Attorney General “such authorities and functions under [the INA] relating to the immigration and naturalization of [noncitizens] as were exercised by [EOIR], or by the Attorney General with respect to [EOIR],” prior to the Act. HSA § 1102, 116 Stat. 2135, 2274; 8 U.S.C. § 1103(g)(1); *see* 6 U.S.C. § 521. Immigration judges and the BIA had used administrative closure to manage congested dockets since at least the 1980s, *see Arcos Sanchez v. Att’y Gen.*, 997 F.3d 113, 116-17 (3d Cir. 2021); Appellate Procedures and Decisional Finality in Immigration Proceedings; Administrative Closure, 88 Fed. Reg. 62242, 62243-46 (Sept. 8, 2023), and the Attorney General had issued regulations directing administrative closure in specified circumstances years before the HSA’s enactment, *see* 8 C.F.R. § 245.13(d)(3)(i) (2011), *as added by* 63 Fed. Reg. 27823, 27829 (May 21, 1998); 8 C.F.R. § 245.15(p)(4), *as added by* 64 Fed. Reg. 25756, 25771 (May 12, 1999).

The district court considered none of this. It received no adversarial briefing and entered judgment the day Texas sued. App. 1a, 49a. Its declaration rests on a single decision from a different circuit, *Hernandez-Serrano v. Barr*, 981 F.3d 459 (6th Cir. 2020). But *Hernandez-Serrano* considered a distinct question: whether a prior version of EOIR’s regulations—which authorized adjudicators to take any action “necessary or appropriate for the disposition” of a case, 8 C.F.R. § 1003.10(b)—conferred general authority to close cases administratively. The court held it did not, because administrative closure “is not itself a ‘disposition.’” 981 F.3d at 463. The Sixth Circuit did not construe the INA, and it did not consider the validity of the Rule at issue here. The Sixth Circuit itself later recognized that immigration judges may

administratively close cases in at least some circumstances. *Garcia-DeLeon*, 999 F.3d at 991-93. *Hernandez-Serrano* does not support the consent judgment, even assuming it was correctly decided. *But see, e.g., Meza Morales*, 973 F.3d at 667 (upholding administrative closure under the prior EOIR regulations). Accordingly, the district court’s judgment lacks any authority supporting its newfound interpretation of federal law.

4. The consent judgment sweeps far beyond anything Texas challenged

The consent judgment also grants relief no injury could support. It vacates provisions of the Rule that Texas never challenged, and it enjoins rulemakings that have not yet occurred. App. 49a-50a. Neither form of relief can stand.

1. The judgment vacates the entire Rule. Yet Texas’s claims target only the Rule’s administrative-closure provisions. *See* App. 30a-31a, 42a, 49a-50a. The Rule does much more, and those other provisions are severable.

A “two-prong inquiry” governs whether a regulation is severable: (1) “the intent of the agency” and (2) “whether the remainder of the regulation could function sensibly without the stricken provisions.” *Texas v. United States*, 126 F.4th 392, 419 (5th Cir. 2025) (cleaned up); *see also K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 294 (1988). Both factors point the same way here. The Rule’s severability clause provides that, if any portion is “held invalid by a court, the Department intends for all other parts of the rule that are capable of operating in the absence of the specific portion that has been invalidated to remain in effect.” 89 Fed. Reg. at 46786. And the remaining provisions can so operate. “[A]dministrative closure and termination are

two separate procedural tools that operate independently of each other,” and the Rule’s changes to BIA procedures—“such as to briefing schedules, background checks, sua sponte reopening and reconsideration, and adjudication timelines, among others”—function independently of administrative closure. *Id.* Vacating them redresses no injury Texas alleged.

2. The injunction—which indefinitely bars future administrations from exercising their regulatory authority to propose and adopt a new regulation addressing administrative closure—is even worse. It bars the government “from promulgating regulations that permit immigration judges the authority to administratively close removal proceedings without reaching the merits of a case absent an express statutory basis to do so.” App. 50a. Texas cannot be injured by a regulation that does not exist. And a claim resting on “contingent future events that may not occur as anticipated, or indeed may not occur at all,” is not ripe. *Texas v. United States*, 523 U.S. 296, 300 (1998) (cleaned up). On the federal government’s urging, this Court recently held that a state’s standing cannot rest on a “string of speculations” about the content of a future rulemaking. *Trump v. California*, 609 U.S. ___, 2026 WL 2473573, at *4 (U.S. Aug. 24, 2026) (per curiam). Any injunction must “be limited to the inadequacy that produced the injury in fact,” which extends (at most) to the Rule, not to rulemakings no one has proposed. *Lewis v. Casey*, 518 U.S. 343, 357 (1996).

Even setting aside that jurisdictional defect, the injunction is unnecessary. If vacatur alone is “sufficient to redress [the plaintiff’s] injury, no recourse to the

additional and extraordinary relief of an injunction [is] warranted.” *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 166 (2010). No party showed, and the district court did not find, that an injunction was necessary under the traditional equitable factors. *See* App. 46a, 50a.

III. A STAY IS NECESSARY TO AVOID IRREPARABLE INJURY BOTH TO APPLICANTS AND THE PUBLIC INTEREST

The consent judgment inflicts irreparable injury on each Applicant. For Centro Legal, the judgment is poised to return 80 to 100 of its administratively closed cases to active dockets, each requiring 40 to 200 hours of uncompensated additional work. App. 63a-65a. Centro Legal will be “forced to devote thousands of hours” to litigating cases that had been closed. App. 71a. The Cities’ injury is equally irreversible. Each crime victim who does not come forward, stops cooperating, or is removed mid-prosecution, cannot testify, and the case against the offender collapses. *See* App. 75a, 83a. Those harms to the Cities’ “law enforcement and public safety interests” are plainly irreparable. *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers). The Cities will also lose taxpayers. Columbus and Baltimore levy local income taxes, including on immigrants who have work authorization while their removal cases are administratively closed. App. 53a, 81a-82a. Each taxpayer removed permanently deprives the Cities of revenue. *See Ala. Ass’n of Realtors v. Dep’t of Health & Hum. Servs.*, 594 U.S. 758, 765 (2021) (crediting lost “rent payments with no guarantee of eventual recovery” as irreparable harm).

The balance of equities favors a stay. A stay would restore the status quo that prevailed for more than two years. The Rule was promulgated in May 2024, and Texas

did not challenge it until June 2026. App. 1a. Whatever costs Texas attributes to the Rule, it shouldered them for two years before suing; a few more months while the appeal proceeds will not tip the balance. Nor would a stay burden the federal government. EOIR itself instructed its adjudicators that, “until it is rescinded, superseded, enjoined, vacated, or otherwise determined to be unlawful,” the Rule remains “binding on EOIR adjudicators.” App. 107a. A stay asks nothing more of them, and it leaves the government free to rescind the Rule through notice-and-comment rulemaking, as the APA has always required.

The public interest unmistakably weighs in Applicants’ favor. For example, some removals spurred by the consent judgment are permanent. A child qualifying for special immigrant juvenile status, *see* 8 U.S.C. § 1101(a)(27)(J), who is removed before a visa becomes available will be deprived of their ability to adjust status, because adjustment requires physical presence in the United States. App. 65a. The consent judgment exposes such children, and many others whose cases were administratively closed, to that fate in a practice that, by the parties’ own account, has reached hundreds of thousands of cases. App. 46a. It does so on the strength of a judgment that never received adversarial testing. If the judgment remains in force while Applicants’ appeal proceeds, it will stand as a working template for any administration that wishes to repeal a regulation without notice and comment.

This Court has not hesitated to stay lower-court orders that set aside federal policies nationwide. *See, e.g., Trump v. CASA, Inc.*, 606 U.S. 831 (2025); *Trump v. Orr*, 146 S. Ct. 44 (2025). The Rule was lawfully promulgated through notice and

comment, and the current administration's disfavor does not entitle it to less respect than any other regulation. And this Court granted a stay in *Mayorkas* to keep a vacatur from taking effect while it considered whether would-be intervenors could defend the vacated policy. 143 S. Ct. at 478. The case for that relief is yet stronger here.

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.

Respectfully submitted.

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OCTOBER 2026

No. _____

IN THE
Supreme Court of the United States

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

Applicants,

v.

STATE OF TEXAS, *et al.*,

Respondents.

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

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**In the United States District Court
Northern District of Texas
Wichita Falls Division**

STATE OF TEXAS,
PLAINTIFFS,

v.

CIVIL CASE NO. X:XX-cv-XXXXX

UNITED STATES DEPARTMENT OF JUSTICE;
TODD BLANCHE, IN HIS OFFICIAL CAPACITY
AS ACTING UNITED STATES ATTORNEY
GENERAL, DAREN K. MARGOLIN, IN HIS
OFFICIAL CAPACITY AS DIRECTOR OF THE
EXECUTIVE OFFICE FOR IMMIGRATION
REVIEW,
DEFENDANTS

STATE OF TEXAS ORIGINAL COMPLAINT

1. The State of Texas (“Texas” or “Plaintiff”) challenges a final rule issued by the Department of Justice (DOJ) permitting immigration judges (“IJs”) and the Board of Immigration Appeals (“BIA” or “Board”) to dispose of removal cases without final adjudication, by using administrative closure to effectively grant indefinite amnesty to aliens illegally present in this country. *See* Appellate Procedures and Decisional Finality in Immigration Proceedings; Administrative Closure, 88 Fed. Reg. 62,242 (Sept. 8, 2023) (“Administrative Closure NPRM”); Efficient Case and Docket Management in Immigration Proceedings, 89 Fed. Reg. 46,742 (May 29, 2024) (“Administrative Closure Rule”).

2. The Administrative Closure Rule drastically expands the use of administrative closure, transforming it from a docket management tool into indefinite permission to remain in the United States for aliens who would otherwise be subject to removal proceedings. *Inter alia*, the Rule requires IJs to administratively close removal cases upon motion by both parties or by one party

when the motion is unopposed and grants broad discretion to IJs to close cases on an opposed motion. *Id.* at 46787 (8 C.F.R. § 1003.1(d)(ii); § 1003.1(l)(1), (3); § 1003.10; § 1003.18(c)).

3. However, the Immigration and Nationality Act (“INA”) does not countenance the use of administrative closure to suspend removal cases but instead directs that “[a]t the conclusion of the proceeding the immigration judge shall decide whether an alien is removable from the United States.” 8 U.S.C. § 1229a(c)(1)(A).

4. The Administrative Closure Rule constituted one part of the Biden-Harris Administration’s campaign to undermine our immigration laws. Among other tools the Biden-Harris Administration abused was to treat “prosecutorial discretion” as a pretextual justification for abdicating their duty to enforce our immigration laws.

5. The predictable result of the Biden-Harris Administration’s derelict immigration policies was the largest surge of immigrants—mostly illegal immigrants—into the United States in the nation’s history. *See, e.g.,* Ronny Reyes & Jennie Taer, *US immigration surge under Biden administration is biggest in US history—outpacing the days of Ellis Island*, N.Y. Post, Dec. 11, 2024, <https://perma.cc/W6SB-S92J>; Steven A. Camarota & Karen Zeigler, *Foreign-Born Number and Share of U.S. Population at All-Time highs in January 2025*, Center for Immigration Studies, March 12, 2025, <https://tinyurl.com/3z8mvu7h> (noting that net foreign-born population growth during the four years of the Biden-Harris Administration exceeded the prior 12 years, estimating that 11.5 to 12.5 million legal and illegal immigrants settled in the country during that period, and estimating that illegal immigrants accounted for approximately two-thirds of that migration).

6. Undeterred by these consequences, the Biden-Harris Administration then took the unlawful step of substantially expanding the concept of administrative closure in immigration

hearings before immigration judges (“IJs”) and Appellate Immigration Judges of the Executive Office for Immigration Review (“EOIR”). *See* Appellate Procedures and Decisional Finality in Immigration Proceedings; Administrative Closure, 88 Fed. Reg. 62,242 (Sept. 8, 2023) (“Administrative Closure NPRM”); Efficient Case and Docket Management in Immigration Proceedings, 89 Fed. Reg. 46,742 (May 29, 2024) (“Administrative Closure Rule”).

7. In theory, administrative closure is a procedural tool that allows IJs or the BIA to “temporarily remove a case from an Immigration Judge’s active calendar or from the Board’s docket.” *Centro Legal de la Raza v. Exec. Off. For Immigration Review* (hereinafter “*Centro Legal*”), 524 F. Supp. 3d 919, 938 (N.D. Cal. 2021) (quoting *Matter of Avetisyan*, 25 I. & N. Dec. 688, 692 (BIA 2012)). The most common justification for the practice is to conserve resources by administratively closing a case while an alien pursues some other form of relief (for example, to avoid fully litigating EOIR proceedings that may just be mooted by a parallel USCIS adjudication for relief).

8. In practice, however, administrative closure is most often treated as a form of indefinite immigration relief itself—one that has never been authorized by Congress. The overwhelming majority of administratively closed cases are never reopened. *See Hernandez-Serrano v. Barr*, 981 F.3d 459, 463 (6th Cir. 2020) (noting 283,366 cases administratively closed from fiscal year 1980-2011, with a major uptick to an additional 215,285 cases administratively closed from fiscal year 2012-2017, and that, at the end of fiscal year 2017, approximately 355,835 cases *remained* administratively closed). The average time a case is administratively closed at the immigration court level is approximately 16.5 years, and at the BIA level, approximately 29 years. These averages do not reflect “temporary” action by any reasonable definition.

9. “The result of administrative closure, as described above, is that immigration cases leave an IJ’s active calendar and, more often than not, never come back. Thus[,] the reality is that, in hundreds of thousands of cases, administrative closure has amounted to a decision not to apply the Nation’s immigration laws at all.” *Hernandez-Serrano*, 981 F.3d at 463.

10. Combined with Department of Homeland Security (“DHS”) guidance that explicitly discouraged bringing or continuing removal proceedings against the vast majority of illegal aliens, administrative closure became an unauthorized, lawless form of immigration relief to be abused by open-borders politicians.

11. The Final Administrative Closure Rule incentivizes illegal immigration, protects illegal aliens who are otherwise ineligible for relief from removal

PARTIES

I. Plaintiff

12. Plaintiff State of Texas is a sovereign State of the United States of America

II. Defendants

13. Defendants the United States Department of Justice (“DOJ”) is a cabinet-level federal executive agency that oversees Defendant, Executive Office for Immigration Review. DOJ and EOIR are responsible for adjudicating removal proceedings.

14. Defendant Todd Blanche is the Acting Attorney General of the United States. Plaintiff sues him in his official capacity.

15. Daren K. Margolin is the Director of EOIR. Plaintiff sues him in his official capacity.

JURISDICTION AND VENUE

16. The Court has jurisdiction over this dispute because it arises under the Constitution and laws of the United States. *See* 28 U.S.C. §§ 1331, 1346, 1361; 5 U.S.C. §§ 702-703. The Court has jurisdiction under 5 U.S.C. §§ 705-706 and 28 U.S.C. §§ 1361 and 2201-2202 to render the declaratory and injunctive relief that the Plaintiff requests.

17. This district is a proper venue because the State of Texas resides in this district and a substantial part of the events and omissions giving rise to the claim occurred here. 28 U.S.C. § 1391(b), (e).

FACTS

I. EOIR is Statutorily Tasked with Adjudicating Removal Cases

18. DHS initiates removal proceedings against an alien illegally present in the United States or otherwise potentially subject to removal by issuing a “Notice to Appear” to the alien. 8 U.S.C. § 1229(a).

19. From there, an EOIR IJ is charged with conducting the proceedings for determining the admissibility or removability of the alien. 8 U.S.C. § 1229a.

20. With limited exceptions, such as expedited removal under 8 U.S.C. § 1228, “a proceeding under [Section 1229a] shall be the sole and exclusive procedure for determining whether an alien may be admitted to the United States or, if the alien has been so admitted, removed from the United States.” 8 U.S.C. § 1229a(a)(3).

21. Immigration Judges are not authorized to exercise discretion with respect to whether a removable alien ought to be adjudicated removable and removed. Rather, 8 U.S.C. § 1229a(c)(1)(A) directs: “At the conclusion of the proceeding the immigration judge shall decide

whether an alien is removable from the United States. The determination of the immigration judge shall be based only on the evidence produced at the hearing.”

22. Neither Section 1229a(c)(1)(A) nor any other element of the INA authorizes an IJ or Appellate IJ to discretionarily decline to conclude a proceeding, conclude a proceeding without reaching a conclusion on removability, or to reach a conclusion other than that an alien is either removable or not removable. In other words, the plain language of the statute directs the IJ to reach a conclusion on removability based solely on the evidence presented at the hearing.

23. Similarly, nothing in the statute authorizes IJs to consider factors that Congress has not made relevant to the legal question of removability.

II. EOIR Case Loads have skyrocketed, so the first Trump Administration promulgated the AA96 Rule to Ensure Efficient Adjudication.

24. During the first quarter of the 21st century, EOIR caseloads skyrocketed. EOIR had a backlog of approximately 130,000 pending cases in 1998, but approximately 1.08 million cases by the end of FY 2019. *See* Appellate Procedures and Decisional Finality in Immigration Proceedings; Administrative Closure, 85 Fed. Reg. 52,491 (Aug. 26, 2020) (the “AA96 NPRM”). By July 2023, this number had more than doubled to a backlog of over 2.2 million cases. *See* Elizabeth Jacobs & Julie Axelrod, *Comment Re: Appellate Procedures and Decision Finality in Immigration Proceedings; Administrative Closure* (A Comment on the Proposed Administrative Closure rule), CENTER FOR IMMIGRATION STUDIES (Nov. 7, 2023) <https://perma.cc/T4MG-GFRD> (“CIS Comment”) (citing EOIR statistics).

25. To curtail this massive increase in EOIR’s backlog, the Trump Administration, in August of 2020, promulgated a notice of proposed rulemaking to streamline EOIR procedures and enhance efficiency of adjudication. *See* AA96 NPRM, 85 Fed. Reg. 52,491.

26. Among other provisions, the AA96 NPRM clarified that controlling regulations “provide no freestanding authority for immigration judges or BIA members to administratively close immigration cases absent an express regulatory or settlement basis to do so.” 85 Fed. Reg. at 52,492.

27. Administrative closure has been described as “a procedural tool created for the convenience of the Immigration Courts and the Board” to “temporarily remove a case from an Immigration Judge’s active calendar or from the Board’s docket.” *Matter of Avetisyan*, 25 I&N Dec. 688, 690, 692 (BIA 2012). In theory, administrative closure is a tool to permit IJs and the Board to manage their dockets under unusual circumstances, such as when an alien may be eligible for relief from removal governed by another administrative body, such as USCIS, and allowing the parallel proceeding to reach its conclusion could moot or otherwise help resolve the removal proceeding.

28. In practice, however, administrative closure became a form of unofficial amnesty for hundreds of thousands of illegal aliens. As the Attorney General found in 2018, “[a]lthough described as a temporary suspension, administrative closure is effectively permanent in most instances.” *Matter of Castro-Tum*, 27 I&N Dec. 271, 272 (A.G. 2018). As of 2018, “[s]ince 1980, immigration judges have recalendared less than a third of administratively closed cases.” *Id.* at 273. “[A]dministrative closure often functions as a de facto amnesty program with benefits—*i.e.*, providing illegal aliens both indefinite employment authorization and indefinite protection from removal—which wholly belies its characterization as merely a docket management tool.” EXEC. OFF. FOR IMMIGRATION REV., U.S. DEP’T OF JUST., *Policy Memorandum 25-29: Cancellation of Director’s Memorandum 22-03* at 6 (Apr. 18, 2025) (hereinafter “PM 25-29”).

29. Thus, DHS determined in 2020 that “administrative closure of cases by the immigration judges or the Board, especially the unilateral use of administrative closure, failed as a policy matter and is unsupported by the law.” AA96 NPRM, 85 Fed. Reg. at 52,504. Accordingly, the AA96 NPRM proposed revising DOJ regulations to clarify that: “Nothing in this paragraph nor in any regulation contained in 8 CFR part 1240 shall be construed as authorizing an immigration judge to administratively close or suspend adjudication of a case unless a regulation promulgated by the Department of Justice or a previous judicially approved settlement expressly authorizes such action.” *Id.* at 52,513.

30. The AA96 Final Rule substantially adopted this language. Appellate Procedures and Decisional Finality in Immigration Proceedings; Administrative Closure, 85 Fed. Reg. 81,588, 81,655 (Dec. 16, 2020) (“AA96 Final Rule”) (“Nothing in this paragraph (b) nor in any regulation contained in part 1240 of this chapter shall be construed as authorizing an immigration judge to administratively close or otherwise defer adjudication of a case unless a regulation promulgated by the Department of Justice or a previous judicially approved settlement expressly authorizes such an action.”)

31. In doing so, DOJ emphasized that the broad administrative closure authority in effect prior to AA96 operated, in practice, as an unauthorized form of case termination, 85 Fed. Reg. at 81,599 (“[I]n practice, unlike continuances, administrative closure has at times been used to effectively terminate cases through indefinite delay.”) and was contrary to law. *Id.* (“[R]egardless of policy preferences, the Attorney General has determined that the expansive version of administrative closure preferred by commenters [that is, the version in effect prior to AA96] is incompatible with existing law and does not warrant a delegation of such authority.”).

32. DOJ concluded that indefinitely delaying cases was not a form of “efficiency” that comported with EOIR’s statutory duty to adjudicate immigration proceedings. *Id.* at 81,598. To the contrary, to reduce the backlog of cases in a lawful and meaningful way, DOJ concluded that “an immigration judge [is] required both to complete a case and to complete it through only one of three avenues: An order of termination, an order of removal, or an order of relief or protection.” AA96 NPRM, 85 Fed. Reg. at 52,496. Any other disposition, including faux termination through indefinite administrative closure, violates EOIR’s statutory responsibility to “decide whether an alien is removable from the United States.” 8 U.S.C. § 1229a(c)(1)(A).

III. The Biden-Harris Administration launched a lawless campaign to undermine U.S Immigration Policies.

33. From the earliest days of the Biden-Harris Administration, it was clear that neither statutory law nor the constitutional directive that the Executive is to take care that the law be faithfully executed would have much influence over the Biden-Harris Administration’s immigration policies. To the contrary, the Biden-Harris Administration launched a comprehensive campaign to actively undermine the immigration policies favored by strong majorities of the American people and written into law by their representatives in Congress.

34. One of the most insidious tools the Biden-Harris Administration used to undermine immigration law was to abuse prosecutorial discretion. This abuse included promulgating policies that expressly discouraged immigration enforcement of any kind against most illegal aliens.

35. In a September 30, 2021, memorandum, then-Secretary of Homeland Security Alejandro Mayorkas described “the exercise of prosecutorial discretion” as the “foundational principle” for the enforcement of civil immigration laws. Alejandro Mayorkas, *Guidelines for the*

Enforcement of Civil Immigration Law, Sept. 30, 2021, <https://perma.cc/DV58-K76U> (“Mayorkas Memorandum”).

36. Going further, the Mayorkas Memorandum proclaimed that, as a matter of policy (and contrary to the Executive’s constitutional duty to faithfully execute the law): “The fact an individual is a removable noncitizen therefore should not alone be the basis of an enforcement action against them.”

37. In other words, as a matter of departmental policy, immigration enforcement was to essentially cease against illegal aliens who were not perceived to be threats to the Biden-Harris Administration’s lax definitions of national security, public safety, or border security.

38. The memorandum also listed an extensive raft of caveats to ensure that even an alien who *was* such a threat to this country need not, necessarily, fear removal.

39. For example, an illegal alien who had committed crimes in addition to their immigration violations could nonetheless enjoy the unauthorized and unofficial amnesty of “prosecutorial discretion” as a matter of policy based on:

- advanced or tender age;
- lengthy presence in the United States
- a mental condition that may have contributed to the criminal conduct, or a physical or mental condition requiring care or treatment;
- status as a victim of crime or victim, witness, or party in legal proceedings;
- the impact of removal on family in the United States, such as loss of caregiver;
- whether the noncitizen may be eligible for humanitarian protection or other immigration relief;

- military or other public service of the noncitizen or their immediate family;
- time since an offense and evidence of rehabilitation;
- conviction was vacated or expunged.

Mayorkas Memorandum at 3–4. In other words, as a matter of administration policy, the Biden-Harris Administration had not only repudiated Congress’s mandate that illegal aliens are removable, it had decided that even further criminality within the United States *after* illegally entering our country and violating our sovereignty might not be enough to stir those charged with carrying out our laws to do their duty.

40. The Mayorkas Memorandum even went so far as to implicitly recognize its own lawlessness. Trying to justify the Biden-Harris Administration’s policies of near-complete abdication of the Executive’s responsibilities, the Mayorkas Memorandum claimed: “Numerous times over the years, and presently, bipartisan groups of leaders have recognized these noncitizens’ contributions to state and local communities and *have tried* to pass legislation that would provide a path to citizenship or other lawful status for the approximately 11 million undocumented noncitizens.” Mayorkas Memorandum at 2 (emphasis added). Underneath an effort to obfuscate reality by emphasizing the Biden-Harris Administration’s policy preferences, this is little more than an admission that Congress has repeatedly considered—and expressly *rejected*—the policy of amnesty/nonenforcement that this memorandum made Executive policy.

41. On April 3, 2022, then-U.S. Immigration and Customs Enforcement (“ICE”) Principal Legal Advisor Kerry Doyle promulgated a memorandum to the ICE Office of the Principal Legal Advisor (“OPLA”) attorneys detailing implementation of the Mayorkas Memorandum within OPLA. Kerry E. Doyle, *Guidance to OPLA Attorneys Regarding the*

Enforcement of Civil Immigration Laws and the Exercise of Prosecutorial Discretion, Apr. 3, 2022, <https://perma.cc/5BXG-7HYH> (“Doyle Memorandum”).

42. The Doyle Memorandum formalized implementation of the Mayorkas Memorandum, directing that OPLA attorneys formally categorize cases within their computerized tracking system (PLAnet) as “priority” or “nonpriority” based on Mayorkas Memorandum guidance.

43. The Doyle Memorandum explicitly encouraged OPLA attorneys not to pursue removal against “nonpriority” illegal aliens and, where removal proceedings had already been initiated, to seek termination or closure of such cases. *See* Doyle Memorandum at 10 (“Noncitizens determined not to be priorities for enforcement may receive prosecutorial discretion. The OPLA-preferred forms of prosecutorial discretion for nonpriority cases are either non-filing of the NTA or, if the NTA has already been filed, dismissal of proceedings. OPLA attorneys may, in appropriate cases, consider alternative forms of prosecutorial discretion, including administrative closure, stipulations to issues or relief, continuances, not pursuing an appeal, joining motions to reopen, and stipulations in bond hearings, but OPLA’s strong preference is to efficiently remove nonpriority cases from the docket altogether to best focus enforcement resources on Departmental priority cases.”).

44. As if to emphasize that even removable aliens already in removal proceedings were to be protected from the legal consequences of their actions, in direct defiance of the laws as promulgated by Congress, the Doyle Memorandum emphasized that: “In performing their duties, OPLA attorneys are expected to exercise discretion *at all stages* of the enforcement process in

accordance with the factors and considerations set forth in the Mayorkas Memorandum and this guidance.” Doyle Memorandum at 9 (emphasis added).

IV. The Administrative Closure Rule was promulgated as a component of the Campaign to undermine Immigration Law.

45. Shortly after the Biden-Harris Administration took office, the AA96 rule was preliminarily enjoined by a district court in California, largely based on alleged APA violations. *See Centro Legal*, 524 F. Supp. 3d 919. Because the Biden-Harris Administration was already planning to rescind the AA96 rule, DOJ agreed to a stay of proceedings, and the matter was not litigated to conclusion. *See Centro Legal*, No. 21-cv-00463-SI, Joint Stipulation and Proposed Order to Hold Case in Abeyance, ECF No. 64 (N.D. Cal. Mar. 24, 2021).

46. With the AA96 Rule preliminarily enjoined, Attorney General Merrick Garland took aim at the administrative decision AA96 had largely codified (*Matter of Castro-Tum*). In *Matter of Cruz-Valdez*, 28 I&N Dec. 326 (A.G. 2021), Attorney General Garland overruled *Matter of Castro-Tum* in its entirety and putatively reinstated the administrative closure standards of *Matter of Avetisyan*, 25 I&N Dec. 688 (BIA 2012), and *Matter of W-Y-U-*, 27 I&N Dec. 17 (BIA 2017).

47. In his brief opinion, Attorney General Garland acknowledged that the prior opinion had been based not only on regulations, but also on statutory law: “In *Castro-Tum* . . . Attorney General Sessions concluded that administrative closure was not authorized by statute, regulation, or delegation from the Attorney General.” *Matter of Cruz-Valdez*, 28 I&N Dec. at 328. Nonetheless, Attorney General Garland relied solely on United States Appellate Court precedent holding that administrative closure was authorized by *regulation* (pre-AA96) and that “*Castro-Tum* departed from long-standing practice.” *Id.* at 328–29.

48. Attorney General Garland offered no statutory authority authorizing indefinite administrative closure, nor in any other way did he address the prior DOJ conclusion, or the conclusion of the Sixth Circuit, that administrative closure was contrary to law. *See Matter of Castro-Tum*, 27 I&N Dec. 271; *Hernandez-Serrano*, 981 F.3d at 465 (noting that the “permanent closure of some 350,000 immigration cases [via administrative closure] was largely contrary to law” and “no one—neither *Hernandez-Serrano*, nor the two circuit courts that have rejected the Attorney General’s decision in *Castro-Tum*—has explained how a general authority to close cases administratively can itself be lawful while leading to such facially unlawful results”).

49. On September 8, 2023, the Biden-Harris Administration promulgated the Administrative Closure NPRM, proposing, among other things, to rescind the AA96 Final Rule and to greatly expand administrative closure beyond even its pre-AA96 limits. *See* Administrative Closure NPRM, 88 Fed. Reg. 62,242.

50. The NPRM proposed to authorize IJs to administratively close any case *with or without cause* “in the exercise of discretion” and “upon the motion of a party.” Administrative Closure NPRM at 62,280.

51. Further, the NPRM proposed to mandate that, absent unusual circumstances, IJs shall administratively close cases where both parties request it, or where one party requests administrative closure and the other party “has affirmatively indicated its non-opposition.” *Id.* (“An immigration judge shall grant a motion to administratively close or recalendar filed jointly by both parties, or filed by one party where the other party has affirmatively indicated its non-opposition, unless the immigration judge articulates unusual, clearly identified, and supported reasons for denying the motion.” (emphasis added)).

52. After commenters explained, in detail, why the proposed rule was unlawful, *see, e.g.*, CIS Comment (explaining that the INA does not authorize “administrative closure as a method to ‘temporarily’ or permanently remove cases from a court’s calendar on the basis of a ‘totality of the circumstances’ analysis of the parties’ interests”), DOJ nonetheless promulgated the Final Administrative Closure Rule on May 29, 2024. 89 Fed. Reg. 46,742.

53. Although the final rule adds factors that should be considered, none are treated as dispositive and the standard remains a statutorily baseless “totality of the circumstances.” Other than that, the final rule retained substantially the same breadth of administrative closure authority as the NPRM. 89 Fed. Reg. at 46,792.

54. However, the final rule went so far as to acknowledge explicitly that there need not be any parallel proceeding that could moot or resolve the issues in the adjudication, nor, for that matter, any reason to believe that the “temporarily” administratively closed case would ever be recalendared. 89 Fed. Reg. 46,792 (“Although administrative closure may be appropriate where a petition, application, or other action is pending outside of proceedings before the immigration judge, such a pending petition, application, or other action is not required for a case to be administratively closed.”).

55. Thus, although the Final Rule describes administrative closure as “temporary,” it authorizes administrative closure for any reason (or no reason at all) upon request by one party (even over the objection of the other party), *mandates* it for most situations in which both parties request it or one requests it and the other does not oppose, and permits recalendaring only (1) as an act of the IJ’s discretion and (2) when one party moves to recalendar. Thus, as a matter of policy, under the Mayorkas and Doyle Memoranda (the governing policies in place when the

Administrative Closure Rule was promulgated), DHS would, in nearly all cases, never make a motion to recalendar as a matter of “prosecutorial discretion.”

56. Thus, the Final Administrative Closure Rule effectively created a permanent form of relief from removal for illegal aliens that was not authorized by Congress, subverted the letter and intent of the INA, defied the statutory mandate that IJs “shall decide whether an alien is removable from the United States,” 8 U.S.C. § 1229a(c)(1)(A), and permitted the Biden-Harris Administration to grant back-door amnesty to hundreds of thousands of illegal aliens per year. The Final Rule was part and parcel of the Biden-Harris Administration’s lawless campaign to abdicate responsibility for enforcing this nation’s immigration laws.

57. The Administrative Closure Rule remains in full legal force and continues to bind EOIR adjudicators, who must apply its administrative closure provisions to cases before them.

58. Therefore, this Court should hold unlawful and set aside the Administrative Closure Rule as “not in accordance with law” under the APA, because it is ultra vires and violates the INA’s requirements for EOIR adjudication. 5 U.S.C. § 706.

V. The Administrative Closure Rule is arbitrary, capricious, an abuse of discretion, not in accordance with law, and otherwise violates the APA.

59. In promulgating the Final Administrative Closure Rule, the Biden-Harris Administration committed numerous other violations of the APA.

60. First, the administration leaned into the precise administrative failures that the Northern District of California had used to justify preliminarily enjoining the AA96 Rule in *Centro Legal*. Specifically, the *Central Legal* court found that the AA96 violated the APA because it was part of “‘Staggered’ Rulemaking” adopted in a “piecemeal method in which the Departments

published this NPRM and other related proposed rules” and policy guidance at different times. *Centro Legal*, 524 F. Supp. 3d at 958.

61. The Final Rule failed to consider (or even address) the compounding impact of freewheeling administrative closure authority paired with the policy of affirmatively refusing to pursue the immigration cases announced in the Mayorkas and Doyle Memoranda, nor how the Doyle Memorandum’s stated expectation that OPLA attorneys “continuously” reevaluate enforcement priorities throughout proceedings might result in meritorious removal cases being nonetheless administratively closed indefinitely.

62. There is no acknowledgment of or consideration of the intersection of this radical expansion of administrative closure and other policies, such as the Biden-Harris Administration’s radical (and ultimately unlawful) expansion of immigration parole, “catch-and-release” policies regarding putative asylum seekers, etc.

63. Although Plaintiff does not agree with the *Centro Legal* court’s analysis, DOJ was clearly not only aware of the holding, but, at least in part, based the Administrative Closure rulemaking process on the premise that *Centro Legal* was correct. *See, e.g.*, Final Administrative Closure Rule, 89 Fed. Reg. at 46,742 (“On September 8, 2023, after reconsidering the AA96 Final Rule, including the comments received during that rulemaking, and the issues identified in the *Centro Legal* litigation, the Department published [the Administrative Closure NPRM].”). Despite *Centro Legal* being, at least in part, the very basis for the challenged rule, DOJ repeated the core alleged errors that formed the basis of the *Centro Legal* preliminary injunction.

64. EOIR’s reliance on *Centro Legal* while making no attempt to reconcile virtually identical procedures with that opinion was arbitrary, capricious, and unlawful.

65. Thus, to an even greater extent than in that case, “because numerous intertwined proposed rules [and policies] were promulgated at different times, including after the close of the comment period in this case, the true impact of the Final Rule was obscured and the public was deprived of a meaningful opportunity to comment. Further, by failing to consider the combined impact of all of these rules [and policy memoranda], EOIR entirely failed to consider an important aspect of the problem.” *Centro Legal*, 524 F. Supp. 3d at 962 (cleaned up).

66. Second, the Administrative Closure Rule failed to consider how hundreds of thousands of facially valid removal cases being indefinitely closed would impact the total population of illegal immigrants present in the United States, or how that increase would impact States, localities, and other parties who rely on the Federal Government to faithfully enforce our immigration laws.

67. The predictable result of the Administrative Closure Rule has been hundreds of thousands of cases indefinitely removed from IJs’ calendars and the Board’s docket; that is, hundreds of thousands of removable aliens receiving an unauthorized and unlawful form of “amnesty” that permits them to remain in the United States indefinitely, when, by law, they should face prompt removal.

68. As of July 31, 2025, EOIR estimated that: “For all inactive pending cases, the average length of time a case has been administratively closed is 6,120 days (approximately 16½ years) and the median length of time is 4,242 days (approximately 11½ years) . . . At the Board of Immigration Appeals, the average length of time a case has been administratively closed is 10,647 days (approximately 29 years) and the median length of time is 12,588 days (approximately 34 years).” EOIR Adjudication Statistics, July 31, 2025, <https://perma.cc/3MFH-JSYW>. “[B]etween

January 2021 and January 2025, the number of administratively closed cases increased from nearly 278,000 to almost 392,000; over that same time period, EOIR's backlog increased from approximately 1.68 million cases to over 4.1 million cases." PM 25-29 at 5. Objectively, there is little to no truth to the claim that administrative closure represents a temporary delay in adjudication when average delays range from years to decades, depending on the level at which EOIR administratively closes a case; by any reasonable definition, it is functionally a final adjudication of "I decline to adjudicate."

69. As a direct result of refusing to adjudicate hundreds of thousands of cases that were already in removal proceedings and subject to facially valid notices of removal, the administrative closure rule has permitted countless illegal aliens to remain in the country who would otherwise have been removed. This comes at a substantial cost to States and localities, who must continue to expend resources on services, entitlements, and law enforcement for illegal aliens who should not be in this country at all, and who must bear the burden of crimes committed by the same.

VI. Texas is irreparably harmed by the Administrative Closure Rule on an Ongoing Basis.

70. Removable aliens are permitted to remain in the United States indefinitely when their cases are administratively closed rather than being adjudicated to completion. As a result, the Administrative Closure Rule causes there to be an increased number of removable illegal aliens present in the country and, specifically, in Texas.

71. The excess illegal aliens residing in Texas as a direct result of the Administrative Closure Rule cause a variety of concrete harms to the State. Primarily, Texas incurs significant fiscal costs due to illegal aliens consuming public services. Since the Rule increases the number of illegal aliens present in Texas, it thereby increases the number of illegal aliens consuming Texas public

services. The Rule also jeopardizes Texas's public safety by releasing illegal aliens suspected of criminal offenses. The Rule inflicts the following specific injuries on Texas.

72. First, Texas incurs substantial fiscal costs from illegal aliens utilizing medical welfare programs operated by the State, including Medicaid and Texas Children's Health Insurance ("CHIP").

73. The Texas Health and Human Services Commission ("HHSC") collects data on the number and cost of hospital visits by illegal aliens. In Fiscal Year 2025, HHSC reported 313,742 hospital visits by illegal aliens at a total cost of \$1,050,642,864. See Ex. A at ¶¶ 6-7 (Declaration of Victoria Grady). These figures include 42,315 visits covered by Medicaid or CHIP that cost the State \$279,674,968. *Id.*

74. Texas is required by federal statute to provide medical care to all persons, regardless of immigration status, through Emergency Medicaid, a subset of Medicaid that offers limited care in emergency situations. Medicaid and Emergency Medicaid are jointly funded by the federal government and the States. Texas is not fully reimbursed for the costs it incurs operating Medicaid and pays those costs out of its budget. Thus, the expense that Texas bears providing Medicaid services to illegal aliens are both federally mandated and uncompensated.

75. Second, Texas must expend additional resources on law enforcement and incarceration of illegal aliens who commit additional crimes. Texas also suffers the damages caused by such crimes against either the State or its citizens.

76. The Texas Department of Criminal Justice ("TDCJ") oversees and operates the State's prisons. TDCJ tabulates the number of "undocumented criminal aliens" in its custody and

estimates the total cost to the State of their incarceration. *See generally* Declaration of Rebecca Waltz, Ex. B.

77. For the period spanning July 1, 2022, through June 30, 2023, TDCJ held 7,768 illegal aliens. *Id.* at ¶ 6. During the same period, incarcerating these inmates cost the State \$191,047,274. *Id.* TDCJ has borne similar costs in previous years. From July 1, 2021, through June 30, 2022, TDCJ was responsible for 6,914 illegal aliens at a cost of \$174,698,428, *Id.* at ¶ 8, and from July 1, 2020, through June 30, 2021, TDCJ held 7,058 illegal alien inmates at a cost of \$171,667,641. *Id.* at ¶ 10. While the federal government provides financial assistance to States that incarcerate undocumented aliens who have at least one felony or two misdemeanor convictions for violations of state or local law, these subsidies amount to a fraction the total costs Texas sustains from its custody of illegal aliens who have committed non-federal crimes. *See Id.* at ¶¶ 3, 7, 9, 11.

78. Third, Texas suffers further pocketbook injuries from the cost of educating school-age illegal aliens. The Fourteenth Amendment—per current precedent—requires States to provide K-12 education to eligible illegal aliens. *See Plyler v. Doe*, 102 S.Ct. 2382, 2391-2402 (1982). Accordingly, Texas must and does offer tax-payer funded primary and secondary schooling to age-appropriate illegal aliens.

79. The Texas Education Agency (“TEA”) provides state-level oversight to Texas’s network of public schools. Noncitizen schoolchildren typically cost more to educate than citizen schoolchildren because they need and qualify for bilingual and compensatory education. *See* Declaration of Amy Copeland, Ex. C at ¶ 2. Specifically, a noncitizen pupil receiving bilingual and compensatory education is projected to consume \$13,399 in education funding in Fiscal Year 2026.

Id. A noncitizen pupil that does not receive bilingual and compensatory education will still cost a projected \$11,170 to educate, in the same Fiscal Year. *Id.*

80. While TEA does not know the exact number of illegal alien children residing in Texas, the Agency calculates a minimum estimate of the costs it expects the State to incur from educating illegal aliens. TEA comes by this estimate using data the federal government publishes of the number of unaccompanied minor children (“UAC”) that are unlawfully present in Texas. *Id.* at ¶¶ 3-4.

81. Using these figures, TEA projects an annual cost of educating illegal alien children of approximately \$45.78 million. *Id.* at ¶ 4. This amount will be split between state and local funds. In Texas, the State supplements local education spending, leaving it on the hook for part of the additional cost arising from illegal alien enrollment. *Id.* at ¶¶ 5-6. And the bulk of local education spending is provided by school districts and counties, which are both subdivisions of the State. Accordingly, in the current fiscal year, Texas will spend at least \$45.78 million to provide K-12 schooling to illegal aliens.

82. Because UACs are only a subset of school-age illegal aliens, the total cost of providing K-12 education to illegal immigrants is higher than TEA’s estimate. Any additional UAC or other illegal alien enrollee increases Texas’s expenditure on K-12 education. *Id.* at ¶ 6.

83. Fourth, the Administrative Closure Rule endangers public safety because it disproportionately benefits illegal aliens suspected of serious crimes. Administrative closure inherently benefits only illegal aliens against whom removal proceedings have been initiated, and the Trump Administration has prioritized removal of illegal aliens accused of further criminality. Thus, the Rule disproportionately results, in removable national security, public safety, and border

security threats being released indefinitely into the United States, rather than removed as the law commands.

84. This population is then free to perform the precise acts that made them national security, public safety, and border security threats in the first place—with Texas and its citizens suffering the consequences of EOIR’s irresponsible abuse of administrative closure.

85. Fifth, beyond harm to the public fisc, Texas suffers damage to its sovereignty as a State. Controlling immigration “is an inherent attribute of sovereignty,” and it is questionable whether the States would have ratified the Constitution if it had stated that limits on immigration “will be enforced only to the extent the President deems appropriate” because the States “jealously guarded” their sovereignty during the Constitutional Convention. *Arizona v. United States*, 567 U.S. 387, 422, 436 (2012) (Scalia, J., concurring in part and dissenting in part).

86. There can be little doubt that the Administrative Closure Rule increases the number of illegal aliens in the United States, including Texas. During the Biden-Harris Administration, roughly 129,000 removal cases were administratively closed, the vast majority of which were not recalendared. PM 25-29 at 5.

87. Further, the Rule actively encourages increased illegal immigration. The unlawful creation of a form of “relief” from removal that permits an illegal alien to remain indefinitely in the United States is about as powerful an incentive as could be provided to a potential illegal entrant.

88. Indeed, U.S. Border Patrol Chief Raul Ortiz confirmed, prior to promulgation of the Administrative Closure Rule, that this was not only a predictable result of the Administration’s nonenforcement policies, but one that had already come to pass. During a July 28, 2022, deposition, Chief Ortiz admitted that since President Biden’s election, the number of aliens attempting illegally

to enter the United States had increased substantially and that internal Customs and Border Patrol documents stated that “since President Biden was elected . . . aliens illegally entering the United States perceive that they will be able to enter and remain in the United States.” *Florida v. United States*, No. 21-cv-1066, ECF No. 78-3 at 59:12–60:5 (N.D. Fla. 2022) (Deposition of Raul Ortiz, Chief of the U.S. Border Patrol) (“Ortiz Depo.”).

89. Chief Ortiz also agreed that “aliens who cite favorable immigration policy as a reason to come to the United States are perceiving what actually is happening in the United States.” *Id.* at 67:22–68:5.

90. Chief Ortiz further explained that it is essential to detain and remove aliens who illegally enter the United States because when there are no consequences, the number of illegal crossings increases; that “if migrant populations are told that there’s a potential that they may be released, that yes, you can see increases [in illegal crossings];” and that if DHS is not detaining and removing aliens who cross illegally, the flow of illegal crossers “will increase.” *Id.* at 171:13–172:9, 173:7–12.

91. Establishing such an incentive structure, and causing such an easily predictable rise in illegal border crossings (which disproportionately affect border States like Texas), is precisely the purpose and effect of the Administrative Closure Rule.

92. The Rule creates an avenue outside of any authorization by Congress for illegal aliens to be released from custody and permitted to remain in the United States indefinitely. Its existence explicitly conveys the possibility of such lawless presence to potential border crossers.

93. Illegally present aliens tangibly harm the State of Texas, and that harm is proportional to their number. Federal law requires Texas to spend significant amounts of money

providing services to illegal aliens while the federal government's lax immigration policies keep these costs high. As the Administrative Closure Rule continues to increase the number of illegal aliens in Texas, the State's injuries deepen.

VII. Texas has standing to challenge the Administrative Closure Rule

94. To have standing, a plaintiff must have “an injury that is concrete, particularized, and actual or imminent; fairly traceable to the defendant's challenged behavior; and likely to be redressed by a favorable ruling.” *Davis v. Fed. Election Comm'n*, 554 U.S. 724, 733 (2008) (citation omitted).

95. As detailed above, Texas suffers irreparable harm—to its sovereignty, the safety of its citizen, and the public fisc—when the federal government administratively closes meritorious removal cases. This harm stems directly from the illegal aliens permitted to remain indefinitely in the United States by administrative closure rather than having their cases adjudicated to completion, and removed. It also stems from the predictable increase in illegal immigration, as the Administrative Closure Rule is a direct and well-understood incentive for potential migrants to enter the United States illegally. *See Dep't of Comm. v. New York*, 588 U.S. 752, 768 (2019) (finding standing where “third parties will likely react in predictable ways”). Some of these effects of the Administrative Closure Rule's take place in Texas, and Texas is affected by illegal immigration into “the entire United States” because “injury to a State can flow from the fact that aliens are ‘free to move among states.’” *Tex. v. United States*, 524 F. Supp. 3d 598, 624 (S.D. Tex. 2021) (quoting *Tex. v. United States*, 809 F.3d 134, 188 (5th Cir. 2015)).

96. “[E]ven ‘a dollar or two’ of fairly predictable costs as a result of agency action show standing.” *Texas v. United States Dep't of Homeland Sec.*, 756 F. Supp. 3d 310, 346 (E.D. Tex. 2024)

(quoting Sprint Commc'ns Co., L.P., 554 U.S. at 289); *see also Czyzewski v. Jevis Holding Corp.*, 580 U.S. 451, 464 (2017) (“For standing purposes, a loss of even a small amount of money is ordinarily an ‘injury.’”). “Federal law affirmatively requires the States to make some of those expenditures” on aliens present in the State, so Texas is unable to avoid this harm. *Texas v. Biden*, 20 F.4th 928, 969 (5th Cir.2021) (citing, 42 C.F.R. § 440.255(c) (Emergency Medicaid)) rev’d. on other grounds *Biden v. Texas*, 597 U.S. 785 (2022).

97. The presence of illegal aliens in Texas imposes concrete fiscal costs on the State due to the strain they place on non-discretionary public services. These costs are traceable to the Administrative Closure Rule because the Rule increases the number of illegal aliens in the United States, including in Texas.

98. Separately, the propensity of the Administrative Closure Rule to benefit criminally suspect aliens endangers public safety. *See Tex. v. United States*, 40 F.4th 205, 217-18 (5th Cir. 2022) (finding Texas suffered a cognizable injury from Biden immigration policy that “increases the number of aliens with criminal convictions and aliens with final orders of removal released into the United States”).

99. Thus, Plaintiff is and continues to suffer concrete and particularized injuries fairly attributable to the Administrative Closure Rule. Texas has incurred and will continue to incur financial injuries on education, healthcare, and law-enforcement costs that it would otherwise not incur but for the Administrative Closure Rule. These costs are attributable to Defendants’ actions both because the Administrative Closure Rule directly increases the number of illegal aliens permitted to remain in the country by indefinitely “closing” meritorious removal cases and because it directly incentivizes increased illegal migration into Texas.

100. The injuries the Rule causes the State implicates a legally protected interest. *Texas v. United States*, 809 F.3d 134, 152–54 (5th Cir. 2015) (“[T]he states are within the zone of interests of the Immigration and Nationality Act (“INA”); they are not asking us to ‘entertain citizen suits to vindicate the public’s nonconcrete interest in the proper administration of the laws.’”).

101. Further, vacatur and injunction of the Administrative Closure Rule will redress Plaintiff’s injury. Vacating the Rule will eliminate requirements for immigration judges to close cases on a party’s motion, and enjoining Defendants from permitting immigration judges to indefinitely close cases will put an end to the Biden-Harris legacy of de facto granting legal status to aliens who, under the INA, are unlawfully present. This relief will necessarily reduce the number of cases administratively closed and, therefore, reduce the number of illegal aliens permitted to remain indefinitely in the United States contrary to the INA. Further, vacatur of the Rule will remove the explicit incentive it creates for further illegal immigration by eliminating a pathway to indefinite unlawful presence. This will reduce expenditures and protect Texas’s sovereignty.

102. The Administrative Closure Rule was promulgated through notice-and-comment rulemaking and published in the Federal Register as a binding regulation. 89 Fed. Reg. 46,742. Under the APA, it can only be rescinded, modified, or superseded through a new rulemaking that itself complies with the procedural requirements of 5 U.S.C. § 553. No such rulemaking has been initiated. Thus, the Rule remains in full legal force, and EOIR adjudicators remain bound by it.

103. Nor is this dispute merely hypothetical. Cases continue to be administratively closed under the Administrative Closure Rule, and hundreds of thousands of previously closed cases remain on EOIR’s inactive docket, imposing concrete and ongoing harm on Texas. Average closure durations range from approximately 16.5 years at the immigration court level to

approximately 29 years at the BIA level. Each administratively closed case represents a removable alien who remains indefinitely in the United States, generating ongoing costs to Texas in healthcare, education, law enforcement, and other public services that Texas is legally required to provide.

VIII. The Court should vacate the Administrative Closure Rule, declare it unlawful, and enjoin the defendants from implementing it.

104. For the reasons explained above, the Court should set aside the Administrative Closure Rule and enter a declaratory judgment that it is unlawful.

105. The Administrative Closure Rule is not authorized by statute, and, in fact, runs counter to the INA's command that: "At the conclusion of the proceeding the immigration judge shall decide whether an alien is removable from the United States. The determination of the immigration judge shall be based only on the evidence produced at the hearing." 8 U.S.C. § 1229a(c)(1)(A). Administrative closure prevents such a decision, and, under the Administrative Closure Rule, results in a determination based on factors not relevant to the hearing under statutory law or precedent.

106. The Administrative Closure Rule is also unlawful because, despite caveats in the text that are disproven by practice, it creates and authorizes distribution of a form of relief from removal unauthorized by Congress and, in fact, contrary to Congressional standards of removability. Congress enjoys plenary power over immigration law, and EOIR may not usurp this power by creating its own alternative system for granting status or presence in the country.

107. Because there is no reasonable way to cabin the effects of the unlawful rule so as to prevent harm to Texas, the injunction should be nationwide.

108. Both the Constitution and Congress have directed that the country needs a uniform, nationwide immigration policy, which requires nationwide relief here. *See Texas v. United States*,

809 F.3d 134 at 187–88. Specifically, “[i]n the context of immigration law, broad relief is appropriate to ensure uniformity and consistency in enforcement.” *Texas v. United States*, 50 F.4th 498, 531 (5th Cir. 2022) (quoting *Texas v. United States*, 40 F.4th 205, 229 n.18 (5th Cir. 2022)). In contrast, “[a] more limited remedy would detract from the integrated scheme of regulation created by Congress.” *Id.* (cleaned up).

109. Most importantly, because this is a case under the Administrative Procedure Act, the Supreme Court’s recent jurisprudence regarding so-called “nation-wide injunctions” does not impede this Court setting aside the Administrative Closure Rule in its entirety. *See Trump v. CASA, Inc.*, 606 U.S. 831, 847 n.10 (2025) (“Nothing we say today resolves the distinct question whether the Administrative Procedure Act authorizes federal courts to vacate federal agency action. *See* 5 U.S.C. § 706(2) (authorizing courts to ‘hold unlawful and set aside agency action’).”)

110. Indeed, in the Fifth Circuit, “[u]nder prevailing precedent, § 706 ‘extends beyond the mere non-enforcement remedies available to courts that review the constitutionality of legislation, as it empowers courts to ‘set aside’—i.e., formally nullify and revoke—unlawful agency action.’” *Data Mktg. P’ship, LP v. U.S. Dep’t of Lab.*, 45 F.4th 846, 859 (5th Cir. 2022). Indeed, the APA only recognizes complete vacatur; it makes no allowance for vacatur of a regulation solely as applied to Texas while that regulation continues in other states. When the federal government promulgates an unlawful regulation, “[t]he default rule is that vacatur is the appropriate remedy.” *Id.*

CLAIMS FOR RELIEF

Count I

**Administrative Procedure Act, 5 U.S.C. § 706(2)(A), (C)
Rule in Excess of Defendants' Statutory Authority**

111. Plaintiff incorporates by reference the preceding allegations as if fully set forth herein.

112. The Administrative Closure Rule is final agency action reviewable under the APA. *See* 89 Fed. Reg. at 46,788 (“The decision below is, therefore, the final agency determination.”).

113. Under the APA, a court must “hold unlawful and set aside agency action” that is “not in accordance with law” or is “in excess of statutory . . . authority[] or limitations, or short of statutory right.” 5 U.S.C. § 706(2)(A), (C).

114. The Administrative Closure rule is not in accordance with law and exceeds Defendants' statutory authority to regulate removal proceedings under 8 U.S.C. § 1229a.

115. Specifically, the Administrative Closure Rule permits IJs and the Board to violate Congress's command that: “At the conclusion of the proceeding the immigration judge shall decide whether an alien is removable from the United States.” 8 U.S.C. § 1229a(c)(1)(A).

116. It has long been understood that an immigration judge “may neither terminate nor indefinitely adjourn the proceedings in order to delay an alien's deportation . . . [and] [o]nce deportation proceedings have been initiated . . . the immigration judge . . . must execute his duty to determine whether the deportation charge is sustained by the requisite evidence in an expeditious manner.” *Matter of Quintero*, 18 I&N Dec. 348, 350 (BIA 1982). The Administrative Closure Rule nonetheless allows IJs to exceed their authority by effectively terminating—at a minimum “indefinitely adjourning”—proceedings with no cause to believe that they will ever be resumed or

dependance on outside events that could offer guidance as to how long the indefinite adjournment will last.

117. This conclusion is further bolstered by longstanding separation-of-function principles that dictated that enforcement authority (and, therefore, prosecutorial discretion) did not vest with EOIR adjudicators, who were required to accept DHS decisions to pursue or not pursue removal and were limited to adjudicating the removability of an alien *after* that decision had been made.

118. However, the Administrative Closure Rule implicitly erases this principle by empowering adjudicators, even over DHS objection, to administratively close any case for any reason—or no reason—guided only by their own discretion if requested to do so by the removable alien, with no requirement that the case ever be reopened or finally adjudicated.

119. The Defendants, therefore, have “gone beyond what Congress has permitted [them] to do.” *City of Arlington v. FCC*, 569 U.S. 290, 298 (2013). They have “no power to act unless and until Congress” grants it, *Nat. Res. Def. Council v. Nat’l Highway Traffic Safety Admin.*, 894 F.3d 95, 112 (2d Cir. 2018), yet they have created an alternative form of relief from removal specifically to undermine Congress’s statutory plan for regulating immigration into the United States.

120. The Administrative Closure Rule also cannot survive scrutiny under the major questions doctrine. Under *West Virginia v. EPA*, 597 U.S. 697 (2022), and *Biden v. Nebraska*, 600 U.S. 477 (2023), when an agency claims authority to resolve a matter of “vast economic and political significance,” courts require “clear congressional authorization” for the agency’s action. *West Virginia*, 597 U.S. at 716m 724 (cleaned up). The doctrine applies with particular force where

the agency's assertion of authority is novel, "unheralded," based on "the vague language of an ancillary provision," or where "Congress had conspicuously and repeatedly declined to enact" the very policy the agency seeks to impose. *Id.* at 724 (cleaned up).

121. Each of these indicia is present here. Through the Administrative Closure Rule, EOIR has asserted the authority to create a *de facto* amnesty program affecting hundreds of thousands of aliens, permitting them to remain indefinitely in the United States—with employment authorization—free from any threat of removal. No statute authorizes administrative closure by EOIR adjudicators. And Congress has "conspicuously and repeatedly declined" to enact the amnesty that the Administrative Closure Rule accomplishes by administrative fiat: as the Mayorkas Memorandum itself acknowledged, "bipartisan groups of leaders . . . *have tried* to pass legislation that would provide a path to citizenship or other lawful status for the approximately 11 million undocumented noncitizens." Mayorkas Memorandum at 2 (emphasis added).

122. Immigration—and, in particular, the question of whether to grant *de facto* amnesty to hundreds of thousands of removable aliens—is a matter of "vast economic and political significance" and the subject of "an earnest and profound debate across the country." *West Virginia*, 597 U.S. at 716, 732 (cleaned up). Because Congress did not clearly authorize EOIR to create a system of indefinite non-adjudication that operates as a mass amnesty program, the Administrative Closure Rule exceeds the Defendants' statutory authority.

123. Therefore, the regulation is unlawful and should be declared as such and set aside.

Count II
Administrative Procedure Act, 5 U.S.C. § 706(2)(A)
Arbitrary and Capricious Agency Action

124. Plaintiff incorporates by reference the preceding allegations as if fully set forth herein.

125. Under the APA, a court must “hold unlawful and set aside agency action” that is arbitrary, capricious or otherwise not in accordance with law or contrary to the Constitution. 5 U.S.C. § 706(2)(A).

126. “[A]gency action is lawful only if it rests on a consideration of the relevant factors” and all “important aspect[s] of the problem.” *Michigan v. EPA*, 576 U.S. 743, 750–52 (2015) (requiring “reasoned decisionmaking” of Executive agencies). This means agencies must “examine all relevant factors and record evidence.” *Am. Wild Horse Pres. Campaign v. Purdue*, 873 F.3d 914, 923 (D.C. Cir. 2017).

127. Particularly where it is obvious, an agency cannot “entirely fail[] to consider an important aspect of the problem.” *Motor Vehicle Mfrs. Ass’n*, 463 U.S. at 43; *see also Am. Wild Horse*, 873 F.3d at 931 (“The Service’s Finding of No Significant Impact not only failed to take a ‘hard look’ at the consequences of the boundary change, it averted its eyes altogether.”).

128. Further, agencies must actually analyze the relevant factors. “Stating that a factor was considered . . . is not a substitute for considering it.” *Texas v. Biden*, 10 F.4th 538, 556 (5th Cir. 2021) (internal quotation omitted). The agency must provide more than conclusory statements to prove it considered the relevant statutory factors. *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 224 (2016).

129. The Administrative Closure rule is arbitrary and capricious for several independently sufficient reasons.

130. *First*, the Defendants arbitrarily did not consider or account for the States’ legally recognized reliance interests in the complete adjudication of removal cases.

131. The government is obligated to “turn square corners in dealing with the people.” *DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 24 (2020) (quoting *St. Regis Paper Co. v. United States*, 368 U.S. 208, 229 (2020) (Black, J., dissenting)). When an agency changes course, as the Defendants have done here, they must “be cognizant that longstanding policies may have ‘engendered serious reliance interests that must be taken into account.’” *Id.* at 30 (quoting *Encino Motorcars*, 579 U.S. at 221–22 (2016)). In fact, “[i]t would be arbitrary and capricious to ignore such matters.” *Id.* (quoting *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009)).

132. States have overwhelming reliance interests in federal enforcement of immigration law. Plaintiff’s budgets and resource allocations are determined in reliance on Defendants’ continued enforcement of immigration law, including adjudicating removal cases to completion as required by statute. The Defendants did not consider whether the States relied on EOIR to fully adjudicate cases brought before it when they were determining how to marshal and distribute their resources to address the number of aliens living illegally in their States and claiming benefits. The Administrative Closure rule is arbitrary and capricious because it utterly ignores these reliance interests. *See Regents of the Univ. of Cal.*, 591 U.S. at 29–32.

133. *Second*, the Defendants gave no consideration whatsoever to the actual costs they imposed on States by releasing illegal aliens indefinitely back into the population.

134. They made no mention of increased expenses for healthcare, education, or other benefits.

135. They made no mention of increased crime or costs associated with law enforcement.

136. They made no mention of the infringement on State sovereignty occasioned by aliens who are *known to be present illegally in the United States* being nonetheless granted an indefinite and legally unauthorized opportunity to continue to reside within the States.

137. They made no mention nor gave any consideration to how incentivizing further illegal migration into the United States would impact the states to which aliens migrated, nor did they consider the particularly damaging consequences such incentives would have for border states like Texas.

138. To the contrary, in both the NPRM and Final Rule, Defendants simply asserted that the Rule “would not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.” *See* 88 Fed. Reg. at 62,275; 89 Fed. Reg. at 46,785.

139. These statements are categorically and demonstrably false. Thus, the Administrative Closure rule is arbitrary and capricious.

140. *Third*, the Defendants did not consider how the Administrative Closure Rule incentivizes further illegal migration into the United States.

141. Despite acknowledging that numerous commenters raised this concern, *see, e.g.*, 89 Fed. Reg. at 46,743, Defendants did no more than brush the concern off as “an unfounded assumption,” *see* 89 Fed. Reg. at 46,773. The “assumption,” however, is far from unfounded—creating an explicit pathway to remain in the United States indefinitely *even after being identified as illegally present and subjected to a Notice to Appear for removal proceedings* is an obvious incentive for potential illegal migrants, and, as explained above, the Biden-Harris Administration’s

lax approach to immigration enforcement predictably led to the worst surge of illegal migration into the United States in its history.

142. Brushing off concern that an active incentive to commit unlawful conduct may result in an increase in the incentivized conduct as “an unfounded assumption” is far from adequate consideration. As a result, the Administrative Closure Rule is arbitrary and capricious.

143. *Fourth*, the Defendants entirely failed to consider the interplay between other policies of nonenforcement and the Administrative Closure Rule. For example, there is no mention, let alone adequate discussion, of how the Mayorkas and Doyle Memoranda operate in the context of the Administrative Closure Rule.

144. Since the Mayorkas Memorandum expressly directs DHS personnel not to pursue enforcement in ordinary illegal immigration cases, and to pursue only national security, public safety, and border security threats, the Administrative Closure Rule should reasonably have been expected to operate predominantly on populations that were or had at some point in the proceedings been considered to be such threats.

145. Yet there is no consideration of whether mass administrative closure for such dangerous individuals would operate to disproportionately increase risks to national security, public safety, or border security. There is no consideration of whether combining an express policy of nonenforcement, as articulated in the Memoranda, with a policy of abandoning what little enforcement there is in a large number of cases via administrative closure could multiply the incentives to commit illegal acts.

146. Ironically, both the NPRM and Final Rule cite the *Centro Legal* opinion, 524 F. Supp. 3d 919, as support for promulgating the rule, meaning Defendants were clearly aware of

concern about how other immigration rules and policies could interact; yet they chose to ignore the very same thing in their own rulemaking.

147. Thus, the Administrative Closure Rule is arbitrary and capricious.

148. *Fifth*, the Administrative Closure Rule is arbitrary and capricious because Defendants failed to address separation-of-function concerns.

149. Multiple commenters noted the longstanding legal and regulatory separation-of-function principle holding that those bringing charges, not adjudicators, were to exercise prosecutorial discretion.

150. However, the rule expressly permits IJs and the Board to administratively close a case upon motion by any party, including over DHS's objection, for any reason or no reason at all—including, by implication, the IJ's or the Board's own judgment about application of prosecutorial discretion.

151. Because Defendants fail to explain why it is appropriate to discard longstanding separation-of-function principles, the Administrative Closure Rule is arbitrary and capricious.

152. *Sixth*, the Administrative Closure Rule is arbitrary and capricious because its rationales are obviously pretextual. EOIR has itself admitted that "there is no reliable evidence that administrative closure aids docket management; rather, the opposite has shown to be true." PM 25-29 at 6.

153. The Rule circumvents the normal order for adjudicating removal cases and creates a pathway to indefinite presence in the United States for illegal aliens, contrary to our immigration law. The Rule is justified by "efficiency" concerns, yet DHS and EOIR personnel are mandated to

constantly reevaluate an extensive list of factors that go far beyond removability to decide, at every stage of adjudication, whether a case should instead be administratively closed.

154. Further, efficiency is one of the few factors IJs are not authorized by the Rule to consider if both parties move to administratively close a case. Without “unusual, clearly identified, and supported reasons for denying the motion,” an IJ must grant administrative closure if both parties so request, even if, in his judgment, it is a *less* efficient course (e.g., if the case is nearing conclusion and the alien is clearly removable).

155. The Biden-Harris Administration demonstrated a consistent and lawless dedication to open borders ideology, and the Administrative Closure Rule is merely another tool to that end. It was promulgated to undermine immigration enforcement, not to promote efficiency, and so is arbitrary and capricious.

Count III
Administrative Procedure Act, 5 U.S.C. § 706(2)(D)
Lack of Notice and Comment

156. Plaintiff incorporates by reference the preceding allegations as if fully set forth herein.

157. The APA provides that courts must “hold unlawful and set aside agency action” that is “without observance of procedure required by law.” 5 U.S.C. § 706(2)(D).

158. The APA requires agencies to publish notice of all “proposed rule making” in the Federal Register, 5 U.S.C. § 553(b), and to “give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments,” 5 U.S.C. § 553(c). Thus, the Rule can be issued, if at all, only via notice-and-comment rulemaking under the APA. 5 U.S.C. § 553.

159. Such requirements are not “mere formalities,” but rather are “basic to our system of administrative law.” *Nat’l Highway Traffic Safety Admin.*, 894 F.3d at 115. “Section 553 was enacted to give the public an opportunity participate in the rule-making process. It also enables the agency promulgating the rule to educate itself before establishing rules and procedures which have a substantial impact on those who are regulated.” *U.S. Dep’t of Labor v. Kast Metals Corp.*, 744 F.2d 1145, 1153 n.17 (5th Cir. 1984) (quoting *Batterton v. Marshall*, 648 F.2d 694, 705 (D.C. Cir. 1980)); *see also NRDC*, 894 F.3d at 115 (notice and comment serves “the public interest by providing a forum for the robust debate of competing and frequently complicated policy considerations having far-reaching implications and, in doing so, foster reasoned decisionmaking.”); *Spring Corp. v. FCC*, 315 F.3d 369, 373 (D.C. Cir. 2003) (notice and comment “ensures fairness to affected parties and provides a well-developed record that enhances the quality of judicial review”) (cleaned up)).

160. Nonetheless, by obscuring the interplay between complementary policies of nonenforcement, the Defendants deprived the public of the opportunity to meaningfully comment on the comprehensive scheme devised by the Biden-Harris Administration.

161. Further, as explained in Count II, because the Rule was promulgated on the false basis of efficiency, without explanation or even acknowledgment that administrative closure, in practice, is typically something between indefinite and effectively permanent, interested parties were impeded in their ability to comment on the practical effects of the Rule or its operation as, in practice, an alternative and unauthorized form of relief from removal.

162. Because interested parties were not given adequate information about the rule or how it fit into the larger set of open-border policies promulgated by the Biden-Harris

Administration, they did not have an adequate opportunity to comment on the Rule. The Rule was thus promulgated “without observance of procedure required by law.” 5 U.S.C. § 706(2)(D).

Count IV
Violation of the Take Care Clause of Art. II, Sec. 3
of the United States Constitution

163. Plaintiff incorporates by reference the preceding allegations as if fully set forth herein.

164. Article II, Section 3 of the Constitution provides that the President has a constitutional duty to “take Care that the Laws be faithfully executed.” U.S. CONST. ART. II, § 3.

165. The Take Care Clause has its roots in the dispute between Parliament and King James II, who was overthrown in the Glorious Revolution of 1688. Parliament was infuriated at King James’s use of his purported power to suspend or dispense with Parliament’s laws. Zachary Price, *Enforcement Discretion and Executive Duty*, 67 VAND. L. REV. 671, 676, 690–91 (2014). As a result, the subsequent monarchs, William and Mary, agreed to the English Bill of Rights, which stripped the monarchy of all suspending and dispensing authority. *See* Bill of Rights 1688, 1 W. & M. Sess. 2 c. 2 (Eng.)

166. Considering this historical background, the Framers of the U.S. Constitution unanimously rejected a proposal to grant dispensing powers to the President.

167. Indeed, the Fifth Circuit recently had occasion to examine the Executive’s inability to dispense with the laws. *Texas v. Biden*, 20 F.4th at 978–82. In short, “[t]he Framers agreed that the executive should have neither suspending nor dispensing powers.” *Id.* at 980

168. The Supreme Court has held likewise. *Kendall v. United States ex rel. Stokes*, 37 U.S. 524 (1838). “To contend that the obligation imposed on the President to see the laws faithfully executed, implies a power to forbid their execution, is a novel construction of the [C]onstitution,

and entirely inadmissible.” *Id.* at 613. Any other conclusion “would ... vest[] in the President a dispensing power.” *Id.*

169. Here, the complete abdication of responsibility for enforcing immigration law is particularly egregious. In the Mayorkas Memorandum, the Biden-Harris Administration explicitly abdicated responsibility for enforcing immigration law in the entire category of cases involving “only” immigration law violations. Indeed, the Mayorkas and Doyle Memoranda restrict enforcement to cases that are otherwise explicitly called out as being of particular interest under the INA, for example criminal aliens made removable under 8 U.S.C. 1182.

170. The Administrative Closure Rule is little more than a tool of this abdication, allowing the Administration to further abandon its responsibility for enforcing this country’s immigration laws even where a facially valid Notice to Appear has been issued to a presumptively removable illegal alien. Such a consistent abdication “is a dereliction of duty reviewable in the courts.” *Adams v. Richardson*, 480 F.2d 1159, 1163 (D.C. Cir. 1973).

Count V
Non-Statutory Cause of Action
Ultra Vires

171. Plaintiff incorporates by reference the preceding allegations as if fully set forth herein.

172. A plaintiff may “institute a non-statutory review action” against an agency head “for allegedly exceeding his statutory authority.” *Chamber of Com. of U.S. v. Reich*, 74 F.3d 1322, 1327 (D.C. Cir. 1996). Such non-statutory causes of action survive displacement by the APA. *Id.* at 1329 (citing *Larson v. Domestic & Foreign Comm. Corp.*, 337 U.S. 682, 690–91 (1949)).

173. For the same reasons as stated in Count I, the Administrative Closure rule exceeds the Defendants' statutory authority to manage caseloads under 8 U.S.C. § 1229a by effectively terminating cases without final adjudication.

174. The Administrative Closure rule further exceeds the Defendants' statutory authority under the INA by effectively creating a form of relief from removal not authorized by law that operates to permit illegal aliens to remain indefinitely in the United States at the whim of the Executive.

DEMAND FOR RELIEF

For these reasons, Plaintiff State of Texas asks that the Court:

- a. Decree that the Administrative Closure Rule was issued in violation of the APA and vacate, set aside, and permanently enjoin Defendants from implementing it;
- b. Declare that the Administrative Closure Rule exceeds Defendants' statutory authority under 8 U.S.C. § 1229a;
- c. Declare that no statute authorizes immigration judges to administratively close or suspend adjudication of a case; and
- d. Award Plaintiff State of Texas all other relief to which it may be entitled.

Date: June 22, 2026

Respectfully submitted.

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Attorney General

/s/ Kyle Tebo
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COUNSEL FOR PLAINTIFF

CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing document was filed electronically
(via CM/ECF) on June 22, 2026 and that all counsel of record were served by CM/ECF.

/s/ Kyle Tebo
KYLE TEBO

**In the United States District Court
Northern District of Texas
Wichita Falls Division**

STATE OF TEXAS,
PLAINTIFFS,

V.

UNITED STATES DEPARTMENT OF JUSTICE;
TODD BLANCHE, IN HIS OFFICIAL CAPACITY
AS ACTING UNITED STATES ATTORNEY
GENERAL, DAREN K. MARGOLIN, IN HIS OF-
FICIAL CAPACITY AS DIRECTOR OF THE EX-
ECUTIVE OFFICE FOR IMMIGRATION REVIEW,
DEFENDANTS

CIVIL CASE No. 7:26-CV-00070-O

JOINT MOTION FOR ENTRY OF CONSENT JUDGMENT

The State of Texas (Plaintiff) and the United States Department of Justice, Todd Blanche, and Daren K. Margolin (Defendants) jointly move this Court to enter the attached proposed consent judgment as to Plaintiff's claims and prayer for relief set forth in the Complaint. ECF No. 1. In support of this motion, the Parties incorporate the allegations in the Complaint by reference and state the following:

1. Plaintiff filed suit against Defendants on June 22, 2026.
2. The Parties agree that the Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1345, and venue is proper under 28 U.S.C. § 1391(b).
3. In the Complaint, Plaintiff challenged the regulatory changes made in the final rule titled: Efficient Case and Docket Management in Immigration Proceedings, 89 Fed. Reg. 46,742 (May 29, 2024) ("Administrative Closure Rule"), including, among other changes to Federal Regulations, rescinding the AA96 Final Rule, *see* Appellate Procedures and Decisional Finality in

Immigration Proceedings; Administrative Closure, 85 Fed. Reg. 81,655 (Dec. 16, 2020) (“AA96 Final Rule”).

4. Plaintiffs requested that this Court enter a judgment declaring that the Administrative Closure Rule was issued in violation of the APA and that it exceeds Defendants’ statutory authority under 8 U.S.C. § 1229a.

5. Plaintiffs further requested that this Court vacate, set aside, and permanently enjoin the Defendants from implementing or operating under the parameters of the Administrative Closure Rule.

6. The Parties Agree that the Court has the authority to provide the requested relief under 28 U.S.C. §§ 1361 and 2201–2202, the Administrative Procedure Act, 5 U.S.C. §§ 705–706, and its inherent equitable powers.¹

7. Congress directed immigration judges to reach a final determination regarding removability on the merits of a case: “At the conclusion of the proceeding the immigration judge shall decide whether an alien is removable from the United States. The determination of the immigration judge shall be based only on the evidence produced at the hearing.” 8 U.S.C. § 1229a(c)(1)(A).

8. The Parties agree that the effect of the Administrative Closure Rule is to authorize indefinite administrative closure without legal justification or identifiable timetables. As the Sixth Circuit said of the *less permissive* administrative closure regime in place immediately prior to the

¹ The proposed final judgment provides that the Rule be vacated pursuant to 5 U.S.C. § 706. It is the position of the Department of Justice that the APA does not authorize a court to vacate an agency rule, and that if vacatur is an available remedy, then like all equitable remedies, such relief must be subject to traditional equitable limitations. The Department acknowledges, however, that there is substantial authority opposing this position in some circuits, including the Fifth Circuit, though the Supreme Court has not ruled on the issue. In jointly requesting with Plaintiff that the Court enter the parties’ proposed final judgment, the Department agrees not to pursue this position in this case, but it reserves the right to continue to advance this position in other cases.

promulgation of the Administrative Closure Rule: “Those concessions imply that the permanent closure of some 350,000 immigration cases was largely contrary to law. Indeed no one . . . has explained how a general authority to close cases administratively can itself be lawful while leading to such facially unlawful results.” *Hernandez-Serrano v. Barr*, 981 F.3d 459, 465 (6th Cir. 2020).

9. The Parties further agree that the promulgation of the Final Administrative Closure Rule was inadequately justified under the circumstances and was arbitrary and capricious.

10. Accordingly, the Parties request that the Court enter a final judgment declaring that the challenged regulations, as described in the Administrative Closure Rule Notice of Proposed Rule-making, Appellate Procedures and Decisional Finality in Immigration Proceedings; Administrative Closure, 88 Fed. Reg. 62,242 (Sept. 8, 2023), and implemented in the Administrative Closure Rule, 85 Fed. Reg. 81,655, are unlawful under 8 U.S.C. § 1229a and 5 U.S.C. § 706(2)(A), (C).

11. The Parties further request that this Court enter a final judgment declaring that no statute authorizes immigration judges to indefinitely administratively close or suspend adjudication of a case.

12. The Parties request that this Court issue a permanent injunction that prohibits Defendants as well as their successors, agents, subordinate agencies, and employees, from enforcing the challenged regulations or promulgating substantially similar regulations that permit broad authority to administratively close removal proceedings without reaching the merits of a case, absent an express statutory basis to do so.

13. The Parties also request that this Court vacate the Administrative Closure Rule.

14. The Parties agree that each Party will bear their own costs and fees.

Dated: June 22, 2026

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*Pro Hac Vice forthcoming

COUNSEL FOR PLAINTIFF

Certificate Of Service

I hereby certify that on June 22, 2026, a true and correct copy of the foregoing document was served on all counsels of record.

/s/ Kyle Tebo
KYLE TEBO

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
WICHITA FALLS DIVISION**

STATE OF TEXAS

Plaintiff,

v.

DEPARTMENT OF JUSTICE, ET AL.,

Defendants.

§
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Civil Action No. 7:26-CV-00070-O

ORDER AND FINAL JUDGMENT

Before the Court is the Parties’ Joint Motion for Entry of a Consent Judgment. ECF No. 3. Having considered the Motion, the Complaint (ECF No. 1), and applicable law, the Court **GRANTS** the Motion. Accordingly, the Court hereby **DECLARES** that the challenged regulation, Efficient Case and Docket Management in Immigration Proceedings, 89 Fed. Reg. 46,742 (May 29, 2024) (“Administrative Closure Rule”), is in excess of statutory authority and contrary to law.

The Court further **DECLARES** that no statute authorizes immigration judges to indefinitely administratively close or suspend adjudication of a case before them.¹

The Court further **ORDERS, ADJUDGES AND DECREES** as follows:

1. The Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1346, and 1361, and is authorized to award the requested relief under 5 U.S.C. §§ 702, 703, and 706; 8 U.S.C. §§ 1361, 2201, and 2202; and the Court’s inherent equitable powers;

¹ See *Hernandez-Serrano v. Barr*, 981 F.3d 459, 465–66 (6th Cir. 2020).

2. Defendants, as well as their successors, agents, subordinate agencies, and employees, are hereby permanently enjoined from enforcing the Administrative Closure Rule;
3. Defendants, as well as their successors, agents, subordinate agencies, and employees, are permanently enjoined from promulgating regulations that permit immigration judges the authority to administratively close removal proceedings without reaching the merits of a case absent an express statutory basis to do so;
4. The Administrative Closure Rule is hereby vacated;
5. The Parties enter into this final Consent Judgment voluntarily and waive any right to appeal from this Judgment;²
6. All remaining requests for relief are dismissed without prejudice.

This final judgment is issued pursuant to Federal Rule of Civil Procedure 58(a). The Clerk of Court shall transmit a true copy of this judgment to the Parties.

SO ORDERED on this **22nd day of June, 2026**.



Reed O'Connor

CHIEF UNITED STATES DISTRICT JUDGE

² The Department of Justice represents that its position is that the Administrative Procedure Act “does not authorize a court to vacate an agency rule, and that if vacatur is an available remedy, then like all equitable remedies, such relief must be subject to traditional equitable limitations. . . . In jointly requesting with Plaintiff that the Court enter the parties’ proposed final judgment, the Department agrees not to pursue this position in this case, but it reserves the right to continue to advance this position in other cases.” Mot. 1 n.2, ECF No. 3.

**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF TEXAS
WICHITA FALLS DIVISION**

State of Texas,

Plaintiff,

v.

U.S. Department of Justice *et al.*,

Defendants,

and

City of Baltimore, MD; City of Columbus, OH;
City of New Haven, CT; and Centro Legal de la
Raza,

Movant-Intervenors.

Case No. 7:26-CV-00070-O

Declaration of Jacquelin R. Lewis

I, Jacquelin R. Lewis, declare as follows:

1. I am a resident of the State of Ohio. I have personal knowledge and knowledge set forth based upon information that is provided to me in the performance of my job duties, including reviewing business records. That knowledge is set forth in this declaration and, if called as a witness, I could and would testify competently to the matters set forth below.
2. I am the Auditor for the City of Columbus. I began serving in that position on May 4, 2026. The City Auditor is the city's chief accounting officer.
3. Prior to serving as the City Auditor, I was a partner at the law firm of Bricker Graydon Wyatt LLP in its Public Finance practice group. My professional experience includes advising various Ohio political subdivisions on the issuance of municipal bonds and lease-purchase financing, including general obligation, revenue, and nontax revenue bond financings.

4. The City Auditor's Office is responsible for maintaining high-quality fiscal processing, tax collection and audit, debt management, record keeping, and reporting to our residents, business community, City departments and others on the financial condition of the City.
5. My office has six different sections: (1) Accounting and Operations, which is responsible for processing and maintaining accurate records of all City fiscal transactions; (2) Financial Reporting, which manages the City's independent audit and compiles the City's annual comprehensive financial report and popular annual financial report; (3) Payroll, which handles the bi-weekly generation of paychecks and tax-withholding remittances for all of the City's employees; (4) Debt Management, which oversees the City's debt issuance, credit analysis, and debt payment processes; (5) Financial Systems, which maintains the software systems and technology functions for the Auditor's Office; and (6) Financial Analytics, which establishes and sets the City's official revenue estimate which serves as the ceiling for the City's annual budget, revenue analysis, and related functions.
6. The Division of Income Tax is also located in the City Auditor's Office.
7. The Division of Income Tax carries out collection of the City's 2.5% income tax, its admissions tax, short-term rental excise tax, and hotel/motel tax.
8. General Fund income tax revenues on the budget basis in 2025 for the City of Columbus were \$1.265 billion less refunds of \$40.6 million for a net amount of \$1.224 billion.
9. Income tax revenues on the modified accrual basis of accounting, net of refunds, were \$1.243 billion.
10. A ten-year lookback for income tax revenues for the City of Columbus can be summed up in this table, which was compiled by the Auditor's Office for the Annual Comprehensive Financial Report for the Fiscal Year ended December 1, 2025:

City of Columbus, Ohio
Income Tax Revenue Fund Distribution and Governmental Activities
Net of Refunds
Last Ten Fiscal Years
(in thousands, except %)

Year	Budget (Cash) Basis					GAAP (Modified Accrual) Basis					Full Accrual	
	General Fund	Debt Service Funds	Other Governmental Funds	Total	% Increase (Decrease)	General Fund	Debt Service Funds	Other Governmental Funds	Total	% Increase (Decrease)	Governmental Activities	% Increase (Decrease)
2016	\$ 629,935	\$ 209,979	\$ -	\$ 839,914	4.60%	\$ 630,266	\$ 210,089	\$ -	\$ 840,355	3.96%	\$ 846,355	4.05%
2017	656,889	218,963	5	875,857	4.28%	657,229	219,076	5	876,310	4.28%	876,310	3.54%
2018	668,685	222,895	5	891,585	1.80%	666,599	222,199	5	888,803	1.43%	880,803	0.51%
2019	706,086	235,362	5	941,453	5.59%	711,076	237,025	5	948,106	6.67%	953,106	8.21%
2020	699,560	233,187	1	932,748	(0.92%)	710,261	236,754	1	947,016	(0.11%)	938,016	(1.58%)
2021	776,095	258,699	-	1,034,794	10.94%	773,734	257,911	-	1,031,645	8.94%	1,053,645	12.33%
2022	810,429	270,143	1	1,080,573	4.42%	810,936	270,901	1	1,081,838	4.87%	1,084,838	2.96%
2023	852,461	284,153	-	1,136,614	5.19%	848,120	282,117	-	1,130,237	4.47%	1,151,237	6.12%
2024	1,149,649	-	-	1,149,649	1.15%	1,144,941	-	-	1,144,941	1.30%	1,134,941	(1.42%)
2025	1,224,256	-	-	1,224,256	6.49%	1,242,726	-	-	1,242,726	8.54%	1,257,726	10.82%

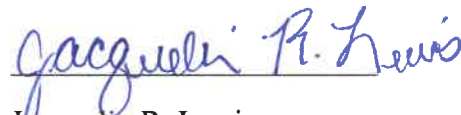
Source: City of Columbus, Ohio, City Auditor.

11. I understand that some individuals who currently do not have United States citizenship can and do obtain work permits that allow them to legally work in this country.

12. When an individual obtains such a work permit, they are permitted to work and pay income tax and other types of taxes just like United States citizens.
13. U Visa applicants can be granted such a work permit.
14. Should the U Visa applicant be granted work authorization, that individual would contribute to the City's revenue base by working and paying taxes.
15. The City of Columbus levies a 2.5% income tax on residents as well as non-residents who work in the City.
16. I understand that many U Visa applicants work legally while their applications are pending. Removal of each of these individuals would mean that the City would lose out on the tax revenue that each person would pay.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed August 7, 2026, in Columbus, Ohio.


Jacquelin R. Lewis

**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF TEXAS
WICHITA FALLS DIVISION**

STATE OF TEXAS,

Plaintiff,

v.

U.S. DEPARTMENT OF JUSTICE, et al.,

Defendants.

Civ. Action No. 26-cv-00070

**DECLARATION OF ABBY SULLIVAN ENGEN, CENTRO LEGAL DE LA RAZA,
IN SUPPORT OF MOTION TO INTERVENE**

Pursuant to 28 U.S.C. § 1746, I, Abby Sullivan Engen, declare under penalty of perjury as follows:

1. I make this sworn statement based on personal knowledge and information provided to me in the course of my employment by colleagues at Centro Legal de la Raza (“Centro Legal”), whom I believe to be reliable.

2. I am the Directing Attorney of the Immigrants’ Rights practice at Centro Legal, a non-profit organization with its principal place of business in Oakland, California.

Centro Legal’s Mission and Selected Activities

3. Centro Legal is a nonprofit legal services organization that protects and advances the rights of low-income individuals through legal representation, education, and advocacy. Our immigration practice serves the needs of the most vulnerable immigrants, including asylum seekers, youth who have survived domestic abuse and other violence, and survivors of trafficking and other violent crimes.

4. Centro Legal has been operating in Oakland, California since 1969, and we have been one of California’s leading nonprofit providers of removal defense legal services since 2014.

Our Immigrants' Rights practice has established partnerships with dozens of community-based organizations and school districts, who regularly refer their clients and constituents to our office for immigration legal services. We are one of several nonprofit organizations on the list of immigration legal service providers that DHS subagencies and EOIR distribute to noncitizens seeking legal representation in removal proceedings. It is our mission and goal to provide high-quality, free immigration legal representation to as many indigent noncitizens in removal proceedings as possible.

The High Demand for Centro Legal's Immigration Legal Services

5. At present, our immigration legal practice comprises eight attorneys, three Department of Justice accredited representatives, and five support staff. Two additional attorneys will begin employment with us in August and September of 2026, and we are in the process of hiring one additional support staff member.

6. Collectively, our legal team manages over 1,600 open immigration legal matters. Between January and July 2026, Centro Legal staff actively worked on 1,113 cases for existing clients. Our attorneys responded to 36 ICE arrests and provided legal services to these individuals ranging from consultations, release advocacy before ICE, habeas corpus representation in federal court, and assistance with repatriation. Due to our existing demanding workload and the need to respond to an exponential increase in ICE arrests in Alameda County, between January and July of 2026 we commenced full-scope or limited-scope immigration legal representation of only 24 new, non-detained clients.

7. Due to our long-term community presence and consistent reputation for providing high-quality, free immigration legal services, the demand for our services substantially outpaces our capacity. Between the same time period of January through July 2026, over 1,100 nondetained individuals called or walked into our office requesting immigration legal services; 67 detained individuals sought our legal representation; and I estimate that we received an additional 50-70 referrals from community and organizational partners. Therefore, we were able to respond to just under 2% of the demand for our legal representation.

8. While we can provide formal legal representation to only a small fraction of the unrepresented respondents in removal proceedings who seek our services, we have designed other ways to meaningfully serve these community members. We coordinate and execute an average of one to two workshops or clinics each month, and this year we have prioritized clinics to assist unrepresented respondents to file complete asylum applications to avoid the risk of pretermission of their asylum claims. At each clinic we're able to serve between 10 and 20 community members to file the necessary documents to be able to continue pursuing their asylum claims rather than lose the opportunity to present them to an immigration judge.

The “Administrative Closure Rule”

9. The regulation codified at 8 C.F.R. § 1003.18 is titled “Docket management” and sets forth subsections titled “Scheduling,” “Notice,” “Administrative closure and recalendaring,” and “Termination.” The order and final judgment issued in this case on June 22, 2026 references the final rule titled “Efficient Case and Docket Management in Immigration Proceedings,” promulgated at 89 Fed. Reg. 46,742, and proceeds to refer to this rule as “the Administrative Closure Rule.” It then vacates “the Administrative Closure Rule” and enjoins the Department of Justice from promulgating regulations that permit administrative closure of removal proceedings, absent express statutory authority.

10. At least one Immigration Judge in the San Francisco Immigration Court has raised the question *sua sponte* whether he has authority to *terminate*—not only administratively close—removal proceedings following the District Court’s order in this case. Therefore, the Court’s order may and will be read to vacate the entire rule now codified at 8 C.F.R. § 1003.18, not simply the provision governing administrative closure.

Our Office’s Reliance on Both Administrative Closure and Termination

11. Removal defense cases comprise the majority of our practice’s collective workload, and I estimate that our attorneys devote 75% of their time to representation of individuals in removal proceedings. Many of our clients—particularly our clients who entered the United States as unaccompanied children fleeing persecution and domestic violence and our clients who

survived violent crimes in the United States—are statutorily eligible for lawful immigration statuses that can be conferred only by U.S. Citizenship and Immigration Services (USCIS); additionally, some clients have a statutory right to pursue such status before USCIS despite being in removal proceedings. Due to USCIS processing times over which neither we nor our clients have any control, our office relies heavily on both administrative closure and termination while our clients’ cases proceed before USCIS. These procedures as contemplated in 8 C.F.R. § 1003.18 allow for the conclusion or pausing of clients’ removal proceedings so that they can pursue legal protections before USCIS for which they are eligible. In most cases, the strongest forms of relief from removal for our clients whose cases have been terminated or administratively closed pursuant to § 1003.18 must be sought before USCIS.

12. The vast majority of Centro Legal’s clients whose removal proceedings have been administratively closed or terminated fall into three primary categories:

- a. **Youth who are eligible for or have been granted Special Immigrant Juvenile Status (“SIJS”).** SIJS is a classification for immigrant youth (under 21 years old and unmarried) who have been abused, neglected, and/or abandoned by at least one of their parents, and for whom it would not be in their best interest to return to their country of origin. In order to apply for SIJS before USCIS, a young person must first be placed under the jurisdiction of a juvenile court and must seek findings by a juvenile court judge that establish their SIJS eligibility. These clients have demonstrated to the satisfaction of a juvenile court that they suffered abuse, neglect, and/or abandonment at the hands of their parent(s), and that due to factors such as pervasive violence perpetrated by organized criminal groups, racial discrimination, lack of educational opportunities, and endemic poverty, it is against their best interests to return to their countries of origin.
- b. **Unaccompanied children fleeing persecution in their countries of origin.** Asylum is a legal protection for individuals who have suffered persecution or otherwise have a well-founded fear of persecution on account of race, religion,

nationality, political opinion, or membership in a particular social group, and who are unable to avail themselves of the protection of their countries' governments. Asylum may be a defense to removal for individuals in removal proceedings, and their asylum applications are adjudicated in the adversarial environment of the immigration courts; defensive asylum applicants are routinely cross-examined by attorneys for the Department of Homeland Security about the details of the persecution they claim to have suffered, including rape and other sexual violence, murders and disappearances of their family members, and attempts on their own lives. Asylum may also be sought "affirmatively" before USCIS—typically by someone who entered the United States on a visa or other formal legal status and then claimed a fear of persecution in their country of origin—and this process involves a nonadversarial interview by an Asylum Officer. In recognition of the unique vulnerability of unaccompanied children to human trafficking and other forms of exploitation, Congress passed the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), which vests USCIS with original jurisdiction over these children's asylum claims, even if they are in removal proceedings. This allows unaccompanied children overcoming trauma to present their asylum claims in the nonadversarial setting of USCIS before an Asylum Officer trained in child-specific interviewing techniques, rather than in the adversarial environment of Immigration Court where they will be subjected to cross-examination by government attorneys without such training.

- c. **Survivors of violent crimes in the United States.** Congress created U nonimmigrant status (more commonly referred to as the "U visa") in 2000 as a means of encouraging undocumented individuals to report crimes and cooperate with law enforcement. When a noncitizen who lacks immigration status becomes the victim of a violent crime in the U.S. and reports the crime to local law enforcement, they may apply for a U visa. The noncitizen must first obtain a

certification from a local investigatory or prosecutorial authority documenting that they were the victim of a qualifying crime and were helpful in the investigation or prosecution of the crime. The noncitizen must further establish that they suffered substantial abuse due to the crime and that they have continued to cooperate with authorities in the crime's investigation and/or prosecution. If granted, a U visa confers a temporary lawful status that makes the recipient eligible to apply for Lawful Permanent Resident (LPR) status after three years.

13. All three categories of clients detailed above—Special Immigrant Juveniles, unaccompanied child asylum applicants, and U visa petitioners—are stuck in protracted delays over which they have no control:

- a. A SIJS beneficiary can apply for LPR status only when a visa becomes available. For several years, there has been a yearslong wait for the type of visa available to SIJ youth. Therefore, despite Congress creating this protection for abused, neglected, and abandoned youth, many SIJS beneficiaries wait in limbo for several years until a visa becomes available for them to apply for. When these youth are not in active removal proceedings, we do not need to defend them against deportation, and they can instead focus on overcoming the trauma that led them to apply for SIJS, reuniting with family members, pursuing their educational and professional goals, and otherwise building their lives in the United States. We estimate that approved SIJS petitioners this year will wait at least five years before they reach the end of the visa backlog and are able to adjust status to LPR.
- b. For several years prior to 2018, with the exception of designating certain nationalities as priorities, the USCIS Asylum Office generally adjudicated asylum cases in the order applications were received. However, in 2018, USCIS announced that it was turning its scheduling procedures on their head in order to combat purported fraud in the affirmative asylum process (of which it produced no evidence). Rather than adjudicating the longest-pending applications first, USCIS

brought back an antiquated “last in, first out” policy (“the LIFO policy”), ostensibly to prevent noncitizens from filing frivolous asylum applications as a means to obtain work authorization for the years their applications remained pending. Pursuant to its LIFO policy, USCIS prioritizes scheduling asylum interviews for applications received in the last 21 days; however, USCIS receives many more asylum applications than it has capacity to schedule for interviews.¹ As a result, most noncitizens whose asylum applications are pending before USCIS have been waiting years for their applications to be adjudicated, with little to no recourse for accelerating USCIS’s processing. In recent years, our office has successfully pushed USCIS to adjudicate applications only through mandamus petitions in U.S. District Court,² a time-consuming process for which we received no additional funding. Via motions to terminate removal proceedings filed jointly with the Department of Homeland Security as well as unilateral motions citing § 1003.18(d), I estimate that our office secured termination of removal proceedings for over 100 unaccompanied child clients whose asylum applications were pending before USCIS. I estimate that between 30 and 50 additional unaccompanied child clients remain in administratively closed removal proceedings while awaiting USCIS’s scheduling of their asylum interviews.

- c. With respect to U visa petitioners, when Congress created the U visa, it vested USCIS with exclusive jurisdiction to adjudicate these petitions and instituted an

¹ While USCIS did not release such data for fiscal year 2025, its most recently published data shows that in fiscal year 2024 it received 419,800 asylum applications and adjudicated 126,700. USCIS, Annual Statistical Report FY 2024, *available at* https://www.uscis.gov/sites/default/files/document/reports/fy24_annual_statistical_report_v1.0.pdf.

² See *John Doe v. USCIS, et al.*, No. 24-CV-07450-SK (N.D. Cal. 2024); *V.M.G. v. Jaddou, et al.*, No. 24-CV-09314-TLT (N.D. Cal. 2024).

annual cap of 10,000 U visas per year. Over 260,000 U visa petitions are currently pending before USCIS, and they are generally adjudicated in the order received. Therefore, despite furthering the public policy goals Congress envisioned—coming forward to report violent crime without fear of immigration consequences—and qualifying for U nonimmigrant status, I estimate that at least 20 Centro Legal clients remain in administratively closed removal proceedings with no way to expedite the adjudication of their U visa petitions.

14. In reliance on the established practices of termination and administrative closure as set forth in § 1003.18, Centro Legal has retained hundreds of clients who we otherwise could not have represented. Generally, our retainer agreements with these clients detail the scope of legal representation as representation before USCIS in connection with specific application(s) and representation before the Immigration Court in connection with a motion to terminate or administratively close their removal proceedings. Contrary to the notion that administrative closure amounts to an “indefinite” suspension of a noncitizen’s removal proceedings, it is our established practice to move to recalendar and terminate removal proceedings once USCIS has granted an application; moreover, it is USCIS’s practice to refer all denials of immigration benefits to removal proceedings.³

Centro Legal’s Client Population in Administratively Closed Removal Proceedings

15. I estimate that 80-100 of our clients are currently in administratively closed removal proceedings. In general, these clients decided (or we made a careful and strategic decision in consultation with the client) to seek to administratively close their removal proceedings in order for them to pursue relief from removal before USCIS. While some also have pending applications for relief for removal before the immigration courts, as a general rule these clients’ cases were

³ See USCIS, Policy Memorandum PM-602-0187 (Feb. 28, 2025), *available at* https://www.uscis.gov/sites/default/files/document/policy-alerts/NTA_Policy_FINAL_2.28.25_FINAL.pdf; 8 C.F.R. § 208.14(c).

administratively closed based on our assessment that those applications do not comprise their strongest form of relief from removal.

16. As noted above, the vast majority of our clients in administratively closed proceedings are unaccompanied children who have been abused, neglected, and/or abandoned by their parents and who have applied for or been granted SIJS; unaccompanied children with asylum applications pending before USCIS; and survivors of violent crimes whose U visa petitions are pending before USCIS. We have young SIJS clients whose parents and other adult caregivers deprived them of food, subjected them to forced labor at young ages, beat them on a daily basis, and sexually abused them. We have young asylum-seeking clients who have survived kidnappings and beatings by their local governments in retaliation for their religious and political advocacy, clients who have been group-raped by gangs due to their Indigenous identity and religious devotion, and clients who have survived ritualistic public beatings as punishment for violating social expectations, including for becoming pregnant out of wedlock. Our U visa clients have survived shootings, rape, and violent assaults in the United States, and some have testified at jury trials against the perpetrators and been instrumental in securing criminal convictions.

17. These clients' pending applications before USCIS have allowed us to secure administrative closure of removal proceedings. In some cases, Immigration Judges have cited 8 C.F.R. § 1003.18(c) as their authority to close these proceedings. For SIJS clients, once a visa becomes available for them to apply to adjust their status to LPR, it is our practice to move to recalendar and terminate their removal proceedings pursuant to 8 C.F.R. § 1003.18(d)(1)(ii)(B) (discretionary termination) so that they can file their application for permanent residency before USCIS. For asylum and U visa clients, we move to recalendar and terminate pursuant to 8 C.F.R. § 1003.18(d)(1)(i) (mandatory termination) once their applications are granted; and, as noted above, their removal proceedings are reactivated if their applications are denied.

18. Were our clients' removal proceedings recalendared while they remain in the various USCIS backlogs described in paragraph 13, *supra*, we would be forced to seek repeated continuances at best; at worse, we would be forced to litigate asylum or other claims before the

Immigration Court, Board of Immigration Appeals, and Ninth Circuit, expending up to 200 hours per case, despite the likelihood of them eventually being granted lawful status by USCIS.

How Vacatur Will Harm Centro Legal

19. The vacatur of the rule codified at 8 C.F.R. § 1003.18(c) will irreparably harm Centro Legal in several ways. If the vacatur is allowed to stand, we will face exponential and compounding challenges that would make it prohibitively costly to serve our clients meaningfully. With respect to termination, while I am not aware of a substantial number of clients eligible for mandatory or discretionary termination whose removal proceedings remain on the Immigration Court's active docket, assuming the Department of Homeland Security reads the June 22nd decision to eliminate § 1003.18(d) pertaining to termination, I predict that it will recommence removal proceedings for those clients whose cases were terminated pursuant to subsection (d)(1)(ii) (permitting discretionary termination for unaccompanied children with pending TVPRA asylum applications as well as noncitizens who are prima facie eligible for lawful status before USCIS). I estimate that this will propel at least 50 Centro Legal clients back into removal proceedings. With respect to administrative closure, as noted above, I estimate that we currently carry 80-100 administratively closed cases. Once proceedings recommence or are recalendared for these 130-150 clients, I estimate that each case will require approximately 40 to 200 additional hours of staff time, depending on the complexity of the case and whether appeals are required.

20. Accordingly, as detailed below, first, the vacatur will inflict direct economic losses on Centro Legal. Second, the vacatur will place an untenable burden on our legal staff, who have extremely demanding workloads even without the recalendaring of these cases. Third, the vacatur likely will harm our organizational reputation. Fourth, it will interfere with our core activities of providing free, high-quality immigration legal services to as many indigent community members as possible.

I. Economic Harm

21. As noted above, our practice provides all immigration legal services pro bono. Not only do we believe strongly in pro bono legal representation, but our largest funder requires as a

condition of funding that we not charge clients any fees for our legal services; and another large funder requires that our “primary purpose and function” be the provision of free legal services to indigent people.

22. The vast majority of our practice’s funding is tied to specific “case deliverables,” measured either by a full-time equivalent (FTE) caseload, or by total number of clients. Because nondetained removal defense cases typically last for at least two years and sometimes over a decade, we are extremely careful to open the exact number of cases that our contracts with funders require—no more and no fewer—and assign these cases as equitably as possible. For example, under our largest removal defense grants, we must carry 25 to 35 active removal defense matters per FTE; at present, we are funded to carry a total of 130 to 182 active matters at all times, and we carefully plan to open and close a precise number of cases in order to maintain our total number of matters between 130 and 182.

23. In addition to our FTE-based grants, for over ten years we received per-case funding for representation of unaccompanied children. This grant provided a set quantity of funds per client, regardless of the complexity and lifetime of the case, and regardless of how many separate legal services we provided to the client (i.e., we received the same funding regardless of how many forms of relief from removal we pursued for each client). This grant requires that we continue to represent the child in connection with appeals of all adverse administrative and judicial decisions. I conservatively estimate that we continue to represent 90-100 of these clients in connection with pending TVPRA asylum applications, pending SIJS petitions, and approved SIJS petitions with a priority date that is not yet current, despite the fact that funding has been depleted. Were these clients suddenly back in active removal proceedings, we would be contractually obligated to represent them through a Circuit Court appeal, yet we would receive no additional funding under the unaccompanied child-specific grant to represent them. Rather, we would receive funding only for those cases that bring our total active matter count to 182.

24. Similarly, were our administratively closed cases to be subjected to wholesale recalendaring, we would receive funding only for those cases that bring our total active matter

count to 182. We would therefore be forced to perform legal work on well over 182 matters—work that our funding contracts neither anticipate nor pay for. Moreover, this would destroy the value of completed work our funders already paid for—the closures themselves.

25. The circumstances of Special Immigrant Juveniles bear additional highlighting. As noted above, Congress created SIJS for the purpose of protecting these vulnerable youth from being deported to abusive or otherwise dangerous conditions; and, by definition, a young person who has been granted SIJS has received a juvenile court order concluding that it would be contrary to their best interests to be returned to their country of nationality. Yet the perverse result of vacatur of this rule is that removal proceedings are likely to be recommenced or recalendared for these youth, forcing them to defend against deportation despite USCIS granting them SIJS—while waiting for a visa to become available for a permanent legal status *for which Congress has made them eligible*. See 8 U.S.C. § 1255(a), (h) (authorizing SIJs to apply for LPR status and removing many barriers that might otherwise prevent them from becoming LPRs).

26. Perhaps more critically, if a Special Immigrant Juvenile is removed from the United States, they will be unable to adjust status to become an LPR because only immigrants who are physically present in the United States can adjust status, and the alternative of “consular processing” from overseas is not available to Special Immigrant Juveniles.⁴ I estimate that a total of 90 Centro Legal clients who have been conferred SIJS but have not yet adjusted status to LPR either had their removal proceedings terminated or remain in administratively closed removal proceedings.

27. In general, the Immigration Court has exclusive jurisdiction over adjustment-of-status applications filed by individuals in removal proceedings, with the exception of USCIS

⁴ USCIS Policy Manual Vol. 7, Part F, ch. 7.C (stating that SIJS beneficiaries must be “physically present in the United States at the time of filing and adjudication of an adjustment application”), <https://www.uscis.gov/policy-manual/volume-7-part-f-chapter-7>; *id.* Vol. 7, Part A, ch. 1.B, (“Adjustment of status to lawful permanent residence describes the process by which a [noncitizen] obtains U.S. LPR status while physically present in the United States.”), <https://www.uscis.gov/policy-manual/volume-7-part-a-chapter-1>; 22 C.F.R. § 42.11 (denoting SIJS as an “adjustment-only” category).

having jurisdiction over the applications of those who were processed as “arriving aliens” upon their arrival to the United States.⁵ The vast majority of our Special Immigrant Juvenile clients were not processed as “arriving aliens,” meaning USCIS cannot exercise jurisdiction over their adjustment applications if they are in removal proceedings, whether active or administratively closed. In both the San Francisco and Concord Immigration Courts, it has been standard practice for Immigration Judges to terminate removal proceedings for our clients once their SIJS priority dates become current. I estimate that at least 50 Centro Legal clients whose removal proceedings were terminated have pending applications to adjust status before USCIS. All of these clients filed those applications free of charge,⁶ but either they or Centro Legal paid the costs for their immigration medical examinations, a requirement for adjustment eligibility that typically costs between \$350-500. The medical examination must be submitted to the adjudicator in a sealed envelope, and it is invalid once opened by someone other than the adjudicator. If these clients’ removal proceedings recommence, not only will they or we have to again absorb the costs of a new medical examination, but they will also be required to pay the EOIR filing fee for their adjustment application, unless they qualify for a fee waiver. Unlike USCIS, which requires no fee for SIJS-based adjustments, EOIR’s fee is \$2,980. Neither our organization nor our clients have the funds to pay this fee.

II. Untenable Burden on Staff

28. The full-time equivalent (FTE) based model described above is new over the last few years, whereas for more than a decade, each year we opened all removal defense cases pursuant to a per-case funding model—as many as 500 cases per year. I estimate that over 100 of those cases (for which funding has been depleted)⁷ remain on our docket; therefore, our legal staff are perpetually managing full workloads that leave little or no room to take on additional tasks.

⁵ 8 C.F.R. §§ 245.2 & 1245.2.

⁶ See USCIS Fee Schedule (Form G-1055), available at <https://www.uscis.gov/g-1055>, at p. 15 (listing fee as \$0 for individuals applying to adjust status “as a person seeking or granted Special Immigrant Juvenile classification”).

⁷ This includes the 90-100 estimate in paragraph 23, above.

29. Our staffing model is carefully designed with these constraints and challenges in mind, and we consistently review and modify existing attorneys' caseloads to support their wellbeing so that we can reduce burnout and prioritize attorney retention. Because the elimination of administrative closure and the recommencing of previously terminated proceedings will lead to the wholesale reactivation of dozens (if not over 100) current cases handled by Centro Legal, staff will be faced with a Hobson's choice of either terminating legal representation of clients—clients who are extremely unlikely to secure high-quality legal representation due to regional capacity constraints both in the nonprofit sector and private firms—or carrying a larger caseload than they can sustain. Staff will burn out, and organizational morale will plummet.

30. Likewise, our management team will be burdened by the vacatur. We will be forced to devote time and resources to ensuring that all attorneys and fully accredited representatives are familiar with the consequences of the rule's vacatur, familiarize ourselves with cases that have been largely inactive for several years, and reevaluate case strategy on our 1,600 open immigration cases.

III. Organizational Reputation

31. Our Immigrants' Rights practice maintains strong and collaborative partnerships with several community-based organizations, who refer their clients and constituents to us for legal services. I estimate that we accept 50 to 100 referrals for formal representation or limited-scope services annually from partner organizations. When capacity opens for new cases or limited-scope services, we aim to draw from a variety of referral sources to best serve the extremely diverse immigrant communities across our service area.

32. The vacatur of this rule will mean that we are wholly unable to accept any new referrals because we will become overwhelmed with new hearings, deadlines, and other demands for cases that previously have been either terminated or administratively closed. At the same time, due to the recommencement of removal proceedings and the recalendaring of inactive cases for the immigrant community at large, our partner organizations will receive even more inquiries from their clients and constituents regarding removal defense legal services. So not only will Centro

Legal be unable to accept the number of referrals that we have consistently accepted over many years, but the referring organizations will be referring even more clients than before.

33. I am concerned that our inability to accept any new referrals will harm our reputation as a reliable removal defense provider. Over many years, Centro Legal has developed a reputation in the immigration services community as being a steadfast advocate for immigrants, including because we accept regularly referrals from partner organizations. If we stop accepting these referrals because of the consent judgment, our partners may come to rely on other organizations with fewer cases affected by the vacatur that they perceive as more reliable. In addition to this reputational harm, an extended period of time where we are refusing new cases could eliminate funding opportunities in the future. Among the factors funders consider is an organization's relationship with other partners and reputation for reliability.

IV. Interference with Performance of Core Activities

34. Our most central and critical service is the provision of high-quality, free removal defense representation to as many indigent community members as possible. The vacatur will interfere with our ability to perform this core activity because (1) it will hinder our ability to provide high-quality representation to our existing clients, and (2) the recalendaring or commencement of previously terminated removal proceedings for unrepresented individuals will substantially increase the need for removal defense representation in our service area by the thousands, exacerbating the already sizable gap between the demand for our services and our capacity to meet this demand.

35. With respect to the first concern, as noted above, we have retained clients for legal services before USCIS and limited the scope of our representation in removal proceedings to moving for termination or administrative closure. In so doing, we have relied heavily on the regulation at issue to assume a specific workload, and that workload will now balloon far beyond what we anticipated. This will unavoidably interfere with our ability to provide high-quality representation to our current clients. At the very least, a notice-and-comment rulemaking process

would have afforded us the opportunity to comment in opposition to this sea change and also to prepare to absorb the additional workload.

36. The vacatur of this rule will lead to the recommencement/recalendaring of many cases that we will be forced to litigate in Immigration Court, most or all of which involve clients whose strongest path to immigration status is before USCIS and who have limited options for relief from removal before an Immigration Judge. As noted above, in most cases we have strategically sought administrative closure because the client's strongest form of relief is (or they have a statutory right to pursue relief) before USCIS; many of these clients' removal proceedings were terminated in the Immigration Court's exercise of discretion, whereas others were administratively closed. For each client whose Immigration Court case recommences or is recalendared, we would be forced to resort either to filing for costly and more fragile forms of relief before the Immigration Court (such as asylum, withholding of removal, protection under the Convention Against Torture, and/or cancellation of removal), consult with and retain expert witnesses who typically charge \$700-2000 per case, or to request repeated continuances—all of which would demand significant resources from Centro Legal.

37. In turn, these demands would siphon our limited resources away from accepting new clients and fully representing our current vulnerable clients. In other words, vacatur of the rule and the resulting reactivation of inactive cases will directly impede Centro Legal from fully carrying out some of its core business activities.

38. To give one example of the impact on our other clients, we currently serve dozens of clients who are monolingual speakers of Latin American Indigenous languages. They face extreme challenges finding counsel because very few attorneys have the capacity to hire interpreters, and these Indigenous immigrants are often among the poorest clients and cannot afford to hire their own interpreters. We have carefully invested in building our capacity to work with Indigenous immigrants and hire competent interpreters. If our current cases are recalendared and previously terminated cases recommence en masse, we would be forced to substantially reduce

our representation of Indigenous-language speaking immigrants, leaving one of the most vulnerable immigrant groups even more underserved.

39. To give another example, we have almost always been able to offer full-scope representation to our immigration clients. This means that we represent them from the time they come to us until they obtain permanent legal status. If our current clients' removal proceedings are reactivated en masse, we would be forced to curtail that practice. Instead, until a substantial number of removal defense cases resolve, we would only be able to afford to offer limited-scope services to new clients, such as filing an asylum application, but then not continuing to represent the client in their removal proceedings or before USCIS. Because of the complexities of immigration law and the challenges facing immigrants seeking status, this reduction in our level of assistance would significantly undermine the effectiveness of our representation, hindering our mission and risking the lives and family-unity of our clients.

Centro Legal's Prior Litigation

40. Because of the burdens that the elimination of administrative closure would inflict on Centro Legal, we previously brought suit against the Executive Office for Immigration Review over a 2020 rule that would have eliminated administrative closure. *See Centro Legal de la Raza v. EOIR*, No. 3:21-cv-00463 (N.D. Cal.), Dkt. No. 1 (complaint challenging Appellate Procedure and Decisional Finality in Immigration Proceedings; Administrative Closure, 85 Fed. Reg. 81,588 (Dec. 16, 2020) ("the 2020 rule")).

41. Centro Legal obtained a preliminary injunction against the 2020 rule, which a district court concluded was likely unlawful. *See Centro Legal de la Raza v. EOIR*, 524 F. Supp. 3d 919 (N.D. Cal. 2021). The parties ultimately stipulated to the dismissal of the case after EOIR promulgated the 2024 Final Rule, which rescinded the 2020 rule and therefore remedied Centro Legal's injuries. *Centro Legal de la Raza v. EOIR*, No. 3:21-cv-00463 (N.D. Cal.), Dkt. No. 109.

42. The consent judgment in this case vacates the 2024 Final Rule, which has the effect of restoring the 2020 rule. That restoration deprives Centro Legal of the benefit of its prior

litigation and the expectation that the parties' settlement of that litigation would remedy Centro Legal's injuries.

Conclusion

43. Centro Legal proudly advances the rights of low-income immigrants through legal representation, education, and advocacy. We serve the needs of the poorest immigrants, including youth, victims of violent crime, and those fleeing violence in their countries of origin. If the vacatur is allowed to stand, and we are forced to devote thousands of hours to litigating previously administratively closed cases, Centro Legal will be greatly limited in our ability to meaningfully represent our clients and continue offering services to our community members.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Executed on August 7, 2026, in Oakland, California.



Abby Sullivan Engen
Directing Attorney, Immigrants' Rights Practice
Centro Legal de la Raza

**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF TEXAS
WICHITA FALLS DIVISION**

State of Texas,

Plaintiff,

v.

U.S. Department of Justice *et al.*,

Defendants,

and

City of Baltimore, MD; City of Columbus,
OH; City of New Haven, CT; and Centro
Legal de la Raza,

Movant-Intervenors.

Case No. 7:26-CV-00070-O

Declaration of Melanie Tobias-Hunter

I, Melanie Tobias-Hunter, declare as follows:

1. I am a resident of the State of Ohio. I have personal knowledge and knowledge set forth based upon information that is provided to me in the performance of my job duties including reviewing business records. That knowledge is set forth in this declaration and, if called as a witness, I could and would testify competently to the matters set forth below.
2. I am the Criminal Division Chief for Columbus City Attorney Zach Klein. In that role, I am ultimately responsible for criminal prosecutions undertaken by our office. I also oversee individuals in this office who are responsible for prosecution as well as for working with victims of crime.
3. Our office is responsible for the criminal prosecution of misdemeanor crimes that occur inside the City of Columbus. The criminal division has 101 total employees, including 25 court room prosecutors, and 7 prosecutors who specialize in prosecuting misdemeanor crimes of domestic violence.

4. In addition, the criminal division employs 22 individuals who work as victim advocates. These individuals work with survivors of domestic violence by helping them navigate the courts, work with social support entities that provide for the needs of these individuals including helping them secure no-contact orders, alternative housing or food assistance, medical and counselling services, and other needs.
5. In 2025, our office handled 5,256 prosecutions for domestic violence.
6. According to the US Census Bureau, the City of Columbus has 938,396 residents as of July 1, 2025, a 3.6% increase from its 2020 population.¹
7. The Census Bureau also estimates that 15% of the population of the City of Columbus was foreign born.²
8. The State of Ohio is home to approximately 601,100 immigrants – 5% of the State’s total population.³
9. The Columbus Metropolitan area itself is home to approximately 204,900 immigrants, or 10% of its population.⁴
10. The Columbus region has around 101,500 noncitizen residents.⁵
11. In addition, the region has 96,100 children with at least one parent who was born in a foreign country. That means approximately one in five children in the Columbus region have at least one immigrant parent.⁶
12. Approximately 84% of children in the Columbus region who had at least one foreign born parent are birthright citizens of the United States.⁷

¹ <https://www.census.gov/quickfacts/fact/table/columbuscityohio/PST045225>.

² *Id.*

³ https://vera-institute.files.svdcn.com/production/downloads/publications/Columbus_Immigrant_Population_Profile.pdf?dm=1748637563.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

13. Central Ohio is home to the second largest Somali community in the United States with an estimated 60,000 residents.⁸
14. In my role as Criminal Division Chief, I am responsible for signing off on U Visa applications on behalf of the Columbus City Attorney's Office. Since 2023, our office has signed approximately 35 U-visa certifications.
15. A number of the crime victims our office assists are undocumented individuals, including victims of domestic violence.
16. In the past, I have signed off on U Visa applications for individuals who were victims of domestic violence and other crimes. For example, I signed a U Visa application in 2024 for a victim in a protection order violation case wherein we were able to obtain a conviction. Similarly, in 2025 I signed a U Visa application connected to a domestic violence offense wherein we obtained a conviction to the lead charge of Domestic Violence.
17. It is traumatic and difficult for survivors of domestic violence to interact with the legal system. This is especially true if the survivor lacks adequate documentation about residency status. The U-visa process exists for exactly these victims. Victims of domestic violence report to our victim advocates that they were hesitant to call police for fear that their abuser would alert law enforcement to their undocumented status. Victims tell our advocates that they do not wish to appear in court for fear that ICE will be present in court looking for undocumented persons. It's also not unusual for victims to share their fears with us about exposing their information to additional court systems in order to obtain civil protective orders. While a victim may be willing to talk with our advocates and prosecutors over the phone, they refuse to come to court for fear of being arrested by ICE. In short, victims ask about deportation risks, and they make decisions about whether to report, appear, and testify based on fear of deportation. When victims do not come forward, offenders—including repeat domestic-violence offenders—go unprosecuted, and Columbus residents, citizen and noncitizen alike, are less safe.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

⁸ Johanek, Marilou, Ohio has the 2nd largest Somali community in the U.S. Trump's racist rant puts them in danger. Ohio Capital Journal, December 11, 2025. <https://ohiocapitaljournal.com/2025/12/11/ohio-has-the-2nd-largest-somali-community-in-the-u-s-trumps-racist-rant-puts-them-in-danger/>

Executed August 7, 2026 in Columbus, Ohio.


Melanie Tobias-Hunter

**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF TEXAS
WICHITA FALLS DIVISION**

State of Texas,

Plaintiff,

v.

U.S. Department of Justice *et al.*,

Defendants,

and

City of Baltimore, MD; City of Columbus, OH; City of
New Haven, CT; and Centro Legal de la Raza,

Movant-Intervenors.

Case No. 7:26-CV-00070-O

DECLARATION OF JUSTIN ELICKER (CITY OF NEW HAVEN)

I, Justin Elicker, declare as follows:

1. I am the Mayor of the City of New Haven, Connecticut. I have served in this position since January 2020.
2. The City of New Haven (the “City” or “New Haven”) is a municipal corporation existing by virtue of the laws of the State of Connecticut.
3. This declaration is based on my personal knowledge and on information provided to me in my official capacity as the Mayor of New Haven. I am over the age of eighteen and suffer from no legal incapacity.
4. Since its founding in 1638, New Haven has been seen worldwide as a safe haven for anyone, including immigrants, seeking escape from repression, persecution, tyranny, and economic ruin.

5. To that end, in July 2020, I signed “An Executive Order to Affirm New Haven a Welcoming City” (the “Welcoming City Order”), to emphasize the City’s commitment to the health and safety of all its residents, without regard to their immigration status, in order to achieve the City’s goals of protecting life, liberty, and property. The Welcoming City Order underscored the American promise to welcome immigrants of the world, from wherever they come, and it directed City officers and employees in how to carry out that fundamental commitment in the exercise of their official duties.

5. I am aware that on May 29, 2024, the Executive Office for Immigration Review published a new rule (the “Rule”), to take effect on July 29, 2024. 89 Fed. Reg. 46742 (May 29, 2024). Among other things, the Rule permitted immigration judges and the Board of Immigration Appeals to administratively close or terminate removal proceedings if certain conditions were met. I understand that the consent judgment in this case vacates the regulation and enjoins the U.S. Department of Justice from promulgating similar regulations in the future.

6. For the City of New Haven, the ability of the immigration courts to administratively close or terminate immigration cases directly and concretely affects New Haven residents and City programs in several ways.

7. The collusive decision by the parties in this matter to end the Rule raises the specter of mass deportations on New Haven’s immigrant community. This will chill the willingness of resident immigrants to interact with the city and its resources, resulting in a less safe and healthy community for both citizens and non-citizens.

8. For instance, fear of deportation makes it less likely that immigrants will seek medical attention until they are so ill that they have no choice but to go to the emergency room, where care is more expensive and imposes greater stress on New Haven’s medical facilities. Further, untreated

diseases may be spread to and subsequently harm other citizens. And chronic diseases which can be readily diagnosed and treated when identified promptly may be left untreated, imposing greater costs upon the hospital and the City's Health Department when diagnosed later after complications and additional conditions have developed.

9. To provide another example, mass deportations make it less likely that immigrants will report crimes, negatively impacting the City's police force's ability to investigate and resolve crimes and thereby harming public safety. Immigrants will be less likely to cooperate with law enforcement and prosecutors when they fear that once they have assisted the State they will be turned over to ICE. For example, the Alliance for Immigrant Survivors interviewed 170 immigration advocates and attorneys, and found that 75.6% of them said that immigrants have concerns about contacting the police, and that 70.3% of them reported concerns about going to court for a matter related to the abuser/offender, for fear that the abuser/offender will "report" them to ICE.

10. New Haven is proud of its rich and diverse culture. Thus, losing the value of having people with different national origins and cultures, and those people becoming fearful of engaging with the City will impact many aspects of daily life, including the benefit of listening to and learning different languages, and appreciating other cultural differences such as customs and cuisine. These cultures are represented all over New Haven in different businesses that provide jobs for residents, attract people outside New Haven, and generate revenue for the City.

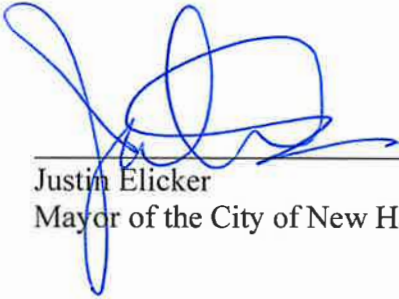
11. Deportations of immigrant parents with children who are citizens will have a catastrophic effect on child development and city resources. The children will be left homeless and their education and overall development stifled. Moreover, New Haven will be required to use additional unplanned resources to house, shelter, and educate these children.

12. Mass deportations will leave immigrants feeling much less safe and secure if they seek out the judicial system for any court-related reason out of fear that ICE agents will stake out the courthouse to arrest them.

13. Increased deportations threaten New Haven's workforce, where immigrants perform crucial services in many areas, including construction, maintenance, and food services, resulting in greater costs to all.

14. The collusive decision by Texas and the Department of Justice to end the Rule will result in the loss of many people who positively contribute to the rich tableau that is New Haven.

Executed this 7th day of August, 2026.



Justin Elicker
Mayor of the City of New Haven

1 UNITED STATES DISTRICT COURT FOR THE
2 NORTHERN DISTRICT OF TEXAS
3 WICHITA FALLS DIVISION

4 State of Texas,

5 *Plaintiff,*

6 v.

Case No. 7:26-CV-00070-O

7 U.S. Department of Justice *et al.*,

8 *Defendants,*

9 and
10

11 City of Baltimore, MD; City of Columbus,
12 OH; City of New Haven, CT; and Centro
13 Legal de la Raza,

14 *Movant-Intervenors.*

15 **DECLARATION OF CATALINA RODRIGUEZ LIMA**

16 I, Catalina Rodriguez Lima, declare as follows:

17 1. I have knowledge of the facts set forth in this declaration as a result of
18 information provided to me in the performance of my job duties and, if called as a witness, could
19 and would testify competently to the matters set forth below.

20 2. I am the Director of the City of Baltimore's (the City) Mayor's Office of
21 Immigrant Affairs (MIMA). I have served in this role since 2014.

22 3. In my role, I manage MIMA, which works to promote the community well-being
23 and inclusion of immigrant communities by identifying needs and opportunities that immigrants
24 bring to our city. Within City government, our office assists other agencies and decisionmakers
25 in better serving immigrant residents. Outside of City government, we collaborate with
26 community-based organizations to ensure immigrant residents are being connected to critical
27 resources and services.
28

1 4. The Mayor and City Council of Baltimore, the City's corporate identity, is a
2 municipal corporation organized pursuant to Articles XI and XI-A of the Maryland Constitution
3 and is entrusted with all the powers of local self-government and home rule afforded by those
4 articles. Baltimore is the largest city in Maryland and the thirtieth largest city in the United
5 States.

6 5. Recent Census Bureau estimates identify that non-citizens make up 5.2% of the
7 City's total population of over 569,000. Our immigrant population is an integral and
8 indispensable part of our community. As Mayor Brandon Scott made clear in a statement last
9 year, Baltimore is "a welcoming city ... [that is] better because of our immigrant neighbors."

10 6. The U Visa nonimmigrant status—known as the U Visa—is set aside for victims
11 of certain crimes who have suffered mental or physical abuse and are helpful to law enforcement
12 or government officials in the investigation and prosecution of criminal activity. The U Visa
13 process can protect victims of, and witnesses to, crimes from deportation. And, if the U Visa
14 application is found to be *bona fide*, these vulnerable individuals are provided with work
15 authorization.

16 7. MIMA is aware of at least 600 pending or approved U Visa applications submitted
17 by partner legal service providers to Baltimore residents. I have also been informed that BPD has
18 processed more than 440 U Visa certifications since the beginning of 2025. And, in my
19 experience, U Visa adjudications can take years.

20 8. The U Visa process provides stability to Baltimore residents who have
21 experienced or witnessed crimes ranging from intimate-partner violence, to sexual assault, to
22 even homicide. Relief from the specter of deportation empowers the recipient to protect him- or
23 herself and become a more integrated part of the Baltimore community.

24 9. Should the U Visa's applicant be granted work authorization, that individual also
25 starts contributing to the City's revenue base by working and paying taxes. Baltimore levies a
26 3.2% income tax on residents, and many U Visa applicants work legally while their applications
27
28

1 are pending. Removal of each of those workers would mean that the City would lose out on the
2 tax revenue that each worker would pay.

3 10. And, before the court's judgment, an applicant's removal proceedings could be
4 paused while the application remained pending before USCIS.

5 **U Visas Promote Cooperation with Law Enforcement and Improve Public Safety**

6 11. Baltimore has recently experienced year-over-year declines in important crime
7 statistics, reflecting a community that is taking real and evidence-based approaches to improving
8 public safety. The City has made tremendous strides toward building trust between the Baltimore
9 Police Department (BPD) and residents in the wake of the mass protests that followed the death
10 of Freddie Gray.

11 12. The City believes that public safety is founded on trust and cooperation of
12 community residents and local law enforcement. The City's emphasis on community policing is
13 one factor leading to these unprecedentedly low crime rates.

14 13. Studies show that undocumented immigrants are less likely to provide
15 information to police, when they are the victims of or witnesses to crimes, because they fear
16 exposing themselves, family, or friends to a risk of deportation. This is true based on my
17 experience.

18 14. The U Visa program aids law enforcement by incentivizing cooperation with the
19 police from a community that—to say the least—has justified and tangible fears that any
20 interaction with law enforcement could initiate a series of events leading to deportation or
21 detention.

22 15. Effective law enforcement requires a community where witnesses are willing to
23 come forward. U Visas help to foster a relationship of trust, respect, and open communication
24 between law enforcement and the undocumented, ensuring community security. Allowing all
25 community members, regardless of their immigration status, to feel safe and secure when
26 contacting members of local law enforcement.
27
28

1 relaunched and expanded the program in 2025. The City has made a \$2 million investment into
2 Safe City Baltimore, which funds and provides immigration screen clinics, coordination with pro
3 bono legal service providers, and coordination with legal representation. Safe City Baltimore
4 funds its legal service providers through fixed awards that assume a minimum volume of cases.
5 Safe City Baltimore funds are also used to partner with community-based organizations to
6 educate immigrants about their legal rights.
7

8 20. Since Safe City Baltimore launched a hotline in September 2025, the City's legal
9 service provider has been able to identify more than 60 residents eligible for a U Visa. These
10 residents have been placed with legal service providers responsible for helping residents apply
11 for U Visas and/or representing pending applicants in removal proceedings.

12 21. As a result of the court's judgment, the cases funded through Safe City Baltimore
13 that were administratively closed will now return to active dockets. The City has already paid for
14 the legal work that achieved those closures; when the cases reopen, that City-funded work is lost,
15 and the same clients will require additional legal work to defend their cases—again at the City's
16 expense.

17 22. The judgment also changes what every case costs going forward. Before the
18 court's judgment, a case whose defense was funded through Safe City Baltimore would typically
19 not require funded legal work to prepare for hearings or filings while the undocumented
20 immigrant's removal case was paused and their visa application was filed. Now, the same client
21 needs two representations at once to achieve the same goal: a visa application and an active
22 removal case in immigration court, with all its attendant process and hearings. Each such case
23 will consume substantially more of the funded capacity Safe City Baltimore's awards were built
24 around, so providers will exhaust their awards on fewer clients. The City must either increase its
25 appropriation to maintain the same level of service or accept that Safe City Baltimore will serve
26 fewer residents.
27
28

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed August 6, 2026 at BALTIMORE CITY, MARYLAND.

Catalina Rodriguez Lima

Catalina Rodriguez Lima

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
WICHITA FALLS DIVISION**

THE STATE OF TEXAS,

Plaintiff,

v.

U.S. DEPARTMENT OF JUSTICE, ET

AL.,

Defendants.

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Civil Action No. 7:26-CV-00070-O

OPINION & ORDER

Before the Court are the Emergency Motion to Intervene by City of Baltimore, MD; City of Columbus, OH; City of New Haven, CT; and Centro Legal De La Raza (collectively, “Proposed Intervenors”) (ECF No. 6); the State of Texas’s (“Plaintiff”) Response (ECF No. 19); Proposed Intervenors Reply (ECF No. 22); and Defendants’ Nunc Pro Tunc Motion and Response to the Court’s August 11, 2026 Order (ECF No. 21). Having considered the Motions, briefing, and relevant law, the Court **DENIES** the Motion to Intervene (ECF No. 6) for the reasons set forth below. The Court **GRANTS** Defendants’ Nunc Pro Tunc Motion (ECF No. 21).

I. BACKGROUND¹

Immigration judges have the ability to suspend removal proceedings in certain circumstances—this is known as administrative closure. *See, e.g.*, 8 C.F.R. § 1003.18(c) (defining administrative closure as the “temporary suspension of a case”). On May 29, 2024, the Department of Justice promulgated the final rule titled *Efficient Case and Docket Management in Immigration Proceedings*, 89 Fed. Reg. 46,742 (May 29, 2024) (the “Final Rule”). The Final Rule authorized,

¹ Unless otherwise indicated, the facts are taken from the parties’ briefing.

inter alia, immigration judges and the Board of Immigration Appeals to administratively close proceedings under a totality-of-the-circumstances standard, including when no collateral petition, application, or other proceeding was pending. *Id.* at 46,792. It also addressed termination, briefing schedules, background checks, and *sua sponte* reopening. *Id.* at 46,743, 46,766–67.

In April 2025, the Acting Director of the Executive Office for Immigration Review (“EOIR”) issued Policy Memorandum 25-29, which stated that EOIR could not and would not defend the Final Rule in good faith against legal challenge. EXEC. OFF. FOR IMMIGRATION REV., U.S. DEP’T OF JUST., Policy Memorandum 25-29: Cancellation of Director’s Memorandum 22-03 at 8 (Apr. 18, 2025). The memorandum did not itself vacate or suspend the Rule. When Plaintiff filed this action on June 22, 2026, the complaint alleged that the Final Rule “remain[ed] in full legal force and continue[d] to bind EOIR adjudicators.”²

Plaintiff and Defendants filed a Joint Motion for Entry of Consent Judgment the same day.³ The Court then entered an Order and Final Judgment under Federal Rule of Civil Procedure 58(a) (“Consent Judgment”).⁴ The judgment declared the Final Rule contrary to law, vacated it, permanently enjoined its enforcement, imposed specified prospective injunctive relief concerning future administrative-closure regulations, recorded the parties’ waiver of appeal, and dismissed all remaining requests for relief without prejudice.⁵ On August 7, 2026, the City of Baltimore, the City of Columbus, the City of New Haven, (“Municipal Intervenors”) and Centro Legal de la Raza (“Centro Legal”) moved to intervene as defendants under Rule 24(a).⁶ Their motion states that they seek intervention for the purpose of appealing the Consent Judgment because the existing

² Compl. ¶ 57, ECF No. 1.

³ Joint Motion for Entry of Consent Judgment, ECF No. 3.

⁴ Order and Judgment, ECF No. 5.

⁵ *Id.*

⁶ Mot. Intervene, ECF No. 6.

parties will not appeal.⁷ Plaintiff filed a response and Defendants moved for the Court to accept Defendants' position opposing intervention nunc pro tunc.⁸ The Motion has been briefed and is now ripe for the Court's review.

II. LEGLA STANDARD

A. Article III Standing

Federal courts are courts of limited jurisdiction and must have "statutory or constitutional power to adjudicate the case." *Home Builders Ass'n of Miss. v. City of Madison*, 143 F.3d 1006, 1010 (5th Cir. 1998). "Under the Constitution's Article III cases and controversies requirement, a plaintiff must establish standing to sue. Standing requires: (1) an injury in fact, (2) a sufficient 'causal connection between the injury and the conduct complained of' and (3) a likelihood that the injury will be redressed by a favorable decision." *Morgan v. Huntington Ingalls, Inc.*, 879 F.3d 602, 606 (5th Cir. 2018) (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992); U.S. CONST. art. III, § 2. The injury cannot be merely "conjectural or hypothetical." *Summers v. Earth Island Inst.*, 555 U.S. 488, 493 (2009). Causation requires that the injury "fairly can be traced to the challenged action of the defendant" rather than to "the independent action of some third party not before the court." *Simon v. E. Ky. Welfare Rts. Org.*, 426 U.S. 26, 41–42 (1976).

When a motion to intervene is opposed and the proposed pleading advances defenses no existing party asserts, the Court must first determine whether the proposed intervention is futile. *United States v. Texas*, 181 F.4th 548, 553–54 (5th Cir. 2026). The Rule 12(b)(6) standard applies: factual allegations are assumed true, the pleading is construed liberally. *Id.* Futility is a threshold inquiry that precedes the factors in Rule 24(a) and (b), and it applies to proposed defense-side intervenors. *Id.* An intervenor that alone seeks appellate relief must independently demonstrate a

⁷ *Id.* at 1.

⁸ See generally *Defs.' Mot. Nunc Pro Tunc*, ECF No. 21.

concrete and particularized injury that is fairly traceable to the judgment and likely to be redressed by reversal. *Virginia House of Delegates v. Bethune-Hil*, 587 U.S. 587 U.S. 658, 663–64 (2019).

B. Intervention as of Right

Federal Rule of Civil Procedure 24(a) requires that a party be permitted to intervene in an action if it shows by “timely motion” that (a) “it has a protectable ‘interest’ in the action,” (b) “the ‘disposing of the action’ could ‘impair’ its ability to protect that interest,” and (c) “existing parties do not ‘adequately represent’ that interest.” *Louisiana v. Burgum*, 132 F.4th 918, 922 (5th Cir. 2025) (quoting Fed. R. Civ. P. 24(a)(2)). “Failure to satisfy any one requirement precludes intervention of right.” *Haspel & Davis Milling & Planting Co. v. Bd. of Levee Comm’rs of the Orleans Levee Dist.*, 493 F.3d 570, 578 (5th Cir. 2007). “Although the movant bears the burden of establishing its right to intervene, Rule 24 is to be liberally construed.” *Wal-Mart Stores, Inc. v. Tex. Alcoholic Beverage Comm’n*, 834 F.3d 562, 565 (5th Cir. 2016).

III. ANALYSIS

Before considering the merits of the Proposed Intervenors’ arguments, the Court has an obligation to ensure itself of the litigants’ standing. *Texas v. United States (DACA)*, 126 F.4th 392, 405 (5th Cir. 2025). Under Article III of the United States Constitution, a party must demonstrate (1) injury in fact, (2) causation, and (3) redressability. *Lujan*, 504 U.S. at 561. Where, as here, the Intervenors are not themselves “the object of the government action or inaction [their] [] standing is not precluded, but it is ordinarily ‘substantially more difficult’ to establish.” *Id.* at 562 (quoting *Allen v. Wright*, 468 U.S. 737, 758 (1984)). Proposed Intervenors assert several different grounds upon which to establish injury. The Court address each in turn.

First, Municipal Intervenor argue that the Consent Judgment extinguishes identifiable revenue streams in the form of tax revenue.⁹ The argument proceeds thus: aliens residing within Municipal Intervenor’s jurisdiction work legally while their applications are pending. Those aliens now face reopened removal cases as those matters are recalendared resulting in Municipal Intervenor losing specific taxpayer revenue.¹⁰ Plaintiff responds that Municipal Intervenor’s theory of injury is too attenuated as it requires each of the following: “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.”¹¹ The Court agrees with Plaintiff.

The Municipal Intervenor’s “loss of general tax revenues as an indirect result of federal policy is not a cognizable injury in fact.” *El Paso Cnty., Texas v. Trump*, 982 F.3d 332, 339 (5th Cir. 2020). To succeed under their theory, the Municipal Intervenor must show “a direct injury in the form of a loss of specific tax revenues,” *Wyoming v. Oklahoma*, 502 U.S. 437, 448 (1992), because “the reality of federal expenditure is that ‘virtually all federal policies’ will have ‘unavoidable economic repercussions[.]’” *El Paso*, 982 F.3d at 339 (quoting *Pennsylvania v. Kleppe*, 533 F.2d 668, 672 (D.C. Cir. 1976)). Crucially, an injury is not cognizable when an “independent act of a third party was a necessary condition of the harm’s occurrence, and it was uncertain whether the third party would take the required step.” *Texas v. United States (“DAPA”)*, 809 F.3d 134, 160 n.68 (5th Cir. 2015).

Here, Municipal Intervenor’s injuries depend on the enforcement decisions of federal officials, over which neither this Court nor the Proposed Intervenor have any control. Setting

⁹ Br. Supp. Mot. Intervene 7, ECF No. 6-1.

¹⁰ *Id.*

¹¹ Resp. 10, ECF No. 19.

aside the question of whether recalendaring is a certainty, at most, the direct consequence of the Consent Judgment is that cases that are currently closed may be recalendared. Whether an individual, tax-paying alien is ultimately deported requires another branch of government to adjudicate removal and exercise discretion to enforce any resulting removal order. *Arizona v. United States*, 567 U.S. 387, 396 (2012) (“A principal feature of the removal system is the broad discretion exercised by immigration officials.”).¹² Such a causal chain “is too ‘attenuated’ to support standing” because it hinges on the independent acts of third parties and it is uncertain whether those actions will result in a loss of tax revenue. *DACA*, 126 F.4th at 409 (quoting *United States v. Texas*, 599 U.S. 670, 680 (2023)).

Additionally, Municipal Intervenors simply have not alleged or pointed to any evidence in the record that any of the individuals whose cases would be recalendared as a result of the Consent Judgement are currently working, let alone paying taxes. They have not shown that such an already strained chain of causation—entirely dependent on the decisions of third parties—would actually result in a loss of tax revenue. Accordingly, Municipal Intervenors’ potential loss of tax revenue falls short of the fairly traceable and cognizable harm required to show standing.¹³

Second, Baltimore contends that it will be injured by the destruction of the value of public money already spent on removal defense through Safe City Baltimore, and by the exhaustion of

¹² The Court notes that a final order of removal also does not necessarily result in deportation—adding another link to an already tenuous chain of causation. See Kathleen Bush-Joseph, et al., *ICE Arrests and Deportations from the U.S. Interior*, MIGRATION POLICY INSTITUTE (February 2025) <https://www.migrationpolicy.org/explainer/ice-arrests-deportations-us-interior> (“Just because a person is ordered removed does not always mean the deportation is carried out. About 1.5 million noncitizens have outstanding removal orders[.]”).

¹³ Moreover, courts are less likely to find standing to challenge a sovereign’s policy when the injury could be cured by a change in tax policy. See e.g., *State of Fla. v. Mellon*, 273 U.S. 12 (1927) (“If, as alleged, the supposed withdrawal of property will diminish the revenues of the state, non constat that the deficiency cannot readily be made up by an increased rate of taxation.”).

fixed-award legal-service contracts.¹⁴ This injury is wholly self-inflicted. *See Williams v. Parker*, 843 F.3d 617, 620 (5th Cir. 2016) (holding that self-inflicted litigation-funding injury was not fairly traceable to the defendant’s conduct). Here, no one forced Baltimore to spend money litigating immigration proceedings. *Cf. Texas v. Biden*, 20 F.4th 928, 969 (5th Cir.2021) (“Federal law affirmatively requires the States to make some of those expenditures.”) *rev’d. on other grounds Biden v. Texas*, 597 U.S. 785 (2022). The fact that some proceedings may have to be reopened is only traceable to Baltimore’s initial decision to expend funds on those proceedings. *Id.* at 621. Such voluntary decisions by governmental bodies cannot be a cognizable injury when the damage inflicted is by its own hand. *See Pennsylvania v. New Jersey*, 426 U.S. 660, 664 (1976) (per curiam) (holding that fiscal harm to plaintiff state due to its own statutory funding mandate was “self-inflicted” and not “traceable to the challenged conduct of the defendant.”).

Third, Municipal Intervenors assert that the Consent Judgment impairs their law enforcement operations by discouraging crime victims from cooperating with police, as incentivized by U visas. 8 U.S.C. § 1101(a)(15)(U). But the Consent Judgment does not affect the U visa certification process, and it remains available to aliens who face active removal proceedings. Municipal Intervenors suggestion that unlawful immigrants with pending removal cases will not submit U visa applications, even when eligible, is pure speculation. Nothing before the Court indicates that the Consent Judgment has or will result in cases failing and the perpetrators going unprosecuted. The asserted injury depends on independent choices by aliens, immigration adjudicators, prosecutors, witnesses, and federal enforcement officials. Such speculative, contingent harm is insufficient to confer standing. *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 409 (2013).

¹⁴ Br. Supp. Mot. Intervene 7, ECF No. 6-1.

Finally, Centro Legal alleges that recalendaring or recommencement of its clients' removal proceedings will require additional legal work, strain fixed funding, reduce its ability to accept new matters, and potentially affect referral relationships.¹⁵ The Fifth Circuit has forcefully explained that "A legal-services organization cannot have Article III standing merely because a new law or regulation requires it to understand the legal change, to adjust resources in response, or to increase the degree or scope of legal representation for its current or prospective clients who may be adversely affected." *United States v. Texas* ("*Texas S.B. 4*"), 173 F.4th 659, 666 (5th Cir. 2026). Centro Legal's theory of standing is thus explicitly foreclosed by Fifth Circuit precedent.

Centro Legal attempts to circumvent *Texas S.B. 4* by asserting that "it does not merely claim that it must divert its resources" but that the "Consent Judgment will force it to perform legal work that its grants do not cover and will erase the value of legal work it already was paid to perform."¹⁶ Such a contention is mere sophistry. At bottom, Centro Legal's alleged injury is that it will be required to do more work if its client's cases get reopened, such that it will be unable to take on new work and may lose out on future referrals. This is precisely the logic that the Fifth Circuit rejected. *See Texas S.B. 4*, 173 F.4th at 666 (finding no standing where a legal services organization was required "to increase the degree or scope of legal representation for its current or prospective clients"); *see also Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 394, 395 (2024) (rejecting the proposition that "standing exists when an organization diverts its resources in response to a defendant's actions" and noting that the argument that the government has "'impaired [organizations'] ability to provide services and achieve their organizational missions' . . . does not work to demonstrate standing"). Accordingly, Centro Legal fails to articulate a basis for Article III standing.

¹⁵ *Id.* at 9–11.

¹⁶ Reply 4–5, ECF No. 22.

IV. CONCLUSION

Accordingly, none of the Proposed Intervenors have standing under Article III rendering intervention futile. The Motion to Intervene (ECF No. 6) is therefore **DENIED**.

SO ORDERED on this **21st day of August, 2026**.



Reed O'Connor
CHIEF UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
WICHITA FALLS DIVISION**

THE STATE OF TEXAS

Plaintiff,

v.

U.S. DEPARTMENT OF JUSTICE, ET

AL.,

Defendants.

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Civil Action No. 7:26-CV-00070-O

OPINION & ORDER

Before the Court are Proposed Intervenor City of Baltimore, Maryland; City of Columbus, Ohio; City of New Haven, Connecticut; and Centro Legal de la Raza's Emergency Motion for a Stay Pending Appeal (ECF No. 25); and the State of Texas' Response (ECF No. 28). Having considered the Motion, briefing, and applicable law, the Court finds that the Motion should be, and hereby is, **DENIED**.

Proposed Intervenor may not appeal the underlying judgment because, having been denied intervention, they are not parties to the action. *See Marino v. Ortiz*, 484 U.S. 301, 304 (1988) (per curiam). Accordingly, they may not obtain a stay of the judgment. In any event, Proposed Intervenor have failed to carry their burden of establishing that a stay pending appeal is warranted under the *Nken* factors. *United States v. Texas*, 97 F.4th 268, 274 (5th Cir. 2024) (quoting *Nken v. Holder*, 556 U.S. 418, 426 (2009)).

For the foregoing reasons, the Court concludes that Proposed Intervenor have not met their burden of showing that the circumstances justify an exercise of the Court's discretion to grant a stay pending appeal. Accordingly, the Court **DENIES** Proposed Intervenor's Motion (ECF No. 25).

SO ORDERED on this **2nd day of September, 2026.**

A handwritten signature in black ink, appearing to read "Reed O'Connor", is written over a horizontal line. The signature is stylized with a large, sweeping loop at the end.

Reed O'Connor

CHIEF UNITED STATES DISTRICT JUDGE

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

September 29, 2026

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 26-10794 State of Texas v. USA
USDC No. 7:26-CV-70

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk

Lisa E. Ferrara

By:

Lisa E. Ferrara, Deputy Clerk
504-310-7675

Mr. Simon Christopher Brewer
Ms. Anna Louise Edwards
Mr. Brian D. Netter
Mr. Joshua Marc Salzman
Ms. Allyson R. Scher
Mr. Kyle Tebo

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

September 29, 2026

Lyle W. Cayce
Clerk

No. 26-10794

STATE OF TEXAS,

Plaintiff—Appellee,

versus

UNITED STATES OF AMERICA; TODD WALLACE BLANCHE, U.S.
Attorney General; SIRCE OWEN, *Acting Director of Executive Office for*
Immigration Review,

Defendants—Appellees,

versus

CITY OF BALTIMORE, MD; CITY OF COLUMBUS, OHIO; CITY OF
NEW HAVEN, CT; CENTRO LEGAL DE LA RAZA,

Movants—Appellants.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 7:26-CV-70

UNPUBLISHED ORDER

Before STEWART, RICHMAN, and HAYNES, *Circuit Judges.*

PER CURIAM:

IT IS ORDERED that Appellants' motion to stay the consent judgment pending appeal is DENIED.

IT IS FURTHER ORDERED that Appellants' motion to summarily reverse the denial of intervention is DENIED.



OOD
PM 25-29
Effective: April 18, 2025

To: All of EOIR
From: Sirce E. Owen, Acting Director
Date: April 18, 2025

CANCELLATION OF DIRECTOR'S MEMORANDUM 22-03

PURPOSE:	Rescind and Cancel Director's Memorandum 22-03
OWNER:	Office of the Director
AUTHORITY:	8 C.F.R. § 1003.0(b)
CANCELLATION:	Director's Memorandum 22-03

I. Introduction

On November 22, 2021, the EOIR Director issued Director's Memorandum (DM) 22-03, *Administrative Closure*, purporting to provide guidance regarding the use of administrative closure by EOIR adjudicators. A subsequent rulemaking superseded that DM, *see* Efficient Case and Docket Management in Immigration Proceedings, 89 FR 46742 (May 29, 2024) (ECDM Rule), and rendered it unnecessary. Furthermore, many of the assertions in that DM were either factually or legally dubious, and EOIR cannot defend it as a policy. Consequently, it warrants rescission and cancellation.

II. History of EOIR's Use of Administrative Closure

No statute authorizes administrative closure by EOIR adjudicators, and prior to the ECDM Rule, no regulation clearly authorized it either. EOIR's use of administrative closure in immigration proceedings dates back to at least the 1970s, as EOIR still has unresolved cases that were administratively closed during that decade. The use of administrative closure became more widespread in the 1980s following the issuance of an Operating Policies and Procedures Memorandum ("OPPM") in 1984 setting forth options available to Immigration Judges in cases where aliens failed to appear for their hearings, including the option to administratively close cases. OPPM 84-2: *Cases in Which Respondents/Applicants Fail to Appear for Hearing* (Mar. 7, 1984) (rescinded). Notably, that OPPM did not identify any basis for its authority, and there was no delegation by the Attorney General of such authority.

Subsequently, the use of administrative closure generally tended to correspond with either legislative changes providing new statutory forms of relief for aliens or with federal court settlement agreements requiring its use. For example, in 1986, shortly after the passage of the Immigration Reform and Control Act of 1986, creating an amnesty program for certain illegal

aliens who had entered the United States prior to January 1, 1982, Immigration Judges increasingly used administrative closure to pause removal proceedings while aliens pursued this newly available amnesty. PL 99-603, 100 Stat. 3359 (November 6, 1986).

Likewise, in the 1990s and early 2000s, the Department entered into binding settlement agreements that required Immigration Judges and the Board of Immigration Appeals (“Board”) to administratively close cases and issued regulations providing that parties could request administrative closure in a variety of specified situations.¹

As the use of administrative closure became more common, the Board began to address questions related to its use. For example, in 1988, the Board determined that an Immigration Judge improperly exercised administrative closure authority rather than hold deportation proceedings *in absentia*. *Matter of Amico*, 19 I&N Dec. 652, 654 (BIA 1988). Likewise, in 1990, the Board published *Matter of Lopez-Barrios* and *Matter of Munoz-Santos*, both of which held that an Immigration Judge could not administratively close a case if either party to the proceedings opposed closure. *Matter of Lopez-Barrios*, 20 I&N Dec. 203 (BIA 1990); *Matter of Munoz-Santos*, 20 I&N Dec. 205 (BIA 1990).

These decisions were consistent with prior Board caselaw—and general principles of administrative separation-of-functions—holding that decisions on whether to prosecute immigration proceedings were the sole province of the then-Immigration and Naturalization Service (“INS”) (now the Department of Homeland Security (“DHS”)). See, e.g., *Matter of Quintero*, 18 I&N Dec. 348, 350 (BIA 1982), *aff’d sub nom. Quintero-Martinez v. INS*, 745 F.2d

¹ See, e.g., *Barahona-Gomez v. Ashcroft*, 243 F. Supp. 2d 1029, 1035 (N.D. Cal. 2002) (“[I]f the [Respondent] fails to appear for the scheduled hearing . . . the case shall be administratively closed, following which, should the Respondent come forward, the hearing shall be recalendared[.]”); *Am. Baptist Churches v. Thornburgh*, 760 F. Supp. 796, 805-806 (N.D. Cal. 1991) (“*ABC*”) (ordering that proceedings before EOIR be administratively closed, generally, for class members); Adjustment of Status for Certain Nationals of Nicaragua and Cuba, 63 FR 27823, 27830 (May 21, 1998) (implementing administrative closure procedures for aliens who appeared eligible to adjust status under the Nicaraguan Adjustment and Central American Relief Act of 1997 (“NACARA”)), 8 C.F.R. § 245.13(d)(3) (1999); Adjustment of Status for Certain Nationals of Haiti, 64 FR 25756, 25771 (May 12, 1999) (requiring Immigration Judges and the Board to exercise administrative closure in cases where aliens appeared to be eligible to file an application for adjustment of status under the Haitian Refugee Immigration Fairness Act of 1998 (“HRIFA”) and met various other requirements), 8 C.F.R. § 245.15(p)(4) (2000); Executive Office for Immigration Review; Adjustment of Status for Certain Nationals of Nicaragua, Cuba, and Haiti, 66 FR 29449, 29452 (May 31, 2001) (providing that an alien for whose case an Immigration Judge or the Board has granted a motion to reopen under particular statutes may move to have proceedings administratively closed to seek adjustment of status), 8 C.F.R. § 245.13(m)(1)(ii) (2002); V Nonimmigrant Classification; Spouses and Children of Lawful Permanent Residents, 66 FR 46697, 46704 (Sept. 7, 2001) (“If the alien appears eligible for V nonimmigrant status, the immigration judge or the Board, whichever has jurisdiction, shall administratively close the proceeding or continue the motion indefinitely.”), 8 C.F.R. § 214.15(l) (2002); New Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for “T” Nonimmigrant Status, 67 FR 4784, 4797 (Jan. 31, 2002) (stating that T-visa applicants may request administrative closure) (codifying language later moved to 8 C.F.R. § 1214.2(a)); Adjustment of Status for Certain Aliens from Vietnam, Cambodia, and Laos in the United States, 67 FR 78667, 78673 (Dec. 26, 2002) (authorizing certain nationals of Vietnam, Cambodia, and Laos to move for administrative closure pending their applications for adjustment of status, but preventing the Immigration Judge or the Board from “defer[ring] or dismiss[ing] the proceeding” without the former INS’s consent) (codifying language later moved to 8 C.F.R. § 1245.21(c)). As discussed, *infra*, some of these regulations may be *ultra vires* or otherwise unlawful for other reasons, but a further discussion of these specific regulations is beyond the scope of this PM.

67 (9th Cir. 1984) (noting that an Immigration Judge “may neither terminate nor indefinitely adjourn the proceedings in order to delay an alien’s deportation . . . [and] [o]nce deportation proceedings have been initiated by [DHS], the immigration judge may not review the wisdom of [DHS’s] action, but must execute his duty to determine whether the deportation charge is sustained by the requisite evidence in an expeditious manner”); *see also Matter of Roussis*, 18 I&N Dec. 256, 258 (BIA 1982) (“It has long been held that when enforcement officials of the [DHS] choose to initiate proceedings against an alien and to prosecute those proceedings to a conclusion, the immigration judge is obligated to order deportation if the evidence supports a finding of deportability on the ground charged.”); *cf. Lopez-Telles v. INS*, 564 F.2d 1302, 1304 (9th Cir. 1977) (“Rather, these decisions plainly hold that the immigration judge is without discretionary authority to terminate deportation proceedings so long as enforcement officials of the [DHS] choose to initiate proceedings against a deportable alien and prosecute those proceedings to a conclusion. The immigration judge is not empowered to review the wisdom of the [DHS] in instituting the proceedings. His powers are sharply limited, usually to the determination of whether grounds for deportation charges are sustained by the requisite evidence or whether there has been abuse by the [DHS] in its exercise of particular discretionary powers. This division between the functions of the immigration judge and those of [DHS] enforcement officials is quite plausible and has been undeviatingly adhered to by the [DHS].”); *Matter of Silva-Rodriguez*, 20 I&N Dec. 448, 449-50 (BIA 1992) (undue delay by an Immigration judge may frustrate or circumvent statutory purpose of prompt immigration proceedings); *Matter of Yazdani*, 17 I&N Dec. 626, 630 (BIA 1991) (“However, so long as the enforcement officials of the [DHS] choose to initiate proceedings against an alien and to prosecute those proceedings to a conclusion, the immigration judge and the Board must order deportation if the evidence supports a finding of deportability on the ground charged.”). Otherwise, an Immigration Judge could, through the unilateral use of administrative closure, overrule DHS’s decision on prosecuting a particular case and indefinitely adjourn the case to effectively prohibit or avoid the alien’s removal.

The prohibition on administrative closure over the opposition of a party generally remained the status quo for several years. However, in 2012, the Board published *Matter of Avetisyan*, 25 I&N Dec. 688 (BIA 2012), which caused significant upheaval in the law and accelerated the utilization of administrative closure. In that decision, the Board held, for the first time ever, that Immigration Judges and the Board could unilaterally administratively close proceedings over a party’s objection. *Id.* at 694. This broad interpretation was a significant—and partially unexplained—departure from the prior uses of administrative closure described above. Further—and also for the first time ever—the Board linked Immigration Judges’ and Appellate Immigration Judges’ authority to administratively close proceedings to general regulatory authority provisions under 8 C.F.R. §§ 1003.10(b) and 1003.1(d)(1)(ii) to take any appropriate and necessary action. *Id.* at 691.

Notably, the Board in *Matter of Avetisyan* did not expressly overrule—or even acknowledge—its prior line of cases prohibiting Immigration Judges and Appellate Immigration Judges from second-guessing DHS’s decisions to prosecute a case in removal proceedings. Rather, it simply asserted a *non sequitur*—that its decision would not preclude DHS from pursuing removal proceedings, despite the fact that unilateral administrative closure over DHS’s objection does preclude DHS

from pursuing the removal proceedings while the administrative closure order is in effect, *compare Matter of Avetisyan*, 25 I&N Dec. at 694 (“Although administrative closure impacts the course removal proceedings may take, it does not preclude the DHS from . . . pursuing those proceedings . . .”), *with Matter of Amico*, 19 I&N Dec. at 654 (“When a case is administratively closed, the respondent is allowed . . . to avoid an order regarding his deportability, and the consequences an order of deportation could bring.”) *and Matter of Quintero*, 18 I&N Dec. at 350 (noting that an Immigration Judge “may neither terminate nor indefinitely adjourn the proceedings in order to delay an alien’s deportation . . . [and] [o]nce deportation proceedings have been initiated by [DHS], the immigration judge may not review the wisdom of [DHS’s] action, but must execute his duty to determine whether the deportation charge is sustained by the requisite evidence in an expeditious manner”)—without justification, explanation, or even an acknowledgment of its prior caselaw to the contrary.²

Furthermore, *Matter of Avetisyan* did not address that the regulatory provisions only assign the authority to defer adjudication of cases to the Director, the Chief Appellate Immigration Judge, and the Chief Immigration Judge—but not to Immigration Judges or Appellate Immigration Judges themselves. *See* 8 C.F.R. §§ 1003.0(b)(1)(ii), 1003.1(a)(2)(i)(C), 1003.9(b)(3). Further, the Board did not acknowledge that, if 8 C.F.R. §§ 1003.1(d)(1)(ii) and 1003.10(b) provided freestanding authority for administrative closures, then other regulatory provisions that do expressly provide for such closures would be superfluous. *See, e.g.,* 8 C.F.R. § 1245.13(d)(3)(i) (stating that immigration judges or the Board “shall, upon request of the alien and with the concurrence of [DHS], administratively close the proceedings”). Finally, the Board did not address the reference in 8 C.F.R. §§ 1003.1(d)(1)(ii) and 1003.10(b) to the “disposition” of cases, which ordinarily connotes a final or dispositive decision, which an order of administrative closure is certainly not. *Compare* Black’s Law Dictionary (11th ed. 2019) (defining “disposition” as “[a] *final* settlement or determination” (emphasis added)), *with Matter of Avetisyan*, 25 I&N Dec. at 695 (describing the “fact that administrative closure does not result in a final order” as “undisputed”) *and Matter of Amico*, 19 I&N Dec. at 654 n.1 (“The administrative closing of a case does not result in a final order.”).

The result from *Matter of Avetisyan* was a dramatic increase in the use of administrative closure, which was encouraged by the Department of Justice and EOIR leadership in an apparent effort to effectuate a policy goal of avoiding or deferring orders of removal against as many aliens as possible. Between Fiscal Year (FY) 1991 and the close of FY 2011, the FY preceding the *Matter of Avetisyan* decision, EOIR averaged 3,697 cases of administrative closure per FY. However, in

² The Board’s change in position in *Matter of Avetisyan* was neither well-reasoned nor observant regarding prior Board precedent with which it conflicted. Indeed, *Matter of Avetisyan* failed to fully explain its change in position from prior Board precedents prohibiting Immigration Judges from preventing DHS from prosecuting its cases itself, nor did it even acknowledge there was a change. This unexplained and unacknowledged departure from prior precedent violates fundamental principles of administrative law. *See FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) (“To be sure, the requirement that an agency provide reasoned explanation for its action would ordinarily demand that it display awareness that it *is* changing position. An agency may not, for example, depart from a prior policy *sub silentio* or simply disregard rules that are still on the books.”). Thus, although *Matter of Avetisyan* remains precedential and binding, EOIR cannot—and will not—defend it in good faith if challenged in litigation because it provided neither a reasoned explanation nor awareness of its marked change in position from past precedent regarding DHS’s prosecutorial discretion.

the five FYs following FY 2012, EOIR averaged 21,158 administratively closed cases per FY. This pattern repeated after *Matter of Avetisyan* was revived in 2021.³ Between FY 2022 and FY 2024, EOIR averaged 33,209 cases of administrative closure per FY. Of the approximately 379,000 cases that are still administratively closed at the immigration court level (since FY 1974), as of the beginning of April 2025, over 222,000 were administratively closed in just nine FYs: FY 2013 to FY 2017 and FY 2022 to FY 2025.

III. Inaccurate Characterizations of Administrative Closure

EOIR's increased utilization of administrative closure as a policy-driven tool since 2011 also corresponded with repeated—yet demonstrably untrue—assertions about its usage. These knowing mischaracterizations of administrative closure, particularly by those with access to accurate information, warrant significant rectification.

For example, administrative closure has often been described as a temporary measure. *See, e.g., Matter of Gutierrez-Lopez*, 21 I&N Dec. 479, 480 (BIA 1996) (“Administrative closure of a case is used to temporarily remove a case from an Immigration Judge’s calendar or from the Board’s docket.”), *overruled by Matter of Avetisyan*, 25 I&N Dec. at 697. Although that may have been arguably true in the 1980s or 1990s, it is no longer considered a temporary measure. On the contrary, the average length of time that a case is administratively closed at the immigration court level is approximately 15 years, and approximately 29 years at the Board level. These averages do not reflect “temporary” action by any reasonable definition of the term. Rather, administrative closure is more properly characterized as an indeterminate or unbounded measure, which typically stops an adjudication indefinitely.

Second, administrative closure is often erroneously alleged to aid docket management and has been described as an “administrative convenience,” *Matter of Amico*, 19 I&N Dec. at 654 n.1. Yet, periods of increased usage of administrative closure have also corresponded to periods of significant increases to EOIR’s backlog. For instance, between January 2013 and January 2017, the number of administratively closed cases increased from nearly 172,000 to over 268,000; over that same time period, EOIR’s backlog increased from just under 550,000 cases to nearly 859,000. Similarly, between January 2021 and January 2025, the number of administratively closed cases increased from nearly 278,000 to almost 392,000; over that same time period, EOIR’s backlog increased from approximately 1.68 million cases to over 4.1 million cases. Indeed, EOIR’s experience shows that increased usage of administrative closure leads to greater lost-docket time as parties debate whether it is appropriate in a particular case, leading to even more continuances while that issue is resolved, and, if administrative closure is not ordered, a lengthy delay occurs in adjudicating the merits of a case that otherwise would have been decided much earlier. Moreover, as a matter of logic, because administrative closure does not dispose of a case, it cannot help manage the overall docket; rather, it simply delays a case indefinitely without a disposition so that it remains in a liminal state. Administrative closure merely “kicks the can down the road,” increasing the overall backlog while leaving ripple effects—*e.g.* multiple continuances and lost

³ *Matter of Avetisyan* was overruled in 2018 by the Attorney General. *Matter of Castro-Tum*, 27 I&N Dec. 271 (A.G. 2018). *Matter of Castro-Tum* was, in turn, overruled by a different Attorney General in 2021, and *Matter of Avetisyan* was effectively reinstated. *Matter of Cruz-Valdez*, 28 I&N Dec. 326 (A.G. 2021).

adjudication time—in its wake, which further exacerbate the backlog. In short, there is no reliable evidence that administrative closure aids docket management; rather, the opposite has shown to be true.

Similarly, as noted above, although administrative closure has been frequently characterized as a docket management tool, in reality, it has transformed into a mechanism to effectuate immigration policy goals rather a procedure to genuinely aid the efficient disposition of cases. As early as 1988, EOIR recognized that “[w]hen a case is administratively closed, the respondent is allowed. . .to avoid an order regarding his deportability, and the consequences an order of deportation could bring.” *Matter of Amico*, 19 I&N Dec. at 654. To that end, since 2011, administrative closure has been used principally as a policy tool—particularly by Administrations opposed to robust immigration enforcement and adherence to the plain language of statutes—in order to direct the “resolution” of cases to achieve a particular policy outcome, namely the avoidance or indefinite delay of the issuance of an order of removal against as many aliens as possible. In addition to overriding the decisional independence of adjudicators, this policy of outcome-driven use of administrative closure by EOIR has also established a *de facto* amnesty program unauthorized by Congress. Indeed, in EOIR’s experience, many illegal aliens seek administrative closure when they have no other viable form of relief or protection from removal available; otherwise, they would pursue a meritorious application that would provide them with full lawful status in a timely manner. Yet, before seeking administrative closure, they often file an application for relief anyway and rely on that application to obtain employment authorization. Then, once the removal case is administratively closed, because the relief application may remain pending indefinitely, the alien will also continue receiving employment authorization indefinitely with no fear of being removed. As a result, administrative closure often functions as a *de facto* amnesty program with benefits—*i.e.*, providing illegal aliens both indefinite employment authorization and indefinite protection from removal—which wholly belies its characterization as merely a docket management tool.

IV. Additional Legal Questions Surrounding the Use of Administrative Closure

In addition to overriding DHS’s prosecutorial discretion, violating basic administrative separation-of-functions principles, and the failure in *Matter of Avetisyan* to explain or acknowledge its departure from prior Board precedent, EOIR’s use of administrative closure, including as codified by the ECDM Rule, presents several other problematic legal questions.

First, EOIR’s widespread use of administrative closure, to the extent that cases may be closed for decades, creates a serious tension with—if not also a direct violation of—EOIR’s regulations requiring cases to be adjudicated in a timely manner. *See, e.g.*, 8 C.F.R. § 1003.10(b) (“[i]n all cases, immigration judges shall seek to resolve the questions before them in a timely and impartial manner”). Further, the lack of timely adjudication of approximately 400,000 cases places EOIR at great risk of an onslaught of mandamus petitions. *See* 28 U.S.C. § 1361. Put simply—and also as a matter of good governance—“[a]n adjudicatory default on that scale strikes directly at the rule of law,” *Hernandez-Serrano v. Barr*, 981 F.3d 459, 461 (6th Cir. 2020), and EOIR’s “adjudicatory default” due to administrative closure over a long period of time potentially jeopardizes the agency’s ability to defend itself from legal challenges.

More troublingly, EOIR’s use of administrative closure, including the ECDM Rule, appears to implicate the major questions doctrine. As discussed, *supra*, the use of administrative closure has effectively become an amnesty program, allowing otherwise illegal aliens to remain in the United States indefinitely—and typically with the benefit of work authorization—without the threat of removal. However, there is absolutely no statutory authorization for such a program, as there is no such authorization for administrative closure in the first instance. Moreover, as also noted elsewhere, even the regulatory and adjudicatory bases for it are on questionable administrative law footing. EOIR’s assertion of heretofore unknown regulatory authority for the widespread use of administrative closure is of recent vintage and conspicuously fails to assert any statutory basis. Rather, it is a transformative expansion of its authority in order to create a *de facto* amnesty program for hundreds of thousands of aliens. The absence of any statutory basis for such a program—even beyond the dubious regulatory or adjudicatory basis for it—raises serious separation-of-powers or nondelegation issues for EOIR and squarely implicates the major questions doctrine.

Although “the major questions ‘label’ may be relatively recent, it refers to an identifiable body of law that has developed over a series of significant cases spanning decades.” *Biden v. Nebraska*, 600 U.S. 477, 504-05 (2023) (cleaned up). As commonly understood, the major questions doctrine requires Congress to have spoken clearly to the assignment of certain authorities to administrative agencies, especially those purporting to address questions “of vast economic and political significance.” *Alabama Ass’n of Realtors v. Dept. of Health and Hum. Servs.*, 594 U.S. 758, 764 (2021) (cleaned up). Put more clearly,

[t]he major questions doctrine serves a similar function [as the nondelegation doctrine] by guarding against unintentional, oblique, or otherwise unlikely delegations of the legislative power. Sometimes, Congress passes broadly worded statutes seeking to resolve important policy questions in a field while leaving an agency to work out the details of implementation. Later, the agency may seek to exploit some gap, ambiguity, or doubtful expression in Congress’s statutes to assume responsibilities far beyond its initial assignment. The major questions doctrine guards against this possibility by recognizing that Congress does not usually “hide elephants in mouseholes.” In this way, the doctrine is a vital check on expansive and aggressive assertions of executive authority.

NFIB v. OSHA, 595 U.S. 109, 125 (2022) (Gorsuch, J., concurring) (cleaned up). The doctrine applies “when an agency claims the power to resolve a matter of great political significance or end an earnest and profound debate across the country.” *West Virginia v. EPA*, 597 U.S. 697, 743 (2022) (Gorsuch, J., concurring) (cleaned up).

There is no question that immigration, particularly a *de facto* amnesty, is a matter of “great political significance” and subject to “an earnest and profound debate” across the United States. It is equally clear that EOIR has seized for itself an authority to indefinitely suspend cases without a disposition, administrative closure, that has no statutory basis at all. That combination—*i.e.* using an authority to effectuate amnesty to hundreds of thousands of otherwise removable aliens without any statutory basis—squarely implicates the major questions doctrine, as Congress has not clearly

provided EOIR authority to implement such an amnesty, yet EOIR has nevertheless done so. As such, EOIR is placed in an uncomfortable position of adhering to a rulemaking that may be potentially unconstitutional.

Whether EOIR's use of administrative closure as a *de facto* amnesty program definitively violates the major questions doctrine is beyond the scope of this Policy Memorandum (PM).⁴ Nevertheless, that question further underscores the myriad of problems EOIR's use of administrative closure, codified in the ECDM Rule, has engendered. At best, the ECDM Rule appears arbitrary and capricious because it wholly failed to consider several problematic aspects of administrative closure⁵ and was wholly contrary to the evidence that administrative closure is neither temporary nor is an effective docket management tool. *See, e.g., Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) ("Normally, an agency rule would be arbitrary and capricious if the agency. . . entirely failed to consider an important aspect of the problem [or], offered an explanation for its decision that runs counter to the evidence before the agency. . ."). At worst, it may be *ultra vires* or unconstitutional in violation of the major questions doctrine because it arrogated to EOIR an authority to grant amnesty to hundreds of thousands of illegal aliens without any statutory basis whatsoever. As such, EOIR could not—and will not—defend the ECDM Rule in good faith against legal challenge. Nevertheless, until it is rescinded, superseded, enjoined, vacated, or otherwise determined to be unlawful, the changes made by that rulemaking remain binding on EOIR adjudicators. Accordingly, this PM cannot—and does not purport to—alter that rulemaking's legal effect, and adjudicators should continue to adhere to it unless they have a legal basis for not doing so.

V. Conclusion

EOIR's use of administrative closure, particularly between 2011 and 2017 and between 2021 and 2025, was an unmitigated disaster from a policy standpoint and strongly appears to have also been unlawful. Further, not only did it constitute "[a]n adjudicatory default. . . [that] strikes directly at the rule of law," *Hernandez-Serrano*, 981 F.3d at 461, but in EOIR's experience, it contributed to significant increases in EOIR's adjudicatory backlog. To the extent DM 22-03 contributed to that "adjudicatory default" it merits cancellation and rescission even if it had not otherwise been effectively superseded by the ECDM Rule, and EOIR's "adjudicatory default" due to administrative closure over a long period of time potentially jeopardizes the agency's ability to defend itself from legal challenges. Accordingly, DM 22-03 is cancelled and rescinded.

This PM is not intended to, does not, and may not be relied upon to create, any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States,

⁴ Apart from potentially implicating the major questions doctrine, EOIR's use of administrative closure—except as required by a judicial settlement agreement—may also be *ultra vires*. As an administrative agency, EOIR can exercise only authority granted to it by statute, and no statute authorizes administrative closure at all. *See, e.g., Int'l Union of Elec., Radio and Mach. Workers v. NLRB*, 502 F.2d 349, 352 n.* (D.C. Cir. 1974) ("An administrative agency possesses no such inherent equitable power, however, for it is a creature of the statute that brought it into existence; it has no powers except those specifically conferred upon it by statute."). Again, this PM does not definitively resolve whether administrative closure, including the ECDM Rule, is an *ultra vires* exercise of authority.

⁵ For example, it failed to consider the federalism impacts of an amnesty program on states with high numbers of aliens whose cases have been administratively closed.

its departments, agencies, or entities, its officers, employees, or agents, or any other person. Nothing herein should be construed as mandating a particular outcome in any specific case. Nothing in this PM limits an adjudicator's independent judgment and discretion in adjudicating cases or an adjudicator's authority under applicable law.

Please contact your supervisor if you have any questions.